



**THE EVOLUTION OF JUSTICE,
EQUITY, AND EQUALITY**
PRACTICAL WISDOM FROM THE PAST
Edited by
Iwona Barwicka-Tylek, Jan Halberda,
and Maciej Mikula

Routledge Studies in Comparative Legal History



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The Evolution of Justice, Equity, and Equality

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way as to give rise to a certain *just* ordering of the society. The results were very diverse, although for us only the political experience of a few places (in particular, Athens between the 6th and 3rd centuries BCE) is sufficiently well known.

Indeed, Athenian democracy² constituted the first sufficiently documented experiment in translating the notions of freedom (*eleutheria*) and equality (*isonomia, isegoria, isotomia, isopoliteia*, etc.)³ into an operational constitutional design for a given political community. The constitution of Athenian democracy was the result of a historical process in a very complicated geopolitical context, which underwent numerous ups and downs and retrappings throughout its more than two centuries of development. It is, of course, an irreproducible historical experience in a different historical context. Nevertheless, the testimonies provided directly by some of its protagonists or by the ancient historians who recounted its vicissitudes, and, above all, the profound subsequent reflections of the great Greek philosophers on the subject, produced such an impact that they have been able to provide political models and narratives up to the present day. The ideas of freedom and equality put into practice there (but, above all, the interpretations that have come down to us) have permeated Western political thought over the centuries. At the same time, the critical reflection of philosophers (particularly Plato and Aristotle) on the concrete implementation of these notions of freedom and equality in various *poles* (again, above all in Athens) gave rise to the formulation of an idea of justice as a regulative ideal of political life. Justice thus appears as a function dependent on the conceptions held about the level of equality that should exist among the members of society and the sphere of individual freedom that can be tolerated without resulting in the dispersion of the social group or its absorption by other, larger communities. The designs for a just society projected by Plato and Aristotle had a significant influence on later Greek thought, and finally on Rome.

After the Athenian experience, the next prominent historical-political model that consciously combined the notions of freedom and equality, and of which a very large body of information has been collected, is Rome. The constitution of the Roman Republic was also the historical product of the

- 2 On Athenian democracy, see: A.H.M. Jones, *Athenian Democracy* (Oxford: Blackwell, 1983); R. Sealey, *The Athenian Republic: Democracy or the Rule of Law?* (University Park: Pennsylvania State University Press, 1987); F. Rodríguez Adrados, *La democracia ateniense: Structure, Alianza*, 1988); M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes: Structure, Principles, and Ideology*, trans. J.A. Crook (Oxford, UK-Cambridge, USA: Blackwell, 1991); D.L. Stockton, *The Classical Athenian Democracy* (Oxford: Oxford University Press, 1991); J. Bleicken, *Die athenische Demokratie* (Paderborn: Schöningh, 1995); J. Thorley, *Athenian Democracy* (London: Routledge, 2004); P.J. Rhodes, ed., *Athenian Democracy* (Edinburgh: Edinburgh University Press, 2004); R. Osborne, *Athenian Democracy* (Cambridge: Cambridge University Press, 2023), among others.
- 3 Note the use of a plurality of technical terms to refer to "equality," as opposed to the uniqueness and univocality of the expression meaning "freedom."

8 Liberty and Inequality in Cicero's *Oratio Pro Sestio*

Francisco J. Andrés Santos

8.1 Introduction

Justice, freedom, and equality are three central concepts in the political thought and practice of all ages, and they are permanently interrelated, either in harmony or in opposition. They are interlinked concepts, which no philosophy can do without if it wants to construct a sound theory of the best way to organise social life. However, they are to a large extent open concepts whose meaning can be filled in in many different ways. In any case, how one conceives of any one of them depends, in turn, on how one conceives of the others. They are not conceptually independent categories: the three are linked in a logical relationship of co-dependence. And it is on the basis of the conception of each of these terms that the trends of political philosophy have revolved around from the beginning to the present day. It could be said that there was no political philosophy until the idea of justice burst into Greek thought, with which the notions of freedom and equality are necessarily linked in their context. Particular attention needs to be paid here to the freedom/equality binomial, as proposed in the title of this chapter.¹ These two notions have appeared as dialectically related concepts since ancient Greece, in terms of both philosophical-political reflection and constitutional practice. The Greek *poletis* were the first known historical expressions in which there was a conscious attempt to construct a political space in which both ideas were combined in such a

¹ This chapter starts from concepts of freedom and equality based on the ideas of modern republicanism, especially in the version of the contemporary republican left (authors such as Gerald Allan Cohen, Philippe Van Parijs, Antoni Domènech, Andrés De Francisco, etc.). That is, it starts from a conception of freedom as non-domination (cf. P. Pettit, *Republicanism* (New York: Oxford University Press, 1997), 51–79) and of equality as *quantitative* or *distributive* equality (i.e., a tendency towards a distribution of political powers and social goods as equally as possible among the members of the social group, as far as historical-social and cultural conditions allow), and not so much *relational* (where what belongs to each subject is linked to the social relations he or she has with the other members of the comparative class): cf. E. Anderson, “Equality,” in *The Oxford Handbook of Political Philosophy*, ed. D. Estlund (Oxford: Oxford University Press, 2012), 40–57). It is not possible to go into detail here on the justification of this view.

- Wirszubski, Chaim. "Cicero's cum dignitate otium - A reconsideration." *Journal of Roman Studies* 44 (1954): 1-13.
- Wirszubski, Chaim. *Libertas as a Political Idea at Rome during the Late Republic and Early Principate*. Cambridge: Cambridge University Press, 1950.
- Wissowa, Georg ed. *Paulys Realencyklopädie der classischen Altertumswissenschaft*, 83 vols. Stuttgart: J. B. Metzler, 1893-1980.