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The Trial and Death of Socrates

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Athens, birthplace of democracy, executed the philosopher Socrates in the year 399 BCE for the crime of impiety (*asebeia*), i.e., irreverence toward the gods of the polis, which his accusers – Meletus, Anytus, and Lycon – had said was a corrupting influence on the young men who kept company with Socrates and imitated his behavior. But the city had been hearing complaints and jokes about Socrates for some thirty years by then. A popular comedian had in 414 added the term "to Socratize" (*sōkratein*) to the Athenian vocabulary, describing the conduct of long-haired youths who refused to bathe and carried sticks, affecting Spartan ways (Aristophanes, *Birds*, 1280–3). What was different in 399 was a wave of religious fundamentalism that brought with it a steep rise in the number of impiety cases in Athenian courts. Socrates, maintaining in his defense that he was not an atheist and that he had never willingly corrupted the young or indeed knowingly harmed anyone, was found guilty and went willingly to his execution against the exhortations and the plans of his companions, preferring death to the alternatives of desisting from philosophy or leaving his beloved polis to engage in philosophy elsewhere. Plato narrates the indictment, trial, and execution of Socrates in a series of five dialogues, the *Theaetetus*, *Euthyphro*, *Apology*, *Crito*, and *Phaedo*, set in the spring and summer of that year.

This singular event has been examined and reexamined ever since. There are other accounts,[1] but it is Plato's that has become philosophy's founding myth and that has immortalized Socrates in the popular imagination as a man of profound moral strength and intelligence – though also as a uniquely peculiar and inscrutable individual. When brought to trial, Socrates was 70 years old, married, the father of three sons ranging in age from 1 to 17, and poor; his net worth, including his house, was 5 *minae* (Xenophon, *Oeconomicus* 2.3.4–5), the equivalent of what a sophist might charge for a single course (*Apology* 20b9), and less than a skilled laborer could earn in a year and a half. He perished without publishing but having inspired his young companion Plato (424/3–347 BCE) and other men known as Socratics to compose dialogues and memoirs in which Socrates was featured. There were enough of these that Aristotle was later to refer to such Socratic works as a literary genre (*Poetics* 1447b11). What was it about democratic Athens in 399, its politics, religion, culture, laws, or courts – or about Socrates, or his accusers, or their charges – that might help explain what has appeared to so many as a great miscarriage of justice? In laying out some of the issues

raised by Socrates' trial and death, I will follow the five dialogues mentioned above in relation to the legal thread through the events: summons, preliminary hearing, pretrial examination, evidentiary and penalty phases of the trial, imprisonment, and execution (Harrison 1971; MacDowell 1978).

Anyone who reads the five dialogues, amidst the telling of Socrates' final story, encounters indestructible philosophy – argumentation concerning being, knowing, and philosophical method.[2] So provocative and engaging are the extended philosophical passages in the *Theaetetus* and *Phaedo* that anyone inquiring into Socrates' trial and execution must make a conscious effort not to be distracted by brilliant arguments, not to be seduced away from the narrative line of Socrates' last days. That this should be so is Plato's ultimate defense of the philosopher, his highest tribute to Socrates and to the very idea of what it is to live the life of a philosopher: one's circumstances, no matter how dire, are never more than a backdrop for the conduct of philosophy.

Meletus' Summons and the Political Background

Several things had already happened when Socrates, the summons in his hand, greeted Theodorus in the spring of 399 (*Theaetetus* 143d1–2), and it is best to set them out in order.

Meletus of Pithus was Socrates' chief accuser. He was the son of a poet also named Meletus, but was himself "young and unknown" (*Euthyphro* 2b8).[3] To charge Socrates, a fellow-citizen, Meletus was obliged to summon him to appear at a preliminary hearing before the relevant magistrate, namely, the king-archon (*archōn basileus*), who had jurisdiction over both homicide and impiety. This Meletus did by composing a speech or document that stated the complaint and demanded that the defendant, Socrates, appear on a specified day. It was not necessary to put the summons in writing, or for the king-archon to agree in advance about the date of appearance, but at least four days had to be granted between the notification and the hearing.

Athenian public prosecutors, selected by lot and paid a *drachma* per day, had only narrow functions, so, when Meletus made his accusation, he became both plaintiff and prosecutor in Socrates' case. The summons had to be served on Socrates personally and preferably in public: active participation in Athens' extensive religious life was a civic obligation, thus to prosecute impiety was to act in the public interest. Any citizen could serve and, though it was not obligatory, could add his name to Meletus' document, if Meletus put his complaint in writing (as *Apology* 19b3–c1 implies he did). If a defendant could not be located, it may have been permissible to announce the summons in front of his house (as allowed some decades later); but the sanctity of Socrates' house could not be violated for that purpose. One or two witnesses accompanied Meletus in his search for Socrates, men who would later swear that the summons had been properly delivered. These may have been the two men who would be Meletus' advocates (*syn*goroi*) in the trial, Anytus of Euonymon, and Lycon of Thoricus, men of very different dispositions.[4]

Anytus was rich, having inherited a tanning factory from his self-made and admirable father (*Meno* 90a). Plato emphasizes his hatred of sophists at *Meno* 90b, 91c, and 92e. He was elected general by his tribe, and in 409 tried but failed because of storms to

retake Pylos from the Spartans. Prosecuted for this failure, he escaped punishment by devising a new method of bribery for use with large juries that was later given the name *dekazein* and made a capital crime. In 404, he supported the government of the Thirty, but it soon banished him, whereupon he became a general for the exiled democrats (though his protection of an informer to the Thirty cast doubts on his loyalties). When the democracy was restored in 403, he became one of its leaders. Anytus served as a character witness in another of the impiety trials of 399, Andocides'. Xenophon calls Anytus' son a drunkard (Xenophon, *Apology* 31.1–4).

