

## WERE THE ANCIENT GREEKS EPISTEMIC DEMOCRATS?

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Though the primary focus of this volume is the discovery of the fact in the context of legal reasoning, I want to take a slightly wider view. I wish to consider the place of facts—which I’ll define provisionally as things that can in principle be known, i.e. that might be the object of the Greek verbs *oïda* or *epistamai*, “know,” or described as *epistêmê*, “knowledge”—in the broader ancient Greek political context, including in both assemblies and lawcourts, particularly (owing to the abundance of evidence) those of classical Athens.

It is not too controversial to regard classical Athenian courts as political bodies.<sup>2</sup> Many obviously political decisions were made by judicial panels (*dikastêria*), especially via the *graphê paranomôn*, the indictment for proposing an illegal decree, but also through other charges such as treason, lying to the *dêmos*, and offering or taking bribes. Pre-office scrutinies and post-tenure audits were likewise usually conducted by courts and were a standard feature of political life in Athens and elsewhere.<sup>3</sup> Arguably, ancient Greek courts were not considered merely accessory to the city’s main political decision-making body, whether an assembly or a council, but were deemed equally significant.<sup>4</sup> This I infer from Aristotle’s representation of “what is advantageous?” and “what is just?” as pre-eminent political questions. “What is advantageous” (*to sympheron*), he said, was typically decided by assemblies; “what is just” (*to dikaion*) by courts.<sup>5</sup> Both bodies were equally “political” in that they performed the work of the *polis*. They generated views and actions that were treated as those of the community as a whole.

My particular focus will be the limit of claims to knowledge in these contexts. Interestingly, there is no ancient Greek equivalent to our word “fact,” though it

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<sup>2</sup> See M.H. Hansen, “The Political Powers of the People’s Court in Fourth-Century Athens,” in O. Murray and S. Price eds., *The Greek City from Homer to Alexander* (Oxford: Clarendon Press, 1990), 215–43; R. Bauman, *Political Trials* (London: Routledge, 1990). For further discussion, see D. Cammack, “The Democratic Significance of the Classical Athenian Courts,” in *Decline: Decadence, Decay and Decline in History and Society* ed. W. O’Reilly (Budapest: Central European University Press, forthcoming 2017).

<sup>3</sup> Aristot. *Pol.* 1281a–b, 1298a–b, 1300b, 1317b, 1322b; Ps. *Ath. Pol.* 48.4, 59.4.

<sup>4</sup> Though they are sometimes represented as such: 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, CA: University of California Press, 2007), 4.

<sup>5</sup> Aristot. *Rhet.* 1358b1–59a6.

commonly appears in translation. Usually what is translated is a pronoun such as “this” (*touto*) or “these things” (*tauta*), sometimes a participle such as *to gegenêmenon*, “what has happened.”<sup>6</sup> More important, both assemblies and courts were specifically decision-making bodies; they heard arguments and then voted to approve or to reject a proposal and to confirm or 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 I think we may plausibly characterize as appeals to fact. Other papers in this volume will have many interesting things to say about such appeals. I want to investigate something slightly different: the perceived relationship of the decision-making process *itself* to fact, knowledge, or truth.

Specifically, I will ask: To what extent were the questions considered by ancient Greek assemblies and courts—all of them variations on the basic formulations “What is advantageous?” and “What is just?”—understood as not merely involving *appeals* to matters of fact, but as *themselves* inquiries into fact? When an assembly considered whether or not a particular policy was advantageous, say declaring war against Philip of Macedon, to what extent was it believed that there existed an objectively correct answer to this question, independent of the decision eventually reached? Or when a judicial panel considered whether, for example (as Aeschines argued), Ktesiphon’s proposal to award Demosthenes a crown was illegal, how far was the answer to that question conceived as something that existed independently of the views of the judges? Was there, in other words, a perceived boundary between invocations of fact in arguments about advantage and justice and the decisions subsequently made, or did the ancient Greeks consider those decisions themselves to be declarations of fact?

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

### *The current intellectual context*

An influential defence of democracy today 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

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<sup>6</sup> See e.g. Din. 1.33, 105, trans. Burr. Cf. Dem. 41.25, 50.21, 37, 52.7, trans. Murray.

<sup>7</sup> For an account of this defence and three alternatives, see M.P. Saffon and N. Urbinati, “Procedural Democracy, the Bulwark of Equal Liberty,” *Political Theory* 41(3), 441-81.

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, and that the more jurors there are, 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 right (or at least epistemically better and worse) answers to questions such as these; 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 that large, cognitively diverse groups are more likely to approximate correct answers than small groups or individuals, including groups of experts, because they have access to more diverse knowledge about the world. As H el ene Landemore puts it, "More is smarter."<sup>11</sup> For some, this is not merely a sufficient justification of democracy but a necessary one. According to David Estlund, "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 do better at answering certain kinds of question than individuals, however expert. Two much-cited examples are the "guess the weight of the ox" competition described by Francis Galton in 1906 and an attempt to locate a missing submarine in 1968. 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 programme, the number of books in his office.<sup>13</sup> In every case, the average guess of the crowd has resulted in something very close to the independently verifiable truth.

These experiments have prompted a great deal of interest, but it is not 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

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

<sup>9</sup> 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.

<sup>10</sup> Estlund, *Democratic Authority*, 230; Landemore, *Democratic Reason*, xv.

<sup>11</sup> Landemore, *Democratic Reason*, 104.

<sup>12</sup> Estlund, *Democratic Authority*, 8, italics mine.

<sup>13</sup> All discussed in J. Surowiecki, *The Wisdom of Crowds* (New York: Doubleday, 2004). For another approach towards 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): 16386-9.

then be found if the epistemic argument for democracy (or indeed 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 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 Athens’ “remarkable” success 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>

This claim is open to two interpretations. It may be read as a purely external or objective account of the Athenian political system: that is, whatever 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 behavioural 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 in part on the territory of political thought as well as practice. It suggests that ordinary Athenians conceived of political decision-making on epistemic lines and 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 may be understandable given the relatively little evidence available on the

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<sup>14</sup> Aristot. *Pol.* 1281a40-82a40 and 1286a25-b7, discussed below and in Estlund, *Democratic Authority*, 232-3; 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, NJ: Princeton University Press, 1989), 163-4; J. Ober, *Democracy and Knowledge* (Princeton, NJ: 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.

