

## **Quasi-rights: Participatory citizenship and negative liberties in democratic Athens.**

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### INTRODUCTION: DEMOCRACY VS LIBERALISM?

The relationship between participatory democracy (the rule of and by a socially diverse citizenry) and liberal constitutionalism (a regime predicated on the protection of individual liberties and the rule of law) is a famously troubled one. The purpose of this paper is to suggest that, at least under certain historical conditions, participatory democracy will indeed support the establishment of liberal constitutionalism. That is to say, the development of institutions, behavioral habits, and social values centered on the active participation of free and equal citizens in democratic politics can lead to the extension of legally-enforced immunities from coercion to citizens and non-citizens alike. Such immunities, here called “quasi-rights,” are at least preconditions for the personal autonomy and liberty in respect to choice-making that are enshrined as the “rights of the moderns.” This paper, which centers on one ancient society, does not seek to develop a formal model proving that democracy will necessarily promote liberal constitutionalism.<sup>1</sup> However, by explaining why a premodern democratic citizenry of free, adult, native males -- who sought to defend their own interests who were unaffected by Enlightenment or post-Enlightenment ideals of inherent human worth -- chose to extend certain formal protections to slaves, women, and children, it may point toward the development a model for deriving liberalism from democratic participation. Development of such a model could have considerable bearing on current policy debates.

The notion that democracy has any meaningful relationship to liberalism is often denied. Fareed Zakaria, for example, argues for a sharp distinction between democracy and “constitutional liberalism.” For Zakaria, democratic citizenship has no intrinsic value and democracy should be valued only if it

were shown to be an efficient instrument for obtaining the desirable end of constitutional liberalism -- for protecting what are sometimes known as the “rights of the moderns.” Other political means for obtaining this same desired end would, for Zakaria, be equally acceptable and, indeed, preferable if those means proved more efficient. Although he is unable to point to a contemporary example of liberal constitutional autocracy, Zakaria sees no principled reason to prefer democracy to a hypothetical autocratic alternative. Zakaria therefore suggests that American foreign policy-makers should reorient their priorities – away from encouraging the growth of democracy abroad in favor of fostering the growth of liberal constitutionalism -- even if that means supporting autocracy.<sup>2</sup>

If we suppose, with Zakaria, that democracy is nothing more than an instrument for gaining the higher end of protecting the rights of individuals and minority groups, there seems no innate reason to prefer being a "democratic citizen" to being a "rights-holding subject" of a benevolent non-democratic sovereign. And so the only reason to prefer democracy to autocracy is the presumption that democracy is more likely than autocracy to foster the growth of liberal ideals and constitutional governmental structures. But Zakaria claims that this is not the case. His quick survey of modern European history and contemporary developments in the Third World leads to a simple conclusion: “Constitutional liberalism has led to democracy but democracy does not seem to bring constitutional liberalism.”<sup>3</sup>

Leaving aside various other problems with Zakaria’s argument (e.g. his tendency to conflate “constitutionalism” simpliciter with the special form of “liberal constitutionalism”), this paper attempts to use the example of classical Athens to rethink the relationship between (first) the core values that constitute the primary commitments of contemporary liberalism, (next) the constitutional “rule of law,” and (finally) participatory democracy -- with its focus on the duties and privileges of the citizen.

Zakaria's primary focus in foreign policy, but the claim that democracy has nothing to do with the desired end of achieving constitutional liberalism has much wider policy implications. If this is correct, then there is (for example) no reason for liberals to worry about "democratic citizenship" per se or "the education of citizens." Rather the proper concern would seem to be with the liberal education of a few elite leaders capable of guaranteeing that a constitutional apparatus is properly established and maintained. Assuming that constitutional liberalism is the only desired end and that democracy is a dispensable instrument will therefore lead to a preference for an educational system with some of the same general goals (if not any of the specific features) of the educational system designed to produce Guardians in Plato's Republic. But if democracy does foster liberal values and the rule of law, then a very different sort of civic education would seem to be in order.

Dragging ancient Greece into the debate over democracy and constitutional liberalism is not idiosyncratic. Zakaria acknowledges that the modern emphasis on individual liberty "draws on a philosophical strain, beginning with the Greeks."<sup>4</sup> (p. 26). But his position on the relative importance, and ultimate separability, of democracy and liberalism builds on Isaiah Berlin's celebrated elaboration of Benjamin Constant's distinction between "positive liberty" (i.e. participatory political community-building, or political shareholding, which Constant specifically identified with Greco-Roman antiquity) and "negative liberty" (i.e. the distinctively modern individual freedom from interference by others in the processes of personal choice-making). For Berlin, the "classical republican" notion that participatory politics undertaken by "citizens" was a precondition to the secure maintenance of individual rights was incoherent since he supposed that negative liberties could just as well be ensured by a sovereign for his subjects. Zakaria's argument builds on Berlin's claims that negative liberty "is not incompatible with

some kinds of autocracy, or at any rate with the absence of self-government” and that it is a mistake to suppose that there is any “necessary connexion between individual liberty and democratic rule.”<sup>5</sup>

While it is obviously impossible to prove the existence of a “necessary connexion” between democracy and liberal values by reference to a single historical case study (or indeed by multiple historical cases), I will argue that in ancient Athens something resembling modern liberal values did in fact emerge – for the first time in recorded human history – quite directly from the development and experience of democratic political processes. And thus, whether or not one supposes that participatory democracy is a good in itself (for the record, I do), there is some reason to suppose that a democracy may indeed foster the values, institutions, and behavioral practices conducive to the development and maintenance of “constitutional liberalism.” This is still a long way from a straightforward causal argument: I am not claiming that “democracy” is a necessary and sufficient condition for either constitutionalism or liberalism. But I do think that a case can be made that the habits associated with the practice of democracy have a lot better chance of leading in those desirable directions than do the habits associated with autocracy.

I will argue, then, that the answer to the question “is the practice of democracy conducive to the development of negative liberties?” is at least a qualified “yes.” The answer is qualified first because classical Athenian democracy never evolved into a fully liberal regime -- never extended participation rights to all those residents who would be regarded as appropriate rights-holders under any twentieth-century regime claiming the title “liberal” or “democratic.” And it is further qualified because the rights which were guaranteed by the Athenian regime never had the ontological status of “inherent or universal human rights.” In Athens individual rights were acknowledged as performative and contingent rather than being regarded as natural, innate, and inalienable. I have dubbed them “quasi-rights” because the

Athenians never supposed -- as modern rights theorists sometimes do -- that rights had a universal or metaphysical existence, that they were either God-given or naturally occurring. Rather, for the Athenians, rights were to be enjoyed by those who demonstrably deserved them, and – this is the key point -- only for so long as other rights-holders were willing to acknowledge them and willing voluntarily to act consistently and collectively in their defense. The Athenians, were in a sense, “rights pragmatists.”

The Athenians developed a detailed, and emphatically procedural, code of law. But they recognized that, absent appropriate political behavior, the law code was meaningless, mere written words without substance or authority. In this they were highly realistic. Laws, even in the most mature of liberal and constitutional regimes, remain in force only for as long as the behavior of the powerful generally conforms to them. Law codes will survive the challenge of serious misbehavior by the strong only when society is willing to respond with superior strength in defense of the law. Modern constitutional regimes depend, of course, on government agents to enforce the law. And so, when these agents misbehave, the only viable response is a multiplication of government agencies charged with investigating and prosecuting other agents of the government. That process that can continue, as recent U.S. history suggests, *ad nauseam*, if not *ad infinitum*. The result is a growth of political cynicism on the part of the populus. Government, politics, and the rule of law itself, come to be seen as a side show, occasionally entertaining but generally irritating and largely irrelevant. By contrast, the Athenian citizens depended directly and immediately upon one another to enforce laws and to reify, in action, the values on which laws were predicated. Democracy meant, for the Athenians, that the collective strength of the individually weak “many” was available for deployment against the capacity for coercion possessed by powerful individuals and syndicates. Although they were indeed concerned to prevent the misuse of

governmental authority, Athenians never forgot that threats to human dignity are just as likely to emanate from private individuals capable of monopolizing social power.

My second main argument concerns democratic ideology and the legal consequences of political sociology: The democratic Athenians included within the privileged category of "free and equal citizens" many persons normatively regarded by traditional Greek "social mentality" as incapable of being citizens on the grounds of their putative dependence and moral inferiority (i.e. day-laborers, small-scale traders, and craftsmen possessing little or no real property). I will suggest that this inclusiveness led to the development of what I am calling quasi-rights. Moreover, it soon opened the way (in legal practice as well as in political theory) for the extension of legal immunities in the form of "negative liberties" to other Athenians regarded as dependent and inferior: children, women, slaves, and resident foreigners. I will not argue that this "liberalizing" tendency to extend immunities beyond the boundary of the citizen body was the conscious or stated intention of the Athenian democratic regime or anyone associated with it. Rather it was an unintended effect of ideological complexity. But the fact that Athenian citizenry did not intend to foster extra-citizen liberalism only strengthens the argument that (at least under the conditions pertaining in classical Athens) the practice of participatory democracy itself can foster liberal practices and values and can, moreover, extend those practices and values into new and unexpected social contexts.

## DEMOCRACY IN THE ATHENIAN STYLE

The primary body of Athenian rights-holders-and-defenders was the citizen body: the demos. This large (ca. 30,000 persons) and socio-economically diverse group was defined by age, gender, and (ordinarily) by birth: typically the Athenian citizen (polites) was a male over 18 years of age, legitimately

born of an Athenian father and Athenian mother, whose neighbors had formally (by voting in local assembly) accepted him as such, and whose name had been inscribed in his ancestral township or neighborhood (deme) citizen-list.<sup>6</sup> The citizen body was thus homogeneous in terms of gender and ethnicity (or imaginary ethnicity: some citizens were naturalized foreigners). But it remained highly stratified in terms of wealth and income. Economic distinctions had been specifically linked to constitutional participation-rights in the early sixth-century (pre-democratic) governmental system established by the reformer-lawgiver, Solon. Each of the four Solonian census classes enjoyed specific participation-rights, based on a sliding scale of annual income measured in terms of agricultural produce. These census classes were never abolished, but by the fourth century B.C. if not before, they were ignored in political practice ([Aristotle] Athenaion Politeia 7.4). Rich and poor Athenian citizens were political and legal equals: each citizen was an equal voter (isopsephos), enjoyed an equal right to public speech (isegoria), and an equal standing before the law (isonomia).<sup>7</sup>

By classical Greek (and pre-twentieth-century Western) standards, the most remarkable feature of Athenian citizenship is an absence: despite the range of wealth classes within the citizen body, there was no property qualification for the active exercise of citizenship: the landless Athenian day-laborer was in meaningful institutional terms the political and legal equal of the largest landowner. For Aristotle (and other ancient theorists) it was precisely the absence of property qualifications for citizenship that distinguished democracy from oligarchy.<sup>8</sup> By instituting democracy, the Athenians had agreed, in effect, to extend the frontier of citizenship (and its associated protections) wide enough to enclose the entire native adult male (hereafter NAM) population -- to extend the border of political belonging remarkably far (by contemporary Greek standards), but (in principle) no further.

