

Princeton/Stanford Working Papers in Classics

Socrates and democratic Athens: The story of the trial in its historical and legal contexts.

Version 1.0

July 2006

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Abstract: Socrates was both a loyal citizen (by his own lights) and a critic of the democratic community's way of doing things. This led to a crisis in 339 B.C. In order to understand Socrates' and the Athenian community's actions (as reported by Plato and Xenophon) it is necessary to understand the historical and legal contexts, the democratic state's commitment to the notion that citizens are responsible for the effects of their actions, and Socrates' reasons for preferring to live in Athens rather than in states that might (by his lights) have had substantively better legal systems. Written for the *Cambridge Companion to Socrates*.

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(for *Cambridge Companion to Socrates*)

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Draft of August 2004

In 399 B.C. the Athenian citizen Socrates, son of Sophroniscus of the deme (township) Alopece, was tried by an Athenian court on the charge of impiety (*asebeia*). He was found guilty by a narrow majority of the empanelled judges and executed in the public prison a few days later. The trial and execution constitute the best documented events in Socrates' life and a defining moment in the relationship between Greek philosophy and Athenian democracy. Ever since, philosophers and historians have sought to explain troubling aspects of the case: Why was Socrates, the philosophical model of a good man, charged with public wrongdoing? Why was he convicted and why on such a close vote? Was he guilty of impiety or other crimes? Why did he undergo trial and execution, rather than leaving Athens to pursue his philosophical investigations elsewhere? Were his loyalties owed to Athens, to himself, or to the world? And, perhaps most pressing: how did a democratic community, committed to the value of free speech and public debate, come to convict and execute its most famous philosopher-citizen? Because there are no simple answers to these questions the ancient tradition and modern scholarship on the trial and its aftermath are rich and of enduring interest.¹

Legal narrative

The chain of events that began with legal charges being lodged against Socrates and culminated in Socrates' death proceeded according to the established judicial practices of the democratic polis. Meletus, a voluntary prosecutor (*ho boulomenos*: "he who chooses to act"), brought his case before the Basileus ("King-archon"), a lottery-chosen public magistrate responsible for preliminary investigation of religious crimes (inter alia). Meletus' charges against Socrates were as follows: "Socrates does criminal wrong (*adikei*) by not recognizing (*ou nomizon*) the gods that the polis recognizes (*nomizei*), and furthermore by introducing new divinities (*daimonia*); and he also does criminal wrong by corrupting (*diaphthairon*) the youth (*neous*)."² The Basileus summoned Socrates to his office in the Athenian *agora* (public square) for a preliminary hearing; Plato's *Euthyphro* imagines a conversation that took place there just before the hearing.³ Having interrogated both Meletus and Socrates, the Basileus remanded the matter to an Athenian "people's court" (*dikasterion*). The case was tried in the course of a single day by a panel of 501 judges who had been selected randomly from a pool of

Athenian citizens over age 30. The judges listened to a carefully timed speech of accusation by Meletus who, following ordinary Athenian prosecutorial practice, yielded part of his allotted speaking time to two associates (Anytus and Lycon). Next, Socrates, as defendant, was allowed an identical period of time in which to speak in his own defense. He used part of his time in a rare but legally unremarkable cross-examination of Meletus.⁴

The 501 Athenians who heard the case should be thought of as judges rather than jurors because they made substantive decisions about the meaning and applicability of the law itself, rather than merely determining matters of fact. Athenian written law, while very specific about procedural rules meant to ensure fairness (e.g. equal time for speeches by prosecutor and defendant) tended not to include definitions of the abstractions upon which the law's application hinged. It was up to the judges to decide on their own, without expert assistance, the meaning of relevant terms as well as their applicability to particular cases. The best-documented example is the Athenian law on outrage (*hubris*): The law carefully specified the categories of persons against whom outrage may not be committed, the procedure to be followed in the case of trial, and the range of penalties that might be inflicted upon a guilty individual. Yet the law did not define *hubris* – it did not specify what behaviors or actions were outrageous. This meant that it was open to prosecutor and defendant to debate both facts (what the defendant purportedly did) and their legal meaning (whether what he did constituted a breach of the law). Precedent offered no firm guidance: Athenian judicial bodies were not bound by earlier decisions, although litigants often cited wise past judgments.⁵

The Athenian law on impiety appears to have been similar in form: detailing the legal procedure to be followed, but silent on the range of beliefs, behaviors, or acts constituting impiety.⁶ There was a strong consensus among Athenians that certain actions were impious and therefore merited prosecution: performing mock religious rites, defacing sacred objects, stealing goods stored in a temple, placing an olive branch upon an altar at an improper time, or removing the stump of a sacred olive tree from private land.⁷ Yet Socrates was accused of nothing of the kind. Meletus' charges of failing to properly recognize state gods, improperly introducing new gods, and corrupting the youth were vaguer and we lack detailed evidence for Athenian impiety prosecutions on similar grounds.⁸ In light of the close vote, there is no reason to suppose that a strong normative consensus pertained about what constituted proper "recognition" of state gods, or what sort of actions would constitute improperly "introducing" new gods, or what counted as an "impious" sort of corruption.

Digression: Red Herrings

Meletus had to demonstrate to the judges that the things he accused Socrates of doing or failing to do were *normatively* impious, as well showing *factually* that Socrates had done or not done them. This legal burden bears directly on the question of Socrates' innocence or guilt. Given the apparent failure of the law to define impiety, and in the absence of evidence for an Athenian consensus about what constituted improper recognition, introduction, and corruption, it is not possible to answer question "was Socrates guilty or innocent, according to Athenian law?" in any straightforward way -- other than to assert, tautologically, that after the judgment he was certainly guilty, because the court's judgment legally constituted him a guilty man. If (as seems likely)

impiety remained undefined in Athenian law and there was no Athenian normative consensus on what constituted impious non-recognition, introduction, and corruption, the central question in much scholarship on the trial -- “was Socrates (whether it is Plato’s Socrates or the historical Socrates) *actually guilty?*” – is unanswerable.⁹ I address instead a question that is perhaps as interesting and certainly more answerable: “How and why did the early Socratic tradition seek to prove Socrates innocent – in respect to absolute justice and in the eyes of a ‘reasonable’ Athenian judge?”

Plato’s *Apology* and Xenophon’s *Apology* and *Memorabilia* approach the task of exculpating Socrates differently: both acknowledge, either implicitly (Plato) or explicitly (Xenophon), that Socrates’ speech appeared extraordinarily boastful and unconvincing to the judges. Xenophon explains this by the assumption that, although innocent of any impious thought of behavior and of corrupting anyone, Socrates intended to commit a sort of judicial suicide and so intentionally infuriated the jurors with a boastful speech. Plato’s approach is more subtle: his Socrates presents a speech of outstanding rhetorical sophistication and filled with dazzling logical gambits. Socrates repeatedly lulls the judge/reader into thinking that the defense is developing according the standard protocols of Athenian forensic rhetoric, and then suddenly inverts those protocols in ways that are clearly intended to be shocking – to sting the listener/reader into wakefulness. His sarcastic cross-examination of Meletus seeks to show that Meletus’ views on politics and education are both incoherent and typical of most Athenians. Socrates is critical of the underlying assumptions of the democratic culture of Athens: that ordinary citizens were capable of making important decisions and that the public institutions of the polis were adequate to train the youth in good civic values. Plato’s Socrates claims to seek acquittal, but is very pessimistic about the likelihood of this, and for good reason: he reveals his own commitments to truth-telling and moral value to be fundamentally at odds with the attitudes of most Athenians – and his life’s work to be the painful process of bringing his fellows to acknowledge their individual and collective failings. And yet for all that, Plato urges his reader to suppose that a thoughtful and fair-minded judge *should* have voted to acquit: both on the substance of the case and in his own interest and that of his city.¹⁰

The question of the *actual arguments* used by the prosecution and the defense leads to another interpretive dead end. Since no version of the prosecution speeches survives, we can only guess at their main arguments. It is quite possible that Meletus accused Socrates of outright atheism, as Plato asserts (*Apology* 26e). He probably claimed that Socrates failed to participate in the ordinary round of state-sponsored religious practices (sacrifice, procession, cult ritual) – an argument that Xenophon sought to refute in his *Memorabilia*.¹¹ Meletus presumably accused Socrates of improper attention to a deity unrecognized by the state (Socrates’ famous *daimonion*).¹² If Meletus charged Socrates with corrupting specific Athenians (by name or implication) these likely included Alcibiades (an Athenian leader during the Peloponnesian War, whose treason contributed to Athens’ loss in the war) and Critias (Plato’s uncle and leader of an anti-democratic government established in Athens by the Spartans in 404 B.C.). Meletus may have implied that Socrates corrupted young men by teaching them to behave as he did, thereby making it more likely that they would willingly harm their fellow citizens (as Critias and Alcibiades had).¹³ In developing his impiety case Meletus was likely to have hinted at sundry other crimes and misdeeds, including a generalized hostility to the democracy itself. The jurors were probably told that Socrates was arrogant (*Xen. Apol.*

32), a diabolically clever speaker (Plato, *Apol.* 17a-b), and an unpatriotic scofflaw with an inherently vicious character (Xen. *Mem.* 1.2.9). Meletus may have claimed that he was prosecuting only reluctantly, as a patriot performing a public service, and that a failure to convict would put the city at grave risk. To prove his case he may have cited the sworn testimony of witnesses (Xen. *Apol.* 24), but he could also have called upon the jurors themselves as informal witnesses, claiming that it was common knowledge that Socrates acted impiously.

My guesses about Meletus' rhetorical *exposition* are based on the commonplaces used by other Athenian prosecutors. My guesses about the *substance* of the prosecution case against Socrates are based on the charges and the philosophical Socratic tradition regarding the trial.¹⁴ That tradition consists of two quite different *Apologies* (Defense Speeches) of Socrates written some time after the trial by Socrates' followers, Xenophon and Plato; various remarks about the trial in the extensive body of "Socratic conversations" written by those two authors; and a miscellany of off-hand, fragmentary, and much later testimonies.¹⁵ Plato's *Apology* is the most important single item in the tradition. It takes the form of three sequential speeches: Socrates' defense proper (for which we have many near-contemporary comparanda in the corpus of Athenian legal orations), a speech at the sentencing phase of the trial, and a final address to the jurors who had voted to acquit. The main defense speech resembles real Athenian defense speeches; the two others are *sui generis*. Xenophon's *Apology of Socrates* is not modeled on actual Athenian defense speeches; it takes the form a second hand report of the trial and its aftermath. Xenophon's *Memorabilia* was written in response to a literary version of a prosecutor's indictment of Socrates.¹⁶ No document surviving from antiquity can be regarded as anything like a transcript of Socrates' actual remarks at the trial – the texts that constitute the early Socratic tradition about the trial were written for philosophical or rhetorical, rather than historical or forensic purposes. As a result, we do not know what the historical Socrates said in his own defense. Since guesses about the prosecution's substantive arguments depend on the same tradition, it is impossible to reconstruct what the prosecutors *or* the defendant actually said.

