Carol Atack
Lucy Cavendish College

Ancestral constitutions in fourth-century BCE Athenian political argument: genre and re-invention[1]

When the Athenian general Phocion conceded his city to the Macedonian regent Antipater in 321 BCE, a decree declared the restoration of Athens' ancestral constitution (*patrios politeia*); from now on the city would be run according to the laws of Solon, the revered father of democracy.[2] The reported outcome was that Athens' beleaguered democracy was effectively dismantled, its leading orators handed over to the Macedonians and its poorest citizens, who had powered the city's fleets to domination of the Greek world in the previous century, deprived of citizenship and resettled in colonies in Thrace.[3] Ancient biographical tradition places Phocion as Plato's student, and Antipater as Aristotle's executor, but the messy negotiations that ended Athenian democracy seem to owe little to Plato's idealism or the tradition of Solon as sage and lawgiver.[4]

For almost a century, since Athens' previous brush with oligarchy, the idea that there was an authentic Athenian *patrios politeia* had featured in political debate and theorising, even as its features, definition and attribution to more-or-less historical lawgivers such as Solon changed at the hands of its disparate proponents. Emerging from the contest between supporters of varieties of democracy and oligarchy towards the end of the Peloponnesian War, the *patrios politeia* began to appear as a model constitution in new works of political theory, alongside imagined utopias and often supplanting idealised versions of Sparta.[5] While the more extreme oligarchs of 411 and 404/3 had looked to Sparta for a model constitution, their failure, and that of

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[2] τὴν πάτριον ἀπὸ τιμήματος πολιτείαν, Plut. *Phoc*. 27.3; κατὰ τοὺς Σόλωνος νόμους, Diod. Sic. 18.18.5.

[3] Diod. Sic. 18.18.4, Tritle 1988: 131-40. The view that 323 BCE marks a turning point for Athenian democracy is controversial; much historical evidence, notably epigraphic evidence, points to continuation of institutions and practices rather than change. The idea that submission to Macedon made a substantive change to Athenian politics may reflect the idealisation of the classical period by later sources looking back from, for example, the different political world of imperial Rome. However, such views reflect the suspicion that beneath the continuation of institutions, there was some kind of change in Athenian politics remains – even if that change is at an extremely abstract level.

[4] Plut. *Phoc*. 4.2; Diog. Laert. 5.1.11.

[5] Finley 1975: 35-40; Hansen 2005: 14-15; Mossé 1978: 81-2.

Sparta as hegemon of the Greek world and military power, had undermined the appeal of Athenian political Laconism.[6] Despite Xenophon's attempt to rehabilitate the Spartan model in the *Lacedaimoniōn Politeia*, theorists needed a new ideal *politeia*. The concept of the *patrios politeia* enabled critics and theorists to re-invent Athenian democracy and to criticise its institutions while avoiding the suggestion that they were crypto-oligarchs or apologists for Sparta. Placed in the imaginary Athens of the city's own rhetoric, its counterfactual existence could be presented as a realised utopia.

Isocrates and Plato extended the process of removing the *patrios politeia* from its historical context, competitively fabricating ever more extravagant pre-histories for the Athenian constitution in an imagined, mythicised past. Their works exploit the distinction between the traditional genres of Athenian democratic public discourse, such as the funeral speech, and literary versions of them circulated in writing to an elite audience, in order to question Athenian values and to educate the elite.[7] While Plato's playful literary re-inventions are wide-ranging (as Nightingale, drawing on Todorov's genre theory, shows), Isocrates re-fashions the spoken rhetorical forms of public discourse of the Athenian democracy as a private intra-elite written discourse.[8]

Isocrates develops his model of the ancestral Athenian constitution over his long career, refining its details between the *Panegyricus* of 380 BCE and the *Panathenaicus* of 339 BCE. Xenophon too seems to find the original Athenian genre of political theoretical analysis and argument, the *politeia*, insufficient, following his Spartan *politeia* with works of history (*Hellenica*) and (fictionalised) biography (*Anabasis* and *Cyropaedia*) within which he can expound his political theory and philosophy. Isocrates and Xenophon promoted political theories based on an idealised past, that resemble those of 20th-century proponents of elitist democracy such as Schumpeter, with their emphasis on the restriction of leadership roles to the selected few and mass participation to occasional opportunities to assent via elections.[9]

Plato bases his criticism of ancestral constitution models on the problems raised by using historical examples as political ideals. He criticises the use of Athenian self-image and mythology through pastiches of funeral speech in the *Menexenus* and

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[6] Cartledge 1999: 313-4; Tigerstedt 1965: 154-9.
[7] Nicolai 2004: 13-29; Pownall 2007: 235-7; Robb 1994: 214-51.
[8] Nightingale 1995: 3-12; Todorov 1990: 13-26.
[9] Held 2006: 125-57.

history in *Laws* III-IV, and magnificently re-invents them in the story of Athens and Atlantis in the *Timaeus/Critias*. Plato uses the distinction he draws between the serious and playful uses of writing (*Phdr*. 274d-278b) to structure these critiques of *patrios politeia* arguments.[10] His Socrates observes that lawgivers such as Solon should have used this distinction (*Phdr*. 278c3-4).

The *patrios politeia* – a contested concept

The concept of the '*patrios politeia*' was contested from its first appearance during the turmoil of the final stages of the Peloponnesian War and the successive Athenian oligarchies. Whereas democrats sought to restore democracy in its most recent form, others saw an opportunity to wind back some of the fifth century's political reforms to an earlier stage, which could be valorised as the authentic form of democracy while reducing the power of the *demos*. The sophist Thrasymachus provides late fifth-century evidence that the concept of *patrios politeia* was contested, although he claims that this conflict could easily be resolved by referring to arguments from the past (λόγων τῶν παλαιοτέρων).[11]

Finley argues that the desire to return to a past constitution is a feature of 'sharp political conflict'.[12] While this may be true of the situation in 411/403, the current state of Finley's third example of ancestral constitution arguments, the continuing interest in re-interpreting the writings of the USA's founding fathers, suggests a longer-term breakdown of political consensus, much more similar to the different Athenian situation in the mid-fourth century.[13]

Diodorus Siculus' (much later, though probably derived from the fourth-century historian Ephorus) account of the Spartan-mandated peace settlement of 403 (14.3.3) captures the distinct uses of the term well.[14] One (democratic) group wants their fathers' constitution, τὴν τῶν πατέρων πολιτείαν, emphasising their desire for a return to the most recent version of democracy. The other, oligarchic, side appears to place the ancestral constitution (τὴν παλαιὰν κατάστασιν) in a more distant past. This is the move that enabled supporters of the *patrios politeia* to argue ostensibly for

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[10] Derrida 1981: 73-8; Jouët-Pastré 2001: 34-6.
[11] DK85 B1; Fuks 1971: 102-05.
[12] Finley 1975: 35, 40-2. Finley's consciously rhetorical inaugural lecture aims to match the Athenian example with the 17th-century English political argument studied by Pocock (Pocock 1987).
[13] Finley 1975: 42-3.
[14] Fuks 1971: 63-7.

democracy, but exclude the constitutional changes of the fifth century that established the features of Athenian radical democracy.

The Aristotelian *Ath. Pol.* suggests that the nature of the ancestral constitution was debated during the 411 oligarchies and their aftermath (29-33), but the extent to which these chapters quote genuine documents or decrees (such as the Rider of Kleitophon, 29.3) is uncertain.[15] The eagerness of the returned democrats to re-establish the traditional *nomoi*, their ascription to Solon, and confusion about their substance, are hinted at in Andocides' use of the decree of Teisamenos, by which the democracy had been restored using Solon's laws, in his defence against impiety charges.[16] The returned democrats sought the *nomoi* needed to restore the democracy, while their opponents argued for earlier laws that restricted democracy. Whether these Solonian *nomoi* had ever existed in any physical sense as decrees inscribed on stone is doubtful, but the search was for positive laws (*nomoi*), not an idealised way of life (*politeia*).[17]

Both parts of '*patrios politeia*' were contested. The description *patrios* was ambiguous. Fourth-century orators often used *patrios* to refer to religious tradition or civic custom currently in use, as Thucydides did in describing the funeral speech as being τῷ πατρίῳ νόμῳ (Thuc. 2.34.1).[18] This sense of 'traditional' extends to political use; Thucydides shows the democratic forces at Samos arguing that the oligarchs have wrongly dissolved the traditional laws (ἡμαρτηκέναι τοὺς πατρίους νόμους καταλύσαντας, Thuc. 8.76.6). In Xenophon's *Hellenica*, the democrat Thrasybulus requires the defeated oligarchs to obey the *patrioi nomoi* as a condition of their return to Athens (*Hell*. 2.4.42).

