

Michigan Law Review

Volume 117 | Issue 6

2019

An Apology for Lawyers: Socrates and the Ethics of Persuasion

Sherman J. Clark

University of Michigan Law School, sjclark@umich.edu

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Classics Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Sherman J. Clark, *An Apology for Lawyers: Socrates and the Ethics of Persuasion*, 117 MICH. L. REV. 1001 (2019).

Available at: <https://repository.law.umich.edu/mlr/vol117/iss6/3>

<https://doi.org/10.36644/mlr.117.6.apology>

This Classic Revisited is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CLASSIC REVISITED

AN APOLOGY FOR LAWYERS: SOCRATES AND THE ETHICS OF PERSUASION

*Sherman J. Clark**

APOLOGY OF SOCRATES, in *SIX GREAT DIALOGUES: APOLOGY, CRITO, PHAEDO, PHAEDRUS, SYMPOSIUM, AND THE REPUBLIC*. By *Plato*. Translated by *Benjamin Jowett*. New York: Charles Scribner & Co. 1871. (Tom Crawford ed., Dover Publications, Inc. 2007). Pp. v, 460. \$5.

I. THE MODERN RELEVANCE OF AN ANCIENT SPEECH

The work we know as Plato's *Apology* might better be called Socrates' Self-Defense. It is Plato's account of what Socrates said to the Athenian jurors when he, Socrates, was on trial for his life. The term ἀπολογία (apologia) means not so much apology as "speech in defense" or even "explanation." But whatever we call it, I do not suggest that we read this speech for practical advice on criminal defense strategy—and not just because Socrates lost his case. Although Socrates does offer indirect illustrations of the art of persuasion, much of what he says makes little sense if seen merely as an effort to secure acquittal. This Review is not "practice tips from Plato." Rather, I suggest that contemporary lawyers and political actors should read the *Apology* to help us appreciate the risks and responsibilities that attend persuasive speech. In particular, Socrates can help us think better about not just what we persuade people to do but also what it is we do to people when we persuade.

I recognize that a Review like this, in times like these, may seem to come from a particularly remote ivory tower. Not to put too fine a point on it, but American democracy is at risk under a troubling administration, hatred and xenophobia are on the rise, and severe long-term problems are going largely unaddressed. And I suggest that lawyers read Plato? Yes. Because one thing exacerbating these pressing problems is the way we speak to and argue with one another. I do not mean mere civility. The impact of speech is not primarily a consequence of the gentility with which it is delivered; and strong words sometimes suit. Nor do I mean simply honesty—although the truthfulness of what we say matters more than the politeness with which we say it.

* Kirkland & Ellis Professor of Law, University of Michigan Law School.

I hope here to highlight a set of concerns about the impact of our speech that are deeper than mere civility or even honesty. Following Socrates, I suggest that the way we speak, particularly when we seek to persuade, can play a role in forming the character of our listeners. Arguments are, in that sense, potentially constitutive. As Socrates describes and demonstrates, how we speak to people can influence how they think about themselves and their world. And that in turn can influence whether and how they thrive.

An obvious contemporary case in point is how our current president may be nurturing hatred and xenophobia—engendering traits as harmful to the holders as to the larger community—through how he speaks and argues. But this is not just about Trump. All of us should consider how our arguments may influence our listeners. This will not be easy. One of the bracing lessons of the *Apology* is just how difficult and potentially intractable the problem is—how the occasions for our speech often make it difficult to attend to the constitutive consequences of what we say and how hard it is to figure out how to address those consequences. But if we listen carefully, Socrates can help.

One obstacle to listening carefully is that Socrates spoke in Ancient Greek. There are of course numerous English translations available.¹ But some phrases have layers that matter; so some of what follows will require attention to the original Greek.

II. WITH GREAT PERSUASIVE POWER COMES GREAT RESPONSIBILITY

The formal charges against Socrates were corrupting the youth and not believing in the right gods (APOLOGIA, p. 24b8–c1; Jowett Translation, p. 7)—serious charges potentially punishable by death. Socrates' speech, however, is not merely a defense against these specific charges. Rather, he offers an account of how he lived and why. In the process, he eschews some arguments and strategies that might have gotten him off the hook—or at least enabled him to escape death. Moreover, he risks angering the jurors with what

1. The translations of passages in this essay are my own, based on the authoritative Oxford Classical Text, 1 PLATO, APOLOGIA [APOLOGY], in PLATONIS OPERA [WORKS OF PLATO, VOLUME I] 29 (E.A. Duke et al. eds., Oxford Univ. Press 1995) [hereinafter APOLOGIA]. Numerous English translations are readily available. Perhaps the most popular is the Benjamin Jowett translation, which appeared first in 1871. 1 PLATO, APOLOGY, reprinted in THE DIALOGUES OF PLATO (B. Jowett trans., Charles Scribner & Co. 1871). That is the translation that appears in the inexpensive edition indicated at the head of this essay, which is hereinafter referred to as the “Jowett Translation.” That translation is also available free online at Plato, *Apology*, INTERNET CLASSICS ARCHIVE, <http://classics.mit.edu/Plato/apology.html> [<https://perma.cc/A59Y-UNN4>]. For those who want access to the original Greek as well as a translation, one option is the iconic Loeb Classical Edition, in which the Greek appears on facing pages with the solid 1914 Harold North Fowler translation. 1 PLATO, EUTHYPHRO, APOLOGY, CRITO, PHAEDO, PHAEDRUS (Harold North Fowler trans., Harvard Univ. Press 1914).

