

THE FREEDOM OF THE CITIZEN IN THE GREEK WORLD

M. I. Finley

Cambridge

Men have for centuries exercised their minds in vain to find a workable definition of "freedom". I do not propose to add yet another attempt to the mountain of failures, for I do not believe the term to be definable in any normal sense of the word "definition", and that for two related reasons. The first is that "the concept of 'freedom' can properly be formulated [only] as the antithesis of 'unfreedom' ".¹ The statement, "X has a right", has no content until it is accompanied by "Y has a correlative duty". My second reason is that the gamut of claims, privileges, powers and immunities, and of their correlative duties, "unprivileges", liabilities and disabilities, is too vast over the whole range of human activity, and too varied not only from society to society but also among the members within any known society. The rights recognized in a given society constitute a bundle of claims, privileges, powers and immunities, unevenly distributed among the individual members, even among those who are called "free", so that a definition of freedom encompassing them would be either a tautology or a misrepresentation of the reality.² A man who possessed claims, privileges and powers in all matters against the whole world would be a god, not a man, to paraphrase Aristotle.

In lieu of a definition, I shall begin by pointing up some of the analytical difficulties inherent in any account of the subject and the instability over time of essential conceptions. I start with a quotation from the classic statement of what we may call the "libertarian position", by John Stuart Mill. "The object of this essay", he wrote in the introduction to his *On Liberty*, "is to assert one very simple principle, as entitled to govern absolutely the

¹ E. Leach, "Law as a Condition of Freedom", in *The Concept of Freedom in Anthropology*, ed. D. Bidney (The Hague 1968) 74-90, at p. 74.

² I use the classification of W. N. Hohfeld, *Fundamental Legal Conceptions . . .*, ed. W. W. Cook (New Haven and London 1920).

dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. The principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.... The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."

Mill's "one very simple principle" may be easily asserted, it is less easily elaborated: if nothing else, "self-protection", "harm to others", turn out to be almost as slippery as "liberty" itself. Mill had to acknowledge that later in the same essay: "there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of public offences, may rightfully be prohibited."³

That qualification of course opens the door to the conflict over the relationship between law and morals which has lost little of its sharpness even in our more permissive societies today. Mill managed to keep it within the tight frame of "harm to others". Even when he extended the notion of "public offences" slightly, he went no further than "good manners". Contrast to this doggedly negative approach the following selections from the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations in 1948.

"Everyone, without any discrimination, has the right to equal pay for equal work" (Article 23, sect. 2).

"Everyone has the right to form and to join trade unions for the protection of his interests" (Article 23, sect. 4).

³ World's Classics ed. (reprint 1948) p. 120. For an analysis of *On Liberty* and its place in Mill's work, see Alan Ryan, *J. S. Mill* (London and Boston 1974) ch. 5.

"Elementary education shall be compulsory" (from Article 26, sect. 1).⁴

These clauses exemplify a positive approach, that is to say, they establish claims for individuals (for "everyone" in fact) which, by their very nature, reduce the claims of others—in my first two quotations the claims of employers of labour to liberty of action. Hence enforcement of these rights would cause them "harm".

John Stuart Mill came at the end of one period of sharp political conflict and he codified in an extreme form some principles of the victors. The central issue in the conflict (though not for Mill) may be reduced for our purposes to the freedom of the citizen from the arbitrary authority of a monarch or a foreign power; a freedom, it is important to remember, in which taxation and the autonomy of private economic activity were major components. When the English crown was offered to William and Mary in 1689, the accompanying Declaration of Rights not only dealt with elections, trial by jury, the standing army and the right to bear arms, but also declared expressly that "levying of money without consent of Parliament is illegal". The provisions were all concrete, not abstract statements of freedom or of rights, and they reflected the struggle with the Crown which had been brought to a successful conclusion.

Both the American and the French revolutions, a century or so later, also had their proximate causes in a conflict over taxes and various economic restrictions. The outcome transcended these limited concerns—transcended, but did not eliminate. The most famous rhetoric emerged from the American Revolution, in the second paragraph of the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The rhetoric was not meant to be taken literally: not "all men" since the numerous slaves were excluded; "inalienable" only with important exceptions, for the right to liberty did not prohibit imprisonment, nor did the right to life prohibit capital

⁴ I quote the declaration from M. Cranston, *What Are Human Rights?* (London 1973) Appendix A.

punishment or conscription into the armed forces. The rhetoric was translated into practical propositions in the Constitution, where we find freedom of speech and religion and so on, in the first ten amendments collectively known as the Bill of Rights, but, no less important, we read in the fifth amendment that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." There is no reference to a right of property in the Declaration of Independence, but clearly "the pursuit of Happiness" implied both its existence and its protection.

The road from the conception of rights in the American Constitution to the very different conception in the Declaration of the United Nations was a long and difficult one, strewn not only with debate but also with overt conflict. In the United States, to give but one example, it required an amendment to the Constitution, the sixteenth (not formally adopted until 1913), to permit Congress to levy an income tax, the courts having previously ruled such a tax unconstitutional. I do not propose to pursue that history. I have called attention to certain contemporary aspects of the problem of rights and freedom solely in order to lay the foundation for several conceptual and methodological points that I believe one needs to formulate expressly in an account of the ancient Greek situation (the classical *polis*, more narrowly, in which citizenship was acquired by birth in all but exceptional cases; I shall not be concerned with the Greek cities in the Hellenistic monarchies or in the Roman empire). They are commonplace points. My justification for taking time to state and document three of them is that recent extensive reading of the learned literature has brought home to me how common is the tendency to overlook, ignore and even flout the obvious.

