

by the same author

XENOPHON'S RETREAT: Greece, Persia and the End of the
Golden Age

WHY SOCRATES DIED

Dispelling the Myths

ROBIN WATERFIELD



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Socrates in Court

In the spring of 399 BCE, the elderly philosopher Socrates, sixty-nine or seventy years old, stood trial in his native Athens. The court was packed. Apart from the hundreds of officials, there was also a shifting crowd of spectators – Socrates' well-wishers and enemies, and those who were simply curious to see what would happen to this man, who had long been a well-known figure in Athenian life.

The case was probably heard in the building known to the excavators of the Athenian Agora as the 'Rectangular Peribolos', a more-or-less square structure in the south-western corner of the Agora. Once the dikasts were seated (the 'jurors', that is, but their functions were so different from those of a modern jury that it is less misleading just to transliterate the ancient Greek term), and the court president, the King Archon, had decided that everything was ready, Socrates and his prosecutors entered through the main entrance in the north wall. The inside of the building was, at this date, still just an open space, about twenty-five metres square, lined on three sides with benches for the dikasts, for witnesses (if there were any to be called), and for onlookers, who were distinguishable from dikasts only by the fact that the dikasts had been issued with voting tokens with which to cast their verdict at the end of the trial. The fourth side of the building held chairs for the presiding archon, the prosecutors and defendant, and their separate podiums.

The walls were lightly decorated and although in its previous incarnation the building had been open to the sky, it had been rebuilt after the Persian sack of Athens in 480 and was now roofed. The klepsydra – literally 'water-stealer', the clock by which the proceedings were timed – was manned by a responsible publicly owned slave, and kept outside, by the north wall, just to the west of the entrance. It was a terracotta jar with an overflow hole close to the rim and a bronze pipe acting as an outlet at the base. The jar was filled with water up to the overflow hole and the water ran out of the pipe into another similar jar, placed below the first one; speeches were timed in multiples of jars, and the original function of the water-clock was not to limit the length of speeches so

much as to ensure that both litigants would have the same time to speak. Different kinds of trial were allowed speeches of different lengths, but no trial lasted longer than a day and many lasted considerably less, so that a court could get through a number of cases in a single day. Socrates' trial lasted a full day, but he still complained, with considerable justification, about the time restriction.*

The number of dikasts employed in Athenian trials seems enormous by modern standards: the smallest jury we hear of, for a private case later in the fourth century, was 201; the most critical public cases might be heard by the entire pool of six thousand. The commitment by ordinary people of their time and energy to the pursuit of democratic justice in classical Athens is astonishing. At the beginning of every year, six thousand citizens were enrolled as dikasts, and the courts drew on this pool every time they met; as many of the six thousand as were needed were at the last minute (to curb bribery) divided by lot among the courts. The size of the jury too was partly a hedge against bribery, but more importantly, the law courts were an integral tool of the democracy, and the numbers were meant to ensure that the will of the people was done.

The jury was a fair cross-section of adult male Athenian society, in terms of age groups, wealth distinctions, modes of employment and so on, with something of a bias towards the poor, who needed the state pay for attendance. Since the 420s, dikasts were paid three obols for a day's session – an amount that, on its own, would barely keep a single person alive, but on top of other sources of income was enough to improve the quality of a poor man's life. For Socrates' trial, there were almost certainly five hundred or 501 dikasts, the normal minimum at the time. Following the devastating losses of the long-drawn-out war with Sparta, which had recently ended with the Athenians' defeat, there were probably no more than twenty thousand citizens available for jury duty (for which one had to be male and over thirty years old), so Socrates was tried by a good percentage of his citizen peers.

With the dikasts assembled, the indictment was read out by one of the archon's assistants. The prosecution speech or speeches followed, and then those of the defendant and, if he had them, one or two

* References can be found on pp. 209–26. Unattributed facts derive from a variety of sources, which can be tracked down via the bibliography on pp. 227–45.

supporting speakers. The dikasts then voted – immediately, with no further time for deliberation – on the defendant's guilt or innocence. The voting system in use for Socrates' trial in 399 was still relatively new, but vastly improved on its predecessor. Dikasts were given two ballots, which were clearly differentiated, so that one recognizably meant 'I vote for the prosecution' and the other 'I vote for the defence'. The ballot was a small bronze disc pierced through the centre either by a hollow tube ('for the prosecution') or by a solid tube ('for the defence'). Each dikast approached a jar and dropped into it one or the other of his two ballots; he then approached a second jar and dropped into it his unused ballot. When every dikast had voted, votes from the first jar were counted, and could be checked by counting the discarded ballots from the second jar. Secrecy was ensured by the fact that the dikasts could hold the ballots with their fingers covering the spindles, so that no one could see whether they were solid or pierced, but in general the use of ballot-voting in ancient Athens was a way of ensuring accuracy rather than secrecy, since votes could be counted rather than just estimated, by vociferous acclaim or a show of hands.

Socrates' trial fell into a common category, technically known as 'assessed trials' (*agōnes timētoi*), in which further, shorter speeches were allowed. These were cases where the state acknowledged that there could be degrees of guilt, and so after the chief prosecutor had proposed a penalty, the defendant proposed a lesser counter-penalty, and then there was a second round of voting by the dikasts, on which of the two proposed penalties to enforce. For both rounds of voting, a simple majority was all that was required; a tied vote counted in favour of the defendant.

The trial attracted a great deal of attention on the day, and became even more notorious afterwards. This helps to explain the fortunate accident of the preservation, albeit by a biographer writing over six centuries later (drawing on an only somewhat earlier historian, who claimed to have found the document preserved in the Athenian archives), of the exact wording of the charges against him:

This indictment and affidavit is sworn by Meletus Meletou of Pitthus, against Socrates Sophroniscou of Alopece. Socrates is guilty of not acknowledging the gods the city acknowledges, and of introducing other new divinities. He is also guilty of subverting the young men of the city. The penalty demanded is death.

Socrates' trial, then, was one of a number known to us in which the fundamental charge was impiety (*asebeia*), a prosecutable offence under Athenian law. Meletus had demanded the death penalty, and he got his way; I will later outline what we know or can reasonably guess about Meletus and his fellow prosecutors, Anytus of Euonymon and Lycon of Thoricus. Death was a penalty or possible penalty for a surprisingly wide number of serious charges in classical Athens. Having lost the case, Socrates was led by public slaves straight from the court to prison, not far distant in the Athenian Agora. Imprisonment was not, as now, a common punishment; the usual penalties were death, disenfranchisement, exile, confiscation of property or a fine. Prisons were used less as places of long-term internment than as temporary holding-stations, for those awaiting execution, for public debtors, and for some categories of criminals awaiting trial; they fell under the jurisdiction of an annually selected board known, banally rather than sinisterly, as the Eleven, and were staffed by a few lowly workers such as turnkeys, who were probably state-owned slaves.

Execution usually followed a guilty verdict within a day or two, but fate intervened to prolong Socrates' life for a brief span. No executions were permitted while the Delia, the annual festival of Apollo on his island of Delos, was being celebrated, because the sacred island had to remain free of pollution. So Socrates lingered in prison for thirty days, awaiting the return of the official Athenian ship from the festival (it set off for Delos the day before his trial and its return was delayed by adverse winds). Apollo, the god to whom Socrates felt closest, was looking after him to the last.

If Plato is to be trusted, Socrates passed the time conversing with friends and family members, and composing incidental poetry (his only known attempts at writing). Visitors were allowed in the prison at any time of the day or night, and were expected to bring food for the inmates, whose rations were meagre or non-existent. But, until the final day, when he was released as an act of mercy, he was kept in uncomfortable fetters; they were used to reduce the numbers of staff required, and because building materials were such that escape from prison would otherwise have been easy, a matter merely of digging through a relatively soft wall (the ancient Greek for 'burglar' means 'wall-tunneller'). Even so, escaping from prison was not difficult, and some of Socrates' friends made plans to break him out, but Socrates asked them not to. Having earlier turned down the opportunity of

exile before the trial (when it was permissible, if not quite legal), he could not now escape illegally. That would be to harm the city, he said; to harm anyone or anything is to commit injustice and to scar one's own soul; and Socrates prided himself on never having wronged anyone throughout his lifetime.

