

*The Discovery of the Fact*

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## LAW AND SOCIETY IN THE ANCIENT WORLD

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# The Discovery of the Fact

*Edited by Clifford Ando and  
William P. Sullivan*

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## CHAPTER 1

Were the Ancient Greeks  
Epistemic Democrats?

Daniela Cammack

Though the primary focus of this volume is the discovery of the fact in the context of legal reasoning, this chapter considers the place of facts—defined as things that can, in principle, be known (i.e., that might be the object of the Greek verbs *oida* or *epistamai*, “know,” or described as *epistêmê*, “knowledge”)—in the wider ancient Greek political context. This analysis takes in assemblies as well as law courts, particularly (owing to the abundance of evidence) those of classical Athens. It is not too controversial to regard the classical Athenian courts (*dikastêria*) as political bodies.<sup>1</sup> Many plainly political decisions were made by judicial panels, not only via the *graphê paranomôn* (the indictment for proposing an illegal decree), but also through other charges, such as treason, lying to the demos, and offering or taking bribes. Pre-office scrutinies and post-tenure audits were likewise decided by judges and were a standard part of the political process in Athens and elsewhere.<sup>2</sup> Indeed, though ancient Greek courts have often been represented by scholars as accessories to the main decision-making body of a polis, they were arguably equally significant,<sup>3</sup> as suggested by, among other things, Aristotle’s representation of “What is advantageous?” and “What is just?” as preeminent political questions. The advantageous (*to sympheron*) was typically decided by assemblies, the just (*to dikaion*) by courts.<sup>4</sup> Both bodies were equally political in that they made decisions on behalf of the polis.<sup>5</sup> They generated actions that were treated as those of the community as a whole.

My topic here is the limits of claims to knowledge in these contexts. Interestingly, there was no ancient Greek equivalent to our word *fact*, though it commonly appears in translation. What is so translated is usually a pronoun, such as “this” (*touto*) or “these things” (*tauta*), and sometimes a participle, such as *gegenêmenon*, “what has happened.”<sup>6</sup> Both assemblies and courts were, as noted, decision-making bodies; they heard arguments and then voted to approve or to reject a proposal and to confirm or to dismiss an indictment. In the course of those arguments, a great many appeals were made to the way things are, have been, or will be—appeals that we may plausibly characterize as appeals to fact. I here investigate something slightly different: the perceived relationship of the decision-making process itself to fact, knowledge, or truth.

Specifically, I ask to what extent the questions considered by ancient Greek assemblies and courts—all of them variations on the basic formulations “What is advantageous?” and “What is just?”—were understood not merely as involving appeals to matters of fact but as themselves inquiries into fact. When an assembly considered whether or not a particular policy (e.g., declaring war against Philip of Macedon) was advantageous, to what extent did its members believe that an objectively correct answer to their question existed? When a judicial panel considered whether, for example, Ktesiphon’s proposal to award Demosthenes a crown was illegal, how far was the answer to that question conceived of as something that existed independently of the views of the judges? I ask, in other words, if invocations of fact in arguments about advantage and justice were separated, by a perceived boundary, from the decisions subsequently made, or if, instead, the notion of “facticity” slid into the way the ancient Greeks conceived of those decisions themselves.

I hope to show, against some recent arguments, that there was such a boundary. The ancient Greeks did not regard themselves as working their way toward an objectively correct answer when they decided political questions. On the contrary, their political terminology reveals that they conceived of decision-making as a strictly situated activity, inseparable from the perspective of the decision maker. A decision was a judgment made from a particular point of view, not an attempt to square up to an independently correct order of things. That understanding, I suggest, reveals a grasp of the nature of political action superior to the epistemic conceptualization popular in some quarters today.

### *The Current Intellectual Context*

An influential defense of democracy is the epistemic argument, also known as the argument from collective wisdom.<sup>7</sup> According to this argument, democracy is superior to other forms of government because it offers the best chance of arriving at correct answers to political questions.<sup>8</sup> Support for this claim is often drawn from Condorcet's jury theorem (1795), which shows that, assuming any given juror has a better than random probability of being right, a majority of jurors is almost certain to be right about a defendant's guilt or innocence; in addition, the greater the majority, the higher the probability of a correct conviction.<sup>9</sup> Similar logic has been held to apply to such questions as "Should we build a bridge over the channel or not? If so, should it be a four-lane, a two-lane, built now or later?" and "Should France ratify the EU constitution?"<sup>10</sup>

Epistemic democrats hold that there are correct (or at least epistemically better and worse) answers to such questions. They hold that these answers exist independently of any decision-making procedure but can be approximated by decision makers to some degree (if not known with certainty), and they agree that large, cognitively diverse groups are more likely to approximate correct answers than small groups or individuals (including groups of experts), because the former have access to more diverse knowledge about the world. In the words of Hélène Landemore, "More is smarter."<sup>11</sup> For some, such as David Estlund, this justification of democracy is not merely sufficient but necessary: "Democratically produced laws are legitimate and authoritative because they are produced by a procedure with a tendency to make correct decisions."<sup>12</sup>

There is some plausibility to these claims. In several cases, the "wisdom of crowds" has been shown to answer certain kinds of questions better than individuals, however expert. Two frequently cited examples are a 1906 competition for guessing an ox's weight, described by Francis Galton, and a 1968 search for a missing submarine. More recently, James Surowiecki has documented the same phenomenon when asking members of the public to guess the number of jelly beans in a jar and even, on a radio phone-in program, the number of books in his office.<sup>13</sup> In every case, the average guess of the crowd resulted in something very close to the independently verifiable truth.

These experiments have prompted a great deal of interest among political theorists. But it is not quite clear what their political implications may be, since we have no way to verify "true" or "correct" answers to political questions.

Other kinds of supporting evidence must be found if the epistemic argument for democracy (or any other political system) is to seem credible.

Into this breach, perhaps unexpectedly, step the ancient Greeks. Aristotle is regularly cited in this connection;<sup>14</sup> Protagoras (as represented by Plato) has also been deployed.<sup>15</sup> Most significantly, Josiah Ober has recently championed classical Athens as a “case study in participatory epistemic democracy.”<sup>16</sup> What Ober calls the “remarkable” success of Athens can, he argues, be explained at least in part by the “epistemic functions of democratic institutions.”<sup>17</sup> “Overall and over time,” Ober writes, “democratic Athens fared well enough to outdo all its city-state rivals,” and “the postulated value of aggregated knowledge solves the riddle of Athenian success.”<sup>18</sup>

Ober’s claim is open to two interpretations. It may be read as a purely external or objective account of the Athenian political system: that is, regardless of the Athenians’ intentions or self-understanding, the effect of their political system was to aggregate a great deal of politically useful knowledge. If that reading is right, Ober offers a “black box” analysis of Athenian democracy, an “as if” or functionalist-evolutionary account that harkens back to his brief but ringing endorsement of behavioral studies of human society in his major early work *Mass and Elite in Democratic Athens*.<sup>19</sup> Like all “as if” explanations, moreover, such an account could not be disproved on its own merits, given its implicit reliance on circular reasoning.<sup>20</sup> It could only be deemed more or less plausible in relation to competing accounts.

Alternatively, Ober’s claim may be read in a more internal or subjective vein, as suggesting that the Athenians consciously deployed democratic institutions in order to maximize knowledge aggregation. If so, Ober’s argument is staked at least partly on the territory of political thought as well as practice. It suggests that ordinary Athenians conceived of political decision-making along epistemic lines and actively supported democracy on that basis, not merely that they unwittingly enjoyed its epistemic effects.

Much of the time, Ober has left open which interpretation is to be preferred. This is understandable given the relatively little evidence available on the Athenian council, which Ober describes as the city’s most epistemically valuable institution.<sup>21</sup> In at least one version of the argument, however, Ober has favored the second interpretation. Democratic Athens, he writes, depended “directly and self-consciously” on “deploying the epistemic resources of its citizenry to hold its place in a highly competitive multi-state environment.”<sup>22</sup>

Unlike a functionalist account, the latter version of Ober’s claim concerning

Athens may be assessed directly. We have ample evidence showing how the Athenians and other Greeks conceived of their decision-making processes. Did they favor democratic institutions because they enabled the community to benefit from the epistemic resources of the masses? In particular, did they think of democratic decision-making as a process likely to uncover correct (or at least epistemically superior) answers to the political questions before them? Were they, in short, epistemic democrats? I argue that the answer to these questions is no.

In the remainder of this chapter, I first assess the evidence introduced by Ober and others in support of the view that the ancient Greeks valued democracy on epistemic grounds. Next, I explore the distinction between knowledge (*epistêmê*), understood as information that exists independently of human will, and judgment (*krisis* or *gnômê*), understood as a view produced by and inextricably linked to a particular willing agent. I suggest that while the ancient Greeks certainly believed that knowledge played a role in decision-making, they understood the specific task of decision makers to be asserting how things seemed to them (*edoxe tini*, the language used in the prescript of ancient Greek decrees), not discovering how things really were. This suggests that the concept of a procedure-independent standard of correctness or truth in politics—a necessary postulate of the epistemic view—was largely alien to them. Finally, drawing on political problems such as the Melians' conflict with the Athenians during the Peloponnesian War and the rise of Macedon, I argue that the standard ancient Greek conceptualization of decision-making shows a better grasp of its inherently creative character.

