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Josiah Ober: Athenian Legacies

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Introduction: Climbing the Hill of Ares

THIS COLLECTION OF ESSAYS on Athenian political culture is a sequel to my previous collection, *The Athenian Revolution* (1996), in a very specific sense: Those earlier essays centered on democracy's revolutionary origins; these concern what must come after a revolution if the diverse members of a political community are to go on together. Both the energies inherent in revolutionary moments and the techniques of collective "going on" must be taken into account by any theory of democracy that claims to take history and culture seriously. Both revolution and going on are historical and cultural processes. While I take the human propensity to culture making as a natural endowment, particular cultures are the products of history, and history is made by willful agents. Political culture includes the values, structures, and practices of a community, along with the evolving social and political identities from which it is constituted. Ancient Athens becomes more valuable for us as modern history-making agents and for democratic theory building when we recognize it as a particular, historically unique polis with a distinctive political culture—rather than categorizing it, generically, as "the polis." Historical Athens was much more diverse and much more conflicted than the generic and idealized polis often imagined by political theorists (from Aristotle to Arendt and beyond). Because it is concerned with diversity and conflict as well as solidarity, the study of Athenian politics can contribute, not only to discussions about democracy's original potential, but also to democracy's possible future.¹

The approach to Athens offered here rejects backwards-looking "polis nostalgia." It seeks to specify what is admirable in Athenian political culture, while never forgetting the evils permitted and promoted by the structural injustices of Athenian slavery, imperialism, and exclusion of women from active citizenship. The Athenian failure to generalize access to the freedom, equality, and security characteristic of participatory citizenship was a profound moral failure. But acknowledging that failure of moral imagination need not, in and of itself, lead to a general indictment of the

¹ Recent political theoretical work drawing upon Athenian critical theory and democratic practice includes books by D. Allen, Balot, Euben, Farrar, Lane, Monoson, Saxonhouse, Villa, and Wallach (see bibliography). Use of Athens for political theorizing need not be "positive." Lape 2004, for example, concludes that apparent Athenian democratic resilience proved false in that it was grounded on an incapacity to acknowledge the political agency of anyone other than native males.

values and practices typical of Athenian democratic self-governance. A historically disciplined account of politics that addresses normative concerns should allow the experience of an ancient city-state to interrogate and challenge, rather than simply to reify our modern intuitions about the possibilities of political life.² The practice of democracy in Athens is in some ways different from all contemporary versions of democracy (e.g., parliamentary, constitutional, deliberative, strong). But after all, it makes little sense to ask modern readers to grapple with Greek antiquity unless doing so will yield understandings not readily available in more familiar places.

GOING ON TOGETHER

At the heart of each of these essays is the attempt solve a mystery. How did the Athenians manage to go on together as an internally diverse and democratically governed community, one that sought (if never altogether successfully) to promote conditions of justice, in the face of so many circumstances that made going on so very difficult? We can sharpen that question by personalizing it: Why did Socrates choose to live in the city of Athens and obey its laws, despite his belief that other places were better governed (see chapter 7)? Why did Athenian resident foreigners and slaves risk their lives in joining the pro-democracy uprising against an oligarchic government in 404 B.C. (see chapter 8)? Why did so many Athenians choose to subordinate their individual and sectarian group interests in favor of working to maintain a community, even though that meant living and working with persons and groups who were very different from themselves?

The “going-on-together” question thus has descriptive and analytical dimensions, but it is also has normative force: Going on together under (always imperfect) conditions of democracy and justice should be valued in much the same way that we value the more familiar political goods of liberty and equality. Going on together implies these political goods and like them it is a condition of human flourishing. To pose the historical question of how going on together was possible for the Athenians, without assuming that “false consciousness” provides an easy answer, is to assert the moral equality and capacity for agency of people who were constrained in their choices (even the juridically unfree).³ It denies that “plurality” and

² My use of Athenian history for theory building was recently the subject of a sustained critique by a leading ancient Greek historian of the positivist school (Rhodes 2003). I am pleased that in the course of his extended normative argument about why historical positivists ought not approach history in the way I do, Rhodes does not find factual errors in my work; see chapter 8, below.

³ This formulation assumes that even slaves had some capacity to choose to work to build or to undermine a given community: see chapters 4 and 8, below.

“diversity” are distinctively modern political concerns. It acknowledges humans as political animals who will truly flourish only in sustainable communities, but regards every human community as an artifact of historical circumstances. Moreover, it supposes that socially experienced difference among people is produced in large part by revisable human judgments and willful actions. Unless we are willing to regard cultural differences as objective “facts of nature,” we have no warrant for simply assuming, a priori, that Athens was in fact more culturally homogeneous than a modern nation-state.⁴ If going on together is intrinsically valuable, then we should also value the processes by which the Athenians achieved that choiceworthy end and did so without resorting to forms of homogeneity that denied the value of personal freedom and without confusing equality with sameness.

The Athenians *chose* to go on together, chose it as something of value, in the face of experienced difference and periodic conflict. That choice was not foreordained: In the course of classical Greek history many poleis degenerated into a sustained civil strife that ran roughshod over written law and social convention, and ultimately extinguished the possibility of a sustained civic community: Thucydides (3.70–85) sketches a famously harrowing portrait of the dissolution of the once-great polis of Corcyra, and notes grimly that this was only one example of a pattern of collapse that affected many communities. The historical record bears him out; in the century following the Corcyrean civil war catastrophic intra-polis conflict was a frequent occurrence in the Greek world. For Thucydides’ younger contemporary, Plato, and for Plato’s student, Aristotle, the problem of political conflict within the city was the central problem of Greek political theory.⁵

In the *Republic* Plato employs the conflicted polis as a way to address the problems of moral psychology: His use of the polis as a model of the human soul means that solving the problem of justice, by instituting a proper system of civic education and thereby ending conflict in the city, entails an end to troublesome internal conflict within the soul of the individual. Although modern democratic theory necessarily approaches the question of

⁴ While classical Greek antiquity was admittedly unfamiliar with the non-negotiable religious beliefs associated with fundamentalist versions of revelation-based monotheism, the ancient Mediterranean-western Asian world was extremely diverse in terms of religious practices, just as it was diverse in terms of language, ethnicity, dress, eating habits, and so on. Many of the horrors and benefits of modernity (colonialism, imperialism, ethnic cleansing and forced migrations of ethnic groups, mixed economies, “globalized” trade networks, etc.) have recognizable counterparts in the Mediterranean-western Asian world that was the context of ancient Athenian political culture. While we must not overlook the differences (e.g., in technology and scale), we must not allow “ancient v. modern” to do more explanatory work than it can bear.

⁵ For a catalogue of Greek civil conflicts, see Gehrke 1985. For an introduction to civil conflict as a key problem in Greek history and political thought, see Ober 2000.

“politics as soulcraft” quite differently, Plato’s central insight—linking the political life of the community to the moral-political psychology of individuals—remains extremely powerful. In hopes of making Plato’s insight relevant to democracy, the second half of this introductory essay looks at some of the political choices made by a particular Athenian individual in the course of a lifelong civic education.