And so at last the ship returned from Delos, and Socrates was executed by drinking hemlock. This form of execution had been introduced only a few years earlier, and had not yet replaced the most common method (a kind of crucifixion), perhaps because it was considered expensive; at any rate, the preparation of the dose was paid for by friends or relatives of the condemned criminal rather than by the state – but what they were really paying for was a more benign death for their friend. The state also approved of the use of hemlock, because it was self-administered and bloodless, and so freed the state from the miasma of guilt.

It used to be thought that death by hemlock was painful and ugly, with spasms, choking and vomiting; but we now know, thanks to classicist and amateur toxicologist Enid Bloch, that the particular species of hemlock used for this purpose in ancient Athens (*Conium maculatum*, available on the slopes of nearby Hymettus) was effective, but not especially violent. Its effects, in fact, are pretty much as Plato described them in the closing pages of his dialogue *Phaedo*, a beautiful and profound work set in prison on the last day of Socrates' life. Plato correctly portrays his beloved mentor dying a gradual death by paralysis, leading finally to asphyxiation. His body was then collected by family and friends and accorded the traditional rites.

BEFORE THE TRIAL

The trial was the culmination of an orderly procedure. First, some weeks or even months earlier, Meletus had had to accost Socrates, and in the presence of two witnesses (perhaps in this case his two fellow prosecutors) read the charges out to him and summon him to appear on a specified date at the office of the King Archon in the stoa named after him in the north-west of the Agora, when Meletus would formally lodge with the King Archon a written copy of the indictment. The King Archon was one of the nine *arkhontes* of Athens, officers annually selected by lot from an elected short-list, who, in the developed Athenian democracy, had little more than formal roles, especially in the

religious and judicial spheres. The King Archon's title was an odd residue of the long-gone era of kingship, and he retained some of the prehistoric kings' powers in matters pertaining to religion, so that he was responsible, among other things, for trials for impiety. Socrates' case was slightly complicated by the fact that impiety was only half of the charge, with the other half being subversion of the youth; but since impiety was the more serious charge, it took precedence and the entire procedure was as if for a trial for impiety. Besides, to judge by the phrasing of the charges, the way in which Socrates was supposed to have subverted Athenian young men was by encouraging them to be as impious as himself. That was how Meletus understood the charges.

At the end of this meeting in the Royal Stoa – the dramatic context of Plato's dialogue *Euthyphro*, which has Socrates discussing piety (what else?) with a religious fanatic – the King Archon also set a date for the preliminary hearing, the *anakrisis*. In the intervening days, the King Archon's staff posted a copy of the charges in public, in the heart of the Agora. Then, at the preliminary hearing, it was the King Archon's job to decide whether the case had enough merits to go to court. The indictment was read out, depositions were taken from any relevant witnesses, and Socrates formally denied the charges. If the King Archon was still unsure whether or not there was a case that needed answering, he questioned both Meletus and Socrates until he could reach a decision. After all, the state paid dikasts for their service, and he did not want to waste resources on hopeless or frivolous cases. But these proceedings were more or less a formality, since there were further measures in place to fine prosecutors severely if their cases failed to win twenty per cent of the dikasts' votes in the actual court itself. The people themselves, sitting as dikasts, would decide the merits of the case.

We have no way of knowing what either party said at the *anakrisis*, but Meletus evidently convinced the King Archon that there was a case to be heard, and the archon set a date for the trial. Some weeks passed between the preliminary hearing and the trial. This should have been a time for the defendant to prepare his defence, but on the day Socrates claimed to be speaking off the cuff and even told one of his associates that he had spent his entire life preparing his defence, by consistently doing no wrong. Both Plato and Xenophon were, in some sense, followers of Socrates, and his trial and execution aroused such dismay and anger that they and several others from Socrates' circle

devoted at least part of their literary career to defending their mentor's memory. We have all of the Socratic writings of Plato and Xenophon, and too few fragments from a number of others. Above all, in the present context, we have both Plato's and Xenophon's versions of Socrates' defence speeches, each traditionally called in English the *Apology of Socrates*, or just the *Apology* – a transliteration of the Greek word for 'defence speech'.

When such a tiny percentage of ancient Greek literature has survived, and yet *two* versions of a single episode remain, it might seem churlish to complain, but the fact is that we cannot know for certain how much, if anything, of these two versions of Socrates' defence resembles what Socrates actually said on the day. The differences between the two versions are enormous; they cannot both be right. So whom does one trust? It is tempting to rely on Plato's version, because it is brilliant – funny, philosophically profound, essential reading – whereas Xenophon's is far more humdrum, and is in any case an unpolished work. But this is the nub of the whole 'Socratic Problem', as scholars call it: we want to trust Plato, but his very brilliance is precisely what should incline us not to trust him, in the sense that geniuses are more likely than lesser mortals to have their own agendas. And in fact no one doubts that Plato had his own agenda, and came to use Socrates as a spokesman for his own ideas; the only question is when this process started and how developed it is in any given dialogue. The most sensible position is that no dialogue, however early, is sheer biography and no dialogue, however late, is entirely free from the influence of the historical Socrates. Plato, Xenophon and all the other Socratics were writing a kind of fiction – what, in their various views, Socrates might have said had he been in such-and-such a situation, talking with this person and that person on such-and-such a topic. For one thing that is common to all the Socratic writers is that they portray their mentor talking, endlessly talking – either delivering homilies, or engaging others in sharp, dialectical conversation and argument.

What, then, of the two defence speeches? If execution is an attempt by a community to have a trouble-maker disappear, Athens signally failed with Socrates. The trial rapidly became so notorious that a number of *Apologies of Socrates* were written soon afterwards, and at least one prosecution speech purporting to be that of Anytus. If the object had been to report the actual speech or speeches Socrates himself gave in the course of the trial, there would have been no need for more than

one or two such publications, and all the rest would have been redundant. The fact that so many versions of Socrates' defence speeches were written strongly suggests that the authors were not reporters of historical truth, but were concerned to write what, in their opinion, Socrates could or should have said – which is what characterizes the whole genre of Socratic writings that sprang up in the decades following Socrates' trial and death. If there is any truth to the stories that Socrates came to court unprepared, a rhetorical innocent, Plato's *Apology* certainly begins to look fictitious: it has long been admired as polished oratory.

Given the unlikelihood of our ever having objective grounds for proving the fictional nature of either or both of these two versions of the defence speeches, it is gratifying, and significant, that we can easily create a plausible case for their fictionality. One of the most famous episodes in Plato's *Apology* is the story that Socrates' friend Chaerephon of Sphettus, famous in comedy for being ascetically emaciated (or at least poor), a con artist and a creature of the night, consulted the oracle at Delphi, the fabulously wealthy shrine of Apollo which was one of only a handful of international cult centres in Greece, and came back with the god's judgement that there was no one wiser or more knowledgeable than Socrates. As Plato tells the story, this oracle was the trigger for Socrates' philosophical mission. He was puzzled by what the god could have meant, and so set about questioning all the experts he could find in Athens, to try to understand what the god meant. And in the end he decided that the god was right, because everyone else suffered from the false conceit that he knew more than he actually knew; none could demonstrate his expertise by responding coherently to Socrates' questions. So Socrates concluded that he alone *did* have a kind of wisdom – the sense to know how little he knew. But by then he was launched on his mission of enquiry, of asking himself and others tough questions to try to uncover the truths underlying our beliefs and opinions.

But why should Chaerephon have approached the oracle with his question in the first place? In order for it to make sense to ask whether there was anyone wiser than Socrates, Socrates must already have had a reputation for wisdom. He had never been famous as anything other than the person in Athens who went around questioning people and finding out if they could define the moral and other concepts they claimed to work with; this enterprise had started around 440 BCE, and had brought him notoriety by the end of the decade. But this is

precisely the kind of questioning that, according to Plato, was supposed to have been triggered by the oracle, rather than going on beforehand. Another good reason for supposing the oracle a fiction is that there is no other reference to it by Plato, or by any of the other Socratics (who would certainly have made hay with it), or anywhere else in Greek literature, except a mention in Xenophon's *Apology*, which now begins to look decidedly derivative. It surely would have been a famous tale.

