

I Do What I Want: Freedom and Power in Classical Athens

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Abstract

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This project investigates the ideology of freedom and power underlying democratic citizenship in classical Athens using philological analysis and modern theoretical approaches, including performance and power studies. In opposition to other political systems such as oligarchy and tyranny, democracy is linked in ancient texts to freedom. Beginning with an exploration of what freedom meant to the Athenians and what logical conclusions this definition entailed, I find that freedom is often described as the ability of its citizens to do “whatever they wish.” Building on modern political theory’s distinction between negative and positive freedom (freedom *from* constraints versus freedom *to act* in order to take control of one’s life), I argue that the phrase to do “whatever one wishes” is an expression of positive freedom, rather than negative freedom. I support this view with evidence from legal language, the historians (Herodotus and Thucydides), and the philosophers (Plato and Aristotle). These sources indicate that positive freedom and autonomy in both the private and public realms were conceptually and institutionally important for the Athenian citizen. This type of freedom accords, in turn, with a sense of power. I argue that power is best tracked by tracing the use of the adjective *kurios* and its opposite, *akuros*. Using the *kurios* of the household as a model, I outline basic features of power, including its performative and contested nature. I then focus philological analysis on *kurios* as deployed in

forensic speeches to describe the defendant, jury, and the laws. The move from political theory into the pragmatic setting of the law court is conducive to identifying and analyzing prevalent notions about power and autonomy. In addition, I aim to show that democratic ideology negotiates a balance between its free citizens and its laws by conceptualizing the two parties as symbiotically drawing power from each other. Finally, I close with a case study of *Against Neaira* ([D.] 59), exemplifying how questions of freedom, power, and their attributes may be deployed for textual analysis. In contrast to other readings of the speech, I show that power struggles are central to the prosecution's argument.

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Chapter 1 Introduction: Freedom, Power, and the Individual

There is no shortage of scholarly work on Athenian democracy, and, as in all disciplines, different time periods have fashioned different trends in scholarship. Over the past twenty years, once such trend has been the study of popular ideology. This focus arose in contrast to the constitutional approach, which gives primacy to institutions. Epitomized by the work of the prolific and erudite Mogens Hansen, this constitutional view has produced scholarship that has elucidated many of the fine points of the political and legal workings of Athenian democracy. Josiah Ober, however, has questioned the presumed objectivity of such an approach and pointed out its limitations. That is, asking and attempting to answer questions such as “Which political body was sovereign in Athens?” assumes that various premises hold true for ancient Athens, in this example the idea of the sovereignty of ruling bodies. In other words, while this type of inquiry seems on the surface to presuppose very little, it actually imports many assumptions through its method. Since the constitutional approach supposes that explaining the institutions of democracy serves to sufficiently analyze democracy, one implied assumption is that the political machine is distinct from the rest of the life of the city, and thus that the public and private spheres are also separate. Thus, while the constitutionalists have undoubtedly given us important scholarship on democracy, there is room for work from another perspective that takes a more holistic view.

The history of ideas, an approach spearheaded by scholars such as Ober, strives instead to illuminate the ideology that gives rise to such institutions. Through this approach, the study of ancient citizenship, as a subsection of inquiry into democracy, has likewise moved away from purely institutional interpretations. Rather than focusing on citizenship as solely a list of concrete political rights, scholars have looked at the complex character of citizenship which

includes “a legal status, but also the more intangible aspects of the life of the citizen that related to his status” (Manville 1990: 7).¹ By recognizing the extra-legal aspects of citizenship, this mode of inquiry provides a broader view of the citizen as engaged in both public and private realms. The view that citizenship is not merely a static legal designation leads to another related development in the realm of citizenship studies: the notion that citizenship is constantly performed and reinforced.²

My study is informed by this dialogue about democratic citizenship and is especially influenced by the ideological approach. I focus in the following chapters on a feature of democracy that ideologically distinguishes it from other constitutions in antiquity. What is this central feature of democracy? Plato asks this very question through a dialogue between Socrates and Adeimantos in his *Republic*:

Σωκράτης: Ἄρ' οὖν καὶ ὁ δημοκρατία ὀρίζεται ἀγαθόν, ἢ τούτου ἀπληστία καὶ ταύτην καταλύει;

Ἀδεΐμαντος: Λέγεις δ' αὐτὴν τί ὀρίζεσθαι;

Σωκράτης: Τὴν ἐλευθερίαν, εἶπον. τοῦτο γάρ που ἐν δημοκρατουμένη πόλει ἀκούσαις ἂν ὡς ἔχει τε κάλλιστον καὶ διὰ ταῦτα ἐν μόνῃ ταύτῃ ἄξιον οἰκεῖν ὅστις φύσει ἐλεύθερος.

Ἀδεΐμαντος: Λέγεται γὰρ δὴ, ἔφη, καὶ πολὺ τοῦτο τὸ ῥῆμα. (*Rep.* 562b7-c3)³

Socrates: And isn't democracy's insatiable desire for what it defines as the good also what destroys it?

Adeimantos: What do you think it defines as the good?

Socrates: Freedom (*eleutherian*): Surely you'd hear a democratic city say that this is the finest thing it has, so that as a result it is the only city worth living in for someone who is by nature free.

¹ Also see Boegehold and Scafuro 1994.

² See e.g. Goldhill and Osborne 1999, Farenga 2006.

³ I have added the speakers' names in the Greek and English for clarity.

Adeimantos: Yes, you often hear that.⁴

In Plato's utopian work, democracy, like many other constitutions, falls short. In his Socrates' estimation, the cause of its shortcomings and eventual devolution into tyranny is that it pursues freedom, ἐλευθερία, as the ultimate good. While this analysis of the outcome of freedom is highly idiosyncratic, Plato's focus on freedom as a central element of democracy is far from unique to him. As we shall see, the association of democracy with freedom is well established among both democrats and their critics.

The importance of freedom has its roots in the personal status of the Athenian citizen. In archaic Athens, personal status became important as the great leveler for citizens; free Athenians were citizens regardless of family or wealth and thus eventually enjoyed political equality, other inequalities notwithstanding. In the classical period, however, 'freedom' developed into something beyond simply having free status. It is this meaning that becomes intertwined with democratic thought and that I attempt to expound in this dissertation. Since this distinctive meaning begins with the freedom of the individual, the ideology of freedom must be conceived of and perceived at the individual level in order to understand its significance for the polity as a whole.

At the outset of this project I wished to investigate what 'freedom' meant in the popular ideology of classical Athens. While ordinary language cannot entirely exhaust the meanings pertaining to 'freedom' as a concept, whether narrowly technical or more general, I took it as an important starting point for grounding my investigation. In doing so, I found one phrase that kept recurring in how people talked about democratic freedom at Athens. We find an example in

⁴ Translation of Plato's *Republic* from Grube and Reeve 1992.

the *Politics*, where Aristotle reports Socrates' view in the *Republic* that the constitution will degenerate

διὰ τὸ ἐξεῖναι ὅ τι ἂν βούλωνται ποιεῖν· οὐ αἰτίαν τὴν ἄγαν ἐλευθερίαν εἶναί φησιν. (1316b23-25)

because it is open to them to do whatever they wish (*ho ti an boulōntai*). The cause of which Socrates says is too much freedom (*eleutherian*).⁵

Freedom is, then, is linked with doing “whatever one wishes.” In the Aristotelian and Platonic view, this creates utter chaos and anarchy. But what did democratic sympathizers think of such a denotation for freedom? In chapter 2, I explore this phrase in depth and show that this interpretation of ἐλευθερία is widespread among both critics and supporters of democracy. In fact, it is considered a merit by democrats. Employing Isaiah Berlin’s distinction between positive and negative freedom, I argue that this phrase indicates positive freedom. Moreover, just as democracy encapsulates both public and private aspects of the city, positive freedom, too, is found in both spheres.

We must take seriously the consequences of this most radical and distinctive feature of democracy. If freedom is the ability to do whatever one wishes, what does this entail for the individual citizen? After all, as Socrates claims, democrats believe democracy is the best constitution for a free man. As such, one might expect there to be an assumed link between the most complete expression of one’s freedom and democracy. In exploring what positive freedom means for the citizen, we are led to the question of power. Who or what is empowered in democratic Athens? In order to start again from ordinary language, we must first identify a term that designates ‘power.’ Unlike ἐλευθερία, the word for ‘freedom,’ there are various words that may refer to what we mean by our English word ‘power.’ One of the most important of these is

⁵ Translation of *Politics* is from Keyt 1999.

the adjective κύριος.⁶ While in English we typically think of ‘power’ as a noun, and thus something someone can have, Greek often employs this adjective to describe a state of power in the sense of authority (as opposed to brute force). This works well with thinking of power as a disposition, as it most often is in modern political theory.⁷ While a disposition may exist without being exercised, however, we can more readily determine increases and decreases of power when it is challenged and exercised. The adjective *kurios* also satisfies the requirement for a term that straddles both private and public realms. In the former, the role of the head of the household as the substantivized *kurios* provides a venue through which to explore power. As for the latter, in addition to the public role of *ho kurios*, the adjective is used to describe legal processes and political entities as well as individuals as having power.

In pursuing the term *kurios* as designating possession of power, I am taking a cue from Mogens Hansen, but from a different perspective. Concerned with sovereignty within the polis, he says,

If we could travel back to the age of Demosthenes and ask an ordinary Athenian the question ‘Who is *kyrios* in Athens?’ all the sources indicate that the immediate reply would be ‘the laws’ (*hoi nomoi*). If asked, however, ‘What persons are *kyrioi*?’ he would probably say, ‘The *demos* is *kyrios*,’ but then he would take the *demos* to mean the whole of the people, i.e. the state of Athens. (1991: 303)

Refocusing the inquiry, I would add that if asked simply “Who is *kurios*?” an adult male citizen would likely reply, “I am.” These various answers show the various ways in which power could be understood. While the *demos* is very much a unit identified as *kurios*, that collective is constituted by individuals. I intend to make use of this rather banal observation in order to show the ways in which the individual was powerful in popular ideology, as well as free. In chapter 3,

⁶ Other words like ἡ δυνάμεις, ἡ ἀρχή, ἡ δυναστεία, and τὸ κράτος can serve as abstract nouns for ‘power.’ I find these to be more specific than the general term *kurios*. See ch. 3.

⁷ See e.g. Morriss 2002.

I analyze what the term *kurios* means, show how it can be connected to an essential element of citizenship by means of a citizen's free status, and explore what properties of 'power' we can determine from instances where *kurios* is used. I argue that two marked qualities of power arise: it is created through performance and it is often shared. I then expand those ideas to the law courts and study instances where citizens and laws are called *kurioi* or, conversely, *akuroi*. The contention that the individual *qua* citizen, and not simply the *demos*, is powerful and free, though, may lead to conflict between the laws as *kurioi* and the citizen as *kurios*. I will show that in fact there is no conflict between a typical citizen and the laws; rather, their power is complementary.

Thus, taking freedom to its ultimate conclusion will lead us to a consideration of citizens' power. The consequences of an empowered citizenry and power's performativity can then be examined via court cases. Chapter 4 turns to a specific case study, analyzing *Against Neaira* ([D.] 59) through the lens of power relations. This is a prosecution speech alleging that Neaira, a metic and former courtesan, is illegally married to an Athenian citizen. Rather than focusing on the speech's political undercurrents or the anxiety about potential contamination of the citizen pool with illegitimate children, applying ideas about freedom and its relationship to power to this text allows us to assess the threat Neaira presents to the city in a different light. Her assumption of citizenship effectively empowers a female freed slave, who should not be empowered, while disempowering Athenian citizens, who should be.

The approach to freedom and power developed throughout these chapters provides another way to interpret and understand canonical Greek texts. Chapter 5 suggests other possible avenues of inquiry that may open when we take seriously the notion of the citizen as free and empowered.

Chapter 2: Freedom as Autonomy

δύο γὰρ ἐστὶν οἷς ἡ δημοκρατία δοκεῖ ὠρίσθαι, τῷ τὸ πλεῖον εἶναι κύριον καὶ τῇ ἐλευθερίᾳ· τὸ μὲν γὰρ ἴσον δίκαιον δοκεῖ εἶναι, ἴσον δ' ὅ τι ἂν δόξη τῷ πλήθει, τοῦτ' εἶναι κύριον, ἐλεύθερον δὲ [καὶ ἴσον] τὸ ὅ τι ἂν βούληται τις ποιεῖν· ὥστε ζῆ ἔν ταῖς τοιαύταις δημοκρατίαις ἕκαστος ὡς βούλεται. (Arist. *Pol.* 1310a28-33)

For there are two things by which democracy is thought to be defined: the supremacy of the majority, and freedom (*eleutheriai*). For it is held that the just is equality, that equality is the supremacy of whatever seems right to the mass, and that freedom is doing whatever one wishes (*ho ti an boulētai*). Thus in such democracies each man lives as he wishes (*hōs bouletai*).⁸

Democracy as a political arrangement can be defined by its legal and political practices. Behind the institutions of democracy lies the ideology that shapes those practices and distinguishes it from other regimes. What, then, is the nature of this ideological difference between democracy and other constitutions? In the passage above from the *Politics*, Aristotle lays out two fundamental concepts that he believes shape the democratic polity: rule of the majority (τὸ πλεῖον εἶναι κύριον) and freedom (ἐλευθερία). Let us take Aristotle's suggestions as a starting point.

First, we shall begin with the supremacy of the majority. Majority rule is often associated with democracy and might seem to provide an easy contrast with other modes of government in antiquity, particularly in light of the nomenclature of oligarchy and monarchy. Majority rule, though, is insufficient for differentiating democracy from other regimes. Other systems, such as oligarchy, included a form of majority rule through voting.⁹ Of course, the members of the polis eligible to vote varied in each system. The charitable view, then, may contend that since in a democracy a greater number of free men were voting citizens, *democratic* majority rule implied a true majority of free men, rather than a majority of a more restricted,

⁸ All Greek texts used are *OCT*. All translations of the *Politics* are from Keyt 1999.

⁹ Arist. *Pol.* 1294a11-14; also see Keyt 1999 on 1310a25-36.

smaller group.¹⁰ Granting full citizenship to a larger part of its constituents based on shared free status was indeed one of democracy's distinguishing features.¹¹ Majority rule, though, supervenes on this principle of citizen equality based on free status and does not stand as a fundamental principle on its own. In addition, it does not seem that democrats themselves viewed majority rule as a foundational principle. As Josiah Ober has pointed out, it was mainly critics of democracy, not proponents, who used majority rule as a defining feature of the constitution, and they did so pejoratively.¹² In the search for the underived principles that drive democratic institutions, majority rule therefore falls short.

The second principle identified by Aristotle, *eleutheria*, or freedom,¹³ is commonly part of democratic branding.¹⁴ Unlike majority rule, which depends on another concept to ideologically motivate it, freedom is a fundamental principle for democracy: freedom itself was used to justify institutions and practices, such as the basis for political inclusivity and alternating

¹⁰ Keyt 1999 (on 1310a25-36) sees this underlying Aristotle's statement.

¹¹ In Athens, though, free foreigners were excluded as rule from citizenship and Perikles' citizenship law of 451/0 further restricted matters, although there were exceptions where metics were naturalized *en masse* and individually. Athenian claims to autochthony obviously also contributed greatly to their self-identity. Still, while these free foreigners could not convert their free status into political capital because they did not share descent, the internal and external perception of citizenship as based largely on free status, versus aristocratic descent or net value, was still paramount. The use of *eleutheros* as synonymous with citizen is evidence of this.

¹² Ober (2008) further argues that rather than how many members of the population are eligible to rule and the consequent 'majority rule' characterization, the ability of the *demos* collectively to act in the public sphere was the original defining feature of *demokratia* both etymologically and in practice. Although differently focused, this complements my views expressed below.