Politeia also extended its meaning over this period; originally a quality applied to individuals, the capability of being a citizen, it came to refer to the mixture of ethos and laws that went to define the character of a polis, and also a text discussing the system in question.[19] The earliest free-standing *politeia* text, the pseudo-Xenophontic *Athenaiōn Politeia*, is firmly focused on the present of successful imperial Athens and

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[15] Rhodes 1992: 376-7.
[16] Andocides 1.81-4; Fuks 1971: 34-40.
[17] Rhodes 2006; Ruschenbusch 1958; Walters 1976: 135-8.
[18] Lys. 1.30, 30.21, 30.29, 31.31; Finley 1975: 37; Walters 1976: 133-5.
[19] Bordes 1982: 127-37.

its roots in Athenian democracy, which is opposed to oligarchy rather than seen as modifiable.[20] Aristotle later schematised possible *politeiai,* describing different forms of democracy ranging from moderate to extreme (*Pol.* 4.4.1291b30-1292a38). Thucydides shows an early stage of this distinction: in arguing for change in the constitution the pro-oligarchs first demand the outright end to democracy (Thuc. 8.48.5), then a change in the type of democracy in Athens (μὴ τὸν αὐτὸν τρόπον δημοκρατουμένοις, 8.53.1).[21] The mixed constitution emerged from the same period (Thuc. 8.97.2) as fourth-century theorists' ideal, as its measure and balance was seen as a defence against the instability of pure forms of democracy or oligarchy.

Hansen suggested that *patrios politeia* was little more than a vague 'hurrah-word', equivalent to the use of 'democracy' in modern political debate; however, it seems more likely that the different uses of the term reflect different sides' claims.[22] An elaborate process of mythologisation and the retrospective creation of laws and ideas attributed to Solon continued throughout the century, both in public debate and in the texts discussed below, although the precise mix of Solon's *politeia* was contested (Arist. *Pol.* 2.12.1273b35-74a22); *Ath. Pol.* 7-11, drawing on different sources, gives a much more detailed (although almost certainly imaginary) list of institutional reforms attributed to Solon, that well match the features of ancestral constitutions.[23]

Although Finley argues that *nomoi* and *politeia* should not be distinguished, this wider sense of *politeia,* which includes details of education and culture, became the more important in the fourth-century political debate.[24] Although the later debate was conducted through the reconstruction of Athenian myth and ideology, and the incorporation of Solon into it as a 'founding father', its focus was different.[25] Aristotle carefully notes that Lycurgus and Solon established both *nomoi* and *politeiai* (*Pol.* 2.12.1273b33-4), and in Isocrates' political theory the idea of the *patrios politeia* becomes an all-encompassing moral and political framework of unwritten law, contrasted with specific *nomoi* (*Areopagiticus* 41). On this basis Isocrates is not, as Jaeger suggests, simply the heir of a Theramenean moderate 'party' from the earlier

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[20] Most probably dated to the 440s-420s; Gray 2007: 57-8. Bordes 1982: 139-63; Gray 2007: 51-4; Ober 1998: 14-6.
[21] Hornblower 2008: 912; Mossé 1978: 82.
[22] Hansen 1990b: 75-8.
[23] Hansen 1999: 296-300; Mossé 1979: 425-31.
[24] Finley 1975: 37.
[25] Mossé 1979: 434-6.

period seeking to reinstate former *nomoi*.[26] But the separation was not complete: Athenian democratic institutions continued to evolve throughout the fourth century, often in directions suggested by *patrios politeia* arguments, moderating the former radical democracy into something which starts to resemble modern elitist models of democracy.[27]

The rhetorical appeal to the past must have been attractive to fourth-century Athenians, conscious of their city's decline and the superior achievements of their ancestors.[28] Even at its height Athens had always grounded its superiority in appeals to a mythicised past, as expressed through the fifth-century institution of the public funeral speech.[29] Two themes of the *epitaphios*, the historical evidence for Athenian greatness, and the nature of the Athenian *politeia*, merge in the ancestral constitution arguments of Isocrates and Plato. The 'imaginary' Athens of funeral speech rhetoric provided the ideal location for explorations of political possibilities and utopian constitutions.[30]

Menexenus and *Panegyricus*: ancestral constitutions and public versus private speech

Both Plato's *Menexenus* and Isocrates' *Panegyricus* re-work genres of Athenian public epideictic rhetoric as literary texts in order to examine ideas about Athenian democracy, including the ancestral constitution. Both writers reject democracy's public platforms (implying their authors' rejection of current democratic practice), where these genres belong, and address their work to small private audiences. By manipulating rhetorical genres, which in their public, spoken form exemplified Athenian democratic self-celebration, they produce multi-layered, ironic critiques of the politics of their time delivered through the different medium of the written word to a private audience opposed to the current version of Athenian democracy.[31] Plato would later present the noisy debate of Athenian democracy as a cause of Athenian decline (*Leg*. 3.700a5-701b3).

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[26] Jaeger 1940: 442-8.
[27] Hansen 1999: 296-304; Rhodes 2005: 279-81.
[28] Hansen 1990b: 72-4.
[29] Loraux 1986: 15-76.
[30] Loraux 1986: 328-38.
[31] Pownall 2007: 235-7.

The *epitaphios* delivered at the annual public funeral and commemoration of the Athenian war dead had an unusual status among the forms of public speech in Athens. It was given by an orator publicly selected (ἡρημένος ὑπὸ τῆς πόλεως) for his individual worth (ἀξιώσει προήκῃ, Thuc. 2.34.6), an unusual procedure in democratic Athens where most roles were distributed by lot and only a handful of exceptional magistracies were elected.[32] Unlike ordinary public speeches in the assembly and law-court, funeral and other ceremonial orations received no direct reply or counter-argument, again an extremely unusual situation in Athenian public speech, where speeches usually appear in opposed pairs, such as the *agones* of drama. The replies to funeral speeches appear within the differing renditions of the genre given by each speaker.

Although the *epitaphios* became, as Loraux demonstrates, an important vehicle for analysis of the Athenian *politeia*, and possibly the only one available to democratic thinkers, its aristocratic process and incorporation of aristocratic values jar with the society it celebrates.[33] This disjunction, along with its set *topoi* of Athenian foundation myths, military exploits and politics, seem to have rendered mock *epitaphioi* an attractive genre for fourth-century criticism of Athenian democracy.[34] Plato and Isocrates' written works re-invent the genre to criticise Athenian democracy using its own tradition of self-praise, reworking myth and history in support of their arguments.

Plato's *epitaphios* delivers a complex set of criticisms of the use of funeral speech *topoi* in political rhetoric. The *Menexenus* wraps a sample *epitaphios*, attributed by Socrates to Aspasia, Pericles' partner, in a brief dialogue; the attribution of an Athenian democratic speech to a non-Athenian woman is only one of the puzzles it contains.[35] The dramatic date of the speech must postdate the latest event in its survey of Athenian history, the King's Peace of 387/6, obviously long after Socrates' execution in 399.[36] This is a speech that could never have possibly been delivered, presented as made not to a public audience but to a single student in a private setting.

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[32] Hansen 1999: 229-37.
[33] Loraux 1986: 202-20.
[34] Todd 2007: 151-3.
[35] Kahn 1963: 220-21.
[36] Salkever 1993: 135-6.

The speech is clearly a pastiche of the funeral speech genre, and not just the Thucydidean funeral speech.[37] Pericles, or the Thucydidean presentation of him, is indeed an explicit target (Socrates claims the speech contains off-cuts from the speech which Aspasia allegedly wrote for Pericles, 236a8-b6), but, just as with Xenophon's assault on Pericles (*Mem*. 3.5), the closer targets seem to be the more recent expression of democracy in the (itself problematic) Lysian funeral speech and elitist responses to it.[38] Only in the final address to the bereaved does Socrates express recognisably Socratic sentiments, encouraging the living to seek their own glory (247a2-6) rather than the second-hand praise of the *epitaphios*.

Praise of the Athenian character and *politeia* was the central theme of the Periclean funeral speech, in an explicit contrast with Sparta (cf. Thuc. 2.37.1, 39.1-2). Plato overturns the order of the democratic funeral speech, as exemplified by Lysias' funeral speech of the 390s, where the discussion of the Athenian *politeia* covers the transition from myth to history (Lys. 2.18-19). He begins with a portrait of the Athenian *politeia*, unrecognisable as Periclean democracy but clearly and explicitly an ancestral constitution (238b7-8) based on the Athenians' noble origins and education.

Plato omits the mythical history fundamental to the genre (perhaps following Thucydides), and replaces it with a mythicised *politeia*, relocating the Athenian constitution into mythical pre-history. This is a typical move in ancestral constitution arguments; Isocrates places the ancestral constitution in the generation before Marathon, at the border of myth and history in the Athenian past (*Panegyricus* 75).