### ***The Evidence for the Epistemic Interpretation***

Easily the most-cited evidence for the view that the ancient Greeks supported democracy on epistemic grounds is a section of book 3 of Aristotle's *Politics*, in which he argues that it is sometimes acceptable for a multitude to hold power.<sup>23</sup> The argument itself is fairly brief (though Aristotle frequently refers back to it) and has been much debated. At its heart is a claim that because a large number of relatively ordinary men may collectively possess more of a certain politically salient thing than a few men who are each blessed with a large amount, the large group is able to judge better (*krinousin ameionon*) than the small one.

What is this politically salient thing? Despite some variation among inter-

pretations, the predominant view has been that it is some form of knowledge, such as dispersed information, experience, or expertise.<sup>24</sup> Yet, as I have argued elsewhere, Aristotle does not, strictly speaking, employ epistemic language in this passage.<sup>25</sup> Rather (as shown by his immediately preceding chapters), he takes the crucial criterion for participation in politics to be *aretê*, “excellence” or “virtue,” an umbrella term that includes both ethical and intellectual qualities, and he maintains that focus throughout the passage in question. Each man of the many, he says, may have a part (*morion*) of virtue (*aretês*) and prudence (*phronêseôs*), and when they come together, these parts are combined: one man supplies one part, another provides another part, and all together supply the whole (*alloi gar allo ti morion, panta de pantes*).<sup>26</sup>

There is clearly an intellectual aspect to this claim. *Phronêsis*, “practical wisdom,” is one of six capacities listed by Aristotle under *logos*, “reason,” in his catalog of the parts of *aretê* in its broadest sense.<sup>27</sup> (*Epistêmê*, “scientific understanding” or “knowledge,” is another.) Equally clearly, the claim has an ethical aspect. Whenever Aristotle distinguishes between *aretê* and an intellectual capacity (as he does here), *aretê* always refers to a bundle of moral qualities, including (most important for politics) courage, justice, and moderation.<sup>28</sup> But most crucial to our understanding is that in Aristotle’s account, each of these criteria—courage, justice, moderation, and even practical wisdom—are practices, not forms of knowledge. That *aretê* (virtue) is *epistêmê* (knowledge) is an argument famously associated with Socrates and Plato but explicitly denied by Aristotle,<sup>29</sup> according to whom *aretê* is a “power” (*dynamis*) of “providing and preserving good things.”<sup>30</sup> Above all, it is practical, realized only in activity.<sup>31</sup> As such, it is quite different from knowledge, which may exist in the mind even when not being acted on.

To the extent that Aristotle had a conception of collective wisdom, then, it seems to have involved not the aggregation of knowledge (conceived of as dispersed information, experience, or expertise) but the aggregation of practical capabilities, including ethical capabilities, in collective activity.<sup>32</sup> Accordingly, his defense of the right of certain multitudes to rule is not “epistemic” according to the modern definition of the term. He never suggests that a multitude ought to rule because it can aggregate more politically useful knowledge than smaller groups. Rather, his view seems to be that a multitude will be justified in ruling if and when, by acting together, it will be braver, fairer, more moderate, and more sensible than some subset of very brave, fair, moderate, and sensible men. I take this argument to be closer to an ethical than an epistemic one.

Losing the support of this passage of Aristotle makes a sizable hole in the epistemic democrat's armory. As well as being the only canonical philosophical support cited in most discussions of collective wisdom, it is the only primary evidence used to demonstrate the Athenians' commitment to the aggregation of knowledge in Ober's 2008 book *Democracy and Knowledge*.<sup>33</sup> Earlier in his career, however, Ober adduced several other passages in the service of a more general argument about the Athenians' faith in the "wisdom of the masses," defined as the "collective knowledge, experience, and judgment of the citizen body as a whole."<sup>34</sup> Unfortunately, those passages also fall short of proving that the Athenians supported democracy on epistemic grounds. Either they reveal respect for the judgment of the masses but do not show that this respect was connected to their possession of knowledge, or they attest to the usefulness of knowledge but do not show that its dispersed possession was believed to justify democracy.

Many sources indicate Greek democrats' respect for the judgment of the masses and their commitment to submitting political decisions to them. One of the best known is a sentence by the Syracusan leader Athenagoras (reported by Thucydides), stating that while the best advisers are the wise (*tous synetous*), the many (*hoi polloi*) judge best (*krinai . . . arista*).<sup>35</sup> As Ober rightly notes, a similar idea appears in Cleon's speech on how best to punish the Mytilenaeans following their revolt: "ordinary men" who "mistrust their own cleverness" generally "conduct affairs successfully" (*orthountai*—literally, "go straight") because they are "fair judges" (*kritai . . . apo tou isou*), unlike those "rivals" who argue with each other from the stage.<sup>36</sup>

At first glance, the passages just cited may look like promising support for the epistemic interpretation. Yet, crucially, neither implies that the basis of the masses' better judgment is knowledge. Cleon, in particular, appears to be suggesting something different: that "ordinary men" judge more soundly because they are not themselves party to a public dispute. That suggestion recalls another argument offered by Aristotle in support of the judgment of the many: that they are less "corruptible" (*adiaphthoron*) than a few, just as a larger stream of water is purer.<sup>37</sup> A single person's judgment (*krisin*), Aristotle argues, is bound to be corrupted when that person is overcome by anger or another emotion, but it is hard to make everyone get angry and "go wrong" (*hamartein*) at the same time.<sup>38</sup> Again, what is at issue seems to be primarily ethical or dispositional.<sup>39</sup> Sound judgment involves being fair to both sides, by practicing the virtue of justice (*dikaiosynê*), a quality commonly lauded in Greek political thought.<sup>40</sup>

A passage from Demosthenes cited by Ober may be interpreted similarly. Ober writes, “Even when berating the jurors for their inconsistency, Demosthenes emphasized their good judgment and claimed that everyone [*hapantes*] quite correctly agreed that bribe-taking politicians were the worst men in the state.”<sup>41</sup> Bribery was certainly taken very seriously: a variety of measures were available to bring those involved to court, and if they were convicted, the death penalty might be applied.<sup>42</sup> But it is not clear that Demosthenes’ comment reveals a commitment to democracy on epistemic grounds. If the judgment of the masses was deemed superior to that of a bribe taker, the reason for that was surely ethical. Moreover, Demosthenes’ suggestion that the judgment of the crowd was the correct one does not amount to a defense of democracy.

In other passages, knowledge plays a more direct role. Hypereides argued that a man’s entire life is relevant to his legal defense since “no one in the polis can deceive the mass of you.”<sup>43</sup> Similarly, Dinarchus, prosecuting Demosthenes for bribery in 323, remarked that his audience would doubtless “see and know [*epistamenoî*] these facts [*tauth’*, “these things”] much better than I do.”<sup>44</sup> Ober argues that since Dinarchus goes on to relate the crimes of Demosthenes in great detail, the prosecutor cannot really have thought this. Rather, Ober suggests, Dinarchus is “expressing solidarity with an ideology that stressed group over individual knowledge.”<sup>45</sup>

Ober’s interpretation is certainly possible. But the claim “You guys know this even better than I do” remains a fairly common rhetorical gambit, and one would hesitate to argue that every society in which it has appeared is one that prized group over individual knowledge. Moreover, although such remarks are quite common in our extant speeches, they were not above suspicion. Another speech in the Demosthenic corpus includes the lines “[This man] is so unscrupulous that if he has no witnesses to prove a fact [*peri hôn*, “about things”], he will say it is well known to you [*hymas eidenai*] . . . a trick used by all those who have no just argument to advance. If he shall try it, do not tolerate it; expose him. What any one of you does not know [*eidê*], let him deem [*dokimazetô*] that his neighbor does not know either.”<sup>46</sup> This advice strongly implies that regardless of the grounds on which ordinary men were invited to pass judgment in court, the possession of prior knowledge was not deemed to be essential.

Most extant ancient Greek speeches, like the aforementioned, concern court cases. Our most valuable evidence concerning speeches made in assemblies is a collection of openings (*exordia*) found among the writings of Demosthenes, and Ober rightly makes the most of them. He draws attention to two in

particular. One, *Exordium* 45, recalls the speeches of Athenagoras and Cleon found in Thucydides and quoted above. Ober writes, “When arguing that making a good speech and choosing sound policies are not the same, Demosthenes states that the former is the work of the rhetor, the second of a man possessing intelligence (*nous*). Therefore, ‘you, the many’ are not expected to speak as well as the orators, but ‘you, especially the older ones of you, are expected to have intelligence (*noun*) equal to or better than that of the speakers, since it is experiences (*empeiriai*) and having seen much (*poll’ heorakenoi*) that makes for intelligence.”<sup>47</sup> The special attractiveness of this passage to older citizens is “obvious,” Ober remarks, but he also suggests that it “affirms the conviction that collective judgment by the many is superior to individual perception and more important than mere speech”<sup>48</sup>

It is clearly true that the collective judgment of the many was deemed “more important than mere speech”; the vote of the mass of listeners, not the opinion of a speaker, was, after all, politically decisive in Athens and other ancient Greek democracies. But the claim that collective judgment by the many was deemed superior to individual perception deserves further consideration. For one thing, Demosthenes does not actually mention perception, individual or otherwise. He is engaged in comparing speech-making and decision-making, and his argument is that different capacities are exercised in each: in speech-making, rhetorical prowess; in decision-making, intelligence (*nous*) based on experience. The modern pro-democracy argument from collective wisdom would be that decisions ought to be made by the many because those who comprise the many have more experience under their collective belt than a single speaker. But Demosthenes does not make that claim. Rather, he takes it for granted that the speaker’s role is simply to speak, and he stresses that this function is distinct from the audience’s role, which is to decide. Demosthenes goes on to argue that “valorous deeds and bold exploits . . . unless backed by ready armament and physical force, though pleasant to hear, are hazardous in action. . . . All things are easy to say, men of Athens, but not all things are easy to do.”<sup>49</sup> Demosthenes’ concern is evidently that the audience will make a foolish decision based on its love of fine speeches, rather than a sensible one based on *nous*, which the crowd’s older members especially ought to possess. The two dispositive factors here would seem to be age and *nous*, not *epistêmê* or even, necessarily, collective judgment.

