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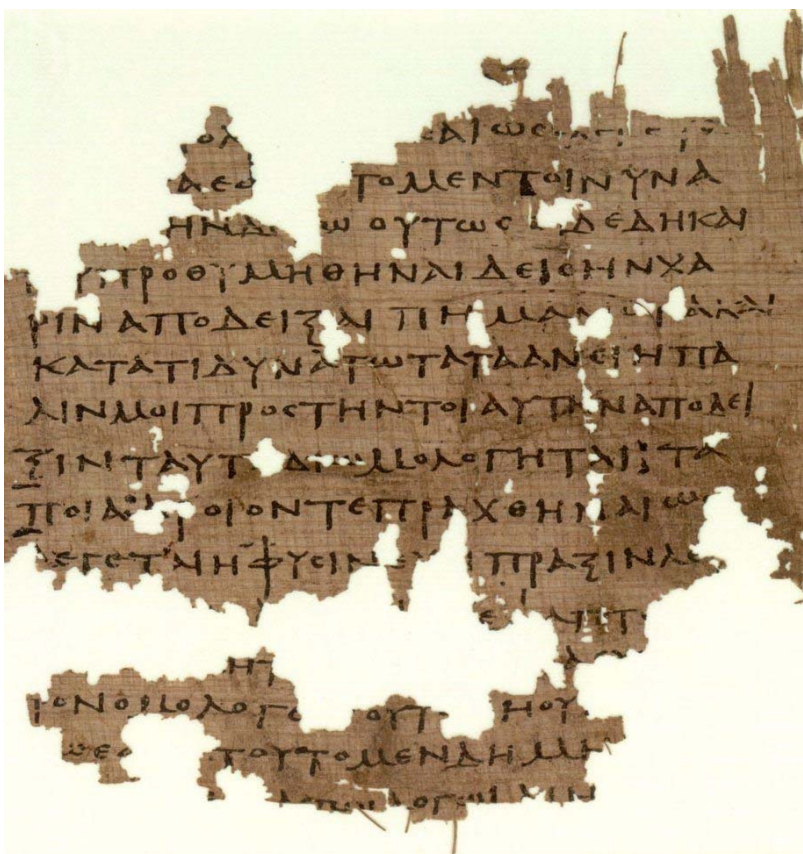
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Should We Kill “the Classics”?



P. Oxy. 3679, manuscript from the 3rd century AD, containing fragments of Plato's Republic – Public Domain

Classical thinkers, what do they have to teach us? Their societies were brutal, marked by social and economic inequities that dwarf those that characterize even our own, increasingly unequal society. Add to that the fact that they've provided grist for the mill of white

supremacist thought since at least the seventeenth century, if not even longer than that, and you've got what appears to be a legitimate reason for eliminating the classics as an academic discipline. That's the position, in any case, of Princeton classics professor, Dan-el Padilla Peralta. Padilla argues in a recent piece in *The New York Times Magazine* that "classics is so entangled with white supremacy as to be inseparable from it." He says he's not even sure "the discipline deserves a future."

My suspicion is that that's a bit of hyperbole. Padilla has got to know, after all, that we could learn a lot from a careful reading of the classics. Take the *Republic*. The *Republic* is one long conversation about justice, a conversation that ought to be very revealing to contemporary readers if they pay attention to it. Early in the conversation, one of the participants, Thrasymachus, a sophist, or teacher of rhetoric to wealthy young Athenians, bursts forth with the claim that "the just is nothing other than the advantage of the stronger" (338c). That is, Thrasymachus argues that those in power in a society establish rules that benefit themselves while claiming that these rules instantiate some sort of transcendent form of justice.

Well, that's the U.S., isn't it? We have what is referred to by scholars as an "adversarial legal system" where two sides on an issue battle it out through their lawyers. The conspicuous flaw in this system is that the "stronger" party always has an advantage in a fight. Our whole justice system is thus based, at least implicitly, on the totalitarian principle that might makes right.

Defenders of the system will protest that that's an oversimplification. The assumption, they will argue, is that truth will naturally emerge as a result of a contest between two opposing parties. That makes sense, *ceteris paribus*, or all other things being equal, as philosophers say. That is, the preponderance of evidence ought normally to support the side in an argument that's right.

That isn't always the case, though. Evidence can be lost, or destroyed, or even suppressed because of some legal technicality. Law can be very complex. Argument can be as important as empirical evidence in deciding a case. Highly skilled attorneys generally command equally high fees, though. That's where all other things start being *unequal*. Not everyone is in a position to afford the high fees the best attorneys charge.

There's been a lot of attention focused recently on racism in law enforcement. Racism isn't restricted, however, to law enforcement. It pervades the entire legal system. Black people are more likely to be convicted than are white people accused of the same crimes. Legal institutions such as strict liability for drug possession and felony murder, where a person can be convicted of "murder" simply for being with someone who committed a murder, trap an unacceptably high number of innocent people of color.

There are profound problems with our whole criminal justice system in that it is inherently biased toward the powerful, or the "stronger," to return to Thrasymachus's expression, and against those without power. If you have a lot of money, I mean a *huge* amount of money,

you can get an attorney who is far more likely to win your case for you than one you would get if you had to shop around for an attorney who was more “affordable.”