The trial of Socrates was, however, a notable and memorable event for the Athenians. It was a definitive moment for the Socratic tradition and for writers who responded to it, quickly generating a substantial literature. The trial took place in a well-documented period of Athenian political and legal history; we can say much about the context of the trial, and about the contexts in which the texts constituting the Socratic tradition about the trial were written. We must keep in mind that the "Socrates" who takes part in "the story of the trial" is, like a character in a historical novel, a conglomerate: in some part modeled on the real Socrates, in some part a fictional being invented by the authors of the tradition. Despite the ink spilled on the subject, there is no way to quantify objectively how much of Plato's or Xenophon's Socrates is historical, how much invented; thoughtful scholarly opinion on this subject covers a broad spectrum.¹⁷ My approach here is to seek to place the events as portrayed in the tradition (especially Plato but taking account of Xenophon) in their Athenian legal and historical context. The result will not be "the real, historical Socrates," but I hope to show that the Socratic tradition engaged creatively with the Athenian context, and that "Socrates on trial and in prison" was constructed by the tradition as a plausible Athenian character, one deeply concerned with the values and practices of the democratic city.

Legal narrative, continued

Following the speeches of Meletus and his associates, Socrates delivered his speech of defense. In Plato's account of the trial, Socrates' defense hinged on two substantive claims: First, negatively, Meletus was incapable of recognizing impiety because he had no understanding of piety. Nor did he understand how the youth were either corrupted or benefited. His ignorance was demonstrated by his incapacity to avoid self-contradiction on these subjects under Socrates' cross examination. Since Meletus could not explain what piety or education were without contradicting himself, he could not make a coherent case that Socrates had behaved impiously or had miseducated anyone. Second, positively, in accord with the beliefs of other Athenians, Socrates regarded piety as a virtue. Socrates' ideas about piety were, Plato argues, both internally consistent and fell within the range of reasonable Athenian opinion on the subject.

The tradition's argument for innocence is grounded in these claims: Socrates conducted his life in accordance with his moral commitments. Because he regarded piety as a virtue and his conception of piety conformed to reasonable Athenian opinion, Socrates would not have, and so did not, engage in actions that a reasonable Athenian would regard as impious. Socrates had no motive to corrupt others, since by so doing Socrates would have harmed himself. There was no evidence for corruption of the youth, since neither Athenian youths nor their parents testified that Socrates had corrupted them. These arguments for Socrates' innocence might have convinced some of the judges but they did not directly answer the prosecutor's charges. A reasonable judge listening to the speech of Plato's *Apology* could hardly be blamed for concluding that the logic lesson given Meletus was a cover-up and that Socrates actually disbelieved in state-approved gods and for that reason avoided participation in state religious rituals; promoted a personal deity unrecognized by the state; and corrupted entire families so thoroughly that they failed to recognize the harm they suffered and did. That judge might accept Meletus' argument that such behavior was impious. Plato sets Socrates' logical refutation of Meletus' conceptions of piety and education within a speech that challenged Athenian assumptions about what constituted a proper legal defense. And so the sympathetic reader is given to understand that Socrates was innocent, but also that many of the Athenian judges would have had reason to vote for conviction. A sympathetic reader of Xenophon's *Apology* was likely to reach a similar conclusion.

Plato's "Socrates on trial," like many actual Athenian litigants, spent a relatively small part of his allotted time answering the prosecution's charges; like other Athenian defendants, the bulk of his defense speech was devoted to a discussion of the conduct of his life and an assessment of his behavior and attitudes in respect to the democratic culture of the polis. The choice to use much of the water in the clock on self-presentation was not inherently peculiar. Yet Plato presents Socrates as diverging radically from the standard practice of Athenian litigants in the *substance* of his self-presentation. Ordinary defendants sought to present their lives and attitudes as conforming closely to democratic norms. By contrast, Socrates presented himself as a long-standing and open critic of Athenian mores and as decidedly critical of certain core principles and practices of democratic political culture. Socrates' goal in self-presentation was not that of the ordinary Athenian defendant: i.e. persuading the judges to vote for acquittal on the grounds of his sound character and democratic way of life, whether or not they believed a

law had been broken. Socrates' actual rhetorical goal was a matter of debate in antiquity: Xenophon suggests that because he was tired of life he portrayed himself in a way intended to assure his own conviction. I will argue that in the philosophically richer account given by Plato, Socrates' goal in presenting himself as a social and political critic was the education (in its distinctively Socratic sense of "stinging into moral wakefulness") of the judges.

Following Socrates' speech, the judges immediately voted on the verdict, by secret ballot and without formal consultation. Because the majority (according to Plato some 280 of 501) of the judges voted for conviction, Meletus and Socrates each gave another timed speech, offering alternative penalties. Lacking discretionary sentencing authority, the judges were legally required to choose between these alternatives. Meletus proposed death. Plato's Socrates proposed a bizarre conglomerate "penalty": A substantial fine (30 minas: roughly 10 years' wages for a craftsman) paid by his wealthy friends conjoined with the extraordinary honor of taking meals in the public dining hall (*prytaneion*) for the rest of his life. A majority of the judges voted for death and Socrates was incarcerated in the public prison (*desmoterion*). A delay of several days ensued, due to a religious prohibition (a sacred ship was en route from Delos). Socrates' friends sought to have Socrates smuggled out of prison (Xen. *Apol.* 23). Plato's *Crito* tells the story of Socrates' refusal, on ethical grounds, to cooperate with the escape plan. Socrates received visitors in his prison cell, some of whom stayed with him until the end (see Plato's *Phaedo*). The death sentence was carried out, via hemlock poisoning, as soon as the religious prohibition was lifted.¹⁸

The story of the trial is set in a compressed and dramatic narrative frame very familiar to Plato's and Xenophon's Athenian readers. Socrates is the protagonist of this story, but the antagonist is not just Meletus, but the polis of Athens: its citizens (qua judges), its established laws, and its democratic political culture. The stark confrontation between the moral philosopher and the democratic city in the dramatically satisfying narrative of the legal trial became a foundation story for Western civilization – and especially for moral philosophy. It is difficult to over-estimate its impact. According to the *Seventh Letter* (325a-26a, a product of the early Academy if not by Plato) the trial and execution of Socrates was the decisive event that turned young Plato away from an engagement in democratic politics, and towards the philosophical project that resulted in the composition and circulation of Socratic dialogues and the foundation of the Academy. The events of 399 cast a long shadow across Plato's oeuvre; the trial theme notably recurs in the *Gorgias* (see below), where Socrates' interlocutor, the aspiring Athenian politician Callias, predicts that Socrates will be unable to defend himself in court when unjustly charged with a crime.

The trial of Socrates spawned a new kind of Athenian literature: speeches of defense (*Apologiai*) and of accusation (*Kategoriai*) written for and against Socrates – the former by Socrates' followers and the latter by their intellectual opponents.¹⁹ The trial was sufficiently notorious a half-century later to be cited in an Athenian courtroom by the politician and prosecutor Aeschines (1.173), who argued that the conviction of Socrates would be rendered unfair in retrospect if the judges were to allow the defendant's supporter, Demosthenes, to use the trial as a sophistical showcase. About a decade earlier (in ca. 352 B.C.), the Athenian rhetorician Isocrates, whose school rivaled Plato's Academy, wrote an immense and fanciful super-*Apology*. In that speech (*Antidosis*)

Isocrates cast himself in the role of an intellectual, falsely charged with “corrupting the youth,” who faced capital charges if his defense failed to convince the judges: Isocrates’ reader was obviously meant to recognize Plato’s *Apology of Socrates* as the literary model that Isocrates sought to surpass in his lengthy and ornate legal fiction.²⁰

Notably, in the trial scene in Plato’s *Gorgias*, as in both Aeschines’ and Isocrates’ citations, the themes of the dissident intellectual confronting democratic political culture and the corruption of youth are prominent, but impiety as such has dropped from the picture. The specifically *religious* aspect of the trial proved to be its least enduring feature. This is perhaps because Athens had no independent religious establishment. The aspect of religion relevant to the trial was a facet of civic life and so the trial of Socrates is relevant to the question of the compatibility of philosophical dissidence with democratic civic norms. The story of Socrates and Athens remains salient in modernity -- in an era in which “democracy conjoined with law,” as originally defined by the ancient Athenians, and “critical ethical inquiry,” as originally defined by Socrates, are both regarded as primary goods and basic to human flourishing. Although no retelling can ever hope to be definitive, by taking into account the relevant contexts -- cultural, social, political, and legal as well as intellectual and philosophical -- we may begin to make better sense of the story of the confrontation between philosophical Socrates and democratic Athens.

Socrates’ civic duties

We can best understand the story of the trial by starting with its aftermath, at a key moment for the Socratic tradition, with Socrates in prison, awaiting execution. According to Plato’s *Crito* – a dialogue which, like the *Apologies of Socrates*, puts Socrates into an active conversation with democratic norms and practices -- Socrates refused to go along with an escape plan because escaping from prison meant breaking the law: It would violate a legal order issued by competent public authorities. Escape, as Plato’s *Crito* admits, would constitute a substantive harm to the edifice of Athenian law.²¹

Socrates of the *Crito* considers the harm consideration decisive. He brushes aside counter-arguments regarding the bad effects of Socrates’ death upon his friends and sons, and on the reputations of those who might have saved him but failed to do so. This carelessness about morally irrelevant conditions of life is typical of Socrates as portrayed in the tradition. More surprisingly, however, Socrates also refuses to take into consideration the substantive fairness of the judgment against himself. Both *Crito* and Socrates (and presumably Plato’s intended reader) accept that the Athenian judges erred in convicting Socrates of impiety. As we have seen, in Plato’s *Apology* Socrates had attacked the coherence of Meletus’ conception of piety and sought to establish his own commitment to piety as a virtue. The philosophically-inclined reader assumed by Plato’s texts was likely to conclude that Socrates had been wrongly convicted in respect to absolute justice. Yet Socrates had been rightfully convicted in respect to Athenian law. That is to say, the Athenian jury had made no procedural error in coming to its legal judgment. Because the trial had been legally (i.e. procedurally) correct, the decision of the court had legal standing. If the verdict had been based on the judges’ acceptance of a logically flawed definition of piety that was unfortunate but strictly irrelevant in terms of the law. In Athenian legal process there was no presiding magistrate who might declare a mistrial, no provision for legal appeal to a higher court, and certainly no provision for

appeal to the authority of “absolute justice.” The escape was proposed by Crito in the absence of any obvious options for legal redress.²²

Having discounted Crito’s concerns about the negative effect of Socrates’ death on individuals and reputations (harms without moral relevance), Socrates weighs the assumed *injustice of the conviction* against the potential *harm to the polis’ laws* and comes to an unambiguous conclusion: The consideration that escape would entail (morally relevant) harm to the laws decided the matter and so he refused to cooperate in the escape plan. But in Plato’s dialogue Socrates comes to this conclusion in two stages: harming the laws is initially rejected as an ethically acceptable course of action on the grounds that doing morally relevant harm is impermissible.²³ Socrates reminds Crito that they had previously agreed (in a conversation unavailable to Plato’s readers) on the impermissibility of doing harm. If doing morally relevant harm is impermissible, and harming the law is morally relevant, then harming the laws is impermissible. So the discussion about what Socrates should do seems, philosophically, to be decided quickly and decisively. Yet the dialogue continues, taking the form of an imagined conversation between the “laws (*nomoi*) of Athens” and a Socrates who is (counterfactually) seriously contemplating breaking the law by escaping from prison. This “dialogue within a dialogue” continues the conversation between Socrates and the jury in Plato’s *Apology*. The difference is that now Socrates’ interlocutor is the law of Athens as he himself has come to understand it, rather than fallible and educable Athenian citizens.

