

## LAW AND COMMUNITY IN ANCIENT ATHENS, AND THE PROSECUTION OF SOKRATES

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### RESUMEN:

Los griegos arcaicos inventaron la ley escrita para proporcionar justicia igual para la ciudadanía (dêmos), sobre todo contra aristócratas abusivos. De allí en adelante, los jurados fueron extraídos de los dêmos, los magistrados de élite tenían poderes limitados, y los casos se decidieron por mayoría de votos (una invención griega). Las leyes eran tomadas en serio, y los expertos (abogados) eran limitados. Como jurados, los ciudadanos comunes y corrientes decidieron lo que significaban las leyes.

En contraste con el estado de derecho, los discursos de los tribunales a menudo incluyen consideraciones extra-legales como el servicio militar de un litigante o antepasados patrióticos. En los ensayos de homicidio se excluyó dicho material, y en otros casos los litigantes a menudo se oponen a él. Algunos estudiosos sugieren que tales argumentos son relevantes para «el cuadro más amplio» de un caso. Otros creen que los hechos eran de importancia secundaria en los litigios.

Sostengo que la mayoría de los argumentos extraños en los discursos legales pertenecen al bienestar comunitario, el objetivo último de la ley griega, mucho más importante que el bienestar de los individuos. Uno de los objetivos principales de la ley estadounidense es proteger a los individuos contra el poder abusivo del estado. Los griegos no tenían «estados pesados» sino sólo comunidades, que las leyes defendían. Si la adjudicación ateniense a veces funcionaba fuera de los límites de la ley, nunca funcionaba fuera de las preocupaciones de la comunidad.

Por último, evaluar la acusación de Sokrates desde las perspectivas contrastantes de la libertad religiosa y la salvaguardia de Atenas.

### PALABRAS CLAVE:

Derecho antiguo, Comunidad griega antigua, Práctica legal griega antigua, *dêmos*, Sokrates, Sistema legal de los Estados Unidos.

ABSTRACT:

Archaic Greeks invented written law to provide equal justice for the citizenry (*dêmos*), mostly against abusive aristocrats. Henceforth, juries were drawn from the *dêmos*, elite magistrates had limited powers, and cases were decided by majority vote (a Greek invention). Laws were taken seriously, and experts (lawyers) were limited. As jurors, ordinary citizens decided what laws meant.

In contrast to the rule of law, court speeches often include extra-legal considerations such as a litigant's military service or patriotic ancestors. In homicide trials such material was excluded, and in other cases litigants often object to it. Some scholars suggest that such arguments are relevant to «the broader picture» of a case. Others believe that facts were of secondary importance in litigation.

I argue that most extraneous arguments in legal speeches pertain to community welfare, the ultimate goal of Greek law, far more important than the welfare of individuals. One main goal of U.S. law is protecting individuals against the abusive power of the state. Greeks had no «heavy states» but only communities, which laws defended. If Athenian adjudication sometimes functioned outside the confines of law, it never functioned outside community concerns.

Finally, I evaluate Sokrates' prosecution from the contrasting perspectives of religious freedom and safeguarding Athens.

KEY WORDS:

Ancient Law, Ancient Greek Community, Ancient Greek Legal Practice, *dêmos*, Sokrates, United States Legal System.

I begin with four basic points about ancient Greek law and legal practice<sup>1</sup>. First, already from its beginning in the later eighth century, written law represented equal justice for the *dêmos*, all citizens of each Greek city-state (*polis*)<sup>2</sup>. Greek communities invented written law because they were outraged by the «crooked» decisions of upper-class magistrates in favor of the rich and powerful<sup>3</sup>. Around

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<sup>1</sup> Abbreviations: Aeschin. = Aeschines; Andoc. = Andocides; Dem. = Demosthenes; Diod. S. = Diodoros Siculus; Diog. L. = Diogenes Laertius; Lys. = Lysias; Plut. = Plutarch; Sen. = Seneca. Titles of ancient texts and academic journals are abbreviated according to standard English conventions.

<sup>2</sup> See Wallace 2016, 1-14.

<sup>3</sup> Aristotle attests Greece's earliest lawgivers, Pheidon of Corinth (*Pol.* 1265b) and the Corinthian Philolaus who legislated at Thebes and was linked with an Olympic victor of 728 BC (*ibid.* 1274a-b).

