

“LIVING AS ONE WISHES” IN ATHENS:  
THE (ANTI-)DEMOCRATIC POLEMICS

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IN THE LONG-RUNNING DEBATE about Greek political ideals and the extent of individual liberty in the Athenian democracy, scholars have taken numerous positions, not infrequently founded upon Aristotle’s systematization of constitutions. This classification rested upon the philosopher’s view of democracy—or its “extreme” form, also found in Athens—as a disorderly, unlawful polity based on unrestrained freedom. This article aims to question this influential testimony by highlighting the language of democratic discourse, based primarily on the surviving Athenian speeches as the source closest to the political beliefs of the majority of Athenian citizens. It will thus deal with the question whether the Athenians as individuals and as a collective believed that they should be able to “do whatever they wished” and “live however they wanted” and if they shaped their political system upon this premise. In doing so, this article aims at a more complete understanding of what has been studied under the label of “Athenian freedom.”

Traditionally, classical liberal thought had been criticized by other, particularly communitarian and republican, schools of political philosophy for not emphasizing the connection between freedom and law but rather focusing on freedom from any kind of restraint, with law treated as one of such limitations. It is interesting to compare this view with what John Locke—today customarily referred to as the Father of Liberalism<sup>1</sup>—had to say in his *Second Treatise of Civil Government* of 1690, when criticizing Robert Filmer’s definition of liberty (VI 57):

So that however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom. . . . For liberty is to be free from restraint and violence from

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1. Not an unproblematic attribution and a fairly recent one: see Bell 2014 on the changing notion of “liberalism”; the author also rightly observes (p. 690): “the term is commonly used to tar opponents or to create linkages between liberalism and political positions that liberals invariably reject,” a statement with deep significance to the argument of this essay.

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others, which cannot be where there is no law; and is not, as we are told, “a liberty for every man to do what he lists” . . .

The critics of the “liberal” interpretation of liberty as “freedom from restraint,” however justified in their concerns, often took their arguments too far by not taking into account the stance of particular authors on what they considered the proper boundaries set by “natural law.”<sup>2</sup> A similar distortion can be observed in the case of Greek political thought, but—unlike Locke’s example—it is still reiterated in a number of contemporary studies. It concerns one of the ideals most commonly ascribed to the Greek democrats, that of “living as one pleases.” Aristotle famously put this idea into their mouths by claiming (*Pol.* VI 2, 1317a.40–1317b.13; cf. 1318a3–10, *Pl. Resp.* VIII, 562b–64b):

Ἵπόθεσις μὲν οὖν τῆς δημοκρατικῆς πολιτείας ἐλευθερία . . . ἐλευθερίας δὲ ἐν μὲν τὸ ἐν μέρει ἄρχεσθαι καὶ ἄρχειν. καὶ γὰρ τὸ δίκαιον τὸ δημοτικὸν τὸ ἴσον ἔχειν ἐστὶ κατὰ ἀριθμὸν ἀλλὰ μὴ κατ’ ἀξίαν . . . ἐν μὲν οὖν τῆς ἐλευθερίας σημεῖον τοῦτο, ὄν τιθενται πάντες οἱ δημοτικοὶ τῆς πολιτείας ὅρον· ἐν δὲ τὸ ζῆν ὡς βούλεται τις. τοῦτο γὰρ τῆς ἐλευθερίας ἔργον εἶναι φασιν, εἴπερ τοῦ δουλεύοντος τὸ ζῆν μὴ ὡς βούλεται.

A fundamental principle of the democratic constitution is freedom. . . . One component of freedom is ruling and being ruled in turn. For democratic justice is having an equal share on the basis of number, not worth. . . . This, then, is one sign of freedom, which all democrats take as a mark of the constitution. Another is to live as one wishes. For this they say is the function of freedom, if indeed it is a feature of one who is enslaved not to live as he wishes.<sup>3</sup>

Earlier in his treatise, with reference to the same phrase, he reasons that the democrats err in thinking that living according to the given constitution (*πρὸς τὴν πολιτείαν*)—that is, following the laws of the state—equals liberty (*Pol.* V 9, 1310a.25–36; cf. VI 4, 1318b.38–41; IV 4, 1292a.4–13, 23–25):

ἐν δὲ ταῖς δημοκρατίαις ταῖς μάλιστα εἶναι δοκούσας δημοκρατικαῖς τὸναντίον τοῦ συμφέροντος καθέστηκεν, αἴτιον δὲ τούτου ὅτι κακῶς ὀρίζονται τὸ ἐλεύθερον. δύο γὰρ ἐστί οἱς ἡ δημοκρατία δοκεῖ ὀρίσθαι, τῷ τὸ πλεῖον εἶναι κύριον καὶ τῇ ἐλευθερίᾳ· τὸ μὲν γὰρ δίκαιον ἴσον δοκεῖ εἶναι, ἴσον δ’ ὅ τι ἂν δόξῃ τῷ πλήθει, τοῦτ’ εἶναι κύριον, ἐλεύθερον δὲ [καὶ ἴσον] τὸ ὅ τι ἂν βούληται τις ποιεῖν· ὥστε ζῆ ἐν ταῖς τοιαύταις δημοκρατίαις ἕκαστος ὡς βούλεται, καὶ εἰς ὃ χρῆζων, ὡς φησὶν Εὐριπίδης· τοῦτο δ’ ἐστὶ φαῦλον· οὐ γὰρ δεῖ οἴεσθαι δουλείαν εἶναι τὸ ζῆν πρὸς τὴν πολιτείαν, ἀλλὰ σωτηρίαν.

In democracies—those that are held to be especially democratic—the opposite of what is advantageous has come about. The reason for this is that people define freedom badly. For there are two things by which democracy is thought to be defined: the supremacy of the majority, and freedom. For it is held that the just is equality, that equality is the supremacy of whatever seems right to the mass, and that freedom [and equality] is doing whatever one wishes. Thus in such democracies each man lives as he wishes, and “For what he happens to crave,” as Euripides says. But this is bad. For one should not think it slavery to live in harmony with the constitution, but safety.

2. For Locke’s views on liberty and law, see Tully 1984; cf. MacCallum 1967, in addition to Bell 2014, on the problem of attributing views of the “school” to its various “representatives.”

3. The translated passages of Aristotle’s *Politics* Books V and VI follow Keyt 1999. Translations of the orators are based on the Oratory of Classical Greece series (Austin, TX; general ed. M. Gagarin); for *Lys.* 1–11 the newer translation by Todd (2007) is used, while citations from [Dem.] 25 are based both on Vince’s 1935 Loeb and Harris 2018.

Out of these remarks, a clear pattern emerges. The democrats are wrong in their political ideals, for the equality they cherish is based on a mistaken premise, while their freedom is mere license for everyone to do whatever he—or even she<sup>4</sup>—pleases (ὁ τι ἂν βούληται τις ποιεῖν). Aristotle attempts to impute to the democrats the belief that living according to a certain principle, especially one pertaining to the state laws, is worthy of a slave, rather than the free.<sup>5</sup> Notably, he speaks alternately of “doing whatever one wishes” and “living as each person wants” as the ideal of the democrats (cf. n. 17 below). There cannot be complete certainty as to which *poleis* the philosopher had in mind when referring to the “radical” forms of democracy in his treatise, but he apparently counted the Athenian constitution among the latter (*Pol.* II 12, 1274a.3–21, VI 4, 1319b).<sup>6</sup> It should thus be safe to assume that he included it among those “deemed particularly democratic” (*Pol.* IV 14, 1298b.13–15, V 9, 1310a.25–36; cf. [*Ath. Pol.*] 41.2), where the *dēmos* allegedly stood above the laws, and which he criticized most vehemently.<sup>7</sup>

The same assumption underlies Plato’s famous passage from the *Republic* (VIII, 557b–c), in which Socrates targets a democratic *polis* and sarcastically explains that it is “full of ἐλευθερία [‘freedom’] and παρρησία [‘frank speech’],” and thus everyone who lives there has the license (ἐξουσία, see below) to do whatever one pleases (ποιεῖν ὁ τι τις βούλεται). At the same time, he explicitly criticizes this notion elsewhere (*Resp.* II, 359b–c; *Leg.* X, 907c; cf. *Resp.* VIII, 563d; *Lg.* VI, 779e–80c), pointing to Athens between the lines, since the Athenian Glaucon admits such unrestrained freedom is his own experience (*Resp.* VIII, 556e, 558b, 563c–d), while the Athenian in the *Laws* explains that only in the good old days were his compatriots law-abiding but now they have preference for “unrestrained freedom” (III, 698a–701e). Plato’s Socrates compares such a state in which everyone has his/her own mind and is different from others, to a multicolored vestment, which many may find alluring.<sup>8</sup> He incorporates into his criticism a belief that following this principle leads to disorderliness in the state where everyone can choose political conduct that suits him best, deciding freely whether to follow its laws and customs (*Resp.* VIII, 557d–58c; cf. [*Dem.*] 25.25–26 below).