Lycon is known to us through an extended and sympathetic portrayal by Xenophon (in *Symposium*) who depicts him as the doting father of a devoted son, Autolycus, a victorious pancratist in 422 who was later executed by the Thirty. Lycon was a man of Socrates' generation who had become a democratic leader after the fall of the oligarchy of 411. In comedies, his foreign wife and his son are accused along with him of living extravagantly and beyond their means; he is accused with his son of drunkenness; but he alone is accused of treachery, betraying Naupactus to the Spartans in 405.

It is sometimes said that political animosity lay behind the impiety charges against Socrates, both because some of the men he was rumored to have corrupted were political leaders; and because, it has been claimed, he could not *legally* be charged with the political crime of subverting democracy (Stone 1988; cf. Burnyeat 1988). Although the labels "democracy" and "oligarchy" are ubiquitous, politics in Athens in the late fifth century resists reduction to a simple clash between broad-franchise democrats and narrow-franchise oligarchs for several reasons: many central figures changed sides, sometimes repeatedly; the oligarchies themselves varied in number (the 400, the 5000, the 30); clan and family interests as well as individual loyalties often cut across affiliation. During the long Peloponnesian War, from 431, Athens remained a democracy except for a brief period in 411. After a decisive Spartan victory in 404, however, the Assembly (*ekklēsia*) elected 30 men, three per tribe, to return the city to her predemocratic ancestral constitution. The Thirty quickly consolidated their power and wealth through executions and confiscations, driving supporters of the democracy into exile. After about 8 months of tyranny, in 403, the exiles retook the city in a bloody civil war, later driving the leaders of the Thirty and their supporters to Eleusis. An amnesty was negotiated with Spartan help that separated the two sides and made it illegal from 402 to bring charges against anyone on either side for crimes committed during the rule of the Thirty. Suspecting that the former oligarchs were hiring mercenaries, the democrats raided Eleusis in the early spring of 401 and killed all who were left. In the courts, from 400, the amnesty was observed for criminal charges, but residual hostility continued, and it was common to attack one's opponent for remaining in the city instead of joining the democrats in exile, as had Socrates' childhood friend Chaerephon (*Apology* 20e8–21a2). Socrates did remain in the city, but he opposed the Thirty – as his record shows – and there is no evidence that there was an underlying political motive in Socrates' case.

Upon receipt of the summons, to resume the narrative, Socrates enjoyed a citizen's right not to appear at the preliminary hearing, though Meletus' suit would then proceed uncontested to the pretrial examination stage. Even if charged with a murder, short of parricide, a citizen also had the right to voluntary exile from Athens, as the

personified laws remind Socrates (*Crito* 52c3–6). Socrates exercised neither of those rights. Rather, he set out to enter a plea before the king-archon and stopped at a gymnasium on his way.

The *Theaetetus*: Trial and Death in Prospect

The *Theaetetus*, replete with references to Socrates' impending trial and execution,[5] opens the five-dialogue exploration of what it is to lead the examined life of a philosopher. Philosophy begins in wonder (*Theaetetus* 155d3) with the study of mathematical patterns, and, in Socrates' case, ends – if it ends – with his death as presented in the *Phaedo*. Although the *Theaetetus* stands first in Plato's narrative, it is rarely read in that context because of its overwhelming philosophical importance in distinguishing perceptions and true beliefs from *knowledge*.[6] Yet the Athenians' failure to make precisely these distinctions is crucial to what happened in 399. Why the polis executed Socrates comes starkly into focus four times in the dialogue, showing that – however well-intentioned – *the Athenians mistook their friend for their enemy and killed him.*

The first is a famous passage (*Theaetetus* 148e–151d) in which Socrates likens himself to his mother, Phaenarete, for both are midwives, she of bodies, he of minds. As she is beyond child-bearing age, he is beyond wisdom-bearing age. As she runs the risk of being confused with unjust and unscientific procurers when she practices her art, he runs the risk of being confused with sophists when he practices his (cf. 164c–d). Through Socrates' maieutic art, others "have themselves discovered many admirable things in themselves, and given birth to them" (150d6–8).[7] He admits he is considered strange and has a reputation for questioning others and making them suffer birth pains without proffering his own views; some men want to bite him when he disabuses them of the silliness they believe. As he draws the midwifery comparison, Socrates presages what he will later say in court: that his mission is compelled by the god; that he has a personal *daimonion* or spiritual monitor,[8] which here sometimes forbids his association with youths who return to him after choosing bad company; and that no god can wish evil to man – the denial of which serves as an example of "silliness." The gods acknowledged by the polis were those of the poets, gods who often wished, and even caused, evil; but Socrates acknowledged no such gods. Plato makes it easy to imagine Socrates playing into the hands of his accusers, for Socrates volunteers examples of youths whose corruption he could not prevent and says Homer's gods Oceanus and Tethys are really flux and motion (152e7–8, cf. 180d), that Homer's golden chain is the sun (153c9–d1).