The imagined laws of Athens make what Socrates takes to be a powerful case regarding Socrates’ duty of obedience in respect to themselves: obedience to Athenian law is demanded on the grounds that, as a citizen Socrates, like his forefathers, is the “son and slave” of the laws (50e). This argument, with its unexpected introduction of fundamentally unequal social positions (a father or master may do things to a son or slave that the son or slave may not do to the father or master), is concerned with harms (to the laws) and with what actions are permissible. It does not, however, hinge on the general impermissibility of doing morally relevant harms. It rests instead on the value of reciprocity within a civic/political context: Were Socrates, a citizen of Athens, to harm the laws of his polis, he would be returning evils for the goods he had previously received from the laws. Doing so would be analogous to the behavior of a son who struck his father (a common trope in Athenian literature) despite the goods he had received in the past from his parent. The strengthening of the paternal trope implied by the reference to Socrates as son *and slave* of the laws rests on the claim that Socrates, qua citizen, had received from the laws of Athens benefits that exceeded even the benefits a son received from a parent. To wit: Socrates had received from the laws his birth (*genesis*), his upbringing (*trophe*), and his education (*paideia*).²⁴

The tricolon “birth/upbringing/education” was not an idiosyncratic or distinctively “Socratic” group of human goods – the imagined laws of Athens present the benefits they conferred upon each citizen as a simple and commonly accepted “moral fact,” well known to any morally-attentive Athenian. The tricolon reproduces what was probably a canonical list of goods received from parents.²⁵ What is remarkable in this case is that the relevant goods are transferred from the parental realm to the civic realm: they are provided by the laws themselves qua “super-parent.” In the *Crito* the provision of birth, upbringing, and education defines the formation of the individual Athenian citizen by, through, and in relationship to his polis: the citizen is quite literally a product of the laws.

In this account, the law of the polis qua “state” takes on a role that is substantially different from the legal role of the modern liberal state – i.e. something other than a morally neutral guarantor of inalienable individual rights (centered on pursuit of individually defined happiness) within a stable regime of constitutionally-mandated and transparent rules. Rather, as the direct provider of both an individual’s original being and subsequent becoming, and thus of the entirety of his fundamental identity, the law stands in a paternal and “masterful” relationship to each and every citizen.²⁶ Although Socrates of the *Crito* equates the goods received by the citizen from the state *only* with the “paternal” trio of birth, upbringing, and education, the general conception that the citizen was eternally indebted to the polis and its law due to the receipt of a basket of goods was, as we shall see, common in normative Athenian political thought.

The relationship between citizen and polis law is characterized by Socrates as paternal and masterful (inter alia) because there is no meaningful chance of the individual citizen repaying the debt: As Aristotle notes in the *Nicomachean Ethics* (1161a), sons and fathers remain on grounds of inequality (and thus sons owe their fathers obedience and not vice versa) because of the impossibility of full reciprocity. Yet the impossibility of repayment does not free the son or citizen from an obligation to pay to his parent or polis, to the extent that he was able interest on the unrepayable capital loan.²⁷ Borrowing from various sources for Athenian cultural-political attitudes, we may break down the “citizen’s payment schedule for goods received” as follows:

First and foremost the polis requires *obedience* to the written laws and unwritten customs of the polis (the term *nomoi* includes both) and to the orders of legitimately-appointed public magistrates. This form of legal obedience included obeying the call to military service: when summoned, the good citizen served the polis with his body – most usually as a cavalryman, heavy infantry-man (hoplite), or rower in the fleet. And when in the field he obeyed the orders of his commanders who were themselves elected or appointed magistrates of the state. Obedience to laws and magistrates, especially in the context of military service, might entail grave physical danger, and might ultimately require the individual to sacrifice his life: Among the most important annual ceremonies of the democratic state was the “ancestral (or paternal) law” (*patrios nomos*) which specified collective public burial and public commemoration (via speech and inscribed monument) for the Athenian soldiers who died in that year. In Thucydides’ history of the Peloponnesian War, Pericles’ Funeral Oration, delivered in the first year of the war (431 B.C.), offers an eloquent testimony to the deep Athenian cultural assumption that the goods offered by the polis to each citizen rendered it fitting, indeed glorious, for an individual citizen to give his life in battle for the good of the polis. Likewise, according to the argument offered to Socrates by the laws of Athens in the *Crito*, the sacrifice of one’s life could be justly demanded in (partial) repayment for having been given the trio of basic goods. In the *Apology*, Plato’s Socrates alludes prominently to his active military service as a heavy-armed infantryman, and he comments specifically on his willing obedience to the orders of elected Athenian military commanders. The later Socratic tradition also celebrated the courage and steadfastness of “Socrates the citizen soldier.”²⁸

In addition to obedience, the polis expected a certain amount civic *participation* from each individual citizen: the state required his time and presence in order to operate the institutions of the democratic community. Civic participation ordinarily included political as well as military service. Rather than resting upon the efforts of a few political

experts (like Plato's "philosopher-kings"), the democracy depended upon the occasional service of a mass of "dedicated amateurs" to serve as Assemblymen, as councilors in the agenda-setting Council of 500, as judges in the people's courts, as lotteried magistrates, as public arbitrators, and as voluntary prosecutors (like Meletus) of public malefactors. The account of the fourth century B.C. Athenian democracy in the Aristotelian *Athenaion Politeia* gives a vivid sense of the large number of citizen-days of public service that were required each year in order for the democracy to operate. Although Socrates' political service is less prominent in the Socratic tradition than is his military service, the tradition acknowledges that Socrates did indeed answer this participation demand: In Plato's *Gorgias*, Socrates mentions that he attended the Athenian Assembly and listened carefully to the debates there. He served a year on the Council of 500 in 406 B.C. – and happened to be one of the magistrates in charge of running an especially contentious meeting of the Assembly, at which Athenian generals were charged en masse with dereliction of duty. On this occasion Socrates sought to restrain the Assemblymen from acting outside the established legal norms of the polis.²⁹

In respect to the duties of obedience and civic participation, Athenian citizens were regarded as more or less interchangeable. Obedience and civic participation were demanded of all Athenians, irrespective of their particular and individualized capacities. But the Athenian was also expected to repay the "interest" on the unrepayable "debt principal" represented by the goods he had received from the polis by freely offering to the polis whatever individual and personal excellence he might possess. In the case of the wealthy individual, this meant paying periodic special taxes based on total family property holding (*eisphora*). For the very wealthy it meant substantial material contributions in the form of periodic festival liturgies (e.g. as chorus-producer for a series of tragedies) and naval liturgies (to defray the expense of maintaining a fleet of warships). Fine singers and dancers performed in one of the 50-man (and 50-boy) tribal choruses during major festivals. A victorious athlete, demonstrably strong of body and beloved of the gods, might take a leading place in military formations. The citizen who had relevant expert knowledge and was a capable public speaker would be expected to offer advice at public meetings of democratic bodies.³⁰

The citizen's excellence-based contributions were different from his duties of obedience and participation in that, under the right circumstances, he might claim that these special services placed the polis in *his* debt. Athenian litigants who had voluntarily performed more than their allotted share of financial liturgies, might, for example, claim that the judges owed them a sympathetic hearing. Those whose personal excellence greatly benefited the polis expected public honors, potentially including decrees of thanks, statues in public spaces -- or the privilege of taking their meals in the public dining hall. It was because Socrates believed that his own special excellence had been the source of substantial benefits to the polis that he included free public meals in the "penalty" he proposed after being found guilty of impiety. But, as we have seen, in the *Crito* Socrates also claimed that he owed to the laws of Athens an unrepayable debt for goods he himself had received. Although some Athenians (like Alcibiades) may have felt that their debt to the polis for goods received was more than repaid by their special services, both standard Athenian thinking and Socratic thinking was more complex: The performance of outstanding services deserved public acknowledgment in the form of outstanding honors, but those honors did not indicate the full repayment of the

individual's underlying debt to his polis. Rather, the indebtedness of excellent citizen and polis was reciprocal, and the reciprocity was expressed in a language of mutual honoring and mutual obligation.³¹

Unlike his overall conventional responses to the obligations of obedience and civic participation, in the area of duty based on individual excellence Socrates developed a distinctive conception of his responsibility to the polis. He was not wealthy. He was not athlete and we are not given to suppose that his singing and dancing were up to Athenian choral standards. While knowledgeable and politically astute after his own fashion, he was not a public speaker. Indeed, in Plato's *Apology* (31c-32a) Socrates makes a point of his unwillingness to "speak out in public debates" – and this is sometimes mistaken as evidence that Socrates refused to perform the ordinary civic duties of participation. But in fact relatively few Athenians spoke in public meetings. This sort of "quietism" was not exceptional and was in no sense incompatible with an active record of public service; indeed it was structurally essential to democratic governance: Had even a substantial minority of Athenians actively sought to exercise their equal right of public speech (*isegoria*) at major public meetings, the polis would be rendered ungovernable.³²

Many Athenians who lacked the specific "excellence" required to serve as, for example, liturgists or public speakers, contented themselves with repaying their debt to the polis by fulfilling the duties of obedience and civic participation. But Socrates imagined he did have a particular area of excellence in which he could serve Athens: as an educational public gadfly. Plato's *Apology* assumes that his philosophical conversations, carried out in the public spaces of the Athenian agora, were a form of public service. In Plato's *Apology* (30e-31b) the service of waking the Athenians from their moral slumber is famously compared to the service a biting gadfly performs for a large and well-bred but lazy horse. It is precisely on the basis of his "public benefactions" as a gadfly that Socrates made the seemingly audacious proposal during the sentencing phase of his trial that he be offered free meals by the city (36d-e), an honor ordinarily reserved for victorious athletes who, as we have seen, might be asked to take positions of extraordinary risk in war. Although that honor (had it been offered) would not have ended Socrates' obligations in respect to public service, it would have been, he supposed, a reasonable and appropriate acknowledgement of the special educational benefits he provided, and of the risks he incurred in the process.

Of course, like proposing an extraordinary honor as a "penalty," Socrates' gadfly analogy is deliberately paradoxical: No one who has watched a real horse responding to the persistent attack of biting flies -- switching its tail, shivering its flanks, shaking its head and mane – will imagine that the horse appreciates the "service" done by the flies in preventing it from sleeping. If given the opportunity, the horse will kill the gadfly – and likewise Socrates recognized that his fellow citizens were unlikely to acknowledge as benefits his own practice of making them uncomfortable with their own moral laziness. Unlike a wealthy litigant's allusion to a solid record of public liturgies, Socrates' allusion at the trial to his well-known "gadfly" behavior certainly did nothing to help him win the sympathy of the jurors and thus secure acquittal, nor, Plato implies, was it meant to.

