

Ancient and Modern Democracy

Ancient and Modern Democracy is a comprehensive account of Athenian democracy as a subject of criticism, admiration and scholarly debate for 2,500 years, covering the features of Athenian democracy, its importance for the English, American and French Revolutions and for the debates on democracy and political liberty from the nineteenth century to the present. Discussions were always in the context of contemporary constitutional problems. Time and again they made a connection with a long-established tradition, involving both dialogue with ancient sources and with earlier phases of the reception of Antiquity. They refer either to a common cultural legacy or to specific national traditions; they often involve a mixture of political and scholarly arguments. This book elucidates the complexity of considering and constructing systems of popular self-rule.

Wilfried Nippel is Professor Emeritus of Ancient History at Humboldt University of Berlin. He has been an Ordinary Member of the Berlin-Brandenburg Academy of Sciences and Humanities since 1997. He has published seven monographs, including *Public Order in Ancient Rome* (Cambridge University Press, 1995), and edited eight collective volumes. He has written more than 150 scholarly articles in German and English on subjects of ancient history, history of political thought and history of historiography.

Ancient and Modern Democracy
Two Concepts of Liberty?

WILFRIED NIPPEL

Humboldt University, Berlin

Translated by KEITH TRIBE



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107020726

© Wilfried Nippel and Keith Tribe 2016: Originally published as: 'Antike oder moderne Freiheit? Die Begründung der Demokratie in Athen und in der Neuzeit' 2008 © Fischer Taschenbuch Verlag in der S. Fischer Verlag GmbH, Frankfurt am Main. All rights reserved by S. Fischer Verlag GmbH, Frankfurt am Main.

The translation of this work was funded by Geisteswissenschaften International – Translation Funding for Humanities and Social Sciences from Germany, a joint initiative of the Fritz Thyssen Foundation, the German Federal Foreign Office, the collecting society VG WORT and the German Publishers & Booksellers Association.

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2016

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Nippel, Wilfried.

Ancient and modern democracy : two concepts of liberty? / Wilfried Nippel; translated by Keith Tribe.

pages cm

Includes index.

ISBN 978-1-107-02072-6 (hardback)

1. Democracy – Greece – Athens – History. 2. Democracy – History.

3. Liberty – Greece – Athens – History. 4. Liberty – History. I. Title.

JC75.D36N57 2015

321.8–dc23 2015028498

ISBN 978-1-107-02072-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Contents

<i>Acknowledgements</i>	page ix
<i>List of Abbreviations</i>	xi
Introduction	I
1 The History and Structure of Athenian Democracy	9
<i>Athens – A Special Case in the Greek World</i>	9
<i>Solon, the Legislator</i>	10
<i>The Tyranny of the Peisistratids</i>	11
<i>The Reforms of Cleisthenes</i>	12
<i>Ostracism</i>	14
<i>The Road to Complete Democracy</i>	17
<i>Citizens, Metics and Slaves</i>	23
<i>The New Approach to Allies and the Leading Role of Pericles</i>	30
<i>The Popular Assembly and the Council of 500</i>	33
<i>The Magistracies</i>	39
<i>The Process of Political Decision Making</i>	42
<i>The Financing of Public Tasks</i>	49
<i>Jury Courts</i>	51
<i>The Crises during the Later Phases of the Peloponnesian War</i>	62
<i>Legislation and the ‘Judicial Review’</i>	65
<i>Developments in the Later Fourth Century</i>	71
<i>Democracy without Theory or Mission</i>	74
2 The Reception of Ancient Constitutional Theory	79
<i>Ancient Constitutional Categories</i>	82
<i>The Reception of Aristotle and Civic Humanism</i>	85
<i>Mixed Constitution, Ephors, Tribunes and New Republicanism</i>	89
<i>Alternatives to Aristotelianism</i>	98
<i>Variants of the Social Contract</i>	100

3	Ancient Democracy and Social Backwardness	105
	<i>Republic and Territorial State</i>	106
	<i>A Military or a Commercial State</i>	107
	<i>Further Distancing from Antiquity</i>	115
4	The American Founding Fathers and Their Emancipation from the Ancient Model	118
	<i>Sources of Constitutional Discussion</i>	119
	<i>Lessons from Antiquity</i>	124
	<i>A World-Historical Founding Constellation</i>	129
	<i>Constitution, Basic Rights, Human Rights</i>	139
	<i>Republic and Democracy</i>	144
5	The French Revolution and Antiquity	148
	<i>Constitution Building and Human Rights</i>	149
	<i>Topics from Antiquity</i>	158
	<i>State of Emergency, Dictatorship and Tyranny</i>	164
	<i>Building a Constitution and Freedom of Opinion</i>	170
	<i>A National Programme of Education</i>	173
	<i>Emancipation: Slaves, Women, Foreigners</i>	175
	<i>Citizens, Voters and Democracy</i>	178
	<i>Gracchus Babeuf</i>	183
	<i>References to Antiquity in Post-Revolutionary Constitutions</i>	185
6	Terror and the ‘Cult of Antiquity’ in Post-Revolutionary Discourse	191
	<i>The Legend of Jacobin Enthusiasm for Antiquity</i>	192
	<i>The Course of Discussion in Germany</i>	196
7	‘Ancient and Modern Liberty’ – From Benjamin Constant to Max Weber	204
	<i>Constant on Liberty/Liberties</i>	204
	<i>Fustel de Coulanges and the All-Powerful Ancient State</i>	211
	<i>Burckhardt and the Subordination of the Individual to the State</i>	215
	<i>Acton on the History of the Freedom of Conscience</i>	218
	<i>Max Weber and the Homo Politicus</i>	219
8	German Nineteenth-Century Ambivalence Regarding Athenian Democracy	224
	<i>Topical Criticism of Athens</i>	225
	<i>Discussion of Major Athenian Iniquities</i>	232
	<i>Positive Images of Athens</i>	240
9	The ‘Rehabilitation’ of Athenian Democracy	247
	<i>The Tory View of Athens</i>	247
	<i>Grote’s Liberal Athens</i>	251
	<i>Antiquity and the Present in the Writing of John Stuart Mill</i>	259
	<i>German Reactions to Grote</i>	268
	<i>Discussion in the Theory of the State</i>	275

10	Models of Democracy and Constitutional Policy in the Nineteenth and Early Twentieth Centuries	278
	<i>Competing Democratic and Constitutional Models</i>	279
	<i>Caesarism – Autocracy and Democracy</i>	293
	<i>Antiquity in Political Rhetoric</i>	296
	<i>Direct Popular Legislation</i>	299
	<i>The Paris Commune and the Dictatorship of the Proletariat</i>	302
	<i>Referendum Democracy</i>	304
	<i>German Liberty versus Western Democracy</i>	308
	<i>Prussian Electoral Reform and the Relevance of Antiquity</i>	310
11	Democracy, Führer and Volksgemeinschaft	315
	<i>New Theories of Democracy</i>	315
	<i>Back to Arguments from Antiquity</i>	319
	<i>Fascism and the Cult of Rome</i>	322
	<i>Athenian and Weimar Democracy</i>	325
	<i>Ancient and German Leadership in National Socialism</i>	329
12	Between Totalitarianism and the Constitutional State	340
	<i>Totalitarianism in Antiquity?</i>	340
	<i>Diverging Historical Perspectives on Athens</i>	342
	<i>The Revived Discussion over the ‘Two Freedoms’</i>	348
	<i>2,500 Years of Democracy?</i>	350
	<i>Democratisation versus the Limitation of Powers</i>	352
13	Conclusion: Is Athens Still a Standard?	356
	<i>Democracy as the Sole Legitimate Constitution</i>	357
	<i>A Democratic Deficit in Athens?</i>	359
	<i>‘Direct Democracy’ – Back to Athens?</i>	363
	<i>Athenian Democracy and the European Union</i>	368
	<i>Further Reading</i>	371
	<i>Index</i>	375

Acknowledgements

This book has appeared in German in 2008, a French translation was published in 2010. On the occasion of this English translation I have taken the opportunity to revise my text and to include additional material on a considerable scale.

I thank the translator Keith Tribe for the pleasant cooperation, Andreas Kohring for technical support, Nadine El-Hussein and Laura Nippel for their help in proof-reading.

Abbreviations

Fornara	Charles W. Fornara (ed.), <i>Archaic Times to the End of the Peloponnesian War</i> (Translated Documents of Greece and Rome, 1), Cambridge 1983.
GKG	Jacob Burckhardt, <i>Griechische Kulturgeschichte</i> , reprinted Munich 1977.
Harding	Philipp Harding (ed.), <i>From the End of the Peloponnesian War to the Battle of Ipsos</i> (Translated Documents of Greece and Rome, 2), Cambridge 1985.
MECW	Karl Marx, Frederick Engels, <i>Collected Works</i> , Moscow 1975ff.
MEGA ²	Karl Marx, Friedrich Engels, <i>Gesamtausgabe</i> , Berlin 1985ff.
MEW	Karl Marx, Friedrich Engels, <i>Werke</i> , Berlin 1955ff.
Mill, <i>Collected Works</i>	John Stuart Mill, <i>Collected Works</i> , ed. John M. Robson et al., Toronto 1963ff.
Mill, <i>Dissertations</i>	John Stuart Mill, <i>Dissertations and Discussions</i> , vols. 1–2 (1859), reprinted New York 1973.
MWG	<i>Max Weber Gesamtausgabe</i> , Tübingen 1986ff.
Rhodes / Osborne	Peter J. Rhodes and Robin Osborne (Hgg.), <i>Greek Historical Inscriptions 404–323 BC</i> , Oxford 2003.

Introduction

Athenian democracy lasted less than two centuries. No date is available to trace its beginning. Athenians liked to think of the great legislator Solon (594 BC) as their founding father, but since the nineteenth century scholars have primarily regarded the reforms of Cleisthenes (508/507 BC) as the prime impulse for a process that led to the development of democracy around the middle of the fifth century BC. This was sustained until 322 BC, with brief periods of oligarchic rule intervening in 411 BC and 404/403 BC. Then, under Macedonian supremacy, an oligarchic constitution was introduced. In the decades to follow there were various régime changes which were repeatedly declared to be a ‘restoration of democracy’. This did permit self-government by the citizenry, but actually by a select few of those citizens who were able to spend time and money on the assumption of political functions. The characteristic feature of democracy up until then, the extended participation of the entire citizenry, offices being filled by lot and daily allowances being paid for their performance, were ended.

Although by modern standards this political system was always that of a small state, it has retained its fascination right up to the present, whether as a shocking example of ‘mob rule’, or as a model of collective self-determination, against which all modern forms of indirect, representative democracy fall short. Centuries of debate over antiquity have been interwoven with the question of how, under the quite different conditions of modernity, it might be possible to establish a society of free citizens under an appropriate constitutional order.

There are in antiquity other Greek political forms that have been called ‘democracies’, but they are not relevant here – either because they only bore a limited resemblance to the Athenian model, or because little is known about their internal structure and they barely left a trace in later European history. This is even more true for the possibility that similar orders existed outside the Greek world, in, for instance, Mesopotamian or Phoenician city-states. The

extension of our knowledge about political structures existing outside Athens and Greece, achieved by the systematic scholarly analysis of inscriptions, has not altered this fixation upon the Athenian model in the Western world's conception of history.

Nonetheless, we need to remember that the discussion of Athenian democracy is only one part of much broader reflections on the political legacy of antiquity. (There is no space here for any treatment of the wider legacy, represented in literature, painting, architecture, philosophy and mathematics.) Depending on period, context and author, at issue might be the general political conditions of antiquity, or the distinctions between Greece and Rome, or the contrast between Sparta and Athens within the context of Greek antiquity. In each case, a different assessment of individual phases of a given history could be made. Usually, one early period – Sparta at the time of Lycurgus, Athens at the time of Solon, Rome in the early days of the republic – has been contrasted with a later phase thought to represent a period of political and moral decline.

Evaluations of the philosophical and artistic achievements of the Greeks, and assessment of their political culture, can diverge, sometimes quite markedly. In the late nineteenth century Jacob Burckhardt wrote that 'during the intervening millennia it has not been Athens as a state, but as a cultural potential, that has remained the source of inspiration'.¹ Some decades later Ulrich von Wilamowitz wrote that 'we are only interested in the ephemeral features of Athenian politics in order to understand the eternal works of Attic artists'.²

In 1798, Friedrich Schlegel had summed up the way in which antiquity had been used: 'Everyone has found in the ancients what they needed, what they wanted; for the most part, themselves.'³ It was, according to Otto von Gierke, 'less a matter of what the Greeks and Romans thought about state and law, than what survived in the reception process, and what they were thought to have believed'.⁴

Discussions were always in the context of contemporary problems; time and again they made a connection with a long-established tradition, involving dialogue both with ancient sources and with earlier phases of the reception of antiquity. Until the later eighteenth century this also reflected the fact that no specific distinction was thought to separate antiquity from a given present, so that 'classical' texts could be applied directly to one's own times.

Apart from specialised scholars, the 'antiquarians', who were eager to collect all possible evidence, knowledge of antiquity depended on a schoolbook canon of literary sources; and attention to Greek sources was often contingent upon

¹ GKG I, 224.

² Ulrich von Wilamowitz-Moellendorff, 'Staat und Gesellschaft der Griechen', in idem and Benedictus Niese, *Staat und Gesellschaft der Griechen und Römer*, Leipzig 1910, 134.

³ Friedrich Schlegel, *Prosaische Jugendschriften*, ed. Jakob Minor, Vol. 2, Vienna 1906, 225.

⁴ Otto von Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien*, Breslau 1902, 327.

the existence of Latin translations or translations into vernacular languages. The texts were taken at face value, even when they dealt with imaginative accounts of the supposed origins of social order. Even when it was clear that they could not be regarded as entirely factual or reliable, they were assessed according to the criteria of plausibility, or one's own values. There was no questioning of the sources behind these sources – considering how these texts had come into being by drawing on older oral or literary traditions, and so determining how their reliability might be judged. This kind of *Quellenforschung* was first developed by scholars in the nineteenth century, especially in Germany, but not necessarily adopted in classical education. A gap emerged between what scholars knew and the image of antiquity shared by a broader, cultivated public.

The early modern constitutional state – this being an ideal-typical term for quite varied political systems of the past two and a half centuries, all of which were subject to many transformations – developed out of a variety of medieval traditions involving self-administration and political participation in communal, corporative and ecclesiastical bodies; it had no institutional continuity with antiquity. The idea, first developed in Canon Law and then transferred to civil bodies that appointed representatives were entitled to make binding decisions on behalf of those who had selected them,⁵ was unknown in antiquity. This is also true of the idea that certain decisions can be made only with a qualified, rather than a simple majority.⁶

The introduction of representative constitutions was not necessarily associated with universal (male) suffrage, in the form first established in many countries during the later nineteenth and twentieth centuries.⁷ From the very first the modern constitutional state limited the majority principle, the protection

⁵ One root of the principle of representation can be found in a tenet which had been part of Canon Law since the twelfth century: that all those persons who would be affected by a decision must discuss it and express their agreement – *quod omnes tangit ab omnibus tractari et approbari debet*. The formula derives from Roman Private Law, but was transferred to Public Law during the medieval revival of Roman Law. It was understood in the sense that the agreement of all had to be given by elected representatives, who had at their disposal a free mandate. See Bernard Manin, *The Principles of Representative Government*, Cambridge 1997, 87f. (with further references).

⁶ The two-thirds majority principle comes from the rules governing papal elections, and has been in force since 1179 – Léo Moulin, 'Les origines religieuses des techniques électorales et délibératives modernes', *Revue internationale d'histoire politique et constitutionnelle* n.s. 3, 1953, 106–148; Léo Moulin, 'Origines des techniques électorales', *Le Contrat Social. Revue historique et critique des faits et des idées* 4, 1960, 172–178; Josep M. Colomer and Iain McLean, 'Electing Popes: Approval Balloting and Qualified-Majority Rule', *Journal of Interdisciplinary History* 29, 1998, 1–22; Peter Herde, 'Die Entwicklung der Papstwahl im dreizehnten Jahrhundert. Praxis und kanonistische Grundlage', in his *Gesammelte Aufsätze und Abhandlungen*, Vol. 2.1, Stuttgart 2002, 153–180.

⁷ Nor is the provision of such an electoral law a sufficient condition for democracy, as is demonstrated by the constitutions of the North German Confederation (1867) and the German Empire (1871), which despite the introduction of universal male suffrage were based on a compromise between monarchical and popular sovereignty.

of individual rights being effected in one way or another through the division of powers. Moreover, this could be emphasised by the invocation of inalienable human rights, a conception unknown in antiquity.

There was certainly an intellectual tradition within which ancient ideas continued to hold sway and merged into particular practices and conceptions. This was less true of the model of equal political participation for all citizens, largely rejected for many centuries, than for a form of republicanism compatible with forms of rule by ‘notables’, so long as this represented a safeguard against a descent into arbitrary rule, as the Roman concept of citizenship had done.⁸

The modern model of creating a constitution that comprehensively regulates the competences of the organs of the state and lays them down in a constitutional document does not presuppose the existence of any democratic principle, as demonstrated by the written constitutions of the English seventeenth-century Interregnum, or the Danish *lex regia* of 1665, which consolidated monarchical absolutism (and which was only dissolved by the new constitution of 1849).

Differing histories have to be reconstructed for all of these, and they do not run in synchrony; and in each case there is the problem of whether particular conditions in antiquity, the Middle Ages or early modernity are treated as simple conditions of later possibilities, or rather already as their realisations.

This is true, for example, of the question of continuity, or lack of it, between representation by estates and parliaments, especially in the English case, for which popular history assumes that there is a more than 700-year history for parliament. And even more so for human rights – what was here of decisive importance: specific Stoic and early Christian roots (although the later Catholic Church rejected human rights until well into the twentieth century); the demands of seventeenth-century English Dissenters for freedom of belief and conscience; codification during the American and French Revolutions; or their inclusion as part of international law by the United Nations, the Council of Europe or the European Union, however effective or ineffective this might be?

⁸ Quentin Skinner, *Liberty before Liberalism*, Cambridge 1997, opposed with his conception of ‘neo-Roman liberty’ an overemphasis upon the participatory tradition in John G. A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton 1975. In each case there is a tendency to overestimate the importance of ancient influences. The variety of Republican forms in Europe – see *Republicanism. A Shared European Heritage*, Martin van Gelderen and Quentin Skinner (eds.), 2 Vols., Cambridge 2002 – cannot be treated as an example of ‘classical republicanism’. That is especially true for Dutch republicanism, whose great importance has been emphasised by Ernst H. Kossmann, ‘Dutch Republicanism’, in *L’età dei lumi. Studi storici sul settecento europeo in onore di Franco Venturi*, Naples 1985, 453–486, this being most recently repeated by Jonathan I. Israel in, for example, ‘The Intellectual Origins of Modern Democratic Republicanism (1660–1720)’, *European Journal of Political Theory* 3, 2004, 7–36; and his *Democratic Enlightenment. Philosophy, Revolution, and Human Rights, 1750–1790*, Oxford 2011. It would be more appropriate to talk of ‘protodemocracy’, since it did not yet involve a conception of political rights which drew in the great majority of citizens.

During the nineteenth century, the application of the concept of democracy to orders that had a quite different institutional and legitimating foundation than that of the ancient model had particularly serious effects.⁹ This completely rules out the possibility of writing a ‘history of democracy’, since one would either have to elevate one tradition or era into the standard for all others in world history, or alternatively assume that democracy is an ideal that has never ever been realised, such that all previous endeavours in this direction were either failures or conscious misrepresentations. World history might be the world’s tribunal (Friedrich Schiller), but in my opinion historians lack the qualifications to sit as judges.

This book will seek to reconstruct, using original sources as far as is possible,¹⁰ the role played in modern discussion by an intellectual demarcation from, or identification with, Athenian democracy. A detailed though not exhaustive presentation of the Athenian constitution makes clear just how selectively later writers have employed this tradition, depending on the particular argumentative stance adopted. Positions developed in the modern study of ancient history demonstrate the reciprocity between specialised historico-philological research and ‘Grand Theories’ regarding social development and the course of human history.

Tracing the history of debates over freedom and democracy, ancient and modern, that have lasted centuries necessarily involves selection. The account presented here makes no claim to comprehensiveness, but locates important points at which it can be shown how close the connection was between thoughts about a current order and that of antiquity. Here statements involving a direct invocation of the (presumed) reality of Athenian democracy are placed in the foreground. The processes of reception always involve a selection being made from a broad and available ‘stock’ of particular elements suited to whatever argument is being made at the time. As Leopold von Ranke put it: ‘Speculation has its own history, which reaches from one era into another; what has been established in the first serves as a basis for the following; but further development, and the degree of its validity, is always very closely related to the events

⁹ ‘Modern representative democracy has changed the idea of democracy beyond recognition. But, in doing so, it has shifted it from one of history’s hopeless losers to one of its more insistent winners’ – John Dunn, *Setting the People Free. The Story of Democracy*, London 2005, 20. Egon Flaig has here spoken of ‘the most grandiose conceptual misappropriation in modernity’ in his ‘Menschenrechte ohne Gleichheit? Die athenische Demokratie im neoliberalen Gegenlicht’, *Rechtshistorisches Journal* 16, 1997, 62–113, here at 81.

¹⁰ Of course this cannot happen without having examined in detail the relevant scholarly literature. Even to cite a small selection of the literature relating to Athens, the English, American and French Revolutions, and the many classical political thinkers, the noteworthy historians, social scientists and lawyers would overwhelm the account given here. Consequently, references to secondary works are here included only where a direct citation is made, or as an indication of other sources for matters that cannot be discussed in detail. In those sections on the history of nineteenth- and twentieth-century scholarship, works representing differing positions in discourse about democracy, ancient and modern, are treated as ‘sources’.

of the time. The great crises of history lend an impulse to new conceptions, ideals and systems'.¹¹

It is always necessary to discuss how referencing back to Athens relates to discussion of ancient 'alternatives' in the shape of Sparta and Rome (whether it is the republic, Caesar's personal rule or the Principate). Sparta and Rome can be introduced here only at certain points. They play a very limited role in modern democratic discourse. Of course, in retrospect they seem to share many common features – their military orientation, the role of slavery and the absence of a representative system – and these similarities of political system seem to be greater than their differences.¹² But whenever democracy itself was a matter for discussion, and this was not understood as a limited degree of civic participation in a system otherwise dominated by an aristocracy and/or a monarchy, then Athens was always treated as the ancient democracy *par excellence*.

Moreover, it is necessary to discuss the given current constitutional political situation in which the reception of antiquity is embedded. This is especially true for the American and French Revolutions and the subsequent European constitutional conflicts, within which political actors actually developed their conceptions through the medium of the ancient tradition, or at least were thought to have done so.

This present-centredness remained true of later periods, especially for writers who combined the roles of scholar and politician, whether in the higher levels of state administration, or whether as a member of a parliament composed of notables. Such scholars were not limited to particular disciplines or epochal interests. That was not only true of polymaths such as John Stuart Mill or Max Weber, but also for lawyers and political economists for whom reference to antiquity in their studies was taken for granted, at least up until the beginning of the twentieth century. Historians (in Germany and elsewhere) taught and published across the entire domain of history far into the nineteenth century, or, once medieval studies had developed as an independent discipline, they were both ancient and modern historian in one person. This made reference from antiquity to modernity a quite natural matter even if there was no particular political message attached. Correspondence between scholars, in which they often formulated their (political) intentions more clearly than in

¹¹ Leopold von Ranke, 'Zur Geschichte der Doctrin von den drei Staatsgewalten', in his *Sämmtliche Werke*, Vol. 24, Leipzig 1872, 237–266, here at 237f.

¹² The points made by Fergus Millar, *The Crowd in Rome in the Late Republic*, Ann Arbor 1998, regarding the quasi-democratic character of the Roman Republic have given rise to controversy, since this does not correspond to the way that Romans understood themselves, and furthermore evens out the great differences with Athens. Millar has responded by pointing to accounts of Rome as a democracy in Renaissance and early modern political theory: *The Roman Republic in Political Thought*, Hanover, NH, 2002. That is only partially convincing, since Rome was mainly thought to have a mixed constitution. What here becomes evident is the problem that even in antiquity the concept of democracy was a very broad one, which in turn had to be reflected in the history of reception.

their writings, has for the most part not been introduced here, since such private expression was as a rule unknown to the relevant contemporary public. Biographical references to these authors are given briefly wherever it appears necessary for the understanding of the cited text.

Since the late nineteenth century, and really only starting in the twentieth century, references to antiquity in general constitutional argument seem to have diminished, while the study of antiquity itself has become more strictly a scholarly matter. This naturally does not mean that the perceived relevance of antiquity to such discussion just disappeared. The link with Athens was always made whenever the question of the proper form of democracy was raised. Scholars in the humanities and social sciences on the one hand draw upon contemporary problems for their questions; on the other they are often pressured to demonstrate the utility of their discipline, or at least sense such a pressure, quite apart from cases where an official version of history is required, or where there is a consciously self-serving relationship to ruling powers and ideologies.

Discussion about Athens can just as little be clearly separated from debate over other political models in antiquity as they can be neatly divided into 'scholarly' and 'political' dimensions. Moreover, given the continuity of individual motives and the many stages of a reception process presented, a chronological order can be maintained only in the shape of a crude framework, requiring a great deal of back and forth.

Why certain issues and ideas came together and were suddenly the object of particular attention can be explained by linking each case to contemporary political problems and discussions. Things are much more difficult where there seems to have been an absence of such interest. It may be that there are in fact relevant texts, but these have been forgotten, or have been overlooked only by the present author. All in all, any explanation why certain discussions did not take place must necessarily remain hypothetical.

In various national cultures one used to refer to a cultural legacy common to all Europeans, conditioned however by questions that derived from specific social conditions and scholarly traditions;¹³ or alternatively, similar debates arose, but they did so at different times and so were not linked together. I here seek to make plain the common European basis of discussion about Athens that has gone on for centuries, necessarily including North America as both giving and taking in transatlantic debate.¹⁴

¹³ Oswyn Murray has put this well in 'Cities of Reason', *Archives européennes de sociologie* 28, 1987, 325–346, here at 326: 'The German *polis* can only be described in a handbook of constitutional law; the French *polis* is a form of Holy Communion; the English *polis* is a historical accident; while the American *polis* combines the practices of a Mafia convention with the principles of justice and individual freedom'.

¹⁴ The limitation to 'The West' is not intended as a denial that, in other cultures, at different times, there have been structures that could be called democratic. John Keane's *The Life and Death of Democracy*, London 2009, provides a great deal of material from different periods.

If there seems to be an emphasis upon German discussion in the treatment of the nineteenth and twentieth centuries, this can to some extent be explained by the unavoidable limitations in my knowledge of the literature. But there are also substantive reasons for this – the leading international position occupied by German scholarship in the nineteenth century, and the consequences of National Socialism, not only with regard to the future course of history, but also for all consideration of how a political order guaranteeing freedom and human dignity can be established and maintained.

The History and Structure of Athenian Democracy

In this chapter the conspicuous features of Athenian democracy will be outlined.¹ Classical scholarship has advanced since the nineteenth century, drawing upon all literary and inscriptional sources and becoming increasingly refined. One Aristotelian text, *The Athenian Constitution*, whose first historical part provides a critical outline of the development of democracy and the second systematic part, on the contrary, a detailed and neutral account of the complex procedural rules in force during the later fourth century BC,² was rediscovered on papyrus only in the late nineteenth century and published in the 1890s. Despite the advances in understanding made by modern scholarship, the general public's comprehension of Athenian democracy remained heavily marked by stereotypical ideas developed over many centuries. The emphases in this chapter are placed on those aspects of Athenian democracy that have been a constant source of controversy and misunderstanding.

ATHENS – A SPECIAL CASE IN THE GREEK WORLD

From the eighth century onwards, the Greek world stretched beyond the mainland and the Aegean islands to the coast of Asia Minor, Sicily and southern Italy. It was formed for the most part of city-states (*poleis*) populated by autonomous groups of citizens. There were around 700 such *poleis* in the Greek mainland and islands alone. Each had a territory of between twenty and thirty-eight square miles, with 500–1,500 adult male citizens. A *polis* was a single jurisdiction, combining both the urban centre (with a place of assembly, magistrates' and administrative buildings and temples) and a surrounding

¹ References are given to a representative selection of sources only. Attic orators are quoted without distinguishing between authentic speeches and those that are found only in collections of their speeches (e.g., Demosthenes); this does not have any consequences for the account given here.

² All dates in this chapter relate to the pre-Christian era.

hinterland. *Poleis* were therefore distinct from the city-states and republics of medieval Europe, where the status of a citizen was linked to his residence in the city – as a necessary, but not sufficient, condition of citizenship. The city-state of Athens itself extended over the whole of Attica, covering 985 square miles, or an area similar to that of present-day Luxembourg, but less than that of the smallest American state, Rhode Island.

We do not know the precise number of citizens, nor of the wider population. Estimates can be made only indirectly, using, for example, the size of military units; but these only included men capable of arming themselves as hoplites for the infantry. More recently, population estimates have been made using figures for Athens' grain consumption. At its height (shortly before the outbreak of the Peloponnesian War in 431), the number of politically qualified adult males could have reached 60,000; the total number of inhabitants, including the wives and children of the citizens, resident aliens (*metoikoi*; metics) and slaves of both gender, is much harder to judge, but the most generous estimate comes out at something between 300,000 and 400,000. The immense losses during the Peloponnesian War would have played a major role in reducing that number in the fourth century.

The political unification of Attica was completed quite early on, probably during the tenth century; Athenian tradition ascribes this to King Theseus. This created a political centre, but not the rule of a city over a surrounding area and its inhabitants. One example of such a development is that of Sparta, where rule was extended first of all to the surrounding territory and then to the greater part of the Peloponnese. Its governmental and social order, in retrospect treated as the sole work of the great legislator Lycurgus, was in fact the outcome of a long-term and complicated process which turned on the fact that Spartans were professional warriors capable of maintaining rule over subject territories, and of keeping their populations in a condition of collective slavery as helots. Besides these there were also *perioikoi*, free men living in communities enjoying limited rights of self-administration, who were obliged to perform military service for Sparta.

SOLON, THE LEGISLATOR

During the seventh and sixth centuries Athens showed signs of crisis similar to those of many other *poleis*. Tensions rose between a leading stratum of nobles and the great mass of farmers who, suffering from legal insecurity and indebtedness, faced the possible legal consequences of the latter in debt-bondage and sale into slavery. This had brought even Athens to the brink of civil war, with the associated danger that sole rule (*tyrannis*) would become illegitimately established. It was for this reason that Solon was appointed in 594 or thereabouts as an 'arbitrator', with comprehensive legislative powers. His legislative authority thus rested upon consensus, however this might have been conferred on him. Solon was supposed to have made the Athenians swear that they would

not alter his laws for a period of ten years.³ This implies that the legal order should be subject to enacted legislation. However, this would not be the case if those sources which say that the obligation not to alter the laws lasted for a century are to be believed.⁴

Apart from the consolidation and partial development of traditional law, Solon undertook a reorganisation of the constitution, dividing political rights according to four distinct classes of wealth. However, more important than these distinctions was that all citizens were included, even those without any assets. The introduction of a property qualification did not alter the political role of the upper class; it did, however, imply that membership of the highest rank of citizens was no longer heritable, but subject to economic and military capacity. Popular assemblies became more important; magistrates were elected by all citizens with the same voting rights, and the assemblies also functioned as courts in which citizens could appeal against judgements made by magistrates. It can be assumed that these popular assemblies reached decisions based on the majority of those present. Quite remarkably, this epochal breakthrough, whenever it actually happened, is not something to which ancient sources paid attention.⁵ Above all, Solon proscribed the enslavement of the domestic population. This prohibition gave the status of citizen its own specific value as a guarantee of personal freedom. In the longer term, this led to the importation of slaves to meet the need for workers. Freedom and slavery stood in a dialectical relationship.

Solon was viewed by later generations as the ‘father of democracy’, in particular during the fourth century. Of course, in Solon’s time they still did not talk of ‘democracy’, but of *eunomia* (good order) which could either be achieved or lost; there was still no idea that there could be constitutional alternatives. Nonetheless, Solon expressly emphasised the principle of the responsibility of each citizen for the fate of the commonwealth, the welfare of which depended upon their own conduct, and not the will of the gods.

THE TYRANNY OF THE PEISISTRATIDS

In the long run, Solon’s reforms could not prevent the rise of the tyrant Peisistratus, who ruled from 561 to 527, with some intermissions. He did not

³ Herodotus 1, 29, 2 – provided that it is historical, this would be the earliest instance of an ‘entrenchment’ clause (see fn. 269).

⁴ Aristotle, *Athenian Constitution* 7, 2; Plutarch, *Solon* 25, 1.

⁵ Since this did come to be regarded as self-evident, the Spartan procedure during elections (Plutarch, *Lycurgus* 26, 2f.) and voting in popular assemblies (Thucydides 1, 87, 2), namely deciding not by the number of votes, but by the volume of noise, came to be a matter of bewilderment. Aristotle regarded this simply as ‘childish’ (*Politics* 1270b27f.). With regard to the treatment of preferences there is some kind of rationality here (see fn. 37), even if this was open to error and manipulation during elections in which the degree of agreement for numerous candidates was to be ‘measured’.

abolish the existing institutions, but filled the most important positions with his own people.⁶ During the period of his rule the political standing of the aristocracy was permanently weakened. In the sources Peisistratus has a relatively 'good press', partly because of the measures he introduced in support of small farmers, and also because of his building programme, and his promotion of pan-Athenian celebrations, such as that in honour of the city's goddess, Athena. This furthered a sense of belonging to the polis, and not just to its constituent parts.

It was only the final phase of the subsequent joint rule of his sons that was felt to be oppressive. In 514, one of them (Hipparchus) was murdered, while in 510 the second, Hippias, was driven away with the help of Sparta. Harmodius and Aristogeiton, who murdered Hipparchus in 514 and paid with their lives for so doing, were feted as heroes of liberty after the end of the tyranny. Statues of the pair were installed on the Agora,⁷ their act of liberation having been endorsed ever since, and their descendants honoured. It was because of this cult that in the later fifth century the historians Herodotus and Thucydides argued that the murder of one of the Peisistratids in no respect brought the era of tyranny to a close, and that Harmodius and Aristogeiton had really acted out only out of personal motives of revenge.⁸ Nonetheless, this did not alter their transfiguration into heroes of liberty, which had the advantage that the role of Sparta in the overthrow of tyranny was displaced by the idea that citizens had liberated themselves.⁹ This also coincided with the way that democracy always saw itself as a legal order distinct from tyranny, defined as a form of arbitrary rule lacking all control. This was expressed both at the opening of assemblies and in public ceremonies, when a potential tyrant was again and again cursed.¹⁰

THE REFORMS OF CLEISTHENES

After the overthrow of the tyranny a power struggle broke out among the aristocracy; Cleisthenes succeeded in winning over most of the citizenry to his side and implementing a comprehensive reform in 508/507. The central point was a reorganisation of the subdivisions of the citizenry according to a rational ordering.¹¹ Subdivision by *phylai* (translating this term with 'tribes' represents

⁶ The rule of the Medici in fifteenth-century Florence offers a parallel case.

⁷ The first group of statues was installed shortly after the collapse of tyranny; when the Persians seized them in 480, a new set was made.

⁸ They were represented as lovers. The relationship between a grown man (Aristogeiton) and a youth (Harmodius) was regarded as typical for the aristocracy. However, Thucydides (6, 54, 2) here emphasises that Aristogeiton came from the middle stratum.

⁹ Herodotus 6, 123; Thucydides 1, 20; 6, 54–59. Aristophanes, *Lysistrata* 1150–1156 contains a reminder that liberation from the Peisistratids was owed to the Spartans.

¹⁰ Aristophanes, *Thesmophoriazusae* 338f.; *Birds* 1072ff.

¹¹ This new order overlaid the older form of organisation by phratries. These (fictive) kinship groupings remained in place and retained important functions in the attestation of marriage and

a stopgap solution) existed in all *poleis*, being used to organise military units and for the collection of dues related to military expenditure by the state. Moreover, a *phyle* filled the need for a sense of belonging to a group which was thought to be a clan that descended from a common ancestor.

Central to Cleisthenes' new order was the distribution of local communities, the demes, among the *phylai*. (The concept *demos* signified both these groupings and the citizenry as a whole.) According to one ancient record, there were something like 170 or 174 demes;¹² epigraphic findings from the fourth century suggest a smaller number, from 133 to 139, demes. For the most part these demes were rural settlements. New, however, was the way in which this division into local communities was extended to the city of Athens itself, so that it had no special status within the state. By joining these demes into ten new *phylai*, each being composed of demes from the urban area, the coast and the interior, each *phyle* became a regional cross-section, every region being represented in each *phyle*. The *phylai* were therefore artificial entities, not territorially linked regions.¹³

The demes took over the task of maintaining the lists of citizens, while the *phylai* organised the raising of military contingents. The newly established Council of 500 was composed of 50 councillors each from the 10 *phylai*; and within these *phylai* the individual demes were in turn represented in proportion to the number of citizens they had. Many demes put forward only one or two councillors, some more than ten: one *demos* had twenty-two councillors. These quotas remained fixed, since membership of a deme was heritable; and if people moved to another community in Attica, they stayed registered with their original deme.

Herodotus stated laconically that Cleisthenes 'gave the Athenians their tribes (*phylai*) and democracy'.¹⁴ It is not immediately obvious what the one has to do with the other. The new organisation mutually reinforced two tendencies which, under other circumstances, could have worked against each other: securing connection to a home community; and at the same time, stabilisation of political participation at the level of the state as a whole. The artificial composition of the *phylai* ensured that in the raising of military contingents and for the Council of 500, as well as in competitions during public festivities, men came together from different regions who shared in common only the fact that they were citizens. This promoted the formation of new structures of solidarity and communication at the level of the state, connections which

the recognition of legitimacy. It is not clear whether membership of a phratry was a necessary condition to be entered in the list of citizens, but it was often raised whenever the status of someone as a citizen was questioned. Detailed rules relating to the criteria for becoming a member of a phratry exist for the fourth century; Rhodes/Osborne, no. 5.

¹² Strabon 9, 16 = C396.

¹³ It does not become clear in the sources in what manner the numerous administrative questions were resolved, and how long the implementation took.

¹⁴ Herodotus 6, 131, 1.

hitherto only the aristocracy had enjoyed. At the same time, the representation of regional interests within institutions was blocked. The demes were elevated from the status of mere local settlements to political units. They acquired their own magistrates, had their own property, organised many festivities and cults, in part connected with events put on by the *polis*, in part in addition to those of the state as a whole. They were the site in which the citizen felt himself directly part of the community, and within which the work of self-administration could be exercised. In the assemblies of local communities even the humblest citizen was able to make demands and express agreement or disagreement; those who would otherwise have found the assemblies in Athens too large, too anonymous, the questions raised too complex, the dominance of practised orators too overpowering could here make themselves heard.¹⁵

The longer-term effects of Cleisthenes' reforms cannot be over-estimated. However, he enjoyed only a minor role in the collective memory of the Athenians. It was, instead, the murder of the tyrant in 514 that became regarded as the inauguration of political freedom.¹⁶

OSTRACISM

There is another tradition that involves the introduction of *ostrakismos*. In one version Cleisthenes had introduced it; but the first time it was put into practice was only in 488/487, a relative of the Peisistratids being expelled in this way.¹⁷ Another version states that this instrument was invented only by its initial use during the year in question.¹⁸ Most scholars have here turned to material probabilities, for want of an obviously 'better' source (according to the criteria of source criticism): some conclude from the given aim of preventing a new tyranny that the ordinance was part of Cleisthenes' reorganisation; others argue that it is entirely improbable that someone would invent such a decisive instrument and then leave it unused for over twenty years. All that can be said with certainty is that its first use fell during the year 488/487.

The sources are consistent in supporting the assumption that expulsion was intended to prevent a new tyranny, which was why the first resolutions involved persons suspected of being associated with the overthrown Peisistratid family,

¹⁵ Membership of the demes was heritable, but people could move to any place in Attica. Therefore, there were non-urban demes that held their assemblies in Athens during the fourth century; Demosthenes 57,10.

¹⁶ Later, Cleisthenes became sometimes associated not only with the introduction of democracy, but also with the simultaneous overthrow of tyranny – Isocrates 15, 232.

¹⁷ A fragment of a late Byzantine source found during the twentieth century in the Vatican Library suggests that ostracism was initially carried out by the council; John J. Keaney and Anthony E. Raubitschek, 'A Late Byzantine Account of Ostracism', *American Journal of Philology* 93, 1972, 87–91. It is not clear how much weight can be placed on this obscure source.

¹⁸ Aristotle, *Athenian Constitution* 22, 1 (Cleisthenes as the originator of the law) – Androton, Fragment 6 (introduction and first use coinciding).

or with the Persians who supported their reinstatement. But these initial conditions are insufficient as explanation when the fairly long-term functions of the procedure are considered.

Ostracism meant that one man annually – and just one – could, following a popular resolution, be compelled to leave the country for ten years, without any formal judicial procedure. This was an honourable exile, and expulsion was not associated with the confiscation of property, so that it did not affect the family group. Once the ten years term was up the exile was free to return and resume full civil rights, including admission to all offices. Thus, Cimon, who was exiled on account of his opposition to the constitutional reform of 462/461,¹⁹ assumed the command of an attack on Cyprus after his return in 450.

The popular assembly (*ekklesia*) had to make a decision at a definite point in time whether an *ostrakismos* should take place. If a majority was in favour, then after about two and a half months, again at a definite time, there was a vote without any prior discussion or speeches for the prosecution or the defence.²⁰ Each participant could write on an *ostrakon*, a clay tablet, the name of the person who should be exiled.²¹ Whoever ‘gained’ the most votes in this ‘reverse election’ had to go. A precondition was that at least 6,000 votes in total would be cast, one version suggesting that this was the total number of those voting, another stating that to be exiled one had to have received at least 6,000 votes.²² Most scholars opt for the former, presuming that otherwise the threshold for the number of participants would be so high that it was almost inconceivable that a successful ostracism could occur.²³ There was always a distribution of votes because of the lack of any prior list of candidates, and someone, or even a few people, could nominate an unpopular neighbour as a prank. Even in other decisions where 6,000 votes were required, this figure related to the total number of voters.²⁴

Ostracism can be seen as an ingenious arrangement. There is no risk that proof must first be given that someone aspires to be a tyrant, so that this does take place, and it all becomes too late then. But the strict timetable blocks any hasty reaction to acute danger. The damage to someone who is the target of suspicion is limited and prevents disputes between larger groups that might well end up with forcible ejections. The annual vote whether there should be

¹⁹ See p. 20.

²⁰ (Pseudo)-Andocides 4, a speech demanding that Alcibiades should be ostracised, is a fiction.

²¹ Scholion to Aristophanes, *Knights* 855.

²² Plutarch, *Aristides* 7, 5f. (6,000 as a quorum); Philochoros, Fragment 30 (6,000 against the person to be exiled). It is not clear what happened in cases where the identification of the named person was in doubt, because of the similarity of the name with that of another, or because the father’s name or the membership of the *demos* was not given. However, this would not have been a great problem, since most votes were cast against a few prominent persons.

²³ See the following text concerning the case of Hyperbolus.

²⁴ See p. 33f.

an *ostrakismos* demonstrated the control that ordinary citizens could exercise over aristocrats who might become too powerful, even if it was decided not to continue with the procedure. As far as we know, between 488 and 416 there were about a dozen cases of actual exile.²⁵ It is striking that those affected accepted the decision and did not seek to use force in defending themselves, which could have been expected from aspiring tyrants.

Ostracism was still used in a time when there was no longer a real threat that someone would aspire to tyranny (although this does not mean that this motif fell into disuse in political rhetoric). Instead, a state of competition prevailed between men who employed authority and rhetoric to argue over informal leadership in the popular assemblies. If a majority of a popular assembly was to declare in favour of an *ostrakismos*, there had to be some kind of smear campaign in respect of potential candidates. During the period before the definitive vote, this was intensified, so that sufficient men from all over Attica might attend. Some of the *ostraka* found at archaeological sites indicate that sometimes there could have been organised campaigns. One discovery turned up many potsherds on which the name of Themistocles was written in the same hand. One should bear in mind that many people could not write properly. It could have been possible that the financial interests of professional writers played a part here, speculating on who the possible victim might be. Some potsherds have, in addition to the name, a deprecatory comment, regarding a luxurious lifestyle, adultery or sexually deviant behaviour. It is, however, difficult to say whether this procedure also demonstrates the way in which the demos controlled the social behaviour of the upper strata.

If *ostrakismos* was intended to bring about a decision between two rival politicians, then the popular choice would fall on the one currently the less powerful. A few cases after 485 indicate that the procedure represented the high point of a duel between two leading politicians. By making this decision between persons, political direction was stabilised through the confirmation of a spokesman for the people.²⁶ This made the preservation of a constant line possible, especially in foreign policy; or, if it seemed appropriate, to make a clear change of course. Attendance at popular assemblies did fluctuate, and

²⁵ For nine cases this is clear; for seven more cases the sources are so unclear that no conclusions can be drawn. It is also not established whether there were instances in which the second vote took place, but the quorum was not met. See David J. Philipps, 'Athenian Ostracism', in *Hellenika. Essays on Greek History and Politics*, ed. G. H. Horsley, North Ride, N. S. W., 1982, 21–43.

²⁶ This can be said with certainty only in the cases of Aristides' exile in 483/482, which led to the programme of naval construction urged by Themistocles (Herodotus 8, 79, 1f.; Aristotle, *Athenian Constitution* 22, 7; Plutarch, *Themistocles* 5, 5), and of Thucydides Melesios in 443 (see p. 33f.). The ostracisation of Themistocles between 474 and 470 was ascribed to his self-praise and greed – Plutarch, *Themistocles* 22f. In the case of Cimon it was his pro-Spartan attitude and opposition to the reforms of Ephialtes (see p. 21) that were crucial. In this respect it was a decision about a fundamental political issue: Plutarch, *Cimon* 17, 2; *Pericles* 9, 4; Andocides 3, 3.

the absence of party fractions meant that it was not possible to predict voting behaviour; and so from time to time attempts were made to reverse previous decisions. On the contrary, if leading politicians were presumptive tyrants, then reinforcing the influence of the strongest would have been quite counterproductive. The last time that *ostrakismos* was implemented emphasised the functional changes the procedure had undergone during the fifth century. In 416 or 415, a vote of this kind was supposed to have resulted in a choice between Nicias, who favoured a moderate foreign policy for Athens, and Alcibiades, who advocated a more aggressive line. These two came to an arrangement and managed – unfortunately, we do not know how – to organise their respective followers so that a third party, a man called Hyperbolus, was ostracised. That would be hard to imagine if 6,000 votes against one person were needed; but the concentration of votes upon three or even four ‘strong candidates’, together with random voting, would have made 2,000 votes (or even less) against Hyperbolus sufficient.²⁷ He certainly had been a prominent figure for some time, being mentioned in Aristophanes’ plays written in 425 and 424.²⁸ Nonetheless, his exile was considered an abuse; Hyperbolus did not deserve this ‘honour’, precisely because it did not involve any change in the direction of policymaking.²⁹ Ostracism was never formally abolished. Year after year the popular assembly voted on whether such a vote should occur. After the case of Hyperbolus, however, no one else was exiled in this manner. At most, it can be presumed that the threshold for a resolution on exile was raised; but no indications have been found in the sources.

Despite the fact that this peculiar procedure³⁰ had no practical importance during the greater part of the history of Athenian democracy it was a feature that should again and again be discussed in the history of reception, mostly, though not always critical.

THE ROAD TO COMPLETE DEMOCRACY

A second date for institutional change concerns the modus by which the posts of the chief magistrates, the ten archons, were filled in 487/486. By drawing lots from pre-selected candidates, archons were appointed. It can be assumed that each *phyle* put forward ten candidates, from which one was chosen by the lot. This procedure meant that the people were more strongly involved in the

²⁷ Plutarch, *Nicias* 11; *Alcibiades* 13, 3ff.; *Aristides* 7, 3f. Plutarch mentions Phaiax as a fourth potential victim, which has been confirmed by *ostraka* that have been discovered.

²⁸ Aristophanes, *Acharnians* 846; *Knights* 1304 and 1355. There are also other references in later pieces by Aristophanes, as well as in comedies by other poets, from which only fragments have survived.

²⁹ Plutarch, *Aristides* 7, 3f.; Thucydides 8, 73, 3.

³⁰ There were, at least temporarily, certain equivalents to the Athenian procedure in Syracuse (Diodorus Siculus 11, 86f.), Argos (Aristotle, *Politics* 1302b18) and perhaps some other cities. But apart from Syracuse, where the term of exile was five years, no details are known.

election than before, when members of the traditional elite put themselves forward for election. The property qualification was possibly lowered; otherwise it would have been difficult to have had sufficient candidates. For those who put themselves forward as candidates, selection by lot quite probably reduced the chances of dispute; to be defeated in a random selection process was easier to bear than losing an election. For ambitious politicians this was, however, scant comfort, since it could not be ruled out that they would either never, or very late in life, succeed in achieving high office and associated lifelong membership of the Areopagus (more on this in the following pages). This became even more true when appointment to the magistracy was made conditional on a dual lottery (probably from 458/457) and also opened up to members of the third property class of the citizenry.

One consequence was that those who sought not only administrative responsibility and honour (the highest ranking archon gave his name to the year he held office), but who wished furthermore to actively influence policymaking would stand for membership in the board of the ten *strategoï*, generals, the commanders of military units. These functions were filled by straightforward election. By assuming the post of *strategos* both military ability and qualities of political leadership were put on trial.³¹ These two factors went increasingly hand in hand from the beginning of the fifth century, when Athens was drawn into international politics.

The substantive preconditions for the emergence of democracy were created by Cleisthenes and during the decades immediately following his reforms. There was no talk of democracy itself, however. It is likely that the concept first emerged around 470; the oldest instances of its use date from the last third of the fifth century,³² when it also served as a polemical characterisation, referring to the secondary meaning of *demos* as 'lower orders' or 'rabble', rather than 'entire citizenry'.³³

From the time of Cleisthenes, or very shortly afterwards, the term *isonomia* was used in the sense of equality before the law, perhaps also in the sense of political participation. *Isonomia* remained the idea that the developed form of

³¹ This was not applicable to the same degree for all ten *strategoï*. Some were pure military specialists, like Lamachos and Demosthenes, who were repeatedly elected to the post of *strategos* during the Peloponnesian War. The election of the tragedian Sophocles in 441/440 can be explained by his prominent public profile, not because it was thought he possessed any special military competence. Expertise in financial questions could count more than military experience; Xenophon, *Memorabilia* 3, 4, 1ff. See for comments on *strategoï* without particular military abilities Aristotle, *Athenian Constitution* 26, 1.

³² It cannot be determined whether the formulation of popular rule in the 'Great Rhetra' regarding the Spartan constitution (Plutarch, *Lycurgus* 6, 1) is authentic, deriving from archaic times, or whether it comes from the fourth century.

³³ Herodotus 6, 131, 1 (neutral); Pseudo-Xenophon, *Athenian Constitution* 1, 4 (polemically against the domination of the lower orders).

democracy claimed for itself; but this concept could also be applied to more restricted political systems, as long as they were based on the rule of law.³⁴

In the longer term, political equality grew out of the increasing significance of the popular assembly, which was itself closely related to triumphs over the Persians – at Marathon in 490, in the sea battle of Salamis in 480 – as well as the formation of an alliance in the Aegean that was originally aimed against the Persians (the ‘Delian League’ in modern terminology, or alternatively ‘Athenian Empire’). This opened new dimensions of action for the Athenians, including the entire coastal regions of the Aegean Sea and the passage into the Black Sea. The organisation of such an alliance without precedent in the Greek world, the determination and realisation of contributions from about 200 member states³⁵ (supplying naval vessels or money payment), all this required extensive administrative, diplomatic and in some cases military activity. The focus of military potential upon the fleet necessitated continual and high levels of expenditure, organised at the level of the state. Manning the ships required the mobilisation of large sections of the citizenry, including the poorer non-landowning strata (the *thetes*) unable to serve in the infantry as hoplites since they could not afford the weapons and armour that such service required. The ships were used not only as troop transports, but were themselves employed as weapons in battle, ramming other ships; so the rowers could consider themselves as fighters too.³⁶

The number and importance of decisions made in the popular assembly constantly increased, as did the mobilisation of the lower strata of the citizenry. As a consequence, the majority principle was finally adopted, presupposing the diversity of positions in a society but serving to conciliate a given minority in any one decision, since the opportunity for the creation of other majorities remained open. This in turn presupposed that there was no group in the society that found itself, or felt itself to be, in the position of a structural minority whose interests were routinely ignored by the majority.³⁷ The religious, cultural

³⁴ Herodotus 3, 80, 6 (*isonomia* as a norm for democracy); Thucydides 3, 62, 3 (isonomic oligarchy).

³⁵ The exact number is unknown. According to the ‘tribute lists’ (see fn. 86), the Athenians reckoned on about 400 members; but they never received more than 190 contributions in any year.

³⁶ It is a disputed question since when lower-rank citizens in the navy were generally recognised as full soldiers. For some time there may have been a ‘cultural lag’ in the sense that this quality was still attributed only to the hoplite force. Rowers were volunteers and a considerable part or even the majority of the crews was made up of non-citizens. But at last during the Peloponnesian War the military and political importance of the citizen-rowers was acknowledged; Pseudo-Xenophon, *Athenian Constitution* 1, 2.

³⁷ Majority decision fundamentally implies that the strength of a preference plays no role. A slim majority of tepid proponents of a plan can prevail over a strong minority of determined opponents. A democracy based on the sovereignty of the popular assembly provides no possibility of dealing with this problem by the brokering of compromises. It would be dangerous if a particular group in society was under the impression that its views and interests were constantly disregarded.

and ethnic homogeneity of Athenian society minimised this danger, and the symbolic integration of the entire citizenry was again and again secured by public festivals and rituals.

Changes of institutional organisation strengthened the role of the popular assembly. In 462/461 the Areopagus (the council with its meeting place on the 'Hill of Ares', northwest of the Acropolis) was stripped of its political competences, retaining only its function as a court to try cases of homicide and some religious delicts.³⁸ The former archons were members of this, joining for life once their year in office was completed. The membership is estimated between 150 and 200, while the average age was considerably higher than that prevailing in other institutions. Until 462/461, this venerable council seems to have exercised considerable influence, whether informally, or through the control it assumed over magistrates (possibly including the conduct of treason trials); and considering the numerous new tasks created for Athenian politics since the formation of the Delian League, this influence would have increased. The drastic curtailment of its competences in favour of the popular assembly, the Council of 500 and the people's courts³⁹ led to the elimination of a body from decision making whose members enjoyed the advantage of experience, authority and perhaps also social power over other institutions that represented a cross-section of citizens. Simultaneously, the archons lost their leading position in the popular assembly and council. Henceforth, their most important task was as the formal chairpersons of jury courts (for more on this see further in the chapter).

The transfer of control over the magistrates to the popular assembly, courts and council made those in leading positions dependent upon popular will in a new manner, while it also increased the activity of these institutions. The change of political culture is also apparent from the initiation of inscriptional documentation of decisions made by assembly and council dating from precisely this time. Whatever the (minor) practical significance of this might have been for the citizenry of the time, this is symbolic proof of the transparency and binding character of decisions made by these institutions. The fact that in the fifth century decisions regarding the Delian League and financial affairs (and not the statutes governing the modification of the constitution and other internal legislation) were written on stone indicates the supreme importance of external, military and financial policy; and hence the relationship between hegemonic politics and the development of democracy. During the first two decades following the 'overthrow of the Areopagus', a time associated with

³⁸ This appears to have been justified with the argument that the Areopagus had usurped competences not originally assigned to it: Aristotle, *Athenian Constitution* 25, 2.

³⁹ The trial of Cimon (Plutarch, *Cimon* 14, 3f.) could indicate that even before the Areopagus' powers had been transferred to the courts, so that the events of 462/461 represent the conclusion of a developmental phase.

major internal disputes,⁴⁰ the decisive breakthrough for democracy took place in Athens. It coincided with the rise of Pericles, who was the leading political figure from the 440s to his death in 429. During the reforms of 462/461 he played a somewhat marginal role although some accounts presume that the public impact of the great man began very early; here the driving force was Ephialtes, who was subsequently assassinated.⁴¹

The introduction of political payment, especially in connection with participation in the popular courts, is directly associated with Pericles.⁴² This could have happened shortly after the Areopagus was stripped of its powers, with further tasks being assigned to the popular courts. The possibility of making such payments was opened up by the revenue that Athens drew from the members of the Delian League.⁴³ A substantive motive for the payment for attendance would have been that, with the large number of cases and the size of the courts (see the following pages), it would not otherwise have been possible to secure sufficient men as judges.

Unfortunately, we do not know exactly when remunerations for council members, and possibly for some magistrates, were introduced. The limitation of our sources is shown by the way that we have definite evidence for the payment of a daily allowance first in 411 – when as a result of the oligarchic transformation it was being abolished.⁴⁴ But it can plausibly be assumed that this payment originated during the Periclean era. The introduction of daily allowances was a very significant step, since it created the material conditions for the right of a citizen's involvement in decision-making instances to be translated into a real chance of so participating.⁴⁵ The payments made were between 50 and 100 per cent of an unspecialised worker's daily wage. While this was not especially tempting for the well-off, for a man of modest background it was not at all insignificant. We really do not know how the different social strata would have struck a balance between the demands made by public functions on one's time (particularly for council members) and the financial compensation available. We do know, however, that receipt of payments from the state involved no diminution of honour, unlike activity involving a surrender of independence;⁴⁶ for the lower orders it was a real alternative to working for a daily wage.

⁴⁰ The murder of Ephialtes (Antiphon 5, 68; Diodorus Siculus 11, 77, 6; Aristotle, *Athenian Constitution* 25, 4) remained the great exception until the events of 411.

⁴¹ Plutarch, *Pericles* 7, 8; 9, 5ff. (Ephialtes as assisting Pericles); Plutarch, *Cimon* 15, 2 (Ephialtes as the leading figure); Aristotle, *Athenian Constitution* 25, 3ff. (Ephialtes as the driving force and victim of assassination).

⁴² Aristotle, *Politics* 1274a7–9; *Athenian Constitution* 27, 3f.; Plutarch, *Pericles* 9, 2.

⁴³ However, when in the fourth century this revenue no longer flowed into Athens, the system was not only retained, but developed.

⁴⁴ Thucydides 8, 67, 3.

⁴⁵ There was no obligation to assume official functions; except for arbitrators, see p. 52.

⁴⁶ Xenophon, *Memorabilia* 2, 8, 4f.; Demosthenes 57, 45.

The role of juror could have been especially attractive, since one was not here subject to the supervision and accountability associated with other functions. Aristophanes' play *The Wasps* (performed in 422) can give the impression that older men had a particular liking for the work of a judge; apart from its entertainment value they could meet the greater part of their living costs from state disbursements. However, 'old' is a relative term. When campaigns were being prosecuted it was likely that men over sixty who no longer had any military obligations were over-represented in Athens. All the same, given the age structure of the population, this group could not have supplied the majority of the 6,000 jurors required annually. Moreover, one could rely only conditionally on these payments, since a juror who turned up for service on any day could not be sure of being selected.

Related to such payments is appointment by lot, positions being filled through random selection from among those citizens fulfilling the formal conditions and who had put themselves forward as candidates. This procedure implied that no specific knowledge was needed for the exercise of most public functions – apart from the *strategoï*, other military commanders and some of the higher posts in the administration of public finances, where proper election was the rule. Beyond this, some of the highest posts in the treasury were reserved for members of the top property-owning class, being possibly a relic of an older rule.

Of course, the random allocation of functions can be associated with a restriction to an exclusive group; it is only when this is extended to all citizens (and supported by pay for political functions) that it becomes a specifically democratic instrument. This is emphasised by the later doctrine – somewhat irritating from the modern perspective – that a lottery was typically democratic, while, on the contrary, election was typically oligarchic.⁴⁷ But there is nothing in the sources that provides an explanation for the adoption of random selection, nor how it was justified. Instead, one has to rely for the underlying intentions on a reconstruction of the impact upon council and magistracy on the one hand, and courts on the other. Certainly, one effect of selection by lot was the prevention of corruption. We also know very little about the timing

⁴⁷ Plato, *Republic* 557a; Aristotle, *Politics* 1294b8ff.; 1317b20ff.; 1318a1ff. That applies only for a sharp contrast between democracy and oligarchy. Aristotle, *Politics*, passim gives also a number of examples for elections in democracies. On selection by lot in oligarchies as a way of avoiding disputes: Aristotle, *Politics* 1300b1; 1303a14ff.; [Aristotle], *Rhetoric to Alexander* 1424a38 (referring also to secret vote); Diogenes Laertius 8, 34. The leaders of the 411 putsch in Athens constituted a new council of 400 by co-optation; when this board was installed they appointed their presiding officers by lot; Thucydides 8, 67, 3; 8, 70, 1. – Appointment by lot is treated as a purposively rational procedure; there are no religious connotations. See p. 230f. on the discussions in nineteenth-century scholarship. – The Romans made use of sortition in a number of political contexts, for example to select the first voting unit in the popular assembly or to assign provinces to members of a board of magistrates, but they did not appoint magistrates by lot.

and circumstances of its introduction (apart from information about the mode of appointing the archons, mentioned earlier). Here again, we have solid evidence only from the abolition of selection by lot by the oligarchs in 411.⁴⁸ It is, however, clear that the selection of council members and many magistrates by lot was an established procedure in the second half of the fifth century.⁴⁹

Each year 500 councillors and around 700 other magistrates were appointed, together with a few hundred more for functions in connection with the Delian League.⁵⁰ One was allowed to hold a particular office only once in a lifetime, or twice in the case of council members. The property qualification for council members and the majority of magistrates was set so low that they were open to all who met the standard for hoplites, which was itself relatively modest. The extent to which truly poor citizens assumed such positions also depended upon whether an office was associated with expenditure that could exceed any reimbursements. This applied probably to the archons, so that in their case a degree of social exclusivity must have remained. The rule excluding the very lowest class of property owners was never abolished, but it was supposed to have become practically meaningless by the fourth century, either because no check was made on qualification, or because economic development had rendered the thresholds established by Solon irrelevant.⁵¹ This does not necessarily mean that men from the lowest strata did actually enter the rank of archons.

CITIZENS, METICS AND SLAVES

A measure that can definitely be associated with Pericles is the passing in 451/450 of a law on the status of citizens. Henceforth to be an Athenian citizen required that both parents were Athenians. Whether this necessarily meant that a child had to be born into a legitimate marriage is the subject of debate. The crucial difference with regard to previous conditions, based more on practice than legislation, was that it was no longer sufficient for the father to be an Athenian; now the mother had to be an Athenian too; and also that non-Athenians could not assume citizenship rights by virtue of a decision made by an individual deme. Denial of citizenship right did not only mean that

⁴⁸ Thucydides 8, 67, 3. Appointment to the council by sortition was a hallmark of the restoration of democracy in 410; see the law quoted in Andocides 1, 96.

⁴⁹ The imposition by the Athenians of a constitution on Erythrae (on the western coast of Asia Minor), which can be dated with relative certainty to around 453, prescribed a council appointed by lot. Consequently, it can be deduced that by this time this procedure was regarded in Athens as an unambiguous criterion for a democratic order; Fornara, no. 71.

⁵⁰ Aristotle, *Athenian Constitution* 24, 3 gives 700 positions for both categories. This is realistic for the magistracies in Athens, but giving the same number for the Delian League is most probably an error on the part of a scribe. It is not possible to determine their number; the inscriptions recording those magistrates responsible for raising payments of tribute seem to involve both Athenians and locals.

⁵¹ Aristotle, *Athenian Constitution* 7, 4.

non-citizens had no political rights, but that they could not either inherit or buy land in Attica. The law was not retrospective,⁵² but it had very significant implications for the future.⁵³ Marriages between Athenians and non-Athenians consequently became extremely unattractive. During the fourth century there is thought to have been a general prohibition on such marriages.⁵⁴

These new rules, adopted in the mid-fifth century, seem to have especially affected the traditional aristocracy, whose family connections tended to run far beyond their own polis. Also, the metics, resident aliens, were concerned, since their daughters would no longer be attractive partners for Athenians of all strata.

The motivation of the new ruling, be it a reaction to actual conflicts or representing a grand design for the future, cannot be reconstructed, apart from observing that the commitment to Athens was supposed to be strengthened compared with other allegiances. The connection to the development of democracy lay in the fact that a system in which individuals enjoyed real rights of political participation, and also derived material gratification from the status of citizen (payments, occasional allotments of corn, the allocation of land in towns within the area ruled over by Athens,⁵⁵ support for the disabled and war orphans), now needed precise rules for the membership of the citizenry,⁵⁶ the criterion for which became 'participation in the polis'.⁵⁷ These rules became more restrictive than was usually the case with aristocracies.

Associated with the restriction of citizenship was a clear demarcation with regard to the allies of the Athenians. Athens saw no need for a policy of partial integration by granting citizenship to entire communities or their

⁵² There was a problem for sons with a non-Athenian mother born before the new law came into force, but who could only be registered as citizens at the age of eighteen. Retrospective application would have affected those born from 469; in the other case, sons from such unions would have been registered until 433. There is no consensus on this among scholars; this is also true of the status of illegitimate children, both of whose parents were Athenian.

⁵³ Sons born from a union with a non-Athenian mother after the law took effect were affected. The son of Pericles and Aspasia received citizenship only by a popular resolution in 429 (Plutarch, *Pericles* 37, 5). It seems that the terms of the law on citizenship were relaxed during the Peloponnesian War, but resumed their restrictive nature in 403.

⁵⁴ Demosthenes 59, 16.

⁵⁵ Athenian colonists (*klerouchoi*) retained their citizenship. In some cases they resettled, in others they leased land that had been allocated to them to locals.

⁵⁶ There was also probably the intention of ensuring that all phratries and demes operated according to the same criteria; whether this actually happened is another question.

⁵⁷ Aristotle, *Athenian Constitution* 26, 4; scholion to Aeschines 1, 39. The gift of grain from Egypt in 445/444 is supposed to have prompted a review of the citizen list, with the result that around 5,000 persons were excluded; Philochoros, Fragment 119; Plutarch, *Pericles* 37, 4. For many reasons this information is suspect; simply in terms of chronology the Egyptian delivery could not have provided an impulse for the Periclean law. If the story is basically authentic (regardless of the chronological puzzle), then it does demonstrate the material implications of citizenship status.

leadership – something that the Romans later successfully practised.⁵⁸ The principle of descent lent the lower orders of the Athenian citizenry a secure status, since other possible criteria – descent from a privileged family, land ownership and military ability, limitation to a definite maximum number, the exclusion of particular groups by trade or profession, or even the whim of those in office – were excluded. Moreover, all of these restrictive criteria would have involved the prospect of the loss of civil rights in the event of downward social mobility. It was for this reason that with the reconstitution of democracy in 403 this principle was restored, since the criterion of land ownership then proposed would have excluded 5,000 citizens.⁵⁹ However, related to this was the rather shabby treatment of metics and slaves who had fought the oligarchic regime under the leadership of Thrasybulus; their status was improved, but they did not receive the civil rights that had been promised to them, or at any rate, not to the extent originally envisaged.⁶⁰ This conformed to the way in which the end of the ‘Thirty’ was later understood as more of a self-liberation, and there was a desire to play down the role of fighters returning from exile; and this was also reflected in the argument that the 3,000 full citizens were more or less the victims of the small clique of leaders.⁶¹

The myth of the autochthony of the Athenians as a people who had, since time immemorial, formed a closed and culturally homogeneous group⁶² lent emphasis, on the one hand, to this claim of belonging independently of social position and, on the other hand, created a clear external demarcation.

In some respects the legislation on civil rights must have enhanced the status of Athenian women, since they now became significant as the mothers of citizens. Their connection to the civil community eludes categorical definition. There were no official lists of female citizens – we come across the feminine gender in texts written in the fourth century⁶³ – instead mechanisms of social control came into force. It is plain that women were excluded from participation in political institutions. This is hardly surprising, unless one supposes that history began about 1900 AD. It is an open question whether the women’s assembly represented by Aristophanes is anything more than a comic inversion of reality. Even if it is read as some indication of the intellectual discussion of

⁵⁸ Philip V of Macedon around 215 in his letter to the city of Larissa; Stanley M. Burstein, *The Hellenistic Age from the Battle of Ipsos to the Death of Cleopatra VII* (Translated Documents of Greece & Rome, 3), Cambridge 1985, no. 65.

⁵⁹ Dionysius of Halicarnassus, *Lysias* 34.

⁶⁰ Aristotle, *Athenian Constitution* 40, 2; Plutarch, *Moralia* 835f–836a; Rhodes/Osborne, no. 4.

⁶¹ *Lysias* 12, 90ff.

⁶² For example, Plato, *Menexenus* 237b–c; Isocrates 4, 24; materially also in Thucydides 1, 2, 5; 2, 36, 1.

⁶³ Aristotle, *Politics* 1275b32; Plato, *Laws* 814c; Isocrates 14, 51; Demosthenes 57, 30; 59, 107; Isaeus 8, 43.

gender roles, this was not a matter that concerned the political business of the time.⁶⁴

By contrast, the wives and daughters of citizens were integrated as priestesses and assistants into the cults of both the polis of Athens and the demes, although the sources do not indicate whether they were able to attend theatrical events as members of the audience.

Female citizens enjoyed the same protection of the law as did men in the case of abuse, enslavement and murder. In everyday legal practice they were represented by a guardian, either their father or their husband. They possessed no right of inheritance themselves. It was easier for a man to divorce than it was for a woman, but it was in principle possible for a woman to do so. If there was a separation, the husband had to return the dowry. What all this meant for the position of women in everyday life is hard to say. However, the idea that Athenian women were strictly excluded from public life is a myth that modern scholarship has rebutted.

The tightening of citizenship qualifications was linked to a clear demarcation of the status of metics, aliens who had permanently settled in Athens.⁶⁵ Athens had an interest in attracting them, needing the labour for manufacturing, building temples, harbours and so forth, as well as more ship crews besides those recruited from the lower social orders and as mercenaries. Metics were not regarded as unwelcome competition. During the second half of the fifth century the Athenian fleet had around 200–300 ships, each ship needing a crew of 200. Even if all the ships were not in use all of the time, they could not be crewed only with citizens.⁶⁶

The metics had an ambivalent status; on the one hand, they suffered legal discrimination as compared with citizens; on the other hand, they enjoyed a far better status than other aliens. It seems as though no other polis created a status for permanent residents similar to that for the Athenian metic. The distinction of the metics from the citizens was evident in the poll tax (*metoikion*) that the metics had to pay, quite probably monthly, hence their differentiation being emphasised by this regular payment. Failure to pay the tax was met with the threat of sale into slavery. The financial burden for individual metics – the monthly equivalent of one day's pay of a handyman (the half for single women) – would not have been oppressive. Nonetheless, the revenue created from this poll tax was considerable. During the fourth century the chief attraction of metics for the Athenians appears to have been fiscal.⁶⁷

⁶⁴ The same is true for the equality of men and women in Plato's ideal state, which is linked to the abolition of the family group.

⁶⁵ It is not clear whether there had previously been a defined metic status, as distinct from other aliens, or from when it might have existed. Aeschylus, *Hiketides* (*The Suppliants*) 609–614, indicates that this status was relatively novel when this tragedy was performed in 463.

⁶⁶ Thucydides I, 143, 1f.

⁶⁷ Xenophon, *Poroi* 2, 1f.

Exclusion from civil rights meant that metics could not acquire landed property. They were not otherwise restricted in their economic activity and occupied themselves in manufacture, trade and banking; they were able to keep slaves, for example. When employed on public building projects or in the fleet they received the same wage as citizens. When a metic registered in one of the demes (during the fourth century possibly required after one month's residence, for the fiscal reason noted earlier) an Athenian had to act as guarantor. However, probably metics could engage in legal affairs without needing to be represented by this patron. There were some factors which contributed to the inferior position of metics in a court of law as compared with that of citizens, but this was offset by their being guaranteed particular procedural rights.

It is notable that metics (though non-citizens), if they met the requirements for the status of hoplite, were drafted into military service as foot-soldiers, primarily in defence of the city. But they were also able to leave the city.⁶⁸ Prosperous metics were also assessed for war tax and in part for the liturgies, excepting the trierarchy, which was formally associated with the command of a ship (on liturgies see further pages). If they had no landed property it would have been relatively easy to conceal their wealth and so evade these obligations, although for many this was a welcome opportunity to demonstrate their integration in society. Especially for meritorious conduct on behalf of the polis (or by payments of this kind) they could be freed of the obligation to pay poll tax, or even be granted the privilege of acquiring landed property. In exceptional cases elevation to citizenship occurred, although the conditions for this were extremely restrictive and each instance required a popular resolution. The applicant had to be a citizen; the metic could not put himself forward. If conferral of citizenship had been a matter for the demes then it would certainly have been possible for someone to more or less buy his citizenship. It remains unclear why, despite the importance of civil rights, the demes retained the responsibility of keeping the lists of registered citizens,⁶⁹ since there were suggestions of irregularity.⁷⁰

Ultimately, the status of the metic swung between privilege compared with foreigners, and discrimination in comparison with citizens. Nonetheless, for many it was sufficiently attractive to settle in Athens as workmen, traders or even political refugees, and to remain there. There were no rules limiting the period during which a metic or his descendants could live in Athens, nor any others that affected residency of the kind that Plato had in mind; above all, there was never any collective expulsion of this group.⁷¹ From the Athenian

⁶⁸ It is doubtful whether this was a realistic option, because it is not clear how long metic families retained the civil rights of their home locality.

⁶⁹ The example of the Sicilian metropolis of Syracuse indicates that it must have been technically possible to maintain a central list in a community having around the same number of citizens as Athens; Plutarch, *Nicias* 14, 5.

⁷⁰ Demosthenes 57, *passim*.

⁷¹ Plato, *Laws* 850b–c proposed a period of twenty years; when this time was up the right of residence should be granted only for individual cases where special services had been rendered to

point of view, the combination of inclusion and exclusion in dealing with immigrants worked well. Autochthony and an openness to foreign migrants were always given equal importance.⁷²

It is not possible to put an exact number on the size of the metic population. According to indirect evidence dating from the late fourth century, there were about half as many metics as citizens, which means about 10,000 adult male metics in proportion to 21,000 citizens.⁷³ We do not know whether this proportion had been the same for the entire period of democracy. When these figures were established the number of citizens had been reduced, since 12,000 citizens had had to leave Athens with the abolition of democracy in 322.⁷⁴

Metics only shared with slaves that they were excluded from political participation. Slavery was considered to be a legal institute embodied in the 'law of nations'. The victor in war surrendered his right of execution by selling his prisoners. It was taken for granted that the slave status was heritable. Slaves were regarded as objects of property owned by their master; they had no civil rights, and of course no political rights. They could be subjected to corporal punishment that went as far as torture – this was a decisive factor differentiating them from free people⁷⁵ – but it was not permitted to kill them. There was no official visible discriminatory mark of a slave, for example, through branding or special dress, so that they – mostly non-Greeks ('barbarians') – were only discernible from the way they looked and the way they spoke. Critics accused Athenians of being too friendly with their slaves.⁷⁶

None of this alters the fact that even in Athens slavery meant 'social death', on account of being separated from familial and social ties, and the unlimited subjugation to the will of the slave owner. There were great variations in the living and working conditions of slaves owned by the state and who assisted in a range of administrative tasks;⁷⁷ house slaves (including tutors) and agricultural workers of both genders; workers in manufactories, prostitutes, and

Athens. It was said that Sparta undertook periodic expulsions of aliens: Thucydides 2, 39, 1; Xenophon, *Constitution of the Lacedaemonians* 14, 4; Aelian, *Varia Historia* 13, 16; but that is more an ideological construct by opponents or admirers of this order than an empirically based observation.

⁷² In the cults, for instance, with the festival of *synoikia* on the one hand, and that of *metoikia* on the other.

⁷³ Athenaeus 272c, citing a source of uncertain date on a population census that took place under Demetrius of Phaleron (probably 317/316). Quite probably there was a connection with the reduction of the property-owning qualification (as compared with the threshold set in 322) that was introduced at the time; Diodorus Siculus 18, 74, 3.

⁷⁴ Plutarch, *Phocion* 28, 4.

⁷⁵ Demosthenes 22, 55.

⁷⁶ Pseudo-Xenophon, *Athenian Constitution* 1, 10–12; Plato, *Republic* 563b; *Laws* 777c; Aristotle, *Politics* 1319b27ff. This was used positively in Demosthenes 9, 3: in Athens there was more freedom of speech for aliens and slaves than in other places for their own citizens.

⁷⁷ Some state slaves did acquire a degree of bureaucratic expertise that was otherwise deprecated; but it was out of question that they should gain any political power in this way.

finally mine slaves who worked in unspeakable conditions. There were also distinctions within each of these groups, where slaves worked as an overseer or foreman in agricultural or industrial enterprises, or as a house administrator.

There were slaves in more or less all occupations, including those where qualifications were needed, and they here worked alongside free citizens. Some slaves were permitted to pursue independent economic activity, and in some circumstances the profits from this could be used to purchase freedom from their masters. Freeing a slave was the private decision of the slave owner, but in Athens it does not seem to have happened very often. It was even rarer for a freed slave to succeed in gaining rights of citizenship. In the famous case of the slave-born 'banker' Pasion, who in the early fourth century finally achieved citizenship, his extraordinary success derived from his major financial services to the polis.⁷⁸

In Rome, liberation from slavery automatically brought with it assumption of civil rights (although with a lower status); but in Athens, freed slaves acquired a legal position similar only to that of the metics. Hence there were no newly created citizens who might have felt politically obligated to the patron, as in Rome. However, unlike in Rome, freed slaves could not be obliged to perform financial or other services for their previous owner; this also meant in turn that there was no material incentive for a slave owner to emancipate his slaves.

The liberation of particular groups of slaves at the behest of the state was extremely exceptional, as in the closing phases of the Peloponnesian War, when in 406 slaves were mobilised as the final contingent for the fleet. In any case, despite the desperate situation in which Athens found itself, even this instance gave rise to argument, for it was not only a matter of setting slaves free, but also conferring civil rights upon them.⁷⁹

Nothing very definite can be said about the number of slaves. The same source from which we can estimate the number of metics and citizens in the late fourth century offers a total figure of 400,000 slaves. It is very improbable that anything like a slave census took place, since they were not called upon to perform military service, as distinct to metics and citizens; nor did they play any part in the determination of property thresholds in respect of political rights. There has been doubt about the idea that there were 400,000 slaves since the late eighteenth century, but this number long dominated discussion, before finally being rejected.⁸⁰ It is also dubious whether the presumption of an orator who, following the Athenian defeat by Macedonia in 338, vainly

⁷⁸ Demosthenes 36, 43–48; 59, 2; and Demosthenes 45, 85 on the enormous sums he had spent on liturgies.

⁷⁹ Aristophanes, *Frogs* 693ff. suggests that the reservations regarding the conferral of civil rights was only in respect of slaves; they were not expressed in respect of metics and aliens who were likewise mobilised and who were given this privilege (cf. Diodorus Siculus 13, 97, 1).

⁸⁰ See p. 109.

pleaded for the mobilisation and liberation of slaves (together with civil rights for metics and aliens who were also to fight) was anything more than a surmise, or an exaggeration. He talked of 150,000 slaves, and must have meant in this case only men capable of fighting.⁸¹ Even this number is treated with great scepticism by modern scholars. Modern estimates assume 80,000–150,000 male and female slaves, implying more or less parity with the citizenry (including women and children).

How far democracy would have been at all possible without the existence of slaves is of course a matter for speculation. It is obvious that the use of slaves has significantly increased the availability of citizens for political and military functions; but it remains an open question how far down the social scale this went, whether, for example, a small farmer could as a rule keep one or two slaves or not.⁸² Limiting factors here could be the purchase price of a slave, and the great seasonal fluctuations in the need for agricultural labour. Whether they could afford them or not, ownership of slaves was certainly desirable even for the poorer citizens.

The institution of slavery was rarely the topic of debate. Attic comedy played with the idea of rule by women, but not with the idea of rule by slaves. In the fifth and the fourth centuries there were possibly some intellectuals who questioned the justice of slavery, but this made no impression, as elsewhere, in antiquity. Aristotle found himself prompted not only to justify slavery through the law of war, but also to postulate the existence of ‘natural slaves’. There were men, he said, who were naturally so lacking in capacities, that it was best for them to be subordinated to a master.⁸³ Nor was there any conception of inalienable human rights upon which demands for the abolition of slavery might be based.

THE NEW APPROACH TO ALLIES AND THE LEADING ROLE OF PERICLES

Pericles promoted a policy presuming that Athens, using the means made available by the members of the Delian League created in 478 against Persia, could do more or less whatever it saw fit, provided that it fulfilled its function of military protection. The alliance was a complete novelty in the Greek world, since members undertook to contribute on a continuous and permanent basis, and not just in time of war. Power within this alliance shifted increasingly to Athens as hegemon,⁸⁴ in part because some member states preferred to make

⁸¹ Hyperides, Fragment 29.

⁸² The sources do not indicate whether women also worked in the fields, as in other agrarian societies.

⁸³ Aristotle, *Politics* 1253b1–1255b15.

⁸⁴ Given the dating of many inscriptions is uncertain, it cannot be said with any confidence whether the transformation into an Athenian Empire had already taken place about 450, or whether it was first consolidated during the Peloponnesian War.

payments, rather than contribute ships to the fleet (which was in any case possible only above a certain size). This was advantageous to both sides: smaller cities benefited from a level of military protection that they otherwise would not have had; Athens could use the payments not only to maintain its large fleet, but also to increase its other state expenditures. However, in this way the allies made themselves entirely dependent upon Athens.⁸⁵ The allied treasury was moved in 454/453 from Delos to Athens; henceforth both the level and collection of the contributions made by member states was directed by Athens alone.⁸⁶ The alliance assembly, in which each member state had one vote, ceased its meetings. Athens used to bring also own interests up before Athenian courts.⁸⁷

From the very first, Athens resolutely met with military force any attempt to leave a contractual system that had no clear terminal point.⁸⁸ Subjugated allies had to give up their ships and were obliged to pay tribute, in some cases also being compelled to pay reparations;⁸⁹ they also had to demolish their walls and give up land. This continued even after 450 when operations against Persia, supposedly the rationale for the existence of this alliance, de facto ceased. Subsequently, the Athenians decided to rebuild the great temples on the Acropolis that the Persians had destroyed, using the funds supplied by the allies.⁹⁰ There was opposition to this, taking up the criticisms made in allied cities. Thucydides, son of Melesias, was the leading Athenian critic (not to be confused with Thucydides the historian).⁹¹ The struggle between Thucydides and Pericles ended with the ostracisation of the former, probably in 443. This

⁸⁵ Thucydides 1, 99; Plutarch, *Cimon* 11. The levels of contribution were originally determined by the Athenian Aristides, and had been approved unanimously; Thucydides 5, 18, 5; Diodorus Siculus 11, 47, 2; Plutarch, *Aristides* 24. It looked like a good deal for everyone concerned. This changed once Athens became involved in the Peloponnesian War and drastically increased the contributions.

⁸⁶ The 'Athenian Tribute Lists' (this title was chosen by the American scholars who published the respective inscriptions from 1939 to 1950) were initiated in this year, recording on inscriptions the sixtieth part of each payment that went to the treasury of the city goddess Athena. The temple treasury was not available for state expenditures, but in cases of emergency it was possible to borrow from it.

⁸⁷ Pseudo-Xenophon, *Athenian Constitution* 1, 14. Sure, an Athenian court deciding on a dispute over the financial contribution of an ally is not a neutral instance but at least the Athenians did not resolve the case by force or imperial command.

⁸⁸ The treatment of Naxos around 470 was explained by Thucydides 1, 98, 4 as a routine response to any attempt to leave the alliance. See Thucydides 1, 101 on the punishment of Thasos around 464.

⁸⁹ As with Samos in 439; Thucydides 1, 117, 3.

⁹⁰ Plutarch, *Pericles* 12ff. It is not certain whether the rebuilding was financed purely from the allies' funds; nor whether it provided a significant increase in employment for Athenian citizens, since specialised craftsmen had to be brought in from outside. Overall, the building costs were not great in comparison with the sums needed for the fleet. None of this alters the perception that the tribute was misused to represent Athens' greatness.

⁹¹ Plutarch, *Pericles* 11-14; Plato, *Menon* 94d.

was also the last ostracisation to take place for a long time and for which there is solid evidence (before that of Hyperbolus, mentioned earlier); it was, however, the last such case which finally decided a political dispute.

Pericles was the leading political figure in Athens from 443 at the latest; and until his death in 429 this position seems to have gone unchallenged by any equally gifted competitor. Various attempts to undermine his position through attacks on members of his circle of friends and advisers did not alter this.⁹² Harsh criticism, however, was made of his leadership role, which apart from anything else limited the opportunities for other members of the traditional aristocracy. In subsequent literature we can find fragments cited from comedies that are partly ironic, but also partly malicious in tone, imputing to him a quasi-monarchical position. The historian Thucydides later summed all this up in saying that at the time of Pericles democracy was in truth the rule of the principal man; but he thought this to be a good thing.⁹³ The formulation is not unambiguous, but nonetheless almost always understood in this way and certainly the outcome of the fixed idea that ultimately only a 'guided' democracy can be successful.⁹⁴

We will come back to the bases of Pericles' reputation. At this point we can note that Pericles did not place himself beyond the constitution's mechanisms of control. We simply do not know if he consciously provoked the war with Sparta and its allies opposing Athens' dominance in Greece, so that he might fight what he saw as an unavoidable war at a time most favourable for Athens. After the outbreak of this 'Peloponnesian War' in 431 his authority was sufficient to persuade the popular assembly to adopt a strategy aimed solely at securing the status quo, and not the further extension of the Athenian sphere of influence. The Athenian fleet embarked on a series of raids; no attempt was made to defend the home territory; and the entire rural population was withdrawn behind city walls. When the consequences of this strategy became apparent, as the invading Spartan army laid waste to the countryside, opinion turned against Pericles. If he did as a consequence suspend the popular assembly,⁹⁵ then the power would not have been his own, but lay either within the competences of the generals during time of war, or would have been agreed with the council. In any case, this did not prevent Pericles being relieved of the office of *strategos* and fined, although he was reappointed at the subsequent

⁹² The circumstances surrounding the legal proceedings involving, among others, Pericles' companion Aspasia and the natural philosopher Anaxagoras, and the ostracisation of the musical theorist Damon, remain murky.

⁹³ Thucydides 2, 65, 9.

⁹⁴ 'Rule (*arche*) under the principal man' could refer to Athens' domination of its allies. But since Plutarch (*Pericles* 9, 1; 15, 2; 16, 1) the Thucydidean sentence was generally understood as meaning 'de facto rule by Pericles despite the formal rules of the constitution'. See the translation by Thomas Hobbes, 1629: 'It was in name a state democratical, but in fact a government of the principal man'.

⁹⁵ Thucydides 2, 22, 1.

election.⁹⁶ The most serious outcome of the Periclean plan was the outbreak of a virulent plague among the population herded together in the city, thousands falling victim to it, including Pericles. It is not evident whether the medical knowledge of the time could have foreseen this; all the same, it did no harm to Pericles' reputation in the eyes of his contemporary, and later, admirers.⁹⁷

THE POPULAR ASSEMBLY AND THE COUNCIL OF 500

In this section, the way in which democracy functioned from the mid-fifth century will be outlined. In the Athenian case it is possible to talk simply of a 'political system' since the priesthood could have no influence on decisions taken in the polis. Priests did not form a caste of religious specialists that monopolised the performance of sacral rituals or even developed a sort of 'theology'.⁹⁸

The inner logic of institutional development meant that the popular assembly became the key organ for decision making. Popular assemblies took place in aristocratic and oligarchic regimes too; it is not their existence as such that is decisive, but rather whether they were actually sovereign bodies. This implies that they had to meet regularly, set their own agenda and make all significant decisions after free discussion. This contrasts with the popular assemblies of Sparta or Rome, in which the leading magistrate was solely responsible for calling a meeting, formulating the alternatives that were to be decided upon and calling upon people to speak; all that was left to the assembly was to accept or reject what was presented to it.

In Athens, all male citizens over the age of eighteen could attend the assembly, including those from the lowest class of property owner. It is not clear whether two years of military service was required, shifting the lowest age limit upwards to twenty; we know more of this *ephebia* from the later phase of democracy, but even here there is no ambiguous association with the right to vote. Every vote was equal; the majority of those present made the decision. Organisation by *phylai* played no role here; for technical reasons, votes on ostracism were made by *phylai*, but it was the total of votes that counted, and there were no voting corporations as in Rome.

The popular assembly was the people as such, the number of citizens actually attending one particular assembly being of no consequence. For decisions

⁹⁶ Thucydides 2, 60, 5; 2, 65, 8; Diodorus Siculus 12, 45, 4; Demosthenes 26, 2; Plutarch, *Pericles* 35, 4. The accusation that he misused public funds (Plato, *Gorgias* 516a) must have been particularly hard for Pericles, who prided himself on his clean hands in financial affairs. His opponents apparently made use of the fact that the continuous re-election of Pericles had precluded a regular audit after the respective year of office; Diodorus Siculus 12, 38.

⁹⁷ It is probable that Pericles did not anticipate the consequences of a lengthy war; cf. fn. 160.

⁹⁸ Even the recognition of new cults and the prosecution of sacrilegious acts was a matter for the *demoi*. Because of the absence of political power it was also not a problem that a few priestly positions were inherited in certain distinguished families, whereas most of the priests were appointed by lot.

that would affect an individual, whether negatively or positively, there was a quorum of 6,000; this was the case with ostracism and with the conferral of civil rights. Decisions like these were also made using voting pebbles,⁹⁹ although here the technical consideration of the exact number attending was probably more important than keeping the individual vote secret.¹⁰⁰ As a rule, however, there was no quorum, and voting was by show of hands. The chairmen of the assembly (taken in rotation from the Council of 500) estimated the majority. If there were any doubt about the result, the vote was taken again.¹⁰¹ It did not seem to be supposed that group pressure might influence this open voting process.¹⁰² A thoroughgoing introduction of a secret ballot and subsequent count would have made meetings of the assembly extremely lengthy, given the number of decisions to be made, or made it impossible to finish any given agenda. There is no record of the idea that particular decisions not only needed a quorum, but also a qualified majority, such as two-thirds of the votes cast. Owing to the size of the territory and the number of citizens, there was no one place where all those entitled to vote could assemble – in spite of a later cliché that has been repeated again and again.

There is no way of saying how many men normally attended an assembly. The insurgents of 411 claimed that there were hardly ever as many as 5,000 present; but this cannot be taken as a general indication since this relates to wartime, during which many citizens were absent for military reasons. Besides, this claim was intended to make their limitation of political rights to 5,000 citizens seem like only a minor qualification of democracy.¹⁰³ There are, however, indications for the fourth century that an attendance of 6,000 was frequently exceeded, despite a marked decline in the number of citizens. In support of this there is the fact that the place of assembly on the Pnyx, a cliff edge west of the Acropolis, was twice extended, finally providing space for a much greater number of participants, around 15,000 in all. The make-up of the assembly varied every time it met. Even if we did know the average attendance, we would still not know how many citizens regularly, or sporadically, or even not at all, made use of their right of participation.

At first, there were no material incentives. Payments for attendance were introduced around the end of the fifth and the beginning of the fourth century for a number of possible reasons: to deal with a decline in participation,

⁹⁹ Demosthenes 24, 59.

¹⁰⁰ This was at least applicable to ostracism. It was possible to bring shards inscribed beforehand.

¹⁰¹ The claim of Aeschines 3, 3 that the vote was often manipulated seems to be without foundation.

¹⁰² Intimidation of minorities was implied by Thucydides 6, 13, 1; 6, 24, 4; Xenophon, *Hellenica* 1, 4, 20. Possibly the tactic adopted by Thucydides Melesiou, getting his supporters to sit together in the assembly in a bloc (Plutarch, *Pericles* 11, 2), represented an attempt to neutralise Pericles' rhetorical powers.

¹⁰³ Thucydides 8, 72, 1; compare 8, 53, 1 on the claim that one aimed at a different sort of democracy. The details of the 'Constitution of 5,000' (Thucydides 8, 97, 2) actually established in autumn 411 remain obscure; ten months later it smoothly passed into democracy.

compensation for the falling prospects of earnings in the fleet, or as a result of competition between leading politicians for popular favour. They were twice increased in short succession, and this seems to have brought about greater attendance at popular assemblies.¹⁰⁴ Payments were given only to those who appeared before a certain time, or only to those who arrived first, up to a specific number, or the funds were exhausted at a level appropriate to the prevailing financial situation.

For that part of the rural population that did not live in demes close to the city, the distance was a disincentive (it was about eighteen miles from Marathon to Athens, or thirty-seven miles from Cape Sounion). Since farmers had more time in some parts of the year than others, there would have been a shifting relationship between rural and urban citizens in assemblies throughout the year. On top of this, there were the military claims made upon one section of the citizenry for service in the fleet and army during the campaigning season from early spring to the autumn. The decision to attend the popular assembly could also depend on the possibility of staying overnight with relatives or friends in the city, the attraction of some particular event or some urgent business.¹⁰⁵

Each assembly had to be given four days' notice, with the agenda publicly announced. Meetings began at dawn and ended at sunset at the latest, so they did not always last the entire day. When voting took place at meetings that had lasted for hours some participants would already have left.¹⁰⁶ If decisions involved important foreign issues the debate could last all day, with the vote taken on the following day.¹⁰⁷ There appears to have been no way of ensuring that only those who had heard the previous debate could vote. The administrative year was divided into ten units of time, corresponding to the subdivision on the council into prytanies, each one-tenth of the council members from one *phyle* acting as a standing committee in turn. The number of assemblies was fixed. A regulation from the later fourth century indicates that at least four popular assemblies had to take place within each prytany, hence forty in one year.¹⁰⁸ Intervals between meetings could vary, since there were no assemblies on feast days; and additional dates were arranged if needed.

¹⁰⁴ Aristotle, *Athenian Constitution* 41, 3; Aristophanes, *Ecclesiazusae* 387f. The level of payments prevailing around 392, after the second increase, was doubled sometime in the fourth century; Aristotle, *Athenian Constitution* 62, 2. It is highly unlikely that one can deduce from Aristophanes, *Acharnians* 21f. (with scholia) that there was some kind of obligation to attend popular assemblies in the later fifth century. It is also not clear whether payments made and evidenced by inscriptions (Fornara, nos. 154, 158) between 410 and 405 were distributed to all citizens as a general benefit, or whether they were associated with functions like jury service.

¹⁰⁵ The participation of colonists (*klerouchoi*) depended much on whether they remained resident in Athens, or had settled outside.

¹⁰⁶ But the requirement that the agenda was fixed in advance means that this factor could not easily be the subject of manipulation, as Aeschines 3, 125f. claims.

¹⁰⁷ Thucydides 1, 44, 1; Aeschines 2, 60f. and 65.

¹⁰⁸ Aristotle, *Athenian Constitution* 43, 4f. It is not known when this rule was initiated. According to a law reported by Demosthenes 24, 21, around the mid-fourth century at least three meetings had to take place per prytany.

Ten times a year there was a meeting with an obligatory programme. Here a vote was taken on the conduct of the magistracy, and in particular of the *stratēgoi*, leading to proceedings against a magistrate before the people's court if the assembly had expressed a lack of confidence in him. After a vote of this kind he was immediately suspended; if he was condemned by the court he was removed from office, whereas if judged not guilty he resumed his normal functions. There was therefore no immunity during a period of office, which demonstrates the degree to which magistrates were deliberately bound by the will of the popular assembly. Other matters for obligatory consideration involved foreign affairs or the grain supply, the latter probably only during the fourth century, when it became an acute concern, once Athens had lost its naval dominance.

Besides these matters, the council decided as a whole on the agenda, the actual management of the meeting being controlled by the prytanies, who assumed chairmanship on the day. The chairman himself was selected by lot each day, so that it was not possible for a practised chairman to manipulate the assembly. Whether some chairmen found their task too challenging is a matter for speculation. From the fourth century the prytanies no longer managed the assemblies, and this task falling to a committee of nine formed of one representative each from that part of the council not currently administratively in control; from these nine candidates a new one was chosen by lot for each day's proceedings. The independence of the assembly was thus further reinforced by the separation of substantive preparations for the meeting and its actual conduct. If a citizen applied to the council to add an item to the agenda it was up to the council whether this application was approved; but a citizen could also propose during the popular assembly that this item should be put on the agenda for the next meeting.

When publishing the agenda, the council had to give a prior resolution (*probouleuma*) for each point. This could take one of several forms: as a draft formulation of what might be decided; as a draft decision in which only some points were fixed, others remaining open; or even a simple description of what was to be discussed, without any substantive guidance. Even if the council had presented a finished proposal for decision, anyone attending the assembly could not only make proposals for partial or detailed changes, but also introduce an entirely new resolution that superseded the one supplied by the council. The final decision therefore always lay with the assembly itself; the council was supposed to facilitate its decisions, but not prejudice them. A matter should not be voted upon more than once, although it was (under certain circumstances) apparently possible for the *prytaneis* to accept a demand to review a decision and open it up again.¹⁰⁹

The way in which decisions were formulated generally reflects the fact that the assembly had the last word in all important matters. It decided over peace

¹⁰⁹ This is demonstrated in the context of the notorious debate over the punishment of the citizens of Mytilene, who deserted Athens in 427; Thucydides 3, 36. See Thucydides 6, 14 on the (failed) attempt of Nicias in 415 to have the decision on intervention in Sicily rescinded. Unfortunately,

and over war (which would involve at least part of the men present); foreign alliances; the conferral of civil rights, honours for individuals; festivals and cults of the polis; and general state business. It constantly monitored the conduct of the magistracy, was able to set detailed provisions and, if necessary, suspend certain magistrates.

The management of the popular assembly's business by the council was so arranged that objectivity and adherence to rules was ensured, while its recommendations to the popular assembly on particular decisions were made in a way that the council did not simply usurp the decision-making competence of the assembly. It was possible to have a more detached and sober discussion in the council than in the assembly, since not every great orator could attend it (unless he was also a general). Complex draft proposals could be elaborated and discussed in the council; not only might alternatives be discussed, but also compromises worked out. Using modern terminology, we could say that it was in the council, not in the popular assembly, where 'deliberation' could take place. Actual domination of the assembly by the council was not only hindered by procedural rules, but by the fact that individual council members, who took it in turns to manage the business of meetings, were chosen by lot, and so did not differ greatly from the average citizen in the popular assembly as far as competence and social status were concerned.

Any citizen over the age of thirty who registered for sortition could become a member of the council. One could be a councillor only twice in a lifetime, and not two years in succession. The rule dates from the fifth century, even if we do not exactly know when it was initiated. If we take the 500 councillors a year, this means that within thirty years not less than 7,500 men, to put it another way, every fourth or fifth citizen, served at least once in the council. This brought about an extraordinary dispersion of political experience within the citizenry which is all the higher, the smaller the number is of those who actually did serve twice. This possibility of a second term was probably introduced because otherwise there would have been difficulties in finding sufficient candidates.¹¹⁰ Prominent politicians, either by consultation or bribery in their deme, sometimes managed to gain entry to the council in a year of their choice; but given the terms of reference of the council and appointment of its members, that cannot have had an important impact upon its conduct as a whole. It was a time-consuming business being a council member since, aside from festival days, it met on an almost daily basis. However, it is not obvious how many attended on a regular basis; we do not know the proportion of members whose attendance was sporadic and how many members were prepared to participate in the debates or to make proposals.¹¹¹ As in the assembly, decisions were made

Thucydides here (as elsewhere) is not interested in the procedural rules which thus remain obscure for us.

¹¹⁰ It remains unclear what was done if there were not sufficient applicants within a deme for its quota of seats in the council.

¹¹¹ Demosthenes 22, 36f. makes a distinction between a small group who regularly took the floor and a silent majority.

by show of hands; voting by ballot and counting the votes was used only when the council's resolution affected individuals.

The one-tenth of councillors managing assembly and council business were obliged to attend all meetings during their incumbency. Their board and lodging were paid by the state. Each day a chairman was selected by lot among them to prevent the accumulation of experience of rule. Together with the one-third of the prytanies during his day of office the person selected had to be continually available in a particular place, from sunrise to sunset; these seventeen men also had to sleep there overnight.

Usually, meetings of the council were held in public,¹¹² but this could be suspended if they were discussing sensitive matters relating to foreign affairs or the military.¹¹³ They were prepared by the prytanies. In principle, only members had the right to speak at meetings, but all citizens were entitled to appeal to the council, which could hear them. Officials had accounts of special circumstances to report, and they were called upon by the council to do so. *Strategoí* could probably take part in meetings by virtue of their office, and they also possibly had a right to petition the council directly.

There were quite a number of other functions that the council performed, besides the business of preparing the ground for popular decision making. It was jointly responsible for the ongoing supervision of the magistracy and introduced any proceedings against it; formal performance criteria were used, and at the end of the administrative year the council would review the accounts and administrative activity. The incoming council similarly reviewed the work of the outgoing one.

The council had a special importance in all financial affairs, making use of a number of sub-committees to deal with them. It played a central part in determining the level of so-called tribute from the Athenian allies; it monitored the financing of the fleet and was responsible for the oversight of public construction.

There were also important functions related to foreign policy. It was here that ambassadors from other states were received; the council decided whether they would be permitted to subsequently address the popular assembly. Athenians who had been on diplomatic missions reported first of all to the council; it also had a major influence on the choice of these envoys by the popular assembly. In exceptional cases it also seems as though the council engaged in secret missions,¹¹⁴ completed diplomatic agreements¹¹⁵ and agreed war aims with the generals,¹¹⁶ in none of which was the popular assembly involved. All in all,

¹¹² Plato, *Menexenus* 234a-b; Demosthenes 19, 17.

¹¹³ Andocides 2, 19; Aeschines 3, 125; Demosthenes 25, 23.

¹¹⁴ *Hellenica Oxyrhynchia* 9, 1 (London Fragment) regarding a case around 395.

¹¹⁵ Demosthenes 2, 6 with scholion; Theopompus fr. 30; agreement with Philip II of Macedon over Amphipolis and Pydna (around 360). Some scholars have cast doubt on this.

¹¹⁶ According to Diodorus Siculus 13, 2, 6, before the invasion of Sicily: the destruction of Selinunt and Syracuse and the regular levying of tributes on other cities as war aims.

there was hardly any sphere of public administration in which the council was not involved to some degree, all the time relieving the popular assembly of administrative detail, and (apart from the exceptions just mentioned) not arrogating to itself the decision-making competence of the assembly. A law of 410/409 ruled out the capacity of the council to declare war and to impose the death penalty or large fines.¹¹⁷ This would have been a reaction against the oligarchy of 411. It was also from 410/409 onwards that lots were drawn for the seating order,¹¹⁸ apparently introduced to prevent organised groups dominating proceedings.

The interaction of popular assembly and the Council of 500 constituted the collective government of Athens. By contrast, the majority of magistracies were executive agencies whose task was to implement decisions.

THE MAGISTRACIES

Athenian magistrates were able to act only on the basis of closely defined rules. They were assigned to committees of ten, or multiples of ten, being evenly distributed to the *phylai*; the chair was constantly rotated and decisions were made as a whole. They were subject to the permanent control and direction of the popular assembly and council. Citizens who had been sanctioned in some way by the magistrates could appeal to the people's court. Competencies were disseminated among a large number of officials with closely defined tasks which were regarded as of equal importance, and which were not arranged in a hierarchy with corresponding powers of direction. The council also played an important role here, since it was always called upon when a matter arose that did not clearly fall within the defined competence of a given board of magistrates.

Most offices were filled by lot, drawing from those citizens who came forward for appointment to that office, subject to a review of their formal qualifications and their citizenship status, and in some cases, whether they were above the minimum age and property threshold and had fulfilled their military obligations. The extent to which during this examination of a candidate (*dokimasia*) other, possibly reputational, criteria of suitability for public office were raised is a matter of debate; in any event, there was certainly no test of material competence. Nonetheless, in the first decades following the restoration of democracy the procedure was used to test the 'democratic reliability' of candidates, since the amnesty of 403 ruled out criminal proceedings related to behaviour under the regime of the 'Thirty'.¹¹⁹

¹¹⁷ Henry T. Wade-Gery, 'Studies in Attic Inscriptions of the Fifth Century B.C. [Part B]: The Charter of the Democracy, 410 B.C. – I.G. I² 114', *Annual of the British School at Athens* 33, 1933, 113–122.

¹¹⁸ Scholia to Aristophanes, *Plutum* 972 = Philochoros, fr. 140.

¹¹⁹ See p. 64f.

It is not clear whether a minimum age of thirty was required for all offices. The duration of office was limited to one year, with a few exceptions. Holding several offices simultaneously was forbidden, as was also the repeated holding of the same office, apart from the (already mentioned) regulation concerning council members. Naturally, in the course of one's life it was possible to assume different functions, just not in two successive years, since once a period of office had finished there was a lengthy process of account and audit.

With about 700 positions for magistrates and 500 for council members annually,¹²⁰ plus frequent meetings of the popular assembly (together with those of the magistracies and meetings at the level of the demes), there must have been, by any world-historical comparison, an extraordinarily high level of political participation, especially on the part of the average citizen.

Although there was generally a deliberate policy of obstructing the accumulation of specialist competences,¹²¹ Athenians were very well aware that without such personal qualifications they would not be able to assume some managerial functions.¹²² This was especially true for the *strategoï*, who during the fifth century displaced the archons as the guiding spirits of politics. It was for this reason that they were elected, and not selected by lot. Likewise, appointment by election was the norm for other leading military roles, as well as for magistrates responsible for the administration of various funds. *Strategoï* were appointed for one year, but could be immediately and unconditionally re-elected. In this case, the business of audit was conducted in parallel with the period of administration; consequently, no lengthy review was required at its end.¹²³ From 443, Pericles was elected as a *strategos* for fifteen consecutive years, and in the fourth century Phocion was even said to have completed forty-five years as a general.¹²⁴ There was within the collegium no elected chief *strategos* as such, as used to be occasionally suggested in older scholarship, although individual members might dominate proceedings; it is possible, however, that there were rules governing the chairing of meetings.¹²⁵ Nonetheless, the popular assembly could

¹²⁰ Substitutes were always appointed for the council (Aeschines 3, 62) in case a selected candidate failed the subsequent review of formal capacity for office, or if a council member died in office, ensuring in this way that the council was always complete. There were vacancies in the magistracies, if a *phyle* was not able to fill its allotted number of places.

¹²¹ To some extent this also applied to the small group of salaried secretaries who worked for the various institutions. They were attached to a different magistracy each year (Lysias 30, 29). The post did not have a very high public profile, so that there was no political influence that could be gained by appointment to such a position (Demosthenes 18, 261; 19, 200 for deprecating remarks about Aeschines, who made his living as a young man in this way).

¹²² Pseudo-Xenophon, *Athenian Constitution* 1, 3; Aristotle, *Politics* 1298a28; cf. Isocrates 7, 22.

¹²³ See fn. 96.

¹²⁴ Plutarch, *Pericles* 16, 3; *Phocion* 8, 1. This statement about Phocion has sometimes been questioned; but this was a time when a functional differentiation had developed between the *strategoï* (Aristotle, *Athenian Constitution* 61, 1) and Phocion probably being a specialist indispensable for the protection of Athenian borders.

¹²⁵ Magistracies usually adopted the practice of a rotating chairman. The meetings of the *strategoï* were presumably chaired by the oldest one present; see Plutarch, *Nicias* 15, 2 (even if the simultaneous membership of Sophocles and Nicias seems to be extremely unlikely).

decide on an ad hoc basis to make particular operations the sole responsibility of one general, or a small number of them.¹²⁶ There was a marked tendency for the popular assembly to instruct the *strategoï* in a specific and strictly limited fashion,¹²⁷ and this could conflict with the need for a military commander to enjoy flexibility in prosecuting a war.¹²⁸ Military failure especially would lead to dismissal or serious charges, in particular if any deviation from the instructions of the popular assembly was treated as treasonable, associated perhaps with the imputation of bribery by the enemy.¹²⁹ As a consequence commanders might shrink from necessary immediate decisions.¹³⁰ The initiation of such proceedings was also furthered by the fact that the accuser ran a lesser risk of being punished himself than in other cases, even if less than one-fifth of the jury voted for his application.¹³¹ Another relevant fact is that until the middle of the fourth century proceedings of this kind could be heard in the popular assembly (the last known case occurring in 362), where in some circumstances manipulative rhetoric had a greater impact.

The ‘professional risk’ to which the *strategos* was vulnerable was unusually great – especially in comparison with military failures within the Roman aristocracy, who enjoyed the general protection of the political class. Athens was anything but deferential to its leaders. Even Miltiades, the great victor of Marathon, was soon afterwards charged with ‘deceiving the demos’ in connection with another military action.¹³² And Themistocles, who had won the victory at Salamis, was later ostracised, and then condemned in his absence.¹³³ The view expressed in a speech from the middle of the fourth century, that a *strategos* was more likely to die as a result of a judgement than to fall in battle,¹³⁴ should not be taken literally, but nonetheless indicates a problem – if one does not assume that Athenians tended towards the selection of incompetent and/or corrupt military leaders.

¹²⁶ Thucydides 6, 8, 2 on the specific powers given to the *strategoï* for the expedition to Sicily. It is, however, not evident whether this related to the specific war aims, or in fact represented general powers for the duration of the entire operation.

¹²⁷ The principle had originally meant that the commanders were not allowed to take high-handed decisions. In 479, during the war against the Persians, the Athenian units were weary of the long siege of a town at the Hellespont. They urged their *strategoï* to lead them home. But the generals declared that they had to follow the instructions of the authorities in Athens; Herodotus 9, 117.

¹²⁸ See, for example, the indictment for treason against Anytus in 409. He was dispatched to the aid of besieged Athenian ships but then because of storms decided to return to Athens; Diodorus Siculus 13, 64, 6.

¹²⁹ Pausanias 10, 9, 11ff.: the Athenians could only explain the decisive defeat in the sea battle of Aegospotami in 405 by supposing that their *strategos* had been bribed by Lysander, the Spartan admiral.

¹³⁰ Thucydides 7, 48, 4ff. on the fatal hesitation of Nicias in Sicily.

¹³¹ See p. 52 and 69 on the application of this rule elsewhere.

¹³² Herodotus 6, 136.

¹³³ Thucydides 1, 135–138; Plutarch, *Themistocles* 22, 2–23, 4.

¹³⁴ Demosthenes 4, 47.

A similar risk haunted envoys who received the usual gifts provided by the Persian or Macedon courts,¹³⁵ which they advisedly accepted for the sake of diplomatic manners,¹³⁶ and who were then accused of corruption; which, given the inclination of these powers to buy influence, was not necessarily untrue. Envoys enjoyed no flexibility in their negotiations. They were bound to follow strictly the instructions of the popular assembly; if they overstepped their mandate they could be prosecuted for treason.¹³⁷

Commanders also worked in a grey area when they appropriated the booty of war, extracted 'protection money',¹³⁸ or captured ships. During the fourth century the lack of sufficient funds forced a resort to such measures so that soldiers might be paid; but there seem to have been no clear rules about the division of funds between leaders and their units, or what proportion should be handed to the state exchequer; it was therefore hard to tell in which cases one might have to face accusations that one had used public office for self-enrichment.¹³⁹

Strictly equal treatment before the law and insistence on the responsibility of all holders of public office without regard to individual merit; a lack of understanding for the dilemmas in which they would find themselves; accusation as an instrument in the competition for political leadership which was not decided by vote for a particular period all these coalesced, vitiating any consistent assessment from the viewpoint of a modern observer, unless one has become partisan, adopting the role of accuser or defender of Athens and its democracy.

THE PROCESS OF POLITICAL DECISION MAKING

The functioning of political institutions needs further elaboration regarding the process of decision making. Literary sources give us a distorted perspective upon this, since they focus on the major personalities.¹⁴⁰ There must have been many more orators who made an impression on popular assemblies than we find in these sources. This is apparent from the fact that inscriptions record

¹³⁵ Aelian, *Varia historia* 1, 22 on practice at the Persian court.

¹³⁶ As illustrated by the anecdote that the philosopher Xenocrates was the only envoy in a mission to Philip II of Macedon who refused a gift, with the result that the Macedon king did not receive him; Diogenes Laertius 4, 8f.

¹³⁷ Demosthenes 19, 4ff. Demosthenes prosecuted Aeschines because of his conduct as an envoy to Philip II of Macedon in 346; both had belonged to the same group of ten Athenian envoys.

¹³⁸ Given the lack of sufficient funds during the fourth century this was a common practice of Athenian military leaders in securing the means to pay their men; Demosthenes 8, 24ff.

¹³⁹ In absolute terms the level of resources that the Athenian military could appropriate for itself was extremely modest, if one compares this with that of their Roman counterpart from the second century BC.

¹⁴⁰ This impression is reinforced by the fact that much of what we know about the fifth and fourth centuries derives from Plutarch's biographies, which are based upon sources that have not survived.

names of proponents not mentioned in any of the surviving literary sources.¹⁴¹ It can also be seen in the way that a protagonist in a famous debate left no other trace in the sources that have come down to us.¹⁴² All the same, it is reasonable to assume that the number of those who regularly addressed the assembly would have been relatively small. There may have been one or two hundred citizens who from time to time took the floor, while there were at any time only one or two dozen quasi-professional orators who spoke on a regular basis. These were men who could live for politics, whether on account of inherited wealth or business activity; or, as in the case of Demosthenes, because they received a handsome income as a writer of court speeches. These unpaid ‘full-time politicians’ also attracted (unproven) accusations that their wealth came from the bribes they took as orators.¹⁴³ When one takes into account that the receipt of ‘presents’ was not forbidden as such, but only if they led to proposals deleterious to Athenian interests,¹⁴⁴ then these became objectionable only in the light of the reputation that a later political decision came to have.

Of decisive importance was that every citizen had the right to speak and propose a motion. The fundamentals of democracy were constituted by this freedom to speak without fear (*parrhesia*), as a condition for controversial debate;¹⁴⁵ equality of citizens in respect of this right (*isegoria*);¹⁴⁶ and equality before the law without regard for social status (*isonomia*).¹⁴⁷ Each time at the beginning of a popular assembly a herald would ask: ‘Who wishes to speak?’¹⁴⁸ It is not clear how one expressed the wish to speak (perhaps by standing up, since those attending sat on benches); how the order in which people could speak was decided; how the time that any one person could speak was limited; how many times one speaker could respond to another; or when someone was no longer

¹⁴¹ The portentous decision to increase the level of tribute in 425/424 (Fornara, no. 136) originates with the council member Thoudippos. On the basis of his probable identification as Cleon’s son-in-law (see John K. Davies, *Athenian Propertied Families, 600–300 B. C.*, Oxford 1971, 228–230) it is usually assumed that he worked here in agreement with Cleon who then was at the zenith of his power; but who, or which group, prepared the complicated proposal is unknown. The unsystematic ordering of numerous instructions suggests that it is not the work of an experienced hand. In other cases it seems that a commission (*syngrapheis*) was appointed to draft proposals; see the Athenian decision regarding Miletus; Fornara, no. 92. Also Andocides 4, 11 (although the details regarding the increase of tribute are certainly dubious).

¹⁴² Diodotus in the ‘Mytilenian Debate’, Thucydides 3, 37–50, prevailing against Cleon, who is a constant presence in the surviving sources. Thucydides 6, 15, 1 on the debate over the attack on Sicily: many orators remain anonymous, apart from the protagonists Alcibiades and Nicias.

¹⁴³ As in the case of Demades: Dinarchus 1, 89 and 104; Plutarch, *Phocion* 30, 2ff.; *Moralia* 525c.

¹⁴⁴ Demosthenes 21, 113; Hyperides 4, 7f.

¹⁴⁵ Euripides, *Hippolytus* 422; Aristophanes, *Thesmophoriazusae* 541; Isocrates 8, 14.

¹⁴⁶ Herodotus 5, 78; Pseudo-Xenophon, *Athenian Constitution* 1, 12; Demosthenes 21, 124; 60, 28.

¹⁴⁷ Euripides, *Hiketides* (*The Suppliants*) 433f.

¹⁴⁸ Aristophanes, *Acharnians* 46; Demosthenes 18, 191; Aeschines 1, 27.

allowed to speak.¹⁴⁹ All the same, the sources that have survived do not in any way suggest that the list of speakers was manipulated. A law attributed to Solon, that men over fifty should speak first,¹⁵⁰ fell into disuse, if it had ever been used. We do have sources that contain rules according to which speakers could address only those points on the day's agenda under discussion at that time.¹⁵¹ By all accounts, there was no opportunity to block decisions by filibuster, or delay matters to such a great extent that by the time a vote was to be taken only those in favour were still present, which might have happened in assemblies of the demes.¹⁵² Even if some speakers might have been given a rowdy reception,¹⁵³ it seems that matters rarely went so far as organised attempts to sabotage proceedings. The chairmen of the meeting had a small number of stewards who could remove individuals who were disruptive, but they would have had a difficult time dealing with larger and more determined groups set on breaking up the meeting.¹⁵⁴

If someone in the popular assembly was speaking, another citizen could object, and if the latter could prove behaviour improper to the position of a citizen – poor treatment of his parents, squandering of an inheritance, failure to fulfil military obligations, cowardice in the face of the enemy, or prostitution – the right to speak could be removed.¹⁵⁵ These forms of antisocial behaviour could be legally sanctioned independently of any appearance at an assembly, while the mere public expression of such accusations could incur legal proceedings themselves. In this way limits could be set to the citizen's right to conduct his life as he wished, both positively and negatively.¹⁵⁶

However, the extent to which this procedure was used is not known, besides occasional resort in political rivalries. We can only speculate about the possible

¹⁴⁹ Plato, *Protagoras* 319c; Xenophon, *Memorabilia* 3, 6. 1.

¹⁵⁰ Aeschines 1, 23; 3, 2ff.; Plutarch, *Moralia* 784c–d.

¹⁵¹ Aeschines 1, 35.

¹⁵² Demosthenes 57, 9ff.

¹⁵³ Aristophanes, *Acharnians* 37ff.; Aeschines 1, 34; Demosthenes 19, 112.

¹⁵⁴ The chairmen disposed of public slaves ('Scythians') to maintain order; Aristophanes, *Knights* 665; Plato, *Protagoras* 319c. One wonders why the use of 'barbarian' slaves was not considered as humiliating for citizens. Anyway, in comedies they are depicted as ridiculous figures; Aristophanes, *Lysistrata* 461; *Ecclesiazusae* 259ff. The contrast with Roman popular assemblies is very striking, especially those of the later Republic, where there were frequent attempts to force through decisions, or prevent them from being made by violence.

¹⁵⁵ Aeschines 1, 27–30.

¹⁵⁶ Quite probably male prostitutes were assumed to subordinate themselves to the wills of many others who then treated them like slaves, and so being disqualified as free citizens. The relevant passages in Aeschines 1 deliberately mix up sections from different laws and his own imputations, so that one can only speculate what the exact content and meaning of these regulations might have been. (Since Aeschines also discriminates against a stable relationship between a mature and a younger man, this runs against the traditional account of those who murdered the Athenian tyrant; see fn. 8). In practice raising such an objection would mean that a relationship that had existed perhaps a decade or more previously had to be evaluated. Male prostitution was not forbidden; like female prostitutes, they had to pay a 'whore's tax' from their income. This could have been introduced as evidence. All the same, in such cases one would have had to rely more on hearsay and (poor) reputation than usual.

social impact of such rules in a system where individuals made ad hoc accusations, as opposed to a political order in which there were ‘moral guardians’ (as with the Roman censors) who mostly acted upon reports by third parties, and whose actions were not therefore necessarily motivated by concern about public welfare.

It was expected of those who addressed the people that they were familiar with the material related to the decision in question. Many of the assembled citizens had considerable political and administrative experience from their appointments to magistracies or the council, and had taken part in several military campaigns; any speaker who showed that he lacked relevant knowledge would have expected to have been mocked or shouted down. That is the moral of a conversation, attributed to Socrates, with a young man from the upper classes who thought he could appear before the popular assembly without having made sure he knew the relevant issues.¹⁵⁷ Athenians did seek expert advice when needed, and were quite intolerant of incompetence; however, in the wider world of politics they presumed that all citizens had the capacity to make decisions, as Socrates is supposed to have said.¹⁵⁸ There was certainly a strong reaction whenever something stated publicly was unpopular.

There were always a few leading politicians whom the popular assembly was prepared to follow for extended periods. Up to the end of the fifth century these were mostly *strategoï*; but being a *strategos* was a necessary, though not sufficient, condition, for there were always ten of them, some of whom strictly confined themselves to their military functions. Besides military competence and good fortune, rhetorical skill was a fundamental prerequisite that became increasingly important. This was especially evident in the case of Pericles, whose dominant role was owed less to the success of great military campaigns than to his supreme oratorical skills.¹⁵⁹ Rhetoric alone would not have been enough, without the existence of trust in substantive competence. Chief among such matters was familiarity with the complex financial arrangements needed for military operations, since the fitting out of a fleet and the payment of their crews was of very great importance to the military success of expeditions. In addition, there was the ability to form a coherent view of matters related to various financial reserves, sources of income and the state of expenditures, developing on that basis a strategy that made sense to the general public.¹⁶⁰

¹⁵⁷ Xenophon, *Memorabilia* 3, 6. Cf. in general Aristotle, *Rhetoric* 1, 4, 8 (1359b): the speaker must command exact knowledge of the income and expenditure of the state.

¹⁵⁸ Plato, *Protagoras* 319c–d.

¹⁵⁹ Thucydides 1, 139, 4; Eupolis, fragment 102 [Kassel/Austin]; Plato, *Phaidros* 269e–270a.

¹⁶⁰ The financial potential of Athens and its consequences for the prosecution of war is the dominating theme of Pericles’ speeches both before and after the outbreak of the Peloponnesian War; Thucydides 1, 140–144; 2, 13. The sums involved suggest that Athens could prosecute this war only for a few years, even if Thucydides 2, 65, 6f. claims the contrary. The later increase of tribute was thus unavoidable, although it did also prompt allies to break away from Athens.

Pericles was also said to be incorruptible.¹⁶¹ Concern about the corruptibility of their politicians, especially by foreign powers, was a constant theme of Athenian politics, as were mutual accusations of corruption,¹⁶² although it is not possible to say how far these were based on actual experience, or on neurotic mistrust. Public trust in a leader also depended on his self-representation as someone who was fully engaged in the service of the commonweal. As was said of Pericles, he was only ever to be seen in the city walking to the assembly or to the council-chamber, and in all these years he had declined all private socialising.¹⁶³ The exercise of political authority also required that one be sparing with engagements. So it was also said of Pericles that he spoke only on truly important matters, leaving the rest mostly to his friends.¹⁶⁴

These were orators of the second or third rank whose names we hardly know, and worked on a more or less constant basis with the prominent popular leaders, appearing with them in the assembly by prior agreement. This is what is meant by ‘friends’, or ‘the people around him’. The need for such collaboration was dictated by the fact that complicated matters could be resolved through cooperation, with perhaps some specialised contributions on particular areas.

We do not, however, know how such groups were formed, how they were held together or whether there was any chance that a dedicated following could be created in the popular assembly. Of course, there were groups formed of relatives and personal friends; common members of a *betaireia* (association promoting sociability); or because someone was under an obligation on account of a loan, or of assistance with a court case. But the usual courtesies prevailing in other societies – material gifts exchanged for support in an election – were for the most part absent, since most positions were filled by lot. For the same reason there could be no administrative patronage wielded by influential politicians.¹⁶⁵ The *strategoï* had discretion in the recruitment of hoplites, the granting of exemptions and other matters, but it is not apparent whether these went further than military considerations and involved questions of patronage, since this might have affected any chances of re-election; in any case, during the fourth century their options became very much reduced.

Given the number of those participating in assemblies and the frequency with which they occurred, on the one hand, and the prospect that citizens would receive payment for attendance, on the other, even a very rich politician would have had very little chance of influencing the voting behaviour of sufficiently large numbers of citizens by distributing gratuities – beyond of course

¹⁶¹ Thucydides 2, 65, 8; cf. 2, 60, 5.

¹⁶² In the ‘Mytilenian Debate’ Diodotus complained about the way that this form of accusation had poisoned the political atmosphere; Thucydides 3, 42, 3f.

¹⁶³ Plutarch, *Pericles* 7, 4; *Moralia* 800c.

¹⁶⁴ Plutarch, *Pericles* 7, 5.

¹⁶⁵ Three of the archons could appoint their own ‘assistants’; Aristotle, *Athenian Constitution* 56, 1; Demosthenes 58, 32. It might have been similar with the *strategoï* and their secretaries; but this does not alter the overall picture.

to members of their own deme or individual supplicants.¹⁶⁶ Accusations of corruption that were otherwise endemic did not arise in the case of election to the post of *strategos*. If votes had been bought, then it is hardly likely that a vote by a show of hands would have been the usual practice;¹⁶⁷ a secret ballot would have been introduced, especially in the case of elections. There were no relations of social dependency that could have constrained citizens in the eyes of their ‘patrons’,¹⁶⁸ nor was there such respect for prominent persons that it might have swayed voting.

Even the possibility that some aristocrats might represent themselves as benefactors and thereby seek to make political capital faded from the mid-fifth century. Cimon, the most important Athenian general between 478 and 462, could still seek support indirectly by financing building and infrastructural works,¹⁶⁹ although this did not prevent his being ostracised in 461. The conduct of building on the Acropolis was, however, from the very beginning in the hands of a commission whose members changed on an annual basis. When Pericles offered to pay for improvements to the water supply out of his own funds, the offer was gratefully declined by the people.¹⁷⁰

Although Pericles generally cultivated a distinguished style in his public appearances, during his final years, and then certainly afterwards, a new breed of politician emerged who, like Cleon, was no longer a descendant of the aristocracy, but who had made a fortune through commerce and manufacture. These *nouveaux riches* made Athens a special ‘market’ for sophists from all over the Greek world who, in return for substantial honoraria (constantly criticised by Plato), for the most part gave lessons in rhetoric, so that one could be trained for appearances before the courts and the popular assembly.¹⁷¹

The concept of demagogue was minted for this new type of orator. *Demagogos*, leader of the people, was perhaps at first a relatively neutral description, but in time gained the strongly negative sense that it has today. In Aristophanes’ comedies *The Knights* (staged in 424) and *The Wasps* (422), Cleon was portrayed extremely negatively as the prototypical demagogue, and Thucydides compared him with the responsible and incorruptible Pericles, as

¹⁶⁶ See the sources for the behaviour of Cimon and Nicias: Aristotle, *Athenian Constitution* 27, 3f. (Pericles is said to have introduced sessional expenses because he could not compete with Cimon’s generosity); Athenaeus 532f–533c (from Theopompus); Plutarch, *Cimon* 10; Cornelius Nepos, *Cimon* 4; Plutarch, *Nicias* 4, 3.

¹⁶⁷ Aeschines 3, 13: Show of hands at the elections of generals and other officials.

¹⁶⁸ The introduction of secret voting for popular assemblies in Rome during the last third of the second century BC was an attempt to exclude the possibility of such influence, and was said to be a guarantee of civil freedom. Whether this did follow is, however, open to doubt.

¹⁶⁹ Plutarch, *Cimon* 13, 6f.

¹⁷⁰ Fornara, no. 117.

¹⁷¹ Plato, *Gorgias* 452e. Rhetoric was supposed to have originated in Sicily when, after the fall of the tyrant Thrasybulus, in 465 courts were established in Syracuse for the restitution of property; Cicero, *Brutus* 46 (invoking Aristotle).

a kind of contrasting political model.¹⁷² Apparently, this had a great deal to do with the way that Cleon presented himself, the traditional elite disdaining the vulgar way in which he ingratiated himself with the masses.¹⁷³

According to Aristophanes, Cleon swore that he loved the demos – almost a homoerotic relationship – and presented himself as a man of the people; he accused the cavalry, the ‘knights’ recruited from the upper class, of neglecting their military duties,¹⁷⁴ linking this to a campaign of defamation against alleged ‘enemies of state’ and potential traitors; he exploited juries, whose payment was increased, against political opponents. It is very likely that he made use of the annual auditing process to undermine his opponents. In *The Knights*, Aristophanes has Cleon trumped by an even more dreadful demagogue, the ‘sausage seller’, who supersedes him in popularity. In 425/424, Cleon is supposed to have been the initiator of the decision to increase the levies imposed by Athens upon its allies.¹⁷⁵ But this ‘demagogue’ was also supposed to have said that the public discussion of sensitive matters was harmful to Athens’ standing as a great power, and that those attending assemblies behaved like an audience in the theatre, applauding the best performance.¹⁷⁶

This suggests that orators in the popular assembly might, on the one hand, seek to win a majority by using all means of persuasion coupled with the denunciation of antagonists while, on the other hand, they had no need to take account of ‘their voters’, so long as they did not wish to be elected to the one politically relevant office, that of a *strategos*. Losing a vote, which Cleon experienced (perhaps because he had harshly criticised the public), did not necessarily imply any lasting damage to a leading political role.

Cleon was the prototype of an influential orator who was not a general, and so bore no military responsibility for the execution of his proposals. In his case, however, this was still perceived to be a problem. When in 424 he put forward a solution to an apparently irresolvable military dilemma, he was not able to avoid the demand that he proceed to implement this cunning plan as a *strategos*; and he then had some good fortune, for he was clever enough to leave the operation to an experienced military expert, Demosthenes (not to be confused with the fourth-century orator).¹⁷⁷ On the whole, one can hardly accuse Cleon of irresponsibly promoting war or, at any rate, no more than Pericles,

¹⁷² While Cleon was characterised by Thucydides as a demagogue (4, 21, 3), Pericles was the ‘principal man’ (2, 65, 9).

¹⁷³ Summarised in Aristotle, *Athenian Constitution* 28, 3.

¹⁷⁴ Theopompus, fr. 93 = scholion in Aristophanes, *Knights* 226.

¹⁷⁵ See fn. 141.

¹⁷⁶ Thucydides 3, 37, 1; 3, 38, 4ff. The idea that democracy’s public and lengthy decision-making processes were a disadvantage in the world of international politics can also be found in Demosthenes 19, 184–186.

¹⁷⁷ Thucydides 4, 27ff. After this victory Cleon was the first (besides the descendants of the tyrannicides) to be rewarded with lifelong dining rights in the council chamber; Aristophanes, *Knights* 281ff.; 575ff.; 766; 1404.

since his actions were continuous with what Pericles had done, forging plans of war that were aimed at preserving the status quo.

A major shift in direction towards continuous expansion is more the doing of Alcibiades, who in 415 brought about the decision to invade Sicily. Subsequently, the roles of popular political leadership and of military responsibility were more systematically separated, even if not completely. At any event, after Pericles no one ever played such a dominant role (except Lycurgus one hundred years later; for more on this see the sections that follow).

THE FINANCING OF PUBLIC TASKS

The extension of a system of rule over the Aegean, and the development of democracy, led to a dramatic increase in the needs of state finance: the building and maintenance of warships, wages for hoplites and rowers, the payment of allowances, the public festivals that became ever more elaborate and expensive and ultimately also the building of temples. The organisation of public finances, of the various exchequers and funds, of the numerous committees – all of this was a complex business and need not be dealt with here. However, the way in which money was raised from citizens was a constant source of concern and criticism. Important here is the absence of regular direct taxation, whether of the citizen or of land. Taxation of this kind could not be reconciled with the freedom of the citizen. In time of war a special levy could be made on property. This *eisphora* was agreed for one year at a time, if necessary repeated in successive years. The tax affected a wide circle of citizens, possibly including those in the middle strata.¹⁷⁸

Above all, it was a small upper stratum which was called upon to make major payments. This took the form of liturgies, or ‘public services’. Very wealthy citizens¹⁷⁹ had to finance specific functions; and it was assumed that for the sake of honour they would exceed a defined minimum contribution.

The trierarchy, named after the triremes, obliged the richest 400¹⁸⁰ Athenians to take turns in paying the running costs for one warship. The ship itself was provided by the state, completely equipped; but the trierarch was responsible for fitting out and maintenance, and this could become very costly. Formally he was in command, but could transfer this to a suitable person. He was free to raise the standard of equipment, or increase the pay for the rowers on the ship. Before the attack on Sicily in 415 the trierarchs succumbed to the general enthusiasm for the war, seeking to outdo each other on both points.¹⁸¹

¹⁷⁸ It is not clear what the threshold was for this tax on self-declared property, whether this threshold was varied according to financial need, and how many citizens were affected. Modern estimates vary between 1,500 and 6,000 taxable citizens.

¹⁷⁹ For some liturgies metics were also included, but this did not apply to the trierarchy.

¹⁸⁰ The number dates from the later fifth century; Pseudo-Xenophon, *Athenian Constitution* 3, 4.

¹⁸¹ Thucydides 6, 30, 3ff.

There was also a degree of competition in public self-representation with regard to the liturgies related to theatrical performance – the *choregia*, outfitting the chorus and assuming responsibility for the costs of the performance. A jury of citizens not only gave a premium for the plays, but also distributed prizes to their producers (*choregoi*). There were in total around a hundred liturgies involved in the organisation of festivals, and every four years, because of the Panathenaea, the most important festival, another twenty more.

Citizens with the greatest amount of wealth had to take turns in being responsible for these liturgies, although there was only one that had to be performed per year, and then one or two years could be claimed as free of liturgical payment. There was no escaping this obligation, unless one could prove that there was another person who had even greater wealth, but who had not been asked to come forward. (The appointment was made by the magistrates responsible for the respective public task; for example, the *strategoï* named the trierarchs.) Characteristic here was that the obligation to make liturgical payments was not linked to an objectively defined level of wealth, but to the fact that an individual was part of the group of the relatively richest citizens.¹⁸² In the absence of administrative records, this was defined according to the individual's own estimates, on the one hand, and broader social estimates, on the other. This caused argument and civil proceedings over the issue of whether someone had tried to conceal their wealth by, for example, hoarding money instead of investing in real estate. As far as public administration was concerned, the advantage of the system was that it ensured a reliable stream of income without the need to create a bureaucratic apparatus.

The burden of these payments could be considerable, especially if they coincided with other costly social obligations such as birthdays and funerals, or weddings and dowries, or even if they clashed with an increase in the war tax. Often people had to borrow money to fulfil their obligation. This was a particular cause for concern for those who were at the lower end of the (imaginary) list of 'rich citizens'. It appears that where the most expensive liturgies were concerned, the smallest likely contribution would involve an expense equal to the annual earnings of an unskilled worker.¹⁸³

There can be little doubt that democracy made historically unparalleled financial claims on its richest citizens.¹⁸⁴ This exploited, on the one hand, the

¹⁸² In the late fifth century 400 citizens were called upon for the trierarchy, the most expensive liturgy; in 357 a system of solidarity associations was introduced, involving 1,200 citizens; from 340 the financing of the fleet was made the sole responsibility of the 300 richest citizens.

¹⁸³ Since liturgies were raised in cash, large landowners had to arrange the sale of their products at the Athenian market, while the number of potential buyers had increased due to state payments to citizens. Both therefore reinforced a market orientation.

¹⁸⁴ By the mid-fourth century at the latest the *epidodis* was added: an additional financial contribution mostly employed to finance military expeditions or the construction or restoration of public buildings. While this was in principle voluntary, considerable pressure was exerted on the richest citizens.

traditional inclination for display and competitiveness on the part of Greek elite while, on the other, no concession was made to any political privilege that might flow from being a member of this elite. There was no prospect of any claim to the highest offices, nor could any politician be sure of gaining support for his ambitions by being especially generous in his giving to liturgies. This system was resolutely adhered to in the fourth century, although efforts were made to spread the burden rather more broadly and justly by creating associations to pay for the trierarchy and *eisphora*, contributions by members of these associations being proportioned according to their wealth. This made the obligation for the trierarchy rather like a form of taxation, since personal responsibility for the fitting out of ships now lapsed.

This combination of substantial financial claims on prosperous citizens who were nonetheless excluded from any political privileges was the special feature of Athenian democracy that animated contemporary critics,¹⁸⁵ and also in the subsequent reception. This was even more the case with the courts of law, which have frequently been regarded as a mechanism for social redistribution.

JURY COURTS

Jury courts (*dikasteria*) played an especially prominent role in Athenian democracy, being responsible since the 'fall of the Areopagus' for the greater part of legal proceedings. The most important exceptions were those involving murder and manslaughter, which remained the responsibility of the Areopagus, along with some religious delicts. Other rules prevailed here. The Areopagus was a court that enjoyed the reputation of being a forum unimpressed by the tricks of advocacy.¹⁸⁶ Its members had considerably greater experience than the usual juror, having chaired a court during their term as archon and then having a permanent seat on the Areopagus.

Most of what we know about the work of jury courts comes from the fourth century: from about one hundred surviving court addresses, and from the details of technical procedure that we can glean from the Aristotelian text on the Athenian constitution.

The role of the popular courts has been controversial from antiquity right up to the present. The principle that public decisions of any kind were a matter for every citizen, whose judgement derived not from any special competence but from his status as a citizen, was here made particularly obvious.¹⁸⁷ All decisions, whether they concerned questions of law or of guilt, were taken by laypersons without legal training. This marks a key difference to legal systems like Anglo-Saxon criminal procedure (or the German jury system from the mid-nineteenth century to 1924) where lay judges alone decided upon guilt,

¹⁸⁵ For example, Isocrates 7, 24f.; 12, 145ff.; Aristotle, *Politics* 1321a30ff.

¹⁸⁶ Lysias 3, 2; Lycurgus 1, 12.

¹⁸⁷ Plato, *Laws* 768b; Aristotle, *Politics* 1275a22f.

with questions of procedure and law being in the hands of professional judges who in some cases also determined the sentence. In Athens the jury doubled as judge. Unfortunately, we lack a concept that clearly captures this function. In the following sections both ‘judges’ and ‘jury’ will be used, without implying that there is any substantive distinction between them.

These lay persons reached their judgements from a hearing in which plaintiff and defendant, or accuser and accused, faced each other directly. Modern concepts of civil and criminal law are applicable only partly to Athenian relationships. A distinction has to be made between a private prosecution that could be initiated only by an injured party, and a popular prosecution in which every citizen could bring an action in the public interest, where the citizen more or less played the role of ‘public prosecutor’.¹⁸⁸ Fundamental here was the question of whether or not there was some public interest at issue that called for a popular prosecution. Nonetheless, it remains puzzling for us that a murder should not, on the one hand, be the subject of a public prosecution, while the abuse of parents, orphans or heiresses (*epikleroi*), on the other hand, were, the imputation being that these individuals were not capable of defending themselves.

In some cases, particularly those which had fiscal implications, premia were offered for successful prosecutions. However, in general a prosecutor who gained less than a fifth of the judges’ votes – who was therefore thought to have brought a casual or abusive case – had himself to pay a fine; and if he repeated the offence he was barred from bringing any future prosecution. Trials in which everyone had a right of action, including those against office holders, were generally heard before 500 jurors; private prosecutions were heard before 200 or 400 jurors; or before 201, 401 or 501 so as to avoid a tied vote.¹⁸⁹

During the fourth century private prosecutions were initially settled through official arbitration. An arbitrator was chosen by lot from among the group of fifty-nine-year-old citizens, these being in the final year of their eligibility for military service. Exceptionally, there was in this case an obligation to assume the function if there were no valid ground for excusal. The arbitrator either reached a settlement or gave his own judgement, but this was binding only if accepted by both sides; it was still possible to bring the case before a jury court.

The archons presided over court proceedings and were responsible only for the technical conduct of the hearing; there was no way in which they could influence the voting by jurors. The fact that they accepted cases and terminated

¹⁸⁸ Popular prosecutions supposedly began with Solon: Plutarch, *Solon* 18, 5. There were some exceptions to the rule that public cases were brought by volunteers. Probably, the board that checked the accounts of leaving magistrates could bring an accusation because of embezzling public money (Aristotle, *Constitution of the Athenians* 54, 2 – though not quite clear); in cases of *eisangelia* initiated by the popular assembly or the council the respective decree would also name a prosecutor (see fn. 215).

¹⁸⁹ Aristotle, *Athenian Constitution* 53, 3; 68, 1. It is not clear how the additional juror was chosen and why it could still end in a tied vote: Aeschines 3, 252.

proceedings did give them some powers, however. The magistrate was able to reject a lawsuit if the plaintiff failed to give a legal basis for his application, if the application made related to matters that were not his responsibility, if judgement had already been given on the same matter or the case was out of time. It is likely that these criteria were never more than a formality. If there was any doubt, then it was more probable that a magistrate would accept a case, or refer the plaintiff to the need for greater legal precision, and not simply dismiss a petition on the grounds of inadmissibility, for fear of being accused of overstepping his competence. Where lawsuits were brought before the court at the same time, the order in which they would be heard was decided by lot,¹⁹⁰ which perhaps introduced some scope for manipulation.¹⁹¹

Juries were selected from the list of all those who were at least thirty years old, who had registered themselves at the beginning of the year and sworn an oath. There were in total 6,000 of such citizens, and there were around 200 court days a year on which several cases could be heard simultaneously.

The way in which judges were assigned to particular courts varied during the fifth and fourth centuries; the process of selection was optimised with respect to the composition of a jury sitting on a particular case by using allotment machines (*kleroteria*).¹⁹² Each jury contained the same number of jurors from each of the ten *phylai*; this excluded the possibility that jurors were drawn only from those socially close to the parties involved in the hearing. Each juror who registered on a court day had an equal chance, but no guarantee, of being called that day. Parties to the hearing found out who would be their judges only just before proceedings began; also, it was not possible for particular groups of judges to sit repeatedly on the same kind of cases, which could have led to the development of fixed criteria. It is hard to imagine a technically better way of securing what is today called the principle of the 'statutory judge'.¹⁹³

Apart from that, there could be no argument over whether in any given case the social background of the jurors adequately secured conditions for a fair trial, as often happens in the United States today. Given the great numbers of jurors a procedure to challenge certain ones for bias was not necessary. The prospects for corruption were also largely undercut,¹⁹⁴ since one would have had to bribe all jurors registering on the day, and not just those selected for a particular hearing,¹⁹⁵ quite apart from the fact that the large number of the

¹⁹⁰ Demosthenes 46, 22; Aristotle, *Athenian Constitution* 56, 6.

¹⁹¹ Demosthenes 21, 112.

¹⁹² Aristotle, *Athenian Constitution* 63–66.

¹⁹³ The contemporary German practice of determining the jurisdiction of courts according to the names of those involved is by comparison very primitive.

¹⁹⁴ Pseudo-Xenophon, *Athenian Constitution* 3, 7.

¹⁹⁵ According to Lysias 29, 12 there was one instance where an attempt was made to bribe 2,100 potential jurors. Modern calculations suggest that around 2,650 men had to register for each normal court day if all courts were to be fully staffed; see David C. Mirhady and Carl Schwarz, 'Dikastic Participation', *Classical Quarterly* 61, 2011, 744–748.

latter presented a major obstacle. Even the seating order was chosen by lot, so that friends or like-minded people did not sit together and comment on proceedings to each other, or orchestrate particular responses.