What Plato was doing with this story is rather subtle. Throughout his life Plato wanted to establish philosophy, as he understood it, as the one valid form of higher education, and in order to do so he used his writings to puncture the claims of rivals – educators, poets, statesmen, orators and other experts. So this is what Plato has his character 'Socrates' do in the early dialogues: question such experts and find them lacking. This was Plato's mission, and his Socrates was the mouthpiece for this mission. But this is precisely the mission summarized in Plato's *Apology* in the oracle story. Plato made up the story, then, as a way of introducing his own mission, the mission he would give to the character Socrates who was to appear in his works.

Since Xenophon knew Socrates, he knew that Plato's Socrates was fictional. He was in a position to recognize that Plato's description of Socrates' mission was actually a clever way of outlining and introducing Plato's own mission. So Xenophon did the same: he used the same story for the same purpose, and merely tweaked it to suit *his* mission. The chief difference between the oracle story in Plato and the version in Xenophon is that in Xenophon the oracle states that there is no one more free, upright and prudent than Socrates. Xenophon's mission was to make Socrates out to be a paragon of conventional virtue (and to explore what inner conditions are required for such virtue), and so his Socrates is 'free, upright and prudent', rather than 'wise'. Xenophon avoids mentioning wisdom because its corollary was Socratic ignorance: Plato's Socrates was wiser than anyone else because he was the only one who was aware of his ignorance. But ignorance is not one of the traits of Xenophon's Socrates, who spends most of his time advising others what to do. What we have, then, is an exquisite case of intertextuality between the two authors. Plato used the oracle story to establish his mission in writing, and Xenophon, recognizing that this is what Plato had done, did the same for his own mission.

'Here before our eyes is the mythmaking process at work,' as Moses Finley once remarked apropos of these two speeches. Perhaps it is the lot of people such as Socrates and Jesus, people who initiate great changes, to be what they become in others' versions. Before long Socrates became such a larger-than-life figure, thanks to the efforts of his followers, that we have to work to uncover the truth about the trial, and the case achieved such fame that, in subsequent centuries, writing defence speeches for Socrates became an exercise for students of rhetoric or concerned philosophers, fuelled by the liveliness of an ongoing debate about the relationship between philosophy and politics. Dozens of Socratic defences were written, and some even 'published', but the only survivor was written by Libanius of Antioch in the fourth century CE, 750 years after the event. The great orator of the late second and early third centuries CE, Maximus of Tyre, alludes to this tradition of writing both prosecution and defence speeches for Socrates' trial, and explains it, at least partly, by reference to the rumour, which started perhaps late in the fourth century, that Socrates himself said nothing at his trial, but just stood there mute and defiant.

SOCRATES' DEFENCE SPEECHES

There may be nuggets of historical truth within either or both of the two works, but we lack the criteria for recognizing them. We will never know for sure what was said on that spring day of 399 BCE. Here, in any case, are summaries of Socrates' main defence speeches, as told by Xenophon and Plato. Plato claims to have been there in person, and Xenophon to have heard about it at second or third hand – but even these claims may be an odd Greek literary convention, a way of creating verisimilitude, rather than a guarantee of truth. Throughout his *Recollections of Socrates*, Xenophon frequently claims to have been present at conversations he could not possibly have witnessed.

Xenophon's version focuses on the current charges. Socrates denies the charge of not acknowledging the gods acknowledged by the state by claiming that he has always performed his religious duties as a citizen. Taking the charge of introducing new gods to be an oblique reference to the supernatural voice that often came to him with advice (more on this later), he argues that listening to this voice is no more irreligious than making use of any other form of divination to receive communications from the gods. The only difference is that

this supernatural voice is exclusive to him, to Socrates – but that he is particularly favoured by the gods is also proved by Apollo's response to Chaerephon. This claim to be the special agent of the gods naturally provokes uproar in the court, and Socrates does not help matters by going on to argue that he is such a paragon of virtue that it makes no sense to charge him with corrupting or subverting anyone. Meletus, when questioned by Socrates about the sense of this charge, falls back on the claim that Socrates attracted young men to himself and took them away from the traditional, family-based forms of education. Socrates admits this, and justifies it by saying that he is an educational expert, so naturally people come to him for education, just as they would go to a doctor on matters of health.

Plato's version is considerably longer and more complex. In this version, Socrates' defence rests crucially on a distinction between his 'old accusers' and his 'new accusers', as he calls them. The 'new accusers' are simply Meletus, Lycon and Anytus, with the specific charges brought at this trial, but the 'old accusers' are largely faceless and nameless: they are the common people, with their prejudices against the new learning that had swept the upper echelons of Athenian society in the last thirty or forty years of the fifth century. They are ill-informed, and incapable of distinguishing between different types of intellectual, and so they project on to Socrates a confused picture in which he becomes simultaneously an archetypal scientist, sophist and orator, along with all their fears about the dangers of such intellectuals – atheism and other forms of moral subversion. Tabloid newspapers used to do the same with the gurus and 'cult leaders' of the 1970s.

Luckily, we are in a position to validate this complaint of Plato's. Socrates often featured in comic plays from the late 430s onwards, and apart from fragments we have an entire work in which he plays an important part. This is Aristophanes' *Clouds*, originally produced in 423, but extensively rewritten some time between then and 414. And in this play we find that Socrates is just such an amalgam: a scientist, a sharp talker, a hair-splitting quibbler, who undermines conventional moral norms and prefers bizarre gods such as Chaos, Clouds and Tongue to the Olympic pantheon. If this was meant to be farce, it became mistaken as satire – and satire of Socrates himself, not of a conglomerate intellectual. And so Socrates was widely taken to be an irreligious corrupter of the young – exactly as in the indictment. It may have been meant to be funny at the time, but things had changed

by 399 and people were more inclined to take Aristophanes' charges seriously.

Plato even includes in his *Apology* a specific reference to this play as a source of the old accusers' prejudices against Socrates. Aristophanes chose Socrates as his figurehead intellectual for no better reason than that he was a native Athenian, whereas the vast majority of other current intellectuals were foreigners. Aristophanes returned to the theme in two later plays, where Socrates is tarred as a corrupter of the young, a kind of cult leader or hypnotist necromancer, and other comic poets (especially Eupolis and Ameipsias, whose work unfortunately has scarcely survived) frequently mocked and expressed comic concern about Socrates and his circle.

Socrates' point here, in Plato's *Apology*, is that there is no way for him to combat such confused and deep-rooted prejudices. He denies them, but in the 440s he had taken an interest in current scientific ideas, and that may still have been vaguely remembered. And his distinction of himself from the sophists (which depended, anyway, on grouping a mass of diverse people together as 'sophists') would have been regarded by most of his audience as mere hair-splitting, just as, to non-initiates today, a logical positivist and a Platonist would seem to share more similarities than differences.

It is even likely that the distinction of Socrates from the sophists was an invention of Plato's. The sophists were educators, and Plato tries to make out that Socrates never claimed to be a teacher (in the sense of a transmitter of his own ideas), and simply followed the course of arguments wherever they led, whether the upshot was the refutation of one of his own beliefs, or those of his interlocutors. Xenophon's Socrates, however, is a fully fledged teacher, offering advice to all and sundry, and Plato's portrait is pretty unconvincing anyway, as a piece of history, because it is hard to imagine that Socrates spent his whole time on refutational argument, that this was the beginning and end of his philosophical mission. He must have spent some time teaching too, and this is what Xenophon portrays. One minor difference is that Socrates did not take money from his students, as the sophists did; he preferred not to be obligated to take pupils on just because they had the means to pay him. Where the testimonies of Plato and Xenophon coincide, however, is in their condemnation of the sophists for the superficiality of their arguments. They were not educators in genuine morality, because they taught their students only the eristic art of

winning arguments, whether or not that involved searching for the truth. Only Socrates had at heart his students' moral improvement. This shaky foundation is all that allows us to distinguish Socrates from those whom his followers lumped together as 'sophists'.