<sup>15</sup> Plat. *Prot.* 322d-e, discussed Landemore, *Democratic Reason*, 57-9.

<sup>16</sup> J. Ober, “Epistemic Democracy in Classical Athens,” in Landemore and Elster, *Collective Wisdom*, 118. Cf. Ober, *Democracy and Knowledge*; Ober, “Democracy’s Wisdom.”

<sup>17</sup> Ober, *Democracy and Knowledge*, 17.

<sup>18</sup> Ober, “Epistemic Democracy,” 143.

<sup>19</sup> Ober, *Mass and Elite*, 311-14.

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

Athenian council, according to Ober the city's most epistemically valuable institution, although it does make it difficult to evaluate his claims.<sup>21</sup> In at least one version of the argument, however, Ober has explicitly favoured 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, this claim may be assessed directly. We have ample evidence showing how the Athenians and other Greeks conceived of their decision-making processes. Did they favour 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 suggest the answer to this question is no. First, I assess the evidence marshalled by Ober and others in support of the view that the ancient Greeks supported democracy on epistemic grounds. Next, I explore the distinction between knowledge (*epistêmê*), understood as information that exists independently of our 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 believed that knowledge certainly played a role in decision-making, the specific task of decision-makers was understood to be to assert *how things seemed to them* (*edoxe tini*, the language used in the prescript of ancient Greek decrees), not to discover *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 alien to them. Finally, drawing on several political problems such as the Melians' conflict with Athens 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 in 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, but at its heart is the following claim. A large number

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<sup>21</sup> 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). Indeed, the first nine pages of this account cite no primary evidence at all. A similar hypothetical account appears in “Democracy's Wisdom,” 116-17. I discuss some of the available evidence and its implications in D. Cammack, “Not Talking but Thinking: Democratic Deliberation in Classical Athens,” forthcoming.

<sup>22</sup> Ober, “Epistemic Democracy,” 118, italics mine.

<sup>23</sup> Aristot. *Pol.* 1281a40-82a40 and 1286a25-b7.

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, and this enables the large group to judge better (*krinousin ameinion*) than the small.

The crucial question is: What is this politically salient thing? Despite some variation among interpretations, 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 recently argued, Aristotle does not, strictly speaking, employ epistemic language in this passage.<sup>25</sup> Rather (as he indicates in the 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 another, 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 catalogue of the parts of *aretê* in its broadest sense.<sup>27</sup> (*Epistêmê*, “scientific understanding” or “knowledge,” is another.) Equally clearly, there is 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 importantly for politics) courage, justice, and moderation.<sup>28</sup> But what is most significant is that on 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 which Aristotle explicitly denied.<sup>29</sup> According to Aristotle, *aretê* is a power, a *dynamis*, of “providing and

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<sup>24</sup> R. Balot, *Greek Political Thought* (Malden, MA: Blackwell, 2006); E. Barker, *The Politics of Aristotle* (Oxford: Clarendon Press, 1962), 126-7; J. Bookman, “The Wisdom of the Many,” *History of Political Thought* 13 (1992): 1-12; Estlund, *Democratic Authority*, 232-3; A. Lintott, “Aristotle and Democracy,” *Classical Quarterly* 42 (1992): 114-28; R. Mulgan, *Aristotle’s Political Theory* (Oxford: Clarendon Press, 1977), 103-5; M. Nichols, *Citizens and Statesmen* (Savage, MD: Rowman and Littlefield, 1992); Ober, *Mass and Elite*, 163-5; Ober, *Democracy and Knowledge*, 110-14; Ober, “Democracy’s Wisdom”; A. Saxonhouse, *Fear of Diversity* (Chicago, IL: 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.

<sup>25</sup> D. Cammack, “Aristotle on the Virtue of the Multitude,” *Political Theory* 41 (2013): 175-202. Cf. 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).

<sup>26</sup> This translation is defended in Cammack, “Virtue of the Multitude”.

<sup>27</sup> Aristot. *NE* 1139b15, 1144a5-10. See further Cherry, “Certain Kind”.

<sup>28</sup> Aristot. *NE* 1098a17-18, 1179b30; *Pol.* 1280b5-10; *Rhet.* 1366b.

<sup>29</sup> E.g. Plat. *Meno* 89c. Contrast Aristot. *NE* 1116b, 1144b25-40; *EE* 1216b3-25, 1230a5-10, 1246b30-7.

preserving good things.”<sup>30</sup> Above all, it is practical, realised 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, therefore, it does not seem to have involved the aggregation of knowledge, conceived as dispersed information, experience, or expertise, but was instead based on the aggregation of practical capabilities, including ethical capabilities, in collective activity.<sup>32</sup> Accordingly, his defence 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. This, I take it, is closer to what we would call an ethical argument than an epistemic one.

Losing the support of this passage of Aristotle makes a sizable hole in the epistemic democrat’s armoury. As well as being the only canonical philosophical support cited in most discussions of collective wisdom, it is also 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> These should also be examined, though they too fall short of suggesting that the Athenians supported democracy on epistemic grounds. They either a) indicate respect for the judgment of the masses but do not show that this was connected to their possession of knowledge, or b) 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, to the effect that while the best advisers are the wise (*tous synetous*), the many (*hoi polloi*) judge the best (*krinai...arista*).<sup>35</sup> As Ober rightly notes, a

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

<sup>31</sup> Aristot. *NE* 1099a1–7.

<sup>32</sup> For further discussion of the way in which *areté* may be conceived as aggregative, see Cammack, “Virtue of the Multitude,” 185–90.