We should not allow Socrates' distinctive interpretation of his public responsibilities in respect to "special excellence" to obscure his largely conventional interpretation of his duties in terms of legal obedience and civic participation – it is the mix of conventionality and originality that makes Socrates so complex and so interesting.

It also makes him extremely difficult to grasp, in that Socrates seems at once to borrow from and yet diverge from a series of ancient Athenian character types: these include the sophists and scientists with whom Socrates was conflated by Aristophanes and other comic poets; Plato and his various philosophical rivals and successors, sequestered in private schools; and Diogenes the Cynic, famous for outrageous behavior and lack of attachment to material goods. But the primary Athenian type against which we should imagine the Athenian jurors of 399 struggling to compare Socrates, and to which he both conformed and diverged in vertiginous ways, was the “standard good citizen” vividly represented in the idealizing portrait offered by Thucydides’ Pericles.

The comparison between Socrates and the “Periclean citizen” is apt. In the speeches he gives Pericles, Thucydides expresses clearly the dependence of both the communal flourishing of the polis and the individual flourishing of each citizen upon the patriotic willingness on the part of each and every citizen to work hard and consistently for the common good. Like the Athenian laws that Socrates of the *Crito* imagines as chastising a lawbreaker, Thucydides’ Pericles emphasizes the catastrophic harm that will come to the polis if individual citizens or social sub-groups place private interests above the common good. Likewise, in their legal orations, delivered before mass audiences of judges and spectators, Demosthenes, Lysurgus, Aeschines and other Athenian political orators, equate the flourishing of the polis with the active willingness of the citizenry to obey the law, to defend the laws by their voluntary public service, and to offer whatever personal excellence they might possess whenever it is called upon. Like Thucydides’ Pericles, these fourth-century Athenian speakers equated the failure to obey, to participate, and to offer personal excellence to the community with the catastrophic incapacity of the polis to ensure its own continuous existence.³³

There was, in sum, a general agreement between Socrates (as portrayed in Plato’s *Crito*) and the democratic political culture of Athens that the citizen had a substantial duty to his polis: obedience to the laws, customs, and magistrates of the polis; public participation in support of the institutions of governance; and voluntary contributions on the basis of whatever special excellence he might possess. These duties were justly demanded by the polis on the basis of a conception of reciprocal exchange that could be analogized as a just (although unequal) contract: the citizen’s duties were an (inadequate) repayment for fundamental goods received by each citizen from the polis and its laws.

Yet if Socrates and political Athenian culture agreed on the general principle of the just social contract, the list of “goods received by the individual from the polis” that they emphasized were different. As we have seen, in the *Crito* Socrates emphasizes the “parental” triad of birth, upbringing, and education. By contrast, Thucydides’ Pericles focuses heavily on national glory and wealth. Fourth-century Athenian orators, for their part emphasized the freedom, political equality, and security enjoyed by each citizen. In juxtaposing Socratic ethics with the normative views of his fellow Athenian citizens, we must not lose sight of the fact that the principle of a contract between citizen and polis was shared, *or* that the basket of goods each regarded as relevant to the civic contract were different.³⁴ As we have seen, the reader of the *Crito* learns that Socrates was required to obey the law by a conviction about the impermissibility of doing morally relevant harm. But the amount of time he subsequently spends in laying out the contractual relationship between citizen and laws suggests that the implied contract is a key to understanding the relationship between Socrates and Athenian democracy.

It is impossible to demonstrate that the *historical* Socrates was committed to the contractual conception of citizen duty that Plato's Socrates lays out in the *Crito*. Yet assuming that the real Socrates had such a conception does help explain the ethical basis for a few seldom-disputed facts about the historical Socrates: his record of military and civic service, his habit of engaging in philosophical conversations with ordinary people in public (rather than limiting himself to private conversations with the educated elite), his willingness to answer the Basileus' legal summons and then to report to the people's court as ordered (rather than ignoring the magistrate's order and going home, as he did when ordered by a magistrate of the oligarchic Thirty to arrest Leon of Salamis), his choice of making a speech of defense at the trial (rather than remaining mute, as Maximus of Tyre later claimed he did),³⁵ his decision to drink the hemlock (rather than escape from prison), and his decision to continue living in Athens (rather than moving to somewhere with "better laws," e.g. Sparta). We will return to these decisions at the end of this chapter.

The goods Socrates of the *Crito* acknowledges having received from the laws of the polis were his birth, upbringing, and education – rather than national glory, power and wealth, or individual freedom, equality, and security. The argument of the Athenian laws in the *Crito* suggests that collectively the three "parental" goods constituted the core civic formation of the individual citizen. While most Athenian citizens had a more capacious conception of the goods offered by the polis, there is no reason to suppose that they would disagree with the positive argument made by the laws in the *Crito*: The parental goods underwritten by the laws provided each citizen with his primary identity; his birth, upbringing and civic education taught him how to conduct his life.

There is obviously much to Socrates' ethical formation and identity that *cannot* be attributed to this standard civic formation. But Socrates of the *Crito* believed that the formation he had received from his birth, upbringing, and civic education was *consistent with* the distinctive moral and ethical commitments he subsequently developed in the course of philosophical study and conversation. At such time as Socrates perceived a conflict between who he was as a citizen and who he was as a self-consciously ethical subject, Socrates was free to leave the polis -- as the laws of Athens point out to him in the *Crito*. The tradition emphasizes that Socrates never left the polis except on military orders, and thus supports the validity of the claim of the imagined laws of the *Crito* that Socrates was satisfied with Athenian laws. The implication is thus that his civic formation and ethical formation remained compatible throughout his life.³⁶

Socrates rejected the notion that he might believe one thing and act otherwise and claimed that his inner voice, his *daimonion*, consistently prevented him from acting wrongly. Thus we must suppose that the actions and behaviors demanded by Socrates' "Athenian formation" – the duties he took on qua citizen – were fully consistent with Socrates' conception of ethics and morality. And to that extent, despite his critical response to certain principles and practices of the Athenian democracy, we may say that Socratic philosophy and Athenian democracy were compatible.³⁷ Yet if this is so, then the series of events which resulted in Socrates' death by hemlock in the prison of Athens were historically contingent rather than being the predictable result of a deep underlying conflict between Socratic ethical philosophy and democratic political culture. The Platonic strand of the Socratic tradition that we have been following here thus opens a common ground which Socrates and Athens might jointly inhabit.

Goods received

In order to test the compatibility of Socrates' ethical commitments with democracy, we should look more closely the three "parental goods" that he acknowledged (in the *Crito*) having received from the laws of Athens. Were these goods a fair exchange, in and of themselves (that is, without the addition of morally problematic "goods" such as national glory, power, and wealth), for the duties demanded of Athenian citizens? What was the relationship of the parental goods to the oft-cited (by Athenian public orators and modern democrats) goods of freedom, equality, and security? Was the contract described by the laws in the *Crito* a fair one, and was it presented by Plato in a way that accurately represented Athenian normative commitments?

By looking briefly at how Athenian law and custom regulated birth, upbringing, and education, we can see how freedom, equality, and dignity were integrated in the formation of citizens. Furthermore, cross-referencing Spartan law and custom will help to clarify Socrates' debt to the laws of Athens. The *Crito* (52b, 53c) suggests that Socrates regarded Sparta (as well as Crete, Thebes and Megara) as having better laws than Athens; yet Socrates chose to live in Athens, subject to Athenian law. Did Socrates receive goods from "inferior" Athenian laws that he would have lacked under the "superior" Spartan legal regime? This legal/historical exploration gives us a starting point for assessing the historical circumstances that allowed Socrates to live a civic and ethical life in Athens as well as the circumstances that brought Socrates and Athenian political culture into a collision course in 399, ending in the untimely death of the philosopher, and a permanent stain upon the record of the democratic community.

Birth. Socrates imagines that the laws ask him, "Did we not bring you forth? Is it not through us that your father married your mother and begat you? Now tell us, have you any fault to find with those of us who are the laws of marriage?" (*Crito* 50d). The laws in question concern legitimate marriage. In contrast to Homeric marriage custom, which recognized the full inheritance rights of bastards, Athenian law defined legitimate marriage as constituting the monogamous nuclear family as an inheritance group and thus as a descent group.³⁸ By canceling one of the privileges of wealth (the begetting of an unlimited number of legitimate heirs: cf. Priam's fifty sons in the *Iliad*) the Athenian marriage law placed Socrates' father, Sophroniscus (and eventually Socrates himself), on a more equal footing with wealthier Athenian men. Socrates would also have a limited number of siblings and could thus expect to inherit a substantial share of Sophroniscus' property. This base-line equality of birth-right among Athenians enabled Socrates' voice to be attended by the Athenian elite, in a way that contrasts sharply with the treatment of another famously ugly and low-born character in Greek literature: Thersites of Homer's *Iliad* (book 2), who is summarily thrashed when he criticizes the behavior of superiors.

Socrates was born in 469 B.C., which means that he came of age (turned 18) in 451, the year in which the Athenians passed a new law requiring that Athenian citizens have both an Athenian father and an Athenian mother (that is, a woman with an Athenian father).³⁹ Sophroniscus probably brought young Socrates before the citizens of his home deme (township) of Alopece at their very first meeting held under the new law to scrutinize the descent of Athenians. Sophroniscus and his wife, Phaenarete, were accepted by the men of Alopece as a native-born Athenians and Socrates was enrolled among the citizens of the deme and the polis.⁴⁰ The laws of marriage defined Socrates'

“civic being” as an equal inheritance from both his parents and made of the Athenians a closed body – a demotic aristocracy. The laws of marriage defined the subsequent conditions of Socrates’ upbringing and education, as well as limiting his own future options for marriage. In sum, the laws of marriage did a lot of work in bringing Socrates, qua Athenian citizen, into being in a social and political sense. They provided Socrates with a complex inheritance in that they made civic unequals of persons who might well be regarded as moral equals (e.g. the citizen Glaucon and the metic Polemarchus), and made civic equals of men who might be regarded as moral unequals (e.g. Socrates and Meletus). Yet Socrates’ reference (in Plato’s *Apology* 30a) to his special relationship to other Athenian citizens on the basis of kinship suggests that it was an inheritance that he willingly embraced.