The other passage Ober quotes from Demosthenes’ *Exordia* offers stronger support for the epistemic case. In it, Demosthenes is outlining the situations in

which he would not bother to speak. One is when everyone has already decided to do what Demosthenes considers necessary, in which case a speech from him would be superfluous. The other is when everyone has already decided to do the thing he opposes, “for I should have thought it more likely,” he explains, “that a single person like myself should misconstrue the best measures [*agnoein ta kratist*] than all of you.”<sup>50</sup> That line is compatible with the view that the Athenians supported democracy because the knowledge possessed by the assembly en masse made them better able to make good decisions, but it does not constrain that inference. Demosthenes accepts that when he is massively outnumbered, it is more likely that the unsound judgment is his rather than that of his audience. But the basis of its unsoundness is unstated. Most important, the epistemic status of the “best measures” is open to interpretation. Do they exist independently of the crowd, apart from its perceptions and judgments? On one occasion elsewhere, Demosthenes distinguishes between “what seems best to you” (*dokounta beltisth*) and the “truly best” (*onth’ hōs alēthōs*), but it is not clear whether he thought that the “truly best” could securely be apprehended by his audience.<sup>51</sup> Altogether, the second *Exordia* passage referenced by Ober raises the question under consideration here but does not answer it.

Completing Ober’s catalog of support for the “wisdom of the masses” is a passage from Isocrates’ attack on the Sophists, the itinerant intellectuals who made their living by teaching rhetoric. Though those men professed to have “exact knowledge” (*tēn epistēmēn*), Isocrates argues that people who relied on *doxai* (opinions, judgments, or views) tended to agree with one another more and to be correct (*katorthountas*, “keep straight”) more often than the Sophists themselves.<sup>52</sup> Suggesting that this claim is “not necessarily representative of Isocrates’ general beliefs,” Ober takes it to show that Isocrates was “willing and able to use the *topoi* of popular ideology for polemical purposes”—the *topos* in question being “the assumption that groups of individuals lacking special skills and education tended to produce wise decisions.”<sup>53</sup> As before, there is no defense of democracy here, epistemic or otherwise. More important is the contrast Isocrates draws between *doxa* (opinion) and *epistēmē* (knowledge). Not only does he counterpose the views of laymen to those of intellectuals, but he specifically distinguishes the judgments of ordinary men from knowledge as such. In the words of translator George Norlin: “There is, according to Isocrates, no ‘science’ which can teach us to do under all circumstances the things which will insure our happiness and success. . . . All that education can do is to de-

velop a sound judgment (as opposed to knowledge).<sup>54</sup> On this reading, Isocrates seems very far from making an epistemic claim on behalf of the many.

About Athenagoras, Demosthenes, Hypereides, and Dinarchus, Ober concludes, “All leave a place in the decision-making process for the expert politician, but each affirms that the collective wisdom of the masses must be the final arbiter.”<sup>55</sup> Those orators certainly championed the advisory role of politicians, though we should perhaps be a bit cautious about the term *expert*, since that is not how they typically represented themselves.<sup>56</sup> And each certainly wanted the judgment (*krisis*) of the masses to be politically decisive. But to the extent Ober uses the word *wisdom* to mean “knowledge” rather than “judgment,” we must demur: we do not have the evidence for that.

Finally, we should consider the sketch of Protagoras’ political views given by Plato and recently discussed by H el ene Landemore, who rightly notes that the speech put in Protagoras’ mouth is a genuine defense of mass participation in politics.<sup>57</sup> Whether Protagoras’ argument amounts to an epistemic defense of democracy is another question. According to Protagoras, all men are originally endowed with the qualities of reverence (*aid s*) and justice (*dikaiosyn *), which are the bonds of men in poleis; hence all men are born to share in political life.<sup>58</sup> Landemore speculates that the political wisdom inculcated by those qualities is an emergent property of the group, since that interpretation would explain Protagoras’ insistence that in addition to being inborn, those characteristics can be further developed through education; Landemore argues that it is only by including everyone that the city will tap “divine wisdom” in the form of collective wisdom.<sup>59</sup> Yet Landemore freely admits the difficulty of calling Protagoras’ myth “epistemic.” As she rightly concedes, political wisdom appears in this dialogue “as an art, a virtue, but only ambiguously as a form of knowledge.”<sup>60</sup> There are slender grounds for interpreting Protagoras’ conceptions of either *aid s* or *dikaiosyn * as epistemic (unlike those of Plato himself). Landemore is right, however, that Protagoras should be significant for epistemic democrats—though for a different reason altogether, as we shall now see.

### ***Knowledge versus Judgment***

Ancient Greek democrats were certainly convinced of the wisdom of putting questions to the demos. Yet it is not clear whether that was because the demos

itself was deemed wise, at least if by that we mean knowledgeable. *Krisis* (judgment), not *epistêmê* (knowledge), is the key concept associated with decision-making in our sources, and the best case for the epistemic view comes from assimilating the two. But there are good reasons to resist that move.

As far as we can tell from Plato's representation, Protagoras was particularly famous for one idea, formulated by Plato in the *Theaetetus* as "Man [*anthrôpos*] is the measure [*metron*] of all things, of the existence of the things that are and the non-existence of the things that are not."<sup>61</sup> A few pages later, this idea reappears with a noteworthy alteration: *metron* is replaced by *kritês* (judge), cognate with *krisis*, the term meaning "decision" or "judgment" that we have already encountered several times.<sup>62</sup> To paraphrase the assertion of Plato's Protagoras, claims about "what is" express nothing more or less than that they appear to be so to a human being. Whether this amounts to full-blown philosophical subjectivism or relativism may be debated.<sup>63</sup> But according to Protagoras' account, human beings cannot get beyond their own perceptions; the views they adopt are intrinsically and ineluctably attached to them as perceivers as well as to the objects perceived. As Plato's Socrates suggests of Protagoras' view, "Nothing is invariably one, itself by itself, but everything is always becoming in relation to something, and 'being' should be altogether abolished."<sup>64</sup>

Protagoras' position is the target of lengthy and explicit criticism in the *Theaetetus*, and I here want to draw attention to the concatenation of ideas associated and contrasted with it. The "man-measure" doctrine is consistently identified by Plato with (1) *krisis* (judgment, decision) and *aisthêsis* (perception), as opposed to *epistêmê* (knowledge);<sup>65</sup> (2) *genesis* (generation) and *kinêsis* (motion), as opposed to *ktêsis* (possession);<sup>66</sup> (3) *to dokein* (seeming)—cognate with *doxa* (opinion)—and *to phainetai* (appearing) and *to genesthai* (becoming), as opposed to *to einai* (being);<sup>67</sup> and (4) political activity, as opposed to philosophy.<sup>68</sup> These patterns admit of concise summarization. At the heart of the *Theaetetus* lies a significant distinction between judgment and knowledge. Judgment is conceived of as an articulation of how things seem to an agent—a changeable articulation generated by and inextricably linked to that agent. Knowledge is conceived of as an articulation of how things really are, which may be possessed by but exists independently of an agent and is not susceptible to change.

From Plato, we understand that the norm in Athens was to care—principally, if not exclusively—about judgment. That Socrates alone is depicted as being more interested in knowledge is to be expected: the self-conception attributed to Socrates as being the Athenians' lone "gadfly" demands it.<sup>69</sup> But, strikingly,

Plato seems to have been right. The evidence is overwhelming that although the ancient Greeks granted knowledge a role in the production of judgments, they saw the essential task of decision makers as being to assert how things seemed to them (a view in which they were themselves implicated), rather than how they thought things really were (an understanding autonomous from their own views or commitments). In other words, when a political agent chose to follow a particular course of action, it was understood that he (or it, in the case of a collective agent) had not discovered but deemed that particular course of action to be advantageous or just.