A second perspective arises out of the discussion of Protagorean relativism. If knowledge is perception, then every juryman is "no worse in point of wisdom than anyone whatever, man or even god" (162c2–5; cf. majority opinion, 171a). Protagoras, impersonated by Socrates, says:

> about matters that concern the state, too – things which are admirable or dishonorable, just or unjust, in conformity with religion or not – it will hold that whatever sort of thing any state thinks to be, and lays down as, lawful for itself actually is, in strict truth, lawful for it (*Theaetetus* 172a1–b5; cf. 167c–d, 177c–d, *Protagoras* 320d–328d);

from which it follows that if Athens thinks it is just, then it *is* just for the city that it execute Socrates. But it is another matter entirely, Socrates objects, when one considers justice not judicially but legislatively, i.e., considers what laws *ought* to be enacted in the interest of the polis – for a polis can judge its own good incorrectly.

> whatever word it [the state] applies to it [the good], that's surely what a state aims at when it legislates, and it lays down all its laws, to the best of its ability and judgment, as being most useful for itself (*Theaetetus* 177e4–6; cf. 179a),

says Socrates. However, one state's decision may approximate the truth, actual justice, less well than another's, and the counselor-gadfly of one polis may be wiser than that of another (cf. 177d). The implication is that Socrates' execution could be legalistically just yet unjust in itself, unjust by nature, thereby raising two further issues pursued in the *Apology* and in the *Crito*: whether a citizen must obey an unjust law, and whether punishment is justifiable. If a polis unwillingly does wrong, it deserves instruction, not punishment – as Socrates replies to his Athenian jury (*Apology* 26a).

The third is the central section, well known as the philosophical digression (*Theaetetus* 172c–177c) comparing the practical man and the philosopher, corresponding to "two patterns set up in that which is."[9] The description of the philosopher shows why the polis would condemn him. In Athens, philosophers are completely misunderstood; they "look ridiculous when they go into the law courts" (172c4–6), and worse. The philosopher's inexperience in court is mistaken for stupidity, his inability to discredit others personally is ridiculed, his genuine amusement is taken for silliness; he thinks of rulers as livestock keepers, fails to value property, wealth, or noble ancestry; he is arrogant, ignorant, and incompetent (174c–175b). If such a man should violate the law as well, wouldn't it be right to kill him? Two further opinions Socrates expresses about the philosopher of the digression will feature in the undoing of Socrates himself: he studies natural science (173e–174a), and his gods are not those of the city (176b–c). For such a godlike man, "the fact is that it's only his body that's in the state, here on a visit" (173e2–5); he "ought to try to escape from here to there as quickly" as he can (176a8–b1).

Fourth and finally, while discussing whether knowledge is true judgment, Socrates asks Theaetetus whether a jury has knowledge when it has been persuaded to a true judgment by an orator or a skilled litigant (201a–c) – reflecting exactly Socrates' situation with his own jury. By the strict letter of the law, Socrates is guilty of not believing in the vengeful Olympian gods of the Athenians and the poets, thus his jury is persuaded to a true judgment by the orator Lycon and the skilled litigant Anytus, if not by the feckless Meletus. But the result is legalistic justice, not justice itself; it reflects a correct judgment, but not knowledge. As the digression puts it, the point is "to give up asking 'What injustice am I doing to you, or you to me?' in favor of the investigation of justice and injustice themselves" (*Theaetetus* 175c1–2).

The *Euthyphro* and Piety

The *Euthyphro*, on the nature of piety, takes place just before Socrates enters his plea before the king-archon. The diviner-priest, Euthyphro, a man in his mid-forties who

will prove inept at grasping piety when Socrates questions him, nevertheless predicts impending events well, fearing that Meletus will harm "the very heart of the city by attempting to wrong" Socrates (3a7–8), and inferring that Socrates' spiritual monitor signals religious innovation "easily misrepresented to the crowd" (3b5–9). Socrates replies by zeroing in on the crux: the Athenians would not mind his spiritual monitor or his opinions if he were not imitated by the young (3c7–d2; cf. 2c–d); the reason he is a defendant, he says, is that he does not accept the poets' stories about the gods' wrongdoing, "and it is likely to be the reason why I shall be told I do wrong" (6a8–9). Socrates leaves no doubt that the quarrelling gods Athenians accept are not the ones he believes in: what he formulates as questions at 6b–c, he states unambiguously elsewhere: "we can state the truth like this. A god is by no means and in no way unjust, but as just as it's possible to be" (*Theaetetus* 176b8–c1). For Socrates, the gods agree perfectly in their goodness, justice, wisdom, etc., and could not come into conflict – something Euthyphro cannot accept.

But Socrates' insistence that what the Athenians are most concerned about is how the youths are affected introduces the topic of education that plays a role in the background. Athenian males of the propertied classes sought higher education in their late teens. Since success in democratic public life was enhanced by the ability to influence the citizenry in the Assembly and courts, many studied with rhetoricians to learn the latest techniques of effective public speaking. In the latter fifth century, however, new intellectual influences from abroad began making headway in Athens among the young: sophists and natural scientists. The former could outdo the ordinary rhetoricians by teaching new ideas about what constitutes a good life or a good state, and some of them taught logic-chopping and hair-splitting as well, to make "the worse into the stronger cause" (*Apology* 19b5–c1), encouraging the young to get ahead without regard for justice or even custom. Natural scientists too seemed a threat to social order, giving naturalistic explanations for natural phenomena, and were lampooned repeatedly in comedy. Over the years, as Athens suffered war, plague, loss of empire, and defeat, its citizenry became increasingly alarmed that the new learning was somehow to blame, and anti-intellectualism grew.

