

# The Role of the Law in the Classification of Democratic Constitutions in Aristotle, *Pol.* IV

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## Summary

The author aims to show: (a) that the equality that characterizes ideal democracy (the “first” democracy) aims to ensure equal protection for the minority of the rich and the majority of the poor; (b) that equality thus understood is the fundamental *nomos* that every democratic regime must respect if it does not want to risk ruin; (c) that “extreme” democracy, led by demagogues, does not give rise to institutional changes but introduces, in particular through the uncontrolled use of decrees of general content, a political practice that finds its historical foundation in the Athens of the fourth century B. C.

## 1. The *Nomos* of the *prôtê dêmokratia*

In the *Politics*, the investigation of democracy is distributed in numerous sections, which are often difficult to put in order and reduce to a systematic treatment: I refer here in particular to book IV,4 and 6 and to the first part of book VI.<sup>1</sup> As is known, the classification of democratic regimes in *Pol.* IV,4 and IV,6 is based on two concomitant criteria: extension of the *politeuma* and compliance / non-compliance with the law (or laws). It is particularly this second criterion that I will consider here. My aim is to show that the *nomos* that characterizes the “first democracy” (*Pol.* IV,1291b31–34), that is, the rule that the majority of the poor must not override the minority of the rich, is the fundamental rule that all democratic regimes must obey if they do not want to perish. The „first democracy“ is called democracy *kata to ison*. In what sense, then, must we understand the notion of equality and how does it relate to the notion of freedom, which (not only for Aristotle) is

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1 However, it would be necessary to take into account all the other passages of the *Politics* which explicitly or implicitly concern democratic regimes. In the rest of the article I will limit myself to mentioning those that seem most pertinent to the perspective adopted here.

the essential characteristic of democracy? In my opinion equality should not be understood here in the sense that all citizens, be they poor or rich, must have an equal right to exercise power, with particular reference to the voting system in the assembly.<sup>2</sup> In a democracy, in contrast to what happens to the poor in the oligarchies, the right to vote is not denied to the rich, so that no one is excluded from the exercise of political rights (except for any tenuous census limitations for access to offices, such as those provided in the second *eidos* of democracy: *Pol.* IV,1291b39–41). Here equality must rather refer to the relations between the two groups that, according to Aristotle, face each other within the regime: the rich and the poor.<sup>3</sup> The problem arises from the fact that, in a democracy, political decisions are taken by a majority. How then will it be possible to guarantee the equal exercise of power between rich and poor, if the majority principle ensures the predominance of the poor, who are usually more numerous than the rich, in the assembly? This is the great *aporia* that makes it difficult to build a balanced and stable model of democracy.

Aristotle proposes two possible solutions. One is to introduce a voting system based on the weighting of the voters' assets (*Pol.* VI,1318a33 ff.); but it is a purely theoretical solution, to which Aristotle no longer returns in the rest of the work. The other, as can be inferred from *Pol.* IV,1292a4 ff., consists in recommending compliance with the law of non-predominance (*hyperochē*) of the majority of the poor in collective deliberations, while maintaining in force the usual functioning of democratic political bodies. This second solution also affects the profile of freedom. Indeed, Aristotle recalls that an (evidently) authoritative trend of thought believes that it is precisely freedom, here to be understood as "freedom to do what one wants" (*Pol.*

2 How do they mean e.g. R. Mulgan, *Aristotle's Analysis of Oligarchy and Democracy*, in: D. Keyt – F. D. Miller Jr. (eds.), *A Companion to Aristotle's Politics*, Cambridge (Mass.) – Oxford 1991, p. 318: "political equality for all"; E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*, Berlin 1996, p. 302: "Gleichheit der Rechte von Armen und Reichen"; L. Bertelli, *Il cittadino in Aristotele: criteri di inclusione/esclusione*, in: F. de Luise (ed.), *Cittadinanza. Inclusi e esclusi tra gli antichi e i moderni*, Trento 2018, p. 147: "sia i ricchi sia i poveri partecipano sul piede di eguaglianza alla *politeia*"; P. Pellegrin, *L'Excellence menacée: Sur la philosophie politique d'Aristote*, Paris 2017, p. 288: "partagent de la même manière le pouvoir politique".

3 So also P. Pellegrin, *L'Excellence menacée: Sur la philosophie politique d'Aristote*, p. 288: "égalité entre classes et non entre individus". Therefore, "de ce fait, cette démocratie n'en est pas une, puisque le peuple y partage le pouvoir à égalité avec les gens aisés". However Pellegrin finds the conclusion of the passage problematic (IV,1291b37–38) where, according to him, "Aristote << redémocratise >> les choses, en rappelant que le principe de base de la démocratie, c'est la souveraineté populaire" (p. 289). In my opinion, the incongruity pointed out by Pellegrin is resolved if the equality that characterizes the "first" democracy is understood not as equality in the right to exercise power, but as a guarantee of equal protection of the interests of the rich and the poor, given that we are still in a democracy. See the solution proposed in *Pol.* VI,1318a27 ff., on which *infra*.

V,1310a31–32), that characterizes democracy (*Pol. IV,1291b34 ff.*). Aristotle shares this widespread opinion,<sup>4</sup> but he further specifies it by arguing that there can be no authentic freedom unless it guarantees to all citizens that particular equality that derives from the *nomos* of this particular democracy (ὁ νόμος ὁ τῆς τοιαύτης δημοκρατίας). And this equality will be realized only if what we could define as the “constitutional guarantees” of personal and property rights are implemented.<sup>5</sup> It is no coincidence that Aristotle emphasizes that living according to the constitution does not mean being a slave (*Pol. 1310a34–36*). The law in question is in a certain sense postulated (see *Pol. IV,1292b28: ton nomon epistêsantes*) without specifying who the author is. In *Pol. IV,1292b28* its creation is attributed to the class of the owners of a medium-sized patrimony, that is, the class that predominates in the second *eidos* of democracy discussed in *Pol. IV,4*; but whether the law is the work of an enlightened legislator or of a legislating assembly wisely guided by the “best” is not known. Now, as I said at the beginning, what interests me here is to point out that the principle of non-abuse of the rich at the hands of the poor majority (i.e. the *dêmos*) is defined as the *nomos* that characterizes the “first” democracy (1291b31–34). I agree, therefore, with the scholars who see in the *prôtê dêmokratia* the ideal model of democracy, with which all other *eidê* must be compared (this seems to me to be confirmed by the fact that the only characteristic that Aristotle attributes to the *prôtê dêmokratia*