The answers to the problem of civic conflict offered by Greek philosophers centered on eliminating the very possibility of strife by carefully managing diversity within the community at large, and by eliminating diversity within the the body of active, participatory citizens. The solutions (notably Callipolis of Plato’s *Republic* and the “polis of our prayers” of Aristotle’s *Politics*) focused variously on reifying and naturalizing social and psychological differences (Plato’s gold- silver- bronze- and iron-souled classes in the *Republic*; Aristotle’s notorious theory of natural slavery) and on strong forms of civic education that intentionally left no room for resistance to the dominant culture or the development of alternative personal identities. Arlene Saxonhouse has rightly pointed to the “fear of diversity” that underlay these radical theoretical solutions to the problem of conflict.⁶

It is tempting to extrapolate from these *philosophical* responses to the imagined threat of intracommunity strife by Athens-based writers to the *historical* response of the Athenian polis to the actual fact of conflict. Yet that temptation must be resisted because the historical Athenian response was actually substantially different. While determined to find and celebrate commonalities among Athenians (some, like “autochthony,” were exclusivist, exclusionary, and expressly fictive), the polis also frankly acknowledged that the umbrella term “Athenian” covered a highly diverse range of social identities. Although it is certainly true that the polis publicly promoted an ideology of “proper Athenian-ness” (e.g., in the “All Athens” Panathenaic Festival) and periodically presented its members with an idealized conception of the Athenian past (e.g., in the ritualized funeral orations over the war dead), it is also clear that these expressions of ideological coherence were countered by frank acknowledgments of diversity and conflict—notably in Athenian drama, legal process, and religious ritual.⁷ The Athenians were historically familiar with internecine strife (see chapters 3, 8, 10). Yet time and again they managed to pull themselves out of the

⁶ Saxonhouse 1992.

⁷ A good deal of work by Hellenists in the last twenty years has sought to explain Athenian culture either as an “hegemonic” expression of coherence or as a “subversive” expression of diversity. The fact that both sides in this debate have been able to muster considerable evidence for their divergent position points, I believe, to an emerging consensus in favor of a “both-and” explanation (see Manville 1997) that acknowledges the role of culture in both reification of coherence and its subversion. See, recently, Wilson 2000, Hesk 2000, Wohl 2002, Lape 2004.

degenerative cycle of retributive violence that shattered Corcyra and so many other classical Greek poleis. They did so, not by retreating from the challenges of change and difference into a fantasy of sameness and changelessness, but by finding democratic means by which to meet political challenges. It is in exploring those means that contemporary theorists may learn something of value from the Athenian experience of politics.

These essays were written in a millennium-spanning decade, 1995–2004. Some of my earlier work on Athenian political practice was written in the previous half-decade, 1989–1994, a historical moment of boundless democratic optimism. Democracy was the catchword of that era, and celebrating democracy’s Athenian origins suited the festive atmosphere of the time.⁸ But it was not entirely clear, in the years immediately following the collapse of the Soviet Empire, why political theorists should bother to learn much about ancient history in building their models of democracy. At a moment sometimes proclaimed the “end of history,” the modern world seemed to be doing very well with the models readily at hand.

Since 1994 history has resumed with a vengeance. We survey a world in which the question, What conditions might allow the members of a deeply divided community to go on together under something approximating conditions of justice? is posed with increasing urgency. And we are more than ever aware that the failure to answer that question entails profound human suffering. Under such circumstances nondemocratic approaches to politics, posing as solutions that are realistic in that they put good ends (constitutional order) ahead of fallible means (democratic process), may come to seem increasingly attractive (see chapter 5). I believe that people who promote such approaches are wrong, but they rightly point to the need to think more seriously about democracy’s costs. This book’s “imagined ideal reader” has been sobered by the limited applicability of the standard models of democracy to the challenges of group identity and violent conflict, yet remains willing to believe that an always-imperfect democracy might ultimately be preferable to even the most benevolent autocracy. For such a reader, learning something of Athenian political history may seem worth the effort.

Each of these essays draws attention, from different angles, to tensions within the Athenian democratic political community and within Athenian political identities. And each essay suggests that these tensions were in a strong sense productive rather than destructive: The solution to the mystery of going on together is not to be sought, I argue, in construing Athenian democracy as a neutral space in which tensions arising from diversity and inequality are finally resolved. Rather the solution lies in recognizing in democracy a sophisticated means for transforming into productivity the

⁸ See, for example, Ober and Hedrick 1993; Morris and Raaflaub 1998.

potential divisiveness arising from diversity. That transformation is effected through an ongoing discursive acknowledgment of difference, and through a willingness to make and carry out public decisions in the face of unresolved tensions. As Danielle Allen reminds us, at any given moment in history the processes of what I am calling “democracy as diversity management” will require sacrifices by some people, and these processes necessarily leave certain individuals and groups in a position of loss and disappointment. But, by the same token, the democratic process holds out the promise that the ledger will be balanced over time and that today’s losers will be tomorrow’s winners.⁹ A careful historical account of democratic politics should be able to answer the essential question of how well that promise was kept. This may not yet be the most familiar way of looking at democracy and political culture, but it can explain a lot about politics in classical Athens and, I would argue, about the still unrealized potential of modern political life.

Contemporary democratic theory, in its dominant communitarian and liberal versions, is, of course, very concerned with identities, difference, and tension arising from pluralism within political communities (understood primarily as nation-states). In modern political theory there is a tendency to emphasize two primary sites of tension: between the state and the individual as “rights-holder,” and between the state and groups within it that lay claim to special rights or recognition (see chapter 4). The persistence of state-individual and state-group tensions may be regarded as inevitable, but it is not ordinarily regarded as productive. The challenge of democratic politics is thus typically understood as finding ways to enable the state to achieve public purposes without doing undue damage to individuals or groups and distributing public goods as fairly as possible among them. The appropriate way of dealing with tensions between the state’s purposes and its constituent groups and individuals is addressed variously in communitarian and liberal accounts. In the communitarian story the state is responsible for promoting civic values and the common good; democracy is the means by which the reified will of a fundamentally homogeneous citizenry is publicly expressed. In the standard liberal account, the state is responsible for maintaining the rule of law and for fair distribution of valued resources. Democracy ensures that individuals have the opportunity to define and express their own wants, but democracy is possible only because the rule of law provides a secure place (inaccessible to majoritarian pressure) for expertise and thereby prevents selfish group interests from devolving into competitive interest-based majoritarianism.

⁹ Importance of democratic fairness as achievable only over time: Allen 2004.

Much of the energy of recent political theorizing has been generated by attempts to accommodate individual and group identities, and to find a way past the reductive “either-or” choice of regarding either the good of the individual, of groups, or of the community at large as the indispensable starting point of politics.¹⁰ Proponents of deliberative democracy seek to replace the conception of democratic decision making as a zero-sum contest among interests with a conception of decision making as a cooperative reciprocity-based process of seeking the best answer. Neorepublican accounts attempt to replace Benjamin Constant’s and Isaiah Berlin’s negative conception of liberty as noninterference with a more positively inflected conception of liberty as noncoercion. Various postmodernist approaches to political theorizing seek to take into account the ways in which the identities of individuals and groups have been constructed by historically contingent (and hence contestable and revisable) relationships of power. Each of these approaches seems to me promising, yet none can yet be regarded as definitive. And so there remains room for other models of democratic politics to be considered as complementary alternatives—including a model based in part on the political culture of classical Athens.¹¹

In the pages that follow, I will have some things to say about standard liberal and communitarian conceptions of politics and political identity. I will argue that Athens is in some conceptually relevant ways less “thick” (i.e., homogeneous and unified) in terms of its political culture (its *politeia*, a term that embraces much more than institutional structure) than enthusiastic communitarians and suspicious liberals alike have often supposed it to be. I will argue that Athenian identities were considerably more diverse than would be tolerable in a genuinely thick culture, and by the same token that much more valuable for contemporary theorizing. Among the primary goals of this book is to develop a historically sensitive line of investigation within democracy studies, by expanding the standard accounts of the formative tensions that have given rise to what Michael Sandel calls “democracy’s discontent.”¹² This means unpacking the familiar box of the structuring tensions of democratic political life in some unexpected, and (I hope) productively unsettling ways.