Xenophon calls μεγαληγορία (*megalegoria*)—a term that literally means “big talk,” but which connotes arrogance or even defiance.²

Socrates’ questionable strategy caused Xenophon to suggest that he must have wanted to die.³ It is clear that Socrates was unafraid of death; but it sells him short to suggest his rhetorical strategy is merely one of carelessness or even defiance—as if he were merely tired of life and trying to annoy his adversaries one last time. He is up to more than that. But what? What is Socrates trying to do?

Ultimately, what Socrates is doing is giving an account of his life. He may or may not want to be acquitted; but it is clear that he wants to be understood. He describes what he sees as his sacred mission to serve the city by acting as a so-called gadfly—reminding citizens to care for their souls more than for their material concerns or glory.⁴ To this mission he has devoted his life. Nearing the end one way or another, he is making a statement about how he has lived and who he really was. To that end, it would make little sense to try to save his life in a way that would be inconsistent with how he had tried to live it.

When it comes to persuasion, winning or losing is not everything—at least not to Socrates. What also matters is what one says and does in the process. And Socrates makes clear that he is concerned not just with what he says about and does to himself. He is also thinking about what his efforts at persuasion may do to the jurors of Athens—the citizens of the city he loves and whose soul he seeks to serve.

Socrates highlights this concern in the very first sentence of his speech. His adversaries have just presented a (seemingly persuasive) case against him; and he begins:

What you, O men of Athens, have experienced at the hands on my accusers I do not know. But for my own part I nearly forgot who I was—so persuasively they spoke.⁵

At least three aspects of Socrates’ word choice here are illuminating.

First, the term translated here as “have experienced” is *πεπόνθατε* (*peponthate*), a passive perfect form of the term *πάσχω* (*pasko*), which means not just experience as in a sense impression but more like “suffered” or “endured.” The word implies something that has been done to the jurors, not merely said to them. Socrates, here beginning his own speech, thus recognizes, and reminds us, that he will not merely be trying to convince the jurors to do something, he will be doing something to them.

2. 4 XENOPHON, *APOLOGY*, reprinted in *MEMORABILIA, OECONOMICUS, SYMPOSIUM, APOLOGY* 668, 668–69 (O.J. Todd trans., rev. ed. 2013).

3. *Id.*

4. See *APOLOGIA*, pp. 29d8–e3.

5. *APOLOGIA*, p. 17a1–a3 (“Ὅτι μὲν ὑμεῖς, ὦ ἄνδρες Ἀθηναῖοι, πεπόνθατε ὑπὸ τῶν ἐμῶν κατηγορῶν, οὐκ οἶδα: ἐγὼ δ’ οὖν καὶ αὐτὸς ὑπ’ αὐτῶν ὀλίγου ἑμαυτοῦ ἐπελαθόμεν, οὕτω πιθανῶς ἔλεγον.”).

Second, the phrase translated here as “so persuasively they spoke” also means, in the Greek, “how they spoke persuasively” or “the way in which they spoke when speaking persuasively.” This highlights something difficult to capture in translation—that what matters is not just how persuasive one is but also how one is persuasive.

Third, the phrase translated here as “nearly forgot who I was” is sometimes rendered as “carried away”;⁶ but that loses the import. The phrase is ὀλίγου ἑμαυτοῦ ἐπελαθόμην (emautou epelanthomai), which means, literally, “almost forgot myself.” It thus highlights that what happens to people when they are persuaded has to do with who they know or think themselves to be. It is not merely cognitive but constitutive.

That is why Socrates speaks as he does. He is not simply thinking about whether he will persuade the jurors rather than alienate them. He is thinking about whether he will elevate the jurors rather than debase them. He is worried not about what they might do to him but about what he is doing to them.

Socrates further calls attention to this concern by expressing ironic surprise that his accusers have warned the jurors to be on their guard lest Socrates bamboozle them by being so clever in speaking.⁷ The term he uses is δεινοῦ, which is the genitive of δεινός, which does mean clever or terrific; but which also means fearsome or terrible. The root word is δέος (deos), meaning fright or alarm. We see something like this in English, where the words terrible and terrific both come from the Latin word for fear.⁸ The Greek δεινός holds both meanings. Socrates claims that the jurors need not fear any excessive cleverness on his part. But we see that he is aware of a deeper sort of danger faced by those who are persuaded. This relates his speech in defense to his life and thus to the underlying charges against him. He has not corrupted the youth in the way his accusers claim; but he knows he might corrupt the jurors and others in a different and deeper way—if he were willing to do so.

Socrates makes this awareness explicit. At the outset of his speech he says that he hopes he will be able to persuade the jurors “if that is the better thing both for you and for me.”⁹ The use of “if” here raises at least two questions: First, how could persuading the jury, and thus securing acquittal, *not* be better for him? While that question is fascinating and arguably central to an understanding of Socrates and his life and work, our focus for the moment is on a second question: What does it mean to ask if it would be better for the jurors?

6. See, e.g., PLATO, THE APOLOGY, *reprinted in* THE LAST DAYS OF SOCRATES 37, 37 (Hugh Tredennick & Harold Tarrant trans., Penguin Books rev. ed. 1993).

7. APOLOGIA, p. 17a5–a7 (“τοῦτο ἐν ᾧ ἔλεγον ὡς χρῆν ὑμᾶς εὐλαβεῖσθαι μὴ ὑπ’ ἐμοῦ ἐξαπατηθῆτε ὡς δεινοῦ ὄντος λέγειν.”); Jowett Translation, p. 1.

