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WHEN THE ATHENIANS DID NOT ENFORCE THEIR LAWS

Democratic Athens professed strong support for its laws.¹ Each year the ephebes, Athens' trainee soldiers, swore "to listen well to those governing at any time, and to the *thesmoi*. If anyone seeks to destroy the *nomoi* I will oppose him as far as I am able myself, and with the help of all" (e.g., Lykourg. 1, 77). Each year the dikasts swore, "I shall vote according to the laws and the decrees of the Athenian demos" (e.g., Dem. 24, 150). Dikasts are often called "guardians of the laws," they are often asked to apply the full strength of the law (e.g., Dem. 21, 34; 57; 177; 224), and the laws are often called *kurioi*.² Aeschines (3, 6-7) excoriates contemporary *rhêtores* for making illegal motions. "If the laws are faithfully upheld for the polis, the democracy also is saved." [Andokides] 4, 19 echoes standard sentiment: "Obeying the officials and the laws is *sôtêria* for all. Whoever ignores these has destroyed the greatest protection of the city."

Yet in the classical period the Athenians sometimes did not enforce their laws. Which laws, why not, and why were consistently unenforced laws not repealed? Finally, how far were conservative complaints justified, that after 462/1 Athens' democracy came to pay less heed to its laws?³

I have divided the instances when the Athenians did not enforce their law into seven categories. However, the available evidence does not indicate that the first two well-known categories were very significant, while the remaining five categories all reflect, in different ways, the flexible and tolerant attitudes characteristic of the democracy.

Our first category, when the democracy actually broke its laws because of mass emotion, includes only one notorious episode, after Athens' naval victory off the Arginousai Islands in 406. Unhappy that their generals, prevented by a storm, had failed to rescue shipwrecked crews especially at a time of manpower shortages, the Assembly tried eight generals as a group and executed six of them, the other two not

¹ I thank Peter Rhodes, my respondent Paulin Isnard, and (at the Paris Symposion) especially Stephen Todd and Martin Dreher for valuable comments on this essay.

² Hansen 1990, p. 240 n. 117, lists many sources for this and other statements in this paragraph.

³ [Arist.], *Ath. Pol.* 26, 2; 41, 2; Arist., *Pol.* 1292a4-37; 1293a9-10, 30-34; 1298a28-33; and Pl., *Republ.* 557e; 563d; *Laws* 701b.

having returned to Athens.⁴ These generals (including Perikles' son by Aspasia) quickly became poster children for conservative complaints about democratic illegalities, notably by Plato (*Ap.* 32b) and Xenophon (*Hell.* 1, 7, 34). Both Plato and Xenophon assert that the Athenians broke the law in trying the generals *en bloc*. However, except for these partisan texts which probably also misrepresent Sokrates' actions as *bouleutês* or *epistatês*,⁵ no other evidence indicates that trying people as a group – however unusual or even unparalleled – was forbidden by law.⁶ Furthermore, even the anti-democratic Xenophon attests the Assembly's heated debate over what action to take, and the manipulation of popular emotions by unscrupulous politicians. *Ath. Pol.* 34, 1 comments, “the people had been misled by those who were enraged at what had happened.” In addition, as the two absent generals knew, the Athenians were always hard on officials who failed, even when failure was not their fault.⁷ Xenophon also mentions how quickly the Athenians regretted their action, voting *probolai* against any who had deceived the people, Kallixeinos who had proposed the action – he came to a miserable end, “hated by all” – and four others (1, 7, 35). (The anti-democratic Thucydides also enjoyed representing “the fickleness of the mob.”) When Xenophon claims “the *plêthos* called out that it would be terrible if someone did not allow the demos to do what it wants” (*prattein ho an boulêtai*) instead of following the law (1, 7, 12), he repeats not history but the standard conservative perversion of democracy's ideal of “living as you like”.⁸

Other episodes of mass emotional illegality by Athens' democracy are rare. A panhellenic example is stoning, a type of social vendetta where as Eva Cantarella points out, no one is prosecuted for homicide.⁹

My second category includes several instances when Athens' democracy suspended or ignored a law as a result of deliberate policy. First, in the later years of

⁴ Xen., *Hell.* 1, 6, 24-7, 35. Diod. S. 13, 97, 1-103, 2. See Andrewes 1974, comparing these accounts and making a case for Diodoros.