Plato's ironic twist is to suggest that the same ancestral *politeia* existed both then and now (ἡ γὰρ αὐτὴ πολιτεία καὶ τότε ἦν καὶ νῦν, ἀριστοκρατία..., 238c5-6). As in Lysias' version, autochthony (the element of Athenian foundation myth that Plato retains) is cited as the generator of equality between Athenian citizens and thus the *politeia* (Lys. 2.17, *Menex.* 238e1). However, the resulting constitution is not the democracy praised by Lysias, but an aristocracy in which the excellence of leaders is mediated through the approval of the people (ἔστι δὲ τῇ ἀληθείᾳ μετ'εὐδοξίας πλήθους ἀριστοκρατία, 238c7-d2). However, the emphasis on *doxa* and the

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[37] Monoson 2000: 181-202; Schofield 2010: xx-xxii.
[38] Eucken 2003b: 44; Pradeau 2002: 18-21.

suggestion that the *politeia* is also a monarchy because it still selects 'kings' (238d1-2), suggest that Plato is both parodying the way in which Athens liked to praise itself and representing the ancestral constitution as a mixed one.[39] The manipulation of *doxa* was central to Isocrates' teaching, where it was equated to conjecture leading to *phronesis*; Plato's criticism may extend not just to Athenian political rhetoric but also to its other critics.[40]

Plato subverts the patriotic distortion of history typical of the genre, questioning and satirising Athenian collective celebration of the past; his historical survey (239a-246a) passes over the mythical elements (pre-Marathon) in favour of a longer exposition of the Persian and Peloponnesian Wars. The Athenian contribution is emphasised and exaggerated, and shameful Athenian defeats (such as the Sicilian Expedition) are presented as opportunities for the display of individual virtues such as courage (243a).[41] As Lysias' positioning of Athens shows (2.20-3, 51-4), the refashioning of myth and history was not the sole preserve of democracy's opponents; orators used the popular, Athenocentric version of histories that a mass audience might recognise.[42] Plato's more detailed narration sets Athenian decline and decadence in the historical past, rather than presenting glory in the mythical past.[43]

Whether the Lysian speech, the *Menexenus*, and the *Panegyricus* appeared first is unclear, but the latter pair represent the first contact in a lengthy argument between their authors.[44] The *Panegyricus* was completed over many years' composition and therefore may respond to several events and other works, in a period when orators depicted a renewed imperial confidence in Athens.[45]

Isocrates presents the *Panegyricus* as a version of the type of speech performed at festivals (*panegurides*), a genre that used many of the same *topoi* as the funeral speech to eulogise Athens to a Panhellenic audience. His speaker's goal is to persuade non-Athenians to agree that Athens deserves to share leadership of the other Greeks

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[39] Kahn 1963: 226.
[40] Poulakos 2004: 46-52.
[41] Pownall 2004: 49-58
[42] Grethlein 2010: 108-13; Nouhaud 1982: 105-11.
[43] Pradeau 2002: 20-26.
[44] Eucken 1983: 162-5; Todd 2007: 157-64.
[45] Dion. Hal. *Comp*. 25.206-12; Usher 1990: 19-21.

with Sparta.[46] Together they could lead the unified Greeks to attack the Persians (157-75), one of Isocrates' key political policies, although one complicated by his ambiguous views on Sparta.[47]

Isocrates draws attention to the speech's complexity and difference from other public speeches (*Panegyricus* 11-14); the speech cannot be delivered as written, because of its length and complex composition. Isocrates' laboured prose with its long periods, carefully balanced clauses and antitheses, and use of metrical rhythms implicitly confirms this.[48] Ober interprets Isocrates' written work (notably the *Antidosis*) as a fictionalised literary re-performance of real events; his (probably historical) *antidosis* trial is re-imagined as trial of his life and teaching, equating him with Socrates.[49] But Ober's use of Skinner's application of speech-act theory to political texts, which flattens the distinction between performance and publication, fails to accord enough significance to the specific performance context of Plato and Isocrates' engagement with politics.[50] Their non-performance in the public sphere is itself an act of political elitism; advisers like Isocrates could influence Athens' leaders outside the democratic framework of the courts or assembly through their private teaching and writings.

Isocrates often represented himself as incapable of successful participation in democratic debate because of his 'insufficient voice' (*To Philip* 81); but, as Too demonstrates, this is a rhetorical ploy to explain how he chose to speak privately to his elite students through his teaching, rather than to participate actively in Athenian politics.[51] While Isocrates is not, like Plato, an explicit rejectionist of Athenian democracy, his elitist political views conflict with the versions of Athenian democracy expressed by supporters such as Lysias; he recognises that Athenians will struggle to distinguish his views from those of oligarchs (*Areopag.* 57, 70). He acknowledges the good in other types of constitution, 'speaking' in the persona of monarchs (*Nicocles*, *Archidamus*), and advising and eulogising them (*Ad Nicoclem*, *Evagoras*). While Lysias names the Athenian constitution as democracy, Isocrates

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[46] Jaeger 1939: 74-8.
[47] Dillery 1995: 54-8; Gray 2000: 154.
[48] Usher 2010: 88-91
[49] Ober 1998: 257-60, 2004: 35-7.
[50] Ober 1998: 33-8; Skinner 2002: 103-27. Judith Butler's analysis of the politics of the performative offers an alternative model: Butler 1997.
[51] Too 1995: 84-9.

tends to refer to it as a *politeia* (*Panegyricus*) and only to mention democracies in general rather than Athens specifically (*Areopagiticus* 60).

Isocrates incorporates the Athenian ancestral constitution, despite declining to call it democracy, into his argument as a source of Athenian superiority (*Panegyricus* 34-40). After delineating Athenian claims to superiority through the myths of autochthony (21-7) and Demeter at Eleusis (28-33), Isocrates argues that Athens served as a protector for other Greek communities, spreading its culture through colonisation (34-7). Its antiquity renders its hegemony more long-standing, more *patrios* (ἡγεμονίαν... πατριωτέραν, 37) than any other city could claim. As the first polis to establish laws and a *politeia* (πρώτη γὰρ καὶ νόμους ἔθετο καὶ πολιτείαν κατεστήσατο, 39), Athens set an example (παράδειγμα) for the rest of Greece. Athens also established the first courts (40, a reference to the Areopagus).

While Plato attempts to undermine history as a support for Athenian claims to good government and leadership through a change of focus, Isocrates stays closer to this source model, elaborating the events that typically feature in eulogies of the city rather than replacing them.[52] He uses the standard mythical examples of the *epitaphios* to show Athenian superiority in helping the mythical heroes and founders of other cities (Heraclids 61; Thebans 64-5; Eumolpus 68). This culminates in the historical Athenians making the common cause of Xerxes' invasion their private concern by responding promptly when other cities did not (86), an outrageous revision of events. Such use of private resources for the communal good is a key feature of fourth-century elitism (*Areopagiticus* 24, Xen. *Cyn.* 12.10, 13.11).

The present generation are denied the share of ancestral virtue that Lysias grants them (παιδευθέντες μὲν ἐν τοῖς τῶν προγόνων ἀγαθοῖς, 2.69); for Isocrates, this virtue was last instantiated in the Marathon generation, whose parents receive Isocrates' most specific praise (75, 78-84). This pushes the period of greatness back into the sixth century, a period that seems to exist on the boundary of myth and history in the Athenian imagination. Isocrates chooses not to mention any of the turbulent changes in the Athenian constitution usually attributed to this period (for example in *Ath. Pol.* 13-22), whereas Lysias describes democrats driving out their oppressors (Lys. 2.18-19).

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[52] Hamilton 1979: 293-5; Welles 1966: 11-17.

Isocrates follows this with a detailed comparison of the roles of Sparta and Athens in the Persian Wars (85-98), returning to his argument that they should have joint leadership of a new Panhellenic war against the Persians (99). While Isocrates might be reworking his historical evidence for rhetorical purposes, Welles argues that the adaptation of the past to suit current ends was typical of the fourth-century use of the past, and cites inscriptions that recreate or invent lost decrees of the past as a similar type of evidence.[53] The didactic historians of the fourth century presented highly selected and distorted historical evidence in much the same way, shaping events to serve their editorial purposes, as Dillery and Pownall show for Xenophon, Ephorus and Theopompus.[54] That Plato and Isocrates should reshape history for argumentative purposes in their reworking of a genre already expected to rewrite history with a patriotic slant is hardly surprising.

Xenophon and Sparta as an ancestral constitution

Xenophon demonstrates the start of the process by which present-day constitutions were rejected in favour of idealised past ones, with his attempt to rehabilitate the Laconists' idealised Sparta as an ancestral constitution. Xenophon cannot simply present fourth-century Sparta as an alternative to Athens; he has to place his model Sparta in an imprecise past, a move that is typical of ancestral constitution arguments. His model differs from other Athenian ancestral constitution arguments only in that Sparta rather than Athens itself is the subject of its re-imagining of history. The *Lac. Pol.* was probably written in the 360s along with most of Xenophon's other work, and probably post-dates the *Panegyricus* and *Menexenus*.[55] Xenophon is characterised by Ollier as 'le laconisant par excellence'.[56] While the subtle ambiguities of his analysis belie this, Sparta remains central to Xenophon's thought; an idealised depiction of Spartan education also underlies and informs his idealised portrait of Cyrus in the *Cyropaedia*.[57]

Xenophon's assessment of Sparta is often negative or ambivalent, as his depiction of its leaders suggests.[58] Spartan leaders are violent bullies who fail to treat their citizen

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[53] Welles 1966: 3-11, giving the ephebic oath *stele* from Acharnae (RO88) as an example.
[54] Dillery 1995; Pownall 2004: 65-175.
[55] Gray 2007: 42-3; Lipka 2002: 9-13; Ollier 1934: xviii-xix, xxviii-xxix.
[56] Higgins 1977: 65-75; Humble 2004: 220-2; Ollier 1973: 373.
[57] Luccioni 1948: 139-74; Tuplin 1994: 151-61.
[58] *Anabasis* 1.5.11-14, 2.6.7-15.

troops – or other Greeks – as citizens, beating them like slaves. This behaviour fails to maintain discipline, leading to defeat, as exemplified by Clearchus, and especially by Mnasippus at Corcyra, whose brutality to his officers and failure to prevent his troops sliding into luxuriousness result in a failure to maintain the hoplite line and thus defeat through failure of Spartan character (*Hell.* 6.2.5-23).[59] Xenophon's critique of the failures of individual Spartan leaders stands in for his criticism of Spartan imperialism as a whole; in Xenophon's elitist political theory leaders represent the character of their whole polity or group.[60] The characterisation of Critias in the *Hellenica* is a further example; Critias is shown praising Sparta as the best constitution while authorising brutality and illegal executions in Athens (*Hell.* 2.3.24-6, 34). Likewise, lawgivers impart character to their constitutions.