8. 17 THE OXFORD ENGLISH DICTIONARY 816–17 (J.A. Simpson & E.S.C. Weiner eds., 2d ed. 1989).

9. APOLOGIA, p. 19a3–a4 (emphasis added) (“εἴ τι ἄμεινον καὶ ὑμῖν καὶ ἐμοί”).

A partial answer is that the jurors might be better off if Socrates were to be acquitted—perhaps because he might then survive to further serve the city. A deeper answer, however, is that Socrates recognizes the impact he might have on the jurors through his persuasion—not just as a consequence of what he persuades them to do. He hopes to persuade the jurors, but only if his doing so will not harm them in an unacceptable way—only if it will not corrupt them in ways that matter. Socrates highlights this concern when he explains why he will not beg for sympathy. This is what many litigants evidently did and what the jurors had come to expect from those on trial; but Socrates rejects this approach.¹⁰ And he tells the jurors why:

Apart from reputation, Gentlemen, it does not seem to me right to beg the jury or to try to get off the hook by pleading for sympathy, rather than to teach and persuade. A juror is not sworn in to dispense justice as a favor; but rather to judge matters according to justice. He has sworn not to favor whoever he happens to prefer, but to judge according to the law. And we should not accustom you to disregard your oath; nor should you become accustomed to doing so. (APOLOGIA, p. 35b9–c7)

The word translated here as “accustom” is a form of the verb ἐθίζω (*ethidzo*), which is the source of the term “ethical.” It refers not just to habits but also to ways of being—character as well as conduct. Socrates is not merely saying that breaking an oath is a bad thing to do. He is saying that being an oath-breaker is a bad way to be. He is concerned not just, or even primarily, with what he might persuade the jurors to do but with what he might do to them in the process.¹¹

III. THE LIFE YOU DO NOT SAVE MAY NOT BE YOUR OWN

We will turn below to the questions of just how it is that persuasion might affect people. But first, note the occasion on which Socrates chose to recognize and respond to this responsibility. His life was on the line. Perhaps it would have been wiser for Socrates to indulge his concern for his hearers’ character and thriving during one of his many other conversations under circumstances in which less was at stake.

We may ask ourselves the same sort of question. Even if we come to recognize the constitutive harm our speech may do, we may think it wiser to ignore such seemingly esoteric worries when faced with pressing practical and professional considerations. Perhaps refined concern for the character and thriving of those we persuade should wait for occasions in which nothing more substantial is at stake.

Setting aside the question of who would dismiss the character and thriving of others as an insubstantial concern, the example of Socrates highlights for us that we cannot ethically defer these concerns to insignificant occa-

10. See FINLEY HOOPER, *GREEK REALITIES: LIFE AND THOUGHT IN ANCIENT GREECE* 349 (1967).

11. Sherman J. Clark, *To Teach and Persuade*, 39 *PEPP. L. REV.* 1371, 1376–77 (2013).

sions. We cannot put off thinking about the constitutive impact of our speech until there is nothing important at stake. This is not just because we might be putting it off forever. More essentially, it is because stakes give speech its constitutive force. It is in the process of persuading people about things that matter to them that we have potential impact on who they are. So, disregarding the debasing impact of speech when we are engaged in important persuasion would be like ignoring the poison in food when we are feeding someone. If it is then that the damage may be done, it is then that we must attend to what we do.

Socrates highlights this by not awaiting a less freighted occasion. He teaches us to attend to the consequences of our arguments even—especially—when there is a great deal on the line by highlighting these concerns when *everything* is on the line. If he can acknowledge his rhetorical responsibility in the face of death itself, we should be able to do so in the face of whatever may hinge on our arguments.

On the other hand, there is a way in which our situation is more difficult than that faced by Socrates. The life he refused to save was, in fact, his own. Lawyers are not free to disregard the concerns of clients out of concern for the impact our arguments might have on those we persuade. Nor are client loyalty and the duty of vigorous representation the only interests that will limit our ability to attend to the constitutive consequences of our speech. We have social change to implement, elections to win, money to earn. We cannot and should not ignore these real-world concerns in favor of an exclusive focus on the potentially constitutive impact of our speech.

Nor, however, do pressing pragmatic concerns free us from the obligation to think about and take responsibility for what we do. Legal ethical rules make explicit certain of our obligations to consider the impact of what we do. The ABA Model Rules of Professional Conduct have long embodied a prohibition against dishonesty, fraud, and deceit.¹² They now also make explicit that it is misconduct to engage in harassment or discrimination.¹³ The rules call for respect for the rights of third persons.¹⁴ They also provide that even the duty of confidentiality must give way in the face of certain sorts of imminent harm.¹⁵ These and similar provisions make clear that lawyers ought to think about the harm we may do to others in the pursuit of even legitimate professional aims.

Crucially, the particular limits articulated in the rules do not exhaust our responsibilities.¹⁶ This much ought to be obvious upon reflection. No particular legal ethical rule tells us not to poison jurors' drinking water in an effort to make them more compliant. We do not need such a rule. We know that client loyalty is not a license to ignore the harm we do to others in the pro-

12. See MODEL RULES OF PROF'L CONDUCT r. 8.4 (AM. BAR ASS'N 2018).

13. *Id.*

14. *Id.* at r. 4.4.

15. See *id.* at r. 1.6.

16. See, e.g., *id.* pmb1. para. 7.

cess of representing those clients. Just as we would be unwilling to poison the tummies of those we persuade, so too might we be hesitant to poison their souls.

