

COLLECTIVE GUILT AND COLLECTIVE PUNISHMENT, INDIVIDUAL RESPONSIBILITY, AND OBEDIENCE TO THE LAWS¹

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Summary: In his treatise *Political Obligation in Ancient Greece and in the Modern World*, Hansen addressed the question how far a citizen in a Greek *polis* had a non-negotiable duty to obey the laws of his community. He argued that several *poleis* obliged their citizens actively to break the law if their constitution had been overturned or was at threat. The aim of the present paper is to take this discussion further with particular attention to the moral dilemmas that were sometimes faced by citizens whose communities were dependent on external hegemonic powers. The choices confronting such citizens would be particularly difficult if they were living under an imposed constitution, but a choice between obedience and civic obligation might arise even in *poleis* that had been pressurised into adapting or repealing only specific laws. The discussion will focus on Mytilene, Thebes and the *poleis* in Keos, as well as on Athens between 405 and 401/0 and in the years after Chaironeia.

I. Introduction.

After the completion of the *Polis* Project in 2004, the late honorand resumed his interest in constitutional history as his main area of research.

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Although there is significant continuity between his research published in the 1970s, 1980s and 1990s, there was a change in emphasis, especially in the articles and monographs that he chose to write and publish in Danish, and which were addressed to a wider Danish readership. Throughout his career, he insisted that every historian must possess a Janus head,² with one of its faces looking to the past, and the other gazing at the present that contributes to shaping the questions with which each generation approaches the past.

His engagement with the present, and especially with modern representative democracy in Denmark and the rest of the western world, deepened from 2005 onwards.³ It resulted in a series of Danish publications on direct and representative democracy, the challenges presented by populism at both ends of the political spectrum, and the growing threats posed to modern democracies and their institutions by globalisation and rising inequality, accompanied by a sense of despair and perceived lack of agency on the part of ordinary voters. Already in 2005, he concluded that “every day we hear about endangered species of wildlife. I fear that democracy is on its way to becoming an endangered way of life” (2005: 188, my translation).

Subsequent political developments across Europe and North America further increased his apprehension, especially from 2016 onwards. Both his monographs published in 2017 commented on the fragility of modern democratic institutions and on contemporary manifestations of democratic backsliding;⁴ and he pointed to the steady decline in political engagement by ordinary citizens as a serious problem in Denmark and elsewhere.⁵ While he refrained from further discussion of that decline in 2017, he had treated it seven years earlier in the context of a broader discussion of civic obligation and civic passivity,⁶ which he attributed in part, with de Tocqueville, to “excessive individualism” (2010: 53).

2 See e.g. Hansen 2005b: 7.

3 Hansen 2005a, 2005b, 2010, 2017a, 2017b.

4 Hansen 2017a: 146–49, 2017b: 86–89.

5 Hansen 2017a: 80–82.

6 Hansen 2010: 52: “From the outside, it looks as though the march of liberal democracy is one of victory, but internally we see growing problems. We demand rights,

On the question of civic obligation and civic duty, his late Danish publications intersected with his Anglophone production, most importantly with his treatise *Political Obligation in Ancient Greece and in the Modern World* (2015). Taking Plato's dialogue *Kriton* as his point of departure, he offered his views on the fundamental question why citizens, ancient and modern, were, and still are, expected to obey their laws and be loyal to their constitution. As far as the Greeks were concerned, he emphasised the importance of civic oaths (2015: 32–53). He also noted that the Greeks operated with an equivalent of the modern “right to rebellion”, but which went further by defining rebellion as a civic duty in some circumstances (2015: 54). Especially in democratic *poleis*, the sworn commitment to obeying the laws was often accompanied by a command to break the law “if the constitution was changed or if there was a serious risk that it might be changed” (2015: 61). This paper will build on Hansen's treatise, and it is my hope that it may succeed in posing some complementary questions that may stimulate further debate. There are two issues in particular that merit further discussion, partly in light of contemporary political and constitutional developments in several European nations and across the Atlantic.

One is the question at what point a citizen's decision to defy the laws and official authorities of his community becomes a moral imperative and, in a Greek context, an obligation that a citizen will have to meet, if he wishes to stay true to his oath. Equally important is the question at what point failure to resist implies consent, with passive compliance turning citizens into *de facto* enablers of a repressive regime. The question is particularly thorny in those cases where a sizeable part of the citizen population has little or no political agency.

but what of the duties that complement those rights? We live increasingly as isolated individuals, but what of our fellowship ('fællesskab')? Democracy is supposedly value-neutral, but are all fundamental attitudes to life equally good? Are politically active citizens not supposed to engage in a political fight for the values and ideals in which they believe? What happens to patriotism, when the democratic state is but a procedure, a frame into which every citizen can mount each their own picture? We are too busy with our own activities to be citizens. We leave politics to elected politicians, yet democracy rests on the ideal of popular sovereignty: that power ultimately belongs, even if only indirectly, to the whole people. A democracy cannot exist without democratic citizens” (my translation, as are all throughout the article).

When regime change is brought about by open violence or the threat of violence, it may be fairly straightforward to identify a defining moment, a tipping point, when a citizen's duty to obey his *polis*' (or country's) laws turns into a duty actively to defy them. Another defining moment may be the annulment of entire bodies of legislation that prescribe the composition and remit of a community's decision-making institutions, especially when this is accompanied by highly visible, physical removal of the legislation itself from public spaces.

Such defining moments are less obvious when the process of regime change is gradual, taking the form of successive small and apparently innocuous adjustments to, for example, definitions of eligibility to certain important offices, expansion of the remit or penal authority of such officials, or the tightening of probouleumatic procedures. This type of insidious undermining of institutions and the laws that underpinned them is discussed by Aristotle (*Pol.* 1307b1-19), who comments that all types of constitutions are potentially vulnerable. As an example he refers to Thourioi, where by popular consent it was decided to repeal a law that limited the consecutive terms of office that their generals were allowed to serve. This provided the basis for further gradual changes to the constitution. Once the *symboloi*, the council or board that was supposed to work as a constitutional guardrail, realised the cumulative effect of the changes, the time for reversing them by peaceful, procedural means had passed.

The risk of 'boiling frog syndrome' is serious in both ancient and modern constitutional contexts, not least when institutional and procedural guardrails fail. At what stage must individual citizens decide that their duty to protect the constitution trumps their duty not to break the laws – not least if the recent laws have been made according to legislative procedures that were *formally* unimpeachable?

The other and more important issue is how far a citizen's obligation to obey the laws applies when the laws in question have been passed as a result of external pressure. Aristotle mentions in passing that constitutional changes sometimes happen as a result of hegemonic *fiat* (*Pol.* 1307b20-24), which, then as now, almost inevitably gives rise to questions of legitimacy on the part of some or all of the citizens who are com-

pelled to live under an imposed constitution. In many such cases, the citizen's moral choice may have been a relatively easy one between patriotic duty and compliance with laws, institutions, and officials that were backed up by external military might, often in the form of a garrison.

In other cases, however, the choice may not have been quite as clear-cut. Those who lived in a community whose legitimate political institutions had decided on a policy of collaboration, and whose enactments were sometimes (but far from always) framed in order to accommodate the desires of an external power, were in an altogether more serious bind. As long as they were allowed to keep their constitutional framework, and as long as it was their own officials and institutions that were responsible for law enforcement, it would be far more difficult for each citizen to decide at what point breaking the law would be condonable, and at what point active resistance would turn into a moral imperative.

Such was the situation which prevailed in Denmark from 9 April 1940, the year when Mogens Hansen was born. Denmark capitulated on the day of the German invasion. Until August 1943 the country, though under German military occupation, retained its democratically elected parliament, its own police force, and its own courts. Throughout this period, and especially from 20 July 1940, the government encouraged active engagement with the occupier (and even permitted officers to join auxiliary military service),⁷ and it actively discouraged resistance, especially sabotage. In a broadcast on 2 September 1942, the Danish prime minister even went as far as to encourage the population to denounce acts of sabotage to the Danish police. The Danish Supreme Court likewise enforced legislation that had been passed by the Danish parliament in response to pressure from Berlin, sometimes increasing the severity of sentences on appeal from the High Court.⁸

7 Holbraad 2017: 46.

8 Tamm 2021: 84-87. Among the decisions discussed by Tamm were that of a youth who had attempted to sail to Sweden in a stolen fishing vessel, the conviction of an historian who had delivered lectures entitled 'Our Neutrality' and 'The History of Our Crusade' and of a journalist who had addressed a private gathering with a speech 'The Freedom of Denmark'. Among the most serious cases was that of a ship owner and his assistant who received prison sentences of, respectively, six and three years for having helped a prominent politician, Christmas Møller, escape to Sweden from where he travelled to exile in London.

The stated intention of the Danish government was to protect the population and the nation's democratic institutions as far as possible by accommodating the demands from Berlin and, where necessary, to legislate accordingly. Until 1943, active resistance on the part of the Danish population was very limited indeed. The vast majority of the population chose to comply, and a substantial number went further, engaging in activities that, as Holbraad puts it (2017: 48), fell "within a grey area between supposedly patriotic behaviour and decidedly unpatriotic behaviour." On 29 August 1943 the government stood down, and although a level of political cooperation continued informally and covertly, the country descended into violence and lawlessness especially from 1944 onwards.