At the heart of the tensions that defined Athenian political life, and thus the lives and moral-political psychologies of individual Athenians, was the contrast between an outwards-looking “centrifugal” push toward social diversity and an inwards-looking “centripetal” pull towards political coherence. Rather than expending vain effort in an attempt to finally

¹⁰ See, for example, Gutmann 2003.

¹¹ Deliberative: Dryzek 2000; Gutmann and Thompson 1996. Republican: Skinner 1998; Pettit 1997. Postmodern: Brown 1995; Butler 1997.

¹² Sandel 1996.

resolve that dichotomy through strong homogeneity or “once-and-for-all” constitutional enactment, Athenian politics existed, and flourished, through a refusal to give up robust commitments to both diversity and coherence. Although one might (with Plato) suggest that the inability to choose between coherence and diversity is, in and of itself, evidence for conceptual incoherence, it is clear that the Athenians did not see matters that way.

The essays in this collection explore several particular aspects of the general “diversity-coherence” theme, looking at issues that emerge from the interplay of commitments to diversity and coherence within Athenian political culture and within Athenian “souls.” Prominent among these issues are the following:

- *Boundaries.* The tension between an orientation to dynamic, experimental, future-oriented expansionism on the one hand and a concern for consistency in judgment, respect for the legacies of the past, and acknowledgment of established limits on the other (esp. chapter 9).
- *Identities.* The interplay between the senses of self that are given by prepolitical “private” associations (e.g., the family), or created by individual effort (e.g., Plato’s Socrates), or gained through participation in the institutions and practices of democratic self-governance (esp. chapter 4).
- *Knowledge.* The simultaneous recognition of the political value of rewarding merit and technical expertise and a conviction that “rule by experienced amateurs” promotes the resilience of the community by educating citizens, and by allowing for the aggregation of what is known and thereby promoting innovation (esp. chapter 2).
- *Persistence.* The recognition of the contingency and thus fragility of any existing political order (including democracy), and an acknowledgment of the losses that make possible both its continued ordinary existence and its recovery from crisis (esp. chapter 10).

Although my contention is that the tensions intrinsic to boundaries, identities, knowledge, and persistence are essential and indeed structural components of Athenian political culture, it is tempting to seek to resolve these tensions by one of two strategies. The first strategy draws a neat separation between ideas and practices. Thus, in terms of boundaries, it might seem possible to claim that mainstream Athenian political culture was expansive, but that conservative Athenian intellectuals urged an acknowledgment of limits. Likewise, one might define a strong sense of “citizen identity,” a devotion to amateurism, and confidence in resilience as typical of Athenian

democratic political culture. Conversely, one might see a concern for “personal identity,” an attachment to expertise, and a recognition of contingency and fragility as typical of the thinking of democracy’s critics—among others, Plato. In the *Republic*, Plato seemingly set himself staunchly against Athenian-style diversity (which he characterizes as “many hued-ness”—*poikilia*). He famously suggested that an ideal-type well-ordered political community (a “best polis” or “polis constructed in words”) might provide a model of an integrated human soul and thus a means to construct a new moral psychology, a fully grounded personal identity. Plato characterized the “democratic soul,” by contrast, as a chaotic hodgepodge of ungrounded desires—and thus as incapable of consistently formulating morally relevant projects either for good or evil. I will offer a very different account of the diverse “democratic soul” at the end this chapter.¹³

In both the *Republic* and the *Laws* Plato develops a vision of an ideal political community that is limited in size, ruled by experts, resistant to variation, and very durable—although ultimately doomed (like all human communities) to catastrophic change. Thucydides, Aristotle, and Isocrates (among others) might likewise be made into staunch proponents of consistency, who rejected the inherent diversity and mutability of Athenian political culture. But any attempt to situate “critics and their ideas” on one side of the diversity-coherence question and “Athens and its practices” on the other leads to dangerous oversimplification. We should not forget that the citizens of Magnesia (the polis of Plato’s *Laws*) are periodically to send out explorers who will seek to discover useful innovations.¹⁴ Although the give and take between Athens’ political culture and Athenian critical intellectuals is indeed an essential part of my story, and the debate between the political culture and its intellectuals was fierce and sustained, the relationship between political culture and political theory in Athens was productively recursive: It is reductive and misleading to resolve the tension between diversity and coherence by splitting ideal theory off from democratic practices (see chapters 6, 10).

An alternative strategy to resolving the various contrasting tendencies that emerge from the urges toward diversity and coherence is the resort to an explanation based on diachronic historical change: Thus, one might posit that the dynamic expansionism of the imperial fifth century B.C. yields to a chastened acceptance of limits in the postimperial fourth century B.C. According to this view the community orientation of the fifth century devolves into the individualism of the fourth, and the amateurism characteristic of the fifth century is replaced by the political domination of

¹³ My thanks to Zena Hitz, whose Princeton University dissertation (2004) has clarified for me Plato’s account of the democratic soul (among other problems).

¹⁴ Among the major developments in modern Platonic political theory has been taking the later political dialogues, *Statesman* and *Laws*, seriously. See, for example, Bobonich 2002.

experts in the fourth. In sum, fifth-century confidence and optimism might be regarded as transmogrifying into a fourth-century pessimistic recognition of political ephemerality. Once again, that story is reductive and historically indefensible.

We should indeed acknowledge that things *did* change in substantial and relevant ways over the course of time in democratic Athens. Few historians these days are likely to disagree with the assertion that paying careful attention to diachronic change is essential to the historical enterprise. But allowing diachronic change to provide a causal explanation powerful enough simply to dissolve the tensions of democratic Athens is to fall into a mode of analysis which necessarily ignores salient historical continuities and thereby evacuates much of the value of the long-term historical case to the project of rethinking democratic theory. In the end, neither the strategy of splitting off the ideas of intellectuals from the culture in which they lived nor leaning on historical change can resolve the structuring tensions within Athenian political culture. And so we are left with the more interesting and demanding task of seeking to understand democracy through paying close attention to how enduring tensions sustained it.

ENTER THEOGENES

I have suggested above that the structured tension between coherence and diversity was part of what allowed citizens of Athens to find a workable course through a confusing world. That world presented a never-ending series of sharp challenges. The temptation was always present to answer those challenges by recourse to a fixed set of unquestionable cultural verities—such as a thick and unitary tradition about the past. Athenian democracy is worthy of our attention because the Athenians by and large resisted that temptation but nonetheless found ways to go on together as a community.