Upbringing. Socrates’ upbringing was not specified by formal Athenian law, as it would have been, for example, had he been born to Spartan parents. But the *nomoi* that Socrates of the *Crito* imagines as addressing him included established Athenian customs as well as written law. In contrast to Sparta, Athenian custom specified that the fundamental choice of *whether* to bring up a child or whether to kill it (by exposure) shortly after birth was made by the family rather than by the state. Had Socrates been born to Spartan parents he would have been examined as an infant by officials charged with exterminating babies who appeared malformed. Although we do not know what criteria the Spartan officials employed, in light of the ancient tradition about his very peculiar appearance, it is at least conceivable that Socrates owed his survival past infancy to Athenian customs regarding upbringing. Shortly after his birth, Socrates was displayed to family members and later presented to the members of Sophroniscus’ phratry (a regional/kinship group); at age 18 he was formally introduced to the demesmen of Alopece. To the extent that Socrates’ identity was based on kinship and locality, it was a product of his upbringing according to established Athenian custom.⁴¹

A second aspect of Socrates upbringing was his paternal inheritance. According to Athenian custom, a father was expected to teach his son a craft and a father who survived into middle age was expected to turn over his estate to his legitimate sons in a timely manner: The estate would be evenly divided amongst the sons who might then take wives of their own.⁴² An Athenian father with a legitimate son lacked the legal authority to disinherit him: even if Sophroniscus (like Aristophanes’ Strepsiades in the *Clouds*) had disapproved of his son’s pursuits, Athenian law and custom demanded that Socrates be his heir. Although we know none of the details, Socrates evidently inherited a property sufficient to allow him to enroll in the ranks of the heavy-armed hoplite infantry, to marry twice, and to raise three sons. One marriage (the order is disputed by the ancient sources) was to a woman with the aristocratic name Xanthippe. The other marriage, according to tradition was without dowry, to a daughter of the distinguished Athenian statesman Aristides (nicknamed “the Just”).⁴³ The two connections suggest that his inherited financial position was relatively secure – secure enough, perhaps, to allow him to spend substantial time upon philosophical investigations rather than worrying about starvation. Socrates was not a rich man, and once his philosophical career commenced in earnest his estate declined (*Apol.* 31b-c). But it is undeniable that his conventional Athenian upbringing made it possible for him to become a philosopher.

Education. When Socrates acknowledged that he had received his education (*paideia*) from the *nomoi* of Athens he must have been referring to both written law and

custom. The imagined laws of the *Crito* ask Socrates if he was dissatisfied with those laws that “told your father to educate you in music (*mousike*) and gymnastics” (50d). Here the reference is to custom: the tradition assumes that Sophroniscus could afford to give his son not only a basic primary education (thus the capacity to read and write, but also a more advanced cultural education offered by private tutors in poetry, musical performance, and athletic endeavor. This sort of education was regarded by Athenians as appropriate to a young man from a comfortable background. Socrates, as presented by both Xenophon and Plato, had a deep and easy mastery of poetry and music, and was very much at home in the gymnasium. The contrast with Sparta is instructive. Had Socrates survived a Spartan infancy, his education (after age seven) would have been highly regulated and provided by the state: he would have been assigned to an age-based “herd of boys” and put through an extraordinarily rigorous physical training aimed entirely at making him into an effective member of Sparta’s highly professional land army. Each Spartan was taught to be “similar” (*homoios*) to every other Spartan; his attitudes toward the world, his public and private comportment, and his conditions of life were, at least in principle, standardized by the state. The model against which the young Spartan was formed was also meant to be timeless: change, difference, innovation, and novelty were systematically suppressed as inimical to the preservation of Spartan society. In sum, Sparta’s legally mandated education would have provided no space for Socrates to develop or pursue his distinctive intellectual and ethical interests. By contrast the “musical and gymnastic” education that Athenian custom demanded that Sophroniscus provide for him clearly did.⁴⁴

Although Athenian law mandated nothing like Spartan training, the democratic political culture and the participatory practices of Athenian governance nonetheless provided each Athenian with a civic education. Athenian civic education may seem haphazard in comparison with Sparta, but it was recognized by the Athenians as essential to the perpetuation of the democratic regime. Athenian public speakers emphasize the educational aspect of public decisions: decrees of the Assembly, judgments of the people’s courts, and the laws themselves. The goal of this Athenian civic education was clearly “building citizens”—that is, making those young Athenians who had met the double-descent birth qualification into courageous and patriotic members of a democratic community.⁴⁵ It was through the everyday operations of democratic culture and practices that each young citizen was taught that he owed a duty to the polis because of the good things he had received from the polis. Although Socrates of the *Apology* is scornful of Meletus’ belief that Athenian judges, Assemblymen, Councilmen, and other officials were effective teachers of the youth, while Socrates alone corrupted them, the normative Athenian position on good citizenship was quite close to the things Socrates imagines he hears the laws saying in the *Crito*, and to which he has no demure.

Plato, in the *Republic*, made special note of the effectiveness and pervasiveness of Athenian-style “civic education by public practice.” Yet far from regarding it as a good received, he depicts Athenian civic education as ideological in the worst sense – as training in conformity to popular attitudes and detrimental to the emergence of a genuinely philosophical perspective.⁴⁶ The great distance between the position on the proper education of the citizen implicitly accepted by Socrates in the *Crito* and that developed in the *Republic*, may be taken as a measure of how far Plato had to go in order to solve the ethical problem left to him by Socrates’ accommodation with Athenian

democratic culture.⁴⁷ It appears that as Plato worked out his “Socrates and Athens” problem, his literary Socrates became both less civic and less “Athenian.” Socrates is difficult to grasp in part because much of the early Socratic tradition (Xenophon and Plato of *Apology* and *Crito*) saw him as simultaneously a “self-created” philosopher, who lived his life according to unrefuted moral positions arrived at in uncoerced philosophical conversations, *and* as an Athenian citizen, possessing a polis-given civic identity. In the *Republic* Plato simplifies the picture by stripping Socrates of most remnants of a civic Athenian identity.

In sum, Socrates of the early tradition believed that he had received a great deal from the laws and customs of his native city: the circumstances of his early life and his early formation were profoundly affected by the distinctive Athenian legal and customary regime under which he was born, raised and educated; under other circumstances his life-circumstances might not have allowed him to pursue philosophy. Given that Socrates was satisfied with who he was and who he had become, and given that his being and becoming was provided (in some part) by the polis, he did indeed owe Athens a substantial debt. Socrates fulfilled his part of a fair contract by living a life compatible with many (if not all) elements of Periclean “standard good citizenship.” There is no reason to believe that the early tradition misrepresented this fundamental point.

The critical intellectual in public and private

If he had no fundamental quarrel with the laws of Athens, how did “good citizen Socrates” come to be tried and executed by his fellow citizens? There is no single answer to that question, either historically or in terms of the philosophical tradition. Scholarly answers can be roughly grouped into the political (an ambitious prosecutor mobilized popular anger at Socrates’ anti-democratic behavior and/or that of his students, Critias and Alcibiades) and cultural (postwar Athenian attitudes towards intellectual nonconformism hardened and concern with piety grew).⁴⁸ Both political and cultural factors certainly played a part, but these should be set alongside the context of civic obligation: The trial was made possible by Socrates’ idiosyncratic interpretation and persistent fulfillment of his “duty to contribute to the polis through his personal excellence.” Rather than using his unique capacities to benefit the polis in obvious and conventionally acceptable ways (e.g. through material contributions or good advice on state policy), he consistently sought to benefit his fellow Athenians educationally by publicly criticizing democratic culture and its associated habits of thought, speech, and action.⁴⁹ The Athenians were used to political criticism; indeed they recognized criticism as essential to democratic flourishing. Socrates managed to be critical in ethical terms that were new, powerful, and ultimately profoundly disquieting to his fellow citizens. His stings were genuinely painful and sometimes untimely. Yet only in the special political and cultural circumstances of the era after the Peloponnesian War did the Athenians decide to take a slap at their troublesome gadfly.

By the 420s, Socrates was well enough known as a “public intellectual” to stand in for the standard “mad scientist/conniving sophist,” in the comedies of Aristophanes and other comic poets. But Socrates diverged from his contemporary intellectuals in that he saw his relationship to himself, to others, and to his community in explicitly ethical terms and in that he initiated critical conversations with ordinary people in public places. Because Socrates, unlike other Athenian intellectuals, carried on much of his critical

work openly in public, Socrates was known to the Athenian public at large – and was thus a convenient butt of comic poets used to mocking public figures.⁵⁰ Socrates' was also remarkable for conjoining his critical enterprise with his duties as a participatory citizen. As we have seen, as Councilor in charge of an Assembly meeting at which several generals were accused en masse of malfeasance, Socrates refused – over the vocal objections of the assembled citizenry -- to put the procedurally irregular matter to a vote. There can be little doubt that Socrates' reputation as an outspoken critic of the status quo was securely established well before 399 B.C..

Socrates was renowned in elite circles as well. Plato and Xenophon each wrote a *Symposium*, suggesting that Socrates was in great demand at exclusive gatherings of Athenian intellectuals. Socially, this was a heterogeneous society, composed of aristocratic citizens (like Crito, Alcibiades, Critias, and Charmides), wealthy metics (like Cephalus and his sons Polemarchus and Lysias), and distinguished foreign visitors (like Protagoras, Gorgias, and Thrasymachus). Some of these people came to regard themselves as Socrates' "students" – but that certainly does not mean that they took on board all of Socrates' attitudes and behaviors. Whereas certain of Socrates' elite friends and interlocutors (like the citizen Chaerephon and the metic family of Cephalus) were loyal supporters of the democratic regime, others (notably Alcibiades and Critias) came to despise the democracy and worked to overthrow it. The latter group clearly did not buy into the conception of the citizen's "debt to the laws of the polis" that Socrates of the *Crito* subscribes to. Revolutionary anti-democrats eventually overthrew (with Spartan help) the democratic regime and the laws that supported in favor of an oligarchy: the regime of "The Thirty."

Socrates denied that he had students since he took no money for teaching. Nor did he accept that that it would have been possible for anyone to have been corrupted by his public or private conversations. To the extent to which Athenian anti-democrats did actually learn from Socrates, they evidently focused on his critical view of democratic governance as grounded in a mistaken belief that ordinary persons, as opposed to experts in moral education, were fully capable of making public policy that could make people better. This was grist for the mill of anti-democratic revolutionaries, but it is not incompatible with the assumption that Socrates himself remained an obedient and participatory citizen of the democratic polis: Socrates may well have believed that no moral education experts existed, or that it was impossible to identify them, or that their authority could not be established without doing ethically impermissible harm to the laws. In any event, there is no necessary contradiction between being a critic of democratic ideology and a good citizen of the democratic community. Athenian politicians, for their own part, were often sharply critical of Athenian political habits.⁵¹

Like a democratic Athenian politician, although for somewhat different reasons, Socrates came to live in two worlds – in the open world of the public square, where his intellectual acumen and critical attitudes were on public view, and in the private world of exclusive elite gatherings. Yet, like an Athenian politician, Socrates insisted that he always remained homogeneously himself – that he was the same over time and that there was no distinction between his "public self" and his "private self."⁵² In Socrates' case, there is no reason to doubt that this claim to be "always be the same" was sincere. Moreover, Socrates' contentions that he was a good citizen and "consistently at one with himself" in public and private were evidently accepted by most Athenians, through most

of his life. Despite his association with Alcibiades, and despite Alcibiades' (and others' of Socrates' acquaintance) entanglement in the notorious "Affairs of the Mysteries and Herms" in 415 B.C., there is no evidence that Socrates was accused – as they were -- of impiously mocking the sacred Eleusinian Mysteries in a private house or of defacing the sacred statues of the god Hermes erected in private and public spaces around the city.⁵³ By contrast, the Athenian politician Andocides, who was also prosecuted in 399 B.C. on a charge of impiety, spent much of his defense speech (*On the Mysteries*) addressing the question of why he could not legitimately be prosecuted for his part in the events of 415. Socrates was evidently not regarded, in 415 or in the years thereafter, as the sort of politically discontented malefactor likely to be associated with anti-democratic activity. In sum, although he was very well known, and any number of Athenians, as victims of his public interrogations, may have had reason to dislike him, there is no evidence that most Athenians regarded Socrates as a dangerous malefactor in the decades before 399.