1. My first point is that rights are not fixed entities but historically conditioned variables; that so-called universal or inalienable or natural rights are merely those which a given society, or a given sector of a society, or even a particular individual favours. The dialectic is that specific "natural rights" arise as a positive demand against authority, only to be transformed into an argument against further changes in the social and political arrangements.

Freedom was once used as an argument against the income tax; it is now deployed as an argument against the right to equal pay for equal work. The latter is not traditional, it is argued, it embodies no *universal* moral right (it cannot apply to those who do not work for pay), it is not enforceable. The poverty of such arguments requires little demonstration.⁵ Freedom of speech was not always traditional either, it too cannot apply to various categories of people, it is not always enforceable.

2. Changes in the matrix of rights that prevail in any society normally begin in a struggle over specific issues, not over abstract concepts or slogans. The rhetoric and the abstractions come later, and then are reified. Consider *stasis*, civil strife, in the Greek world. Although the dominant line of Greek writers, from Thucydides to Aristotle, called it the greatest of evils, they had little impact on the Greek people, who went on with their *staseis* unrelentingly. Why? Because, Aristotle concluded in our textbook on Greek *stasis*, the fifth book of his *Politics*, one sector of the community sought more *kerdos*, profit, gain, material advantage, and more *time*, honour (1302a32), two concrete, definable objectives. The methods employed ranged from normal political means to open civil war; the intellectual argument, when there was one, centred round the concept of equality, the only abstraction which Aristotle introduced into his analysis.

3. Any attempt to gain more rights and privileges for one man or one class or one sector of the population necessarily involves a corresponding reduction of the rights and privileges of others. In all hitherto existing societies, ever since the expulsion from the Garden of Eden, rights have clashed. At least in those spheres of human behaviour that involve goods or power or honour, one man's claims and privileges are another man's duties and disabilities. That is not one jot less true if we resort to Greek and say *agon*, as anyone knows who has read his Pindar with an eye to the values expressed. A gain on either side automatically entailed a corresponding loss on the other side, and naturally led to resistance from that side. That is what underlay *stasis* in the Greek city-states, and *stasis* was by definition restricted to the citizen-

⁵ For an illustration of the deployment of such empty arguments by an academic writer, see Cranston, *op. cit.*, especially ch. 8.

body, to the free men, to those who already had rights which they wished either to increase or to protect.

One reason for their ability to indulge in so much fratricidal activity was the presence of others who possessed no rights. On this subject the Greek view was virtually unanimous: there was no contradiction, in their minds, between freedom for some and (partial or total) unfreedom for others, no notion that all men are created free, let alone equal. "It was no easy matter", wrote Thucydides (8.68.4) of the oligarchic coup of 411 B.C., "some hundred years after the expulsion of the tyrants to deprive the Athenian people of their freedom, a people not only unused to subjection but for more than half this period accustomed to rule over others."⁶

Thucydides was not thinking of slaves at this point, but of the citizens of the other communities within the Athenian empire. When he used the verb "to enslave" repeatedly as a metaphor for Athenian treatment of subject-states, he was dividing the spectrum of rights very near one end: "freedom" became "unfreedom", "enslavement", the moment the autonomy of the community in foreign and military affairs was lost. Normally, a Greek divided the line very much nearer the other end, the complete loss of what we call personal freedom.⁷ He would not have considered the *perioikoi* of Laconia unfree, though they, like the Athenian subjects, had no autonomy in military or foreign affairs. Nor, turning to the domestic field, would he have called the numerous metics in Athens unfree despite their serious disabilities, such as their debarment from political life, their incapacity to own landed property, their exclusion from state grain requisitions and other public perquisites, their liability to be taken before a magistrate by force when served with a summons in a private lawsuit.

In sum, the citizens possessed a larger share of the bundle of claims, privileges, powers and immunities than anyone else,

⁶ For other texts, see J. A. O. Larsen, "Freedom and Its Obstacles in Ancient Greece", *Classical Philology* 57 (1972) 230-34.

⁷ On the spectrum concept, see my "The Servile Statuses of Ancient Greece", *Revue internationale des droits de l'antiquité*, 3rd ser., 7 (1960) 165-89; "Between Slavery and Freedom", *Comparative Studies in Society and History* 6 (1964) 233-49.

though not all citizens had equal shares. The freedom of the Greek citizen cannot be examined solely as an antithesis to unfreedom, to slavery: one must acknowledge the range among the free. In particular, it must be recognised that what we commonly call privileges or immunities are not something apart from rights but a proper class within the genus "rights", and therefore a component of freedom. A public distribution of grain, the gift of an African prince to Athens in 445 B.C., led to a purge of the citizen roster because some non-citizens, falsely inscribed as citizens, were claiming a privilege to which they were not entitled.⁸ At first sight that might appear a minor instance, almost a caricature of the subject of rights and freedom, but behind it there looms a major consideration, namely, the positive right of the citizen to assistance with respect to the food supply. Hence two items were regularly on the agenda of the first assembly meeting in each prytany, defence of the city and the corn supply (Aristotle, *Constitution of Athens* 43.4). No doubt few Athenian citizens actively wished the metics to starve, but only the citizen had the right to demand that the state help prevent such an eventuality.