4 See e.g. *Pol. IV,1294a11* and *VI,1317b2–11*.

5 It seems to me that most of the recent commentators on the *Politics* miss the dialectical relationship that *Pol. IV,1291b34–37* establishes between freedom and equality in democracy, and translate the passage by putting them on the same level. R. Laurenti, *Aristotele, Politica*, Bari 2007: “Poiché, certo, se la libertà esiste soprattutto nella democrazia, come suppongono taluni, e lo stesso l’uguaglianza, si realizzeranno soprattutto qualora tutti senza esclusione partecipino in egual modo al governo”; E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*: “Denn, wenn, wie einige glauben, freie Geburt am ehesten in der Demokratie zur Geltung kommt und zusätzlich Gleichheit, dann dürften diese (Ziele) am ehesten verwirklicht werden, wenn alle möglichst in gleichem Umfang an der Verfassung teilhaben”; Guagliumi (in L. Bertelli – M. Moggi [eds.], *Aristotele, La politica, Libro IV*, Roma 2014): “Se infatti la libertà esiste soprattutto in democrazia, come sostengono alcuni, e anche l’uguaglianza, esse si realizzerrebbero in massimo grado se tutti partecipassero in egual misura al governo”; P. Pellegrin, *L’Excellence menacée: Sur la philosophie politique d’Aristote*: “Car, si c’est en démocratie que se trouve principalement, comme le soutiennent certains, la liberté ainsi que l’égalité, il en sera ainsi principalement si tous partagent principalement de la même manière le pouvoir politique” (p. 343 n. 12). On the other hand, the translations of Aubonnet and Terrel seem closer to the meaning of the text: J. Aubonnet, *Aristote, Politique I. III–IV*, Paris 1989 (1971): “Car, s’il est vrai que c’est en démocratie que la liberté se trouve au maximum – comme certains l’admettent-, de même aussi l’égalité doit s’y trouver au maximum, si tous les citoyens sans aucune exception participent au maximum au gouvernement, et de façon pareille”; J. Terrel, *La Politique d’Aristote. La démocratie à l’épreuve de la division sociale*, Paris 2015: “Car si la liberté la plus grande se trouve en démocratie, comme certains le soutiennent, l’égalité la plus grande s’y trouve aussi, quand tous ont part en commun au régime de la manière la plus semblable possible” (p. 202).

consists precisely in the application of the majority principle). The *nomos* of which Aristotle speaks here must therefore be understood as the fundamental law, the constitutional principle (the *Grundnorm*, in Kelsenian terms), which must govern every democracy that deserves the status of *politeia* (*Pol. IV,1292a30 ff.*).<sup>6</sup> If we accept the interpretation I proposed of the *nomos* enunciated in *Pol. IV,1291b31–34*, we can better understand what *archein ton nomon* means in the regimes marked with n. 3 and n. 4 (*Pol. IV,1291b39–1292a4*). Modern commentators do not care to investigate the meaning of this *nomos*: it is generally stated that in these *eidê* of democracy, the law is sovereign. I believe instead that Aristotle wants to say more precisely that, in the regimes n. 3 and n. 4 (but in reality also in n. 2), the law of equality is respected, which, as we saw in *Pol. IV,1291b31–33*, protects the minority of the rich against vexatious measures eventually approved by the poor majority who are in power. It is therefore a description of democratic regimes in the light of an evaluation criterion: the greater or lesser respect for equality understood in the sense established by the law of the “first democracy”.

## 2. *Psêphismata* and *nomoi* in the extreme democracy

To support the interpretation that I have proposed, it is now appropriate to investigate the role that this law plays in defining the democratic regimes in which it should be applied. From the comparison between *Pol. IV,4* and *IV,6* it is clear that Aristotle is not so much interested in specifying the content of the law or laws in question,<sup>7</sup> as in highlighting the conditions which ensure or which, respectively, threaten the safeguarding and effectiveness of the regime. The determining factor is considered by Aristotle to be the relationship between compliance with the law and the role of the assembly in the various types of democracy. More precisely, Aristotle formulates a sort of theorem: the less extensive and less frequent is the participation of citizens in the assembly, the more firm and widespread the compliance with the laws will be. If a preponderant majority of poor people go to the assembly, for Aristotle this inevitably leads to the violation, if not the elimination, of the law that ensures equality between rich and poor in the sense we have indicated above. It is not easy to understand the reasons behind such a “theo-

6 Contra R. Zoepffel, *Aristoteles und die Demagogen*, in: *Chiron*, 4, 1974, p. 70 n. 6, which, while correctly identifying in the *prôtê dêmokratia* “das Grundprinzip, oder Ideal dieses Verfassungstyps”, argues without justification that “diese erste Urform spielt in den weiteren Überlegungen keine Rolle mehr”.

7 Aristotle alternates between the singular and the plural. In my opinion he always refers to the principle which defends the rich against the predominance of the poor, a principle which, from time to time, depending on the context, may manifest itself in one or more concrete laws.

rem”: it almost seems that, in Aristotle’s thought, the normal functioning of democracy, based by definition on the will of the majority, inevitably causes the ruin of the regime itself.<sup>8</sup> In order to try to explain this *aporia*, it is convenient first of all to focus our attention on the composition and role of the assembly in the various kinds of democracy identified in the *Politics*. Why did Aristotle focus his attention on the assembly rather than on other constitutional bodies, such as the people’s court or the public offices (*archai*)? Because, as Aristotle himself (*Pol. IV,1298a3–7*) observes, the assembly is the body that holds legislative power: in democracy, therefore, it is the place where authentically (and, for Aristotle, unfortunately) democratic laws can be created, that is, laws aimed at favoring the interests of poor to the detriment and at the expense of the rich. And since decisions in the assembly are taken by majority vote, the orientation of the legislative power depends on the composition of the assembly. Here a sort of socio-economic determinism emerges in Aristotle. In fact, participation in the assembly does not depend on the subjective choice of the individual, but on the objective socio-economic conditions that determine the availability of time, that is, the necessary *scholê* to devote oneself to public affairs.<sup>9</sup> Those who have to work to survive, even if they reach a certain amount of wealth,<sup>10</sup> will not have much time to devote to public activity, in particular to participate in the assembly and to sit in the courts. Therefore they will participate only in the “necessary” assemblies (*Pol. IV,1292b29*)<sup>11</sup> and will often avoid performing the functions of judge (*Pol. IV,1293a9*). In the Aristotelian analysis of democratic political life (we are obviously talking about a direct democracy) the generic wealth / poverty opposition is therefore projected into the dimension of work, on which depends the need to work or its absence, and the consequent availability or unavailability of free time (*Pol. IV,1292b27–28*).