The Preliminary Hearing

Although the rough content of the summons is given by the conversation in the *Euthyphro*, how Socrates would later that day answer the charge at his preliminary hearing probably led to greater precision in the formulation of the charge itself. The preliminary hearing designated the official receipt of the case (*dikē*) by the king-archon who, in office for one year, would later preside at the pretrial examination and the trial. Meletus stated or handed over his complaint, and Socrates answered by entering his plea. The king-archon was authorized to refuse Meletus' case on technical procedural grounds, to redirect it to an arbitrator, or to accept it. If Socrates took substantive exception, challenged the admissibility of the charge in relation to existing law, he had the right at this preliminary stage to file a countersuit (*paragraphē*) that would have been heard first – but he did not. In the case of an oral or improperly written complaint, the king-archon rendered the charge in appropriate legal language, marking

the official acceptance of the case, now an indictment in the modern sense. It was then published on whitened tablets in the agora and a date was set for the pretrial examination (*anakrisis*); from this point, word would have spread that old Socrates, that big-mouth, hair-splitting, long-time target of the comic poets, had been charged with impiety.

The indictment that we have – via Diogenes Laertius (2.40.3–7), who took it from Favorinus (second century CE), who said he saw it in the public archive, the Metroön – is so formulated that, taking both the *Euthyphro* passage and this one into account, a secondary literature has grown up over exactly how many separate charges Socrates faced:

> This indictment [*graphē*] is brought on oath by Meletus, son of Meletus, of Pithus, against Socrates, son of Sophroniscus, of Alopece: Socrates is guilty of not believing in the gods the city believes in, and of introducing other divinities [*daimonia*]; and he is guilty of corrupting the young. The penalty assessed is death.

Athenian law forbade impiety, and that is the single law Socrates is charged with breaking – in two ways (not believing . . . , introducing . . .), with one result: corruption of the young.

Narrowly and legalistically, the prosecution faced some obstacles: base individuals who could testify to Socrates' direct influence would be suspect as witnesses; the upright citizens who would have been convincing witnesses, Socrates' actual companions, would testify only to his piety and propriety (*Apology* 33d–34b). But the prosecution had the advantage that the charge of impiety was not limited to the period 403–399, for it was not a political crime; Meletus, Anytus, and Lycon had only to persuade the jury that Socrates had at some time in his long life been impious and, since some of Socrates' associates, whom he might be alleged to have corrupted, were already dead – Critias, Charmides, Alcibiades, and others associated with the particularly notorious sacrileges of 415 – the prosecution could cast aspersions without blatantly violating the law against hearsay evidence.[10] It is probably unwise to be too narrow or legalistic, however, for juries could be swayed by innuendo and fallacious argument, swept along by powerful orations. Besides, the king-archon's acceptance of the case is *prima facie* evidence that there was a case to be made.

The Pretrial Examination

The court fees normally assessed of a plaintiff at this point, to be reimbursed by the defendant if found guilty, were waived in Meletus' suit because impiety prosecutions were "in the public interest." Yet his action would not have been without risk: to discourage frivolous suits, Athenian law imposed a heavy fine on plaintiffs who failed to obtain at least one-fifth of the jury's votes, as Socrates points out (*Apology* 36a7–b2).

Unlike closely timed jury trials, pretrial examinations were occasions for questions to and by the litigants, including questions of one another, to make more precise the legal issues of a case so a verdict of guilt or acquittal would be more straightforward. It was no time for speeches. This procedure had become essential because of the

susceptibility of juries to bribery and misrepresentation by speakers who deliberately and often skillfully interpreted laws to their own advantage. Originally intended to be a microcosm of the citizen body as a whole, juries were now manned by volunteers – the old, disabled, and poor – who needed the meager pay of three *obols*, half the *drachma* that an able-bodied man could earn for a day's work (cf. Aristophanes, *Wasps* 291–311). In 399, Athenian men age 30 or over were eligible to volunteer for jury service at the beginning of the archon year, in midsummer. Six thousand were impaneled, probably by lotteries for 600 from each tribe, to be deployed repeatedly in different configurations to the various civil and criminal courts throughout the year. When Socrates' trial took place at the approach of midsummer, the jurors were experienced if not jaded.

Also, unlike trials, the pretrial examinations could be adjourned and reconvened repeatedly – when, for example, one of the principal parties needed to collect information. If a litigant wished to delay proceedings for weeks or months, this was a rich opportunity. Magistrates could also use the pretrial examination to compel a litigant to reveal information. We do not know what went on at Socrates' pretrial examination, though his complaints at *Theaetetus* 172e acknowledge some constraints.

