Ancient democratic eleutheria and modern liberal democrats' conception of freedom

VIII

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ANCIENT DEMOCRATIC *ELEUTHERIA* AND MODERN LIBERAL DEMOCRATS' CONCEPTION OF FREEDOM[1]

I

A central theme in virtually all modern discussions of political freedom is the subdivision of freedom into two sorts, one positive and one negative. On the one hand, freedom is essentially a negative ideal: liberty[2] is freedom 'from' something, i.e. something one can avoid. On the other hand it is also a positive ideal: freedom is characteristically freedom 'to do' something, i.e. something in which one can participate.

The distinction between positive and negative freedom can be found in Kant's writings,[3] but became a central theme in

[1] In this contribution I develop the views I have advanced in *Was Athens a Democracy?* (Copenhagen 1989) and "The Ancient Athenian and the Modern Liberal View of Liberty as a Democratic Ideal", in *Demokratia. A Conversation on Democracies Ancient and Modern*, ed. by J. OBER, C. HEDRICK (Princeton 1996), 91-104.

[2] Like most others I use liberty and freedom synonymously. In Google there are ca. 600,000 attestations of "individual liberty" and ca. 900,000 of "individual freedom".

[3] I. KANT, *Grundlegung der Metaphysik der Sitten* (1785), in *Immanuel Kant. Werkausgabe* XI, hrsg. von W. WEISCHEDEL (Frankfurt am Main 1977), 81.

political philosophy only with Isaiah Berlin's inaugural lecture in Oxford in 1958, entitled *Two Concepts of Liberty*.[4]

According to Berlin, negative freedom is individual freedom, the right to live as one chooses without interference from the state or from other individuals.[5] Everybody has a right to this kind of freedom, and accordingly it is restricted by others' right to the same freedom.[6] One's own right to live as one likes must be balanced against other individuals' right to live as they like. There has to be equality of freedom,[7] and tolerance is a necessary counterpart of negative freedom. But negative freedom is also restricted by the obligation to obey the laws of the state.[8] It follows that individual freedom, the right to live unobstructed by others, is confined to a specific sector of society and does not apply in all aspects of life.[9]

Berlin adds two comments to his description of negative freedom: (1) negative freedom is modern, and is unattested in the ancient world as a conscious political ideal.[10] (2) Negative freedom is described as a kind of political freedom[11] but is not attached to any specific form of state.[12] In some despoties one can find forms of individual freedom which cannot be found in some democracies, and absolute monarchs have sometimes granted their subjects some forms of freedom which citizens have been denied in democratic states.[13] Thus, freedom of religion was respected under Frederick the Great, the absolute monarch who ruled Prussia from 1740 to 1786. He did not interfere with the religious beliefs of his subjects, although,

[4] Republished in 1969 as the third of *Four Essays on Liberty* (Oxford), 118-72.
[5] *Ibid.*, 122.
[6] *Ibid.*, 126.
[7] *Ibid.*, 125.
[8] *Ibid.*, 124.
[9] *Ibid.*, 124.
[10] *Ibid.*, 129.
[11] *Ibid.*, 122.
[12] *Ibid.*, 129-31.
[13] M. VIROLI, *Republicanism* (New York 2002), 43, 47.

according to the Peace of Westphalia of 1648, he was entitled to decide the religion of the state he ruled and have it enforced.[14] By contrast, in democratic Northern Ireland a minority of catholics was for two generations systematically oppressed by a majority of protestants.[15]

Positive freedom stems "from the wish on the part of the individual to be his own master".[16] Self-government involves, of course, that no one else makes decisions on one's behalf. But to be one's own master may also involve the capability to master one's self.[17] Throughout history from Plato and onwards human beings have been seen as having a split personality. We are divided between a 'lower self', that first of all is inclined to satisfy our passions, and a 'higher self', a 'rational self' that ought to dominate the otherwise unbridled passions. True freedom is only achieved if the rational self is in control, and it is this form of freedom which, according to Berlin, is the core of positive freedom. But the goals pursued by one's better self are not always confined to an individual. They are often pursued by a group to which the individual wants to belong: a tribe, a race, a church, a state.[18] Freedom becomes a social value, and seen in this light there is an opposition between the two forms of freedom: Positive freedom is collectivistic, negative freedom is individualistic. Negative freedom is the right of the individual to act unobstructed by others. The goal of positive freedom is through the community to which one belongs to let one's

[14] R. KOSER, *König Friedrich der Grosse* (Stuttgart 1903), II, 547-56. Friedrich is quoted for the dictum: "Ein jeder kann bei mir glauben, was er will, wenn er nur ehrlich ist" (556).

[15] A. ARBLASTER, *Democracy* (Milton Keynes 1987), 12: "For fifty years between 1922 and 1972 the Unionist Party won every election in the province with a clear majority of votes cast... They used this strong position to reduce the Catholic and generally Irish nationalist minority of the population to the level of second class citizens, discriminated against in public housing and employment, and excluded from positions of power and authority".

[16] I. BERLIN, *op. cit.* (n. 4), 131.

[17] *Ibid.*, 132-4.

[18] *Ibid.*, 132, 134, 144.

true rational self dominate the temptation just to live as one likes. A form of freedom which essentially concerns the individual — *viz.* the relation within an individual between reason and passion — has by Isaiah Berlin been turned into a collectivistic form of freedom applied to a community. The consequence is that the values and ideals cherished by the community become an obligation for the members of the group. Thus, freedom — i.e. positive freedom — has been turned into its opposite: domination and coercion.[19] As champions of positive liberty Berlin singles out Plato, Spinoza, Montesquieu, Burke, Hegel, Marx, and — of course — Rousseau.

In this way the two forms of freedom have become incompatible opposites[20] and, according to Berlin, it is negative freedom that is true freedom. Negative freedom is praised as a positive value whereas positive freedom is censured as a negative value. Berlin prefers that the state interferes as little as possible with the citizens' pursuit of their own goals and he makes it abundantly clear that, in his opinion, positive freedom entails the opposite of freedom: domination.[21]

Berlin's distinction between negative and positive freedom caught on immediately and in political philosophy and political science it has taken central place in discussions of the concept of freedom;[22] but often Berlin's interpretation has got a twist to it. In political science the distinction between

[19] *Ibid.*, 148.

[20] *Ibid.*, 166.

[21] *Ibid.*, 171.

[22] An alternative view of the concept of freedom has been offered by G. MACCALLUM, "Negative and Positive Freedom", in *The Philosophical Review* 76 (1967), 312-34. He questions the division of freedom into negative and positive and argues that any form of freedom should be considered "as one and the same triadic relation". Any kind of freedom is "always *of* something (an agent or agents), *from* something, to *do*, not do, become, or not become something". His analysis has been accepted by some, e.g., J. RAWLS, *A Theory of Justice* (Cambridge, Mass. ²1999), 177, but rejected by others, e.g., T. BALDWIN, "MacCallum and the Two Concepts of Freedom", in *Ratio* 26 (1984), 125-42 and Q. SKINNER, "A Third Concept of Liberty", in *London Review of Books* 4, April (2002), 16-8.

negative and positive freedom is typically applied in analyses of the ideology and values of modern democracy, but the distinction is interpreted differently from what we find in Berlin's treatise.

Freedom, and in particular individual freedom, is the basic value of modern democracy. It consists in all individuals' right to live as they choose without interference from the state or other individuals. This form of freedom is identical with Berlin's negative freedom. But it is usually argued that this form of freedom is peculiar to democracy,[23] and it is ignored that, according to Berlin, negative freedom may exist under any form of government and can be found even in an absolute monarchy.

The interconnectedness of freedom and democracy becomes even more apparent in political scientists' understanding of positive freedom. In democratic political theory positive freedom is not viewed as self-determination in the sense of self-control but in co-determination in the sense of participation. Positive freedom is not the result of a person's endeavour to be ruled by one's higher self in order to pursue more valuable goals in life than doing as one likes.[24] Nor is it the collective belief of a group of such persons that they have a monopoly on the truth. As a political form of freedom positive freedom is

[23] J. LIVELY, *Democracy* (Oxford 1975), 126; R.A. DAHL, *Democracy and its Critics* (New Haven 1989), 93. *Cf.* the preamble to the European Convention of Human Rights of November 1950.

[24] F. VON HAYEK, *The Constitution of Liberty* (Chicago 1960) distinguishes between (a) "'political freedom', the participation of men in the choice of their government, in the process of legislation, and in the control of administration. It derives from an application of our concept to groups of men as a whole which gives them a sort of collective liberty" (13), and (b) 'inner' or 'metaphysical' (sometimes also 'subjective') freedom. It refers to the extent to which a person is guided in his actions by his own considered will, by his reason or lasting conviction, rather than by momentary impulse or circumstance" (15). Precisely the same distinction between active political freedom and passive "inner freedom" is drawn by H. ARENDT, *Between Past and Future* (London 1961), 146.

perceived as every citizen's right directly or indirectly to participate in political decision-making.[25] With such a shift in interpretation positive freedom becomes inextricably connected with democracy.[26]

Even with this changed understanding of positive freedom there is still a marked difference between negative and positive freedom. Positive freedom — the right to political participation — is a communal value. Negative freedom — every person's right to live as he chooses — pertains to the individual. Unbounded individual freedom must result in disintegration of state and society. Unbounded political freedom leaves no sphere in which a person can act unobstructed by others. Hence positive and negative freedom can only coexist if the opposition between the two forms of freedom is combined with an opposition between a public sphere — in which citizens participate in politics and public administration — and a private sphere in which individuals are protected against interference from the state as well as from other individuals.[27]

[25] J. GRAY, *Liberalism* (Minneapolis 1986), 57: "It is often argued that the conception of freedom employed by classical liberal writers is wholly or predominantly a negative one, whereas revisionary liberals and socialists invoke a more positive conception. [...] In its simplest and clearest form, the distinction is that marked by Constant, and stated in our own time with unsurpassed insight by Isaiah Berlin, between noninterference and independence on the one hand and an entitlement to participate in collective decision-making on the other hand". But Gray misinterprets Berlin by identifying his self-determination in the sense of self-control with political participation.

[26] B. HOLDEN, *Understanding Liberal Democracy* (Oxford 1988), 21: "There is a link between liberty and democracy through the connection between self-government and self-determination: the self-determined — the free — individual is the self-governing individual. Here individual liberty is seen to involve participation in, rather than the absence of, government activity". Described by Holden as connected with "the 'positive' conception of liberty" (*Ibid.*). *Cf.* G. SARTORI, *Democratic Theory* (Westport 1962), 286; R.A. DAHL, *op. cit.* (n. 23), 89; M. VIROLI, *op. cit.* (n. 13), 11.

[27] M.H. HANSEN, *op. cit.* (n. 1), 17. I. BERLIN, *op. cit.* (n. 4), 124 admits that individual freedom presupposes a distinction in society between the public and private domains.

A further consequence of the political scientists' different understanding of positive freedom is that negative and positive freedom are no longer irreconcilable opposites as they are according to Berlin's interpretation. On the contrary, both forms of freedom exist side by side in any democracy, but in different spheres: positive freedom in the political sphere and negative freedom in the private sphere. The opposition between positive and negative freedom becomes connected with the opposition between state and (civil) society.

The changed view of, in particular, positive freedom has implications for the history of the two aspects of freedom. According to Berlin negative freedom is modern. He traces it back to Thomas Hobbes, but no further.[28] In the preface to the republication of his inaugural lecture Berlin denies both that the Athenians had a clear conception of individual freedom[29] and that negative freedom was a conscious political ideal in Classical Greece.[30] According to Berlin, the legendary democratic freedom in Classical Athens was centred on the citizens' patriotism which induced them to perform their civic duties of their own acccord and without coercion.[31] That was a form of positive freedom which was a characteristic of the ancient world and can be exemplified by the guardians of Plato's utopian republic,[32] i.e. it is a sort of freedom that is focused on one's duty to live as a citizen in accordance with the laws and ideals of the community.

