

# A Theory of Self-Governance: *De Facto* Constitutions as Filters

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## **Abstract**

What is self-governance, and under what sets of institutions is it possible? We explore this question from the perspective of informal (*de facto*) constitutionalism. The dominant approach, grounded in formal constitutionalism, overlooks crucial institutional features that determine whether governance is something done by individuals to themselves, as opposed to something done by *some* individuals to others. Understanding self-governance requires not only identifying the durable procedures for public decision-making, but also appreciating how these procedures act as filters, which select for the acquisition of political power by individuals with specific and predictable characteristics. We develop a novel constitutional typology based on the structure of political property rights on the one hand, and the kinds of individuals that govern on the other, and use this typology to discover the types of polities most likely to be self-governing.

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This is the first principle of democracy: that the essential things in men are the things they hold in common, not the things they hold separately. And the second principle is merely this: that the political instinct or desire is one of these things which they hold in common...The democratic contention is that government...is not something analogous to playing the church organ, painting on vellum, discovering the North Pole (that insidious habit), looping the loop, being Astronomer Royal, and so on. For these things we do not wish a man to do at all unless he does them well. It is, on the contrary, a thing analogous to writing one's own love-letters or blowing one's own nose. These things we want a man to do for himself, even if he does them badly...In short, the democratic faith is this: that the most terribly important things must be left to ordinary men themselves...This is democracy; and in this I have always believed.

G.K. Chesterton

## 1 Introduction

What is self-governance, and under what sets of institutions is it possible? Ask a dozen social scientists or philosophers these questions and you will likely receive a dozen different answers. There will be some commonalities, however. First, self-governance will probably have, in the answerer's estimation, some necessary connection with *democracy*. Perhaps democracy is the political form that is most conducive to self-governance, or perhaps democracy *is* self-governance. Second, self-governance will probably be embedded within the set of larger social-political ideas we call *liberalism*. Although it is meaningful to say, in one sense, Athens following Solon's or perhaps Pericles's reforms was a self-governing polity, contending there was no qualitative difference between the experience of governance under Athens and modern democracies will make social scientists and philosophers deeply uncomfortable. Contrasting the "liberty of ancients" and the "liberty of moderns" (Constant 1819), and locating the experience of liberalism with the latter, is one possible way of resolving this tension.

Of course, liberalism and democracy are themselves nontrivial to define. For example, many comfortably embrace all political systems featuring regular plebiscites as forms of democracy, and all systems of social thought having their root in one of the several European

Enlightenments claim to be heirs of liberalism. But the conjunction of the two—*liberal democracy*—takes on a new set of meanings, and there are well-traveled paths within economics, politics, and philosophy that suggest these meanings may contain the answers to the two questions posed at the beginning of this section. In particular, the political economy literature following the Second World War contains some important insights, specifically on the nature of self-governance. Frank Knight (1960) focused on the difficulties and tensions of maintaining a democratic society, but his association of democracy with discussion, as opposed to command and domination, comfortably fit the liberalism to which he adhered throughout his academic career. The contractarian tradition encompasses both John Rawls (1971) and James Buchanan and Gordon Tullock (1962), who for all their differences, agreed on the fundamentals of self-governance and liberal democracy: rational assent to society's governance institutions by the governed. F. A. Hayek (1960) looked for governance mechanisms that would limit the use of state coercion to instances that were general, predictable, and nondiscriminatory. And Vincent Ostrom (1997), building on his earlier works on the importance of intermediary and nested governance structures (2007b [1971]) and the problems with the administrative state (2007a [1973]), was explicitly motivated by the desire to preserve liberal democracy from some of democracy's well-known illiberal possibilities.

These classic works, taken together, suggest that it is meaningful to say a society is comprised of free and responsible individuals who govern themselves when their governments possess *institutional structures* that simultaneously are expressive and protective of liberal democracy. In this sense, each of these thinkers could equally fairly be classified as theorists of liberalism as much as of democracy. Their solutions centered on a constitutional architecture that would empower the state to protect individual rights and provide crucial common-interest

goods, while constraining the evils that could result from any narrow interest group capturing the state and using it to advance their own ends (e.g., Buchanan 1975).

The quest to discover and enshrine institutional structures conducive to self-governance has largely taken place under the rubric of formal constitutionalism. This probably reflects both the fruitfulness of the positive project focused on choice over the ‘rules of the game’ and normative sympathies emphasizing discussion and consent in public affairs. Although we are sympathetic to these thinkers both positively and normatively, we want to explore self-governance from an alternative perspective: that of *informal* constitutionalism. Our novel contribution is, using the tools and ideas developed by the theorists of liberal-democratic self-governance, to explore the characteristics of informal (*de facto*) constitutions that promote self-governance<sup>1</sup>. Since *de facto* constitutions are not written down (although they may be compiled, in part, by collections of documents), the focus shifts to the durable organizational properties of political institutions, which select for certain outcomes while simultaneously discouraging others. The rich institutional variety within polities across time and space necessarily means, in order to focus on essentials, my analysis will take place at a high level of abstraction. In spite of this, my conclusions are both specific and novel. We argue that informal constitutions can be viewed as durable structures of *political property rights*, and that analyzing the knowledge-generating and incentive-aligning features of political property rights structures as social filters can point to concrete criteria for determining whether a polity is self-governing. These criteria mainly have to do with discovering, through the political filtering process, which individuals come to hold political authority, regardless of formal constitutional particulars. We argue, for

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<sup>1</sup> Historically, the most durable informal constitution was probably that of Medieval Europe (Salter and Young 2018a; Salter and Young 2018b; Young 2017; Young 2018). This constitution was grounded in the exchange of political property rights, resulting in a self-enforcing set of constraints placed on the various “shareholders of the realm.”

any particular *de facto* constitution, if a polity's governance institutions consistently select for individuals with specific class characteristics over others—that is, individuals who are members of a recognizable social group whose interests are (a) relatively homogeneous and (b) at variance with the interests of other members of the polity—that polity is less likely to be self-governing.

