Fundamental Freedoms in Athens of the Fifth Century

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Contents

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I. INTRODUCTORY REMARKS

In classical Athens the state-individual relationship and its position within the framework of the polis were shaped under the influence of the peculiar concept of *nomos,* signifying not a legislative enactment of the state but custom grown out of the consciousness and free life of the community (1). The polis, being identifiable with the state and the society, provided the institutional framework within which the citizen found the fulfillment of his own basic needs. Thus the happiness of the individual and of the community were identical, since both the polis and the citizen were pursuing the same aim, the same final end in Aristotle's apposite phrase.

The citizen, being an integral part of the polis, fully participated in the exercise of the civic functions, being entitled, at the same time, to the enjoyment of his fundamental freedoms. Political freedom and individual freedom were closely interrelated being part and parcel of everyday life. It was inconceivable, therefore, that the citizen in his capacity as an integral part of the polis, could lodge a complaint against the city claiming a recognition of his "individual right", since such an action would be tantamount to an attack against himself.

The νόμοι (laws) and the ψηφίσματα (decrees), based on the common consent of all citizens, were in essence the expression of their own will against which they could not oppose or protest. However, the extraordinary wisdom of the Greek law established the peculiar procedural safeguards of εἰσαγγελία, ἀποχειροτονία and προβολή thus effectively, though indirectly, protecting individual freedoms (2). It has aptly therefore been stated that in the Greek city-state the sum of freedoms was enclosed in the concept of civil rights, not of human rights (3).

(1) See J. JONES, *The Law and Legal Theory of the Greeks,* 34 (1956) ; H. LAUTERPACHT, *International Law and Human Rights,* 82 (1973).

(2) *Infra,* pp. 117-120.

(3) A. DEL RUSSO, Human Person and Fundamental Freedoms in Europe, II *Howard Law Journal,* 421 (1965) ; G. TÉNÉKIDÈS, Esquisse d'une théorie des droits internationaux de l'homme dans la Grèce des cités, 3 *Revue des Droits de l'Homme,* 213 (1970).

In our days the state-individual relationship has undergone a drastic change. In the evolutionary process of history, mankind has experienced a gradual shift in emphasis from the community to the individual. The citizen is no longer regarded as integral part of the polis but as an independent rational human being (4). He can pursue the untrammelled fulfillment of his individual interest regardless of, or even contrary to, the interest of the community.

Today the state is not conceived of as an omnipotent, supernatural, legally irresponsible entity, as Vattel looked to it, but as a system of legal relationships within the community primarily aiming at securing the inalienable, natural and fundamental rights of man (5). It is the vigilant guard of the fundamental freedoms, assuring that Aristotle's principle "to live as one wishes" is not disturbed, no matter whether it falls or not within the confines of the community objectives.

In delegating to the state the responsibility of preserving his fundamental freedoms, however, western man has estranged himself from the government thereby surrendering, at the same time, control over much of his own life. Democracy today is representative, not participatory; it is a government at a distance, not in the community. The individual is therefore, neither expected nor encouraged to become a full-fledged citizen by devoting a substantial part of his life to the harmonious functioning of the community.

Man no longer considers the laws as a substantiation of his own will and feels entirely justified in breaking or evading them when his conscience so dictates. In effect he is given no opportunity to become a real citizen, in the Athenian meaning of the word, within the operational framework of modern democracies. Thus the Western conception of freedom has been considerably narrowed; in the United States in particular, freedom is now exemplified by the selection and manifestation of one's own life-

(4) Plato, *Republic*, 369b; Aristotle, *Politics*, 1252b, 29-33.

(5) A. DEL RUSSO, *International Protection of Human Rights*, 252 253 (1971); P. REMEC, *The Position of the Individual in International Law according to Grotius and Vattel*, 63 (1960).

style rather than by the active participation in the development of society as a whole, which characterized Athenian life.

It has been submitted in this respect that the ancient Greek city-state knew of no rights of freedom and that a sphere for free individual action with an independent right against the political community seemed inconceivable (6). This view, though widely held and superficially reiterated, has rightfully been criticized and needs revision (6a).

II. THE NOTION OF FREEDOM

The Greek concept of liberty has many dimensions and merits a special study from the sociological and philosophical as well as the legal point of view (7). In my present study, however, I basically intend to confine myself within the legal aspects of the elaborate edifice of the ideal of liberty, drawing, at the same time, appropriate comparisons with regard to the Universal Declaration of Human Rights.

In elaborating upon the notion of liberty and its consequences the Greeks showed an extreme sensitivity and refinement of thought (8). It is to be noted that freedom without justice was conceptually unthinkable (9). Within the polis, the bustling center of the ancient Greek political world, the domination exercised by the few over the many or by the majority over the minority was conceived as harder to bear than the tyranny of a foreign power over the entire city.

This view continued to be the dominant credo even though it was admitted that the foreign tyrant could assure his domination over the polis only in so far as he destroyed the liberty of

(6) C. SCHMITT, as quoted by LAUTERPACHT, *supra* n. 1, p. 81 ; A. ESMEIN-H. NÉZARD, *Éléments de Droit Constitutionnel*, 577 (1927).

(6a) H. LAUTERPACHT, *ibid.*

(7) See C. WELLES, Greek Liberty, 15 *Journal of Juristic Papyrology*, 30 (1965).

(8) Among the more meritorious examples of this point of view may be cited A. FESTUGIÈRE, *Liberté et civilisation chez les Grecs* (1947) ; H. MULLER, *Freedom in the Ancient World* (1961).

(9) Cf. C. WELLES, *op. cit.*, 34 ; PLATO, *Laws* III, 701 D.

the citizens. For the Greek citizen the loss of freedom and its resultant consequences, due either to a domestic or to a foreign tyrant, were frigtheningly apparent. An authoritarian regime, like tyranny, paralyzed the free will of the citizens, who realizing that they were working only for a master were pronouncedly and wilfully slack and indolent ([10]). The impact of tyranny on the city's culture therefore was not, and could not, be reglected since to the Greek mind true cultural creativity within the framework of the polis was inconceivable without personal freedom ([11]).

Thus a chief cause of political subjection was the common Greek view of freedom, which tended to include in freedom for the citizens of a polis the right to dominate those who were not citizens of it ([12]). Aristotle even recognized that war established such leadership or rule as legitimate, provided the rule was for the benefit of those subject to it ([13]). As Thucydides emphatically remarks it was difficult indeed to deprive the Athenian δῆμος([13a]) of its freedom since for nearly a hundred years it had been sovereign and one-half of that time had been accustomed to rule over others ([14]). Commenting on this Larsen has very felicitously put it: "In other words one can almost say that the chief obstacle to freedom was freedom itself" ([15]).

It was within this intellectual, moral and philosophical cli-

(10) Herodotus V, 78, moralizes as follows: "they let themselves be beaten when they worked for a master but so soon they got their freedom, each man was eager to do the best he could for himself".

(11) M. POHLENZ, *Freedom in Greek Life and Thought*, 35 (1966).

(12) J. LARSEN, The Judgement of Antiquity on Democracy, XLIX *Classical Philology*, 6 (1954) ; A. HARRISON, *The Law of Athens*, 87 (1968).

(13) Aristotle, *Politics*, 1333b, 38.

(13a) The term "δῆμος" signifies the commons or commonalty of an ancient Greek state and, consequently, the common people, the populace.

(14) Thucydides viii, 68,4 ; see also J. DE ROMILLY, *Thucydide et l'impérialisme athénien*, 73 (1947) ; J. JONES, *op. cit.*, 152 ; M. FINLEY, The Freedom of the Citizen in the Greek World, 7 ΤΑΛΑΝΤΑ, 6 (1976).