Despite having defined the citizenship as a body of politically equal share-holders, Athenian citizens remained intensely aware that wealth inequality translated easily and inevitably into inequalities in social power. And they were well aware of the manifold humiliating and painful ways in which the misuse of the superior power of those who were rich, well connected, well educated, and consequently strong could play out in the lives and on the bodies of the poor, isolated, relatively ill-educated, and weak. Among the primary ethical goals of the Athenian demos (citizen body) was to limit the practical effects of social-power inequality by political and legal means. The story of the development and manifestation of quasi-rights in democratic Athens can be told in terms of the concurrent development of a strong civic identity among the members of the demos, the elaboration of a popular and political ideology to explain that identity, the creation of governmental and legal institutions to defend that ideology, and the evolution of self-conscious habits of employing democratic ideological and institutional powers (including judicial authority). In Athenian popular ideology and elite political theory alike, these concurrent developments were achieved and maintained by the day-to-day actions of numerous "poor" Athenian citizens (penetes: i.e. those who had to work for a living -- in actuality an economically diverse group that included middling landowners and day-laborers). The "poor" employed their collective political and legal power to counter the social power of a much smaller body of leisure-class (plousioi) elite citizens (again, an internally diverse group, ranging from the marginally leisured to the extremely wealthy).<sup>9</sup>

It was by institutionalizing what Robert Dahl has called "The Strong Principle of Equality" (the assumption that all persons within the relevant group are competent to participate in decision-making and that no one individual or junta can or should be counted upon to make better decisions about best interests of the group or its individual members than they could make for themselves) that the Athenians



instantiated and maintained a direct and participatory form of democratic self-governance. Democracy worked in practice because the Athenians assured, through public speech, daily behavior, and legal procedure, that structures of patronage (and other forms of socio-economic domination with overtly political effects) were strictly limited in practice. The quasi-rights enjoyed by Athenian citizens were predicated upon the conviction that each citizen and the citizen body as a whole would and should be committed to the defense -- notably, although not exclusively, through the enactment and vigorous implementation of a code of laws and legal procedures -- of each citizen's freedom of speech, association, and action (eleutheria), political and legal equality (isotes), and personal security from degradation or assault (soteria). Within the boundaries of the citizenship, the citizens themselves would police one another's behavior on a day-to-day basis. When necessary they would employ social and legal sanctions to ensure conformity to a standard of behavior that limited the material and psychic effects of socio-economic inequality.<sup>10</sup>

This sort of policing may seem to be exactly the sort of social control opposed by the sort of liberalism advocated by J.S. Mill in On Liberty. But Mill, and his fellow British liberals, were (I think rightly) impressed with the defense of the relative openness of Athenian society praised by Thucydides' Pericles in the Funeral Oration (2.37.2): Our public life is conducted in a free way, and in our private intercourse we are not suspicious of one another, nor angry with our neighbor if he does what he likes; we do not put on sour looks at him which, though harmless, are not pleasant."<sup>11</sup> Pericles' point is that in comparison to the obsessive concern with all aspects of public and private behavior manifested by aristocratic/oligarchic Sparta, the Athenians took little notice of one another's private lives and affairs. Pericles' comments point to a distinction that will be important to my argument: the contrast between the concerns of the democratic polis and those manifested by the normative (idealized standard) aristocratic

polis. One serious problem with some recent political-theoretical discussions of ancient Greece is a tendency to reify “the polis” as a single analytic category by conflating Athens, Sparta, Plato’s Kallipolis, and the “polis of our prayers” of Aristotle’s Politics.

If it was remarkably extensive by contemporary Greek standards, the Athenian definition of the citizen as a NAM is, of course, highly exclusivist by twentieth-century standards: children, and, much more problematically, women and non-native residents (including numerous slaves) were excluded from the ranks of the demos.<sup>12</sup> The Athenian political-legal order has, therefore, been regarded by some scholars as predicated on an ideology grounded in a stark distinction between "citizens" and "others." Moreover, it has been argued that the exclusion of "others" from the participation rights associated with political standing was not an unfortunate blindspot of an otherwise admirable system, but a foundational premise of the system itself. On this reasoning, the Athenians were only able to maintain the standards of non-exploitative behavior within the "citizenship boundary" by emphasizing the distinction between the microcosmic, internal civic realm of "polis as state (or citizen-estate)" and the macrocosmic, external realm of "polis as whole society."<sup>13</sup> Because, it is argued, the Athenian citizen body was officially defined in the naturalizing terms of gender and ethnicity, its ideological underpinnings were not only exclusivist but essentialist, and Athenian political essentialism best understood as forthright misogyny and racism.<sup>14</sup> Viewed in this harsh light, Athenian democracy would seem to be not only contingently, but irremediably illiberal, a graphic illustration of Zakaria's argument that democracy in and of itself has nothing necessarily to do with the values espoused by liberal constitutionalism.

## IDEOLOGY AND SUBVERSION

Although I am very aware of the illiberality of Athenian democracy -- when it is viewed at any particular moment in its history, and when it is contrasted to contemporary liberal ideals<sup>15</sup> -- I suggest that focusing exclusively on the binary opposition between "citizen" and "other" elides too much of the ideological complexity central to Athenian politics and society. "Ideology" is defined here as including the logic of common practices as well as commonly held ideas and normative values.<sup>16</sup> It has no metaphysical existence outside of ongoing lived experience. Like a river, ideologies must be continuously replenished from multiple sources; while rivers and ideologies may appear to exist in a steady state, no river and no ideology can stand still. And yet very unlike the waters of a natural river, the raw material of ideology is willful human activity: thought, speech, and action. Ideology is necessarily pragmatic and performative, in the sense of being a living set of beliefs, norms, protocols, and responses. Ideology is not, therefore, just a fixed and given part of people's mental furniture, but it is publicly "performed" through thinking, saying, doing, and writing by self-conscious, choice-making human agents. Although a dominant ideology may close off some avenues of choice (and seek to close off others), no ideology (and a fortiori no democratic ideology) has the totalizing capacity to reduce human interactions to a predetermined set of rote behaviors.<sup>17</sup>

Moreover, although every ideology, by definition, is held by more than one person, not even the most dominant ideology will be perfectly standardized or can function as a seamless whole within a group of persons manifesting any meaningful degree of social diversity. A highly robust ideology will be eagerly embraced and more or less accurately performed by a lot of people, frequently, and in many and various contexts. But never by all of the people, all of the time, and everywhere. The performance of culture is not limited to "authorized personnel." Performances by different-minded or inappropriate persons, or under peculiar circumstances, may result in challenges to the dominant ideology, and as a

consequence culture sometimes changes. The dissonance between official performances and "alternative" performances will necessarily affect attitudes and force questioning of established norms, and so may lead (sooner or later) to substantive revisions of the ideological context itself and in those social identities that depend upon it.<sup>18</sup>

Furthermore, ideology not only informs history, it exists within history. Political ideology, as one part of social context, is responsive to other context shifts (e.g. demographic change); the social and political order inevitably changes over time in reaction to events (broadly construed).<sup>19</sup> In response to internal (alternative performance) and external (eventual) factors, every given ideology will evolve and perhaps may occasionally be rapidly and radically transformed through the diachronic processes affecting social and cultural reproduction: Even with the best (or worst) will in the world, no human group (or dominant subgroup) can maintain a genuinely stable ideology or political culture indefinitely. Yet it is not necessary to suppose that all aspects of an ideology will change at the same rate: some elements may prove to be much more enduring than others.

In some recent discussions of ancient Greek social attitudes a useful contrast is drawn between long-term and relatively stable "mentality" and the shorter-term, more variable and responsive "ideology."<sup>20</sup> Following recent work by Ian Morris and Leslie Kurke, I would suggest that by the sixth century B.C., a fairly cohesive and deeply engrained "mentality" had developed among an important subset of the NAM population of the Greek city states. This mentality emphasized values characteristic of what is sometimes called the hoplite or "middling" class - i.e. those NAMs who owned enough land (or equivalent wealth) to feed their families, may have owned one or more slaves, and fought in the ranks of the heavy infantry. The middling sensibility privileged a common, public, inward-looking and political center (to meson, to koinon) over the individualized, sometimes foreign-oriented, and diverse

private realm (to idion). It privileged the values of the relatively large (perhaps 40 percent of the NAM population) "moderate and middling" ranks of society (hoi metrioi, hoi mesoi: generally associated with the heavy-infantry hoplites rather than the elite cavalry). It tended to reject the values of the small (perhaps 5-10 percent of NAMs) leisure-class, luxurious, and cosmopolitan elite. And by the same token, it excluded from consideration all NAMs with inadequate property, those incapable of arming themselves as hoplites.

The middling mentality emphasized moderation, self-control, self-sufficiency, self-sacrifice in the common interest, and the high intrinsic value of citizenship itself. By the same token it rejected any celebration of luxurious living, ostentatious public displays of wealth, or fascination with extra-polis (and especially extra-Greek) relations. The middling mentality honored freedom (qua lack of dependency) and equality (among the ranks of the mesoi). It placed the hard-working (on his own land), hard-fighting (in common with his fellow infantryman), male, warrior-landowner at the center of the social and political universe, and counterpoised that central figure with the marginal categories of women, foreigners, and the unfree generally. The unfree included chattel slaves (or, in the case of Sparta serf/helots) but also those NAMs who lacked the material resources necessary for inclusion among the ranks of the mesoi.<sup>21</sup> By about 500 B.C. many Greek poleis were dominated by a republican political order defined by the middling mentality -- in these regimes, which Aristotle would variously define as aristocracies, "polities," or as moderate forms of oligarchy, propertyless men were denied citizenship, but property qualifications were low enough that it was the mesoi who ruled.<sup>22</sup>

## HISTORICAL DEVELOPMENT OF ATHENIAN DEMOCRACY

The historical development of Athenian democratic citizenship is a large topic, fruitfully and recently reexamined by Brook Manville.<sup>23</sup> In Athens, the victory of the middling mentality was signaled by the constitutional reforms of Solon (594 B.C.) and paradoxically confirmed during the relatively benevolent (and generally anti-aristocratic) reign of the tyrant Pisistratus (546-528 B.C.). The major step from the republican conception of the "rule of those in the middle rank" to a more radical form of democracy which enfranchised even propertyless laborers was taken in 508/7 B.C., in the aftermath of a popular uprising against a Spartan-sponsored attempt to install a narrow oligarchy as the government of Athens. This Athenian Revolution, and the constitutional order that emerged from it, set the stamp on Athenian civic identity and laid the groundwork for the developed democratic order of the fifth and fourth centuries B.C.<sup>24</sup> From this time on, it would be the demos, qua the body of NAMs, who ran Athens according to their own conceptions of the best interests of the demos and the polis. This meant that democratic Athenian political ideology was in an important sense, and from the beginning of the democracy itself, in conflict with the less capacious "middling mentality."