In order to make the political and psychological concerns about boundaries, identities, knowledge, and persistence that motivate this book more accessible and transparent, it may be helpful to consider a particular citizen, interacting with others in his city, and at two particular moments in Athenian history. The first moment, described in this section, occurs around the middle of the fourth century B.C. The date cannot be precisely determined but the events are documented and (on the whole) credible. The second moment, described in the following section, is a historical fiction—a product of my own imagination but grounded in the relatively full historical record for Athens in 335 B.C. Both moments, the chronologically uncertain real one and the chronologically precise fictive one,

center around the doings of a historical individual: Theogenes of the deme (township) Erchia.¹⁵

Our knowledge of Theogenes' life is almost entirely limited to what we are told by the wealthy and litigious Athenian politician, Apollodorus, in *Against Neaera*, a legal speech of prosecution preserved in the extensive corpus of Demosthenes' dicanic (i.e., courtroom) orations. Some time in the 340s B.C. Apollodorus addressed a court of Athenian judges, speaking in support of a younger brother-in-law. The two men sought to secure the conviction of a woman named Neaera on the charge of falsely presenting herself and her daughter, Phano, as native Athenians and thereby breaking the laws governing legitimate marriage and the procreation of citizens, and potentially corrupting the Athenian citizen body.¹⁶

The issue of political identity is immediately to the fore in this courtroom drama: Apollodorus was himself the son of a manumitted slave, Pasion, who had been naturalized as an Athenian citizen. The issue of how to define and patrol the boundaries between “we, who are the Athenians” and “those residents of Athens who are not Athenian citizens” is a framing concern of the speech. Knowledge is also an issue: just how is anyone to know who among the residents of Athens is a citizen, and who is not? Apollodorus repeatedly argues that the persistence of Athens, as a social and political community defined by Athenian identity, was riding on the answer to that question, which he personalized as, who *is* Neaera, really? The identity issue underlying the Neaera question is, he suggests, *the* sociopolitical challenge confronting the Athenians. In the course of his prosecution speech, Apollodorus lays bare tensions about how Athenian identities are established and the role of popular and expert knowledge in the sociopolitical project of boundary setting. He claims that the survival of the democratic community depends upon getting the answer—and thus the court's verdict—right. A wrong verdict would, he argues, result in a collapse of the requirement that citizen men marry only native-born women and thus in the collapse of the rules of social intercourse—inter alia, nice Athenian girls will choose to become prostitutes. The wrong answer to the Neaera question will, in short, fatally violate the boundaries that sustain the existence of the polis as a community of citizens.

Yet, as Apollodorus readily admits in the course of his speech, the woman Neaera herself was merely a target of convenience. The real object of his legal attack is Neaera's consort (or perhaps husband), Stephanus,

¹⁵ Theogenes may possibly have belonged to the deme Kothokidai (cf. *SEG* 28.149.7) but he was more likely of the deme Erchia (cf. Kroll 1972, 163). He is described in [Demosthenes] 59.72, 80–84. The speech, included in the corpus of Demosthenes was probably delivered in the 340s B.C.

¹⁶ Editions and commentaries on the speech: Carey 1992; Kapparis 1999. Victor Bers (2003) offers a lively new translation. Career of Apollodorus: Trevett 1992.

an Athenian citizen who was a current political enemy (and former legal opponent) of Apollodorus. The speech is an exercise in using the legal process for conjoined personal and political ends by exposing the “private lives of public enemies.”¹⁷ *Against Neaera* offers a vivid portrait of Athens as a highly diverse community, in which adults and children, citizens and foreigners, free and slave, neighbors and strangers, men and women, worked and played, fought and loved, formed and broke alliances (political, marital, and otherwise), all the while negotiating complex personal identities that were deeply informed by the democratic political culture of the city that they co-inhabited. Underlying the prosecution’s case is an abiding Athenian concern with “coherence as nativity,” which was put under considerable pressure by the self-evident fact of Athenian social diversity, made manifest for the jurors in the non-native ancestry of Apollodorus himself. It was sharpened by the fact that no individual Athenian actually knew a large proportion of his fellow citizens by face or name. Under such circumstances, “social knowledge,” and thus trust and social capital, was necessarily constructed out of multiple overlapping networks of association, friendship, kinship, and collegiality.

Theogenes enters Apollodorus’ story because he was chosen, by lottery, to serve a year’s term as Basileus—one of the nine annually appointed archons, public magistrates charged with important ritual, legal, and civic duties. Upon being chosen Basileus, Theogenes appointed Stephanus to be his assessor (*paredros*). He also married Phano; that is, he took her as his legitimate wife, with the intention of producing children who would be Athenian citizens. Phano was presented to him as the daughter of Stephanus and his Athenian wife. Theogenes is introduced by Apollodorus (59.72) as “a man of good birth (*eugenēs*), but poor (*penēs*) and without experience in affairs (*apeiros pragmatōn*).” Each term in this rhetorical tricolon helped to build a clear picture of Theogenes in the minds of the Athenian jurymen, yet each is susceptible to misinterpretation by modern readers.

Far from implying that Theogenes was an impoverished aristocrat innocent of Athenian political culture, Apollodorus sketches for the jury an Athenian Everyman. Theogenes was “well born” because he was a native Athenian, “poor” because he worked for a living, and “inexperienced in affairs” in that he trusted his fellow citizen, Stephanus, too readily. In Apollodorus’ narrative, Theogenes’ inexperience became dangerous when he appointed an unscrupulous political hack as his *paredros*, and then took at face value Stephanus’ claims regarding Phano’s lineage. This proved to be a near-fatal error. It is central to Apollodorus’ case that Stephanus lied

¹⁷ Cf. Wallace 1994.

about Phano's parentage, that in fact he was Phano's pimp rather than her father. In Apollodorus' story Phano is depicted as a luxury-loving prostitute—and as Neaera's daughter by some unknown father. Neaera herself was, Apollodorus claims, a scheming foreign-born prostitute being kept as a mistress and partner in crime by Stephanus and falsely passed off as his legitimate Athenian-born wife. Thus the contrast is drawn and the contest engaged: Athenian Everyman Theogenes, on his own, is no match for the wiles of the corrupt household of Stephanus; he mistakes a schemer for a friend and prostitutes for citizen women, and so falls easily into their trap. Apollodorus' implied lesson for the jurors is clear: Without the legal apparatus of the democratic state, the ordinary Athenian could never guard the boundaries of legitimate identity against devious outsiders who sought to insinuate their way, as free-riders and worse, into the community and who would just as surely abandon it when it collapsed.¹⁸

As wife of the Basileus, Phano was required to perform certain important, community-sustaining ritual functions on behalf of the Athenian polis. As with all aspects of polis religion, it was regarded as vitally important to the persistence of the Athenian community that these rituals be properly carried out.¹⁹ Apollodorus waxes eloquent on the subject of the grotesque impropriety of a foreign-born prostitute (herself the daughter of a foreign-born prostitute) being permitted to officiate at such an exalted and intimate level in religious rituals essential to the ongoing welfare of the Athenian people. In the process Apollodorus demonstrates his own expert mastery of Athenian religious practice; his pride in his mastery recalls Socrates' interlocutor, Euthyphro, in the eponymous Platonic dialogue. Apollodorus' expertise helps him to make his case. But it is also essential to Apollodorus' story that the Athenian community itself possessed nonexpert but reliable knowledge resources adequate to detect and expose "identity-frauds" that threatened the community. Stephanus' plot unravels within a year of the marriage, at a formal scrutiny following Theogenes' term as Basileus. The scrutiny was conducted by the Areopagus Council, a public body composed of former archons.