The Trial and Socrates' Defense: The *Apology*

Plato takes up the story again in the month of Thargelion (May–June) a month or two after Meletus' initial summons, when Socrates' trial occurred. Onlookers gathered along with the 500 or 501 jurors (*Apology* 25a)[11] for a trial that probably lasted most of the day, each side timed by the water clock. Plato does not provide Meletus' prosecutorial speech or those of Anytus and Lycon; or the names of witnesses called, if any (*Apology* 34a3–4 implies Meletus called none). *Apology* – the Greek "*apologia*" means "defense" – is not edited as are the court speeches of orators. For example, there are no indications in the Greek text after 35d8 and 38b9 that the two votes were taken; and there are no breaks after 21a8 or 34b5 for witnesses, although Socrates may in fact have called Chaerecrates or the seven named men. Also missing are speeches by Socrates' supporters; it is improbable that he had none, even if Plato does not name them.

It is sometimes said that Socrates was the first person in the West to be convicted for his beliefs – for a thought-crime or crime of conscience; and not believing in the gods of the Athenians is exactly that. In classical Athens, however, religion was a matter of public participation under law, regulated by a calendar of festivals in honor of a variety of deities, with new ones introduced from time to time. The polis used its revenues to maintain temples and shrines, and to finance festivals; it mandated consultation with Apollo's oracle at Delphi at times of important decisions or crises; generals conferred with seers before deploying troops; and the lottery system for selecting public officials left decisions to the gods. Prescribed dogma or articles of faith, however, were unknown, so compliance was measured by behavior; and it is very unlikely, based on extant Socratic works, that there would have been *behavior* to offer in evidence of Socrates' beliefs, e.g., neglecting sacrifices or prayers, for Socrates continues his religious observance through his dying day. Moreover, unlike the case of the acquitted

Anaxagoras a generation earlier (cf. *Apology* 26d6–e2), there were no writings to present as evidence of unorthodox beliefs.

Socrates divides the accusations against him into old and new, addressed in that order. He had a reputation fueled by several comic poets from about 429 that conflated him with both natural scientists and sophists, often emphasizing his egregious effect on the young:[12] he "busies himself studying things in the sky and below the earth" (*Apology* 19b5). The single case Socrates mentions explicitly in *Apology* is Aristophanes' *Clouds* (produced in 423, revised in 418). As clear as it is with hindsight that the *character* Socrates who introduces new gods, denies the old ones, and corrupts the young in the play is a composite of several different sophists, natural scientists, and philosophers (Dover 1968), the jury made no subtle distinctions. Besides, Aristophanes had made fresh attacks in *Birds* (in 414) and *Frogs* (in 405), both times emphasizing that the city's young men imitated Socrates. In the latter, the Socrates-imitators are accused of attacking the poets. Socrates says himself that the young men question and thereby anger their elders (*Apology* 23c2–d2). Though Socrates denies outright that he is a natural scientist, his familiarity with their investigations and his own naturalistic explanations make it no surprise that the jury could not tell the difference (e.g., *Theaetetus* 152e, 153c–d, 173e–174a; *Phaedo* 96a–100a). Those who had witnessed Socrates in philosophical conversation (*Apology* 19d1–7), his respondents becoming angry or confused, were not likely to have appreciated fine distinctions between philosophical inquiry and sophistry. Socrates' excuse for his strange behavior – the god makes me do it (20e–23b) – appears from the crowd's reaction only to have exacerbated their misunderstanding.

Turning to the new charges, Socrates easily defeats Meletus in argument, demonstrating in turn that Meletus (1) has not thought deeply about the improvement and corruption of the young, (2) should have sought to instruct Socrates privately before hauling him into court, (3) confuses Socrates' views with those of Anaxagoras, and (4) holds incompatible theses: Socrates is an atheist; and Socrates introduces new divinities. Yet the very exhibition of Socratic questioning, coupled with Socrates' belittling of Meletus (26e6–27a7) may have boomeranged. The jury, riled again, may have found Socrates' tactics indistinguishable from those of sophists: they saw, but they did not understand. Socrates' relentless honesty, easily mistaken for arrogance, casts doubt on his every claim: he will do no wrong, even to avoid death; he is like Achilles; he has risked death in battle; he does not fear death; he will never cease to do philosophy, to examine himself and others, even for the promise of acquittal; he is god's greatest gift to the city; his accusers cannot harm him, and the jurors will harm themselves if they kill him.

A defendant is wise to refute what he can, and Socrates does address some of the evidence against him directly. (5) He admits he has had, since childhood, the spiritual monitor that Meletus ridicules, but he defends it. He attributes to it his inability to "yield to any man contrary to what is right, for fear of death, even if I should die at once for not yielding" (32a6–7), and offers two instances of his defiant behavior in proof of it: presiding (as *prytanis*) over the Council (*boulē*) in 406, he opposed the Assembly's unlawful denial of separate trials to six generals who were tried and executed as a group. As a citizen under the lawfully elected but corrupt government of the Thirty, he refused the order to seize a fellow citizen, a general allied with the

democrats in exile.[13] In both cases Socrates cites, crediting his spiritual monitor, the Athenians had later come around to Socrates' view. (6) He denies being anyone's teacher, receiving a fee for conversing, teaching or promising to teach, and is thus unwilling to answer for the conduct of others (33a–b). (7) The Athenian god Apollo ("the god"), he says, ordered him to question wise guys – which the youths of Athens enjoy (33c); and he says oracle-like that he believes in the gods "as none of my accusers do" (35d7).