In the historical part of his essay Berlin goes back to the famous lecture which Benjamin Constant gave to the Royal Athenaeum in 1819 and had published soon afterwards: *De la*

[28] I. BERLIN, *op. cit.* (n. 4), 123: TH. HOBBES, *Leviathan* 1.21.1. See Q. SKINNER, "The Idea of Negative Liberty: Machiavellian and Modern Perspectives", in Q. SKINNER, *Visions of Politics* (Cambridge 2002), vol. 2, 187.

[29] I. BERLIN, *op. cit.* (n. 4), xl.

[30] *Ibid.*, 129.

[31] *Ibid.*, xl-xli, countered in M.H. HANSEN, *op. cit.* (n. 1), 10-1.

[32] I. BERLIN, *op. cit.* (n. 4), 152.

liberté des anciens comparée à celle des modernes.[33] In his lecture Constant distinguishes between two forms of freedom: an ancient and a modern. The ancient form is the citizens' participation in politics, their right to govern the state. It is social in character and lays stress on the community.[34] It is a political form of freedom by contrast with the modern freedom which is individual and consists in every person's right to live as one chooses without interference from others.[35] Constant describes the two forms of freedom as opposites, and with one exception modern freedom did not exist in antiquity.[36] The exception is the Athenian democracy in the Classical period. The Athenians cherished individual freedom: a citizen's right to live at his discretion.[37]

[33] Reprinted in B. CONSTANT, *Écrits politiques*, éd. par M. GAUCHET (Paris 1997), 591-619.

[34] *Ibid.*, 594: "[La liberté ancienne] consistait à exercer collectivement, mais directement, plusieurs parties de la souveraineté tout entière, [...] mais en même temps que c'était là ce que les anciens nommaient liberté, ils admettaient, comme compatible avec cette liberté collective, l'assujettissement complet de l'individu à l'autorité de l'ensemble".

[35] *Ibid.*, 593.

[36] *Ibid.*, 594, singles out Sparta as the typical Greek city-state: the Spartan poet "Terpandre ne peut chez les Spartiates ajouter une corde à sa lyre sans que les Éphores ne s'offensent. Dans les relations les plus domestiques, l'autorité intervient encore." See also 592; 600; 601, 607. — The ancient source is PLUT. *Mor.* 238c. Until ca. 1850 Sparta was almost universally conceived as the typical Greek city-state and Athens as the exception. The modern understanding of Athens as the more typical city-state is due to G. GROTE, *History of Greece* (New York 1846-56), see E. RAWSON, *The Spartan Tradition in European Thought* (Oxford 1969), 359-62. Grote's view was anticipated by E. BULWER-LYTTON, *Athens: its Rise and Fall* (London 1837), republished by O. MURRAY (London 2004); but Bulwer-Lytton's work was soon consigned to oblivion and only recently rediscovered by Murray. The credit for the general change of view must go to Grote.

[37] B. CONSTANT, *op. cit.* (n. 33), 595: "Il y a dans l'antiquité une république où l'asservissement de l'existence individuelle au corps collectif n'est pas aussi complet que je viens de le décrire. Cette république est la plus célèbre de toutes; vous devinez que je veux parler d'Athènes."; 600: "Athènes [...] était de toutes les républiques grecques la plus commerçante, aussi accordait-elle à ces citoyens infiniment plus de liberté individuelle que Rome et que Sparte."; 601: "À Lacédémone, dit un philosophe, les citoyens accourent lorsqu'un magistrat les appelle; mais un Athénien serait au désespoir qu'on le crût dépendant d'un mag-

Berlin lets us understand that his distinction between positive and negative freedom is based on Constant's distinction between ancient and modern freedom and that his distinction is essentially the same as that established by Constant.[38] Thus, Constant's ancient freedom is taken to be a form of positive freedom and Constant's modern individual freedom is identified with Berlin's negative freedom.[39]

There is indeed an overlap, but Berlin's concept of positive freedom does not correspond to Constant's ancient freedom. Constant's ancient freedom is based on a description of historical societies. Berlin's positive freedom is focused on philosophical utopias from Plato to Rousseau. Berlin's positive freedom is first of all self-determination in the sense of self-control. Constant's ancient freedom is political freedom in the sense of all citizens' participation in political decision making. In antiquity the individual had to submit to the *polis* in all aspects of life, but the *polis* was ruled by the citizens who thereby possessed a remarkable measure of political freedom. As a rule individual freedom from public control was unknown in the ancient world, except in Athens. In the ancient world the citizen was sovereign in public affairs but a slave of the *polis* in his private life.[40] The reason Constant takes this overall view of ancient freedom is that he shared the contemporary view that the typical Greek *polis* was Sparta whereas Athens was an exception. The reason for the similarity between the Athenian and

istrat ". Constant's view that the Athenians enjoyed the modern form of freedom is already advanced in an unpublished draft of the lecture written in 1806, *Ibid.*, 836 n. 8. The manuscript shows furthermore that Constant was inspired by C. DE PAUW, *Recherches philosophiques sur les Grecs* (Paris 1788); see P. VIDAL-NAQUET, *La démocratie grecque vue d'ailleurs* (Paris 1990), 197-202.

[38] I. BERLIN, *op. cit.* (n. 4), 163-6.

[39] J. GRAY, *op. cit.* (n. 25), 57; J.W. MAYNOR, *Republicanism in the Modern World* (Cambridge 2003), 14, 30; M. VIROLI, *op. cit.* (n. 13), 38-41.

[40] B. CONSTANT, *op. cit.* (n. 33), 595: "Ainsi chez les anciens, l'individu, souverain presque habituellement dans les affaires publiques, est esclave dans tous ses rapports privés".

the modern view of freedom is, in Constant's opinion, that the Athenian economy was based on commerce.[41]

Berlin has failed to notice that, according to Constant, the Athenians cherished individual as well as political freedom. Berlin holds that negative and positive freedom are irreconcilable opposites.[42] Constant shows that they co-existed in ancient Athens and to some extent they must be brought to co-exist once again.[43] The politically active citizen of ancient Athens lived in a micro-state, i.e. the *polis*. Constant acknowledges that it would be both impossible and undesirable to restore ancient citizenship in modern nation states. According to Constant, it was the French Revolution's most serious mistake that such an attempt was made.[44] On the other hand, Constant regrets that political freedom has disappeared completely from modern states. A certain measure of political freedom is indispensable for state and society. Therefore a certain measure of political freedom must be restored.[45] Not in the form of all

[41] *Ibid.*, 595-6; 600; 836 n.8. Constant's understanding of ancient Athenian freedom as similar to the modern form of individual freedom did not preclude that in several respects he was critical of Athens and in particular of the Athenian administration of justice. Thus, he singled out for criticism the trial of the generals in 406 (601) and the trial of Sokrates in 399 (612); he found that ostracism was an outrageous institution (601, 609), and he concluded that "l'individu était encore bien asservi à la suprématie du corps social à Athènes, qu'il ne l'est de nos jours dans aucun État social libre de l'Europe" (601).

[42] I. BERLIN, *op. cit.* (n. 4), 132; 148;166.

[43] B. CONSTANT, *op. cit.* (n. 33), 618-9: "Loin donc, Messieurs, de renoncer à aucune des deux espèces de libertés dont je vous ai parlé, il faut, je l'ai démontré, apprendre à les combiner l'une avec l'autre [...] En respectant leurs droits individuels, en ménageant leur indépendance, en ne troublant point leurs occupations, elles doivent pourtant consacrer leur influence sur la chose publique, les appeler à concourir par leurs déterminations et par leurs souffrages à l'exercice du pouvoir, leur garantir un droit de contrôle et de surveillance par la manifestation de leur opinions, et les formant de la sorte, par la pratique, à ces fonctions élevées, leur donner à la fois et le désir et la faculté de s'en acquitter".

[44] *Ibid.*, 591-2; 607-8.

[45] *Ibid.*, 612: "La liberté individuelle [...] voilà la véritable liberté moderne. La liberté politique en est la garantie; la liberté politique est par conséquent indispensable." *Cf.* 617-9.

citizens' direct participation in political decision making, but in connection with representative government.[46] Modern citizens must not be tempted by the blessings of modern freedom to give up political freedom altogether. Admittedly, that is what those in power want so that they can wield power without any disturbing control.[47] In a representative system of government all citizens must participate in choosing and controlling those in power. In several almost prophetical passages Constant anticipates the emergence and progress of modern democracy during the 19th and 20th centuries.

Constant's understanding of ancient political and modern individual freedom is remarkably close to the modern democratic view that freedom has two aspects: all citizens' right directly or indirectly to participate in political decision making and all individuals' right to live as they choose without interference from the state or other individuals. But the important line from Constant to modern democracy is often overlooked because Constant's political writings were almost consigned to oblivion after his death in 1830. And it is only in the course of the last generation that he has been restored to the position in political philosophy that he deserves. Today Constant is considered the father of modern liberalism.[48]

Nevertheless, in many modern accounts of the concept of freedom the authors follow Berlin's interpretation of his own positive freedom as, essentially, identical with Constant's political freedom. Similarly, many scholars have not noticed that Berlin has misrepresented Constant's conception of ancient

[46] *Ibid.*, 615-19.

[47] *Ibid.*, 616: "Le danger de la liberté moderne, c'est qu'absorbés dans la jouissance de notre indépendance privée, et dans la poursuite de nos intérêts particuliers, nous ne renoncions trop facilement à notre droit de partage dans le pouvoir politique. Les dépositaires de l'autorité ne manquent pas de nous y exhorter. Ils sont si disposés à nous epargner toute espèce de peine, exceptée celle d'obéir et de payer!".

[48] S. HOLMES, *Benjamin Constant and the Making of Modern Liberalism* (New Haven 1984), 3.

freedom by overlooking that, according to Constant, the Athenians cherished individual freedom as well as political freedom and thus were an exception to a general rule that ancient freedom was a form of political freedom which left no room for individual freedom.