Both philosophers contrast “doing whatever one wishes” with living according to a governing principle, most often temperance (σωφροσύνη), an ideal that

4. See *Pol.* VI 4, 1319b.27–30 for the inclusion of women, children, and slaves in this notion, which Aristotle apparently found particularly appalling; cf. V 2, 1313b.32–1314a.1.

5. See also Trott 2017.

6. Hansen (1998, 105) notes that when referring to specific forms of democracy, Aristotle tends to focus on other *poleis*; cf. 2010a, 319; however, in 1999, 16 with n. 96 and 71 with n. 169, he rightly observes that Aristotle considered Athens to be a “radical” democracy; cf. Hansen 1974, 60 and Strauss 1991, 213, 216–17 on the term and its relation to Athens; cf. Newman 1902, 4: xxxvi–lxi. See, however, Strauss 1991, 227–28 on demography.

7. See also *Pol.* IV 4, 1291b.30–92a.13 for different types of democracies, with the perverse one being that in which the people follows the demagogues, where there is no rule of law because everything is ruled by decrees (*psēphismata*) (1292a.30–38)—a likely dig at fourth-century Athenian democracy, the way its critics saw it; cf. Strauss 1991.

8. On this metaphor and its anti-democratic implications, see Villacèque 2010 (cf. p. 139 on Plato’s preference for the term *hoi polloi* over *dēmos* to emphasize its illegitimacy).

they repeatedly praise—similarly to Isocrates and Xenophon—either directly or by various antitheses.<sup>9</sup> What Plato seems to be criticizing is mainly an issue of political practice: the variety of modes of life, which he rebukes as not founded upon reason.<sup>10</sup> Aristotle, on the other hand, maintains that it was not only a common democratic practice but also a shared political ideal for everyone to live however s/he wishes—with no restraints and in disregard for the laws. This is much in line with the overall incongruence of democratic ideals and philosophers' views about the relation between individuals and the state. According to Plato, the *polis* is a reflection of man's soul, in which all parts need to stand in harmony, based on temperance and ordered by hierarchical structure, which is by nature opposed to the "license" he saw in democracy.<sup>11</sup> For Aristotle, the goal of (political) life is the pursuit of happiness through moral virtue and practical reason,<sup>12</sup> which gives priority to the citizens' common good based on justice over desires of any individual or group.<sup>13</sup> In both authors' views, the state is responsible for the moral character of its citizens and all important areas of their life, extolling discipline over whim. It also ought to be ruled by the wise rather than the allegedly unknowledgeable and irrational *dēmos*.

#### THE ARGUMENT OF LEGALITY

If we were to read Plato and Aristotle as sources accurately reproducing the language and ideas of Greek democrats, we might be inclined to take the philosophers at their word.<sup>14</sup> Yet a careful reading of the Athenian orators—authors much closer to the everyday political discourse of democratic Athens—demonstrates that they repeatedly underline the connection between democracy and democratic freedom on the one hand and law and lawfulness on the other, while hardly ever opposing the two.<sup>15</sup> In the context of what the philosophers want us to believe, it seems striking that speakers addressing popular audiences in

9. See Arist. *Pol.* VI 4, 1319b.27–32; *Pl. Grg.* 468b–469e; *Alc.* 134c–35b; *Isoc.* 7.20, 12.131, 14.37; cf. *Xen. Mem.* 4.5. On *sōphrosyne* in general, see North 1966 and Rademaker 2005. On the place of political freedom in Plato's and Aristotle's thought, see Johnson and Smith 2001.

10. See Stalley 1998 and Hansen 2013, 71–96 on Plato's issues with freedom so understood.

11. See Nettleship 1906; Price 1997; and Burnyeat 1999; for a brief overview, see Balot 2006, 197–209. See also Hansen 2013, 71–96 on *eleutheria* ("freedom") in Plato and Aristotle.

12. See Depew 2009 and Frede 2013; on the means of obtaining virtue through political education in Aristotle's thought, see Stalley 2009 and Weinman 2014.

13. See Johnson and Smith 2001; Balot 2006, 230–42, 247–55; Morrison 2013.

14. Note a confident remark by Cohen (1991, 229) as one example of such an approach out of many: "The second aspect of liberty finds expression in the sentiment that under the radical democracy each man lives as he chooses, subject only to the pressures of social, as opposed to legal, norms. . . . This characterization is so widespread in our sources that there is little doubt that the phrase about doing what one pleases was a political slogan used by proponents and critics alike," with a proviso on Athenian legal framework added in Cohen 1995, 54; cf. Cohen 1991, 228–31 and 1995, 52–57 (apart from vehement criticism in Plato, Isocrates, and Aristotle, the author was able to cite out of those "widespread" examples only *Dem.* 22.51, which speaks of different political ideals, and *Lys.* 25.33, which *contrasts* the principle in question with proper behavior in a democracy). "Living as one wishes" has been praised as an alleged democratic ideal by a number of scholars, often with reference to the sources that either convey different ideas or in fact criticize this notion (see below, e.g., on *Thuc.* 2.37 and *Lys.* 26.5); see, in particular, Hansen 1974, 58; 1989, 10; 1996, 93; 1999, 75; 2010a, 323–24, 338–39; 2010b, 6, *passim*; 2013, 75, 78; Wallace 1994, 127; 1996, 105; 2006; 2009, 171, *passim*; Raaflaub 2004, 248, 263; Balot 2006, 58–59.

15. See the passages from oratory quoted in n. 76 below on the interconnectedness of law, democracy, and freedom. On the rule of law in Greek democratic ideology and practice in connection with the modern meaning

Athenian democratic institutions seldom do anything other than criticize the concept of “doing whatever one wishes,” using the very same wording as the philosophers.<sup>16</sup> Lysias states all of this very briefly in his first speech *Against Alcibiades* of 395 (Lys. 14.11):

ἐνθυμηθῆναι δὲ χρὴ ὅτι, εἰ ἐξέσται ὁ τι ἄν τις βούληται ποιεῖν, οὐδὲν ὄφελος νόμους κείσθαι  
ἢ ὑμᾶς συλλέγεσθαι ἢ στρατηγούς αἰρεῖσθαι.

You should bear in mind that if everybody is allowed to do whatever he likes, there will be no point in having laws, or meeting as an Assembly, or electing generals.

And although the orators usually speak of “doing” (ποιεῖν, πράττειν) whatever one wishes, rather than of “living” (except Aeschin. 1.34, discussed below), in a political context the meaning of both phrases appears to be virtually the same.<sup>17</sup> Thus—they tell us, when inveighing against this principle—the inhabitants of Athens should act according to what the laws (or specifically the Council and the Assembly) ordain, for these serve justice while doing simply what one wants serves the opposite end (e.g., Dem. 24.47, [25].20–26, 42.2, 9; [44].63).<sup>18</sup> This rule was not limited to citizens, but also applied to metics (Lys. 22.5), and covered private mercantile contracts between individuals (Dem. 35.37, 41; cf. below).

Those who had engaged in politics during the oligarchic rule of the Thirty (404–403 BCE) needed to go through extra scrutiny if they wanted to hold office in the restored democracy.<sup>19</sup> With reference to their past activities and the period itself, the orators often brought up the lawlessness of the fallen regime.<sup>20</sup> One of the ways to describe it was to say that its supporters could do whatever they pleased in Athens at that time (Lys. 7.27, 25.32–33; cf. 25.17; Xen. *Hell.* 2.3.23). The prosecutor in the Lysianic speech *Against Evandrus* emphasizes the weight of such inquiries when scrutinizing the to-be member of the Council and his past conduct (Lys. 26.5, trans. modified):

πρὸς δὲ τὴν ἡσυχίτητα τὴν τούτου, ὅτι οὐ νῦν δεῖ αὐτὸν ἐξετάζειν εἰ σώφρων ἐστίν, ὅτ' αὐτὸν οὐκ ἐξεστὶν ἀσελγαίνειν, ἀλλ' ἐκεῖνον τὸν χρόνον σκοπεῖν, ἐν ᾧ ἐξὸν ὀποτέρως ἐβούλετο ζῆν εἴλετο παρανόμως πολιτευθῆναι.

of the term, see Harris 2013 and 2016b and Canevaro 2017; cf. Ober 1989, 299–304; see Harris 2006, 3–28 on legal thinking in the Greek world, and 2016c on the coherence of democratic political thought in classical Greece and on its ideological sources, different from the modern ones.

16. Liddel (2007, 14, 17, 20–24) notes this feature of democratic ideology and provides some good examples, but misses the context of places such as Dem. 57.31 and the difference between statements by individuals and shared democratic ideology on the one hand and rhetorical exaggeration in discussing the legal limitations of the Assembly based on [Dem.] 59.4, Dem. 20.148, etc., on the other (both discussed below). Cf. Hansen 2010a, 324–25.