The policy of cooperation remains bitterly divisive and politically controversial even to this day. Acts of resistance against the Danish government and against the German occupier (and even the resistance movement's assassination of Danish informers) were for a long time *almost* unanimously defined as patriotic acts in retrospect. In the summer of 1945, after the end of the occupation, it gave rise to the question how far it is justifiable retroactively to hold individual citizens criminally responsible for acts that were not defined as illegal when they were committed, let alone for acts that were prescribed by legislation or encouraged by a government that had been almost universally regarded as legitimate at the time when the now discredited laws and policies were devised.

Complex situations similar to that which prevailed in Denmark during the first three years of occupation are likely to have been replicated in numerous Greek *poleis* that were bound by treaty obligations to external hegemonic powers. The discussion that follows will focus on the moral dilemmas, conflicting obligations, and legal complications faced by citizens in *poleis* that found themselves in asymmetrical relationships with external hegemonic powers, *i.e.* 'dependent *poleis*'. It will be urged that the current debate on Greek attitudes to law and the administration of justice should take into consideration the differences between communities that were freely creating their own legislation – and often foisted legislation on others – and those communities that were obliged to adapt

their legislation to meet various demands made by external hegemonic powers.

II. Repression, obedience, and individual responsibility: the case of Mytilene

Thucydides' representation of two opposing speeches concerning the fate of the *polis* of Mytilene in 427 BCE is among the most famous surviving historiographical dramatisations of democratic decision-making in the Athenian assembly. The question that had given rise to the debate was what penalty should be imposed on the community, after the Mytilenaians had attempted to break free of their alliance with Athens and to join Athens' opponents instead. After a lengthy siege by Athenian forces, the Mytilenaians surrendered on terms that permitted the Athenians to deal with the city as they wished (Thuc. 3.28.1). Approximately one thousand adult male Mytilenaians, deemed by the Athenian general Paches to have been those chiefly responsible (ὡς αἰτιωτάτους ὄντας) for the decision to side with Athens' enemies, were arrested and subsequently sent as captives to Athens.

Once they had arrived, along with a number of Mytilenaiian diplomatic representatives, the Athenians convened an assembly meeting. A majority of those attending decided that the Mytilenaians should be subjected to collective punishment for their community's betrayal of their obligations. All adult male citizens past the age of puberty, without exception, were to be executed, while all women and children were to be enslaved and sold.⁹

If we can believe Thucydides, the severity of this collective punishment was due to the assembly meeting having been conducted in a general mood of anger. On the following day, the public mood had changed, and a further assembly meeting was convened with the same question

9 Thuc. 3.36.2: περὶ δὲ τῶν ἀνδρῶν γνώμας ἐποιοῦντο, καὶ ὑπὸ ὀργῆς ἔδοξεν αὐτοῖς οὐ τοὺς παρόντας μόνον ἀποκτεῖναι, ἀλλὰ καὶ τοὺς ἅπαντας Μυτιληναίους ὅσοι ἦβῶσι, παῖδας δὲ καὶ γυναῖκας ἀνδραποδίσαι, ἐπικαλοῦντες τήν τε ἄλλην ἀπόστασιν ὅτι οὐκ ἀρχόμενοι ὥσπερ οἱ ἄλλοι ἐποίησαντο, καὶ προσξυνελάβοντο οὐκ ἐλάχιστον τῆς ὁρμῆς αἱ Πελοποννησίων νῆες ἐς Ἰωνίαν ἐκείνοις βοηθοὶ τολμήσασαι παρακινδυνεῦσαι.

on the agenda for reconsideration. According to Thucydides, the reason for this change of mood was a general feeling that it was “a savage and excessive decision to destroy an entire *polis* rather than just those responsible.”¹⁰

After his thumbnail sketch of the process that led to the reconvening of the assembly,¹¹ Thucydides reports that several different opinions were voiced by different people. This is followed by two speeches represented in *oratio recta*. The first, in favour of upholding the decision, is put in the mouth of Kleon son of Kleainetos, who had made the original proposal the day before;¹² the opposing speech is given to a certain Diodotos son of Eukrates, for whom we (currently) have no other evidence.¹³ It was Diodotos’ speech that prevailed, but only in so far as it reversed the previous decision to impose collective punishment on the Mytilenaian citizen population. Instead, the Athenians limited the sanction to the ca. thousand Mytilenaian men identified by Paches as “chiefly responsible”, who were already present in Athens as captives. A death sentence was imposed on all of them on the basis of a motion subsequently proposed and carried by Kleon in the assembly.¹⁴

As noted by Hornblower (1991: 440), the mass execution of more than a thousand men might strike the reader as “savage” enough in itself, although it pales in comparison with the original proposal to eradicate an entire Greek community by killing and enslaving its inhabitants (*andrapodismos*).¹⁵ The latter is comparable to what a modern observer

10 3.36.4: καὶ τῇ ὕστεραίᾳ μετάνοιά τις εὐθὺς ἦν αὐτοῖς καὶ ἀναλογισμὸς ὡμὸν τὸ βούλευμα καὶ μέγα ἐγνώσθαι, πόλιν ὅλην διαφθεῖραι μᾶλλον ἢ οὐ τοὺς αἰτίους.

11 See Hornblower 1991: 418–19 and 2009: 252–53 on the process that most likely was initiated by the Council of 500, followed by Rhodes 1994: 203.

12 3.36.6: καταστάσης δ' εὐθὺς ἐκκλησίας ἄλλαι τε γινώμει ἀφ' ἐκάστων ἐλέγοντο καὶ Κλέων ὁ Κλεαινέτου, ὅσπερ καὶ τὴν προτέραν ἐνενικήκει ὥστε ἀποκτεῖναι, ὧν καὶ ἐς τὰ ἄλλα βιαιότατος τῶν πολιτῶν τῷ τε δήμῳ παρὰ πολὺ ἐν τῷ τότε πιθανώτατος, παρελθὼν αὐθις ἔλεγε τοιάδε.

13 See, however, the ‘Perikles Cup’ referenced in Cartledge 2023a: 264–65.

14 3.50.1: Τοὺς δ' ἄλλους ἄνδρας οὓς ὁ Πάχης ἀπέπεμψε ὡς αἰτιωτάτους ὄντας τῆς ἀποστάσεως Κλέωνος γινώμῃ διέφθειραν οἱ Ἀθηναῖοι (ἦσαν δὲ ὀλίγῳ πλείους χιλίων) κτλ.

15 See Cartledge 2023b.

might classify as an act of genocide or at the very least as ‘ethnic cleansing’.

However, the Athenian change of heart does not necessarily reflect a widespread perception that *andrapodismos* in response to a betrayal, in war time, by an allied state would be morally wrong *in itself*. Thucydides’ account includes earlier examples of *andrapodismos* inflicted by the Athenians on other Greek communities,¹⁶ but he mentions them in passing without making it clear whether this measure was morally or ethically questionable *per se*, let alone whether the issue had given rise to disagreement among the Athenians on each of these past occasions. It is likewise striking that in Xenophon’s *Memorabilia*, Xenophon’s Sokrates makes his interlocutor Euthydemus concede that *andrapodismos*, like deception, theft, and plunder, is an act of justice, provided that it is imposed on an unjust (*adikos*) and hostile *polis*.¹⁷

What does appear to have divided Athenian opinion is the question whether collective punishment of the Mytilenaian citizen body as a whole would be proportionate and just.¹⁸ The question was complicated because of the particular circumstances of the revolt itself and the context of the Mytilenaian decision to capitulate in order to end the siege. Prior to his dramatisation of the Athenian assembly debate, Thucydides has provided three pieces of crucial information in his narrative of the siege and the Mytilenaian capitulation.

Firstly, the reader is told (3.27.3) that the Mytilenaian *demos* were only lightly armed, until they were equipped with heavy armour at the initiative of the Spartan commander Salaithos in anticipation of an Athenian attack. It was only after food had started to run out in the besieged city, and after hoplite equipment had been distributed to ordinary Mytilenaian citizens that the latter challenged those in power, refusing to comply with orders from Mytilene’s officials. They eventually issued an ultimatum,

16 1.98.1 (Eion) and 1.113.1 (Chaironeia).

17 Xen. *Mem.* 4.2.14: Πρὸς δὲ τῇ δικαιοσύνῃ οὐδὲν ἡμῖν τούτων κείσεται, ὧς Εὐθύδημε; Δεινὸν γὰρ ἂν εἶη, ἔφη. Τί δ’; ἔάν τις στρατηγὸς αἰρεθείς **ἄδικόν τε καὶ ἐχθρὰν πόλιν ἐξανδραποδίσσῃται, φήσομεν τοῦτον ἄδικεῖν**; Οὐ δῆτα, ἔφη. **Δίκαια δὲ ποιεῖν οὐ φήσομεν; Καὶ μάλα.** Contrast Plato *Resp.* 469B, where the practice is unequivocally condemned if carried out by Greeks against Greeks.