There was no reason for those who were outside Socrates' exclusive circle not to believe that Socrates was as he was portrayed in *Clouds*: an atheistic scientist-cum-sophist who taught wealthy young men his weird and dangerous notions. In Plato's defence speech, Socrates claims that the source of these prejudices is his mission to interrogate people (so this is where he introduces the story of the Delphic oracle). Not only has this made those whose conceit to knowledge he punctured angry with him (imagine a contemporary critic who day after day demolished the pretensions of our religious, political and artistic leaders, in public debates broadcast on television to millions), but some young men have imitated his method of interrogation, and even misused it as a way to try to score points off their opponents, rather than as a way of trying to get to the truth. And so, in order to divert attention away from their own ignorance, people have gone around slandering Socrates and fuelling prejudice against him.

The next few pages of Plato's *Apology* are taken up with a short dialogue between Socrates and Meletus, in the course of which Socrates sarcastically ties his prosecutor up in knots over the issues of subverting young men and of atheism; for all the guardedness of his responses, Meletus is made painfully aware that he is not Socrates' intellectual equal. Since there was almost certainly no provision for such dialogue in Athenian courtroom procedure, this too is a feature of Plato's *Apology* that we can safely take to be fictional; and, again, it was one that was imitated, though at considerably less length, by Xenophon in his version. Plato used it, presumably, as a way of letting his readers know one or two of the things Meletus had said in his speech; he had stressed that the proper source of education for young men was the family-based perpetuation of what Sir Gilbert Murray called the 'inherited conglomerate' – the moral and religious code passed down, by example and oral teaching as much as by instruction, from generation to generation – and he had accused Socrates of being an outright atheist.

Socrates goes on to affirm his commitment to his philosophical mission. It was given to him by Apollo, and it would be arrogant sacrilege to abandon it, even on pain of death. He compares himself to the Homeric hero Achilles, who had to choose between a short, brilliant

life and a long, undistinguished one, and insists that he will not stop philosophizing even if the court makes it a condition of his acquittal that he should do so. He claims that, so far from being a source of corruption, his service to the god is the best thing that has ever happened to Athens. He likens the city to a sluggish, dozing horse, and himself to a horsefly, sent by the god to stir it out of its slumbers, and at risk of being swatted dead by the horse's tail.

But if this is his job, why has he not played a greater part in Athenian public life, as a more direct way to galvanize the city? Because, he says, there is no place for an honest man in the city's politics. His supernatural voice has consistently prevented him from playing a part in the city's public affairs, and the reason must be that had he done so he would have been put to death long ago. As it happens, in the normal course of events he found himself in a position of some responsibility once in 406, when he tried to stop what he saw as an immoral procedure; and once in 404 or 403, during the rule of the Thirty Tyrants, they wanted him to arrest Leon of Salamis, but he refused, again on the grounds of the immorality of the proposed action. Despite his evident survival, he says that both times he was in danger of death, and so he uses these cases to support the point that, had he chosen to act politically, whatever the regime, he would have been killed. And then he winds down his speech with a couple of stock rhetorical points: the prosecution's claim that he corrupts people is undermined by the fact that none of the relatives of those he is supposed to have corrupted have ever taken him to court; and he refuses to demean himself by employing the kind of pity-arousing tactics that others employ in court when threatened by the death sentence.

Socrates was found guilty by a narrow margin: 'If a mere thirty votes had gone the other way, I'd have been acquitted.' In other words, on the assumption that there were five hundred dikasts at the trial, 280 voted for his guilt and 220 for his innocence. Then it was his turn to propose a counter-penalty, in face of his prosecutors' demand for death. Since he believed that he was the best thing ever to have happened to Athens, he semi-seriously proposed, according to Plato, that he be fed at public expense for the rest of his life. This was an extraordinary honour, usually reserved for those who had conspicuously enhanced the honour of the city, perhaps by winning an event at the Olympic games, or for the descendants of those who were taken to have established democracy in Athens. Socrates was just being

provocative. In a more serious vein, pleading his well-known poverty, he proposed that he be fined one hundred drachmas (the cost of a small flock of sheep and goats, say), which was promptly increased by the offers of friends, including Plato, to three thousand drachmas.

This was the kind of penalty the court might have accepted, but Plato's Socrates had gone out of his way to alienate wavering dikasts by his arrogance, and a majority still voted for the death penalty. What kind of a majority? A late biographer says that eighty dikasts changed their vote because they were angry at Socrates for his arrogance: that would make it 360 against 140, and this is the figure most scholars accept. But Socrates' own words (in Plato) suggest a different story: *after* the death penalty had been passed he addressed the 220 who voted to acquit him as true dikasts – a strange thing to call them if some of them had subsequently voted to put him to death. In other words, it is possible that *fewer* voted to put him to death, so that the margin was perhaps as little as 260 against 240.

This post-trial address to the dikasts occurs in both Plato and Xenophon, but it again flies in the face of what we know of Athenian courtroom procedure. The core of both versions is that, like the legendary hero Palamedes, the archetypal wronged innocent, he, Socrates, has nothing to worry about, because no harm can come to a just man. It is those who have condemned him to death, and especially his prosecutors, who should worry about the effect on their souls of their wrongdoing, and about the effect on the city of their removal of the one man who could have helped it. Plato's version ends with Socrates voicing some thoughts on death: since his supernatural voice did not prevent him from attending the court today, he is confident that death cannot be a bad thing for him. It is either a blank state, like dreamless sleep, or he can look forward to philosophical conversations in Hades with interesting men of the past. His final words are: 'And so it is time for us to leave. I go to die, and you to live, but which of these two states is better is unclear to all except the god.'

Plato's *Apology* is brilliant; no summary can do it justice. It contains startling, thought-provoking claims, such as that his prosecutors may be able to kill him, but they cannot harm him, because it is a law that a good man cannot be harmed by a worse man; it contains resonant suggestions such as that wherever one has been posted by a superior, man or god, there it is one's duty to remain. Scholars still mine the book not just for details of Socrates' life, but in the attempt

to understand some of his core ethical views. Socrates' equanimity, resolution, defiance, wit and clarity greet one on every page – but this Socrates may, in some part, be Plato's creation rather than the historical man.

Apart from those I have already mentioned in passing, there are a few more or less trivial details common to both Xenophon's and Plato's versions; more importantly, both writers create a certain atmosphere for the trial, and in this, at least, they seem to be reflecting the events of that day. The courts in Athens were not as dignified and solemn as we might nowadays expect and, more than once, dikasts and spectators raised a hubbub of indignant protest at what Socrates was saying, or at his outrageous attitude and refusal to kow-tow to them.

The attitude Plato's Socrates displays to the dikasts, the common people of Athens, is consistently one of defiance and arrogance. Socrates argues that any just man, such as himself, who takes part in democratic politics will be killed; he accepts that he is commonly viewed as an enemy of democracy; he denies the educational value of the democratic inherited conglomerate and even suggests that this kind of education is a major cause of corruption; he states his preference for following his own conscience rather than the collective will of the masses; he makes himself out to be morally superior to the jury, because they expect him to resort to the usual methods of invoking pity, which he says are beneath his dignity; he expresses surprise that so many people voted for him in the first instance – which is to express surprise that the Athenian legal system might actually work in favour of an innocent man; he criticizes the legal system for restricting the time allowed for his defence; he charges the dikasts with acquitting only flatterers and yes-men; so far from directly addressing the charge of impiety, he claims that he would be an atheist if he *stopped* doing what he did, and to have a superior sense of piety to that of the dikasts; and, finally, his suggestion that he should be fed at public expense amounts to a refusal to accept the authority of the dikasts to find him guilty.