700 BC, Hesiod, an early panhellenic poet, complained about «bribe-devouring *basileis*» (not «kings» but «big men»<sup>4</sup>) giving «crooked» decisions in resolving disputes<sup>5</sup>. In 594 Athens' famous lawgiver Solon proclaimed that he wrote his laws «equally [*homoiôs*] for elites and commoners, straight justice»<sup>6</sup>. Carved on stone *stêlai* with brightly painted letters and sometimes word divisions to facilitate reading, Greek laws were displayed in public, readily accessible to everyone<sup>7</sup>. Laws named crimes, specified punishments which thus were the same for everyone, and set down the judicial procedures used to enforce the laws.

Second, laws and courts were instruments of the community. Athens' laws were voted on not by a narrow legislative body but by the *dêmos* in assembly<sup>8</sup>. In United States courts, a judge, who is popularly elected, states the law; a popular jury, often of twelve citizens chosen at random from the telephone book or voting registrations, decides whether the defendant has broken the law (their vote must often be unanimous); then the judge, guided by precedent, decides the punishment. By contrast, ancient Greek courts had no judges, because the Greeks refused to give such great powers to single individuals. For this same reason they had no state prosecutor to exercise «prosecutorial discretion» (a practice prone to abuse) but in classical Athens instructed any citizen «who wanted» (*ho boulomenos*) to prosecute offenses of community concern. Cases were decided by majority vote (another Greek discovery, already attested in Homer<sup>9</sup>), in classical Athens by juries of 200 or 400 people in private cases (torts), 500, 1000, 1500 or more in public cases (offences that concerned the community), voting by secret ballot. Chosen by lot from all male citizens over 30 who were willing to participate, such large juries were considered to be the voice of the community. The Greeks did not adjudicate cases by precedent, because all cases were different, none was documented for posterity, and the power of the community came before anything.

Third, laws were taken seriously. At Athens, the jurors, called *dikastai* («justice men») sitting in a *dikastêrion* («justice place»), were considered «guardians

<sup>4</sup> Hereditary kingships were very rare in Greece. So for example Telemachos will succeed his father Odysseus only if he can show that he is stronger than Penelope's suitors. See (among much else) Drews 1983.

<sup>5</sup> Hesiod, *Works and Days* 38-39.

<sup>6</sup> Solon, fr. 36.18 West = [Aristotle] *Ath. Pol.* 12.4.

<sup>7</sup> See Gagarin, 2008, 65-71. Less commonly, laws were displayed on rotating wooden boards, attested for Solon's *axones* (Plut. *Life of Solon* 25) and the laws of his contemporary, Mytilene's leader Pittakos, whom Aristotle called a «craftsman of laws» (*nomôn dêmiourgos*: *Pol.* 1274b17). According to Diog. L. 1.77, «When Croesus asked [Pittakos] what was the greatest rule (*archê*), he said the rule of the *poikilon xulon* (shifting wood), by which he meant the law». Pittakos' one attested law appears to have been directed against aristocratic symposiasts: for offenses committed while drunk the penalty was doubled (Diogenes, *ibid.*).

<sup>8</sup> See Gagarin, 2008, 92 and chapter 3 («Why the Greeks wrote laws»).

<sup>9</sup> See Hom. *Od.* 24.463ff., with Maffi 2012, 21.

of the laws» and swore to «vote according to the laws and the decrees of the Athenian people»<sup>10</sup>. Every year Athens' trainee soldiers (the *epeboi* = «young men») swore «to obey the officials and the laws. If anyone seeks to destroy the laws I will oppose him as far as I am able myself, and with the help of all»<sup>11</sup>. When the Athenians republished their laws as a code in 403 BC following their defeat in the Peloponnesian War, they retained the archaic wording of older statutes. According to Andoc. 1.85-87, magistrates were forbidden to use «unwritten laws». According to [Dem.] 26.24, it was a capital offense to cite a non-existent law in court. The *graphê paranomôn*, an «indictment for illegal measures», outlawed any law or decree that conflicted with existing laws.

