

The sovereignty of the lawcode in Aristotle

By Denis Vlahovic

Department of Philosophy

McGill University, Montreal

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### *Dissertation abstract*

In contrast with the procedural orientation of Athenian law in his day, Aristotle thinks that the lawcode should include principles which explain the rules of the lawcode and guide the interpretation of these rules in difficult cases. It should be determined by majority vote whether the decisions and proposals of political experts are consistent with the principles of the lawcode. Aristotle's views on practical explanation support his views on political deliberation. Someone has a technê rather than mere empeiria if he can give an account of the principles of an art and is able to explain the results of his deliberations in the art in terms of the principles. Such explanation does not have the same status as apodeixis in the epistêmai, in that such an explanation cannot demonstrate that a conclusion follows necessarily from the principles of the art. However, a person who has experience in the art is able to evaluate deliberative options based on such arguments.

Aristotle has an account of practical intellection which, like Plato's, is theory-based. Aristotle's account is an adjustment of Plato's account in the light of Isocrates' criticisms of Plato. Aristotle combines the accounts of Plato and Isocrates—the emphasis of the one on explanation and the emphasis of the other on practical principles. Aristotle's views on practical intellection allow him to solve a problem associated with Plato's proposals in the *Laws*, which resemble in important respects Aristotle's own proposals. Plato intends in the *Laws* to introduce an arrangement on which the polis is governed by non-philosopher citizens educated by the lawcode. However, because of his views on practical intellection, Plato is forced to put the 'Nocturnal Council' in charge of 'preserving the laws'. Because of his views on

practical intellection, Aristotle can accept that the majority can be in charge of preserving the law. Aristotle's views on practical intellection also allow him to say that one ought to spell out the principles of the lawcode and privilege them in the interpretation of the law—which is different from the Athenian, procedural approach to the law—even though no universally true claims are possible on practical issues.

### *Abrégé de dissertation*

En contraste avec l'orientation procédurale du droit d'Athènes, Aristote croit que le code des lois doit inclure les principes qui expliquent les règles du code et qui guident l'interprétation de ces règles dans les cas problématiques. Il faut que la majorité détermine en votant si les décisions et les propositions des experts en politique sont en accord avec les principes du code des lois. La théorie d'Aristote sur l'explication pratique soutient ses suppositions concernant la délibération politique. Quelqu'un possède une technê et non seulement une empeiria quand il peut expliquer les principes d'un art et quand il peut expliquer comment les conclusions de ses délibérations dans cet art suivent des principes. Les telles explications ne sont pas pareilles aux apodeixeis en epistêmê car une telle explication ne peut pas établir qu'une conclusion suit nécessairement des principes de l'art. Cependant, une personne qui a de l'expérience dans l'art peut évaluer les options délibératives en évaluant les telles explications.

La théorie d'Aristote sur l'intellection pratique est basée, comme celle de Platon, sur une approche théorique. Cette théorie est le résultat d'une adaptation des principes platoniciens à la critique isocratienne de Platon. La théorie d'Aristote unit les suppositions théoriques de Platon avec l'esprit pratique d'Isocrate. Sa théorie lui donne la possibilité d'offrir une solution à un problème dans les *Lois* de Platon, ce qui est important, parce-qu'il y a des relations importantes entre les propositions d'Aristote concernant le code des lois et les propositions sur le même sujet qu'on voit dans les *Lois*. Platon veut introduire, dans les *Lois*, un système selon lequel la polis est administrée par les citoyens non-philosophes éduqués par le code des lois. Néanmoins, à cause de sa théorie sur l'intellect pratique, Platon doit déléguer la responsabilité de la

préservation des lois aux philosophes du 'Conseil de Nuit'. Une conséquence de sa théorie de l'intellect pratique est qu'Aristote peut proposer que la majorité soit responsable de la préservation des lois. Sa théorie aussi lui permet de dire, contre Isocrate, qu'il faut que le code des lois inclut les principes de ce code et que le code ordonne aux principes la priorité dans l'interprétation des règles du code—ce qui distingue ses propositions législatives de la pratique athénienne—même si les propositions universellement vraies ne sont pas possibles concernant les affaires pratiques.

*A note on documentation, foreign words, abbreviations, translations*

I have used the 'MLA documentation style' for documenting sources (*MLA Handbook*, 114). I have also adopted the MLA recommendation that foreign words should be underlined rather than italicised (66). I have used the following abbreviations:

Works by Aristotle

<i>Rhet.</i>	<i>Rhetoric</i>
<i>Pol.</i>	<i>Politics</i>
<i>EN</i>	<i>Nicomachean Ethics</i>
<i>EE</i>	<i>Eudemian Ethics</i>
<i>Ath.Pol.</i>	<i>Constitution of the Athenians</i>
<i>Post.An.</i>	<i>Posterior Analytics</i>
<i>Meta.</i>	<i>Metaphysics</i>
<i>Phys.</i>	<i>Physics</i>
<i>Poet.</i>	<i>Poetics</i>
<i>Soph.El.</i>	<i>Sophistical Refutations</i>

Works by Plato

<i>Gorg.</i>	<i>Gorgias</i>
<i>Phdr.</i>	<i>Phaedrus</i>
<i>Rep.</i>	<i>Republic</i>
<i>Stat.</i>	<i>Statesman</i>
<i>Phileb.</i>	<i>Philebus</i>
<i>Men.</i>	<i>Meno</i>

### Works by Isocrates

- KS            *Against the Sophists*
- A            *Antidosis*
- H            *Helen*
- P            *Panathenaicus*

### Secondary Sources

- ANE   Irwin, T. *Aristotle's Nicomachean Ethics*. Indianapolis, 1986.
- APP   Kraut, R. *Aristotle: Political Philosophy*. Oxford, 2002.
- AR   Kennedy, George. *Aristotle on Rhetoric: A Theory of Civic Discourse*. Oxford, 1991.
- AtD   Hansen, M.H. *The Athenian Democracy in the Age of Demosthenes*. Oxford, 1991.
- DM   Hutchinson, Doug. 'Doctrines of the Mean and the Debate Concerning Skills in Fourth-Century Medicine, Rhetoric, and Ethics.' *Apeiron* 21: 17-52.
- EA   Burnet, John. *The Ethics of Aristotle*. London, 1904.
- LSJ   Liddell, H.G., R. Scott, H.S. Jones, eds. *A Greek-English Lexicon*. Oxford, revised 1968.
- PL   Nightingale, Andrea. 'Plato's Lawcode in Context: Rule by Written Law in Athens and Magnesia.' *Classical Quarterly* 49.1 (1999): 100-122.
- RHG   Cooper, John. *Reason and Human Good in Aristotle*. Cambridge, 1975.

## INTRODUCTION *The sovereignty of the lawcode in Aristotle*

### *The importance of law and nomothetikê in Aristotle*

Diogenes Laertius reports, in his *Lives of the Philosophers*, that Aristotle would frequently speak for a long time about the fact that, while the Athenians were the ones who discovered wheat and the laws they used wheat but did not use laws (5.17). There are numerous passages, in Aristotle's political works, which suggest that he attributes an importance to law in a variety of areas of his moral and political theory.<sup>1</sup> In particular, Aristotle attributes an important status to the art of nomothetikê ['law-giving' or 'legislation']. Aristotle talks about nomothetikê in a way which suggests that the *Ethics* (that is, the *EN* and the *EE*) and the *Politics* can be used by legislators. Indeed, some authors have argued that this is precisely the aim of the *Ethics* and the *Politics*.<sup>2</sup> I will

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<sup>1</sup> Under 'political works' I include the *Pol.*, *EN*, *EE*, *Rhet.*, *Ath.Pol.* When I use a phrase like 'Aristotle's views on law', 'Aristotle's claims about law', etc. I intend this to refer not just to passages in which he talks about nomos but also passages in which he talks about 'ta nomima', 'ho nomimos politês', 'nomothetikê', 'nomothesia', 'nomothetai', etc.

<sup>2</sup> Richard Bodéüs thinks that this is the aim of these texts. He tells us, for example, that 'in my view, the discourses of the *Ethics* too are addressed to the person charged with defining the laws, that is, to the politician' (*Dimensions* 60). In an article he tells us that 'Une bonne part des exposés que contient la *Politique* d'Aristote sont conçus pour répondre le cas échéant aux besoins du législateur' (Savoir 113). He also discusses his views in 'Law and Regime'. Vander Waerdt offers a critical evaluation of some of Bodéüs' claims. Burnet expresses views similar to Bodéüs' regarding the *Ethics*. According to Burnet, 'the object of the present course [i.e. the *EN*] is not to give empirical rules for action, but to train lawgivers; for we know that the fairest and grandest aim of practical science is to produce happiness for a state.' (EA 247) The political and legislative intention of the *Ethics* are also discussed by Cashdollar and Trépanier. Richard Kraut also notes that politics studies the human good (*Human Good* 220-225).

mention briefly the connections Aristotle makes between the concerns of nomothetikê and the *Ethics* and the *Politics* respectively.<sup>3</sup>

(i) Nomothetikê and the Ethics

The connection between the *Ethics* and nomothetikê has to do with the fact that one of the functions of nomothetikê is to make laws which promote the moral virtues. For example, Aristotle says at 1103b6f that it is legislators who make people good by training them [hoi nomothetai tous politas ethizeontes poiouein agathous]; that this is the aim of all legislators and if legislators do not do this they err; and that one respect in which good constitutions are distinguished from bad ones is that in good constitutions the laws have this aim. One reason why moral education is the concern of legislators is that primary education, whose aim is to make citizens virtuous, must be common and required by law. But Aristotle also thinks that the laws must give citizens guidance in virtuous action. He thinks that the laws ought to command actions in accordance with all virtues and forbid actions in accordance with all vices (1129b19-26; 1130b24).<sup>4</sup> The laws ought to do this

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<sup>3</sup> Here I discuss passages which suggest that nomothetikê requires the study of the *Ethics* and *Politics*. There is also evidence which suggests that Aristotle includes future lawgivers among the intended audience of his lectures. For example, at *EN* 1109b33-35, Aristotle introduces the study of the voluntary and the involuntary with the following: ‘those who study virtue must have a definition of the voluntary and the involuntary, and such a definition is also useful to legislators in relation to honours and punishments [to hekousion kai akousion anankaion isôs diorisai tois peri aretês episkopousi, chrêsimon de kai tois nomothetousi pros te tas timas kai kolaseis]’. Burnet, *EA* 111 notes that this passage is a ‘characteristic touch. Aristotle never forgets that we are learning to be lawgivers.’ Another example is *EN* 1155a23, where Aristotle again seems to assume that he should make the discussion relevant to nomothetai.

<sup>4</sup> Aristotle is talking about the best politeia here—i.e. the politeia which he calls ‘aristocracy’ elsewhere. The defining feature of aristocracy is virtue [aristokratias horos aretê] (1294a11). Only in aristocracy is it the case without qualification that the same individual is both a good person and a good citizen [en monêi (têi aristokratiâi) haplôs ho autos anêr kai politês agathos estin] (1293b6). The aim of aristocracy is to promote

so exhaustively that the lawful [nomimos] individual—the individual who complies with all of the laws [nomoi] of the polis—has complete virtue because he acts in accordance with all the virtues (1129b19-26).

This is necessary because, just as we learn a skill by doing the things that we shall have to do when we have learned it [ha dei mathontas poiein, tauta poiountes manthanomen]<sup>5</sup>—for example, one becomes a builder by building houses, a harp player by playing the harp—so too we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts, and so on for the rest of the virtues. That is, primary education of the sort described in *Pol.* 8 is not sufficient to establish the virtues in citizens. One must also guide them in the actions required by virtue, and prevent them from acting in accordance with the vices. This is a higher level of moral education beyond the common primary education.<sup>5</sup> The law must also provide such guidance because some people will never attain moral maturity and will need extensive moral guidance throughout their lives (1180a1-14).

Because of this function of nomothetikê, this art is to the soul what medicine is to the body. And legislation, like medicine, cannot just practise by experience [empeiria]. It must advance to the universal [epi to katholou] just like any technê and epistêmê. It must, therefore, study the soul just like medicine studies the body (1180b20). The *Ethics* offers

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education and customs [aristokratias telos ta pros paideian kai ta nomima] (*Rhet.* 1366a5).

<sup>5</sup> The same is true of the skills. One does not teach people to play the flute by teaching them scales, fingering exercises and such. One also teaches them to play pieces of music.

an examination of the theoretical issues which a nomothetês must know in order to offer moral guidance to citizens.<sup>6</sup>

(ii) Nomothetikê and the Politics

Nomothetikê does not require merely a study of the human soul. It also studies issues relating to constitutions [to peri tas politeias] (1181b14). Aristotle says this in the context of a discussion of the question of who imparts the art of nomothetikê. He is critical of those ‘Sophists’ who think that one can acquire expertise in nomothetikê by studying collections of laws.<sup>7</sup> Aristotle objects that this does not teach us what the expert nomothetês knows. An expert in any art judges well regarding the products of this art by what means and in what way products are perfected [kai di’hôn ê pôs epiteleitai suniasin]; and they know, with respect to their art, *what kinds of things fit what kinds of things* [kai poia poiois sunaidei] (1181a20). For example, those who teach medicine try to tell us not only the treatments but also how one can heal and how to treat each type of disease, classified according to the states of the body [peirôntai legein ou monon ta therapeumata alla kai hôs iatheien kai hôs dei therapeuein hekastous, dielomenoi tas hexeis]. Medicine requires, therefore, a classification of body types and types of disease.

Nomothetikê requires a classification of constitutions and laws. For, Aristotle says in the *Pol.* that laws must be made to suit constitutions [pros tas politeias tous nomous dei tithesthai] (*Pol.* 1289a13). For this reason ‘it is the same phronêsis which will enable a person to know which laws are the best, and which are suited to different constitutions’

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<sup>6</sup>The art of nomothetikê is not just of importance to prospective legislators. Even a person wants to make children and friends become virtuous must acquire this art (1180a32).

<sup>7</sup> Here Aristotle has Isocrates in mind. This is discussed below, in chapter 2.2.

[kai nomous tous aristous idein kai tous hekastê tôn politeiôn harmottontas]

(*Pol.*1289a10). Therefore it is necessary to ‘ascertain what differences there are in the constitutions of states, and in how many ways they are combined’ (*Pol.*1289a10). Since part of the aim of the *Pol.* is to give a classification of the types of constitution, the latter passages suggest that one of the aims of Aristotle’s work in the *Politics* is to contribute to the study of nomothetikê. Aristotle says as much when he says in *EN*10.9 that he is undertaking a study of politeiai; he says that he is doing so because the subject of legislation [to peri tês nomothesias] has been left uninvestigated (1181b14).

*The focus of the dissertation: the lawcode and political deliberation*

This sort of evidence has led Bodéüs, Burnet and others to suggest that one of Aristotle’s central aims in the political works is to educate nomothetai. In this dissertation I will consider evidence which supports the following set of claims about law in Aristotle’s political works.

(i) *The lawcode as textbook*

I will argue, first of all, that Aristotle thinks that the lawcode will instruct citizens not just by specifying rules of action in accordance with the virtues but also by giving citizens an account explaining why they are required to act in these ways.<sup>8</sup> Furthermore, there is evidence that he thinks that the law-code ought to educate officials so that they can make judgments in accordance with the intentions of the nomothetês when they cannot apply the law directly—i.e. the lawcode educates officials in nomothetikê.

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<sup>8</sup> Aristotle suggests that the lawcode will offer such an account to citizens when he says that ‘the law has the power to compel action because it is an account proceeding from a sort of practical wisdom and intelligence’ [ho de nomos anankistikên echei dunamin, logos ôn apo tinos phronêseôs kai nou] (1180a22). This passage and the argument of *EN*10.9 will be discussed in part 2.

(ii) *Technê and practical intellection*

I will argue, second that these functions of the lawcode can be explained based on the evidence of Aristotle's views on education in the technai. I will explain the functions attributed by Aristotle to the lawcode by examining his views on the function of textbooks in the arts. One can in principle acquire a skill without being taught or guided by a textbook. One can acquire it as an empeiria. A textbook in an art facilitates education in the art by giving an 'account' [logos] of the judgment of a person who has a skill. Explanation and teaching in the arts is similar to explanation and teaching in the epistêmai. It involves a definition of principles, classification, and apodeixis. Its universals are true 'for the most part', like the universals of the natural sciences. There is one important difference between the arts and the epistêmai. Whereas empeiria is required for coming to know the principles in the epistêmai, it is involved much more in education in the technai. One learns an art by acquiring experience in practising the art under the guidance of a textbook and a teacher.

(iii) *The lawcode and deliberation*

Aristotle also says that the law ought to be sovereign in the polis. This is the basic principle of a good political order. Anyone else who is sovereign, whether one, few, or the majority, is 'guardian of the law' [nomophulax]. The law must be sovereign, according to Aristotle, because judgment in political matters is subject to the influence of the emotions and the desires. Political judgment requires an objective standard against which its decisions can be measured. I will argue that Aristotle means, first of all, that particular decisions ought to be guided by principles as well as the rules of the lawcode. Second, he means that, when the laws fail, decisions ought to be made by considering the

principles, which are part of the law-code.<sup>9</sup> Therefore, politikê, unlike other technai, is practised ‘by the book’ [kata grammata], meaning that a decision by a practitioner of politikê is acceptable only if it can be explained in terms of the textbook of politikê—i.e. the lawcode. Reasoning in politics is something like reasoning in the epistêmai. A difference between deliberation in the skills and reasoning in the epistêmai is that deliberation does not involve the same sort of certainty as does reasoning in the epistêmai. In the epistêmai one cannot come up with persuasive arguments for contradictory conclusions. In politics, on the other hand, one can come up with persuasive arguments for different laws or courses of action.

(iv) *The sovereignty of the majority*

Aristotle thinks that, in most cases, the majority of citizens will be best qualified to be in charge of nomophulakê.<sup>10</sup> I will argue that this means that the majority of citizens will be in charge of ensuring that all political decisions in the polis are made in accordance with the rules of the lawcode; that, when there is a deviation from the rules of the lawcode—in cases when a decision has to be made and there is no rule to guide the

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<sup>9</sup> A word of clarification on ‘rules and principles’ (and the related ‘logos’) is necessary here. A ‘principle’ does not directly specify an action but can be interpreted to be relevant to deliberation about action. A ‘rule’ specifies an action. An example of a rule is ‘One ought never to flee in the face of enemy attack’. An example of a principle is ‘Happiness consists in the exercise of virtue.’ The term ‘account’—which translates ‘logos’—in its most general sense is any set of principles and/or rules. This sense is used when Aristotle says that it is not easy to say ‘by means of a logos’ what the mean is. (In a more restricted sense a ‘logos’ is an account which explains why something is the case or why something ought to be done. This is used, for example, when Plato says that the rhetorician cannot give a logos of what he does.) Principles rules and logoi are contrasted with particular propositions or imperatives like ‘This is a fish’ or ‘I shouldn’t eat this chocolate.’

<sup>10</sup> Aristotle thinks that this is true, however, only if a politeia excludes from citizenship those who engage in inappropriate occupations.

decision and in cases when the straightforward application of a rule would be contrary to its intended purpose—the decision made is in accordance with the principles of the lawcode; and that changes to the existing rules of the lawcode and the introduction of new rules are consistent with the principles of the lawcode. In all such activities the majority would evaluate whether the decisions or proposals of experts are consistent with the rules and principles of the lawcode.

*(v) The background: 4th century theories of practical education and political deliberation*

Finally, I will defend the following historical claims about Aristotle's views on the lawcode and on the role of principles and explanations in practical education and intellection. I argue, first of all, based on the evidence of Aristotle's assumptions about the lawcode, that Aristotle thinks that the lawcode ought to be arranged in a way similar to the arrangement proposed by Plato in the *Laws*. Second, I examine two competing views on practical intellection and practical education, namely, those of Plato and Isocrates. I examine what is new about Aristotle's theory in relation to his competitors. Aristotle is unique in advocating the importance of a textbook consisting of rules and principles in practical education. Aristotle thinks that is important to establish a practical manual in an art which collects useful rules in an art and organises these rules around an account of the principles. Third, I will argue that Aristotle is unique, when compared with Plato and Isocrates, in advocating the sovereignty of a text consisting of rules and principles in political decision-making. Aristotle addresses a problem regarding political—and, more generally, practical—rules and principles. He explains how practical rules and principles can be sovereign in politics in spite of their limitations.

*A review of the literature and the contributions of the dissertation*

One contribution of my dissertation is to an understanding of Aristotle's views on the role of law in political deliberation. Examinations of political deliberation in Aristotle do not usually attribute great importance to the passages on law. Usually the focus is on Aristotle's 'summation argument' for the wisdom of the majority (e.g. Keyt, 'Aristotle's Theory'; Narcy); or on the distribution of offices required to make the participation in political deliberation just (e.g. Miller *Nature Justice Rights*; Mulgan). Some authors also focus on Aristotle's views on the importance of political participation generally<sup>11</sup>; as well as on the importance of participation in politics in exercising practical wisdom (e.g., Irwin, 'Political Activity'). When the importance of the law in political deliberation is noted no effort is made to incorporate it into a theory of deliberation.<sup>12</sup>

The issue of the role of laws in political deliberation tends to come up in the discussion of Aristotle's views on the status of rules and principles in practical deliberation. This is a very large area of Aristotle scholarship and I will summarise the status of this discussion here briefly. Some authors have suggested that one proceeds syllogistically and that Aristotle gives priority to rules and principles.<sup>13</sup> The evidence,

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<sup>11</sup> As Ober notes, 'all modern discussions of citizenship as a noninstrumental good-in-itself are indebted, if only indirectly, to him' (*Political Dissent* 290). Dahl, for example, thinks that Aristotle is an important example of 'aristocratic republicanism' (25-26). And Aristotle is cited favorably by some communitarian political theorists, e.g., Wolin 433-4.

<sup>12</sup> For example, Miller, *Nature Justice Rights* 79-84 notes the importance of law in Aristotle's political theory but does not examine the implications of Aristotle's views on law for an understanding of his views on political deliberation.

<sup>13</sup> Allen 'The Practical Syllogism' argues that Aristotle introduces, in *EN* 6 and 7, what Allen calls 'practical syllogism'. One sort of practical syllogism names an action as an instance of a rule. One does the action not because it is a means to some end but because it adheres to the rule. According to Allen this is an important first step toward the

however, is very strong that Aristotle thinks that one cannot make decisions by applying general rules or principles. Consequently, a much different interpretation of Aristotle has become common. One author summarises the status of the interpretations as follows:

‘Recent Aristotelian scholarship has emphasised the role of practical wisdom (phronêsis) in discerning the appropriate course of action for each set of circumstances.’ Nancy Sherman, Martha Nussbaum, Sarah Broadie and others ‘point out that it would be impossible to articulate a fixed set of principles by which anyone could decide how to act in every instance. Circumstances that may intervene and change the moral quality of a situation are particularly infinite, and could never be captured by any useful set of general rules. One who is habitually to act in accordance with virtue, then, cannot simply be a rule-follower, but must respond sensitively to the situation at hand. The emphasis on what Nussbaum calls “the priority of the particular” has been helpful in differentiating Aristotelian ethics from certain sorts of deontological ethical systems’ (Walsh 73).

Martha Nussbaum is opposed to deductivist interpretations of Aristotle.<sup>14</sup>

According to Nussbaum, in Aristotle’s argument that the ‘discernment’ of the correct

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recognition of an “intrinsic value” in certain actions, since it suggests the possibility that one might perform an action not because one expected good consequences but because one accepted some rule requiring it.’

<sup>14</sup> Nussbaum finds this interpretation of Aristotle in Aquinas, J. Maritain, and D. Ross. Nussbaum describes this interpretation as follows: ‘Aristotle, the inventor of the syllogism and of the deductive method in the philosophy of science, brought his formidable acumen to the sphere of practice as well and, with his theory of the practical syllogism, made a promising start towards rendering matters of conduct as precise and as deductively neat as the theoretical sciences. With his analysis of man’s essence, he provided the new science with a priori first principles, to be grasped by intuition but not subject to rational argument. Below these there spreads (potentially at least) a closed, consistent hierarchy of rules of practice, covering both the moral and non-moral sides of life...In any deliberative context all the agent will need to do, once the science is finished,

choice rests with 'perception' we see an attack on the idea that 'rational choice can be captured in a system of general rules or principles which can...simply be applied to each new case' ('Discernment' 66). Perception is 'some sort of complex responsiveness to the salient features of one's concrete situation' (55). Practical wisdom is concerned with ultimate particulars which 'must be grasped with insight through experience' (68,74). Even authors who attribute to Aristotle the view that one determines, in some set of circumstances, what course of action is appropriate by referring to some universal conception of the good, do not claim that deliberation is deductive or gives priority to rules and principles. Usually the claim is that some universal picture of the good is involved in deliberation.<sup>15</sup> If such authors talk about practical syllogism they do not suggest that syllogism has the same role that it does in the sciences.<sup>16</sup>

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is to subsume the situation under the relevant rule, plug it into the right place in the hierarchy' ('Practical Syllogisms' 166-7).

<sup>15</sup> Sorabji, 'Aristotle on the Role of Intellect', is an example here. Practical wisdom 'enables a man, in the light of his conception of the good life in general, to perceive what generosity requires of him' (206). Practical wisdom 'involves perceiving what to do in the particular case in the light of knowledge of something more universal' (207). The mark at which the man of practical wisdom looks at is 'his conception of the best...from which his reasoning is said to start' (207). 'The man who has only experience without a picture of the good life in general can achieve only limited success in seeing what courage requires' (207). John Cooper has a similar view (RHG). The practically intelligent person has a knowledge of the ultimate good which determines his conception of good living. This knowledge is practical rather than theoretical. It is 'not founded on any discursive process of deliberative selection' but is rather 'a kind of intuitive knowledge not based on reasons of any kind' (Cooper, RHG 62). William Charleton, who supports the particularist interpretation, thinks that readings like Cooper's and Sorabji's are just a variant of D.J. Allen's interpretation, according to which Aristotle gives priority to rules. Charleton says that 'Where philosophers now speak of pictures of the good life, their austerer predecessors spoke of moral rules' (43).

<sup>16</sup> Sorabji 208-209 and Cooper 84-85 discuss practical syllogism. However, both recognise that deliberative conclusions are not arrived at in the same way as conclusions in the sciences. In a review of Broadie's *Ethics With Aristotle*, Richard Kraut challenges

This is often extended to Aristotle's views on political deliberation. Indeed, interpreters typically read the passages on the role of law in political and legal deliberation to suggest that Aristotle thinks that the law will not have priority in decision-making.<sup>17</sup> I agree with the general emphasis in the literature on differences between practical and scientific reasoning in Aristotle. I also agree that Aristotle is keenly aware of the limitations on practical rules. However, I will argue that the evidence on Aristotle's views on the lawcode and on *technê* suggests that Aristotle thinks that quasi-apodeictic reasoning and argument from principles does occur in politics. I will also argue that the evidence is that this is true of practical intellection generally. However, the status of such argument and reasoning is different from the status of such argument in the sciences. One can have several arguments for several competing conclusions. And the sort of judgment involved in evaluating such arguments is of a different sort than the sort of judgment involved in evaluating arguments in the sciences.

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Broadie's thesis that 'for Aristotle philosophical ethics is not a prerequisite of practical wisdom' ('Defense' 374). Elsewhere Kraut examines ways in which practical wisdom relies on philosophical ethics (*Human Good* ch.6).

<sup>17</sup> Sherman 14-28 reads the passages on law in Aristotle as evidence that his particularist views on practical deliberation lead him to reject 'legal rigourism'. Nussbaum, *Fragility of Goodness* 299, accounts for Aristotle's discussions of rules and laws by distinguishing two sorts of rules. One possibility is that 'rules and the universal principles are guidelines or rules of thumb: summary of particular decisions, useful for purposes of economy and aids in identifying the salient features of the particular case'. Another possibility is that 'the universal rules are themselves the ultimate authorities against which the correctness of particular decisions is to be assessed.' Nussbaum, 'Discernment' 69, thinks that when Aristotle suggests that practical reasoning relies on rules it does so in the first sense. Consequently, she thinks that the law for Aristotle is 'a summary of wise decisions'. The 'good judge will not decide by subsuming a case under antecedently fixed rules' ('Discernment' 73). Here Aristotle is following 'Athenian political morality', which 'elevates concrete perceptions above rule-following and makes public policy a matter of creative improvisation' (98).

A second contribution of my dissertation is to an understanding of Aristotle's views on the role of the emotions in political reasoning. An influential reading of Aristotle is that he emphasises the importance of the emotions in moral deliberation.<sup>18</sup> This is also extended to his views on political deliberation.<sup>19</sup> I will show that Aristotle thinks that the lawcode ought to be sovereign in political deliberation in order to counteract the influence on political decisions of the emotions and other irrational aspects of character.

A third contribution of my dissertation is to an understanding of Aristotle's views on moral, political and, more generally, practical education. There has been some discussion in the literature on Aristotle's views on moral education (e.g. Burnyeat) and on his views on the role of law in moral education (e.g. Bodéüs, *Political Dimensions*, 49-56). No one has argued as I do, however, that Aristotle thinks that the law will be a textbook in morality and politics—a textbook which rules and principles which explain the rules—and which is like textbooks in the technai. There has, furthermore, been little

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<sup>18</sup> According to Sherman 45, a particularly important of ethical perception is what she calls 'emotional awareness'. For example, 'a sense of indignation makes us sensitive to those who suffer unwanted insult or injury, just as a sense of pity and compassion opens our eyes to the pain of sudden and cruel misfortune. We thus come to have relevant points of view for discrimination as a result of having certain emotional dispositions. We notice through feeling what might otherwise go unheeded by a cool and detached intellect. To see dispassionately without engaging the emotions is often to be at peril of missing what is relevant.' According to Nussbaum, 'Discernment' 98, Aristotle thinks that 'correct emotional response is part and parcel of virtue'. Aristotle gives to the emotions a 'central place in morality' (78).

<sup>19</sup> According to Nussbaum, 'the idea that correct emotional response is part and parcel of virtue' is, for Aristotle, a 'thoroughly public' idea ('Discernment' 98). Aristotle, according to Nussbaum Aristotle affirms Athenian political practise in this respect: 'The Athenian males did not reserve expression of love grief and anger for the privacy of the home. The public sphere was suffused with the emotional and imaginative energy that we sometimes associate, instead with the private sphere' (98).

discussion in the literature on Aristotle's views on technical education, which is something I examine.<sup>20</sup> I will argue that Aristotle thinks that the lawcode is essential to the political education of citizens.

A fourth contribution of my dissertation is to an understanding of Aristotle's views on practical intellection generally and political education in particular in their intellectual context. Usually Aristotle is taken to be a critic of Plato and his views on practical and political intellection are taken as formulated against those of Plato (e.g., Hutchinson, DM 50; Nussbaum, 'Discernment' 55, 82; *Fragility* 290; Jaeger 60). I agree that Aristotle rejects many aspects of Plato's epistêmê-based theory of practical intellection. However, I also argue that Aristotle's theory preserves some basic Platonic insights and is, indeed, designed to salvage them against contemporary criticisms—mainly those of Isocrates—of the weaker aspects of Plato's theory.

#### *Overview of the dissertation argument*

In part 1 I examine Aristotle's views on the lawcode. Aristotle thinks that the lawcode ought to provide extensive guidance to citizens and officials. It ought to include rules which guide citizens in their actions and guide officials in their deliberations. It also ought to give explanations of these rules. Aristotle's views on the lawcode are similar in important respects to the lawcode described in Plato's *Laws* and are contrasted with the procedural character of Athenian law in Aristotle's day. Aristotle also argues that the law

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<sup>20</sup> Hutchinson's excellent 'Doctrines of the Mean' is an exception here, though I disagree with his view that Aristotle's theory of practical intellection and education sides with Isocrates' empeiria-based theory against Plato's epistêmê-based theory. Though it is true that Aristotle thinks that empeiria is an important component of technical education, he also thinks, as I will argue, that explanation and theory are important in technical education and technical reasoning.

ought to be sovereign. This is compared to practising a skill ‘by the book’, which involves requiring an expert in some craft to justify decisions in terms of the rules and theory of a textbook in the craft.

In part 2 I examine Aristotle’s views on practical intellection. In 2.1 I examine Aristotle’s arguments that practical intellection cannot be a matter of epistêmê or of applying rules and principles. In 2.2 I examine Aristotle’s views on education and explanation in the arts. One has a technê only if one is able to give a general account of the reasons why the things that the skilled individual does work. Such an account describes typical strategies and explains why they work in terms of the principles of the art. The principles of the art may borrow from strictly theoretical science. A person with a technê deliberates from principles. But the explanations that he gives of his deliberative decisions are different from apodeixeis in the sciences. They will not establish, as do apodeixeis in the sciences, that some deliberative option follows necessarily from the principles. However, someone who has experience in the art and the perception that comes with this experience is able to see, given such an argument, that a deliberative option is best given the principles of the art. This account of the role of explanation from principles in practical education and deliberation allows us to explain Aristotle’s views on the lawcode in deliberation, examined in part 1.

In part 3 I examine the background of Aristotle’s views on practical intellection and political deliberation. In 3.1 I examine the views of Plato and Isocrates on practical intellection. I argue that Aristotle’s account of practical intellection ought to be understood against the background of a polemic between Plato and Isocrates regarding practical intellection. Aristotle offers a theory-based approach to practical education and

deliberation which is an adjustment of Plato's theory-based approach in light of Isocrates' critique of Plato. Aristotle is unique in stressing the importance of a written textbook, which includes both explanation and practically useful rules, in teaching a practical skill and in the progress of a practical skill. In 3.2 I examine Plato's views on nomophulakê in the *Rep.* and the *Laws*. Plato thinks that central to the best polis are the nomima which impart to citizens correct opinion [orthê doxa] through the stories and early education they receive. This is a good basis for action and for further legislation. However, Plato thinks that correct opinion is not a good basis for judgments about the nomima. Someone is able to preserve the nomima only if he or she has epistêmê. Thus, in the *Rep.*, even though the education offered by the lawcode is a good basis for action and political activity, it is not a good basis for nomophulakê. Non-philosophers cannot have authority over the lawcode. This limitation includes restrictions on discussion of the laws. In Aristotle, on the other hand, the lawcode is a basis for education of citizens. Aristotle's views on practical intellection allow Aristotle to solve a problem associated with Plato's proposals in the *Laws*. Plato intends in the laws to introduce an arrangement on which the polis is governed by non-philosopher citizens educated by the lawcode. However, Plato retains, in the *Laws*, the institution of Nocturnal Council whose role is that of 'preserving the laws'. And he bases this restriction on the same views about practical intellection that one finds in the *Rep.* Aristotle can accept that the majority can be sovereign over the law because of his views on practical intellection. In 3.2 I also show that Isocrates uses his critique of Plato's theory-based account of practical intellection to support the Athenian approach to law. Aristotle's theory of practical intellection allows him to say that one ought to spell out the principles of the lawcode and privilege them in the interpretation of

the law—which is different from the Athenian, procedural approach to the law—even though no universally true claims are possible on practical issues.

## PART 1 *Political reasoning and the sovereignty of the lawcode*

### *Introduction to part 1*

The focus of part 1 is the role that the lawcode ought, according to Aristotle, to have in the polis. In 1.1 I examine *Pol.* 3 and show that what Aristotle says there about the rule of the majority [plêthos] is true of the best constitution. In 1.2 I show that Aristotle thinks that the law ought to be sovereign in the best constitution. This means, that the lawcode ought to be as detailed as possible in its guidance of political decisions.

In 1.3 I examine Aristotle's broader legislative ideal and its relationship to two important views on law in Aristotle's day. I show, first of all, that Aristotle thinks that the lawcode ought to be, to citizens who live under it, a textbook in virtue. The laws ought to include an exhaustive list of rules of conduct required by virtue—so exhaustive, in fact, that the lawful [nomimos] individual will have complete virtue—and an account explaining why such conduct is required. Second, I suggest that there are important similarities between Aristotle's views on the lawcode and those of Plato's *Laws*. Finally, I show that Aristotle's views on the lawcode and the sovereignty of law are a departure from the procedural emphasis of Athenian law.

In 1.4 I examine Aristotle's claim, in *Pol.* 3, that the majority of citizens will be in charge of 'guarding the law' [nomophulakê]. I argue that he means that the majority will be guardian of the law in the deliberative and judicial parts of the constitution described in *Pol.* 4. Aristotle has in mind an arrangement according to which deliberation is divided between two offices: (i) a virtue-based office in charge of preliminary deliberation [probouleusis] which prepares items for vote in the assembly; and (ii) a popular assembly which votes on the proposals of the pre-deliberative body.

The assembly judges whether the proposals and decisions of experts are consistent with the principles of the lawcode. In 1.5 I further explore the view, introduced in 1.1, that politikê is conducted 'by the book'. This view expresses the idea that, when an expert deviates from the rules of the lawcode, when the law is changed or a new law is introduced this must make sense to an assembly of non-experts given the text of the lawcode.

## 1.1 *The sovereignty of the majority*

### *Introduction to 1.1*

In the second half of *Pol.* 3 one of Aristotle's concerns is the question of who ought to be sovereign [to kurion] in a state (1281a12).<sup>1</sup> What Aristotle's final view is on this question in *Pol.* 3 is a matter of controversy, especially when it comes to his views on who ought to be sovereign in the best political association.<sup>2</sup> I will present my interpretation and then address an important alternative interpretation.

### *An overview of the evidence in Politics Book 3*

Aristotle's answer to the question 'Who ought to be sovereign in the state?' involves qualification but is consistent throughout *Pol.* 3. He argues first that the view that the majority ought to be sovereign rather than the few best is probably true (1281a40- 42). The reason is that the many can, when they come together, be better than those who are good, just as public dinners to which many contribute are better than those provided by one person (1281a42-1281b3). Together they become one person with respect to character and intellect (1281b7).

But Aristotle also warns that, in a constitution based on virtue, if it is proper for the multitude to be sovereign if they are better than the few then it is proper for the one or more to be sovereign if they are better (1283b21, b23-27). Aristotle's conclusion is

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<sup>1</sup> However, it is also a background concern in the discussion of kingship. It is determined there that a virtue-based state must restrict citizenship, and that citizens are in charge of deliberation and judgment. There the question 'who ought to be a citizen?' amounts to the question of who ought to be sovereign, given that citizenship is defined as participation in judgment and deliberation.

<sup>2</sup> It also needs to be determined what it means to be 'to kurion'. As we will see in 1.2 below Aristotle thinks that the laws must be sovereign in a state. Sovereignty in a state in which the laws are sovereign involves what he calls 'guarding the law' [nomophulakê]. This will be discussed in 1.2 and 1.3 below.

that these considerations prove the incorrectness of all of the standards on which people claim that they should govern and everyone else be governed by them (1283b27-30). For even in the case of those who claim to be able to rule on account of virtue, and similarly on account of wealth, it is possible that at some time the multitude will be better and richer collectively than the few (1283b30-35).

The question of majority rule is also discussed in the two discussion of kingship at the end of *Pol.* 3. In the first discussion, Aristotle says that any of the citizens individually is inferior when compared with the best person. But 'just as a banquet to which many contribute dishes is finer than a single dinner, for this reason in many cases a crowd judges better than any single person' (1286 a29-31). In the same discussion he says that the majority is more incorruptible [adiaphthorôteron] than a few people (1286a31-33). The judgment of the individual will be corrupted when overcome by anger or some other emotion (1286a33-35). On the other hand it seems to be a difficult thing for everyone in a population to get angry at once and to err (1286a35). Thus the many are superior to the few good people.

In the second discussion of kingship, Aristotle says that he will discuss the question of absolute kingship directly.<sup>3</sup> In the second discussion of kingship he considers an argument from equality. Some think that it is contrary to nature [kata phusin] for one person to be sovereign over all citizens [to kurion hena pantôn einai tôn

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<sup>3</sup> It is not at all clear to me how the second discussion is a continuation of the first. It seems merely to discuss the same issues. This is why some think that these are double books.

politôn] wherever the state consists of people who are alike (1287a10-13).<sup>4</sup> For those who are alike in nature [tois homoiois phusei] must necessarily have the same justice and the same value in accordance with nature (1287 a13-14). It is harmful to the body for people who are unequal in nature to have the same food and clothing, and the same holds for honors: it is wrong for those who are equal to be treated unequally (1287a14-16). Therefore, it is just that no one should govern or be governed more than others [dioper ouden mallon archein ê archesthai dikaion] (1287a16-17). And everyone should govern and be governed in turn and in like manner [kai to ana meros toinun hôsautôs] (1287a17-18).

The argument for equality is repeated later. Among people who are alike and equal [tois homoiois kai isois] it is neither advantageous nor just [oute sumpheron oute dikaion] for one person to be sovereign over all [hena kurion einai pantôn] (1288a1-2); neither when there are no laws and he himself is in the place of law, nor when there are laws [oute mê nomôn ontôn alla auton hôs onta nomon, oute nomôn ontôn] (1288a2-3). This is true even if the person in question is superior in virtue, except in a certain way (1288a4-5).

However, in the discussion of kingship too, Aristotle tells us that the majority rule principle is not absolute. He says that the principle of equality requires that one person should not be sovereign over all even if the person is superior in virtue, except in a certain way (1288a4-5). When it comes about that there is either a family or an

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<sup>4</sup> Why does Aristotle not endorse fully the argument here? Why does he introduce it with 'some people say'? The view here seems to be that there is a universal sort of equality (since it is an argument against all kingship). But Aristotle does not endorse this universal argument against kingship.

individual [genos holon ê hena tina] outstanding with respect to virtue when compared with everyone else then it is just that the outstanding family should be royal and the outstanding individual king and sovereign over everyone (1288a15-19).<sup>5</sup>

Again the argument turns on who is outstanding in the state. In this discussion ‘equality’ refers to the idea that no one is outstanding. The conclusion here is a restatement of the conclusion of his discussion of ostracism. If there is on person or a group whose virtue exceeds that of the majority, such a person or group should not be counted as part of the state [meros poleôs] (1284a3-9). For they will be treated unjustly if they are given equal status given that they are so unequal with respect to virtue and political ability (1284a9-10). Such a person is like a god among men (1284a10-11). Aristotle says that ‘from this it is clear that legislation must also necessarily be concerned with those who are equal in kind and in ability’ (1284a11-13); ‘concerning these people there is no law; for they are themselves law’ (1284a13-14). ‘He would be funny trying to legislate for them’ (1284a14-15) They would say what the lions said in Antisthenes’ story when the hares made speeches in the assembly and demanded that all should have equality (1284a15-17). In the best constitution the citizens would not think that they ought to rule over such a person. That would be the same as if they claimed to rule over Zeus, dividing the offices [merizontes tas archas]. It remains for all citizens to obey such a person (1284 b26-34).

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<sup>5</sup> Aristotle makes the same point later. He says that is not natural that a part should overpower the whole [ou gar pephuke to meros huperechein tou pantos] (1288a26-27). But this has happened to the person of such great superiority [tôi de tēn tēlikautēn huperbolēn echonti touto sumbebēken] (1288a27-8). The only option is to obey such a person and for such a person to be sovereign not in turn but absolutely [kurion einai mē kata meros touton all’ haplōs] (1288a28-9).

This absence of an absolute standard is reflected in the final word of *Pol.* 3 on the best polis. There are three correct constitutions (1288a32-33). Of these necessarily the best one is the one governed by the best [toutôn d' anankaion aristên einai tèn hupo tòn aristôn oikonomoumenên] (1288a33-34). This is the constitution in which there happens to be one person or a family or a majority<sup>6</sup>—of whom some are capable of being ruled and others of ruling—outstanding with respect to virtue [toiautê d' estin en hêi sumbebêken ê hena tina sumpantôn ê genos holon ê plêthos huperechon einai kat' aretên, tòn men archesthai dunamenôn, tòn d' archein pros tèn hairetôtatên zôên] (1288a34-37).

Aristotle is saying that there are *three correct* constitutions, but of these *the best one* is the one in which one person or a whole family or a majority is outstanding with respect to virtue and is in charge. The best constitution—which is one of the correct forms of constitution—may have either a person a group or a majority of citizens who are sovereign.<sup>7</sup> When Aristotle says just below that the best constitutions are kingship and aristocracy, he must be including the rule of a majority under aristocracy.

Aristotle's arguments about the supremacy of the majority may be true generally. For example, he says that in recent times as populations have developed

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<sup>6</sup> It might be objected here that 'plêthos' does not necessarily mean 'majority' and might just mean 'a group of people'. However, Aristotle is consistent in *Pol.* 3 in using 'plêthos' to mean 'majority' or 'multitude'. He always uses it when talking about decisions made by the citizen body, presumably by majority vote. The following is a list of some occurrences of this word in *Pol.* 3: 1281 a12, 1281a24, 1281a 26, 1281a40, 1281b6, 1286a36. At 1281a42 'hoi polloi' is used as a substitute for 'to plêthos', suggesting that Aristotle uses them as equivalent in meaning.

<sup>7</sup> Here 'plêthos' cannot mean a traditional aristocracy, which is defined as one in which a minority is sovereign (1279a34-35).

majority rule is more appropriate.<sup>8</sup> But he also has the best polis in mind. He says that the superiority of the many is likely to hold in the best constitution. When he says that the majority of citizens are more incorruptible he adds the following proviso: But the majority must be those citizens who are free [estô de to plêthos hoi eleutheroi] (1286a36); and must do nothing contrary to the law [para ton nomon] except on issues on which the law is deficient (1286a36-37). He also says the following: if this is not easy to ensure for the most part, if those who are both good men and good citizens were in the majority [ei pleious eien agathoi kai andres kai politai], would an individual be a more incorruptible ruler or rather those who are in the majority but all good? It is obvious that it would be the majority (1286a38-1286b1). If the rule of the majority when these are all good people is to be called aristocracy and that of one person kingship, aristocracy is preferable to kingship (1286b3-6).