¹³ 'Liberty' is an equally suitable translation of ἐλευθερία. Despite attempts at forming technical distinctions between 'liberty' and 'freedom,' these terms remain generally interchangeable. For example, Pitkin 1988 employs ordinary usage and etymology to argue that there is a difference; Williams 2001 tracks the change from 'primitive freedom,' which is a basic freedom from coercion, to 'liberty,' as a full-fledged political value; Dworkin 2011 prefers 'freedom' to indicate something like positive freedom (freedom to act) and 'liberty' for something like negative freedom (freedom from coercion) (4, *passim*). Since I am investigating the Athenian concept of ἐλευθερία, I am less interested in the subtle distinctions of our English usage.

¹⁴ E.g. Arist. *Pol.* 1317a40.

rule.¹⁵ Yet it also does not appear *prima facie* to be a distinctive democratic marker, at least in freedom's most basic sense. No polis promoted itself as anti-freedom or lacking freedom. Even Sparta could be considered free as a polis despite its restrictive citizenship requirements and regimented lifestyle.¹⁶ Monarchies, too, could market themselves as free.¹⁷ It is worth noting that in the cases of monarchy and oligarchy, the external freedom of the city as a whole rather than the internal freedom of its citizens is most likely the source of the claim to freedom. That is, the focus is on not being ruled by an outside power. Aversion to external rule was a general feature of Greek poleis, regardless of political affiliation.¹⁸ This would certainly apply to democratic claims to freedom as well. Democracy, then, does not appear to merit a monopoly on freedom *simpliciter*, at least.

Yet other polities and even the competing oligarchic faction at Athens never used 'freedom' as a slogan.¹⁹ While they perhaps could be associated with freedom in some ways, it was not a distinctive or desirable feature. Whereas other regimes did not develop freedom in an idiosyncratic way, democracy's expansion of the idea beyond personal or external freedom is what distinguishes it from other constitutions. Democracy begins to be unique in the way that it links personal freedom and political participation. The radical concept, institutionalized by

¹⁵ Arist. *Pol.* 1317b1-12. See below for discussion of this passage.

¹⁶ e.g. Archidamos addresses his fellow Spartans and claims, "besides, we inhabit a city that has always been free and well-thought of" (καὶ ἅμα ἐλευθέραν καὶ εὐδοξοτάτην πόλιν διὰ παντὸς νεμόμεθα, Thuc. 1.84.1-2).

¹⁷ e.g. Pindar calls Aitna, ruled by a monarch, a city founded "with god-built freedom" (θεοδμάτων σὺν ἐλευθερίᾳ, *P.* 1.61); Darius likewise attributes Persia's freedom to a monarch (κόθεν ἡμῖν ἢ ἐλευθερίῃ ἐγένετο καὶ τέο δόντος; Κότερα παρὰ [τοῦ] δήμου ἢ ὀλιγαρχίης ἢ μουνάρχου; Ἔχω τοίνυν γνώμην ἡμέας ἐλευθερωθέντας διὰ ἓνα ἄνδρα τὸ τοιοῦτο περιστέλλειν, Hdt. 3.82.5).

¹⁸ For this sense of freedom as developing in reaction to contact with the despotic rule of the Great King during the Persian Wars, see Raaflaub 2004.

¹⁹ For Aristotle's and Plato's lack of interest in proposing a positive alternative to democratic freedom, see Mulgan 1984, Hansen 2010.

Solon, that a citizen's freedom was guaranteed also came to mean that this freedom provided a baseline of equality.²⁰ In this way, democracy eventually collapses personal and political freedom. While, as noted above, Athenian descent was another important facet of citizenship, the protection of citizen freedom in essence inaugurated citizenship. That is, one way in which Athenians identified themselves as members of their community was through being *eleutheros*. In contrast, in a monarchic or oligarchic system political actors are certainly of free status, but distribution of power is contingent instead on other factors, thus rendering personal freedom minimally important. Classical democracy's valuation of the public sphere inflated the value of personal freedom, since it was the pass into the political world.

But even if free status is downplayed in other types of government, one can hardly say it is an entirely useless distinction and, subsequently, claim that only democracies are truly free. The conflation of personal freedom and a political sense of 'free' alone cannot solely account for democracy's link with freedom. This explanation only begs the question. That is, democracy cannot simply be full of freedom because all of its citizens, who are free men, participate in politics. Nevertheless, the persistence of the relationship between freedom and specifically democracy requires us to take the connection seriously and investigate what form freedom took that was different enough from other regimes' uses of *eleutheria* to create this lasting attachment. What is the nature of this freedom that so pervaded democratic thought? I shall focus on Athenian democracy in the classical period, since at this point ancient democracy was essentially fully developed.

²⁰ Raaflaub 2004: 45-50.

I. Definition and Uses of Freedom

Much recent scholarship has been devoted to freedom in ancient Greece from various perspectives, showing how multifaceted and important a concept it is for understanding polis life, particularly in democracy.²¹ As we have already seen, freedom is often classified into personal and political branches or, dividing the political further, internal and external freedom. Kurt Raaflaub (2004) has most fully explored the emergence of political freedom. He convincingly traces the evolution of political freedom from its beginnings to its ‘absolute’ instantiation in Athenian democracy. Imperial Athens, he argues, develops its own version of polis freedom, encompassing both internal and external freedom bound up with power and ruling over others. He details a new Athenian view of freedom and explains how it came to be. With his political focus, Raaflaub tends to view freedom at the polis level. While city-wide freedom is certainly responsible in part for the perception of Athens as exceptionally free, it does not take into account the role of the individual citizen’s experience or perception of freedom. I shall argue that freedom was also conceptually important at this individual, personal level and, building on the political groundwork so laid, will investigate how this ideology functioned for citizens. Rather than a diachronic historical approach, I shall study freedom’s effects on the individual citizen synchronically in the classical period. I shall also approach freedom from a broader perspective.

Isaiah Berlin distinguished between what he called positive and negative freedom (2002: 168-217). In brief, negative freedom is the absence of external constraints or obstacles; it is

²¹ E.g. individual freedom and the law: Ober 2000; civic obligation’s relationship to individual freedom: Liddel 2007; Hellenistic period: Carlsson 2010; democratic and philosophical definitions of freedom: Hansen 2010; relation to slavery from a personal and political perspective: Tamiolaki 2010; Greek freedom in the Roman period: Dmitriev 2011. A historical approach to the development of political freedom, Raaflaub 2004, is discussed in greater detail below.

freedom *from* something. One has negative freedom if and when no one interferes with one's decision to act. The modern notion of inalienable rights, for example, springs from negative freedom. These rights create an area of human life upon which no one, including the government, is normally entitled to infringe. It is an area free from coercion. Likewise, the concept of the body of an Athenian citizen as sacrosanct is a product of negative freedom.²² On the other hand, positive freedom is the capacity to act in order to take control of one's life; it is freedom *to do* something. The goal is self-direction. Rather than solely external conditions, positive freedom also requires an internal capacity for action. The eligibility for participation in government as well as the principle of free speech (παρρησία) are corollaries of positive freedom. The range of negative and positive meanings can be found in uses of *eleutheria* and related adjectives in antiquity. There are moments where Berlin's distinction may not seem hard and fast, but it is in general a useful tool for understanding the various meanings *eleutheria* can have. Though there may be some overlap, negative and positive freedom do not necessarily have ultimately compatible aims; the former is concerned more with *how much* power is exercised over a group or individual while the latter addresses *who* wields the power. Since the term *eleutheria* is multivalent, we must look for other markers in the text where it appears as evidence of whether a positive or negative conception of freedom is at stake.

In this chapter, I wish to argue that the innovation of the democratic polity is the incorporation of positive freedom as a central private and political value; it is freedom, as Aristotle says, to do "whatever one wishes." More than freedom from restriction, democratic freedom placed the impetus of action and the seat of power squarely on the individual. The one

²² See D. 22.55 and 24.167, where corporal punishment distinguishes free from slave. The former passage is discussed in chapter 3 in terms of a citizen's loss of power when subjected to physical punishment.

ultimately in charge is the “I”: as a citizen *I* do whatever *I* wish. In using the distinction between positive and negative freedom, I am not claiming that Athenians explicitly conceived of freedom as falling neatly into positive and negative branches from which particular political freedoms necessarily arose. They may not have consciously recognized such a distinction, but I do believe that principle I am referring to as ‘positive freedom’ was understood as relating to freedom and organically unfolded into a more coherent form as the classical period continued. I also do not intend to claim that the democratic hallmark of freedom began as a political conception. In fact, the emergence of political freedom is a rather peculiar and late development.²³ While the political character of freedom became appreciable and essential, the fundamental value of freedom retained a broader significance in both the public and private spheres. Taking this context into account, I wish to show that both negative and positive freedom were activated under democracy’s claim to *eleutheria*. While many scholars attribute positive freedom in the public sphere to classical Athens, the uniqueness of the positive aspect and its relationship to doing “whatever one wishes” is underappreciated. Compared to other uses of *eleutheria*, democracy’s species of positive freedom is especially remarkable and points to how freedom could come to be distinctively tied with democracy.

Most scholars have generally interpreted the phrase to do “whatever one wishes” or to live “however one wishes” as representing negative freedom in the private sphere.²⁴ Mogens Hansen has in fact used this phrase to defend Athens from the charge that it lacked negative freedom altogether (2009b). He takes issue with Berlin, from whom I have taken the positive/negative terminology, for his conclusion that the ancient Greeks had collective positive freedom through political participation but no sense of individual negative freedom (Berlin 2002:

²³ Raaflaub 2004: 4.

²⁴ E.g. Cohen 1995a, Wallace 1996, Andrews 2000 and 2004.

178). Hansen first separates the Athenian notion of freedom into the right to rule, which he labels as positive freedom in the public sphere, and the right to live “however one wishes,” which he labels negative freedom in the private sphere for the individual. He then uses instances of the phrase as evidence against Berlin’s view, citing many of the passages to be discussed below. Part of Hansen’s argument rests on interpreting the phrase as expressing a contrast with enslavement, which he sees as synonymous with a lack of negative freedom. Hansen further argues that doing “whatever one wishes” was not permitted in the public sphere, pointing to cases from the orators as negative exempla. I do not disagree entirely with Hansen’s conclusions. I, too, believe there was a sense of individual freedom which Berlin does not acknowledge. I disagree, however, with some of the main premises used to get there. Hansen’s view of slavery, which helps to define living “however one wishes” as negative freedom, seems to be the root of my disagreement with him. After an exploration of freedom and slavery, I aim to show that this phrase indicates so-called positive freedom by virtue of its focus on action and that it can be applied to both private and public spheres.

In order to properly define the democratic use, I will begin with an overview of *eleutheria*’s general range of meaning in antiquity. The primary use of the *eleutheria* family of words is in contrast to the *douleia*, or slavery, group. The adjective, *eleutheros*, predates the abstract noun and is a part of the pair of opposites *doulos/eleutheros*.²⁵ For example, in an early use, Homer employs the formula “taking away the day of freedom” in contrast to the formula “to ward off the day of slavery.”²⁶ Other meanings of *eleutheros*, such as “characteristic of a free man,” “not living under tyranny,” “free to act” (as with the democratic freedom to be discussed), or simply “a citizen,” are secondary extensions of this basic meaning.

²⁵ For a detailed overview of the evidence, Raaflaub 2004: 23-28.

²⁶ Day of freedom: *Il.* 6.455, 16.831, 20.193; day of slavery: 6.462-3.

How do we understand freedom in light of its essential contrast to slavery? As noted above, in the pair of opposites *doulos/eleutheros*, the property ‘free’ has been typically understood in terms of negative freedom, since a free man is by definition free *from* the coercive control of a master. While a slave may indeed lack negative freedom, since there is no sphere in which he can act unobstructed by his master, a slave is also clearly not free *to act* and is thus also deprived of self-rule, or positive freedom. A slave is clearly not the master of his actions. He wholly belongs to another, not himself.²⁷ Ideologically, slavery is the highest degree of being unfree.²⁸ For this reason, it is the most complete lack of both negative and positive freedom. The amount of power wielded over him is complete and he is entirely disconnected from the person who wields this power. Thus, he can neither regulate who has power over him nor how much power that person has. Since a slave lacks the ability to act as well as liberty from constraint, we should interpret freedom as opposed to slavery as indicating either or both negative and positive freedom depending on the circumstances and point of view of the speaker or author.

The metaphorical use of the *eleutheria* family of words draws on this primary slave/free dichotomy, further demonstrating that personal status is its basic meaning. For example, Plato has the elderly Cephalos claim that there is pleasure in no longer being a slave to sexual passions (*Rep.* 329C-D). He tells Sokrates that in old age there is *eleutheria* after being released from the crazed masters (δεσποτῶν) of desire. In political contexts, the relationship still holds. Herodotus compares the Athenians under tyranny to men under a master (δεσπότη) from whom they have been freed (ἐλευθερωθέντων) (5.78). The lack of freedom in these cases is parallel to the lack of freedom in slavery in the minds of the speakers.

²⁷ Arist. *Pol.* 1254a12-14: ὁ δὲ δούλος... ὄλως ἐκείνου... ὁ γὰρ μὴ αὐτοῦ...; Cf. Ar. *Pl.* 6.

²⁸ For the extreme lack of freedom of a slave, see Finley 1980: 82-92. Cf. Raaflaub 2004: 49. Whether the master is always actively frustrating the aims of the slave is irrelevant: the slave’s actions are never wholly free from the master’s ability to do so. Cf. Finley 1980: 74.

The earliest convergence of freedom and politics in a non-metaphorical sense occurs in sixth-century Athens. In short, debt bondage had become common enough to be considered problematic for the polis. Solon responded by making it illegal to take out loans on a citizen's person and, consequently, enslave him.²⁹ In poetry attributed to him, he uses *eleutheros* twice, both times in contrast to slavery. These are also some of the earliest extant uses of the term, which is rare in both archaic literature and epigraphy. Solon tells us he has emancipated the earth from boundary stones (ὄρους) and so she is no longer enslaved (δουλεύουσα) but free (ἐλευθέρη) (fr. 36.5-7). In this passage, the markers affixed to the earth call to mind the physical bonds of slavery. The focus is on the negative freedom received by removing a tangible form of coercion. Solon does not grant Gaia freedom by changing the source of the control, but by eliminating the control itself.

In the same fragment, Solon employs the term more literally as he takes credit for making free (ἐλευθέρους ἔθηκα) those who were suffering from shameful slavery (δουλίην ἀεικέα ἔχοντας), presumably caused by debt (ll. 13-15). In light of the previous use as well as the context of the poem, I believe this, too, is an instance of negative freedom coming to the fore.³⁰ The protection of citizens against enslavement is a negative freedom; he has freed them from masters, indeed, but the upshot is not any sort of agency conferred upon the citizens as much as a limitation of powers anyone may hold over a citizen. Solon's use of the adjective *eleutheros* is

²⁹ For a view that distinguishes between debt-bondage and enslavement for debt, see Harris 2002.

³⁰ Solon himself may have conceived his reforms overall as such. He describes his actions as defending both the *demos* and the aristocratic factions of the city from each other, thereby establishing what I am referring to as a negative freedom (e.g. frs. 5, 37), rather than advocating for positive freedoms. This is in contrast to later interpretations of Solon's reforms, which additionally place a premium on the ability of the lowest property class to serve in the *ekklesia* and law courts as major democratic reforms (e.g. Arist. *Pol.* 1273b35-1274a5; [Arist.] *Ath. Pol.* 7.3, 9.1). These passages reflect the new prominence of positive freedom in the classical period. Raaflaub 2004: 51-52 sees political participation as unimportant at this time and emphasizes the construction of community.

of particular interest since it is the earliest use in connection to politics. To be sure, Solon is not concerned with political freedom, as such, but for the first time freedom becomes a political issue.³¹ It is an important step in Athenian democracy's development. When freedom makes its political debut, then, it is not truly about political freedom at all, but is still centered on the personal status of free versus slave. By instituting a difference of civic status related to personal status, the antithesis between free and unfree becomes meaningful and sharpens, as does the dichotomy between citizen and non-citizen. As a backdrop to how freedom develops, it is worth noting that in its early intersection with politics, negative freedom is mostly at stake. By protecting citizens from slavery, there is a distinct boundary created upon which the government or debtors or anyone else cannot infringe. How much right the citizen has to self-rule is of secondary consequence. The connection to other positive freedoms seems less developed at this point, but he will be his own master in so far as he will have no master.