Within the middling mentality, the core values of freedom and equality were linked to sufficient property-holding. And thus the marginal penumbra of "unfree/dependent, unequal/inferior, politically useless non-citizens" included all those NAMs (perhaps 50 percent of the total) who were regarded as inadequate in terms of wealth. By extending the border of political inclusiveness so as to include even genuinely destitute NAMs as actively participatory citizens, the Athenians counterpoised their political practice and an emerging democratic political ideology to the norms fostered by the well established (although never uncontested) middling mentality. Just as archaic Greek culture had been defined by a fierce contest between an ideology favorable to luxuriousness (habrosune) and the eventually and generally victorious middling (metrios) mentality,<sup>25</sup> much of the drama of Athenian culture may be

sketched in terms of the tension between the middling mentality (especially as it was reformulated in the work of critical intellectuals) and an increasingly self-confident and coherent popular democratic ideology. In democratic Athens, the core metrios values of freedom and equality among citizens were maintained, but redefined by being stripped of any strong association with property-holding. And with that radical redefinition came the possibility that in practice and over time, the values of freedom, equality, and security of the person might prove robust enough to survive their application in even more unexpected contexts and to persons outside the ranks of the NAMs.

In the democratic Athenian case, given the forthrightly pragmatic orientation of democratic government and the prominence of political life in the organization of society as a whole,<sup>26</sup> we may expect political ideology to be especially responsive to public performance and misperformance. And so, as I have argued in detail elsewhere, it was. In the citizen assembly and People's courts and in the public square -- but also on the streets, in the fields, and workshops, and in mercantile and service establishments -- citizens gathered, conversed, persuaded or failed to persuade, and chose courses of action accordingly. They behaved towards another conventionally or innovatively, were noticed or ignored, and were rewarded and punished accordingly. They took note of all of this activity, forming opinions, thereby confirming or challenging their presuppositions, and resolving or changing their minds. And in so doing, they reproduced political culture and reconstituted social structures by their variously accurate and subversive performances of popular ideology.

Considerable traces survive of some public Athenian discussions -- most especially the preserved (as inscribed stone stelai) records of Assembly decisions and (in the literary record) speeches of prosecution and defense written by or for litigants in the People's courts. Because these epigraphic and forensic corpora can be analyzed, in the aggregate, for their ideological content, it is possible to

speaking with some confidence about the content of Athenian political ideology.<sup>27</sup> But it is important to keep in mind that these inscriptions and speeches, as records of the most overtly political and most highly public of Athenian discussions, are at once descriptive and normative: they employ not only the speaker's suppositions about the actual experienced reality of Athenian social life and the attitudes of the demos, but they also refer to social relations and attitudes that the speaker supposes (and supposes his audience to believe) should pertain in the democratic city.

Our records thereby point to the matrix of convictions about actuality and normativity that constituted Athenian democratic ideology -- or at least the part of that ideology suited to public assertion. Because our surviving records tend to concern relations between citizens, and because the judges (Assemblymen and jurors) of the speech contests recorded in our surviving documents were Athenian citizens, sitting in a specifically "citizenly" politico-judicial capacity, these records are a particularly good indication of the ideological "party line" of the Athenian demos qua exclusive corporation of political shareholders. It is probably safe to say that these documents quite accurately define a good part of the ideological spectrum but fail to reproduce the entire spectrum: they portray Athenian political ideology as more unitary, coherent, and stable, and less liable to subversion by outside (i.e. noncitizen) pressures, than we may suppose it was in the experience of Athenian social life "in the round." The fraction of Athenian ideology to which we have relatively easy access is highly relevant to the question of the relationship between democracy and liberal values: I will suggest that maintaining this public ideology in intra-citizenry contexts was essential if the Athenian "citizen many" were to retain the functional capacity to restrain, by political and legal means, the social power of the wealthy few. And that capacity was essential to the survival of both democracy and the liberalizing tendency exemplified in the expansion of quasi-rights.



We are much less well informed about how citizens talked with one another in less obviously public fora. And, outside the works of Athenian dramatists, pamphleteers, and philosophers, we have only scant traces of day-to-day interactions between citizens and non-citizens, or among non-citizens. In order to assess the extension of "quasi-rights" within the wider Athenian society, I have looked at two sorts of evidence, and have attempted to read them against each other. First, there is the relatively official record of public forensic speeches, which include descriptions of legal and quotidian practices and make normative claims. Second, I have looked at the ways in which philosophical and dramatic texts critically expose the extension of protections within both Athenian society and utopian (or dystopian) imaginary societies. My claim will be that certain quasi-rights were applied to non-citizens more often and in more diverse contexts than could be predicted by an interpretive model that emphasizes binary opposition between citizens and others as the primary principle of Athenian socio-political organization. The extension of negative liberties is due to a variety of factors and these probably cannot be isolated. They must, however, include conscious attempts at subversion on the part of non-citizens. There is, furthermore, the citizens' recognition (whether fully conscious or not) of contradictions between the three spheres discussed above: the relatively exclusivist claims of the traditional metrios mentality, the more capacious democratic political ideology, and the complex lived experience of social life. Both subversive activity and the capacity to recognize contradictions should, I suppose, have something to do with the historical development and subsequent complexity of Athenian ideology. They should also help us to understand that ideology's insistence on juxtaposing political (and legal) authority to non-political (especially economic) forms of social power.<sup>28</sup>

I would not claim that it is possible, by employing the approach sketched above, to give a historically satisfactory account of Athenian social life. But that is not my goal here: I hope only to show

that there is reason to assume considerable discontinuity between what we might call the demos' "official intention": the distribution of positive and negative rights exclusively within the closed context of the society of Athenian citizens (the "politico-polis"), and the functional distribution of negative liberties within the more open and fluid society comprising the entire population of the residents of the territory of Attica (the "geo-polis"). The general point I hope to make is that Athens was, at least in this respect, from the beginning of the democratic era, considerably more liberal than certain of its own premises allowed. The trend toward liberality was particularly noteworthy in the fourth-century B.C. – the age of Plato and Aristotle. As noted above, Athens never evolved into a society that could fairly be described as "essentially liberal" in modern terms. The liberalizing trend was perhaps slowed, or even reversed, in the aftermath of the Athenian loss of formal independence to the autocratic Macedonians after 322 B.C.<sup>29</sup> How liberal Athens might have become had its independence been maintained remains entirely conjectural.

#### PSEUDO-XENOPHON AND ARISTOTLE: CITIZENSHIP AND ITS DISCONTENTS

The fascinating late-fifth-century polemical pamphlet by an anonymous malcontent sometimes called "The Old Oligarch" (Pseudo-Xenophon, Politeia of the Athenians), seeks to teach its reader that Athenian democracy is the efficient and rationally self-interested rule of the "bad" (because poor and uneducated) many (hoi polloi, to plethos, or ho demos) over the "good" (wealthy and cultured) few. The pamphlet seems initially to encourage hopes for an anti-democratic coup d'etat, but it ends on a decidedly discouraging note: The last paragraph of the text begins in medias res: "But someone might interject that no one has been unjustly disenfranchised at Athens" (3.12). The implied context here is the potential for oligarchic opponents of the democracy for fomenting a civil war. In the classical Greek

polis, the ordinary stake in a civil conflict was enfranchisement -- membership in the citizenship qua political community of the polis. The end result of successful revolutionary action would be a change in the composition of the citizen body.<sup>30</sup> And thus, the probable supporters of a revolutionary movement were those who were currently disenfranchised -- and especially those who regarded their disenfranchisement as unjust. Ps-Xenophon replies to his hypothetical interlocutor that although a few men had in fact been unjustly expelled from the community of citizens by the Athenians for official malfeasance of one sort or another, the number was very small indeed, "but to attack the democracy at Athens not a few (oligoi) are required." Successful revolution apparently requires "many" (polloi) who, because they believe themselves to be unjustly disenfranchised, will support a change in regime. At this point in the essay, Ps-Xenophon's tendency to use "demos" as a synonym for "the unleisured many" (hoi polloi) rather than "the citizenry" tout court pays out. With the demos/polloi securely in control, it is impossible to suppose that "many" will be disenfranchised and so revolution is shown to be impossible on the original sociological premises of the argument. Ps-Xenophon concludes his tract and his practical lesson: at Athens, where it was the members of the demos who held the magistracies, how would anyone suppose that "the many" (hoi polloi) would ever be disenfranchised? And so "in view of these considerations, one must not think that there is any danger at Athens from the disenfranchised" (3.13).

Ps-Xenophon's somewhat cryptic argument is elucidated by a text written just a century later: Aristotle's Politics. Like the Old Oligarch, Aristotle was deeply concerned with the relationship between citizenship and civil unrest. Among Aristotle's goals in the Politics is the elucidation of the sources of civil conflict and the discovery of ways in which civil war might be prevented via preemptive and meliorative constitutional adjustments. Aristotle is at one with Ps-Xenophon in seeing the goal of civil war as the enfranchisement of those who regarded themselves as worthy of the status of citizen (or

disenfranchisement of those thought to be unworthy of citizenship). And the prime cause of civil unrest was, consequently, the discontent of those who were unjustly (as they supposed) disenfranchised. Although Aristotle has many suggestions for minor constitutional tinkering that might serve to reduce tensions, it is clear from his account that he thinks the most straightforward way to solve the problem of citizenship and political unrest would be for the citizen body of the polis to be coextensive with the body of those who both desired and deserved the status of citizen. If there were no body of noncitizens within the polis who wanted to be citizens, there would be no reason for a civil war aimed revising the criteria for citizenship.

It is this concern with citizenship and its discontents that unites the "practical" discussion of the middle books (according to the traditional arrangement) of the Politics with books 1 and 7. Book 7, the account of the "polis of our prayers," presents a hypothetical polis in which the felicitous situation sketched in the previous paragraph obtains in practice -- the body of "potential citizens" is coextensive with the body of "actual citizens" and thus the polis not only manifests a high degree of happiness, but also is optimally stable. With the right sort of attention to the processes of social reproduction (especially formal education, sketched in the fragmentary book 8), the "polis of our prayers" should not be subject to the subversive misperformances that led other (real) poleis into a seemingly never-ending series of constitutional/sociological changes (metabolai: cf. [Aristotle] Athenaion Politeia, 41.2 for an account of the 12 major Athenian metabolai). But in order to arrive at this happy end, Aristotle must necessarily decide what the appropriate criteria for citizenship actually should be. This work is undertaken in book 1, where Aristotle sketches the hypothetical origin of the fully developed polis from first principles.