What I highlight here is thus a manifestation of the often-challenging question of how lawyers should balance the ethical demands of our profession. So we should ask ourselves: Are we causing harm? How severe is the harm we may cause? How do we conceive of our responsibilities as lawyers? How can we attend to those responsibilities while still meeting our other professional ethical obligations? Do these responsibilities weigh differently in different contexts? Socrates cannot resolve these dilemmas for us. What he can do, however, is what he did perhaps better and more insistently than anyone before or since. He can turn our attention to things that matter but that we may have so far ignored. He can help us think about who we are, what we say, and what it is we do—to ourselves and to others—when we speak.

IV. HOW DOES PERSUASION NURTURE CHARACTER?

Granted that we should take responsibility for what we do to people when we persuade, how might we do that? How might we craft arguments that elevate rather than debase? To address these questions we need at least a tentative account of how persuasion might affect character. What is it about arguments that can be constitutive? Socrates does not describe a precise mechanism for how arguments may “accustom” people to thinking in certain ways. This does not undercut his insight. One need not detail stomach anatomy to recognize that stabbing people in the gut may be bad for them. But to take the next step and think about the particular consequences of persuasion, we need some working account of what is going on in the people we persuade.

We know at least this much. Persuasion does not work solely through the logical force of arguments. We have all had the experience of making an argument to which our listener has no satisfactory response, yet finding our listener persistently, and often frustratingly, unmoved. Logical force cannot coerce agreement. Instead, we succeed in persuading others when we can make or find space in their worldview for some solution or agreement.

This is why every good lawyer—as well as every good negotiator, salesmen, politician, and con man—knows intuitively that the first and crucial step in persuasion is diagnostic. Before we can figure out what sort of arguments will resonate with particular listeners, we need to figure out, or intuit, what really matters to them. Before we can navigate listeners’ worldviews in an effort to make or find space for some solution or agreement, we must understand, at least to some extent, what the world looks like to them. This is why good lawyers listen, ask questions, and open their minds to differing views. They are trying to understand the mental landscape they must navigate if they hope to persuade.

And the first thing we learn when we try in good faith to understand what the world looks like to others is that their worldview is murky, incom-

plete, and in flux—not just to us, but to them as well. This should come as no surprise. None of us has a fully fixed, fully worked-out, fully consistent worldview adequate to every issue and occasion. We are all always in the process of making sense of our world—making space for new information (or hiding from it), resolving cognitive dissonance (or avoiding it), justifying our failures, nurturing and protecting our sense of who we are.¹⁷ We are all—to some extent at least—always figuring out what our world looks like and where we fit in.

What this means is that when we persuade, we do not merely find space in a fixed worldview; we make space in a developing one. We do not merely navigate worldviews; we help flesh them out. We highlight certain features rather than others and help our listeners resolve cognitive dissonance in certain ways rather than in others. We bring to prominence, for and within our listeners, certain aspects of their identity and how they see the world. Whether we acknowledge it or not, we help them figure out what their world looks like and where they fit in. We help them construct their sense of who they are.

Unfortunately, the people who seem to see this best are not philosophers, or even lawyers, but advertisers. They have come to understand that, as one article on advertising put it, “People Don’t Buy Products, They Buy Better Versions of Themselves.”¹⁸ This is not the place to explore the various similarities and differences between advertisers, lawyers, politicians, and others who for various reasons must persuade. My point here is simply that advertisers know that what they are really selling is not just stuff but identity. But they are not concerned with whether the identity they are selling is one that will help people thrive. If nurturing insecurity and vanity will help them sell clothes, those are the traits they will nurture. If nurturing greed will help them sell get-rich-quick schemes, they will nurture that greed—and without a thought to whether it benefits people to become greedy.

Now, one might be skeptical about the power of an advertisement to affect character, and rightly so. No one advertisement is likely to have any perceptible impact on anyone; and even the largest and most successful campaigns will probably leave most people unsold and unaffected. But what advertisers know is that individually imperceptible impacts, like incremental economic incentives or small doses of poison, add up.¹⁹

And the same is true in the context of political and legal persuasive speech. The constitutive impact of any given speech or speaker is likely to be

17. See generally LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1957).

18. Zander Nethercutt, *People Don’t Buy Products, They Buy Better Versions of Themselves*, MEDIUM (July 7, 2018), <https://medium.com/s/buy-yourself/people-dont-buy-products-they-buy-better-versions-of-themselves-d481390bfcee> [<https://perma.cc/3LMD-YL8V>].

19. See Brian Bass, *What Is Repetition Advertisement?*, CHRON: SMALL BUS., <https://smallbusiness.chron.com/repetition-advertisement-20354.html> [<https://perma.cc/BH4H-BER3>] (“A consensus amongst advertisers holds that you must expose a potential consumer to an advertisement campaign several times before she becomes aware and starts to form an opinion about a product or service.”).

marginal—even imperceptible—in the moment. This does not make it insignificant. If we have each—even inadvertently and through inattention—contributed a little bit to poisoning the better angels of our nature, we should not be surprised to find that they have fallen ill.

But the power to poison may also include the ability to nourish; and similarly the power to debase may in some cases include the ability to elevate. If some constitutive impact is inevitable, perhaps we can find and make arguments that highlight and nurture the aspects of our listeners' worldviews and characters that will help them thrive.