17. Out of Plato and Aristotle it is only the latter who sometimes supplements “doing” whatever one wants with “living” (*zēn*) however one wishes (see *Pol.* V 9, 1310a.31–35, VI 2, 1317b.11–13, VI 4, 1319b.27–32), but he uses both phrases synonymously; the philosophers and the orators thus employ virtually the same language in a similar sense, contrary to what Wallace (2009, 167–68) believes concerning the history of both concepts.

18. The first speech *Against Aristogeiton* ([Dem.] 25) and one *Against Phaenippus* (Dem. 42) are now mostly considered non-Demosthenic; see Harris 2018, 193–97, with further notes on the former, and MacDowell 2009, 151 on the latter.

19. See Krentz 1982. On *dokimasia* after the Thirty, see Todd 1993, 285–89, cf. MacDowell 1978, 167–69. On the various forms of *dokimasia*, see Feyel 2009.

20. See, e.g., Aeschin. 3.190–91, with Harris 2006, 50.

Concerning this man's alleged love of quiet,<sup>21</sup> now there is no point in examining whether he is moderate when there is no opportunity for him to behave licentiously, but we should instead look at the period when it was possible for him to live any of the two ways he wished, and he chose to take part in a lawless regime.

Here, life in a democracy is presented as just and lawful, while life in an oligarchic regime is marked by lawlessness. There are several assumptions underlying this statement. First, that a man living in Athens under the Thirty could choose only from these two ways of life (ἐξὸν ὁποτέρως ἐβούλετο ζῆν) and forms of government (πολιτευθῆναι). Second, that it was only under the Thirty that such a choice was given, as opposed to the time of democracy and the rule of law. Finally, the dikasts present at the hearing were painfully aware that the choice had not been given to everyone, but only to those qualified by the ever-changing citizen lists of the new regime, with the proscription lists ready at hand to supplement them. The choice itself is political but only indirectly refers to the notion of "living as one wishes" in a democracy, for it was presented to those who could either choose to support the undemocratic regime, described as disorderly and having no limits, or try to act against it and preserve democracy, thus showing themselves to be "temperate." Furthermore, the speaker stresses that in a democracy there is no way for the citizen to show a comparable degree of unruliness as he could in an oligarchic regime, which is crucial to the Athenian topos of contrasting the lawfulness of democracy and the unlawfulness of other constitutions. It is therefore striking that this passage has been often read in support of Aristotle's representation of "democratic" concept of freedom.<sup>22</sup>

What should be clear to us today, and what must have been known to Aristotle, is that unrestrained freedom—that is, one not restricted by the laws—regularly appeared in Athenian political discourse as an undemocratic, evil, and fearsome trait in politics, to be avoided in a well-run (democratic) state at all costs. The democratic discourse of temperance and lawfulness in speeches delivered before large audiences in Athens appears as the opposite of what Plato, Aristotle, and Isocrates had to say about the features and ideals of democracy. "Doing whatever one pleases" was particularly fruitful as a counterexample to proper civic behavior presented before popular audiences when it involved misleading the *dēmos* or the dikasts, which—aided by skillful rhetoric—was meant to stir outrage in the audience. In his *Against Timarchus* (34), Aeschines pointed both to "speaking" (that is, "making public proposals") and "living" (ζῆν) the way one wishes as detrimental to the civic body due to the peculiarity of the case.<sup>23</sup> a clear indication that the accused and his associates might be expected

21. For "quietness" as the catchword for non-involvement, see Ehrenberg 1947; Adkins 1976; Lateiner 1982; Carter 1986; Leigh 2013, 23–30; cf. Dover 1974, 187–90.

22. See the works mentioned in n. 14 above, e.g., Hansen 1999, 75, with n. 200; Balot 2006, 59; Wallace 2009, 165; cf. Liddel 2007, 21 for a notable exception.

23. Aeschines argues that rejecting the law about the order of Assembly meetings, indicted as illegal by Timarchus and his associates, would allow them "to speak and live just as they choose": one of many attempts in the speech to connect the defendant's private conduct with his public activity. "Collusion" of *rhētores* was sometimes presented as dangerous to the democracy, see Ober 1989, 328 on Din. 1.99 and Rubinstein 1998, 140–43.

to desire it (ὡς αὐτοὶ βούλονται), but hardly an acknowledgment of this principle in democratic ethos.

It should be noted here that the orators often emphasize by direct appeals to the dikasts that if they let the defendant go, all the worst things will happen to the *polis* if the perpetrator remains unpunished and—having been granted complete immunity (ἄδεια)<sup>24</sup>—will thus feel encouraged to continue doing whatever s/he wishes (Lys. 12.85, 22.19, 30.34; [Dem.] 26.13–14, 59.111, 113; Lycurg. *Leoc.* 145; [Andoc.] 4.36).<sup>25</sup> This topos of the “fateful acquittal” reappears in speeches from Lysias to Lycurgus, and was evidently considered by the speechwriters a potent tool to influence the dikasts’ judgment.

Mogens Hansen has recently noted that we find the criticism of “doing whatever one wants” almost exclusively in public cases or those linked to public institutions, while “the only known attestation of the argument in a private action” is Demosthenes’ *Against Phaenippus* (42.2, 9), which he rightly argues to have been a public case in spirit.<sup>26</sup> This leads him to conclude that the Athenians cherished the “right” to live as one likes, while restricting it to the private sphere. Yet several further instances of the use of such rhetoric in private cases not mentioned by the scholar call for our attention.<sup>27</sup>

In the most explicit example, Lysias’ first speech *Against Theomnestus*, a private case for slander (*dikē kakēgorias*),<sup>28</sup> the prosecutor asks “whether [the defendant] is going to pay the penalty, or whether a special privilege is granted to this man alone of the Athenians to do and say [καὶ ποιεῖν καὶ λέγειν] against the laws whatever he wishes” (Lys 10.3; cf. the technical λέγειν in Aeschin. 1.34).<sup>29</sup> Several other places—however more restrictive in the extent of condemnable private actions—are also significant. In *Against Leochares*,<sup>30</sup> an accusation of giving false testimony (*diamartyria*) in an inheritance case,<sup>31</sup> the prosecutor tells the dikasts that “if the adopted son is permitted to adopt whomever he pleases contrary to the law, inheritances will never be passed on to kinsmen” (cf. n. 35 below on adoption). Similarly, in *Against Lacritus*, a counterplea in a mercantile case (*dikē emporikē*), Androcles points out that the written agreement does not allow the defendants to lend someone else’s property to anyone they like without the owners’ consent (Dem. 35.37), in reply to the defendant’s claim that he lent their goods in Pontus and was not able to recover them afterward. Apart from Lysias 10.3, two private Demosthenic orations—also counterpleas in maritime

24. The term could have had a technical meaning, *immunity* (as in Andoc. 1.11–12, 15, et al.) or could be a rhetorical catchphrase, acting as a “scarecrow,” see Lys. 1.36, 12.85, 22.19, 30.23, 34; Dem. 23.89, 94, 24.47, [26].13, [44].63, 51.15, 54.21, [59].111, 113; see Rubinstein 2007 and Harris 2013, 173–74, 325–26, 331 on the function of such rhetoric in Athenian courts.

25. See also [Dem.] 25.24–26, partially quoted below, and Isoc. 15.174.

26. Hansen 2010a, 324–25.

27. On the distinction between public and private cases, see MacDowell 1978, 57–61.

28. On the offence in Athenian law and in the present case, see Todd 2007, 631–35; cf. MacDowell 1978, 127–29 in general, and Loomis 2003 on the difference between the ancient Greek and modern common-law perspective on “defamation.”

29. On the Athenian concept of *παρησία* as a notion quite distinct from “speaking whatever one wishes,” see Filonik 2015, chap. 4 (and a forthcoming paper).

30. A speech that might have been written by the prosecutor himself, rather than Demosthenes, as MacDowell 2009, 97–98 suggests; *contra* Harris 2013, 401.

31. Cf. Scafuro 2011, 178–91; cf. MacDowell 1978, 58, 103, 217–18.

cases—explicitly condemn the idea of *saying* whatever one wishes (32.29, 34.19). And although one could argue that some of them had a “public” aspect (such as the accusation of illegal grain trade, liable to scrutiny by Athenian magistrates, in Dem. 34), all five cases were formally private trials, involving both Athenian citizens and foreigners.