Socrates undoubtedly did adopt this tactless approach; it is Xenophon's express purpose to explain why this tone of voice was not as ill-considered as it might seem (because, according to Xenophon, the elderly philosopher preferred death to a prolonged old age). And the upshot is that, even if we conclude that Socrates did mount a defence

against the charges (as recent scholars have argued, contrary to an earlier tendency to see the speeches as sheer provocation), it was one that would have worked only if the majority of the dikasts had already been confirmed Socratics. Plato was aware of this: on one of the several occasions when he refers in later works, more or less obliquely, to the trial, he has Socrates say: 'My trial will be equivalent to a doctor being prosecuted by a pastry-cook before a jury of children'; and on another occasion he celebrates the unworldliness of philosophers and how useless they are in court. Both Plato and Xenophon wanted to give their readers the impression that a high-minded philosopher was convicted by the stupidity of a mob, but this was also an attempt to distract attention from the real reasons why Socrates was killed.

How the System Worked

Socrates was tried, condemned and executed; these bare facts alone have spread ripples of puzzlement and indignation down the centuries. But proper understanding of the trial – of any trial – needs context. What kind of society was classical Athens at the time? How did it work? What had it done? What were its hopes and fears? Who were its heroes and villains? We need an outline, at least, of relevant aspects of the classical Athenian political and legal systems. Even such a sketch will show how intertwined the two were. Classical Athens was a radical democracy – the most radical, in certain respects, the world has ever seen – and the courts often acted as another way for the people to wield power. The ancient Greek for ‘the people’ is *dēmos*, and so, along with the democratic ideal, the Athenians gave us the word ‘democracy’, ‘the rule of the people’.

The author of the fourth-century BCE *The Athenian Constitution* (either Aristotle or, more likely, one of his students) was no fan of democracy, and he ruefully agreed that it is only when the people have control of the courts that they are in full control of the constitution. The people’s courts had gained political power above all in the 460s, when they were given the job of assessing the suitability of political officers before they took up their positions, and of judging their performance at the end of their year of office too; by 415 the courts were also hearing cases where the defendant was accused of having introduced an unconstitutional proposal in the Assembly.

But such powers were not the only factors that politicized the law courts; the incredible and enduring competitiveness of upper-class Athenian society also played a part, in that political rivalries often spilled over into the courts. The competitiveness of trials was recognized: the usual word for a court case in ancient Greek was *agōn*, literally a ‘contest’. The courts were arenas where what would once have been feuds were played out in more civilized circumstances. Any kind of case could become an arena for political showboating by one or both of the litigants.

This also means that Plato’s (rather obscure) attribution of personal motives to each of Socrates’ prosecutors is perfectly plausible. Since anyone who wanted to could act on behalf of the city as a whole and initiate a court case on a wide range of charges, including impiety, personal motives were to be expected: ‘Extant evidence reveals’, concludes Danielle Allen, ‘that the Athenians typically prosecuted only in cases where they were victims or personally involved in the matter at trial. The surviving oratorical corpus yields only four cases in which a prosecutor claims to act as a purely disinterested public actor.’ And so the prosecutor of a case would typically begin by claiming that, as a good citizen of the community, his personal grievances coincided with harm done to the city. These generalizations will prove to have enormous implications for Socrates’ trial.

THE ATHENIAN CONSTITUTION

The population of Athens at the time of Socrates’ trial in 399 was around 220,000: 120,000 citizens (men, women and children), thirty thousand ‘metics’ (resident non-Athenians) and seventy thousand slaves. Of these, only the thirty thousand or so male citizens had full political rights; admirers of the Athenian democracy in the past tended to gloss over the fact that it was a slave-owning society, and that full citizenship was restricted.

As in most societies, there were huge differences between the incomes of ancient Athenians. They themselves generally spoke in broad terms of the ‘rich’ and the ‘poor’; the ‘rich’ were indeed rich, but the term ‘poor’ was applied (usually, it has to be said, by the snobbish rich) to anyone who had to work for his living, rather than purchase labour and generate wealth from the surplus value. More precisely, among the thirty thousand full citizens, there were about twelve hundred super-rich, who were liable to ‘liturgies’ (mandatory and usually *very* expensive benefactions to the state, in lieu of taxation, such as funding a religious festival, or a warship for a year); after this class, there were about three thousand men with sufficiently large estates for them not to have to work or worry much (in peacetime, at any rate), to be able to speculate with their capital, and to occupy a territory close to either side of the liturgical boundary, and another three thousand had enough of an income, from whatever sources, to make them liable to emergency taxation (*eisphora*) by the state, especially in times of war; then there were about fourteen

thousand small farmers and businessmen with sufficient income to serve as hoplites, heavy-armed infantry, who were required to provide their own arms and armour when called up for active service; finally, there were about nine thousand 'thetes' – smallholding peasants, casual labourers, menial workers. The Peloponnesian War, which ran intermittently from 431 until Athens's defeat in 404, devastated the last two of these wealth classes, and reduced the numbers of slaves as well – either by death or by giving them the opportunity to run away. The overall population of 220,000 was down from 335,000 at the start of the war.

For all the democracy's claims to egalitarianism and its promise that everyone, however poor, could take part in the city's affairs, it took money to play a major role. There were perks (such as the occasional bribe from abroad, or booty if you were elected general and conducted a successful campaign), but until late in the fifth century there was no remuneration for most political posts, and they were full-time jobs. As well as money, the job was facilitated by recognized standing in society, and above all by a more or less loyal circle of friends and dependants. Aristocratic culture had long been underpinned by such networks, woven partly by a tradition of complex intermarriages between and within clans, and partly by judicious largess. For much of the fifth century BCE, important political offices remained in the hands of wealthy aristocrats, and even when this monopoly became weakened, they were replaced only by nouveaux riches.

Networks thrived on *kharis*, an impossible word to translate because it means simultaneously 'favour' and the feeling of gratitude a favour evokes. It refers to the reciprocity that governed traditional Greek thinking in many areas of life, and it would be only a little too crude to gloss it as 'You scratch my back and I'll scratch yours.' But *kharis* could extend beyond kinship groups and other alliances: a wealthy politician might endow the city with a park, for instance, as a way of winning the favour of the common people; in return, he expected them to support his political career. Favouritism and a marked lack of concern for altruism were two of the consequences of the way Athenian politics were conducted. Politicians did at least pretend to have altruistic motives, but favouritism was openly acknowledged and was not generally thought immoral.

Friends were important, above all, because there were no political parties in ancient Athens; there were programmes initiated by individuals, which withered when the individual died or lost influence. Of

course, one person's programme might resemble another's, but even so it makes little sense to speak of political *parties*, with all the machinery, ideology and endurance the word implies. The phenomenon of a politician changing his mind even about fundamental issues such as war and peace, or whether power should be in the hands of the common people or those of an elite, was more familiar in ancient Athens than in any state organized on party political lines. What a politician was promoting, in the first instance, was not so much a platform as himself, as a statesman or trouble-shooter. A proposal was helped on its way by an individual's core network, and by temporary alliances with other politicians (and their networks) who approved or could be persuaded to approve of that particular proposal. The kaleidoscopic ebb and flow of such alliances, and the behind-the-scenes negotiations, may be left to the imagination. Until very late in the fifth century, there was no civil service to speak of, no permanent committees and sub-committees to see that government progressed relatively smoothly. Friendship was the way things got done.

Nothing shows the individualistic nature of Athenian politics more clearly than the extraordinary institution of ostracism. Once a year, since the foundations of democracy had been laid by Cleisthenes in 508, the people had the option of sending a prominent man into exile for a maximum of ten years – not because he had committed any crime (and so his estates and property were not confiscated while he was away), but just because he was felt to be a threat to the stability of the democracy, especially as a result of bitter rivalry with an aristocratic opponent. Once the decision had been made to conduct an ostracism, feuding among the most powerful politicians reached fever pitch, as each tried to turn the spotlight on to anyone rather than himself. Then, on the day, each attending citizen wrote on a broken piece of pottery (*ostrakon* in Greek) the name of the person he wanted to see removed, or got hold of a pre-inscribed shard. If we see ostracism as a vestige of the prehistoric practice of scapegoating (and sometimes literally killing) the king, *ostraka* are virtual curses, spelled out by ordinary people against their leaders. Though the opportunity was there every year, the Assembly had first to vote to conduct an ostracism, and a minimum of six thousand votes had to be cast in total on the day; but then the person who had the most votes against him was banished.