<sup>33</sup> Ober, *Democracy and Knowledge*, 110–14. It is actually very doubtful that Aristotle is talking about Athens in this passage, though I will 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.

<sup>34</sup> Ober, *Mass and Elite*, 163–5.

<sup>35</sup> Thuc. 6.39.1.

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, this may look like promising support for the epistemic position. Yet crucially, neither of the above passages actually 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. This 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 he 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.<sup>39</sup> Sound judgment would seem to involve being fair to both sides, that is, on practising the virtue of justice, *dikaiosynē*, a quality commonly lauded in Greek political thought.<sup>40</sup>

A passage from Demosthenes cited by Ober raises a similar issue. 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 defence of democracy.

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<sup>36</sup> Thuc. 3.37.3-5.

<sup>37</sup> Aristot. *Pol.* 1286a30-33.

<sup>38</sup> Aristot. *Pol.* 1286a33-36.

<sup>39</sup> Landmore denies this, arguing that Aristotle's claim is "cognitive, not moral" (*Democratic Reason*, 62). To the extent that Aristotle believed that all *aretē* involved acting in accordance with *logos*, reason, he certainly thought there was a cognitive element in virtuous human behaviour (*NE* 1144b26-7). Arriving at one's *krisis*, "judgment" or "decision," is also certainly a cognitive activity. But it is not, on Aristotle's view, *exclusively* cognitive. He argued explicitly that *phronēsis* (the part of *logos* involved in deciding action) and ethical *aretē* are intertwined (*NE* 1144a13-b17). The cognitive and moral (or—following the Greek terminology—ethical) elements in decision-making thus cannot be separated quite as cleanly as Landmore implies.

<sup>40</sup> See further D. Cammack, "Plato and Athenian Justice," *History of Political Thought* (2015), 611-42.

<sup>41</sup> Ober, *Mass and Elite*, 165, citing Dem. 23.145-6.

<sup>42</sup> See C. Taylor, "Bribery in Athenian Politics Part I: Accusations, Allegations and Slander," *Greece & Rome* 48 (2001), 53-66, and "Bribery in Athenian Politics Part II: Ancient Reactions and Perceptions," *Greece & Rome* 48 (2001), 154-172.

In other passages, knowledge played a more direct role. Hypereides argued that a man's entire life is relevant to his legal defence 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 the judges no doubt "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 Demosthenes's crimes in great detail, he cannot really have thought this. Rather, Ober suggests, he is "expressing solidarity with an ideology that stressed group over individual knowledge".<sup>45</sup>

This interpretation is certainly possible. But the claim that "you guys know this even better than I do" remains a fairly standard rhetorical gambit, and I would hesitate to conclude 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 hōn*, "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 (*eidē*), let him deem (*dokimazetō*) that his neighbour does not know either."<sup>46</sup> This strongly implies that whatever 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 foregoing, concern court cases. What of those made in assemblies? Our most valuable evidence in this respect 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, number 45, recalls the speeches of Athenagoras and Cleon found in Thucydides 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

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<sup>43</sup> Hyp. 1.14, trans. Burtt, quoted Ober, *Mass and Elite*, 165.

<sup>44</sup> Din. 1.33, trans. Burtt, quoted Ober, *Mass and Elite*, 165. Cf. Aeschin. 1.44-5, 55, 65, 70, 73, 89, 189; Andoc. 1.1, 20, 37, 46; Din. 2.2, 3.1; Hyp. 4.22; Is. 3.40.

<sup>45</sup> Ober, *Mass and Elite*, 165.

<sup>46</sup> Dem. 40.53-4, trans. Murray, modified.

<sup>47</sup> Dem. Ex. 45.2, trans. DeWitt; Ober, *Mass and Elite*, 164.

than mere speech”.<sup>48</sup> The latter part of this claim is certainly true. The collective judgment of the many was certainly deemed “more important than mere speech”; it was, after all, the vote of the mass of listeners that was politically decisive in Athens, not the opinions of the speakers.

The former part of the claim, however, may be doubted. 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: rhetorical prowess in speech-making, and *nous*, “intelligence,” based on experience, in decision-making. The usual pro-democracy argument from collective wisdom would be that decisions ought to be made by the many because they, *being many*, have more experience under their collective belt than a single speaker. But Demosthenes does not make this argument. Rather, he takes it for granted that the speaker’s role is simply to speak, and he stresses that this is distinct from the audience’s role, which is to decide. He 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 especially the older members of the crowd 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 from the *Exordia* quoted by Ober offers stronger support for the epistemic case. Demosthenes is outlining the situations in which he would not bother to speak. One is when everyone has already decided to do what he, Demosthenes, considers necessary, for in that case a speech from him would be superfluous. The other is when the opposite is true, i.e. when everyone has already decided to do the thing he opposes, “for I should have thought it more likely that a single person like myself should misconstrue the best measures (*agnoein ta kratist’*) than all of you.”<sup>50</sup> This line is certainly 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 certainly accepts that when massively outnumbered, it is more likely that his judgment is unsound 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? Once, elsewhere, Demosthenes does distinguish between “what seems best to you” (*dokounta beltisth’*) and the “truly best” (*onth’ hôs alêthôs*), but it is not

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<sup>48</sup> Ober, *Mass and Elite*, 164-5.

<sup>49</sup> Dem. Ex. 45.2-3, trans. DeWitt.

<sup>50</sup> Dem. Ex. 44.2.

clear that he thought that the “truly best” could securely be apprehended by his audience.<sup>51</sup> Altogether, the passage may raise more questions than it answers.

Another passage completes Ober’s catalogue of support for the “wisdom of the masses.” This is from Isocrates’ attack on the sophists, the itinerant intellectuals who made their living by teaching rhetoric. Though these men professed to have “exact knowledge” (*tên epistêmên*), Isocrates argues, in fact those who relied on *doxai*, “opinions,” “judgments” or “views,” actually tended to agree with one another more and to be correct more often (*katorthountas*, “keep straight”) than the sophists themselves.<sup>52</sup> Ober suggests that this claim is “not necessarily representative of Isocrates’ general beliefs.” Instead, he 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 defence of democracy here, epistemic or otherwise. But what is more important is the contrast Isocrates draws between *doxa*, opinion, and *epistêmê*, knowledge. Not only does he counterpose the views of laymen to those of intellectuals, but he also specifically distinguishes the judgments of ordinary men from knowledge as such. In the words of his 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 develop 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.