So the rich (*euporoi*) would be those who, having no need to work, have free time (*scholê*); the poor (*aporoi*) those who, being forced to work to live,

8 Scholars generally tend to take note of Aristotle’s assertion without attempting to investigate the reasons.

9 Cf. G. E. M. De Ste. Croix, *The Class Struggle in the Ancient Greek World from the Archaic Age to the Arab Conquest*, Ithaca – New York 1961, p. 71: however, the identification of the rich with landowners and the poor with non-owners does not seem to me to correspond to the more flexible categories used by Aristotle.

10 As we have already observed, Aristotle notes that in certain regimes, although they are democratic, a patrimonial threshold for the exercise of political rights is established by law. He acknowledges that limiting the number of political rights holders is an oligarchic measure, but realistically concludes that, in the absence of public stipends, those below that threshold would have no free time available (presumably because they are full-time looking for a way to survive): *Pol. IV,1292b31–33*.

11 It can be assumed that, if Aristotle is thinking in particular of Athens, he is referring to the “main” assembly (*kyria*), mentioned in *Ath. pol.* 43,4.

do not have free time. But, reasoning in this way, Aristotle discovers that the predominance of the majority of the poor, the keystone of democracy, would end up being overthrown. If, in fact, participation in democratic bodies (in particular in the assembly) requires availability of time, it would be the rich, who do not need to work, who would constitute the majority. Actually Aristotle himself knows that the connection between wealth / no need to work / availability of free time / propensity to participate in political life cannot be taken as an incontrovertible axiom. A passage like *Pol. VII,1328a27 ff.* is revealing. Here Aristotle observes that the *euporoi*, although they do not have to work to live and therefore have a lot of free time, do not want to neglect their business to participate in public life (here in particular to perform the function of judge). On the other hand, that the opposition between those who do not work and those who do work does not exactly correspond to the opposition between rich and poor is well known to Aristotle himself: even the oligarchy admits rich artisans to citizenship, consequently to political participation (*Pol. III,1278a21–25*). In any case, any marginal inconsistencies due to the possible choices of individuals which go against the general current of the group to which they belong do not undermine the basic scheme: the opposition between those who work and those who do not work provides Aristotle with the tools to build his typology of kinds of democracy (which is meant to be, as often in *Politics*, both descriptive and prescriptive). The standard model of democracy would make it impossible to change the numerical ratio of rich to poor in favor of the former. But Aristotle observes (and at the same time suggests) that the model can (and, from his point of view, must) be modified. The workers, even if they can be counted among the relatively wealthy subjects, like the peasants (*to georgikon: Pol. IV,1292b25*), tend to limit their participation in political life to what is strictly necessary. But even those who don't work, not because they are rich but because they are homeless and unemployed, will be too busy putting together lunch and dinner to have time to take care of public affairs. Thus the political space controlled by the *beltiones* could turn out to be much larger than one would expect in a democracy, ending up as an effective counterweight to the overwhelming numerical power of the poor.

The solution to the paradox is the introduction of compensation for those who take an active part in political life. It is therefore the *misthos*, paid at the beginning to the judges, and, since the 4<sup>th</sup> century B. C., to citizens participating in the assembly, that breaks the coherence of the criterion of political participation based on work and time availability. In fact, subjects who would not have free time (as they would have to work to live) now have the opportunity to participate in political life as much as, and even more than,

those who do not have to work to live (*Pol.* IV,1293a6).<sup>12</sup> Aristotle is therefore strongly opposed to the payment of *misthos*, not only, as it is logical to expect, when the necessary money is extorted from the rich in an illegitimate way (*Pol.* VI,1320a17 ff.), but also when it comes from public revenue (*Pol.* VI,1320a29 ff.). In fact, it is consistent with democratic ideology and political practice to ensure that the poor do not become too poor; nevertheless, according to Aristotle, it is necessary to avoid what we would today define as welfarism (to which demagogues tend instead: *Pol.* VI,1320a29 ff.). Any surplus of public money must be distributed to the poor only to favor productive investments.<sup>13</sup> In the worst scenario the rich could be forced to pay a *misthos* to the poor, but only to attend the “necessary” assemblies: the reference here to that kind of democratic regime that Aristotle had already praised in *Pol.* IV,1292b29, where the law is obeyed, is evident.

We have so far ascertained that, for Aristotle, it is the *misthos* that ensures the numerical prevalence of the poor in the assembly (and in court). We must focus now on the ways in which the predominance of the poor to the detriment of the rich is achieved in the extreme democracy.<sup>14</sup> The criticism of the decisions of the assembly under the impulse of the demagogues is conducted by Aristotle on both the substantial and the formal level.<sup>15</sup> To illustrate the criticism on a substantial level we must return to *Pol.* III,10 (1281a13 ff.). Aristotle begins by raising the famous question: who must be *kyrios* in the city?<sup>16</sup> The answer, as is known, varies according to the regime in power; but everywhere the holders of power tend to use it against those who are excluded. The first example that Aristotle proposes concerns precisely the degenerate democracy described in *Pol.* IV,1292a4 ff. If the poor, being the majority, distribute the goods of the rich among themselves, do they not commit something *adikon*? The hypothetical interlocutor replies

12 As highlighted by S. Podes, *Bezahlung für politische Partizipation im klassischen Athen: die Diäten als sozialstaatliche Institution?*, in: *Ancient Society*, 26, 1995, p. 15, from this point of view the *misthos* (with the exception of *theorikon*) can be considered a kind of compensation.

13 *Pol.* VI,1320a36 ff. This will lead them to reduce their participation in the assembly, as they are mainly dedicated to looking after their own business. It is natural to link this productive use of public money with the intention of expanding the class of the *mesoi*, a guarantee, according to Aristotle, of the implementation of a stable and balanced democratic regime.

14 To argue that in extreme democracy “the masses hold absolute control and, consequently, the rich do not participate in the most important institutions of government – the assembly and courts”, as I. Jordović, *Aristotle on Extreme Tyranny and Extreme Democracy*, in: *Historia*, 60, 2011, p. 40, writes, can give rise to misunderstandings. The passages he cites attest to a certain reluctance on the part of the rich, not their exclusion from the organs in question.

15 I believe it is futile to try to attribute a precise identity to the demagogues, as R. Zoepffel, *Aristoteles und die Demagogen*, tried to do. In extreme democracy, as Aristotle presents it, they simply carry out the function of spokespersons for the aversion of the poor to the rich.