Ollier and others were able to see Xenophon as a pure Laconist by rejecting the unity and structure of the *Lac. Pol.*, which contains one chapter criticising present Spartans for their failure to live up to the laws of Lycurgus.[61] Chapter 14 has been regarded as an interpolation, a later revision misplaced in the transmission of the text, or an editing failure.[62] However, the uncomfortable transition to chapter 14 and its radical reassessment of present-day Sparta are integral to the work's structure and argument, as Momigliano and others have shown.[63]

The highly rhetorical opening of the *Lac. Pol.* sets up a complicated relationship between past and present, Xenophon and Lycurgus, and Xenophon and the reader, while introducing the idea that the Spartan *politeia* has unique strengths. Xenophon's first-person musing on Sparta passes from aorist to imperfect to present tense (ἐθαύμασα... ἐθαύμαζον... θαυμάζω... 1.1-2) as he explains how he ceased to be astonished at the life-style of the Spartans and now reserves his astonishment for the capabilities of Lycurgus. In obeying Lycurgus' laws the Spartans achieved *eudaimonia*; these laws in turn are the opposite of the practices of other Greek cities (1.2). Sections 1.3-10.8 fill out the details of the effect of the Lycurgan laws on Spartan life from conception to old age, emphasising the differences between Spartan and other Greek lifestyles; here Xenophon ambiguously blurs past and present.

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[59] Hornblower 2000: 68-73; Tuplin 1993: 131-2.
[60] Dillery 1995: 164-76.
[61] Ollier 1934: xxxi-xxxiii.
[62] Lipka 2002: 27-31; Ollier 1934: xiv-xviii; Tigerstedt 1965: 462-4, n.530.
[63] Humble 2004: 223-6; Momigliano 1936: 170-1.

Lycurgus is in the past (ἡγήσατο, 1.4), and good Spartans usually are, but other Greeks and bad elements in Sparta (such as greedy women, βούλονται, 1.9) are in the present.

Xenophon's argument (clearly rather clumsily made, given the problems it has caused its many interpreters) is that Lycurgus' laws have in the past produced a cohesive and successful society, but that the current, corrupt instantiation of Sparta has failed to adhere to the source of its unique strength, obedience to the Lycurgan *nomoi*. The two premises of this argument appear in chapters 1 and 14 respectively.[64]

The opening proposition is echoed and answered in chapter 14; Xenophon no longer wonders, but understands (νῦν δ᾽ἐπίσταμαι, 14.4) how Sparta has failed, and indeed there should be no amazement at all (οὐδὲν μέντοι δεῖ θαυμάζειν, 14.7), because the Spartans clearly no longer obey the Lycurgan laws. But the tone of the debate with the reader is changed by the counterfactual construction of 14.1: 'Εἰ δέ τίς με ἔροιτο... οὐκ ἂν ἔτι θρασέως εἴποιμι.' Earlier, in the introduction to the military section (11-13), Xenophon can happily answer the inquirer about the causes of Spartan military superiority (εἰ δέ τις βούλεται καταμαθεῖν... ἔξεστι καὶ τούτων ἀκούειν, 11.1). Here, the question cannot be answered 'boldly', but its uncertain answer throws the preceding parts of the treatise into an imagined past. The past action of Lycurgus' *nomothesia* and Spartan obedience is finally clearly separated from the less ideal present, and presented as a counterfactual alternative. Xenophon is not asking the Athenians to choose the current Sparta, the hateful imperial power, but a past idealisation of it.

The ancestral constitution model enables Xenophon to maximise the role he gives to Lycurgus, a semi-mythological figure whom he credits with a far greater role in the design of the Spartan *politeia* than earlier sources do, to the extent that Lycurgus, the dominant figure in 1.2-10.8, becomes a mouthpiece for Xenophon's own political thought (for example, when Xenophon reports Lycurgus' thoughts at 2.3, 3.2, 4.1).[65] Lycurgus appears, unusually, at the start of Spartan history, contemporary with the Heraclids, who also feature in Athenian civic mythology, rather than as a later

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[64] Momigliano 1936: 171.
[65] Non-historicity of Lycurgus: Tigerstedt 1965: 70-73; Xenophon's emphasis: Lipka 2002: 35-6; Lycurgus as mouthpiece: Gray 2007: 44-5.

reformer. This follows the fourth-century stress on the process of enacting laws and interest in the codification of law and the exploration of history as a source of moral paradigms; the equivalent process among constructors of Athenian ancestral constitutions is to stress the role of Solon.[66] Although Xenophon considers the *politeia* in its broadest aspect, he regards the *nomoi* enacted by his Lycurgus as the means by which it was created and maintained.

Xenophon later uses his mythicised model of Sparta to support other arguments, notably his equation of justice with obedience to the law.[67] This is a key principle of Xenophon's Socrates, who uses Lycurgan Sparta as an example when arguing about the nature of justice with Hippias (*Memorabilia* 4.4.15). Xenophon's other main use of his imaginary Sparta is in *Memorabilia* 3.5, where Socrates encourages the younger Pericles to become a military and political leader in Athens; this is part of a series of short dialogues (3.1-7) in which Socrates encourages elite participation in Athenian political life.[68] Pericles is dismissive of Athens' capabilities (3.5.4) and the benefits of participation in its political processes, in a series of criticisms of Athens which culminate in a negative comparison of Athens with Sparta (3.5.15-17); Athens can never hope to equal Sparta in obedience and respect to elders, and is thus condemned to a public life of constant quarrelling rather than striving towards common goals in unanimity.

Socrates' response to the younger Pericles' Laconist position is protreptic rather than dialectic, and works its way through the *topoi* of funeral speeches.[69] While the text signals an ironic contrast between the democratic values of Thucydides' Pericles and Xenophon's Laconist Pericles the younger, Socrates' contribution is more obviously a response to Plato and Isocrates' eulogies, discussed below. In all of these speeches the ancestral constitution is an important theme, as are the mythicisation and blurring of the Athenian past to which it is attributed.

As with Isocrates' and Plato's pseudo-public speeches, embedded in the *Panegyricus* and *Menexenus* respectively, Xenophon emphasises the mythical base of Athenian superiority in its status as first-founded city, its autochthony and its monarchical past

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[66] Mossé 1979: 429-31.
[67] Gray 2004: 144-54.
[68] McNamara 2009: 240-2.
[69] Loraux 1986: 199.

(3.5.10-12). The important move that Xenophon gives to Socrates is to equate the idealised Athenian past (of ancestral constitution arguments) with the idealised Spartan present (of Laconism) and to substitute the former for the latter (3.5.14). Rather than stressing the values and achievements of Athenian democracy, Xenophon attaches virtue to a timeless, mythological past by using the funeral speech's Athenian foundation myths, and institutions praised in ancestral constitution arguments, such as the role of the Areopagus council (3.5.20).[70]

Xenophon was a supporter, if a critical one, of Athenian democracy, at least as he saw it through his elitist lens; despite his fierce criticisms of the Athenians' treatment of their generals in his depiction of the Arginusae trial (*Hell.* 1.6-7), in works such as the *Poroi* he shows a concern for the maintenance of the Athenian democracy whose reestablishment he had celebrated in the *Hellenica*.[71] In the *Memorabilia* Socrates does not criticise the Athenian demos, whose obedience and hard work are noted in both a ship-of-state metaphor (3.5.5-6) and references to choral and military training (3.5.18); it is the younger 'Pericles' who criticises the elite for disobedience (3.5.19, 21); Socrates' response is to encourage him to lead them in a revitalised *ephebeia* (3.5.27-28), anticipating a project realised by Lycurgus in the 330s.

Areopagiticus: the classic ancestral constitution

Isocrates delivered the classic statement of his ancestral constitution argument for the adoption of an elitist form of democracy in the *Areopagiticus*, following Xenophon in relocating the ideal constitution into the past. Isocrates has often been presented as a rhetorician whose works are exercises in style with no political content.[72] But he himself defined his works as *politikoi logoi*, by which he seems to have meant that they were focused on the life of the city rather than on the private concerns and court cases he had worked on as a logographer at the start of his career (*Soph.* 21).[73] However, these speeches were not presented to the Athenian public as part of its democratic political process, even when, as with the *Areopagiticus,* he represents them as such.[74] Their audience is likely to have been small, private gatherings of the elite rather than the mass audience of the Athenian democracy that Isocrates addresses

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[70] McNamara 2009: 233-6.
[71] Dobski 2009: 327-31; Kroeker 2009: 226-8.
[72] Baynes 1955: 160-7; Harding 1973: 139-43.
[73] Eucken 2003a: 34-6.
[74] Nicolai 2004: 10-11 describes them as 'fictitious symbouleutic' speeches.

within the text.[75] But this audience, at least partly composed of Isocrates' students, was expected to participate in Athenian political life at a high level, as his student the general Timotheus did.

