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CONTRA SOCRATEM

1. How Socrates was put on trial

We are here to represent the City of Athens and argue the charges against Socrates.

Socrates is accused (a) of impiety demonstrated by his public contempt for the gods who protect the Athenian Democracy and (b) of corrupting the youth of Athens, teaching them to occupy themselves with their souls instead of performing public duties and pursuing the occupations that defend the City of Athens against internal and external enemies.

Both charges against Socrates have been brought by his fellow citizen Meletus according to the laws of Athenian Democracy. At an initial (pretrial) stage the case was examined by King Archon (one of the nine archons of the City) who after hearing both parties, i.e. Meletus the accuser and Socrates the defendant, and after examining the evidence submitted by them, decided to refer the case to be tried before Heliiaia, the jury court of Athens, consisting of 500 jurors, all citizens of Athens over thirty years old, taken by lot on the same day of the trial hearing.

No record of Socrates trial exists. We don't know the details of the charges against him. We do know, however, that the three accusers of Socrates, i.e. Anytus, Meletus and Lykon, proved both charges in open court and persuaded the majority of the jurors (280 against 220) to convict him.

According to Plato's *Apology* Socrates began his oral argument before Heliiaia noting that the speeches of his accusers were so persuasive that even he "*was almost carried away*" in spite of himself.

Our knowledge of the specifics of the accusations against Socrates is necessarily based on his own apology as it is reported by Plato. But this knowledge is incomplete. A statement of any accused person does not always reproduce accurately the charges against him/her. Moreover, what strikes the reader of Socrates' apology is that he

deliberately avoided answering the charges against him. Rather, he used the court's tribune in order to promote -in a highly provocative way- his deviant ideas on democracy, court hearings, public and spiritual life of Athens, and to exhibit his deep disrespect for the jury court of his peers. He addressed the jurors as "men of Athens" and reserved the term "judges" only for those jurors who had voted in favour of his acquittal. He showed no respect for the gods who protected the City of Athens and its fundamental institutions.

2. A strange coalition

We, the advocates of the Athenian Democracy and accusers of Socrates, know that our task is not an easy one. How on earth could someone (even a honey-tongued master of the art of persuasion) persuade judges or jurors of today to convict one of the most celebrated philosophers of all times?

Indeed, whoever attempts today to speak for Athens and against Socrates faces a strange coalition of zealous Socratic supporters.

Christians see in Socrates a true pre-Christian martyr who preached the supremacy of our souls over material joys of this world and faced without fear his death penalty imposed by a pagan state. Liberals celebrate Socrates as a courageous free thinker and a hero of unlimited free speech who insisted until he was put to death on his individual right to communicate his ideas against an oppressive and intolerant society. But even critics or declared enemies of participatory democracy cite Socrates conviction as an eminent example of the "tyranny of the majority" and the incompetence of plain people to perform public duties. Opponents of the jury system find in Socrates' conviction the evidence that jurors are prejudiced and incompetent to judge their peers, while opponents of the death penalty would invoke his conviction to demonstrate that this penalty is unacceptable since it precludes the quashing of a manifestly wrongful conviction.

What is the explanation of this strange pro-Socratic coalition of these otherwise diverging groups of people?

My impression is, with respect, that most of Socrates' supporters select from his teachings those ideas which they believe fit their own. Even worse, they approach Socrates' trial out of its historical context, i.e. they project modern concepts in relation to the secular state and freedom of religion, freedom of speech and individual rights, separation of state powers and legal certainty into a totally different time and culture,

that of the Attic Democracy.

3. The political and social background of Socrates' trial

Men of Athens we are not here to try Socrates the philosopher. We have no intention to accuse him because of his ideas. We are here to examine whether Citizen Socrates committed the acts of which he was accused breaching the laws of Athens; and whether, back in 399 B.C., he was given a real chance to effectively rebut the charges against him and defend his case in a public hearing in accordance with fairness standards of his time.

To this purpose, let me first briefly highlight some of the fundamental political, judicial and cultural constituents of the Athenian Democracy at the time of Socrates trial. Against this background I will then demonstrate that Socrates did have a fair trial whose outcome on both counts was in harmony with the law. I will also demonstrate that the death penalty which followed his conviction was the result of his own decision rather than an act of revenge by his jurors.

Democracy had been restored in Athens just four years before Socrates' trial. The memories of the blood-stained regime of the pro-Spartan Thirty Tyrants who killed 1500 people in eight months were vivid. The Tyrants were led by the notorious Critias, a prominent pupil of Socrates, and among them was Charmides, a pupil of Socrates as well. The Tyrants were overthrown by brave democratic Athenians – among them Anytus, one of Socrates accusers- and democracy was restored. An amnesty, which followed, smoothed the way for the full recovery of the City's democratic institutions.