Fourth, the Greeks did not tolerate lawyers or other experts, because they mistrusted clever speakers and were ignorant of jurisprudence. Demosthenes 20.93 says, «the private citizen should not be confused and at a disadvantage compared with those who know all the laws, but all should have the same ordinances before them, simple and clear to read and understand». Prosecutors and defendants were required to speak for themselves. In the absence of judges to tell the jury which laws were relevant or what laws meant, each juror decided such questions himself. Jurors were forbidden to speak with each other in court, and voted immediately after litigants' speeches. Thus, verdicts reflected the collective sense and collective emotions of individual jurors. Laws guided justice but were necessarily vague, as the Greeks realized early on that it was impossible for any law to specify every situation where it might apply. [Aristotle] *Ath. Pol.* 9.2 says about Solon's 594 legislation<sup>12</sup>:

The fact that the laws have not been drafted simply or clearly ... inevitably leads to disputes; hence, the courts have to decide everything, public and private. Some think Solon made his laws obscure deliberately to give the people the power of decision. This is not likely; the obscurity arises rather from the impossibility of including the best solution for every instance in a general provision.

The statute against *hubris* (arrogant violence), for example, did not define what *hubris* was or give examples of it. Each juror himself had to decide whether a particular deed should be construed as arrogant violence, after hearing details of the case.

In tension with the rule of law, however, litigants often complained that Athens' courts did not always follow the law but took into account matters irrelevant to the case. Introducing such evidence was either legally forbidden, or sub-

<sup>10</sup> See, e.g., Dem. 25. 6-7; Dem. 24.150.

<sup>11</sup> See e.g. Lycurg. 1.77, and Rhodes and Osborne 2003, number 88 lines 11-16.

<sup>12</sup> See also Plato, *Statesman* 295a-b.

ject to objection by the opposing litigant. However, no judge sat in court to forbid it, and material that we would consider irrelevant is common in court speeches. In 12.38 the speechwriter Lysias states of his opponents, «the expedient, so common in this city, of saying nothing to answer the accusation, but saying other things about themselves they deceive you, showing you that they are good soldiers or have captured many ships of the enemy». In 30.1 Lysias says that even if a defendant seemed guilty he could be acquitted if he mentions brave deeds by ancestors and proves that he had served the city well. In 7.33-34 the wealthy conservative rhetorician Isocrates says that in early Athens, judges enforced the laws on money lending instead of yielding to «decency» or «human kindness», to those who were not rich and therefore had to borrow money. Demosthenes 25.76 states, «before now I have seen some men on trial, being convicted by the actual facts and unable to show that they had not done wrong, take refuge in the moderation and self-control of their lives, others in the achievements and public services of their ancestors, or in similar pleas, through which they induced their judges to pity and goodwill». Demosthenes 44.8 says that «generosity and justice» sometimes triumph over the laws. In 1.13 the orator Lycurgus complains that although it is unjust for prosecutors to speak *exo tou pragmatos* («outside the matter»), «you judges have granted this possibility to those who appear before you». In Xenophon's *Defense of Socrates* (4) a certain Hermogenes asks Socrates, «Do you not see that Athenian courts have often been carried away by a speech and killed those who have done no wrong, or else have often freed the guilty because their speech aroused pity or because they spoke agreeably?»<sup>13</sup>.

Such statements have sparked an intense modern debate whether ancient Athens represented the rule of law. Defending Athens' rule of law, some scholars argue that most of the «extraneous» material in court speeches is in fact relevant to «the larger story» of the case in dispute<sup>14</sup>. Adriaan Lanni has contended that extraneous materials helped provide the dicasts with important information about the contexts of disputes, enabling them to «take into account the particular circumstances of the individual case»<sup>15</sup>.

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<sup>13</sup> In U.S. courts, impassioned speeches and personal circumstances sometimes sway jury verdicts. At the same time, verdicts are formally required to be consistent with the law. The judge instructs the jury that if they find that the defendant has broken the law, they must vote to convict. Most conspicuously today, mandatory sentencing reflects an effort to eliminate juridical inconsistencies based on extra-legal factors. On jury nullification (the provision that juries can ignore the law if they so wish), see Allen 2000, 5-9:

The 1992 Federal U.S. criminal jury instructions read: 'you will . . . apply the law which I will give you. You must follow that law whether you agree with it or not.' And in forty-eight U.S. states judges and lawyers are not allowed to tell the jury that they have the power and legal right to set aside the law.

<sup>14</sup> See, e.g., Rhodes 2004.

<sup>15</sup> Lanni 2005.

Other scholars downplay the rule of law at Athens. Very boldly, the Israeli scholar Gabriel Herman contends, «it was not the jurors' concern to find out the truth. Theirs was the task of weighing the relative merits of the arguments they heard with an eye to the city's best interests ... Any idea of ascertaining the 'facts', and then testing them against the letter of the law, was given short shrift»<sup>16</sup>. David Cohen, Professor of Rhetoric at Berkeley, concludes that legal disputes were not necessarily central to court cases. Extraneous materials show that these were contests for social honor and the prosecution of long-standing feuds, here carried out through the courts<sup>17</sup>.