II

Who is right in his interpretation of ancient Athenian freedom, Constant or Berlin? The best way of answering this question is to quote and comment on the longest and most explicit description of democratic freedom in our sources, i.e. Aristotle's in *Politics* Book 6.[49]

> Freedom is the foundation of a democratic constitution. That is what they say arguing that it is only under this constitution that people enjoy freedom since, as they hold, every democracy aim at freedom. One form of freedom is to be ruled and rule in turn. And democratic justice is arithmetic equality, not equality according to merit. With such a conception of justice the majority must be supreme and what the majority decides is final and constitutes justice. For they say that every citizen must have an

[49] ARIST. *Pol.* 1317a40-b17: ὑπόθεσις μὲν οὖν τῆς δημοκρατικῆς πολιτείας ἐλευθερία (τοῦτο γὰρ **λέγειν εἰώθασιν**, ὡς ἐν μόνῃ τῇ πολιτείᾳ ταύτῃ μετέχοντας ἐλευθερίας· τοῦτου γὰρ στοχάζεσθαί **φασιν** πᾶσαν δημοκρατίαν)· ἐλευθερίας δὲ ἓν μὲν τὸ ἐν μέρει ἄρχεσθαι καὶ ἄρχειν. [καὶ γὰρ τὸ δίκαιον τὸ δημοτικὸν τὸ ἴσον ἔχειν ἐστὶ κατ' ἀριθμὸν ἀλλὰ μὴ κατ' ἀξίαν, τοῦτου δ' ὄντος τοῦ δικαίου τὸ πλῆθος ἀναγκαῖον εἶναι κύριον, καὶ ὅ τι ἂν δόξῃ τοῖς πλείοσι, τοῦτ' εἶναι τέλος καὶ τοῦτ' εἶναι τὸ δίκαιον·] **φασὶ** γὰρ δεῖν ἴσον ἔχειν ἕκαστον τῶν πολιτῶν· [ὥστε ἐν ταῖς δημοκρατίαις συμβαίνει κυριωτέρους εἶναι τοὺς ἀπόρους τῶν εὐπόρων· πλείους γάρ εἰσι, κύριον δὲ τὸ τοῖς πλείοσι δόξαν.] ἓν μὲν οὖν τῆς ἐλευθερίας σημεῖον τοῦτο, ὃν **τίθενται πάντες οἱ δημοτικοὶ** τῆς πολιτείας ὅρον· ἓν δὲ τὸ ζῆν ὡς βούλεταί τις. Τοῦτο γὰρ τῆς ἐλευθερίας ἔργον εἶναί **φασιν**, εἴπερ τοῦ δουλεύοντος τὸ ζῆν μὴ ὡς βούλεται. τῆς μὲν οὖν δημοκρατίας ὅρος οὗτος δεύτερος· [ἐντεῦθεν δ' ἐλήλυθε τὸ μὴ ἄρχεσθαι, μάλιστα μὲν ὑπὸ μηθενός, εἰ δὲ μή, κατὰ μέρος, καὶ συμβάλλεται ταύτῃ πρὸς τὴν ἐλευθερίαν τὴν κατὰ τὸ ἴσον]. In this quote of the Greek text I have put Aristotle's comments in square brackets and indicated in bold type how he reports the democrats' view.

> equal share. It follows that in democracies the poor prevail over the rich because they are in the majority and because decisions made by the majority are final. This is one characteristic of freedom which all democrats lay down as their definition of the constitution. Another characteristic is 'to live as one likes'. For this they say is the result of being free just as 'not to live as one likes' is the result of being enslaved. This is the second definition of democracy. From that has come [the wish] not to be ruled, preferably by nobody at all, or failing that, to take turns, which furthers a freedom based on equality.

The first thing to note is that in this passage Aristotle does not produce his own conception of democratic freedom but gives an account of the democrats' own view.[50] The implicit subject of εἰώθασι in 1317a41 is the δημοτικοί in b11. We are not told who these democrats are. Historians and commentators usually presume that Aristotle must have Athens in mind whenever he writes about democracy.[51] But it is not as simple as that. When Aristotle in the *Politics* adduces historical examples to support his general observations about democracy, his references to Athens are outnumbered by references to other democracies, e.g. Syracuse, Rhodes and Kyrene. And the democratic institutions he discusses can in several instances be shown to be different from those attested in Athens.[52] The passage quoted above tells us how some Greek democrats conceived of democratic freedom. Without supporting evidence it cannot *a priori* be taken to represent the Athenian democrats' views; and it can only to some extent shed light on Aristotle's own conception of freedom. His report of what the democrats believe is interspersed with three comments, in lines b5-7, b8-10 and b14-17. These comments combine a report of the democrats' views with Aristotle's critical attitude to these views.

[50] J. BARNES, "Aristotle and Political Liberty", in *Aristotle's Politics. Critical Essays*, ed. by R. KRAUT, S. SKULTEKY (Lanham 2005), 192.

[51] J. OBER, *The Athenian Revolution* (Princeton 1996), 20-1; R. KRAUT, *Aristotle. Political Philosophy* (Oxford 2002), 11.

[52] M.H. HANSEN, *Polis and City-State* (Copenhagen 1998), 104-5.

Aristotle states that, according to the democrats, freedom is the foundation of a democratic constitution and peculiar to democracy, both as an actual fact (μετέχοντας) and as an ideal (στοχάζεσθαι). Democratic freedom consists partly in being ruled an ruling in turn (τὸ ἐν μέρει ἄρχεσθαι καὶ ἄρχειν)[53] and partly in living as one likes (ζῆν ὡς βούλεταί τις).

The first form of freedom, to be ruled and to rule in turn, is linked to the democratic concepts of citizenship and equality. It implies active participation in the political institutions and offers a narrow definition of freedom as a privilege enjoyed by adult male citizens only. On the other hand it is enjoyed by 'all' adult male citizens and the democrats' preference for arithmetic equality (τὸ ἴσον τὸ κατ' ἀριθμόν) entails that every citizen counts for one. It follows that the majority rules (οἱ πλείονες, τὸ πλῆθος), and since the majority of the citizens are poor, democracy becomes 'rule of the poor'.

The other aspect of freedom "to live as one likes" is opposed to the destiny of the slave which is "not to live as he likes". "To live as one likes or chooses" must be a form of individual freedom since different individuals make different choices as to what they want to do. Therefore this form of freedom is not restricted to the political sphere. On the contrary, it is opposed to the political sphere in so far as the ideal is not to be ruled (μὴ ἄρχεσθαι) and that precludes any form of government and leads to anarchy (ἀναρχία).[54] Since it is impossible to abolish government altogether, the democrats must put up with the second-best option which is to take turns in ruling and being ruled.

Aristotle's account of democratic freedom shows that ancient Greek democrats distinguished between two opposed forms of democratic freedom: a kind of positive political freedom which

[53] Note the sequence: passive — active. A citizen is ruled when he is young and comes to rule when he gets older: ARIST. *Pol.* 1329a2-17; 1332b12-3a16. *Cf.* 1259b4-5; 1261a32-4.

[54] *Cf.* PLATO *Resp.* 560e

consisted in taking turns participating in government, and a kind of individual freedom which consisted in living as one likes and was described as a negative form of freedom by being opposed to slavery.

The next step is to compare Aristotle's general description of democratic freedom with what we know about freedom as an ideal cherished by the Athenian democrats.

First, Athenian sources confirm the essential aspects of Aristotle's description of democratic political freedom. In Euripides' *Supplices* King Theseus praises Athens as a free *polis* and as evidence he states that the people rule due to the principle that the magistrates serve in annual rotation and that the Athenians do not favour the rich over the poor (404-8). In an earlier scene Theseus describes Athens as an ἰσόψηφος πόλις (353). Thus, in political decision-making each citizen counts for one and in this respect the Athenians advocate what Aristotle calls numerical or arithmetic equality (1317b4). We meet the same line of thought in Perikles' funeral oration: rotation in office and personal merit are singled out as equally important principles to be applied in the selection of those who rule the *polis* (Thuc. 2.37.1), and Perikles stresses that poverty does not bar a meritous citizen from political influence.[55]

According to Aristotle to live as one likes was the other central aspect of democratic freedom and again the Athenian sources support Aristotle's account. The most famous statement of the view is the chapter about Athenian democracy in Perikles' funeral oration: "Freedom is a feature of our public life; and as for suspicion of one another in our daily private pursuits, we do not frown on our neighbour if he behaves to

[55] THUC. 2.37.1: ὡς ἕκαστος ἔν τῳ εὐδοκιμεῖ, οὐκ ἀπὸ μέρους τὸ πλέον ἐς τὰ κοινὰ ἢ ἀπ' ἀρετῆς προτιμᾶται, οὐδ' αὖ κατὰ πενίαν, ἔχων γέ τι ἀγαθὸν δρᾶσαι τὴν πόλιν, ἀξιώματος ἀφανείᾳ κεκώλυται. Today most commentators agree that the prepositional group ἀπὸ μέρους must be used synonymously with ἐν μέρει or κατὰ μέρος and refer to rotation, see S. HORNBLOWER, *A Commentary on Thucydides,* I (Oxford 1991), 300-1.

please himself or set our faces in those expressions of disapproval that are so disagreeable, however harmless. We are tolerant in our private dealings with one another but in public matters it is first of all fear that keeps us from breaking the law. We obey the authorities and the laws, in particular those enacted to protect injured persons as well as the unwritten laws that cannot be broken without acknowledged disgrace".[56]

Perikles returns repeatedly to this view of individual freedom, e.g. in Chapter 39 where he contrasts the Athenians' unbound lifestyle with the public upbringing and education practised in Sparta.[57] Nikias strikes the same note in his speech to the trierarchs before the final battle in the harbour of Syracuse: he reminds them that their fatherland is the freest in the world where all enjoy the privilege to live their lives without being under command.[58]

Outside Athens we meet the ideal in the debate over the constitutions in Herodotos' Histories, a debate allegedly conducted in Persia in 522 B.C. between seven Persian nobles, but in fact reflecting Greek constitutional views of the mid fifth century. After the debate, Otanes, who argued in favour of democracy, complies with the decision of the six others to restore monarchy, and let one among themselves be king. He withdraws from the competition, but he makes one condition: "I wave my right to compete with you about being king

[56] THUC. 2.37.2: ἐλευθέρως δὲ τά τε πρὸς τὸ κοινὸν πολιτεύομεν καὶ ἐς τὴν πρὸς ἀλλήλους τῶν καθ' ἡμέραν ἐπιτηδευμάτων ὑποψίαν, οὐ δι' ὀργῆς τὸν πέλας, εἰ καθ' ἡδονήν τι δρᾷ, ἔχοντες, οὐδὲ ἀζημίους μέν, λυπηρὰς δὲ τῇ ὄψει ἀχθηδόνας προστιθέμενοι. ἀνεπαχθῶς δὲ τὰ ἴδια προσομιλοῦντες τὰ δημόσια διὰ δέος μάλιστα οὐ παρανομοῦμεν, τῶν τε αἰεὶ ἐν ἀρχῇ ὄντων ἀκροάσει καὶ τῶν νόμων, καὶ μάλιστα αὐτῶν ὅσοι τε ἐπ' ὠφελίᾳ τῶν ἀδικουμένων κεῖνται καὶ ὅσοι ἄγραφαι ὄντες αἰσχύνην ὁμολογουμένην φέρουσιν.

[57] THUC. 2.39.1: ἡμεῖς δὲ ἀνειμένως διαιτώμενοι οὐδὲν ἧσσον ἐπὶ τοὺς ἰσοπαλεῖς κινδύνους χωροῦμεν.

[58] THUC. 7.69.2: πατρίδος τε τῆς ἐλευθερωτάτης ὑπομιμνήσκων καὶ τῆς ἐν αὐτῇ ἀνεπιτάκτου πᾶσιν ἐς τὴν δίαιταν ἐξουσίας, [...] S. HORNBLOWER, *A Commentary on Thucydides,* III (Oxford 2008), 692 translates: "the freest country in the world, where there was no interference with anyone's daily life". Thus, ἀνεπίτακτος ἐξουσία means that in his daily life one has a right to live as one likes without being under command.

since I want neither to rule nor to be ruled, but I do it on the condition that neither I nor any of my descendants be ruled by any of you".[59] Herodotos adds that in his time Otanes' descendants are the only ones among the Persians who are free and they are ruled only to the extent they choose, provided that they obey the laws of the Persians.

An important aspect of the right to live as one likes is freedom of expression. It is often called *parrhesia*[60] and is praised by, e.g., Demosthenes (9.3): "In other matters you find it so important to grant freedom of speech to all who live in Athens that you allow even foreigners and slaves to share in this privilege, and among us one can see many slaves having more freedom to speak their mind than citizens have in some other *poleis*, but you have granted them no share whatsoever in political deliberations". Demosthenes distinguishes between two forms of *parrhesia*: the right to speak in the assembly and the right to speak one's mind. The first form is mostly called *isegoria*, the second *parrhesia*. To speak in the assembly was, of course, a privilege restricted to citizens. To speak one's mind was enjoyed not only by citizens but also by women, foreigners and slaves.[61] It was open to inhabitants and belonged in the private sphere of life.