And what an admirable democracy this was! It would be fair to say that at no other time in history had people achieved such a high standard of direct participatory democracy, where all (male) citizens performed public duties electing and being elected by their fellow citizens to accomplish even the most demanding duties. There was no centralized state power in Athens. Its citizens did not perceive themselves as individuals who needed protection through individual rights against a powerful and omnipresent State. There were no professional politicians, soldiers or judges. Every citizen performed in rotation his public duties on a continuous basis. Moreover, what we would call today religious activity was not left to the individuals as a private affair and the notion of a secular (as opposed to a religious state) was non-existent. Athenians pursued their spiritual activities and honoured their gods jointly and in

public. Happiness was a public and not a private affair. All in all, the Athenian democracy was organized as an integrated political and social system, in which citizens were expected to be active in all aspects of civic life. Escaping into privacy was regarded as a non-honourable behaviour.

Socrates, however, in his speech to the jurors proclaimed:

“A man who really fights for justice must lead a private not a public life, even if he is to survive for a short time” [32a].

Athenians of that time knew all too well how vulnerable their unique democracy was. Enemies from inside were still pursuing the establishment of an oligarchic (pro-Spartan) regime, while external enemies would grasp every opportunity to defeat Athens and submit its citizens to slavery and disrespect.

Athenians were alert to these dangers and determined not to let anyone destroy once again the fundamentals of their political and social order. Early in the morning of Socrates' trial the five hundred jurors of Heliaia swore their oath on the Ardetos Hill promising to vote in accordance with the laws of the Assembly (*εκκλησία του δήμου*) and the Council (*βουλή*) and not to vote in favour of oligarchy or any tyrant; to reject any gift in relation to the judgment; to judge the accused person for the act he was accused of; and to equally listen to both the accuser and the defendant.

4. Socrates' trial tactics

Plato's *Apology* demonstrates that the jurors of Socrates did not violate their oath. Socrates was given ample time (three hours) to defend himself against the charges. He was even free to examine his accusers. According to Plato's *Apology* he exercised this right aggressively attacking Meletus as an unashamed liar.

In our modern so-called liberal societies no accused person would be allowed to examine and insult a prosecutor; and no accused person would be allowed to address the jury court in the way Socrates did. Be sure that a defendant who would use in our courts a language similar to that of Socrates would be prosecuted for contempt of court. But this was Athens of 399 BC! Athenians based all important decisions on public dialogue and followed those of their fellow citizens who presented the most persuasive arguments. In court proceedings parties were asked to present their case and the party who had the most persuasive arguments prevailed. *Πειθώ*, the Goddess of Persuasion, was one of the most respected gods of the City of Athens.

The reader of Socrates' apology is struck by his *μεγαληγορία* (big mouth-

superciliousness) during his trial. He openly attacks his jurors claiming that they are not competent to judge him, the wisest man on earth -this is how he describes himself invoking a Delphic oracle. He brands his accusers as shameless slanderers and urges the jurors to keep quiet and listen to him, because he is “*a gift of the god to the city*” and they would never find someone else like him. He claims his right to be the gadfly “*upon a great and noble horse [scil. the city of Athens] which [is] sluggish and needs to be stirred up*” by him [30e]. He maintains that after a thorough investigation he conducted in order to find out who could be wiser than he was, he came to the conclusion that those who had a reputation for being wise, politicians, poets and craftsmen alike were in reality ignorant and decided that it was “*to his advantage*” to be as he was [22e].

5. Socrates did not answer the charges

Socrates avoided answering the charges against him. His dialogues with Meletus are characteristic of his effort to use rhetorical devices in order to avoid addressing the substance of the accusations.

Socrates refers to the accusation that he is corrupting the youth and asks Meletus [24e *et seq.*]:

“Tell me, my good sir, who improves our young men?”

Meletus answers: *“The laws”*.

“That is not what I am asking”, says Socrates, “but what person who has knowledge of the laws to begin with?”

“These jurymen, Socrates”, answers Meletus.

“How do you mean, Meletus? Are these able to educate the young and improve them?”

Meletus says “yes” and Socrates asks him: *“All of them, or some but not others?”*

“All of them”, answers Meletus.

“What about the audience?” continues Socrates “Do they improve the young or not?”

“They do so”, is the answer of Meletus.

“What about the members of the Council? [βουλή]” insists Socrates.

“The Councilors also”, confirms Meletus.

Socrates goes on with his questions: *“But, Meletus, what about the assembly? Do members of the assembly [εκκλησία του δήμου] corrupt the young or do they improve*

them?”

Meletus answers that they too improve them and Socrates gets ready for a rhetorical triumph over his accuser: He asks: *“All the Athenians, it seems, make the young into fine good men, except me, and I alone corrupt them. Is that what you mean?”*

“That is most definitely what I mean” is the answer of Meletus.

Socrates feels now that he can make the position of his accuser look absurd:

“Tell me: does this also apply to horses do you think? That all men improve them and one individual corrupts them? Or is quite the contrary true, one individual is able to improve them, or very few, namely the horse breeders, whereas the majority, if they have horses and use them, corrupt them? Is that not the case Meletus, both with horses and all other animals? Of course it is, whether you and Anytus say so or not”, concludes Socrates.