The basic meaning of 'free' in opposition to slavery dovetails nicely with democracy's radical form of self-rule. Democracy's claim to freedom, then, does not simply arise from an arguably trivial confusion between the meanings of 'free' as a personal status and as a baseline for political participation. It is not merely because all free Athenian men are political participants that democracy must have the most freedom. Instead, since democracy has the broadest inclusion of the citizenry in making decisions about their polis, it eliminates the top-down power of a ruling class and the restrictions on action that come with it. Elected positions in turn create a check on the *demos'* power. Thus, no man is a metaphorical slave to the

³¹ Cf. Raaflaub 2004: 45-57. Raaflaub highlights the importance of community solidarity as the impetus for reform as well as the emergence of freedom as the basis for citizen equality. He points out that while Solon's reforms are the beginning of freedom as a political issue, they also effectively prevent the emergence of a full-fledged concept of political freedom until the Persian War.

government or any social class since all citizens have a share in the political process. Individuals are most free internally and externally from the rule of others. It is a clear mark of negative political freedom, made to reflect the same negative freedom found in the personal free status of citizens. While negative freedom is compatible with and responsible for some democratic principles, however Athenian democracy further expanded the definition of freedom. Pioneering a newly valued negative freedom in the political sphere and removing external constraints to political participation is insufficient; democracy moves the emphasis to the complete possibility of action, or positive freedom. The democratic citizen is, ideologically at least, ultimately the one in control of his own life. This version of freedom is not confined to the political. While political freedoms, such as alternating rule or freedom of speech, are associated with it, the principle is more fundamental and far-reaching. It is a move that is potentially destabilizing, as opponents of democracy denounce and proponents acknowledge. In this way, radical democracy truly distinguishes itself from other political systems.

I turn now to explore the prevalence of positive freedom as a democratic concept by focusing on how freedom itself is described. In the passage quoted above, Aristotle equates democratic freedom with “doing whatever one wishes.” This relative clause ὅ τι ἄν βούληται (*vel sim.*), which describes the scope of possible action, is often used as a catchphrase for the type of freedom found in a democracy in both critical and sympathetic texts.³² Hansen identifies the definition of freedom as the ability to do “whatever one wishes” as exceptional and “the most controversial form of democratic liberty” (2010: 6). Since this is such a radical departure from other ancient definitions of freedom, which tend to be focused on the negative freedom associated with the slave/free divide, it is important for understanding the underpinnings of

³² This phrase will be discussed in detail below.

democracy. Phrases such as the relative clause in Aristotle's definition above form the philological basis for pursuing this aspect of democratic ideology. Defining their range of meaning will clarify the relation between autonomy and democratic freedom, a fundamental factor in ideas about citizenship and power. The connotations as well as the literal meaning of this phrase are key for understanding the unique freedom democracy claims to represent.

What is striking about this conception of freedom is the strong connection it creates with the personal agent. Freedom is defined as not simply a prerequisite personal status for citizenship but a personal capacity for action. The individual is at the center of the decision-making process and subsequent action. Rather than just freedom from restraint, positive freedom also places the origin of action in the individual. The concept of positive freedom is not strictly an individually focused value however. It is also compatible with group self-governance. Athenian democratic freedom does empower the *demos* as a whole, but it builds the empowerment from the level of the individual citizen. This follows from the fact that each citizen is free and this personal status is expanded to include positive freedom. In this sense, it centers on each agent's autonomy.³³

By 'autonomy' I mean the ability to follow through on one's desires, to act in accordance with one's judgment. Although there are more technical senses to the term in modern political and moral philosophy as well as in antiquity, I use 'autonomy' in this general sense.³⁴ That is, I am not differentiating between the sources of a person's desires and their authenticity, but I am simply indicating one's ability to accomplish those desires. It is important to note that the

³³ Cf. Ober's view that the *demos* as a whole becomes empowered (2009).

³⁴ For general senses in antiquity, see LSJ s.v. *αὐτονομία*; for the particular interstate political meaning in antiquity, see Ostwald 1986, Raaflaub 2004: 147-159. For modern philosophical discussions of the capacity to self-govern free from external, manipulative forces, see Christman 2011; for a feminist perspective, Buss 2008.

autonomy in question has a larger scope than governmental participation. I shall argue that the agency implied by the ability to do “whatever one wishes” was not only a political doctrine or something that pertained solely to negative liberty, but was a wide-ranging ethic concerned with positive freedom that crossed the public-private boundary. Democracy as an ideology in antiquity was not limited to a system of participation in government. It crossed into many areas we would consider part of private affairs. Defining freedom with such a general phrase indicates an interest in not just political freedom, but personal freedom as well. There is a sense of nascent rights for the citizen since it carves out an individual sense of acting however one wishes as inherently citizen-like.

Before the phrase doing “whatever one wishes” becomes a well-developed trope, positive freedom is expressed variously. I will begin with a discussion in section II of positive freedom in Athenian legal language. Section III will continue the investigation with the historians Herodotus and Thucydides, showing positive freedom described in more general terms. Finally, in section IV I will look at the political philosophy of Plato and Aristotle, where the concept becomes more clearly articulated in a set phrase. The fact that this phrase consistently appears in descriptions of democratic principles illustrates autonomy’s centrality to ancient conceptions of democracy.

II. Institutional Examples

A rather formulaic linguistic manifestation of positive freedom appears in Athenian procedural language, the very nuts and bolts of the democratic process. The importance of self-selection, or

voluntarism, in democratic Athens is evident.³⁵ This process was most often expressed in a familiar phrase which appears in a myriad of sources:

Ἀθηναίων ὁ βουλόμενος οἷς ἔξεστιν...³⁶

Whoever wishes from the Athenians to whom it is permitted...

We find it used in legal language in the orators.³⁷ Inscriptions also attest to its technical and widespread use.³⁸ Often shortened simply to the generalizing *ho boulomenos*, this is a formal feature of Athenian democracy.³⁹ It is used in various legal and administrative contexts. For example, public prosecutions were not in the purview of specialists but of whoever wished, *ho boulomenos*, to bring one. Likewise, decrees and laws were initiated by *ho boulomenos*. Obviously, the term *ho boulomenos* did not literally apply to everyone who wished to do something, but only to fully enfranchised citizens. It is therefore also shorthand for a citizen specifically. The citizen as *ho boulomenos* is an essential enough component in the democratic machine that he is called “the real protagonist of the Athenian democracy” by Mogens Hansen (1991: 72).

Another variation on the phrase in official language is the question τίς βούλεται; with the relevant complementary infinitive (“Who wishes to...?”).⁴⁰ For example, the expression τίς ἀγορεύειν βούλεται; (“Who wishes to speak?”) opened assembly meetings.⁴¹ During the *dokimasia*, after the customary questions about lineage, character, and attendant witnesses, those

³⁵ Hansen 1991: 71-72.

³⁶ The limitation here specifying “to whom it is permitted” (οἷς ἔξεστιν) excludes those who are underage or have become disenfranchised.

³⁷ Aeschin. 1.32, Dem. 24.63, both quoting laws.

³⁸ *SEG* 22: 114.10, 23: 77.10, 26: 72.34.

³⁹ For the use of the participle with the article as labeling an entire class see Smyth 1124; the class of the “ones who wish” overlaps entirely with the class of full citizens.

⁴⁰ Cf. E. *Supp.* 438-9 where it *is* freedom itself.

⁴¹ Ar. *Ach.* 45, Aeschin. 1.27, Dem 18.170.

present were asked whether anyone wished to bring a charge against the potential magistrate, τούτου βούλεται τις καταγορεῖν;⁴² While not identical to the fuller phrase above, this wording shares with it the characteristic of putting the burden of the political apparatus on the individual in terms of desire or willingness rather than compulsion or desert. These phrases are elaborations of the principle of self-selection, or voluntarism. That is, the political process depended on citizens to select themselves for various roles. Whether a position was chosen by lot or by vote, the first step was an individual citizen's self-selection to the pool of candidates, just as, whether a decree passed or not, someone first had to be willing to initiate the proposal.

On the surface, self-selection is a mysterious aspect of ancient democracy. One might expect a polity that emphasizes, at least in theory, a high percentage of citizen participation to require that very participation as a matter of fact. Just as selection by lot and rotation of magistrates and juries guaranteed that low-level or unskilled political positions could be filled with the largest number of applicants, mandatory participation would assure the inclusion of a broader cross-section of the citizenry. In fact, however, it seems that Athens preferred to tolerate vacant positions rather than force participation.⁴³

Cynthia Farrar for one has suggested that this puzzling aspect of democracy, self-selection, was its most important institutional feature, more so even than selection by lot or rotation. She has claimed it is not just an assumption of aristocratic privilege, but “a quintessentially democratic challenge to the elite” (2009: 192). The aristocratic model of government sees rule as the obligation of a class of citizens predetermined to be capable of rule. A democratic system dependent on self-selection not only eliminates extra-political power, since

⁴² [Arist.] *Ath. Pol.* 55.4.

⁴³ Hansen 1991: 232-3. For a critical perspective on the fact that no one no one is required to participate, see Plato at *Rep.* 557E2-4.

it makes citizenship the criterion for fitness to rule, but it also relocates the decision to rule to the individual. Each citizen may choose to participate, but none is required to do so. Farrar convincingly demonstrates how this creates a sense of continuity between political actors and the whole *demos*, as well as how it filters participation in the most democratic of ways, since each individual is endowed with the same choice. She sees the voluntarism encapsulated by *ho boulomenos* as a “pro-equal-freedom, anti-entitlement practice: any citizen may speak... and no one must speak, or indeed take political action of any kind” (2009:192).

While I agree with Farrar’s assessment, I would like to unpack further what it means for a citizen to be equated with *ho boulomenos*. Freedom is certainly part of it, but not just the negative freedom from obligation or from a ruling class. The participle pinpoints and articulates the ability to act on one’s decisions as an essential ideological aspect of citizenship. It is self-government at a basic level. The procedural language corresponds both in essence and in diction to Aristotle’s description of democratic freedom that we saw above in §I. The mechanism allowed any Athenian citizen *qua* citizen not only to be free from a ruling class, which might exclude him, but also to be free to act by choosing to participate. While there is no explicit use of the term *eleutheria* in immediate proximity to this semi-fixed phrase, I believe the process and the diction arise from an underlying notion of positive freedom. We find confirmation in Euripides’ *Suppliants*, where Theseus, who functions as a democratic mouthpiece in the play, proclaims, “This is freedom (*to eleutheron*): ‘who has a good proposal he wishes (*thelei*) to introduce for public discussion?’” (τοὔλευθερον δ’ ἐκεῖνο· Τίς θέλει πόλει / χρηστόν τι βούλευμ’ ἐς μέσον φέρειν ἔχων; 338-339).⁴⁴ The poet uses θέλει instead of a form of βούλομαι, but the essence is the same: the ability to answer the herald’s call, to be one who can

⁴⁴ Translation my own.

act if so willing, is freedom itself.

Much of Athenian legal language is not technical, which makes choices of diction telling.⁴⁵ The process itself, as well as the presence of these phrases for self-selection, draws attention to the agent's ability to make a choice where public action is concerned. The use of the verb βούλομαι literalizes the internal motivation and expresses it in practical terms: the impetus of action is codified as dependent on a citizen's desire. *Ho boulomenos* as a ready substitution for the everyman citizen further marks the insistence on one's willingness to act and subsequent ability to do so as essential to citizenship. Positive freedom undergirds the language of willingness and the corresponding institutions that allowed those desires to come to fruition.

III. Colloquial Appeals: The Historians

Herodotus and Thucydides provide texts that are more self-reflective in their interest in political thought than the legalese of the *ho boulomenos* phrases detailed in §II. In their respective *Histories* we find that while they do not deploy the exact phrasing of official procedure, they too present the doctrine of positive freedom.

Herodotus' *Histories* provides us with an early example of political philosophy in its so-called constitutional debate.⁴⁶ After overthrowing the Magi that have usurped the throne, the leading Persians must decide what government to install. Thus, they debate the three main types of constitutions: democracy, oligarchy, and monarchy. The deposing of the Magi occurs in the

⁴⁵ "Athenian laws did not as a rule contain precise definitions in their scope; they tended to be formulated broadly, and in ordinary rather than legal language" (Carey 1991: 87). Determining the specific semantic range of the language used is also in the hands of the court, which is idealized as the *demos* (see ch. 3). The presuppositions of said court, and *demos*, become visible by the ways in which the rhetors and jury delimit ordinary language in technical contexts.

⁴⁶ The very beginning of Greek political philosophy according to How and Wells 1912 on Hdt. 3.80.

last quarter of the sixth-century, altogether predating the reforms of Kleisthenes traditionally associated with the beginning of Athenian democracy. In any case, it is widely agreed that the debate explores a hot topic in Herodotus' contemporary Greek world through historical Persian mouthpieces.⁴⁷ Herodotus' insistence on the veracity of the debate points to his knowledge of a radical change in the Persian empire at that time in the narrative and his attempt to reconcile it with his political worldview. While the actual decision was not about a potentially radical change of political structure, Herodotus transposes the political distress of the Persians to his contemporary world and thus frames the debate in terms of Greek regimes.⁴⁸ Consequently, we can infer fifth-century Greek opinions on different polities from the various speeches in this scene.

Otanes, the first speaker, advocates for handing over rule to “the middle,” ἐς μέσον (3.80.2). Although the term *demokratia* is not used here, his emphasis on equality under the law, elections by lot, and collective decisions makes it clear that he represents the democratic viewpoint.⁴⁹ Likewise, his disdain for hubristic tyranny (3.80.2-5) and praise of legal accountability (3.80.6) are very much in line with popular conceptions of democracy.⁵⁰ Freedom and alternating rule are the only staples of Athenian ideology not explicitly presented in Otanes' opening proposition. Megabyzus follows with a short recommendation of oligarchy. This speech is rather weak and a bit of a straw man. The real contrast is between democracy and tyranny. Otanes' own speech, in fact, deals exclusively with the problems inherent in tyranny. Ultimately democracy and oligarchy both lose to Darius' defense of monarchy.

⁴⁷ How and Wells 1912 on 3.80; Asheri, Lloyd, and Corcella 2007 on 3.80-2.

⁴⁸ Asheri, Lloyd, and Corcella 2007 on 3.80-2.

⁴⁹ Hdt. 3.80.6; Cf. 6.43.3 where Otanes' intention is δημοκρατέεσθαι.

⁵⁰ Raaflaub 2004: 204.

After the conspirators have voted to reestablish a monarchy, Otanes bows out of contention for the throne, on the condition that he and his descendants are not ruled by the future king. He specifically wishes “neither to rule or be ruled,” which is related to the quintessential democratic value of alternate rule unmentioned in his earlier speech (3.83.1). The desire both to live in a non-anarchic polis and to avoid ruling or being ruled creates a paradox. Democracy ideologically resolves this through rotation of office. Since this is not possible in a monarchy, Otanes asks for permission instead to withdraw from the system altogether. The others agree to grant him leave with the result that:

Καὶ νῦν αὕτη ἡ οἰκίη διατελέει μόνη ἐλευθέρη ἐούσα Περσέων καὶ ἄρχεται
τοσαῦτα ὅσα αὐτὴ θέλει. (3.83.3)

To this day the family of Otanes continues to be the only free (*eleutherē*) family in Persia, and submits to the king only so far as the members of it may choose (*hosa...thelei*).⁵¹

Otanes has effectively negotiated his own little democratic outpost in an otherwise unfree, monarchic Persia. Consequently, his family is free to choose to what extent the monarch has power over it.

