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SOKRATES AND DEMOCRATIC LAW: PLATO'S *CRITO* AND *APOLOGY*

Notwithstanding the widespread support for written law in ancient Greece, conservative Athenians advanced eight different arguments against law over one hundred years starting in 458.[1] I shall summarize these arguments, as I shall soon need them. First, old laws are good but new laws are bad, an argument first in Athena's foundation speech for the Areopagos in Aeschylus' *Eumenides*: "may the citizens not pervert the laws by evil influxes; for by polluting clear water with mud you will never find good drinking" (lines 690-95). Although probably not by Aeschylus, *Prometheus Bound* also disparages Zeus's new laws (lines 150-51, 404). Second, the unwritten laws of the gods are superior to the written laws of the city, first attested in Sophokles' *Antigone* in 442 (lines 453-57). Third, law conflicts with *physis*, nature, first attested in the 420s in the sophist Antiphon (DK fr. 44a) whom the democracy executed in 411 for treason (Thuc. 8.68.1). Fourth, laws are too weak to be effective, as Thucydides' Diodotos says in his debate with the democratic leader and champion of law Kleon (3.45). Fifth, laws are no good since the men who pass them often change them. Thucydides delights to have his enemy Kleon say that bad laws that remain fixed are superior to good laws that lack authority (3.37). Sixth, the democracy often ignores its own laws, most famously in the Arginousai trial of 406 when the Athenians illegally tried eight generals as a group (Xen. *Hell*. 1.7.12). Seventh, virtue is advanced not by laws but by the habits of daily life, attested for example in Isokrates' *Areopagitikos* (7.39-41). Eighth, wise rulers need no laws, which are blunt instruments, a key theme in Plato's *Republic*.

The reason for conservative opposition to Athens' laws is that, as Ps.-Xenophon (1.8-9), Xenophon (*Hell*. 1.7.12), Plato (*Rep*. 563d, 557e), and Aristotle (*Pol*. IV 4.25-31) all say, conservatives thought the democracy was passing laws in its own interest. In a debate in the *Memorabilia*, the anti-democratic Xenophon has Perikles tell Alkibiades that law is simply the decisions of the Assembly majority, even when it acts with force against the rich (I 2 40-46). All these enemies of democratic law also opposed democracy. As Isokrates said in reference to the oligarchic revolutions of 411 and 404, "we have twice been deprived of our liberty by men who scorn the

[1] See my "Law's enemies in ancient Athens," in *Symposion* 2005, *Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, ed. E. Cantarella and G. Thür (Vienna 2007) 183-196.

law" (20.10). The democracy responded to some of these criticisms. Orators come to acknowledge the gods' unwritten laws.[2] Athens instituted the *graphê paranomôn* to eliminate confusion between laws and between laws and decrees. It instituted *nomothetai* to draft new laws. From 410 it codified its laws.

There is, however, famous evidence from Plato's *Apology* and *Crito* that Sokrates wholeheartedly accepted the Athenian democracy's laws, but all of our sources including his students Plato and Xenophon say that he was anti-democratic.[3] For the latter point, in particular in the *Crito* Sokrates asks Crito, "Why should we consider what most people think," as opposed to "intelligent people"? Crito answers that "the capacity of ordinary people to cause trouble … has hardly any limits." Sokrates notes that the masses act at random, "the power of the people conjures up fresh hoards of bogeymen to terrify us, by chains and executions and confiscations." Taking any of their opinions seriously is "irresponsible nonsense." We must listen to "the expert in right and wrong, the one authority who represents the actual truth" and not "the general public," "the many" (47a-48a). Later in the *Crito*, the Laws say that Sokrates' favorite models of good government are Sparta, Crete, Thebes (52e, 53b), and Megara, all of them oligarchies and Megara an extreme oligarchy (Thuc. 4.74.3-4). In Plato's *Apology* Sokrates also condemns democratic courts and democratic government. This composition by Plato is a parody of a democratic court speech. Sokrates apologizes for not weeping or bringing into court his family to sway the dikasts; he says he lacks the necessary boldness and shamelessness to prevail (38d). His dialogue with Meletos confirms the importance for him of expert leaders and teachers. He also declares that he is removed from politics and doesn't take part in the Assembly, otherwise he would have been killed long ago: "no man will survive who opposes you or any other crowd and prevents the occurrence of many unjust and illegal happenings in the city" (31c-e). Plato has him say that when the Thirty tried to involve him in their crimes, he just went home, saying nothing (32d). Even according to Plato, he did not vociferously oppose his students' actions. There is evidence that those who remained in the city during the tyranny were considered complicit with it.

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[2] At the same time, however, the city legislated that officials could not use unwritten laws and that any litigant who cited a non-existing law would be executed.