According to Apollodorus (80–83), "the Areopagus Council which in other cases also is of great value to the polis in matters pertaining to piety, then undertook an inquiry as to who this wife of Theogenes was and established the truth." In order to explain the seriousness of the crime and thus the depth of the Areopagites' horror upon finding out the truth (and thereby to stimulate a similarly horrified response among the jurors), Apollodorus digresses at length upon the ancient Athenian tradition regarding

¹⁸ A similar scenario is sketched by Plato's Socrates in the *Gorgias*: as non-Athenians Gorgias and Polus have no stake in the society that their rhetorical practice helps to corrupt.

¹⁹ On Athenian religion in general and role of the Basileus in particular, see Parker 1996, esp. 7–8.

the institutionalized role played by the Basileus' wife (73–79): Among other improprieties, Phano “conducted on the city’s behalf the rites which our fathers handed down for the service of the gods, rites many and solemn and not to be named.” There is an obvious tension here: If the rites are ancestral and unnameable, how is the non-native Apollodorus to speak of them—or even know of them? Apollodorus does not seek to cover up the tension; indeed he makes fine dramatic use of it. He expands upon the hoary antiquity of the rites, claiming that they dated back to before the distant time that King Theseus settled the Athenians in a single city and “established the democracy.” This nice mythohistorical detail makes Stephanus’ deception a threat to a deeply ancestral democratic constitution. And yet the story of “Theseus, founder of democracy,” far from having the status of unquestionable tradition, competed in fourth-century B.C. Athens with several other “democratic foundation stories,” variously featuring Solon, Cleisthenes, and the Athenian people themselves.²⁰ To prove the truth of his contentions about the sacred rites, Apollodorus cites an extremely obscure law: He claims (76) the law was written on a stone stele in a sanctuary of Dionysus of the Marshes, in archaic “Attic letters” now almost illegible due to age. Moreover, the stele was, he says, accessible for inspection only on one day each year. With this extraordinary citation of a barely legible and barely public monument, Apollodorus establishes his own *bona fides* as an expert in sacred law, worthy of instructing the jurors on their own Athenian traditions.

Upon discovering the awful truth about Phano, the Areopagus Council was at first inclined to impose a stiff fine upon Theogenes. But, Apollodorus notes, the Areopagites realized that the fine would have to be imposed “in secret and with due regard for appearances; for they are not in possession of the authority do just as they please” (80). Apollodorus’ narrative points to a tension between the Council’s ancient authority, its deep and righteous anger, and its concern for public appearances in a democratic community highly protective of individual immunities (see chapter 5).

This tension led to productive discussions (*logoi*) between the council and Theogenes. The latter protested his innocence: He had married Phano in the sincere belief that she was an Athenian woman, and it was because of his own inexperience in affairs and the guilelessness of his character that “he had made Stephanus his assessor to attend to the business of his office; for he considered him a friend, and on that account had become his son-in-law” (81). In the course of his discussions with the

²⁰ Competing democratic foundation–ancestral constitution narratives are evident in the Aristotelian *Athēnaiōn Politeia*. See, recently, Morris and Raaflaub 1998, and Anderson 2003 for discussion.

council Theogenes agreed to divorce Phano and dismiss Stephanus. And so it came to pass:

Theogenes, immediately on coming down from the hill of Ares, cast out of his house the woman, the daughter of this Neaera, and expelled from the board of magistrates this man, Stephanus, who had deceived him. Thus it was that the members of the Areopagus desisted from their action against Theogenes and from their anger against him; for they forgave him, because he had been deceived. (81)

And so, with the end of a household, of a friendship, and of righteous anger, we come to the end of the story of Theogenes the Basileus. Apollodorus' tale boldly underlines the painful personal losses that attended the persistence of a community founded on jealously guarding the boundaries of citizen identity.²¹

Without worrying over much about the unanswerable question of the accuracy of Apollodorus' charges against Neaera, the story he tells about Theogenes brings to the surface a variety of structured tensions between private and public, individual and community. In Theogenes' Athens citizens "ruled and were ruled over in turn," but this was clearly not an Aristotelian "face-to-face" community in which each citizen knew each other's character and virtues and was able to judge and act accordingly. We do not know how Theogenes first came to befriend Stephanus, but the archon evidently did not know a lot about his *paredros*' private life. Yet Theogenes trusted Stephanus, and depended upon his superior experience of Athenian magisterial service. Public life (the relationship between archon and *paredros*) merged seamlessly (up to a point) with private life, resulting in the marriage of Theogenes and Phano.

In Apollodorus' narrative this seemingly proper but actually disastrous relationship between Stephanus and Theogenes, between more experienced and less experienced citizens, is detected and quickly corrected by the public-spirited Areopagus Council. The council employs its collective social knowledge to discover the truth (perhaps aided by the self-interested offer of information on the part of Stephanus' enemies, although we are not told that). Caught out by a public body, "inexperienced" Theogenes is not, however, without resources of his own. The council lacks unlimited discretionary power of punishment and is clearly not eager to put its own moral authority at risk by pressing the issue (see chapter 3). And so there are "discussions" aimed at finding a negotiated solution to the problem. The outcome of these negotiations is Theogenes' break with Stephanus

²¹ On the central role of anger in Athenian judicial practice, see Allen 2000b.

and Phano: the dissolution of both their private connection (the marriage) and their public connection (the *paredria*).

As a result of his year as Basileus and its dramatic denouement, Theogenes became considerably more “experienced in affairs”—in the complexities of Athenian identity and the formal and informal practices that sustained the political community. But he was not the only one to learn from his experience. In listening to Apollodorus’ story (as well as the defense offered by Stephanus on behalf of his household, sadly lost to us), and then formulating a judgment upon the entire matter, the Athenian jurors were educated as well (see chapter 6). Apollodorus’ speech is a rhetorical masterpiece. It is wickedly salacious in depicting the lifestyles of Neaera and her daughter. But it is also filled with allusions to informal legal precedents, to recent and deep Athenian history, and to public procedure. Apollodorus, who was himself the son of a former slave and thus a citizen only through a public act of naturalization, can lay claim to having the deepest personal stake in the laws that limit the extension of citizenship to formal acts of the plenary citizen assembly. He reviews Athenian naturalization procedure and the history of the Athenian practice of naturalization at length (88–106), revealing in the process that the Athenian citizen body could be regarded as a community of “earth-born natives” only by a willing suspension of commonly available knowledge about Athenian history. And thereby Apollodorus exposes one more of the key tensions underpinning Athenian political identity. He offers himself, the adopted son of Athens, to the jurors (legal amateurs and mostly “born natives”) as the antithesis of the wicked Stephanus: as a model “experienced citizen” who uses his hard-won special knowledge of public affairs (Athenian law, religion, and magisterial practice) only to promote the public good—and thereby the persistence of the community that had given him his own Athenian identity.

We have no idea of what actually happened to Theogenes after he divorced his wife and deposed his assessor. But it appears that he passed his formal scrutiny after his year as Basileus (Apollodorus says the Areopagus Council forgave him), and thus he would have become a member of the very council that had threatened to fine him for his improper marriage to a noncitizen. The internal evidence offered by Apollodorus suggests that Theogenes’ year as Basileus was in ca. 352 B.C. The imagined scenario that follows postulates that Theogenes was born in 397 B.C. and had in the course of his life, before and after his service as Basileus, joined the ordinary sorts of associations and performed the ordinary sorts of duties expected of the Athenian Everyman portrayed by Apollodorus. Like Socrates (see chapter 7), the imagined Theogenes portrayed in the next section was neither wealthy nor politically ambitious, yet deeply concerned with his personal dignity and that of his community. He was

eager to earn the esteem of his fellows, but not obsessed with personal honor. He was neither overeager to put himself forward nor a free-rider. We resume the story of Theogenes on a day some seventeen years after his year as Basileus, three years after Athenian independence in foreign policy was lost at the Battle of Chaeronea.