(15) J. LARSEN, Freedom and its Obstacles in Ancient Greece, 57 *Classical Philology*, 230 (1962) ; M. POHLENZ, *op. cit.*, 34 (1966) ; commenting on the same issue F. WALBANK remarks in his *Historical Commentary on Polybius* that "the association of the ideas of love of liberty and love of domination over others is essentially Greek".

mate that Greek democracy was born and flourished. This very notion of democracy effectively guaranteed the independence of the city; democracy was a government of the people and by the people ([16]). According to Aristotle a salient feature of the highest form of democracy is equality, that is the rule of non-superiority of the paupers or the well-to-do but of the equal involvement of everyone in public affairs ([17]). It was this concept of equality, which ultimately became one of the fundamental pillars of the Athenian polity. Thus equality and liberty were the underlying principles, in effect, the cornerstone of democracy.

It is especially in Attic law that one sees the evolution and development of the two main tendencies of Greek democracy. To both I will refer as finally established in Athens of the fifth century, after the reformations effectuated by Solon (594-593 B.C.) and Cleisthenes (508-507 B.C.).

The first tendency was a movement towards the establishment of the sovereignty of the people whereas the second aimed, in essence, at the protection of a sphere for free individual action. It is in this connection that Aristotle distinguishes between what we may call political freedom and individual freedom ([18]). The former embodies and guarantees the rotation of every citizen in the exercise of the civic functions. The latter delineates the confines in the sphere of free individual action. Thus both freedoms are the predominant features of a democratic state ([19]).

The Athenian citizen, being an integral part — μόριον of the polis in Aristotle's words — was actively participating in the exercise of the legislative, executive and judicial power ([20]). Law, being an essential part of everyday life, was being taught in the

(16) J. Ellul, *Histoire des Institutions*, I, 94 (1970).

(17) Aristotle, *Politics*, 1291b, 32-37.

(18) These two freedoms are succinctly summarized in the principles : "To govern and to be governed in part" and "to live as one likes". Aristotle, *op. cit.*, 1317a and 1317b, 20; A. Gomme, too, distinguishes between political freedom in a broader sense and individual freedom in his book *More Essays in Greek History and Literature*, 139 (1962).

(19) The fundamental principle of a democratic form of constitution is liberty in Aristotle's words, *Politics*, 1317a, 44.

(20) C. Welles, *op. cit.*, 33; J. Larsen, *op. cit.*, 231.

ἀγορά (the place of assembly in ancient Athens) thus enabling every citizen to assimilate it and make it one of the component elements of the unique Greek civilization, ever-evolving and getting adjusted to the changing social, political and economic needs of the Athenian society ([21]). Thus the sovereignty of the people was not only proclaimed but was given, at the same time, a concrete form having been substantiated in a host of political rights, which in essence were, and should be properly called, civic functions. Rights such as freedom of speech and expression, the rights to legislate and render justice were all protected. In fact these rights represented civic functions which the citizen was required to perform ([22]) in the assembly or in the various courts.

One should point out that there was no government as we know it at the time when democracy reigned in Athens. Having a plenary competence (κυριώτατος τῶν ἐν πόλει ἁπάντων) it was the people who governed by means of the ἐκκλησία ([23]). The assembly, which was not a representative body of the people, but the people itself ([23a]), exercised its powers by pronouncing on all domestic and foreign political problems, its decisions having a force of law. Properly speaking, the exercise of political rights was not a right but a duty arising from civic virtue.

Today the word virtue connotes a moral idea. It is, we are told, a constant disposition of the soul, which leads to the doing of good and the avoidance of evil. This idea is admirably put in focus in the *Menon* and the *Gorgias* of Plato. According to the arguments developed in these dialogues it is in the capacity to govern well that virtue resides. Thus directed towards the common good Greek virtue is essentially civic.

(21) N. PANTAZOPOULOS, *Introduction to the Science of Law*, 7, 1964 (in Greek).

(22) V. EHRENBERG, *From Solon to Pericles*, 93 (1967).

(23) G. TÉNÉKIDÈS, *op. cit.*, 212.

(23a) Every citizen was participating in the exercise of the functions of the assembly, which was in effect the legislative organ of the Athenian polity. See N. PANTAZOPOULOS, *Critical Juxtaposition of Greek and Roman Law*, 242 (1964). The terms "assembly" and "ἐκκλησία" will be used hereinafter interchangeably.

It is interesting to note that in his monumental Funeral Oration ([23b]) Pericles starts with a clear exposition of what is to be understood by democratic equality. Juridically it means equality of all before the law, politically the abolition of all privilege due to birth or wealth. It does not mean however that all should have equal influence on the life of the community. Here there is only one valid criterion that of ἀρετή (excellence), the native ability by which the individual earns recognition in public life ([24]).

Mechanical equality as expressed in voting in the popular assembly needs to be supplemented by some form of differentiation which, given equal opportunity, opens the door to talent so that the poorest may exert influence upon decisive political issues. For Pericles, as for his Greek contemporaries, the state comes first, being a society that has developed naturally and within which alone man can exist. It is the whole of which the individual is a part and upon its well-being his own depends ([25]). The individual is to enjoy freedom in society but over him stands the city-state, which follows its own laws; to the individual belong freedom, to the state sovereignty and power.

Thus only within the limits set up by the interests of the community is the individual guaranteed freedom for the unfolding of his personality ([26]). The interests of the state are paramount,

(23b) Thucydides II, 37, 5.

(24) In the *Funeral Oration*, attributed by Thucydides to Pericles, it is said: "... Moreover there is in the same men a care both of their own and the public affairs and a sufficient knowledge of state matters even in those that labour with their hands. For we only think one that is utterly ignorant therein to be a man not that meddles with nothing but that is good for nothing". Thucydides, Book II, 40,6.

(25) J. Jones, *op. cit.*, 159.

(26) An all-embracing picture has been drawn by Thucydides, *supra*, n. 24, II, 37, II in the following words "... And we live not only free in the administration of the state but also one with another void of jealousy touching each other's daily course of life, not offended at any man for following his own humor, nor casting on any man censorious looks, which though they be no punishment, yet they grieve. So that conversing one with another for the private without offence, we stand chiefly in fear to transgress against the public and are obedient always to those that govern and to the laws...".

and the priority, indeed omnipotence of the state, is enforced at the expense of the individual citizen. Thus Pericles became the chief expounder of the idea of the liberal state. The linking up of the democratic ideal with individual personal liberty is his main achievement (27).

III. FUNDAMENTAL FREEDOMS IN CLASSICAL ATHENS

1. Equality before the law

The Athenian citizens enjoyed a complete equality which was an indispensable condition of democracy (28). It was ἰσονομία (equality before the law), the "most beautiful of words" (29), or, to the more critical, that "fine-sounding" name (30), which was to become a political catchword of the popular party in many Greek cities. The equality the Athenians envisaged was equality not only in but through the law (31) as laid down and enforced by popular assemblies and courts; an equality of civil and political rights, an equal chance of office, an impartial treatment before a court of law and a power open to all to prosecute public offenders (32); an equality which, as Pericles eloquently put it, was consistent with full recognition of unusual merit (ἀρετή) in service to the state (33).

Most commentators regard ἰσονομία as the name of that constitutional form which later came to be called δημοκρατία (a state governed by the people) (34). In the present writer's view, how-

(27) When Plato says in his *Republic*, 494b, that the four characteristics of that rare phenomenon, the philosophic nature, are quickness of understanding, good memory, courage and generosity he might also be describing the everyday Athenian of Pericles' ideal. On this issue see J. Myres, *The Political Ideas of the Greeks*, 360 (1927).

(28) *Supra*, p. 93.

(29) Herodotus III,80. V. Ehrenberg, *The Greek State*, pp. 44, 51 (1960).

(30) Thucydides, III, 82,8.

(31) Hypereides, III, 21; M. Finley, *op. cit.*, 10.

(32) R. Bonner, *Aspects of Athenian Democracy*, pp. 68, 77 (1933).

(33) Thucydides, II, 37,1.