One way that understanding is visible is in the widespread use of the terms *krisis* (decision, or judgment) and *gnômê* (judgment, opinion), as opposed to *epistêmê* (knowledge), to describe the verdicts of assemblies, courts, and other decision-making bodies.<sup>70</sup> But it is plainest in the use of the verb *dokeô* (seem) in decision-making contexts. Throughout ancient Greece, that was the term used to establish laws, decrees, alliances, and other political decisions. We have scores of examples of inscriptions beginning with *edoxe tô dêmô* (literally, “it seemed [good] to the demos”) or variations (involving other agents or institutions).<sup>71</sup> The verb in these cases is often translated “decided by,” “resolved by,” or even “voted” (since that was often the action that had taken place), but what was asserted, more literally, was that the chosen course of action had seemed advantageous to the decision-maker.<sup>72</sup> Even the notion of advantage was typically implicit, though it did appear occasionally. Two examples are Lycurgus’ description of a decree of 338 to the effect that the council would “hold itself ready to do whatever seemed to be in the interest of the demos” (*ho ti an dokê tô dêmô sympheron einai*) and a line of Demosthenes in which he observed that out of a multitude of proposals, “the selection of the one advantageous to you” (*tên tou sympherontos hymin hairesin*) should not be too difficult.<sup>73</sup> Never merely implicit, however, was the agent to whom the given course of action had seemed appropriate, that is, the identity of the decision-maker. That information was evidently deemed an essential part of the political record.

*Dokeô* was used in a parallel way in judicial contexts: Aeschines reports that the “formula prescribed by law” to be spoken by the herald prior to a vote was “The hollow ballot for he who believes [*hotô dokei*; literally, “to whom it seems”] that [X has committed the charge], the solid ballot for him who does not [*hotô mê*].”<sup>74</sup> The only difference was that in court, the wider issue under consideration was not what seemed advantageous to the judges but what seemed just. Hypereides asked his hearers, when they went to the ballot, to “dispense with the arguments of us all” and “vote whatever seems to you to be just [*ho ti an*

*hymín dokê dikáion einai*] and in keeping with your oath.”<sup>75</sup> The speaker in *Against Macartatus*, an inheritance case, “deliver[ed] over to you this boy to be the object of your care in whatever way you deem most just [*hopôs an hymín dokê dikaiotaton einai*].”<sup>76</sup> Similar examples include the injunction “If I seem to have been the victim of wrongful and lawless acts [*ean êdikêsthai kai paranomeisthai dokô*], render me the aid which is my due”; the plea that the judges come to the speaker’s aid “if we seem to be being wronged” (*dokômen adikeisthai*); and the recollection that “you punished him, because he was judged to be guilty [*doxanta adikein*; literally, “he seemed to have done wrong”].”<sup>77</sup> The essential issue was how things seemed to the judges, and the majority view was accepted publicly and, it seems, unhesitatingly—except by Plato—as decisive.

The use of *dokêô* in these contexts, especially the use of *dokêô tini* (seem to [the decision-maker]) to mean “decide,” militates strongly against the claim that most ancient Greeks supported democracy (or any other decision-making system) on epistemic grounds. A key postulate of the epistemic view is that there is a procedure-independent right answer to political questions, which it is the decision maker’s job to approximate and against which the final decision can be judged. But no such conception appears in our ancient Greek sources—as long as we include “agent-independent” under the banner of “procedure-independent,” as I think we must. Rather, the evidence suggests that most ancient Greeks were quite comfortable with the idea that decisions simply track the view of the decision maker, however that view might have seemed to others. Only Plato’s Socrates, it appears, showed an interest in “right answers” to practical questions beyond the ken of how things seemed to be to the decider, and that position arguably constituted one of the most far-reaching philosophical interventions in the history of political thought.<sup>78</sup>

Paradoxically, today’s epistemic democrats would appear to side with the notorious antidemocrat Plato on this issue, against the rest of the ancient Greeks. The standard Greek conceptualization of political decision-making seems to have been closer to the doctrine of Protagoras. And that doctrine, I submit, actually reflects a more plausible account of the nature of political action.

### ***The Nature of Political Action***

Among the postulates of the epistemic defense of democracy is the idea that there are right or correct (or, at least, epistemically better and worse) answers to

political questions, such as “Should we build this bridge?” and “Should France ratify the EU constitution?” To those queries, we may add some ancient Greek equivalents: “Should the Melians refuse an alliance with Athens?” or “Should the Athenians go to war against Philip of Macedon?” or “Was Ktesiphon’s proposal to give Demosthenes an honorary crown illegal?” Epistemic democrats suggest that the right answers to these questions exist independently of the decision-making process and may be approximated by decision makers to some degree, if not known with certainty.

Now let us consider the nature of political decisions. Essentially, they specify and set in train a course of action within the effectual power of the decision maker—in this case, the agent who speaks for the polis.<sup>79</sup> In that respect, political decisions are no different from decisions made by individuals in regard to their personal lives. Both set in motion actions within the power of the decision makers to effect. That characteristic is easy to see in the case of policy decisions, that is, questions of advantage. Whether the bridge is built, the constitution ratified, the alliance made, or war declared is, in the final analysis, simply up to the decision-making agent to decide. Other things may intervene before, for example, the bridge is completed or even begun, but having the bridge built must, in principle, be within the capacity of the decision-making agent.

Accordingly, I suggest, decision-making is an inherently creative act. It can create something new in the world: a bridge, a constitution, an alliance, a state of war. Or it can create a world in which (at least for the time being) there is no such bridge, constitution, alliance, or war, although the potential for it had existed. Either way, something novel is generated purely by the will of the decision maker. That creative aspect suggests that deciding political questions is fundamentally different from answering questions of the kind described earlier in connection with the successful use of the “wisdom of crowds”: the weight of an ox, the location of a missing submarine, and the number of jelly beans in a jar or of books in a study. To these examples, we may add one from ancient Greece, not yet, as far as I know, cited in any of the relevant literature: “How high is this wall?” The Plataeans, Thucydides tells us, made ladders as high as their enemy’s city wall by severally “counting the layers of bricks in an unplastered section. . . . Many counted the layers at the same time, and while some were sure to make a mistake, the majority were likely to hit the true count.”<sup>80</sup> In each of these cases, a right answer really did exist independently of the will of those answering. No matter how much those doing the estimating may have wished otherwise, it was not within their power to alter the weight

of the ox, the location of the submarine, or the number of jelly beans, books, or bricks in the wall. The responses given to these questions were not decisions: there was no decision to be made.

In the case of political questions, however (at least when they are being answered by responsible agents rather than by philosophers), the response offered is a decision. It is not an “answer” in the true sense but a creative act, ultimately (in any case where the decision maker is choosing between two or more possible options) dependent on the will of its author. Indeed, it may be a mistake to think that the political agent and the philosopher interested in political issues are even responding to the same question. At the moment of decision, what is asked is arguably not “Should we build this bridge?”—the question that may well have guided consideration up to that point. Rather, what is asked, implicitly or explicitly, is “Shall we build this bridge?”—a question that necessarily draws our attention back to the will of the decision maker.

In short, I am here taking Aristotle’s side against Plato on the nature of action. Plato posited that the question “What is right?” may be conceived and therefore answered in the same way in the realms of both philosophy and politics—that in both cases, the answer lies on the terrain of “what is” and therefore of *epistêmê*. In contrast, Aristotle argued that asking “What do I know?” is intrinsically different from asking “What shall I do?” The first question calls on *epistêmê* and scientific reasoning, the second on *phronêsis* and deliberation (i.e., choice-making).<sup>81</sup> The “answer” that results from the latter type of inquiry is a decision rather than a fact—a completely different kind of determination.

Since political decisions, with their creative aspect, cannot be divorced from what the decision maker wills and has the power to do, the postulate that there are right answers independent of the decision maker—that is, independent of its will—must, I think, be considered false. It would be akin to suggesting that there exists a right answer to the kind of poem a poet ought to create. My claim may seem to verge on relativism or nihilism (as David Estlund might argue).<sup>82</sup> Surely, some might say, we can imagine better or worse outcomes from the point of view of the agent, and there will exist an agent-independent or objective answer as to what those outcomes are. For example, we can agree that war, famine, or the annihilation of the polis are undesirable outcomes, while its continued flourishing is a desirable one. Can we not use these eventualities as a standard by which to judge the felicity or otherwise of our decisions? To that question, I would say no, and I think most ancient Greeks would have

concluded, for two reasons. First, even when preferred outcomes are agreed on, there may be profound uncertainty about how to establish them and—still more intractable, though perhaps less often considered—wide variation in appetite for the risks involved in doing so. Second, even if things do not turn out as hoped, it does not necessarily follow that the initial judgment of the responsible agents was a poor one. Deciding to pursue a particular course of action, with all the risks it entails, is not the same thing as predicting that the course of action will turn out well. Accordingly, even with the benefit of hindsight, the distinction between judgment and knowledge remains intact.<sup>83</sup>

Uncertainty and risk follow from the obvious point that we decide on actions without knowing their results. As Isocrates argued in *On the Peace*, “in dealing with matters about which they deliberate [*bouleuontai*], men ought not to think that they know [*eidenai*] what the result will be, but be minded towards these contingencies as men who exercise their best judgment [*houtô dianoiesthai*].”<sup>84</sup> Inasmuch as every action creates a new state of the world, we cannot fully foresee its consequences or those of other actions that will be taken in response. The results of our actions are thus susceptible not to knowledge but only to hope and fear. The degree to which we are prepared to accept the risks inherent in any action in order to pursue our hopes and escape our fears will vary from person to person. Consequently, there cannot be an objective standard—at any rate, one accessible to our species—by which to assess the decisions taken by given agents in given conditions.