I shall argue that conceptual similarities between Greek law and the specific irrelevancies adduced in Athens' courts help make Athenian practices clear and coherent. The evolution of modern law has reinforced ever sharper distinctions on relevance in court. When it was to their advantage, Athenian litigants also made such distinctions, protesting extraneous materials as we have seen. However, because of historical factors that shaped their approach to adjudication, the Athenians were prepared to view the law and certain kinds of irrelevant materials from similar perspectives. Such materials were therefore thought appropriate in reaching verdicts. Even litigants who elsewhere protest against irrelevant materials include them in their speeches.

As we have seen, the Greeks' laws, judicial systems, and democracies –government by the *dêmos*– all developed in reaction to abuses by powerful individuals, including «gift-devouring *basileis*» and above all aristocrats, who sometimes thought they did not have to obey the community's laws but could do whatever they wanted (we remember Pittakos and Mytilene's drunken aristocrats). The origin and purpose of Greek laws and legal systems were to protect and empower the community of citizens. Community courts enforced the laws which they saw as their common protector. In 4.19 the orator Andocides proclaimed, «Obeying [the magistrates] and the laws is safety for all. Whoever ignores these has destroyed the greatest protection of the city». In 3.6 the orator Aeschines begins by excoriating contemporary rhetors whose actions fly in the face of the law: «if the laws are faithfully upheld for the polis, the democracy also is saved». In *Suppliants* 429-434 Euripides calls «fairly preserving the laws» «the bond of all men's cities». Demosthenes 25.20 explains the need to obey the laws in terms of the benefits they bring to the community:

I shall say nothing novel or extravagant, but only what you all know as well as I do. For if any of you wishes to inquire what is the cause and the motive-power that calls together the Council, draws the people into the Assembly, fills the

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<sup>16</sup> Herman 1996, 12-13.

<sup>17</sup> Cohen 1995.

courts, makes the old magistrates yield readily to the new, and enables the whole life of the polis to be carried on and preserved, he will find that it is the laws and the obedience to the laws that all men yield.

Athenian perspectives become clearer in the light of several fundamental contrasts between Athens' judicial system and that of the United States, which is intended to function according to modern liberal values. Central tenets of U.S. liberalism include the primacy of the individual over the state and the paramount importance of protecting individual liberties against official interference. In fact (as well as in American TV police dramas), the police must advise defendants of what are called their Miranda rights, named after a defendant in whose case these rights were established: «You have the right to remain silent. Anything you say may be used against you in court. You have the right to a lawyer». The U.S.'s formal legal orientation toward individuals over the state was in part a product of the struggle against religious oppression and what are called «heavy states», where regimes or faceless bureaucrats dominate an alienated populace by what Max Weber called a monopoly of legitimate violence, including censorship, taxation, and the police<sup>18</sup>. In Britain in the seventeenth century, liberalism itself emerged out of debates over the extent to which the state might restrict citizens' freedoms. Although Article I, section 9 of the U.S. Constitution permits the state to set aside individuals' rights when «the public safety may require it», the U.S. legal system is so far oriented toward protecting individuals that even people patently guilty (even non-citizens) are freed if representatives of the state have inadvertently committed some procedural mistake, such as not reading a suspect his Miranda rights, or if the police step onto private property without a warrant signed by a judge. The American Civil Liberties Union opposes indiscriminate security screening of passengers at airports (which they consider a search without cause); it opposes police sobriety checkpoints to control drunk drivers<sup>19</sup>. Individuals in U.S. courts are not required to testify against themselves, or against their spouse. Individuals can refuse to speak to the authorities unless a lawyer is present. Our traditions of rights and laws help guard individuals against abuse by the state or the majority population (as for example against black persons). For these same reasons, Americans can tolerate illegal conduct when the law is judged to represent the oppressive power of the state against individuals, acting especially for reasons of personal conscience. In a longstanding tradition of American civil disobedience, many Americans felt entitled to refuse induction into the military during the Vietnam War. The boxer Mohammed Ali remarked, «I got no quarrel with them Viet Cong».

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<sup>18</sup> Weber 1972, 822.