One of the most important privileges of the Greek citizen was the freedom to engage in *stasis*. I am being neither frivolous nor perverse. Nearly a quarter of a century ago Loenen made the acute, and still generally neglected, observation that "illegality is simply not the constant hallmark of *stasis*. The label *stasis* was always also applied to completely legal groups, existing or arising, between whom there were permanent oppositions and tensions which did not burst into spectacular forms."⁹ Freedom that does not include the freedom to advocate change is empty. So is the freedom of advocacy that does not include the freedom to combine with others. And change, as I have already said, entails the loss of some rights by some members of the community. They resist, hence *stasis*.

Now, it is inherent in a political society—and the Greek *polis* was a quintessentially political society—that conflict over im-

⁸ See A. W. Gomme, *The Population of Athens in the Fifth and Fourth Centuries B.C.* (Oxford 1933) pp. 16-17.

⁹ D. Loenen, *Stasis* (Amsterdam 1953) p. 5.

portant matters of substance, in every sphere of life, is sooner or later translated into a political conflict. Our ancient authorities therefore deal with *stasis* solely on that level, as conflict between oligarchy and democracy, as conflict within the oligarchic minority, as conflict between democratic factions. But, then as now, politics was a way of life for very few members of the community. Even when we make allowance for the satisfaction that comes from the right to vote in the assembly or to sit on juries, the fact remains that for most people political rights are purely instrumental: they are means for achieving non-political ends. So are the now traditional, negative rights, such as freedom of speech, freedom of the press, freedom of assembly. These are understandably the rights most dear to intellectuals, to professors, playwrights and publicists. They could also become important to ordinary men in autocracies: the troubles of the good soldier Schweik began when he said in his local café that the flies had left their trademark on the emperor, referring to the portrait hanging over the bar. We are not in the present context concerned with such systems. When Aristotle (*Constitution of Athens* 16.8) reported that Pisistratus, once accused of murder, was so eager to maintain the rule of law that he appeared in person before the Areopagus to defend himself, but that the frightened accuser failed to appear, the philosopher permitted himself the only joke known to me in the entire corpus of his surviving works. Freedom under a tyranny is not a fruitful subject for discussion. In Sparta, I believe, a citizen could safely have said that the flies have left their trademark on King Archidamus, or on Lysander. But could he have advocated a radical change in the *agoge*, abolition of the *syssitia* or the introduction of silver coinage? That is a meaningful question, and, though advocacy would have been a political act, the objectives I have mentioned would not have been.

Modern discussions of the subject of Greek freedom are too narrowly, too obsessively, concerned with political rights and with the negative freedoms. They are also, I believe, too narrowly concentrated on abstract rights, with insufficient attention to their enforceability in practice. If Aristotle's joke about Pisistratus and the rule of law does not strike one as a cogent example, I offer *isegoria*, the right of every citizen to speak and make proposals

in the Assembly, a topic which has recently produced a spate of scholarly articles.¹⁰ That was a right which Spartans lacked, but what happened in practice in the Athenian Assembly? A fifth-century Athenian Thersites could not have been beaten by a nobleman for his presumption; he would usually have been shouted down by his equals.¹¹

Why? Because even the Athenian *demos*, for all its drive towards the right of every individual to full participation in the activity of government, accepted certain limits on the exercise of its political rights. The Athenians extended the use of the lot widely, for example, and they insured rotation of office by the one-year rule, but they exempted the *strategia* from both. The people claimed *isegoria* but left its exercise to a few. Again we must ask, Why?, and one part of the answer is that the *demos* recognized the instrumental role of political rights and were more concerned in the end with the substantive decisions, were content with their power to direct those decisions through their power to select, dismiss and punish their political leaders.¹² On this score they were favoured by an important and genuine equality—equality of the vote. Wherever there was a popular assembly in Greece, the principle of “one man, one vote” prevailed. There was no weighted group voting, as in the Roman centuriate assembly, for example, or in the French Estates General.

In employing such phrases as “the *demos* accepted”, “the *demos* recognized”, I am of course not suggesting that these were deliberate choices made after due examination and weighing of the issues and the possibilities in the rather abstract, conceptual terms I used. The history of struggles for political rights has never been like that. There were a number of critical moments in the prehistory and history of Athenian democracy—the crisis which produced the reforms of Solon, the seizure of power by Pisistratus, the struggle leading to the reforms of Cleisthenes, the internal

¹⁰ See most recently J. D. Lewis, “Isogoria at Athens: When Did It Begin?”, *Historia* 20 (1971) 129–40.

¹¹ Xen., *Mem.* 3.6 and Plato, *Protag.* 319C are decisive on this.

¹² I have discussed aspects of Athenian leadership in *Democracy Ancient and Modern* (London and New Brunswick, N.J., 1973), ch. 1; “Athenian Demagogues”, *Past & Present*, no. 21 (1962) 3–24, reprinted in *Studies in Ancient Society*, ed. Finley (London and Boston 1974) ch. 1.

problems created by the two Persian invasions, the *stasis* of the late 460s which saw the assassination of Ephialtes and which brought Athens to the brink of civil war. Each of these moments was one of struggle, of overt conflict; each centred round specific concrete issues, not round abstract theories about rights or freedom.