And how do we do this? Advertisers and marketers have an arsenal of tools—attention-grabbing imagery, subtle social cues, subconscious suggestions, evocative references, and the like—many of which are designed to operate below the level of conscious thought. Political candidates employ many of the same devices. Here, however, I am concerned with those contexts in which we have our listeners' conscious attention and are trying to teach or persuade with speech and arguments. In those contexts, how do or might we highlight and nurture certain aspects of our listeners' worldviews and characters?

On occasion, we might explicitly exhort people to adopt or nurture certain traits. "*Be generous,*" we might say, or "*be brave.*" Or we might explicitly advocate specific aspects of worldview. "*See yourself as connected to the natural world,*" we might exhort, or "*think of all men and women as one family.*" We might then hope that such exhortations would lead to support for given positions or policies, while at the same time not debase those we persuade.

But explicit exhortation is not the only way to appeal to and thus nurture traits. It is certainly not the most effective. Heavy-handed and direct efforts to influence character and worldview are likely to be more off-putting than moving. Explicit preaching is rarely the best form of persuasion. Nor is it the most dangerous. When explicitly exhorted to a trait or worldview, people are on notice. They can accept or reject the preaching as they choose. What is more dangerous is when the poison is hidden in the porridge.

More subtly, then, we can—and without realizing it often do—attribute to our listener certain traits, capacities, values, and priorities. The very act of attributing a trait is a way of calling it to our listener's attention as a (presumably desirable) aspect of their identity. This appeal-by-attribution, because less obvious, may be both more effective and more dangerous than direct exhortation.

It would not be particularly persuasive for a politician, for example, to argue explicitly: "*become a fearful and xenophobic person, which will then make you vote for me.*" But it might be quite effective for a politician to more subtly appeal to and thus attribute those traits. But if one can subtly attribute bad traits, one can subtly attribute good ones.

Socrates, explaining why slander has followed him, describes his practice of questioning people who seem, or think themselves to be, wise (APOLOGIA, pp. 21c2–e; Jowett Translation, pp. 4–5). He is about to tell the jurors about how the Oracle at Delphi said that there is no one wiser than Socrates (APOLOGIA, p. 21a5–a9; Jowett Translation, p. 4). He knows that this seem-

ingly self-serving story will strike the jurors as arrogant. So Socrates asks the jury to hear him out. And here is how:

Perhaps one of you might interject and ask: “But what is the situation with you Socrates? Where do these accusations against you come from? For surely all this slander and gossip would not have arisen if you had been doing nothing different from other people—if you had not been behaving in some way out of the ordinary. Tell us what it is, so that we might not judge carelessly regarding you.” (APOLOGIA, p. 20c3–d1)

Here Socrates is attributing to the jurors a certain aim and self-understanding—literally putting words in their mouths and thoughts in their heads with an imagined quote. He does not exhort them to thoughtfulness. Rather, he does something more powerful. He addresses them as though their thoughtfulness were a given. Moreover, a closer look at the language highlights a deeper connection to the idea of constitutive speech. The term I have translated here as “judge carelessly” is a form of the verb *αὐτοσχεδιάζω* (*autoskediazo*).²⁰ It does indeed mean “judge carelessly” in this context; but this relatively rare term more literally means to speak offhand. By using this particular term, Socrates is attributing to the jurors what he is highlighting for us—care for the consequences of what we say.

Less directly, any argument is a sort of attribution. Pointing to consequences is a way of attributing to your listener a concern for those sorts of consequences. Arguing that something will make someone rich or good-looking is a way of saying that you believe that person to care about wealth or looks—and of subtly encouraging them to do so.

In addition to consequentialist arguments, we make moral ones. We argue that something—murder, rape, racism, harassment—is wrong. More often, we assume certain normative values and appeal to them indirectly—by, for example, arguing that certain conduct is a form of murder, rape, racism, or harassment. Any such argument is a way of saying to your listeners that you believe not only that they share that particular value but more deeply that they are the sort of people for whom the worldview implicitly underpinning the argument has force and meaning. That attribution alone will raise the prominence of that value in our listeners’ worldview. And once our listeners take some position or action in light of a value or view of the world that we have attributed to them, their desire for consistency is likely to further strengthen that value or view.

V. WHAT SORT OF CHARACTER SHOULD WE NURTURE?

Once we see that persuasion can be constitutive, we need to figure out what to do about it. If we nurture character, what traits should we hesitate to engender? What ways of being should we, if we are able, try to nurture? Some traits seem obviously harmful, such that we should clearly avoid ap-

20. APOLOGIA, p. 20c8–d1 (“λέγε οὖν ἡμῖν, τί ἐστίν, ἵνα μὴ ἡμεῖς περὶ σοῦ *αὐτοσχεδιάζωμεν*.” (emphasis added)).

peeling to and thus nurturing them—racism, vanity, cruelty, and selfish greed, for example. But beyond those easy cases, how should we think about what we instill in those we persuade?

One answer might be that we should try not to have any influence at all on those we persuade. After all, is it really the job of a lawyer or politician to help someone become some sort of person or another? Perhaps it is illegitimate even to have an influence on character. And can we really be expected to develop a theory of what traits are good for people in the deep sense of helping them thrive? Law school does not teach that.

For better or worse, however, abdication is not an ethical option. That is what Socrates forces us to confront. Given our understanding of persuasion, we see that we may well have some impact on those we persuade whether we like it or not. The impact may be marginal, yes; but it is cumulative, and real. So we have an ethical obligation to think about what we are doing and to try to make what impact we have positive rather than poisonous. And that frames the hardest question of all. What counts as a positive or negative character trait? What ways of being make for a good life?