<sup>19</sup> *Policy Guide of the ACLU* #270 (1986); *Washington Post* June 30, 1990 p. A29; G. Guerrero, speech before the American Society of Industrial Security, Nov. 8 (1989) 11.

For years no jury would convict Greenpeace or Dr. Kevorkian, an American doctor who helped terminally ill people to kill themselves, then an illegal act. In other contexts, strict adherence to the law is considered just. For example, in conspicuous contrast with ancient Athens, in U.S. courts it is forbidden to mention past deeds by a defendant, for example prior rape convictions of a man accused of rape, because past convictions need not prove guilt on a subsequent occasion.

In contrast to the modern liberal state, virtually no Attic text questions the greater importance of the community over any individual. In Thucydides 2.60.2 (and see 1.141.7), Pericles remarks «When the whole city is on the right course it is a better thing for each separate individual than when private interests are satisfied but the polis as a whole is going downhill». In 2.65.7 Thucydides himself remarks that after Pericles' death the city suffered because politicians acted «in accordance with their personal ambition for honor and personal gain». In a debate on saving Athens in Aristophanes' *Frogs* 1427-29, Euripides says «I hate the kind of citizen who'll prove to be / Slow to assist his country, swift to harm her greatly / For his own good astute, but useless for the city's». According to Xenophon *Hell.* 1.7.21, a relative of Perikles named Euryptolemos called it «disgraceful» to put the interests of kin over the interests of the city. The democrat Lysias, the oligarch Andocides, and the contemporary speech preserved as [Andocides] 4 all proclaim the priority of the community over individual concerns. As the oligarch Andocides states, «those who do not identify their interests as individuals with yours as a community can only be hostile to the city»<sup>20</sup>. In *Pol.* 1253a 18-29 Aristotle says, «no one of the citizens must think that he belongs just to himself, but rather that everyone belongs to the city ... and the care of each part naturally looks to the care of the whole». In *Pol.* 1337a 27-30 he continues, «The city-state has priority over the household and over any individual among us. For the whole must be prior to the part». Community sentiment also drove other public values. *Philotimia*, «ambition», was good if directed toward the community, bad if it benefited only oneself<sup>21</sup>.

In the forensic speeches quoted earlier in this essay (and in many other texts as we shall see), the main type of extraneous material adduced in court is service to the community. Lysias mentions brave combat, valiant deeds, and serving the city well; Demosthenes mentions the achievements and public service of ancestors. At the same time as he complains that prosecutors too often make irrelevant accusations, the orator Hypereides remarks that a judicial verdict should be based on a man's whole life: his *Lyc.* 1.8-11 and 14-18 give an account of his own career. Just before begging the jury not to listen to irrelevancies, Aeschines quotes with approval a passage from Euripides<sup>22</sup>:

<sup>20</sup> Andoc. 2.2-3, see also Lys. 31.6, 31.17-18, 21.18, 22.14, and [Andoc.] 4.1, 19.

<sup>21</sup> See Whitehead 1983.

<sup>22</sup> Aeschin. 1.176, and 1.152-53.



Examine the sentiments, fellow citizens, which Euripides expresses. He says that before now he has been made a juryman in many cases, as you today are jurymen, and he says that he makes his decisions not from what the witnesses say, but from the habits and associations of the accused. He looks at this, how the man who is on trial conducts his daily life, and in what manner he administers his own house, believing that in like manner he will administer the affairs of the city also, and he looks to see with whom he likes to associate. Finally, he does not hesitate to express the opinion that a man is like those whose company he loves to keep.

Similarly, bringing children into court showed that a defendant was a good family man, an important consideration for the Athenians even if anti-democratic Plato has anti-democratic Sokrates express scorn of the practice (*Ap.* 34c, 38d).