The very existence of the institution of ostracism shows that the people were aware of the tensions created by the fact that they needed

the continuity, professionalism and contacts (both at home and abroad) that wealthy and ambitious individuals brought to government, and yet had to curb them. One might expect that the members of the elite who held political power would gradually have imposed their own agenda on the community; remarkably, it was not so. One of the great strengths of the Athenian democracy, as a true democracy, was that the general populace found ways to control the elite, and even to make use of their education, wealth and status for democratic ends. Generally speaking, the system worked well; the Athenian democracy ran more or less smoothly, with brief interruptions in 411 and 404–403, for most of its almost-two-hundred-year history (it was overthrown in 322 BCE, after an unsuccessful rebellion against Macedonian dominion), and found a good middle ground between the chaos of aristocratic feuding and a collectivist, totalitarian consensus.

While recognizing the need for elite leadership, because initiative comes from individuals, the people kept for themselves the right to decide which initiatives to implement. They dictated what was and was not acceptable content for speeches heard in the Assembly and the courts, the ever-present threat of their courts kept officials transparent and accountable, and they taxed the rich in various ways. It was almost impossible for a single individual to gain the kinds of powers that in our lifetimes successive Russian presidents (to take just one prominent example) have awarded themselves. Almost all political positions were changed annually, and certain positions (such as Council member) could not be held consecutively, or more than twice in a lifetime; most positions were not unique, but involved membership of a committee; above all, there was the use of the lottery.

Only the boards of generals and of financial officers were elected (since they were taken to require special expertise), while everyone else was chosen by lot (though in the case of the Council, the lottery was applied to a pre-elected pool). In the fifth century, the best ways to achieve long-lasting prominence were to use generalship as if it were a political position (especially since the post could be held in consecutive years), or to bypass the system altogether by being a notable speaker, capable of swaying the Assembly, even without holding any official position. Pericles, for instance, used successive generalships as the foundation of his power in Athens in the 440s and 430s, while after him it became more common to use rhetorical ability for the same end – so much so that the Greek word for ‘public speaker’, *rhētōr*,

came to mean ‘professional politician’. But, strictly speaking, as Harvey Yunis says: ‘Athenian *rhētores* had no professional standing and constituted no restricted or recognized class; held no office, legal position, or any formal power greater than the right to advocate a particular policy; enjoyed no special prerogatives and officially were on a par with all other citizens in and outside the Assembly; were not leaders of parties or factions upon whose support they could call; and had to persuade the *dēmos* anew every time they mounted the platform to advocate a policy or move a proposal.’ The system encouraged demagoguery.

The most important check on an individual’s gaining excessive power was simply the fact that the Assembly was the executive branch of government. The Assembly could be attended by any male citizen over the age of twenty, though in practice, since many citizens lived too far away (especially before the days of good roads) or were otherwise occupied, it was rare for more than four thousand people to attend, at least until the city became packed by refugees during the war years, and until the Pnyx (the meeting-place) was expanded around 400 and pay was introduced for attendance. The Assembly met at least ten times a year, though emergency meetings could be summoned between these mandatory sessions. Some issues came up regularly and recurrently, such as provisions for the supply of grain; others, such as ostracism, came up once a year. Otherwise, the agenda for each Assembly meeting was prepared by the second main administrative body, the Council of five hundred men over the age of thirty, fifty from each of the ten tribes to which all Athenians belonged for administrative purposes.

The Council met every day, and was in effect the daily government of Athens. It controlled the state’s finances through its supervision of the relevant committees, it negotiated with foreign states and received their representatives, it heard petitions from Athenian citizens, and it had certain judicial functions. But its most important work related to the Assembly: it debated and prepared the Assembly’s agenda, attached its recommendations to every item on the agenda, counted the Assembly votes, and saw that Assembly decisions were carried out (by means of its authority over all the various bureaucratic committees and sub-committees). It posted the business for all ordinary meetings of the Assembly and had the right to call extraordinary meetings if necessary. The Assembly could not debate a matter which was not on the agenda

prepared by the Council, but they could insist that an item be included in the agenda for the next Assembly.

To avoid all five hundred Council members being inconveniently occupied all year round (though they were paid a small daily allowance), the Council year was divided into ten prytanies (slightly variable periods of time), one for each tribe. During its prytany, the fifty men from that tribe were on daily duty, and they reported back to the full Council when it next met; they were chaired by one of their number, chosen on a daily basis by lot, who became for that day the head of the Athenian state, symbolized by his custody of the city's seal (whose device we can only guess at: an owl? The goddess Athena?) and the keys to the temples where the state's treasures and archives were stored. Since any adult male citizen could be a member of the Council, and it was the best way to become educated about the city's political systems, this in turn guaranteed a politicized Assembly, because the people who served as councillors also attended the Assembly. If the historians' record of speeches is anything to go by, the farmers and peasants who attended the Assembly were politically sophisticated – capable of absorbing a commentary in the *New York Times*, say, not just the *Daily Mail*.

One of the remarkable features of the classical Athenian democracy is the degree of involvement by people at all levels of society in the running of the state. Six thousand citizens were enrolled every year as the bank from which to draw personnel to man the jury courts; another seven hundred or so sat on committees or held more prestigious jobs; there were five hundred members of the Council; and thousands also attended each Assembly meeting (though, in the nature of things, only a very few of those thousands spoke at any given meeting, while the rest listened, applauded and heckled). If we count religious festivals as political – as the Greeks would, since it was part of one's civic duty to maintain a good relationship between the gods and the city – then we can include the thousands who filled the streets or the theatre during the great festivals, for which Athens was famous. Wealthy individuals supported the state by maintaining its navy and funding its spectacular festivals – and, generally speaking, were proud to do so. Every citizen was also on stand-by, from the age of eighteen until he reached sixty, to serve in the branch of the military appropriate to his social status and wealth: a very rich man in the cavalry, a middle-income man in the hoplite phalanx, and a poor man as an oarsman in

the navy. Their future prosperity depended directly on their own efforts, but they could not have devoted so much time to public matters if Athens had not been a slave-owning and wealthy society.

THE ATHENIAN LEGAL SYSTEM

Legal systems are value-laden; they offer a good route towards understanding a society's values. The classical Athenian legal system is bound to seem, to our minds, somewhat strange, but we are now, thankfully, leaving behind the tendency merely to damn it for its 'deficiencies', assessed against some modern standard. It should rather be seen as a system that worked by its own lights, and as a genuine attempt to bring social justice to a community, to safeguard its welfare, to make its leaders accountable, and to put judicial power in the hands of the majority. We should not expect it to be more than it could have been: it was in transition between the kind of primitive justice where settlement is reached by flexible agreement among the interested parties, and the more rigid, developed system where settlement is reached by reference to the terms of a standing legal code. The Athenians retained a higher degree of flexibility or vagueness than we would nowadays feel comfortable with, and relied more or less entirely on concerned citizens rather than legal professionals.

Scholars speak of ancient Athenian law as being 'procedural' rather than 'substantive'. To take the case most relevant to this book, in so far as we can reconstruct the Athenian law about impiety, it read somewhat as follows: 'If a man is guilty of impiety, he is to be tried in the court of the King Archon and made liable to death or confiscation of property. Any citizen who so wishes may bring the prosecution.' Here the emphasis is procedural, because the focus is on the legal action to be taken, and 'impiety' is not substantively defined. But even though many Athenian laws tended to be phrased as threats in this fashion, there were areas of law (such as property law and family law) where clear definitions were more essential, and a substantive element was far more prominent.

Crimes such as impiety, which were taken to affect the community as a whole and to transgress the community's largely unwritten moral code, were left vague precisely because it was up to the community itself to bring the prosecution (by means of one or two concerned citizens), and to interpret and apply its moral code in reaching a verdict

and choosing a penalty. Within broad parameters, then, the understanding of a particular offence could change from case to case, depending on how the dikasts themselves judged it. Of course, there could be no doubt in anyone's mind that certain actions, such as defacing statues of the gods or stealing sacred property, constituted impiety, but matters rapidly blurred beyond this core. We can go some way towards reconstructing the oath taken by dikasts: in addition to what one would expect about impartiality and so on, there was a provision for voting according to one's sense of justice, in cases where that sense of justice was not guided by any substantive law. Hence the dikasts were occasionally addressed even as law-makers, rather than as law-interpreters.

