

checks against the state and federal legislatures. The parallel in Athens was in the use of jurors, sworn to follow the written laws, to evaluate Assembly proposals.

The Athenians of the late fifth century and the Americans of the twentieth century were both societies in which certain philosophical positions shaped political practice and the interpretation of the laws. The various American progressive and populist movements suggest parallels to both the democratic and sophistic movements in Athens.

Politically, the progressives —like the Athenian democrats—lobbied for greater direct exercise of power by the people, through, for instance, the direct election of senators, and the primary system that has largely replaced the party conventions. The idea that the United States is a federal republic is largely lost today amid the triumph of the populist agenda. In Athens, the Assembly arrogated to itself the function of legislature, ratifier of the popular will, and even judge—the latter when it assumed the functions of the courts, dispensed with the need for oaths, and tried the six generals after they had won a naval battle against the Spartans at Arginusae (discussed above in Section 2).

Intellectually, the Greek sophists were counterparts to the modern subjectivists, who rejected religious dogmatism and supernatural morality, but replaced them with skepticism and moral relativism. The political manifestation of such views is pragmatism, which considers every issue to be an isolated particular case, finds normative standards only in relation to particular situations, and eschews the use of firm principles. The legal counterpart to pragmatism is in the philosophy of Oliver Wendell Holmes, who sought to balance various claims rather than to evaluate them using principles in the law. He wrote famously, “All my life I have sneered at the natural rights of man.” Value choices, he wrote, are “more or less arbitrary.... Do you like sugar in your coffee or don’t you? . . . So as to truth.” “A thing might be good for some persons but bad for others, or at one time good and another time bad,” said the anonymous sophist twenty-four hundred years earlier. Each took his views into the interpretation of the law, and each then saw fit to determine that the law was what he said it was.

In classical Athens—as today—there were many who opposed such subjectivism. Seeing the sophists as destroyers of the moral foundations of society, they demanded a return to the standards associated with the traditional gods. The characters in Aristophanes’ *Clouds* react against sophistic thought by burning down Socrates’ school—a chilling presage to the historical death of Socrates. He remains the preeminent symbol of those who investigate matters in heaven and earth, question the gods, and purport to teach—and then fall victim to those who see such actions as crimes. The reactionaries in Athens also have counterparts today: the conservatives of the religious right, who decry the loss of moral standards among the modern sophists, and call for a return to religious standards—replacing skepticism with tradition and divine moral commandments, and wanting law and order over mob rule. A similar desire motivated some who favored the reinscription of the ancestral laws of Athens. But this approach threatens to leave the laws subordinated to tradition—a primitive form of “original intent” that depends upon some view, drawn from tradition, of what that “intent” might have been.

Throughout history intense debates have often raged between traditionalists and those who challenge tradition by thinking independently—debates over the ethical foundations of a nation’s political health and the relationship between ethics, law, and the exercise of power. In Rome during the second century b.c., for instance, the conservative Cato the Censor was appalled by the openly