In the context of informal constitutionalism, we are going to focus on how incentive-aligning governance institutions contribute to self-governance. In the next section, we justify our focus on informal as opposed to formal constitutions.<sup>2</sup> We also show how constitutions act as filters, which promote certain political outcomes while discouraging others. Using this filtering perspective, in Section 3 we develop a novel constitutional typology for classifying governance institutions. This typology depends simultaneously on whether those who govern internalize the costs and benefits of their actions, and whether governance is open to all as opposed to a closed subset of the population. In Section 4 we use the typology to understand what kinds of societies are self-governing and argue that liberal democracies, as they currently exist, are not self-governing. We also defend a counter-intuitive conclusion: seemingly undemocratic institutions, such as property requirements for voting, can contribute to rather than frustrate self-governance because they align incentives. In the concluding section we briefly recapitulate and discuss the implications of my analysis for future scholarship on self-governance.

Ultimately self-governance is about enabling the widest possible pool from which governors can be drawn, while keeping them genuinely accountable to those whom they govern.

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<sup>2</sup> To be clear, we are not arguing that formal constitutions cannot address the concerns we raise. For example, in subsequent sections we will extensively discuss the relationships between concurrence, incentive-alignment, and self-governance. If these concerns were to be accounted for with an appropriately designed formal constitution, it would probably take the form of a supermajority decision rule, as emphasized in Buchanan and Tullock's (1962) classic work. But just because formal constitutions can, in theory, address these concerns does not render the analysis of informal constitutions unimportant. In fact, precisely because real-world formal constitutions have done such a poor job at promoting self-governing polities, it is even more important to understand how exchange of political property rights results in informal constitutional arrangements that either promote or retard self-governance.

There can be, and should be, a host of nested and complementary institutions performing these roles. Self-governance is thus democratic, but not merely democratic. It is also liberal, but not merely liberal. My analysis suggests that the insights bequeathed by the earlier theorists of liberal democracy is but one possible way of understanding self-governance. Liberal democracy is not necessarily expressive of self-governance. It is one case of a more general category that depends on the filtering procedure for selecting rulers and the underlying structure of political property rights. Considering these features of a polity's constitution thus provides additional insight as to what self-governance is, and also serves as a starting point for deriving additional normative justification for the 'compound republic.'

As far as we are aware, our contribution is the first to treat explicitly the relationship between informal constitutions, political filtering mechanisms, and self-governance. But there are several related literatures. The first literature is on endogenous rule formation, and focuses on how groups create governance arrangements to solve communal problems 'from the ground up' (Anderson and Hill 2004; Ellickson 1991; Leeson 2011, 2014; 2017; Ostrom 1990; Ostrom et al. 1992; Stringham 2015; see also Powell and Stringham 2009). The second literature more explicitly engages normative concerns, both facing communities that wish to self-govern and with the conception of self-governance itself. Prominent examples explore the tensions within liberalism (Levy 2014), the difficulties of maintaining genuine democracy (Koppl 2018; Levy and Peart 2016), and the relationship between norms of justice and communal well-being (Gaus 2011, 2016, forthcoming). Our conclusions vindicate the theorists of self-governance as liberal democracy, but for different reasons than have yet to be stated in the literature. Whereas the usual view has been to locate the essential features of a self-governing society in the particulars of formal procedural rules for collective action, our theory suggests that we can speak

meaningfully of self-governance, or its absence, on margins conceptually unrelated to *de jure* mechanisms.

## **2 An Alternative Perspective on Constitutions**

Our point of departure is the institutional structure for collective action within a given polity. This institutional structure can be characterized as a set of rules for making rules. These ‘rules for rule-making’ are a polity’s constitution (Buchanan 1987). The great attention paid to the particulars of this structure, such as separation of powers, checks and balances, specifically chartered rights and immunities, etc. is understandable. The kinds of outcomes a constitution permits, and those it discourages, certainly have some relation to our intuitions about what it means for people to govern themselves. The nature of this relationship will reveal to us much about our own implicit theories about self-governance.

The constitution ought to be the focus of attention because, among liberal democrats, even those most strongly in favor of direct democracy relative to other constitutional features concede the necessity for some non-democratic procedures to govern collective decision-making. Even the strongest supporters of direct democracies (e.g., Budge 1996; Crouch 1943; Kirchgassner 2008; Schmidt 1989; Sullivan 1892; Wolfensberger 2000) agree that there ought to exist some sort of constitutional protections. Essentially, very few people actually think there should be a complete direct democracy where collective action always reduces to a universal plebiscite. This is obvious both in theory and in history. Formally, every free male citizen had the right to speak in the Athenian assembly. Informally, several mechanisms for allocating speaking time were prevalent, for without these mechanisms there would be no structure to public conversation, and hence no constructive deliberation. The rules informally allocating the

right to deliberate on behalf of the polity will never be perfectly egalitarian, if for no other reason than meaningful deliberation entails nontrivial fixed costs for the polity. Some individuals receiving sufficient time and space to make their proposal will necessarily mean that others do not receive their share on a strictly *pro rata* basis (de Jouvenel 1961).

Already we have stumbled upon an interesting feature of constitutions: the difference between the formal procedures for collective decision-making, and the informal realities of collective decision-making. Especially when taking place among thinkers in modern polities, the debate over the nature of self-governance frequently appeals to the formal constitution, should one exist. For example, what role do constitutions play in determining collective outcomes: are they devices for *constraining* collective action, or are they devices for *coordinating* collective action? The direction of the self-governance debate will unfold very differently if parties can agree as to whether constitutions primarily ‘take some outcomes off the table’ or merely focus group attention on a range of feasible outcomes. The problem is not that we have the wrong question; the problem is the question is being asked with recourse to the wrong constitution.