The antagonists produced their rhetoric, of course, and I do not underestimate political rhetoric, an expression of basic ideology. If any one term is to be singled out as the "banner" of the ultimately victorious democracy, it is the word *isonomia*, which has two distinct connotations.¹³ The dominant one is "equality through the law", virtually a synonym for "democracy",¹⁴ and therefore regularly employed in the context of political rights. But the other sense, "equality before the law", takes us into a different sphere of behaviour. "With written laws," says Theseus in the *Suppliant Women* (lines 433-7) of Euripides,

People of few resources and the rich
Both have the same recourse to justice. Now
A man of means, if badly spoken of,
Will have no better standing than the weak;
And if the lesser is in the right, he wins
Against the great.¹⁵

The boldness and rarity of such a notion cannot be overstressed. The Romans of the Republic never attained it and never seriously desired to, the Roman emperors openly rejected it.¹⁶ There is no reason in principle why an oligarchy should not accept equality before the law in private relations and there is evidence to suggest that some Greek oligarchies in fact did.¹⁷ Then, with the demise of the independent Greek *polis*, the western world had to wait

¹³ I follow B. Borecky, "Die politische Isonomie", *Eirene* 9 (1971) 5-24, on the double sense of *isonomia*.

¹⁴ See above all G. Vlastos, "*Isonomia politike*", in *Isonomia*, ed. J. Mau and E. G. Schmidt (Berlin 1964) pp. 1-35, to whom I owe the word "banner".

¹⁵ Translated by Frank Jones. For other texts, see Borecky, "Isonomie", pp. 12-15.

¹⁶ See J. M. Kelly, *Roman Litigation* (Oxford 1966), especially ch. 3; Peter Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford 1970) part III.

¹⁷ Thuc. 3.62.3.

until recent times before the doctrine was reasserted and reintroduced. And modern experience, including our own, has shown that there is no principle more difficult to translate fully into practice than that of equality before the law. What was the ancient Greek reality?

To begin with, there was a grave technical weakness: there was insufficient governmental machinery for the purpose. To a considerable extent in the case of public offences, and almost wholly in the case of private legal disputes (including many accusations of what we call "crimes", murder for one), legal redress depended on self-help, from the initial summons to the final execution of a judgment. At the beginning of his year in office the Athenian archon proclaimed by herald that everyone shall possess and control to the end of the year whatever property he held at the beginning (Aristotle, *Constitution of Athens* 56.2), but the archon was largely powerless to fulfil that intention against an obstinate and sufficiently powerful miscreant. Self-help is a workable procedure between equals: it weighs the scales heavily in the case of unequal.¹⁸

Consider the behaviour of the wealthy Meidias, son of Cephisodorus. In 349 B.C., Demosthenes undertook the liturgy of preparing a male chorus for the Greater Dionysia of the following year. His old enemy Meidias then embarked on a career of disruption, including nocturnal entry into a goldsmith's shop in order to destroy the garments and golden crowns that were being prepared for the chorus, bribery of the chorus-master to prevent proper rehearsals, and a number of hooligan actions at the festival itself. Demosthenes' chorus failed to win the first prize and the orator took Meidias to court. In the course of his long address to the jury he said the following (21.20): Some of Meidias' previous victims "remained silent because they were cowed by him and his insolence, his henchmen, his wealth and all his other resources; others chose to go to court and failed; still others came to terms with him". Demosthenes won his case—and promptly came to terms with Meidias, for 3000 drachmas (Aeschines 3.52).

Demosthenes' oration against Meidias has been an embarrass-

¹⁸ The analysis by R. von Jhering, "Reich und Arm im altrömischen Civilprozess", in his *Scherz und Ernst in der Jurisprudenz* (3 ed., Leipzig 1885), pp. 175 ff., can hardly be bettered.

ment to modern scholars. It has been ignored, rejected, dismissed as an unfinished draft of an undelivered speech in a case that never came to trial—not on the evidence of the oration itself, but, one must assume, on a reluctance to believe that such things could go on in classical Athens and the wealthy rascal remain unpunished, and on an equal reluctance to believe that the great Demosthenes would have so demeaned himself as to allow himself to be bought off cheaply by Meidias.¹⁹ Similar disbelief is less in evidence with respect to the opposite view, repeatedly stated by Greek pamphleteers, theorists and comic poets, that the Athenian juries took every opportunity to plunder the rich. "Court verdicts", we read, "amounted to pure arbitrariness, which could not be overcome because of the primitive procedure and the pettifogging of the advocates."²⁰ The words are those of a professor of Hamburg, not of the anonymous oligarchic author of the late fifth-century work known as the *Constitution of Athens*, but a close study of the surviving forensic speeches has shown that the conclusion is based on political preconceptions akin to those of Pseudo-Xenophon, and on the professional preconceptions of a modern continental jurist.²¹ Meidias had no fear of being plundered, and rightly so: the family fortune remained sufficiently intact to permit his sons to perform expensive liturgies half a century after the affair with Demosthenes.²²

Athens was no Utopia. Injustices were committed there, both

¹⁹ See the analysis by H. Erbse, "Über die Midiana des Demosthenes", *Hermes* 84 (1956) 135-51, which I have followed. K. J. Dover, *Lysias and the Corpus Lysiaca* (Berkeley and Los Angeles 1968) pp. 172-4, rejects Erbse's analysis for the traditional view that the speech was not delivered. However, he concludes that Demosthenes "did not judge that circulation of such a document would damage his reputation", and that is sufficient for my argument.

²⁰ E. Ruschenbusch, "Dikasterion panton kyrion", *Historia* 6 (1957) 257-74, reprinted in *Zur griechischen Rechtsgeschichte*, ed. E. Berneker (Darmstadt 1968) pp. 350-373, at p. 362. The ancient texts are quoted there, and are all accepted at face value.

²¹ J. Meinecke, "Gesetzesinterpretation und Gesetzesanwendung im attischen Zivilprozess", *Revue internationale des droits de l'antiquité*, 3rd ser., 18 (1971) 275-360; H. Meyer-Laurin, *Gesetz und Billigkeit im attischen Prozess* (Weimar 1965).