APPROACHING THE HILL OF ARES

Imagine a member of Athens' Areopagus Council in the year 335 B.C., walking to the city from his home in Oinoe, a fortified village some twenty miles from the city, on Athens' northwestern border. Oinoe is not Theogenes' deme, not the "ancestral" village assigned according his family's place of residence in 507 B.C. But, like many Athenian families, Theogenes' family had changed its primary residence periodically over the years—relocating to places within and even (in the imperial era of the fifth century) beyond the confines of the Athenian homeland. As a result, Theogenes' ancestral deme of Erchia was only one aspect of his "regional" Athenian identity.²²

Theogenes' ultimate destination is the hill of Ares, one of several low limestone outcroppings west of the Acropolis that give natural definition to the southern side of the Agora—the central Athenian public square. Theogenes plans to climb up the hill of Ares, which is where the Areopagus Council sits and from whence it received its name. There he will join his fellow Areopagites in the conduct of some item of Athenian public business—perhaps a homicide trial or an investigation of a charge of treasonous activity.²³ It was a long walk from Oinoe to Ares' hill, but Theogenes had ample opportunity to visit with friends, kinsmen, and acquaintances along the way. They were a diverse lot, rich men and poor, variously employed: they included fellow Eleusinian initiates, colleagues from the various public offices he had held over the years, tribal messmates from his years of military training and service, along with blood-relatives and old friends of the family.

Theogenes approaches the city along the road between Athens and Eleusis known as the Sacred Way. As he nears the city and enters the neighborhood of Kerameikos ("potters quarter") his route is flanked by funerary monuments, some erected by the polis, others marking the graves of prominent individuals. As always, Theogenes' eye is caught by the impressive cenotaph of the cavalryman Dexileos—and as always he feels at once attracted and repelled by the depiction of the horseman skewering a naked

²² Demes and ancestry: Whitehead 1986. Athenians move about within Attica: Hansen, Bjertrup et al. 1990.

²³ Areopagus Council and its duties: Wallace 1989.

fallen warrior whose sword arm is cocked behind his head in a last futile gesture of defiance (see chapter 10).

Now it is the massive fortifications of the city that command his attention: stone and brick walls, just recently rebuilt in order to meet the threat of new siege technologies. Passing through the great Dipylon Gate he is very conscious of having passed an important boundary: he has left the *chōra* and entered the *asty*, the walled city that, a century before, Pericles had exhorted his fellow Athenians to regard as an island (Thuc. 1.143.5). Yet as a farmer struggling to make a living on tiny holdings diversified across the territories of several villages, Theogenes was committed to regarding all Attica as worthy of defense—and very glad of the massive border fortresses that had been built and rebuilt during the course of his life—for him, *asty* and *chōra* were intimately conjoined: the mighty city walls were only the last of several lines of defense against enemy incursions.²⁴ Theogenes wondered if the defenses would be enough to stop a Macedonian army if it came to that—the faint smell of smoke from Alexander’s sack of the once-mighty city of Thebes still hung in the ordinarily clear air of Oinoe and was a constant reminder that stone walls were no longer a secure boundary between Athens and the dangers and opportunities of the outside world.

Inside the city, Theogenes walks along a wide street, thinking of the great Panathenaic procession that annually used this route on the way up to the Acropolis. It was a brilliant spectacle of “All-Athens on parade”: citizens in military garb, women in their finest, and the resident foreigners unmistakable in their scarlet cloaks.²⁵ He passes the unassuming external façade of a large private house that he knows well—as a boy he had spent months in its richly appointed interior, a guest of the house’s wealthy owner—the *chorēgos* who had voluntarily taken on the expensive liturgy of “boy’s chorus producer” for the tribe of Aigeis. Inside those walls, Theogenes had been trained in singing and close-order dancing as a member of Aigeis’ fifty-boy chorus, a group that had gone on to win in the City Dionysia—much to his delight and that of his tribesmen. It had been Theogenes’ first personal experience of how wealthy citizens lived, and his first deep experience of his tribal identity. Boys from different parts of Attica, and from various walks of life lived under the chorus-producer’s roof, ate his food, dressed in the splendid costumes he provided. Used to a farmer’s simpler circumstances, Theogenes had not been altogether comfortable in such surroundings, but he cherished the experience of being bonded into a tight-knit group under the supervision of an expert chorus-trainer.

Years later, Theogenes had sat on a jury in a civil dispute; by chance the chorus-producer’s son, one of his old chorus-mates, had been a defendant

²⁴ Pericles: Thucydides books 1 and 2; city-walls: Camp 2000; border fortifications: Ober 1985 and chapter 9. Diversified holdings: Osborne 1985; Gallant 1991.

²⁵ Panathenaia: Neils 1992.

and had alluded in his defense speech to his father's choregic tripod monument, erected in celebration of Theogenes' chorus' victory.²⁶ Theogenes had been more than willing to give his old chorus-mate the benefit of the doubt; indeed he had joined in the *thorubos*—the jeering outburst of other jurors when the prosecutor sought to depict the producer's son as an arrogant and selfish rich man, who cared only for his luxurious lifestyle and not at all for the common good.²⁷

Within a few minutes Theogenes had arrived at the outskirts of the public square. Here he is confronted by a formal boundary-marker: a *horos* that informs him that this is indeed the beginning of the Agora (see chapter 9). The *horos* thereby implicitly warns him to proceed only if he is among those permitted to do so; if he is a murderer or otherwise polluted, he is forbidden to go further. Dipping his hand into a shallow basin of water, Theogenes performs the required lustration and continues on his way, passing into the Agora square with its surrounding public buildings. Some of these had only recently been completed, in the course of a great program of civic construction, associated with by Lycurgus of Boutadai, who held the newly created elective office of "city manager." Lycurgus' building program, which included a new theater, stadium, and arsenal, was already rivaling that associated with Pericles, a century before. Theogenes was proud of all the new construction: It showed that Athens was still a great city even after the battle of Chaeronea.

The loss at Chaeronea meant that the Athenians had been forced to join the Macedonian-led League of Corinth, and sign on to a grand "expedition of revenge" that the Macedonian King had announced against the Persian Empire. The loss of true independence had been a blow to Athenian pride. Some of Theogenes' friends argued that pride might be regained by joining the Macedonians in avenging Persian crimes committed during the Greco-Persian wars, now a century and a half past. But Theogenes himself had no particular animus against barbarians. He was well aware that the new public building in the city was matched by a similar construction boom in the Athenian port town of Piraeus—the center of the transit trade that had fueled Athens' recent prosperity. Piraeus, and indeed the polis as a whole, was home to many barbarians—non-Greek foreigners who came from places around the Mediterranean and deep into the Persian empire. Along with their trade goods, they had brought their gods to the polis and these were duly recognized by the democracy. Like Socrates before him (Plato, *Republic* 327a), Theogenes had attended festivities associated with these new cults and had found nothing to

²⁶ The only bit of evidence for Theogenes' life other than [Demosthenes] 59 is a juror's "allotment plate." See note 15, above.