This conveys, at first glance, a negative conception of freedom, in so far as it refers to how much the household is ruled; the verb used is the passive ἄρχεται. But the situation is less simple than it may seem at first sight. What is ruling, after all, if the extent of one’s power is determined by the willingness of the subject, expressed by the verb θέλει? Why not link the household’s freedom simply to not having the Persian king as a master? Why bring will into it at all? This is important for understanding ancient democracy. The household in this section becomes a literal microcosm of a polis in that it is allowed to govern by its own rules. As a stand-in mini-polis, internal freedom should be sufficient to satisfy it. As a subject of the greater

⁵¹ All translations of Herodotus are from De Sélincourt 2003.

Persian state, *autonomia* in the technical interstate sense should be its best possible outcome. Like the lesser allies in the Athenian empire, a measure of negative freedom in the family's internal affairs should be the most they could hope for. Any positive freedom is exceptional.⁵² By bringing will into the discussion, Herodotus shows that the source of control is ultimately Otanes, rather than the monarch. The negotiation becomes about the ability to have self-determination to attain one's wishes. Positive freedom, associated with democracy, asserts itself even when the alternative might have come more easily.⁵³

There is a clear link between the household's freedom and its ability to determine how much it is ruled. Asheri, Lloyd, and Corcella go so far as to claim Otanes "embodies the Athenian democratic ideal of 'living as one pleases.'" They account for the predicate ἐλευθέρη, though, by positing for Otanes a special, more independent satrapy that may have included a "bill of privileges" stating release from the δοῦλος designation traditionally applied to all subjects of the Great King.⁵⁴ While that may well be the case, I think the revocation of the δοῦλος title is not the whole story behind calling his household ἐλευθέρη. As aforementioned, the debate is a piece of Greek political theory set in an exotic locale. The tripartite division of regimes is imported as are the assumptions about each regime. In this scene, Otanes' association with freedom is as contingent on his role as the democratic spokesman as is his hatred of tyranny or subscription to collective decision-making. More than just not a slave, a free democratic citizen also claimed positive freedom, or "living as one pleases." As the description of the household's freedom bears witness, we should see the choice of ἐλευθέρη evincing this notion.

⁵² At the polis level, one can think of freedom to act in foreign policy as a measure of positive freedom, which a subject state would not have had. The nature of subject statehood would prevent external freedom from even being on the table.

⁵³ Granted, Herodotus does mention they must live within the bounds of the law (3.83.3). For more on law and freedom see below in chapters 3 and 4.

⁵⁴ 2007: ad loc.

Perikles' funeral oration (2.35-46), one of the most famous passages in all of Thucydides, provides us with another piece of political theory and evidence for positive freedom. While Perikles' level of enthusiasm for democracy has been debated, his *epitaphios* is in all interpretations deeply concerned with what it means to be an Athenian.⁵⁵ It is generally agreed that Thucydides' hand cannot be ignored, but that the speech must largely correspond to the general premises of Periklean ideas.⁵⁶ The setting, which must have included a good-sized audience of Athenians and non-Athenians, and the occasion, a customary oration for the year's war casualties, lend themselves to sweeping statements and patriotic popular sentiment: fertile ground for defining democracy.

Perikles begins his eulogy with an extended introduction about the difficulty of giving such a speech (2.35). He follows with general praise of Athenian ancestors, which fits well enough with other extant funeral orations (2.36.1-3). At this point, however, he departs from convention. Rather than detail the military exploits of past or present fallen soldiers, he launches into an encomium of the "city of the present."⁵⁷ Perikles links Athens' greatness to its form of government and citizens' character, both of which are unique to Athens (2.36.3-37.1). He describes both public and private life as intertwined on the same principles:

ἔλευθέρως δὲ τὰ τε πρὸς τὸ κοινὸν πολιτεύομεν καὶ ἐς τὴν πρὸς ἀλλήλους τῶν καθ' ἡμέραν ἐπιτηδευμάτων ὑποψίαν, οὐ δι' ὀργῆς τὸν πέλας, εἰ καθ' ἡδονὴν τι δοῦναι, ἔχοντες.' (2.37.2)

"The freedom (*eleutherōs*) which we enjoy in our government extends also to our ordinary life. There, far from exercising a jealous surveillance over each other, we do not feel called upon to be angry with our neighbor for doing what he likes (*kath' hēdonēn ti drai*)."⁵⁸

⁵⁵ Eulogizing democracy: Loraux 1986 ch. 4; Cartwright 1997 on 2.34-46; Bosworth 2000. Lukewarm towards democracy: Gomme, Andrews, and Dover 1981: 335.

⁵⁶ Bosworth 2000; Raaflaub 2004: 228; Kagan 2009: 16-17.

⁵⁷ Bosworth 2000: 5; Cf. also Rusten 1989 on 2.34-47.2; Cartwright 1997 on 2.34-46.

⁵⁸ All Thucydides translations are from Strassler and Crawley: 1996 with some modifications.

Not the most difficult sentence in Thucydides, but one that still gives pause. The opening phrase has been variously translated and interpreted, the problem resting on what ἐλευθέρως is getting at. Just how does a citizen go about being a citizen (πολιτεύομεν) “freely”?

Many scholars, invoking the typology of the slave/free dichotomy, take it to mean “in a manner befitting free men.”⁵⁹ For Raaflaub, this is related to the availability of individual freedom. He sees democracy as the place with the most individual freedom, which allows those liberal qualities to develop, in turn shaping foreign policy.⁶⁰ Gomme and Rhodes, on the other hand, contrast citizens with slaves in the public realm: they highlight the check on “tyranny” of any one class, namely the fact that no single class monopolizes political power. That is, the administration of the government is in the hands of the many (ἐς πλείονας) and the laws apply equally (κατὰ τοὺς νόμους... τὸ ἴσον), but men of merit (κατὰ τὴν ἀξίωσιν) are honored with elected office (2.37.1). In this claim, they see the check on class-specific power as the mechanism that allows the citizens to live freely (ἐλευθέρως) by balancing the power of the different classes. Negative freedom, in other words, is the central concern for Gomme and Rhodes. Another approach takes ἐλευθέρως to mean something more like ‘liberally’ in modern English. Rusten translates it as emphatic: “It is with tolerance that we behave...” (1989: ad loc.).⁶¹ Whether or not this is also a reading that suggests an ideal typology of the free man, it, too, interprets the nature of ἐλευθέρως πολιτεύομεν as negative freedom, since citizens do not have to fear the coercion of other citizens or their sidelong glances. As democratic citizens we tolerate others, thus we do not infringe on each other’s activities and we keep their and our own

⁵⁹ Rhodes 1988: ad loc.; Gomme 1970: ad loc.; Raaflaub 2004: 229. Thus the adverb corresponds to the adjective ἐλεύθερος in its meaning as ἐλευθέρως (LSJ s.v. II).

⁶⁰ 2004: 230.

⁶¹ Cf. Cartwright 1997: ad loc.

negative freedom intact. The threat is perceived as coming from other individuals rather than at the institutional level, as Raaflaub, Gomme, and Rhodes see it.

Simon Hornblower takes a slightly different tack. He sees the first part of this claim as indicating that they live in a manner appropriate for citizens in a free polis and points to the inheritance of an externally free Athens praised at 2.36.1 (1987: ad loc.).⁶² Rather than referring to individual freedom, Hornblower prioritizes the external positive freedom of the city. Specifically, he argues that we should not see a claim to living free from state interference, that is, negative freedom, in Perikles' statement. I agree with Hornblower, but I think there is more to be said. To begin with, I am not sure what acting appropriately for a citizen in a free city entails unless city-wide freedoms can be mirrored at the individual level. I agree that we should move away from seeing exclusively negative freedom in Perikles' words, whether it be from class tyranny or state interference, but there is another layer to the positive freedom promoted in Athens.⁶³ I would argue that Perikles is ascribing positive freedom to the Athenian citizen as an individual.

In order to explicate the above passage, we must first expand our focus. The second half of the opening sentence after *πολιτεύομεν*, which relates to private life, goes largely unremarked in Hornblower's commentary, although it seems closely linked to the political passage before it. In fact, as Hornblower has pointed out, there is good reason not to separate the public and private in these sections (1987 on 2.36.4). This applies not only to the sentence at hand, but the surrounding lines as well. We should, then, read the previous section, 37.1, closely with 37.2. The first section of chapter 37 concentrates on public life:

⁶² He acknowledges this as positive freedom at the city level, which is a prerequisite for an empire.

⁶³ I see both negative and positive freedom at the individual and city level, whereas Hornblower tends to see positive freedom only at the city level.

‘Χρώμεθα γὰρ πολιτεία οὐ ζηλούση τοὺς τῶν πέλας νόμους, παράδειγμα δὲ μάλλον αὐτοὶ ὄντες τισὶν ἢ μιμούμενοι ἑτέρους. καὶ ὄνομα μὲν διὰ τὸ μὴ ἐς ὀλίγους ἀλλ’ ἐς πλείονας οἰκεῖν δημοκρατία κέκληται· μέτεστι δὲ κατὰ μὲν τοὺς νόμους πρὸς τὰ ἴδια διάφορα πᾶσι τὸ ἴσον, κατὰ δὲ τὴν ἀξίωσιν, ὡς ἕκαστος ἔν τῳ εὐδοκιμεί, οὐκ ἀπὸ μέρους τὸ πλεον ἐς τὰ κοινὰ ἢ ἀπ’ ἀρετῆς προτιμᾶται, οὐδ’ αὖ κατὰ πενίαν, ἔχων γέ τι ἀγαθὸν δρᾶσαι τὴν πόλιν, ἀξιώματος ἀφανεία κεκώλυται.’ (1.37.1-2)

“Our constitution does not copy the laws of neighboring states; we are rather a pattern to others than imitators ourselves. Its administration favors the many instead of the few; this is why it is called a democracy. If we look to the laws, they afford equal justice to all in their private differences; if to social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way, if a man is able to serve the state, he is not hindered by the obscurity of his condition.

Perikles comments on the administration of the state, the rule of law, and political activity.

These are all clearly part of the public sphere. The opening sentence of 37.2 then turns the focus to the private sphere. Since Perikles’ aim is to show the greatness of Athenian character and the principles that run through both closely related realms, this section should correspond with the one before it. The phrase ἐλευθέρως πολιτεύομεν is the grammatical and ideological hinge that connects them both. It is both πρὸς τὸ κοινόν, looking back to 37.1, and ἐς τὴν πρὸς ἀλλήλους τῶν καθ’ ἡμέραν ἐπιτηδευμάτων ὑποψίαν, looking forward.

The idea of acting freely in the public sphere found in 37.1 includes an element of equal opportunity and the assurance that poverty does not create an unsurpassable barrier to public service and action. But recognition of merit is also emphasized. James Andrews has seen these lines as indicative of Athens’ institutional positive and negative freedom (2004).⁶⁴ He labels equal access to public participation as a positive freedom, and the protection from majority tyranny a negative one. Given the close connection with what follows, we should expect

⁶⁴ In some particulars we part ways, since he sees “living as one wishes” as a negative freedom. He bases his understanding on fellow citizens respecting one’s negative freedom. But this ignores the active grammatical and conceptual sense in “living as one wishes” or “doing as one wishes.” §I above details how I see this as positive freedom.

parallels in 37.2, when the focus shifts to private lives. There Perikles tells us that Athenians do not get angry when a neighbor does “what he likes.” Reciprocally, I, as a citizen, can do what I like with impunity. The question is not whether one can do what one wishes; that is taken for granted. Perikles says that in addition to that right, no one bats an eye when someone exercises it. Beyond expressing a negative freedom from interference by each other, the idea behind the phrase is also that positive freedom of action is inherently democratic: every man does as he wishes, and citizens happen to be gentlemen about it. Hence, there is a nice symmetry between public and private freedoms. To be sure, there is a manner in which acting freely simply means acting as befitting a free man; but here that is specifically said to entail doing what one wishes in peace.

Later, in Book 7 of Thucydides’ *Histories*, in preparation for the final struggle of the tragic Sicilian expedition, Nikias speaks to his captains one last time. He includes all the standard pre-battle admonitions, so standard that Thucydides does not feel the need to recreate his address but rather reports it all in indirect speech. Part and parcel of such a set speech is the appeal to preserve one’s homeland and way of life. Again, Athenian freedom is presented as positive freedom and autonomy:

... πατρίδος τε τῆς ἐλευθερωτάτης ὑπομνήσκων καὶ τῆς ἐν αὐτῇ ἀνεπιτάκτου
πάσιν ἐς τὴν δίαίταν ἐξουσίας... (7.69.2)

He reminded them of their country, the freest of the free (*eleutherōtatēs*), and of the unfettered authority (*exousia*) allowed to all with respect to their daily lives.

The word ἐξουσία is the nominal version of the verb ἔξιμι, which is found in the legal expressions above. Here again we find the idea of positive freedom far removed from the specialized language of philosophers and instead situated in a set speech of a general to his

troops. The implication is that positive freedom resonates emotionally with the soldiers, suggesting that it is a deeply embedded value for the Athenians, and thus worth fighting for.

Athenians act freely in the political sphere and likewise in the private sphere—the capacity to act is a key part of that freedom for both. In spirit, if not in letter, this is surprisingly close to the formulations in Aristotle above of “doing whatever one wishes” and the idea of self-selection. Democracy effectively turns the conversation of freedom towards personal capacities instead of state interference.

IV. The Philosophers

To return to Aristotle, who opened this chapter, it may be remembered that he expresses freedom as the ability to act with the phrase ὅ τι ἂν βούληται τις ποιεῖν, “to do whatever one wishes.” The verb βούλομαι is used to indicate that action is contingent on a person’s desire, and so highlights his ability to achieve his desire, while the τις works to generalize it to all those applicable. The legal language discussed in §II has formal similarities, in addition to ideological ones. In understanding an individual’s relationship to freedom, uppermost is his ability to act rather than the lack of restraint. As we have seen in §§II-III, Aristotle is not alone in his assessment. He differs, however, in employing this specific phrase to denote positive freedom, which can be traced across several passages.

The origin of Aristotle’s formulation may be in Plato. Book 8 of Plato’s *Republic* is dedicated to discussing the degeneration of the good city into the other government types, during which discussion Socrates and his interlocutors analyze the characters of various polities and the people who rule them. In regard to democrats and democracies, Socrates asks,

Οὐκοῦν πρότον μὲν δὴ ἐλεύθεροι, καὶ ἐλευθερίας ἡ πόλις μεστὴ καὶ παρρησίας γίγνεται, καὶ ἐξουσία ἐν αὐτῇ ποιεῖν ὅτι τις βούλεται; (557B)

“First of all, then, aren’t they free (*eleutheroi*)? And isn’t the city full of freedom (*eleutherias*) and freedom of speech? And doesn’t everyone have the license (*exousia*) to do what he wants (*hoti tis bouletai*)?”⁶⁵

The similarity between Aristotle’s and Plato’s phrases suggests both a chain of influence and a calcification of a general phrase designating positive freedom in technical discourse. It is a crucial enough trademark of democracy to persist in political discussion well past the classical period. Thus the same set phrase crops up in Polybius two centuries after Plato (6.4).

The key points in the diction and syntax of the phrase indicate a general pattern which can be identified in various fourth-century texts.⁶⁶ The following three minimum criteria will determine what is eligible as a phrase indicating autonomy: it is (1) a relative clause referring to a range of action that (2) uses βούλομαι as its verb and (3) contains a generalizing element. The generalizing is important for the holistic sense of autonomy, the ability to act on the whole expanse of desires. This may be accomplished variously. For example, an indefinite relative pronoun or ὅτι and the subjunctive may provide the generalizing elements. Some phrases that are eligible may be irrelevant due to their context. There are similar phrases that employ the verb θέλω instead of adhering to criterion (2) for an analogous effect, but for the purpose of this study I will not focus on these.⁶⁷

The passage above from Book 5 of Aristotle’s *Politics* (1310a28-33) appears in the section devoted to causes of decline for deviant regimes. It focuses specifically on the need to train citizens and give them values in accordance with their polity. Regardless of how well laws

⁶⁵ Translation is from Grube and Reeve 1992.