[3] For Sokrates as anti-democratic, see for example R. Kraut, *Socrates and the State* (Princeton 1984) 194-99. On Gregory Vlastos's argument that Sokrates' philosophy was at any rate "demophilic," embracing all humanity and therefore he cannot have been partisan or sympathetic to oligarchy, see Ellen Meiksins Wood and Neal Wood, "Sokrates and democracy: a reply to Gregory Vlastos" (*Political theory* 14 [1986] 55-82). In "Was Socrates against democracy?," in *Plato's Euthyphro, Apology, and Crito. Critical Essays*. ed. R. Kamtekar (Lanham MD 2005) 127-49, Terence Irwin, another distinguished philosopher, also doubts that Sokrates was antidemocratic. To argue this Irwin must tackle a series of historical questions which he argues like a philosopher, requiring absolute proof. Unlike philosophers, historians must settle for judicious assessments.

As for Sokrates supporting Athens' democratic laws, in the *Crito* Sokrates refuses Crito's suggestion to disobey the law by escaping from jail, and in an imaginary conversation with the "Laws and the Constitution of Athens" the Laws point out to him, "Do you think that a city can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and overthrown by individuals?" What will be our answer, Crito, to these and similar words? … We might reply, "Yes; but the city has injured us and given an unjust sentence." "And was that our agreement with you?" the laws would say; "or were you to abide by the sentence of the city? … Are you too wise to realize that your fatherland is more to be honored … than your mother, father, and other ancestors? … You must persuade your fatherland or do what it commands, and endure in silence what it orders you to endure, whether you are beaten or bound, whether you are led into war to be wounded or killed … for there justice lies." (*Crito* 50c-51c)

Second, in *Apology* 32a-c Sokrates mentions that the only city office he ever held was *bouleutes* and his tribe was serving as *prytaneis* when the Athenians debated the fate of the Arginousai generals. "I was the only *prytanis* to oppose your acting against the laws, and voted in opposition; and while the orators were ready to inform against me and arrest me, with you ordering and clamoring for them to do so, I thought I ought to run the risk on the side of law and justice rather than support you in your unjust decision through fear of prison or death." In *Hell.* 1.7.6 Xenophon tells a similar tale but without mentioning any public attacks on Sokrates. At a first Assembly meeting the generals seemed to be winning the argument, but it was too late to vote. At a second Assembly, "the *prytaneis* were afraid and agreed to put the measure to a vote, all of them except Sokrates son of Sophroniskos: this man said he would do nothing contrary to the law. After this Euryptolemos … spoke as follows in defense of the generals…"

Finally, a third argument for Sokrates' lawfulness is that he did not escape from jail.

Did Plato's Sokrates or the historical Sokrates, both anti-democratic, believe that he and all Athenians must obey democratic Athens' laws, even if unjust? In the *Crito* Plato's Sokrates repeats the Laws' claim that unless one can convince the city otherwise, one must do what it orders even if unjust, a profoundly authoritarian position and inconsistent with Sokrates' defiant statements in the *Apology*, for example that if the court orders him to stop philosophizing, he will not obey but will follow god's command (29c-d), "this is my course of action, even if I am to face death many time. Do not create a disturbance, gentlemen!" (30c) Here please contrast what the Laws say in the *Crito*, "Did you undertake to abide by whatever judgments the city pronounces?" Following unjust orders is also inconsistent with Sokrates' repeated claim that one must never do what is unjust. Many scholars have tried to resolve this crux. For example, in *Socrates and the State* (see n. 3) Kraut argues that Sokrates means that we must obey the city only if it is just, and that we

must persuade—or even try to persuade—the city that disobedience is justified. His reviewers are sympathetic but unconvinced.[4]

Why does Plato's Sokrates quote Athens' Laws at the end of the *Crito* that he must obey them even if unjust? To answer this question, we must first consider why Plato's *Apology* only defends Sokrates against the charge of disbelieving the city's gods, not against his involvement with the Thirty tyrants, some of them his students, who had brutalized Athens in 404, killing 1500 persons for their money. Xenophon often addresses this issue (e.g., *Mem.* 1.2.9-12), Aeschines said the Athenians executed "Sokrates the sophist" because he taught Kritias (1.173), and Polykrates' attack on Sokrates in 393 also took this line. Plato's silence has led a few scholars to suppose that the criminal violence of the Thirty was not a factor in Sokrates' trial.[5] However, most scholars agree that it was a principal factor. Why does Plato's *Apology* not address it? In fact, Plato's defense speech offers Sokrates the best defense of all: silence. Had Plato addressed this issue, it would stand as an issue. Silence helps it go away. It's a standard lawyer's trick. The phrase "There is no truth to the rumor that my opponent is sleeping with his sister" will make people start thinking about incest. For the same reason, the *Apology* presents the legal charge of corrupting the young purely as religious or intellectual corruption, not moral or political. Plato's Sokrates says, "Surely the terms of your indictment make clear that you accuse me of teaching [the young] to believe in new deities" (26b), and he goes on to discuss religion. Xenophon and Aeschines state directly that it was political corruption.