[59] HDT. 3.83.2: ἐγὼ μέν νυν ὑμῖν οὐκ ἐναγωνιεῦμαι· οὔτε γὰρ ἄρχειν οὔτε ἄρχεσθαι ἐθέλω· ἐπὶ τούτῳ δὲ ὑπεξίσταμαι τῆς ἀρχῆς, ἐπ' ᾧ τε ὑπ' οὐδενὸς ὑμέων ἄρξομαι, οὔτε αὐτὸς ἐγὼ οὔτε οἱ ἀπ' ἐμεῦ αἰεὶ γινόμενοι. 3: καὶ νῦν αὕτη ἡ οἰκίη διατελέει μούνη ἐλευθέρη ἐοῦσα Περσέων καὶ ἄρχεται τοσαῦτα ὅσα αὐτὴ θέλει, νόμους οὐκ ὑπερβαίνουσα τοὺς Περσέων.

[60] K.A. RAAFLAUB, *The Discovery of Freedom in Ancient Greece* (Chicago 2004), 223-5; P. LIDDEL, *Civic Obligation and Individual Liberty in Ancient Athens* (Oxford 2007), 25-6. DEM. 59.28.

[61] Apart from DEM. 9.3, see [XEN.] *Ath. Pol.* 1.12; PLATO *Resp.* 557a; PLATO *Grg.* 461e; AR. *Th.* 540-3; *Ra.* 948-51; DEMOCR. fr. 226. See D.M. CARTER, "Citizen Attribute, Negative Right: A Conceptual Difference between Ancient and Modern Ideas of Freedom of Speech", in *Free Speech in Classical Antiquity*, ed. by I. SLUITER, R.M. ROSEN (Leiden 2004), 199-202; R.K. BALOT, "Free Speech, Courage, and Democratic Deliberation", in I. SLUITER, R.M. ROSEN, *op. cit. (supra)*, 236-42. For a rather critical view of Athenian *parrhesia*, see A.W. SAXONHOUSE, *Free Speech and Democracy in Ancient Athens* (Cambridge 2006).

"To live as one likes" is often described as an ἐξουσία, i.e. as an opportunity or a permission to do something, but almost always with the connotation of having the right or the power to do something.[62] So the Athenians considered "to live as one likes" to be a right,[63] but when it is praised as a democratic ideal it is stressed that this right belongs in the private sphere. It is a right one has in everyday life and in relation to one's neighbours and other citizens individually. As stressed by Perikles it is restricted by the obligation to allow others to live as 'they' like. Individual freedom has tolerance as its complement. Furthermore, one must obey the laws and a breach of the law cannot go unpunished. In such a context the democratic ideal to live as one likes is converted to an offence which prosecutors hold up as a bugbear to intimidate the jurors at the people's court, in particular in an argumentation aimed at the effect an acquittal will have on public moral: "If you acquit the defendant he and others will believe that one can do as one likes" or "if everybody lives as he likes, laws will no longer be valid".[64] To live as one likes is no longer a democratic value, it is a vice and a threat to the democracy.

It is significant that such arguments are used in public actions, rather than in private ones. Furthermore it is almost always found in trials relating to public institutions and the

[62] Opportunity: αὐτῷ ἐξουσία ἦν σαφῶς εἰδέναι (ANTIPHO 1.6); permission: ἐξουσίαν ὁ νόμος δέδωκε (PLATO *Smp.* 182e); power: ἐξουσίαν ἔχειν θανάτου (POLL. 8.86); freedom and right: ἐξουσία τοῦ λέγειν (PLATO *Grg.* 461e). On rights, see F.D. MILLER, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford 1995), 101-4; D.M. CARTER, *art. cit.* (n. 61), 202-5.

[63] The Athenians had no notion of human rights, cf. M. OSTWALD, "Shares and Rights: 'Citizenship' Greek Style and American style", in J. OBER, C. HEDRICK, *op. cit.* (n. 1), 49-62, but many of the modern human rights were acknowledged as citizen rights, see M.H. HANSEN, *op. cit.* (n. 1), 12-17. See also R.W. WALLACE, "Law, Freedom, and the Concept of Citizens' Rights in Democratic Athens", in J. OBER, C. HEDRICK, *op. cit.* (n. 1), 105-19.

[64] The argument is used by prosecutors as a kind of precedent: In the case at hand, acquittal will induce citizens to break the laws, conviction to obey them, see L. RUBINSTEIN, "Arguments from Precedent in Attic Oratory", in *Oxford Readings in the Attic Orators,* ed. by E. CARAWAN (Oxford 2007), 362.

administration of the *polis*. It is used against Eratosthenes who is called to account for his conduct as one of The Thirty (Lys. 12.85); against the younger Alkibiades who without permission served in the cavalry instead of obeying the summons to serve among the hoplites (Lys. 14.11); against some corn-dealers who have purchased larger amounts of grain than permitted by the law (Lys. 22.19); against Nikomachos who was a member of a legislative committee (Lys. 30.34); against Timokrates who was charged with having proposed and carried an unsuitable law (Dem. 24.47); against Aristogeiton who had appeared as speaker in the people's assembly and as prosecutor before the people's court although he was indebted to the treasury (Dem. 25.25; 26.13); against Neaira, allegedly a prostitute from Corinth who had married an Athenian citizen (Dem. 59.112); and against Timarchos who had appeared as a speaker in the people's assembly although he had made profit from male prostitution (Aeschin. 1.34).

In all these cases the defendant is charged with having committed a crime relating to the *polis*. The only known attestation of the argument in a private action is in Demosthenes' speech *Against Phainippos* which was held in connection with a legal dispute over the obligation to serve as trierarch (Dem. 42.2, 9). Thus the action relates to the financing of the Athenian navy and is in fact a public matter although the trial takes the form of a private action.[65]

I conclude that a study of forensic rhetoric confirms what Perikles states in his funeral oration, Demosthenes in his third speech against Philip and Aristotle in his analysis of the democratic concept of freedom: the right to live as one likes belongs in the private sphere and concerns the citizens' daily dealings

[65] For an exemplary collection of the sources, see P. LIDDEL, *op. cit.* (n. 60), 22. He does not point out that all examples but one come from speeches for the prosecution in public actions. His purpose in collecting these sources is to question or at least to modify the view that freedom to live as one likes was a democratic ideal.

with one another. In the public sphere, it is fear of the law and obedience to the authorities that are emphasised as essential characteristics of democracy.[66]

While individual freedom is cherished as a value by the Athenian democrats if practised among people in the private sphere, it is severely criticised and rejected altogether by Plato and Aristotle; and Xenophon and Isokrates too take a critical view of this lifestyle.[67]

In the *Republic* Plato opens his account of the nature of democracy by stating that the fundamental value is freedom (*eleutheria*), in particular freedom of speech (*parrhesia*)[68] and the right to live as one likes.[69] Everyone can arrange his private life at pleasure.[70] The freedom to do as one likes results in the democratic *polis* being like a patchwork dress of different types of person,[71] and if one endeavours to establish a new *polis* the democratic *polis* can serve as a marketplace of constitutions from which one can choose.[72] In a democracy there is no obligation to rule nor to be ruled.[73] One does not have to join the others going to war or keeping the peace,[74] and one does not have to obey the laws that debar one from serving as a magistrate or a juror.[75] Convicted persons are treated leniently,[76] and even persons sentenced to death or exile can appear in public. Democratic freedom is, in fact, anarchy.[77]

[66] For a clear description of the difference between the spheres, see DEM. 24.192-3.

[67] See, e.g., ISOC. 7.20 and XEN. *Mem.* 4.5.2-5.

[68] PLATO. *Resp.* 557b5: παρρησία, assimilated from παν-ρησία, *cf.* 562c-d.

[69] 557b5-6: ἐξουσία ἐν αὐτῇ [the *polis*] ποιεῖν ... ὅτι τις βούλεται.

[70] 557b8-10: ἰδίαν ἕκαστος ἂν κατασκευὴν τοῦ αὑτοῦ βίου κατασκευάζοιτο ἐν αὐτῇ, ἥτις ἕκαστον ἀρέσκοι.

[71] 557c6-7: αὕτη πᾶσιν ἤθεσιν πεποικιλμένη καλλίστη ἂν φαίνοιτο.

[72] 557d8: παντοπώλιον ... πολιτειῶν.

[73] 557e2-4: μηδεμίαν ἀνάγκην ... εἶναι ἄρχειν ... μηδὲ αὖ ἄρχεσθαι ἐὰν μὴ βούλῃ.

[74] 557e4-5: μηδὲ πολεμεῖν ... μηδὲ εἰρήνην ἄγειν.

[75] 557e5-6: ἐάν τις ἄρχειν νόμος σε διακωλύῃ ἢ δικάζειν.

[76] 558a4: πρᾳότης ἐνίων τῶν δικασθέντων.

[77] 560e2, 5: ἐλευθερία as ἀναρχία. *Resp.* 558c4: δημοκρατία as an ἄναρχος πολιτεία.

Democracy is characterised by contempt for the principles on which Plato's own utopia is based: noble nature and good education. Regardless of qualifications anyone can meddle in politics.[78] It suffices that one declares his loyalty to the people;[79] and equality is bestowed on equals and unequals alike.[80]

In Book six of the *Politics* Aristotle gives an account of the democrats' own view of freedom and restricts his criticism to two comments about arithmetic equality by which democracy becomes the rule of the majority, i.e. the poor citizens. Aristotle's own explicit criticism of democratic freedom is advanced in Book five in a discussion of how one can protect and preserve a given type of constitution, *viz.*, by exposing the young to an education which makes them conform to the constitution they will have to live under when grown up.[81] Aristotle states that what they do in a radical democracy is inexpedient, and the reason is a wrong understanding of freedom. Democracy is defined by two criteria: majority rule and freedom. Majority rule is associated with equality and justice whereas "freedom is what a person wants to do; so that in such democracies everyone lives as he likes, and 'as he desires', as Euripides says; but that is wrong. Because to live in accordance with the constitution must not be seen as a form of slavery but as salvation".[82]

[78] 558b6-7: οὐδὲν φροντίζει ἐξ ὁποίων ἄν τις ἐπιτηδευμάτων ἐπὶ τὰ πολιτικὰ ἰὼν πράττῃ.

[79] 558c1: εὔνους ... τῷ πλήθει.

[80] 558c5-6: ἰσότητά τινα ὁμοίως ἴσοις τε καὶ ἀνίσοις διανέμουσα.

[81] ARIST. *Pol.* 1310a12-22.

[82] ARIST. *Pol.* 1310a25-36: ἐν δὲ ταῖς δημοκρατίαις ταῖς μάλιστα εἶναι δοκούσαις δημοκρατικαῖς τοὐναντίον τοῦ συμφέροντος καθέστηκεν, αἴτιον δὲ τούτου ὅτι κακῶς ὁρίζονται τὸ ἐλεύθερον. δύο γάρ ἐστιν οἷς ἡ δημοκρατία δοκεῖ ὡρίσθαι, τῷ τὸ πλεῖον εἶναι κύριον καὶ τῇ ἐλευθερίᾳ: τὸ μὲν γὰρ ἴσον δίκαιον δοκεῖ εἶναι, ἴσον δ' ὅ τι ἂν δόξῃ τῷ πλήθει, τοῦτ' εἶναι κύριον, ἐλεύθερον δὲ [καὶ ἴσον] τὸ ὅ τι ἂν βούληταί τις ποιεῖν· ὥστε ζῇ ἐν ταῖς τοιαύταις δημοκρατίαις ἕκαστος ὡς βούλεται, καὶ εἰς ὃ χρήζων, ὡς φησὶν Εὐριπίδης· τοῦτο δ' ἐστὶ φαῦλον· οὐ γὰρ δεῖ οἴεσθαι δουλείαν εἶναι τὸ ζῆν πρὸς τὴν πολιτείαν, ἀλλὰ σωτηρίαν.