While Isocrates' speech was not performed in public, the *Areopagiticus* shows a close engagement with and response to the events and ideas of its time and it aimed to influence elite opinion through its dissemination as a written text.[76] It probably dates from the opening stages of the Social War in 357 BCE.[77] Isocrates suggests that short-term military success and overconfidence are preventing Athens from confronting its longer-term failure both as a self-sufficient polis and a hegemonic power (1-2). He draws on the now-mature concept of *politeia* to assess the state of Athens and to prescribe changes, drawing on Plato's city-soul analogy to describe the *politeia* as the soul and practical reason of the city (ἔστι γὰρ ψυχὴ πόλεως οὐδὲν ἕτερον ἢ πολιτεία, τοσαύτην ἔχουσα δύναμιν ὅσην περ ἐν σώματι φρόνησις, 14) and to use the city as a large-scale representation of events (6).

But unlike Plato, with his utopian model of Kallipolis and ethical rather than historical theory of political change, Isocrates anchors his utopian construction in a re-imagined, mythicised version of pre-Marathon Athens. At first Isocrates plays with the identity of his ideal city; the past constitution he is going to praise, the un-walled city with a low population, could very well be that of Sparta (13), renowned for both qualities.[78] Ambiguous references to Sparta are a characteristic of Isocrates' political writing, with which he exploits the difference between his sophisticated readership and the supposed mass audience of the speeches contained in his work.[79]

Isocrates' ancestral constitution contains institutional features familiar in elitist texts: selection of magistrates by election from pre-qualified shortlists (designed to exclude pro-oligarchs) rather than by lot (22-3), and a political culture in which the properly valued elite took office as a liturgy rather than an opportunity for profit (24). Most importantly, the Areopagus Council held supervisory powers over education and civic

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[75] Morgan 2003: 204-6.
[76] Pownall 2007: 240.
[77] Bringmann 1965: 75-7; Jaeger 1940: 411-39; Wallace 1986: 77-80.
[78] Arist. *Pol.* 2.9.1270a29-34, Thuc. 1.10.
[79] Bons 1993: 166-8; Gray 1994b: 89-92.

life (37-8).[80] This extends its role as a repository for ethical excellence that Xenophon (*Mem*. 3.5.20) had already given it far beyond its historical extent.[81] At the time Isocrates was writing, the Areopagus was a religious and homicide court, presided over by the *basileus archon*. The leisured elite were over-represented in its membership of former archons, making it an elite of wealth and status rather than of achievement, pointing to a difference between Isocrates' and Xenophon's elitism.[82]

But Isocrates is fundamentally interested not in institutions but in ethos and values, the major shift he contributes to *patrios politeia* arguments; the purpose of his Areopagus Council is to promote his selected values.[83] It oversees the education of elite citizen youth (43-5), which Isocrates believes to be under-supervised in his own Athens (another implied contrast with Sparta), and it also monitors the behaviour of the entire citizen body (46-9), encouraging good character and behaviour.[84]

He expands the details through a negative comparison of *paideia* then and now, focusing on the degenerate political character of present Athens (ἡγεῖσθαι τὴν μὲν ἀκολασίαν δημοκρατίαν, τὴν δὲ παρανομίαν ἐλευθερίαν, τὴν δὲ παρρησίαν ἰσονομίαν, τὴν δ'ἐξουσίαν τοῦ ταῦτα ποιεῖν εὐδαιμονίαν, 20), notably identifying παρρησία, key to democracy, as a negative feature. The *topos* of the corruption of thought and language in the decayed *politeia* suggests Thucydides' image of *stasis* (Thuc. 3.82.4) and Plato's description of the decline of democracy (*Resp.* 8.560c-61e). By contrast, the *patrios politeia* demonstrated a more nuanced approach to important qualities, such as the two types of equality (δυοῖν ἰσοτήτοιν, 21), a standard item of fourth-century elitist thought, and moderation and respect for tradition in religious practice (29-30), a fourth-century concern across the political spectrum.[85]

In Isocrates' imagined past there was communality of wealth, in that the wealthy invested in and employed the poor, ensuring that there was always work for every citizen (55), in contrast to the current arrangements where the impoverished depended on state pay for jury service and assembly attendance (54). Again, where institution-

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[80] Elections: Arist. *Pol*. 6.4.1318b27-19a4; Mathieu 1925: 145-6.
[81] Wallace 1989: 94-112.
[82] [*Ath. Pol.*] 57; Hansen 1990a: 76-7; Rhodes 1992: 641-5.
[83] Mathieu 1925: 146-52.
[84] cf. Xen. *Lac. Pol.* 2.1-3.5, Arist. *Pol.* 7.17-8.1 on education; Mathieu 1925: 143-5.
[85] Equality: Arist. *Eth. Nic.* 5.3.1131a10-1131b24, Pl. *Leg.* 6.756e-758a, Harvey 1965, 1966; religious tradition: Lys. 30.17-19.

focused depictions of the Solonian *patrios politeia* (such as *Ath. Pol.* 7-9) emphasise the four property classes, Isocrates makes a simple distinction between rich and poor. Even so, this is not like Aristotle's economic analysis (*Pol.* 3.8) but a distinction between the ethical values and status of the two groups, similar to the utopian constitutions whose analysis of *koinōnia* Aristotle rejects in *Politics* II.[86]

While the earlier debates on the ancestral constitution seem to have involved a search for specific *nomoi* ascribed to Solon and earlier lawgivers, which could be reinstated and displayed in Athens, Isocrates, like other fourth-century conservatives, is opposed to the idea of detailed written codes, or at least believes that they can be minimised in a state with excellent *politeia* and well-acculturated citizens (*Areopagiticus* 39-40, *Panegyricus* 78-81), a Laconist position. For Xenophon the importance of laws and lawgiver was a simple connection; the mandatory system of citizen education established by the original lawgiver inculcated the appropriate character that rendered continuing law-making unnecessary.[87] Plato shows a more complex situation in the *Laws*, where a second-best society requires legislation, but the lawgiver aims to minimise codified law with the use of argument and persuasion of intermediate status (7.822d-3d). For Isocrates, it is not so much Solon's written laws as the habits of the Athenians (ἐπιτηδευμάτων, 40) that are the source of the Athenian *patrios politeia*'s strength.[88]

The emphasis on the collective Areopagus rather than individual lawgivers such as Solon differentiates Isocrates from Xenophon, and his promotion of Lycurgus; the Aristotelian *Ath. Pol.* emphasises Solon's role much more (*Ath. Pol.* 7-12).[89] In promoting the collective agent of the law rather than the individual lawgiver, Isocrates opens up a further Spartan comparison, with the Gerousia, the council of Spartan elders. This reopens the question as to whether Isocrates is simply an oligarch, or an opponent of democracy, which he acknowledges is a concern (57).[90] Here, his lengthy response sets out how present democratic Athens is superior to the oligarchic Athens of the Thirty (itself a Spartan-inspired and backed, self-selected Gerousia copy) (63-70). Isocrates' disingenuous explanation for the Spartan echoes in all these

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[86] Eucken 1990: 284-5.
[87] Gray 2000: 152.
[88] Konstan 2004: 116.
[89] Gehrke 2006: 279-82; Rhodes 1992: 118-20.
[90] Ober 1998: 281-2.

arrangements is that the Spartan system is likewise democratic (61); the nature of the democratic element in the Spartan mixed constitution was a *topos* of fourth-century theory. Aristotle reported opposed views that placed it either in the political structure of the ephorate or the social structure of the communal messes and education system (*Pol*. 4.9.1294b13-41).

Like Xenophon's Sparta, Isocrates' Solonian constitution is curiously detached from the history that connects it to the degenerate present: he omits any description of Pericles' or Ephialtes' reforms, returning instead to another panegyric-style retelling of mythical history (74-6), linking his constitution to the mythical past rather than to actual history. Perhaps a couple of years later, he would take a different approach in *On the Peace*, believed to date from Athens' defeat in the Social War a couple of years later in 355 BCE.[91] Here Isocrates clearly depicts the degradation of Athenian democracy under the demands of ruling an empire (41-56), and dissociates Athens from its mythical past, arguing that the current citizens are not descended from the original autochthonous Athenians (88). He contrasts excellent ancestors who should be emulated – the Persian war generation – with those who should not – the more recent 'Decelean' war generation (37-8). The downbeat tone matches that of Xenophon's *Poroi*, which depicts the economic distress of the city; the need for improved models of leadership highlights Athens' loss of confidence in its generals, in this period of multiple *eisangelia* prosecutions, including that of Isocrates' pupil Timotheus.[92]

Throughout his long career Isocrates turned to his own imaginary pseudo-historical and the mythical Athenian past, locating his ideal constitution in the ancestral *politeia* he found there. While he presents himself as a patriotic Athenian, he is aware of his readership's fond attachment to the idea of the Spartan constitution. The structural games played in the *Areopagiticus*, where he unconvincingly attempts to rebrand Sparta as a democracy (61), suggest that he is aware that his ideal Athens looks very much like an idealised Sparta. But there are enough points of contact between Isocrates' arguments and those of his contemporaries – and indeed of Aristotle – to suggest that he was providing a knowing readership with satisfying material, and his many references to poverty suggest an engagement with Athens' economic