18 See recently Lanni 2017: 21–22.

demanding that the remaining food supplies should be distributed fairly to all. Otherwise, they would themselves negotiate the surrender of Mytilene with the Athenians.¹⁹ Faced with such open civil disobedience, those in power saw no alternative to joining negotiations on the terms of capitulation.

Secondly, Thucydides makes it clear (3.27.2-3.28.1) that Mytilene was governed by a type of constitution which excluded a significant proportion of the citizen body from taking part in important deliberation and decision making. His report that ordinary Mytilenaians “were gathering together in groups” (3.27.3)²⁰ when stating their demand strongly suggests that the Mytilenaians operated with a census requirement for assembly attendance that excluded the vast majority of the citizen body, or alternatively that the assembly offered its participants no real political agency in the form of meaningful debate, let alone the capacity to submit proposals.²¹

Thirdly, according to Thucydides, several of those who had most actively worked to forge an alliance with Athens’ enemies had in effect identified themselves as chief instigators by seeking sanctuary at the city’s altars (3.28.2). They were subsequently transferred to Tenedos and

19 ὁ Σάλαιθος καὶ αὐτὸς οὐ προσδεχόμενος ἔτι τὰς ναῦς ὀπλίζει τὸν δῆμον πρότερον ψιλὸν ὄντα ὡς ἐπεξιών τοῖς Ἀθηναίοις· οἱ δὲ ἐπειδὴ ἔλαβον ὄπλα, οὔτε ἡκροῶντο ἔτι τῶν ἀρχόντων, κατὰ ξυλλόγους τε γιγνόμενοι ἢ τὸν σῆτον ἐκέλευον τοὺς δυνατοὺς φέρειν ἐς τὸ φανερόν καὶ διανέμειν ἅπασιν, ἢ αὐτοὶ συγχωρήσαντες πρὸς Ἀθηναίους ἔφασαν παραδῶσιν τὴν πόλιν.

20 κατὰ ξυλλόγους τε γιγνόμενοι, which Hornblower 1991: 410 translates “they held meetings of their own.”

21 See e.g. Gehrke 1985: 119 who argues that the supporters of the oligarchic government were too few to take on the *demos* once the latter had been armed. See also Simonton 2017: 49-50, who notes that some scholars have regarded the figure of 1,000 men deemed responsible for the revolt as rather high, as a proportion (20%) of a total body of adult male citizens estimated at ca. 5,000. However, the Mytilenian oligarchy would belong among the less inclusive types of oligarchies on a constitutional spectrum, if the figure of 1,000 included not just “members of the oligarchic faction” (Hansen et al. 2004: 1027) but comprised all adult Mytilenaians who met a census criterion for assembly participation, while the remaining ca. 80% were deprived of any formal political agency whatsoever.

from there to Athens, along with other men whom the Athenian commander Paches had identified as sharing responsibility for Mytilene's secession.

Modern discussions of Thucydides' Mytilene debate have tended to focus on the choice that the Athenians confronted. One option, advanced by Kleon, was indiscriminately to impose the most severe collective punishment possible, for maximum deterrent effect. The other, advanced by Diodotos (3.48.1-2), was to confine the decision on guilt and punishment to those whom Paches had identified as guilty of taking their *polis* down this disastrous path,²² while letting the rest of the Mytilenaians continue to live in their city. Both speakers assert that their proposal will benefit the long-term interests of the Athenians themselves, but the emphasis in Kleon's speech is on justice and retribution, while Diodotos prioritises expediency, that is the adverse effects of the collective punishment of the Mytilenaians, were other allied states to secede from the Athenian alliance in the future.²³

22 οὓς μὲν Πάχης ἀπέπεμψεν ὡς ἀδικοῦντας κρῖναι καθ' ἡσυχίαν. κρῖναι here is ambiguous: it may imply a legal process decided by a court or it may refer to a decision by the Athenian assembly on one or more decree proposals. See e.g. Xen. *Hell.* 1.7.34 where the verb (ἐκρίναν) refers to the outcome of voting by show of hands on two competing proposals. As mentioned earlier, the fate of the Mytilenaians was apparently decided in a decree proposed and carried by Kleon (3.50.1).

23 It has been asserted by Harris 2013: 106-7 that Kleon's appeal to rectificatory justice (combined with his assertion that this will be in the Athenian interest), is misplaced in the context of the Athenian assembly. For a more nuanced stand, see Barbato 2024 who emphasises the importance of arguments on corrective justice especially in the context of deliberations on relations with other states. The *Rhetoric to Alexander* lends further support to the latter position: a protreptic speech must demonstrate that the proposal is just (*dikaíos*), in line with custom (*nomima*), advantageous (*sympheron*), morally good (*kalos*), pleasant (*hedys*), and easily accomplished (1421b). Moreover, the author's advice on relevant arguments in symbouleutic debates emphasises the theme of justice and injustice, towards the speaker's own community as well as against another state, as important arguments in discussions of treaties (1424b34-1425a1-6), debates on peace agreements (1425b11-14), and as justification for war (1425a10-16). The vocabulary of punishment is applied in the context of symbouleutic oratory concerning interstate relations in 1422a39-42 (τιμωρεῖσθαι) and 1422b39-44 (κολάζειν). For κολάζειν in symbouleutic *oratio recta*, see also Xen. *Hell.* 5.3.7, 5.4.1, 6.3.10-11.

As for the Mytilenaians themselves, the civil disobedience and ultimatum issued by the majority of ordinary Mytilenaians have formed an important part of the on-going modern debate on how far Athenian hegemony enjoyed popular support in communities subjected to Athenian dominance or which, like Mytilene, were bound by treaty obligations as allied states.²⁴ Rather less attention has been paid to the dilemma that each individual Mytilenaiian citizen had to confront from the earliest stages of the revolt to the city's final capitulation: whether to obey instructions issued by their city's officials, or whether to honour the sworn obligations of a treaty that their city had voluntarily entered into with the Athenians.

A major bone of contention between Thucydides' Kleon and Diodotos was to what extent the majority of Mytilenaiian citizens, politically marginalised and only lightly armed, could and should be held liable for the decision to revolt that was made in the name of their community collectively.²⁵ A closely related question was how far the compliance by ordinary Mytilenaiians with orders issued by the city's officials should be considered as tantamount to complicity. Kleon is made to address both questions in the course of his speech (3.39.6):

And let them now be punished in a way that fits their crime, and don't pin the blame on the Few, while acquitting the *demos*. **For they all attacked us in the same way**, including those for whom it was possible, by turning to us, to be restored to their city (literally "to be back in their city"). Yet they joined in the secession, because they deemed it more secure to run the risk together with the Few.²⁶

24 See recently e.g. Canevaro & Lewis 2024: 185–86.

25 Hornblower 1991: 429 comments that while Kleon distinguishes between the hypothetical group of allied *states* who have been forced to revolt by an external power and those who revolted voluntarily, Diodotos advocates for that distinction being applied to individuals *inside* a rebel state.

26 κολασθέντων δὲ καὶ νῦν ἀξίως τῆς ἀδικίας, καὶ μὴ τοῖς μὲν ὀλίγοις ἡ αἰτία προστεθῇ, τὸν δὲ δῆμον ἀπολύσητε. **πάντες γὰρ ἡμῖν γε ὁμοίως ἐπέθεντο**, οἷς γ' ἐξῆν ὥς ἡμᾶς τραπομένοις νῦν πάλιν ἐν τῇ πόλει εἶναι· ἀλλὰ τὸν μετὰ τῶν ὀλίγων κίνδυνον ἡγησάμενοι βεβαιότερον ξυναπέστησαν.

This assertion is flatly contradicted in the speech that Thucydides gives to Kleon's opponent, Diodotos (3.47.3):

If you destroy the *demos* of the Mytilenaians, **who did not take part in the secession**, and who voluntarily handed over their city when they had got possession of heavy arms, then, firstly, you will be committing a crime by killing your benefactors, and, secondly, you will create a situation which is exactly what the men in power want most of all. For when making their *poleis* secede, they will have the *demos* as their allies, **because you have demonstrated that the same penalty is prescribed both for those who are criminals and for those who are not.**²⁷

Thus, the disagreement between Kleon and Diodotos turns partly on a question of fact, namely whether or not the *demos* of Mytilene had played an active part in Mytilene's betrayal of Athens. A further point of contention is what had *motivated* ordinary Mytilenaians when they eventually decided openly to defy their city's authorities.

According to Diodotos, there was no doubt that ordinary Mytilenaians had no choice but to obey, until they had been adequately armed. As for their motivation for civil disobedience, he interprets this as driven by loyalty to Athens, rather than as an act of self-preservation in the face of starvation.