Consider the situation of the Melians in book 5 of Thucydides.<sup>85</sup> Their options were clear:<sup>86</sup> either they could become allies of the Athenians, paying tribute but preserving their territory, or they could refuse to become allies, trusting in fortune, the gods, and the Lacedaemonians to assist them if the Athenians attacked.<sup>87</sup> As Thucydides has the Athenians point out, the chances that fortune, the gods, or the Lacedaemonians would step in to save the Melians were slim, while the Athenians’ position was extremely strong: they had thirty of their own ships and eight of their allies’ anchored at Melos, with a force of about seventeen hundred hoplites, three hundred bowmen, and twenty mounted archers encamped on the land, and they had already set about ravaging the Melians’ territory.<sup>88</sup> Nonetheless, the Melian negotiators refused the alliance, stating that they would not so readily “rob of its freedom a *polis* that has already been inhabited seven hundred years”; instead, they would “try to win our deliverance.”<sup>89</sup> The sequel is well known. The Athenians commenced a siege, the Melians eventually capitulated, and the Athenians killed all the adult males,

enslaved the women and children, and eventually repopulated the town with their own colonists.

Does it make sense to think of the Melians' decision to reject the Athenians' demands as epistemically better or worse than the alternative? The language of knowledge certainly played a role in the arguments. Both sides "knew" (*epistamenous, epistametha*) that "the powerful exact what they can, while the weak yield what they must" and that "the fortune of war is sometimes impartial and not in accord with the difference in numbers."<sup>90</sup> Declaring the Melians' reasoning to be *alogôs* (irrational), the Athenians openly accused them of placing greater confidence in their hopes than in their present resources and of "holding out for the worse alternative."<sup>91</sup> Yet I can see no reason to believe that the Melians decided as they did because they were mistaken about the magnitude of the task before them. They acknowledged that they would find it very difficult to defeat the Athenians, who, for their part, admitted that the favorable contingencies imagined by the Melians might happen.<sup>92</sup> As the Melians argued, "For us, to yield is at once to give up hope; but if we make an effort, there is still hope that we may stand erect."<sup>93</sup>

The Melian negotiators were willing to take an enormous risk—to "stake your all on a single throw," as the Athenians put it.<sup>94</sup> But it does not follow that they made an epistemic mistake. Only hindsight brings certainty; before the event, there will always be room for hope. If the will to tolerate the relevant risks exists, the claim that acting on that will involves a factual mistake seems meaningless. One may, I think, sooner say that the Melians were crazy to act as they did than that they were mistaken, even if their preferred outcome was survival as opposed to an honorable destruction.

Other examples show that the ancient Greeks did not consider all decisions that proved unfortunate to have been mistaken. Take, for instance, the Syracusans' response to the news that the Athenians were coming to invade Sicily in 415. Hermocrates asserted that he spoke with knowledge (*eidôs*), but he was disbelieved; Athenagoras' argument that the Athenians would hardly act so foolishly was based on probabilities (*ta eikota*), and the Syracusan demos agreed.<sup>95</sup> The Athenians did invade, but Athenagoras was not accused of making a mistake. His judgment had been a reasonable one: the Syracusans were not to know how reckless the Athenians could be.

Another example is Demosthenes' self-defense in *On the Crown*. At various points between the late 350s and 322, when the Greek rebels against Macedonian rule were comprehensively defeated, the Athenians had to choose between

fighting—as they did, for example, in 352–346, 340–338, and 323—and keeping the peace. Both options risked disaster, either through annihilation by superior military forces, as happened to Thebes in 335, or through the loss of political autonomy, as happened to Athens in 322. Demosthenes' position during that period seems to have been complex and not necessarily consistent, but the defense he offered in 330 was straightforward. His policy of resistance to Macedon had failed, but it had seemed right to him, and he stood by it.<sup>96</sup> More than four-fifths of the judges voted in his favor, rejecting Aeschines' argument that proposing a crown for these efforts was illegal.

Evidently, neither Hermocrates' advice nor that of Demosthenes was interpreted as a form of prediction. Judging well—that is, making (or advising) a decision on what seem reasonable grounds—was, apparently, treated as distinct from one's judgment being borne out by events. Indeed, ancient Greeks seldom spoke of good or wise judgments, let alone correct ones. Rather, they complimented the act of judging. The usual form of praise was to say that someone had judged “straightly” (*orthós*).<sup>97</sup> Whether or not such “straight judging” turned out to embody a successful prediction was a separate issue. Similarly, making a poor judgment was “going wrong with respect to a judgment” (*gnômê hamartanei*) or “seeming to make a mistake” (*dokoit' an hamartein*). I am not suggesting that criticism of others' views was rare; on the contrary, the Athenians were arguably harsher in this respect than we are today, as revealed by their custom of indicting those who proposed illegal measures or disadvantageous laws. But at stake in such cases was usually the claim that the original judgment had been based on deceit or manipulation of the people or the political process, not that it had been epistemically unsound.<sup>98</sup>

To what extent were the questions raised in Athenian court—decisions of justice—treated like guesses at the number of jelly beans in a jar, and to what extent were they treated like policy questions of the kind raised in assemblies? To Plato, questions of justice exactly resembled the example of the jelly beans: they were questions with a right answer independent of the views of the judges. Consequently, it was possible for judges to give a wrong verdict, as they had—Plato's works continually implied—in the case of Socrates. Court cases certainly seem to involve *epistêmê* more than did votes in the assembly. As Aristotle observed, court cases concern the past, not the future, and what happened in the past can, in principle, be known. One might argue, then, that at least where the evidence allowed it, court judgments could be determined directly from the facts at hand.

Knowledge of relevant facts certainly played an important part in court speeches. Aeschines, closing his speech against Timarchos, called on his hearers to “make your decision” (*krisin*) in the following manner: “Let nothing be more credible in your eyes than what you yourselves know [*hôn autoi suniste*] and have been persuaded by. . . . Give your vote with regard to the long term, truth, and your own knowledge [*hois autoi suniste*].”<sup>99</sup> Isaeus and Demosthenes both emphasized the importance of giving one’s verdict with a “perfect” or “accurate” knowledge of what had happened,<sup>100</sup> while Isocrates argued, in a pamphlet imitating a self-defense in court, that the “best and fairest defense” was “that which enables the judges to know *eidenai*] . . . about that which they are about to vote” and which specifically left “no room for them to go astray in their thinking [*dianoia*] or to be in doubt which party speaks the truth [*alêthê*].”<sup>101</sup>

Yet even Isocrates drew up short of suggesting that when the facts of a matter were clear, the judgment that ought to follow was equally plain. Once his readers had “learnt the truth” (*mathontas tèn alêtheian*), he said, they would be in a better position to “deliberate [*bouleuesthai*] and pronounce judgment [*diagnôsesthai*] on it.”<sup>102</sup> Knowing the truth did not determine what the judgment should be; rather, it enabled the decision makers to judge well. In this context, as with decisions regarding advantage, “seeming” necessarily supervened. Isocrates himself (in the very next line) reverted to the terminology we have seen elsewhere: “Cast your ballots as seems to each of you right [*dokê dikaion einai*] and in accordance with law.”<sup>103</sup>

The clearest available example of judicial discretion concerns the Harpalos affair of 324. Alexander of Macedon’s treasurer, Harpalos, had absconded with a huge amount of money, sought refuge with the Athenians, been imprisoned in Athens, and then escaped from the city, leaving behind considerably fewer funds than he had had upon arrival. Following an investigation, it was determined by the council of the Areopagus that he had paid enormous bribes to various politicians in order to leave Athens, and the named men were put on trial in the normal way. What is striking is the division of labor between the Areopagus and the courts. Just because the Areopagus had determined that a given man had committed the offense, it did not follow that the judges were expected to punish him.

As Dinarchus explained with respect to another case, “The report of the council was not proved false; it was quite true, but the jury decided to acquit Polyuctus. The council [of the Areopagus] was instructed to discover the truth [*to . . . alêthes*], yet . . . the court decided [*ekrine*] it was a case for pardon.”<sup>104</sup>

Earlier, when prosecuting Demosthenes, Dinarchus had pleaded, “You have taken over the case from the people [*dêmos*], who know the facts [*to gegenêmenon eidotos*]. . . . Will you disregard all that has passed and acquit the first man here before you? Will you, with full power at your command, reject what seemed just [*ta dikaia . . . doxanta einai*] both to the demos and to the Areopagus and indeed to everyone?”<sup>105</sup> These were not merely rhetorical questions. Demosthenes was convicted and severely punished, but letting him go was a real option and would not necessarily have been interpreted as impugning the credibility of the Areopagus. The council was to uncover the facts; the judges were to decide what was just. These were two distinct tasks.

If this seems contradictory, we should remember the extent to which judicial decisions were forward-looking, creative acts, just like those of the assembly. Isocrates took this for granted when prosecuting Lochites: if the judges voted to convict, he remarked, they would not only “judge well” (*orthôs gnôsethe*) but also “cause others citizens to be more decorous and make your own lives more secure.”<sup>106</sup> The principal focus of lawsuits was the judgment of past events, but in every case, the judges also brought something new into being: a conviction or an acquittal, a reparation or a lack thereof. Their decision produced not only a new state of affairs—one in which, for example, Ktesiphon’s proposal to crown Demosthenes would or would not count as illegal—but also a new normative benchmark. To put the issue most bluntly, judicial decisions create facts. Sometimes, the point is that they create facts where there were none before. Which facts are produced is owed solely, in the final analysis, to the will of the decision makers at the moment they cast their votes.