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[91] Cloché 1963: 76-82.
[92] *Antidosis* 129-31; Hansen 1975: 58-65; Sinclair 1988: 163-9

situation.[93] Despite his utopian approach and disdain for participation, Isocrates
anticipated the real trend for an increase in the Areopagus' judicial power that
accelerated after the *Areopagiticus*' publication, although he would no doubt have
preferred that power to be mediated through the indirect influence of *paideia* rather
than the blunt tool of *apophasis*.[94]

Plato's *Timaeus*/*Critias* – owning the ancestral constitution

Plato responds to Isocrates' developed ancestral constitution argument in the
Timaeus/*Critias*, where once more he mixes the playful and the serious to position his
arguments on Athenian politics. Eucken argues that the *Timaeus* answers Isocrates'
attack on Plato's political philosophy in his *Busiris*, where a constitution similar to
that of Kallipolis is represented as the work of an Egyptian monarch renowned for
cruelty and tyranny (*Busiris* 15-27).[95] However, Plato seems to be aiming at a broader
target, *patrios politeia* arguments based on Athenian history, with his inventive
depiction of a past Athens forgotten by the Athenians, who know only the names of
kings and heroes of that era, but none of the details of their deeds (*Crit*. 109d-110c).[96]

Rather than follow others in using and re-inventing the shared history and myths of
the Athenians, as he did in the *Menexenus*, Plato playfully creates his own set of
myths, which turn the ideal constitution he invented in the *Republic* into the ancestral
constitution of Athens. In doing so, he questions and undermines Isocrates' grounding
of his arguments in mythicised Athenian history. Gill and others have noted that the
dialogue appears to parody the *patrios politeia*, without explaining why Plato might
have done so here; but the links between the ancestral constitution Plato presents and
the rest of the dialogue suggest that Plato is demonstrating that arguments based on
history are inferior to those based on cosmology.[97]

The dramatic setting of the dialogues emphasises both the focus on Athenian politics
and the idea of taking political debate out of the public arena. The speeches, like that
in Isocrates' *Panegyricus*, are festival speeches, presented orally but in private (*Tim*.
26e-27a), at a party held in Athens during the Panathenaea, the great festival of

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[93] Fuks 1972: 18-25.
[94] Hansen 1975: 51-7; Wallace 1989: 174-84.
[95] Eucken 1983: 208-12.
[96] Brisson 1998: 22-3; Livingstone 2001: 66-73.
[97] Gill 1977: 295 n.36; Naddaf 1994: 408-12; Osborne 1996: 183-5.

Athens' patron goddess (*Tim*. 21a). This improves upon the *Republic*'s dramatic setting, where the discussion takes place in the Piraeus at a new festival for the imported cult of Bendis (*Resp*. 1.327a). The *Timaeus* begins with Socrates summarising his speech of the previous day, a version of the constitution of Kallipolis (although without the philosopher kings), and expressing a desire to see his model in action (*Tim*. 17c-19b). Critias has recalled that he has heard a story of a similar constitution when he was a child, retold from a story told to his great-grandfather by Solon (*Tim*. 20d-21a).

Critias' description of the great and astonishing deeds of this Athens (μεγάλα καὶ θαυμαστὰ τῆσδ' εἴη παλαιὰ ἔργα τῆς πόλεως, 20e) echoes both Herodotus' opening and Xenophon's response to Sparta and Lycurgus (*Lac. Pol.* 1.1-2). Socrates has also said that he would like to hear speakers present a contest of cities (*Tim*. 19c); Isocrates opens his own version of a festival speech with a complaint about the lack of competitive opportunities for speakers (*Panegyricus* 1-2). Aristotle saw the identification of τα θαυμαστά as a good strategy for opening epideictic speeches (*Rhet*. 1415b1-3), and Plato marks these stories as display rhetoric by using this formula.

At the playful level, Plato concentrates attention on the transmission and telling of Critias' contribution. The story told by Solon has the authority of a written text, through its transmission in Egypt, but also the weakness of a copied recital, in its transmission within Critias' family and Critias' own performance of it. Critias' performance is a recreation, a valid means of transmitting the oral genre of myth, but also a lifeless copy, inferior to Timaeus' spontaneous exposition of his own thoughts on cosmology, which provides the serious level.[98] As well as the distinction between public and private, oral and written discourse, Plato seems to apply his ontological hierarchy of being and becoming to types of discourse.

This story is one that Solon specifically failed to include in his didactic poetry, and presented only as a private discourse to his friend, Plato's and Critias' ancestor Dropides (*Tim*. 21c-d). For Solon, poetry was a diversion (παρέργῳ, 21c4), and dealing with Athenian *stasis* left him too busy to develop his account of ancient Athens. Critias claims that his speech will take the city and citizens described by

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[98] Brisson 1998: 25-35; Osborne 1996: 185-91

Socrates as a myth (ὡς ἐν μύθῳ) and show them as the truth (ἐπὶ τἀληθές, 26c7-d2), and assertion of the story's truth is repeated many times.[99] Morgan argues that its plausibility shows that it is a potential charter myth or noble lie for a reinvigorated Athens, with the potential to take shape as the type of didactic poetry of which Plato approves.[100] However, Plato's emphasis on Critias' reconstruction and recital of the remembered story suggests that he is also pointing up its weaknesses and that this playful section will be outweighed by Timaeus' contribution, the serious.[101]

The true Solonian constitution, it would seem, is not the one enacted in the Athenian democracy and displayed on public inscriptions and in Solon's published poetry, but one created for the city by Athena (*Tim*. 24c) and privately communicated to Plato's ancestors.[102] It has in a sense become Plato's own *patrios politeia*, received orally from his teacher and from his family; Critias regards the coincidence between Solon and Socrates' accounts as divinely inspired (ὡς δαιμονίως, 25e).

Plato compares the written transmission of the story preserved in the Egyptian temple with Solon's orally transmitted and less accurate stories of the origins of Athens, representing written analysis as superior to oral discussion and debate. Plato answers Isocrates' Egypt argument by showing that the Egyptians use this constitution because they learned of it at their foundation 8000 years ago; the primeval Athens in which it was used was destroyed 9000 years ago (*Tim*. 23d-24a). The Egyptian priest who explains this to Solon makes several jibes about the Athenians' ignorance of their own history, explaining that the natural cycle of floods and destructions has destroyed their knowledge of their own past, leaving them like children (*Tim*. 21b-23d). That ignorance of history causes poor analysis is a recurring criticism of Athenian democratic debate (cf. Thuc. 6.54-59), but here Plato uses his hierarchy of discourse to suggest that political analysis grounded in cosmology is more powerful.

The description of Athens' physical landscape reinforces its link with cosmology: Athena had also selected Athens' physical setting as the most likely to produce excellence (*Tim*. 24c-d, *Crit*. 109c-d).[103] But the emphasis on landscape also has a

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[99] Morgan 1998: 101-2.
[100] Morgan 1998: 102-4
[101] Osborne 1996: 183-5.
[102] Rowe 2000: 254-7.
[103] Pradeau 2002: 119-20.

playful role, cloaking primeval Athens in a Spartan setting, suggested by the fertile land, lack of temples, and lack of reliance on the sea (*Crit.* 110d-111d). The physical locations of Athenian democracy, such as the Pnyx, are subsumed under an expanded acropolis, which is occupied only by the warrior class, excluding the farmers and artisans from the city (*Crit.* 111e-112c).[104] The primeval Athenians rose from different earth, and were eventually swallowed by it, in a playful reversal of the autochthony myth (*Tim.* 25c6-d3).[105]

Primeval Athens is only half of the model included in the myth; its rival Atlantis plays an important role too, revealed by Critias when he resumes the narration of the story after Timaeus' cosmological speech (*Crit.* 108e-109a). As Vidal-Naquet explained in detail, Atlantis represents fifth-century Athens with its wealth, mining (worthless 'mountain copper' rather than Laurion silver), grandiose public buildings and maritime empire.[106] Plato uses this imagined conflict between his idealised primeval Athens and Athens at the start of its decline to promote his own view of Athenian politics, matching Isocrates' arguments but surpassing him in inventiveness.