Political philosophers prior to the early 19<sup>th</sup> century would be confused by the current distinction between formal and informal constitutions, and doubly so at the attention paid to the former at the expense of the latter. To these earlier thinkers, the decision-making procedures of the state, whatever those procedures were, comprised the constitution of that state. *De jure* procedures, chartered rights, etc., to the extent they influenced how states actually reached their decisions, were obviously part of the *de facto* constitution. But they had no bearing on collective outcomes if they did not influence how those empowered to act on behalf of the public behaved. Reinterpreting this insight to speak to the current debate: to the extent that the *de jure*



constitution matches the *de facto* constitution, the *de jure* constitution is redundant; and to the extent that the *de jure* constitution does not match the *de facto* constitution, it is toothless.

If the issue were merely reallocating scholarly attention away from formal constitutions in favor of informal constitutions, it would hardly be worth writing about. Many studies by many different scholars either explicitly or implicitly explore *de facto* constitutional issues. The difficulty with this conversation, and the reason a second look at the *de jure* vs. *de facto* point is worthwhile, is that the standard tendency is to look at *de facto* constitutions in the exact same manner as *de jure* constitutions. *De jure* constitutional analysis, comprising some combination of textual exegesis, empirical social science, and moral philosophy, would produce a body of work suggesting what outcomes are likely, and what are morally acceptable, constitutionally speaking. The temptation is to transplant this mode of thinking directly to *de facto* constitutions, as if the only difference were that the latter are unwritten, and that this did not itself necessitate any sort of change in the social scientific ‘standard operating procedure.’

But the fact that there is a durable architecture for collective decision-making that lies behind whatever formal procedures are in place suggests we have to approach our analysis quite differently. The methodological principles of positive and normative social science are not in question; their application in this particular institutional environment is. Casual observation suggests that the norm is for significant variation between *de facto* and *de jure* constitutions. This is because, just as there is potentially for mutually beneficial exchange among actors in the course of ordinary politics, there is potentially mutually beneficial exchange among actors in the course of constitutional politics.

An analogy to the economic theory of markets will be helpful here. Economists have long emphasized that what is being exchanged in markets is not physical goods or services

themselves, but property rights to these goods and services (Alchian 1987; Demsetz 1964; North 1991; Powell 2002). A market is the institutional structure governing the process of property rights exchanges. Because mutually beneficial exchange is the norm so long as individuals have an incentive to make exchanges, and possess the information necessary to do so, the formal ‘equilibrium’ properties of markets are primarily useful as explications of the *filtering mechanisms* that highlight the survivability characteristics of households and firms that are able to move from a less preferred to a more preferred arrangement of property rights (Alchian 1950). These insights hold equally true in the political exchange process, and *quid pro quo* is the relevant lens for exploring both ordinary and constitutional exchange. At any given moment, the polity’s constitution will be a reflection of its structure of political property rights<sup>3</sup>: the informal procures for determining who has the right to exercise which public functions, as well as specifying what the payoffs are for particular courses of public action (Salter 2015a). If political actors can make mutually beneficial exchanges over tax and spending decisions within the rules, they will; and if they can make mutually beneficial exchanges over the *procedures* for these decisions, they will as well. This can include amendment of existing procedures, whether formally or informally, or the creation of new procedures as changing circumstances enable a new set of constitutional exchanges, and hence distribution of political property rights, feasible.

Importantly, the filtering perspective outlined above draws attention to the characteristics of the individuals or organizations that are adaptively successful within the environment in question. In markets, for example, firms are modeled as profit maximizers because adaptively

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<sup>3</sup> Political property rights, when specified appropriately, ensure that there is an alignment of incentives for the political actors to govern well (Salter 2015b). An important feature is a form of residual claimancy. For example, in medieval times, kings and nobles, because their political rights were tied to economic rights, internalized the value of collective decisions into their property holdings. A troubling feature of modern “liberal” democracies is that elected officials can use political authority to claim economic rights to which they are not, in any meaningful sense, residual claimants. This can explain many pathologies of collective action in these polities.

successful firms will be the ones that make the highest actual profit over time, while less successful firms will lose market share and eventually be weeded out. The natural follow-up question is, what properties of firms enable them to make higher profits than their competitors? The selection paradigm can also be meaningfully applied to constitutional politics. But selection in this environment is less precise, because there is not as tight feedback in political settings, still less constitutional settings, as there is between production and profit in the market sphere (Martin 2010; see also 2011). There will still be margins of success and failure, but those margins could be the maximization of different objectives such as votes, budget and personnel, or personal influence. But along all of these margins, any individual or organization will have opportunity for cooperation or competition; some will be selected for and receive a more preferred arrangement of political property rights, while others will be discouraged and be forced to make do with a less preferred arrangement of political property rights. Now the question is, what are the characteristics of the individuals or organizations that enable them to exhibit greater constitutional durability than their competitors?

By adopting a subtly different filtering perspective, the object of inquiry has changed significantly. Instead of focusing on the Aristotelian dimensions of constitutions, i.e., the breakdown in power between the One, the Few, and the Many, we instead explore what properties of the One, the Few, and the Many enable them to acquire and retain authority over public decision-making rights. The constitutions-as-filters perspective thus puts in the analytical foreground the *kinds* of agents, whether individuals or organizations, who govern. This is certainly an important issue for the nature of self-governance. What if a polity's *de jure* constitution is such that predictable subsets of the population comes to acquire political authority, and predictable subsets are prevented from doing so? Focusing on what the One, the

Few, or the Many can or cannot do places excessive import on the *governance* in self-governance. The perspective we propose balances this by allocating relatively more attention to the *self* in self-governance.