To Kleon, by contrast, the resistance of the Mytilenaiian *demos* was of no importance, and it certainly should not be considered as a mitigating factor. Like their wealthy fellow-citizens, ordinary Mytilenaians had taken an active part in the secession from the beginning. They had been

27 εἰ δὲ διαφθερεῖτε τὸν δῆμον τὸν Μυτιληναίων, **ὃς οὔτε μετέσχε τῆς ἀποστάσεως**, ἐπειδὴ τε ὅπλων ἐκράτησεν, ἐκὼν παρέδωκε τὴν πόλιν, πρῶτον μὲν ἀδίκησετε τοὺς εὐεργέτας κτείνοντες, ἔπειτα καταστήσετε τοῖς δυνατοῖς τῶν ἀνθρώπων ὃ βούλονται μάλιστα· ἀφιστάντες γὰρ τὰς πόλεις τὸν δῆμον εὐθὺς ζύμμαχον ἔξουσιν, **προδειξάντων ὑμῶν τὴν αὐτὴν ζημίαν τοῖς τε ἀδικοῦσιν ὁμοίως κείσθαι καὶ τοῖς μὴ**. For a similar line of argument, voiced by a defendant addressing an Athenian court, see e.g. Lys. 25.18-20.

motivated by self-interest all along, both when acquiescing in the policies decided by those who ruled them,²⁸ and later when they turned against their own rulers, after the siege had become too hard for them to bear.

Thucydides does let his Kleon-figure concede that it would have been dangerous for ordinary Mytilenaian citizens actively to resist their own government. This is clear when he says that they believed it to be *more secure* to join in the secession. However, he also makes clear his view that they had had an alternative, already before they had been furnished with heavy arms. If they had been truly committed to the alliance, the honourable course of action would have been to desert their city and hand themselves over to the Athenians, with a view to returning to their *polis* once it had capitulated (οἷς γ' ἐξῆν ὥς ἡμᾶς τραπομένοις νῦν πάλιν ἐν τῇ πόλει εἶναι).

What Kleon is suggesting as an honourable alternative for ordinary Mytilenaians is not unreasonable in an ancient Greek context. Our evidence is teeming with examples of individuals and groups who made the choice to withdraw into exile, rather than to stay and to comply with the policies ratified by their community's established decision-making institutions and its laws. Moreover, as highlighted by Hansen (2015: 16-18) in his discussion of Plato's dialogue *Kriton*, the Laws tell Sokrates that they explicitly permit an adult Athenian citizen to emigrate with all his possessions, if he is not satisfied with the laws and political processes of his city (51D).²⁹ The corollary is that the citizen who chooses to stay has by doing so (ἔργῳ) committed himself to doing what the laws command (51E). The decision to stay thus implies consent.

Plato's dialogue leaves it open if there would be any alternatives to emigration or voluntary exile, such as civil disobedience, if the laws were to command a citizen to perform an act of injustice, and the issue has

28 This would have included participating in the preparations for war (3.2-4), and, later, in the attack on the Athenian forces in the island (3.5.2, καὶ ἔξοδον μὲν τινα πανδημεὶ ἐποίησαντο οἱ Μυτιληναῖοι ἐπὶ τὸ τῶν Ἀθηναίων στρατόπεδον).

29 This permission does not seem to be restricted only to citizens who have just come of age, since Sokrates might have chosen the penalty of exile even at the point of his trial (*Cri.* 52C). However, it cannot be ruled out that Plato's personified *nomoi* might take a rather dimmer view if a citizen decided to leave his community in wartime.

given rise to considerable controversy.³⁰ Precisely that question was very real in the case of the Mytilenaians. The violation of the terms of a treaty, as an agreement freely entered into by the contracting parties, was an unjust act, unless a valid case could be made that the other side had breached it first.

Remarkably, the speech that Thucydides gives to the Mytilenaiian envoys addressing the Spartans at Olympia does not contain any concrete allegations of injustice or provocation committed by the Athenians specifically against Mytilene, let alone of a severity that would release the Mytilenaiians from their treaty obligations. Quite the contrary, these envoys even go as far as to concede that their decision to walk away from their treaty obligations is preemptive (3.12.2-3),³¹ although they otherwise go out of their way to persuade the Spartans that their secession was justified.

On Kleon's argument, then, and on that of the *Nomoi* in Plato's *Kriton*, the Mytilenaiians who chose to stay and obey were complicit in an act of injustice against an ally. As a result, from an Athenian point of view it would be not only morally but also legally right for Mytilene's citizens to refuse to obey decisions made by their city's institutions and orders issued by their officials and military commanders, and, if necessary, to withdraw into exile and even actively to support the party who had suffered injustice (i.e. the Athenians). That course of action might be further justified, if those who decided to abandon their besieged city had had little or no influence on the shaping of the original decision to break their treaty obligations.

From a Mytilenaiian perspective, however, to leave one's city while it was under siege and to throw oneself on the mercy of the besieger would be an act of treason, or at the very least an act of desertion. Even a citizen who chose to remain, but who engaged in passive resistance by refusing to comply with orders from his city's authorities would most likely be acting illegally and be liable to severe sanctions.

30 See e.g. Lane 1998: 324-26.

31 3.12.2-3: ὥστε εἴ τῳ δοκοῦμεν ἀδικεῖν προαποστάντες διὰ τὴν ἐκείνων μέλλουσιν τῶν ἐς ἡμᾶς δεινῶν, αὐτοὶ οὐκ ἀνταναμείναντες σαφῶς εἰδέναι εἴ τι αὐτῶν ἔσται, οὐκ ὀρθῶς σκοπεῖ.

Every Mytilenaiian was trapped in this dilemma. Each individual citizen would have to make a choice whether to stay true to his *polis*' treaty obligations and to the oaths and divine sanctions that underpinned them, or to obey his *polis*' laws, decrees, and officials. Morally, the choice may have been less difficult for those citizens who had had no meaningful influence on the original decision to secede and therefore did not 'own' it, but it was also those very citizens, lightly armed as they were, who were most exposed to the personal risks arising from acts of active or passive resistance.

Yet, those thousand Mytilenaiians who had been involved at some level in the decision-making process had faced that dilemma, too, as individuals. One example are the Mytilenaiians who were *proxenoi* of Athens, who were 'dissenters' (κατὰ στάσιν), and who revealed the secession plans to the Athenians (3.2.3). There may have been many different reasons for their dissent, including their objections to an unjustified breach of the treaty, which might eventually jeopardise the very survival of their *polis*,³² as well as more petty personal grudges.³³

Whatever their individual motivations, their positions as *proxenoi* strongly suggest that they belonged to the more affluent strata of the Mytilenaiian citizen population, rather than among those with little or no political agency. That was certainly the case of one among them who later changed his mind (3.4.4), lent his active support to the secession, and was even entrusted with a diplomatic mission to Athens to provide false reassurance. Why did he flip? Thucydides does not tell us. Fear for his personal safety (or the safety of his loved ones if he were to be caught and convicted as a traitor), religious indignation at the Athenian assault on his city during the festival of Apollon Maloeis,³⁴ or patriotic sentiment after the Athenians had initiated acts of open war – any and all of these are possible reasons for his changing sides.

Those Mytilenaiians who enjoyed a degree of political agency (and who disposed of heavy armour) would have had an opportunity politically to oppose the secession in its early stages, that is *before* the conflict

32 For this suggestion, see Mack 2015: 141.

33 For the latter, see Arist. *Pol.* 1304a5–10. See further Gehrke 1985: 118 and Hornblower 1991: 383–84.

34 For a discussion of Thucydides' 'religious silences', see Hornblower 2011: 25–53.

with Athens had descended into actual warfare,³⁵ and *before* the Athenians had set up a military camp in Mytilene's territory. At that early stage, the moral choice between loyalty to the treaty and loyalty to the *polis*, its laws, and its institutions was not yet as stark as it would become, once Athens and Mytilene were at war. That was the tipping point when the two obligations turned incompatible.

Groupthink, peer pressure, and intimidation of the type discussed by Simonton (2017: 247-73) were often powerful disincentives for individuals openly to stick their neck out and call for a reversal of a political course of action that had already been decided, and all the more so in a relatively small community with an even smaller *numerus clausus*.³⁶ Nevertheless, the initial lack of resistance by the majority of the politically-entitled Mytilenaians could with some justification be taken to imply individual consent, and thus ultimately an individual share in the collective culpability for the violation of the treaty.³⁷

III. Disobedience and totalitarianism: Thebans and the Thirty

Diodotos' proposition that ordinary Mytilenaians should not be held accountable, let alone punished, for their compliance with policies decided by their rulers is neatly paralleled in the speech given to the Thebans later in Thucydides' Book 3. Castigated for their *polis*' decision to Medize

35 Note the expression in 3.4.1-2 Καὶ οἱ Ἀθηναῖοι (...) οὐκ ἔσακούοντων δὲ τῶν Μυτιληναίων ἐς πόλεμον καθίσταντο.

36 For comparison: Diodotos' going head-to-head with a rhetorically formidable and intimidating Kleon in the Athenian assembly was undoubtedly courageous (see Balot 2014: 120-23), but he had reason to feel less personally exposed because a majority of the *prytaneis*, and perhaps even of the *boule* in its entirety, felt so uneasy about the original decision that they had reopened the debate in the first place. He knew that he was not alone.