16 Cf. S. Gastaldi, *A chi deve appartenere l'autorità suprema nella città? Il problema del kyrios nella Politica di Aristotele*, in: *Teoria politica*, N. S., 8, 2018, pp. 63–79.



maliciously that these measures are legally irreproachable, since they are approved by the majority. And since the laws are adapted to the nature and the purpose of the regime that enacts them (*Pol.* III,1281a36), they must also be considered just measures (what the laws establish must therefore be right). The reply, which seems to express the point of view of Aristotle himself, highlights the contrast between law and justice, which will later find its echo in the famous Latin formulation *summum ius summa iniuria*.<sup>17</sup> It will be noted, however, that to the argument based on the effectiveness of the formally valid norm Aristotle is not able to oppose instruments such as the Athenian *graphê paranomon* and *graphê nomon mê epitêdeion theinai* against measures contrary to the law. Instead, his criticism is based on the factual consequences that are likely to be expected from measures of that kind: the *dikaion*<sup>18</sup> cannot by definition cause its own ruin. Compliance with legal forms cannot therefore hide the unjust content of the measures that harass the rich. Only the tyrant, with whom extreme democracy is compared,<sup>19</sup> can behave in a way that is contrary to the laws, precisely because the tyrannical regime disregards the observance of any law other than the will of the tyrant himself. It must therefore be very clear to the legislator that there is a limit to the adaptation of laws to the interests of those who hold power (i.e. the rich in oligarchies and the poor in democracies): care must be taken not to go beyond the point where the dominated party considers oppression intolerable and blows up what we would call the social contract. Therefore, the laws that must regulate both oligarchic and democratic regimes are those that ensure the survival of the respective regimes (*Pol.* VI,1320a1–4). And it is precisely those laws that, as Aristotle notes in his classification of both democracy (*Pol.* IV,4) and oligarchy (*Pol.* IV,5), are in force in those first regimes that achieve a degree of relative stability by keeping the centrifugal thrusts of opposing interests in balance.

In *Pol.* III,10 Aristotle, as we have seen, criticizes extreme democracy with regard to the consequences of the apparently formally correct measures which it in fact implements out of, hatred for the rich. In *Pol.* IV,4 he goes further and also questions the formal validity of those measures (I refer in particular to *Pol.* IV,1292a32–37). In *Pol.* IV,1292a32 we read: “where laws (*nomoi*) do not command, there is no *politeia*; in fact, the laws must regulate everything”. And in *Pol.* IV,1292a35–37: “a constitution in which everything is regulated by decrees is not a democracy because a decree cannot have

17 Cicero, *De off.* I,10. But see already the Aristotelian criticism of *akribodikaioi* in *Eth. Nic.* 1138a1.

18 *Dikaion* is to be understood here as both law and justice proper to every regime: cf. *Pol.* 1309a37–38.

19 Aristotle, *Pol.* 1281a22–24 anticipating *Pol.* 1292a15 ff.



a general scope”.<sup>20</sup> These two statements, which are logically linked within the same argument, presuppose that Aristotle distinguishes *nomoi* from *psêphismata*. And the criterion by which they are distinguished inevitably refers back to Athens in the 4th century (while we cannot say whether a similar distinction was in force in other poleis too): *psêphismata* have a particular content and are approved by the assembly, while *nomoi* have a general content and are passed by the *nomothetai*. However, the logical link between the two statements quoted above is not immediately clear. We would expect Aristotle to present the argument which did not emerge in *Pol. III,10*, that is, that the vexatious measures against the rich, formally correct or not, are contrary to the laws in force. We would therefore expect him to say: the laws do not command because the assembly approves decrees contrary to the laws and these decrees remain valid (it is not by chance, as we noted, that the *graphê paranomon* is not mentioned in the *Politics*). Instead, criticism of the legislative production of extreme democracy is conducted, at least in appearance, only in terms of the form of the measures in question: demagogues get approval for *psêphismata* of general content, while *psêphismata* can only have a particular content.<sup>21</sup> Now, there can be no doubt that demagogues also approve *psêphismata* whose particular content is contrary to the *nomoi*. We must therefore think that, when Aristotle just before (*Pol. IV,1292a16*) writes that the *dêmos* no longer wants to be commanded by law, he refers to *psêphismata* of both types, i.e. of both particular and general content. However, Aristotle does not mention *psêphismata* of particular content, perhaps because they could be considered contingent phenomena, which do not threaten the existence and the stability of the *nomoi*.<sup>22</sup> According to Aristotle it is therefore the *psêphismata* of general content that cause the

20 Aristotle, *Pol. 1292a30–37*: εὐλόγως δὲ ἂν δόξειεν ἐπιτιμᾶν ὁ φάσκων τὴν τοιαύτην εἶναι δημοκρατίαν οὐ πολιτείαν. ὅπου γὰρ μὴ νόμοι ἄρχουσιν, οὐκ ἔστι πολιτεία. δεῖ γὰρ τὸν μὲν νόμον ἄρχειν πάντων τῶν δὲ καθ’ ἕκαστα τὰς ἀρχάς, καὶ ταύτην πολιτείαν κρίνειν. ὥστ’ εἴπερ ἔστι δημοκρατία μία τῶν πολιτειῶν, φανερόν ὡς ἢ τοιαύτη κατάστασις, ἐν ἣ ψηφισμασι πάντα διοικεῖται, οὐδὲ δημοκρατία κυρίως: οὐθὲν γὰρ ἐνδέχεται ψηφισμα εἶναι καθόλου.

21 As it is adequately clarified in *Eth. Nic. V,1134b18–24, 1137b13 and 32, 1141b21–28*

22 It is worth briefly mentioning here the interpretation proposed by F. Quass, *Nomos und Psephisma. Untersuchungen zum griechischen Staatsrecht*, München 1971, p. 35–36: extreme democracy is characterised by the fact that “der souveräne Volkswille in allen Angelegenheiten des Staates nur noch von Fall zu Fall entscheidet und alles staatliches Handeln sich modern gesprochen in reiner Exekutive erschöpft; in einem so gedachten Staat werden dann folgerichtig etwa bestehende Normen ignoriert und sind damit bedeutungslos“ (with a cross-reference, p. 36 n. 41, to *Eth. Nic. VII,1152a19–23*). But Aristotle criticizes precisely the fact that demagogues have general rules approved in form of decree. The solution of individual cases is rather attributed to the authority of the public officials (*archai*) (*Pol. IV,1292a33–34*), who, however, do not take decisions through the emanation of *psêphismata*, since these are measures issued by collegial bodies on the basis of a vote.