The concept in question is not limited to forensic oratory and can likewise be found in deliberative and epideictic speeches; it is also not restricted to the context of democratic bodies, as exemplified by various passages cited in this paper. Admittedly, it did appear more often in public trials, where the stakes were higher and ideals of civic life more eagerly brought to people’s attention, but this is true of much political discourse and what we would call “ideology” in general.<sup>32</sup> It might be further argued that private citizens in Athens were not allowed to “do whatever they wished” in or with their own households, that is either to hide safely from the rule of law in domestic space or give away their estates freely, although state officials were indeed not allowed to enter private houses in Athens without a “warrant.”<sup>33</sup>

The orators repeatedly stress that a man in Athens “can bequeath his property as he wishes” (τὰ ἑαυτοῦ ἐξεῖναι διαθέσθαι ὅπως ἂν ἐθέλῃ) only under certain conditions.<sup>34</sup> In practice, Athenian inheritance law contained a number of restrictions primarily meant to ensure protection of descendants within the family, as a result of which the inhabitants of Athens even after their death could not boast of being allowed to “do whatever they wished” either in public or in private.<sup>35</sup> Citizens were also obliged by the law to take good care of their elderly parents and grandparents and bury them after their death, and could be disenfranchised for failing to do so;<sup>36</sup> public speakers could lose their right to speak (Aeschin. 1.19–21, 27–33, 160)<sup>37</sup> and women could be punished and humiliated because of their sexual conduct (see n. 46 below). Men were also obliged to spend a significant part of their lives performing military service under the threat of disenfranchisement and spend money on public service under the threat of losing one’s property. What we would call an individual’s private life was sometimes subject to scrutiny under the laws; in particular, it could be brought to people’s attention whenever it became distressing or harmful to others. Legal regulation thus extended to the inner sphere of the household, as did Athenian freedom, which was never perceived in the democratic discourse as an absolute concept with reference to the individual’s life in the state, and as such differed vastly from its representation by philosophers.

32. On adjusting the rhetoric to various kinds of speeches, see Rubinstein 2005 and 2007, 365–71.

33. On the limits of inviolability of the citizen’s *oikos*, see Carey 2014; cf. Filonik 2013 on the shifting boundaries between the public and the private in impiety cases. On the publicly issued “search warrant,” see Dem. 18.132, 22.51, with Harris 1995, 172.

34. Isac. 2.13, 3.68, 6.9, 9.13; Dem. 20.102, [44].68; Hyp. *Ath.* 16–17. Cf. Dem. 46.14.

35. The Solonian laws possibly conferred an element of testamentary freedom, rather than restrained it, but in effect it was still to a large extent limited. On Athenian inheritance law and last will, see MacDowell 1978, 99–108; Griffith-Williams 2012 and 2013, 3–23.

36. On *eisangelia* (or *graphē kakōseōs goneōn*), see Rhodes 1981, 629; see also Rubinstein 1993, 64–68 on *gērotrophia*. On “mother-beater” of “father-beater” as an insult as grave as “murderer” or “shield-thrower” (deserter) in Athens, see Loomis 2003, 293, 296.

37. See the discussion in MacDowell 2005 and Gagliardi 2005; cf. Fisher 2001, 40–42.

If we accept, as we now should, that the concept of “living as one wishes” was not commonly praised in oratory, it might be worth noting that rarely and in a limited context it could be introduced in a less disapproving manner. In *Against Eubulides*, the only such instance from forensic oratory, the speaker concedes that due to their alleged poverty his mother and he are pressured to sell ribbons at the market,<sup>38</sup> and thus must “agree not to live whichever way they [might] wish” (ὁμολογοῦμεν . . . ζῆν οὐχ ὄντινα τρόπον βουλόμεθα, Dem. 57.31). One assumption behind this statement is that had they not been poor, they would not have chosen this occupation rather than a way of life in agreement with their wishes and social identity. Another is that, since they considered poverty an obstacle to fulfilling their wishes, the ability to choose their own way of life seemed particularly desirable to them.

In other words—and to no great surprise—the speaker claims that people want to live as they prefer, but are restrained by various necessities of life and cannot follow their dreams. This is different from saying that everyone in the *polis* should be allowed to live in a way that does not mind the laws, as the critics of democracy suggest. Incidentally, the entire statement depends heavily on the social context and the identity of impoverished citizens, pointing at various life choices dictated by social conventions. One might compare this with Menander’s play bearing the telling title *Misogynes*, where one of the characters claims that an extravagant wife is a burden to her husband, for she might not allow him to live as he wishes (frag. 236.7–8 *PCG*; cf. 870). Here, in turn, the opposition is between the constraints of marriage on individual freedom and the husband’s wish to be completely independent. As far as we know, in neither of these examples does the context allow us to say anything either about legal restrictions democracy imposes upon such desires or whether the individuals wishing to fulfill their dreams would see democratic constitution as a similarly limiting impediment. There is an underlying assumption here that “living as one wishes” is what people generally hope and strive for (cf. Isoc. 3.62, 8.102–3), but with no indication such a concept was a recognized political ideal in Athenian democratic discourse. What is even more significant is that the occurrences of the positive use of such phrases in relation to individuals seem to end here.

Contrary to the common sentiment, “living as one wishes” is also not among the communal ideals praised by Thucydidean Pericles in his Funeral Oration. At 2.37.1, he says that the Athenians are not angry at a neighbour εἰ καθ’ ἡδονήν τι δρᾷ, “if he does *something* for his pleasure,” or “as pleases him” (that is: *not only* for the community or with the interests of the state in mind), and it appears immediately after the statement attributing a higher value to those who benefit the *polis* (ἔχων γέ τι ἀγαθὸν δρᾶσαι τὴν πόλιν).<sup>39</sup> This is quite far from saying that an Athenian can “do whatever he wishes,” however important a statement in comparison with the enemy Sparta, where the magistrates supposedly told peo-

38. The speaker attempts to present his family’s poverty as the main reason for casting doubt on his civic status; cf. Ober 1989, 222–24 on the rhetoric of poverty in this speech and Carey 2007, 243–45 on the apparent weakness of the case.

39. See Filonik 2015, chap. 3.3.2 (and a forthcoming book) for a more detailed analysis of this passage.

ple how to live; and even this insignificant dose of “liberal” attitude soon leads in Thucydides’ narrative to lawlessness (*ἀνομία*) during the plague, described in strikingly similar terms (2.53.1: ῥᾶον γὰρ ἐτόλμα τις ἂ πρότερον ἀπεκρύπτετο μὴ καθ’ ἡδονὴν ποιεῖν; cf. 3.82.8.9–10). Moreover, the same Pericles soon emphasizes the prevailing authority of the officials and the laws (2.37.3). And even though the unconstrained lifestyle as attainable particularly in Athens is sometimes praised with much exaggeration and in different terms in commanders’ battlefield exhortations to die for one’s country (Thuc. 7.69.2; Xen. *An.* 3.2.13; but see Thuc. 6.15.4, 6.28.2), as prompted by the occasion,<sup>40</sup> it will become clear in what follows that in practice there was an elaborate set of checks imposed on individuals and the *dēmos*, while the everyday ideology emphasized quite different features of the Athenian political system than unrestrained freedom.

#### FREEDOM AND THE TYRANT

One of the key terms appearing in most passages discussed here is ἐξουσία (or any variant of the verb ἐξεσσι “it is allowed”), a word that, depending on the context, can be read either as “power (to do something)” or “license,” either the given capacity or its excess. The difference rests upon the emotional evaluation by the speaker. It is interesting to note that with reference to “doing whatever one wishes” these terms are rarely used in a positive sense not only by Plato but also by Athenian orators.<sup>41</sup> The orators emphasize that empowering the *dēmos* as a whole is the only way for the city to flourish, while doing whatever one wishes makes it wither, for it is incongruent with democratic justice and freedom, and empowers only the few (e.g., Lys. 25.32–33; cf. Antiph. 5.80; Aeschin. 3.5). Not obeying any laws was commonly perceived as one of two extremes of not having a governing principle in life: the “natural” state of wild animals or uncivilized people on the one hand, and that of the tyrants and gods on the other.<sup>42</sup> In oratory, similarly to earlier Greek imagery, obedience to the law is sometimes contrasted with a posited natural state of man in which everyone has the license to do whatever one pleases, which is put on an equal level with the status of those living outside of the democratic state (e.g., [Dem.] 25.20).

Among the elementary principles of democracy was not to abuse one’s power over others, for it was believed to lead to *hybris* (see below on [Dem.] 25.25–26; cf. Dem. 21.170).<sup>43</sup> Doing whatever one wishes is portrayed in oratory as such an abuse, since it allows an individual to take advantage of any extralegal leverage he might have. In *Against Aristocrates*, a trial for proposing an illegal decree (*γραφή παρανόμων*), Demosthenes<sup>44</sup> describes a situation in which, on the basis

40. See Liddel 2007, 17–18 on the limits of the rhetoric in the pre-battle speeches.

41. In oratory, we find the positive use only with respect to the democratic political bodies (e.g., Antiph. 5.90; Dem. 13.17, 24.151, [59].88; see discussion below) and leaving one’s inheritance according to the law (Isae. 2.13, 9.13). For negative connotations, see, e.g., Lys. 7.2, 25.33; Dem. 22.16, 23.67, 25.25, [26].13, 42.2, [59].112; Hyp. *Lyc.* 14.

42. See Balot 2006, 20–22; Dover 1974, 74–83. On the godlike features of tyrants, see Kucharski 2012.

43. See a detailed study of *hybris* by Fisher 1992, with MacDowell 1976 and Cairns 1996; see also Fisher 2001, 138, with further bibliography and Harris 2008, 81–82.