Ober concludes that Athenagoras, Demosthenes, Hypereides and Dinarchus “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> These orators certainly championed the advisory role of politicians, though we ought to 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 that by “wisdom” Ober means “knowledge” rather than “judgment,” we must demur: we do not have the evidence for that.

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<sup>51</sup> Dem. Ex. 26.1.

<sup>52</sup> Isoc. 13.8. Cf. Isoc. 12.9.

<sup>53</sup> Ober, *Mass and Elite*, 163.

<sup>54</sup> G. Norlin, *Isocrates*, vol. II (Cambridge, MA: Harvard University Press, 1929), 162-3.

<sup>55</sup> Ober, *Mass and Elite*, 165.

<sup>56</sup> 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 S. Hornblower and R.G. Osborne (eds.), *Ritual, Finance, Politics* (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 *technê* (323a) (or the impression of it) was not required.

Finally, we should consider the sketch of Protagoras' political views given by Plato in the *Protagoras*, recently discussed by H el ene Landemore. As Landemore rightly notes, the speech put in Protagoras' mouth is a genuine defence of mass participation in politics.<sup>57</sup> Yet whether Protagoras' argument amounts to an epistemic defence 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 these qualities is an emergent property of the group, since this would explain Protagoras' insistence that as well as being inborn they can be further developed through education; and she 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 also freely admits the difficulty of pinning Protagoras' myth down as epistemic. As she concedes, political wisdom appears in this dialogue "as an art, a virtue, but only ambiguously as a form of knowledge."<sup>60</sup> And on this point she is perfectly right. There are in fact slender grounds for interpreting Protagoras' conceptions of either *aid s* or *dikaiosyn * as epistemic (unlike those of Plato himself). Landemore is also right, however, that Protagoras should be significant for epistemic democrats—but for a different reason altogether.

#### *Knowledge versus judgment*

Ancient Greek democrats were certainly convinced of the wisdom of putting questions to the *d mos*. Yet it is not clear that this was because the *d mos* itself was deemed wise, at least if by that we mean knowledgeable. *Krisis*, "judgment," not *epist m *, "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.

Let us pick up where Landemore leaves off, with Protagoras, or rather with Plato's representation of him. As far as we can tell, Protagoras was particularly famous for one idea, formulated by Plato in the *Theaetetus* as "Man (*anthr pos*) 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 *krit s*, "judge," cognate with *krisis*, the term meaning "decision" or "judgment" which we have already encountered several times.<sup>62</sup>

We may paraphrase this assertion as follows. According to Plato's Protagoras, claims about "what is" express nothing more or less than that they *appear to be so*

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<sup>57</sup> See further C. Farrar, *The Origins of Democratic Thinking* (Cambridge: Cambridge University Press, 1988).

<sup>58</sup> Plat. *Prot.* 322de.

<sup>59</sup> Landemore, *Democratic Reason*, 57-8.

<sup>60</sup> Landemore, *Democratic Reason*, 59.

<sup>61</sup> Plat. *Th.* 152a.

<sup>62</sup> Plat. *Th.* 160c.

to a human being. Whether this amounts to full-blown philosophical subjectivism or relativism may be debated.<sup>63</sup> But what is important to notice is that on Protagoras's account, human beings cannot get beyond their own perceptions. Another way to put this is that the views they adopt are intrinsically and ineluctably attached to themselves as perceivers as well as to the objects perceived. Or perhaps, as Plato's Socrates suggests of Protagoras's 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's position is the target of lengthy and explicit criticism in the *Theaetetus*, but what I want to draw attention to here is the concatenation of ideas associated and contrasted with it. The "man-measure" doctrine is consistently identified by Plato with a) *krisis*, "judgment" or "decision," and *aisthêsis*, "perception," as opposed to *epistêmê*, "knowledge";<sup>65</sup> b) *genesis*, "generation," and *kinêsis*, "motion," as opposed to *ktêsis*, "possession";<sup>66</sup> c) *to dokein*, "seeming" (cognate with *doxa*, "opinion"), *to phainetai*, "appearing," and *to genesthai*, "becoming," as opposed to *to einai*, "being";<sup>67</sup> and d) 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*, conceived as an articulation of *how things seem* to an agent, which is generated by that agent, remains inextricably linked to him or her, and is changeable; and *knowledge*, conceived as an articulation of *how things really are*, which may be possessed by an agent but exists independently of him or her and is not susceptible to change.

Plato gives us to understand that the norm in Athens was to care—principally if not exclusively—about judgment. Socrates alone is depicted as being more interested in knowledge. This, of course, 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 Greeks certainly 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*, independent of 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)

<sup>63</sup> See e.g. Farrar, *Origins*, 49; H. Segvic, *From Protagoras to Aristotle* (Princeton, NJ: Princeton University Press, 2009), 7, 25-6.

<sup>64</sup> Plat. *Tht.* 157a.

<sup>65</sup> Plat. *Tht.* 151e, 152a-c, 153a-d, 160c, 161c-e, 170d, 179a, 186e, 201b-c, 201e, 210a. Cf. *Prot.* 356c-e.

<sup>66</sup> Plat. *Tht.* 152e, 153a-e, 155e, 180d, 182d, 183a, 197a-b.

<sup>67</sup> Plat. *Tht.* 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*.

<sup>68</sup> Plat. *Tht.* 172a-177d, 201a-c. Cf. *Gorg.* 455a-b, 466d-467b.

<sup>69</sup> Plat. *Apol.* 30e.

had *deemed* this particular course of action to be advantageous or just, not that he (or it) had *discovered* it to be advantageous or just.