non-application of the *nomoi* and the consequent destruction of the *politeia*. It seems that it is the issue of measures of a general content in the form of a *psêphisma* that has a subversive effect, even if their content is not contrary to the laws. Now, how can this radical criticism of the form of the normative measures taken by the assembly of extreme democracy be reconciled with the assertion that in every regime legislative production is the responsibility of the assembly (*Pol.* IV,1298a5 and *Rhet.* I,4,1359b)? It could be assumed that, in Aristotle's extremist representation of degenerate democracy, the demagogues have obliterated the Athenian distinction between the procedure for the approval of *nomoi*, entrusted, as is well known, to the *nomothetai*,<sup>23</sup> and the procedure for the approval of *psêphismata*, which is the competence of the assembly. If this were the case, it would explain why the same measures are named *nomoi* in *Pol.* III,10 and *psêphismata* in *Pol.* IV,4. And to consider the measures against the rich, approved by the majority of the poor in the assembly (*Pol.* III,1281a14 ff.),<sup>24</sup> formally valid would be justified. In this case we would return to the situation that characterized the enactment of laws in Athens in the 5th century, that is, before the creation of the *nomothetai*. However, one can object to this explanation that Aristotle could not say that a regime in which normative measures are issued in the form of *psêphismata* is not a *politeia* (*Pol.* IV,1292a30–32). A regime in which one legislates only through *psêphismata* is not a *politeia*, because only the laws (in particular the law of the “first democracy”) can ensure the internal balance necessary for the survival of every democracy. *Psêphismata* have by definition a particular content; which means they are often approved for and in the interest of an individual. In our case they are approved in the interest of the *dêmos*, which is comparable to a single individual, that is, to the tyrant (*Pol.* IV,1292a15 ff.). For this reason the *psêphismata*, even if they aim at the interest of a group, that is of the *dêmos*, are equated with the *epitagmata* of the tyrant, which are made exclusively in his interest. In one of his latest works, Vegetti had pointed out the paradox that, for Aristotle, all laws are unjust because all constitutions are deviant.<sup>25</sup> However, it can be observed that, in the *Politics*, the validity of a law is not measured on the basis of a cri-

23 Cf. M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes*, Oxford 1991, ch. 7. I do not agree with the thesis that the *nomothetai* are the same members of the assembly who deliberate in a different capacity, as supported in particular by Canevaro (cf. lastly the bibliography in M. Canevaro, *Honorary Decrees and Nomoi ep'andri: on IG II<sup>2</sup> 1 327; 355; 452*, in: L. Gagliardi – L. Pepe [eds.], *Dike. Essays on Greek Law in Honor of Alberto Maffi*, Milano 2019, pp. 71–86).

24 Here demagogues are not explicitly mentioned, but we could identify an advocate of the demagogues in the one who answers the objection (*Pol.* III,1281a16), since the situation described is exactly the same as in *Pol.* IV,4 and IV,6.

25 M. Vegetti, *I fondamenti del sapere politico. Aristotele contro Platone?*, in: *Teoria politica*, N. S., 8, 2018, pp. 23–34.

terion of absolute justice, but on the basis of its aptitude to preserve, if observed, the *politeia*. We must therefore conclude that, according to Aristotle, extreme democracy has not abrogated the distinction between *nomoi* and *psêphismata*, as we know it in 4<sup>th</sup> century Athens.<sup>26</sup> But the *psêphismata* that characterize extreme democracy are opposed both to formal rules, because they have a general content, and to substantive rules because they violate the fundamental law of the balance between the parties which ensures the survival of democratic regimes. Now, if it is true that the model of legislative production, which Aristotle thinks of when criticizing extreme democracy, is Athens in the 4<sup>th</sup> century, one could resolve the contradiction noted above, taking into account the fact that the competence to initiate the legislative procedure is in any case left to the assembly, even if it is the *nomothetai*, and not the assembly, that passes the new laws.<sup>27</sup> If we place ourselves in this perspective and reason in the terms in which Aristotle sets up his critique, we could ask ourselves why the demagogues could not make Aristotle's critique ineffective by having their general measures approved in the form of a law instead of a *psêphisma*. Given that they control moods and orient opinions and the will of the assembly (*Pol.* IV,1292a27), it would not be difficult for demagogues, respecting the rules of the Attic *nomothesia* of the 4<sup>th</sup> century, to obtain the repeal of laws that are contrary to their aims, and to have approved in the form of a *nomos* those general measures, which, according to Aristotle, they (illegally) approve in the form of a *psêphisma*. In this way they would easily escape, at least from a formal point of view, the philosopher's criticism, since Aristotle himself acknowledges that democratic laws are by definition in favor of the *dêmos* (*Pol.* III,1282b10–11). According to the logic of a purely theoretical constitutional bricolage an objection of this kind seems to me insurmountable: it is not clear why demagogues do not approve their measures in the form of *nomos* instead of *psêphisma*. An explanation must therefore be sought not in the logic of the system of classification of constitutions built by Aristotle, but on the historical level. And history, because of

26 The fact that the oppressive measures taken by the majority against the minority are called *nomoi* in *Pol.* III,1280b21, is to be explained by the fact that in this passage of Book III the discourse is valid for any type of regime: *Pol.* III,1281a17–19 reasons in fact in terms of pure majority/minority dialectic, which also applies in oligarchic regimes, where presumably there is no hierarchy between norms. In *Pol.* IV,4, instead, the model of legislative production in democracy is, as we noted, the Athenian model of the 4<sup>th</sup> century, based on the distinction between *nomos* and *psêphisma*. But this does not exclude the possibility that even in extreme democracy laws are passed precisely in order to limit the excessive power of the majority: cf. *Pol.* VI,1319b37–1320a4, which applies above all to extreme regimes, both democratic and oligarchic.

27 M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes*, chap. 7; M. Canevaro, *Athenian Constitutionalism: nomothesia and the graphe nomon me epitedeion theinai*, in: G. Thür – U. Yiftach – R. Zelnick-Abramovitz (eds.), *Symposion 2017*, Wien 2018, pp. 65–98.

the very way in which, as we have seen, Aristotle carries out his criticism of extreme democracy, can only be the history of Athens.