(8) Socrates three times takes up the charge that he corrupts the young, twice in the same hypothetical way: "Either I do not corrupt the young or, if I do, it is unwillingly." If unwillingly, he says he should be instructed because "if I learn better, I shall cease to do what I am doing unwillingly" (25e6–26a4). Later: "if by saying this I corrupt the young, this advice must be harmful, but if anyone says that I give different advice, he is talking nonsense" (30b5–7). He also argues that many of his former and current young companions are present with their guardians, but that none of them have testified to his corrupting influence (33d–34b). Anytus had warned the jury that Socrates should perhaps not have been brought to trial but, since he was, must be executed or else the sons of the Athenians will "practice the teachings of Socrates and all be thoroughly corrupted" (29c3–5). Can this 70-year-old who insists he will continue to philosophize possibly yield to instruction? Socrates claims his advice is that the soul is more important than the body or wealth (30a–b), but there has also been testimony that he teaches the young to despise the gods of the city and to question their elders disrespectfully. Even Socrates could not blame the jury for finding him guilty, for it is mistaken about what is truly in the interest of the city (cf. *Theaetetus* 177d–e). So the gadfly is swatted. The verdict is guilty, and the trial passes into the penalty phase.

Socrates blames one of Athens' laws:

> If it were the law with us, as it is elsewhere, that a trial for life should not last one but many days, you would be convinced, but now it is not easy to dispel great slanders in a short time. (*Apology* 37a7–b2)

This isolated complaint in the *Apology* is supported by the running criticism of the court in the *Theaetetus* noted earlier, e.g., "is what's true to be determined by the length or shortness of a period of time?" (158d11–12; cf. *Gorgias* 455a). And it stands opposed to the remark of the personified laws that Socrates was "wronged not by us, the laws, but by men" (*Crito* 54c1).

Socrates goes on to describe himself as the city's benefactor; to maintain that he mistreats no one and thus deserves a reward, not punishment; to insist that he cannot and must not stop philosophizing, for "the unexamined life is not worth living" (*Apology* 38a5–6) – confirmation to some that incorrigible Socrates opposes the will of the city. In a last-minute capitulation to his friends, he offers to allow them to pay a fine of 30 *minae*, six times his net worth. He is sentenced to death and reflects that it may be a blessing: either a dreamless sleep, or an opportunity to converse in the underworld.

Socrates' trial was no evil conspiracy against an innocent, but something more profound and at the same time more tragic – a catastrophic mistake, a misunderstanding that could not be reconciled in the time allowed by the law.

The *Crito* and Socrates' Refusal to Escape

The day before Socrates' trial begun, the Athenians launched a ship to Delos, dedicated to Apollo and commemorating Theseus' legendary victory over the Minotaur (*Phaedo* 58a–b). During this annual event, Athenian law demanded exceptional purity, so no executions were allowed. Although the duration of the voyage varied with conditions, Xenophon says it took 31 days in 399 (*Memorabilia* 4.8.2); if correct, Socrates lived 30 days beyond his trial, into the month of Skirophorion (June–July 399). A day or two before the end, Socrates' childhood friend Crito – sleepless, distraught, depressed – visits Socrates in the prison, armed with arguments for why Socrates should escape before it is too late. Socrates replies that he "listens to nothing . . . but the argument that on reflection seems best" (*Crito* 46b4–6), whereupon a reflective conversation begins.

Socrates' argument that he must not escape is a continuation of his refrain from the *Apology* (28b, 29b, 32a, 32b, 37a, 37b) that he never willingly does wrong (*Crito* 49b–d). The principle is absolute. Wrongdoing, mistreating people, and injustice are the same, "in every way harmful and shameful to the wrongdoer" (49b5), never to be inflicted, not even in return for wrongdoing suffered (cf. *Theaetetus* 173a8), not even under threat of death (cf. *Apology* 32a), not even for one's family (*Crito* 54b3–4). Clearly Socrates cannot be morally consistent and inflict harm on Athens in return for harm endured, as Crito would prefer (50c1–3). Note, however, that although one should keep one's agreements (49e6–8) – one's social contract as it were – one cannot always keep all one's agreements at the same time. Socrates is right not to equate injustice with lawbreaking. We have already seen that (a) cities legislate their good to the best of their ability, but can be mistaken about what is in their interest, consequently establishing unjust laws; (b) Athens' law against impiety, insofar as it required acceptance of the quarreling, wrongdoing gods of the poets, was an unjust law; (c) orders from lawful governments to commit wrongdoing are not binding because they are unjust; and (d) Athens' one-day limit on all trials was an unjust law. Socrates had already found it necessary to violate the law of (b) when it conflicted with both his spiritual monitor and reason, and to disobey an order of type (c) when following it would have harmed someone else. Nevertheless, Socrates says he would be mistreating Athens to escape and must therefore remain in prison (49e9–50a3). To understand why that is so, we should take into account the argument of the *Theaetetus* and the *Apology* that (e) the correct response to unwilling wrongdoing is not punishment but wise counsel, instruction – the positive corollary to the negative principle of do-no-harm. When the laws tell Socrates to persuade or obey them (*Crito* 51b9–c1), they give a nod to this principle. Like keeping agreements, however, persuasion is not always possible and is thus subordinate to do-no-harm.