The bronze token that jurors had to show when being selected was often placed in their grave, expressing the pride taken in the public engagement they represented. Of course, this did not exclude the possibility that being prepared to act as a juror might also be motivated by the payments made, and the feeling that, as a simple citizen, it was possible to make decisions about the socially powerful.¹⁹⁶

There were fixed procedural rules. Plaintiff and defendant each had to represent themselves, without the assistance of lawyers. The rule was modified by the possibility of having other speakers (*synegoroi*) plead on one's behalf.¹⁹⁷ Each side had exactly the same time to address the court, and in the latter case this was divided among several people. It was possible to commission addresses from expert professional writers which were then learned by heart in part or whole, so that they could be delivered freely. Simply reading a speech out was not prohibited, but it was not usual and did not make a very good impression on its addressees. While the supporting speakers identified themselves with one of the parties to the hearing, lending their own reputation to the case, speech writers were available to anyone who wanted and was able to pay them. One of the earliest known professional writers, Antiphon, was represented in comedies of the later 420s as an extremely avaricious man, making his skills available to any who would pay for them, even those who were obviously guilty.¹⁹⁸ They did also have some legal expertise which they could place at the disposal of their clients.

It was up to the parties to the hearing to cite the relevant statutes. The lay judges then made their decision by a secret vote, using voting pebbles that carried no particular mark, preserving the anonymity of an individual's vote. An individual juror was thus free from internal group pressure, and had no fear of causing subsequent enmities; but he also could not benefit from his own decision in any way. The pebbles were counted in the presence of the parties to the hearing, ruling out the possibility of the result being fixed.¹⁹⁹ The presiding judge gave no instructions. The jurors were not called upon to make any formal statement, so it was not possible for one person to take a lead and

¹⁹⁶ Aristophanes, *Wasps* 575.

¹⁹⁷ By law, these *synegoroi* should not be paid: Demosthenes 46, 26. Whether the law was observed is of course another question.

¹⁹⁸ Plutarch, *Moralia* 833c; Philostratus, *Vitae Sophistarum* 1, 15, 2 (= 499). Antiphon was the leader of the oligarchic conspiracy of 411, defending himself after the overthrow of the regime with the argument that he could have had no interest in the abolition of democracy, since it was only in a democratic regime that he could have profited from his skill in writing speeches for others: Thucydides 8, 68, 1-3; Antiphon, Fragment 1a; Plutarch, *Moralia* 833-834.

¹⁹⁹ Aristotle, *Athenian Constitution* 68, 2ff.

influence the opinion of this ad hoc grouping through the use of rhetorical skill, or expert knowledge.

Nor was it possible to provide reasons for a judgement in a hearing organised in this way. Jurors had sworn to make their decision only on the basis of explicit statute; any interpretation of its meaning or consideration of equity was admissible only if the statutes failed to give appropriate guidance.²⁰⁰ Despite the patchiness of statute law, those addressing the court generally avoided invoking the principle of material justice; instead, they sought to make the facts of the case fit the letter of the law, even if this involved quite serious distortion. In so doing they could make use of those parts of the law thought to favour their case and read these out at suitable points in their address. The only check on the possibility that a nonexistent law (not, however, the selective use of a valid law) might be cited in this way – besides the knowledge of jurors or the other side – was the threat of an indictment which, if upheld, carried the death penalty.

We can assume that some jurors were protected from the chance of being deliberately misled by a degree of specialised knowledge. During the year they took part in many hearings; greater part of them had already done so in previous years. On top of that there was the knowledge gleaned as auditors of hearings, as well as the experience they had gained while performing functions as magistrates or as participants in the popular assembly. We should also remember that statutory law hardly changed at all during the fourth century. The annual review of laws undertaken by the popular assembly was another source of knowledge on which the jurors were able to draw.²⁰¹

Critics, both contemporary and modern, have found harsh words about these jury courts. They are said to have brought about a degree of litigiousness that was a drag on daily life: the popular prosecution provided an opening for semi-professional prosecutors who profited from the indictment premia, or who sought to extort money by threatening someone with an indictment.

The figure of the malicious prosecutor, the ‘sycophant’ (a concept whose origin is unknown), was said to ‘haunt the Agora like a viper or a scorpion’,²⁰² plaguing in particular the better-off citizens.²⁰³ This person constantly brought prosecutions on a quasi-professional basis so that he might benefit from the premia, or favoured using the threat of a prosecution to extract money from people, or even as someone who took on a prosecution for someone else in return for payment. The popular prosecution was certainly abused; but there is no way that the extent of such abuse can be accurately gauged. On the one

²⁰⁰ Demosthenes 20, 118; 39, 40. A complete version of the relevant oath has not survived, but has to be reconstructed from various sources dating from different periods; it is not clear when it was first administered, nor what changes it might have undergone over time.

²⁰¹ Cf. p. 67.

²⁰² Demosthenes 25, 52.

²⁰³ Xenophon, *Symposium* 4, 29f.

hand, one can point to the way that the legal order depended upon the public spirit of those who as the ‘the people’s watchdogs’²⁰⁴ were prepared for the effort and risk of an indictment, defending in this way the commonweal and its laws. On the other hand, anyone who did this was suspected of having self-ish motives in the pursuit of justice, using this to cloak their advancement of personal or political enmities. It was for this reason that many orators emphasised personal enmity, so that they might forestall accusations of sycophancy.²⁰⁵ The ‘sycophant’ and the ‘just man’ presented in Aristophanes’ *Plutum* stand ultimately for two contrasting judgements on one and the same role. So we find Aristophanes in another one of his plays describing all Athenians as sycophants.²⁰⁶

Finally, juries were suspect of being constantly prepared to discriminate against the wealthy, not least because fines and property confiscation strengthened the state funds from which their own payments were made.²⁰⁷ But parties could draw advantage from their pleadings to the jurors if they laid emphasis on the public-spirited way in which they had used their own money.

It is extremely difficult to assess the validity of these criticisms; it is probable that abuses did exist, but how serious they were and how systematically the resentment at wealthy citizens was expressed were quite different questions – quite apart from the fact that in many cases legal disputes were conducted between members of the upper stratum. If jurors really had made their judgements primarily with an eye on the state’s income, as was often implied, they would constantly have had to strike a balance between the immediate revenue from fines and the confiscation of property, and the longer-term loss through conviction of a ‘good taxpayer’, together with a more general impact upon the willingness of the wealthy to not only fulfil their financial obligations, but also voluntarily pay more than this.²⁰⁸

There is no way of telling by which criteria jurors made their judgements, given the absence of any statements, the secret voting and the lack of any reasons given for the judgements. Did they really base their decision solely on the evaluation of the evidence produced for this particular case or were they more inclined to make a judgment on the defendant’s character and conduct of life?

²⁰⁴ Demosthenes 25, 40.

²⁰⁵ Lysias 14, 3; Demosthenes 58, 1ff.; [Aristotle], *Rhetoric to Alexander* 1442b12ff.

²⁰⁶ Aristophanes, *Ecclesiazusae* 439ff.

²⁰⁷ Aristophanes, *Knights* 1359f.; Lysias 27, 1; Isocrates 8, 130; Aristotle, *Politics* 1320a20ff. (without any direct reference to Athens). Also Lysias 30, 22: initiation of an *eisangelia* by the council because of the bad financial position. There is good evidence on the contrary that, in times of severe financial pressure, civil proceedings were prorogued: Lysias 17, 3; Demosthenes 39, 17; 45, 4.

²⁰⁸ In other respects one was relatively short-sighted. Confiscated land was sold immediately and the proceeds flowed to the state. It would have made more sense to rent the land out, in this way securing a steady income. According to Aristotle, *Politics* 1320a6–9 appropriation of property on the part of temple funds would not offer any incentive for conviction.

One consequence of the way in which legal proceedings were conducted was that jurors, as individuals assuming public functions in Athenian democracy, could not be made accountable for their actions.²⁰⁹ Nor can we know what impact the swearing of an oath might have had on a juror who, in transgressing, risked bringing the wrath of the gods on his own head and that of all his children, even when orators pointed out that the secret ballot they cast was no secret to the gods.²¹⁰

Nor do the sources allow us to form even a very rough idea of the kind of arguments presented to the courts that tended to be successful. The surviving court pleas always present the standpoint of one side only; and the opposing position is usually unknown, as is the outcome of the hearing. These speeches had been preserved because of their rhetorical quality. They come from the 'ten Attic orators' (canonised in Hellenistic times), which means from professional speechwriters.²¹¹ We cannot say how a citizen who was not able to hire such a 'ghostwriter' would try to win over the jury.

It was repeatedly emphasised that the legal order existed to protect property and that fact is demonstrated by the condemnation of tyranny and any form of arbitrary rule, especially after the experience of being ruled by the 'Thirty' (see further pages).²¹² This state of affairs was symbolised by the way that the archon, whose court was responsible for property disputes, always proclaimed the protection of property at the beginning of his period in office,²¹³ while this obligation was also contained in the oath sworn by jurors.

Detailing the costs and benefits of this legal system, necessarily as seen from a modern perspective, would go far beyond the limits of our present discussion.²¹⁴ Some very brief remarks will have to suffice. Civil procedure with two unrepresented parties was a rhetorical duel, naturally with advantages for the practised orator, or for anyone who could afford the services of a professional (and expensive) speechwriter. Of course, we can discern here a disadvantage for a citizen without the means to pay for such services, but

²⁰⁹ Plato, *Laws* 761e demanded that judges were to be made formally accountable. How this would be effected is, however, unclear; for this ultimately turned on the issue concerning the independence of justice. In a modern system judgements can be overturned on appeal without there being any consequences for the judge who had made an erroneous judgement. Intentional perversion of justice is extremely difficult to prove.

²¹⁰ Demosthenes 19, 239; Lycurgus 1, 146.

²¹¹ The text may differ from the speech that was actually held. Certain texts are obviously too long for the time allowed in court. In some cases we may have the draft for the speech, in others a version revised after the trial.

²¹² Lysias 34, 4f.

²¹³ Aristotle, *Athenian Constitution* 56, 2.

²¹⁴ Given the variety of modern legal systems, it is not possible to take a unified modern perspective. In the Anglo-Saxon legal world criminal law involves trial by jury, especially in the United States, whereas in the majority of European countries the professional judges have a far greater role.

subsequent commentary has more or less ignored this problem; instead, the alleged discrimination against the upper stratum has always been at the centre of attention.

The entire system was organised by procedural rules intended to guarantee the strict equality of chance between parties to the hearing,²¹⁵ and the independent judgement of the jurors; and not, on the other hand, a method for the establishment of 'truth'. The jurors had to rely for their knowledge of the statutory basis of the case on the pleadings of the parties involved, who referred to this basis selectively, seeking to strengthen their position. In addition, there were almost no statutory definitions of punishable offences; this was true, for example, of *hybris*: the humiliation of a person, ranging from insulting behaviour through grievous bodily harm to sexual assault, and *asebeia*, irreverence or impiety. To all appearances the law provided only for the procedure according to which these delicts should be dealt with. There was also a lack of rules regarding interpretation, and little recognition that the meaning of concepts altered over time. Argumentation referring to the will of the legislator, or the general legal principles underlying a concrete norm, was necessarily fictive, since only decisions had been documented, not the preceding discussion. (Nor did the laws have any preamble, as Plato had envisaged for his state of laws).

The court president could not intervene to prevent deviations from the issue.²¹⁶ Such control could be exerted only informally, by expressions of dissatisfaction from the jurors, or also from the general public, who might noisily express approval or disapproval.²¹⁷ They liked it when the other side's character was defamed by the outline of a life story wracked by scandal; emotional appeals to the jury involving relatives and poor little children also went down well,²¹⁸ as did theatrical gestures,²¹⁹ or references to one's own service to the polis.

The judgement was made on the basis of individual evaluations of the evidence made by each juror (provided that he did not follow extra-legal points of view). This did have certain advantages over legal systems in which proof of

²¹⁵ This principle was somewhat limited in the case of trials for high treason (*eisangelia*) which mostly involved office holders: such a trial presupposed an order by the council or the popular assembly, and this could have prejudiced the jurors. In addition a plaintiff who failed to win over the minimum number of jurors to his own side was subject to lesser sanctions than in other criminal proceedings. In particular cases, when a prosecution seemed politically necessary, the popular assembly itself appointed prosecutors. None of this altered the fact that plaintiff and defendant enjoyed the same rights at trial.

²¹⁶ According to Aristotle, *Athenian Constitution* 67, 1, litigants had to swear to keep to the point, but it is doubtful which effect that might have.

²¹⁷ Aeschines 2, 4; Plato, *Laws* 876b.

²¹⁸ This was used not to argue for clemency while admitting guilt, but was part of the claim of innocence.

²¹⁹ Hyperides is supposed, between 350 and 340, to have gained the acquittal of the *hetaira* Phryne from an accusation of a religious delict at the end of his pleading by baring the breasts of this famous beauty: Athenaeus 590c-f; Plutarch, *Moralia* 849e.

wrongdoing depended on there being a definite number of witness statements that coincided,²²⁰ or a confession,²²¹ or the swearing of an oath. All the same, the lack of any rules of evidence was a definite weakness.

Witnesses were called by the parties to the action, and were used simply to confirm what the party who called them had said. Their statements were not heard separately to pleadings, but called for at the point in a plea where they were meant to support the argument of the speaker. Cross-examination that might throw doubt on the reliability of a witness was excluded as a possibility from 378/377 at the latest, after which witnesses no longer presented their own statements to the court, but had them read out, the witness then just confirming the statement without being able to add anything to it.

Witness evidence was generally treated as superior to documentary evidence. Even where one might expect the latter to be central, such as in disputes about the status of a person, the fact that there was an entry in a list of citizens was less critical than the fact that witnesses could be called who could testify to their presence at various stages in a person's assumption of the status of citizen.²²² One factor here was a fear that documents could be tampered with, while it was of course impossible for hundreds of jurors to assess whether the documents presented at a hearing were genuine. In civil cases at least it seems that the persons called were not primarily those who might be thought independent, this being considered a token of their reliability in other legal systems; it was instead relatives, neighbours and friends who were called, which suggests that their statements were also meant to buttress the social reputation of the party for whom they spoke.

Even criminal proceedings that might end with a death sentence were completed within a day.²²³ There was no right of appeal. A judgement could be reversed only if a witness could be proved to have committed perjury.

When a guilty verdict was reached in a criminal proceeding for which there was no statutory penalty, the prosecutor and the convicted party could each propose a penalty, on which the jurors then voted. The person convicted, even if convinced of his own innocence, had to propose a punishment for himself that would not seem inappropriately lenient, since it was likely that the jurors would then follow the proposal of his prosecutor, including even those who had originally voted for his innocence.²²⁴ All verdicts were reached through a

²²⁰ See Aristotle, *Politics* 1269a1 ('simplistic' provisions).

²²¹ This was true of trials held before the 'Eleven', where a confession led to self-condemnation; Aristotle, *Athenian Constitution* 52, 1. This was applied to particular 'evildoers' who seem to have been treated as habitual criminals; Antiphon 5, 9. We do not know how this group was defined, nor whether the 'Eleven' tended to work towards a confession, or sought to prevent the accused making one, so that the matter could then come before a regular court.

²²² Isaeus 6, 64f.

²²³ During his own trial, Socrates raised the objection that in other *poleis* longer trials, stretching over several days were conducted: Plato, *Apology* 37a–b; cf. *Laws* 856a.

²²⁴ The most well-known instance of this is the trial of Socrates; see p. 236f.

simple majority vote, even when it was a matter of a death sentence or confiscation of property.²²⁵

The outcome resulted therefore from a tactical game and did not reflect an appropriate relationship between the gravity of the offence and the penalty imposed. Protagoras and Plato developed ideas related to a 'rational' criminal law, including the idea of a general deterrence.²²⁶ Nonetheless, these ideas had no influence upon the Athenian legal system. One can only reflect upon how long it would take until similar ideas were absorbed into new criminal codes during the European Enlightenment, prompted especially by Beccaria.²²⁷

The death penalty could be imposed for a number of offences, but there was not in Athens any practice of making public execution a spectacle for the sake of deterrence, in contrast to the early modern age. Whoever was unable to pay a fine within a defined period became a state debtor, lost his active rights of citizenship and remained imprisoned until the fine was paid. If no payment was made then the debt was transferred to descendants, again with the restriction of civil rights.

One and the same matter could be brought as different forms of prosecution; this gave an advantage to any prosecutor and could lead to very different sanctions. A citizen who wanted to enforce the law or his own rights had no official support, even if it was a matter of public concern: he had to obtain copies of the relevant legal texts, find evidence and witnesses and call on the other party to stand trial. Prior to the hearing he could be subjected to pressure, then had to give a public speech and quite possibly pay a ghost writer. He took the risk of being punished if he failed to win over the minimum number of jurors, perhaps only because he had not performed that well. The victor of a civil process was himself responsible for executing the judgement. The outcome of hearings was also uncertain because new juries were always called on an ad hoc basis for a particular case, without there being any question of precedence established by previous court decisions. There is a long list of these kind of problems.

All the same, these are balanced against the advantages of a system in which it was the citizen, and not the state, that took the initiative in criminal proceedings. This not only assured a strict equality of chances between accuser and defendant, but that there was no interference with the personal freedom of the accused before trial.²²⁸ Remand was the exception (at times of political crisis); the inviolability of the house, a characteristic feature of democracy,²²⁹ still prevailed in the case of looming criminal proceedings; so even someone who

²²⁵ Andocides 4, 9.

²²⁶ Plato, *Protagoras* 324a–c; *Laws* 862c–d; 933e–934c. See also Lysias 14, 4: calling on the court to interpret laws in this way.

²²⁷ Cesare Beccaria, *Dei delitti e delle pene* [*On Crimes and Punishment*], 1764.

²²⁸ There were exceptions if political overthrow was feared, as in 415; see p. 232f.

²²⁹ Demosthenes 22, 52.

wished to serve a summons on his opponent could not enter his house without first getting permission;²³⁰ not even a magistrate could enter a house to deliver a defendant to justice without the prior authorisation of the popular assembly.²³¹ It was not permitted to torture citizens;²³² punishment, and especially the execution of a citizen, could only follow in due process;²³³ verdicts had to have a sound legal basis, the underlying laws being of a general nature and not specifically aimed at particular citizens;²³⁴ nobody could be accused twice in connection with the same act.²³⁵ There was also at least an idea that laws could not be applied retrospectively, although it is not certain whether there was an unambiguous rule governing this.²³⁶

Protection from the arbitrary search of one's home, arrest and punishment, together with the creation of elementary rights for the accused and a guarantee of a trial by a jury selected from the people (and not only composed of official judges) – the implications of all this become clear once the importance of declarations of civil rights in later eighteenth- and nineteenth-century debates are considered. Athens' procedural rules provided for all of this, including the separation of judge and prosecutor, together with public, oral and prompt proceedings, and the freedom with which evidence was assessed. Given the way that in Athens the jury was selected right at the last moment, when cases were allocated; their considerable number; the secrecy of a juror's vote; and the passivity of the presiding magistrate – all of these combined to secure individual jurors from all pressure, whether this came from parties to the trial, or officials.²³⁷ Since these rules were never placed in question, they did not need to be trumpeted through proclamation or the norms of higher rights – in contrast to the modern age. The application of law secured justice through procedure.

Since the Athenian court system has been repeatedly subject to harsh criticism, it is worth comparing it to that of Rome, whose legal culture is generally admired. In all, we could say that because Roman civil law was constantly developed by legal scholars with no official standing, it had a clear advantage

²³⁰ Demosthenes 47, 60.

²³¹ Demosthenes 18, 132.

²³² Andocides 1, 43. Slaves could not act as witnesses in court, but it was possible to subject them to torture in preliminary proceedings so as to obtain a statement; either one demanded of an opponent that he makes his slaves available or offered one's own slaves for this purpose. We have no way of knowing the extent to which this practice was actually employed. None of the court pleas that have survived suggest that slaves were actually tortured as part of any one case; instead, parties to the proceedings were keen to suggest that the respective opponent had his own reasons for not agreeing to this procedure.

²³³ Demosthenes 25, 87.

²³⁴ Andocides 1, 87; Demosthenes 23, 86; 24, 59.

²³⁵ Andocides 4, 9; Demosthenes 20, 147; 24, 54.

²³⁶ Demosthenes 24, 75f.

²³⁷ The counter-example is the practice during the rule of the 'Thirty': Lysias 13, 37. See also Thucydides 4, 74, 3: after a closed oligarchy was established in Megara in 424 a change to public voting on verdicts for political opponents was forced through.

over Athenian law because it was more capable of adaptation to changing social and economic conditions. However, if one considers criminal procedure in the jury courts of the later Republic, then there is little basis for thinking that verdicts were made on more substantive grounds. In the cases for which records have survived, more or less exclusively with a political background, there is a clear tendency towards opportunistic verdicts, something to which the pleadings of the parties involved are clearly directed. This is also true of Cicero's court speeches, the Cicero whom later generations regarded as an exemplary republican. The fact that here the jurors – only fifty to seventy-five in total – were all drawn from the social elite did nothing to render them immune to corruption; instead, it drove the price of bribery up.

If we compare Athenian relations with those of other *poleis* in which there were violent disputes over property and honour within the upper strata, disputes which sometimes resembled civil wars, the legendary alacrity with which Athenians resorted to the courts²³⁸ can be seen as a sign of trust that their legal system was capable of peacefully resolving conflict.

THE CRISES DURING THE LATER PHASES OF THE PELOPONNESIAN WAR

Democracy developed without there being any real threat to domestic peace from the middle of the fifth century.²³⁹ Of course, there were groups in the Athenian upper stratum who were extremely sceptical about the way in which popular rule was developing, who could not get used to the idea that political influence could be gained only through the popular assembly, who complained that the money they paid out for the commonweal lent them no privilege or influence, and certainly no guarantee of being favoured in the distribution of public offices, who found it unbearable that court hearings were settled by average citizens to whom one should show reverence as representatives of popular power, even ask them for mercy.

On the whole, however, Athens' external success and its advance to a great power presented members of the upper strata with the opportunity of becoming senior officers and envoys, together with new, more or less legal, ways of enriching themselves.²⁴⁰ It also made Athens an economic and cultural centre

²³⁸ Thucydides 1, 77, 1; Pseudo-Xenophon, *Athenian Constitution* 3, 2; Aristophanes, *Peace* 505; *Clouds* 206ff.; *Birds* 35ff.

²³⁹ In 457 a group of Athenians banked on the intervention of Sparta in order to overthrow democracy; Thucydides 1, 107.

²⁴⁰ This is certainly how Thucydides 8, 48, 6 should be understood. The probably illegal acquisition of land in allied *poleis* on the part of rich Athenians is indicated in the documentation of the confiscated property of those condemned in 415 (see p. 233, fn. 76). In the scholion to Aristophanes' *Knights* 1070 it is implied that those commanders who pressed allies for payment also profited personally from them. In the comedy it was said of Cleon that he extorted payments from allies and diverted them into his own pocket; Aristophanes, *Wasps* 655f.;

for all of Greece, and no alternative to this domestic and external path had been proposed.²⁴¹ It is not obvious how widely shared among the social elite was the view of Alcibiades (who had grown up in the house of Pericles): democracy was of course a mischief, but so long as it conducted a successful foreign policy and provided leading roles for members of prominent families, one could accommodate oneself to it.²⁴² It is very doubtful that the Hermae and Mysteries affairs of 415 really were indicatives of a conspiracy against democracy; but the subsequent criminal proceedings did certainly alienate one section of the upper stratum from democracy.²⁴³

The situation changed dramatically when the Peloponnesian War dragged Athens into a major crisis. After the attack on Sicily (415/413) had ended in disaster, and the position in the war with Sparta seemed increasingly precarious, some sections of the upper stratum foreswore loyalty. Those who bore the financial burden should be put in charge.²⁴⁴ Oligarchic regimes were installed in 411/410 and 404/403, reducing the number of full citizens to 5,000 and 3,000, respectively. In the former case the alternative criterion of the status of a hoplite admitted a greater number, which in turn gave scope for flexibility in allocation;²⁴⁵ in the latter it was plain that the status of full citizenship was not settled by the criterion of wealth alone, but also according to questions of 'political reliability'. Remuneration for political functions and appointment by lot were both abolished. The popular assembly was overrun by a mixture of propaganda²⁴⁶ and terror. Even the council turned out to be helpless, a

Theopompus, fr. 94 = scholion to Aristophanes, *Acharnians* 6. In the debate over Sicily, Nicias accused his opponent Alcibiades of seeking to finance his extravagant lifestyle from his command: Thucydides 6, 12, 2.

²⁴¹ There was considerable tension at the beginning of the Peloponnesian War, when the Periclean strategy forced landowners to watch passively as the Spartans laid waste to their land. But there seemed to be no leading figure who might propose a convincing alternative to this strategy, no 'Peace Party' being formed: Thucydides 2, 20–22; 2, 65, 1–4; see p. 32f. on the removal and subsequent re-election of Pericles; also Aristophanes, *Acharnians* (produced in 425) on the contradiction between a readiness for peace and the desire for revenge on the part of farmers. If the Pseudo-Xenophon text does come from the early years of the Peloponnesian War (see p. 82) then it proves that even harsh critics of the system took its strength for granted.

²⁴² Thucydides 6, 89.

²⁴³ See p. 232f.

²⁴⁴ Thucydides 8, 48, 1; 8, 63, 4. The question of whether there were any more profound constitutional ideas within the conspiratorial groups depends on whether one imputes to them the model of four alternating councils according to these in Boeotia (Aristotle, *Athenian Constitution* 30), or considers this a later fiction that emerged as a form of apologia.

²⁴⁵ Lysias 20, 13f. (a later justification by a member of the regime, claiming to have included 9,000 citizens in the list).

²⁴⁶ In 412/411 it was argued that it was only a temporary change of the constitution: Thucydides 8, 53f. There is debate over the extent to which the coup of 404/403 was associated with talk of a return to an 'ancestral constitution' (*patrios politeia*), or whether this was a later interpretation advanced as an apologia (Aristotle, *Athenian Constitution* 34, 3). It is likewise not clear whether *patrios* refers to a distant past (for instance, the era of Solon), or the immediately preceding status quo.

consequence of it being composed of average citizens. Both times resistance formed when it became clear that those in power sought to realise their personal ambitions through violence and collaboration with Sparta. It ultimately became obvious there was no solid basis among the citizens for the abandonment of democracy. The regime of the ‘Thirty Tyrants’²⁴⁷ who came to power in 404/403 with the help of Sparta reduced the number of citizens (not only with regard to political rights, but also in terms of general rights) to 3,000 ‘hand picked’ men with the cavalry, the ‘knights’, as their core group.²⁴⁸ It cannot be said with any certainty whether this followed the Spartan model with the distinction between Spartans and *perioikoi*.²⁴⁹ On top of that, the regime had executed 1,500 citizens and 1,000 metics for political and financial reasons.²⁵⁰ Given that the ‘Three Thousand’ were deliberately made jointly responsible for this crime by their leaders, the outcome was the mutual dependency of gangsters.²⁵¹ If the number of citizens in this period was around 30,000, this means that 5 per cent of the citizenry were executed within nine months – a level of state terror that has few, if any, parallels in other times, and certainly not with the victims of the French Revolutionary Tribunals of 1793/1794.²⁵²

Once Sparta ceased supporting this regime it was overthrown by Athenian émigrés in a civil war; Thrasybulus led his forces from Thebes to Piraeus ultimately. The subsequent restoration of democracy occurred without great complications, since domestic peace was secured by a generous amnesty for previous members of the oligarchy. This refusal to pursue prosecutions was to a great extent dictated by Sparta as a way of protecting its former allies, but it was subsequently strictly observed in the absence of further pressure from Sparta.²⁵³

²⁴⁷ This characterisation became customary in the modern era, and its origins can be first found in Aristotle, *Rhetoric* 1401a33, and Diodorus Siculus 14, 3, 7 (going back possibly to Ephorus, the fourth-century historian). The sources usually just refer to the ‘Thirty’, associating them both with tyranny (because of the form of rule) and with oligarchy (because of the number). This shows that there was no proper concept for ‘collective tyranny’.

²⁴⁸ It is not clear whether members of the cavalry were included in the list of the 3,000, or whether they had a special status: Xenophon, *Hellenica* 2, 4, 2 and 9. There was, however, no doubt about their support for the regime; after the restoration of democracy their loyalty was suspect: Xenophon, *Hellenica* 3, 1, 4.

²⁴⁹ The same thing applies to the question of whether the Thirty represent a conscious imitation of the Spartan ‘council of elders’ (*gerousia*, composed of 28 elected members and the two kings). It is, however, striking that the organisers of the seizure of power were called ephors (like the highest magistrates in Sparta): Lysias 12, 43.

²⁵⁰ The Thirty had requested Lysander for an occupation force of 700 men, and the cost of this had to be met.

²⁵¹ On the number of victims: scholion to Aeschines 1, 39; Isocrates 7, 67; 20, 11; Aeschines 3, 235; Aristotle, *Athenian Constitution* 35, 4. On the involvement of everyone in the criminal measures: Xenophon, *Hellenica* 2, 4, 9; Isocrates 18, 17; Plato, *Apology* 32c–d.

²⁵² On this parallel see p. 192.

²⁵³ The precept ‘harbour no grievance against any citizen’ (Andocides 1, 90; Xenophon, *Hellenica* 2, 4, 43; Aristotle, *Athenian Constitution* 39, 6) meant that no indictment could be brought for any criminal act committed during the rule of the Thirty, secured through a particular form of

The restoration of law and order and the reintegration of the upper stratum was achieved by abjuring the prosecution of crimes, only partial compensation for damage to property and the extremely limited conferral of citizens' rights on metics and slaves who had fought for the restoration of democracy. The pacification that the amnesty brought about was so obvious to all that it was praised even by critics of democracy in antiquity,²⁵⁴ later becoming regarded as one of the few thoroughly positive aspects of Athenian history.

LEGISLATION AND THE 'JUDICIAL REVIEW'

The experience of the oligarchic regime terminally discredited any constitutional alternative for Athens. 'Democracy' was now finally adopted as an unambiguously positive self-characterisation. This was expressed in a law of 410/409 which threatened with death any citizen participating in the overthrow of democracy and holding public office after a putsch.²⁵⁵ Actions against the oligarchs of 411 were complicated by the fact that these could only be charged with treason in collaboration with Sparta; in addition, many of those accused sought to save themselves by denouncing those who were more guilty. Democracy in the fourth century was always able to legitimate itself through the contrast with these regimes, particularly that of the Thirty. The prognosis made by an orator after the restitution of democracy in 403, that 'the past misfortunes have left sufficiently strong memories to remove once and for all any desire on the part of our descendants for any other form of government'²⁵⁶ proved to be true. It is also likely that in this year a cult was created worshipping *Demokratia* as a goddess.²⁵⁷ When during 317–307 Demetrius of Phaleron presided over an authoritarian regime in Athens on behalf of the Macedon ruler Cassander, he passed off his constitutional changes as the restoration of democracy;²⁵⁸ apparently no other state form could claim legitimacy in Athens.

counter-accusation (*paragraphe*); Isocrates 18, 2f. This did not, however, imply that silence on the events of 404/403 was decreed. Instead, in the following two decades actions of individuals during this period were repeatedly the topic of speeches.

²⁵⁴ Plato, *Menexenus* 243; Plato, *Seventh Letter* 325b; Aristotle, *Athenian Constitution* 40, 2f.; Xenophon, *Hellenica* 2, 4, 43; Cicero, *First Philippic Speech* 1.

²⁵⁵ Andocides 1, 96–98. The same provision can be found in an inscription of a law from 337/336; Rhodes/Osborne, no. 79. The first inscription showing *demokratia* as a self-description is in a law dealing with the care of orphans from 403/402: Harding, no. 8.

²⁵⁶ Lysias 34, 1; Isocrates 7, 66ff. (a text from around 357): the present democratic order does have its faults in comparison with those of the good old days, but it is clearly much better than an oligarchy like the Thirty. Isocrates 8, 108 (text from about 355): because of the vile nature of the Thirty everyone is today an enthusiastic supporter of democracy.

²⁵⁷ Anthony E. Raubitschek, 'Demokratia', *Hesperia* 31, 1962, 238–243. Already in 420 there is evidence that a sacrifice for democracy was made daily in the council: Antiphon 6, 45.

²⁵⁸ Strabo 9, 1, 20 = C 398. This regime could be criticised as covert sole rule (Plutarch, *Demetrius* 10, 2).

Part of democracy's self-image was a consciousness of the rule of law, such that the prospect of a putsch was linked with tyranny (synonymous with rule bound by no laws), although the real danger was more the establishment of an oligarchy.²⁵⁹

Initially, the fact that laws were established through a majority decision was not thought to be a problem. There was no discrepancy between positive law and justice; the validity of laws was based on the procedure through which the citizenry established them; both Pericles and Socrates were said to have emphasised this²⁶⁰ – and even if they had not expressed themselves in this way, it suggests the widespread acceptance of the idea. But from the later fifth century it became increasingly clear that the large number of popular decisions could lead to contradictions which could eventually undermine the stability of the legal order. There was a need to sift through the proliferation of decisions that the popular assembly had produced with ever-greater intensity.²⁶¹ Decisions were to some extent documented by inscriptions placed around the city; others could be found elsewhere in other media, such as wooden tablets, or papyrus.²⁶² Even if there had been a rule that the most recent decision nullified an older one, this would have been difficult to implement since until the later part of the fifth century decisions were undated – there was no record of the archon year in which they had been made.

In 410 a start was made with collecting, reviewing and revising the existing laws, not something that it was thought would take much time. In actual fact the task was still unfinished in 404,²⁶³ and was concluded only in 399 with the

²⁵⁹ As in the laws of 410/409 and 337/336 (see fn. 255). Jurors swore an oath that they would not vote for any move from democracy to tyranny or oligarchy: Demosthenes 24, 149. Aristophanes *Wasps* (staged in 422), 488ff.: 'You still talk of the dangers of a tyranny, even though it has not existed for fifty years.' Thucydides 6, 60, 1 on the perception of the scandals of 415: conspiracy with the aim of installing an oligarchy or a tyranny. The association with tyranny is here more obvious, since Alcibiades' lack of scruple in both politics and his private life, together with the way he presented himself, fed this suspicion: Andocides 4, 27; Plutarch, *Alcibiades* 16, 2. According to Thucydides 6, 28, 2 he had the reputation of possessing an 'undemocratic scorn for the law', to which the very many times he was said to have ignored rules and regulations stood testimony. There is a (questionable) tradition that Alcibiades sabotaged a trial simply by deleting the prosecution from the official list, something that the responsible magistrate had not dared to stop: Athenaeus 407b-c.

²⁶⁰ Xenophon, *Memorabilia* 1, 2, 42; 4, 4, 12.

²⁶¹ Plato, the writer of comedies (not the philosopher), coined the saying that an Athenian who spent three months away from Athens would not recognise the city on his return, because of all the laws passed in the meantime: Fragment 239 (Austin/Kassel).

²⁶² The popular decision on the raising of a tribute (Fornara, no. 98) that Cleinias initiated showed how many documents had to be made for this purpose that were not recorded as inscriptions.

²⁶³ Lysias 30, 2-4. It was probably thought at the beginning that all valid laws could be documented through inscription, but this turned out to be unrealisable, so that only some parts were recorded in this way (Dracon's law on murder, regulations for the council, the festival calendar). It was only with the creation of a state archive in 410 that documentation could become complete.

restoration of democracy. The real need for this process was not even discredited by the fact that the regime of the Thirty had originally sought to legitimise itself as a commission for the revision of the laws.

This consolidation of the body of law became the basis for new procedures that bound the *demos* constitutionally, even though this was a reaction to the ease with which the council and the popular assembly had been overridden by previous seizures of power. The rationalisation of prevailing law made it possible to distinguish in the future between *nomoi*, as general and superior norms, and *psephismata*, popular decisions involving individual cases, introducing procedures specific to each. Laws were no longer simply passed by the popular assembly, but according to a special procedure. While the rules governing this were changed several times, the principle remained the same, and so the particular details are not relevant here.

Once a year a special assembly decided whether the existing body of law was sufficient, or whether it needed to be supplemented or whether there might be conflicts between prevailing laws that needed dealing with. If there was general assent, each citizen could then make proposals for change. There then followed legislative procedure that was no longer impelled by the popular assembly itself, but in something like a court hearing. The group making the decision were the so-called *nomothetai*, 'legislators', selected from the jurors serving that year, so that all of them were over thirty and had sworn a juror's oath. Their number varied from 500 (or 501) to 1,000 (or 1001),²⁶⁴ or even more. The *nomothetai* made their decision, whether openly or by secret ballot is not clear, following a contradictory hearing about the maintenance of the existing law or its replacement by another. Five speakers selected from the people appeared for the defence of the old law, while the person proposing the new law spoke in support of it. No other speakers were permitted, nor could any new proposals be made. More time was allowed for speeches both in support of the new law, and for those opposed to it, than was usually the case for decisions made by the popular assembly.

Formal objections could be raised even against a law that had cleared this hurdle, and also its proposer indicted, if the new ruling was 'of no use', which meant that it had brought about a conflict in the existing law. At the extreme, someone who had initiated a new law could find himself sentenced to death.²⁶⁵

The procedure had the intended effect of posing a high threshold to any changes in the law.²⁶⁶ From 403 to 322 we know of only a dozen new *nomoi* by comparison with about 500 *psephismata*. This also lent the existing body of law an additional validity through the power of tradition. It became the practice to refer in political rhetoric to any legal norm as 'Solonian', even where it

²⁶⁴ Andocides 1, 84; Demosthenes 24, 27.

²⁶⁵ Demosthenes 24, 33 and 138.

²⁶⁶ Demosthenes 24, 139f. This refers approvingly to a practice said to be followed by the Locrians, where a person proposing a change to the law that did not find majority support was executed.

was clear that there was no link to the great legislator, but that it was of much more recent origin.

The reorganisation at the beginning of the fourth century also involved placing the *graphe paranomon*, an action against a popular decision contrary to law, on a new footing. The procedure had been introduced in the later fifth century, and so far as we know the first case in which it was used was in 415.²⁶⁷ In 411, and probably also in 404, the rule was suspended, to make way for a pseudo-legal subversion of the constitution.²⁶⁸ To begin with it seemed mainly to be about the infringement of formalities, such as reaching a popular decision without there being a preceding proposal by the council.²⁶⁹

Once the codification of laws was complete it became possible to argue that a *psephisma* was ‘unconstitutional’ on both formal and material grounds. The *graphe paranomon* was aimed both at punishing a proposer and suspending, or repealing, a decision; here too the decision was left to a jury court. The criminal responsibility of the initiator was limited to one year; any later hearing affected only the validity of the decision. Someone could break off the action before the resolution was put to the vote by announcing that he would indict the proposer; he was then liable to punishment if he failed to do so. One particular feature of this variant was that the ruling came into force if it was considered legal in the ensuing trial, although there was no way of saying whether it would have been supported by a majority of the popular assembly.

The popular assembly surrendered part of its competence by transferring to juries decisions over changes in the law and appeals against *psephismata*. It seems to have been thought that by employing a legalised procedure there would be a gain in substantial relevance by comparison with the popular assembly. However, in contrast with modern forms of the division of powers, the controlling instance had no difference of interest, nor even its own institutional interest, as happens in two-chamber systems. Even less did it have the legal expertise possessed by modern constitutional courts to cancel laws if they

²⁶⁷ Andocides 1, 17 and 22.

²⁶⁸ Thucydides 8, 67, 2; Aristotle, *Athenian Constitution* 29, 4.

²⁶⁹ There were apparently ‘entrenchment’ clauses that were older, primarily intended as protection for decisions of a fiscal nature. An application to repeal or alter a decree was supposed to be permissible only if the popular assembly had in advance authorised the proposer to do so. This is the sense of a ruling on a decision on the treatment of temple funds, probably dating from 433/432 (Fornara, no. 119B). It can be supposed that a decision of this kind would have needed a quorum of 6,000 attendees. In other decrees there is reference to the punishment by death of an initiator without any indication of a possible regulation regarding indemnity (the coinage decree for the Delian League, the increase of tribute in 425: Fornara, nos. 97, 136). It seems, however, improbable that any popular decree of this kind was ruled out, as also any prospect of correction. Ultimately, in 412 the decree from 431 concerning the inviolability of a monetary reserve was repealed, despite the proposer being at the time threatened with the death penalty: Thucydides 2, 24, 1; 8, 15, 1. There is a dubious popular decision made at the end of the Peloponnesian War that no one might propose a peace treaty which involved the razing of the Long Walls: Xenophon *Hellenica* 2, 2, 15; Lysias 13, 8.

are not in accordance with superior legal norms. The members of the Athenian decision-making group were distinguished from the members of the popular assembly only by virtue of their age,²⁷⁰ and the fact that they had sworn an oath. Seeking to create a legal order free of contradiction, efforts were made to optimise the process, opening up the prospect of correcting decisions that had been made without forethought, and the transfer of these matters to a committee of the demos was not thought to be a limitation of democracy. This system was thought to be a strong institutional guarantee for democracy.²⁷¹ It was not based on the assumption of 'higher law' (like natural or sacral law), but on the hierarchisation of positive legal norms. From the point of view of legal theory, this is an astonishing innovation that can be regarded as the equivalent of the 'priority of the constitution' in modern systems.

If we consider the actual practice, we find something rather different. The demarcation of matters to be regulated by law and which by simple popular decision remained blurred; in practice, it was probably oriented to that which had been codified as law in 399, and so if changed needed to be given the form of law. It appears that the *graphe paranomon* was primarily used as an instrument in competition among politicians. To some extent it could be said to have replaced ostracism, which was no longer practised. This was primarily because procedure (within the one-year term) linked the repeal of a popular decision with the condemnation of the person who had moved it. Since there was no legally fixed penalty for this delict, a guilty verdict could lead to a purely symbolic fine, or equally to one which was so high that it destroyed the person on whom it was levied. In theory a death sentence was also a possibility, but there is no instance of this in the evidence that has survived. Being condemned three times following an action of this kind could have led to the loss of all political rights while a prosecutor who failed to win over one-fifth of the jury was subject to sanction. Such personal risks clearly distinguish such cases from the invocation of constitutional courts in modern times, which is often enough the continuation of politics by other means.

We cannot determine whether the threat of punishment against those seeking to change the law was a way of preventing the reappearance of laws that had already been appealed in the same form, or with slight alterations. Given the absence of counsel and reasons for a judgement, and also the ever-changing composition of the court, judgements were reached without consideration of the precedent, nor was it possible to make any certain prognosis about future cases. In short, any thorough elimination of 'constitutional' problems was not possible with this kind of procedure.

²⁷⁰ In view of the age structure, the exclusion of men under the age of thirty was quantitatively significant. It is nonetheless an open question whether this could have brought about a greater degree of objectivity if there had not generally been procedural rules distinct to those of the popular assembly.

²⁷¹ Aeschines 3, 191.

A typical case was the dispute over the conferral of honours on Athenian politicians. The form of argument involved not only technical legal matters, but also that, according to the law, special merit and worthiness were required of a person to be so honoured; and since the person proposed did not meet these standards, the popular decision must be unlawful.²⁷² This could always be said. Quite how the deliberate splitting of hairs (on the part of those making the complaint) and a naive adherence to the law (on the part of the jurors) combined is an open question.

The classic instance is Aeschines' objecting to the bestowal of a crown for Demosthenes as a reward for his great service to the city. Aeschines initiated a prosecution for bringing an illegal measure against Ctesiphon who had made this proposal in 336. For reasons unknown to us, the case was not heard until 330, when the indictment was rejected by an overwhelming majority.²⁷³ Although Aeschines made formal objections involving the infringement of procedural rules, he focused upon the unworthiness of Demosthenes, who responded by detailing the services he had rendered in a long career.²⁷⁴ (Demosthenes' speech supported Ctesiphon).

If it can be believed that an orator active over many decades had been attacked with a *graphe paranomon* a total of seventy-five times, but never once condemned,²⁷⁵ this is some kind of indication of the political exploitation of this legal device, together with the fact that it was not necessarily successful. One outcome was that prominent politicians put up straw men to submit proposals to the popular assembly.

It remained a problem that the people could reach a decision and then condemn the person who had initiated it; even if the council had approved the proposal and the popular assembly had passed it with an overwhelming majority.²⁷⁶ There are different ways of interpreting this: either as the institutionalised irresponsibility of a *demos* that can do no wrong but looks for a scapegoat when mistaken decisions are made, or that the popular assembly was dependent upon the initiative of individual orators whose lead was taken on trust, abuse of this relationship then being punished with sanctions. And so an assembly regularly began with the condemnation of anyone who might deceive the *demos*.²⁷⁷ By contrast, sound advice could be rewarded with an honour. The responsibility of someone proposing a motion was symbolised by the way that a citizen, while speaking in the assembly, had a wreath placed on his head, just like the magistrates wore. However, the popular assembly could,

²⁷² Demosthenes 59, 90f.

²⁷³ Plutarch, *Demosthenes* 24, 1; *Moralia* 840c.

²⁷⁴ Aeschines 3; Demosthenes 18.

²⁷⁵ Aeschines 3, 194 (self-praise of Aristophan).

²⁷⁶ Demosthenes 59, 4f. There is a parallel in the criminal proceedings related to the deception of the *demos* by making false promises: Aristotle, *Athenian Constitution* 43, 5; Demosthenes 20, 100.

²⁷⁷ Dinarchus 2, 16; Demosthenes 19, 70; Aristophanes, *Thesmophoriazuse* 331ff.

with a quorum of 6,000, provide a petitioner with a prior guaranteed immunity to a *graphe paranomon*. Initiatives related to the levying of a war tax were regularly made in this way.

All in all, the way in which the *graphe paranomon* was used was ambiguous. The imputation that if a proposal turned out to have been a bad idea, this could be laid entirely at the door of the person who had first proposed it was either cynical or naive. This was evidently wide open to abuse. Nonetheless, the institutionalised separation of laws from popular decisions and the possibility of repealing previous decisions and laws through court action were both quite remarkable arrangements. Very important for future perception of Athens were some remarks by Aristotle on an extreme form of democracy in which the necessary distinction between *nomos* and *psephisma* was constantly misused, and that in this way the people exercised rule irresponsibly, in a manner that came close to collective tyranny.²⁷⁸ While he is not here directly referring to Athens, the association seems fairly clear, since it was only in Athens that such a distinction was made, as far as we know.²⁷⁹ It is difficult to explain why this technical legal achievement has not been duly recognised, despite all possible criticism of the Athenian practice on the part of Aristotle.

DEVELOPMENTS IN THE LATER FOURTH CENTURY

Athens recovered astonishingly quickly from the consequences of the Peloponnesian War – in contrast to the victorious Sparta, which in the course of the fourth century became increasingly enmeshed in problems related to the diminishing number of full citizens, and the loss of their reputation for invincibility. Nevertheless, Athens never regained its former position of power. Democracy was consolidated, despite difficult external conditions. Neither the participation of citizens (now paid by the day for attendance at popular assemblies) nor the emergence of potential political leaders or the financial involvement of the upper stratum declined to such a degree that it might have posed a real threat to domestic stability, despite the negative impact of the increasingly clear division between civil and military leadership. This last did not mean that *stratego*i no longer appeared at popular assemblies, or that they did not form temporary alliances with orators; but the assembly was increasingly dominated by orators who themselves had no military experience.²⁸⁰ There were some military leaders who spent certain periods serving other powers. All the same, when they served as Athenian commanders they observed the ‘primacy of politics’, and represented no threat to domestic order.²⁸¹

²⁷⁸ Aristotle, *Politics* 1292a5ff.

²⁷⁹ There were no corresponding regulations in the Roman Republic either.

²⁸⁰ Isocrates 8, 54f.; Plutarch, *Phocion* 7, 3; cf. Aristotle, *Politics* 1305a8ff.

²⁸¹ Their characterisation as *condottieri* is inappropriate, since for Athens at least they did not operate as military entrepreneurs with their own mercenary troops.

Since the mid-fourth century the principal issue was how a medium-sized power could hold its own against the expansionary politics of Philip II of Macedon. Rival proponents of appeasement and of containment became involved in serious and dirty disputes. They argued about the way in which public funds should be used: whether surpluses should be employed to provide gratifications to the people, or for strengthening the fleet. Since the mid-fourth century²⁸² *theorikon*, ‘theatre money’, was paid as reimbursement for the cost of a seat on festival days, to which might be added further payments, depending on the current state of the funds. The arrangement was described by the orator Demades as the ‘glue of democracy’²⁸³ – which could mean both a symbolic emphasis of the status of citizen and the moderation of social tensions. The fund used for this was filled by the surpluses of other funds. Only a portion was distributed among the citizens directly; the remainder was used to finance public construction, among other things. It was the responsibility of one elected officer, deviating from the prevailing collegial practice. Given the lack of clarity in the sources, there is some debate whether re-election was allowed or whether the term of office was extended to four years.²⁸⁴

The same was true of the central military fund. If financial experts paid a dominant part during some periods – Eubulus from 354/353 to 338, and even more so, Lycurgus from 338 to 324 – this was not necessarily because they had a formal competence, but rather because of their authority in the popular assembly.²⁸⁵ Nonetheless, there was an apparent tendency to emphasise the importance of particular magistracies and value substantive competencies to a greater degree than before. Election was the favoured way of filling new posts, not selection by lot.²⁸⁶

Even the Areopagus, while a relic of the pre-democratic order, and whose lifetime membership was in marked contrast to prevailing rules, gained after the mid-fourth century new competences, being able to make preliminary investigations and bring actions for political trials.²⁸⁷

Eventually, the anti-Macedon tendency led by Demosthenes prevailed. However, in 338, the coalition of Greek states led by Athens was decisively

²⁸² Some sources trace this back to Pericles (Plutarch, *Pericles* 9, 1) but the fund in question was established only in the 350s.

²⁸³ Plutarch, *Moralia* 1011b. The connection of citizenship status and theatre money was still emphasised in a text from the second century AD: Lucian, *Timon* 48f.

²⁸⁴ Aristotle, *Athenian Constitution* 43, 1 refers to a period of office from ‘one Panathenaea to another’. Whether this means the ‘Great Panathenaea’ which took place every four years, or the annual festival, is disputed.

²⁸⁵ For both there is evidence only for periodic responsibility for one of the major funds. Lycurgus initiated a major legislative programme and represented himself as a kind of educator of the people through the prosecutions he brought.

²⁸⁶ For instance, the tax law for the islands of Lemnos, Imbros and Skyros of 374/373 required of the ten new magistrates economic and organisational skills: Rhodes/Osborne, no. 26.

²⁸⁷ The increased significance of the Areopagus, if not mistrust of its new role, can be seen in its inclusion in the law against the seizure of power of 337/336 (see fn. 255).

defeated by Philip II, and the Macedonian hegemony over Greece finally established. To begin with, Athens' internal arrangements were left formally untouched – quite in contrast to the situation after the Peloponnesian War, when severe military defeat had led to the overthrow of the constitution. During the period after 338 there was an increasing tendency to pass resolutions honouring citizens, in particular magistrates, if they had contributed to the financing of specific works out of their own pocket, in part or whole.²⁸⁸ This was something quite different to the long-established practice of honouring foreign rulers,²⁸⁹ dignitaries and others who had done Athens a service,²⁹⁰ for example, by delivering grain. Sometimes they were granted citizens' rights, although it was not expected that these 'honorary citizens' would settle in Athens, unless they were seeking sanctuary. By honouring their own citizens there was the expectation that those so distinguished would assume responsibility for financing public functions from their own resources. Here office and liturgy began to converge in a way that would become typical for post-democratic development.²⁹¹

Only after the death of Philip's successor, Alexander the Great, did Athens rise up against the Macedonians, and this ended in a disaster, following which the victors forcibly took control and imposed in 322 a property qualification which robbed the lower strata not only of their political rights, but also of their status as citizens. Quite possibly this was done on the initiative of those Athenians friendly with the Macedonians, led by Phocion.²⁹² That was the end of a political system that had achieved a degree of direct participation by citizens that has remained unparalleled in world history. It is more than doubtful whether the constitutional changes that Macedon conceded in 319 really implied the reinstatement of democracy,²⁹³ and whether this can be said of the different phases after the end of the regime led by Demetrius of Phaleron (317–307) until the mid-third century, if one uses the features that had characterised Athens up to 322. Meanwhile 'democracy' related more to autonomy than to the internal political structures. However, this does not have to be discussed here. This period played no part in the subsequent debates on Athenian

²⁸⁸ At the beginning of the fourth century Conon was the first general to be honoured with a statue, the only previous instance being the statue for the tyrannicides of 514 (see p. 12); Demosthenes 20, 69f. This was followed by the honouring of other generals: Aeschines 3, 243. In Demosthenes 23, 196–198, this turn away from the practice of the fifth century was criticised with the argument that the citizen soldiers, and not the generals, should be honoured in this way. In the course of the fourth century honours were increasingly conferred for civil functions.

²⁸⁹ For instance, in 346 for the dynasty ruling over the Bosporan kingdom in the Crimea: Harding, no. 82.

²⁹⁰ Xenophon, *Poroi* 3, 11.

²⁹¹ Aeschines 3, 234 records a contemporary debate whether such changes generally improved democracy, or undermined it.

²⁹² Diodorus Siculus 18, 66, 5.

²⁹³ Diodorus Siculus 18, 55, 4; 18, 65, 6.

democracy. Only in recent scholarship has ‘democracy in Hellenistic Athens’ (and elsewhere in the Hellenistic world) become an issue of debate.

DEMOCRACY WITHOUT THEORY OR MISSION

The development of democracy had depended on the mutual relationship between an external and an internal political dynamic. Although there was a consistent emphasis on the extension of political participation, there was no clearly formulated prior ideological aim. The practical success of the system²⁹⁴ reinforced the belief that all citizens should take part on decision making that directly affected them. On the one hand, extraordinary institutional imagination had been shown in realising the principle. On the other, no theory of democracy was developed that might have offered a positive justification for it, including the features like money payments and the role of random selection. In Herodotus there is a fictional discussion of the best order between Persian nobles, known as the ‘constitutional debate’, reflecting the state of discussion in Greece, or rather Athens, after the mid-fifth century. The advocate of popular rule notes that this can lay claim to the ‘most beautiful name’: *isonomia*. This implies that it was at that time this concept, implying the rule of law, that had a particular attraction, and not that of democracy. Besides the responsibility of officials, the use of choice by lot is identified as the particular feature of this constitution, although no reason for this is given. This is also true of his statement that here everyone decided, which is itself tautological, since it is not supported by the argument that everyone had to bear the consequences of political decision making.²⁹⁵ This last point can be found in another context, in tragedies, by Aeschylus (circa 463) and Euripides (circa 421) regarding petitions from foreigners for asylum, in which kings left the decision to the people because of possible foreign complications.²⁹⁶ In Euripides’ piece the Athenian king Theseus represented in a form of constitutional debate the democratic position,²⁹⁷ while the Theban herald articulated the criticism of mob rule. Here too the principles of equality before the law and universal participation in offices rotating on an annual basis were not valued for themselves, but simply contrasted with tyranny.²⁹⁸ Nonetheless, common to these arguments is the

²⁹⁴ Cf. Lysias 25, 8: no one is naturally democratic or oligarchic, but the decision is made according to one’s own interests.

²⁹⁵ Herodotus 3, 80–82, here 3, 80, 6. The rota system is made possible by the drawing of lots; Euripides points this out (Euripides, *Hiketides* [*The Suppliants*] 406f.).

²⁹⁶ Both plays have the title *Hiketides* (‘Suppliants’). The scene of Aeschylus is Argos, that of Euripides Athens. – On the role of the argument concerning the rights of those affected in medieval Canon law see p. 3.

²⁹⁷ Besides Solon, Theseus was also styled retrospectively as a founding father of democracy: Demosthenes 59, 75; Pausanias 1, 3, 3.

²⁹⁸ Euripides, *Hiketides* (*The Suppliants*) 381ff.

idea that in democracy the emphasis is on procedure, whereas with sole rule and aristocracy it is the personal qualities of rulers that are lent significance.

The famous speech of Pericles in honour of those Athenians who had fallen during the first year of the Peloponnesian War is by contrast a panegyric to the 'Athenian Way of Life', seeking to strengthen the morale of the population after Spartan attacks.²⁹⁹ Pericles praises the everyday freedom of Athenians that the observance of the law brings and contrasts the spirit of their constitution to the domestic system of monitoring and control in Sparta. He uses the concept of democracy in a rather defensive manner,³⁰⁰ is relatively vague about specific procedures (this is certainly linked to the circumstances in which he was speaking) and instead extensively praises the political and military engagement of the citizenry. In public life all citizens were equal; their reputation was not derived from their social status, but their political engagement, something that was both moral obligation and a right. Pericles argues that the way in which all decisions in Athens are made only after a public debate in which both sides of an argument are weighed is a strategic advantage: the free Athenian citizen has a more solid martial spirit than the professional Spartan soldier.

There is an echo of this in the address of the commander Nicias to his soldiers before the final battle on Sicily in 413. According to Thucydides, he reminded them that they fought for their home city, the freest country in the world, where the state did not interfere with private life, a statement that sounds even stronger than the Periclean one.³⁰¹

Apart from a few statements, the theoretical analysis of democracy can be found in the writings of its opponents and critics: Plato and Aristotle. It is not always clear whether general remarks about democracy are supposed to apply to Athens in particular, or also to other city-states. (Since so little is known about democratic forms outside Athens there has always been an inclination to treat them as particularly relating to Athens). Aristotle made carefully differentiated statements about, and detailed analyses of, both democracy and oligarchy. Here we find the 'summation principle': the addition of capacities in a large crowd outweigh those of a small group, even if their members were above average – one of the few positive things said about the principle of democracy.³⁰² The argument that freedom means equal political participation is repeated, and criticised, in Aristotle.³⁰³

²⁹⁹ Thucydides 2, 35–46.

³⁰⁰ There is still argument over whether Pericles talks of *demokratia* as a form of rule *for* or *by* the majority (Thucydides 2, 37, 1).

³⁰¹ Thucydides 7, 69, 2.

³⁰² Aristotle, *Politics* 1281a40ff. The argument that a choice between different proposals is best done by all can be found in Thucydides 6, 39, 1: Speech of Athenagoras in Syracuse in 415 – but this spokesman for democracy is totally wrong in his assessment of the situation that the Athenians would not attack Sicily.

³⁰³ Aristotle, *Politics* 1317a40ff.

There is a kind of indirect justification of democracy in the ‘myth of Protagoras’, which states that while all share political capacities, this competence is not inborn, but has to be developed, so that there are differences in the degree of political ability.³⁰⁴

Democracy remained solely a matter for Athenian citizens; it was not a universal principle. It was taken for granted that Athenian women and metics were excluded from political rights; there was no question about slavery, not least because slavery made it possible for many citizens to participate in politics and warfare. No attempt was made to draw in members of the allied cities by offering citizens’ rights. In 427, those surviving the destruction of Plataea were given citizenship, although many later settled elsewhere, this very likely reflecting their own wishes.³⁰⁵ The conferral of citizenship on the inhabitants of Samos in 405, the last faithful ally, was of a more symbolic nature.³⁰⁶

There was no wish to disseminate the principle of democracy throughout the Greek world. The Delian League of the fifth century was an instrument of Athens’ great power politics, from which Athens drew extensive material benefits. To justify the hegemony of Athens the part played by Athens in the defence against the Persians was talked up, and the role of the Spartans and other Greeks increasingly talked down.³⁰⁷ During the second half of the fifth century Athens had established political arrangements to some extent similar to its own in the cities over which it ruled,³⁰⁸ and this could have been welcomed by sections of their own citizens,³⁰⁹ but the interventions which were made were motivated by the prevailing political interests of Athens, and were not intended as benefits.³¹⁰ One could get along with oligarchies just as well, so long as these did what Athens wanted them to.³¹¹

There could be disagreement over the treatment appropriate for individual states. In the debate about Mytilene which was occupied by Athens after it seceded from the alliance with Athens, the sole question in 427 concerned what served Athens’ reason of state best. Cleon argued that putting all the men to death and enslaving all women and children would have a suitable deterrent impact upon other *poleis* who might wish to leave the alliance. A counter-proposal, that ‘only the guilty’ should be punished (which ended

³⁰⁴ Plato, *Protagoras* 320a ff. By justifying the argument that political virtue could be taught, the sophist Protagoras defended his own profession against the attacks of Socrates. Attempts to find a theory of democracy in Democritus have failed, given the fragmentary nature of his surviving work.

³⁰⁵ Demosthenes 59, 104; Lysias 23, 6; Thucydides 5, 32, 1.

³⁰⁶ Fornara, no. 166; Rhodes/Osborne, no. 2.

³⁰⁷ Thucydides 1, 75; 5, 89.

³⁰⁸ Popular resolution on Erythrae (see fn. 49); Thucydides 3, 82, 1; Pseudo-Xenophon, *Athenian Constitution* 1, 14, 3; Lysias 2, 56; Plato, *Seventh Letter* 332b-c; Aristotle, *Politics* 1307b22.

³⁰⁹ The popularity or unpopularity of Athenian rule among the various groups certainly depended upon the distribution of the financial burden imposed by Athens.

³¹⁰ As with the Athenian intervention in Samos 440/439: Thucydides 1, 115–117.

³¹¹ Pseudo-Xenophon, *Athenian Constitution* 3, 11.

with the execution of at least 1,000 men), was ultimately successful, the argument being that in regard to the impact upon allies collective punishment was not something that should be done. Instead, one should encourage those groups sympathetic to Athens, or give others the chance to resume paying tribute.³¹² ‘Humanitarian’ considerations were not at issue here, but instead rational calculation: whether the full, or partial, exercise of the unlimited rights of a victor served Athenian rule better.³¹³

There was consensus on Pericles’ doctrine that once supremacy had been achieved it should be maintained at all costs, especially if one was already hated by subjects who experienced such dominance as tyranny.³¹⁴ Alcibiades went one step further in 415 when he justified the attack on Sicily with the argument that a great power can maintain its status only through constant expansion.³¹⁵ Neither in this nor in any other case is it obvious that Athenians took any account, in making their decision to start a war, of the domestic constitution of their foe, that is, as a democracy refrained from attacking other democracies.³¹⁶

One year before the Athenians had attacked the island of Melos, which had wanted to remain neutral. Its inhabitants were either killed or enslaved, and Athenians settled in their place. Prior to this the Melians had been informed that, as a small state, they had to accept the non-negotiable demands of a large power. This claimed ‘law of the strongest’ is hard to trump, given the crudity with which it was expressed.³¹⁷ The ‘Melian Dialogue’ in Thucydides has been noted many times because of the way that it encapsulates the question of realism or cynicism in relationships between states, where no law prevails.

³¹² Thucydides 3, 36–50.

³¹³ Thucydides 3, 48. The Athenian *stratego*i who in 429 expelled the exhausted population of Potidaea so as to bring a lengthy and costly siege to an end were prosecuted because they had not sold the population into slavery; Thucydides 2, 70.

³¹⁴ Thucydides 2, 63, 2. Likewise, Cleon, Thucydides 3, 37, 2. The Athenians did also say that they did not come by this position of power through violence, but instead through the passivity of their allies. They claimed that they treated their subjects better than others would do: Thucydides 1, 75; 1, 77, 2ff.

³¹⁵ Thucydides 6, 18, 2f.

³¹⁶ Thucydides 7, 55, 2: the attack on Sicily involved cities that were democracies like Athens. Of course, one can say that at the time the Athenians could have regarded Syracuse and other Sicilian cities not to be democracies of a quality equal to their own. Aristotle, *Politics* 1304a27–29; 1316a32f., was later in two minds about whether Syracuse could be regarded as a democracy after the overthrow of tyranny in 416. Syracuse’s victory over the Athenians led in 412 to a revision of the constitution that conferred greater rights on the people, and led to the selection of magistrates by lot (Diodorus Siculus 13, 34, 6) – a rare example of learning from a vanquished foe. (In 406 the new tyranny of Dionysius was established). If Athens had prevailed over Syracuse the city would have been destroyed (see fn. 116). Generally speaking, the idea that democracies should not fight each other played no role. There is no trace here of Kant’s later doctrine (*Perpetual Peace: A Philosophical Sketch*, 1795); in any case, Kant ascribed pacifism not to democracy, but to a republic based on the rule of law.

³¹⁷ Thucydides 2, 63 (Pericles); 6, 18 (Alcibiades); 5, 84–116 (‘Melian Dialogue’).

In Athens it was plain that in the event of defeat in the Peloponnesian War that same kind of punishment loomed that they had meted out before; the fact that it did not come to that was solely attributed to the difference of interests between Sparta and its allies.³¹⁸ In the so-called Second Athenian Confederacy (378/377–355), which was originally aimed against Sparta, Athens' position was no longer so powerful; the alliance collapsed when Athens abandoned the reticence it had initially adopted, and some members rejected Athenian interference with their autonomy.

Over 150 years Athens developed a constitutional order that was without precedent and which, because of its exceptional historical status, would continue to be referred to whenever 'popular rule' was discussed in succeeding centuries. For many centuries this was mostly a theoretical possibility that was simply dismissed. It was only in the later eighteenth century that it once more became a political prospect, linked to discussions on the distinctions of democracy ancient and modern.

³¹⁸ Xenophon, *Hellenica* 2, 2, 3 and 19f.

The Reception of Ancient Constitutional Theory

Occidental political thinking took shape in debates over the heritage of antiquity. This began in the Middle Ages, gathered force with the reception of Aristotle in the late thirteenth century and by the time of the Renaissance had become a thoroughgoing reassessment of an ancient legacy. Central to this reception were examples of the Greek *poleis* of the fifth and fourth centuries (Sparta and Athens), together with republican Rome. In a political world dominated by monarchies, in which the remaining city-states were also ruled by a relatively closed elite, it was the similarities of the ancient republics that tended to be emphasised, rather than the very considerable differences between them in the nature and extent of the part played by citizens. Republican systems were at the centre of the political theory of antiquity; hence their prime – in Athens, and partly in Rome – was thought to coincide with the cultural achievements that came to be seen as ‘classical’. The rediscovery of the constitutional theory of antiquity created the possibility of a rational appraisal of all forms of rule, accepting the underlying legitimacy of diverse constitutional forms, and strengthened the autonomy of the political sphere vis-à-vis the church.

To a great degree, assessment of the political arrangements of antiquity was influenced by the judgements that had shaped ancient constitutional theory itself. Athenian democracy never had much in the way of a theory that might have reflected and legitimated its actual practice; or, at least, this theory was not expressed coherently in any particular text. Athenian democracy was therefore read through the writings of Plato, Aristotle, Isocrates and Cicero,¹ all of whom were struck by the way that nearly all posts and offices were filled

¹ Cicero, *Pro Flacco* 16f.: Athens’ decline resulted from the unruliness of the popular assembly, the dominance of ignorant masses and the role of trouble-makers. *De Legibus* 3, 14: Demetrius of Phaleron (the autocratic ruler; see p. 65) was as a sort of philosopher-king. The rejection of popular rule as a matter of principle and scattered critical remarks on Athens in *De re publica* were unknown until 1820 (see the following pages) but Cicero’s critique of the fact that Pericles

by lot, and officials were paid, evening out the natural inequality of men in political matters.²

Selection by lot was seen as an aversion to the accumulation of political expertise, although in other spheres of life one could not do without experts.³ But even a direct vote could not ensure competence. Antisthenes, a student of Socrates, joked that if the popular assembly were able to appoint men without military expertise to the posts of *strategoï*, then it could also make a donkey into a horse.⁴ Day payments were possible only because of a system of redistribution, prompting the poor to involve themselves in politics, whereas the rich could not afford to do without neglecting their affairs;⁵ or, if they did participate, they stood to lose all they had.⁶

A picture came together in which this constant shift 'from ruling to being ruled' was thought to end up as the 'rule of the poor', where the popular assembly was supposed to be incapable not only of rational policy, but also of setting any legal limit to the will of the majority, while the popular courts were said to pursue a deliberate policy of plundering 'the rich'.⁷ The 'poor' were considered to be all those who earned their living through work, while the 'rich' constituted the small group whose wealth made them liable for liturgies,⁸ whereas they had no privileged access to political offices in return for their financial contributions⁹ or even felt like slaves of the polis.¹⁰ This distinction would lead to later misunderstanding, when poverty was often taken to mean a complete absence of means and dependence on alms and charity. Ostracism was taken to be an expression of envy of the rich, and an arbitrary instrument for the purpose of social levelling.¹¹ The influence of demagogues was overdrawn, so that the history of the constitution seemed to be dominated by a succession of

as the leading statesman could be insulted in comedies had been transmitted by Augustine, *De civitate Dei* 2, 9 (= Cicero, *De re publica* 4, 11).

² Plato, *Politeia* 558c; Isocrates 7, 21ff.; Aristotle, *Politics* 1280a7ff.; 1317b1ff. and passim.

³ There are various statements to this effect that have been ascribed to Socrates; Xenophon, *Memorabilia* 1, 2, 9; 3, 9, 10; Aristotle, *Rhetoric* 1393b4. There was also the cunning argument that lotteries could not be in the interest of democracies, since opponents of the system could gain office in this way: *Dissoi Logoi* 8, 5; Isocrates 7, 57.

⁴ Diogenes Laertius 6, 8.

⁵ Plato, *Politeia* 565a–566d; Isocrates 7, 57; 8, 129–131; Aristotle, *Politics* 1293a1ff. 1298b13ff.; 1300a1ff. 1320a2off.

⁶ Xenophon, *Memorabilia* 2, 8, 1f.

⁷ On the principle of alternation: Aristotle, *Politics* 1261a39ff.; 1317b2; on the rule of the poor: Plato, *Politeia* 557a; Aristotle, *Politics* 1279b9ff.; 1290b17ff. and passim.

⁸ Aristotle, *Politics* 1305a3ff.; 1309a14ff.; 1320b1ff. This distinction, which was also usual in Athenian political discourse (Demosthenes 18, 102ff.), contrasts with other forms of classification that can be found in Aristotle, for instance, when he writes of a group of 'middle' citizens: *Politics* 1295b1ff. and passim.

⁹ See p. 51.

¹⁰ Xenophon, *Symposium* 4, 43–45; *Memorabilia* 2, 1, 8ff.

¹¹ Andocides 4, 3; Aristotle, *Politics* 1284a14–b25 (adapting a story that had originated as a device for tyrants; Herodotus 5, 92); Plutarch, *Aristides* 1, 2f. (from Demetrius of Phaleron).

popular leaders.¹² Court speeches from the fourth century convey the sense of power struggles between leading politicians using underhand methods.

Democracy seemed to be a collective tyranny, even though it had always defined itself in contrast to the irresponsibility of sole rule. Montesquieu noted laconically that ‘Plato was dismayed by the tyranny of the Athenian people’.¹³

Thucydides recorded that Pericles, in his Funeral Oration,¹⁴ emphasised the freedom to live according to a legal framework, as contrasted with the social discipline of Sparta; that was interpreted as the ‘freedom to live however one likes’, and so understood as a socially damaging lack of constraint.¹⁵ Plato also criticised the fact that participation in politics was a voluntary matter.¹⁶

There was of course the image of a ‘nominal democracy led by a strong man’, as in Thucydides’ glorification of the statesmanship and political leadership of Pericles, as distinct from his irresponsible successors, especially Cleon.¹⁷ This offered something in the way of an identification, but was countered by the judgement of Plato and Aristotle that Pericles was responsible for the radicalisation of Athenian democracy.¹⁸ Moreover, in his biography of Pericles Plutarch repeated the fifth-century criticism that Pericles ‘played at being Zeus’, and was a ‘tyrant’, together with the accusation that he had all too casually started the Peloponnesian War.¹⁹ Hobbes wrote that ‘it is said that Pericles once made thunder and lightning in his speeches and threw all Greece into confusion’.²⁰ This criticism of Pericles underwrites the implication in ancient theory that in a democracy, a leader of the people can end up as a tyrant;²¹ and this became a fixed idea, even though in Athens at least there was no serious basis for such an inference.²²

The critical accounts of decision-making processes to be found in ancient historians appeared to confirm the generally negative image of Athens. Thucydides concentrated on debates in the popular assembly made with demagogic arguments, showed no sympathy for a capricious popular mass²³ and passed over

¹² Isocrates 15, 231–236.

¹³ Montesquieu, *De l'esprit des lois* [1748], Book XXIX, Ch. 19.

¹⁴ Thucydides 2, 37, 2f. Compare Cicero, *De oratore* 3, 318: Because of his eloquence and competence Pericles had led the Athenians in internal as well as foreign politics for forty (!) years.

¹⁵ Plato, *Politeia* 557b; 562b–c; *Laws* 780a; Aristotle, *Politics* 1310a33; 1317b11; 1319b30; Isocrates 7, 20. Correspondingly, in democracies there were no magistracies supervising the behaviour of women and children: Aristotle, *Politics* 1300a5ff.; 1319b27ff.; 1322a23ff.

¹⁶ Plato, *Politeia* 557e.

¹⁷ Thucydides 2, 65, 9ff.; 3, 36, 6; 4, 27f. and passim.

¹⁸ Plato, *Gorgias* 515e; Aristotle, *Politics* 1274a7–9.

¹⁹ Plutarch, *Pericles* 3–6; 24, 2ff.; 30, 4.

²⁰ Thomas Hobbes, *De Cive*, Ch. 5, § 5 [*On the Citizen*, Richard Tuck and Michael Silverthorne, eds., Cambridge 1998, 71–72].

²¹ Herodotus 3, 82, 4.

²² Plato, *Politeia* 564a; 565c–d; Polybius 6, 9, 8f. Anachronistically, it was implied that Peisistratus as a demagogue established himself as a sole ruler; Aristotle, *Politics* 1305a23ff.

²³ Thucydides 2, 65, 4 on the punishment and subsequent re-election of Pericles.

the role of the council. In his depiction of the civil war in Corcyra (427 BC) all constitutional ideas were treated as so much cover for brutal power struggles.²⁴ Xenophon sketched a popular assembly in which the majority brooked no disagreement, shouting down and threatening opponents.²⁵

A text attributed to Xenophon, probably dating from the later fifth century BC, and entitled *The Athenian Constitution*, contains an extremely polemical account of mob rule. While the author clearly finds the stability of this form of rule regrettable, it was overlooked for a very long time (some exceptions like Bodin notwithstanding). It was only during the nineteenth century that historical research paid any attention to it, a consensus forming that this piece could not have been written by Xenophon; nonetheless, it has never been possible to identify this 'pseudo-Xenophon' (or 'old oligarch' in the Anglo-Saxon literature), nor to agree on purpose, audience, genre or precise date of origin for the text. Aristotle's text on the *Athenian Constitution* with its critical account of fifth-century democracy remained unknown until the end of the nineteenth century.

Likewise, it was probably only in the nineteenth century that the scorn for, or criticism of, democracy and its leaders in the work of Aristophanes began to play a more prominent part in the assessment of Athens, the work of philologists contributing to better historical appreciation of his comedies. Hitherto the way in which Aristophanes had ridiculed Socrates in *Clouds* had led to his being dismissed as a reliable historical source, while his literary reception had (as with Molière) favoured those comedies focussing on eternal human characteristics, a genre that was modish in the fourth century BC.

ANCIENT CONSTITUTIONAL CATEGORIES

The political theory of the later fifth and the fourth centuries BC developed a constitutional schema that enabled all political orders to be reduced to three basic types: monarchy, aristocracy and democracy, or respectively sole rule, the rule of an elite and the rule of the people. This tripartite schema could also generate a sixfold version if one distinguished between just and corrupt forms, according to whether rule was directed to the common good and its exercise subject to law, or not. The point of departure was a distinction between a kingdom based upon law and an illegitimate tyranny, whether the latter be based upon usurpation and/or the exercise of rule without recourse to law. This constitutional typology was also related to the idea of a shift from one constitutional form to another, such that a leading demagogue in a democracy could in time become a tyrant.

²⁴ Thucydides 3, 82.

²⁵ Xenophon, *Hellenica* I, 4, 20 (on the return of Alcibiades in 408); see p. 235 for his account of the Arginusae trial.

Even in the fifth and fourth centuries a distinction between democracy and oligarchy was difficult, unless one wanted to restrict ‘democracy’ to its Athenian form (with day payments and appointment by lot). Aristotle brought together a number of political systems under ‘democracy’, common to which was the equal right of citizens in the popular assembly and in the choice of magistrates and councillors. However, these smaller groups then made most of the decisions, and were *de facto* or *de jure* selected from a pool of privileged citizens.²⁶

Besides decidedly theoretical usage, since Hellenistic times there has been a tendency to reduce the typology to the contrast of monarchy and citizenry as organisational foundations, so that the older contrast between democracy and oligarchy lost its force.²⁷ During the Roman Empire we come across the idea of ‘democracy under the Emperor’, where all democracy means is legal protection and social certainty practised by good government.²⁸

‘Despotism’ was a special category, clearly distinct from tyranny. Aristotle used this term to characterise the form of rule in the Persian Empire, where the king ruled as a patriarch over his subjects, treating them like slaves, corresponding to the slavish nature of the inhabitants arising from the climate.²⁹ The reception, starting with Bodin and reinforced by Montesquieu, has always linked this with the ‘Orient’, a conceptual catch-all for the alleged social stagnation prevailing in empires stretching from Turkey, through Persia and India to Japan and China, sometimes also including Russia, and which contrasts with the liberty and dynamism of Europe. Since the eighteenth century this has been increasingly associated with the assumption that private property is absent in these regimes. Marx later coined the category ‘Asiatic mode of production’ to denote this. Right up to the later twentieth century Marxists continued to debate whether this is a specific social formation distinct from those stages marking the progress of human history – from antiquity and chattel slavery, through feudalism and capitalism, ultimately ending in communism.³⁰

Since the eighteenth century there has also been a politically charged and metaphorical use of the term ‘despotism’ in relation to absolute monarchy, which has over time become, together with a loose usage of ‘tyranny’, synonymous with any kind of rule by force.

²⁶ Aristotle, *Politics* 1274a15ff.; 1281b32ff.; 1318b28ff.

²⁷ For example, Polybius 22, 8, 6; 31, 2, 12; Strabo 9, 1, 20 = C 398.

²⁸ Cassius Dio 56, 43, 4; Aelius Aristides, *Eis Romem* 90; Philostratus, *Vita Apollonii* 5, 35.

²⁹ Aristotle, *Politics* 1285a15ff.; 1327b20ff. and passim.

³⁰ Marx, *A Contribution to the Critique of Political Economy* [1859]; MECW, Vol. 29, 263 [MEW, Bd. 13, 9 = MEGA², Abt. II, Bd. 2, 101]. It is indeed only here that Marx uses exactly this formula, but in the twentieth century his (anonymous) 1853 newspaper articles on India and the unfinished *Grundrisse der Kritik der politischen Ökonomie* (*Outlines of the Critique of Political Economy*), which were published only in 1939 (at that time without resonance) and then again in 1953, were used to reconstruct his alleged theory.

The tripartite constitutional schema could be linked to the idea that one particular mixed form of these three elements might be used to forestall the misuse of power by rulers, and so in this way ensure stability to a political system. The model for this was the constitution of Sparta, supposedly unchanged for centuries. Here there was a unique dual monarchy (two kings from dynasties traditionally hostile to each other, and who functioned as leaders of the army); an elders' council (*gerousia*, made up of twenty-eight men, all of whom were over the age of sixty) which formed a quasi-aristocratic element; the ephors (five annually appointed officials) representing the entire citizenry, and so a democratic element; and finally the assembly of all Spartans. These institutions appeared to embody a system for the mutual limitation of power. A problem of classification – that Sparta's special arrangements could not easily be fitted into the tripartite constitutional scheme³¹ – was turned into a model for the creation of a stable order based on a balance of power.

These constitutional categories were altogether so flexible that they could be applied to political systems in the world beyond the Greek city-states. In the mid-second century BC the Greek historian Polybius applied the Spartan model of a mixed constitution to Rome and construed a connection between domestic order and success in external power politics. Rome's rise to power was based upon the strength of its constitutional order, in which the mutual interplay between consuls, senate, tribunes of the plebs (and the popular assembly) ensured the balance of social interests.³² By contrast, Polybius said that in Athens the mob (*ochlos*) ruled; the state was a ship without a helmsman, in which the crew constantly argued about the course that should be steered.³³

The idea of this kind of mixed constitution permitted the inclusion of quasi-monarchical institutions in a republican model. The Roman consuls were understood to be quasi-monarchical by virtue of their powers (especially during campaigns), despite adhering to a collegial model and the restriction of appointment to one year. Here we can also see a new dimension to the concept of democracy. Normally this meant the direct participation of all citizens in processes of political decision making. With the mixed constitution model the democratic element was now treated as the representation of citizens by ephors, or tribunes of the plebs. This meant that the later possibility of equating democracy with representation was partially anticipated, without this itself having any impact on an understanding of democracy as such. But there was difficulty in defining the democratic part of the mixed constitution: in Sparta, was it the ephors (who, furthermore, also appeared from another perspective to be 'tyrannical'³⁴ because of the lack of controls placed upon them) who were

³¹ Plato, *Laws* 712d; Aristotle, *Politics* 1294b13ff.

³² Polybius 6, 11–18.

³³ Polybius 6, 44. The comparison with a ship can be traced back to Plato, *Politeia* 488a ff.

³⁴ Plato, *Laws* 712d; Aristotle, *Politics* 1270b14; Xenophon, *The Constitution of the Lacedaemonians* 8, 4.

the democratic element, or the popular assembly?³⁵ Polybius avoided the issue by leaving out the ephors; and as for the Roman tribunes, he simply said that they had to do what the people wanted, ignoring the fact that the articulation of the people's will itself depended on the initiative of the tribunes. In Rome there was no theory of imperative mandate, even if the argument developed by Tiberius Gracchus as a tribune of the plebs in 133 BC moved in this direction.³⁶

Polybius saw in the mixed constitution the sole chance of preventing the constant turnover of constitutional orders, a process that seemingly occurred quite necessarily and naturally, fed by the inevitability that, after a given period of time, the rulers would abuse their power and prompt their deposition.³⁷ Polybius (or a source of his that we cannot identify) developed the idea of a circulation between the three constitutional forms of monarchy, aristocracy and democracy, and their respective degenerated forms: tyranny, oligarchy and ochlocracy (mob rule). It starts with monarchy; this is followed by tyranny, after which an aristocracy comes to power, which then declines into oligarchy, which is then replaced by democracy. This then degenerates into mob rule, from which finally a new monarchy emerges, bringing the whole sequence back full circle. This established a way of thinking presuming that sole rule eventually followed from democracy and its inevitable successor, ochlocracy (a concept first encountered in Polybius).

The fact that Polybius' model is flawed has not done it any harm. It was adapted by Cicero – important in the reception here above all is his *De legibus*; greater parts of the text of his *De re publica* were rediscovered only in 1820; until then, only some passages were known that had been cited by Augustine, Lactantius and Macrobius. Cicero's impact on subsequent political thought rests mainly on his writings as a whole, especially his rhetorical treatises. The Polybian-mixed constitution made a particular comeback in seventeenth-century England (see the later pages), and has since then influenced discussion of mechanisms for the limitation of powers that might foster stability.

THE RECEPTION OF ARISTOTLE AND CIVIC HUMANISM

Well into the eighteenth century and beyond, the three (or six) basic constitutional forms were considered quite adequate to make conceptual sense of the

³⁵ Aristotle, *Politics* 1273a5ff.

³⁶ Polybius 6, 10 on the Spartan constitution without mentioning the ephors; that is also true for the further treatment of the system in 6, 48-50: it guaranteed internal stability but did not enable the Spartans to pursue expansion; in this respect the Roman model was superior. – Polybius 6, 16, 5 on the Roman tribunes. Tiberius Gracchus' justification for his getting the popular assembly to dismiss another tribune who had intervened against the Agrarian Law introduced by Gracchus: Plutarch, *Tiberius Gracchus* 15, 2ff. Where he might have got such an idea, alien as it was to Roman public law, remains a mystery.

³⁷ Polybius 6, 3-9.

various political orders in different epochs and places. If it were not merely a matter of description, but also of normative evaluation, these categories were also capable of interpretation from both an inner-worldly and a religious perspective.

This offered the prospect of treating non-monarchical constitutional forms as legitimate, even if they were thought impractical for territorial states, or more generally implied popular rule, making them vulnerable to the danger of degeneration – something that in principle applied to all forms. Thomas Aquinas, for example, followed Aristotle in treating democracy as a quasi-tyrannical rule of the poor over the rich.³⁸

Moreover, the conception of ‘people’ or ‘citizens’ as members of a political community was a flexible one. Popular rule could simply be understood as a system in which full citizenship rights (with passive eligibility) depended on a property qualification, the remaining groups of citizens only having the right to vote, or of confirming selection by acclamation, or merely enjoying legal protection. The ‘better part’ (*pars sanior*) of the citizenry should have the final say. In 1324 Marsilius of Padua did adopt Aristotle’s definition of a full citizen in respect of democracy, but added that political rights had to be arranged according to social rank (*dignitas*).³⁹ And it was often because of later social conditions that Aristotle’s view, according to which in the ‘best state’ craftsmen should be excluded from citizenship, was ignored.⁴⁰

The ideal of political participation by the citizen was developed by the Florentine civic humanism of the early fifteenth century according to the Athenian tradition. (As early as in thirteenth-century Italy Cicero had been invoked in the treatment of rhetoric as the art making possible the rule of a community in conformity with reason and justice). Leonardo Bruni adapted Pericles’ Funeral Oration to fit contemporary conditions; that was a ready source since it presented a eulogy to the love of one’s home city. Bruni had previously made clear the independence and military strength of Florence in his praise for the city; the freedom that citizens enjoyed within the city itself was defined in relation to the Roman republican tradition, guaranteeing legal security and protection from heavy-handed action by the magistrates. Correspondingly, Bruni highlighted the fact that Florence was founded during the era of the Roman republic, and not during the Principate,⁴¹ although one

³⁸ Thomas Aquinas, *De regimine principum*, Book I, Ch. 1. In *Summa Theologiae*, I-II [Prima Secundae], quaestio 105, 1, Thomas Aquinas accepted the democratic principle within a mixed constitution, which he saw as realised in the choice of rulers.

³⁹ Aristotle, *Politics* 1275a23; 1275b5; Marsilius von Padua, *Defensor Pacis*, ed. Richard Scholz, Hanover 1932, Book I, Ch. 12 XII, § 4.

⁴⁰ Aristotle, *Politics* 1278a2–12; 1328b32–41. See the evidence of how later medieval theorists ignored this idea in Cary J. Nederman, ‘Mechanics and Citizens. The Reception of the Aristotelian Idea of Citizenship in Late Medieval Europe’, *Vivarium* 40, 2002, 75–102.

⁴¹ Leonardo Bruni, *Peri tes ton Phlorentinon politeias. Über die Staatsverfassung der Florentiner*, ed. Carl Friedrich Neumann, Frankfurt am Main 1822 [text from c. 1439]; Bruni, *Rede auf*

might have wished for a better founding date than during the reign of Sulla, marked as it was by proscriptions, arbitrary executions and the expropriation of thousands of political opponents.

The Florentine constitutional order had certain structural features in common with Athenian democracy – an extremely short term of office (two months), the large number of offices, the use of complicated procedures of election and appointment by lot, the popular assembly (*parlamento*) also being able to legitimate constitutional change – without there having been any direct influence. The use of appointment by lot served to select magistrates independent of ties to relatives or clients, but they were picked only from a defined and qualified set of citizens. This procedure was not therefore an expression of any idea that every citizen should have political capacity, as it was in Athens. The principle of rotation in political functions remained limited to a closed group, and large sections of the citizenry had only reduced political rights. Nonetheless, the rhetorical recourse to antiquity signalled a detachment from an understanding of the constitution based upon guilds and the emergence of a conception that emphasised the individual citizen.

In principle, the same went for Florentine debate between the overthrow of the Medici (1494) and the eventual restoration of their rule (1530). At stake here was the enlargement of a citizenry possessing political rights, but not stretching to the entire city population. In 1495 Savonarola managed to achieve the abolition of the popular assembly, on the grounds that it was an instrument for the manipulation of the popular will, but in fact preparing the way for the restoration of the Medici.⁴²

Another important interest was the extent to which one should imitate Venetian constitutional arrangements, so that one might be able to create a mixed constitution based upon internal institutional regulation, something that could be based on either a broader, or a narrower, constituency of active citizens.⁴³ The institutional stability of Venice, based upon the division of powers between the Doge (elected for life, but subject to significant restraints), various powerful magistrates and the Grand Council led it to be compared with Sparta.

Machiavelli's *Discorsi*, dealing with the first ten books of Livy and written between 1513 and 1519, dominated the question of what lessons might be drawn from Roman history for the stabilisation of a republic that also should

Nanni Strozzi, ed. Susanne Daub, Stuttgart 1996 [text of 1428]; 'Laudatio Florentinae Urbis', in *From Petrarch to Leonardo Bruni. Studies in Humanistic and Political Literature*, ed. Hans Baron, Chicago 1968, 232–263 [text of c. 1401].

⁴² Sermon of 28 July 1495, in Girolamo Savonarola, *Prediche sopra i salmi*, ed. Vincenzo Romano, Rome 1974, Vol. 2, 152–181.

⁴³ Francesco Guicciardini, *Dialogo e discorsi del reggimento di Firenze* [ca. 1512–1515], ed. Roberto Palmarocchi, Bari 1932 [*Dialogue on the Government of Florence*, ed. Alison Brown, Cambridge 1994]; Donato Gianotti, *Repubblica fiorentina* [1534]; translated as *Die Republik Florenz*, Alois Riklin and Daniel Höchli, eds., Munich 1997.

retain the capacity to expand. For Machiavelli this led to the need for a citizen army. Machiavelli saw in the institutionalised competition of aristocracy and people in Rome the best framework for the simultaneous achievement of the aims of stability, domestic freedom and the free exercise of power externally. For the majority of citizens freedom meant above all the enjoyment of security, not of political power, for this was accessible only to a small elite. This distinction between the two concepts of liberty, which we can also find in Grotius,⁴⁴ is not a discovery of the nineteenth and twentieth centuries, quite apart from the fact that it can be traced back to ancient roots.

The participatory implications of the concept of citizen were always played down in the political theory of early modernity, despite the influence of Aristotelianism. Aristotle himself had emphasised that the category of the citizen was defined through participation in political decision making, and so really applied only to democracy.⁴⁵

For Bodin the people was a ‘many-headed beast’ without judgement; ancient democracy had therefore to fail if the masses were not kept under control through a combination of material and symbolic concessions, as Pericles had succeeded in doing.⁴⁶ Developed democracy was thought to be a system in which demagogues ruled, and which would go under because there ‘licence was thought to be liberty’ (Besold 1637);⁴⁷ or otherwise, ‘what prevails is whatever the common rabble think advantageous, with no regard to general welfare and security’, as the Enlightenment philosopher Christian Wolff put it in the early eighteenth century, once again referring to Aristotle, but this time to his critique of democracy.⁴⁸

Montesquieu thought that the decline of a democracy was inevitable once political equality became excessive, the people not being satisfied with the election and control of their magistrates (as under Solon in Athens), but wanted to take over the business of government themselves, so that they might then be able to distribute the public finances among themselves. This would necessarily produce, as in antiquity, a popular leader making himself a sole ruler. More than any other political orders, democracy demanded that its citizens be virtuous, and for precisely this reason it had the least chance of permanence. Moreover, in democracy there was an erroneous understanding of

⁴⁴ Hugo Grotius, *De Jure belli ac pacis libri tres. Drei Bücher vom Recht des Krieges und des Friedens* 1625, ed. Walter Schätzel, Tübingen 1950, Book I, Ch. 3, § 12, no. 1: Distinction of *libertas personalis* and *libertas civilis*.

⁴⁵ Aristotle, *Politics* 1275a23 and 1275b5.

⁴⁶ Jean Bodin, *Les Six Livres de la République*, Paris 1583; reprint Aalen 1961, Book IV, Ch. 7; Book VI, Ch. 4 (with many criticism of democracy from antiquity, especially the pseudo-Xenophon).

⁴⁷ Christoph Besold, *Synopsis Politicae Doctrinae* [1637], Book I, Ch. 8; translated as *Synopse der Politik*, ed. Laetitia Boehm, Frankfurt am Main 2000.

⁴⁸ Christian Wolff, *Vernünftige Gedanken von dem gesellschaftlichen Leben der Menschen und insonderheit dem gemeinen Wesen* [‘Deutsche Politik’, 1736], ed. Hasso Hofmann, Munich 2004, § 236.

political freedom, failing to properly observe the need for adherence to laws.⁴⁹ Nonetheless, Montesquieu had been positive about the use of the lottery,⁵⁰ and of ostracism; ostracism, he thought, showed how merciful democracy was, and this was often misunderstood due to the fact that in later times exile was known only as a punishment.⁵¹

MIXED CONSTITUTION, EPHORS, TRIBUNES AND NEW REPUBLICANISM

The model of the mixed constitution recurs from the thirteenth to the eighteenth century whenever a particular political constellation aggravates the problem of the control of power. Examples range from the (Italian) city-states – especially Venice – to the major monarchies where there is a varying degree of estate representation. In addition, there is its application to the church in the theory of Conciliarism, according to which the ecumenical councils should maintain their independence from the Pope.

A particular role was played by the interpretation of the English system as a mixed constitution based upon king and the upper and the lower houses of Parliament. As early as Tudor times this idea was employed against the absolutist ambitions of the Crown. It became especially marked when matters came to a head with the Stuart constitutional crisis. From the beginning of the civil war it was used to justify the claims both of Parliament and of Crown.⁵²

Charles I adopted the theory in his official response to Parliament's 'Nineteen Propositions' shortly before the outbreak of the Civil War in June 1642. He employed a Polybian model of balances. The proclamation referred to the 'ancient, equal, happy, well-poised and never enough commended Constitution of the Government of this Kingdom'. This meant:

There being three kinds of government among men, absolute monarchy, aristocracy and democracy, and all these having their particular conveniences and inconveniences, the experience and wisdom of your ancestors hath so moulded this out of a mixture of these as to give to this kingdom (as far as human prudence can provide) the conveniences of all three, without the inconveniences of any other, as long as the balance hangs even between the three estates.

Charles I wanted to make a last-minute invocation of the role of the monarch in protecting the constitution, this role specifically disallowing any further concession to Parliament, while he also warned of the domination of the masses, of the threat of chaos and anarchy. This could be prevented only if the king

⁴⁹ Montesquieu, *De l'esprit des lois*, Book II, Ch. 2; Book VIII, Ch. 2; Book III, Ch. 3; Book XI, Ch. 3.

⁵⁰ Montesquieu, *De l'esprit des lois*, Book II, Ch. 2; see p. 134.

⁵¹ Montesquieu, *De l'esprit des lois*, Book XXVI, Ch. 17.

⁵² The most convincing theoretical analysis is that of Philip Hunton, *A Treatise of Monarchy* (1643) [ed. Ian Gardner, Bristol 2000]. Although Hunton takes the side of Parliament, he makes

remained a necessary part of the legislature, while retaining the executive as an independent domain, so as not to be reduced to the status of the Doge of Venice with his limited competencies.⁵³ However, in so formulating his position Charles I had at least implicitly conceded the equation of his position with both houses of Parliament, something that he had up to that point refused to do.⁵⁴ The derivation of this order from the collective wisdom of the nation also meant that the monarchy could no longer claim direct divine legitimacy. On the one hand, the king achieved a considerable propagandistic success, since this proclamation helped overcome his isolation; on the other hand, he paid for this by surrendering his previous legal position.⁵⁵

By the Glorious Revolution of 1688 at the latest this model had become generally accepted; it was rendered canonical by Blackstone at the end of the eighteenth century,⁵⁶ and remained long into the nineteenth the prevailing conception of sovereignty as the ‘King in Parliament’,⁵⁷ simultaneously excluding the broad mass of the people from any direct influence.⁵⁸

clear that a fundamental conflict between two equally legitimate holders of state power cannot be resolved.

⁵³ ‘XIX Propositions Made by both Houses of Parliament, to the Kings Most Excellent Majestic: With His Majesties Answer Thereunto’, in *The Struggle for Sovereignty. Seventeenth-Century English Political Tracts*, Vol. 1, ed. Joyce Lee Malcolm, Indianapolis 1999, 145–178, here at 167ff.

⁵⁴ According to the legal view of the Crown, the ‘three estates’ had previously been the Lords Spiritual, Lords Temporal und Commons beneath the monarch. But now King, Lords and Commons were considered to be the three estates, which implied also acceptance of the exclusion of the bishops from the House of Lords. Charles’ new counsellor Edward Hyde (later Earl of Clarendon) immediately saw this ‘mistake in point of right’, committed by other advisors of the king, but was unable to prevent publication of the passage he thought to be ‘prejudicial to the king’: *The Life of Edward Earl of Clarendon* ... written by himself, Oxford 1857, 130–132.

⁵⁵ For example, a journal that waged a fierce propaganda war against Charles I interpreted the mixed constitution as implying equal rights for the parliament: ‘A mixed Government, of Monarchy, Aristocracy, and Democracy, for if the two last had no share or co-ordination in the Government but consultive, it were purely tyrannicall, and arbitrary in one who might do and undoe at pleasure’; *Mercurius Britannicus*, 8 March 1644, quoted in Joyce Macadam, ‘Mercurius Britannicus on Charles I: An Exercise in Civil War Journalism and High Politics, August 1643 to May 1646’, *Historical Research* 84, 2011, 470–492, at 476.

⁵⁶ William Blackstone, *Commentaries on the Laws of England* [1765–1768], 15th ed., London 1809, Vol. 1, 49ff. and 153ff.

⁵⁷ For example, Henry Brougham, *The British Constitution. Its History, Structure and Working*, London 1861, Chs. 1–2.

⁵⁸ Critics of Parliament’s high-handedness cited the Septennial Act of 1716 (passed in reaction to Jacobite unrest caused by the Hanoverian succession), an act which extended the limit of a parliamentary legislative period from five to seven years, a ruling that remained in force until 1911. ‘That act proves to demonstration that in a legal point of view Parliament is neither the agent of the electors nor in any sense a trustee for its constituents.... The Septennial Act is at once the result and the standing proof of ... Parliamentary Sovereignty’; Albert V. Dicey, *Introduction to the Study of the Law of the Constitution* [1885], reprint of 8th ed., 1915, Indianapolis 1982, 9.

With some exceptions,⁵⁹ references back to antiquity subsided. There were different versions of how the equilibrium between the three constitutional components – King, Lords and Commons – might be arranged. Those who championed a longer or shorter legislative period for the lower house, defenders of the role of royal and aristocratic patronage in constituencies and appointments like Hume,⁶⁰ or critics like Bolingbroke,⁶¹ proponents and opponents of a stronger upper house – all of these voices, despite the divergence in their arguments and demands, invoked the mixed character of the English system, a system that must neither revert into ‘absolute monarchy’ or be diverted into ‘popular government’.⁶² The adherence to this characterisation of the constitution also concealed a gradual shift in the actual powers of government away from the monarch and towards cabinet government.⁶³ The Crown’s right of legislative veto became obsolete. Queen Anne made use of it for the last time in 1708; since then royal assent has never been withheld.

British pride in having the best of all constitutions (this ‘matchless constitution’) resonated in Continental Europe. The writings of Voltaire, Montesquieu, Diderot or de Lolme created in the eighteenth and nineteenth centuries the widespread reputation of the English constitution (from 1707 the British constitution) as moderate and free – but not democratic. In de Lolme this was linked to sharp criticism of the ancient republics, which did not respect the individual rights of their citizens.⁶⁴

Nonetheless, Montesquieu’s association of England with the separation, rather than the overlapping, of state powers and so placing ‘unruly facts on a Procrustean bed’ (von Mohl),⁶⁵ would give rise to a great deal of misunderstanding. The ‘Montesquieu-Delolme worm-eaten theory of division of powers’

⁵⁹ Jonathan Swift, ‘A Discourse of the Contests and Dissentions between the Nobles and the Commons in Athens and Rome; with the Consequences They Had upon Both of Those States’ [1701], in *A Tale of a Tub. With Other Early Works 1696–1707*, ed. Herbert Davis, Oxford 1965, 195–236.

⁶⁰ ‘Of the Independency of Parliament’ [1741], in David Hume, *Political Essays*, ed. Knud Haakonssen, Cambridge 1994, 24–27.

⁶¹ ‘A Dissertation upon Parties’ [1733/1734], in Bolingbroke, *Political Writings*, ed. David Armitage, Cambridge 1997.

⁶² Hume, ‘Whether the British Government Inclines More to Absolute Monarchy, or to a Republic’ [1741], in *Political Essays*, 28–32.

⁶³ Later, Walter Bagehot, *The English Constitution* (1867), declared that the Crown had become a ‘dignified’, rather than ‘efficient’, part of the Constitution.

⁶⁴ Voltaire, *Philosophical Letters. Or, Letters Regarding the English Nation*, John Leigh and Prudence L. Steiner, eds., Indianapolis 2007, letter eight, on the parliament [*Lettres philosophiques ou lettres anglaises*, 1734]; Montesquieu, *De l’esprit des lois*, Book XI, Ch. 6; Diderot, *Histoire des deux Indes*, Book XIV (= Diderot, *Political Writings*, John H. Mason and Robert Wokler, eds., Cambridge 1992, 188f.); Jean Louis de Lolme, *Constitution de l’Angleterre*, 1771 [The Constitution of England, ed. David Lieberman, Indianapolis 2007].

⁶⁵ Robert Mohl, ‘Neuere Schriften über englisches Staatsrecht’, *Zeitschrift für die gesammte Staatswissenschaft* 5, 1848, 90–137, here at 103.

(Marx)⁶⁶ would acquire a ‘glittering place in the long history of human error’ (Treitschke).⁶⁷

Despite their different functions, Spartan ephors and Roman tribunes were treated as equivalent organs of control by a tradition that went back to antiquity,⁶⁸ and they figured as legitimating points of reference for estate organs seeking a right of resistance to rulers who had become tyrants. This was especially true of Calvinist, and later Lutheran, association with monarchomach doctrines of the sixteenth century. This avoided extending the right of resistance to a ruler who had turned out to be a tyrant (in confessional matters) to just anyone, in particular ‘the popular mass ... that many-headed monster’.⁶⁹ (Later Catholic monarchomachs showed no such reservation on this point, nor on the issue of tyrannicide.) The story that in Sparta the kings and the ephors swore a mutual oath every month – the kings affirming to observe the laws, the ephors that they would not infringe the rights of the kings⁷⁰ – could be taken as a constitutional contract that had corresponding consequences if broken.

The attraction of the ephors argument lay in the way that control by ephors could be presented as being in the very interest of the monarchy. In one version of the ancient tradition the ephors were not an element of the original Lycurgan constitution, but were instead a later addition intended to ‘rein in’ the kings, the outcome being that this was the reason for the survival of kingship only in Sparta.⁷¹ One variant of this legend had it that King Theopompus had himself introduced the ephorate. When his wife argued that he thereby reduced the power of his successors, he responded to her that, on the contrary, he had provided for the preservation of the kingship.⁷²

Assessment of the Roman tribunate likewise always depended on which aspect of its highly ambivalent role was considered, or emphasised in argument. In the first two centuries of the republic the tribunes had, as organs of the plebeians, articulated their demands for legal and political equality, freedom from debt and due part in conquered land, and finally succeeded. Subsequently they drew their legitimacy from the protection of civil rights. They became increasingly integrated into the political elite because of the way they could either block decisions, or get laws passed. Their role as the symbol of *libertas*

⁶⁶ Marx, ‘The Crisis and the Counter-Revolution’ [1848], MECW, Vol. 7, 430 [MEW, Bd. 5, 401].

⁶⁷ Heinrich von Treitschke, ‘Das constitutionelle Königthum in Deutschland’ [1869–1871], in his *Historische und politische Aufsätze*, Vol. 3: *Freiheit und Königthum*, 5th ed., Leipzig 1886, 427–561, here at 432.

⁶⁸ Cicero, *De Legibus* 3, 16.

⁶⁹ As in Stephanus Junius Brutus [Philippe Duplessis-Mornay?], *Vindiciae contra tyrannos* (1579), 2. Investigation [*Vindiciae contra tyrannos or Concerning the Legitimate Power of a Prince over the People, and of the People over a Prince*, ed. and trans. George Garnett, Cambridge 1994].

⁷⁰ Xenophon, *The Constitution of the Lacedaemonians* 15, 7.

⁷¹ Plato, *Laws* 692a.

⁷² Aristotle, *Politics* 1313a23–33; Plutarch, *Lycurgus* 7, 2; *Moralia* 779e; Valerius Maximus 4, 1, ext. 8. This tradition is echoed (with somewhat different accentuation) in the address of Philip V of Macedon to his sons in 182 BC; Polybius 23, 11, 4.

could be understood – as did Cicero – as meaning that it was possible to domesticate a popular will that could otherwise have expressed itself in uncontrolled violence.⁷³ The ambivalent role of this institution was underscored by the fact that from Augustus onwards the emperors assumed tribunician power as legitimising part of their bundle of competences.

At the outbreak of the English civil war in 1642 the parliamentarians founded their claim to sovereignty on the idea that the realisation of people's rights through tribunes and ephors necessarily led to confusion; Parliament was a far better medium, since its elected members had far greater insight than the people.⁷⁴ But with the deposing of the king and his execution in 1649 the ephor model made a comeback in a radical variant, grounding the legitimacy of the regicide by noting that the Spartan ephors had in 241 BC condemned and executed King Agis IV. It corroborated the accusation that the king had breached the trust invested in him by the people.⁷⁵

In view of the rule of the Long Parliament and of Cromwell after the abolition of the monarchy and the House of Lords in 1649 the idea that particular regulating institutions should prevent the abuse of power by Parliament gained force. Cromwell himself argued in 1657 for the need of an 'other house' (whose members he would nominate) as 'a check, or balancing power'.⁷⁶ In the conjuncture of 1659/1660, in which convinced republicans sought a functional equivalent to the traditional mixed constitution,⁷⁷ there was also much talk of ephors and tribunes. These possibilities were mooted since without such a reform there could be no preventing the restoration of the monarchy.⁷⁸ From the mid-1650s English

⁷³ Cicero, *De Legibus* 3, 15ff.

⁷⁴ Henry Parker, *Observations upon Some of His Majesties Late Answers and Expresses* [1642], excerpted in *Political Ideas of the English Civil Wars 1641–1649*, Andrew Sharp, ed., London 1983, 135–144.

⁷⁵ Statement by the principal of the court in Sharp (ed.), *Political Ideas*, 51–53 (general comments on the similar competencies of tribunes, ephors and the English Parliament). See also Milton, 'A Defence of the People of England' [originally published in Latin 1651 and reissued 1658], Ch. VIII, in John Milton, *Political Writings*, ed. Martin Dzelzainis, Cambridge 1991, 200. The source is Plutarch, *Agis* 19–21.

⁷⁶ Speech of 7 March 1657, quoted in Toby Barnard, *The English Republic 1649–1660*, 2nd ed., London 1997, 91.

⁷⁷ Henry Neville in February 1659: 'We that are for a Commonwealth, are for a single person, senate, and popular assembly; I mean not King, Lords, and Commons. I hope that will never be admitted here'; cited in James Cotton, 'The Harringtonian "Party" (1659–1660) and Harrington's Political Thought', *History of Political Thought* 1, 1980, 51–67, here at 55.

⁷⁸ Edmund Ludlow, *Memoirs*, ed. Charles H. Firth, Oxford 1894, Vol. 2, 98f. (recalling the debates of 1659); James Harrington, 'Pour Enclouer le Canon' [1659], in *The Political Works of James Harrington*, ed. John G. A. Pocock, Cambridge 1977, 728–733. John Milton, 'The Ready and Easie Way to Establish a Free Commonwealth' [late February 1660], in *Areopagitica and Other Political Writings of John Milton*, ed. John Alvis, Indianapolis 1999, 414–445, here at 428ff., rejected the idea of ephors; instead he demanded a Senate whose members were appointed for life as a counterweight to a lower house in which a Royalist majority was to be anticipated. After the reinstatement of the 'Rump Parliament' in May 1659 there were calls from the army for such a Senate, but it was to be composed of officers.

theorists of a ‘popular government’ like James Harrington, Henry Neville⁷⁹ or Algernon Sidney⁸⁰ thought in Machiavellian terms about the possibilities for the stabilisation of a (quasi-) republic, which Harrington presented in ideal form as an ‘immortal commonwealth’.

‘Commonwealth’ was the official term for the English republic formed in 1649; the concept was open to a number of interpretations deriving from different ideas of what a republic was.⁸¹ The doctrine of a mixed constitution moved its association away from an order based upon estates and towards a functional limitation of powers, since liberty had to be founded upon institutional arrangements that would prevent the abuse of power.⁸² The people should participate through representatives, but this ‘people’ was composed only of those who were economically independent. This version of republicanism thus did not have any direct association with the Athenian conception of the role of a democratic assembly, with its presumed tendencies towards anarchy. Sidney counted Rome, Athens and Sparta as among ‘popular governments’, but added: ‘As to popular government in the strictest sense (that is pure democracy, where the people in themselves, and by themselves, perform all that belongs to government), I know of no such thing; and if it be in the world, have nothing to say for it.’ In his view, the model republics of antiquity were a mixture of monarchy, aristocracy and democracy.⁸³

Interrogated after his arrest in December 1661, James Harrington said that he had (probably in 1654) talked to men around Cromwell who sought to create a ‘commonwealth’, but who had no real idea of what that might be. ‘Upon this some sober men came to me and told me: if any man in England could show what a commonwealth was, it was myself. Upon this persuasion I wrote’.⁸⁴ The result was the *Commonwealth of Oceana* (1656). Harrington cited extensively from antiquity and the Old Testament regarding the possible procedures and institutions needed to realise an ‘empire of laws and not of men’ (invoking Aristotle and Livy) that might guarantee liberty.⁸⁵ He adopted a

⁷⁹ Henry Neville, ‘Plato Redivivus, or a Dialogue Concerning Government’ [1681], in *Two English Republican Tracts*, ed. Caroline Robbins, Cambridge 1969.

⁸⁰ Algernon Sidney, *Discourses Concerning Government* [1698, posthumous; ed. T. G. West, Indianapolis 1990], Ch. 2, § 21.

⁸¹ This was also related to the fact that even after the execution of Charles I on 30 January 1649, no decision had been made about the form that state should take, and it was only on 17 March that the monarchy was formally abolished. If there had been a politically acceptable candidate from among the Stuarts, the retention of the monarchy would have been a distinct possibility.

⁸² Harrington, ‘A Discourse upon This Saying ...’, 1658, in *Political Works* 737: ‘The spirit of the people is no wise to be trusted with their liberty, but by stated laws or orders; so the trust is not in the spirit of the people, but in the frame of those orders’.

⁸³ Sidney, *Discourses*, Ch. 2, § 19 (at 189); § 16. In Ch. 2, § 18 (at 175f.) Sidney defended Athenian ostracism against Filmer’s critique.

⁸⁴ Harrington, *Political Works*, 859.

⁸⁵ Harrington, *Oceana*, in *Political Works*, 161. Aristotle, *Politics*, 1292a30ff. and passim; Livy 2, 1, 1.

position contrary to that of Hobbes, who considered Aristotle's doctrine of the rule of law to be mistaken.⁸⁶ Harrington's perspective upon the Roman republic was conditioned by his reading of Machiavelli's *Discorsi*, and his interest in the arguments that could be drawn from it for the internal stabilisation of a republic that also should possess the capacity for military expansion. Unlike Machiavelli, however, he did not rely upon the potentially positive effects of institutionally constrained domestic conflict, but thought that the act of foundation was the decisive factor in creating a perfect order.⁸⁷ In regard to this founding conception the greatest similarity in Harrington's design was with Plato's *Laws*, although Harrington did not explicitly refer to Plato's blueprint. In both models, however, at issue was the prevention of politics employed to deal with contingencies and to balance interests; instead, the common good should be the more or less automatic resultant of well-designed institutional arrangements. According to Harrington, good rules make bad men good, while bad rules make good men bad; hence a republic composed of sinful citizens can be perfect. In such an order no one can have an interest in unrest and inconstancy, and even if he had, he lacked the means to realise it.⁸⁸

Apart from that of Rome (with among other things suffrage based upon property, age and residence), the models Harrington thought suitable for his own time were headed by Venice (where office holders were appointed through a complex process involving voting and lotteries), followed by Switzerland and the Netherlands. While he considered the principle of rotation to be important, it was, he thought, badly realised in Athens, since the council did not bring together a 'natural aristocracy' of landowners; and the replacement of the entire council after only one year was insufficient to develop the authority needed to restrain the people.⁸⁹ He considered that constant discussion in the popular assembly had destroyed Athens.⁹⁰

Harrington proposed a bicameral system: a Senate of 300 representing the better off citizens, following both Roman and Venetian models; and a second house, the Prerogative, with 1,050 members. The Senate was to extensively discuss and then propose laws which were up to the Prerogative to simply accept or reject: they had no right of consultation or initiation. Only an elite was able to draft appropriate proposals, while a decision on rules that would bind

⁸⁶ Hobbes, *De cive*, Ch. 12, § 4 (*On the Citizen*, 134).

⁸⁷ Harrington, *Oceana*, in *Political Works*, 276: 'As no man shall show me a commonwealth born straight that ever became crooked, so no man shall show me a commonwealth born crooked that ever became straight.'

⁸⁸ Harrington, *A System of Politics*, in *Political Works*, 838; *Oceana*, *ibid.*, 320 and 178.

⁸⁹ Harrington, *Oceana*, in *Political Works*, 184, 262; *The Prerogative of Popular Government* [1658]; *ibid.*, 477. His characterisation of the autumn 411 Athenian 'Constitution of the 5000' (p. 34, fn. 103) as the first example of a 'popular assembly by way of representative' is based upon a misunderstanding; *Oceana*, in *Political Works*, 279.

⁹⁰ Harrington, *Oceana*, in *Political Works*, 177. He defended, however, ostracism as a measure for the 'security of the commonwealth'; *ibid.*, 343.

everyone had to be made on a broader basis. This separation between debate and decision was intended above all to forestall the emergence of demagoguery on the Athenian model; Alcibiades was mentioned here.⁹¹

In addition, Harrington wished to introduce an agrarian law on the Roman model, but one which pre-emptively secured the limitation of differences in landownership (laying the basis for the unification of the roles of citizen, landowner and soldier). From his study of the course of Tudor social history he concluded that a monarchy supported by a hereditary aristocracy had become obsolete, because of the shift in ownership towards new strata, especially the gentry. He wished to use the emergent constellation of ownership as a foundation for his republic. By making landownership a central criterion Harrington adopted a position opposed to those who had emphasised the advantages of commerce to the prosperity of the new commonwealth.⁹²

Harrington did not want to rely upon an actual reorganisation of the commonwealth 'from below', as envisaged by the 'Agreements of the People' in the army and the Levellers.⁹³ He could only hope that the man actually in power would accept the role of a legislator who, with the establishment of a lasting order, would surrender his power. The Spartan lawgiver Lycurgus was the great example for such a proceeding.⁹⁴ *Oceana* is a fictional account of the creation of such an order. Harrington dedicated it to Cromwell, who commented that he would not exchange power won at the point of his sword, and which would be needed to further secure domestic peace, for a 'little paper shot'.⁹⁵

Besides, both of Cromwell's constitutional experiments – the 'Instrument of Government' imposed by him in 1653, and the 'Humble Petition and Advice' agreed in 1657 between the Lord Protector and Parliament – foundered on the fact that Cromwell was not accepted as a legitimate constitutional legislator.⁹⁶

⁹¹ Ibid., 149.

⁹² As in the official statement of 22 May 1649 (referring to the success of the Dutch), 'A Declaration of the Parliament of England, Expressing the Grounds of Their Late Proceedings, and of Settling the Present Government in the Way of a Free State', in Malcolm, *Struggle for Sovereignty*, Vol. 1, 369–390, here 381. Further evidence of this tendency in contemporary writing can be found in Steve Pincus, 'Neither Machiavellian Moment nor Possessive Individualism: Commercial Society and the Defenders of the English Commonwealth', *American Historical Review* 103, 1998, 705–736.

⁹³ Harrington, *The Art of Lawgiving*, Book III, in *Political Works*, 656ff.

⁹⁴ Harrington, *Oceana*, in *Political Works*, 341f. According to Plutarch, *Lycurgus* 29, the Spartans had sworn to keep to Lycurgus' laws until his return from Delphi where he would consult the Oracle. Having achieved the Oracle's approval of his laws Lycurgus informed the Spartans by letter and then committed suicide. Harrington says that it is sufficient for the lawgiver of *Oceana* to abdicate; he should then take on the role of an Elder Statesman distinguished by public honours; *ibid.*, 342 and 346f.

⁹⁵ John Toland, 'The Life of James Harrington', in Harrington, *Works*, London 1771, XVII.

⁹⁶ The Venetian envoy in London characterised Cromwell's role at the beginning of 1656: 'The fundamental laws of the nation are upset, and Cromwell is the sole legislator. His laws are dictated by his own judgment and his own desires'; cited in Horatio F. Brown, 'Cromwell and the Venetian Republic', in his *Studies in the History of Venice*, New York 1907, Vol. 2, 298–321, here 313.

The existing Parliament did not accept his demand that particular basic principles had to be unalterable and required various changes, Cromwell responding by dissolving Parliament.⁹⁷ The fact that all this resulted in the first written constitution⁹⁸ suggested some, although very limited, influence of the Levellers.

The English revolution was a dramatic break with the past. The unprecedented condemnation and execution of a legitimate monarch shocked all of Europe,⁹⁹ even if there was no direct response from other powers. During this period a number of new political conceptions were formulated, and these would have a varied but definite impact on the subsequent course of European constitutional history.

In England itself the shock to the political order created by the radical social and religious movements led back to the restoration of the traditional system in 1660. This created what remains a unique political order, where real changes have been made on the basis of a fiction of continuity, and which has done without any constitution in the form of a finished, written body of rules.

The writings of Harrington and Sidney, whose ideas were kept alive by a crypto-republican current in eighteenth-century England, would have greater resonance in American constitutional discussion. Harrington's design for a state was admired not only for its institutional imagination, but also for the way with which it dealt with the problems of a comprehensive reorganisation by a great legislator, the first since Moses and Lycurgus,¹⁰⁰ but who then played no further effective part in the newly constituted order. His version of the bicameral system influenced the American constitutions and ended up serving as a blueprint for the French constitution of 1795.¹⁰¹

A contrasting conclusion drawn by the history of political ideas from the English Interregnum was the idea that a republic could not last in a large territorial state, but must necessarily turn into a form of sole rule by the military powers. This was apparent in the case of Cromwell, whose name, like that of Caesar, became the sign of a loathsome system. The Polybian circular model seemed to have been confirmed by contemporary experience.

⁹⁷ In a speech before Parliament on 12 September 1654 Cromwell said: 'In every government there must be Somewhat Fundamental, Something like a Magna Charta, which should be standing, be unalterable'; *The Writings and Speeches of Oliver Cromwell*, ed. Wilbur C. Abbott, Vol. 3, Cambridge, MA, 1947, 458f. On the one hand, there were repeated efforts to get Cromwell to accept the title of king; on the other hand, many of the competencies of the Lord Protector were disputed; to this was added in 1657 the dispute over the powers and composition of the second chamber, its independence being questioned given the number of officers Cromwell had appointed to it.

⁹⁸ At the same time it became apparent that a written constitution did not necessarily have any connection with democracy. This became even more plain with the Danish *lex regia* of 1665, a constitutional decree that fixed absolute legislative power in the hands of the king.

⁹⁹ Even a republican like Spinoza (see below) considered it a very risky procedure, by contrast with the murder of a tyrant: *Tractatus Theologico-Politicus*, 1670, Ch. 18.

¹⁰⁰ Harrington, *Oceana*, in *Political Works*, 210.

¹⁰¹ See p. 138 and 186.

ALTERNATIVES TO ARISTOTELIANISM

The constant recourse to ancient examples and theories does not mean that the premises of the ancient republican tradition were generally accepted. Machiavelli's *Principe* and the Italian writings on the Reason of State that followed on from it placed techniques of power in the foreground, which were to be used to maintain the political system, if necessary without any regard for ethical principles.

After the experience of confessional civil war, at the end of the sixteenth century, Justus Lipsius reached back primarily to the early Principate, which had likewise been established after a lengthy period of civil wars. Selecting quotations from Tacitus and Seneca regarding *utilitas publica* and *salus rei publicae*, he mobilised them as justification for the argument that, if the legal order were threatened, then extra-legal means could be used to secure the existence of the commonweal.¹⁰² Since Machiavelli's *Principe* was spurned as immoral, and had also been placed on the Index by the Catholic Church, the link to antiquity here assumed the form of a 'Neostoicism' in compensation.

Countering the survival of an ancient, as well as Aristotelian, conception of man as a political being, with citizenship as the basis of political organisation, there developed first in Bodin and then above all with Hobbes a completely different understanding of human nature, whose power to disrupt and destroy human community needed to be forcibly controlled. For Hobbes, man in a state of nature was in a condition of war, of all against all. This condition could be overcome only through the conclusion of a contract which is at once a social and a governing contract. By concluding this contract among themselves, individuals transfer all rights related to the securing of peace to the ruler. The sovereign is not a partner to the contract, but rather an accessory after the fact. Subjects owe him, and the positive laws that he introduces, absolute obedience, but only so long as the sovereign is able to maintain his protecting function. In the contemporary English context that could also be taken to mean that once the monarchy had been overthrown, the duty of loyalty would be transferred to Parliament, to the extent that it was able to assume this function. The legitimisation of state order derived from its capacity to guarantee elementary security, not from its capacity to realise justice and the 'good life'. For this reason, Hobbes considered Aristotle's political philosophy to be irreconcilable with a rational conception of the state.¹⁰³

Since the sovereign requisite for the security of the state was indivisible, for Hobbes – as also had been the case with Bodin, who had invoked Tacitus¹⁰⁴ – it was possible that this sovereign power was held collectively, but not in a mixed constitution, and any attempt to realise the latter necessarily ending in

¹⁰² Justus Lipsius, *Politicorum sive civilis doctrinae libri sex*, 1704 – the work dates from 1589.

¹⁰³ Hobbes, *De cive*, Ch. I, § 2 (*On the Citizen*, 22–24).

¹⁰⁴ Bodin, *Les Six Livres de la République*, Book II, Ch. 1. Tacitus, *Annals* 4, 33, 1f.

anarchy.¹⁰⁵ In the context of the doctrine of sovereignty it should also be noted that only the tripartite typology was appropriate, since the distinction between just and degenerate forms is irrelevant. As far as Hobbes was concerned, any reference back to the democratic tradition of antiquity evoked chaos, since this involved the illusion of an organisation of the commonweal free of rule and domination. There had, he argued, been no individual liberty in the ancient republics, only the liberty of states, a liberty which was expressed in mutually destructive warfare – and in contemporary England civil war had been initiated by parliamentarians carried away by ancient conceptions of liberty and democracy.¹⁰⁶

Hobbes had intended his translation in 1629 of Thucydides as a warning against democracy and demagoguery.¹⁰⁷ He considered Thucydides to be the political historian *par excellence*, even if he formulated no doctrine.¹⁰⁸ Hobbes' general view of assembly democracy could have been inspired by Thucydides' description of the role of Pericles:

In all democracies, though the right of sovereignty be in the assembly, which is virtually the whole body; yet the use thereof is always in one, or a few particular men.... A democracy, in effect, is no more than an aristocracy of orators, interrupted sometimes with the temporary monarchy of one orator.¹⁰⁹

During the English revolution Robert Filmer, a protagonist of the divine right of kings, had supported this stance. He considered that in all ancient republics conditions very similar to civil war had prevailed and that it was the virtuous politicians who had been removed from power, in part through ostracism and political trials.¹¹⁰ He also disputed that one could invoke Aristotle as an apologist for democracy.¹¹¹ Filmer's writings first made an impact during the 1680s with the rebuttals of his theses by Algernon Sidney and John Locke. The context for this was the Exclusion Crisis of 1679–1681, in which the House of Commons failed to exclude the king's brother (the future James II) from succession to the throne on the grounds that he had converted to Catholicism.

¹⁰⁵ Grotius by contrast considered sovereignty and a mixed constitution to be compatible, but disputed the relevance of the Polybian model to Rome: Hugo Grotius, *De Jure belli ac pacis* Book I, Ch. 3, §§ 17–20.

¹⁰⁶ Hobbes, *On the Citizen*, Ch. 12; *Leviathan*, Ch. 29; Ch. 46; Ch. 21; *Behemoth*, First Dialogue.

¹⁰⁷ Hobbes, 'On the Life and History of Thucydides', in his translation of Thucydides, *The Peloponnesian War*, ed. David Grene, Chicago 1989, 571ff.

¹⁰⁸ 'Thucydides [...] though he never digress to read a lecture, moral or political, upon his own text [...] is yet accounted the most politic historiographer that ever writ'; *ibid.*, XXII.

¹⁰⁹ Hobbes, *The Elements of Law, Natural and Politic*, Part 2: De Corpore Politico, Ch. 21, § 5.

¹¹⁰ 'The Anarchy of a Limited or Mixed Monarchy', in Sir Robert Filmer, *Patriarcha and Other Writings*, ed. Johann P. Sommerville, Cambridge 1991, 131–171; *Patriarcha*, *ibid.* 27ff. (this text was published posthumously in 1680; it was composed at some time between 1628 and 1648).

¹¹¹ 'Observations upon Aristotle's Politiques, Touching Forms of Government' [1652], in Filmer, *Patriarcha and Other Writings*, 245.

(King Charles II had fathered a great number of illegitimate children but no legitimate heir.)

VARIANTS OF THE SOCIAL CONTRACT

A quite different idea of the social contract can be found during the English revolution in the real democratic movement of the ‘Levellers’ – not a name they gave themselves, but one applied to them polemically by their opponents. In the period from 1647 to 1649 the Levellers had a great deal of influence on parliamentarian soldiers, leading eventually to mutinies which were forcibly quelled by Cromwell, who after the execution of the king had had his power reinforced by the Rump Parliament in the form of collective government.¹¹² John Milton claimed that this regime was ‘democratical’ (*popularis*) since the ‘healthier part’ (*pars sanior*), the army leadership and Parliament, embodied the true people’s will.¹¹³ The Levellers unleashed a public discussion on the foundation of political order that was certainly unprecedented in the English context, and more generally in the entire Occidental tradition, including Athens.

The Levellers demanded a social contract¹¹⁴ to be signed by all citizens, and a written constitution (an ‘agreement of the people’); freedom of belief and of confession; the incompatibility of office and mandate; short legislative periods; and an extension of the franchise (for men) to the ‘poorest he that is in England’.¹¹⁵

In the course of discussion the Levellers did bow to Army demands to exclude servants and apprentices from the franchise, as well as those in receipt of alms. (There was agreement that Royalists should be excluded.) These exclusions roughly corresponded to the criterion of independence that was later used to define the franchise for the election of the German National Assembly in 1848, which also left room for some practical adaptation.¹¹⁶ Given that

¹¹² The Rump Parliament united legislature and executive. The Council of State, whose members were elected for an annual term from among members of Parliament, was subordinate to the Parliament.

¹¹³ ‘A Defence of the People of England’ [1651, first written in Latin as *Pro Populo Anglicano Defensio*], Ch. 6; John Milton, *Political Writings*, ed. Martin Dzelnainis, Cambridge 1991, 181. This resumes the well-known line of argument used in the later Middle Ages (e.g., by Marsilius of Padua); see p. 86.

¹¹⁴ A draft was to be agreed in committee, whose members were to be elected from the army and the counties, as John Lilburne outlined in 1649; in Arthur S. P. Woodhouse, *Puritanism and Liberty. Being the Army Debates (1647–9) from the Clarke Manuscripts with Supplementary Documents*, 2nd ed., London 1974, 343f. Since this assembly was solely concerned with the drafting of a constitution, and had no legislative authority, this was in fact a ‘constitutional convention’.

¹¹⁵ Colonel Rainsborough during the Putney Debates conducted by the Army during October 1647; text in *Divine Right and Democracy. An Anthology of Political Writing in Stuart England*, ed. David Wootton, London 1986, 286.

¹¹⁶ Practical realisation was left to the individual states, so there were varying degrees of limitation on the franchise – see Georg Meyer, *Das parlamentarische Wahlrecht*, ed. Georg Jellinek, Berlin

the Levellers demanded an extension of the franchise that was not realised in Britain before the end of the nineteenth century, the debate that broke out in the 1960s over their inadequate understanding of democracy was rather anachronistic.¹¹⁷ There are parallels here with some of the recent discussion about Athenian democracy.¹¹⁸

Quite probably, for the first time since the days of Athenian democracy, the principle of equal rights of political participation of (almost) all citizens was embodied in a political programme. However, the Levellers based their ideas on an original Christian understanding of equality, covenant theology and the antimonarchical tradition of the Old Testament, the invocation of old English liberties which were now understood as individual rights, and inalienable rights granted by God.¹¹⁹

There was no invocation of ancient democracy – even if the deep distrust of all office holders suggests structural parallels with the Athenian model. Even the ‘practical communism’ (Eduard Bernstein)¹²⁰ of the ‘True Levellers’ or ‘Diggers’, who wanted to return former commons into collective use, was founded upon a Christian tradition. Because of their education, leading Levellers might on occasion allude to the republican tradition of antiquity.¹²¹ Nonetheless, both the political and the social egalitarianism of the Levellers cannot really be attributed to this source. If in 1650 Cromwell’s chief propagandist Marchamont Nedham polemicised against Levellers’ demands by citing ancient sources on the abuse of popular rule,¹²² it says nothing about the origin of their ideas.

Although at the time the Levellers failed in the realisation of their demands, the lasting influence of their ideas on English political history was clear whenever demands were later raised for the extension of political participation and shorter legislative parliamentary periods, or what might anachronistically be

1901, 180ff.; Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789. Vol. 2: Der Kampf um Einheit und Freiheit 1830 bis 1850*, Stuttgart 1960, 607f. As with the Levellers, it is possible to place emphasis upon the major extension of the franchise in comparison with the *status quo ante*, or the remaining restrictions of universal (male) suffrage.

¹¹⁷ Crawford B. Macpherson, *The Political Theory of Possessive Individualism. Hobbes to Locke*, Oxford 1962. Macpherson’s critique of the Levellers provoked a broad and controversial reaction.

¹¹⁸ See p. 359ff.

¹¹⁹ The religious foundation of comprehensive ‘inalienable rights’ was given most clearly by Richard Overton in pamphlets written in 1646 and 1647; see the extracts in Sharp, *Political Ideas of the English Civil Wars*, 177–185.

¹²⁰ Eduard Bernstein, *Sozialismus und Demokratie in der großen englischen Revolution*, 4th ed., Stuttgart 1922, 131ff. [*Cromwell and Communism: Socialism and Democracy in the Great English Revolution*, London 1930].

¹²¹ As with the citation of Livy and Pliny in *England’s Miserie and Remedie* [1645], in Wootton, *Divine Right*, 276–282. See further Samuel Dennis Glover, ‘The Putney Debates: Popular versus élitist republicanism’, *Past and Present* 164, 1999, 47–80.

¹²² Marchamont Nedham, *The Case of the Commonwealth of England, Stated* [1650], ed. Philip A. Knachel, Charlottesville 1969, Ch. 4, 96–110. Nedham equated Levellers with *isonomia*.

called 'democratisation'. In substance and in form, although without their religious foundation, they can be found in the movement for the radical reform of the later eighteenth century,¹²³ and in the demands of the Chartists of the later 1830s, whose six-point People's Charter was repeatedly presented on the basis of a mass petition to Parliament, only to be rejected without discussion. Even in the later twentieth century the Levellers were cited as an important part of the Labour Party's tradition.¹²⁴

There are certainly other consequences that can be derived from the model of a social contract. In the later seventeenth century, Samuel Pufendorf, drawing upon an Aristotelian tradition, renewed the idea of the natural sociability (*sociabilitas*) of man, while also treating the consolidation of the political order as necessary for the securing of law and liberty, given the precarious circumstances of the state of nature.¹²⁵ A social contract between individuals would achieve this; once a decision had been made on the form of government, a contract involving rulership and subordination was concluded, obliging the ruling authority to foster the common good and public security and subjects to obedience.¹²⁶

Pufendorf laid emphasis upon the way that, in a democracy, all major decisions by the magistrates had to be brought before the popular assembly; in this way, he thought, the condition of liberty and equality present in the state of nature could best be preserved. However, Pufendorf's attitude to the various constitutional forms appears to be ambivalent, and this meant that it was possible to draw upon the support of Pufendorf for differing positions. In his own time he apparently favoured monarchy as the most suitable form of government, since it kept open the capacity for decision and action; this could not be guaranteed in a democracy, since citizens might on account of their domestic obligations be unable to agree, or might stage unauthorised assemblies, or might simply be cut out of the loop through a failure to call an assembly. On this last point Pufendorf referred to Thucydides, who reported that, at the beginning of the Peloponnesian War, Pericles simply suspended the popular assembly because of the criticism of his strategy.¹²⁷

Spinoza also argued in his political writings that a political order in which the interests and passions of ruler and ruled were both equally subordinated

¹²³ In late 1792 an association seeking to defend the existing social and political status quo called itself the 'Association for Preserving Liberty and Property against Republicans and Levellers'.

¹²⁴ Tony Benn, *The Levellers and the English Democratic Tradition. Text of a Speech Delivered in Burford on Saturday 15 May, 1976*, Nottingham 2000. Notable here is that Benn as a leader of the Labour Left emphasised the primarily Christian motivation of the Levellers.

¹²⁵ Samuel Pufendorf, *De officio* [1673], Book II, Ch. 1, § 9 (Pufendorf, *Gesammelte Werke*, ed. Wilhelm Schmidt-Biggemann, Vol. 2, ed. Gerald Hartung, Berlin 1997).

¹²⁶ Pufendorf, *De jure naturae et gentium* [1672], Book VII, Ch. 2, § 7–8 (Pufendorf, *Gesammelte Werke*, ed. Wilhelm Schmidt-Biggemann, Vol. 4, 2, ed. Frank Böhling, Berlin 1998).

¹²⁷ Thucydides 2, 22; on this issue see p. 32. Pufendorf, *De jure naturae et gentium*, Book VII, Ch. 5, § 3f. and 7; see also *De officio*, Book II, Ch. 8, § 3f.

to the common good (through institutional provision, not through trust in their virtuousness) was quite realisable within the three constitutional forms, although in a monarchy only if its powers were strictly limited. Spinoza here associated himself with the way in which Dutch republicanism opposed the quasi-monarchical role of the House of Orange, leading in 1651–1672 to the abolition of its function as *stadholder* (supreme civil servant and military commander), something thought to be rather like a Roman dictatorship that could eventually lead to the establishment of a new Caesar.¹²⁸

Spinoza generally favoured a democracy because it corresponded most closely to the principle of the natural liberty of men.¹²⁹ On the one hand, this reflected the views of contemporary Dutch republicans,¹³⁰ who aimed at a freedom of the individual from the tutelage of church and state that would also foster the development of trade and commerce. A political order should be so arranged that the pursuit of individual interests served the common good. They elaborated an important theory of republicanism, but not really of democracy, since the dominance of urban patriciate families ('regents') remained unquestioned.

On the other hand, Spinoza's understanding of democracy is rooted in the idea of a specific form of theocracy based upon the concept taken from the Jewish historian Josephus (first-century AD), of a 'Hebrew State' that had prevailed before the establishment of kingship in Israel. The state of nature after the exodus from Egypt was resolved in a pact with God: the transfer of sole rule to God excluded relationships of superiority and subordination within the society itself.¹³¹ We do not know what democracy meant for Spinoza, neither in the Netherlands of his day nor in comparison with the ancient model, since he did not complete the relevant part of the *Tractatus Theologico-Politicus* before his death in 1677. However, his emphasis upon the federal principle as a means of securing liberty suggests a significant divergence from antiquity.¹³²

In the early seventeenth century the self-identification of the Dutch with the free Batavians, who in 69/70 AD rose against Rome and were thereby acknowledged by Tacitus,¹³³ was used by Grotius¹³⁴ and others to justify secession from Spain and to legitimate an aristocratic republic. From 1795 to 1806,

¹²⁸ See Charles-Edouard Levillain, 'William III's Military and Political Career in Neo-Roman Context, 1672–1702', *Historical Journal* 48, 2005, 321–350.

¹²⁹ Spinoza, *Tractatus Theologico-Politicus* [1670], Ch. 16.

¹³⁰ The most important theorists of Dutch republicanism were the brothers Pieter and Johan de la Court. Spinoza, *Tractatus politicus* [posthumous 1677], Ch. 8, § 31, refers to the 'informed Dutchman V. H.': V. H. = van Hove = de la Court.

¹³¹ Spinoza, *Tractatus Theologico-Politicus*, Ch. 17.

¹³² Spinoza, *Tractatus politicus*, Ch. 9, § 14f.

¹³³ Tacitus, *Histories* 4, 12–37; 54–79; 5, 14–26.

¹³⁴ Hugo Grotius, *De antiquitate Reipublicae Batavae* 1610; translated as *The Antiquity of the Batavian Republic*, ed. Jan Waszink et al., Assen 2000.

the name 'Batavian Republic' was given to the state established by the French invasion.

Although John Locke made no concrete connection with antiquity, he argued that the social contract could lead to the formation of a 'perfect democracy' in which citizens collectively exercised legislative power. At the same time he noted that, for practical reasons, this was very hard to realise, leading in addition to great instability, so that the transfer of this competence to representative bodies was to be strongly recommended.¹³⁵

Until late in the seventeenth century the various traditions of antiquity were used, on the one hand, as legitimating resources for political ideas, and, on the other, to develop quite different models of social order that rejected those of antiquity. In the course of the eighteenth century a new discourse on the ancient world began alongside the continuing older debates, in which the relationship between political order and the capacity for economic development was made more evident than ever before.

¹³⁵ 'The Second Treatise of Government', § 132 and 94, in John Locke, *Two Treatises of Government*, ed. Peter Laslett, Cambridge 1988, 354 and 329f. [these texts were written in 1679–1681].

Ancient Democracy and Social Backwardness

Hobbes presumed that it was the fundamental anthropological and legal assumptions that created the distance separating antiquity from the present; but from the mid-eighteenth century greater emphasis was placed upon differences of scale and social and economic structures. In France, since the time of Louis XIV there had been debate in the arts and sciences about the exemplary importance of antiquity, and whether this unique status was now outmoded. Fontenelle believed that the writings of Sophocles, Euripides and Aristophanes would in time be displaced by those of Racine, Corneille and Molière.¹ This dispute, the ‘Querelle des Anciens et des Modernes’, was taken up throughout Europe, lasting well into the eighteenth century. However, there were always voices raised in moderation. Diderot, for example, emphasised that his obligation to ancient tradition implied no lesser regard for the achievements of modernity.²

However much the ancient arts were admired, this did not mean that such admiration went so far as to include the ancient political order: in 1773 Voltaire wrote to Frederick the Great that ‘when I implored you to revive the fine arts of ancient Greece, by no means did I intend to beseech you to reintroduce Attic democracy; I have no love for mob rule’.³ Nor did Frederick have any such intention. He defined his role as the ‘first servant of the state’, a characterisation of kingship that went back to the Stoic ‘honourable servitude’ embraced by the Macedon king Antigonus Gonatas in the third-century BC.⁴

¹ Fontenelle, *Entretiens sur la pluralité des mondes. Digression sur les Anciens et les Modernes* [1688], ed. Robert Shackleton, Oxford 1955.

² Cited in August Buck, ‘Diderot und die Antike’, in *Aufklärung und Humanismus*, ed. Richard Toellner, Heidelberg 1980, 140.

³ *Aus dem Briefwechsel Voltaire – Friedrich der Große*, ed. Hans Pleschinski, Zürich 1992, 493. A French edition dates the letter to 1772.

⁴ Frederick’s phrase comes from his critique of Machiavelli which he wrote with Voltaire while being Crown Prince in 1739/1740: Friedrich der Große, *Der Antimachiavell oder Untersuchung*

REPUBLIC AND TERRITORIAL STATE

During the eighteenth century the idea that the self-government of ancient cities rested, like that of the Swiss and Dutch republics, on their small size was a point that was reflected back and forth in Scottish and French philosophical writings. In these small-scale republics it was possible for all citizens to assemble and make political decisions. Voltaire wrote that ‘in a small republic it is easier for a people to be heard than in a large one, because it is easier to reason with one thousand persons than with forty thousand’.⁵ John Millar stated that ‘most of the ancient republics, with which we are acquainted, appeared to have owed their liberty to the narrowness of their territories’.⁶ The author of the entry on ‘Democracy’ in the *Encyclopédie* knew of no existing instance, apart from San Marino, where ‘five hundred peasants rule a barren crag whose possession no-one covets’.⁷

David Hume more or less reversed this line of argument. Whereas in a small state the constitution must necessarily be unstable because of the danger of the tyranny of the majority, he argued, in a territorial state citizens could make themselves heard only through representatives with delegated powers. In large states, such as France or Great Britain, representation made a new and improved form of democracy possible, avoiding the instability of small-state democracy since sheer size hindered the establishment of a majority fraction.⁸

There was also discussion of the idea that such republics could survive the vagaries of international power politics only if they formed federations.⁹ They offered a possible way out of a dilemma that Montesquieu identified in respect of Rome in 1734: that the expansion thought necessary for self-determination

von Machiavellis ‘Fürst’, bearbeitet von Voltaire, ed. Helga Bergmann, Leipzig 1991, 8f. The French original has ‘domestique’ and not ‘Diener’, Voltaire later modifying this to ‘magistrat’ (at 142). The statement by the Macedon king is recorded in Aelian, *Varia Historia* 2, 20. In his commentary on Montesquieu, Frederick had compared the Macedon kings, who constantly extended their hegemony with those of Prussia (and Sardinia); but the popular nineteenth-century idea of a mission involving national unity was, however, far from his thoughts: ‘Marginalie Nr. 7’, in *Montesquieu, Größe und Niedergang Roms. Mit den Randbemerkungen Friedrichs des Großen*, trans. Lothar Schuckert, Frankfurt am Main 1980, 31 and 164.

⁵ Voltaire, *Republikanische Ideen* [1765], ed. Günther Mensching, Frankfurt am Main 1986, no. 26 (at 14). [*Euvres*, Vol. XL, *Mélanges*, Vol. 4, Paris 1830, 575].

⁶ John Millar, *The Origin of the Distinction of Ranks. Or, an Inquiry into the Circumstances Which Give Rise to Influence and Authority, in the Different Members of Society* [1779], 4th edition [1806], ed. Aaron Garrett, Indianapolis 2006, Vol. 1, 241 (Ch. 5, § 3).

⁷ C. L. de Jaucourt, ‘Démocratie’, in *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers*, Vol. 4 (1754), 816–818, here at 816. According to the statute enacted in 1600 and which in principle still prevails today in San Marino, there is besides an assembly of all citizens an elected council responsible for legislation and which also elects an executive body headed by two equal *capitani reggenti*, who rule for only six months.

⁸ ‘Idea of a perfect Commonwealth’ [1752], in David Hume, *Political Essays*, ed. Knud Haakonssen, Cambridge 1994, 232.