"Socrates in Athens" -- famous as a sophist, scientist, public philosopher, and all-round contrarian; friendly with the notorious, and conversation-partner with the ordinary man on the street; an obedient dissident; a critic of democratic culture who takes up public office and is a stickler for the legal rules -- may appear to modern readers to be a mass of contradictions. But Athenian democratic ideology and discourse thrived on such contradictions: Political leaders were expected to present themselves as at once extraordinary and ordinary, as at once the spokesmen for what "everybody knows" and as the founts of highly original policy. Famously wealthy litigants could offer themselves in court as incapable of dowering their daughters. Athenians delighted in individual freedom of speech and thought, yet they also honored consensus as public ideal. So, if "Socrates in Athens" is paradoxical, he nonetheless fit within an Athenian culture based on a capacity among the citizenry to embrace contradictions.⁵⁴ The question of why Socrates was tried and executed in 399 must be set in the context of Socrates' long career as a famous critical intellectual in a famously litigious community. We need to confront both the trial of 399 and the fact that it happened only after decades of public notoriety.

Explaining 399: Why prosecute? Why defend?

I have argued that there was no fundamental incompatibility between Socrates, as we know him from the tradition, and Athenian democratic culture. Despite the many aspects of Athenian culture Socrates found worthy of critique, he regarded the implicit contract he had made with the laws as a fair one and compatible with his ethical commitments. Despite the discomfort and confusion some Athenians experienced in Socrates' company, the peculiarities of behavior and expression entailed by Socrates' philosophical commitments were adequately balanced by his sincere and convincing self-portrayal as an obedient and participatory citizen. The balance held until Socrates was seventy years old. What tipped the balance?

In 404 B.C. Athens had surrendered to Sparta, ending the Peloponnesian War. Socrates' associates Critias and Charmides, along with 28 other anti-democratic Athenians, were soon installed as Athens' new governors by the victorious Spartans. The reign of the Thirty was short and brutal, featuring arbitrary arrests, judicial murder, property confiscation, and large-scale exile. Plato writes in the *Seventh Letter* (324d) that the former democratic era appeared a golden age by contrast. Some Athenians abandoned the city to join a pro-democratic army, based first at the Athenian border-village of Phyle

and then in the port-town of Piraeus. In 403 the government of the Thirty was overthrown by the democratic insurgency: Critias was killed in battle and others fled. The Spartan-brokered peace that followed allowed the re-establishment of a democratic government in the city, with a new oligarchic polis to be founded at the Athenian town Eleusis by the surviving supporters of the Thirty. Meanwhile, the democrats in the city proclaimed an Amnesty, protecting all but the Thirty themselves and a few of their closest associates from politically motivated legal prosecution. Two years later, in 401, following another battle, the polis was reunited under a democratic government.⁵⁵

According to Socratic tradition (especially the *Seventh Letter* and the two *Apologies*), Socrates himself paid scant notice to this dramatic sequence of historical events. He remained in the city after the takeover of the Thirty, continuing his ordinary round of philosophical engagements. Yet the Thirty were not content to leave him uninvolved: According to Xenophon (*Mem.* 1.2.29-38) Critias hated Socrates for having called attention to his personal and political failings and promulgated a special law forbidding Socrates from holding philosophical conversations with anyone under age thirty. Plato focuses on the attempt of the Thirty to implicate Socrates in judicial murder: Along with four other Athenians, Socrates was ordered to report to the Tholos, a public building in the agora. When the five men arrived, they were told to go to Salamis (an Athenian island off the west coast of Attica) to arrest a certain Leon and to bring him to Athens for execution. Plato's *Apology* (32c-d) states that the other four obeyed the magistrate's order, but Socrates himself simply returned to his home, refusing to be frightened by the Thirty into doing something unjust. Socrates' principled refusal to cooperate did not save Leon, or the other victims of the Thirty. Actively aiding an unjust act was ethically impermissible, but heroic action aimed at saving other men from injustice was evidently not required.⁵⁶

The Leon incident might, on the face of it, seem to have presented Socrates with a hard choice between ethically impermissible legal disobedience and doing an unjust act. In the *Crito* he asserts that it is impermissible to break the laws and he clearly regarded ignoring orders issued by legitimate authorities (e.g. the execution ordered by the court in 399) as lawbreaking. Yet Socrates deliberately ignored the order issued to him by the magistrates of the Thirty and there is no hint in the tradition that his choice was a difficult one. Socrates' decision to go home rather than to obey the order to arrest Leon suggests that he did not believe that the Athenian lawcode under which he had grown up had been nullified by the establishment of a new government under the Thirty. If Socrates regarded the Athenian laws that had been in force before 404 remained in force after the coup of the Thirty, and were not superseded by laws the Thirty sought to put in their place, then Socrates' refusal to obey the magistrate's order to arrest Leon of Salamis is fully consistent with a stance of steadfast obedience to the laws of Athens under which he had been born, raised, and educated. Socrates surely accepted that the established law could be modified by legitimate legislative action (e.g. the new citizenship law of 451 B.C.). But he evidently did not accept that the ad hoc legal practices of the new oligarchic government constituted a code of law that he was obliged to obey.⁵⁷ Unlike the *nomoi* of Athens under which Socrates was born and raised, the ad hoc legal proclamations of the Thirty failed to constitute an entity that would suffer morally relevant harm as a result of his disobedience. Moreover, only the democratic law code that pertained during his youth

could demand Socrates' obedience on the basis of its paternal role in providing him with birth, upbringing, and education.

In the aftermath of the democratic restoration the city of Athens was freed from the Thirty, but remained in dire straits: The population was devastated by the effects of the long war; the economy was a shambles; the great fleet and impregnable walls that had protected the city had been destroyed by the Spartans. Athenians who had survived the war and the Thirty had lost much: In many cases their ancestral property was gone forever. Once proud and wealthy families were now destitute and struggled to make ends meet.⁵⁸ The Athenians did what they could. They held civic celebrations stressing national unity. They honored the heroes who had initiated the democratic resistance to the Thirty. And they completed the arduous task of re-codifying the laws. But these measures were carried out in an uneasy political environment; Athens would not recover full political stability for some years. In the Assembly, there were rancorous debates about the most fundamental questions of civic membership. Proposals were advanced, and ultimately defeated, that would have radically altered the composition of the citizen body, on the one hand to disenfranchise the poorest Athenians, on the other to enfranchise all non-Athenians who had participated in the anti-tyrannical resistance. Meanwhile the Amnesty meant that people's anger and pain at the terrible losses suffered during the reign of the Thirty could not be satisfied by gaining what must have seemed to many as just revenge through the legal apparatus. It was an agonizing era; everyone's life was thrown into disarray.

Everyone, that is, but Socrates. His response to the order to arrest Leon of Salamis, as reported in Plato's *Apology* "going away from there, I went on home," might be taken as summing up his lack of concern with the chaos around him: That day was not, as it turned out, a good one for philosophical conversation in the agora, so he went home; but there would be other days and other conversations. The Socratic tradition seeks to make much of Socrates' bravery in ignoring the arrest order: In Plato's *Apology*, Socrates claims that he might have been executed himself had the regime of the Thirty not fallen soon afterwards. But to Athenians who had risked their lives and lost much else in order to bring about the fall of the murderous oligarchy, Socrates' easy willingness to stay in the city during the worst of the oligarchic excesses, and his close relationship with some of the oligarchic leaders, were of greater moment than his principled refusal to collaborate in an arrest. Yet then again, many Athenians had connections with members of the Thirty and many others had stayed in the city during their reign. The Amnesty was intended to avoid implicating the institutions of the restored democracy in acts of private revenge upon those Athenians whose collaboration with the Thirty had been essentially passive – or even upon most of those who had actively collaborated. Although as Critias' putative teacher Socrates was no doubt a target of anger – that anger was blocked by the Amnesty from employing the law as its legitimate instrument.

We cannot know the actual motives of Meletus, or those of his associates, for the prosecution of 399. But we can say for certain that in deciding to prosecute Socrates, Meletus was constrained by both the conditions of the Amnesty and by the legal risk to which he was subject as prosecutor. The Amnesty meant that Meletus could not openly prosecute Socrates on the charge of being an oligarch's teacher and collaborator: One Athenian had already been put to death for violating the proscription against seeking to prosecute in defiance of the Amnesty. Meanwhile, Athenian law mandated severe

penalties for Athenian prosecutors who failed to secure one fifth of the jury's votes.⁵⁹ There was no reason for Meletus to suppose that Socrates would be a particularly easy target. Aristophanes' *Clouds* shows that Socrates was renowned for his verbal cleverness and Meletus necessarily faced the possibility that Socrates would mount a rhetorically sophisticated and convincing defense.

Meletus' choice of the grounds of "impiety" ensured that he would not fall afoul of the Amnesty. And impiety might, on the face of it, seem a safe charge for a prosecutor. Whether or not the late fifth and early fourth century was an era of "religious crisis" at Athens, as it is sometimes portrayed, there were a number of successful postwar prosecutions on the legal grounds of impiety. In at least some cases, political concerns hovered in the immediate background.⁶⁰ Yet the other well-known impiety trials concerned behavior that most Athenians were likely to recognize as unambiguously impious. In Socrates' case there was no "smoking gun" of Mystery-mocking, herm-smashing, olive-tree-digging or the like. If he were to convince a jury of Socrates' guilt, Meletus would need to expand the ordinary legal horizon of impiety. As we have seen, impiety was probably not defined in the written law, and so Meletus was free to seek to define impiety as failing to recognize the gods recognized by the polis and introducing new gods. But this would be unfamiliar legal ground for the judges; as we have seen there are no securely attested prior prosecutions under the impiety law employing Meletus' definition. Even given the old and familiar association of Socrates with possibly atheistic scientists and sophists, as exemplified by Aristophanes' *Clouds*, Meletus could not have been confident that the judges would to vote against Socrates on the basis of the actual charges. Nor could Meletus count upon enough of the randomly selected judges having deep enough personal reasons to vote automatically for conviction. In brief, Meletus certainly must have counted upon political factors to tilt the decision in his favor.