In briefest summary, Aristotle suggests that the polis is the natural context for human flourishing, indeed the only context in which humans can hope consistently to achieve their highest ends. The polis is imagined as growing up organically from the conjunction of men and women into families (oikoi) for purposes of biological reproduction, then families into villages and clans for the purpose of security, and then villages and clans into the polis for the purpose of achieving justice and autarky.<sup>31</sup> Given the polis' evolution via the conglomeration of families, which are (in Aristotle's view) properly composed of husband, wife, children, and slaves, the society of the ideal-standard polis itself was made up of native adult men, native women, their children, and their slaves. The activities of each of these categories of persons was necessary for the existence and maintenance of a proper polis, but not all of these persons will be considered to "have a share" (metechein) in the polis. Indeed, as in Athenian ideology, only NAMs were regarded by Aristotle as potential citizen/shareholders. Aristotle explained the exclusion from shareholding of non-NAM residents by reference to their innate psychologies: due to specific defects in their deliberative capacity (to bouleutikon), women, slaves, and children simply could not function as citizens. Male children were only temporarily impaired; they were expected to have developed appropriate deliberative capacity upon achieving adulthood. Women and slaves, however, although manifesting somewhat different psychologies, were permanently and irremediably impaired. Aristotle gives his reader no reason to suppose that a woman or a (natural) slave would ever (justly) desire any of the attributes or protections of citizenship, at least so long as she or he were treated justly by her or his husband/master (kurios).

There is a serious practical problem with this naturalizing scenario, one that would be clear enough to any classical Greek, and Aristotle faces it quite squarely (if chillingly): Some Greek-owned slaves were Greek citizens of other poleis, men who had been captured in war and sold into slavery.

These persons remained "psychological citizens." As such they were necessarily unhappy in their status as slaves and thus a likely source of ideological/constitutional subversion. Aristotle's solution is a sketchy doctrine of "natural slavery" which posits the existence of persons who are "slaves by nature." He tentatively identifies most barbarians, and especially those of Asia, as likely natural slaves. The best polis will abjure enslaving those who are not slaves by nature, but may actively seek out opportunities to acquire natural slaves by imperialistic warfare.<sup>32</sup>

With the development of the doctrine of natural slavery, Aristotle's "natural polis" is complete. At first glance it appears to be a democracy on something like the Athenian model: all NAMs seem, on the psychological premises of the argument, to suit the criteria for "shareholding citizens." Yet in the last chapter of book 1 (1.13) Aristotle introduces a further complexity that mandates a good deal of further discussion of citizenship: those persons (including many NAMs) who worked for others, and received directions from them, were in some important sense assimilated to slaves. Such persons are summed up under the related categories of banausoi (craftsmen) and thetes (laborers). These quasi-slaves did not enjoy the leisure that we are now reminded (the point was made in the Nicomachean Ethics) is necessary to the development of political virtue. Moreover, it seems that the labors of banausoi and thetes could, in and of themselves, be regarded as having corrupted any genuine and innate political capacity. It was precisely in their approach to the political standing of "sub-metrios NAMs" that Athenian democrats differed from those who advocated more restricted criteria for the active exercise of citizenship. And thus, by equating banausoi and thetes with slaves in his treatment of normative citizenship, Aristotle diverges from democratic definitions of citizenship, and leans toward the thinking of earlier and more overtly oligarchic political theorists, like Ps-Xenophon.

Elsewhere in the Politics, however, Aristotle treats democracy as the best of the "commonly existing" regimes (the alternatives being oligarchy and tyranny). Aristotle's recognition of the (contingent, if not absolute) justice of democratic practice on the grounds of what might be called "natural citizenship" (for Aristotle: lack of innate psychological impairment), and his simultaneous methodological acknowledgment of the endoxic force of settled sociological judgments of his elite interlocutors who regarded many NAMs as quasi-slaves, is the source of considerable tension in the argument of the Politics. The seriousness with which Aristotle treats certain of the claims underpinning democratic government (e.g. the "summation argument" in support of the potential validity of collective decision-making) is among the most interesting and (for a modern democrat at least) most attractive features of his text. But for our current purposes, the important point is that Aristotle's philosophical/psychological/naturalizing premises take the place of Athenian popular ideology in the project of explaining the basis of shareholding and social justice in the polis.

Like Aristotle, the Athenian demos was very concerned with the issue of justice. But unlike Aristotle's "polis of our prayers," in which all potential citizens were both actual citizens and leisure-class and where all productive labor was to be the province of natural slaves, the Athenian democracy had to reconcile the concerns of a socially and economically diverse citizen body with the concerns and interests of other residents of the "geo-polis" without reference to a well developed naturalized teleology. Unlike Aristotelian political theory, Athenian civic ideology had no well articulated psychological premises with which to explain why citizenship (and its attendant privileges and protections) should be restricted to NAMs and denied to women and slaves -- or for that matter, to resident foreigners (metics: a large category of persons, to which Aristotle himself belonged, but one of very limited analytic importance within the argument of the Politics). Although the Athenians did attempt

(with varying degrees of success) to naturalize political distinctions based on gender, there is reason to suppose Athenian NAMs regarded slaves and metics as psychologically similar, or even identical to themselves.

Ps-Xenophon makes special note of the startlingly uppity behavior (akolasia) of Athenian slaves and metics, and he relates this phenomenon to the culture encouraged by democracy and to its material bases: He points out that in Athens "you" are not permitted (oute...exestin) to hit slaves and foreigners at will, nor will a slave stand aside for you. Ps-Xenophon's own explanation for this disturbing (to his implied reader) state of affairs is that the lower-class individuals constituting the Athenian demos were not recognizable as citizens: they were no better dressed nor any more handsome than individual slaves and metics. Hence, if an elite gentleman were allowed free license to strike slaves at will, he might well strike an Athenian citizen, mistaking him for a slave (1.10). And so, he claims, it was in order to ensure their own physical security that the demos forbade the casual beating of slaves. Moreover, he suggests that the Athenians' willingness to grant equality in regard to speech (isegoria) to metics and slaves, and to allow slaves to become rich, and their tendency to manumit slaves were all quite rational (eikotes: 1.11-12). He claims that the explanatory key is the material importance to the lower-class Athenians of Athenian naval power -- like Aristotle (Politics 1327a40-b16) Ps-Xenophon relates naval might directly to the social conditions fostered democracy (1.2; 1.11-12). The navy required the availability of considerable free capital (chremata) and a variety of specialized trades (technai). He argues that metics provided the necessary skills while money was acquired by taking a portion of the earnings of slaves. If, as was the case at (oligarchic) Sparta, your slave feared me, he might simply give up making money so as not to be at risk on account of his possession of wealth. Ps-Xenophon implies that this would not be a problem for the Spartans, whose land-based military organization did not demand the accumulation of



capital; whereas for the Athenians the drying-up of the capital resources now gained by extracting the surplus value generated by the willing labor of profit-motivated slaves (who were presumably saving up to buy their manumission) would impair the operations of the navy.

For Ps-Xenophon the underlying premise is self-interest. The Athenian demos protected slaves and metics from physical mistreatment first because they feared being mistaken for slaves or metics. Athenians next protected the property rights of slaves and metics because believed they could profit from the willing labor of slaves and metics who would work productively only if they were secure in their possession of property and some part of the fruits of their labor.<sup>33</sup> The Old Oligarch's highly tendentious explanation for Athenian liberality in respect to slaves and resident foreigners is reiterated by Plato and other ancient critics of democracy. Their point is that when compared with more restrictive citizen regimes (like Sparta), democracy was perversely (yet rationally) unwilling to patrol the boundaries between citizens and non-citizens. The Athenians allowed non-citizens access to protections that should (in aristocratic thought) "properly" be restricted to citizens alone. This perversity was explained by democracy's critics in terms of political sociology: the presence of poor ("ill-dressed, ugly") laborers and craftsmen within the Athenian citizen body. It was because the ordinary citizens (hoi polloi) themselves were "slave-like" when compared to the "good and beautiful" (kaloi k'agathoi) elite that they extended certain protections to slaves.

While rejecting the Old Oligarch's premises about natural inferiority of the poor, I would suggest that he is right to link the extension of privileges to the sociological diversity of the Athenian demos. Once the "natural" association between participation rights and high social standing had been breached, there was a strong tendency for certain negative liberties to be extended beyond the citizen body itself.

## DEMOSTHENES 21: QUASI-RIGHTS AND THE LAW ON HUBRIS.

It is hard to say how closely Ps-Xenophon's (undoubtedly polemical) claims about Athenian treatment of metics and slaves reflects the lived experience of most real persons in classical Athens. But his statement about Athenian unwillingness to tolerate overt public violence to non-NAMs is supported by an important Athenian legal statute: the law (nomos) dealing with acts of hubris. As the N.R.E. Fisher has exhaustively demonstrated, hubris refers to the propensity for and the act of deliberately seeking to disrespect or dishonor another person through outrageous speech (gross verbal insult) or action (physical violence).<sup>34</sup> Aristotle (Rhetoric 2.2.1378b23-31) usefully associates the tendency to commit hubris with the possession of wealth (especially new wealth) and other elite attributes. But our best single source for the Athenian law on hubris is the politician/orator Demosthenes' prosecution speech, Against Meidias, composed in 346 B.C. The speech is especially relevant to my current purposes, because, in the course of exposing the extent and illegitimate application of his opponent Meidias' wealth-power via acts of hubris, Demosthenes explores in detail the existence and function of the quasi-rights of personal (as well as communal) liberty, equality, and security within the citizen body.<sup>35</sup>

Demosthenes argues that, in the face of potentially destabilizing economic inequalities among the citizens, the maintenance of liberty (qua the right to do what one wishes and especially to speak out in public), equality (of opportunity and political voice), and individual personal security (living without fear of being constrained by the actions of stronger persons within one's own society) are functionally essential components of democratic Athenian culture. For him, the maintenance of these quasi-rights was among the primary purposes of democracy; without them, the powerful would rule the state in their own interests and democracy would cease to exist. The possibility of "benevolent" oligarchs, who

would recognize the justice of granting negative liberties to the weaker many, is as foreign to Demosthenes' thought as "enlightened" democrats, who accept the moral superiority of aristocrats, are to the thought of Ps-Xenophon.

Demosthenes' prosecution speech offers a particularly eloquent defense of the notion that the maintenance of quasi-right protections is predicated not on any natural or divine dispensation, or on the contractual delegation of powers to an abstract sovereign, but upon political participation: the willed activity of the concerned individual citizen and of the collective citizenry in the defense of the outraged individual. Demosthenes (21.223-225) explicitly reminds his audience of jurors that Athenian laws have no independent existence or agency; it is only the willingness of the citizens actively to work the machinery of the law (as voluntary public prosecutors and jurors) that gives the law substance and force. The modern reader is forcefully reminded that there was no meaningful distinction in Athens between "citizenry" and "government." In Athens it was the aberrant powerful individual or syndicate, rather than "the government," that threatened the freedom, equal standing, and fundamental dignity of the ordinary (non-elite) citizens. Demosthenes' speech is a testament to the assumed determination and capacity of the demos to restrain the hubristic individual. At the same time it offers ample evidence for the very considerable scope of action and opportunity of the wealthy elite, and the relative security of their property rights.