⁹ Montesquieu, *De l’esprit des lois*, Book IX, Ch. 1 – where he mistakenly supposes that the United Netherlands was made up of fifty republics.

inevitably undermined the foundations of a republican order, leading then to the establishment of a monarchy.¹⁰ Ancient equivalents of federal orders thus attracted special attention – the Delphic Amphictiony (the league of Greek states that administered the sanctuary), the Achaean and Aetolian confederacies in the Hellenistic period or the Lycian confederacy in Asia Minor – although these were in practice ignored in classical political theory and have likewise left little trace in subsequent commentary.¹¹ Hence knowledge of the Lycian case, praised by Montesquieu as a ‘model of a worthwhile federation of states’, comes in fact from one passage in Strabo, the geographer of the Augustan age.¹²

A MILITARY OR A COMMERCIAL STATE

Discussion about the need to replace a full assembly by democratic representation concerned not only the question of scale, but also the fact that in an increasingly commercial society the constant participation of all citizens was not possible. Arguments were made for a suitable division of labour; the peaceable acquisition of resources would follow, while the self-interested pursuit of gain on the part of citizens, including their desire for luxury, would be turned to the good of society as a whole. In this way a level of economic development would be achieved that had been entirely unattainable in antiquity, where societies were constantly on a war footing. Already Hobbes had noted the risks involved in Athens and Rome, where the material security of their citizens depended upon the use of military force.¹³

There were sceptical voices. Adam Ferguson foresaw the danger that the advance of commercialisation would undermine civic virtue. The main objection to a ‘democratical or popular government’ on the Athenian model was that citizens had made all their joint decisions on the basis of personal profit; they were therefore ‘ready to resign themselves entirely to the influence of some popular leader, who flattered their passions and wrought on their fears’.¹⁴ The Roman republic had itself been broken by the increasing concern of its citizens for the private interests. For his own society Ferguson therefore wished to

¹⁰ Montesquieu, *Considérations sur les causes de la grandeur des Romains et de leur décadence* [1734].

¹¹ The organisation of the Boeotian Confederacy from the mid-fifth century BC first came to light in a papyrus fragment of a historical text discovered in the early twentieth century (*Hellenica Oxyrhynchia*), and so played no part in this discussion.

¹² Montesquieu, *De l'esprit des lois*, Book IX, Ch. 3. Strabo 14, 3, 3 = 664C. The American founding fathers took their knowledge of the ancient leagues mostly from Mably (see p. 121), who in many instances was mistaken; see Edward A. Freeman, *History of Federal Government in Greece and Italy*, ed. J. B. Bury [1893], reprint London 1972, 249ff.

¹³ Hobbes, *On the Citizen*, Ch. 13, § 14.

¹⁴ Adam Ferguson, *An Essay on the History of Civil Society* [1767], ed. Fania Oz-Salzberger, Cambridge 1996, 178 [pt. IV, § 2].

retain the militia system – by contrast with Adam Smith, for whom the rise of Macedonia was proof of the superiority of a professional army, indispensable for a society based on the division of labour.¹⁵ Ferguson thought that liberty in Rome was ended once power shifted from the Senate to the popular assembly. Historical experience showed that a democracy that was too large ended up as a ‘military government’.¹⁶ Ferguson warned of a simple reversal of value by comparison with antiquity: ‘to the ancient Greek, or Roman, the individual was nothing, and the public every thing. To the modern, in too many nations of Europe, the individual is every thing, and the public nothing.’¹⁷

If one wanted to compare relative progressiveness or backwardness within antiquity, then the openmindedness and economic activity of Athens as a ‘commercial state’ contrasted with the more negatively viewed ‘military state’ of Sparta.¹⁸ French authors freely talked of a ‘military monastery’ in connection with Spartan warrior society.¹⁹ But as Montesquieu emphasised, even Athens had never fully exploited its economic possibilities, since it was ‘more concerned with extending maritime power than profiting from it’, and ‘left its government to the lower orders, while the rich were oppressed’.²⁰ If in democracies the people could do as it liked, then it was not really free, since liberty presupposed the observance of law.²¹

If Athens was favoured over Sparta, Scottish authors in particular, like Adam Smith, David Hume and John Millar, shared a critique of the part played by the institution of slavery in the Athenian social order. Here they referred not only to slavery in antiquity, but also to that practised in modern European colonies. So far as John Millar was concerned, given the costs of acquiring and maintaining a slave, ‘the work of a slave, who receives nothing but a bare subsistence, is really dearer than that of a free man, to whom constant wages are given in proportion to his industry’.²² Adam Smith believed that ‘it appears ... from the experience of all ages and nations ... that the work done by freemen comes cheaper in the end than that performed by slaves’.²³ Relatively high wages for free labourers furthered productivity and population growth. Slavery was not

¹⁵ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* [1776], 3rd ed., 1783, Roy H. Campbell and Andrew S. Skinner, eds., Oxford 1976, Vol. 2, 701f. [Book V, Ch. 1a].

¹⁶ Adam Ferguson, *Remarks on a Pamphlet Lately Published by Dr. Price*, London 1776, 14 and 23. Ferguson, *The History of the Progress and Termination of the Roman Republic*, 3 Vols., Edinburgh 1783, is a work of narrative historiography.

¹⁷ Ferguson, *An Essay on the History of Civil Society*, 57 [pt. I, § 8].

¹⁸ Montesquieu, *De l'esprit des lois*, Book V, Ch. 6.

¹⁹ Diderot, cited in Elizabeth Rawson, *The Spartan Tradition in European Thought*, Oxford 1969, 254; d'Holbach, cited in Luciano Guerci, *Libertà degli Antichi e libertà dei Moderni. Sparta, Atene e i 'philosophes' nella Francia del Settecento*, Naples 1979, 195.

²⁰ Montesquieu, *De l'esprit des lois*, Book XXI, Ch. 7.

²¹ *Ibid.*, Book XI, Chs. 2–3.

²² Millar, *Origin of the Distinction of Ranks*, 252 [Ch. VI, § 2].

²³ Smith, *Wealth of Nations*, Vol. 1, 99 [Book I, Ch. 8].

rejected primarily for ethical reasons, but because it corresponded to the martial character of ancient society, and had been a drag on demographic growth and economic progress. For Hume, it followed that in this respect ancient society was inferior to modern society.

The argument that free wage labour was basically more productive than slave labour has today been empirically disproved. Nonetheless, during eighteenth- and nineteenth-century debates this argument – in Herder's words, if slavery were condemned 'not on the grounds of love of humanity, but from calculation'²⁴ – remained an effective one for abolition. The number of slaves in Athens at the end of the fourth-century BC reported by Athenaeus (third-century AD) – 400,000 slaves as against 21,000 adult male citizens – was at the time generally accepted.²⁵ Hume corrected the number to 40,000 – suggesting that it had to have been a copying error. Such a surplus of slaves was incompatible with the existing economic structures; also, it would have been impossible to keep so many slaves under control.²⁶

However, in the eighteenth and nineteenth centuries both popular and scholarly opinion was sceptical of the merit of this downward revision, as shown by the immediate response of Robert Wallace,²⁷ and then later by August Böckh,²⁸ among others. The latter's rounded number (365,000 slaves) was taken up by Friedrich Engels, who wrote that the 'downfall of Athens was not caused by democracy, ... but by slavery, which banned the labour of free citizens'.²⁹ It is only since the later nineteenth century that the accuracy of Hume's judgement has been generally acknowledged, although those who either could not, or would not, doubt the word of Friedrich Engels as one of the founders of scientific socialism took a very long time to do so.

Hume was very critical of the Athenian form of government:

The Athenian Democracy was such a tumultuous government as we can scarcely form a notion of in the present age of the world. The whole collective body of the people

²⁴ Johann Gottfried Herder, *Zur Philosophie der Geschichte der Menschheit* (Herder, *Werke*, ed. Wolfgang Pross, Vol. 3, Munich 2002), part III [1787], Book XV, Ch. 2 (at 591).

²⁵ See Jean Bodin, *Les six livres sur la république* [1583], Book I, Ch. 5. On the numbers in antiquity, see p. 28f.

²⁶ Athenaeus 272c; Hume, 'Of the Populousness of Ancient Nations' [1752], in Hume, *The Philosophical Works*, Thomas H. Green and Thomas H. Grose, eds., London 1882, 381–443, here 418ff. Hume's assumption, there was one nought too many, did not, however, correspond to the Greek system of measurement, which was indeed very susceptible to transcription errors. This, however, alters nothing about the substantial rectitude of Hume's argument as against the numbers that had been traditionally accepted.

²⁷ Robert Wallace, *A Dissertation on the Numbers of Mankind in Antient and Modern Times*, Edinburgh 1753.

²⁸ August Böckh, *Die Staatshaushaltung der Athener* [1817], 3rd ed., Berlin 1886, Vol. 1, 47ff.

²⁹ Friedrich Engels, *The Origin of the Family, Private Property and the State* [1884], MECW, Vol. 26, 222 [MEW, Bd. 21, 116 = MEGA², Abt. I, Bd. 29, 223]. This adoption from Böckh can be found earlier in one of Marx's notebooks, MEGA², Abt. IV, Bd. 7: *Exzerpte und Notizen* (September 1849 bis Februar 1851), 244–246.

voted in every law, without any limitation of property, without any distinction of rank, without controul from any magistracy or senate; and consequently without regard to order, justice, or prudence.

The ‘senate of the bean’, the Council of 500 chosen randomly using beans, was only ‘a less numerous mob’ without any special authority.³⁰ Court proceedings served merely to fill the coffers of the state by confiscating property.³¹ Ostracism ‘expelled every citizen whose fame or power overtopped the rest’.³² Although critical of some of its rules and the way in which they were applied, Hume did see in the *graphe paranomon* a very remarkable institution, through which the Athenian *demos* took account of its own capricious behaviour.³³

Hume’s criticisms of Athens were, however, overshadowed by the distance he set from the Spartan model. Its military strength, based on the exploitation of helots, ruled out any of the civilising refinement that could be acquired only through trade and industry; a society organised as ‘a fortified camp’ ignores the self-interest of its members.³⁴ Bernard de Mandeville, coming from the Dutch republican tradition, had already noted in 1714 that in his own days no one, and especially the English, would want to pay such a price for military strength as the Spartans had done.³⁵

Around 1750 Turgot drafted a universal historical outline that remained a fragment, but which clearly emphasised the progress in the arts and sciences that had made Athens a ‘model for all nations’. These cultural achievements were made, however, in a political system ‘governed by the decrees of a popular mass, whose orators stirred or calmed the stormy waves as they saw fit; ... where Pericles had taught its leaders how to buy up the state with its own resources, and dissipate its coffers; ... where the art of governing a people consisted in the art of amusing them.’³⁶ Nonetheless, Athens was better off than Sparta, where the natural disposition to family and property was suppressed, and the enslavement of the helots still failed to make happy the small number of Spartans ‘who live out an extremely barren life and constantly wage war, without ever conquering anything’.³⁷ A similar favouring of Athens over Sparta can be found in Cornelis de Pauw, *Recherches philosophiques sur les Grecs*

³⁰ ‘Of Some Remarkable Customs’ [1752] in Hume, *Political Essays*, 181.

³¹ Hume, ‘Populousness of Ancient Nations’, 406.

³² Hume, ‘Of the Balance of Power’, in *Political Essays*, 155.

³³ Hume, ‘Of Some Remarkable Customs’, in *Political Essays*, 181, with a reference to Aeschines 3, 191.

³⁴ Hume, ‘Of Commerce’ [1752], in *Political Essays*, 95 and 100.

³⁵ Bernard de Mandeville, *The Fable of the Bees, or: Private Vices, Public Benefits* [1714], 5th ed., London 1728, 276f. (Remark X).

³⁶ Turgot, ‘Tableau philosophique des progrès successifs de l’esprit humain, Discours prononcé ... le 11 décembre 1750’, in *Œuvres de Turgot et Documents le concernant*, ed. Gustave Schelle, Paris 1913, Vol. 1, 225. The text depends on lectures in Latin delivered to theological students at the Sorbonne.

³⁷ Turgot, ‘Discours sur les avantages que l’établissement du christianisme a procurés au genre humain’, in *Œuvres*, Vol. 1, 207.

(1787/1788), one of the very few to recognise that Plutarch's biography of the Spartan founding father Lycurgus drew mainly upon fiction.³⁸

The central role of Athens had also been emphasised by Jean Jacques Barthélemy in *Voyage du jeune Anacharsis en Grèce vers le milieu du IVe siècle avant l'ère vulgaire* (1788). The book was a bestseller in France, and throughout Europe; there were translations into English and German. According to ancient legend, Anacharsis was a Scythian prince who had travelled to Greece for his own edification. Barthélemy's book was a mixture of travel journal and *Bildungsroman*, drawing on broad antiquarian knowledge to describe the culture of classical Greece. Here Athens appeared to be a model enlightened society. In the mid-nineteenth century Barthélemy was criticised by a German classicist, who complained that 'his figures are too often ancient statues in French garb, complete with lace cuffs'.³⁹

Proponents of a frugal lifestyle retained an admiration for the exemplary nature of Spartan society, with the public educational system and equality of possession among citizens (or the absence of private property). In pre-revolutionary France, Morelly⁴⁰ and Mably⁴¹ represented a 'Communism, ascetic, Spartan' (Engels).⁴² However, Mably did not think that the legislation of a Lycurgus could be replicated, since it was appropriate only for small communities. Instead, his constitutional ideas drew upon the quasi-republican wing of British seventeenth- and eighteenth-century theorists.

For Rousseau, the Spartans in their 'happy ignorance' were more 'demi-Gods' than men, 'so much superior to humanity did their virtues appear'; the Athenians, by contrast, with their love of the fine arts, philosophy and rhetoric had produced 'those astounding works that will stand as models in every corrupt age'.⁴³ The liberty of the Spartans, however, rested upon the total enslavement of the helots.⁴⁴

³⁸ According to Pierre Vidal-Naquet, *La démocratie grecque vue d'ailleurs. Essais d'historiographie ancienne et moderne*, Paris 1996, 172; Rawson, *Spartan Tradition*, 260.

³⁹ Wilhelm Adolph Becker, *Charikles. Bilder altgriechischer Sitte zur genaueren Kenntniss des griechischen Privatlebens* [1840], 2nd ed., Leipzig 1854, ed. Karl Friedrich Hermann, VII. In this book Becker had imitated Barthélemy's literary form.

⁴⁰ Etienne-Gabriel Morelly, *Code de la nature ou véritable esprit des ses lois de tout temps négligé ou méconnu*, 1755. The author of this text was first identified around the mid-nineteenth century; hitherto the work had frequently been attributed to Diderot.

⁴¹ *Observations sur les Grecs*, 1749, lightly revised as *Observations sur l'histoire de la Grèce* [1764], in Gabriel Bonnot de Mably, *Collection complète des oeuvres*, ed. Guillaume Arnoux, Vol. 4 [1794].

⁴² Friedrich Engels, *Anti-Dühring* [1878]; MECW, Vol. 25, 19 [MEW, Bd. 20, 18 = MEGA², Abt. I, Bd. 27, 229f.]; *Socialism Utopian and Scientific* [1880]; MECW, Vol. 24, 287 [MEW, Bd. 19, 191 = MEGA², Abt. I, Bd. 27, 591].

⁴³ J.-J. Rousseau, 'First Discourse' in *The Discourses and Other Early Political Writings*, ed. V. Gourevitch, Cambridge 1997, 11 and 12.

⁴⁴ J.-J. Rousseau, 'The Social Contract', in *The Social Contract and Other Later Political Writings*, ed. V. Gourevitch, Cambridge 1997, 115 [Book III, Ch. 15].

The obverse of Athens' cultural blossoming was the dissolute nature of its political order, which necessarily followed from the fact that the people not only determined its own laws, but also conducted their own government.⁴⁵ (Rousseau did not advocate the identity of ruler and ruled, as is often supposed.) In this way Athens became ruled by demagogues: 'Athens was not in fact a democracy, but a most tyrannical aristocracy governed by learned men and orators.'⁴⁶ Sparta had no philosophers, but preserved the virtues of the citizen; Athens was the reverse – even Pericles had failed to make its citizens virtuous⁴⁷ (taking a point from Plato).⁴⁸ Rousseau went on to contrast the strict moral code in Rome in the time of the censor Fabricius Luscinus (275 BC), who took steps against the demonstrative luxury of the aristocracy,⁴⁹ with the conditions prevailing later, once Rome had adopted Greek morals, associated with the spread of luxury and effeminacy.⁵⁰ For Rousseau, republican Rome was exemplary because the rights of citizens were intact; death sentences could be handed down only by the popular assembly and were in any case not carried out, since sentence would be commuted to exile.⁵¹

Rousseau had already read Plutarch's biographies at the age of six, and he later saw this as the foundation for his republican convictions.⁵² He read them in Amyot's French translation of 1559, the accessible style of which accounted for the popularity of Plutarch in France.⁵³ Rousseau contrasted the ideal of the ancient *citoyen* to a present in which all that remained was a multitude of vocational roles. He had no illusions about the gulf separating antiquity from modernity. 'The ancient peoples can no longer provide a model for the new, they have become too alien in every respect'; for, as he said in his address to the burghers of Geneva:

You are neither Romans nor Spartans, not even Athenians. Forget all these great names that do not suit you; you are merchants, craftsmen, bourgeois, always involved in your own private interests, with your work, your trade, your profit; really just people for whom liberty is only a means to acquire without hindrance and keep your property secure.⁵⁴

⁴⁵ J.-J. Rousseau, 'Discourse on the Origin and Foundations of Inequality among Men', in *The Discourses and Other Early Political Writings*, 116.

⁴⁶ J.-J. Rousseau, 'Discourse on Political Economy', in *The Social Contract and Other Later Political Writings*, 8.

⁴⁷ Rousseau, 'First Discourse', 75, fn.

⁴⁸ Plato, *Gorgias*, 515d–e.

⁴⁹ See above all Valerius Maximus 2, 9, 4: the censor Fabricius removed a distinguished ex-consul from the Senate because he had set a bad example by collecting silver plates weighing ten pounds.

⁵⁰ Rousseau, 'First Discourse', 10 and 13.

⁵¹ Rousseau, 'Discourse on Political Economy', 18.

⁵² J.-J. Rousseau, *Confessions*, Paris 1968, 47; *Quatre lettres à Malesherbes*, Paris 2010, 21.

⁵³ Alain Billaut, 'Plutarch's Lives', in *The Classical Heritage in France*, ed. Gerald Sandy, Leiden 2002, 219–235.

⁵⁴ Rousseau, *Lettres de la montagne* (9ème lettre), Lausanne 2007, 256f.

Rousseau advocated an ideal order in which all citizens – and not some kind of representatives – were responsible for legislation. He considered English parliamentary sovereignty, which pretended to give citizens liberty, but did so only in the moment of voting, to be a terrible example.⁵⁵ In his view, Rome, with its extensive territory and great number of citizens, showed that a small-scale system was not necessary if the entire citizenry were to be included. – Rousseau did greatly overestimate the levels of actual participation; nonetheless, he was not worried by the extreme graduation of voting rights according to the possession of property.⁵⁶ He regarded secret ballots in the later republic as symptoms of the decline of civic virtues; but in a system already corrupted they were appropriate.⁵⁷

A popular assembly of this kind could not be allowed to function as an executive, since the kind of majority decision making required there could not be reconciled with the principle of *volonté générale*. This criticism was especially directed at Athens:

For example, when the people of Athens appointed or cashiered one of its chiefs, bestowed honors on one, imposed penalties on another, and by a multitude of particular decrees indiscriminately performed all the acts of government the people no longer had a general will (*volonté générale*) properly so called; it no longer acted as a Sovereign but as a magistrate.⁵⁸

Democracy cannot function in the form of a governing assembly, since the people cannot constantly meet, and there is the ever-present danger of unrest and civil war.

In the strict sense of the term, a genuine Democracy never has existed, and never will exist. It is against the natural order that the greater number govern and the smaller number be governed. ... If there were a people of Gods, they would govern themselves democratically. So perfect a government is not suited to men.⁵⁹

He did, however, ascribe a quasi-divine role to a legislator modelled on Lycurgus, who must make virtuous citizens of men; without this legislator the constitution cannot be inaugurated, while in the constituted order he no longer had a role to play.⁶⁰

In sum, Rousseau's use of antiquity served more as a critique of the present than any claim that one could return to ancient models. This is also evident in his constitutional plans for Corsica (1764) and Poland (1771). In the case of

⁵⁵ Rousseau, *The Social Contract*, 114 [Book III, Ch. 15].

⁵⁶ *Ibid.*, 110; 130–131 [Book III, Ch. 12; Book IV, Chs. 3–4].

⁵⁷ *Ibid.*, 135 [Book IV, Ch. 4]; cf. Montesquieu, *De l'esprit des lois*, Book II, Ch. 2.

⁵⁸ Rousseau, *The Social Contract*, 62 [Book II, Ch. 4].

⁵⁹ *Ibid.*, 91, 92 [Book III, Ch. 4]. This is apparently an allusion to Plato, *Laws* 739d: the absolutely best state is achievable only for gods.

⁶⁰ Rousseau, *The Social Contract*, 69 [Book II, Ch. 7]. See also Rousseau's remarks on ancient lawgivers (Moses, Lycurgus, Numa), 'Considerations on the Government of Poland'; *The Social Contract*, 180f.

Corsica he recommended a mixture of assembly and representative democracy, since a 'purely democratic government ... is more fitting to a small state than to an entire nation'.⁶¹

This distancing from antiquity, whose political orders left insufficient space to the individual, was not something confined to the great social theorists, but is variously reflected in the writings of many later eighteenth-century writers. Some examples from German texts will illustrate this. Johann Gottfried Herder, in 1765 a twenty-one-year-old teacher in Riga, asked whether one still had the public and the fatherland of the ancients, but claimed no originality for the way that he contrasted differing forms of liberty. For the ancients, 'liberty was an unrestrained impudence, the audacity of wanting to take the wheel of the state, the headstrong insistence that there be no preferment'. By contrast, today 'a finer and more moderate liberty prevailed: freedom of conscience, the right to be an honest Christian man, the liberty to quietly enjoy one's cottage and vine in the shadow of the throne, and own the sweat of one's brow; the liberty to be the creator of one's own happiness and comfort, the friend of those who are close, the father and guide to one's children.'⁶² Ten years later, and then regularly afterwards, Herder remarked in passing, but positively, that the 'common republican spirit of the Greeks' was an expression of 'Greek liberty',⁶³ this being related to his increasing criticism of monarchy and aristocracy. When in 1795, after the end of the French Revolution, he once more asked 'Haben wir noch das Vaterland der Alten?', it was quite plain for him: 'Wishing to be back in the times of Greece and Rome would be foolish; ... even if we could be so transported, we could scarce gain in the exchange anything that we really desired.'⁶⁴

Criticism of the inhumanity of Sparta was common; among others, Thomas Abbt, a well-known publicist of the German Enlightenment, wrote in 1765 that 'his (Lycurgus') constitution was intended for 7,000 or 8,000 men, and sinned against the remainder of the human race'.⁶⁵ The contrast of Sparta to Athens was repeated by Friedrich Schiller in his 1789 Jena lecture on the legislation of Lycurgus and Solon. (The famous author had been appointed as supernumerary professor in Jena in the same year. Needless to say that he based his account on Plutarch's biographies of the two lawgivers.) Schiller's view was much like that of many contemporary German writers, for whom the Spartans seemed 'the

⁶¹ In *Sur l'économie politique; Considérations sur le gouvernement de la Pologne; Projet pour la Corse*, Paris 1990, 111.

⁶² Johann Gottfried Herder, 'Haben wir noch jetzt das Publikum und das Vaterland der Alten?', *Sämmtliche Werke*, ed. Bernhard Suphan, Vol. 1, Berlin 1877, 23f.

⁶³ 'Ursachen des gesunkenen Geschmacks bei den verschiednen Völkern, da er geblühet' [1775], in Herder, *Sämmtliche Werke*, Vol. 5, Berlin 1891, 599–655, here at 620f.

⁶⁴ 'Briefe zur Beförderung der Humanität', in Herder, *Werke in zwei Bänden*, ed. Karl-Gustav Gerold, Munich 1953, Vol. 2, 483.

⁶⁵ Thomas Abbt, 'review of Jacob Wegelin, *Politische und moralische Betrachtungen über die Gesetzgebung des Lykurgus*, Lindau 1763', *Briefe, die Neueste Litteratur betreffend* 22. Theil, 1765, 93–146, here at 115.

bears of Greece'.⁶⁶ Seen in its own terms, said Schiller, the Lycurgan order, in which citizens were entirely at the disposal of the state, appeared to be a 'master-piece in governing state and men'. However, if one

compared the aim that Lycurgus set himself with the aim of humanity, admiration gave way to deep disapproval. ... Everything can be sacrificed to the good of the state, save that for which the state itself is merely a means. The state is never the aim in itself, it is important only as a condition for the fulfilment of the aim of humanity, and this aim of humanity is no other than the development of all human powers, ... the advancement of the human spirit.

According to Schiller, the Athenian order that Solon inaugurated is built on exactly the opposite principle, for here the state serves man:

The Athenian lawgiver opened up all possible paths to the genius and hard work of his citizens. Consequently, in Athens all virtues could mature, industry and the arts blossomed, every sinew was strained, and so all fields of knowledge were there cultivated.

Correspondingly, however, in Athens there was 'a most disgraceful lack of gratitude to its great men', and 'cruelty to its vanquished enemies'.

Corrupted by the flattery of its orators, ... [the Athenian people] often treated their allies and neighbours with unbearable arrogance, and allowed themselves in public debate to be swayed by a reckless and capricious spirit that often nullified the efforts of its most wise statesmen, driving the state to the brink of ruin.⁶⁷

FURTHER DISTANCING FROM ANTIQUITY

In 1792 Wilhelm von Humboldt, influenced by contemporary events in France, outlined a model for a state that he considered to be the contrary of the ancient republic, where political participation was at the cost of freedom in private life. In his sketch, the state should confine itself to the securing of domestic and external security.⁶⁸

The Göttingen universal historian, constitutional lawyer and prominent political journalist August Ludwig Schlözer articulated an especially radical critique of antiquity in his 1793 *Staatslehre* as well as in journal articles, arguing against a rule based on despotism and aristocracy, and defining the state as a human invention for pragmatic ends, rather like fire insurance.⁶⁹

⁶⁶ [Christian Gottlob Heyne], 'review of de Pauw, *Recherches philosophiques*', *Göttingische Gelehrte Anzeigen* 1788, Vol. 1, 867.

⁶⁷ Friedrich Schiller, 'Die Gesetzgebung des Lykurgus und Solon', in *Sämtliche Werke*, Gerhard Fricke and Herbert G. Göpfert, eds., Vol. 4: *Historische Schriften*, 7th ed., Munich 1988, 805–836; quotations 814f., 832f. and 834.

⁶⁸ 'Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen', in Wilhelm von Humboldt, *Werke*, Andreas Flitner and Klaus Giel, eds., Vol. 1, 3rd ed., Darmstadt 1980, 56–233, especially 60ff. and 104f. The text was first published in 1851.

⁶⁹ August Ludwig Schlözer, *Allgemeines StatsRecht und StatsVerfassungslehre*, Göttingen 1793, section I, § 4 (at 3).

Schlözer was thought to be both a democrat and a Jacobin, and was denounced as such. Like so many other German intellectuals, he had first welcomed the revolution in France, but then condemned the beginnings of direct democracy that had been made there. Schlözer not only criticised the goings-on of ‘Greek mini-republics’⁷⁰ – he had already written that ‘the flourishing states of Solon and Lycurgus are villages’.⁷¹ Nor could he see in them anything like ‘pure democracy’, not only because of the tendency to anarchy and mob rule,⁷² but also because women did not have the right to vote.⁷³ In making this point he also criticised the fact that women had not gained electoral rights in the French Revolution; they were denied an inalienable human right without any legal basis.⁷⁴

Ludwig Timotheus Spittler, another Göttingen historian, in 1796 said much the same thing during his lectures on ‘Politik’. He noted that democracy in the true sense had never existed at any time in past history since women were excluded, although no rational reason had been given for this.⁷⁵

In the later seventeenth century Spinoza had, in his unfinished *Tractatus politicus*, already raised the question of whether women could not in a democracy take part in government, but rejected the idea because of the natural inequality of the sexes.⁷⁶ During the French Revolution the issue was raised, but then deferred; in Great Britain during the 1790s Mary Wollstonecraft, arguing with both Thomas Paine and Edmund Burke, proposed the extension of the ‘rights of men’ to the ‘rights of women’,⁷⁷ an argument taken up at the same time in Germany by Kant’s friend Theodor Gottlieb von Hippel.⁷⁸

In general, discussion during the eighteenth century cast doubt on the exemplary status of antiquity, its political and economic structures being incommensurable with the needs of a society of acquisitive citizens, who sought a constant improvement in their welfare through the efficient organisation of their labour. It was acknowledged that there were costs involved in economic

⁷⁰ Schlözer, *StatsRecht*, section VI, § 22 (at 148).

⁷¹ Schlözer, *Vorstellung seiner Universal-Historie* 1772, Ch. 1, § 6 (at 12).

⁷² ‘What a depraved rabble the Athenians were since the time of the infamous Pericles. ... Their freedom bordered on anarchy’: Schlözer, *Vorstellung seiner Universal-Historie*, 3rd ed., 1789 (this passage is not in the first edition), cited in Anton Meder, *Der athenische Demos zur Zeit des Peloponnesischen Krieges im Lichte zeitgenössischer Quellen*, Dissertation Munich 1938, VI.

⁷³ Schlözer, *StatsRecht*, section III, § 9 (at 124–126).

⁷⁴ Schlözer, ‘Recapitulation und Aphorismen, Nr. IVa’, in *StatsRecht*, 158f. Schlözer took the emancipation of women seriously; his daughter Dorothea had a full education and in 1787 took her doctorate in Göttingen at the age of seventeen (to the great irritation of contemporaries).

⁷⁵ Ludwig Timotheus Spittler, *Vorlesungen über Politik*, ed. Karl Wächter, Stuttgart 1828, 52ff. [text of lectures delivered in 1796].

⁷⁶ Baruch de Spinoza, *Tractatus politicus*, Ch. 11, § 4.

⁷⁷ *A Vindication of the Rights of Men* [1790]; *A Vindication of the Rights of Woman* [1792], in Mary Wollstonecraft, *Political Writings*, ed. Janet Todd, Oxford 1994.

⁷⁸ Theodor Gottlieb von Hippel, *Über die bürgerliche Verbesserung der Weiber*, 1793, reprint Frankfurt am Main 1977. Hippel was mayor of Königsberg.

progress, where citizens became preoccupied with their private interests to the detriment of their engagement in the common weal. The question became most pressing with the American and then French Revolutions: how liberty in the sense of political involvement and in the sense of the protection of individual rights might be joined together. Debate over antiquity thus became part of contemporary constitutional discussion. In the end, the ancient model of politics was rejected; but the first breakthrough for the idea of democracy also meant that the advantages and disadvantages of a constitutional state for a civic society of a new type were henceforth always discussed in terms of a comparison with antiquity.

The American Founding Fathers and Their Emancipation from the Ancient Model

American constitutional debates from 1776 onwards are an integral part of European intellectual and constitutional history: its arguments drew upon an occidental tradition; they were used to construct a new type of constitution and federal state, which then had, in turn, a decisive influence upon subsequent European history. It was here that the ‘idea of a great democratic Republic had first sprung up, whence the first Declaration of the Rights of Man was issued, and the first impulse given to the European Revolution of the 18th Century’, as Karl Marx wrote in his congratulatory address to the re-elected president Abraham Lincoln in 1864.¹

There are numerous allusions to antiquity in America, both in the recurrent use of the Roman capitol in official architecture and in political discussion. The consistency of such reference should not, however, be allowed to conceal the fact that there has been a shift from rhetorical evocation of the exemplary status of antiquity to an increasing emphasis on fundamental differences. This shift is most evident among those who were successful in their advocacy of a federal state, whatever their individual political differences might have been.²

¹ Karl Marx, on behalf of *The International Working Men’s Association*, ‘To Abraham Lincoln, President of the United States of America’ (December 1864); MECW, Vol. 20, 19 [MEGA², Abt. I, Bd. 20, 26]. The sentiments expressed here were partly tactical; the hope was that the abolition of slavery would finally make possible the creation in the United States of a powerful labour movement.

² There is a problem with all of the literature in the genre ‘The Founding Fathers and the Classics’; inevitably, they deal with only one thread in the constitutional debates of that time. Some authors tend to overestimate the rhetorical role of antiquity (as compared with the use of other theories and historical examples), correspondingly playing down the ultimately unambiguous rejection of the classical constitutional models. (Sometimes one has the impression that this also serves to justify the place of classical studies in the modern educational system.) Nonetheless, one should avoid the temptation to dismiss as simple window-dressing the way in which the Founding Fathers sought to draw lessons from antiquity, in the way that Bernard Bailyn does in his *The Ideological Origins of the American Revolution* [1967], Cambridge, MA, 1977, 23.

Unlike in France somewhat later, this was a continuous process, reaching a high point in 1787 with debate on the creation of a federal constitution, when it was realised that neither ancient nor modern constitutions could serve as suitable models.³

SOURCES OF CONSTITUTIONAL DISCUSSION

American constitutional debate developed as arguments over European political theory, including the way in which it related to antiquity. It must be remembered that any direct reference to antiquity was only one part of a larger political discourse in which many authors were involved, who themselves had drawn upon antiquity in particular contexts, creating perspectives according to their given interests and purposes. Among such points of reference were Machiavelli – as a theorist of the republic in his *Discorsi*,⁴ and not as the author of *Principe* – and Montesquieu (quite probably cited most often as an ‘oracle’).⁵ British theorists like Locke (a theorist of the right of resistance, but much better known by his writings on tolerance and education), Harrington, Sidney⁶ and Hume; English

Nor can constitutional questions be reduced to the material interests of the founding fathers, as does Charles Beard in his *An Economic Interpretation of the Constitution of the United States* (1913). I can only mention here that recent scholarship has drawn attention to a tradition of Republicanism that referred to the example of the ancient Jews before the establishment of a monarchy. This idea originated with seventeenth-century English theorists and was adopted in the political discourse of the American Revolution; see Eric Nelson, ‘“Talmudical commonwealths” and the Rise of Republican Exclusivism’, *Historical Journal* 50, 2007, 809–835; Eran Shalev, ‘“A Perfect Republic”: The Mosaic Constitution in Revolutionary New England, 1775–1788’, *New England Quarterly* 82, 2009, 235–263.

³ Benjamin Franklin stated in the Philadelphia Convention on 28 June 1787: ‘We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed with the seeds of their own dissolution now no longer exist. And we have viewed Modern States all round Europe, but find none of their Constitutions suitable to our circumstances’; in *The Records of the Federal Convention of 1787* [1937], ed. Max Farrand, rev. ed., New Haven 1966, Vol. 1, 451. A remark by John Dickinson, ‘Experience must be our only guide. Reason may mislead us’, has become proverbial; 13 August 1787; Farrand, *Records*, Vol. 2, 278.

⁴ Explicit references to Machiavelli can be found especially in John Adams, who also relied heavily on Machiavelli’s *Istorie fiorentine* for his analysis of the constitutional history of Florence: Adams, *A Defence of the Constitutions of Government of the United States of America* [first published 1787/1788], Philadelphia 1797, Vol. 2, 10ff.

⁵ *Federalist*, No. 47 (Madison). *The Federalist Papers* are available in a great number of editions with various introductions; they include those by W. R. Brock, London 1911 (many reprints; Everyman’s Library); Isaac Kramnick, London 1988 (Penguin Classics); Terence Ball, Cambridge 2003 (Cambridge Texts in the History of Political Thought) and also the selection of the most important articles in *The Essential Federalist and Anti-Federalist Papers*, ed. David Wootton, Indianapolis 2003 (Hackett). The texts are all the same; they can be best identified by referring to the numbers of the articles.

⁶ Sidney was treated as a martyr and as a new Socrates because of his execution in 1683 following accusations of high treason.

legal scholars like Coke and Blackstone; and, finally, Grotius, Pufendorf and Vattel with their laws of people and of nations, the social contract and the constituent power of the people.

Sources from many societies of all eras were drawn upon. This was especially the case with John Adams. He believed that political theory had to be based, like the natural sciences, upon all available empirical data: on the constitutional histories of various Italian republics, including that of San Marino; on the Netherlands and Poland; or the political order of the Swiss Confederation and of the Holy Roman Empire.

To this was added the independent constitutional tradition of the colonies in the form of the charters that had guided their self-government under the British Crown, and which had given settlers rights equal to those of the English. English constitutional law treated these as privileges that could be revoked, while the colonists understood the charters to be contracts not subject to unilateral repudiation. In the Crown Colonies, the governors and their various councils, functioning as a kind of upper house, were nominated by the British government; but it was the lower house that increasingly took the legislative initiative. In 1681 William Penn acquired his own colony (Pennsylvania) which was initially predominantly Quaker; the self-confidence with which he established a political order made him seem to Montesquieu a 'genuine Lycurgus'.⁷ Freedom of conscience was guaranteed, together with a broad franchise analogous to the ideas of the Levellers. But Penn became enmeshed in a dispute with the settlers who did not agree with his Harringtonian bicameral system (where initiative and decision were separated), since they considered that the number of representatives was far too small.⁸

The constitutions of Connecticut and Rhode Island were created by the settlers themselves in the seventeenth century; here governors and council were to be elected. This was more or less retained in full after independence, until 1818 and 1841, respectively. These constitutional traditions meant that their identity as individual states remained unaffected by the Declaration of Independence and the federal constitution.

In the states of New England democratic government by town meeting drew on the parish traditions of Congregationalists. John Wise, their best-known critic of Presbyterian demands for hierarchy and centralisation in the early eighteenth century, invoked Pufendorf and so, indirectly, the ancient tradition upon which Pufendorf drew. Nonetheless, this political order was oriented primarily to the egalitarianism of early Christianity (before the creation of bishops), and not to the model provided by the political systems of antiquity.⁹

⁷ Montesquieu, *De l'esprit des lois*, Book IV, Ch. 6.

⁸ Richard Alan Ryerson, 'William Penn's Gentry Commonwealth: An Interpretation of the Constitutional History of Early Pennsylvania, 1681-1701', *Pennsylvania History* 61, 1994, 393-428.

⁹ John Wise, *A Vindication of the Government of New-England Churches*, Boston 1717, 32 and 57.

In this context 'democracy' meant the equality of household heads taking communion.¹⁰

As in Europe, the more advanced school and college education in the colonies rested heavily on the teaching of Greek and Latin literature and languages. In the heart of the curriculum was instruction in rhetoric based on the study of the classical rhetorical treatises (by Aristotle, Cicero and Quintilian) and famous speeches by Demosthenes and Cicero. Antiquity provided a ready source of examples for pamphleteers advocating American independence, and later for those taking part in the discussion of the new constitutional order. Some of their leading representatives, such as Thomas Jefferson, had a familiarity with ancient literature that went far beyond their schooling. One exception was Thomas Paine, who did not have the usual classical training, and who in his writings aimed at a broad public, doing without the usual displays of learning.

Interest in Sparta, the society of 'military monks', was confined to a few particular aspects.¹¹ To the fore in the perspective upon antiquity was the fate of Athenian democracy together with the decline of the Roman republic and its replacement with a tyrannical regime.¹² Appreciation of the latter process drew on Cicero, Sallust and Tacitus, together with various tracts and historical accounts.¹³

Discussion of the question of a federal state was based upon key ancient examples familiar mostly from Mably – the Achaean, Aetolian and Lycian Confederations, as well as the Delphic Amphictiony.¹⁴ Any gaps in the knowledge from the use of such sources were closed by speculation. But it was recognised that these ancient systems could not provide a solid foundation for contemporary problems since not enough was known about them.¹⁵ That did

¹⁰ Ernst Troeltsch, 'Die Bedeutung des Protestantismus für die Entstehung der modernen Welt', *Historische Zeitschrift* 97, 1906, 1–66, here at 36f.; Karen O. Kupperman, 'Definitions of Liberty on the Eve of Civil War: Lord Saye and Sele, Lord Brooke, and the American Puritan Colonies', *Historical Journal* 32, 1989, 17–33.

¹¹ Jefferson, cited in Paul A. Rahe, *Republics, Ancient and Modern. Classical Republicanism and the American Revolution*, Chapel Hill, NC, 1992, 155. *Federalist* No. 6 (Hamilton): "Sparta was little better than a well regulated camp". On the idea of a 'military monastery' see p. 108. Voices were, however, raised in favour of a 'Christian Sparta', in the sense of an austere and disciplined life conduct: Gordon S. Wood, *The Creation of the American Republic 1776–1789*, Chapel Hill, NC, 1969, 118.

¹² For instance, Jefferson, 'Notes on the State of Virginia', Query XIII, in Thomas Jefferson, *Writings*, ed. Merrill D. Peterson, New York 1984, 252ff. Jefferson here comments upon (narrowly defeated) motions put forward in the Virginian House of Representatives during 1776 and 1781 that, in view of the military situation, sought to the appointment of a dictator with comprehensive powers. He suggested that those in favour had been guided by a fallacious understanding of Rome, and that in fact the introduction of a dictatorship (meaning Sulla and Caesar) had led to rule by force.

¹³ Among them the Roman history of Rollin (see p. 161), which was also available in English translation.

¹⁴ See p. 107.

¹⁵ 'Remarks of James Wilson in the Pennsylvania Convention to Ratify the Constitution of the United States (26. November 1787)', *Collected Works of James Wilson*, Kermit L. Hall and

not stop references to these historical examples being made as and when argument dictated. These ancient confederations tended to be negative examples for those in favour of a federal constitution, since the excessive autonomy of their members rendered them too weak to uphold their independence against the hegemonic powers of Macedon or Rome.¹⁶

On the whole, however, it was the Swiss Confederation and the United Netherlands that played a more important part in these debates. For the opponents of a strong central instance Switzerland was a model, for those in favour of a strong centre a shocking example; it was the other way around with the Netherlands and the *stadholder* of the House of Orange.¹⁷

Besides significant intellectual engagement with the ancient tradition, political rhetoric also drew upon names and examples for ornamental purposes. Political pamphlets were very often published anonymously, not so much to conceal the author's identity from the British authorities, but to emphasise that it was the argument which was important, not the status of the author. Names from antiquity were common: Aristides, Phocion,¹⁸ Brutus, Camillus, Cincinnatus, Cato, Publius, Tully (for Marcus Tullus Cicero), Helvidius Priscus and many more. Interestingly, Pericles was not among them: he was mainly treated (by Alexander Hamilton, for instance) as the person who, influenced by the 'whore' Aspasia,¹⁹ recklessly initiated war against Samos (440/439 BC),

Mark D. Hall, eds., Indianapolis 2007, Vol. 1, 181. There was also great interest in Carthage as a stable republic based upon trade, but here again there was a lack of detail – see Caroline Winterer, 'Model Empire, Lost City: Ancient Carthage and the science of politics in revolutionary America', *William and Mary Quarterly* 3rd. ser. 67, 2010, 3–30.

¹⁶ James Wilson in the Federal Convention, 6 June 1787, in Farrand, *Records*, Vol. 1, 143; James Madison, 'Notes on Ancient and Modern Confederacies', in *The Papers of James Madison*, Vol. 9 (9 April 1786–24 May 1787), Robert A. Rutland and William M. E. Rachal, eds., Chicago 1975, 3–24; 'Additional Memorandums on Ancient and Modern Confederacies', *ibid.*, Vol. 10 (27 May 1787–3 March 1788), 1977, 273–283 (in greater detail about modern cases); *Federalist*, No. 18 (Madison and Hamilton); No. 45 (Madison). Madison had Jefferson send him all available writings on the topic from Paris. The issue has survived right up to the present in American political rhetoric; in 1974 Henry Kissinger, then secretary of state, remarked that a politically divided Europe was threatened with the same fate as ancient Greece.

¹⁷ The Netherlands were relevant in many respects: to begin with, in the relation of members states to the union. Here sovereignty lay with the members states, whose delegates to the States General, one for each province, had to decide unanimously over war and peace, although in practice the richest province, Holland, was dominant. This could be interpreted by the Americans as appropriate equality of all members, or as the cause of endless disputes, or as proof of the actual irrelevance of equal rights. There was also interest in the office of *stadholder* in relation to the presidency. But even here there had long been different opinions. On the one hand, this was seen as an ingenious solution, combining domestic republicanism with a quasi-monarchical head for external purposes. On the other hand, it was criticised as a quasi-tyranny (see p. 103).

¹⁸ For the afterlife of Phocion see p. 161.

¹⁹ According to Plutarch, *Pericles* 24, 2ff.; 30, 4; Aristophanes, *Acharnians* 524ff. The ambiguities of the contemporary comedy about Aspasia, the second wife of Pericles, were embroidered in the later ancient tradition, so that she became a 'courtesan' or a 'madam' (Plutarch, *Pericles* 24;

and then dragged Athens into the Peloponnesian War, with its fatal outcome.²⁰ Correspondingly, however, in 1803, when Hamilton declared that war over the French part of Louisiana would be inevitable, he chose 'Pericles' as his pseudonym.²¹

The Athenian Aristides was in antiquity surnamed 'the Just', because in 487 BC he had settled the dues payable by members of the Delian League through general agreement. The name Brutus stood for the first consul of the Roman Republic as well as his (supposed) descendant, the killer of Caesar; Camillus for saving Rome before its neighbours after the Gallic invasion of 387 BC, after which he was treated as the second founder of Rome; Cato for the second century BC censor who called for the rigour of older Roman morality, as well as for his great-grandson, the 'last republican' who had bitterly opposed Caesar (depicted in a play of 1713 by Joseph Addison which was very popular in America);²² Helvidius Priscus was the Stoic who, as a member of the Senate during the Imperial era, had bravely resisted Nero, was then murdered around the year 70 because of his oppositional stance under Vespasian, and who as a result was treated as a second Socrates in the Stoic tradition.²³

The attitude to Lucius Quinctius Cincinnatus, the Roman who during a critical wartime situation in 458 BC was called from his plough to serve as dictator, was ambivalent; quickly resolving the situation, he resigned and returned to the life of a farmer.²⁴ This exemplary republican, who had previously refused unconstitutional re-election as consul,²⁵ did, however, have a highly problematic son, Kaeso Quinctius, who was known for his vehement attacks on the Plebs and tyrannical aspirations. The condemnation of his son to death had brought about the first retirement of Cincinnatus into private life.²⁶ There is also the record of a second dictatorship of Cincinnatus in 439, when he used harsh and questionable methods in dealing with a domestic crisis.²⁷ (The highly dubious historical reliability of these stories is of no relevance here.) The reputation and use of this figure therefore fluctuated between an association with saving his country and the dangers of a coup d'état.

32, 1); this was carried through into the nineteenth century and beyond; see [Wilhelm] Adolf Schmidt, *Perikles und sein Zeitalter*, Bd. 1, Jena 1877, 94 and 288–297.

²⁰ *Federalist*, No. 6 (Hamilton).

²¹ Douglass C. Adair, 'A Note on Certain of Hamilton's Pseudonyms', *William and Mary Quarterly* 3rd ser. 12, 1955, 282–297, here 285f.

²² Added to this was the impact of *Cato's Letters*, in which John Trenchard and Thomas Gordon polemicalised during the years 1720–1723 against the patronage system of Robert Walpole, the *de facto* British prime minister. On the image of Cato the Younger in the eighteenth century see Nathaniel Wolloch, 'Cato the Younger in Enlightenment Thought', *Modern Philology* 106, 2008, 60–82.

²³ Epictetus, *Discourses* 4, 1, 123.

²⁴ Livy 3, 26, 8ff.; 3, 29, 7.

²⁵ Livy 3, 21, 3ff.; Valerius Maximus 4, 1, 4; cf. Machiavelli, *Discorsi*, Book III, Ch. 24.

²⁶ Livy 3, 11, 6ff.

²⁷ Livy 4, 13–15.

It was George Washington who above all others was publicly associated with Cincinnatus. As the commanding general during the War of Independence he had made a point in 1783 of his retirement into private life, a decision that was greeted with surprise and admiration since this did not square with what a victorious general was supposed to do. However, as chairman of the ‘Society of the Cincinnati’ many feared that he might still plan to seize power and impose military rule on the model of a Cromwell, who was no longer thought of as a champion in the struggle against absolutism.²⁸ This Society was founded by officers active in the War of Independence; membership was inherited by their eldest sons; representing the class of great landowners, they might pose a threat to republicanism by establishing themselves as a sort of hereditary aristocracy – this was also the perception held in France, thanks to Mirabeau.²⁹ In 1787 Washington became president of the federal convention, but refrained from involvement in negotiations, so as to put a definite end to disquiet regarding his intentions. He became the first president of the United States of America two years later, and was ultimately celebrated as the ‘Father of his Country’, a *pater patriae* on the Roman model.³⁰ The Ohio city of Cincinnati was named in 1790 in honour of the Society.

In 1787 and 1788, Alexander Hamilton, James Madison and John Jay together published as the *Federalist Papers* eighty-five newspaper articles that had for the most part been written independently, Jay contributing only five. The articles advocated acceptance of the federal constitution in New York State, and they used the pseudonym Publius – alluding to Publius Valerius Publicola, one of the heroes of Plutarch’s biographies, a consul in the first year of the Roman republic (509 BC) who had stabilised the new order by introducing the law protecting the citizen against harsh punishment by magistrates. The Anti-Federalists favoured the names of Cato and Brutus, since they wanted to suggest that their opponents had tyrannical inclinations.

LESSONS FROM ANTIQUITY

The idea of a mixed constitution was highly favoured and was taken up in differing forms as something that appeared to represent a political order insulated against the abuse of power. During the English constitutional debates of the seventeenth century the idea of a mixed constitution had been deployed to

²⁸ See Rock Brynner, ‘Cromwell’s Shadow over the Confederation. The Dread of Cyclical History in Revolutionary America’, *Proceedings of the Massachusetts Historical Society* 106, 1994, 35–52.

²⁹ Mirabeau, *Considérations sur l’Ordre de Cincinnatus, ou, Imitation d’un pamphlet anglo-américain*, London 1784 (English edition 1785). In 1784, a French branch of the Society of the Cincinnati had been established by former volunteers in the War of Independence.

³⁰ After his death Washington was praised as better than the ancient models. ‘Rome with all her heroes, Greece with all her patriots could not produce his equal’, says one of many eulogies, quoted by Eran Shalev, *Rome Reborn on Western Shores. Historical Imagination and the Creation of the American Republic*, Charlottesville 2009, 211.

limit monarchical authority; now it was to be used in a parliamentary context to control a majority in the legislature. English parliamentary sovereignty had in the colonies been seen as tyrannical, and this was what had led to separation from the mother country.

John Adams adopted a traditional understanding of this theory, seeing the aristocratic element of a mixed constitution embodied in the ‘natural aristocracy’ of educated property owners. Placed in a special chamber they would exercise control over both the government and the people’s representatives, whereas in a single-chamber system they would win elections and then relentlessly pursue their own interests.³¹ Adams argued that a system of checks and balances in a free government could be learned even from modern aristocracies like the Netherlands, Venice or Bern; it was not known by the Greeks, resulting in numerous bloody civil wars; and it was for this reason that they were no model for America.³² The mixed constitution offered a preferable alternative, as developed in Rome by Polybius and Cicero on the models of Sparta and Rome;³³ or rather, as in the English constitution, because, at least in theory, it embodied reasonable principles and was an advance on the ancient mixed constitutions, whose system of balances was inadequate.³⁴ There was no historical example of a ‘simple and perfect democracy’,³⁵ not even in San Marino.³⁶ Instead, evident everywhere was a tendency that a small group quickly became dominant, leading eventually to de facto sole rule. Adams later saw the experience of the French Revolution, and the roles in it of Robespierre and finally Napoleon, as confirming this lesson from antiquity.³⁷

Direct democracy on the Athenian model was generally thought to imply a tendency towards the tyranny of the majority that rode roughshod over individual liberties and had little regard for private property. A system like this necessarily led to destabilising party struggle; as a consequence, Greek republics had fluctuated between extremes of tyranny and anarchy.³⁸ According to

³¹ Adams, *Defence of the Constitutions*, Vol. 1, 183. Adams had argued purely functionally in his 1776 ‘Thoughts on Government’ that the lack of controls over a one-chamber government could lead to the abuse of power: in *The Political Writings of John Adams*, ed. George W. Carey, Washington 2001, 482–491.

³² Adams, *Defence of the Constitutions*, Vol. 1, IIIff. Sparta had achieved the greatest degree of stability, but at the cost of a rigid social order whose only purpose was ‘war and politics’, not ‘life and happiness’; Vol. 1, 256.

³³ *Ibid.*, Vol. 1, XVIff., 98 and 175–177.

³⁴ *Ibid.*, Vol. 1, 5. 7of., 187f., 223–225, 255, 259f., 335f. and 361.

³⁵ *Ibid.*, Vol. 1, 7.

³⁶ *Ibid.*, Vol. 1, 9ff. On San Marino see p. 106.

³⁷ ‘Review of the Hillhouse Proposal’ [1808], in Adams, *Political Writings*, 624; ‘Letters to John Taylor’ [1814], *ibid.*, 370, 379, 407 and *passim*. Adams had been critical of the French Revolution from an early date, even while there was still great sympathy for it among the American public.

³⁸ *Federalist*, No. 9 (Hamilton).

Alexander Hamilton, historical experience rebutted the assumption that a pure democracy was the best form of government:

It has been observed by an honorable gentleman, that a pure democracy, if it were practicable, would be the most perfect government. Experience has proved, that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny, their figure deformity: When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity. In these assemblies, the enemies of the people brought forward their plans of ambition systematically. They were opposed by their enemies of another party; and it became a matter of contingency, whether the people subjected themselves to be led blindly by one tyrant or by another.³⁹

Among the founding fathers it was John Adams who probably had the most detailed knowledge of ancient constitutional theory and history. He went so far as to suggest that the gruesome régime of the ‘Thirty Tyrants’ during 404/403 BC was not a contrast to Athenian democracy, but the inevitable outcome of a system of popular government.⁴⁰ James Madison was of the view that

[i]n all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.⁴¹

If the Athenian people had possessed ‘a safeguard against the tyranny of their own passions’, they would (taking account of the fate of Socrates and the Athenians’ supposed subsequent regret)⁴² have avoided the accusation ‘of decreeing to the same citizens the hemlock on one day and statues on the next’.⁴³ Democracies of the past had collapsed because of the lack of stability and the evident injustice of inadequate personal security and disregard for private property; and these were all inherent in popular assemblies. By contrast, the Union had to create a constitution capable of representing ‘a republican remedy for the diseases most incident to republican government’: a republic that should be organised as a system of representation, rather than as a system of pure democracy.⁴⁴

³⁹ ‘Speech in the New York Ratifying Convention’, 21 June 1788; in Alexander Hamilton, *Writings*, ed. Joanne B. Freeman, New York 2001, 489.

⁴⁰ Adams, *Defence of the Constitutions*, Vol. 3, 345f. Athenian history was said to be marked by ‘continuous factions, massacres, proscriptions, banishment and death of the best citizens’; *ibid.*, Vol. 1, 284.

⁴¹ *Federalist*, No. 55 (Madison).

⁴² Diogenes Laertius 2, 43. The same was true for Phocion according to Plutarch, *Phocion* 38, 1.

⁴³ *Federalist*, No. 63 (probably Madison).

⁴⁴ *Federalist*, No. 10 (Madison). See also Noah Webster [A Citizen of America], ‘Examination into the Leading Principles of the Federal Constitution’ [17 October 1787], in *The Debate on the Constitution: Federalist and Antifederalist Speeches, Articles and Letters during the Struggle over Ratification*, ed. Bernard Bailyn, New York 1993, Vol. 1, 129–163, here 130: legislation by

In 1787, after ten years of intensive discussion in the various states, a federal constitution was proposed on 17 September by the state delegates attending the Philadelphia convention.⁴⁵ This convention had been called to revise the 'Articles of Confederation', agreed in 1777 and ratified in 1781, creating a federation of states.⁴⁶ The convention was conducted in closed session,⁴⁷ and delegates were very much aware of the fact that they had exceeded their mandate in drafting a constitution.⁴⁸ This problem was resolved by stipulating that the constitution could come into force only when it had been ratified by nine of the conventions held in the thirteen member states and called expressly for this purpose. But even this, as Madison did himself admit, violated the 'Articles of Confederation', which provided that any alteration required the agreement of all states.⁴⁹ The process of ratification was accompanied by extensive public discussion,⁵⁰ which introduced lessons from the working of the constitutions created in individual states as well as problems in cooperation between the thirteen states, together with the experience of having an executive that was too weak both internally and externally.⁵¹

'Shays' Rebellion' in Massachusetts during 1786 and 1787, named after the farmer who led it, was at the time seen, with some exaggeration, as a threat to private property;⁵² but materially it did contribute to the considerable strengthening of federal power on the domestic front.

popular assembly was in antiquity 'the cause of innumerable evils. To avoid these evils, the moderns have invented the doctrine of *representation*, which seems to be the perfection of human government'.

⁴⁵ Deliberation began at the end of May. Rhode Island had not sent any delegates, while those from New Hampshire arrived a few weeks later.

⁴⁶ These negotiations also had been made necessary by the debts of both confederation and individual states arising from the War of Independence.

⁴⁷ The sparse official notes made by the secretary remained confidential until 1818, while it was much later that the private minutes taken during debates by convention members were made public. This was especially true of Madison's notes, first published in 1840, where there are indications that he revised them after the event: Farrand, *Records*, Vol. 1, 'Introduction'; James H. Hutson, 'Riddles of the Federal Constitutional Convention', *William and Mary Quarterly* 3rd ser. 44, 1987, 411–423.

⁴⁸ Madison justified the procedure by arguing that a new constitution could have been drafted only as a result of 'informal and unauthorised propositions made by some patriotic and respectable citizen or number of citizens' (*Federalist*, No. 40). Privately he expressed himself more forcefully: 'no Constitution would ever have been adopted by the convention if the debates had been public'; cited in Gordon S. Wood, *Revolutionary Characters. What Made the Founders Different*, New York 2006, 255.

⁴⁹ Madison, *Federalist*, No. 40.

⁵⁰ Jürgen Heideking, *Die Verfassung vor dem Richterstuhl. Vorgeschichte und Ratifizierung der amerikanischen Verfassung 1787–1791*, Berlin 1988.

⁵¹ Madison, 'Vices of the Political System of the United States' [April 1787], in James Madison, *Writings*, ed. Jack N. Rakove, New York 1999, 69–80; *Federalist*, No. 15 (Hamilton).

⁵² Hamilton, *Federalist*, No. 21, pointed to the unforeseeable dangers that might have arisen if a Caesar or a Cromwell had put himself at the head of the unrest.

Supporters of the new constitution emphasised that the successful revolution of 1776 in the cause of liberty had now been followed by a revolution in favour of strong government, opponents complaining of the ‘tyranny of Philadelphia’.⁵³ From the perspective of its supporters, a federal constitution of this kind offered the greatest scope for territorial expansion and the inclusion of new members, on the one hand, while it raised, on the other hand, the prospect of becoming a world power equal to, or even greater than, the European states.⁵⁴

At the conclusion of this constitutional process, understood as the outcome of a ‘new science of politics’,⁵⁵ the fundamental difference with respect to antiquity was clear. This was especially true for those whose conception of the constitution prevailed. It was this group that had studied antiquity most closely, and precisely as a result of this opted for a political order quite different from the ancient models. The opponents of a federal constitution, the Anti-Federalists, considered ‘pure democracy’ to be a popular democracy based on an assembly that was practical only on the small scale;⁵⁶ they considered a strong central power to be dangerous, and so were in effect closer to the ancient political conception, although they did not pursue this comparison to any great extent, beyond their pseudonymous use of classical names.⁵⁷

On the side that ultimately won, even if they had first of all to make concessions to the Anti-Federalists, Alexander Hamilton maintained that

the industrious habits of the people of the present day, absorbed in the pursuits of gains, and devoted to the improvements of agriculture and commerce, are incompatible with

⁵³ Respective comments made in 1787 are cited by Isaac Kramnick, ‘The “Great National Discussion”. The Discourse of Politics in 1787’, *William and Mary Quarterly* 3rd ser. 45, 1988, 3–32, here at 23.

⁵⁴ *Federalist*, Nos. 9 and 11 (Hamilton).

⁵⁵ *Federalist*, No. 9.

⁵⁶ ‘In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate and decide. This kind of government ... must be confined ... to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it’: Brutus, No. 1 (October 1787), in *The Essential Antifederalist*, William B. Allen and Gordon Lloyd, eds., 2nd ed., Lanham 2002, 112.

⁵⁷ On the whole, the ideological coherence of both camps should not be overestimated. On the side of the ‘Anti-Federalists’ there were no publications agreed among the authors involved. The federal constitution was the outcome of many compromises, often arrived at after hard-won compromise (see *Federalist*, No. 62 [Madison] regarding the Senate), for which then the ‘Federalist Papers’ sought retrospectively to lend a convincing argument. Especially remarkable is that they vehemently advocated the new order even when this was in many respects not their own view, but very different to the one with which they had started out. Hamilton had in Philadelphia, for example, recommended that senators and president be elected for life, by analogy with the English constitution (18 June 1787; Farrand, *Records*, Vol. 1, 288f.). By contrast, Madison was concerned that the possibly unlimited re-election of a president could end up as a lifetime presidency, like ‘a bad edition of a Polish king’ (Letter to John Adams, 13 November 1787; Madison, *Writings* 913).

the condition of a nation of soldiers, which was the true condition of the people of those [i.e., ancient Greek] republics.⁵⁸

In 1782 Hamilton had already explained that, given the much greater complexity of contemporary social structures, a search for models in Greek and Roman antiquity would be as laughable as turning to the Hottentots or the Lapps.⁵⁹

A WORLD-HISTORICAL FOUNDING CONSTELLATION

The fathers of the constitution freely compared themselves with the great lawgivers of antiquity: the Athenian Solon, the Spartan Lycurgus and the Roman king Numa (but also with Moses). This admiration for the founders as presented in Plutarch's biographies⁶⁰ also drew on the writings of Harrington. In 1776 John Adams saw himself, even before the Declaration of Independence, as living through an era in which

the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government ... for themselves or their children! When, before the present epoch, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can provide?⁶¹

The separation of constitutive and constituted power could be made using the example of Greek legislators who had stepped down once they had completed their work.⁶² The constitutional legislators felt themselves to be 'an assembly of demigods', enjoying the same veneration that their ancient forbears had; but they wished to avoid the errors that had, in antiquity, led to the gradual decline of the political order.⁶³ The liberty and political equality that had prevailed

⁵⁸ *Federalist*, No. 8 (Hamilton). Charles Pickney (South Carolina) also emphasised the complete divergence from conditions in antiquity during the Philadelphia convention: Farrand, *Records*, Vol. 1, 401f.

⁵⁹ *The Continentalist*, No. 6, 4 July 1782; Hamilton, *Writings*, 111–118, here at 115.

⁶⁰ On Hamilton's reading of the biographies of Lycurgus and Numa during the winter of 1777–1778 see Philip Stadter, 'Alexander Hamilton's Notes on Plutarch in His Pay Book', *Review of Politics* 73, 2011, 199–217.

⁶¹ 'Thoughts on Government', in Adams, *Political Writings*, 490. In June 1777 Adams wrote to his wife Abigail regarding the constitutional fathers of Massachusetts: 'Who will be the Moses, the Lycurgus, the Solon – or have you a score or two of such?'; cited in Jack Rakove, *Revolutionaries. Inventing an American Nation*, London 2011, 195. For the constitution of 1780 it would be him.

⁶² *Pennsylvania Journal*, 22 May 1776, cited in Willi Paul Adams, 'Die amerikanischen Einzelstaatsverfassungen und die Bundesverfassung: Vorbilder und Analogien, 1776–1791', *Historische Mitteilungen* 10, 1997, 217–231, here 224.

⁶³ Jefferson on the federal convention in a letter to John Adams, 30 August 1787, in Jefferson, *Writings*, 909. See also Noah Webster, in Bailyn, *The Debate on the Constitution*, Vol. 1, 129. In ancient times admirers of Sparta talked of the rule of demi-gods: Isocrates 12, 41.

in Athenian democracy was to be achieved, but in a system secured against instability and factional struggle, and which did not aim to establish social equality. For this, the functioning of the political order would not rely primarily on the virtues of the citizen, but on institutional arrangements capable of channelling the passions inherent to human nature, in this way fostering the common good.⁶⁴ Symbolic of this conception was the way in which the ‘pursuit of happiness’, embodied in the 1776 Declaration of Independence and the Virginia Declaration of Rights, became one of the ‘inalienable rights’ of the individual.

Given the need to allow for the pursuit of individual interests while at the same time limiting its scope, a constitution had to be created that could be altered only with great difficulty. However, this in turn created the problem that later generations would to a great extent be tied to decisions already made by the founders⁶⁵ – a problem to which Jefferson had drawn attention.⁶⁶ The question had already been raised by John Locke and David Hume.⁶⁷

Those who created the American constitution saw themselves as the architects of a new world order, having a sense of their political eminence entirely at odds with the globally marginal political significance of their new federation. The formula adorning the national coat of arms, *novus ordo seclorum*, is an allusion to Virgil’s Fourth Eclogue, and had long been treated in Christian tradition as a prophecy concerning the second coming of Christ and the world

⁶⁴ Madison wrote that, while a republican constitution did presume a greater degree of trust in the virtue of the citizen than other political orders, it also sought to reinforce this human potential (*Federalist*, No. 55).

⁶⁵ *Federalist*, Nos. 43 and 49 (Madison).

⁶⁶ Letters to Madison, 6 September 1789, and Samuel Kercheval, 12 July 1816, in Jefferson, *Writings*, 959ff. and 1395ff. Jefferson said that according to the tables of mortality the majority of the adults living at any one moment would be dead in about nineteen years. After this time a new generation must have the right to choose its form of government; ‘a solemn opportunity of doing this every nineteen or twenty years should be provided by the constitution’ (at 1402). Madison objected in his letter to Jefferson, 4 February 1790, that this proposal would undermine the stability of the political order. One should better stick to the principle of tacit assent (John Locke); Madison, *Writings*, 477ff. According to the Pennsylvanian constitution of 1776–1790 a ‘council of censors’ was to be elected every seven years. The council was charged not only with making sure that all officials adhered to the constitution, but was to propose the abolition of unconstitutional laws, or in urgent cases initiate proceedings for a change to the constitution: Lewis H. Meader, ‘The Council of Censors’, *Pennsylvania Magazine of History and Biography* 22, 1898, 265–300. In 1777 Vermont adopted this provision when it became an independent state, and it remained in force right up to 1870. The name and the prime function of this council alluded to the Roman censors, (mis)understood by Montesquieu and Rousseau to have the function of constitutional oversight. In fact these American ‘censors’ resembled Spartan ephors; their secondary function resembled the Athenian *graphe paranomon* and the role of the *nomothetai*. In substance, however, these similarities were limited, and it was clear that no revival of an Athenian model was intended.

⁶⁷ ‘The Second Treatise of Government’, § 116, in John Locke, *Two Treatises of Government*, ed. Peter Laslett, Cambridge 1988, 345f.; ‘Of the Original Contract’ (1748), in David Hume, *Political Essays*, ed. Knud Haakonssen, Cambridge 1994, 186–201.

order that this would herald; the Virgilian original does not talk of a *novus ordo*; this was added to create the sense of a completely new beginning.⁶⁸

This new order could not, however, be established by a divinely inspired lawgiver; John Adams noted that, unlike Solon or Lycurgus, the constitutional fathers could not conduct ‘interviews with the gods’.⁶⁹ All the same, Adams later envisaged the theoretical possibility that he could have been charged by a unanimous resolution of the American people, like a Solon or a Lycurgus, with the drafting for them of a binding constitution.⁷⁰ One of the delegates to the Philadelphia constitutional convention suggested that Solon’s example should to some extent be followed; although Solon had not created the best of all possible orders, he had established one that could be accepted by the people.⁷¹

Madison argued that in America an admirable advance in comparison with ancient processes had been made, since the constitution had been drafted not by one solitary man, but by the collective wisdom of a council of trusted citizens.⁷² The political system had to be produced not by the regular legislatures but by constitutional conventions charged with this task by the constituting powers of the people as had been first practised in Massachusetts.⁷³ James Wilson emphasised that the use of such a procedure in America implied real popular sovereignty, whereas the ancient lawgivers had used dictatorial powers.⁷⁴

⁶⁸ Hannah Arendt, *On Revolution* [1963], Harmondsworth 1973, 210.

⁶⁹ Adams, *Defence of the Constitutions*, Vol. 1, XIII.

⁷⁰ Letter to Mercy Warren, 11 July 1807, in ‘Correspondence between John Adams and Mercy Warren Relating to Her *History of the American Revolution*’, July–August, 1807, *Collections of the Massachusetts Historical Society*, 4th series, 5, 1878, 315–511, here 325. This matched his own estimate that he was one of the very few who had understood how a constitution had to be drawn up: Letter to Richard Price, 19 April 1790; Adams, *Political Writings*, 663f. He was, however, alone in this view; and Adams always suffered from the feeling that his part in the American constitutional process had never been properly appreciated.

⁷¹ Pierce Butler (South Carolina), in Farrand, *Records*, Vol. 1, 125; likewise *Federalist*, No. 38 (Madison) referring to Plutarch, *Solon* 15, 2.

⁷² *Federalist*, No. 38 (Madison).

⁷³ In 1777 the Massachusetts House of Representatives had been authorised by the voters to draft a constitution in cooperation with the Governor’s council. But in the township meetings it had failed to find a majority in favour (March 1788). Objections concerned the omission of a Bill of Rights and other points as well as the procedure; the functions of a constitutional convention and of the legislature should not be intermingled. The next constitutional convention (September 1779–June 1780) was the first body elected exclusively for the purpose to draft a constitution. Long deliberations in this convention were followed by debates in township meetings. They produced a great number of amendments. The convention declared that it was impossible to draft an alternative text on the basis of these proposals. It enacted the original proposal (drafted chiefly by John Adams) on its own assumption that more than two-third of the voters had accepted it; see Willi Paul Adams, *The First American Constitutions. Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, expanded ed., Lanham, Md., 2001, 86ff.; 296f.; Paul C. Reardon, ‘The Massachusetts Constitution Marks a Milestone’, *Publius. The Journal of Federalism* 12, 1, 1982, 45–55.

⁷⁴ ‘Oration Delivered on the Fourth of July 1788, at the Procession Formed at Philadelphia to Celebrate the Adoption of The Constitution of the United States’, in *Collected Works of James*

The idea of an assembly charged with drawing up a constitution had been raised first of all by the Levellers, then in the 1650s, during the English interregnum, but never realised;⁷⁵ in the mid-eighteenth century it was Vattel who clearly identified the nation as the originator of a constitution, having precedence over everyday law and being binding on all state institutions.⁷⁶

In January 1776, many months before the Declaration of Independence, Tom Paine put wind in the sails of the independence movement by writing in *Common Sense*:

Should an independancy be brought about ... we have every opportunity and every encouragement before us, to form the noblest, purest constitution on the face of the earth. We have it in our power to begin the world over again. A situation, similar to the present, hath not happened since the days of Noah until now. The birth-day of a new world is at hand.⁷⁷

In 1777 John Jay argued that the Americans were the first people to whom the heavens had given the opportunity of themselves deciding the government under which they wished to live after free and open discussion.⁷⁸ James Wilson went further, opening the 1787 Pennsylvania ratifying convention with the assertion that, for the first time in 6,000 years of world history, a system of government was established on the basis of a general consensus following thorough discussion.⁷⁹ James Madison echoed this in the Virginia convention.⁸⁰ He wrote that Americans had ‘reared the fabrics of government which have no model on the face of the globe,’ and in so doing ‘accomplished a revolution which has no parallel in the annals of human society’, possible only because they had no ‘blind veneration for antiquity’.⁸¹ Since antiquity had not known of the system of representation ‘as a substitute for a meeting of the citizens in person’, no lessons could be drawn from it on this point.⁸² George Washington

Wilson, Vol. 1, 285–308, here 286f. Wilson, originally a Scot and one of the signatories to the Declaration of Independence, was exceptional among the founding fathers on account of his Rousseauist conception of a constitution. He had a unique theoretical understanding of constitutional questions. He was one of the most influential members of the Philadelphia convention.

⁷⁵ On the ideas of the Levellers see p. 100, fn. 114. Henry Vane, *A Healing Question* [1656], cited in Margaret A. Judson, *The Political Thought of Sir Henry Vane the Younger*, Philadelphia 1969, 44f.

⁷⁶ Emer de Vattel, *La droit des gens ou principes de la loi naturelle* [1758], Book I, § 26ff.; *The Law of Nations*, Béla Kapossy and Richard Whatmore, eds., Indianapolis 2008, 91ff.

⁷⁷ Thomas Paine, *Rights of Man, Common Sense, and Other Political Writings*, ed. Mark Philp, Oxford 1995, 52f. Around 120,000 copies of the book were sold within three months.

⁷⁸ Cited in Henry S. Commager, *The Empire of Reason* [1977], London 2000, 197.

⁷⁹ ‘Speech of James Wilson before the Pennsylvania Convention, November 24, 1787’, in *Collected Works of James Wilson*, Vol. 1, 182, also in Wootton, *The Essential Federalist and Anti-Federalist Papers*, 100.

⁸⁰ ‘Speech in the Virginia Ratifying Convention on Ratification and Amendments’ [24 June 1788], in Madison, *Writings*, 401.

⁸¹ *Federalist*, No. 14 (Madison).

⁸² *Federalist*, No. 52 (Madison).

endorsed the new constitution for the way that it offered ‘more checks and barriers against the introduction of Tyranny ... than any Government hitherto instituted among mortals.’⁸³

In retrospect, Paine considered this to have been a historically unique founding moment, rendering all resort to ‘obscure fields of antiquity’ superfluous. America would not only realise democracy in a large state, but by using the democratic principle of representation (‘representation ingrafted upon democracy’) far exceed the Athenian model, however admirable it might be; representation based upon the equality of rights was, he thought, the fundamental invention of modernity. A ‘simple democracy’ in the style of Athens could not survive even on a small scale, once primitive conditions were overcome and social differentiation took hold.⁸⁴

In 1814 making a delayed response to John Adams and his idea of a mixed constitution, John Taylor argued that new political principles had been developed in America that rendered all reference to the past, up to and including antiquity, obsolete.⁸⁵ Alexander Hamilton and James Madison stated that it had for the first time been possible to demonstrate that, thanks to the principle of representation, a republic could be established upon an extended territory and achieve a degree of stability far beyond that of the pure democracy of the ancient model. The decisive difference with antiquity was that the new order had no place at all for the direct self-government of the people – and not because antiquity lacked all form of representation. This latter idea was contradicted by the institutions of ephors and tribunes.⁸⁶

The plurality of interests of a large social body hindered the emergence of a homogeneous majority that might in time be able to impose its aims on the remainder.⁸⁷ In this Hamilton and Madison followed Hume, and rejected

⁸³ Letter to Lafayette, 7 February 1788, in *The Origins of the American Constitution. A Documentary History*, ed. Michael Kammen, New York 1986, 102.

⁸⁴ Paine, *Rights of Man* [Part II, 1792], Chs. 4 and 3 (ed. Philp, at 238, 229 and 233); *Dissertation on First Principles of Government* [1795] (ibid. at 389). He had already written: ‘I cannot help being sometimes surprised at the complimentary references which I have seen and heard made to antient histories and transaction. The wisdom, civil governments and sense of honor of the States of Greece and Rome, are frequently held up as objects of excellence and imitation. Mankind have lived for very little purpose, if, at this period of the world, they must go two or three thousand years back for lessons; ‘the mist of antiquity [should] be taken away’; ‘I have no notion of yielding the palm of the United States to any Grecians or Romans that were ever born’; ‘The American Crisis V’ [21 March 1778], in Thomas Paine, *Collected Writings*, ed. Eric Foner, New York 1995, 168f.

⁸⁵ John Taylor, *An Inquiry into the Principles and Policy of the Government of the United States* [1814], London 1950, esp. 37f. and 159. Jefferson wrote to him: ‘You have successfully and completely pulverized Mr. Adam’s system of orders, and his opening the mantle of republicanism to every government of laws, whether consistent or not with natural rights’; 26 May 1816, Jefferson, *Writings* 1392.

⁸⁶ *Federalist*, No. 63 (probably Madison).

⁸⁷ *Federalist*, No. 9 (Madison), 10 and 14 (Madison).

Montesquieu's contention that republics were possible only in small states.⁸⁸ The latter's view was frequently taken up by the opponents of a federal constitution, who also pointed to the way that the expansion of Rome had led to the emergence of tyrannical rulers,⁸⁹ or the army that such a large state required could create the conditions for the overthrow of a free order, as the examples of Caesar and Cromwell had shown.⁹⁰

The fear that a presidency linked to the command of the army would lead to a quasi-monarchy led those advocating this move to support the candidacy of George Washington, who was by now thought to be immune to any such ambition. Eventually, Washington was unanimously elected by the electoral college as first president of the United States.

The election of representatives under modern conditions is not merely a technical means of compensating for the fact that assembling all citizens in one place is an impossibility. This was already impossible in Athens, notwithstanding the constant repetition of this cliché in the comparison of ancient and modern political structures. If it had just been a practical problem, the solution created in Athenian democracy – appointment of a decision-making body by drawing lots – could have been imitated. Montesquieu, following Aristotle, had treated this as a typically democratic procedure, acceptable if, as in Athens, leading military positions were excepted and the selected magistrates rigorously screened both on entering office and after leaving it, thus discouraging incompetent candidates from the start.⁹¹ Although appointment by lot was not only an Athenian practice, but also one followed in Florence and Venice (although here there was a limit on who could be elected, and the procedure involved a combination of voting and sortition), there was never any serious discussion of this approach in the modern constitution debate that the American Revolution initiated.⁹²

At issue was always only the principle of responsibility on the part of the rulers, not a system in which the greatest number of citizens took turns to rule and be ruled (as in Athens). The settlement of decision making on 'a chosen

⁸⁸ On Hume, see p. 106. Montesquieu, *De l'esprit des lois*, Book VIII, Ch. 16.

⁸⁹ See the texts in Wootton, *The Essential Federalist and Anti-Federalist Papers*, 47, 53, 63, 65, also in Allen, Lloyd, *The Essential Antifederalist*, 111, 127, 202, 249, 287.

⁹⁰ Brutus, No. 10 (January 1788), in Hamilton, Madison, Jay, *The Federalist with Letters of Brutus*, ed. Terence Ball, Cambridge 2003, 495–501. Other references in Peter Baehr, *Caesarism, Charisma and Fate. Historical Sources and Modern Resonances in the Work of Max Weber*, New Brunswick 2008, 187–212.

⁹¹ Montesquieu, *De l'esprit des lois*, Book II, Ch. 2. He overstates the substantive significance of the screening on assumption of office.

⁹² See p. 366f. for the raising of this demand in the later twentieth century. Tom Paine suggested in *Common Sense*, 32, that lots should be drawn to determine the sequence in which the thirteen colonies could annually hold the post of congressional president. All delegates would then select the president by voting for one of the delegates from the selected colony. This is rather different from selecting a parliamentary chamber by drawing lots.

body of citizens, whose wisdom may best discern the true interest of their country',⁹³ and who were capable of protecting the people from acting against its true interest,⁹⁴ would offer a much greater chance of developing a politics serving the common good than would be the case with an unfiltered articulation of the people's will.

This substantially coincided with the role of representation as outlined by Edmund Burke in his famous November 1774 address to the voters of Bristol: serving the entire constituency, and not therefore following the instructions of his own voters.⁹⁵ The advantage of an extensive republic had been outlined by David Hume,⁹⁶ who had argued that constituencies had to be made so large that representatives were secured against excessive pressure from local groups of electors. This principle also spoke in favour of a union government, since here the rights of the individual could be better protected than in the member states, where the danger of arbitrary rule by the majority was greater.⁹⁷ Anti-Federalists argued by contrast that representatives would in this case be beyond the control of their voters.⁹⁸ In 1813 Thomas Jefferson argued against John Adams that experience with the US Constitution had shown that during elections, as a rule, the best in the sense of a 'natural aristocracy' prevailed, so that they needed no separate chamber reserved especially for them, as John Adams had thought.⁹⁹

There was no consensus about the franchise in constitutional discussion – whether all (adult, male, white) citizens should get the vote, or whether it should be limited to those who fulfilled some property qualification, or paid a minimum amount of tax. The argument that no one should be excluded for lack of property was opposed less for the prospect that a future majority of the unpropertied might interfere with property rights, than for fear that the small number of poor (by comparison with Europe) could be vulnerable to corruption and manipulation by the few very rich. The issue was left to the individual states, who decided either for open or restricted franchises. Using the payment of tax as a criterion tended to include a large number of citizens, so that by the 1820s in the majority of states there was in effect an almost universal franchise for white, male citizens though often 'paupers', persons receiving poor relief,

⁹³ *Federalist*, No. 10 (Madison).

⁹⁴ *Federalist*, No. 71 (Hamilton).

⁹⁵ *Select Works of Edmund Burke*, reprint Indianapolis 1999, Vol. 4, 3–14.

⁹⁶ 'Idea of a Perfect Government' (1752), in Hume, *Political Essays*, 221–233.

⁹⁷ *Federalist*, No. 9 (Hamilton); 10 and 14 (Madison). Hamilton, Speech to the New York Ratification Congress, June 1788, in Hamilton, *Writings*, 487–495.

⁹⁸ This argument also formed the basis for the demand that senators might be subject to recall: 'Federal Farmer, No. 11' (10 January 1788), in *The Founders' Constitution*, Vol. 1: *Major Themes*, Philipp B. Kurland and Ralph Lerner, eds., reprint Indianapolis 2001, 63–65.

⁹⁹ Jefferson, *Writings*, 1306.

were excluded.¹⁰⁰ Between 1776 and 1807, in New Jersey even unmarried or widowed women with property had the vote.¹⁰¹

In this new form of republic, in which there was no place for the direct exercise of governing functions by the people as a whole, control mechanisms were necessary to regulate the institutions authorised by the people, so ensuring that these institutions did not exceed the powers with which they had been constitutionally endowed. The idea of a mixed constitution in the form of a Polybian (and English) model of equilibrium was stripped of the last vestiges of status and rank and transformed into a system of checks and balances.¹⁰² The people were no longer one element in a mixed constitution, but set up (through direct or indirect election) diverse instances, each of which acted independently according to its own judgement, but which in so doing regulated each other, since particular decisions could be made only jointly. The personal interest of the office-holders in securing their own competences hence stabilised the constitutional system, while serving to protect the citizen.¹⁰³

In the federal constitution this conception assumed the place of a strict division of powers, as had been articulated in the 1776 constitution of Virginia and the constitutions of some other states. The system was balanced between presidency and Congress. The president, having a right of veto over legislation, was in possession of extensive powers by comparison with the state governors, and until 1951 could be re-elected indefinitely (though only Franklin D. Roosevelt held office more than twice, 1933–1945). John Adams had argued that the American president had to be more than a Venetian Doge, a variant of the argument used by Charles I during the English civil war,¹⁰⁴ and which fitted with Adam's frank advocacy of a quasi-monarchical head of state as a necessary component of a mixed constitution.¹⁰⁵ The indirect appointment

¹⁰⁰ Robert J. Steinfeld, 'Property and Suffrage in the Early Republic', *Stanford Law Review* 41, 2, 1989, 335–376; Alexander Keyssar, *The Right to Vote. The Contested History of Democracy in the United States*, 2nd ed., New York 2000, 3–52.

¹⁰¹ Keyssar, *The Right to Vote*, 54.

¹⁰² Noah Webster 1787, in Bailyn, *The Debate on the Constitution*, Vol. 1, 135: 'Our senates ... are not composed of a different order of men.... In most of our American constitutions, we have all the advantages of checks and balances, without the danger which may arise from a superior and independent order of men'.

¹⁰³ James Wilson later clearly emphasised the difference with respect to both the ancient and the English mixed constitution: *Lectures on Law*, Ch. 10, 'Of Government', in *Collected Works of James Wilson*, Vol. 1, 689–717.

¹⁰⁴ See p. 90.

¹⁰⁵ Letter to Roger Sherman, 18 July 1789; 'Review of the Hillhouse Proposal' [1808], in Adams, *Political Writings*, 448 and 611. Adams' *Defence of the Constitutions* was a reaction to Turgor's criticism of the bicameral American constitutional system (see p. 157); Adams was concerned that this criticism could further turn away from this system in America: Letter to Samuel Perley, 19 June 1809, in *Political Writings*, 674–677. When the first volume of *Defence of the Constitutions* appeared in February 1787, a federal constitution was not yet at issue. All the same, the text (the third volume was published in December 1787) did contribute to acceptance of the new federal constitution, even though the book advocated a traditional conception

by an electoral college – not through Congress, as originally envisaged¹⁰⁶ – was intended to ensure the choice of the best candidate independent from any notion of popularity, and so block demagogic machinations.¹⁰⁷ This intention was modified when, after 1832, the composition of the electoral college was no longer determined by the state parliaments, but by popular vote.¹⁰⁸

In addition to this there was a bicameral system including a Senate which, up until 1913, was likewise elected indirectly by the assemblies of the individual states. Here all states, regardless of their size, have equal weight,¹⁰⁹ serving on the one hand the ‘defence to the people against their own temporary errors and delusions’,¹¹⁰ and on the other binding individual states into an order that had to be ‘neither a national nor a federal Constitution, but a composite of both’.¹¹¹ This Senate had only its name in common with its Roman forerunner, in which magistrates became members for life with the expiry of their term.¹¹²

of the mixed constitution. What was decisive was the agreement on the need for checks and balances, and a strong executive head.

¹⁰⁶ The original convention plan, 1 June 1787; in Farrand, *Records*, Vol. 1, 64–69. It was assumed that normally no majority would be formed in the electoral college, so that the final choice would be made in the House of Representatives (with one vote per state): Max Farrand, ‘Compromises of the Constitution’, *American Historical Review* 9, 1904, 479–489.

¹⁰⁷ *Federalist*, No. 68 (Hamilton).

¹⁰⁸ There has been no change to the fact that a majority can emerge in the electoral college that does not correspond to the total popular vote, as was shown by the presidential election of 2000. George W. Bush won a majority in the electoral college, although Al Gore had received more popular votes. The majority in the electoral college depended on a disputed result in Florida, which decision was the object of several court proceedings, until the Supreme Court of the United States made a final determination. From the European perspective, it was peculiar that debate focussed upon electoral rights and electoral practice in Florida and the associated court cases, but that there was no broader discussion of the way in which presidents were elected, partly because the prospects of any fundamental change are small. See Keyssar, *The Right to Vote*, 325ff. (Afterword on 2000 Election); Robert A. Dahl, *How Democratic Is the American Constitution* [2002], 2nd ed., New Haven 2003, 79–81; Richard L. Hasen, ‘A Critical Guide to Bush v. Gore Scholarship’, *Annual Review of Political Science* 7, 2004, 297–313.

¹⁰⁹ This issue was debated at length in the federal convention, until the delegates of the smaller states finally prevailed, making use of a precedent from the First Continental Congress of 1774. No part was thought to be played by references to ancient federal states.

¹¹⁰ *Federalist*, No. 63 (Madison).

¹¹¹ *Federalist*, No. 39 (Madison).

¹¹² Arguments in favour of lifetime membership on the model of the Roman Senate or the British House of Lords were advanced in the federal convention. Political rhetoric later freely equated the Roman and American Senates, a comparison that today has difficulty in gaining traction. In 1993 Senator Robert Byrd (West Virginia, since 1959) made a series of speeches on the Roman Senate, seeking to reinforce the role of the American Senate as a bulwark of liberty against the encroachments of presidential power. (The particular issue was the ‘line item veto’, the presidential rejection of individual clauses of a law passed by the legislative, without vetoing the entire law. In 2002 Byrd then employed the same comparison with respect to the presidential powers assumed after 9/11, and with regard to the Iraq War). There was a mixed public reaction to this. Many found the comparison absurd; see David J. Bederman, *The Classical Foundations of*

The short two-year legislative period for the House of Representatives, and the structure of the Senate elections – every two years for one-third of the senators, who enjoyed a six-year term – were provisions that go back to Harrington.¹¹³ In a political order of this kind representatives of both chambers can receive payments without private interests prevailing over the general interest. An interesting point of the debate on the remuneration of deputies was the suspicion that it would be set too low in order to prevent the candidacy of little people.¹¹⁴

As this system was being established, parallels with antiquity were sought. They were deployed liberally and haphazardly, making clear that antiquity served primarily as an exemplary stock of mistakes to be avoided. Hence Madison argued in the federal convention that the number of senators should be kept small, since the Roman tribunes of the plebs had no longer been able to exercise their function of control once their number had grown so large (actually, ten) that conflicts among them would become unavoidable.¹¹⁵ Another delegate spoke in favour of a one-man chief executive, arguing that otherwise there would be no controlling the executive. He said that the Triumvirate (Antonius, Octavian [later Augustus] and Lepidus from 43 BC) had led Rome into despotism; while a joint head, as with the Roman consulate or Spartan kingship, would weaken the government.¹¹⁶ One man was easier to control than a collective leadership determined to abuse its power, here the reference being to the Thirty in Athens and the Roman Decemvirate of 450 BC.¹¹⁷

The bicameral system and the principle of the separation of powers, including a governor at the head of the executive, had been the general pattern followed when the constitutions of individual states were drawn up. There was one exception: Pennsylvania had begun in 1776 with a legislature made up of only one chamber, elected for just one year, a collective government leadership without the right of veto, and with direct involvement of the people in the drafting of legislation. This contrary model, which critics such as Benjamin Rush described as a one-way street to tyranny,¹¹⁸ and which also appeared

the American Constitution. Prevailing Wisdom, Cambridge 2008, 200ff.; Margaret Malamud, *Ancient Rome and Modern America*, Oxford 2009, 1–4 and 256–258.

¹¹³ Harrington's idea for an agrarian law influenced discussion and legislation in a few states, introducing a law of inheritance that prevented the emergence of too great a differentiation in the holding of property: see Eric Nelson, *The Greek Tradition in Republican Thought*, Cambridge 2004, 195ff.

¹¹⁴ Farrand, *Records*, Vol. 2, 290ff.

¹¹⁵ Madison, 7 June 1787, in Farrand, *Records*, Vol. 1, 151f.

¹¹⁶ Patterson, 16 June 1787, in Farrand, *Records*, Vol. 1, 261.

¹¹⁷ James Wilson in the Philadelphia Convention, 1 June 1787; Farrand, *Records*, Vol. 1, 74; *Federalist*, No. 70 (Hamilton). Here reference to the Decemvirate relates not to the group that drew up the Twelve Tables, but rather their successors, who according to ancient tradition were supposed to complete the laws, but instead introduced a tyrannical regime.

¹¹⁸ Rush pointed to the experience of antiquity in his condemnation of the fateful construction of a unicameral system: 'all the dissensions of Athens and Rome, so dreadful in their nature,

to demonstrate the need for the limitation of powers, given the constitutional infringements that arose, was revised and adapted to the usual pattern in 1790. Opponents, on the contrary, saw in these ‘checks and balances’ a violation of the principle of the separation of powers as exemplified by Montesquieu, as they (mis)understood him.

CONSTITUTION, BASIC RIGHTS, HUMAN RIGHTS

Hitherto, a ‘constitution’ had limited an existing state power through legal rules and conventions dating from various periods and with a variety of validating principles, an ‘assemblage of laws, institutions and customs’ in the words of Bolingbroke.¹¹⁹ In the United States, ‘constitution’ meant first of all that a sovereign people had created an order that itself constituted political institutions, which subsequently disposed of only those competences that had been assigned to them by the people.¹²⁰

With a political system constructed in this fashion the advocates of the new federal constitution such as Madison and Hamilton considered a Bill of Rights, of the kind created for Virginia in 1776 and then imitated elsewhere,¹²¹ to be a superfluous paper declaration. A proclamation of this kind could even be dangerous because of the suggestion that only those rights explicitly enumerated might be protected.¹²² Opponents of the constitutional initiative – the Anti-Federalists, not reactionaries, but advocates of a conception of civic virtue that could be realised only in small political entities – pointed to the gap between electorate

and so fatal in their consequences, originated in single Assemblies possessing all the power of these commonwealths; ‘Observations on the Government of Pennsylvania’ (1777), in Kurland, Lerner, *The Founders’ Constitution*, Vol. 1, 363.

¹¹⁹ ‘A Dissertation upon Parties’ (1733/1734), Letter X, in Bolingbroke, *Political Writings*, ed. David Armitage, Cambridge 1997, 88.

¹²⁰ The classical formulation comes from Tom Paine: ‘A constitution is a thing *antecedent* to a government; and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting a government.’ The constitution regulates ‘the compleat organization of a civil government, and the principles on which it shall act, and by which it shall be bound’; *Rights of Man* [Part I, 1791], 122: Hence: ‘government without constitution is power without a right’; [Part II, 1792, Ch. 4], 238. See also *Federalist*, No. 53 (Madison) on the breakthrough the Americans had achieved: ‘The important distinction so well understood in America, between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, seems to have been little understood and less observed in any other country.’ He refers to the sovereignty of the British parliament as demonstrated by the Septennial Act (see p. 90, fn. 58) as the very opposite.

¹²¹ The Bill of Rights was especially detailed in the 1780 Massachusetts constitution, running to thirty articles; this was introduced after a constitution drafted in 1778 without such provision had been rejected.

¹²² Madison, Letter to Jefferson, 17 October 1788; in Madison, *Writings*, 418–423; *Federalist*, No. 48 (Madison) and 84 (Hamilton); James Wilson, ‘Remarks in the Pennsylvania Convention’, *Collected Works*, Vol. 1, 194f.

and the people's representatives, and the dangers of a strong federal government that could degenerate into tyranny, and thus deviate from the principles of the revolution. An executive composed of only one person looked to them like an English king, with all his prerogative powers. Newspaper articles of this persuasion appeared in New York during 1787 and 1788 under the telling name of Brutus;¹²³ the *Federalist Papers* were in part aimed at these arguments.

George Mason, who had drafted the Declaration of Virginia, was critical of this lack of any declaration of rights, and his views were shared, for example, by Jefferson, at the time American envoy in France.¹²⁴ To forestall such criticism it was announced that Congress would pass supplementary articles as 'Amendments'. This announcement contributed greatly to the acceptance of the draft constitution in the individual states, which was passed in some ratifying conventions by a very small majority. Following an initiative on the part of Madison¹²⁵ in 1791 Congress passed ten fundamental amendments which were adopted in a further process of ratification. On the one hand, this restricted the legislative powers of Congress (no state religion could be prescribed, nor could there be any limitation of freedoms of religion, speech, the press and of assembly); on the other, it elevated elements of the English legal tradition into higher legal norms, whereas in England they were related to Parliamentary Acts (the Habeas Corpus Act of 1679, the Bill of Rights of 1689) which, like any law, could be altered by the legislature.

The amendments related primarily to security against arbitrary imprisonment and the searching of homes, together with the guarantee of a fair trial by jury. The Ninth Amendment makes clear that this was not intended to be a definitive listing of rights. Strictly speaking, only indirectly was it the conversion of basic civic rights into constitutional form. 'These supplementary articles are incidentally not composed in the form of a declaration of human rights; for the most part they concern procedures to be observed in federal courts, all of which is taken from English court procedure.'¹²⁶ The amendments primarily limited the competence of the legislature ('Congress shall make no law').

¹²³ Several of these essays can be found in Allen, Lloyd, *The Essential Antifederalist*, a smaller selection also in Wootton, *The Essential Federalist*, 74–96. The supposed author was Robert Yates, member of the New York Supreme Court, who had been a delegate to the Philadelphia convention.

¹²⁴ George Mason, 'Objections to the Constitution of Government Formed by the Convention' (November 1787), in Kammen, *The Origins of the American Constitution*, 255–258; Letter of Jefferson in Paris to James Madison, 20 December 1787, in Jefferson, *Writings*, 914–918. Jefferson was concerned about the image of America in an enlightened Europe, which he thought to be based on the declarations of rights by the individual states; this image would be damaged if there were no such declaration in the federal constitution; Letter to Francis Hopkinson, 13 March 1789, *ibid.*, 940–942.

¹²⁵ 'Speech in Congress Proposing Constitutional Amendments', 8 June 1789, in Madison, *Writings*, 437–452.

¹²⁶ Robert Mohl, *Das Bundes-Staatsrecht der Vereinigten Staaten von Nord-Amerika. I. Abt.: Verfassungsrecht*, Stuttgart 1824, 110.

The American federal constitution established the precedence of the constitution with respect to ordinary law – it was after all clear that a Parliament (in this case, the British Parliament) could pass resolutions that were unlawful. Judicial review, based upon some English legal conceptions, was already being practised by individual states. Whether Chief Justice Edward Coke really had in the early seventeenth century advocated the precedence of Common over Parliamentary law is doubtful,¹²⁷ but this made no difference to the influence of the principle. There were also cases in which it was established that the new state constitutions had been violated.¹²⁸ Judicial review was rather slow to develop in the Supreme Court of the United States during the early nineteenth century, beginning with the suspension of a federal law on the grounds of its conflict with the constitution (in the *Marbury v. Madison* case, 1803).

The opponents of the federal constitution feared that all-powerful judges would prevail over the people's will,¹²⁹ while its advocates saw in this an expression of the predominance of the constitution;¹³⁰ and this difference remained unresolved. The dispute has lasted right up to the present, there still being controversy about whether constitutional judgements make possible the adaptation of legal norms to changed circumstances, or whether they should instead secure the 'original intent' of the Founding Fathers.¹³¹ If it later became possible to make learned comparisons between the constitutional jurisdiction of the Supreme Court and the Athenian *graphe paranomon*,¹³² this does not mean that Athenian procedure had become influential.

The first ten amendments are about civil rights, not human rights. Their formulation corresponded to a concrete historical situation, most clearly apparent in the right to own and bear arms so that a militia could exist. (It is still a matter of argument whether an individual right to own guns can be derived from the Second Amendment.)

The Virginia Bill of Rights (12 June 1776), drafted by George Mason, and the Declaration of Independence (4 July 1776) involved a declaration of equality that was founded in natural law. The federal constitution did not repeat

¹²⁷ Coke's judgement in 'Dr. Bonham's Case' of 1610 was one of the instances cited; on it see John W. Gough, *Fundamental Law in English Constitutional History*, Oxford 1955, 31f.

¹²⁸ In Massachusetts the unconstitutional nature of slavery was established in 1783.

¹²⁹ In various articles by Brutus (see fn. 123) – Nos. 11, 12 and 15.

¹³⁰ *Federalist*, No. 78 (Hamilton).

¹³¹ Reference to foreign or international legal developments play no part in the judgements handed down by the Supreme Court.

¹³² T. D. Goodell, 'An Athenian Parallel to a Function of Our Supreme Court', *Yale Review* 2, 1894, 64–73. See also William W. Goodwin, 'The Athenian *Graphe Paranomon* and the American Doctrine of Constitutional Law', *Transactions and Proceedings of the American Philological Association* 26, 1905, LX–LXI (résumé of a lecture which emphasised the superiority of the American system). George M. Calhoun, 'Greek Law and Modern Jurisprudence', *California Law Review* 11, 1923, 295–312, here 308f., underlined by contrast the advantages of the Athenian as opposed to the American legislative process. For recent debate on this point see p. 347.

this. The Declaration of Independence had primarily emphasised the traditional rights of free Englishmen, which had been violated by the Crown; there was, however, no desire to simply proclaim a right of resistance, but maintain before the world a right to independence based on universal principles that were described as ‘self-evident truths’ – this was the later view of Jefferson, the most important author of the Declaration.¹³³

It was clear from the very first that maintaining the natural equality of all men in the Declaration of Independence (‘all men are created equal’) would throw up the problem of the continuation of slavery.¹³⁴ The Virginia Bill of Rights got around this by using the formula that rights acquired through birth applied only to members of society, thus excluding slaves. A passage originally drafted by Jefferson for the Declaration of Independence, in which the accusation is made that the British Crown also permitted trade in slaves, was deleted during discussion.¹³⁵ Opponents of slavery also refrained from bringing the slavery issue into discussion of the federal constitution, to avoid endangering the coherence of the new union. The slave states insisted that three-fifths of their slaves – euphemistically called ‘other persons’ – should be added to the number of their citizens in assessing the number of seats to be held in the House of Representatives. Calling upon universal legal principles, a number of Northern states abolished slavery for the future, or at least limited it, although existing slaves were not freed. In addition, the constitution contained a twenty-year limitation period during which no federal law against the import of slaves might be introduced; in 1808 when such a law was passed, both those for and against the continued existence of slavery reckoned that it would die out within twenty years,¹³⁶ drastically underestimating the significance of slave ‘breeding’.

The slave question involved from the very first reference to antiquity;¹³⁷ in addition, there were references to slavery in the Old Testament, as well as to the adjournment of the slave question in the New Testament (Paul’s ‘Letter to Philemon’). These allusions did become more frequent in the course of the nineteenth century, the Southern defenders of the institution making use of the Judaic-Christian tradition as well as the principles of Roman Law and

¹³³ Letter to Henry Lee, 8 May 1825, in Jefferson, *Writings*, 1501. On the original intention to argue in terms of the Law of Nations see David Armitage, ‘The Declaration of Independence and International Law’, *William and Mary Quarterly*, 3rd ser. 59, 2002, 39–64.

¹³⁴ This implication of referring to natural law was anticipated even earlier, for example, by James Otis in 1764; Eric Slauter, ‘Rights’, in *The Oxford Handbook of the American Revolution*, Edward D. Gray and Jane Kamensky, eds., Oxford 2013, 447–464, at 453.

¹³⁵ The differences between Jefferson’s draft and the final version are documented in Garry Wills, *Inventing America. Jefferson’s Declaration of Independence* [1978], Boston 2002, 374–379.

¹³⁶ This prognosis had already been made when the compromise agreement had been passed; see, for example, James Wilson, ‘Remarks in the Pennsylvania Convention to Ratify the Constitution of the United States’: ‘I consider this as laying the foundation for banishing slavery out of this country’ (3 December 1787); *Collected Works*, Vol. 1, 210.

¹³⁷ For example, ‘Notes on the State of Virginia’ [1781], Query XIV, in Jefferson, *Writings*, 267–270.

Aristotle's theory of 'natural slavery'. Although Aristotle had had difficulty in demonstrating empirically that the 'natural slave' he postulated did exist, with the emergence of physical anthropology in the eighteenth century the factor of 'race' or skin colour became relevant. American abolitionists invoked instead the idea that slavery was economically inefficient, as had been postulated by the Scottish theorists.¹³⁸ All the same, by invoking human rights in the foundational act there was an implicit promise that could not, in the long run, be ignored or retracted. In 1863 in his Gettysburg Address President Abraham Lincoln promised a re-foundation of the nation that would fulfil the promises of the Declaration of Independence.¹³⁹ The fact that the American Civil War was not fought as a war of liberation from slavery makes no difference to the long-term impact of the obligations imposed by an adherence to human rights.

The American Founding Fathers certainly started out from a one-sided and critical attitude to Athenian democracy, placing greater weight on the dangers of the rule of a majority than on the advantages of civic participation. They therefore constructed its precise opposite: a representative constitution, based upon institutions that countered and regulated each other, which has proved extraordinarily stable and continuous, lasting right up to the present day and absorbing massive territorial growth and an extension from thirteen to fifty states – something which has taken place despite the extremely strict provisions regarding changes of the constitution.¹⁴⁰ The constitution provided for the calling of a constitutional convention if there were to be any comprehensive revision, but no use has ever been made of this. By contrast, the constitutions

¹³⁸ Classic examples are the reports about the supposed inefficiency of slavery in the Southern states by Frederic Law Olmsted, *The Cotton Kingdom. A Traveller's Observation on Cotton and Slavery in the American Slave States* (1861), and the corresponding economic argument in John Elliott Cairnes, *Slave Power: Its Character, Career and Probable Designs* (1862), both of which strongly influenced discussion in the Northern states. See p. 108f. on Millar's, Smith's and Hume's views on slavery.

¹³⁹ Gettysburg Address, 19 November 1863. This very short speech (only three minutes) in honour of the Union's soldiers who had fallen in the Civil War echoed in part Pericles' Funeral Oration (Thucydides 2, 35ff.) though it is far from clear whether Lincoln alluded consciously to this text. The references to Thucydides' text are, however, evident in the preceding opening speech for about two hours delivered by the classicist Edward Everett, former governor of Massachusetts, secretary of state, and president of Harvard University. It is worth noting that, although Lincoln here coined the famous phrase 'government of the people, by the people, for the people', the word 'democracy' was not used at all, despite what later came to be assumed.

¹⁴⁰ The hurdles are set so high – requirement of a two-thirds majority in both Houses of Congress to be proposed, agreement by three-quarters of the states – that constitutional changes are possible only in exceptional cases. Even the external form – the original text remains, even if it has been set aside by an amendment – sends the message that the constitution is ultimately permanent and unchanging. There is no term set for the ratification process. The Twenty-Seventh Amendment (any revision to payments made to members of Congress comes into force only in the following legislative period of the House of Representatives) goes back to a proposal made in the first, 1789, Congress, but was ratified only in 1992, more than 200 years after it was proposed.

of the individual states have been revised frequently. All this is held together by a deep-seated belief, a form of civil and religious cult, in the constitution, and lasting veneration of the Founding Fathers – this is something typical of the public realm, and not necessarily reflected in academic historical scholarship, one strand of which has definite patricidal tendencies. The *Federalist Papers* were originally conceived as a means in the struggle to establish the federal constitution, but they have in time become an authoritative source of commentary on the constitution, in the twentieth century even being referred to by the Supreme Court – although this also involves the disputed role of this court in the development of the constitution through interpretation, which in turn has arisen because of the almost insuperable barriers to constitutional change.

REPUBLIC AND DEMOCRACY

Although frequent reference was made to ancient Greece and Rome, there was in fact a clear break made with ancient models in both practical and theoretical constitutional matters. Looking back in 1816 Thomas Jefferson summed this up: that while the value of personal freedom was recognised in antiquity, there was no conception of a form of government that might best secure such freedom. The new principle of representative democracy realised in America robbed ancient political theory of any practical significance, so that one no longer even missed the gaps in our knowledge of it.¹⁴¹ In 1839 the *United States Magazine and Democratic Review* formulated this idea as follows: America was a nation oriented to the future, embodying human progress; all that could still be learned from antiquity was the mistakes to be avoided.¹⁴²

The concept ‘representative democracy’¹⁴³ was used by Hamilton in a letter written in 1777, and can be found later in Destutt de Tracy, whose commentary on Montesquieu was translated by Jefferson and published in the United

¹⁴¹ Jefferson, letter to Isaac H. Tiffany, 26 August 1816; cited in Rahe, *Republics* (as in fn. 11), 18.

¹⁴² Cited in Edwin A. Miles, ‘The Young American Nation and the Classical World’, *Journal of the History of Ideas* 35, 1974, 259–274, here 274.

¹⁴³ ‘Eene waare representative Democratie’ (true representative democracy) was also a demand made by the proto-democratic movement of ‘Patriots’ during the 1780s in the Netherlands, formulated in the 1785 *Leidse Ontwerp* (Leiden Draft); Jonathan I. Israel, *Democratic Enlightenment, Philosophy, Revolution and Human Rights, 1750–1790*, Oxford 2011, 889. A democratic form based on popular assemblies, as in the Swiss cantons and antiquity, was not of any interest to the Patriots, given the size and social structure of the Netherlands. The opponents, supporters of the House of Orange, made use of the traditional *topos*, that democracy was the playground of demagogues and led to tyranny; Wyger R. E. Velema, ‘Elie Luzac and Two Dutch Revolutions: The Evolution of Orangist Political Thought’, in *The Dutch Republic in the Eighteenth Century. Decline, Enlightenment, and Revolution*, Margaret C. Jacob and Wijnand W. Mijnhardt, eds., Ithaca, NY, 1992, 123–146; Velema, ‘Republican Readings of Montesquieu: *The Spirit of the Laws* in the Dutch Republic’, *History of Political Thought* 18, 1997, 43–63.

States in 1811.¹⁴⁴ Often in public statements no distinction was made between a republic and a democracy. All the same, those in favour of the new order laid emphasis, during debates about a federal constitution, on the contrast between a modern republic based on a system of representation, and direct, ancient democracy.¹⁴⁵ For Madison, the success of the American constitution decided ‘the fate of Republican government’ in general.¹⁴⁶ The concept was, however, redefined. A republic could only be a system in which power flowed, either directly or indirectly, from the great majority of its citizens, not from a small elite.¹⁴⁷ The constitution does not use the concept ‘democracy’; Article IV, section 4 guarantees ‘to every State in this Union a Republican Form of Government’, without, however, defining what this might mean. Twenty years later John Adams, commenting on the many and various connotations of the concept of a republic, said that he had never understood what the term really meant, and that it was the same for everyone else.¹⁴⁸

Once the federal constitution was established there was no longer any doubt over its fundamental difference from antiquity, and the way was open to reconcile the idea of democracy with the principle of representation. In another letter of 1816, Jefferson wrote of a people who elected its representatives, but who do not themselves rule: ‘We of the United States ... are constitutionally and conscientiously democrats.’¹⁴⁹ At his inauguration as president in 1800 he had still said: ‘We are all Republicans, we are all Federalists.’¹⁵⁰ As early as 1806

¹⁴⁴ Letter to Governor Morris (on the Constitution of New York), 19 May 1777; Hamilton, *Writings*, 46. Antoine Louis Claude Destutt de Tracy, *A Commentary and Review of Montesquieu’s Spirit of Laws*, Philadelphia 1811, 19. Noah Webster preferred ‘Representative Republic’ in order to distinguish the United States from a ‘democracy ... where the legislative powers are exercised directly by all the citizens, as formerly in Athens and Rome. In our country, this power is not in the hands of the people, but of their representatives. ... Hence a material distinction between our form of government and those of the ancient democracies’s Writing in 1800, he wanted to avoid ‘democracy’ also since ‘the word *Democrat* has been used as synonymous with the word *Jacobin* in France’; *Ten Letters to Dr. Joseph Priestly* [Priestley], in *Answer to His Letters to the Inhabitants of Northumberland*, New Haven 1800, 9 (Letter III).

¹⁴⁵ *Federalist*, No. 14 (Madison): ‘under the confusion of names, it has been an easy task to transfer to a republic observations applicable to a democracy only’; that is, ‘the turbulent democracies of ancient Greece and modern Italy’.

¹⁴⁶ Madison at the Philadelphia convention, 26 June 1787; in Farrand, *Records*, Vol. 1, 423.

¹⁴⁷ *Federalist*, No. 39 (Madison). This denied the character of a ‘true’ republic to Venice and Holland, among others, by contrast with John Adams.

¹⁴⁸ Letter to Mercy Warren, 20 July 1807, in *Correspondence between John Adams and Mercy Warren* (as in fn. 70), 352f. The Supreme Court addressed this article for the first time in 1849, but avoided making any definition: Robert W. Shoemaker, ‘Democracy’ and ‘Republic’ as understood in Late Eighteenth Century America’, *American Speech* 41, 1966, 83–95, here 83f.; Linda K. Kerber, ‘The Republican Ideology of the Revolutionary Generation’, *American Quarterly* 37, 1985, 474–495, here 476f. It remains an open question whether the article simply seeks to exclude monarchy and a hereditary aristocracy.

¹⁴⁹ Letter to P. S. Dupont de Nemours, 24 April 1816, in Jefferson, *Writings*, 1385.

¹⁵⁰ Jefferson, *Writings*, 493.

John Adams complained that as president Jefferson had made a ‘quasi or mixed government’ into one which was in ‘virtue, spirit, and effect a democracy’.¹⁵¹

Eventually, the ‘Democratic–Republican’ Party founded by Jefferson in 1792 adopted the name ‘Democratic Party’ during the presidency of Andrew Jackson (1829–1837). Jackson presented himself as a self-made man who had fought for democracy, engaged with citizens directly during his electoral campaign, and benefited from the extension of the franchise that had occurred in some states. His period in government, during which the role of the president in the constitutional system was *de facto* extended, was called ‘Jacksonian democracy’. His opponents, however, polemicised against the emergence of a new Caesar.¹⁵²

This new usage was reinforced when Alexis de Tocqueville equated the American social and political order with democracy in his famous book *De la Démocratie en Amérique* (1835–1840).¹⁵³ His understanding of the American political system was based mainly on the *Federalist Papers*. In his account, the United States exemplifies the chances of success for a representative democracy based upon the law, common values and civic association, as well as the threat posed to this success by the tension between liberty and equality.

This had nothing to do with a mixed constitution, which was an ‘illusion’.¹⁵⁴ This democracy was based on a political and social structure entirely distinct from that of antiquity, lent emphasis, according to Tocqueville, by the fact that in Athens 20,000 citizens faced 350,000 slaves, so that it was really an ‘aristocratic republic’.¹⁵⁵ And so, he went on, drawing any analogy across time, even if it involves a familiar conceptual framework, appeared quite inappropriate; moreover, the Americans were far more cultured and educated, and really understood the basic elements of their political system:

When I compare the Greek and Roman republics with that of America and the former’s libraries full of manuscripts and their rude population with the latter’s thousand

¹⁵¹ Letter to Benjamin Rush, 19 September 1806, cited in Douglass G. Adair, ‘Experience Must Be Our Only Guide: History, Democratic Theory, and the United States Constitution’, in *The Reinterpretation of the American Revolution 1763–1789*, ed. Jack P. Greene, Westport 1979, 397–416, here 415.

¹⁵² Nicholas Cole, ‘Republicanism, Caesarism, and Political Change’, in *A Companion to Julius Caesar*, ed. Miriam Griffin, Oxford 2009, 418–430, here 424f.; Malamud, *Ancient Rome and Modern America*, 18ff.

¹⁵³ Tocqueville had visited the United States for nine months (from May 1830 to February 1831), commissioned by the French government to report on the American prison system. The empirical basis for much of his observations is certainly sparse, but this only makes the more remarkable his insights into underlying social structures and developments. He stressed, for example, the role of religion in public life as the result of a separation of state and church which was inconceivable in Europe at this time.

¹⁵⁴ Alexis de Tocqueville, *Democracy in America*, ed. Isaac Kramnick, London 2003, 293 (*De la démocratie en Amérique*, Paris 1967, Tome 1, 2^e partie, chapitre 7, at 71).

¹⁵⁵ Tocqueville, *Democracy in America*, 550 (*De la démocratie en Amérique*, Tome 2, 1^e partie, chapitre 15, at 80). For a discussion of the number of slaves in Athens, see p. 109.

newspapers and its educated people, when I think of all the effort made to judge the latter in the light of the former and to anticipate what will happen today by studying what happened two thousand years ago, I am tempted to burn my books in order to apply only brand new ideas in such a newly formed society.¹⁵⁶

For a 'new political science is needed for a totally new world'.¹⁵⁷

Given the ubiquitous use of 'democracy' during the 1848 Year of Revolutions, Tocqueville maintained that he would not

reveal its Greek roots to find out where the world comes from. I will seek democracy where I have seen it alive, active and triumphant, in the only country in the world where it exists, where it today could create in the modern world something great and permanent, in America.

Here there was 'the only democracy that today exists in the world, the sole true democratic republic known to history'.¹⁵⁸

He went on to say that democracy was not something limited to political institutions, but stood for a whole social dynamic, which went beyond the mere abolition of estate and rank and aimed at social equality, introducing the danger of a 'tyranny of the majority'. Tocqueville regarded this possibility with great scepticism, not so much in respect of the United States and its checks and balances, its numerous civic and religious associations, but in respect to Europe following the possible end of monarchy and aristocracy. The success of the United States did not, for Tocqueville, imply that different circumstances would lead to the same outcome. However, since the 1840s, Tocqueville was no longer that sure about the great future of the United States because of the slavery problem and territorial expansion.

Tocqueville's stance on the 1848 revolution will be discussed in a following chapter.¹⁵⁹ By then, the European discussion of democracy had long stood in the shadow of the French Revolution of 1789 and its aftershocks.

¹⁵⁶ Tocqueville, *Democracy in America*, 353 (*De la démocratie en Amérique*, Tome 1, 2^e partie, chapitre 9, at 409f.).

¹⁵⁷ Tocqueville, *Democracy in America*, 16 (*De la démocratie en Amérique* Tome 1, Introduction, at 62).

¹⁵⁸ Tocqueville, 'Discours prononcé à l'Assemblée Constituante dans la discussion de projet de Constitution sur la question du droit au travail' (12 septembre 1848), in Alexis de Tocqueville, *Écrits et discours politiques*, ed. André Jardin, Paris 1990, 174.

¹⁵⁹ See p. 291f.

The French Revolution and Antiquity

In the course of the French Revolution and its aftermath it is possible to trace a path from a (selective) enthusiasm for antiquity, to a critique of antiquity. The link to antiquity was not that apparent at the beginning of the Revolution, but developed in part through its progressive radicalisation, and also as a reaction to the Terror during the Jacobin rule. As with the American case, the importance of references to antiquity during constitutional discussion should not be overestimated. Current talk of the revolutionaries' 'cult of antiquity'¹ involves some exaggerations and misconceptions. There was really no serious attempt in France to further the introduction of ancient models. It was instead thought that an entirely new world order was being founded, implying a clear sense of competition with the American founding fathers. In any case, French circumstances – the rush of events, the harshness of mutual debate, the inter-linking of the radicalisation of the Revolution with counter-revolutionary uprisings, countering the intervention of European powers, the lack of all scruple in the struggles within and between factions, each of which generated new revolutionary leaders² – left no space for any process of thorough and controversial discussion of the lessons that might be drawn from antiquity, as had been the case in America. References to antiquity, primarily to Rome, served the argument of the moment, evoked particular associations with polemical intent, but did not involve any deeper engagement with ancient models.

Associations with antiquity were made from the very beginning. In August 1789 the teacher and publisher from Brunswick, Joachim Heinrich Campe, travelled to Paris with Wilhelm von Humboldt. Campe found the Revolution

¹ Following the pioneering study by Harold T. Parker, *The Cult of Antiquity and the French Revolutionaries*, Chicago 1937.

² The saying of the Girondin Vergniaud, 'the Revolution, like Saturn, devours its children', has become proverbial. It was not, as is often assumed, a 'famous last word' uttered on the scaffold (30 October 1793). Vergniaud had made this remark in March 1793.

inspiring, unlike Humboldt, and it seemed to him as if Paris was filled with Greeks and Romans.³ Those seeking to preserve the monarchy, together with its right of veto over parliamentary decisions, soon feared that any allusion to antiquity could also evoke republican tendencies. Jean-Joseph Mounier, a member of the National Assembly's constitutional committee, argued for a representative system as the best arrangement, criticising in so doing the 'sophistry of those who admired Greece and Rome'.⁴ In the press it was argued that, when all was said and done, one lived as a Frenchman in a monarchy, and not as a Greek or Roman in a republic.⁵

If political rhetoric subsequently made increasing reference to antiquity, this was because not only were both England and America excluded as political ideals, but also the free Franks of the early Middle Ages. A developing conflict with the clergy and increasing hostility to Christianity excluded the latter, associated as they were with the aristocracy and early Christianity. Antiquity remained virtually the only reference point that was not, for one reason or another, burdened with unambiguously negative connotations.⁶

CONSTITUTION BUILDING AND HUMAN RIGHTS

In the United States a new state was established through the creation of a constitution; in France an existing state was subjected to revolutionary change. These two sequences represent ideal-types of modern constitution building. The French case involved the Third Estate taking the initiative in the Estates General and declaring itself to be a National Assembly (17 June 1789) that would continue until the 'constitution of the realm and public regeneration are established and assured' (Oath of 20 June 1789).⁷ It assumed consequently the title of a Constituent Assembly (*Assemblée nationale constituante*) on 9 July. Sieyès developed a doctrine concerning the division between constituent power (*pouvoir constituant*) and the institutions created by the constitution (*pouvoirs constitués*), but in practice this distinction was the one realised in America (especially in the members states), and not in France since the

³ Joachim Heinrich Campe, *Briefe aus Paris, zur Zeit der Revolution geschrieben* [1790], ed. Helmut König, Berlin 1961, 113.

⁴ Cited in Karl Loewenstein, *Volk und Parlament nach der Staatstheorie der französischen Nationalversammlung von 1789*, Munich 1922, 204, fn. 86.

⁵ The editor of the *Gazette de Paris* in July 1790, quoted by Lynn Hunt, *Politics, Culture and Class in the French Revolution*, Berkeley 2004, 28f.

⁶ Marisa Linton, 'Ideas of the Future in the French Revolution', in *Enlightenment and Revolution. Essays in Honour of Norman Hampson*, ed. Malcolm Crook et al., Aldershot 2004, 153–168.

⁷ The formulation of this 'Tennis Court Oath' was still ambiguous; did '*fixer la constitution du royaume, opérer la régénération public*' mean the reconstruction of the traditional system or the building of a new constitution based on new principles? The following decision to publish a Declaration of the Rights of Man made evident that the latter path was taken; Keith M. Baker, 'Political Languages of the French Revolution', in *The Cambridge History of Eighteenth-Century Political Thought*, Mark Goldie and Robert Wokler, eds., Cambridge 2006, 626–659, at 630f.

Constituent Assembly was not authorised by the people but depended on the self-empowerment of the deputies. Condorcet commented: ‘the American republics have put into practice the idea, which was still new even in theory, of the necessity to establish by law a regular and peaceful procedure for reforming the constitution itself, and of distinguishing the authority entrusted with such reforms from the ordinary legislative authority.’⁸

The ‘Declaration of the Rights of Man and Citizen’ of 26 August 1789 preceded the drafting of the constitution. There were virtually no links to antiquity in the discussion of human rights, and what connection there was related to the fact that ancient legislators did *not* expound their principles separately, but anchored them in positive law.⁹ This point remains of basic importance, even if it were argued that the formulation of Article 6, regarding open access to public office according to the capacities and virtues of the citizen, makes a conscious or unconscious allusion to a formulation in Pericles’ Funeral Oration.¹⁰

The French declaration was influenced by the American Declaration of Independence, and more so by the proclamations of basic rights by the individual states, Virginia especially; these declarations had made a great impression in France.¹¹ Lafayette, who wrote one of the many French drafts, symbolised this transatlantic communication.¹²

In France there was a fixation upon the removal of the Ancien Régime; unlike the American model, a distrust of all power exercised by a state played no part, and so in France there was no guarantee of access to legal process. In 1902 the French political scientist Émile Boutmy wrote:

All Declarations of the United States are written in such a way that they can be invoked in court. ... For the French the Declaration is merely an oratorical masterpiece, the articles are to be found there is their abstract purity. ... No court can use them as legal instruments, or introduce them as reasons for a judgement. The French write for the instruction of the whole world; American legislators by contrast have written the articles of their Declarations for the use of their citizens, in such a way as to be acceptable to them.¹³

⁸ ‘The Sketch’, in Condorcet, *Political Writings*, Steven Lukes and Nadia Urbinati, eds., Cambridge 2012, 105 [*Esquisse d’un tableau historique des progrès de l’esprit humain*, 1794].

⁹ Examples of isolated expressions of this sentiment can be found in Sigmar-Jürgen Samwer, *Die französische Erklärung der Menschen- und Bürgerrechte von 1789/91*, Hamburg 1970, 230.

¹⁰ Adolf Menzel, ‘Das Problem der Demokratie in der griechischen Staatslehre’, *Zeitschrift für Volkswirtschaft und Sozialpolitik* NF 4, 1924, 411–432, here at 422, referring to Thucydides 2, 37, 1.

¹¹ Elise Marienstras, Naomi Wolf, ‘French Translations and Reception of the Declaration of Independence’, *Journal of American History* 85, 1999, 1299–1324.

¹² Lafayette was advised by Jefferson, who was at that time American ambassador in Paris: Letter from Jefferson to Rabaut de St. Etienne, 3 June 1789, in Thomas Jefferson, *Political Writings*, Joyce Appleby and Terence Hall, eds., Cambridge 1999, 349–351.

¹³ Émile Boutmy, ‘La déclaration des droits de l’homme et du citoyen et M. Jellinek’, *Annales des sciences politiques* 17, 1902, 415–443; reprinted in *Revue française d’histoire des idées politiques* 1, 1995, 141–165.

All the same, in his debate with his German counterpart Georg Jellinek, who had emphasised the precedence of the Anglo-Saxon tradition,¹⁴ Boutmy favoured the French model over the American. Insofar as these abstract formulations proclaimed 'more the rebirth of the human race than the reform of France', the French Revolution could be 'made intelligible to all and at the same time find imitation in a hundred places'.¹⁵

The derivation of all state power from the sovereignty of the nation (Article 3) was in tension with the emphatically proclaimed, yet in practice very vague, principle of the separation of powers (Article 16), implying a tendency for the will of the sovereign to be superior to the principle of constitutionality. It was the task of popular representatives to secure the conformity of the new society's positive law (yet to be created in full) with its basic laws. But it was not considered necessary to limit the competence of the legislature, judicial review not therefore being a possibility.¹⁶

Resort to traditional rights to liberty as formulated by the *Parlements* (supreme courts) on the eve of the Revolution¹⁷ did not seem adequate for the future, and so universalistic principles were drafted as the basis for a legitimate order, principles which then had to be incorporated as concrete legal norms by a new constitution which, however, came into force only on 3 September 1791.¹⁸ This constitution had to establish both a new legal and social order since the abolition of privileges and feudal rights on 4 August 1789 had created a *tabula rasa*. Condorcet, who used to draw comparisons with the American Revolution, later explained:

The Americans ... who had no vicious system of taxation to reform; and no feudal tyrannies, no hereditary distinctions, no rich, powerful and privileged corporations, no system of religious intolerance to destroy, limited themselves to establishing a new authority in place of that which had been exercised up till then by the British. None of these innovations affected the ordinary people or changed the relations between individuals. In France, on the contrary, the revolution was to embrace the entire economy of society, change every social relation and find its way down to the furthest links of the political chain.¹⁹

¹⁴ Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte. Ein Beitrag zur modernen Verfassungsgeschichte*, Leipzig 1895; 'La déclaration des droits de l'homme et du citoyen. Réponse de M. Jellinek à M. Boutmy', *Revue du droit public et de la science politique en France et à l'étranger* 18, 1902, 385–400. Jellinek considered freedom of religion as the origin of human rights and stressed the importance of its guarantee in the seventeenth-century British colonies in North America.

¹⁵ Alexis de Tocqueville, *L'Ancien Régime et la Révolution* [1856], Paris 1967, 71.

¹⁶ The catalogue of human rights compiled in 1789, alluded to in the preamble to the 1958 constitution of the Fifth Republic, first found concrete application in 1971, by a decision that the *conseil constitutionnel* derives its right of review from it.

¹⁷ For example, the 'declaration des droits de la nation' by the Parlement of Paris, May 1788, in *La déclaration des droits de l'homme et du citoyen*, ed. Stéphane Rials, Paris 1988, 522–528.

¹⁸ During the debates in August 1789 Mirabeau and others had proposed that a Declaration of Rights should wait until the new constitution was established.

¹⁹ 'Sketch', in Condorcet, *Political Writings*, 106.

In French constitutional debates no credence was given at first to the idea of direct democracy. Edmund Burke, the British critic of the French Revolution, was unsure in 1790 how one should classify the new political order in France. If there were any intention of introducing the pure democracy of antiquity, argued Burke, then one should remember the ancient authors, in particular Aristotle, who had pointed to the relationship between democracy and tyranny.²⁰

Sieyes [Siyèès] stated in September 1789 that democracy was an impossibility in a state the size of France if it were not to fragment into a loose confederation of republics.²¹ This explains the hesitancy in abolishing the monarchy, despite the obstruction of Louis XVI, and also after the royal family's (failed) flight to Varennes in July 1791, a reluctance shared even by the Jacobins.²² Like the Scottish political economists, Sieyes thought that representation was the only form suited to an economically progressive society based upon the division of labour.²³ In his view, 'any order of society in which representation is not a central element, is a false constitution'.²⁴ Mirabeau praised Sieyes as

²⁰ Edmund Burke, *Reflections on the Revolution in France* [1790], ed. Connor Cruise O'Brien, Harmondsworth 1968, 228f. Burke's prognoses were also marked by the experience of the English Revolution, at the end of which a general like Cromwell could seize power. The French Revolution, suggested Burke, was unlike all previous upheavals (with the exception of the Reformation), because it was a 'revolution of doctrine and theoretick dogma' that affected all other states; and for this reason he urged ever more strongly for the intervention of the European powers: 'Thoughts on French Affairs' [December 1791] in Edmund Burke, *Further Reflections on the Revolution in France*, ed. Daniel E. Ritchie, Indianapolis 1992, 208. For Burke's difficulty in finding a legitimation for intervention see Iain Hampsher-Monk, 'Edmund Burke's Changing Justification for Intervention', *Historical Journal* 48, 2006, 65–100.

²¹ 'Dire de l'Abbé Sieyes sur la question du veto royal, a la séance du 7 septembre 1789', in Emmanuel-Joseph Sieyes, *Écrits politiques*, ed. Roberto Zapperi, Basel 1985, 213–244, here at 234 and 237.

²² The Jacobin Club, founded in 1789, had originally a fairly diverse political membership. Here I use the term 'Jacobins' to refer to the group led by Robespierre which from the autumn of 1792 – after the exclusion of the Girondins – dominated the club, and in the National Convention were represented by the Montagnards, dominating the Committee of Public Safety and becoming involved in a somewhat uneasy alliance with the *sans-culottes* and popular societies. The label 'Girondins' was a term developed in nineteenth-century historical writing; at the time the grouping was usually referred to by the name of their unofficial head, Brissot, as *Brissotins*. It was only since late 1792 or early 1793 that they formed a coherent group within the National Convention.

²³ See the text of October 1789, cited by Pasquale Pasquino, 'Emmanuel Sieyes, Benjamin Constant et le "gouvernement des modernes"', *Revue française de science politique* 37, 1987, 214–229, here at 220f.

²⁴ Sieyes, 'Über den wahren Begriff einer Monarchie', *Neues Göttingisches Historisches Magazin* 1, 1792, 341–349, here 343f. A number of Sieyes' writings were published immediately in German translations and then completely collected in *Politische Schriften*, 2 Vols. ed. Konrad Engelbert Oelsner, Leipzig 1796. He found special praise from Immanuel Kant, who was in turn highly regarded in France. For Kant, a republic presupposed representation and the division of powers; in their absence, as in antiquity, there was despotism: *Zum ewigen Frieden (Perpetual Peace)* [1795]; *Metaphysik der Sitten, Der Rechtslehre Zweiter Teil* [1797], § 52.

‘the man who has revealed to the world the genuine principles of representative government’.²⁵

Barnave, one of the most important speakers for the group in the National Assembly that had succeeded in gaining acceptance for a constitutional monarchy with a unicameral parliament, stated in May 1790 that a National Assembly was not something that could be held in a public space, as in Athens.²⁶ In August 1791 he argued, against those who admired antiquity, that a representative system with a franchise based on a property qualification was to be preferred to ‘pure’ democracy, which was based on the exclusion of slaves and other groups of the population.²⁷ Brissot, the leader of the Girondins, emphasised in July 1791 that French republicans did not seek a pure democracy on the Athenian model.²⁸ The concept of ‘representative democracy’ had been in circulation in French discussions since 1790.²⁹

Although the Declaration of the Right of Man and of the Citizen (Article 6) stated that all citizens had the right to participate in legislation ‘in person, or through their representatives’, the text of the 1791 constitution (Title III, Ch. 1, Section 3, Article 7) laid down that the nation could exercise its rights only by delegation; even an imperative mandate, as had existed for the Estates General, was expressly excluded (Title III, Ch. 1, Section 3, Article 7).³⁰ The independence of representatives was also furthered by their election in the newly created departments, and not in the traditional provinces. The artificial character of the departments undermined traditional ties. Generally, representation was considered to be not only a substitute for the impracticality of assembling all citizens, but also a superior form of decision making.

According to Title VII of the constitution enacted in September 1791, the constitution could be revised by parliamentary means only after ten years had elapsed. As constitutional conflict with the king increased, and with the invasion of foreign troops, this provision was overridden, and in September 1792 a new National Convention (*Convention nationale*) was called.³¹ It produced

²⁵ Mirabeau, speech of 20 May 1790, in his *Discours*, ed. François Furet, Paris 1973.

²⁶ Barnave, ‘Premiers discours sur le droit de paix et de guerre’, in *Orateurs de la Révolution française t. 1: Les constituants*, François Furet and Ran Halévi, eds., Paris 1989, 21.

²⁷ Barnave, ‘Discours sur la révision du cens électoral’, in Furet, Halévi, *Orateurs*, t. 1, 43f.

²⁸ Cited in Pierre Rosanvallon, ‘The History of the Word “Democracy”’, *Journal of Democracy* 6, no. 4, 1995, 140–154, here at 145.

²⁹ Examples in Raymonde Monnier, ‘“Démocratie représentative” ou “république démocratique”. De la querelle des mots (république) à la querelle des anciens et modernes’, *Annales historiques de la Révolution française* no. 325, 2001, 1–21.

³⁰ The formulation of a free mandate was written into many later European constitutions. The imperative mandate remained an arrangement associated with estate assemblies; it was, however, revived in the postulates of the *sans-culottes*, and later in the Commune and syndicalist theory.

³¹ The parliament was called *Assemblée nationale législative* to signify that it had power only to pass laws, not to alter the constitution. To change, the constitution demanded resolutions of three consecutive legislative assemblies (each with a term of two years) and then the final

a new constitution in June 1793 which limited the principle of representation and elevated elements of direct democracy. Parliamentary laws became valid only when primary assemblies of departmental voters had failed to voice any objections (Articles 59–60); a range of matters was, however, reserved to parliamentary decree (relating to the army and domestic security), and these decrees were not subject to this right of objection (Articles 115–117). In addition, the legislative term was restricted to one year. All the same, initiatives from below were bound by deadlines and quora that were very hard to meet.

In the mid-nineteenth century Thomas Carlyle called this text ‘the most Democratic Constitution ever committed to paper’. But he added that the immediate suspension of this ‘poor new constitution’ was not only due to actual circumstances but also a consequence of its impracticability: ‘Further than paper it never got, nor ever will get’.³² Lorenz Stein, who documented the social movement in France in detail for a German audience, considered it to be ‘the most consistently conceived, purest democratic constitution in European history’,³³ a judgement that is often repeated, if with varying emphasis.

It would, however, be an exaggeration to see behind this constitution the vision to transform all of France into a gigantic version of Periclean Athens.³⁴ Besides, the previous Girondin draft for the constitution, mostly written by Condorcet³⁵ and presented by him on behalf of the constitutional committee to the National Convent on 15 February 1793, had a stronger popular basis than the final version pushed through by the Jacobins, since, according to Condorcet’s draft, the electors were to remain continually assembled, possessing their own legislative initiative, including the possibility of nullifying laws passed by Parliament. They would also be empowered to choose the members of the government.³⁶ In addition, there should be a National Convention to

decision by a fourth one with increased membership (*Assemblée de révision*), which could only deal with the points raised by the resolutions of the preceding assemblies. In addition, this process could only be initiated by the third legislative assembly elected under the 1791 constitution.

³² Thomas Carlyle, *The French Revolution. A History* [1837], Leipzig 1851, Vol. 3, 233. Carlyle echoed apparently the view of the French historian François Auguste Mignet, *Histoire de la révolution française* [1824] – English translation: *History of the French Revolution from 1789 to 1814*, London 1826, 261f.: ‘The constitutional law of 1793 established the pure government of the multitude. ... As it made over the government to the multitude, as it placed the power in a disorganized body, it would have been at all times impracticable’.

³³ Lorenz Stein, *Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage*, Bd. 1 [1850], Hildesheim 1959, 287.

³⁴ As suggested by Peter Graf Kielmansegg, *Volkssouveränität. Eine Untersuchung der Bedingungen demokratischer Legitimität*, Stuttgart 1977, 164.

³⁵ The committee charged with the work included Tom Paine, who mostly advised Condorcet since he could talk with him in English. Paine was made an Honorary Citizen in August 1792 and elected to the National Convention. Since he expected to be condemned for high treason in England, in mid-September he fled to France and took his seat.

³⁶ Text in François-Alphonse Aulard, ‘La constitution “girondine”’. *Texte du projet et des articles votés*, *La Révolution Française. Revue d’histoire moderne et contemporaine* 17, 1898, 503–554. Justification of his plan and criticism on the hastily imposed Jacobin constitution

revise the constitution every twenty years, so that each generation had the right to decide anew under which order it wanted to live – a postulate that Jefferson had formulated in the American debates, but for which he had failed to win support.³⁷ Condorcet did not want to follow the model of ancient lawgivers (or Harrington) and establish supposedly eternal constitutions, which was indeed an illusion. He wished instead to allow for the correction of mistakes that might have occurred during the founding act, and provide for a necessary adaption to new circumstances by calling constitutional conventions.³⁸

After the arrest of leading Girondins, the Jacobins cancelled the direct election of ministers, the periodic revision of the constitution and the initiative for legislation; the primary assemblies should be convened only on demand; initiatives to alter the constitution or to veto parliamentary laws were subjected to higher procedural hurdles by shortened deadlines and increased quora.³⁹

The practicability of Condorcet's draft could indeed be doubted. But the Jacobins had massively altered this plan because it would have strengthened the departments at the expense of the masses active in Paris. Robespierre claimed that Condorcet's draft meant an 'excess of democracy'. If the primary

in Condorcet, 'Aux citoyens français sur la nouvelle constitution', in Condorcet, *Œuvres*, ed. Arthur Condorcet O'Connor and François Arago, t. 12, Paris 1848, 653–675. (Consequently, a warrant for Condorcet's arrest was issued on 8 July 1793). For the details of Condorcet's draft see Alfred Stern, 'Condorcet und der girondistische Verfassungsentwurf von 1793', *Historische Zeitschrift* 141, 1930, 479–496, and for an evaluation in view of present-day political theory Nadia Urbinati, 'Condorcet's Democratic Theory of Representative Democracy', *European Journal of Political Theory* 3, 2004, 53–75; idem, *Representative Democracy*, Chicago 2006, 176ff. The extraordinary nature of this draft was quickly recognised by some critics of the Revolution: [Jacques] Mallet du Pan, *Considerations sur la nature de la révolution de France et sur les causes qui en prolongent la durée*, London 1793, 90f. Friedrich Gentz in his German translation commented that there was hardly any difference with respect to a democracy in which 'the entire people deliberated as a whole and legislates': *Über die französische Revolution und die Ursachen ihrer Dauer*, Berlin 1794, n. 20. Compare Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* [1922], Berlin 1993, 66f.: Condorcet's plan would have transformed all France into a debating society. Schmitt echoed a remark of Donoso Cortés concerning a 'diskutierende Gesellschaft'. The same formulation is used by Alexandre Koyré, 'Condorcet', *Journal of the History of Ideas* 9, 1948, 131–152, at 151: Condorcet's 'Constitution, so perfect, ... was obviously quite impracticable, and would have transformed all France into a permanent debating club'.

³⁷ On Jefferson see p. 130. For Condorcet's ideas with regard to constitution building Egon Zweig, *Die Lehre vom Pouvoir Constituant. Ein Beitrag zum Staatsrecht der französischen Revolution*, Tübingen 1909, esp. 102ff., 360f. and 381ff., is still indispensable.

³⁸ 'Discours sur les conventions nationales' [7 August 1791], in Condorcet, *Œuvres*, t. 10, 209–222, at 209f.

³⁹ The alterations to Condorcet's draft were made by a new constitutional committee of five men that was established as an enlargement of the Committee of Public Safety on 29 May 1793. Already on 9 June its chairman Héroult de Sechelles presented the new version to the Committee of Public Safety and the next day to the National Convention. It was without much debate finally passed by the National Convention on 27 June; Hedwig Hintze, *Staatseinheit und Föderalismus im alten Frankreich und in der Revolution*, Berlin 1928, 442ff.

assemblies would meet permanently poor men and artisans would withdraw after a while, thus leaving the field to plotters and rich people.⁴⁰ Considerations of power do play a role here on both sides, but it is evident that Condorcet, a convinced 'Modernist', envisaged a greater role for direct democracy than the Jacobins, who were supposedly fixated upon antiquity.

The new constitution was confirmed by popular oral vote in public, with a turnout of more than 30 per cent. But after the official proclamation which was celebrated with the *fête de l'Unité et de l'Indivisibilité* (Festival of Unity and Indivisibility) on 10 August 1793 it was immediately suspended because of the war and counter-revolutionary uprisings. It never actually came into force. The National Convention should now have been dissolved, but a newly elected assembly could have had an anti-Jacobin majority. Finally, the National Convention assumed officially the part of a provisional revolutionary government for the duration of the war, exercising its power mainly through commissions and the Committee for Public Safety. Saint-Just justified this decision of 10 October 1793 with the argument that, under prevailing conditions, the constitution would in any case have been suspended.⁴¹

Though never implemented, the 1793 constitution and Condorcet's plan remained a point of reference for later consideration of combinations of plebiscitarian and parliamentary democracy.⁴²

Apart from the absence of any question of a federal order, which was excluded by the dogma that the kingdom (in 1791) or the republic (in 1793) was 'united and indivisible', French constitutional debate differed clearly from American arguments in that there was no premise regarding the problems of majority rule: how the danger of the unlimited rule of a majority might be averted through the development of suitable institutional arrangements.

Even before the Revolution, liberty was thought to be threatened only by the monarch and his government. Article 16 of the Declaration of the Rights of Man and Citizen emphasised the principle of the separation of powers as the essence of a constitution worthy of this name. But this was not elaborated, and its real purpose was protection against excesses on the part of the executive. This was understood to be a lesson drawn from France's own history, in which the original liberty of the French was said to have been suppressed by absolutism.

⁴⁰ Statement in the National Convention, 14 June 1793; *Archives Parlementaires* sér. 1, t. 66, 530. Jules Michelet, expressing his anti-clerical bias, later put it bluntly: the Girondins wanted to secure the preponderance of the 'barbarian' country folk that in their servile obedience to priests and aristocrats would have destroyed the Republic, whereas the Jacobins preferred the 'enlightened' city dwellers; *Histoire de la Révolution française* [1847], Paris 1888, t. 7, 302.

⁴¹ Report on behalf of the Committee of Public Safety to the National Convention, 10 October 1793, in Saint-Just, *Œuvres complètes*, ed. Miguel Abensour, Paris 2004, 628–645.

⁴² François Furet, *Revolutionary France, 1770–1880*, Oxford 1992, 130, comments on its presence in later French discussions: 'Nothing speaks more eloquently of the lasting nature, in French history, of that separation between political ideas and realities created by the Revolution'. But there was a real impact on the new schemes of constitution which were developed in nineteenth-century Switzerland; see p. 306.

This problem should not arise in a republic of virtuous citizens capable of moral perfection where the National Assembly expressed the General Will. (Note that this applied Rousseauism did not correspond to Rousseau's original ideas.) And so there arose the tendency to treat minority positions as illegitimate, as a betrayal of the nation, or of the Revolution. Accordingly, problems could not originate in the new order, in which the nation had created itself as an autonomous subject, but must come from enemies of the system.

A small group in the National Assembly favoured a bicameral system with limitation of powers on the English or American model; however, the great majority rejected this proposal, mainly because they saw it as in conflict with the idea of the united representation of the nation, also fearing that in this way an aristocratic chamber might emerge.⁴³ Although the English system had once been admired, this had given way to rejection, in part because of the anti-revolutionary stance of the English. All the same, according to the constitution finally passed in 1791, the king was permitted a suspensive veto on parliamentary legislation.