37 In Thuc. 3.50.1, we are told only that the decision to execute all of them was based on a decree proposed by Kleon, but not how this was implemented procedurally. One possibility is the 'Arginousai model', with a single collective defence; another is the 'Plataia model' where each Mytilenaiian was asked if he had done anything to support the Athenians during their confrontation with his city. See further Rubinstein 2011: 338-39.

during the Persian Wars, the Thebans counter that at the time their *polis* was governed by a tiny ruling élite (*dynasteia*), rather than by an oligarchy based on *isonomia*, let alone by a democratic constitution (Thuc. 3.62.2-5).

This government, so the Theban argument goes, was almost the polar opposite of lawful and moderate governance. In the hope that an alliance with Persia might consolidate their power, the rulers thrust this alliance upon their *polis*, keeping control of their fellow citizens by force (κατέχοντες ἰσχύι τὸ πλῆθος ἐπηγάγοντο αὐτόν). Because the *polis* as a collectivity was not in control of its own destiny when it joined the Persian side, it would not be fair to blame it for wrongdoing that it had committed while in a state of lawlessness (καὶ ἡ ξύμπασα πόλις οὐκ αὐτοκράτωρ οὕσα ἐαυτῆς τοῦτ' ἔπραξεν, οὐδ' ἄξιον αὐτῇ ὀνειδίσαι ὧν μὴ μετὰ νόμων ἦμαρτεν).

Thucydides' Thebans do not abdicate responsibility on the grounds that the decision to Medize had been made more than half a century ago. In 427 only those Thebans who had reached the ripe age of 70 would have been old enough to have fought alongside the Persians in 479; yet the Thebans do not argue that those who had complied with that decision were first and foremost their fathers and grandfathers. Rather, their defence is that the majority of citizens had acted under compulsion, exercised by a handful of men who were themselves not constrained by law. The implication is almost certainly that, being above the law, those in power had unlimited means of terrorising their fellow citizens into toeing the line. This should emphatically not be dismissed off-hand as an invalid line of defence.³⁸ It is important to bear in mind the discipline and compliance that have been achieved by more recent autocratic regimes in the 20th and 21st centuries through the open use of deadly violence

38 Contrast the argument given by Xenophon (*Hell.* 3.5.8) to a Theban speaker addressing the Athenians in 395, in which he attempts to hold a single Theban representative responsible for the proposal to eradicate Athens at a meeting of Peloponnesian allies after Aigos Potamoi. If this supposedly rogue envoy had seriously misrepresented the collective Theban position, a disciplinary procedure on his return would be the normal response, and it is significant that Xenophon's Theban does not bring this up. For the Theban proposal as a persistent poisonous memory in Athenian public discourse, see Steinbock 2013: esp. 280-318 and 326-36.

against protesters, along with torture and detention of political dissidents in prisons and concentration camps.

The Theban line of defence comes strikingly close to the argument advanced by Diodotos in his defence of Mytilenaian *demos*. And just as Kleon queried the ordinary Mytilenaiaans' motivation for defying their government only in the eleventh hour, so the Theban defence might be challenged by asking why they had stood by their rulers. Surely, the right thing to do would be either to oppose them directly or to go into exile and join their fellow Greeks in their fight against the Persians? After all, the Mytilenaian *demos* had been up against a relatively broad-based, well-armed oligarchy. By contrast, on the Thebans' own admission, their oligarchy had been so narrow that it must have excluded even wealthier and more resourceful citizens, including many of those with military experience as hoplites or in the Theban cavalry.

What is more, if the Thebans were right that their rulers had not exercised their power on the basis of law, but with physical force alone, then their subjects would have faced no *moral* dilemma if they had decided to rebel, even if they had more to fear in terms of possible *physical* reprisals. Unlike the Mytilenaiaans, they would not have had to choose between acting according to their conscience and obeying their laws and authorities. And unlike the Mytilenaian *demos*, they were not confronting a choice between collaboration with a foreign power and loyalty to their own *polis* and its institutions. Quite the contrary: toppling a small government of pro-Persian Quislings would arguably count as an act of true patriotism.

Despite the differences between the positions of the Mytilenaian *demos* and the Theban *plethos*, the same fundamental questions are raised by both. How far is it justified to hold all members of a citizen population responsible, if the majority has had little or no meaningful say in the decisions shaping the community's legislation, as well as its political decisions on internal and on foreign policy? Under what circumstances would it be reasonable to expect the politically marginalised majority to engage in active resistance? And at what point does such resistance turn from being condonable into being a moral imperative?

It is possible that the threshold may have been higher, if the city's institutions, political and legal processes, and the persons appointed to

man them, rested on a bedrock of legislation that provided clear limitations on their authority and power, and which was consistently and fairly enforced. Yet, the Theban example suggests that this issue was not always straightforward, when considered from the point of view of the individual citizen. If the authorities operated with only few or no legal constraints on the methods with which they could clamp down on dissidents, the risks associated with open disobedience would have been correspondingly higher. And the higher the risks, the less justifiable it would be to blame individual citizens for their failure to resist by passive, let alone active, disobedience.³⁹

In Aristotle's *Nicomachean Ethics* (1109b30-10a33), the discussion of voluntary and involuntary agents regards actions carried out under external compulsion as condonable. The same applies to acts committed by an agent who is presented with an impossible choice between two evils. Aristotle's example is that of a man who is forced to do wrong by a dictator, who holds his parents or his children as hostages, and who has threatened to kill them if he refuses to comply with the dictator's order. That said, Aristotle goes on to suggest that there are some orders so horrific that even the most painful death is a preferable alternative to carrying them out.

What Aristotle does not make clear is whether death as the only honourable alternative to obedience would apply in relation to all such horrific orders at all times. It is possible that he has in mind only circumstances where the command has emanated from a person whose exercise of power is *not* clearly based on the *polis*' legislation. At any rate, elsewhere in the *Nicomachean Ethics* (1129b11-25) he suggests that obedience to the established laws – and to the authorities appointed to enforce them – would be required, even if the legislation itself was of an inferior quality.

A similar view is expressed also in *Politics* (1294a3-8), where Aristotle distinguishes between two meanings of *eunomia*. One is when people obey the laws, even though the legislation itself might be bad. The other is when people not only obey the laws, but the legislation that people

39 For a discussion of implied and tacit consent in the context of Plato's *Kriton*, and in the context of totalitarian regimes, see Hansen 2015: 21-22.

obey is itself good.⁴⁰ From this we may infer that, to Aristotle, both active and passive disobedience to orders and prohibitions backed by established law should be an absolutely last resort. Yet, it remains a question for his reader where the boundary might be between, on the one hand, *nomoi* that must be obeyed and, on the other, enactments drawn up and issued by governments so illegitimate that their commands and prohibitions would have no claim to be considered as ‘laws’ that were binding on the citizens, whether individually or collectively.

Indeed, this problem of definition surfaces several times in both Plato’s and Xenophon’s Sokratic dialogues. The most famous illustration provided by both authors is that of Sokrates’ conduct under the oligarchic regime of the Thirty. In Plato’s *Apology* (39C-D) Sokrates relates how he had refused to obey the Thirty’s instruction to arrest his fellow citizen, Leon of Salamis, so that the latter could be executed. Sokrates further states that this type of command was part of a deliberate strategy devised by the Thirty. By compelling individual citizens to carry out such acts they sought to make as many citizens as possible liable to accusations. This episode is also mentioned in Xenophon’s *Memorabilia*, and it has attracted much attention in modern discussions of the trial of Sokrates.⁴¹

The general modern consensus is that there is no conflict between Sokrates’ disobedience here and his insistence, in the dialogue *Kriton*, that obeying the laws is his absolute duty, and that the laws require him to submit to the verdict passed in his trial for *asebeia*. The laws and the court decision featuring in the *Kriton* were legitimate, whereas the Thirty’s instruction to arrest Leon was not.⁴²

40 οὐκ ἔστι δὲ εὐνομία τὸ εὖ κεῖσθαι τοὺς νόμους, μὴ πείθεσθαι δέ. διὸ μίαν μὲν εὐνομίαν ὑποληπτέον εἶναι τὸ πείθεσθαι τοῖς κειμένοις νόμοις, ἑτέραν δὲ τὸ καλῶς κεῖσθαι τοὺς νόμους οἷς ἐμμένουσιν (ἔστι γὰρ πείθεσθαι καὶ κακῶς κειμένοις); cf. *Eth. Nic.* 1103b: οἱ γὰρ νομοθεταὶ τοὺς πολίτας ἐθίζοντες ποιοῦσιν ἀγαθοὺς, καὶ τὸ μὲν βούλημα παντὸς νομοθέτου τοῦτ’ ἐστίν, ὅσοι δὲ μὴ εὖ αὐτὸ ποιοῦσιν ἀμαρτάνουσιν, καὶ διαφέρει τούτῳ πολιτεία πολιτείας ἀγαθὴ φαύλης.

41 See recently Gerbasi 2025 with references to previous literature.

42 See e.g. Ober 2011: 168, who argues that if Sokrates did not regard the laws passed by the Thirty as having superseded the laws of the democratic city, there was no conflict between his act of disobedience and his stance as represented in Plato’s *Kriton*.