Plato is also able to outdo rival analysts of political constitutions by grounding his political philosophy within his detailed cosmology. The city is not (or perhaps not just) a large-scale model of the human soul, but a small version of the cosmos. Xenophon regards geometry and astronomy as subjects to be pursued only for limited practical purposes, while Isocrates regards them as intellectual training of little practical value.[107]

However, Plato's bold and playful move in re-inventing the ancestral constitution as his own, investing Solon with secret Egyptian knowledge and Socrates with divine inspiration, is offset by the abandonment of the *Critias*. The third dialogue of the projected trilogy, the *Hermocrates*, which would perhaps have included an analysis of the failings of Athenian democracy from the Sicilian general, seems never to have been written. Ironically, however, it is the non-ideal and degenerate Atlantis that has

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[104] Vidal-Naquet 1964: 430-1.
[105] Loraux 2000: 29-34.
[106] Vidal-Naquet 1964: 439-43.
[107] Isocrates *Antidosis* 258-69; Xenophon *Mem.* 4.7.2-9.

taken on a life of its own in utopian political thought and in popular culture through the ages.[108]

Plato's *Laws* 3 – the ancestral constitution as *jeu sérieux*

Plato's later work also bears the signs of Athens' loss of confidence after its defeat, and the long years of poverty that marked the 350s, the final stage in Plato's career. The grand narrative of Athenian victory in the *Critias* was abandoned, and the alternative project of the *Laws* is concerned with the practicalities of what is achievable by a lawgiver applying the ideal to the circumstances that pertain (4.708ad), rather than a search for the ideal best itself.[109] The ability to propose and to do what is opportune in the circumstances (*kairos*) was the goal of Isocrates' educational programme, and Plato seems to suggest that this more limited goal is the achievable one.[110]

The central content of the work, the development of a law-code for a proposed colony, Magnesia in Crete, is again wrapped within a complex presentation, which examines the relationship between written and unwritten law, compulsion and persuasion, and the role of history in political argument, through the conversation of three elderly men as they attempt to amuse themselves on a walk to Zeus' shrine in a Cretan cave. After examining the weaknesses of Sparta and Crete, and presenting a typology of constitutions through a pseudo-historical survey, the Athenian Stranger describes to his Spartan and Cretan companions a lawgiver who creates a constitution with many similarities to the fourth-century idea of a Solonian ancestral constitution. The unnamed stranger himself plays a similar role to that of the travelling Solon the sage in Herodotus, whom Croesus greets as Ξεῖνε Ἀθηναῖε.[111]

The *Laws* was for a long time overlooked as a dull and excessively lengthy work of its author's declining years.[112] But Plato seems to regard it as exemplifying the mixture of playfulness and seriousness that is the expression of the divine in humans (θαῦμα... θεῖον, εἴτε ὡς παίγνιον ἐκείνων εἴτε ὡς σπουδῇ τινι συνεστηκός, 1.644d7-

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[108] Vidal-Naquet 2005: 41.
[109] Naddaf 1994: 202-3.
[110] Morgan 2004: 149-50; Too 1995: 182-4.
[111] Herodotus 1.29.1-30.2; Schofield 2006: 75-6.
[112] Bobonich 1996: 249-52; Pradeau 2002: 133-5.

9).[113] Weil highlights the importance of this interplay between playfulness and seriousness, describing the *Laws* as a 'jeu sérieux'.[114] The exploration of history and the design of constitutions are amusements particularly suited to the elderly discussants (3.685a6-b1, 4.712b1-2); just like Solon in Critias' story, they become παῖδες πρεσβῦται.

The contrast between spoken rhetoric and written law is played with in the final parts of the *Laws*, but even before that the differences between written and unwritten law and good and bad constitutions are emphasised. The opening of the *Laws* itself plays with ideas of genre, beginning with the word *Theos* as if it were an inscribed Athenian decree (which in the fourth century usually began with the formula *theoi* inscribed as the first line).[115]

By playing with the genres of public speech, Plato finds a way to write down the unwritten laws of an ancestral constitution, in the form of the spoken preambles that persuade and exhort rather than compel (for example, the law on hunting, 7.824a11-19 and its preamble, 7.823d3-824a9).[116] But he also plays down the role of the lawgiver that is emphasised in ancestral constitution models. Solon and Lycurgus are not named in the historical section, despite many allusions to them – only the Persian kings are named there. Both are named later, in comparison with Homer and Tyrtaeus as writers of didactic poetry, when the Athenian Stranger is considering how laws should be written, in what genre and how they need to surpass a city's other literature (9.858e-859b). Chance, opportunity and the divine are more important factors in the success of a constitution than the lawgiver (4.709b7-9), unless exceptional circumstances produce a man with unusual personal authority (4.711d-712a), inviting the reader to consider whether there are any genuine examples of this. The work of the lawgiver – in the shape of the conversation of books 4-12 – is likened to the type of *mythos* that would be spoken by an oracle (4.712a4), although later it also becomes the type of written text that should be read as part of the Magnesian *paideia* (7.811c-812a).

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[113] Derrida 1981: 156-8.
[114] Jouët-Pastré 2006: 48-54; Weil 1959: 34-7.
[115] Rhodes and Osborne 2003: xix.
[116] Nightingale 1993: 288-9; Yunis 1996: 217-23.

Although Plato showed in the *Menexenus* and the *Timaeus*/*Critias* that history was, for him, an inadequate analytical tool, he uses it in the *Laws* to show both the importance of *kairos* for legislation, and the limits of historical models. Adopting the structures of the fourth-century genre of universal history, he fits his examination of the defective ancestral constitutions of Athens, Sparta and Persia, and their lawgivers, into a (highly selective) survey starting at the last cataclysm, and in doing so presents a Platonic criticism of ancestral constitution arguments in Xenophon and Isocrates.[117] For Plato, historical events, so easily distorted in their retelling, are just as fallible a guide to truth and virtue as the everyday world is to that of the reality of the Forms.

Starting with an imagined prehistoric pre-polis age, the Athenian Stranger works his way through the development of different types of human association, as larger and more complicated groupings of individuals, families and villages emerge from the destruction of all human society by the flood. Plato uses the generic elements of history subversively; while Thucydides presented his Archaeology to show the uncivilised nature of pre-polis early society (Thuc. 1.1-23), Plato inverts this and makes this society the closest to the ideal. The first 'constitution' described as ancestral is the most primitive, first society of small family units (3.678e-679e), similar to the pre-political system of the Homeric Cyclopes (3.682b3-c1, *Od.* 9.105-115). This is developmentally prior to Socrates' first, minimal city (*Resp.* 2.369c-370e); here Plato asserts that its δυναστεία (3.680b2) counts as a kind of constitution, from which aristocracy will eventually emerge (3.681c7-d5).[118]

Plato marks primitive δυναστεία as an ancestral constitution in several ways. While there are no written laws (οὐδὲ... γράμματα, 3.680a5), there are unwritten habits and laws transmitted orally from ancestors (or perhaps, habits and laws which are said to be *patrios*) (ἔθεσι καὶ τοῖς λεγομένοις πατρίοις νόμοις, 3.680a6-7). Authority is literally patriarchal, belonging to the parents and being passed down (3.680d7-e4); it is classified here as a kind of kingship. Plato is taking the idea of *patrios nomos* and entirely removing it from the history of the polis, placing it instead at the start of the historical cycle in something like a Hesiodic golden age, where there is no need of lawgivers (3.680a3-4) and everyone lives happily. The lack of money and thus greed is a further sign of an ideal constitution; because humans have lost the skill of mining

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[117] Weil 1959: 36.
[118] Weil 1959: 68-9.

and access to their mines (3.678e-679c), there are no metals and therefore none of the greed or corruption that caused Atlantis' downfall.

Plato presents this early society as the human society most like the 'age of Cronos' the Athenian Stranger describes (as a *muthos*) as existing in an earlier cycle (4.713a-714b), where citizens lived in obedience to divine spirits in the same sort of relationship that herds of animals have to their human controllers. Good constitutions, he argues, replicate that relationship through the institution of law, which retains some of the divine element. The successful creation of an ancestral constitution is taken out of human hands and the historical era, and attributed to gods outside any historical framework.

The primitive society and the age of Cronos book-end the survey of constitutions, which incorporates somewhat schematised versions of familiar stories of Sparta, Persian and Athens into his model as the process of *nomothesia* begins (3.681c4).[119] The Athenian Stranger uses this survey to show that more stable constitutions will result where there is a mixture of the two forms of constitution, monarchy and democracy, rather than the extremes of each type exemplified by Xerxes' Persia and the decadent version of democratic Athens (3.693de).[120] While the Spartan constitution exemplifies mixture, its previously identified weakness of aiming at the wrong kind of virtue means that it is not an ideal alternative. Plato thus manages to incorporate in his historical structure all the constitutions his rivals based on idealised versions of historical models (Xenophon's Sparta and Persia, Isocrates' ancestral Athens) and to demonstrate their failings.[121]

While Xenophon depicted the Spartan constitution as an unchanging set of laws created by Lycurgus, Plato describes it as a changing system adapted by multiple lawgivers, following his pattern of downplaying the individual historical lawgivers praised by others. Sparta's changes, the doubling of the kingship, the introduction of the Gerousia, and of the ephorate, move it from being a pure monarchy to a mixed constitution (3.691e-692a). These adaptations protect Sparta from the excesses of pure monarchy, caused by the over-concentration of δυναστεία in a single individual,

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[119] Nightingale 1999: 309.
[120] Morrow 1960: 521-43.
[121] Danzig 2003: 289-94.

while its fellow Dorian states Argos and Messene suffer from the greed and ignorance of their unfettered monarchs. Before these states fell into decline, the Dorian league was balanced by the interrelationship between the peoples and kings of each city (3.683e-684b); equality also meant that the process of legislation was not divisive, with no upheavals caused by legislation for land redistribution or the cancellation of debts (3.684d-685a).

Cyrus' Persia is presented as a vibrant city whose strong leader capably mixes slavery and freedom (3.694a4).[122] But the lack of a strong institution of *paideia* meant that the strengths of his *politeia* were not transmitted to the next generation. This depiction clearly draws on Xenophon's *Cyropaedia*, but aspects such as the role of free speech (3.694b2) and politics carried out εἰς τὸ μέσον (b5) also suggest Periclean Athens. Criticism of the lax control of Athenian education is a frequent feature of ancestral constitution arguments (cf. *Areopagiticus* 37), and the detailed management of *paideia* becomes a core feature of Magnesia's constitution.