(34) See for example, G. Vlastos, Ἰσονομία πολιτική, *Isonomia. Studien zur Gleichheitsvorstellung im griechischen Denken*, 2 (1964); J. Larsen, Cleisthenes and the development of the theory of democracy at Athens,

ever, ἰσονομία is not a name for a form of government but for the principle of political equality which, though most closely associated — and perhaps most consistently compatible — with a democratic constitution than with any other, is not necessarily confined to it.

In the speech which Herodotus puts into the mouth of Otanes ([34a]) the argument for entrusting rule to the Persian people as a whole is founded on the value of ensuring for all citizens an equal chance to be elected for office, an equality in holding magistrates accountable for their official acts and an equal opportunity to participate in the shaping of policies ([35]). These three institutions, although expressing the principle of political equality could, in a different measure, be found in non-democratic forms of government as well. Thus we hear of sortition being used in some oligarchies ([36]) and in Sparta — admittedly not a democratic state — some form of εὔθυνα (accountability of the magistrates) is known to have existed. The example of Thebes, however, is more enlightening. If the Theban constitution was an oligarchy, as Thucydides asserts ([37]), the Thebans were right not only in contrasting it with government by an oligarchic clique but also in calling it an oligarchy because of its restriction of active citizenship, but an ὀλιγαρχία ἰσόνομος, because all full citizens enjoyed equal political rights and equal political power.

These examples, I think, lend force to the argument that ἰσονομία in its purely political sense is not to be identified with democracy in the most positive and unmistakable way in Vlastos' words ([38]).

Essays in Political Theory presented to G. Sabine, 6 (1948) ; G. GRIFFITH, Isegoria in the Assembly at Athens, *Ancient Society and Institutions*, 115 (1966) ; M. OSTWALD, *The Nomos and the Beginnings of the Athenian Democracy*, 97 (1969).

(34a) Herodotus, III, 80,6.

(35) G. VLASTOS, *op. cit.*, 2,3 ; J. JONES, *op. cit.*, 86. M. OSTWALD, *op. cit.*, 112, 113.

(36) Aristotle, *Politics*, 4,15, 1300b, 1-3.

(37) Thucydides, V, 31,6.

(38) G. VLASTOS, *ibid.*

It is noteworthy that Article 2 of the Universal Declaration of Human Rights ([38a]), addressing itself to man qua man, *expressis verbis* declares that every human being is entitled to the enjoyment of his fundamental rights and freedoms without distinction of any kind. At the same time, Article 7 ([38b]) prescribes and envisages equality in the law without any discrimination, thus explicitly, though indirectly, irradiating the influence of the immortal Greek spirit, ever-present in the writings of Montesquieu and Rousseau, into the law of nations.

It cannot be doubted that these provisions, in clarifying the meaning of Article I of the Declaration, establish a liberal concept aiming at the orderly functioning of a society in which every human being — regardless of color, sex, race, religion or national origin — will be recognized and guaranteed everywhere the unfettered development of his personality and the fulfillment of his basic needs according to his innate abilities. Thus the Declaration, by making equality one of the mainstays of freedom, raises to the level of those who were theretofore the privileged classes millions of people who had previously been categorized as inferior. It moreover enables all citizens to take part in the shaping of the national policies by recognizing their equal political rights expressly stating that everyone should have equal access to public service according to his merit, thereby furthering the making of a society based on freedom, equality, justice and reason.

(38a) Article 2 of the Universal Declaration provides:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

(38b) Article 7 of the Universal Declaration provides:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

2. Freedom of speech

Full political rights and freedom of speech for all are the distinctive characteristics of democracy. As Plato asserts, Athens had the reputation for enjoying the greatest liberty of speech in all Greece (39). It is relevant to ask, therefore, when and how it was that the Athenians instituted the practice, which we see in operation under the full democracy, of allowing any citizen who pleased to address the assembly, and further, what was the essence of the much-debated ἰσηγορία (equal freedom of speech).

It appears that it was the regular procedure in the ἐκκλησία, after the προβούλευμα (agenda) had been read and the principal officers of the state, together with the proposer of the measure, had said what was necessary and apposite that the herald asked the question τίς ἀγορεύειν βούλεται; "who wishes to speak?" (40) Any citizen could elbow his way to the front, if he had not stationed himself there awaiting the herald's cue, ascend the βῆμα (platform from which speeches were delivered) and say what he wanted on the matter at hand. Anyone about to propose a measure had the right to persuade the people to add or to amend or even to reject outright and accept an alternative proposal. The assembly was free to choose its course, untrammelled by higher authority, provided always that the speakers were present to express their points of view and to persuade. This represents the important contribution of ἰσηγορία to the democracy (41).

Concerning the sophisticated concept of ἰσηγορία, which Herodotus apparently thought of as being one of the innovations of Cleisthenes, it is most plausible to admit, with Griffith and Woodhead, that it was introduced perhaps after 462 B.C. Griffith rightly points out that it may well have been introduced by no specific legislation but by empirical encroachment and usage

(39) Plato, *Republic*, 557b; *Gorgias*, 461 E.

(40) See A. Woodhead, Isegoria and the Council of 500, 16 *Historia*, 129 (1967); J. Lewis, Isegoria at Athens, 20 *Historia*, 129 (1971).

(41) G. Griffith, *op. cit.*, 131; A. Woodhead, *op. cit.*, 140.

permitted by presidents of less prestige than those of earlier years (42).

An aristocratic critic of Athenian democracy in the late fifth century, when it was still triumphantly successful both at home and abroad, explains why complete equality in public speech was a vital element of democracy as it was conceived in Athens:

> "First I want to say this: there the poor and the people generally are right to have more than the high-born and wealthy for the reason that it is the people who man the ships and impart strength to the city; the steersmen, the boatswains, the sub-boatswains, the look-out officers, and the shipwrights — these are the ones who impart strength to the city far more than the hoplites, the high-born and the good men. This being the case, it seems right for everyone to have a share in the magistracies, both allotted and elective, for anyone to be able to speak his mind if he wants to" (43).

In one way or another, however, all public speakers in the assembly could theoretically be held responsible for their advice and their promises but in practice the matter was not so simple. Restrictions were placed both upon the persons entitled to freedom of speech and upon what could be said by those entitled to the privilege. Any person found guilty of certain offences was deprived of the right of public speech in the council, the assembly or the courts. License in speech (παρρησία) as distinguished from freedom of speech (ἰσηγορία) was checked by libel laws.

Meetings of the assembly were opened by the pronouncement of a solemn curse against those who by speech would deceive the assembly, the council or the heliastic court. When, under the Cleisthenian regime, the assembly gained the right to try and punish public offenders, this power was chiefly used to punish men who abused the confidence of the people. The earliest example of the exercise of this right is the trial of Miltiades, the victor of Marathon. The general charge against him was wrongdoing (ἀδικία) but the specific form of wrongdoing was deceiving the

(42) G. Griffith, *op. cit.*, 125.
(43) *Pseudo-Xenophon*, I, 2,6.

people by the promises he rashly made in connection with an unsuccessful expedition to Paros (44).

It is manifest, therefore, that the Athenians took wise precautions to safeguard freedom of speech by disqualifying, or otherwise punishing, citizens who abused it. First, they deprived unworthy men of the right to advise and influence their fellow citizens. This purpose was achieved partly by subjecting to scrutiny those who habitually spoke in the public assemblies, if they were suspected of specified offences. Secondly, they punished overt acts such as deceiving the people, giving bad advice and promoting inexpedient legislation or legislation which would tend to undermine the foundations of the Athenian polity.

Thus in the first place the γραφὴ παρανόμων (45), used to test the validity of legislative acts of the assembly, was in principle a prosecution for deceiving the people. It was, in effect, used as a check upon the abuse of freedom of speech in the assembly. In the second place, the loss of the right of free speech was quite often due to a man's failure to discharge his financial obligations to the treasury or was a punishment for a crime previously committed. Complete disfranchisement (ἀτιμία) (46) resulted in his becoming practically a social and political outcast. He was excluded from courts or assemblies and, consequently, he lost, *inter alia*, the right to speak in public either as orator, litigant or witness. Finally, the Athenian system provided still another means of depriving unworthy citizens of the right to speak in the assembly. It was known as the scrutiny (δοκιμασία) of the orators (47). If one of the habitual speakers in the assembly was

(44) Herodotus, VI, 136; Plato, *Gorgias*, 516 E.