⁶⁶ This section is dedicated to instances in Aristotle, but subsequent chapters will continue pursue this phrase in the orators.

⁶⁷ E.g. Eur. *Supp.* 338-339 or Hdt. 3.83.3, both discussed above. The difference between the verbs θέλω and βούλομαι may be minor in many instances, but the distinction between ‘being willing’ and ‘wishing’ to do something, respectively, seems potentially significant.

are established, they will be ineffective if the citizens are not conditioned to live under and promote them. In the lines leading up to the passage, Aristotle indicates that the lamentable and uniquely democratic definition of freedom is doing “whatever one wishes.” In fact, he introduces the definition as partly responsible for the polity’s decline. In the most democratic-seeming of democracies,

τὸναντίον τοῦ συμφέροντος καθέστηκεν, αἴτιον δὲ τούτου ὅτι κακῶς ὀρίζονται τὸ ἐλεύθερον. (1310a27-28)

the opposite of what is advantageous has come about. The reason for this is that people define freedom (*to eleutheron*) badly.

The ensuing definition of freedom as ὅτι ἂν βούληται τις ποιεῖν is unsound:

οὐ γὰρ δεῖ οἶεσθαι δουλείαν εἶναι τὸ ζῆν πρὸς τὴν πολιτείαν, ἀλλὰ σωτηρίαν. (1310a34-36)

For one should not think it slavery to live in harmony with the constitution, but safety.

Aristotle envisions the democratic man as seeing the roles of the citizen and the state as analogous to those of a slave and master. He implies that to live “however one wishes” is diametrically opposed to living “in harmony with the constitution.”

This analogy has two consequences. First, it pits freedom against the constitution and presumably its laws. Since the state is viewed as a coercive power, democracy is also colored as redefining the relation of the citizen to the state or polity. But “state” is a rather cold, poor translation for the πολιτεία, or polity, of the classical polis. Πολιτεία embraces not just the rulers and set of rules placed over the population but also the societal arrangement. It represents the community at large. In Aristotle’s view, ‘freedom’ drives a peculiar wedge between the state and the citizen, the rulers and the ruled. Ironically, democracy is the type of polity in which rulers and ruled should be most identified with one another. Instead, Aristotle frames it as if there is a distrust of the machinery of state. This is quite antithetical to Athenian claims to their

law-abiding nature.⁶⁸ For Aristotle, the definition of freedom encompassed by the phrase is, then, both particular to democracy and, paradoxically, incompatible with the state that perpetuates it.

The second consequence of the slavery analogy is the further intertwining of political and personal freedom. The slavery metaphor transfers the distinctions of the household onto the level of the polis. It creates a relationship between individual and state analogous to the one between slave and master in the eyes of democrats.⁶⁹ If the state plays the role of master, it risks impinging on a citizen's free status. Although a democratic sympathizer would disagree with this assessment of freedom and its incompatibility with the state, it is notable that Aristotle's perception of democratic freedom was as an analogous extension of personal freedom into the public sphere.

Slavery in contradistinction to democratic freedom appears again in Book 6 of the *Politics* during the discussion on establishing constitutions. Again, Aristotle highlights democracy's tenet of freedom:

Ἐπιπέσεις μὲν οὖν τῆς δημοκρατικῆς πολιτείας ἐλευθερία (τοῦτο γὰρ λέγειν εἰώθασιν, ὡς ἐν μόνῃ τῇ πολιτεία ταύτῃ μετέχοντας ἐλευθερίας· τούτου γὰρ στοχάζεσθαι φασὶ πᾶσαν δημοκρατίαν)· (1317a40-1317b2)

A fundamental principle of the democratic constitution is freedom (*eleutheria*). (For this is what people are accustomed to say, on the ground that only in this constitution do they have a share of freedom (*eleutherias*)—which is what they declare every democracy aims at.)

Aristotle continues to define two signs (σημεῖα) of freedom that are also boundaries (ὄροι) of democracy. The first sign is the practice of majority rule (1317b9-11), which has been discussed

⁶⁸ Further explored in chapter 3.

⁶⁹ As Dr. Hollmann has pointed out to me, this would be contradictory to Aristotle's view throughout the *Politics* that these relationships are different in kind. Also cf. Pl. *Cri.* 50E where the laws refer to Sokrates as their slave.

above. Second, and more relevant to our purposes, is to live as one wishes, another instance of the phrase-type:

ἐν δὲ τὸ ζῆν ὡς βούλεται τις. τοῦτο γὰρ τῆς ἐλευθερίας ἔργον εἶναι φασιν, εἴπερ τοῦ δουλεύοντος τὸ ζῆν μὴ ὡς βούλεται. τῆς μὲν οὖν δημοκρατίας ὅρος οὗτος δεύτερος· (1317b11-14)

Another is to live as one wishes (*hōs bouletai tis*). For they say this is the function of freedom (*eleutherias*), if indeed it is a feature of one who is enslaved not to live as he wishes. This, then, is the second mark of democracy.

Again, rather than pointing to an institutional practice as distinctive of democracy, this definition cuts to the ideological level. The use of the slavery analogy along with the phrase-type is interesting here. In contrast to the earlier archaic uses of the dichotomy slave/free framed in terms of negative freedom, Aristotle uses the distinction to draw attention to a slave's lack of positive freedom in order to articulate the democrat's position. The shift in the metaphor corresponds to the shift in democracy's elaboration of freedom. Instead of pointing to the absence or presence of constraints, Aristotle contrasts the capacity to act on one's wishes and the lack of that capacity: that is, autonomy.

Freedom itself, as discussed above, was initially conceived of primarily as a personal status. The broadening of it to cover both private and political value is a democratic idiosyncrasy. The picture of distinctive democratic freedom that emerges is of a sort of autonomy that straddles the public/private divide. While negative freedom is part of *eleutheria*, the elements of positive freedom cannot be denied. Legal language and practice as well as the historians provides evidence for the existence of positive freedom as a general value. By the time it is discussed by the philosophers, the language used for it has ossified into a general formulation. It is both a capacity to act and freedom from a political overseer that extends into the personal realm.

The prevalence of positive freedom throughout various levels of discourse shows its significance in democratic thought. Practically, it gave rise to procedural components in various aspects of administration and law. Theoretically, positive freedom provided a distinctive point of contrast between Athenian democracy and other systems of government, as both a point of criticism and a core marker of identity. But positive freedom also brings the consequence of a potential struggle between the power of the law and the freedom of the individual. If indeed the democratic conception of freedom is in direct conflict with the state, and personal freedom is singularly important, then the ways in which that conflict is overcome are just as important to democratic ideology as freedom itself. This conflict, though, seems to me to be misrepresented by scholars. Since positive freedom is at the core of democratic freedom, democratic ideology circumvents the conflict with negative freedom. If there is to be any threat at all, we must find it with regards to the citizen's ability to act and self-govern. Taking the citizen as truly free, we must also acknowledge him as empowered. In the following chapter, I shall turn to this connection between freedom and power before revisiting the imagined conflict between laws and citizens.

Chapter 3: Power and the Citizen

As outlined in chapter 2, the extent of both positive and negative freedom was unique in Athens and a defining feature of its democracy. Positive freedom in Athens was not just a collective goal or right, whereby the *demos* as a body was able to participate politically, but it was also a principle that resonated at the individual level. In the public sphere, this was linked to the individual citizen's ability to navigate the political landscape. In the private sphere, the citizen was permitted to arrange his life as he liked. In sum, in both realms, the individual as a free man and citizen was allowed to do 'whatever he wished' and so 'be his own master' literally and figuratively.⁷⁰

The freedom to do what one wishes has implications for power relations. The central concern of positive freedom is, after all, "what or who is the source of control?" or, in other words, "who or what is in power?" (Berlin 2002: 169). In Athens, the citizen is the locus of freedom. As freedom to act is linked to power, the latter must also be found at the level of the individual citizen.⁷¹ The importance of power to the individual citizen begins with the importance of freedom in archaic Athens. Solon's act of preventing the sale of citizens into slavery strengthened the dichotomy between free and unfree but also between master and slave, which reflects a fundamental power dynamic.⁷² A citizen could no longer become a slave, but would always be the master in the master/slave relationship. Since he himself would not be subject to another, he would at least have power over himself. Thus, the freedom guaranteed to citizens also guaranteed them a measure of power. When freedom's importance grew in Athens

⁷⁰ Cf. Berlin's definition of positive freedom (2002: 178).

⁷¹ While positive freedom has been associated with a limitation of negative freedom for the sake of the group, I believe the Athenian move to place power ideologically on the individual protects the citizen and prevents the elimination of negative freedom.

⁷² For the dichotomy slave/master existing alongside slave/free, see Raaflaub 2004: 53-57.

with the distinction between citizen and noncitizen, the individual citizen's power naturally also grew. I propose that just as democratic freedom begins with free individuals, so too is the power structure of the city connected to the power of individuals.

How was power ideologically distributed among the individual, the group, and the law at Athens? Just as Athenian democracy championed a radical conception of freedom, I shall argue that it also redefined power by distributing it among individuals. Since a central tension of democracy is between individual authority and collective action, a study of individual and collective power will also be useful for understanding the reconciliation between the two, in addition to deepening our understanding of Athenian values. We must also look at the power of the laws in so far as they represent the apparatus of government and the collective will of the citizens. Performance studies have provided a fruitful approach to ancient citizenship.⁷³ If citizenship is a performance, how does the performance of power fit in? Drawing on theories of power and performativity, in this chapter I aim to clarify the role and conception of power in democratic citizenship. I turn to the notion of the empowered citizen in classical Athens by focusing on the term *κύριος* in order to analyze how the power engendered by positive freedom was expressed at the individual level, both in the institutional sense and in the ideological sense. First, I explore the concept of power (§I); next, the performance of power in the law courts (§II); and, finally, how the potential conflict between the individual and the laws was mitigated (§III).

⁷³ On performance and citizenship, see Goldhill and Osborne 1999, Farenga 2006.

I. Power in the *Oikos* and Polis

Power has been generally divided into ‘power to’ do an action or ‘power over’ an individual.⁷⁴ Many power theories have restricted the conversation about power to the ‘power over’ aspect. Generally, this view formulates power as A’s ability to get B to do something B would not otherwise do.⁷⁵ Variations on this definition include changing the requirement that it be against B’s will, considering B’s interest, de/emphasizing whether the exercise of power was successful, or softening the directness of A’s control. The sliding scale of power may vary from ‘domination’ to ‘authority’ to ‘influence.’ At the core, what I am describing as ‘power over’ signifies one entity’s capacity to control another. In thinking about political or social systems and the potential for oppression, this view of power as covert or overt domination certainly makes sense, but it limits our appreciation of the power spectrum. Steven Lukes has argued that power over is technically a species of power to.⁷⁶ He has proposed a general definition of power as “being able to make or receive any change, or to resist it” (2005: 69). The amount of domination a person or group has over others clearly has implications for the freedom of the subjected individuals, but the productive aspect of power and the freedom of the empowered are also important.

Peter Morriss has championed the view, convincingly to most scholars, that power is a dispositional concept and that it does not need to be exercised to exist (2002).⁷⁷ While I agree that power can indeed exist without actually being used, the performative nature of Athenian citizenship compels us to look for the performance of power. That is, I would like to look at how actions constitute the disposition of power. I will show through primary sources that the

⁷⁴ Lukes 2005.

⁷⁵ e.g. Dahl 1957.

⁷⁶ Undoubtedly influenced by Morriss 2002.

⁷⁷ This is commonly referred to as the ‘exercise fallacy.’

Athenians at least talked about power as constantly negotiated by its performance. Just as citizenship was performed in many aspects of polis life, so too was power performed.

In order to trace the performance of power, first we must identify how ‘power’ was expressed linguistically in Athens. Since we are interested in a general conception of power, ideally the term should broadly express power relations. It should be applicable in several situations as well as indicate both power *to do* things and power *over* people and things. If we put aside terms for strictly physical strength (such as τὸ σθένος and ἡ ἰσχυς), we find that ἡ δυνάμις, ἡ ἀρχή, ἡ δυναστεία, and τὸ κράτος can serve as abstract nouns for ‘power.’ Some of these terms fall short of indicating a power relationship. For example, ἡ δυνάμις can also mean power in the sense of ‘faculty’ and so does not represent a power dynamic. Others, such as ἡ ἀρχή and ἡ δυναστεία, specifically denote political relationships and so are less flexible in general application. Although used in other senses, τὸ κράτος is perhaps still tied rather closely to its physical meaning and to political rule. Rather than focusing on abstract conceptions of power, I would like to look instead at adjectives describing the empowered. The adjectives derived from the above words are problematic in the same ways as the nouns. Another possibility is the adjective κύριος, which is used to indicate power in both the public and private realms. As a substantive, *ho kurios*, it is used to indicate the head of a household, a role which was part of the typical experience of Athenian males.

The adjective *kurios*, like many Greek terms, does not correspond neatly to a single English word. At its core, however, it expresses a power relation and covers the range of power over and power to.⁷⁸ The abstract noun (κυριεία or the shortened κυρία) does not appear

⁷⁸ Several auxiliary uses are extraneous to my investigation. For example, it is often used with a word signifying time to simply mean “the appointed time.” LSJ s.v. *kurios* II.3, etc.

often.⁷⁹ In uses of *kurios*, power is thus most naturally located in the vehicle for its expression, whether it be the citizen, the entire *demos*, or the laws, rather than an abstract ideal. Being *kurios* affords one power over a set of individuals or things. Indeed, a primary use of the adjective *kurios* is with an objective genitive to mean having power over something.⁸⁰ Isaios, for example, uses *kurios* to describe Stratokles' control of his unmarried daughter's property, which includes land, animals, and other goods (καὶ τὴν ἄλλην κατασκευὴν ἅπασαν ἧς κύριος ἐκεῖνος γινόμενος, 11.42). In Isokrates, we find it applied to a natural phenomenon, indicating not just a type of ownership but a sense of control. He claims that the Egyptians have made themselves *kurios* over rain and drought because of their use of the Nile (τῶν γὰρ ὄμβρων καὶ τῶν αὐχμῶν ... ἐκείνων δ' ἕκαστος ἀμφοτέρων τούτων αὐτὸς αὐτῷ κύριος καθέστηκεν, 11.14). Likewise, in the topsy-turvy world of Aristophanes' *Assemblywomen*, where a man can only authorize transactions worth less than a *medimnos*, he is described as not *kurios* to engage in those transactions above that amount (ἀλλ' οὐ κύριος ὑπὲρ μέδιμνόν ἐστ' ἀνὴρ οὐδεὶς ἔτι, 1024-1025).⁸¹ It can, in addition, refer to power over some part of the city politically. Antiphon uses it to describe the position of the laws and decrees over the whole constitution (... ὑπὸ τε τοῦ νόμου κατακέκριται ὑπὸ τε τῶν ψηφισαμένων, οἱ κύριοι πάσης τῆς πολιτείας εἰσιν, 3.1.1). The adjective *kurios* can also be used with the infinitive to indicate more explicitly the power to do something.⁸² Aeschylus' chorus of elders in the *Agamemnon* are physically weak, but they are *kurios* to utter and so relate past events in their odes (κύριός εἰμι θροεῖν, 104-

⁷⁹ I would argue that this reflects the performative aspect. That is, it does not exist independently but is a feature (or disposition) in a person or thing—which in turn must exercise it to keep it valid.

⁸⁰ LSJ s.v. *kurios* I.

⁸¹ Here it is without the genitive. This is the same limit imposed on legal transactions for women (cf. Is. 10.10) and so particularly suited to the gender role reversal in the *Assemblywomen*.