²⁷ Chorus-production and training: Wilson 2000. Citation of liturgies in legal speeches: Ober 1989. Jurors' *thorubos*: Bers 1985.

despise. There were Greek-speaking barbarians, men and women, free people and slaves, among his fellow Eleusinian initiates. Theogenes was sensitive to the special bond he shared with them: Sacred knowledge that was kept strictly secret from all those who had not been initiated, including some of his fellow citizens. Like other Athenians, Theogenes remembered that the Persians had once burned Athenian temples and he was stirred by tales of ancestral Athenian courage and self-sacrifice in the wars of the distant past. But he lived in a present in which Greeks and barbarians were in constant contact; he was left cold by the empty rhetoric of “revenge against the ancestral enemy.”²⁸

Among the first buildings Theogenes passes as he enters the Agora is the Stoa of the Basileus. Theogenes notes it with mixed emotions: It was his office during the eventful year that culminated in his divorce from Phano. Even before its dramatic denouement, the year’s service had been by turns frightening, demanding, and exciting. He had been responsible for preliminary hearings on some difficult legal cases—and he was very aware that a couple of years before his own birth a Basileus had sent the philosopher Socrates off to the trial that the Athenians had never managed to forget.

Beyond the Stoa of the Basileus were many other monuments to distract Theogenes’ attention: statues of illustrious military figures, tribal heroes, and heroically naked tyrant-killers, sacred altars, innumerable public inscriptions, fountain houses, law courts, public offices, and temporary shops where men and women sold all manner of goods. Like the Stoa of the Basileus, some of the buildings had strong personal associations for Theogenes: He passes the Bouleuterion where he sat for a year as a member of the advisory council of 500 citizens, the Tholos where he ate and slept with other members of his fifty-man tribal team (*prytanis*) for a tenth part of that year, and the temple of Hephaestus where he and his sister each gave evidence in a privately arbitrated dispute with some of his cousins. There are courtrooms in which he sat as a juror. And there is the public office where two years ago he had spent a mandatory year (as did all Athenian citizens upon reaching the age of sixty) as a public legal arbitrator, seeking to resolve legal disputes delegated to him by other magistrates. In each public capacity he had come to know a diverse array of people and had learned to work with them. In the process he had become reasonably expert in some of the manifold ways in which the democratic system judged, categorized, and negotiated the differences between people (see chapter 2).²⁹

Passing out of the Agora at its southwestern boundary, marked by more boundary-stones, Theogenes has neared his destination. To his left

²⁸ Positive Athenian attitudes towards barbarians: K. H. Allen 2003a, 2003b.

²⁹ Agora monuments: Camp 1992 and chapter 9. Activities in the Agora: Millett 1998. Public and private arbitration: Hunter 1994.

looms the awe-inspiring limestone massif of the Acropolis, with its famous marble temples and treasuries—along with the inscribed public records showing that they had been built by mixed work-teams composed of citizens, foreigners, and slaves. To his right is the hill of the Pnyx—the meeting-place of the Athenian demos, which had recently been given a substantial renovation—allowing many more citizens to attend each open-air meeting in relative comfort. And directly before him is his destination: the hill of Ares itself.³⁰

As Theogenes prepares to climb the hill, he is confronted with an inscription (RO 79): a tall marble stele, about his own height, crowned by a relief sculpture of a draped female figure he knew to be *Demokratia* crowning a seated man, *Demos* (see chapter 10). The lower part of the stele recorded a law (*nomos*) recently passed by the Athenian lawmakers (*nomothetai*). Theogenes had seen dozens of more or less similar inscriptions on his walk in from Oinoe—Athens was justly famous for its habit of publicly displaying the official acts of its public bodies and parts of the city now resembled a forest of stelai. But this inscription had particular relevance for him, as an Areopagite. The law, passed the year before (337–336 B.C.) on the motion of a certain Eukrates, regulated when it was and when it was not allowable for an Areopagite to climb the hill of Ares. Specifically, Theogenes and his fellow Areopagites were forbidden by Eukrates' *nomos* from ascending the hill if and when “the demos and the democracy were overthrown.” Should Theogenes choose to mount the hill in such circumstances, he would be declared an outlaw: Anyone who subsequently killed him was declared free from charges arising from committing an act that would in other circumstances be regarded as impious and a heinous crime against the public order. By demanding that Theogenes consider the legality of fulfilling his intention of joining his colleagues upon the Hill of Ares, the inscription served as a sort of boundary-marker—it was in relevant ways analogous to the *horoi* of the Agora he had passed upon entering and leaving the public square: in both cases the inscription indicated that proceeding into public space was only allowed under specific circumstances. But whereas the Agora *horoi* implicitly forbade entry to those who had committed specific acts, the Eukrates *nomos* forbids entry to state officials under specific political conditions.

If we imagine that Theogenes is in a thoughtful mood, we may picture him pausing at the stele recording the Eukrates *nomos* to ponder its significance for the relationship between the democracy and himself, as citizen and magistrate. The law explicitly acknowledges the possibility of political conflict in the community, conflict that could lead to the revolutionary overthrow of the democracy and thus the suspension of the

³⁰ Mixed work-teams: Randall 1953; Pnyx rebuilding: Camp 2001, 153–54, 266.

political authority of the demos. One might suppose that if the democracy were overthrown, its laws would be nullified and that they would thereby lose (inter alia) their capacity to allow or forbid Theogenes to climb the hill. And yet Eukrates' law specifically asserts its authority over Athenian magistrates in the (anticipated) condition of the democracy being overthrown. And thus democratic Athenian law claims a persistent moral authority that transcends the institutional authority of the demos itself (see chapter 3). Yet by so doing, Eukrates' law also points directly to the adamant linkage between democracy and the daily practice of citizens: If Athenian magistrates (and other citizens) respect the law's restriction upon their participation in nondemocratic regimes, those regimes will be denied both the appearance of legitimacy and the expertise necessary to sustain themselves. And so antidemocratic interludes will be correspondingly ephemeral: short detours on the long democratic road.

The Eukrates law ties the capacity of democratic culture to persist in the face of a nondemocratic government to Theogenes' willed choice as an Athenian magistrate, and thus the political community to the moral-political psychology of the individual: If Theogenes (inter alios) chooses to obey the law, democracy will survive—*even if overthrown*. But the law also seeks to constrain Theogenes' individual choice by declaring him an outlaw—subject to arbitrary killing—if he does not obey. Simply by noticing the stele, Theogenes is required to ask himself, *Is the democracy and the demos now overthrown?* Depending on his answer, Theogenes' act of continuing up the Hill of Ares either asserts the current persistence of democracy, or he willingly declares himself an outlaw, or he denies the authority of the law to designate his status or constrain his actions.

In any event, the law's physical presence (or even its remembered presence) thus makes a magistrate's simple act of climbing a hill into a highly charged public performance. Theogenes' trudge up a slope to meet his fellow magistrates on what might be a dull administrative matter becomes a politically significant mini-procession, a cultural practice with profound implications for the individual and his relationship with the political community. By going on up the hill or by turning back, Theogenes makes a choice that is directly relevant to the democratic community's chances of going on together into an always uncertain future.