²² See J. K. Davies, *Athenian Propertied Families 600-300 B.C.* (Oxford 1971) no. 9719.

by individuals and by official bodies. *Isonomia* in practice cannot be assessed by the evocation of individual instances, or by literal acceptance of the rhetoric on either side. I am doubtful that a proper assessment, with all the necessary nuances, is possible today, given the available evidence. But there is one sphere in which we can be confident that the rule was inequality, not equality, before the law. I refer to the law of debt, which lay heavily and onesidedly on the defaulting debtor. His property was subject to forceable seizure, by self-help, though after due process, and in many Greek states also his person.²³ Solon put an end to personal bondage in Athens, and the magic of Solon's name induces forgetfulness of the fact that he was an Athenian, not a Greek, lawgiver. Solon greatly influenced political theory and political ideals; he made less impact on the law outside his native city. Cancellation of debts and redistribution of land together were the perennial "revolutionary" demands in the Greek cities. Debtors are "very dangerous" when a city is under siege, wrote the fourth-century B.C. mercenary captain Aeneas (14.1).

The incompatibility of freedom and demands for equality is a familiar dogma throughout the history of political theory. There were many Greeks, however, who believed that the fundamental incompatibility was between freedom and inequality, though they are not easily to be found among those who wrote books. In the political field, narrowly understood, steps were taken to create an artificial equality, carried furthest in Athens: they included the widespread use of selection by lot, pay for office, annual rotation of office, ostracism. But there were limits: it is hard to imagine how the education and leisure necessary for political leadership could have been equally distributed, and no one tried. It is equally hard to imagine devices aimed at an artificial equality in the juristic sphere, in private relations between individuals, short of either the abolition or the equalization of wealth. And no one tried in practice, though a rare Utopian writer, notably

²³ Egon Weiss, *Griechisches Privatrecht* (Leipzig 1923) bk. IV, remains fundamental despite the correct criticism of some reviewers that throughout the book he paid insufficient attention to social and political change in Greek history: e.g. Kurt Latte in *Gnomon* 1 (1925) 255-64, reprinted in his *Kleine Schriften* (Munich 1968) pp. 313-22.

Phaleas of Chalcedon, showed a realization of this central issue.²⁴

Nevertheless, it is an absurdity to dismiss Athenian, or any other Greek, judicial procedure as "pure arbitrariness", to relegate *isonomia* to the realm of empty rhetoric. Classical Greek communities would have torn themselves apart long before Philip and Alexander brought the curtain down on the city-state. They were not Utopian communities, neither were they the victims of pure arbitrariness, caprice and anarchy. Under the best conditions, they practised the principles of the rule of law and equality before the law as well as could be expected, though always setting the citizen above all other men in both respects. In matters of property and contract they allowed wide, though of course not absolute, freedom to the individual,²⁵ and sought to protect that freedom against fraud and duress. Restrictions on the individual's freedom in this broad sphere were as likely to arise from social pressures as from the law, for example in the preference for certain forms of income-producing wealth against others.

To catalogue and examine the rights and disabilities through the whole gamut of property relations would require another essay. I shall restrict myself to one example because of two important implications, and that is the virtually unlimited freedom of a slaveowner to manumit his slaves. In Rome, when a citizen slave-owner did that the freedmen automatically became Roman citizens (with exceptions that are irrelevant in the present context). But never in Greece, so far as I know. More broadly a Greek had his freedom severely restricted by law in any activity that entailed the introduction of new members into the closed circle of the citizen-body.²⁶ That meant, in particular, tight restriction in the field of marriage and family law. The state determined the legitimacy of a marriage, not only by laying down the required formalities but also by specifying the categories of men and women who could, or could not, marry each other, and in so doing they

²⁴ See my "Utopianism Ancient and Modern", in *The Use and Abuse of History* (London and New York 1975) ch. 11.

²⁵ See e.g. my *Studies in Land and Credit in Ancient Athens* (New Brunswick, N.J., 1952) pp. 113-7.

²⁶ See now Ph. Gauthier, "'Générosité' romaine et 'avarice' grecque: sur l'octroi du droit de cité", in *Mélanges... William Seston* (Paris 1974) pp. 207-15.

went well beyond the incest taboos. Pericles' law of 451 or 450 B.C., prohibiting marriage between a citizen and a non-citizen, is only the most famous instance.²⁷ Violators may not have been punished personally, but their children paid the heavy penalty of being declared bastards, *nothoi*, and therefore being excluded from the citizenship roster as well as having their inheritance rights reduced.

Such disabilities, such limitations on the freedom of the citizen, were accepted without a murmur. A Diogenes did not accept them, of course, but Diogenes renders all discussion impossible. Furthermore, family law cut across political rights and political systems, and that is the second implication arising from my initial example of manumission. In this field of behaviour, and it is not the only one, democracy did not necessarily entail an extension of rights, greater freedom, beyond those existing in oligarchies. On the contrary, Pericles' law of 451/0, for example, was more restricting than any other we know, in any Greek community of that period. Similarly, Athenian women had fewer claims to an inheritance than the women of Sparta or Crete; conversely, Athenian male citizens had less freedom to dispose of their property with respect to their wives, daughters and female relations.

In short, when we turn, as I now do, to the freedom of the Greek citizen in his relations with the state, as distinct from his relations with other individuals, we must try to rid our minds of the false unitary notion that all rights, political and non-political, moved in tandem. I must stress this particularly because I shall be concentrating on classical Athens, the only *polis* other than the very atypical Sparta that is accessible to systematic analysis, and Athens was an exceptional *polis* because of the quality of its democracy and also because of its fifth-century empire.