⁵ Pl., *Ap.* 32a-c; Xen., *Hell.* 1, 7, 6; *Mem.* 1, 1, 18. In particular Hatzfeld 1936-39 on *Hell.* 1, 7, 6, followed by Delebecque 1957, p. 36, argue that Xenophon's claims (*Mem.* 1, 1, 18 and 4, 4, 2) that Sokrates was *epistatês* are fabrications “pour embellir les choses.” See also Andrewes 1974.

⁶ See MacDowell 1978, p. 189.

⁷ See Knox 1985; Sinclair 1988, p. 146-52.

⁸ For “living as you like” see e.g. Euripides fr. 891 (in Arist., *Pol.* 1310a32-34); Lys. 26, 5; Arist., *Pol.* 1317a40-b14; and my essay, Wallace 1996, p. 114 (and *passim*). For conservative perversions of the democratic ideal (“doing what you want” was a tyrant's pleasure), see e.g. Soph., *Ajax* 1073-88; Thuc. 2, 37, 2; and Pl., *Republ.* 557b. The fictional episode in Xenophon became a key historical indicator for Ostwald 1986, p. 441-44: “Never before had there been a situation in which ‘the masses shouted that it was monstrous for anyone not to let the people do whatever they wanted’ [Ostwald quotes Xenophon]. The right of the sovereign people not to be bound by their own *nomoi* is affirmed as justifying cruel and unjust action.” Cf. also Sinclair 1988, p. 221.

⁹ Cantarella 1991, p. 73-87.

the Peloponnesian War the Athenians either ignored or annulled Perikles' law requiring citizens to have two Athenian parents, again because of citizen shortages. Hence the orator Demosthenes was a citizen although his mother's Athenian father Gylon probably married a non-Athenian *ca.* 406,¹⁰ and his enemies therefore branded him a Skythian. Perikles' law was reinstated in 403/2: "Aristophon the rhetor proposed the law that he who was not born from an *astê* was a *nothos*" and hence not a citizen, expressly exempting those born before that date.¹¹

Whether Perikles' law was ignored or annulled is here an important question. We cannot exclude the possibility that the Athenians simply ignored the law.¹² In a parallel episode, again because of citizen shortages, after the Spartan army's defeat by lesser numbers at the battle of Leuktra in 371, Agesilaus announced that the law punishing cowards "might sleep for one day, before resuming its power" (Plut., *Ages.* 30). On the other hand, one argument for annulment is that in 403/2 Aristophon would not have needed to propose a law that was already on the books. The *graphê paranomôn* against proposals that contravened existing law is first attested in 415 (And. 1, 17), and in 414 Aristophanes *Birds* 1649-70 implies that Perikles' law was still in force. It is likely that Perikles' law was superseded, whether formally or informally, because of Athens' massive casualties in Sicily during the winter of 413/12. Certainly in the aftermath of that calamity, the Athenians suspended the *graphê paranomôn* (Thuc. 8, 67, 4; *Ath. Pol.* 29, 4) and established an oligarchy. If in this period the Athenians formally annulled Perikles' law, they will not have committed an illegal act.

In a related development, Diogenes Laertius (2, 26) reports that according to "some" including Satyros and Hieronymos of Rhodes (both Peripatetics), "to increase the population because of a shortage of men (*leipandrein*), the Athenians decreed that a man might marry one *astê*, and make children from another," and so Sokrates had two wives simultaneously. Athenaios (555d-556a) repeats this tradition about Sokrates, adding fourth-century Peripatetic sources (Aristotle, Aristotle's great nephew Kallisthenes, Demetrios of Phaleron, and Aristoxenos). Aulus Gellius (*NA* 15, 20) reports that Euripides "had two wives at the same time, since that was lawful by a decree of the Athenians." If this decree allowed citizens to marry two Athenian women (*astai*) because of casualties during the war, it did not contravene the terms of Perikles' citizenship law that citizens' parents must both be Athenian (*Ath. Pol.* 26, 3). However, the status of the second wife may possibly

¹⁰ Compare Aeschin. 3, 171-2, and see Davies 1971, p. 121-22. On Perikles' law, see Ismard 2010, p. 122-28.

¹¹ Karystios F 11 Müller *ap.* Ath. 577b-c; see also Dem. 57, 30; 32. Eumelos *FGrHist* 77 F2 attributes the measure to one Nikomenes: see Harrison 1968, p. 26 n. 1. Patterson 1990 defends the consensus view that *nothoi* were not citizens.