These were the questions at the heart of ancient ethics—even if they are not the questions with which modern philosophy is most enamored. And perhaps the deepest lesson of the *Apology*—and of Socrates' life and work more broadly—is that these questions, hard as they are, demand a response. We can try to ignore them; but that just means that we respond thoughtlessly—and probably poorly. In purely individual private life, the cost of ducking these questions may fall only on those who duck them. But those of us who influence others—through our arguments or otherwise—cannot ethically disregard what we do to them. We cannot responsibly set aside the central human question of what ways of living and being lead to or constitute a good life. Socrates shows us that we need at least tentative general answers. And he can help.

I have used the term “character” to describe what is potentially affected by persuasive speech. That is the appropriate term; but it is imperfect, even potentially misleading. In his speech, Socrates does not describe and evaluate particular traits or tendencies. Socrates does more of that in some of the dialogues;²¹ but the vision of character evoked in the *Apology* is broader. It has less to do with tendencies and more to do with attention. What Socrates is talking about is people's sense of what matters to them. This, he sees, makes all the difference to whether people live well. And this, he recognizes, is what persuasive argument can indirectly influence. So, what he wants to nurture through his speech are not so much habits, or even traits, but rather a certain set of concerns and priorities.

21. See, e.g., PLATO, CHARMIDES (Thomas G. West & Grace Starry West trans., Hackett Publ'g Co. 1986) (c. 399 BCE) (on temperance); PLATO, EUTHYPHRO, reprinted in THE WORKS OF PLATO 33 (Irwin Edman ed., Benjamin Jowett trans., Simon & Schuster, Inc. 1928) (c. 380 BCE) (on piety); 2 PLATO, LACHES, reprinted in LACHES, PROTAGORAS, MENO, EUTHYDEMUS 1 (W.R.M. Lamb trans., Harvard Univ. Press 1924) (c. 380 BCE) (on courage).

Socrates makes this explicit when he describes how he would react if the jurors were to offer him freedom on the condition that he stop annoying everyone with his constant questioning and conversation. He says he would not take the deal (APOLOGIA, p. 29c6–d5; Jowett Translation, p. 12). Socrates says that as long as he has breath and ability, he will continue to do as he has always done, which is to pull aside each man and say this:

Are you not ashamed that you give your attention to honors and reputation and making as much money as possible—while you give no thought to truth and understanding and making your soul as good as possible? (APOLOGIA, pp. 29d8–e3)

This, at bottom, is what Socrates wants to instill—a concern for truth and understanding rather than for money and honor.

Should we follow suit? Should we too, in our arguments and elsewhere, assuming that we may inevitably engender something, seek to engender a love of truth and understanding—or at least avoid engendering a love of money and honor? In the *Apology*, Socrates does not offer much of an argument or explanation for why nurturing a love of truth is the route to true human thriving. But he very much does do that elsewhere—in the *Republic*, a book many times longer and in many ways much more complex than the *Apology*.²²

The *Republic*, often incorrectly described as a book about the ideal state,²³ is in fact a book about the soul. Using an elaborate metaphor of an imagined state, Socrates describes three aspects of the soul. One part, the largest, loves pleasure and material gain; one smaller part loves reputation and honor; and the smallest but best part loves truth.²⁴ Through the metaphor of the imagined state, Socrates explores at great length how and why each of us should nurture in ourselves that small best part—the part that loves truth more than gain or glory. And that, as we have seen, is exactly what he wants to nurture in himself and others—in his *Apology* and throughout his life.

I cannot rehearse the insights of the *Republic* here. But know that they are there. We may not end up agreeing with Socrates that we should engender in ourselves and others the love of truth and that we should avoid nurturing the love of money and honor. But he makes a good case. So am I saying that the central takeaway from reading and thinking about the *Apology* is that we need to read and think even more? Yes. That is what Socrates does. He makes us think; then he sends us away to think more—but armed with a better sense of what we need to think about. And once we realize that our arguments may affect the sort of people our listeners become, we have an ethical responsibility to think about what sort of people it is good for them to

22. PLATO, *REPUBLIC* (C.D.C. Reeve trans., Hackett Publ'g Co. 2004) (c. 380 BCE).

23. See, e.g., George Klosko, *Implementing the Ideal State*, 43 J. POL. 365 (1981).

24. PLATO, *supra* note 22, at bk. IV, 435b1–442c7.

be. Reading more Plato is far from the only way to do that; but it is a very good start.

In the meantime, there are at least two more relevant lessons we can learn from the *Apology* itself—one springing from what Socrates refused to do and one from what he, at least on this occasion, seems to have refused to see.

VI. WHY SOCRATES INSISTS THAT HE WAS NEVER PAID TO TEACH

Socrates takes great pains to refute the claim that he was ever paid to teach (APOLOGIA, p. 19d8–e1; Jowett Translation, p. 3). Why? Teaching for money was not one of the charges levied against him. Indeed it was not illegal or even frowned upon. Socrates himself purports—albeit ironically—to admire people who have knowledge worth paying for.²⁵ He even engages in a longish aside about a wealthy man, Callias, who pays a famous teacher to help educate his sons (APOLOGIA, pp. 20a3–c3; Jowett Translation, p. 3). But in the process, Socrates takes great pains to distance himself from those who teach for profit.