The reason why the outstanding character of the majority is more likely to occur in the best polis is that the virtue of citizens is cultivated in the best polis. The best polis [hê beltistê polis] will not make manual laborers [banausoi] citizens (1278a8). In any constitution which is called aristocratic and in which honors are bestowed according to goodness or merit citizenship cannot be extended to banausoi and thêtes because these cannot practice the pursuits in which goodness is exercised (1278a20-21). In the best state [hê aristê polis] the virtue of a man and that of a citizen are the same (1288a38-9). A person becomes good in the same way that one establishes an aristocracy or

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<sup>8</sup> Kingships existed in earlier times because it was rare to find men who greatly excelled in virtue, especially since in those days cities were small. But as it began to come about that many men were alike with respect to virtue, they would no longer submit to kingship, but sought some common form of rule [ezêtoun koinon ti] and established a constitution [kai politeian kathistasan] (1286b8-13).

monarchy (1288a40-41). It will be the same education and habits that make a good person and that make a politically capable person or king (1288b1-2). In the case of the best polis, when he talks about the majority he means the majority of those who have citizenship rights and have been educated in virtue.

But if the majority is likely to be outstanding in the best polis, it may also occur that an outstanding individual or group might arise. For example, Aristotle says in his discussion of ostracism he says, regarding the best constitution, that ‘they should grant’ him or them sovereignty (1284b26-34).

Why does Aristotle speak of these as all falling under one constitutional type? I think that the explanation is that there is no way to secure the rule of a single outstanding individual or class constitutionally. Heredity does not ensure that an outstanding group or individual will rule. There is no system of education or selection which will ensure that some class or family will be outstanding—i.e. that they will have the sort of superiority in virtue required in order to be sovereign. This sort of superiority of a class or family might occur in a polis in which the population is underdeveloped. But if one wants to ensure constitutionally that the outstanding part of the polis be sovereign, one must educate all citizens. In such a case some outstanding individual or group might arise and be given sovereignty.

In *Pol.* 7-8 too the best polis is one in which the majority is sovereign.<sup>9</sup> He says that the quality of a state is determined by the outstanding character of the majority which is part of the state. (1326a21-2). He repeats in *Pol.* 7 the point about the

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<sup>9</sup> He introduces the discussion of *Pol.* 7 at the end of *Pol.* 3, which has been reason for speculation about the order of the books of the *Politics*.

outstanding individual. If there were some type of person differing from others as much as gods and heroes differ from ordinary human beings—having superiority in soul and in body—so that their outstanding character [huperochê] was evident to all subjects, it is obvious that it would be better for the same persons to rule and the same persons to be ruled (1332b16-23). But since this is not easy to ensure [ou rhâidion labein] and since there is nothing like the difference that Scylax claims exists between rulers and ruled in India, it is necessary for all to share alike in ruling and being ruled (1332b23-27).

There are other important parallels suggesting that Aristotle is talking about the same best state in both parts of the *Politics*. He tells us in *Pol.* 7 too that a polis that aims at virtue cannot allow certain classes of people to be citizens. In the best state citizens cannot live a ‘mechanic or mercantile life’ [banauson bion out’ agoraion] (1328b39). They also cannot be farmers [geôrgous] (1328b41). For leisure is needed for virtue and for practicing politics (1329a1-3). Just like in *Pol.* 3, the majority will be in charge of election, deliberation and judgment. Citizens in the best state will have to know each other’s characters in order to be able to judge lawsuits and elect officials (1326b14-16).<sup>10</sup> The state contains the part deliberating about the good [to bouleuomenon peri tôn sumpherontôn] and judging about matters of justice [krinon peri tôn dikaiôn] (1329a3-4). This is similar to what he says about citizenship in *Pol.* 3.<sup>11</sup> Aristotle does not mention scrutiny in *Pol.* 7-8 but there is no reason to suppose that this

<sup>10</sup> Here we see that Aristotle assumes that citizens will be electing officials in the politeia described in *Pol.* 7-8, pace Kraut, who suggests that offices would be filled ‘through a system of rotation’ (*APP* 227).

<sup>11</sup> We declare that a citizen is one who has the right to participate in deliberative or judicial office [archês bouleutikês ê kritikês] (1275b18-19).

would not be among the powers of citizens in the best polis, given that they would also be electing officials.<sup>12</sup> In both *Pol.* 7 and *Pol.* 3 he talks about learning to rule by being ruled.<sup>13</sup>

*Richard Kraut on Politics Book 3*

There is an important alternative interpretation of Aristotle's views in *Pol.* 3. According to Richard Kraut there is a tension between *Pol.* 3 and *Pol.* 7-8. The latter describes a constitution in which the majority rules. The former, on the other hand, affirms, on Kraut's reading, that the best constitutions are kingship and aristocracy. Kraut explains this discrepancy by saying that *Pol.* 3 is concerned with existing constitutions whereas *Pol.* 7-8 are concerned with the best possible constitution.

But there is no need to resort to such explanations because there is no evidence of a discrepancy between *Pol.* 7-8 and *Pol.* 3.<sup>14</sup> According to Kraut, *Pol.* 3 affirms the superiority of kingship and aristocracy whereas *Pol.* 7-8 describes a state in which the majority is superior. But the conclusion of *Pol.* 3 is in fact that the best polis is one in which an individual family or majority is sovereign (1288a33-37). *Pol.* 7, furthermore,

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<sup>12</sup> I do not agree with Kraut, *APP* that citizens will fill offices by rotation, given Aristotle's statement that citizens will be electing officials.

<sup>13</sup> '...but there exists a sort of rule [tis archê] in which one rules over those who are equal in kind and free [kath' hên archei tôn homoiôn tōi genei kai tôn eleutherōn] which is described as political rule [politikê archê] and this the ruler should learn by being ruled' (c. 1277b8).

<sup>14</sup> This explanation is also implausible because, as Aristotle tells us, kingship thrives when a population is underdeveloped. It would be odd if Aristotle thought that the best constitution is one in which a population is underdeveloped. Kraut mentions that this might also involve the sovereignty of people educated in philosophy—i.e. something like the kingship of Plato's *Rep.* But this seems to be getting away from the idea that a constitution that exists or existed in the past is involved.

recognizes that if some outstanding individual were to arise that individual ought to be sovereign (1332b16-23). In other words, *Pol.* 7 recognizes the same principle—that that part of the city outstanding with respect to virtue ought to be sovereign—and recognizes that that principle would require monarchy under certain circumstances.

Kraut supports his interpretation by pointing to the statement, in *Pol.* 4, that the best state—which can be characterized as an aristocracy or kingship—has been discussed, suggesting that this was the conclusion of *Pol.* 3. But, as Kraut himself notes, Aristotle characterizes aristocracy in ways which might be used to include the rule of the majority where the majority is good (*APP* 360 n.6).<sup>15</sup> Furthermore, Aristotle recognizes the possibility that ‘aristocracy’ might apply to a majority when he says that ‘if we call the rule of the many who are all good men aristocracy, and the rule of one good person kingship, then aristocracy is better for cities than kingship’ (1286b3-5). Aristotle also talks about aristocracy and kingship in the concluding remarks of *Pol.* 3 (1288a41). This passage occurs just after he has concluded that the best polis involves an individual family or majority outstanding with respect to virtue. This also suggests that Aristotle might have this sort of best polis in mind when he talks about aristocracy at this point in *Pol.* 3, as opposed to a traditional sort of aristocracy in which the minority is sovereign.

Kraut also argues that his interpretation is supported by *Pol.* 3.4. He cites, first of all, and argument in this book that concerns ‘the best polis’ [peri tês aristês politeias] (1276b37). The argument shows that the good man and the good citizen are not the

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<sup>15</sup> A city is an aristocracy if it is ruled by the best or those who aim at the best (1279a36); if its goal is virtue (1294a9-11); or if it is devoted to education and requires that all rulers be educated (1365b33-4).

same 'if it is impossible for a state to consist entirely of good men' [ei...adunaton ex hapantôn spoudaiôn ontôn einai polin] (1276b37-8). Kraut argues that Aristotle must endorse the hypothesis if he endorses the conclusion and if the conclusion requires the hypothesis. But this is not Aristotle's only argument for this conclusion in 3.4. There is no reason why he might not include a hypothetical argument, a premise of which he does not endorse, among arguments the premises of which he does endorse.

Furthermore, questions have been raised about the text.<sup>16</sup>

Kraut also says the following about *Pol.* 3.4: 'Aristotle never speaks of this ruler as someone who is, during certain periods of his adult life, ruled by others. He is assuming, in other words, that he will hold office permanently, and that his position will be one of supreme authority. By contrasts, he speaks throughout this chapter of the excellent citizens of the ideal city as individuals who are good at both ruling and being ruled' (*APP* 367). But the conclusion of the discussion initiated in 3.4, at 1278b1, concerns the politikos, who controls, alone or with others [ê kath'hauton ê met'allôn] common concerns [tês tôn koinôn epimeleias]. When Aristotle says what he does about the ruler as opposed to the citizen he is most likely just talking about someone a ruler *qua* ruler. A person is a good citizen if he is good both at ruling and being ruled. A person is a good ruler if he is good at ruling.<sup>17</sup>

Kraut also assumes that, when Aristotle talks about the rule of the majority in *Pol.* 3, he is talking about polity (e.g., *APP* 404). This would support the idea that he

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<sup>16</sup> Bernays suggests 'dunaton' instead of 'adunaton'.

<sup>17</sup> It is not correct, furthermore, to suggest that the conclusion about the ruler relate to the best polis. The claim about the best polis might apply only to the first (hypothetical) argument.

endorses the rule of the few or one—kingship and traditional aristocracy—in *Pol.* 3 because Aristotle also says in *Pol.* 3 that kingship and aristocracy are superior to polity. But in fact there is no need to assume that the rule of the majority refers to polity. Aristotle also has in mind the rule of the majority of citizens when citizens are good.<sup>18</sup>

Therefore, there is no reason to assume, as Kraut does, that Aristotle does not endorse the arguments against kingship. Kraut tells us that Aristotle is merely rehearsing the arguments against kingship and that ‘he is not swayed by these arguments because within 3.17 and 3.18 he concludes that kingship and aristocracy are superior to other forms of government’ (*APP* 413). But Aristotle concludes that an individual family or majority is sovereign in the best constitution.

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<sup>18</sup> Aristotle does not, as *APP* 417 claims, say that polity is one of the best constitutions. (This is one of Kraut’s reasons for arguing that the best polis in *Pol.* 3 is different from that of *Pol.* 7-8.) Rather his final word is that there are three correct constitution, and that one of these is best, in which an individual, family or majority might be sovereign. Here the sovereign majority is not a polity. He says that all of these belong to one constitution—the best—whereas polity is the worst of the correct constitutions.

## 1.2 *The sovereignty of law*

### *Introduction to 1.2*

Aristotle does not advocate the sovereignty of the majority in *Pol.* 3 without qualification. He thinks that the law ought to be sovereign and that the majority—or group or individual if the latter happen to be outstanding—ought to be ‘guardians of the law’.

### *The Rhetoric*

Aristotle discusses law in the *Rhet.* In particular, he discusses the role of law in judging cases before the courts. He says that laws should, as much as possible [hosa endechetai], determine everything themselves [panta diorizein autous] (1354a31-2). They should leave as little as possible up to those judging a case [hoti elachista kataleipein epi tois krinousi] (1354a32-3). Those judging ought to be ‘sovereign over as little as possible’ [dei hōs elachistōn poiein kurion einai ton kritēn] (1354b12-13).<sup>19</sup>

The judgment of the legislator ought to determine how cases are judged in the courts. The legislator’s judgment does not apply to a particular case, but is universal and applies to the future, unlike the decisions of jurors or members of the assembly, which are about present and immediate things [hē tou nomothetou krisis ou kata meros, alla peri mellontōn te kai katholou estin; ho d’ekklēsiastēs kai dikastēs, êdē peri parontōn kai aphōrismenōn krinousin] (1354b5-8). As much as possible of the decision-making of jurors and members of the assembly ought to be anticipated by the lawgiver, and

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<sup>19</sup> This, of course, is a good arrangement only if the law is ‘correctly formulated’ [orthōs keimenous] (1354a31). He also talks about the law as ‘the result of long consideration by the art of legislation’ [nomothesia] (1354b2); as something done by ‘a few men of practical wisdom capable of legislating and making judgments’ [eu phronountas kai dunamenous nomothetein kai dikazein] (1354b1).

particular, immediate and present cases ought, as much as possible, to be made by applying general rules.

What sorts of things can the law not anticipate? What sorts of things must be left up to those making the judgment [epi tois kritais] (1354b14)? According to Aristotle, those making the judgment ought primarily to be responsible for deciding whether a thing happened or not; whether it is going to happen or not, of being or not being so (1354b13-15). This must be left to the discretion of the judges, for it is impossible for the legislator to foresee such questions (1354b15-16).

#### Politics Book 4

Aristotle is primarily concerned with the sovereignty of law in the courts in these passages from the *Rhet*. However, he also assumes that the same will hold in the assembly. His conclusion is about ‘jurors and members of the assembly’ (1354b7). Aristotle discusses a broader sovereignty of law his discussion of radical democracy at 1291b30ff. At *Pol.* 1292a5ff. he characterizes it as the sort of democracy in which ‘the majority is sovereign and not the law’ [kurion d’ einai to plêthos kai mê ton nomon] (1292a5-6); the decrees of the assembly are sovereign rather than laws [ta psêphismata kuria alla mê ho nomos] (1292a6-7); ‘all things are decided by the decrees of the assembly’ [en hêi psêphismati panta dioiketai] (1292 a35-6).

In such a state existing laws are ignored, and no effort is made to introduce new laws in order to minimize the need for decision-making by decree. Instead, the law ought to govern all things while the offices and the citizens should judge particular cases [dei gar ton men nomon archein pantôn, tôn de kath’hekasta tas archas]. It is this relationship between law and officials that we judge to be a constitutional government

(1292a32-4).<sup>20</sup> Where the laws do not govern there is no constitution [hopou mê nomoi archousin, ouk esti politeia] (1292a32).

One would, therefore, be right to say that radical democracy is not a constitution in the real sense (1292a30-1). For in radical democracy particular decrees are sovereign and no decree can be universal [ouden endechetai psephisma einai katholou] (1292a36-7). A democracy of this nature is comparable to the tyrannical form of monarchy (1292a17-18). The decrees voted by the assembly are like the commands issued in a tyranny (1292a19-20). Like the assembly, the tyrant rules by decree and does not defer to law, written or conventional.

#### Athenaiôn Politeia

The sovereignty of law requires not only that decisions be made by applying general rules, but also that the rules be formulated so as to leave as little as possible to the interpretation of those applying, as we see at *Ath. Pol.* There, Aristotle says that the institution established by Solon that has contributed most to the power of the democracy is the right to appeal to the courts [hê eis to dikastêrion ephesis] (9.1). By being sovereign over decisions in the courts the dêmos becomes sovereign over the constitution [kurios gar ôn ho dêmos tês psêphou kurios gignetai tês politeias] (9.1).

Since the laws are not drafted simply or clearly, but like the law about inheritances and

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<sup>20</sup> I take it that when Aristotle talks about offices he includes the assembly and courts under this. That is, the assembly and courts ought also to defer to the law whenever possible in its decisions. In *Pol.* 3 he includes membership in the assembly and courts under 'offices' (1275a23-33). Membership in the assembly and courts is membership in office [archê] and those who are members of the courts and assembly are properly called officials [archontes]. The difference between the latter sort of official and other officials is that his tenure is not limited. He defines this sort of office as 'unlimited office' [aoristos archê] (1275a31-2). Offices occupied by individuals are characterized as 'the most important sort of office' [hê megistê archê] (1281b26).

heiresses, it necessarily results that many disputes take place and that the jury-court is the arbiter of all matters, both public and private [eti de kai dia to mê gegraphthai tous nomous haplôs mêde saphôs, all' hôsper ho peri tôn klêrôn kai epiklêrôn, anankê pollas amphisbêtêseis gignesthai kai panta brabeuein kai ta koina kai ta idia to dikastêrion]  
 (9.2). Some people think that Solon purposely made his laws obscure [asapheis], in order that the people might be sovereign over the verdict [hopôs êi tês kriseôs ho dêmos kurios] (9.2). Aristotle thinks that this is unlikely and that probably it was due to his not being able 'to define the good in universal terms' [katholou perilabein to beltiston] (9.2).

*What does it mean for the law to be 'to kurion'?*

In these texts from the *Rhetoric*, *Politics* and *Athenaiôn Politeia*, we see what it means for the law to be 'sovereign' [kurion]. The law is sovereign even though someone is in charge of applying the law. And if there are laws, those applying them can be sovereign if the laws are not precise enough. This is related to another way of speaking about law and deliberation. Aristotle often speaks as if decisions made by applying the law are not the decisions of those who apply the law but of those who made the law. For example, Aristotle says that when the legislator has not given instructions [dioriken] it is a matter for the juror to judge [krinein] (1354a30). In Athens jurors decide [krinein] cases in which the law does not give instructions [diorizein] (1287b15-17). On matters on which it can do so the law is the best ruler and judge (1287b17-18). Here it is not that the jurors do not judge other cases. Rather, they defer

to the law when it is obvious how the law should be applied. The judgment is made by the law rather than by the juror.<sup>21</sup>

*EN 10.9 on politikê and nomothetikê*

Aristotle's discussion, at *EN* 1141b24ff., of the relationship between lawgiving [nomothetikê] and politics [politikê] is also relevant to the discussion of the sovereignty of law in Aristotle. Both lawgiving and politics are forms of practical wisdom [phronêsis], concerned with the state [peri polin] (1141b24-5). The latter sort of practical wisdom has a name that is common to both [to koinon echei onoma] (b26). That is, there is a broad sense of the word 'politics' which includes both. However, there is a specialized sense of 'politics' which is one kind of 'politics' in the broader sense.

Lawgiving is characterized as 'directive' [hôs architektonikê] (b25); politics as 'concerned with the particular' [hôs ta kath' hekasta] (b26). Politics is concerned with action and deliberation [hautê de praktikê kai bouleutikê] (b27). For a decree is something that must be put into action and is like the last step in deliberation [to gar phêphisma prakton hôs to eschaton] (b27-8). This is why they say that only these people take part in politics [dio politeuesthai toutous monon legousin] (b28). For only these people act in the way that manual laborers do [monoi gar prattousin houtoi hôsper hoi cheirotechnai] (b29).

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<sup>21</sup> Similarly, Aristotle says that the absolute monarch [pambasileus] who does everything 'in accordance with his will' [kata tèn hautou boulesin] (1287a1). This is contrasted with the rule of law. Even though the will of the lawful monarch may be to rule in accordance with law, nevertheless, his rule is not 'in accordance with his will' [kata boulêsin] because it defers to the law.

This passage is found in a discussion, at *EN* 1141b15-1142b23, of the role knowledge of the universal plays in practical wisdom [phronêsis]. At 1141b15-23 Aristotle has shown that practical wisdom must involve knowledge of the particular as well as knowledge of the universal because the products of practical reasoning are particular actions. At 1141b23-1142a12, which is where the above passage occurs, Aristotle discusses the arts of politics, household management and legislation [politikê, oikonomikê and nomothetikê]. Here he discusses phronêsis regarding the state [hê peri polin phronêsis]. This discussion emphasizes the other side of phronêsis—knowledge of the universal. Legislation [nomothetikê] is ‘directive practical wisdom’ [hê architektonikê phronêsis], while politics is likened to the practical wisdom which deals with particulars [hê peri ta kath’ hekasta phronêsis].

Aristotle is using two analogies here. First, the politician [politikos] is to the legislator [nomothetês] as manual laborers [hoi cheirotechnai] are to the architect [architekton] in a building project. The laws [nomoi] are analogous to the instructions of the architect which are put into practice by the manual laborers. The products of legislation—i.e. laws—are like the instructions of the architect. The second analogy is that a decree [psêphisma] is a thing to be done as is the last step in deliberation [to gar psêphisma prakton hôs to eschaton]. The politician implements a particular decree on the basis of the general laws of the legislator. The decree implemented by the politician, as well as the politician’s actions implementing this decree, stand to the law as do particulars universals.

*Politics Book 3: Law vs. the experts*

In *Pol.* 3 Aristotle considers an important objection, found in Plato's *Statesman*, at 294a, to the idea that the law ought to be sovereign. Aristotle considers the question 'Is it better to be ruled by the best man or the best laws?' (1286 a7-9). Those who think that it is good to be ruled by a king say that the laws only speak generally and do not give directions for particular situations [dokousi dê tois nomizousi sumpherein bazileuesthai to katholou monon hoi nomoi legein, all'ou pros ta prospiptonta epitattein] (1286 a9-11). This is why in every skill it is foolish to make decisions [archein] 'by the book' [kata grammata] (1286 a11-12). It is clear that a constitution which is in accordance with law and by the book [hê kata grammata kai nomous politeia] is not the best, for the same reason (1286 a14-16). The argument is based on an analogy between politikê and other arts [technai]. To make the law sovereign is the equivalent of requiring that the expert in some art to practice his craft 'by the book' [kata grammata], which is something that is typically not done in the arts.

This point is clarified by reference to an example of the practice of Egyptian physicians. Aristotle tells us that 'even in Egypt, physicians are allowed to make a change after the fourth day, though if a physician does so before then, he does it at his own peril' (1286 a12-14). There existed in this period Egyptian doctors 'who were legally obligated to abide by written prescriptions' (Nightingale, PL 116). The example of this requirement might be used to support the principle that one ought in some arts to practice the art 'kata grammata'. However, even in Egypt, Aristotle points out, the practice is that the physician is allowed to change the course of treatment after four days.

The example refers to the Egyptian practice of requiring physicians to treat ailments in accordance with the treatments described in sacred medical texts. The texts, presumably, give general rules like, in such and such a case one ought to give such and such a treatment. The treatments prescribed do not, however, work in all cases. In some cases a patient will not be cured and might, indeed, be made worse by the treatment. In such cases physicians are allowed to deviate from the treatment prescribed by the medical text if the treatment does not begin to work in four days. This example shows why it is foolish to practice an art by the book. A textbook is limited in what it can anticipate, and often implementing the instructions of a textbook may be counterproductive.

Aristotle addresses the limitations on the law in his discussion of ‘equity’ [to epieikes] at *EN* 1137a32ff. Aristotle defines equity as a ‘correction of legal justice’ [epanorthôma nomimou dikaïou] (1137b12-13). Aristotle explains the reason [aition] why legal justice requires rectification as follows (1137b13ff.). Every law is general [ho...nomos katholou pas] (1137b13). Often it is necessary for the law to speak universally [eipein katholou] even when it is not possible to do so correctly (b14-15). In such cases the law grasps that which is ‘for the most part’, though it does not ignore the error [to hôs epi to pleion lambanei ho nomos, ouk agnoôn to hamartanomenon] (b15-16). When the law speaks universally [hotan oun legêi men ho nomos katholou], cases will arise which are exceptions to the rule [para to katholou] (b19-21).<sup>22</sup> This does not make it any less correct a law [ouden hêtton orthos] (*EN* 1137b17). For, the error is not

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<sup>22</sup> The problem of exceptions to a universal rule is probably what Aristotle means when he mentions cases in which the laws ‘go astray’ [parekbainousi] (*Pol.* 1286a22).

in the law nor in the lawgiver, but in the nature of the case, since the material of conduct is essentially irregular [to gar hamartêma ouk en tōi nomōi oud'en tōi nomothetēi all'en tēi phusei tou pragmatos estin: euthus gar toiautē hē tōn praktōn hulē estin] (b17-19).

In praxis, for any rule of action which specifies what is required by virtue and nobility in action, there is some possible set of circumstances such that, if one were to act in accordance with the rule one would commit a shameful act. We can take an example given by Socrates in the *Republic*. If one takes the rule 'One ought to return what one borrows', this rule recommends something contrary to its aim in the case of the friend from whom one has borrowed a weapon and who has become insane and is now asking for it to be returned (331c-d).<sup>23</sup>

It is important to note also that Aristotle thinks that one can make decisions in accordance with the intentions of the lawgiver in such situations. He says in the *EN* discussion of equity that, when the law fails, one ought to correct the omission, which is what the legislator himself would have recommended had he been present, and what he would have legislated had he known that it would happen [epanorthoun to elleiphthen, ho kan ho nomothetēs autos houtōs an eipoi ekei parōn, kai ei êidei, enomothetēsēn an] (1137b22-24). Aristotle says something similar in the *Rhet*. He says that it is equitable [epieikes] to look 'not to the law but to the legislator' and 'not to the word but to the reasoning of the legislator' [to mê pros ton nomon alla pros ton nomothetēn kai mê pros ton logon alla pros tēn dianoian tou nomothetou skopein] (1374b11-13).

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<sup>23</sup> The *Dissoi Logoi*, a late 5th century text, has many more such examples (Diels, Kranz 405-416; Sprague 279-294; Robinson).

There are two sorts of problems associated with law. First, on some issues one can come up with general rules but the rules fail. This is the case in the Egyptian physician example. Here the example is that one gives a treatment recommended by the text and this treatment does not work and one has to adjust the treatment. There are also issues on which it is impossible to make laws because of the unpredictability of the subject matter. There are some ‘cases for which it is impossible to lay down a law, so that a decree becomes necessary’ [peri heniôn adunaton thesthai nomon, hôste psêphismatos dei] (EN 1137b28). For ‘what is indefinite can only be measured by an indefinite standard, like the leaden rule used by Lesbian builders. Just as that rule is not rigid but can be bent to the shape of the stone, so a special ordinance is made to fit the circumstances of the case’ (b28-29). Deliberation about whether or not someone is guilty of a crime is one such issue discussed in the *Rhetoric*.

Aristotle endorses the sovereignty of law in *Pol.* 3 in spite of these limitations on the law. Aristotle discusses the sovereignty of law when he considers the question of who ought to be sovereign in the polis? Aristotle concludes that it is necessary that properly formulated laws be sovereign (1281b1-2). After he has concluded that the law ought to be sovereign, he says that those who govern should be sovereign over matters on which the laws are quite unable to speak with precision because of the difficulty of making a universal rule on all matters [ton archonta peri toutôn einai kurious peri hosôn exadunatousin hoi nomoi legein akribôs dia to mê rhâidion einai katholou dêlousai peri pantôn] (1282 b3-6).

Aristotle also endorses the sovereignty of law when he considers the question ‘Is it better to be ruled by the best man or the best laws?’ (1286 a7-9). Aristotle concludes

that ‘it is clear that he ought to practice the art of nomothetikê and ought to make laws; these laws must not be sovereign when they go astray, though they must be sovereign in all other cases [hoti men toinun anankê nomothetên auton einai, dêlon, kai keisthai nomous alla mê kurios hêi parekbainousin, epei peri tôn g’ allôn einai dei kurios]’ (1286 a21-22).

In the second discussion of kingship Aristotle argues that it is preferable for the law to rule rather than any one of the citizens. Even if it be better for certain men to govern, they must be appointed as ‘guardians of the laws’ and ‘in subordination to them’ [nomophulakas kai hupêretas tois nomois] (1287a21).<sup>24</sup>

Aristotle’s conclusion in *Pol.* 3, therefore, is that the law ought to be sovereign. This means that the law ought to guide decisions as much as is possible given the limitations on what the laws can anticipate. The part of the polis outstanding with respect to virtue—which, in most cases will be the majority—is in charge of ‘guarding the law’.<sup>25</sup> The outstanding part of the polis will also make decisions on issues on which the law gives no guidance and in cases in which it is necessary to deviate from the laws.

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<sup>24</sup> This second discussion is presented as the argument made by others. But he presents the same arguments for the rule of law here. He distances himself because of the unqualified rejection of monarchy. In other words, he rejects the idea that the sovereignty of the majority ought to hold universally, which is what the argument holds. But he does think that it ought to hold when the majority is outstanding. There is also some question whether the sovereignty of law would hold in the case of an outstanding individual. For he says that the outstanding individual would himself be the law and would not, therefore, be subject to the law. But there is an explanation. He is talking about the sorts of laws necessitated by equality. And weakness of judgment seems to apply universally. But even if it does not apply to the outstanding individual, he does seem to endorse it in other cases. Thus it would still apply to the city run by the majority.

<sup>25</sup> This means, presumably, that they monitor the interpretation and application of the law. What Aristotle has in mind here will be discussed below in 1.3. Guarding the law

Aristotle says, in what is obviously an allusion to the argument of the *Statesman*, that the argument that the law should not be sovereign is the result of the fact that ‘some things can be covered by the laws while other things cannot’ [ta men endechetai perilêphthênai tois nomois ta d’ adunata] (1287b19-20). Aristotle thinks that the argument of the *Statesman* ought to be rejected because the law in many cases does offer guidance. As we see in Aristotle’s discussion of equity in EN, Aristotle thinks that the law will hold ‘for the most part’ (1137b15-16). This is the same sort of status that he assigns to universal statements in the natural sciences. Even though such statements are false in some cases, they are characterized by Aristotle as ‘correct’ (1137b17).

#### *The fallibility of political experts*

But why limit the expert in this way? Why practice the political art ‘by the book’? There is a feature of politikê that marks it off from other skills: the judgment of the political expert is susceptible to influence by the irrational part of the soul. In the first discussion of kingship, Aristotle says the following in favor of the sovereignty of law. He says that that in which the emotional is not present is better than that in which the emotional part is naturally present [kreitton d’ hoi mê prosesti to pathêtikon holôs ê hoi sumphues] (1286 a17-18). It does not belong to law, whereas every human soul has it by necessity [tôi men oun nomôi touto ouch’ huparchei, psuchên d’ anthrôpinên anankê tout’ echein pasan] (1286a18-20).

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surely involves ensuring that interpretation of the law is true to the lawcode. For even though the law in many cases does give guidance, a self-interested party may try to interpret the meaning of the law in a way that accords with their interests. The *Ath. Pol.* passage refers to the law of Solon, but there is no reason to assume that Aristotle does not recognize that even a clear lawcode leaves room for manipulation if it is being interpreted by those who are not faithful to the spirit of the lawcode and the intentions of the lawgiver.

The second discussion of absolute kingship examines the same argument for the sovereignty of law. He says that ‘he that recommends that the law shall govern seems to recommend that God and reason alone shall govern’ (1287a28-30). On the other hand, ‘he who recommends that a human being should govern adds a wild animal also’ (1287a30). This is because appetite is like a wild animal (1287a30-31). Furthermore, passion warps the rule even of the best men [ho thumos archontas diastrephei kai tous aristous andras] (1287a30-32). On the other hand, ‘the law is wisdom without desire’ [aneu orexeôs nous ho nomos estin] (1287a32).

Aristotle also addresses the analogy from the arts that it is bad to practice medicine by the book and that it is better to use those skilled in the art [tôn technôn to paradeigma hoti to kata grammata iatreusthai phaulon, alla hairetôteron chrêsthai tois echousi tas technas] (1287a33-5). He says, concerning this analogy, that it ‘seems to be false’ [einai dokei pseudos] (1287a33). For physicians ‘never act contrary to reason from motives of friendship’ [hoi men ouden dia philian para ton logon poiousin] (1287a35-6). Rather, they earn their fee when they heal the sick (1287a36-7). Those in political office, on the other hand, ‘are in the habit of doing many things out of spite and friendship’<sup>26</sup> [hoi de en tais politikais archais polla pros epêreian kai charin eiôthasi prattein] (1287a37-8).<sup>27</sup> When people suspect even physicians of being in the

<sup>26</sup> The Greek ‘charis’ might suggest a self-interested return of a favor. But it might equally suggest a favorable disposition towards another person out of friendship (*LSJ*, s.v. ‘charis’). Indeed, the latter is the more likely sense given that epêreia precedes it. Thus the sense is that politicians act out of arbitrary negative or positive disposition towards a person rather than out of considerations of justice.

<sup>27</sup> Aristotle appears, in this passage, to be talking about current practice. One might argue that this is suggested by ‘eiôthasi’ (1287 a38). But we know from the previous

confidence of their enemies and of harming them for gain, in that case they would rather look up the treatment in the books (1287a38-41).

Aristotle also points out that physicians themselves call in other physicians to treat them when they are ill, and gymnastic trainers put themselves under other trainers when they are doing exercises (1287a41-b2). They do so because they believe that ‘they are unable to judge truly because they are judging about their own cases and when they are under the influence of feeling’ [...hos ou dunamenoî krinein to alêthes dia to krinein peri te oikeiôn kai en pathei] (1287b2-b3). The examples mentioned here are those of the physician treating himself and the gymnastic trainer directing his own training. In both cases, presumably, the problem is that a difficult or painful treatment or regimen might be called for and the expert in each case is likely to soften the treatment or regimen. Recognizing this, the physician or trainer might put himself under someone else’s care, even if he is an expert. He recognizes that his judgment is compromised.

Aristotle concludes here that when people seek for what is just they seek for what is impartial [hôte dêlon hoti to dikaion zêtountes to meson zêtousin]; the law is that which is impartial [ho gar nomos to meson] (1287b3-5). On the other hand, the impartiality of the political expert is always in doubt because of the influence of the irrational part of the intellect.

This establishes that even in the arts [technai] an expert’s judgment might be suspect if it is under the influence of passion. Aristotle’s main point in the passage does not have to do with second opinion but the rule of law. The question in this passage is

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passage that he thinks that this is a universal feature of human character—a consequence of epithumia, as well as thumos and other passions.

whether it makes sense for an expert's judgment to be measured against some written textbook in the art. The answer is that it does because the textbook, like the second opinion, is objective. Thus even though textbooks have limitations, the advice of the expert might be measured against the recommendations of a textbook—in particular when the expert's objectivity is suspect.

It is the judgment of the expert that is suspect in such cases. It is not a matter of action that deliberately promotes the good of the agent at the expense of others. For this is characteristic of the vicious individual, whereas Aristotle says that the good, and indeed, the best, are susceptible too. It is also not a matter of incontinence. For, the incontinent individual fails to act on a determination of a faculty of judgment that is sound. Rather it is a matter of having the right principles but doing the wrong thing in some particular situation because of the influence of passion and the emotions.

Thus when Aristotle says that politicians 'act contrary to principle' [para ton logon poiouein] (1287a36) he does not mean that they knowingly act contrary to principle. This is why the example of the doctor and trainer are relevant. The doctor and trainer do not have a wrong conception of the principles and aims of medicine or gymnastic training. Rather, they recognize that the difficulties involved might impair their judgment. They believe that they are unable to judge truly because they are judging *about their own cases and under the influence of feeling* [peri te oikeiôn kai en pathei] (1287b3).

Aristotle is pointing to a disanalogy between politics and other practical disciplines. This disanalogy explains why political experts, unlike experts in other disciplines, ought to practice their art 'by the book'. The text is an impartial standard,

like the opinion of another practitioner of the art. Politicians require the objective standard of the law even if they are the best in the polis and a political expert. Aristotle says in *Pol.* 3, as we saw in 1.1, that there is always some part of the polis outstanding with respect to virtue. But even that part is not assumed by Aristotle to be free from the corruptive influence of the irrational part of the soul.

Aristotle gives a similar justification of the sovereignty of law in the *Rhetoric*. In the *Rhetoric* Aristotle says that the laws should, as much as possible [hosa endechetai], determine everything themselves [panta diorizein autous] (1354a31-2); that they should leave as little as possible up to those judging a case [hoti elachista kataleipein epi tois krinousi] (1354a32-3); and that those judging ought to be ‘sovereign over as little as possible’ [dei hōs elachistōn poiein kurion einai ton kritēn] (1354b12-13). The main reason is that ‘the judgment of the legislator does not apply to a particular case, but is universal and applies to the future, whereas the members of the public assembly and the courts have to decide present and definite issues, ‘and in their case love, hate, or personal interest is often involved, so that they are no longer capable of discerning the truth adequately, their judgment being obscured by their own pleasure or pain’ [hē tou nomothetou krisis ou kata meros, alla peri mellontōn te kai katholou estin; ho d’ekklesiastēs kai dikastēs, êdê peri parontōn kai aphōrismenōn krinousin, pros hous kai to philein êdê kai to misein kai to idion sumpheron sunêrtētai pollakis, hōste mêketi dunasthai theōrein hikanōs to alêthes, all’ episkopein tēi kriesi to idion hêdu ê lupêron] (1354b5-11).

Aristotle also says in the *Rhet.* that there ought to be restrictions on what can be argued before a jury; in particular one ought to guard against the ability of speakers to

arouse prejudice [diabolê], compassion [eleos], anger [orgê], and similar emotions [ta toiauta pathê] in jurors (1354a16-17). It is wrong to warp the juror's feelings, to arouse him to anger, jealousy or compassion, [ou dei ton dikastên diastrephein eis orgên prosagontas ê phthonon ê eleon] *because it would be like making the rule crooked which one intended to use* (1354a14-16). The juror must give an objective judgment. The arousal of the various emotions would jeopardize this objectivity.

*The outstanding individual 'is himself the law'*

It might be asked whether Aristotle thinks, in *Pol.* 3, that the law ought to be sovereign in all cases. In the discussion of ostracism, he considers the possibility that a person or 'more than one but not enough to be able to make up a complete state'<sup>28</sup> [ê pleious men henos mê mentoi dunatoi plêrôma paraschesthai poleôs] might be 'so greatly distinguished in outstanding virtue' [tosouton diapherôn kat' aretês huperbolên], so that the virtue [aretê] of all the rest and their practical ability [dunamis politikê] is not comparable with that of the men mentioned, if they are several or one, or if one with his alone' (1284a3-8). It is no longer proper to count these exceptional men a part of the state [ouketi theton toutous meros poleôs] (1283a8). For 'they will be treated unjustly if deemed worthy of equal status, being so widely unequal in virtue and in their political ability' [adikêsontai axioumenoi tôn isôn, anisoi tosouton kat'aretês ontes kai tên politikên dunamin] (1284a9-10). Such a man 'will naturally be as a god among men' [hôsper gar theon en anthrôpois eikos einai ton toiouton] (1284a10-11). Hence it is clear that 'legislation also must necessarily be concerned with persons who are equal in birth

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<sup>28</sup> The point here is that there is more than one person but they do not constitute a majority.

and in ability' [dêlon hoti kai tên nomothesian anankaion einai peri tous isous kai tôi genei kai têi dunamei] (1284a11-13) There can be no law dealing with such men as those described, for they are themselves a law [kata de tôn toioutôn ouk esti nomos autoi gar eisi nomos] (1284a13-15).<sup>29</sup>

The issue here is most likely related to the law relating to the distribution of political power in the city. The city is better run if power is shared. It is also a matter of justice for power to be shared, for ability determines who ought to rule. Sharing power involves term limits, election and scrutiny. It involves rules as to how offices are rotated. Indeed, he characterizes this as the sovereignty of law in the second discussion of absolute kingship.<sup>30</sup> Here we see that sometimes it means that authority is distributed

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<sup>29</sup> In the second discussion of kingship he also concludes 'it is clear that among people who are alike and equal it is neither expedient nor just for one to be sovereign over all—neither when there are no laws, but he himself is in the place of law, nor when there are laws, neither when both sovereign and subjects are good nor when both are bad, nor yet when the sovereign is superior in virtue, except in a certain manner' (tx). The 'except in a certain manner' refers to the outstanding individual.

<sup>30</sup> 'Some people think that it is entirely contrary to nature for one person to be sovereign over all the citizens where the state consists of men who are alike; for necessarily persons alike in nature must in accordance with nature have the same principle of justice and the same value so that inasmuch as for persons who are unequal to have an equal amount of food or clothing is harmful for their bodies, the same is the case also in regard to honours; similarly therefore it is wrong for those who are equal to have inequality, owing to which it is just for no one person to govern or be governed more than another, and therefore for everybody to govern and be governed alike in turn. And this constitutes law for regulation is law. Therefore it is preferable for the law to rule rather than any one of the citizens, and according to this same principle, even if it be better for certain men to govern, they must be appointed as guardians of the laws and in subordination to them [(...) nomophulakas kai hupêretas tois nomois]; for there must be some government, but it is clearly not just, men say, for one person to be governor when all the citizens are alike'. Here he is arguing that the law ought to ensure that 'everyone govern and be governed alike in turn'. (The argument: When citizens are equal it is not just for one citizen to rule over others. Therefore, they ought to share equally in ruling and being ruled. 'Therefore this is already law, for regulation is law' [touto d'êdê nomos, hê gar taxis nomos]) 'Law' refers, in this version of the conclusion,

in a legal fashion; he says that they must rule and be ruled in turn and this is order and therefore already law.<sup>31</sup> The laws here are laws that deal with how offices are filled, terms limits, the scrutiny of officials. It is likely to be this sort of law that the outstanding individual ought to be exempted from.

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to the law which will regulate how offices are to be distributed and filled. The conclusion is that they must be distributed and filled so that each citizen gets an equal share in the government of the polis.]

<sup>31</sup> He goes on to assume that the sovereignty of law in the substantive sense is included. Aristotle probably conceives of them as a package.

### 1.3 Aristotle's comprehensive legislative ideal

#### *Introduction to 1.3*

In 1.3 I examine evidence that Aristotle thinks that the lawcode ought to give extensive moral guidance to citizens, so much so that the lawful [*nomimos*] individual in a *polis* with such a lawcode would have complete virtue. Aristotle thinks that the lawcode must offer such guidance to citizens in order to educate them in virtue. Next I examine evidence suggesting that Aristotle thinks that the law-code will give citizens an account [*logos*] which explains why they ought to obey the laws. After this I suggest that Aristotle has in mind a law-code which has some important features in common with the law-code described in Plato's *Laws*.<sup>32</sup> The law-code will be both a textbook educating citizens in virtue and a textbook educating officials in *nomothetikê*.<sup>33</sup> I then

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<sup>32</sup> That Aristotle has something like this in mind is also suggested by Aristotle's reference to preludes in *EN* 10.9. This passage will be discussed below. How close the parallels are between what Aristotle has in mind and the law-code described in the *Laws* is not crucial. The parallels with the *Laws* are brought up for two reasons. (i) They are brought up, first of all, in order to illustrate what Aristotle has in mind for the lawcode. It is evident that he has an ideal in mind, given that what he describes departs from current legal practise. It is evident that the lawcode offers to citizens the sort of guidance offered to citizens by the lawcode described in the *Laws*. It is evident that the *Laws* was familiar to Aristotle. It is plausible, therefore, to suggest that this is a model Aristotle might have had in mind. (ii) Second, they are brought up in order to set up the discussion of the context of Aristotle's views on the law-code in part 3, where I will make further comparisons between Aristotle's views on law and those found in Plato's *Laws*.

<sup>33</sup> This suggests that the law-code has two parts. One consists of laws and principles whose aim is to educate citizens in virtue, and the other of laws and principles whose aim is to educate officials in politics and *nomothetikê*. Or, to put the distinction another way, the aim of one set of laws and explanations is to tell me what my moral requirements are and why I have these requirements--these are the laws which make me virtuous--and the aim of the other set of laws and explanations is to tell officials why the laws over which their offices preside are what they are. But this is not the case. In the *Laws* Plato talks about one law-code. The narrative for the law-code is one narrative rather than two. Officials and citizens are privy to the same law-code and it is the same

consider briefly some of the literature on Athenian law in order to show that Aristotle's views on the lawcode are a departure from Athenian practise.

*The law-code and the virtue of citizens*

In *EN* 5.1 Aristotle discusses the various senses of the word 'justice'. On one sense of this word justice is compliance with the law. This is the sense being used when the law-abiding [nomimos] citizen—i.e. the citizen who complies with all the laws of the state—is said to be 'just'. Aristotle says that 'this justice is complete virtue' [hautê dikaiosunê aretê esti teleia] (1129b26). This is true, he says, because 'the law commands citizens to do the actions of a brave person; for example, not to leave their posts, not to flee, not to throw down their arms; and [it commands them to do] the actions of a temperate man; for example, not to commit adultery or assault; and to do the actions of a gentle man, for example not to strike or slander others; *and similarly with actions exemplifying the rest of the virtues and vices, requiring the former and forbidding the latter* — correctly if the law has been rightly enacted, not correctly if it has been made at random' (1129b19-26). Elsewhere Aristotle says that '*the law commands citizens to live in accordance with every particular virtue; and the law forbids action in accordance with every particular vice*' [kath'hekastên gar aretên prostattei zên kai kath'hekastên mochthêrian kôluei ho nomos] (1130b24). We see in

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principles which explain to citizens their obligations and to officials the functions and powers of their offices. In part 2 we will see that the basic principle of a technê—a logos which teaches a skill—is the aim of the skill. In medicine this aim is health, and a technê in medicine is organised around an account of health. In politics the aim is the common good. But Aristotle also says that the common good is aim of the laws which define virtue. It is probable, therefore, that Aristotle had in mind a law-code organised around some account of the common good. This includes an account of human nature. And it also includes an account of the principles of justice and of politeiai. That is, it would contain material from the *Ethics* and from the *Politics*.

these passages that Aristotle thinks that the law ought to be exhaustive in commanding action in accordance with virtue and forbidding action in accordance with vice.