There was no public prosecutor; for most kinds of cases where the public good was felt to be at stake, any citizen could take any other citizen to court. The main curiosity here is that even for the most serious crimes, such as murder, the state offered no help; if no individual chose to prosecute a case, it would not come to court. The main abuse of the system was that it became an arena for personal vendettas. A case could be reopened by bringing a charge against one of your opponent's witnesses, but more commonly, to quote Josiah Ober, 'The prosecutor in one action, dissatisfied with a jury's acquittal, might indict the same person, for the same crime, in front of a different jury by use of a different class of action. Similarly a convicted defendant could prolong proceedings by turning prosecutor.' In the fourth century, Demosthenes and Aeschines spent the best part of ten years trying to destroy each other's careers in a series of vicious lawsuits, when the real issues between them were how to perceive the Macedonian threat – and who was to be the leading statesman of Athens.

There was a protracted attempt at the very end of the fifth century to tidy things up, but until then laws had arisen piecemeal, without adequate protection against contradiction and vagueness. Written laws were idealized as equalizers, but in practice tradition, gossip and other factors played just as large a part in legal procedure. Precedent was recognized, if at all, as a weak factor, whose surface appearance was more important than consideration of why a previous jury had reached such a decision in the first place. It was easy for speakers to base arguments on biased versions and interpretations of Athenian laws while expecting the dikasts not to spot the bias. The laws, especially those that were phrased vaguely, were regarded more as a kind

of evidence, to be wielded as instruments of persuasion, than as the system of regulations on the basis of which a verdict should be reached.

There was little concern in the courts with what we might recognize as valid or relevant evidence. In the first place, there was nothing in Athens remotely resembling a police force; gathering evidence was up to the litigants themselves, and even then they were not always obliged to produce it in court. In the second place, there was no opportunity in court to cross-examine witnesses or one's opponent (whatever Plato and Xenophon may have implied in their versions of Socrates' defence). Evidence was presented chiefly by an exchange of speeches by two sides, and usually consisted of circumstantial evidence, backed up by arguments from plausibility, along the lines of: 'Is it likely that I, an elderly weakling, would have assaulted such a strapping young fellow?'

In many categories of case, one could say the most outrageous or innuendo-laden things about one's opponent and his ancestors and friends – precisely the kind of tactic that Socrates refused to employ in his defence speeches. The most popular accusations included foreign or servile birth, low social status and deviant sexual behaviour. There was hardly any need to prove these slurs, and they were introduced whether or not they were strictly relevant to the case. By contrast, one presented oneself as a true bearer of the most noble and valuable Athenian characteristics. Contrast this with the relative isolation of modern democratic courts, where (ideally) *only* the case at hand is to be judged, whatever the litigants' behaviour in the past; for us, the fact that the defendant needs a shave and a haircut should be entirely irrelevant to the question whether or not he committed the crime for which he finds himself in court, but for ancient Athenian dikasts it was precisely relevant.

There was no judge to instruct the dikasts, and dikasts were untrained men selected at random from the citizen body, who had to decide by themselves matters of law as well as of fact. Precise interpretation of fine legal points would have required a body of experts, and the very existence of such experts would have detracted from the democratic nature of the courts. Dikasts were more likely to be persuaded by the most impressive speaker, or the one they warmed to most for other reasons (such as his political usefulness to them in the near future). Hence speakers tended to skate over complex issues, in

speeches that were theatrical (literally: there was influence both ways between forensic and tragic oratory) and combative, and which included a whole host of extralegal matters, deliberately to appeal to the emotions of the jurors, rather than to employ a dispassionate and strictly legal approach. Weak speakers were at a terrible disadvantage; professional speech-writers were available for those who needed them and could afford them.

Juries were large to reduce the possibility of bribery, and because they were supposed to represent the democracy, but their large size could encourage irresponsibility. When a jury consists of twelve, each person is bound to appreciate that his or her vote makes a substantial difference; the same does not apply to a jury numbering well into the hundreds. Moreover, though the dikasts were obliged to reach a verdict, they were not obliged to say why they reached it. However complex the case, it was not allowed to last more than a day. At the end of the day, the dikasts' decision was final. There was no right of appeal, because the dikasts already were an assembly of the sovereign Athenian people: to whom else could an appeal be made?

One quirk of the system was that it made it possible for unscrupulous people to make money by threatening to take someone to court. In many cases the threatened person would make an out-of-court payment to the blackmailer, either to avoid the nuisance of a court case, or in fear of losing more if the case came to court; even innocent men were tempted to pay, because the open nature of the system made it possible for a man to be convicted even of a crime he had not committed, if he was otherwise unpopular or if his opponent impressed the dikasts. These blackmailers were called 'sycophants' – a word that has a curious origin. Ever since the beginning of the sixth century, it had been illegal to export any foodstuffs except olive products out of Athenian territory; there was to be no profiteering when Athenians needed all the land could produce. Occasionally, however, people tried to smuggle figs across a border. If one of your fellow citizens denounced you as a fig-smuggler, he was a *sykophantēs*, a 'tale-teller about figs'; if it was part of his purpose to ingratiate himself with the authorities, he was close to being a sycophant in the modern sense of the word. Sycophancy in ancient Athens was a genuine nuisance, and steps were periodically taken to curb it, but it was an inevitable consequence of the virtual lack of a police force, of the system whereby individual citizens themselves acted as prosecutors,

and of the rewards given to successful prosecutors of cases involving crimes where the state's interests were felt to be at stake.

The impulse for all the essential features of Athenian law was that the workings of the courts were expressly considered to be part of the workings of the democracy as a whole; hence the boundary between court matters and the rest of the political life of the community could be thin (and court cases were usually heard, anyway, in more or less public places, where onlookers were welcome). In a modern democracy, the legislative and judicial branches of government are, or are supposed to be, independent, so that they can act as checks against each other; in ancient Athens both were unified in the common people. One important upshot of this was that dikasts tended to rule conservatively: the spirit of the law was as important as the letter (if there was a 'letter' in the first place) and, fundamentally, the law was animated by a desire to preserve the community. This is a true reflection of the capaciousness of the Greek word for law: *nomos* means not only 'law', but also 'custom' or 'convention' – the way a given society traditionally goes about things.

Political scientist John Wallach succinctly summarizes the necessary conclusions:

The Athenians' criteria of guilt were not wholly legal in nature, or at least not legal in our sense. Because their conception of legality included conformity to everything signified by *nomoi* – legislative enactments, their constitutional heritage, and sanctioned social customs – guilt for violating such laws could be much more loosely defined than it is in contemporary western courtrooms, where the line between political and legal charges is, or at least is supposed to be, firmly drawn.

Every route by which we approach classical Athenian law brings us sooner or later to the same realization: precisely those aspects that we might see as deficiencies are what enabled it to be a powerful tool of the democracy.

GLOSSARY

obligation to each other; they had a religious duty to each other that transcended more mundane sentiments such as patriotism. *Xenia* facilitated communication in a number of important areas, such as trade and diplomacy. *Proxenia* was an extension of *xenia*, whereby a whole community became, so to speak, a person's *xenoi*; a *proxenos*, then, was the representative of a foreign community within his home community.

References

PREFACE

- xii *groused enough*: see especially my 'Xenophon's Socratic Mission', in Christopher Tuplin (ed.), *Xenophon and His World* (Stuttgart: Steiner, 2004; = *Historia Einzelschrift* 172), 79–113.