Are speakers simply inconsistent, blind to their own protests against irrelevancies? Other litigants sought to weaken the force of such material by claiming that law alone was important. In 21.219-25 (the peroration of his speech against Meidias), Demosthenes tells the jury that an offense against one person could easily become an offense against anyone. «Do not betray me or yourselves or the laws... No excuse—neither public services nor pity nor personal influence nor forensic skill, nor anything else—must be devised whereby anyone who has broken the laws shall escape punishment». Thus we see that the law was also important. However, the ideology that everyone must obey the law equally arose in the context of contesting aristocratic claims to special privilege. In the egalitarian community of classical Athens, many litigants stress the importance and the relevance of character and community service. They include this material because in law and litigation, the welfare of the community and a litigant's value as a citizen were paramount. With the modern world's traditions of the heavy state, the idea that the state must come before any individual is the essence of fascism. Fascism was absent from ancient Greece because the Greeks had no heavy states but only communities, the *dêmos* together, whose interests came before any individual's. For important historical reasons, U.S. citizens are prepared to tolerate certain illegal actions by individuals against the public or its government because of personal conscience or government overreach. The Athenians completely rejected any such conception. In their courts the community was the important thing, with thousands of jurymen, great tolerance of noisy outbursts by juries and spectators (which U.S. judges immediately silence), and deep suspicion of legal experts. As I have mentioned, juries were forbidden to discuss cases among themselves, lest rich or powerful jurors exercise undue influence. For similar reasons, the substantive provisions of Athens' legal statutes were often left general, for example not defining «impiety» or «idleness». This so-called «open texture» meant in part that each juror could interpret laws according to his own sense of justice or a statute's meaning. Even more egregiously from modern legal per-

spectives, in their oath the dicasts also swore «where there are no laws, I shall decide as seems best to me». Verdicts in such cases can only have represented dicasts' communal sense of right and wrong, however each side represented the law to them, or even in the absence of law.

A parallel sentiment in Athens was claiming to forgo legal advantage if the other side made a reasonable case. The speaker in Dem. 44.8 states that even if his opponents «do not have the support of the laws, but it seems to you that what they say is in accordance with justice and generosity, even so we withdraw our claim». According to Dem. 56.14, the speaker's party agreed to a concession in a dispute: «we were not unaware, jurors, of what was just from the agreement, but we thought that we should suffer some loss and make a concession, so as not to appear litigious». However specious such claims might be, the important point is that litigants felt they should put community values over personal benefit. Litigation was embedded within the wider frame of community values<sup>23</sup>.

Scholars who have understood the importance of community in Athenian courts have sometimes downplayed the importance of law<sup>24</sup>. I argue here that administering the law was also important and for the same reason. Both laws and courts safeguarded the community. If Athens' system of adjudication sometimes functioned outside the narrow confines of law, it never functioned outside the concerns of the community. In Athens' great religious Mysteries scandal of 415, following a prisoner's doubtful testimony, in 6.60 Thucydides wrote that the Athenians

brought to trial those against whom he had given evidence and all who were secured were put to death. The death sentence was passed on all who managed to escape and a price was put on their heads. In all this it was impossible to say whether those who suffered deserved their punishment or not, but it was quite clear that the rest of the city benefited greatly.

Finally, both in courts and the Assembly, once a majority reached a decision, the community united behind it. Thucydides often records Assembly disputes. Once decisions were reached, we hear of no further dissent. The community united behind the majority and went forward together.

For law in action, I now turn briefly to one of the world's most famous trials, that of the Athenian intellectual Sokrates. Who was Sokrates, and why was he prosecuted and condemned in 399 BC? His sources fall into two groups: first,

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<sup>23</sup> The communal quality of Athenian court disputes is further indicated by the often large numbers of spectators, «people standing around» (*hoi periestêkotes*) the courts, listening to the proceedings: Lanni 1997.

<sup>24</sup> See Cohen 1991, 192; Todd 1993, 6; Herman 1996, 12-13; Dover, 1978: 39.

students and admirers, especially Plato and Xenophon, who sought to defend him; and second, our other Athenian sources, notably the comic poets and especially Aristophanes in the *Clouds* but others as well including Assembly orators such as Lysias and Aeschines. All of Sokrates' contemporaries in this second group knew him well, and all of them publicly scorned him. Why?