It might be suggested here that Aristotle is talking about the unwritten law of morality. This suggestion has some support in the fact that Aristotle uses 'nomima' instead of 'nomoi' as the word for 'law' at 1130b22 and 1130b25. However, 'nomima' is often used by Aristotle to describe written laws.<sup>34</sup> And, at 1129b24, just after he says that the laws command all actions required by virtue and forbid all vicious actions, Aristotle says that the law does this '*correctly if the law has been rightly enacted, not correctly if it has been made at random*' [orthôs men ho keimenos orthôs, cheiron d' ho apeschediasmenos] (1129b24-5). Aristotle uses 'keisthai' ['to lay down'] here, a verb which is used to describe the action which results in the *positive* law of a state.

In the *EN* 10.9 discussion of law and the art of legislation [nomothetikê] we see that it is a political ideal for Aristotle that the positive law of a state guide citizens as closely as is suggested in the passages above. There is, Aristotle tells us in *EN* 10.9, a general obligation on individuals to make friends and family virtuous. But this should be left up to individuals only when the city does not take care of the virtue of its citizens (1180a29-32). For, people can adequately be assisted in becoming virtuous only in a city which takes care of the virtue of its citizens in two ways. First of all, there must be a system of universal and public education regulated by law (1179b32). Second, the law must provide extensive guidance to citizens throughout their lives (1180a1-14).

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<sup>34</sup> This is supported by Bonitz, 488a16. Thus Gauthier and Jolif comment, at 1129b12, concerning 'nomima' and 'nomoi', 'les deux termes sont...chez Aristote, interchangeables...chacun d'eux pouvant désigner les lois écrites et les lois non-écrites, conformément à ce qui semble l'usage courant de la langue grecque (340).

However, Aristotle does not think that any existing state provides this sort of guidance. For example, he says that Sparta is the only state which comes close to doing this (*EN*1180a25). However, even Sparta does it inadequately (*Pol* 1271b12). That Aristotle thinks that no state legislates virtue adequately is also evident from his discussion of the art of legislation [*nomothetikê*]. Aristotle describes legislation as an art which studies universal features of human character and, based on this study, makes laws whose aim is to make citizens virtuous.<sup>35</sup> At *EN* 1180b30-1181b12 Aristotle shows that neither those who profess to teach *nomothetikê* and *politikê* (the ‘Sophists’) nor the politicians have the art of *nomothetikê*. At 1181b12 Aristotle concludes: ‘Since, therefore, the subject of legislation has been left uninvestigated [*paraleipontôn oun tôn proterôn anereuêton to peri tês nomothesias*] it is probably better if we consider this subject ourselves, along with the question of the nature of the constitution in general, so that we complete, as much as is possible, the science of human affairs’ [*hê peri ta anthrôpina philosophia*].

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<sup>35</sup> At 1180b20 Aristotle says the following: ...’anyone who wishes to make himself a professional and a man of science must advance to general principles [*tôi boulomenôi teknikôi genesthai kai theôretikôi epi to katholou badisteon einai doxeien an*], and acquaint himself with these by the proper method [*kaekeino gnôristeon hôs endechetai*]: for science, as we said, deals with the universal. So presumably a man who wishes to make other people better (whether few or many) by discipline, must endeavour to acquire the science of legislation — assuming that it is possible to make us good by laws. For to mould aright the character of any and every person that presents himself is not a task that can be done by anybody, but only (if at all) by the man with knowledge [*tou eidotos*], just as is the case in medicine and the other professions involving a system of treatment and the exercise of prudence.’

*The law is a logos*

In the following extended discussion of law, at *EN* 10.9 1179b4-1180b15, we see that one of the reasons that the laws must define the virtues in the way suggested in the passages above has to do with the nature of the human soul:

(1.) (a.) Now if discourses on ethics were sufficient in themselves to make men virtuous, 'large fees and many' (as Theognis says) 'would they win,' quite rightly, and to provide such discourses would be all that is wanted. But as it is, we see that although theories have power to stimulate and encourage generous youths, and, given an inborn nobility of character and a genuine love of what is noble, can make them susceptible to the influence of virtue, yet they are powerless to stimulate the mass of mankind to moral nobility. (b.) For it is the nature of the many to be amenable to fear but not to a sense of honor, and to abstain from evil not because of its baseness but because of the penalties it entails; since, living as they do by passion, they pursue the pleasures akin to their nature, and the things that will procure those pleasures, and avoid the opposite pains, but have not even a notion of what is noble and truly pleasant, having never tasted true pleasure. What theory then can reform the natures of men like these? To dislodge by argument habits long firmly rooted in their characters is difficult if not impossible...

(2.) (a.) Again, theory and teaching are not, I fear, equally efficacious in all cases: the soil must have been previously tilled if it is to foster the seed, the mind of the pupil must have been prepared by the cultivation of habits, so as to like and dislike aright. For he that lives at the dictates of passion will not hear nor understand the reasoning of one who tries to dissuade him; but if so, how can you change his mind by argument?

(b.) And, speaking generally, passion seems not to be amenable to reason, but only to force. We must therefore by some means secure that the character shall have at the outset a natural affinity for virtue, loving what is noble and hating what is base. And it is difficult to obtain a right education in virtue from youth up without being brought up under right laws; for to live temperately and hardily is not pleasant to most men, especially when young; hence the nurture and exercises of the young should be regulated by law, since temperance and hardiness will not be painful when they have become habitual.

(3.) (a.) But doubtless it is not enough for people to receive the right nurture and discipline in youth; they must also practice the lessons they have learnt, and confirm them by habit, when they are grown up. Accordingly we shall need laws to regulate the discipline of adults as well, and in fact the whole life of the people generally; for the many are more amenable to compulsion and punishment than to reason and to moral ideals. (b.) Hence some persons hold, that while it is proper for the lawgiver to encourage and exhort men to virtue on moral grounds, in the expectation that those who have had a virtuous moral upbringing will respond, yet he is bound to impose chastisement and penalties on the disobedient and ill-conditioned, and to banish the incorrigible out of the state altogether. For (they argue) although the virtuous man, who guides his life by moral ideals, will be obedient to reason, the base, whose desires are

fixed on pleasure, must be chastised by pain, like a beast of burden. This indeed is the ground for the view that the pains and penalties for transgressors should be such as are most opposed to their favorite pleasures.

(4.) But to resume: if, as has been said, in order to be good a man must have been properly educated and trained, and must subsequently continue to follow virtuous habits of life, and to do nothing base whether voluntarily or involuntarily, then *this will be secured if men's lives are regulated by a certain intelligence, and by a right system, invested with adequate sanctions.*

(5.) Now paternal authority has not the power to compel obedience, nor indeed, speaking generally, has the authority of any individual unless he be a king or the like;

(6.) but law on the other hand is a rule, emanating from a certain wisdom and intelligence, that has compulsory force. Men are hated when they thwart people's inclinations, even though they do so rightly, whereas law can enjoin virtuous conduct without being invidious.

(7.) But Sparta appears to be the only or almost the only state in which the lawgiver has paid attention to the nurture and exercises of the citizens; in most states such matters have been entirely neglected, and every man lives as he likes, in Cyclops fashion 'laying down the law For children and for spouse.'

(8.) The best thing is then that there should be a proper system of public regulation; but when the matter is neglected by the community, it would seem to be the duty of the individual to assist his own children and friends to attain virtue, or even if not able to do so successfully, at all events to make this his aim. But it would seem to follow from what has been said before, that he will be more likely to be successful in this if he has acquired the science of legislation. Public regulations in any case must clearly be established by law, and only good laws will produce good regulations;

(9.) Paternal exhortations and family habits have authority in the household, just as legal enactments and national customs have authority in the state, and the more so on account of the ties of relationship and of benefits conferred that unite the head of the household to its other members: he can count on their natural affection and obedience at the outset (tr. Rackham).

We have, in this passage, an argument for the necessity of a legal order of the sort described above, in which the laws give citizens extensive guidance in conduct, and describe exhaustively action in accordance with virtue. The argument is formulated as an argument for the priority of 'laws' [*nomoi*] over 'discourses' [*logoi*]. It establishes that moral discourses can change listeners only if listeners have been raised in legal order of the sort described above.

2a. and 2.b establish that laws are prior to discourses in the sense that, in order for discourses and teaching [*logoi, didachê*] to be effective with youths, laws must have

established basic conditions of character beforehand. ‘Discourses’ [logoi] can change only generous [eleutherioi] youths well born with respect to character [êthos eugenes] who are rare. [1. a.] For most people, in order for discourses and teaching [ho logos, didachê] to work the ‘the soul of the listener must have been prepared by the right habits to like and dislike the right things’ [dei prodieirgasthai tois ethesi tên tou akroatou psuchên pros to kalôs chairein kai misein]. [2.a] For ‘the person living in accordance with passion would not hear or understand the discourses of one trying to transform him’ [ou akouseie logou apotreponontos oud’an suneiê ho kata pathos zôn]. [2.a] (And, presumably, anyone not raised to acquire the right habits would end up living ‘in accordance with passion’ [kata pathos]. A related point is made in 2.b., where Aristotle says that ‘to live in accordance with temperance and endurance is not pleasant to most men, especially when young’. But ‘temperance and endurance will not be painful when they have become habitual.’ This suggests that the young are naturally intemperate and lack endurance.) Therefore, in order for ‘discourses and teaching’ [ho logos and hê didachê] to work ‘it is necessary somehow to ensure beforehand [dei prouparchein pôs] that the character appropriates virtue, accepting the noble and rejecting the base’.

Aristotle puts the same point as follows: It is difficult to ‘obtain a right education in virtue from youth up without being brought up under such laws [ek neou agôgês orthês tuchein pros aretên chalepon mê hupo toioutois traphenta nomois]’. Therefore, ‘nurture and exercises must be regulated by law [dei tattein tois nomois tên trophên kai ta epiteudemata]’.

We see in 1.b. that Aristotle thinks that, because anyone not raised in the right habits would end up living ‘in accordance with passion’ [kata pathos], and because passion does not listen to discourses but to compulsion [logôi, biâi] [2.b.] therefore, as things stand—i.e. given the fact that no such legal order exists—most human beings can be morally transformed and improved only by means of a legal order which gives extensive coercive guidance to citizens; a legal order which commands virtuous action, forbids vicious action and threatens punishment for transgressions. However, we see in 3.-6. that even a polis which takes care of the virtue of citizens—by raising them in the right habits—requires a legal order of this sort. It is not sufficient merely to have a legal order which enforces a system of early education. In order for people to have virtuous habits, they must have guidance later as well. They must also ‘practice the lessons they have learnt, and confirm them by habit, when they are grown up’ [kai andrôthentas dei epitêdeuein auta kai ethizesthai]. [3.a.] Therefore it is necessary to make laws for this stage and, generally, for the whole of life [kai peri tauta deoimeth’an nomôn, kai holôs dê peri panta ton bion]. [3.a.] In 3.-6. Aristotle establishes that people can become virtuous only if their lives are extensively regulated by law—i.e. only if the laws of the city exhaustively describe virtuous and vicious actions, commanding the former and forbidding the latter.<sup>36</sup>

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<sup>36</sup> Aristotle, of course, is concerned with the education of a large group of people. For, as we saw above, he thinks that some people might be gifted enough to have a capacity to be influenced by discourses and teaching even without the sort of education described here. Aristotle’s claim is that only a system of laws can provide the sort of guidance necessary in order to ‘morally improve’ [protrepein] a large group of people with a range of natural abilities.

However, the analysis in 3.-6 has several steps. We see that, even in 4. he does not think that the argument thus far has established that this regulation of citizens' conduct after youth must have some form. Rather, it has been established that 'in order to be good a man must have been properly educated and trained, and must subsequently continue to follow virtuous habits of life, and to do nothing base whether voluntarily or involuntarily, then this will be secured if men's lives are regulated by a certain intelligence, and by a right system, invested with adequate sanctions' [tauta de gignoit'an bioumenois kata tina noun kai taxin orthên, echousan ischun]. [4.] In other words it has been established that: (a.) There must be some way of arranging, for a population, the entirety of their individual lives so that they are guaranteed 'never to do anything base, whether voluntarily or involuntarily'. (b.) The guidance given must 'have power'—i.e. sanctions must be imposed on those who fail to act in accordance with this guidance. In 5. Aristotle addresses the question of the nature of the authority which is necessary in order to provide the guidance needed: the commands of a father or other individuals do not have the power to compel obedience. Commands have such power only if the individual who gave them is a king.

In 6. Aristotle establishes that such commands ought to be 'accounts' [logoi]: 'people hate individuals who oppose their impulses whereas law on the other hand is an account coming from practical wisdom and intelligence [logos...apo tinos phronêseôs kai nou]' . What Aristotle has in mind here is more evident if one examines it together with 3.b. 3.b is a reference to Plato's *Laws* and, as Burnet notes, in particular, to 'Plato's requirement at 722d ff that all laws should begin with a prooimion of a persuasive and protreptic character' (EA 470). Aristotle's conclusion in 6. shows that he has something

similar in mind, namely that the laws which provide moral guidance—*coercive* moral guidance—to citizens ought simultaneously be logoi appealing to the intellect. In 3.b. it is the same legal code which ‘encourages’ and ‘exhorts’ [parakalein, protrepein] to virtue those who had a good moral upbringing and are persuaded by logoi, and compels those who are not virtuous in live in accordance with pleasure with the threat of sanctions—like ‘beasts of burden’. In 6. Aristotle establishes that nomoi can provide moral guidance effectively only if they are simultaneously logoi which appeal to the intellect.

In 6., Aristotle reconciles ‘laws’ and ‘discourses’ [nomoi, logoi]. The opposition between laws and discourses central thus far is the following: laws are commands which must be obeyed under threat of punishment and result in the moral improvement [protrepsis] because of a natural human fear of punishment; discourses result in protrepsis by being persuasive to the intellect. Aristotle has been arguing that nomoi are prior to logoi because logoi can be persuasive only to people who have been brought up in and continue to be guided by the right nomoi. However, Aristotle establishes in 6. that the nomoi being given are also logoi. Nevertheless, Aristotle, like Plato in the *Laws*, remains a partisan of nomoi. For, he thinks that logoi can be understood and persuasive only to people who have been raised in a city in which these logoi are nomoi. (Excepting the rare naturally gifted individuals.)

The emphasis on punishment in this passage is misleading. Aristotle recognises that the nomoi of a city have other holds on human character. He mentions the fear of shame and the desire for honours in other passages—which I will discuss in the next draft. And Aristotle recognises that coercion is not necessary at an early age in the

household, as passage 9. suggests. However, even in the household Aristotle thinks that children ought to be raised by means of nomoi, as 8. shows. That is, it is not sufficient to have the example of virtuous parents or particular commands given by parents.

Parents must guide their children by means of nomoi which are logoi.

### *Parallels with Plato's Laws*

Aristotle, therefore, has a legislative ideal in mind when he says that the law provides exhaustive guidance in virtue; and when he says that the law is an account which explains why citizens ought to obey these laws. Aristotle's legislative ideal has much in common with Plato's in the *Laws*. Indeed, as we saw in the last section, Aristotle alludes to the *Laws* in *EN* 10.9. Like Aristotle, Plato is critical of the current status of the law-code.<sup>37</sup> The lawcode must explain to citizens that the aim of the laws is to promote the virtues (631c). And the law-code must include preludes which explain the laws. The law-code will have a general preamble (724a-734e). And each section of the law-code will include a preamble.

In Plato's *Laws*, 'citizens are to receive not merely edifying myths but also the philosophical accounts presented in the *Laws* itself' (Bobonich 380). Though 'the argumentation in the preludes is somewhat simplified' in that 'important terms are sometimes not clearly defined and possible objections are not fully considered...we do

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<sup>37</sup> Concerning Lycurgus or Minos '...we should say that he enacted the laws aiming not at some part of virtue...but at the whole of virtue, and that he examined them by category, but not in terms of the categories used by those who make laws currently'. [...ouch hōs pros aretēs ti morion...etithē blepōn alla pros pasan aretēn, kai kat'eidē zêtein autous tous nomous, oud'haper hoi tôn nun eidē protithemenoi zētousin](630e) 'Whatever each legislator needs he now inquires into and adds to the law-code.' [hou gar an hekastos en chreiai gignētai, touto zētei nun parathemenos](630e) 'One deals with inheritances and heiresses, another with cases of battery, and so on in endless variety.' (630e, Bury translation of the last line.)

find some very sophisticated arguments in the preludes' (394). For example, the arguments in *Laws* 10 for Plato's basic theological principles are part of the prelude to the law on impiety.

Plato also thinks that the lawcode will teach citizens to think as lawgivers when required. The lawcode is a text which enables one who has learned it to decide as the lawgiver would in any given situation (Nightingale, PL 102-103, 119). Aristotle, as we saw in 1.1, has the same view on the role of the lawcode. And he alludes to Plato's *Statesman* when he talks about rule 'by the book' [*kata grammata*] in *Pol.* 3. And in the *Laws* Plato, like Aristotle, advocates the sovereignty of law (715d).

In Plato and in Aristotle the lawcode does not merely consist of rules but of a complete *logos*, which consists both of rules and of an explanation of the principles behind these rules. This is to be contrasted with Athenian practise, as we will see in the next section. We see in the *Ath.Pol.* and *Rhet.* passages that Aristotle thinks it very important that the lawcode should be such a comprehensive *logos*. We see in the text from the *Ath.Pol.* (9.2) that Aristotle thinks that the lawcode should be formulated so as to minimize the sovereignty of the *dêmos*. The passages from the *Rhet.* and *Ath.Pol.* also suggests that the laws ought to define as much as possible and leave as little as possible up to the judgment of jurors.

#### *The procedural character of Athenian law*

Aristotle's emphasis on the sovereignty of the lawcode is consistent with Athenian practise and ideology. Nightingale says, regarding Plato's *Laws*, that 'Plato's adoption of an extensive written lawcode (and a judicial system to go with it) signals a move towards Athens and away from Sparta, which preferred to bind its citizens to

ancestral (and, primarily, unwritten) laws by way of its elaborate educational system, its unique mode of training, and other institutions (such as the ‘common meals’) designed to produce unity and discipline’ (PL 100-1). In 403/2 B.C. Athens enacted legislation forbidding the use by magistrates of unwritten law (Andocides 1.85-87; Hansen, AtD170). Whereas in the 5th century nomos meant both custom and law, in the 4th century, in legal contexts nomos came to be restricted to ‘a written statute passed by the legislative organ of the state’ (Hansen, AtD 170) There is evidence that late 5th-century Athenian ideology associated ‘rule by written law with democracy and rule by unwritten law with oligarchy...The Athenians’ championing of the rule by written law...had both practical and ideological implications’ (Nightingale, PL 106; Thomas, ‘Written in Stone?’). This ideology ‘is readily apparent in 4th century texts’ (Nightingale, PL 106). For example, Aeschines 1.5 claims that ‘autocracies and oligarchies are administered according to the whims of their leaders, but democracies according to the established laws’ (tr. Nightingale, PL).

The scholarship on the Athenian lawcode suggests, however, that the Athenian law-code was not in fact organised in the ways prescribed by Aristotle. There seems to be a consensus in the literature that Athenian law was essentially procedural in its orientation.<sup>38</sup> The lawcode specifies acts which are prohibited, and the legal process to which they are subject if they commit these acts, but it does not define these actions or

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<sup>38</sup> Hansen, *Eisangelia*, notes that the ‘sources show that the Athenians took much more interest in procedural rather than substantive law. In the forensic speeches we hear of innumerable procedures and types of process whereas substantive rules concerning offences, obligations, property, etc. are vague and often obscure’ (10). Todd, *Shape* has also emphasised the procedural character of Athenian law as has Carey (‘Nomos’, 41). Cohen has noted the lack of definition in Athenian legislation (*Law Violence Community* 190).

provide any way of interpreting them. An implication of the procedural emphasis of Athenian law is that Athenian law has 'open texture'. This phrase was coined by H.L.A. Hart to describe the fact that the law cannot anticipate all possible applications and requires interpretation (Osborne 44; Carey, 'Shape' 98-99). 'All law is to some degree open in texture...In Athens, however, this openness was very pronounced, in that the absence of formal definition in the text of the law in many cases meant that the definition of offences was left to the jury panels' (Carey, 'Shape' 99). An example illustrating the open and procedural character of law is the law on hubris quoted by *Demosthenes* 21.47: 'If anyone treats with hubris any person, either child or woman or man, free or slave, or does anything illegal against any of these, let anyone who wishes, of those Athenians who are entitled, submit a graphê to the thesmothêtai. Let the thesmothêtai bring the case to the Eliaia within thirty days of the submission of the graphê, if no public business prevents it, or otherwise as soon as possible. Whoever the Eliaia finds guilty, let it immediately assess whatever penalty seems right for him to suffer or pay. Of those who submit private graphai according to the law, if anyone does not proceed, or when proceeding does not get one-fifth of the votes, let him pay 1000 drachmas to the public treasury. If a money penalty is assessed for the hubris, let the person be imprisoned, if the hubris is against a free person, until he pays it' (tr. McDowell 129). Here 'only the first sentence is concerned with defining the offence, and there is no attempt to define hubris itself. That shows that the word does not have any special legal meaning but is just being used in its ordinary sense, with which all the readers of the law are assumed to be familiar' (McDowell 130). This shows how broad the range is of possible offenses covered by this law and how much of the application of

the law depended on the moral and legal intuitions of the jurors. For 'Hubris, though a fairly common word, is difficult to define or translate...Study of its use by Greek authors indicates that a fundamental element of it is having energy or power and misusing it self-indulgently. Characteristically its driving-force is the energy of a young man who has had plenty to eat and drink and behaves like a frisky horse, and it is often found in men who have political power; but it is not necessarily confined to young or the wealthy. Its characteristic manifestations are further eating and drinking, sexual activity, larking about, hitting and killing, taking other people's property and privileges, jeering at people and disobeying authority both human and divine. A person shows hubris by indulging in conduct which is bad, or at best useless, because it is what he wants to do, having no regard for the wishes or rights of other people' (129). The law, therefore, 'allows a man to prosecute another for hitting, killing, rape, disobeying authority, jeering at someone, depriving him of a privilege or indeed of any kind of misbehavior whatever towards another person, if he thinks that he can convince a jury that the act was an act of hubris' (130).

Josiah Ober has suggested that the procedural character of Athenian law explains why Socrates argues, in the *Crito*, that he has an obligation to obey the law even if the law is unjust. 'Procedural law is concerned with establishing fair rules for legal practices, rather than with carefully defining legal terms in an attempt to achieve consistently good outcomes. Under a legal regime in which impiety is strictly defined, Socrates would confront a problem if and when his dialectical investigations demonstrated that a prevailing legal definition was flawed. If, for example, established substantive law defined a specific and detailed set of beliefs as constituting piety and

mandated that citizens hold such beliefs, and if Socrates determined philosophically that those beliefs were foolish, Socrates would have to choose between his conscience and the law. But Athenian law avoided such difficulties because it avoided detailed definitions of abstract terms like piety. In accepting the authority of Athenian law, Socrates accepted the established procedures by which he would be judged if he were accused of a delict, but he was not constrained to accept a detailed, substantive definition of that delict. Athenian law forbade (inter alia) impiety, hubris, slander and assault. By living in Attica and thereby accepting the law, Socrates acknowledged that these things were morally reprehensible and worthy of punishment. So, for example, because Athenian law forbade impiety [asebeia] Socrates accepted that asebeia...was a crime and that a citizen formally accused of asebeia would be tried according to a specific set of procedures. But when indicted on a charge of asebeia, Socrates was not constrained to accept the detailed definition of asebeia offered by the prosecution. Nor was he constrained to accept that his behavior...would have constituted asebeia. Rather, Athenian law invited each juror to weigh the competing assessments of prosecutor and defendant regarding what sorts of behavior carried out under what conditions constituted impiety' ( 'Living Freely').

The secondary literature on Athenian law in the 4th century suggests that Aristotle has in mind a legislative ideal when he suggests that the lawcode ought to specify principles.<sup>39</sup> There are authors who disagree with the consensus.<sup>40</sup> However,

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<sup>39</sup> This might also explain why Aristotle characterises the current democracy as a radical democracy in spite of the fact that it placed a great value on the rule of law. Aristotle is saying that unless a constitution also describes the principles the problems associated with rule kata psephismata are shifted to another level. Emotions, desires and personal interests rather than reason influence the evaluation of questions of principle.

there is no suggestion by anyone in the literature that the Athenian lawcode attempted to define principles in the way suggested by Aristotle.

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For example, Aristotle describes ways, in *Pol.* 3, in which class affiliations affect citizens' evaluations of questions concerning equality, justice, citizenship, and other questions of principle.

<sup>40</sup> For example, Rhodes 'Eisangelia' 106 questions Hansen's emphasis on procedure. Carey cautions that 'the volume of law with a substantive orientation may have been understated by recent writers' ('Shape', 94).

## 1.4 *The majority as guardian of the law*

### *Introduction to 1.4*

In 1.4 I argue that what Aristotle identifies as the part of the constitution in charge of nomophulakê in the context of his discussion of the sovereignty of law corresponds, in his discussion of the parts of the constitution in *Pol.* 4, to the deliberative part of the constitution. I also examine Aristotle's arguments for the sovereignty of the 'majority' [plêthos]. I argue that Aristotle thinks that deliberation must be divided between: (i.) a virtue-based office in charge of preliminary deliberation [probouleusis], which prepares items for vote in the assembly; (ii.) a citizens' assembly which votes on the proposals of the pre-deliberative body.

### *Sovereignty and guarding the law*

Aristotle's first argument for the sovereignty of law in Book 3 of the *Politics* begins with the question of who ought to be sovereign in the polis. He considers a list of possibilities, among which are the majority of citizens, the citizens who are good [hoi epieikeis], the citizen who is best [ho spoudaiotatos]. The solution, as we saw in 1.1, is that the law ought to be sovereign and whoever else is sovereign over matters on which the law cannot give a precise determination (1282b1-6).

Aristotle's conclusion leaves open the possibility that there may be one person with this role.<sup>41</sup> However Aristotle also argues that the majority ought to be sovereign in addition to the law (1281a40-1282b1). That Aristotle thinks that the majority is best

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<sup>41</sup> He says that 'ton archonta de, an te heis an te pleious ôsi' ought to be sovereign over matters on which the law cannot give precise directions because of the difficulty of saying something universal that holds in all cases [peri toutôn einai kurios peri hosôn exadunatousin hoi nomoi legein akribôs dia to mê rhâidion einai katholou dêlousai peri pantôn] (1282b3-5).

suited to carry out these duties is confirmed in his two discussions of kingship at the end of *Pol.* 3. In both discussions Aristotle affirms the principle that the law ought to be sovereign, and discusses the problem of who ought to be sovereign in addition to the law—a problem that arises because of the limitations on any general account which is meant to guide decisions on particular cases. Aristotle goes on to argue that all the citizens together are better qualified to supplement the law than the best man (1286a21-1286b4).

The reason is that in most cases a large group of people is collectively superior to the best person among them. Any one individual citizen is inferior compared with the best man. But ‘just as a banquet to which many contribute dishes is finer than a single plain dinner’, in many cases a crowd judges better than any single person [krinei ameinon ochlos polla ê heis hostisoun] (1286a28-31). Each person in the group has some portion of virtue and wisdom [morion..aretês kai phronêseôs] (1281b4-5). And ‘when they have come together, just as the multitude becomes a single man with many feet and many hands and many senses, so also it becomes one personality as regards the moral and intellectual faculties’ [peri ta êthê kai dianoian] (1281b7).<sup>42</sup> An individual’s judgment, furthermore, is likely to be influenced by anger or some other such emotion, whereas it is difficult for everyone in a large group to be roused to anger and go wrong together (1286a33-5). The superiority of the majority holds only in cases in which a large group of citizens can make decisions together (1282a34-36). The plêthos must be

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<sup>42</sup> All citizens, when assembled together, have ‘sufficient discernment’ [hikanê aisthêsin], and ‘by mingling with the better class are of benefit to the state, just as impure food mixed with what is pure makes the whole more nourishing than the small amount of pure food alone; but separately the individual is immature in judgement’ [chôris d’hekastos atelês peri to krinein estin] (1281b34-8).

sovereign over nomophulakê in some way that preserves the unity of the group in the deliberative process of which nomophulakê consists. This fact will be important below when we think about the institutions in which the plêthos will be sovereign in the best polis.

*The good man and the good citizen in the best polis*

As we saw in 1.1, though Aristotle thinks that the arguments about the outstanding character of the majority might be true in other cases, he thinks that they are particularly relevant to the best political regime. Aristotle assumes that the majority is most likely to be outstanding, when compared with the best people in the city, in the best sort of political regime—i.e. one in which citizenship is restricted to those with leisure and in which citizens are educated. In such a regime the good citizen and the good person are the same.<sup>43</sup>

When Aristotle says that the majority ought to be guardian of the law in the first discussion of kingship he says that they must, in this capacity, do nothing apart from the law except about matters as to which the law is necessarily deficient (1286a36-37). He also says that the majority must be freemen [hoi eleutheroi] (1286a36). This is consistent with his claim, in *Pol.* 3 and *Pol.* 7, that those who engage in the slavish occupations ought not to be granted citizenship in the best constitution. He also says that it is not indeed easy to ensure in the case of many men that they would act as guardians of the law (1286a38). However, it would be ensured in a state in which the

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<sup>43</sup> How can they be the same? I will address this question in the next section. We will see that Aristotle thinks that the lawcode of the city should provide such extensive moral guidance to citizens; and that a citizen in the right sort of state can exercise complete virtue by complying with the laws of the state.

‘good men and good citizens’ are many [pleious] (1286a38-9). They would be better guardians of the law than one single good person (1286a38-1286b1). It may be objected that they would be likely to try to split up into factions whereas the single good person would not [...hoi men stasiasousin ho de heis astasiastos] (1286b1-2). But they are virtuous in soul just like the single good ruler [...spoudaioi tên psuchên hôsper kakeinos ho heis] (1286b3). Rule by a majority of citizens who are good is a kind of aristocracy (1286b4). However, it cannot be an aristocracy in the normal sense because it is the rule of a majority of citizens rather than the rule of a few good people.

Aristotle also says that it will be the same education and habits [paideia kai ethê] which make a politically capable person and a king [ta poiounta spoudaion andra kai ta poiounta politikon kai basilikon] (1288a41-1288b2). This suggests that citizens who participate in politics require moral guidance and education in order to be able to participate in politics. It is not surprising that *Pol.* 7-8 focuses on the education of citizens in the best constitutions.

### *Nomophulakê and bouleusis*

In the present section I examine some limitations Aristotle places on the principle that the majority ought to be sovereign over nomophulakê. I also explain this view in terms of Aristotle’s discussion of the three parts of the polis in *Pol.* 4. I will also argue that Aristotle’s classification of the parts of the polis is prescriptive rather than descriptive and that it is an institutional requirement connected to the sovereignty of law principle.

Aristotle does not endorse the sovereignty of the majority without qualification.

First of all, as we see in this passage at 1281b21-38, he thinks that offices ought to be shared between the majority of the citizens and the virtuous:

One might therefore employ these considerations to solve not only the previously stated difficulty but also the related question, over what matters is the authority of the freemen, the mass of the citizens, to extend (using that expression to denote those who are not rich nor possessed of any distinguishing excellence at all)? For it is not safe for them to participate in the highest offices (for injustice and folly would inevitably cause them to act unjustly in some things and to make mistakes in others)... It remains therefore for them to share the deliberative and judicial functions [to bouleuesthai kai krinein]. For this reason Solon and certain other lawgivers appoint the common citizens to the election of the magistrates and the function of calling them to audit, although they do not allow them to hold office singly. For all when assembled together have sufficient discernment, and by mingling with the better class are of benefit to the state, just as impure food mixed with what is pure makes the whole more nourishing than the small amount of pure food alone; but separately the individual is immature in judgement (tr. Rackham).

The ‘previously stated difficulty’ Aristotle mentions in this passage is that with which the discussion of who ought to be sovereign began: if, on the one hand the majority were to become sovereign, they would use their power to distribute the wealth of the rich and this will lead to instability. If, on the other, the best citizens were to become sovereign the majority of the city would be left ‘without honours’, which would also lead to instability in the polis. The solution proposed in this passage is that of power sharing between the majority and the best. The argument for this arrangement is the following. The highest offices can be occupied singly, whereas judicial and deliberative functions can be done in popular institutions—i.e. in institutions in which the members function as a group. The majority is superior as a group to the virtuous, but inferior to the most virtuous singly. Therefore the majority ought to occupy judicial and deliberative functions and the most virtuous the highest offices. This is also a solution

to the previously stated difficulty because it is a limit on the power of the majority, while allowing the majority to participate.

The deliberative and judicial functions include the election and scrutiny of higher officials. This is suggested by the last passage where, following Aristotle's conclusion that the majority ought to share the deliberative and judicial functions, he says '*For this reason* Solon and certain other lawgivers appoint the common citizens to the election of the magistrates and the function of calling them to audit, although they do not allow them to hold office singly.' It is also confirmed in a subsequent passage, at 1281b38-1282a14, when Aristotle considers the following objection to this conclusion:

This arrangement of the constitution is however open to question in the first place on the ground that it might be held that the best man to judge which physician has given the right treatment is the man that is himself capable of treating and curing the patient of his present disease, and this is the man who is himself a physician; and that this is the case similarly with regard to the other arts and crafts. Hence just as a court of physicians must judge the work of a physician, so also all other practitioners ought to be called to account before their fellows....Further the same might be thought to hold good also of the election of officials, for to elect rightly is a task for experts — for example, it is for experts in the science of mensuration to elect a land-surveyor and for experts in navigation to choose a pilot; for even though in some occupations and arts some laymen also have a voice in appointments, yet they certainly do not have more voice than the experts. Hence according to this argument the masses should not be put in control over either *the election of magistrates or their audit* (tr. Rackham).

Here the objection to the conclusion that the majority should be allowed to participate in deliberation and judgment assumes that the election and scrutiny of higher officials are included under deliberation and judgment.

We saw that the majority must be in charge of decisions when the law 'goes astray' [parekbainei] and when the law is silent. In the second discussion of kingship we see, at 1287a20-27, that Aristotle also includes the authority to change law under nomophulakê:

Therefore it is preferable for the law to rule rather than any one of the citizens, and according to this same principle, even if it be better for certain men to govern, they must be appointed as guardians of the laws and in subordination to them...the law first specially educates the magistrates for the purpose and then commissions them to decide and administer the matters that it leaves over 'according to the best of their judgement,' *and furthermore it allows them to introduce for themselves any amendment that experience leads them to think better than the established code* (tr. Rackham).

Aristotle, therefore, thinks that the majority of citizens ought to: (i) be sovereign (though subject to the law) in the sense of being 'guardians of the law' [nomophulakes]; (ii) have a share in deliberation and judgment [bouleusis and krisis]; (iii) be in charge of election and scrutiny; (iv) interpret the law in cases in which the law gives the wrong command or gives no command; (v) make changes to the law when required.<sup>44</sup>

In *Pol.* 4, at 1297b35ff., Aristotle discusses the parts of a constitution. Every constitution has three parts [moria]. One of the parts is the deliberative [bouleutikon] part in charge of common matters [koina]. The second is concerned with the offices—what they are, what matters they will have authority over, what kind of selection process there will be for each. The third is the judicial. The deliberative part has authority over laws, as well as the selection and audit of officials, war and peace, alliances and their dissolution, death sentences, exile, and confiscation of property.

With respect to these three parts, given that Aristotle says in *Pol.* 3 that the majority of citizens ought to be in charge of deliberation and judgment, [bouleusis, krisis], it is clear that the majority of citizens would in some way be in charge of the deliberative and judicial parts of the city and that the offices would be filled by election

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<sup>44</sup> Aristotle does not state directly that the majority would have the power to make changes to the law. I am inferring this from Aristotle's statements (1) that the right sort of majority ought to be in charge of nomophulakê; and (2) that nomophulakê involves the authority to change laws or make new laws.

of candidates, perhaps from the wealthier part of the citizen body. In other words, Aristotle thinks that the deliberative and judicial bodies ought to be organised in a democratic fashion, and the higher offices distributed according to merit. This means that deliberation should be conducted by majority vote in some popular assembly open to all citizens—with the limitation that no persons in menial occupations are allowed to be citizens. Aristotle's claim that the majority ought to be sovereign in the deliberative body is consistent with his claim that the majority ought to be in charge of election and scrutiny. For, as we learn in *Pol.* 4, the deliberative part is in charge of these. (Election is not initially mentioned but is mentioned below, at 1298a20-1.)

Aristotle also says in *Pol.* 3 that the majority ought to be sovereign in the constitution. Aristotle calls the deliberative part of the constitution the sovereign [kurion] part. In what respects will the majority be sovereign on the arrangement as described? In the second part of *Pol.* 3 Aristotle's main concern is with the law and the principle that the law ought to be maximally sovereign. But the law is susceptible to 'deviations' and cannot specify how political authority ought to be exercised on all matters. Therefore, what is needed is not just a system of law but an individual or body capable of interpreting the law and making decisions when the law is silent or when it deviates. Aristotle says that this is the part of the polis is in charge of guarding the law [nomophulakê]. Thus the majority would in some way be in charge of guardianship of the law on the best political arrangement. In which of its deliberative or judicial functions is the majority guardian of the law? The most obvious sense in which the majority is sovereign over the law on such an arrangement is that it is sovereign over the deliberative part of the constitution and the deliberative part is in charge of law. This

includes the introduction of new laws or changes to old laws. But Aristotle attributes great importance to the interpretation of law. In particular, he is concerned with cases in which the law deviates or is silent. The majority will interpret law in the courts. But Aristotle also thinks that individual higher officials will interpret the law. In what sense can the majority then be said to be the sovereign guardian of the law? The actions of the officials are subject to scrutiny. It is plausible, therefore, that the controversial decisions of officials would be subject to such a scrutiny in the deliberative body. Nomophulakê involves making sure that all acts of political authority [archê] by particular offices are consistent with the lawcode of the polis. This involves, no doubt, making sure that all offices and officials do not deviate from the letter of the law unless necessary. But since there are cases, when they do deviate from the letter of the law—in cases where the law ‘goes astray’ [parekbainei], and in cases when the law includes no rule and they must make a decision which suits the case—nomophulakê also involves making sure that such decisions are ‘kata nomous’—i.e. consistent with the principles of the constitution. The latter is accomplished by the deliberative part of the constitution through the scrutiny of officials and their actions in office.

At 1299a1 Aristotle calls the deliberative part the sovereign [kurion] part of the constitution. This remark, as well as the classification of the parts of the polis is prescriptive. For, Aristotle recognises here that these functions of government are not always assigned to different parts of a constitution. We see that this is the case in his discussion of democracy at 1291b30ff. At *Pol.* 1292a5ff Aristotle discusses the sort of democracy in which ‘the multitude is sovereign and not the law’ because the decrees of the assembly are sovereign rather than laws:

(1.) This happens because of the demagogues; for in democracies which are in accordance with law, the demagogue does not arise. Instead, the best citizens take leadership in the assembly. But where the laws are not sovereign demagogues arise. For the demos becomes a monarch, composed out of the many... (2.) The monarchic demos then seeks to exercise its monarchic rule by not being ruled by law and becomes despotic, so that flatterers are held in honour. (3.) And *a demos of this sort is comparable to the tyrannical form of monarchy. Because of this their character is the same.* Both exercise despotic control over the better classes. Furthermore, *the decisions of the assembly are like the commands of a tyrant*, and the demagogues and the flatterers are the same individuals and their roles are analogous. Each set has the very strongest influence with the respective ruling power, the flatterers with the tyrants and the demagogues with democracies of this kind. (4.) And *these men cause the resolutions of the assembly to be supreme and not the laws, by referring all things to the people*; (5.) for they owe their rise to greatness to the fact that the people is sovereign over all things while they are sovereign over the opinion of the people, for the multitude believes them. (6.) Moreover those who bring charges against the magistrates say that the people ought to judge the suits, and the people receive the invitation gladly, so that all the magistracies are put down. (7.) And it would seem to be a reasonable criticism to say that such a democracy is not a constitution at all; for *where the laws do not govern there is no constitution, as the law ought to govern all things while the magistrates control particulars*, and we ought to judge this to be constitutional government; (8.) if then democracy really is one of the forms of constitution, it is manifest that an organization of this kind, in which all things are administered by resolutions of the assembly, is not even a democracy in the proper sense, for it is impossible for a voted resolution to be a universal rule (tr. Rackham modified).

Aristotle affirms the sovereignty of law principle in his discussion of democratic regimes at 8., where he says that *the laws ought to govern all things universal while the magistrates govern particulars*. Aristotle points here to an additional institutional requirement associated with the rule of law, which will be discussed below, namely that, in a lawful regime the assembly must be presided over by a merit-based office which prepares items for vote by the assembly. [1.] Aristotle is describing the breakdown of a constitutional order in which there is a division of authority between the assembly and offices. The constitution breaks down because there is no limit on who comes to prominence in the assembly. As a consequence, a demagogue comes to prominence in the assembly. The demagogue persuades the assembly to ignore the law

whenever the law is not consistent with its interests. The assembly, furthermore, usurps the powers of the offices. Such a constitutional order is a form of tyranny because the decrees of the assembly are sovereign rather than the law and because all matters are brought before the assembly for decision. A democratic regime in which the law is sovereign would be one in which the law is sovereign. If the dêmos makes decisions it is on general matters only.

We see here further confirmation that one aspect of the idea of the sovereignty of law is that all political deliberation [bouleusis] and decision-making must, as much as this is possible, be about general laws rather than consisting of decisions about particular cases. This requires a separation between the part of the constitution in charge of deliberation [bouleusis] and that part in charge of the execution of the authority of the state in particular cases—between bouleusis on the one hand and krisis and archê on the other. These are to be carried out by three separate parts of the polis—that in charge of bouleusis and the ‘specialized offices’ [archai] and the courts.

#### *Majority rule and the nature of political expertise*

In his discussion of popular sovereignty Aristotle defends the principle of popular sovereignty against objections based on the nature of expertise in practical science. In his responses to these objections Aristotle gives us further insight into his conception of political expertise, and into ways in which political expertise is similar to and differs from other forms of practical expertise. We see that Aristotle thinks that the nature of politikê is such that it is especially suited to a system in which the majority is sovereign and political experts are subject to the election and scrutiny of the majority.

Aristotle considers the following objection to the sovereignty of the majority over nomophulakê:

This arrangement of the constitution is however open to question in the first place on the ground that it might be held that the best man to judge which physician has given the right treatment is the man that is himself capable of treating and curing the patient of his present disease, and this is the man who is himself a physician; and that this is the case similarly with regard to the other arts and crafts. Hence just as a court of physicians must judge the work of a physician, so also all other practitioners ought to be called to account before their fellows (1281b38-1282a3, tr.. Rackham)

Further the same might be thought to hold good also of the election of officials, for to elect rightly is a task for experts — for example, it is for experts in the science of mensuration to elect a land-surveyor and for experts in navigation to choose a pilot; for even though in some occupations and arts some laymen also have a voice in appointments, yet they certainly do not have more voice than the experts. Hence according to this argument the masses should not be put in control over either the election of magistrates or their audit (1282a7-14, tr. Rackham).

Here the objection is based on the model of the crafts. In the crafts, practitioners are elected and called to account by experts in the craft. And, even if non-experts ‘have a voice in appointments they...do not have more voice than the experts.’

In response to this, Aristotle points out, at 1282a14-23, that there are crafts in which non-experts do judge experts:

(1.) But perhaps this statement is not entirely correct, both for the reason stated above, in case the populace is not of too slavish a character (for although each individual separately will be a worse judge than the experts, the whole of them assembled together will be better or at least as good judges), (2.) and also because about some things the man who made them would not be the only nor the best judge, in the case of professionals whose products come within the knowledge of laymen also: to judge a house, for instance, does not belong only to the man who built it, but in fact the man who uses the house (that is, the householder) will be an even better judge of it, and a steersman judges a rudder better than a carpenter, and the diner judges a banquet better than the cook (tr. Rackham).

Aristotle points in 2. to arts in which the person who uses the product of a craft, and who is not expert in the craft, is taken to be a better judge than the expert. In 1. he

points once again to the collective superiority, with respect to virtue and practical wisdom, of the majority to those who are outstanding in virtue and practical wisdom. He also warns, once again, that this collective superiority is likely to be true only of populations which are ‘not too slavish’.

Aristotle gives an example, at 1281b7-10, of another art in which experts are subject to the judgment of non-experts:

This is why the general public is a better judge of the works of music and those of the poets, because different men can judge a different part of the performance, and all of them all of it (tr. Rackham).

This art is more appropriate as a model for politikê than the arts mentioned in the previous passage because the superiority of the audience in music and poetry consists in their being taken together as a unity. The audience is a unity of its individual members and reacts to poetry and music as a unity. Similarly, the plêthos can be superior to the aristoi only in offices in which a large group of people can deliberate and make judgments as a unity—i.e. the assembly and courts.

Aristotle points, at 1282a2-7, to another fact about the arts which supports the idea that the ordinary citizen has the authority to judge the work of political experts:

(1.) But ‘physician’ means both the ordinary practitioner, and the master of the craft, and thirdly, the man who has studied medicine as part of his general education [iatros d’ ho te dêmiourgos kai ho architektonikos kai tritos ho pepaideumenos peri tèn technên]  
(2.) (for in almost all the arts there are some such students, and we assign the right of judgement just as much to cultivated amateurs as to experts) [eisi gar tines toioutoi kai peri pasas hôs eopein tas technas, apodidomen de to krinein ouden hêtton tois pepaideumenois ê tois eidosin] (tr. Rackham).