Later in Book six he states that "the opportunity to do whatever one wants is unable to restrain the badness inherent in every human being."[83]

Comparing Plato's and Aristotle's account we can detect a shift in emphasis between the two aspects of freedom: the political freedom which consists in the right to rule and be ruled, and the individual freedom which consists in the right to live as one likes. In Aristotle the political freedom takes pride of place. The democratic freedom to participate in politics is mentioned by Plato, but only in passing.[84] The kind of freedom in which he is interested is the democratic citizen's right to do as he likes[85] and his opportunity to organise his private life at pleasure.[86] What is the result? According to Plato the human soul has three parts: reason, spirit and appetite (440e-441a). If one lives in accordance with the democratic ideal to do whatever one wants (561c6-e2), the consequence is that the appetitive part of the soul comes to prevail over the rational (560b7-11). Man becomes dependent on his desires and is in fact turned into a slave of the appetitive part of his soul (559c-d. 564a). By such a line of thought democratic freedom is converted into its opposite. The person who is a slave of his desires is no longer free but unfree and his enslaved status both as a person and as a citizen is most clearly seen when democracy has been converted into a tyranny (577b-e).

[83] ARIST. *Pol.* 1318b38-41: τὸ γὰρ ἐπανακρέμασθαι, καὶ μὴ πᾶν ἐξεῖναι ποιεῖν ὅ τι ἂν δόξῃ, συμφέρον ἐστίν· ἡ γὰρ ἐξουσία τοῦ πράττειν ὅ τι ἂν ἐθέλῃ τις οὐ δύναται φυλάττειν τὸ ἐν ἑκάστῳ τῶν ἀνθρώπων φαῦλον.

[84] PLATO *Resp.* 558b6-7, *cf.* n. 78.

[85] 557b5-6: ἐξουσία ποιεῖν ὅτι βούλεταί τις.

[86] 557b8-10, *cf.* n. 70.

III

In my opinion the sources show that Constant got it right, and Berlin got it wrong. Euripides, Thucydides and Aristotle show that in Athens and in democratic *poleis* in general freedom was partly political freedom by ruling in turn and partly the individual's freedom from political oppression by living as one chooses. A positive political freedom in the public sphere is contrasted with a negative individual freedom in the private sphere. Nevertheless, Isaiah Berlin is inclined to deny the parallel between ancient Greek *eleutheria* and modern freedom. In the introduction to his *Four Essays on liberty* he devotes more than a page to the historical origins of the concept:

> "I have found no convincing evidence of any clear formulation of [the notion of individual liberty] in the ancient world. Some of my critics have doubted this, but apart from pointing to such modern writers as Acton, or Jellinek, or Barker, who do profess to find this ideal in ancient Greece, some of them also, more pertinently, cite the proposal of Otanes after the death of Pseudo-Smerdis in the account given by Herodotus, the celebrated paean to liberty in the Funeral Oration of Pericles, as well as the speech of Nikias before the final battle with the Syracusans (in Thucydides), as evidence that the Greeks, at any rate, had a clear conception of individual liberty. I must confess that I do not find this conclusive. When Pericles and Nikias compare the freedom of the Athenian citizens with the fate of the subjects of the less democratic states, what (it seems to me) they are saying is that the citizens of Athens enjoy freedom in the sense of self-government, that they are not slaves of any master, that they perform their civic duties out of love for their *polis*, without needing to be coerced, and not under the goads and whips of savage laws or taskmasters (as in Sparta or Persia). So might a headmaster say of the boys in his school that they live and act according to good principles not because they are forced to do so, but because they are inspired by loyalty to the school, by 'team spirit', by a sense of solidarity and common purpose; whereas at other schools these results have to be achieved by fear of punishment and stern measures. But in neither case is it contemplated that a man might, without loosing face, or incurring contempt, or a diminution of his human essence, withdraw from

> public life altogether, and pursue private ends, live in a room of his own, in the company of personal friends, as Epicurus later advocated, and perhaps the Cynic and Cyrenaic disciples of Socrates had preached before him. As for Otanes, he wished neither to rule nor to be ruled — the exact opposite of Aristotle's notion of true civic liberty. [...] I do not say that the ancient Greeks did not in fact enjoy a great measure of what we should today call individual liberty. My thesis is only that the notion had not explicitly emerged, and was therefore not central to Greek culture, or, perhaps, any other ancient civilization known to us". [87]

Almost every sentence of this passage can be disputed and several disproved by the evidence we have of freedom in Greek political thought. In the Funeral Oration Perkles repeatedly distinguishes between a public sphere (*to koinon*) and a private sphere (*ta idia*) in which every Athenian is free to live as he pleases and to have a lifestyle different from that of his neighbours.[88] *Pace* Berlin, Perikles 'does' imply that the Athenians "needed to be coerced" to obey the laws.[89] Nikias does 'not' compare "the freedom of the Athenians with the fate of the subjects of less democratic states", and he does 'not' link freedom with "civic duties" but with individual freedom in private life.[90] It is misleading to contrast Otanes' claim with "Aristotle's notion of true civic liberty". First, Aristotle had no personal view of true civic liberty[91] but gives only a — partly

[87] I. BERLIN, *op. cit.* (n. 4), xl-xli.

[88] THUC. 2.37: As today, democracy (δημοκρατία) is associated with equality (πᾶσι τὸ ἴσον), liberty (ἐλευθέρως) and tolerance (ἀνεπαχθῶς) and for each of these three ideals Perikles describes how it operates both in the private sphere and in the public sphere (τὰ ἴδια διαφορά ... ἐς τὰ κοινά — τά τε πρὸς τὸ κοινόν ... τὴν πρὸς ἀλλήλους ὑποψίαν — τὰ ἴδια ... τὰ δημόσια). Thus the oppositon between the private and the public becomes a characteric element of democratic ideology, one which permeates all aspects of society.

[89] THUC. 2.37.3: we obey the laws out of fear: διὰ δέος μάλιστα οὐ παρανομοῦμεν, see also S. HORNBLOWER, *op. cit.* (n. 55), 301-2.

[90] THUC. 7.69.2 quoted in n.58.

[91] This point is argued in M.H. HANSEN, "Democratic Freedom and the Concept of Freedom in Plato and Aristotle", in *GRBS* 50 (2010), 1-27.

critical — account of the democratic notion of freedom. Second, Aristotle says that the essence of democratic 'political' freedom is to be ruled and rule in turn; but his description of individual freedom in democracies matches Otanes' claim. In Aristotle's description of democratic freedom at *Pol.* 1317a40-b17 Berlin has focused on the first half of it (b1-11) without paying any attention to the second half (b11-17). And these views of personal freedom are not just found in Herodotos, Thucydides and Aristotle, but in other sources as well, e.g. in the *Supplices* by Euripides, in Plato's the *Republic*, and in Demosthenes' speeches. Furthermore, "to withdraw from public life [...] and pursue private ends" was perfectly respectable,[92] and to "withdraw from public life 'altogether'" is often — even in forensic speeches — held up as an honourable way of life. Like all other people the Athenians practised 'doublethink'.[93] On the one hand, they expected every citizen to participate in the running of the democratic institutions, and passive citizens can be censured by Perikles and called "useless" rather than "quiet".[94] On the other hand, the Athenian jurors listened — apparently with approval — to a man who told them that he had always stayed away from the *bouleuterion*, the *dikasteria* and the *agora* altogether.[95] The clash of views is undeniable and must not be avoided by suppressing one of the two opposed ideals, i.e. that personal freedom and the right to keep out of

[92] EUR. *Suppl.* 438-41; LYS. 19.18; DEM. 10.70-4; 18.308; 19.99; 22.30. *Cf.* L.B. CARTER, *The Quiet Athenian* (Oxford 1986).

[93] 'Doublethink', a word coined by George Orwell in his novel *Nineteen Eighty-Four* (1949), denotes "the power of holding two contradictory beliefs in one's mind simultaneously, and accepting both of them". The concept was brilliantly pursued by John Crook in an (unpublished) lecture held at Copenhagen University in December 1978.

[94] THUC. 2.40.2: τόν τε μηδὲν τούτων μετέχοντα οὐκ ἀπράγμονα, ἀλλ' ἀχρεῖον νομίζομεν.

[95] LYS. 19.55; IS. 1.1 (courtroom speeches); PLATO *Ap.* 17d; ISOC. 15.38 (literary imitations of courtroom speeches), see M.H. HANSEN, *The Athenian Democracy in the Age of Demosthenes. Structure, Principles and Ideology* (Oxford 1991), 267-8.

public life was indeed an essential feature of Athenian democracy. Thus, in Athens negative individual freedom comprised the right to stay out of politics.[96]

Berlin's introduction to the *Four Essays* was written in 1969. A manuscript of a lecture delivered at Yale University in 1962 was published posthumously in 2002 with the title "The Birth of Greek Individualism".[97] It covers much of the same ground as the later introduction to the four essays but is more detailed. Much space is devoted to an account of Plato's and Aristotle's view that the state has an absolute claim upon the citizens, which is correct for both the philosophers but says nothing about the Athenians' view of freedom. In the manuscript Berlin mentions Euripides' and Demosthenes' praise of freedom of speech, but both sources are brushed aside without discussion. Berlin denies that the citizens had rights against the *polis* and compares Athens to a public school: "Schoolboys, however lightly ruled have no rights against the masters".[98] Berlin does not mention the *euthynai* by which a citizen could sue an outgoing magistrate for misconduct in office; if the issue at stake was a private matter, the case was heard by a popular court presided over by one of The Forty.[99] A number of such cases must have been heard every year, and if the prosecuting citizen

[96] *Pace* H. ARENDT, *On Revolution* (London 1963), 284 who describes self-exclusion as "one of the most important negative liberties we have enjoyed since the end of the ancient world, namely, freedom from politics, which was unknown to Rome and Athens and which is politically perhaps the most relevant part of our Christian heritage". The difference between the ancient and the modern world is rather that in Athens it was probably a small group of citizens who availed themselves of this negative freedom whereas today it is a very small group of citizens who are politically active in the ancient sense of what political participation implies.

[97] I. BERLIN, *Liberty* (Oxford 2002), 287-321.

[98] *Ibid.*, 301.

[99] For Athens see ARIST. *Ath.* 48.3-6. For a list of *euthynai* heard by the Athenian courts, see M.H. HANSEN, *The Athenian Ecclesia II. A Collection of Articles 1983-89* (Copenhagen 1989), 10 with n. 32. For other Greek *poleis*, see the magisterial collection of the evidence in P. FRÖLICH, *Les cités grecques et le contrôle des magistrats (IV^e-I^er siècle avant J.-C.)* (Genève 2004).

had the magistrate convicted, he would have vindicated his right to something against the *polis*.[100]

IV

The debate over negative and positive freedom has been carried on since Berlin's inaugural lecture in 1958 and it is still an important issue both in political philosophy and in ancient history. In a recent monograph about ancient and modern liberty Wilfried Nippel devotes a section to discussing Berlin's concepts of negative and positive freedom and the issue whether the Athenians had any notion of individual freedom.[101] He selects me as the protagonist of the view that individual freedom was an important aspect of Athenian democratic ideology. As the representative of the opposite view he refers to the chapter *Athens's Illiberal Democracy* in the first volume of Paul Rahe's magnum opus: *Republics Ancient and Modern*.[102]

In an introductory section of this chapter Rahe discusses a broad selection of the sources which — favourably or unfavourably — draw a picture of Athens as a democracy in which the citizens are free to speak their mind and live as they like. He admits that on the basis of this evidence one might think that "the city Athena had somehow become an open society, with a ethos similar to that of James Madison's litigious liberal republic".[103] But the next section is opened with the statement: "And yet nothing could be further from the truth"[104], and my Essay *Was Athens a Democracy?* is held up as the exponent of

[100] For trials in Athens brought by a citizen against the *polis*, see LYS. 17, 18 and 19.