I begin with the state and the individual in the military sphere. It has been calculated that, during the century and a half from the end of the Persian wars in 479 B.C. to the defeat by Philip of Macedon in 338, Athens was engaged in war on an average of two out of every three years, and never enjoyed a period of peace for as long as ten consecutive years. No wonder that defence of the city was on the agenda of the Athenian Assembly ten times

²⁷ See most recently S. C. Humphreys, "The *Nothoi* of Kynosarges", *Journal of Hellenic Studies* 94 (1974) 88-95.

a year at a minimum. Who performed the necessary military service and under what conditions? If we put aside such marginal groups as archers and slingers, normally mercenaries, the Greek ideal can be formulated in two parts: 1) the propertied sector of the population, both citizens and non-citizens, were obligated to serve as hoplites, paying for their equipment themselves, with the wealthiest performing the even more expensive duties of cavalrymen; 2) the poorer sector of the citizen-body were eligible, but normally not compelled, to serve as rowers in the fleet, supplemented by foreigners and even slaves. That the ideal could not be maintained in grave emergencies or in such a protracted conflict as the Peloponnesian War is obvious and easily documented. Sparta, for example, then had eventually to enrol helots as hoplites, Athens to use slaves as rowers (though she normally was more able than other states to resist this practice).²⁸ And in the fourth century B.C. the professional general and the mercenary soldier became increasingly important.

Had we the information, therefore, a full account of military and naval service in classical Greece would reveal endless variations, according to place, time and circumstance. Nevertheless, the reality approximated the ideal sufficiently, for much of the classical period, to permit us in the present context to assume the existence of the ideal.²⁹ And the fundamental distinction between the richer and the poorer must be carried one step further than I have so far taken it. While on active service, soldiers and rowers were paid a *per diem* sum, the same for both whenever possible except that the hoplite was expected to have a batman, and indeed needed one because of his armour, and he was given a second, identical allowance for his servant. In fifth-century Athens the amount varied from a half-drachma to a drachma a day, according to the state of the treasury and the size of the demand.³⁰ The sources

²⁸ See Y. Garlan, "Les esclaves grecques en temps de guerre", in *Actes du Colloque d'histoire sociale*, Besançon 1970 (Paris 1972) pp. 29-62; "Quelques travaux récents sur l'esclavage en temps de guerre", in *Actes du Colloque sur l'esclavage*, Besançon 1972 (Paris 1974) pp. 15-28.

²⁹ Perhaps I should say once again that tyrannies are excluded from this discussion.

³⁰ The fullest account is W. K. Pritchett, *The Greek State at War*, vol. 1 (Berkeley and Los Angeles 1971) ch. 1-2.

call the *per diem* "pay" and "rations" indiscriminately, a usage which has the implication of a trifling sum, and which may accordingly mislead. Hoplites were usually on active duty for periods of only days or weeks and rarely in full force, and, it is worth repeating, they were not compensated for the considerable cost of their equipment. Their pay was therefore in fact a trifle. A substantial number of triremes, on the other hand, were on duty in fifth-century Athens for seven or eight months of the year, quite apart from the ships called out in an emergency. For those poorer citizens who rowed regularly, their pay thus ranged from perhaps 100 drachmas a year in times of peace to over 200 in the Peloponnesian War—no longer a trifle.³¹

If we now combine the pay situation with the distinction between compulsory military service and voluntary naval service, we are drawn to say that contribution to the defence of the city was a duty of the richer citizens and a privilege of the poorer. That may not be the whole truth: the Greek *polis* was not the only society in history in which army service was transformed from a duty to a privilege, a right, through powerful ideological pressures. But the paradox is valid nonetheless. I shall restate it brutally: the poorer Athenian citizen had the freedom to choose between serving and not serving and to be maintained by the state if he chose to serve, whereas the wealthier Athenian citizen had no freedom in this sphere. I have carefully said "Athenian", not "Greek", because Athenian exceptionalism is very marked here. The obligation of hoplite service was more or less universal, irrespective of the political regime, but the naval side of the paradox existed only in the maritime states, and we may doubt that others were able to pay on the Athenian scale with any regularity.

In so far as non-citizens were drawn into the same structure of military and naval service, political rights were reduced, in this sphere, to a minor, almost irrelevant, factor. However, that is not the important approach. The decision to deploy the army and navy was a sovereign one. In democracies the power lay with the assembly. Since Greek democracies were direct, not representative, many of the men who, on the day, voted for war with Sparta

³¹ Much is obscure on this subject; the fullest account will be found in M. Amit, *Athens and the Sea* (Brussels 1965).

or for the Sicilian expedition, were voting to take themselves off on campaign, with the distinction between hoplite service and naval service I have drawn certainly in their minds. Only in an imaginary world of disembodied spirits could they have been unaware of the personal implications, or unaffected by them.