¹² So Harrison 1968, p. 25.

have been unequal, which could have had consequences for earlier laws about *nothoi*.¹³

It may be noted in this context that the Athenians sometimes deliberately ignored their citizenship laws when awarding citizenship to non-Athenians for service to the city (for example the Samians in 405: ML 94, lines 7-17), or for other reasons (as in the case of Perikles' son by Aspasia).

A final instance where Athens' democracy formally suspended its laws was the amnesty decree of 403, forbidding the prosecution of most offenses committed before that date. This measure promoted social concord (*homonoia*) during a civil war that lasted until 401. We may compare the Athenians' decision (Aristophon's decree) in 403/2 not to disfranchise citizens of mixed blood who were born before that date.

In my third category, and shifting now from actions by the democratic Assembly to Attic society generally, a number of scholars have pointed out that what has been called automatic *atimia* was sometimes ignored in daily life.¹⁴ *Hoboulomenos* could have prosecuted, but until he did, *atimia*'s legal restrictions remained unenforced. In the case of debt to the polis, this phenomenon was well recognized.¹⁵ According to [Dem.] 58, 48-52 cf. 21, in a case of public debt, Attic law declared that *atimia* was imposed following a judicial conviction or else "from the day when [an offender] has transgressed the law or the decree." In the latter case, offenders were automatically *atimoi* but this had not been expressly declared. In consequence, many such persons went about their business with no apparent difficulties.¹⁶ Two explanations for Athens' leniency are that many men had fallen into debt through service to the city, and if they were denied the ability to manage their affairs, the city could not recoup the money that was owed to it or easily recruit new naval contributors.

Also subject to automatic *atimia* were men who had mistreated their parents, prostituted themselves, squandered their inheritance, not adequately performed military service, or thrown away their shields in battle, but had not been convicted of these offenses. Such men sometimes ignored *atimia*'s restrictions until an enemy or opponent, provoked by some different issue, brought a charge.¹⁷ Thus most famously, Aeschines says that "because [Timarchos] had lived shamefully [as a male prostitute], the laws forbade him to speak before the people" (1, 3). Yet

¹³ See Ogden 1996, p. 72-75, and on the last point, Harrison 1968, p. 15-17.

¹⁴ See esp. Paoli 1930, p. 332-33, and Hansen 1976, p. 59-60.

¹⁵ The *locus classicus* is [Dem.] 25, 85-91. See Hansen 1976, p. 59 n. 22, and Gabrielsen 1994, p. 157-69.

¹⁶ See Gabrielsen 1994.

¹⁷ See above all Aeschin. 1, 28-32; and also Aeschin. 1, 14; 19-20; 40; 46; 73; 119; 154; 195; and Dem. 22, 29-31 specifically on male prostitution; Aeschin. 1, 154 on squandering one's estate; and Lys. 10, 1 on throwing away one's shield. See my essay, Wallace 1998.

Timarchos had often addressed the Assembly over many years (see e.g. Aeschin. 1, 80). Aeschines sought to discredit Timarchos because he opposed Demosthenes' and his associate Timarchos' anti-Macedonian policies. Demosthenes makes the same point against Androtion (22, 21-32), another political enemy. Whether or not Timarchos or Androtion was so patently guilty of male prostitution as Aeschines and Demosthenes claimed (in 346 the dikasts did find Timarchos guilty of disregarding automatic *atimia* and formally declared him *atimos*: Dem. 19, 284), the absence of a formal conviction put such men in a special category,¹⁸ weakening the charge that the Athenians did not enforce the law. (By contrast, no convicted *atimos* is known to have disregarded the restrictions imposed by *atimia*, as doing so was a capital offense.)

Fourth, some wealthy Athenians including Isokrates¹⁹ successfully avoided the obligations – especially trierarchies – that the law imposed on them because of their wealth. Other citizens could have challenged them, but sometimes did not do so. Athens' wealthy conservatives did not complain about this failure by the demos (!).

Fifth, some laws restricting women, slaves, and thetes were not enforced in the fourth century as a result of broader social developments and changing mores. Relevant laws for women include economic and sexual restrictions. Women were legally forbidden to conduct transactions worth more than one *medimnos* of grain (Is. 10, 10, cf. Aeschin. 1, 18). However, David Schaps, Virginia Hunter, and others have traced a number of larger transactions, for example by the widow of Polyeuktos in Dem. 41, 8-9, lending Spoudias 1,800 drachmas.²⁰ It may be that male *kurioi* stood as guarantors of some of these activities, which thus were only *de facto* rather than *de jure* illegal. In either case, Ed Cohen rightly says, Athenian men “appropriate[d] the veneer of exclusive legal authority – *politeia* in public affairs, ‘*kyrieia*’ in private matters.”²¹ In a number of cases, wealthy widows managed the family property and are sometimes called *kuriai*, including Demosthenes' mother Kleoboule²² and the widow of Polyeuktos whom I have mentioned.