He seems to have had two closely related aims in emphasizing that he was never paid. First, he is highlighting the fundamental questions we have acknowledged above. The aside about the education of the sons of Callias is not really an aside but is a way of framing the substantive question lurking behind the whole speech. One would hire a horse trainer to make one's horses better horses. So presumably one hires a teacher to help one's children be better people.²⁶ But what does it mean to be better as a person? What are the traits and capacities that a thoughtful person should really want—even be willing to pay—to learn?

The second point to Socrates' insistence that he was never paid is more straightforward. Those who speak for money are likely to say what people will pay to hear rather than what they need to hear. Preachers for profit may be inclined to preach what will get them paid.

There is no easy way to deal with the potential impact of the pervasive profit motive on the ways in which we speak—and thus on what we do to those who listen. Few of us are in the position to emulate Socrates in his disregard of financial considerations. But what we can do is pay attention. As we try to balance or reconcile the potential constitutive impact of our speech with our pragmatic professional obligations, we should be aware that some of the most powerful influences on the way we speak are in this sense self-imposed. Yes, we must recognize the legitimate expectations of clients and constituents. But we should also be aware that telling ourselves "*the client comes first*" can often be an indirect way of saying "*my profit, career advancement, reputation, etc. . . . come first.*"

25. See APOLOGIA, p. 19e1–e3; Jowett Translation, p. 3.

26. See APOLOGIA, pp. 20a7–b6; Jowett Translation, p. 3.

So, lacking a Socrates to whisper in our ear, we must be our own gadflies and ask ourselves the hard questions. As lawyers, when we choose clients, do we consider not just the material implications of the representation but also the constitutive consequences of the arguments we may need to make? When we argue cases, are we attentive to the traits to which we appeal and thus evoke? Specifically, are we thoughtlessly and lazily relying on appeals to narrow self-interest—and thus nurturing the same? Might we instead take the time to think about whether there are arguments that could persuade without corrupting?

These concerns do not apply only to lawyers in court. As academics, are we driven by an authentic desire to learn and teach? Or are we thinking about our own profit—placements and citations and promotions—and thus perhaps inattentive to the deeper consequences of our arguments? As politicians, are we allowing our desire for power and place to blind us to the deeper consequences of what we say and do to secure that power?

Even when we act from what we feel are good or selfless motives, we should think about the potential constitutive impact of our arguments. I offer no view here as to whether or to what extent it is ever ethically acceptable to poison people's souls for the public good. But if so, it is certainly something we should think carefully about and take responsibility for—rather than just let happen as a result of inattention.

CONCLUSION

While Socrates can help us open our eyes to the potential constitutive consequences of our arguments, he cannot tell us exactly what to look for. That is not simply because he is too far removed from our time. Rather, it is because he, in a sense, was too close to his own time—as we are in some sense too close to ours. Socrates, it seems, was effectively blind to some of the most salient realities of his time. As, no doubt, are we.

In particular, Socrates seems oblivious to some of the most insidious import of his own speech. And this—the blindness of the man with his eyes most open—may be the hardest and most important lesson the *Apology* has to teach. Because if Socrates, with his full awareness of potential constitutive consequences of speech, can fail to see what seems to us so clear, what must we be missing?

An example of something big that Socrates seems to have failed to see is that his speech was helping to entrench the severe gender inequity at the heart of Athenian life and law. Women played little role in the rich political life of the city and were excluded from much of its cultural life.²⁷ Wealthy women were locked away.²⁸ Poor women were exploited.²⁹ Socrates does not

27. See, e.g., SUE BLUNDELL, *WOMEN IN ANCIENT GREECE* 113–49 (1995); SARAH B. POMEROY, *GODDESSES, WHORES, WIVES, AND SLAVES: WOMEN IN CLASSICAL ANTIQUITY* 57–92 (2d ed. 1995). For an excellent survey of key original sources, see *WOMEN'S LIFE IN GREECE AND ROME* (Mary R. Lefkowitz & Maureen B. Fant, eds., 3d ed. 2005).

28. See POMEROY, *supra* note 27, at 81.

merely fail to address or condemn this reality. He speaks in ways that were clearly helping to entrench and reinforce the difficult situation faced by half the souls in the city he claimed to want to save.

Most explicitly, before explaining his deeper reason for refusing to beg for mercy, Socrates notes that it would be disgraceful for him to engage in histrionics (APOLOGIA, p. 35a2–a5; Jowett Translation, p. 16). Why disgraceful? Because visitors observing that conduct might think that the finest of Athenian men—those who rule over others and hold honor—are “no better/different than women.”³⁰ What is clear to us, if not to him, is that Socrates is appealing to, and thus nurturing, disrespect for women. This argument assumes, thus attributes, and thus entrenches, the view that it would obviously be shameful to be thought to be like women.

And this is only the most obvious and heavy-handed way his speech entrenches what we would describe as gender hierarchy and inequality. He refers repeatedly to the Men of Athens. He relates stories about how people educate their sons—never their daughters (APOLOGIA, pp. 20a3–c3; Jowett Translation, p. 3). He discusses no women in his speech. Granted, many of these aspects of his speech were less a product of his choice than of his time or place. He was addressing an all-male jury. His society was one in which attention was paid to the education of sons.³¹ Much of what he said was simply built into his language and culture. That is my point.

My aim here is not to take Socrates to task for his failures. The question of whether and how to apply normative standards that we have come to recognize as crucial to other times and places is a fascinating and important one. But that is not the question I am addressing here. Rather than judge Socrates for his seeming blindness to his society’s flaws, I want here to learn from it.