44. Everything suggests Demosthenes wrote the speech, but evidently the person who delivered it was an Athenian citizen named Euthycles; see MacDowell 2009, 196.

of the decree introduced by the accused, the culprit would have been liable to immediate seizure had he killed an Athenian mercenary, Charidemus (Dem. 23.27–28). He argues with much exaggeration that because of this he would be punished untried, suffering “whatever the avengers would choose to do” (ὅ τι ἂν βούλωνται χρῆσθαι), which would go strongly against the democratic order of prosecution and the political ideal of offering citizens this basic form of protection (Dem. 23.91, 215–16).<sup>45</sup> Such a decree—the orator urges—would also mean that Charidemus could “do whatever he pleases” in his foreign escapades and thus stand above the law, for everyone would fear the consequences of punishing him (Dem. 23.67, 89). In fact, only in rare circumstances of particularly despised crimes, such as catching a seducer or sexual offender red-handed, the laws in Athens gave permission to “treat the perpetrator however one likes,” and even then under very specific conditions.<sup>46</sup>

When Otaues in Herodotus’ Constitutional Debate advocates popular rule (3.80; cf. 3.31, 81), he asks how monarchy can be advisable if the monarch is not accountable to anyone and can do whatever he wishes (ἔξεστι ἀνευθύνῳ ποιεῖν τὰ βούλεται), which leads to a whimsical exercise of power, while in a democracy the many do nothing of the sort, alternately holding accountable offices and bringing their proposals forth to the public. In tragedy, similarly, it is the will of the tyrant that is the sole rationale needed for action within one-man rule. The tyrant is considered to be the only person who is absolutely free<sup>47</sup> and can act with only his own wish as the law,<sup>48</sup> a notion echoed in Thucydides’ description of Alcibiades’ private conduct.<sup>49</sup> His rule, as in the Aeschylean *Prometheus Bound*, is established by force. Sophocles has his Antigone say that the tyrant is truly happy for many reasons, but specifically because only he “has the license to do and say whatever he wishes,” while his subjects out of fear refrain from speaking what they truly think.<sup>50</sup>

In oratory, various types of undemocratic rule bear a set of traits borrowed from tragic tyranny. Demosthenes speaks in the Assembly in his *Second Philippic* just like Aeschylus’ Prometheus or Sophocles’ Antigone by asking the people rhetor-

45. See Carawan 1984 and Hansen 1999, 76, 190 on the principle itself; see also Liddel 2007, 23 on Thuc. 8.67.2. On offenses penalized on the spot, see Hansen 1976.

46. [Dem.] 59.66 limits this to acting against the *moichos* in the court and without a weapon after his lost trial for illegal arrest (probably possible after agreeing to ransom; cf. Lys. 1.25 and Carey 1992, 119), but other sources mention no such provisos and include physically abusing and killing the *moichos*, if caught *in flagrante* (Lys. 1.49; cf. 1.30, 13.66); [Dem.] 59.86–87 additionally quotes the law allowing “anyone who wishes to do anything he wishes” to the unfaithful woman caught in the act and subsequently denied participation in civic rites if she is found participating in them (the paraphrase of the law is reliable evidence but not necessarily the text of the document inserted in [Dem.] 59.87, on which see Canevaro 2013, 190–96); cf. Aeschin. 1.183. On *moicheia*, see Harris 2006, 283–332 and Wolicki 2007; cf. Kapparis 1999, 295–300, 354–60 with an overview of earlier scholarship, pp. 302–7 on penalties, and Carey 1995 on social implications. See Harris 2013, 50–57 on the restriction of the use of force in Athenian legal system and 2006, 373–90 on *apagogē* to the Eleven.

47. See Aesch. *PV* 49–50; *Pers.* 241–42; Soph. *Ant.* 479; Eur. *Hel.* 276; *HF* 250–51; cf. Arist. *Pol.* V 11, 1314a.1–10.

48. See Aesch. *PV* 149–50, 186–87, 402–5; Eur. *Med.* 119–23; *HF* 140–42.

49. Note the language and antitheses of Thuc. 6.12.2, 6.15.4, 6.28.2; cf. Harris 2016a.

50. Soph. *Ant.* 504–7: τούτοις τούτο πᾶσιν ἀνδάνειν / λέγοιτ’ ἄν, εἰ μὴ γλώσσαν ἐγκλήσοι φόβος. / Ἄλλ’ ἡ τυραννίς πολλά τ’ ἄλλ’ εὐδαιμονεῖ / κἄξεστιν αὐτῇ δρᾶν λέγειν θ’ ἂ βούλεται. See also lines 211–14. Cf. Harris 2006, 69–70, 76–77 on Creon as a tragic tyrant failing to recognize the primacy of the laws and on his reception in fourth-century oratory.

ically: “What do you seek? . . . Freedom? . . . Every king and tyrant is an enemy of freedom and an opponent of laws” (6.24–25, cf. 9.2, 10.4, 23.140; *Hyp. Epit.* 20). Philip’s autonomous “will” to do whatever he wishes (or, shall we say, his “will to power”), not bound by any restraint, is emphasized by the orator as an inherent quality of a tyrant who consequently enslaves Greek cities and their people, while Isocrates says the same of the Persians, Spartans, and Thebans respectively.<sup>51</sup> In Athens, only in a military context could it be possible for citizens, in this case ordinary soldiers, to think that a *stratēgos* was able to do whatever he wished by simply being in charge, with no way to oppose him (*Lys.* 21.7), which serves to describe very undesirable relations of power.<sup>52</sup> Quite peculiarly, Isocrates—forgetful of his earlier criticism of this concept—later praised Philip by saying that only he, as a monarch, can act however he wishes, while people in other states are restrained by their laws (5.14–16; cf. 3.45, 12.79).

What is striking here is that in fifth-century literature the phrase in question is used to describe the sovereign’s power in one-man rule (cf. nn. 48–50 above), and in Herodotus it is even found explicitly opposed to the idea of popular government. Only sometime after 380, in the works of the elitist authors such as Isocrates, Plato, and Xenophon, does it turn against democracy, apparently by a conscious reversal of the language with which one-man rule was criticized earlier. This seems to echo the fifth-century portrayal of the *dēmos* as a tyrant,<sup>53</sup> in both its positive (empowering) and negative aspects (fickleness and ruthlessness), discernible also in Xenophon’s narrative of the trial of the generals discussed below.

#### THE DEMOCRATIC BODIES

Athenian orators in their court speeches often claim that the dikasts are allowed to “do whatever they wish” with respect to the case under discussion. On the level of political ideals, such statements rested upon a presumption that the people’s decision was fair and representative of all members of the *dēmos*, owing to a set of democratic control procedures;<sup>54</sup> it was thus deemed to be the “voice of the people” and that of the laws, being much more than what private individuals might agree on between each other (*Lys.* 22.4). One should bear in mind, however, that speakers addressing their audience in court made repeated attempts to employ various appeals to goodwill, including misrepresenting the dikasts’ social background and status, their intellectual capabilities, or—indeed—their actual legal powers.<sup>55</sup>

51. *Dem.* 9.2, 21–35 (contrasted with the situation in Athens in §§3–4, 23); *Isoc.* 12.59, 226, 14.37; cf. *Dem.* 19.87, 136; 18.71, 23.140; 15.24, 10.4–5; see also *Thuc.* 8.56.4. For Isocrates’ negative attitude toward the idea of “doing whatever one wishes,” see also *Isoc.* 7.37.

52. It might not be a coincidence that the speaker in *Lys.* 21 tells this only a few words after mentioning Alcibiades, already quite unpopular by its delivery ca. 403/2; cf. n. 48 above.

53. See Connor 1977 and essays in Morgan 2003; cf. Jordović 2011 on the links between democracy and tyranny in Aristotle and Plato (pp. 45–46 on “living as one wishes”).

54. On the means of obtaining fairness, equality and representation of the *polis* in Athenian popular courts in general, see Boegehold et al. 1995; see Harris 2013, 274–301 on the principle of fairness (*epiēkeia*); cf. Carey 1996. See Mirhady 2007, Harris 2013, 101–37, 353–56, and Canevaro 2013, 173–80 on the dikastic oath.

55. Cf. Ober 2017, 21, 30. On the issue of social background of Athenian dikasts and its representation in the courtrooms, see Todd 1990; MacDowell 1995, 156–58. For a possible example of overdrawing their literary skills (and literacy, for that matter), see *Pl. Ap.* 26d–e.