In the midst of his demonstration that Meidias (by punching Demosthenes in the theater of Dionysos, while the latter was serving as chorus producer for his tribe) was guilty of the worst sort of hubris, Demosthenes pauses to quote the (typically highly procedural) Athenian law forbidding acts of hubris:

If anyone treats with hubris any person, either child or woman or man, free or slave, or does anything unlawful (paranomon) against any of these, let anyone who so wishes, of those Athenians who are entitled (exestin), submit a graphe (written complaint) to the thesmothetai (legal magistrates). Let the thesmothetai bring the case to the Heliaia (People's court) within thirty days of the submission of the graphe, if no public business prevents it, or otherwise as soon as possible. Whoever the Heliaia finds guilty, let it immediately assess whatever penalty it thinks right for him to suffer or pay. Of those who submit graphai according to the law, if anyone does not proceed, or when proceeding does not get one-fifth of the votes, let him pay one thousand drachmas to the public treasury. If he (the accused) is assessed to pay money for his hubris, let him be imprisoned, if the hubris is against a free person, until he pays it. (Dem. 21.47, transl. MacDowell, adapted).<sup>36</sup>

Having cited the law in full, Demosthenes then points to its remarkable scope, "you hear the generous consideration (philanthropia) of the law, men of Athens: it does not even allow acts of hubris against slaves. Well by the very gods!" Demosthenes then proposes a sort of thought experiment: What if someone were to transport a copy of this law to "the barbarians from whom slaves are imported to Greece," and were to praise the Athenians by pointing out that despite the many wrongs they have suffered at the hands of barbarians (a reference *imprimis* to the Persian wars of 490-78) and their consequent natural enmity "nevertheless [the Athenians] don't think it right to treat insolently even the slaves whom they acquire by paying a price for them, but have publicly made this law to prevent it, and have before now imposed the death penalty on many who transgressed it." Demosthenes suggests that in these circumstances, the grateful barbarians would immediately appoint "all of you" to the honorific

position of proxenoi: “local consuls” who look after the interests of persons from some specific foreign locale (Dem. 21.48-50). Demosthenes' explication of the hubris law is constructed in the form of an a fortiori argument, to show how spectacularly wrongful was Meidias' behavior in punching a fellow citizen who was performing a public liturgy. And Demosthenes himself, with his "by the very gods!" seems a bit startled by the results of his own explication of the law's scope and by its failure to distinguish between citizens and non-citizens as protected persons.

A few other aspects of the law on hubris (which cannot, unfortunately, be dated or securely assigned to a specific lawmaker) merit our attention here. First, its provisions are remarkably broad: Not only does it proscribe hubris against all categories of residents of Athenian territory, it prohibits the commission of any action that was paranomón -- which can be translated either as "unlawful" or "against what is customarily regarded as proper" -- against the same extensive list of persons. Since neither hubris nor paranomón is specifically defined by the law, it was up to the voluntary prosecutor to convince his audience of jurors that a given action was, when viewed in context and judged by prevailing community standards, "hubristic" or "legally/customarily improper." We can now see why Ps-Xenophon would have regarded it as prudent for a visitor to Athens, evidently used to freely asserting his superiority at home, to refrain from engaging in behavior toward anyone that might be regarded by Athenians as demeaning or otherwise offensive.

The hubris law points to an important distinction between positive (participation) rights and negative liberties. Although citizens have no special standing among those protected by the law, it is only "Athenians who are entitled" (i.e. citizens not suffering from full or partial disenfranchisement: atimia) who are empowered to initiate a prosecution under the anti-hubris law. As in the case of other Athenian criminal actions, if a voluntary prosecutor were to initiate a legal action, but failed to pursue it in court,

he himself would suffer atimia. Moreover, if the prosecutor failed to convince one-fifth of the jurors of the justice of his claims (the votes of jurors -- generally 500 for this category of delict -- were counted after the carefully timed speeches of prosecutor and defendant were complete), then he must pay a stiff fine (roughly three years' wages for a skilled craftsman). Clearly, the Athenians were concerned to prevent frivolous prosecutions and they backed up their concern by putting the voluntary prosecutor, as well as the defendant, at risk. The exercise of positive rights can entail serious consequences, but it is the exercise of positive rights by "the enfranchised" which defends the negative liberties of the entire resident population.

Finally, the law draws a distinction between the potential punishment of a person convicted of hubris against free persons as opposed to hubris against slaves: the man convicted of the latter will not face prison, even if he is unable to pay an assessed fine. It is worth noting however, that a monetary fine was only one of the possible penalties that might be suggested by a successful prosecutor and accepted by the jury. Demosthenes appears to claim (the syntax allows some vagueness) that "many" persons had in fact been executed for committing hubris against slaves. Demosthenes may, of course, be engaging in hyperbole. We do not know how often (if ever) Athenian citizens actually were prosecuted for hubris against non-NAMs, nor, if they were prosecuted, what the rate of conviction or the seriousness of the assessed punishment might have been. It seems, on the face of it, unlikely that a man would be prosecuted for hubris against members of his own oikos, whether slave or free. But then it also might seem, on the face of it, unlikely that the Athenian citizens would pass or keep on the books a law that is so little concerned with citizens as a specially protected category. The law on hubris confirms Ps-Xenophon's claim that metics and slaves could not be struck with impunity at Athens, but it shows that

the scope of protection was (in the letter of the law, anyway) even broader: children and women were granted identical protections.

## METICS AND SLAVES.

Before turning to gender roles, we should pause to consider briefly other evidence for the formal or informal application of negative liberties to metics and slaves. Although ownership of real property ordinarily remained a monopoly of Athenian citizens, the Athenians sometimes granted metics the right to own real estate (enktesis); others were granted remission of the head-tax ordinarily paid by resident foreigners (isoteleia). A detailed forthcoming study by E. Cohen amply demonstrates that Ps-Xenophon was right that metics and even slaves could and did accumulate considerable private fortunes and that their property rights were as secure as any Athenian citizen's.<sup>37</sup> Cohen also argues that in certain sorts of civil lawsuits (dikai) concerning property, metics and even slaves could represent themselves rather than depending on legal representation by an Athenian citizen, and by the same token they could initiate prosecutions, even against citizens.<sup>38</sup> Metics and slaves enjoyed as much religious freedom as anyone in Athens; they were treated as functional equals in the context of certain important Athenian cults and rituals, notably the state-sponsored and state-protected Eleusinian Mysteries.<sup>39</sup>

But given that citizenship, with its specific participation-rights, remained centrally important, what of naturalization? An Athenian law dating to the mid-fifth century predicated citizenship on birthright, mandating double native descent -- an Athenian father and Athenian mother -- for those persons accepted as citizens by the demes. This restriction was ideologically buttressed by resort to the myth that Athenians were autochthonous -- originally born of the earth of Attica. Public speakers could claim that with autochthony came a common inborn patriotism.<sup>40</sup> Yet naturalization was in fact possible,

for individuals and even for groups of persons, by special decree of the citizen Assembly. Some metics, and even former slaves, were in fact enfranchised in this way. In the best known case (because the family's complex legal affairs are well documented in the corpus of Demosthenes' forensic speeches), the family of the extremely wealthy former-slave and bank-owner Pasion, became prominent members of Athenian society. Pasion's son, Apollodorus, went on to become a well-known Athenian politician and public speaker. In several preserved forensic speeches, Apollodorus speaks openly of his ancestry. Although he allows that he and his relatives owed a special debt to the Athenians for the gift of citizenship, he claims that this indebtedness is a source of his own intense patriotism and his dedication to the good of his adopted polis.<sup>41</sup>

Metics (regularly) and slaves (more often than is generally acknowledged) served in the Athenian armed forces.<sup>42</sup> Their faithful service led, on several occasions, to formal proposals in the citizen Assembly for mass manumission of slaves and mass enfranchisement of metics. Although in each case the Athenians eventually balked (sometimes after the decree had been successfully challenged in the People's courts), there was clearly, from time to time at least, considerable sympathy (and potential, if not fully realized, ideological space) for the inclusion within the Athenian citizen body of many persons who were obviously not "autochthonous." Indeed, even the standard story of Athenians as a pure "earthborn" race was counterbalanced by the equally well-known and celebrated story of Athenian receptiveness to foreign immigrants in mythological times.

In practice, it is certain that many "non-ethnic" Athenians slipped into the ranks of "the Athenians" without being approved by special decree of the Assembly. This was perhaps especially common in periods of revolutionary political change (Aeschines 1.77; Demosthenes 57.26: diapsephismos). But it also occurred on a more casual and endemic level at the level of the deme



(township) registration procedure: the deme assemblies voted to accept as citizens any number of men who fell short of the double-descent requirement. The periodic call for "cleansing of the deme lists" (e.g. in the 340s B.C.) are evidence for Athenian concern for maintaining the fiction of the citizen body as a closed corporation, but also points to the fact that it was indeed a fiction, and that many persons undoubtedly were registered as "Athenians" because their neighbors had, for whatever reason, chosen to ignore actual ethnicity in regarding them as worthy of that distinction.<sup>43</sup>

## CONTROLLING WOMEN (AND CHILDREN)

Ps-Xenophon limits his criticism of Athenian laxness in the matter of treatment of non-NAMs to metics and slaves. But in the Republic Plato (562b-63d) seems to pick up where the Old Oligarch had left off, noting that the freedom and equality characteristic of democratic regimes lead, not only to metics becoming equal to citizens, but the young equal to the aged and women equal to men. Plato's Socrates had advocated a sort of cross-gender role equality within the closed and carefully educated ranks of Kallipolis' Guard class (on the analogy of the similarity of the nature of male and female dogs, to which the Guards are frequently compared). But Plato clearly regards the putative equalization of gender relations within the real world of the democratic polis to be among its most grievous faults. Plato's claim here (like Ps-Xenophon's, above) is part of a critical project and cannot be taken as a simple description of Athenian reality. But, in light of the specific inclusion of women in the Athenian law against hubris, and the frequent assertion by modern scholars that women in democratic Athens were actually much less free and less equal to men than they were in aristocratic societies (e.g. among archaic poleis and in classical Sparta),<sup>44</sup> it is worth asking whether there might be some real-world basis to Plato's

complaint that democracy encouraged the extension of inappropriate privileges across gender lines - just as it did across the lines of metic vs citizen and slave vs free.

In the context of a discussion in the Politics about what sorts of institutional arrangements are suited to each regime type, Aristotle makes a suggestion that has considerable bearing on the general topic of women's standing in democratic and non-democratic poleis:

The controller of children (paidonomos) and the controller of women (gunaikonomos), and any other office that has authority of this sort of superintendence (epimeleia) is aristocratic, and certainly not democratic. For how is it possible to prevent the wives of poor men (aporoι) from going out [of the house]? Nor is it oligarchic, for the wives of oligarchs live luxuriously (1300a4-8).

Later, Aristotle notes that

peculiar to those poleis which enjoy greater leisure and are more prosperous, and which in addition take thought for orderliness (eukosmia), are the offices of guardian of women, guardian of the laws, guardian of children, and gymnasiarch, and, in addition to these, the superintendence of gymnastic games and the Dionysian festival contests, and any other spectacles that there may be. Of these sorts of offices, some are clearly not democratic, such as that of guardianship of women (gunaikonomia) or guardianship of children (paidonomia), since poor men (aporoι) necessarily use their wives and children as subsidiary workers (akolouthoi) due to their lack of slaves. (1322b37-23a6)

The two comments directly link the sorts of behavior that could reasonably be enforced by agents of the government with the sociologically-determined propensities of the sort of citizens definitive of various

regime-types: that which was suitable for leisured aristocrats was simply impracticable in a democracy, dominated as it was by people constrained to work for their living.