As for sexual restrictions, very likely as David Cohen and others have argued, a lot of *moicheia* by wives, when discovered, did not result in the legal penalty of obligatory divorce, for reasons including family honor and forgiveness by their spouse.²³ At Eur., *Hipp.* 462-63, the Nurse asks: “How many sensible men do you think, when they see their bed dishonored, seem not to see?” The early democracy

¹⁸ To lessen the danger, I argued that one main purpose of Athens' slander laws was to penalize any false accusation regarding these five offenses: see Wallace 1994.

¹⁹ See Davies 1971, p. 247.

²⁰ Schaps 1979, p. 52-56; Hunter 1994, p. 19-29; also Sealey 1990, p. 39. In early fourth century, Xenophon (*LP* 14, 3) reports that the Spartans no longer observed their law against owning gold and silver (see MacDowell 1986, p. 119).

²¹ E. Cohen 2002a, p. 106.

²² Dem. 27, 53, cf. 45, 74; Isai. 10, 23.

²³ D. Cohen 1994, ch. 6; see further Roy 1997 (Attic law is treated esp. on p. 13-15).

had been severe on Attic women partly in defense of Attic bloodlines,²⁴ although even from the start we cannot know how far Athens' adultery laws may have been largely wishful thinking.

For slaves too, legal restrictions could sometimes be disregarded, *de facto* and sometimes *de jure*, especially for economic reasons. In his banking book Ed Cohen quotes Yves Garlan: "*il fallut enfin adapter empiriquement [l]es capacités juridiques [of a slave] aux fonctions économiques qui lui étaient confiées.*" As Cohen later notes, four slaves operated Pasion's bank, the largest in Athens; slaves owned or were partners in various businesses; they could enter into contracts with other persons; they lent substantial sums to customers; and in some cases they could litigate in court. As women did also, slaves sometimes used citizen agents, making their independence *de facto* not *de jure*.²⁵ In all these cases Athenian democratic ideals of personal freedom, of "living as you like," were "trickling down" to those who were not adult male citizens, as I shall argue elsewhere.

As for the thetes, according to *Ath. Pol.* 7, 4, in the 320s it remained illegal for a thete to hold office, but when a candidate for allotted office was asked his class, "nobody would say he was one of the thetes." Thus the law excluding thetes from office had become a dead letter.²⁶ In a possibly related development, according to *Ath. Pol.* 8, 1, the Athenians "continue to use even at the present time" Solon's law that treasurers are to be allotted from the *pentakosiomedimnoi*, but 47, 1 adds: "the man picked by lot holds office even if he is very poor." Peter Rhodes offers two possible explanations for this final clause.²⁷ Perhaps assigning people to Solonian classes was now "wholly unrealistic and a poor man might be a *pentakosiomedimnos*"; or perhaps "the law was only nominally in force, and anyone who wished to be treasurer would claim to be a *pentakosiomedimnos* and his claim would not be challenged."

Sixth, presumably as a result of changing religious mores, according to *Ath. Pol.* 60, 2, "in the past [...] if anyone dug up or cut down one of the sacred olive trees, he was tried before the Areopagos and the penalty for those found guilty was death. Ever since the owner of the land has paid the contribution of oil, the law exists but the trial [for its violation] has lapsed." If *Ath. Pol.* is right about the death penalty, by the early fourth century that penalty had been reduced to exile and confiscation of property (*Lys.* 7, 3; 32; 41). Later in the century the Athenians stopped enforcing this law altogether: another dead letter.²⁸

²⁴ See my essay, Wallace 2010, p. 138-40.

²⁵ E. Cohen 1992, p. 96-101 (and see p. 98-101 on slaves' use of citizen agents); 2002b, p. 103; Garlan 1982, p. 55.

²⁶ Many have sought to confirm that thetes were archons in the 4th century. Ryan 1994 thinks the evidence inconclusive.

²⁷ Rhodes 1981, p. 551.