Already before the Revolution reformers such as Condorcet and Turgot had like Mably criticised the American bicameral system, arguing that it relied too heavily on the English model; a system of checks and balances might, they said, make sense in controlling a monarchy, but not a republic, where it would simply be dysfunctional.⁴⁴ John Adams responded to this criticism in 1787–1788 with his *Defence of the Constitutions of Government of the United States of America*, which in France was treated more as a defence of the English than of the American constitutions. French advocates of bicameralism referred to Adams as theorist of the mixed constitution in the tradition of Lycurgus, Polybius, Montesquieu and De Lolme,⁴⁵ whereas a spokesman for the majority scorned Adams as 'Don Quixote of nobility'.⁴⁶ The first (1776) Pennsylvanian

⁴³ See 'What Is the Third Estate?' in Sieyès, *Political Writings*, ed. Michael Sonenscher, Indianapolis 2003, 141f.

⁴⁴ Turgot, Letter to Richard Price, 22 March 1778 (published by Price in 1784), in *Richard Price and the Ethical Foundations of the American Revolution*, ed. Bernard Peach, Durham, NC, 1979, 215–224; Condorcet, 'Seconde lettre d'un citoyen des États-Unis, à un Français, sur les affaires présentes' [1788], in Condorcet, *Ceuvres*, t. 9, Paris 1847, 107–123; Gabriel Bonnot de Mably, 'Observations sur le gouvernement et les loix des États-Unis d'Amérique', in *Collection complète des œuvres*, ed. Guillaume Arnoux, t. 8, Paris 1795; translated as *Remarks concerning the government and the laws of the United States of America: in four letters, addressed to Mr. Adams, Minister Plenipotentiary from the United States to those of Holland; and one of the negociators for the purpose of concluding a general peace*, 1785.

⁴⁵ Lally-Tolendal, in the National Assembly, 31 August 1789, quoted by Joyce Appelby, 'America as a Model for the Radical French Reformers of 1789', *William and Mary Quarterly* 3rd ser. 28, 1971, 267–286, at 283.

⁴⁶ Jean Denis Lanjuinais, in the National Assembly, 7 September 1789, quoted by C. Bradley Thompson, 'John Adams and the Coming of the French Revolution', *Journal of the Early Republic* 16, 1996, 361–387, at 384.

constitution, with its unicameral system, was positively received in the National Assembly.⁴⁷

These basic assumptions meant that any possible lessons from antiquity regarding the abuse of a majority were superfluous, even if now and then this was denied, as, for example, by the king's secretary in 1791, whose annotated translation of Demosthenes' speeches sought to demonstrate the horrors of democracy, and further the cause of maintaining a constitutional monarchy.⁴⁸

TOPICS FROM ANTIQUITY

Only with the radicalisation of the Revolution did it become common to make emphatic use of antiquity. However, what Hannah Arendt has called the 'pathos of novelty'⁴⁹ protected the Jacobins from an unrestrained identification with antiquity, their defining self-consciousness being that they had completed a break with all historical continuity and created for the first time in world history 'an entirely new state form, based simply on principles of reason'.⁵⁰ As Robespierre said, 'The French people appear to be two thousand years ahead of the rest of mankind; compared to this, one might be tempted to think it a different species.' And: 'The French Revolution is the first to be founded upon the theory of human rights and the principles of justice.'⁵¹ Nothing could be found relating to the theory of revolutionary government in political literature, since nobody had been able to foresee such a novel constitution.⁵² Hence both the American and the Dutch examples were of no relevance.⁵³

⁴⁷ References in Henry E. Bourne, 'American Constitutional Precedents in the French National Assembly', *American Historical Review* 8, 1903, 466–486; Horst Dippel, 'Aux origines du radicalisme bourgeois. De la constitution Pennsylvanie de 1776 à la constitution jacobine de 1793', *Francia* 16/2, 1989, 61–73.

⁴⁸ Cited in Ulrich Schindel, *Demosthenes im 18. Jahrhundert. Zehn Kapitel zum Nachleben des Demosthenes in Deutschland, Frankreich, England*, Munich 1963, 85–87.

⁴⁹ Hannah Arendt, *On Revolution* [1963], Harmondsworth 1973, 34.

⁵⁰ Wilhelm von Humboldt, 'Ideen über Staatsverfassung, durch die neue französische Constitution veranlasst' [1791], in Humboldt, *Werke*, Andreas Flitner and Klaus Giel, eds., Vol. 1, 3rd ed., Darmstadt 1980, 33–42, here 34 (directed to the first 1791 constitution, and intended to be critical).

⁵¹ Speeches in the National Convention, 7 May 1794, and 26 July 1794, Robespierre, *Œuvres complètes*, ed. Marc Bouloiseau et al., Paris 1952ff., t. 10, 444f., 544. In a statement in the National Convention, 15 April 1793, Robespierre had acknowledged that the Americans were the first to have based constitutions on Declarations of Right, but that they had done it in a most inadequate way; cited in Jacques Godechot, 'Robespierre et l'Amérique', *Annales historiques de la Révolution française* no. 226, 1976, 637–652, here at 640.

⁵² Report of 25 December 1793; Robespierre, *Œuvres complètes*, t. 10, 274.

⁵³ The demands of the Dutch 'patriots' (see p. 144, fn. 143) were known in France, since many of the movement's members had fled to France after the invasion of Prussian troops in 1787, and could well have influenced the French Declaration of the Rights of Man and Citizen, even if in the Dutch case it was a matter more of restoring traditional liberties: Jeremy D. Popkin, 'Dutch Patriots, French Journalists, and Declarations of Rights: The *Leidse Ontwerp* of 1785 and Its Diffusion in France', *Historical Journal* 38, 1995, 533–566.

In retrospect, both Kant and Hegel shared this conception of universal historical uniqueness:

For a phenomenon of this kind which has taken place in human history *can never be forgotten*, since it has revealed in human nature an aptitude for improvement of a kind which politician would have thought up by examining the course of events in the past.

That would remain true, added Kant, even if its ‘atrocities’ made one hope that the Revolution would not be repeated.⁵⁴ Hegel wrote that ‘never before, since the sun has been in the heavens with the planets turning around it, has it been seen that man entrusts himself to his head, that is to thought, building reality according to his thought’.⁵⁵ In 1817 Hegel spoke of the ‘last 25 years’ as ‘the richest that world history has certainly ever had, and for us the most instructive, because they are part of our world and our ideas’.⁵⁶

In France, reverence for antiquity was intended to legitimate the republican state form, at the same time forcing a rupture with Christianity – although Christian ritual was transformed into a cult of revolutionary martyrs. One important feature was the replacement of Christian first names with ancient ones, which at the same time symbolised civic virtues. The creation of a new way of calculating time and a new calendar came into conflict with these intentions, however.⁵⁷ Not only was dating from Christ’s birth and Sunday abolished, but also the Roman names for months of the year – not only July and August, referring to the autocrats Caesar and Augustus, but also June and with it an association with M. Iunius Brutus, the first consul of the Roman Republic, who was otherwise so revered.⁵⁸

The ‘Festival of the Supreme Being’, organised in June 1794 by the revolutionary artist and member of the National Convention Jacques-Louis David, which clearly borrowed from the Athenian Panathenaen Festival as depicted by Barthélemy, was also intended to outmatch it.⁵⁹ This cult was also aimed at the atheism of the Hébertists, this in turn giving rise to charges that Robespierre was a crypto-Catholic. The Jacobin red cap of liberty adopted from early 1792 evoked the *pilleus*, the Roman head-covering that was not only worn at the time a slave was set free, but also the general symbol of individual and collective

⁵⁴ Immanuel Kant, ‘The Contest of Faculties’ [1798], *Political Writings*, ed. Hans S. Reiss, Sections 7 and 6, respectively (at 184 and 182).

⁵⁵ *Vorlesungen über die Philosophie der Geschichte*, 4. Teil, 3. Abschnitt, 3. Kapitel; Georg Wilhelm Friedrich Hegel, *Werke*, Bd. 12, Frankfurt am Main 1986, 529.

⁵⁶ ‘[Beurteilung der] Verhandlungen der Landstände des Königreichs Württemberg in Jahre 1815 und 1816’, Hegel, *Werke*, Bd. 4, 507.

⁵⁷ The date 22 September 1792 was fixed as the beginning of ‘Year One of the Republic’. The renaming of months and the replacement of the week by decades of ten days followed in September 1793.

⁵⁸ Hans Maier, ‘Revolutionäre Feste und Zeitrechnung’, *Internationale katholische Zeitschrift* 17, 1988, 348–366, here at 359.

⁵⁹ Jean Starobinski, *L’invention de la liberté 1700–1789*, Geneva 1987, 103; Norman Hampson, ‘Mably and the Montagnards’, *French History* 16, 2002, 402–415, here at 410. On Barthélemy, see p. 111.

liberty (*libertas*) in Rome. The murderers of Caesar had put these felt hats on after they had committed their act of liberation.⁶⁰ A Parisian journal of March 1792 also noted a Roman coin⁶¹ which on one face had an image of Brutus, the liberator from Caesar's tyranny, and on the other the *pilleus* placed between two daggers, the legend referring to the Ides of March, the day of Caesar's murder in 44 BC.⁶² How it eventually came to the mix of *pilleus*, 'Phrygian' cap and the colour red is, however, more or less a mystery.⁶³ After the overthrow of the monarchy, images of liberty, embodied in a female face, often had this image wearing a Phrygian cap on one side with *fasces* on the other. These last were the bundles of rods that were carried by officials (*lictors*) before the Roman consuls, to demonstrate their claim to obedience from the citizenry.

According to Roman republican tradition, the consuls in the city had removed the axe from the *fasces* to signify that they denied all threat of executing citizens;⁶⁴ but French Liberty – according to the state seal of 1792⁶⁵ – wielded this symbol of the deathly power that a vigilant republic had need of in deterring its enemies. Instead of the executioner's axe there was the guillotine, recommended by its inventor for its humane qualities, which was from the end of 1792 in Paris and elsewhere set up next to the Statue of Liberty.⁶⁶

The education given in church schools, especially in those run by the Oratorians (the Jesuit Order having been banned in 1764), showed itself in the rhetoric of the revolutionaries. Some individuals had perfected a knowledge of the classics, but there was among the French revolutionaries little of the deep knowledge and theoretical appreciation that can be found in many of the American founding generation. Private collections of books with the relevant texts were on the modest side. Robespierre's library was confiscated after he was executed, and it turned out there were no editions of ancient texts in it; Saint-Just had translations of the speeches of Demosthenes and Cicero, together with works by Montesquieu, Rousseau and Mably.⁶⁷

⁶⁰ Appian, *Civil Wars* 2, 499. After Nero's death (68 AD) the Plebs ran through the city wearing *pilleus*; Suetonius, *Nero* 68, 1.

⁶¹ Described in Cassius Dio 47, 25, 3.

⁶² Jennifer Harris, 'The Red Cap of Liberty. A Study of Dress Worn by French Revolutionary Partisans, 1789–1794', *Eighteenth-Century Studies* 14, 1980–1981, 283–312, here at 290.

⁶³ Richard Wrigley, 'Transformations of a Revolutionary Symbol. The Liberty Cap in the French Revolution', *French History* 11, 1997, 131–169.

⁶⁴ As in Plutarch, *Publicola* 10, 5.

⁶⁵ Image in Maurice Agulhon, *Marianne au combat. L'imagerie et la symbolique républicaines de 1789 à 1880*, Paris 1979, 28. Later, the female figure was replaced by Hercules, as an allegory for the people who destroyed its enemies: Hunt, *Politics, Culture and Class*, 92ff.

⁶⁶ Gerd van den Heuvel, *Der Freiheitsbegriff der Französischen Revolution*, Göttingen 1988, 148.

⁶⁷ Germain Bapst, 'Inventaire des bibliothèques de quatre condamnés', *La Révolution Française. Revue d'histoire moderne et contemporaine* 21, 1891, 532–536; Fabienne Ratineau, 'Les livres de Robespierre au 9 Thermidor', *Annales historiques de la Révolution française* no. 287, 1992, 131–135. This does not involve all of their private holdings of books, but it does demonstrate that in formulating their revolutionary politics they had little need of ancient sources.

Only a few texts were more or less familiar, some through the popular Roman histories of Vertot and Rollin.⁶⁸ Among these were Cicero's speeches against Catilina and against Antonius, Sallust's depiction of the Catilinarian conspiracy, as well as the biographies of the famous Greeks and Romans by Plutarch and Cornelius Nepos. Together with Valerius Maximus's *Memorable Deeds and Sayings*, all these contributed to an enthusiasm for the great orators and virtuous republican politicians of antiquity. The disillusioning and discouraging political analysis of Thucydides was hardly known; a French translation was first published in 1795.

The influence of Plutarch also led to the Athenian general Phocion being treated as a model, despite his role during 322 BC in abolishing democracy under Macedon rule, for which he was executed in 318, although later rehabilitated. Plutarch presented him as a kind of philosopher-ruler who sensitively guided the masses, placing his fate in parallel with that of Socrates. He was presented in the same manner in the biographical sketches of Cornelius Nepos and in Valerius Maximus's *Memorable Deeds and Sayings*.⁶⁹ This image was further reinforced when in 1763 Mably made Phocion the heroic protagonist of a dialogue. Mably, the admirer of Sparta, was among Saint-Just's favourite reading, who also applied for Mably's ashes to be transferred to the Pantheon.⁷⁰ During the Reign of Terror, its victims compared themselves with Socrates and Phocion.⁷¹ The death of Socrates, painted in 1787 by Jacques-Louis David, was in turn an image familiar to the Parisian public.

Camille Desmoulins, born in 1760, characterised the impact of this education:

We were schooled in Rome and Athens, and in pride of the republic, so that we might be able to live in the depravity of the monarchy. What a senseless government, which thought that we could immerse ourselves in the past, without at the same time judging the present.⁷²

Manon Roland, born in 1754, the wife of the Minister of the Interior from 1792 to 1793, and in whose salon the leading Girondins had met, wrote before her execution in November 1793 in her prison notes that, as an eight-year-old,

⁶⁸ René Aubert de Vertot, *Histoire des révolutions arrivées dans le gouvernement de la république romaine*, 2 Vols., Paris 1722; Charles Rollin, *Histoire romaine depuis la fondation jusqu'à la Bataille de Actium*, 16 Vols., Amsterdam 1739–1749. Compare Walter Percival, 'Greek and Roman History in the French Revolution', *Contemporary Review* 204, 1963, 47–50, 155–158; Jacques Godechot, 'L'influence de l'antiquité à l'époque de la Révolution', *Index. Quaderni camerti di studi romanistici* 7, 1977, 45–57.

⁶⁹ Plutarch, *Phocion* 37f.; Cornelius Nepos, *Phocion* 4; Valerius Maximus 3, 8, ext. 2–3.

⁷⁰ Jacob Bernays, *Phokion und seine neueren Beurtheiler. Ein Beitrag zur Geschichte der griechischen Philosophie und Politik*, Berlin 1881, 19.

⁷¹ *Mémoires de Madame Roland: Confessions d'une femme politique guillotinée sous la Terreur*, Paris 2001, 84.

⁷² Camille Desmoulins, 'Histoire des Brissotins', in *Archives parlementaires de 1787 à 1860*, série 1, t. 3, 622.

she had taken Plutarch to church instead of the Bible: 'Plutarch prepared me to be a republican. ... He awoke in me a genuine enthusiasm for public virtues and liberty.'⁷³

Christoph Martin Wieland, a German writer and publicist living in Weimar and well-known at the time, wrote in 1799 that 'republican enthusiasts' had nourished their self-deception in their reading of Plutarch and Cornelius Nepos:

Very probably [Cornelius] Nepos and Plutarch are innocently guilty of all their errors and mistakes. The best and most educated among them [the revolutionaries] were, it could be said, brought up from childhood in the republics of antiquity. At an age when sensitive souls still have an unblemished sense for the ethical, the beautiful and the great, they became acquainted with the most excellent republicans of Greece and Rome, imbibing their love of republican liberty, their hatred of tyranny and monarchy, and their weakness for popular forms of government.

Thus, they had sought to remove ancient models 'from their natural context, to set them in a quite different order, in ground where they had no prospect of flourishing'.⁷⁴

There was a marked tendency to identify oneself with the pioneers of a free commonwealth who were antagonistic to tyranny. Brutus enjoyed the greatest popularity; according to Roman tradition he had taken part in the overthrow of the last Roman king, Tarquinius Superbus. Brutus was then one of the first two consuls of the republic (509 BC), in which role he had not shrunk from ordering the execution of his own sons, who had been part of the Tarquinian conspiracy.⁷⁵ As a founder of Roman liberty,⁷⁶ Brutus embodied the ideal of the citizen who put the welfare of the republic above all else. As Benjamin Constant remarked: 'After the Tarquinians had been driven from Rome, there was certainly not one citizen who would have dared disparage Junius Brutus's memory.'⁷⁷

Voltaire's play of 1730, *Brutus*, was staged again and again during the years of Revolution. For this Voltaire gained a posthumous reputation as a republican that he would have found embarrassing; after performances his bust would be brought onstage, and a Phrygian cap placed on it.⁷⁸ At the beginning of August 1793, the National Convention ordered that *Brutus* (Voltaire), *Gaius Gracchus* (Chenier), *Guillaume Tell* (Lemierre) and other dramas be

⁷³ *Mémoires de Madame Roland*, 145.

⁷⁴ 'Würdigung der neufränkischen Republik aus zweierlei Gesichtspunkten', in *Wieland's Werke*, Bd. 33: *Kleinere politische Schriften*, Berlin n.d., 384–402, here at 389f.

⁷⁵ See Livy 2, 2–5; Valerius Maximus 5, 8, 1; Plutarch, *Brutus* 1.

⁷⁶ Tacitus, *Annals* 1, 1, 1.

⁷⁷ Benjamin Constant, 'Des effets de la terreur' [1797], in Constant, *Écrits et discours politiques*, t. 1, Paris 1964, 108.

⁷⁸ See the report by Johann Friedrich Reichardt regarding a Paris performance of 1792 in *Reiseziel Revolution. Berichte deutscher Reisender aus Paris, 1789–1805*, Heiner Boehncke and Harro Zimmermann, eds., Reinbek 1988, 99–103.

shown at the expense of the state every week, because of the way in which they represented the virtues of freedom fighters.⁷⁹

Brutus was also the subject of a large painting by David that had been finished before the Revolution. Representations of Brutus were a central feature of public festivals; his example was constantly invoked in public speeches; his name was given to streets and to children, or used as a *nom de guerre* by revolutionaries (like Camille Desmoulins) and popular societies; busts of Brutus were displaced in public places, especially at the revolutionary tribunals, all over the country. This resonance was further amplified by the association with his alleged descendant, the Brutus who murdered Caesar; this was lent support by the constant performances of Voltaire's 1731 *La mort de César*, which was now interpreted contrary to the original intention to represent tyrannicide as illusory, since the murder of Caesar did not prevent the establishment of a monarchy.⁸⁰

Brutus was a symbol that even the uneducated could easily grasp. The men and women from those Paris sections who, at the end of 1793, demanded that the National Convention punish revolting military units by sanctioning the sons of their members, identified themselves with Brutus.⁸¹ 'It was the hereditary task of the Brutuses to exterminate the usurpers', wrote Fichte in 1793 in his defence of the French Revolution.⁸² In 1865 Heinrich von Treitschke, a devoted adversary of the Revolution of 1789 and its after-effects, mocked the 'idle toying with ancient reminiscences', whereby the republican heroes of antiquity

were eagerly celebrated and imitated – those phantom, virtuous heroes striding on stilts, disembodied and bloodless, as Plutarch described them and Rousseau extolled them. In each club there was a Cato, a Brutus, an Aristogeiton [the Athenian tyrannicide of 510 BC], all with red [Jacobin] caps.⁸³

In the hall in which the National Convention sat there were busts of Brutus, together with the busts of Publicola, Camillus, Cincinnatus, and those of Solon, Lycurgus, Plato and Demosthenes. The inclusion of Demosthenes here is

⁷⁹ Marvin Carlson, *The Theatre of the French Revolution*, Ithaca, NY, 1966, 165.

⁸⁰ See for references Kenneth N. McKee, 'Voltaire's Brutus during the French Revolution', *Modern Language Notes* 56, 1941, 100–106; Antoinette Ehrard and Jean Ehrard, 'Brutus et les lecteurs', *Cahiers Vilfredo Pareto. Revue européenne des sciences sociales* 27 (no. 85), 1989, 103–113; Denise Amy Baxter, 'Two Brutuses: Violence, Virtue, and Politics in the Visual Culture of the French Revolution', *Eighteenth-Century Life* 30, 2006, 51–77.

⁸¹ Georg Forster, *Parisische Umrisse*, 3 December 1793, cited in *Die Französische Revolution. Berichte und Deutungen deutscher Schriftsteller und Historiker*, ed. Horst Günther, Frankfurt am Main 1985, Bd. 2, 640.

⁸² Johann Gottlieb Fichte, *Beitrag zur Berichtigung des Urteils des Publikums über die französische Revolution* [1793], ed. Richard Schottky, Hamburg 1973, 180.

⁸³ Heinrich von Treitschke, 'Frankreichs Staatsleben und der Bonapartismus, I: Das erste Kaiserreich' [1865], in his *Historische und politische Aufsätze, Bd. 3: Freiheit und Königthum*, 5th ed., Leipzig 1886, 43–113, here at 77.

something of a surprise, not only because he was sometimes cited as a crown witness for unlimited democracy, but also mainly because little use was ever made of his speeches, despite there being existing French translations.

STATE OF EMERGENCY, DICTATORSHIP AND TYRANNY

Cicero, described in Plutarch's dual biography as a Roman pendant to Demosthenes, enjoyed by contrast much greater popularity in revolutionary rhetoric. That was due to the permanent fear of conspiracies formed by the Crown and the aristocracy.⁸⁴ Cicero's exemplary behaviour as Consul in 63 BC which, with the overthrow of the Catilinarian conspiracy, placed the welfare of the republic above all legalistic considerations, was deployed in various ways by public speeches (as well as in yet another frequently performed play by Voltaire, *Rome sauvée*).

Cicero's justificatory formula, the welfare of the people must be the supreme law (*salus populi suprema lex*),⁸⁵ echoed on through the years of the Roman Empire; and even in the early modern doctrine of reason of state this commitment to public welfare (*salus publica*) served to legitimise transgressions of the law. And this would certainly have a use if not only the king was a new Catilina, but also Catilina a figure encountered everywhere in France.⁸⁶

Salut public served now among other things as justification for calling a new National Convention that followed the breaching of the 1791 constitution;⁸⁷ the 'September Massacres' of 1792;⁸⁸ the demand to execute Louis XVI without due process;⁸⁹ the introduction of Revolutionary

⁸⁴ Timothy Tackett, 'Conspiracy Obsessions in a Time of Revolution. French elites and the origins of terror, 1789-1792', *American Historical Review* 105, 2000, 691-713.

⁸⁵ Cicero, *De Legibus* 3, 8. This Ciceronian phrase was later translated by the Russian Marxist Plekhanov 'into the language of the revolutionary', and updated: 'The success of the Revolution is the supreme law.' Plekhanov was speaking in 1903 at the Second Congress of the Russian Social Democratic Party, cited by Lenin, 'Plekhanov on the Terror' [January 1918], in Lenin, *Collected Works*, Vol. 42, 48.

⁸⁶ Thomas E. Kaiser, 'Conclusion: Catilina's Revenge - Conspiracy, Revolution and Historical Consciousness from the *ancien régime* to the Consulate', in *Conspiracy in the French Revolution*, ed. Peter R. Campbell et al., Manchester 2007, 189-216. See also a petition from the Paris Sections to the Legislative Assembly, 20 June 1792: Against traitors one should follow the example of Cicero who had revealed the machinations of Catilina and driven the public enemies into exile, in *Die Französische Revolution. Eine Dokumentation*, ed. Walter Grab, Munich 1973, 103.

⁸⁷ Decision of the Legislative Assembly of 11 August 1792, in *French Revolution. Documents 1784-94*, ed. James M. Thompson, Oxford 1948, 194-196.

⁸⁸ Robespierre, Speech in the National Convention, 5 November 1792; Robespierre, *Œuvres complètes*, t. 9, 87f.

⁸⁹ Robespierre, Speech in the National Convention, 3 December 1792; Robespierre, *Œuvres complètes*, t. 9, 121ff. Robespierre was not then able to persuade the National Convention of this; the king was instead given a right to defend himself. By accepting the role of the accused, despite possessing immunity under the 1791 constitution, Louis XVI missed the opportunity

Tribunals;⁹⁰ in effect, all measures taken by the revolutionary government;⁹¹ and it ultimately found direct expression in the notorious committee formed on 6 April 1793: *Comité de salut public*. For Germaine de Staël, daughter of Jacques Necker, the last minister of finance before the Revolution and a critic of it, this category seemed in retrospect to be ‘a fatal expression which implies the sacrifice of morality to what it has been agreed to call the interest of the state, that is, to the passions of those who govern’.⁹²

During the trial of the king in the National Convention, Saint-Just had said that allowing this new Catilina the prospect of defending himself meant allowing him greater rights than had been usual for Rome, whereas he should really be tried as a foreign enemy according to the law of nations.⁹³ When in October 1793 the Girondin leader Brissot was put on trial he asked for proof of conspiracy of the kind that Cicero had laid before the Senate, to which Robespierre replied that legalistic arguments were inappropriate here, since in Rome they had been used by Caesar.⁹⁴ Given that Caesar, the defender of civic rights, quickly became the destroyer of the republic, this showed Brissot up for what he was. In a speech in the National Convention during March 1794 Couthon, a member of the Committee of Public Safety and largely responsible for the destruction of counter-revolutionary Lyon, concluded from Cicero’s arguments that conspirators could be identified by the physiognomy, so that all further proof was redundant.⁹⁵ Couthon had played a major part in the infamous law of 22 Prairial of year II (10 June 1794) which massively extended the definition of a political crime, denied any right defence to the accused, declared the presentation of evidence to be superfluous, leading to a dramatic increase in the number of death sentences handed down by the Paris Revolutionary Tribunal.⁹⁶

Combined with the example of Catilina and/or talk of *salut public*, free use was also made of the formula that one had, for the time being, to draw a

of presenting himself as a martyr to liberty, as had the English king Charles I in 1649. The French monarch did, however, seek to learn from Charles’ example by approaching his execution with dignity; for this, he read the relevant passage on the English regicide in Hume, *History of England*; see Timothy Blanning, *The Pursuit of Glory. Europe 1648–1815*, Chichester 2008, 195ff.

⁹⁰ Danton, Speech in the National Convention, 10 March 1793; *Discours de Danton*, ed. André Fribourg, Paris 1910, 289ff.

⁹¹ Robespierre, Speech in the National Convention, 25 December 1793; Robespierre, (*Œuvres complètes*, t. 10, 273ff.

⁹² *Considerations on the Principal Events of the French Revolution*, ed. Aurelian Craiutu, Indianapolis 2008, 375.

⁹³ Speech in the National Convention, 13 November 1792; Saint-Just, (*Œuvres complètes*, 475–484.

⁹⁴ Caesar in the session of the Roman Senate on the fate of the arrested Catilinarians, 5 December 63 BC; he pleaded against executions without due course of law since this would violent fundamental rights of citizens; Sallust, *De coniurato Catilinae* 51.

⁹⁵ Cicero, *In Catilinam* 3, 13; Kaiser, ‘Catilina’s Revenge’, 200.

⁹⁶ The removal of any immunity from members of the National Convention played a significant part in the formation of resistance to Robespierre.

veil over liberty. This idea stemmed from all the people of Montesquieu, who had come to this conclusion from studying the practice of the freest nations in world history – England, Athens and Rome.⁹⁷ It was not a question of individual enemies of the states, as in Cicero and Montesquieu, but rather every person who was in some way or another ‘suspect’. Danton had as minister of justice in early 1793 invoked the Roman tradition, that one might without fear of punishment kill (potential) tyrants, arguing that this should be used against all counter-revolutionaries;⁹⁸ although at the time he was in fact arguing for Revolutionary Tribunals as a way of preventing recurrence of the kind of mob lynch-law seen during the 1792 September Massacres. Responsible citizens were called upon to report every suspect person, but not anonymously, since it was unfitting for a republic to rely upon denunciation for reward, as had been the rule in the dark times of Emperor Tiberius (according to Tacitus).⁹⁹

These arguments also functioned to deny the accusation that the Jacobins sought a dictatorship, accusations aimed in particular at Robespierre. Rousseau had in mid-century approved of the conventional Roman dictatorship – transitory concentration of the power of the magistracy in one person to deal with an acute military or domestic crisis – as a suitable means for a republic, and criticised the failure to use this means against Catilina.¹⁰⁰ However, by the final decade of the eighteenth century the institution of dictatorship was strongly associated with lasting military rule on the model of Caesar or Cromwell.¹⁰¹ From the beginning of the Revolution ‘dictator’ had been used as a slogan of denunciation against anyone said to be seeking personal power; speakers from the different fractions sought to outbid each other with the accusation.

⁹⁷ Bernard Manin, ‘Drawing a Veil over Liberty. The Language of Public Safety during the French Revolution’, in *La théorie politico-constitutionnelle du gouvernement d’exception*, Pasquale Pasquino and Bernard Manin, eds., Paris 2000, 71–85. Montesquieu, *De l’esprit des lois*, Book XII, Ch. 19. He cites here the English Bill of Attainder, the Athenian ostracism, and for Rome banishment through popular vote, as used against Cicero in 58 BC. These were all procedures that affected only one person at a given time, which was not the case with the persecution conducted by the Revolutionary Tribunals.

⁹⁸ 27 March 1793; *Discours de Danton*, 299ff. Danton was referring to the law passed during the first year of the Roman republic following an initiative by Valerius Publicola (Livy 2, 8, 2; Plutarch, *Publicola*, 12, 1).

⁹⁹ This difference to the Roman practice was often expressed: Jacques Guilhaumou, ‘Fragments of a Discourse of Denunciation (1789–1794)’, in *The French Revolution and the Creation of Modern Political Culture Vol. 4: The Terror*, ed. Keith M. Baker, Oxford 1994, 139–155; Colin Lucas, ‘The Theory and Practice of Denunciation in the French Revolution’, *Journal of Modern History* 68, 1996, 768–785.

¹⁰⁰ Rousseau, ‘Of the Social Contract’, in *The Social Contract and Other Later Political Writings*, ed. V. Gourevitch, Cambridge 1997, 139f. [Book IV, Ch. 6].

¹⁰¹ Sulla and Caesar had used the title of dictator to legitimate sole rule based on military force. In commentary from Machiavelli to Rousseau this was generally treated as an abuse of power, and dictatorship was viewed positively, in its original sense of an emergency institution; see Wilfried Nippel, ‘Saving the Constitution: The European Discourse on Dictatorship’, in *In the Footsteps of Herodotus. Towards European Political Thought*, Janet Coleman and Paschalis M. Kitromilides, eds., Florence 2012, 29–49.

In the early years of the Revolution the 'prime suspect' among those thought to harbour dictatorial aspirations was Lafayette. He had himself vaguely described his situation as that of a kind of dictator, a generalissimo.¹⁰² From more than one direction there was talk that he wished to abuse his military command. Mirabeau suspected that Lafayette wanted to practise a 'new dictatorship'.¹⁰³ Nobody in Court circles was sure whether Lafayette wanted to be a dictator like Cromwell, or someone who would restore the monarchy, like General Monck.¹⁰⁴

At the end of 1791 Robespierre opposed the proposal to declare war upon hostile European powers, suspecting that behind the proposal lay an intention, shared by Girondins (who sought to export the Revolution) and the Court, of creating a pretext for counter-revolutionary intrigue. This reminded him of the tactics of the Roman patricians, who in their struggles to maintain their status and rank had talked of imminent war to quell the demands of the plebeians. The executive would then suspend civil rights and assume dictatorial powers, nullifying the laws;¹⁰⁵ and if among the generals (this meant above all Lafayette) there was a new Caesar or Cromwell, he would then usurp all power.¹⁰⁶ In May 1792, Robespierre published what amounted to republican articles of faith, stating that he preferred the existence of free citizens in a monarchy with a representative assembly to a condition of enslavement under an aristocratic Senate or a dictator; that he had as little love for Cromwell as for Charles I, and he had just as little time for the Decemvirate as for a Tarquinius (Superbus).¹⁰⁷

From September 1792 onwards in the National Convention the Girondins were locked in a power struggle with the Jacobins. They maintained that Robespierre, supported by the Paris Commune, or working for it, sought to impose a dictatorship, or form a triumvirate¹⁰⁸ with Danton and Marat.¹⁰⁹

¹⁰² Louis Gottschalk, Margaret Maddox, *Lafayette in the French Revolution. Vol. 2: From the October Days through the Federation*, Chicago 1973, 104f. Lafayette could have seen George Washington as a model for his role, Washington being treated in America as a new Cincinnatus (see p. 124).

¹⁰³ Speech in the National Assembly, 2 October 1790; Mirabeau, *Discours*, 283.

¹⁰⁴ Gottschalk, Maddox, *Lafayette*, 326.

¹⁰⁵ See the famous formulation in Cicero, *Pro Milone* 11: *silent enim leges inter arma* ('when arms speak, the laws are silent').

¹⁰⁶ Speeches in the Jacobin Club, 2 January 1792 and 18 December 1791; Robespierre, (*Œuvres complètes*, t. 8, *Discours* 3 (octobre 1791–septembre 1792), Paris 1953, 87 and 49, respectively.

¹⁰⁷ Robespierre, (*Œuvres complètes*, t. 4: *La défenseur de la constitution: les journaux*, ed. Gustave Laurent, Paris 1939, 9. The ten-men grouping that formulated the Twelve Tables in 451/450 BC was according to ancient tradition succeeded by a second Decemvirate that oppressed the plebs; it is the latter which seems to be referred to here.

¹⁰⁸ A triumvirate in the sense of the alliance of Octavian (later Augustus), Antonius and Lepidus, who were endowed with extraordinary powers in 43 BC; they subsequently used these powers to conduct proscriptions.

¹⁰⁹ This was how Barbaroux, for example, argued in the National Convention on 25 September 1792, in François-Alphonse Aulard, *Les orateurs de la législative et de la convention*, t. 1, Paris

These accusations were emphatically denied. Danton demanded that any initiative leading to the introduction of a dictatorship or a triumvirate be punishable with death.¹¹⁰ Robespierre for his part protested against the imputation, which he claimed to be absurd, since he could call upon no military forces. Instead, he turned the accusation back upon his accusers.¹¹¹ In the summer of 1793 Saint-Just once again rejected this Girondin accusation.¹¹² At a meeting of the Paris Sections in March 1793 the threat was made to kill anyone who dared attack the sovereignty of the people (which they, not the National Convention, represented) by introducing a dictatorship or triumvirate.¹¹³ When at the beginning of January 1794 Robespierre was yet again accused of dictatorial ambition, he defended himself by pointing out that he was after all only one of the twelve members of the Committee for Public Safety, which was true enough.¹¹⁴ Following the way Robespierre behaved during the Festival of the Supreme Being on 8 June 1794, this accusation now came from those members of the Committee of Public Safety who feared that they would be the next victims of Robespierre, Saint-Just and Couthon, and who therefore began to seek their suppression.¹¹⁵ It was only when Robespierre's dominant position began to crumble that Saint-Just, in a joint session of the Committees for Public Safety and for Security in June 1794, proposed that Robespierre should be made dictator, a proposition that Robespierre had approved only with great hesitation. It was rejected by a large majority.¹¹⁶

1885, 545ff.; and the continuation of these attacks a few days later, David P. Jordan, *The King's Trial. The French Revolution vs. Louis XVI*, Berkeley 1979, 51ff.

¹¹⁰ Speech in the National Convention, 25 September 1792; *Discours de Danton*, 194ff.

¹¹¹ Speech in the National Convention, 5 November 1792; Robespierre, *Œuvres complètes*, t. 9: *Discours 4 (septembre 1791–juillet 1793)*, 77–101.

¹¹² Report on behalf of the Committee for Public Safety, 8 July 1793; Saint-Just, *Œuvres complètes*, 599. The minister of the interior, Garat, also denied similar rumours in the National Convention on 16 June 1793; *Archives parlementaires* sér. 1, t. 66, Paris 1904, 581.

¹¹³ Albert Soboul, 'Some Problems of the Revolutionary State, 1789–1796', *Past and Present* 65, 1974, 52–74, here at 59.

¹¹⁴ Jean Massin, *Robespierre*, 4th ed., Berlin 1976, 307. The members were appointed by the National Convention for one month only, and remained accountable to it. The role that Robespierre played in this Committee, where decisions were made by a majority, is disputed; there were certainly other hardliners whose interest it served to put all responsibility on Robespierre. Since no minutes were taken, the way in which decisions were made cannot be reconstructed.

¹¹⁵ Ludwig Häusser, *Geschichte der französischen Revolution 1788–1799*, ed. Wilhelm Oncken, 3rd ed., Berlin 1891, 482f.; William Doyle, *The Oxford History of the French Revolution*, 2nd ed., Oxford 2002, 277.

¹¹⁶ Saint-Just reported on this in his last National Convention speech of 27 July 1794, in which he was finally shouted down; Saint-Just, *Œuvres complètes*, 765–785; for a report by a member of the convention on this session see Louis Jacob, *Robespierre vu par ses contemporains. Témoignages recueillis et présentés*, Paris 1938, 172–174; Jacob Burckhardt, *Geschichte des Revolutionszeitalters*, ed. Wolfgang Hardtwig et al., Munich 2009, 517 [Burckhardt's lectures reconstructed from his manuscripts]; Martin Lyons, 'The 9 Thermidor. Motives and Effects', *European Studies Review* 5, 1975, 123–146, here at 127.

In his last speech delivered in the National Convention on 26 July 1794, Robespierre declared that he would not be deflected from defending the cause of the people, even if he was accused of being a dictator or tyrant (like Peisistratus in Athens); but, he went on, dictatorship could not be reconciled with republican principles. The accusation made against him by his opponents served only to ascribe responsibility to him for all the decisions made by revolutionary institutions, whereby these enemies of the republic abused the name of a Roman institution.¹¹⁷ With the continuation of the session on the same day Robespierre was shouted down with cries of ‘dictator, tyrant, Caesar, Catilina, Cromwell’; he, Saint-Just and Couthon were said to be the triumvirate responsible for proscriptions; and this was constantly repeated after their execution two days later on 10 Thermidor, Year II.¹¹⁸ The same accusations would be levelled against Napoleon after his seizure of power in November 1799.

The leading Jacobins maintained to the very last (apart from Saint-Just’s late shift of position) that they likewise rejected even a constitutional dictatorship, on the grounds that it could not be reconciled with the principles of collective decision making in republican institutions.¹¹⁹ Robespierre was linked with the Roman tribunes of the plebs, with all the ambivalences inherent to this institution. At the end of April 1792 Robespierre suggested that his foes compared him with the Gracchi because he would find the same tragic end as they had.¹²⁰ In October 1792, Brissot, the leader of the Girondins, demanded that Robespierre and other Jacobins be thrown from the Tarpeian Rock¹²¹ (the cliff near the Roman Capitol) in imitation of the summary justice of the Roman tribunes,¹²² which was a procedure entirely fitting for the ‘Mountain’, the *montagnards* in the National Convention. When in June 1794 Robespierre

¹¹⁷ Speech in the National Convention, 26 July 1794; Robespierre, *Œuvres complètes*, t. 10, 542–576. He repeated the speech that same evening in the Jacobin Club; *La Société des jacobins*, t. 6, ed. François-Alphonse Aulard, Paris 1897, 244–281.

¹¹⁸ See, for instance, the newspaper reports in *Paris pendant la réaction thermidorienne et sous le Directoire*, t. 1, ed. François-Alphonse Aulard, Paris 1898, 1–7.

¹¹⁹ Among the Jacobins Marat was the great exception. During the turbulent debate of September 1792 he said that Robespierre and Danton had always denied the intentions ascribed to them; the only person who had in France, since the outbreak of the revolution, raised such a demand was he, Marat, since he was convinced that establishing a dictatorship or a triumvirate or military tribunes was the only way to deal with traitors and conspirators. He had long openly maintained this position in newspaper articles – Speech in the National Convention, 25 September 1792; Jean-Paul Marat, *Œuvres*, ed. Auguste Vermorel [1869], Aalen 1989, 236–244. What Marat meant by military tribunes is not clear. It was the title of officers of the Roman Army who in the Early Republic temporarily served as supreme commanders and magistrates instead of the consuls.

¹²⁰ Speech in the National Convention, 30 April 1792; Robespierre, *Œuvres complètes*, t. 8, 326.

¹²¹ Cited in Pjotr A. Kropotkin, *Die große Französische Revolution 1789–1793*, Bd. 2 [1909], Leipzig 1982, 42f. [*La grande révolution*, 1909].

¹²² Dionysius of Halicarnassus, *Antiquitates Romanae* 10, 31, 3f. (supposedly carried out in 456 BC); Livy, *Periochae* 59; Pliny, *Naturalis Historia* 7, 143 (prevented by another tribune in 131 BC).

celebrated the Festival of the Supreme Being there was great disquiet among his former allies for the way he gave himself the role of High Priest, breaking with the principle of collective leadership that had prevailed hitherto. Robespierre was then reminded that it was only a short step from the Capitol to the Tarpeian Rock.¹²³ Saint-Just intended to refer to the threat involving the Tarpeian Rock in his defence of Robespierre on 9 Thermidor of Year II (27 July 1794) in a speech to be given in the National Convention, but he was not able to complete it.¹²⁴ Robespierre's opponents also put into circulation their name for him: Peisistratus.¹²⁵ There were other rumours: that Robespierre had put it round that there were plots to assassinate him and other members of the Committee of Public Safety, so that he could get the people to approve the formation of a bodyguard, just like Peisistratus had done to establish his tyranny.¹²⁶ In April 1794, Billaud-Varenne, himself a member of the Committee for Public Safety and advocate of the need for the Terror, said in regard to Robespierre that Pericles, supposedly the people's friend, had in fact been a tyrant: 'The scoundrel Pericles made use of popular colours to conceal the chains that he forged for Athenians.'¹²⁷

BUILDING A CONSTITUTION AND FREEDOM OF OPINION

Figures from Greek history like Solon and Lycurgus attracted interest as prototypical lawgivers who, as Rousseau had emphasised, stepped down once their work was complete.¹²⁸ In May 1791, Robespierre successfully used this argument in the National Assembly to rule out the re-election of members for the new Legislative Assembly (*Assemblée nationale législative*).¹²⁹ Lycurgus also

¹²³ Adolphe Thiers, *Histoire de la Révolution française (1823–1837)*, t. 6, Paris 1839, 117; François-Alphonse Aulard, *Le culte de la raison et le culte de l'Être suprême*, Paris 1892, 319. The same threat had been made against the Jacobin leadership by Jacques Roux as spokesman for the extreme left wing of the popular movement (*les Enragés*); cited by Walter Markov, *Die Freiheiten des Priesters Roux*, Berlin 1967, 305.

¹²⁴ Text in Robespierre, *Œuvres complètes*, t. 10, 588.

¹²⁵ Mignet, *Histoire de la révolution française* [1824], Brussels 1839, 273.

¹²⁶ Herodotus 1, 59, 4 (on Peisistratus' seizure of power ca. 560 BC after the Athenians had given him a bodyguard). Report in *Vossische Zeitung* (Berlin), 26 May 1794, in *Das Neueste aus Paris. Deutsche Presseberichte 1789–1795*, ed. Susanne Böhme-Kuby, Munich 1989, 342. The background to this was a suspected connection between assassination attempts on 23–24 May against Collot d'Herbois and Robespierre, and the Law of 22 Prairial of Year II (10 June, 1794), which was, however, planned beforehand; Patrice Gueniffey, *La politique de la terreur. Essai sur la violence révolutionnaire, 1789–1794*, Paris 2000, 277ff.

¹²⁷ Cited in Vincent Azoulay, *Périclès. La démocratie ancienne à l'épreuve du grand homme*, Paris 2010, 195. There are some remarks on Pericles by others, but all in all he was no figure of interest during the Revolution; *ibid.*, 190ff.

¹²⁸ Rousseau, *The Social Contract*, Book II, Ch. 7: 'Of the Lawgiver'.

¹²⁹ Hermann Oncken, *Das Zeitalter der Revolution, des Kaiserreichs und der Befreiungskriege*, Bd. I, Berlin 1884, 352f. On the very different motives of individual representatives see Barry M. Shapiro, 'Self-sacrifice, Self-interest, or Self-defense? The Constituent Assembly and the "Self-denying Ordinance" of May 1791', *French Historical Studies* 25, 2002, 625–656.

held a fascination because he had lent citizens the strength needed to forcefully resist the enemies of a republic.¹³⁰

In June 1793, Héroult de Séchelles who, together with four other members of the National Convention, was charged with the final work of editing the new constitution, urgently requested from the national library a collection of Greek laws, in particular, the laws of the Cretan king Minos.¹³¹ That later earned Héroult de Séchelles a great deal of mockery, as in Taine.¹³² But quite possibly Héroult de Séchelles was making a joke at the expense of speakers who had referred to the laws of Minos.¹³³ Whoever it might have been that took the laws of Minos so seriously, he showed a curious mixture of knowledge about the law-making role ascribed to Minos in ancient tradition, and which was also, for example, taken up by Montesquieu;¹³⁴ plus the ignorance of the fact that no authentic version of his supposed rules have come down to us. It could also have been a reminiscence of Fénelon's novel of 1699, *Telemachus* (the son of Odysseus); this was one of the most-read literary works in eighteenth-century France.¹³⁵ Here we can read that the laws of Minos are preserved in a golden casket.¹³⁶ Consciously or not, this example was followed: after it had been accepted by the people, the text of the 1793 constitution was placed ceremoniously in a cedarwood shrine on the Champ de Mars (10 August 1793);¹³⁷ but the constitution was itself immediately suspended.

In 1815 Friedrich Christoph Dahlmann criticised the hasty conception of the Jacobin constitution; the manner in which it combined an eternal claim with immediate nullification involved a revision of the role played by great lawgivers – Moses, Lycurgus and Solon. These had in no respect created a new order by virtue of their own powers of understanding; instead, they carefully modified the arrangements rooted in the history of their peoples.¹³⁸

¹³⁰ Billaud-Varenne in the name of the Committee of Public Safety, June 1794; Heinrich von Sybel, *Geschichte der Revolutionszeit von 1789 bis 1795*, Bd. 3, 3rd ed., Düsseldorf 1866, 148f.

¹³¹ The letter is cited by Pierre Vidal-Naquet, *Les grecs, les historiens, la démocratie*, Paris 2000, 225.

¹³² Hippolyte Taine, *Les origines de la France contemporaine* [1873ff.], t. 1, Paris 1986, 583.

¹³³ François-Alphonse Aulard, *Histoire politique de la Révolution française* [1901], 6th ed., Paris 1926, 297, n. 1; Georges Bernier, *Héroult de Séchelles*, Paris 1995, 87.

¹³⁴ Plato, *Laws* 624b; Pseudo-Plato, *Minos* 318c–e; Aristotle, *Politics* 1271b31; Strabo 16, 2, 38 (= C762); Montesquieu, *De l'esprit des lois*, Book IV, Ch. 7.

¹³⁵ According to Patrick Riley, 'Rousseau, Fénelon, and the Quarrel between the Ancients and the Moderns', in *The Cambridge Companion to Rousseau*, ed. P. Riley, Cambridge 2001, 78–93, at 81, it was even the most-read literary work in eighteenth-century France after the Bible.

¹³⁶ François de Fénelon, *Telemachus, Son of Ulysses*, Cambridge 1994, Book V, p. 67.

¹³⁷ Martin Göhring, *Geschichte der großen Revolution*, Bd. 2, Tübingen 1951, 313.

¹³⁸ Friedrich Christoph Dahlmann, *Ein Wort über Verfassung* [1815], Leipzig 1919, 90f. Niebuhr was of a different point of view in his memorandum for the Prussian Court on the Netherlands (1813): 'Should a Constitutional Convention be convened? For heaven's sake, no! The people of antiquity, if otherwise being ruled democratically, always entrusted the creation of a constitution to a single person, or at most a small group'; Barthold Georg Niebuhr, *Grundzüge für eine Verfassung Niederlands* [ed. Marcus Niebuhr], Berlin 1852, 14.

Better fitted to the current situation was the fact that the Académie des Inscriptions et Belles Lettres had commissioned studies in 1791 of the pros and cons of ostracism,¹³⁹ and that a deputy had provided for an institution of this name in the draft constitution of April 1793 (involving exile without loss of property for five years, instead of the ten in Athens).¹⁴⁰ It is unclear whether this had any influence on the later practice of deportation to Cayenne (Guyana) as an alternative to execution (hence it being called the ‘dry guillotine’).

Camille Desmoulins was one of the revolutionary leaders relatively well-acquainted with antiquity. He had no time for the backwardness of Sparta’s civilisation.¹⁴¹ In 1789 he wrote that the foundation of the United States refuted the idea that the Athenian model of civil self-government could be replicated only in small states.¹⁴² According to Michelet, Desmoulins is supposed to have behaved as though he was among Athenians when in the evenings he talked in the street about God and the world with craftsmen.¹⁴³ From 1793, Desmoulins laid emphasis upon his love of Athens where, he said, the comedies demonstrated the freedom to express opinion in a way that, today, had to be secured in the form of freedom of the press, although an Aristophanes would not evade the guillotine.¹⁴⁴ This was aimed at a politics that sought to suspend individual liberties because of the supposed need to defend the republic. Desmoulins took up John Milton’s argument, who had in his *Areopagitica* (1644) likewise invoked Athens during the English Revolution when demanding the abolition of censorship for printed materials.¹⁴⁵ In 1788 Milton’s text had been translated by Mirabeau into French.

In the longer run, direct democracy as practiced by the section assemblies having made a devastating impression upon him, Desmoulins also became more critical of the Athenian model of democracy.¹⁴⁶ The Terror initiated by the Committee for Public Safety reminded him of the atmosphere described

¹³⁹ Vidal-Naquet, *Les Grecs*, 222.

¹⁴⁰ Jacques Bouineau, *Les toges du pouvoir ou la révolution de droit antique 1789–1799*, Toulouse 1986, 19f. It is unclear whether the five-year duration of a ban as a consequence of ostracism referred to in Diodorus Siculus 11, 55 was known. Diodorus had probably confused the Athenian institution with a similar one in Syracuse; see p. 17, fn. 30.

¹⁴¹ Camille Desmoulins, *Le Vieux Cordelier*, ed. Pierre Pachet, Paris 1987, No. 6, 102.

¹⁴² ‘La France libre’, in *Œuvres de Camille Desmoulins*, t. 1, Paris 1871, 123–188, here at 177ff.

¹⁴³ Michelet, *Histoire de la Révolution Française*, t. 2, 315.

¹⁴⁴ Desmoulins, *Le Vieux Cordelier*, No. 7, 124f.

¹⁴⁵ John Milton, in *Areopagitica and other Political Writings*, ed. John Alvis, Indianapolis 1999. Milton used as an epigraph for his book a quote from Euripides’ praise for free speech in *Hiketides* (*The Suppliants*), 426ff. Imitating Isocrates 7 (*Areopagiticus*, 355 BC) Milton equated the Long Parliament with the Athenian Areopagus, corresponding to his elitist understanding of politics (see p. 100). In any case, his stance related to one particular parliamentary measure, the ‘Licensing Act’ of 1643, and did not involve unqualified support for freedom of the press. See Eric Nelson, ‘“True Liberty”. Isocrates and Milton’s *Areopagitica*’, *Milton Studies* 40, 2001, 201–221.

¹⁴⁶ Desmoulins, *Le Vieux Cordelier*, No. 7, 138f.

by Tacitus in the early period of the Principate, when denunciations had triggered trials for crimes against the emperor.¹⁴⁷ Desmoulins' habit of speaking freely cost him his head in April 1794; his death sentence was signed by his one-time ally, Robespierre. During his trial Desmoulins invoked another tradition. Asked his age, he responded: 'thirty-three, just like the *sans-culotte* Jesus when he died'.¹⁴⁸

A preference for the Spartan model is attributed to others, especially Saint-Just. The idea that he had been the 'architect of Spartan paradises' was repeated well into the twentieth century.¹⁴⁹ But this is true only partly, quite apart from the fact that Saint-Just's influence upon domestic politics, deriving from his success in organising the revolutionary army, was only very sporadic. He had, for example, in 1791 emphasised the importance of human rights that guaranteed greater individual liberty than had been the case in antiquity:

Human rights would have destroyed Athens or Sparta. There was only love for the Fatherland, and in this love the individual forgot himself. Human rights strengthen France; here the Fatherland forgets itself for the sake of its children.¹⁵⁰

(On another page one can find his later offensive justification of the Terror for the sake of defending the republic and the Fatherland.) Saint-Just also gave reasons here for the advantages that a representative constitution enjoyed over the direct rule of a capricious, but also easy to manipulate, crowd of people, as in Athens. He was also certain that in Sparta the helots were part of the indigenous population but were held in collective slavery, a condition similar to feudalism, whose abolition was one of the proud achievements of the Revolution.¹⁵¹

A NATIONAL PROGRAMME OF EDUCATION

The relationship to antiquity also surfaced in discussions regarding the development of obligatory state education. This became an issue with the closure of church educational institutions in 1792. Since the only suitable body of teachers, the clergy, had been persecuted (and not just those, about half of them, who had refused to swear an oath of allegiance to the civil constitution

¹⁴⁷ Desmoulins, *Le Vieux Cordelier*, No. 3. On his indebtedness to English republican traditions compare Rachel Hammersley, 'Camille Desmoulins's *Vieux Cordelier*: A Link between English and French Republicanism', *History of European Ideas* 27, 2001, 115–132.

¹⁴⁸ Thiers, *Histoire de la Révolution française*, t. V, 399.

¹⁴⁹ Eric Hobsbawm, *The Age of Revolution. Europe 1789–1848* [1962], New York 1964, 94. Against the current assumption that Saint-Just had an ideological fixation on Sparta see Marisa Linton, 'The Man of Virtue. The Role of Antiquity in the Political Trajectory of L.-A. Saint-Just', *French History* 24, 2010, 393–419.

¹⁵⁰ 'Esprit de la révolution et de la constitution', in Saint-Just, *Théorie politique*, ed. Alain Liénard, Paris 1976, 53.

¹⁵¹ Cited in Jean-Christian Dumont, 'La Révolution française et Rome', *Studi Italiani di Filologia Classica* 85, 3rd ser. 10, 1992, 487–512, here at 490f.

of the clergy), the plans would have been very difficult to realise. Added to this was the idea, at least among the Jacobins, that a new era of human history demanded the education of a new man. As chairman of the educational committee in the Legislative Assembly, Condorcet had already in April 1792 warned of the dangers involved in doctrinaire education that presupposed a political religion with an orientation to antiquity. Given the need for a mathematical and natural scientific education, this seemed to him to be obsolete; giving priority to the teaching of Latin would be at the expense of reading really useful texts. Besides, he went on, reliance on ancient rhetoric for the persuasion of a popular assembly was damaging for a representative system.¹⁵²

Michel Lepeletier outlined a radical plan for a system of education that would produce a new man; it was presented to the National Convention in July 1793 by Robespierre as his legacy. Lepeletier had voted in January 1793 for the execution of the king and was then murdered by a royalist; for the Jacobins, he counted as the first martyr of the Revolution, before Marat; and his end was, like that of Marat, eternalised by the Revolution's painter, David. Lepeletier's ideas were strongly influenced by the English social reformer Jeremy Bentham, who saw the individual as a product of his environment; he consequently advocated social equality, to be realised through the educational system. In 1791 Lepeletier had presented a French translation of Bentham's *Panopticon* to the National Assembly.¹⁵³ Bentham was a writer well-known in France, and in 1792 he had been made an honorary citizen.¹⁵⁴

Lepeletier did admit to having been inspired by antiquity, but he also made clear that his own society had different needs. Sparta had produced only soldiers; a society based upon agriculture, trade and industry could not exist in this way, but had to educate people for all stations of life.¹⁵⁵ To this it was objected that in a society without helots, children could not be entirely removed

¹⁵² 'Rapport sur l'organisation générale de l'Instruction publique présenté à l'Assemblée Nationale législative au nom du Comité d'Instruction publique les 20 et 21 avril 1792', in Condorcet, *Écrits sur l'instruction publique, t. II: Rapport sur l'Instruction publique*, Paris 1989.

¹⁵³ Olivier Le Cour Grandmaison, 'Éducation et république. La machinerie éducative de Lepeletier', *History of European Ideas* 21, 1995, 647–657.

¹⁵⁴ In private correspondence with Brissot, Bentham had already in August 1789 criticised the French Declaration of Rights of Man, but he was initially interested in getting his ideas for reform implemented in France; Michael Levin, *Political Thought in the Age of Revolution 1776–1848*, Basingstoke 2011, 89f. As the Revolution radicalised, his detachment from it increased. In retrospect Bentham called the Declarations of Rights 'nonsense upon stilts': 'Anarchical Fallacies; Being an Examination of the Declarations of Rights Issued during the French Revolution', in *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron, London 1987, 46–76. This text was written in 1795/1796, but published only posthumously, first in French in 1816, then in English in 1853. Since Bentham left many papers unpublished, reconstruction of his changing ideas on French developments is extremely difficult; even more so, what the contemporary public (apart from his correspondents) could know about them.

¹⁵⁵ Text in *Une éducation pour la démocratie. Textes et projets de l'époque révolutionnaire*, ed. Bronislaw Baczkowski, Paris 2000, 347ff.

from agricultural labour.¹⁵⁶ Lepeletier's project was accepted by the National Convention, but any thought of implementation was soon abandoned.

Saint-Just had, in unpublished papers dating from 1793 and 1794, formulated rather similar ideas to Lepeletier. His idea of officially registering friends who would then fight side-by-side in battle, and of men over the age of sixty who would be guardians of virtue, were borrowed from Sparta. But Saint-Just did not, unlike Lepeletier and also unlike Sparta, want to involve girls in his educational plans.¹⁵⁷

Friedrich Gentz, the German critic of the Revolution (and translator of Edmund Burke's *Reflections on the Revolution in France*), considered the idea that one could 'cultivate republican virtues' through public instruction, imbuing future generations 'with Roman greatness and Spartan spirit' to be an illusion.¹⁵⁸ However, the unconditional identification of the Jacobin conceptions of education with the Spartan model certainly has as much to do with the polemics of their opponents as it has with the intentions of their originators.

Deploying a rhetoric of anti-rhetoric, Saint-Just and other Jacobins do contrast with the Athenian style of oratory, which served the end of deception; they practised a lapidary style, 'laconic', corresponding to the virtue of the citizen.

EMANCIPATION: SLAVES, WOMEN, FOREIGNERS

During discussion of abolition, a few voices from the 'right' were raised arguing for the continuation of slavery, legitimating this with reference to the Roman tradition, and thus seeking to play the property guarantee given in the Declaration of the Rights of Man off against the postulate of natural equality.¹⁵⁹

Nonetheless, in February 1794 the National Convention formally abolished slavery in the French colonies, without any compensation being paid to slave owners. The issue had been raised early in the Revolution by people like Brissot who, having travelled in America and taken note of the Quaker demand for abolition, formed in 1788 the *Société des Amis des Noirs*; he was supported by Condorcet and the Abbé Grégoire, among others.¹⁶⁰ However, they were

¹⁵⁶ As argued by Abbé Grégoire, 30 July 1793; *Procès-verbaux du Comité d'Instruction Publique de la Convention Nationale*, t. 2, ed. M.-J. Guillaume, Paris 1894, 173–178.

¹⁵⁷ 'Fragments d'institutions républicaine', in Saint-Just, *Théorie politique*, 263–268.

¹⁵⁸ Friedrich Gentz, 'Über die National-Erziehung in Frankreich' [1793], in Edmund Burke, Friedrich Gentz, *Über die Französische Revolution. Betrachtungen und Abhandlungen*, ed. Hermann Klenner, Berlin 1991, 574–582, here at 578.

¹⁵⁹ Jean-Christian Dumont, 'Esclavage blanc, esclavage noir', *Bulletin de l'Association Guillaume Budé* 1988, 2, 174–194.

¹⁶⁰ Leonore Loft, *Passion, Politics, and Philosophie. Rediscovering J.-P. Brissot*, Westport, CT, 2002, 199ff.; 'Rules for the Society of the Friends of Negroes (1788)', in Condorcet, *Political Writings*, 148–155. Condorcet's statement against slavery had already appeared in 1781 and was then reprinted in 1788: 'Réflexions sur l'esclavage des nègres', in Condorcet, *Œuvres*, t. 7, 61–140. Though denying any justification for slavery Condorcet pleaded against immediate emancipation of all slaves, with its probable social repercussions; one should better proceed

not able to win support from the more radical revolutionaries. There was no mass movement in revolutionary France supporting abolition comparable to the one developing at this time in Great Britain, where the Quakers and other evangelical groups formed the core of the abolitionist movement, together with William Wilberforce in parliament (who in 1789 had started his initiative to prohibit slavery within the British Empire).

The term 'slavery' was often used metaphorically to refer to the 'despotism' of pre-revolutionary France; while the Jacobins used the term to refer to the situation they would face if domestic and foreign foes of the Revolution prevailed. In 1792 Desmoulins argued that because of this, the freeing of slaves would have to be postponed until a time such as the Revolution had been secured.¹⁶¹

The fact that the Girondins forced a debate on the emancipation of slaves made them doubly suspect. Towards the end of 1793 Robespierre argued polemically that the same party which sought 'to push all the poor into the rank of helot and subordinate the people to rich aristocrats' also sought 'to free and arm all negroes, so that our colonies might be destroyed'.¹⁶² The freeing of slaves was eventually embarked upon as a hasty reaction to continued disorder in Saint-Domingue (later Haiti), after a Jacobin commissioner, on his own initiative, promised freedom to revolting slaves in late August 1793. The intention was to secure the island as a French possession, after the rebelling slaves allied themselves with Spain and the white slave owners with England.¹⁶³ Danton made the arguments in the National Convention for the Emancipation Decree of 4 February 1794; at his own trial two months later the absurd accusation was made that by so doing he sought to undermine France's position as a world power.¹⁶⁴

step by step, through prohibition of the slave trade and emancipation of slave children at a certain age, so that slavery would eventually die out. Grégoire played only a marginal role in the *Société des Amis des Noirs* but engaged as parliamentary spokesman for abolition; Marcel Dorigny, 'The Abbé Grégoire and the *Société des Amis des Noirs*', in *The Abbé Grégoire and His World*, Jeremy D. Popkin and Richard H. Popkin, eds., Dordrecht 2000, 27–39.

¹⁶¹ Cited in Dumont, *La Révolution française et Rome*, 489f.

¹⁶² Report to National Convention, 17 November 1793; Robespierre, *Œuvres complètes*, t. 10, 173f.

¹⁶³ Robin Blackburn, 'Haiti, Slavery, and the Age of the Democratic Revolution', *William and Mary Quarterly* 3rd ser. 63, 2006, 643–674; David Geggus, 'Racial Equality, Slavery, and Colonial Secession during the Constituent Assembly', *American Historical Review* 94, 1989, 1290–1308; Paul R. Hanson, *Contesting the French Revolution*, Chichester 2009, 60f. and 101ff.; Doyle, *Oxford History of the French Revolution*, 411ff. Slavery was reintroduced into French colonies under Napoleon, in 1802; a renewed uprising in Haiti led in 1804 to its independence; it was only in 1848, directly after the outbreak of the Revolution, that France finally abolished slavery in its colonies. Henri Wallon was a member of the commission that drafted the corresponding law. He had previously been active in the anti-slavery movement, and in 1847 published a work on slavery in antiquity: *Histoire de l'esclavage dans l'antiquité* [1847], 3 Vols., Paris 1879.

¹⁶⁴ David Andress, *The Terror. The Merciless War for Freedom in Revolutionary France*, New York 2005, 273.

The emancipation of Jews was decided in September 1791 in the face of considerable opposition, but the attempt to fully extend the postulate of equality to women failed, although they were granted equality in civil law in September 1792. (Under Napoleon the laws of inheritance and of marriage were altered in such a way as to be unfavourable to women.) The Revolution had politicised women first as actors in traditional forms of disorder linked to rising prices, starting with the famous 'march of market women to Versailles' in early October 1789. But women also began to take part in the section assemblies and in political clubs; Robespierre was always fervently supported by women in the galleries of the National Convention and the Jacobin club.¹⁶⁵ In early 1793 the Society of Revolutionary Republican Women was founded in Paris. The cry for comprehensive emancipation went so far that women should be armed or even form 'Amazon Legions'. Already in 1791 Olympe de Gouges had rewritten the 1789 Declaration of the Rights of Man into a Declaration of the Rights of Woman that also included political rights.¹⁶⁶ A bitter opponent of Robespierre, she was guillotined in November 1793. As far as the form of execution went, the equality of the sexes was thereby established; the guillotine was used for all delinquents, regardless of their sex, status and the form of their offence.

Condorcet had already, before the Revolution, raised the issue of women's right to vote, and he returned to this question in 1790, arguing that if the right to vote was linked to a property qualification, then gender could play no role.¹⁶⁷ Even after the beginning of the Revolution his position was not widely shared by male politicians. The right of women to vote was discussed in connection with the constitution of 1793, and while at the time it was rejected (and thus also ignored in Condorcet's draft), it was proposed that it be realised in the near future. It was in part practised in the section assemblies. But at the end of October 1793 the Committee for Public Safety banned women's clubs (according to its general policy to curtail popular protest), in connection with which there had been little restraint in talking about the natural role of women.¹⁶⁸ The right of women to vote was first introduced in France in 1946.

What the claim to universal applicability evident in the Declaration of the Rights of Man actually meant can also be seen at work in the fate of Jean-Baptiste

¹⁶⁵ Noah C. Shusterman, 'All of His Power Lies in the Distaff: Robespierre, Women and the French Revolution', *Past and Present* 223, 2014, 129–160.

¹⁶⁶ Olympe de Gouges, *Déclaration des droits de la femme et de la citoyenne*, Paris 2003.

¹⁶⁷ Condorcet, 'Essai sur la constitution et les fonctions des Assemblées Provinciales' [1788], in Condorcet, *Œuvres*, t. 8, Paris 1847, 117–659, esp. 127ff.; 'Sur l'admission des femmes au droit de cité' [3 July 1790], in Condorcet, *Œuvres*, t. 10, 119–130 ['On Giving Women the Right of Citizenship', in Condorcet, *Political Writings*, 156–162].

¹⁶⁸ Scott H. Lytle, 'The Second Sex (September, 1793)', *Journal of Modern History* 27, 1955, 14–26; Olwen Hufton, 'Women in Revolution 1789–1796', *Past and Present* 53, 1971, 90–108, at 102. See further pertinent texts in *Cahiers de doléances des femmes et autres textes*, ed. Paul-Marie Dubrat, Paris 1981; Marie-France Brive, *Les femmes et la Révolution française*, 3 Vols., Toulouse 1989–1991.

Cloots. A native of Cleves on the Lower Rhine, and a nephew of de Pauw,¹⁶⁹ he became a spokesman for foreigners, calling himself the ‘orator of mankind’. Having been granted French citizenship in August 1792, he was elected to the National Convention. Given his demands that the ideals of the Revolution be exported so that a world republic might be formed, and more substantively, because of his role in the dechristianisation campaign, he was from the end of 1793 under attack from both Robespierre and Desmoulin, who believed Cloots’ activities represented a danger to the republic. In March 1794 the ‘Apostle of the Universal Republic’, as the Left-Hegelian Bruno Bauer later called him,¹⁷⁰ was executed together with the Hébertists, accused of conspiracy. His case is quite typical: an initial generosity in seeking to integrate foreigners, who then by virtue of their foreign origin are suspected of being potential spies and agents of the counter-Revolution. At the end of December 1793 the National Convention expelled all members who had been born outside France. Cloots had adopted the name ‘Anacharsis’, marking his opposition to Christianity, as well as recalling the hero of a popular work by Barthélemy. It is not clear from Cloots’ writings to what extent he saw Athenian democracy as a model.¹⁷¹ There was certainly no Athenian basis for his cosmopolitical version of the democratic idea. And it was inopportune to promote such a line at the very moment that the Revolution appeared to be endangered by both foreign and domestic enemies.

CITIZENS, VOTERS AND DEMOCRACY

Despite its significance for the rhetoric and emblems of the Revolution, one should not overestimate the use of antiquity in its everyday politics. There was far more emphasis upon an identification with ancient role models of civic virtue than with any effort to replicate institutions.¹⁷² The introduction of juries into criminal proceedings, while heavily modified, followed the English model, which had even before the Revolution (by Montesquieu, for example)¹⁷³ been thought to be exemplary.

References to antiquity played a lesser role in discussions of civil rights; there was much greater interest in arrangements in North America, in the Netherlands or in Switzerland. The emphasis upon the status of the *citoyen* as a free and equal member of a nation that no longer recognises a hierarchy of social rank was at first linked with a distinction between ‘active’ and ‘passive’

¹⁶⁹ See p. 110f.

¹⁷⁰ Bruno Bauer, *Geschichte der Politik, Kultur und Aufklärung des 18. Jahrhunderts*, Bd. 2: *Deutschland und die französische Revolution*, Charlottenburg 1845, 236.

¹⁷¹ Jean-Baptiste [Anacharsis] Cloots, *Écrits révolutionnaires, 1790–1794*, ed. Michèle Duval, Paris 1979. On Anacharsis see p. 111.

¹⁷² For example, a letter from an admirer of Robespierre, 5 February 1792, praising the way that he combined the energy of an old Spartan and a Roman from the early years of the republic with the eloquence of an Athenian: Louis Jacob, *Robespierre vu par ses contemporaines. Témoignages recueillis et présentés*, Paris 1938, 129.

¹⁷³ Montesquieu, *De l'esprit des lois*, Book XI, Ch. 6.

(male) citizens, despite the 1789 Declaration. Active citizens had to be more than twenty-five years of age and pay tax equivalent to at least three days' wages; in addition, they could not be in a dependent relationship as a servant. They were entitled to participate in political activity, although there were very significant gradations, eligibility having a far higher property threshold, and the passive citizen enjoying only the protection of the law. This distinction can be traced back chiefly to Sieyès.¹⁷⁴ Kant later provided a theoretical justification.¹⁷⁵

The role of the active citizen was largely exhausted through the selection of electors who then in turn voted for representatives, who then made decisions on the welfare of the nation according to their own judgement. For the great mass of primary voters the exercise of the right to vote was more a symbolic affirmation of their membership of the nation than any participation in a political process.¹⁷⁶ In this respect there is no connection at all with any ancient conception of the citizen.

The restrictions in the 1791 constitution were then removed by the Jacobin coup of August 1792, the subsequent elections to the National Convention and the completion of the 1793 constitution, in which all male citizens over the age of twenty-one enjoyed political rights. The tiered voting rights remained, however, using primary and secondary electors. Electoral participation remained under 20 per cent because of the great amount of time it took, even though voters who had to travel to their place of voting received compensation.¹⁷⁷

Hitherto the concepts of democracy and of democrat had been used for the most part pejoratively; during the Jacobin period this became a positive way of identifying oneself, but above all as a counterconcept to 'aristocracy' and 'aristocrat'.¹⁷⁸

¹⁷⁴ 'Einleitung zur Verfassung. Anerkennung und erklärende Darstellung der Menschen- und Bürgerrechte. Am 20. und 21. Juli [1789] im Verfassungsausschuß verlesen', in Emmanuel Joseph Sieyès, *Politische Schriften, 1788–1790*, Eberhard Schmitt and Rolf Reichardt, eds., 2nd ed., Munich 1981, 239–257, here at 251.

¹⁷⁵ Immanuel Kant, 'On the Common Saying: "This May Be True in Theory, but It Does Not Apply in Practice"', in Kant, *Political Writings*, ed. Hans S. Reiss, Cambridge 1991, 77f.

¹⁷⁶ Pierre Rosanvallon, 'Political Rationalism and Democracy in France in the Eighteenth and Nineteenth Century', *Philosophy and Social Criticism* 28, 2002, 687–701, here at 696.

¹⁷⁷ Peter McPhee, 'Electoral Democracy and Direct Democracy in France, 1789–1851', *European History Quarterly* 16, 1986, 77–96. The constitution of 1793 (Articles 16 and 17) left it to the individual voters, or the respective primary assemblies, whether the vote was oral or by ballot paper. A secret ballot was first prescribed by the constitution of 4 November 1848, but the lack of adequate procedural rules meant that it was only partially implemented: Erwin Jacobi, 'Zum geheimen Stimmrecht', in *Forschungen und Berichte aus dem öffentlichen Recht. Gedächtnisschrift für Walter Jellinek, 12. Juli 1855–9. Juni 1955*, ed. Otto Bachof et al., Munich 1955, 141–163; Malcolm Crook, Tom Crook, 'The Advent of the Secret Ballot in Britain and France, 1789–1914. From Public Assembly to Private Compartment', *History* 92, 2007, 449–471.

¹⁷⁸ See, for references, Horst Dippel, 'Démocratie, démocrates', in *Handbuch politisch-sozialer Grundbegriffe in Frankreich 1680–1820*, ed. Rolf Reichardt, Heft 6, Munich 1986, 57–97.

One preferred calling one's opponents in this way [as aristocrats], rather than oneself a democrat. ... As with 'heretic' previously, the name 'aristocrat' made someone an object of hatred and persecution, without anyone needing to inquire after the details of personal belief.¹⁷⁹

Even the substitution as a form of address of *citoyen/citoyenne* for *monsieur/madame* had a mainly anti-aristocratic (and patriotic) dimension. The concepts of democracy and of citizens stood more for opposition to the Ancien Régime and its (actual or supposed) adherents than for a particular constitutional model. Correspondingly, the 1793 constitution refers not to a 'Democracy', but to a 'Republic' ('république une et indivisible', a formula repeated in later republican constitutions). Subsequently, the concept of democracy was tarnished by its association with Jacobinism and the Terror.

Nor was Robespierre an adherent of direct democracy. When the Girondins demanded a plebiscite over the fate of Louis XVI, who had been sentenced to death by the National Convention, the Jacobins rejected the idea, arguing that the people had made their decision with the rising of August 1792 and the election of their representatives to the National Convention.¹⁸⁰ Of course, the former hoped for and the latter feared a decision in favour of the monarch. From its very beginnings, debates on plebiscites mingled questions of principle and opportunism.

Robespierre used his charisma to blur the tension between different conceptions of popular rule. He was a brilliant parliamentarian and also, as the 'Incorruptible', the idol of the masses. He used this to marginalise the Girondins, and then sought to channel the influence of the popular movement against the National Convention. With the aura of incorruptibility that stood in contrast with Danton's image as a venal person, and the distance from the masses that distinguished him from the 'people's friend' Marat, Robespierre's public role showed clear similarities with that of Pericles.

For Robespierre the purpose of citizens' assemblies and their occupation of the public space was to control representatives. The planned parliament buildings were to contain 12,000 places for the public. Robespierre thought this to be a better solution than the Roman tribunate, since here the people could be its own tribune, whereas the Roman tribunes had been tools of the aristocracy.¹⁸¹ He did not, however, see in this system any real alternative to the representational system.

¹⁷⁹ Barthold Georg Niebuhr, *Geschichte des Zeitalters der Revolution. Vorlesungen an der Universität zu Bonn im Sommer 1829 gehalten*, Bd. 1, Hamburg 1845, 196f.

¹⁸⁰ The National Convention decided unanimously on the guilt of Louis XVI. The decision for execution, rather than reprieve until after the war, or imprisonment, was carried only by a bare majority: Hanson, *Contesting the French Revolution*, 92f.

¹⁸¹ Robespierre, Speech in the National Convention, 10 May 1793; *Œuvres complètes*, t. 9, 500. The formulation echoed Livy 10, 37, 11, where there is a corresponding accusation against the people's tribunes (supposedly from the year 294 BC).

Daily allowances for participation in section assemblies of the Paris Commune recalls the Athenian precedent, but this does not mean that the allusion was intended; the purpose was different. When introduced in September 1793, payments were linked to a limit of two sessions a week, instead of every evening as had been usual before; in this way, the National Convention was trying to reduce the pressure of the street. While some of those involved welcomed the payment, others recognised in it an affront to the sovereignty of the people.¹⁸²

Robespierre did make repeated use of the concept of democracy in 1794, claiming that the French had been the first people to establish a democracy (Athens and the United States obviously did not count), but made clear that

Democracy is not a state where a people are continually assembling and dealing with public matters themselves. ... Democracy is a state in which the sovereign people conform to laws that are of their own making, in which the people itself does what it can do well, and lets its representatives do what it cannot itself.

It is remarkable that the supposed Rousseauist Robespierre here makes use of a formulation from Montesquieu.¹⁸³ In his final speech to the National Convention he said to those present: 'You are not here to be ruled, but to rule those who have entrusted you.'¹⁸⁴

Filippo Buonarroti, the associate of Babeuf (see the following pages), concluded in retrospect:

One should not think that the French revolutionaries, in furthering democracy, linked this with the concept as understood by the ancients. No-one thought of calling the people together so that the work of government could be discussed.¹⁸⁵

Robespierre rejected the imputation that any attempt was being made 'to build the French republic on the model of Sparta. We wish to lend it neither the rigour, nor the corruption, of a monastery.'¹⁸⁶ There should rather be an order in which 'individuals and families [are permitted] to do anything that does not

¹⁸² On the comparison with Athens see Wilhelm Schulz, 'Revolution' in Rotteck and Welcker's *Staatslexikon* of 1842, reprinted in *Die Französische Revolution, Bd. 3: Die weltgeschichtlichen Deutungen*, ed. Horst Günther, Frankfurt am Main 1985, 1047–1074, here at 1056. For the different reactions in the sections, see *Die Sansculotten von Paris. Dokumente zur Geschichte der Volksbewegung 1793–1794*, Walter Markov and Albert Soboul, eds., Berlin 1957, Nos. 37 & 39. One consequence was the formation of popular clubs that met on a daily basis and sought to dominate the sections.

¹⁸³ Speech in the National Convention, 5 February 1794; Robespierre, *Œuvres complètes*, t. 10, 352ff. (the sequence of the quotation has been reversed). Montesquieu, *De l'esprit des lois*, Book II, Ch. 2.

¹⁸⁴ Robespierre, *Œuvres complètes*, t. 10, 567.

¹⁸⁵ Philippe Buonarroti, *Conspiration pour l'égalité dite de Babeuf, suivie du procès auquel elle donna lieu et des pièces justificatives etc.*, t. 1, Brussels 1828, 23.

¹⁸⁶ Speech in the National Convention, 5 February 1794; Robespierre, *Œuvres complètes*, t. 10, 354f.

harm others'; in which everything would be given to 'individual liberty that did not naturally belong to public authority'.¹⁸⁷ The only proviso was that the Revolution must first be defended; and for now civic virtue, inspired by Greece and Rome, belonged together with the Terror as the 'despotism of liberty'.¹⁸⁸ In fact, the Terror reached its height only after domestic risings had already been suppressed and external attacks repelled.

Hegel commented later:

Virtue is here a simple principle, and distinguishes only those who have the sentiment from those who do not. What this sentiment might be is something that can only be recognised and judged by the sentiment itself. There is therefore the suspicion ... that a subjective virtue, governed only by sentiment, involves the most terrible tyranny. Its power holds sway without judicial formalities, and its punishment is just as simple – death.¹⁸⁹

The historian Droysen (who had a Hegelian background) saw the 'ghastly great system of terror' as determined by an 'icy cold, serving the general imperative to kill all other feeling. ... It is the virtue called for by the law of Lycurgus, as it was practised by Brutus and Papirius. ... Once more, as in pagan antiquity, national existence is the supreme, the ultimate, the sole cause: for it everything is sacrificed.'¹⁹⁰

Like Desmoulins, Marx drew a parallel to the Roman Principate: 'Laws against tendency, laws giving no objective standards, are laws of terrorism, such as were invented owing to the emergency needs of the state under Robespierre and the corruption of the state under the Roman Emperors.'¹⁹¹ Engels also made the usual association with the period of proscription in the later Roman republic, without, however, expressing the usual condemnation: 'Marius and Sulla, Cromwell and Robespierre, the bloody heads of two kings, proscriptions lists and dictatorship speak loudly enough of the "horrors" of democracy'.¹⁹²

The extended demands of the revolutionary *petit bourgeoisie*, the *sans-culottes*, for direct democracy – public deliberation in primary assemblies,

¹⁸⁷ Speech in the National Convention, 10 May 1793; Robespierre, *Œuvres complètes*, t. 9, 501f.

¹⁸⁸ Speech in the National Convention, 5 February 1794; Robespierre, *Œuvres complètes*, t. 10, 357. Even this was a twist on Montesquieu, for whom the basic principle of the republic was political virtue (*vertu politique*), whereas in despotism it was fear (*crainte*); *De l'esprit des lois*, Book III, Ch. 9.

¹⁸⁹ *Vorlesungen über die Philosophie der Geschichte*, 4. Teil, 3. Abschnitt, 3. Kapitel; Hegel, *Werke*, Bd. 12, 532f.

¹⁹⁰ Johann Gustav Droysen, *Vorlesungen über die Freiheitskriege*, 1. Theil, Kiel 1846, 458. By Papirius he probably means the Roman dictator L. Papirius Cursor, who in 325 BC threatened his deputy (*magister equitum*) with execution, because he had begun a battle without authorisation, a battle which he then won: Livy 8, 30–35.

¹⁹¹ Marx, 'Comments on the Latest Prussian Censorship Instruction' [1842]; MECW, Vol. 1, 119 [MEW, Bd. 1, 14 = MEGA², Abt. 1, Bd. 1, 107].

¹⁹² Engels, 'The Condition of England II. The English Constitution' [1844]; MECW, Vol. 3, 492 [MEW, Bd. 1, 571f. = MEGA², Abt. I, Bd. 3, 569f.].

representatives who were permanently subject to instruction and recall, the ratification of parliamentary laws by section assemblies, decision by acclamation by show of hands – none of these has ancient roots, even if they do in effect replicate elements of the Athenian model. They derive rather from a Rousseauian belief that the popular will could not be transferred or delegated, even if it was not based on any deep understanding of Rousseau – ‘the Rousseauian utopia had already diffused from cultured circles downwards to the half-educated’.¹⁹³ In addition, there was the desire to implement the Revolution’s promise of equality directly as social and economic measures – providing food, regulating wages, rents and prices, and with an upper limit on private property.

GRACCHUS BABEUF

There was one exception to this, with the attempt in a later phase of the Revolution to revive an aspect of ancient tradition: François-Noël Babeuf’s programme for the revolutionary redistribution of land. There had been previous demands for a *loi agraire*. The National Convention had passed a law in March 1793 threatening capital punishment for anyone making such a proposal, even if it involved the acquisition by peasants of estate land seized from *émigrés*. Neither Robespierre nor Saint-Just (with his supposed laconophilia) had advocated a general and egalitarian redistribution; Robespierre thought the idea a ‘fantasy’.¹⁹⁴ Saint-Just, while retaining the basic principle of private property, had proposed an upper limit for landownership in the early 1790s,¹⁹⁵ and then in 1794 considered the redistribution of estates confiscated from those who were politically suspect; but this latter idea failed to win support in the National Convention.

Babeuf saw himself as the political heir of Robespierre. Influenced by the ideas of Morelly, Mably and Rousseau, he invoked both the original Spartan system of equality of possession and the agrarian laws of the Roman tribunes. In 1793 he adopted the name of ‘Gracchus’, having formerly called himself ‘Camillus’; from late 1794 he edited a periodical called *Le Tribun du Peuple*. In November 1795 he published a ‘Plebeian Manifesto’,¹⁹⁶ arguing that the possibility of a society based on equality of possession had a historical precedent in the arrangements made by the ‘tribune’ Lycurgus.¹⁹⁷ This formulation runs together the Spartan and Roman examples, which rather suggests a lack

¹⁹³ Jacob Burckhardt, *Historische Fragmente*, ed. Emil Dürr, reprint Nördlingen 1988, 312 (a note related to his lectures on the age of Revolution).

¹⁹⁴ Speech in the National Convention, 24 April 1793; Robespierre, *Œuvres complètes*, t. 8, 470.

¹⁹⁵ ‘Des lois agraires’, Ch. 14 of *De la nature* [c. 1791]; Saint-Just, *Théorie politique*, 172f.

¹⁹⁶ Hitherto the term ‘plebeian’ had a rather negative connotation even in revolutionary language, designating a *Lumpenproletariat* that was distinct from honest working people: Albert Soboul, ‘Volksmassen und Jakobinerdiktatur’, *Jahrbuch für Geschichte* 2, 1967, 51–74, here at 52f.

¹⁹⁷ Babeuf, *Œcrits*, ed. Claude Mazauric, Paris 1988, 271.

of deep acquaintance with classical literature, but Babeuf was not concerned about that.

After the fall of Robespierre – ‘Robespierism is democracy’¹⁹⁸ – Babeuf developed a conception of the social organisation of production and consumption based upon a ‘community of goods’. In 1796 he organised a ‘conspiracy of equals’ against the Directorate, being executed the following year after its failure (27 May 1797). His trial provided Babeuf with a platform that he had never previously enjoyed. It also offered the government, which was extremely well-informed about the activities of the conspirators, an opportunity of highlighting the spectre of social unrest.

Babeuf recapitulated a conception of Roman agrarian laws (i.e., those of the earlier Roman tribunes and of Tiberius and Gaius Gracchus in 133 BC and 123/123 BC, respectively) as revolutionary measures that had been in circulation since the Renaissance, with some dissent from scholars.¹⁹⁹ It was only in the nineteenth century that Niebuhr established that none of this involved a general redistribution of land, but instead a limited measure that provided for the requisition and distribution of unlawfully occupied land that still was the property of the Roman state.²⁰⁰ Niebuhr had a predecessor in Heyne, who had in 1793 sought to correct interpretations of Roman agrarian laws in reaction to the initial demands for an agrarian law made by ‘spokesmen for the nonsense of equal possession of goods’.²⁰¹ This was intended to undercut the legitimation by historical example of current demands.²⁰² Too much weight should

¹⁹⁸ Letter of Babeuf, 28 February 1796; Babeuf, *Écrits*, 287.

¹⁹⁹ See Ronald T. Ridley, ‘*Leges agrariae*. Myths, Ancient and Modern’, *Classical Philology* 95, 2000, 459–467 (against Niebuhr’s claim for originality).

²⁰⁰ Barthold Georg Niebuhr, *Römische Geschichte*, Bd. 2, Berlin 1812, 335–414. Niebuhr’s theory that the agrarian laws related only to *ager publicus* became the communis opinio of classical scholars. But see now the doubts raised by John W. Rich, ‘Lex Licinia, lex Sempronia: B. G. Niebuhr and the Limitation of Landholding in the Roman Republic’, in *People, Land, and Politics: Demographic Developments and the Transformation of Roman Italy 300 BC–AD 14*, Luuk de Ligt and Simon J. Northwood, eds., Leiden 2008, 519–572; and Mattia Balbo, ‘La lex Licinia di modo agrorum. Riconsiderazione di un modello storiografico’, *Rivista di filologia e di istruzione classica* 138, 2010, 265–311.

²⁰¹ Christian Gottlob Heyne, ‘Über die Ackergesetze’, *Politische Annalen*, ed. Christoph Girtanner, 3, 1793, 193–208; 283–297, citation at 198. In an unpublished text the young Hegel had described this redistribution, together with that involved in the Athenian practice of liturgies, as a means of curbing ‘the disproportionate wealth of a citizen’ which ‘was capable of destroying liberty itself’. In this regard it could be said that ‘an injustice has been done to the French system of sans-culottes, if the source of their desire for greater equality of property was thought to lie solely in avarice’; ‘Fragmente historischer und politischer Studien aus der Berner und Frankfurter Zeit (ca. 1795–1798)’, Nr. 13, Hegel, *Werke*, Bd. 1, 439.

²⁰² Niebuhr’s preliminary studies have been brought together by Alfred Heuß, *Barthold Georg Niebuhrs wissenschaftliche Anfänge. Untersuchungen und Mitteilungen über die Kopenhagener Manuscripte und zur europäischen Tradition der lex agraria (loi agraire)*, Göttingen 1981, 500ff. Niebuhr became interested in this issue in relation to argument over peasant emancipation in Holstein and its consequences. He opposed the position of the Holstein aristocracy, seeking to legitimate the settlement of peasants as tenant farmers on land they had previously

not, however, be placed in this invocation of antiquity, since a major part of Babeuf's writings relate to debates on French land law and demands for the restoration of older collective rights of use. Given his pre-revolutionary career as a land commissioner clarifying questions of ownership and usufruct, he was well-versed in this matter.

Babeuf's later reputation as an early proponent of communist ideas does not directly derive from his contemporary activities and influence. Instead, his relevance to later revolutionary currents is owed to Buonarroti's presentation of him in 1828, and then in France during the 1840s to Louis-Auguste Blanqui. Both sought to achieve a social revolution through secret societies and professional revolutionaries, who should exercise a temporary dictatorship, rather than through a mass movement. Babeuf's doctrine 'wrapped in the lustre that martyrdom had brought its creator became the gospel of the radical Parisian proletariat'.²⁰³ Marx and Engels made an exception for Babeuf from their usual disparagement of all predecessors and competitors, who were pejoratively labelled 'utopian socialists'.²⁰⁴ Babeuf has always had a special place in the socialist landscape, and this was given a boost in the context of the Russian Revolution of 1917.²⁰⁵

REFERENCES TO ANTIQUITY IN POST-REVOLUTIONARY CONSTITUTIONS

Concepts linked to antiquity continued to find favour during the post-revolutionary phase in France. The 1795 constitution²⁰⁶ went back to the

cultivated as a restoration of ancient rights, as in Roman agrarian laws. This did not therefore amount to a revolutionary intervention in property rights.

²⁰³ Georg Adler, 'Babeuf, François Noël', *Handwörterbuch der Staatswissenschaften*, Bd. 2, 3rd ed., 1909, 319f. For Buonarroti's book as 'the gospel of the French proletarians': Karl Grün, *Die soziale Bewegung in Frankreich und Belgien. Briefe und Studien*, Darmstadt 1845, 301.

²⁰⁴ Karl Marx, Friedrich Engels, *Manifesto of the Communist Party* [1848]; MECW, Vol. 6, 514 [MEW, Bd. 4, 489]; Marx, 'Moralising Criticism and Critical Morality' [1847], MECW, Vol. 6, 321 [MEW, Bd. 4, 341]. In 1846 Marx, in collaboration with Engels and Moses Hess, tried (in vain) to publish a series with German translations of French and English socialist writings that would have included Buonarroti's book; Moses Hess, *Briefwechsel*, ed. Edmund Silberner, The Hague 1959, 155 and 163.

²⁰⁵ Since the Moscow Marx-Engels-Institute acquired Babeuf's papers in the late 1920s, Babeuf became a favourite subject for Soviet students of the French Revolution.

²⁰⁶ The National Convention, which was still in session, should really have revoked the suspension of the 1793 constitution. However, an entirely new draft was presented, then ratified by plebiscite and finally enacted in September 1795. This plebiscite was also linked to an electoral decree that provided for two-thirds of the seats in both new chambers being taken by former members of the National Convention. In the view of Mignet, *History of the French Revolution*, 355f., 'this constitution, which was the result of six years' experience in Revolution and legislation, was the best and wisest, the soundest and most liberal form of government which had yet been established or projected'. But then he had to state that it could not provide stability, since the competing political camps did not really accept it.

idea of a mixed constitution as realised in the United States, with two chambers and an executive headed by five directors with five-year terms.²⁰⁷ The ‘Council of Five Hundred’, whose members were at least thirty years old, represented a clear reference to Athenian democracy. Together with a 250-strong ‘Council of Elders’ (whose members were over the age of 40 and were either married or widowers), this made up the legislature. The ‘Five Hundred’ initiated legislation which the ‘Elders’ then accepted or declined, without, however, being able to make any revisions. This separation of initiative and decision runs back to Harrington. To prevent the formation of factions, the seating for the Council of 500 was by lot, rather like the Athenian Council; but this was quite certainly not a deliberate imitation of an ancient model, since this rule, in force from 410/409 BC, has survived only as a hidden note.²⁰⁸

In the constitutional debates of 1795 Sieyès had proposed the formation of a ‘jury constitutionnaire’, but not been able to get the idea accepted. (He did not belong to the committee that drafted the new constitution.) This was to be a form of constitutional court capable of abolishing unconstitutional laws; it is not clear whether this involved only procedural flaws, or implied a more far-reaching judicial review. Application could be made not only by both chambers of the legislature and the government, but also by citizens, who would, however, be fined if they abused the system. In addition, every ten years the ‘jury constitutionnaire’ was supposed to make proposals for possible constitutional changes, which would then be decided by plebiscite.²⁰⁹

In the constitutional debates of 1792/1793 moderate forces had proposed the creation of a reviewing instance within the legislature, borrowing the idea from Harrington and also linked to the model of the Venetian constitution.²¹⁰ Sieyès built on elements of these considerations of jurisdiction and constitutionality, which had in 1792–1793 been explicitly referred to as an ephorate. This idea of the ephors as ‘guardians of the constitution’ can be found in

²⁰⁷ Boissy d’Anglas, who had drafted this constitution, expressly invoked John Adams’ *Defence of the Constitutions*. Since the messianic claim of re-inventing the world had been abandoned, it was no longer necessary to set oneself apart from the United States: Andrew Jainchill, ‘The Constitution of the Year III and the Persistence of Classical Republicanism’, *French Historical Studies* 26, 2003, 399–435. Referring to John Adams always implied interest in the Polybian mixed constitution, so that the government subsidised a new edition of Polybius; Mortimer N. S. Sellers, ‘Revolution, French’, in *The Classical Tradition*, Anthony Grafton, Glenn W. Most and Salvatore Settis, eds., Cambridge, MA, 2010, 822–826, at 824.

²⁰⁸ See p. 39. In the 1848 German National Assembly the French model was imitated to the extent that appointment to committees was made by creating fifteen sections by lot; this did not, however, hinder the development of (quite efficient) parliamentary groups.

²⁰⁹ ‘Opinion de Sieyès, sur plusieurs articles des titres IV et V du projet de constitution’; ‘Opinion de Sieyès, sur les attributions et l’organisation du jury constitutionnaire’; both printed in: *Euvres de Sieyès*, reprint Paris 1989, t. 3, nos. 40–41.

²¹⁰ Sten B. Liljegren, *A French Draft Constitution of 1792 modelled on James Harrington’s ‘Oceana’*. Théodore Lesueur, *Idées sur l’espèce de gouvernement populaire qui pourroit convenir à un pays de l’étendue et de la population présumée de la France*, Lund 1932.

Rousseau;²¹¹ it was taken up by Fichte in 1796, and would end up with Carl Schmitt.²¹² The 1793 constitution, by contrast, had proclaimed the right of the people to revise the constitution at any time, since one could not bind future generations; the primary assemblies should be able to request the convening of a National Convention (Article 28 of the Declaration of the Rights of Man and Citizen [not in the 1789 Declaration]; Article 115 of the 1793 constitution). But (as mentioned earlier) the rules were so construed that it would have been extremely difficult to initiate this process.

Sieyes' proposal has a structural correspondence with the *graphe paranomon* and legislation by *nomothetai* in Athens.²¹³ But it is an open question whether any conscious reference to Athens was intended here. In part, these ideas were incorporated in the role of the *Sénat conservateur* of the 1799 constitution.²¹⁴ This was based on a draft plan by Sieyes that Napoleon modified. Given Napoleon's actual powers, this Senate was in practice ornamental.²¹⁵

In sum, given the additional restrictions on suffrage by property, age and family status²¹⁶ in the 1795 constitution, combined with the power of the collective state leadership (the Directory), it cannot be said that there is any real connection here with ancient ideas of democracy.

However, during the era of the Directory, copies of this constitution were forced upon a number of countries,²¹⁷ including the Italian 'sister republics' – in

²¹¹ Rousseau, *The Social Contract*, Book IV, Ch. 5.

²¹² *Grundlagen des Naturrechts*, in Johann Gottlieb Fichte, *Gesamtausgabe. Bd. 3: Werke 1794–1796*, Reinhard Lauth and Hans Jacob, eds. Stuttgart-Bad Cannstadt 1966, 448ff.; Carl Schmitt, *Der Hüter der Verfassung* [1931], Berlin 1996, 1–11.

²¹³ John E. E. Dalberg-Acton [Lord Acton] refers to this in 'Sir Erskine May's Democracy in Europe' [1878], in his *The History of Freedom and Other Essays*, London 1907, 61–100, here at 96.

²¹⁴ Sieyes' idea was first realised in France with the creation in 1958 of a 'conseil constitutionnel'.

²¹⁵ The scornful comment of Edmund Burke in February 1796 on Sieyes' readiness to engage again and again in drafting constitutions under changing political circumstances betrayed a prophetic quality in view of Sieyes' role in 1799: 'Abbé Sieyes has whole nests of pigeon-holes full of constitutions ready made, ticketed, sorted and numbered; suited to every season and every fancy ...; some with directories, others without a direction; some with council of elders, and councils of youngsters; some without any council at all. Some where the electors choose the representatives; others where the representatives choose the electors. ... So that no constitution-fancier may go unsuited from his shop, provided he loves a pattern of pillage, oppression, arbitrary imprisonment, confiscation, exile, revolutionary judgment, and legalized premeditated murder, in any shapes into which they can be put'; 'A Letter to a Noble Lord', in *Further Reflections on the Revolution in France*, 316.

²¹⁶ While it is true that a majority of adult males got the vote, only a very small group were qualified to act as electors.

²¹⁷ The case of the Dutch 'Batavian Republic' is especially interesting from the perspective of constitutional history, since the first draft constitution prepared by a convention was in 1797 rejected by a large majority in a plebiscite, something which very rarely happens in plebiscites of this kind. The convention was first 'purged', and then in the following year a new draft, modelled on the French Directorial model, was accepted by the people: Robert R. Palmer, 'Much in

Rome the directors were of course called ‘Consuls’ – and the propaganda associated with this invoked the Roman tradition which the French were allegedly restoring. At the beginning of 1798 Romans were told:

Shades of Cato, Pompeius, Brutus, Cicero and Hortensius, receive the praise of the free French – here on the same Capitol where you so often defended the rights of the people, and increased the fame of Rome. The descendants of the Gauls come today with an olive branch in the hand to this exalted place to build anew the altars of liberty that Brutus first built.²¹⁸

One might wonder whether the reminiscence of the ‘Gallic disaster’ in 387 BC, the sack of the city by a horde of Celts, which was a trauma for the ancient Romans, was a happy propagandistic choice, despite the emphasis upon the peaceful intentions of the new Gauls.

The short-lived Neapolitan Republic created in January 1799 after French intervention was given a five-man executive modelled on the Directory and called the Archontate; this had no relation to the Athenian supreme magistracy, but was rather an illustration of the arbitrary way in which ancient terms were used. Nonetheless, there were ‘ephors’ forming a kind of constitutional court that, while discussed in France in 1793 and 1795, was never realised there.²¹⁹ The official name ‘Repubblica Partenopea’ relates to the veneration of Parthenope, the daughter of the mythical Eumelos, founder of the city; since the time of Virgil, Parthenope had been a synonym for the city, founded in the eighth century BC. It can be doubted whether the name of this state had any particular symbolic power for the urban lower orders, who brought about the coup of 1799.

According to the 1799 French constitution which legitimated Napoleon’s seizure of power, his actual autocratic rule was camouflaged by giving him the title ‘First Consul’, there being in total three consuls, each with a ten-year term. The title was supposed to express the civil nature of his rule. Napoleon stated in May 1802 that ‘I govern not as a general, but because the nation believes that I have the civil properties fitting for government’.²²⁰ The Roman arrangement involved two equal colleagues as a supreme magistracy that united civil and military leadership appointed for one year only – so the Consulate had little enough to do with that. In his draft Sieyès had foreseen Napoleon’s role as that of a ‘great elector’ for life who would appoint two consuls, one for the military sphere and one for the civil.²²¹ It never will be clear how far Cicero

Little. The Dutch Revolution of 1795’, *Journal of Modern History* 26, 1954, 15–35; Jonathan Israel, *The Dutch Republic. Its Rise, Greatness, and Fall, 1477–1806*, Oxford 1995, 1122f.

²¹⁸ Pamphlet cited by Rolf E. Reichardt, *Das Blut der Freiheit. Französische Revolution und demokratische Kultur*, Frankfurt am Main 1998, 320.

²¹⁹ Titolo VI: Potere esecutivo, and XIII: Custodia della costituzione; text in *La costituzione della Repubblica Napoletana del 1799*, ed. Arturo Fratta, Naples 1999.

²²⁰ Cited in François Furet, ‘Napoléon Bonaparte’, in *Dictionnaire critique de la Révolution française, volume Acteurs*, François Furet and Mona Ozouf, eds., Paris 2007, 62.

²²¹ Jean Tulard, *Napoléon ou le mythe du sauveur*, Paris 1977, 116. Those who created the title for Napoleon had no way of knowing that in the twentieth century classical scholars would come

formed the model for the accentuation of the civil aspects of the consulate, presenting himself as pacifically dressed, the ‘consul in the toga’ contrasting with the military man Pompeius.²²²

In addition to this there was a chamber of parliament called *tribunat*, which was confined to advising on proposals made by the Consulate and the state council that it convened. The *Corps législatif* passed laws without discussion; the third chamber, the *Sénat conservateur* (composed of members appointed for life and who received even higher emoluments than the members of the other chambers), was supposed to vouch for the constitutionality of new laws. (The *tribunat* was weakened in 1802 by being divided into sections, and it was abolished in 1807.) The terminology – Consulate, Tribunate, Senate (and ‘senatus-consulte’ for its decisions) – evokes associations with the Roman republic, without there being, however, any substantial correspondence with Roman institutions.

The talk of plebiscites in relation to the popular vote adopting the 1799 constitution (and the revisions of 1802 and 1804) was later understood as a ‘reminiscence of old Rome’.²²³ Objectively, the real correspondence was that, as in Rome, the people could only answer yes or no to something presented to them. But ‘plebiscite’ was not a contemporary concept. It does not appear in the official texts of the Napoleonic era, but first with the constitution of 1852 that founded Napoleon III’s empire. To all appearances this term was then first applied retrospectively to the popular votes under the first Napoleon.²²⁴

Napoleon was named consul for life in 1802, and emperor in 1804 – as the constitution of May 1804 stated in a nice oxymoron, ‘the government of the republic is entrusted to an Emperor’. Besides evoking the imperial succession to Charlemagne (symbolised by Napoleon’s temporary residence in Aix-la-Chapelle in the summer of 1804), there were also links made to an ancient Roman tradition. As the situation dictated, parallels could be drawn with the conqueror Caesar (who could also be swapped for Alexander the Great), or with the Emperor of Peace, Augustus. In 1852 Karl Marx commented that ‘the Revolution of 1789–1814 draped itself alternately as the Roman republic and the Roman empire’. In their ‘world-historical necromancy’ both the Jacobins and Napoleon had brought about the unchaining of civil society ‘in Roman costumes and with Roman phrases’; once this had been achieved ‘the Brutuses, Gracchi, Publicolas, the Tribunes, the Senators and even Caesar’ all vanished. The social revolution could begin only once it had ‘stripped off all superstition

to doubt the received idea of an original dual magistracy, suspecting that it originally involved three members with one member presiding.

²²² Cicero, *In Catilinam* 2, 28; 3, 23 and passim.

²²³ Adalbert Wahl, ‘Napoleon’, in *Meister der Politik*, Erich Marcks and Karl Alexander von Müller, eds., Bd. 2, Stuttgart 1922, 325–353, here at 333.

²²⁴ Malcolm Crook, *Napoleon Comes to Power. Democracy and Dictatorship in Revolutionary France, 1795–1804*, Cardiff 1998, 75 and 139; Patrice Pierre, ‘Plébiscite’, in *Dictionnaire du Second Empire*, ed. Jean Tulard, Paris 1995, 1010–1015.

about the past. Earlier revolutions required recollections of past world history in order to dull themselves to their own content. In order to arrive at its own content, the revolution of the nineteenth century must let the dead bury their dead.²²⁵ The core of Marx's argument is that the revolutionaries of 1848 by imitating those of 1792/1793 had in the same manner failed to grasp the social realities as the Jacobins had done in their orientation towards antiquity.

Napoleon's expansionary policy can also be compared with that of Macedon in the fourth century BC. Niebuhr published (anonymously) in 1805 an edited version of the first speech of Demosthenes against Philip II of Macedon as an appeal for resistance to Napoleon.²²⁶

One should not overestimate the substantial significance of these reminiscences of antiquity for the revolutionary era, nor for the Napoleonic period that followed. All the same, after the fall of the Jacobins the view became established that they had sought to imitate antiquity – with the outcome that the entire political order of antiquity appeared to have been discredited.

²²⁵ Karl Marx, 'The Eighteenth Brumaire of Louis Bonaparte' [1852], MECW, Vol. 11, 104 and 106 [MEW, Bd. 8, 115–117 = MEGA², Abt. I, Bd. 11, 96–98].

²²⁶ Barthold Georg Niebuhr, *Demosthenis erste philippische Rede im Auszug übersetzt* [1805], new ed., Hamburg 1831. See also Lorenz von Stein, 'Die Entwicklung der Staatswissenschaft bei den Griechen', *Sitzungsberichte der philosophisch-historischen Classe der kaiserlichen Akademie der Wissenschaften Wien*, Bd. 23, 1879, 213–298, here at 239: 'Napoleonismus der Makedonier'.

Terror and the ‘Cult of Antiquity’ in Post-Revolutionary Discourse

Robespierre was overthrown on 9 Thermidor, Year II (27 July 1794). He was executed the next day together with twenty-one of his followers; a further eighty-three executions took place during the next two days, all of them without trial, solely by the decision of the National Convention that these persons were to be considered outlaws.¹ In 1797 Joseph de Maistre, theorist of the counter-Revolution and counter-enlightenment, summarised these events: ‘The history of the ninth Thermidor is not long. Some scoundrels killed some other scoundrels’.² In the mid-nineteenth century the German historian Heinrich von Sybel wrote that the fall of Robespierre had been arranged by a coalition of ‘the most authentic representatives of the system of terror, who only deserted Robespierre for the sake of personal ambition’ – among these were Billaud-Varenne, Collot d’Herbois and Barère.³

¹ Howard G. Brown, ‘Robespierre’s Tail. The Possibilities of Justice after the Terror’, *Canadian Journal of History* 55, 2010, 503–535, here at 503.

² Joseph de Maistre, ‘Considérations sur la France’, in his *Œuvres*, ed. [Jacques Paul] Migne, Paris 1841, 67. Though de Maistre’s tract was hailed by French emigrants, it did not at the time have very much resonance in France. It was only with the second edition in 1814 that it was understood to foretell the Restoration, and it later became a key text on the divine right of kings and the final authority of the Pope in secular matters. Note that de Maistre’s editor, the Abbé Migne, later became famous for his monumental edition of patristic texts.

³ Heinrich von Sybel, *Geschichte der Revolutionszeit von 1789 bis 1795*, Bd. 3, 3rd ed., Düsseldorf 1866, 288. Sybel’s work was the only German account of the French Revolution translated into French (1869). Its reputation derived from its use of archival sources, including those on the Committee of Public Safety. Those named here were members of the Committee of Public Safety who in early 1795 were stripped of their responsibilities and exiled to Cayenne. Barère was able to escape deportation; he had been a member of the Committee of Public Safety since the beginning and made its reports to the National Convention. He was known as ‘Anacreon of the guillotine’, after the Greek lyric poet of the sixth century BC who had praised love and wine; in September 1793 he had proposed that ‘Terror be placed on the agenda’, although after 9 Thermidor he criticised it as an instrument of despotism: Rudolf Walther, ‘Terror, Terrorismus’, in *Geschichtliche Grundbegriffe*, Bd. 6, Stuttgart 1990, 323–444, here at 347.

The question of why the Revolution had taken the path of *terreur* was at the centre of public debate. To attribute it to a fixation with antiquity seemed to be a convenient solution. Directly after Robespierre's fall it was claimed that the Jacobins, 'the Spartans of the Convention',⁴ had sought, through the use of terrorist methods, to impose ancient conditions on the present, a supposedly collective liberty on individual liberty, seeking to sacrifice millions of Frenchmen to a Spartan form of public welfare.⁵ More accurate was the parallel drawn by the economist Du Pont de Nemours, a former moderate representative who escaped the guillotine only because of the fall of Robespierre; he put the *terreur* on a level with the rule of the Thirty in Athens in 404/403 BC. He reworded a significant speech by Lysias about the time of Athenian terror to apply to the committees of public safety and of security,⁶ substituting for each of the names of Athenian tyrants a corresponding member of these committees.⁷

THE LEGEND OF JACOBIN ENTHUSIASM FOR ANTIQUITY

After his fall, it was officially said that Saint-Just (born in 1767 and executed together with Robespierre on 28 July 1794) was

a twenty-six year old muddlehead, barely out of school, inordinately proud of what little learning he had, having read in a book by a great man [Mably?] whom he did not understand that the people had been corrupted by luxury, this fruit of art and commerce; he also read that another great man [Lycurgus], whom he certainly understood even less, had raised a brave people out of a few thousand – and so our clumsy copyist set to work on antiquity, without regard to differences of place, customs, and people, seeking to replicate the irreplicable.⁸

At the end of August 1794 in his Third Report on Vandalism, the Abbé Grégoire⁹ declared Lepeletier's educational plan to be an error, while its

⁴ Benjamin Constant, 'Fragments sur la France', in his *Mélanges de littérature et de politique*, 1829, cited in Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism*, New Haven 1984, 48 (= Constant, *Œuvres complètes*, Bd. 33, ed. François Rosset, Berlin 2012, 209).

⁵ As reported by Courtois on the events of 9 Thermidor, in *Papiers inédits trouvés chez Robespierre, Saint-Just, Payan, etc.*, t. 1, Paris 1828, 3 und 6.

⁶ The role of this second committee during the *terreur* has been somewhat neglected by historians; see, however, Michel Eude, 'Le comité de sûreté générale en 1793–1794', *Annales historiques de la Révolution française* no. 261, 1983, 295–306.

⁷ [Pierre Samuel Du Pont de Nemours], *Plaidoyer de Lysias contre les membres des anciens comités de salut public et de sûreté générale*, Paris, L'an III de la République [1795]. The source is Lysias 12 (contra Eratosthenes, a former member of the Thirty). See the review of this piece by Karl August Boettiger, 'Revolutionsgerichte zu Athen und Paris', *Neue deutsche Monatsschrift* 1, 1795, 331–338.

⁸ Report by Courtois in *Papiers inédits*, 3.

⁹ Grégoire was the first cleric to swear allegiance to the civil constitution and had been elected Bishop of Blois within the 'constitutional church'. As a member of the National Convention he supported the liberation of slaves (see p. 175) and the Jewish emancipation, but advocated as

adoption by Robespierre had been a crime. They had claimed they wanted to make Spartans of Frenchmen, but they had instead degraded them into a great mass of helots, brutally ruled by a small minority.¹⁰ No mention was made of the fact that the Jacobin project had never got off the starting blocks, nor was any attention drawn to the fact that it was Grégoire himself who first mentioned anything about helots in contemporary debates.¹¹ Grégoire was in any case a past-master at rewriting recent history. In his previous reports on the destruction of works of art – the context in which he introduced the term 'vandalism' and so did the ancient Vandals an injustice – it had been counter-revolutionaries who were blamed, now was it the Jacobins.¹²

In April 1795, 3,000 copies of Condorcet's text on the progress of humanity were distributed at the expense of the state. In it Condorcet had written that the Greeks could not have developed an order founded upon 'rights equally endowed upon men by nature', and that all their achievements had been based upon the institution of slavery.¹³ In March 1794 Condorcet had died in prison in mysterious circumstances shortly after being apprehended; this text had been written shortly before while he was in hiding.

Constantin-François Chassebœuf, called Volney, was known chiefly for his 1787 book about his travels in Egypt and Syria.¹⁴ Imprisoned during the Jacobin period, from January to March 1795, he gave a series of lectures on history at the newly founded École Normale¹⁵ in which he placed the Jacobins in context. According to Volney, the revolutionaries had simply exchanged one superstition for another: out with Christianity, in with a worship of antiquity. In the ancient republics minorities of citizens had ruled over great masses of slaves, he said. Even within the citizenry – which in Sparta had lived according to the rules of a Trappist monastery, whereas in Athens it had merely been

well the vigorous suppression of regional languages. He accepted a mandate as representative under the Directory and the Consulate.

¹⁰ Grégoire, 'Rapport sur les destructions opérées par le vandalisme' [Report to the National Convention, 31 August 1794], in *La culture des sans-culottes*, Bernard Deloche and Jean-Michel Leniaud, eds., Paris 1989, 278–293, here at 285.

¹¹ See p. 174f.

¹² Bronislaw Baczko, *Ending the Terror. The French Revolution after Robespierre*, Cambridge 1994, 202ff.

¹³ Condorcet, *Esquisse d'un tableau historique des progrès de l'esprit humain* [1794], Paris 1970, 109.

¹⁴ Volney, *Les ruines ou méditation sur les révolutions des empires* [1787], Paris 1979. Volney's hostility to Christianity led him to deny that Jesus had ever lived; Albert Schweitzer, *Geschichte der Leben-Jesu-Forschung* [1906], 9th ed., Tübingen 1984, 451f.

¹⁵ The École Normale was based on plans formed by the Jacobins for a pedagogic institute for all of France; it opened in 1794, but was quickly closed again. After a few months it was reopened for the training of teachers at new elite schools. The teaching programme followed the outlines sketched by Condorcet: Robert R. Palmer, *The Improvement of Humanity. Education and French Revolution*, Princeton, NJ, 1985, 155ff.; 208ff.; Robert Wokler, 'Ideology and the Origins of Social Science', in *The Cambridge History of Eighteenth Century Political Thought*, Mark Goldie and Robert Wokler, eds., Cambridge 2006, 688–709.

‘a confused people’ – there was no guarantee of individual rights secured by representation and the division of powers.¹⁶ One should definitively discard any idea that antiquity was any kind of model. Ultimately, there was no difference between ancient republics and Oriental despotism – which was from the fifth century BC through to the eighteenth century time and again wheeled out as the contrary to an order of liberty, as Montesquieu’s contrast of the ‘servitude of Asia’ and the ‘freedom of Europe’ shows.¹⁷ During the eighteenth century the concept of despotism was also used polemically against absolute monarchy.

Volney and others also criticised the influence of Rousseau’s ideas. Here again, while the revolutionaries had built a cult around Rousseau, constitutional politics had in fact very little to do with Rousseau’s ideas. According to one deputy, the Revolution was itself an exemplification of the *Social Contract*.¹⁸

At the time the Jacobins were overthrown in the summer of 1794 Pierre-Charles L vesque, professor at the Coll ge de France, described the Spartans as feudal lords,¹⁹ except that those for whom this rebuff was intended – the supposed adherents of Sparta – had already made this comparison themselves.²⁰ The Thermidorian reaction to the Jacobin admiration of antiquity led the convention to ban the use of ancient names, and the *jeunesse dor e* of the streets assaulted anyone wearing the Jacobin cap based on the *pilleus*, tearing down all symbols associated with the Jacobins.²¹ All these claims fitted into the strategy of the new political elite of ‘Thermidorians’ – composed of ‘turned’ Jacobins, the survivors of other factions, the *nouveaux riches* who had done well out of the property confiscated from aristocrats and emigr s, and re-emerging Girondins – all of whom blamed the recent past entirely on the clique around Robespierre, and so avoiding any discredit to the Revolution itself.

¹⁶ Constantin-Fran ois Volney, ‘Le ons d’histoire, prononc es   l’Ecole Normale en l’an III de la R publique Fran aise’, in his *Œuvres*, t. 7, 2nd ed., Paris 1824, 1–135, here at 124–135.

¹⁷ Montesquieu, *De l’esprit des lois*, Book XVII, Ch. 6.

¹⁸ Cited by Horst G nther, *Freiheit, Herrschaft und Geschichte*, Frankfurt am Main 1979, 90.

¹⁹ Fran ois Hartog, ‘La r volution fran aise et l’antiquit : l’avenir d’une illusion?’, *OPUS* 6–8, 1987–1989, 237–258, here at 241ff.; Pierre Vidal-Naquet, *Politics, Ancient and Modern*, Cambridge 1995, 156f. In 1795 L vesque published the first French translation of Thucydides, whom he considered a witness for the instability of ancient Greek republics. See Nadia Urbinati, ‘Thucydides the Thermidorian: Democracy on Trial in the Making of Modern Liberalism’, in *Thucydides and the Modern World. Reception, Reinterpretation and Influence from the Renaissance to the Present*, Katherine Harloe and Neville Morley, eds., Cambridge 2012, 55–76.

²⁰ Saint-Just, see p. 173.

²¹ [Wilhelm] Adolf Schmidt, *Pariser Zust nde w hrend der Revolutionszeit von 1789–1800*, Bd. 1, Jena 1874, 233ff.; Harold T. Parker, *The Cult of Antiquity and the French Revolutionaries*, Chicago 1937, 179; Bacsko, *Ending the Terror*, 177f.

On the one hand, the idea put forward by the political right, that the *terreur* was a necessary consequence of the 1789 Revolution, was dismissed. In 1797 Benjamin Constant noted that

the enemies of the republic neatly incorporate the reaction that the Terror regime created. The memory of Robespierre is used to spurn the *manes* of Condorcet and to murder Sieyes. The chaos of 1794 has brought about a situation in which weak and embittered souls reject that dawning of liberty in 1789. The memory of the Terror today benefits the friends of despotism.²²

On the other hand, any post-mortem on what had gone wrong was to be avoided, together with any question of one's own responsibility for it. *Terreur* was therefore externalised by ascribing it to a hard core of political fanatics, 'monsters' and 'beasts of prey'²³ who had pursued the idea of a retrospective utopia that could be realised in a civilised society only through the use of force. It was possible to see oneself as a true representative of the Enlightenment, which was why the Jacobins had to be cast in the role of worshippers of antiquity.

It was in these debates that the basic framework of 'right' and 'left' interpretations of the Revolution was established, and which has defined the academic and political argument in France and elsewhere ever since: was there one Revolution, or many? Was the Terror a totalitarian proclivity already there at the beginning, or was it a derailment of the Revolution, brought about by circumstance? Was it a purely defensive reaction?²⁴

The propaganda machine of the Thermidorians also worked overtime, as is shown by the ready acceptance of the claim that Robespierre, known for his modest lifestyle, had covertly maintained mistresses, and had sought to become king through his connection with a Bourbon princess.²⁵ And of course he was now denounced as an agent of foreign powers.²⁶

²² 'Des effets de la terreur' (1797), in Benjamin Constant, *De la force du gouvernement actuel de la France et de la nécessité de s'y rallier. Des réactions politiques. Des effets de la terreur*, ed. Philippe Raynaud, Paris 1988, 173. The remark on Sieyes refers to an attempt on his life in April 1797.

²³ Antoine de Baecque, 'Robespierre, monstre-cadavre du discours thermidorien', *Eighteenth Century Life* 21, 1997, 203–221.

²⁴ This is especially clear in the reactions to the arguments of François Furet, *Penser la Révolution française*, Paris 1978 (translated as *Interpreting the French Revolution*, Cambridge 1981), and many other texts by the author and his school according to which the road to terror was already taken in 1789. See his survey: François Furet, 'A Commentary', *French Historical Studies* 16, 1990, 792–802, and from numerous other commentaries on this debate Colin Haydon and William Doyle, 'Robespierre: After Two Hundred Years', in *Robespierre*, Haydon and Doyle, eds., Cambridge 1999, 3–16; François Crouzet, 'French Historians and Robespierre', *ibid.*, 255–283; Timothy Tackett, 'Interpreting the Terror', *French Historical Studies* 24, 2001, 569–578.

²⁵ Bacsko, *Ending the Terror*, 1ff.

²⁶ Wolfgang Kruse, *Die Erfindung des modernen Militarismus. Krieg, Militär und bürgerliche Gesellschaft im politischen Diskurs der Französischen Revolution 1789–1799*, Munich 2003, 264f.

THE COURSE OF DISCUSSION IN GERMANY

Comparison of the French Revolution with events in antiquity was also made outside France. The Göttingen classicist Christian Gottlob Heyne was known for his ceremonial speeches, in which he would recount current events in terms of their ancient parallels. Heyne was the father-in-law of Georg Forster, a representative of the Mainz Republic proclaimed by German Jacobins,²⁷ but had quite different views on the French Revolution. In 1793 noting the French parallels to the corruption of rhetoric and demagoguery in Athens, Heyne also made this comparison with the regime of the Thirty in Athens:

These tyrants carried on in exactly the same way as the French National Convention, and there was in Athens as much cruelty and horror inflicted, robbery and murder, as is the case today in France.²⁸

In 1794 the Göttingen historian Arnold Heeren (another son-in-law of Heyne) compared the Athenian decree of 427 BC to punish the secession of Mitylene²⁹ with the National Convention's decision of October 1793 concerning the destruction of counter-revolutionary Lyon. The 'Athenian rabble and its leaders' were 'no better, if anything wilder and more bloodthirsty' than their Parisian match. The role of demagogues in Athenian democracy had become really clear only in the light of experience with the leaders of the Jacobins; Cleon was an 'Athenian Robespierre'.³⁰

In the same year, the philosopher Christian Garve suggested that the similarity between the Athenian assembly and the French National Convention lay in the fact that

often in both of them the man who drives the excesses of a democratic government farthest, and is the initiator of the most imprudent decrees, talks the language of wisdom

²⁷ The area of the left bank of the Rhine, including the cities of Mainz, Worms and Speyer, became a republic between October 1792 (occupation by French troops) and July 1793 (retaken by the Prussians), declaring itself part of France in March 1793. Its best-known representative was Georg Forster, famous for his having travelled around the world with James Cook (Forster, *A Voyage around the World*, 1778), who was at the time a librarian in Mainz and president of the Jacobin Club. Forster went to Paris as a representative of the 'Rhenish-German Convention' to negotiate the union with France. German Jacobins were very much more moderate than some sections of their French opposite numbers; they advocated political equality and extensive political rights in a purely representative system, and made no demands concerning social equality. They favoured the concept of 'democracy', because a 'republic' was also compatible with aristocratic rule: Georg Wedekind, 'Über die Regierungsverfassungen' [5 November 1792], in *Mainz zwischen Rot und Schwarz. Die Mainzer Revolution 1792–1793 in Schriften, Reden und Briefen*, ed. Claus Träger, Berlin 1963, 190–204.

²⁸ Christian Gottlob Heyne, 'Über die bürgerliche Freiheit und Gleichheit in der Republik der Athenienser', in *Politische Annalen*, ed. Christoph Girtanner, 4, 1794, 96–106; 181–197, here at 182.

²⁹ Thucydides 3, 36–49. See p. 76f.

³⁰ Arnold Hermann Ludwig Heeren, 'Mitylene und Lion' [1794], in his *Vermischte Historische Schriften*, Bd. 3, Göttingen 1821, 241–252.

and virtue in his speeches, as if providing the people whom he seduces with true and beneficial teaching.... According to the speech of the true demagogue, the people as a whole is great and good, insightful and virtuous; but any individual who among this people ... sticks out of the crowd is, if he is not a supporter of the demagogue, feeble-minded, or a troublemaker.³¹

The disadvantages of democracy were, Garve said, as plain in antiquity as they were in the present.³² A few years later he wrote that the French Revolution had not only destroyed any desire he might have had for reform, but also any faith in the exemplary nature of antiquity: 'The Greeks and Romans who have been so very much praised do not impress me any more'.³³ Finally, in the later 1820s Niebuhr would draw a parallel between the Thirty in Athens and the Committee of Public Safety.³⁴

In these statements it is apparent that the concept of demagogue was more strongly marked by a Jacobin association than with any ancient model, which would be seen in the 'persecution of demagogues' after 1815, which swept up tendencies thought politically suspicious, and which intensified with the Carlsbad Decrees of 1819; by this time the concept was used as a form of denunciation, without any direct connection being made with antiquity.

One exception was a German voice raised in 1799 which, while critical of the Revolution, argued that the French representative system had deviated from the ancient model and deceived the people with demagoguery:

The new architects of this so-called great nation believe that they have introduced a masterpiece in the art of government by assigning legislation to a large assembly of people's deputies. ... Democracy through representation was unknown in all the older republics. ... The French arrangement ceases to be democracy at the point a representative is elected. It contradicts its own theoretical principles. The people are supposed to be sovereign, and have no idea if their deputies impose a tax, declare war, make peace, or guillotine their king. It is a true aristocracy, apart from its not being heritable. All the same, the rhetorical skill of today's popular leaders has managed to deceive an entire nation with this fantasy of liberty.³⁵

³¹ Christan Garve, 'Übersetzung und Erläuterung der Rede Kleons, eines atheniensischen Demagogen, im 37sten Kapitel des 3ten Buches des Thukydidēs' [1794], in his *Vermischte Aufsätze, welche einzeln oder in Zeitschriften erschienen sind*, Breslau 1796, 447–515, here at 458 and 468.

³² *Ibid.*, 455.

³³ Christian Garve, 'Über die Veränderungen unserer Zeit in Pädagogik, Theologie und Politik' [1800], in Zwi Batscha, 'Despotismus von jeder Art reizt zur Widersetzlichkeit'. *Die Französische Revolution in der deutschen Popularphilosophie*, Frankfurt am Main 1989, 251–259, here at 253.

³⁴ Barthold Georg Niebuhr, *Vorträge über alte Geschichte, an der Universität zu Bonn gehalten*, Bd. 2, ed. Marcus Niebuhr, Berlin 1848, 200.

³⁵ [Christoph Friedrich von Derschau], *Über Gleichheit, Freyheit und Demokratie*, Aurich 1799, 36, 68 and 85f. The author was from 1751 to 1785 district president in Aurich (East Frisia).

Here the ancient model of politics is set against the principle of representation, except the author adopts no position of his own; instead, as a decided opponent of the Revolution and supporter of a constitutionally limited heritable monarchy, he polemicises against both forms of democracy.

During the post-revolutionary period the accusation rapidly spread in the European press that revolutionaries had confused their own era with that of antiquity. In his London exile in 1797, Chateaubriand claimed that the revolutionaries had identified themselves with antiquity, also accusing them of being mad enough to try and restore ancient conditions after the model of Lycurgus; but since circumstances were very different, they had had to resort to terror.³⁶ He later admitted that his text was a chaos in which Jacobins and Spartans, the Marsellaise and the songs of the (Spartan) Tyrtaios were all muddled up together.³⁷

In German journalism too the perception of the new France as ‘Spartan’ was linked not only to the revolutionary armies – whether in admiration or horror – but to the constitutional ideas of the Jacobins. An article published in February 1795 stated that Robespierre had ‘formed in his head the ideal of a deist Sparta ... to which he intended to add the French’.³⁸

This association was made quite independently of the political stance of the writer – being common to decided opponents of the Revolution and those who, seeking to defend the achievements of 1789, maintained that they had been discredited only by the unfortunate excesses of the Terror. Friedrich von Gentz, the translator of Edmund Burke’s famous text on the French Revolution and later an advisor to Metternich, made some remarks on a speech by Saint-Just in 1794, noting that liberty à la Sparta and the freedom of the individual furthered by an enlightened and civilised society were two very different things.³⁹ Johannes Weitzel had initially hailed the republic of the Mainz Jacobins, but then turning away from them directly after the fall of Robespierre argued that the new holders of power were likewise tyrants, but that Robespierre had wanted to transform France in the image of Sparta:

³⁶ François-René de Chateaubriand, ‘Essai historique, politique et moral sur les révolutions anciennes et modernes considérées dans leurs rapports avec la Révolution française’ [1797/1826], in Chateaubriand, *Essai sur les révolutions. Génie du christianisme*, ed. Maurice Regard, Paris 1978, 79–91.

³⁷ Cited in Jacques Godechot, *The Counter-Revolution. Doctrine and Action 1789–1804*, London 1972, 126f. Godechot comments: Chateaubriand’s essay ‘is indeed a welter, a medley of confusion, but an extremely intelligent medley’. During the so-called Second Messenian War (conventionally dated to the mid-seventh century BC) Tyrtaios had exhorted his fellow Spartans to fight to death to subjugate the rebellious helots.

³⁸ George Wilhelm Bartholdy, *Berlinisches Archiv der Zeit und ihres Geschmacks*, February 1795, cited in *Deutschland und die Französische Revolution 1789–1806*, Theo Stammen and Friedrich Eberle, eds., Darmstadt 1988, 328.

³⁹ Friedrich Gentz, ‘Über die Grundprinzipien der jetzigen französischen Verfassung nach Robespierre’s und St. Just’s Darstellung derselben’, *Minerva. Ein Journal historischen und politischen Inhalts*, 1794, Bd. 2, 166–189; 232–300, here at 271f. and 275f.

Robespierre, the only man in the Revolution who was in earnest with the monstrous plan of creating a democracy of 25 million people, was a follower of Lycurgus, and took from the eternal armed camp of a few thousand semi-barbarians the mode for an agile, refined and powerful state. He did harm to his fatherland by destroying trade, the arts and wealth.⁴⁰

The Leipzig publisher and journalist Johann Gottfried Dyk (Dyck), who mainly kept the German public supplied with counter-revolutionary texts, noted in 1798 that the fools who had claimed that ancient republics were a model for the present were 'halfwits' whose knowledge was based on French theatrical tragedies, and who had, among other things, ignored the great number of slaves in Athens. He cited the numbers given by Athenaeus: 20,000 citizens and 400,000 slaves.⁴¹

Ernst Moritz Arndt, a propagandist for German resistance to Napoleon, warned in 1806 against a revival of free states on the Greek model, since these had all been based on the oppression of slaves. Association with this model would be 'the most disgraceful misfortune of the human race. ... God preserve us eternally from such freedom and equality, and such republics'.⁴²

Andreas Riem had in 1800 as a German Jacobin defended the achievements of the Revolution, noting that although the French Jacobins had been on the defensive, they did harbour fatal and utopian aspirations in the imitation of antiquity:

Robespierre and his villainous helpers ... became monstrous because of their great struggle with a powerful party rather than of their free will. They rampaged like tigers, since they saw this as the only means of achieving their aims. The whim of a Spartan republic that was never possible on French soil ... led them from one excess to another. In this way they gradually became men lacking all humanity.⁴³

Among those Germans supporting the Revolution the travel writer Johann Gottfried Seume was one of the few who did not waver in the face of the terrorist phase of the Revolution. For him, this period was no imitation of antiquity, but instead embodied the unique nature of this Revolution:

⁴⁰ Johannes Weitzel, *Geist der fränkischen Revolution* [1795], excerpts in *Die Französische Revolution im Spiegel der deutschen Literatur*, ed. Claus Träger, Leipzig 1975, 620–624, here 622.

⁴¹ Johann Gottfried Dyk, *Natur, Ursachen und Resultate der französischen Revolution*, Leipzig 1798, excerpts in *Kritik der Revolution. Theorien des deutschen Frühkonservatismus 1790–1810*, ed. Jörn Garber, Kronberg, Ts. 1976, Bd. 1, 129–133, here at 130. On these numbers see p. 29 and 109.

⁴² Ernst Moritz Arndt, 'Geist der Zeit I', in *Arndts Werke. Auswahl in 12 Teilen*, Bd. 6, ed. Wilhelm Steffens, Berlin n.d. [1912], 79f.

⁴³ Andreas Riem, *Reise durch Frankreich vor und nach der Republik* [1799–1800], excerpts in *Die Französische Revolution*, 787–797, ed. Träger, here at 794f. On the motif 'the tiger Robespierre' in the context of contemporary physiognomy see Colin Jones, 'French Crossings III. The Smile of the Tiger', *Transactions of the Royal Historical Society* 6th ser. 22, 2012, 3–35.

The French Revolution will have done world history the service of lending, for the first time, public law a foundation in the principles of reason. If these principles are allowed to wither once more, then each part of the world will deserve the Napoleon that they get. – I know in history of no republic of a better kind. For a time, the French looked as though they would become one. It is a divine endeavour that has for millennia met with no success. – All of Greek history had few republicans, Roman history not one, unless one counts the Gracchi. The French Revolution has the advantage of creating the first republicans. The seedling will grow, even if it is at present strangled by weeds.

For Seume, the victims of the Revolution were of no account:

There is so much babble about the French Revolution and its cruelty. When he entered Rome, Sulla wreaked more havoc in *one* day than has happened in the entire Revolution. – Of all those who have died in the French Revolution, eighty parts were fools, nineteen parts rogues, and perhaps the one hundredth part honest and intelligent people. These proportions are very liberal. The fools often looked very heroic and wise.⁴⁴

The way that Seume combined apologia for the Revolution with a distance to antiquity was the great exception in a discourse that dealt overwhelmingly in terms of a Jacobin aspiration to imitate antiquity. The Baden lawyer Philipp Jakob Siebenpfeiffer, standing accused as one of the organisers of the 1832 Hambach Festival,⁴⁵ spoke in his own defence claiming that he did not want his ideal of a ‘representative republic’ to be discredited by association with the ‘horrors’ of the ‘cruelty of the French Revolution of 1793’, an association so often made against republicans that it made them quite nauseous. He saw the roots of the Terror, on the one hand, in the way France was subject to attack both from within and without and, on the other, in the return to direct democracy on the ancient model:

The constitutions of 1791 and 1793 sought to create popular sovereignty, but they did not go about it in the right way. Rome and Athens were thought to be the examples, and so they created the rule of a city-state, not the representative commonwealth worthy of a great people. Whatever suited Paris ... was forced upon the entire population. Paris controlled the government.⁴⁶

It was much the same in the later nineteenth century: Hippolyte Taine, whose hostility to Revolution was increased by the shock of the 1871 Paris Commune, commented: ‘In the capital city there developed, as once in Sparta or ancient Rome, a monstrous population of subjects without rights, ruled by a despotic

⁴⁴ ‘Apokryphen’ [1806/1807], in Johann Gottfried Seume, *Werke in zwei Bänden*, Bd. 2, ed. Anneliese und Karl-Heinz Klingenberg, 3rd ed., Berlin 1977, 224, 235 and 255.

⁴⁵ In late March 1832 about 30,000 people from all over Germany came together at Hambach castle in the Palatinate, demanding civil liberties and national unification; the German Federation reacted to this with a further tightening of the Carlsbad decrees.

⁴⁶ Philipp Jakob Siebenpfeiffer, ‘Verteidigungsrede vor dem Schwurgericht in Landau 1833’; cited in *Restauration und Frühliberalismus 1814–1840*, ed. Hartwig Brandt, Darmstadt 1979, 423–428, here at 424f.

oligarchy that is sole possessor of the "rule of the people".⁴⁷ As far as Taine was concerned, the Jacobins were psychopaths.⁴⁸

In general, the course of the French Revolution and the subsequent seizure of power by Napoleon seemed to confirm the Polybian model: that ochlocracy would engender a new form of autocratic rule. Droysen wrote: "The despotism of masses lacking a united will finally ends as the power of one man, who rules in the name of the sovereign people, an emperor without forbears, whose origin was not in France."⁴⁹ In turn, this should revive the fear that the cycle of constitutions takes the form of an 'accelerated movement passing through all developmental stages', as the 'rapid turnover, the revolving of a state through all its forms', taking shape as a constantly accelerating revolutionary cycle.⁵⁰

From the socialist perspective one can find in Marx and Engels the same imputation that the French Revolution sought to imitate antiquity and thereby ignored the different socio-economic foundations. (Marx's plan, to write a history of the National Convention,⁵¹ remained unrealised, just like the one he had to write a drama based on the Gracchi.⁵²) Robespierre was said to have aspired to a 'universal Spartan frugality' to limit the obstacle that differences of wealth presented to 'pure democracy', but failed to understand the social causes of these relationships.⁵³

Robespierre and Saint-Just spoke explicitly of 'liberty, justice and virtue' of ancient times. ... Spartans, Athenians and Romans at the time of their greatness were 'free, just and virtuous peoples'. ... He [Robespierre] continually recalls the ancient popular community and quotes its heroes as well as its corrupters. ... Robespierre, Saint-Just and their party fell because they confused the ancient, realistic-democratic commonweal based on real slavery with the modern spiritualistic-democratic representative state, which is based on emancipated slavery, bourgeois society. What a terrible illusion it is to have to recognise and sanction in the rights of man modern bourgeois society ... and at the same time ... to want to model the political head of that society in the manner of antiquity!⁵⁴

⁴⁷ Hippolyte Taine, *Les origines de la France contemporaine* [1873], t. 1, Paris 1986, 782.

⁴⁸ Patrice Higonnet, 'Terror, Trauma and the "Young Marx" Explanation of Jacobin Politics', *Past & Present* 191, 2006, 121–164, here at 129f.; Jeremy Jennings, *Revolution and the Republic. A History of Political Thought in France since the Eighteenth Century*, Oxford 2011, 290f.

⁴⁹ Johann Gustav Droysen, *Vorlesungen über die Freiheitskriege*, 1. Theil, Kiel 1846, 12.

⁵⁰ Georg Gottfried Gervinus, *Einleitung in die Geschichte des neunzehnten Jahrhunderts* [1853], ed. Walter Boehlich, Frankfurt am Main 1967, 138.

⁵¹ According to a written communication by Arnold Ruge in 1844, cited in Auguste Cornu, 'Karl Marx Stellung zur Französischen Revolution und zu Robespierre', in *Maximilien Robespierre 1758–1794*, ed. Walter Markov, Berlin 1961, 505–524, here at 513, n. 13.

⁵² Paul Lafargue, 'Persönliche Erinnerungen an Karl Marx' [1890/91], in *Mohr und General. Erinnerungen an Marx und Engels*, 4th ed., Berlin 1982, 304.

⁵³ Marx, 'Critical Marginal Notes on the Article "The King of Prussia and Social Reform. By a Prussian"' [1844]; MECW, Vol. 3, 199 [MEW, Bd. 1, 402 = MEGA², Abt. I, Bd. 2, 457].

⁵⁴ Marx, Engels, *The Holy Family* [1844]; MECW, Vol. 4, 121f. [MEW, Bd. 2, 128f.]. The point that nostalgia for antiquity ignored the fundamental difference in economic structures had also been made by the French socialist Charles Fourier; see the references in Hans-Peter Jaeck, *Die*

Lorenz Stein, who admired the 1793 Constitution,⁵⁵ thought that Robespierre's striving for virtue, and with it 'all Spartanisation of society', broke on the way that the principle of equality came into irresolvable conflict with the principle of property.⁵⁶ Elsewhere Stein wrote that the French Revolution had sought 'to breathe new life into the old Roman Republic'.⁵⁷ In 1888 Wilhelm Blos, a Social Democrat popular historian and deputy of the Reichstag, wrote that the bourgeoisie had found after the fall of Robespierre 'no appetite for the Spartan republic of virtue'; they 'wanted to enjoy the victory over feudalism and the old monarchy, pile up wealth, shape state and society in their own interest'. Their rule was not that of a 'republic of virtue' marked by 'Spartan rigour', but rather 'sybaritic diversion and immorality'.⁵⁸ The southern Italian city of Sybaris, founded by the Greeks, had since antiquity represented a life of unbridled luxury; the comparison was aimed at the ostentatious way in which, in the post-Thermidorian period, people were glad to be alive. Only very few were prepared to take the Jacobins' alleged love for Sparta with irony, as the Paris-based German writer Heinrich Heine had done in the 1830s: 'If Robespierre had really introduced Spartan cooking the guillotine would have been superfluous. The remaining aristocrats would have died for tremble or immediately emigrated.'⁵⁹

The claim that the Jacobins exercised a cult of antiquity can be attributed as much to counter-revolutionary polemic as to the historical connections made by the Jacobins themselves. (It is much the same with the retrospective over-estimation of the influence of Rousseau.) This assumption had a significant influence on the historical framework within which the Revolution was placed throughout the nineteenth century, and well into the twentieth. Hegel compared the 'tyrannical' role of the Spartan ephors with that which 'Robespierre and his followers exercised for a period in France'.⁶⁰ For Hegel, slavery was 'a necessary condition for a good democracy [Athens] where each citizen had the right and the duty to both give and hear lectures on state administration held in public, to exercise in gymnasia, and participate in festivals'. The precondition for all this was that 'the labour associated with daily life

französische bürgerliche Revolution von 1789 im Frühwerk von Karl Marx, Berlin 1979, 115, fn. 134.

⁵⁵ See p. 154.

⁵⁶ Lorenz Stein, *Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage*, Bd. 1 [1850], Hildesheim 1959, 304.

⁵⁷ Lorenz Stein, 'Die staatswissenschaftliche Theorie der Griechen vor Aristoteles und Platon', *Zeitschrift für die gesammte Staatswissenschaft* 9, 1853, 115–182, here at 124.

⁵⁸ Wilhelm Blos, *Die Französische Revolution. Volksthümliche Darstellung der Ereignisse und Zustände in Frankreich von 1789 bis 1804* [1888], Berlin 1988, 338f. and 344.

⁵⁹ Cited in Klaus Deinert, 'Heine und Frankreich – eine Neueinordnung', *Internationales Archiv für Sozialgeschichte der deutschen Literatur* 32, 1, 2007, 112–152, at 132, fn. 53.

⁶⁰ *Vorlesungen über die Philosophie der Geschichte*, 2. Teil, 2. Abschnitt, 3. Kap.; Hegel, *Werke*, Bd. 12, 322.

was done by slaves'; 'the equality of the citizens presumed that slaves would be excluded from this'.⁶¹ An order of this kind was possible only in a small state; hence there was no prospect that democracy would flourish in the French Revolution, while the reign of terror by the National Convention and its committees was unavoidable.⁶² (But Hegel continued to celebrate the anniversary of the 1789 Revolution with an extra bottle of wine.)

Niebuhr wrote in relation to Sparta: 'If one considers past history in the same terms as the present, we see it quite differently than one does with poetic eyes.'⁶³ One result of this perspective was that the image of a quasi-terroristic regime comparable with that of the Jacobins was retrospectively applied to both Rome and Athens. Niebuhr saw in the people's tribunes of the late Roman republic a form of 'National Convention'.⁶⁴

In 1845 the historian Friedrich Christoph Dahlmann wrote that from the French Revolution one should at long last learn that 'it is nonsensical and frivolous to seek to remodel our part of the world, suffused as it is by a monarchical order, into the republics of antiquity', while at the same time criticising those who would hold fast to 'the much-loved idol of an unlimited monarchy'.⁶⁵

The American Revolution put Athenian democracy back in its place: the museum. Reaction to the French Revolution, however, brought it to life again as a kind of chamber of horrors in which one could review the horrors of democracies throughout the ages. The imputation that the French Revolution was based upon an emulation of antiquity led to a differentiated appreciation of the great ancient republics being overlaid by the tendency to blame antiquity as a whole for failures to protect individual rights. It also set up a general, if not universal, tendency for 'the left' to use Athens as a model for participatory democracy, while largely ignoring the existence of slavery, while 'the right', even if they rejected political equality and constitutional human rights in their own time, made this an argument against Athens.

⁶¹ Ibid., Hegel, *Werke*, Bd. 12, 311.

⁶² Ibid., 4. Teil, 3. Abschnitt, 3. Kap.; Hegel, *Werke*, Bd. 12, 532f.

⁶³ Niebuhr, *Vorträge über alte Geschichte*, Bd. 3 (1851), 380.

⁶⁴ Niebuhr, *Römische Geschichte*. Neue Ausgabe, ed. Meyer Isler, Bd. 1, Berlin 1873, 514.