(45) G. Griffith, *op. cit.*, 130; R. Bonner, *op. cit.*, 69; A. Harrison, *op. cit.*, p. 78, n. 1.

(46) See also R. Bonner, *op. cit.*, 81.

(47) Aischines informs us that the following four charges alleged against an orator were sufficient ground for a δοκιμασία (scrutiny). First, that he had not behaved dutifully towards his parents; secondly, that he had not served as he ought to have done in the army or had thrown away his shield; thirdly, that he had prostituted himself; and finally that he had squandered his patrimony. Aischines, I *Timarch*, 28.

suspected of certain specified dishonorable acts, he could be prosecuted, not for the offence, but for continuing to speak in the assembly after committing the offence. The penalty was disqualification.

The rationale of all these provisions was to check upon the abuse of freedom of speech in the assembly and to make orators personally responsible for their public utterances just as magistrates were held responsible for their public acts.

In contradistinction to the peculiarities of the Greek concept of ἰσηγορία, both the Preamble and Article 19 of the Universal Declaration of Human Rights ([47a]) imbued by the eternal principles of the extraordinarily refined Greek philosophy, juxtapose a world without frontiers; a world in which the unique and rational human being, who is the true end of all law, shall enjoy freedom of speech being entitled, at the same time, to the inalienable birthright to freedom of expression.

It appears that the basic right to freedom of opinion is the most immediate expression of the human personality in society and as such one of the noblest human rights. The writer of the present paper firmly believes that it is absolutely basic for a liberal-democratic order because it alone makes possible the constant intellectual exchange, the contest among opinions which are the lifeblood of such an order, "the matrix, the indispensable condition of nearly every other form of freedom", in Cardozo's words.

3. The right of association

For the first time in the history of European civilization the right of association was officially enunciated and solemnly proclaimed by Solon at the turn of the sixth century. Solon's law on associations was not designed to give the associations enumerated in it a right not hitherto possessed by them to exist as

(47a) Article 19 of the Universal Declaration provides:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

independent corporations ([47b]); it abolished, in effect, the privilege of the right of association — being theretofore exclusively exercised by the nobility ([47c]) — and extended its applicability to a wide range of social groups ([48]). Thus this very law, definitely liberating the individual from the intolerable pressure exerted upon it by the group, embodied, in modern terms, the first declaration of the rights of the free individual in the world. I think, therefore, that it is worth dwelling on that law in my attempt to elucidate its substance.

Although the law does not clearly distinguish between the groups specifically referred to in its text, we can conveniently classify them into two categories. The ones falling within the confines of public law and those pertaining to the domain of private law ([48a]).

A. Public law associations

a) *Demes*

The term δῆμος encompasses social groups usually living out of the city and comprises, as a result, individuals falling under the various categorizations of citizens, excluding the nobility ([49]). It appears that citizenship was granted to the members of the demes, a right formerly accorded only to the members of the

(47b) The term "corporations" is used in the sense of the associations envisaged by the Solonian enactment.

(47c) In ancient Greek societies, being organized on an aristocratic basis, the individual acquired a legal capacity only if he was a member of one of the social groups recognized by the ruling class. No legal protection was accorded to those who were not members of the groups in question. See Aristotle, *Athenaiōn Politeia* 2,3.

(48) Gaius, D. 47,22,4.

(48a) The civil law doctrine divides the law into public and private law. The former is the part of the law which is concerned with the state in its sovereign capacity thus comprising constitutional law, administrative law, international law and criminal law. The latter is composed of civil law and commercial law. See J. Merryman, *The Civil Law Tradition*, 107, 108 (1969). To both classifications I will refer in a looser sense, given the peculiarities of the legal structure of the Athenian polity.

(49) See N. Pantazopoulos, Αἱ ἑλληνικαὶ Κοινωνίαι. Προλεγόμενα εἰς τὸ ἀττικὸν σωματειακὸν δίκαιον, 52, 1946 (in Greek); J. Jones, *op. cit.*, 157.

phratries and the γένη (clans), whose character was prevalently aristocratic. Thus registration with a deme, though not conclusive, was strong evidence of citizenship (50).

b) *Phratries*

The phratries, being originally based on blood relationship, were perhaps the first political manifestation of the natural societies and became combative organs in the pursuit of their interests and purposes (51). Subsequently, membership was extended to individuals of heterogeneous descent (52), although political rights were not accorded to them through the instrumentality of their membership.

The enumeration of the phratries in the text of Solon's law, apparently aimed at the strengthening of the position of disadvantaged individuals, placing them on the same footing with the aristocrats from a political point of view. Yet, the aristocrats did not comply with the requirements of the law, which inaugurated a political equality of the paupers to the nobility. Thence the enactment of a new law prescribing the obligation of the phratries to welcome their new members within their ranks, recognizing their political rights (53).

c) *Orgeones*

Some writers, like Ziebarth and Poland, have expounded the view that the ὀργεῶνες were private law associations partaking of a local — religious character. Others point to their predominant religious element, stressing that they were associations of foreigners, mainly Thracians, decisively conducive to the spreading of the Thracian mysteries in Athens. A careful scrutiny, however, shows that, although meeting to celebrate a com-

(50) After the reforms brought about by Cleisthenes in 507 B.C., every Athenian citizen was required to be registered in a deme, the Demos of Athens being possibly, at first, so called because it was made up of the aggregate of these demes.

(51) Aristotle, *Politics*, 8,107.

(52) Aristotle, *Athenaiōn Politeia*, 21,2,55,3.

(53) F. Chamoux, *La civilisation Grecque*, 278 (1965).

mon cult, their members perhaps aimed at the overthrowing of the ruling class in the pre-Solonian era. Their legislative recognition, effectuated by Solon's reform, made them the prevailing form of public law associations possibly until the days of Cleisthenes (54). Thus the ὀργεῶνες, being transformed from private law associations to public law religious groups, dominated the public life of Athens and formed the models for the establishment of new private law associations.

B. Private law associations

a) *Syssitoi*

This term rather rarely connotes an association, although in some cases it signifies people sharing common meals or banquetings. A synonymous term is the word σύσκηνος. In Athens, as well as in Sparta, the σύσσιτοι or σύσκηνοι formed groups recognized and protected by the state (55). In Plato's days the term assumes broader dimensions denoting not simply a feasting but a comprehensive association of its members (56). Such is, too, the character of the ἀνδρεῖα in Crete and the φειδίτια in Sparta, which can be characterized as social gatherings of the citizens(57). It seems plausible to accept that the syssitoi of Solon's law were private law associations of a similar nature in contradistinction to the ἀνδρεῖα and φειδίτια, partaking of a public law character.

b) *Homotaphoi*

From Homer's days the obligation of the surviving not to leave the remains of a relative or a friend unburied came to be considered law common to all the Greeks (58), being identified with the divine law whose origin was so old as no one knew when it first appeared (59). It seems, therefore, that the duty to bury the

(54) J. Jones, *op. cit.*, 159.

(55) M. Radin, *Legislation of Greeks and Romans on Corporations*, 45 (1910).

(56) Plato, *Epistles*, 350c.

(57) N. Pantazopoulos, *op. cit.*, 70; J. Jones, *op. cit.*, p. 167, n. 8.

(58) Euripides, *Supplices*, pp. 526-527; M. Radin, *op. cit.*, 45-46.