One way this is visible is in the widespread use of the terms *krisis*, “decision” or “judgment,” and *gnômê*, “judgment” or “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, this was the term used to establish laws, decrees, alliances, and other political decisions. We have scores of examples of inscriptions beginning *edoxe tô dêmô*, literally “it seemed [good] to the *dêmos*,” 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 more literally what was asserted was that the given course of action had seemed advantageous to the given decision-maker.<sup>72</sup> Even the notion of advantage, in fact, was typically implicit, though it did appear occasionally. Two examples are Lycurgus’s description of a decree of 338 to the effect that the council would “hold itself ready to do whatever seemed to be in the *dêmos*’ interest” (*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> What was never merely implicit, however, was the agent to whom the given course of action had seemed appropriate, i.e. the decision-maker. That was an essential part of the political record.

*Dokeô* was used in a parallel way in court cases. Aeschines reports that the “formula prescribed by law” 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

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<sup>70</sup> *Krisis* and cognates: Aristot. *Pol.* 1286a33-36; Aeschin. 1.93, 186, 196; Dem. 18.57, 226, 20.87, *Ex.* 33.3; Isoc. 6.5; Hyp. 2.10. *Gnômê* and cognates: Aeschin. 1.196; Andoc. 1.2, 3; Dem. 18.8. Cf. Aristoph. *Ass.* 655; Plat. *Prot.* 340b.

<sup>71</sup> 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, 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, 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. Andoc. 1.27; Aristoph. *Ass.* 395, *Thesm.* 372-7; Lyc. 1.37; Thuc. 1.53.1, 125, 2.24.1, 4.118.2, 4, 9, 11, 5.18.8, 23.6, 6.47.12.

<sup>72</sup> As in Aristoph. *Assemblywomen* 197-8, trans. Henderson: “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. 454-7, 764, 854.

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

<sup>74</sup> Aeschin. 1.79, trans. Adams.

all...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*, lit. “he seemed to have done wrong”).”<sup>77</sup> The essential issue was how things seemed to the judges, and the majority view was publicly and, it seems, unhesitatingly—except by Plato—accepted as decisive.

The use of *dokêô* in these contexts, and especially the use of *dokêô tini*, “seem to [the decision-maker],” to mean “decide,” argues strongly against the claim that the Greeks supported democracy (or any other decision-making system) on epistemic grounds. A key postulate of the epistemic view is that there exists a procedure-independent right answer to political questions, which is it the decision-making agent’s job to approximate and against which the final decision can be judged. But no such conception appears in our ancient Greek sources—that is, so 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 seemed to others. Only Plato’s Socrates, it appears, showed an interest in right answers beyond the ken of how things seemed to the decision-maker, 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 on this issue to be on the side of Plato, that notorious anti-democrat, against the rest of the ancient Greeks. The standard Greek conceptualization of political decision-making appears to have been much closer to the doctrine of Protagoras. And that doctrine, I submit, actually suggests a more plausible account of the nature of political action.

### *The nature of political action*

Let us recall some postulates of the epistemic defence of democracy. There exist 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

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<sup>75</sup> Hyp. 4.40. Cf. Is. 11.50; Isoc. 15.179. An exception is Dem. 48.52, which asks the judges to “reach the conclusion regarding us which may seem to you best” (*ho ti an hymín dokê beltiston einai*).

<sup>76</sup> Dem. 43.81, trans. Murray.

<sup>77</sup> Dem. 38.2, 54.2, 56.55, 59.117, trans. Murray. Cf. Dem. 48.52, 53.24.

<sup>78</sup> See further Cammack, “Plato and Athenian Justice.”

EU constitution?” To these we may add some ancient Greek equivalents: “Should the Melians refuse an alliance with Athens?” “Should the Athenians go to war against Philip of Macedon?” “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 more carefully the nature of political decisions. What exactly do they do? I suggest that the essential feature of a political decision, like any decision, is that it specifies and sets in train a course of action within the power of the decision-maker to effect.<sup>79</sup>

This is easy to see in the case of policy decisions, i.e. questions of advantage. Whether the bridge is built, the constitution ratified, the alliance made, or war declared is in the final analysis simply down to the decision-making agent to decide. Other things may of course 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 creates something new in the world: a bridge, a constitution, an alliance, a state of war. Or, if the decision goes the other way, it creates 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.

This suggests two things. First, deciding political questions is fundamentally different from answering the kind of questions described earlier in connection with the successful use of the “wisdom of crowds”: the “guess the weight of the ox” competition, the discovery of the missing submarine, and the experiments with jellybeans in a jar or books in a study. To these examples we may add one from ancient Greece: How high is this wall? The Plateans, 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 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 jellybeans, books, or bricks in the wall. The responses given to these questions were thus 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 indeed a decision, that is, a creative act, ultimately (in any case where the

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<sup>79</sup> Cf. Arist. *Rhet.* 1359a35-b2.

<sup>80</sup> Thuc. 3.20.3, trans. Smith.

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 answering the same question. At the moment of decision, what is asked is arguably not “Should we build this bridge?”—the question which may well, however, have guided consideration up to that point. Rather, implicitly or explicitly, what is asked is “Shall we build this bridge?”—a question that necessarily draws our attention back to the will of the decision-maker.

In effect, I am 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 the same way in the realms of both philosophy and politics—that is, that in both cases the answer lies on the terrain of “what is” and therefore of *epistêmê*. Aristotle, on the other hand, 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 *phronêsis* and deliberation, i.e. choice-making.<sup>81</sup> And the “answer” that results from the latter type of enquiry is a decision rather than a fact—a completely different kind of determination.

Second, since decisions cannot be divorced from what the decision-maker wills and has the power to do, the postulate that there exist right answers to political questions 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 is a right answer to the kind of poem a poet ought to create.