This passage is interesting, first of all, because Aristotle distinguishes, among physicians, the ‘architektonikos’ and the ‘dêmiourgos’. These terms, given the context,

must describe persons of different levels of expertise in the art, the architektonikos having greater expertise than the dêmiourgos.<sup>45</sup> But these terms are also used by Aristotle to describe the relative importance of the nomothetês and the politikos in the best political arrangement. The passage is interesting, secondly, because it identifies a third category of expertise in the art, namely, that of the person who has the status neither of the architektonikos nor of the dêmiourgos but that of the merely pepaideumenos. (I say ‘merely’ pepaideumenos because, presumably, the demiourgos and the architektonikos have also been pepaideumenoi but have also attained a level of expertise beyond that of someone who has a basic level of education in the art.) These three classes of expertise in an art correspond very well to the three classes of expertise in politikê assumed by Aristotle.<sup>46</sup> The architektonikos corresponds to the person outstanding in politikê and competent in nomothetikê in the sense of being able to produce laws. The dêmiourgos corresponds to the official who is able to execute the laws. The pepaideumenos corresponds to the citizen who has a basic education in the laws—for the legal code, as we argued in 1.3, corresponds to the textbook in an art in that it consists of rules organised around principles—but who has not attained the level of excellence in the art of the dêmiourgos or architektonikos.

### *Election and Nomophulakê*

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<sup>45</sup> This passage should be read together with *EN* 1141b25. There the nomothetês is the architekton and the politikoi are the cheirotechnai. Another related passage is Plato’s discussion of the slave doctor and the free doctor at *Laws* 720a-d, 857d.

<sup>46</sup> If we pursue the parallel with *EN* 1141b25, the category of the ‘pepaideumenoi’ adds a third category to the two described in the *EN* passage. This category corresponds to the ordinary citizen in the politeia whose lawcode educates citizens in politics.

Aristotle thinks that, in a state in which the law is sovereign, someone must be in charge of ensuring that the laws of the state are upheld. He calls this function ‘nomophulakê’ and suggests that in many instances—most importantly, in the best constitution—the majority ought to be in charge of nomophulakê. He also thinks that the majority ought to have sovereignty over decisions that either deviate from the law or deal with matters on which the law is silent. We saw in 1.2 that Aristotle thinks that such decisions can be made by thinking about what the lawgiver would have said. They can be made, in other words, by thinking from the principles of the lawcode. Such decisions are also in accordance with law in a broad sense, even though they are not guided by any straightforward application of the rules of the lawcode.

The majority, therefore, is in charge of a sort of nomophulakê that goes beyond ensuring that the rules of the lawcode are applied faithfully. Nomophulakê in this broader sense involves sovereignty over cases in which the law parekbainei, matters on which the law is silent and changes to the law. Nomophulakê in this broader sense, in other words, is concerned to defend the law against all the weaknesses to which any system of rules is subject. But Aristotle also says that the majority will have sovereignty over election and scrutiny. What is the connection between these two aspects of the sovereignty of the majority? Scrutiny of an official would involve, I have argued, an examination of deviations from the letter of the law. (Or, what is more likely, it would involve controversial deviations. That is, individual citizens might have the authority to bring complaints against officials before the assembly and the assembly would judge whether the law was closely followed and, if not, whether a deviation was warranted and whether the official’s decision was kata nomous.)

We can now also explain the connection between election and nomophulakê. In electing an official one looks to their past actions in the political sphere, and perhaps also politically relevant private actions. At least part of this will involve demonstrating an ability which goes beyond that of the ‘merely’ pepaideumenos individual. This includes an ability to make decisions which demonstrate a capacity to think beyond the law. Such people must demonstrate an ability to make decisions in instances where the law is silent or parekbainei and to make these decisions kata nomous. Here we can refer to Aristotle’s discussion of epieikeia. The equitable person is able to see when the law ought to be corrected. The equitable person ‘does not stand on his rights unduly but is content to receive a smaller share although he has the law on his side’ (1138a1). One knows that the equitable person is not deviating from the law out of private interest because he sacrifices a private interest in his equitable act. (Aristotle did not consider the possibility that one might consistently act equitably in order to gain a reputation for equity and gain political power. Perhaps this is because on his account of the best political order it is not possible to gain the sort of power from which one could easily derive profit. Such a move would quickly become transparent.) A person who has acquired a reputation for equity is one who would be a candidate for higher office.

#### *Probouleusis in the Best Regime*

Aristotle has established the competence of the majority to be sovereign as a unity. From this, Aristotle argues, follows a restriction on the power of the plêthos. The plêthos must act as a unity and, consequently, they cannot occupy higher offices which can be occupied only by single individuals or smaller groups.

Aristotle's claim that the 'majority' [plêthos] is a sovereign requires a brief note. That the plêthos is sovereign refers, presumably, to the majority of those gathered in the assembly and whose preference won in a vote. This majority are a unity in the sense that they all agreed on some proposal, and disagreed with the minority who had a different preference and who had the losing vote. Aristotle talks about the majority as being sovereign. However, in a majority vote system it is not always the same majority which is victorious. It is not the same majority which is sovereign. When Aristotle says that the majority is sovereign he simply means that issues are decided by majority vote at an assembly of citizens.

We saw above that Aristotle further elaborates the limits of the deliberative competence of the plêthos. He has established that their competence is limited to the ability to judge the works of experts in politikê—i.e. those who are outstanding in virtue and practical wisdom. In electing officials an assembly of citizens acts as a unity by voting whether or not to appoint a particular candidate to a particular office. One has to be a little more speculative as to how they might come up with candidates as a unity. They can, for example, each write a name and the two names that come up most often are put to a further vote. In scrutiny individual citizens can file complaints against officials to be considered and decided by vote in the assembly.

However, we also saw that Aristotle attributes to the plêthos the power to change law and to deliberate on issues on which the law is silent. (The deliberative part of the polis is concerned with issues that are such—i.e. are issues on which the law is silent—by virtue of the sorts of subjects they are. No doubt such issues might come up in the subordinate offices as well—the archai and dikastêrion. However, it may be that

these cases are not such by virtue of their subject matter. Or perhaps they are such by virtue of their subject matter, but are not the topic for the part in charge of bouleusis because they are not as important or are not irreversible in the way that decisions of the deliberative part are.) How does the plêthos do this as a unity? Here, it seems, proposals which are put to a vote must be made by experts in nomothetikê rather than by ordinary citizens. For ordinary citizens are competent to judge the products of nomothetikê as parts of a plêthos rather than as single individuals. This suggests that the best political arrangement is one in which there is an office in charge of probouleusis and which is filled in the way that all the higher offices are filled—i.e. according to aristocratic criteria. (Aristotle discusses probouleusis at 1299b30.)

This restriction is also suggested by a passage, at 1292a7-37, from Aristotle's discussion of the origins of radical democracy:

(1.) This happens because of the demagogues; for in democracies which are in accordance with law, the demagogue does not arise. Instead, the best citizens take leadership in the assembly. But where the laws are not sovereign demagogues arise. For the demos becomes a monarch, composed out of the many... (2.) The monarchic demos then seeks to exercise its monarchic rule by not being ruled by law and becomes despotic, so that flatterers are held in honour. (3.) *And a demos of this sort is comparable to the tyrannical form of monarchy. Because of this their character is the same.* Both exercise despotic control over the better classes. Furthermore, *the decisions of the assembly are like the commands of a tyrant*, and the demagogues and the flatterers are the same individuals and their roles are analogous. Each set has the very strongest influence with the respective ruling power, the flatterers with the tyrants and the demagogues with democracies of this kind. (4.) *And these men cause the resolutions of the assembly to be supreme and not the laws, by referring all things to the people;* (5.) for they owe their rise to greatness to the fact that the people is sovereign over all things while they are sovereign over the opinion of the people, for the multitude believes them. (6.) Moreover those who bring charges against the magistrates say that the people ought to judge the suits, and the people receive the invitation gladly, so that all the magistracies are put down. (7.) And it would seem to be a reasonable criticism to say that such a democracy is not a constitution at all; for *where the laws do not govern there is no constitution, as the law ought to govern all things while the magistrates control particulars*, and we ought to judge this to be constitutional government; (8.) if

then democracy really is one of the forms of constitution, it is manifest that an organization of this kind, in which all things are administered by resolutions of the assembly, is not even a democracy in the proper sense, for it is impossible for a voted resolution to be a universal rule (tr. Rackham modified).

Aristotle says that radical democracy occurs because of the demagogues. For ‘in democracies which are in accordance with law, the demagogue does not arise. Instead, the best citizens take leadership in the assembly’ [*hoi beltistoi tôn politôn eisin en proedriai*]. ‘Proedria’ is a technical term of the Athenian democracy. Proedroi were introduced in 403/2 or shortly thereafter and presided over meetings of the Council and Assembly (Hansen, AtD 365-6). In a democracy in accordance with law there is a division between the parts of government. The powers of the dêmos should be limited. One of the limitations, as suggested here, is that the affairs of the assembly are presided over by an individual selected either by virtue criteria or by class criteria. If this is a democracy then the assembly is in some way sovereign over deliberation [bouleusis]. However, its control over such issues is limited by the chair. In what way does the chair control the assembly? Given Aristotle’s discussion of the superiority of the majority, it is most likely that the assembly is limited to voting on proposals by the chair. For, Aristotle establishes their ability to judge—as a unity, like the audience at a dramatic festival—the products of experts in the political art. This means that pre-deliberation would be left to those who are outstanding in nomothetikê.

### 1.5 *Politikê* ‘by the book’ [*kata grammata*]

Aristotle thinks that the majority will, for the most part, be in charge of ‘guarding the law’ [*nomophulakê*]. Aristotle has in mind the following arrangement. An assembly of citizens will vote on the proposals of a pre-deliberative body of legislative experts. The assembly will vote on important particular decisions and on changes to the law-code—the introduction of new laws, changes to existing laws. The assembly will also scrutinize the decisions of officials, particularly those decisions which do not consist of a strict application of the rules specified in the law-code. The assembly will deliberate on all such issues by thinking about what is in accordance with law. Their task is to ensure that all political decisions in the *polis* are in accordance with the rules and principles of the lawcode. Deliberation in the assembly will consist of argument from principles which are part of the law-code. The majority must judge, for any policy, that this policy follows from the principles of the law-code.

In voting on the proposals of *nomothetai* and in conducting scrutinies of the officials of the *polis*, the assembly will be judging whether the proposals of political experts are consistent with the principles specified by the lawcode. Rule in accordance with the law is like looking up political decisions in a textbook on politics. One asks that an official justify a decision in terms of the lawcode. The question that would be put to the assembly is ‘Is this decision consistent with the lawcode’? The assembly looks to the lawcode for guidance. The decision has to make sense to the majority given the text of the lawcode. The analogue in medicine would be to require that an assembly of individuals who are not experts in medicine, but who have had a general education in medicine, vote on whether a doctor’s prescriptions follow from the principles of the

medical art as described in a textbook on the medical art. Given that the majority is sovereign and votes on the proposals of experts we see what Aristotle means when he suggests that politics, unlike other technai, is conducted 'by the book' [kata grammata].

The following two objections to what has been said above must be addressed.

(1) I suggest above that part of the authority over nomophulakê attributed to the majority in *Pol.* 3 might be that the assembly would have authority over changes to the lawcode--i.e. changes to existing laws and the introduction of new laws. It might be objected that such changes would not occur and that, therefore, such authority would not be a part of the authority over nomophulakê attributed by Aristotle to the Assembly. The claim that such changes would not occur might be supported by the facts that frequent changes to the lawcode were not recommended in Athens either, which Aristotle criticises for not respecting the integrity of its laws.<sup>47</sup> But such changes, though infrequent, did occur regularly enough in Athens that there was a procedure for the introduction of new laws (Hansen, *AtD* 168-9; MacDowell, 49); and, in addition, there was an annual review of the laws (Hansen, *AtD* 166; MacDowell 49). And in Plato too there was recognition that such changes were necessary. Indeed, until the lawcode reached finality such changes might be made regularly (*Laws*, 772a-d).

(2) It might also be objected that it is unlikely that Aristotle would give such authority to the majority, given that this was not the case even in Athens where the nomothetai were in charge. However, this point is not agreed upon universally.<sup>48</sup>

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<sup>47</sup> On the Athenian reluctance to change the laws see Sealey, *Athenian Republic* 52.

<sup>48</sup> Hansen examines the controversy (*AtD* 154). Some think that, in spite of the board of nomothetai, the dêmos is nevertheless still in charge of changes to the law. Ober, for example, has this view (*Mass and Elite* 145-7).

Further, it must be remembered that Aristotle is giving this power, not to a democratic assembly, but to an aristocratic one. Those who do not have leisure are excluded from citizenship and the lawcode must be formulated so as to educate and guide citizens.

Further, Aristotle is in some sense placing a restriction on the powers of the assembly when compared with the Athenian arrangement. For, whatever side one takes on the controversy, it is generally agreed that, in Athens, it was members of the dêmos who had the power to propose and formulate legislation (MacDowell, 49; Hansen, *AtD* 168-8). And this is precisely the division of deliberative labour to which Aristotle objects at *Pol.* 4. Indeed, the arrangement according to which the assembly has the power only to vote on proposals by aristocratic probouloi is associated with Sparta (Sealey, *History* 75, 87).

### *Conclusion to part 1*

I examined evidence that Aristotle thinks, as Plato does in the *Laws*, that the lawcode ought to consist of rules which guide citizens in their actions and officials in their decisions. The rules ought to guide officials inasmuch as this is possible given the limitations on what can be anticipated about practical matters. The rules ought to guide citizens in their actions to such an extent that lawful individuals—individuals who comply with all the rules of the lawcode—possess complete virtue. The lawcode ought, furthermore, to include an explanation of these rules, so that citizens, in their individual actions and in their official capacities, are able to determine how to act in accordance with the aims of the lawgiver even when the laws fail. I contrasted this view of the lawcode with the procedural emphasis of Athenian law. I examined the institutional implications of Aristotle's claim, in *Pol.* 3, that the majority will in most cases be best qualified to be in charge of nomophulakê. I suggested that Aristotle means that the majority will have authority over the deliberative and judicial parts of the constitution in the sense that decisions will be made by majority vote on deliberative and judicial matters. In all cases the majority will be evaluating the proposals and decisions of experts in terms whether these proposals and decisions are consistent with the principles of the lawcode. This explains the suggestion, in *Pol.* 3, that politics will be practised 'by the book' [kata grammata].

## PART 2 *Rules and principles in practical education and deliberation*

### *Introduction to part 2*

In part 1 we saw that Aristotle thinks, like Plato in the *Laws*, that the lawcode ought to be an account. This is in contrast with the procedural character of Athenian law. Aristotle also thinks that the majority ought to be in charge of guarding the law. This means that they ought to be in charge of the deliberative and judicial parts of the constitution. They must judge, based on their knowledge of the lawcode, that the decisions of experts are consistent with the lawcode. They must determine when deviations from the rules are warranted and what decisions are appropriate in such cases. They must also make decisions on matters on which there are no rules and decisions on changes to the lawcode. Aristotle proposes a system, therefore, on which experts in politics are required to justify their decisions to an assembly of non-experts in terms of the text of the lawcode. He proposes a system, in other words, in which, to use a phrase which arises in the *Pol* 3. discussion of the sovereignty of law, politics is practised ‘by the book’ [*kata grammata*]. Aristotle makes this claim plausible by saying that the lawcode educates those who live under it.

In part 2 my aim is to examine relevant aspects of Aristotle’s views on practical deliberation and education in order to understand what sort of education is provided by the lawcode and how the lawcode can be used, by non-experts, as a guide to the evaluation of the decisions of experts. How is it that an expert can show, to an assembly of non-experts, that some decision follows from some set of principles? What sort of argument might make this possible given Aristotle’s views on practical deliberation? These are important questions given that Aristotle spends much time, as I will show in

2.1, arguing that, in any field of practical endeavour, it is not possible to determine, by appeal to some argument or rule, that some deliberative option is the best one. These same arguments suggest, furthermore, that it is not possible to teach some practical skill by means of an account. In 2.2 I will examine Aristotle's positive account of practical education and argument which explains his claims about the lawcode.

## 2.1 Practical deliberation and perception

### Introduction to 2.1

Phronêsis includes individual phronêsis, oikonomikê, politikê, nomothetikê (1141b23-1142a1). Phronêsis has much in common with the technai. Phronêsis and the technai both involve ‘deliberation’ [bouleusis] or ‘calculation’ [to logizesthai], by which Aristotle means instrumental reasoning of a particular kind. Because they involve such reasoning, both phronêsis and the technai involve intellection which is very different from epistêmê.<sup>1</sup> I will use the term ‘practical intellection’ to refer to the sort of intellection which phronêsis and the technai have in common. In this chapter I examine Aristotle’s views on practical intellection.

In 2.1.1 I examine Aristotle’s arguments that practical intellection is not epistêmê. This means that it is not possible to determine, for some deliberative option, that it is the best deliberative option by considering arguments in support of this option—not, at any rate, in the way that one shows by argument that some conclusion is true in the sciences. In 2.1.2 I examine Aristotle’s arguments that practical intellection involves a determination of the mean. This means that it is not possible to come up with an account—some set of rules or principles—which one can use to determine that some deliberative option is the right one. Both of these results—i.e. the results of 2.1.1 and of 2.1.2—raise problems for Aristotle’s claims about the lawcode, which we examined in

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<sup>1</sup> I do not in this chapter aim to present an examination of all possible senses of ‘epistêmê’ in Aristotle. Sometimes Aristotle uses this term to describe technê. And he even says that physics might involve deliberation. I am going to restrict myself to what Aristotle says about epistêmê in *EN*—mostly in *EN* 6—in the context of his discussion of phronêsis.

part 1. These problems will be addressed in 2.2.

### 2.1.1 *Practical intellection vs. epistêmê*

#### *Introduction to 2.1.1*

In 2.1.1 I show that Aristotle thinks one cannot produce, for some deliberative option, an argument or explanation of why that option ought to be chosen which will support this option decisively. For, it is only in the epistêmai that one can produce a demonstration of the truth of some conclusion which shows that the conclusion follows necessarily from the premises; and Aristotle shows that practical intellection cannot be epistêmê.

#### *That which can be otherwise*

Aristotle's focus in *EN* 6 is to determine the nature of phronêsis. An important aspect of Aristotle's argument is that phronêsis cannot be an epistêmê.<sup>2</sup> The following is one argument Aristotle provides for the claim that phronêsis is not an epistêmê.

Phronêsis deals with things which can be otherwise [allôs echein] (1140b2), in contrast with epistêmê, which deals with that which cannot be otherwise [mê endechetai allôs echein] (1139b21) and is, therefore, of necessity [ex anankês] (1139b22) and eternal [aidion] (1139b23). Because the things with which phronêsis deals can be otherwise no demonstration [apodeixis] is possible regarding these things (1140a35). Therefore phronêsis is not epistêmê (1140b1).

In order to make sense of the argument we must examine briefly what Aristotle means by epistêmê here. Epistêmê is a way of grasping universals (1140b31). A person

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<sup>2</sup> Initially Aristotle simply posits by definition that the epistêmonikon part of the intellect deals with that which is necessary whereas the logistikon part deals with that which can be otherwise. However he also goes on to argue that phronêsis cannot be epistêmê.

has scientific knowledge when he believes in a certain way [pôs pisteuêi] (1139b33).

What is the way of believing something universal and necessary which is characteristic of epistêmê? That which is knowable is demonstrable [to epistêton apodeikton]

(1140b35). One believes that a proposition is true in the way characteristic of epistêmê

when one has a demonstration which shows how the proposition follows from other

universal and necessary propositions. This is why epistêmê is linked to teaching. Every

epistêmê is teachable and that which is knowable can be learned (1139b25). An

epistêmê is not simply propositions plus demonstrations which support them. One must

also know the first principles with certainty (1139b33). And an epistêmê is a state by

virtue of which one can give demonstrations [hexis apodeiktikê] (1139b32).

Nevertheless, even an epistêmê in this sense is imparted by demonstration.<sup>3</sup>

How, then, do we interpret Aristotle's argument? The argument relies on the fact that apodeixis is not possible in phronêsis because phronêsis deals with things which

can be otherwise. What does Aristotle mean when he says that apodeixis is not possible

regarding things which can be otherwise and why does this prevent phronêsis from

being epistêmê? I interpret the passage proceeding from the following two points. (1) I

take Aristotle to be using 'ex anankês' here in the same sense in which he uses it at

*Post.An.* 73b19, where he says that an attribute belongs to a subject 'ex anankês' when

it is not possible that the attribute should not belong to the subject--as opposed, for

example, to an attribute which belongs to a subject 'hôs epi to polu'.<sup>4</sup> (2) The question

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<sup>3</sup> It is probably not learned just by listening to apodeixeis. One probably also has to practise doing apodeixeis.

<sup>4</sup> Anagnostopoulos examines this passage closely (*Goals and Exactness* 233, 242, 281, 283-4). Regarding the argument at 1139b32 'hôt' eiper epistêmê men met' apodeixeôs,

‘Is phronêsis epistêmê?’ should be taken to mean ‘Does the phronimos individual determine that some deliberative option is the right one in the same way that the person with episteme—e.g. the mathematician—determines that some conclusion is true?’. The mathematician arrives at a conclusion by apodeixis. Can this be the way that the phronimos individual arrives at conclusions? The answer is that it cannot because whatever conclusion one comes up with—which, as a conclusion of an apodeixis is universal—will be such that it might not hold in any given particular deliberative situation. For example, while deliberating one considers deliberative option O. One considers an apodeixis whose conclusion is ‘When in situation of type X one ought to do Y’, where X is a situation type and Y is an action type. One determines that one is in situation of type X and that O is an action of type Y. One concludes that one ought to do O. The problem is that no statement of the form ‘When in situation of type X one ought to do Y’—or any other statement, for that matter—is possible in practical affairs which does not admit of exceptions. For any given situation it might, therefore, be the case that that is a situation for which does not hold. This cannot be the way, therefore, that the

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hôn d’hai archai endechontai allôs echein, toutôn mê estin apodeixis (panta gar endechetai kai allôs echein)...ouk’an eiê hê phronêsis epistêmê...’ Anagnostopoulos takes Aristotle to be talking about what he calls the ‘strict or Platonist’ conception of knowledge and demonstration according to which it is not possible to have demonstration from premisses which are hôs epi to polu. At 1139b32, according to Anagnostopoulos, Aristotle is alluding to the fact that practical matters are ‘hôs epi to polu’ and are, therefore, excluded from the strict conception of demonstration. I agree generally with this reading. However, I think that there is a reason, which I’ve tried to explain here, why Aristotle sticks to the ‘strict’ sense of demonstration and knowledge in this passage. The reason is related to the fact that the determinations of phronêsis are particular. The idea is that, if one allows epistêmê with non-necessary—i.e. for the most part—premisses, then phronêsis cannot simply be epistêmê. If apodeixis is involved there must also be some additional capacity which tells me, on any given occasion, whether or not the relevant hôs epi to polu conclusion holds on this occasion or whether this occasion is an exception.

phronimos individual determines, in any given situation, what the right course of action is.

*Empeiria and particular knowledge*

Aristotle also tells us, in *EN* 6, that phronêsis cannot be knowledge of universals only and must also take into account particulars [oud'estin hê phronêsis tôn katholou monon, alla dei kai ta kath'hekasta gnôrizein] (1141b14). For it is concerned with action and action deals with particulars [praktikê gar hê de praxis peri ta kath'hêkasta] (1141b16). In deliberation one can be mistaken with respect either to the particular or the universal [hê hamartia ê peri to katholou en tôi boulesasthai ê peri to kath'hekaston] (1142a20). For example, one might not know either that all sorts of heavy water are harmful or that this is heavy water (1142a22).

As further evidence of the idea that phronêsis requires knowledge of the particular as well as the universal Aristotle cites the fact that young people may be experts in mathematics and geometry but they cannot be phronimoi (1142a11). The reason is that *phronêsis is also knowledge of particulars which become known through experience*, whereas a young person does not have experience [aition hoti kai tôn kath'hekasta estin hê phronêsis, ha ginetai gnôrima ex empeirias, neos empiros ouk estin] (1142a14). Aristotle notes that it is also the case that, though the young can be mathematicians, they cannot be natural philosophers or metaphysicians. The reason here, however, is that the principles of metaphysics and natural philosophy come from experience [hai archai ex empeirias], whereas those of mathematics come from abstraction [di'aphaireseôs] (1142a18).

Aristotle is establishing the general point that practical skill cannot just be

knowledge of the universal. But the argument also works as an argument against the view that phronêsis is epistêmê. In the epistêmai demonstration moves from premises to conclusions. Perhaps, then, deliberation can be thought of in terms of conclusions drawn from premises. The argument here is that even if deliberation does involve some such reasoning this cannot be all there is to deliberation, because one must be able to move from the universal conclusion to the particular action. In other words, even if we assume that deliberative reasoning is like reasoning in the epistêmai, because phronêsis deals with particulars one must have not only the episteme—the ability to get from universals to other universals—but also the ability to recognise the particulars which fall under the universals.<sup>5</sup> As the heavy water example shows, it cannot be taken for granted that this is a straightforward thing to do. This is a capacity additional to the epistêmê. Experience is needed in epistêmai such as natural science and metaphysics. However, it is needed in a different way in phronêsis, assuming that deliberation involves reasoning similar to that of the epistêmai. One must have an additional capacity in order to get from universals conclusions to the sort of particular conclusion that is needed for praxis.

Because phronêsis deals with the particular and cannot be knowledge of the universal only, some people who do not know the universal are more successful in action than those who know them [dio kai enioi ouk eidotes heterôn eidotôn praktikôteroi] (1141b16). In phronêsis and in other areas those who have experience

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<sup>5</sup> This is suggested by Aristotle's statement that, unlike mathematics, phronêsis is *also* knowledge of the particular [kai tôn kath'hekasta estin hê phronêsis] (1142a14). This suggests that phronêsis must involve something which is additional to the sort of reasoning that takes place in mathematics.

[hoi empeiroi] are more successful than those who have knowledge of the universal<sup>6</sup> (1141b18). Phronêsis deals with actions [hê phronêsis praktikê] (1141b21). Therefore, one requires both knowledge of the universal and of the particular; but one requires knowledge of the particular more<sup>7</sup> [hôte dei amphô echein, ê tautên mallon] (1141b21). Aristotle gives the following example to support the claim that those who have experience can be more capable than those who have knowledge. He says that those who know that light meat is easily digestible and wholesome but do not know which meats are light are less likely to restore someone to health than the person who knows that bird meat is wholesome<sup>8</sup> (1141b18).

We see in these passages that Aristotle means by 'knowledge of the particular' and 'empeiria' more than just the knowledge that some particular thing is a token of some type. Empeiria and 'knowledge of the particular' is knowledge that one can have even without knowledge of the universal. One can succeed in some practical domain by

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<sup>6</sup>Presumably, Aristotle means here that they have knowledge of the universal *only*.

<sup>7</sup>Characteristically, Aristotle says that, though phronêsis requires knowledge both of the particular and of the universal—and of the former more than the latter—one sort of knowledge must be authoritative [architektonikê]. In the passage which follows this one—which was discussed in part 1—we see that nomothetikê must be authoritative in relation to politikê, and that, therefore, knowledge of the universal must be authoritative.

<sup>8</sup>Jaeger notes the relevance of Hipp. *De Victu* II, c. 46 ff, : 'We are here reminded of the Greek medical literature on regimen, which was abundant in Aristotle's time, especially the second book of *Peri diaitês* wrongly preserved under the name of Hippocrates, with its long lists of light and heavy meats and its emphasis on the meat of chicken and other birds' ('Medicine as Model' 59). It is important to note the difference between this example and the heavy water example. In the heavy water example the problem has to do with recognising that something immediately present is an instance of a universal. In the bird-meat example the point is that there is a more particular sort of knowledge, which one might have attained by experience, which is more useful than a more universal sort of knowledge which is characteristic of epistêmê.

empeiria.<sup>9</sup>

*Deliberation, calculation and perception*

In order to clarify the nature of phronêsis (1138b34) Aristotle distinguishes two parts of the rational soul, the ‘scientific’ and ‘calculative’ [epistêmonikon...logistikôn] parts (1139a3-15). Calculation and deliberation are the same thing [to bouleuesthai kai to logizesthai tauton] (1139a12) and Aristotle uses these as equivalent. He also takes it that phronêsis involves deliberation and that he can clarify the nature of phronêsis by talking about deliberation. Deliberation is the sort of reasoning which is involved in discovering the means<sup>10</sup> to any given end [peri tôn pros ta telê] (1112b12). This sort of reasoning occurs in the arts. For example, a doctor deliberates about how to cure his patient, an orator deliberates about how to persuade an audience, and a political expert about how to secure good government [eunomia] (1112b14). All skilled individuals

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<sup>9</sup> Indeed, as the bird meat example shows, empeiria and ‘knowledge of the particular’ can consist of something general—i.e. that bird-meat is wholesome. This sort of item of knowledge is taken to be characteristic of empeiria and, though general, it does not count as knowledge of something universal. I will argue in 2.2 that it does not count as a universal because it does not tell us *why* the items that fall under it have the property attributed to them. The statement ‘Bird-meat is wholesome’ does not pick out the category by virtue of which it has the property of being wholesome, whereas the statement ‘Light meat is wholesome’ does.

<sup>10</sup> It is a matter of controversy how one ought to interpret and translate ‘ta pros ta telê’. Irwin, for example, translates this phrase as ‘what promotes the end’ (Irwin, ANE 63). He warns us that ‘means’ ‘is liable to mislead, since Aristotle is not concerned only with instrumental means; I can also decide on something as a good in itself that promotes a further good in itself by being a part of that further good’ (318). ‘Deliberation, and hence decision, are not about ends but about “things towards” or “promoting” them... These things towards ends need not only be instrumental means—efficient causes of the end, neither wholly nor partly coinciding with it. (Shopping for food is an instrumental means to eating dinner.) They may also show us what counts as achieving the end, so that we find its components (eating the main course is ‘towards’ eating the meal because it is part of eating the meal)’ (393). My argument does not depend on the precise interpretation of ‘ta pros ta telê’ and I translate this as ‘means’ even though I am aware of the possibility that the sense may be that suggested by Irwin.

posit some end and then examine how and by what means the end can be achieved [themenoi telos ti pôs kai dia tinôn estai skopousi] (1112b15). If they find that there are several means they consider [episkopousi] which of these is the easiest and best [rhaista kai kallista] (1112b16). If, on the other hand there is only one way then they examine how it can be accomplished in this way; that is, they examine how this end can be accomplished, until they reach the first link in the chain of causes, which is the last thing in the order of discovery [ho en têi heuresei to eschaton] (1112b19). If this last thing is an impossibility, they give up on that course of action. If it is something possible they act (1112b25).

‘Phronimos’ is sometimes used to describe a person who calculates well with respect to some particular end of value [pros telos ti spoudaion] which is not the end of some art (1140a29). But ‘phronimos’ ought strictly speaking to be reserved for the sort of person who is able to deliberate well about things which are good and advantageous to himself [peri ta hautôi agatha kai sumpheronta] (1140a26) not regarding some part—for example, to deliberate well about what sorts of things are good for health or strength—but regarding what sorts of things are good for life as a whole [poia pros to eu zên holôs] (1140a28).

Aristotle compares deliberation with geometric analysis, where the geometer sees that the ‘last thing’ is the triangle (1142a29). According to John Cooper Aristotle is talking about ‘a problem of construction, where the problem is set by the specification of the figure to be produced, and the solution is reached by the progressive analysis of the figure into simpler figures until something is reached which one knows how to construct’ (RHG 10-11).

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What is the analogy between deliberation and geometric analysis? In deliberation one has some end E in mind and one asks how a present action can contribute to the realisation of this end. This consists of an analysis into the things that must be done for the sake of the end [ta pros to telos], which includes thinking about the conditions which must be brought about in order for E to be attained. For example, E will be accomplished if I do  $A_n$ ; I can do  $A_n$  if I do  $A_{n-1}$ ...I can do  $A_2$  if I do  $A_1$ ;  $A_1$  is something I can do now. For example, say I want to become a Virgil scholar. Presently I know no Latin and have never studied Classics. I must, therefore, go to university and get a BA in Classics. This means that tomorrow I will have to go to the university to get an application form. I must pack my lunch now for the trip to the university tomorrow. This sort of reasoning is analogous to geometrical analysis where one begins with the figure which one must construct, and one breaks down this figure until one arrives at a figure or figures which one can construct.

Aristotle says that because it apprehends to eschaton, phronêsis involves a kind of perception [aisthêsis] (1142a23-30).<sup>11</sup> The analogy with geometric analysis supports this idea. In the geometrical example the analysis relies on perception in an obvious way, especially if Cooper is right in suggesting that Aristotle has in mind a geometer who ‘works with a sketch before him, so that he will actually draw the relevant triangle as he analyzes the problem and will be actually looking at it when he recognizes it as the end of his analysis’ (RHG 40-41). However, Aristotle says that the sort of reasoning

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<sup>11</sup> Aristotle uses the language of sight to describe deliberation. All skilled individuals posit some end and then ‘*examine*’ [skopousi] how and by what means the end can be achieved [themenoi telos ti pôs kai dia tinôn estai skopousi] (1112b15). If they find that there are several means they ‘*examine*’ [episkopousi] which of these is the easiest and best [rhaista kai kallista] (1112b16).

in the geometrical example is closer to sensory perception. Perceiving that the triangle is the last figure is closer to sense-perception than is the perception involved in phronêsis. Phronêsis is a sort of intellectual perception (Burnet, EA 274).

'Aisthêsis' is meant to describe the sort of intellection which constitutes phronêsis. What does it signify about this sort of intellection? Aristotle says that the sort of reasoning involved in phronêsis and the technai is very different from the sort of reasoning involved in epistêmê. Because it apprehends to eschaton phronêsis is not epistêmê (1142a24). And the latter is because the last thing<sup>12</sup> cannot be the subject of epistêmê but of perception [aisthêsis] (1142a30). How does the fact that aisthêsis is involved point to a difference between phronêsis and epistêmê? Aristotle says that the sort of perception involved in phronêsis is opposed to the sort of perception involved in nous. Nous is perception of the definitions [tôn horôn], *of which there is no account* [hôn ouk esti logos] (1142a26). Epistêmê, on the other hand, is the sort of intellection which gives logoi.

The aisthêsis involved in phronêsis is akin to the sort of perception which Aristotle has in mind when he says that nous is a sort of perception. Namely, it is something which is grasped *because of a logos*, in the way that the conclusions of arguments are in an epistêmê. The analogy with geometric construction works to explain this aspect of phronêsis as well. Once one has solved the construction problem

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<sup>12</sup> Irwin suggests that Aristotle means by 'the last thing' the particular as opposed to the universal (ANE 345). However, it seems to me more correct to see Aristotle here as meaning the 'last thing' as discussed in the context of deliberation. Aristotle says that deliberation proceeds until one comes to the 'last thing', which means something that can be done. Irwin's translation assumes that deliberation always involves applying universals, which does not seem correct. Cooper argues that 'to eschaton' does not refer to particulars (RHG 183-6).

one can give a logos of how to construct the figure. It is analogous to the logos that a person might give of how they are going to achieve some end: ‘I will do A<sub>1</sub>, then A<sub>2</sub>...then A<sub>n</sub>...’ However, the analysis is not something of which one can give a logos of this sort. One cannot give a logos which one can use to solve any given construction problem. Similarly, one cannot give a logos which one can use, for any given practical aim, to come up with a plan of action to accomplish that aim, though one can give a logos of a plan of action for some end.

### *Deliberation and uncertainty*

According to Aristotle we deliberate about things which are in our power and which are not always done in the same way [mê hôsautôs aei] (1112b2). The arts of medicine and business deal with such matters, for example. And we deliberate more about navigation than about gymnastic training because the former has been less precisely worked out [hêttôn diêkribôntai] (1112b5). There is no deliberation in skills that are exact [akribês] such as the science of writing [hê peri grammatôn epistêmê] (1112b2). Deliberation is associated with uncertainty as to how to proceed. There is no deliberation in the science of writing [hê peri grammatôn epistêmê] because there is no uncertainty as to how to proceed [ou distazomen pôs grapteon] (1112b2). We deliberate more about the skills than the sciences because we are more uncertain about the arts [mallon...peri tas technas ê tas epistêmas mallon gar peri autas distazomen] (1112b6-8).

In support of the last claim, Aristotle says the following: ‘indeed [dê] deliberation occurs (i) in areas which are “for the most part” but where the result of our actions is unclear or (ii) in areas which are undefined’ [to bouleusthai dê en tois hôs epi to polu, adêlois de pôs apobêsetai, kai en hois adioriston] (1112b8-9). Deliberation

occurs, in other words, when we think that strategies which are generally reliable will not work or when there are no reliable strategies. It is significant that Aristotle is using grammatikê as an example of an exact science. He is not suggesting that grammatikê is an epistêmê in the strict sense. For it does not involve apodeixis, does not have universal conclusions, does not have necessary premisses. But it has something important in common with the epistêmai, namely that in grammatikê, like in epistêmê, there is no uncertainty as to how something is done. In an epistêmê of the sort that Aristotle has in mind—like mathematics, for example—premises are necessary and the conclusion necessarily follows from the premises. It is recognised, by someone who has epistêmê, at any rate, that the conclusion follows. There is no reason to question whether the conclusion is true. Similarly, in the art of grammatikê, there is only one correct way to write some word. Once one has the art of grammatikê one does not hesitate in writing a word. When one writes a word correctly, the way in which one has written a word will not be disputed by others who have the art of grammatikê.

When Aristotle says, at 1112b6-8, that ‘we deliberate more about the arts than the sciences because we are more uncertain about the arts [mallon...peri tas technas ê tas epistêmas mallon gar peri autas distazomen]’ does he not suggest that there may be some sort of deliberation going on in the exact sciences as well? I think that this suggestion is best interpreted as follows. In the sciences there may be some uncertainty as to how to proceed. One might weigh options. There is, therefore, a sort of deliberation going on. However, it is not real deliberation. For, once one determines what the correct option is there is no longer any uncertainty as to what the right option is. Practical deliberation, on the other hand, quite often lacks this degree of finality.

It is characteristic of deliberation that we accept advice on important matters and when we do not have faith that we are able to judge accurately [sumboulous de paralambanomen eis ta megala apistountes hêmin autois hôs ouch hikanois diagnônai] (1112b10-11). Aristotle's comment here is surprising since one does, in the sciences, consult others and work on problems with others. I think that the difference that Aristotle is pointing to is that in the sciences, as understood by Aristotle, problems reach some point of finality. A mathematical problem, if solved properly, is not something about which one typically continues to feel doubt and uncertainty. As a result, the fact that someone else thinks that something is the case is not, typically, a reason to think that it is the case. For example, my friend thinks that his proposed solution to a mathematical problem is the right one and I do not see that it is. I do not think that my friend's confidence in his solution is a reason to think that his solution is the right one. I might consider it a reason to think about the problem further and examine whether there might not be something that I've missed. But it is not a *prima facie* reason to think that the solution is correct. Things are different when it comes to practical matters. If I am not sure whether I ought to do A or B and I consult my friend, and give him the arguments for and against A and B, his opinion that I ought to do A—that the reasons for doing A are, on balance, better than the reasons for doing B—is a reason to think that I ought to do A, particularly if it is a very strong opinion. It is not an overriding consideration. It is, however, *prima facie*, a reason to do A.

#### *Conclusion to 2.1.1*

The evidence considered in 2.1.1 shows that practical intellection is not epistêmê. It is not epistêmê because: (i) it does not deal with the necessary—it admits of

being otherwise—and, therefore, no apodeixis is possible; (ii) it cannot be knowledge just of the universal; (iii) it involves means-end reasoning, whose conclusions are arrived at through perception rather than through argument; (iv) it is something which involves uncertainty.<sup>13</sup> I have explained Aristotle's argument for (i.) and (ii.) as working on the hypothesis that epistêmê is involved. On this hypothesis practical intellection requires something additional to epistêmê. Therefore it is not simply an epistêmê.

An apodeixis in the epistêmai is such that it is evident—evident, at any rate, to those to whom the principles are evident—that the conclusion follows necessarily from the premisses. One cannot come up with an apodeixis for the contrary conclusion. Deliberation too yield an explanation of why one has chosen some deliberative option. But it remains a matter of perception that this is the best course of action. I can explain my choice to do  $A_1$  with the following: 'E will be accomplished if I do  $A_n$ ; I can do  $A_n$  if I do  $A_{n-1}$ ...I can do  $A_2$  if I do  $A_1$ ;  $A_1$  is something I can do now'. This gives me an explanation which I can use to tell others how I will get from here to E and to *argue* that  $A_1$  is what must be done now. However, this may not be a way which will actually get me from here to E, and there may be better ways of getting from here to E. That this is the best way to get from here to E is a matter of aisthêsis. Others will judge by aesthesis—and not by thinking about the demonstrative force of my apodeixis—whether this is the best way to get from here to E.

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<sup>13</sup> There are positive aspects to Aristotle's discussion too. The positive characterisation is that practical intellection requires aisthêsis and empeiria. Sometimes Aristotle talks about empeiria as an ability which does not rely on knowledge of the universal. Sometimes he talks about it as an ability which one requires in addition to knowledge of universals in order to be able to deliberate. Aristotle also talks about empeiria as something which one needs in order to develop the aisthêsis necessary for practical intellection.

### 2.1.2 Practical intellection and the mean

#### *Introduction to 2.1.2*

Aristotle has another line of argument leading to the conclusion that deliberation is a matter of perception [aisthêsis]. This argument, which I examine in 2.1.2, is based on the claim that practical intellection always involves a discernment of what Aristotle calls the mean.<sup>14</sup> A consequence of the fact that practical intellection always involves an intuition of the mean is that it involves a discernment of a range of quantitative factors which cannot be determined by the application of rules, principles or some definitional logos. The argument examined in 2.1.2 is not directed against the claim that practical intellection is a matter of epistêmê but against the claim that one can acquire a practical skill by learning some set of rules, principles or definitions. However, the implication here too is that there is no way that one person can persuade himself or others of the rightness of some deliberative option by showing that the deliberative option follows from some principles.

#### *The mean [to meson]*

Aristotle has another way of talking about practical intellection, and this has to do with the characterisation of practical intellection in terms of the mean. According to Aristotle moral virtue and the technai aim at the mean [to meson]. Good craftsmen [hoi agathoi technitai] make their products by looking to the mean [pros to meson blepousa] (1106b9). Practical knowledge<sup>15</sup> perfects products [to ergon eu epitelei] by looking to

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<sup>14</sup> The connection between the mean and aisthêsis is examined by Olmsted, who explains Aristotle's views on the mean in the *EN* in terms of Aristotle's theory of perception in the *DeAn* ('Moral Sense').

<sup>15</sup> Aristotle uses 'epistêmê' here. I take it from the context that Aristotle is primarily concerned with the technai and is using 'epistêmê' here to refer to the technai.

the mean and guiding its works towards the mean [pros to meson blepousa kai eis touto agousa ta erga] (1106b9). Since virtue is more accurate and better than any technê it follows that virtue also aims at the mean [tou mesou stochastikê] (1106b15). Virtue is a mean with respect to emotion and action [peri pathê kai praxeis] (1106b16). For in action and passion one can have excess, defect or a mean quantity [huperbolê...elleipsis...to meson] (1106b17).

But when Aristotle talks about the mean in emotion and action--and, presumably, when he talks about the mean in the technai as well—he is talking about not just some quantity which relates to the particular action or passion—e.g., am I too angry or not angry enough on this occasion, did I give too much or too little money on this occasion—but to a range of factors relating to some action or passion. For example, with respect to fear and boldness, desire, anger and pity, and in general pleasure and pain there is an excess a defect and in either case this is something bad. To feel these things ‘at the right time, on the right occasions, towards the right people, for the sake of the right thing and in the right way is the mean and is the best, which is characteristic of virtue’ [to hote dei kai eph’hois kai pros hous kai hou heneka kai hôs dei, meson te kai ariston, hoper esti tês aretês] (1106b21-23). Aristotle tells us that ‘*in the same way* with respect to action there can be excess, deficiency and the mean [homoiôs de kai peri tas praxeis estin huperbolê kai elleipsis kai to meson] (1106b23).’ That is, excess, deficiency and the mean with respect to some action has to do with whether the action is done at the right time, on the right occasions, towards the right people, for the sake of

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However, it is possible that he thinks that epistêmai such as mathematics also look to the mean in some way. Perhaps mathematicians look to the mean in the sense that they aim to make their proofs as efficient as possible.

the right thing and in the right way. Moral virtue [êthikê aretê] is a mean between two vices [mesotês duo kakiôn], one an excess and the other a deficiency and it is a mean because it aims at hitting the mean in passion and action<sup>16</sup> [toiautê esti dia to stochastikê tou mesou einai tou en tois pathesi kai tais praxesin] (1109a20).

*The mean, perception and logoi*

Virtue is difficult because, first of all, it is difficult to have a state of character which aims to the mean in action and passion. But it is also difficult because it is difficult to determine what the mean is. That is, even for a person who has a character which does not tend towards extremes in action and passion, it is difficult to know what the mean in action and passion is at all times. Aristotle says, for example, that it is hard to be good [ergon esti spoudaion einai] because in each discipline it is difficult to find the mean [en hekastôi gar to meson labein ergon]; for example not everyone can find the middle but only he who has knowledge [...ou pantos alla tou eidotos]; for example it is easy to get angry and anyone can do it; so is giving and spending money; but towards whom and how much and when and on account of what and how; these things are not easy to determine and are not such that anyone can determine them [to d'hôi <dei> kai hoson kai hote kai hou heneka kai hôs, ouketi pantos oude rhâidion] (1109a24-29).