(59) Sophocles, *Antigone*, 460.

dead was undertaken by the group, substituting the city in so far as the protection of the individuals of common origin was concerned. In Athens such groups were the ὀργεῶνες, acting in consonance with the predominant social and religious beliefs of the time. From the unwritten law this obligation pervades Solon's law reaffirming the view that the ὁμόταφοι ([59a]) were one of the oldest forms of association. It may be conjectured that they have been the only form of association tacitly recognized by the state and sanctioned by the law common to all the Greeks, before becoming a lawful corporation of the *lex lata* ([60]).

c) *Thiasoi*

The θίασοι originated in small groups of associated individuals meeting to celebrate a common cult ([61]). It should be noted, at this point, that the activity of any group was centered in worship at a common shrine to a common deity, for to the Greeks worship long continued to be essentially a social rather than an individual matter and, conversely, association in itself implied a common cult ([62]). As the time passed by the θίασοι increasingly proliferated. Thus in the fifth and fourth centuries, comprising a large number of multifarious private law associations, they became the prevalent form of corporation in the social and political life of Athens. Their particular significance lies in the fact that, being a manifestation of the universal idea of association, it allowed for the first time the association of all individuals, notwithstanding the *metics* ([62a]), the women and slaves.

d) *Those sailing for plunder and commerce*

These were possibly associations of a mixed socio-economic

(59a) The term ὁμόταφοι signifies people sharing the same grave.

(60) N. PANTAZOPOULOS, *op. cit.*, 73.

(61) J. JONES, *op. cit.*, 161.

(62) In his *Politeia*, 738, A, B Plato did not fail to note that there was also the political advantage to the city from the friendly contacts of the citizens with one another in religious sacrifices and festivals.

(62a) The metics were persons having a defined legal status in the city of their domicile.

character formed for trading and privateering (63). It seems plausible to admit that the express citation of the aforementioned categories in the text of the law has to be construed as allowing the practice of these "professions" to all citizens of common origin (64) after Solon's enactment.

Having already delineated the salient features of the associations expressly recognized and juridically protected by the Solonian law we are called upon to evaluate its significance.

The individual, having been liberated from the guardianship of the aristocratic elite, was given the right of free action and initiative by virtue of his identity as a member of the community, provided that his actions were within the framework circumscribed by the interests of the polis (65). The common blood relationship (γένος), being the linchpin of the ruling classes of the state, was substituted by the element of common place (δῆμος) (66) and common interest (ὀργεῶνες) (67). Moreover, by virtue of the law attributed to Solon, their autonomy, in the sense of the power to enact autonomous corporate rules recognized to all associations, was proclaimed, provided that their aims and resolutions did not contravene *jus cogens* provisions (δημόσια γράμματα) (68). It has rightly been argued, therefore, that the enactment of autonomous rules of law, as a legal institution, is not a creation of German law but an all-pervasive institution of ancient Greece (69).

One should not fail to emphasize, at this point, that the pro-

(63) N. PANTAZOPOULOS, *op. cit.*, 77, citing ZIEBARTH; M. RADIN, *op. cit.*, 49.

(64) Aristotle, *Politics* I, 8, 1256 a-1256b.

(65) I. LINFORTH, in his book *Solon the Athenian*, 127 (1919) remarks that Plato's characterization of Solon as ἐλευθεριώτατος should be also extended to the "political domain".

(66) S. MAINE in his study *Village Communities in the East and the West* (1871), has expounded the view that the first associations were not based on the fact of "common blood" but on the one of "common place".

(67) See W. FERGUSON, The Attic Orgeones, XXXVII *Harvard Theological Review* (1944).

(68) For a full discussion see M. RADIN, *op. cit.*, chapter 4.

(69) N. PANTAZOPOULOS, *op. cit.*, II.

visions of Article 20 of the Universal Declaration of Human Rights ([69a]) regarding freedom of assembly and association are among the most conducive to the flowering of democracy in any state. All the newly emerging African nations, that have carefully entrenched a body of fundamental human rights in their national constitutions, have in respect of these two freedoms followed solemnly the pattern set forth by the Declaration ([69b]). The older nations, on the other hand, have significantly been influenced if not in the formulation of the specific provisions, at least, in the implementation of its legal ideals in the administration of justice.

The Declaration, though seeking to guarantee freedom of assembly and association on a universal basis, embodies logical and inevitable limitations upon the enjoyment of these rights dictated not only by the compelling exigency for recognition and respect of the freedoms and rights of others but also by the requirements of morality, public order and the general welfare in a democratic society. For anyone who has assiduously studied Solon's law, this carefully conceived language is undoubtedly reminiscent of the limitation incorporated therein which explicitly spells out that the aims and the autonomous rules enacted by the associations in question should not infringe upon imperative rules of law.

4. The right to personal liberty and security

In pre-Solonian Athens it was fairly common for free men to fall into slavery. It was rather a habitual practice that they

(69a) Article 20 of the Universal Declaration provides:

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

(69b) See H. WALDOCK, Human Rights in Contemporary International Law and the European Convention, in *European Convention of Human Rights*, British Institute of International and Comparative Law, Series 5, 14 (1965) ; A. DEL RUSSO, International Protection of Human Rights, *op. cit.*, (*supra*, n. 5), 38 ; L. SOHN, The Universal Declaration of Human Rights, 8 *Journal of the International Commission of Jurists*, 24 (1968).

might be sold into slavery by their parents (70) or pledge their bodies as security for loans (71) or, even, be hailed into slavery for failing to pay a debt (72). The latter case, in which the rule was actually inequality not equality before the law (73), refers to the law of debt. Pursuant to its provisions the debtor's property was subject to forcible seizure, though after due process, and he himself to enslavement (74). This anachronistic procedure was abolished by Solon, whose monumental law prescribed that an Athenian citizen could neither be enslaved, and by implication imprisoned, for private debts nor sell away his children into slavery (75). It is to be noted, however, that with regard to public debt no imprisonment was envisaged for payment of sums due to the state from purely financial debtors but only against criminal debtors, that is, those condemned to a money penalty.

Although it is an indisputable fact that the Athenian citizen was protected against wrongful enslavement, it is quite controversial whether the protection sought was effectuated by means of the procedure known as ἀπαγωγή (taking to the court) or if a γραφὴ ἀνδραποδισμοῦ (suit against enslavement) was also available (76). Another line of defense open to a citizen wrongfully enslaved was the procedure called ἀφαίρεσις εἰς ἐλευθερίαν (deprivation of personal liberty) (77). It is characteristic of the prevailing liberal trends within the operational framework of the Athenian democracy that these very remedies might be resorted to by a *de facto* slave striving to establish an alleged right to be free.

(70) R. Schlaifer, Greek Theories from Homer to Aristotle, xlvii *Harvard Studies in Classical Philology*, 178 (1936).

(71) R. Schlaifer, *op. cit.*, 177.

(72) Isocrates, 14,48; Lysias, 12,98.

(73) M. Finley, The Freedom of the Citizen in the Greek World, *supra*, n. 14,13.

(74) R. Schlaifer, *op. cit.*, 178.

(75) Solon had applied to this measure the euphemistic term σεισάχθεια (disburdenment); see I. Linforth, *op. cit.*, 269; A. Harrison, *op. cit.*, pp. 187, 242.

(76) See J. Ellul, *op. cit.*, 108.

(77) J. Morrow, *Plato's Law of Slavery in its relation to Greek Law*, pp. 112, 117 (1976).

Strictly speaking ἀπαγωγή was the hailing before the competent magistrate of one caught *in flagrante* committing certain acts. The acts which rendered a man liable to an ἀπαγωγή were categorized into three classifications. First were acts done by those falling under the general head of felons. These were listed as thieves, clothes-robbers, kidnappers, burglars and cut-purses (78). Quite distinct from the ἀπαγωγή of felons was the procedure against those guilty of homicide who, despite bloodshed, did not absent themselves from the ἀγορά, the temples and other holy places. The transgressor could be killed out of hand or be arrested and hailed off to prison by any private person. One should point out, however, that the Athenian citizen was not subject to arrest or punishment except by due process of law (79). Lastly, a third category of acts rendering a man liable to ἀπαγωγή was the use of forfeited rights. In this connection, Demosthenes quotes a law spelling out that a man convicted of maltreating his parents or failing in his military duties or frequenting forbidden places was liable to be hailed before the *Eleven* (a criminal court), who would imprison him and bring him before a dikastery where he could be accused by anyone (80).