That claim may seem to verge on relativism or nihilism (as David Estlund might argue).<sup>82</sup> Surely we can imagine better or worse outcomes from the point of view of the agent, and there will exist an independent or objective answer as to what those outcomes are? Surely, for example, if it were agreed that war, famine, or the annihilation of the *polis* were undesirable outcomes, we could use them as standards by which to judge the felicity or otherwise of given decisions?

I would say no, and I think most ancient Greeks would have agreed, for two reasons. First, even when preferred outcomes are agreed, there may be profound uncertainty about how to establish them and, equally important, wide variation in appetite for the risks involved in doing so. And second, even knowing after the fact that things did not turn out as hoped will not necessarily make many responsible agents deem their initial judgment a poor one. Nor should it. Deciding to pursue a particular course of action is not the same as predicting that that course of action will turn out for the best. Even with the benefit of hindsight, then, the distinction between judgment and knowledge remains intact.

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<sup>81</sup> 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; Cammack, “Not Talking but Thinking,” forthcoming. See also Segvic, *From Protagoras to Aristotle*.

<sup>82</sup> Estlund, *Democratic Authority*, 5.

The first point follows from the obvious fact that we decide upon 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 (*houtō dianoiesthai*).”<sup>83</sup> Inasmuch as every action creates a new state of the world, we cannot fully foresee its consequences, still less of the actions of other agents that will be generated in response. The results of our actions are thus not susceptible to knowledge, but only of hope and of fear. And 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.

As an illustrative example, let us consider the situation of the Melians in Book 5 of Thucydides.<sup>84</sup> The options facing the Melians (or rather the elite few who hear the Athenians’ demands and make a formal response) are clear.<sup>85</sup> They can either become allies of the Athenians, paying tribute but preserving their territory, or they can refuse to become allies, trusting in fortune, the gods and the Lacedaemonians to assist them if the Athenians attack.<sup>86</sup> As the Athenians argue, the former looks like the wiser choice from the point of view of self-preservation; the latter risks total annihilation. The chance that either fortune, the gods or the Lacedaemonians will step in to save them are, the Athenians claim, slim to non-existent. Meanwhile, the Athenians’ position is extremely strong. They have at the time of negotiating thirty of their own ships and eight of their allies’ anchored at Melos, with a force of about 1700 hoplites, 300 bowmen and twenty mounted archers encamped on the land; and they have already set about ravaging the Melians’ territory.<sup>87</sup>

Nonetheless the Melians reject the request for an alliance, stating that they would not so readily “rob of its freedom a *polis* that has already been inhabited seven hundred years,” but would “try to win our deliverance.”<sup>88</sup> The sequel is well known. The Athenians built a wall, commenced a siege, and after some skirmishes, were supplemented by another force from Athens. The Melians capitulated and the Athenians killed all the adult males, enslaved the women and children, and eventually repopulated the town with their own colonists.

The question we must ask is whether it makes sense to think of the Melians’ decision at the conclusion of the negotiations as *epistemically* better or worse than the alternative. The language of knowledge certainly played a role in the

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<sup>83</sup> Isoc. 8.8, trans. Norlin (modified).

<sup>84</sup> Thuc. 5.84-115.

<sup>85</sup> Thuc. 5.84.3.

<sup>86</sup> Thuc. 112.2.

<sup>87</sup> Thuc. 5.84.1-2.

<sup>88</sup> Thuc. 5.112, trans. Smith.

arguments of both sides. Both “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>89</sup> Both sides also recognized that the Athenians considered the Melians’ reasoning to be *alogôs*, irrational, while the Athenians openly accused the Melians of placing greater confidence in their hopes than in their present resources and “holding out for the worse alternative.”<sup>90</sup>

Yet I can see no reason to believe that the Melians decided as they did because they underestimated—that is to say *misapprehended*—the Athenians’ power. To the contrary, they acknowledged that they would find it very difficult to contend against them, and for their part, the Athenians, too, admitted that the favourable contingencies imagined by the Melians *might* happen.<sup>91</sup> Conversely, 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>92</sup>

The most I think we can say is that a positive outcome for the Melians in the case of continuing warfare seemed, to both sides, extraordinarily unlikely. Yet if the Melian representatives proved, as they did, to have an enormous appetite for risk—to be willing to “stake your all on a single throw,” as the Athenians put it—I do not see how we can say that any epistemic mistake was made.<sup>93</sup> Only hindsight could allow that certainty; before the event, there is always room for hope of an improbable outcome, however slender. Hence if the will to tolerate the corresponding risk 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 than that they were mistaken, *even if* their preferred outcome was survival as opposed to an honourable destruction.

Yet if this suggests that hindsight is the crucial criterion, and that *with* knowledge of events one could deem the choice of a particular course of action to have been correct or otherwise, our ancient Greek sources provide reasons to doubt on that, too. Consider, for example, the Syracusans’ response to the news that the Athenians were on their way to invade Sicily in 415. Hermocrates asserted that he spoke with knowledge (*eidôs*) and was disbelieved; Athenagoras argued from probabilities (*ta eikota*) that the Athenians would hardly act so foolishly, and the Syracusan *dêmos* agreed.<sup>94</sup> Hermocrates turned out to have been right, but Athenagoras was not accused of making a mistake. His judgment *had* seemed reasonable at the time; the Syracusans were not to know how reckless the Athenians could be.

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<sup>89</sup> Thuc. 5.89, 102, trans. Smith.

<sup>90</sup> Thuc. 5.104, 111.

<sup>91</sup> Thuc. 5.104, 111.

<sup>92</sup> Thuc. 5.102, trans. Smith.

<sup>93</sup> Thuc. 5.103, trans. Smith.

<sup>94</sup> Thuc. 6.33, 36.

Another relevant example is Demosthenes' self-defence 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 had to choose between fighting—as they did, for example, between 352-46, 340-38 and 323—and keeping the peace. Both options arguably risked disaster: one by annihilation by superior military forces, as happened to Thebes in 335, Athens' ally in the battle of Charoneia only a few years earlier; the other by the eventual loss of political autonomy, as happened to Athens in 322. Demosthenes' position during the whole period seems to have been complex and not necessarily consistent, but the defence he offered in 330 was straightforward. His policy of resistance to Macedon had failed, but it had seemed the right thing to do at the time and he stood by it.<sup>95</sup> More than four-fifths of the judges agreed.