The office of the paidonomos is otherwise unattested, but gunaikonomoi did exist in some poleis - including post-democratic Athens.<sup>45</sup> Aristotle's explanations for women's behavior under different regimes (and his silence on the matter of children's behavior) suggests that he was more interested in gunaikonomoi than paidonomoi. He supposed that, were a gunaikonomos appointed, the wives of citizens would be prevented (or officially discouraged) from "going out" and from living luxuriously. In the case of oligarchy, in which citizenship was defined specifically by reference to wealth alone, Aristotle assumes that oligarchs' wives lived luxurious lives with the tacit approval (or even open encouragement) of their husbands. Display and enjoyment of wealth is assumed to be central to the oligarchic identity and, that being the case, there was no reason for an oligarchic regime to seek the appointment of an official whose duty would be to restrain luxurious behavior.

The case of democracy is more complex and Aristotle's commentary is fuller: Aristotle assumes it is simply impossible (even if it were in principle regarded as desirable) to prevent the wives of working men from leaving their homes. His reasoning in the first passage is clarified by the second: the "poor" oikos lacked slaves, and so it depended on the productive labor of all of its members (including women). Some part of this labor was typically carried out, we must suppose, in extra-household contexts. Once again, as with Ps-Xenophon on the lenient treatment of slaves, the association between what sort of behavior is allowed and the socio-economic basis of democracy is to the fore: For Aristotle, it is specifically because in a democracy the citizenry included slaveless "poor men," who were constrained to act (and to allow other members of their household to act) in certain ways due to

their lack of material resources, that the "aristocratic" office of "controller of women" is particularly unsuited to a democracy.

There is nothing wrong with Aristotle's reasoning in these passages: he allows us to suppose that Greek men (including democrats) would, on the whole, prefer that their women stayed at home and out of sight.<sup>46</sup> A regime which restricted citizenship to those men financially able to keep women at home, and one concerned with ensuring "good order" via "supervision" -- i.e. an aristocracy -- would be likely to appoint a magistrate with the duty of assuring that this norm was enforced in practice. As we have seen, in Aristotle's view oligarchs lacked the will to prevent private luxuriousness among women. But under a democracy, whatever the normative preference of the NAMs, there was, practically speaking, no way for the regime to survive unless women went out of the home to work. If the women of the poor could not work, the poor would starve and thus material necessity trumped whatever normative preference for the seclusion of citizen-women might have pertained among the Athenian NAMs. And thus we might begin to develop a context for taking seriously Plato's comment about the tendency of democracy to promote relatively greater practical equality of women and (citizen) men without invoking a self-conscious liberalism among the NAM population.

It is impossible to determine whether or not Athenian women valued the lack of legal restrictions on their freedom of movement and association as a substantive liberty. Yet if we regard the creation of a formal government officer "in charge of controlling women" as a move specifically designed to place limits on women's life-choices, then we might want to question the scholarly habit of correlating Greek democracy with oppression of women, aristocracy with inter-gender liberality. We are, however, still a long way from making an argument for a positive correlation between democracy and (relatively) liberal gender-role relations or attitudes. If we accept that it was quite common for Athenian citizens' wives

and daughters to work outside the home, and that this material necessity was recognized (at least in negative terms) in Athenian institutional arrangements, do we have any warrant to go further? Do we have reason to suppose that the lived and performed Athenian experience of gender roles was otherwise more liberal than the "official" normative line? Or that Athenian ideology responded over time to the fact that women's labor was essential to the survival of democratic culture?

The best source of evidence for the last question, at least, is Athenian drama: At Athens tragedy and comedy were officially sponsored by the democratic state and famously depict strong, willful, even overtly "political" women. When watching Aristophanes' Ecclesiazusae (ca. 393 B.C.), Athenian citizens were confronted with a comic scenario in which women are made citizens by decree of the Assembly and subsequently undertake a radical reorganization of the polis along social lines that were hyper-egalitarian (among the free population).<sup>47</sup> I suppose that comedy (I am deliberately leaving tragedy to one side) had an institutionalized critical function. The Athenians intended for comic poets to present on stage culturally subversive material, to make visible the ideological contradictions and evasions by which the Athenians ordinarily lived their personal and (especially) their political lives. And I suppose that the democracy challenged itself in this way because of an implicit recognition of the dangers inherent in ideological ossification, and a recognition of the essential role that sharp and profound internal criticism plays in the continued flourishing of a democratic political order.<sup>48</sup> In the terms employed above, we might suggest that drama very literally "alternatively performed" aspects of Athenian ideology and thereby stimulated the democratic imagination and opened the way for other (imitative, reactive, creative) alternative performances outside the Theater of Dionysos. A reconsideration of the Athenian law on hubris may help us to think about the relationship between drama, Athenian democratic ideology, and the wider Greek context.

I would suggest that the hubris law might be read as a (non-intentional) democratic counterpart and rejoinder to aristocratic laws establishing "controllers of women" and perhaps similar, less well attested, offices for control of other categories of non-citizens.<sup>49</sup> We may suppose that both democratic Athens and the normative aristocratic polis passed their laws intending, *imprimis*, to protect the standing of the citizen body. In both cases, there was a deep concern with behavior, especially in public (although perhaps also in private) that might be contrary to, and thus threatening to the established rules (i.e. paranomon), thereby manifesting the potential to destroy the regime that was maintained by adherence to those rules. The general Greek assumption that lawcode and regime are intertwined, fragile, and so incapable in practice of surviving serious breaches is familiar from Aristotle's Politics and interestingly reconfigured by Plato's Crito - a text that has caused liberal readers considerable anguish.<sup>50</sup> In this conviction, then, Athenian democrats were at one with the aristocratic upholders (at whatever remove) of the metrios ideal.

The contrast between Athens and the normative aristocratic regime arises in where the threat to "laws and regime" was perceived to originate, how it was manifested, and how it was answered. The aristocratic ideology that eventuated in gunaikonomia legislation saw a prime need for behavioral control to be exerted upon those non-citizens most intimately connected to citizens: children and (especially) "citizens' women." If we take Aristotle's Politics as our source, the threat was thought to be manifested by the inappropriate public appearance of those who should remain invisible, and by the enjoyment of luxury by those who should not live in a luxurious manner. Although presumably children were also potentially sources of dangerous behavioral deviance, in Aristotle's account it is wives and daughters of citizens who are the primary objects of concern: Evidently the women of aristocrats manifested some tendency to "go out in public" -- i.e. to imitate the very public-oriented lives of their husbands, brothers,

and fathers. And/or they tended to want to live over-luxuriously in private -- i.e. to conform to the behavioral norms typical of the archaic habrosune ideology, an ideology which had conflicted with the metrios ideal normatively embraced by classical aristocrats (at least those of the Aristotelian sort). Because manifestations of these tendencies were affronts to the metrios ideal, the preservation of "good order" required scrutiny of women and official suppression of their subversive practices. The potential threat was answered by the creation of a formal government office: a bureaucracy (in effect) that was assigned formal responsibility for rooting out women's misbehavior and chastising any breeches uncovered. The rest of the citizen-aristocrats were, by implication, left to pursue other matters, public and private.

By contrast, the Athenian democratic ideology construed the threat to public order, the prime suspect of "paranomic" activity, as the hubristic individual - he who was strong enough and arrogant enough to seek to establish preeminence via the humiliation of others within the polis. By combining the language of the hubris law itself and Demosthenes' normative language in explicating that law,<sup>51</sup> we may say that Athenians saw women, children, slaves, and (presumably) foreigners, along with the weaker of the citizens (i.e. those commanding few resources) as the potential objects of illegitimate activity, rather than the willful originators of threats to the public order. The powerful hubristic individual was imagined as seeking to establish hierarchical relations within the polis on his own terms by demonstrating his capacity to humiliate, by outrageously insulting weaker persons by speech or deed (especially sexual violation), and by seeking to do so with impunity. And if he (or the class of powerful persons he represented) were successful in establishing a secure "personal" social hierarchy within the polis, a social space free from the legal authority of the democratic state, it would clearly mean the end of the effective

rule of the demos: this is why a successfully perpetrated, unchastised act of hubris could be characterized as signifying "the overthrow of the democracy."<sup>62</sup>

Equally distinctive is the Athenian notion of how to respond to the threat of hubris: not by the establishment of a formal office, a hypothetical "controller of hubristic persons," but rather by the willful intervention of "whoever among the enfranchised Athenians so wishes." The voluntary prosecutor (NAM in good standing) took it upon himself to initiate a legal action before a large body of citizens and at considerable legal (as well, we must assume, in some cases, less formal but very real) risk to himself.<sup>53</sup> The maintenance of "good order" in Athens was consequently dependent upon the presence of individuals willing to serve as voluntary prosecutors -- whether out of a concern for the public good, desire for personal revenge, self-aggrandizement via public display, or (most likely) some combination of these. Unlike the normative aristocratic polis, which assigned the responsibility for investigation and chastisement to an appointed individual and (potentially and in principle) left the rest of the citizens out of it, in democratic Athens the entire citizen body was (potentially and in principle) involved in the maintenance of public order through the prosecution of the deviant individual.<sup>54</sup>

How should we read the Athenian legal conflation of women, slaves, and weaker citizens as potential objects, rather than originators, of subversive behavior? In light of the strong women depicted in Attic drama, it seems illegitimate to read the hubris law as proof that Athenians saw women as fundamentally "apolitical" or incapable of agency. The women of Aristophanes' Ecclesiazusae, for example, seem to manifest all the characteristics of Aristotle's "natural citizens." Their stated motivation in seeking to seize control of the government is the communal project of "saving the polis." Led by the attractively portrayed character Praxagora, the women-citizens of the play seek to reconcile various aspects of metrios mentality and democratic ideology. Their program of collectivization would end in



freeing all Athenian NAMs from the necessity of labor and in equalizing opportunity for the enjoyment of such pleasures (especially food and sex) as the society had to offer.

Notably, Praxagora is not portrayed as an elite woman: she is the wife of Blepyros, a citizen who owns but a single cloak and depends in part upon his Assembly pay for the sustenance of his family (cf. Aristotle, Politics 1300a1-4). Praxagora "goes out in public" when necessary, without prior approval of her husband, and not only to engage in economically productive work. She excuses a nocturnal absence by claiming that she was called out to aid a friend undergoing childbirth (Ecclesiastus 526-34). Her excuse points to an Athenian world of female friendship, association, and mutual aid – a world that would presumably be restricted in an aristocratic regime characterized by presence of a gunaikonomos. Praxagora had no slave attendant and so ventured out all alone – she explains that she donned Blepyros' male clothing in order to appear more formidable to potential cloak-thieves. We are reminded of Aristotle's comment that among the poor, women (and children) perform the sorts of tasks (in this case, defense of property) that the wealthy delegated to slaves. The point, once again, is the problematic (from the perspective of the metrios mentality) inclusion of poor men among the active-citizen body, which leaves open the possibility of the (situationally contingent and partial) assimilation of the women (and other non-NAMs) to citizens.