The abovementioned view of the homicide law gives us the clue to the interpretation of the law of personal injury. The concept of ὕβρις was broad enough to include any attack upon the individual with special emphasis on any kind of assault connoting humiliation and degradation. Thus the law forbidding ὕβρις against anyone, slave or free, was preserved enabling any citizen to prosecute the offender by bringing a γραφὴ ὕβρεως (suit for offence) before a heliastic court (81). It is noteworthy that as against his master the slave could not rely on a chance of getting

(78) Aristotle, *op. cit.*, 51,1; Plato *Republic*, 552d.

(79) See J. Gaudemet, *Institutions de l'Antiquité*, 171-172 (1967); C. Mossé, *Les Institutions Grecques*, 74 (1967).

(80) Demosthenes, 24, *Timokrates*, 105.

(81) G. Morrow, *op. cit.*, 48; A. Harrison, *op. cit.*, pp. 168, 172. Slaves were specifically protected from ὕβρις and Demosthenes even alleges that men had been condemned to death on this charge. Demosthenes 21,47-49; on this point see also R. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle*, II, 56 (1938).

a sympathetic citizen to bring a γραφὴ ὕβρεως if he suffered bodily harm at his master's hands. However, an effective remedy against cruel treatment by a master lay in a slave's right to take asylum at the Theseum or at the altar of the Eumenides on the Areopagos ([82]). Although Andocides asserts that until the archonship of Scamandrius ([83]) even citizens could be tortured by the state, Attic law entertains the curious belief that the assertions of the slaves could be relied on only when given under torture([84]). It appears plausible, therefore, to admit that the underlying idea is the belief that torture was an infallible method of eliciting and attaining the truth ([85]).

Thus it may be argued that Solon's law on disburdenment and the Athenian law on ὕβρις have set forth the first dimensions for the realization of human rights already prescribed by the Universal Declaration of Human Rights (Articles 3, 4 and 5) ([85a]) the United Nations Covenant of Civil and Political Rights (Articles 7, 9 and 10) ([85b]) and the European Convention For The Pro-

(82) R. SCHLAIFER, *op. cit.*, 181; G. MORROW, *op. cit.*, 55; A. HARRISON, *op. cit.*, 172.

(83) The date is unknown. See D. MACDOWELL, *Mysteries*, 92 (1962).

(84) See also G. MORROW, *op. cit.*, 80; HARRISON, *op. cit.*, 147.

(85) SCHLAIFER, *ibid.*

(85a) Articles 3, 4 and 5 of the Universal Declaration provide, respectively:

> Art. 3. Everyone has the right to life, liberty and security of person.
> Art. 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
> Art. 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(85b) Articles 7, 8, paragraphs 1 and 2 and Article 10, paragraph 1 of the United Nations Covenant on Civil and Political Rights stipulate:

> Art. 7. No one shall be subject to torture or to cruel, inhuman or degrading punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
> Art. 8. (1) No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
> (2) No one shall be held in servitude.
> Art. 10. (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

tection of Human Rights and Fundamental Freedoms (Articles 2, 3 and 4) ([85c]).

5. Freedom of religion

To state that in our days freedom of religion is a civil right expressly recognized and constitutionally protected by all modern democracies would be a truism, yet this very fact lends force to the argument that the necessity for legal protection of religious freedom is nevertheless evidence for religious tolerance ([86]).

In classical Athens the system was pantheistic, tolerant and permissive of the importation of new deities, the prevailing intolerance being evidenced by the existence of a shrine of the unknown god ([86a]). Religion, being an all-pervasive element, had become socialized. The originally aristocratic phratries and cults were democratized and admirably fitted to allow the citizens to mingle with one another, in Aristotle's words. Moreover, at regular periods throughout the year the whole population without distinction of birth or wealth joined together joyously in celebrating their splendid festivals, honoring their national divinities ([87]).

(85c) Article 2, paragraph 1, and Articles 3 and 4, paragraphs 1 and 2 provide:

> Art. 2. (1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> Art. 3. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
>
> Art. 4. (1) No one shall be held in slavery or servitude.
>
> (2) No one shall be required to perform forced or compulsory labour.

(86) The spearhead for efforts at strengthening religious freedom in the international community is the Convention on the Elimination of All Forms of Religious Intolerance, with its promise of international cooperation in measures aimed at realizing the Declaration's standards for religious liberty: see M. ABRAM, 8 *Journal of the International Commission of Jurists* 40 (1968).

(86a) R. BONNER, *op. cit.*, 136-137.

(87) R. BONNER, *ibid.*

Impiety, as Wilamowitz has said, was not a question of plus but of minus, not of worshipping strange gods but of neglecting the worship of those of one's own city ([88]). Thus in the eyes of his accusers Socrates preferred his own god to those of the city and was charged and tried for impiety and corruption of the youth. He had been the teacher of the notorious Alcibiades, and of Critias, the leader of the Thirty Tyrants. However, it seems reasonable to suppose that there was a political element in the trial of Socrates ([89]). His teachings might be deemed a source of danger, tantamount to a covertly introduced social revolution, he himself being one of the scapegoats of the unfortunate Peloponnesian war.

The Universal Declaration ascribes to the perennial human idea of freedom of thought, conscience and religion, the status of a sacred human right. However, the conferral of such an attribute to this freedom does not make it absolute but serves to impose severe restrictions and rigorous criteria upon the type of considerations which may be invoked to justify interference with the exercise of that right.

The inevitability of limitations as well as the restriction on what constitutes permissible ones has been *expressis verbis* recognized in Article 29 of the Declaration. This Article confines the limitation of the freedom to manifest religion or belief solely to those considerations which invoke either the rights and freedoms of others or morality, public order and the general welfare in a democratic society ([89a]).

This very recognition that there are practical limitations on any exercise of a right, even such a sacrosanct right as the freedom of thought, conscience and religion, highlights the threat of undermining the right through the imposition of limitations.

(88) As cited by J. JONES, *op. cit.*, p. 95.

(89) See C. PHILLIPSON, *The Trial of Socrates*, 275 (1928).

(89a) Article 29, paragraph 2 of the Universal Declaration provides:

> In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Yet, since man is the measure of human rights, in accordance with the Protagorean beliefs, the ultimate safeguard against that threat can only be the judgement and grave concern of man. For the noble task of defining his inalienable freedoms as legal rights and of effectively safeguarding them, being incumbent upon man, necessarily entails an incessant response and adaptation to the ever-evolving human, social and economic needs which are hammered out by the irresistible force of change inherent in man's world.

6. The right of property

In Athens of the sixth century a gradual transformation of collective into individual ownership was realized, culminating in Solon's law which allowed testamentary dispositions by men without legitimate off-spring (90). The right of landed property was, so to speak, a right inherent in the law of the polis and inextricably connected with it. Thus a necessary concomitant of this was that only the citizens were entitled to proprietary ownership.

However, the Athenian polity might regulate the exploitation of privately owned land (91) while restrictions on the right of property were permissible for common interest and public utility purposes. Nevertheless, expropriation without compensation and confiscation of property without due process were essentially inconsistent with the nature of the institution of property.

On taking office the ἐπώνυμος ἄρχων (one of the nine chief magistrates of the Athenian polity) proclaimed his intention to ensure that men's possessions should remain unmolested during his term of office and that whatever a man possessed he should continue to possess till the end of the year (92). In this connection one should also point out the inclusion in one form of the heliastic oath of an undertaking binding the members of the court not to permit any redistribution of the land or houses of

(90) G. Τένέκιδès, *op. cit.*, 220; J. Jones, *op. cit.*, 198.
(91) J. Ellul, *op. cit.*, 93-94.
(92) Aristotle, *Athenaiōn Politeia*, 36,2.

the Athenian citizens (93). Thus the notion of inviolability was attached to the notion of property as a *sine qua non*.