There is, however, a subtle difference between Plato's and Xenophon's accounts. In Plato's *Apology* Sokrates' refusal to obey the instruction is that arresting Leon is unjust (ἄδικον) and unholy (ἀνόσιον).⁴³ In Xenophon's *Memorabilia* (4.4.2-3), it is asserted that Sokrates refused to comply with the Thirty's instructions, including their order to arrest an unnamed man on a capital charge, on the grounds that they had been issued *against the laws* (παρὰ τοὺς νόμους).⁴⁴ This difference is hardly accidental, nor that Sokrates' resistance, highlighted and elaborated in Plato's *Apology*, is entirely passive. As is often noted, he chooses simply to go home, rather than to take *active* steps to prevent the arrest – for example by warning Leon.

The difference in terminology and emphasis between Xenophon's and Plato's accounts reflects the ambiguity which later surrounded the legislation that had been passed after the Thirty had been installed in power.⁴⁵ In formal terms, the Thirty's instruction was based on a statute that in several respects meets the criteria that would have been associated with a genuine *nomos*.

For a different interpretation of Sokrates' stance in Plato's *Apology*, see Gerbasi 2025: 52-53, for whom Sokrates' decision not to resort to the plea of *respondeat superior* "implies that it was possible to act otherwise than on fear—that the Athenians could have acted otherwise than on fear."

43 32C-D: ἐπειδὴ δὲ ὀλιγαρχία ἐγένετο, οἱ τριάκοντα αὖ μεταπεμψάμενοί με πέμπτον αὐτὸν εἰς τὴν θόλον προσέταξαν ἀγαγεῖν ἐκ Σαλαμῖνος Λέοντα τὸν Σαλαμίνιον ἵνα ἀποθάνοι, οἷα δὴ καὶ ἄλλοις ἐκεῖνοι πολλοῖς πολλὰ προσέταττον, βουλόμενοι ὥς πλείστους ἀναπλῆσαι αἰτιῶν. τότε μέντοι ἐγὼ οὐ λόγῳ ἀλλ' ἔργῳ αὖ ἐνεδειξάμην ὅτι ἐμοὶ θανάτου μὲν μέλει, εἰ μὴ ἀγροικότερον ἦν εἰπεῖν, οὐδ' ὅτι οὖν, τοῦ δὲ **μηδὲν ἄδικον μηδ' ἀνόσιον ἐργάζεσθαι**, τούτου δὲ τὸ πᾶν μέλει. ἐμὲ γὰρ ἐκείνη ἡ ἀρχὴ οὐκ ἐξέπληξεν, οὕτως ἰσχυρὰ οὖσα, ὥστε **ἄδικόν** τι ἐργάσασθαι, ἀλλ' ἐπειδὴ ἐκ τῆς θόλου ἐξήλθομεν, οἱ μὲν τέτταρες ὥχοντο εἰς Σαλαμῖνα καὶ ἤγαγον Λέοντα, ἐγὼ δὲ ὥχομην ἀπιὼν οἴκαδε. καὶ ἴσως ἂν διὰ ταῦτα ἀπέθανον, εἰ μὴ ἡ ἀρχὴ διὰ ταχέων κατελύθη. καὶ τούτων ὑμῖν ἔσονται πολλοὶ μάρτυρες.

44 καὶ ὅτε οἱ τριάκοντα προσέταττον αὐτῷ **παρὰ τοὺς νόμους τι**, οὐκ ἐπείθετο· τοῖς τε γὰρ νέοις ἀπαγορευόντων αὐτῶν μὴ διαλέγεσθαι καὶ προσταξάντων ἐκείνῳ τε καὶ ἄλλοις τισὶ τῶν πολιτῶν ἀγαγεῖν τινα ἐπὶ θανάτῳ, μόνος οὐκ ἐπείσθη, **διὰ τὸ παρὰ τοὺς νόμους** αὐτῷ προστάττεσθαι.

45 The inconsistency in the designation of the year 404/3 as, respectively, the year of Pythodoros and *anarchia* suggests that the delegitimation of the regimes of the Thirty and the Ten was the result of an evolving process. See Laffon 2025: 147-54 and n. 49 below.

First, the Thirty themselves cannot simply be dismissed as usurpers. They had been appointed by a majority vote in the Athenian assembly while Athens was still democratically governed (Lys. 12.71-75). To be sure, they owed their appointment in part to the pressure exercised by the Spartan commander Lysander, but in *formal* terms they had been appointed by a democratic process. Second, the assembly had defined their remit as that of drawing up legislation by which Athens was to be governed. Admittedly, there is a discrepancy in our sources as to their precise designation as either *syngrapheis* or *nomothetai*.⁴⁶ Yet, in the present context, their precise designation is of limited importance. The main point is that they had received authorisation to publicise *nomoi* that would be binding on the community. To a modern Anglophone observer, the regime of the Thirty and their oligarchic successors might fit the definition of rule by law as set out by Tushnet, rather than rule of law.⁴⁷

Finally, it is striking that the Athenians themselves referred to the Thirty as having ruled “with unjust laws” (*adikoi thesmoi*) in an epigram honouring men who had spearheaded the democratic resistance from Phyle (SEG 28.45). The poem was monumentalised on a stele set up in 401/0, partly restored on the basis of Aischines’ recital of it in a lawsuit 70 years later (3.190).⁴⁸ The application of the term *thesmoi* to the legislation of the Thirty in the wake of the fall of Eleusis signals a degree of concession to those citizens who had chosen to comply with the laws under the oligarchy, while its juxtaposition with the adjective *adikoi* legitimises the decision of those who chose to defy them.

We have only very scant information about the Thirty’s specific activities as legislators, but one regulation is referred to explicitly as a “new law” (*kainos nomos*) by Xenophon’s Kritias figure in his dramatisation of

46 Xen. *Mem.* 1.2.31 refers to Kritias and Charikles as *nomothetai* (and so probably also the source of Dion Chrysostomos 21.3); Xen. *Hell.* 2.3.2 and 2.3.11 employs the verb συγγράφειν, while the *Ath. Pol.* does not dignify the Thirty as legislators with any designation at all. On the evidence for Kritias’ activities as legislator, see also Bultrighini 1999: 113-17.

47 Tushnet 2014: 80. Tushnet’s definition also works for other attested oligarchies, especially those at the further (but not extreme) end of the constitutional spectrum.

48 For the date of the inscription, see Malouchou 2015: 94.

Theramenes' trial and conviction (*Hell.* 2.3.51).⁴⁹ This law provided that no-one registered among the three thousand citizens with a share in the new constitution could be executed without a trial, and that the case must be decided by the council of 500. It also provided that the Thirty were authorised (*kyrioi*) summarily to execute anyone who was not registered as one of the three thousand citizens. It is safe to assume that Leon of Salamis was not one of their number.

On this interpretation, the instruction issued by the Thirty to Sokrates was technically *not* unlawful, despite its being both unjust and unholy. And thus, when Sokrates chose not to obey, he was on this interpretation defying established law, on which the Thirty's command was based. When compelled to choose between law and justice, Plato's Sokrates chose justice.

IV. Illegitimate government, unjust laws, and the problem of Athenocentrism.

For the Athenians, it was a rare experience to live under a government whose leadership they had been pressurised by a foreign power to elect in an assembly process that was anything but 'free and fair', let alone to be living in the shadow of a foreign garrison that the Athenians themselves were required to finance. Not until their defeat in the Lamian War did they again have to endure a foreign-backed government which com-

49 Xen. *Hell.* 2.3.11 asserts that the Thirty kept delaying the framing and publication of the legislation under which the Athenians were to be governed. *Ath. Pol.* 35.2 suggests that their legislative project may have been more extensive and, in terms of publication, also further advanced than Xenophon lets on: the Thirty allegedly changed the wording not only of Solon's law on bequest, but also the rest of Solon's laws (ὁμοίως δὲ τοῦτ' ἔδρων καὶ ἐπὶ τῶν ἄλλων). On these passages see Krentz 1995: 123-24 and Rhodes 2017: 315-17; for the suggestion that the changes to Athens' legislation were extensive see Wolpert 2002: 20-23, Osborne 2003: 262-64, and Carawan 2013: 284 n.8. For the view that the Thirty reneged on their duty as legislators, see Lanni 2010: 555-56. The scholarly disagreement is a result of the ambiguity of our fourth-century evidence, which almost certainly reflects an unease among contemporary and later generations of Athenians to acknowledge any legitimacy of the Thirty especially in the early phases of their rule, when they still enjoyed broad support.

pletely abolished large parts of Athenian legislation (and even the Makedonian-backed oligarchies that ruled in 322/1-318 and 317-307 may have refrained from tampering with Athens' Solonian legislation, at least to the extent that the Thirty had done).⁵⁰

Once the dust had settled in the years following the defeat of Eleusis in 401/0, and once a general consensus had been reached on the legitimacy of Athens' democratic institutions, the Athenians enjoyed a level of legal stability, consistency, and predictability that is often, in a modern context, associated with 'rule of law'. More importantly still, after the final phase of the reconciliation in 401/0, the Athenians themselves *owned* their laws, in the sense that they had not been compelled by external hegemonic pressure to adapt their legislation, at least not until after their defeat at Chaironeia in 339/8. This meant that the Athenians were spared the difficult choice between, on the one hand, obedience to legislation that they had been forced to pass or adapt and, on the other, obedience to the law (or laws) that the new enactment(s) had superseded, and which they regarded as *theirs*, as an established part of their legal heritage – in other words as a *patrios nomos*.