Aristotle discusses the following strategies for hitting the mean: (1) We ought to avoid that extreme which is more opposed to the mean (1109a30). (2) We ought to notice which errors to which we are most prone—for different people are inclined by

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<sup>16</sup>I take it that the difference between moral virtue, which is a mesotês, and the mean in action and passion is that the former is a tendency, which is a part of character, for one's actions and passions to hit the mean.

nature to different faults—by observing our pains and pleasures (1109b1). (3) We must be on our guard for what is pleasant (1109b7). After he has discussed these strategies he says that it is by doing these sorts of things that we will best be able to hit the mean. He says that he is ‘hôs en kephalôi eipein’, which suggests that this list summarizes the strategies for hitting the mean.

Aristotle tells us that ‘it is not easy to determine by means of an account [tôi logôi aphorisaï ou rhâidion] up to what point and how much [mechri tinos kai epi poson] one can deviate before one becomes blameworthy’ (1109b20). Here I have translated ‘tôi logôi aphorisaï’ with, ‘to determine by means of an account’. It can also mean ‘determine by means of reason. But at 1126a32 a slightly different version of the same passage appears. There this sentence appears as follows: ‘ou rhâidion tõi logôi apodounai’, which suggests that what is at issue is giving an account.<sup>17</sup> Aristotle also says that it is not easy to state<sup>18</sup> ‘how and with what sorts of people and for what sorts of reasons and how long one ought to be angry’ [ou gar rhâidion diorisaï pôs kai tisi kai epi poiois kai poson chronon orgisteon] (1109b14).

One sort of definition of the mean is possible. It is ‘determined by reason and in the way that the phronimos individual would do it’ [hôrismenê logôi kai hôs an ho phronimos horiseien] (1107a1). The mean is ‘that which right reasoning says it is’ [to de meson estin hôs ho logos ho orthos legei] (1138b19). But this sort of definition is not very useful. A person knowing only this would not know much more than the person

<sup>17</sup> Apodidômi can be used by itself for ‘to give an account’ (*LSJ*, sub verbo ‘apodidômi’). Aristotle uses it in this way at *Cat.* 2b8, in the phrase ‘apodidômi ti esti ti’ meaning ‘give an account of what some thing is’.

<sup>18</sup> Again, ‘dioirisaï’ can just mean ‘determine’. But, given the context, ‘state’ is more appropriate.

who does not know this [touto de monon echon an tis outhen an eideiê pleon]' (1138b29). For example we would not know what sorts of things promote the health of the body if someone were to tell us that all those things which the medical art and the person who possesses it require (1138b30).

Why is it difficult to give an account of the mean? Aristotle gives the following explanation: 'For neither is any other of the things which are perceived [ta aisthêta] easy to determine by means of an account. For such things are determined by the particular situations [ta toiauta en tois kath'hekasta] and judgment regarding particulars is in perception' [en têi aisthêsei hê krisis] (1109b21).

Aristotle's argument regarding practical intellection again points to the fact that one arrives at the conclusions of practical intellection by means of aisthêsis and, therefore, that no account is possible of how one arrives at such conclusions. In the epistêmai too nous, and therefore aisthêsis is involved in grasping the principles. But one can give a logos of how one moves from the principles to the conclusions. In practical intellection, however, it is not possible to give such a logos.<sup>19</sup>

#### *The identity of the mean and the deviations*

Aristotle has another way of expressing the impossibility of giving an account of the mean. He says that the same things both promote and destroy the mean state. For example, bodily strength is destroyed both by excessive and deficient exercises; health is destroyed both by too much and too little food and drink. On the other hand, the right

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<sup>19</sup> Lloyd points out that Aristotle's doctrine of the mean allows him to 'deny *both* that moral excellence is an invariable (the same for everyone in every case) *and* at the same time that moral excellence is a purely arbitrary or conventional matter. It lies in the mean pros hêmas but that does not mean to say that it is nomôi' ('medical and biological analogies' 76).

quantities of these things produce, increase and preserve these states [ta de summetra kai poiei kai auxei kai sôizei] (1104a11-18). The same is true of temperance, courage, and the other moral virtues. The person who flees and fears everything and never endures anything becomes a coward. But the person who fears nothing and encounters everything becomes rash (1104a18). The person who indulges every pleasure and refrains from none becomes self-indulgent, whereas the person who shuns all pleasure becomes insensible (1104a22). Their origination and growth, destruction and activity are in the same things [...hai geneseis kai auxeseis kai hai phthorai ek tôn auton kai hupo tôn autôn ginontai... kai hai energeiai en tois autois esontai] (1104a27). That is, the same actions and passions cause the mean state as well as the extreme states.

As a consequence, any rule which specifies a *kind* of action or passion cannot define virtue. For example, the first passage suggests that a definition of the virtue of gentleness of the form, ‘Gentleness is mildness with respect to anger’ cannot work. The second passage suggests that a rule like ‘Courage is standing your ground in the face of danger’ cannot define virtue because sometimes standing one’s ground is rash and a rule like ‘one ought to avoid danger’ cannot define virtue because avoiding danger can be cowardly. Because of the mean character of virtue, the actions or passions which establish and reflect some virtue and the actions or passions which establish and reflect the corresponding vices are *the same*.

#### *The mean as an incalculable quantity*

Particularly problematic concerning the mean is the fact that quantity is involved. For example, in the case of money-giving, even if my aim is to give for the sake of exercising the virtue of liberality, and I know that it has something to do with

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giving money, I am still faced with the difficulty of determining in situations which call for the action of money-giving what the right amount to give is, given the person, circumstances, etc. If I determine these factors incorrectly then my action may end up being vicious even though my intention is to act virtuously.

But if the nature of virtue is quantitative why could one not come up with a quantitative logos defining virtue? Since a virtuous act is always a mean between two extremes, one rule which might be applied universally is to consider what quantities are extreme in given circumstances and take the quantity intermediate between these two as the right quantity. But Aristotle makes it clear that this is not possible. Aristotle gives the following example from training: ‘...if ten pounds are too much for a particular person to eat and two too little, it does not follow that the trainer will order six pounds; for this is also perhaps too much for the person who is to take it, or too little’ (1106b1). He tells us that the intermediate quantity which fixes the virtuous act in given circumstances may be different from the quantity which is arithmetically intermediate. The former is a quantity is ‘intermediate relatively to us’ rather than an ‘intermediate according to arithmetical proportion’.

#### *Archery and the mean*

Aristotle uses the language of archery to talk about the mean. For example, he says that it is difficult to ‘hit the mean’ [tou mesou tunchanein] (1109b13). He also says that it is easy to miss the target and difficult to hit it [rhâidion men to apotuchein tou skopou, chalepon de to epituchein] (1106b31). In *EN* 6.1 Aristotle talks about aiming at the target and determining the quantity based on this aim. The mean is a target at which the person who has reason looks and in accordance with which such a person increases

or relaxes the tension<sup>20</sup> [...skopos...pros hon apoblepôn ho ton logon echon<sup>21</sup> epiteinei kai aniêsin] (1138b22).

### *Conclusion to 2.1.2*

Aristotle's discussion of practical intellection in terms of the mean shows that, because practical intellection requires a determination of the mean, it is not possible to come up, for some area of practical endeavour, with a procedure—definitional logos or some other such procedure—which one can apply in any given situation in order to determine what deliberative option is best. Aristotle's use of the language of archery is revealing here. The ability to hit the target in archery is a sensory-motor ability which can be learned by practise only and about which not much by way of useful rules can be given to would-be archers.

### *Conclusion to 2.1*

I argued in part 1 that Aristotle thinks that, in politics, non-experts can evaluate

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<sup>20</sup> Rackham says that these words 'denote tightening and loosening a bowstring, and also tuning a lyre. The former image is suggested by the preceding words, but the latter perhaps is a better metaphor for that avoidance of the too much and the too little which, according to Aristotle, constitutes right conduct'. Rackham is, presumably, worried that the archer is not primarily concerned with tightening and loosening the bowstring but aiming the arrow correctly. But if one imagines an archer raising a bow and attempting to hit a certain area on the ground rather than on a board which is perpendicular to the ground then the archer would be concerned with tightening and loosening the bowstring in order to hit the mark. Sorabji makes the same point ('Aristotle on the Role' 219 n.5).

<sup>21</sup> What does Aristotle have in mind when he talks about 'ho ton logon echôn' and 'ho orthos logos'? Perhaps the idea is that the person with phronêsis has some justification for what he does. He has some explanation as to why he does this particular thing. I do this because I want to achieve A, which is necessary for B and because my ultimate aim is E. However, this sort of logos is not arrived at by reasoning, as in the epistêmai. It is not derived at from the principles. This logos is itself the result of a sort of perception. It is as impossible to give an account of how one comes up with the right logos as it is to give an account of how one aims correctly at the target. This is a matter of perception which is acquired by empeiria.

the work of experts. They can decide whether the decisions of experts are in accordance with the lawcode. The lawcode is an account which includes principles as well as rules and which is such that it can enable one to determine what is in accordance with the art of lawgiving even if one is not an expert in the art. Experts are expected to justify their decisions in accordance with the text of the lawcode. 2.1 examined the ways in which this does not occur. It cannot be that the decisions would be made plain in the way that conclusions are made plain by argument in the epistêmai. Nor does it seem to be that a logos—definitional or otherwise—can enable us to distinguish how to act. This also poses a problem for two ways of thinking about education, namely that education occurs (i) by demonstration; or (ii) by learning a logos—i.e. some set of definitions, principles, rules. 2.1.1 shows that one cannot demonstrate the truth of conclusions from principles as in the epistêmai. 2.1.2 shows that one cannot show that something follows by showing that it is consistent with a logos. The question, then, is how can the lawcode be a standard for decision-making?

## 2.2 Explanation in the *technai*

### Introduction to 2.2

In 2.2 we see that, even though practical intellection is not *epistêmê* and cannot simply be a matter of applying rules and principles, nevertheless one can argue that some conclusion follows from principles in the practical skills as well. In 2.2 I examine Aristotle's views on *technê*. Aristotle thinks that *technê*, like *epistêmê*, involves theory and explanation. However, the judgment involved in deciding, based on an explanation, that some deliberative conclusion follows from the principles of a *technê* is different from the sort of judgment involved in deciding that the conclusion of an *apodeixis* follows from the premises.<sup>22</sup>

### Technical universals

At *Post. An.* 2.19 Aristotle tells us the following about memory, experience, art and science:

[A.] ...from sense-perception memory comes to be [*ek men oun aisthêseôs gignetai mnêmê*] ...and from many memories of the same thing experience comes to be [*ek de mnêmês pollakis tou autou gignomenês empeiria*]; for memories that are many in

<sup>22</sup> Here I am departing from the readings of Aristotle's views on practical intellection discussed in the introduction to the dissertation. The 'particularist' interpreters—Sherman, Broadie, Nussbaum—emphasise the particular character of practical intellection in Aristotle. But even authors who emphasise the universal aspects of deliberation—e.g. Cooper and Sorabji—do not deny the claim of the particularist interpreters that Aristotle rejects the idea that one ought to privilege rules and principles in practical deliberation. The idea that Aristotle rejects rules and principles is common. Tiles and Gomez-Lobo make the same point, as does David Wiggins. The most important part of their case is evidence of the sort examined in 2.1 In 2.2 I argue that Aristotle thinks that rules and principles have a much more important role in practical intellection than is typically supposed. They are important to practical education. But they also have an important role in practical deliberation. Winter ('*hôs epi to polu* relations') and Anagnostopoulos, (*Goals and Exactness*) also argue that a science of ethics, whose propositions are *hôs epi to polu*, is possible, but they do not approach the issue from the perspective of Aristotle's views on explanation in the *technai*.

number constitute a single experience [hai gar pollai mnêmai tōi arithmōi mia empeiria estin]. And from experience, that is from the universal when established as a whole in the soul [ek d'empeirias, ê ek pantos êremêsantos tou katholou en tēi psuchēi]...originate art and science... (100a3-8).

He next gives the following more precise statement of the way in which technê and epistēmê arise from sense-perception:

[B.] When one individual percept [tōn adiaphorōn henos] has 'comes to a halt' [stantos] in the soul, this is the first beginning of the presence there of a universal (because although it is the particular that we perceive, the act of perception involves the universal, e.g. 'man' not 'a man, Callias') Then other 'halts' occur among these [proximate] universals, until the indivisible genera or [ultimate] universals are established. E.g., a particular species of animal leads to the genus 'animal', and so on. Clearly then it must be by induction [epagōgēi] that we acquire knowledge of the primary things [ta prōta], because this is also the way in which the general concepts are conveyed to us by sense-perception (100a15-b5, tr. Tredennick).

Aristotle seems to be giving an account in these passages of the formation of universal concepts. However, in the next passage from the *Meta.* we see that Aristotle means 'universal' to include general propositions:

[C.] The animals other than man live by appearances and memories, and they have but little of connected experience [ta men oun alla tais phantasiais zēi kai tais mnêmais, empeirias de metechēi mikron]; but the human race lives also by art and reasonings [to de tōn anthrōpōn genos kai technēi kai logismois]. And from memory experience is produced in men [gignetai d'ek tēs mnēmēs empeiria tois anthrōpois]; for many memories of the same thing produce finally the capacity for a single experience. [hai gar pollai mnêmai tou autou pragmatos mias empeirias dunamin apoteleousin] Experience seems to be very similar to science and art but really science and art come to men *through* experience [kai dokei schedon epistēmēi kai technēi homoion einai hē empeiria, apobainei d'epistēmē kai technē dia tēs empeirias tois anthrōpois]...And art arises when from many notions gained by experience one universal judgement about similar objects is produced. [gignetai de technē, hotan ek pollōn tēs empeirias ennoēmātōn mia katholou genētai peri tōn homoiōn hupolēpsis] For to have a judgement that when Callias was ill of this disease this did him good, and similarly in the case of Socrates, and in many individual cases, is a matter of experience [to men echein hupolēpsin hoti Kalliāi kamnonti tēndi tēn noson todi sunēnengke kai Sokratei kai kath'hekaston houtō pollois, empeirias estin]; but to judge that it has done good to all persons of a certain constitution, marked off in one class, when they were ill of this disease, e.g. to the phlegmatic or bilious people when they burning with fever—this is a

matter of art [to d'hoti pasi tois toioisde kat'eidos hen aphoristheisi kamnousi tēdi tēn noson, hoion tois phlegmatōdesin ē cholōdesin ē purettousi kausōi, technēs] (980b25-981a12, tr. Tredennick).

Epistēmē is knowledge of universals. Aristotle tells us that 'it is with this that the sciences are concerned' (1180b20). Technē is like epistēmē in that it involves universals. Both technē and epistēmē 'come to men through experience'.

The following passage gives another example of a technical universal:

[D.] Nor is practical wisdom concerned with universals only—it must also recognize the particulars. That is why some who do not know, and especially those who have experience, are more practical than others who know; for if a man knew that light meats are digestible and wholesome, but did not know which meats are light, he would not produce health, but the man who knows that bird-meat is wholesome is more likely to produce health (*EN* 1141b14-21).

Let us look more closely at what Aristotle takes to be a universal at passages **D** and **C**. If we take **D** as evidence of Aristotle's position on the nature of the universals of a technē and the particulars of empeiria, it is not immediately clear what distinction between universal and particular Aristotle is employing.

Aristotle uses the following two propositions as examples: (1) 'Bird-meat is wholesome.' (2) 'Light meat is digestible and wholesome.' (1) is particular relative to (2). But in some sense (2) is also a general proposition—e.g., in relation to (3) 'Turkey is wholesome.' And (3) is, furthermore, general in relation to (4) 'This turkey I am now eating is wholesome.' Why, then, does Aristotle make the straightforward distinction between the kind of proposition to which (1) belongs and the kind of proposition to which (2) belongs?

The insight that bird-meat is wholesome enables, furthermore, someone who arrives at this insight to instruct others concerning the sorts of foods which should be

ingested if one wants to be healthy. In what sense, then is this insight to be distinguished from the insight that light meat is digestible and wholesome? An answer to this question may lie in the explanatory value Aristotle attributes to technical universals.

As we see in the following passage, another important feature of technê which a person who is merely empeiros does not possess is a knowledge of the reasons why one does the things that one does:

[E.] But yet we think that knowledge and understanding belong to art rather than experience, and we suppose artists to be wiser than men of experience...and this is because the former know the cause but the latter do not. For men of experience know that the thing is so but do not know why, while the others know the 'why' and the cause (*Meta.* 24-30, tr. Tredennick).

The universals which are possessed by the technitês are, therefore, not only more general in scope than the items of knowledge possessed by someone with empeiria but also have explanatory value.

How are the universal statements which Aristotle attributes to the technitês explanations? In what sense do they constitute knowledge of the reason why something works? It must be the case that Aristotle believes that the categories identified in the universals of a technê describe the aspects of the things—observed by empeiria to have the effects that they do—which are responsible for those effects. Thus, in the example in passage **D**, the technitês knows that bird-meat is wholesome because it is light. It is the lightness of the meat that causes health when ingested.

But passage **D** tells us that the explanatory component of a technê involves more than identifying the class under which an object should be viewed and which explains the aspect of the object responsible for the causal powers of the object relevant to the

technê in question. For, we are told that the individual who knows the universal knows that ‘light meats are digestible and wholesome’. Such a person knows, in other words, that light meats are wholesome because they are digestible. This is consistent with Aristotle’s claim, made in the *EE*, that teaching a technê involves showing how the actions of the technitês contribute to the end of the technê:

[F.] ...that the end is the cause of all that comes under it, the method of teaching shows; for the teacher first defines the end and thence shows of each of the other things that it is good; for the end aimed at is the cause. Eg. since to be in health is so and so, so and so must needs be what conduces it; the health-giving is the efficient cause of health (*EE* 1218b16-21, tr. Rackham)

If we take the example in passage **D**, the technical explanation being offered is something like the following: (i) Bird-meat is light, (ii) Light meat is easily digestible, (iii) Good digestion is a part of health, (iv) Therefore bird-meat is healthful.

In the rest of 2.2 I will consider the following two questions. First, passage **F** shows that the method of teaching involves giving explanations—i.e. teaching employs the universal. The question is *why* is knowledge of the universal necessary for teaching? Why can teaching not consist, for example, of giving particular items of knowledge like ‘bird-meat is healthy’?

Another question that must be addressed regarding Aristotle’s theory of practical universals is whether having a skill involves knowledge of the universal. That is, is knowledge of the universal required only for teaching a skill or does a skill require knowledge of the universal? Is Aristotle saying that someone skilled in an art is able, by virtue of being skilled in the art, to give explanations of the sort examined in this section?

technê vs. mere empeiria

Aristotle distinguishes art [technê] and experience [empeiria]. At passages **C** and **E**, art is knowledge of the universal and the ‘why’; experience is knowledge ‘that’ something is the case, presumably knowledge that some particular thing will have a desired effect. Here Aristotle says that technê involves knowledge of the universal. This suggests that one must know the universal in order to have a productive ability. However, at passage **D**, Aristotle contrasts knowledge of the universal and experience. Experience consists of knowledge of some particular thing which is healthful without a knowledge of the explanation of why it is healthful. Indeed, we are told that someone who has experience without knowledge of the universal is ‘more practical’ than the person who has knowledge of the universal without the experience. In passages **C** and **E**, therefore, Aristotle must mean by ‘technê’ a state of the intellect which includes *both* experience and knowledge of the universal. For, it is unlikely that he means by ‘technê’ mere knowledge of the universal. This means that someone who has experience in some skill without art in the sense meant in passage **E** has the skill and is able to be productive in the domain of the skill without being able to give explanations as to why the things he does have the effects they do.

Aristotle seems to say, in passages **A** and **B**, that empeiria involves knowledge of the universal, that the universal is part of the cognition of the empeiros individual. However, this must be some pre-theoretical cognition of the universal. Passage **A** says that, out of experience, which is the universal ‘brought to a halt in the soul’ originate art and science [ek d’empeirias, ê ek pantos êremêsantos tou katholou en têi psuchêi...technês archê kai epistêmês]. Since the experience which, Aristotle says in this

passage, is the origin of science does not know the universal explicitly—rather Aristotle says elsewhere that it is the starting-point for the explicit knowledge of the universal by epistêmê, which is acquired through inquiry—it is reasonable to assume that the same holds for technê in this passage. Passage C says that science and art come ‘through’ [dia] experience. Here experience is not described as knowing the universal in any way. Rather, Aristotle says ‘art arises when from many notions gained by experience one universal judgement about similar objects is produced’ [gignetai hê technê hotan ek pollôn tês empeirias ennoêmatôn mia katholou genêtai peri tôn homoiôn hupolêpsis].

The examples of things known by experience is the ‘judgement [hupolêpsis] that when Callias was ill of this disease this did him good, and similarly in the case of Socrates, and in many individual cases’. Aristotle contrasts this with the judgment ‘that it has done good to all persons of a certain constitution, marked off in one class, when they were ill of this disease, e.g. to the phlegmatic or bilious people when they burning with fever’, which is a matter of art. Here experience consists of the knowledge that some particular thing benefited particular people. It is an awareness of something common in the particular cases which amounts to a knowledge which can help its possessor heal others; but its possessor has no explanation of why the treatment in question works.

It appears, therefore, that the state of the intellect which is necessary for a productive capacity does not require explicit knowledge of the universal or theoretical reasoning in any way. It appears that one can have a productive capacity without theoretical reasoning. It does seem, however, that Aristotle thinks that empeiria involves knowledge of the universal in some pre-theoretical, practical sense. This will be argued

next, in the discussion of the question of how the theoretical portion of a technê helps to teach skill. If having a skill does not require having the ability to reason theoretically about the skill, then how does the theory of the skill help in teaching the skill? My interpretation is that Aristotle thinks that the theoretical portion of a technê is a description of the state of the intellect by virtue of which the skilled individual is able to do what he does. The skilled individual has a state of the practical intellect which enables him to determine what particular things are conducive to the aim of the technê. For example, the physician who has empeiria is able, given some patient in some state of illness to determine what course of treatment will heal this patient without being able to give an explanation as to why this is the case. This productive capacity is based on empeiria. But it does not consist merely of particular bits of knowledge. (E.g. ‘Ginger helped Socrates with his gas last year; therefore it might help Socrates with the same condition this year.’)

*An account of the empeiros individual’s judgment [krisis]*

The passages just examined do seem to support the idea that empeiria just consists of bits of particular knowledge beyond which the empeiros individual does not generalize. For example, the person who knows that bird meat is healthful knows only that bird meat is healthful and not that other light meats are healthful. However, I think that the evidence suggests that empeiria might also allow a person to divine that other light meats are healthful without having a theory as to why that might be. An example of such evidence is the discussion of nomothetikê in *EN* 10.9 (1180b28-1181b13), which I will examine next.

This discussion of nomothetikê at 1180b28-1181b13 is organised around the

question ‘From what source and how does one become a nomothetês?’ [episkepton pothen kai pôs nomothetikos genoit’an tis] He first considers the possibility that one can learn it from politicians. They cannot teach politics to others but know their art through empeiria rather than the intellect [dianoia] because they do not write or give an account of such matters nor have they made their friends or sons into statesmen. Thus though empeiria, is important in politics—so that someone who wants to know about politics also needs empeiria—one cannot learn nomothetikê from politicians.

He then considers those Sophists who profess to teach politics. He says that they are very far from teaching it [lian...porrô...tou didaxai] (1181a13). For they do not know what kind of knowledge it is and what sorts of things it deals with [holôs gar oude poion ti estin ê peri poia isasin] (1181a14). For if they did they would not think that it is the same as or even inferior to rhetoric.<sup>23</sup> Nor would they think that it is easy to make laws by collecting those laws which are reputed to be good<sup>24</sup> [oud’an ôionto rhâidion

<sup>23</sup> Burnet notes that Isocrates, A 80-2 is the target here. He cites the following passage: ‘Men of wisdom... ought... to appreciate the fact that, while any number of men both among the Hellenes and among the barbarians have been able to lay down laws, there are not many who can discourse upon questions of public welfare in a spirit worthy both of Athens and of Hellas. For these reasons, men who make it their duty to invent discourses of that kind should be held in higher esteem than those who propose and write down laws, inasmuch as they are rarer, have the more difficult task, and must have superior qualities of mind’ (EA 473). Here it is nomothetikê which is said to be inferior to rhetoric.

<sup>24</sup> Burnet notes that it is ‘quite plain’ that the reference here is to the *Antidosis*: ‘Those who invent discourses should be held in higher esteem than those who propose and write down laws...these tasks no longer call for the same understanding [dianoia]; nay, those who have elected to make laws have had at their service a multitude of laws already made (for they have no need to search for new laws, but only to put forth the effort to collect those which are approved in other states, which anyone who desires can easily do) while those who occupy themselves with oratory, seeing that most subjects have been seized upon and used by others before them, are in the opposite case’ (EA 81-83).

einai to nomothetesai sunagonti tous eudokimountas tôn nomôn] (1181a16). For they think that easy to select the best laws [(ôionto rhâidion)...eklexasthai gar einai tous aristous]; as if it were not the case this selection requires understanding and that judging correctly is the most important thing [hôsper oude tên eklogên ousan suneseôs kai to krinai orthôs megiston] (1181a18). For those with empeiria judge correctly particular products of a skill, and they know by what means and in what manner works are perfected and what sorts of things accord with what sorts of things [hoi gar empeiroi peri hekasta krinousin orthôs ta erga, kai di'hôn ê pôs epiteleita suniasin, kai poia poiois sunâidei] (1181a20). This is the case in music, for example. Those who have no experience [hoi apeiroi] are happy if it does not escape their notice whether a product is made well or badly.

It is somewhat unusual that Aristotle should object to this method of teaching, if judgment is acquired through experience. For, it is arguable that examples of good products of an art widen the scope of one's experience. Rather than having to discover for oneself that bird-meat is wholesome, for example, one can be given this information by one's teacher. What better method of imparting good technical judgment does Aristotle propose, then, in place of that of giving examples of products of the technê being taught? The answer lies in the nature of the discriminative capacity which Aristotle attributes to the empeiros individual. Aristotle says that laws are the products of the political art [tês politikês ta erga]. 'How then can one become skilled in nomothetikê, or judge which laws are best from laws? [pôs oun ek toutôn nomothetikos genoit'an tis, ê tous aristous krinai] Even physicians do not seem to be made by a study

of prescriptions<sup>25</sup> [ou gar phainontai oud'iatritoi ek tôn sungrammatôn ginesthai].

‘Indeed’, Aristotle continues, ‘they try, at any rate, to state not only the treatments, but also how particular classes of people can be cured and should be treated, distinguishing the various states’ [kaitoi peirôntai ge legein ou monon ta therapeumata, alla kai hôs iatheien an kai hôs dei therapeuein hekastous, dielomenoi tas hexeis].

Aristotle looks to the example of medicine to support his point that collections of laws are useless. One does not teach someone to be a doctor by giving them lists of doctors’ prescriptions. Rather, students of medicine are taught general principles—classifications of diseases, general principles regarding how particular sorts of diseases are to be treated, etc. But even such an account is not sufficient to teach a skill. ‘Even such explanations valuable only to the person who has experience and useless to the person who has no acquaintance with the subject matter’ [tauta de tois empeirois ôphelima einai dokei, tois d’anepistêmosin achreia] (1181b5). That is, even such an approach to teaching a skill—even though it is superior to the approach of the ‘Sophists’ to nomothetikê—is useless unless a student also acquires empeiria.

Aristotle says the following about collections of laws: ‘Probably, then, both collections of laws, and of constitutions, will be useful to those who can think about them theoretically and judge what is well done and what is the contrary and what sorts of things fit what sorts of things’ [isôs oun kai tôn nomôn kai tôn politeiôn hai sunagôgai tois men dunamenois theôrêsai kai krinai ti kalôs ê tounantion kai poia poiois harmottei, euchrêst’an eiê] (1181b7).<sup>26</sup> On the other hand, such collections are useless

<sup>25</sup> ‘Prescriptions’ suits the context better than ‘text books’ because sungrammata are being contrasted with statements of how classes should be treated.

<sup>26</sup> At 1289a10 Aristotle says that it is necessary to ascertain ‘what differences there are

to ‘those who go through such collections without this state<sup>27</sup> will not acquire right judgment, unless they do so by chance’ [tois d’aneu hexeôs ta toiauta diexousi to...krinein kalôs ouk’an huparchoi, ei mê ara automaton].<sup>28</sup>

A collection of laws does not help a person who reads it to acquire the judgment necessary to distinguish good laws from bad laws. What one needs, in order to teach a discriminative ability, is to have an explanation, though even this is necessary together with empeiria. Collections of laws are useful primarily to those who have experience and theory. In order for a collection of laws to be useful to a student of nomothetikê it has to include: (i) an account of what constitutes a good law which explains why the particular laws in the collection are good; (ii) a typology of politeiai and a classification of each law in the collection under the politeia or politeiai they suit, as well, perhaps, as an explanation of why they suit these politeiai. In other words, in order for a collection

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between constitutions, and in how many ways they are combined. The same practical intelligence is involved in determining what laws are the best, and in determining what laws are suited to each of the constitutions’ [kai nomous tous aristous idein kai tous hekastêi tôn politeiôn harmottontas]. For ‘we ought, as everyone does, to make laws with a view to the constitution, and not the constitution with a view to the laws.’ This passages suggests that when Aristotle says that one must know ‘poia poiois harmottei’ in the context of nomothetikê he means that one must know what kinds of laws fit what kinds of constitutions.

<sup>27</sup> What is the ‘hexis’ here? I think that Aristotle uses ‘hexis’ instead of ‘empeiria’ here because he means that the person has both the ability to *judge* which erga are good, as well as the ability to explain why they are good. They are able to ‘theôrêsai kai krinai’. ‘Krinai’ refers to that which comes with empeiria, ‘theôrêsai’ to the ability to give explanations. Burnet writes: ‘aneu hexeôs...is supposed to mean either (1) without the habit produced by experience and practice, or (2) without knowledge as a hexis apodeiktikê. Neither of which seems satisfactory’ (EA 474-5).

<sup>28</sup> The sentence continues ‘eusunetôteroi d’eis tauta tach’an genointo’. The men...de suggests that Aristotle is saying that becoming eusunetôteros is inferior or less of an accomplishment than learning how to judge well. It is not at all clear to me what Aristotle might mean here.

of laws to be useful in teaching nomothetikê it has to be accompanied by a theory of constitutions—their aim, types, etc.—which explains why the laws are useful. Or, more precisely, if the person acquires good judgment, it will not be because the judgment was taught by the collection of laws but that the collection of laws broadened the student's experience somewhat.

The collection, then, will have done nothing *in addition* to experience in order to impart a skill. The empeiros individual's right judgment of good and bad laws is described as the capacity to theôrêsai kai krinai the kinds of laws appropriate to a given constitution. Aristotle is suggesting, therefore, that the judgment of the skilled individual includes the knowledge of what kinds of laws fit what kinds of constitutions. But this ability is reflected in the skilled individual's ability to determine, for some polis, what sorts of laws fit the polis, rather than in a developed theory of categories of constitutions and the corresponding categories of law. The ability of the skilled individual to distinguish good and bad laws can be described by an account of the reasons why some laws suit a given constitution while others do not; but the skilled individual does not need to have such an account.

Collections of laws are useless to the person who does not have the judgment which comes with experience, while general observations about the kinds of laws appropriate to general kinds of circumstances are useful. The universal statements are explanations of the sort of insight which is at the basis of the discriminative capacity which comes with empeiria. The capacity of the empeiros individual to discriminate good from bad products of some art can only be explained by attributing to the empeiros individual some knowledge of the reasons why something qualifies as a good

example of some art. Education in a practical discipline must impart good judgment. This is the capacity to discriminate good and bad products of some art. This is the most important capacity possessed by the empeiros individual, which enables the empeiros individual to do what he does.

Empeiria does not, in other words, consists merely of the empeiros individual's memory of particular acts which contributed to some end which enables him to have a capacity to discriminate what the best response is to some particular situation but his possession of a more general sort of intuitive ability. The question of how to educate someone in a practical discipline should focus on this capacity and how it can be imparted to others. Lists of good and bad products of an art are useless because they require judgment to pick out the good products and distinguish them from the bad ones. Lists of good products of an art are useless because they address only indirectly the criteria which distinguish the good from the bad products of an art, in that the lists themselves have been made in accordance with such criteria. What is useful—though even this is useful only in conjunction with experience in the art being learned—is an account of the criteria which the person with judgment employs. Therefore, rather than compiling lists of good products of an art, one should investigate the criteria employed in distinguishing the good from the bad examples. These criteria are the universals of a technê, and are operative in the discriminative capacity of an empeiros individual. The difference between the merely empeiros individual and the individual who is able both to practice and teach a craft is that whereas the former merely has the capacity to use this judgment, the latter has made the content of this judgment explicit.

Therefore the theory of a technê is a theoretical description of the productive

capacity of the skilled individual, which gives an explanation of why the technitês does the particular things he does. The determinations of reasoning that the merely empeiros individual—the person with the productive capacity but without the corresponding ability to give explanations—is able to give are particular only. Such a person is not able to give universal, in the sense of explanatory rather than general, determinations of the intellect.

### *Principles and technê*

Aristotle's views in the discussion of nomothetikê are representative of his views on the technai. For every technê there ought to be a textbook which states the principles of the art and explains why the artist does what he does. At *Rhet* 1354a4-6, Aristotle says that rhetoric, like dialectic, is within the knowledge of all people. For all people, 'to some extent, try both to test and maintain an argument [as in dialectic] and to defend themselves and attack others [as in rhetoric].' He says that 'among the general public, some do these things randomly, and others through an ability acquired by habit' (1354a6-7, tr. Kennedy). Kennedy explains the distinction Aristotle is making here as follows: the former are people who 'hardly know what they are doing'; the latter are people who 'by trial and error, have gained a practical sense of what is effective' (AR 29).

Aristotle continues: 'but since both ways are possible, it is clear that it would also be possible to do the same thing by [following] a path [methodos]; for it is possible to observe<sup>29</sup> the cause why some succeed by habit and others accidentally, and all would at once agree that such observation is the activity of an art [technê]' (1354a9-10,

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<sup>29</sup>Kennedy: 'Theorein': lit. "see" but with the implication "theorize" (AR 29).

Kennedy). Why does Aristotle think that a theory of the art of rhetoric is possible because 'both ways are possible'? The idea, presumably, is that if people were able to practise rhetoric 'accidentally' only, then no technê would be possible. For example, if I guess on several occasions whether a coin will turn up heads or tails, I do so by accident. There is no way that I can learn by habit or experience to anticipate what side of a coin will turn up. Here no technê is possible even though I can get a result by accident.

Aristotle thinks that his own *Rhetoric* offers something new and in a way establishes rhetoric fully as an art. 'As things are now those who have composed *Arts of Speech* have worked on a small part of the subject' (1354a11-13). One of the reasons is that these writers have said nothing of enthymemes which, according to Aristotle, is an important part of rhetoric and the discussion of which is important in his *Rhetoric*. As Kennedy notes, Aristotle here 'appears to be thinking primarily of the handbooks of the mid-fourth century, such as those of Pamphilus and Callipus', cited at 1400a (AR 29). Aristotle collected the doctrines of some of these textbooks in a lost work '*Sunagôgê Technôn*'. Cicero talks about this work in his *On Invention* 2.6 (AR 293).

Here Aristotle reserves the term 'technê' for a theory of an art. It consists of an explanation of why someone who is able to get results in some area of practical endeavour is successful. A technê is a textbook which describes general strategies in some areas of practical endeavour and explains why they work. This involves a definition of the principles [archai] of the art. It may also involve borrowing from strictly theoretical disciplines in order to facilitate explanation in the art. For example, in Book 2 of the *Rhet.*, Aristotle gives a typology of emotions and characters. As

Kennedy notes, the ‘famous chapters on the emotions, the earliest systematic treatment of human psychology, seem to have originated in some other context and have been only partially adapted to the specific needs of the speaker (AR 122). Aristotle seems to have borrowed these chapters from a theoretical text, taking what is relevant and giving a schematic account.

A technê does not consist of a direct explanation of particular products of an art. It describes the typical strategies and elements which are useful in an art and endeavours to give an explanation as to why these strategies and elements are necessary. Aristotle’s *Rhetoric*, for example, begins with a definition of rhetoric, which includes a discussion of the dunamis and ergon of the art (1357a); and a classification of the eidê of rhetoric in terms of the specific telos of each type of rhetoric (1358b). He then discusses ‘separately each of the species of rhetoric—deliberative, epideictic and judicial—to provide an understanding of the subjects with which it deals and propositions or topics specific to it that may be used by a speaker in developing an argument’ (AR 15).

At the conclusion of *Sophistical Refutations* Aristotle tells us the following about his writings on dialectic. In rhetoric and all the other technai those who discover the principles [hoi tas archas heurontes] advance these arts in a very important way. Aristotle tells us that he sees himself as establishing the principles of dialectic in the same way. The education given by the paid teachers of eristic was like the system of Gorgias [tôn peri tous eristikous logous mistharountôn homoia tis ên hê paideusis têi Gorgiou pragmateiâi] (183b35). ‘For some of them gave their pupils to learn by heart speeches’. Hence their teaching was quick but not technical [tacheia men atechnos d’ên

hê didaskalia]. They thought that they could teach not by giving technê but by giving the products of technê [ou gar technên alla ta apo tês technês didontes paideuein hupelambanon]. It is as if a person claiming to impart the knowledge for the prevention of pain in the feet [tis epistêmên phaskôn paradôsein epi to mêden ponein tous podas] were to offer a selection of various kinds of shoes instead of teaching the cobbler's art (184a).

### *Practical education*

Experience [empeiria] is an important element of education in the practical disciplines. One must have experience, first of all, in order to be able to recognize the particulars which fall under the universals of a technê. One must be able to recognize such particulars before one can make use of one's knowledge of technical universals.

We saw earlier an example given by Aristotle of a technical universal which must be supplemented by experience in order to be useful. In this passage Aristotle tells us that in order to make use of the universal 'light meat is digestible and wholesome' one needs to know that bird-meat is light, which knowledge can only come with experience. But this does not illustrate well the contribution of experience to technical education. After all, most people are able to recognize birds and those who are not—because, perhaps, they have never seen birds—could easily come to know what birds are after seeing a few. Therefore, the experience required to apply the technical universal 'light meat is digestible and wholesome' is not extensive. The need for experience is more evident in cases in which one must recognize differences which are not as obvious as those which distinguish birds from other animals.

A good example is the experience which a physician must have in order to be

able to distinguish various diseases. Perhaps, for example, it is easy to remember that a person of constitution X, suffering from disease Y requires treatment Z. It may also be easy to explain that this is because disease Y involves a deficiency of a substance which is necessary for a healthy state of the body and which replenished by treatment Z. But it is not easy to recognize that some individual's body is of constitution X and that individual is suffering from disease Y. The recognition of these particulars—where recognition means identifying the universals under which they fall—is quite evidently a matter of insight which comes only with experience. Diseases and constitutions of the body are natural classes which are distinguished from natural classes such as birds and fish in that the experience required of someone who wants to be able to recognize members of the former sort of natural class is more unusual than that required of someone who wants to be able to recognize members of the latter class. The former sort of experience is, furthermore, possessed only by those who seek it out in the course of medical education. Natural classes such as birds and fish are distinguished in ordinary, non-technical language. However, it is also true that the ability to recognize the classes of birds and fish known by the expert in animal taxonomy requires specialized experience.

But, even given the ability to recognize such particulars, there is yet another element of the application of the universals of a technê which involves the sort of insight which comes only with experience and is not acquired with a knowledge of universals. For, once one has correctly identified a patient's constitution, the disease the patient is suffering from and the course of treatment appropriate to the patient's disease and constitution, one is left with the task of deciding when it is appropriate to apply this

treatment (e.g. at what phase in the disease, at what time of day) and in what quantity the treatment should be applied. There is no course of treatment which escapes such a decision. The success of the treatment—i.e. whether or not the treatment is an example of a good or bad product of the art of medicine—depends upon such a decision. And, according to Aristotle, such a decision can never be subject to a universally applicable account.

This third aspect is what distinguishes the role of experience in the technai from the role of experience in the epistêmai. For, even in the epistêmai—e.g. physics—one requires experience and, therefore, time, to be able to understand the content of the universals of the episteme. In order to understand a universal in any discipline one must be familiar with the particulars under which the universal falls. (The difference between mathematics and physics is accounted for by the fact that a comprehension of the universals of mathematics requires less experience.) One does not, however, have to employ, in the epistêmai, a faculty of the practical intellect which determines features of action and passion such as quantity, timing [ho kairos], etc.

A consequence of the fact that practical intellection involves decisions about appropriate times, quantities, etc. is that the explanation given by the phrônimos individual who has done something virtuous of why he chose to do this particular action and not some other is the same as the explanation of the person who wants to hit the mean but errs. Here I have in mind, for example, the person who wants to react with the appropriate amount of anger given a particular situation but who, instead, reacts with too much or too little anger.

There is more than one way in which, according to Aristotle, one can err in

action. One can be wrong in taking the wrong things into consideration (e.g. How much money should I give to this poor person in order to impress my friends?). In such a case an explanation of the reasons for which the action was done would immediately disqualify the action from being virtuous. One can also go wrong in estimating the right quantity given the circumstances, even if one is making one's decision on the basis of the right considerations. In such a case one's explanation of the reasons for one's action will be the same as the explanation of the individual who estimated correctly the quantity appropriate for the action given the circumstances.

As we just saw, the situation is the same in the technai. If one has correctly identified an individual's constitution, correctly diagnosed that person's disease and, on the basis of this information, correctly determined the type of treatment necessary one has done only part of the physician's job. One must also be able correctly to identify the appropriate quantity of a treatment, the appropriate moment of application etc. The explanation of the reason why some treatment was given will be the same both in the case of the physician who succeeds in treating his patient (i.e. who succeeds in hitting the mean) and in the case of the physician who does not. Yet, despite this limitation, the individual who knows that these are the factors which must be weighed in determining the course of treatment is ahead of the individual who does not know this. The physician who believes that the determining factors are things like the position of the moon at the time of the patient's birth will be entirely ineffective at achieving health (on the basis of his deliberation, at any rate) in his patients. Similarly, the individual who believes that the pleasure to which an act will eventually lead is the factor which determines the value of that act will necessarily fail at achieving happiness.

### *Practical apodeixis*

There are very important differences between explanation in the arts and explanation in the epistêmai, even those epistêmai whose truths are hôs epi to polu. (The latter issue will be discussed shortly.) I will talk about the ‘theory of an art’ or the ‘principles of an art’.

However, in spite of differences between epistêmê and practical intellection, it does appear to be that there is a sort of practical or technical apodeixis. An example is the ‘syllogism’ discussed above which explains why bird-meat is wholesome. The aim of a technê—in the sense of a theory of an art—is to give an account of and impart the krisis of the person who has a skill. But the aim is also to give the student an understanding of the skill. The person who learns a technê acquires not only a productive ability but also an understanding of—and an ability to explain—why the things that he does in accordance with this ability work. A physician who has a technê and is not a physician merely by empeiria is able to explain why particular treatments are necessary. The explanation will be in terms of the principles of the medicine.

A textbook describes typical strategies—strategies which work typically. These strategies will not always work. Indeed, sometimes these strategies will have contrary results. On some occasions, for example, if one were to implement a treatment recommended for some condition one would exacerbate rather than improve the condition of the patient. Having a skill involves being able to discern when the typical strategies will not work. The person with technê will be able to explain why the typical strategies will not work. Here too, the explanation will be in terms of the principles.

Apodeixis and that which is true *hôs epi to polu*

I have suggested that there is a sort of apodeixis in the practical skills.<sup>30</sup> Like apodeixis in the epistêmai, practical apodeixis consists of explanations which show how particular conclusions follow from higher-order premises. In this section I will examine whether speaking this way is consistent with Aristotle's views on apodeixis.

In the *EN* Aristotle frequently comments on the differences between practical universals—i.e. those concerning action or production—and the universals of the epistêmai. According to Aristotle any general account in matters of conduct and production is limited by its subject-matter, which is subject to much variety and fluctuation. For this reason it is only possible to give an account which is 'for the most part' [*hôs epi to polu*] true (1094b21; 1112b9). For this reason, furthermore, it is not appropriate to demand the same sort of precision of an account on practical matters as it is appropriate to demand in epistêmai such as mathematics, for example (1094b24). The epistêmai, on the other hand, are concerned with things which occur 'of necessity' (1112a24; 1139b20) and do not admit of exceptions. At *Post. An.* 73b19, for example, Aristotle says that an attribute belongs to a subject of necessity [*ex anankês*] when it is impossible that it should not belong to its subject. He says this in the context of a discussion of what it means for an attribute to belong to a subject kath'hauto. One of the features of such an attribute is that it belongs to a subject 'of necessity'.

An example of a truth which does not admit of exceptions is 'the incommensurability of the diagonal and the side of a square (1112a22). Two examples

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<sup>30</sup> I am using 'practical skill' to refer to any state of the logistikôn part of the soul possessing logos. This includes both phronêsis—in all of its forms, namely individual phronêsis, politikê, oikonomikê—and technê. I will use 'art' to refer to technê alone.

of claims which are true hôs epi to polu are 'Men go gray in old age' (*Pr. An.*, 32b5) and 'Male human beings grow hair on the chin' (*Post. An.* 96a10). In matters of conduct and production most general claims are true hôs epi to polu.