Although the Athenians did not fail to recognize the factual difference between possession and ownership, as any rudimentary system of law does, they did not elaborate the distinction into a whole body of rules for protecting the two different relationships. However two actions, namely, the διαδικασία and the δίκη ἐξούλης, were instrumental in this respect. In both title was all important, the former aiming at establishing it while the latter purported to clothe it with possession (94).

It should be noted that Article 17 of the Universal Declaration (94a), predicated upon terms which are reminiscent of the proclamation articulated by the aforesaid magistrate, would have gained in precision and lost some of its excessive individualism had it simply stated that the right to property could not be exercised against the public interest.

A thorough examination of the conflicting views which ultimately led to the adoption of Article 17 leads to the inference that three additional points should have been included in the text, if it was to become comprehensive. Such points were the recognition of the right of every human being to a minimum of personal property, sufficient to guarantee a decent living, the principle that the right to property must not be exercised against the public interest and the qualification that the deprivation of property is not arbitrary when it is based on considerations of public interest and is accompanied by fair compensation.

It is, nevertheless, incontrovertible that the espousal of the formula of Article 17 constituted a remarkable progress in 1948, leaving the heavy task of creating better juridical and political

(93) Aristotle, *Politics*, 5,7,11 mentions as one of the necessary safeguards in a democracy that property should not be subject to redistribution.

(94) See J. Jones, *op. cit.*, 202.

(94a) Article 17 states:

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

instruments to ensure its effective implementation to the upcoming generations.

7. The right of petition

The way in which legislative and judicial functions tended to merge in democratic Athens emphasized the disposition, present to some degree in all democracies, to identify the city with the aggregate of the citizens. But the identification was never complete. It is for this very reason that the exercise of their civil and political rights and the harmonious functioning of the system itself was, and had to be, safeguard by the safety-valves of εἰσαγγελία, ἀποχειροτονία and προβολή. These were the procedures under which the βουλή and the ἐκκλησία might act in a judicial capacity and, in fact, did play a preponderant role.

a) *Eisangelia*

The term εἰσαγγελία has both a general sense, "report" or "petition", and a technical sense of initiating the legal procedure of that name, which can be best translated as "impeachment"(95). The distinguishing marks of this procedure were that the accusation was deemed a particularly serious threat to public order, even though in some cases it had only affected a private individual, that it called for a speedy redress and that the initiator or prosecutor was not liable to a fine of a thousand drachmai, if he failed to receive one-fifth of the votes of the court or did not persist in the prosecution (96). There were three distinct categories of εἰσαγγελία. In the first place, it was available against those who wronged orphans or heiresses; secondly, against official misconduct of arbitrators; and finally, against those guilty of acts threatening the public order or the stability of the state. In my present analysis I shall confine myself withing the third category, for only in these cases did the βουλή (the legislative council of elders) or the ἐκκλησία exercise their powers in an effective manner.

(95) R. Bonner, and G. Smith, *op. cit.*, I, 294.
(96) G. Morrow, *op. cit.*, 48; R. Bonner and G. Smith, *op. cit.*, II, 56.

Though it is quite doubtful whether there was a specific law of impeachment (νόμος εἰσαγγελτικός) in the sixth century, as Aristotle asserts (97), there existed early in the fifth century a special procedure for dealing with grave political misdeeds, conducted at first throughout the *Areopagos* (one of the high courts), later initiated before the βουλή and carried through either before it or before the ἐκκλησία or remitted by one or other of these bodies to a dikastery (98). Hypereides, the magniloquent Athenian orator, informs us that the law named the following grounds for impeachment:

1. Attempt to overthrow the constitution (99).
2. Treason (100).
3. Taking of bribes by an orator (101).
4. The charge of making deceptive promises to the people (102).

Miscellaneous charges allied to treason, such as damage to naval establishments, the burning of public buildings or records and acts of sacrilege are mentioned in various contexts as fit occasions for εἰσαγγελία (103).

An information could be laid before the βουλή at any moment and by any person, slave or free, foreigner or citizen (104). The information lodged, which probably had to be in writing, could be against anyone, whether officer of the state or private person. Thus two preeminent aims seem to have dictated the extraordinary procedures available for impeachment. The first, emphasized by Harpokration (104a), was to bring the wrongdoer to book with the minimum delay (104b). The second was to give the widest latitude to informers to initiate proceedings without hesitation or fear of reprisals from wealthy or powerful men, a function

(97) Aristotle, *Athenaiōn Politeia*, 8,4.
(98) See R. Bonner and G. Smith, *op. cit.*, I, 299.
(99) Hypereides, 3 *Euxenippos*, 7.
(100) Hypereides, *ibid.*
(101) R. Bonner, *op. cit* (*supra*, n. 32), 80.
(102) Demosthenes, 49, *Timotheos*, 67; A. Harrison, *op. cit.*, p. 54, n. 3.
(103) Hypereides, 2 *Lykophron*.
(104) Aristophanes, *Knights*, 475; Hypereides, 2 *Lykophron* 3,4.
(104a) Harpokration was one of the Greek lexicographers.
(104b) See A. Harrison, *op. cit.*, p. 51, n. 1.

which in a contemporary democracy a free press is supposed to perform.

b) *Apokheirotonia*

At the κυρία ἐκκλησία (plenipotentiary assembly) in each prytany anyone, according to Aristotle ([105]), could lodge an εἰσαγγελία following the course outlined in the preceding pages. At the same session the magistrates should give an account before the assembly and a vote was taken by show of hands to determine whether they were governing rightly ([106]). If the vote was adverse, the magistrate concerned had to appear before a dikastery, which could either condemn him and inflict the penalty or acquit him, in which case he took up his office again. This procedure, being in effect an εἰσαγγελία, ultimately acquired major political importance ([107]).

c) *Probolè*

The third procedural safeguard, being in essence a *sui generis* form of procedure ([108]), was a preliminary stage rather than an integral part of an action. Under it the perpetrator of certain specific public wrongs could be reported to the ἐκκλησία by means of a complaint addressed to the πρυτάνεις ([108a]). The πρόεδροι (presiding officers) had then to bring up the matter at a meeting of the ἐκκλησία, at which both sides were heard and the people subsequently voted by show of hands ([109]). The vote in the ἐκκλησία had in itself no effect. If the vote was adverse to the accused, it did not necessarily entail his prosecution ([110]). Contrariwise,

(105) Aristotle, *Athenaiōn Politeia*, 43,4.

(106) N. Pantazopoulos, *op. cit.*, 241.

(107) A notorious example was its use against Pericles in 430 B.C. See Thucydides, 2.65.

(108) A προβολή could be put forward even by a foreigner but the accused had to be either a citizen or a metic.

(108a) Each of the ten clans was represented in the Council of 500 by fifty members, the so-called πρυτάνεις, elected at random.

(109) A. Harrison, *op. cit.*, p. 60, n. 1.

(110) Aischines, 3 *Ktesiphon* 52, shows that Demosthenes dropped the case against Meidias though he had secured a favorable vote at the προβολή.

if it was in his favor he could be prosecuted, though no prosecutor would have been likely to be forthcoming in that event ([111]).

The acts which qualified for this peculiar procedure can be subsumed under two categories. The first category of acts qualified for treatment by προβολή was sycophancy ([112]) and deceiving the people by making unfulfilled promises ([113]). These general terms engender an ambiguity in defining precisely their scope of application and consequently of understanding why they are thus conjoined. The second category of acts was behavior prejudicial to the sanctity of certain festivals. The qualifying act was described in general terms as ἀδικεῖν περὶ τὴν ἑορτήν (causing damage to the festival). More specifically it included assault on the persons of festival officials or those attending the festival, corrupting or threatening of festival officials, damaging or appropriating sacred objects, and even what would in other circumstances have been lawful arrest of persons for debt, including judgement debtors ([114]).