Countless other Greek states were far less fortunate. It is a commonplace that *stasis* was endemic in archaic and classical *poleis*, and one of the many achievements of Hansen & Nielsen 2004 (124-129 and 1361-1362) is to provide the basis for further quantification and a large number of discussions of the phenomenon.⁵¹ Even in cases where internal discord stopped short of open factional violence, and even in cases where internal polarisation did not ultimately result in regime change, it regularly led to the legitimacy of the community's legislative institutions or the integrity of its procedures of law enforcement being called into question, and sometimes to a combination of both.⁵²

It has often been asserted that in Greek political thought, the legitimacy of any given constitution, *politeia*, depended on the extent to which

50 On the oligarchy of 322/1-318, see Simonton 2017: 129-30 with references to previous literature; on the very limited evidence for legal reform under Athens' Makedonian-imposed constitution, see the discussion in Canevaro 2011: 59-63.

51 See e.g. Arcenas 2026, a statistical approach.

52 Gehrke 1985: 203-16 remains fundamental.

the latter was perceived to be based on the ‘rule of law’.⁵³ The topic continues to be divisive, and I do not propose to enter the general discussion here, except to emphasise that there was also another side to the equation. Aristotle alludes to it in *Politics* 1282b6-13: the legitimacy of the laws of any given *politeia* was derived to a considerable extent from the perceived legitimacy of the institutions that had been involved in framing, ratifying and enforcing them.⁵⁴ It is significant that Aristotle refers explicitly to ‘unjust laws’ (*adikoi nomoi*) as a characteristic of ‘deviant’ constitutions. In other words, the difference between a law that must be obeyed without question and an unjust or illegitimate enactment that may – and sometimes must – be ignored is often in the eye of the beholder. Precisely this question of legitimacy has particularly serious implications for citizens whose *polis* was in a subordinate relationship to an external hegemonic power that had exercised heavy influence on their institutions and legislation.

In recent years, the modern debate on the phenomenon of ‘imposed constitutions’ and their legitimacy has intensified. As Albert et al. have put it (2019: 2):

“Imposed constitutions raise something of a paradox: how can a set of basic social and political rules meant to govern a people ever legitimately be forced upon that people by another?”

With the decreasing authority and resources of international organisations, and as modern hegemonic powers face ever fewer constraints in their dealings with their allies and opponents, that question of legitimacy is likely to remain a hotly contested issue, not only in the Global South but increasingly also in Europe. The question of the legitimacy of

53 See e.g. Canevaro 2017 and, for a summary of the various positions on the question of ‘rule of law’, see Forsdyke 2021.

54 ὁποῖους μέντοι τινὰς εἶναι δεῖ τοὺς ὀρθῶς κειμένους νόμους, οὐδέν πω δῆλον, ἀλλ’ ἔτι μένει τὸ πάλαι διαπορηθέν. ἅμα γὰρ καὶ ὁμοίως ταῖς πολιτείαις ἀνάγκη καὶ τοὺς νόμους φαύλους ἢ σπουδαίους εἶναι, καὶ δικαίους ἢ **ἀδίκους**. πλὴν τοῦτό γε φανερόν, ὅτι δεῖ πρὸς τὴν πολιτείαν κεῖσθαι τοὺς νόμους. ἀλλὰ μὴν εἰ τοῦτο, δῆλον ὅτι τοὺς μὲν κατὰ τὰς ὀρθὰς πολιτείας ἀναγκαῖον εἶναι δικαίους τοὺς δὲ κατὰ τὰς παρεκβεβηκυίας **οὐ δικαίους**. For another interpretation of this passage, see Canevaro 2025: 189–90.

imposed constitutions deserves to receive more consideration in the current debate on legislative institutions, courts, and laws in the Greek *poleis* more generally. Because the Greeks shared important features of legal and administrative culture, not least as practised in the administration of regional and transregional sanctuaries,⁵⁵ imposed constitutions may not have led to the same level of controversy and instability as they often do when modern hegemonic powers impose constitutions on communities with very different cultural, religious, and legal traditions.⁵⁶ The issue is nevertheless of relevance to the modern discussion of how far ‘the Greeks’ operated with ideals comparable to those underpinning the modern Anglo-American concept of ‘rule of law’ and its various European equivalents, and more importantly how far they succeeded in applying them in practice.

In many cases, the answer to both may depend not so much on where the constitution under consideration was placed on the spectrum between democracy and oligarchy, as on how far it had been imposed as a result of external hegemonic demands. As observed by Gehrke (1985: 268), in 72% of his 283 case studies external factors played a part as catalysts in *staseis*, often through the agency of states that occupied a superior position in an asymmetrical power relation (1985: 272–74). Where overt external pressure had resulted in extensive constitutional changes, this might not only compromise the perceived legitimacy of the *polis*’ decision-making institutions, along with legislation promulgated and enforced by them, but also constitute an important tipping point where active defiance turned from being condonable into a moral obligation.

Even in those cases where a dependent *polis* was able to keep its own political and legal institutions largely intact, the hegemon might still demand changes to specific items of legislation or procedures. One example is an enactment, dating from the mid-fourth century, that was formally passed by the political institutions of Karthaia, Koressos, and Ioulis in Keos under heavy and overt Athenian pressure. The enactment criminalised the export of ochre to any destination other than Athens (RO 40), apparently reaffirming a previous law that appears to have been abolished, amended, or fallen out of use (RO 40.16). It is suggestive that the

55 See Rubinstein 2026 with reference to previous literature.

56 See e.g. Abat i Ninet 2019.

Athenians insist on any appeals being heard by their own courts, in case the hearing in the community of Koressos were to result in an acquittal of the person denounced (RO 40.21). The Athenians probably suspected that the Koressians manning their *dikasterion* in Keos might be inclined to side with their own citizens.

The Kean case thus offers an example of rapid change to legislation which might contribute to a level of legal uncertainty. It also provides an illustration of a situation where a specific law might be perceived by some or all members of the community to conflict with other parts of the *poleis'* legislation. It is unlikely that the citizens in the Kean *poleis* would zealously set about repealing any of their ancestral laws that might conceivably conflict with an enactment whose main objective was to put the Athenians first (to coin a phrase).

While we have eloquent evidence for persistent tensions between the Athenians and the citizens in the *poleis* on Keos (RO 39), we lack information on how enactments such as this may have been litigated in the courts in the affected communities. Nor do we know how far citizens in the Kean *poleis* might be impelled *not* to denounce a fellow citizen who breached the export restrictions, because they feared reprisals from members of their own community. Some may have struggled with their consciences, torn between loyalty to their own *polis* and obedience to an enactment that, in formal terms, had been passed by their own councils and assemblies, but which served the interests of a foreign hegemon, rather than their own.⁵⁷

Indeed, the Kean example may help to explain two hotly contested passages in, respectively, the *Rhetoric to Alexander* (36.22-23) and Aristotle's *Rhetoric* (1375a27-1375b15). Both passages offer advice on how to

57 The Kean situation (and that of countless other Greek communities under hegemonic domination) in many ways resembles that which prevailed in occupied Denmark between 9 April 1940 and 29 August 1943, when the position of Denmark's democratically elected government finally became untenable. Among the most egregious examples of legislation passed by the Danish parliament under German pressure was the unconstitutional anti-communist law of 22 August 1941, which nevertheless was indistinguishable from other Danish legislation in terms of its preamble and framing. The law was passed in response to an ultimatum from Berlin, and it retroactively legalised the arrests and detentions that had been carried out by Danish police with (later infamous) zeal since 22 June 1941.

construct persuasive argumentation on specific legislation, including how to handle a written law that is unfavourable to the speaker's case. The *Rhetoric to Alexander* (36.22-23) suggests that the speaker may deny the validity of the statute, on the grounds that it fails to meet the defining criterion of a *nomos*: that it should be of benefit to the community. The speaker should follow this up by reassuring the judges that they will not act against the laws (οὐ παρανομήσουσιν) if they vote contrary to enactments (*dogmata*) that are wicked (*ponera*) and unlawful (*paranoma*). Quite the contrary: by invalidating bad laws (*phauloi nomoi*), they will be acting as the benefactors of their *polis* – an act which no law seeks to prevent.⁵⁸

Aristotle's advice in his *Rhetoric* includes suggestions that the speaker might resort to contrasting fairness and justice (*to dikaion*) favourably with a written *nomos* if the latter does not support his case. Among the specific recommendations is the argument that fairness is a constant, whereas *nomoi* are often changed, or that the law in question does not conform to the definition of what is *dikaion* – resonant of the *adikoi nomoi* and *adikoi thesmoi* discussed earlier. A further strategy is to draw attention to statutes that clearly conflict with each other. In the context of the present paper, it is particularly striking that he refers to Sophokles' *Antigone*'s defence as an example of a *nomos* that clashes with a higher norm, which Antigone chose to follow.⁵⁹

58 ἂν δ' ἡμῖν συμβαίνει [τὸ] παρὰ μοχθηροῖς δοκοῦσιν εἶναι νόμοις τὸ πρᾶγμα πεπρᾶχθαι, ῥητέον, ὥς οὐ νόμος, ἀλλ' ἀνομία τὸ τοιοῦτόν ἐστιν· ὁ μὲν γὰρ νόμος ἐπὶ τῷ ὠφελεῖν τίθεται, οὗτος δὲ βλάπτει τὴν πόλιν. ῥητέον δὲ καὶ ὥς οὐ παρανομήσουσιν, ἂν τούτῳ τῷ νόμῳ ἐναντίαν ψῆφον θῶνται, ἀλλὰ νομοθετήσουσιν, ὥστε μὴ χρῆσθαι δόγμασι πονηροῖς καὶ παρανόμοις. δεῖ δὲ καὶ τοῦτο συμβιβάζειν, ὥς οὐδεὶς νόμος κωλύει τὸ κοινὸν εὖ ποιεῖν, τοὺς δὲ φαύλους νόμους ἀκρούς ποιεῖν εὐεργετεῖν τὴν πόλιν ἐστὶ. I follow Chiron's emendation of the text (2002).