### **3      Constitutions as Filters: Who, Whom?**

A political property rights approach to *de facto* constitutions is well-suited to ground our conceptions as to what makes polities self-governing. Since these kinds of constitutions describe the actually existing distribution of political power, it is to them we must look to ascertain who is governing whom. However, *distribution* in this context refers not only to a static allocation of decision-making rights, but also to the dynamic filtering properties of the *de facto* constitution. Both the holders of political power at a moment in time, and the kinds of individuals who come to acquire power over time through the political filtering process, require attention by theorists of self-governance. This is a new dimension of analysis from the procedural perspective of *de jure* constitutionalism, and cannot be reduced to the categories of thought that have prevailed in analyses of the relationship between *de jure* constitutions and self-governance.

Lenin's question remains pertinent for any theory that purports to describe actually existing political institutions, and thus in developing a theory of self-governance with real-world applicability. Intuitively, if a certain class of individuals comes to acquire power over others, and are capable of retaining it over significant periods of time, we should be concerned about the prospects for self-governance in that polity. To the extent that the characteristics of that class can be described abstractly, to yield predictions about the subset of the population that will come to hold political authority in the future, these concerns increase. If this class of individuals has well-defined interests that are at variance with the interests of those who find themselves

systematically underrepresented in wielding power, these concerns *greatly* increase. The existence of a class of individuals set apart from the general population in terms of personal attributes and special (as opposed to general) interests is a recipe for Madisonian factionalism. If a predictable subset of the population finds it can acquire and retain its preferred arrangement of political property rights over time, and thus exhibit high adaptive fitness within the environment described by the polity's *de facto* rules for rule-making, it is unlikely the polity will remain *self-governing* in any meaningful sense.

Further light can be shed on the relationship between self-governance and informal constitutions by integrating the insights of a group of theorists who have been unduly neglected by modern scholarship constitutions. The early 20<sup>th</sup> century 'elite theorists' remain the most sophisticated commenters on the tendency for mature polities to evolve a deep constitutional ecology that differs from any *de jure* charters, as well as to exhibit a high degree of similarity although they are separated across time and space. Michels (1915) conducted pioneering research on the nature of political parties, especially in democracies. The originator of the "iron law of oligarchy," Michels showed the organizational pressure that would drive even the most committedly democratic polities towards centralization and hierarchy. The necessities of governing large and complicated states would require intermediary organizations, even those formally committed to democratic ends, to soften those commitments in the name of acquiring, exercising, and retaining power. The rise of elites—those individuals who have a competitive advantage in political affairs—is a natural consequence of this centralization: organizations such as political parties and administrative bureaus, after all, need somebody to run them. Mosca (1939) introduced the concept of the *political formula*, or the legitimating principle (which may, in fact, be true, but the truth of which is ultimately irrelevant) by which elites justified their

possession of political authority. The political formula is especially important as a justificatory tool in polities that exhibit a noticeable gap between the classes of elites and non-elites. Pareto (1935), already famous amongst economists, drew a distinction between logical and non-logical action, the distinguishing feature of which was, for the latter, the lack of concrete feedback to evaluate the effectiveness of means for the attainment of ends. Importantly, logical vs. non-logical action do not map neatly onto modern categories of rational vs. irrational action. To Pareto, action *per se* is rational, because it is goal-oriented. Whether it is logical is a function of environmental feedback. Political environments, and especially constitutional environments, promote non-logical action relative to logical action for the simple reason that there are fewer constraints in these environments that restrict the range of predictable outcomes.

Importantly, these mechanisms are at work in all states. It is important for our purposes that neither liberal, democratic, nor liberal democratic politics are free from the tendencies described by the classical elite theorists, as Burnham (1941, 1943) asserts and Wagner (2016) expands upon. Ultimately these thinkers' insights can focus our attention on the constitutional features that should bear the heaviest analytical weight to answer what *de facto* constitutions actually reflect self-governance.

Figure 1 provides a basic constitutional typology that is informed by the elite theorists. The typology also contains an important feature of political property rights, of a kind considered by the thinkers surveyed in the Introduction, albeit approached from a different angle. It is thus a balanced attempt to consider both the *self* and *governance* in self-governance, a break from traditions in which the former is subsumed within the latter. The typology is a 2x2 matrix, with the rows corresponding to an essential feature of political property rights, and the columns

corresponding to the subset of the general population from which the holders of political property rights, whomever they are, tend to be drawn.

**Figure 1—A Constitutional Typology**

<i>Row: Political Property Rights</i> <i>Column: Who, Whom?</i>	<b>Amateurs</b>	<b>Experts</b>
<b>“Other People’s Money”</b>	Ancient democracies	Modern democracies
<b>“Skin in the Game”</b>	Freeholders’ republic	Singapore, Inc.

The rows detail a standard feature inherent in all structures of public decision-making: for those who are empowered to make such decisions, what personal share of costs and benefits arising from their decisions accrue to them, as opposed to being passed on to the public at large? “Other People’s Money” refers to situations where public decision-makers do not internalize large shares of the costs and benefits arising from their actions; these costs and benefits instead are borne or enjoyed by the public. The converse also holds: “Other People’s Money” can refer to situations where public decision-makers are forced to internalize costs and benefits that do not arise from their personal behaviors. Both excessive consequence passing (the more salient

problem) and excessive consequence bearing are properties of processes where costs and benefits are not tightly linked to personal actions, which frequently is the case with collective action. “Skin in the Game” refers to solutions to the cost-benefit divergence problem: there is some political-institutional mechanism that pushes into alignment the costs and benefits accruing to public decision-makers and the costs and benefits to the public at large that follow. In addition to expressing a widely considered issue within the political economy literature, it is also a way of integrating Pareto’s insights concerning feedback: more direct internalization of costs and benefits associated with governance should be associated with a more robust feedback loop between action and consequence, all else being equal.