And what we can learn is that that there are no doubt things built into our own language and culture that then find their way into our speech—problematic realities that we then thoughtlessly appeal to, attribute, and entrench. Ironically—tragically—gender inequality remains very much one of them. But what we can identify we can at least try to mitigate. My point here is that even just identifying the constitutive impact of our speech is difficult. Do we think ourselves wiser than Socrates? If not, the fact that he could miss something so central about his society and his speech should make us wonder—and worry—about what we may be missing about our own.

Socrates is famous for the assertion—made most clearly here in the *Apology*—that all he really knows is that he does not know.³² That is the answer to the riddle inherent in the Delphic claim that no one is wiser than Socrates. While all are ignorant, others think they are wise. It remains a bit of a mystery exactly how to take Socrates’ claim of ignorance. But one thing is

29. See BLUNDELL, *supra* note 27, at 124–25.

30. APOLOGIA, p. 35b3 (“γυναικῶν οὐδὲν διαφέρουσιν.”).

31. See POMEROY, *supra* note 27, at 74.

32. See APOLOGIA, pp. 21d3–e1; Jowett Translation, p. 5.

clear. He is at least willing to admit that he has more to learn—not just about technical or trivial issues, but about matters of life and death. Literally.

Recall that the very first sentence of his speech was an acknowledgement of ignorance about something crucial—how the jurors would react to the case against him. The very last sentence is another such acknowledgment—this time of ignorance about something arguably even more important. “It is time now to leave—I to death, you to life. And which is better is unknown to all but God.”³³ This is not irony. Nor is it mere defiance or big talk. This is Socrates.

In this Review I have argued that we should emulate Socrates in his attention to the ethical responsibilities attendant upon persuasive speech—and in particular to the constitutive consequences of our arguments. We have recognized however, that those consequences can be difficult to see, let alone measure or quantify, especially when they involve pervasive aspects of our culture. So, if we are to emulate Socrates in this particular way, a necessary first step is to emulate him in the deeper way that frames and pervades both his speech and his life. We should learn to acknowledge our own ignorance. In particular, we should be open to the possibility that the things we say may be causing harm that we have so far been unable or unwilling to see.

In that effort, we might be tempted to defer to other fields—to social psychology, in particular. After all, perhaps it should be their job, rather than ours, to figure out how persuasion may impact the people we persuade. For better or worse, however, we cannot delegate the task Socrates has assigned us.

I would welcome research on the impact of persuasion on character and the impact of character on human thriving. Unfortunately, there is none directly measuring either. Upon reflection, this should not surprise us. Just as modern philosophy does not focus on the ethical question that was most salient to Socrates (what makes for a good life?)—social psychology has not focused on the particular ethical questions highlighted by the *Apology* (how does persuasion impact our capacity to live well?). Nor should we take our colleagues too much to task for not addressing these questions as we might like. Character is difficult to quantify or even describe with precision. Human thriving is, as we have acknowledged, even harder to pin down.

So how do we deal with a situation where—as here—things that matter a great deal to our life and work turn out to be difficult or impossible to quantify or measure? Our usual response—albeit largely by default—is simply to focus on issues that are more amenable to quantification or at least precise description. Rather than try to describe character and thriving, social psychologists look at specific aspects of attitudes and behavior. Rather than think about what makes for a good life, legal scholars and policy researchers

33. APOLOGIA, p. 42a2–a5 (“ἀλλὰ γὰρ ἤδη ὤρα ἀπιέναι, ἐμοὶ μὲν ἀποθανομένῳ, ὑμῖν δὲ βιωσομένοις: ὁπότεροι δὲ ἡμῶν ἔρχονται ἐπὶ ἄμεινον πρᾶγμα, ἄδηλον παντὶ πλὴν ἢ τῷ θεῷ.”).

look for economic efficiency, marginal increases in material wealth, or preference satisfaction.

This default response is unsatisfactory for two reasons. First, and most obviously, it can lead us to ignore much of what matters most. Perhaps economic efficiency, marginal increases in material wealth, and preference satisfaction are not the things that matter most to people's ability to thrive—or even just to their happiness. If so, it seems perverse and foolish to spend all of our time and energy thinking about those things just because those are the things we find easiest to think about.

More to the point, and to return to the lessons of the *Apology*, if we continually emphasize those things, we may be entrenching a worldview in which those things are prominent. By constantly harping on material wealth and preference satisfaction, we may be nurturing a view in which people think that getting richer or getting more of what they want will constitute thriving or will make them happy. And if that view turns out to be false, we will have inadvertently helped sell people on a tragically flawed way of thinking about themselves and their lives.

So, it is neither intellectually nor ethically responsible to ignore the potential constitutive impact of our arguments just because that impact is hard to measure. To return to an example with which we began, we know that Trump is nurturing fear—not just appealing to it. And we recognize that he should not be able to wash his hands of that merely because the damage he is doing is not subject to empirical quantification. But if he should be accountable for what he is nurturing through his efforts at persuasion, so too should we. Yes, the arguments we make may be less obviously problematic than those made by Trump. And yes, the impact we have, being individually marginal but cumulative, is even harder to measure—harder even to see. But that does not give us license to indulge in willful blindness. Rather, we should try that much harder to open our eyes.

And that is what Socrates calls upon us to do. Throughout the Socratic dialogues, and in the *Apology*, he presses his friends, fellow citizens, and us to face what we are inclined to ignore. He makes us question the unexamined assumptions that inform our worldviews—assumptions we then may nurture in others.