⁶⁵ Friedrich Christoph Dahlmann, *Geschichte der französischen Revolution bis auf die Stiftung der Republik* [1845], 3rd ed., Berlin 1864, 436.

‘Ancient and Modern Liberty’ – From Benjamin Constant to Max Weber

While ancient critics of Athenian democracy found fault with its inherent excess of liberty, it was rather its lack of personal liberty that became the point of criticism from the eighteenth century onwards. The texts that will be discussed in this chapter cover a period of about one hundred years, come from varied contexts and pursue different lines of argument. All the same, they share a specific universal historical, or even historical–philosophical, perspective. The fact that they connect up with each other, sometimes implicitly, at other times explicitly, justifies their treatment as a specific line of interpretation of antiquity from the early nineteenth to the early twentieth centuries.

CONSTANT ON LIBERTY/LIBERTIES

The eighteenth-century critique of antiquity and the assumption that Jacobinism had shown an enthusiasm for antiquity are reflected in the writings of Benjamin Constant: above all in *De l'esprit de conquête et de l'usurpation, dans leur rapports avec la civilisation européenne* (*The spirit of conquest and usurpation and their relation to European civilization*, 1814, which was aimed primarily at Napoleon); and *De la liberté des anciens comparée à celle des modernes* (*The liberty of the ancients compared with that of the moderns*, 1819, a lecture which originally was part of a series on the English constitution).

These texts develop the thinking behind Constant's political journalism during the post-Thermidorian period, when he sought to counter claims that, since its inception, the Revolution had been immutably set on the path to the reign of terror.¹ In the second text, he returns to the ideas he had developed during 1798–1799 in collaboration with his friend Germaine de Staël. As she then wrote:

¹ See p. 195.

The freedom of the present times involves everything that guarantees the independence of the citizen against the power of the government. The freedom of earlier times involves everything that secured to the citizens the greatest share in the exercise of power.²

Constant had studied in Edinburgh from 1783 to 1785, and he recapitulated the older criticism of ancient societies made by Scottish writers: that they were oriented entirely to the pursuit of war rather than to the making of money, robbing them of any contemporary relevance – except that Napoleon's expansionist policies seemed dangerously similar to the martial concerns of the ancient world.

Constant also adopted the post-revolutionary critique of the Jacobins, that they had been inspired by Mably's and Rousseau's idealised image of Sparta as a 'monastery' which served as a representation of a new social order that would be forcibly imposed.³ In Constant's view, such aspirations involved a misunderstanding of the fundamental difference between ancient and modern liberty. Although he cited Condorcet as the inspiration for this idea,⁴ he claimed that he himself was the first to clearly make this distinction. Nonetheless, he thought that the self-deception of the revolutionaries was to some degree pardonable, since they were more or less the victims of their own education. While their schooling had brought the special genius of antiquity to life, Mably and Rousseau were said to have misled them in applying ancient conceptions to the present. The result was the confusion of

two kinds of liberty ... in the all too famous days of our revolution [which was] the cause of many an evil. France was exhausted by useless experiments, the authors of which, irritated by their poor success, sought to force her to enjoy the good she did not want, and denied her the good which she did want.⁵

² Germaine de Staël, *Des circonstances actuelles qui peuvent terminer la révolution et des principes qui doivent fonder la république en France*, ed. Lucia Omacini, Geneva 1979, 111f.

³ Benjamin Constant, *Principes de politique, applicables à tous les gouvernements (version de 1806–1810)*, ed. Étienne Hofmann, Paris 1987, 374ff.; 'The Spirit of Conquest and Usurpation and Their Relation to European Civilization', in Constant, *Political Writings*, ed. Biancamaria Fontana, Cambridge 1988, 44–167, at 105ff.

⁴ 'The Liberty of the Ancients Compared with that of the Moderns', *Political Writings*, 312. Constant was probably also influenced by Adam Ferguson's distinction between ancient and modern liberty (see p. 108). The influence of Sismondi should also be mentioned. In 1796 Sismondi had completed a manuscript on the constitutions of free people which was intended to show that true liberty was achieved only in the modern world. On the advice of Constant, he presented it to the *Institut national des sciences et des arts* (since 1795 the parent organisation of French learned societies or academies, later called *Institut de France*). It was accepted by the *Institut* but nevertheless not printed. (Posthumous edition: Jean-Charles-Léonard Sismondi, *Recherches sur les constitutions des peuples libres. Texte inédit*, ed. Marco Minerbi, Geneva 1965). Sismondi took up the subject in revised form forty years later: *Études sur les constitutions des peuples libres* [1836], Brussels 1839 (with the preface referring to the fate of the original text). On Sismondi's constitutional ideas see Nadia Urbinati, 'Republicanism after the French Revolution. The Case of Sismondi de Sismondi', *Journal of the History of Ideas* 73, 2012, 95–109.

⁵ 'The Liberty of the Ancients', *Political Writings*, 309.

At the present time, therefore, the liberty of the citizen meant (or should mean) the enjoyment of protection from arbitrary state action (such as unlawful arrest and execution); freedom to express one's opinion; freedom to choose an occupation; freedom to dispose of one's property without reference to third parties; freedom to join with others in cultivating religious or social aims.

Limited political participation by the citizen could ensure that state power guaranteed these freedoms:

Finally it is everyone's right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed.⁶

Representation, corresponding to the principles of a society based on the division of labour, is the prime achievement of modernity; and the protection of individual rights could be guaranteed only in a representative system. Although Constant does deny wage labourers political rights, he does so because they are to be treated as aliens, which involves a garbled understanding of the Athenian distinction of citizens from metics;⁷ his rejection of cash payments for representatives is justified by a reference to Aristotle.⁸

The relationship in antiquity between the protection of individual rights and political participation was quite different: The liberty of the ancients

consisted in exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace ...; in voting laws, in pronouncing judgements. But if this was what the ancients called liberty, they admitted as compatible with this collective freedom the complete subjection of the individual to the authority of the community. You find among them almost none of the enjoyments which ... form part of the liberty of the moderns. All private actions were submitted to a severe surveillance. No importance was given to individual independence, neither in relation to opinions, nor to labour, nor, above all to religion. The right to choose one's own religious affiliation ... would have seemed to the ancients a crime and a sacrilege. In the domains which seem to us the most useful, the authority of the social body interposed itself and obstructed the will of individuals. ... In the most domestic of relations the public authority again intervened.⁹

In sum, this means:

Thus among the ancients the individual, almost always sovereign in public affairs, was a slave in all his private relations. As a citizen, he decided on peace and war; as a private individual, he was constrained, watched and repressed in all his movements. ... Among

⁶ *Ibid.*, 311.

⁷ 'Principles of Politics Applicable to All Representative Governments', *Political Writings*, 213f.

⁸ *Ibid.*, 211f.

⁹ 'The Liberty of the Ancients', *Political Writings*, 311. For the supervision of private life he invoked Sparta and the moral oversight of the Roman censors. Constant touched on the lack of religious liberty in antiquity in unpublished lectures delivered in 1818: Bryan Garsten, 'Religion and the Case against Liberty. Benjamin Constant's Other Lectures', *Political Theory* 38, 2010, 4-33.

the moderns, on the contrary, the individual, independent in his private life, is, even in the freest of states, sovereign only in appearance. His sovereignty is restricted and almost always suspended.¹⁰

And he continues:

The aim of the ancients was the sharing of social power among citizens of the same fatherland: this is what they called liberty. The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures.¹¹

Any assessment of benefit had in the present to be clearly in favour of the guarantee of individual rights that the great mass of citizens should enjoy:

The ancients found greater satisfactions in their public existence, and fewer in their private life; consequently, when they sacrificed individual to political liberty, they sacrificed less to gain more. Almost all the pleasures of the moderns lie in their private life. The immense majority, always excluded from power, necessarily take only a very passing interest in their public existence. Consequently, in imitating the ancients, the moderns would sacrifice more to obtain less.¹²

These differences were interpreted along the lines of older theories that had emphasised the small size of ancient states, the limits on trade and the existence of slavery, all of these determining the orientation to war and politics, an orientation unthinkable under modern conditions. Constant wrote, strongly exaggerating: 'Without the slave population of Athens, 20,000 Athenians could have never spent every day at the public square in discussions.'¹³ He emphasised, however, that Athens was the great exception in antiquity, since trading activity played a far greater role than it could have elsewhere. This was in turn made possible only by the far greater degree of freedom Athens gave its citizens than that typical of Sparta or Rome:

There was in antiquity a republic where the enslavement of the individual existence to the collective body was not as complete as I have described it. ... Of all the ancient states, Athens was the one which most resembles the modern ones.¹⁴

The Athenians showed an

excessive love of individual independence. In Sparta, says a philosopher, the citizens quicken their step when they are called by a magistrate; but an Athenian would be desperate if he were thought to be dependent on a magistrate.¹⁵

¹⁰ 'The Liberty of the Ancients', *Political Writings*, 311f.

¹¹ *Ibid.*, 317.

¹² 'The Spirit of Conquest and Usurpation', *Political Writings*, 104.

¹³ 'The Liberty of the Ancients', *Political Writings*, 314.

¹⁴ *Ibid.*, 312.

¹⁵ *Ibid.*, 316. The 'philosopher' on the Spartans' deference to magistrates is Xenophon, *The Constitution of the Lacedaemonians* 8, 2.

On the whole, however, Athens did conform to the ancient pattern, since the individual was much more subservient to the supremacy of the social body in Athens, than he is in any of the free states of Europe.¹⁶

The institution of ostracism was thought to be symptomatic of this; together with the scandalous trials of the Arginusae generals and of Socrates, it stood for a ‘legal arbitrariness [which] rested on the assumption that society had complete authority over its members’.¹⁷

Constant’s references to antiquity do not betray an understanding beyond that of a conventional cultural background; and he sometimes makes mistakes, as with his assertion that every alien involved in economic activity could become a citizen of Athens; he also contradicts himself here.¹⁸ In addition, his choice of examples is governed by a concern for the maintenance of rights in the present, which remains a basic feature of his political and journalistic activity independently of the shifts in position that he made. From December 1799 until March 1802 Constant was a member of the chamber called the ‘Tribunate’, in which role he opposed Napoleon. When he was excluded, he went into voluntary exile; in 1815, during the temporary restoration of Napoleonic rule, he drafted a constitution. (Napoleon appointed him a state counsellor and paid his gambling debts.) Constant later insisted that there had been a chance here of regaining an order based on liberty,¹⁹ and that he had never abandoned his fight for liberty,²⁰ but the way in which he suddenly threw in his lot with Napoleon was viewed with suspicion. Treitschke’s subsequent verdict reflected this criticism: ‘The much-praised theorist of liberalism, Benjamin Constant, trustingly lent support to the reformed despot.’²¹ Constant’s draft constitution aimed at securing parliamentary rights, a sort of ministerial responsibility,²²

¹⁶ ‘The Liberty of the Ancients’, *Political Writings*, 316.

¹⁷ *Ibid.*, 316 and 321. See p. 234f. for the Arginusae trial and the trial of Socrates, p. 236ff.

¹⁸ *Ibid.*, *Political Writings*, 315. Compare the contrary statement quoted on p. 206.

¹⁹ ‘Mémoires sur les Cent-Jours’ (1819/1829), Benjamin Constant, *Œuvres complètes*, Bd. 14, ed. Kurt Kloocke, Tübingen 1993.

²⁰ *Mélanges de littérature et de politique* (1829), preface: ‘For forty years I have defended the same principle, liberty in everything, in religion, in philosophy, in industry and in politics; and by liberty I mean the triumph of the individual over both the authority wishing to rule despotically and the masses demanding the right to subject the minority to the majority’, quoted by K. Steven Vincent, ‘Benjamin Constant, the French Revolution, and the Origins of French Romantic Liberalism’, *French Historical Studies* 23, 2000, 607–639, at 608 (= Constant, *Œuvres complètes*, Bd. 33, ed. François Rosset, Berlin 2012, 148).

²¹ Heinrich von Treitschke, ‘Frankreichs Staatsleben und der Bonapartismus. I: Das erste Kaiserreich’ [1865], in his *Historische und politische Aufsätze*, Bd. 3: *Freiheit und Königthum*, 5th ed., Leipzig 1886, 43–113, here at 67. Johann Gustav Droysen, *Vorlesungen über die Freiheitskriege*, Kiel 1846, Bd. 2, 694, marked this change of allegiance by adding ‘Inconstant’ to Constant’s name.

²² Constant’s position on this issue is rather difficult to define; he was primarily concerned with securing the king’s inviolability; Hans L. Rudloff, ‘Die Entstehung der Theorie der parlamentarischen Regierung in Frankreich’, *Zeitschrift für die gesamte Staatswissenschaft* 62, 1906,

judicial independence and press freedom. This presented a kind of substitute for direct political participation, required for the control of rulers. Napoleon himself wished for the 'restfulness of a constitutional king'.²³ To the degree that the monarch was assigned the role of a neutral instance securing the constitution, the function of 'protecting the constitution' was separated from any association with ephors and tribunes as had been the case in previous debates on this issue.

Following the final restoration of the Bourbons (whom he praised for avoiding a counter-Revolution), Constant continued his journalistic support for these aims, and in so doing opposed counter-revolutionary theorists like de Maistre and de Bonald who had raised the demand for a monarchy based on divine right, unrestricted by any constitutional rules. As Constant had already written in 1797, the fact that the Revolution was discredited did not mean that the substantial achievements of 1789 had to be surrendered.²⁴ This would be the tenor of liberal French historiography from the 1820s to the 1840s – Thiers, Mignet, Michelet – in which defence of the principles of 1789 served to advance constitutionality in their own time, a stance that was carried over into their careers as active politicians.

For Constant, individual liberty meant the exclusion of arbitrary state action. It was in these terms that he came back to talk of ostracism, warning of provisions that would make legal the imposition of exile without due process of law, as in a French law on special courts dating from 1802.²⁵ A similar parallel to the ancient practice of ostracism had been made in a scholarly treatise during the period of the Directory.²⁶ Constant's remarks on Roman censors were directed against an intention to limit press freedom, or interference on the part of church or state in schooling, defending liberty of religious practice. 'Since we live under monarchies, I humbly beg these monarchies not to borrow from ancient republics the means to suppress us'.²⁷ And 'legislators must renounce all disturbance of habits, all experiment in order to act forcefully upon opinion. No more Lycurguses, no more Numas'.²⁸ The argument that the

597–631; Mary S. Hartman, 'Benjamin Constant and the Question of Ministerial Responsibility in France, 1814–1815', *Journal of European Studies* 6, 1976, 248–261.

²³ Cited in Jean Tulard, *Les révolutions de 1789 à 1851 (Histoire de France, ed. Jean Favier, t. 4)*, Paris, 1985, 288: 'Le repos d'un roi constitutionnel peut me convenir'.

²⁴ See p. 195. For Constant in 1819, the Revolution of 1789 was still 'our happy revolution. I call it happy, despite its excesses, because I concentrate on its results'; 'The Liberty of the Ancients', *Political Writings*, 309.

²⁵ The respective provision of this law 'introduced into France Greek ostracism'; 'The Liberty of the Ancients', *Political Writings*, 321.

²⁶ Baudin, 'De l'ostracisme' (Lecture given in November 1797), in *Mémoires de l'Institut National des Sciences et Arts. Sciences morales et politiques* 3, 1800/1801, 61–79: warning against imitating ostracism by new laws on banishment.

²⁷ 'The Liberty of the Ancients', *Political Writings*, 323.

²⁸ 'The Spirit of Conquest and Usurpation', *Political Writings*, 105. That would also apply to a lawgiver who wanted to regulate society on the basis of enlightenment ideas. In the early

state should distance itself from schooling and limit its attention to issues related to security was one shared by many early German liberals, who had a high regard for Constant's writings.

Since Constant sought to block this use of antiquity, at the end of his 1819 lecture he argued in a sort of *volte-face* for a connection of ancient to modern liberty: 'far from renouncing either of the two sorts ... of liberty ... it is necessary ... to learn to combine the two together'.²⁹ Underlying this was the fear that constitutional development in France could lead to a situation in which the price of securing the pursuit of private interests would involve a progressive exclusion from political participation. This would take the form of the imposition of a drastic increase of the property qualification for voting rights, although Constant did consider economic independence to be a necessary condition for free voting. 'The danger of modern liberty is that, absorbed in the enjoyments of our private independence, and in the pursuit of particular interests, we should surrender our right to share in political power too easily'.³⁰

Constant's position was more complex than a simple contrast of ancient to modern liberty might suggest. This was true of his assessment of Athens in its ancient context as well as the way in which this was contrasted with modernity. A return to antiquity would be extremely dangerous; nonetheless, the political freedom that had once been achieved remained a standard against which modern constitutional states were to be measured. However, these fine distinctions are often flattened out in interpretation that drew on Constant, where his writing becomes a politically inflected 'quarrel of ancients and moderns', in which the option for modernity was plain.³¹ Moreover, Constant lent the critique of antiquity a clear historical-philosophical dimension. He emphasised in his religious observations that for the Greeks, religion was not dominated by a caste of priests; it was this that distinguished them from oriental despotism (to which Volney had drawn close). This was a condition of possibility for the world historical achievement of Christianity, which had sought the breakthrough of individual freedom.³²

1820s Constant criticised the *dirigisme* of the 'Scienza della legislazione' of the Neapolitan scholar Gaetano Filangieri; see Gisela Schlüter, 'Neue Aspekte einer kontroversen "Gesetzgebungswissenschaft". bei Filangieri und Constant', *Historische Zeitschrift* 295, 2011, 78–104.

²⁹ 'The Liberty of the Ancients', *Political Writings*, 327.

³⁰ *Ibid.*, 326.

³¹ 'This holds especially true for Isaiah Berlin's reading of Constant which influenced strongly Constant's perception in the later twentieth century; see Jeremy Jennings, 'Constant's Idea of Modern Liberty', in *The Cambridge Companion to Constant*, ed. Helena Rosenblatt, Cambridge 2009, 69–91, at 69 and 72, and p. 348.

³² Benjamin Constant, *De la religion considérée dans sa source, ses formes et ses développements*, 4 Vols., Paris 1824–1831. This work would become of great interest for Marx, who in 1842 made long excerpts from it; MEGA², Abt. IV, Bd. 1, 342–367; compare Patrice Higonnet, 'Marx, disciple de Constant?', *Annales Benjamin Constant* 6, 1986, 11–16.

This thesis was later adopted by the French legal historian Édouard Laboulaye, together with others.³³ Laboulaye's writings on the limits of state power were marked by his view that the 1848 Revolution demonstrated the tyrannical exercise of popular sovereignty.

Constant's use of antiquity as a means of developing constitutional ideas (a usage that was also substantially echoed in early German constitutionalism) remained, throughout the nineteenth and into the twentieth century, a constant point of reference in which the relation of (ancient) democracy and liberty recurred, for the most part, in a very one-sided version.

FUSTEL DE COULANGES AND THE ALL-POWERFUL ANCIENT STATE

The way in which Constant's perspective, the 'interpreter and mouthpiece of bourgeois society' (as he was labelled by Marx),³⁴ shaped later understanding of antiquity³⁵ can especially be seen in the writings of Numa Denis Fustel de Coulanges, who began his academic career as an ancient historian and only later turned his attention to medieval French history. In his Strasbourg inaugural lecture of 1862 Fustel de Coulanges took up Constant's accusation that the Jacobin's resort to antiquity had destroyed liberty. State omnipotence and dictatorial rule was justified in the name of liberty, and political opponents had been treated in the same way as enemies of the state had been in antiquity; the emulation of antiquity had led to the *terreur*.³⁶ However, in 1870, during the Franco-German War, Fustel invoked another side of the Great Revolution, opposing Theodor Mommsen in arguing for the French integrity of Alsace and basing his claim on 'our Revolution of 1789'.³⁷

In 1864 Fustel had made a lack of individual liberty and problems in the way that antiquity had come to be understood the leitmotiv of his presentation

³³ Édouard Laboulaye, 'La liberté antique et la liberté moderne', in his *L'état et ses limites*, Paris 1863, 103–137.

³⁴ Karl Marx, 'The Eighteenth Brumaire of Louis Napoleon' [1852]; MECW, Vol. 11, 104 [MEW, Bd. 8, 116 = MEGA², Abt. I, Bd. 11, 97].

³⁵ See, for example, François P. G. Guizot, *Histoire de la civilisation en Europe* [1828]; *History of Civilization in Europe*, trans. William Hazlitt [1846], new ed. Larry Siedentop, London 1997, Second Lecture, 44f.: 'When you find liberty in ancient civilizations, it is political liberty, the liberty of the citizen: man strove not for his personal liberty, but for his liberty as a citizen: he belonged to an association, he was devoted to an association, he was ready to sacrifice himself to an association.'

³⁶ Numa Denis Fustel de Coulanges, 'Une leçon d'ouverture et quelques fragments inédits de Fustel de Coulanges', *Revue de Synthèse Historique* 2, 1901, 241–263, here 252f.

³⁷ 'L'Alsace est-elle allemande ou française? Réponse à M. Mommsen' [27 October 1870], in Fustel de Coulanges, *Questions historiques*, ed. Camille Jullian, Paris 1893, 505–512, here at 509, a response to Mommsen, *Agli Italiani*, Berlin [30 August 1870] (a collection of articles previously published in Italian newspapers; reprinted with a commentary by Gianfranco Liberati, *Quaderni di Storia* no. 4, 1976, 197–248).

of both the Greek and Roman ancient city, *La Cité antique. Étude sur le culte, le droit, les institutions de la Grèce et de Rome*:

We shall attempt to set in a clear light the radical and essential differences which at all times distinguished these ancient peoples [Greeks and Romans] from modern societies. ... We rarely fail to deceive ourselves regarding these ancient nations when we see them through the opinions and facts of our own time. Now, errors of this kind are not without danger. The ideas which the moderns have had of Greece and Rome have often been in their way. Having imperfectly observed the institutions of the ancient city, men have dreamed of reviving them among us. They have deceived themselves about the liberty of the ancients, and on this very account liberty among the moderns has been put in peril. The last eighty years have clearly shown that one of the great difficulties which impede the march of modern society is the habit which it has of always keeping Greek and Roman antiquity before its eyes.³⁸

Fustel considered that state power originated in political institutions that had gradually emerged from arrangements intended to further cults based on family and kinship:

The city had been founded upon a religion, and constituted like a church. Hence its strength; hence, also, its omnipotence and the absolute empire which it exercised over its members. In a society established on such principles, individual liberty could not exist. The citizen was subordinated in everything, and without any reserve, to the city ... The religion which had produced the state, and the state which supported the religion, sustained each other, and made but one, these two powers, associated and confounded, formed a power almost superhuman, to which the body and the soul were equally enslaved. There was nothing independent in man; his body belonged to the state, and was devoted to its defence.³⁹

Fustel thought the lack of religious freedom to be related to this:

A man had no chance to choose his belief. He must believe and submit to the religion of the city. ... Liberty of thought in regard to the state religion was absolutely unknown among the ancients.⁴⁰

Freedom of thought in connection with the state religion was completely absent in the ancient world, as was, for example, shown in the condemnation of Socrates. To sum up:

The ancients knew neither liberty in private life, liberty in education, nor religious freedom. The human person counted for very little against that holy and almost divine authority which was called country or state. The state had not only, as we have in our

³⁸ Numa Denis Fustel der Coulanges, *The Ancient City, A Study of the Religion, Laws, and Institutions of Greece and Rome*, Boston 1955 (reprinted Mineola, NY, 2006), 11 (introduction). The translation is the one by Willard Small, originally published in 1874, which is also used in other English editions of Fustel's work. New French edition: *La cité antique*, Paris 1984.

³⁹ Fustel, *The Ancient City*, 219f. (Book III, Ch. 17 [= Book III, Ch. 18 of the French edition]).

⁴⁰ *Ibid.*, 222.

modern societies, a right to administer justice to the citizens; it could strike when one was not guilty, and simply for its own interest.⁴¹

The Athenian institution of ostracism was proof of this. Cicero was invoked in the same context:

The dangerous maxim, that safety of the state is the supreme law, was the work of antiquity. It was then thought that law, justice, morals, everything should give way before the interest of the country.⁴²

Fustel summed up as follows:

It is a singular error, therefore, among all human errors, to believe that in the ancient cities men enjoyed liberty. They had not even the idea of it. They did not believe that there could exist any right as against the city and its gods. ... The government was called by turns monarchy, aristocracy, democracy; but none of these revolutions gave man true liberty, individual liberty. To have political rights, to vote, to name magistrates, to have the privilege of being archon – this was called liberty; but man was not the less enslaved to the state. The ancients, especially the Greeks, always exaggerated the importance, and above all, the rights of society; this was largely due, doubtless, to the sacred and religious character with which society was clothed in the beginning.⁴³

In Athenian democracy, these general features of the ancient state appeared in a peculiar variant. Democracy made constant demands on its citizens, requiring them to participate in popular assemblies, courts, magistracies and local communities:

It was, we see, a heavy charge to be a citizen of a democratic state. There was enough to occupy almost one's whole existence, and there remained very little time for personal affairs and domestic life. ... The citizen, like the public functionary of our day, was required to devote himself entirely to the state. He gave it his blood in war and his time during peace. He was not free to lay aside public affairs in order to give more attention to his own; it was rather his own that he was required to neglect in order to labor for the profit of the city. Men passed their lives in governing themselves.⁴⁴

However, this created possibilities for the poorer strata of the population:

The Greeks never knew how to reconcile civil with political equality. That the poor might be protected in their personal interests, it seemed necessary to them that they should have the right of suffrage, that they should be judges in the tribunals, and that they might be elected as magistrates. If we also call to mind that among the Greeks the state was an absolute power ... we can understand what an immense interest every man had, even the most humble, in possessing political rights.⁴⁵

⁴¹ Ibid., 222.

⁴² Ibid., 223, referring to Cicero, *De legibus*, 3, 8. Cf. p. 164.

⁴³ Fustel, *The Ancient City*, 223.

⁴⁴ Ibid., 335f. (Book IV, Ch. 11).

⁴⁵ Ibid., 328 (Book IV, Ch. 10).

If political equality was achieved, then the inequality in property and wealth was felt all the more strongly. Poor citizens, grown unused to labour by the existence of slavery, saw no prospect of improving their economic position through engagement in economic activity; instead, they devoted themselves to political opportunities:

The poor man had equality of rights; but assuredly his daily sufferings led him to think equality of fortunes far preferable. Nor was he long in perceiving that the equality which he had might serve him to acquire that which he had not, and that, master of the vote, he might become master of the wealth of his city.⁴⁶

Accordingly, one got oneself paid for political activity: conducting, ‘disguised under legal forms’, a ‘regular warfare against wealth’ by making the rich responsible for financing public expenditures and prosecuting them in court so that they might be stripped of their fortune.⁴⁷ In many places people were declared debtors, land was redistributed or civil wars were followed by the extensive confiscation of property:

A majority of votes might decree the confiscation of the property of the rich, and ... the Greeks saw neither illegality nor injustice in this. What the state had declared was right. This absence of individual liberty was for Greece a cause of misfortunes and disorders. Rome, which had a little more respect for the rights of man, suffered less.⁴⁸

Fustel wrote in a footnote that these extreme outcomes did not occur in Athens; here the struggle of the rich with the poor ‘limited itself to the introduction of taxes and liturgies which impoverished the rich, and to the instrumentalisation of the courts, striking fear into the hearts of the rich and oppressing them’.⁴⁹ Fustel later took this point up again, linking a thoroughly positive assessment of Athenian democracy to its sophisticated constitutional rules.⁵⁰ But this distinction was barely noticed; instead, his summary judgement in *La cité antique* that antiquity lacked liberty predominated in the reception of his work.

In the closing section of his book Fustel saw the religious basis of their commonwealth as the reason for the Greeks’ difficulty in transcending the city-state form of organisation. Amphyctionies and federal states remained loose associations; it was only the Romans who succeeded in creating an empire. The demise of ancient society was then sealed by the rise of Christianity, whose universalism superseded the connection to family and the institutions of the city-state, liberated politics from traditional ritual, and at the same time removed the soul of man from the grasp of the state. In this way the deficiency of ancient liberty was overcome, and the liberty of the individual initiated.

⁴⁶ Ibid., 337 (Book IV, Ch. 12).

⁴⁷ Ibid., 338.

⁴⁸ Ibid., 339.

⁴⁹ *La cité antique*, 402, fn. 1 (in *The Ancient City*, 340, fn. 8, the text of this footnote is shortened).

⁵⁰ Fustel de Coulanges, ‘Attica Respublica’, in *Dictionnaire des antiquités grecques et romaines*, Charles Daremberg and Edmond Saglio, eds., t. 1.1 (1877), 532–542, here at 542.

BURCKHARDT AND THE SUBORDINATION OF THE INDIVIDUAL TO THE STATE

The line from Constant and Fustel leads on to Jacob Burckhardt's *Griechische Kulturgeschichte*. Burckhardt had earlier written two books dealing with transitional periods of universal historical significance, *Die Zeit Constantin's des Großen* (1853) and *Die Cultur der Renaissance in Italien* (1860). *Griechische Kulturgeschichte* was published posthumously between 1898 and 1902, based on his Basel lecture notes from the period 1872–1886.

In these lectures Burckhardt distinguished the Greeks from oriental peoples dominated by a caste of priests, while following August Böckh's dictum of 1817 that the Greeks were 'unhappier than most people believe'.⁵¹ The Greek polis was a social body in which the 'power of the state went hand in hand with a lack of all individual liberty'; the 'subordination of the individual to the state' was shown by the absence of 'any guarantee of life and property' in respect of 'the polis and its interests'.⁵² Burckhardt refers to Fustel here, but distances himself from the latter's over-emphasis upon religion. At another point there is almost a direct quotation of Fustel's statement that the Greeks had not been able to connect civil equality to political inequality.⁵³ The 'Greek idea of the state' implied the complete subordination of the individual to the collectivity; antiquity knew of no such thing as human rights.⁵⁴ Friedrich Nietzsche, his colleague in Basel, summed this up as: 'Of all those in ancient history, it is the Greeks who are mad about the state'.⁵⁵

Burckhardt thought that while this was true of all the *poleis*, it was truest of Athenian democracy. He borrowed the idea from Fustel that the great mass of poor Athenian citizens sought to use their political power to effect a redistribution of wealth. This was the purpose both of day payments and liturgies, whose compulsory nature became increasingly apparent, the state as a consequence falling 'into the hands of a moody and greedy demos'.⁵⁶

In this 'tyranny of the majority'⁵⁷ the court system played a very special role, dominated as it was by the 'public terrorism' of sycophants, semi-professional accusers who focussed especially upon 'the innocent, particularly if they had

⁵¹ Burckhardt, *Griechische Kulturgeschichte* (= GKG) I, 11. August Böckh, *Die Staatshaushaltung der Athener* [1817], Bd. I, 3rd ed., Berlin 1886, 71of.

⁵² GKG I, 77.

⁵³ *Ibid.*, 206. It does, however, appear that Burckhardt became aware of Fustel's book at a very late stage – see his letter to Robert Grüniger, 5 August 1885, in *Jacob Burckhardt, Briefe*, Bd. 8, ed. Max Burckhardt, Basel 1974, 299.

⁵⁴ GKG I, 80 and 72.

⁵⁵ Friedrich Nietzsche, *Menschliches, Allzumenschliches II; Kritische Studienausgabe*, Bd. 2, Giorgio Colli and Mazzino Montinari, eds., Munich 1999, 658.

⁵⁶ GKG I, 218.

⁵⁷ *Ibid.*, 216, n. 486. Burckhardt cites here Wilhelm Vischer, 'Die oligarchische Partei und die Hetairien in Athen' [1836], in his *Kleine Schriften*, Bd. 1, ed. Heinrich Gelzer, Leipzig 1877, 153–204, here at 169.

some property, placing them in a constant state of siege'.⁵⁸ The criminal justice system lacked 'all fairness and objectivity in sentencing, all proportion between delict and punishment, and so the basic matters that we expect of criminal law'.⁵⁹ As a result, there was a tendency to treat every delict as an act endangering the state, responding to this with draconian punishment. This made possible a 'complete uncertainty about justice, since people were found guilty solely because the confiscation of their possessions was thought to be something that would help the public finances'.⁶⁰ It would have been more consistent with the aims of the polis 'to have acted more openly ... and said that one or another citizen had to die because the state needed his property'.⁶¹ The Athenian people constantly treated the 'property of victims' as 'possible booty', enjoying trials as 'artful theatre ... in which the unlucky and those under threat had to flatter the people and clown publicly'.⁶²

Burckhardt thought that any conclusive judgement about the degree to which the qualitative and quantitative chicanery in Athens had any equivalent in the present called for the 'combined efforts of experienced specialists in both antiquity and criminal investigation'.

We would then see whether in any other province of world history this devilry, such pleasure in the ruin of others, had been able to be expressed so freely as it was with the Greeks, primarily through the encouragement of sycophancy.⁶³

He saw in ostracism less the 'hatred of the rabble' and more the 'impotent vanities' of mediocre politicians faced with the challenge of prominent and capable leaders.⁶⁴

Circumstances in Athens, where 'the popular assembly and the courts with all their official formalities allow themselves to be used as the stage and instrument of the most vicious chicanery and persecution', are like those prevailing during the Jacobin Terror of 1793–1794, except that in Athens 'there must have always been proportionally more actively heinous people than in any other big city of our times'.⁶⁵ Burckhardt, and others like him who made this comparison, ignored the fact that trial procedure in Athens never approached that of French Revolutionary Tribunals in the extent to which the accused lacked any kind of protection.

⁵⁸ GKG I, 228f., 232.

⁵⁹ GKG I, 231. This is all quite true, although it was a criterion that could not really have been recognised before the nineteenth century.

⁶⁰ GKG I, 237.

⁶¹ GKG I, 238. This had in fact been the practice of the 'Thirty', but Burckhardt ascribes it to Athenian democracy as such.

⁶² GKG I, 220f.

⁶³ GKG II, 341.

⁶⁴ GKG I, 207.

⁶⁵ GKG IV, 323f.

Nonetheless, Burckhardt did note the freedom of Attic comedy as compared to conditions prevailing during the French Revolution. It was, he said, 'historically unique' that the 'Peloponnesian War and the associated domestic and foreign crises' coincided with 'the most sublime satire'. Furthermore, 'an Athens existed that willingly looked into this distorting mirror. On the other hand, during the French Revolution anyone who expressed the slightest doubt about its pathos, or even depicted it grotesquely, would have soon enough lost their head'.⁶⁶

In his lectures on the study of history, also known as *Weltgeschichtliche Betrachtungen*, Burckhardt summed up as follows:

The time of Pericles in Athens would have been intolerable for any peaceable and cultivated citizen of our time. He would have been bitterly unhappy even if he was not among the majority, the slaves, but was a free man: [because of] the enormous pillage of the individual by the state, and constant interrogation about the performance of state obligations by demagogues and sycophants.

But he did add: 'Nevertheless, the Athenians of that time must have had a sense of themselves for which no worldly security could compensate'.⁶⁷ There is therefore a degree of regret in Burckhardt when he recognises that, in the Greek *poleis*, freedom in the private sphere was first secured at a time of limited civil self-government, in the shadow of the new Hellenistic powers, and so accordingly 'bought dearly'.⁶⁸

Hence for Burckhardt the eminence of Athens lay not in its state, but in its significance as a 'cultural potential of the first order, as the source of our spirit'.⁶⁹ His rejection of ancient democracy corresponds to his distaste for modern democratic ideas, and especially the way in which these had come to be expressed as demands for social reform. Since the time of the French Revolution democracy had, he wrote, been linked to 'a thousand different sources', but in each case the state was expected to do what society was not prepared to do: provide 'individual castes with a particular right to work and subsistence'.⁷⁰ Burckhardt's concern about the development of democracy was at first shaped not so much by his perspective upon his larger European neighbours, but rather by what was happening in Switzerland, and especially his own city of Basel.⁷¹ In the course of the nineteenth century a movement for

⁶⁶ GKG III, 252f. During the French Revolution the same point had been made by Camille Desmoulins, see p. 172.

⁶⁷ Jacob Burckhardt, *Über das Studium der Geschichte. Der Text der 'Weltgeschichtlichen Betrachtungen'*, ed. Peter Ganz, Munich 1982, 236 (this edition is based on Burckhardt's manuscripts).

⁶⁸ GKG IV, 556.

⁶⁹ GKG I, 224.

⁷⁰ Burckhardt, *Über das Studium*, 370f. This maybe an allusion to the failed experiment during the 1848 French Revolution to secure a 'right to work' by establishing workshops financed by the state; see p. 287. This demand was later kept alive by the workers' associations in various countries.

⁷¹ In 1832–1833 Basel became a genuine city-state because of the secession of the countryside.

constitutional reform had succeeded in the introduction of direct democracy based upon referenda.⁷² As he wrote in a letter of 1845, he saw the people as a 'roaring mass', and foresaw the emergence of a 'despotism of the masses' that would only lead to the 'rule of force'.⁷³ Over the years he became increasingly pessimistic in view of the probable developments in all Europe. He was later convinced that an 'alternative between complete democracy and absolute, lawless despotism' would emerge, the latter taking the form of 'supposedly republican military commandos'.⁷⁴

ACTON ON THE HISTORY OF THE FREEDOM OF CONSCIENCE

In 1877 John Dalberg-Acton, since 1869 Lord Acton, gave two lectures that dealt with the deficiencies of antiquity in respect of the freedom of conscience: 'The History of Freedom in Antiquity' and 'The History of Freedom in Christianity'. At the time he was known as a Catholic writer who was opposed to the doctrine of papal infallibility. In 1895 Acton became professor of History at Cambridge. He was related on his mother's side to German aristocracy, and had been a student of the Roman Catholic historian and specialist in canon law, Ignaz von Döllinger, who had in 1871 been excommunicated because of his opposition to the declaration of infallibility made by the First Vatican Council.

Acton wanted to write a comprehensive history of liberty, but like other great works he had envisaged, this never saw the light of day. He said that Döllinger 'knew too much to write' and that 'he would not write with imperfect materials, and to him the materials were always imperfect'.⁷⁵ The same could be said of him, at any rate with regard to major publications.

According to Acton, the Athenians, starting with Solon, should be credited with forming a free political order based upon the participation of citizens, marking a contrast with oriental despotism and as such laying the foundations of European liberty. However, the evolution of Athenian democracy showed that there was no oppression worse than the tyranny of a majority. As with the French Revolution,⁷⁶ this was most evident in the harsh treatment of political and military leaders, the confiscations of property from the wealthy that could have resulted in their collaboration with Athens' enemies and, finally, in the open abuse of procedural rules in the trials of the Arginusae generals and the condemnation of the 'martyr' Socrates, the admirable amnesty of 403 BC being

⁷² See p. 304f.

⁷³ Letter to Gottfried Kinkel, 19 April 1845; Burckhardt, *Briefe*, Bd. 2 (1952), 158.

⁷⁴ Letter to Friedrich von Preen, 13 April 1881; Burckhardt, *Briefe*, Bd. 8 (1974), 31. Here, Burckhardt reflected especially upon the future of Russia.

⁷⁵ 'Döllinger's Historical Work', in John E. E. Dalberg-Acton [Lord Acton], *The History of Freedom and Other Essays*, London 1907, 375-435, here at 434 and 432.

⁷⁶ On this see the lectures delivered after 1895: John E. E. Dalberg-Acton [Lord Acton], *Lectures on the French Revolution*, John N. Figgis and Reginald V. Laurence, eds., London 1910.

no compensation for this.⁷⁷ The lack of a representative system of government, the adherence to slavery and the lack of freedom of conscience were, according to Acton, the three decisive factors in the deficiencies of individual liberty in antiquity.⁷⁸ The emergence of the security of individual liberty was initially an unintended consequence of the medieval conflict between spiritual and temporal powers, the decisive breakthrough coming with the English revolution of the seventeenth century, when freedom of belief and of conscience was definitively established.⁷⁹ Here Acton followed Guizot.⁸⁰

MAX WEBER AND THE *HOMO POLITICUS*

A late echo of the kind of critique of antiquity outlined here can be found in Max Weber's manuscript 'The City', published posthumously in 1921 but written sometime between 1911 and 1914.⁸¹ Weber was familiar with the work of Fustel de Coulanges and Jacob Burckhardt,⁸² and there is here an unmistakable resonance of both of these writers, and also of Benjamin Constant, whose 'theory of the ancient state' had already been cited by Weber as an example of what an ideal type was.⁸³ In any case, the introduction to Burckhardt's *Griechische Kulturgeschichte* can be read as an anticipation of an ideal-typical approach. Weber's text on 'The City' bundles together a number of universal-historical perspectives that he had in part already aired in other writings, the central question being the uniqueness of the way in which urban community in the Occident was characterised by a politically engaged citizenry. He compared both ancient and medieval Europe with the Orient, but he was especially interested in the differences between the ancient and medieval eras of the Occident; for although there were obvious parallels in their political and institutional development, it was only in the medieval period that the conditions for 'modern capitalism' and the 'modern state' emerged.

⁷⁷ 'The History of Freedom in Antiquity', in Dalberg-Acton, *The History of Freedom and Other Essays*, 1–29, here at 12f.

⁷⁸ *Ibid.* 25f. See also Acton, 'Sir Erskine May's Democracy in Europe' [1878], *ibid.*, 61–100, here at 66ff.

⁷⁹ 'The History of Freedom in Christianity', *ibid.*, 30–60.

⁸⁰ See p. 266.

⁸¹ Max Weber, *Wirtschaft und Gesellschaft. Die Wirtschaft und die gesellschaftlichen Ordnungen und Mächte. Nachlaß. Teilband 5: Die Stadt*, ed. Wilfried Nippel, Tübingen 1999 (MWG I/22–5).

⁸² 'Agrarverhältnisse im Altertum' [1908/1909], in Max Weber, *Gesammelte Aufsätze zur Sozial- und Wirtschaftsgeschichte*, ed. Marianne Weber, Tübingen 1924, 279 and 283. [Also in Max Weber, *Zur Sozial- und Wirtschaftsgeschichte des Altertums. Schriften und Reden 1893–1908*, ed. Jürgen Deininger, Tübingen 2006 (MWG I/6), 727 and 735].

⁸³ 'Die "Objektivität" sozialwissenschaftlicher und sozialpolitischer Erkenntnis' [1904], in Max Weber, *Gesammelte Aufsätze zur Wissenschaftslehre*, ed. Johannes Winckelmann, 4th ed., Tübingen 1973, 206.

Weber organised the contrast between an ancient order centred upon politics, war and plunder, and a medieval order oriented to the peaceful pursuit of trade and commerce in terms of the ancient *homo politicus* and the medieval *homo oeconomicus*. The ancient citizen was said to be a member of a ‘warrior caste’, for whom there was in principle ‘no freedom of choice in the way one led one’s life’:

The citizenry took whatever steps it thought necessary in dealing with the individual. A disorderly household, the squandering of the inherited estate, ... marriage breakdown, the careless upbringing of a son, mistreatment of parents, impiety, hubris – any and every form of behaviour that endangered military and civil order or that might bring down the displeasure of the gods on the polis was harshly punished, despite whatever Pericles might have said in his Funeral Oration recorded by Thucydides about each being able to live his own life in Athens. In Rome, such behaviour would lead the censor to intervene.⁸⁴

Athenian democracy in particular made demands upon its citizens in regard to politics and military service that were ‘historically unprecedented for all previous and subsequent developed cultures’.⁸⁵ In exchange, they were offered the rewards of an expansionary politics: allocations of land and booty, together with payment for military and political service. This itself prevented the development in the mass of the citizenry of any inclination for ‘peaceful economic gain and rational economic conduct’.⁸⁶ The exclusivity of the citizenry also blocked the creation of a strong and stable empire that did not presuppose the oppression of allies.⁸⁷

The obligation laid upon wealthy citizens that they contribute to public funds through liturgies represented a constant threat to private wealth: ‘The democratic polis laid its hand upon the property of any citizen that seemed substantial’.⁸⁸ The popular courts were another source of peril, composed as they were of ‘hundreds of jurors bereft of knowledge of the law’, whose ‘absolutely arbitrary qadi justice’ posed such a threat to formal legal security that one was ‘more surprised by the continued existence of property than by the rapid changes of fortune that accompanied every political calamity’.⁸⁹ By ‘qadi justice’ Weber meant legal systems which supposedly favoured an orientation to material justice at the expense of formal legal security.

⁸⁴ MWG I/22–5, 283 and 285. Elsewhere, Weber mentioned in passing the trial of Socrates as proving the constant danger of religious persecution; *Die Wirtschaftsethik der Weltreligionen. Hinduismus und Buddhismus, 1916–1920*, ed. Helwig-Schmidt-Glinzer, Tübingen 1996 (MWG I/20), 527.

⁸⁵ MWG I/22–5, 286.

⁸⁶ *Ibid.*, 288.

⁸⁷ *Ibid.*, 290. Likewise Eduard Meyer, *Geschichte des Altertums*, Bd. 4, Stuttgart 1901 [1915 reprint], 13: ‘A liberal regime of civil law was rendered impossible in Athens by the radical nature of democracy.’ This regime was ‘ungenerous and ... ultimately suicidal’.

⁸⁸ MWG I/22–5, 286.

⁸⁹ *Ibid.*, 286f.

Elsewhere Weber emphasised that the Athenian legal system differed from the Roman by virtue of the fact that jury courts were not only used for criminal or political trials (as in Rome during the later Republic), but were also used for all civil proceedings.⁹⁰ In a judicial system oriented solely to principles of material justice, to an 'ethical "sensitivity" deriving from political or social factors',⁹¹ in which proceedings were initiated by demagogic presentations by the respective parties, it was 'impossible to develop formal law and formal legal science'.⁹² In this respect Athenian jury courts were comparable to the Revolutionary Tribunals of the French Revolution and to the respective courts established during the German Revolution of 1918–1919 that had failed to limit their remit to politically relevant cases. Prompted by a strike in Berlin during January 1918, Weber stated that the situation was like that in 'a mad-house', or in 'Athens after the Battle of the Arginusae'.⁹³

Weber's assessment of Athenian democracy shifted according to the comparison he was drawing. The possibility of cancelling unlawful popular decisions with a *graphe paranomon* suggested a greater similarity with the American constitutional system than with English parliamentary sovereignty; on the contrary, ostracism involved a decision made in respect of a specific person, which in Rome would have been excluded on legal grounds.⁹⁴

The dominance of the popular assembly in Athens inevitably led to the rule of a demagogue,⁹⁵ whose role was a consequence of the constitutional structure,⁹⁶ rendering null and void the usual moral contrast drawn between Pericles and Cleon.⁹⁷ Weber assumed that there was a position of an official head of the *strategoï* who until the time of Pericles would also assume the role of the leading demagogue.⁹⁸ While this would today be treated as an unjustified assumption about the chairmanship within this collegium, he was here following Karl Julius Beloch and Eduard Meyer, and perhaps Droysen as well.⁹⁹

⁹⁰ Max Weber, *Wirtschaft und Gesellschaft*, ed. Johannes Winckelmann, 5th ed., Tübingen 1976, 465.

⁹¹ *Wirtschaft und Gesellschaft*, 471.

⁹² *Ibid.*

⁹³ Max Weber, *Zur Politik im Weltkrieg. Schriften und Reden 1914–1918*, ed. Wolfgang J. Mommsen, Tübingen 1984 (MWG I/15), 413.

⁹⁴ 'Agrarverhältnisse im Altertum', 123 [MWG I/6, 500].

⁹⁵ *Ibid.*, 217 [MWG I/6, 640].

⁹⁶ MWG I/22–5, 219f.; *Gesammelte Aufsätze zur Wissenschaftslehre*, 483.

⁹⁷ Max Weber, *Wissenschaft als Beruf 1917/19. Politik als Beruf 1919*, Wolfgang J. Mommsen and Wolfgang Schluchter, eds., Tübingen 1992 (MWG I/17), 191; *Wirtschaft und Gesellschaft*, 668.

⁹⁸ *Wirtschaft und Gesellschaft*, 665; MWG I/17, 191.

⁹⁹ Karl Julius Beloch, *Die attische Politik seit Perikles*, Leipzig 1884, 274–288; Eduard Meyer, *Geschichte des Alterthums*, Bd. 3, 1: *Das Perserreich und die Griechen. I. Hälfte: Bis zu den Friedenschlüssen von 448 und 446 v.Chr.*, Stuttgart 1901, 347 und 579; Johann Gustav Droysen, 'Bemerkungen über die attischen Strategen', *Hermes* 9, 1874, 1–21. On the *strategoï* see p. 40, fn. 125.

Compared to the ‘wild demagogy’ of the prophets of ancient Israel, decision making in the Athenian popular assembly was distinguished by ‘rationally-ordered consultation’;¹⁰⁰ the ‘political rhetoric of Attic demagogues’ should not necessarily therefore be regarded negatively. All the same, the process of political decision making in Athens was a long way from the ‘rational assessment’ that was characteristic of the conduct of politics by the Senate in the Roman republic.¹⁰¹

It remains unclear why Weber thought that he could not include the Athenian system under his category of ‘administration of a group eschewing positive rule’, arguing that Athens was clearly too large for this organisational form.¹⁰² Important elements of this ideal type for the ‘minimisation of rule’ fit the Athenian case quite well: short administrative periods, permanent right of recall, the use of random choice or simple appointment in turn so that the accumulation of specialised skill and knowledge be avoided, a rigorously imperative mandate for the conduct of administration, the obligation to report and consult whenever a case arose not covered by this mandate, obligation to render account, the short-term appointment of those charged with special tasks and so on.

Nonetheless, for all the distinctions that Weber makes in individual cases, he does accept that in all of antiquity there was a lack of individual liberty. Given his central question concerning the conditions for the emergence of modern capitalism, he saw the consequence of this in the obstacles for the development of economic rationality.

Weber considered that direct democracy in modern times was possible only under the kind of conditions prevailing in the Swiss cantons, which were inapplicable in a powerful nation state that was incapable of ‘going Swiss’.¹⁰³ When in 1917 he argued for the necessary constitutional reform of Germany (the demand for ministerial responsibility among other things) and Prussia (franchise reform) it was parliamentarism that he favoured above all as the means for selecting suitable political leaders. Necessarily linked to this was his acceptance of the career parliamentarian able ‘to live from politics’.¹⁰⁴ In this context even the demagogic tendencies of a parliamentary leader (the

¹⁰⁰ Max Weber, ‘Die Wirtschaftsethik der Weltreligionen. Das antike Judentum’, in *Gesammelte Aufsätze zur Religionssoziologie*, Bd. 3, ed. Marianne Weber, Tübingen 1921, 335.

¹⁰¹ MWG I/22–5, 298f.

¹⁰² *Wirtschaft und Gesellschaft*, 169f. (‘herrschaftsfremde Verbandsverwaltung’).

¹⁰³ MWG I/15, 96. Friedrich Engels had also warned of the ‘federal Swissification’ of Germany; ‘A Critique of the Draft Social-Democratic Programme of 1891’, MECW, Vol. 27, 228 [MEW, Bd. 22, 236 = MEGA², Abt. I, Bd. 32, 50].

¹⁰⁴ MWG I/17, 169ff.; MWG I/15, 501f. and 533f. The distinction of living ‘for’ and living ‘from’ politics can already be found in a short piece dating from 1905: Max Weber, *Wirtschaft, Staat und Sozialpolitik. Schriften und Reden 1900–1912*, ed. Wolfgang Schluchter, Tübingen 1998 (MWG I/8), 192–199. Weber here refers to James Bryce, that is, to *The American Commonwealth*, London 1888, Vol. 2, 386ff. (Ch. LVII: ‘The Politicians’).

prototype being Gladstone)¹⁰⁵ had positive features,¹⁰⁶ since this involved leadership qualities that Weber considered necessary for any kind of democracy, the more so in modernity given the way that unavoidable bureaucratic tendencies clogged the workings of the political system. Even in democracies there were major decisions that could be taken only by one person: 'this unavoidable circumstance means that since the time of Pericles the positive successes of mass democracy have always been at the cost of significant concessions to the Caesarist principle in the selection of leaders'.¹⁰⁷

In his later statements on 'plebiscitary democracy' or 'leadership democracy' Weber tended to see this counterbalance to the bureaucracy less in the institution of Parliament than in charismatic leaders and their legitimation through plebiscite.¹⁰⁸ In 1919 he supported a strong constitutional position for the president of the Reich, who should be 'the people's choice' and 'the trustee of the masses'.¹⁰⁹ Besides, Weber had always said that for him 'democracy' had never been 'an end in itself', but only in respect of the possibility it offered of an 'objective national politics for a strong and united Germany'.¹¹⁰

Weber's views represent, on the one hand, a continuation of the tradition founded by Constant and others and, on the other, a new perspective upon the limits of democracy that draws upon the science of politics and the sociology of organisation, as developed by Robert Michels and other contemporaries. His idea that parliamentarism can be joined to charismatic leadership was quickly overtaken by voices and movements that sought to use the principle of the sole leader to abolish the parliamentary state based upon the rule of law.¹¹¹

¹⁰⁵ MWG I/17, 209; *Wirtschaft und Gesellschaft*, 669.

¹⁰⁶ MWG I/15, 537f.; MWG I/17, 162 and 191.

¹⁰⁷ MWG I/15, 540. On Caesarism see p. 293ff.

¹⁰⁸ *Wirtschaft und Gesellschaft*, 156f.; cf. MWG I/17, 203f.

¹⁰⁹ 'Der Reichspräsident', in Max Weber, *Zur Neuordnung Deutschlands. Schriften und Reden 1918-1920*, ed. Wolfgang J. Mommsen, Tübingen 1988 (MWG I/16), 87 and 220-224.

¹¹⁰ MWG I/15, 234.

¹¹¹ See p. 315ff.

German Nineteenth-Century Ambivalence Regarding Athenian Democracy

However different their questions, the genre and substance of their writing, Constant, Fustel de Coulanges, Burckhardt, Acton and Weber shared the view that antiquity should above all be discussed in universal-historical terms. They were, however, outsiders from the point of view of the guild of classical scholars formed in the nineteenth century. Fustel de Coulanges and Burckhardt had deployed a broad and detailed range of sources in their texts, but the guild was critical of the manner in which they had used these sources: they had openly disdained source criticism, together with the quest for the sources of their sources that was the mark of the new classical scholarship. Turning around a quote from Cicero, Fustel de Coulanges said that he would ‘rather be wrong with Livy than [right] with Niebuhr’.¹ (In Germany and Great Britain Niebuhr was generally praised as the pioneer of ‘critical’ ancient history.) Burckhardt repeatedly emphasised his distance from philologists writing for philologists; he styled himself a ‘dilettante’, that is an interested non-specialist, who wanted to address like-minded readers.²

Karl Julius Beloch was a polemically inclined classical scholar, and when he referred to Burckhardt’s *Griechische Kulturgeschichte* as ‘a book by one clever dilettante for other dilettantes’³ he meant this in a sense quite different from that of Burckhardt. Given their neglect of the new research findings of German scholarship, the work of Fustel and Burckhardt was met with great misgiving, verging on vehement rejection.

The dedication of this chapter to discussion of German specialist writing can be justified by the fact that, during the nineteenth century, German classical

¹ ‘Une leçon d’ouverture et quelques fragments inédits de Fustel de Coulanges’, *Revue de Synthèse Historique* 2, 1901, 241–263, here 258. Cicero, *Tusculanae disputationes* 1, 39: ‘I’d rather be wrong with Plato than [right] with the Pythagoreans’.

² See Jacob Burckhardt, *Über das Studium der Geschichte*, ed. Peter Ganz, Munich 1982, 122f. and 252f.

³ Karl Julius Beloch, *Griechische Geschichte*, Bd. 1.2, 2nd ed., Straßburg 1913, 18.

scholarship enjoyed international renown. Nonetheless, the way in which the guild drew a line between their own work and that of Fustel and Burckhardt did not imply that there was no crossover in their respective treatments of ancient and modern liberty. A number of texts on Greek history, reference works as well as highly specialised studies, reflected universal-historical perspectives. Professional students of antiquity could neither avoid such basic questions, nor would they have wished to, if they had any sense at all of the 'relevance' of their work to their own contemporaries. And so there is, after all, a clear and mutual relationship between discussion of the 'big questions' about the specific character of antiquity and the conduct of specialised historical research.

TOPICAL CRITICISM OF ATHENS

It was commonly agreed that the lack of a system of representation in antiquity necessarily led to mob rule,⁴ and that direct democracy without representation is despotic, as Immanuel Kant had made plain.⁵ This also went for the Roman republic of course, which, according to Friedrich von Raumer⁶ and especially Theodor Mommsen,⁷ collapsed in the face of its inability to replace popular assemblies with representative bodies.

It was assumed that in Athens 'the purest form of autocratic popular rule' prevailed, where 'the division of powers was replaced by the union of powers' in a demos that developed 'the sense of ruling consciousness of sovereignty'.⁸ It was further presupposed that in antiquity there was 'a love of liberty without human rights';⁹ that in Greece the 'individual had no rights in his relation to the state',¹⁰ such that 'individuals existed for the state, not the state for its inhabitants', so that 'man, as such, had no value'; or rather, insofar as he did 'then only as a means for the achievement of intended state aims';¹¹ or that 'for the ancients a power that a people wielded over itself had no need of a limit'.¹²

⁴ Arnold Hermann Ludwig Heeren, *Ideen über die Politik, den Verkehr und den Handel der vornehmsten Völker der alten Welt, Teil 3.1: Griechen* [1812], Vienna 1817, 181.

⁵ See p. 172, fn. 24.

⁶ Friedrich von Raumer, 'Über die römische Staatsverfassung', *Historisches Taschenbuch* Neue Folge 9, 1848, 97–218, at 200ff.

⁷ Theodor Mommsen, *Römische Geschichte* [1854–1856], 9th ed., Berlin 1902, Bd. 1, 841; Bd. 2, 94, 115 and 231; Bd. 3, 313 and 374.

⁸ Robert Pöhlmann, *Griechische Geschichte und Quellenkunde* [first published in 1889 as *Grundriß der griechischen Geschichte*], 5th ed., Munich 1914, 224f. (sequence of quotations altered).

⁹ Johann Gottlieb Fichte, *Die Staatslehre, oder über das Verhältnis des Urstaates zum Vernunftreiche*, ed. Fritz Medicus, Leipzig 1912, 53.

¹⁰ Eduard Zeller, 'Der platonische Staat in seiner Bedeutung für die Folgezeit', *Historische Zeitschrift* 1, 1859, 108–126, here at 111.

¹¹ Friedrich Kolb, 'Griechenland, althellenisches', in *Das Staats-Lexikon*, Carl von Rotteck and Carl Welcker, eds., new ed., Bd. 6, Altona 1847, 80–86, here at 83.

¹² Heinrich von Treitschke, 'Die Freiheit' [1861], in his *Ausgewählte Schriften*, Leipzig 1907, Bd. 1, 1–47, here at 5.

August Böckh had been the first to develop a realistic reconstruction of Greek antiquity, but had not been able to realise his vision completely; Jacob Burckhardt took up this challenge in his *Griechische Kulturgeschichte*, seeking to create a total representation of the Greek lived experience. During 1839–1840 the young Burckhardt had attended Böckh's lectures on 'Greek Antiquities' in Berlin; the cultural history that he then sought to develop was a transformation of the genre of 'antiquities' as presented in Wilhelm Wachsmuth's *Hellenische Alterthumskunde aus dem Gesichtspuncte des Staates* (1826–1830), and Karl Friedrich Hermann's *Lehrbuch der griechischen Staatsalterthümer* (first published 1831). Burckhardt wanted to offer a perspective upon the 'history of the Greek spirit'.¹³

Burckhardt took his conception of a Greek idea of the state in which there was no room for the liberty of the individual from Hermann's textbook.¹⁴ Hermann had derived this idea from Sparta and the political theory of Aristotle;¹⁵ various authors followed him in this.¹⁶ Hermann's textbook was not intended to present original work, but rather reflect the existing body of scholarly knowledge; the fact that it contained many remarks on Athenian democracy, which Burckhardt should endorse, demonstrates that Burckhardt's critique rested in detail on the existing state of knowledge.

There were of course those who had a positive view of the 'Greek idea of the state', since it did after all involve an orientation to the collectivity that ran counter to a modern individualism and its (alleged) destructive tendencies. This was especially true of those who admired Sparta. Karl Otfried Müller had lauded this system as 'a creation that constantly created and represented the whole nation', concluding that

the high degree of liberty of the Spartans, and of Hellenes in general, consisted in being no more than a living link in the whole; while what is usually today called liberty means that one has as little as possible to do with the commonwealth; or in other words, the unity of the state is broken down as far as possible into its constituent parts.¹⁷

However, generally the contrast of ancient and modern liberty was understood as a critique of antiquity. In 1813 Niebuhr summed the Greeks up in this way:

The genuine characteristic of the Greeks is that they never had any idea of government and administration in the abstract, separate from the collective inclinations of those

¹³ Burckhardt, GKG I, 3f.

¹⁴ Karl Friedrich Hermann, *Lehrbuch der griechischen Staatsalterthümer aus dem Standpunkt der Geschichte*, 5th ed., Karl Bernhard Stark and Christian Felix Bähr, eds., Heidelberg 1875, 218ff.

¹⁵ Karl Friedrich Hermann, 'Die historischen Elemente des platonischen Staatsideals', in his *Gesammelte Abhandlungen und Beiträge zur classischen Literatur und Alterthumskunde*, Göttingen 1849, 132–159.

¹⁶ For instance H. Ahrens, 'Hellenische Staatsidee', in *Deutsches Staatswörterbuch*, Johann Caspar Bluntschli and Karl Brater, eds., Bd. 5, 1860, 106–115; Georg Friedrich Schoemann, *Griechische Alterthümer*, Bd. 1: *Das Staatswesen*, 3rd ed., Berlin 1871, 98.

¹⁷ Karl Otfried Müller, *Die Dorier*, Bd. 2, Breslau 1824, 19 and 6.

participating in sovereignty – what was called twenty years ago the rule of laws, and not of persons. As a consequence, all their constitutional arrangements were arbitrary and governed by passion. They really knew nothing about the inviolability of property.¹⁸

In his *Staatshaushaltung der Athener* of 1817 August Böckh had characterised the combination of payments to citizens and the apparently confiscatory policy of the courts as follows:

It was therefore not enough that these distributions robbed the state of its best forces for advantageous and profitable undertakings, but the desire for alien goods was aroused, and the tension between the rich and the poor was nourished; in the states of antiquity this was a constant and highly dangerous evil, as it can also be today.¹⁹

In the lectures on the ‘Encyclopedia and Methodology of the Philological Sciences’ that Böckh regularly gave between 1809 and 1865 he had dubbed ancient liberty as ‘popular tyranny’: the ‘liberty of ancient states appears in the process of political development to be only an intermediate link between oriental despotism and the constitutional liberty of modern states’. He did also note that the complete realisation of the constitutional state had yet to be achieved: ‘If the modern state achieves its aim, then it will far surpass the liberty of antiquity. But it has not yet reached this point everywhere.’²⁰

There is no need to review in any detail the range of criticisms made by scholars of particular faults in the system of Athenian democracy. It was widely accepted that the self-government of the citizenry had led to ‘the rule of the mob’, and that the only thing that might have remedied this was a representative system; but in a small political system in which citizens were able to gather together, this was unthinkable.²¹ Under democracy, the citizen offered ‘his whole life to the state, and in return enjoyed the greatest possible degree of participation in making legislation’. The downside was the ‘dishonesty of administration, ... the destruction of the common weal, ... the defamation and persecution of those who were less corrupt’.²² Criticism focussed upon the role of ‘demagogues’ who ‘deceived the people’ in the same way that Robespierre had,²³ ‘career parliamentarians’ who consequently lacked any sense of accountability,²⁴ ‘who said what citizens wanted

¹⁸ Barthold Georg Niebuhr, reviewing Heeren, *Ideen*, Bd. 3.1 [1813], in Niebuhr, *Kleine historische und philologische Schriften*, 2. *Sammlung*, Berlin 1843, 107–158, here at 134.

¹⁹ Böckh, *Die Staatshaushaltung der Athener*, Bd. 1, 3rd ed., Berlin 1886, 276.

²⁰ August Böckh, *Encyklopädie und Methodologie der philologischen Wissenschaften* [1877], ed. Ernst Bratuschek, 2nd ed., ed. Rudolf Klusmann, Leipzig 1886, 268f. (sequence of quotations altered).

²¹ Heeren, *Ideen*, Bd. 3.1, 181.

²² Wilhelm Wachsmuth, *Hellenische Alterthumskunde aus dem Gesichtspunkte des Staates*, 2. Teil, 1. Abt., Halle 1829, 12f.

²³ Wilhelm Wachsmuth, *Hellenische Alterthumskunde aus dem Gesichtspunkte des Staates*, 1. Teil, 2 Abt., Halle 1828, 154.

²⁴ Ulrich von Wilamowitz-Moellendorff, ‘Staat und Gesellschaft der Griechen’, in Wilamowitz-Moellendorff and Benedictus Niese, *Staat und Gesellschaft der Griechen und Römer*, Berlin 1910, 1–207, here at 104.

to hear and sought to satisfy their baser inclinations', if they did not at the same time (like Cleon) 'terrorise' the popular assembly.²⁵ 'Career parliamentarian' was a favoured phrase in the conservative critique of parliamentarism.²⁶ Pericles could of course be excluded from this verdict, if he was seen to have realised a fortunate 'combination of popular and autocratic rule', taking account of the fact that 'every popular mass ... has to be ruled, if the state is not to be surrendered to accident and unreason'.²⁷

The introduction of payments in return for the assumption of political functions was taken to be a 'waste of public money' for the benefit of 'the great mass, which for the most part lives at the expense of the state',²⁸ which 'managed to be fed ever more exorbitantly by the state';²⁹ thus political pay was seen as 'a means of promoting mob rule'.³⁰ Wilhelm Roscher drew a parallel between the Athenian practice of day payments, which had advanced 'the craving for confiscation and idleness on the part of the great mass', and corresponding practice for those attending Section assemblies during the 'time of the French Terror'.³¹ It was generally agreed that the latter had degenerated into a system of 'outdoor relief for wastrels'.³² At the end of the nineteenth century the same comparison was made in respect of the 'demands of our extreme social democrats' for parliamentary allowances.³³ Finally, the use of liturgies to finance public undertakings was seen as 'an abuse of moneyed citizens'.³⁴ The demos 'gleefully placed the most acute and despotic burden upon the rich and well-born; liturgies and payments of all kinds were heaped upon them without regard'.³⁵

Again and again criticism was made of a legal system that provided inadequate protection to property:

²⁵ Ernst Curtius, *Griechische Geschichte*, Bd. 2, 4th ed., Berlin 1874, 410 and 464.

²⁶ For example, Heinrich von Treitschke, 'Parlamentarische Erfahrungen der jüngsten Jahre' [1886], in his *Historische und politische Aufsätze*, Bd. 3: *Freiheit und Königthum*, 5th ed., Leipzig 1886, 629–645, here at 635: career parliamentarians are the 'most generally damaging element of our representation of the people'.

²⁷ Curtius, *Griechische Geschichte*, Bd. 2, 4th ed., 210f. (sequence of quotations reversed).

²⁸ Arnold Hermann Ludwig Heeren, *Handbuch der Geschichte der Staaten des Alterthums*, Wien 1817, 185.

²⁹ Franz Poland, 'Die griechische Blütezeit. Staat. Leben. Götterverehrung', in Fritz Baumgarten et al., *Die hellenische Kultur*, 3rd ed., Leipzig 1913, 244–303, here at 264.

³⁰ Böckh, *Staatshaushaltung*, Bd. 1, 709.

³¹ Wilhelm Roscher, *Politik: Geschichtliche Naturlehre der Monarchie, Aristokratie und Demokratie* [1892], 2nd ed., Stuttgart 1893, 372. On the provisions for Parisian Section assemblies see p. 181.

³² Ludwig Timotheus Spittler, *Vorlesungen über Politik*, ed. Karl Wächter, Stuttgart 1828, 77f. [lecture of 1796].

³³ Hugo Landwehr, 'Die Forschung über die griechische Geschichte 1882–1886', *Philologus* 47, 1889, 108–162, here at 111.

³⁴ Wilamowitz-Moellendorff, 'Staat und Gesellschaft', 110.

³⁵ Johann Gustav Droysen, 'Des Aristophanes Vögel und die Hermokopiden' [1. Teil], *Rheinisches Museum* 3, 1835, 161–208, here at 182.

This neglect of private law ... is proof ... that under the republican spirit the life of the individual exhausted itself in the public realm, and was to an extent so far identified with this realm that all value and meaning was lost for private existence.³⁶

In the jury courts the payment of allowances was said to have attracted 'the lowest rabble among an Athenian citizenry already inclined to idleness'.³⁷ These jurors, who had an 'average level of education ... similar to that of the workers in our large cities'³⁸ and 'had one sole norm in making judgements, and that was the subjective whim of the judge',³⁹ these courts had implemented 'arbitrary acts ... of the sovereign demos',⁴⁰ 'despotism of the people',⁴¹ so that here 'democracy ... celebrated its most depraved orgies'.⁴² The little Athenian took pleasure in 'seeing the rich, before whom in his social life he must bow, shaking in their sandals'.⁴³ In the courts the Athenian luxuriated 'in the full enjoyment of his sovereignty', finding 'great titillation for his sense of self-worth in seeing rich and aristocratic people trembling at his feet, seeking to curry his favour'.⁴⁴

The result was 'sycophantic vexing of the rich, who were made to look suspicious in the eyes of the sovereign people, and whose condemnation was brought about so that the state treasury might be enriched from confiscations of property or large fines, increasing in turn the resources available for donations and payments'.⁴⁵ This led to 'uncertainty about the law, no-one being any longer able to live untroubled lives in the state',⁴⁶ so that 'even the best ... could no longer live in peace if their evil neighbours took against them'.⁴⁷ The 'democratic masses' persecuted in the courts 'anyone who stood out by wealth, birth or intellectual capacity'.⁴⁸ This amounted to a 'formal system of plunder ... aimed at the rich in one's own state, who were exploited in all conceivable ways, and in particular by the confiscation of their property by the people's courts, put

³⁶ Eduard Platner, *Der Process und die Klagen bei den Attikern*, Teil 1, Darmstadt 1824, 11f.

³⁷ August Wilhelm Heffter, *Die Athenäische Gerichtsverfassung. Ein Beytrag zur Geschichte des Rechts, insbesondere zur Entwicklung der Idee der Geschwornengerichte in alter Zeit*, Cologne 1822, 485.

³⁸ Karl Julius Beloch, *Die attische Politik seit Perikles*, Leipzig 1884, 9.

³⁹ Max Fränkel, *Die attischen Geschworenengerichte. Ein Beitrag zum attischen Staatsrecht*, Berlin 1877, 109f.

⁴⁰ Wilamowitz-Moellendorff, 'Staat und Gesellschaft', 114f.

⁴¹ Adolf Holm, *Griechische Geschichte von ihrem Ursprunge bis zum Untergange der Selbständigkeit des griechischen Volkes*, Bd. 2, Berlin 1889, 227.

⁴² Poland, 'Die griechische Blütezeit', 266.

⁴³ Hermann, *Lehrbuch der griechischen Staatsalterthümer*, 613.

⁴⁴ Johann Gustav Droysen, *Des Aristophanes Werke*, Bd. 2 [*Die Wespen; Die Acharner; Die Ritter*], Berlin 1837, 9f.

⁴⁵ Schoemann, *Griechische Alterthümer*, Bd. 1, 3rd ed., 362.

⁴⁶ Robert von Pöhlmann, 'Isokrates und das Problem der Demokratie', *Sitzungsberichte Bayrische Akademie der Wissenschaften*, 1913, Nr. 1, 77.

⁴⁷ Gustav Gilbert, *Handbuch der griechischen Staatsalterthümer*, Bd. 1, Leipzig 1881, 389.

⁴⁸ Gustav Friedrich Hertzberg, *Alkibiades. Der Staatsmann und Feldherr*, Halle 1853, 5.

on trial through chicanery and double-dealing'.⁴⁹ Here sycophants 'were the most evil poison weeds in the political soil of ancient Greece'.⁵⁰ In this way 'accusing wealthy citizens became a business ..., and the people, this *demos* that neither could work, nor were inclined to do so, held their demagogues in high regard, the more so the greater the opportunity they presented of levying here and there a fine from a few talented people'.⁵¹ Sycophants were the 'Camorra of democracy'.⁵² When dealing with any political question jury courts formed from the 'great mass' must have been completely out of their depth.⁵³ All this led to 'crude class rule, ... a tyranny of the majority over the propertied minority',⁵⁴ or to the endangering of citizens' life and property, 'of such a kind that we can hardly imagine today, living as we do under the protection of a monarchical state based upon the rule of law'.⁵⁵ This class justice from below 'shook all consciousness of law' and contributed to an 'increasing disregard of property'.⁵⁶ It was only occasionally acknowledged that the attribution to Athens of 'a planned and organised system of terror' led to a distorted picture.⁵⁷

While filling positions by lot might be seen as an expression of a 'rough and ready conception of equality',⁵⁸ this practice came in for much less criticism than other Athenian institutions. This could have been because it is also quite suited to non-democratic systems; for instance, the semi-aristocratic Swiss cantons of the eighteenth and early nineteenth centuries made use of the practice to avoid dirty election campaigns or bribery of the electorate.⁵⁹ Added to this

⁴⁹ Karl Hildenbrand, *Geschichte und System der Rechts- und Staatsphilosophie*, Bd. 1: *Das klassische Alterthum*, Leipzig 1860, 37f.

⁵⁰ Wilhelm Wachsmuth, *Geschichte der politischen Parteien alter und neuer Zeit*. Bd. 1: *Geschichte der politischen Parteien des Alterthums*, Brunswick 1853, 92.

⁵¹ Lorenz Stein, 'Die staatswissenschaftliche Theorie der Griechen vor Aristoteles und Platon', *Zeitschrift für die gesammte Staatswissenschaft* 9, 1853, 115–182, here at 143.

⁵² Pöhlmann, 'Isokrates', 44.

⁵³ Beloch, *Attische Politik*, 201f.

⁵⁴ *Ibid.*, 10.

⁵⁵ Pöhlmann, 'Isokrates', 42f.

⁵⁶ Robert Pöhlmann, *Geschichte des antiken Kommunismus und Sozialismus*, Bd. 2, Munich 1901, 280 and 275. 'Class justice' was actually the polemical slogan used by the socialists against a legal system that protected the interests of the propertied class.

⁵⁷ Emil Müller, 'Die wichtigsten litterarischen Erscheinungen auf dem Gebiete der griechischen Alterthümer seit 1851', *Neue Jahrbücher für Philologie und Pädagogik* 75, 1857, 537.

⁵⁸ Johan Nicolai Madvig, 'Blicke auf die Staatsverfassungen des Alterthums, mit Rücksicht auf die Entwicklung der Monarchie und eines umfassenden Staatsorganismus', *Archiv für Geschichte, Statistik, Kunde der Verwaltung und Landesrechte der Herzogthümer Schleswig, Holstein und Lauenburg* 1, 1842, 12–51, here at 20.

⁵⁹ Wilhelm Roscher, 'Umriss zur Naturlehre der drei Staatsformen. Erster Abschnitt: Monarchie', *Allgemeine Zeitschrift für Geschichte* 7, 1847, 79–88, here at 84; Ernst Curtius, 'Die Bedingungen eines glücklichen Staatslebens' [1860], in his *Alterthum und Gegenwart*. *Gesammelte Reden und Vorträge*, Bd. 1, 3rd ed., Stuttgart 1903, 301–320, here at 313; Heinrich Gelzer, 'Jahresbericht für griechische Geschichte', in *Jahresbericht über die Fortschritte der klassischen Alterthumswissenschaft* 2, 1873, 988–1076, here at 1015, fn. 12; Max Goldstaub, *Wochenschrift für Klassische Philologie* 9 (Nr. 36), 1892, 969–973 [review of James W. Headlam, *Election by*

was the fact that scholars since the Renaissance had directed their attention to the ‘technical’ question of the date on which this system had been introduced in Athens. That related to the appointment of archons since the early fifth century BC or even earlier as some scholars thought. (Remember that Aristotle, *The Athenian Constitution*, which provided the date 487/486 BC for the first step, sortition after preliminary election, was unknown until 1890). There was a certain consensus that the use of the lot as such was not necessarily a democratic device.⁶⁰ In any case, it was recognised that the Athenians deviated from the principle of selection by lot when it came to some important posts in the magistracy, ‘where skill and experience are necessary for rule’.⁶¹

By contrast, the institution of ostracism was repeatedly criticised as an expression of the ‘tyrannical legislation of the popular community’⁶² over political leaders; or as ‘one of the most horrible creations of democratic despotism’,⁶³ which also carried the risk for *strategoï* that ‘their appointment in the field ... would end with their becoming a martyr’;⁶⁴ or, ultimately, as an excessive reaction to the supposed danger of a coup. The *graphe paranomon* was called a ‘tool of chicanery and political hate’.⁶⁵

At the end of the nineteenth century the political economist Georg Adler traced the history of socialist ideas back to antiquity.⁶⁶ As for Athens, he praised the central role played by the popular assembly, the public construction projects and state payments to citizens, but then went on to present a ‘list of sins’:

Despite its marvellous creations, Athenian democracy has given cause for sharp criticism: they expelled genial statesmen and military leaders [= ostracism], unlawfully executed victorious admirals [= the Arginusae trial], gave a poisoned cup to the wisest person of the time [= Socrates], put in power the most cunning demagogues [= Cleon and others], proved incapable of sustaining a consistent great power policy, and finally brought about the financial collapse of the empire, and could even be blamed for the dissolution of the city [= capitulation in the Peloponnesian War].⁶⁷

Lot at Athens, Cambridge 1891]. Headlam, *Election by Lot*, had definitely refuted the theory of Fustel de Coulanges that the Greeks understood sortition as a choice made by the gods.

⁶⁰ See the discussion in Karl Lugebil, ‘Zur Geschichte der Staatsverfassung Athens’, *Jahrbücher für classische Philologie*, Suppl.-Bd. 5, 1871, 539–699, here at 567ff. See also see p. 22, fn. 47.

⁶¹ Böckh, *Staatshaushaltung*, Bd. 1, 201 (in respect of the financial magistracy of the fourth century BC).

⁶² Niebuhr, *Kleine historische und philologische Schriften*, 2. *Sammlung*, 149. Elsewhere Niebuhr described ostracism as a necessary instrument for the stabilisation of small republics, drawing a parallel with medieval cities: *Vorträge über alte Geschichte, an der Universität Bonn gehalten*, Bd. 1, ed. Marcus Niebuhr, Berlin 1847, 401.

⁶³ Wilhelm Traugott Krug, *Das Repräsentativsystem. Oder Ursprung und Geist der stellvertretenden Verfassungen mit besondrer Hinsicht auf Deutschland und Sachsen*, Leipzig 1816, 10.

⁶⁴ Curtius, *Griechische Geschichte*, Bd. 2, 413.

⁶⁵ Justus Hermann Lipsius, *Das attische Recht und Rechtsverfahren*, Bd. 1, Leipzig 1905, 393.

⁶⁶ Georg Adler, *Geschichte des Sozialismus und Kommunismus*, Bd. 1: *Bis zur französischen Revolution*, Leipzig 1899.

⁶⁷ Georg Adler, ‘Sozialismus und Kommunismus’, *Handwörterbuch der Staatswissenschaften*, Bd. 6, 2nd ed., 1901, 811–828, here at 812.

DISCUSSION OF MAJOR ATHENIAN INIQUITIES

Those trials thought especially scandalous and iniquitous in the history of Athenian democracy were given special and frequent attention. Often excluded was the execution of Cleophon in 404 BC, when the council intervened unlawfully in the conduct of a jury trial.⁶⁸ Since Cleophon seemed to be a raging demagogue who insisted on standing firm in even the most desperate military situation, some (but not all) scholars were here inclined to accept arguments from the reason of state.⁶⁹ Another questionable judgement on the part of the council in 403 first came to light at the end of the nineteenth century, when Aristotle's text on the Athenian constitution was rediscovered.⁷⁰

So that the judgements made in the literature might be understood, there follow some brief remarks on the circumstances involved. The first significant example is the arrests and condemnations following the mutilation of the Herms and the profanation of the Mysteries in 415 BC. The deliberate destruction of practically all statues of Hermes – a god protecting travellers – in one night, shortly before the departure of the Athenian fleet to attack Sicily, prompted great unrest. Not only was it thought to be a bad omen for the Sicilian expedition, but also a signal for the overthrow of democracy. Given the way that all statues were attacked at the same time, it was clearly not the spontaneous action of a few drunkards after an evening spent carousing. Investigations initially drew a blank, but they did report that Alcibiades, the initiator of the Sicilian adventure, had, together with his friends, performed the Eleusinian mysteries in private houses and also before non-initiates. Both events, which were not necessarily related to each other, became treated as one. Later a few 'culprits' were sentenced for participating in both scandals.

As a reaction to this the Council of 500 was given special powers, and an investigatory commission established. Reports could be made to it by persons from any status group, including women, metics or slaves. Rewards comprised an indemnity for those who had taken part, monetary payments, liberation for slaves. As a result of the information gathered in this way a number of people were eventually arrested and sentenced, mostly in absentia since the accused had fled; their property was confiscated instead.⁷¹ Denunciations were, however, cross-checked, and whoever was found to have made a false statement

⁶⁸ Xenophon, *Hellenica* 1, 7, 35; Lysias 13, 12; 30, 10f.

⁶⁹ Ulrich von Wilamowitz-Moellendorff, *Aristoteles und Athen*, Bd. 2, Berlin 1893, 195, fn. 8, claims that the proceedings 'seriously violated both the letter and the spirit of the old constitution'; Beloch, *Griechische Geschichte*, Bd. 2, Straßburg 1897, 106, is satisfied with the outcome, without going into the conduct of the proceedings. Curtius, *Griechische Geschichte*, Bd. 2, 783, differs here, writing of the ' vilest infringement of the law', and Georg Busolt, *Griechische Geschichte bis zur Schlacht von Chaironeia*, Bd. 3.2, Gotha 1904, 1632f., writes of 'judicial murder'.

⁷⁰ Aristotle, *Athenian Constitution* 40, 2: the execution of a man decided upon by the council without there being a court judgement, since he had brought a complaint against the rules on amnesty (in this source treated positively, as a way of securing domestic peace).

⁷¹ Thucydides 6, 27–29; 53; 60f.; Andocides 1.

lost the promise of immunity and was sentenced for complicity.⁷² Application was made to suspend the prohibition of torture for citizens, although this was either not agreed, or not put into practice;⁷³ and legal means could be used against an order for imprisonment.⁷⁴ The main problem lay with those witnesses/culprits who gave evidence for the state, who on the one hand provided alibis for a few participants, while on the other their evidence permitted ‘culprits’ to be positively identified. Although such problems are inherent to this kind of legal institution, in this case those who were identified as guilty turned out for the most part to be persons who had fled, or who had died.⁷⁵ It is not clear how many of the fifty to one hundred people who were condemned were actually executed; this could be established only in one further case, apart from that informer whose denunciation had been rejected as false.⁷⁶

Of course, this wave of trial proceedings can be seen as a manifestation of hysteria, in which there was a massive imbalance between provocation and reaction, an expression of a ‘mistrustful irritability ... which can only be the sign of great weakness’,⁷⁷ especially since whatever the intention might have been, those culpable had not made any plans for a coup. The mutilation of the Herms could have been an attempt to undermine the naval expedition to Sicily, which would have been quite opposed to Alcibiades’ interests; and the profanation of the Mysteries was not intended for public effect. What can be said is that ‘deliberate, lawful and innocuous measures’ here gave rise to ‘slander, ... party hatred and sycophantism’.⁷⁸ Moreover, one can doubt the prudence in terms of reasons of state of a scenario where Alcibiades could be allowed to set sail with the fleet and then be brought back so that he might stand trial – the voyage he then used to flee and go over to the Spartans. This is the sense of Thucydides’ account, who also emphasises the accusations, arrests and wave of flights from Athens, and especially the trial of Alcibiades, and not the further history of the trials (which he probably did not know in any detail). It is also very plain that the whole affair undermined the loyalty of a large part of the Athenian upper classes to the institution of democracy, this then being a contributory factor in the coup of 411.

Even so, it is not fitting to call these events a ‘witch trial’,⁷⁹ or a ‘monster trial’ replete with ‘illegalities and arbitrary actions’.⁸⁰ If the investigative

⁷² Andocides 1, 65f.

⁷³ Ibid., 43f.

⁷⁴ Ibid., 17.

⁷⁵ Ibid., 13. 47–53. 67f.; 2, 7f.; Lysias 6, 23f.; Thucydides 6, 60, 2ff.

⁷⁶ Andocides 1, 13. Twentieth-century scholarship can also make use of inscriptions that list the sale of confiscated goods for the benefit of the state treasury (Fornara, no. 170). However, these do not record whether those who had been condemned had fled, or whether they were actually executed.

⁷⁷ Wilhelm Roscher, *Leben, Werk und Zeitalter des Thukydides*, Göttingen 1842, 435.

⁷⁸ Droysen, *Des Aristophanes Vögel* [1. Teil], 179f.

⁷⁹ Niebuhr, *Vorträge über alte Geschichte*, Bd. 2 (1848), 144.

⁸⁰ Wilhelm Goetz, ‘Der Hermokopidenproceß’, *Jahrbücher für classische Philologie*, Suppl. Bd. 8, 1875/1876, 538–581, here at 562.

commission is compared with the Committee of Public Safety,⁸¹ or it is said that ‘the investigative commissions and denunciations, persecution and judicial murder remind one in many ways of the worst period of terrorism during the French Revolution’,⁸² this is an implicit minimisation of the practice during the French Revolution.

The second great scandal, ‘a stain on Athens’ record, or rather on the constitution under which such things could happen’,⁸³ was the condemnation and execution of the Athenian board of generals who in 406 BC had won a great naval battle during the Peloponnesian War over the Spartans off the Arginusae islands (near Lesbos, near the Asia Minor coast). However, because of a sudden storm they also suffered great losses; and this weighed all the more heavily because at this late stage in the war the fighting involved the last reserves. The *strategoí* were subsequently accused of failing to save those who had been shipwrecked, or of a failure to pick up their bodies. The trial took place in a heated atmosphere before the popular assembly, and ended with a collective sentence of death for the six *strategoí* present.⁸⁴ This was the first time Athenian generals had been condemned to death and executed. The inquiry had affected eight out of the ten *strategoí*; two of the accused had chosen to ignore the command to return to Athens. Typical for the subsequent inimical presentation is that reference is made sometimes to nine, sometimes to ten, executed *strategoí*, instead of the actual six.⁸⁵

There is some evidence that procedural rules were violated. But either because of our insufficient knowledge of the rules in force at the time, or because the procedural rules had not been established, they cannot all be unambiguously defined.⁸⁶ Among the latter is the question of whether or not the collective responsibility of the *strategoí* for the military operation rendered a collective sentence admissible. What does seem plain is that the initial hearing for the *strategoí* before the trial was subsequently re-interpreted as due process of law, which made further negotiations before the vote unnecessary. It was also a great problem that the guilty verdict was coupled with the death sentence, so

⁸¹ Ibid., 552 and 563.

⁸² Hermann Köchly, ‘Sokrates und sein Volk’ [1855], in his *Akademische Vorträge und Reden*, Zürich 1859, 221–386, 413–429, here at 307.

⁸³ Beloch, *Griechische Geschichte*, Bd. 2, 99. Eduard Meyer, *Geschichte des Alterthums*, Bd. 4: *Das Perserreich und die Griechen. Drittes Buch: Athen (vom Frieden von 446 bis zur Capitulation Athens im Jahre 404 v. Chr.)*, Stuttgart 1902, 650, talks of an ‘irremovable brand’ that Athenian democracy had imprinted upon itself.

⁸⁴ Xenophon, *Hellenica* 1, 7; Diodorus Siculus 13, 101f.

⁸⁵ Xenophon, *Memorabilia* 1, 1, 18; Plato, *Apologia* 32b; Pseudo-Plato, *Axiochos* 368d; Aristotle, *Athenian Constitution* 34, 1.

⁸⁶ See in the nineteenth-century literature among others Gustav Gilbert, *Beiträge zur innern Geschichte Athens im Zeitalter des Peloponnesischen Krieges*, Leipzig 1877, 371ff.; Georg Löschke, ‘Über den Abstimmungsmodus im Feldherrnprocess nach der Schlacht bei den Arginusen’, *Neue Jahrbücher für Philologie* 113, 1876, 757f.; Adolf Philippi, ‘Die Arginusenschlacht und das Psephisma des Kannonos’, *Rheinisches Museum* 35, 1880, 607–609.

that guilt and sentencing were not determined separately.⁸⁷ The fact that the popular assembly met to hear a treason trial was in itself not an infringement of procedure.⁸⁸ Later, those who had set the trial up were accused of ‘deceiving the demos’, but (if this is not an invention) no trial eventually took place, because of the wartime conditions.⁸⁹ There was in any case no discussion of an official rehabilitation for those who had been executed.

What made the greatest difference to later discussion was Xenophon’s tendentious report, shifting all the blame on to an angry mob, erasing the dubious role played by the council during the proceedings. He claimed that an application made in favour of the accused (a *graphe paranomon* against the councillor who proposed the collective condemnation of the generals on account of the violation of procedural rules which would suspend the proceedings) was shouted down with the argument that the people could do whatever it wished;⁹⁰ and this also ignored Socrates’ intervention who on this day was a member of the council committee responsible for the conduct of the popular assembly.⁹¹

It was thus a short step to the interpretation that the proceedings were unlawful, tumultuous, that they involved ‘irresponsible judicial murder’.⁹² In this scholars saw ‘murderousness’,⁹³ ‘the terrorism of an enraged mob’⁹⁴ and the ‘anarchistic madness of a court lacking all legal form’,⁹⁵ all of which was a reminder of the ‘bloodthirsty Revolutionary Tribunals’ of the French Revolution.⁹⁶ Or, parallels with the 1848 revolution were drawn: in the demand that the people could decide whatever they wanted one could

hear the brutal siren voice of the demagogy that, sovereign in its stupidity, we got to know in the fateful year of 48 as the most effective partner of reaction. This is the democracy of the streets, of that ‘extreme left’ who call for ‘the law of the people’s will’, but for whom the people is any rabble that has been drummed up.⁹⁷

⁸⁷ Xenophon, *Hellenica* 1, 7, 9f.

⁸⁸ It was only since ca. 355 BC that such cases were regularly dealt with by a jury court.

⁸⁹ Xenophon, *Hellenica* 1, 7, 35; Diodorus Siculus 13, 103, 1f.

⁹⁰ Xenophon, *Hellenica* 1, 7, 12. Characteristic of Xenophon’s tendentiousness is his talk of ‘the mob’ (*ochlos*); *Hellenica* 1, 7, 13. Xenophon actually contradicts himself, since it is clear from his account that the supposedly extremely threatened applicant had plenty of opportunity to put his case.

⁹¹ Xenophon, *Hellenica* 1, 7, 15; *Memorabilia* 1, 1, 18; 4, 4, 2; Plato, *Apologia* 32b–c.

⁹² Busolt, *Griechische Geschichte*, Bd. 3.2, 1609. Wilhelm Vischer, ‘Über die neueren Bearbeitungen der griechischen Geschichte’ [1861], in his *Kleine Schriften*, Bd. 1, ed. Heinrich Gelzer, Leipzig 1877, 511–533, here at 517.

⁹³ Wachsmuth, *Hellenische Alterthumskunde*, 1. Teil, 2. Abt., 207.

⁹⁴ Lipsius, *Das attische Recht und Rechtsverfahren*, Bd. 1, 185.

⁹⁵ Wachsmuth, *Geschichte der politischen Parteien*, Bd. 1, 128. He also talks here of a ‘murderous mood among the rabble’.

⁹⁶ Ludwig Ferdinand Herbst, *Die Schlacht bei den Arginusen*, Hamburg 1855, 56.

⁹⁷ Köchly, ‘Sokrates’, 323.

This last remark is especially striking since it points to a split within the revolutionaries of 1848/1849. Hermann Köchly, at the time a reform-minded school teacher, had become involved as a republican in Saxony. Following the 1849 May Rising in Dresden he fled first to Brussels, and then was appointed in 1850 to a chair for classical philology in Zürich. He became a popular lecturer and speaker; the statement quoted comes from a lecture he gave in Zürich during 1855. After returning to Germany, he was a member of the Reichstag for the left-liberal Progressive Party between 1871 and 1874.

The English historian Edward A. Freeman drew a self-critical comparison relating to his own constitutional tradition; he linked the Arginusae trial to a 'bill of attainder'.⁹⁸ – This was an act of parliament by which someone was proclaimed guilty of treason without trial. This procedure had been introduced by the Crown during the Tudor period, employed by Parliament in 1641 against the Crown Minister Strafford and in 1645 against William Laud, Archbishop of Canterbury, used for the last time in 1798, and formally abolished in 1870.⁹⁹

However, one judges the legal situation of 406 BC, by staging this trial and then electing new *strategoï*, more on the basis of political considerations than military competence Athens weakened itself in the closing phases of the Peloponnesian War. That the way in which Athenians treated their senior military men was to say the least problematic¹⁰⁰ tends to be concealed rather than illuminated by the focus on one particular case.

While some of the scholarship dealing with the scandals of 415 and 406 BC quite understandably reflected contemporary revolutionary experiences, it was different with the trial of Socrates. He was found guilty in 399 BC by an Athenian jury court because, according to the charge, he 'did not acknowledge the gods recognized in the polis, wished to introduce new divinities, and seduced the youth.'¹⁰¹ The legal ground was blasphemy (*asebeia*), which was a crime; the relevance of the additional charge concerning the seduction of youth is not clear; 280 of the 580 jurors supported the charges. Since with this delict there was no legally fixed punishment, the accuser and the (already convicted) accused had to make applications in a second round, and the jury then voted on these. Since Socrates had initially said that he deserved public honour rather more than any punishment, and also had been slow to increase his proposed fine (which would be paid by his rich friends), the second ballot yielded a

⁹⁸ Edward A. Freeman, 'The Athenian Democracy' [review of Grote], in his *Historical Essays, 2nd series*, London 1873, 107–148, here 132 and 158. The comparison had already been made by Montesquieu, *De l'esprit des lois*, Book XII, Ch. 19.

⁹⁹ It was of decisive importance here that Parliament was not bound by the rules of evidence that would have prevailed in a court trial for treason; Robert J. Frankle, 'Parliament's Right to Do Wrong: The Parliamentary Debate on the Bill of Attainder against Sir John Fenwick, 1698', *Parliamentary History* 4, 1985, 71–85.

¹⁰⁰ See p. 41f.

¹⁰¹ Diogenes Laertius 2, 40.

majority of 360: 140 against Socrates; at least 80 jurors who had found him not guilty now voted for the death penalty.¹⁰² It is not clear whether Socrates finally came up with an acceptable figure for a fine, or whether we should believe the variant which states that he made no proposal for a fine at all.¹⁰³

There were no violations of procedural rules in this trial. For his part, Socrates considered the judgement against him to be an error following from the prejudices of the jurors, but he did not question the legitimacy of the trial as such. He only raised criticism of the fact that in Athens, unlike other (unnamed) *poleis*, it was possible to deal with a case that could end with a death sentence in just one day;¹⁰⁴ but interestingly, he did not raise the fact that blasphemy was barely defined, but involved a catch-all paragraph. Socrates did not evade execution through flight, which his friends wanted to arrange. He felt bound by a tacit agreement to support Athenian laws; in his view, evading the carrying out of the sentence would have undermined the entire legal order.¹⁰⁵

Socrates had been known for years around the city, as is evident from his caricature and denunciation in Aristophanes' *Clouds* (423 BC) as a sophistical twister of words and corrupter of youth; quite why he had been accused, as well as why a majority of jurors found him guilty, is not something that we can know. The accusation had not been made *ex officio*, but on the whim of a citizen; the jurors voted in secret without any prior discussion; and in this system there was no provision for reasons to be given. Even shortly afterwards it was presumed that the real motive behind accusation and verdict had nothing to do with blasphemy, but was rather more related to Socrates' well-known criticisms of appointment by lot and cash payments, or, his association with Alcibiades and with Critias, the leader of the 'Thirty Tyrants' of 404/403, together with other members of this régime.¹⁰⁶ This suspicion tends to be supported by the fact that among the accusers was Anytus, who had played a leading role in the restored democracy since 403.¹⁰⁷ According to Plato, in his defence speech

¹⁰² Plato, *Apologia* 36a–38b; Diogenes Laertius 2, 41f. – There may even have been a greater number of jurors who changed their vote pro or con Socrates in the second round. The total results cannot indicate possible switches in both directions.

¹⁰³ According to Plato, *Apologia* 38b, his final offer amounted to 30 minae, that is 3,000 drachmae. One drachma was then equal to an average to a good day's pay. According to Xenophon, *Apologia* 23, Socrates made no such application.

¹⁰⁴ Plato, *Apologia* 37a–b.

¹⁰⁵ Plato, *Crito* 50aff.

¹⁰⁶ For Socrates' criticism of democracy as the actual motive: Xenophon, *Memorabilia* 1, 2, 9; Aristotle, *Rhetoric* 1393b3ff.; Plato, *Gorgias* 515e; and for his connection to the 'Thirty': Xenophon, *Memorabilia* 1, 2, 12; 3, 7, 9; Isocrates 11, 5; Aeschines 1, 173.

¹⁰⁷ However, Anytus was only a supporting speaker for the main accuser Meletus, who bore the risk if at least one-fifth of the jurors did not vote in favour of the accusation; Diogenes Laertius 2, 40; Plato, *Apologia* 36a–b. Nothing is known either about Meletus or his motivation in moving the case; this is also true of Lycon, another person who spoke for the accusation. According to Plato and Xenophon, in his defence speech Socrates referred only to Meletus. We therefore do not know what arguments Anytus advanced. On his leading role in Athenian politics

Socrates compared his resolute stance in the Arginusae trial with his later refusal to follow criminal orders issued by the ‘Thirty’, and so consciously suppressed the difference between political systems.¹⁰⁸ Socrates had obviously been among the 3,000 citizens of the oligarchy of 404/403.

The case of Socrates has always been an issue in European intellectual history, and we can only touch on a few instances here. For a Roman like the elder Cato (second century BC), who certainly had no sympathy for Athenian democracy, it was obvious that someone with a big mouth had to be dealt with, disruptive speeches being a threat to public order.¹⁰⁹ In the second century AD Christian apologists began to draw parallels between the trials of Socrates and Jesus. In both cases this involved the unrepentant martyr standing for truth in a court where his accusers and the judge were in the wrong, something which also applied to those who persecuted Christians at that time; and since the Renaissance this comparison of Socrates and Christ has been replayed in different variations.¹¹⁰ In the course of historical-critical study of the sources it later became plain that there was another parallel: in each case, an account of life and teaching was to be found only in the writings of disciples. The question of the ‘historical Jesus’ which first emerged in the eighteenth century¹¹¹ was shadowed in the early nineteenth century by Schleiermacher’s treatment of the ‘historical Socrates’.¹¹²

In the eighteenth century a few studies were published that did justify the condemnation of Socrates.¹¹³ Nonetheless, criticism of a scandalous judgement predominated,¹¹⁴ so that it was possible in the nineteenth century to argue that the judgement against Socrates ‘has survived for millennia in the memory of humanity as the greatest crime of Athenian history’.¹¹⁵

of the time see Isocrates 18, 23f., and on the alleged later exile of the accusers see Diogenes Laertius 2, 43.

¹⁰⁸ Plato, *Apologia* 32b–d. See also Plato’s view in his autobiographical report, Plato, *Seventh Letter*, 325a ff. For further details see Aelian, *Varia Historia* 3, 17; Athenaeus 217f–218a.

¹⁰⁹ Plutarch, *Cato maior* 23, 1.

¹¹⁰ See among others Adolf Harnack, ‘Sokrates und die alte Kirche’, in his *Reden und Aufsätze*, Bd. 1, Gießen 1904, 27–48; Klaus W. Müller, ‘Schierlingstrank und Kreuzestod. Anmerkungen zu den Prozessen gegen Sokrates und Jesus’, *Antike und Abendland* 32, 1986, 66–88; Ernst Dassmann, ‘Christus und Sokrates. Zur Philosophie und Theologie bei den Kirchenvätern’, *Jahrbuch für Antike und Christentum* 36, 1993, 33–45; and for the general reception of the comparison see Benno Böhm, *Sokrates im 18. Jahrhundert*, 2nd ed., Neumünster 1966, 134ff.

¹¹¹ See Albert Schweitzer, *Geschichte der Leben-Jesu-Forschung* [1906], 9th ed., Tübingen 1984.

¹¹² Friedrich Daniel Schleiermacher, ‘Über den Wert des Sokrates als Philosophen’ [1815], in his *Sämtliche Werke*, 3. Abt., 2. Bd., Berlin 1838, 287–308.

¹¹³ Mario Montuori, *De Socrate iuste damnato: The Rise of the Socratic Problem in the Eighteenth Century*, Amsterdam 1981.

¹¹⁴ Ian Macgregor Morris, ‘The Refutation of Democracy? Socrates in the Enlightenment’, in *Socrates from Antiquity to the Enlightenment*, ed. Michael Trapp, Aldershot 2007, 209–227.

¹¹⁵ Eduard Meyer, *Geschichte des Alterthums*, Bd. 5: *Das Perserreich und die Griechen. Viertes Buch: Der Ausgang der griechischen Geschichte*, Stuttgart 1902, 227.

Other voices upheld a different perspective. In the later sixteenth century Montaigne referred to Socrates' 'childish and unbelievably arrogant defence',¹¹⁶ while the way in which he combined contractualism and obedience to the law was later said by David Hume to be a 'tory consequence of passive obedience, [built] on a *whig* foundation of the original contract'.¹¹⁷ And ultimately it was possible to claim that Socrates wished to die (like Jesus), as formulated by Nietzsche:

The two greatest judicial murders in world history [of Socrates and Jesus] are, to be quite frank, covert and well-concealed suicides. In both cases they wanted to die; in both cases they were run through by a sword wielded by the hand of human injustice.¹¹⁸

Hegel's interpretation became very influential, seeing in Socrates the founder of an independence of spirit and subjective morality which was ahead of its time, with the outcome that the Athenians, caught in a tragic conflict, could see Socrates only as a foe of their order.¹¹⁹ It was not only German authors who reflected this view, pointing to the limits of any freedom of political expression,¹²⁰ and especially of the 'propaganda of teachings endangering the state'.¹²¹ George Grote and John Stuart Mill too shared essentially the same view.¹²² In turn, Theodor Gomperz, the editor of the German translation of Mill's collected works, invoked the authority of Mill for his understanding of the Athenians. He thought it quite clear that Socrates had to be silenced;

¹¹⁶ Michel de Montaigne, *Essais*, transl. Johann Daniel Tetz [1753/1754], Zürich 1992, III. Buch, XII. Hauptstück, at 314f.

¹¹⁷ Hume alludes here to Locke's implicit contract: Locke, *Second Treatise of Government*, § 119; 'Of the Original Contract' [1748]; in Hume, *Political Essays*, ed. Knud Haakonssen, Cambridge 1994, 201.

¹¹⁸ 'Menschliches, Allzumenschliches', II. 1. 94; Friedrich Nietzsche, *Kritische Studienausgabe*, Giorgio Colli and Mazzino Montinari, eds., Bd. 2, Munich 1999, 414. On Socrates' quasi-suicide see also 'Götzendämmerung. Das Problem des Sokrates, Nr. 12'; Nietzsche, *Kritische Studienausgabe*, Bd. 6, 73.

¹¹⁹ *Vorlesungen über die Philosophie der Geschichte*, 2. Teil, 2. Abschnitt, 3. Kapitel; Hegel, *Werke*, Bd. 12, Frankfurt am Main 1986, 328–330; *Vorlesungen über die Geschichte der Philosophie*, 1. Teil, 1. Abschnitt, 2. Kapitel; Hegel, *Werke*, Bd. 18, 441–516, esp. 496ff.

¹²⁰ See, for example, Peter Wilhelm Forchhammer, *Die Athener und Sokrates. Die Gesetzlichen und der Revolutionär*, Berlin 1837. Critical of Forchhammer is Theodor Heinsius, *Socrates nach dem Grade seiner Schuld zum Schutz gegen neuere Verunglimpfungen*, Leipzig 1839, who according to his preface wished to restore to youth a 'belief in the moral purity of the Greek sage' and so began with the parallel between Socrates and Jesus.

¹²¹ Köchly, 'Sokrates', 349ff., here at 358.

¹²² See p. 257 and 266. Ferdinand Lassalle, founder of the German Labour Party, explained in a defence speech (January 1863) that the execution of Socrates was quite understandable since in Athens a scholarly attack on religion was considered an assault on the state; 'Die Wissenschaft und die Arbeiter', in Lassalle, *Ausgewählte Reden und Schriften, 1849–1864*, ed. Hans Jürgen Friederici, Berlin 1991, 176. Of course, he wanted to make the point that in the present there should be no restrictions of scholarly freedom and that the programmatic tract, for which he was prosecuted, was an academic statement.

unlike 'in our modern community today' there was in Athens no means available like 'dismissal from a professorial chair, the initiation of a disciplinary investigation, ... house-arrest, expulsion or administrative posting'.¹²³

At the end of the nineteenth century Robert Pöhlmann thought that this reading of the trial of Socrates already represented the prevailing view, so that he had to counter it. According to Pöhlmann the 'judicial murder' of Socrates was proof that 'if the idea of liberty comes into conflict with the instinct for equality, we find out how little the great cultural interest of liberty means compared with the mass idea of equality'.¹²⁴ By his references to Tocqueville's *Democracy in America*,¹²⁵ and to Herbert Spencer and Henry Maine as contemporary English critics of democratisation,¹²⁶ Pöhlmann leaves no room for doubt that he saw the case of Socrates as a lesson in the dangers of mass democracy, something which he had elsewhere made clear that he associated with socialist endeavours.¹²⁷

All the same, the complexities of the trial of Socrates have to be balanced by the fact that the formal procedural rules were properly followed, which makes it hard to dismiss the event as 'terrorism of the people', as could be done for other events and institutions. Other authors besides Gomperz noted by way of apology that Athens was not a police state that could respond to someone speaking out of turn by stripping them of the right to teach, or expulsion. The trial could be initiated only by the citizens themselves;¹²⁸ furthermore, it was pointed out that, given the structure of the Athenian penal system, the judgement made against Socrates created no precedent.¹²⁹

POSITIVE IMAGES OF ATHENS

The Athenian comedies created a rather more positive image. Scholarly interest was primarily directed to questions of historical or antiquarian interest, or of the sources for the plays organised by the polis and presented to a public made up of a significant part of the Athenian citizenry. There was felt to be a need

¹²³ Theodor Gomperz, *Griechische Denker. Eine Geschichte der antiken Philosophie*, Bd. 2 [1902], Frankfurt am Main 1996, 71ff., citation 90.

¹²⁴ Robert Pöhlmann, *Sokrates und sein Volk. Ein Beitrag zur Geschichte der Lehrfreiheit*, Munich 1899, 107, 112 and 103.

¹²⁵ *Ibid.*, 61f.; 110, note 1; 112, note 1.

¹²⁶ *Ibid.*, 64f. Herbert Spencer, *Man Versus the State*, London 1884; Henry Sumner Maine, *Popular Government. Four Essays*, London 1886. Pöhlmann, 'Isokrates', refers several times to the work of Robert Michels (see p. 315) to draw a parallel between Athenian demagogues and Socialist leaders who de facto rule over the masses. In large passages the discussion on Athens is only a pretence for attacks on the Social Democrats and on universal male suffrage.

¹²⁷ See p. 273.

¹²⁸ Köchly, 'Sokrates', 358f.; Ernst von Lasaulx, *Des Sokrates Leben, Lehre und Tod. Nach den Zeugnissen der Alten dargestellt*, Munich 1857, 78, fn. 246.

¹²⁹ Holm, *Griechische Geschichte*, Bd. 3 (1891), 37f., fn. 4.

to account historically for the way in which Pericles appeared in the comedies of his time as a kind of tyrant (only fragments of these comedies have survived); and how, in the midst of a war, Cleon could be so vehemently attacked by Aristophanes as an unscrupulous and corrupt popular orator. These plays enjoyed great public popularity; but the politicians attacked in them remained the leading opinion-formers in the popular assembly.

According to Wieland (1794), this observation conveyed ‘a curious sense of the character of a sovereign people ... who were relaxed enough to laugh about themselves in public, and generous enough for such an unbridled political farce to disadvantage neither the writer nor the demagogues they pilloried’.¹³⁰ Aristophanes had not only represented the Athenians as ‘sheep’ who ‘recognize the demagogue as a bellwether, following after him and repeating what he says’,¹³¹ but had voiced his hostility to the court system and cash payments; and so the question arose how far these plays were merely skilful although inconsequential entertainment, and how far they might be considered critical of the system. During the nineteenth century this issue of Aristophanes’ ‘partisan’ stance was read through the contrast of ‘progressive’ to ‘conservative’ parties.¹³² At issue was the extent to which some allusions made in the comedies allowed one to deduce the occasional existence of restrictions to the freedom usually allowed to comedies, including the existence of an alleged indictment brought by Cleon against Aristophanes.¹³³ It was obvious that this raised the contemporary problem of freedom of speech and of the press, as had been true of Milton during the English Revolution and Desmoulins during the French Revolution.¹³⁴

In a historico-philological essay of 1844 Theodor Bergk noted that ‘the openness of the public realm was the lifeblood of any free state’. He added:

One is not wrong in judging the strength of a state from the degree of liberty enjoyed by speech and writing; every restriction of public opinion is always a result of mistrust of its own powers by the ruling body of a state. When Athens was at the height of its power the writing of comedies enjoyed the most complete freedom.¹³⁵

¹³⁰ Christoph Martin Wieland, ‘Kurze Darstellung der innerlichen Verfassung und äusserlichen Lage von Athen in dem Zeitraum, worin Aristofanes seine noch vorhandenen Komödien auf die Schaubühne brachte’, in his *Politische Schriften, insbesondere zur Französischen Revolution*, Bd. 3, ed. Jan Philipp Reemtsma et al., Nördlingen 1988, 213–233, here at 233.

¹³¹ Johann Gustav Droysen, ‘Des Aristophanes Vögel und die Hermokopiden, 2. Teil’, *Rheinisches Museum* 4, 1836, 27–62, here at 47.

¹³² Roscher, *Leben, Werk und Zeitalter des Thukydides*, 300f.

¹³³ That Cleon had prosecuted Aristophanes for his attacks in *Babylonians* (staged in 426 BC) is only recorded in a scholion to Aristophanes, *Acharnians* 386; Aristophanes, *Fragments*, ed. Jeffrey Henderson, Cambridge, MA, 2007, 143.

¹³⁴ See p. 172.

¹³⁵ Theodor Bergk, ‘Über die Beschränkung der Freiheit der ältern Komödie zu Athen’ [1844], in his *Kleine philologische Schriften*, Bd. 2, ed. Rudolf Peppmüller, Halle 1886, 444–465, here at 452 and 449.

In 1847 Bergk became a member of the Hessian Assembly (representing the University of Marburg) and in 1848 of the Constitutional Commission ('Committee of Seventeen') established by the *Bundestag*.¹³⁶

Wilhelm Adolf Schmidt, a writer of various works of contemporary as well as ancient history, was a member of the Frankfurt National Assembly, belonging to the centre-left, later becoming in 1874–1875 a National Liberal member of the Reichstag. He published a book on Pericles in 1877 in which he wrote that 'in relation to the unconditional freedom of speech, even when it involved calumny, Athens was then at exactly the same stage as today's United States of America.' Like Pericles, the American president would not react to 'disparagement and invective', but trust in the 'justice of history'.¹³⁷

Contemporary readers would not have missed the contrast with Bismarck, who was only too ready to shower his political and literary opponents (among them Mommsen)¹³⁸ with writs for slander. A review of contemporary research from the later 1880s noted that, given how 'in recent times it had become the custom to seek to destroy political opponents through court judgements' one could now for the first time really understand how Athenian politicians had battled it out in the courts.¹³⁹

Assessments of the trial of Socrates and the freedom with which the comedies were written and performed betray a degree of ambivalence that cannot be unilaterally traced back to a negative assessment of both ancient and modern democracy. Such summary and one-sided judgements had always found critics in the literature. For instance, Friedrich Wilhelm Tittmann's *Darstellung der griechischen Staatsverfassungen* of 1822 began with remarks about the 'different nature of liberty in ancient and modern states', evident above all in the way in which, today, state power was subject to the law. This was an idea that would have been alien to the Greeks, fixated as they were upon participation in decision making:

The ancients, seeking all freedom in their own participation in supreme power, lost sight of any other basis of liberty that they could not imagine any kind of legal limitation of that supreme power... It was for the Greeks this democratic form that, by error, brought about despotism. Since in democracy the citizenry as a whole exercised supreme power, ... it seems that the supreme power could do no wrong, since the citizen was part of it; as if the right of the people was quite simply unlimited, not even limited by law, which itself had force by virtue of the people's will.¹⁴⁰

¹³⁶ The *Bundestag* was the Diet of the German Confederation consisting of delegates appointed by the member governments. By establishing the 'Committee of Seventeen' for drafting a German constitution in March 1848 the *Bundestag* tried (in vain) to keep control of the revolutionary movement but was aware that for this purpose one had to choose reputed Liberals.

¹³⁷ [Wilhelm] Adolf Schmidt, *Perikles und sein Zeitalter*, Bd. I, Jena 1877, 110.

¹³⁸ See p. 298.

¹³⁹ Hugo Landwehr, 'Die Forschung über die griechische Geschichte aus den Jahren 1882–1886', *Philologus* 46, 1888, 113.

¹⁴⁰ Friedrich Wilhelm Tittmann, *Darstellung der griechischen Staatsverfassungen*, Leipzig 1822, 5. Tittmann, author of historical works on various subjects, was a Dresden archivist. See Karl

He cited as a cardinal example the Arginusae Trial. Tittmann did, however, indicate that the Athenians were nevertheless familiar with the idea of the legal restriction of majority opinion, since there existed the possibility of proceeding against an unlawful popular decision (by way of a *graphe paranomon*). He went on to show that, despite all appropriate criticism relating to the insecurity of property given the lack of a foundation in natural law, the lack of clear norms of punishment, the arbitrariness of sentences or ostracism and the ambiguousness with respect to religious freedom the overall picture was not that gloomy. He noted the many procedural rules designed to prevent harmful factors, so that in the comparison of ancient and modern procedure the balance was no longer so much against the former. In respect of the prosecution of blasphemy, and also including the trial of Socrates, he noted the pros and cons of securing public order ('police') that did not depend on the anticipatory action of the state apparatus, but instead on subsequent punishment following the initiative of individual citizens:

We note at this point a feature peculiar to Greek police as compared with modernity. Among the Greeks police was less about making arrangements to prevent forbidden actions and more concerned with liability following a violation. All might go about their affairs unhindered by the state, so long as he did not have to answer for a more obvious infringement. And so there was here perhaps less restriction, a more bold and free course of things, a more untroubled approach than with the kind of police in which every step is prescribed in advance and watched over. But it was of course natural that a liability that was only incurred subsequent to the violation had to be, if it were not to be without effect, harder and more oppressive than that applied to the simple infringement of a general rule, as was then to be found in the truly despotic rigour of police for the Athenians.¹⁴¹

This possibility of punishment did not of course exist in all domains; sensitivity in regard to the state religion was quite different from the complete freedom prevailing in the expression of political opinions:

The extent of police powers ... in matters relating to religion and morals contrasts remarkably with the brash liberty and free-spiritedness of the citizen in respect of state power itself. Traditional religion had to remain inviolate, but any and every view was in order when it came to the constitution and administration of the state. Free-spirited, brash, even impertinent attacks on state power, on the authorities, on the people, none of this was the object of retribution by police.¹⁴²

Tittmann refrains from making explicit allusion to the present, but it does seem very possible that readers would make an association with the 'persecution of demagogues' since the Carlsbad Decrees of 1819, having in mind the

von Weber, 'Dr. Friedrich Wilhelm Tittmann', *Archiv für die sächsische Geschichte* 3, 1865, 128–133.

¹⁴¹ Tittmann, *Darstellung der griechischen Staatsverfassungen*, 29f.

¹⁴² *Ibid.*, 3of.

enthusiasm for surveillance of modern police on the one hand, and the freedom of political expression in Athens on the other.

Niebuhr expressed a very similar view in 1828, even if he elsewhere made various critical remarks on Athenian democracy:¹⁴³

Endless terrible things can truthfully be said about the Athenian constitution. But ... even there, life instinctively provided form and functions through which the republic, for all its constitutional anarchy, maintained and governed itself. Of all peoples in history, the Athenians have been misunderstood and unjustly condemned. With very few exceptions, the old accusations of mistakes and lost opportunities have simply been repeated. ... To those who talk of the Athenians as an appallingly careless people, that their republic, as in Plato's time, hopelessly lost, I will not make them liable for their error, since they don't know what they do.¹⁴⁴

In Niebuhr's view, in the customary polemics against the fickleness of the popular assemblies, and the arbitrary judgements of the people's courts, rare blunders are made out to be the rule. John Stuart Mill should later take up this passage from Niebuhr and call it the 'vindication of the Athenian demos'.¹⁴⁵

Even in respect of some particular Athenian constitutional institutions there were different opinions expressed during the nineteenth century. It was, for example, recognised that the function of ostracism in the developed form of democracy was to make a choice between two politicians competing for the leadership of opinion in the popular assembly, and by exiling one of them maintain a stable majority.¹⁴⁶ One of the first here could have been Wilhelm Roscher, but whose image of a 'constitutional change of ministers' then obscured the fact that ostracism was needed exactly because there was no government in the modern sense.¹⁴⁷ Wilhelm Oncken rightly judged that it was a matter of 'the internal and external unity of those governing the state, and it was not those who had become "too powerful" who were affected, but instead one of two rivals who had the most votes against him'.¹⁴⁸

In an 1847 essay on the Attic Communal Constitution Droysen presented the self-administration of the demes as guaranteeing of a free order upon which the idea of the subordination of the citizen to entirely state-based control simply

¹⁴³ Barthold Georg Niebuhr, *Vorträge über Alte Geschichte*, ed. Marcus Niebuhr, Bd. 2, Berlin 1848, 32ff.

¹⁴⁴ Barthold Georg Niebuhr, 'Über Xenophons Hellenika' [1826/1828], in his *Kleine historische und philologische Schriften*, 1. Sammlung, Bonn 1828, 464–482, here at 476f.

¹⁴⁵ John Stuart Mill, 'Two Publications on Plato' [1840], in Mill, *Collected Works*, Vol. 11, 242.

¹⁴⁶ Karl Lugebil, 'Über das Wesen und die historische Bedeutung des Ostrakismos in Athen', *Jahrbücher für classische Philologie*, Suppl. Bd. 4, 1860, 119–175.

¹⁴⁷ Roscher, *Leben, Werk und Zeitalter des Thukydidēs*, 380, fn. 4 (which continues over several pages).

¹⁴⁸ Wilhelm Oncken, *Athen und Hellas. Forschungen zur nationalen und politischen Geschichte der alten Griechen*, Bd. 2, Leipzig 1865/1866, 57f.

did not fit. The ‘banal phrase: in antiquity man was nothing if not political’ was simply not true; this was

an abstraction that, taken from the Spartan way of life, as it was at least in theory, has been very carelessly transferred to all manner of things; in Attic democracy not only was there a broad and free space for domestic and private life, for custom and tradition, for social relationships; but in this communal form Cleisthenes created those spheres that filled a noticeable gap between these and the life of the state.

The technical aspects of Cleisthenes’ reforms are at the heart of this essay. Allusions to contemporary problems in the relation of state and communal self-government suggested by the date and year of publication of the essay can be found especially in this passage, where Droysen explains that it is difficult ‘to find any constitution in ancient or modern times in which state and community were mutually delimited in such an exemplary manner’. He emphasised that in Athens there was

no jealousy between state and commune, no rivalry between state and church, no patrimonial supervision over private liberty on the part of the state. These are relationships that internalise all guarantees of security, of a flourishing existence, of inner satisfaction.

Droysen also writes that this was possible only because at the same time the state relinquished control of ‘all relations arising from commune, religion, rank, and so forth’.¹⁴⁹ The political message was therefore ambivalent. Praise for communal self-administration was linked to the view that the communes had no inherent rights, but only those such as had been delegated from the state.

In his 1833 book on Alexander the Great Droysen had outlined the self-destruction of Athenian democracy during the Peloponnesian War, and accused fourth-century Athenians of failing to see the need for a ‘new modality of state life’. Under the leadership of that ‘unfortunate figure’ Demosthenes, they set themselves against the national unity of Greece under Macedonian leadership, and so ‘struggled for an independence founded upon impotence and a tawdry state upholding a dated sense of freedom’. Philip II of Macedon by contrast had taken on the ‘national task of the Greeks’ and brought it to completion.¹⁵⁰ In the revision of the text in 1877 the parallels between Macedonia and Prussia as powers called to realise national unity became even more

¹⁴⁹ Johann Gustav Droysen, ‘Die attische Communalverfassung’ [1847], in his *Kleine Schriften zur Alten Geschichte*, Bd. 1, ed. Emil Hübner, Leipzig 1893, 328–385, at 384 (quotation rearranged).

¹⁵⁰ Johann Gustav Droysen, *Geschichte Alexander des Großen. Nach dem Text der Erstausgabe 1833*, Zürich 1984, 24, 26 and 50. Athens missed its chance in the Peloponnesian War: ‘There was a time when Athens could conceivably have gone in another direction; taking a path that would not have saved the democratic principle, but would have saved its positive outcomes, and with it the power of the state. Rome found its Caesar. If Alcibiades had returned victorious from Sicily, he would, given his personal powers, the dedication of his army and the compliance of his federal allies, have been able to re-establish an Athenian rule before which Sparta and all of Greece would have had to bow’; Droysen, *Des Aristophanes Werke*, Bd. 2, 287.

marked. Some changes were made in the text, but this shift had more to do with a shift in the perceptions of the public after German unification in 1871. Droysen had been known, since the time of his membership of the Frankfurt National Assembly, as a proponent of 'little Germany' (without Austria) and as a historian of a Brandenburg-Prussia that had according to his interpretation, since its origins in the fifteenth century, been conscious of its obligation to promote German unity.¹⁵¹ Another author wrote that Athens had 'become drunk on the wine of the most developed democracy and then, in this state, become the booty of a semi-barbaric Macedonia, and then of martial Rome'.¹⁵²

The image of Athens remained unclear and changeable. A new dimension of discussion opened up in England, where it became directly related to the reform of a political system that was supposed to sustain a free order, or make it for the first time possible, without having to pass through the revolutionary turbulence that had occurred in Continental Europe.

¹⁵¹ See Wilfried Nippel, *Johann Gustav Droysen. Ein Leben zwischen Wissenschaft und Politik*, Munich 2008.

¹⁵² Karl Wilhelm Götting, *Geschichte der Römischen Staatsverfassung von Erbauung der Stadt bis zu C. Cäsar's Tod*, Halle 1840, VI.

The ‘Rehabilitation’ of Athenian Democracy

If condemnation of Athenian democracy in Germany during the first half of the nineteenth century was not unequivocal, in England there was a quite different perspective. ‘Critical’ classical scholarship became established in Oxford and Cambridge much later than it had in German universities. Greek history was primarily written in England by people men who were very active in public life; scholarship and political engagement came to have a mutual influence upon each other.

THE TORY VIEW OF ATHENS

For many years the British view of Athenian democracy¹ was formed by the relevant volumes of William Mitford’s *History of Greece* (1784–1810), the work of a Tory politician. Mitford was a member of the House of Commons from 1785 to 1818, with longer intervals. He had been encouraged to write this history by Edward Gibbon, author of *The History of the Decline and Fall of the Roman Empire* (1776–1788).² As early as December 1789 Gibbon had prophesied that the French dream of a perfect democracy for a people of twenty-five million citizens would end up with the demand for equality of possession.³ He had subsequently become increasingly concerned about the

¹ John Gillies, *The History of Greece* (1786), is often cited because of its frontispiece dedication to George III: ‘The History of Greece exposes the dangerous turbulence of Democracy, and arraigns the despotism of Tyrants, by describing the incurable evils inherent in every form of Republican policy, it evinces the inestimable benefits, resulting to Liberty itself, from the lawful dominion of hereditary Kings, and the steady operation of well-regulated Monarchy.’ Gillies was critical of Athenian democracy, but in this he always followed the respective ancient sources and did not digress into general reflections. His work was not a political tract in disguise.

² Brendan A. Rapple, ‘Ideology and History. William Mitford’s “History of Greece” (1784–1810)’, *Papers on Language and Literature* 37, 2001, 361–381, here at 364.

³ Letter to Lord Sheffield, 15 December 1789, *The Letters of Edward Gibbon*, ed. Jane Elizabeth Norton, Vol. 3, London 1956, 184.

spread of a ‘French disease’ by ‘triumphant *democrates*’ and ‘fanatic missionaries of sedition’ in Europe, for which he thought the best medicine was Burke’s account of the Revolution.⁴

According to Mitford, the Athenian courts had financed day payments and public festivals through the confiscation of property, so that ‘life and property were rendered insecure beyond what anything seen in the most profligate of modern European governments would give to imagine under any government possible’.⁵ A ‘spirit of tyranny’ prevailed in Athens which led to a ‘disregard upon principle for property and the convenience and satisfaction of individuals’.⁶ In short, ‘it was as dangerous to be rich under the Athenian democracy as under the Turkish despotism’⁷ – equating democracy and despotism in the same way as French post-revolutionary debate did.

There was a clear parallel here, both for the writer and for his readers, between Athens and revolutionary France, a parallel that was aimed at a contemporary English reform movement which was itself ambivalent about the real or apparent dangers of revolution. The British establishment had at first treated the French Revolution as an event that would hopefully weaken a traditional global rival, but had then become increasingly alarmed about its possible repercussions at home. Prime Minister William Pitt the Younger considered human rights a ‘monstrous doctrine’ that would ‘overturn Government, law, property, security, religion, order, and every thing valuable in this country, as they had already overturned and destroyed every thing in France, and endangered every nation in Europe’.⁸

The British government took drastic steps, characterised with some exaggeration as ‘Pitt’s Terror’ by its opponents⁹ against those radicals whose response

⁴ Edward Gibbon, *Memoirs of My Life*, ed. George A. Bonnard, London 1966, 185; Letter to Lord Sheffield, 5 February 1791, in *The Letters of Edward Gibbon*, Vol. 3, 216. In Gibbon’s view, the revolution in Geneva in late 1792 aimed at ‘pure and absolute democracy’, since it ‘imparted the rights of citizens to all the rabble of the town and country’; Letter to Lord Sheffield, 1 January 1793, *ibid.*, 307. He was afraid that the revolutionary wave would reach his place of residence, Lausanne.

⁵ Mitford, *History of Greece*, Vol. 5 (1797), [Ch. 21], 13.

⁶ *Ibid.*, Vol. 5 [Ch. 21], 31.

⁷ *Ibid.*, 32.

⁸ Cited by Thomas Philip Schofield, ‘Conservative Political Thought in Britain in Response to the French Revolution’, *Historical Journal* 29, 1986, 601–622, here at 604.

⁹ During the 1790s, government persecution was linked to major treason trials (based on a broadened definition of treason), which failed, however, to secure any convictions; Clive Emsley, ‘Repression, “Terror” and the Rule of Law in England during the Decade of the French Revolution’, *English Historical Review* 100, 1985, 810–825. Supporting this at a lower level was the work of local magistrates, ‘loyalist’ associations and church and king riots. A common occurrence was the burning of effigies of Tom Paine: Frank O’Gorman, ‘The Paine Burnings of 1792–1793’, *Past & Present* 193, 2006, 111–155. Friedrich von Gentz, a sharp critic of the French Revolution, regarded the response of the British government, suspending civil rights on account of a small number of dangerous persons, to be quite disproportionate, but noted that critics of such measures overdramatised their practical consequences: ‘Historisch-politische

to the Revolution was the demand for thorough reforms of the British constitution: annual parliaments, a significant extension of the franchise, ending of Crown patronage, equal rights for Dissenters and the like – much the same as had been postulated by the Levellers during the English civil war. The demand was also raised for a constitution like that of the United States and of France, to be drafted by a constitutional convention.¹⁰ Those radicals formed democratic clubs on the Jacobin model, the London Corresponding Society¹¹ being the most well-known example. The government also continued, after the end of the Napoleonic Wars, to persecute those involved in the early phases of what became the Chartist movement.¹² Among the measures adopted was strict limitations on the rights of association and assembly, and repeated suspension of Habeas Corpus, the chief protection against arbitrary imprisonment.

Übersicht der Haupt-Begebenheiten des Jahres 1794' [III], *Neue deutsche Monatsschrift* 1, 1795, 177–236, here at 205ff.

¹⁰ Thomas Paine, 'Letter Addressed to the Addressers, on the Late Proclamation 1792', in *Rights of Man, Common Sense and Other Political Writings*, ed. Mark Philp, Oxford 1995, 376ff. (linked to the demand for a review of the Constitution every twenty years). See also the tracts by John Oswald, 'The Government of the People, or a Sketch of a Constitution for the Universal Common-Wealth' [1793], in *Political Writings of the 1790s, Vol. 4: Radicalism and Reform 1793–1800*, ed. Gregory Claeys, London 1995, 95–103 (demanding a decisive role for primary assemblies of voters) and John Cartwright, *An Appeal on the Subject of the English Constitution*, London 1797, 35: a written constitution should replace the 'ever-varying camelion constitution'. The demand for a constitutional convention was treated as treasonable in the political trials of 1794: T. M. Parssinen, 'Association, Convention and Anti-Parliament in British Radical Politics 1771–1848', *English Historical Review* 88, 1973, 504–533. The Dissenter William Godwin (*An Enquiry Concerning Political Justice* [1793], ed. Mark Philp, London 1993) rejected the principle of representation. He argued that democracy was practicable only in small communities that could more or less manage without government, and that it should in this context be based upon mutual moral control and the promotion of Christian virtue. All in all, discourse on democracy remained broadly in the mixed government tradition; Mark Philp, 'Talking about Democracy: Britain in the 1790s', in *Re-Imagining Democracy. America, France, Britain, Ireland 1750–1950*, Joanna Innes and Mark Philp, eds., Oxford 2013, 101–113.

¹¹ Here too the contrary position sometimes drew on ancient example. Robert Bisset, *Sketch of Democracy*, London 1796, devoted more than 300 pages to the evils of democracy as evidenced by Athens and Rome. He cited historical experience and the authority of Aristotle, Cicero and Hume against the London Corresponding Society (at 20) so that he could provide 'a just view of the badness of democracy and the goodness of the British constitution' (Advertisement, III): 'Our Parliament has an identity of interest with us; that being the case, it matters little to individuals whether they have a vote or not in the elections of its members. My rights, who have no vote, are as well secured as those of any elector in the kingdom' (350). Athenians were moderate by comparison with their modern disciples: 'The Athenian treatment of illustrious men did not arise from any thing peculiarly bad in their national character – compared with most democrats, they were mild and humane. If they had been inspired with the ferocity of modern democrats, the lamp post, or guillotine, would have prevented the banishment of their great men' (72f.).

¹² 'Peterloo' came to symbolise post-war repression, when on 16 August 1819 a peaceful demonstration on St. Peter's Fields, Manchester, was forcefully broken up by the militia, with eleven killed and a hundred wounded.

By 1837 John Stuart Mill could write that one could now calmly consider the French Revolution to be a historical event, about which one had neither fears nor hopes.¹³ It was for this reason that Mill some years before had given up his plan to write a history of the French Revolution; instead he left the materials, which he had already collected, to Thomas Carlyle.¹⁴ But this attitude was not typical of the period preceding the parliamentary reform of 1832, nor perhaps later, since the left wing of the Chartist Movement still identified itself with Jacobinism.¹⁵ But the 'People's Charters' remained limited to political demands, implying that it was only political reform that could resolve the social question. Even the radical wing of the movement demanded only a reformation of the traditional English mixed constitution so as to take account of the popular will, and not the creation of a new constitution on the basis of popular sovereignty.

Mitford considered the English mixed constitution the best political order that had ever existed, so reform was not only superfluous, but dangerous. Marx's later witticism, that the Tories praised the English constitution as the eighth wonder of the world,¹⁶ would have fitted Mitford too. Mitford pointed to the contradiction in Athens between the sense of liberty and the actuality of rule by a small minority over metics and 400,000 slaves (the famous figure recorded by Athenaeus), although he took no exception at all to the very restrictive English franchise. According to Macaulay, Mitford hated democracy, and Macaulay was troubled by the success of a work owed above all to its political tendency.¹⁷ John Stuart Mill was of the opinion that Mitford's history reflected the 'wildest height of Antijacobin phrenzy'.¹⁸ Mitford prided himself on the fact that his view of the Athenians was based upon ancient sources, but he used them one-sidedly to support his negative approach to Athenian democracy. As John Adams had done before, Mitford treated the regime of the Thirty as the logical consequence of democratic lawlessness, drawing a parallel with the French Terror and the Committee of Public Safety.¹⁹

¹³ 'Carlyle's French Revolution' [1837], in Mill, *Collected Works*, Vol. 20, 158.

¹⁴ John Coleman, 'John Stuart Mill on the French Revolution', *History of Political Thought* 4, 1983, 89–110; Alan S. Kahan, *Aristocratic Liberalism. The Social and Political Thought of Jacob Burckhardt, John Stuart Mill, and Alexis de Tocqueville*, new ed., New Brunswick 2001, 12ff.

¹⁵ Engels, 'The Festival of Nations in London (To Celebrate the Establishment of the French Republic, September 22, 1792)', MECW, Vol. 6, 3–15 [MEW, Bd. 2, 611–624], reproducing the speech of the Chartist leader George Julian Harney (22 September 1845), who had praised Robespierre, Marat, Saint-Just and Babeuf. Linking up with this tradition also involved donning the Jacobin cap: see James Epstein, 'Understanding the Cap of Liberty: Symbolic Practice and Social Conflict in Early Nineteenth-Century England', *Past & Present* 122, 1989, 75–118.

¹⁶ Marx, 'The Elections – Tories and Whigs' [*New York Daily Tribune*, 21 August 1852]; MECW, Vol. 11, 327 [MEGA², Abt. I, Bd. 11, 318].

¹⁷ 'On Mitford's History of Greece' [November 1824], in *The Works of Lord Macaulay*, Vol. 1, London 1898, 365–393.

¹⁸ Review of Grote, Vols. 1 & 2 [1846] in Mill, *Collected Works*, Vol. 24, 867.

¹⁹ Mitford, *History of Greece*, Vol. 5 [Ch. 21], 58 and 62, n. 4. On Adams, see p. 126.

GROTE'S LIBERAL ATHENS

A call for the comprehensive reform of society and politics, together with franchise reform, was taken up in the early 1820s in circles beyond that of the familiar radical tradition. This new 'utilitarian' movement centred on Jeremy Bentham and James Mill, who argued that the legitimacy of a regime rested on its utility to the ruled, its securing the greatest happiness of the greatest number. In politics they had 'an almost unbounded confidence in the efficacy of two things: representative government and complete freedom of discussion'.²⁰

Bentham himself was not really very interested in history, or even ancient history, as a resource for experience and argument; he thought that ancient democracy had nothing to do with representative democracy, which was the only form suitable for modern times. The only form of democracy Bentham acknowledged was the American one: 'Look not to Greece or Italy – look not to ancient or to middle ages – look not to any self-acting democracy. Compared with a representative democracy, in which the sole power exercised by the people is that of choosing their deputies, and in those deputies their rulers, whatever else has been called democracy, has had nothing of democracy but the name.' In the United States as 'self sustained [democracy] there is no such thing as danger; no diminution of security for person, property, reputation, condition in life, religious worship'.²¹

The interest in proper interpretation of ancient democracy shown by some in Bentham's circle was very much a sideline in the larger struggle for the rational reorganisation of social order; but some saw ancient democracy as a matter too important to be left to the opponents of reform. Efforts were therefore made to counter the 'crusade against liberty' conducted by Mitford and his disciples claiming, for example, that the Athenian jury courts were not after all inferior to the English jury system, but rather embodied the authentic will of the people.²² Mitford had argued against this that an English jury consisted of twelve men instructed by a judge, and so was not subject to demagogic influence, as had been the case in Athens.²³

George Grote, a member of the Bentham circle,²⁴ set himself the task of refuting Mitford's argument by writing a comprehensive work on Greek history and so revealing that Mitford had written no more than a 'party pamphlet',²⁵

²⁰ John Stuart Mill, *Autobiography* [1873], London 1958, 89.

²¹ Jeremy Bentham, *Plan of Parliamentary Reform in the Form of a Catechism with Reasons for Each Article. With an Introduction, Shewing the Necessity of Radical, and the Inadequacy of Moderate, Reform* [1817], London 1818, 17; the text was written in 1809.

²² [Charles Austin], 'Greek Courts of Justice', *Westminster Review* 7, 1826/27, 227–268, here at 228; this is a critique of an article of the same title in *Quarterly Review* 33, 1826, 332–356, in which Mitford's position was defended.

²³ Mitford, *History of Greece*, Vol. 5 [Ch. 22], 89f.

²⁴ Grote published Bentham's *Analysis of the Influence of Natural Religion on the Temporal Happiness of Mankind*, London 1822, using the pseudonym Philipp Beauchamp. Bentham often gave manuscripts to friends for editing and publishing.

²⁵ *The Works of Lord Macaulay*, Vol. 1, 386; Walter Bagehot, 'Mr. Grote', in *The Collected Works of Walter Bagehot*, Vol. 2, ed. Norman St John-Stevas, London 1965, 369–373, here at

a Tory falsification of history.²⁶ Grote had already attacked Mitford in 1826 in a long review essay for the *Westminster Review*, the house-journal of the Benthamites. He accused Mitford of an uncritical reading of the sources combined with the projection of political prejudice fed by the French Revolution, so that Mitford had understood neither the political order of Athens, nor its court system.²⁷ Since Mitford's interpretation so clearly mirrored ruling English interests, it had to be countered with a proper history of Greece.²⁸ This did not necessarily mean that one had to rewrite Greek history from its origins; but beyond his political intentions Grote had scholarly and literary ambitions which led him to start from early Greece. He probably also assumed that he would reach a broader public if his work was presented in the form of a large historiographical text, since the public expected a thorough and detailed account. From 1846 to 1856 the twelve volumes of Grote's *History of Greece from the Earliest Period to the Close of the Generation Contemporary with Alexander the Great* appeared.

Grote had taken his inspiration from German classical scholarship, in particular, Niebuhr's *Römische Geschichte*, in seeking to distinguish the legendary elements from the trustworthy kernels in the sources for early Greece.²⁹ Niebuhr's book had made a great impression in England, although traditionalists disliked the manner in which it undermined the authority of the usual source narrative (which in turn had potential implications for readings of the Bible).³⁰ As early as 1827 Niebuhr suggested that Grote's forthcoming work (which he believed to have been already completed) be translated into German.³¹ Grote was also an admirer of August Böckh, in 1844 devoting a long review essay

371. Or, Thomas Arnold, *History of Rome*, Vol. 1 [1838], 4th ed., London 1845, X: 'Mitford's example sufficiently prove[s] that the spirit of modern party may affect our view of ancient history'.

²⁶ This was how James Mill described the work to his son John Stuart: John Stuart Mill, *Autobiography*, 10.

²⁷ George Grote, 'Institutions of Ancient Greece', *Westminster Review* 5, 1826, 269–331, here at 286. See also John Stuart Mill, 'The British Constitution [II]' (May 1826), in Mill, *Collected Works*, Vol. 26, 367: 'If honourable gentlemen who have such a horror of the Athenian democracy would take the trouble to read its history, not in Mitford, but in the authors whom Mitford quotes, they will find that of all governments of antiquity that in which person and property were most secure was the Athenian democracy'.

²⁸ Grote, 'Institutions of Ancient Greece', 331.

²⁹ 'Grecian Legends and Early History', *Westminster Review* 39, 1843, 285–328, reprinted in George Grote, *Minor Works*, ed. Alexander Bain, London 1873, 73–134.

³⁰ See for references Wilfried Nippel, *Klio dichtet nicht*, Frankfurt am Main 2013, 131f.

³¹ Letter to Franz Lieber, March 1827 in Barthold Georg Niebuhr, *Briefe, Neue Folge 1816–1830*, ed. Eduard Vischer, Bd. 3, Bern 1983, 113. See also Niebuhr's encouragement of Grote in a letter of 26 June 1827, *ibid.*, 146–148, also in Harriet Grote, *The Personal Life of George Grote. Compiled from Family Documents, Private Memoranda, and Original Letters to and from Various Friends*, London 1873, 52f. Niebuhr's appreciation of Grote's talent for Greek history was based on his reading of Grote's *Westminster Review* article on Mitford.

to his work on coins, weights and measures in antiquity.³² Grote wanted to write a book that represented the best of specialist scholarship, while at the same time going beyond the German examples by presenting a work that appealed to a broad public. A reviewer described this as follows: 'This union of the practical knowledge of the English gentleman and the British statesman with the erudition of a German professor gives a peculiar charm and value to his [Grote's] history.'³³

Grote's history gained international recognition as both a scholarly and a literary achievement. In early 1848 Tocqueville wanted to make Grote an honorary member of the *Académie des sciences morales et politiques*, citing Grote's treatment of early Greece.³⁴ This had focussed on the sources and their reception, and not on their political instrumentalisation.

According to his widow and biographer Harriet, Grote had started work on his history in 1823,³⁵ but his professional obligations as a banker and his political activities prevented him from completing it quickly. As Member of Parliament for the City of London (1832–1841) and spokesman for the 'Philosophical Radicals' he argued in vain for the continuation of reform by the introduction of secret ballots, the revision of constituency boundaries to reflect urban changes, the extension of the franchise to lower social strata and the setting of short parliamentary terms (instead of the maximum of seven-year terms, which dated from 1716).³⁶ This attracted serious criticism from the conservative side.³⁷ In 1843, shortly after the end of his parliamentary career and twenty years after he had started work on his Greek history, Grote retired from banking so that he could at last devote all his effort to historiography.³⁸

In the meantime a history of Greece had begun to be published written by the Anglican theologian Connop Thirlwall, bishop of St. Davids, Wales, from 1840 and a former school friend of Grote.³⁹ This was a purely historical

³² Grote's letter to Böckh, 12 March 1867, in Harriet Grote, *Personal Life*, 285f.; 'Investigations on Ancient Weights, Coins and Measures' [1844], in Grote, *Minor Works*, 135–174 [review of Böckh, *Metrolologische Untersuchungen über Gewichte, Münzfüsse und Masse des Alterthums in ihrem Zusammenhange*, Berlin 1838].

³³ 'Grote's History of Greece', *Quarterly Review* 99, 1856, 60–105, at 61.

³⁴ Harriet Grote, *Personal Life*, 183f.

³⁵ *Ibid.*, 49. Grote may have started earlier. There is a short piece from 1821 on the Athenian constitution based on Demosthenes, published in *George Grote Reconsidered. A 200th Birthday Celebration*, William M. Calder III and Stephen Trzaskoma, eds., Hildesheim 1996, 82–94.