⁸² LSJ s.v. *kurios* I.2.

105).⁸³ Aristotle, among others, uses it explicitly to indicate the purview of magistracies, saying they are *kuriai* to judge certain cases (εἰσὶ δὲ καὶ νῦν περὶ ἐνίων αἱ ἄρχαι κύριαί κρῖναι, *Pol.* 1287b15-16). This use of *kurios* overlaps even more with the democratic sense of positive freedom, construed as the ability to act.⁸⁴ *Kurios*, then, satisfies both the power over and power to aspects of power.

Kurios also has the advantage that it is broad enough in scope to be applied both to individuals and to organs of the state. In addition to the adjectival uses, substantivized (*ho kurios*) it denotes the head of an *oikos* and refers to his authority over his property, children, wife, and other familial dependents. As we shall see, this institutional role is important in both private and public contexts and can thus help shape our account of power. Beginning from a term grounded in the household but that also has a public aspect reflects the complicated relationship between the private and public realms in ancient Athens. Aristotle describes the *oikos* as the fundamental building block of the polis (*Pol.* 1252b9-31). Each *oikos* is in turn constituted by the relationships between people. The most basic partnerships that create a household are male/female and master/slave. As envisioned by Aristotle, these are fundamentally power relationships between the adult male citizen and the others in his *oikos*. Household management is broken down into the head of household's rule over slave, children, and wife. While master/slave is clearly a despotic power relation, the connection between husband and wife is described as statesman-like (πολιτικῶς) rule over the female, and the interaction of the father with children is described as kingly (βασιλικῶς) rule.⁸⁵ Since the *oikos*

⁸³ Raeburn and Thomas 2011: ad loc.

⁸⁴ The relative lack of *eleutheros* with an infinitive to indicate “freedom to” is perhaps thus explained by the existence of this alternate expression.

⁸⁵ Ἐπεὶ δὲ τρία μέρη τῆς οἰκονομικῆς ἦν, ἐν μὲν δεσποτικῇ, περὶ ἧς εἴρηται πρότερον, ἐν δὲ πατρικῇ, τρίτον δὲ γαμικῇ (καὶ γὰρ γυναικὸς ἄρχει καὶ τέκνων, ὡς ἐλευθέρων μὲν

is the foundation of the city, and relationships form the *oikos*, these power relationships, then, constitute the city to some degree.

The capacity of the head of household in these power relationships is underscored by his title as *ho kurios*. In a complementary way, the adjectival use of *kurios* for various parts of the legal and political system, such as laws, the jury, and political offices, looks at power from the public sphere inward.⁸⁶ When modifying legal entities, as well as wills, adoptions, and other legal arrangements, there is a tendency to translate the word as ‘competent,’ ‘supreme,’ or ‘valid.’⁸⁷ But both translations, particularly the latter, miss the underlying notion of power in the term. More than a trite descriptor of governmental function (i.e. a particular law being simply ‘valid’ or a governing body being ‘competent’), it shows that power is a central organizational feature. The widespread nature of the *kurios* institution as well as the various uses of the adjective in political and legal contexts points to an overlapping concept of power connected linguistically under the term *kurios*.

Athenian ideas about power, then, can usefully be borne out by attending to the uses of *kurios*. For a citizen, to be *kurios* comprises both the state of self-rule and the ability to act, which encompass the sense of positive freedom. Part of freedom is being one’s own master,

ἀμφοῖν, οὐ τὸν αὐτὸν δὲ τρόπον τῆς ἀρχῆς, ἀλλὰ γυναικὸς μὲν πολιτικῶς τέκνων δὲ βασιλικῶς· (1259a39-b1). “There are, as we saw, three parts of household management, one being the rule of a master, which has already been dealt with, next the rule of a father, and a third which arises out of the marriage relationship. This is included because rule is exercised over wife and children—over both of them as free persons, but in other respects differently: over a wife, rule is as by a statesman (*politikōs*); over children, as by a king (*basilikōs*)” (trans. Sinclair and Saunders 1981).

⁸⁶ e.g. the laws, D. 24.96; an archon, D. 43.75; the jury, D. 24.118; a will, D. 36.34; an annulled adoption is *akuros*, Is. 2.47. More detailed analysis below (§II). Wolff in his survey of Athenian marriage law calls these applications of *kurios* “particularly interesting” (1944: 63 n. 105).

⁸⁷ e.g. Hunter 1994: 10 n. 6; LSJ s.v. *kurios* II. 2. ‘Sovereign’ is also used, which at least is related to power, but reflects a problematic top-down, absolute schema: see Todd 1993: 298; Ober 1996: 30, 120-2.

whether socially, whereby a free man has no master, or politically, whereby citizens are not ruled by an external system. I will show that since a citizen was necessarily free, he was also necessarily *kurios*. I propose that investigating how Athenians conceived of power and authority as expressed by the word *kurios* will lead us to a fuller understanding of the individual citizen in his role in the polis and overarching power relations.

To first examine how a true, full citizen is automatically a *kurios* by his nature, we can compare him to his opposite, the slave. Even at the most basic level, a citizen would be *kurios* over himself. This separates him from a slave, who, antithetically, can never be *kurios*, even over himself.⁸⁸ We see this expressed for comic effect, for example, in Aristophanes' *Wealth*. The opening scene finds Kario, the slave of the protagonist Chremylos, lamenting that he has a foolish master. In his capacity as slave, he must suffer along with him since

τοῦ σώματος γὰρ οὐκ ἐᾷ τὸν κύριον
κρατεῖν ὁ δαίμων, ἀλλὰ τὸν ἐωνημένον. (6-7)

...the deity won't let the one whose business it is control (*ton kurion kratein*) his own body, but puts it in the power of the purchaser.⁸⁹

Embodiment, when it comes to a slave, does not provide a legitimate claim to exercise power over one's own self. The joke here is, first, that a *kurios* is not able to rule, κρατεῖν, which contradicts the very definition of a *kurios* or 'master,' and, second, the tongue-in-cheek claim by the slave to be *kurios* over anything.⁹⁰ The distinction between free and slave is ideologically the

⁸⁸ It also separates him from women, discussed below.

⁸⁹ Translation by Sommerstein 2001 with modifications. In his commentary, he adds a more literal translation: "doesn't let the *owner* control the body" (ad loc., emphasis mine). While a δεσπότης owns a slave, a *kurios* owns himself. Olson's translation also draws attention to the 'natural' versus 'purchased' master, contrasting the purchaser who controls the body "as opposed to its real owner" (1989: ad loc.), as does the earlier Van Leeuwen who translates *kurios* as "the one whom nature herself has made master" (1904: ad loc.).

⁹⁰ Cf. Aristotle's use of objective genitive in the statement that a slave is not even *of* himself but entirely *of* another (*Pol.* 1254a11-15). Emancipation similarly can be expressed as καθ' ἑαυτὸν

fundamental division in the democratic state which both separates citizens from noncitizens and creates equality among citizens. This passage shows that the concept of being *kurios* is logically entailed as part of the free/slave division.⁹¹ That is, a slave cannot ‘be master’ of anything. He is not even truly able ‘to do’ anything in terms of accomplishing his own will. We see the upshot of this perspective in the ways the recurring character of the slave in Aristophanic comedies does or does not conform to the ideal. As S. Douglas Olson has shown, the slave in the ideal household is an extension of the will of his master (2013).⁹² Likewise, Aristotle’s discussion of slavery corroborates this view at the theoretical level. In his opinion, slaves are a possession and a “living tool” (*Pol.* 1254a14-17, b32).⁹³ Instruments, like things, do not have ends of their own.⁹⁴

The indignity of not controlling one’s own person and the consequent importance of a citizen’s right to do so is expressed in antiquity from the most elemental beginnings of Athenian citizenship: Solon’s law forbidding the sale of citizens into slavery begins the process of

ὄν, “being of oneself” (e.g. D. 36.4, although this is contested). *Contra* Sommerstein who sees the paradox in these lines as a principled critique of slavery rather than a joke (2001: ad loc.).

⁹¹ While metics could usually be called *kurios* over moveable property, including slaves (e.g. Phormion in charge of Pasion’s estate at D. 36.3), this characteristic did not automatically transfer to a set of political rights, just as they were technically of free status but that did not translate into political rights. The Athenian ideology of freedom and subsequent authority as necessary conditions of equality and political power did not see limited metic status as problematic. Indeed, metics were not considered equal even when they were granted special dispensation nearing full enfranchisement. For the range of metic statuses, see Kamen 2013: 43-61.

⁹² Olson further applies this model to the state, where the politicians should be slaves to the people (δημος). For the reality of slave resistance, see McKeown 2011.

⁹³ Aristotle goes as far as calling the slave a part (μέρος) of the master’s body (*Pol.* 1255b11-12).

⁹⁴ Vlassopoulos (2011) sees Aristotle’s view as an outlier in antiquity. He suggests slavery was mostly viewed as a relation of domination rather than property ownership, *contra* Finley 1981, among others. I think this can be a useful approach and believe it works well with seeing ‘*kurios*’ as describing power. Either way, the slave is still ideally “an extension of the master’s will” (Olson 2013: 72), whether one thinks of a slave as a tool or as a dominated Other.

codifying the autonomy and sanctity of the citizen's body.⁹⁵ This partially expresses a negative freedom, since it places a limit on the powers over one's body, but it also represents the establishment of a citizen's inherent mastery over himself, a form of positive freedom and power. By the time of classical democracy, we have further evidence of the value of the citizen's body, and so one's own control over it, institutionalized via several laws.⁹⁶ Conversely, not being *kurios* can cause one to become like a slave. Aristotle makes the connection between loss of power and slavery at the institutional level. In his review of lawgivers, he identifies Solon as giving the *demos* the minimal amount of power required for freedom by granting them the election and review of magistrates. He specifies that without being *kurios* over these rights, the people would be a slave to the ruling class (μηδὲ γὰρ τοῦτου κύριος ὢν ὁ δῆμος δοῦλος ἂν εἴη, *Pol.* 1274a17).⁹⁷ A *kurios*, then, is not a slave; he does not have a δεσπότης, but is instead *kurios* over himself.⁹⁸ At the minimum, then, a citizen in so far as he is free must be, and always is, his own *kurios*. These terms denote a citizen's self-mastery, or positive freedom. To be able to do "whatever one wishes" one must be empowered.

Becoming a citizen accordingly is equated with becoming *kurios*. In a passage from Demosthenes' *Against Meidias*, which I shall return to in greater detail in §III, Demosthenes uses the relationship between being a citizen and being *kurios* in the service of his defamation of Meidias. Demosthenes alleges that the defendant was not truly a citizen but a foreigner

⁹⁵ One of Solon's three most 'democratic,' δημοτικώτατα, laws ([Arist.] *AP* 9.1). For a fuller discussion of Solon, see ch. 2.

⁹⁶ Protection from physical assault, D. 21.179; from prostitution, Aeschin. 1.13. As Aeschines explains, the idea of a sacrosanct citizen body is important enough that even slaves were protected by the law on *hubris* (Aeschin. 1.15). That is, the intention of the lawgiver was not to protect slaves, but to accustom the free never to commit outrage in order to avoid a free man ever being outraged (17).

⁹⁷ This is also a rendering of slavery as the opposite of positive freedom, a potential reinterpretation of Solon's reforms in light of democratic development. See ch. 2.

⁹⁸ Schaps 1979: 48; cf. Hunter 1994: 9 where an adult male citizen is *sui iuris*.

purchased as a child who has surreptitiously gained citizenship and the power that comes with it. He then claims that Meidias “has thus become powerful (*kurios*) over goods to which he has no claim,” and abuses those privileges (καὶ γάρ τοι διὰ τοῦτο τῶν οὐ προσηγόντων ἀγαθῶν κύριος γεγονώς, 21.150).⁹⁹ Meidias, by pretending to be a citizen in Athens, has gained power (κύριος γεγονώς) over what does not pertain to him (οὐ προσηγόντων) as a non-Athenian. Whether he actually is a covert foreigner or not is beside the point. Either way, Demosthenes is making a connection between becoming a citizen and becoming *kurios* over a certain set of things, indicating that the status comes with power.

A citizen can become *akuros*, but this is only in extreme situations. In effect, these circumstances are the exceptions which prove the rule that citizens were normally considered *kurios*. In the speech *Against Stephanos II*, spuriously attributed to Demosthenes, the speaker is attempting to prove that a will was invalid. He claims that a citizen can only dispose of his property when he is sane; that is, under normal circumstances. But when he is under duress, whether from a woman, illness, insanity, or another cause, “the laws command that he be *akuros*” (ἄκυρον κελεύουσιν εἶναι οἱ νόμοι 46.16). This is clearly meant to be the atypical situation.¹⁰⁰ In other words, a citizen should be *kurios*, in this case to bequeath property, but when his autonomy is questionable, he is *akuros*. The speaker does not need to explain the specific circumstances of when a man is sane and powerful, since that is the supposed normal state of affairs.

A full citizen was *kurios* by default, not only in a general sense, but also in the specific substantivized form; he was *ho kurios* of a household. Various translations, none ideal, have

⁹⁹ Translations of D. 21 from Harris 2008 with some modifications.

¹⁰⁰ See also chapter 4 for temporary loss of *kurios* status due to summary arrest and punishment for adultery.

been proposed for this usage. A few examples suffice: ‘lord’ (MacDowell 1978: 84), ‘master’ (Todd 1993: 383; Vlassopoulos 2011: 118; et al.), and ‘guardian’ (Harrison 1968: 98, although he also uses ‘master’ in some contexts). Virginia Hunter circumvents the issue by mostly using the transliteration *kyrios*, but she seems to treat it as generally indicating someone vested with authority (e.g. 1994: 9). The common thread that binds all the translations is the fundamental idea of ‘having power,’ albeit in different degrees. The *kyrios* has power over his household. His power extended over the people, free and unfree, as well as the property in his household. Designating the head of a household as *ho kyrios* is a very particular and widespread use of the adjective *kyrios* bound up with a basic sense of authority that includes both power over and the power to.

While the role of the *ho kyrios* has its roots in the power relations of the domestic sphere, the overall features of power extend to power as generally understood and experienced. Just as freedom in the democratic context can be extrapolated from personal status to political status, so, too, can the idea of having authority or power at the personal, household level be brought to bear on the level of the polis. If being *kyrios* is the natural state of the citizen in the private sphere, how does that translate into the public sphere? The two spheres are formally linked by the fact that *ho kyrios* was also the legal representative of the *oikos*. This legal responsibility institutionally bridges the gap of any private/public divide. Moreover, the *kyrios* would have been acknowledged as such in the eyes of other *kyrioi*, which indicates that his power was also valid ideologically in both spheres. As mentioned before, the division between public and private was not deeply cleaved. In fact, theoretical thought in antiquity already linked the structure of the *oikos* to that of the polis. In Xenophon’s *Oikonomikos*, Ischomachos reports telling his wife that she must run the household like a city, namely considering herself a guardian

of the laws in the household, and so act like a commander, the Council, and a queen (οὐν ἐκέλευον, ἔφη, τὴν γυναῖκα καὶ αὐτὴν νομοφύλακα τῶν ἐν τῇ οἰκίᾳ εἶναι, καὶ ἐξετάζειν δέ, ὅταν δόξη αὐτῇ, τὰ σκεύη, ὥσπερ ὁ φρούραρχος τὰς φυλακὰς ἐξετάζει, καὶ δοκιμάζειν... ὥσπερ ἡ βουλή... δοκιμάζει, καὶ ἐπαινεῖν δὲ καὶ τιμᾶν ὥσπερ βασίλισσαν, 9.15). In Plato's *Statesman*, the stranger reduces the skills of the statesman, master, and householder to the same ἐπιστήμη (258E-259C). Although Aristotle suggests that the difference between household rule and political rule is in kind and not degree (*Pol.* 1252a7-16), even he clearly grants that household and public realms inform each other.¹⁰¹ As discussed above, he goes on to describe the husband's rule over the wife as πολιτικῶς and over his children, βασιλικῶς (*Pol.* 1259a39-b1). The fact that these types of conversations were current in classical Athens attests to a popular analogy between the household and the city.¹⁰² While the power of the *kurios* initially appears bound up with the *oikos*, then, the transferability of terms, as well as his public role, suggest that even the technical role of head of household spanned both spheres. The tight parallelism between political activity and household management shows that power and its exercise were analogous in each sphere. Thus, investigating the power of *ho kurios* of an *oikos* will give us insight into the power in both realms.