If we allow that there is even a minor creative aspect to judicial decision-making, it seems to me to follow that there can be no objective right answer to questions of justice, in just the same way that there is none to questions of policy. We are, perhaps, caught on the horns of a dilemma: either judges have no agency in this context and, hence, do not really decide anything but merely assert something to be true, perhaps mistakenly; or they do decide something, in which case we must allow for their agency and thus recognize that even accepted facts and the judgments based on them may diverge. If so, we should consider the possibility that the role of facts even in judicial decision-making may be radically circumscribed. Their significance is for the decision maker to decide. If that seems persuasive, the significance of the discovery of the fact with respect to political action in any context may also be judged quite limited.

### **Conclusion**

Near the beginning of *Infotopia*, Cass Sunstein limits the scope of his investigation: “To keep the analysis simple, I focus not on controversial judgments of value but on questions with demonstrably correct answers, now or in the future. What exactly happened in World War Two? Does a certain nation have nuclear weapons? Will a human being be cloned? Will the government of Saudi Arabia be toppled? Will there be a flu pandemic? Will a terrorist attack hit the United States in the next year?”<sup>107</sup> I suggest that this set of questions makes the mistake of treating two different kinds of inquiry as one. Ancient Greek political terminology helps us to see the difference.

The first two questions in Sunstein’s list concern the past and present, both now unchangeable. There is, in principle, a “demonstrably correct” answer to those questions. In contrast, there is no “demonstrably correct” answer now to speculation concerning the results of future human actions, though not because it is difficult to predict such things. On the contrary, prediction is often quite easy, and events may even unfold just as predicted. If they do, it is not, however, because the original prediction had a secure epistemic basis. That is impossible, because the necessary actions had not yet been decided. The reason we can have *epistêmê* about the past, Aristotle suggested, is because the past cannot be changed. In comparison, the future is created by agents whose wills are as yet undetermined. How things seem to the relevant decision makers thus necessarily supervenes in the decision-making process, not only because the outcome of their actions cannot be known, but (more significantly) because what will be created depends on their own wills and what seems tolerable to them, which, in turn, depends not on knowledge but on perception. The distinction to which this necessity points is not between facts and values, as Sunstein suggests, but between facts and unforced actions. Though facts may prove helpful in getting to the threshold of a decision, they cannot finally determine which action to choose.

Why, then, did ancient Greek democrats support democracy, if not because they were persuaded that it led to epistemically superior decisions? One might turn to the argument of Aristotle discussed earlier, but it is a defense not of *dêmokratia* but of rule by a particular kind of multitude, one that meets Aristotle’s criterion of adequate *aretê*. Better evidence can be found in two Athenian sources: the *Athênaiôn Politeia* (*Constitution of the Athenians*) found among

Xenophon's writings, written probably between the late 440s and late 420s, and another work of the same name, dated to the late 330s and attributed to Aristotle but more likely produced by a student or students of his.

Pseudo-Xenophon, sometimes known as "the Old Oligarch," was no democrat (at least if we take his text at face value).<sup>108</sup> But there is also no reason to think that he offers an inaccurate picture of democratic ideology. Indeed, his stated intention is to make clear why the Athenians acted as they did, even though he himself would not endorse their actions: "I do not myself praise the political system of the Athenians; but since they have decided to have it so [*edoxen houtôs autois*; literally, "it seems [good] to them to have it so"], I will show how well they maintain it and achieve those other things concerning which the other Greeks think they act mistakenly [*ha dokousin hamartein*]."<sup>109</sup>

First, says Pseudo-Xenophon, "the poor and the demos there rightly [*dikaiôs*] do better than the wellborn and rich, because it is the demos that mans the ships and brings power [*dynamis*] to the polis." Accordingly, "it seems right [*dokei dikaion einai*] for everyone to have a share in the offices, both randomly allotted and elected, and for any of the citizens to be allowed to speak if he wishes." In other words, what is said to justify the power of the demos within the political system is the power imparted by the demos to the polis. The text does not specify to whom, exactly, this situation appears justified: presumably the demos favored this reasoning, but it seems possible that it is shared more widely—if, as in the case of Pseudo-Xenophon, reluctantly.

He goes on, touching directly on the issues of wisdom and the will: "One might say that they ought not to let everyone speak and serve on the council, but only the smartest [*tous dexiôtatous*] and best [*andras aristous*]." But even in that regard, Pseudo-Xenophon argues, the Athenians "deliberate well" (*bouleountai arista*). "For if [only] gentlemen spoke and deliberated," he explains, "it would be great for the likes of them, but it would not be great for the men of the demos." The latter "know [*gignôskousin*] that the ignorance and viciousness and goodwill [*eunoia*] of the wretched profits them more than the virtue [*arêtê*] and wisdom [*sophia*] and ill will [*kakonoia*] of a gentleman [*tou chrêstou*]."<sup>110</sup> What follows spells out the stakes for the demos, with remarkable matter-of-factness: "For the demos does not want good government under which it is itself enslaved [*douleuein*]; it wants to be free [*eleutheros*] and to rule [*archein*]. . . . If it is good order [*eunomia*] you seek, you will first see the smartest men [*tous dexiôtatous*] making laws in their own interest. Then these gentlemen will pun-

ish the lowlives [*tous ponêrous*]; they will make policy and not allow madmen to sit on the council or to speak or come to assemblies. As a result of these excellent measures, the demos would rapidly fall into slavery [*douleian*].”<sup>111</sup>

In Pseudo-Xenophon’s account, democracy seems very far from being pursued on epistemic grounds. On the contrary, it represented an act of openly partisan self-defense by the demos, advanced by the goodwill of its lowly supporters, endangered by the ill will of at least some of the privileged class. This argument is further supported by Pseudo-Xenophon’s closing remarks, where he gives several examples of *dêmoi* which, having lost the upper hand, had been enslaved or “cut down” by the upper classes in their polis.<sup>112</sup> We may also recall Aristotle’s quotation of an oath sworn in several oligarchical poleis: “I will be hostile to the demos and plan whatever evil I can against it.” Apposite, too, is Aristotle’s list of the three qualities desirable in candidates for high office: loyalty (*philia*) to the established constitution, capacity to perform the office, and *arêtê* and justice, with loyalty listed first.<sup>113</sup> In each case, the disposition of the decision maker is represented as paramount.

To this evidence on the Greek understanding of democracy, we can add the perspective of the Aristotelian *Athênaiôn Politeia*, written around a century later, a few years prior to the end of the classical democratic period. According to its author, the Athenian demos became *kyrios* (supreme or authoritative) over affairs when, following the short rule of the Thirty Tyrants in 404/3, “Having accomplished its return by its own efforts, it seemed just [*dokountos . . . dikaiôs*] for the demos to take over the political system.”<sup>114</sup> Once again, “seeming” is of decisive importance, not merely within the established political process but also with respect to the establishment of the political process itself. The author does not specify to whom, exactly, the reestablishment of democracy seemed just, but we can venture a guess. At a minimum, it will have seemed agreeable to the demos, which had the upper hand at that point and could therefore put its judgment into action.

The author of the Aristotelian *Athênaiôn Politeia* goes on to explain what that action entailed: the demos “administers everything by decrees and by courts in which the demos is the ruling power.” He adds, “They seem [*dokousi*] to act rightly [*orthôs*] in doing this, for a few are more easily corrupted by gain and influence than the many.” This justification, like the preceding one, suggests the importance of the will of the decision maker in forging political action—in this case, with respect to protection against corruption. But this line is, importantly, the author’s personal evaluation. From everything that has been said, I

do not think it would have seemed necessary to the demos to offer any additional justification of its political supremacy.

### Notes

I thank Cliff Ando, Larissa Atkison, David Grewal, Matthew Landauer, Josiah Ober, and George Scialabba for their comments on this chapter. Translations are mine unless otherwise stated.

1. See M. H. Hansen, "The Political Powers of the People's Court in Fourth-Century Athens," in *The Greek City from Homer to Alexander*, ed. O. Murray and S. Price (Oxford: Clarendon, 1990), 215–43; R. Bauman, *Political Trials* (London: Routledge, 1990).

2. Aristot. *Pol.* 1281a–b, 1298a–b, 1300b, 1317b, 1322b; Ps.-Aristot. *Ath. Pol.* 48.4, 59.4.

3. See, e.g., J. K. Davies, *Democracy and Classical Greece*, 2nd ed. (Cambridge, MA: Harvard University Press, 1993), 226; G. Glotz, *The Greek City* (London: Routledge, 1921), 182; K. Raaflaub, J. Ober, and R. Wallace, *Origins of Democracy in Ancient Greece* (Berkeley: University of California Press, 2007), 4.

4. Aristot. *Rhet.* 1358b1–59a6.

5. For this language, see, e.g., Dem. 5.3, "you who deliberate on behalf of the polis" (addressing an assembly); 25.14, "those who deliberate on behalf of the polis and the laws" (referring to judges). On the relationship between deliberation and decision in ancient Greece, see D. Cammack, "Deliberation in Ancient Greek Assemblies" (*Classical Philology*, forthcoming).