Although Plato attributes Athenian success in the Persian Wars to its ancestral constitution, which was still in place and guided the character of its citizens as they fought to defend their city and Greece as a whole at Marathon (3.698b), he shows a very different city to the *epitaphios* image of the heroic city at its best. While Solon is not named, the Solonian element of four property classes is highlighted as an important feature (πολιτεία τε ἦν παλαιὰ καὶ ἐκ τιμημάτων ἀρχαί τινες τεττάρων, 3.698b4-5, cf. *Ath. Pol.* 7.3-4), and reappears in the Magnesian constitution (5.744bd).[123] But the important principles are not so much the laws of the ancestral constitution itself, but the moral culture of *aidos*, which generated respect for the laws, and the fear caused by the magnitude of the Persian threat, which increased obedience to the extent that Athenians were willing to be enslaved to their laws (3.698bc). Morrow regards this emphasis on *aidos* as an oblique reference to the Areopagus Council and the behaviour it engendered in the Athenians, just as Isocrates stressed its moral supervisory role (cf. *Areopagiticus* 37-49).[124] Later, an Areopagus-like Nocturnal Council will be given the same role of moral leadership and surveillance over Magnesia's citizens (12.951d-952c, 961a-968e).

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[122] Morrow 1960: 527-8; Schofield 2006: 78-9.
[123] Morrow 1960: 591-3.
[124] Morrow 1960: 63-5.

This fear and its associated *aidos* reappeared when the Persians returned and threatened Athens again (3.699bc). Obedience to the ancestral laws powered a further Athenian defeat of the invaders, although the battles here are not named, nor the different role of the Athenian demos in naval victory. However, the force that united the Athenians was fear (φόβος, 3.699c2), so that there was no distinction between the brave and cowards – hardly a resounding celebration of Athens' finest hour. The Athenian Stranger seeks to distinguish Athens' success under its ancestral constitution, when obedience to the laws was a kind of voluntary slavery, and the demos was in partial control (3.700a3-5), from its later decline, but his historical example depicts grim desperation rather than the rule of reason.[125] Just as the Persians were more like Athenians, Plato shows how easily historical examples can be distorted by showing the obedient Athenians as more like Xenophon's ideal Spartans (despite their latter-day failure to follow Lycurgus' laws). Notably this first mention of the demos triggers the account of Athens' decline.

The ancestral constitutions presented in *Laws* III are all shown to be defective representations, except for the most primitive kind, which resembles the divine institutions of the age before the flood. The association that Plato valorises is not Athens, Sparta or Persia, but a pre-political mythical age; Homer, the basis of traditional Athenian education, depicted the Cyclopes as man-eating brutes, not noble savages. The *Laws* recalibrates the balance between *nomoi* and *politeia*, acknowledging the need for *nomoi* in the imperfect world where the ideal constitution of Kallipolis cannot be achieved, but whether the Athenian Stranger's lawgiver is one of the exceptionally gifted lawgivers or not is left open.

De-democratising the ancestral constitution – the final moves

Just as Plato stepped back from his depiction of powerful primeval Athens as the model for the ideal society, Isocrates readjusted his ancestral constitution model to account for the weakening of Athens after 355. The shifts in the balance of power between the Greek *poleis* were becoming less important as Philip's Macedon came to dominate the region. Isocrates' final adjustment to his ancestral constitution model, therefore, re-orients it towards monarchy. The *Panathenaicus'* unwieldy structure and excessive length have led some to dismiss the elderly Isocrates as senile, but Isocrates

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[125] Morrow 1960: 85

uses the *topos* of old age to emphasise the theme of revision.[126] Moreover, it contains two important aspects of Isocrates' political thought, the attribution of the Athenian ancestral constitution and democracy to Theseus, and a complex analysis of Isocrates' attitudes to Sparta.

While the ancestral constitution model in the *Areopagiticus* relies upon the idealisation and distortion of a historical model through a somewhat Laconist lens, the version presented in the *Panathenaicus*, Isocrates' last major work, follows Plato's mythicising moves as well as bringing the idea of the monarch back into Athenian political discourse. The idea of Theseus as a democratic king itself had a long history (e.g. Thuc. 2.15.2-6); Athenians attributed early developments in their polis to him. Euripides had presented Theseus on the Athenian festival stage as a mouthpiece of democratic ideology (*Supp*. 403-62), and Isocrates had long since eulogised his contributions to Athens (*Helen* 18-38), and specifically his role in setting up a common state for his fellow citizens (τῶν συμπολιτευομένων, 35). This model of the establishment of the Athenian *politeia* reappears in the *Panathenaicus*, when Theseus hands over the state to the people (129) who then establish a *patrios politeia* democracy, which is really a mixed constitution (δημοκρατίαν... ἀριστοκρατίᾳ δὲ χρωμένην, 131).

This claim introduces the most detailed exposition of Isocrates' political theory, in which he sets out the threefold model of constitutions but emphasises the contrast between good and bad leadership in possible versions (132-3). However, the detailed analysis serves perhaps to obscure the way that Isocrates has based the *politeia* he praises on mythical origins. Athenian foundation myth, rather than the hazy history of the Solonian era, is emphasised.[127] While depictions of Solon straddle the boundaries of history and myth, this story of Theseus and his abdication in favour of the Athenian aristocracy is entirely mythical, although Theseus' political role appears to have featured in the lost part of the *Ath Pol*.[128]

By placing Theseus at the heart of the foundation of the Athenian *politeia*, Isocrates develops an ingenious defence against accusations of Laconophilia (152), arguing that

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[126] Tigerstedt 1965: 187; Too 1995: 56-7.
[127] Masaracchia 2003: 162-5.
[128] Plut. *Thes*. 25.1-2, *Epitoma Heraclidis* 1.

Lycurgus' Spartan constitution is a copy of the Athenian one, and the Gerousia a copy of the Areopagus Council (153-4). Isocrates acknowledges this outrageous inversion of his earlier arguments, which remodelled the Areopagus as a Gerousia, through the rhetorical device of a critical Spartan student, who counters that Isocrates has duplicitously attacked Sparta to disguise his admiration for the city (235-9).[129] Isocrates uses the dialogue form and educational setting to redefine his thoughts on Sparta as philosophy rather than practical politics, but by this stage Sparta is such a spent historical force that it is safe for Isocrates to acknowledge that his thought on Sparta is ambiguous.

Although many commentators argue that Isocrates' *patrios politeia* arguments had little effect, Isocrates seems to have documented a change in Athenian political mentality shown in the increasing role of the Areopagus in the fourth-century democracy.[130] Inscription and literary evidence show it supervising religious disputes, and it was also guardian of the laws.[131] But Eucrates' tyranny decree of 337/6, not long after the council gained the new power of *apophasis* in an initiative supported by Demosthenes, suggests that there was some unease about the increase in the Areopagus' power, and its relationship to the elite; among other measures, the decree forbade the Areopagus from meeting at times of political turmoil.[132] Athens, weakened by its defeat by Macedon at Chaeronea (338), was well on the way to abandoning democracy, and a strong Areopagus with broad legal powers made that more possible.

Conclusion

The idea of the ancestral constitution provided a space within which Athenian democracy could be attacked and alternatives debated, after the restoration of democracy and reconciliation. The re-imagined past was a safer model in which to explore elitist and other alternative constitutions without the taint of oligarchy or Sparta. Xenophon's defence of the Spartan constitution displays some ambivalence in projecting Spartan excellence back into the past. Isocrates, on the other hand, uses his loyalty to Athens and its glorious mythical past to escape accusations that his model

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[129] Gray 1994a: 238-56.
[130] Hansen 1999: 290-1.
[131] RO58=*IG* II[2] 204, Pl. *Euthphr.* 2a, Lysias 7.22.
[132] RO79=*SEG* xii 87; Hansen 1999: 294-5; Ostwald 1955; Wallace 1989: 177-9.

of an elitist democracy is really a Spartan-inspired oligarchy. Both writers seem to look to the limits of the historical past.

Plato mocks the idea that the Athenian historical past can be the basis for political excellence by satirising both the past itself and its use in civic discourse, through the medium of the funeral speech in the *Menexenus*. Both Xenophon and Isocrates adopt public civic discourse in a similar way, translating the rhetoric of the public display speech into conversations between Socrates and his pupils, or to Isocrates' readership, by repurposing the genres of spoken rhetoric into new literary forms. Isocrates in particular plays on the distinction between the public audience internal to his speeches and the private external audience, acknowledging the ambiguity of his arguments.

Ancestral constitution arguments changed throughout the century. Their origin in the dispute between oligarchs and democrats at the end of the Peloponnesian War was quickly transcended, although the popular appeal to ancestral custom retained its political power. After Athens weakened in the 350s, the basis for ancestral constitution arguments, or perhaps the need for them, also weakened. Before Athens' defeat Isocrates presented an Athenian collective body, albeit the elitist and aristocratic Areopagus Council, as a source of good customs; Plato stepped back from his narrative of the victory of primeval Athens, and after dismissing historical constitutions in the *Laws* he returned to a model based on divine inspiration. Isocrates' acknowledge the increasing importance of Philip of Macedon with his growing emphasis on the monarchical origins of the *patrios politeia*.

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