A similar distinction was to be found in the fiscal sphere. The classical Greeks looked upon direct taxes as tyrannical and avoided them whenever possible.³² The two exceptions in Athens, the only city about which we know enough in these matters, are most revealing. One was the *metoikion*, a flat-rate head-tax paid by every non-Athenian residing in the city for even short periods, a "tyrannical" kind of tax which by its mere existence marked the free non-citizen off from the citizen.³³ The other was the *eisphora*, a capital levy imposed from time to time to meet special military costs, from which the poor, roughly everyone below hoplite status, were exempt. The rich therefore paid for the wars as well as fighting in them (unless they could pass the costs to subject-states). Otherwise normal governmental income was derived from state property, court fees and fines, and such indirect taxes as sales taxes and harbour dues. Again with one exception:

³² That it was not always possible is obvious, and it may be that the smaller, inland agricultural *poleis* were compelled to levy direct taxes regularly, as suggested by H. W. Pleket, "Economic History of the Ancient World and Epigraphy: Some Introductory Remarks", in the *Akten* of the VIth international epigraphical congress, Munich 1972, pp. 243-57, at p. 252. However, I must protest the sporadic attempts to elevate a tiny handful of sources, as many Hellenistic and Roman as classical, into a falsification of the generalization in my text, e.g. by A. Wilhelm in *Sitzungsberichte ... Wien*, 224 no. 4 (1947) 17-19; D. C. Gofas, "Les Carpologues de Thasos", *Bulletin de correspondance hellénique* 93 (1969) 337-70. Pleket (p. 251) rejects the latter's arguments as "not particularly convincing". I should be less cautious, in view of Gofas' construing two key passages, Herod. 6.46 on Thasos and Ps.-Arist., Oec. 2.2.21, on Mende, to say precisely the opposite of what they unequivocally do say (p. 352), and of his heavy reliance on the "revenue laws" of Ptolemy Philadelphus, the Hadrianic oil law and the *gnomon* of the *idios logos*.

³³ Although the *metoikion* was only a drachma a month (and half that for a woman), not a great financial burden, the psychological implication is none the less for that. Cf. the comment of Lord Hailey about modern Africa under European rule: "It might almost be said that the African begins to be recognized as a member of civilized society when he becomes subject to the payment of income tax instead of poll tax" (*An African Survey*, London and New York 1957, p. 643).

the liturgies (*leitourgeiai*), the device by which the state got certain things done, not by paying for them by the treasury but by assigning to richer individuals direct responsibility both for the costs and for the actual performance such as the training of a festival chorus or the command and maintenance of a trireme. The honorific element in liturgies was a strong one, but so was the financial burden.

I called attention at the beginning of my paper to the well-known importance of taxation in the modern struggles for citizens' rights. In Greece, by contrast, taxation was no issue at all in the analogous struggles (except, I believe, against tyranny once again³⁴), and the explanation lies ready to hand. Whatever the grievances and the demands of citizens with restricted rights, they did not refer to a tax burden. In all the vast catalogue of complaints which Aristophanes was able to compile, much helped by his fertile imagination, not once does a peasant or townsman grumble about his taxes. But we do find in Aristophanes, notably in the *Wasps*, the soak-the-rich charge I mentioned earlier. And it is a fact that only in *staseis* designed to overthrow democracy, not in those aimed to introduce or advance it, did fiscal burdens feature prominently, those borne by the rich. Thucydides says so explicitly (8.48.1, 63.4) about the oligarchic coup of 411 B.C. In the fifth book of the *Politics* (1304b20-05a7) Aristotle gives five instances in which oligarchic revolts were provoked by the "wantonness" of the "demagogues", in Cos, Rhodes, Heraclea, Megara and Cyme. Characteristically there are no dates and little concrete information, but it is certain from his concluding sentences that financial charges, particularly liturgies, were an essential element in the conflicts.

For Athens there is the oft-quoted remark of Pseudo-Xenophon (*Constitution of Athens* 1.13): the *demos* "demand payment for singing, running, dancing and sailing on ships in order that they

³⁴ Admittedly, such narratives as we have of the struggle against, and the overthrow of, tyrants have little or nothing to say about tax grievances. I suggest that they were nevertheless an important element because, in Athens, a point is specifically made of the Pisistratean tithe (Thuc. 6.54.5; Arist., *Ath. Pol.* 16.4), which we know to have been abolished as soon as the tyranny was eliminated, and because of the place of direct taxes among the fiscal devices in Ps.-Arist., *Oec.* II.

may get the money and the rich become poorer". That comes from a skilfully contrived political pamphlet, with an unconcealed oligarchic bias. The expressed motive, that the rich should become poorer, need not detain us: the egalitarianism runs counter to all the contemporary evidence, such as the openness with which wealthy Athenians, from Alcibiades to the minor figures in the forensic orations, paraded their wealth in the Assembly and the courts as points in their favour because they employed that wealth in the public interest.³⁵ The uses of wealth, not its possession, were the crux of the matter. However, it does not follow that the remainder of the quotation is as easily dismissable. Pay for a wide range of public activity had become the order of the day in Athens, varying from the *per diem* of the jurors to the naval payments which sometimes amounted to annual salaries, on to the monetary rewards for Games victors and the pensions for war orphans. Non-citizens were sometimes admitted, when there was no alternative, but the fundamental divide is symbolized by a decree of 402 B.C., which voted maintenance for the orphans of men killed in the fighting that overthrew the Thirty Tyrants, and explicitly restricted the benefit to the legitimate sons of citizens.³⁶ The number of boys involved, and therefore the sums of money, were tiny; that is precisely why the decree is so revealing.

I am not for a moment suggesting that a notable proportion of the citizen-body were idlers living at public expense. Most Athenians, like most Greeks, had a low standard of living and worked for it, none harder than the rowers in the fleet, the largest body of men receiving pay from the state. My point is, rather, one which is implicit in the formal language of government—"the Athenians", not "Athens", passed laws, levied taxes, declared war and so on—that in practice the Greek concept of rights was closer in spirit to the one revealed by the United Nations Declaration than to the libertarian position of John Stuart Mill. A citizen had positive claims on the state, not merely the right not to be interfered with in the private sphere. Such claims, if pressed,

³⁵ See A. W. H. Adkins, *Moral Values and Political Behaviour in Ancient Greece* (London 1972) ch. 5.