Evidently neither Hermocrates' nor Demosthenes' advice was interpreted as a form of prediction. Their suggestions were not interpreted as claims about what *would* be advantageous, which could be proved or disproved by what followed; rather, they were understood as claims about the kind of action the Syracusans and Athenians ought to *want* to take, what ought to seem good to them at that time. This strikes me as exactly right. Judging well—that is, making (or advising) a decision on what are regarded as admirable grounds—is distinct from one's judgment being borne out by events. The distinction is particularly clear in ancient Greek. 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” (*orthôs*).<sup>96</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*). Criticism of others' views was certainly widespread: the Athenians were arguably harsher in this respect than we are today, as indicated by their custom of indicting those who proposed illegal measures or disadvantageous laws. But what was 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 things had not turned out as hoped.<sup>97</sup> Again, deciding to create a world in which a certain course of action had been tried, even if it was found wanting, was not regarded as the same as arguing that things would turn out as hoped.

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<sup>95</sup> Dem. 18.62, 65-72, 191-5, 199, 206-10. See 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 honour, 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 dokē*).”

<sup>96</sup> Thuc. 2.22, 5.26; Isoc. 20.18; Dem. 18.255, 50.1, *Ex.* 18.

<sup>97</sup> Ps. Ath. 28.3.

So much for decisions of advantage. What about decisions of justice? To what extent did the questions raised in court resemble those such as “how many jellybeans in the jar?” and to what extent did they resemble policy questions of the kind raised in assemblies?

There is little doubt in my mind how Plato would answer this. To him, questions of justice exactly resembled “how many jellybeans in the jar,” that is, 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—his works continually implied—in the case of Socrates. And court cases certainly seem to involve *epistêmê* more than votes in the assembly. As Aristotle pointed out, they concern the past, not the future, and what happened in the past can in principle be known. Surely, at least where the evidence allowed it, court judgments could then 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>98</sup> Isaeus and Demosthenes both emphasized the importance of giving one’s verdict with a “perfect” or “accurate” knowledge of what had happened,<sup>99</sup> while Isocrates, in a pamphlet emulating a self-defence in court, argued that the “best and fairest defence” 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>100</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>101</sup> Knowing the truth did not determine what the judgment should be; rather, it enabled the decision-makers to perform *distinct* acts of judgment well. And in this context, as with decisions regarding advantage, “seeming” necessarily supervened. In the very next line, when anticipating the verdict, Isocrates reverted to the terminology we have seen elsewhere. “Cast your ballots as each of you thinks is right (*dokê dikaion einai*) and in accordance with law.”<sup>102</sup>

The clearest available example of the gulf separating judges’ freedom to assert whatever seemed just to them from the accepted facts of a case concerns the Harpalos affair of 324. Alexander’s treasurer, Harpalos, had absconded with a

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<sup>98</sup> Aeschin. 1.93. Cf. 77-8.

<sup>99</sup> Is. 8.3, Dem. 57.4. Cf. Dem. 18.57, 57.34; Lyc. 1.23.

<sup>100</sup> Isoc. 15.52, trans. Norlin.

<sup>101</sup> Isoc. 15.178.

<sup>102</sup> Isoc. 15.179, trans. Norlin. Cf. Dem. 28.23.

huge amount of money, sought refuge and been imprisoned in Athens, and then escaped, with considerably less money. Following an investigation, it was determined by the council of the Areopagos 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 labour between the Areopagos and the courts. Just because the Areopagos had determined that a given man had committed the offence, it did not follow that the judges were expected to punish him. As Dinarchus explained with respect to a different case, “The report of the council was not proved false; it was quite true, but the jury decided to acquit Polyeuctus. The council (of the Areopagos) was instructed to discover the truth (*to...alêthes*), yet, as I say, the court decided (*ekrine*) it was a case for pardon.”<sup>103</sup> Earlier, prosecuting Demosthenes, Dinarchus had pleaded: “You have taken over the case from the ppl (*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 *dêmos* and to the Areopagos and indeed to everyone?”<sup>104</sup> These were not merely rhetorical questions. Demosthenes was in fact convicted and severely punished; but letting him go had been a real option, and would not, it seems, necessarily have been interpreted as impugning the credibility of the Areopagos. The council’s task was to uncover the truth, the judges to decide what was just; these were two distinct things.

If this seems contradictory, we should remember the extent to which judicial decisions were forward-looking, and thus creative acts, just like those of assemblygoers. Isocrates, prosecuting Lochites, took this for granted: if the judges voted to convict, he remarked, they would not only “judge well (*orthôs gnôsesthe*)” but also “cause others citizens to be more decorous and make your own lives more secure.”<sup>105</sup> The principal focus of lawsuits was, to be sure, the judgment of past events. But in every case, such judgments also brought something new into being: a conviction or an acquittal, a reparation or a lack thereof. A new state of affairs was thus produced—one in which, for example, Ktesiphon’s proposal to crown Demosthenes *would* or *would not* count as illegal—and with it, a new normative benchmark. This was true even in a legal system, like the Athenian, in which precedents were not formally relevant. And again, exactly what was produced 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 such questions. We are, perhaps, caught on the horns of a dilemma: either judges have no agency in this context, hence they do not really *decide* anything, but

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<sup>103</sup> Din. 1.59, trans. Burt.

<sup>104</sup> Din. 1.105-6. Cf. Din. 1.33.

<sup>105</sup> Isoc. 20.18, trans. Norlin, modified. Cf. Aeschin. 1.196.

merely assert something to be true, perhaps mistakenly; or they do decide something, in which case we must allow that they have agency, and thus accept that even accepted facts and their judgment may diverge. If so, we should consider the possibility that the role of facts even in judicial decision-making may be quite radically circumscribed. They may be relevant up to the point of decision-making, but their significance beyond that is, like the final judgment, down to the decision-maker to decide. If so, the significance of the *discovery* of the fact, at least as far as political action is concerned, may also be judged quite limited.