Thus Apollodorus tells the dikasts that they can do anything they wish with the accused Neaera ([Dem.] 59.12: ὅ τι ἂν βούλησθε χρῆσθαι αὐτῇ),<sup>56</sup> even if in fact they would be bound to respect all statutory constraints.<sup>57</sup> Notably, had the same kind of power over others been exercised by the avengers in disregard of the laws, it would have been simply denounced as lawlessness (see on Dem. 23.27–28 above). It needs to be taken into account that the dikasts were bound by the oath, the principle of hearing both parties, and of voting justly and according to the law (cf. n. 54 above). They could be thus free to act within these boundaries and the limits of the procedure that could restrict their choice of possible penalties. What matters even more, is that before the vote on the penalty in the procedures that allowed them such a choice,<sup>58</sup> they could only vote to accept or reject the plaintiff, which significantly limited their course of action.

The *dēmos*, however sovereign in its nature, was likewise restrained by a set of procedures governing Assembly meetings,<sup>59</sup> even if “doing whatever the people wishes” was sometimes promoted by the speakers as a posited reality of Athenian politics. Thus, the orators occasionally went so far as to claim that the people can *do*—that is, legislate—whatever it wishes, but in practice this would be limited to some very specific circumstances and, above all, regulated by the laws and the supervising role of the Council over the Assembly ([Dem.] 59.88; cf. Dem. 24.151; Thuc. 2.62.2). In *Against Neaera*, the supporting speaker Theomnestus<sup>60</sup> tried to portray the exemplary civic conduct of the main prosecutor by saying that he had always acted on the principle that the *dēmos* should possess the authority (κύριον . . . δεῖν . . . εἶναι) to act however it wishes with respect to its own funds ([Dem.] 59.4; cf. Dem. 20.148), highlighting its actual economic powers.<sup>61</sup> In fact, the *dēmos* at the Assembly was exceptional in not being accountable to anyone (Andoc. 2.19; cf. Thuc. 3.43.4–5). As a direct manifestation of the will of the people, it did not have to undergo any formal process of examination, unlike individual magistrates and some collective political bodies, for example, the Council, which was responsible to the *dēmos* (as Andocides also notes). Nonetheless, its decisions could be reversed if found to be in conflict with existing laws, in particular through the *graphē paranomōn* procedure.

Evidently, relations between *rhētores* and the *dēmos* could prove difficult. While addressing the people at the Assembly in the prologue to his symbouleutic speech, Demosthenes reprimands his fellow citizens by saying they are likely to make rash decisions and, as they grow angry, they condemn whomever they please (*Prooem.* 21.3; cf. Dem. 9.2–4). In addition to the case of Mytilene described in Thucydides (3.36–49), at least one famous fifth-century example attests to this. In 406/5, the *dēmos* sentenced to death without a fair trial the generals of the battle of Arginusae, who were judged collectively and only

56. Cf. Antiph. 5.90; [Lys.] 6.32; Dem. 19.104, 24.151.

57. Liddel (2007, 24) misreads such arguments as a description of the actual legal situation.

58. See MacDowell 1978, 253–54 and Todd 1993, 133–35 on the *agōnes timētoi*.

59. See Hansen 1999, 132–60 (esp. 151–55) and Ober 1989, 299–304; cf. Harris 2006, 81–120 on (the lack of limits on) the dates and number of Assembly meetings.

60. On the supporting speakers (*synēgoroi*) in Athenian legal system in general and [Dem.] 59 specifically, see Rubinstein 2000, 98–100, 102–3, 239, *passim*.

61. Cf. Kallet 2003 on the *dēmos-tyrannos* metaphor with respect to expenditure.

by the Assembly (one which did not even hear their previous defense),<sup>62</sup> after they failed to recover thousands of bodies of their dead or still living soldiers floating in the water after the battle.<sup>63</sup> These events are recounted by Xenophon (*HG* 1.6.24–7.35; cf. *Mem.* 1.1.18, 4.4.2) and later Diodorus (13.100–101); they are also briefly mentioned by Lysias (12.36, 21.9–11), Plato (*Ap.* 32b; cf. *Menex.* 243c), and the *Athenaiōn Politeia* (§34.1).<sup>64</sup>

After the resolution that denied them a proper court trial was proposed,<sup>65</sup> pressed for by the trierarchs fearing for their skin, individual citizens started coming forward to invoke the procedure for illegal proposals (*graphē paranomōn*, Xen. *Hell.* 1.7.8–12, 26). And although some acclaimed these lawful regulatory measures, “the masses” (τὸ πλῆθος)<sup>66</sup>—Xenophon claims—shouted that “it would be outrageous if someone were not to allow the *dēmos* to do whatever it might wish” (1.7.12). One Lysiscus reportedly even went so far as to claim that those proposing to vote on the legality should meet the fate of the *stratēgoi* unless they step back (1.7.13). And when some *prytaneis* had refused to carry on, they were also intimidated and felt compelled to withdraw; all but Socrates (1.7.14–15). Next, one of the citizens who opposed the proclamation, Euryptolemus, spoke up for preserving the procedures (1.7.16–34), calling the resolution illegal and asking whether its promoters feared that by acting lawfully they could lose the ability to “kill and free whomever they please” (1.7.26; cf. *Mem.* 1.1.18; Pl. *Ap.* 32b).<sup>67</sup> The people soon regretted their decision, and in remorse decided to sentence the proposers of the resolution to death, yet these were able to escape.<sup>68</sup> We are thus presented with the failure of each and every control procedure of the democracy, with the people’s actions based on an irrational whim, rather than on the laws and the community’s long-term interests. Nonetheless, it needs to be taken into account that the historiographer’s views on democracy influenced his overly dramatic narrative, possibly written several decades later.<sup>69</sup> He could have thus extrapolated his general attitude toward the people in Athens into his description of these events, by putting the shout about “doing anything the *dēmos* wishes” into the Assembly’s collective mouth (quite difficult to imagine as a mob’s united cry, even if individual citizens were eager to shout their disapproval).

Admittedly, the Athenian *dēmos*—as Demosthenes too was ready to point out—could be hasty and wrong (not to say cruel) in its decisions, in particular when it came to putting generals on trial (cf. *Dem.* 4.47).<sup>70</sup> Nonetheless, what

62. See Hamel 2015, 81, *passim*.

63. For a good analysis of the battle and rescue, see Hamel 2015 (p. 54 on the body count).

64. See Bleckmann 1998, 509–71; Johnstone 2011, 133–37; Rubel 2014, 131–45.

65. See Harris 2013, 241–43; cf. Carawan 1984.

66. On Xenophon’s description of the *dēmos*, see Pownall 2000; cf. Rubel 2014, 141–42.

67. MacDowell (1978, 186–89) and Bleckmann (1998, 523–32) suggested that the trial did not necessarily break the law (cf. Pownall 2000), but Harris (2013, 241–43, 342–43) more persuasively argues to the contrary. It might be that *παρὰ τὸν νόμον* earlier meant “against a customary practice” (rather than a specific law, cf. Carawan 2007), but we need too many assumptions to argue that this is what Xenophon had in mind (in the fourth century), and even this reading would change little in the Athenian negative perception of such practices.

68. See Xen. *Hell.* 1.7.35; see also Pl. *Ap.* 32b, 35b; Diod. Sic. 13.103.1–2; cf. [Arist.] *Ath. Pol.* 34.1. See Hamel 2015, 77 on the critical remarks in Aristophanic comedy soon after the trial.

69. Cf. Due 1983; Bleckmann 1998, 509–14, 547–41; Pownall 2000; Rubel 2014, 141–42, 134 n. 25.

70. Cf. Hansen 1975, 60; Harris 2005, 22.

was considered proper in the military sphere was different from how Athenians would go about sentencing private individuals,<sup>71</sup> even if in various Greek *poleis* collective trials of officials were far from unthinkable.<sup>72</sup> Furthermore, Xenophon’s and Plato’s accounts were, among other reasons, written to show that only one man, their venerated teacher Socrates, had the courage to stand for the rule of law in democracy in the face of the immediate danger (yet this is not what eventually put him in danger). Such examples gave elitist writers ammunition for their condemnation of democracy *in toto* as whimsical and unreasonable by nature based on what now appears to be quite unusual cases.<sup>73</sup> In practice, “doing whatever the *dēmos* wishes,” even if occasionally repeated as a crowd-pleasing slogan (if Xenophon can be trusted here), did not reflect the legal capacity of the people at the Assembly or in the courts, which were restrained by the laws governing the workings of Athenian political bodies.