The *kurios*' power was expressed in various ways. As touched upon earlier, *ho kurios* could own slaves and most often did. A slave is a distinct sort of property and member of the *oikos* in that he alone is also under the power of a δεσπότης rather than a *kurios*.¹⁰³ The anxiety present in the relationship of the *kurios* with his slaves can shed light on the nature of master-

¹⁰¹ See Nagle 2006.

¹⁰² The exaggerated and detrimental form of the *oikos* taking over the polis may be seen in Aristophanes' *Assemblywomen*.

¹⁰³ The term δεσπότης is applied to the head of household typically only poetically or when referring to a monarch (e.g. Hdt. 1.91, referring to Gyges; Aes. *Pers.* 169, referring to Darius).

slave power relations. Several Aristophanic comedies exploit the potential instability of such relationships. In the *Knights*, for example, the Paphlagonian slave is constantly attempting to undermine his master, Demos, by appropriating the benefits that should be his master's: he eats the best bits of food and drinks all the wine. The slave, in other words, is acting like the *kurios* of the household.¹⁰⁴ The worry exposed here is not merely that of being taken for a dupe and having one's possessions used up, but "the danger is that the tables will be turned and he will become a slave of his own slaves... in which case most of the benefits that ought to come to him will go to others instead" (Olson 2013: 72). Although he has the most firm institutional power over his slaves, it is still a source of concern. By acting as a *kurios*, a slave can become *kurios* in a practical if not an institutional sense. The status of *kurios* is therefore not ideologically stable.¹⁰⁵

In addition to slaves, the *kurios* also had power over the free members of his household. His wife, children, and sometimes other female relatives were under his control. Again, as free citizens, they could not have a δεσπότης any more than an adult male citizen could have one. While a minor's father would technically be his *ho kurios*, indicated by the specific substantive use of the adjective with the article, other adult males could be referred to as *kurios*, such as older brothers, teachers, and uncles.¹⁰⁶ The inclusion of 'teachers' is notable, since, while the others as male relatives could be replacements for a deceased father as *ho kurios*, the inclusion of an unrelated adult signifies that the term also carried a general power connotation outside of the formal *kurios* system.

¹⁰⁴ The slave, note, is not exploiting the role of δεσπότης by wielding absolute power over his master, but is taking the role of head of household through its benefits.

¹⁰⁵ Vlassopoulos sees the slave/master relation as "the constant negotiation of power" (2011: 128 *et passim*). I agree and expand that insight to other realms of power.

¹⁰⁶ Aeschin. 1.13, 18.

Citizen minors were considered incomplete citizens and thus more suited to being ruled rather than ruling.¹⁰⁷ Aristotle pinpoints the undeveloped deliberative faculty as the essentially deficient element in a minor (τὸ βουλευτικόν...ἀτελής, *Pol.* 1260a14). Aeschines, too, implies that minors are unfit for self-rule, which is essential to full citizenship. He calls underage citizens *akuroi*. Expounding the various laws related to lovers and beloved, he says:

Ἀκύρου δ' οἶμαι καὶ ἀδυνάτου ἔτι ὄντος κρῖναι τὸν ὄντως εὖνουν καὶ μὴ, τὸν ἐρώωντα σωφρονίζει. (1.139)

But, I think, so long as the boy is not his own master (*akouros*) and incapable of judging who is really well-disposed to him and who is not, the lawgiver makes the lover be self-controlled.¹⁰⁸

There is perhaps an implied connection between being *akouros* and lacking reason here, but the reference is also literal. As an incomplete citizen, the boy is not yet his own master, but has an external *kurios*. Earlier in the speech, Aeschines explains that in the event that a minor is prostituted, the *kurios* acting as pimp is liable for indictment and not the boy (13, 18). Only once the boy is enrolled in the citizen list does the law directly apply to him (18). Fittingly, Aeschines promises not to charge the defendant for the indiscretions committed while he was legally underage (39). The fact that youths are not yet *kurioi* and thus to some extent not responsible for their actions until they become citizens reinforces my view of the default state of ideal citizens as *kurios*. Before that point, they are neither *ho kurios* of a household nor *kurios* even of themselves. In this way, they do not have the necessary power to take action nor to be responsible in the private and public spaces of the city.¹⁰⁹ Thus, power is attached to citizens

¹⁰⁷ Children are described as ἀτελεῖς πολῖται (Arist. *Pol.* 1275a14-19, 1278a4-6). For childhood in Athens generally, see Golden 1990 and Grubbs and Parkin 2013.

¹⁰⁸ All translations of Aeschin. 1 are Fisher 2001 with some modification.

¹⁰⁹ Here I am linking power to its expression as well as the responsibilities it entails. Similarly, Liddel explores duties as part of freedom (2007).

differently depending on age and, we shall see, gender. Power itself is not only what allows one to act, but is also what makes one accountable.¹¹⁰

The authority of the *kurios* over women has been treated in great detail.¹¹¹ I am interested here in seeing what the *kurios*' power over a woman can tell us about power structures in general. An Athenian woman was notoriously required to have a *kurios* for her entire life. That is, she was under the *kurieia* of her household's *kurios*. Her natal *kurios* was her father or next closest adult male agnate. Once she married, she was under the *kurieia* of her husband, but she was not entirely severed from the power of her natal *kurios*. While the former was responsible for daily upkeep, such as management of her dowry and representation in court, the latter presumably still held some amount of authority over her. The husband could not, for example, give her in marriage to another man while he was still alive, a privilege reserved for the original *kurios* (Schaps 1979: 48). The natal *kurios* could even sue for divorce, a process called ἀφάρεσις, possibly even without the woman's consent.¹¹² This points to an interesting aspect of the *kurios*' authority and power: in some sense, it is not absolute. There are potentially overlapping spheres of power.¹¹³ The potential for conflict between *kurioi* was present, yet there is no indication that in the normal course of things this made the husband or father conceptually

¹¹⁰ Cf. a man who is under duress, whether from a woman, illness, or madness, becoming ἄκνυτος to dispose of his will ([D.] 46.16).

¹¹¹ For the legal standing of *ho kurios* see Harrison 1968: 19-21, 30-32, 108-115, MacDowell 1978: 84-89, Todd 1993: 207-216; economic role, Schaps 1979: 48-60; power relations at home, Hunter 1994: 15-19.

¹¹² The evidence is sparse. For the view that the natal *kurios* had legal recourse to divorce his daughter from her husband even against her will, Harrison 1968: 109, 30-32, Hunter 1994: 15-17, Cohn-Haft 1995. For the view that although the father could apply pressure on his daughter to divorce her husband, there was probably no legal right for him to do so himself, Rosivach 1984.

¹¹³ Todd sees *kurieia* as not particularly formal and so allowing several *kurioi* (1993: 209).

somehow less *kurios*.¹¹⁴ Leaving aside for the moment the question of compatibility of ends for each *kurios*, we can at least infer from this that being *kurios* was not in all cases complete, and yet there was not a sense of diminished power for either one. That is, to ask whether each man's power was deficient or defective in so far as the other one had authority is to misunderstand an important aspect of power. Instead, we should take this as evidence that power was amenable to sharing.

The natural limit on the power of the *kurios* is in contrast to the power of the δεσπότης, whose power *was* absolute.¹¹⁵ As master, he had complete control over his slave's body, movement, labor, property, and status (in that he controlled his freedom), while a *kurios* did not have absolute control in all those areas over his dependent. The master also did not share this power with others. If he sold his slave, for example, he did not keep any residual rights, as the slave was now the property of another. Despotic power was practically and ideologically distinct from other types of power. Accordingly, it does not suit our model of more general power. Absolute power was thus conceivable for Athenians, but not considered a fundamental element of the power essential to a citizen as *kurios*.

Let us look, finally, at the relationship of a *kurios* and his property, for this, too, is a type of power. The head of the household was responsible for the family estate, which included his wife's dowry. The dowry was not truly 'his' in an unqualified sense. In the event of a divorce or the wife's death before bearing heirs, the dowry returned to her familial home. The legal

¹¹⁴ Harrison does see it as a serious limitation on the husband's *kurieia* when it occurred, but imagines that conflict was rare (1968: 31-32).

¹¹⁵ Monarchs are also called δεσπόται. This metaphorical use reflects the analogy between the household and the city: just as a δεσπότης is an absolute ruler of a slave, so is a monarch an absolute ruler of his subjects.

mechanism for the return was a private suit, either a *δίκη προικός* or *δίκη σίτου*.¹¹⁶ If the husband was thought to be squandering his wife's dowry, she or her natal *kurios* could file for divorce. Similarly, the estate as a whole was considered the property of future generations, and the possibility of a *γραφή παρανοίας* against a profligate *kurios* codifies that idea into law.¹¹⁷ The law also restricted to whom a man could bequeath ancestral property. If he already had heirs, he was not allowed to adopt or leave it to others by means of his will.¹¹⁸

In what sense, then, was the *kurios* actually *kurios* of his property? We are hard pressed to call this 'ownership,' since implied in 'ownership' is the ability to dispense of goods and property as one sees fit. In Athens, beyond the social pressures to manage property in particular ways, the laws regarding dowry and estates effectively limited what we mean by 'ownership.'¹¹⁹ Hans Wolff has advanced 'limited power of disposition' as a more useful concept than ownership (1944: 63). A. R. W. Harrison, partly influenced by the fact there is no Greek word for the idea of ownership in the abstract, has suggested that Athenians had a fluid concept of ownership (1968: 201-5). Likewise, Virginia Hunter has suggested the term 'stewardship' rather than 'ownership' to describe the relationship between a *kurios* and property (1994: 12).¹²⁰ Lin Foxhall is not ready to do away with the term 'ownership,' but she allows that Athenian ideas about ownership were not synonymous with "rights of management and/or disposal... but [those things were] merely an aspect of it, the significance of which could change contextually" (1989:

¹¹⁶ Harrison 1968: 55-60; Todd 1993: 215-216; Hunter 1994: 9.

¹¹⁷ This is, literally, a suit for insanity, attested in [Arist.] *Ath. Pol.* 56.6, but without any certain examples. See Harrison 1968: 79-81; Todd 1993: 108, 244-245; Hunter 1994: 12.

¹¹⁸ Harrison 1968: 28; Foxhall 1989: 28.

¹¹⁹ Foxhall 1989. *Contra* for example Schaps 1979, who sees property as unequivocally belonging to *ho kurios*, and MacDowell 1989: 20-21, who claims that only the individual and not the *oikos* had legal standing in Athenian law.

¹²⁰ The political idea of *μετέχειν πολιτείας*, or sharing in the constitution, rather than 'possessing' rights seems to me to be a related concept (Ostwald 1996).

26). All of these definitions move away from describing the *kurios*' power as an absolute idea towards describing it as a more flexible, shared capacity. Although the objects of his power are different, this is not unlike the relationship between the *kurios* and his free dependents.

Using the head of household as our model of power undoubtedly introduces the question of gender into the discussion of citizenship. If *ho kurios* represents various aspects of the natural power associated with citizenship, how far can a citizen woman be said to be powerful, *kuria*, since she can never be *ho kurios*? I should first point out that *ho kurios* serves as our paradigm for power but does not exhaust the possibility of power. Instead, it is our basis for understanding other forms of power, particularly as indicated by the adjective *kurios*. Secondly, my concern is with the *idea* of citizenship. Since we are searching for the ideological attributes of citizenship, we should be more interested in the universal qualities in which citizens believed themselves to participate. For example, if our investigation were about citizen labor, we should not be surprised to find that while self-sustaining land ownership was an assumed ideal, many citizens instead held menial, manual-labor jobs. In this example, class is leveled for the purpose of creating the ideal. Similarly, if we are to look for the ideology of citizenship, we must focus on the ideal citizen. This inquiry into power, then, focuses on the ideal citizen, in whom resided the full range of rights and responsibilities accorded to a citizen: the adult male.

One of the most marked features of female citizens is that they each had a lifelong guardian, a *kurios*. Children, too, had a *kurios*, but this was obviously only temporary for males. While this did make women juridical minors in a sense, it did not change their status as citizens. David Schaps has shown that Athenian women were viewed by themselves and others as distinctly free and not slaves (1998). At the most basic level, he argues, an Athenian woman was never subject to a δεσπότης; in fact, she was a δέσποινα over slaves herself. A *kurios* is not the

same as a slave master. In this way, an Athenian woman meets the basic criteria for freedom. From this status follows behavioral expectations and various legal protections which mark her as free. There is, however, slippage between ‘citizens’ and ‘free women’ in general throughout Schaps’ account. Although metics and freed slaves were indeed legally free, Athenians associated freedom with citizenship in such a way that ‘free’ in a narrow sense was synonymous with ‘citizen.’¹²¹ While Schaps, then, focuses at times simply on Athenian women’s personal freedom, his discussion can be expanded further to separate female citizens not just from slaves but from other free women.

For example, Schaps mentions that while in reality ‘free’ women may have been promiscuous or prostituted themselves, they were not expected to do so and thus “the term ἐλευθέρω is occasionally used as if it were the opposite of ἐταίρω” (175). I would add that since courtesans were often associated with metics and not just slaves, the use of ἐλευθέρω in contrast to a courtesan must indicate a citizen as distinct from the whole non-citizen category, under which fell various statuses. His point, though, still stands: citizen women had certain characteristics in the Athenian imaginary.¹²² Just as the ideal male citizen is the embodiment of freedom, an Athenian woman’s freedom is synonymous with citizenship. They also had legal rights. Citizen women were guaranteed protection from bodily harm, detainment, and sale. Although granted in some form to all free people, these protections were likewise associated with citizenship in popular ideology. Legal protections and behavioral expectations are evidence of a distinct category of female citizen. Athenian women were not just free, but free citizens.

¹²¹ Hansen 2010. See also chapter 2.

¹²² This holds true for only some of his examples, since many of his citations about free women are about non-Athenians, and so may actually not apply to citizens.

They participated in the ideal of freedom associated with citizenship, even if they were not the ideal citizens.

Some scholars, though, have argued that since women could not participate in politics and were essentially juridical minors, they were not citizens.¹²³ This places an obvious premium on sharing in government as the main function of a citizen. Aristotle's assessment of a citizen as someone who holds deliberative or judicial office would seem to support this view.¹²⁴ Josine Blok has argued that Aristotle in this passage is expressing his own idiosyncratic views in contrast to the commonplace belief that citizenship was tied simply to a descent group (2005). Furthermore, Cynthia Patterson has shown that distinctive terms were applied to Athenian women, marking them as citizens (1986). She argues that while we do not often see the feminine of the adjective 'Athenian' or the noun 'citizen,' we do find the feminine forms ἄσπῆ and Ἀττικῆ. These terms reflect a direct connection to the land and city, if not to the political processes. Women did also participate in the state, if not in politics. Scholars have pointed out women's roles in religious activities as an important parallel to other political activity.¹²⁵ Additionally, after 451/0, a child's citizenship also depended on the lineage of both parents, clearly further institutionalizing the importance of women as citizens.¹²⁶

Since women were identified with this particular privileged group, citizens, they were *mutatis mutandis* associated with the group ideology. While no woman could be *kuria* to act in the Assembly, for example, I do not take this to mean that women were thought of as powerless. Their status as citizens granted them a measure of power. Although it is not common, we do

¹²³ e.g. Hedrick 1994.