The columns capture the personal characteristics of those who find themselves in the role of public decision-maker. Here we use the term “expert” instead of “elite” since the connotation of the former seems to capture the essence of what it means to be an elite, but also speaks to the kinds of individuals who come to exercise power in modern Western polities. In brief, an expert is one who specializes in governing, and possesses a class interest in means of governance conducive to expert management (Koppl 2018; Levy and Peart 2016; see also Leonard 2016). The following two conditions set apart experts from amateurs. First, experts are set apart by some initiation procedure, the participation in which is costly. This initiation procedure may be replicable, such that an amateur can make strategic investments to become an expert, but it need not be. An example of a replicable initiation procedure is graduation from an Ivy League public administration program; an example of a non-replicable administration procedure is being born into the Roman senatorial class. The empirical tendency for social groups to cluster around these identities, at least in sufficiently large and old states, reflects Michel’s insights. Second, experts reflect a division of labor in governing. They possess governance-specific human capital, which



increases their efficacy (or, *pace* Mosca, appears to increase their efficacy) in exercising political power. An amateur, then lacks one or both of these qualifications. If these two conditions hold, *and* the members of the group in question have an identifiable interest which is at variance with the interests of non-group members, the group meets the requirements of the “expert” classification in my analysis.

Within the boxes created by the intersection of a row and column is a “representative” polity that fits these distinctions. Exploring each of these will help us refine our intuitions on self-governance to the point where we can speak meaningfully to the conditions of its existence.

#### **4 Exploring the Quadrants: Locating Self-Governance**

In this section we justify our classifications of the kinds of polities that fit into the quadrants. We will briefly elaborate on the political property rights structure within the representative polities. This is a small digression from my thesis, but a necessary one to show that the categories described above possess empirical content. Having shown that the polities in question can be fruitfully analyzed in terms of political property rights and class filters, we can then use those categories to ascertain which conjunction of political property rights and class filters is best suited to self-governance. We proceed in order of quadrants.

The Hellenic city-states of classical antiquity fall broadly within the first quadrant. Using Athens as an example, governance was not conducted by experts as they have been defined here. All Athenian citizens, meaning free males (roughly 30% of the population), had the right to participate in the *ecclesia* (assembly). Citizens in the *ecclesia* directly conducted collective action. To be sure, certain individuals were much more likely to find themselves in positions of public importance. This can be seen in the institution of the *boule*, a council comprised of

several hundred individuals who had agenda control over *ecclesia* deliberations. Individuals on this council were heavily drawn from the propertied class, rendering its composition much more oligarchical than the *ecclesia*. While oligarchical power was lessened by the Periclean reforms, it is grossly inaccurate to say that every voice counted equally, and that anybody could govern. However, by expanding the offices that could be staffed by individuals who did not possess significant property, the reforms that characterized the ‘golden age’ of Athenian democracy made polity governance quite open by the standards of the ancient world. But Athenian democracy did not solve the cost-benefits alignment problem. As shown by Athenian officials’ transformation the Delian League from a defensive arrangement against the Persians to an instrument of Athenian domination, possessors of political power were quite able to pass the significant costs of perpetual military expeditions onto the public at large. Just as large a risk was the *ecclesia* imposing costs on individuals due to the perception that those individuals contributed to poor public decisions. From the perspective of cost and benefit alignment, both are worrisome. Because responsibility cannot clearly be assigned, prominent individuals were sometimes able to pass the costs of their decisions on to others, and other times individuals had costs imposed on them by the political process that were disproportionate to that individual’s contribution to collective decision making. A particularly eloquent example is provided by Thucydides in the third Periclean oration, in which Pericles defends himself against an irate assembly. More generally, the practice of exiling prominent figures due to fear of tyranny is an example of how individuals could and did bear costs that did not follow from the personal consequences of their actions. Cost and benefit alignment was clearly a problem.

Modern democracies, including the United States and the polities of Western Europe, fall within the second quadrant. These polities are characterized by regular and open elections,

whose freedom from corruption is virtually certain. But this does not mean that the average individual has any significant say in influence the operations of the state, which now goes by the misleadingly value-free phrase “public policy.” First, these polities are sufficiently large that, even assuming the people’s representatives exercised considerable authority on the day-to-day operations of government, the effect of the average voter’s exercise of voice on public outcomes is essentially zero (Brennan 2016; Caplan 2007; Somin 2013). But it is also far from clear that actual governance is done by, or meaningfully overseen by, elected officials. In the United States, for example, the salient feature of government beginning with the Wilson administration, and reaching maturity following the Second World War, is a greatly expanded Executive branch. Bureaucrats, administrators, and other experts, almost always university-trained in disciplines relevant to governance, possess significant discretionary authority to conduct, promulgate, and review public policy (e.g., Epstein 2014; Greve 2012; Hamburger 2014; Leonard 2016; Levy and Peart 2016). Congress is nominally supposed to oversee the various Executive agencies, but members of Congress, even when they meet the technical definition of experts, tend to lack the *specific* training necessary to evaluate the civil service’s quality and quantity of output.