People with no money at all can turn to the public defender. Unfortunately, public defenders are typically paid less than prosecutors, so the district attorney’s office has an advantage over the public defender in acquiring legal talent. Not all attorneys are motivated by money, but many can’t afford to be indifferent to salaries because most have to repay hefty law school loans. In addition, public defenders are often generally underfunded with the result that they are seriously understaffed. This means public defenders are not simply underpaid, they’re also overworked. They have less time than prosecutors to familiarize themselves with the details of their clients’ cases and less time to prepare their defenses. One result is the now well documented high number of false convictions. Check out Barry Sheck and Peter Neufeld’s *Actual Innocence* if you want background on how and how often that happens.

The bias in the criminal justice system against the powerless and toward the powerful is well known and yet little has been done to change it. It isn’t only the criminal justice system, though, that’s biased toward wealth and power. There is no such thing as a public defender for individuals accused of civil rather than criminal offenses. You’re on your own if someone sues you for something like the violation of a contract or defamation. You’re going to have to hire an attorney to defend you and reach deep down in your pockets to pay the many thousands of dollars, sometimes tens of thousands of dollars, it can cost to defend yourself against such accusations.

And it goes without saying that if you want to sue someone yourself for a civil crime, you’re going to have to pay to do that. Let’s say, for example, that you feel you are a victim of discrimination at your job. You can take your case to the EEOC, and if you’re lucky, they will represent you for free. The EEOC rarely takes on cases, though. Usually, the best you can hope for from the EEOC is what’s called a “right to sue” finding and what that means is that you’re going to have to hire an attorney to represent you.

It gets worse. Because American employment law is what is called “employment-at-will,” it’s virtually impossible to prove you’ve been fired because of your race, etc. Why is that? Well, because employment-at-will means your employer doesn’t have to have a reason for firing you. They can fire you for no reason at all. You may *feel* that you were fired because of your race, but that’s going to be pretty hard to prove given that your employer can always respond that they fired you—just because.

The law is crafted to favor employers over employees. So if you want to bring a discrimination suit against a former employer, your employer has the advantage. Also, if you decide to sue your former employer, you had better have pretty deep pockets. No matter how deep your pockets are, though, your former employer’s are likely deeper.

But wait, you say. What about plaintiff’s lawyers, you know, the lawyers who will take cases on what is called “contingency,” which means that you don’t have to pay them unless you

win your case? Yes, they're out there. The thing is, to make a living as a plaintiff's lawyer, you've got to win most of your cases and the awards in those cases have got to be pretty big. That's why most plaintiff's lawyers do medical malpractice; the awards in such cases tend to be big. The same thing is not true in discrimination cases. One such case could take several years to pursue successfully. A plaintiff's lawyer can afford to wait a few years for a million-dollar, or multi-million-dollar award. Most can't afford to wait for a case that would result in only a few thousand dollars. So good luck finding someone to represent your discrimination case on contingency.

I'm not done yet, though. Corporate crime is viewed far more indulgently than what is misleadingly referred to as "violent crime." What's misleading about that characterization is that, as James Coleman argues in *The Criminal Elite: Understanding White Collar-Crime* (Worth, 2005), research suggests corporate crime is actually responsible for far more deaths annually than is "violent crime." Yet, as Jed S. Rakoff, a United States District Judge argues, "high-level corporate executives, with only the rarest of exceptions, have become effectively immune from any meaningful prosecution for crimes committed on behalf of their companies" ("[Getting Away With Murder](#)," *New York Review of Books*, December 3, 2020).

So was Thrasymachus correct? Is "justice" simply a system or rules designed to favor the wealthy and powerful? Is that what we actually mean when we use the term? Is that what Plato was trying to say? It may be tempting for people who haven't read much Plato to assume that's his position. He has a reputation, after all, for being a friend of fascists.

But Socrates, and his companions in the *Republic* resoundingly reject Thrasymachus's view. In fact, it's fair to say that if there's a villain in the *Republic*, it's Thrasymachus. He's actually compared to "a wild animal" (336b). Thrasymachus is brutal, uncivilized. He's not a champion of justice, but a celebrant of raw power.

Even Thrasymachus can't help but accept the reality of a transcendent standard of justice, though. He goes on to argue that "those who condemn injustice condemn it not because they're afraid of doing unjust things but because they're afraid of suffering them" (344c). It's clear there that what Thrasymachus identifies as "injustices" are the things we normally think of as injustices, things such as being convicted of a crime you didn't commit because of the color of your skin, or because you couldn't afford a high-priced attorney.

Legal positivism is an approach to law that rejects the idea that law is an attempt to instantiate some sort of transcendent ideal of justice and that it hence needs to be continually evaluated and re-evaluated to bring it increasingly close to that ideal. Legal positivists argue, in keeping with Thrasymachus, that law is simply what lawmakers lay down as law. That would appear to be the predominant view of those in the justice system in the U.S. There's no other conceivable explanation for the widespread failure of those inside the system to call for its reform. "Justice" is just what the courts decide. It is what it is, right?

Strange that Plato should associate what many Americans consider a legitimate approach to jurisprudence with wild beasts rather than civilized human beings. Stranger still, arguably, is that we don't.

It would appear that there still are things we can learn from the classics.

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