[101] W. NIPPEL, *Antike oder moderne Freiheit? Die Begründung der Demokratie in Athen und in der Neuzeit* (Frankfurt am Main 2008), 332-5.

[102] P. RAHE, *Republics Ancient and Modern. Vol. 1. The Ancien Régime in Classical Greece* (Chapel Hill 1994), 172-204.

[103] *Ibid.*, 178.

[104] *Ibid.*

the mistaken view which even in our own day is advocated by many students of the classics.[105]

To refute my view Rahe adduces five observations which, in his opinion, disclose the illiberal character of Athenian democracy. 1. The Athenians had slaves. 2. Women were excluded from political life. 3. The Athenians did not naturalise metics. 4. Athens had no written constitution. 5. The protection of a citizen's home was not peculiar to democratic Athens, it was found in Sparta as well. — Later in the chapter he adds some further charges which, in his view, show that Athens was "an illiberal democracy." The two most important are: 6. The Athenians controlled an empire and ruled their allies tyrannically.[106] 7. In religious matters the Athenians did not tolerate diverging opinions or deviant behaviour.[107]

All Rahe's points of criticism can be raised not only against the ancient Athenian but also against modern democracies which unquestionably have had individual freedom as an ideal which people tried to uphold.

Re 1. In 1776 when Thomas Jefferson drafted the Declaration of Independence about one fifth of the population of the southern American colonies were slaves. Jefferson owned close to 200 slaves, and when he died in 1826 only five were freed. There were still slaves in USA in 1842 when one could read in the 7th edition of the *Encyclopaedia Britannica* under the entry "democracy" that "the most perfect example of democracy is afforded by the United States of North America at the present day". Slavery was not abolished until 1863, and it was only with the Civil Rights Act of 1964 that black Americans living in the southern states became full American citizens.

Re 2. When President Wilson in his speech to Congress in April 1917 wanted "to make the world safe for democracy" women had no political rights in any of the belligerent powers,

[105] *Ibid.*, 325, n. 41.
[106] *Ibid.*, 179.
[107] *Ibid.*, 182.

except Australia and New Zealand; and in Belgium, Italy and France women had to wait till after the Second World War before they got political rights.

Re 3. In almost all modern democracies guestworkers and refugees have no political rights. In Switzerland, allegedly the stronghold of democracy, over 20% of the population are foreigners without the political rights possessed by citizens.[108]

Re 4. UK has no written constitution and Parliament is empowered to pass any law whatsoever. The only constitutional protection of freedom is UK's accession in 2000 to the European Convention on Human Rights. Until recently several other democracies were organised like Britain and had no constitution until the end of the 20th century.

Re 5. In 4th century Sparta there were indeed walled houses described as private nests,[109] but we do not know whether or not Spartan officials were empowered to penetrate into a private house without a warrant from the *gerousia* or the ephors. And these houses were seen as a defect in Spartan society[110] whereas the inviolability of a citizen's home in Athens was considered to be a democratic ideal protected by the laws.[111]

Re 6. In 1915 all London buses had stuck up a bill with an English translation of Pericles' praise of liberty in the funeral speech.[112] But at that time England ruled an empire whose members were certainly not governed democratically. Like Athens, Britain was a democracy at home but an imperial power abroad.

Re 7. The Athenian trials of people charged with aberrant views about religious or constitutionals matters must be compared with similar trials in modern democracies, and in an American context with the persecution during the McCarthy

[108] *Switzerland in its Diversity* (2007-8), 26.

[109] PLATO *Resp.* 548a-b, *cf.* P. RAHE, *op. cit.* (n. 102), 144.

[110] M.H. HANSEN, "Was Sparta a Normal or an Exceptional *Polis*?", in *Sparta: Comparative Approaches,* ed. by S. HODKINSON (Swansea 2009) 385-416.

[111] DEM. 18.132; 22.51-2. See M.H. HANSEN, *op. cit.* (n. 1), 13-4.

[112] F.M. TURNER, *The Greek Heritage in Victorian Britain* (London 1981), 187.

period of people suspected of communist views and espionage on behalf of the Sovjet Union. The evidence does not support Rahe's view that there were numerous such trials in Classical Athens. In 415 Alkibiades was convicted not because of his parodying the Eleusinian mysteries but because in a private party he had diclosed the secrets to uninitiated persons.[113] Similarly, Diagoras was not convicted of atheism, but of having disclosed the mysteries in his book.[114] Sokrates was probably convicted as a missionary, because, without public permission, he had introduced what could be seen as a new kind of oracle cult based on his *daimonion*. And if the circle around Sokrates had not included so many traitors with oligarchic sympathies, he could probably have continued his criticism of democracy uninterrupted.[115] Rahe claims that there were many such trials in Athens, but the sources are Hellenistic biographies of dubious value. After Sokrates it was an accolade for a philosopher to have been charged with impiety, and the Hellenistic biographers were eager to bestow the honour on quite a few of Sokrates' contemporaries and successors: Anaxagoras, Protagoras, Prodikos, Stilpon, Theodoros, Aristotle and Theophrastos.[116] Anaxagoras may have been put on trial,[117] but the

[113] M.H. HANSEN, *Eisangelia* (Odense 1975), 74-6.

[114] AR. *Av.* 1073 with *scholia*, cf. N. DUNBAR, *Aristophanes Birds* (Oxford 1995), 581-3.

[115] M.H. HANSEN, *The Trial of Sokrates — from the Athenian Point of View* (Copenhagen 1995), 19-31. My views were disputed by S.R. SLINGS in his review in *Mnemosyne* 51 (1998), 501-6, which I countered in "The Trial of Sokrates — from My Point of View", in *Noctes Atticae*, ed by B. AMDEN *et al.* (Copenhagen 2002), 150-8. My reconstruction of the trial is also disputed by A.W. SAXONHOUSE, *op. cit.* (n. 61), 104-5; but she does not mention a main point in my argument, *viz.* that a majority of the citizens who appear in the circle round Sokrates seem to have been black sheep and disreputable persons whom the Athenians had sentenced to death, often *in absentia* (27).

[116] E. DERENNE, *Les procès d'impiété intentés aux philosophes à Athènes au V^me^ & au IV^me^ siècles av. J.C.* (Liège 1930); K.J. DOVER, "The Freedom of the Intellectual in Greek Society", in *Talanta* 7 (1976), 24-54; R.W. WALLACE, "Private Lives and Public Enemies: Freedom of Thought in Classical Athens", in *Athenian Identity and Civic Ideology*, ed. by A.L. BOEGEHOLD, A.C. SCAFURO (Baltimore 1994), 127-55.

evidence for all the other public prosecutions of philosophers for impiety is anecdotal and dangerous to rely on without further information. Even the trial of Anaxagoras is not above suspicion.[118] If we can trust our sources, in order to have a law that warranted a suit of that kind, a certain Diopeithes had to propose and carry a decree that public action be brought against atheists and astronomers, probably a *hendiadys* for atheistic astronomers.[119] In any case, the urgent need for a decree in order to have Anaxagoras put on trial indicates that the Athenians did not normally interfere with what people thought about the gods as long as they did not profane the mysteries or mutilate the Herms or commit other acts of impiety.

None of the objections made by Rahe disprove the sources that show that the Athenians cherished individual freedom and that — within the limits dictated by the nature of ancient societies — they lived up to their ideal. Besides, is there any example in world history of a society that has lived up to its own ideals one hundred per cent? Rahe for his part is conscious of the fact that all his charges against Athenian democracy have parallels in modern democracies but holds that one must "recognise as anomalous in modern democracies phenomena which are clearly illiberal vestiges of the premodern world". As indicated above Re 1-7, that is to whitewash modern democracies in order to blacken the Athenian one.

The only one of Rahe's objections that is potentially relevant is the last one. I admit that the trial of Sokrates may have been an infringement of the individual's freedom of expression. If so, it was in my opinion a miscarriage of justice and not, as Rahe may argue, a juridically justified verdict passed by an illiberal democracy. Our sources do not allow us to decide the issue since we cannot any longer reconstruct the case for the

[117] E. DERENNE, *op. cit.* (n. 116), 13-41.
[118] K.J. DOVER, *art. cit.* (n. 116), 29ff; R.W. WALLACE, *art. cit.* (n. 116), 136-7.
[119] PLUT. *Per.* 32.2-5; *Mor.* 169e; DIOD. 12.39.2; DIOG.LAERT. 2.12.

prosecution.[120] We cannot even reconstruct the defence. We know from Xenophon's *Apology* that Sokrates had *synegoroi* who spoke in his defence. Any reconstruction of the political aspects of the trial based on Plato's and Xenophon's accounts alone is bound to be defective in as much as it is likely that the political charges were dealt with by the *synegoroi*.[121] Furthermore, it must be kept in mind that the trial of Sokrates took place only four years after the second oligarchic revolution and less than two years after the civil war between Athens and Eleusis. 399 was not a 'normal' year. Once again a modern parallel is revealing. The terrorist attack on USA on 9/11 caused almost all democratic states to impose restrictions on fundamental rights and freedoms such as the protection of person and freedom of speech. Antiterrorist laws have made modern democracies less democratic, and nine years after 9/11 there is still a prison at Guantánamo Bay where USA detain prisoners who have never had the opportunity to appear before a court. From a democratic point of view the years after 9/11 have not been 'normal years'.

V

To conclude: if the Athenians had no notion of individual freedom, how can it be that it appears as an ideal in the sources that praise democracy? And that it is criticised as a misunderstanding of man's purpose in life in sources that take a negative view of democracy? If the Athenians had no notion of individual freedom, it is a mystery to me that they are able to describe it in words and phrases that are so close to those used by modern

[120] M.H. HANSEN, *op. cit.* (n. 115), 4, 7-15, 31.

[121] XEN. *Ap.* 22. M.H. HANSEN, *op. cit.* (n. 115), 13-14. That it was the rule rather than the exception to have *synegoroi* in public actions is demonstrated by L. RUBINSTEIN, *Litigation and Cooperation. Supporting Speakers in the Courts of Classical Athens* (Stuttgart 2000), 58-65.

champions of freedom, *viz.* that people in a democracy are allowed to live their private lives as they like or that an essential difference between democratic Athens and oligarchic Sparta is that in Athens one is allowed to praise the Spartan constitution and way of life whereas in Sparta it is an offence to praise any other constitution than the Spartan (Dem. 20.105-8).

I find it incomprehensible that scholars can deny that the Athenian democrats cherished individual freedom 'as an ideal'. Whether they lived up to their ideal is a different question. That issue cannot be settled by referring to Euripides or Thucydides or Demosthenes. But here the philosophers are valuable sources. Both Plato and Aristotle give voice to the view that democratic freedom to live as one likes was not just an ideal but — alas — a reality, and that is one of their reasons for rejecting democracy as a debased form of constitution. Plato in particular but Aristotle too would not have focused on individual freedom as one of the most objectionable aspects of democracy if "to live as one likes" had been an empty rhetorical phrase — professed at the annual public burial of soldiers killed in the course of the year or in some of the tragedies performed at the Dionysia — but of no importance in real life.

Thus Plato and Aristotle are in fact the best sources we have to confirm what the Athenian democrats claimed: that individual freedom in the private sphere to live as one likes was an important ideal and to a large extent a reality too in Classical Athens. One question remains: to what extent did individual freedom in Athens develop into anarchy as claimed by Plato but contested by the Athenian democrats themselves? That issue must be dealt with in a future investigation.