As is well known, it is much debated whether the entire description of democratic regimes in *Pol.* IV,4, IV,6 and VI,4 is to be related to the historical reality of Athens.<sup>28</sup> The prevailing opinion does not exclude the possibility that Aristotle keeps the Athenian experience in mind, even if we cannot speak of a direct reference.<sup>29</sup> In my opinion, the tendency to resort to *psêphismata* as a tool to legislate in Athens is attested by unequivocal sources. First of all, a mention must be made of the trial of the Arginusae (*Xen. Hell.* 1,7), to which many commentators of *Politics* have considered that Aristotle alludes without explicitly mentioning it.<sup>30</sup> At the time of the Arginusae trial the 4<sup>th</sup> century *nomothesia* procedure was not yet in force, but to judge the *stratêgoi* through a summary and collective trial, it would have been necessary, in any case, to preliminarily repeal the law which provided for an individual trial. By choosing this way, however, the accusers would have diluted the rhetorical effect that allowed them to obtain the immediate condemnation of the defendants by the assembly. We have already mentioned that, according to Aristotle, under the influence of demagogues, the people become a monarch, almost a collective but unitary subject, easy to persuade as a whole to approve a measure with immediate effect (*Pol.* 1292a11–13), just as the tyrant is persuaded by the flatterers without any particular formality being necessary.<sup>31</sup> In the 4<sup>th</sup> century, with the introduction of the *nomothesia* procedure, the distinction between *psêphismata* and *nomoi* was institutionalised, so that the former were subordinated to the latter. But this didn't prevent attempts to pass the typical contents of a *nomos* through *psêphismata*. In particular, Demosthenes has given us a number of valuable references to the risk of the abusive approval of *psêphismata* of general

28 For a summary of current arguments cf. E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*, Excurs 2, p. 298–305; more recently L. Bertelli, *Aristotele democratico?*, in: *Teoria politica*, N. S., 8, 2018, pp. 96–97.

29 For a good synthesis see L. Bertelli, *Democrazia e metabolé. Rapporti tra l'Athenaion Politeia e la teoria politica di Aristotele*, in: G. Maddoli (ed.), *L'Athenaion Politeia di Aristotele 1891–1991. Per un bilancio di cento anni di studi*, Napoli 1994, p. 86: the constitutional forms of *Pol.* IV–VI “sono ideal-tipi modellati sulla combinazione di molti fattori empirici”. Cf. also F. Pezzoli in: L. Bertelli – M. Moggi (eds.), *Aristotele, La politica, Libro IV*, Roma 2014, pp. 205 ff.

30 Cf. e.g. A. Lintott, *Aristotle and Democracy*, in: *Classical Quarterly*, 42, 1992, p. 120; most recently F. Pezzoli in: L. Bertelli – M. Moggi (eds.), *Aristotele, La politica, Libro IV*, Roma 2014, p. 213.

31 The comparison with tyranny (*Pol.* IV,1292a15 ff.), however, must be considered a rhetorical exaggeration, and does not intend to designate a real change of constitution, not even in the intention of the demagogues (which, moreover, Aristotle never names or locates in a precise place and time). On the other hand, no classification of constitutions contemplates a collective tyranny. The allusion to the Homeric πολυκοιρανίη (*Pol.* IV,1292a13–14) must therefore be considered a joke.

content contrary to an existing law.<sup>32</sup> We can recall here Demosthenes, *Or.* 20,92 (*Contra Lept.*) (“*nomoi* no longer differ from *psêphismata*”); *Or.* 22,48–49 (*Contra Androt.*) (tax laws are emended by decree); *Or.* 23,86–87 (*Contra Aristocr.*) (attempt to make a *psêphisma kyrioteron* of a *nomos*); *Or.* 24,29–30 (*Contra Timocr.*) (where we find the same words as in *Or.* 23 cit. above: rendering a *psêphisma kyriôteron* of a *nomos*). These are certainly statements that are functional to the favorable outcome of the trial; but it must be taken into account that a *psêphisma* that was not attacked in court remained in force even if it should have been issued as a *nomos*. And evidently it was not such a rare or sporadic phenomenon if the author of *Ath. pol.* 41,2 writes that the people (*dêmos*), after the democratic restoration of 403 B. C., became master (*kyrios*) of everything, and everything was regulated (*dioikeitai*, as in *Pol. IV*,1292a35–36) by *psêphismata* and the courts. This last statement has been considered unreliable;<sup>33</sup> in particular, it was pointed out that it does not take into account the fact that the *psêphismata* could be invalidated by *graphê paranomon*.<sup>34</sup> But *Ath. pol.* 41,2 must be considered, as we said, a political judgment,<sup>35</sup> not the trace of a legislative reform measure; and one should not underestimate the fact that *Ath. pol.* doesn’t ignore the existence of the *graphê paranomon* (*Ath. pol.* 56,2), while the *Politics* ignores it. Certainly the extreme democracy of the *Politics* accentuates for didactic purposes the potentially negative characteristics inherent in the democratic

32 Cf. for a synthetic reference P. J. Rhodes, *A Commentary on the Aristotelian Athenaiôn Politeia*, Oxford 1993, p. 329.

33 E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*, p. 303, taking up a remark by Aalders, maintain that deciding everything by means of *psêphismata* “besagt nicht, dass man die Gesetze nicht beobachtet”: it seems to me, however, that this interpretation does not take into account the context in which Aristotle places his statement, since in *Pol. IV*,1292a15–16 we read that the *dêmos* does not want to be commanded by the law. More inclined to believe that the type of democracy that Aristotle had in mind to build his model was the Athenian one, is F. Pezzoli in: L. Bertelli – M. Moggi (eds.), *Aristotele, La politica, Libro IV*, p. 210, although he argues that Aristotle ignores “la distinzione gerarchica” between *nomos* and *psêphisma*. This would be demonstrated by the same passages of Demosthenes that we have instead cited in the opposite direction, i.e. as an indication that the attempt to legislate in the form of *psêphisma* was quite a widespread practice in Athens during the 4<sup>th</sup> century. More recently L. Bertelli, *Aristotele democratico?*, p. 97 n. 72, argues that *Ath. pol.* 41,2 is not a “prova” of conformity to the real situation in Athens, but a “derivato” from his theory of democracy in the *Politics*. In my opinion it is exactly the opposite. The criticism of the use of approving *psêphismata* of general content in the extreme democracy is inspired by the historical judgment on the Athenian legislative policy that we read in *Ath. pol.* 41,2: to the *dêmos* made *kyrios apantôn* in *Ath. pol.* 41,2 corresponds the *dêmos pantôn kyrios* in *Pol. IV*,1292a26–27.