#### NOTHING IN EXCESS

At least one place in Athenian literature seems to connect all of the mentioned features and topoi concerning “doing whatever one pleases,” while also giving us a likely context for the use of such phrases. In the first speech *Against Aristogeiton*—an accusation against an alleged state debtor for exercising citizen privileges to which he was no longer entitled—(Pseudo-)Demosthenes<sup>74</sup> unfolded before the dikasts an image of the decay that would surely infest the city if the accused was not put to death. The main argument concerning the principle of lawfulness in the democratic *polis* runs as follows ([Dem.] 25.25–26, trans. modified):

εἰ ἕκαστος τῶν ἐν τῇ πόλει τὴν Ἀριστογείτονος τόλμαν καὶ ἀναισχυντίαν λαβών, καὶ διαλογισάμενος ταῦθ’ ἄπερ οὗτος, ὅτι ἔξεστι καὶ λέγειν καὶ ποιεῖν μέχρι παντός ὃ τι ἂν βούληται τις ἐν δημοκρατίᾳ, ἄνπερ τοῦ ποῖός τις εἶναι δόξει {ὁ} ταῦτα ποιῶν ὀλιγορήσει, καὶ οὐδεὶς ἐπ’ οὐδενὶ τῶν ἀδικημάτων εὐθὺς αὐτὸν ἀποκτενεῖ· εἰ ταῦτα διανοηθεὶς ὁ μὴ λαχὼν τῷ λαχόντι καὶ ὁ μὴ χειροτονηθεὶς τῷ χειροτονηθέντι ἐξ ἴσου ζητοῖη εἶναι καὶ τῶν αὐτῶν μετέχειν, καὶ ὅλως μὴ νέος, μὴ πρεσβύτερος τὰ προσήκοντα πράττει, ἀλλὰ πᾶν τὸ τεταγμένον ἐξελάσας ἕκαστος ἐκ τοῦ βίου, τὴν ἑαυτοῦ βούλησιν νόμον, ἀρχὴν, πάνθ’ ὑπολαμβάνου· εἰ ταῦτα ποιοῖμεν, ἔστι τὴν πόλιν οἰκεῖσθαι; τί δέ; τοὺς νόμους κυρίους εἶναι; πόσῃ δ’ ἂν οἴεσθε βίαν καὶ ὕβριν καὶ παρανομίαν ἐν ἀπάσῃ τῇ πόλει καθ’ ἑκάστην τὴν ἡμέραν γίνεσθαι καὶ βλασφημίαν ἀντὶ τῆς νῦν εὐφημίας καὶ τάξεως;

If everyone in the city copied the audacity and shamelessness of Aristogeiton, calculating in the same way as he that in a democracy a man in every respect has the right to say and do whatever he likes, as long as he does not care what reputation such conduct will bring him, and that no one will put him to death at once for any of his misdoings; if, acting on this principle, the citizen not chosen by lot or elected wanted to be on an equal footing with the one chosen by lot or elected and share in the same privileges, or if, in a word, neither young nor old should do his duty, but each man, getting rid of all order from his life, regarded his

71. Cf. Bleckmann 1998, 530; Rosivach 1987.

72. See Rubinstein 2012 on the widespread Greek practice of imposing collective penalties.

73. Cf. nn. 69 and 91; on the bias of the sources, see Rubel 2014, 133, with n. 22.

74. Even if the speech is not genuine, which is most likely the case (cf. n. 18 above), it draws on earlier oratory and abundantly—and densely—uses the topoi we meet elsewhere.

own wish as the law, as authority, as everything—if, I say, we should act like this, is it possible for the state to be governed? How then? Would the laws be valid? How much violence, outrage, and lawlessness there would be throughout the city every day! What profanity in place of the present decency of language and order!

In this passage brimming with the catchwords commonly associated with “doing and speaking whatever one wishes,” the speaker draws on the previously mentioned topos of the “fateful acquittal” and implies that letting the defendant go will equal the destruction of every single value Athenian citizens pride themselves on and, above all, will make away with the legal and political framework of the democratic *polis*. The antithesis here is between the order of the democratic state and its citizens’ good repute on the one hand (τάξις, τὸ τεταγμένον, τὰ προσήκοντα, ἀρχή, νόμοι, εὐφημία; cf. §24, 27) and the lack and destruction of all such values by Aristogeiton on the other, described in highly evaluative terms (τόλμα, ἀνασχυντία, βία, ὕβρις, παρανομία, ἀδικήματα, βλασφημία; cf. §27 and Soph. *Aj.* 1071–83). Acting upon one’s own will (ἑαυτοῦ βούλησις) thus leads directly to *hybris* and the use of force by everyone who so wishes, making the democratic decision-making process irrelevant. The democratic ideal would, in turn, be that of obedience to the principles that organize every individual’s life and the shared life of the community, and—to express it in modern terms—transferring the monopoly of the legitimate use of force to the state and its political bodies.<sup>75</sup> The same opposition is found in Plato’s *reductio ad absurdum* of democratic freedom in his *Republic* (VIII, 557a–58c), with the exception that the orator makes it clear that such behavior contravenes all democratic ideals, rather than constitutes them, as Plato would have us think.

What seems crucial here, however, is that—according to the orator—Aristogeiton’s shamelessness manifested itself in his reasoning that “in a democracy a man has an unlimited right to say and do whatever he likes,” with social chastisement as the only consequence. This phrasing suggests that there were individuals in Athens who connected such slogans with democracy; but at the same time it draws attention to the expression “in every respect,” or “to the fullest extent” (μέχρι παντός). It seems to indicate that the accused was pushing the limits of what to some degree could have been a recognized idea, even if worded differently and linked to freedom in a less absolute manner. This might be expressed as “a free person should not be restricted in his actions as long as he does not contravene any laws and interests of the community,”<sup>76</sup>

75. Wallace (2006, 78 n. 22) takes notice of this passage while praising the concept of “living as one wishes” as an Athenian ideal, but curiously discards it by saying: “The speaker objects that such conduct is inconsistent with the rule of law, but that is a different issue.”

76. Cf. Hdt. 3.83.3 (about Otanes; clearly anachronistic and thus interesting as a parallel): καὶ νῦν αὐτῆ ἡ οἰκῆ διατελεῖ μοῦνη ἐλευθέρῃ ἐοῦσα Περσέων καὶ ἀρχεται τοσαῦτα ὅσα αὐτῆ θέλει, νόμους οὐκ ὑπερβαίνουσα τοὺς Περσέων (“and now it is his house and his house only out of all in Persia that continues to be free and is being ruled only as much as it wishes, as long as it does not transgress the laws of the Persians,” my translation), but this seems to entail that after withdrawal from politics, Otanes has to live according to—all or some essential—laws imposed on him and which he does not have the capacity to shape; cf. Strasburger 1955, 11, 23; Tamiolaki 2010, 219–20; Farenga 2014, 106–7. See examples of the topos of interconnectedness of freedom, law, and democracy in Isoc. 20.10; Lys. 2.18–19, 28.13; Dem. 23.139, 24.5, 76; see also Dem. 6.25 and Hdt. 7.104.4; cf. Harris 2013, 3–4 on the orators’ assertions regarding obedience to the laws. The phrase μέχρι παντός is common since the first century BCE but not in classical Greek, which adds to the list of arguments that *Against Aristogeiton* was a post-classical rhetorical exercise, only based on the ideas found in Attic oratory (see Harris 2018, 193–97).

something that even Plato’s Socrates seems to concede (*Cri.* 51d–52d).<sup>77</sup> For the majority of Athenians, this would be limited by various social constraints and rules of conduct, and further defined by the practical restrictions imposed by the institutional system. In this paraphrase, it looks as if this principle was taken by the defendant several steps too far, similarly to Aristotle’s characterization of democratic principle of equality that let him attack a straw man in the form of “everyone’s being equal to everyone else in every possible respect”<sup>78</sup> (hardly the ideal of equality cherished by Greek democrats),<sup>79</sup> or his representation of Athenian lower classes and the rowers’ role in establishing and maintaining a democracy,<sup>80</sup> or his discussion of legal argument in forensic rhetoric.<sup>81</sup> Just as to Locke, recalled at the beginning of this article (echoing Aristotle’s categories and attesting their popularity), political freedom appeared to Greek democrats as something very far indeed from “not being restrained by the laws.”

One could imagine the Athenian “gilded youth” (like the Hermokopidai, or the Kakodaimonistai, or Triballoi),<sup>82</sup> wandering around and boasting that in a democratic state one can do anything one wishes in every possible measure.<sup>83</sup> Most Athenians, however, would probably view this principle in the way the orators each time expressed it in front of them, counting on their approval, that is, as sheer lawlessness and the decay of all political ideals, to which Athenian dikasts had to answer with indignation based on their knowledge of what such ideals were really about. There remains yet another significant assumption behind this statement: in a democracy people need to care about their image in the eyes of their fellow citizens. The only individuals who can take the liberty of living entirely as they please—until the law stops them—are those who are not at all particular about their reputation in the *polis* ([Dem.] 25.25; Dem. 51.15–16).<sup>84</sup>

#### INDIVIDUAL WISHES AND SHARED IDEALS: CONCLUSION

Despite severe criticism of democratic ideology by its most prominent detractors, there is virtually nothing to indicate that “living as one wishes” was ever a genuine political ideal in Athenian democratic discourse. While perhaps sometimes taken within the *reductio ad absurdum* so far as the words ascribed by the orator to Aristogeiton scolded for his public conduct, it was adapted in its most radical and spurious form for the sake of the ideological battle by those particularly critical of the democratic constitution as its alleged elementary

77. See Ober 2000 on Plato’s *Crito*; contra Plax 2001.

78. See *Pol.* III 9, 1280a.16–25, III 12, 1282b.18–23, V 1, 1301a.25–b.4, 1301b.29–40, VI 2, 1317b.3–10; cf. III 13, 1283.a23–84b.34, VI 2, 1318a.3–10.