If the practical truths are non-necessary and practical conclusions are particular, in what sense can there be 'apodeixis' of practical conclusions? Does not apodeixis in the epistêmai rely on the necessary character of its universals, so that we are using 'apodeixis' in a way inconsistent with Aristotle's usage?

It is true that Aristotle tells us in the *Post. An.* as well as in the passages discussed in 2.1 from *EN* 6 that there can be apodeixis and epistêmê only in cases where premises are true of necessity and do not admit of exceptions and conclusions have this character. We see this in the following passage from *Post. An.*:

...the premises of the syllogism must be necessary; for whereas it is possible to draw a conclusion from true premises without demonstrating anything, it is impossible to draw one from necessary premises without doing so; for necessity directly implies demonstration (74b15-18, tr. Tredennick).

But Aristotle appears to admit another form of demonstration and epistêmê which does not proceed from necessary premises, as we see in the following two passages:

There can be no demonstrative knowledge of the fortuitous. What happens by chance is neither a necessary nor a usual event, but something which happens in a different way from either; whereas demonstration is concerned with one or the other of them. Every syllogism proceeds through premises which are either necessary or usual; if the premises are necessary, the conclusion is necessary too; and if the premises are usual, so is the conclusion (*Post. An.* 87b19-25, tr. Tredennick).

...everything either is always and of necessity (necessity not in the sense of violence, but that which we appeal to in demonstrations), or is for the most part, or is neither for the most part, nor always and of necessity, but merely as it chances, eg there might be cold in the dog-days, but this occurs neither always and of necessity, nor for the most part, though it might happen sometimes. The accidental, then, is what occurs, but not always nor of necessity nor for the most part. Now we have said what the accidental is, and it is

obvious why there is no science of such a thing; for *all science is of that which is always or for the most part*, but the accidental is in neither of these classes (*Meta.* 1064b32–1065a6, tr. Tredennick).

Aristotle appears to use ‘apodeixis’ and ‘epistêmê’ equivocally. In one sense these terms refer only to demonstrative reasoning whose conclusions and premises are necessary. In another they can include demonstrative reasoning whose premises and conclusions are true hôs epi to polu. Indeed it has to be the case that we can have epistêmê of the second sort since physics is an epistêmê and many claims in physics are true hôs epi to polu (*Phy.* 198b35).

Perhaps Aristotle’s equivocation can be explained as follows: the syllogism in which the premises are true hôs epi to polu does not give necessary proof because the conclusion they establish is not necessary but hôs epi to polu true. (Although it is probably true that the conclusion that the proposition which follows from the hôs epi to polu premises is true hôs epi to polu is necessary given the premises.) Such syllogisms do not give proof because they establish a general conclusion which is not true in all cases. Thus they do not establish a conclusion which will tell me something about any given particular which falls under the general term which is the subject of the conclusion.

We see evidence for this in the following passage:

Attributes which are not essential...do not admit of demonstrative knowledge, since it is not possible to give a necessary proof of the conclusion, for an accidental attribute may not apply to its subject (*Post. An.* 75a18-21, tr. Tredennick).

Here when Aristotle says that an attribute may not apply to its subject he is talking about a proposition like ‘anthrôpos esti leukos’. This proposition can be applied to a particular man and as a general statement about man in general. (It is an accidental

attribute of the subject in either case. That is, Aristotle uses 'accident' to describe a predicate applicable to an individual or a general term.)

Even if it were true that every man were pale, 'pale' would be an accident of 'man' and not a necessary attribute of 'man' because it does not belong to the essence of man. (Consequently, even if every past and present man were pale it might not be true that every future man will be pale—not on the basis of the fact that they are men, at any rate.) However, if one can find individual men who are not pale, then one can conclude that 'pale' is not a necessary attribute of 'man'. Consequently, one cannot have demonstrative knowledge which applies to particular pale men regarding their pallor.

Aristotle says that 'such attributes do not admit of demonstrative knowledge because it is not possible to give a necessary proof of the conclusion, *for an accidental attribute may not apply to its subject*'. Here Aristotle is probably using the sense of demonstration evidenced at *Post. An.* 74b16: ' $P_1, P_2$ , therefore  $C$ ' is an apodeixis only if  $P_1$  and  $P_2$  are necessary and  $C$  follows from  $P_1$  and  $P_2$ .

Aristotle is pointing, at 75a18-21, to a relationship between demonstration and particulars. For some attribute ' $A$ ' and subject ' $S$ ', ' $S$  is  $A$ ' cannot be the conclusion of an apodeixis because there may be some  $S$  of which ' $A$ ' is not true. Here apodeixis includes only those syllogisms whose conclusions are necessary. Only such syllogisms are apodeictic because only such syllogisms say something which will be true of every particular of some class. Such a syllogism is apodeictic because it allows me to conclude, given any particular, something about that particular. A syllogism in which the premises are hôs epi to polu true is not a syllogism of this sort. For example, if the

conclusion is ‘Therefore all goats have four legs’, this conclusion may be true of most goats but not of all goats.

If Aristotle thinks that a syllogism whose premises are hôs epi to polu true has these limitations when the premises, and therefore the conclusion of the syllogism are hôs epi to polu true and not necessary, in what sense do such syllogisms give a demonstration? Aristotle thinks that physics deals with truths which are hôs epi to polu rather than necessary. If an apodeixis explains why goats have four legs, it will not function as an explanation in the case of a goat which happens to have three legs. And it will not enable a person to predict with certainty how many legs the next goat one encounters will have. But it does explain why a goat which in fact has four legs has four legs.

### *Conclusion to 2.2*

The evidence examined in parts 1 and 2 suggests that Aristotle thinks of rules as more than ‘summaries of wise past decisions’. Aristotle thinks that rules must be formulated properly, picking out the right categories. The rules ought not just to be summaries of past actions but part of an explanatory account.

Aristotle places special emphasis on textbooks in technical education. A textbook does not just discuss the relevant theory—e.g. a theory of health and disease in medicine—but is also something that one can use to guide one’s practise in learning an art. Thus a medical textbook, for example, would have to include practically useful descriptions of particular situations—e.g. what sort of course of treatment works for a particular sort of individual with a particular sort of disease at a particular stage of its course. But it is important that the practical and theoretical components connect. It is

important that the principles explain the practically useful information—e.g. that one can understand, from the medical textbook, why this particular sort of treatment works for this particular sort of individual with this particular sort of disease at this stage of its course. Someone who has acquired experience in applying the textbook will acquire the art in a way which is not possible by trial and error or by mere practical advice. Once one has acquired the art one will be able to understand when the rules of the textbook ought not to be followed. One will also be able to determine the appropriate course of action even when there are no rules.

Technê, to repeat, is contrasted with empeiria in that technê involves knowledge of the reasons why something works. One teaches a skill by describing typical strategies which work and by explaining why they work in terms of the principles of the art. The principles of the art may borrow from strictly theoretical science. (For example, Aristotle draws on insights from psychology in his *Rhetoric*. Technê involves something like apodeixis.)

Someone who has technê probably uses the rules and explanations to practise the art.<sup>31</sup> However, someone who has acquired the art will be able to recognise when a rule ought not to be followed and what ought to be done in such situations. Such a person will think about what ought to be done from the principles of the art. This may involve coming up with an explanation of why the relevant rule ought not to be

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<sup>31</sup> The heavy water and bird-meat examples suggest this. One can, furthermore, practise the art in a quasi-apodeictic way, by thinking from principles to relevant rules to the conclusions. The physician, for example, can think about what to prescribe in a given situation by thinking generally about the nature of the human body, of health and of disease and such, drawing a conclusion based on such considerations as to what ought typically to be done in cases like this and determining whether this typical strategy will work in this particular case.

followed on this particular occasion, as well as an explanation of why this particular thing ought to be done instead. This sort of explanation does not have the same status as do apodeixeis in the epistêmai. In particular, the judgment involved in determining that this is what ought to be done is based on aisthêsis, which is acquired with empeiria. It is possible to get results without being able to give such explanations. For it is possible to get results by empeiria. However, Aristotle thinks that technê in the true sense of the word is possessed only by someone who possesses and is able to give these sorts of explanations.

### *Conclusion to part 2: politics 'by the book'*

Politics involves two arts—politics and lawgiving. It is unique among the arts because the textbook is the focus of the art.<sup>32</sup> (What might the lawcode include according to Aristotle? Some of the content of the *Ethics* and *Politics*, no doubt.<sup>33</sup>) Politics is also distinguished from most arts in that (i) it is done by the book; (ii) non-

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<sup>32</sup> In the art of lawgiving, the textbook part of the product of the art. (It is not the main product, since, ultimately, the product is the particular implementations of the lawcode.) Aristotle talks about nomophulakê as an important activity. And he says that one applies the law in difficult situations by thinking what the lawgiver would say in the given situation. None of this is the case in medicine. One does not typically say that the art of medicine, for example, has, as its aim, the preservation of the medical textbook and of practising the art of textbook-writing. (Though, as Nightingale notes, the focus of the art of medicine in Egypt was the sacred medical texts (PL 115).) Matters are also complicated by the language used by Aristotle, which he gets from Plato, suggesting that the lawcode is to be understood as the instructions of a nomothetês who wrote it and that the aim in interpreting difficult cases is to understand the aims of this original legislator.

<sup>33</sup> In the introduction I examined two passages which suggest, first of all, that nomothetikê requires a study of human nature; and, second, that it requires a study of constitutions and laws. An important aspect of the authority of the deliberative part of the constitution is that of authority over war and peace. The material in *Pol.* 7 on war (which is very reminiscent of Plato's discussion in *Laws* 1) would be relevant here (Kraut, *Human Good* 209).

experts judge the work of experts. In the first respect politics is unique. Aristotle has to come up with a hypothetical example—the example of a physician who might profit from my demise—in order to give an example of something similar in the arts. In the second respect it is unusual but not unique, since non-experts are sovereign at, e.g., dramatic festivals and in house-building.<sup>34</sup> The lawcode educates those who live under it. Thus, even though arguments on political matters cannot be evaluated by those who have no experience living under the laws and seeing them applied—this is one of the respects in which it is different from epistēmē, where empeiria has a smaller role so that in an epistēmē like mathematics very little empeiria is needed—nevertheless those with sufficient experience living under the lawcode can make such evaluations.

The principles of the lawcode cannot—no matter how well defined they might be—give us a procedure for determining when one ought to depart from the rules. Nor can they impart episteme—the ability to determine without hesitation what policies follow from the principles. However, the principles give us a logos which can function as an objective measure for the decision. Whatever argument one can come up with for some law or decision is not one which excludes argument for other laws or decisions—in the sense of being superior to other arguments so that one does not hesitate in one's judgment regarding its superiority—in the way that apodeixeis are in, say, mathematics. Furthermore, decisions in politics are such that one profits from consulting others. That someone else believes that something ought to be done is a consideration relevant in thinking about whether the conclusion is correct, which is not the case in mathematics.

The sort of reasoning involved in political deliberation will not be the same as

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<sup>34</sup> In the case of dramatic festivals Aristotle might think it important that the audience have had some sort of basic education.

reasoning in the sciences. One will not come up with proofs which cannot be refuted.

One can argue the case in many ways. There will be much greater reliance on the judgment of the majority. However, this is a way of deliberating which is superior to the judgment of one individual. Aristotle seems to suggest that this might be a better way of arriving at decisions in the other arts. However, it is necessary in politics because of the problems associated with political deliberation.

## PART 3 *The context of Aristotle's views on law and practical intellection*

### *Introduction to part 3*

In part 3 I examine the background of Aristotle's views on practical intellection and law. In 3.1 I examine the background of Aristotle's views on practical intellection and education, examined in part 2. In 3.1.1 I show that Plato has a theory-based account of education and deliberation in the practical skills. I also show that Aristotle's criticisms of epistêmê theory examined in 2.1 hold for Plato's theory. In 3.1.2 I show that Isocrates has a similar critique, which in many cases is directed against Plato, of epistêmê. But Isocrates establishes, based on this critique, a very different conception of practical education and deliberation. Aristotle has a theory of practical intellection which, like Plato's is theory-based; however it is not susceptible to the sort of critique made by Isocrates. Aristotle combines the two accounts—the emphasis of the one on explanation and the emphasis of the other on practical principles that one applies. Aristotle's account is unique in emphasising a written text as the basis for education and progress in the practical skills.

In 3.2 I examine the background of Aristotle's views on the sovereignty of the lawcode. I examine, first of all, Plato's views on nomophulakê in the *Rep.* and the *Laws*. Plato thinks that central to the best polis are the nomima which impart to citizens correct opinion [orthê doxa] through the stories and early education they receive. This is a good basis for action and for further legislation. However, Plato thinks that correct opinion is not a good basis for judgments about the nomima. Someone is able to preserve the nomima only if he or she has epistêmê. Thus, in the *Rep.*, even though the education offered by the lawcode is a good basis for action and political activity, it is

not a good basis for nomophulakê. Non-philosophers cannot have authority over the lawcode. This limitation includes restrictions on discussion of the laws. In Aristotle, on the other hand, the lawcode is a basis for education of citizens. Aristotle's views on practical intellection allow Aristotle to solve a problem associated with Plato's proposals in the *Laws*. Plato intends in the laws to introduce an arrangement on which the polis is governed by non-philosopher citizens educated by the lawcode. However, Plato retains, in the *Laws*, the institution of Nocturnal Council whose role is that of 'preserving the laws'. And he bases this restriction on the same views about practical intellection that one finds in the *Rep*. Aristotle can accept that the majority can be sovereign over the law because of his views on practical intellection. In 3.2 I also show that Isocrates uses his critique of Plato's theory-based account of practical intellection to support the Athenian approach to law. Aristotle's theory of practical intellection allows him to say that one ought to spell out the principles of the lawcode and privilege them in the interpretation of the law—which is different from the Athenian, procedural approach to the law—even though no universally true claims are possible on practical issues.

### 3.1 Between *epistêmê* and *empeiria*

#### *Introduction to 3.1*

In 3.1 I examine the views of Plato and Isocrates on practical intellection.<sup>1</sup> I will argue that Aristotle's account of practical intellection, which we examined in part 2, ought to be understood against the background of a polemic between Plato and Isocrates. Aristotle offers a theory-based approach to practical education and deliberation which is an adjustment of Plato's theory-based approach in light of Isocrates' critique of Plato. Aristotle is unique in stressing the importance of a written textbook—which includes both explanation and practically useful rules—in teaching a practical skill and in the progress of a practical skill.

#### 3.1.1 *Plato on theory and practical intellection*

##### *Introduction to 3.1.1*

Plato thinks that a practical skill ought to be practised on the model of what he characterises as the 'Hippocratic' approach to medicine. Moral and political expertise requires that one inquire into the nature of the good and that one use this knowledge to determine what is right in any given situation. The person with such knowledge is able to determine what is the best deliberative option in any given situation and is able to explain why it is the best deliberative option. I focus, first, on the discussion of *technê* in the *Phdr.*; and, second, on the discussion of moral and political *epistêmê* in the *Rep.*

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<sup>1</sup> Here, as in part 2, I am using 'practical intellection' to include intellection in the arts as well as moral and political intellection. I will use 'practical skill' to include skill in the arts as well as political and moral intellection. I will also talk about 'practical deliberation' to refer to the deliberative process in the arts as well as moral and political deliberation. When I talk about 'Plato's theory of deliberation' I do not mean to suggest that Plato has a views on *bouleusis* which are like Aristotle's. I am merely referring to Plato's views on the thought that goes into a particular decision in the practical skills.

My aim is not to give a comprehensive account of Plato's views on these issues but to discuss these issues inasmuch as they are relevant to comparisons with Isocrates and Aristotle.<sup>2</sup> My claim is that Aristotle's theory of practical intellection is best understood in terms of a controversy between Plato and Isocrates; it is an adjustment of Plato's theory in the light of the criticisms of Isocrates or someone like him. Here the views found in the *Phdr.* and *Rep.* are most relevant. In 3.1.1 I will examine Plato's views on practical intellection and deliberation and compare them with Aristotle's views, which I examined in 2.1 and 2.2.

### Technê and giving a logos

In the *Gorg.* Plato uses 'empeiria'—together with the companion concept of 'tribê'—to designate the ability to achieve results in some area without being able to give an explanation. It is on this ground that Socrates argues that rhetoric is not a technê. Rhetoric is not a technê but an empeiria because it has no logos 'by which it applies the things it applies, to say what they are by nature, so that it cannot say what the explanation is of each thing' [ouk echei logon oudena hōi prospHEREI ha prospHEREI hopoi'atta tēn phusin estin, hōste tēn aitian hekastou mē echein eipein] (465a).<sup>3</sup>

Socrates contrasts the empeiria of relish-making<sup>4</sup> with the technê of medicine

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<sup>2</sup> The details of Plato's views change. However, I think that the basic elements of my claims about Plato here continue to be present in the *Laws*, as I will argue in 3.2.

<sup>3</sup> Here I am following Irwin's translation. There are textual problems with this passage (Dodds 229). However, the basic point is clear. 'A technê differs from an empeiria in that it is based on a rational principle (logos), and can thus explain the reasons for its procedure in every case' (Dodds 228-9).

<sup>4</sup> The word here is 'opsopoiikê'. Opsopoiikê is characterised by Aristotle as a technê of pleasure (*EN* 1153a26). It is distinguished from 'artopoiikê' and 'sitopoiikê', both of which designate bread-making (*LSJ*, s.v. 'opsopoieon'). The aim of the relish-maker is to produce food which is pleasing without regard to its nutritional content. The bread-

(500e5). Medicine has examined the nature and the reason of that which it treats and can give a logos of these things [toutou hou therapeuei kai tên phusin eskeptai kai tên aitian hôn prattei, kai logon echei toutôn hekastou dounai hê iatrikê] (501a). Relish-making, on the other hand, is an empeiria which produces pleasure ‘without a technê, without considering the nature or the explanation of the pleasure, and altogether without reason and making no distinctions’ [...atechnôs ep’ autên erchetai, oute ti tên phusin skepsamenê tês hêdonês oute tên aitian, alogôs te pantapasin...ouden diarithmêsamenê] (501a). By tribê and empeiria relish-making merely preserves the memory of that which usually happens, and by means of this memory it produces pleasure [tribêi kai empeiriâi mnêmên monon sôizomenê tou eiôthotos gignesthai, hôi dê kai porizetai tas hêdonas] (501b).<sup>5</sup>

The idea that empeiria is a capacity which cannot give a logos arises in the distinction, in the *Laws*, between real doctors and those who are called ‘doctors’ but are in fact doctors’ assistants [hupêretai tôn iatrôn] (720a). The latter acquire their technê<sup>6</sup>, under the commands of their masters, by observation and by empeiria and not by nature [kat’ epitaxin de tôn despotôn kai theôrian kai kat’ empeirian tên technên ktôntai, kata phusin de mê] (720b). The master doctors, on the other hand, have learned and teach their students by nature [kata phusin...hoi eleutheroi autoi te memathêkasin houtô tous te hautôn didaskousi paidas] (720b).

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maker makes food which is not necessarily pleasing but is nutritious.

<sup>5</sup> ‘The cook [Dodds’ translation of ‘opsopoiikos’] remembers that these ingredients produced a “nice” dish last time, but has no notion why’ (Dodds 320).

<sup>6</sup> Here technê is used in a broader sense than in the *Gorgias*, so that it includes a skill established by empeiria and without the capacity to give a logos.

Slaves are usually treated by slaves, who are themselves slave-doctors.<sup>7</sup> These doctors do not give their patients an account of each illness [tina logon peri hekastou nosêmatos] (720c). Such a doctor gives a command<sup>8</sup> which seems right based on empeiria, as if he had precise knowledge [prostaxas d'autôi ta doxanta ex empirias hôs akribôs eidôs] (720c). The free doctor treats and investigates the ailments of the free [ta tôn eleutherôn nosêmata therapeuei kai episkopei] (720d). He does so by investigating their ailments 'from the beginning and in accordance with nature' [...exetazôn ap'archês kai kata phusin] (720d). The free doctor talks to his patient almost like a philosopher, tracing the disease from its beginning and reviewing the whole physiology (857d).

In these passages we see that one can learn—and teach—an art 'from nature' [kata phusin], which involves the ability to give a logos which explains the aitia of what one does and why it works; or one can practise it by empeiria or tribê, which means by observing what usually happens and without thinking about or being able to explain the causes. Not much more is said in the *Laws* about the differences between these two ways of practising an art—i.e. 'from nature' and by empeiria. We find a discussion of this question in the *Phdr.*, which I examine next.

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<sup>7</sup>The slaves who treat slaves at 720c ff are, themselves, presumably doctors who are described at 720a as 'hupêretai tôn iatrôn'.

<sup>8</sup> Here 'epitaxis' and 'prostaxis' are used to describe prescriptions without explanations. The discussion of the two sorts of doctor is, furthermore, being used to explain why prelates which explain laws and persuade citizens are necessary, as we see at 720a. Aristotle also contrasted the tyrant's epitaxis/prostaxis with nomoi. This suggests that Aristotle, too, might have in mind nomoi which give explanations. This is also supported by Aristotle's claim, in *EN*10.9, that the law is accepted readily—as opposed to a particular individual's word—because it is a logos. This claim is essentially Plato's argument in the *Laws*.

*Practising an art 'kata phusin' in the Phdr.*

In the *Phdr.* we see that giving a logos is not merely a way that one teaches or learns a skill—or, more precisely, a way that one learns to perfect a skill and attain a result which is more reliable than a memory of ‘what usually happens’—but also a way in which one practices a skill. The evidence of the *Phdr.* adds to the evidence of the *Gorg.* and *Laws*.

Socrates says that the arts ought to proceed according to what he calls the ‘method of Hippocrates’ in medicine (270c4). This method first defines the nature of the body [dielesthai phusin sômatos] (270b4). It then proceeds ‘not in accordance with tribê and empeiria but in accordance with art’ [mê tribêi...kai empeiriai alla technêi] to impart health and strength by giving medicine and food (270b5). Socrates thinks that this is the method which one ought to follow in all the arts. We ought to examine the nature of any given subject [dei dianoeisthai peri hotououn phuseôs] concerning which we want to acquire expertise as follows (270d1). We ought to consider first whether it is ‘a simple or multiform thing [haploun ê polueides], and if simple then to enquire what power it has of acting or being acted upon in relation to other things, and if multiform to the number of the forms; and see first in the case of one of them, and then in the case of all of them, what is the power of acting or being acted upon which makes each and all of them to be what they are?’ (270d1-7). A method [methodos] which is without such determinations is like the journey of a blind man (270e1). We must do this for any subject ‘concerning which we wish to become skilled and to make others skilled’ [hou boulêsometha einai technikoi kai allon dunatoi poiein] (270d2-3).

Plato next applies this to the art of rhetoric. Anyone who seriously wants to

impart the art of rhetoric [hos an...spoudêi technên retorikên didôî] (271a4) must do the following. He must first give ‘a very exact description of the nature of the soul [pasêi akribesai grapsei te kai poiêsei psuchên idein] (271a5-6). This description will enable us to see whether the soul single and same or, like the body, multiform. This is what we would call showing the nature [phusin deiknunai] of something (271a7-8). Second, he must describe the ways in which the soul acts or is acted upon [hotôi ti poiein ê pathein hupo tou pepukên] (271a10-11). Third, he must classify the kinds of speeches and souls as well as their affections [diataxamenos ta logôn te kai psuchês genê kai ta toutôn pathêmata] (271b1-2). Fourth, he must discuss the causes [dieisi tas aitiâs] (271b2); connecting particular sort of speech with each particular sort of soul [prosarmottôn hekaston hekastôn kai didaskôn] (271b2-3) and explaining what kind of soul is necessarily persuaded or not persuaded by what kind of speech [hoia ousa huph’hoiôn logôn di’hên aitian ex anankês hê men peithetai hê de apeitheî] (271b3-4).

We see here, first of all, that Plato thinks that the art of rhetoric is reliant on a detailed study of the nature of the soul. The reliance of rhetoric on such a study is also mentioned at 270e1-4, where Plato says that if one wants to make speeches by means of art [technêi logous] one will ‘make clear precisely the being of the nature [tên ousian deixai akribôs tês phuseôs] of...the soul’; and at 270b4-9, where Plato says that, if one is to produce ‘persuasive discourses, not in accordance with tribê and empeiria but in accordance with art’ [mê tribêi...kai empeiriai alla technêi] one must discover the nature of the soul. Hackforth, *Phaedrus* 150, comments regarding the latter passage: ‘...we are now in a position to understand the understand the general statement of 269e: pasai

hosai megalai tôn technôn prosdeontai adoleschias kai meteôrologias phuseôs peri.<sup>9</sup> It means the important technai ‘must apply to their several provinces the same theoretical treatment--the essence of which is the discovery of the One behind the Many, or the One-in-Many—as physics and cosmology apply to the universe. All science is or ought to be peri phuseôs historia, and all scientists (including rhetoricians, if rhetoric is to be a science) must expose themselves to the common gibes of ‘garrulity’ or word-spinning...and of ‘high-flown speculation.’

For the person who wants to be an orator it is necessary to know, furthermore, how many types of soul there are [ton mellonta rhêtorikon esesthai anankê eidenai psuchê hosa eidê echei] (271d1-2). The rhetorician must, in other words, not only make a detailed study of the general nature of soul but must also make a detailed and precise classification of the types of soul. He thinks that the rhetorician must apply the method of division to the classification of the types of soul. We see this when he tells us that the rhetorician must know the method of division [...horisamenos ...kat’eidê...] (277b7) and must apply this method to the nature of the soul [peri te psuchês phuseôs diidôn kata tauta] (277b8).<sup>10</sup> Having divided soul into kinds in this way, he must discover the

<sup>9</sup> ‘All the great arts require word-spinning and high speculation concerning nature’. Socrates tells us, not altogether seriously, that this explains why, of all who have practised rhetoric, Pericles was most perfect in the development of rhetorical ability [...pantôn teleôtatos eis tēn rhetorikēn genesthai] (269e1-2). For he knew Anaxagoras and enriched himself with ‘high speculation’ and ‘arrived at the nature of nous and anoia’—topics on which Anaxagoras was always discoursing—and applied this knowledge to the art of speech (270a3-8).

<sup>10</sup> He also says that a good speech-writer one must be able to ‘know the truth regarding that of which he speaks or writes’ [prin an tis to te alêthes hekastōn eidêi peri hōn legei ê graphei] (277b5-6) and must, for this reason become capable of defining every thing with respect to itself [kat’auto te pan horizesthai dunatos genêtai] (277b6) and must, therefore know the method of division (277b7).

type of speech which fits each type of soul [to prosarmotton hekastêi phusei eidos aneuriskôn] (277b8-c1).

The person who wants to be a rhetorician must be able to give the following sort of general account. 'There is such and such number of types of soul and they are of such and such type [estin oun tosa kai tosa kai toia kai toia] (271d2).' 'From these types of soul are these types of character [hoi de toioi gignontai] (271d3).' Having discerned the types of character he will begin again and say 'there is such and such number of forms of speech and each is such and such' [toutôn de dê diêirêmenôn, logôn au tosa kai tosa estin eidê, toionde hekaston] (271d3-5). 'People of this type will be lead, by discourses of this type, to do such and such things for this reason, whereas those of this other type will, for these and these reasons, not be' [hoi men oun toioide hupo tôn toiônde logôn dia tênde aitian eis ta toiade eupeitheis, hoi de toioide dia tade duspeitheis] (271d5-7).

This ought to be followed by the rhetorician as a method of composition. Someone does not write in accordance with art [technê] unless they compose their speeches and writings in accordance with the method indicated [prin an oun ton tropon touton legôsi te kai graphôsi, mê peithômeth'autois technêi graphein] (271c3-4). This is how one ought to write if one intends to be as technical as possible [hôs dei graphein ei mellei technikôs echein kath'hoson endechetai] (271c6-8).

Plato tells us that, once one has learned the theory, one must learn to apply it. Learning to apply the theory involves learning how to recognise the particulars that fall under the universal categories identified by the theory. After the student 'has sufficiently learned these principles, and when he has seen them as they are in practise and seen them applied by someone, he must be able, with a sharp perception to follow

them closely, or else he will not yet get any use from the general accounts which he heard' [dei dê tauta hikanôs noêsanta, meta tauta theômenon auta en tais praxesin onta te kai prattomena, oxeôs têi aisthêsi dunasthai epakolouthein, ê mêden einai pô pleon autôi hôn tote êkouen logôn sunôn] (271d7-e2). Plato means by aisthêsis here the ability to recognise, for some individual whom one wishes to persuade, what character type that individual falls under and what speech type is appropriate to him. The practitioner must be able both to say adequately what kind of person is persuaded by what kind of thing and, concerning someone present, 'to identify this person and to say he is this type and this is his nature [...diaisthanomenos heautôi endeiknusthai hoti houtos esti hai hautê hê phusis] and for this nature these are the appropriate sorts of discourse, and, now that I am in the presence of such a person, it is necessary to apply these discourses in this way in order to achieve this sort of persuasion' (270e-271a).

Plato also tells us that the character types identified by the theory can appear in combination. In such cases one must recognise the combination of character types in some individual. To this combination will correspond some combination of speech types which one must weave into one's speech. We see this at 277b8-c3, where Plato tells us that, having divided soul into kinds one must discover the type of speech which fits each type of soul [to prosarmotton hekastêi phusei eidos aneuriskôn] and one must make and arrange one's speeches in accordance with this classification [houtô tithêi kai diakosmêi ton logon] by making 'complex speeches which to fit complex souls and simple speeches to fit simple souls' [poikilêi men poikilous psuchêi kai panarmonious didous logous]. In other words, when a person's character is a combination of several character types, the speech must be a complex of matching discourse types.

Plato mentions something else which one must learn in order to have the art of speech. One must grasp, in addition to all that has been described, be able to discern the right occasions [hoi kairoi] for speaking and holding back for short speech and moving speech, for exaggeration (272a4-5). When, whatever form of speech he has learned [hos'an eidê mathêi logôn], he can discern for each the right and wrong occasions, he has achieved the art of speech (271a5-8).

*A summary of Plato's views on technê in the Phdr.*

The proper method of teaching and practise is to proceed from nature [kata phusin], in accordance with the 'method of Hippocrates' in medicine. Plato describes a general method for the technai. In medicine one begins with a study of the nature of the body, and one determines how to treat each case based on a knowledge of the nature of the body. A physician who practises in accordance with nature is able to give an explanation—an explanation which is, furthermore, persuasive to the patient, as we are told in the *Laws*—from the principles of medicine. Such a person is able to give an explanation of the nature and causes of a disease; and an explanation of how some prescribed treatment will restore health to the body. In rhetoric the foundation is a comprehensive and detailed study of the nature of soul, the types of character and the types of speech. The person who practises rhetoric 'in accordance with nature' begins by determining, in each case, the character type of the person present. He then composes his speech based on this determination. He says, 'This person is of type X (where X is either a simple or complex type). If one wants people of type X to do an action of type Y one must have a speech which employs the following forms of discourse in the following way.' He would also be able to explain why people of type

X—and, consequently, *this* person—are *necessarily* led to do an action of type Y upon hearing a speech employing these figures in this way.

*Comparisons with Aristotle on technê*

In contrast with Plato, Aristotle thinks, as we saw in 2.2, that the foundation of a technê is the practical results which have been compiled by empeiria. The key is to categorise and generalise these results in accordance with the principles. Thus, while empeiria has determined that bird-meat is wholesome, the general rule that bird-meat is wholesome is not useful in teaching the art (of dietetics) because it does not characterise the more general knowledge that the person with empeiria has. The empeiros person is able to hit on [tunchanein, stochazein] the right course of action in every case. The empeiros person would know (in some intuitive, practical way) that other light meats are wholesome. He would be able to judge in some intuitive way that other light meats are wholesome.

With respect to content there is not much difference between Plato and Aristotle. Aristotle too mentions character types as important to rhetoric, as well as a knowledge of the aspects of speech which are appropriate to them.<sup>11</sup> One difference regarding their views on content is that Aristotle does not think that an art requires a precise account of the principles whereas Plato does. However there is a big difference between Aristotle and Plato when it comes to their respective views on the nature of the intellection involved in art. (Here I am relying on the results of my discussion of Aristotle in 2.1.) Aristotle does not agree that rhetoric or any other technê ought to be described as an

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<sup>11</sup> Kennedy notes the connection between Aristotle's discussion of character in *Rhet.* 2 and the discussion of character in the *Phdr.* (*Art of Persuasion* 92-93, 95). Indeed, as Kennedy notes, Aristotle's discussion of character in Book 2 is a development on the discussion of character in the *Phdr.* (AR 163).

epistêmê in the strict sense. The contrast between Aristotle's and Plato's views on ho kairos are characteristic here. In Aristotle the appropriate (in the temporal sense of ho kairos it is mentioned as to hote at 1109a24-19) is among the factors that make it impossible to say anything universal (in the strict Platonic sense, vs. universal in the sense of 'for the most part') about practical matters.<sup>12</sup> Aristotle thinks that, because of ho kairos and other quantitative aspects, practical intellection cannot be a matter of epistêmê and no universal definition can be given and practical intellection is a matter of a sort of aisthêsis which is opposed to epistêmê.<sup>13</sup> Plato also talks about aisthêsis in the context of practical intellection. But he describes aisthêsis as the ability to recognise particular instantiations of the universal categories described by the theory (*Phdr.* 271e1, discussed above).<sup>14</sup> For Plato the fact that one must know ho kairos is not

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<sup>12</sup> Here Aristotle is following the traditional view on the kairos. Kennedy, *Art of Persuasion* 67: 'In rhetoric kairos is the principle which governs the choice of the organisation, the means of proof, and particularly the style.' It is defined as 'the adaptation of the speech to the manifold variety of life, to the psychology of the speaker and hearer: variegated, not absolute unity of tone.' Allied with this concept is 'to prepon, the fitting, which was also a term used in the fifth century'. The two concepts together 'constitute what may be called the artistic element in rhetorical theory as opposed to the prescribed rules.' Because the subject of ho kairos 'one that by nature cannot be reduced to rules' it is a subject which 'did not receive great attention in the handbooks. Dionysius of Halicarnassus complains (*On composition* 120 that no definitive treatise had been written on kairos, "nor did Gorgias...who first tried to write on it, write anything worth mentioning."'

<sup>13</sup> At *EN* 1096a26 Aristotle says that kairos is 'the good in the category of time'. Rodrigo and Tordesillas note, commenting on this passage, that Aristotle is on the side of the Sophists in criticising Plato's view of the Good based on the kairos. Lane 34-35 criticises their emphasis on the temporal aspect of the kairos in Aristotle.

<sup>14</sup> Plato's use of aisthanomai and other perceptual language to talk about the ability to perceive the forms will be discussed below. Plato also uses this language to talk about the ability to distinguish the letters. For example, Plato says, at *Stat.* 277e7, that children learn to read by learning to 'diasthanesthai' the letters (Menn, 297).

inconsistent with this being an epistêmê. Indeed, Plato even suggests that the kairos is something that can be measured, as we will see in the next section.

*Plato on art and precise measurement*

The difference between Plato and Aristotle also becomes clear if we compare Aristotle's views on the mean with those of Plato in the *Statesman*. The mean is the difference between good and bad men (283e5-6) and the difference between good and bad in the arts (284a5). The 'very existence of the arts must depend must be held to depend on the possibility of measuring more or less...with a view to attaining the mean...for if there are arts, there is a standard of measure, and if there is a standard of measure there are arts; but if either is wanting there is neither' (284e7-9).<sup>15</sup> The art of measurement is divided into two parts (284e3). In one part are all the arts which measure number, length, depth, breadth, swiftness and their opposites (284e3-5). In another part are the arts measured with the mean, the fit, the opportune, and the due 'in short which denote a mean or standard removed from the extremes' (284e6-8). Here we see an important difference between Plato and Aristotle. Aristotle argues, as we saw in 2.1, that the mean cannot be determine by measurement but is a matter of perception based on experience.

In the *Phileb.* we see that Plato thinks that technê is distinguished from empeiria and tribê in that it allows for precise measurement. If one takes arithmetic, mensuration and weighing [arithmêtikê...metrêtikê...statikê] from any art what is left is 'conjecture

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<sup>15</sup> Another difference between Plato and Aristotle has to do with their views on what sort of standard the mean is. Plato distinguishes relative and absolute standards and says that art relies on the existence of absolute standards. Hutchinson tells us that for Plato 'a real skill will therefore address itself to standards which are objectively established for it in such a way that it is possible to err either by being excessive or by being insufficient' (DM 36). Aristotle, as we know, thinks that the mean is a relative quantity.

and the better use of the senses which is given by experience and practise, in addition to a certain power of guessing which is commonly called art and is perfected by attention and pains' [eikazein leipoit'an kai tas aisthêseis katameletan empeiriâi kai tribêi tais tês stochastikês proschrômenous dunamesin has polloi technas eponomazousi, meletêi kai ponôi tên rhômên apeirgasmenas] (55e1-56a1). Music (56a3-7), medicine, husbandry, piloting and generalship (56b1-2) are examples of skills which do not allow for precise measurement and involve conjecture and the use of the senses. Ship-building and house-building are examples of skills which allow for precise measurement (56b4-c2).<sup>16</sup> Dialectic, according to Plato, is the most precise form of measurement (57e6-7).

Epistêmê and giving a logos

Political and moral expertise<sup>17</sup> require what Plato calls epistêmê. There are

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<sup>16</sup> Surprisingly, Plato includes, in the *Phileb.*, medicine among the imprecise arts. Hutchinson uses this, together with other evidence to establish an approximate date ('some time in the years before the middle of the fourth century') for the development of the empiricist view of medicine, 'that medicine needed no profound knowledge of nature and no contribution from beyond experience, and consequently was a skill which essentially involved estimation' (DM 50). By the third quarter of the fourth century this empiricist model of skill, and of medicine in particular, was (as far as we can tell) an undisputed commonplace in both Academy and Lyceum' (50). Aristotle's innovation relative to Plato, according to Hutchinson, 'was to argue that these features of the contemporary model did not mean that skills were second-rate forms of knowledge; they were kinds of practical knowledge, rather than theoretical knowledge, but absolutely adequate to their task, and not inherently defective. The most important skill, virtue, turns out to be a practical skill, which comes from training and experience (not from profound investigation), and an ability to estimate'(50).

<sup>17</sup> Plato thinks that both sorts of expertise require the same sort of knowledge—i.e. knowledge of the good. He says, for example, that 'anyone who intends to act wisely in public or private life must have caught sight of the form of the good' [...dei tautên idein ton mellonta emphronôs praxein ê idiâi ê dêmosiâi] (*Rep.* 517c18-19). He does also say that one can have a sort of moral and political expertise by having 'correct opinion'. He says in the *Meno*, for example, that correct opinion is no worse a guide to action than wisdom [doxa ara alêthês pros orthêta praxeôs ouden cheirôn hêgemôn phroneseôs] (97b9-10); and that people become good and useful to states [agathoi andres kai

important parallels between epistêmê and technê. We saw that someone who wants to become a rhetorical technitês must first undertake a detailed study of the nature of the soul. Epistêmê requires that one study a range of natural sciences. In the *Republic* Plato describes a program of education whose aim is to establish in students moral and political epistêmê. Arithmetic, geometry, astronomy, harmonics should be introduced while students are still young [paisin ousi] (536d).<sup>18</sup> Those who show themselves best in various trials will be given further education after their physical education is over, at the age of twenty (537a-c). At that time some of them will be selected for promotion and will bring together the various disconnected subjects which they studied in childhood and take a comprehensive view of their relationship with each other and with the nature of reality (537b-c). A student will be allowed to undertake further study only if he or she is person able to take a comprehensive view of the sciences. The person who is able to view things in terms of their connections is a 'natural dialectician' [ho sunoptikos dialektikos] (537c).

In the *Rep.* the practise of dialectic is an important aspect of epistêmê. A 'dialectician' is a person who is 'able to exact an account of the essence of each thing' [ton logon hekastou lambanonta tês ousias] (534b9-10). The person who is not able to give such an account of the essence on some subject is, to the degree that he is unable to give such an account either to himself or to others, lacking reason regarding that subject [ton mê echonta, kath'hoson an mê echêi logon autôi te kai allôi didonai, kata tosouton ôphelimoï tais polesin] by correct opinion just as much as by knowledge (98c8-10).

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<sup>18</sup>Isocrates mentions these subjects in the context of his critique of Academic views on education in politikê. It is likely, therefore, that the Academy taught these subjects as preliminaries to politics—i.e. dialectical inquiry into issues of justice, the good, etc.

noun peri toutou ou echei] (534b10-12). The foundation of moral and political epistêmê is an account of the essence of the good. A person must be able to define by means of an account distinguishing from all other things the idea of the good [diorisasthai tōi logōi apo tōn allōn pantōn aphelōn tēn tou agathou idean] and as it were in battle, testing out all refutations [hōsper en machēi dia pantōn elenchōn diexiōn], and striving to question by essential reality and not by opinion [mê kata doxan alla kat'ousian prothoumenos elenchein], and pass through all of this with his account intact [en pasi toutois aptōti tōi logōi diaporeuētai] (534b13-c17).<sup>19</sup> The person who lacks this power 'does not really know the good itself or any particular good; but if he apprehends any adumbration [eidōlou] of it, his contact with it is by opinion and not by knowledge' (534c). A person has epistêmê only if he has an account of the essence of the good which has withstood refutation. The person with epistêmê examines the good with all the greatest possible precision [theasthai hōs hoion te akribestata] (484c3-d2).

As in the discussion of technê, this knowledge of the basis of morality and politics also gives the person with epistêmê an understanding of the reasons why particular good actions are good. Correct opinion [orthê doxa] is as good a guide to action as knowledge [epistêmê] (*Men.* 97b9-10; 98b7-9; 98c1-3). The person who has

<sup>19</sup> Adam warns, concerning 'dia pantōn elenchōn diexiōn' 'as it were in battle, that, though the ordinary interpretation supposes that the elenchoi are applied by others this would require that we take elenchein as = elenchein tous tōn allōn elenchous, which is difficult' (v.2142). According to Adam Plato means here that 'we apply the elenchoi ourselves. At 'mê kata doxan alla kat'ousian prothoumenos elenchein' Plato means, according to Adam, that 'the dialectician tests his view of the good not by...what "seems" (good, bad, etc.) to the many, but by the Truth i.e. by that which "is" in the Platonic sense of ousia, viz. the Ideas, such as (let us say) the Ideas of kallos, dikaion, and so forth. The Idea of the Good has connexions and relations with all the other Ideas...and our knowledge of these may therefore be used to test the accuracy of our conception of the Good' (v.2 142-3).

knowledge has an account of the reason cause [aitias logismos] (98a3-4). And, again as in the discussion of technê, such knowledge does not merely benefit its possessor by giving him an understanding of the reason why the things that he believes to be good are in fact good—though this benefit is important because, without it, one does not have understanding [nous] (534b) and one is not fully rational. It also benefits its possessor because it also his actions and enables him to determine what particular actions and policies are required. Anyone who intends to act wisely in public or private life must have caught sight of the form of the good [...dei tautên idein ton mellonta emphronôs praxein ê idiâi ê dêmosiâi] (517c). People with epistêmê have, in the soul, a model and are able, looking like painters to the absolute truth as to a model, and, always to referring to it and looking there with the greatest possible precision, [en têi psuchêi echontes paradeigma...dunamenoî hôsper grapheis eis to alêthestaton apoblepontes kakeise aei anapherontes te kai theômenoi hôs hoion te akribestata...] to make laws here about the noble and the just and the good and to preserve those that exist (484c3-d2).

Plato talks about the capacity that one acquires with epistêmê in terms of imitating a model. The eyes of the philosopher are turned to ‘immutable realities...which is *the model he imitates for himself and to which he assimilates himself* as far as he can’ (500c). But, as in the discussion of technê, Plato also talks about the application of the knowledge of the person with moral and political epistêmê as a discernment of the good in particulars. The person who has epistêmê of the good has, by virtue of this epistêmê, the ability to discern the good in particulars. This is suggested when Plato says, alluding to the cave analogy, that the city will tell the

philosopher the following: 'once you get used to it you will see a thousand times better than they do and will distinguish the various shadows and know what they are shadows of because you have seen the truth about things admirable and just and good' (520c). The philosopher uses knowledge of the forms not only to *recognise* instantiations of forms but to determine his own actions.