One might say Socrates should have attempted to persuade the Thirty, and perhaps he did, but that situation differed importantly: undermining a corrupt government by refusing to harm a good man was unlawful, but it was not unjust. In the present case, having already said that death may be a blessing, Socrates cannot point to a harm that would outweigh the harm he would be inflicting on the city if he now exiled himself unlawfully when he could earlier have left lawfully (52c3–6). In this case, the

laws are right to say that if Socrates destroys them, he will manifestly confirm the jury's judgment that he is a corrupter of the young (53b7–c3).

The impiety law Socrates violated is interesting in a different way. Whereas one can destroy laws by undermining them, one cannot *persuade* laws; one must rather persuade men. And that presents an insurmountable obstacle: in 410, a commission was established to inscribe all the laws, the Athenian Constitution, in stone on the walls of the king-archon's court. Just as the task was completed in 404, a series of calamities – Athens' defeat by Sparta, the establishment of the Thirty, then bitter civil war – persuaded the citizens that, however useful it was to have the newly inscribed laws readily available, those laws themselves had failed to prevent disastrous decisions over a generation of war in which the empire had been lost. When the democracy was restored in 403, a Board of Legislators (*nomothetai*) was instituted to write additional laws, assisted by the Council. A new legal era was proclaimed from the year 403/2, Ionic lettering replaced Attic for inscriptions, and a public archive was established so laws written on papyrus could be consulted and cited. From that year, only laws inscribed from 410 to 404, or from 403 at the behest of the new legislators, were valid; an official religious calendar was adopted and inscribed; and decrees of the Assembly and Council could no longer override laws (such as had enabled the six generals to be tried as a group over Socrates' objections).

However useful the reforms were, the Board was not a public institution seeking advice or holding hearings. Furthermore, it was a crime for anyone else even to propose a law or decree in conflict with the inscribed laws. Still, Socrates did what he could: he never shrank from discussing whether the gods were capable of evil and conflict. It is anachronistic to use the phrase "academic freedom" of the era before Plato had established the Academy, but what is denoted by the phrase owes its authority to Socrates' steadfast principle of following nothing but the argument that on reflection seemed best to him.

The Execution of Socrates in the *Phaedo*

Plato sets the final conversation and execution of Socrates in a metaphysically speculative, Pythagorean dialogue where intricately intertwined arguments, mythology, and Socratic biography have roles to play. The *Phaedo* is Plato's most dualistic dialogue, exploring the soul's troubled relationship with the body; and it is the only dialogue in which Plato's absence is explicitly remarked (59b10). What in the *Theaetetus* is Socrates' down-to-earth maieutic method, is in the *Phaedo* the soul's recollection of transcendent Forms. What in the *Theaetetus* is the philosopher's escape from the earthly mix of good and bad, is in *Phaedo* the soul's escape from the body.

Phaedo is, by custom, the dialogue most concerned with what it is to be a philosopher and to lead the life of philosophy – though in more rarefied air than when the rough Socrates practices his questioning techniques on anyone willing to be engaged by him. It is perhaps closer to the truth to say that the dialogue is about dying in philosophy, for the recurring image is of the soul's purification and final flight from the imprisoning body that distracts it with pleasures and pains, needs and desires,

throughout life. Phaedo tells the Pythagorean community at Phlius that – while Socrates' companions felt "an unaccustomed mixture of pleasure and pain at the same time . . . sometimes laughing, then weeping"[14] – the philosopher himself, on his last day of life, "appeared happy both in manner and words as he died nobly and without fear" (58e3–4), a proem sustained in the conversations about the soul that follow.

Without ever claiming certainty, and sometimes flatly denying he has it, Socrates wants to put his argument before his "judges," his friends: one who has spent a lifetime doing philosophy should face death cheerfully. He says, "other people do not realize that the one aim of those who practice philosophy in the proper manner is to practice for dying and death" (64a4–6) – which raises a laugh and Simmias' joke that people think "true philosophers are nearly dead" (64b4–6; cf. 65d, 80e). But the seriousness of the day's talk is plain when Simmias and Cebes have delivered themselves of arguments against the immortality of the soul, depressing everyone. Socrates rallies:

> If you take my advice, you will give but little thought to Socrates but much more to the truth. If you think that what I say is true, agree with me; if not, oppose it with every argument and take care that in my eagerness I do not deceive myself and you and, like a bee, leave my sting in you when I go. (*Phaedo* 91b8–c5)

Philosophical argument resumes. Near the end, Socrates breaks into a long story of the afterlife that "no sensible man would insist" were true, but where "Those who have purified themselves sufficiently by philosophy live in the future altogether without a body" (114c2–6).

In sharp contrast, realism dominates the opening and closing scenes in the prison. In the morning, Socrates visits with Xanthippe and their baby, and rubs his ankle where the bonds have been removed, speaking of pleasure and pain; the Eleven, prison officials chosen by lot, are already gone (59e–60b). Now, sometime in the afternoon and with the philosophical conversation ended, attention focuses again on the body. Socrates has no interest in whether his corpse is burned or buried, he says, but he wants to take a bath to save the women of his household from having to wash the corpse, then he meets with his family before rejoining his companions. The servant of the Eleven, a public slave, bids Socrates farewell by calling him "the noblest, the gentlest, and the best" (116c5–6), but cannot forbear weeping. The poisoner describes the physical effects of the poison, the *Conium maculatum* variety of hemlock (Bloch 2002). Socrates cheerfully takes the cup, "without a tremor or any change of feature or color" (117b3–5), and drinks. The emotions that have been threatening Socrates' companions now erupt violently – and are immediately checked by Socrates' shaming, "keep quiet and control yourselves" (117e2). The poison begins to work, and the poisoner follows its numbing progress from the feet to the belly – touching, testing, pressing Socrates' body. Socrates makes a last request of Crito. Presently, his body gives a jerk, after which his eyes are fixed. Crito closes them. Phaedo, the former slave, echoes the servant of the Eleven, ending the dialogue with an epithet for Socrates, "the best, . . . the wisest and the most upright" (118a16–17).