³⁶ R. S. Stroud, "Theozotides and the Athenian Orphans", *Hesperia* 40 (1971) 280-301.

quickly produced financial crises: I need not review the history of fourth-century Athens on this score, with its chronic difficulties in financing the navy or with the characteristic difficulties of Demosthenes in getting public monies transferred to the war fund from the theoric fund, which provided free admissions to the theatre. Elsewhere *stasis* was endemic, but not in Athens, though no city carried the claims of its citizens to public pay and assistance so far. The key to this Athenian exceptionalism, I have already suggested, will be found in the empire, which is outside this discussion.

Except in moments of desperation when they called for the cancellation of debts and redistribution of the land, Greek citizens failed to press their claims as far as one might imagine they could and would. Despite Pseudo-Xenophon and his co-believers, not even the Athenian *demos* ever mounted an assault on the fortunes or the honours of the Athenian wealthy. Nor, to look at the matter from another angle, did the Greek state exercise its powers in many spheres of behaviour. It did not restrict interest rates, as the Romans did, or (save for Sparta) introduce compulsory education. Neither did it build highways; that is to say, the limits of observable governmental intervention in the realm of rights and duties were set by the structure and value-system of the society, not by transcendental doctrines, just as in the normally neutral realm of technological activities. There were no inalienable rights guaranteed by a higher authority. There were no natural rights. The secular discussion of *physis* and *nomos*, nature and convention, initiated by the Sophists and continued by philosophers of different schools, ultimately found its way into political rhetoric (among the Romans rather than among the Greeks), but it is difficult to discover any significant impact on the practical behaviour of citizens and governments.

This is not to say that the Greeks were determined immoralists. In matters of the family and sexual relations, most notably, there was a common belief that some practices and relations were somehow natural and universal (at least among civilized people), others unnatural, though even here there was wide latitude for legislation and change. What was wholly lacking was a conception of precisely those inalienable rights which have been the founda-

tion of the modern libertarian doctrine: freedom of speech, of religion and so on. In the family field, the Athenian state could narrow the range of legitimate marriage; it would have found it impossible to abolish the incest taboos. But it could make inroads into freedom of speech and thought, and did so when it chose. The operative phrase is "when it chose". Provided the procedures adopted were themselves lawful, there were no limits to the powers of the *polis*, other than self-imposed (and therefore changeable) limits, outside the sphere in which deep-rooted and ancient taboos remained powerful. In 411 B.C., after all, the Athenian Assembly voted to abolish democracy.

What, then, were the sources of rights and duties, of freedom, and what were the sanctions? Where, particularly, were the gods in this whole story? The pervasiveness of rituals, of sacrifices, oaths and oracles is too familiar to require retelling. So is the strength of the public outcry against a blasphemous outrage, or the ubiquity of the curse, public and private. However, it is also true that Greek law had undergone a process of thorough de-sacralization by the classical period.³⁷ Although the religious externals were scrupulously retained, there is silence about divine command, divine favour or divine sanction in the substantive provisions. Athena received gifts and her share of the tribute, she was even given confiscated counterfeit coins carrying her portrait (as was Poseidon in Corinth),³⁸ but she was not invoked in the massive legislative reform of the end of the fifth century. Zeus Xenios protected strangers; he was never invoked to increase the rights of metics: even the pious Xenophon restricted himself to purely utilitarian arguments in the *Poroi* when he called for various benefits, within narrow limits, designed to attract more metics to Athens. In other historical periods, religion has sometimes been a positive ideology on behalf of rights and freedom, in the peasant revolts at the end of the Middle Ages, for example, or in the Calvinist support against autocracy in the sixteenth and seventeenth centuries. Not in Greece, however.

I have oversimplified, of course, under the compulsion of brevity,

³⁷ See Kurt Latte, *Heiliges Recht* (Tübingen 1920).

³⁸ See R. S. Stroud, "An Athenian Law on Silver Coinage", *Hesperia* 43 (1974) 157-88.

and I have concentrated almost entirely on the state and its governmental machinery, leaving aside the important role of informal social pressures, all the stronger because the Greek *poleis* were small, face-to-face communities, in which men lived out their lives in public, so to speak. Granted the need for qualification that a more extended and nuanced treatment would require, the conclusion seems to me to be warranted, nevertheless, that the classical Greek *polis* had evolved an institutional system which, of itself, was capable of formulating, sanctioning, and when necessary changing the intricate network of rights and duties that are subsumed under the label "freedom". The weaknesses which the ancient theorists pursued relentlessly were the strengths of the system seen from within. The greatest flaw, from our standpoint, the underpinning of the *polis* by a majority with restricted rights or with no rights at all, was not one of the weaknesses condemned by the theorists. On the contrary, they held the democratic *polis* to be insufficiently hierarchical, the extension of *isonomia* (in both its senses) to peasants, shopkeepers and craftsmen to be its greatest fault.

Historians have an understandable affinity with their own predecessors, the intellectuals of antiquity, and tend to see ancient realities through their eyes, which means as refracted through their values. There is another way of looking at the Greek realities. It was no one less a man than Pseudo-Xenophon who concluded (3.1): "As for the Athenian system of government, I do not like it. However, since they decided to become a democracy, it seems to me that they are preserving the democracy well."³⁹

³⁹ I am grateful to John Dunn, H. W. Pleket and especially A. Andrewes for advice and criticism.