²⁸ Rhodes 1981, p. 684 compares *Ath. Pol.* 61, 2: "When in command of troops, [the generals] have the power to imprison anyone for insubordination, to discharge him, and

Finally, seventh, like judges everywhere, Athens' dikasts were sometimes influenced by extraneous factors and therefore might be accused of not enforcing the law. Lysias says that even if a defendant seemed guilty he could be acquitted if he mentions valiant deeds by ancestors and proves that he has served the city well (30, 1). Lykourgos complains that it is unjust for prosecutors to raise irrelevant charges but "you judges have granted this possibility to those who appear before you" (1, 13). The wealthy Isokrates says that in early Athens judges enforced the laws on money lending, instead of yielding to *epieikeia*, "decency" (7, 33-34). Demosthenes (44, 8) says that "generosity and justice" sometimes triumph over the laws. In such cases the law may be enforced, but not in ways that someone claiming to be a strict legalist approved of. While their validity is debated, such accusations certainly lie behind some conservative complaints that Athens' courts did not follow the law. I note that other litigants sought to weaken the force of extraneous material by claiming that the law alone was important. In the peroration of his speech against Meidias, Demosthenes tells the dikasts that an offense against one person could easily become an offense against anyone. "Do not betray me or yourselves or the laws... No excuse – neither public services nor pity nor personal influence nor forensic skill, nor anything else – must be devised whereby anyone who has transgressed the laws shall escape punishment" (21, 219-25). Other litigants claim to forgo legal advantage if the other side makes a reasonable case. In [Dem.] 44, 8, the speaker states that even if his opponents "do not have the support of the laws, but it seems to you that what they say is in accordance with justice and generosity, we withdraw our claim." According to [Dem] 56, 14, the speaker's party agreed to a concession in a dispute: "we were not unaware, dikast men, of what was just from the agreement, but we thought that we should suffer some loss and make a concession, so as not to appear litigious."

How far did Athens' democracy or its citizenry not enforce the laws, despite many affirmations of loyalty to them? In the Arginousai affair the Assembly may not have broken the law, and most of the few attested actual cases of not enforcing laws seem reasonable, not abusive, and for the common good. In a long war Athens needed more citizens and suspended or ignored citizenship laws. The Athenians did not push *atimia*'s restrictions when money was owed to them, especially as a result of serving Athens, or when citizens had not been convicted of a crime. They did not hound the rich who sought to avoid military contributions, because military service was an honor, volunteerism was an important element in military finance, and establishing comparative wealth was difficult. Fourth-century Athenians could be *laissez-faire* regarding women's and slaves' economic contributions, especially

to impose a fine (*epibolê*), although they do not usually impose a fine." Rhodes concludes that this provision in the law had become obsolete – or, I would note, mostly so.

when male citizens declined to engage in commercial activities or a widow had no husband. In the sophisticated world of late Classical Athens, executing or exiling citizens for hard-to-prove cases about the goddess's sacred stumps may have seemed quaint or disproportionate.

Why did the Athenians not repeal unenforced laws about the sacred olive trees, or women's economic activities, or thetes in political office? One reason will have been that especially from the second half of the fifth century and along with other Greeks (famous parallels occur in Sparta and Lokri²⁹), most Athenians believed in their laws and did not want to change them. According to Herodotos (1, 29) writing in the 440s or 430s, Solon made the Athenians swear not to alter his laws for 10 years; later tradition reinforced the message by claiming 100 years (Plut., *Sol.* 25). In Thucydides' Mytilenean debate, the democrat Kleon scorns "intelligent people" who "always want to show that they are wiser than the laws... They cause cities disaster. Simpler people mistrust their own intelligence, and are content to be more ignorant than the laws" (3, 37). The democracy's *graphê paranomôn* protected the laws against illegal decrees. According to Antiphon (5, 14-15 and 6, 2), Athens' homicide laws were the city's oldest and never changed, a sign of good laws. From 410 the Athenians sought to systematize their laws, formally by announcing that they were restoring the laws of Drakon and Solon. Probably they wanted the *anagrapheus* Nikomachos to include more recent measures, although in doing so Nikomachos laid himself open to charges of changing the laws of Solon and Drakon.³⁰ Calling all laws Solon's, for example the law/decreed of Demophantos (And. 1, 95-98) which its prescript dates to 410, reflects the ideology that Athens still followed its old laws. Demosthenes 57, 32 calls Perikles' citizenship law Solon's. A scholiast on Aeschines 1, 39 (82 Dilts) transmits a democratic account of the Thirty Tyrants: "they overthrew the traditional constitution of the Athenians and defiled the laws of Drakon and Solon." Similarly, litigants and others appeal to Athens' first lawgivers Drakon and Solon (e.g., Dem. 24, 211) against those who proposed laws supposedly not in the spirit of those two men. Democrats even championed the *patrios politeia*, while avoiding that oligarchic phrase. According to the Lysianic *Funeral Oration* (2, 18-19), early Athenians "conducted the city's affairs in the spirit of free men, by laws; humans should make law the touchstone of what is right, [...] law was their king."