³⁶ Grote's parliamentary speeches on the secret ballot: in *History of Suffrage, 1760–1867*, Anna Clark and Sarah Richardson, eds., Vol. 4, London 2000, 7–74; a résumé in Grote, *Minor Works*, [19]–[37]; also Grote, 'Essentials of Parliamentary Reform' [1831], *ibid.*, 1–55. For various contemporary responses to Grote see the anonymous collection 'The Ballot', *Quarterly Review* 61, 1838, 507–551.

³⁷ See for references H. H. Asquith, 'The Ballot in England', *Political Science Quarterly* 3, 1888, 654–681, here at 659.

³⁸ Later, Grote added *Plato and the Other Companions of Socrates*, 3 Vols., 1865, and *Aristotle*, 1872 (published posthumously).

³⁹ Connop Thirlwall, *A History of Greece*, 8 Vols., London 1835–1847. A modern selection: *Bishop Thirlwall's History of Greece. A Selection*, edited and introduced by Peter Liddel,

narrative, with no intention of relating to the present; it differed from Grote's book in the approach to Athenian democracy. Thirlwall in part endorsed Athenian democracy; in other places criticised it, but without the political engagement that marked Grote's volumes. A reviewer stated that Thirlwall 'has a right apprehension of the "spirit of antiquity" and betrays no disposition to try the politicians of Greece by maxims drawn from Magna Charta'.⁴⁰ Grote had great respect for Thirlwall's work, especially for the way in which it provided a corrective to Mitford's distortions. Grote's admission in the preface to his first volume (1846), that he would perhaps not have begun his own work if Thirlwall's book had been published a few years earlier, should not, however, be taken at face value.

Grote thought that the modern critique of Athens was driven by the contemporary rejection of the democratic principle. He countered this with a 'triumphant vindication of the Athenian democracy'⁴¹ that refuted the usual criticisms of selection by lot, of day payments, of the courts, of ostracism, the role of demagogues and so on. Grote was one of the first to treat Cleisthenes, and not Solon, as the true founder of Athenian democracy.⁴² This democracy was based upon 'the grand and new idea of the sovereign People, composed of free and equal citizens, – or liberty and equality, to use words which so profoundly moved the French nation half a century ago.'⁴³ Sparta, a society whose

Exeter 2007. Thirlwall had translated Niebuhr's *Roman History* (together with Julius Charles Hare) in 1828–1832 and defended Niebuhr's treatment of the sources against English critics. In the 1820s he had been a member of the London circle of Utilitarians and impressed young John Stuart Mill with his eloquence (Mill, *Autobiography*, 106). Thirlwall had also supported the law of 1834 which opened the universities for Dissenters. In view of this record his career within the Anglican Church is remarkable; see Kyriacos Demetriou, 'Thirlwall, Connop (1797–1875)', in *Dictionary of Nineteenth-Century British Philosophers*, William J. Mander and Alan P. F. Sell, eds., Vol. 2, Bristol 2002, 1107–1112.

⁴⁰ 'Thirlwall's Greece', *Eclectic Review* 5, 1839, 98–105, at 104.

⁴¹ John Stuart Mill, Review of Grote, Vols. 3–5, published in *The Spectator* (1847); Mill, *Collected Works*, Vol. 24, 1088. Cf. Robin G. Collingwood, *The Idea of History*. Revised edition with lectures of 1926–1928, ed. Jan van der Dussen, Oxford 1994, 398: 'a modern democrat may, like Grote, write a history of Greece with the more or less deliberate purpose of vindicating ancient democracy and thus, indirectly, glorifying modern democracy.' [From the 'Lectures on the Philosophy of History', 1926].

⁴² George Grote, *History of Greece*, 12 Vols., New York 1858–1861, Vol. 3, 125–127 [Pt. 2, Ch. 11]; Vol. 4, 163ff. [Pt. 2, Ch. 31] – all citations relate to this edition. Cf. Mill, Review of Grote in Mill, *Collected Works*, Vol. 25, 1086. Grote could only cite Herodotus 5, 69ff. At the time, Aristotle's *Athenian Constitution*, with the technical details of the reforms (21–22, 1), was still undiscovered. Cleisthenes' significance for the development of democracy had already been identified in the eighteenth century by De Pauw, although this had gone unrecognised; see Claude Mossé, 'Un éloge inattendu de la démocratie athénienne au XVIIIe siècle: les recherches philosophiques sur la Grèce de Cornelius de Pauw', in *Historiographie de l'antiquité et transferts culturels. Les histoires anciennes dans l'Europe des XVIIIe et XIXe siècles*, Chryssanthi Avlami and Jaime Alvar, eds., Amsterdam 2010, 99–104.

⁴³ Grote, *History of Greece*, Vol. 4, 177 [Pt. 2, Ch. 31].

citizens were 'always under the fetters and observances of a rule, partly military, partly monastic',⁴⁴ was naturally no model.

Grote's defence of the Athenian political order was accompanied by constant comparison with modernity, a comparison that was supposed to place the rationality of the Athenians in a favourable light. They were, furthermore, said to be capable of demonstrating an enthusiasm for a political idea, not displaying anything of the apathy that Edmund Burke presumed that popular masses would have.⁴⁵ Correspondingly, Grote ascribed to the Athenians a 'constitutional morality' that combined free speech with an unconditional respect for the constitution of a kind not achieved even in the course of the French Revolution.⁴⁶

This attestation of 'constitutional morality' could also apply to the practice of ostracism, since this involved preventive action in dealing with a thirst for power on the part of individuals. While an exceptional measure, there were strict rules of procedure; and the more secure democracy became in time, the less use was made of the institution.⁴⁷ A reviewer, most probably George Cornewall Lewis, supported this line of argument with an example from English history. If during the great constitutional crisis involving Charles I there had been an institution such as this, he wrote, there would have been no need to condemn and execute Strafford and Archbishop Laud (by bill of attainder), and perhaps in 1642 civil war might have been avoided.⁴⁸

Grote countered the image of Cleon painted by Aristophanes and Thucydides, who had depicted the leading politician of the post-Periclean period as an irresponsible and corrupt demagogue. Aristophanes had presented Cleon in *The Knights* (staged 424 BC) as showing the 'maximum of that which wit combined with malice can achieve, in covering an enemy with ridicule, contempt, and odium'.⁴⁹ This should not be taken at face value since modern statesmen such as Walpole, Fox or Mirabeau would not ultimately be judged in accordance with the calumnies written in the pamphlets of their enemies.⁵⁰ If Thucydides considered Cleon to be a 'man of violent temper and fierce political antipathies, and sometimes dishonest in his calumnies against adversaries', these were, according to Grote, only 'the qualities which, in all countries of free debate, go to form what is called a great opposition speaker'.⁵¹ Comparison with the elder

⁴⁴ *Ibid.*, Vol. 2, 381 [Pt. 2, Ch. 6].

⁴⁵ *Ibid.*, Vol. 4, 178 [Pt. 2, Ch. 31].

⁴⁶ *Ibid.*, Vol. 4, 154f. [Pt. 2, Ch. 31].

⁴⁷ *Ibid.*, Vol. 4, 155ff. [Pt. 2, Ch. 31]. See on this Thomas Erskine May, *Democracy in Europe*, London 1877, Vol. 1, 75f.: 'Grote's masterly vindication of this law [ostracism] redeems it from much of the odium attached to it'.

⁴⁸ *Edinburgh Review* 91, 1850, 139. G. C. Lewis was a Member of Parliament from 1847 and between 1855 and 1863 successively chancellor of the exchequer, home secretary and minister of war.

⁴⁹ Grote, *History of Greece*, Vol. 6, 481 [Pt. 2, Ch. 54].

⁵⁰ *Ibid.*, Vol. 6, 482 [Pt. 2, Ch. 54].

⁵¹ *Ibid.*, Vol. 6, 484 [Pt. 2, Ch. 54].

Cato in Rome showed ‘such a temper ... not inconsistent with a high sense of public duty’. This is also reflected in the story that Cleon, when he first became politically active, made clear to his friends that service to the common good excluded private favours.⁵² If Thucydides described Cleon’s daring plan of 425 BC to relieve the Athenian soldiers besieged on Sphacteria as sheer madness, his own report of Cleon’s subsequent success contradicts his own judgement.⁵³

Among other things, Grote contrasted the Athenian courts with the jury system in England and the United States. He thought the absence of any instructions to the jury in Athens, and the immunity of jurors, to be a positive advantage, compared with the way that instruction could be given by a judge to the lay members of an English jury, especially prior to 1688, when jurors could, with political trials, be punished for their findings.⁵⁴

In 1837 Edward Bulwer-Lytton, known as the author of the novel *The Last Days of Pompeii*, had published a work of Athenian history that to a great extent anticipated Grote’s treatment of Athenian culture. While criticising the principle of a mass jury without judicial direction, he did reject the conventional wisdom that this was of benefit only to the lower classes. Instead, he argued, it was more likely that in such circumstances it would be the wealthy and the educated who would be advantaged.⁵⁵

Grote considered that in political trials Athens had the advantage of modern systems:

It is probable that a delinquent, indicted for any state offence before the dikastery, at Athens, ... would have better chance of a fair trial than he would now have anywhere, except in England and the United States of America; and better than he would have had in England down to the seventeenth century.⁵⁶

⁵² *Ibid.*, Vol. 6, 484f. [Pt. 2, Ch. 54], referring to Plutarch, *Moralia* 806f.

⁵³ Grote, *History of Greece*, Vol. 6, 347ff. [Pt. 2, Ch. 52], on Thucydides 4, 21f.; 27–29, and polemic against Mitford, who blindly followed this source.

⁵⁴ Grote, *History of Greece*, Vol. 5, 387ff. [Pt. 2, Ch. 46]. In ‘Bushel’s Case’ of 1670 a jury member was imprisoned by a judge for not agreeing with the instruction to condemn two Quakers accused of unlawful assembly (one of the Quakers was William Penn). The juror successfully appealed in Crown Court and in this way made an important step in ensuring the immunity of jurors. Extracts from this case can be found in *The Stuart Constitution 1603–1688. Documents and Commentary*, ed. John P. Kenyon, Cambridge 1966, 428–430.

⁵⁵ Edward Lytton Bulwer [Bulwer-Lytton], *Athens. Its Rise and Fall. With Views of the Literature, Philosophy, and Social Life of the Athenian People*, Vol. 2, Leipzig 1837, 280–282 and 338f. On this work see Oswyn Murray, ‘More than just a Dandy. A Forgotten Work Establishes Bulwer Lytton as a Pathbreaking Historian of Greece’, *Times Literary Supplement*, no. 5252, 28 November 2003, 14f.; *idem*, ‘Modern Perceptions of Ancient Realities from Montesquieu to Mill’, *Démocratie athénienne – démocratie moderne. Tradition et influences* (Entretiens sur l’Antiquité classique 56), Vandoeuvres 2010, 137–160. Murray believes that it was deliberately ignored by Grote and his widow Harriet for the benefit of Grote’s originality.

⁵⁶ Grote, *History of Greece*, Vol. 5, 393 [Pt. 2, Ch. 46]. At the same time he moderated the idea of a caesura in English history, criticising the prejudice of English juries in dealing with the ‘church and king’ riots of the 1790s, especially in regard to the attack in July 1791 on Joseph Priestley (and other Dissenters) in Birmingham. The great majority of indicted rioters was acquitted.

He considered the generous amnesty of 403 BC as proof that the condemnation of the Athenians by Mitford and others was just the result of prejudice.⁵⁷ In addition, he sought to justify the trials in the Herms and mysteries affair, the condemnation of the generals after the Battle of Arginusae and the trial of Socrates. Mitford had considered the Arginusae trial to be one of the greatest scandals in world history.⁵⁸ Grote's position led to the charge that he appeared to be 'more an advocate of the Athenian demos ... than a cool and impartial historian'.⁵⁹ His account gave the impression that the Arginusae trial 'was a great day for the Athenian republic'.⁶⁰

Grote argued that to condemn the manner in which sacrilegious actions were in 415 BC subjected to criminal proceedings simply ignored the treatment of blasphemy in Christian countries well into the eighteenth century; the Athenians were 'mild and tolerant' by comparison.⁶¹ He did not attempt to deny that there were breaches of procedure in the Arginusae trial,⁶² but maintained that the admirals had been guilty of serious misconduct.⁶³ As regards the trial of Socrates, he quite rightly pointed out that the outcome was very much a result of the way in which the defence had been conducted.⁶⁴ On the contrary, one might question his view that the existence of freedom of thought and speech in Athens was proved by the delay in staging the trial of Socrates; in no other Greek city Socrates would have been allowed to teach freely for decades.⁶⁵ Given the way that any prosecution in Athens depended upon the initiative of an individual citizen, little weight can be placed on the timing of a prosecution.

It is in connection with the discussion of Thucydides' account of Pericles' Funeral Oration that Grote deals with the problem of ancient and modern liberty. It reads like a rejection of Benjamin Constant's distinction, although Constant is not explicitly mentioned. Pericles' emphasis on the freedom to live one's life

deserves peculiar attention, because it serves to correct an assertion, often far too indiscriminately made, respecting antiquity as contrasted with modern societies – an assertion that the ancient societies sacrificed the individual to the state, and that only in modern times has individual agency been left to the proper extent.

⁵⁷ *Ibid.*, Vol. 8, 304 [Pt. 2, Ch. 66].

⁵⁸ Mitford, *History of Greece*, Vol. 4 (1795), [Ch. 20], 359f.

⁵⁹ Wilhelm Vischer, 'Über die neueren Bearbeitungen der griechischen Geschichte' [1861], in his *Kleine Schriften*, ed. Heinrich Gelzer, Bd. 1, Leipzig 1877, 511–533, here at 516.

⁶⁰ Adolf Philippi, 'Die Arginusenschlacht und das Psephisma des Kannonos', *Rheinisches Museum* NF 35, 1880, 607–609, here at 607.

⁶¹ Grote, *History of Greece*, Vol. 7, 212f. [Pt. 2, Ch. 58].

⁶² *Ibid.*, Vol. 8, 195f. [Pt. 2, Ch. 64].

⁶³ *Ibid.*, Vol. 8, 175ff. [Pt. 2, Ch. 64].

⁶⁴ *Ibid.*, Vol. 8, 482ff. [Pt. 2, Ch. 68].

⁶⁵ *Ibid.*, Vol. 8, 467 [Pt. 2, Ch. 68].

This accusation affected Sparta, together with the ideal states envisaged by Plato and Aristotle, though not popular rule in Athens, for this allowed the individual to develop his own capacities to a degree not encountered in modernity. It could not be denied, Grote went on, that

none of the governments of modern times, democratical, aristocratical, or monarchical, presents anything like the picture of generous tolerance towards social dissent, and spontaneity of individual taste, which we read in the speech of the Athenian statesman [Pericles].⁶⁶

Whether consciously or not, Grote's approach followed that of Hegel: that one should not rely on the statements of critics of democracy like Xenophon or Plato, but should instead attend to the witness of democratic statesmen.⁶⁷ In the words of one reviewer, Grote argued that the Athenian demos committed fewer crimes and blunders, and did more good than any other ancient government; and its conception of a state based upon the rule of law was unique.⁶⁸

Athenian democracy was of world-historical importance. At the beginning of his history Grote had stated that he wanted to end with Alexander the Great, since the subsequent era was 'no longer interesting to the reader, or operative on the destinies of the future world',⁶⁹ a judgement that makes sense only in the context of the reception of the idea of political liberty. As far as Grote was concerned, Alexander was merely a violent conqueror lacking all statesmanlike qualities. He represented in Asia no civilising mission, but even extended oriental and despotic rule to the Greeks: 'Instead of hellenizing Athens, he [Alexander] was tending to asiatic Macedonia and Hellas.'⁷⁰ Alexander was consequently guilty of the destruction not only of the 'distinction of Grecian political freedom and self-action, but also the decay of productive genius'.⁷¹ Grote thus opposed Droysen's glorification of Alexander, together with his conception of Hellenism as a world-historical epoch in which Greek, oriental and Jewish culture blended together and formed a basis for the development of Christianity.⁷²

Grote's defence, or rehabilitation, of Athenian democracy, together with his relatively benign view of Athenian hegemony,⁷³ was of relevance to the

⁶⁶ Ibid., Vol. 6, 148 and 150 [Pt. 2, Ch. 48].

⁶⁷ Hegel, *Vorlesungen über die Philosophie der Geschichte*, 2. Teil, 2. Abschnitt, 3. Kapitel; *Werke*, Bd. 12, 318f.

⁶⁸ Freeman, 'The Athenian Democracy' (review of Grote) in his *Historical Essays, 2nd series*, London 1873, 107–148, here at 131.

⁶⁹ Grote, *History of Greece*, Vol. 1, X [Preface].

⁷⁰ Ibid., Vol. 12, 267 [Pt. II, Ch. 94].

⁷¹ Ibid., Vol. 12, 489 [Pt. II, Ch. 98].

⁷² Ibid., Vol. 12, 270 [Pt. II, Ch. 94]: Contrary to Droysen, 'Hellenism' should refer to classical Greek culture, with political liberty as its hallmark. On Droysen's understanding see Wilfried Nippel, *Johann Gustav Droysen*, Munich 2008, 22–34.

⁷³ Ibid., Vol. 6, 1ff. [Pt. 2, Ch. 47]. Grote made no effort to hide the fact that the Athenians treated their federal allies as subjects, but emphasised that they had fulfilled their obligations regarding

present only as a public exemplification of the way in which liberty could be based upon popular participation and the rule of law. This did not, however, mean that Athens provided a model for institutional solutions. Grote was no supporter of popular direct democracy,⁷⁴ but sought instead a careful reform of Britain's parliamentary monarchy. Given the centrality of the issue of the franchise, the open voting in which Athens routinely engaged, and the allocation of political functions by lot, provided no workable model.⁷⁵

ANTIQUITY AND THE PRESENT IN THE WRITING OF JOHN STUART MILL

It was John Stuart Mill, the son of Grote's intellectual mentor James Mill, who treated Grote's *History* most extensively from the standpoint of political theory, devoting a number of review essays to its thorough evaluation. Under the direction of his father, John Stuart had begun to learn Greek at the age of three, so that as a child he could already read Herodotus, Xenophon and other texts in the original.⁷⁶ His father had drawn his attention to Mitford's tendentious history with its 'perversions of facts for the whitewashing of despots and blackening of popular institutions ... with such effect that in reading Mitford my sympathies were always on the contrary side to those of the author'.⁷⁷ Besides this, when he was eleven he wrote a study of the early Roman constitution

military protection and the securing of the open seas, so that these dependent states did profit from the relationship.

⁷⁴ In a series of articles on the Swiss confederacy, published as *Seven Letters Concerning the Politics of Switzerland* (London 1847), Grote did draw parallels with political conditions of ancient Greece, but linked this to the problem of small states, not to direct democracy. He showed a thorough comprehension of the complicated political constellation that led to the war between protestant and catholic cantons ('Sonderbundskrieg'); see Heinrich Straumann, 'George Grote und der Sonderbundskrieg', *Zeitschrift für schweizerische Geschichte* 27, 1947, 359–364.

⁷⁵ Though Grote had not referred to Athens to support his claim for the introduction of the ballot, critics nevertheless pointed out that in Athens it had only been used in jury courts; see Stephen Charles Denison, *Is the Ballot a Mistake?*, London 1838, who added that secret voting in the late Roman Republic as well as in the United States had not prevented bribery, thus concluding that Grote could offer no proof from history of the advantage of this procedure. There had been a degree of confusion about the Athenian voting system, since some voices had claimed that the Athenians did not appoint officials by lot but by secret voting; see the rebuttal of this opinion by G. C. L. [George Cornewall Lewis], 'The Journal of Education, and Vote by Ballot in the Athenian State', *Philological Museum* 1, 1832, 420–426. Following Lewis' demonstration that the ballot was used only in jury courts, Robert Scott, *The Athenian Ballot and Secret Suffrage*, Oxford 1838, 30, argued that 'vote by pebble' did not necessarily mean 'secrecy of suffrage'. Though he restricted himself to the Athenian case he surely also wanted to make a point with respect to the English debate.

⁷⁶ Mill, *Autobiography*, 4f.

⁷⁷ *Ibid.*, 10.

based on his reading of Livy and Dionysius of Halicarnassus, in which he ‘upheld, to the best of my ability, the Roman Democratic party’.⁷⁸

It was plain to John Stuart Mill that the Greeks were the ‘originators of political freedom’ and as such the model for modern Europe. The Athenians in particular had combined political praxis with cultural achievement, in contrast to the Spartans, who were the ‘hereditary Tories and Conservatives of Greece’.⁷⁹ If the Athenians had not repelled the Persians, the course of world history would have involved a struggle between uncultivated Romans on the one hand, and a Persia ruled by priests and despots on the other, a struggle in which the cultural legacy of Greece would have been lost.⁸⁰ And so it was true that

[t]he battle of Marathon, even as an event in English history, is more important than the battle of Hastings. If the issue of that day had been different, the Britons and Saxons might still have been wandering in the woods.⁸¹

Here Mill plays a variation on a theme that was generally accepted in Europe. Hegel had written of the Persian Wars that they were

world-historical victories: they were the salvation of culture and spiritual power, draining all force from the Asiatic principle. ... The interest of world history was here in the balance.⁸²

The theme was sustained. Max Müller wrote that defeat of the Greeks would have led to the imposition of the Persian Zoroastrian religion on the entire civilised world.⁸³ The issue later became the subject of a methodological critique of Eduard Meyer by Max Weber;⁸⁴ and it recurred throughout the twentieth

⁷⁸ Ibid., 10f. Mill adds that he also used Nathaniel Hooke, *The Roman History from the Building of Rome to the Ruin of the Commonwealth*, first published in 1738. Here, ‘democratic party’ in Rome means the champions of agrarian laws.

⁷⁹ ‘Early Grecian History and Legend’ (A review of the first two volumes of Grote’s *History of Greece*) [*Edinburgh Review* October 1846], in Mill, *Dissertations*, Vol. 2, 283–334, here at 283f. and 331 (= *Collected Works*, Vol. 11, 273f. and 303).

⁸⁰ Review of Grote, Vols. 9–11 [*Edinburgh Review* 1853], in Mill, *Dissertations*, Vol. 2, 510–554, here at 516 (= *Collected Works*, Vol. 11, 313).

⁸¹ Mill, *Dissertations*, Vol. 2, 283 (= *Collected Works*, Vol. 11, 273). In 1926 the British prime minister, Stanley Baldwin, talked of the salvation of Western civilisation in a similar way. The Greek victories over the Persians had been more important for European history than the outbreak of the World War: Stanley Baldwin, ‘Among Archaeologists. Speech Delivered at the Annual Meeting of the British School at Athens, in London 2nd November 1926’, in his *Our Inheritance. Speeches and Addresses*, London 1928, 255–260, here at 259.

⁸² *Vorlesungen über die Philosophie der Geschichte*, 2. Teil, 2. Abschnitt, 3. Kapitel; Hegel, *Werke*, Bd. 12, 314f.

⁸³ Friedrich Max Müller, *Essays, Band 1: Beiträge zur vergleichenden Religionswissenschaft*, Leipzig 1869, 145.

⁸⁴ Eduard Meyer, *Geschichte des Alterthums*, Bd. 3: *Das Perserreich und die Griechen. Erste Hälfte: Bis zu den Friedensschlüssen von 448 und 446 v. Chr.*, Stuttgart 1901, 420f. and 444ff.; Meyer, ‘Review of Beloch, *Griechische Geschichte*, Bd. 1’, *Literarisches Centralblatt* 1894,

century – sometimes reflecting that from what the Occident had been spared, but more often evoking prospects that had then been opened up.⁸⁵ But there were voices raised in opposition,⁸⁶ and the issue arose once more in recent talk of a 'clash of cultures' in considering world history.

According to Mill, Athens achieved a historically unique degree of political education for the average citizen, thanks to freedom of speech, access to office for all and the court system; the last institutionalised a 'habitual love of fair play, and of hearing both sides of a case'.⁸⁷ Really all that the Athenians could be accused of was the naivety with which they contemplated the opponents of democracy, who consequently, towards the end of the fifth century BC, were able to stage two coups.⁸⁸

Mill also thought that engagement of the citizen in furthering the common good was required in a modern, necessarily representative, constitution. New forms of communication (newspapers and the railway) compensated for the inability for everyone to assemble in one place.⁸⁹ Inspired by Schleiermacher's commentaries, Mill was a great admirer of Plato and had translated parts of the Platonic dialogues for his personal use. He saw no conflict between Plato's idea of government by the knowledgeable and the principle of popular rule. He advocated a franchise based upon proportional representation that would represent all interests, taking up a proposal of Thomas Hare in which there would be a national choice of candidates, and not a party list.⁹⁰ Mill complemented Hare's plan: voting rights were to be dependent upon the level of education: to get the right to vote one had to be able to read and write, while those who were better-educated had multiple votes, up to six for university-trained people. There was, however, no property qualification, everyone being able to submit themselves to the assessment of their level of education, receiving a given number of votes in accordance with the results of

109–114, here at 113: the Battle of Salamis was the 'major decision about the whole course of the world's cultural development'; Max Weber, 'Kritische Studien auf dem Gebiet der kulturwissenschaftlichen Logik I. Zur Auseinandersetzung mit Eduard Meyer' (1906), in *Gesammelte Aufsätze zur Wissenschaftslehre*, 4th ed., Tübingen 1973, 273f.

⁸⁵ See, for example, Victor Ehrenberg, *Ost und West*, Brunn 1935, 27: 'The Greeks repelled the attack of Eastern peoples and saved the Occident from Orientalism and despotism'; and Christian Meier, *Athen. Ein Neubeginn der Weltgeschichte*, Berlin 1993, 33: the 'Battle of Salamis was the needle's eye through which world history had to pass'.

⁸⁶ Arnold J. Toynbee, *A Study of History, Vol. 12: Reconsiderations*, Oxford 1961, 635f.: a Persian victory would have given the Greeks unity and freedom, and saved them 450 years of misery.

⁸⁷ Review of Grote, Vols. 9–11 [*Edinburgh Review* 1853], in Mill, *Dissertations*, Vol. 2, 510–554, here at 535 (= *Collected Works*, Vol. 11, 325)

⁸⁸ Mill, *Dissertations*, Vol. 2, 540 (= *Collected Works*, Vol. 11, 327f.)

⁸⁹ 'M. de Tocqueville on Democracy in America' [1840], in Mill, *Dissertations*, Vol. 2, 1–83, here at 19 (= *Collected Works*, Vol. 20, 165).

⁹⁰ Paul B. Kern, 'Universal Suffrage without Democracy. Thomas Hare and John Stuart Mill', *Review of Politics* 34, 1972, 306–322; J. Joseph Miller, 'J. S. Mill on Plural Voting, Competence and Participation', *History of Political Thought* 24, 2003, 647–667. – Hare's so-called single transferable vote is nowadays again an issue of British politics.

this assessment.⁹¹ (The obvious objection against this proposal was, and still is, that higher education is no guarantee of sober political judgment and unselfish decisions.) Mill's proposal made no impact; the debate focused on the pros and cons of lowering the property qualification.

Mill also favoured open voting, since this promoted the voters' commitment to the common good. Like his father⁹² and George Grote, and the Philosophic Radicals in general, during the 1830s he had still advocated a secret ballot as a means of combating the patronage of constituents and their bribery.⁹³ The purchase of votes in England had reminded Hegel of relations during the later Roman republic and the early empire;⁹⁴ they reminded Marx of 'Saturnalia in the ancient Rome sense of the word', a day when master and servant exchanged roles since and money and alcohol changed hands on English polling days.⁹⁵

When after thirty years Mill shifted position he justified this by pointing to the progressive dissolution among voters of relations of social dependency, so that it was now possible to be open about one's voting intentions.⁹⁶ While a secret ballot suited the conditions prevailing in the later Roman republic and Athenian democracy, nullifying the influence of powerful groups and individuals, under modern conditions it would foster the abuse of the right to vote by favouring purely private interests.⁹⁷ Mill's reference to Athens is here misleading, since in the few instances of Athenian elections voting was done publicly, unlike the decisions made by juries in court cases.

Mill's advocacy of open voting corresponded with the idea that voting is not the exercise of a personal right, but the performance of a public duty, a position argued in the nineteenth century both by German liberals and legal theorists;⁹⁸

⁹¹ 'Thoughts on Parliamentary Reform' [1859], in Mill, *Collected Works*, Vol. 19, 311–339; 'Recent Writers on Reform' [1859], *ibid.*, 343–370 [on Hare 358ff.]; *Considerations on Representative Government* [1861], New York ed., 1991, Ch. 10.

⁹² 'The Ballot' [1830], in James Mill, *Political Writings*, ed. Terence Ball, Cambridge 1992, 225–267.

⁹³ This was also of importance to them under the conditions of a restricted franchise, if all of Bentham's demands (universal franchise and annual parliaments) did not appear realisable.

⁹⁴ 'Zwei Entwürfe zur Reformbill-Schrift' [1831]; Hegel, *Werke*, Bd. 11, 553.

⁹⁵ Marx, 'Corruption at Elections' [*New York Daily Tribune*, 2 September 1852]; MECW, Vol. 11, 344 [MEGA², Abt. I, Bd. 11, 335].

⁹⁶ Bruce L. Kinzer, 'J. S. Mill and the Secret Ballot', *Historical Reflections* 5, 1978, 19–39.

⁹⁷ Mill, *Considerations on Representative Government* [Ch. 10], 209f.; cf. 'Thoughts on Parliamentary Reform', *Collected Works*, Vol. 19, 331ff.

⁹⁸ See Albert E. F. Schäffle, 'Die geheime Stimmgebung bei Wahlen in die Repräsentativkörperschaften, geschichtlich, theoretisch und nach dem Stande der neueren Gesetzgebung betrachtet', *Zeitschrift für die gesammte Staatswissenschaft* 21, 1865, 379–434; Ferdinand Frensdorff, 'Die Aufnahme des allgemeinen Wahlrechts in das Öffentliche Recht Deutschlands', in *Festgabe der Göttinger Juristen-Fakultät für Rudolf von Jhering zum fünfzigjährigen Doctor-Jubiläum am VI. August MDCCCXCII*, Leipzig 1892, 135–210; Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*. Bd. 2: *Der Kampf um Einheit und Freiheit 1830 bis 1850*, Stuttgart 1960, 789f.; Bd. 3: *Bismarck und das Reich* (1963), 863f. While not otherwise sharing Mill's views (especially with respect to female suffrage) the historian (and representative in the

it was also a position which had been supported by Rousseau and the *sans-culottes* and would later be revived by Carl Schmitt.⁹⁹

The principle of the secret ballot became established only in the last third of the nineteenth century, being introduced in England in 1872.¹⁰⁰ A plural franchise that took into account property, education, family situation and age was introduced in Belgium in 1893 and in Saxony in 1909.¹⁰¹

Without being explicit, Mill distanced himself from Constant's definition of ancient liberty in Athenian form, where he considered that political participation went along with the protection of the individual. As with Grote, Pericles' funeral oration was cited as evidence that private life was in Athens subject to no social control so long as vital common interests were not involved. Grote had refuted the prevalent idea that in Athens personal liberty was sacrificed to an imaginary state interest.¹⁰² According to Mill, Pericles represented the idea of human self-development that is preferable to the Calvinist idea of the subjugation of the self to the supposed will of God, so long as this did not lead to the kind of libertinism associated with Alcibiades.¹⁰³

Mill considered that Athenian democracy had the advantage over a modern representative system in that the right of free speech gave leading intellectuals the chance of influencing public opinion, whereas in modern times it was only occasionally possible that a Themistocles, a Pericles or a Demosthenes might be elected, if at all.¹⁰⁴ The historian Edward Freeman expressed agreement with Grote in taking the view that the average Athenian citizen was more politically intelligent than the average English parliamentarian.¹⁰⁵ Macaulay had written

Frankfurt National Assembly in 1848/1849) Georg Waitz adopted his argument for open voting: 'Die Wahlen zur Volksvertretung', in Georg Waitz, *Grundzüge der Politik nebst einzelnen Ausführungen*, Kiel 1862, 219–247, here at 243.

⁹⁹ Carl Schmitt, *Verfassungslehre* [1928], 5th ed., Berlin 1970, 244f.

¹⁰⁰ The model for Great Britain was the procedure introduced in the Australian colonies during the 1850s; John Keane, *The Life and Death of Democracy*, London 2009, 524ff. In France, secret voting had in principle been established with the Great Revolution, but it took until the early twentieth century to develop adequate procedures to secure this right; see p. 179, fn. 177.

¹⁰¹ For early twentieth-century debates see Georg Jellinek, *Das Pluralwahlrecht und seine Wirkungen*, Dresden 1905; Egon Zweig, 'Das Pluralwahlrecht', in his *Studien und Kritiken*, Vienna 1907, 158–171. Plural vote was again discussed as an alternative to the Prussian electoral system; see p. 314. England had a sort of plural vote up until 1949, but this had a different structure. University graduates could vote for university MPs as well as for their local constituency MPs. Anyone who lived or conducted business in two or three separate constituencies was able to vote in all of them. Recently the idea of plural voting has been revived by demands that parents should be entitled to vote on behalf of their children.

¹⁰² Mill, Review of Grote, Vols. 9–11, in *Dissertations*, Vol. 2, 526 (= *Collected Works*, Vol. 11, 319); *Considerations on Representative Government* [Ch. 3], 78f. ('our great historian of Greece' = Grote).

¹⁰³ *On Liberty* [1859], Ch. 3; in John Stuart Mill, *On Liberty and Other Writings*, ed. Stefan Collini, Cambridge 1989, 62f. (= *Collected Works*, Vol. 18, 266).

¹⁰⁴ Mill, *Considerations on Representative Government* [Ch. 7], 162 and 165f.

¹⁰⁵ Freeman, 'The Athenian Democracy' [Review of Grote], 147. See also idem, *History of Federal Government in Greece and Italy* [1863], 2nd ed., ed. J. B. Bury, London 1893, 29–31: 'English readers are apt to blame such a government as the Athenian Democracy for placing power

in 1824 that the Athenian citizen, thanks to his combining the roles of legislator, soldier and judge, had far greater insight than the broad masses of any other society known to history.¹⁰⁶

Mill rejected the idea of the payment of MPs. This would reduce Parliament to an assembly of demagogues who would, like Cleon and his rivals in Aristophanes' *The Knights*, use all possible means to curry favour with the voters.¹⁰⁷ Opponents of the 1832 Reform had been concerned that too many Cleons could now enter Parliament.¹⁰⁸ The contest between Gladstone and Disraeli over voting on the 1867 Reform Bill was compared in Parliament with the plot of *The Knights*.¹⁰⁹

Disraeli, the Conservative leader, sought to outdo his liberal rival by extending the franchise, pursuing a strategy similar to that of Bismarck (but who had moved straight to the introduction of universal male suffrage). At the same time, Disraeli stressed that his efforts had nothing to do with democracy, implying that what his opponents saw as a 'leap in the dark'¹¹⁰ would not change

in hands unfit to use it. The truer way of putting the case would be to say that the Athenian Democracy made a greater number of citizens fit to use power than could be made fit by any other system. No mistake can be greater than to suppose that the popular Assembly at Athens was a mob such as gathers at some English elections The Athenian Assembly ... was an assembly of citizens among whom the political average stood higher than it ever did in any other state. Our own House of Commons ... does not necessarily consist of the 658 wisest men among the British people. Many of its members will always be mere average citizens But the average member ... will derive unspeakable benefit from his political education in the House itself... . This good political education, which the English constitution gives to some hundreds of average Englishmen, the Athenian constitution gave to some thousands of average Athenians'.

¹⁰⁶ 'On the Athenian Orators' [1824], in *The Miscellaneous Works of Lord Macaulay*, Vol. 1, London 1860, 125–140, here at 131.

¹⁰⁷ Mill, *Considerations on Representative Government* [Ch. 10], 226f.

¹⁰⁸ George Cornewall Lewis to Karl Otfried Müller, 14 May 1831, in *Teaching the English Wissenschaft. The Letters of Sir George Cornewall Lewis to Karl Otfried Müller* [1828–1839], ed. William M. Calder III et al., Hildesheim 2002, 46.

¹⁰⁹ See Willibald Steinmetz, *Das Sagbare und das Machbare. Zum Wandel politischer Handlungsspielräume. England 1780–1867*, Stuttgart 1993, 340. Cleon as symbolic of potentially violent demagoguery could also be associated with Chartist leaders: anonymous review of Grote, Vols. 7–8, *Edinburgh Review* 94, 1851, 204–228, here at 216. (Niebuhr had drawn a parallel with William Cobbett, the editor of a newspaper for working men; *Vorträge über alte Geschichte*, Bd. 2, ed. Marcus Niebuhr, Berlin 1848, 91). Even in 1926 the British prime minister, Stanley Baldwin, had suggested that 'a political leader should know his *Knights* by heart, for there is no profounder truth than that the sausage-seller lies ever on the flank of Cleon'; *The Classics and the Plain Man. Presidential Address Delivered to the Classical Association ... 8th January, 1926*, London 1926, here quoted from Philip Hooker, 'The Presidents', in *The Classical Association. The First Century 1903–2003*, ed. Christopher Stray, Oxford 2003, at 184f. Baldwin's address made great impact on the British public; nearly 5,000 copies were sold: there were also French and German translations; the German one was published in *Die Antike* 2, 1926, 155–160.

¹¹⁰ This formulation was spread by Lord Derby, who did (as a Conservative) support, however, the Reform; cited by Asa Briggs, *The Age of Improvement 1783–1867* [1959], London 1979, 513f.

the established order; 'it will never be the fate of this country to live under a democracy.'¹¹¹ Robert Lowe, formerly minister in successive cabinets under Palmerston, was one of the most prominent spokesmen opposing parliamentary reform, which, he considered, would mean a fateful step towards democracy. He argued that Tocqueville's prognosis, that democracy was unavoidable, expressed a cowardice with which Parliament should not associate itself.¹¹² The 1867 Reform was still a long way from universal male suffrage; there was a further extension in 1884, but the right to vote for all males over the age of twenty-one was not introduced until 1918. However, one outcome of the 1867 Reform was that issues of national politics became aligned with electoral campaigns, and election results had a more direct impact upon the composition of the government.

For Mill, Parliament was a means of controlling a government and creating a public domain, but was unsuited to the work of drawing up legislation. This was something more suited to experts drawn from an upper house that should be composed of life peers; drafts could then be laid before a lower house which could only accept or reject them. He cited as a historical precedent the Athenian procedure of legislation by *nomothetai*;¹¹³ but lying behind this there was certainly the Harringtonian model in which legislative initiative and decision making were separated.

Mill considered the prospect of human self-development, 'the absolute and essential importance of human development in its richest diversity' as Wilhelm von Humboldt called it,¹¹⁴ to be a condition of modern social progress. But as

Socialist reformers saw this uncertainty in a positive light: 'But democracy is still the Great Unknown. Of its full scope and import we can yet catch only glimpses'; Sidney and Beatrice Webb, *Industrial Democracy*, Vol. 2, London 1897, 850.

¹¹¹ Cited in Michael Levin, *The Spectre of Democracy. The rise of modern democracy seen by its critics*, Basingstoke 1992, 38.

¹¹² Robert Lowe, 'Speech upon the Second Reading of the Borough Franchise Extension Bill, May 3, 1865', in his, *Speeches and Letters on Reform. With a preface*, London 1867, 39f. According to a critic, Lowe constructed 'a hideous ideal of Democracy by combining all the worst features of ancient city-governments with all the worst features of modern republics and empires in which universal suffrage prevails'; George C. Brodrick, 'The Utilitarian Argument against Reform, as Stated by Mr. Lowe', in *Essays on Reform*, London 1867, 1-25, here at 17f. In the same collection of articles James Bryce, 'The Historical Aspect of Democracy', 239-278, took issue with all so-called arguments from history that 'gathered together all the vices of democratic government in all ages - the instability of Athens, the corruption of Rome, the ferocity of the French revolution, the lobbyists, caucuses, and wire pullers of America' (at 242). He stressed the great difference between the ancient world and modern Britain to declare such an equation null and void. Lowe's polemics against enfranchising the working classes provoked so strong reactions that in fact the position of Disraeli and Derby was strengthened; James Winter, 'The Cave of Adullam and Parliamentary Reform', *English Historical Review* 81, 1966, 38-55.

¹¹³ Mill, *Considerations on Representative Government* [Ch. 3], 113f.

¹¹⁴ This formulation of Humboldt in his *Ideen zu einem Versuch die Grenzen der Wirksamkeit des Staates zu bestimmen* (written in 1792, published in 1851) was used by Mill as the epigraph to his *On Liberty*.

Tocqueville had foreseen, there loomed the danger that liberty would succumb to the tyranny of majority opinion. That is why freedom of opinion for even the smallest minority was essential. Freedom had to be secured not only with respect to the state, but also with respect to society, the latter in turn requiring a degree of state intervention.¹¹⁵ Mill referred in this context to Guizot, who had noted the way in which demarcation of individual and state spheres was different in Athens to that of modernity, consequent upon the separation of church and state that had begun in the Middle Ages.¹¹⁶ If religion did not by definition belong to the private sphere, then it was easier to understand how Athenian jurors could have condemned Socrates in all good consciousness.¹¹⁷

Mill was ambivalent about slavery: it made no difference to the fact that the Greeks had invented political liberty.¹¹⁸ Unlike modern slavery in America and the Caribbean, the institution of slavery had not prevented economic progress in Athens, since the absence of racial discrimination meant that physical labour was not treated as ignoble and inappropriate for free citizens.¹¹⁹ In this way Mill distanced himself from the view, which had been developed by the eighteenth-century Scottish political economists, that slavery was always and everywhere unproductive while supporting the abolitionist argument that a white underclass had emerged in the United States that considered 'nigger work' to be beneath it.¹²⁰

However, as an advocate, together with his wife Harriet Taylor, of female emancipation,¹²¹ Mill also recognised that Athenian democracy was incomplete, since it excluded women, slaves and metics. Nor could the Northern States of the United States be called democratic, given the absence of political rights for women.¹²² Moreover, given the subordination of married women to the guardianship of their husbands, the legal status of women in England was hardly better than that of slaves, and in some respects worse.¹²³ Following the

¹¹⁵ Mill, *Principles of Political Economy* [1848], Book V, Ch. 11; *Collected Works*, Vol. 3, 936ff.

¹¹⁶ François P. G. Guizot, *Histoire de la civilisation en Europe*, [1828]; *History of Civilization in Europe*, trans. William Hazlitt [1846], new ed. Larry Siedentop, London 1997; Mill, 'Guizot's Essays and Lectures on History' [1845] in Mill, *Collected Works*, Vol. 20, 259–294, at 271ff.

¹¹⁷ Mill, *On Liberty*, 27 (= *Collected Works*, Vol. 18, 235).

¹¹⁸ 'Early Grecian History' in Mill, *Dissertations*, Vol. 2, 284 (= *Collected Works*, Vol. 11, 273).

¹¹⁹ 'Review of Grote', in Mill, *Dissertations*, Vol. 2, 519f (= *Collected Works*, Vol. 11, 314f.).

¹²⁰ See Mill, *Principles of Political Economy* Book II, Ch. 5. Here Mill adopts an argument developed mainly by Olmsted and Cairnes (see p. 143, fn. 138).

¹²¹ Mill was far more consistent than other politicians in the Benthamite tradition. Bentham himself could not accept any argument for the exclusion of women from political rights (*Plan of Parliamentary Reform*, 35f.) but he did not demand female suffrage, since he thought that neither the time nor men were yet ripe enough; see Miriam Williford, 'Bentham on the Rights of Women', *Journal of the History of Ideas* 36, 1975, 167–176.

¹²² Review of Grote, Vols. 7–8 [1850] in Mill, *Collected Works*, Vol. 25, 1161; review of Grote, Vols. 9–11 in Mill, *Dissertations*, Vol. 2, 534 (= *Collected Works*, Vol. 11, 324).

¹²³ Mill, 'The Subjection of Women' [1869], in Mill, *Collected Works*, Vol. 21, 259–340. The argument that women in Athens enjoyed a higher status than women in Victorian England can also

1867 Reform, Mill sought as a Member of Parliament to introduce female suffrage, but failed.¹²⁴ The way in which Mill used civil law was turned against the proposal, arguing that women were in fact 'represented', through their fathers or husbands. This argument had been developed by, among others, John Stuart Mill's own father, James Mill.¹²⁵

Grote and Mill had joined in demonstrating that in Athens the political liberty of citizens had been perfectly compatible with the liberty of the individual. In so doing they each had in mind contemporary political circumstances: this principle was to be realised in the present, even if there were no way back to the forms assumed by Athenian democracy. This connection of support for parliamentary reform with a new perspective on Athenian democracy was rooted in the personal interests of Grote and Mill, but is not something that can simply be generalised to others, despite the importance of the classics to political rhetoric and the education of the upper classes. Gladstone had, for example, written numerous studies of Homer while engaged in political activity. Freeman's view that Greek history could not be understood without reference to English history, and *vice versa*,¹²⁶ was certainly not universally accepted. For example, in 1871 Robert Lowe, in a speech given to engineers, warned of the dangers of overestimating a classical education as compared with one involving the natural sciences and technology. He maintained that the 192 Greeks who died at Marathon¹²⁷ was a small number compared with those who died in a mining accident.¹²⁸ He was obviously unimpressed by Hegel's sense of 'world-historical victories'. On the other side, in early 1867 Ernest Jones, the veteran Chartist leader who had reappeared in the reform debates of 1866/1867, answered impromptu an attack on democracy by John Stuart Blackie, the Edinburgh Professor of Greek. Blackie had argued in front of an audience of Edinburgh working men that all experiments with democracy – from the ancient world

be found in later commentary by a classicist: Arnold W. Gomme, 'The Position of Women in Athens in the Fifth and Fourth centuries', *Classical Philology* 20, 1925, 1–25.

¹²⁴ Mill proposed that the word 'man' in the electoral law should be replaced by 'person'; the same property qualification then applying for either sex. By contrast, in Germany Robert von Mohl criticised the fact (in *Das deutsche Reichsstaatsrecht. Rechtliche und politische Erörterungen*, Tübingen 1873, 342f.) that in the Reich Constitution of 1871 the vote was given to 'every German'. In the absence of qualifying this with 'of a male gender' this could give rise, according to Mohl, to the 'monstrosity' of voting rights for women.

¹²⁵ 'On Government' [1820], in James Mill, *Political Writings*, 27. A similar argument involving 'virtual representation' had been used in the eighteenth century to counter American colonists' demands for political representation. See Terence Ball, 'Utilitarianism, Feminism, and the Franchise. James Mill and His Critics', *History of Political Thought* 1, 1980, 91–115; Gisela Bock, 'Frauenwahlrecht: Deutschland um 1900 in vergleichender Perspektive', in *Geschichte und Emanzipation. Festschrift Reinhard Rürup*, ed. Michael Grüttner et al., Frankfurt am Main 1999, 95–136, here at 103.

¹²⁶ Edward A. Freeman, *Comparative Politics*, London 1873, 309f.

¹²⁷ Herodotus 6, 117, 1.

¹²⁸ Robert Lowe, cited in Freeman, *Comparative Politics*, 498. On Lowe see fn. 112. Of course, Lowe himself had enjoyed a profound classical education.

to modern France and the United States – had failed. Apart from expressing his belief in human progress Jones tried a rebuttal of all of Blackie's historical points. Not surprisingly, he referred to Grote in defending Athenian democracy.¹²⁹

GERMAN REACTIONS TO GROTE

Grote's history was in England quickly recognised as a standard work; but in Germany the reception was more ambiguous, rather like that for Mills' 'nineteenth-century Gospel'.¹³⁰ Nevertheless, the impact was so marked that it was later possible to assert that 'all the German studies on Greek history of the last fifty years of the nineteenth century are either for or against Grote'.¹³¹ Opinions differed on his source criticism when dealing with early Greece. In 1854, even before Grote's book was complete, his account of Athenian constitutional history was criticised on several counts, although endorsing the work as a whole.¹³² But this was a matter of historical-critical philology.

Grote's account of Athenian democracy also had a mixed reception. In England it later became a cliché that German scholars struggled to properly understand Grote's position because they had not, like him, the experience as a member of a free parliament.¹³³ A German literature survey of 1857 noted:

The English historian [Grote] has been accused of allowing his own democratic partisanship an unwarranted influence upon the historical account; while Grote for his part has accused German philologists of being prejudiced against Greek democracy, and against the Athenian demos in particular.

The author suggested that Grote was more in the right than his critics, allowing that the 'prejudice against Greek democracy in many philologists could not be denied', deriving, however, not merely from their 'own way of political thinking', but rather more 'from their constant involvement with ancient writers who took any and every opportunity to express their scorn, derision or hatred

¹²⁹ Ernest Jones, *Democracy Vindicated. A Lecture Delivered to the Edinburgh Working Men's Institute, on the 4th January 1867, in Reply to Professor Blackie's Lecture on Democracy, Delivered on the Previous Evening*, Edinburgh 1867.

¹³⁰ Heinrich von Treitschke, 'Die Freiheit' [1861], in his *Ausgewählte Schriften*, Bd. 1, Leipzig 1907, 1–47, here at 4.

¹³¹ Arnaldo Momigliano, 'George Grote and the Study of Greek History', in his *Contributo alla storia degli studi classici*, Rom 1955, 213–231, here at 225.

¹³² Georg Friedrich Schoemann, *Die Verfassungsgeschichte Athen's nach G. Grote's History of Greece kritisch geprüft*, Leipzig 1854. Grote's thesis on the origin of Homer's *Iliad* was welcomed by Ludwig Friedländer, *Die homerische Kritik von Wolf bis Grote*, Berlin 1853; and Karl Lehrs noted the great respect among Berlin philologists for Grote's treatment of early Greece: 'Georg Grote', in his *Populäre Aufsätze aus dem Alterthum, vorzugsweise zur Ethik und Religion der Griechen*, 2nd ed., Leipzig 1875, 447–478, here at 478.

¹³³ Alexander Bain, 'Critical Examination of Character and Writings', in *The Minor Works of George Grote*, ed. Alexander Bain, London 1873, [69]; Edward A. Freeman, *The Methods of Historical Study*, London 1886, 289.

of the people and of popular rule'.¹³⁴ One year later a small treatise appeared that laid emphasis upon Grote's treatment of individual liberty and the pacifying impact of the court system: 'In Athens we have a court war rather than a civil war.'¹³⁵

In 1865 Wilhelm Oncken, later known as a modern historian, enthusiastically greeted Grote's 'epoch-making work', proceeding to use it as the basis for his own apologia for the Athenian court system as a 'nursery of public morality' and a 'school for legal sense'.¹³⁶ The philologist Hermann Müller-Strübing, a London resident with socialist leanings,¹³⁷ also published in 1873 a work that took its point of departure from Grote. He argued – somewhat chaotically, mixing abstruse points with acute insights – against the tendency of German classical scholars to accept at face value the attacks on Cleon made in Aristophanes' comedy (likewise found in Thucydides), and then deduce from them serious criticism of democracy after Pericles.¹³⁸ Other authors followed Grote on his new picture of Cleon,¹³⁹ so much so that a later writer mocked the development of an 'entire cult literature of a liberal Cleonphilism'.¹⁴⁰ A forerunner of all this was Droysen, who in the forewords to his Aristophanes' translations from 1835 to 1838 had presented a more strongly positive image of the period, and especially of the demagogue Cleon.¹⁴¹

¹³⁴ Emil Müller, 'Die wichtigsten litterarischen Erscheinungen auf dem Gebiete der griechischen Alterthümer seit 1851', *Neue Jahrbücher für Philologie und Pädagogik* 75, 1857, 74ff.

¹³⁵ Leopold Freese, 'Die Freiheit des Einzelnen in der Attischen Demokratie', Programm des Gymnasiums zu Stralsund 1858, 1–22, here at 13.

¹³⁶ Wilhelm Oncken, *Athen und Hellas. Forschungen zur nationalen und politischen Geschichte der alten Griechen*, Bd. 1, Leipzig 1865, 9 and 286.

¹³⁷ On his biography and his contacts with Marx, Bakunin and Alexander Herzen see Götz Langkau and Hans Pelger, *Studien zur 'Rheinischen Zeitung' und zu ihrer Forderung nach Handelsfreiheit und Grundrechten im Deutschen Bund. Mit einem Brief von Karl Marx an Hermann Müller-Strübing (1843)*, Trier 2003, 93–159.

¹³⁸ Hermann Müller-Strübing, *Aristophanes und die historische Kritik. Polemische Studien zur Geschichte von Athen im fünften Jahrhundert v. Chr.*, Leipzig 1873. He supposed that Thucydides' text had already been interfered with in antiquity, anti-democratic views being inserted: Müller-Strübing *Thukydideische Forschungen*, Wien 1881. On this theory see the critical comment by Ludwig Holzappel, 'Das Verfahren der Athener gegen Mytilene', *Rheinisches Museum* NF 37, 1882, 448–464.

¹³⁹ Among others Gustav Gilbert, *Beiträge zur innern Geschichte Athens im Zeitalter des Peloponnesischen Krieges*, Leipzig 1877, passim; C. Ahn, 'Kleon. Versuch einer Ehrenrettung', *Jahresbericht des k. k. Obergymnasiums zu Laibach*, Laibach 1877; Max Büdinger, 'Kleon bei Thukydides. Eine kritische Untersuchung', *Sitzungsberichte der philosophisch-historischen Classe der kaiserlichen Akademie der Wissenschaften Wien*, Bd. 96, 1880, 367–412; Adam Emminger, 'Der Athener Kleon', *Programm des k. Gymnasiums Eichstätt* 1881/1882. The abundance of writings on Cleon provoked by Grote is documented by Georg Busolt, *Griechische Geschichte*, Bd. 3, 2, Gotha 1904, 988, fn. 3 (the note stretches over four pages).

¹⁴⁰ Hugo Landwehr, 'Die Forschung über die griechische Geschichte aus den Jahren 1882–1886', *Philologus* 46, 1888, 110.

¹⁴¹ *Des Aristophanes Werke. Übersetzt von Johann Gustav Droysen*, Bd. 2, Berlin 1837; 'Einleitung zu den Ritzern'. An anonymous reviewer of Grote, Vols. 7 & 8, also drew attention to Droysen's vanguard role: *Edinburgh Review* 94, 1851, 204–228, here at 220f. Despite his

There was a distinct prejudice among certain German classical scholars against Grote's 'gospel of democracy', its 'illusions ... regarding the cultural and political value of a democracy' that had proved itself in recent times to be 'such a fateful illusion',¹⁴² together with the idea that his 'rehabilitation' of Athenian democracy was heavily marked by the political values of an 'unhistorical Liberalism'.¹⁴³ Writers of quite different political persuasion and scholarly bent like Robert Pöhlmann (who accused Grote of ignoring social tensions) and Ulrich von Wilamowitz-Moellendorff shared the view that Grote's 'partisan account of the Athenian demos'¹⁴⁴ glossed over a great deal. All the same, it was recognised that this amounted to little more than a correction to the ideological condemnation that had prevailed for so long, and that the time had now come for detailed studies of Athenian law and constitution, a position that Wilamowitz supported in the light of the rediscovery of Aristotle's text on the Athenian constitution.¹⁴⁵ Eduard Meyer concluded that Grote's work 'is to a great extent not a history, but an apologia for Athens', although it did present much of value.¹⁴⁶ Curt Wachsmuth thought Grote's 'deep and penetrating assessment of the political life of the Athenians and their great statesmen' to have great merit, but criticised his underlying 'individualist political economy' of the 'Manchester School'. Nonetheless, he finally concluded that Grote's work 'is such a great advance on everything previously written on the subject that it has been greeted on all sides with pleasure and admiration'.¹⁴⁷

For socialist writing Karl Kautsky treated Grote's text as an expression of the bourgeois understanding of democracy, lacking any feel for the 'robust communism of tribal life'.¹⁴⁸ Kautsky had in mind a selection from Grote put together by Johann Jacoby, a left liberal politician who later went over to the

excellent knowledge of German specialist literature and also of Droysen's work this may not have come to Grote's attention, given the place of publication. Droysen's praised Cleon as protagonists of Athenian imperial policy; Nippel, *Klio dichtet nicht*, 184f. Later, Droysen thought that Grote's political agenda meant an inadmissible actualisation of history of the same kind that Mommsen had practiced in his *Roman History*, and that Grote's political stance blinded him to the concerns of the Athenian peasantry; letter to Wilhelm A. Arendt, 20 March 1857, in Johann Gustav Droysen, *Briefwechsel*, ed. Rudolf Hübner, Bd. 2, Munich 1929, 442; idem, *Historik*, ed. Peter Leyh, Stuttgart 1977, 185. He would also not accept Grote's work as a model for German historiography, a narrative history of early Greece being ridiculous in his view; *ibid.*, 228f.

¹⁴² Robert Pöhlmann, *Griechische Geschichte im neunzehnten Jahrhundert*, Munich 1902, 12; and 'Zur Beurteilung Georg Grotes und seiner Griechischen Geschichte' [1890], in his *Aus Altertum und Gegenwart. Gesammelte Abhandlungen*, Munich 1895, 315–343, here at 320.

¹⁴³ Ulrich von Wilamowitz-Moellendorff, *Aristoteles und Athen*, Bd. 1, Berlin 1893, 378.

¹⁴⁴ Karl Hildenbrand, *Geschichte und System der Rechts- und Staatsphilosophie*, Bd. 1: *Das klassische Alterthum*, Leipzig 1860, 14, fn. 1.

¹⁴⁵ Wilamowitz-Moellendorff, *Aristoteles und Athen*, Bd. 1, 378–381.

¹⁴⁶ Eduard Meyer, *Geschichte des Alterthums*, Bd. 3: *Das Perserreich und die Griechen. Erste Hälfte: Bis zu den Friedensschlüssen von 448 und 446 v. Chr.*, Stuttgart 1901, 293.

¹⁴⁷ Curt Wachsmuth, *Einleitung in das Studium der Alten Geschichte*, Leipzig 1895, 39 and 41.

¹⁴⁸ Karl Kautsky, 'Grote und Jacoby', *Die Neue Zeit* 2, 1884, 448–451.

Social Democrats.¹⁴⁹ The idea that there had been a 'natural democracy' before the invention of the state was drawn from Engels, who had in turn taken it from Morgan.¹⁵⁰

In 1884 Karl Julius Beloch had distanced himself from the 'one-sidedness of the Grote School' and its fashionable 'cult of radical democracy';¹⁵¹ in 1913 he characterised Grote's interpretation in retrospect:

For Grote, the Greeks are no more than disguised nineteenth-century Englishmen; the democrats are the Liberals, the oligarchs the Conservatives, and since the author belongs to the Liberals, Greek Democrats are always in the right, and the oligarchs always in the wrong: Grote's history thus becomes a paean to Athenian democracy. As a reaction against the hitherto prevailing underestimation of this democracy that was right and useful; but it is just as unhistorical as the opposing view.¹⁵²

In an earlier essay Beloch had turned explicitly against the argument that the omnipotence of the ancient state enjoyed unfettered grasp at the property of its citizens:

One of the many prejudices still commonly shared regarding classical antiquity is that the state enjoyed a greater degree of power over its citizens, and made greater demands of them, than does the modern state. . . . The truth is the exact opposite: in normal times, the ancient state made far less demands of its citizens than does our state. It was only in times of extraordinary need that the ancient polis levied direct taxes on its citizens.¹⁵³

This is probably an allusion to the income tax, a much-contested invention of the nineteenth century.

By the early twentieth century a relatively sober and positive attitude to Athenian democracy and the political culture of antiquity had become established in classical scholarship, despite the regular expression of dissent by some writers. The difference between ancient and contemporary relations now seemed so great that praise or criticism of Athenian democracy was no longer necessarily linked to current political positions. However, this emphasis upon the differences in state and politics was counted with a growing tendency to use modern categories when studying the economic history of antiquity.

Even a politically conservative classical scholar like Wilamowitz thus had no problem in having a much more positive attitude to Athenian democracy than had hitherto been usual with the treatment of Cleon, using 'repulsive images and the worst kind of slogans'. These were the words Wilamowitz used

¹⁴⁹ Johann Jacoby, *Geist der griechischen Geschichte. Auszug aus Grote's Griechischer Geschichte*, ed. Franz Rühl, Berlin 1884.

¹⁵⁰ Friedrich Engels, *The Origin of the Family, Private Property and the State* [1884], MECW, Vol. 26, 205ff. [MEW, Bd. 21, 98ff. = MEGA², Abt. I, Bd. 29, 53ff.], with comments on Grote. Engels' book was an expanded discussion of Lewis H. Morgan, *Ancient Society*, 1877.

¹⁵¹ Beloch, *Die attische Politik seit Perikles*, Leipzig 1884, IV.

¹⁵² Karl Julius Beloch, *Griechische Geschichte*, Bd. 1. 2, 2nd ed., Straßburg 1913, 13.

¹⁵³ Karl Julius Beloch, 'Zur griechischen Wirtschaftsgeschichte (I)', *Zeitschrift für Socialwissenschaft* 5, 1902, 95–103, here at 95.

in a speech during 1877, 'On the Magnificence of the Attic Empire' in which he admired the Delian League as 'the sole attempt in antiquity to achieve the uniting of a people through a federation'. At the same time he praised the fact that Athenians were conscious of living in a state based upon the rule of law.¹⁵⁴ The attribution here of national unification to the Athenians can be explained by the (very dubious) assumption of an equivalence between the Delian League and the German Empire of 1871. Beforehand, as in Droysen, but also afterwards, with the experience that 'both Italy and Germany were forcibly united from the north',¹⁵⁵ reference to Macedonia was more usual.

Wilamowitz considered Athens to be the 'first state based on liberty and civil duty'; the world should regard it 'with awe, as long as it recognises these foundations itself'.¹⁵⁶ One fellow scholar saw in Wilamowitz's forced parallel a 'fateful error', since here 'German history and politics is constantly discovered in the Greek past, while the German history of the previous century is meant to have taught us how to understand that of fifth-century Hellas.' He went on to ask whether the public was now thoroughly confused: was Athens or Macedonia supposed to be compared with Prussia, and was it Alcibiades or Antipatros, vice-regent after the death of Alexander the Great, who were to be compared with Bismarck?¹⁵⁷

Eduard Meyer (born in 1855) claimed for his generation that 'we have become less partisan in political questions, and so have gained a more correct and more comprehensive historical judgement'.¹⁵⁸ He thought that Athens had achieved a 'higher humanity',

more noble and moderate, a truly free perspective and treatment of human and state life of which the narrowness and pettiness of any other state would not have been capable.¹⁵⁹

¹⁵⁴ 'Von des attischen Reiches Herrlichkeit', reprinted in Ulrich von Wilamowitz-Moellendorff, *Reden und Vorträge*, 3rd ed., Berlin 1912, 30–66, here at 31f.

¹⁵⁵ Thomas Lenschau, 'Griechische Geschichte', in *Die Altertumswissenschaft im letzten Vierteljahrhundert*, ed. Wilhelm Kroll, Leipzig 1905 [= *Jahresbericht über die Fortschritte der klassischen Altertumswissenschaft*, Suppl.-Bd. 124], 154–192, here at 167.

¹⁵⁶ Ulrich von Wilamowitz-Moellendorff, 'Staat und Gesellschaft der Griechen', in Wilamowitz and Benedictus Niese, *Staat und Gesellschaft der Griechen und Römer*, Berlin 1910, 1–207, here at 3.

¹⁵⁷ Adolf Bauer, 'Jahresbericht über griechische Geschichte und Chronologie für 1881 bis 1888', in *Jahresbericht über die Fortschritte der classischen Alterthumswissenschaft* Jg. 17, Bd. 60, 1889, 1–190, here at 88f. The parallel between Prussia and Athens, in which Prussia was more successful in establishing national unity, was one that Ernst Curtius had already made: 'Die Entwicklung des preußischen Staats nach den Analogien der alten Geschichte' [1880], 'Die Reichsbildungen im classischen Alterthum' [1881], in Ernst Curtius, *Alterthum und Gegenwart. Gesammelte Reden und Vorträge*, Bd. 2, 3rd ed., Stuttgart 1903, 209–218; 235–246.

¹⁵⁸ Meyer, *Geschichte des Alterthums*, Bd. 3, 293.

¹⁵⁹ Meyer, *Geschichte des Alterthums*, Bd. 4: *Das Perserreich und die Griechen. Drittes Buch: Athen (vom Frieden von 446 bis zur Capitulation Athens im Jahre 404 v. Chr.)*, Stuttgart 1902, 9.

In his 1902 retrospective on nineteenth-century scholarship Robert Pöhlmann distanced himself from Jacob Burckhardt and his 'night-time portrait of the polis', emphasising 'the world-historical achievement of the Greek people: the foundation of the state based upon the rule of law and the introduction of the concept of political liberty into the states of historical Europe'.¹⁶⁰ Pöhlmann said other things too, more in line with the traditional critique of Athens, especially in regard to the trial of Socrates.¹⁶¹ He also drew upon antiquity as exemplary for modernity, in which one could see the dangers of democracy and mass rule based on redistribution, the excesses of party organisation, the nature of demagogic and professional politicians.¹⁶² Carl Grünberg, an economist with socialist sympathies, judged this to be a 'use of modern parallels that was certainly exaggerated in more than one regard'.¹⁶³ Karl Kautsky's response was sharper: 'Quite senselessly, Pöhlmann equates the class struggles of ancient proletarians ... with the struggles of modern socialism, in order to prove that the dictatorship of the proletariat brings absolutely nothing other than pillage ... and infamy, sharing and gluttony.'¹⁶⁴

The reading of Athenian democracy criticised by Kautsky could of course be adopted by anyone whose politics it suited. Othmar Spann, a Viennese economist who favoured a state and a society organised along guild lines, learned from Pöhlmann even as late as 1921 'how much antiquity had suffered from democracy, the associated socialist, even Bolshevik excesses, to such an extent that one might say that Greece was destroyed by democracy'.¹⁶⁵

Pöhlmann's comments have to be seen in the context of contemporary debate over the role of the Gymnasium in schooling, a debate prompted by Wilhelm II's comment at a Prussian School Conference in 1890 that one should educate 'young patriotic Germans, not young Greeks and Romans'.¹⁶⁶ Wilhelm II of course was pushing immunisation against social democracy, and a classical scholar like Pöhlmann could think of himself as contributing to this by treating Greek history as having 'the value of a first-rate political

¹⁶⁰ Pöhlmann, *Griechische Geschichte im neunzehnten Jahrhundert*, 21.

¹⁶¹ See p. 240.

¹⁶² Robert von Pöhlmann, 'Die Bedeutung der Antike für staatsbürgerliche Belehrung und Erziehung', *Das Humanistische Gymnasium* 25, 1914, 1–24.

¹⁶³ Carl Grünberg, 'Sozialismus und Kommunismus', in *Wörterbuch der Volkswirtschaft*, ed. Ludwig Elster, Bd. 2, 2nd ed., Jena 1907, 875–924, here at 880. Grünberg was professor of Political Economy in Vienna from 1900 and in 1924 became director of the *Institut für Sozialforschung* in Frankfurt am Main (the 'Frankfurt school' later headed by Max Horkheimer and Theodor Adorno).

¹⁶⁴ Karl Kautsky, *Der Ursprung des Christentums. Eine historische Untersuchung* [1908], 10th ed., Stuttgart 1920, 56, n.*.

¹⁶⁵ Othmar Spann, *Der wahre Staat. Vorlesungen über Abbruch und Neubau der Gesellschaft*, Leipzig 1921, 114.

¹⁶⁶ Text in Berthold Michael and Heinz-Hermann Schepp, eds., *Politik und Schule von der Französischen Revolution bis zur Gegenwart*, Bd. 1, Frankfurt am Main 1973, 415–419, here at 416.

and social-scientific propaedeutic' for the 'leading classes of the nation'.¹⁶⁷ He noted the importance of paternalism in dealing with the lower orders so that class struggle might be avoided,¹⁶⁸ a struggle in which 'belief in the justification of the existing orders of society and property' would necessarily be lost.¹⁶⁹ The economist Heinrich Dietzel expressed similar sentiments.¹⁷⁰ All of these views were a variant of the positions expressed in contemporary 'academic socialism' (*Kathedersozialismus*) about the way in which one should pull the rug from under social democracy.¹⁷¹

Nonetheless, by the early twentieth century this contrast of ancient and modern liberty was becoming outdated, even if it was still said that the Athenian court system was abused for the

frivolous revenge of the rabble upon the defenceless citizen of a differing opinion, a mass whipped up by demagogues, or whose property had given rise to the envy of the less well-off. Here the conflict between the judicial power of the state and the freedom of the citizen was decided entirely against liberty.¹⁷²

This, the author went on, was the result of a system in which the daily pay for jurors was considered to be regular income. 'What had been compensation and the bestowal of honour was polluted by the thirst for gain. Every workshy person set his sights on the post of a judge.'¹⁷³

At the beginning of the 1920s an American classical scholar used a comparison with Athens to criticise his own court system. He argued that the members of American juries were also poor and uneducated, and so interested in their day payments and meals only at public expense.¹⁷⁴

¹⁶⁷ Pöhlmann, *Griechische Geschichte im neunzehnten Jahrhundert*, 37.

¹⁶⁸ Robert von Pöhlmann, *Das klassische Altertum in seiner Bedeutung für die politische Erziehung des modernen Staatsbürgers* [1891]; 'Extreme bürgerlicher und sozialistischer Geschichtsschreibung' [1895], in his *Aus Altertum und Gegenwart*, Munich 1895, 1–33; 391–406. This is also the political message in Pöhlmann's best-known work: *Geschichte des antiken Kommunismus und Sozialismus*, 1893–1901, entitled from the second 1912 edition as *Geschichte der sozialen Frage und des Sozialismus in der antiken Welt*. See also his articles, 'Die Anfänge des Sozialismus in Europa', *Historische Zeitschrift* 79, 1897, 385–451; 80, 1898, 193–242; 385–435.

¹⁶⁹ Pöhlmann, *Griechische Geschichte im neunzehnten Jahrhundert*, 28.

¹⁷⁰ Heinrich Dietzel, 'Beiträge zur Geschichte des Sozialismus und des Kommunismus II. Die Ekklesiazusen des Aristophanes und die Platonische Politeia', *Zeitschrift für Litteratur und Geschichte der Staatswissenschaften* 1, 1893, 373–400, 400f.

¹⁷¹ Robert von Pöhlmann, *Isokrates und das Problem der Demokratie*, Munich 1913, is a pamphlet against the Social Democrats in the guise of a classical treatise. Pöhlmann here took up Robert Michels' arguments concerning the increasing power of party leadership; see p. 315.

¹⁷² Leopold Wenger in a review, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 36, 1915, 453.

¹⁷³ Leopold Wenger, 'Die Verfassung und Verwaltung des europäischen Altertums', in Alfred Vierkandt et al., *Allgemeine Verfassungs- und Verwaltungsgeschichte* (= *Die Kultur der Gegenwart*, ed. Paul Hinneberg, Teil II, Abt. II, 1), Leipzig 1911, 136–197, here at 160f.

¹⁷⁴ John O. Lofberg, 'Trial by Jury in Athens and America', *Classical Journal* 17, 1921/22, 3–15. He was the author of *Sycophancy in Athens*, Chicago 1917 [reprinted New York 1979].

DISCUSSION IN THE THEORY OF THE STATE

We can also state a retreat from the usual distorted picture of an ancient lack of freedom in the social and political sciences. This can be seen quite clearly in the way that Georg Jellinek's *Allgemeine Staatslehre* (1900) distances itself from the arguments advanced by Constant and Fustel de Coulanges, and their reception by an earlier generation of German academics such as Conrad Cucumus, Karl Vollgraff, Friedrich Julius Stahl, Johann Caspar Bluntschli, Karl Hildenbrand and Robert von Mohl.¹⁷⁵

Cucumus had argued that antiquity differed from modernity,

the separation of individual spheres from that of the community being unknown; the rights of the individual consist in his participation in public life, and its exercise is, so to say, only the blending of the individual into the whole and into all communities.¹⁷⁶

Vollgraff had remarked that

the concept of liberty was quite different for the Greeks than it is for us, it was only to be found in membership of a people or a state, and participation in rule and government. ... It was not a matter of the freedom of the individual from all ties, but rather of the free moral development of all. ... The individual had no so-called original rights, or human rights. ... At no time did Greek politicians find it necessary to investigate the basis of state power, and what its limits might be; for since this was founded in the people, it was as unlimited as the people's will. ... Protection of the particular rights of the individual was an objective neither of the state nor of the society.¹⁷⁷

For his part, Bluntschli had argued that

the Hellenic state, and antiquity in general, prevailed because its powers were ubiquitous. It is everything, the citizen is only something because he is a member of the state. His entire existence depends upon the state, is subject to the state. If the Athenians possessed and exercised freedom of thought, that was only because the Athenian state had a high regard for liberty, not because it recognised human rights. The same freest state of all states executed Socrates and believed it had the right to do so. The independence of the family, for parents to bring up their children, even the vows of marriage were not beyond state intervention; even less so when it came to the private property of the citizen. The state got involved in everything, it acknowledged no moral or legal limits to its power. ... The old democracies ... sought the liberty of all in equal political rule. The new democracies presume the liberty of the individual, and seek to surrender as little as possible to the whole, to be as little obedient as possible.¹⁷⁸

¹⁷⁵ Georg Jellinek, *Allgemeine Staatslehre* [1900], Kronberg 1976, 295ff.

¹⁷⁶ Conrad Cucumus, *Über den Staat und die Gesetze des Alterthums*, Würzburg 1824, 4f.

¹⁷⁷ Karl Vollgraff, *Antike Politik oder Politik der Griechen und Römer*, Gießen 1828, 69f.

¹⁷⁸ Johann Caspar Bluntschli, *Allgemeines Staatsrecht*, Bd. 1, 4th ed., Munich 1868, 55f. and 307f.

For Hildenbrand it was clear that the Greeks

did not recognise the absolute value of individual human beings when they collided with the interests of the state. All human individuality only had a claim to exist to the extent that it fitted in with the state and harmonised itself with it.¹⁷⁹

Mohl thought that the lack of a representative system in antiquity could be traced to the ideas of liberty among the citizenry:

Every citizen was so directly connected to the state, took such a full part in public life, his concept of liberty was so much part of his share in public affairs, that there was no place at all for an intermediary.¹⁸⁰ ... Among the ancients the individual served the state and found his aims met indirectly in its well-being; in modern times, the state is there for all individuals, and it finds its success in the well-being of citizens. There liberty consists in participation in government, here in being governed as little possible.¹⁸¹

Stahl linked this 'rule of the state over men, whose happiness, liberty and moral fulfilment is found in the state' to the legal philosophy of Plato and Aristotle.¹⁸²

Whereas all these positions were discussed and criticised by Jellinek, he makes no mention of wild tirades against Athenian democracy from the Hungarian political theorist Julius Schvarcz, for whom there was in his own days far more political and social equality than there had been in Athens, together with individual liberty 'in the most rigid principality, in the Duchy of Mecklenburg-Schwerin' (which right up to the end of the Second Empire had no written constitution and no parliament, but retained estate assemblies); the life of the state and of the people in Athens was 'truly animal in its depravity'.¹⁸³ In his preface Schvarcz simply dismisses all those who have (according to his own view) obscured this basic insight. This is directed principally against Grote and his disciples – according to Schvarcz, Grote's elitist liberalism and Machiavellianism had led him to ignore the (once again 400,000) slaves in Athens.¹⁸⁴ Schvarcz opposed what he considered the prevailing 'political correctness': 'today quite a great deal of moral courage is needed to state openly and plainly one's opinion of Athenian democracy; for it has already become

¹⁷⁹ Hildenbrand, *Geschichte und System*, 27.

¹⁸⁰ Robert von Mohl, *Staatsrecht, Völkerrecht und Politik*, Bd. 1, Tübingen 1860, quoted from Robert von Mohl, *Politische Schriften. Eine Auswahl*, ed. Klaus von Beyme, Opladen 1966, 101.

¹⁸¹ Robert von Mohl, *Encyklopädie der Staatswissenschaften*, Tübingen 1858, 320.

¹⁸² Friedrich Julius Stahl, *Die Philosophie des Rechts 1830–1837. Eine Auswahl nach der 5. Aufl.* (1870), ed. Henning von Arnim, Tübingen 1926, 6.

¹⁸³ Julius Schvarcz, *Die Demokratie von Athen* [1877–1882], 2nd ed., Leipzig 1901, LXVII and 588.

¹⁸⁴ Schvarcz, *Demokratie*, XLII f. For his polemic against the 'Grote school' see also Schvarcz, 'Prof. Holm und die Demokratie von Athen', *Ungarische Revue* 7, 1887, 122–139 (a reply to Adolf Holm, 'Review of Schvarcz, *Demokratie*', *Revue Historique* 28, 1885, 157–164). For a short account of Schvarcz' career and work see Zsigmond Ritoók, 'Ein vergessenes Lebenswerk: Julius Schvarcz', in *Miszellen zur Wissenschaftsgeschichte der Altertumskunde*, ed. Horst Gericke, Halle 1980, 79–89.

good form to try and outbid all others in praise of Athens.¹⁸⁵ Ancient historians dismissed Schvarcz's book.¹⁸⁶ Houston Stewart Chamberlain (son of a British Rear Admiral who had settled in Germany and became a propagandist of 'Pan-Germanism' and 'racial' anti-Semitism) by contrast thought it a 'monumental work by a theoretically-sophisticated statesman and philologist'.¹⁸⁷ This also serves as an example of how rejection of the democratic principle (even in respect of the present) could be based by the extreme rightist on the argument on slavery.

Jellinek also criticised Karl Friedrich Hermann's deduction of a 'Greek idea of the state' from the model of the Spartan constitution.¹⁸⁸ Against this traditional conception he posed the view that there had in fact been in Athens a great deal of individual liberty, but that there had been no 'consciousness of the legal character of a sphere free of the state' since this required the belief that there was a contrast between individual and state. This latter idea had first emerged under specific conditions in early modernity, presupposing a struggle for freedom of thought and of belief in a confessional era, or the securing of such freedoms under an absolute monarchy.¹⁸⁹ Since that time the position of the individual in the state has been characterised according to a negative, positive or an active status: first, the legal recognition of a sphere in which the state was not permitted to intervene; second, a claim that the state provide legal protection; and third, the right of political participation.¹⁹⁰ Jellinek's clarifications seemed to undermine the bases of an old debate, but then in the later twentieth century it broke out once more.

¹⁸⁵ Schvarcz, *Demokratie*, LV.

¹⁸⁶ See the reviews by Adolf Bauer, *Historische Zeitschrift* 49, 1883, 478–483, and Holm (see fn. 184).

¹⁸⁷ Houston Stewart Chamberlain, *Die Grundlagen des 19. Jahrhunderts*, Bd. 1, Munich 1899, 96.

¹⁸⁸ See p. 226.

¹⁸⁹ Jellinek, *Allgemeine Staatslehre*, 304 and 307. Jellinek's emphasis upon the Anglo-Saxon tradition of the Dissenters being of decisive importance in the development of human rights led to a great deal of grumbling in France, since the French thought of themselves as having made the decisive breakthrough on this front; see p. 151. Jellinek's stance was thought provocative in Germany as well, since the prevailing rejection of human rights was based upon their supposed connection with the French Revolution.

¹⁹⁰ Jellinek, *Allgemeine Staatslehre*, 419ff.

Models of Democracy and Constitutional Policy in the Nineteenth and Early Twentieth Centuries

The growing enthusiasm for Greek art throughout Europe towards the end of the eighteenth century was heavily influenced by Johann Joachim Winckelmann, to whom the Germans laid exclusive claim only posthumously. Neither this admiration of Greek culture nor Wilhelm von Humboldt's neo-Humanism could change the distorted perspectives on ancient politics unleashed by the French Revolution. When Humboldt maintained that 'The Greeks are, for us, not merely a historical people about whom it is useful to know, but an ideal',¹ he mainly had the Athenians in mind. Humboldt considered a focus in advanced education on the study of (Greek) antiquity to be the condition for developing all human capacities. Thus he transformed the 'German Sparta' (Prussia) into a 'land of culture and education' (Treitschke).²

General assent to Humboldt's ideal was, however, fused with a critical and distanced stance in respect of Athenian democracy. A comment made by the historian Hermann Baumgarten in 1866 also serves to represent the general view prevailing earlier in the century:

The pleasing harmony of a universal education that Humboldt so admired in the Greeks was in fact, at best, the outcome of Solon's iron hand, which placed the state at the core of masculine duties. ... For the grand figures in Pericles' circle, the state was the solid and broad basis of all moral activity. ... However, when the Peloponnesian War buried previous discipline and older belief, a new insolent and wilful generation reduced the fatherland to an instrument of personal interests; and so even the glory of the Greek

¹ 'Über den Charakter der Griechen, die idealische und historische Ansicht desselben', in Wilhelm von Humboldt, *Werke in fünf Bänden*, Bd. 2, Andreas Flitner and Klaus Giel, eds., 4th ed., Darmstadt 1986, 65–72, here at 65. 'If I said Greeks, I meant especially the Athenians', 'Geschichte des Verfalls und Unterganges der griechischen Freistaaten' [1807], *ibid.*, 73–124, here at 84 (related to the observation that only Athens could keep Greece free of foreign rule).

² Heinrich von Treitschke, *Deutsche Geschichte im neunzehnten Jahrhundert*, Bd. 4 [1890], Berlin 1928, 712.

spirit was overshadowed. All the wisdom of Socrates, Plato and Aristotle could not save a people for whom the solid moral foundation of the state had been shattered.³

Not even the Greek War of Independence, from 1821 to 1829, had revived the ancient democratic ideal. The Greek uprising against Turkish rule sparked enthusiastic support throughout Europe; volunteers hurried to Greece, among them the English poet Lord Byron; money was collected by all sorts of bodies to buy weapons and to provide humanitarian aid. Often enough there was open disappointment that contemporary Greeks had little in common with their ancient forebears, and that it was sometimes not clear what distinguished freedom fighters from brigands. Nonetheless, the Persian Wars were invoked, the role of the ancient Persians being taken by the modern Turks. The liberty at stake here was one of national independence, or the freedom of a Christian Occident from oriental despotism. Philhellenism did not lead to any detectable revival of the ideal of ancient democracy, but in Germany it did reinforce early liberal associations during a period of political repression (typified by the Carlsbad Decrees) and so contributed to constitutional agitation, especially in Southern Germany.

In many parts of Europe the early nineteenth century was characterised by the demand 'for a constitution', which meant that 'the two principles of monarchy and popular sovereignty came into conflict'.⁴ In many cases, excluding France and Spain, questions of political organisation coincided either with the creation of a nation state or the gaining of national independence, unavoidably leading to conflicted aims. The discursive context was complex: it ranged over references to the American and French Revolutions, to a Britain resistant to revolution, the mixed outcomes when constitutions were introduced, especially during the years 1830–1831 and 1848–1849, the influence of ideas introduced by emigrés, and the uniformity of constitutional demands and their conflict with nationalist claims. Here only a few positions exemplifying democratic discourse can be dealt with, where talk of democracy gradually detached itself from references to antiquity.

COMPETING DEMOCRATIC AND CONSTITUTIONAL MODELS

John Stuart Mill noted that Tocqueville's account of American democracy had detached the concept of democracy from its ancient origin as 'pure democracy' limited to a small state, and used it for 'a modified form', that of 'representative government'.⁵ Mill did, however, criticise the way that Tocqueville employed

³ Hermann Baumgarten, *Der deutsche Liberalismus. Eine Selbstkritik* [1866], ed. Adolf M. Birke, Frankfurt am Main 1974, 32. Baumgarten was referring to Humboldt's 'Ideen zu einem Versuch die Grenzen der Wirksamkeit des Staates zu bestimmen' (*Limits of State Action*), published posthumously in 1851 (Humboldt, *Werke*, Bd. 1, 56–233).

⁴ Leopold von Ranke, *Über die Epochen der neueren Geschichte. Vorträge dem Könige Maximilian II. von Bayern gehalten* [September/October 1854], Darmstadt 1982, 161.

⁵ John Stuart Mill, *Autobiography*, Oxford 1958, 161f.

democracy to characterise social relations.⁶ *Democracy in America* was a best-seller in Germany too, having a significant public and academic echo. One reviewer wrote that it marked ‘to some extent an epoch in the entire history of the political sciences’.⁷ Robert von Mohl thought that Tocqueville would always be famous for having ‘studied with the eye of a statesman the causes and effects of democracy under the conditions of today’s civil society’.⁸

Following Tocqueville, America was taken to be the realisation of democracy under modern conditions; for many, also having the advantage of creating a constitutional state without the kind of social turbulence that the French Revolution had brought about. The Southern German liberal Friedrich Murhard considered that

North Americans have resolved, with resounding success, what had been earlier seen to be an unresolvable problem... . They have provided the first example of the real practicality of democracy in a state of such great extent, and with such a large population.⁹

Wilhelm Schulz, a leftist publicist, wrote in an article on ‘Democracy’ for Rotteck’s and Welcker’s *Staatslexikon* (‘the bible of Liberalism’) that the United States had invented representative democracy, as opposed to the ‘pure or absolute’ democracy of antiquity and the Swiss cantons, a view that accurately reflected early German liberalism.¹⁰

This view could be interpreted in different ways. It could be argued that the American representative constitution was a ‘form of aristocracy’, or at any rate, not a ‘constitution that the Greeks would have called a democracy’.¹¹ Alternatively, the United States was now said to be a shining example of a modern ‘refined democracy ... that could no longer be understood in terms of the old received ideas’, since it was no longer based upon popular assemblies and the distribution of offices by lot. Democracy now meant, as a rule, representative democracy, as opposed to ‘pure, direct democracy, which was an obsolete and semi-barbarian constitutional form’.¹² Ranke also emphasised the epochal significance of the American Revolution:

⁶ ‘Tocqueville on Democracy in America’, in Mill, *Dissertations*, Vol. 2, 62 (= *Collected Works*, Vol. 18, 191).

⁷ Anonymous reviewer of the first volume, *Göttingische Gelehrte Anzeigen* 1836, Teil 1, 241–259, here at 241.

⁸ Robert von Mohl, ‘Entwicklung der Demokratie in Nordamerika und in der Schweiz’, *Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung des Auslandes* 16, 1844, 275–311, here at 292f.

⁹ Friedrich Murhard, ‘Nordamerikanische Verfassung’, in *Staatslexikon*, Carl von Rotteck and Carl Welcker, eds., Bd. 11, 1841, 381–491, here at 409.

¹⁰ Wilhelm Schulz, ‘Demokratie’, in Rotteck, Welcker, *Staatslexikon*, Bd. 3, 2nd ed., 1846, 705–712.

¹¹ Karl Salomo Zachariae, ‘Constitution der Vereinigten Staaten (Nordamerika)’, *Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung des Auslandes* 8, 1836, 1–34, here at 24f. This survey of the literature relates to the Federalist Papers.

¹² Johann Caspar Bluntschli, ‘Demokratie’, in *Deutsches Staatswörterbuch*, Johann Caspar Bluntschli and Karl Brater, eds., Bd. 2 (1857), 696–712, here at 699 and 704.

The theory of representation first gained its full meaning once it had created a state.... This was a greater revolution than any that had ever occurred in the world, it completely overturned the principle. Hitherto it was the king, graced by God, around whom everyone grouped themselves; now the idea emerged that power should come from below.¹³

Liberals like Gervinus could see the United States as the model for the kind of constitutional order for which they were fighting. This was true of Gervinus only after the failed revolution of 1848–1849; up until then he had been an advocate of a constitutional monarchy.¹⁴ If the United States was treated as a model constitutional and federal state, it did not necessarily mean that one was committed to constitutional legislation by the people; the early German constitutional movement rather favoured an agreement between the monarch and a representative body. Even in the Frankfurt National Assembly, which in 1848 claimed the sole right to constitution-making, the question of any agreement with the princes of the different states was not finally resolved, given the fact that the German Revolution had not involved the overthrow of any monarchy. Droysen had written in 1846 that the model of a federal state realised through the ‘admirable’ American Constitution of 1787 was one that could be adopted in Europe, although of course in monarchical constitutions.¹⁵ Apart from anything else, in the early nineteenth century references to the American Constitution often involved a very limited understanding of the system. This was true of the debates in the Frankfurt National Assembly, where the United States was often cited in relation to federal state structures.

Kant had made a clear distinction between a democracy and a republic, ordering direct democracy to despotic governments, while a true republic was representative and included a division of powers.¹⁶ The force of this distinction now began to wane, and with it the association of democracy and Jacobinism. Giuseppe Mazzini, a representative of the Italian nationalist and constitutionalist movement and who had lived as an exile in London since 1837, wanted to break with all this. He declared that representative democracy was an entirely new invention that shared only a name with all earlier forms, especially those of the later phases of the French Revolution.¹⁷

¹³ Ranke, *Über die Epochen*, 151.

¹⁴ Georg Gottfried Gervinus, *Einleitung in die Geschichte des neunzehnten Jahrhunderts* [1853], ed. Walter Boehlich, Frankfurt am Main 1967, 92ff. and 169. On the way in which Gervinus revised his earlier position see Siegfried Schmidt, ‘Georg Gottfried Gervinus nach 1848/49. Eine Denkschrift von 1851 zu den Schlußfolgerungen aus der Revolution’, *Zeitschrift für Geschichtswissenschaft* 32, 1984, 713–717.

¹⁵ Johann Gustav Droysen, *Vorlesungen über die Freiheitskriege*, 1. Theil, Kiel 1846, 277 and 282.

¹⁶ Kant, ‘Perpetual Peace. A Philosophical Sketch’ [1795], Section 2.1; in Kant, *Political Writings*, ed. Hans S. Reiss, Cambridge 1991, 126–127; *Metaphysik der Sitten*, § 52.

¹⁷ Written for the *People’s Journal*, translated into Italian in Giuseppe Mazzini, *Pensieri sulla democrazia in Europa*, ed. Salvo Mastellone, Milan 1997, 82–90.

When the question arose of which constitutional models one might adopt, interest in antiquity gradually faded. Robert von Mohl in retrospect put his own position like this:

My entire upbringing was essentially a modern one. Antiquity and the Middle Ages were only of interest to me insofar as they were sources for contemporary circumstances, or made these circumstances more intelligible through the contrast they represented. ... [I was] very much in favour of the conservation and extension of popular liberty, without however being blind to the need for government, or a foe to monarchy. My political consciousness was that of an English Whig, a French member of the centre left, an American Federalist.¹⁸

Since 'pure popular rule' no longer had any significance, there was no need for Mohl to take account of the many historical examples of 'unconsidered and unjust decisions by popular assemblies, involving the oppression of minorities or lack of regard for the rights of individuals'.¹⁹

For conservatives, the French *Charte constitutionnelle* imposed in 1814 by Louis XVIII served as a model that already in its name expressed the idea that it was a concession made by a monarch, and not a constitution derived from the idea of popular sovereignty. The constitutional arrangements of 1818–1820 in Bavaria, Baden, Württemberg and Hessen-Darmstadt were based upon this model; but the resulting constitutions contained a catalogue of basic rights that implied a limitation of state power that could no longer be cancelled unilaterally. (The Prussian Crown did not keep its promise to issue a constitution.)

The *Charte constitutionnelle* provided a model constitutional order in which monarchs legitimated by divine appointment clearly outweighed a bicameral parliament, in which the upper chamber was in any case composed of aristocrats appointed by the monarch. For France, however, this was at first more a theoretical than a practical consideration. But Charles X steered an ultraroyalist course from 1825, so that the 'craziness of the French court broke the talisman that had held the demon of Revolution in check'.²⁰ He was displaced in the July Revolution of 1830 by the 'Citizen King', Louis Philippe, together with a liberal constitution.

In Germany subsequent constitutions introduced in Hessen-Kassel, Saxony, Brunswick and Hanover between 1831 and 1833 built upon this new French constitution. German liberals, or as they were called at the time,

¹⁸ Cited from Mohl's memoirs in Erich Angermann, *Robert von Mohl 1799–1875. Leben und Werk eines altliberalen Staatsgelehrten*, Neuwied 1962, 27f.

¹⁹ Robert von Mohl, 'Die Weiterentwicklung des demokratischen Principes im nordamerikanischen Staatsrechte', in his *Staatsrecht, Völkerrecht und Politik. Bd. 1: Staatsrecht und Völkerrecht*, Tübingen 1860, 493–535, here at 497.

²⁰ Barthold Georg Niebuhr, 'Vorrede' (dated 5 October 1830), in *Römische Geschichte, Teil II*, 2nd ed., 1830, cited in Niebuhr, *Römische Geschichte*, Bd. 2, new ed. by Meyer Isler, Berlin 1873, VIII.

'Constitutionalists', wanted to link equal rights as citizens with a limited franchise based upon a property qualification; they thought that the 'democratic principle' could be united with a constitutional monarchy.²¹ The lower chamber was to be elected according to a limited franchise and quotas by social rank; the upper chamber was composed partly of the titled nobility, partly of appointees or those who sat by virtue of office. The chambers were supposed to be the counterpart to the monarchy but had no right to infringe the latter's domain of responsibility. The great exception was Hessen-Kassel with a one-chamber assembly that had a strong position since it could initiate legislation and had considerable means to control the government; civil rights were guaranteed to a greater extent as in other constitutions;²² Marx later called it 'the most liberal fundamental law ever proclaimed in Europe'.²³ All in all, the fear expressed by Metternich in 1834, that 'the natural evolution of a representative system was towards the sovereignty of a democratic popular assembly of representatives'²⁴ attributed aims to liberals that in fact exceeded their real aspirations.

Some writers, although by no means all, frequently referred to the unwritten English constitution, although the way in which it had changed was not always recognised.²⁵ The dangers of uncritically adopting a system in which

²¹ Carl von Rotteck, 'Demokratisches Prinzip' and 'Konstitution', in Rotteck, Welcker, *Staatslexikon*, Bd. 1, 1837 and Bd. 3, 1836, reprinted in *Rechtsphilosophie bei Rotteck/Welcker. Texte aus dem Staats-Lexikon 1834-1847*, ed. Hermann Klenner, Freiburg 1994, 306-323; 324-384. Those who defended the 'monarchical principle' resolutely maintained that the ruler had the right to wield state power in its entirety: Friedrich Julius Stahl, *Das monarchische Princip. Eine staatsrechtlich-politische Abhandlung*, Heidelberg 1845. Opening the Landtag in April 1847 the Prussian king, Friedrich Wilhelm IV, was quite explicit that 'participation in rule, the dilution of authority, the division of sovereignty' was out of the question; he did not wish to be separated from his people by 'writing on a piece of paper', that is, a constitution – cited in David E. Barclay, *Anarchie und guter Wille. Friedrich Wilhelm IV. und die preußische Monarchie*, Berlin 1995, 193. In the course of the 1848 revolution a Constituent National Assembly for Prussia was called. It drafted a liberal constitution which was not accepted by the king. Instead the Crown itself enacted a constitution in December 1848 which surprisingly took over greater parts of the previous draft.

²² Horst Dippel, 'Die kurhessische Verfassung von 1831 im internationalen Vergleich', *Historische Zeitschrift* 282, 2006, 619-644. For a more critical assessment of the actual functioning of this system see, however, Ewald Grothe, 'Konstitutionalismus in Hessen vor 1848. Drei Wege zum Verfassungsstaat im Vormärz. Eine vergleichende Betrachtung', *Zeitschrift des Vereins für hessische Geschichte und Landeskunde* 107, 2002, 245-262.

²³ 'Trouble in Germany' [*New York Daily Tribune*, 2 December 1859]; MECW, Vol. 16, 541 [MEGA², Abt. I, Bd. 18, 15].

²⁴ Cited in Manfred Botzenhart, *Deutscher Parlamentarismus in der Revolutionszeit 1848-1850*, Düsseldorf 1977, 29f.

²⁵ For example, Friedrich Christoph Dahmann, *Die Politik, auf den Grund und das Maß der gegebenen Zustände zurückgeführt* [1835], ed. Manfred Riedel, Frankfurt am Main 1968; he relies on De Lolme and Blackstone for his view of the English constitution.

Parliament had come to dominate and the government depended upon a trust in Parliament were noted.²⁶

Advocates of the latter system could point to the Belgian constitution of 1831, which was drawn up by a constitutional assembly; here state power and the competences of the king were derived from the people (Articles 25 and 78), so that contemporaries referred to Belgium as a ‘republican monarchy’.²⁷ This liberal constitution was, however, combined with a very restricted suffrage based on property.²⁸ Belgium was a particular case, since its secession from the United Netherlands involved the creation of a new state, with a monarch installed from elsewhere (Leopold I of Saxony-Coburg-Gotha, who in fact assumed a strong role beyond his formal competencies). An even more liberal model had been provided by the Spanish constitution passed by the *Cortes* in Cádiz in 1812. It was based on the sovereignty of the nation, granted suffrage to all males over twenty-five and had only one chamber with great competences. It had been in force only between 1820 and 1823 and was then adopted in the Kingdom of the Two Sicilies and the Kingdom of Piemont-Sardinia. French and Austrian military interventions put an end to these constitutional monarchies.²⁹

By contrast, ‘pure’ democracy retained its association with the Athenian model, so that it was related only to communal and not state institutions.³⁰ In 1848 the aim of a ‘democratic monarchy’ still seemed achievable even to the parliamentary left in the Frankfurt National Assembly, since it was thought to differ little in substance from a ‘democratic republic’.³¹ For them, the prime

²⁶ Robert von Mohl, ‘Neuere Schriften über englisches Staatsrecht’, *Zeitschrift für die gesammte Staatswissenschaft* 5, 1848, 90–137; idem, ‘Über die verschiedene Auffassung des repräsentativen Systemes in England, Frankreich und Deutschland’, *Zeitschrift für die gesammte Staatswissenschaft* 3, 1846, 451–495. Mohl repeats the usual reservations about English parliamentarism, which, however, he does not share.

²⁷ Franz Petri in *Handbuch der europäischen Geschichte*, ed. Theodor Schieder, Bd. 5, ed. Walter Bussmann, 2nd ed., Stuttgart 1998, 951. In August 1848 Marx and Engels denounced the impoverishment of the Belgian population, calling the country a ‘monarchical Eldorado with the broadest democratic foundation’: ‘The “Model State” of Belgium’; MECW, Vol. 7, 333–336; see also ‘The “Model Constitutional State”’, *ibid.*, 482–484 [MEW, Bd. 5, 315–318; 437–439]. Criticism from the ‘Right’ comes from Heinrich von Treitschke, *Politik. Vorlesungen gehalten an der Universität zu Berlin*, Bd. I, 3rd ed., ed. Max Cornicelius, Leipzig 1913, 141: The Belgian ‘dynasty still rules today by the people’s grace; the King is a Republican civil servant appointed by the people, despite all the talk of a hereditary monarchy’.

²⁸ The necessary property that entitled to vote was in cities higher than in villages. After long disputes universal male suffrage was introduced in 1893 but that was combined with plural vote; up to three votes for family fathers over thirty-five, house owners and high school graduates.

²⁹ The Cádiz Constitution was also adopted in Portugal in course of the 1820/1821 liberal revolution. It was revoked by the king in 1824. The next constitution of 1826, which was imposed by the monarch, followed the 1814 French *Charte constitutionnelle*.

³⁰ See references to this in Paul Nolte, ‘Bürgerideal, Gemeinde und Republik. “Klassischer Republikanismus” im frühen deutschen Liberalismus’, *Historische Zeitschrift* 254, 1992, 609–656.

³¹ See, for example, ‘Programm der Linken [Partei des deutschen Hofes] Oktober 1848’, in *Die Revolution von 1848/49. Eine Dokumentation*, ed. Walter Grab, Stuttgart 1998, 101 (‘democratic

objectives were the constitution and unity; they therefore voted for the constitution of 28 March 1849 and subsequently defended it, even though they had been outvoted in respect of the state form (involving a hereditary emperor) and in other important points.

During the 1840s 'Democrats' had begun to break away from liberals. In 1844 Moses Hess (at that time a collaborator of Marx) remarked of France:

France's misfortune is the antagonism of both parties that represent the Revolution's principles of liberty and equality, the antagonism of the liberal and the democratic party. ... We understand liberals to be those who seek reforms that further political liberty, whether the path chosen is conservative, peaceful or radical and revolutionary. Democrats are by contrast those who strive only, or mainly, for social equality, and treat liberty in the same way that liberals treat equality: at best indifferent, on occasion with enmity.³²

Dedicated democrats in Germany demanded a republic in which the central place was to be taken by a single-chamber parliament elected through universal suffrage; this was an expression of popular sovereignty, but did not involve direct democracy. In the Frankfurt National Assembly they demanded that this assembly should exercise powers of government through an 'executive committee', modelled on the government by the French National convention from 1792 to 1795.³³ The numerous informal popular assemblies that took place in the course of 1848, which, thanks to the existence of the railway, were very well-attended, put politicians under pressure but were no model for a future constitutional order. Gustav von Struve, who organised the Baden insurrection in April 1848 with Friedrich Hecker, considered that an elected assembly of popular representatives epitomised the 'principle of democracy'. This was the basis of 'all effective democracies in modern times', meaning in particular the United States.³⁴

monarchy' or 'free democratic state'); Julius Fröbel, 'Das Königtum und die Volkssouveränität, oder: Gibt es eine demokratische Monarchie?' [text of June–July 1848], in *Der europäische Liberalismus im 19. Jahrhundert. Texte zu seiner Entwicklung*, Lothar Gall and Rainer Koch, eds., Bd. 2, Frankfurt am Main 1981, 184–198; 'Erster Kongreß der deutschen demokratischen Republikaner Frankfurt am Main 14.–17. Juni 1848' [chaired by Julius Fröbel], included in Gerhard Becker, 'Das Protokoll des ersten Demokratenkongresses vom Juni 1848', *Jahrbuch für Geschichte* 8, 1973, 379–405, here at 388 ('democratic republic'). The Constitution of the Duchy of Anhalt-Dessau dated 29 October 1848 referred in § 4 to a 'democratic-monarchical form of government'; § 5 stated that '[a]ll powers are derived from the people'. Derogation of these rules followed in March 1850.

³² Moses Hess, 'Briefe aus Paris', in *Deutsch-französische Jahrbücher* 1844, reprinted Leipzig 1981, 196f.

³³ 'Programm Donnersberg vom 31. Mai 1848', in Werner Boldt, *Die Anfänge des deutschen Parteiwesens. Fraktionen, politische Vereine und Parteien in der Revolution 1848*, Paderborn 1971, 188–191; Robert Blum, 'Rede in der Nationalversammlung, 20. Juni 1848', in Robert Blum, *Briefe und Dokumente*, ed. Siegfried Schmidt, Leipzig 1981, 78–83.

³⁴ Gustav von Struve, *Grundzüge der Staatswissenschaft* [1847], cited in Werner Boldt, 'Konstitutionelle Monarchie oder parlamentarische Demokratie. Die Auseinandersetzung

Neither contemporary workers' associations, which at the time were mainly composed of craft and not industrial workers, nor the original communists, went much further than this in their constitutional arguments, but they did advocate payment of representatives, so that workers might be able to participate.³⁵ This had also been one of the Six Points demanded by the British Chartists.³⁶ In Germany, emphasis was placed upon social demands: Arnold Ruge argued that the 'application of the democratic principle to property, labour and commerce' would bring about the 'solution of the social question'.³⁷

However, the Frankfurt National Assembly more or less rejected wholesale the inclusion of social rights in the basic rights which they postulated, apart from free elementary schooling. The rights that were included covered not only the rights of liberty and defence against the state (protection from arbitrary imprisonment, freedom of conscience and of belief), but also the rights of assembly and of association, together with freedom of the press and academic freedom. When combined with the abolition of aristocratic privileges this would make possible the creation of a society of citizens.

Demands for a 'social' or a 'red' republic occurred only towards the end of the revolution, and were seen as a problem not only by conservatives, but also by liberals who staked their salvation on the monarchy. In a memorandum for the Prussian court, Leopold Ranke wrote in October 1848:

In recent days the concept of popular sovereignty has been joined to a social tendency, placing everything in question; some fear for everything, others hope for everything. It is therefore absolutely necessary that the idea of popular sovereignty is excluded from the new constitution [for Prussia].³⁸

um die deutsche Nationalversammlung in der Revolution von 1848', *Historische Zeitschrift* 216, 1973, 553–622, here at 564. In his article 'Menschenrechte' in Rotteck and Welcker's *Staatslexikon*, Bd. 18, 1847, 611–622 (reprinted in *Rechtsphilosophie bei Rotteck/Welcker*, ed. Klenner, 192–211) Struve noted the absence of human rights in antiquity as well as the fact that the French Declarations had been no obstacle to the Jacobin terror, nor to Napoleon's military rule whereas human rights had been realised in the United States, and were yet to be realised in Europe. After periods in Switzerland, England and France Struve emigrated to the United States in 1851, where he later campaigned for Abraham Lincoln among German emigrants and took part in the war against the Southern states.

³⁵ 'Demands of the Communist Party in Germany' [late March 1848]; MECW, Vol. 7, 3–7 [MEW, Bd. 5, 3–5].

³⁶ As in the first national petition of 1839: *From Cobbett to the Chartists, 1815–1848. Extracts from Contemporary Sources*, 2nd ed., ed. Max Morris, London 1951. Payment for members of Parliament was introduced in 1911.

³⁷ 'Unser System oder die Weltweisheit und Weltbewegung unserer Zeit. Heft 3: Die Gründung der Demokratie in Deutschland' [1850], in Arnold Ruge, *Werke und Briefe*, Bd. 8, ed. Hans-Martin Sass, Aalen 1998, 271.

³⁸ Leopold von Ranke, 'Politische Denkschriften aus den Jahren 1848–1851. Bestimmt für König Friedrich Wilhelm IV., gerichtet an dessen Flügeladjutanten Edwin Freiherrn von Manteuffel', in Ranke, *Zur Geschichte Deutschlands und Frankreichs im neunzehnten Jahrhundert*, ed. Alfred Dove (Ranke, *Sämmtliche Werke*, Bd. 49/50), Leipzig 1877, 585–623, here at 595. On Ranke's role as advisor to the Prussian court see Eckart Conze, 'Der Historiker als Politikberater.

Following the insurrections of May 1849, the Rhenish entrepreneur Gustav Mevissen (who had been an influential liberal member of the National Assembly) prophesied that all those with property would prefer 'absolute monarchy' to a 'red republic'.³⁹ In 1852 Robert von Mohl (who had been Minister of Justice in the provisional national government of 1848-1849) feared that 'in Germany, democracy would lead directly to communism. We have experienced what our proletarians understand by liberty and a republic'. Democracy, he went on, did not really satisfy 'social needs, thus the core dissatisfaction; for these are in a domain that is not at all affected by the form of government'. He concluded: 'Democracy is an entirely dubious remedy for the actually-existing evils of monarchy that might only be considered if these evils become overwhelming and immovable.'⁴⁰

How realistic these views were is not our concern here; to the degree that they were, they had probably more relevance to France than to Germany. During the first two months of the Revolution in France the provisional government, whose members included Louis Blanc and a 'real worker', had introduced a number of measures for workers, including National Workshops (*ateliers nationaux*) and a form of 'workers' parliament'. Marx thought the 'phrase fraternité', this 'comfortable and warming abstraction from class contradictions, this sentimental levelling of contradictory class interests, this enthusiastic transcendence of class struggle' to be 'the real slogan of the February Revolution'.⁴¹ But he added that fraternal feelings lasted only as long as the interests of the bourgeoisie were in accordance with the interests of the proletariat. The triadic formula 'liberty, equality, fraternity' had never been definitively formulated as such during the Great Revolution, at least in official documents. It was during the 1848 Revolution that the triad became canonical, and in November 1848 enshrined in the constitution of the Second Republic. Only then was it retrospectively applied to the Great Revolution.

Following the disappointing results for the socialists of the elections on 23 April 1848 special provisions made for workers were revoked. This was then followed in Paris by an insurrection under the slogan 'Dictatorship of the Working Class',⁴² which was bloodily suppressed by the army at the end of

Leopold von Ranke's politische Denkschriften 1848 bis 1851', *Historische Mitteilungen* 14, 2001, 24-37.

³⁹ Cited in Christoph Kleßmann, 'Zur Sozialgeschichte der Reichsverfassungskampagne von 1849', *Historische Zeitschrift* 218, 1974, 283-337, here at 303.

⁴⁰ 'Das Repräsentativsystem, seine Mängel und die Heilmittel' [1852], in Robert von Mohl, *Politische Schriften*, ed. Klaus von Beyme, Opladen 1966, 118-224, here at 143. Mohl had already expressed this fear in the spring of 1848; see the text included in Erich Angermann, 'Republikanismus, amerikanisches Vorbild und soziale Frage 1848', *Die Welt als Geschichte* 21, 1961, 185-193.

⁴¹ Marx, 'Class Struggles in France 1848 to 1850' [1850]; MECW, Vol. 10, 57f. [MEW, Bd. 7, 21 = MEGA², Abt. I, Bd. 10, 128].

⁴² Marx, 'Class Struggles in France 1848 to 1850'; MECW, Vol. 10, 69 [MEW, Bd. 7, 33 = MEGA², Abt. 1, Bd. 10, 139].

June 1848. Tocqueville considered that this rising was distinguished from all others since 1789 by the fact that it sought not a change of government, but rather a change to the social order. 'It was not so much a political as a class struggle, a kind of slave rising.'⁴³

'Democracy' was no longer limited to the nature of a constitutional order and of a political system, but instead conceived in the same way that the *sans-culottes* had done during the Great French Revolution: as related to the reconstruction of society, and affirmed or denied as such. Those in favour presumed that democracy was a goal that could be attained only in the future, if necessary via a dictatorship of the proletariat. The mid-nineteenth-century concept of democracy combined elements of Greek, Roman, American and French traditions, while as Friedrich Engels noted, communism set itself apart as 'real democracy'.⁴⁴ For Engels and Marx, who had begun their political engagement as 'democratic communists',⁴⁵ 'bourgeois democracy' was always merely a transitional stage on the road to this goal. If the bourgeoisie were victorious in their constitutional struggles against monarchy and aristocracy, a revolutionary workers' movement would afterwards become the sole democratising force.⁴⁶ A 'democratic republic' as the 'final state form of bourgeois society' would be the space in which 'class struggle would be fought to a decision', using means 'as in France in 1793', realising the principle of socialism via the 'dictatorship of the proletariat'.⁴⁷ Ultimately a classless society would be achieved, in which the 'entire state machine' would be consigned to the 'museum of antiquities, next to the spinning wheel and the bronze axe'.⁴⁸ The features of this future order were, however, never outlined.

Marx and Engels consequently saw no need to think very deeply about the institutional conditions for liberty both before and after the attainment of the historical goal.⁴⁹ As far as they were concerned, 'division of powers' was 'the

⁴³ Alexis de Tocqueville, 'Souvenirs', in Tocqueville, *Œuvres complètes*, t. XII, ed. Luc Monnier, Paris, 1964, 151. This was written between late 1850 and early 1851. Tocqueville embargoed his memoirs, and they were first published in 1893.

⁴⁴ Engels, 'The Festival of Nations in London' [1846]; MECW, Vol. 6, 4 [MEW, Bd. 2, 612f.].

⁴⁵ Marx, Engels, 'Address of the German Democratic Communists of Brussels to Mr. Feargus O'Connor' [1846]; MECW, Vol. 6, 58–60 [MEW, Bd. 4, 24–26].

⁴⁶ Engels, 'The Prussian Constitution' [1847]; MECW, Vol. 6, 64–71 [MEW, Bd. 4, 30–36].

⁴⁷ Marx, Engels, 'Address of the Central Authority to the League, March 1850'; MECW, Vol. 10, 277ff. [MEW, Bd. 7, 244ff. = MEGA², Abt. I, Bd. 10, 254ff.]; Marx, 'Critique of the Gotha Programme' [1875]; MECW, Vol. 24, 75ff. [MEW, Bd. 19, 11ff. = MEGA², Abt. I, Bd. 25, 3ff.].

⁴⁸ Engels, *The Origin of the Family, Private Property and the State* [1884]; MECW, Vol. 26, 222 [MEW, Bd. 21, 168 = MEGA², Abt. I, Bd. 29, 110].

⁴⁹ 'Dictatorship of the proletariat' was used by Marx and Engels in different ways in various contexts: sometimes it connoted majority rule achieved by parliamentary means, sometimes a violent seizure of power followed by the suppression of class enemies (as later exemplified by Lenin).

old constitutional folly';⁵⁰ they were scornful of 'human rights', which served only private interests and the protection of property.⁵¹

By the mid-nineteenth century, and in particular during the 1848 revolutions throughout Europe, 'democracy' had arrived at the range of meanings that would mark all later discussion, sometimes positively, sometimes very negatively. At the same time 'democracy' became a general norm.

Regarding the social question in England, Thomas Carlyle had stated in 1843: 'Democracy is everywhere the inexorable demand of these ages, swiftly fulfilling itself.'⁵² Seven years later he wrote:

We had the year 1848, one of the most singular, disastrous, amazing, and on the whole, humiliating years the European world ever saw. ... Everywhere immeasurable Democracy rose monstrous, loud, blatant, inarticulate as the voice of Chaos.⁵³

Carlyle adds that there had never been a democracy. In the ancient republics the citizens ruled as an aristocracy over the slave population; the various French republics had all failed; the supposed 'Model Republic' United States was in fact anarchical.⁵⁴

Julius Fröbel, a representative of the parliamentary left, said on 22 January 1848 in the Frankfurt National Assembly:

I am of the opinion that at the present point of European history democracy has become unavoidable. This might suit some and not others, but that has no bearing on the question. My judgement is the same as that reached by Tocqueville in his book about American democracy.

Fröbel was also convinced that 'true democracy' had never existed; both in antiquity and in the United States the existence of slavery meant that a privileged group ruled.⁵⁵

⁵⁰ Marx, 'The Constitution of the French Republic, Adopted November 4, 1848'; MECW, Vol. 10, 570 [MEGA², Abt. I, Bd. 10, 540].

⁵¹ Marx, 'On the Jewish Question' [1844]; MECW, Vol. 3, 162 [MEW, Bd. 1, 364 = MEGA², Abt. I, Bd. 3, 157].

⁵² Thomas Carlyle, *Past and Present*, London 1843, 289. In a long review of this book, Friedrich Engels criticised Carlyle's 'lack of clarity about the goal, the purpose of modern democracy. Democracy, true enough, is only a transitional stage, though not towards a new, improved aristocracy, but towards real human freedom'. And Carlyle ignored the English Socialists: 'But in any case they [the Socialists] are the only party in England which has a future, relatively weak though they may be. Democracy, Chartism must soon be victorious, and then the mass of the English workers will have the choice only between starvation and socialism'; 'The Condition of England. *Past and Present* by Carlyle'; MECW, Vol. 3, 466 and 467 [MEW, Bd. 1, 548 and 549 = MEGA², Abt. I, Bd. 3, 534 and 535].

⁵³ Thomas Carlyle, 'The Present Time' [February 1850], in his *Latter-Day Pamphlets*, London 1850, 6.

⁵⁴ *Ibid.*, 21ff.

⁵⁵ Fröbel in the National Assembly, cited according to Rainer Koch, 'Julius Fröbel: Demokratie und Staat', in *Die Achtundvierziger. Lebensbilder aus der deutschen Revolution 1848/49*, ed.

In his book *De la démocratie en France*, published in January 1849 and immediately translated into English and German, Guizot (then in his London exile) recorded his reaction to the French revolutionary events of 1848:

Chaos is now concealed under one word – Democracy. This is now the sovereign and universal word which all parties invoke, all seek to appropriate as a talisman. ... Such is the power of the word Democracy that no government or party dares to raise its head, or believes its own existence possible, if it does not bear that word inscribed on its banner; and those who carry that banner aloft with the greatest ostentation and to the extremest limits, believe themselves to be stronger than all the rest of the world. Fatal idea, which incessantly excites and foments social war amongst us. This idea must be extirpated.⁵⁶

Guizot already found it suspect that the constitution of 4 November 1848 defined France as a ‘democratic republic’, although the United States as the model democracy had not done this. Guizot is also polemicising against Tocqueville, who had taken part in the drafting of the new French constitution – the allusion to Tocqueville (who had attended Guizot’s lectures in 1828–1830) is evident from the title of Guizot’s text.

This characterisation carries with it an implication about the struggle of social groups.⁵⁷ ‘Social democracy’ must lead to a complete levelling, and so bring about the destruction of society.⁵⁸ The German liberal Karl Biedermann considered that, for Guizot, the ‘installation of a strong government and keeping democracy in check was the sole and ultimate goal of all politics’, a viewpoint that he also detected in the centre-right of the National Assembly.⁵⁹ Guizot had always been of the view that a small stratum of the propertied and educated could represent the entire nation within the framework of a constitution that prevented the abuse of power.

The principle of the sovereignty of the people ... is then radically false; for under the pretext of maintaining legitimate equality, it violently introduces equality where none exists. ... Representative government rests upon the disposition of actual power in

Sabine Freitag, Munich 1998, 146–159, here at 154. Julius Fröbel, *System der sozialen Politik*, Teil 2, Mannheim 1847, 132f.

⁵⁶ François P. G. Guizot, *Democracy in France*, New York 1849, 10f.

⁵⁷ Already in 1847 Victor Considerant, a French socialist in the tradition of Fourier, had stated that ‘democracy’ was associated by the lower classes with the prospect of social revolution, which he, however, did not endorse; *Principes du socialisme. Manifeste de la démocratie au XIX siècle. Procès de la démocratie pacifique*, Paris 1847, esp. 60ff.

⁵⁸ Eduard von Wietersheim, who had been minister of culture in Saxony 1840–1848, incorporated a translation of Guizot’s chapter on the ‘social republic’ in his *Die Demokratie in Deutschland. März 1849*, Leipzig 1849. He concluded from it that in Germany as well as in France any demand for a republic was in fact aiming at a ‘red republic’.

⁵⁹ Karl Biedermann, *Erinnerungen aus der Paulskirche*, Leipzig 1849, 241. For the claim that the exaggerated demands for democracy had driven the advocates of constitutionalism into the arms of the forces of reaction see, Max Duncker, *Zur Geschichte der deutschen Reichsversammlung in Frankfurt*, Berlin 1849, 7 and 130f.

proportion to the capacity to act according to reason and justice ..., [it] is not purely and simply the government of the numerical majority, it is government by the majority of those who are qualified to govern ...⁶⁰

In modern times democracy could be realized only within a representative system in which suffrage depended on the appropriate capacity of the voter. Otherwise one would lapse into the anarchical form of democracy known from the ancient world where it had meant the domination of the poor and ignorant over the rich and educated men.⁶¹ ‘Enrichissez-vous’ is a phrase often attributed to Guizot, but not actually well-documented: that one should make oneself rich by working and saving.⁶² It remains open to a more benign interpretation, that in a franchise limited by a property qualification, hard work made it possible for someone to rise into the class of those with political rights. Guizot’s associated rejection of a franchise reform that had been demanded since 1847 by a broadly based public campaign led to the February 1848 Revolution and his removal as head of government.

On the left side of the political spectrum this revolution was greeted as the victory of democracy all over Europe.⁶³ At the beginning of March 1848 the franchise was extended to all males over the age of twenty-one; surprisingly, this was met with broad agreement and was never revoked in later French constitutions. When the provisional government declared at the same time that a franchise of this kind was a world historical novelty,⁶⁴ they naturally left Athens out of account. Tocqueville himself had complained in connection with the 1848 Revolution that the ‘general use of the words “democracy” and “democratic government”’ created ‘the greatest mental confusion’. If there were no success in clarifying the idea, this would only be ‘to the advantage of demagogues and despots’. It would be claimed that a ‘land governed by an absolute ruler was a democracy, because he ruled with the help of institutions that sought to ameliorate the condition of the people’. However, democracy was ‘in essence ... closely linked to the idea of political liberty’. It therefore made no sense to call a system of government, in which there was no political liberty,

⁶⁰ François P. G. Guizot, *The History of the Origins of Representative Government in Europe*, trans. Andrew R. Scoble. Introduction and Notes by Aurelian Craiutu, Indianapolis 2002, Lecture 7, at 61f. [*Histoire des origines du gouvernement représentatif et des institutions politiques de l’Europe*, Paris 1851, based on lectures given from 1820 to 1822].

⁶¹ François P. G. Guizot, ‘De la démocratie dans les sociétés modernes’, *La Revue Française* n. s. 1, 1837, 193–225; translated as *Democracy in Modern Communities*, London 1838.

⁶² Eugen Weber, ‘The Man Who Tamed the Past’ [review of the reprint of Guizot, *History of Civilization in Europe*], *Times Literary Supplement*, 4908, 25 April 1997, 10f.

⁶³ See, for example, the address of German emigrés in Paris, February 1848, which was formulated by the poet Georg Herwegh, in 1848. *Augenzeugen der Revolution*, ed. Peter Goldammer, Berlin 1973, 59f. Herwegh then headed a revolutionary legion of German emigrés which was crashed by Baden military.

⁶⁴ Cited in Pierre Rosanvallon, ‘The Republic of Universal Suffrage’, in *The Invention of the Modern Republic*, ed. Biancamaria Fontana, Cambridge 1994, 192–205, here at 199.

a democracy.⁶⁵ He also rejected the claim that socialism was the legitimate developmental successor to democracy; evidence for this could be found in the American example, a complete democracy where socialist ideas had no resonance. 'Democracy and socialism have in common only one word: equality. But mark the difference: democracy seeks equality in liberty, while socialism seeks equality through the suppression of liberty.'⁶⁶ As for the misuse of 'democracy' the socialist revolutionary Blanqui was of the same opinion: People like Guizot or even aristocrats would call themselves 'democrats'; thereby they wanted to obscure that there were two opposed camps, the *bourgeoisie* and the proletariat.⁶⁷

The general European acceptance of the democratic principle claimed by Guizot and Tocqueville, whatever one might understand by it, quickly vanished. This was even true of German left-liberals, who considered the idea tarnished by the failed revolution. Dedicated opponents of revolution warmed to Donoso Cortés' call for a monarchy upheld by a 'dictatorship of the sabre', so as to prevent the emergence of a 'dictatorship of the dagger' from below.⁶⁸ According to Donoso Cortés, dictatorship was a legal institution embedded in many constitutions, finding its equivalent in Athenian democracy in the form of ostracism.⁶⁹

The Prussian king, Friedrich Wilhelm IV, considered as early as June 1848 circumstances 'under which dictatorship could become an ineluctable necessity', but thought of this in terms of the temporary transfer of the executive into the hands of one man, and so according to the Roman model.⁷⁰ While

⁶⁵ 'Fragments sur la suite de L'Ancien régime et la révolution', in Alexis de Tocqueville, *Œuvres complètes*, t. 2, 198f.

⁶⁶ Speech in the National Assembly 12 September 1848, in Tocqueville, *Œuvres complètes*, t. 3, 175.

⁶⁷ Letter to Maillard, 6 June 1852, in Auguste Blanqui, *Textes choisis*, ed. V. P. Volguine, Paris 1955, 127–140.

⁶⁸ 'Rede über die Diktatur, 4. Januar 1849', in Juan Donoso Cortés, *Über die Diktatur. Drei Reden aus den Jahren 1849/50*, ed. Günter Maschke, Vienna 1996, 27–51, here at 51. Cortés speech in the Spanish parliament found a great echo in Europe. The idea was in the air at the time. In February 1849 Bassermann, the Rightist liberal representative, stated in the German National Assembly: 'If I were able to bring about the unity of a future Greater Germany by temporarily surrendering all rights of liberty, I would be the first to subordinate myself to a dictatorship'; cited in Lothar Gall, 'Friedrich Daniel Bassermann: Sei dein eigener Herr und Knecht, das ist des Mittelstandes Recht', in Freitag, *Die Achtundvierziger*, 97–112, here at 110. If revolutionary efforts on the part of the left were to be eliminated, then all liberal ideas could be realised. Marx apparently played on Cortés' terminology when commenting on the suppression of the June 1848 uprising in Paris by General Cavaignac: 'it was not the dictatorship of the sabre over the bourgeoisie but the dictatorship of the bourgeoisie by the sabre'; *Class Struggles in France* [1850]; MECW, Vol. 10, 76 [MEW, Bd. 7, 40 = MEGA², Abt. I, Bd. 10, 145].

⁶⁹ Donoso Cortés, *Über die Diktatur*, 31. In the twentieth century Cortés' critique of liberalism, his ideas on dictatorship and on 'political theology' played a great role in the writings of Carl Schmitt. It is difficult to disentangle Cortés' intentions from Schmitt's interpretation.

⁷⁰ Correspondence between Friedrich Wilhelm IV and Freiherr Senfft von Pilsach, 27 June and 1 July 1848, in *Revolutionsbriefe 1848. Ungedrucktes aus dem Nachlaß König Friedrich Wilhelms IV. von Preußen*, ed. Karl Haenchen, Leipzig 1930, 116f.

this particular king often changed his mind, he did also express himself more pithily: 'Soldiers are the only remedy for democrats' is his well-known expression (in a letter) in response to the offer of the imperial crown by the National Assembly in April 1849.⁷¹ In November 1848 the Berlin philosopher Friedrich Schelling had said that salvation from the revolution depended on a 'genuine despotism, like that of Russia'.⁷²

Since the early nineteenth century discussions of the possibility and desirability of democracy (or not) under modern conditions was on the one hand related to an American Constitution which was an acknowledged success, but on the other overlaid with memories of the Great French Revolution, in whose light the 1848 Revolutions was seen.

Looking back in 1895, Friedrich Engels wrote:

When the February revolution [1848] broke out, all of us, as far as our conceptions of the conditions of the state and the course of revolutionary movements were concerned, were under the spell of previous historical experience, particularly that of France. It was, indeed, the latter which had dominated the whole European history since 1789, and from which now once again the signal had gone forth for general revolutionary change.⁷³

What appeared to have been a great hope to him and those of his political persuasion was seen by their opponents as a solemn warning.

CAESARISM – AUTOCRACY AND DEMOCRACY

Opponents of revolution saw a chance of avoiding social turbulence by combining autocracy and democracy in the form of 'Caesarism'. The political concept first emerged with Louis Bonaparte's coup d'état, and it was then retrospectively applied to the original Napoleon. It involved autocratic rule imposed by usurpation, but then cemented through a plebiscite (whose outcome was to a greater or lesser degree fixed) which lent the appearance of legitimacy to the new regime. Louis Bonaparte did this while retaining the general right to vote

⁷¹ Cited in *Einheit und Freiheit. Die deutsche Geschichte von 1815 bis 1849 in zeitgenössischen Dokumenten*, ed. Karl Obermann, Berlin 1950, 779. The king is supposed to have made a substantially identical statement to the members of a deputation from the National Assembly: 'Against democrats you can only use soldiers'; this was reported by a third party and repeated by Arnold Duckwitz, *Denkwürdigkeiten aus meinem öffentlichen Leben von 1841–1866. Ein Beitrag zur bremischen und deutschen Geschichte*, Bremen 1877, 281. The slogan, 'Soldiers are the only remedy for democrats' can be traced to a pamphlet by a Prussian officer: Günter Wollstein, 'Friedrich Wilhelm IV. und "sein Preußen" im Revolutionsjahr 1848/49', *Forschungen zur brandenburgischen und preußischen Geschichte* NF 9, 1999, 185–204, here at 189, n. 11.

⁷² Friedrich Wilhelm Joseph Schelling, *Das Tagebuch 1848. Rationale Philosophie und demokratische Revolution*, ed. Hans Jörg Sandkühler et al., Hamburg 1990, 165.

⁷³ Engels, 'Introduction' to Marx, *Class Struggles in France* [new edition 1895]; MECW, Vol. 27, 509 [MEW, Bd. 22, 512 = MEGA², Abt. I, Bd. 32, 335].

(for males). He is supposed to have said: 'It is in the nature of democracy to be personified by one man.'⁷⁴

The term 'Caesarism' was either minted, or at any rate spread, by Auguste Romieu, a high-ranking civil servant and supporter of Louis Bonaparte who had already in 1850, before the coup of December 1851, argued for the concentration of state power as a necessary way of avoiding civil war, and keeping the 'red danger' at bay.⁷⁵ Ludwig Bamberger commented that Romieu's basic idea was 'to flee parliamentarism because it led to communism, and seek shelter in the hands of Caesarism'.⁷⁶ In 1852 Constantin Frantz, a fervent critic of constitutionalism, saw this model of 'Napoleonism' as the sole possible form of democracy under modern conditions, since parliamentarism necessarily involved a 'demagogic constitution' and 'true democracy' in the form of direct self-government by the people was possible only in the rural Swiss cantons. In his view this new sort of dictatorship on a democratic foundation was the only way to govern France, and also the model that should be copied elsewhere in Europe.⁷⁷

Caesarism was usually employed interchangeably with 'Napoleonism' or 'Bonapartism', and this usage quickly caught on throughout Europe: Napoleon III could in this way be treated as either the liquidator or proponent of social revolution, as a military dictator or as a true representative of the people's will. The term was open to both positive and negative use, highlighting either the 'extremely democratic' or the 'extremely monarchist aspect' of Caesarism.⁷⁸ There was even talk of 'democratic despotism'.⁷⁹

In 1866 Bamberger remarked that 'now everyone talks of Caesarism, and God knows what on earth they think by it'.⁸⁰ In 1869 Karl Marx polemicised against the 'school-taught phrase now current, particularly in Germany, of so-called Caesarism'. This 'superficial historical analogy' entirely muddled

⁷⁴ Heinrich von Treitschke, 'Frankreichs Staatsleben und der Bonapartismus. I: Das erste Kaiserreich' [1865], in his *Historische und politische Aufsätze*, Bd. 3: *Freiheit und Königthum*, 5th ed., Leipzig 1886, 55 (no source given).

⁷⁵ Auguste Romieu, *L'ère des Césars*, 1850; and *Le spectre rouge de 1852*, 1851. Both works had been immediately translated into German.

⁷⁶ Ludwig Bamberger, 'Der Cäsarismus' (newspaper article from 1866), in his *Gesammelte Schriften*, Bd. 3: *Politische Schriften von 1848 bis 1868*, Berlin [1895], 328–336, here at 333.

⁷⁷ Constantin Frantz, *Louis Napoleon. Masse oder Volk* [1852], ed. Günter Maschke, Vienna 1990, 47f., 61 and 66ff.

⁷⁸ Robert Pöhlmann, 'Die Entstehung des Cäsarismus' [1895], in his *Aus Altertum und Gegenwart*, 245–291, here at 284.

⁷⁹ Walter Bagehot, 'Caesarism as It Now Exists' [1865], in Bagehot, *Collected Works*, Vol. 4, ed. Norman St John-Stevan, London 1968, 111–116; Heinrich von Treitschke, *Politik*, Bd. 2, 3rd ed., Leipzig 1911, 204.

⁸⁰ Bamberger, 'Der Cäsarismus', 328. Bamberger fled Germany in 1849 having been condemned for his participation in the Palatinate rising. He lived in exile until 1866, finally in Paris, and he was later the leading figure among the National Liberals supporting Bismarck in the German Reichstag.

the 'complete difference between the material, and economic conditions of the ancient and the modern class struggles'.⁸¹ Engels and other socialist authors later applied the concept of Bonapartism to Bismarck's regime, on account of the way in which he was said to set the bourgeoisie and the proletariat against one another.⁸² The extension of the franchise was seen as a manoeuvre to divert the proletarian masses from developing a revolutionary class consciousness. Bismarck introduced an equal, universal and secret right to vote for all male adults from the age of twenty-five (for majority voting in single-member constituencies) in the constitutions of the North German Confederation (1867) and the German Empire (1871) after confidential discussions with Ferdinand Lassalle, the founder of the German workers' movement, a circumstance that made the entire affair suspect in the eyes of radical socialists.⁸³

Liberals did not welcome the idea of merely playing 'supporting parts for constitutionalism' in the 'new Caesarism',⁸⁴ and they viewed a universal franchise with a secret ballot as a 'precursor to democratic dictatorship'.⁸⁵ The young Max Weber, the son of a National Liberal politician, wrote in 1884 of the 'murder of equal rights for all in the true sense of the word' in a letter to his uncle, the historian Hermann Baumgarten,⁸⁶ echoing Baumgarten's criticism of

⁸¹ Marx, Foreword to the second edition of 'The Eighteenth Brumaire of Louis Bonaparte', MECW, Vol. 21, 57 [MEW, Bd. 16, 359f. = MEGA², Abt. I, Bd. 21, 130f.]. This text had first appeared in 1852 in a German Journal published in New York and remained virtually unknown in Germany. In the 1869 Foreword Marx reviewed the developing discussion of the Bonapartist system.

⁸² Engels, 'The Prussian Military Question and the German Workers' Party' [1865], MECW, Vol. 20, 72ff. [MEW, Bd. 16, 71ff. = MEGA², Abt. I, Bd. 20, 102ff.]; 'The Housing Question' [1872]; MECW, Vol. 23, 363ff. [MEW, Bd. 18, 213ff.]; *Origin of the Family*; MECW, Vol. 26, 222 [MEW, Bd. 21, 167 = MEGA², Abt. I, Bd. 29, 108]; 'The Role of Force in History' [written 1887–1888, published posthumously in 1895]; MECW, Vol. 26, 476f. [MEW, Bd. 21, 454–456].

⁸³ In Lassalle's lifetime (he died in 1864 after a duel) Marx and Engels criticised him only in private; but later, when it became known that he had had conversations with Bismarck they were more open in their criticism.

⁸⁴ Letter from Mommsen to Louis Jacoby, 5 December 1866; cited in Lothar Wickert, *Theodor Mommsen. Eine Biographie*, Bd. 4, Frankfurt am Main 1980, 84.

⁸⁵ In the words of the historian Heinrich von Sybel as a member of the Reichstag of the North German Confederation in 1867; cited by Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*, Bd. 3: *Bismarck und das Reich*, Stuttgart 1963, 661. See also the criticisms made by Laband, a very highly regarded commentator on the Imperial Constitution: 'The Reichstag is a radical and democratic institution the like of which would be hard to find in any other large state; for the universal and equal franchise favours the representation of unpropertied and uneducated classes, and there is no upper house that represents other interests. The secret ballot removes all possibility that the government and its organs might influence the outcome of elections, although the influence upon elections of the clergy, working-class dictators and other demagogues operate freely and can make use of the most despicable means'; Paul Laband, 'Staatsrecht', in *Die Kultur der Gegenwart, Teil II, Abteilung VIII: Systematische Rechtswissenschaft*, 2nd ed., ed. Paul Hinneberg, Leipzig 1913, 347.

⁸⁶ Letter of 8 November 1884, in Max Weber, *Jugendbriefe*, Tübingen n. d. [1936], 143. As late as 1917 Weber remarked that Bismarck had employed universal suffrage 'in the struggle of his

Bismarck's 'Caesaristic demagogy'.⁸⁷ Treitschke called talk of Caesarism as the 'emptiest of all phrases' used in the effort to discredit in Germany the 'lawful and national monarchy'.⁸⁸

If one actually took the comparison with the original Roman model seriously, with Caesar as a 'military chief and democratic king',⁸⁹ then it was possible to turn this against modern imitators. In 1857 Theodor Mommsen cautioned against reading his fulsome praise for Caesar in his *Römische Geschichte* as 'any kind of judgement about so-called Caesarism'; instead, 'the history of Caesar and of Roman Caesarism ... is probably a more telling criticism of modern autocracy than anyone would care to write'.⁹⁰ Mommsen also refused to contribute to a book on Caesar by Napoleon III.⁹¹ The emperor's *Histoire de Jules César* finally published in 1865–1866 with contributions from leading French classical scholars and military specialists⁹² was a purely conventional account, and not a theoretical comparison of Caesarism and Bonapartism. Treitschke was scornful: 'It is a risky thing, dealing with Caesar's ghost; dangerous for the reputation of the first Bonaparte, more dangerous for his epigones.'⁹³

ANTIQUITY IN POLITICAL RHETORIC

Parallels drawn with antiquity played a very minor role in other contexts. This was true of the jury courts and payments for political representatives, which is where the more obvious parallels with Athens arise.

Since the early nineteenth century there had been vigorous discussion in Germany of the proposal to introduce lay judges into criminal trials to decide the question of guilt. The issues raised included demands for oral and public proceedings and the separation of roles between prosecution and judge.⁹⁴ This primarily involved the adoption of procedures introduced during the French

Caesarism against a recalcitrant bourgeoisie' (MWG I/15, 347), but he was now convinced of the need to revise the franchise in Prussia.

⁸⁷ Baumgarten, cited in Wolfgang J. Mommsen, *Max Weber und die deutsche Politik 1890–1920*, Tübingen, 2nd ed., 1974, 6. Baumgarten thought that a universal and equal franchise was a threat to the entire culture, since it 'leads to the domination in all matters of the crude instincts of the masses'; cited by Rudolf Haym, 'Hermann Baumgarten', *Preussische Jahrbücher* 76, 1894, 193–213, here at 212.

⁸⁸ Treitschke, *Frankreichs Staatsleben*, 48.

⁸⁹ Theodor Mommsen, *Römische Geschichte*, Bd. 3, 9th ed., Berlin 1904, 465.

⁹⁰ *Ibid.*, 476f. This statement can be found from the second edition of 1857, registering his reaction to interpretation of passages in the first (1856) edition in contemporary comments.

⁹¹ See Wickert, *Theodor Mommsen*, Bd. 4, 138ff.

⁹² Melvin Kranzberg, 'An Emperor Writes History. Napoleon III's *Histoire de Jules César*', in *Teachers of History. Essays in Honor of Laurence Bradford Packard*, ed. H. Stuart Hughes, Ithaca, NY, 1954, 79–104.

⁹³ Treitschke, *Frankreichs Staatsleben*, 113.

⁹⁴ The classic tract on this subject is Carl Joseph Anton Mittermaier, *Die Mündlichkeit, das Anklageprinzip, die Öffentlichkeit und das Geschworenengericht in ihrer Durchführung in den verschiedenen Gesetzgebungen*, Stuttgart 1845.

Revolution and retained by Napoleon, and which had also been introduced into the Rhineland during the period of French rule. Advocates of lay participation saw this as an instrument of civic freedom, even if it only concerned a limited section of the population. The main problem seemed to lie in the determination of rules of proof, references being made to French, England and American models. In addition to this there was an attempt to derive this principle from the older Germanic legal tradition, supported by discussions among German legal scholars at the 1847 Lübeck *Germanistentag*.⁹⁵ Juries were then introduced after 1848 in nearly all German states, even if this was quickly followed by calls for courts composed of a combination of professional and lay judges. The organisation of Athenian courts did not seem to have any bearing on this, for the structural differences with Athens were unmistakable: selection of jurors according to property and level of education; only twelve jurors, solely responsible for deciding the question of guilt; a professional judge in charge of proceedings.

Much the same went for the question of payment for parliamentary representatives. This was introduced in a number of member states of the German Confederation, and the (futile) 1849 German constitution also included this. However, the 1867 constitution of the North German Confederation and the 1871 Constitution of the German Empire both excluded payments, and this was eventually introduced only in 1906 after much wrangling. The upshot was the absenteeism of large numbers of representatives, often resulting in the failure to reach a quorum. Parliamentary representatives were instead paid in part by their party apparatus (or the newspapers belonging to political parties), or they also took seats simultaneously in parliaments of those member states that did provide compensations for political representatives.⁹⁶ Argument about whether the ban upon payment conflicted with the existence of a universal franchise, or whether it was a provision that made the universal franchise tolerable⁹⁷ did not require any kind of reference to the Athenian model.

None of this excluded the possibility of this or that reminiscence about Athens was evoked. Bismarck, for instance, referred to the 'payment of the educated proletariat for the commercial pursuit of demagogy',⁹⁸ but the significance of this kind of statement should not be overestimated. The same goes for Puttkamer, the Prussian interior minister, who in 1881 accused Theodor

⁹⁵ Germanists of all sorts – philologists, lawyers, historians – participated in this conference under the chairmanship of Jacob Grimm.

⁹⁶ Georg Meyer, *Das parlamentarische Wahlrecht*, ed. Georg Jellinek, Berlin 1901, 519ff.; Christian Jansen, 'Selbstbewußtes oder gefügiges Parlament? Abgeordnetendiäten und Berufspolitiker in den deutschen Staaten des 19. Jahrhunderts', *Geschichte und Gesellschaft* 25, 1999, 33–65.

⁹⁷ Summarised in Robert von Mohl, *Das deutsche Reichsstaatsrecht. Rechtliche und politische Erörterungen*, Tübingen 1873, 353ff. Mohl himself was unambiguously against the payment of representatives; given that the universal franchise that admitted uneducated voters was irrevocable, the prohibition of payments at least prevented the election of unsuitable parliamentarians.

⁹⁸ Cited in Lothar Gall, *Bismarck. Der weiße Revolutionär*, Berlin 1980, 388f.

Mommsen, then a liberal member of the Reichstag, of talking more like Cleon than Pericles at an electoral meeting, Mommsen rejecting the comparison with ‘this representative of the Athenian mob’.⁹⁹ Treitschke, who had in 1880 been heavily attacked by Mommsen during the dispute on antisemitism, also compared the ‘progressive enemies’ of Bismarck with ‘demagogic agitators’ à la Cleon.¹⁰⁰ (Here both Mommsen’s and Treitschke’s reference to Cleon no longer corresponded with the revised image of Cleon that Droysen and Grote had introduced.)

The arbitrariness of this kind of rhetoric is also apparent in the way that Bismarck, feeling in 1882 insulted by what Mommsen had said, expressed a suspicion that ‘the immersion in times 2000 years ago has completely overshadowed this excellent scholar’s view of the sunlit present’.¹⁰¹ Three years later Bismarck did not think twice in quoting a passage from Mommsen’s *Römische Geschichte* in support of protective tariffs, bringing the response from its author that ‘foolhardy games’ with ‘historical analogies’ showed how history was ‘misunderstood by fools and abused by the clever’.¹⁰²

Historical allusions, based upon a common cultural canon, employed in rhetorical support of current political argument – Bismarck’s conception of ‘Catilinarian creatures’ belongs here too¹⁰³ – by no means suggests that any structural similarities between antiquity and the present are implied.

A socialist like Karl Kautsky emphasised the fundamental difference between ancient and modern conditions, even though he adhered to a materialist conception of history that had space for antiquity. It would, he said, be worthwhile even for workers to devote ‘a portion of their limited leisure time’ to this, for understanding of one’s own present involved a dialogue with all human history, including distant times like that of classical antiquity, where a mode of production prevailed quite different from that of capitalism.¹⁰⁴

⁹⁹ Wickert, *Theodor Mommsen*, Bd. 4, 96ff.

¹⁰⁰ Treitschke, *Politik*, Bd. 2, 3rd ed., 291.

¹⁰¹ Bismarck in the Reichstag, 24 January 1882; in Otto von Bismarck, *Die gesammelten Werke*, Bd. 12: *Reden 1878–1885*, ed. Wilhelm Schüssler, Berlin 1929, 326; cf. Wickert, *Theodor Mommsen*, Bd. 4, 99ff., and Alexander Demandt, ‘Mommsen gegen Bismarck’, in *Theodor Mommsen. Wissenschaft und Politik im 19. Jahrhundert*, ed. Demandt, Berlin 2005, 89–102, on Bismarck’s complaint that Mommsen had insulted him.

¹⁰² Bismarck in the Reichstag, 14 February 1885, in *Gesammelte Werke*, Bd. 12, 609f., referring to Mommsen, *Römische Geschichte*, Bd. 1, 839. Mommsen’s response in the periodical *Die Nation* appeared anonymously, obviously seeking to avoid another accusation that he had insulted Bismarck; cited in Jürgen Malitz, ‘“Ich wünschte ein Bürger zu sein”. Theodor Mommsen im wilhelminischen Reich’, in *L’antichità nell’ottocento in Italia e Germania*, Karl Christ and Arnaldo Momigliano, eds., Bologna 1988, 321–359, here at 355f.