DISCUSSION

C. Farrar: What makes personal freedom (living as one likes) a 'democratic' value? I suggest that the ancient democrats connected the personal and the political (and freedom in the two realms) in a way that we don't — not just that they drew the line in a different place. Everyone, whatever their personal or social characteristics, so long as they are not slaves, is freed from domination by others. Aristotle (in his 'best city' mode) and Plato object to this in one way, but not in another — personal excellence is to be the requirement of political power, and order will therefore suffuse both realms. They (like the democrats) say they do not want to 'read off' from conventional sources of personal and political domination to political entitlement — but they do want to tie political power to a personal characteristic, namely excellence or merit.

M. Hansen: Since Athens was a direct and not just a representative democracy, citizens could connect the personal and the political in a way that we don't. I agree. We must not forget that excellence and merit were important principles in Athenian democracy. Even in a direct democracy there has to be 'leaders' and 'followers'. What the Athenians required from their *rhetores kai strategoi* was that their leadership was based on excellence and merit, see, e.g., Thuc. 2.37.1 and the numerous honorary decrees passed by the Athenians in honour of their leaders (e.g., Aeschin. 3.49-50; *IG* II^2 223 A 11-12).

C. Farrar: For the Athenians, democratic political institutions gave both freedom (in the private sphere) and power (in the public sphere) to people who were not deemed to be entitled to either. So just as 'everyone' is entitled to rule and be

ruled (or not), so too 'everyone' is free in the private context. This private freedom is primarily, I suggest, freedom from interference from other individuals (as in Pericles' Funeral Oration and Thuc. 7.69.2, and as you yourself indicate, p. 330; and note your conclusion that the argument against 'just living as one likes' occurs in public actions, not private ones).

M. Hansen: I agree that at 2.37.2 Thukydides mentions freedom from interference from other 'individuals', but at 7.69.2 the reference must be to freedom from interference from the *polis*. Nikias speaks about everybody's right (ἐξουσίας) in Athens not to be under command (ἀνεπιτάκτου) in one's daily life (ἐς τὴν δίαιταν).

I suppose that by "people who were not deemed to be entitled to either" you understand ordinary citizens, i.e. the 'followers' who did not possess the excellence required from the democratic 'leaders'. In this context I find it worth adding that Aristotle — but not Plato — was open to the view that the limited wisdom of ordinary citizens could be added up when they attended an assembly, and that — in this way — the assembly as a whole could possess more wisdom than any individual person or narrow group of meritous persons (*Pol.* 1282a16-17).

C. Farrar: I agree with you that the Athenian democracy did respect individual (though not human) rights, and they did distinguish public from private. But I don't think that they did so because they were reconciling a 'negative' and a 'positive' view of freedom. Instead, they were keen to ensure a principle of non-domination in both realms, through democratic institutions in which everyone could participate. The distinction between public and private was important because in the public realm, when they were making and enforcing laws, citizens were called upon to act as citizens — a self-understanding built through institutions like rotation and the lot — not just as private individuals with private interests, whims, and desires. As Aristotle says (*Pol.* 1279a8f), it is because of the principle of

taking turns to rule that 'despotism' is prevented, and the interests of all are preserved.

M. Hansen: I agree with you that the Athenians "were keen to ensure a principle of non-domination in both realms, through democratic institutions in which everyone could participate". But that is not incompatible with the view that they had to reconcile the positive (political) and the negative (individual) view of freedom by distinguishing between a public and a private sphere of life.

Any view of democratic freedom — ancient as well as modern — has to face the problem that there is an inherent opposition between positive political and negative individual freedom (see p. 312). If one maximises the sphere of individual freedom, there is no room left for political decision making in which to participate. The result is anarchy (Plato's and Aristotle's view of Athens). If one maximises the sphere political freedom there is no room left for doing anything unobstructed by others. The result is a totalitarian society (many Athenian democrats' view of Sparta). So today — as well as in ancient Athens — the precondition for combining the two aspects of freedom is to distinguish between a public sphere in which we participate in political decision making (directly in Athens, indirectly in modern democracies) and a private sphere in which we can live as we please without interference from the state or from other individuals. In Athenian political thought the distinction was between the public (τὸ κοινόν or δημόσιον) and the private (τὸ ἴδιον), in modern liberal democracy the commonly made distinction is between state and civil society.

In Athenian sources the distinction appears in what seems to be a paradox: in sources praising the Athenian constitution we are told that to live as one likes is an essential aspect of democratic freedom (pp. 321-3 *supra)*. In speeches for the prosecution in public actions we are told the opposite: that to allow the defendant to live as he likes is an offence which undermines law and society (pp. 324-5 *supra)*. These two apparently

contradictory views, however, are perfectly compatible when connected with the distinction between the private and the public sphere.

Plato and Aristotle, however, did not accept a distinction between a public and a private sphere and they criticised the democrats for making it. Plato in particular thought that in the best *polis* everything had to be under public control, and to a large extent Aristotle was inclined to share this view. As I have argued here and shall argue in more detail in my forthcoming article (see p. 330 n. 91) they held that to allow people to live as they like would lead to anarchy (Plato *Resp* 563d; Arist. *Pol.* 1319b28).

C. Farrar: This is very different from modern democracy (despite the language of self-determination) — modern citizens are not equally free to rule, so their personal freedom is not in this way continuous with political power. Modern systems can be 'liberal' (i.e. enforce the rule of law, and protect human rights), and even give everyone the right to vote, without being fully democratic (i.e. without giving all citizens "the power to take part in the deliberative or judicial administration", Arist. *Pol.* 1275b19-20). Modern citizens are in effect self-ruled 'only' in the private sphere. Robert Dahl once observed that individual freedom secured by rights can be seen as the consolation prize for the modern citizen's loss of political power. I think this is misleading: Athenians enjoyed personal freedom precisely because of their status as powerful citizens of a democratic *polis*.

M. Hansen: Yes, "modern citizens are self-ruled 'only' in the private sphere" because in the public sphere they do not have "the power to take part in the deliberative or judicial administration" but just the right to vote. The Athenian citizens were self-ruled both in the public and in the private sphere. That constitutes, as you say, an essential difference between ancient 'direct' and modern 'representative' democracy

When Robert Dahl sees individual freedom as a "consolation prize" he is echoing what Constant predicted in 1819 and warned against: if enjoying modern individual freedom we give up all claims to political freedom we end up as passive subjects of the rulers.

K. Piepenbrink: Ich stimme Ihnen zu, dass die Athener in bestimmten Kontexten eine derartige Unterscheidung vornehmen. Mein Eindruck ist, dass es daneben auch Situationen gibt, in denen sie eine Interdependenz zwischen den beiden Elementen herausstreichen. Das scheint mir etwa in der Gerichtsrhetorik der Fall zu sein, z.B. wenn ein Kläger für sich reklamiert, Schutz für seine Person bzw. seinen häuslichen Bereich zu suchen (also — wenn man die Begrifflichkeit verwenden möchte — ‚negative Freiheit' zu erlangen) und gleichzeitig bemerkt, dass er dies dadurch erstrebt, dass er sich als Bürger engagiert, indem er eine Klage einreicht (also seine ‚positive Freiheit' nutzt). Einen ähnlichen Zusammenhang hat m.E. D. Cohen herausgearbeitet, als er den Nexus zwischen Gesetzesherrschaft und individuellen Rechten im Athen des vierten Jahrhunderts aufgezeigt hat (siehe D. Cohen, "Democracy and Individual Rights in Athens", in *ZRG Rom. Abt.* 114 [1997], 27-44, bes. 32-34).

M. Hansen: You are right. In many cases negative and positive freedom were both involved simultaneously. Enjoyment of individual rights in the private sphere presupposes the protection of these rights by the political institutions in the public sphere. In Athens both the Assembly and the popular courts were manned with ordinary citizens who volunteered (*hoi boulomenoi*). Thus a prosecutor in a private or public action concerning the infringement of an individual right would make use of his positive freedom to defend his negative freedom.

A. Lanni: Critiques of the modern public/private distinction have pointed out that the line between public and private is

exceedingly fuzzy, and perhaps even nonsensical since so much of what we consider 'private' is dependent on protection provided by public acts. Can you elaborate on where the Athenians drew the line between public and private? Were the City Dionysia and other religious festivals, for example, considered public or private?

M. Hansen: The City Dionysia and other similar festivals were certainly public, but at the same time private individuals could make dedications and perform sacrifices in public temples, and, e.g. the house cults of Hestia and Zeus Herkaios were presumably private whereas there were public cults of the two deities as well, see R. Parker, *Athenian Religion* (Oxford 1996), 5-7. To draw a clear line between the public and private was impossible in ancient Greece, just as it is today. But at the same time the opposition between the public and the private was important in Classical Athens, just as it is today, both in theory and in practice. And τὸ ἴδιον *versus* τὸ κοινὸν or δημόσιον is an opposition attested again and again in all our sources. Yes, individual freedom (in the private sphere) is indeed "dependent on protection provided by public acts". For a treatment of the issue, see my chapter "The Opposition between the Private and the public", in *Polis and City-State* (Copenhagen 1998) 86-91 = *Polis et cité-état* (Paris 2001) 128-35.

A. Lanni: At the end of your paper you raise the question of whether the Athenians lived up to their ideal of protecting individual freedom and the private sphere. I believe that they did not. The prevalence of informal social sanctions (e.g. Xen. 1.7.35; Lys. Fr. 38; Dem. 25.63; Thuc. 2.37.3) — and the potential seriousness of such sanctions in a rural society where one was dependent on neighbours and friends to survive downturns— must have severely restricted individual freedom. Moreover, in practice, the distinction between public and private behavior was not maintained. As I contend in "Social Norms in the Courts of Ancient Athens," in *Journal of Legal*

Analysis 1.2 (2009), 691-736, litigants argue that verdicts should turn in part on the extent to which they and their opponents had adhered to a variety of norms of private behavior, from their treatment of relatives and friends to their sexual behavior. In this way, the Athenian popular courts did not respect a 'private sphere' but rather actively enforced private social norms.

M. Hansen: Yes, I agree that the practice in Athenian courts to treat the opponent's character and way of life must have had an influence on social behaviour and thereby restricted a citizen's negative freedom to live as he liked. That is an important point. But, as far as I know, it is the same in modern democracies. For a comparison in this respect between ancient Athenian and modern Danish administration of justice, see L. Rubinstein, *Litigation and Cooperation* (Stuttgart 2000), 194 n. 21, 212-18. I suppose you can supply the literature for the American and British systems. Even in modern democracies, one's social behaviour in general is important for how one is treated in a law court and in this way modern democratic courts too tend to restrict the field within which people can live as they like.

Chr. Mann: Die Analyse der philosophischen Diskurse leuchtet mir ein, ich frage mich allerdings, ob die Athener ihre individuelle Freiheit durch die Demokratie geschützt sahen. Für die Aristokraten gilt dies sicherlich nicht, sie sahen sich einem starken normativen Druck seitens des *demos* ausgesetzt. Zu leben, wie man wollte, hieß für die griechischen Aristokraten, ihren sozialen Status öffentlich zu präsentieren, aber genau in dieser Hinsicht fühlten sie sich durch die demokratische Ordnung eingeschränkt, wie vor allem die Quellen des 5. Jahrhunderts zeigen. Was die Bauern in den Dörfern Attikas betrifft, wurde die individuelle Freiheit weniger durch rechtliche Regelungen als durch soziale Kontrolle eingeschränkt. Hier trat nach den Reformen des Kleisthenes ein Wandel ein,

indem die Demenorgane gestärkt wurden (W. Schmitz, *Nachbarschaft und Dorfgemeinschaft im archaischen und klassischen Griechenland* [Berlin 2004], 411-66). Für mich stellt sich daher die Frage, welche Gruppen der athenischen Bürgerschaft von dem Schutz individueller Freiheiten profitierte, welche die athenische Demokratie Deiner Meinung nach mit sich brachte.