IV. CONCLUDING REMARKS

The belief that the law of any state is bound with and conditioned by the constitution which at the time exists in that state leads Aristotle to a distinction between absolute or simple justice, on the one hand, and justice having regard to the constitution of the state, on the other ([114a]). Solon whose reforms had set Athens on the road to a democratic form of government, evidently believed that justice and equality were not necessarily identified ([114b]). Justice indeed required a measure of political equality, expressed in freedom from personal bondage for debt, liberty to prosecute wrongdoers whether the wrong directly affected one-

(111) Demosthenes, 21 *Meidias*, 214.

(112) For a definition of sycophancy see Aischines 2 *Embassy*, 145; Aristotle *Athenaiōn Politeia*, 43,5.

(113) See BONNER, *op. cit.*, 80; HARRISON, *op. cit.*, p. 54, n. 3.

(114) A. HARRISON, *op. cit.*, p. 62, n. 5.

(114a) Aristotle, *Politics*, vii, 8,2.

(114b) Aristotle, *Athenaiōn Politeia*, v, xii.

self or not and the right to take decisions of lower courts for review to the people sitting in its judicial capacity ([114c]).

Solon thought that under the peculiar conditions of Athenian society justice did not require a similar advance in economic equality, comprising, as the popular leaders advocated, abolition of all inequalities of wealth and of the political privileges, such as eligibility for office, predicated upon them. His program, in essence, was not distribution of wealth but moderation in the use and display of it, the careful striking of a balance secured by enough force to prevent such predominance of one side or another as would endanger the independence or well-being of the city itself.

The freedom of the polis required that its members should not be enslaved and that the small farmer's plot should be relieved from burdens which were essentially burdens on the polis in so far as they prejudiced or extinguished his position as a citizen. Consequently reforms were in effect undertaken in the knowledge that they did not occur in a vacuum. They were essentially kept within the limits prescribed by the εὐνομία (an established system of laws), disciplined order and concord. Thus the only stable and practicable form of justice was that embodied in the νόμος of the city as a generally accepted and readily obeyed set of rules controlling the arbitrariness of individual decisions of magistrates and courts.

It was, however, under the invigorating influence of the peculiar notion of civic virtue (ἀρετή) that the Athenian democracy flourished and prospered. Thus the prevailing liberal trends have had a great impact in the shaping of the two main tendencies of Greek democracy, as finally developed in the Athens of the fifth century. The former aimed at the establishment of the sovereignty of the people and was eventually substantiated in an array of civil rights which, in essence were and, should be properly called civic functions. The latter delineated the confines in the sphere of free individual action. Thus both ultimately became the salient features of the Athenian polity thereby

(114c) *Ibid.*, ix.

embodying the Aristotelian distinction between political freedom and individual freedom.

The most striking feature of the sublime Greek philosophy, of the elaborate edifice of the Roman Law and, subsequently, of the Christian fathers was their common belief in the law of nature, as lying beyond and above positive law and as the transcending authority which delimits the secular power of the state with regard to the individual. It was Hugo Grotius, however, who laid the foundations for the recognition of the inherent rights of man within the framework of international law.

The human being with its rational and social nature is at the basis of the Grotian system both on the national and the international plane. According to Grotius laws are created by common agreement of the people so that the obligation to respect them is founded on the consent of the contracting individuals ([115]). Thus the individual, being the focal point of the law of nature, is a shareholder in it qua individual ([116]). This very conception of the law of nature, with man and his well-being at the center of the system, passed from Grotius to Locke and, through the latter, to the revolutionary scene of the declarations of 1776 and 1789.

It was in Europe, the cradle of civilization and enterprising ideas, that the fundamental freedoms of man were first proclaimed and conceived as full-fledged legal principles by the enlightened geniuses of Montesquieu and Rousseau. These very ideas of the eminent molders of the political contract theory were transported to the American Continent and were fully realized in the Virginian Declaration of Independence. It was there proclaimed, that all men are equal and are endowed with liberties inherent to the human being, inalienable and lying above the power of the state; it was also recognized that the state is created by the people and its function is not to limit the natural rights of man but to maintain and protect the fundamental rights to life, liberty and the pursuit of happiness

(115) GROTIUS, *De Jure Belli ac Pacis*, I, 1,4,18.
(116) GROTIUS, *ibid.*; P. REMEC, *op. cit.*, 63.

assuring to man their enjoyment in peace and security ([117]).

The broad spectrum of the rights of man, as envisaged by Jefferson, became an all-pervasive concept which thirteen years later reaffirmed itself in the monumental Declaration of the Rights of Man and Citizen of 1789. It is there stated that "men are born and remain free and equal in rights... These rights are liberty, the ownership of property, security and the right to resist oppression" ([117a]). Thus the underlying philosophy of both the American and French revolutions was the same. The enthronement of the individual in his pedestal was effectuated by means of his recognition as a subject of rights conferred upon him by natural law not by human society. The age of unlimited sovereignty and state pantheism was over. The era of man qua man had succeeded.

It took almost two centuries for the community of nations to realize that human rights were not an issue to be reserved to the exclusive jurisdiction of the national states and that their internationalization was an imperative need. Thus in 1948 the world community proclaimed that the inalienable rights of man are an issue of international concern. The Universal Declaration of Human Rights has been hailed as a historic landmark of paramount significance. It has been described as an International Magna Charta of all mankind, as a common standard of achievement for all peoples and all nations, as a document of the highest moral authority ([118]). The Declaration in pursuing

(117) H. LAUTERPACHT, *op. cit.*, 75,88; A. DEL RUSSO, *Dimensions and Relevance of Human Rights under the Rule of Law*, World Peace Through Law Conference (1965); A. DEL RUSSO, Human Person and Fundamental Freedoms in Europe, *op. cit.* (*supra*, n. 3), pp. 424-425.

(117a) Articles 1 and 2 of the Declaration of the Rights of Man and Citizen.

(118) *The Universal Declaration of Human Rights. A Standard of Achievement*, U.N. Doc. 62.1.9, at 12; L. SOHN, The Universal Declaration of Human Rights (*supra*, n. 69b), 20; R. CASSIN, Twenty Years after the Declaration, 8 *Journal of the International Commission of Jurists*, 10; H. LAUTERPACHT, The Universal Declaration of Human Rights, 25 *B.Y.I.L.*, 358 (1948); M. HUDSON, *The Universal Declaration of Human Rights*, 44 *A.J.I.L.*, 546 (1950).

the ideal of a universal society proclaims and defines the inalienable rights of man thus enshrining the individual freedom and the inviolable nature of the human being. It recognizes human rights that is rights of the man as a member of the world community thus tending to fulfill Democritus' vision couched in the following words: "The wise man may walk anywhere he pleases, for the whole world is the fatherland of a noble soul".

Having set forth the dimensions and relevance of the concept of fundamental freedoms referred to in the Charter ([119]) the Declaration has thus elucidated the common standards to be applied both at the national and the international level. Although divested of any binding force it has significantly imbued the substantive law of the world community and of individual nations and its eternal principles have already become part of the common patrimony of the general principles of law ([119a]) or, as some internationalists put it, part of the customary law of nations ([120]). It appears that it is the profound teaching of the Universal Declaration that the recognition and the continued protection of the equal and inalienable rights of all members of the human family will eventually pave the way to freedom, justice and peace in the world.

(119) A. DEL RUSSO, International Law of Human Rights, A Pragmatic Appraisal, 9 *William and Mary Law Review*, 750 (1968).

(119a) R. CASSIN, *op. cit.*, 2, L. SOHN, *op. cit.*, 26. For a different point of view see H. LAUTERPACHT, *op. cit.*, 366.

(120) H. WALDOCK (*supra*, n. 69b), at 15.