Notes

1 Xenophon is often cited, though he was not in Athens at the time: see discussions in Stone (1988), Brickhouse and Smith (1989: §§ 1–2), and McPherran (1996: *passim*); later accounts, mostly fragmentary, tell how Socrates was viewed in later centuries (see Brickhouse and Smith 2002, cited at Bloch 2002).

2 Cf. allusions at, e.g., *Sophist* 216a–d, and *Statesman* 299b–300e, set dramatically when the indicted Socrates was at liberty pending trial.

3 *Euthyphro*, *Apology*, *Crito*, and *Phaedo* translated by G. M. A. Grube, revised by John Cooper.

4 Anytus appears in the works of 11 different contemporaneous authors (Nails 2002: 37–38), Lycon in 6 (Nails 2002: 188–89).

5 Litigation is a topic (172a–173b, 173c–d, 174c, 178e, 201a–c); but there are additional allusions to legal proceedings: (a) the *ad hoc* adoption of legalistic language (145c, 170d, 171d, 175d, 176d–e, 179b–c); (b) reminders about the time required by philosophy and limited by litigation (154e, 158d, 172c–e, 187d, 201a–b; cf. *Apology* 24a, 37b). Moreover, there are thematic ties to *Phaedo* (*Theaetetus* 144e–145a, 145c–d, 154c, 173e–174a, 176a–b, 205c).

6 By discussing *Theaetetus* in dramatic order, I make no claims about when it was written, though I reject the so-called developmental hypothesis that Plato's views evolved in some linear way: Plato tendered positions tentatively, leaving them open for revision, and returned to them repeatedly to address material for various purposes (Nails 1995: 219–31).

7 *Theaetetus* translated by John McDowell.

8 See *Republic* 496c4 (cf. 509c1), *Phaedrus* 242b9, *Euthydemus* 272e4, *Euthyphro* 3b5, *Apology* 31d1, 40a4, 41d6, and *Theaetetus* 151a4.

9 Thesleff (1967: 57–61) surveys three types of central section, arguing that Plato, like Pindar et al., occasionally sets a visionary speech at the center of a dialogue, e.g., the divided line passage in *Republic*. Blondell's (2002: 289–303) account of the digression notes the special role of the central section and cites more recent bibliography. The passage here shows, by the way, why Socrates would fit more comfortably in the primitive communal society of *Republic* 2 (369b–372d) than in even a purged Athens, though it is the latter that he loves (*Theaetetus* 143d).

10 Critias was a leader of the Thirty; Charmides was a member of the Piraeus Ten in the same period. The mutilation of herms and profanation of the mysteries is treated in Nails (2002: 17–20; s.vv.); contemporaneous ancient sources are Thucydides 6.27–29, 6.53, 6.60–1; Andocides 1.11–1.70; inscriptions on *stelae* from the Eleusinium in Athens (*Inscriptiones Graecae* I 421–430); and Xenophon, *Hellenica* 1.4.13–21. Plutarch, *Alcibiades* 18–22; and Diodorus Siculus 13.2.2–4, 13.5.1–4, 13.69.2–3 may have used contemporaneous sources, no longer extant, in their much later accounts.

11 The round number 500 continues to appear in contemporaneous accounts long after we know 501 were employed to avoid ties.

12 See Nails (2002: 266–7) for Aristophanes, *Clouds*; *Birds* 1280–3, 1553, *Frogs* 1491–9 et al.; and for fragments of Callias' *Pedētae*, Teleclides, Amipsias' *Connus*, and Eupolis.

13 A more complete account appears in Nails (2002: 79–82), citing Xenophon, *Hellenica* 1.7.8–35; Diodorus Siculus, *Library of History* 13.98–103; and contemporary sources; cf. pseudo-Aristotle, *Athenian Polity* 34.1. The election and rule of the Thirty, with numerous ancient and contemporary sources, is at Nails (2002: 111–13). Leon of Salamis has an entry at Nails (2002: 185–6) with reference to Thucydides 5 and 8, *passim*; Xenophon, *Hellenica* 1 and 2, *passim*, especially 2.3.39–41; Andocides 1.94; Lysias 10, 13.44; Plato, Letter 7.324e–325a, and *Apology* 32c–d; and contemporary sources.

14 59a4–9. Considerable information about these companions is known. Of some 23 persons, only 2 are attested in the liturgical class, 5 or fewer are Athenian men under 30. There are 3 slaves and a (foreign) former slave, the illegitimate son of a rich man, 2 to 3 women, 3 children, and 6 foreigners, 1 of whom seems to have been wealthy (Nails 2002: xxxix; s.vv.). The prison cell, which could not have held them all at once, has been unearthed (Camp 1992: 113–16).

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