It is not easy (maybe not possible or even desirable) to sustain a claim that any given drama guides its audience to a simply positive or negative evaluation of that possibility. But it seems highly likely that drama was at once informed by the complexity of democratic ideology, and contributed in some measure to how Athenians thought about the evolving matrix of social and political values with which and by which they lived their lives.

## CONCLUSIONS: ANCIENT POLITICS AND MODERN THEORY

I have suggested that in classical Athens the practice of participative democracy led to the development of a regime that was at once constitutional and fostered something like modern liberal values. Democracy promoted the development of both positive participation rights and negative liberties. Whereas participation rights were limited to NAMs, certain negative liberties were (at least in legal principle) extended to all residents of Athenian territory. If we regard the NAM body as a collective sovereign, the Athenian case might (ironically) be taken as proof of Berlin's contention that subjects of a autocrat may enjoy negative liberties. But the sociologically diverse Athenian demos is very different from Berlin's imagined unitary sovereign, and I have argued that it is the ideological complexities associated with the social diversity of the citizenry that is the key to understanding the development of what I have been calling "quasi-rights." The Athenian constitutional order developed from and was sustained by a complex and contradictory ideology. The contradictions of the ideology were exposed by both "external" critics like Plato and by institutionalized critics, notably the comic poets. The experience of regularly being confronted with contradictions between social norms and the implications of political practices was an important aspect of the education of the democratic citizen. It encouraged habits of public deliberation, cut against the binary opposition between "citizen and Others," and so promoted a distribution of relations of justice that was considerably wider than the majoritarian logic of participatory democracy would otherwise have demanded.

The more general question of what Greek democracy might mean for contemporary politics and political thought has been asked, overtly and implicitly, in much recent work by both political theorists and classicists.<sup>55</sup> I conclude by reiterating three reasons that the study of the Athenian experience of democracy seems to me useful to modern political theorists.

First the Athenian example highlights the potential interpretive leverage gained by assessing a variety of text genres (here: historiography, comedy, forensic oratory, and partisan pamphlets, as well as political philosophy), and by juxtaposing practices, law, ideological assumptions, normative statements, and formal philosophical claims. The modern academic tendency (which is, happily, far from universal) of subdividing the study of politics such that political theorists and philosophers deal with “ideas” while the analysis of political practices and ideologies is delegated to historians, leaves too much out of any given picture. The establishment of sharp dichotomies between “rational discourse” of intellectuals and the ideological assumptions common to ordinary people tends to obscure how indebted intellectual thought may be to ordinary political discourse and ideological presuppositions. Athenian political texts discourage this sort of dichotomous thinking, in part because they were written in a “pre-disciplinary” era.

Second is the overt Greek concern with the practical and ideological effects of social power inequality, especially that produced by wealth inequality. The Greeks approached the issue of wealth-power from a perspective very different from that generally assumed by modern writers, who find it difficult to approach issues of wealth and class outside the interpretive framework defined (in schematic terms) by Adam Smith (and his advocates and critics) on the one hand, and Karl Marx (with his advocates and critics) on the other. Whereas it would be very foolish to suppose that the ancient approach to “social life and politics” is inherently superior to modern discussions, it is, I think, potentially valuable in offering a pre-capitalist, pre-Marxist viewpoint.

Third, and for me the most important, is the unambiguous classical Athenian focus on the pragmatic and performed status of political privileges and legal immunities. Lacking any clear distinction between citizenship and government, or any metaphysical basis for the assertion of rights claims, the

Athenians saw that establishing and maintaining individual dignity and democratic public authority was predicated on the actions of society's members. If rights were not consistently and accurately reperformed by most of the people most of the time, they would simply cease to exist. This understanding might offer some purchase on the failure of traditional forms of liberal universalism to come fully to grips with assertions of "group rights" predicated on the establishment and maintenance of a specific group identity.<sup>56</sup> Moreover, the Athenian democrats' willingness to trust "voluntarism" and general reluctance to delegate important authority to specific governmental agents may offer an alternative to the modern tendency to associate of the maintenance of rights and the strength of the formal institutions established by a powerful (if potentially threatening) central government.

Of course no polis – not even democratic Athens at its best and understood in the best possible light – is an appropriate model for the establishment of a modern social or political regime. My point is not that we should take Athens as a paradigm, but that the history of the democratic polis is "good to think with." It offers us, as moderns, a perspective on the possible spectrum of relationships between democratic politics, political sociology, and moral values that is at once strikingly familiar and radically alien. As such, Athens may present a therapeutic challenge, not only to those who would deny any connection between participatory democracy and the extension of negative liberties, but to a complacent "end of history" tone that sometimes seems to affect even the best work by contemporary liberal thinkers.

ENDNOTES. OBER, Quasi-Rights.

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<sup>1</sup> Barry R. Weingast, "The Political Foundations of Democracy and the Rule of Law," American Political Science Review vol. 91, no. 2 (June 1997): 245-63, develops the game-theoretic basis for a rational choice model along these lines. Although my argument here focuses on social practices and values rather than on rational choice, it is compatible with Weingast's model. I received very helpful comments on earlier versions of this paper delivered at New York University, the University of California at Santa Cruz, Stanford University, and Princeton's University's Center for Human Values. Special thanks to Barry Strauss and Phillip Mitsis, for discussions that led to the writing of this paper, and to Emily Mackil for editorial assistance and substantive comments.

<sup>2</sup> Fareed Zakaria, "The Rise of Illiberal Democracy," Foreign Affairs vol. 76, no. 6 (November/December 1997): 23-43. For a good discussion of the traditional conflict between the liberal "rights of the moderns" (religious liberty, liberty of conscience, thought and expression, rights of person and property) and the democratic "rights of the ancients" (freedom of political speech and participation rights), and an argument that these can be conjoined within a conception of deliberative democracy based on reasonable plurality, see Joshua Cohen, "Procedure and Substance in Deliberative Democracy," Democracy and Difference ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), 94-119.

<sup>3</sup> Zakaria, "Rise of Illiberal Democracy" (n. 2), 28. Zakaria's examples of constitutional liberalism leading to democracy include 19<sup>th</sup> century Britain, Hong Kong, and contemporary "semi-democratic" East Asian regimes. His examples of democracy failing to bring about constitutional liberalism include sub-Saharan Africa, Haiti, Central Asia, and "the Islamic world," *ibid.* 26-29.

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<sup>4</sup> Ibid. 26.

<sup>5</sup> Benjamin Constant, “The Liberty of the Ancients Compared with that of the Moderns”, in Benjamin Constant, Political Writings, ed. and trans. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 307-328. Isaiah Berlin, “Two Concepts of Liberty”, in Four Essays on Liberty (Oxford: Oxford University Press, 1969), 163ff; esp. 164f. On Berlin’s conception of negative liberty and his debt to Constant, see John Gray, Isaiah Berlin (Princeton: Princeton University Press, 1996), 5-37, esp. 20. Berlin quotes: “Two Concepts of Liberty” p. 14, 56, cited by Quentin Skinner, Liberty before Liberalism (Cambridge; New York: Cambridge University Press, 1998), 115.

<sup>6</sup> See David Whitehead, The Demes of Attica 508/7-CA. 250 BC A Political and Social Study (Princeton: Princeton University Press, 1986), 67.

<sup>7</sup> For a general discussion of Athenian democratic equality, see Kurt A. Raaflaub, “Equalities and Inequalities in Athenian Democracy”, in Demokratia. A Conversation on Democracies, Ancient and Modern, ed. Josiah Ober and Charles Hedrick (Princeton: Princeton University Press, 1996), 139-174.

<sup>8</sup> Aristotle, Politics 1291b3-34.

<sup>9</sup> The story of how the demos came to be defined in the terms of “non-leisured” Athenians (or, conversely, all NAMs) rather than the terms of the elite is important and interesting, but not my main focus here: cf. Josiah Ober, The Athenian Revolution. Essays on Ancient Greek Democracy and Political Theory (Princeton: Princeton University Press, 1996), esp. ch. 6; Victor D. Hanson, “Hoplites into Democrats: The Changing Ideology of Athenian Infantry” in Demokratia, ed. Ober and Hedrick (n. 5), 289-312, and Barry S. Strauss, “The Athenian Trireme, School of Democracy” in *ibid.*, 313-326; Kurt Raaflaub and Josiah Ober exchange in K. Raaflaub and I. Morris (eds.), Democracy 2500?

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(Dubuque, Iowa: Kendall/Hunt, 1998), 67-85.

<sup>10</sup> Policing: Virginia J. Hunter, Policing Athens. Social Control in the Attic Lawsuits, 420-320 BC

(Princeton: Princeton University Press, 1994); David Cohen, Law, sexuality, and society. The enforcement of morals in classical Athens (Cambridge: Cambridge University Press, 1991).

<sup>11</sup> Thucydides, The Peloponnesian War, ed. [trans.] Benjamin Jowett (Oxford: Clarendon Press, 1881)

with revisions of Simon Hornblower, A Commentary on Thucydides (Oxford: Clarendon Press, 1991),

*loc.cit.*

<sup>12</sup> Athenian demographics: Citizens and their families: Mogens H. Hansen, Demography and

Democracy: The Number of Athenian Citizens in the Fourth Century B.C. (Herning: Sistrup, 1985).

The number of foreign residents and slaves was large, but cannot be accurately estimated. In any event, citizens cannot have been more than about one-fifth of the total population at any time during the democracy.

<sup>13</sup> On the distinction: Ober, Athenian Revolution (n.7) ch. 11, with literature cited.

<sup>14</sup> Bipolarity of Athenians and others: Paul Cartledge, The Greeks. A Portrait of Self and Others

(Oxford: Oxford University Press, 1993); link to democracy: Jennifer Tolbert Roberts, "Athenian

Equality: A Constant Surrounded by Flux," in Demokratia, ed. Ober and Hedrick (n.5), 187-202;

racism and misogyny: Morris, Archaeology as Cultural History (Cambridge: Cambridge University Press, forthcoming).

<sup>15</sup> See Ober, Athenian Revolution (n. 7), ch. 11.

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<sup>16</sup> The distinctions between what people say and what they do, what people say in official circumstances and what they say among intimates, is relevant here, but hard to specify.

<sup>17</sup> See, for example, Ober, Athenian Revolution (n.7) ch. 5 on the inevitability of criticism.

<sup>18</sup> Judith Butler, Excitable Speech: A Politics of the Performative (New York: Routledge, 1997) offers one account of the relationship between performance and culture; my thanks to Susan Lape for clarifying for me how Butler's work can be applied to Athens. My own understanding of how dominant ideologies are challenged by alternative performances is sketched in Athenian Revolution, 148-54.