6. See, e.g., Din. 1.33, 105, trans. Burr ( *Minor Attic Orators*, vol. 2 [Cambridge, MA: Harvard University Press, 1954]). Cf. Dem. 41.25, 50.21, 37, 52.7, trans. Murray (Demosthenes, *Orations* [Cambridge, MA: Harvard University Press, 1930–49]).

7. For an account of this defense and some alternatives, see M. P. Saffon and N. Urbinati, "Procedural Democracy, the Bulwark of Equal Liberty," *Political Theory* 41 (2013): 441–81.

8. D. Estlund, *Democratic Authority* (Princeton: Princeton University Press, 2008); H. Landemore, *Democratic Reason* (Princeton: Princeton University Press, 2013); H. Landemore and J. Elster, *Collective Wisdom: Principles and Mechanisms* (Cambridge: Cambridge University Press, 2012); J. Ober, "Democracy's Wisdom," *American Political Science Review* 107 (2013): 104–22; Ober, *Demopolis* (Cambridge: Cambridge University Press, 2017), 139–52; C. Sunstein, *Infotopia: How Many Minds Produce Wisdom* (Oxford: Oxford University Press, 2006).

9. For this and related theorems, see B. Grofman, G. Owen, and S. Feld, "Thirteen Theorems in Search of Truth," *Theory and Decision* 15 (1983): 261–78.

10. Estlund, *Democratic Authority*, 230; Landemore, *Democratic Reason*, xv.

11. Landemore, *Democratic Reason*, 104.

12. Estlund, *Democratic Authority*, 8.

13. All the examples mentioned are discussed in J. Surowiecki, *The Wisdom of Crowds* (New York: Doubleday, 2004). For another approach toward the same conclusion, see L. Hong, S. Page and W. Baumol, "Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers," *Proceedings of the National Academy of Sciences* 101 (2004): 16386–89.

14. Aristot. *Pol.* 1281a40–82a40, 1286a25–b7, discussed below and in Estlund, *Democratic Authority*, 232–33; H. Landemore, "Collective Wisdom: Old and New," in Landemore and Elster, *Collective Wisdom*, 1; Landemore, *Democratic Reason*, 59–64; J. Ober, *Mass and Elite in Democratic Athens* (Princeton: Princeton University Press, 1989), 163–64; Ober, *Democracy and Knowledge* (Princeton: Princeton University Press, 2008), 110–14; Ober, "Democracy's Wisdom," 109–12; Sunstein, *Infotopia*, 49, 119; J. Waldron, *The Dignity of Legislation* (Cambridge: Cambridge University Press, 1999), 92–123.

15. Plat. *Prot.* 322d–e, discussed in Landemore, *Democratic Reason*, 57–59.

16. J. Ober, "Epistemic Democracy in Classical Athens," in Landemore and Elster, *Collective Wisdom*, 118. Cf. Ober, *Democracy and Knowledge*; Ober, "Democracy's Wisdom."

17. Ober, *Democracy and Knowledge*, 17.

18. Ober, "Epistemic Democracy," 143.

19. Ober, *Mass and Elite*, 311–14.

20. See J. Elster, *Explaining Technical Change: A Case Study in the Philosophy of Science* (Cambridge: Cambridge University Press, 1983), 55–68.

21. Prefacing his original fourteen-page reconstruction of the council's contribution to epistemic democracy, Ober writes, "Lacking any detailed first-person narrative from antiquity, a thought experiment must suffice" (*Democracy and Knowledge*, 143). In keeping with this prescription, the first nine pages of his account cite no primary evidence at all. He offers another hypothetical account in "Democracy's Wisdom" (116–17) and *Demopolis* (146–52). For a discussion of the activity of the council based on available sources, see Daniela Cammack, "Deliberation and Discussion in Classical Athens," *Journal of Political Philosophy* (forthcoming).

22. Ober, "Epistemic Democracy," 118.

23. Aristot. *Pol.* 1281a40–82a40, 1286a25–b7.

24. R. Balot, *Greek Political Thought* (Malden, MA: Blackwell, 2006); E. Barker, *The Politics of Aristotle* (Oxford: Clarendon, 1962), 126–27; J. Bookman, "The Wisdom of the Many," *History of Political Thought* 13 (1992): 1–12; Estlund, *Democratic Authority*, 232–33; A. Lintott, "Aristotle and Democracy," *Classical Quarterly* 42 (1992): 114–28; R. Mulgan, *Aristotle's Political Theory* (Oxford: Clarendon, 1977), 103–5; M. Nichols, *Citizens and Statesmen* (Savage, MD: Rowman and Littlefield, 1992); Ober, *Mass and Elite*, 163–65; Ober, *Democracy and Knowledge*, 110–14; Ober, "Democracy's Wisdom"; A. Saxonhouse, *Fear of Diversity* (Chicago: University of Chicago Press, 1992); Waldron, *Dignity of Legislation*, 92–123; J. L. Wilson, "Deliberation, Democracy, and the Rule of Reason in Aristotle's Politics," *American Political Science Review* 105 (2011): 263.

25. D. Cammack, "Aristotle on the Virtue of the Multitude," *Political Theory* 41 (2013):

175–202. See also K. Cherry, “Aristotle’s ‘Certain Kind of Multitude,’” *Political Theory* 42 (2014): 1–23; M. Lane, “Aristotle on Claims to Rule: The Case of the Multitude,” in *The Cambridge Companion to Aristotle’s Politics*, ed. M. Deslauriers and P. Destrée (Cambridge: Cambridge University Press, 2013).

26. This interpretation is defended in Cammack, “Virtue of the Multitude.”

27. Aristot. *NE* 1139b15, 1144a5–10. See, further, Cherry, “Certain Kind.”

28. Aristot. *NE* 1098a17–18, 1179b30; *Pol.* 1280b5–10; *Rhet.* 1366b.

29. E.g., Plat. *Meno* 89c. Cf. Aristot. *NE* 1116b, 1144b25–40; *EE* 1216b3–25, 1230a5–10, 1246b30–37.

30. Aristot. *Rhet.* 1366a30–35. See also Aristot. *NE* 1098a15–35, 1100b10–15, 1103b1–30, 1105b10–15, 1106a15–25, 1152a5–10; *EE* 1222a5–10, 1223b10–15.

31. Aristot. *NE* 1099a1–7.

32. For further discussion of the way in which *aretê* may be interpreted as aggregative, see Cammack, “Virtue of the Multitude,” 185–90.

33. Ober, *Democracy and Knowledge*, 110–14. It is very doubtful that Aristotle is talking about Athens in this passage, though I do not pursue that issue here. See Cammack, “Virtue of the Multitude,” 180; E. Garver, *Aristotle’s Politics: Living Well and Living Together* (Chicago: University of Chicago Press, 2011), 14.

34. Ober, *Mass and Elite*, 163–65.

35. Thuc. 6.39.1.

36. Thuc. 3.37.3–5.

37. Aristot. *Pol.* 1286a30–33.

38. Aristot. *Pol.* 1286a33–36.

39. Landemore denies this, arguing that Aristotle’s claim is “cognitive, not moral” (*Democratic Reason*, 62). To the extent that Aristotle believed that all *aretê* involved acting in accordance with *logos* (reason), he certainly thought there was a cognitive element in virtuous human behavior (*NE* 1144b26–7). Arriving at one’s *krisis* (judgment or decision) is also certainly a cognitive activity. But it is not, in Aristotle’s view, exclusively cognitive. He argued explicitly that *phronêsis* (the part of *logos* involved in deciding action) and ethical *aretê* are intertwined (*NE* 1144a13–b17). The cognitive and moral (or—following the Greek terminology—ethical) elements in decision-making are not as distinct as Landemore implies.

40. See, further, D. Cammack, “Plato and Athenian Justice,” *History of Political Thought* 36 (2015): 611–42.

41. Ober, *Mass and Elite*, 165, citing Dem. 23.145–46.

42. See C. Taylor, “Bribery in Athenian Politics,” pt. 1, “Accusations, Allegations, and Slander,” and pt. 2, “Ancient Reactions and Perceptions,” *Greece and Rome* 48 (2001): 53–66, 154–72.

43. Hyp. 1.14, trans. Burtt, modified, quoted in Ober, *Mass and Elite*, 165.

44. Din. 1.33, trans. Burtt, quoted in Ober, *Mass and Elite*, 165. Cf. Aeschin. 1.44–45, 55, 65, 70, 73, 89, 189; Andoc. 1.1, 20, 37, 46; Din. 2.2, 3.1; Hyp. 4.22; Is. 3.40.