As for Athens' conservatives, as I discussed in Salerno,³¹ the period after Ephialtes was difficult, in part because they thought the democracy was passing new laws in its own interest. In consequence, over the next century they developed eight

²⁹ Lykourgos made the Spartans swear to follow his laws until he returned from Delphi, and he never returned (Plut., *Lyc.* 29, 2-3; Arist., *Pol.* 1271b25-6). Anyone proposing to emend one of the *palai keimenoî nomoi kai ta patria* at Lokri did so with his head in a noose (Dem. 24, 139-141).

³⁰ Lys. 30, 2-5, and see Rhodes 2011, p. 18-22.

³¹ Wallace 2007.

arguments against law; when they took power in 411 they formally abolished the *graphê paranomôn* against illegal proposals, as we have seen; in 404 they did the same, abolishing various laws including laws of Solon (*Ath. Pol.* 35, 2) and probably also the *graphê paranomôn* (Aeschin. 3, 190-200 and esp. 191), thereby providing another reason why democrats of the later fifth (Thuc. 8, 76, 6) and fourth centuries (e.g. Dem. 24, 154; Aeschin. *ibid.*) did not like to change or annul Athens' laws. Conservatives' complaints that Athens' democracy did not obey its own laws were one of their eight arguments against law. So, we have seen, Xenophon represents the masses as calling out that they should be able "to do what they want" rather than follow the law in 406; the Old Oligarch complains (1, 8-9) that the demos wishes not to be enslaved while the city has good laws, but to be free and to rule, caring little about *kakonomia*. Conservatives' allegations of the demos' illegalities occur not in a neutral context but as anti-democratic argument. In the fourth century by contrast, democrats might complain that politicians were passing laws in their own interest. By a neat inversion also supporting "Solon's" laws, Demosthenes protests that "in this city, dikast men, our *rhêtôres* rarely let a month go by without legislating to suit their private ends... They arbitrarily repeal those well-trying laws of Solon, enacted by their forefathers, and expect you to obey laws of their own, proposed to the detriment of the community" (24, 142).

As for not annulling unenforced laws, especially those that regulated women, slaves, and thetes, Athens formally remained a timocratic polity, by wealth, of adult male citizens. Formally expanding others' legal status would legislate against Athens' historic democracy.

Finally, as for dikasts' disregarding the letter of the law in court cases, in an unpublished paper I argue that for the Greeks the purpose of law was to safeguard the community, just as [Andokides] 4 and Aeschines said in the first paragraph of this paper ("*sôtêria* for all," "saving the democracy"), and as Demosthenes has just now said (24, 142). If adjudication at Athens did not always fully respect the terms of the law, its constant concern was community welfare. In the Mysteries scandal of 415, following the doubtful testimony of a prisoner, Thucydides states that the Athenians "brought to trial those against whom he had given evidence and all who were secured were put to death. The death sentence was passed on all who managed to escape and a price was put on their heads. In all this it was impossible to say whether those who suffered deserved their punishment or not, but it was quite clear that the rest of the city benefited greatly" (6, 60). In the United States, because of liberal democracy's aversion to the "heavy" state, what trumps law is (first) any abuse of power by the government, so that even admitted criminals walk free if the police make some small procedural error, and (second) reasons of individual conscience, for example against war or in support of Greenpeace. The Greeks would have flatly rejected any such arguments as harmful to the community. My unpublished argument is that "irrelevant" testimony for example about military valor or public service consistently reflected community welfare, as did the dikasts'

verdicts in the Mystery trials, and that was also the point of law. Elaborate procedures for creating and repealing laws in the fourth century³² show how seriously the Athenians took their *nomoi*. At the same time, when there was clear benefit to the *polis*, they might on occasion not enforce them.

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³² Rhodes 1985.

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