34 Thus already B. Haussoullier (ed.), *Constitution d’Athènes*, Paris 1922, p. XXV ff.

35 We are unable to say how peculiar to Aristotle this view was. A. Lintott, *Aristotle and Democracy*, believes in a strong influence of Athenian history on the constitutional theory of democracy expounded in the *Politics*. J. Bleicken, *Die athenische Demokratie*, Paderborn – München – Wien – Zürich 1994 (in particular pp. 305–306 and 343–344) believes that in Athens the social and political conflicts were not so pronounced.

constitution.<sup>36</sup> It is striking, however, that the *graphê* does not even among the corrections that Aristotle suggests to improve democratic regimes (*Pol.* IV,1298b11 ff.). I suppose that in a regime in which the polarization between rich and poor, and the consequent irremediable conflict, become the key to interpreting the entire social, political and juridical structure, there can be no room for mechanisms to control the legitimacy of deliberations, such as the *graphê paranomon*. Therefore, the remedies suggested by Aristotle tend to prevent the approval of vexatious measures against the minority, rather than to create annulment procedures that would prove ineffective. However, it is interesting to note that Aristotle also considers it necessary to issue laws, both written and unwritten (*Pol.* VI,1319b1–4, 1319b37–1320a4, 6–9). Such laws are therefore given a higher status than the *psêphismata*, although it is not specified how this superiority will be ensured: this confirms that in the Aristotelian conception of extreme democracy the *nomoi* have not been abolished. As for unwritten laws, as far as democracy is concerned, they can probably be identified with those principles contained in the law of equality which, as we have seen, characterizes the “first democracy”. What Aristotle intends to stigmatize by criticizing extreme democracy is therefore not a change of constitution, but only an anomalous praxis that finds illuminating parallels in the Athenian historical experience.

### 3. Adjudication and public officials in the extreme democracy

We have seen so far that the negative judgement towards extreme democracy in *Pol.* IV,4 is centred on the attribution to the *psêphismata* of the function that should be left to the *nomoi*: a deviation, both formal and substantial, that allows the *dêmos* to easily violate the fundamental *nomos* that forbids the predominance of the poor over the rich. At least if we consider the text of *Pol.* IV,1294a4 ff., in defining the characteristics of extreme democracy Aristotle does not seem to attribute to the judicial abuse of the rich, again by demagogues, a role of importance equal to that of legislating through *psêphismata*. Yet there are other passages from which it appears that the judicial policy conducted by demagogues is considered by Aristotle as an equally serious and evident violation of the constitutional order of the *prôtê dêmokratia* (e.g. *Pol.* VI,1320a4 ff.). In fact, the violation of the *nomos* of the equality between rich and poor does not derive only from assembly decisions, but also (and one would say above all) from convictions that are the consequence of judicial actions (mainly public actions) brought primar-

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36 This point is rightly emphasized by F. Pezzoli in: L. Bertelli – M. Moggi (eds.), *Aristotele, La politica, Libro IV*, p. 211.

ily by the demagogues themselves (*Pol. VI,1320a5*). It is true that the judges, unlike the assembly participants, in an extreme democracy are drawn by lot; therefore, juries could also include members of the wealthy class. However, Aristotle does not seem to doubt that in this type of democracy the court, like the assembly, is also dominated by the *dêmos* led by demagogues; but, as we said, he does not put control over the courts alongside the prevalence of *psêphismata* as a characteristic of extreme democracy. Perhaps, if we want to look for a reason for this lack of theoretical emphasis, we have to take into account the fact that *Ath. pol.*'s exposition is historical, while in *Politics* the theoretical and prescriptive dimensions assume a dominant role. The replacement of *nomoi* with *psêphismata* in the extreme democracy violates a constitutional principle, that, as we know, in the Athens of the 4<sup>th</sup> century would have exposed the violators to prosecution. On the contrary, since sentences cannot be appealed, it is not possible to distinguish sentences which comply with the law from those which do not. Therefore, sentences issued in hatred of the rich violate the fundamental "law of non-predominance of the rich over the poor", but cannot be formally declared contrary to law. If the ideal legislator wants to influence the outcome of trials, he must use indirect remedies: either modify the method of recruitment to ensure the participation of judges from the wealthy class (*Pol. IV,1300b35 ff.*), or severely punish public accusers for having proposed frivolous prosecutions (*Pol. VI,1320a11–13*), or allocate the assets confiscated from the rich into the treasury of the gods (*Pol. VI,1320a5*). It can therefore be assumed that the judicial side of the predominance over the rich is also contained implicitly in Aristotle's repeated statement that the *dêmos* (or *plêthos*) becomes *kyrios tôn nomôn* (*Pol. V,1305a32, 1310a4*) or *tês politeias* (*Pol. IV,1293a9–10*).<sup>37</sup> Then we can perhaps better understand, to return to *Pol. IV,1292a32*, why Aristotle says that there is no *politeia* where laws do not govern. If an essential component (*Pol. III,1283a17–19*) of the population, i.e. the rich, are no longer protected by the law of equality, which condemns the predominance over the rich through decrees approved by the poor in the assembly and through vexatious judicial sentences, the foundation of what Rousseau would call the social contract is destroyed, and the way is opened to the dissolution of the political community.

We have so far seen the Aristotelian criticism of extreme democracy with regard to the assembly and the courts. The third *morion* of the government structure, the public officials, has remained in the background so far. As is well known, Aristotle suggests that democratic regimes entrust the

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37 I do not therefore share Schütrumpf and Gehrke's underestimation of the judicial dimension (E. Schütrumpf – H. J. Gehrke [eds.], *Aristoteles, Politik Buch IV–VI*, p. 295).



public offices to members of both classes (*Pol.* V,1309a1; VI,1318b25 ff.), or even that they request a census, however minimal, from the candidates (*Pol.* IV,1291b39). Indeed, the last requirement seems to be present also in the extreme democracy, if we have to take literally the premise “everything is as in the previous forms” (*Pol.* IV,1292a4–5). This seems to be confirmed by the fact that demagogues and public officials are not necessarily the same people, as we can infer from *Pol.* V,1308a22 ff. However, a brief passage in the discussion of extreme democracy in *Pol.* IV,4 reveals the tension that can be created between demagogues and public officials who are not aligned, already because of their origin, on the positions of the tyrannical *dêmos*. I refer to *Pol.* IV,1292a28–30, of which I quote here the translation of Aubonnet:<sup>38</sup> “En outre, ceux qui portent des accusations contre les magistrats disent que c’est au peuple à décider; celui-ci accepte volontiers cette invitation, et, de la sorte, c’est pour les magistrats la ruine de toute autorité.”<sup>39</sup> Presumably the demagogues who accuse the public officials (perhaps at the end of their term of office), although they also have the control of the court, trust the assembly more, perhaps because the judge’s vote, because it is secret, is less easy to control.<sup>40</sup> The effect that Aristotle attributes to this type of accusations (which do not necessarily result in a conviction) remains to be considered: *katalyontai pasai archai*. Schütrumpf and Gehrke<sup>41</sup> (followed by Pezzoli and Curnis)<sup>42</sup> argue that, according to Aristotle, the public offices are abolished and replaced by the assembly. In my opinion such a radical interpretation is not convincing. One cannot see, for example, how the assembly could command an army instead of the *stratêgoi*.<sup>43</sup>