¹⁰³ Bismarck in the budget committee of the lower Prussian house, 30 September 1862; *Gesammelte Werke*, Bd. 10: *Reden 1847–1869*, 140.

¹⁰⁴ Karl Kautsky, Foreword to Joseph [Giuseppe] Salvioli, *Der Kapitalismus im Altertum. Studien über die römische Wirtschaftsgeschichte*, trans. Karl Kautsky, Stuttgart [1912], 2nd ed., Berlin 1922, XIX.

DIRECT POPULAR LEGISLATION

German social democracy never developed any specific constitutional ideas. This was not only true of its Marxist wing, but also for the Lassalleans: Lassalle himself had avowed that at stake was the 'real constitution', that is, the relations of power.¹⁰⁵ After their experience with the Socialist Laws (in fact: Anti-Socialist Laws) which, in force from 1878 to 1890, meant that parliamentary activity was the sole form of legal activity left to them, social democrats took a more positive view of parliament, even if in the same period they adopted Marx's teachings in the popularised form offered by Engels and Kautsky, and did not abandon the rhetoric of a revolutionary overthrow of existing conditions.

In 1893 Kautsky distanced himself from the principle of 'direct legislation by the people' that had been embodied in the 1891 Erfurt Programme of the Social Democrats, although the programme was very much his own work.¹⁰⁶ In this case, points from previous programmes had simply been absorbed into the new one,¹⁰⁷ formulations concerning the right for the people to propose and reject laws being included without further elucidation. This aspiration was a reflection of long-held ideas of direct popular legislation, not as an extension of parliamentary legislation, but as a replacement for it. Jellinek called this an expression of an unconscious Rousseauism.¹⁰⁸ The small left-liberal German People's Party had also called in 1895 for referenda on 'fundamental laws'.¹⁰⁹

For decades the whole idea was primarily championed by Moritz Rittinghausen, whose text on the subject was reprinted yet again in 1893.¹¹⁰ During the revolutionary period 1848–1849 Rittinghausen had agitated in the Cologne Democratic Association for direct popular legislation and the abolition of parliament.¹¹¹ When finally in French and Belgian exile he continued

¹⁰⁵ *Über Verfassungswesen. Ein Vortrag*, Berlin 1862, reprinted in Ferdinand Lassalle, *Gesammelte Reden und Schriften*, Bd. 2, ed. Eduard Bernstein, Berlin 1919, 25–61.

¹⁰⁶ Karl Kautsky, 'Die direkte Gesetzgebung durch das Volk und der Klassenkampf', *Die Neue Zeit* Jg. 11, Bd. 2, 1893, 516–527; idem, *Der Parlamentarismus, die Volksgesetzgebung und die Sozialdemokratie* [1893], second edition published under the title *Parlamentarismus und Demokratie*, Stuttgart 1911.

¹⁰⁷ The texts of the Eisenach Programme of 1869, the Gotha Programme of 1875, and the Erfurt Programme of 1891 are printed in *Deutsche Parteiprogramme*, 2nd ed., ed. Wilhelm Mommsen, Munich 1964, 312, 314 and 351.

¹⁰⁸ 'Die Politik des Absolutismus und die des Radikalismus (Hobbes und Rousseau)' [1891], in Georg Jellinek, *Ausgewählte Schriften und Reden*, Bd. 2, Berlin 1911 3–22, here at 13.

¹⁰⁹ Wilhelm Mommsen, *Parteiprogramme*, 161.

¹¹⁰ Moritz Rittinghausen, *Die direkte Gesetzgebung durch das Volk*, 5th ed., Zürich 1893 [first published 1868–1872 with the title *Sozialdemokratische Abhandlungen*].

¹¹¹ Rittinghausen, *Direkte Gesetzgebung*, 63. Marx thought Rittinghausen's idea of direct democracy to be 'nonsense'; Letter to Engels, 8 August 1851; MECW, Vol. 38, 411 [MEW, Bd. 27, 299 = MEGA², Abt. III, Bd. 4, 172]. According to Franz Mehring, *Geschichte der deutschen Sozialdemokratie*, 2. Teil [1904], Berlin 1976 [= Mehring, *Gesammelte Schriften*, Bd. 2], 256f., Rittinghausen 'had retained something of the utopian inclinations of German socialists before 1848'.

to promote his ideas, and did find resonance in the German party programmes mentioned earlier, as well as in Swiss constitutional discussions.¹¹² In 1869 Zürich (with a purely representative system until then) had introduced referenda on legislation and the possibility of popular legislative initiatives, becoming in this way a model for other cantons.¹¹³ The popular movement that achieved this new constitution was led by Karl Bürkli, a socialist in the tradition of Fourier and Considerant. Bürkli had been inspired by Rittinghausen's earlier writings.¹¹⁴ Friedrich Albert Lange, a German philosopher (with socialist leanings) who had settled in the canton of Zürich in 1866, was co-author of the new constitution. Lange claimed that it was the 'first attempt in world history to install democracy on a more rational basis than by popular assemblies or by parliaments'.¹¹⁵

Rittinghausen again referred to the Zürich model when he pleaded successfully for the adoption of 'direct popular legislation' in the 1869 Eisenach Programme of the German Labour movement.¹¹⁶ In 1877 Rittinghausen became a representative in the Reichstag, but was expelled from the social democrats in 1884 for infringing party discipline. According to Engels, Rittinghausen had remained essentially what he always was, 'only a socialist pro forma, so that he could use us to help him realise the idea of direct popular government. But we had better things to do.'¹¹⁷

¹¹² Ulrike Fäuster and François Melis, 'Moritz Rittinghausen (1814–1890). Ein Achtundvierziger als Vorkämpfer für die direkte Gesetzgebung durch das Volk', in *Akteure eines Umbruchs. Männer und Frauen der Revolution von 1848/49*, Bd. 4, ed. Walter Schmidt, Berlin 2013, 451–497.

¹¹³ On the Zürich constitution of 1869 see Alfred Kölz, *Der Weg der Schweiz zum modernen Bundesstaat*, Chur 1998, 85–91.

¹¹⁴ Friedrich Albert Lange, *Über Politik und Philosophie. Briefe und Leitartikel 1862 bis 1875*, ed. Georg Eckert, Duisburg 1968, 147ff. Bürkli had formulated his idea of 'pure democracy' already in 1851; see his respective text in *Wege zur direkten Demokratie in der Schweiz. Eine kommentierte Quellenauswahl von der Frühneuzeit bis 1874*, ed. Rolf Graber, Vienna 2013, 431–434.

¹¹⁵ In a letter, May 1869, quoted in Lange, *Über Politik und Philosophie*, 13f.

¹¹⁶ *Protokoll über die Verhandlungen des Allgemeinen Deutschen sozial-demokratischen Arbeiterkongresses zu Eisenach am 7., 8. und 9. August 1869*, Leipzig 1869, 33–35. Probably Bürkli had some influence on this decision of the Eisenach Congress; see Heinrich Gemkow, 'Im Kampf um die Gründung der Partei. Unveröffentlichte Briefe an Bebel und Liebknecht (Juni bis August 1869)', *Beiträge zur Geschichte der Arbeiterbewegung* 11, 1969, 620–639, at 634f., and Wolfgang Renzsch, 'Die "direkte Gesetzgebung durch das Volk" im Eisenacher Programm', *Internationale wissenschaftliche Korrespondenz zur Geschichte der deutschen Arbeiterbewegung* 13, 1977, 172–176. It was again Bürkli who in 1892 exhorted his German comrades to pay more than lip service to this demand and thus provoked Kautsky's reaction; see Wolfgang Mantl, *Repräsentation und Identität. Demokratie im Konflikt. Ein Beitrag zur modernen Staatsformenlehre*, Vienna 1975, 537ff.

¹¹⁷ Engels, Letter to August Bebel, 10 May 1883; MECW, Vol. 47, 21 [MEW, Bd. 36, 25f.]. Engels had already criticized the demand for popular legislation in the 1875 programme as fashionable nonsense; in Switzerland it had caused more damage than benefit; letter to Bebel, late March 1875; MECW, Vol. 45, 63 [MEW, Bd. 34, 128].

Rittinghausen believed that both initiative and decision should rest solely on section assemblies (each consisting of 1,000 citizens) which had to meet simultaneously; this was therefore a kind of decentralised popular assembly for a given state. Apart from Swiss cantonal assemblies (*Landsgemeinden*), the idea was drawn from the primary assemblies in the French Revolution, as codified in the 1793 constitution.¹¹⁸ Rittinghausen did make some reference to Greeks and Romans (citing Grote and Mommsen), but he saw the principal forerunners in the 'free' Germans described by Tacitus¹¹⁹ as a relevant historical model.¹²⁰

By contrast, Kautsky considered a parliamentary system to be indispensable, noting also that in Athens direct popular rule had taken an enormous amount of time; it could only be realised by

those elements who lived at the expense of others: the idle rich and the idle poor – large landowners, merchants and manufacturers together with the lumpenproletariat. ... The lumpenproletariat sold its political power to the highest bidder, hence to the rich, who gained the allegiance of propertyless people through festivals and alms – bread and circuses, as in Rome. The means for all this was supplied by the slave economy.¹²¹

As in his other writings,¹²² Kautsky here shared the accepted views to be found in 'bourgeois' literature on the nature of the ancient lower classes, as did also Marx and Engels, equating them with the 'poor whites' in the American slave states.¹²³ They considered that the lower classes in ancient society lacked an appropriate class consciousness because they occupied a privileged position by comparison with the slaves. Here no differences needed to be made between Athens and Rome.

Kautsky in fact agreed with his 'revisionist' antagonist Eduard Bernstein that, as a rule, popular referenda are not a suitable instrument for deciding complex matters in a modern state.¹²⁴ In 1918 Kautsky, considering the

¹¹⁸ In detail Rittinghausen followed more Condorcet's draft than the constitution imposed by the Jacobins (see p. 154ff.). When in 1850 Rittinghausen had promoted his ideas in France Louis Blanc rejected them, pointing to their Girondist roots: *Plus de Girondins*, Paris 1851.

¹¹⁹ Tacitus, *Germania* 11.

¹²⁰ Rittinghausen, *Direkte Gesetzgebung*, 3 and 9ff. The same myth was repeated by Edward A. Freeman, *The Growth of the English Constitution from the Earliest Times*, London 1872, Ch. 1.

¹²¹ Kautsky, *Parlamentarismus und Demokratie*, 34f.

¹²² Karl Kautsky, *Der Ursprung des Christentums. Eine historische Untersuchung* [1908], 10th ed., Stuttgart 1920 (on Rome).

¹²³ Marx, 'The North American Civil War' [20 October 1861]; MECW, Vol. 19, 40 [MEW, Bd. 15, 337]; Engels, *Origin of the Family*; MECW, Vol. 26, 249 [MEW, Bd. 21, 144 = MEGA², Abt. I, Bd. 29, 90].

¹²⁴ Eduard Bernstein, 'Die sozialpolitische Bedeutung von Raum und Zahl' [1897], in his *Zur Theorie und Geschichte des Socialismus*, Teil II, 4th ed., Berlin 1904, 58–78, here at 65f. Bernstein's 'revisionism' meant that one should not tie oneself dogmatically to the statements of Marx and Engels, but develop their theory in the light of changing circumstances. This stance brought him into conflict with Kautsky as spokesman for the 'orthodox' Marxist wing of the party, which had become increasingly dominant.

Russian Revolution, clearly declared himself in favour of a representative system and against a system of workers' councils. He linked this with the claim that social democracy had never ever aspired to anything else – and in so doing, invoked arguments made by Marx and Engels in particular circumstances.¹²⁵ Lenin responded by labelling Kautsky a 'renegade', transforming Marx into a 'common liberal'.¹²⁶ (In a sense he was right since Kautsky had played down Marx' ideas). Lenin also took note of Kautsky's interest in antiquity, making the friendly suggestion that 'the German proletariat, after it has attained its dictatorship, will bear this inclination of his in mind and appoint him, say, teacher of ancient history at some Gymnasium'.¹²⁷ In fact, Lenin had in 1902 agreed with Kautsky's critique of Rittinghausen, rejecting the illusionary idea prevalent in the workers' movement that democracy could do without career functionaries, and that in future everyone could decide everything. Lenin cited in support Sidney and Beatrice Webb, the historians of the English workers' movement, who had showed that English trade unions had left behind their earlier illusionary ideas.¹²⁸

However, after 1917 Lenin no longer counted Kautsky among his comrades fighting for the 'dictatorship of the proletariat', that is, 'for the first time ... democracy for the poor, democracy for the people, and not democracy for the money-bags; the dictatorship of the proletariat imposes a series of restrictions on the freedom of the oppressors, the exploiters, the capitalists.'¹²⁹

THE PARIS COMMUNE AND THE DICTATORSHIP OF THE PROLETARIAT

The short life of the Paris Commune from March until May 1871 was conceived both by its participants and by its opponents as a rerun of the revolutionary government and section assemblies of the Great French Revolution. There were also echoes of the workers' rising in 1848, but hardly any references

¹²⁵ Karl Kautsky, *Demokratie oder Diktatur*, Berlin 1918; also his *Die Diktatur des Proletariats*, Vienna 1918. Kautsky's acceptance of parliamentarism implied, however, the understanding that social democratic members of parliament had to follow the party's instructions.

¹²⁶ Lenin, 'The Proletarian Revolution and the Renegade Kautsky' [November 1918]; *Collected Works*, Vol. 28, 227–325; 'On "Democracy" and Dictatorship' [January 1919], *ibid.*, 368–372. On the controversy between Lenin and Kautsky see Gary P. Steenson, *Karl Kautsky, 1854–1938. Marxism in the Classical Years*, Pittsburgh 1978, 207ff.

¹²⁷ Lenin, 'The Proletarian Revolution and the Renegade Kautsky', *Collected Works*, Vol. 28, 236.

¹²⁸ Lenin, 'What Is to Be Done? Burning Questions of Our Movement' [1902]; *Collected Works*, Vol. 5, 404. Sidney and Beatrice Webb, 'Primitive Democracy in British Trade Unionism', *Political Science Quarterly* 11, 1896, 397–432, and 'Representative Institutions in British Trade Unionism', *ibid.*, 640–671. The assumption that 'democracy means that everything which "concerns all should be decided by all" ... leads straight either to inefficiency and disintegration, or to the uncontrolled dominance of a personal dictator or an expert bureaucracy' (431). The Webbs drew a parallel between the early trade unions and the Swiss cantonal assemblies (399).

¹²⁹ Lenin, 'The State and Revolution' [1917], *Collected Works*, Vol. 25, 466.

were made to Athenian democracy. History repeated itself to the extent that in 1871 a Committee of Public Safety was eventually created in order to reduce drastically the influence of primary assemblies, although this did result in a split within the movement. The Paris Commune became mythologised as the revolutionary self-organisation of the people, as the realisation of the 'social republic', which should 'supersede class rule itself' through 'essentially a working class government'.¹³⁰ It became the model for the workers' councils of the early twentieth century. The Commune's aura derived from its heroic failure and great loss of life, with around 20,000 persons executed in the aftermath. This created the idea that it all should not have been in vain. 'Working men's Paris, with its Commune, will be forever celebrated as the glorious harbinger of a new society. Its martyrs are enshrined in the great heart of the working class.'¹³¹ In this way Marx deviated from his earlier critique of the Commune's insurrectionary politics as irresponsible adventurism, 'annexed' the Commune and created 'an important tradition for the coming movements of working peoples'.¹³²

The Paris Commune was a form of revolutionary self-organisation in the face of an acute threat. There was no unitary theoretical conception, and on its left wing had various socialist and anarchist tendencies that looked back to Marx, Blanqui, Proudhon and Bakunin. August Bebel, the chairman of the German social democrats, thought that it 'failed more for a lack of direction ... than because of the superiority of its enemies',¹³³ although this did not reduce its significance for him.¹³⁴ In 1871 Bebel expressed his solidarity with the Commune in the Reichstag, bringing down upon him a prosecution for treason; when introducing the Socialist Law in 1878 Bismarck accused him of having made himself the 'evangelist for these murderers and incendiaries' and so brought about the 'self-defence' of the state.¹³⁵

¹³⁰ Marx, *The Civil War in France. Address of the General Council of the International Working Men's Association*; MECW, Vol. 22, 330f. and 334 [MEGA², Abt. I, Bd. 22, 139 and 142].

¹³¹ Marx, *The Civil War in France*; MECW, Vol. 22, 355 [MEGA², Abt. I, Bd. 22, 159]. This text brought Marx into prominence (or notoriety) all over Europe.

¹³² Arthur Rosenberg, *Demokratie und Sozialismus. Zur politischen Geschichte der letzten 150 Jahre* [1938], Frankfurt am Main 1962, 173; see also his *Geschichte des Bolschewismus* [1932], Frankfurt am Main 1966, 64. From 1920 to 1927 Rosenberg had been a member of the Communist Party. These books reflect his break with Communism.

¹³³ 'Größe und Grenzen der sozialistischen Bewegung in Frankreich' [1 May 1878; review of Lissagaray's book on the Paris Commune], in August Bebel, *Ausgewählte Reden und Schriften*, Bd. 1: 1863 bis 1878, Rolf Dlubek and Ursula Herrmann, eds., Berlin 1970, 507–518, at 508.

¹³⁴ See Bebel's commemoration of the thirtieth anniversary of the Paris Commune in 1901: 'Ein Aufsatz von August Bebel über die Pariser Kommune', *Zeitschrift für Geschichtswissenschaft* 19, 1971, 373–381.

¹³⁵ Speech in the Reichstag, 17 September 1878; Bismarck, *Gesammelte Werke*, Bd. 11: *Reden 1869–1878*, 610f. Bismarck states that he no longer knew whether it was Bebel or the other socialist member Wilhelm Liebknecht who had said this.

During the 1930s Arthur Rosenberg, a classical scholar to his bones who during the 1920s had turned into a contemporary historian, writing the history of socialism mentioned as precursors to the Paris Commune and the soviets the ‘small republics of antiquity’, but elsewhere cited only the ‘urban communes of the Middle Ages, the Swiss peasant cantons, and the original communal settlements in North America’ as the relevant historical models.¹³⁶ (In the case of soldiers’ councils one could cite predecessors in Cromwell’s army.) The organisation of commune and workers’ council did have some structural correspondences with Athenian democracy, but was no longer related to a deliberate invocation of antiquity.

REFERENDUM DEMOCRACY

Possible alternatives to a representative constitution were discussed primarily in relation to Switzerland. Tocqueville had in 1848 criticised the myth that democracy had prevailed in Switzerland since the Middle Ages, noting the highly oligarchic nature of its communities. At the time of the French Revolution, he argued, one was in Switzerland further removed from the ‘institutions and the spirit that went to make up modern liberty’ than anywhere else in Europe.¹³⁷ The Helvetic Republic (1798–1803), founded under pressure from the French but also with the active support of sections of the Swiss urban elites, was an attempt to create a centralised state on the French model, in which the cantons functioned merely as administrative districts (like the French departments). Its constitution was substantially a copy of the French 1795 Directory Constitution; it called itself a ‘representative democracy’ (Title I, No. 2), something unparalleled in other constitutions. The continuing resistance to this new order¹³⁸ led Napoleon to see that a system had here been forced upon the Swiss that was foreign to their traditions and dictated a return to a confederation of cantons.¹³⁹

After the restoration of the Confederacy in 1803 (which was given a new contractual basis in 1815)¹⁴⁰ there was further agitation during 1830–1831

¹³⁶ Rosenberg, *Demokratie und Sozialismus*, 171; also his *Geschichte des Bolschewismus*, 127.

¹³⁷ ‘Bericht über die Demokratie in der Schweiz’ [15 January 1848], in Alexis de Tocqueville, *Kleine politische Schriften*, ed. Harald Bluhm, Berlin 2006, 163–178, here at 165. [Tocqueville, ‘Rapport sur la démocratie en Suisse’, *Œuvres complètes*, t. 16, 203–220]. On Tocqueville’s earlier statements on pre-1848 Switzerland see Emil Dürr, ‘Die Demokratie in der Schweiz nach der Auffassung von Alexis de Tocqueville’, *Basler Zeitschrift für Geschichte und Altertumskunde* 23, 1925, 225–279.

¹³⁸ A new constitution came into force in 1802, after a referendum: around 70,000 voted in favour, and 90,000 against. The constitution was deemed to have been accepted by adding the 170,000 votes not cast to those cast in favour.

¹³⁹ Hermann Oncken, *Das Zeitalter der Revolution, des Kaiserreiches und der Befreiungskriege*, Bd. 2, Berlin 1886, 85ff.; Holger Böning, *Der Traum von Freiheit und Gleichheit. Helvetische Revolution und Republik (1798–1803) – Die Schweiz auf dem Weg zur bürgerlichen Demokratie*, Zürich 1998, 292ff.

¹⁴⁰ In 1803 Napoleon had imposed the *Acte de Médiation*. It comprised the constitution of the Confederacy as well as individual constitutions for the cantons (now 19). In the view of

in many cantons for constitutional change. This resulted in new provisions, intended to undermine the domination of the patriciate by introducing an extended franchise, popular consultation in case of constitutional changes, a popular veto over legislation and the right to recall mandated representatives. The 'democratic movement' of the 1860s resulted in replacing the veto by referenda on legislation, in some cases obligatory, in other cases as the result of a successful popular initiative.¹⁴¹ The 1848 constitution for the newly formed federal state¹⁴² made constitutional changes subject to a popular vote and allowed popular initiatives to revise the constitution.¹⁴³

Direct democracy thus had two different forms in Switzerland. This related, on the one hand, to the organisation of some rural cantons based on the *Landsgemeinde* (cantonal assembly) and, on the other, to a 'referendum democracy' which operated at the federal level and within mostly urban cantons. The term 'referendum' indicates that the process which leads to a popular vote on a certain subject is started by a (legally defined) number of citizens in contrast to a 'plebiscite' designating that the government submits at its own discretion a particular proposal for popular approval or disapproval.¹⁴⁴

In the *Landsgemeinde* all males capable of military service usually met once a year to decide on the budget, to pass laws and to elect magistrates. The preparatory work was done by a council (made up of representatives from the communes) and once this had been completed it was difficult to alter in the assemblies; the possibility for debate was very limited.¹⁴⁵ Decisions were made in open session by a show of hands; it was up to the magistrate, who chaired

Robert von Mohl it was an excellent solution but had the 'irreparable defect' to be the work of a foreigner; 'Die Literatur des schweizerischen Staatsrechtes', *Zeitschrift für die gesammte Staatswissenschaft* 6, 1850, 438–501, at 485. After Napoleon's fall this system was declared void in late 1813; a new federal treaty came into force two years later after complicated negotiations between the cantons.

¹⁴¹ This procedure had apparently been a trick to domesticise popular unrest. The rules with respect to terms, quora and necessary majorities were so construed that there were only small chances of success. That is why it was replaced by referenda; see Silvano Möckli, 'Das Gesetzesveto und -referendum. Ein Stolperstein wird zum Grundstein', in *Les origines de la démocratie directe en Suisse*, ed. Andreas Auer, Basel 1996, 209–220; Martin Schaffner, 'Die demokratische Bewegung', *ibid.*, 155–162.

¹⁴² Here the relationship between federation and canton borrowed from the US model, especially with respect to a second chamber representing cantons. For the executive a collegiate system was chosen; that followed the example of the Helvetic Republic and thus of the 1795 French Directory though one preferred to declare it a Swiss tradition.

¹⁴³ This applied then only to initiatives to replace the current constitution by a new one ('Totalrevision'); since 1891 popular initiatives could also be launched to alter only certain parts of the constitution ('Partialrevision').

¹⁴⁴ This distinction is already blurred in the cases of 'obligatory referenda', constitutional rules that make mandatory a direct decision by the electorate. In present-day usage in various countries there is no longer a clear-cut terminological differentiation.

¹⁴⁵ In one canton (Appenzell Außerrhodens) debate was even prohibited; while possible in others, for the most part members of the government made recommendations: Heinrich Ryffel, *Die schweizerische Landsgemeinden*, Zürich 1903, 309f.

the sessions, to decide on the majority.¹⁴⁶ Magistrates had therefore a very strong position; for the most part they came from families that had been in politics for generations.¹⁴⁷ This clearly differs from the situation prevailing in Athens: the assembly met almost at weekly intervals; those who presided over the meetings were regularly replaced; and the political initiative lay with (usually unofficial) ‘demagogues’ who competed with each other.¹⁴⁸

In 1847 Friedrich Engels described this ‘crude, Germanic-Christian democracy of the cattle-raising primitive cantons’ as ‘reactionary ballast’ that the European democracy really had to get rid of.¹⁴⁹ This was also the position of the liberal and leftist wings of the Swiss bourgeoisie, who objected both to the conservative policies these arrangements promoted, and the actual domination of the magistrates. In 1848 the *Landsgemeinde* was abolished in both the Cantons Schwyz (existing here from 1294) and Zug (existing from 1376).¹⁵⁰

In a ‘referendum democracy’ the competence of a parliament is limited by popular initiatives and popular decision making, obligatory in the case of constitutional revision. The established argument that under modern conditions a parliament had to take the place of popular assemblies was in Switzerland transformed, so that popular referenda were thought as equivalents when a *Landsgemeinde* was no longer practical.¹⁵¹ So, one cultivated the myth of an organically developing democracy that had roots going back centuries, whereas in fact the idea of referenda undoubtedly drew upon the French constitution of 1793, or more exactly, upon Condorcet’s draft.¹⁵²

The federal constitutions of 1848 and 1874 resumed use of the old distinction between democracy and representation, unlike the 1798 constitution. The cantons were to ‘secure the exercise of political rights according to

¹⁴⁶ For the potential conflict of interest here see p. 361, fn. 24.

¹⁴⁷ See Max Weber’s remarks on this point in ‘Der Sozialismus’ [1918]; MWG I/15, 602f. Up until about 1800 it was also usual that the voting and material decisions of citizens was influenced with payments of money and other gifts; elected magistrates received no salary, they even had to pay a large sum into the state treasury on assuming office: Andreas Suter, ‘Vormoderne und moderne Demokratie in der Schweiz’, *Zeitschrift für Historische Forschung* 31, 2004, 231–254, here at 244.

¹⁴⁸ Mogens Herman Hansen, ‘The Athenian *ecclesia* and the Swiss *Landsgemeinde*’, in his *The Athenian Ecclesia. A Collection of Articles 1976–1983*, Copenhagen 1983, 207–226, stresses some equivalents between the Athenian and the *Landsgemeinde* procedural rules but does not grasp the *de facto* oligarchic character of the latter.

¹⁴⁹ Engels, ‘The Civil War in Switzerland’ [1847]; MECW, Vol. 6, 367 [MEW, Bd. 4, 391]. See further ‘Political Position of the Swiss Republic’ [*New York Daily Tribune*, 17 May 1853]: ‘What, at most, can be said in favor of the Swiss constitution of 1848 is this: that by its enactment the more civilized portion of the Swiss declared themselves willing to pass, to a certain extent, from the middle ages into modern society’; MECW, Vol. 12, 90 [MEGA², Abt. I, Vol. 12, 130]. This article was published under the name of Marx but in fact written by Engels.

¹⁵⁰ See p. 366 for twentieth-century developments.

¹⁵¹ This was argued by Jakob Dubs, *Die schweizerische Demokratie in ihrer Fortentwicklung*, Zürich 1868. Dubs was a member of the federal government from 1861–1872.

¹⁵² Kölz, *Der Weg der Schweiz zum modernen Bundesstaat*, 68ff.

republican (representative or democratic) forms'. 'Republican' here implied the exclusion of the monarchy, an issue that had contemporary relevance in the 'Neuenburg Question'. In 1848 the Principality of Neuenburg (*Neuchâtel*) had been transformed into a republic by way of (peaceful) revolution. Since 1707 Neuenburg had been ruled by the Prussian kings in personal union. Until 1857 the Prussian king refused to recognise the results of the 1848 Revolution. In the Swiss federal constitution of 1874, which prescribed the obligatory constitutional referendum in the cantons, 'representative or democratic' related to cantonal legislation which could be made either through parliamentary decision or popular vote.

'Referendum democracy' was propagated abroad. Wilhelm Roscher maintained that 'radical statesmen in Switzerland have praised their referendum as the most splendid experiment that a republic has ever made'.¹⁵³ There was also a great deal of discussion in Germany, great play being made with the (purely fictional) derivation from the *Landsgemeinde* and from the Germanic liberties embodied in popular assemblies as described by Tacitus.¹⁵⁴ However, a positive view of this model was hindered by the fact that the plebiscite had been discredited by its association with Bonapartism, as an instrument for the manipulation of popular will.¹⁵⁵

The idea of democracy based upon referenda¹⁵⁶ was, however, well-received in the United States. The 'progressive movement' of 1890–1920 against 'big money' and 'party machines' led to a number of reforms in various states. These included obligatory referenda for constitutional revisions; referenda even in cases of simple legislation (for some issues obligatory, for others following a popular initiative); and the possibility of recalling elected representatives and governors. The Swiss example was in the forefront of all of these changes.¹⁵⁷

¹⁵³ Wilhelm Roscher, *Politik: Geschichtliche Naturlehre der Monarchie, Aristokratie und Demokratie*, Stuttgart [1892], 2nd ed., 1893, 357.

¹⁵⁴ This view of a Swiss model based on an allegedly older Germanic form was presented in various publications by the journalist Theodor Curti, who after many years of political activity in Switzerland was chief editor of the *Frankfurter Zeitung* from 1902 to 1914; see Theodor Curti, 'Der Weltgang des Referendums. Ursprung, Untergang und Wiedergeburt der germanischen Volksfreiheit', *Archiv des öffentlichen Rechts* 28, 1912, 1–44.

¹⁵⁵ Immanuel Hoffmann, *Das Plebiscit als Correctiv der Wahlen*, Berlin 1884, sought to argue against this view by citing the positive experience gained in Switzerland.

¹⁵⁶ In the early 1890s another form was considered but not realised in Belgium. In case of a conflict with the parliament the king should be entitled to call for a consultative (not legally binding) plebiscite; see Ludwig Fuld, 'Die versuchte Einführung des Referendums in Belgien', *Archiv für öffentliches Recht* 8, 1893, 558–566.

¹⁵⁷ 'This desire for the so-called initiative and referendum is due in part to descriptions of the successful government of Switzerland by direct legislation, in part to a growing distrust of our representative system of government'; W. Rodman Peabody, 'Direct Legislation', *Political Science Quarterly* 20, 1905, 443–455, here at 443; see further William E. Rappard, 'The Initiative, Referendum and Recall in Switzerland', *Annals of the American Academy for Political and Social Science* 43, 1912, 110–145 (by a Swiss author who provides a long list of contemporary publications in English on the Swiss model and its applicability in the American states), and

Primary elections, however, were a new element.¹⁵⁸ The fact that California was among the states adopting these measures showed that the model was not considered as suitable only to small states that were culturally, socially and ethnically homogeneous.

In the later nineteenth century there were therefore two plausible alternatives to a purely representative system: the commune or (later) council model and the referendum model. Neither of these had anything to do with an Athenian original. This was also true of course for the *Landsgemeinde* that had developed out of medieval tradition; this system was generally perceived to be a relic of folklore, and not replicable. Nevertheless, none of this excluded the possibility that a referendum would be treated as a 'venerable form of ancient and Germanic human liberty'.¹⁵⁹

GERMAN LIBERTY VERSUS WESTERN DEMOCRACY

After the establishment of the German Empire in 1871 the idea gained ground that Germany had discovered a specific balance between democratic and monarchical principles that distinguished it from other Western powers. In lectures delivered in 1913 the historian Hans Delbrück polemicised against the principle of democracy and extolled the German constitutional compromise. Compared with his critique of modern parliamentarism and party rule in England, France and America, the critical remarks made about Athens and Rome took up a relatively small amount of his attention.¹⁶⁰ This was also true for his hostile obituary for August Bebel in the same year, in which Delbrück depicted the man who had long been chairman of the social democrats (and called 'shadow emperor of the German workers') as a modern Cleon.¹⁶¹

Among the war literature produced from 1914 to 1918 (besides comparison with the Peloponnesian War as regards the question of war guilt)¹⁶² a

for recent accounts Constanze Stelzenmüller, *Direkte Demokratie in den Vereinigten Staaten von Amerika*, Baden-Baden 1994; Silvano Möckli, *Direkte Demokratie. Ein Vergleich der Einrichtungen und Verfahren in der Schweiz und Kalifornien*, Bern 1994; John Keane, *The Life and Death of Democracy*, London 2009, 341ff.

¹⁵⁸ At the federal level this movement led primarily to the introduction of direct elections of senators in 1913 (Seventeenth Amendment).

¹⁵⁹ Karl Loewenstein, *Volk und Parlament nach der Staatstheorie der französischen Nationalversammlung von 1789*, Munich 1922, 9.

¹⁶⁰ Hans Delbrück, *Regierung und Volkswille*, 2nd ed., Berlin 1920; on Athens at 34 and 65ff., on Rome at 68ff.

¹⁶¹ Hans Delbrück, 'Bebel der Demagog', *Preussische Jahrbücher* 153, 1913, 556–560. In his old age Mommsen (who had voted for the Socialist Law in the Reichstag) came to a different conclusion: 'equipped with a mind like Bebel a dozen East Elbian Junkers could stand out and shine among their fellows'; Mommsen, 'Was uns noch retten kann' [1902], in Ludo Moritz Hartmann, *Theodor Mommsen. Eine biographische Skizze*, Gotha 1908, 255–258, here at 258.

¹⁶² For example, Erich Bethe, 'Athen und der Peloponnesische Krieg im Spiegel des Weltkrieges', *Neue Jahrbücher für das klassische Altertum, Geschichte und deutsche Literatur* 20, 1917, 73–87.

monograph by Engelbert Drerup was published dealing with fourth-century Athens as an ‘advocates’ republic’. The belittlement of the (naturally) corrupt ‘professional politician’ Demosthenes was also aimed at the enemy politicians in France and England.¹⁶³ One reviewer, however, thought the book to be a ‘regrettable confusion’, since scholarly objectivity was sacrificed on the ‘altar of national pedagogy’.¹⁶⁴ In 1923 Drerup then concluded that after all, an ‘advocates’ republic’ had become established in ‘our once so proud Fatherland’, a ‘republic of the street and of demagogues before whom Cleon and Aristophanes’ sausage-seller [counterpart to Cleon in *The Knights*] would have no need to feel ashamed’.¹⁶⁵

Eduard Meyer, the leading contemporary ancient historian and active in propagating the idea of a ‘victorious peace’, preferred attacking England and the United States directly, and not through the intermediation of antiquity.¹⁶⁶ From the time that England sought to encourage the United States to enter the war in order to ‘defend democracy’, the American president Woodrow Wilson ultimately adopting this argument with the statement ‘the world must be made safe for democracy’,¹⁶⁷ the path of Western democracy was explicitly countered to the German path.¹⁶⁸ This form of confrontation was not one best suited for the discussion of ancient and modern democracy and liberty. During the First World War London buses carried placards with quotations from Pericles’ Funeral Oration,¹⁶⁹ although in this case it had probably more to do with the expression of the martial spirit of free citizens in this oration than any idea of democracy.

¹⁶³ Engelbert Drerup, *Aus einer alten Advokatenrepublik (Demosthenes und seine Zeit)*, Paderborn 1916, 1–4 and 187–192.

¹⁶⁴ Heinrich Swoboda, *Deutsche Literaturzeitung* 39, 1918, 323–331, here at 331.

¹⁶⁵ Engelbert Drerup, *Demosthenes im Urteile des Altertums von Theopomp bis Tzetzes. Geschichte, Roman, Legende*, Würzburg 1923, 1.

¹⁶⁶ Eduard Meyer, *England. Seine staatliche und politische Entwicklung und der Krieg gegen Deutschland*, Stuttgart 1915; *Nordamerika und Deutschland*, Berlin 1915; also his *Weltgeschichte und Weltkrieg. Gesammelte Aufsätze*, Stuttgart 1916; for numerous other pieces see Heinrich Marohl, *Eduard Meyer. Bibliographie*, Stuttgart 1941.

¹⁶⁷ Declaration before the American Congress, 2 April 1917. Wilson’s message was heavily criticised among large sections of the American public, the expectation having been that Wilson would keep them out of the war. However, in an interview given in April 1918 Wilson moderated the message: ‘I am not fighting for democracy except for the peoples who want democracy. If they don’t want it, that is none of my business’; cited in John Dunn, *Setting the People Free. The Story of Democracy*, London 2005, 232, n. 7.

¹⁶⁸ As in the collective volume: *Die deutsche Freiheit. Fünf Vorträge*, Gotha 1917, with contributions from Adolf von Harnack, Friedrich Meinecke, Max Sering, Ernst Troeltsch and Otto Hintze. Also among others the radical rightist author Houston Stewart Chamberlain: *Demokratie und Freiheit*, Munich 1917; but later also an ancient historian who in this context did not refer to antiquity: Julius Kaerst, ‘Die moderne Demokratie und der deutsche Staat’, *Die Tradition. Wochenschrift für preußische Politik und monarchische Staatsauffassung* 3, 1921, 228–238; 288–301.

¹⁶⁹ Frank M. Turner, *The Greek Heritage in Victorian Britain*, New Haven 1981, 187.

PRUSSIAN ELECTORAL REFORM AND THE RELEVANCE
OF ANTIQUITY

The historian Friedrich Meinecke remarked that during 1918 in Prussia it was assumed that opponents of the universal franchise and a secret ballot that was to replace the tiered franchise (*Dreiklassenwahlrecht*) and open voting would 'find their arguments in world history, invoking the terrible effects of progressive democracy in ancient city-states'.¹⁷⁰

The tiered (three-class) franchise was introduced in Prussia at the end of May 1849 not through any legislative measure, but in the highly unconstitutional form of an emergency decree. It was then endorsed by the revised Prussian constitution of January 1850. Voters were divided into three classes, each of which accounted for one-third of the income from direct taxation. The primary voters of each class voted in public each for the same number of electors, who then in turn voted publicly for representatives. The votes of the few highly taxed persons in the first class (4,7 per cent of the total in 1863) had a far greater weight than those in the mid-ranges of tax incidence (12,6 per cent), and especially with respect to the large number of persons who paid the least amount of tax in the third class (82,7 per cent). This arrangement had previously been introduced in the Rhineland communal constitution of 1845. Ironically, a proposal involving similar arrangements had been made in 1799 in an allegedly Jacobin draft constitution from Southwestern Germany.¹⁷¹

In contemporary debate this three-class system was occasionally compared with the Roman centuriate assembly,¹⁷² but this does not necessarily mean

¹⁷⁰ Friedrich Meinecke, *Erlebtes. 1862–1919*, Stuttgart 1964, 321.

¹⁷¹ 1863 electoral statistics in *Der Verfassungskonflikt in Preußen 1862–1866*, ed. Jürgen Schlumbohm, Göttingen 1970, 89–93. The 1799 'Jacobin' draft: 'Entwurf einer republikanischen Verfassungsurkunde, wie sie in Deutschland taugen möchte. Im 7. Jahr der Mutterrepublik', 4. Abschnitt, Nr. 15: 'One third of the electors will be composed of the least well-off, one third of the middling sort, and one third of the most well-off citizens. The tax rolls will serve here as a guide.' In *Jakobinische Flugschriften aus dem deutschen Süden Ende des 18. Jahrhunderts*, ed. Heinrich Scheel, Berlin 1965, 130–182, here at 148. This distribution related to the electors, not the voters; a secret ballot was also envisaged.

¹⁷² In the Roman republic the highest magistrates were elected by the *comitia centuriata* (which also could pass laws). Members of the infantry were placed in five classes ranked according to their property as recorded in a census; the higher groups (which had far fewer members) received a larger number of voting units (*centuriae*). There were in addition voting sections for the cavalry ('knights') as well as for the remaining citizenry who lacked the means for self-equipment as soldiers. Each *centuria* had one vote (irrespective of the number of citizens enrolled in it and the actual attendance). The census groups voted successively, beginning with the knights and the first class. The majority of the 193 centuries decided the vote. Until the mid-third century BC a unanimous vote of the eighteen knights' centuries and the eighty centuries of the first census class would achieve the absolute majority. After this date the first class was reduced to seventy centuries, ten centuries added to the lower classes; the necessary majority was now possible after the second class had voted. Once an absolute majority was achieved the voting was halted, so that it could happen that the lower census classes never got

that this provided a model. In the constitutional committee of the Frankfurt National Assembly the representative Tellkampff pleaded for a 'very complicated census-based qualification in the Roman fashion', votes receiving different weights without, however, anyone being excluded, which, he thought, would simply play into the hands of 'communism'.¹⁷³ The advantage, that no citizen would be discriminated against through complete exclusion, even if his vote had practically no weight, was something that had already been emphasised in the Roman tradition, which ascribed this system to King Servius Tullius.¹⁷⁴

Another rightist member of the National Assembly said that this form of franchise had given Rome 600 years of stability.¹⁷⁵ Of course, the weight of such statements should not be overestimated, for when discussing the vote the introduction of all kinds of historical examples was a favourite ploy, as was reference to the range of different arrangements in a number of contemporary states. Ultimately, there were two camps: those who supported a universal franchise, and those who favoured a franchise that would hold the lower orders at bay, discriminating on the basis of the payment of tax, property or occupation. The National Assembly finally settled not only on a universal franchise (for men of twenty-five and above), but direct elections with a secret ballot – although for the time being this had no effect. The three points were voted on in turn, there being differing majorities in favour of each. There was no hard connection in preferences: those in favour of universal (male) suffrage could also favour indirect elections and/or public voting; those who sought some kind of property qualification could favour direct elections and/or secret ballots.¹⁷⁶

Prussia's three-class voting system had a thoroughly murky background, with respect to any possible link to antiquity and to its basic inspiration.¹⁷⁷ During a debate in the Prussian lower house in May 1861 a left-liberal member

to vote. Modern scholarship presumes that this system first developed during the republic, around the fourth century BC, and not, as Roman historiography assumed, back in the days of King Servius Tullius in the late sixth century.

¹⁷³ *Aktenstücke und Aufzeichnungen zur Geschichte der Frankfurter Nationalversammlung aus dem Nachlaß von Johann Gustav Droysen*, ed. Rudolf Hübner, Berlin 1924, 381f. Tellkampff was professor for Sciences of the State in Breslau; in other contexts he often sought to make something of the fact that he had been professor in New York and had special knowledge of American conditions.

¹⁷⁴ Cicero, *De republica* 2, 39; Livy 1, 43, 10.

¹⁷⁵ [Maximilian] Grävell (Frankfurt/Oder) in Plenary Session, 20 January 1849; *Stenographischer Bericht über die Verhandlungen der deutschen constituirenden Nationalversammlung zu Frankfurt a. M.*, Bd. 7.1, ed. Franz Wigard, Frankfurt am Main 1849, 5491.

¹⁷⁶ Ferdinand Frensdorff, 'Die Aufnahme des allgemeinen Wahlrechts in das Öffentliche Recht Deutschlands', in *Festgabe der Göttinger Juristen-Fakultät für Rudolf von Jhering zum fünfzigjährigen Doctor-Jubiläum am VI. August MDCCCXCII*, Leipzig 1892, 135–210.

¹⁷⁷ Someone tried to justify it with reference to Aristotle; see the reply: 'Preußische Briefe. 13. Brief: Aristoteles und das octroyirte Wahlrecht', *Die Grenzboten* 8. Jg. 1849, Bd. 2, 269–273. This anonymous author says that the Roman system would better fit as an equivalent. That was meant ironically, but others took this comparison seriously.

guessed that this electoral system had been invented by ‘a deceased, very learned lawyer, who had recalled the census of Servius Tullius’.¹⁷⁸ The ancient historian Max Duncker responded: ‘The history of the three-class system is just as obscure for Prussia as it is for the system to which the member has referred in connection with Roman elections. It is however doubtful that an eminent Prussian lawyer or an important Prussian general invented the system of different voting classes.’¹⁷⁹ Puzzling about the ‘father’ of the Prussian electoral system would go on as long as it lasted.¹⁸⁰

Basic parallels between the two systems can be emphasised – an extreme discounting of the value of an individual vote with the declining economic status of the voter – just as much as their technical differences.¹⁸¹ In an 1849 article Karl Rodbertus-Jagetzow pointed out the political implications, noting that in Rome the superior right to vote was linked to financial and military duties, whereas the lower orders – unlike the present – were freed from these obligations.¹⁸²

Tenacious adherence to what Rosa Luxemburg ‘called the most wretched of all electoral systems’¹⁸³ was the outcome of trying to keep the social democrats at bay. The Social Democratic Party (SPD) had taken part in the elections to the Prussian *Landtag* since 1898, where open voting made possible the development of solidarity and the exertion of group pressure which compensated to some extent for their unequal position. In Saxony, where there was a three-class

¹⁷⁸ [Franz Leo Benedikt] Waldeck; 16 May 1861; *Stenographische Berichte über die Verhandlungen* [of the Prussian lower house] 1861, 1257. The lawyer could not have been Friedrich Carl von Savigny (contrary to the assumption in Gerhard Schilfert, *Sieg und Niederlage des demokratischen Wahlrechts in der deutschen Revolution 1848/49*, Berlin 1952, 271) since he died only on 25 October 1861. This does not exclude the possibility that Savigny is one of the ‘suspects’.

¹⁷⁹ *Stenographische Berichte über die Verhandlungen* [of the Prussian lower house] 1861, 1260.

¹⁸⁰ Herman von Petersdorff, ‘Graf Albrecht v. Alvensleben-Erxleben’, *Historische Zeitschrift* 100, 1908, 263–316, here at 300f.; Hellmuth von Gerlach, *Die Geschichte des preußischen Wahlrechts*, Berlin 1908; August Wolfstieg, ‘Wer ist der Vater des Dreiklassenwahlrechts in Preußen?’, *Preußische Jahrbücher* 164, 1916, 349–355.

¹⁸¹ Besides the difference in the number of classes, in Rome registration to a particular class was effected individually according to defined census thresholds; voting was done successively by class; within *centuriae* the vote was direct; but the result was determined only through the summing of votes from these bodies; and, finally, from 139 BC oral voting was replaced by written, more or less secret ballot.

¹⁸² Cited in August Bebel, ‘Die Sozialdemokratie und das allgemeine Stimmrecht. Mit besonderer Berücksichtigung des Frauen-Stimmrechts und Proportional-Wahlsystems’ [1895], in his *Ausgewählte Reden und Schriften*, Bd. 3, ed. Gustav Seeber, Munich 1995, 613–691, here at 690. Rodbertus’ forgotten and almost inaccessible article had been reprinted in *Deutsche Worte* (Vienna) 10, 1890, 257–265.

¹⁸³ Rosa Luxemburg, ‘Der preußische Wahlrechtskampf und seine Lehren’ [Speech in Frankfurt am Main, 17 April 1910], in her *Gesammelte Werke*, Bd. 2, 1906–June 1911, ed. Institut für Marxismus-Leninismus beim ZK der SED, Berlin 1972, 305–333, here at 319. Bismarck also had said that there was ‘no more senseless, wretched electoral law’; Speech in the Reichstag of the North German Confederation, 28 March 1867; Bismarck, *Gesammelte Werke*, Bd. 10: *Reden 1847–1869*, 356.

voting system from 1896 to 1909, it was combined with a secret ballot. The Social Democrats not only demanded equal electoral rights, but also proportional in place of majority voting and women's suffrage.¹⁸⁴ Wilhelm II, speaking as the Prussian king, did make some relatively vague remarks in his 1917 Easter message about the future reform of the electoral law, since 'after the enormous efforts of the entire people in this terrible war ... there was no room for a three-class electoral system in Prussia any longer'.¹⁸⁵

Meinecke, a modern historian, was asked by the new and reformist Prussian interior minister Wilhelm (Bill) Drews to go through the literature on Athens, so that the minister would be prepared to counter possible arguments from ancient history. Eduard Meyer, who as ancient historian was 'more qualified', was deliberately not asked to do this, since the minister presumed that he was politically prejudiced.¹⁸⁶ This could have been more to do with Meyer's well-known political position and his rejection of contemporary democracy¹⁸⁷ than with his work on ancient history.

Unfortunately, Meinecke does not say what literature he consulted. The outcome of the work that he did was summarised for the minister as follows:

One can say many bad things about ancient democracy, but not only bad things; the social, political and intellectual circumstances of that time and of today are far too different to derive directly arguments from the past for the present. In the particular historical situation in which Prussia-Germany now was, it appeared to him [Drews], as it did for me, that democratic reform for Prussia was simply unavoidable.¹⁸⁸

The fact that the new electoral law was not passed before the 1918 November Revolution has of course nothing to do with arguments about antiquity. In the various statements that Meinecke made in 1917 about the Prussian electoral reform he first favoured a plural electoral law as a *via media* between a

¹⁸⁴ They were the only German political party that formulated this demand before 1918. (In Germany, only since 1908 women could join political parties according to law.) Women's suffrage was part of the Social Democratic platform since 1891. In the early years of the twentieth century this point was also adopted by the international socialist movement especially since the founding of the International Socialist Women's Congresses in 1907. Within the socialist movement this policy met with male reservations against the emancipation of women or the fear that women would vote conservative. There were also great tensions between socialist and bourgeois women's associations. In countries with a still restricted franchise there was also dispute whether the demand for female suffrage should be postponed until universal male suffrage was achieved. Klara Zetkin, *Zur Frage des Frauenwahlrechts*, Berlin 1907 (representing the socialist position) has a useful appendix on the state of the rules and the debates in various countries at this time.

¹⁸⁵ For the text of the message see *Deutsche Geschichte in Quellen und Darstellung*, Bd. 8: *Kaiserreich und Erster Weltkrieg 1817-1918*, 2nd ed., Rüdiger vom Bruch and Björn Hofmeister, eds., Stuttgart 2002, 427-430, here at 429.

¹⁸⁶ Meinecke, *Erlebtes*, 321.

¹⁸⁷ For instance, 'Der Staat, sein Wesen und seine Organisation', in Meyer, *Weltgeschichte und Weltkrieg*, 132-168.

¹⁸⁸ Meinecke, *Erlebtes*, 321.

three-class system and the universal system used for the Reichstag, agreeing with the majority in the Prussian parliament. For Max Weber this was proof of the political stupidity of academics, and in particular, professors.¹⁸⁹ In any case, no comparison with antiquity was involved here. Proposals for a plural vote referred in general to the system that had been introduced in Belgium in 1893.¹⁹⁰

In a newspaper article published in late November 1918 Meinecke compared the German defeat in the world war with that of the Athenians in the Peloponnesian War. The counterparts to Cleon and Alcibiades as promoters of the war he thought were Tirpitz and Ludendorff, who had casually provoked America's into entering the war.¹⁹¹ But at the same time Meinecke also wrote that 'modern war automatically brings about democracy, because you cannot continually wage war with mass armies if you do not also constantly include the masses in politics'.¹⁹²

Ultimately, even before the First World War what the medievalist Georg von Below, a member of the Fatherland Party and so on the extreme right, said in 1920 was true:

If today interest in classical antiquity no longer involves the danger of unfavourable political influence, the reason for that lies in the progress that study of ancient relations has made in the meantime, and in the genuine historical sense with which this work is done. ... Our principle always remains the nurture of our national independence, the development of our unique national spirit, to draw ever more from the power of our people.¹⁹³

The constitution of the Weimar Republic was measured against these standards, and then rejected by many.

¹⁸⁹ 'Das preußische Wahlrecht' (28 March 1917); 'Wahlrecht und Demokratie in Deutschland' (6 December 1917); MWG I/15, 229ff. and 350f.

¹⁹⁰ See Friedrich Meinecke, *Politische Schriften und Reden*, ed. Georg Kotowski, Darmstadt 1958, 146–180. Otto Hintze, 'Zur Reform des preußischen Wahlrechts', *Europäische Staats- und Wirtschaftszeitung* 2, 1917, 432–435, did actually reject most of the argument for a plural vote, but thought it conceivable that the right to vote could be linked to military service and tax payments. For an earlier proposal to adopt the Belgian plural vote (fn. 28) see Hans Delbrück, 'Wahl-Reform', *Preußische Jahrbücher* 115, 1904, 22–32.

¹⁹¹ Meinecke, *Politische Schriften und Reden*, 270. The parallel of Cleon and Ludendorff can also be found in Friedrich Meinecke, 'Johann Gustav Droysen. Seine Geschichtsschreibung und sein Briefwechsel', *Historische Zeitschrift* 141, 1930, 249–287, here at 265. Tirpitz was head of the Imperial Navy Office until spring 1916, Ludendorff the strong man in the Supreme Command since autumn 1916.

¹⁹² Friedrich Meinecke, *Nach der Revolution*, Munich 1919, 5.

¹⁹³ Georg von Below, 'Deutschtum und klassisches Altertum', *Deutscher Volkswart* 5, 1920, 297–302; 319–325, here at 301f.

Democracy, Führer and *Volksgemeinschaft*

From the later nineteenth century there were signs that discussion of ancient liberty and democracy was becoming more a historical concern, and so no longer immediately relevant to the present.

NEW THEORIES OF DEMOCRACY

The issue of democracy was for sociologists like Mosej Ostrogorskij, Vilfredo Pareto, Gaetano Mosca and Robert Michels simply obsolete in its usual sense.¹ For them it was everywhere apparent that a 'political class', a well-organised minority, ruled (Mosca); or in Michels' terms, there was an 'iron law of oligarchy' in which representatives in fact ruled over those who had supposedly mandated them, a trend Michels saw especially functioning in the workers' movement. Hence the main issue concerned the manner in which political leaders emerged and joined in oligarchic rule. A democracy based on assemblies as favoured by Rittinghausen was unworkable in Michels' opinion; it would not only fail to resolve the problem, but also make it worse, since here participants would be manipulated by skilful speakers.²

¹ Moise(j) J. Ostrogorski(j), *La démocratie et l'organisation des partis politiques*, Paris 1903 [*Democracy and the Organization of Political Parties*, 1922]; Vilfredo Pareto, *Trattato di sociologia generale* [1916]; and his *Trasformazione della democrazia* [1921]; Gaetano Mosca, *Elementi di scienza politica* 1895, 2nd ed., 1922 [*The Ruling Class*, 1939]; Robert Michels, *Soziologie des Parteiwesens in der modernen Demokratie. Untersuchungen über die oligarchischen Tendenzen des Gruppenlebens* [1911], Stuttgart, 4th ed., 1989 [*Political Parties. A Sociological Studies of the Oligarchical Tendencies of Modern Democracy*, 1962]; 'Die oligarchischen Tendenzen in der Gesellschaft. Ein Beitrag zum Problem der Demokratie' [1908]; 'Grundsätzliches zum Problem der Demokratie' [1928], in his *Masse, Führer, Intellektuelle. Politisch-soziologische Aufsätze 1906-1933*, Frankfurt am Main 1987, 133-181; 182-187; also his 'Gaetano Mosca und seine Staatstheorien', *Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reiche* 53, 1929, 111-130.

² Michels, *Soziologie des Parteiwesens*, 27ff. On Rittinghausen see p. 299ff.

Italian Fascism would later borrow from Pareto, Mosca³ and Michels, and Michels also eventually shifted from being a socialist to an admirer of Mussolini.⁴ Besides these writers, reservations about democracy were propagated in Europe by Gustave Le Bon's book on the psychology of the masses and their craving for strong leadership; a popular, pseudo-scholarly book, written by a French doctor which would become an inspiration to Mussolini and Hitler, among others.⁵

In political writings of the early twentieth century it was increasingly common for democracy to be discussed without any reference to antiquity at all,⁶ in much the same way that the rejection of democracy in the later nineteenth century had no need of reference to ancient precedents.⁷ The contrast of direct to indirect democracy shifted: direct democracy could no longer relate primarily to a popular assembly, since modern conditions had made the idea obsolete, surviving only in the *Landsgemeinden* of rural Swiss cantons. The entire citizenry could now participate in referenda, which as an institution for creating decisions competed with a parliament. There were different kinds of referenda: the Swiss model,⁸ or the plebiscitary elements in the Weimar

³ How far Fascists were justified in referring to their work is a moot point. Pareto had welcomed the Fascist seizure of power and had been appointed a member of the Italian senate in 1922, but died in 1923. Mosca, appointed senator for life in 1919, initially approved of Mussolini's regime, but from 1925 became increasingly critical and retired from university teaching and from politics the following year.

⁴ 'Der Aufstieg des Fascismus in Italien' [1924], in Michels, *Masse, Führer, Intellektuelle*, 265–297; see also his *Italien von heute. Politische und wirtschaftliche Kulturgeschichte von 1860 bis 1930*, Zürich 1930, 221f., with references to Mosca and Pareto. Michels was an Italian citizen from 1913 and in 1928 became a member of the Fascist Party, and had been among the first to welcome Mussolini's regime; Timm Genett, 'Einleitung', in Robert Michels, *Soziale Bewegungen zwischen Dynamik und Erstarrung. Essays zur Arbeiter-, Frauen- und nationalen Bewegung*, ed. Timm Gennett, Berlin 2008, 26ff.

⁵ Gustave Le Bon, *Psychologie des foules*, 1895 [*The Crowd. A Study of the Popular Mind*, 1896]. The book was in part based on the case of the French general Georges Boulanger, who between 1886 and 1889 created a movement that was supposed to propel him into a dictatorship. Mussolini said in an interview in 1926 that he had read Le Bon's book several times; quoted in Piero Melograni, 'The Cult of the Duce in Mussolini's Italy', *Journal of Contemporary History* 11, 1976, 221–237, at 227.

⁶ See, for example, Wilhelm Hasbach, *Die moderne Demokratie. Eine politische Beschreibung*, Jena 1912; in the English language literature: James Bryce, *Modern Democracies*, New York 1921. In both works Athens was dealt with only briefly.

⁷ For Britain see Walter Bagehot, *The English Constitution*, London 1867; James Fitzjames Stephen, *Liberty, Equality, Fraternity* [1873], ed. Stuart D. Warner, Indianapolis 1993 [reply to J. S. Mill]; Herbert Spencer, *The Man Versus the State*, London 1884; Henry Sumner Maine, *Popular Government. Four Essays*, London 1886; William E. H. Lecky, *Democracy and Liberty*, 2nd ed., London 1896.

⁸ See Georg Jellinek, *Allgemeine Staatslehre* [1900], Kronberg 1976, 724f.; Richard Thoma, 'Der Begriff der modernen Demokratie in seinem Verhältnis zum Staatsbegriff. Prolegomena zu einer Analyse des demokratischen Staates der Gegenwart', in *Hauptprobleme der Soziologie, Erinnerungsgabe für Max Weber*, Bd. 2, ed. Melchior Palyi, Munich 1923, 37–64; Thoma, 'Staat. Staatslehre', in *Handwörterbuch der Staatswissenschaften*, Bd. 7, 4th ed., 1926, 724–756, here at 737; Hans Kelsen, *Allgemeine Staatslehre*, Berlin 1925, 343f.

Constitution⁹ which combined elements of the French tradition (ordering a popular decision from ‘above’) with the Swiss one (initiatives from ‘below’)¹⁰ and which were initially either dismissed as a ‘democratic ornament’ or talked of as a potential ‘powder keg under the Constitution’.¹¹

The problem could also be seen in Rousseauist terms as a conflict of identity and representation.¹² ‘Pure democracy’ would then appear as a system in which the people acclaimed their political leaders (or not),¹³ there being therefore no contradiction between democracy and dictatorship, since dictatorship was not the opposite of democracy, but instead the opposite of discussion (an argument advanced by Carl Schmitt, citing Donoso Cortés).¹⁴ There is here at least a partial convergence with the positions that Max Weber held shortly before his death.¹⁵

The democratic left still had reservations about parliamentary democracy, although the alternative of a council system had been rejected¹⁶ and the Communists formed a party of their own. When the Weimar Constitution was accepted the Social Democratic Minister of the Interior, Eduard David, expressed his respect for Hugo Preuß as its spiritual father – Social Democracy

⁹ Carl Schmitt, *Volksentscheid und Volksbegehren. Ein Beitrag zur Auslegung der Weimarer Verfassung und zur Lehre von der unmittelbaren Demokratie*, Berlin 1927.

¹⁰ First, the *Reichspräsident* was entitled to submit laws passed by the parliament to popular decision. This corresponded to the intention of Hugo Preuß (and Max Weber) to strengthen the role of the *Reichspräsident*. Second, 10 per cent of the electorate could initiate legislation. That was a concession to the Social Democrats and to South German Liberals. Only the latter rule was put into practice; but of eight initiatives, only two reached the final stage of a decision by the citizens. The first was on the expropriation (without compensation) of the former princely houses in June 1926, promoted by the Communists with the hesitant support of the Social Democrats; the second initiative concerned the rejection of the Young Plan in December 1929, and was promoted by right-wing parties and the NSDAP. In both cases an overwhelming majority of those who voted approved the initiatives, but they were nevertheless defeated since electoral participation failed to reach the 50 per cent threshold. The degree to which the respective campaigns changed the political climate and undermined parliamentary democracy is disputed.

¹¹ Hans Gmelin, ‘Referendum’, in *Handbuch der Politik Bd. 3: Die politische Erneuerung*, 3rd ed., ed. Gerhard Anshütz et al., Berlin 1921, 71–77, here at 77.

¹² Carl Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* [1923], 5th ed., Berlin 1979.

¹³ Carl Schmitt, ‘Der Gegensatz von Parlamentarismus und moderner Massendemokratie’ [1926], in his *Positionen und Begriffe im Kampf mit Weimar – Genf – Versailles* [1940], Berlin 1988, 52–66; and his ‘Wesen und Werden des faschistischen Staates’ [1929], *ibid.*, 109–115, here at 111; his *Volksentscheid und Volksbegehren*, 34; and his *Verfassungslehre* [1928], 5th ed., Berlin 1970, 243f.

¹⁴ Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* [1922], 6th ed., Berlin 1993, 67; and his *Geistesgeschichtliche Lage*, 41.

¹⁵ See p. 223.

¹⁶ On the clash between Lenin and Kautsky see p. 301f., and on its broader implications Heinrich August Winkler, ‘Demokratie oder Bürgerkrieg. Die russische Oktoberrevolution als Problem der deutschen Sozialdemokraten und der französischen Sozialisten’, *Vierteljahrshefte für Zeitgeschichte* 47, 1999, 1–23.

itself had no specific constitutional ideas, and so more or less took its lead from the left liberal Preuß. David added that the Weimar Constitution had solidified not only political democracy, but also economic democracy, referring here to the creation of economic and labour councils under Article 165. Not only had women got the vote, but the Constitution provided for the ‘autonomous and direct expression of popular will’ in referenda: ‘The German Republic is henceforth the most democratic democracy in the world’.¹⁷

In 1929 Ernst Fraenkel, who then belonged to the left wing of the Social Democrats, expressed regret that the councils had remained almost without significance in practical politics, suggesting that they could have represented a check to ‘parliamentary dictatorship’, or to a ‘dictatorship of political democracy’.¹⁸ Even those who rejected a ‘Bolshevist Party Dictatorship’ were prepared to cultivate the myth of the councils (in their ‘true’ form, unperverted by the Bolsheviks). They were said to be the ‘organs of an extreme democracy, the unconditional and unlimited self-government of the people’. For ‘genuine democracy is not about the ballot, but about the active self-government of the masses’.¹⁹

During the 1920s it was often said that ‘democracy’ had been reduced to a slogan that could be associated with all kinds of aims. Much the same had been said in 1848. Legal theorists as diverse as Carl Schmitt and Hans Kelsen, for example, made statements to this effect. The former wrote that

the greatest lack of clarity arises from the fact that the concept of democracy has become a general ideal whose ambiguity provides space for the most varied ideas and, ultimately, everything that is ideal, nice, and attractive. Democracy is identified with Liberalism, Socialism, Justice, Humanity, Peace and the reconciliation of peoples.²⁰

Kelsen for his part wrote:

Democracy is the slogan that generally dominates the minds of the nineteenth and twentieth centuries. Because of this it loses any fixed meaning, as with any slogan. Swept along by political fashion, it is used for all kinds of things, and this most abused of all

¹⁷ Statement in the National Assembly, 31 July 1919, in *Die Deutsche Nationalversammlung im Jahre 1919 in ihrer Arbeit für den Aufbau des neuen deutschen Volksstaates*, ed. Eduard Heilfron, Bd. 7, Berlin 1919, 451–453. Similar complacent statements were also made by the Social Democratic Reichskanzler Gustav Bauer, quoted by Tim B. Müller, *Nach dem Erstem Weltkrieg. Lebensversuche moderner Demokratien*, Hamburg 2014, 87f., and the Social Democratic parliamentary party; quoted by Heinrich Potthoff, ‘Das Weimarer Verfassungswerk und die deutsche Linke’, *Archiv für Sozialgeschichte* 12, 1972, 433–483, at 467.

¹⁸ Ernst Fraenkel, ‘Kollektive Demokratie’ [1929], in his *Gesammelte Schriften. Bd. 1: Recht und Politik in der Weimarer Republik*, Hubertus Buchstein and Rainer Kühn, eds., Baden-Baden 1999, 343–357, here at 349. As an exile in the United States Fraenkel later published a path-breaking study on the character of the Nazi system: *The Dual State. A Contribution to the Theory of Dictatorship*, New York 1941.

¹⁹ Arthur Rosenberg, *Geschichte der Weimarer Republik*, Frankfurt am Main 1961, 17f. [first published under the title *Geschichte der deutschen Republik*, 1935].

²⁰ Schmitt, *Verfassungslehre*, 225.

political concepts assumes the most varied, often quite contradictory, meanings, insofar as it is not reduced, in the usual thoughtless way in which common political language is used, to a conventional phrase that no longer has any claim to a particular sense.²¹

Kelsen, one of the few committed democrats in the circle of constitutional lawyers, sought a quite formal definition of democracy, characterising an open system as opposed to a closed, autocratic form of government. He argued that the dilemma for democracy was that it could not defend itself if the loyalty of citizens weakened.²²

BACK TO ARGUMENTS FROM ANTIQUITY

In this context the confrontation of ancient and modern democracy, or of ancient and modern liberty, lost force. This does not mean that the contrast did not survive in various sections of specialised academic literature, but its explicit use became rarer. One exception in German-language publications during the period after the First World War was an essay published in 1922, 'Der moderne Freiheitsbegriff und die attische Demokratie'. The author sought to revive the arguments of Constant and Fustel de Coulanges in opposition to the revisions of modern classical scholarship, seeking contradictions in the arguments advanced by Wilamowitz, Eduard Meyer and Beloch. In many cases this was substantially justified, but the author was more concerned to press home an attack on modern scholarship's revision of an older version of history:

My task was to show that there is no basis, despite all the advances classical scholarship has made, for ranking the degree of civil liberty enjoyed by the individual in the Attic state any higher than have Constant, Stahl, Mohl and their followers, and I can only close with the wish that the idea of an 'Athenian state based upon the rule of law' vanishes from accounts of the classicists, or is at least no longer employed by anyone familiar with the law.²³

Edgar Salin, an economist with a great interest in cultural history, likewise denied the existence of any understanding of 'liberal' freedom in Athens, but did not explore this tradition in any depth.²⁴

²¹ Hans Kelsen, *Vom Wesen und Wert der Demokratie*, 2nd ed., Tübingen 1929, 1. Kelsen had very much influenced the 1920 Austrian constitution; in 1930 he became a professor in Cologne and then, because of his democratic inclinations and Jewish background, was compulsorily retired in 1934. He could continue his career in Geneva, Prague and (from 1940) in the United States.

²² Hans Kelsen, 'Verteidigung der Demokratie' [1932], in his *Demokratie und Sozialismus. Ausgewählte Aufsätze*, ed. Norbert Leser, Wien 1967, 60–68.

²³ Ernst Radnitzky, 'Der moderne Freiheitsbegriff und die attische Demokratie', *Zeitschrift für öffentliches Recht* 3, 1922, 287–351, here at 351. The author was a civil servant in the Austrian Ministry of Finance.

²⁴ Edgar Salin, 'Der "Sozialismus" in Hellas', in *Bilder und Studien aus drei Jahrtausenden. Eberhard Gothein zum siebzigsten Geburtstag als Festgabe*, Munich 1923, 15–59, here at 46ff. Among other matters, the essay dealt with discussion about ancient socialism which had been started by Pöhlmann.

In his *Staatsgedanke und Staatslehre der Griechen* of 1923 the classicist Max Pohlenz objected that Constant's thesis concerning the omnipotence of the state in antiquity could at most be applied to Sparta. By the fifth century BC Athens had, he argued, long been a 'liberal popular state', losing this characteristic only in the post-Periclean era. Elaborating the argument, however, traditional themes in the criticism of Athens re-appear: reference to a 'Jacobin' justification of an unbounded popular will (as in the Arginusae trial) and to the way in which the courts were used by poor people to enforce 'class justice' and social equality.²⁵

Arthur Rosenberg, by contrast, used the same features as positive signs of a 'proletarian democracy' in Athens.²⁶ Rosenberg was a fully qualified academic classicist, a student of Otto Hirschfeld and Eduard Meyer, after the war being transformed into a Marxist and who then made a name for himself writing about the origins and development of the Weimar Republic. He ended up looking for a 'red international' deep in antiquity (although with a different kind of context).²⁷ In contrast, his earlier talk of 'oppressive proletarian rule' in Athens was intended critically.²⁸

The art historian Bernhard Knauss published in 1940 *Staat und Mensch in Hellas*, in which he emphasised the attachment of Athenian democracy to the law, and its respect for the rights of individuals, something which distinguished Athens from Sparta and its 'political infertility'.²⁹ Since the book does that without any reference to the existing literature there is very little in the way of evidence given for these statements. They are all the same noteworthy, for they are quite different from the ideological positions held in contemporary National Socialism.

We cannot here review all the classical literature examining the supposed 'realities' of Athens for perspectives upon present-day democracy in all their various national contexts and their diverging political tendencies. For instance, in France in 1909 a positive account of Athenian democracy³⁰ was met with angry protest from the anti-democratic and anti-Semitic *Action française*, drawing freely on Fustel de Coulanges.³¹ It was simply not accepted that

²⁵ Max Pohlenz, *Staatsgedanke und Staatslehre der Griechen*, Leipzig 1923, 13, 61, 54 and 60.

²⁶ 'Demokratie und Klassenkampf im Altertum' [1921]; 'Aristoteles über Diktatur und Demokratie' [1933], in Arthur Rosenberg, *Demokratie und Klassenkampf. Ausgewählte Studien*, ed. Hans-Ulrich Wehler, Frankfurt am Main 1974, 19–102, 103–125.

²⁷ Arthur Rosenberg, *Geschichte der römischen Republik*, Leipzig 1921, 59f. (this relates to the assumption that there is a relationship between the utopias of the Hellenistic period and the agrarian laws of the Gracchi).

²⁸ Arthur Rosenberg, 'Perikles und die Parteien in Athen', *Neue Jahrbücher für das klassische Altertum, Geschichte und deutsche Literatur* 18, 1915, 205–223, here at 208.

²⁹ Bernhard Knauss, *Staat und Mensch in Hellas*, Berlin 1940, 131.

³⁰ Alfred Croiset, *Les démocraties antiques*, Paris 1909.

³¹ At issue was primarily Fustel's account of French national history since the early Middle Ages, his critique of the French Revolution, the demand for the return of Alsace (directed against Theodor Mommsen) and his polemic against German science and scholarship: Stephen Wilson, 'Fustel de Coulanges and the Action Française', *Journal of the History of Ideas* 34, 1973,

Athens could be presented as a shining example for one's own society, especially in respect of the tolerance shown to metics, whose equivalent in twentieth-century France were the Jews.³² Gustave Glotz, the Sorbonne Professor of Greek history, in the later 1920s justified his admiration for Athenian democracy (and his clear difference from Fustel de Coulanges in this respect) by saying that it had embodied the ideals of the French Revolution – liberty, equality and fraternity; and that its courts had realised a perfect balance between state power and individual liberty.³³ The former French prime minister Georges Clemenceau (1906–1909 and 1909–1920), whose career ended with his defeat in the French presidential election of 1920, published at the age of eighty-three a biography of Demosthenes.³⁴ It offered an implicit self-portrait of a heroic defender of national liberty who was, at the same time, the victim of his people's ingratitude; however, quite what the more general political message might be was unclear.

This was even more true of Harold Laski's picture of an Athens that protected civil rights and provided security of property while, of all things, using Pericles' Funeral Oration to argue that Athenian society had no conception of individual liberty.³⁵ There were in the English context quite divergent statements of this kind in the later nineteenth and early twentieth centuries, in which a benevolent imperialism was attributed to an Athens that had brought democracy to the *poleis* that it ruled, embedded within this there often being a justification for the British Empire.³⁶ On the contrary, John A. Hobson, the

123–134. Because of his position on Germany the Left did not want to see Fustel 'occupied' by the anti-republican Right: François-Alphonse Aulard, 'Fustel de Coulanges. Patriote, politique, philosophe', *La Revolution Française* 69, 1916, 385–399 (with references to earlier publications in the same vein).

³² Pierre Lasserre, M. Alfred Croiset, *historien de la démocratie athénienne*, Paris 1909, 1–7; the book has a preface by Charles Maurras, the leader of the *Action Française*; this was reprinted in Bertrand Hemmerding, 'L'action française et la démocratie athénienne', *Quaderni di Stora* no. 4, 1976, 7–18, here at 13ff. In 1990 a parliamentary representative of the Front National took up this argument once more, but reversed. It was suggested that the Athenian democracy so admired by the Left had placed great emphasis on the distinction between citizens and foreigners – reported in Nicole Loraux, *Né de la terre. Mythe et politique à Athènes*, Paris 1996, 204ff.

³³ Gustave Glotz, *La Cité grecque. Le développement des institutions* [1928], Paris 1968, 153, 241 and 267.

³⁴ Georges Clemenceau, *Démosthène*, Paris 1924.

³⁵ Harold J. Laski, 'Democracy', in *Encyclopaedia of the Social Sciences*, Vol. 5 (1931), 76–85, here at 78; see also his 'Liberty', *ibid.*, 9 (1933), 442–447, at 442. Laski was a prominent leftist political scientist (member of the Fabian Society and later also of the Labour Party) who considered that the survival of modern democracy depended upon the democratisation of the economy. See, for example, his 'The Present Position of Representative Democracy', *American Political Science Review* 26, 1932, 629–641.

³⁶ This is especially true for Alfred E. Zimmern, *The Greek Commonwealth. Politics and Economics in Fifth-Century Athens*, Oxford 1911 [5th ed., 1931], for whom the Delian League was a model for the League of Nations, Zimmern being actively involved in its creation. Further references in Jennifer Tolbert Roberts, *Athens on Trial. The Antidemocratic Tradition in Western Thought*, Princeton 1994, 258f.; Thomas Harrison, 'Through British Eyes: The Athenian Empire and Modern Historiography', in *Classics and Colonialism*, ed. Barbara Goff, London 2004,

radical journalist and lecturer whose book on imperialism had been an inspiration for Lenin's own writing on the subject, had not a good word to say about Athens for exactly this reason:

We read of democracy in Athens, Rome and other cities of the Mediterranean in ancient or even in medieval times. But this never amounted to more than an experiment in local self-government by an upper class living upon the labour of a slave or depressed majority of the inhabitants. The noble sentiments placed in the mouth of the great Athenian statesman [Pericles] by the historian Thucydides must not blind us to this fundamental defect of Athenian democracy and to the nature of the imperialism into which it so soon lapsed.³⁷

Of what such views are representative cannot be determined without thorough research. And this is also true of a number of other national contexts in which we would have to examine the differences between various academic schools of thought, differences in contemporary political problems and the relationship between scholarly analysis and patterns of thought embedded in the respective national cultures or even everyday prejudice.

FASCISM AND THE CULT OF ROME

Italian Fascism saw itself primarily in terms of ancient Rome. *Fascio* is derived from *fasces*, the bundle of rods carried by Roman lictors; the symbolism of the French Revolution had already drawn upon this image. In nineteenth-century Italy the idea had also been used for those organisations seeking national unity and for workers' associations. Mussolini's *fasci di combattimento*, combat groups, were linked to both traditions. Use of Roman institutional symbolism also suggested the sense of the state embodied in Fascism. In 1929 Carl Schmitt wrote that 'the fascist state wishes with ancient sincerity to be a state once more, with visible holders of power and representatives. ... The strong feeling of connection with antiquity is not merely decorative'.³⁸ In 1932 Mussolini founded a new city in the former Pontine Marches: he called it Littoria (since 1947 it has been called Latina). The fascist militia was structured according to ancient Roman terminology into legions, cohorts, centuries and maniples. 'Labour Day' was brought forward to 21 April, the 'birthday' of the city of Rome. Symbolism was reinforced by the use of the 'Roman greeting', an outstretched right arm as on Roman statues; this was then adopted by the National Socialists and made into a 'German greeting'.³⁹

25–37; Peter Liddel, 'European Colonialist Perspectives on Athenian Power: Before and after the Epigraphic Explosion', in *Interpreting the Athenian Empire*, ed. John Ma et al., London 2009, 13–42.

³⁷ John A. Hobson, *Democracy and a Changing Civilisation*, London 1934, 1.

³⁸ Carl Schmitt, 'Wesen und Werden des faschistischen Staates', 114.

³⁹ Friedrich Pfister, 'Fascistengruß', in *Wörterbuch der Antike mit Berücksichtigung ihres Fortwirkens*, ed. Hans Lamer, 2nd ed., Leipzig 1936, 212; he denies a direct reception of antiquity, referring to a remark of Mussolini that it was just his own practice. Hans Bengl

The official ideology of Fascism reversed the democratic poles. The rejection of parliamentary democracy and a conception of liberty focused on the individual was a precondition for a strong, corporate state that would realise true democracy and liberty. Mussolini proclaimed a turn away from the 'absurd conventional lie of political equality and collective irresponsibility', seeking instead 'organised, centralised authoritarian democracy'.⁴⁰ There was a 'purer' form of democracy in which the people identified with the will of a single person.⁴¹

In 1927 Robert Michels described Mussolini as the 'dictatorial head' in which 'a great people and state' achieved its 'maximum', 'dedicating to leader and state its sense of responsibility and work ethic'.⁴² Mussolini's intellectual adviser and ghost writer, Giovanni Gentile, a Hegelian Professor of Philosophy holding numerous cultural positions, besides being education minister in Mussolini's government from 1922 to 1925, wrote:

The Fascist State ... is a people's state, and as such the democratic State *par excellence*. ... Fascism ... envisages the contrast not as between liberty and authority, but between a true, a concrete liberty which exists, and an abstract, illusory liberty which cannot exist.⁴³

In the reciprocal relationship between Fascism and classical scholarship Athenian democracy was more marginal. Much more important was *Romanità*, the connection to ancient Rome. This also involved a claim to cultural hegemony in Europe and the world beyond,⁴⁴ which after 1933 crossed with the tense relationship with National Socialist Germany.⁴⁵ In 1934 Mussolini said

disagreed with this: 'Das Armheben als antiker Gestus', *Gymnasium* 48, 1937, 43f.; he argued that both Fascism and National Socialism had 'resumed this gesture of a vigilant Roman people and given it a new spirit'.

⁴⁰ Benito Mussolini, *Der Geist des Faschismus*, ed. Horst Wagenführ, 4th ed., Munich 1940, 17. [*La dottrina del fascismo*, 1932]. Much of this was written by Giovanni Gentile; Mariella Cagnetta, 'Democrazia come "disgusto". Fra tradizione classica e propaganda', *Quaderni di Storia* no. 40, 1994, 151–160, here at 157.

⁴¹ Mussolini, *Der Geist des Faschismus*, 6.

⁴² Michels, 'Über die Kriterien der Bildung und Entwicklung politischer Parteien' [1927], in his *Masse, Führer, Intellektuelle*, 298–303, here at 299.

⁴³ Giovanni Gentile, 'The Philosophic Basis of Fascism', *Foreign Affairs* 6, 1927/1928, 290–304, here at 302f. In post-war Italy Gentile's role was a constant cause of controversy. Some condemned his involvement with Fascism, while others argued that his philosophical work remained unaffected. Gentile's ambivalent role is also apparent by the way that he inspired the loyalty oath to the Fascist government that Italian professors had to swear in 1931, while on the contrary he protected people that it placed at risk, for instance, the ancient historian Gaetano de Sanctis, who was one of the very few to refuse to take the oath.

⁴⁴ For instance, in Pietro de Francisci, *Der Geist der römischen Kultur*, Cologne 1941 [text of 1940]; further references in August B. Hasler, 'Das Duce-Bild in der faschistischen Literatur', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 60, 1980, 420–506, here at 462–468.

⁴⁵ This is apparent in the competing plans for the European New Order after the war; the Italians had claims on leadership rooted in Roman traditions that clashed with those of Germany: Monica

that when Rome ‘had Caesar, Virgil and Augustus’, the Germans did not even have a written script.⁴⁶

The orientation to Roman antiquity was mainly to secure support from the educated bourgeoisie for the régime, and from the mid-1920s was focused on archaeological excavations in Rome and the redesign of the cityscape.⁴⁷ All this culminated, after the Abyssinian campaign of 1936, in the declaration of a new empire charged with a civilising mission, and in the celebration of Augustus’s double millennium in 1937–1938,⁴⁸ which itself had been preceded by corresponding jubilees for Virgil in 1930 and Horace in 1935.

The ‘Duce’ could call himself a dictator in line with Roman Republican institutions.⁴⁹ Mussolini knew the writings of Spengler⁵⁰ and also Gundolf’s book on Caesar;⁵¹ he saw united in Caesar the ‘will of a warrior with the genius of wisdom’, regarding him as the greatest person of all time (after Jesus).⁵² He always had a bust of Caesar on his desk to look at.⁵³ If it suited, Mussolini could also be equated with Augustus, the victor in the civil war and subsequently the ruler in peace. Sympathetic Anglophone authors also emphasised the parallels between Augustus and Mussolini;⁵⁴ they can also be found implicitly, if drawn with ambivalence, in Ronald Syme’s *The Roman Revolution*.⁵⁵

Fioravanzo, ‘Die Europakonzeptionen von Faschismus und Nationalsozialismus (1939–1943)’, *Vierteljahrshefte für Zeitgeschichte* 58, 2010, 509–541.

⁴⁶ Cited in Giovanni de Luna, *Benito Mussolini*, 4th ed., Reinbek 2000, 103.

⁴⁷ Ludwig Curtius, *Mussolini und das antike Rom*, Köln 1934, expressed his admiration for this revival of antiquity. The author was director of the German Archaeological Institute in Rome.

⁴⁸ There was a major exhibition on the Roman Empire coinciding with this, ‘Mostra Augustea della Romanità’, in which many prominent Italian classical scholars took part. See Friedemann Scriba, *Augustus im Schwarzhemd? Die ‘Mostra Augustea della Romanità’ in Rom 1937/1938*, Frankfurt am Main 1995; Flavia Marcello, ‘Mussolini and the Idealisation of Empire. The Augustan Exhibition of Romanità’, *Modern Italy* 16, 2011, 223–247.

⁴⁹ Francesca Rigotti, Lorenzo Ornaghi, ‘Die Rechtfertigung der faschistischen Diktatur durch die Romanität’, in *Das Scheitern diktatorischer Legitimationsmuster und die Zukunftsfähigkeit der Demokratie. Festschrift für Walter Euchner*, ed. Richard Saage, Berlin 1995, 141–157, at 153ff.

⁵⁰ References in Michael Thöndl, ‘Der “neue Cäsar” und sein Prophet. Die wechselseitige Rezeption von Benito Mussolini und Oswald Spengler’, *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 85, 2005, 351–394.

⁵¹ Ludwig Curtius, *Deutsche und antike Welt. Lebenserinnerungen*, Stuttgart 1950, 497. On Gundolf see the following pages.

⁵² *Mussolinis Gespräche mit Emil Ludwig*, Berlin 1932, 67, 182 and 216.

⁵³ Albert Mirgeler, ‘Der Faschismus in der Geschichte des modernen Staates. Die Selbstdeutung Mussolinis und seiner Mitarbeiter’, *Saeculum* 6, 1955, 84–117, here at 116.

⁵⁴ A. Pelzer-Wagener, ‘A Classical Background to Fascism’, *Classical Journal* 23, 1927/1928, 668–677; Kenneth Scott, ‘Mussolini and the Roman Empire’, *Classical Journal* 27, 1932, 645–657; Eugenie Strong, ‘Romanità Throughout the Ages’, *Journal of Roman Studies* 29, 1939, 137–166. Much more critical was Edward F. D’Arms, ‘The Classics as Propaganda in Modern Italy’, *Social Research* 6, 1939, 556–563, who took the stamps issued on the occasion of the great exhibition on the Roman Empire as an example of the manipulation of the classical heritage.

⁵⁵ Ronald Syme, *The Roman Revolution*, Oxford 1939. Striking here are chapter header lines such as ‘March on Rome’ and ‘Dux’. The well-known statement from the introduction: ‘In all

I cannot say how far the dominance of Rome in fascist ideology and the preponderance of scholarly works on Rome in comparison with those on Greek history⁵⁶ affected the view of Athenian democracy in contemporary Italian classical scholarship.⁵⁷

ATHENIAN AND WEIMAR DEMOCRACY

Between the wars reference to Athenian democracy was probably much more common in Germany than in Italy. The following paragraphs select some instances from this discussion, which culminate, perhaps surprisingly, in a re-evaluation of the Athenian model during the National Socialist era.

One of the more scurrilous examples of the way the classical canon could be deployed was an article by a Bavarian judge who, following the 1918–1919 Revolution, sought to reinforce the position of Civil Servants and portray them as saviours of the nation. He compared these administrators to Plato's 'guardians', although of course it could not be expected that they would remain unmarried and propertyless. Nonetheless, as Plato had seen, they had to be suitably rewarded by society – in other words, provided with a salary that would guarantee their independence.⁵⁸ Plato can be used to support all kinds of things – he has also been called a prophet of the women's movement.⁵⁹

During the Weimar Republic Athenian democracy was invoked both by its supporters and its critics, the former seeing in it a model for contemporary times, especially in respect of the plebiscite, the 'most genuine' democratic

ages, whatever the form and name of government, be it monarchy, republic, or democracy, an oligarchy lurks behind the facade', sounds like an echo of Michels or Mosca.

⁵⁶ The study of Greek history had been shaped primarily by two German professors who had taught for many years in Italy: Adolf Holm in Palermo (1876–1884) and Naples (1884–1896); and Karl Julius Beloch in Rome (1879–1929, with a break from 1917 to 1924).

⁵⁷ Gaetano de Sanctis, *Pericle*, Milan 1944 (non vidi); his critique of Pericles' imperial policy can apparently be read as being aimed at Mussolini, but also as a thorough justification of Italian expansionary politics. See the different nuances in Mariella Cagnetta, 'Gaetano de Sanctis. 15 October 1870–9 April 1957', in *Classical Scholarship. A Biographical Encyclopedia*, ed. William M. Calder III and Ward W. Briggs, New York 1990, 43–51, and José Antonio Dabdad Trabulsi, 'Gaetano de Sanctis, biographe de Périclès', *Quaderni di Storia* no. 69, 2009, 199–211.

⁵⁸ Theodor von der Pfordten, 'Das Beamtenideal bei Platon und seine Bedeutung für die Gegenwart', *Annalen des Deutschen Reichs für Gesetzgebung, Verwaltung und Volkswirtschaft*, Jg. 1919/1920, 245–269. Pfordten later died while taking part in Hitler's attempted Munich putsch of 9 November 1923, his death providing the National Socialists with a 'martyr'. In hindsight this article could be read as expressing the affinity of Nazi ideology to Plato's ideal of a state; R. F. Hoernlé, 'Would Plato Have Approved of the National-Socialist State?', *Philosophy* 13, 1938, 166–182, at 178.

⁵⁹ Willi Schink, 'Platon und die Frauenbewegung', *Sokrates. Zeitschrift für das Gymnasialwesen* NF 3, 1915, 432–444. This point had already been made (though with some reservation) by a prominent spokeswoman of the German socialist women's movement; Lily Braun, 'Die Frauenfrage im Altertum', *Archiv für soziale Gesetzgebung* 13, 1899, 155–178. It is true that Plato sought a better legal position for women than they had in Athens.

element in the Constitution.⁶⁰ Representative of the latter is a 1930 book by Hans Bogner, which said of Athens:

Equal rights proved in practice to mean favouring the lesser orders and the deformed. Mob rule, the dictatorship of the proletariat, prevailed. ... The idea of the state shrank, the governing mob treating it like a soup kitchen.⁶¹

Bogner also thought that ‘all the so-called ideas of the French Revolution can already be found in the Greeks’,⁶² this being meant as a condemnation both of past and present. After 1933 Bogner emerged as a representative of especially ‘brown’ classical scholarship, describing Athenian democracy as ‘leaderless and in need of a leader’, something that was linked to ‘racial degeneration’.⁶³

From a different perspective in the mid-1920s Ulrich Wilcken (an ancient historian well-known as the pioneer of papyrology in Germany) had criticised Athens’ misconceived ‘social policy’, using as a standard Bismarck’s social legislation. In Athens, he contended, the people treated the state as a welfare institution. Since metics were excluded from payments and grain distributions, the system was really about the ‘exploitation of a majority lacking rights by a privileged minority’, and so was far removed from ‘our German social policy, as inaugurated on 17 November 1881 through imperial decree [introducing social insurance]’.⁶⁴

Apart from this, the traditional criticisms of Athenian democracy were repeated, using arguments that were either explicit or implicit criticisms of the present.⁶⁵ Victor Ehrenberg wrote in 1923 that Athenian courts represented the ‘degenerative features of a consistent democracy’, namely, ‘demagogy, bribery, mass instinct’.

⁶⁰ Friedrich Cauer, ‘Die deutsche Demokratie im Spiegel der athenischen’, *Vergangenheit und Gegenwart* 21, 1931, 257–276, here at 267.

⁶¹ Hans Bogner, *Die verwirklichte Demokratie. Die Lehren der Antike*, Hamburg 1930, 219.

⁶² Hans Bogner, ‘Das Ende der aufgeklärten Demokratie’, *Deutsche Rundschau* 213, 1932, 6–13, here at 9.

⁶³ Hans Bogner, ‘Das doppelte Gesicht der Demokratie. Platon und die Lehren der Antike’, in *Reich und Reichsfeinde*, Bd. 1, Reichsinstitut für Geschichte des neuen Deutschlands, Hamburg 1941, 143–159, here at 145 and 147. Bogner’s antisemitism is on display in his article ‘Die Judenfrage in der griechisch-römischen Welt’, in *Forschungen zur Judenfrage*, Bd. 1, Sitzungsberichte der Ersten Arbeitstagung der Forschungsabteilung Judenfrage des Reichsinstitut für Geschichte des neuen Deutschlands vom 19. bis 21. November 1936, Hamburg 1937, 81–91.

⁶⁴ Ulrich Wilcken, *Griechische Geschichte im Rahmen der Altertumsgeschichte* [1924], 2nd ed., Munich 1926, 112. The text of Wilhelm I’s declaration that social insurance was a supplementary measure in ‘the suppression of Social Democratic excesses’ in *Deutsche Geschichte in Quellen und Darstellung*, Bd. 8: *Kaiserreich und Erster Weltkrieg 1817–1918*, 2nd ed., Rüdiger vom Bruch and Björn Hofmeister, eds., Stuttgart 2002, 54f.

⁶⁵ The practice of daily payments was regarded as ‘demoralising comforts’ for the recruitment of a ‘proletarian jury’: Walter Weddigen, ‘Sozialpolitik als Schicksalsfrage der Antike’, *Jahrbücher für Nationalökonomie und Statistik* 131, 1929, 371–387, here at 378.

The state increasingly became the domain for a mob led by ambitious demagogues. Career politicians, the most woeful distortion of the *zoon politikon*, became the leaders and beneficiaries of democracy.⁶⁶

However, employment of the Athenian example to construe the tension existing between democracy and the security of individual rights was nullified by general disillusionment with parliamentary democracy in the Weimar Republic. Large sections of the bourgeoisie were sceptical of, or even hostile to, parliamentary rule – those identified with the ‘conservative revolution’ regarded it as ‘rule by inferior people’.⁶⁷ They were also hostile of parties, or rather, of the leftist parties, since of course those on the right represented the general interest. They longed for the rebirth of a strong state, a sentiment cultivated in the mythology of Bismarck as the ‘Iron Chancellor’;⁶⁸ or for salvation through a political messiah, which made Mussolini an attractive figure.⁶⁹

Friedrich Gundolf’s history of Caesar’s European reputation sought to underline the nature of true greatness in pressing the ‘need of a strong man’ in an era where mediocrities abounded and were merely caricatures of the ‘lord and saviour’ for whom one had to wait.⁷⁰ Oswald Spengler foresaw a ‘final struggle between democracy and Caesarism, between the leading powers of a dictatorial money economy and the purely political will of a Caesar’; he thought Mussolini might be such a man, but not Hitler.⁷¹ Werner Sombart, who for many years had been taken to be a salon Marxist, wrote in 1934 of a ‘German socialism’, and argued that ‘democracy, in the economic era means no more than the legalisation of horse-trading’.⁷²

Parliamentarism was not only the object of criticism from the right. The extreme left saw it as cover concealing the class rule of the bourgeoisie. As

⁶⁶ Victor Ehrenberg, ‘Vom Sinn der griechischen Geschichte’ [1923], reprinted in his *Polis und Imperium*, Zürich 1965, 7–18, here at 14.

⁶⁷ Edgar J. Jung, *Die Herrschaft der Minderwertigen. Ihr Zerfall und ihre Ablösung durch ein Neues Reich*, 2nd ed., Berlin 1930.

⁶⁸ Robert Gerwarth, *The Bismarck Myth. Weimar Germany and the Legacy of the Iron Chancellor*, Oxford 2007.

⁶⁹ Klaus Schreiner, ‘Wann kommt der Retter Deutschlands? Formen und Funktionen des politischen Messianismus in der Weimarer Republik’, *Saeculum* 49, 1998, 107–160; Wolfgang Schieder, ‘Das italienische Experiment. Der Faschismus als Vorbild in der Krise der Weimarer Republik’, *Historische Zeitschrift* 262, 1996, 73–125.

⁷⁰ Friedrich Gundolf, *Caesar. Geschichte seines Ruhms* [1924], 2nd ed., Berlin 1925, 7.

⁷¹ Oswald Spengler, *Der Untergang des Abendlandes. Umriss einer Morphologie der Weltgeschichte* [1923], Munich 1972, 1144; and his *Jahre der Entscheidung. Erster Teil: Deutschland und die weltgeschichtliche Entwicklung*, Munich 1933, 131ff., esp. 134: Mussolini would fit the role if only he could rid himself of the ‘sub-humans’ in his party.

⁷² Werner Sombart, *Deutscher Sozialismus*, Berlin 1934, 24. It is hard to say whether Sombart’s view (*ibid.*, 213) that the Führer received direction from God indicates any ambivalence about the National Socialist system. Sombart had earlier distinguished the idea of a leader conscious of having been sent by God from demagogues without such a mission: ‘Die Idee des politischen Führertums’, in *Deutsche Kultur. Ein Lesebuch von deutscher Art und Kunst für die Oberstufe höherer Schulen*, ed. Hans Heinrich Schmidt-Voigt et al. Frankfurt am Main 1925, 165–170.

Ernst Troeltsch noted that there was a convergence between left and right in their aversion to ‘formal democracy’,⁷³ a notion that also could be traced back to a Rousseauist understanding of democracy. This can be seen at work in a comment made in 1926 by the leftist journalist Kurt Tucholsky: some theories of Fascism ‘are more modern than democracy which acts against its own interest when its existence is shackled to parliamentarism’.⁷⁴ After Mussolini’s seizure of power the Communist Party quickly declared that this was merely one more form of the class rule of the bourgeoisie, other variants being embodied by the Social Democrats, who were denounced as ‘social fascists’.⁷⁵

Leftist parliamentary criticism of this kind has only a marginal role in our context, since most classical scholars belonged to the ‘nationally minded’ bourgeoisie. Their own borrowings from antiquity therefore emphasised the need for an authoritarian state – drawing upon Thucydides’ assumption that great power politics demanded rigorous domestic leadership⁷⁶ and the state-based virtues of the Romans.⁷⁷ There were therefore many continuities with the kind of views prevailing during the National Socialist era.

One example of this was a critique made in the later years of the Weimar Republic of a ‘doctrinaire liberal standpoint’ that drew upon Fustel de Coulanges, made by Werner Jaeger, who in 1921 had succeeded Wilamowitz-Moellendorff in the prestigious Berlin chair of Greek philology. Rejecting an individualistic conception of human rights, he called for the integration of the individual within the transcendent framework of the state; recalling Plato’s conception of education, he looked forward to the reinforcement of the ‘state spirit’ through the ‘passionate party struggle’ of the present.⁷⁸ Following the seizure of power in 1933 he offered to the new regime a ‘third humanism’ as an educational

⁷³ Ernst Troeltsch, ‘Der Ansturm gegen die Demokratie’ [20 April 1919], in his *Spektator-Briefe. Aufsätze über die deutsche Revolution und die Weltpolitik 1918/22*, ed. Hans Baron, Tübingen 1924, 47–52, esp. 48. On the dispute within Social Democracy, which on the one hand demanded the formal equality of democracy, but on the other feared this would consolidate social inequality, see Hermann Heller, *Die politischen Ideenkreise der Gegenwart*, Breslau 1926, 135.

⁷⁴ Cited by Riccardo Bavaj, *Von links gegen Weimar. Linkes antiparlamentarisches Denken in der Weimarer Republik*, Bonn 2005, 433.

⁷⁵ The concept of ‘social fascism’ was decreed by the Soviet leadership and made binding on the Communist International from 1924 onward; however, within the German Communist Party there were groups who wished to maintain a united front with Social Democracy: Siegfried Bahne, “Sozialfaschismus” in Deutschland. Zur Geschichte eines politischen Begriffs’, *International Review of Social History* 10, 1965, 211–245.

⁷⁶ Max Pohlenz, ‘Thukydides und wir’, *Neue Jahrbücher für das klassische Altertum, Geschichte und deutsche Literatur und für Pädagogik* 46, 1920, 57–72.

⁷⁷ See Richard Heinze, ‘Von den Ursachen der Größe Roms’ [1921], in his *Vom Geist des Römertums*, ed. Erich Burck, Darmstadt 1972, 9–27; Eduard Fraenkel, *Die Stelle des Römertums in der politischen Bildung*, Berlin 1926; various pieces republished in *Römertum. Ausgewählte Aufsätze und Arbeiten aus den Jahren 1921 bis 1961*, ed. Hans Oppermann, Darmstadt 1962; *Römische Wertbegriffe*, ed. Oppermann, Darmstadt 1967.

⁷⁸ Werner Jaeger, ‘Staat und Kultur’, *Die Antike* 8, 1932, 71–89, here at 74 and 89.

ideal,⁷⁹ even though this did not go down too well with dedicated Nazis.⁸⁰ In retrospect, Helmut Berve observed in 1942:

The germ and early beginnings of a new image of antiquity that developed before our eyes can in many cases be located in the period preceding the rise of a National Socialist consciousness among the German people. The direct relationship to the state as a moral, communal order of men and women related by blood that we have gained in the rebirth of our people can be found in a long-established research tradition that sought the communal character of the Hellenic state in its real actualisation as well as in the ideal form that Plato's genius gave it.

Of course, this could be fully recognised only when the 'racial instincts of our people had been aroused', Greeks and Romans being understood only then to be 'of our blood, and our kind'.⁸¹

ANCIENT AND GERMAN LEADERSHIP IN NATIONAL SOCIALISM

A yearning for a 'strong state' and a *Volksgemeinschaft* was already evident in the 1920s. This term expressed a hankering for national community undisturbed by class tensions and party conflicts; during the Nazi period it was supposed to be based on the homogeneity of blood and race. This more or less made redundant any critique of antiquity for its supposedly inadequate protection for individual rights.

This was also true of the position adopted in some legal assessments of the Weimar Constitution, which treated liberalism as in contradiction with democracy, and its basic rights as an obstacle to the development of a true 'people's state'.⁸² During the Third Reich there was then a complete

⁷⁹ Werner Jaeger, 'Die Erziehung des politischen Menschen und die Antike', *Volk im Werden* 1, H. 3, 1933, 43–49. Typical for this is the reprinting ten years later of a speech given on the occasion of the celebration in 1924 of the founding of the German Empire: Werner Jaeger, 'Die griechische Staatsethik im Zeitalter Platons', *Die Antike* 10, 1934, 1–16. On the contemporary implications of Werner Jaeger, *Paideia. Die Formung des griechischen Menschen*, Bd. 1, Berlin 1933, see the critical and ironic review by Bruno Snell, *Göttingische Gelehrte Anzeigen* 1935, reprinted in Snell, *Gesammelte Schriften*, Göttingen 1966, 32–54. In his essay 'Das I-Ah des goldenen Esels', *Hermes* 70, 1935, 355f., Snell wrote at the end of his interpretation of Apuleius, *The Golden Ass* (a second-century AD Latin novel): 'the German ass can only say "yes"', a clear allusion to the plebiscite of August 1934 approving Hitler's assumption of presidential functions after Hindenburg's death. Snell also sent the essay to English colleagues; Enoch Powell prevented its printing in the *Manchester Guardian* to protect its author; Gerhard Lohse, 'Klassische Philologie und Zeitgeschehen. Zur Geschichte eines Seminars an der Hamburger Universität', in *Hochschulalltag im 'Dritten Reich'*. *Die Hamburger Universität 1933–1945*, Bd. 2, ed. Eckard Krause, Berlin 1991, 775–826, here 817, n. 93.

⁸⁰ Hans Drexler, *Der dritte Humanismus. Ein kritischer Epilog*, Frankfurt am Main 1937.

⁸¹ 'Vorwort', in *Das neue Bild der Antike*, ed. Helmut Berve, Bd. 1: Hellas, Leipzig 1942, 6, 9 and 7.

⁸² Ernst Rudolf Huber, 'Bedeutungswandel der Grundrechte', *Archiv des öffentlichen Rechts* 62 (NF 23), 1932/1933, 1–98, here at 9f.

abandonment of the state based upon the rule of law,⁸³ and a definite rejection of individual rights of protection vis-à-vis the state, since this was incompatible with 'ideas of the Führer and his followers' and of the *Volksgemeinschaft*.⁸⁴ As Ernst Rudolf Huber wrote, giving Rousseau's category a twist, ultimately the Führer

advocated the objective idea of the nation if necessary against the subjective wilfulness of misguided popular opinion. The general will embodied in him expresses the political unity of the people as against all individual interests.

The law was accordingly 'the unfolding of a popular life according to the plan and the decision of the Führer'.⁸⁵

For the 'German Führer and people's state' one can 'lay claim to the concept of democracy in a more genuine and deeper sense than is often the case for the formal democracies of other countries'.⁸⁶ The acclamation of the Führer's will in the form of plebiscites was then said to be the 'Germanic' form of democracy. A *Führerstaat* based on these principles was in the 'fullest sense directly democratic', and plebiscites served to 'effectively demonstrate, or sometimes restore, the harmony of the people with its Führer'.⁸⁷

During the National Socialist era classical scholars sought to emphasise the importance of the Graeco-Roman heritage, competing here with reference to the ancient Germans. This was sometimes a means of securing the place of ancient languages in school and classical studies in the university, blocking in this way the reassignment of university chairs to Germanic studies,⁸⁸ or even the 'history of the

⁸³ Carl Schmitt, 'Nationalsozialismus und Rechtsstaat', *Juristische Wochenschrift* 63, 1934, 713–718; and with the concrete application of this to the 'Röhm putsch' (the murder of the SA leadership ordered by Hitler, on account of an alleged plan for a putsch): 'Der Führer schützt das Recht', *Deutsche Juristen-Zeitung* 39, 1934, 945–950 (reprinted in Schmitt, *Positionen und Begriffe*, 199–203), and (especially disgusting) to the Nuremberg Laws: 'Die Verfassung der Freiheit', *Deutsche Juristen-Zeitung* 40, 1935, 1133–1135.

⁸⁴ Theodor Maunz, 'Das Ende des subjektiven öffentlichen Rechts', *Zeitschrift für die gesamte Staatswissenschaft* 96, 1935/1936, 71–111, here at 74.

⁸⁵ Ernst Rudolf Huber, 'Die deutsche Staatswissenschaft', *Zeitschrift für die gesamte Staatswissenschaft* 95, 1934/1935, 1–65, here at 41; Huber, 'Der Führer als Gesetzgeber', *Deutsches Recht. Zentralorgan des National-Sozialistischen Rechtswahrerbundes*. Ausgabe A, 9. Jg., 1. Halbband, 1939, 275–278, here at 275.

⁸⁶ Wilhelm Stuckart, 'Der nationalsozialistische Führerstaat im Verhältnis zu Demokratie, Diktatur und Selbstverwaltung', *Deutsches Recht* 6, 1936, 342–349, here at 343. Stuckart was secretary of state in the Interior Ministry. For a contrast of Führer democracy, which was 'not a dictatorship', with the 'bogus democracies' of Western European parliamentarism, see also Paul Ritterbusch, *Demokratie und Diktatur. Über Wesen und Wirklichkeit des westeuropäischen Parteienstaates*, Berlin 1939. A different position is formulated by Ernst Rudolf Huber, *Verfassungsrecht des Großdeutschen Reiches*, 2nd ed., Hamburg 1939, 209–211: The *Führerstaat* is unique, cannot be defined by traditional categories: it is no democracy since the *Führer* and not the people themselves makes all decisions; it is also no dictatorship, neither in the sense of a temporary institution in times of emergency, nor in the pejorative sense of a despotic system.

⁸⁷ Wolfgang Endriss, *Die unmittelbare Demokratie als germanische Idee und ihre geschichtliche Entwicklung*, Dissertation, University of Cologne 1935, 21.

⁸⁸ Heinrich Weinstock, 'Die Altertumswissenschaft in der deutschen Bewegung', *Neue Jahrbücher für Wissenschaft und Jugendbildung* 9, 1933, 467–469, was a response to a corresponding

National Socialist Revolution'.⁸⁹ Attacks of the kind made by Julius Streicher – 'Not Latin, nor ancient Greek will be spoken in the Third Reich, but German'⁹⁰ – could always be countered with the oft-cited sentences from Hitler's *Mein Kampf*:

Roman history, if properly understood, is and remains the best teacher not only for today, but for all time. ... The Hellenic cultural idea should be preserved for us in its exemplary beauty.⁹¹

Hitler retained a high regard for 'classical' antiquity that contrasted with his dismissive remarks about the ancient Germans,⁹² and he was quite sarcastic about the Germanophilia of other National Socialist leaders; although the latter was not so widely known.⁹³

Since there was no hegemonic historical narrative for antiquity at least, competition developed among scholars jockeying for the regime's favour. Emphasis was placed upon the allegedly exemplary consciousness of the state's importance in antiquity, whether simply as an image of 'Rome' or in terms of Caesar

demand by Hans Teske, 'Nationale Bildungs- und Erziehungsarbeit an den Universitäten', *Volk im Werden* 1, Heft 2, 1933, 11–13. Weinstock cited Hitler's appreciation of the educational power of antiquity. (For the quote from Hitler see above in main text). In 1933 the Berlin archaeologist Gerhard Rodenwaldt put together a list of Hitler quotations on classical antiquity which he used in public speeches against any favouring of the ancient Germans; Marie-Luise Bott, 'Rückschau 1948. Max Vasmer's Rede "Die Haltung der Berliner Universität" im Nationalsozialismus', *Jahrbuch für Universitätsgeschichte* 12, 2009, 189–255, here at 236. *Ur- und Frühgeschichte* (prehistoric archaeology) was promoted in particular by the new non-university research organisations linked to the *Abnenerbe* of the SS and the *Amt Rosenberg*. The standard accounts of these rival organisations are Michael H. Kater, *Das Abnenerbe der SS 1933–1945. Ein Beitrag zur Kulturgeschichte des Dritten Reiches*, Munich 1974, and Reinhard Bollmus, *Das Amt Rosenberg und seine Gegner. Studien zum Machtkampf im nationalsozialistischen Herrschaftssystem*, Stuttgart 1970; they have since been supplemented by a great number of publications.

⁸⁹ Walter Frank, the 'chief historian' of the regime, supported this development in 1935: Helmut Heiber, *Walter Frank und sein Reichsinstitut für Geschichte des neuen Deutschlands*, Stuttgart 1966, 122. Given that he was a historian of France (*Nationalismus und Demokratie im Frankreich der Dritten Republik 1871 bis 1918*, Hamburg 1933) he quite probably had in mind the chair for the History of the French Revolution established at the Sorbonne in 1891. In fact, the existence of ancient history was never endangered; when in 1941 'Reichsuniversitäten' were founded in Strasbourg and Poznan they included chairs for ancient history.

⁹⁰ Streicher in 1934 at a conference of the National Socialist Teachers' Association in Nuremberg, cited by Hans Jürgen Apel, Stefan Bittner, *Humanistische Schulbildung 1890–1945. Anspruch und Wirklichkeit der altertumswissenschaftlichen Fächer*, Cologne 1994, 283. Streicher was Gauleiter in Franconia and editor of the antisemitic smear-sheet *Der Stürmer*.

⁹¹ Cited by Helmut Berve, *Antike und nationalsozialistischer Staat* [1934], reprinted in *Über das Studium der Alten Geschichte*, ed. Wilfried Nippel, Munich 1993, 283–299, here at 284f.; Joseph Vogt, *Unsere Stellung zur Antike*, Breslau 1937, 10 and 12; Otto Seel, *Caesar und seine Gegner*, Erlangen 1939, 22.

⁹² See for references Alexander Demandt, 'Klassik als Klischee: Hitler und die Antike', *Historische Zeitschrift* 274, 2002, 281–313.

⁹³ These views became known after the war via the publication of his recorded 'Table Talk' during the war; Henry Picker, *Hitlers Tischgespräche im Führerhauptquartier* [1951], Munich 2003; see Hitler's remarks on 18 January (at 116) and 7 July 1942 (at 610f.).

as a leader enjoying plebiscitary legitimation⁹⁴ (here there was competition with Italian Fascism), or Plato was used in connection with the *Führerprinzip* that had become ‘a shining example’ to all those who turned away in disgust from democracy and parliamentarism.⁹⁵ Attention was also drawn to Plato’s agrarian laws, pedagogy⁹⁶ and eugenics that could be construed in terms of ‘racial policy’⁹⁷ which could also be found in Hitler’s *Mein Kampf*.⁹⁸ And of course Sparta as a military state was of particular interest.⁹⁹ Anti-Semitic works on the ‘Jewish question in antiquity’ were written not only by classical scholars, but also theologians.¹⁰⁰

On 30 January 1943 citation of Sparta reached a macabre highpoint in official propaganda related to the position of the German Sixth Army, surrounded at Stalingrad. Hermann Göring, who as commander of the Luftwaffe had failed to keep his rash promise to maintain supplies to the army by air, broadcast a speech in which the troops at Stalingrad were asked to make a ‘heroic sacrifice’ of the kind made by King Leonidas and his Spartans at Thermopylae.¹⁰¹ In 480 BC

⁹⁴ Hans Oppermann, ‘Cäsar als Führergestalt’, *Vergangenheit und Gegenwart* 24, 1934, 641–652.

⁹⁵ Justus Hashagen, ‘Über die weltgeschichtliche Bedeutung der antiken Staats- und Soziallehren’, *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte* 28, 1935, 1–14, here at 7; see also, for example, Wilhelm Nestle, ‘Der Führergedanke in der platonischen und aristotelischen Staatslehre’, *Gymnasium* 48, 1937, 73–89.

⁹⁶ Hans-Georg Gadamer, ‘Platos Staat der Erziehung’, in Berve, *Das neue Bild*, Bd. 1, 317–335, without, however, making any specific contemporary connection.

⁹⁷ Among others Herbert Holtorf, ‘Griechische Staatsgesinnung – Staatsgesinnung des Dritten Reiches’, *Das Gymnasium* 48, 1937, 122–126. Plato had already been invoked as an authority for a eugenics policy that would ‘select the strongest’ and prevent the reproduction of those ‘barely capable of life’: Paul Cauer, *Das Altertum im Leben der Gegenwart*, Leipzig 1911, 107. Hans F. K. Günther, who from 1933 was a highly regarded authority on ‘race’, had already put his ideas forward in the late 1920s; *Platon als Hüter des Lebens. Platons Zucht- und Erziehungsgedanken und deren Bedeutung für die Gegenwart*, Munich 1928 (and a number of other publications).

⁹⁸ Joachim Bannes, ‘Hitler und Platon. Eine Studie zur Ideologie des Nationalsozialismus’, *Geisteskultur. Monatshefte der Comenius-Gesellschaft für Geisteskultur und Volksbildung* 42, 1933, 97–113.

⁹⁹ Among others Helmut Berve, *Sparta*, Leipzig 1937; Hans John, *Vom Werden des Spartanischen Staatsgedankens*, Breslau 1939; Hans Lüdemann, *Sparta. Lebensordnung und Schicksal*, Leipzig 1939; Jürgen Brake, *Spartanische Staatserziehung*, Hamburg 1939. The texts by Lüdemann and Brake were products of the circle of the ‘Reichsbauernführer’ Richard Walter Darré. For Darré the promotion of such works on Sparta or on Roman land law (there were various articles in his periodical *Odal* on these topics) not only served the historical legitimation of ‘blood and soil’, but also his ambition to gain the interpretive hegemony over history among National Socialists.

¹⁰⁰ The most prominent of them was Gerhard Kittel, as editor of the *Theologisches Wörterbuch zum Neuen Testament* an internationally respected scholar.

¹⁰¹ The text is printed in *Ursachen und Folgen. Vom deutschen Zusammenbruch 1918 und 1945 bis zur staatlichen Neuordnung Deutschlands in der Gegenwart*, Herbert Michaelis and Ernst Schraepfer, eds., Bd. 18, Berlin n.d., 92–99, esp. 96. Hitler also saw holding out in the ‘Führerbunker’ as a desperate struggle of eternal value, like that of Leonidas: Joachim Fest, *Hitler. Eine Biographie*, 7th ed., Frankfurt am Main 2005, 1022. The Spartan example had been used repeatedly since the French Revolution in various national and ideological

the Spartans fought to the last man so that the advance of the Persians might be slowed – not a comparison the soldiers listening in Russia might have welcomed, despite the associated promise of eternal fame. Besides, classical scholars had long contended that Thermopylae was in fact a senseless action without any impact on the longer-term outcome of the war, although for the Greeks the war did end positively. How far this view was known outside specialist circles is unclear.¹⁰²

The ‘consanguineous’ ancient Greeks would, together with the Romans, exemplify the cultivation of a ‘state-oriented breed of people’; these peoples, ‘related [to the Germans] by race and blood’, could be the model for a new German state in which an ‘organic interchange between state and people’ could take place.¹⁰³ Accordingly,

authentic humanistic education creates not individuals, the spiritual private person, but political men and women. ... It cultivates the virtues that the National Socialist state needs.¹⁰⁴

According to Joseph Vogt, the ancient state is not a

security organisation for the free play of forces, nor even a welfare institution for the protection of the weak, and certainly just as little a playground for tyrannical appetites – at its peak, in any case. It is instead the community of free citizens who act politically without mediation and representation...

In Athens and Sparta citizens, ‘in their dedication to their state experienced their highest personal attainment, liberty and attachment in one’.¹⁰⁵

If the Greeks were generally thought to cultivate ‘not a self-satisfied individual, but above all a member of a greater, cohesive community’, then this was even more true of Sparta with its ‘single highest rule of life’: the ‘autonomous organisation and independence of the whole state through a disciplined and rigorous communal order, with a will for combative self-determination’.¹⁰⁶

But even Athenian democracy could be interpreted in this fashion. Those features that had hitherto been included in the usual negative criticism of Athens now counted as positives. In an article of 1934 Wolfgang Schadewaldt characterised Jacob Burckhardt’s critique of ‘the enslavement of the individual

contexts whenever the issue of sacrifice for the mother country was raised: Anuschka Albertz, *Exemplarisches Heldentum. Die Rezeptionsgeschichte der Schlacht an den Thermopylen von der Antike bis zur Gegenwart*, Munich 2006.

¹⁰² Among those who responded to the criticism of the Leonidas myth was Franz Miltner, ‘Pro Leonida’, *Klio* 28, 1935, 228–241.

¹⁰³ ‘Leitsätze des Deutschen Altphilologen-Verbandes zur Neugestaltung des humanistischen Bildungsgedankens auf dem Gymnasium (30 September 1933)’, *Neue Jahrbücher für Wissenschaft und Jugendbildung* 9, 1933, 570f. Otto Regenbogen, ‘Das Altertum und die politische Erziehung’, *Neue Jahrbücher für Wissenschaft und Jugendbildung* 10, 1934, 211–225, here at 213.

¹⁰⁴ Berve, *Antike und nationalsozialistischer Staat*, 297.

¹⁰⁵ Vogt, *Unsere Stellung*, 10f.

¹⁰⁶ Jürgen Brake, *Spartanische Staatserziehung*, Hamburg 1939, 6f.

by the state' as a misunderstanding, arising from the liberal spirit of the nineteenth century. The Greek state was instead

in a sense more powerful, and created closer bonds, than most modern states; but even with this great power it preserved in the individual a feeling of liberty and independence of a kind that is absent in a liberal state because its idea of liberty, to be a just liberty, is too harmless. In Athens, as a total state, there is a very special reciprocity between liberty and restraint, an identity of self-sacrifice and self-assertion.¹⁰⁷

There is not space to recount all the many ways in which this new perspective upon Athenian democracy manifested itself. Examples range from an association of Athenian liturgies with the Winter Welfare programme;¹⁰⁸ emphasis on the similarities of *ephebia*, the military service of young Athenian men, to the Hitler Youth and the SA,¹⁰⁹ or 'our SS';¹¹⁰ the drawing of parallels between the political thought of Thucydides and Hitler's *Mein Kampf*;¹¹¹ the interpretation of Pericles' legislation on citizenship as protection from 'the mingling of foreign blood'¹¹² and a measure aimed at maintaining the 'racial strength of Athens';¹¹³ the interpretation of the form of democracy prevailing in Athens as 'the essential expression of the people's nature' and legal equality as the 'necessary consequence of blood equality';¹¹⁴ even the claim that the Athenian popular assembly had been revived in a new form when the entire people listened to the Führer on the radio.¹¹⁵

A comprehensive account of the presentation of Athens, or more generally of Greece, in National Socialist ancient history would involve a number of other aspects, for instance, the use of concepts of 'race', 'Nordic world history', 'Führer' and 'organic state'.¹¹⁶ One would also need to acknowledge a critical

¹⁰⁷ Wolfgang Schadewaldt, 'Einzelner und Staat im politischen Denken der Griechen', *Vergangenheit und Gegenwart* 24, 1934, 16–32, here at 21 and 32. This is the text of a lecture given on 9 November [!] 1932.

¹⁰⁸ Hans Volkmann, 'Der private Reichtum im freiwilligen Dienst des antiken Stadtstaates', *Neue Jahrbücher für Antike und deutsche Bildung* 2, 1939, 3–20, here at 3.

¹⁰⁹ Hans H. Bielstein, 'Unsere heutige Stellung zur Antike', *Der deutsche Student* 4, 1936, 210.

¹¹⁰ Hildebrecht Hommel, 'periploi', *Paulys Realencyclopädie der classischen Altertumswissenschaft*, revised edition initiated by Georg Wissowa, Bd. 19, 1 (1937), 855.

¹¹¹ Helmut Berve, *Thukydides*, Frankfurt am Main 1938, 49.

¹¹² Fritz Taeger, 'Antikes Führertum', *Nachrichten der Gießener Hochschulgesellschaft* 10, 1934, 3–26, here at 10.

¹¹³ Siegfried Erasmus, 'Themistokles und Perikles als nordische Führerpersönlichkeiten', *Die deutsche höhere Schule* 6, 1939, 73–89, here at 77.

¹¹⁴ Richard Harder, 'Plato und Athen', *Neue Jahrbücher für Wissenschaft und Jugendbildung* 10, 1934, 492–500, here at 499.

¹¹⁵ Hans Bogner, 'Das deutsche Griechenbild und die Altertumswissenschaft', *Straßburger Monatshefte* 6, 1942, 517.

¹¹⁶ See Fritz Schachermeyr, 'Die Aufgaben der Alten Geschichte im Rahmen der nordischen Weltgeschichte', *Vergangenheit und Gegenwart* 23, 1933, 589–600; Schachermeyr, 'Die nordische Führerpersönlichkeit im Altertum', in *Humanistische Bildung im nationalsozialistischen Staate*, Leipzig 1933, 36–43; also his *Indogermanen und Orient. Ihre kulturelle und*

remark made in 1942 by Hans Oppermann, an enthusiast of 'brown' classical studies: while there were works that reflected the 'spirit of our times', many publications remained indebted to the 'positivistic and historicist epoch of the sciences'¹¹⁷ – that there were still very many old-fashioned scholarly pieces.¹¹⁸

We can deal with Helmut Berve in rather more detail here, for his views were in many respects already developed before he became a prominent and influential spokesman of Nazi ancient history. His *Griechische Geschichte* (1931/1933) described the participation in public affairs that Athenian citizens enjoyed, thanks to day payments as 'the fulfilment of true communal life', so that 'the totality of citizens melded itself with the state'.¹¹⁹ Berve justified the condemnation of Socrates, writing that Socrates represented an 'individualist ethic', that he was 'an open protagonist of a life-norm antagonistic to the state' and should be seen as 'a harmful element who had to be eradicated'.¹²⁰

Since 1927 Berve had held a respected chair in Leipzig, moving to Munich in 1943; he joined the NSDAP in 1933 and then was active at many levels of academic politics.¹²¹ After the war he lost his chair in Munich, but after a period of involuntary retirement he resumed activity in the Federal Republic of Germany.¹²² During the National Socialist era his scholarly reputation made

machtpolitische Auseinandersetzung im Altertum, Stuttgart 1944; Hans Lüdemann, 'Die Antike im politischen Geschichtsbild', *Vergangenheit und Gegenwart* 27, 1937, 631–647; Franz Miltner, 'Die Antike als Einheit in der Geschichte', in Berve, *Das neue Bild*, Bd. 2, 433–453; Friedrich Oertel, *Klassenkampf, Sozialismus und organischer Staat im alten Griechenland*, Bonn 1942.

¹¹⁷ Hans Oppermann, 'Zur Lage der griechisch-römischen Altertumswissenschaft', *Deutschlands Erneuerung* 26, 1942, 574–579, here at 574. Oppermann also clearly expressed his position on the 'Jewish question': *Der Jude im griechisch-römischen Altertum*, Munich 1943 (Schriftenreihe zur weltanschaulichen Schulungsarbeit der NSDAP, 22).

¹¹⁸ The quotations in this chapter come mostly from journals addressed to school teachers or publications for a general public. It may be said, if only tentatively, that scholarly journals with international distribution (like *Klio* or *Hermes*) avoided flagrantly ideological articles.

¹¹⁹ Helmut Berve, *Griechische Geschichte*, Freiburg 1931–1933, Bd. 1, 273.

¹²⁰ Berve, *Griechische Geschichte*, Bd. 2, 62.

¹²¹ On Berve's career and his restless activities during the Third Reich see Stefan Rebenich, 'Alte Geschichte in Demokratie und Diktatur: Der Fall Helmut Berve', *Chiron* 31, 2001, 457–496. Among Berve's functions was his role as head of the 'Kriegseinsatz der Altertumswissenschaft' (war mission of classical studies), which itself was part of the 'Kriegseinsatz der Geisteswissenschaften' (of the Humanities); Frank-Rutger Hausmann, *Deutsche Geisteswissenschaft im Zweiten Weltkrieg. Die 'Aktion Ritterbusch' (1940–1945)*, Dresden 1998. This project brought together numerous academics from many disciplines who were charged with demonstrating the value of the Humanities, Social Sciences and Law for the 'intellectual prosecution of the war' and for the planning of a new Europe under German leadership, organising conferences and publishing collective works and monographs that could be seen as either 'normal science' or propaganda. This was also true of the collective volumes edited by Berve, *Das Neue Bild der Antike*, 2 Bde., Leipzig 1942.

¹²² In 1945 Berve was dismissed from the Munich post, but in 1954 appointed to a chair in Erlangen. He became of sort of doyen of German ancient historians and was acknowledged in this role even in East Germany, at least during the 1950s.

him the most important representative of those classical scholars who sought to contribute to the National Socialist conception of history. He now concentrated on popularising ancient history in books, articles lectures, and broadcasts for a general public and in talks for school teachers, army-, SS- and police officers.

On the one hand, Berve was an admirer of Sparta: specifically, of ‘the education of youth, communal spirit, soldierly life, subordination and heroic attitude of the individual’. All this helped create a ‘type of *Herrenmensch*’, thanks to ‘natural selection’ and the ‘community of blood’.¹²³ On the other hand, he sought to defend Athens against the accusation that it had been a democracy; he pointed out that the citizenry had always been in a minority, and that furthermore in Athens ‘the communal state had been realised in a quite unique way’.¹²⁴ Berve praised the ‘readiness for sacrifice’ of the Athenians, their massive ‘commitment of blood and property for the polis’.¹²⁵ The history of the fifth-century BC showed

a truly shocking commitment of the best blood among the Athenian citizenry. The Parthenon was built not by a generation enjoying a golden period of peace, but by one that sacrificed countless numbers of its best men, and was hourly prepared to sacrifice itself for the polis.¹²⁶

Berve’s speech as rector of Leipzig University in February 1940 is typical of the genre. Connections to the present are sketched out for the public, while at the same time suggesting the relevance of the speaker’s specialist area to modern life. Pericles is portrayed as a true leader. With his ‘demonic strength of leadership’ he succeeded ‘in activating all the strata of the Athenian people, moulding them together into a genuine living community within the state’; the provision of day payments for political functions and service in the fleet and in building works were all part and parcel of this. To finance them ‘foreign undertakings’ were needed, ‘which both satisfied the lust for power and created the material basis for the new state community’. The exploitation of allies served to provide ‘material security for a life worthy of the Attic *Herrenvolk*’. Since ‘Pericles’ will and the healthy instinct of the citizenry harmonised naturally’ the great man and his people appeared ‘to have fused into one’.¹²⁷ This was not a novel insight; we can read in a text from the later nineteenth century that ‘Pericles and the Attic state were to a certain extent one, or grown into one’.¹²⁸ The

¹²³ Helmut Berve, *Sparta*, Leipzig 1937, 7, 39 and 45.

¹²⁴ Helmut Berve, Review of Bogner, *Deutsche Literaturzeitung* 55, 1934, 1324–1330, here at 1329f.

¹²⁵ Helmut Berve, ‘Staat und Staatsgesinnung der Griechen’, *Neue Jahrbücher für Antike und deutsche Bildung* 1, 1938, 12.

¹²⁶ Helmut Berve, ‘Was ist von der griechischen Geschichte lebendig?’, *Süddeutsche Monatshefte* 33, 1936, 720–727, here at 725.

¹²⁷ Helmut Berve, *Perikles*, Leipzig 1940, 13, 7f., 20 and 22.

¹²⁸ [Wilhelm] Adolf Schmidt, *Perikles und sein Zeitalter*, Bd. 1, Jena 1877, 177. Or Eduard Meyer, *Geschichte des Altertums*, Bd. 4. *Das Perserreich und die Griechen*, Drittes Buch [1901], 2nd

maintenance of domestic unity was, however, said by Berve to be conditional ‘upon active foreign involvement ... aimed at extending Attic power’.¹²⁹

The constant reference to the National Socialist ideology of a *Volksgemeinschaft*¹³⁰ subordinate to the Führer, and the waging of war to secure resources for a *Herrenvolk*, are here obvious. Likewise, the allusion to the Führer as a great builder:

It was the brutal power of Athens and the iron will of its leader that built those wondrous edifices, the Parthenon and the Propylaea, which still as ruins count among the most captivating witnesses of human creative power.¹³¹

It is well-known that Hitler harboured especial admiration for classical buildings, and in private conversation compared himself as a builder with Pericles; the latter had the Parthenon, while Hitler had his autobahns.¹³²

Berve is aware of the danger that his glorification of Pericles might cast a shadow over Hitler. He therefore cautions against direct comparisons with the present, not least because the Athenian ‘war on many fronts’ from 461 BC, and the result of the Peloponnesian War, were not especially encouraging examples, or could represent a warning against a ‘short-sighted frenzy of conquest’.¹³³ Instead, he suggests that any such direct comparisons

not only sin against the historical past, but just as much against our National Socialist present, its Führer and their unique, but not yet final, creations. ... We who experience contemporary politics on a gigantic scale certainly have no need of the past to enable us to feel the breath of great deeds and revolutionary events. But for our inquiring minds to grasp, amidst the storms which rage around us, the unchanging laws of the life of Indo-Germanic peoples, some acquaintance with such an exemplary history as that of the Greeks can here be of some assistance.¹³⁴

It is worth noting that Berve republished his former ‘intellectual service to the German people in its fateful hour’¹³⁵ in 1949, the language of the new version being very lightly modified, and minus the opening and closing remarks.¹³⁶ Hans Schaefer, a student of Berve, had suggested that the ‘people of Athens’ had found in Pericles the ruler ‘to whose leadership it entrusted itself for almost a generation’. On display here was the ‘enigmatic intertwining of people and

ed., Stuttgart 1915, 49, on the change of role for Pericles from the leader of a party to that of a state: ‘Like a true king he blended into the state, its destiny in his hands’.

¹²⁹ Berve, *Perikles*, 23.

¹³⁰ *Ibid.*, 28.

¹³¹ *Ibid.*, 21.

¹³² Fest, *Hitler*, 548.

¹³³ Berve, *Perikles* 9f. and 27.

¹³⁴ *Ibid.*, 28.

¹³⁵ *Ibid.*, 29.

¹³⁶ In Helmut Berve, *Gestaltende Kräfte der Antike*, Munich 1949, 66–87. In the preface to this volume Berve breezily claims that earlier writings have here been revised ‘because of new scholarly finding’.

leading statesman'.¹³⁷ From this perspective, Athenian democracy had realised the proper form of liberty. According to Fritz Taeger, Pericles had prevented liberty from turning into 'dissolution and the domination of the demos ... as mob rule'. For

this city [Athens] whose watchword was liberty, paid no regard to the individual when it made its demands, and knew only one rule, that each was obliged to freely dedicate himself unto death, because it was only in this way that the powers could be developed of which it had need in dealing with both its subjects and its foes.

Liberty was ennobled through the 'deepest dedication to service and loyalty'.¹³⁸ The 'unconditional affirmation of the state' that stemmed from the time of aristocracy was now founded 'upon the self-definition of free personalities, not so that state and society might be atomised, but to mould them ever more closely together on the basis of liberty'. In the present, the real idea of liberty was realised 'in service to Führer and (national) community'.¹³⁹

An author who had a degree of distance to the regime wrote that Pericles 'understood by democracy the collective working together of all *Volksgenossen*, to which even the poorest could contribute according to strength and skill'. In this way a 'people's state' would be realised 'in which every individual felt himself to be a living part of the whole'.¹⁴⁰

An essay appearing in mid-1943 drew a parallel between Hitler and Pericles which, taking account of the course of the war, was open to a reading that the author himself perhaps did not have in mind. Writing of the mood in Athens, which at the beginning of the Peloponnesian War had swung against Pericles, we can read that

The Athenian people ... failed when tested. ... The popular mass shifted from enthusiasm to open disapproval as soon as it looked as though their goods and chattels were at risk. ... The people made itself guilty. In a life and death struggle it ceased to follow its leader, it abjured its loyalty because it was too attached to temporal matters, and ignored the eternal values that repose in the Fatherland.¹⁴¹

Hans Erich Stier, a student of Eduard Meyer, essayed a positive approach to Athenian democracy during the 1940s. He distanced himself from the 'doctrinaire, rigid English form of liberalism' that marked Grote's perspective on Athens; the comparison, since the nineteenth century, with modern democracy 'was more hindrance than help'. This approach obscured the fact that Athens

¹³⁷ Hans Schaefer, 'Die Grundlagen des attischen Staates im V. Jahrhundert' [1941], reprinted in his *Probleme der Alten Geschichte*, Ursula Weidemann and Walter Schmitthenner, eds., Göttingen 1963, 82–98, here at 90.

¹³⁸ Fritz Taeger, *Das Altertum*, Bd. 1, Stuttgart 1940, 296f. and 5.

¹³⁹ Fritz Taeger, 'Zur Geschichte der Freiheitsidee bei den Griechen', *Nachrichten der Gießener Hochschulgesellschaft* 11, 1936/1937, 35–52, here at 44 and 52.

¹⁴⁰ Hugo Wilrich, *Perikles*, Göttingen 1936, 302.

¹⁴¹ Hermann Brauer, 'Perikles und die Kriegsschuldfrage. (Ein Beitrag zur Interpretation des Thukydides)', *Die Deutsche Höhere Schule* 10, 1943, 131–136, here at 135.

had developed a 'form of political life ... in which, however paradoxical it might sound, the empowered individual personality, the great man as the real dynamic force of all history, can be led into being a beneficiary for all'. This changed first in the era after Pericles:

While Pericles took on the task of leading the people in the proper sense of the word, and from his own entire dedication to the state and common good gained the authority and power to guide the mass of the citizenry towards this, his successors saw themselves only as the executors of the popular will.

It was only then that Athenian democracy began to resemble modern party democracy, where the will of the majority prevailed over the 'primacy of insight'. Stier was certainly no National Socialist propagandist; his example shows that very different ideas of leadership in a democracy could be projected on to Pericles, and that the border between bourgeois-elitist ideas, and those typical of the Nazis, was fluid.¹⁴²

In 1942 Joseph Goebbels, the minister of propaganda, characterised 'German Democracy' as follows:

We Germans live in a true democracy, however autocratic its methods of leadership might be, and the distinguishing feature of our democracy is the sum of trust that binds government and people together.¹⁴³

In 1933 Goebbels had stated emphatically that with the seizure of power National Socialism had eradicated 'the year 1789 from history'.¹⁴⁴ There are, however, clear correspondences between the French Revolution on the one hand, and Fascism and National Socialism, on the other – the theatricalisation of politics and the martyr cults, among others.

With these altered ideological premises there was no direct access available to the traditional ideas of ancient and modern liberty. This would change when the question of democracy and the rule of law arose once more, after the Second World War.

¹⁴² Hans Erich Stier, *Grundlagen und Sinn der griechischen Geschichte*, Stuttgart 1945, 36, 271, 273f. and 275. Despite initial sympathy with Hitler, Stier never became a party member. He develops ideas in this book, which was finished in late 1943, which he would advance after the war in his role as a Christian-Democrat cultural politician: the importance of Greece and Christianity for a democracy that had to make a good defence against totalitarianism.

¹⁴³ 'Unsere Art von Demokratie' [19 April 1942] in Joseph Goebbels, *Das eiserne Herz. Reden und Aufsätze aus den Jahren 1941/42*, Munich 1943, 279–285, here at 280f.

¹⁴⁴ Radio broadcast of 1 April 1933; cited in Karl Dietrich Bracher, *Die deutsche Diktatur*, Frankfurt am Main, 6th ed., 1979, 8.

Between Totalitarianism and the Constitutional State

Arnaldo Momigliano, who emigrated to England after the promulgation of the Italian ‘Racial Laws’, in 1940 delivered a lecture in Oxford criticising the way in which the idea of ancient liberty, as treated by Constant, Lord Acton and Jellinek, had become neglected in the guild of classical scholars. Momigliano’s own work had centred upon the tension between the autonomy of the *poleis* and the conditions for arriving at a general peace in the Greek world. He had not worked on democracy, and he never realised his plan of comparing ancient and modern liberty – just as Acton had failed to do so before him.¹

TOTALITARIANISM IN ANTIQUITY?

The experiences of the Second World War and its immediate aftermath raised the question of totalitarianism and possible ancient parallels. The reaction to the Terror during the French Revolution had cast a shadow over any parallels with antiquity. The new concept of ‘totalitarian democracy’ sometimes drew upon a mix of antiquity, Rousseauism and Jacobinism.² In this compound, Greek political culture comes under general suspicion,³ or alternatively is sometimes exonerated,⁴ while majority decision making in Athens was said to have

¹ Arnaldo D. Momigliano, ‘Liberty and Peace in the Ancient World’ [1940], in his *Nono contributo alla storia degli studi classici e del mondo antico*, ed. Riccardo Di Donato, Rome 1992, 483–501. Part of this had been dealt with in Momigliano, ‘Freedom of Speech in Antiquity’, in *Dictionary of the History of Ideas*, ed. Philip P. Wiener, Vol. 2, New York 1973, 252–263. On the biographical background, see Sally C. Humphreys, *The Strangeness of the Gods. Historical Perspectives on the Interpretation of Athenian Religion*, Oxford 2004, 48f.

² Jacob L. Talmon, *The Origins of Totalitarian Democracy* [1952], London 1961, esp. 11 and 104f.

³ Carl Joachim Friedrich, ‘Greek Political Heritage and Totalitarianism’, *Review of Politics* 2, 1940, 218–225 [Review essay of Werner Jaeger, *Paideia*].

⁴ Joseph P. Maguire, ‘Some Greek Views of Democracy and Totalitarianism’, *Ethics* 56, 1945/1946, 136–143.

negated the protection of individual rights, so that a democratic constitutional order was here combined with totalitarian practice.⁵ Another approach was to emphasise the totalitarian elements in Sparta,⁶ the ‘most striking example encountered in antiquity of the strict regimentation by the state of the life of every single citizen, perhaps the most extreme example in the whole of humanity’s history’.⁷

All this resonated far beyond classical scholarship, finding an echo in Karl Popper’s *Open Society and Its Enemies*, which he wrote in New Zealand exile during the war. Popper contrasts the liberal order of Athens with that of Sparta and the anti-democratic ideas of fourth-century political theory. Popper reprofiles the evaluation of Plato during the Weimar Republic and the Third Reich, when he was treated as the originator of an authoritarian state; he now presents Plato as the intellectual ancestor of totalitarianism, some of the Sophists in contrast being labelled ‘liberal’.⁸ Popper did not allow the need for textual interpretation, nor the need to reconstruct historical realities, to get in the way of his projection. According to him, Athens fought the Peloponnesian War in order to bring liberty and democracy to the rest of Greece; and the Athenians had considered the abolition of slavery.

Richard Crossman, after the Second World War a leading member of the Labour Party, was educated as a classical scholar. In the later 1930s he had presented rather similar arguments about Plato.⁹ Plato also appears in the writings of Alexander Rüstow as a precursor of totalitarianism, whether in the form of National Socialism, or of Bolshevism.¹⁰ Rüstow attributed to Athens

⁵ Heinrich Gomperz, ‘The Greek Conception of the State’, in his *Philosophical Studies*, ed. Philip Merlan, Boston 1953, 108–118, here at 116f. [Lecture in February 1940].

⁶ Victor Ehrenberg, ‘A Totalitarian State’, in his *Aspects of the Ancient World*, Oxford 1946, 94–104; Gerhard J. D. Aalders, ‘Totalitarian Tendencies in Ancient Greece’, *Free University Quarterly* 3, 1954/1955, 12–25; Franz Neumann, ‘Notizen zur Theorie der Diktatur’ [text from the early 1950s], in his *Demokratischer und autoritärer Staat. Studien zur politischen Theorie*, ed. Herbert Marcuse, Frankfurt am Main 1986, 224–247.

⁷ Kurt von Fritz, ‘Totalitarismus und Demokratie im alten Griechenland und Rom’, *Antike & Abendland* 3, 1948, 47–74, here at 52; see also his *The Theory of the Mixed Constitution in Antiquity*, New York 1954, 350.

⁸ Karl Raimund Popper, *The Open Society and Its Enemies*, Vol. 1: *The Spell of Plato*, London 1945. Cf. Geoffrey E. M. de Ste. Croix, *The Class Struggle in the Ancient Greek World*, London 1981, 284: ‘Plato, one of the most determined and dangerous enemies that freedom ever has had.’ On the Sophistic as a kind of ancient liberalism see Eric A. Havelock, *The Liberal Temper in Greek Politics*, New Haven 1957.

⁹ Richard Crossman, *Plato Today*, Oxford 1939. On the impact this had among British readers see Stephen Hodkinson, ‘Sparta and Nazi-Germany in Mid-20th-Century British Liberal and Left-Wing Thought’, in *Sparta. The Body Politic*, Stephen Hodkinson and Anton Powell, eds., Swansea 2010, 297–342.

¹⁰ Alexander Rüstow, *Ortsbestimmung der Gegenwart. Eine universalgeschichtliche Kulturkritik*, Bd. 2, Zürich 1952, 134–140. Rüstow was an economist who in the 1920s worked for a federation of industries. He was an advocate of ordoliberalism, the intellectual foundation of West Germany’s ‘Social Market Economy’. The book was written during Rüstow’s exile in Turkey (1933–1949).

during the Periclean period ‘the most complete self-realisation of a genuine liberal democracy ... that mankind has yet achieved’; Sparta was, on the other contrary, the original form for totalitarian repression.¹¹

All the same, the absence of individual intellectual liberty in Athens, apparent in the fate of Socrates, remained a commonplace.¹² It was said that the Greeks failed to achieve a balance between ‘state power’ and ‘the sphere of the individual’ – unlike the Romans.¹³ However, some effort was made to disprove the accusation that there was a lack of individual liberty in Athens, mobilising the Athenian model to reinforce the democratic idea, a move made in a German text of 1951.¹⁴

DIVERGING HISTORICAL PERSPECTIVES ON ATHENS

During the past few decades many studies of Athenian democracy have appeared, investigating a range of individual issues, and seeking to reconstruct the way in which the political system worked. Studies coming from the Marxist-Leninist camp have contributed very little to this discussion; they have addressed their attention to the socio-economic basis of the system, namely slavery, and its social location. Different forms of state power were related to this, linked to the character of the ruling class.¹⁵ From this point of view slavery was a necessary stage in social development, a view formulated by Engels as follows:

It was slavery that first made possible the division of labour between agriculture and industry on a larger scale, and thereby also Hellenism, the flowering of the ancient world. Without slavery, no Greek state, no Greek art and science; without slavery, no Roman Empire. But without the basis laid by Hellenism and the Roman Empire, also no modern Europe. We should never forget that our whole economic, political and intellectual development presupposes a state of things in which slavery was as necessary as it was universally recognised. In this way we are entitled to say: without the slavery of antiquity, no modern socialism.¹⁶

The specialists generally neither condemned nor idealised Athens. What is quite clear here is a move away from the habit of criticism, even if the Athenian court

¹¹ Ibid., 103 and 82 with 517, n. 7.

¹² Gerhard Ritter, ‘Ursprung und Wesen der Menschenrechte’ [1949], in *Zur Geschichte der Erklärung der Menschenrechte*, ed. Roman Schnur, Darmstadt 1964, 202–237, here at 204f.; Victor Ehrenberg, ‘Freedom – Ideal and Reality’ [1967], in his *Man, State and Deity. Essays in Ancient History*, London 1974, 19–34.

¹³ Ulrich von Lübtow, *Blüte und Verfall der römischen Freiheit*, Berlin 1953, 32.

¹⁴ Friedrich Warncke, *Die demokratische Staatsidee in der Verfassung von Athen*, Bonn 1951.