Fortunately, Plato and Xenophon mostly confirm what most scholars believe was the main reason why Sokrates was charged and condemned in 399: during the 27-year war with Sparta he was a philo-Spartan anti-democratic public provocateur whose students, at the end of the war in 404, led the philo-Spartan, anti-democratic *coup d'état* called the Thirty tyrants, killing some 1500 people in order to steal their money<sup>25</sup>. Plato's Sokrates praises Sparta in *Prt.* 342b, *Rep.* 544c, and *Cr.* 53a. Plato's Sokrates asks Crito, «Why should we consider what most people think», as opposed to «intelligent people»? Crito answers that «the capacity of ordinary people to cause trouble ... has hardly any limits». Sokrates notes that the masses act at random, «the power of the people conjures up fresh hordes of bogeymen to terrify us, by chains and executions and confiscations». Taking any of their opinions seriously is «irresponsible nonsense», we must listen to «the expert in right and wrong, the one authority who represents the actual truth» and not «the general public», «the many»<sup>26</sup>. «The accuser» in Xenophon's *Memorabilia* 1.2.12 observes that Sokrates taught both Kritias, «the most avaricious and violent of all the oligarchs», and Alkibiades, «the most dissolute and arrogant of all the democrats». At *Mem.* 1.2.9 Xenophon mentions the charge that Sokrates «taught his followers» to despise the established constitution. According to Xenophon himself in *Mem.* 3.7.9, Sokrates convinced the oligarch Charmides, Kritias' nephew and a die-hard member of the Thirty, to enter politics. Richard Kraut observes, «In the *Memorabilia*, Sokrates' hostility towards democracy is unmitigated: II.6.26, III.1.4, III.7.5 – 9 [the Assembly is filled with 'dunces and weaklings, cleaners, shoemakers, carpenters, smiths, peasants, traders, and stallholders in the Agora whose minds are set on buying cheap and selling dear. . . men who have never given a thought to public affairs'], and esp. III.9.10 [against democracy's popular election or allotment of rulers]»<sup>27</sup>. Isokrates reports that Polykrates attacked Sokrates in 392 because he taught Alkibiades. At 1.173 the democratic orator Aeschines states that the Athenians executed «the

<sup>25</sup> More than 1500 victims: Aeschin. 3.235; not fewer than 1500: [Arist.] *Ath. Pol.* 35.4; 1500 «without trial»: Isokr. 7.67, 20.11; 1400: Diog. L. 7.5; 1300: Sen. *De tranq. animi* 5.1; according to *schol.* Aeschin. 1.39, «some said 1500» but Lysias said 2500. Greed as the motivation for the Thirty's murders: Lys. 12.6ff., Xen. *Mem.* 2.3.21-22, 4.21, Diod. S. 14.2.1, 4.4, 5.5-6, [Arist.] *Ath. Pol.* 35.4.

<sup>26</sup> *Cr.* 47a-48a, see also *Ap.* 25a-c.

<sup>27</sup> Kraut 1984, 195 n. 2 and more generally 194-99.

sophist Sokrates» because he was «the teacher of Kritias, one of the Thirty who put down the democracy». Mogens Herman Hansen points out that of the fifteen persons who talk with Sokrates in Plato's dialogues and whose political affiliations are known, only five are loyal democrats and one of these is Sokrates' prosecutor Anytos. The remaining ten were «crooks and traitors»<sup>28</sup>. In Plato's *Apology* 24b another prosecutor, Meletos, claims to be *philopolis*, a «lover of the city», a «patriot». These sources certainly indicate a strong political element in Sokrates' condemnation.

In addition to his politics, Sokrates was an intellectual, whom Plato spent his life trying to separate from «the sophists», a word whose negative meaning he largely created. In fact, Plato's teacher was in many ways a typical albeit extraordinary intellectual of the post-Periklean years<sup>29</sup>. Even Plato's Sokrates fits most of the qualities of Plato's sophists, as Plato himself sometimes acknowledges<sup>30</sup> and Aeschines publicly called him. He primarily discusses ethics and politics. He is quintessentially identified with debate and argument. His cross-questioning reflects his constant challenge to received opinion, eliciting contradictions and absurdities which he replaces not with positive doctrine but «uncertainty», *aporia*. He expounds no coherent set of beliefs. His mantra is that he knows nothing, and only seeks to show others that they too know nothing – although his scorn for democracy's incompetence, among many other points, contradicts that mantra. He held unconventional views about the gods. His entourage was a crowd of rich, elite young Athenians, most of them hostile to democracy like Plato, and to conventional religion. No fewer than eight persons in Sokrates' circle were accused of profaning the sacred Eleusinian Mysteries in 415<sup>31</sup>. Contemporary Athenians including Aristophanes judged him the worst of the sophists. We all love Plato's idealized portrait of Sokrates. That portrait is mostly a fiction, written to improve his public memory.

In 399, «the following public charge was brought by Meletos ... Sokrates does wrong in refusing to recognize the gods whom the city recognizes, but introducing other new spiritual beings. He also does wrong in corrupting the youth. The penalty demanded is death»<sup>32</sup>. The meaning of the first of these charges, about the gods, is clear enough. The second charge, just how he is supposed to have

<sup>28</sup> Hansen 1995, 28.