38 J. Aubonnet, *Aristote, Politique I. III–IV*.

39 In my opinion, Schütrumpf and Gehrke’s (*Aristoteles, Politik Buch IV–VI*) translation of this passage is not correct: “Ausserdem fordern diejenigen, die (den Einfluss der) politischen Ämter kritisieren, dass der Demos die Entscheidungen fällen müssen, und dieser nimmt diese Aufforderung gerne an; so kommt es denn dazu, dass alle Ämter beseitigt werden“ (the Guagliumi translation in L. Bertelli – M. Moggi [eds.], *Aristotele, La politica, Libro IV*, is clearly influenced by the translation of the German scholars mentioned above: “... quelli che criticano i magistrati in carica sostengono che è il popolo a dover deliberare...”). The participle *enkalountes* usually refers to those who brings a legal action; therefore, the verb *krinein*, referring to the assembly, must be understood in the sense of adjudication. For this reason, I’m not convinced that the correction *proklêsis*, instead of *prosklêsis* attested by more than one codex, is to be approved.

40 The commentators on the *Politics* see here again, probably rightly, an allusion to the aforementioned Arginusae trial: cf. E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*, p. 301, and F. Pezzoli in: L. Bertelli – M. Moggi (eds.), *Aristotele, La politica, Libro IV*, p. 213.

41 E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*, p. 292.

42 F. Pezzoli in: L. Bertelli – M. Moggi (eds.), *Aristotele, La politica, Libro IV*, p. 213.

43 What Aristotle writes in in *Pol.* IV,1292a7–9 may sound misleading, but it does not mean that demagogues take the place of the public officials.

Likewise, the interpretation of *Pol. IV*,1292a33–34<sup>44</sup> by Schütrumpf and Gehrke is far from convincing,<sup>45</sup> when they write: “ein Aspekt der Kritik an Volksbeschlüssen war, dass Entscheidungen, die den Ämtern zustehen, von der Volksversammlung wahrgenommen wurden“. In my opinion, here Aristotle, reasoning as an expert in Athenian constitutional law, means that the public officials must decide the concrete case on the basis of general provisions of law, not on the basis of *psêphismata*, whose function is also to regulate specific concrete cases. We can therefore conclude that *Pol. IV*,1292a28–30 must be interpreted in the sense that demagogues provoke a redefinition of the spheres of competence of the public officials on one hand, and of the assembly, the council (*Pol. IV*,1299b38) and the courts on the other. By accepting this conclusion, it is confirmed that we are not dealing with a real *metabolê* of the democratic constitution, in the sense that we do not pass from democracy to another type of constitution (as happened in the Platonic *Politeia* in the transition from democracy to tyranny: *Resp.* 562a ff.). It is within the democratic form that the distorted interpretation of genuine democratic principles (freedom and equality) by the demagogues actually causes a *metabolê* from the *patria* to the *neotatê dêmokratia* (*Pol. V*,1305a28).

The analysis we have conducted in the preceding pages allows a conclusive reflection on Aristotle’s attitude towards democracy. As we have seen, the main problem of every democratic regime is that arithmetic equality means that the majority, composed by definition of the poor, tends to pursue its own interest at the expense of the minority of the rich. Control over legislation, adjudication and competences of the public officials converge toward this goal. Against this total subordination of the institutions to the interests of the majority, Aristotle suggests a remedy based on a normative conception of equality. It is neither strictly democratic arithmetical equality nor oligarchic equality based on census. Rather, it is an equality that must inspire every provision and every decision by purifying them of the ideological conditioning deriving from the fact of having its author in one of the two irreconcilable and irreducible groups (*Pol. IV*,1290a10–11 with *IV*,1291b7 and *IV*,1296b1). We are therefore faced with an optimistic investment in the ability to obey a fundamental law that imposes self-control and self-limitation on human beings.<sup>46</sup> However, in proposing this solution of the basic aporia of democratic regimes, it is clear that Aristotle does not have excessive il-

44 τῶν δὲ καθ’ ἕκαστα τὰς ἀρχάς κατὰ τὴν πολιτείαν κρίνειν.

45 E. Schütrumpf – H. J. Gehrke (eds.), *Aristoteles, Politik Buch IV–VI*, p. 296.

46 C. A. Bates Jr., *Law and the Rule of Law and Its Place Relative to Politeia in Aristotle’s Politics*, in: L. Huppes-Cluysenaer – N. M. M. S. Coelho (eds.), *Aristotle and The Philosophy of Law: Theory, Practice and Justice*, Dordrecht 2013, p. 71, writes: “Hence law is a form of self-restraining guideline which allows those who lack authority in the given community to restrain those who do

lusions.<sup>47</sup> Best of all is that the space for political participation should be reduced to a minimum, and that citizens should keep as far away as possible from it by dedicating themselves to their private affairs. If this proves impossible, as pervasive as possible a system of checks and balances should be adopted,<sup>48</sup> so that any temptation to prevail over the adversaries is harnessed. I refer to the huge repertoire of institutional instruments described in *Pol.* IV,14–16, where an explicit piece of advice to democratic regimes concerns precisely how to rebalance the participation in the assembly of the rich and the poor (*Pol.* IV,14,1298b13 ff.). *Ultima ratio*: to make everyone aware that, by pushing to excess the attitude which seeks predominance, just when we believe we are tasting the triumph, we are rushing into the self-destruction of the political structure. We could basically consider that the sanction of the “Grundgesetz” of the *prôtê dêmokratia*.

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rule and hold authority”. But without the introduction of special institutional mechanisms, the minority will not be able to enforce the laws against the excessive power of the majority.

47 Only the *politeia* in the proper sense (*Pol.* III,1279a37; IV,1296b35 ff.) constitutes an acceptable solution, not only thanks to the balanced mix between democratic and oligarchic institutions, but above all because it is the constitutional expression of the *mesoi* community. On the double “anatomy of the city” see recently M. Canevaro – A. Esu, *Extreme Democracy and Mixed Constitution in Theory and Practice. Nomophylakia and Fourth-Century Nomothesia in the Aristotelian Athenaiion Politeia*, in: C. Bearzot – M. Canevaro – T. Gargiulo – E. Poddighe (eds.) *Athenaiion Politeiai tra storia, politica e sociologia: Aristotele e Pseudo-Senofonte*, Milano 2018, pp. 105–146.

48 Cf. A. Maffi, *Legittimazione del potere, autorità della legge*, in: F. de Luise (ed.), *Legittimazione del potere, autorità della legge: un dibattito antico* (Collana Studi e Ricerche, 10), Trento 2016, in particular pp. 131 ff.