¹⁵ Engels, *Origin of the Family*; MECW 26, 221f. [MEW 21, 115f. = MEGA², Abt. I, Bd. 29, 71]; Lenin, ‘Thesis and Report on Bourgeois Democracy and the Dictatorship of the Proletariat, March 4’ (1919; First Congress of the Communist International), in Lenin, *Collected Works*, Vol. 28, 457–475.

¹⁶ Engels, *Anti-Dühring*; MECW 25, 168 [MEW 20, 168 = MEGA², Abt. I, Bd. 27, 370].

system was regarded as very problematic, a 'happy hunting ground for demagogic orators and informers', through which 'democracy ... brought discredit upon itself';¹⁷ or the 'occupational group' of sycophants were characterised as a 'plague'.¹⁸ Or Cleon was depicted as the 'first Attic politician of the class struggle'¹⁹ and it was claimed that 'freedom in democracy was secured by means of unfreedom and coercion'.²⁰

Ultimately, Athenian democracy could be described as a failure, prompting no repetition or imitation. According to Karl Loewenstein, 'democratic fundamentalism' there went so far that 'the assembly of active citizens ... must have thought themselves all-powerful' and the 'people proved themselves incapable of keeping their own sovereign power in check'. The result was dramatic failures in decision making:

They expelled Themistocles, their Washington, who had saved them from Persian imperialism. ... They sent Aristides into exile, whose name has since then been a symbol for honest politics. They had Socrates drink the hemlock. They allowed themselves to be seduced by Cleon, whose name since then has always been a byword for demagogy. ... They simply dismissed out of hand Demosthenes' warning of Philip's fifth column in their midst.²¹

Something like a common perspective upon Athens in the fifth and fourth centuries BC has become established since the 1970s, reflecting a new cultural and political climate in which the importance of democracy was acknowledged: that as a political order in which all important decisions were made in the popular assembly of Athens showed remarkable stability and efficiency. Scholarly reconstruction of a distant past is generally no longer a medium through which statements regarding the proper social and political order of one's own time are made.

In his studies of the classical period of Greek history Christian Meier has emphasised the historical breakthrough that it represents: the development of societies based on the participation of citizens, especially the establishment of democracy in Athens. Behind his stress on the 'political identity' of the Athenians (including the poorest citizens) there is an implicit argument that in modern times democracy cannot survive without a sense of civic pride and responsibility, a sense that is quite distinct from the pursuit of private interests.²² At the same time Meier leaves no room for doubt – rejecting the

¹⁷ Victor Ehrenberg, *The Greek State*, London 1972, 74 [orig. *Der Staat der Griechen, Teil I: Der hellenische Staat*, Leipzig 1957, 55].

¹⁸ Franz Kiechle, 'Sykophanten', in *Lexikon der Alten Welt*, ed. Carl Andresen, Stuttgart 1965, 2953f.

¹⁹ Fritz Schachermeyr, *Perikles*, Stuttgart 1969, 190.

²⁰ Hans Schaefer, 'Politische Ordnung und individuelle Freiheit im Griechentum' [1957], in his *Probleme der Alten Geschichte*, Göttingen 1963, 307–322, here at 319.

²¹ Karl Loewenstein, *Verfassungslehre*, Tübingen 1959, 134 and 74 [*Political Power and the Governmental Process*, Chicago 1957].

²² Christian Meier, *Die Entstehung des Politischen bei den Griechen*, Frankfurt am Main 1980, esp. 247–272 [*The Greek Discovery of Politics*, 1990]; and his *Athen. Ein Neubeginn der*

traditional criticism of the tyranny of the majority in Athens and emphasis upon its aggressive foreign policy – that the structural conditions of the present leave open no way back to the institutional forms of antiquity, and that popular rule can be realised only in the form of representative democracy.²³ It is for him obvious that a political order ‘that was made so extensively, directly and concretely by citizens is unrepeatably’.²⁴ Other authors also support this stance, that while civic engagement in Athens might have been exemplary, this is not a reason to call for a return to this model.²⁵

Of course, it is possible for scholarly discussion about ancient history to relate to arguments over political and democratic theory that are explicitly oriented to the present. However, this overlap is not today so easy to identify as it used to be. Contributions to international scholarly debate react both to contemporary political discourse and to educational systems that have distinctive national forms; contextualising statements also draw upon a lengthy scholarly tradition; debates in individual disciplines, and in those disciplines in different countries, tend to be chronologically disjointed, and focus upon different aspects of the ongoing discussion; and the preparedness to engage on ‘political pedagogy’, to use Theodor Mommsen’s phrase,²⁶ is unevenly distributed between individual scholars and across national cultures of scholarship.

The following remarks pay no claim to comprehensiveness, but aim to make clear that, for all the recognition of historical distance, a connection to the present is constantly emphasised, the old questions continually reappearing in new contexts. I will deal here with basic statements about the character of

Weltgeschichte, Berlin 1993 [*Athens. A Portrait of the City in Its Golden Age*, 1999]; and *Von Athen bis Auschwitz*, Munich 2002, esp. 77ff. [*From Athens to Auschwitz. The Uses of History*, 2005], as well as various other writings.

²³ Christian Meier, *Die parlamentarische Demokratie*, Munich 1999, esp. 15ff., 257ff.

²⁴ Christian Meier, ‘Demokratie und Republik. Zwei Errungen-, zwei Erbschaften der Antike’, in *Einwohner und Bürger auf dem Weg zur Demokratie*, ed. Hans-Eugen Specker, Stuttgart 1997, 9–26, here at 17.

²⁵ In England this line of argument was initiated by Ernest Barker; see the contributions in Ernest Barker, *The Political Thought of Plato and Aristotle (1906). A Centenary Tribute*, ed. Julia Stapleton, Exeter 2006 [a special issue of *Polis. The Journal of Ancient Greek Political Thought* 23, no. 2]. For French debate see Jacqueline de Romilly, *L’élan démocratique dans l’Athènes ancienne*, Paris 2005; also her *Actualité de la démocratie athénienne. Entretiens avec Fabrice Amedeo*, Paris 2006. Cornelius Castoriadis points to Athens as a model for autonomous self-determination founded neither on transcendence nor absolute knowledge; what remains exemplary is that all those affected are able to decide on the advice of experts: ‘The Greek Polis and the Creation of Democracy’ [first published in French in 1985] in *The Castoriadis Reader*, trans. and ed. David Ames Curtis, Oxford 1997, 267–289; idem, ‘The Athenian Democracy: False and True Questions’, in Pierre LeVêque and Pierre Vidal-Naquet, *Cleisthenes the Athenian. An Essay on the Representation of Space and Time in Greek Political Thought from the End of the Sixth Century to the Death of Plato*, Atlantic Highlands, NJ, 1997, 119–127.

²⁶ Letter of Mommsen to Sybel, 7 May 1895, cited in Lothar Wickert, *Theodor Mommsen. Eine Biographie*, Bd. 4, Frankfurt am Main 1980, 239. Mommsen’s formulation, ‘duty of political pedagogy’, had a particular context (namely his antagonism to Treitschke), but was later converted into a basic principle.

Athenian democracy, not with particular forms of evaluation that can still be found in recent literature – like talk of the mood of a ‘pogrom’ when writing about the Herms and Mystery trials,²⁷ or of the Arginusae trial as a manifestation of a ‘totalitarian democracy’ or ‘mob terror’,²⁸ or of the ‘judicial murder’ of Socrates;²⁹ of characterisation of the Periclean era as one of a ‘populist Führer-democracy’ because of the introduction of day payments;³⁰ or about jury courts as ‘self-service facilities for the poorer sections of the population’.³¹

It is also possible to read that in Athens a ‘class of professional politicians’ guided opinion formations in the popular assemblies:

The popular assembly was thus not a place for discussion, for the free play of argument and counter-argument resulting in rational decisions. ... It was more like a theatre with a stage on which political players sought to curry favour with a public largely confined to expressions of appreciation or dislike.³²

In the early 1970s one classical scholar went even further, depicting Pericles as a quasi-dictator who brainwashed the Athenian demos, whose repression of all non-conformists had been recently revived by the colonels of the contemporary Greek junta.³³

The following will deal only with discussion directed specifically to the Athenian political system and its possible significance in a modern context. It does not deal with a normative political philosophy of the kind essayed, for example, by Joachim Ritter, Eric Voegelin, Leo Strauss or Hannah Arendt in respect of Plato, Aristotle or even Thucydides (as the representative of a realistic perspective upon power struggles both within and between states), without, however, dealing in any detail with the actual procedures followed in Athens. It might only be mentioned that in Strauss³⁴ and

²⁷ Alexander Rubel, *Stadt in Angst. Religion und Politik in Athen während des Peloponnesischen Krieges*, Darmstadt 2000, 190 and 230.

²⁸ Alexander Demandt, *Der Idealstaat. Die politischen Theorien der Antike*, Cologne 1993, 55; Harvey Yunis, *Taming Democracy. Models of Political Rhetoric in Classical Athens*, Ithaca, NY, 1996, 44.

²⁹ Arnold J. Toynbee, *An Historian's Approach to Religion*, Oxford 1956, 60f.; Karl-Wilhelm Welwei, *Das klassische Athen. Demokratie und Machtpolitik im 5. und 4. Jahrhundert*, Darmstadt 1999, 25; Peter Funke, *Athen in klassischer Zeit*, Munich 1999, 97.

³⁰ Hauke Brunkhorst, *Einführung in die Geschichte politischer Ideen*, Munich 2000, 57.

³¹ Gernot Böhme, *Der Typ Sokrates*, Frankfurt am Main 1988, 43.

³² Günther Lottes, ‘Staat, Herrschaft’, in *Fischer Lexikon Geschichte*, ed. Richard van Dülmen, Frankfurt am Main 1990, 300–326, here at 306f. Comparison with the theatre is precisely the accusation that Cleon is supposed to have made to the Athenians during the ‘Mytilene Debate’: Thucydides 3, 38, 4ff.

³³ Peter Green, ‘In the Shadow of the Parthenon’, in his *In the Shadow of the Parthenon. Studies in Ancient History and Literature*, Berkeley 1972, 11–46, esp. 20, 28 and 30f. Bernard Crick, *Democracy. A Very Short Introduction*, Oxford 2002, 20, also calls Pericles ‘a kind of democratic dictator’, but only in the sense of Pericles’ leadership in the popular assembly.

³⁴ Leo Strauss, *Natural Right and History*, Chicago 1953; *What Is Political Philosophy*, Glencoe, Ill., 1959; *Liberalism. Ancient and Modern*, New York 1968 (a counter to Havelock, *Liberal Temper*).

Arendt³⁵ we find Popper's thesis reversed, seeing in the turn away from antiquity the condition of possibility of totalitarianism.³⁶ A critic of Strauss has objected that the rise of Hitler could hardly have been prevented by an ability to read Plato in the original.³⁷ Naming Strauss and Arendt together here does not of course ignore the great differences between them such that, roughly speaking, one could assign Strauss to an elitist political model,³⁸ and Arendt to a model of 'basis democracy'.³⁹ They do, however, coincide in their critique of representative democracy.

Moses Finley is one of the few classical historians in the second half of the twentieth century whose work has been highly regarded by scholars in many disciplines and, thanks to many translations, by a wider public in many countries. His *Democracy, Ancient and Modern* (1973) employed the Athenian model of participatory democracy to counter Anglo-American writers who presume that modern democracy was all about the selection and periodic replacement of functional elites (parties), and that any further political activity on the part of the citizen was rather detrimental to rational government. In this they oriented themselves to Schumpeter,⁴⁰ who had himself adopted older versions of the theory of elite rule.

Finley's presentation of the exceptional levels of civic participation in Athens, including the leading role necessarily played by 'demagogues' without any official standing;⁴¹ the consistency of decisions made; domestic stability in the absence of ideological conceptions; and the successful prosecution of external policy led to accusations that he had romanticised Athenian

³⁵ Hannah Arendt, *The Human Condition*, Chicago 1958.

³⁶ In this line of argument see also Wilhelm Hennis, 'Politik und praktische Philosophie' [1963], in his *Politik und praktische Philosophie. Schriften zur politischen Theorie*, Stuttgart 1977, esp. 69ff.

³⁷ Stephen Holmes, *The Anatomy of Antiliberalism*, Cambridge, MA, 1993, 83.

³⁸ There has recently been discussion about the degree to which the position of the 'Neo-Cons' during the presidency of George W. Bush can be attributed to the influence of Leo Strauss, for example, in respect of the 'noble lie' and the second Iraq War; see Neil G. Robertson, 'Platonism in High Places: Leo Strauss, George W. Bush and the Response to 9/11', in *Classical Antiquity and the Politics of America. From George Washington to George W. Bush*, ed. Michael Meckler, Waco, TX, 2006, 153–174; Thomas Harrison, 'Ancient and Modern Imperialism', *Greece & Rome* 55, 2008, 1–22, here at 20ff. Some have compared the American policy of military intervention for the purpose of building democracy with the practice followed by Athens – efforts to make the world happy only meet with ingratitude: Victor David Hanson, *A War Like No Other. How the Athenians and Spartans Fought the Peloponnesian War*, New York 2005, 8f.

³⁹ Arendt's interpretation (*On Revolution*, 1963) started out as an appraisal of the democratic intentions behind the American Revolution that were in the course of creating the constitution 'betrayed'; but this line of argument conflicts with her praise of the stability of the American Constitution, and critique of the French Revolution.

⁴⁰ Joseph A. Schumpeter, *Capitalism and Democracy* [1942], 2nd ed., London 1947, Ch. 21: 'The Classical Doctrine of Democracy'.

⁴¹ Moses I. Finley, 'Athenian Demagogues', *Past & Present* 21, 1962, 3–24 [reprinted as Ch. 2 of *Democracy, Ancient and Modern*, 2nd ed., London 1985].

realities.⁴² Among other things, Finley emphasised the ‘constitutionality’ of the Athenian method for checking the results of popular decisions; since this was done through *graphe paranomon* by a court selected by lot from amongst the citizens, whereas in the American Supreme Court, competence in deciding the constitutionality of particular laws was given to a small group selected from the political elite.⁴³ However, this argument stands up only if one supposes that a Constitutional Court is incompatible with the principle of democracy.⁴⁴

In sum, the only element in the Athenian ideal that can be maintained today is that of maximising civic participation, whereas there is no return to Athenian procedures and institutions.⁴⁵ For the *étatiste* French political scientist Julien Freund this was enough (when combined with the shock of the 1968 events) to take offence at Finley’s normative statements about an ideal of civic participation and accuse him both of having based his illusions about democracy upon a thorough apologia for Athens.⁴⁶ But this was a very partial understanding of Finley’s position, since he had emphasised the dialectical relationship between civic freedom and slavery and the exploitation of slaves and ‘allies’ as the foundation of Athenian democracy.⁴⁷ At the same time he had argued that to give undue weight to the exclusion of slaves, metics and women from political rights involved anachronistic moralising that was no substitute for structural historical analysis.⁴⁸ Finley also noted:

As for freedom of speech, much as the Athenian may have treasured it, and practiced it, they would not allow that the Assembly had no *right* to interfere. There were no theoretical limits to the power of the state, no activity, no sphere of human behavior, in which the state could not legitimately intervene... Freedom meant the rule of law and participation in the decision-making process, not the possession of inalienable rights.⁴⁹

⁴² J. Rufus Fears, ‘Review of Finley, *Democracy, Ancient and Modern*’, *Annals of the American Academy of Political and Social Science* 410, 1973, 197f.

⁴³ Finley, *Democracy, Ancient and Modern*, 26f.

⁴⁴ Finley’s argument was taken up again by Adriaan Lanni, ‘Judicial Review and the Athenian “Constitution”’, in *Démocratie athénienne – démocratie moderne. Tradition et influences*, Vandoeuvres 2010, 235–263, with discussion 264–276. Sure, one can deny the need for judicial review (as does Jeremy Waldron, ‘The Core of the Case against Judicial Review’, *Yale Law Journal* 115, 2006, 1346–1406, with respect to ‘reasonably democratic societies’), or argue about the competencies of a constitutional court and the way in which its members are appointed, but the Athenian lay judiciary can no longer serve as a plausible model. The *raison d’être* of a constitutional court is the restriction of the majority principle by judicial review, and that needs legal experts.

⁴⁵ Finley, *Democracy, Ancient and Modern*, 36f.

⁴⁶ Julien Freund, ‘Les démocrates ombrageux’, *Contrepoint* 22/23, 1976, 97–112. During the period of German occupation Freund had belonged to the Communist Resistance. After the war he sought to make the French public familiar with the ideas of Max Weber and Carl Schmitt.

⁴⁷ Various essays in Moses I. Finley, *Economy and Society in Ancient Greece*, Brent D. Shaw and Richard P. Saller, eds., London 1981; idem, *Ancient Slavery and Modern Ideology*, London 1980.

⁴⁸ Moses I. Finley, *Politics in the Ancient World*, Cambridge 1983, 84.

⁴⁹ Finley, *Democracy, Ancient and Modern*, 116.

If such interventions were extremely infrequent, it is the liberty for comedy, and not the condemnation of Socrates, that is typical for the intellectual climate;⁵⁰ and this was because of a pragmatic self-limitation, not out of respect for a sphere removed from the action of a legislator by natural or human laws.⁵¹

THE REVIVED DISCUSSION OVER THE ‘TWO FREEDOMS’

During the past five decades Isaiah Berlin’s thesis concerning the tension between two kinds of liberty – positive (rights of participation) and negative (rights of privacy and protection) – has played a great role in anglophone political theory. Berlin sought to revive the nineteenth-century tradition of warning of the ‘tyranny of the majority’ associated with Benjamin Constant, Alexis de Tocqueville and John Stuart Mill. He mentioned antiquity only in passing, noting merely that it lacked a clear idea of negative liberty; star witness for this observation was Condorcet.⁵² There is no interest in the empirical aspects of ancient (or Athenian) politics.⁵³

In 1987 Giovanni Sartori reproduced the way in which Fustel de Coulanges and Constant had contrasted ancient and modern liberty so that he could argue that any idea of the possible exemplary character of Athenian democracy for modernity was a dangerous illusion. It stood for a ‘past that we would not want back at all’. For ‘modern standards, men of antiquity were not free ... according to our notion of individual freedom’. In Athenian democracy ‘the individual was actually undefended and remained at the mercy of the collective body’ since ‘the community allows no margin of independence and no sphere of protection to the single individual’.⁵⁴

In 1994 Ernest Gellner also took up the theses of Fustel and Constant, but did not see any danger that one might, through reminiscence about antiquity, be led into any misunderstanding of liberty that was incompatible with ‘civil

⁵⁰ Ibid., 121f. and 133f. See also Samuel E. Finer, *The History of Government, Vol. 1: Ancient Monarchies and Empires*, Oxford 1997, 363: ‘To take ... the trial and death-sentence of Socrates as characteristic [of Athenian democracy] is like taking the trial and execution of Sacco and Vanzetti as typical of American democracy’.

⁵¹ Moses I. Finley, ‘The Freedom of the Citizen in the Greek World’, *Talanta* 7, 1976, 1–23, here at 21; Finley, ‘Politics’, in idem (ed.), *The Legacy of Greece*, Oxford 1984, 22–36, here at 26f. In substance, this corresponds to the view already taken by Jellinek (see p. 277).

⁵² Isaiah Berlin, *Two Concepts of Liberty* [inaugural lecture, Oxford 1958], reprinted in his *Four Essays on Liberty*, Oxford 1969; and afterwards in Berlin, *Liberty*, ed. Henry Hardy, 2002, 166–217; on Condorcet at 176. The idea of ‘two liberties’ is not a new one, and can be traced back to Machiavelli; see p. 88.

⁵³ This can also be seen in ‘The Birth of Greek Individualism’, a lecture of 1962, published posthumously in Berlin, *Liberty*, ed. Hardy, 287–321.

⁵⁴ Giovanni Sartori, *The Theory of Democracy Revisited*, Chatham 1987, quoted from 287, 284, 285 and 286.

society'; after all, in 1970 striking shipyard workers in Danzig neither invoked Pericles nor cited Plutarch.⁵⁵

These statements by Berlin and others represent a regression in respect of the differentiations that Jellinek had made long before in 1900, and they even ignore that Benjamin Constant had in fact given a much more differentiated account, at least with respect to Athens.

Though Berlin had not really dealt with antiquity, his theses prompted efforts seeking to either prove⁵⁶ or disprove the existence of 'negative liberty' in Athens, those seeking to disprove it noting that a society that could condemn Socrates on the basis of such vague accusations could have had no conception of freedom of expression.⁵⁷ Berlin repeated his point that there was no clear formulation of the idea of individual, negative liberty, but added:

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 to any other ancient civilization known to us.⁵⁸

The Danish ancient historian Mogens H. Hansen, an authority on Athenian constitutional history, has made the most striking criticism of interpretations along the lines of Berlin.⁵⁹ Hansen identifies both positive and negative liberty in Athens. The protection of individual rights was not only in practice observed, but also followed from a clear understanding of the individual's sphere of liberty.⁶⁰ To this extent there is no substantial difference between Athenian democracy and the democratic constitutionalism derived from the American and French Revolutions, although there was no sort of continuity, either in institutional or in ideological terms, between ancient and modern democracy. Besides this, Hansen considers that the procedures introduced in late-fifth-century Athens for the nullification of popular decisions, or the

⁵⁵ Ernest Gellner, *Conditions of Liberty. Civil Society and Its Rivals*, London 1994, 9.

⁵⁶ Arnold W. Gomme, 'Concepts of Freedom', in his *More Essays in Greek History and Literature*, Oxford 1962, 139–155.

⁵⁷ Richard Mulgan, 'Liberty in Ancient Greece', in *Conceptions of Liberty in Political Philosophy*, Zbigniew Pelczynski and John Gray, eds., London 1984, 7–26, here at 1.

⁵⁸ Berlin, 'Introduction' [1969], in *Liberty*, ed. Hardie, 33f., referring especially to A. W. Gomme.

⁵⁹ Mogens H. Hansen, *Was Athens a Democracy? Popular Rule, Liberty and Equality in Ancient and Modern Political Thought*, Copenhagen 1989; idem, 'The Tradition of the Athenian Democracy A.D. 1750–1990', *Greece & Rome* 39, 1992, 14–30; idem, *The Tradition of Ancient Greek Democracy and Its Importance for Modern Democracy*, Copenhagen 2005, and 'Ancient Democratic *eleutheria* and Modern Liberal Democrats' Conception of Freedom', in *Démocratie athénienne – démocratie modern* (fn. 44), 307–339 (followed by discussion, 340–353).

⁶⁰ That is a problematic point. One can refer to the statement by Nicias, *Thucydides* 7, 69, 2 (see p. 75), or extract this as a core principle of democracy from Plato's and Aristotle's critique of 'the freedom to live however one likes' (see p. 81), but whether this amounts to a clear-cut idea of spheres of non-interference by the state is not beyond doubt.

passing of laws by *nomothetai* (instead of popular assemblies) represent parallels to the modern idea of the division of powers.⁶¹

2,500 YEARS OF DEMOCRACY?

There has been a mixed response from classical and intellectual historians to Hansen's propositions, evident in a collection entitled *Demokratia. A Conversation on Democracies, Ancient and Modern* (1996).⁶² This is one of the several publications linked to conferences and exhibitions staged during 1992 and 1993, especially in the United States and Greece, to celebrate '2500 Years of Democracy'.⁶³ This took Cleisthenes' reforms of 508/507 BC to be the hour of the birth of Athenian democracy, reflecting a view held by modern scholars since Grote, but not the historical understanding of the Athenians themselves. The phrasing also tended to suppress the fact that during these 2,500 years there had mostly been a vigorous rejection of the Athenian model.⁶⁴

Contributions of this kind are directed to cultural debate in which the traditional educational canon was questioned on the grounds that it was

⁶¹ Mogens H. Hansen, 'Nomos und Psephisma in Fourth-Century Athens', *Greek, Roman and Byzantine Studies* 19, 1978, 315–330; idem, 'Initiative and Decision: The Separation of Powers in Fourth-Century Athens', *Greek, Roman and Byzantine Studies* 22, 1981, 345–370.

⁶² *Demokratia. A Conversation on Democracies, Ancient and Modern*, Josiah Ober and Charles Hedrick, eds., Princeton 1996.

⁶³ *2500 Years of Democracy/2500 chronia demokratias*, Athens 1992; *The Birth of Democracy. An Exhibition Celebrating the 2500th Anniversary of Democracy at the National Archives, Washington, DC, June 15, 1993 – January 2, 1994*, Josiah Ober and Charles Hedrick, eds., Oxford 1993; *Athenian Political Thought and the Reconstruction of American Democracy*, ed. J. Peter Euben et al., Ithaca, NY, 1994; *The Archaeology of Athens and Attica under the Democracy*, ed. W. D. E. Coulson et al., Oxford 1994; *The Good Idea. Democracy in Ancient Greece. Essays in Celebration of the 2500th Anniversary of the Birth of Democracy in Athens*, ed. John A. Koumoulides, New Rochelle 1995; *Colloque international: Démocratie athénienne et culture. Organisé par l'Académie d'Athènes en coopération avec l'UNESCO (23, 24 et 25 novembre 1993)*, ed. Michel Sakellariou, Athens 1996; *Democracy 2500? Questions and Challenges*, Ian Morris and Kurt A. Raaflaub, eds., Dubuque, Iowa, 1997; Luciano Canfora et al., *Venticinque secoli dopo l'invenzione della democrazia*, Paestum 1998. In 1992 an exhibition of Greek art was staged in Washington in connection with this anniversary. In the prefatory note signed by President George H. Bush there is no mention of Cleisthenes, but the assertion that the American Founding Fathers had been strongly influenced by the ideas of 'Solon, Plato and other Greek philosophers and statesmen'. The text is in *The Greek Miracle. Classical Sculpture from the Dawn of Democracy. The Fifth Century B. C.*, ed. Diana Buitron-Oliver, Washington 1992.

⁶⁴ There was a reaction in a series of conferences from 1992 to 1995, although rather than direct criticism to the idea of democratic continuity it was the fixation on Athens that was held to have ignored the political variety of the Greek world; *Alternatives to Athens. Varieties of Political Organization and Community in Ancient Greece*, Roger Brock and Stephen Hodkinson, eds., Oxford 2000.

exclusively oriented to Western civilisation, to 'dead white men'.⁶⁵ It was also argued that the way in which Athenian democracy excluded metics, slaves and women meant that it was in fact the rule of a small minority, and so in no respect a model for a modern democracy that should be seeking to realise more social equality, and not stop at the political equality of all.

Against all this it was argued that it was necessary to encourage reflection on Athens as the model for a democracy. Advocates of this line of argument sought to provide communitarianism with some kind of historical dimension, historicising the emphasis on the self-determination and autonomous organisation of citizens in 'civil society', as opposed to defining the citizen in terms of subjective rights with respect to state and fellow subject.⁶⁶ They also wished to counter a tendency to derive an elitist conception of society from antiquity through an emphasis upon Plato and Aristotle,⁶⁷ as a contrast with a supposedly feeble liberalism.⁶⁸ This then led to the claim that Athenian democracy, with its combination of leadership and collective decision making, was an exemplar for modern forms of management and organisation.⁶⁹ This also forms the cultural and political background for efforts to draw a direct line between ancient conceptions of natural law and the conception of civil rights articulated in the American Revolution.⁷⁰

Periclean democracy was also deployed as a model for the post-1989 democracies of Eastern Europe, and as a remedy for socialist nostalgia, since it

⁶⁵ Martin Bernal, *Black Athena: The Afroasiatic Roots of Classical Civilization*, 3 Vols., New Brunswick, NJ, 1987–2006, was at the centre of a virulent argument concerning his thesis that Greek culture was heavily influenced by Egyptians and Phoenicians, although it soon enough became clear that the scholarship of the book was questionable, and controversy died down.

⁶⁶ Ober, Hedrick, *Demokratia*, 5; Benjamin Barber, *Strong Democracy*, Berkeley [1984], 3rd ed., 2003. This idea was taken up in Germany by among others Michael Stahl, 'Auf der Suche nach dem Fundament. Der athenische Bürgerstaat und die Demokratie in der Gegenwart', *Geschichte in Wissenschaft und Unterricht* 47, 1996, 420–426; idem, 'Antike und moderne Demokratie: Probleme und Zukunftsperspektiven der westlichen Demokratie im Spiegel des griechischen Bürgerstaates', in *Volk und Verfassung im vorhellenistischen Griechenland*, Walter Eder and Karl-Joachim Hölkeskamp, eds., Stuttgart 1997, 227–245; Angela Pabst, 'Zur Aktualität der antiken Demokratie', in *Mensch – Natur – Technik*, Elisabeth Erdmann and Hans Kloft, eds., Münster 2002, 149–186.

⁶⁷ Josiah Ober, *Mass and Elite in Democratic Athens: Rhetoric, ideology, and the Power of the People*, Princeton 1989, esp. 9 and n. 11 (against Leo Strauss) together with 156 and 334 (Athens was the exception to Michels' 'iron law of oligarchy'); Euben et al., *Athenian Political Thought*; Peter J. Euben, *Corrupting Youth. Political Education, Democratic Culture, and Political Theory*, Princeton, NJ, 1997.

⁶⁸ Apart from Leo Strauss we can also note Alasdair MacIntyre, *After Virtue. A Study in Moral Theory*, London 1981; Allan Bloom, *The Closing of the American Mind*, New York 1987.

⁶⁹ Philip Brook Manville, Josiah Ober, *A Company of Citizens. What the world's first democracy teaches leaders about creating great organizations*, Boston 2003. This was then transferred into politics in Josiah Ober, *Democracy and Knowledge. Innovation and Learning in Classical Athens*, Princeton, NJ, 2008.

⁷⁰ Susan Ford Wiltshire, *Greece, Rome, and the Bill of Rights*, Norman, OK, 1992.

demanding of its citizens 'engagement and readiness for sacrifice, but at the same time space for private activities that were no concern of the state'. Likewise, 'not all spheres of life were forced down to the lowest common level', because in Athens there had been recognition that 'equality before the law, not equality of property, was the sole form of equality that was compatible with welfare, liberty and security'.⁷¹

An alternative is offered by the American intellectual historian Paul Rahe whose voluminous tome *Republics, Ancient and Modern* (1992) convincingly shows how, in the course of the American Revolution, ancient models were left behind. However, to demonstrate the fundamental contrast between American and ancient constitutional principles, Rahe joins together Sparta and Athens (as an 'illiberal democracy') in a single model of ancient (un)freedom retreading arguments originally made by Constant. The lack of any guarantee of personal liberty in Athens is, yet again, demonstrated with reference to the Arginusae trial and that of Socrates.⁷² The political message is a call to return to the doctrines of the American Founding Fathers, obscured as they have become by all the intellectual trends and political theories developed since the nineteenth century.⁷³

Rahe offered a serious study in the history of ideas. That cannot be said of a book by an American ancient historian that in reaction to the celebration of '2500 Years of Democracy' lists Athens sins – an aggressive, imperial foreign policy, the role of demagogues, the Arginusae and Socrates trials and so on – while at the same time writing off demands for increased political participation in the present.⁷⁴ Athens becomes a screen used for the projection of a political opinion that would have pleased William Mitford.⁷⁵

DEMOCRATISATION VERSUS THE LIMITATION OF POWERS

In Germany, the example of antiquity is introduced with an explicit link to the present primarily in the writings of political science, when cautioning that the concept of democracy should not be interpreted in a one-sided manner, but extended to all social sub-systems. This has been the case ever since discussion over 'democratisation' began in the later 1960s. One should not forget, it is said, that our conception of democracy, which derives ultimately from the American and French Revolutions, depends upon a limitation of the will of the majority through higher law and the separation of powers.

⁷¹ Donald Kagan, *Perikles. Die Geburt der Demokratie*, Stuttgart 1992, 373f., 354 and 371 [*Pericles of Athens and the Birth of Democracy*, New York 1991].

⁷² Paul A. Rahe, *Republics, Ancient and Modern. Classical Republicanism and the American Revolution*, Chapel Hill, NC, 1992, esp. 196f.

⁷³ *Ibid.*, 773ff.

⁷⁴ Loren J. Samons II, *What's Wrong with Democracy? From Athenian Practice to American Worship*, Berkeley 2004.

⁷⁵ On Mitford see p. 247f.

Dolf Sternberger, for instance, has repeatedly used the model of the ancient citizen in emphasising the necessity of an orientation to the common good, instead of the exclusive pursuit of private interests. However, the state should remain an authority *sui generis*, and not become an instrument of social forces, nor allow itself to be pressured by extra-parliamentary movements or citizens' initiatives. Democracy is only one part of the modern constitutional state, which is built upon representation, the division of powers and the security of basic rights. The historical forerunner, or lasting model, for this constitutional state cannot be the Athenian state, but only the idea of a mixed constitution, in which overlapping competences set limits to the power of the majority will. Sternberger considers that the political theory of Aristotle formulates timeless, ideal forms of the mixed constitution, or a model of the division of powers.⁷⁶ Other writers have expressed themselves in a similar fashion.⁷⁷

This could go too far for an author who thinks that the 'political philosophy of antiquity is unsuited for comprehension of the nature of the modern state'. After all, 'if one is to take antiquity as a model, then it has to be taken as a whole' – and that meant the kinds of unfreedom that prevailed which, not surprisingly, are then documented with the familiar citations from Fustel de Coulanges and Burckhardt, together with references to recent literature that appear to confirm this perspective. The author consciously uses the term 'Volksgeschichtshof' for the Athenian jury courts, an allusion to the highest special court of the National Socialist regime, to make entirely plain that this democracy was 'total'.⁷⁸

In the majority of cases the assessments of professional classical historians, even if influenced in some way by their own personal values and ideas about contemporary problems, are best approached through their interpretation of the sources. Insofar as there are basic statements, they demonstrate that one can arrive at very different evaluations when making an explicit comparison. Jochen Bleicken, summing up his comprehensive account of *Die athenische Demokratie* (1985) in which he had laid emphasis on procedural rules and also

⁷⁶ Dolf Sternberger, *Nicht alle Staatsgewalt geht vom Volke aus. Studien über Repräsentation, Vorschlag und Wahl*, Stuttgart 1971; various articles in Sternberger, *Die Stadt als Urbild*, Frankfurt am Main 1986, and in Sternberger, *Verfassungspatriotismus*, Frankfurt am Main 1990. While Sternberger emphasised the normative aspects of the mixed constitution, Mogens H. Hansen, 'The Mixed Constitution versus the Separation of Powers: Monarchical and Aristocratic Aspects of Modern Democracy', *History of Political Thought* 31, 2010, 509–531, has recently argued that this category should be applied descriptively to modern constitutional states that cannot be adequately characterised as democracies nor states with a division of powers. This proposal exchanges one conceptual dilemma for another.

⁷⁷ Wilhelm Hennis, 'Vom gewaltenteilenden Rechtsstaat zum teleokratischen Programmstaat', in his *Politik und praktische Philosophie*, 243–274; Ulrich Matz, 'Zur Legitimität der westlichen Demokratie', in *Die Rechtfertigung politischer Herrschaft*, Peter Graf Kielmansegg and Ulrich Matz, eds., Freiburg 1978, 27–47.

⁷⁸ Manfred Trapp, 'Über einige Unterschiede zwischen antiker und moderner Staatsauffassung', *Politische Vierteljahresschrift* 29, 1988, 210–229, here at 211, 225 and 223.

the popular courts in Athens, concluded after reviewing the controversies of the nineteenth century: 'The guarantee of democracy rests on the institutional integration of all its processes, in Athens as in our modern era'. The different forms: strict control of office holders, personal liability of the politically active citizen for all his proposals on the one hand, division of powers, qualified majorities, obstacles to constitutional change on the other – all of this proves that 'Athenians rate the people's will higher than the security of the individual, or a minority, against the terror or whim of the majority'. But this corresponds to a constellation in which 'the security of the individual ... was not threatened to the same degree as today from the terror of a majority', because intervention in 'everyday life' and 'traditional life' are hardly considered.⁷⁹

For one reviewer of Bleicken's book his generally positive image of the functioning of Athenian democracy went too far. He objected that 'the ideal of self-government by equals was dearly bought: massive reductions in personal liberty, disabling control mechanisms domestically. Subordination to a major, uniting collective goal, for instance, the precedence of the own state over others'.⁸⁰

Even Paul Veyne employed formulations in an essay of 1983 that carried echoes of Constant, Fustel or Burckhardt:

The ancient citizen possesses neither human nor civic rights, no liberties, and not even liberty itself; he only has duties. ... The ideal of ancient democracy was that its citizens would be its slaves. ... In modern times a space has been gained for liberty and private life in respect of the state, whereas the Athenians only enjoyed as much liberty as the polis allowed to them. Only in clearly defined cases does a modern state interfere with the morality of its citizens. By contrast, the right of supervision of the private lives of citizens enjoyed by the polis was unlimited, although it was hardly ever exercised.

Socrates' refusal to evade execution through flight, because he did not wish to undermine the laws, corresponds in Veyne's view to the attitude of the old Bolsheviks 'who after a show trial would rather die out of loyalty to the Party than disrupt an organisation whose prime strength lay in discipline'.⁸¹

The quotations made here from recent scholarship presume a modern construction of individual rights which form a sphere into which the state cannot intervene, or if it can, then only under particular conditions. This modern construction is then measured against corresponding principles in antiquity, or in Athens. A proposition like the one made by Mogens Hansen, that there is a corresponding marking out of the limits of state and individual, is an exception. Mostly Finley's line of argument is taken, that there were no principal limits to the state's intervention in all areas of life, but that this coincided with

⁷⁹ Jochen Bleicken, *Die athenische Demokratie*, Paderborn 1985, 314f.

⁸⁰ Gerhard Thür, 'Review of Bleicken, *Die athenische Demokratie*', *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 107, 1990, 439–444, here at 444.

⁸¹ Paul Veyne, 'Les grecs ont-ils connus la démocratie?', *Diogenes* July–September 1983, 3–33.

a reticent practice,⁸² as can be seen in the case of religious freedom,⁸³ or in the liberties taken in comedies.⁸⁴

The absence of limits to legislation founded in paramount law, derived from proclamations of human rights, is the subject of very different assessments. Consensus is obviously not achievable; repetition of arguments in the one or the other sense will continue.

⁸² Robert W. Wallace, 'Law, Freedom, and the Concept of Citizens' Right in Democratic Athens', in Ober, Hedrick, *Demokratia*, 105–119; idem, 'The Legal Regulation of Private Conduct at Athens. Two Controversies on Freedom', *Dike. Rivista di storia del diritto greco ed ellenistico* 9, 2006, 23–62 (on Isaiah Berlin and Moses I. Finley); idem, 'Freedom, Community and Law in Democratic Athens', *Philosophical Inquiry* 27, 2006, 61–78; Josiah Ober, 'Quasi Rights: Participatory Citizenship and Negative Liberties', in his *Athenian Legacies. Essays on the Politics of Going on Together*, Princeton, NJ, 2005, 92–127 (critical of this: Kevin Olbrys, Thanassis Samaras, 'Is Ancient Democracy Quasi-liberal?', *Revue internationale des droits de l'antiquité* 3rd ser. 54, 2007, 111–141); Peter Liddel, *Civic Obligation and Individual Liberty in Ancient Athens*, Oxford 2007; Matt Edge, 'Athens and the Spectrum of Liberty', *History of Political Thought* 30, 2009, 1–45.

⁸³ The fact that some Sophists (Anaxagoras, Protagoras and others) were persecuted for impiety is contested by some scholars, who argue that a later tradition projected the proceedings against Socrates back on these earlier cases: Kenneth J. Dover, 'The Freedom of the Intellectual in Greek Society', *Talanta* 7, 1976, 24–54; Robert W. Wallace, 'Book Burning in Ancient Athens', in *Transitions to Empire. Essays in Greco-Roman History in Honor of E. Badian*, Robert W. Wallace and Edward M. Harris, eds., Norman, OK, 1996, 226–240.

⁸⁴ Stephen Halliwell, 'Comic Satire and Freedom of Speech in Classical Athens', *Journal of Hellenic Studies* 111, 1991, 48–70, sees no real limits to comedy; Alan H. Sommerstein, 'Harassing the Satirist: The Alleged Attempts to Prosecute Aristophanes', in *Free Speech in Classical Antiquity*, Ineke Sluiter and Ralph M. Rosen, eds., Leiden 2004, 145–174, takes the opposite position.

Conclusion: Is Athens Still a Standard?

The American and French Revolutions were the world-historical events to which almost all subsequent political change related itself. The French Revolution was open to a wide variety of readings – conservative, liberal, socialist – ranging from the horrors of a reign of Terror to a legitimization of Russia's October Revolution. In the eyes of the Bolsheviks and their admirers, this was a rather better-organised version of Jacobinism;¹ but it could also be viewed as a liquidation of the true Revolution, much as Napoleon had put an end to the French Revolution.²

Perceptions of Athenian democracy were affected by all this in various ways, although such perceptions remained secondary by comparison with the American and French Revolutions. Both had, in different ways, broken with the Athenian model. Nonetheless, subsequently, the concept of democracy was transferred to the representative system, so that not only the United States was thought of as an established democracy, but Great Britain was hailed on account of its long parliamentary tradition as the 'oldest democracy in the world' – despite a franchise that remained very restricted up to the twentieth century, and until 1911 an upper house composed entirely of hereditary peers

¹ For example, Lenin, 'One Step Forward, Two Steps Back' (The Crisis in our Party), written in 1904 about the split in Russian Social Democracy between the Bolsheviks and the Mensheviks; *Collected Works*, Vol. 7, 381; 'Deception of the People with Slogans of Freedom and Equality' (Speech at the 1st All-Russia Congress on Adult Education, 6 May 1919), in Lenin, *Collected Works*, Vol. 29, 371f. Albert Mathiez, founder in 1907 of the Société des Études Robespierrieste, saw in Lenin a 'Robespierre who had been successful'; cited in Beatrix W. Bouvier, *Französische Revolution und deutsche Arbeiterbewegung. Die Rezeption des revolutionären Frankreich in der deutschen sozialistischen Arbeiterbewegung von den 1830er Jahren bis 1905*, Bonn 1982, 18.

² 'The followers of Lenin, who consider themselves to be so many Napoleons of socialism, rage and rampage and so complete the destruction of Russia; the Russian people will have to pay for it with their blood'; Maxim Gorky, 'Lenins Experimente', 10 November 1917, in his 'Ein Jahr russische Revolution', *Süddeutsche Monatshefte* Jg. 16, H. 1, 1918, 1–72, here at 26.

with great power. Others think that Switzerland deserves the honorary title of the oldest democracy, because of its traditions of direct participation by citizens.

There was a longer-term consequence of this association of democracy with representation: as Tocqueville had forecast, during the late nineteenth and early twentieth centuries the right to vote was gradually extended, eventually to women. Another feature was the gradual reduction of the minimum age both for voting and standing as a candidate.³

DEMOCRACY AS THE SOLE LEGITIMATE CONSTITUTION

After the First World War it was anticipated that representative democracy would conquer Europe, but as we know that did not happen. Following the Second World War democracy was installed as an ideal not just for Europe, but for the whole world. Democracy has become the description of the sole legitimate constitutional form, 'a standard by which regimes were judged rather than merely one among a number of regime forms'.⁴ However a political system is in fact organised this is the claimed criterion. This 'global adoption of the concept of democracy'⁵ is something shared by power-holders of all kinds, demonstrating 'the inevitability even when practising the opposite to pay lip service to the idea of democracy'.⁶ The tautological term 'people's democracy' (before 1948 'people's republic')⁷ became obsolete after 1989, when Lenin's forecast that 'proletarian democracy' as a 'new type of state' could no longer disappear,⁸ was disproved.

'Republic' has been largely emptied of meaning, though in France it still retains a particular emphasis stemming from the Revolution, while elsewhere

³ In most cases during the nineteenth century these rights were enjoyed only by males over twenty-five, or even thirty, while for a long period there was a distinction in the qualifying age for voting and for candidacy. As the voting age reduced, so this distinction gradually disappeared. Today in most states all those over the age of eighteen have the right to vote, while in Austria it has recently been reduced to sixteen. In Germany, there has been recent discussion about reducing the voting age below eighteen, which for some local elections has already been done; occasionally there is talk of reducing the qualifying age to fourteen. It is inconceivable that, once reduced, the threshold could be increased.

⁴ Benjamin Barber, 'Democracy', in *The Blackwell Encyclopaedia of Political Thought*, ed. David Miller et al., Oxford 1987, 114–119, here at 115.

⁵ Karl Dietrich Bracher, *Geschichte und Gewalt. Zur Politik im 20. Jahrhundert*, Berlin 1981, 52.

⁶ Hermann Lübbe, 'Mehrheit statt Wahrheit. Über Demokratisierungszwänge', in his *Modernisierungsgewinner. Religion, Geschichtssinn, direkte Demokratie und Moral*, Munich 2004, 154–166, here at 154.

⁷ To begin with, people's democracies were considered, by comparison with the Soviet Union, to be yet-unrealised socialist democracies, but this distinction was later abandoned: Lothar Schultz, 'Volksdemokratie', in *Sowjetsystem und demokratische Gesellschaft. Eine vergleichende Enzyklopädie*, Bd. 6, 1972, 754–766.

⁸ 'The Third International and Its Place in History' (April 1919); Lenin, *Collected Works*, Vol. 29, 311.

efforts have been made to revive the idea of ‘republicanism’ in the sense of civic virtue.⁹ In Europe ‘monarchy’ no longer serves as a viable constitutional alternative. Monarchies are integrated into parliamentary democracies (Great Britain, the Benelux countries, Scandinavia, Spain after Franco) that have opted to employ a hereditary head of state as a symbol of national unity. Given that the nobility no longer constitutes a privileged social rank the term ‘aristocracy’ has also become obsolete. Since the work of Robert Michels ‘oligarchy’ has mostly been used to describe informal ruling groups; more recently the new business magnates in post-Soviet countries are regularly called ‘oligarchs’.

‘Tyranny’ and ‘despotism’ had always been largely polemical terms. From the later eighteenth century onwards they were increasingly used interchangeably, and with their later application to totalitarian systems the implicit structural differences to which these terms referred in ancient constitutional theory have been terminally eroded. ‘Dictatorship’ has undergone the same conceptual shift, although not at the same rate; hardly anyone today thinks of this as a particular constitutional institution, as was still possible in the Weimar Republic¹⁰ and the early years after the Second World War.¹¹ Today ‘dictator’, ‘tyrant’, and ‘despot’ are used quite promiscuously in everyday political speech.

⁹ The debate in the United States of ‘Communitarism versus Liberalism’ has also been conducted in terms of ‘Republicanism versus Liberalism’, but in this latter case with a stronger linkage to the founding ideas of the eighteenth century; see Alan Gibson, ‘Ancients, Moderns and Americans: The Republicanism-Liberalism Debate Revisited’, *History of Political Thought* 21, 2000, 261–307. For German discussion see Josef Isensee, ‘Republik – Sinnpotential eines Begriffs. Begriffsgeschichtliche Stichproben’, *Juristenzeitung* 1, 1981, Nr. 1, 1–8; Emanuel Richter, *Republikanische Politik. Demokratische Öffentlichkeit und politische Moralität*, Reinbek 2004.

¹⁰ The competences that Article 48 of the Weimar constitution gave the president in case of an emergency were qualified as ‘dictatorial powers’ by the father of this constitution; Hugo Preuß, ‘Reichsverfassungsmäßige Diktatur’, *Zeitschrift für Politik* 13, 1923, 97–113. In contrast with this, one can read in Article 150 of the 1946 Hesse constitution: ‘The creation of a dictatorship, in whatever form, is prohibited’; this is in all likelihood a reaction to the Enabling Act (*Ermächtigungsgesetz*) passed in March 1933 that gave the government, de facto Hitler, the power to enact laws without parliamentary involvement.

¹¹ The experience of authoritarian regimes during the interwar period, or what came to be called totalitarianism, led some political scientists to discuss the necessity for a time-limited constitutional dictatorship for the purpose of safeguarding the rule of law and democracy: see, for example, Frederick M. Watkins, ‘Constitutional Dictatorship’, *Public Policy* 1, 1940, 324–378; Clinton L. Rossiter, *Constitutional Dictatorship. Crisis Government in the Modern Democracies*, Princeton, NJ, 1948; Carl J. Friedrich, *Constitutional Reason of State*, Providence, RI, 1957. This idea was then quickly forgotten, but it has been revived more recently in the context of the American debate about appropriate measures in prosecuting a ‘war on terror’; instead of the unlimited assumption of powers by a president there should be a separation between the instances that determined the existence of an emergency, and those that then take measures to deal with it; and in so doing explicit references are sometimes made to the Roman model; see Wilfried Nippel, ‘Saving the Constitution: The European Discourse on Dictatorship’, in Janet Coleman and Paschalis M. Kitromilides, eds., *In the Footsteps of Herodotus. Towards European Political Thought*, Florence 2012, 29–49.

Nowadays democracy is an unambiguously positive norm, a state of affairs that runs counter to its treatment in a 2,500-year-long history. It is a reminder of the great Athenian experiment and invites comparison with the inventors of this order. Athens remains contemporary,

whether it be as the shadow of a failed experiment in the past that ended dialectically with the enslavement of its protagonists; or whether it is seen as a flame pointing to the future that has warmed the hearts of countless numbers of men and women striving for autonomy and self-determination.¹²

A DEMOCRATIC DEFICIT IN ATHENS?

Since the nineteenth century, 'democracy' has been a name for a former society that was part of the earliest times of European history, as well as the name for the political systems of the present and, as such, embodying a conception of an ideal form of state and society. Deficiencies in its realisation in any given present circumstances can be suffered so long as the aim appears to be attainable, or as an alternative, the present is said to fall short of the ideal. This overlap of historical, descriptive and normative aspects can be applied to Athens retrospectively. Athens can be measured against the norms of contemporary constitutional states and so said to be 'not really democratic', a 'partial democracy';¹³ or Athens is introduced as a model to criticise the deficiencies of modern democracies and suggest means for their resolution. A third possibility is to claim that 'government by the people for the people' is for all times and places merely 'empty talk'.¹⁴

The occasional criticism, first made in the later eighteenth century, that apart from slaves, both metics and women were excluded from political rights, has long since become routine and incorporated in the image of a 'closed society' (reversing Karl Popper's evaluation).¹⁵ Less appropriate than that is talk of Athens really being ruled by an oligarchy.¹⁶ This corresponds neither to the ancient conception of oligarchy, which related only to those possessing full

¹² Richard Saage, *Demokratietheorien. Historischer Prozess – Theoretische Entwicklungen – Soziotechnische Bedingungen. Eine Einführung*, Wiesbaden 2005, 39.

¹³ Manfred G. Schmidt, *Demokratietheorien. Eine Einführung*, Opladen 1995, 35 (the exclusion of slaves, metics and women).

¹⁴ Maurice Duverger, *Die politischen Regime*, Hamburg 1960, 6 [*Les régimes politiques*, first published Paris 1948].

¹⁵ Robin Osborne, 'Athenian Democracy: Something to Celebrate?', *Dialogos. Hellenic Studies Review* 1, 1994, 48–58, here at 57. The contrast made here with an open (British) society is perhaps lent emphasis because the text originated in an event shared with Enoch Powell, who in 1968 had prophesied the dangers of civil war arising from policies on immigration and minorities. Powell, a distinguished classical scholar, had talked of 'rivers of blood', alluding to Virgil, *Aeneas* 6, 86f., and for this he was dismissed from the Conservative shadow cabinet.

¹⁶ For example, Schmidt, *Demokratietheorien*, 34f. Or, see Victor Ehrenberg, *The Greek State*, London 1972, 50: 'democracy may be conceived as a kind of extended aristocracy'.

political rights within the citizenry, nor the current application to a particular group de facto holding power, where all formally have equal rights.

Criticism of exclusion of permanently settled aliens, the metics, refers to the fact that their number was in Athens very great in comparison to that of the citizens, and that there were extreme stiff conditions for an alien to gain civic rights. But it ignores the fact that as a matter of principle there is no difference to the rules prevailing in present-day democracies. One can only treat as irritating statements of the kind that ‘in ancient Greek democracy the people did not have the same significance as they do today, and cannot be equated with all those men and women who belonged to the polis’;¹⁷ or that the Greeks took for granted ‘that political equality did not extend to slaves, foreigners [!] and women’.¹⁸ The following can be best left to speak for itself:

Athenian democracy ... should be seen from the modern standpoint as a kind of ‘base democracy’ for the small proportion of the population who possessed political rights. Taking account of the fact that the majority of the population – the really poor, minors [!], women, foreign workers and slaves were excluded from political participation, we cannot describe the Athenian polis as a modern democracy.¹⁹

Apart from the fact that children do not have the right to vote in modern democracies (so far at least), all modern democratic constitutional states make a clear distinction between citizens of the state and those with rights of residence, with political rights being linked to the status as a citizen according to specific laws,²⁰ and not acquired through the mere fact of migration.²¹ This is also true when these provisions are generous, for instance, in the form of a *jus soli*, the acquisition of citizenship by being born within the territory of a state, or a citizenship status related to a short period of residence as provided in the (abortive) French 1793 constitution.²² There is today an international

¹⁷ Manfred Hättich, ‘Demokratie I’, in *Staatslexikon*, ed. Görres-Gesellschaft, Bd. 1, 7th ed., 1985, 1182–1192, here at 1182.

¹⁸ Klaus von Beyme, ‘Demokratie’, in *Sowjetsystem und demokratische Gesellschaft*, Bd. 1 (1966), 1111–1158, here at 1118.

¹⁹ Karl Mittermaier and Meinhard Mair, *Demokratie. Die Geschichte einer politischen Idee von Platon bis heute*, Darmstadt 1995, 19.

²⁰ In some cases there are special provisions for particular privileged groups, for instance, the right to vote in Great Britain enjoyed by citizens of the Commonwealth and of Ireland. Apparently, the only country that gives all foreigners the right to vote (after one year of residence) is New Zealand.

²¹ This is also true of the European Union. The right to vote enjoyed by the ‘EU citizen’ resident in a country other than their home is limited to the local level; in Germany, this required a change of the Basic Law. However, a decoupling from residency is evident in new provisions made by several countries which seek to provide a right to vote for those of their citizens permanently living abroad. This is a rather problematic development, since such voters are not affected by the result of an election, and quasi-election campaigns take place abroad.

²² According to Article 4 of the 1793 constitution, citizenship was bestowed on any foreigner, over twenty-one who ‘has been resident in France for a year and lives from his work or acquires landed property or marries a Frenchwoman or adopts a child or supports an old person’. In

consensus (if not established by treaty) that states should not strip their citizens of this status, but there is still no generally recognised right to become the citizen of another country.²³

Whatever the status in civil law women in Athens might have had, they certainly never had any rights of political participation. Whoever wants to make this a criterion for calling a state a democracy would, logically, have to exclude France until 1946 and Switzerland until 1971 (at the federal level).²⁴ The history of democracy would then begin with those who had first introduced female suffrage at the national level: New Zealand (1893), Finland (1906, together with the right to stand as a candidate),²⁵ Australia (1908) and Norway (1913).

As elsewhere in antiquity, in Athens the existence of slavery was never questioned, being treated as a legal institution arising from the law of war, and which therefore excluded the enslavement of one's own citizens. That there was anything like the beginnings of an abolitionist movement is nothing but Karl Popper's benevolent fantasy. Nor was there anything like human rights in the sense formulated in the course of the American and French Revolutions; yet again, any suggestion that they might have existed in some form simply projects modern ideas on to antiquity.²⁶ It is of course true that in both the American and French cases it was possible to propagate human rights while still maintaining the existence of slavery; but this could not eventually prevent the development of a number of motives and interests that brought about the final abolition of slavery.

There was in Athens no catalogue of a citizen's basic rights which would be a barrier to legislation. The example of the British constitutional tradition, in which there are no theoretical limits to parliamentary sovereignty, but where it is presumed that it will not be abused,²⁷ demonstrates that the absence of a

the 1791 constitution (Title II, Article 3) there was a requirement for five unbroken years of residence.

²³ Seyla Benhabib, *The Rights of Others. Aliens, Residents, and Citizens*, Cambridge 2004.

²⁴ As does Peter Siewert, 'Menschenrechte', *Der Neue Pauly*, Bd. 7, 1999, 1258–1261. Almost all other cantons then followed during 1971 and 1972 in conformity with the federal extension. In Appenzell Außerrhoden it was not introduced until 1989. The decision was taken by the *Landsgemeinde* by show of hands as usual; see p. 305f. In this case there was an extremely narrow result. Despite massive protests the government that was eager to introduce female suffrage declared that a majority had voted for it and refused to count exactly the individual votes. The subsequent lengthy dispute led to the abolition of the *Landsgemeinde* in 1997. In 1990 Appenzell Innerrhoden was forced by the Swiss Federal Court to recognise the right of women to vote.

²⁵ From 1809 Finland was an autonomous duchy within the Russian Empire whose independence was progressively restricted in the later nineteenth century, but then revived by the Russian Revolution of 1905.

²⁶ As does Peter Siewert, 'Menschenrechte', *Der Neue Pauly*, Bd. 7, 1999, 1258–1261.

²⁷ Classically formulated by Ivor Jennings, *The British Constitution* [1941], 3rd ed., Cambridge 1950, 213: 'the source of our liberty is not in laws and institutions, but in the spirit of a free people's.

written record is not necessarily a deficiency. Much of what later became the core of such declarations, such as laws governing criminal procedure, did not need in Athens to be the subject of ceremonious proclamations that sought to overcome previous abuses, because they were already embodied in institutions and procedures. After 403 BC there was in Athens a hierarchy of positive legal norms in the sense that there was a distinction between laws as general norms and popular decisions about individual cases, and popular decisions could be revoked by *graphe paranomon* if they conflicted with laws. This in effect introduced a 'precedence of the constitution' and its procedural realisation; as David Hume and John Stuart Mill noted, this was quite a remarkable technical constitutional innovation, even if its application quite often seemed questionable.

Most remarkable in discussions of this kind is the way in which a political system is measured against criteria developed more than 2,000 years later. There can certainly be no other political order in world history that has had such obviously anachronistic standards applied to it than Athenian democracy. It does not matter what the Athenian inventors defined as *demokratia*, but what 'we' think what democracy should be;²⁸ and this is, as shown earlier, often accompanied by the ignorance of the history of modern democracy or even contemporary practice. Mogens H. Hansen asks: 'The history of modern democracy spans more than 200 years from the American and French revolutions to the present day. ... Do we want to compare *demokratia* with the concept of democracy in the 19th, the 20th or the 21st century?'²⁹ One should better say: 'the ever divergent concepts of democracy since the nineteenth-century'.

What in the case of Athens gives occasion for criticism, or a plea for understanding, is for other societies merely recorded as a historical fact. Anyone writing about the Roman Republic does not have to present detailed arguments on the question of whether the exclusion of women, aliens and slaves was in conflict with its own principles.

Quite plainly, Athens has a special place in historical consciousness, the category of democracy creating a universal norm against which its own practice might be measured, so that particular incidents such as the Arginusae trial or the trial of Socrates are cited in the criticism of the system, it then being incumbent upon defenders of Athens to respond to such criticism.³⁰

²⁸ This point is nicely made by Robert A. Dahl, *On Democracy* [1998], New Haven 2000, 24: 'Wouldn't we be pushing our present perspective to the point of anachronistic absurdity if we were to conclude that the Greeks simply misused the term [democracy]? After all, it was they, not us, who first created and used the word *democracy*. To deny that Athens was a democracy would be rather like saying that what the Wright brothers invented was not an airplane because their little machine so little resembled ours today'.

²⁹ Mogens H. Hansen, 'Introduction', in *Démocratie athénienne – démocratie moderne. Tradition et influences*, Vandoeuvres 2010, at XXI.

³⁰ The prominent left-liberal American journalist I. F. Stone's justification of the execution of Socrates resonated internationally, since he had sought in so doing to defend the democratic ideal: *The Trial of Socrates*, Boston 1988.

Ultimately, when Athens is considered not only as a historical phenomenon but also as a normative point of reference for one's own order, the same kind of evaluations result as is apparent in the case of the French Revolution. A broad generalisation would read: on the one hand, the 'liberal' or 'leftist' perspective seeks to uphold its value, despite the existence of slavery, in the same sort of way that the ideals of the early phases of the French Revolution are defended despite the later onset of terror; on the other, conservatives maintain that you cannot have the one without the other.³¹

'DIRECT DEMOCRACY' – BACK TO ATHENS?

The modern constitutional state, whatever national form it might take and however it has changed over the past 200 years, is founded upon the principle of representation. This has its roots in various medieval and early modern assemblies (inclusively those of the Church), but importantly has no institutional continuity with antiquity. The idea of a free mandate (despite the tension with party discipline) likewise separates modern parliament from previous forms based upon estates.

The modern constitutional state of the Western world has many restrictions upon democracy in the sense of majority rule.³² Among the most important are differences between the number and effective value of votes, most marked in first-past-the-post systems, and the existence of the minimum percentage hurdles in proportional representation;³³ the disproportionate influence enjoyed by small parties in coalition governments; the division and limitation of powers; bicameral systems,³⁴ especially when some member states are heavily

³¹ For another combination of evaluations compare the criticism of the exclusive character of Athenian democracy while at the same time admiring Jacobins and Bolsheviks by Luciano Canfora, *La Democrazia. Storia di un'ideologia*, Rome 2004 [*Democracy in Europe. A History of an Ideology*, 2006].

³² Contrary to this type are 'illiberal democracies' where rule of law, separation of powers, freedom of opinion, the autonomy of civil society, the rights of minorities and so on are not respected with reference to the fact that the government is legitimated by the majority of the electorate; see Wolfgang Merkel, 'Defekte Demokratien', in *Demokratie in Ost und West. Für Klaus von Beyme*, Wolfgang Merkel and Andreas Busch, eds., Frankfurt am Main 1999, 361–381.

³³ Another variant is the 'majority premium', the distribution of additional seats to the relatively strongest party, as happens today in Italy and Greece.

³⁴ The plea for bicameralism can lead to ironic twist in argument. Churchill's dictum, 'that democracy is the worst form of Government except all those other forms that have been tried from time to time' is often cited, but without reference to the context within which it was uttered. In 1947 Churchill was the leader of the opposition and said this against the Labour government when, once again, reform of the composition and limitation of the power of the House of Lords was on the agenda. At that time it was composed almost entirely of hereditary members; before the introduction in 1958 of life peerages those peers created by the government gained a seat in the upper house that itself became hereditary. Churchill argued that democracy required 'a system of balanced rights and divided authority', and whoever attacked the role of the upper house opened the road to a quasi-dictatorship: John Keane, *The Life and Death of*

over-represented in ration to their number of citizens;³⁵ the high (but variant) thresholds for constitutional changes; the limitation of legislative competence by basic and/or human rights (now also based upon international conventions); and finally the possibility that a small number of constitutional judges can strike down laws passed by parliamentary majorities using proper procedure.³⁶ Great Britain remains here a special case.³⁷ Parliamentary sovereignty means that Parliament has ‘the right to make or unmake any law whatever; and further, that no person or body is recognised ... as having a right to override or set aside the legislation of Parliament’.³⁸

The Dutch cultural historian Johan Huizinga in 1945 expressed the regret that the Athenian concept of *isonomia* had not been revived, which best expressed the idea of a state based upon the rule of law. Instead, the concept of democracy gained ground, an idea that necessarily could not be fulfilled.³⁹ The paradoxical effect of attaching ‘democracy’ to parliamentary systems was that the latter could be criticised as not reaching the grade of political participation that ‘democracy should really mean’.

The representative system therefore gained acceptance in this perspective only as a necessary surrogate with respect to citizen numbers and territorial proportions, and not as a superior system promoting decisions in the general interest, as its originators had envisaged.⁴⁰ Thus, a representative constitution appeared as a ‘sorry substitute for the real thing’.⁴¹ Or it was called a ‘democracy

Democracy, London 2009, 58of. Attempts to defend a hereditary House of Lords with the functional needs of a bicameral system were, of course, not new. In the late nineteenth century the well-known historian Edward A. Freeman made a great effort to prove that this argument was historically wrong; ‘Reform of the House of Lords’, *Contemporary Review* 46, 1884, 465–487.

³⁵ Extreme cases here are the United States and Switzerland, with the same number of representatives for all individual states in the Senate and the *Ständerat* (Council of States) respectively.

³⁶ The constitution that Hans Kelsen drafted for Austria in 1920 was in the vanguard here; the principle became generalised only after the Second World War and then in the post-1989 democracies, which mostly followed the model of the (West) German Constitutional Court.

³⁷ There has been considerable change to British constitutional practice since the end of the twentieth century; see Vernon Bogdanor, ‘Constitutional Reform in Britain: The Quiet Revolution’, *Annual Review of Political Science* 8, 2005, 73–98; Nicholas Bamforth, ‘Current Issues in United Kingdom Constitutionalism: An Introduction’, *International Journal of Constitutional Law* 9, 2011, 79–85; David Lipsey, ‘A Very Peculiar Revolution. Britain’s Politics and Constitution, 1970–2011’, *Political Quarterly* 82, 2011, 341–354. Nonetheless, there are still considerable differences with respect to the constitutions on the European continent and elsewhere.

³⁸ Albert V. Dicey, *Introduction to the Study of the Law of the Constitution* [1885], reprint of 8th ed. 1915, Indianapolis 1982, 3f.

³⁹ Johan Huizinga, *Wenn die Waffen schweigen. Die Aussichten auf Genesung unserer Kultur*, Basel 1945, 95.

⁴⁰ Herbert Krüger, *Allgemeine Staatslehre*, Stuttgart 1964, 235.

⁴¹ Robert A. Dahl, *Dilemmas of Pluralist Democracy. Autonomy vs. Control*, New Haven 1982, 13. Dahl is reporting this view, which is not necessarily his own.

without demos',⁴² or even an 'immature', 'crude' but of course 'necessary framing concept' that had to be transformed into 'real democracy', and so required 'vitalization' through 'citizens' initiatives, participation, self-organisation, control over representatives'.⁴³

These kinds of demands are part of the tradition that sees a line from the Section Assemblies of the French Revolution via the 1871 Paris Commune to the Workers' Councils of the early twentieth century. They betray a deep wish for the political involvement of the entire citizenry, which on the part of the New Left in the late 1960s led to a reactivation of the idea of councils.⁴⁴ However, Hannah Arendt's enthusiastic praise for councils during the Hungarian Rising of 1956 shows that such yearning was not confined to the New Left. Her recommendation that democracy be revitalised through councils was combined with the clear recognition that politics has to be the business of a self-selected elite dedicated to the common good, while all other citizens should be happy to be protected by a state and the rule of law.⁴⁵ Dolf Sternberger thought that, for her, councils were a 'phosphorescent form of the ancient city'.⁴⁶

Whatever one may think of the councils as a desirable or a realisable form – apart from revolutionary situations in which they arise more or less spontaneously,⁴⁷ and then with the phase of consolidation quickly disappear – it is quite possible to support the idea of such a system without having to invoke Athens. A case in point is the beginning of the Green Party in West Germany from 1980, whose 'democracy of the base' involved the (meanwhile abandoned) principle of rotation of party posts and seats in parliaments recalling Athenian practices (apart from the fact that the Greens had – and have – a quota for women), without, however, anyone thinking to argue that the Greens had taken the idea from antiquity.

The same goes for demands that the parliamentary system be complemented by allowing more space for popular initiatives and plebiscites. This has been

⁴² Johannes Agnoli, 'Die Transformation der Demokratie', in Johannes Agnoli and Peter Brückner, *Die Transformation der Demokratie*, Frankfurt am Main 1968, 1–87, here at 44f. See *ibid.*, 55: 'the brief democratic period of Jacobin terror'.

⁴³ Fritz Vilmar, 'Systemveränderung auf dem Boden des Grundgesetzes. Gesellschaftsreform als Prozeß umfassender Demokratisierung', *Aus Politik und Zeitgeschichte* 18, 1974, 3–29, here at 3f.

⁴⁴ See, for instance, the various contributions in *Probleme der Demokratie heute. Tagung der Deutschen Vereinigung für Politische Wissenschaft in Berlin* (autumn 1969), Opladen 1971 (= *Politische Vierteljahresschrift*, Sonderheft 2); and for the opposing position Gerhard A. Ritter, "Direkte Demokratie" und Rätewesen in Geschichte und Theorie' [1968], in his *Arbeiterbewegung, Parteien und Parlamentarismus. Aufsätze zur deutschen Sozial- und Verfassungsgeschichte des 19. und 20. Jahrhunderts*, Göttingen 1976, 292–316; 389–394.

⁴⁵ Hannah Arendt, 'Totalitarian Imperialism: Reflections of the Hungarian Revolution', *Journal of Politics* 20, 1958, 5–43.

⁴⁶ Dolf Sternberger, 'Politie und Leviathan. Ein Streit um den antiken und den modernen Staat' [1986], in his *Verfassungspatriotismus*, Frankfurt am Main 1990, 232–300, here at 254.

⁴⁷ In the recent past following the collapse of communist systems they took the form of 'round tables'.

implemented recently in a number of parliamentary democracies, especially in Europe, in many variants,⁴⁸ whereas all efforts to introduce direct democratic procedures into Germany's constitutional order have so far failed⁴⁹ (it is a different matter at the level of the individual *Länder*). The experience of Switzerland can be praised or disputed, and either can involve argument from principles or from outcomes. Again, the way in which Bonapartist regimes and the autocratic and totalitarian systems of the twentieth century used such measures for the purposes of manipulation can also be brought into the argument.⁵⁰

This debate involves a number of important issues, but has no need of any reference to Athens. Genuine direct democracy in the form of the *Landsgemeinde*, today existent only in the Cantons of Glarus and Appenzell Innerrhoden,⁵¹ of course has no place in this discussion.

Recently there has been discussion of using selection by lot as in Athens, conceived as a means of countering political apathy and the decline of electoral participation.⁵² Some consider that this makes sense only on the municipal level,⁵³ but others argue for the use of selection by lot to make appointments

⁴⁸ See the survey by Laurence Morel, 'Referendum', in Michel Rosenfeld and András Sajo, eds., *The Oxford Handbook of Comparative Constitutional Law*, Oxford 2012, 501–528.

⁴⁹ In 2002 the German *Bundestag* (national parliament) voted for the introduction of referenda but the two-thirds majority necessary for a constitutional amendment was missed as had been foreseeable. Circumstances suggest that it was more a political show by the government than a serious attempt.

⁵⁰ Recently, some consensus has been reached in agreeing that the experience of the Weimar Republic does not unequivocally speak against referenda (see p. 317, fn. 10). Even the decidedly anti-plebiscitary stance of West Germany's Basic Law was not primarily due to a 'lesson from Weimar', but rather expressed concern in the immediate post-war years that this instrument could be misused by the Communists; see Otmar Jung, *Grundgesetz und Volksentscheid. Gründe und Reichweite der Entscheidungen des Parlamentarischen Rats gegen Formen direkter Demokratie*, Opladen 1994, together with other writings by this author. It does not follow from this that one has to agree with him that plebiscitary elements should be included in the Basic Law.

⁵¹ The *Landsgemeinden* of Appenzell Außerrhoden (see fn. 24), Nidwalden and Obwalden were abolished in the years 1996–1998.

⁵² Oliver Dowlen, *The Political Potential of Sortition. A Study of the Random Selection of Citizens for Public Office*, Exeter 2008 (he also deals with the use of random selection in Florence and Venice) is rather cautious about any chance of a revival, whereas the German political scientist Hubertus Buchstein has written extensively about the use of this procedure in different contexts: most recently, *Demokratie und Lotterie. Das Los als politisches Entscheidungsinstrument von der Antike bis zur EU*, Frankfurt am Main 2009; 'Reviving Randomness for Political Rationality: Elements of a Theory of Aleatory Democracy', *Constellations* 17, 2010, 435–454. Meanwhile there is almost a wave of publications on a possible survival of sortition in various countries. – Reviewing John W. Headlam, *Election by Lot at Athens* (1891), who saw in sortition the decisive difference between ancient and modern democracy, Reginald W. Macan had asked: 'Is it even so certain as Mr. Headlam seems to assume that the actual institution of appointment by Lot will not be revived by some democracy of the future?'; *Classical Review* 6, 1892, 60.

⁵³ Richard G. Mulgan, 'Lot as a Democratic Device of Selection', *Review of Politics* 46, 1984, 539–560; Benjamin Barber, *Strong Democracy*, Berkeley [1984], 3rd ed., 2003, 290–293; Robert A. Dahl, *Democracy and Its Critics*, New Haven 1989, 340. For more recent experiments in

to a second chamber,⁵⁴ for example, as a replacement for the British upper house, reform of which has stalled after the exclusion of the majority of hereditary lords from a right to vote in the House of Lords.⁵⁵ Of course, ideas and implications can be developed from the way in which selection by lot was practised in Athens (and elsewhere), but that does not amount to an answer to the question of whether repetition of the procedure will today have the desired effect, nor how it might be integrated in a quite different constitutional structure – it is not enough to presume that Athens represents an eternal model.⁵⁶ It should be recalled that we lack any solid evidence concerning the reason for the adoption of sortition in Athens, but can only deduce the intentions from a reconstruction of the effects.

For some time now there has also been discussion about the prospects that computer and Internet technology offer for a return to direct democracy. In principle, this idea is not that new. A member of the German National Assembly in 1848–1849 suggested that assemblies of voters in constant session could telegraph in their votes to the government.⁵⁷ In the later 1920s Carl Schmitt had foreseen that

one day useful invention will provide every person with the means of constantly expressing his opinion on political matters without leaving his home, using an apparatus that automatically registered this in a central exchange where it would only need to be read off.

different countries to select citizens by lot for posts at district or city level see Anja Röcke, *Losverfahren und Demokratie. Historische und demokratietheoretische Perspektiven*, Münster 2005, 93ff.

⁵⁴ As with a proposal in Denmark that annually 70,000 citizens (out of 4 million persons entitled to vote) should be randomly selected and form a sort of second chamber which then vote electronically, reported by Mogens H. Hansen, 'Direct Democracy, Ancient and Modern', in *Thinking Like a Lawyer. Essays on Legal and General History for John Crook on His Eightieth Birthday*, ed. Paul McKechnie, Leiden 2002, 135–149. For similar ideas in an American context see Axel Zakaras, 'Lot and Democratic Representation. A Modest Proposal', *Constellations* 17, 2010, 455–471.

⁵⁵ Since 1999 only (or still) ninety-two hereditary Lords have retained their right to vote, but plans for a reorganisation of the upper house have yet to be realised. Anthony Barnett and Peter Carty, *The Athenian Option. Radical Reform for the House of Lords* [1998], Exeter, 2nd ed., 2008, seek to have all members appointed by lot. The authors refer to this as the 'Athenian solution', but do not examine the historical case at all, and seem to believe that simply invoking the name of Athens is in itself an effective argument.

⁵⁶ Cynthia Farrar, 'Taking Our Chances with the Ancient Athenians', in *Démocratie athénienne – démocratie moderne*, 167–217, with discussion 218–234. Farrar throws up a number of relevant questions (such as voluntary or compulsory participation in a lottery of political posts), but she couples her analysis of the Athenian case with advocating selection by lot in present-day democracy, as if the Athenian example could strengthen her case.

⁵⁷ Carl Theodor Gravenhorst in a meeting of the moderate left during February 1849; in *Das Frankfurter Parlament in Briefen und Tagebüchern*, ed. Ludwig Bergsträßer, Frankfurt am Main 1929, 264.

However, as a ‘right-wing Rousseauist’, Schmitt thought this undesirable, since this would involve a privatisation of opinion formation, destroying the General Will.⁵⁸

In 1994 the American vice president Al Gore expressed the view that the Internet would make possible a ‘new Athenian era of democracy’.⁵⁹ Given that the forms of communication are quite different,⁶⁰ that cannot be taken very seriously, but serves as evidence of the magic that the Athenian model still commands. (The latter can also be seen in the current European debate on the financial disaster in Greece when there are several voices that one had to take into account that ‘the Greeks’ had invented democracy. For obvious reasons the other great societal and constitutional model of ancient Greece, Sparta, is not mentioned.)

ATHENIAN DEMOCRACY AND THE EUROPEAN UNION

When the European Constitutional Treaty was drafted by the ‘European Convention’ (or ‘Convention on the Future of Europe’) in June 2003 it used as its epigraph the statement from Pericles’ Funeral Oration to the effect that democracy means the rule of the majority, evoking some of this magic. This quotation in the original Greek, accompanied by translations into the respective vernaculars, was subsequently removed and did not enter the last version passed in June 2004 by the heads of states or governments of the member states, though it seems not to be clear why this was done.⁶¹ Perhaps someone remembered that in Athens women were excluded from political participation. Alternatively, it was perhaps realised that Pericles’ statement stemmed from the context of the Peloponnesian War, fought between Sparta and Athens but involving all of Greece – in itself not an especially good model for a peaceful

⁵⁸ Carl Schmitt, *Verfassungslehre* [1928], Berlin 1970, 245f.

⁵⁹ Cited in Hubertus Buchstein, ‘Bittere Bytes: Cyberbürger und Demokratietheorie’, *Deutsche Zeitschrift für Philosophie* 44, 1996, 583–607, here at 585.

⁶⁰ There is no doubt that the technical possibilities make new forms of participation available, which can and will change the character of democracy. Whether political decisions should be made in this way is a different issue. There are problems with, for example, advantages enjoyed by groups that are especially practised with the new technologies, and the anonymity of those taking part in discussion. In Germany there was the emergence of the new ‘Pirate Party’ in 2011 that now has representatives in some parliaments of the member states. The initial success came from their invitation to citizens to participate in discussion and decision-making through the Internet, and a promise of complete transparency. The outcome was a number of ‘flame wars’. More recently the party has lost a great deal of support; in the federal election of October 2013 they gained only 2.2 per cent of the vote and thus failed to reach the qualifying level of 5 per cent of the vote necessary to enter parliament.

⁶¹ Armin von Bogdandy, ‘Europäische Verfassungspolitik als Identitätspolitik. Theoretische Verortung und Kritik’, *Kritische Justiz* 38, 2005, 110–126; Reinhard Brandt, “‘Verantwortung vor Gott’ und andere Koordinaten: Zur Präambel der EU-Verfassung”, *Zeitschrift für Theologie und Kirche* 103, 2006, 280–305; Mogens H. Hansen, ‘Thucydides’ Description of Democracy (2.37.1) and the EU Convention of 2003’, *Greek, Roman & Byzantine Studies* 48, 2008, 15–26.

European political order. But it cannot be said that the cancellation of the quotation from Pericles had any significant role in the collapse of the Constitutional Treaty in the form it took in 2004.⁶²

Since the Constitutional Treaty should guarantee ‘more democracy’ within the European Union it is unlikely that objection against this preamble stemmed from doubts that it did not fit the peculiar legal status of the European Union, with its unique combination of supranational and intergovernmental elements; and that ‘democracy’ may not, either in the short run or the long,⁶³ be an adequate category⁶⁴ when the principle of a majority of all those qualified to vote does not prevail.⁶⁵

There are a number of questions that reference to Athens cannot resolve: how can parliamentarism and civic participation be combined in a co-ordinated manner in a society based on the division of labour, and how might parliamentarians be paid; how can the social policy,⁶⁶ education and the media⁶⁷ so be arranged that equal rights of participation do actually translate into equality of chances (and which tasks should be assumed by the state, and which rather

⁶² The treaty concerning a European constitution was rejected in 2005 following plebiscites in France and the Netherlands. The motives for this rejection were various; but the concept ‘constitution’ is linked to that of the ‘state’, and this was clearly a handicap to acceptance, since there is no call for a federal state that supersedes the national state. The treaty subsequently negotiated in Lisbon came into force at the end of 2009. In its judgement on the Lisbon Treaty, the German constitutional court determined (June 2009) that the Basic Law did allow for the transfer of extensive sovereign rights to the European Union, but this could not lead to the surrender of the principle of democratic self-determination. If this border were infringed, then a new constitution for Germany would be needed. Critics have objected that this is conceived too much in terms of a zero-sum game. If the European Union gains capacities to solve problems that cannot be resolved at the national level, then this is not at the cost of member states.

⁶³ The hope that a European civil society can develop that creates a new form of ‘transnational’ democracy is one held by Jürgen Habermas, *Die postnationale Konstellation*, Frankfurt am Main 2003; *Zur Verfassung Europas*, Berlin 2011. The opposing position is that there is no such thing as a European *demos* that could adopt a constitution: Dieter Grimm, ‘Does Europe Need a Constitution?’, *European Law Journal* 1, 1995, 282–302, and response from Habermas, *ibid.*, 303–307.

⁶⁴ One can even say that the European Union looks more like a new type of empire based, of course, not on military domination but on consensus, a multi-level system of governance, new forms of transnational integration, providing an attractive model beyond its borders; see inter alia Ulrich Beck and Edgar Grande, ‘Empire Europa: Politische Herrschaft jenseits von Bundesstaat und Staatenbund’, *Zeitschrift für Politik* 52, 2005, 397–420. However, the political idea of ‘empire’ is historically incriminated.

⁶⁵ The seats in the European Parliament are allocated to member states according to ‘degressive proportionality’. In Germany around 850,000 inhabitants gain one seat, in Malta about 70,000. Comparisons with the US Senate or the Swiss *Ständerat* (Council of States) are not relevant, since the European Parliament has only one chamber.

⁶⁶ There are obviously great differences between Europe, in which state provision is a basic pillar of democracy, and the United States, in which large parts of political and public life are marked by the idea that this is the work of the devil.

⁶⁷ There is a particular problem with the connection of political power and the control of the media, Berlusconi being an example of this: Colin Crouch, *Post-democracy*, Cambridge 2004.

not); how can the representation of social interests be organised so that political decisions are made in the public interest; how can a common political culture be preserved in a period of growing ethnic and religious multiculturalism; how can the self-determination of national states (or a supranational political union) be defended in the face of the forces of global capitalism, and the loyalty of citizens maintained in situations of economic crisis; in what way is a democratic state based on the rule of law in a position to defend itself faced with enemies and terrorists of a completely new type, without becoming involved in the problem that the 'greatest possible security corresponds to the greatest possible restriction of personal liberty';⁶⁸ how is democracy to be organised at the levels of communes, member states, national states and European Union, if it cannot be decided which level commands the greatest degree of legitimation.⁶⁹

Nonetheless, so long as democracy and the inadequacy of its realisation in a state not consisting of Gods (Rousseau)⁷⁰ is an issue, Athens will probably not disappear from discussion. Hardenberg, the former (and future) Prussian chief minister, wrote in 1807 that 'pure democracy we must leave for 2440, if it is ever to be made for men'.⁷¹ There will be enough time then to prepare the celebrations for 3,000 Years of Democracy.

⁶⁸ Rudolf Bultmann, 'Die Bedeutung des Gedankens der Freiheit für die abendländische Kultur', in his *Glauben und Verstehen. Gesammelte Aufsätze*, Bd. 2, 4th ed., Tübingen 1965, 274–293, here at 284. Bultmann is here referring to social safety.

⁶⁹ Christoph Möllers, 'Multi-Level Democracy', *Ratio Juris* 24, 2011, 247–266.

⁷⁰ *Contrat social*, Book III, Ch. 4; see p. 113.

⁷¹ Karl August von Hardenberg, in his Riga memorandum, 'Über die Reorganisation des Preußischen Staats', 1807, in *Deutsche Geschichte in Quellen und Darstellung*, Bd. 6: *Von der Französischen Revolution bis zum Wiener Kongreß 1789–1815*, Walter Demel and Uwe Puschner, eds., Stuttgart 1995, 88. Hardenberg is alluding to Louis-Sébastien Mercier's utopian novel, *L'an 2440* [1770]. (On this work, a bestseller at that time, see Harvey Chisick, 'Utopia, Reform and Revolution. The Political Assumptions of L. S. Mercier's *L'an 2440*', *History of Political Thought* 22, 2001, 648–668.) Hardenberg commented at the same point about his own times: 'The democratic principle in a monarchical government: this seems to me the form appropriate for the present age.' By democratic principles he meant individual rights, not political participation.

Further Reading

It is not possible even to cite a small selection of the literature relating to Athens, the English, American and French Revolutions, political developments in the nineteenth and twentieth centuries and the many political thinkers, historians and social scientists mentioned in this book. The following list contains a selection of monographs and collective volumes which relate to the major subjects of this book.

Athenian Democracy

- Azoulay, Vincent, *Périclès. La démocratie athénienne à l'épreuve du grand homme*, Paris: Colin 2010.
- Bleicken, Jochen, *Die athenische Demokratie*, Paderborn: Schöningh, second edition 1994.
- Démocratie athénienne – démocratie moderne. Tradition et influences*, Vandoeuvres: Fondation Hardt 2010 (Entretiens sur l'Antiquité classique 56).
- Eder, Walter (ed.), *Die athenische Demokratie im 4. Jahrhundert v. Chr.*, Stuttgart: Steiner 1995.
- Finley, Moses I., *Democracy, Ancient and Modern*, London: Chatto & Windus 1973 (second edition – London: Hogarth Press 1985).
- Flaig, Egon, *Die Mehrheitsentscheidung. Entstehung und kulturelle Dynamik*, Paderborn: Schöningh 2013 (deals with the principle of majority-rule in broad comparative perspectives, but puts emphasis on the Athenian model).
- Hansen, Mogens H., *The Athenian Ecclesia. A Collection of Articles 1976–83*, Copenhagen: Museum Tusulanum Press 1983.
- The Athenian Ecclesia II. A Collection of Articles 1983–89*, Copenhagen: Museum Tusulanum Press 1989.
- The Athenian Democracy in the Age of Demosthenes*, Oxford: Blackwell 1991.
- Harris, Edward M. and Rubinstein, Lene (eds.), *The Law and the Courts in Ancient Greece*, London: Duckworth 2004.
- Herman, Gabriel, *Morality and Behaviour in Democratic Athens*, Cambridge: Cambridge University Press 2006.

- Liddel, Peter, *Civic Obligation and Individual Liberty in Ancient Athens*, Oxford: Oxford University Press 2007.
- Ma, John, Papazarkas, Nikolaos and Parker, Robert (eds.), *Interpreting the Athenian Empire*, London: Duckworth 2009.
- Meier, Christian, *Die Entstehung des Politischen bei den Griechen*, Frankfurt am Main: Suhrkamp 1980 [*The Greek Discovery of Politics*, Cambridge, MA: Harvard University Press 1990].
- Ober, Josiah, *Mass and Elite in Democratic Athens. Rhetoric, Ideology, and the Power of the People*, Princeton, NJ: Princeton University Press 1989.
- Ostwald, Martin, *From Popular Sovereignty to the Sovereignty of Law. Law, Society, and Politics in Fifth-Century Athens*, Berkeley: University of California Press 1986.
- Rhodes, Peter J., *A History of the Classical Greek World, 478–323 BC*, Oxford: Blackwell 2006.
- Samons, Loren J. (ed.), *The Cambridge Companion to the Age of Pericles*, Cambridge: Cambridge University Press 2007.
- Welwei, Karl-Wilhelm, *Das klassische Athen. Demokratie und Machtpolitik im 5. und 4. Jahrhundert*, Darmstadt: Wissenschaftliche Buchgesellschaft 1999.

Reception of Ancient Political Theory

- Nippel, Wilfried, *Mischverfassungstheorie und Verfassungsrealität in Antike und früher Neuzeit*, Stuttgart: Klett-Cotta 1980.
- Pocock, John G. A., *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton: Princeton University Press 1975.
- Skinner, Quentin, *The Foundations of Modern Political Thought*, 2 vols., Cambridge: Cambridge University Press 1978.
- Vlassopoulos, Kostas, *Politics. Antiquity and Its Legacy*, London: Tauris 2010.

Athens and Sparta in the View of Modernity

- Cambiano, Giuseppe, *Polis. Un modello per la cultura europea*, Rome: Laterza 2000.
- Demetriou, Kyriacos, *George Grote on Plato and Athenian Democracy. A Study in Classical Reception*, Frankfurt am Main: Lang 1999.
- Guerci, Luciano, *Libertà degli Antichi e libertà dei Moderni. Sparta, Atene e i "philosophes" nella Francia del Settecento*, Naples: Guida 1979.
- Hansen, Mogens H., *The Tradition of Ancient Greek Democracy and Its Importance for Modern Democracy*, Copenhagen: Royal Danish Academy 2005 (Det kongelige Danske Videnskabernes Selskab. Historisk-filosofiske Meddelelser 93).
- Jenkyns, Richard, *The Victorians and Ancient Greece*, Cambridge, MA: Harvard University Press 1980.
- Nelson, Eric, *The Greek Tradition in Republican Thought*, Cambridge: Cambridge University Press 2004.
- Rawson, Elizabeth, *The Spartan Tradition in European Thought*, Oxford: Clarendon Press 1969.
- Roberts, Jennifer Tolbert, *Athens on Trial. The Antidemocratic Tradition in Western Thought*, Princeton: Princeton University Press 1994.

American Revolution and Antiquity

- Bederman, David J., *The Classical Foundations of the American Constitution. Prevailing wisdom*, Cambridge: Cambridge University Press 2008.
- Niggemann, Ulrich and Ruffing, Kai (eds.), *Antike als Modell in Nordamerika? Konstruktion und Verargumentierung 1763–1809*, Munich: Oldenbourg 2011 (Historische Zeitschrift, Beiheft 55).
- Rahe, Paul A., *Republics, Ancient and Modern. Classical Republicanism and the American Revolution*, Chapel Hill, NC: University of North Carolina Press 1992.
- Reinhold, Meyer, *Classica Americana. The Greek and Roman Heritage in the United States*, Detroit: Wayne State University Press 1984.
- Richard, Carl J., *The Founders and the Classics. Greece, Rome, and the American Enlightenment*, Cambridge, MA: Harvard University Press 1994.
- Sellers, Mortimer N. S., *American Republicanism. Roman Ideology in the United States Constitution*, Washington Square, NY: New York University Press 1994.

French Revolution and Antiquity

- Bouineau, Jacques, *Les toges du pouvoir ou la révolution de droit antique, 1789–1799*, Toulouse: Eché 1986.
- Mossé, Claude, *L'antiquité dans la révolution française*, Paris: Michel 1989.
- Parker, Harold T., *The Cult of Antiquity and the French Revolutionaries. A Study in the Development of the Revolutionary Spirit*, Chicago: University of Chicago Press 1937.
- Vidal-Naquet, Pierre, *La démocratie grecque vue d'ailleurs. Essais d'historiographie ancienne et moderne*, Paris: Flammarion 1990.

History of Classical Studies

- Christ, Karl, *Hellas. Griechische Geschichte und deutsche Geschichtswissenschaft*, Munich: Beck 1999.
- Momigliano, Arnaldo D., *Contributi alla storia degli studi classici e del mondo antico*, 9 Vols., Rome: Edizioni di Storia e Letteratura 1955–1992.
- Nippel, Wilfried, *Klio dichtet nicht. Studien zur Wissenschaftsgeschichte der Althistorie*, Frankfurt am Main: Campus 2013.
- Rhodes, Peter J., *Ancient Democracy and Modern Ideology*, London. Duckworth 2003.

Fascism, National Socialism and Antiquity

- Losemann, Volker, *Nationalsozialismus und Antike. Studien zur Entwicklung des Faches Alte Geschichte 1933–1945*, Hamburg: Hoffmann & Campe 1977.
- Näf, Beat, *Von Perikles zu Hitler? Die athenische Demokratie und die deutsche Althistorie bis 1945*, Bern: Lang 1986.
- Näf, Beat (ed.), *Antike und Altertumswissenschaft in der Zeit von Faschismus und Nationalsozialismus*, Mandelbachtal: Edition Cicero 2001.

Modern Democracy

- Böckenförde, Ernst-Wolfgang, *Staat, Gesellschaft, Freiheit. Studien zur Staatstheorie und zum Verfassungsrecht*, Frankfurt am Main: Suhrkamp 1976 [*State, Society and Liberty. Studies in Political Theory and Constitutional Law*, New York: Berg 1991].
- Buchstein, Hubertus, *Öffentliche und geheime Stimmabgabe. Eine wahlrechtsbistorische und ideengeschichtliche Studie*, Baden-Baden: Nomos 2000.
- Canfora, Luciano, *Democracy in Europe. A history of an ideology*, Malden, MA: Blackwell 2006 [*La democrazia. Storia di un'ideologia*, Rome: Laterza 2004].
- Dahl, Robert A., *On Democracy*, New Haven: Yale University Press 1998.
- Dunn, John, *Setting the People Free. The story of democracy*, London: Atlantic Books 2005.
- Dunn, John (ed.), *Democracy. The Unfinished Journey. 508 BC to AD 1993*, Oxford: Oxford University Press 1992.
- Fontana, Biancamaria (ed.), *The Invention of the Modern Republic*, Cambridge: Cambridge University Press 1994.
- Friedrich, Carl Joachim, *Constitutional Government and Democracy. Theory and Practice in Europe and America*, Boston: Ginn 1950.
- Held, David, *Models of Democracy*, Cambridge: Polity Press, 3rd ed. 2006.
- Keane, John, *The Life and Death of Democracy*, London: Simon & Schuster 2009.
- Manin, Bernard, *The Principles of Representative Government*, Cambridge: Cambridge University Press 1997.
- Müller, Jan-Werner, *Contesting Democracy. Political Ideas in Twentieth-Century Europe*, New Haven: Yale University Press 2011.
- Saage, Richard, *Demokratiethorien. Historischer Prozess – Theoretische Entwicklungen– Soziotechnische Bedingungen. Eine Einführung*, Wiesbaden: Verlag für Sozialwissenschaften 2005.
- Sartori, Giovanni, *The Theory of Democracy Revisited*, Chatham, NJ: Chatham House 1987.
- Urbinati, Nadia, *Representative Democracy. Principles and Genealogy*, Chicago: University of Chicago Press 2006.
- Vorländer, Hans, *Demokratie. Geschichte, Formen, Theorie*, Munich: Beck 2003.

Index

“f.” after page numbers means: ‘and following page’

- Abbt, Thomas (1738–1766), 114
abolitionists, 143, 176, 266, 361; *see also*
 slavery
Acton; *see* Dalberg-Acton
Adams, John (1735–1826), 119fn4, 120,
 125f., 129, 131, 133, 135f., 145f., 157,
 186fn207, 250
Addison, Joseph (1672–1719), 123
Adler, Georg (1863–1908), 231
Aeschines (389–314 BC), 40fn121,
 42fn137, 70
Aeschylus (525–456 BC), 74
Agis IV, Spartan King (244–241 BC), 93
agrarian laws, 96, 138fn113, 183f., 260fn78,
 320fn27, 332
Alcibiades (450–404 BC), 15fn20, 17,
 43fn142, 49, 63, 66fn259, 77, 96, 232f.,
 237, 245fn150, 263, 272, 314
Alexander III, the Great, King of Macedon
 (336–323 BC, *356), 73, 189, 245,
 258, 272
amnesty, Athenian of 403 BC, 39, 64f.,
 218f., 232fn70, 257
Amyot, Jacques (1513–1593), 112
Anacharsis, legendary Scythian prince, 111, 178
Anne, Queen of Great Britain and Ireland
 (1702–1714, *1665), 91
Antigonos Gonatas, King of Macedon
 (283–239 BC, *c. 319), 105
Antipatros, Vice-Regent of Macedon
 (†319 BC), 272
Antiphon of Rhamnus (c. 480–411 BC), 54
Antisthenes (c. 455–360 BC), 80
Antonius [Marcus Antonius] (83–30 BC), 138,
 161, 167fn108
Anytus († after 395 BC), 41fn128, 237
archons
 in Athens, 17f., 20, 23, 40, 51f., 57,
 213, 231
 in Naples, 188
Arendt, Hannah (1906–1975), 158, 345f., 365
Areopagus, 18, 20f., 51, 72, 172fn145
Arginusae trial, 208, 218, 221, 231, 234–236,
 238, 243, 257, 320, 345, 352, 362
Aristides (†c. 467 BC), 16fn26, 31fn85,
 122f., 343
aristocracy, concept of, 75, 82, 85, 95f., 125,
 135, 280, 289, 358
Aristogeiton (†514 BC), 12, 163
Aristophanes (c. 445–386 BC), 17, 22, 25,
 47f., 56, 82, 105, 172, 237, 241, 255,
 264, 269, 309
Aristotle (384–322 BC), 30, 71, 75, 79, 81–83,
 86, 88, 94f., 98f., 121, 134, 143, 152,
 206, 226, 231f., 249fn11, 258, 270, 276,
 279, 311fn177, 345, 349fn60, 351, 353
Arndt, Ernst Moritz (1769–1860), 199
Aspasia († after 428 BC), 24fn53, 32fn92, 122
assembly, popular
 in Athens, 15f., 19f., 32–48, 55, 61–63,
 66–72, 79fn1, 80–83, 95, 99, 102, 126,
 196, 216, 221f., 228, 231, 234f., 241,
 244, 264, 306, 334, 343, 345, 347
 in Rome, 84f., 108, 112f., 310f.
 in Sparta, 84f.
Athenaeus (3rd century AD), 109, 199, 250

- Augustine [Aurelius Augustinus] (354–430), 85
- Augustus, Roman Emperor (27 BC–14 AD, *63 BC), 93, 138, 159, 167fn108, 189, 324
- Babeuf, François Noël [‘Gracchus’] (1760–1797), 181, 183–185, 250fn15
- Bakunin, Michail Alexandrowitsch (1814–1876), 269fn137, 303
- ballot, secret vote, 22fn47, 34, 38, 47, 54, 56f., 67, 113, 179fn177, 236f., 253, 259fn75, 262f., 295, 310f., 312fn181, 313, 318
- Bamberger, Ludwig (1823–1899), 294
- Barère, Bertrand (1755–1841), 191
- Barnave, Antoine (1761–1793), 153
- Barthélemy, Jean Jacques (1716–1795), 111, 159, 178
- Bauer, Bruno (1809–1882), 178
- Baumgarten, Hermann (1825–1893), 278f., 295f.
- Bebel, August (1840–1913), 303, 308
- Beccaria, Cesare (1738–1794), 60
- Belgium, 263, 284, 307fn156, 314
- Beloch, Karl Julius (1854–1929), 221, 224, 271, 319, 325fn56
- Below, Georg von (1858–1927), 314
- Bentham, Jeremy (1748–1832), 174, 251, 262fn93, 266fn121
- Bergk, Theodor (1812–1881), 241f.
- Berlin, Isaiah (1909–1997), 210fn31, 348
- Bernstein, Eduard (1850–1932), 101, 301
- Berve, Helmut (1896–1979), 329, 335–337
- Besold, Christoph (1577–1638), 88
- bicameralism; *see* two-chamber system
- Biedermann, Karl (1812–1901), 290
- Bill of attainder, 166fn97, 236, 255
- Billaud-Varenne, Jean Jacques Nicolas (1756–1819), 170, 191
- Bismarck, Otto von (1815–1898), 242, 264, 272, 295–298, 303, 312fn183, 326f.
- Blackie, John Stuart (1809–1895), 267f.
- Blackstone, William (1723–1780), 90, 120, 283fn25
- Blanc, Louis (1811–1882), 287, 301fn118
- Blanqui, Louis-Auguste (1805–1881), 185, 292, 303
- Bleicken, Jochen (1926–2005), 353f.
- Blos, Wilhelm (1849–1927), 202
- Bluntschli, Johann Caspar (1808–1881), 275, 280
- Böckh, August (1785–1867), 109, 215, 226f., 252f.
- Bodin, Jean (1529/30–1596), 82f., 88, 98
- Bogner, Hans (1885–1948), 326
- Bolingbroke [Henry St. John, 1st Viscount Bolingbroke] (1678–1751), 91, 139
- Bonald, Louis Gabriel Ambroise de (1754–1840), 209
- Bonaparte, Louis; *see* Napoleon III
- Boutmy, Émile (1835–1906), 150f.
- Brissot [de Warville], Jacques Pierre (1754–1793), 152fn22, 153, 165, 169, 174fn154, 175
- Bruni, Leonardo (1369–1444), 86
- Brutus [Lucius Iunius Brutus] (Roman consul 509 BC), 122–124, 140, 159, 162f., 182
- Brutus [Marcus Iunius Brutus] (85–42 BC), 122–124, 140, 160, 163, 188
- Bulwer-Lytton, Edward (1803–1873), 256
- Buonarroti, Filippo (1761–1837), 181, 185
- Burckhardt, Jacob (1818–1897), 2, 215–219, 224–226, 273, 333, 353f.
- Burke, Edmund (1729–1797), 116, 135, 152, 175, 187fn215, 198, 248, 255
- Bürkli, Karl (1823–1901), 300
- Byron, George Gordon [Lord Byron] (1788–1824), 279
- Caesar [Gaius Iulius Caesar] (100–44 BC), 6, 97, 103, 123, 134, 146, 159f., 163, 165–167, 169, 189, 296, 324, 327, 331f.
- Caesarism, 293–296, 327
- Camillus [Marcus Furius Camillus] (†364 BC), 122f., 163, 183
- Campe, Joachim Heinrich (1746–1818), 148f.
- Carlyle, Thomas (1795–1881), 154, 250, 289
- Cassander, King of Macedon (305–297 BC, *c. 355), 65
- Catilina [Lucius Sergius Catilina] (108–62 BC), 161, 164–166, 169
- Cato [Marcus Porcius Cato ‘Censorius’] (234–149 BC), 122–124, 163, 238, 255f.
- Cato [Marcus Porcius Cato ‘Uticensis’] (95–46 BC), 122–124, 163, 188
- censors, Roman, 45, 112, 130fn66, 206fn9, 209, 220
- Chamberlain, Houston Stewart (1855–1927), 277, 309fn168
- Charlemagne [Charles the Great], Frankish King, Roman Emperor (768/800–814, *742), 189
- Charles I, King of England, Scotland and Ireland (1625–1649, *1600), 89f., 94fn81, 136, 164fn89, 167, 255
- Charles II, King of England, Scotland and Ireland (1660–1685, *1630), 100

- Charles X, King of France (1824–1830,
*1757, †1836), 282
- Chartists, 102, 249f., 264fn109, 267f., 286
- Chateaubriand, François-René de
(1768–1848), 198
- checks and balances; separation, division
of powers, 4, 68, 87, 91, 125, 133,
136, 138f., 147, 151, 156f., 194,
225, 281, 288, 350, 352–354,
363fn32
- Chénier, André Marie de (1762–1794), 162
- Cicero [Marcus Tullius Cicero] (106–43
BC), 62, 79, 85f., 93, 121f., 125, 160f.,
164–166, 188f., 213, 224, 249fn111
- Cimon (c. 510–c. 450 BC), 15, 16fn26,
20fn39, 47
- Cincinnatus [Lucius Quinctius Cincinnatus]
(c. 519–c. 430 BC), 122–124, 163
- Cleisthenes († after 507 BC), 1, 12–14, 18,
245, 254, 350
- Clemenceau, Georges (1841–1929), 321
- Cleon (†422 BC), 43fn141, 47f., 62fn240, 76,
81, 196, 221, 228, 231, 241, 255f., 264,
269, 271, 298, 308f., 314, 343
- Cleophon (†404 BC), 232
- Cloots, Jean-Baptiste ['Anacharsis']
(1755–1794), 177f.
- Coke, Edward (1552–1634), 120, 141
- Collot-d'Herbois, Jean-Marie (1749–1796),
170fn126, 191
- comedy, Athenian, 30, 32, 54, 82, 172, 217,
240–242, 269, 348, 355
- Committee of Public Safety, 152fn22,
155fn39, 156, 165, 168, 170, 172, 177,
191fn3, 192, 197, 234, 250, 303
- commonwealth, concept of, 93fn77, 94
- Commune of Paris
during the French Revolution, 167, 181
in 1871, 200, 302–304, 365
- communism, communists, 83, 101, 111, 185,
270, 286–288, 294, 311, 317, 328
- Condorcet [Marie Jean Antoine Nicolas
Caritat, Marquis de C.] (1743–1794),
150f., 154–157, 174f., 177, 193, 195,
205, 301fn118, 306, 348
- confederations, ancient, 107, 121f.
- Connecticut, constitution of, 120
- Considerant, Victor (1808–1893),
290fn57, 300
- Constant, Benjamin [Henri-Benjamin Constant
de Rebecque] (1767–1830), 162, 195,
204–211, 215, 219, 223f., 257, 263, 275,
319f., 340, 348f., 352, 354
- Constitution
concept(s) of, 3f., 68f., 100, 127, 139,
149–156, 171, 187fn215, 227, 249f., 255,
279, 281–283, 357, 359f., 362–364
mixed constitution, 6fn12, 84f., 87, 89–94,
98, 99fn105, 124f., 133, 136, 146, 157,
186, 250, 353
revision of constitutions, 130, 143f.,
155, 306f.
constitutional conventions, 100fn114, 131,
143, 155, 171fn138, 249
constitutional courts, 68f., 186, 188, 347,
364fn36
constitutional monarchy, 153, 158, 281, 283f.
consuls, consulate
in France, 188f.
in Rome, 84, 123, 138, 160, 189
Corneille, Pierre (1606–1684), 105
Cornelius Nepos (c. 110/100–c. 25 BC), 161f.
Cortés, Donoso (1809–1853), 155fn36,
292, 317
- Council of 500
in Athens, 13, 20, 23, 33–40, 43fn141, 63f.,
67f., 70, 81f., 95, 110, 232, 235
in France, 186
- councils of workers, 302–304, 318, 365
- Couthon, Georges (1755–1794), 165, 168f.
- Critias (†403 BC), 237
- Cromwell, Oliver (1599–1658), 93f., 96f.,
100f., 124, 134, 152fn20, 166f., 169,
182, 304
- Crossman, Richard (1907–1974), 341
- Cucumus, Conrad (1792–1861), 275
- Dahlmann, Friedrich Christoph (1785–1860),
171, 203, 283fn25
- Dalberg-Acton, John Emerich Edward [Lord
Acton] (1834–1902), 218f., 224, 340
- Danton, Georges (1759–1794), 166–168,
169fn119, 176, 180
- David, Eduard (1863–1930), 317f.
- David, Jacques-Louis (1748–1825), 159, 161,
163, 174
- De Lolme [Delolme], Jean Louis (1740–1806),
91, 157, 283fn25
- Declarations (Bills) of Rights, 61, 118,
130, 131fn73, 139–141, 150f., 153,
156, 158fn53, 174fn154, 175, 177,
187, 361f.
- Delbrück, Hans (1848–1929), 308
- Delian League, 19–21, 23, 30, 76, 123, 272,
321fn36
- Demades (c. 380–c. 318 BC), 43fn143, 72

- demagogues, demagoguery, 47f., 80–82, 88, 96, 99, 112, 137, 144fn143, 196f., 217, 221f., 227, 230–232, 235, 240fn126, 241, 243, 251, 254f., 264, 273f., 291, 294, 295fn85, 296–298, 306, 309, 326f., 343, 346, 352
- Demetrius of Phaleron (c. 350–283 BC), 28fn73, 65, 73, 79fn1
- Demosthenes (384–322 BC), 42fn137, 43, 70, 72, 121, 158, 160, 163f., 190, 245, 263, 309, 321, 343
- Demosthenes, Athenian general (†413 BC), 18fn31, 48
- Desmoulins, Camille (1760–1794), 161, 163, 172f., 176, 178, 182, 217fn66, 241
- despot, despotism, 83, 138, 152fn24, 176, 182, 194f., 201, 210, 218, 225, 227, 229, 231, 242, 247fn1, 248, 258–260, 279, 281, 291, 293f., 358
- Destutt de Tracy, Antoine Louis Claude (1754–1836), 144
- dictator, dictatorship, 103, 121fn12, 123, 166–169, 182, 185, 292, 294f., 317f., 323f., 330fn86, 358
- dictatorship of the proletariat, 273, 287f., 302, 326
- Diderot, Denis (1713–1784), 91, 105, 111fn40
- Dietzel, Heinrich (1857–1935), 274
- Dionysius of Halicarnassus (late 1st century BC–early 1st century AD), 260
- Disraeli, Benjamin (1804–1881), 264, 265fn112
- division of labour, 107f., 152, 206, 342, 369
- division of powers; *see* checks and balances
- Doge of Venice, 87, 90, 136
- Döllinger, Ignaz (von) (1799–1890), 218
- Drerup, Engelbert (1871–1942), 309
- Drews, Wilhelm (Bill) (1870–1938), 313
- Droysen, Johann Gustav (1808–1884), 182, 201, 208fn21, 221, 244–246, 258, 269, 272, 281, 298
- Du Pont de Nemours, Pierre Samuel (1739–1817), 192
- Duncker, Maximilian (Max) (1811–1886), 290fn59, 312
- Dyk (Dyck), Johann Gottfried (1750–1815), 199
- Ehrenberg, Victor (1891–1976), 261fn85, 326, 359fn16
- Engels, Friedrich (1820–1895), 109, 111, 182, 185, 201, 222fn103, 271, 284fn27, 288, 289fn52, 293, 295, 299–302, 306, 342
- England
- constitutions during the Interregnum, 4, 93, 96f.
- electoral system, franchise, 100f., 249, 251, 253, 264–267
- English (British) constitution, 89, 91, 120, 125, 128fn57, 157, 204, 249f., 283, 364
- House of Lords, 90fn54, 91, 93, 137fn112, 363fn34, 367
- parliamentary sovereignty, 90, 93, 113, 125, 221, 361, 364
- Ephialtes (†461 BC), 16fn26, 21
- ephors, 64fn249, 84f., 89, 92f., 133, 186, 188, 202, 209
- Eubulus († before 330 BC), 72
- Eumelos, mythical founder of Naples, 188
- Euripides (before 480–406 BC), 74, 105, 172fn145
- European Union, 4, 360fn21, 368–370
- Fabricius [Gaius Fabricius Luscinus] (Roman censor 275 BC), 112
- fascies*, 160, 322
- Fénelon, François (1651–1715), 171
- Ferguson, Adam (1723–1816), 107f., 205fn4
- Fichte, Johann Gottlieb (1762–1814), 163, 187
- Filmer, Robert (1588–1653), 94fn83, 99
- Finley, Moses I. (1912–1986), 346–348, 354
- Florence, 12fn6, 86f., 119fn4, 134, 366fn52
- Fontenelle [Bernard Le Bovier de F.] (1657–1757), 105
- Forster, Georg (1754–1794), 196
- Fourier, Charles (1772–1837), 201fn54, 294fn57, 300
- Fox, Charles James (1749–1806), 255
- Fraenkel, Ernst (1898–1975), 318
- France
- constitution of 1791, 151, 153, 157, 164, 200, 360fn22
- constitution of 1793, 154–156, 171f., 177, 179f., 187, 200, 202, 301, 306, 360
- constitution of 1795, 97, 185–187, 304, 305fn142
- constitution of 1799, 185–187
- constitution of 1814, 282, 284fn29
- constitution of 1848, 287f., 290f.
- constitutions of sister republics, 187f.
- Franco, Francisco (1892–1975), 358
- Frantz, Constantin (1817–1891), 294
- fraternité*, fraternity, 287, 321
- Frederick the Great [Friedrich II], King of Prussia (1740–1786, *1712), 105

- Freeman, Edward Augustus (1823–1892), 236, 263, 267, 363fn34
- Freund, Julien (1921–1993), 347
- Friedrich Wilhelm IV, King of Prussia (1840–1861, *1795), 283fn21, 292f.
- Fröbel, Julius (1805–1893), 284fn31, 289
- Fustel de Coulanges, Numa Denis (1830–1889), 211–215, 219, 224f., 230fn59, 275, 319–321, 328, 348, 353f.
- Garve, Christian (1742–1798), 196f.
- Gellner, Ernest (1925–1995), 348f.
- Gentile, Giovanni (1875–1944), 323
- Genz, Friedrich (von) (1764–1832), 154fn36, 175, 198, 248fn9
- Germany
 constitutions of early 19th century states, 282f.
 National constitution of 1849; *see* National Assembly, German
 Constitution of the North German Confederation 1867, 3fn7, 295, 297
 Constitution of the German Empire 1871, 3fn7, 295, 297
 Constitution of the Weimar Republic 1919, 316–318, 329, 358, 366fn50
- Gervinus, Georg Gottfried (1805–1871), 281
- Gibbon, Edward (1737–1794), 247f.
- Gierke, Otto (von) (1841–1921), 2
- Gladstone, William Ewart (1809–1898), 223, 264, 267
- Glutz, Gustave (1862–1935), 321
- Goebbels, Joseph (1897–1945), 339
- Gomperz, Theodor (1832–1912), 239f.
- Gore, Albert Arnold (Al) (*1948), 137fn108, 368
- Göring, Hermann (1893–1946), 332
- Gouges, Olympe de (1748–1793), 177
- Gracchus, Gaius Sempronius (153–121 BC), 162, 169, 184, 189, 200f., 320fn27
- Gracchus, Tiberius Sempronius (162–133 BC), 85, 169, 184, 189, 200f., 320fn27
- graphie paranomon*, 68–71, 110, 130fn66, 141, 187, 221, 231, 235, 243, 347, 362
- Grégoire, Henri [Abbé Grégoire] (1750–1831), 175, 192f.
- Grote, George (1794–1871), 239, 251–259, 262f., 267–271, 276, 298, 301, 338, 350
- Grote, Harriet, née Lewin (1792–1878), 253, 256fn55
- Grotius, Hugo (1583–1645), 88, 99fn105, 103, 120
- Grünberg, Carl (1861–1940), 273
- Guizot, François Pierre Guillaume (1787–1874), 211fn35, 219, 266, 290–292
- Gundolf, Friedrich (1880–1931), 324, 327
- Hamilton, Alexander (1757–1804), 122–124, 126, 128f., 133, 139, 144
- Hansen, Mogens Herman (*1940), 349f., 353fn16, 354, 362
- Hardenberg, Karl August von (1750–1822), 370
- Hare, Thomas (1806–1891), 261
- Harmodius (†514 BC), 12
- Harrington, James (1611–1677), 94–97, 119f., 129, 138, 155, 186, 265
- Hecker, Friedrich (1811–1881), 285
- Heeren, Arnold Hermann Ludwig (1760–1842), 196
- Hegel, Georg Wilhelm Friedrich (1770–1831), 159, 182, 184fn201, 202f., 239, 258, 260, 262, 267
- Heine, Heinrich (1797–1856), 202
- helots, 10, 110f., 173f., 176, 193
- Helvidius Priscus († after 70), 123
- Héroult de Séchelles, Marie-Jean (1759–1794), 155fn39, 171
- Herder, Johann Gottfried (1744–1803), 109, 114
- Hermann, Karl Friedrich (1805–1855), 226, 277
- Herodotus (490/484–430/425 BC), 12f., 74, 259
- Hess, Moses (1812–1875), 185fn204, 285
- Heyne, Christian Gottlob (1729–1812), 184, 196
- Hildenbrand, Karl (1814–1872), 275f.
- Hipparchus, son of Peisistratus (†514 BC), 12
- Hippel, Theodor Gottlieb (von) (1741–1796), 116
- Hippias, son of Peisistratus († after 490 BC), 12
- Hirschfeld, Otto (1843–1922), 320
- Hitler, Adolf (1889–1945), 316, 327, 329fn79, 330fn83, 331f., 334, 337f., 346
- Hobbes, Thomas (1588–1679), 81, 95, 98f., 105, 107
- Hobson, John Atkinson (1858–1940), 321f.
- Homer, 267, 268fn132
- Horace [Quintus Horatius Flaccus] (65–8 BC), 324
- Hortensius [Quintus Hortensius Hortalus] (†50 BC), 188

- Huber, Ernst Rudolf (1903–1990), 330
- Huizinga, Johan (1872–1945), 364
- Human rights, 4, 30, 140f., 143, 150, 151fn14, 158, 173, 203, 215, 225, 248, 275, 277fn189, 285fn34, 289, 328, 355, 361, 364; *see also* Declarations of Rights
- Humboldt, Wilhelm von (1767–1835), 115, 148f., 265, 278, 279fn3
- Hume, David (1711–1776), 91, 106, 108–110, 119, 130, 133, 135, 164fn89, 239, 249fn11, 362
- Hyperbolus (†411 BC), 17, 32
- Isocrates (436–338 BC), 65fn256, 79, 172fn145
isonomia, 18f., 43, 74, 101fn122, 364
- Jackson, Andrew (1767–1845), 146
- Jacoby, Johann (1805–1877), 270
- Jaeger, Werner (1888–1961), 328f.
- James II, King of England and Ireland and (as James VII) of Scotland (1685–1688, *1633, †1701), 99
- Jay, John (1745–1829), 124, 132
- Jefferson, Thomas (1743–1826), 121, 122fn16, 130, 133fn85, 135, 140, 142, 144–146, 150fn12, 155
- Jellinek, Georg (1851–1911), 151, 275–277, 299, 340, 349
- Jesus, 173, 193fn14, 238f., 324
- Jones, Ernest (1819–1869), 267f.
- Josephus [Flavius Josephus] (37–c. 95), 103
- jury courts, popular courts
in Athens, 20f., 51–62, 68f., 80, 214, 216, 220f., 227, 229f., 236f., 244, 248, 251, 320f., 326, 345, 353f.
in England, 251, 256
in Germany, 51, 296f.
in Rome, 62, 221
in the USA, 53, 140, 256
- Kant, Immanuel (1724–1804), 77fn316, 116, 152fn24, 159, 179, 225, 281
- Kautsky, Karl (1854–1938), 270–273, 298–302, 317fn16
- Kelsen, Hans (1881–1973), 318f., 364fn36
- Knauss, Bernhard (1896–1980), 320
- Köchly, Hermann (1815–1876), 235f.
- Laboulaye, Édouard-René (1811–1883), 211
- Lactantius [Lucius Caелиus Firmianus] (c. 250–c. 325), 85
- Lafayette [Marie-Joseph de Motier, Marquis de la Fayette] (1757–1834), 150, 167
- Lange, Friedrich Albert (1828–1875), 300
- Laski, Harold (1893–1950), 321
- Lassalle, Ferdinand (1825–1864), 239fn122, 295, 299
- Laud, William (1573–1645), 236, 255
- lawgivers, 96, 113fn60, 114f., 129, 131, 155, 170f.
- Le Bon, Gustave (1841–1931), 316
- Lemierre, Antoine Marie (1723–1793), 162
- Lenin [Wladimir Iljitsch Uljanow] (1870–1924), 288fn49, 302, 317fn16, 322, 356fn1 and 2, 357
- Leonidas I, Spartan King (†480 BC), 332
- Leopold I, King of Belgium (1831–1865, *1790), 284
- Lepeletier, Louis Michel (1760–1793), 174f., 192
- Lepidus [Marcus Aemilius Lepidus] (c. 90–12 BC), 138, 167fn108
- Levellers, 96f., 100–102, 120, 132, 249
- Lévesque, Pierre-Charles (1736–1812), 194
- Lewis, George Cornewall (1806–1863), 255, 259fn75
- lex regia*, Danish of 1665, 4, 97fn98
- Lincoln, Abraham (1809–1865), 118, 143, 285fn4
- Lipsius, Justus (1547–1606), 98
- liturgies, 27, 49–51, 73, 80, 184fn201, 214f., 220, 228, 334
- Livy [Titus Livius] (59–17 BC), 87, 94, 101fn121, 224, 260
- Locke, John (1632–1704), 99, 104, 119, 130, 239fn117
- Loewenstein, Karl (1891–1973), 343
- lot, lottery; appointment, selection by; sortition, 1, 17f., 22f., 36f., 39f., 46, 63, 72, 74, 77fn316, 80, 87, 89, 95, 134, 230f., 237, 254, 259, 280, 347, 366f.
- Louis Philippe, King of France (1830–1848, *1773, †1850), 282
- Louis XIV, King of France (1643/1661–1715, *1638), 105
- Louis XVI, King of France (1774–1791/92, *1754, †1793), 152, 164, 180
- Louis XVIII, King of France (1814/1815–1824, *1755), 282
- Lowe, Robert (1811–1892), 265, 267
- Ludendorff, Erich (1865–1937), 314
- Luxemburg, Rosa (1871–1919), 312
- Lycurgus, Athenian politician (†324 BC), 49, 72
- Lycurgus, legendary Spartan lawgiver, 2, 10, 92, 96f., 111, 113–116, 120, 129, 131, 157, 163, 170f., 182f., 192, 198f., 209
- Lysias (c. 445–380 BC), 192

- Mably, Gabriel Bonnot de (1709–1785),
107fn12, 111, 121, 157, 160f., 183, 205
- Macaulay, Thomas Babington (1800–1859),
250, 263f.
- Macedon(ia), 1, 29, 73, 108, 122, 161, 190,
245f., 258, 272
- Machiavelli, Niccolò (1469–1528), 87f., 95,
98, 105fn4, 119, 166fn101
- Macrobius, Ambrosius Theodosius (late 4th,
early 5th century), 85
- Madison, James (1751–1836), 122fn16,
124, 126f., 128fn57, 130fn64 and 66,
131–133, 138–140, 145
- Maine, Henry Sumner (1822–1888), 240
- Maistre, Joseph Marie de (1753–1821),
191, 209
- Mandeville, Bernard de (1670–1733), 110
- Marat, Jean Paul (1743–1793), 167,
169fn119, 174, 180, 250fn15
- Marathon, battle of, 19, 41, 260, 267
- Marius [Gaius Marius] (157–86 BC), 182
- Marsilius of Padua (1275/90–1342/43), 86,
100fn113
- Marx, Karl (1818–1883), 83, 91f., 109fn29,
118, 182, 185, 189f., 201, 210fn32, 211,
250, 262, 283, 284fn27, 285, 287–289,
292fn68, 294f., 299, 301–303
- Mason, George (1725–1792), 140f.
- Massachusetts, constitution of, 129fn61, 131,
139fn120, 141fn128
- Mazzini, Giuseppe (1805–1872), 281
- Meier, Christian (*1929), 261fn85, 343f.
- Meinecke, Friedrich (1862–1954), 309fn168,
310, 313f.
- metics, 10, 23–30, 49fn179, 64f., 76, 206, 232,
250, 266, 321, 326, 347, 351, 359f.
- Metternich, Graf Klemens von (1773–1859),
198, 283
- Mevissen, Gustav (von) (1815–1899), 287
- Meyer, Eduard (1855–1930), 220fn87, 221,
234fn83, 260, 270, 272, 309, 313,
319f., 338
- Michelet, Jules (1798–1874), 156fn40, 172, 209
- Michels, Robert(o) (1876–1936), 223,
240fn126, 274fn171, 315f., 323,
324fn55, 351fn67, 358
- Mignet, François Auguste (1796–1884),
154fn32, 185fn206, 209
- Mill, James (1773–1836), 251, 252fn26,
259, 267
- Mill, John Stuart (1806–1873), 6, 239, 244,
250, 252fn27, 254fn39, 259–267, 279,
348, 362
- Millar, John (1735–1801), 106, 108
- Miltiades (†489 BC), 41
- Milton, John (1608–1674), 93fn78, 100,
172fn145, 241
- Minos, legendary Cretan King, 171
- Mirabeau [Honoré Gabriel Victor de Riqueti,
Marquis de M.] (1749–1791), 124,
151fn18, 152f., 167, 172, 255
- Mitford, William (1744–1827), 247f.,
250–252, 254, 256fn53, 257, 259, 352
- mob, mob rule, ochlocracy, 1, 74, 82, 84f.,
105, 110, 116, 126, 201, 225, 227f., 235,
326f., 338, 345
- Mohl, Robert (von) (1799–1875), 91,
267fn124, 275f., 280, 282, 284fn26,
287, 297fn97, 304fn140, 319
- Molière [Jean-Baptiste Poquelin] (1622–1673),
82, 105
- Momigliano, Arnaldo Dante
(1908–1987), 340
- Mommsen, Theodor (1817–1903), 211, 225,
242, 269fn141, 296–298, 301, 308fn161,
320fn31, 344
- Monck, George, 1st Duke of Albemarle
(1608–1670), 167
- Montaigne, Michel de (1533–1592), 239
- Montesquieu [Charles-Louis de Secondat,
Baron de La Brède et de M.]
(1689–1755), 81, 83, 88f., 91, 106–108,
119f., 130fn66, 134, 139, 144, 157,
160, 166, 171, 178, 181, 182fn88, 194,
236fn98
- Morelly, Étienne-Gabriel (18th century; dates
unknown), 111, 183
- Morgan, Lewis Henry (1818–1881), 271
- Mosca, Gaetano (1858–1941), 315f.,
324fn55
- Moses, 97, 113fn60, 129, 171
- Mounier, Jean Joseph (1758–1806), 149
- Müller, Friedrich Max (1823–1900), 260
- Müller, Karl Otfried (1797–1840), 226
- Müller-Strübing, Hermann (1812–1893), 269
- Murhard, Friedrich (1778–1853), 280
- Mussolini, Benito (1883–1945), 316, 322–324,
325fn57, 327f.
- Napoleon I, Emperor of France
(1804–1814/15, *1769, †1821), 125, 169,
176fn163, 177, 187–190, 199–201, 204f.,
208f., 285fn34, 293, 297, 304, 356
- Napoleon III [Louis Bonaparte], Emperor of
France (1852–1870, *1808, †1873), 189,
293f., 296

- National Assembly, French (1789–1791), 149, 153, 157f., 170, 174
- National Assembly, German (Frankfurt 1848/49), 100, 186fn208, 281, 284–286, 289f., 293, 297, 311, 367
- National Convention, French (1792–1795), 153f., 156, 162–165, 167f., 171, 174–181, 183, 185fn206, 191, 196, 201, 203, 285
- Necker, Jacques (1732–1804), 165
- Nedham, Marchamont (1620–1678), 101
- Nero, Roman Emperor (54–68, *37), 123, 160fn60
- Netherlands, 95, 103f., 106fn9, 120, 122, 125, 144fn143, 158, 178, 187fn217
- Neville, Henry (1562–1615), 93fn77, 94
- Nicias (before 469–413 BC), 17, 36fn109, 40fn125, 41fn130, 43fn142, 47fn166, 62fn240, 75, 349fn60
- Niebuhr, Barthold Georg (1776–1831), 171fn138, 184, 190, 197, 203, 224, 226f., 231fn62, 244, 252, 253fn39, 264fn109
- Nietzsche, Friedrich (1844–1900), 215, 239
- Noah, 132
- nomothetai*, 67, 187, 265, 349f.
- Numa Pompilius, Roman King, 113fn60, 129
- ochlocracy; *see* mob
- Odysseus, 171
- oligarchy, concept of, 83, 85, 315, 358f.
- Oncken, Wilhelm (1835–1905), 244, 269
- Oppermann, Hans (1895–1982), 334f.
- ostracism, 14–17, 33f., 69, 80, 89, 99f., 110, 172, 208f., 213, 216, 221, 231, 243f., 254f., 292
- Ostrogorskij, Mosej (1854–1919), 315
- Paine, Thomas [Tom] (1737–1809), 116, 121, 132f., 134fn92, 139fn120, 154fn35, 248fn9, 249fn10
- Palmerston, Henry John Temple, 3rd Viscount Palmerston (1784–1865), 265
- Papirius [Lucius Papirius Cursor], Roman dictator 325 BC, 182
- Pareto, Vilfredo (1848–1923), 315f.
- Parthenope, daughter of Eumelos, 188
- Pasion (before 430–370 BC), 29
- Paul [St. Paul, apostle], 142
- Pauw, Cornelis de (1739–1799), 110f., 178, 254fn42
- pay(ment), daily allowances, remuneration for political functions
- in Athens, 21f., 34f., 46, 48f., 54, 56, 63, 71f., 74, 80, 83, 215, 220, 227–229, 231, 237, 241, 248, 254, 274, 326fn65, 335f., 346
- during the French Revolution, 181, 228
- for parliamentarians, 138, 143fn140, 206, 264, 286, 297
- Peisistratus (c. 600–528/527 BC), 11f., 81fn22, 169f.
- Peloponnesian War, 10, 29, 32, 63, 71, 73, 75, 78, 81, 102, 123, 217, 231, 234, 236, 245, 278, 308, 314, 337f., 341, 368
- Penn, William (1644–1718), 120, 256fn54
- Pennsylvania, constitutions of, 120, 130fn66, 138f., 157f.
- Pericles (c. 495–429 BC), 21, 23, 30–33, 34fn102, 40, 45–49, 63, 66, 72fn282, 75, 77, 79fn1, 81, 86, 88, 99, 102, 110, 112, 116fn72, 122f., 143fn139, 150, 154, 170, 180, 217, 220f., 223, 228, 241f., 257f., 263, 269, 278, 298, 309, 321f., 325fn57, 334, 336–339, 345, 349, 368f.
- Persia, Persians, Persian Wars, 12fn7, 15, 19, 30f., 42, 74, 76, 83, 260, 279, 333, 343
- Philip II, King of Macedon (357/355–336 BC, *c. 382), 38fn115, 42fn136 and 137, 72f., 190, 245, 343
- Phocion (402–318 BC), 40, 73, 122, 126fn42, 161
- Pitt, William [the Younger] (1759–1806), 248
- Plato (427–347 BC), 26fn64, 27, 47, 57fn209, 58, 60, 75, 79, 81, 95, 112, 113fn59, 163, 224fn1, 237, 244, 258, 261, 276, 279, 325, 328f., 332, 341, 345f., 349fn60, 351
- plebiscite, 180, 186, 189, 223, 293, 305, 307, 325, 330, 365
- Plutarch (c. 46–after 119), 42fn140, 81, 111f., 114, 124, 129, 161–164, 349
- Pohlenz, Max (1872–1962), 320
- Pöhlmann, Robert (von) (1852–1914), 240, 270, 273f., 319fn24
- Polybius (c. 200–120 BC), 84f., 89, 97, 99fn105, 125, 136, 157, 186fn207, 201
- Pompeius [Gnaeus Pompeius Magnus] (106–48 BC), 188f.
- Popper, Karl Raimund (1902–1994), 341, 346, 359, 361
- Preuß, Hugo (1860–1925), 317f., 358fn10
- Protagoras of Abdera (c. 485–c. 415 BC), 60, 76, 355fn83
- Proudhon, Pierre Joseph (1809–1865), 303

- Publicola [Publius Valerius Publicola], Roman consul 509 BC, 124, 163, 166fn98, 189
- Pufendorf, Samuel (1632–1694), 102, 120
- Puttkamer, Robert Viktor von (1828–1900), 297
- Quinctius, Caeso, son of Cincinnatus, 123
- Quintilian [Marcus Fabius Quintilianus] (1st century AD), 121
- Racine, Jean (1639–1699), 105
- Rahe, Paul (*1946), 352
- Ranke, Leopold (von) (1795–1886), 5f., 28of., 286
- Raumer, Friedrich von (1781–1873), 225
- reason of state, 98, 164
- referendum, 218, 299f., 301, 304–308, 316–318, 366fn49 and 50
- representation, representative government / democracy, 1, 3f., 5fn9, 84, 94, 104, 106f., 114, 126, 132–135, 143–146, 149, 151–153, 167, 173f., 179, 181, 194, 197, 200, 206, 219, 225, 227, 249fn10, 251, 261, 263, 276, 279–281, 283, 285, 290f., 302, 304, 306f., 315, 317, 344, 346, 356f., 363–365
- republic, concept of; republicanism, 79, 87f., 94–97, 103, 106f., 112, 118, 124, 126, 133–136, 144–147, 149, 156f., 159–162, 164, 166f., 169, 175, 178, 180, 189, 193f., 197–200, 202f., 229, 281, 284–288, 293, 306f., 357f.
- revolutionary tribunals, French, 64, 163–166, 216, 221, 235
- Rhode Island, 10, 120, 127fn45
- Riem, Andreas (1749–1812/14), 199
- Ritter, Joachim (1903–1974), 345
- Rittinghausen, Moritz (1814–1890), 299–302, 315
- Robespierre, Maximilien de (1758–1794), 125, 152fn22, 155, 158–160, 164fn89, 165–170, 173f., 176–178, 180–184, 191–196, 198f., 201f., 227, 250fn15, 356fn1
- Rodbertus-Jagetzow, Johann Karl (1805–1875), 312
- Roland, Manon [Jeanne-Marie Roland de la Platière] (1754–1793), 161f.
- Rollin, Charles (1661–1741), 121fn13, 161
- Romieu, François-Auguste de (1800–1855), 294
- Roosevelt, Franklin D. (1882–1945), 136
- Roscher, Wilhelm (1817–1894), 228, 244, 307
- Rosenberg, Arthur (1889–1943), 303fn132, 304, 320
- Rotteck, Karl von (1775–1840), 280
- Rousseau, Jean-Jacques (1712–1778), 111–113, 130fn66, 157, 160, 163, 166, 170, 183, 187, 194, 202, 205, 263, 330, 370
- Ruge, Arnold (1802–1880), 286
- Rush, Benjamin (1745–1813), 138
- Rüstow, Alexander (1885–1963), 341
- Saint-Just, Louis-Antoine-Léon de (1767–1794), 156, 160f., 165, 168–170, 173, 175, 183, 192, 198, 201, 250fn15
- Salamis, battle of, 19, 41, 260fn84, 261fn85
- Salin, Edgar (1892–1974), 319
- Sallust [Gaius Sallustius Crispus] (86–34 BC), 121, 161
- San Marino, 106, 120, 125
- Sartori, Giovanni (*1924), 348
- Savonarola, Girolamo (1452–1498), 87
- Schadewaldt, Wolfgang (1900–1974), 333f.
- Schaefer, Hans (1906–1961), 337f.
- Schelling, Friedrich Wilhelm Joseph (1775–1854), 293
- Schiller, Friedrich (1759–1805), 5, 114f.
- Schlegel, Friedrich Daniel (1772–1829), 2
- Schleiermacher, Friedrich (1768–1834), 238, 261
- Schlözer, August Ludwig (von) (1735–1809), 115f.
- Schmidt, Wilhelm Adolf (1812–1887), 242
- Schmitt, Carl (1888–1985), 154fn36, 187, 263, 292fn69, 317f., 322, 330fn83, 347fn46, 367f.
- Schulz, Wilhelm (1797–1860), 280
- Schumpeter, Joseph Alois (1883–1950), 346
- Schvarcz, Julius (1838–1900), 276f.
- Senate
 in France, 187, 189
 in Rome, 84, 95, 108, 222
 in the USA, 128fn57, 136fn102, 137f., 364fn35
- Seneca [Lucius Annaeus Seneca] (c. 4 BC–65 AD), 98
- separation of powers; *see* checks and balances
- Servius Tullius, Roman King, 311f.
- Seume, Johann Gottfried (1763–1810), 199f.
- Shays, Daniel (1747–1825), 127
- Sidney, Algernon (1623–1683), 94, 97, 99, 119
- Siebenpfeiffer, Jakob Philipp (1789–1845), 200

- Sieyès [Sieyès], Emmanuel Joseph (1748–1836), 149, 152, 179, 186–188, 195
- slavery, slaves
 in Athens (and in antiquity generally), 10f., 28–30, 44fn154, 61fn232, 76, 108f., 143, 153, 193, 199, 202f., 207, 219, 250, 266, 276, 289, 301, 322, 341f., 347, 351, 359–363
 in French colonies, 175f.
 in the USA, 118fn1, 141fn128, 142f., 147, 266, 289, 301
- Smith, Adam (1723–1790), 108
- Social Democracy, Social Democrats, German, 228, 240fn126, 273f., 299, 302f., 308, 312f., 317f., 326fn64, 328
- Socrates (469–399 BC), 45, 59fn223, 66, 76fn304, 80, 82, 126, 161, 208, 212, 218, 220fn84, 231, 235–240, 242f., 257, 266, 273, 275, 279, 335, 342f., 345, 348f., 352, 354, 355fn83, 362
- Solon (640–560 BC), 1f., 10f., 23, 44, 52fn188, 63fn246, 74fn297, 88, 114–116, 129, 131, 163, 170f., 218, 254, 278, 350fn63
- Sombart, Werner (1863–1941), 327
- sophists, 47, 341, 355fn83
- Sophocles (496–406 BC), 18fn31, 40fn125, 105
- sortition; *see* lot
- Spain, constitution of Cádiz 1812, 284
- Spann, Othmar (1878–1950), 273
- Sparta, Spartans, 2, 6, 10, 12, 33, 64, 75, 81, 84f., 87, 92, 94, 108, 110–112, 114, 121, 125, 138, 161, 172–175, 181, 183, 192–194, 198–203, 205, 207, 226, 245, 254, 258, 260, 277, 320, 332f., 336, 341f., 352, 368
- Spencer, Herbert (1820–1903), 240
- Spengler, Oswald (1880–1936), 324, 327
- Spinoza, Baruch de (1632–1677), 97fn99, 102f., 116
- Spittler, Ludwig Timotheus (1752–1810), 116
- Staël, Germaine de (1766–1817), 165, 204f.
- Stahl, Friedrich Julius (1802–1861), 275f., 283fn21, 319
- Stein, Lorenz (von) (1815–1890), 154, 202
- Sternberger, Dolf (1907–1989), 353, 365
- Stier, Hans Erich (1902–1979), 338f.
- Strabo (64 BC–19 AD), 107
- Strafford, Thomas Wentworth, 1st Earl of
 Strafford (1593–1641), 236, 255
- strategoi*, 18, 22, 36, 38, 40f., 45f., 50, 71, 80, 221, 231
- Strauss, Leo (1899–1973), 345f., 351fn67
- Streicher, Julius (1885–1946), 331
- Struve, Gustav von (1805–1870), 285
- suffrage, franchise
 based on property or taxpaying, 95, 135, 153, 179, 187, 283f., 291, 311
 for women, 116, 136, 177, 266f., 313, 361
 plural vote, 263, 284fn28, 313f.
 three-class system, 310–314
 universal male, 3, 100f., 120, 135, 264f., 284f., 291, 295, 296fn87, 297, 310
- Sulla [Lucius Cornelius Sulla] (138–78 BC), 87, 121fn12, 166fn101, 182, 200
- Supreme Court (USA), 137fn108, 141, 144, 145fn148, 347
- Switzerland, Swiss cantons, 95, 106, 122, 178, 217, 222, 230, 259fn74, 280, 294, 300f., 304–307, 316f., 357, 361, 366fn35, 366, 369fn65
- Sybel, Heinrich von (1817–1895), 191, 295fn85
- sycophants, 55f., 215–217, 229f., 233, 343
- Syme, Ronald (1903–1989), 324
- Tacitus [Cornelius Tacitus] (c. 55–120), 98, 103, 121, 166, 173, 301, 307
- Taeger, Fritz (1894–1960), 338
- Taine, Hippolyte Adolphe (1828–1893), 171, 200f.
- Tarquinius Superbus, last Roman King, 162, 167
- Taylor Mill, Harriet, née Hardy (1807–1858), 266
- Taylor, John (1770–1832), 133
- Telemachus, son of Odysseus, 171
- Tellkamp, Johann Ludwig (1808–1876), 311
- terreur*, reign of terror during the French
 Revolution, 148, 161, 170, 172f., 180, 182, 191f., 195, 198–200, 203f., 211, 216, 228, 234, 250, 340, 356, 363
- Themistocles (c. 524–459 BC), 16, 41, 263, 343
- Theopompus, Spartan King, 92
- Theseus, King of Attica, 10, 74
- Thiers, Louis Adolphe (1797–1877), 209
- Thirlwall, Connop (1797–1875), 253f.
- Thirty, thirty tyrants in Athens, 25, 39, 57, 61fn237, 64f., 67, 126, 138, 192, 196f., 216fn61, 237f., 250
- Thomas Aquinas (c. 1225–1274), 86
- Thrasylbulus (†388 BC), 25, 64

- Thucydides (c. 460/454–c. 400 BC), 12, 31f., 36fn109, 47, 75, 77, 81, 99, 102, 161, 194fn19, 220, 233, 255–257, 269, 322, 328, 334, 345
- Thucydides, son of Melesias (5th century BC), 16fn26, 31
- Tiberius, Roman Emperor (14–37, *42 BC), 166
- Tirpitz, Alfred (von) (1849–1930), 314
- Tittmann, Friedrich Wilhelm (1784–1864), 242f.
- Tocqueville, Alexis de (1805–1859), 146f., 240, 253, 265f., 279f., 288–292, 304, 348, 357
- Treitschke, Heinrich von (1834–1896), 92, 163, 208, 228fn26, 278, 284fn27, 296, 298, 344fn26
- tribunat* (France), 189, 208
- tribunate, tribunes of the people (plebs), Roman, 84f., 92f., 133, 138, 169, 180, 183f., 189, 203, 209
- Troeltsch, Ernst (1865–1923), 309fn168, 327f.
- Tucholsky, Kurt (1890–1935), 328
- Turgot, Anne Robert Jacques (1727–1781), 110, 136fn105, 157
- two-chamber system, 68, 95, 97, 120, 125, 137f., 157, 186, 282f., 305fn142, 363, 366f.
- tyranny (of the majority), concept of, 12, 57, 66, 71, 74, 77, 81–83, 85, 106, 125, 133, 138, 140, 147, 152, 162, 170, 182, 215, 218, 227, 230, 266, 344, 348, 358
- Tyrtaios (7th century BC), 198
- United States of America
 Articles of Confederation, 127
 Declaration of Independence, 120, 129f., 141–143, 150
 Federal Constitution, 119, 124, 127f., 136, 139, 141f., 144
 Philadelphia Convention 1787, 127f., 131
- Valerius Maximus (1st half of the 1st century AD), 161
- Vattel, Emer(ich) de (1714–1767), 120, 132
- Venice, 87, 89, 95, 125, 134, 145fn147, 186, 366fn52; *see also* Doge of Venice
- Vertot, René Aubert de (1655–1735), 161
- Vespasian, Roman Emperor (69–79, *9), 123
- Veyne, Paul (*1930), 354
- Virgil [Publius Vergilius Maro] (70–19 BC), 130f., 188, 324, 359fn15
- Virginia, constitution of, 130, 136, 139–142, 150
- Voegelin, Eric (1901–1985), 345
- Vogt, Joseph (1895–1986), 333
- Vollgraff, Karl Friedrich (1794–1863), 275
- Volney [Constantin-François Chassebœuf de] (1757–1820), 193f., 210
- Voltaire [François-Marie Arouet] (1694–1778), 91, 105f., 162–164
- Wachsmuth, Curt (1837–1905), 270
- Wachsmuth, Wilhelm (1784/87–1866), 226
- Wallace, Robert (1773–1855), 109
- Walpole, Robert (1676–1745), 123fn22, 255
- Washington, George (1732–1799), 124, 132–134, 167fn102, 343
- Webb, Beatrice (1858–1943), 264fn110, 302
- Webb, Sidney (1859–1947), 264fn110, 302
- Weber, Max (1864–1920), 6, 219–224, 260, 295, 306fn147, 314, 317, 347fn46
- Weitzel, Johannes (1771–1837), 198
- Welcker, Karl Theodor (1790–1869), 280
- Wieland, Christoph Martin (1733–1813), 162, 241
- Wilamowitz-Moellendorff, Ulrich von (1848–1931), 2, 270–272, 319, 328
- Wilberforce, William (1759–1833), 176
- Wilcken, Ulrich (1862–1944), 326
- Wilhelm II, German Emperor and King of Prussia (1888–1918, *1859, †1941), 273, 313
- Wilson, James (1742–1798), 131f., 136fn103, 142fn136
- Wilson, Woodrow (1856–1924), 309
- Winckelmann, Johann Joachim (1717–1768), 278
- Wise, John (1652–1725), 120
- Wolff, Christian (1679–1754), 88
- Wollstonecraft, Mary (1759–1797), 116
- Xenophon (c. 430/25–354 BC), 235, 258f.
- Zürich, constitution of 1869, 300