In the discussion of rhetorical technê we saw that the knowledge of the types of soul gives one a knowledge of elements which one looks for in particular individuals in order to determine what forms of speech one ought to incorporate into one's speech. Plato says something similar about moral and political epistêmê in the *Rep*. Plato uses an analogy between this knowledge and knowing the letters of the alphabet. He compares knowledge of the forms with knowledge of letters at 402a-c. When we were learning to read 'we felt that we knew them sufficiently only when the separate letters did not elude us, appearing as few elements in all the combinations that convey them' (402a). That is, we learned to recognise a finite number of letters in all the words. We did not think them beneath our notice in large words or small, but tried to recognise them everywhere on the grounds that we should not be literate till we could' (402a-b). 'And we can't recognise reflections of the letters in water or in a mirror till we know the letters themselves. The same skill and training are needed to recognise both' (402b).<sup>20</sup> He says that 'we shall not be properly educated [mousikoi] ourselves nor will the

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<sup>20</sup>What is the analogy here? Why does Plato talk about recognising the *images* of letters? Aren't particular words the analogues of particular instantiations of forms? The idea, perhaps, is that a particular act or object is never a manifestation of a single form, but rather of several forms. Such an object is an instance of a *type* which is a combination of several forms. The form for that object is, therefore, a combination of several forms. The analogy with letters works as follows. When someone writes 'cat' this is a token of the general type, which is the word 'cat'. But this type is the result of the combination of elements--the letters 'c', 'a', and 't'.

guardians...until we can recognise the qualities of discipline, courage, generosity, greatness of mind, and others akin to them, as well as their opposites in all their many manifestations' (402c). We must be able to 'apprehend [aisthanomai] them and their images wherever found, disregarding them neither in trifles nor in great things but believing the knowledge of them to belong to the same art and discipline' (402c). His characterisation of rhetorical technê in the *Phdr.* and moral and political epistêmê in the *Rep.* as a knowledge of elements or letter [stoicheia] which one learns to recognise in particulars is consistent with his diagnosis, in the *Statesman*, of the difficulty of dialectic and of recognising forms in particulars. Plato compares it with the difficulties involved in learning the alphabet and recognising the elements in long words: 'Can we wonder, then, that the soul has some uncertainty about the alphabet of things, and sometimes and in some cases is firmly fixed by the truth in each particular, and then, again, in other cases is altogether at sea; having somehow or other a correct notion of combinations; but when the elements are transferred into the long and difficult language (syllables) of facts, is again ignorant of them?' (278c-d).<sup>21</sup>

#### *Aristotle and Plato on epistêmê*

In the *Phdr.* Plato talks about recognising the variety of character types in the individual. In the *Rep.* he talks about the forms as letters which one learns to recognise. The person with moral and political epistêmê<sup>22</sup> is able to determine what is required in

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<sup>21</sup> The stoicheia are also discussed in relation to epistêmê at *Theaet.* 206a, Isoc. KS13 (discussed in 3.1.2), Xen. *Mem.* iv.4.7 (Shorey, v.2, p.29).

<sup>22</sup> Plato thinks that moral knowledge and political knowledge involve the same knowledge. A person who has moral knowledge also has political knowledge. He says, for example, that the person who has knowledge is ready for any action public and private (517c); and that the person with knowledge uses the forms as models for himself

any given situation, is able to explain why it is required, and is able to give more general explanations—e.g., of the nature of the good and of the virtues. The knowledge required of the person with epistêmê in the *Rep.* is much more extensive than the knowledge required of the rhetorician. The knowledge described in the *Rep.* is different in many other ways from the knowledge required of the rhetorician. But the basic ‘Hippocratic’ elements are there. The person with moral knowledge is able to give an account. Such a person practices by means of an account. Practice is a matter of applying a general knowledge, also described as knowledge of the forms. It involves perceiving the forms in individual instances.

Aristotle, as we saw in 2.1, argues that phronêsis is not epistêmê. Aristotle does not think that learning to apply knowledge is merely a matter of learning to recognise particular instances of universal forms. Indeed, he thinks that whatever universal knowledge one can have on practical affairs is such that there are instances when it does not hold. Phronêsis involves the ability to determine what the right action is even when the universal does not hold. Furthermore, for Aristotle recognising that particulars fall under universals may involve recognition which requires a special kind of experience [empeiria]. For example, that something is heavy water. A further important contrast between Plato and Aristotle has to do with their respective accounts of the basis for the skill.<sup>23</sup> Plato thinks that one comes to know how to get results in an art by studying the

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and for the laws (484c3-d2).

<sup>23</sup> In Aristotle that it is not the principles of an art that will enable one to determine what the right course of action is. For example, it is not by knowing what health is or what happiness is that I will be able to determine how to produce health or lead a happy life. It is by learning to aim at and produce this result that I acquire the ability to aim at and produce this result. An account of the nature of physiology and of the body and of what constitutes a healthy state of the body does not give me the ability to determine how to

theory. In Aristotle the theory allows one to give an account of the discriminative capacity of the expert. Aristotle thinks that one can acquire a productive ability by empeiria. This ability, furthermore, involves some intuitive sense of what sorts of things fit what sorts of things.

### 3.1.2 *Isocrates on practical intellection*

#### *Introduction to 3.1.2*

In 3.1.1 I showed that Plato has a theory-based account of education and deliberation in the practical skills. I also showed that Aristotle's criticisms of epistêmê theory examined in 2.1 hold for Plato's theory.<sup>24</sup> In 3.1.2 I show that Isocrates has a similar critique, which in many cases is directed against Plato, of epistêmê. But Isocrates establishes, based on this critique, a very different conception of practical education and deliberation. Aristotle has a theory of practical intellection which, like Plato's is theory-based; however it is not susceptible to the sort of critique made by Isocrates.<sup>25</sup>

#### *Isocrates vs. the Academy*

Isocrates describes a mode of education which focuses on practice and teaching

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heal in particular instances. Empeiria, on the other hand, gives me a practical knowledge of health. It gives me knowledge of health as a target and the ability to hit the target. Empeiria gives me not only particular items of knowledge or generally reliable general items of knowledge but the ability to judge in particular cases what will produce health.

<sup>24</sup> This is not surprising given Aristotle's criticisms of the idea of the good in *EN* 1. Indeed we know that Aristotle is critical of Plato's views on epistêmê in many other respects. Some of these criticisms are discussed by Cherniss (*Aristotle's Criticism of Plato*).

<sup>25</sup> The issues of the relationship between Isocrates and the Academy and of the rivalry between Isocrates and Aristotle are discussed by Merlan.

by example. Isocrates supports his own program of education by arguing that science is useless, and that practical skill generally and rhetoric particularly cannot be a matter of scientific reasoning. This argument is also interesting because it bears some resemblance to Aristotle's own arguments against the idea that practical expertise can be a matter of science. Isocrates targets the following set of related ideas: (i) that virtue is a matter of epistêmê; (ii) that studying theoretical disciplines has practical importance; (iii) that rhetoric and other practical disciplines can be taught like sciences. The main sources are the *Antidosis* [A] and the *Against the Sophists* [KS]. Other texts cited below are the *Panathenaicus* [P] and *Encomium on Helen* [H].

Isocrates is opposed to a program of education which places importance on subjects such as geometry, astronomy and eristic (P30-32; A261). He does not think that such disciplines harm their students, unless one should become a specialist (P30-3). On the contrary, they even benefit them. For they keep young men busy and out of trouble (P30-32). They teach students to apply their minds to difficult problems and to concentrate for long periods of time (A264). In this sense they are a valuable 'gymnastics of the soul' (A266); and a useful preliminary to the study of rhetoric (A268). According to Isocrates, however, even though these subjects may be a useful preliminary to the study of politics, they subjects are useless in themselves (P30-32). Because they have no practical value in themselves these subjects are not remembered for a long time after they are learned (A262). Isocrates disagrees, therefore, with those who claim that epistêmê can make one prosperous (KS1-8).

But, even though Isocrates gives some concessions to this sort of program of education, he rejects the claim that there is one mode of knowledge [mia epistêmê]

concerned with courage, wisdom, and justice, and he has no patience for those who waste their time on disputation (H1).<sup>26</sup> Isocrates is particularly concerned with the fact that this ‘over-exactness’ [*periergia*] has appeared in rhetoric recently (H2). He says that such people ‘ought to give up the use of this claptrap, which pretends to prove things by verbal quibbles...and to pursue the truth, to instruct their pupils in the practical affairs of our government and to train them in *empeiria* in such matters’ [*peri tas praxeis en hais politeuometha tous sunontas paideuein kai peri tēn empeirian tēn toutōn gymnazein*] (H4-5).<sup>27</sup> We see in this passage that Isocrates, against Plato, favors *empeiria* rather than *epistēmē*.<sup>28</sup>

#### *Isocrates’ arguments against epistēmē*

Isocrates’ reasons for rejecting the *epistēmē* model for *praxis* and the *technai* in favor of *empeiria* are reminiscent of Aristotle’s. At KS1-8, for example, Isocrates discusses those Sophists who devote their lives to disputation [*peri tas eridas*] (KS1). He says that they claim to teach a knowledge [*epistēmē*] by means of which one can become happy [*eudaimōn*] (KS3). He says that in doing so such people are claiming ‘foreknowledge of future events [*ta mellonta prognōskein*] (KS2).’ This knowledge,

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<sup>26</sup> It is clear that the former is a reference to the Academy since he also tells us that these people think that courage and wisdom and justice are identical (H1).

<sup>27</sup> Given that the reference is to the Academy, Isocrates is concerned with two sorts of ‘over-exactness’: (i) Over-exactness in teaching rhetoric of the sort that we saw in the *Phaedrus*. (ii) Over-exactness in discussing and thinking about practical issues which, he thinks, ought to be resolved by rhetorical deliberation.

<sup>28</sup> Doug Hutchinson argues that Plato and Isocrates are on two sides of a more general discussion regarding the nature of the skills. Thus when Plato criticises rhetoric for relying on *empeiria* and *tribē* he is referring to an alternative theory of the skills. Hutchinson also sees evidence of these two approaches in the texts on medicine from the 4th century (DM).

however, is not possible even for the gods, who are described in Homer as deliberating [bouleuomenoi] about the future (KS2). In *EN* 6 Aristotle argues that phronêsis cannot be epistêmê because whereas ‘a thing known scientifically cannot vary [ho epistametha mê endechesthai allôs echein] (1140b2); it exists of necessity [ex anankês esti to epistêton] (1139b22), and is, therefore, eternal—‘for, everything which is from necessity is eternal (1139b23)’—phronêsis deals with things which can be otherwise [allôs echein] (1140b2).<sup>29</sup>

A second argument occurs in the *Antidosis*, when Isocrates says that is not possible for humans to have ‘an epistêmê which enables one to know what must be done or said in any given situation’ [ouk enestin en têi phusei têi tôn anthrôpon epistêmên labein hên echontes an eideimen ho ti prakteon ê lekton estin] (A271). This is because practical affairs escape the epistêmai [epi gar hapantôn tôn pragmatôn diapheugousi tas epistêmas] (A183). For, it is not possible to cover all of the occasions [tôn kairôn] by means of an epistêmê [tôi men gar eidenai perilabein autous ouch’ hoiont’estin] (A183). This, again, is reminiscent of Aristotle’s claim that, because of the quantitative character of the mean—under which he includes the right timing (‘to hote’, 1106b21-23)—deliberation requires aisthêsis, which means that it cannot be by epistêmê.

According to Isocrates, in practical affairs, truth is hôs epi to polu.<sup>30</sup> He says so

<sup>29</sup> My interpretation of this passage is discussed in 2.1 Again, I take Aristotle to be using ‘ex anankês’ here in the same sense in which he uses it at *Post.An.* 73b19, where he says that an attribute belongs to a subject ‘ex anankês’ when it is not possible that the attribute should not belong to the subject—as opposed, for example, to an attribute which belongs to a subject ‘hôs epi to polu’.

<sup>30</sup> Isocrates’ assumption here is that epistêmê deals with the necessary rather than the hôs epi to polu. It is interesting to note that Aristotle makes the same assumption in *EN*

in the context of his explanation as to why practical knowledge cannot be a matter of epistêmê. He says that those who are able to ‘apply their minds and *see what happens for the most part* will most often hit them’ [hoi de malista prosechontes to noun kai dunamenoî theorein to sumbainon hôs epi to polu pleistakis autôn tunchanousin] (A183). This is reminiscent of Aristotle’s claim that to katholou in practical affairs is at best true hôs epi to polu.

### *The forms of discourse and wrestling postures*

Isocrates rejects the Academy’s claim that politics and rhetoric—or any other skill, for that matter—can be taught as an epistêmê. According to Isocrates, rhetoric is a matter of natural ability and empeiria and that a program of education in rhetoric has to reflect this. Isocrates thinks, first of all, that the example of a person who is a good speaker is important in teaching rhetoric (KS15-19). This, perhaps, is why Isocrates was thought to be claiming that no education is possible. Isocrates mentions this as an ‘accusation’ levelled against him: ‘Just the other day some Sophists were putting on a show in the Lyceum and said that I hold Homer and Hesiod in contempt and want to do away with all the learning [philosophia] and teaching [paideia] of others and say that all but those who spend time with me talk nonsense. I will set the record straight....’ (P1-38). He thinks that ability, whether in speech or in any other discipline is found in people who are endowed by nature and who have been ‘trained through experience’ [peri tas empeirias gegumnasmenoi] (KS14). Composition exercises were a central part

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6, when he argues—as we saw in 2.1—that phronêsis cannot be epistêmê, even though Aristotle recognises that some epistêmai are hôs epi to polu. I gave an explanation for this in 2.1. However, it is entirely possible that Aristotle had Isocrates’ argument in mind here; i.e. that he was appropriating Isocrates’ argument and presenting his own version of it.

of Isocrates' teaching method.<sup>31</sup>

Isocrates thinks that paideusis of a certain sort is also important. It is important to teach the 'forms of discourse' [mathein ta eidê tôn logôn] (KS17). The forms of discourse are that 'out of which' [ex hôn] we compose all discourses (KS16). Isocrates even calls the knowledge of the forms of discourse an 'epistêmê' (KS16).<sup>32</sup> However, Isocrates thinks that learning the forms of discourse is only a small part of such an education. Unlike Plato, Isocrates thinks that the most important part of the education of an orator is acquiring empeiria by practising the application of these forms. Learning this 'epistêmê'—i.e. the forms of discourse—is not difficult (KS16). What is difficult is to choose from these elements those which should be employed for each subject, join them and arrange them properly and not to miss what is opportune [eti de tôn kairôn mê diamartein]. These are the traits of a mature and experienced mind [psuchês andrikês kai doxastikês] (KS16). For this, a student must both learn the different kinds of discourse *and* train himself their use [chrê ta men eidê ta tôn logôn mathein, peri de tas chrêseis autôn gumnasthênai] (KS17). The role of the teacher is to teach whatever can be taught and in himself set an example in oratory (KS17-8).

In the *Antidosis* Isocrates expresses the same views regarding education in

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<sup>31</sup> Kennedy, AP178. R.C. Jebb notes that 'Isocrates stood alone in the stress which he laid, and the critical pains he bestowed, on work done by his pupils themselves...Isocrates recognised fully the use of example; but while for most other teachers the setting of finished patterns before their school was almost everything, Isocrates seems to have regarded these patterns chiefly as counsels for perfection for advanced and gifted students (KS,18); the real essence of his method consisted in developing the learner's own faculty through the learner's own efforts' (46). 'This fact is expressed by the tradition, preserved in the Plutarchic life, and by Photios cod.260, that Isocrates taught not merely but methodos--ie technical precept—but also by askêsis—practise under the eye of the master' (46).

<sup>32</sup> He is using 'epistêmê' in a way which would not make Plato happy, of course.

rhetoric. A teacher may begin by imparting to a student ‘all the forms which rhetoric uses’ [...tas ideas hapasas, hais ho logos tunchanei chrômenos] (A183). However, after making their students familiar with these the teacher must habituate them to work and to combine each of the things which they have learned singly [suneirein kath’hen hekaston hôn emathon] (A183). They do so in order that the students might grasp these more firmly and also ‘bring their doxai into closer touch with the occasions for applying them’ [hina...tôn kairôn enguterô tais doxais genôntai] (A183). Isocrates compares the forms of discourse to the ‘wrestling postures’ which physical trainers impart to students [ta schêmata ta pros tên agônian] (A183).

Learning the forms is something which makes the practise of rhetoric easier because it ‘makes students more skilful and resourceful in discovering the possibilities of a subject’ [pros to zêtein euporôterous], because ‘it teaches them to take from a readier source of topics which they otherwise hit upon in haphazard fashion’ (KS15). We can use Isocrates’ analogy with wrestling postures to explain this point. Someone could, in theory, discover the appropriate postures during a match without prior familiarity with them, by discovering them on his own. But it is easier to discover the appropriate postures during a match if one has practised typical postures.

It is not clear to me what Isocrates means by ‘ta eidê tôn logôn’. Preuss *Index Isocrateus* 59 (s.v. ‘eidos’) lists only 3 other instances of ‘eidos’ in Isocrates, of which only the following two are relevant. At A280 Isocrates says that ‘probabilities and proofs and *all forms of persuasion*...make a speech persuasive’ [ta eikota kai ta tekμήria kai pan to tôn pisteôn eidos...ton logon pistoteron epoiêsen]. At A74 Isocrates says ‘allôs te kai nun hot’ou monon mikrois meressin all’holois eidesi proeilomên

chrêsthai pros humas’ Norlin *Isocrates* v.2, p.227, translates this ‘especially now when I have chosen to repeat to you not merely small parts but whole divisions of my speeches.’ But *LSJ* (s.v. eidos) translates ‘holois eidesi’ with ‘example of a style’. *LSJ* also takes ‘eidos’ in ‘ta eidê tôn logôn’ at KS17 to signify ‘style of writing’ and finds this usage at *Rhet.Al.* 144b9. I suspect that Isocrates means by ‘ta eidê tôn logôn’ material of the sort covered in Book 3 of Aristotle’s *Rhet.*, which covers elements of style [lexis] (1403b-1414a) and arrangement [taxis] (1414a-1420a). It is clear, however, that Isocrates does not intend the study of the forms of discourse to be anything like the sort of education included by Plato in rhetorical technê in the *Phdr.* Isocrates does not think that one needs to practise rhetoric ‘kata phusin’.

#### *Rhetoric vs. grammatikê*

Isocrates distinguishes his own method of teaching from that of those Sophists who teach ‘political discourse’ (KS 9ff). They undertake to transmit the science of discourse [tên tôn logôn epistêmên] as simply as they would teach the letters of the alphabet [hôsper tên tôn grammatôn paradôsein] (KS10). That Isocrates means this quite literally is evident from the critique which follows (KS12-13). He tells us that they err in applying the analogy of an ordered skill to a creative process [hoi poiêtikou pragmatos tetagmenên technên paradeigma pherontes] (KS12). For the skill of using letters is fixed and unchanged [akinêtôs echei kai menei kata tauton], in that we always and invariably use the same letters for the same purposes (KS12). On the other hand, the opposite holds true for speech-making. What has been said by one speaker is not equally useful for the speaker who comes after. For, first of all, the most skilled speaker is one who is able to discover in some subject something which has not been said by

others. But the greatest indicator of the difference between using letters and speaking well is that a speech is good only if fit to the occasion [ho kairos], the style of its composition is proper and the treatment of its subject is original (KS13). The ability to speak well comes with natural endowment and experience [empeiria] (KS14) and cannot be acquired by learning general principles.

What Isocrates says here relates to Plato's discussion of rhetorical technê in two ways. First of all, Isocrates is criticising here those who suggest that rhetoric can be learned in the same way that one learns hê tôn grammatôn (epistêmê) (KS10). This is in direct contrast with Plato's claim, examined in 3.1.1, that epistêmê and technê *can* be compared to grammatikê and that the elements of rhetorical technê and epistêmê--the types of soul and of discourse in the case of the former and the forms in the case of the latter--are like the letters [stoicheia] of the alphabet. Aristotle also contrasts deliberation and grammatikê (1112b2), as we saw in 2.1. Second, Isocrates takes that the fact that rhetoric involves determining ho kairos to be inconsistent with the claim that one can understand it in terms of an analogy with a skill which involves combining elements which are fixed and unchanged [akinêtôs echei kai menei kata tauton] (KS12). For Isocrates, it seems, the choice of the appropriate elements is a matter of ho kairos.<sup>33</sup> Plato, on the other hand, recognises the role of a sense of ho kairos, but does not take this to be inconsistent with the idea that the application of the knowledge of elements is an ordered process. Determining what is opportune is something that comes after one

<sup>33</sup> Again, Isocrates' views on ho kairos are similar to Aristotle's. Aristotle thinks that it is not sufficient to know what sorts of action are characteristic of virtue. One must also know the proper occasions for doing these actions in order to do them virtuously. I must know not only that it is characteristic of virtue to give money. I must also be able to discern the right sorts of occasions for giving money. Similarly, Isocrates warns that it is not sufficient to learn the forms of discourse. One must also be able to discern the

has already determined the appropriate elements that one will use in the speech.

Isocrates thinks that his theory of teaching applies more generally to other arts and to practical intelligence as well as rhetoric.<sup>34</sup> He says that his advice does not pertain merely to speech but is ‘of concern to anyone who wants to excel either in speech or in action or any of the other activities’ [dioisein ê peri tous logous ê peri tas praxeis ê peri tas allas ergasias] (A187). And these observations further apply to all the arts [technai] (A187). In order to succeed in any such practical discipline a student must: a) have natural aptitude; b) be educated and acquire the knowledge [epistêmê]<sup>35</sup> peculiar to their subject; c) become versed and practised in the use and application of their art [entribeis genesthai kai gymnasthai peri tèn chreian kai tèn empeirian autôn] (A187).

#### ‘Doxa’ in Isocrates

Like Plato, Isocrates distinguishes doxa and epistêmê. Isocrates distinguishes ‘having good judgment’ [epieikôs doxasthai] and ‘having precise knowledge’ [akribôs epistasthai] when he says that the ‘teachers of dialectic do not know that it is much better to have good judgment about useful things than exact knowledge concerning useless things’ [peri tòn chrêsimon epieikôs doxazein ê peri tònachrêstôn akribôs epistasthai] (H5).

He says that it is better to have a ‘doxastikê’ soul than to know the elements of

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right occasions for their application.

<sup>34</sup> Practical intelligence is not easily separable from rhetoric for Isocrates, however—as we shall see below—because he thinks that excellence in rhetoric makes one excellent at deliberation generally—public and private (A256-7).

<sup>35</sup> Isocrates is using ‘epistêmê’ in a general sense here, to refer to whatever principles can be learned in some art—the forms of discourse in rhetoric, the postures in wrestling, etc.

an art or to have scientific knowledge. He says that ‘to know the elements [ex hôn] out of which compose all discourses is not difficult. But to choose from these elements those which should be employed for each subject, join them and arrange them properly and not to miss what is opportune [eti de tôn kairôn mê diamartein] are the traits of a mature and ‘doxastikê’ soul [psuchês andrikês kai doxastikês] (KS15-9).<sup>36</sup>

Like Plato, Isocrates also talks about ‘doxai’ in the plural. However, unlike Plato, Isocrates thinks that philosophy consists of the possession of generally reliable doxai. He defines ‘phronêsis’ as ‘the ability to hit upon the best for the most part by means of doxai (A271)’. And he says that philosophy studies the means by which this phronêsis is acquired (A271)—i.e. it involves the acquisition of doxai. We also see here that Isocrates says that ‘doxai’ are true ‘hôs epi to polu’ and that only such truths are attainable in practical affairs.

*Isocrates’ philosophia and deliberative particularism*

For Isocrates thought and deliberation are a matter of speech [logos]. None of the things ‘which are done with intelligence can take place without the help of speech. In all our actions as well as thoughts speech is our guide and is most employed by those who have the most wisdom’ (A257). Isocrates says that the theoretical disciplines do not have useful application in private or public affairs. For they do not help us to ‘speak or to deliberate about practical matters’ [eipein ê bouleusasthai peri tôn pragmatôn] (A267). Here ‘eipein’ and ‘bouleusasthai’ are associated. According to Isocrates, education in rhetoric also improves an individual’s ability to deliberate about his own

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<sup>36</sup> According to Shorey, Plato may be parodying this phrase at *Gorg.* 463a7, though Dodds disagrees (Dodds 225).

actions. For, 'the same arguments [pistesin] which we use in persuading others when speaking in public we also use when we deliberate in our own thoughts. We call those skillful in speaking before crowds eloquent, we regard as wise [euboulous] those who skillfully debate problems in their own minds' (A256).

Isocrates seems to subscribe to the Athenian democratic view that moral truth is determined by agreement. We see this at A253-55. There, Isocrates tells us that the art of persuasion is a development of a human natural capacity which separates human beings from animals and frees them from the life of animals. In respect to our other powers we are not superior to other animals and we are even inferior to them with respect to some—e.g. speed and strength. But we are different from animals inasmuch as we have the ability to 'persuade each other and make clear to each other whatever we wish'. For this reason we have escaped the life of wild animals and have come together and made laws and invented arts. 'Laws concerning things just and unjust, honourable and base, without which we would not be able to live with one another, follow from this ability.' Isocrates was not uncritical of democracy. On the contrary, he often voices many of the concerns of the aristocratic opponents of the democracy.<sup>37</sup> However, he endorses this democratic value and, in this respect, allies himself with Athenian democracy.<sup>38</sup>

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<sup>37</sup> Wallace discusses Isocrates' political ideology, which includes the proposals that officials are to be chosen from the wealthy classes and that the Areopagos be given greater constitutional authority (*Areopagos* 164).

<sup>38</sup> Ober claims that Isocrates is adopting democratic rhetoric in an inter-elitist dispute (*Mass and Elite* 163). However, this is not an aberration. It is consistent with his view that rhetoric is the political art. And it is consistent with an aristocratic approach to decision-making. One can endorse the democratic principle of majority rule while limiting who is allowed to participate, as Aristotle does.

Isocrates' claim that deliberation ought to be rhetorical in character is consistent with his endorsement of the Athenian democratic idea that moral and political truths are based on agreement and persuasion. However, Isocrates views on deliberation are much deeper than this. This is suggested by the fact that he thinks that private deliberation—and thought generally—is rhetorical in character. Isocrates bases this view on the idea that nothing universally true can be said about practical affairs. Isocrates's philosophia is two-fold. It is, first of all a method of teaching rhetoric. But, more importantly, it is a deliberative method. Isocrates claims to impart deliberative excellence by teaching rhetoric. Isocrates supports both aspects of his philosophia—against the Academic alternative—by arguing that no epistêmê is possible which can tell one how to speak or act in any given situation. Isocrates argues for both positions by arguing that epistêmê and necessary knowledge are not possible in practical disciplines. In the passages discussed above, on Isocrates' critique of the idea that rhetoric can be taught as an epistêmê, Isocrates' argument against practical epistêmê and in favor of his own philosophia support both of these points. For example, at A271 Isocrates supports his own philosophia against the Academic alternative by pointing out that '...it is not in the nature of human beings to acquire an epistêmê having which, we could know what one ought to do or say' [ouk enestin en têi phusei têi tôn anthrôpôn epistêmên labein hên echontes an eideimen ho ti prakteon ê lektein estin]. His own deliberative alternative is that of rhetoric, which involves presenting a persuasive logos for each side of a debate. Isocrates concludes, based on the fact that no practical skill can be an epistêmê, both that rhetoric cannot be taught by an approach of the sort described in the *Phdr.* and that practical deliberation is rhetorical in character. Isocrates often treats these two together-

-perhaps because he is so confident in the privileged status of rhetoric—and provides arguments for both points simultaneously. The two questions are nevertheless conceptually distinct and Isocrates does not confound these questions, but has a view on both questions.

Isocrates argues, in conclusion, that rhetoric is the best mode of political--and individual--deliberation based on his critique of Plato's views on epistêmê. Isocrates argues, in other words, that a certain kind of logos—a certain kind of argument—ought to guide decisions based on facts about practical affairs. Isocrates' objections to Plato's views on epistêmê also work in support of the idea that theory—which, qua theory, explains what is common and universal—is useless in deliberation. Isocrates' argument also translates into consequences for the nature of the sorts of arguments that one ought to consider in determining what one ought to do.

#### *Summary of Isocrates on practical intellection*

Isocrates offers a critique of the idea that practical intellection is epistêmê. This critique has several aspects. It is, first of all, a critique of the idea that rhetoric can be taught as an epistêmê. It is a critique also of the idea that one can learn something practically useful by studying the epistêmai. It is also a critique of the idea that practical deliberation is from principles. Isocrates has a particularist theory of education and deliberation which he establishes based on his observations about practical affairs and his associated criticism of the epistêmê-based account. His emphasis in education is on practical exercises, on the guidance of a skilled teacher in giving practical exercises, and on doxai which are generally reliable practical instructions. His emphasis in deliberation is on the idea that rhetoric is the most appropriate instrument of

deliberation. One presents as persuasive an account as possible for and against each deliberative option and one judges which account is most persuasive. In endorsing the rhetorical approach to political deliberation Isocrates is affirming the Athenian idea that moral and political standards are determined by agreement. But Isocrates argues for this approach based on his observation about practical affairs and based on his critique of the epistêmê-based account of deliberation. From this critique it follows that one ought not to privilege theory-based reasoning.

#### *Comparisons with Plato*

Contra Plato, Isocrates uses doxa and orthê doxa to refer to that at which one ought to aim with respect to practical knowledge. In Isocrates 'doxa' refers to a state of the intellect. Like Plato, he also uses the plural 'doxai' to refer to particular items of knowledge. This sense is evident when he uses doxai in the plural. We can only speculate as to what Isocrates might mean by these terms. In my view he is talking about practical generalisations—e.g., rules and principles. This view is based on the fact that there must be something in common between doxa and doxai in Isocrates and doxa and doxai in Plato, given that Isocrates is, when he advocates the importance of doxai against epistêmê, opposing Plato or someone who distinguishes epistêmê and doxa in a way similar to Plato. In praising doxa at the expense of epistêmê Isocrates is saying: 'Plato says that doxa is inferior to epistêmê. I say that, on the contrary, epistêmê is inferior to doxa...He says that definitional logoi are what one ought to seek rather than doxai. I on the other hand think that doxai are more important.'

#### *Comparisons with Aristotle*

Isocrates' criticism of the epistêmê-based account of practical education and

deliberation is very similar to Aristotle's argument that phronêsis is not epistêmê (discussed in 2.1). Some of Aristotle's language and claims seem to be derived from Isocrates'. Isocrates talks about the need for instruction which is useful and true 'for the most part' [hôs epi to polu] rather than discussing principles in a scientific and precise manner [akribôs]. There is a difference between Isocrates' and Aristotle's views on this issue, however. Isocrates talks about both doxa the state and doxai the items of knowledge as being reliable hôs epi to polu. Aristotle, on the other hand, seems to think that the skilled individual gets it right more often than an unskilled individual following hôs epi to polu true principles and rules. For Aristotle, the judgment of the skilled individual is not merely hôs epi to polu reliable, at least not hôs epi to polu in the same way that practical universals—i.e. rules and principles—are.

Another difference between Aristotle and Isocrates is that, even though Isocrates talks about the importance of doxai in practical education, unlike Aristotle he does not advocate writing down such doxai, systematizing them or explaining them in terms of the principles of the art of rhetoric. However, the most important difference between Aristotle's and Isocrates' views on practical intellection is that Aristotle has a theory-based account of the sort that Isocrates rejects. Isocrates does not talk about establishing a textbook of the sort advocated by Aristotle. It would be entirely inconsistent with Isocrates' views to talk about borrowing from theoretical disciplines as Aristotle does.

However, Aristotle does borrow in important ways from Isocrates. When Aristotle says in the *EN* that one must restrict oneself to a sketch of issues which are investigated by the epistêmê of psychology in detail he is emphasising, in Isocratean fashion, the priority of practical concerns over theory. Aristotle thinks that one ought to

give a theory of some skill, but do so in a way which is practical. He also thinks, as we saw in 2.2, that deliberation which is from principles and which is theory-based involves judgment based on empeiria and judgment which is stochastikê rather than judgment about logical necessity. Here too Aristotle is borrowing from Isocrates. Aristotle, in sum, offers a theory-based account of practical intellection which incorporates Isocrates' criticisms of the epistêmê-based variant of such an account.

### *Conclusion to 3.1*

In 3.1.1 I show that Plato has a theory-based account of education and deliberation in the practical skills. I also show that Aristotle's criticisms of the idea that phronêsis is epistêmê (examined in 2.1) hold for Plato's theory. In 3.1.2 I show that Isocrates has a similar critique of epistêmê, which is also directed against Plato. But Isocrates establishes, based on this critique, a very different conception of practical education and deliberation. Aristotle has a theory of practical intellection which, like Plato's is theory-based; however it is not susceptible to the sort of critique made by Isocrates. Indeed, it is likely to be an adjustment of the theory-based account based on such criticisms. And, given the fact that Isocrates' school was a prominent alternative to be reckoned with it is likely that Aristotle was influenced by Isocrates. Aristotle combines the two accounts--the emphasis of the one on explanation and the emphasis of the other on practical principles that one applies. Aristotle's account is unique in emphasising a written text as the basis for education and progress in the practical skills.

By comparing Aristotle's account with the accounts of Plato and Aristotle we see what is novel about his account. Aristotle's account is a sort of compromise of these two. Aristotle addresses Isocrates' critique of Plato's claims about practical epistêmê

while at the same time showing why it is important to give priority to principles and theory in teaching an art. What is new about Aristotle's account is its emphasis on theory which is practically applicable. This might explain why Aristotle warns, in the *EN*, that one must not go into too much detail in discussing theoretical issues because the emphasis is on giving an account which is practical. One ought to focus on giving a *sketch* which can be applied (1094b12-28; 1098a21-34; 1101a24-28). The emphasis in Aristotle is on a sketch which can guide practise in the same way as doxai in Isocrates and Plato but which is also an account. This textbook can be used by students to guide their empeiria. The textbook comes to be understood as it is applied.

Another novel aspect of Aristotle's account is that a textbook, once established, serves to advance an art. The importance of establishing a textbook in an art is discussed by Aristotle at *Soph.El.* 183b18ff. Here Aristotle says that once one has accurately established the principles of an art the art is allowed to develop further. Furthermore, once the principles and rules are sketched out they can be used by others to further refine the textbook. This is suggested by Aristotle's discussion of what happens in the arts at *EN* 1094b12-28. Isocrates and Plato do not directly address the question of the advancement of the arts. But this question was in the background, especially given that Plato and Isocrates borrow from theories of medical technê.

Aristotle's view on the way in which the arts advance is intermediate between the 'empiricist' and 'Hippocratic' views of medicine (discussed by Hutchinson, DM). Let us take as an example the 'empiricist' view of the author of *On Ancient Medicine*. The author is responding to the accusation that there is no such thing as medical skill

because doctors often make mistakes.<sup>39</sup> The author's view is that 'medicine has advanced as far as it has simply by experience, by trial and error, without the use of deep theories and hypotheses and that, given sufficient time of adhering to this non-theoretical and we may say empiricist approach medical science will in due course find its perfection' (DM, 27). In contrast with the empiricist approach to medicine and the arts, Plato sets up a method for attaining practical epistêmê through theoretical inquiry. Plato's answer to the accusation that there is no such thing as a medical skill might have been that medicine has not sufficiently established a theory of the workings of the human body and the causes of disease. In Aristotle we see an approach to the development of an art which combines the Platonic/Hippocratic<sup>40</sup> and empiricist approaches to art. In Aristotle we see that a textbook, which gives a practically useful account of an art, is useful in guiding further development of an art. Once this sort of textbook has been established the further refinement of an art is possible through the empeiria of practitioners.<sup>41</sup>

<sup>39</sup> The controversy is stated in ch. 12: 'We ought not to reject the ancient skill as non-existent or improperly investigated just because it has not attained precision in every detail. Rather, because it has been able to rise, by reasoning, from profound ignorance to something approaching complete truth, I think we ought to admire the discoveries of medicine as the work, not of chance, but of inquiry rightly and correctly conducted' (tr. Jones, in Hutchinson, DM 26).

<sup>40</sup> As usual I intend 'Hippocratic' here to refer to the approach to medicine labelled 'Hippocratic' in the *Phdr.*, in the passages discussed above. This does not describe accurately all of the assumptions about medicine discussed in the Hippocratic texts.

<sup>41</sup> One is reminded here of Plato's account at *Laws* 772a-d, of the way in which the lawcode is brought to completion by officials trained by the lawcode. This is a way in which Aristotle's views on practical intellection are more suited to the proposals in the *Laws* as to what a lawcode should look like.

### 3.2 Aristotle's *nomophilia* in context

#### *Introduction to 3.2*

In 3.1 I argued that Aristotle's theory can be seen as a solution to a problem posed for the Platonic theory-based account by Isocrates' critique. In 3.2 I place Aristotle's views on the sovereignty of law and the role of the majority as guardian of law in context. In doing so I also establish a connection between Aristotle's theory of practical intellection and his views on law.

#### *Nomima and doxai in the Republic*

A cursory reading of the *Rep.* gives the impression that Plato is not concerned here with guiding the conduct of citizens by means of laws [nomoi, nomima], in contrast with the central importance of laws which guide citizens in the *Laws*. Plato says in the *Rep.*, for example, that in the ideal polis legislation will be practically non-existent, and that only an unhealthy polity requires extensive legislation (427a).<sup>42</sup> However, a closer examination reveals that laws are merely present in another form in the *Republic*. These are the doxai which are instilled in citizens through the stories they hear and through their primary education.

Any city has conventions about the good, the honourable, etc., and these are the

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<sup>42</sup> Laks argues, against authors like Jaeger who claim that the Philosopher-King rules without laws (Jaeger, 'Praise of Law', Laks 212 n.11), that the relationship between the *Rep.* and the *Laws* is like the relationship between a politeia and its nomoi as defined by Aristotle in *Pol.* 4. (This relationship is reflected in the titles of these two works.) The politeia defines what the magistracies are and the procedures according to which they should be filled, so that essentially the constitution has to do with the form of government; the nomoi, on the other hand, tell the magistrates how they are to implement their functions' (211). He thinks that the *Laws* presents the laws of the *Republic* (225). The laws tells us how the constitution of the *Rep.* 'may be a true constitution, a politeia, under human conditions'. Second, it tells us that 'under human conditions...precisely because of human conditions, no politeia can do without resorting to the form of the laws, that is constraint.'

nomima of the city. Such nomima come up as examples of doxai in Plato's discussion of doxa and epistêmê (479d). The best polis will guide citizens by means of nomima which are orthai doxai. An important source of doxai for citizens are the stories they hear in childhood (377b). The doxai established at an early age are difficult to change or eradicate (378b). This is why it is necessary to supervise the city's 'story-makers' [muthopoiói] (377c). Some examples from the *Rep.* of such doxai are: it is wrong for citizens to quarrel with each other (378c); one ought not to fear death (386b); one ought not to be overcome by loss of property or a son or a brother because the good man is most self-sufficient with respect to what is needed for the good life (387d-e); one ought always to do what one thinks is best for the community (413c). The best polis would include as nomima other doxai which follow from the account of the *Rep.* of justice and the advantages it brings to its possessor (392c).

With such correct opinions citizens will not need legislation because such opinions are more reliable than legislation as guides to action. With such doxai citizens would rediscover for themselves the conventions [nomima] which their predecessors abolished. For example, that the young should be silent in the presence of their elders, give up their seats to them and stand in their presence; that they should look after their parents; as well as convention concerning one's clothes and bearing, keeping one's hair and clothes and shoes tidy, and so on (425b). Concerning business transactions, for example contracts made in the market and contracts for manufacture, questions of slander and assault, the lodging of legal actions and composition of juries, exaction and payment of market and harbour dues and the regulation of the market, city, harbour and other things, Plato says that legislation in these areas is not necessary because, if the

citizens and rulers have the above doxai they will find out easily enough what legislation is generally necessary (425c-e). A real legislator ought not to bother making laws or constitutional arrangements of this sort either in a bad state or a good one; in the former because they are no use and in the other because they are partly obvious and partly the ‘automatic result of earlier training’ [automata epeisin ek tōn emprosthen epitēdeumatōn] (427a).

The nomima in which citizens have been raised—and which, on Plato’s account of knowledge, are orthê doxa—are, therefore, adequate guides to action and legislation. They will enable citizens to discover other nomima which follow from these. And they will be a sufficient basis for further legislation by those in charge of government.<sup>43</sup> Guardians are those citizens who have outstanding strength of character and are particularly committed to the doxai of the best state (430a). Only rulers will require epistēmê rather than doxa. The system of education and upbringing described will make citizens and guardians reasonable men [metrioi andres] (423e). As such they will fulfill their obligations without difficulty (423d-e). This includes even apparently difficult injunctions, such as the principle that each person must fulfill the task for which he is naturally suited (423d); and regulations concerning marriage, the procreation of children and the possession of property (423e-424a).

#### Orthê doxa in the *Meno*

Plato’s views in the *Rep.* on the power of the nomima to guide action and legislation are not surprising, given his views on orthê doxa in the *Meno*. In the *Meno*

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<sup>43</sup> In this passage Plato is suggesting that one might not need to have epistēmê in order to participate even in some types of law-making—correct opinion seems to be enough. We will see below that Plato identifies one sort of authority in the state for which correct opinion is not sufficient, and this is authority over preservation of the laws.

and Socrates gives the following example to illustrate what epistêmê and orthê doxa have in common (97a9-b3). A person who knows the way [eidôs tên hodon] to Larisa or some other place can guide others to it (97a9-11). But so too can a person who has a right opinion about the way but has never been there and does not know [orthôs doxazôn... mê...epistamenos] (97b1-3). As long as he has the correct opinion about the things which the other person knows he will be no worse a guide [heôs g'an pou orthên doxan echêi peri hôn ho heteros epistêmên, ouden cheirôn hêgemôn estai] (97b5-6). For he believes what is true, though he does not have wisdom concerning this truth [oiomenos men alêthê, phronôn de mê] (97b6-7) Correct opinion is no worse a guide to action than wisdom [doxa ara alêthês pros orthêta praxeôs ouden cheirôn hêgemôn phroneseôs] (97b9-10).<sup>44</sup> When Meno suggests that the person who has knowledge will always arrive at the right action whereas the person with correct opinion will sometimes be wrong [ho men tên epistêmên echôn aei an epitunchanoi, ho de tên orthên doxan tote men an tunchanoi, tote d'ou] (97c6-8), Socrates says 'How can this be? The person who always has the right opinion will not always be right?' [pôs legeis; ho aei echôn orthên doxan ouk aei an tunchanoi, heôsper ortha doxazoi;] (97c9-10). The difference between epistêmê and orthê doxa are likely to run away unless they are tied down by the account of the cause [aitias logismôî] (98a3-4). People become good and useful to states [agathoi andres kai ôphelimoî tais poleisin] by correct opinion just as much as by knowledge (98c8-10). Politicians have guided states not by knowledge but by correct opinion [eudoxiai] (99b10-12).

#### *Guarding the nomima*

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<sup>44</sup> The same point is made at 98b7-9 and 98c1-3.

Plato argues that guardians and rulers must have the authority assigned to them because of the need to preserve the nomima of the city. The focus of the guardians' efforts will be on preserving the city's system of education. It is in education that guardians must build their main defences (424d). Socrates characterises it as 'the one great thing' and the sufficient condition that the guardians must guard [phulattein] (423e). Plato also argues that philosophers must be in charge of the city [poleôs hêgemonas] because only they are capable, by virtue of their philosophical knowledge, of guarding the laws and pursuits [nomous, epitêdeumata] of the city (484b). Only they are capable of laying down rules about what is noble and just and good [ta nomima kalôn te peri kai dikaiôn kai agathôn tithenai] and of guarding ones which already exist (484d). In the philosopher-ruler the just and the honourable [ta dikaia, ta kala] have their guardian [phulax] in the city (506a).

The guardians must prevent anyone from saying, in poetry or other forms something other than the desired nomima (380b; 381e; 383b; 386b; 392b). But they must also guard against more subtle forms of subversion. For it is in education [paidia] that lawlessness [paranomia] easily creeps into the city unobserved (424d). Little by little it enters characters and activities [êthê, epitêdeumata] (424d). From them it invades business dealings and then spreads into the laws and constitution [epi tous nomous kai politeias] until it has upset the whole of private and public life (424d-e). The guardians must maintain the city's system of education 'as their first priority and avoid at all costs any innovation in the established physical or academic curriculum' (424b). In particular, they should be on guard against changes in the style of the city's music and poetry. The music and poetry of the city cannot be altered without major

political and social changes (424c).

Another important requirement is that only selected people, who are mature and have a strong and disciplined character be allowed to take part in philosophical discussion about the moral and political issues (539c-d). The reason is that a person who participates in such discussion comes to see that the nomima to which he subscribes do not stand up to dialectical scrutiny and, as a result, such a person loses faith in these nomima (538d).

The nomima of the city, which are imparted to citizens in the stories they hear and the early musical and gymnastic education they receive, give citizens and guardians extensive guidance—so extensive, in fact, that the city will need little real legislation. Citizens will be able to conduct themselves well in many aspects of their conduct. And guardians will be able to discover, based on the nomima, what legislation is necessary in order to govern the state. Because of the crucial importance of the nomima in the city, and because of their vulnerability, complete authority over the nomima is given to rulers and guardians. The preservation of the nomima also requires control over what stories citizens hear as children and over participation in philosophical discussion.<sup>45</sup>

*The virtue of citizens and fidelity to the nomima*

The nomima are sufficient guidance for citizens and guardians. They are insufficient only if one wants to be a ruler. The virtue of citizens and guardians is defined by Plato as fidelity to the nomima in the sense that these nomima are retained,

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<sup>45</sup> The emphasis throughout is on the stories that children hear. This suggests that adults might be permitted to hear stories and speeches which contradict the nomima, unless, of course, they involve argument and, more importantly, refutation. Perhaps only refutation--and extreme pleasure or pain, of course--can change a person's views on the nomima once one has been properly educated.

by strength of character, as doxai—i.e. as items of belief. The city, Plato tells us, is brave with respect to that part of itself which ‘retains in all circumstances the ability to judge, on the basis laid down by the lawgiver in its education, what and what sort of things are to be feared’ (429b-c). Courage is ‘safely keeping the opinion inculcated by the established education about what things and what kind of things are to be feared...without losing it in pleasure or pain, desire or fear’ (429c). In educating the soldier class the aim was ‘to steep them in the spirit of the laws like a dye, so that nature and nurture might combine to fix in them indelibly their opinions [doxai] about what is dangerous, and about all other topics, and prevent them being washed out by those most powerful detergents, pleasure...and pain and fear and desire ’(430a). Courage is the ability to retain safely in all circumstances right opinion about what is to be feared, which is correct and in accord with law’ [sotêrian kata pantos doxês orthês te kai nomimou...] (430b). This is what he calls citizens’ courage [andreia politikê] (430c).