The third quadrant is perhaps the most difficult for which to find real-world examples. In this model, governance is conducted by non-experts who nonetheless have significant skin in the game. The idyllic model of a landowners’ frontier democracy and Thomas Jefferson’s more romantic musings on the nature of a virtuous state come to mind. More concretely, highly federalized systems such as Switzerland, or the United States prior to the significant political centralization that took place during the Progressive era, may be legitimate cases. As suggested, historically the most likely mechanism to align incentives among those party to public decision-making was land ownership, the market value of which presumably scaled with the desirability

of the polity as a place in which to live. The lack of expertise reflects not a distinction in skill in administration, or eloquence in public speech, or anything of the sort, but an *openness* to the deliberative procedures for discovering some expedient course of collective action. Political property rights would incentivize (non-expert) governors to govern in a way that would benefit both society and those who make these decisions. But the lack of historical examples compared to the other quadrants—Switzerland is still relatively expert-friendly, albeit at the local level, and the United States has its own historical baggage concerning exclusion of the socially vulnerable from participation in governance—does suggest problems with feasibility. In the United States, for instance, there occurred a massive growth in the size of government both during and after the Progressive Era, leading to serious incentive alignment problems in government. Higgs (1987) among others (Boettke and Horwitz 2005; Leonard 2016; Rodrik 2014; Rothbard 2017) show that the Progressive Era resulted in the rise of modern public administration in the United States, due in no small part to the perceived failures of classically liberal governance during the Great Depression. As the size and role of government changed, so did the incentives: the public sector began much more serving its own ends, rather than the public.

The fourth quadrant—governance by experts who themselves have skin in the game—can be labeled the “run the state like a business” model. Administrators possess significant power and are compensated handsomely; legislators, to the extent they exist, play a distant secondary role. Furthermore, there are economic mechanisms at work that tend to align the incentives of administrators with broad-based economic growth. The city-state of Singapore is such an example (Low 2006; Salter and Furton 2016, pp. 12-14). Political property rights are structured in Singapore such that the state closely resembles a large, hierarchical firm, which has earned the polity the only somewhat tongue-in-cheek nickname “Singapore, Inc.” Those who

staff the state in Singapore are experts: highly trained possessors of significant human capital who are paid premium-market wages in order to attract the best talent. Total compensation is tied to Singapore's economic performance, because bonuses are frequently based on the rate of economic growth. Another example would be the polities that comprise the confederation of the United Arab Emirates, and in particular Dubai. Herb (1999) calls this polity model 'dynastic monarchy.' In this model, the family is the residual claimant to the wealth that arises from governing the state. The family selects future emirs and allocates governance portfolio among leading family members. This model is also highly oriented towards hierarchical administration rather than consensual decision procedures in day-to-day governance. Expertise enters this model due to the gulf that separates members of the royal family from non-royals, and the non-royal administrative staff, the state's "middle managers." The political property rights structure of the Middle Eastern dynastic monarchies is such that the state resembles a family business, with the ruling family comprising the largest shareholders (Herb 2009, p. 385; Salter and Furton 2016, pp. 14-16).

Within which of these quadrants, if any, can we locate self-governance? Perhaps the most obvious finding is that whatever else its merits, the model of quadrant four is not compatible with self-governance. The meteoric rate of economic growth polities such as Singapore and Dubai have exhibited in the last several decades have, without a doubt, benefited these polities' residents. But they are not self-governing in any meaningful sense of the term. In fact, both governors and governed in these polities are more likely to reject explicitly both the feasibility and desirability of self-governance in these polities.

More controversially, modern democracies (second quadrant) also fail the self-governance test. This is more difficult to see, since by all accounts plebiscites in these polities

are regular, fair, and uncorrupt. Plebiscites may be an important mechanism in producing self-governance, but the debate as to whether they are necessary or sufficient misses an important qualitative constitutional feature. Modern democracies are overwhelmingly governed by experts, and these experts are not a representative sample of the general population. In educational attainment, income, lifestyle habits, social circles, and sociopolitical interests, the experts are set apart. The standard theory of representative democracy rightly critiqued by Achen and Bartels (2017) is neither commensurate with nor incommensurate with a realistic appraisal of *de facto* constitutional arrangements, because there is no margin within the standard theory on to which these questions map. Although liberal democracies admirably protect the rights to voice by all citizens (at least by historical standards), when it comes to crafting, discussing, implementing, and altering the actual decisions made by the state, there is no skirting around the fact that governance in these polities is something done by some groups to other groups, not something all groups do to themselves.<sup>4</sup>

Our claim that expert governance cuts against self-governance may seem too hastily made. After all, there is a well-developed literature that asserts these seemingly disparate modes of rule are actually compatible (e.g. Brown 2009; Collins and Evans 2007; Jasanoff 1990; Kitcher 2001; see also Richardson 2002). This literature represents a valuable contribution to our understanding of how expert governance can be reconciled with popular government. Particularly noteworthy is the insight that the administrative apparatus itself can serve as a forum for public deliberation. However, whatever the successes of this literature, it is ultimately of little relevance to my project, which instead is closer to the projects of Levy and Peart (2016) and

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<sup>4</sup> The point is that when one delegates crucial public decisions to experts, then one limits his or her own choice to self-govern. Societies cannot be self-governing when, as a constitutional matter, they empower a narrow, selective, and largely unaccountable class to make important decisions on their behalf.

Koppl (2018). The first, and weaker, reason is that the *possible* reconciliation of the tension between expert rule and popular rule does not imply such a reconciliation does or can *actually* exist. The second, and stronger, reason is that this literature is not addressing the same questions as we are. Due to the nature of the project, this literature often assumes a correspondence between democracy and self-governance. This is unproblematic if, as can be seen in Muñiz-Fraticelli's (2008) review of Richardson (2002), self-governance is associated with widely shared democratic *values*, such as the importance of public deliberation and respect for individual autonomy. But our project is to assess critically whether democracy itself corresponds to our broader understanding of self-governance. For this reason, we prefer to treat democracy simply as a political form, in which power (*kratos*) ultimately rests in the hands of the people (*demos*) as expressed through some institution of collective action. Stripped of any normative association with values to which I am admittedly highly sympathetic, it is apparent that if experts rule, then the people (in the above sense) don't. Particular interest crowds out general interest in the public square, as noted by Michels, Mosca, Pareto, and Burnham.