45. Ober, *Mass and Elite*, 165.

46. Dem. 40.53–54, trans. Murray, modified.
47. Dem. *Ex.* 45.2, trans. DeWitt; Ober, *Mass and Elite*, 164.
48. Ober, *Mass and Elite*, 164–65.
49. Dem. *Ex.* 45.2–3, trans. DeWitt.
50. Dem. *Ex.* 44.2.
51. Dem. *Ex.* 26.1.
52. Isoc. 13.8; cf. 12.9.
53. Ober, *Mass and Elite*, 163.
54. G. Norlin, *Isocrates*, vol. 2 (Cambridge, MA: Harvard University Press, 1929), 162–63.
55. Ober, *Mass and Elite*, 165.
56. Aristot. *Rhet.* 1359b–60b, Plat. *Alc.* I and Xen. *Mem.* 3.6 suggest that those who offered political advice were expected to be acquainted with basic information about the resources and organization of the polis; cf. L. Kallet-Marx, “Money Talks: Rhetor, Demos, and the Resources of the Athenian Empire,” in *Ritual, Finance, Politics*, ed. S. Hornblower and R. G. Osborne (Oxford: Oxford University Press, 1994, 227–52). But I do not know of any assembly speech where an orator goes so far as to represent himself as an expert, and Plat. *Prot.* 319d strongly implies that neither *technê* (323a) nor the impression of it was required.
57. Plat. *Prot.* 322d e; Landemore, *Democratic Reason*, 57–58. See, further, C. Farrar, *The Origins of Democratic Thinking* (Cambridge: Cambridge University Press, 1988).
58. Plat. *Prot.* 322d–e.
59. Landemore, *Democratic Reason*, 57–58.
60. Landemore, *Democratic Reason*, 59.
61. Plat. *Th.* 152a.
62. Plat. *Th.* 160c.
63. See, e.g., Farrar, *Origins*, 49; H. Segvic, *From Protagoras to Aristotle* (Princeton: Princeton University Press, 2009), 7, 25–26.
64. Plat. *Th.* 157a.
65. Plat. *Th.* 151e, 152a–c, 153a–d, 160c, 161c–e, 170d, 179a, 186e, 201b–c, 201e, 210a. Cf. *Prot.* 356c–e.
66. Plat. *Th.* 152e, 153a–e, 155e, 180d, 182d, 183a, 197a–b.
67. Plat. *Th.* 151e, 152a–c, 153a, 154a, 157a–d, 166d, 167b–c, 170a, 177c–d, 178d–e, 179a, 183a, 186c. Cf. *Gorg.* 459d–e, 464a, 527b; *Prot.* 340b, 344d; *Rep.* 357a–b, 361b, 362a, 365b–c. See also *Rep.* 477a–b, which explicitly associates “being” with *epistêmê*.
68. Plat. *Th.* 172a–177d, 201a–c; cf. *Gorg.* 455a–b, 466d–467b.
69. Plat. *Apol.* 30e.
70. For *krisis* and cognates, see Aristot. *Pol.* 1286a33–36; Aeschin. 1.93, 186, 196; Dem. 18.57, 226, 20.87; Dem. *Ex.* 33.3; Isoc. 6.5; Hyp. 2.10. For *gnômê* and cognates, see Aeschin. 1.196; Andoc. 1.2, 3; Dem. 18.8. Cf. Aristoph. *Eccl.* 655; Plat. *Prot.* 340b.
71. R. Meiggs and D. M. Lewis, *A Selection of Greek Historical Inscriptions to the End of the Fifth Century BC*, rev. ed. (Oxford: Clarendon, 1988), §§ 5.11, 5.24, 14.1, 23.2,

31.1, 37.2, 40.1, 46.1, 47.1, 52.1, 58.1, 64.11–12, 65.3, 68.3, 69.3, 70.3, 71.1, 73.2, 82.2, 85.3, 86.3, 88.1, 89.4, 90.2, 91.1, 92.1, 94.5; P. J. Rhodes and R. Osborne, *Greek Historical Inscriptions, 404–323 BC* (Oxford: Oxford University Press, 2003), §§ 1.19, 2.41, 2.56, 4.3, 5.9, 8.1–2, 10.5, 14.3, 15.1, 17.2–3, 18.2, 22.5, 23.1, 25.1, and many others. Cf. An. doc. 1.27; Aristoph. *Eccl.* 395; Aristoph. *Thesm.* 372–77; Lyc. 1.37. Cf. also Thuc. 1.53.1, 125; 2.24.1; 4.118.2, 4, 9, 11; 5.18.8; 5.23.6; 6.47.12.

72. E.g., Aristoph. *Eccl.* 197–98, trans. Henderson (Harvard University Press, 2002): “We need to launch a fleet: the poor man votes yes, the wealthy and the farmers vote no” (*tô penêti men dokei, tois plousiois de kai geôrgois ou dokei*). Cf. 454–57, 764, 854.

73. Lyc. 1.37; Dem. 1.1. Cf. Thuc. 1.36, 87.3, 91.5, 5.47.12; Dem. 1.16; Dem. *Ex.* 5, 18; Isoc. 8.10, 12.248.

74. Aeschin. 1.79, trans. Adams (Harvard University Press, 1919).

75. Hyp. 4.40. Cf. Is. 11.50; Isoc. 15.179. An alternative formulation appears at Dem. 48.52, where the judges are asked to “reach the conclusion regarding us which may seem to you best” (*ho ti an hymin dokê beltiston einai*).

76. Dem. 43.81, trans. Murray.

77. Dem. 38.2, 54.2, 56.55, 59.117, trans. Murray. Cf. 48.52, 53.24.

78. See, further, Cammack, “Plato and Athenian Justice.”

79. Cf. Arist. *Rhet.* 1359a35–b2.

80. Thuc. 3.20.3, trans. Smith (London, 1910).

81. Emphasized at Aristot. *NE* 1140b1–8. For further discussion of Aristotle’s understanding of deliberation as choice-making, see D. Cammack, “Aristotle’s Denial of Deliberation about Ends,” *Polis* 30 (2013): 228–50. See also Segvic, *From Protagoras to Aristotle*.

82. Estlund, *Democratic Authority*, 5.

83. A complicating factor is the extent to which any possible course of action, entertained because it seems a plausible means to the desired outcome, may or may not advance any of a host of other valued ends, of varying importance to the decision maker. One may argue that the notion that there are single “right answers” to political questions is not true to life, because there may be many coefficients (as it were) that we are trying to maximize or many values that we are trying to respect (though it can be easy to forget this when certain forms of modern analysis privilege precisely those questions for which it is possible to measure or quantify or guesstimate outcomes, and they often dominate debate: e.g., will we be better off economically after Brexit?). An epistemic democrat might reply that the “right answer” in such a situation is whatever maximizes the value of all relevant “coefficients.” Yet what those coefficients are may be disputed, as well as their rank ordering, and even when there is no dispute, the relevant ends may—as has been much discussed—conflict (or appear to conflict) with one another. In such cases, their relative importance to the decision maker must be weighed, and the decision maker’s willingness to tolerate the risks involved in contingently prioritizing one valued end over another will come into play.

84. Isoc. 8.8, trans. Norlin, modified (Harvard University Press, 1980).

85. Thuc. 5.84–115.
86. Thuc. 5.84.3.
87. Thuc. 112.2.
88. Thuc. 5.84.1–2.
89. Thuc. 5.112, trans. Smith, modified.
90. Thuc. 5.89, 102, trans. Smith.
91. Thuc. 5.104, 111.
92. Thuc. 5.104, 111.
93. Thuc. 5.102, trans. Smith.
94. Thuc. 5.103, trans. Smith.
95. Thuc. 6.33, 36.
96. Dem. 18.62, 65–72, 191–95, 199, 206–10. Consider, in particular, 199: “Suppose that the future had been revealed to all of us, that every one had known what might happen, and that you, Aeschines, had predicted and protested, and shouted and stormed . . . even then the city could not have departed from that policy if she had any regard for honor, or for our ancestors, or for the days that are to come. All that can be said now is, that we have failed: and that is the common lot of humanity, if the god so wills [*hotan tō theō tauta dokê*].”
97. Thuc. 2.22, 5.26; Isoc. 20.18; Dem. 18.255, 50.1; Dem. *Ex.* 18.
98. Ps.-Aristot. *Ath. Pol.* 28.3
99. Aeschin. 1.93. Cf. 77–78.
100. Is. 8.3; Dem. 57.4. Cf. Dem. 18.57, 57.34; Lyc. 1.23.
101. Isoc. 15.52, trans. Norlin.
102. Isoc. 15.178.
103. Isoc. 15.179. Cf. Dem. 28.23.
104. Din. 1.59, trans. Burt.
105. Din. 1.105–6; cf. 1.33.
106. Isoc. 20.18, trans. Norlin, modified. Cf. Aeschin. 1.196.
107. Sunstein, *Infotopia*, 16.
108. For a reading of this text as pro-democracy satire, see S. Hornblower, “The *Old Oligarch* (Pseudo-Xenophon’s *Athenaion Politeia*) and Thucydides: A Fourth-Century Date for the *Old Oligarch*?” in *Polis and Politics: Studies in Ancient Greek History*, ed. P. Flensted-Jensen, T. H. Nielsen, and L. Rubinstein (Copenhagen: Museum Tusulanum Press, 2000), 363–84.
109. Ps.-Xen. *Ath. Pol.* 1.1.
110. Ps.-Xen. *Ath. Pol.* 1.6–7.
111. Ps.-Xen. *Ath. Pol.* 1.8–9.
112. Ps.-Xen. *Ath. Pol.* 3.11.
113. Aristot. *Pol.* 1310a10, 1309a35–40.
114. Ps.-Aristot. *Ath. Pol.* 41.1.