M. Hansen: I agree with you that "zu leben, wie man wollte, hiess für die griechische Aristokraten, ihren sozialen Status öffentlich zu präsentieren". It has often been noted that one of the fascinating aspects of Athenian democracy is that most democratic leaders in the fifth century and many in the fourth were members of the old upper class families who — apparently without much regret — gave up the aristocratic form of ruling the people and came to lead the people instead (cf., e.g. J.K. Davies, *Athenian Propertied Families* [Oxford 1971], xvii; E. Stein-Hölkeskamp, *Adelskultur und Polis-gesellschaft* [Stuttgart 1989], 235-7). They had ample opportunity to demonstrate their social status, e.g. by being prominent speakers in the Assembly, by performing liturgies, and if — like Alkibiades — they were victorious in the Olympic games, such triumphs were seen to lend lustre to the *polis* as well as to the winner personally (Isoc. 16.32-5). There were, of course, other aristocrats who after the introduction of democracy preferred to turn their back on politics and to live as passive citizens who minded their own business. They are scorned by Perikles in the Funeral Oration (Thuc. 2.40.2), but their attitude was respected and in Athens negative individual freedom comprised the right to stay out of politics (see p. 331). The opportunity for the aristocrats to adjust themselves to democratic government and democratic freedom was eased by the fact that democratic equality was restricted to the political sphere. In Athens there was never any attempt during the democracy to demand and implement a redistribution of land (ἀναδασμὸς γῆς) or a cancellation of debts (ἀποκοπὴ χρεῶν).

The individual freedom enjoyed by small farmers is a different matter. In the Greek *polis* in general and in Athens in

particular there was no sharp barrier between an urban and a rural population. Many farmers must have been *Ackerbürger,* i.e. they lived in Athens but had their fields in the hinterland outside the walls. Farmers settled in the inland and coastal demes seem to have visited Athens frequently, as demonstrated, e.g. by the dicastic *pinakia*, cf. my *The Athenian Ecclesia* 2 (Copenhagen 1989), 233. Therefore I suspect that the '*Dorfgemeinschaft*' mattered less in Ancient Greece than in Medieval and new modern Europe. The freedom to speak one's mind is claimed to be a privilege open not only to citizens, but also to foreigners, women and slaves (see p. 323). And the unbound life style in everyday social relations is not only praised by democrats, but also severely criticised by those who dislike democracy (the Old Oligarch, Isokrates, Plato and Aristotle, see p. 326). The criticism indicates that it was at least to some extent a reality and not just empty praise. On the other hand, in daily life there must have been a social pressure, sometimes a strong social pressure. There is in all societies, non-democratic as well as democratic, ancient as well as modern, *cf.*, for example, what Tocqueville has to say about the strong social pressure in the American democracy, *De la démocratie en Amérique* (Paris 1835-40), 2.7.7, (293-4 in the Pléiade edition).

O. Murray: I agree with your rather negative interpretation of the influence of Isaiah Berlin's inaugural lecture of 1958. That was of course a seminal paper in the rhetoric of the Cold War, which has to be considered alongside those other great texts of the age — Karl Popper's *The Open Society and its Enemies* of 1945 (revised 1952) and his *The Poverty of Historicism* of 1957. Later one discovered that much of this activity, in the famous literary journal *Encounter* and elsewhere, had been funded by the CIA, often without the knowledge of the protagonists: that would indeed be an interesting study in the secret history of liberty. But I too have received hospitality from the Liberty Fund, as well as its Soviet equivalent. It is a

great pity that, like many of us as we get older, Berlin was unwilling to revise his opinions.

I think however that you have still accepted too much of Berlin's view of the history of liberty. The rediscovery of Benjamin Constant was much earlier than you suggest: it is due to Benedetto Croce and his disciples in the 1930s (see B. Croce, *Constant e Jellinek intorno alla differenza tra la libertà degli antichi e quella dei moderni* [Napoli 1930], whose importance was recognised in a review by A. Momigliano in *RFIC* ns IX [1931], 262-4); Croce was translated into English by his disciple R.G. Collingwood; and his view of liberty was fundamental to liberal European thought before and during the Second World War. The distinction that Berlin was trying to make is already the basis of Momigliano's lectures as a refugee, "Peace and Liberty in the Ancient World", given in Cambridge in 1940 (Italian translation, *Pace e libertà nel mondo antico,* a cura di R. Di Donato [Roma 1996]; the English original will shortly be published).

Moreover you seem to follow Berlin in ignoring the importance of religion in the history of liberty; as Lord Acton saw, Christianity was fundamental to the conception of a sphere of personal freedom of thought — and not just once in the age of persecutions, but again in the development of the idea of freedom of religious thought from Protestantism to the American Revolution. An Anglican Christian addresses almost daily a God "whose service is perfect freedom" (*Book of Common Prayer, Second Collect, for Peace*).

M. Hansen: Concerning Benedetto Croce I note that, once again, you have drawn attention to a book which is practically unknown to others — including me — who write about the issue of negative and positive freedom. In Stephen Holmes' monograph on Constant there is no reference to Croce. Once again Momigliano seems to be the intermediary figure. I look forward to seeing the publication of the English original of his lecture.

Concerning religion, I do not want to ignore or play down the importance of religion in the history of freedom. As you note, it was ignored by Berlin. It was ignored by Constant too and, to the best of my knowledge, it is not a key issue in the discussion about the relation between negative and positive freedom. I intend to take it up in a future study about other aspects of the history of freedom.

O. Murray: Since we are discussing the relevance of ancient ideas to the modern world, a student of the modern idea of freedom might well respond to both Berlin and yourself that the concept of liberty is more complicated. There is much to recommend the view of Idealism from Hegel and Croce, that sees the history of humanity as the history of liberty: the continuous thread in western history at least is the developing idea of freedom, which has changed and will continue to change its meaning in each successive age. But I wonder whether this can still satisfy us from a multi-cultural perspective. What is the Arabic for 'liberty', and how does it differ from western ideas? And what is the Chinese concept of liberty? I have found no enlightenment on these crucial questions for the future of the human race in either the *Muqaddimah* of Ibn Khaldun or the *Analects* of Confucius. We desperately need an answer to the question whether there is anything outside the western tradition that corresponds to the central importance of the theme of liberty in our history.

M. Hansen: As you correctly point out, to see the history of humanity as the history of liberty may be a thread of western history which dominates idealism from Hegel to Croce. But it is a narrow view which overlooks that in the Christian tradition equality matters much more than liberty. And during the Enlightenment — before romanticism and idealism — liberty was usually balanced by equality. Furthermore to focus on liberty is a western view of civilisation. As you say, neither in Muslim nor in Chinese civilisation is there any notion of freedom as a right the individual has against state and society.

O. Murray: I am not at all sure that Constant arrived at his view of the two types of liberty because he regarded Sparta as the typical Greek *polis*; his thesis related to the whole of antiquity, not simply to Greece: he saw no sign of the modern type of liberty in Rome either. And you perhaps exaggerate the exception that he made of ancient Athens: he does after all offer the Athenian institution of ostracism as an example of the absence of the modern idea of liberty and the power of the ancient community over the rights of the individual.

M. Hansen: You are right that Constant's thesis relates to the whole of antiquity. Even ancient Gaul gets a mention (592) alongside Sparta, Athens and Rome. But I hold that Sparta and Athens take centre stage and in several passages Rome is referred to alongside Sparta (595, 597, 599, 600). Like the Spartans, the Romans had no notion of the modern kind of freedom. Note that Rousseau and Mably are the two philosphers singled out and severely criticised by Constant (604-6). They were both Spartophiles and in particular Mably is taken to task by Constant for his misguided admiration for Sparta and his equally misguided contempt for Athens (606). Constant's explicit description of Athens as "the exception" shows that he followed the prevailing French view during the Enlightenment that Sparta was the normal *polis*. But the Athenian exception is so important to Constant because the Athenians' dual conception of freedom serves as the outstanding historical model for his main thesis in the lecture: that ancient political and modern individual freedom must exist side by side and that neglect of political freedom will lead to servitude (616-19). You are also right that Constant's positive evaluation of Athenian freedom does not preclude that he is critical of some Athenian institutions, for example ostracism (see p. 316 n. 41).

O. Murray: Your discussion of Arist. *Pol.* 6.2 does not solve what is for me the central puzzle. I believe you are right to

emphasise that in ancient Athens there were two aspects of the democratic argument in favour of democracy. But I am still left with the question, what is the source for this doctrine? W.L. Newman in his great commentary simply attributes it to *hoi demotikoi*, which does not help much. We find traces of such views elsewhere of course, as the much derided book of E.A. Havelock, *The Liberal Temper in Greek Politics* (1957) showed — in Thucydides' funeral oration, in Plato's *Protagoras*, in Euripides' *Supplices*. One of its most famous expressions is, as you say, in the debate on constitutions in Hdt. 3, with Otanes' declaration "I do not want either to rule or to be ruled", a slogan that I have seen written on a wall in Athens as an election manifesto, presumably of an anarchist group. The latest Herodotus commentary of David Asheri rightly says "the maxim is worthy of a philosopher" (p. 476). But what philosopher? I fear that as long as we cannot answer this question, we are always open to the perfectly reasonable objection that Aristotle was not referring to any developed body of democratic doctrine, but had simply distilled these ideas from his own interpretation of the logic of the democratic position — in which case he could be held to have been the originator of this coherent democratic theory. Indeed the reference you cite in note 50 from Jonathan Barnes to support your view specifically leaves open these two possibilities: "Does Aristotle recognize the two sorts [of freedom]? He seems to be talking *in propria persona*; but given his rejection of the 'democratic' definition of freedom at 5.9 1310a27-36, it may be that the present passage is in implicit *oratio obliqua* — Aristotle is reporting, and not endorsing, a democratic view".

M. Hansen: The subject of φασι at 1317b1 must be πάντες οἱ δημοτικοί at b11. Thus Aristotle states that he reports a view allegedly shared by all democrats, probably politically active citizens as well as philosophers. This interpretation is — as I argue — confirmed by the sources we have: Thucydides, Euripides, and Demosthenes in particular. There was 'a devel-

oped body of democratic doctrine' which can be traced back to the fifth century.

However, not all the statements made in the passage 1317a40-b17 are a report of democratic views. Aristotle has inserted three comments in which he states his own — critical — view of democratic ἐλευθερία, see the quote p. 318 note 49 *supra*. The third comment runs from ἐντεῦθεν at b14 to ἴσον at b17. So τὸ μὴ ἄρχεσθαι, μάλιστα μὲν ὑπὸ μηθενὸς, εἰ δὲ μή, κατὰ μέρος is not what the democrats hold, but Aristotle's own inference and again he blames arithmetic equality.

Otanes' statement at Hdt. 3.83.2 is different. It must be seen in the context of the previous debate among the seven Persian nobles. In context οὔτε γὰρ ἄρχειν οὔτε ἄρχεσθαι ἐθέλω means "I do not want to be king nor do I want to be ruled by a king". The result is that he and his descendants become ἐλεύθεροι (83.3) and the link to democracy is that Otanes was the noble who argued in favour of democracy during the debate (80). A democratic citizen or philosopher 'living in a democracy' would not hold the view "I do not want to rule nor do I want to be ruled". His view would be that he would rule together with his fellow citizens and be ruled by the laws and by the officials in annual rotation. That he would prefer not to be ruled at all is Aristotle's and Plato's dismissive analysis of the consequences of having a democratic constitution.