The political factors most commonly adduced by the Socratic tradition, and especially by Xenophon, are the charges that Socrates was the teacher of Alcibiades and Critias and that he was personally anti-democratic. Xenophon was eager to dispute both charges, and there has been much scholarly discussion about their actual weight in the trial and their legitimacy.⁶¹ While it seems indisputable that some Athenian judges would indeed have been fatally prejudiced against Socrates on the basis of those charges, it is also the case that others would be alive to the spirit of the Amnesty and respectful of their oath to judge according to the written law and according to justice when the law was silent.⁶² Athenian dissatisfaction with Socrates stemmed, at least in part, from the fact that Socrates seemed unaffected, in his attitudes and in his public behavior, by the momentous events of the late fifth century. Yet I would suggest that Meletus counted less upon the "low politics" of resentment and revenge than upon the "high politics" of normative conceptions of public duty and accountability.

The two extant *Apologies* give us strong reason to suppose that following the fall of the Thirty, Socrates went about his ordinary philosophical round: earnestly seeking conversation-partners in the public space of the *agora* as well as in private and elite gatherings, humiliating those who failed to avoid self-contradiction, and in the process gathering about himself a group of young men eager to be known as his students. In the years preceding the political crisis of the late fifth century, these young men had included Alcibiades, Critias, and other well-known enemies of democracy. Plato's Socrates emphasizes that his conversations were aimed at benefit, of himself and his interlocutors,

and that he no intention of corrupting anyone. Given that he was doing good and not harm, Socrates saw no reason not to pursue exactly the sort of life after the fall of the Thirty that he had pursued during and before their reign. But many Athenians had come to see things differently.

Socrates was famous for carrying out remarkable conversations about justice and responsibility (inter alia) in public places and before admiring audiences. The Athenians, for their part were deeply disposed by their political culture to associate speech with action.⁶³ They believed that citizens should accept responsibility and pay for the consequences of their speech, even if those consequences were not intended or predictable. The Athenians accepted *parrhesia*, frank speech, and *isonomia*, the equal right to public speech, as cornerstones of their democracy. Yet free speech did not, for them, mean freedom from the consequences attendant upon speech: Citizens could say pretty much whatever they wished, but by the same token they were held responsible for the public consequences of their speech.⁶⁴

That conviction ordinarily concerned speech in the context of public institutions. For example, he who employed his powers of frank and equal speech by successfully passing a resolution in the Athenian Assembly was held personally responsible for that resolution. The individual sponsor of a resolution that turned out to have negative public effects could be held legally liable on the grounds that he had proposed something *paranomon*: that is, contrary to the *nomoi* of the Athenians.⁶⁵ It was well known that various of the young men who hung around Socrates subsequently went on to commit crimes against other citizens, and against the public order itself. Whereas Socrates renounced the idea that he was a teacher or intended to harm others, there was prima facie reason to relate the criminal actions of Socrates' followers to things that Socrates said in public and, by implication, in private. Although after the Amnesty Socrates could not be prosecuted for the crimes committed by those who listened to him, his unwillingness to accept that he was in any sense liable for the effects of his speech was deeply troubling to Athenian sensibilities – indeed it appeared indicative of a lack of concern with justice and evidence for personal irresponsibility; in brief Socrates had come to look like a particularly dangerous sort of public hypocrite.

Many Athenians, convinced by the necessity for Amnesty, were probably willing to give Socrates what was, in effect, a pass for what they regarded (rightly or wrongly) as the negative effects of his prior speech: that is, for his role in the formation of Alcibiades, Critias, and other enemies of democracy who had been suppressed by 403. But then, in years after the restoration of the democracy, Socrates blithely returned to his familiar practices. He acted as if nothing had happened in the meantime, carrying on exactly the same sorts of conversations in the same public spaces as he always had. He brushed aside criticism, asserting that his speech simply could not have had negative consequences. And he thereby made himself vulnerable to the charge that he was perversely and dangerously unwilling to accept responsibility for the effects (past and potential) of his own behavior. In such circumstances, his claim to be a public benefactor was likely to be taken as evidence of bad faith.

Socrates' behavioral constancy, the fact that he was indeed "always the same" in circumstances that had become very different, made him vulnerable to Meletus' prosecution. As we have seen, Socrates believed that he was ethically required to put his unique personal excellence to the service of his polis in the form of beneficial "stinging";

nothing in the new external circumstances of the city changed that. And so it was that his unswerving and peculiar interpretation of his own public duty ultimately brought him into a fatal conflict with Athenian law. Although Socrates' philosophical convictions and the underlying values of Athenian democracy remained compatible, the special circumstances of the post-war years tipped the balance against him. His reputation as an obedient and participatory citizen was no longer enough to convince enough of his fellow citizens that his distinctive public behavior fell within the expansive parameters established by Athenian democratic culture: Because he would not accept any connection between his speech and others' actions, Socrates, who had devoted his life to acting justly, seemed unwilling to accept his own responsibilities in respect to justice.

By 399 B.C. the immediate political crisis had passed, but so had public euphoria at surviving the war, at dodging the bullet of endless civil war, and reuniting the polis under a re-established code of law. The realization sunk in that reunification was only the beginning of a costly and uncertain rebuilding period, and that Athens remained fragile and vulnerable to its enemies. The Athenian willingness to tolerate peculiar behavior and apparently irresponsible public attitudes reached a low point. And so, for Meletus the time was ripe: he could prosecute Socrates for impiety on relatively novel grounds with little concern of incurring the penalty for failing to gain a fifth of the votes.

As it turned out, Socrates' idiosyncratic defense enabled Meletus to gain a guilty verdict. The Socratic tradition holds that could not have give any other sort of defense and yet remain true to his own convictions, and recognized that it was unlikely to secure his acquittal. But the question remains: Why did Socrates choose to defend himself in the first place: Why not go elsewhere? Or, if he refused to leave Athens, why say anything at all at the trial? The Socratic tradition was bothered by these questions: In Plato's *Gorgias* 521c-22c), Callicles predicts that Socrates will be legally prosecuted by some evil man, and that (lacking Gorgias' training in rhetoric) he will fail to defend himself and so will be killed. Socrates of the *Gorgias* concurs with this prediction, and in his metaphor of the doctor being tried by a pastry-cook before a jury of children, seemingly predicts that the irrationality of the proceeding would leave him with nothing to say in his own defense. Maximus of Tyre's claim that Socrates stood silent at the trial translates this prediction into fact. Yet the historical Socrates certainly did address the Athenian judges. Perhaps he did so because he believed that even if the chances of acquittal were slight, he owed it to himself (that is to the continuation of his philosophical project) to make the effort. But surely there was another reason, just as compelling: Socrates believed that it was his civic duty to seek to educate (by stinging awake) his fellows – and especially his fellow Athenian citizens. Although the conditions of the trial, speaking at length before a mass audience and with time constraints, were sub-optimal, he owed it to his polis to offer his last, best sting. And thus, when Socrates claimed that he could not have offered any other defense, he must have meant (inter alia) that his duty to his polis demanded a speech that was at least as much of a “sting” as it was a defense.

Conclusion: Why Socrates lived in Athens

Finally, it is worth asking why Socrates chose to continue living in Athens in the years before the trial, when he was under no moral obligation to do so and when, according the tradition, he believed that Sparta (at least) had better laws. A full answer is beyond the scope of this chapter, but one part of the equation must be that the Athenian

regime of law allowed him to live as a philosopher and as an obedient citizen. As we have seen, the Athenian regime provided Socrates with conditions of birth, upbringing, and education that were compatible with the demands of a philosophical life, whereas the Spartan regime, for example, would not have. Moreover, had he lived under a legal regime in which legal abstractions like “piety” were carefully defined, Socrates might have developed a conception of pious behavior that contradicted the legal definition. He would therefore have confronted a hard choice between his moral responsibility to act according to his philosophical convictions and his responsibility for obeying the law. In Athens Socrates had no need to choose, because Athenian procedural law was concerned with establishing fair rules for legal practices, rather than with defining legal terms in an attempt to achieve consistently good outcomes. Since Athenian law apparently forbade impiety without defining it, Socrates need only accept that impiety (properly so understood) was indeed worthy of punishment.

By the lights of the Socratic tradition, the Athenian jurors were wrong to accept Meletus’ definition of impiety. Yet Socrates accepted the authority of a legal system that gave the defendant a chance to confront his accuser directly and to argue for a better definition. Like a Socratic dialectical conversation, Athenian legal process allowed for debate over morally relevant terms. Both Socrates and the Athenian legal system assumed that better definitions of contested evaluative terms could be arrived at, and worse definitions rejected. Because Athenian legal process did not, in Socrates’ view, consistently settle upon good definitions, it could hardly be regarded as “good”: Indeed the legal definitions used in Sparta (e.g.) were evidently, on the whole, better in Socrates’ terms. But a lawcode based on established definitions of moral abstractions was not subject (as were Socrates’ working definitions of moral terms) to constant philosophical examination and refinement. Thus, such a system was eventually likely to employ a definition that philosophical inquiry had demonstrated to be seriously flawed. The “better” Spartan regime was, ironically, likely to confront Socrates with a hard choice between his duty to philosophy and to citizenship. And so, Socrates chose Athens, despite what he saw as its flaws and despite the chance that by remaining the same in the face of radically changed circumstances he would face prosecution.⁶⁶

Athenian-style democracy was, to the very end, the best real-world regime for Socrates. That may not be particularly surprising for modern readers who take for granted a close relationship between democracy, the rights of the individual, and the rule of law. But it was deeply puzzling to Plato. Plato’s great accomplishment, as a political theorist, was in designing imagined regimes in which his literary creation, “Socrates,” could truly flourish -- in which the laws would provide him with a birth, an upbringing, and an education worthy of his philosophical capacities. I have suggested that one way to unite the historical Socrates the son of Sophroniscus of the deme Alopece, and “Plato’s Socrates” is by recognizing the ways in which Socrates was a product of both his philosophical self-fashioning and of Athenian civic culture. That conjunction set a challenge for all those claiming to be Socrates’ intellectual heirs: the demand that we live at once as philosophers and as citizens.