But secondly, again without directly mentioning the horrors of 404, the *Crito* does address this issue. It argues that, so far from complicity in right-wing death squads, Sokrates swears that he is an absolutely law-abiding citizen, so much so that he will obey even the democracy's unjust laws and refuse to escape from jail. The *Crito* is thus a second apology, addressing the issue of lawlessness which many think was the driving charge against Sokrates but on which the first *Apology* was silent. In the *Crito*, the Laws point out to Sokrates, "Do you think that a city can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and overthrown by individuals?" That happened in Athens in 404, and Plato's Sokrates here seems to disavow responsibility. The Laws say to him, "a destroyer of laws might well be supposed to have a destructive influence on young and foolish human beings," and so Plato defends him right here against that charge: as a supporter of laws, he therefore did not corrupt the lawless young. However, at the same time, with masterful irony undercutting his apparent message, Plato has Sokrates utter the same absurdist argument that Thucydides put in the mouth of

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[4] See, e.g., G. Klosko, *The Review of Politics* 46 (1984) 619-22, H. Sarf, *The American Political Science Review* 78 (1984) 1190-91, J. Dybikowski, *The Philosophical Review* 95 (1986) 292-94.

[5] See T. Brickhouse and N. Smith, *Socrates on Trial* (Princeton 1989).

Kleon: that even bad laws should be obeyed. Thus we see that Plato's Sokrates condemned Athens' laws as bad. Furthermore, at 52d5 the Laws pick up their statement at 51e3-4 that everyone who remains in Athens has *ergôi*, "in practice" agreed to do what we command, but at 52d Plato has the Laws *ask the question* whether by remaining in Athens Sokrates agreed to obey Athens' laws "in practice but not in word," ergôi all' ou logôi*:* ἀληθῆ λέγομεν φάσκοντές σε ὡμολογηκέναι πολιτεύσεσθαι καθ' ἡμᾶς ἔργῳ ἀλλ' οὐ λόγῳ, ἢ οὐκ ἀληθῆ: "do we not say the truth, *phaskontes*, asserting [but to quote LSJ, 'often with a notion of alleging or pretending'] that you have agreed to be governed by us in practice but not in word, or is this not the truth?" (52d). *Ergôi all' ou logôi*, "in practice but not in word," has been mistranslated by most Plato scholars. Jowett has "in deed and not in word only," Grube the same, "you agreed, not only in words but by your deeds." Better but still dodgy is Hugh Tredennick: "in deed if not in word" and Reginald Allen basically the same, "if" seeming to imply that maybe he said it, maybe he didn't, an ambiguity which is not in the Greek. John Burnet comments: "some would bracket *all'ou logôi*, but the phrase *ergôi all' ou logôi* is a standing formula, and must not be too closely analysed."[6] In fact the point of *all'ou logôi* is straightforward: Plato states that Sokrates never *said* he must obey Athens' laws. And precisely so, again with masterful subtlety, in the *Crito* only Athens' Laws say he must obey them, only Crito concludes that Sokrates must obey them. Sokrates himself never says this, but only asks Crito what conclusions they must draw. There is therefore no contradiction between Plato's Sokrates' quoting the Laws of Athens and other passages where he asserts that one must always act justly.

Finally, at the end of the dialogue, one last time Plato undercuts the whole, when Sokrates claims that he heard the Laws "just as a mystic Corybant seems to hear the strains of music." In other words, all is fantasy. Sokrates adds that his ears are ringing so loudly that he cannot hear the other side, and then Plato adds one final ambiguity (ἀλλὰ ἴσθι, ὅσα γε τὰ νῦν ἐμοὶ δοκοῦντα, ἐὰν λέγῃς παρὰ ταῦτα, μάτην ἐρεῖς): "but know," Sokrates says to Crito, "however many are the things that seem to me now, if you speak against these, you will speak in vain," concluding that they should follow the god. What are these things that "seem" to Sokrates? They may not be what the Laws have said, because Crito agreed with them. They seem more likely his original intention, not to escape from jail.

The question is raised: if Plato's Sokrates does not believe what the Laws say, why does Plato have him quote them? In the *Crito* Plato wants simultaneously to defend Sokrates against the charge of illegal conduct, *and* to impugn Athens' laws as unjust, *and* not actually to have Sokrates state that one must obey the laws of democratic Athens, something Sokrates did not believe. Plato hoped that readers not attentive to his masterful irony and undercutting might think that Sokrates believed that the state and its law, even if unjust, must take precedence over any individual, in

[6] J. Burnet, *Plato's Euthyphro, Apology of Socrates and Crito* (Oxford 1924) ad loc.

fact a widespread Greek belief. Unfortunately, even his most sophisticated readers have missed his more complex point.