It is very important that the guardians of the polis who are to govern are very firm in their commitment to the principles in which they were raised. Plato focuses on one principle in particular to which guardians must be committed. It is crucial that the city choose as ruling guardians those who will ‘stick most firmly to the principle that they must always do what they think best for the community’ (413c). Therefore the city must watch for those among the guardians who ‘appear most inclined through the entire course of their lives to be zealous to do what they think for the interest of the state (412d-e). And the city must watch for those who are ‘conservators and guardians of this conviction [dogma] in their minds and never by sorcery nor by force can be brought to expel from their souls unawares this conviction’ (412e).

For, a true opinion [orthê doxa] (413a) can be ‘stolen’ by time or when one is persuaded by argument to drop the opinion (413b). A person can also be constrained to drop an opinion by pain or suffering or by the ‘sorcery’ of pleasure (413b-c).<sup>46</sup> The city must choose potential rulers by various competitive tests to which all guardians will be subject (413c-e), choosing only those who remain immune and are guardians of themselves and the education they have received [phulax hautou kai mousikês hês emanthanen] (413e).

In contrast with the ordinary citizen’s virtue, a fully virtuous individual is brave because ‘he has a spirit which holds fast to the orders of reason about what he ought or ought not to fear, in spite of pleasure and pain’ (442b-c). Such a person is wise by virtue of the part ‘which is in control and issues orders, and has a knowledge [epistêmê] of what is best for each of the three elements’ (442c). Such a person has bound the three elements of the soul together and ‘will be ready for action of any kind, whether it concerns his personal or financial welfare, whether it is political or private; and he will...call the knowledge which controls such action wisdom’ (443e). Whereas the ordinary citizen and the guardian are courageous by holding fast to the doxai in times of

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<sup>46</sup> The sense in which an opinion can be ‘stolen’ by argument will be discussed in the next section. It is hard to make sense of Plato’s claim that one can be persuaded by pleasure and pain to drop an opinion. Here are three possibilities. (i) One is forced to act contrary to one’s opinion. (ii) The immediate experience of pain leads one to *believe* that the doxa that one cannot be harmed by pain is false; and the immediate experience of pleasure can lead one to believe that the doxa that pleasure is not a good is false. (iii) In the face of extreme pleasure or pain, one might consider *arguments* refuting one’s doxai so that one might be justified in acting contrary to the doxai, as one is inclined to do because of the overwhelming pleasure or pain. The third interpretation has support in the fact that a person with epistêmê has a more stable character than the person reliant on doxa. One reason why a person with epistêmê might have a more stable character is that such a person is able to answer arguments against his doxai, including arguments which might be considered in difficult moments.

trial, the fully virtuous person is courageous by holding fast to the orders of reason on such occasions.

*The fragility of doxai*

One can be persuaded by pleasure or pain that some true doxa is false. Plato also mentions that a true doxa can be stolen by argument (413b). We see what Plato has in mind here when he discusses the education of philosophers in the *Rep.* An important component of this education involves dialectical inquiry into basic moral and political questions such as ‘What is justice?’ ‘What is the good?’ etc. This is a particularly dangerous stage of education because of the refutability of the doxai to which the student is committed. This is why no one but potential philosophers ought to be allowed to undertake dialectical inquiry into moral and political issues.<sup>47</sup> And dialectical inquiry should be introduced even to such individuals at a very mature age. Those permitted to take part in such discussions must have orderly and stable natures in contrast with the current practice of admitting to it any chance and unsuitable applicant (539d).

The reason why this sort of discussion must be controlled has to do with the ease with which one can refute certain ‘convictions [dogmata] from childhood about the just and the honourable in which, in obedience and honour to them we have been bred as children under their parents’ (538c). When a young person is met by the question ‘what is honourable?’ and ‘on giving his answer which he learned from the lawgiver the argument confutes him and by many and various refutations upsets his faith and makes him believe that this thing [i.e. that which is said by the lawgiver to be honourable] is

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<sup>47</sup>That is, Plato says that no one but such people ought to be allowed to pursue the highest course of study which involves a dialectical inquiry into questions such as ‘What is justice?’ and other basic moral and political issues.

no more honourable than it is base, and when he has had the same experience about the just and the good and every thing as a result he will cease to honour and obey these' (538d-e).

When young men 'first get a taste of disputation, misuse it as a form of sport, always employing it contentiously, and, imitating their confuters, they themselves continue to confute others.' They 'delight like puppies in pulling about and tearing with words all who approach them' (539b). And when young men prove many people wrong and have been proved wrong themselves they start to believe that nothing they believed before was true (539b-c). And in place of the dogmata that people get from their parents and education there are 'other practises going counter to these [epitêdeumata enantia toutôn] that have pleasures attached to them and that flatter and solicit our souls'. These practises 'do not win over men of any decency'. Such men continue to hold in honour the teachings of their fathers and obey them' (538d). But when a young person ceases to honour these principles and think that they are binding on him but cannot discover the true principles he will adopt a way of life flattering his desires (538e-539a). He will become lawless [paranomos] whereas before he was lawful [nomimos] (539a).

We see here what Plato means when he says that correct opinion can be stolen by argument. The orthai doxai of the sort Plato described earlier in the *Rep.*, though generally reliable guides to action, are easily refuted. When one presents an orthê doxa as an answer to a question such as 'What is justice?' the answer that one gives—even though it is, qua orthê doxa the correct answer—is easily refuted.<sup>48</sup> When all of one's

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<sup>48</sup> Strictly speaking, the orthê doxa, qua orthê doxa cannot be refuted. The idea is that no correct opinion or set of correct opinions gives sufficient guidance to a person being examined if that person has correct opinion only and not knowledge. If the person being questioned has mere correct opinion without knowledge then that person will be refuted

beliefs are refuted in this way, one might begin to believe that nothing of what one believed before was true; that which is said by the lawgiver to be honourable is no more honourable than it is base, and the same with respect to the just and the good and all other matters on which the nomima provided answers. In such a state a person is likely to be influenced by practices counter to the nomima and adopt a life flattering to the desires.

### *Braggart discourses*

Further evidence of Plato's views on the refutability of the nomima is Plato's discussion of the way in which oligarchy is corrupted. Here Plato discusses the way in which the oligarchic character is corrupted and becomes a democratic character. The son of a father with an 'oligarchic temperament'—i.e. one who disapproves of unnecessary desires and approves of necessary ones—'got into the company of men with more sophisticated tastes and desires' (572c). These men introduce him to unnecessary pleasure and desires. And they also introduce him to 'false and braggart accounts and opinions' [pseudeis kai alazones logoi kai doxai] (560b). Such accounts and opinions name 'reverence and awe "folly" ... temperance "want of manhood" ... moderation and orderly expenditure "rusticity" and "illiberality" ... they call insolence "good breeding" license "liberty" prodigality "magnificence" and shamelessness "manly spirit" (560c-e). If any support comes from his kin to the old beliefs and habits 'the braggart discourses [alazones logoi] ...prevail in the conflict' (560c-e). The reason why the young man's soul is unable to withstand the influence of unnecessary pleasures and 'braggart discourses' is that his soul is 'empty and unoccupied by studies and

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when these opinions are subjected to dialectical examination.

honourable pursuits and true discourses' [alêtheis logoi] (560b).

Here we see a discussion of a similar situation to the one examined in the previous section. Here the doxai involved are not the doxai of the best polis but of the oligarchic state.<sup>49</sup> However, these opinions have some semblance of truth in them<sup>50</sup> and are the basis for whatever virtue is to be found in the oligarchic character and the oligarchic state. Such doxai are easily corrupted by 'false and braggart accounts and opinions' which name reverence and awe "folly", temperance "want of manhood", moderation "rusticity", insolence "good breeding", license "liberty", prodigality "magnificence", shamelessness "manly spirit". These new logoi win out even if relatives try to bring the young man back to old beliefs and habits.

In both passages—the one in the present section concerning the oligarchic character and the one in the previous section concerning the dangers of dialectic to young men—we see that argument seems to be on the side of the idea that there is no difference between good and bad, the just and the unjust, etc. Indeed, certain 'braggart discourses' seem to support a reversal of virtue and vice. A person who is particularly committed to the nomima—because of a strength of character rather than any rational basis for them—might not be swayed by such logoi.<sup>51</sup> However, even though some may

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<sup>49</sup>In the previous section Plato was talking about the higher education of guardians who are to become rulers. In such a polis the doxai in which all citizens are raised are true. However, in this section Socrates also seems to be speaking generally. This is his general diagnosis of the way in which certain sorts of polities are corrupted—when the nomima of these polities are subjected to 'braggart discourses'.

<sup>50</sup> The opinions of the oligarch include false and true opinions. An example of a false oligarchic belief is the belief that money is good.

<sup>51</sup> Plato thinks that it is the young in particular who are vulnerable to such logoi and that older persons might be less easily swayed to abandon their doxai even if they recognise that their doxai have been refuted.

not be swayed by such logoi it is not because they have better logoi with which to respond. They are persuaded on some level that their doxai are inadequate—that they are powerless to defend them—but they remain faithful to them in spite of this, and are not persuaded in the sense that they drop these doxai, because of their upbringing and character.<sup>52</sup>

Plato does not think that there is anything wrong with refutation in principle. Indeed, it is an essential part of the path towards epistêmê. But it is not just incorrect logoi which have trouble standing up to the test of questioning.<sup>53</sup> Even the doxai given by the laws of the best polity—which qualify as ‘correct opinion’—do not withstand scrutiny. The doxai one has from one’s upbringing might be adequate guides to action—assuming that they are orthai doxai—but even such adequate guides to action can be refuted.

#### *Logopoiêtikê vs. philosophy in the Phaedrus*

These ideas concerning the refutability of nomima—and doxai and logoi in general—are reflected in Plato’s remarks concerning logopoiêtikê in the *Phdr.* There Socrates says, directing his message to Lysias and all other composers of discourses, to Homer and all others who have written poetry, and to Solon and ‘all authors of political compositions under the name of laws’: ‘if one of them has written with a knowledge of

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<sup>52</sup> One is reminded here of the behaviour of Cephalus in book 1 of the *Rep.* When his definition of justice is refuted by Socrates he is not particularly troubled by the refutation. He simply withdraws—to perform an act of piety (331d)—and leaves his sons to continue.

<sup>53</sup> We see Socrates directing this sort of refutation against incorrect opinion at 505c. Those who ‘define good as pleasure’ are ‘compelled to admit that there are bad pleasures’ and thus ‘find themselves admitting that the same things are both good and bad’.

the truth, can defend his statements against refutation, and in so speaking in defense of his work can demonstrate the inferiority of his writings out of his own mouth, he ought not to be called a poet speech writer or law writer but a philosopher' (278a-d). On the other hand, 'one who has nothing to show of more value than the literary works on whose phrases he spends hours, twisting them this way and that, pasting them together and pulling them apart, will rightly...be called a poet or speech-writer or law-writer' (278d-e).

This passage suggests that knowledge is demonstrated in an ability to defend logoi against refutation, rather than in the logoi themselves. Whatever logos one comes up with in this way is inferior to the ability, characteristic of philosophers, to defend such a logos against refutation. This attests to the inherent instability of logoi without knowledge. It also evidences Plato's view that it is not possible to defend logoi against refutation unless one has knowledge of a certain sort. Philosophy is described here as the ability to defend logoi against refutation. We also see here why epistêmê provides an anchor for and preserves the doxai, which is what we are told in the *Meno* and *Republic*. It preserves the doxai in a way that simple strength of character cannot because it can defend the doxai against refutation. It defends the doxai against refutation either by argument or by the passions or desires.

*One person's doxai are another person's logos*

In the *Meno*, Plato talks about epistêmê as if it were doxa plus an account—i.e. doxai plus an account which explains them.<sup>54</sup> However, epistêmê is more than just the

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<sup>54</sup> We saw that Plato distinguishes technê and empeiria in this way. For example, he says that rhetoric is not a technê but an empeiria because it has no logos 'by which it applies the things it applies, to say what they are by nature, so that it cannot say what

sum of doxai and accounts. It is a capacity to come up with the right doxai and the logoi which explain them--as well as the capacity to determine in any given situation what is the correct course of action. Orthê doxa typically refers to any simple logos which can be either a rule of action or a principle. An example of the former is 'It is wrong for citizens to quarrel with each other' (*Rep.* 378c). An example of the latter is 'The good man is most self-sufficient with respect to what is needed for the good life' (*Rep.* 378d-e). A logos of the sort that a person with epistêmê can give typically refers to an explanatory account. But any such logos amounts to orthê doxa for the person without epistêmê. Any such logos can be refuted if the person defending it does not have epistêmê.<sup>55</sup> A person who is committed to and guided by a logos but cannot defend it against refutation has doxa and not epistêmê. Even though Plato talks about epistêmê in terms of a possession of logoi—e.g., in the case of moral epistêmê, logoi of justice, the

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the explanation is of each thing' [ouk echei logon oudena hōi prospheirei ha prospheirei hopoi'atta tēn phusin estin, hōste tēn aitian hekastou mē echein eipein] (*Gorg.* 465a); and that medicine has examined the nature and the reason of that which it treats and can give a logos of these things [toutou hou therapeuei kai tēn phusin eskeptai kai tēn aitian hōn pratei, kai logon echei toutōn hekastou dounai hē iatrikē] whereas relish-making is an empeiria which produces pleasure 'without a technē, without considering the nature or the explanation of the pleasure, and altogether without reason and making no distinctions [...atechnōs ep'autēn erchetai, oute ti tēn phusin skepsamenē tēs hēdonēs oute tēn aitian, alogōs te pantapasin...ouden diarithmēsamenē] (*Gorg.* 501a). The claim that the difference between correct opinion and knowledge is that the latter possesses an account is made in the *Meno*, at 98a3-4. The difference between epistêmê and orthê doxa is that the latter is not 'tied down' by the account of the cause [aitias logismōi]. It is also made in the *Theaet.*, where we are told that epistêmê is true opinion [alēthēs doxa] with an account [meta logou] (201d1); and that knowledge is perfected when an account is added to true opinion [...to meta doxēs alēthous logon prosgenomenon tēn teleōtatēn epistēmēn gegonenai] (206c3-5). In this dialogue, however, Plato appears eventually to reject this account of episteme. Plato's claim—and the various senses of 'logos' discussed by Plato—are examined by White 176-183 and Gulley 94-106.

<sup>55</sup> Again, inasmuch as it is correct or true opinion it cannot be refuted. But a person who has correct opinion without knowledge will not have the resources to defend the true opinion against refutation.

good and such—the knowledge which one arrives at does not consist of logoi. It is not that the person with epistêmê would refer to some logos to determine how to act, or would refer to some logos in order to answer questions about the good and such. Having epistêmê means being able to produce one explanatory logos and many others. It means being able to produce logoi which are appropriate to the occasion and the questions being asked. No logos by itself is sufficient to produce epistêmê in another person. It is true that one is led to epistêmê by a process of discussion, argument, presenting and defending logoi. But epistêmê is a state which is the result of a long process rather than the comprehension of logoi. Epistêmê is a capacity to produce logoi which explain and support the doxai. To a person who does not have epistêmê—or when memorized by such a person—such an explanatory logos is a lifeless and defenseless item of doxa.

### *Epistêmê and discernment*

The idea that epistêmê is not just a matter of knowing and applying logoi is supported by Plato's language when he discusses epistêmê. We saw in 3.1 that Plato uses an analogy with stoicheia—letters of the alphabet—to describe the relationship between epistêmê and the forms. He describes the ability to recognise some action as good as an ability to discern the forms of virtue in the particular action. Plato also often talks about the forms as paradeigmata—‘models’—which the person with epistêmê is able to see and implement in particular actions and laws.

Both of these ways of speaking about epistêmê describe epistêmê as a form of visual discernment rather than as the application of some logos. Thus, even if the person with epistêmê or technê deliberates by giving a logos—and Plato suggests in the *Phdr.*

that this is how the technitês approaches technical deliberation—it is not the logos which enables the technitês to determine the correct course of action but some parallel process of discernment.

### Nomophulakê and epistêmê

It is because doxai are so vulnerable to refutation that those who are in charge of nomophulakê must have epistêmê. They must have epistêmê because only those people who have epistêmê are capable of making decisions about the nomoi and guarding the nomoi.<sup>56</sup> The state described by Plato is possible only if philosophers become rulers (473d). No state or individual can attain perfection until philosophers become kings (499b). Philosophers must be in charge of the state [poleôs hêgemonas] (484b) because only they are able to guard the laws and pursuits of society [phulaxai nomous te kai epitêdeumata poleôn] (484c).

Non-philosophers have no true knowledge of reality, and no clear standard of perfection in their mind to which they can turn, ‘as a painter turns to his model’ which they can study closely before they start laying down ‘rules about what is admirable or right or good where such rules are needed [nomima kalôn te peri kai dikaiôn kai agathôn tithesthai] or guard and preserve those that are established’ (484c-d). The philosopher’s perception of eternal things also enables him to ‘stamp on the plastic matter of human nature in public and private’ the patterns that he sees there in addition to enabling him to ‘mould and fashion’ himself (500d). He can thus be a craftsman of temperance and justice and all the forms of citizens’ virtue [dêmiourgos ... dêmotikês

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<sup>56</sup> They must also have epistêmê because they are in a position of great power and the temptations are great and so they need great strength of character, and epistêmê is an additional pillar of support—additional to mere strength of character, that is—for correct opinion.

aretês] (500d).

### Nomophulakê in the Laws

Whatever may be the differences between the *Republic* and the *Laws*—and there is no doubt that they are significant<sup>57</sup>—Plato has the same views on nomophulakê in the *Laws* that he does in the *Republic*. We see that this is the case in his discussion of the ‘Nocturnal Council’ (951dff; 960dff). This council is in charge of ‘preserving the laws’ [sôtêria tôn nomôn] (960d). The council is needed because some members of the state must know the ‘political aim’ [politikos skopos] at which the state aims, just as the doctor must know health in order to heal. A person who knows the mark ‘possesses reason’ [noun echei] (962a-b).

The law-givers and guardians of the law must know the ‘account’ [logos] of the virtues (964a). They must be able to look ‘from the many and the dissimilar to one form’ [pros mian idean ek tôn pollôn kai anomoiôn] (965c). There is ‘no clearer method [saphestera methodos] than this’ (965c). This involves explaining what it is that is common to the four virtues (965c-e). The same holds for the noble and the good [kalos te kai agathos], that is they must see that it is one (966a). They must be able not only to understand it [ennoein] but also to display it in language [tên endeixin tôi logôi...endeiknusthai] (966b). Here we see the familiar claim that those in charge must know the logos of the virtues. And ‘knowing the logos’ is elaborated as being able to (i)

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<sup>57</sup> One respect in which they are *not* different is that the *Laws* is concerned with nomima and the *Republic* is not. The *Republic*, just like the *Laws*, is concerned with offering guidance to citizens in praxis. One difference is that, while the *Republic* focuses on a minimal set of unwritten principles, imparted through the muthoi citizens hear in childhood and through the primary gymnastic and musical education, the *Laws* describes an extensive written legal code. Another difference is that there is no effort in the *Republic* to give citizens a logos which explains their obligations.

perceive the forms; and (ii) display this knowledge 'tôi logôi'.

One of the noblest forms of knowledge is that concerning the gods (966c). We can pardon the majority [hoi pleistoi] if they follow 'the letter of the law' [phêmê tôn nomôn] (966c). But we must exclude from guardianship of the laws those who have not mastered all of the proofs concerning the being of the gods [pisteis peri ousian tôn theôn] (966c). There are two arguments which lead to faith in the divinities [du'eston tô peri theôn agonte eis pistin] (966d). One concerns the priority of soul to bodies. The other concerns the ordering motion of the cosmos (966e).

Those who are to be guardians of the law must be educated in 'reckoning and arithmetic' [logismoi kai ta peri arithmous]; 'the art of measuring length and surface and solid'; 'the study of the course of the stars and how they travel in relation to one another' (817e). Guardians must study this in detail [hôs akribeias] whereas ordinary citizens [hoi polloi] will get some necessary parts of these studies (818a2).<sup>58</sup> In addition to these preliminary studies they must grasp the 'sovereign reason in the stars' [ho en tois astrois nous] (967e). And he must see the connection between these things and musical theory and apply it to the education of character and the laws (967e). 'He that is unable to master these sciences in addition to the popular virtues will never make a competent magistrate of the whole state but only an assistant to other magistrates' (968a).

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<sup>58</sup> At 818a4 he says, regarding these studies, 'as far as the ordinary citizens are concerned, whatever is, quite correctly said to be necessary for common citizens to know, it would be shameful if they were to remain ignorant of such matters; but it would not be easy or possible for them to undertake such study in great detail' [tôi plêthei de hosa autôn anankaia kai pôs orthotata legetai mê epistasthei men tois pollois aischron, di' akribeias de zêtein panta oute rhaidion oute to parapan dunaton].

We see in these passages that, even in the *Laws*, where Plato thinks of the law-code as a logos which explains the requirements on citizens—which talks to citizens as the free physician talks to his patients, namely like a philosopher—and persuades them that they ought to obey the laws Plato imagines that philosophers must be in charge of preserving the lawcode.

*The Laws on what the lawcode teaches*

In Plato's *Laws* citizens learn the law by memorizing the text of the law as children (811c-d).<sup>59</sup> Of all studies that of 'what is written in the law-code will be the most efficacious in making the learner a better person' (957c). One must learn the text of the written lawcode in order to possess this as an 'antidote to other discourses' [kathaper alexipharmaka tôn allôn logôn] (957d). The writings of the lawgiver will be a clear touchstone [basanos eiê saphês ta tou nomothetou grammata] for all other logoi, 'of praise or blame, in verse or prose, written down or uttered from day to day at all the other gatherings' (957c-d).<sup>60</sup> All other writings in the polis must be modelled on the lawcode and any that disagree with the lawcode deemed contemptible (858e).

However, Plato does not think that the lawcode will turn citizens into nomothetai. Only a philosophical education can enable one to be a nomothetês. As Nightingale notes, 'The citizens will thus become experts in the law, although this

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<sup>59</sup> Nightingale, PL 102-103 notes that the 'citizens of Magnesia 'will be compelled to really learn the law. This will involve reading and re-reading the actual text of the lawcode as well as learning poems and prose writings which contain exactly the same message as the laws.'

<sup>60</sup> In the *Phdr.* writing is a drug which blocks off the activity of enquiry and true memory. In the *Laws*, on the other hand, as Nightingale notes, 'Plato chooses to harness the power of writing. He thus urges his citizens to memorize and internalize the written text of the lawcode so that it can serve as an ever-present standard for measuring all other modes of discourse and thought' (PL 103).

expertise is not that of a lawyer or lawgiver' (PL 102-3). They will be experts in the sense that they 'possess a thorough knowledge of the full text of the lawcode which will enable them to live lawfully and participate in all aspects of political life.' This conception of 'learning' the law is 'based on the mastery and memorization of a fixed text rather than on the acquisition of technical or argumentative skills.'<sup>61</sup>

For Plato, even in the *Laws*, citizens merely have an irrational attachment to some logos.<sup>62</sup> For Plato any logos, even an elaborate explanatory logos such as the lawcode described in the *Laws*, is, qua logos, such that, though those without epistêmê can follow the lawcode and be guided by it, they are not competent to judge on matters concerning the lawcode.<sup>63</sup> In Plato the logos is something lifeless and dependent.

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<sup>61</sup> Nightingale, PL 119: 'The citizens of Magnesia...will be made into doctors if they learn and obey the language of the laws. By learning and internalizing the text of the lawcode, they will be able to doctor and administer to themselves and the city.' The citizens, however, are 'being asked to become a particular kind of doctor. Clearly they will not be the same kind of doctor as the lawgiver since they are not taught philosophy or even the technê of lawmaking. Rather, they are taught to become experts in the lawcode at hand and the value system it represents. In short, they are very much like the Egyptian doctors, since their primary task is to master and obey the written laws.'

<sup>62</sup> Morrow and Popper have emphasised the irrational aspect of the education offered by the law-code. Bobonich argues that what is offered is genuine understanding. I think that Bobonich is right in saying that this was Plato's aim. However, he is forced—because of his views on practical knowledge—to categorize this as persuasion. And he is forced to have an institution like the Nocturnal Council.

<sup>63</sup> Plato does at times speak as if the majority would be in charge of guarding the law in his polis too. For example, at 770a he says that the law-guardians—who are not members of the nocturnal council—will be law-givers. And he says at 772b that the citizens will vote on changes to the laws. It may be that one ought not to attribute make too much of the way in which the nocturnal council separates Plato from Aristotle. It may be that Plato too would say that, in his polis the majority is, in some important sense, guardian of the law. However, the point of the discussion here is that Aristotle has a theory of practical intellection and practical explanation which accommodates this, whereas Plato's theory of epistêmê is in tension with it.

Having and applying such a logos in particular decisions does not advance one's understanding. The only way in which one can advance one's understanding of such a logos—so that one can judge true and false logoi—is to undertake a philosophical education.

*Aristotle vs. Plato on nomophulakê*

We see now that, whatever similarities there are between Aristotle's views on law and Plato's views in the *Laws*, Aristotle departs from Plato some crucial respects. In Plato the lawcode is a logos to which citizens have a very strong commitment. The logos does not, on Plato's theory, allow for any intuition. It does not allow for logopoietic ability. Such a logos may serve as a basis for political decisions, but it does not establish the basis for arguments about nomoi.

In Aristotle practical education is a matter of applying a logos. One acquires the ability to judge logoi by applying them. Thus, it is possible to make arguments which, qua arguments, seem plausible—e.g., they are not sophistical or based on error—and which promote something contrary to virtue. However, one is able, given sufficient empeiria, to judge which arguments are sophistical and which are not. In Aristotle the way in which one advances one's ability to make judgments about such logoi is by acquiring empeiria in applying them. Aristotle thinks that the law-code can educate citizens. By acquiring empeiria they acquire genuine understanding and judgment. It is by means of empeiria that one acquires an ability to judge logoi in praxis. Therefore, Aristotle has an account of practical education such that an ordinary citizen's fulfilment of civic obligations—obeying and thinking about the laws—is sufficient education for nomophulakê. He explains, given his views on technical education, how the majority

can be sovereign over nomophulakê. His theory explains, furthermore, how a logos can promote progress in an art and how the lawcode can be a textbook and how it can guide reasoning.

### *Nomophulakê and political discourse*

The discussion of nomophulakê and nomothetikê in Plato and Aristotle bears on the nature of the discourse which is to be allowed and permitted in the polis. It will probably be the case that the laws will not be changed very often. The institution of the nomophulakes has to do with the question of how to preserve the nomoi. Even if the city is committed to the nomoi and considers them sacred there is a chance that the nomoi can be corrupted. Innovation is a problem. The key source of motive for innovation has to do with the refutability of the nomoi. This may be given impetus by individuals who want power in the polis and want to seize power by persuading the assembly and the courts that the nomoi ought to be flaunted.<sup>64</sup> But even an honest-minded inquiry into such matters can lead to the corruption of the nomoi and can lead to the demand for innovation. For if one sees that the nomoi have inadequacies one is naturally lead to think that one can do better.

Plato shows in the *Rep.* that discourse must be controlled and what must be instilled is fidelity to a set of doxai. In the *Laws* Plato thinks that the doxai should be a logos. He also argues that some education should be given to citizens. However they never learn more than a complex set of doxai. They are always subject to corruption by argument. This is why one must establish controls on the sorts of logoi heard by

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<sup>64</sup> Both Plato and Aristotle diagnose as a problem with democracy the fact that the laws were corrupted by demagogues.

citizens.<sup>65</sup> In the *Laws* one needs nomophulakes who are educated in philosophy and have ultimate authority over the laws because of limitations on the education provided by the lawcode. Aristotle establishes an account of technê which shows that a law-code can impart judgment to citizens. Aristotle shows that the lawcode can preserve itself because it educates officials and citizens so that they can make decisions about the lawcode. It is plausible—though Aristotle does not discuss the issue—that in Aristotle one would not require the sorts of restrictions on speech discussed by Plato. In Aristotle the main restriction on argument about nomoi has to do with the nature of argument and with the way in which such nomoi, and practical issues generally, are thought of.<sup>66</sup>

#### *Nomophulakê and preserving basic values*

In the *Rep.* like in the *Laws* Plato has in mind nomoi which are the basic principles rules and values of the polis. It is in this context that the question of nomothetikê and nomophulakê should be read in Aristotle too. The question of nomothetikê and nomophulakê in Plato and Aristotle is, therefore, a very broad question. How does one preserve the principles and values of the polis? These principles and values are pervasive. They include private and not just public ones. This is why Aristotle says that the nomoi and nomima of the polis specify action in

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<sup>65</sup> For example, Plato thinks that it is important to control discussion of the law, especially among the young (634d-e). Detienne<sup>100</sup> notes, for example that Plato's lawgiver 'devises the astonishing project of domineering over rumour, of organising its orientation, and making it circulate via a thousand channels. He will leave no stone unturned so that the community may express constantly and in the most useful way "one and the same voice throughout its existence, by means of its chants [ôidai], its tales [muthoi] and its discourse' [logoi] (664a).

<sup>66</sup> The passages on to epieikes and the passages on officials suggest that citizens and officials will deviate from the laws when necessary. The proviso is that this has to be such that it can be explained in terms of the common principles. The deviation must be weighed against a logos explaining it in terms of the principles.

accordance with all the virtues and that the lawful individual has complete virtue. He has in mind an art which controls and determines all such values.<sup>67</sup>

*Rhetoric and the doxai of the majority*

Plato is critical of rhetoric because it does nothing more than give persuasive arguments which do not attempt to distinguish good and bad or give an account of virtue but come up with speeches which are persuasive and reliant on the opinions of the audience. At *Rep.* 493b he says that the private teachers who are called Sophists in fact teach nothing more than the ‘opinions of the multitude which they opine when they are assembled and calls this knowledge wisdom’ [*ta tôn pollôn dogmata ha doxazousin hotan hathroisthōsi*] (493a). He compares this to the ability of a person who has learned to control a great strong beast by learning the moods and desires of the beast, how it is to be approached and touched, when and by what things it is made fierce or gentle. Such a person has acquired, by means of a tribê, a sort of skill which he can teach. But he does not know which of these ‘opinions and desires’ [*dogma...epithumia*] is honourable or base. He calls what pleases it good and what angers it bad ‘having no other logos to give of them’ (493c).<sup>68</sup>

According to Plato the standards of value of the polis are determined by public opinion and, more precisely, by the opinions of the majority in the assembly and other places of public gathering. For example, he explains that students of private teachers

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<sup>67</sup> This is not inconsistent with Athenian practise, as we will see below, in 3.2.2. In democratic Athens too the decisions of the assembly are taken to be the basic source of education and value.

<sup>68</sup> At *Phdr* 260c Plato says that the orator studies the ‘opinions of the majority’ [*doxas tous plêthous*] in order to persuade them.

have been corrupted not by these teachers but by the dêmos. They educate them and turn them into the sort of people they want (492b). 'When they crowd into the seats in the assembly or law courts or theatre or any other popular meeting place and with a great deal of noise and lack of moderation approve or disapprove of what is said or done until the place echoes with the sound of censure or praise' the young man will be so influenced by the censure and applause that he will 'affirm the same things that they do to be honourable and base and will do as they do and be such as they' (492b-c). Plato is alluding here to the fact that in democratic Athens the decisions of the assembly were thought to be important in the moral guidance of citizens and the education of the young.<sup>69</sup>

The critique of democracy and the critique of rhetoric are related. Plato says that the Sophists teach one how to discern 'the opinions of the multitude which they opine when they are together.' In both passages Plato is alluding to the fact that in a democracy the nomoi are established by agreement and that this is associated with the participation of professional rhetors in the decision-making process. This includes all nomoi. For in the democracy one is educated by means of the decisions of the Assembly.

#### *Isocrates on rhetoric and law*

Isocrates subscribes to the Athenian democratic view that the nomoi are determined by agreement. We see this at A253-55, where Isocrates tells us that we are

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<sup>69</sup> At *Apology* 24a-25d the courts and the assembly and 'every Athenian' are identified by Meletus as the 'improvers of the youth.' Ober *Mass and Elite* 160-163 examines the evidence that this was the current view of the role of the assembly and other popular institutions of Athens. An example is *Aeschines* 3.246, who argues that the decisions of the demos educate the youth of the city.

different from animals inasmuch as we have the ability to ‘persuade each other and make clear to each other whatever we wish’ and that ‘*laws concerning things just and unjust, honourable and base...* follow from this ability’. Isocrates’ view that rhetoric is sovereign is used in Isocrates not just as an argument against the idea that there can be a political epistêmê but also as an argument against the idea that rules and principles can be given priority in deliberation—i.e. against the sovereignty of law as described in Plato’s *Laws* and in Aristotle. Isocrates argues, as we saw in 3.1.2, that one ought not to give priority to a certain kind of logos—namely a logos which privileges an account of the principles. He seems also to be using this as an argument against the idea that one ought to proceed from a *fixed* account of practical affairs. Any logos is fixed and cannot anticipate what will come in the future. Therefore one ought not give an account and use this account in order to argue about particular decisions.

Isocrates’ rhetoric-based view regards not only the sort of discourse which is appropriate to politics, but also the codification of the laws and the way in which the laws should guide decision-making. Isocrates extols the virtues of the rule of law; is nostalgic about the days when the Areopagus Council was sovereign; wants to clean up the laws. However, he does not suggest, as Aristotle and Plato do, that the law-code ought to be arranged as an account. Indeed, this would be entirely inconsistent with his views on practical intellection. In Isocrates we see, in other words a particularist view of the sovereignty of law. This, as we saw in 1.2, is consistent with Athenian legislative practise. There is a particularist basis to Athenian views on the nomoi. The nomoi are open and are interpreted by the various courts. One can see in Isocrates a particularism which might be the basis for such a view. We see in Isocrates that deliberative

particularism—associated with the empeiria theory of practical education—was allied to democratic views on deliberation. The idea is that the particularist theory of deliberation—and the idea that nothing universal can be said about practical matters—can be allied to the idea that the majority is sovereign over political decisions and that justice is based on agreement. Thus, even though Athens was associated with the rule of law its law had an open texture. And it has been argued (e.g. by Ober) that this was deliberate and associated with democracy. We see here an argument about practical truth which might have been used to support this point, especially against proposals to change the lawcode in a way which tries to define principles.

Thus Aristotle is also giving an account of why one ought to arrange and codify the laws in the ways suggested by the *Laws*. Thus Aristotle's views on nomos also show why political deliberation must favour nomoi. Aristotle's theory can once again be understood in the context of a polemic between Plato and Isocrates. Aristotle's theory can be seen as a solution to a problem posed by Isocrates for Plato's theory. It shows that one ought to argue about principles and that one ought to establish a fixed logos even though there are limits on what can be said about practical matters.

### *Conclusion to 3.2*

In part 1 we saw that Aristotle's views on the lawcode appear to have some important common elements with those of Plato's views in the *Laws*. We also saw that Aristotle alludes to the *Laws* in *EN* 10.9, when he argues that the law ought to be an account—i.e. that the lawcode ought not only to give rules but to educate and give guidance for interpreting the rules. We also saw that Aristotle thinks that the law ought to be sovereign and the majority guardians of the law [nomophulakes]. Non-

philosophers who have been raised in the laws—assuming that they have the leisure for participation—are able to make judgments about the decisions of experts concerning the law. In 3.2 I examined Plato’s views on nomophulakê in the *Rep.* and the *Laws* and compare them with those of Aristotle.

In the *Rep.* Plato thinks that, central to the best polis, are the nomima which impart to citizens correct opinion [orthê doxa] through the stories and early education they receive. This is a good basis for action and for further legislation. Here Plato is exploiting the view of the *Meno* that correct opinion is as good a guide to action as knowledge. We see in the *Rep.*, however, that Plato thinks that correct opinion is not a good basis for judgments about the nomima. Epistêmê is demonstrated in the defense of correct opinion against refutation. Here the discussion of the *Phdr.* of the difference between knowledge and logopoiêtikê is relevant. Thus, in the *Rep.*, even though those without knowledge—i.e. non-philosophers—are good at action they cannot be in charge of nomophulakê. This means that they cannot have authority over the lawcode. This limitation includes restrictions on discussion of the laws.

In Aristotle, on the other hand, the lawcode is a basis for education of citizens. In 3.2 we saw that Aristotle’s views on practical intellection allow Aristotle to solve a problem associated with Plato’s proposals in the *Laws*. Plato intends, in the *Laws*, to introduce an arrangement on which the polis is governed by non-philosopher citizens educated by the lawcode. As G. Morrow shows, in *Plato’s Cretan City*, Plato adopts, in the *Laws*, some important Athenian democratic institutions, such as the participation of citizens in electing and scrutinizing officials and in making decisions on some important issues in citizens’ assemblies. In doing so he departs from his views in the *Rep.*

However, Plato retains, in the *Laws*, the institution of Nocturnal Council (951dff; 960dff) whose role is that of ‘preserving the laws’ [*sotêria tôn nomôn*] (960d).<sup>70</sup> He is required to do this for the same reasons that he is required to do it in the *Rep*. Aristotle, on the other hand, can accept that the majority can be sovereign over the law because of his views on practical intellection.

In 3.2 I also showed that Isocrates uses his critique of Plato’s theory-based account of practical intellection to support the Athenian procedural approach to law. Aristotle’s theory of practical intellection allows him to say that one ought to spell out the principles of the lawcode and give them privilege in the interpretation of the law—which is different from the Athenian, procedural approach to the law—even though no universally true claims are possible on practical issues.

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<sup>70</sup> Morrow minimizes the importance of the Nocturnal Council. It is true that Plato seems to suggest that non-philosophers educated by the lawcode would be sovereign even over the laws. At 770a, for example, he says that the law-guardians—who are not members of the nocturnal council—will be law-givers. And he says at 772b that citizens will vote on changes to the lawcode. However, it is also true that he attributes the role of preserving the laws to the Nocturnal Council—indeed, the preservation of the laws is its primary function—and that he requires that its members be educated in philosophy. In other words, with respect to the problem of preserving the laws Plato has the same views—when he discusses the Nocturnal Council, at any rate—in the *Laws* that he has in the *Rep*. We find no such tension in Aristotle because he can, given his views on practical intellection, consistently hold that the majority of citizens are guardians of the law.

## DISSERTATION CONCLUSIONS

The aim of this dissertation was three-fold: (1) to examine Aristotle's views on what a lawcode ought to look like and what role it ought to have in political deliberation; (2) to explain these views in terms of the broader issue of Aristotle's views on practical intellection, education and deliberation; (3) to examine Aristotle's views on practical intellection and on the lawcode in the context of two rival theories which influenced these views.

In part 1 I argued that Aristotle thinks that the lawcode ought to be a text which provides extensive guidance to citizens and officials; which specifies rules which guide citizens in their actions and guides officials in their deliberations; and which gives an explanation of these rules so that citizens and officials can make decisions which cannot be made by applying the rules of the lawcode. Aristotle's views on the lawcode were shown to be similar in important respects to the lawcode described in Plato's *Laws* and were contrasted with the procedural character of Athenian law in Aristotle's day. It was also argued that Aristotle's claim, in *Pol.* 3, that the majority of citizens will be in charge of 'guarding the law' [*nomophulakê*] ought to be interpreted to mean that the majority will be guardian of the law in the deliberative and judicial parts of the constitution described in *Pol.* 4. Here I further explored the view, suggested in *Pol.* 3, that *politikê* is conducted 'by the book'. This view expresses the idea that, when an expert deviates from the rules of the lawcode, when the law is changed or a new law is introduced this must make sense to an assembly of non-experts given the principles encoded in the law.

In part 2 my aim was to examine relevant aspects of Aristotle's views on

practical deliberation and education in order to understand what sort of education is provided by the lawcode and how the lawcode can be used by non-experts as a guide to the evaluation of the decisions of experts. I wanted to explain how it is that an expert can show, to an assembly of non-experts, that some decision follows from some set of principles and to consider what sort of argument might make this possible, given Aristotle's views on practical deliberation. 2.1 shows that Aristotle cannot mean that the decisions would be made plain (i) in the way that conclusions are made plain by argument in the epistêmai; or (ii) by appeal to a logos—definitional or otherwise—which one can use mechanically to distinguish the best deliberative option.

In 2.2 I argued that, even though practical intellection is not epistêmê and cannot simply be a matter of applying rules and principles, nevertheless one can argue that some conclusion follows from principles in the practical skills as well. In 2.2 I examined Aristotle's views on technê. Aristotle thinks that technê, like epistêmê, involves theory and explanation. One teaches a skill by describing typical strategies which work, and by explaining why they work in terms of the principles of the art. The principles of the art may borrow from strictly theoretical science. Technê involves something like apodeixis. However, the sort of explanation that one can give in the technai does not have the same status as do apodeixeis in the epistêmai. In particular, the judgment involved in determining that some deliberative option is what ought to be done is based on aisthêsis, which is acquired with empeiria. It is possible to get results without being able to give such explanations. For it is possible to get results by empeiria. However, Aristotle thinks that technê in the true sense of the word is possessed only by someone who possesses and is able to give these sorts of

explanations.

The results of 2.2 showed us that Aristotle does have an account of practical intellection according to which one can argue from principles and show that one deliberative option follows from the principles more so than another. This also allowed us to say more about political deliberation ‘by the book’. The art of politics is different from other arts in two respects. (1) First, it is much more important in politics than in other arts that the principles be consulted and that deliberative decisions be shown to follow from the principles. (This will not necessarily be done very closely in every case. In cases in which a decision is simply the result of a straightforward application of a rule, the decision clearly follows from the principles since the rule—assuming that it is properly formulated—follows from the principles.) In other arts too a person with technê rather than mere empeiria will consult the principles and rules of the art and explain his actions to himself. However, the requirement that one be able to come up with an explanation of why some deliberative decision follows from the principles will not have the same importance that it does in politics. The only analogy that Aristotle comes up with in other arts is an unusual and artificial one—that of a patient who is being treated by a physician who stands to profit from the patient’s demise.

(2) The art of politics must be practised by submitting decisions to an assembly of non-experts. This second respect is unusual but not unique in the arts. In house-building and drama too non-experts evaluates the work of experts. In politics, like in any domain of practical intellection, an argument for some deliberative option will not be such that someone who has an intuition of the principles of this domain will see that the deliberative option follows necessarily from the principles. For any deliberative

option one will be able to come up with plausible arguments for alternative deliberative options. However, someone who has acquired experience in the technê of politics—i.e. someone who has lived and deliberated under the right sort of lawcode—will be able to evaluate arguments in politics and choose the best deliberative option among some list by evaluating arguments for these deliberative options. Furthermore, Aristotle thinks that an arrangement on which an assembly of citizens evaluates the decisions and proposals of experts by evaluating, for each such decision and proposal, the argument that it follows from the principles, is superior to an arrangement on which experts are given full control of political decisions.

In part 3 I examined Aristotle's views on practical intellection and on the lawcode in context. In 3.1.1 I examined Plato's theory-based account of education and deliberation in the practical skills. I argued that I contrasted this with Aristotle's views on phronêsis. In 3.1.2 I showed that Isocrates has a similar critique, directed against Plato, of the epistêmê-based account of practical intellection. However, Isocrates establishes, based on this critique, a very different conception of practical education and deliberation. Aristotle combines the two accounts—the emphasis of the one on explanation and the emphasis of the other on practical principles that one applies. Aristotle has a theory of practical intellection which, like Plato's is theory-based; however it is not susceptible to the sort of critique made by Isocrates. Indeed, it is likely to be an adjustment of the theory-based account based on such criticisms.

In 3.2 I examined, first of all, Plato's views on nomophulakê in the *Rep.* and the *Laws*. Plato thinks that central to the best polis are nomima which impart to citizens correct opinion [orthê doxa] through the stories and early education they receive. This is

a good basis for action and for further legislation. However, Plato thinks that correct opinion is not a good basis for judgments about the nomima. Someone is able to preserve the nomima only if he or she has epistêmê. Thus in the *Rep.* even though the education offered by the lawcode is a good basis for action and political activity, it is not a good basis for nomophulakê. Non-philosophers cannot have authority over the lawcode. This limitation includes restrictions on discussion of the laws. Plato intends, in the *Laws*, to introduce an arrangement on which the polis is governed by non-philosopher citizens educated by the lawcode. However, Plato retains the institution of Nocturnal Council whose role is that of ‘preserving the laws’. And he bases this arrangement on the same understanding of practical intellection that one finds in the *Rep.* Aristotle, on the other hand, can accept that the majority can be sovereign over the law because of his views on practical intellection. In Aristotle the lawcode is a sufficient basis for the education of citizens in nomothetikê.

In 3.2 I also showed that Isocrates uses his critique of Plato’s theory-based account of practical intellection to support the Athenian approach to law. Aristotle’s theory of practical intellection allows him to say that one ought to spell out the principles of the lawcode and privilege them in the interpretation of the law—which is different from the Athenian, procedural approach to the law—even though no universally true claims are possible on practical issues.

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