Some commentators of Socrates’ apology take the view that at this point Socrates fights off his accuser and rebuts the charges of corrupting the youth.

I disagree. In my view Meletus examination by Socrates lets Meletus win a clear victory over his opponent. I may assume that in the eyes of the jurors Meletus appears to be a citizen devoted to the City’s laws and its fundamental institutions (the Assembly, the Council, the Jury Courts) which educate young people by their collective actions and decisions confirming democracy and the rule of law. The education of young people aimed at making them into law-abiding, active good citizens cannot be accomplished by the very few competent “horse breeders” as the aristocratic-minded Socrates maintains. Their education can only be accomplished by the organised society as a whole through its fundamental political and cultural institutions. In the Athenian democracy all citizens had to play an active role in this collective education of the young.

Socrates is evasive in relation to the charges of impiety as well. Instead of taking a clear position regarding his alleged contempt for the gods of the city and his teaching the young not to respect them and to follow new demons (*καινά δαιμόνια*), he uses again a rhetorical device to avoid answering. He uses Meletus answer that he (Socrates) is an atheist to expose his accuser: Meletus, says Socrates, is contradicting himself because on the one hand he claims he is an atheist and on the other hand he accuses him of teaching the young to follow new demons, who are bastard children of the gods by nymphs or some other mothers. How is it possible, he exclaims, to *“believe that children of the gods exist, but not gods? That would be just as absurd as*

to believe the young of horses and asses, namely mules, to exist, but not to believe in the existence of horses and asses” [28d].

This is a rhetorical victory of Socrates but does not help him rebut the charges of impiety. The jurors would expect Socrates to answer whether he respects the gods of the city who protected Athens and who all citizens had to respect in order to preserve the integrity of the Athenian democracy. Educating the young to respect the gods of the city was of the utmost importance for the Athenians. When Meletus accused Socrates of being an atheist, he was exactly referring to the gods of the city (like *Αθηνά Πολιάς, Δήμος, Ζεύς Αγοραίος, Πειθώ* etc.). Socrates had no respect for them choosing instead to follow some undefined “inner voices” and urging the young to do the same. I may assume that in the eyes of the jurors Socrates’ defence against these charges was really poor. What if he did follow some unspecified spiritual things? How would these protect Athens? They would not.

6. Two possible objections

Let me conclude by addressing two possible objections against Socrates’ conviction by the Athenian jury court.

Impiety and corruption of the young, one might say, are too vague concepts and cannot justify a conviction by a criminal court. What kind of crimes are these, one would argue, with no description of their specific elements in law?

Such an objection would seem plausible today. We ask our legislators to take pains to describe as accurately as possible all the elements of criminal offences and we have many thousands of statutes containing lengthy –albeit not always clear- definitions of the punishable acts. This is how we, in our modern societies, pursue legal certainty.

Not so in Athens back in 399 B.C. There was no developed body of what we today call substantive criminal law in the Athenian democracy. With the exception of some core crimes, the use of broad concepts such as “impiety” was legitimate. It would be for this reason unfair to reject Socrates conviction on the basis of the vagueness - under modern standards- in the description of his acts in law.

Under the Athenian laws the accusers had to specify the facts which constituted the alleged crime before the court. The three accusers of Socrates did that and convinced the jury. It’s a pity that we don’t have their speeches. From Socrates’ own apology it is clear, however, that they described persuasively all elements of the acts Socrates was convicted of. Therefore, the outcome of the trial was fair to the evidence.

A second objection against Socrates conviction would refer to his sentence. Was it right to kill Socrates even if the acts he was accused of were proven in court? Did the Athenians really need to put him to death?

My answer is, no, there was no need for a death penalty. But it was Socrates and not his jurors who, after the verdict on guilt, led the trial to the death sentence. When asked to propose an alternative sanction to the death penalty requested by his accusers, Socrates started to mock the jury court asking them to give him free meals in the Prytaneum (*Πρυτανεῖον*) for the rest of his life because “he made them happy”. He went on rejecting exile –because he thought he would be equally unpopular in any other city- and monetary sanctions, because he had no money. He then proposed – ironically- to be sentenced to a ridiculous fine of one silver mina (*μνά*) and finally, motivated by his friends (Plato et al.) who were present, he proposed thirty minas with his present friends standing surety for these. It is very likely that Socrates would have avoided the death sentence if he wished so. He did not.

So, let us not put the blame on the jurymen. They kept their oath and listened carefully to both the accusers and Socrates. A substantial number of them (220) voted for his acquittal. This is clear evidence that Socrates did have a fair trial and that his fellow citizens of the jury delivered their judgment on the evidence and not out of prejudice, hate or revenge.

We may ask the Court and you, men and women of Athens, to declare that Socrates trial was fair and his conviction lawful and must be confirmed. Thank you.

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