79. See Mulgan 1970; Hansen 1989, 22–25 et al.

80. See Ceccarelli 1993 (who notes major differences in this respect between the Old Oligarch, Plato, Aristotle, and Isocrates on the one hand and the orators and—more surprisingly—Xenophon on the other) and van Wees 1995. 81. See Carey 1996.

82. See Filonik 2013, 21, 39–41 on these groups.

83. For the phrasing similar to the modern “it’s a free country!”, note Strabo’s remark on the sarcastic proverb that became famous in Roman times after Korkyra lost all its former significance: ἐλευθέρα Κόρκυρα, χέζζ’ ὅπου θέλεις (“Korkyra [is] free, shit wherever you please,” 7a.1.8 = VII frag. 8). The Platonic vision of Athenian democracy apparently outlived its prototype, as attested by Plu. *Apophth. Lac.* 236c: ἐν Ἀθήναις . . . πάντα καὶά.

84. See also Dover 1974, 221 on (the argument from) conscience and reputation.

principle. Whether it was a misunderstanding based on class bias (invariably focused on the laxity of “commoners”) that made such an interpretation an obvious solution,<sup>85</sup> or whether—more likely—it was a conscious manipulation and abuse of the concept found in publicly pronounced democratic ideology, a major fallacy emerges out of this comparison, and one successfully accepted in the future image of classical Athens.

It seems that Plato and Aristotle were conscious of the kind of democracy they lived in, and thus deliberately misrepresented and caricatured its traits of which they did not approve, promulgating a belief that it could not uphold the rule of law and promote reason as its constitutive principle. During all their time in Athens they experienced life in a society based on quite different rules from the one at which they aimed their criticism. According to Plato, *dēmokratia* leads to *anarchia* (*Resp.* VIII, 558c, 560e, 562a–63c), which then naturally transforms itself into *tyrannis* (*Resp.* IX, 577c–e) through enslavement of the soul by want and lust instead of obedience to the laws (*Resp.* IX, 572a–75d, 577c–78a; *Leg.* III, 693d–701e).<sup>86</sup> Perhaps he found the idea of democratic freedom so defined useful for his own positive ideal of the philosopher’s freedom understood as “doing whatever he truly wants,” based on truth and reason,<sup>87</sup> which called for a bold antithesis between two interpretations of this concept.

For Aristotle, *dēmokratia* was one of the deviant constitutions, mistakenly based on freedom,<sup>88</sup> an imperfect form of *politeia* that had been lost in Athens after the Solonian order, the way some envisioned it in Aristotle’s time (*Pol.* III 7, 1279b.4–10, IV 4, 1291b.30–92a.38; *Eth. Nic.* VIII 10, 1160a.31ff.–60b.22). Nonetheless, the image he draws in the *Politics* is quite different from the one that emerges in the *Athenaiōn Politeia*, with its more restrained evaluation of Athenian democratic institutions, however distorted by Aristotelian philosophical assumptions.<sup>89</sup> It was probably the critical evaluation of the Athenian *dēmos* and the political system that put it in power, more than anything else, that justified the need to misrepresent democratic ideals as he does; not to mention the elitist authors’ awareness of not being able to participate in the *polis* the way the “chosen few” could if not for the elaborate checks imposed by the democracy.<sup>90</sup> It only required Aristotle’s tendency to systematize historical events and developments in his writings to finally declare that what first had been the object of far-fetched criticism was in fact the very essence of this rotten form of (a former) “good constitution.” Aristotle’s remarks on democratic freedom

85. As argued by Ober (1989; 1998) and Roberts (1994); cf. Wood and Wood 1978, 97–102, 214–23; but Lintott (1992) notes that Aristotle’s “anti-democratic sentiments” surpass usual aristocratic prejudice and are based on a long-standing anti-egalitarian tradition in Greek political thought (even if the two do not have to be mutually exclusive). Note also Strauss’ (1991, 231) observation: “We must remember first that Aristotle had both rhetorical and philosophical reasons to paint the defects of Athenian democracy in broad strokes. The Athenian citizens whom he met at the Academy and Lyceum tended to be men who were thoroughly disillusioned with democracy. To reach them, it made sense for Aristotle to speak their language, a language critical of the Athenian regime” (cf. p. 232); cf. Cartledge 2002, 147.

86. Cf. Stalley 1998. See also Arist. *Pol.* IV 11, 1296a.1–5, V 10, 1310b.3–4, 1312b.32–38.

87. On this concept in Plato, see Bizoń 2015.

88. See the passages above; cf. Lintott 1992; cf. Strauss 1991; Mulgan 1970.

89. Cf. Rhodes 1981, 5–37; Strauss 1991, 219, *passim*; Wexler and Irvine 2006.

90. See a good analysis by Canevaro (2016) of what *polis* institutions meant for the citizens in Greek democracies and oligarchies.

are even more striking when one realizes that elsewhere in his *Politics* he treats the posited “good” democracy as something closer to a constitutional order than tyranny, even though he ascribes the principle of “living however one wishes” to all democrats equally (VI 2; only to some in V 9, both quoted above).

Both “doing” and “living” as one wishes, criticized by the philosophers and the orators, apparently point to a similar notion linked to lawlessness and subversion of proper political order. And it is specifically the rule of law that the former omit and the latter highlight in their descriptions of democratic ideals.<sup>91</sup> When confronting sociopolitical reality with their own system of values, authors of political polemics such as Plato and Aristotle might have had a genuine impression that in Athens individuals and nonelite groups were not controlled by the sovereign or the elite, and thus were allowed to “do whatever they want.” However, in this observation they distorted an essential quality of the democratic constitution, that is, the primacy of the legal framework over individual “wishes”; and at the same time, they—particularly Aristotle—praised the very supremacy of the law that the democrats extolled, only by opposing it to democracy in their teachings.

Kenneth J. Dover began his *Greek Popular Morality* by the insightful observation that “It often happens that if I try to do as I wish I necessarily frustrate what someone else wishes. By the ‘morality’ of a culture I mean the principles, criteria and values which underlie its responses to this familiar experience.”<sup>92</sup> Based on what can be found in the surviving Athenian speeches, several traits need to be distinguished, in turn, in Athenian responses to the concept of “doing whatever one wants.” First, it is used in a highly negative sense and is directly condemned by the speakers and logographers whenever they discuss those actions of individuals in the state that influence other citizens’ lives, the common interest, and the laws of the *polis*. Second, although *living* (*zēn*) rather than “doing” or “acting” as one pleases appears in this sense only in Aeschines *Against Timarchus* 34, the context of the passages here discussed makes it clear that these concepts were equivalents linked to shared notions, as their interchangeable use in philosophical prose also suggests (cf. n. 17 above). Third, and perhaps the strangest, is the fact that nowhere in some 130 surviving speeches meant for public delivery in democratic Athens do we find any remark that would merely suggest that the concept of “living as one wishes” was part of the Athenian democratic ethos, as opposed to the individual’s own wish to live as s/he chooses sometimes expressed publicly. Had it been a true democratic ideal, we would have expected at least a basic recognition of that fact in the sources constantly referring to popular morality such as publicly delivered speeches, especially considering their innumerable remarks on Athenian freedom, equality, and rule of law. Fourth, and no less striking, is that before the fourth-century criticism of democracy, this principle commonly referred to one-man rule and was opposed to the lawful ways of democracy, which later found its reflection in oratory. Finally, with reference to the political bodies—the popular courts and the Assem-

91. Cf. the chart in Loraux 1986, 181. See also Wexler and Irvine 2006 on the rule of law in Aristotle’s thought, and Canevaro 2017 for an overview of its place in Greek political thinking in general.

92. Dover 1974, 1.

bly—rather than individual citizens, this principle is only rarely mentioned in a positive light, and even then it is limited by various provisos. It is thus not correct to accept the very basis of Aristotle’s criticism of the concept of freedom allegedly shared by the Greek democrats, so eagerly adopted in the studies of classical Athens throughout the ages, for in fact, as the philosopher himself might say it, it was based on some false assumptions.

The present paper has argued that, despite the fact that in practice Athens—as opposed to more restrictive political systems—gave its citizens a considerable amount of latitude in choosing their lifestyle, the democratic ideal remained quite far indeed from what detractors ascribed to Greek democrats as a substantial category of their freedom, and what the moderns have alternately condemned and praised as such. Athenians were indeed proud of their identity as *free men*—masters of their bodies, unlike the slaves, and masters of their political reality, unlike the subjects of a monarch—but they never equated this with the ability to “do whatever one pleases” the way we had been encouraged to believe. Realizing this basic fact may help phrase ancient democratic ideals more accurately in future studies of Greek political thought and the political culture of democratic Athens.

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