Although many have assumed that Plato's early representations of Sokrates reflect the historical Sokrates, Plato's dialogues are fictional. Sokrates says what Plato wants him to say, Plato writes Sokrates' defense speech, he is not a historian but Sokrates' lawyer defending his master. When Plato has Sokrates claim that virtue cannot be taught, of course it can be. In *Apology* 38a Sokrates says the greatest good is to discuss virtue every day," again and again Sokrates says that virtue is philosophical knowledge. Plato's statement that virtue can't be taught is his defense of Sokrates against the charge that he taught the evil Kritias, which he did. In *Apology* 33a, in the context of the Thirty, Sokrates states, "I have never been anyone's teacher… If anyone says he has learned anything from me… he is not telling the truth." Nonsense. Just a few lines later he says he seeks to teach the dikasts (35c), and a few lines after that, he says his method was to approach individuals privately, trying to persuade them to be good and wise (36c).

As for the Arginousai trial, according to Plato's *Apology* and Xenophon, Sokrates also remonstrated with his fellow democratic *bouleutai* not to break the law. Even if we assume that this episode is historical, the main point is that Sokrates here uses a standard anti-democratic argument against the democracy's laws, that the demos itself does not obey them. If the episode happened, it offered Sokrates a delicious moment to convict the democracy of hypocrisy. Anti-democrats like Plato and Xenophon certainly told the story for that reason. Sokrates' objection to the demos' behavior is consistent with conservatives' disdain for democratic law. It need not mean that Sokrates supported that law.

Finally, why Sokrates refused to escape is a big question. There is I think much to be said for Xenophon's view that Sokrates did not seek to avoid execution. The obscene terror of 404 was a disaster for him, after having "been saying your whole life that you cared for virtue" as Plato's Crito says to him (45d), and for so long professing to teach virtue. Why does Plato's Sokrates not offer a better defense speech? Even Plato's Crito calls his speech a farce. Why does Plato's Sokrates say that his *daimonion* did not oppose his conduct in court, from which Sokrates concludes that death may be a good thing (40a-c)? He says, "It is better for me to die now and escape from trouble" (41d). That's right. Why does Plato's Sokrates say that if acquitted, he will go on doing what he has always done? And why did the historical Sokrates not propose a serious alternative penalty to death which the prosecution demanded? In the *Crito* Plato's Sokrates says he does not object to dying. Xenophon's thesis (*Mem*. 4.8.6-10, *Ap*. 1-9, 22, 33) is that Sokrates sought to provoke execution to avoid the pains of old age. I would say, the pains of conscience. Sokrates was not free of guilt for his student's conduct and he knew it: there was no miscarriage of justice, and he knew it. But Plato turned Sokrates' refusal to escape to his advantage, as offering him a golden opportunity to claim that Sokrates was a law-abiding citizen. After a day-long court trial to which we are not

privy, a small majority of the dikasts concluded that Sokrates had in fact broken the law.

What was Sokrates' attitude to the democracy's laws? Plato says he thought they were unjust and that "in word," *logôi*, he did not support them. Sokrates was anti-democratic and philolaconic, attitudes inconsistent with supporting Athens' laws. According to Xenophon, "his accuser said he taught his companions to scorn the established law" (*Mem.* 1.2.9), and Xenophon nowhere refutes this charge.

Finally, on a more general level, it is useful to consider how Plato's protean master was in many ways a typical—albeit extraordinary—intellectual of the post-Periklean years. Even Plato's Sokrates fits most of the qualities of Plato's sophists. He primarily discusses ethics and politics. He is quintessentially identified with debate and argument. His cross-questioning reflects his constant challenge to received opinion, eliciting contradictions and absurdities which he replaces not with positive doctrine but "uncertainty," *aporia*. He expounds no coherent set of beliefs. He held unconventional views about the gods. His entourage was a crowd of rich young Athenians, most of them hostile to democracy like Plato. Like other wartime sophists, he hated democracy and stayed out of politics. Contemporary Athenians, like Aristophanes and his public, considered him the worst of the sophists. In his middle period Plato drew decisively away from the historical Sokrates into a transcendent world of Forms, claiming that he knew the truth and bringing his ideal Sokrates along with him. Plato pulled off two coups. First, he discredited two generations of some of the world's most brilliant and innovative thinkers, largely because—like most modern philosophers—they declined to accept a transcendent reality and were aware of potential disjunctions between words and things. Secondly, he managed to steal his teacher out from amidst that group. None of the later sophists supported the democratic city's law. Neither did Sokrates.