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Wilfried Nippel

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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

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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.

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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.

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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.

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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’.

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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 *Sämtliche 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.

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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.

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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.

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I

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.

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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