ONE

- 4 *complained . . . about the time restriction*: Plato, *Apology* 19a, 37a–b.
 4 *the smallest jury we hear of*: ps.-Aristotle, *The Athenian Constitution* 53.3.
 5 *This indictment . . . penalty demanded is death*: Diogenes Laertius, *Lives of Eminent Philosophers* 2.40.
 6 *If Plato is to be trusted*: Plato, *Phaedo* 59c–61c.
 6 *Socrates asked them not to*: see Plato, *Crito* 44b ff.
 7 *harm the city, he said*: Plato, *Crito* 49a–50a.
 7 *thanks to . . . Enid Bloch*: 'Hemlock Poisoning and the Death of Socrates', in Brickhouse and Smith (eds), *Trial and Execution*, 255–78. A shorter version of this paper first appeared online in March 2001, in the *Journal of the International Plato Society*: <http://www.nd.edu/~plato/bloch.htm>.
 7 *as Plato described them in . . . Phaedo*: *Phaedo* 117a–118a; a peaceful death is also implied by Xenophon, *Apology* 7.
 8 *how Meletus understood the charges*: see Plato, *Apology* 26b.
 8 *speaking off the cuff . . . doing no wrong*: Plato, *Apology* 17c; Xenophon, *Apology* 3 (see also *Recollections of Socrates* 4.8.4).
 10 *One of the most famous episodes*: Plato, *Apology* 20e ff. It was famous even in antiquity. See, for instance, ps.-Lucian, *Amores* 48 (second century CE), which humorously gives the story an erotic spin: Socrates is wisest because of his attraction towards young men.
 10 *famous in comedy*: e.g. Aristophanes fr. 539, 573 Kock, *Birds* 1296, 1564; Alexis fr. 210 Kock (fr. 214 Arnott); Antiphanes fr. 197 Kock.
 10 *started around 440 BCE . . . by the end of the decade*: Plato, *Laches* 187d–188a. The earliest comic fragment mentioning Socrates, datable to before 430, is fr. 12 Kock (Giannantoni I A2) of the poet Callias, in which he has a character accuse Socrates of making people arrogant. Clearly, young men had already begun to imitate his questioning of others, as a means of making themselves feel superior to others.
 11 *a mention in Xenophon's Apology*: 14.

REFERENCES

- 12 *as Moses Finley once remarked: Aspects of Antiquity*, 62. On other Socratic apologies, see Trapp, 'Beyond Plato and Xenophon', in Trapp (ed.), *Socrates from Antiquity to the Enlightenment*, 51–63.
- 12 *Maximus of Tyre: Oration 3* in Michael Trapp, *Maximus of Tyre: The Philosophical Orations* (Oxford: Oxford University Press, 1997).
- 12 *started perhaps late in the fourth century*: we would not know about this tradition, were it not for the chance preservation of a papyrus fragment containing part of a Socratic dialogue, in which Socrates is asked why he did not mount a defence. The fragment is PKöln 205 (in Michael Gronewald, *Kölner Papyri*, vol. 5 (Opladen: Westdeutscher Verlag, 1985), 33–53); it is summarized by Jonathan Barnes in *Phronesis* 32 (1987), 365–6.
- 12 *Plato claims . . . and Xenophon to have heard about it*: Plato, *Apology* 38b; Xenophon, *Apology* 10.
- 14 *a specific reference*: Plato, *Apology* 19b–c; see also Xenophon, *On the Management of an Estate* 11.3.
- 14 *in two later plays*: Aristophanes, *Birds* 1280–4, 1553–6 (produced 414); *Frogs* 1491–9 (produced 405). See also other comic fragments collected by Giannantoni in his section I A.
- 14 *taken an interest in current scientific ideas*: specifically those of Anaxagoras of Clazomenae (according to Plato, *Phaedo* 96a–99d), perhaps mediated by Anaxagoras's pupil Archelaus, a native Athenian; see Geoffrey Kirk, John Raven and Malcolm Schofield, *The Presocratic Philosophers* (Cambridge: Cambridge University Press, 1983), 385–6. It seems also to be an implication of Xenophon, *Recollections of Socrates* 4.7.1–6 that at some point Socrates had acquired expertise in such matters; at any rate, his attitude towards them does not seem to be the product of ignorance. Some claim that Xenophon, *Recollections of Socrates* 1.6.14 suggests even that Socrates taught such matters, but I cannot find evidence of this.
- 15 *imitated . . . by Xenophon*: *Apology* 19–21.
- 15 *the 'inherited conglomerate'*: Murray, *Greek Studies* (London: Oxford University Press, 1946), 67.
- 16 *'If a mere . . . acquitted'*: Plato, *Apology* 36a.
- 17 *A late biographer*: Diogenes Laertius, *Lives of Eminent Philosophers* 2.42.
- 17 *he addressed . . . as true dikasts*: Plato, *Apology* 39c.
- 18 *a few more or less trivial details*: both writers have Socrates claim that those who are about to die gain prophetic powers, and that the indications from his supernatural voice were that he would benefit from the trial; both writers attribute the part of the indictment that mentioned new gods to this supernatural voice; both writers have Socrates insist that he has never wronged anyone.
- 18 *raised a hubbub*: Socrates asks for quiet or anticipates such interruptions at Xenophon, *Apology* 15; Plato, *Apology* 17c–d, 20e, 21a, 27a–b, 30c, 31d–e.
- 18 *defiance and arrogance*: 31d–e; 28a–b; 24e–25c; 20e–21b, 28e–29a; 34c–35d (see also *Crito* 48c–d); 37a–b; 38d–e; 28e–29a, 35d; 36d–e.
- 18 *Xenophon's express purpose*: *Apology* 1.

REFERENCES

- 19 *as recent scholars have argued*: 'Sense can be made of the *Apology* only if Socrates is seen as attempting to secure his acquittal in a manner consistent with his principles' (Brickhouse and Smith, *Socrates on Trial*, 210). Reeve describes Plato's *Apology* as 'part of a reasonable and intelligible defense compatible with his [Socrates'] deepest principles, and it establishes his innocence' (*Socrates in the Apology*, 185).
- 19 *he has Socrates say . . . and on another occasion . . .*: Plato, *Gorgias* 521e (see also 486a–b, 522b); *Theaetetus* 174c.

TWO

- 20 *he ruefully agreed*: ps.-Aristotle, *The Athenian Constitution* 9.1.
- 21 *personal motives*: Plato, *Apology* 23c: Meletus championed the poets, Anytus the politicians, Lycon the orators.
- 21 *'Extant evidence . . . public actor'*: Allen, *World of Prometheus*, 39–40.
- 25 *'Athenian rhetores . . . move a proposal'*: Yunis, *Taming Democracy*, 10.
- 28 *the oath taken by dikasts*: see especially Demosthenes 24.149–51 (*Against Timocrates*).
- 28 *as law-makers, rather than as law-interpreters*: e.g. Demosthenes 56.48 (*Against Dionysodorus*); Lysias 14.4 (*Against Alcibiades I*).
- 28 *'The prosecutor in one action . . . by turning prosecutor'*: Ober, *Mass and Elite*, 144–5.
- 28 *Written laws were idealized as equalizers*: e.g. Euripides, *Suppliant Women* 430–4.
- 29 *not always obliged*: in his speech *Against Aphobus* (27.40–1) Demosthenes complained that his opponents refused to produce in court a will that would have corroborated a point he was making.
- 31 *'The Athenians' criteria . . . firmly drawn'*: Wallach, *Platonic Political Art*, 97.

THREE

- 32 *Aristotle . . . quipped*: the story is preserved in Aelian, *Miscellany* 3.36 (first/second centuries CE).
- 33 *the scholarly consensus*: e.g. Hansen, 'The Trial of Sokrates', 165; Schofield, 'I. F. Stone and Gregory Vlastos', 285.
- 33 *the prosecution speech that survives*: the speech is preserved as Lysias 30 (*Against Nicomachus*).
- 33 *'a surprisingly high proportion . . . strong political agenda'*: Todd, *Shape of Athenian Law*, 308.
- 36 *both Xenophon and Plato*: Xenophon, *Recollections of Socrates* 1.1.5; Plato, *Apology* 26c.
- 37 *Protagoras . . . expressed his agnosticism*: fr. 4 Diels/Kranz.
- 37 *Prodicus of Ceos*: fr. 5 Diels/Kranz.
- 37 *Democritus of Abdera*: e.g. A74, A75 Diels/Kranz; but see the fuller set of relevant testimonia in Christopher Taylor, *The Atomists: Leucippus and Democritus* (Toronto: University of Toronto Press, 1999), 138–41.