This leaves the two quadrants that fall within the 'Amateur' rubric of governance, for which the examples are ancient democracies and freeholder republics. It is tempting to find meaningful definitions of self-governance in each, appropriate to the particulars of time and place pertaining to each polity. But this would go too far in the opposite direction: just as it is a mistake to focus on structural constitutional issues at the expense of the Who, Whom? question, considering only the latter and expunging the former as a meaningful criterion also trivializes self-governance. This is perhaps where our intuitions are least helpful, and a somewhat more detailed argument is appropriate. Why is it that structural constitutional issues, namely whether governors are 'gambling with other peoples' money' or themselves have 'skin in the game,' a

meaningful determinant of self-governance? Social scientists have long explicated the incentive-aligning and information-generating role of constitutional mechanisms that fall within the ‘skin in the game’ rubric, but spent less effort linking these mechanisms to self-governance. However, the authors cited in the Introduction are an exception: each of these thinkers does have something to say about the link between constitutional constraints and self-governance. The idea common to each, from which we can generalize, is that ‘skin in the game’ is an inherently *communal* concept. That is, it only makes sense when specified with sufficient institutional detail, which means with reference to interaction among a community of persons. For example, a real property requirement for voting, which fits most comfortably in the freeholders’ republic model and was a historically common qualification for the franchise, is often denigrated as an indirect means of excluding undesirable (from elites’ perspective) voters, and hence systematically excluding a subset of the population from public deliberation. Whether this is true or not in terms of supporters’ motivations is irrelevant, because the key issue is not motivation, but functionality and adaptation. Property requirements for voting, and other such mechanisms, are additional ways of *holding the individuals within a political community accountable to each other*, complementary to but independent from formal voice procedures. Poor public decisions made by property-owning voters will make the polity a less desirable place to live, perhaps because of a suboptimal public goods output for a given tax bill. Less desirable locales command lower real estate values. This directly impinges on the choice calculus of voters, in an environment where voice and real property ownership are linked. This seems like a narrowly economic criteria, but it is important to understand that this feedback process, which lies at the intersection of markets and politics, is also communal. Decreased property values resulting from poor governance reflects the judgment of consumers of real estate engaged in voluntary



transactions. This is an additional way residents—not just owners but renters as well, as the value of the service flows will be capitalized into the value of the asset—can convey their dissatisfaction to public deliberative bodies. In fact, it can be viewed as another kind of voice, but one coupled with more easily accessible exit opportunities for the individual. That renters just as well as owners have access to this feedback process also partially forestalls the objection that only the opinions of the wealthy or well-to-do are fed back into markets. To be sure, the bottom line as reflected in real estate prices will weight some perspectives more highly than others, but no expressive procedure, short of a complete unanimity rule, is capable of granting everybody what they want all the time. Thus the integration of market feedback into political decision-making is one additional way those empowered to decide for the community are answerable to the community, and must bear personal costs resulting from unpopular decisions<sup>5</sup>.

We are not claiming that property requirements for voting are required for self-governance. They are but one of many possible mechanisms for creating good incentives and generating good information for those empowered to make public decisions. Historically, we have seen other forms of incentivizing public decision making. In many monarchies, for example, there existed incentives for the monarch to steward the value of their patrimony, which mirrored the wealth of the polity.<sup>6</sup> Another mechanism, proposed by Hendrickson and Salter

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<sup>5</sup> This process of feedback mechanisms is given in other cases as well, such as in the ideal process of taxation. Wicksell (1958) attempts to reconcile a principle of just taxation, specifically what he refers to as a principle of unanimity and voluntary consent. He, he argues that the only justifiable use of taxation is for programs that benefits all of the social classes; he thus proposes a rule to eliminate conflict between the social classes. What this idea forces, at least in principle, is to have public decision making occur only when it is just for all classes, meaning it does not require forced sacrifices from any segment of society to confer rents on other segments of society.

<sup>6</sup> A modern-day example is the Principality of Liechtenstein, a constitutional monarchy that is currently led by Hans-Adam II. The reigning prince is a strong believer in classical liberal principles, which he deems necessary for a thriving economy (Hans-Adam II 2009). He also acknowledges the issues that arise in political systems where governors do not confront the costs of the decisions they make on behalf of the governed. For explanations of Liechtenstein's political system in terms of aligning incentives for good governance, see Beattie (2004), Salter (2014), Salter and Hebert (2014), and Young (2010).

(2017), is a contract that would link pensions for politicians to long-term economic growth. In their view, this would incentive politicians to think more long-term instead of the short-term in ways that focus excessively on reelection. Whatever the proposal, what ultimately matters is that, to the extent some constitutional architecture exists that performs these functions, the governors find themselves accountable to the governed on multiple margins. This is because, while information and incentives can be understood with respect to Robinson Crusoe problems, information and incentive *alignment* is necessarily social and therefore relational. This is why the ancient democracies, whatever constitutional virtues they possessed, cannot be called self-governing. Although governors could be drawn from a highly representative subset of the population, too often they exercised authority apart from robust accountability procedures to the community. Plebiscites are only one such feature, as discussed above. Granting each member of the polity a formal share in public decision-making is obviously valuable, from the perspective of self-governance. But this cannot be the conclusion of the analysis, because it does not follow that *de facto* and *de jure* procedures cohere. Widespread access to voice, as shown by the theorists of liberalism thinkers cited in the Introduction, the classical elite theorists cited in Section Three, and the students of public opinion empirics cited throughout, is not a sufficient condition for widespread access to governing.