### *Conclusion*

Near the beginning of *Infotopia*, Cass Sunstein limits the scope of his investigation as follows. “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>106</sup>

I suggest that this set of questions makes the mistake of treating two different kinds of enquiry as one, and ancient Greek political terminology helps us to see the difference. The first couple of questions concern the past and present, both now unchangeable. There is in principle a “demonstrably correct” answer to these questions. But there is no “demonstrably correct” answer *now* to speculation concerning the results of future human actions. Not because it is difficult to predict such things—to the contrary, it is easy, and events may even unfold just as predicted. But if they do, it is not because the original prediction had a secure *epistemic* basis. That would be impossible, because the necessary actions had not yet been decided. The reason we can have *epistêmê* about the past, Aristotle suggested, is because it cannot be changed. But 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 points is not between facts and values, as Sunstein suggests, but between facts and unforced actions. Facts may prove helpful in getting to the threshold of a decision; they cannot finally determine which action to choose.

This leaves us with one last question. Why 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,

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<sup>106</sup> Sunstein, *Infotopia*, 16.

but it is less relevant than it may at first appear, since it is not in fact a defence of *dēmokratia* but of rule by a particular kind of multitude, one that meets Aristotle's criterion of adequate *aretê*. Better evidence is available from two Athenian sources: the *Athēnaiōn 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 attributed to Aristotle but more likely produced by a student or students of his, dated to the late 330s.

Pseudo-Xenophon, sometimes known as "the Old Oligarch," was no democrat (at least if we take his text at face value).<sup>107</sup> But there is also no reason to think that he offers an inaccurate picture of democratic ideology. Indeed, his stated intention is to render clearly why the Athenians acted as they did even in the face of explicit criticism: "I do not myself praise the political system of the Athenians; but since they have decided to have it so (*edoxen houtōs autois*), 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>108</sup>

First, he says, "the poor and the *dēmos* there rightly (*dikaiōs*) do better than the well-born and rich, because it is the *dēmos* 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 *dēmos* within the political system is the power imparted by the *dēmos* to the *polis* itself. The text does not specify to whom, exactly, this appears justified: presumably the *dēmos* favours this reasoning, but it seems possible that it is shared more widely—if, as in the case of this author, 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 dexiōtatous*) and best (*andras aristous*)." But even here, the author argues, the Athenians "deliberate well (*bouleuontai arista*)." "For if [only] gentlemen spoke and deliberated, it would be great for the likes of them, but it would not be great for the men of the *dēmos*." The latter "know (*gignōskousin*) that the ignorance and viciousness and good will (*eunoia*) of the wretched profits them more than the virtue (*arētê*) and wisdom (*sophia*) and ill-will (*kakonoia*) of a gentleman (*tou chrēstou*)."<sup>109</sup> What follows spells out with remarkable matter of factness the stakes for the *dēmos*. "For the *dēmos* 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,

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<sup>107</sup> For an alternative reading, see S. Hornblower, "The *Old Oligarch* (Pseudo-Xenophon's *Athenaion Politeia*) and Thucydides. A Fourth-Century Date for the *Old Oligarch*?" P. Flensted-Jensen, T.H. Nielsen and L. Rubinstein, eds., *Polis and Politics: Studies in Ancient Greek History* (Copenhagen: Museum Tusulanum Press, 2000), 363-84.

<sup>108</sup> Ps. Xen. *Ath. Pol.* 1.1.

<sup>109</sup> Ps. Xen. *Ath. Pol.* 1.6-7.

you will first see the smartest men (*tous dexiôtatous*) making laws in their own interest. Then these gentlemen will punish the low-lives (*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 *dêmos* would rapidly fall into slavery (*doubleian*).<sup>110</sup>

Democracy, on this account, seems very far from being pursued on epistemic grounds. To the contrary, it represented an act of openly partisan self-defence by the *dêmos*, advanced by the good-will 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, when he gives several examples of occasions where the *dêmoi* of various *poleis*, having lost the upper hand, had indeed been enslaved or "cut down" by the upper classes.<sup>111</sup> We may also recall Aristotle's quotation of the oath sworn in several oligarchical *poleis*, "I will be hostile to the *dêmos* and plan whatever evil I can against it"; equally his list of the three qualities desirable in candidates for high office, *viz.* loyalty (*philia*) to the established constitution, capacity to perform the office, and *arêtê* and justice, with loyalty listed first.<sup>112</sup> In each case the disposition, not knowledge, of the decision-maker seems paramount.

To this we can add the evidence of the Aristotelian *Athênaiôn Politeia*, written around a century later, a few years before the end of the classical democratic period. According to this author, the Athenian *dêmos* became *kyrios*, "supreme" or "authoritative," over affairs when, following the short rule of the Thirty Tyrants in 404/3, "the *dêmos*'s having accomplished its return by its own efforts made it seem just (*dokountos...dikaiôs*) for it to take over the political system."<sup>113</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 re-establishment of democracy seemed just, but we can venture a guess. At a minimum, it will have seemed agreeable to the *dêmos*, which at that point had the upper hand and could therefore put its judgment into action.

The author goes on to explain what this entailed: the *dêmos* "administers everything by decrees and by courts in which the *dêmos* is the ruling power." And, 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 first, 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, we should note, appears to be the author's personal evaluation. From everything that has been said, I am not sure that the *dêmos* itself would have felt that further justification of its political agency was necessary.

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<sup>110</sup> Ps. Xen. *Ath. Pol.* 1.8-9.

<sup>111</sup> Ps. Xen. *Ath. Pol.* 3.11.

<sup>112</sup> Aristot. *Pol.* 1310a10; 1309a35-40.

<sup>113</sup> Ps. Aristot. *Ath. Pol.* 41.1.