<sup>29</sup> See Wallace 2007 on Athenian intellectuals' post-429 transition from progressive democratic ideas and public engagement into darker, more private moods during the war with Sparta and the plague, as intellectuals sought more extreme, sometimes offensive conceptual innovations such as might makes right and against traditional religion.

<sup>30</sup> See Taylor 2006: «Socrates the Sophist».

<sup>31</sup> Akoumenos, Adeimantos, Alcibiades, Axiochos, Charmides, Kritias, Eryximachos, and Phaidros: see Nails 2002, *sub nomina*.

<sup>32</sup> Xen. *Mem.* 1.1.1, Diog. L. 2.40, cf. Pl. *Euthyphro* 2b, 3b.

«corrupted the youths», is not clear. However, once Athens' democrats had driven the Thirty out of Athens in 403, they declared a general amnesty for all crimes committed before that date, except in cases of murder or actions by the Thirty themselves<sup>33</sup>. Sokrates' prosecutors were therefore legally prohibited from prosecuting Sokrates on the political charge of involvement with the Thirty, although «corrupting the youths» may have been left vague in order to conceal a political dimension. How valid was the first, religious charge, brought under Athens' general statute against impiety? Although defeat in the war will surely have made some people anxious about Athens' newfangled intellectuals, by 399 the Athenians were surely inured to insulting treatment of their traditional gods, both in the theater and elsewhere. Although in 415 Alkibiades was indicted for profaning the Eleusinian Mysteries, Athens' soldiers insisted that he be their general in the great Sicilian expedition that departed shortly afterward, so little did people fear divine retribution for this sacrilege. Most scholars agree that Sokrates' involvement with the Thirty was the primary reason for Sokrates' trial and conviction. Even Plato has him say to the jury, in *Ap.* 29c: «I shall never stop philosophizing», then in *Ap.* 30b-c: «I am not going to alter my conduct, not even if I have to die a hundred deaths. Don't make an outburst, men!» Mogens Hansen is surely right that after 404, Sokrates will have continued to say that democracy was a bad form of government and should be changed – very dangerous words in difficult times.<sup>34</sup> The impiety charge was legal, and Sokrates could certainly be considered guilty of impiety from conventional viewpoints. The sentence may seem severe, but as we saw in 415, the Athenians executed many men who were merely accused of profaning the Mysteries. Thucydides records that these executions were thought «to benefit the city greatly».

Why in *Ap.* 40a-c does Plato's Sokrates say that his famous inner voice, his *daimonion*, did not oppose his not preparing a proper defense in court, from which Sokrates concluded that death may be a good thing? At 41d he says, «It is better for me to die now and escape from trouble». Why does Plato's Sokrates provoke the jury by saying that if he is acquitted, he will go on doing what he has always done? And why did the historical Sokrates not propose a serious alternative penalty to death which the prosecution demanded? Xenophon's thesis is that Sokrates sought to provoke his execution in order to avoid the pains of old age<sup>35</sup>. Might we rather say, the pains of conscience? Sokrates was not free of guilt for his students' conduct, and he knew it, but could not change his ways. His sentence was no miscarriage of justice, and he knew it. But Plato turned Sokrates' refusal to escape from prison to his advantage, as offering him a golden opportunity to claim that

<sup>33</sup> [Arist.] *Ath. Pol.* 39.6, *Lys.* 70 fr. 165 Carey.

<sup>34</sup> Hansen 1995, 1-31.

<sup>35</sup> *Mem.* 4.8.6-10, *Ap.* 1-9, 22, 33.

Sokrates was a law-abiding citizen. After a day-long trial to which we are not privy, 280 of (presumably) 500 dicasts concluded that Sokrates was guilty.

Finally, at the second, penalty stage of his trial, a somewhat larger majority voted to execute Sokrates, the penalty proposed by the prosecution, rather than the small fine which Sokrates proposed because friends promised to pay it for him. This discrepancy has sometimes been considered a sign of a democratic jury's irresponsibility. Yet once the community had decided that Sokrates was guilty, it was reasonable for some who had thought him innocent to accept the majority judgment and hence decide on the heavier penalty.

In Athenian courts, verdicts were shaped by a shifting blend of community laws, community justice, and community interests, because the main concern of both dicasts and laws was safeguarding the community. Was it unreasonable for a small majority of Athenians to conclude that Sokrates was and continued to be a dangerous menace to their city?

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