59 φανερόν γάρ ὅτι, ἐὰν μὲν ἐναντίος ᾗ ὁ γεγραμμένος τῷ πράγματι, τῷ κοινῷ χρηστέον καὶ τοῖς ἐπιεικεστέροις καὶ δικαιότεροις. καὶ ὅτι τὸ “γνώμη τῇ ἀρίστῃ” τοῦτ' ἐστίν, τὸ μὴ παντελῶς χρῆσθαι τοῖς γεγραμμένοις. καὶ ὅτι τὸ μὲν ἐπιεικὲς αἰεὶ μένει καὶ οὐδέποτε μεταβάλλει, οὐδ' ὁ κοινός (κατὰ φύσιν γάρ ἐστιν), οἱ δὲ γεγραμμένοι πολλάκις, ὅθεν εἴρηται τὰ ἐν τῇ Σοφοκλέους Ἀντιγόνη ἀπολογεῖται γὰρ ὅτι ἔθαψε παρὰ τὸν τοῦ Κρέοντος νόμον, ἀλλ' οὐ παρὰ τὸν ἄγραφον (...) καὶ ὅτι τὸ δίκαιόν ἐστιν ἀληθές τε καὶ συμφέρον, ἀλλ' οὐ τὸ δοκοῦν, ὥστ' οὐ νόμος ὁ γεγραμμένος· οὐ γὰρ

Thirty years ago, Carey 1996 observed that our corpus of surviving oratory does not provide a single clear example of a litigant who resorted to that line of argument. His observation on the discrepancy between the two rhetorical theorists and Attic oratorical practice has met with near-universal assent in subsequent scholarship on Athenian litigation and forensic oratory, although Chiron (2002: 111 n. 667) has suggested that the strategy outlined in the *Rhetoric to Alexander* might fit a situation of legal uncertainty following the abolition of oligarchy at Athens in 403/2.

However, as argued by Piepenbrink 2021, there is nothing in the contents of the *Rhetoric to Alexander* to suggest that its author had an Athenian audience in mind, or even a readership based in communities whose governance resembled that of the Athenians. Piepenbrink identifies several aspects of the treatise that would fit contexts of both moderate oligarchies and democracies with oligarchic or aristocratic features, as well as features that deviate markedly from the practices attested in surviving Attic oratory (2021: 448–55). And while she has noted a stronger link between Athenian institutions and oratorical practice in Aristotle's *Rhetoric*, she identifies features also in this text that differ from attested Athenian practice, including in the discussion of laws as *atechnoi pisteis* and the type of dicastic audience envisaged in this part of his work (2020: 68–77).

Specifically on the Aristotelian advice on how to question the authority and validity of specific statutes, she suggests (2020: 74) that Aristotle may have drawn on sophistic material, and even that the treatment in his *Rhetoric* and the *Rhetoric to Alexander* may have been derived from the same source, because their advice is “unusual.” However, if both texts are read through a less Athenocentric lens, these argumentative strategies very likely reflect the moral dilemmas and legal uncertainties that citizens faced in the large number of Greek communities that were subjected to hegemonic domination. Those strategies make especially good sense when applied to communities which had been compelled to make changes to their existing legislation in violation of their *autonomia* in the literal sense.

ποιεῖ τὸ ἔργον τὸ τοῦ νόμου. καὶ ὅτι ὥσπερ ἀργυρογνῶμων ὁ κριτὴς ἐστίν, ὅπως διακρίνη τὸ κίβδηλον δίκαιον καὶ τὸ ἀληθές. καὶ ὅτι βελτίονος ἀνδρὸς τὸ τοῖς ἀγράφοις ἢ τοῖς γεγραμμένοις χρῆσθαι καὶ ἐμμένειν.

As mentioned earlier, the Athenians were largely spared this kind of external pressure for most of the fourth century after the reconstruction of their democracy. Yet, what has survived of Lysias 34 indicates that some Athenians advocated anticipatory obedience in the form of the re-introduction of a census requirement in response to hegemonic pressure from the Lakedaimonians (34.6-10). If we believe the speaker of [Dem.] 17, the Athenians were to face increasing hegemonic pressure on their legislation and their courts in the years after their defeat at Chaironeia, to which some Athenians allegedly responded with similar anticipatory obedience:

But they have reached such a pitch of *hybris* that, being protected by the garrisons of the tyrant [Alexander] they order you to abide by sworn obligations that have now been broken, as if he is even in complete control of perjury, while they force you to abolish your own laws by letting those who have been convicted in the courts off the hook and by forcing you in countless other ways to break the law.⁶⁰

Even if the speaker is exaggerating the situation, his argument here suggests that the Athenians increasingly had to confront moral choices and legal dilemmas similar to those faced by other *poleis* that had to adapt some of their laws or even accept imposed constitutions. Under such circumstances, the question how far it was the citizen's non-negotiable duty to obey specific laws that had been enacted under external pressure must have been considerably more difficult to answer. Even more difficult was the question at what point refusal to comply with such laws and their enforcement turned from being condonable into a moral imperative, and ultimately a patriotic obligation.

60 [Dem.] 17.12: ἀλλ' εἰς τοῦθ' ὕβρεως ἤκουσιν ὥστε δορυφορούμενοι τοῖς τοῦ τυράννου στρατοπέδοις ἐν μὲν τοῖς παραβεβασμένοις ὅρκοις ἐμμένειν ὑμῖν διακελεύονται, ὡς καὶ τῆς ἐπιτοκίας αὐτοκράτορος ὄντος ἐκείνου, τοὺς δ' ἰδίους ὑμᾶς νόμους ἀναγκάζουσι λύειν, τοὺς μὲν κεκριμένους ἐν τοῖς δικαστηρίοις ἀφιέντες, ἕτερα δὲ παμπληθῇ τοιαῦτα βιάζόμενοι παρανομεῖν.

V. Conclusions

Despite external pressure and despite internal divisions in the 330s and 320s, the Athenians managed to preserve fundamental aspects of their constitution, including freedom of expression, that made it possible for them to debate and disagree over their relationship with and obligations to the Makedonians.⁶¹ They also managed to draw some important red lines, for example when resisting the Makedonian demand for the extradition of some of their leading political figures, while at the same time recognising the need to engage in a policy of appeasement and flattery.⁶²

No doubt, this was due in part to the resilience of the Athenian legal and political institutions, to which Hansen devoted a large part of his career. There seems to have been a broad consensus on their integrity and legitimacy, and with those also the authority of the enactments that they promulgated. That consensus may be an important reason why ordinary Athenians continued to engage actively in political life and decision-making, in marked contrast to the despondency and fear that had allegedly led to passivity and acquiescence in 405/4, and which had facilitated the consolidation of an authoritarian regime.

Yet, even in fourth-century Athens it appears to have been possible to call the authority of certain enactments into question, not least those which could be represented rhetorically as serving the interests of an external hegemon, at the expense of the Athenians themselves. Athens may have been able to resist further erosion of the integrity of its laws and institutions, not just because of their collective commitment to them, but also because of the unusual size and resources of the city itself.

A smaller *polis* was more at risk of experiencing developments where external pressures might lead to a deepening conflict between the community's laws and institutions on the one hand, and the fundamental values, norms, and patriotic sentiments of (most of) its citizens on the other. Such developments could be further exacerbated, if citizen complacency allowed crucial tipping points to be missed, making the process unstoppable by peaceful means.

61 See recently Poddighe 2022.

62 See Brun 2000: 73–78, 85–95 and 2013.

The tendency for states across the Western world to slide towards authoritarian rule by law, rather than rule of law, was discussed by Hansen in 2017, and it has only accelerated since then. We have to consider the possibility that we, and our children and grandchildren, may soon have to face a choice between obedience to the laws and policies made and enforced by our governments in our name and our obligation to act according to more “general principles of law recognised by civilised nations.”⁶³ We have to be mindful of the risk that individual decisions not to act before it is too late may be interpreted as implied consent by future generations.

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63 European Convention on Human Rights, Article 7.2.

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