To summarize: polities eschew plebiscites at their peril, but it is equally dangerous to reify them as a *sine qua non* of self-governance. Equal representation at the polling station and proportional representation in the marketplace are complements, not substitutes, for constituting a self-governing society. The reason property and plebiscites are complements is because both are community responsibility mechanisms instantiated within some rules-framework for

collective action. This is a novel perspective on the role of filtering processes within constitutional systems.

## **5 Conclusion**

We have argued that a polity's constitutional architecture, in terms of aligning the information and incentives of governors with those of the governed, is a necessary, but not sufficient, factor to consider in deciding whether that polity is self-governing. By changing the focus to social filters that select for certain classes of individuals in exercising political power, which we have discussed in a simplified manner using the Amateur-Experts distinction, we see that a crucial component of self-governance has not received the attention in the literature that it deserves. In the spirit of the Chesterton quote at the beginning of this paper, self-governance requires that amateurs not be excluded from governance, whether that be interpreted as deciding upon the ends or selecting the means. Although it may, tragically, pertain to the question of *good* governance, whether amateurs are as skilled as experts in governing is irrelevant for the question of *self*-governance.

This answer complements and extends the theorists of liberalism who focused on formal constitutional checks and balances. They rightly perceived the importance of constitutional constraints on both the will of the people and their governors. Perhaps paradoxically, binding one's hands to restrict 'local' choice does expand 'global' choice. Constitutional constraints in this conception are thought to as take certain options 'off the table,' thereby creating some intermediate space where predatory politics is unlikely, but productive and protective politics are possible. Following the pioneering contributions of North (1990), constitutional constraints have often been analogized to the rules of the game that govern a sporting event. There is obviously

much insight in this analogy, but embracing it also runs the risk of overlooking essential differences. In any social activity, whether a sporting event or the governance of nations, rules to not only constrain, they also *enable*. That this has been overlooked in political affairs is ironic since the focus on constitutions—that which *constitutes* the decision-making procedures of the polity—should naturally fit with an appreciation of promoting certain kinds of political behaviors, or certain kinds of individuals to a position of being able to exercise those behaviors, rather than merely eliminating them as potential outcomes. The rules of basketball do constrain players by forcing them to dribble up and down the court. But it is bad social ontology to claim that the rules of basketball constrain all forms of movement, except when accompanied by dribbling. Instead, dribbling is an activity that takes on positive meaning in the larger rules-context of basketball. Constraining and enabling are flip sides of the same coin from an institutions-as-filters perspective.

Our argument impels several questions for future scholarship on self-governance. Here we briefly discuss two of the most salient. First, unpacking the “Other People’s Money” rubric further, what are the institutional differences between excessive consequence passing and excessive consequence bearing? Both derive from weak feedback in collective action, which means they are examples of the same class of problem. But how they manifest in specific polities could be an issue of vital importance for assessing the presence and durability of self-governance. It should be obvious by now that if those with power can reap the benefits of exercising power, while passing the costs on to those who are excluded from power, then self-governance does not exist. How does this change when we further explore practices that broadly fall under the heading of ‘scapegoating’? Intuitively these practices, which are quite common

historically, are at odds with self-governance as well. But the ways in which polities fail to self-govern matter. This distinction does not undermine the theory we developed, but it is a difference that makes a difference nonetheless.

Another question is, what happens to classes of individuals who, though not excluded, confront a higher cost of access to governance institutions? Even in self-governing societies, some exercises of political power will be zero-sum: if I currently wield more, somebody else currently wields less (cf. Hirschman 1970; Hirsch 1977; see also Martin 2017). Take the case of a self-governing society with property requirements for the franchise. What happens to disadvantaged minorities such as the impoverished? That such societies can be self-governing is not a contradiction: my theory of self-governance was positive, not normative, meaning that institutions of self-governance are not incompatible with historical injustices. But this question cannot be addressed with positive analysis alone; it is proper that normative considerations play a role as well. For example, there is nothing in my analysis that necessarily prevents some amount of redistribution to account for unjust disadvantages. But the natural reply is that addressing those disadvantages requires instituting political machinery that is likely to weaken self-governance. If we are appointing guardians to rectify injustices, *quis custodiet ipsos custodes?* The most profitable way forward will probably be to explore normative remedies that, positively, are means-ends consistent, as devised within my constitutional rubric.

Global politics has recently witnessed a resurgence of populism as a viable political force. With this resurgence has come reflection on the relationship, both positively and normatively, between self-governance and the popular will. Whatever one's position on these issues, they highlight the importance of understanding what self-governance is, and whether or not it exists. The apparent tensions between lawful government and popular government, which

manifest from time to time in all polities, cannot be resolved within the currently popular categories of thought. This is because existing categories lack a framework for considering self-governance apart from formal constitutional procedures which, depending on their incentive- and information-compatibility, may not even reflect the actual decision procedures of the state. By incorporating a constitutional filters perspective, we see that neither of these positions adequately appreciates how wielders of power are selected from the general population *in conjunction* with linking choice and cost. The augmented classificatory schema entitles us to say that self-governance may, depending on the institutional particulars, occur on both sides of the lawful government vs. popular government divide, or—more importantly—on neither.

Self-governance ultimately requires non-systematic rule by any subset of the population in terms of characteristics or interests, and that governance is subject to mechanisms that align the welfare of the governors with those of the governed. This is ultimately dependent on *de facto* constitutions. Questions of liberalism and democracy, both in theory and practice, must be explored within this particular constitutional context if we are to progress in the positive *and* normative projects of understanding self-governing societies.

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