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Notes

- ¹ The “Socrates and democratic Athens question” was a primary concern of Gregory Vlastos, a very influential classical philosopher who devoted much of his career to Socrates: see especially Vlastos 1983 (reprinted as Vlastos 1994), Vlastos 1991. From different perspectives, the same question motivated the life’s work of the conservative political philosopher Leo Strauss (see esp. Strauss 1964) and became the culminating project of the left-wing political commentator, I.F. Stone (Stone 1988). Recent book-length treatments by classical philosophers, centered on Plato’s account of the trial, include Reeve 1989, Brickhouse and Smith 1989. Colaiaco 2001 is a detailed and well-informed introduction. Schofield 2002 focuses on the implicit debate between Vlastos and Stone over Socrates’ attitude towards democracy and his “quietism. The main primary sources are assembled in Brickhouse and Smith 2002 and Reeve 2002.
- ² Cited in full in Diogenes Laertius 1.5.40, this is consistent with the main ancient accounts (Xen. *Mem.* 1.1.1; Xen. *Apol.* 11-12, 19; Plato *Apol.* 24b, *Euthyphro* 2c-3b), although these may not be the exact words of Meletus’ indictment. The most difficult term here is the Greek *nomizein*, which can mean either “believe in” or “appropriately recognize” (by performance of right actions). The most likely scenario is that the prosecutor played on the two senses of the word: claiming that Socrates acted wrongly (in respect to religious practice) out of a wrong belief (in respect to the gods recognized by the state).
- ³ See Camp 1992 for details of the Athenian *agora* and its buildings.
- ⁴ Athenian legal procedure: MacDowell 1978. Athenian lawcourts: Boegehold 1995.
- ⁵ Law against *hubris*: Fisher 1992. Procedural focus of Athenian law: Todd 1993. Precedents: Lanni 2004.
- ⁶ MacDowell 1978, 197-202; see Parker 1996, ch xx, n. 63 for further discussion.
- ⁷ Parker 1996, chapter xx.
- ⁸ Plutarch (*Life of Pericles* 32.2) mentions a state decree against atheism passed on the motion of one Diopieithes in 432 B.C. No other ancient author cites this decree; if it ever existed it may have passed out of existence in the course of the late fifth century revision of the Athenian lawcode. In any event, we have no evidence for prosecutions under the decree; see, further, Reeve 1989, 79-82. The ancient stories regarding other Athenian trials for “thought crimes” have been shown to be spurious: Dover 1975, Wallace 1994. On the scanty evidence for three later charges of “introducing new gods” see Parker 1996, chapter xx, nn. 62, 63.
- ⁹ Guilty of impiety (qua harming the polis by undermining traditional religion): Burnyeat 1997; guilty of harming the democracy: Stone 1988. Innocent of impiety: Reeve 1989; innocent of any anti-democratic tendencies: Vlastos 1983.
- ¹⁰ For a more detailed analysis of the rhetoric of Plato’s *Apology*, see Ober 1998, 166-79.
- ¹¹ Discussed in detail in McPherran 2000.
- ¹² The Athenian state did in fact allow the introduction of new gods according to a formal, state-approved procedure; see Garland 1992; Parker 1996, chapter xx. Plato, *Apology* 26b-c, points out that that the practice of introducing new gods is incompatible with thorough-going atheism.
- ¹³ This charge of “educating in badness” is a key part of the hostile portrait of Socrates in Aristophanes’ *Clouds*. A half-century after the trial the orator Aeschines (1.173) reminded jurors that “you” convicted Socrates for having educated Critias, and Xenophon, *Memorabilia* 1.2.12, claims that Socrates’ association with Critias and Alcibiades was brought up by the prosecutors.
- ¹⁴ See Ober 1989 for an analysis of Athenian courtroom rhetoric. Hansen 1995 is a recent, and historically well informed attempt to work out the trial of Socrates “from the Athenian point of view.”
- ¹⁵ Besides the *Apologies*, the most important near-contemporary works for our purposes are Plato’s *Euthyphro*, *Crito*, and *Gorgias*, and Xenophon’s *Memorabilia* (on which, see Gray 1998). The later ancient tradition on Socrates is collected in Calder 2002. Two references to the charges by the Athenian orators Aeschines and Hypereides are considered below.
- ¹⁶ Probably by the Athenian political orator Polycrates, a text to which the famous speech-writer, Lysias, offered to write yet another *Apology of Socrates*: *scholion in Aristidem* 3.480 (Dindorf).
- ¹⁷ Vlastos 1991, esp. chapters 2 and 3, argued that it was possible to recover, mostly from Plato’s early Socratic dialogues, the views and arguments of the historical Socrates. Morrison xx carefully reviews the question of the historical accuracy of Plato’s account of the trial, concluding that it reliably reports the basic historical facts about the trial, but that there is no reason to suppose that Plato’s *Apology* (any more than any other ancient account) gives us anything close to Socrates’ actual arguments.
- ¹⁸ Todd 2000 reviews methods of capital punishment at Athens.

- ¹⁹ The most famous *kategoria* was by the fourth-century B.C. sophist Polycrates, who is apparently the butt of Xen. *Mem.* Book 1 and Isocrates, *Busiris* 4. See further, Brickhouse and Smith 2002, 5-8.
- ²⁰ Isocrates and Socrates: Nightingale 1995; Ober 1998, chapter 5; Ober 2004.
- ²¹ For thoughtful book-length discussions of the *Crito*'s philosophical arguments see Allen 1980, Kraut 1984, and Weiss 1998.
- ²² On Athenian "legal positivism" see Ober forthcoming. Convicted Athenian defendants could challenge a court's decision by various round-about means (e.g. indicting one of the prosecution's witnesses for perjury: see Osborne 1985), but it is not clear that there was time to launch such a challenge in Socrates' case, nor that Socrates would have had any interest in doing so.
- ²³ It is important to distinguish between harm simpliciter and morally relevant harm. Socrates must have willingly accepted the possibility that he might inflict physical damage upon his opponents when he fought in Athenian wars; this sort of harm evidently falls out of the category of morally relevance, even though the wars in which Socrates fought would be regarded as indefensible according to modern "just war doctrine."
- ²⁴ Parent-striking as an Athenian trope with special salience in the era of Socrates: Strauss 1993.
- ²⁵ Cf. Aristotle, *NE* 1162a4-7.
- ²⁶ The public discourse of the Athenian polis employed various parental tropes (*patris*: fatherland; *patrios nomos*: ancestral law), but the "state as father" was ordinarily obscured by the "fraternal" connection of male citizens as warrior/political actor equals who collectively constituted the polis: see Loraux 1993.
- ²⁷ So the question is: Does the obligation create a virtuous circle of mutual benefit, or a vicious relationship similar to the gangster's "offer you can't refuse" and "debt you can't repay."
- ²⁸ Plato: *Apology* 28e; Diogenes Laertius 1.5.23.
- ²⁹ Socrates in the Assembly: *Gorgias* 455d-e, cf. 503a-d; on the Council: Plato *Apology* 32c-d, *Gorgias* 473b-74a; Xen. *Mem.* 1.1.18. See further, Ober 1998 193-97.
- ³⁰ *Eisphora*: Thomsen 1964, festival liturgies: Wilson 2000, naval liturgies: Gabrielsen 1994, choruses: Wilson 2000, athletes: Kurke 1993; knowledgeable speakers: Ober 1989, 314-27.
- ³¹ Reciprocity and mutual obligations of gratitude as key aspects of democratic culture: Ober 1989, 226-30.
- ³² Varieties of Athenian quietism: Carter 1986. The question of Socrates' alleged political quietism is a key element in Vlastos' and Stone's accounts: Schofield 2002, 277-81.
- ³³ Thucydides' Pericles: Thuc. 2.37.1, 2.60.2-5. Athenian orators: Ober 1989, 295-304.
- ³⁴ It is important to note that these Greek conceptions of "social contract," with their attention to participation and diverse individual excellence, as well as obedience and the common good, are very different from the early modern social contract theories of, e.g. Hobbes and Rousseau. See further, Ober 1996, chapter 11.
- ³⁵ Maximus of Tyre, *Oration* 3.7 and passim.
- ³⁶ Socrates' home-boundedness: *Crito* 52b.
- ³⁷ Kraut 1984, chapter 7 and Schofield 2002, 271-77, review evidence for Socrates' critical stance toward democracy; see, further, Ober 1998, 184-85 and passim, for the essential distinction between criticism and hostility.
- ³⁸ Lape 2002-3; Note, however, that Diogenes Laertius 1.5.26 claims that Socrates had two wives during a short interval in which this was allowed by special wartime law.
- ³⁹ Patterson 1981, Boegehold 1994, with literature cited.
- ⁴⁰ There is a debate among scholars about whether or not boys born to foreign mothers before the passage of the law were "grandfathered." Hansen 1991, 53, follows Humphreys 1974, in supposing those born of non-Athenian mothers pre 451/0 were excluded from citizenship. Ogden 1996, argues for grandfathering.
- ⁴¹ On standard Athenian upbringing practices, see Golden 1990.
- ⁴² Athenian customs regarding inheritance: Strauss 1993.
- ⁴³ Socrates' marriages: Diogenes Laertius 1.5.26.
- ⁴⁴ On traditional education in Athens, Sparta, and elsewhere in Greece, see Griffith 2001.
- ⁴⁵ On "rational courage" in Athens, see Balot 2004.
- ⁴⁶ On the distinctions between civic education in Plato's Callipolis and in Athens, see Ober 2001.
- ⁴⁷ See, further, Ober, 1998 chapter 4.
- ⁴⁸ Political explanations: Stone 1988, Wood and Wood 1978. Cultural explanations: Connor 1991, Parker 1996.
- ⁴⁹ Much of the scholarship is polarized around whether Socrates was a friend (Vlastos 1983) or an enemy (Stone 1988) of democracy; see further Schofield 2002, 271-77; I am suggesting that the question is

misconstrued: that Socrates was a critic and that being an engaged critic need entail neither friendship nor enmity.

⁵⁰ Socrates in public: Xen. *Mem.* 1.1.10; Plato, *Apol.* 17c, 19d, 33a-b; Maximus of Tyre 3.7.

⁵¹ Ober 1989, 318-24.

⁵² Pericles as “always himself: Thuc 2.61. See further, Connor 1971.

⁵³ Socrates’ associates and the Affair of the Mysteries: Ostwald 1986, 537-50.

⁵⁴ Contradictions: Ober 1989, chapter 7.

⁵⁵ On this difficult period in Athenian history, see Krentz 1982, Wolpert 2002, Carawan 2002.

⁵⁶ Socrates’ passive response to the Leon affair is regarded by Stone 1988 as proof of his fundamentally anti-democratic disposition. Stone’s book helped to re-open the question of the political background to the trial, without demonizing the Athenian democracy, but in my view it errs in making Socrates into a simple oligarch whose views were genuinely pernicious and actively destructive to democratic persistence.

⁵⁷ Xen. *Mem.* 1.2.34 humorously presents Socrates in a dialogue with Critias and Charicles over their new law forbidding him to discourse with the youth, and as open to the argument that he should obey. But Xenophon’s Socrates is clearly being ironic, and the reader is not led to suppose that Socrates is given good reason to obey.

⁵⁸ Xenophon’s *Memorabilia* sets Socrates in this milieu, and, in its latter books, makes him a source of practical financial and military advice.

⁵⁹ Execution for violation of the Amnesty: [Aristotle] *Ath. Pol.* 40.2. Penalties for exceptionally weak prosecutions: MacDowell 1978, 64.

⁶⁰ On the “religious crisis” see Parker 1996, Connor 1991.

⁶¹ See Schofield 2002.

⁶² Athenian jurors’ oath: MacDowell 1978, 44.

⁶³ Thuc 2.40.2-3 with Ober 1998, chapter 2.

⁶⁴ The Athenian orator Hyperides (F 44 (Jensen)) claims that Socrates was convicted “for words”; see discussion in with Parker 1996, chapter xx with n. 19.

⁶⁵ *Graphe paranomon*: MacDowell 1978, 50-52.

⁶⁶ See further, Ober 2000, which also seeks to resolve (by reference to Socrates’ commitments and fundamental principles of Athenian law) the apparent contradiction between Socrates’ statement in Plato’s *Apology*, to the effect that he would have to disobey a law forbidding him to philosophize, and his statement in the *Crito* to the effect that it was impermissible to disobey the law.