If Theogenes is not merely politically thoughtful, but possessed of a historical and mythopoetic turn of mind, a whole series of ideas might flit through his head as he completes his journey. He might begin by musing on the strangeness of having a hill sacred to the god of war and strife located in the political and sacred center of the city.³¹ And indeed, the Hill

³¹ Ares in the city: Loraux 2002, 35–39, 111–20.

of Ares lived up to its name in Athenian myth and history: Theogenes would have heard over and over again how the fierce woman warriors, the Amazons, occupied most of Attica and made their camp upon the Hill of Ares before being pushed back by the ancestral heroes mustered on the Acropolis. In historical time (480 B.C.), the invading Persians used the Hill of Ares as a staging ground for their successful assault on the Acropolis, leading to the eradication of the last Athenian defenders of the homeland. Yet the invaders' victory proved hollow because most Athenians had been willing to abandon their homeland in advance of the Persian arrival, and willing to risk their collective future on a military plan that gave Athens' poorest citizens a military role equal to that of the heavily armed infantrymen.

It was the Areopagites who had coordinated the orderly withdrawal of the population from Attica in advance of the Persian invasion, but less than two decades later (462 B.C.) the council's powers were limited by democratic enactment. The constitutional change was not accomplished without bloodshed: Ephialtes, the proposer of the change, was murdered.³² It was in the aftermath of these events that Aeschylus presented his tragedy *Eumenides*, which is set on the Hill of Ares and celebrates the creation of the Areopagus Council as a court for judging acts of homicide. Ares himself does not figure as a character in the play, but his presence is felt when Athena exhorts the Furies of the chorus not to shatter Athenian society by unleashing the horrors of an "intra-kindred (*emphulios*) Ares" (lines 861–66).

Theogenes might compare this mythic account to his recognition that it was in response to a historical threat of *stasis*, in the aftermath of an unsuccessful bid for tyranny in the late seventh century, that Drakon set down the earliest Athenian written law on homicide. From the moment of its beginnings (in history and myth) the council that met on the Hill of Ares was involved with the gnarly problem of conjoining a legal standard with the aggregated capacity for wise judgment of its members, for the purpose of managing conflict in a diverse and divided community. Before Ephialtes' reforms, the council had been charged with a generalized "guardianship of the laws." In the era of Theogenes, the council was still regarded by most Athenians as an important bastion of legal authority, and a reliable source of justice. Areopagites had long been among the most important interpreters of Athenian law.

Theogenes the Areopagite is reminded by Eukrates' law that he is not only a judge responsible for interpreting law, but is himself, like every other Athenian, subject to the laws. That subjection might, as the law's projection of its own authority into a "postdemocratic" future suggests, be regarded

³² Murder of Ephialtes and Athenian memory: *Ibid.*, 71–75.

as uncontestable. The law urges him, in a sense, to take the model of Socrates to heart in choosing to “go home” rather than to collaborate with a new nondemocratic political and legal regime: When the democracy had been overthrown by the Spartans and the Thirty Tyrants in 404 B.C., Socrates had refused to obey the legal order of an oligarchic magistrate to arrest Leon of Salamis. Yet in contrast to his willingness to disobey an unjust order issued by an oligarchic magistrate, Socrates (of Plato’s *Crito*) was completely obedient to an unjust order of an Athenian jury mandating his own execution. The key difference for Socrates was that the Athenian jury’s order was procedurally correct and issued under the authority of the democratic laws under which he had been born, raised, and educated. Those laws, so he supposed, continued in effect through the oligarchic interlude, and Socrates’ refusal to cooperate with the oligarchs had helped insure that it was only an interlude (see chapter 7).

Like the reified “laws of Athens” to which Socrates attends in the *Crito*, Theogenes is urged by the law of Eukrates to regard democratic laws as part of a political culture to which he owes profound loyalty and allegiance, rather than simply the rules of the moment, suited to and maintained by a historically contingent structure of power, which might be replaced by other rules when some other structure is put in its place.

DEMOCRATIC SOULS

The apparent absoluteness of the demand for citizen loyalty to the legal order of the community, to the point of Socrates choosing to accept capital punishment resulting from a substantively flawed legal judgment, has seemed to many modern political philosophers more than any regime should demand of its members. Socrates and Theogenes were encouraged by the laws of Athens to regard their individual choices and actions as directly relevant to the survival of the political community. They were expected to interrogate themselves about the public consequences of their individual actions and to hold themselves personally responsible for the consequences of those actions. They knew, moreover, that the law actively exhorted their fellow citizens to take responsibility for enforcing the law—up to the point of treating the lawbreaker as an outlaw who might be killed with impunity. The alternative, as Plato’s Socrates points out in the *Crito*, is that the laws have no force and thus, by very strong implication, that “going on together” as a community will no longer be possible.

And so we return to the question of how thick and how constraining political culture must be in order for a democratic community to persist

over time. As I noted above, the “standard Greek polis” is often taken, by liberals and communitarians alike, as a very thick community, deeply grounded in tradition and situated commitments. Among the motivating ideas of this collection of essays is that Athens is actually considerably less tradition-bound than is often supposed (see esp. chapter 4). Athens allowed, I will argue, many (though not all) of its people to authorize their own histories, to define for themselves a variety of goods, and it provided many of them with resources adequate to pursuing a variety of diverse ends. And so Athenian political coherence remained thin enough to be consistent with the demands of political theorizing that must engage with the real conditions of multicultural modernity. If this is right, the Athenian polis (unlike the “standard-ideal polis” of much political writing) need not be relegated to the projects of celebrating and castigating the homogeneous cultural order of an imaginary past. Attending to the high level of personal responsibility assumed by Plato’s Socrates and my Theogenes, however, brings us face to face with the difference between the “democratic soul” (the moral-political psychology) of the Athenian citizen and the attitude toward the political sphere that is fostered by modern political culture.

The Athenian’s democratic soul was admittedly not the autonomous result of the sort of reflective individual self-fashioning demanded of a Kantian subject. But neither was it the conditioned result of a coercively hegemonic political culture. It was indeed formed in part by a regime of personal and collective obligations. But meanwhile rights, or perhaps better “quasi rights” (see chapter 5), provided space for plural identities, for individuals and groups to participate in defining themselves and their desires. These vital immunities were in turn understood as being secured by the responsible choices, the ongoing willed behavior, of the citizens. They were enshrined in the law, but the Athenians realized that in the absence of the consistently chosen activity of a citizenry, immunities could never be guaranteed by the authority of a written document.

The understanding of Athenian democracy offered in the following pages is based on a vision of political space as a common good that variously asks for voluntary self-sacrifice, defers the pursuit of personal happiness, and denies the possibility of absolute justice for all of the people all of the time. It acknowledges the existence of social boundaries. It recognizes transnational responsibilities, but also respects the special value of honoring obligations to those relatively close by. And it admits that what is owed locally may be in some ways different in nature from what is owed to those further away. Athenian political culture was undeniably demanding and non-perfectionist. It is disruptive to any fond hope that conflict can be eliminated while diversity is preserved. The acceptance of the tragic inevitability of

conflict, loss, and the incompleteness of all political solutions is one of the two legs upon which an Athens-inspired democratic theory must stand. Its other leg is a historically justified optimism about the potential of a diverse community of citizens, of men and women who have constructed appropriately democratic souls for themselves, to choose to go on together in the face of that tragic acceptance.