<sup>19</sup> See Morris, Archaeology as Cultural History.

<sup>20</sup> Morris, Archaeology as Cultural History, chapter 4. In my own work, I have tended to use the term ideology to cover both aspects of thought and practice, and it is important to keep in mind that there is no practical way to segregate "mentality" from "ideology" in the thought of any given person at any given time.

<sup>21</sup> Chattel slaves, either Greek prisoners of war or (more often) non-Greeks imported specifically to serve as slaves, could be bought and sold as ordinary property. Helots and other unfree "serfs" were tied to the land; they could not be bought or sold but otherwise lacked liberties and immunities.

<sup>22</sup> Ian Morris, "The Strong Principle of Equality and the Archaic Origins of Greek Democracy", in Demokratia, ed. Ober and Hedrick (n.5), 19-48; Leslie Kurke, "The Politics of Habrosune in Archaic Greece," Classical Antiquity 11 (1992), 91-120; and (believing it to be a reality rather than an ideology,) Hanson, "Hoplites into Democrats" (n.7).

<sup>23</sup> Philip Brook Manville, The Origins of Citizenship in Ancient Athens (Princeton: Princeton University Press, 1990).



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<sup>24</sup> Ober, Athenian Revolution (n.7), chapter 4.

<sup>25</sup> For the struggle between habrosune and metrios mentality, see Ian Morris, *art.cit.* (n.19); Leslie Kurke, *art.cit.* (n.18); Kurke, The Politics of Meaning in Archaic Greece: Coinage, Bodies, Games, and Gold (Princeton: Princeton University Press, forthcoming).

<sup>26</sup> Centrality of politics: Pierre Lèveau & Pierre Vidal-Naquet, Cleisthenes the Athenian. An Essay on the Representation of Space and Time in Greek Political Thought from the End of the Sixth Century to the Death of Plato, ed. [trans.] David Ames Curtis (Atlantic Highlands, NJ: Humanities Press, 1996); Christian Meier, The Greek Discovery of Politics, [trans.] David McLintock (Cambridge, MA & London, England: 1990); Jean-Pierre Vernant, The Origins of Greek Thought (Ithaca, NY: Cornell University Press, 1982). My argument does not embrace extreme claims about the "primacy of politics" in Greek culture (see, e.g. Paul A. Rahe, Republics Ancient and Modern. Classical Republicanism and the American Revolution (Chapel Hill; London: University of North Carolina Press, 1992)), but likewise rejects the attempt to read Athens as primarily family- and cult- centered (see e.g. Cynthia Patterson, The Family in Greek History (Harvard University Press, 1998)).

<sup>27</sup> Inscriptions: David Whitehead, "Cardinal Virtues: The Language of Public Approbation in Democratic Athens," Classica et Mediaevalia 34 (1983): 55-74. Speeches: Josiah Ober, Mass and Elite in Democratic Athens (Princeton: Princeton University Press, 1989).

<sup>28</sup> The contrast, among republics, is with societies like that of ancient Rome, in which religious, social, economic, and political power were concentrated in the hands an aristocratic oligarchy. I know much less about monarchical societies (e.g. classical China), but I suppose that they might manifest an even

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more fully developed isomorphism between various sorts of power, and consequently fewer obvious contradictions or opportunities for ideological confusion.

<sup>29</sup> On democracy in post-classical Athens, see Christian Habicht, Athens from Alexander to Antony (Cambridge: Harvard University Press, 1997). On the ways in which post-classical Athenian political culture may have resorted to essentializing ideological tactics, see Susan Lape, "Community and Politics in Menander," (Ph.D. Dissertation: Princeton University, 1998).

<sup>30</sup> On this passage of Ps-Xenophon, cf. Arnold W. Gomme, "The Old Oligarch," in A.W. Gomme, More Essays in Greek History and Literature, ed. David A. Campbell (Oxford: Basil Blackwell, 1962), 61-62, 67-68, (originally published in Athenian Studies Presented to W.S. Ferguson: Harvard Studies in Classical Philology, Suppl. vol. i, (1940), 211-245). The association of revolutionary change in the politeia with a change in the dominant element in the citizen body (politeuma) is a key issue for Aristotle in the Politics; see below, p.8.

<sup>31</sup> For a fuller account, see Ober, The Athenian Revolution (n.7), ch. 11.

<sup>32</sup> For Aristotle's doctrine of natural slavery, see Aristotle, Politics 1252a24-1256b40, with the discussion of Peter Garnsey, Ideas of Slavery from Aristotle to Augustine (Cambridge: Cambridge University Press, 1996), with literature cited.

<sup>33</sup> The Greek text is partially corrupt here; see Gerald Bechtle, "A Note on Pseudo-Xenophon, *The Constitution of the Athenians* 1.11," Classical Quarterly 46, no.2 (1996):564-566, who discusses the difficulties and offers a sensible solution. The point, for Ps-Xenophon, is that because the Athenians enter into legally binding financial agreements with their slaves, under the terms of which the slaves are

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eventually able to manumit themselves, the free Athenians are not able to do whatever they wish in respect to slaves and are therefore "slaves to slaves."

<sup>34</sup>N.R.E. Fisher, Hybris. A Study In The Values Of Honour And Shame in Ancient Greece (Warminster: Aris & Phillips, 1992).

<sup>35</sup> I offer a detailed analysis of this speech in Athenian Revolution, chapter 7.

<sup>36</sup> Douglas M. MacDowell, Demosthenes, Against Meidias (Oration 21). (Oxford: Clarendon Press, 1990), loc.cit.

<sup>37</sup> Enktesis and isoteleia: David Whitehead, The Ideology of the Athenian Metic (Cambridge: Cambridge Philological Society, 1977). Wealthy metics and slaves: Edward E. Cohen, Athenian Nation, (forthcoming).

<sup>38</sup> Edward E. Cohen, Ancient Athenian Maritime Courts (Princeton: Princeton University Press, 1973), id. Athenian Nation (n. 34).

<sup>39</sup> On the question of religious freedom and the law against impiety: Robert Parker, Athenian Religion: A History (Oxford: Clarendon Press, 1996), 207-211, 214-215. On metics and slaves in Athenian religious life: Cohen, Athenian Nation (n.34).

<sup>40</sup> Periclean citizenship law: Alan L. Boegehold, "Perikles' Citizenship Law of 451/0 B.C." in Athenian Identity and Civic Ideology, ed. Alan L. Boegehold and Adele C. Scafuro (Baltimore and London: Johns Hopkins University Press, 1994), 57-66, with literature cited. Autochthony, ergo patriotism: Ober, Mass and Elite (n.24), 261-266. Cohen, Athenian Nation, discusses the evidence for naturalization in detail. He also argues that the citizenship law potentially allows any individual to be legally accepted as a citizen so long as he was born of two long-term non-citizen residents of Attica, but

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I do not believe that the evidence he cites supports the sharp legal distinction between the terms astos and polites upon which his argument depends.

<sup>41</sup> The procedure for enfranchisement and its relative rarity: M.J. Osborne, Naturalization in Athens (Brussels: AWLSK, Klasse der Lettern, Jaargang 43, Nr. 98, 1981). House of Pasion and Apollodorus. Ober, Mass and Elite (n.24), 212-214. See also Jeremy Trevett, Apollodoros the Son of Pasion (Oxford: Clarendon Press, 1992).

<sup>42</sup> Metic service in Athenian armed forces: Whitehead, Ideology of the Athenian Metic (n.34), 82-86. Slaves in military service: Peter Hunt, Slaves, Warfare, and Ideology in the Greek Historians (Cambridge: Cambridge University Press, 1998).

<sup>43</sup> Cohen, Athenian Nation, discusses the evidence in detail.

<sup>44</sup> For the claim that women in democratic Athens were actually less free than in aristocratic poleis, couched in negative terms, see Aristotle, Politics 1269b5-1270b7.

<sup>45</sup> Gynaikonomoi at Athens and elsewhere: B.J. Garland, "Gynaikonomoi: An Investigation of Greek Censors of Women" (PhD Dissertation: Johns Hopkins University, 1981). See D. Cohen, Law, Sexuality and Society: The Enforcement Of Morals In Classical Athens (Cambridge & New York: Cambridge University Press, 1991), on myth of seclusion of women at Athens.

<sup>46</sup> Cf. Thucydides 2.45.2: "If I may speak also about the women who will now be widows, I shall define it all in a brief admonition. For great is the glory for you not to be worse than your existing nature, and not to be talked about for good or evil among men." (Translation of J.S. Rusten, Thucydides, The Peloponnesian War, Book II (Cambridge: Cambridge University Press, 1989), loc.cit., with adaptations suggested by Simon Hornblower (n.9), loc.cit.

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<sup>47</sup> See further, Josiah Ober, Political Dissent in Democratic Athens: Intellectual Critics of Popular Rule (Princeton: Princeton University Press, 1998), pp. 122-55.

<sup>48</sup> The argument here is made in more detail in Ober, "How to Criticize Democracy in Late-Fifth and Fourth-Century Athens," in Ober, The Athenian Revolution (n.7)

<sup>49</sup> Although Aristotle's concept of aristocracy is a complicated philosophical contrivance, the fact that some non-democratic poleis did indeed have "controllers of women" allows us to use the term aristocracy rather more broadly than Aristotle (sometimes) did. Some scholars have supposed (although it is not provable) that the hubris law was enacted by Solon, to whom are also attributed laws restricting the behavior of Athenian women at funerals (Plutarch, Solon, 21.5). But the point here is what laws are enforced under the democratic regime.

<sup>50</sup> Plato's Crito: Richard Kraut, Socrates and the State (Princeton: Princeton University Press, 1984).

<sup>51</sup> This would be problematic procedure if the primary concern was the intention of the original lawmaker, but since that is unknowable and undatable, per n. 49 above, I am concerned here with the way the law was used and understood in fourth-century practice.

<sup>52</sup> Phrase kataluein ton demon (vel sim.) and its association with hubris: Aristophanes, Ecclesiazusae 453; Thucydides iii.81.4 (stasis on Corcyra).

<sup>53</sup> Demosthenes' description of the various bad things done to him in private life by Meidias and his cronies illustrates the potential harms that could arise from challenging the powerful, even in Athens.

<sup>54</sup> The Athenians annually appointed many magistrates (by election or, more often, by lot) to undertake various aspects of public business: Mogens H. Hansen, The Athenian Democracy in the Age of

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Demosthenes (Oxford: Blackwell, 1991), pp. 225-45. But the work of magistrates was subordinate to the popular Assemblies and lawcourts, and did not include moral policing.

<sup>55</sup> Peter Euben, Corrupting Youth: Political Education, Democratic Culture, and Political Theory (Princeton: Princeton University Press, 1997); Ober and Hedrick, Demokratia (n.5) sum up a good deal of recent work; and their bibliographies point to more.

<sup>56</sup> See, for example, Charles Taylor, et al., Multiculturalism. Examining the Politics of Recognition, ed. Amy Gutmann (Princeton: Princeton University Press, 1994).