¹²⁴ *Pol.* 1275b17-20.

¹²⁵ For the view that women were citizens, see also Patterson 1986, Kamen 2013.

¹²⁶ The public importance of women and the domestic sphere in general can also be tracked iconographically (Osborne 2010: 244-266).

occasionally see citizen women called *kuria* over an estate.¹²⁷ Typically, these women are widows or have no living natal *kurios*. Hunter has used passages in oratory and new comedy where women are called *kuria* to show that they could control property and be heads of households when their husbands died or were away at war (1994: 29-33). The ability to own and alienate property, especially land, is an important feature of citizenship. While scholars are divided on to what extent *kurios* approval was *de facto* or *de jure* necessary, it seems to me that this is one way in which women participated in the ideal of citizenship and power.¹²⁸ This is not to claim that women were on equal footing with men or that they were not marginalized. Since the term is directly associated with the household *kurios*, it seems unsurprising that we seldom find the adjective used to describe a woman. Otherwise, it would seem to imply that she was her own *kurios*, a legal impossibility.

The relationship of the *kurios* to his dependents and property has revealed various characteristics of power. What overall definition of power can we draw from its various uses? The power of the *kurios* includes both power to and power over. A *kurios* had power to effect change in the public sphere in his role as the public representative of the *oikos*, politically and otherwise. At home, too, he had the prerogative of action regarding, for example, the disposition of property. He also wielded power over the people in his household. In summary, we have seen that someone who is *kurios* has power to act in both public and private realms; can hold

¹²⁷ There are a handful of instances in classical texts of which I am aware. E.g. D. 27.53, Is. 10.23; Archippe is *kuria* at [D.] 45.74 and later is called no longer *kuria* due to illness, not unlike an infirm male *kurios*, at [D.] 50.60.

¹²⁸ See e.g. Schaps 1979: 14-15, 55-56; Foxhall 1989. We do see *kuria* applied to metics as well, including Neaira as *kuria* over herself. In this passage, the usage is connected quite explicitly to personal freedom, as it refers to Neaira once her freedom is secured after arbitration (ἐλευθέραν εἶναι καὶ αὐτὴν αὐτῆς κυρίαν, [D.] 59.46). Thus, it testifies again to the link between freedom and power through being one's own *kurios*. Still, while there are some technical uses of *kurios* for male metics as well, as mentioned above, the ideology of being *kurios* remained a characteristic of citizens, whatever the practical reality.

power over slaves, free people, and objects; does not have completely free rein or unlimited power; in many cases shares power to some degree with other *kurioi*; and may find his status as *kurios* at risk of becoming *akuros*. This status is also properly that of a full citizen, an adult male. We can derive from this well-attested institution these general features of a citizen's power.

In analyzing the role of the household *kurios*, Virginia Hunter employs a domination-based definition of power in her definition of the *kurios*' authority but then broadens it to include the ability to act, instead of focusing on coercion (1994: 9 n. 1). Taking into account power to act, rather than only power over, is a more holistic view of power and corresponds more closely with the institution of the *kurieia*. Neither aspect of power, as noted, was absolute. This tells us more about the proper concept of power than the amount of a citizen's power. The *kurios*' power expressed itself variously depending on the individual and his spheres of influence. The range of power held by the household *kurios*, moreover, gives us insight into ideas undergirding the concept of power. As an adjective, *kurios* was applied broadly to different people and things. Using the role of the household *kurios* to outline a basic definition of power in both the private and public realms, we can now look at how the adjective is applied in order to adjudicate between claims to power.

II. Power and its Performance in the Law Courts

The law courts provide an environment where conflicts of power are created and resolved. Thus, the features of power outlined in §I are expressed through the power struggles of the law courts. The use of the word *kurios* as a sort of political football shows that while power may be dispositional, the exercise of it gives rise to dispute. In fact, citizens' power is only called upon

to be exercised because it has been violated in some way. As with the *oikos* relationships in Aristophanes' plays, if the *kurioi* aren't careful, they too will lose power and be slaves although their natural role is to be empowered.¹²⁹

The three main entities referred to as *kurios* in extant forensic speeches are the laws, the members of the jury, and the defendant. The decisions of the jury and decrees of the Assembly are also referred to as powerful, both representing the *demos* through synecdoche. By reviewing the instances in which each entity is called *kurios* and when it is challenged, rendered *akuros*, we can track how ideas about power are expressed in the public sphere. In this section, I will analyze passages where the laws, jury, and defendant are labeled as *kurios* and *akuros* to determine how each one's claim to power was perceived as well as the limits of that power. I will also show that the individual citizen is empowered in and of himself and not just as an impersonal member of the *demos*. His power, like the power of the laws, is at stake whenever someone breaks the law.

To begin with, the law is constantly called *kurios* throughout our texts. Since a common democratic trope focuses on how law-abiding Athenians are, and, in a related fashion, how their success is related to the greatness of their laws, it is unsurprising that the laws should be presented as appropriately *kurioi*.¹³⁰ Issues arise when they are treated as or made ineffectual, *akuroi*. *Kurios* is in fact used as the default descriptor for laws that are extant. As mentioned in §I, *kurios* in this use is usually rendered as 'valid,' 'operative,' or 'current.'

¹²⁹ Olson sees the politicians as potentially usurping power, whereas I focus here on errant citizens versus 'good' citizens and the laws (2013).

¹³⁰ E.g. Athenians as especially law-abiding, Thuc. 2.37.2; a city is great or small through laws, D. 24.215; goods of the city are attributable to laws, D. 24.5; laws are responsible for character of the city, D. 24.210.

Several examples of this use can be found in Demosthenes' *Against Timokrates*. Since it is a prosecution speech against the proposal of an unfitting law, γραφή νόμον μὴ ἐπιτήδειον θείναι, the speech focuses on contrasting Timokrates' proposed law with laws currently in effect. His law allows certain state debtors to offer sureties in order to avoid incarceration and still delay full payment of their debt (24.39-40, *et passim*). The prosecutor denounces it as a harmful law in many respects, including the alleged fact that it benefits criminals by lightening their penalties.

τὰς γὰρ ὑπαρχούσας ἐκ τῶν νῦν κυρίων νόμων τιμωρίας καταλύει. (102)

For it abrogates the existing (*hupoarchousas*) penalties imposed by the statutes in power (*kurion*).¹³¹

Kurios is used here (as usual) to mark the laws that are currently in effect. They are the ones that have power at the moment and thus can be the source of the existing penalties. Likewise, after a law is approved, it becomes *kurios* after it takes effect:

ἕκαστον ἀφ' ἧς ἡμέρας ἐτέθη κύριον εἶναι, πλὴν εἴ τῳ χρόνος προσγέγραπται, τούτῳ δὲ τὸν γεγραμμένον ἄρχειν. (43)

every statute shall be in power (*kurion*) as from the date of enactment, unless a date is appended, and, in that case, the specified date shall mark the beginning of its operation.¹³²

Although it may not apply for all or even most laws, there is a conceivable intermediary state between when a law is voted upon and when it goes live, so to speak. That moment, however temporary, indicates that there is a separation of the idea of a law as established (ἐτέθη), on the one hand, and as effective or empowered (*kurios*), on the other. While 'operative' or 'valid' may then be fine technical translations, they somewhat lack the color of the term *kurios*, which indicates a measure of power. The extensive use of *kurios* points to a conception of the law as

¹³¹ Translations of D. 24 are from Vince 1935 with modifications. For similar uses of *kurios*, see D. 20.11, 91, 139; 23.62, 89; 24.17, 30, 72, 96, 137, 188, 205; [D.] 25.14, 99; Is. 2.26.

¹³² For similar use of *kurios* when laws are enacted, see D. 24. 1, 28, etc.

powerful once it goes into effect. A law that is *kurios* is indeed ‘operative’ or ‘valid’ in the sense that it is effective, but it is also ‘empowered.’

Several uses of *kurios* exploit its denotation as ‘powerful,’ indicating that it is not a dead signifier or simply a colorless, technical term. In fact, it can be used to mean that the laws have ‘power over’ a certain aspect of the city or person when used with an objective genitive.¹³³ This would obviously not work if the term simply indicated that a law was in effect. The use of the comparative form of *kurios* also supports the idea that it is a marker of power. For example, we are told that:

οὐκ ἐὼνθ’ ἕτερον νόμον ψήφισμ’ οὐδέν, οὐδ’ ἂν ἔννομον ἦ, νόμου κυριώτερον εἶναι (D. 23. 30)

Another law declares that no decree, even though in itself constitutional, shall be more powerful (*kuriōteron*) than a statute.¹³⁴

Vince has chosen here in his translation to render the term as ‘more authoritative,’ where I have preferred ‘more powerful.’ Although he often uses ‘valid’ or ‘operative’ for *kurios*, ‘more valid’ or ‘more operative’ would be awkward and border on the nonsensical. He is forced here to give a more particular flavor than his default translation of ‘valid.’ The passage illustrates that there is a clear hierarchy of power whereby a decree is beneath a law, thus activating the sense of power in *kurios*.¹³⁵ There are also other words, namely ὑπάρχων (‘existing’) and κείμενος (‘established’), that can signify ‘being current.’ *Kurios*, then, must have distinct connotations, as can be seen from the way it is coupled with these participles in order to underscore the laws’

¹³³ E.g. over a person at D. 23.32, where the speaker claims that when someone brings a criminal to court, he empowers the laws over him (τοὺς νόμους κυρίους τοῦ δεδρακότος); over things at D. 23.73, where the laws are described as powerful over everything (τοὺς νόμους κυρίους ἁπάντων).

¹³⁴ Translations of D. 23 are Vince 1935 with modifications.

¹³⁵ See also D. 23.87, 218.

power rather than their simple existence.¹³⁶ This power can also be expressly threatened. Cases are often presented as being not just about whether a crime has been committed, but “whether it is necessary that the laws be empowered” (εἰ δεῖ κυρίους εἶναι τοὺς νόμους. D. 22.46). “Current” would clearly not work here, either in translation or in the Greek participial form ὑπάρχων or κείμενος. A law that is *kurios* is not, then, simply currently in use, but in power.

If the laws are powerful, *kurioi*, we should expect to see some similarities between how power is expressed in the institution of *kurieia* and the application of the power term to the laws. As mentioned above, the law certainly had power over things, citizens, and slaves, just as the *kurios* had in his household, and regulated elements of both the public and private sphere.¹³⁷ It also had the power to do things in a sense; it could ‘order’ things to happen or make a person *kurios* to do certain things himself.¹³⁸ While these elements of power may be evident, the laws as empowered also share the feature seen in *ho kurios* of constantly being negotiated. Power must be performed to be kept and power can also be shared, just as we saw with the household *kurios*.

The inconstancy of power is evinced by the prosecution’s appeal to jurors to vote in accordance with the law in order to keep it empowered. For example, Demosthenes writes,

πότερον δεῖ τοὺς μὲν ἄλλους νόμους, οὓς ἐπὶ τοῖς ἀδικούσι τὴν πόλιν ὑμεῖς ἀνεγράψατε, ἀκύρους εἶναι, τόνδε δὲ κύριον, ἢ τούναντίον τούτον μὲν λύσαι, κατὰ χώραν δὲ μένειν τοὺς ἄλλους ἔαν. τὸ μὲν οὖν πρᾶγμα περὶ οὗ δεῖ νῦν ὑμᾶς γνῶναι, ὡς ἐν κεφαλαίῳ τις ἂν εἴποι, τοῦτ’ ἐστίν. (D. 24.5)

¹³⁶ e.g. D. 24.137, where the age of the laws is emphasized by τοὺς πάλαι κειμένους and their extant penalties by τοὺς ὑπάρχοντας but it can be asked whether they should be κυρίους; also D. 23.89; conversely, laws that are ὑπάρχοντας can be made *akuros*, D. 24.16.

¹³⁷ Laws that seem to deal with private issues have been interpreted as actually interfering with the public sphere in some way. For example, inheritance laws seem to the modern reader to intrude paternalistically upon the private sphere. But in antiquity the matter rested on preserving the *oikos*, the basic unit of the polis. Likewise, prosecution of citizens for what may seem like private matters, such as in the case of Sokrates, was viewed as protecting the public sphere and was an infrequent occurrence (Wallace 1994).

¹³⁸ As the subject of the verb κελεύω, D. 23.108; 24.108; 44.62; Aeschin. 1.113; 3.15, 18. With δίδωμι, D. 23.35.

Shall the laws that you have enacted for the restraint of evil-doers be disempowered (*akurous*), and this law alone be powerful (*kurion*); or shall this law be undone and the rest allowed to remain? That, to put it in brief summary, is the issue that you have to determine today.

He represents a conviction as voting with the laws and keeping them *kurioi*, while he associates acquittal with voting against the laws and rendering them all *akuroi*. As noted above, this speech is a prosecution against a proposal of an unfitting law, γραφή νόμον μὴ ἐπιτήδειον θεῖναι. In this type of case, there is a clear conflict between laws and so it makes sense to talk of one law gaining power at the expense of another. One might argue that a special appeal to a particular quality of power is unnecessary to explain it.¹³⁹ But this trope extends to other types of cases as well. Acquittal is often associated by the prosecution with making laws *akuroi*.¹⁴⁰ The opening of Demosthenes' *Against Polykles* clearly raises the stakes: the case is not just about private matters or public duties, but in fact it also “concerns the laws, whether they are powerful (*kurioi*) or not” (περὶ τῶν νόμων, πόττερα κύριοί εἰσιν ἢ οὐ, 50.1).¹⁴¹ The charge revolves around Polykles' alleged refusal to complete a liturgy, forcing Apollodoros to extend his own tenure in the position.¹⁴² In this case, it is not a new law clearly contradicting an old law that causes the loss of power. Instead, the defendant's actions are able to render the laws no longer *kurioi*. A law is not absolutely powerful in itself, but must be reenacted in the courts to remain in power. Otherwise, it may become *akuros*.

The laws, though, are not the only things described as powerful in the court. In order to challenge or share the power of law, other actors must themselves be powerful, or at least

¹³⁹ For the procedure of creating new laws in the fourth century, including the necessary repeal of repugnant laws, see Canevaro 2013.

¹⁴⁰ e.g. [D.] 25.37, 59.112.

¹⁴¹ Translation of D. 50 is from Bers 2003 with modifications.

¹⁴² Whether the actual charge is of shirking his trierarch duties or a suit for damages incurred by Apollodoros is unclear.

potentially powerful. As discussed above, citizens are inherently *kurioi*. Their power is not limited to the *oikos* but extends into the public realm. These powerful individuals are the source of potential conflict in the legal system. The prosecutor typically attempts to divide Athenian citizens into the defendant and his cronies, on the one side, and the jury, on the other, with which he aligns himself. The jury, in so far as it is the *demos*, is also associated with the laws, since they are passed by the *demos* in its role as the Assembly, but their relationship is more complex. Thus, we have the laws, the defendant, and the jury as power players in the court room. Since we have already seen the ways in which laws are powerful, I turn now to descriptions of the jury.

I take the jury as coextensive with the *demos* as a whole, although the citizens do not completely lose their individual identities.¹⁴³ The *demos* is properly *kurios* in a democracy; indeed, for the people to be *kurios* is the most basic definition of democracy.¹⁴⁴ Thus, the jurors are also referred to as *kurioi*. Speeches often address the jury directly, using the second-person plural pronoun and reminding them of their power (e.g. ὑμεῖς κύριοι γέγονατε, Is. 2.47).¹⁴⁵ Occasionally, the jury is reminded explicitly of its ability to act by the addition of an infinitive, just as the household *kurios* or the laws had the power to act (e.g. “When you have the power to reward and, conversely, to punish...” ὑμῶν... τῶν καὶ τιμῆσαι κυρίων ὄντων καὶ τοῦναντίον κολάσαι, D. 19.177). That a power relationship is indicated by the adjective *kurios* can also be

¹⁴³ Cf. Ober, who sees the Assembly and jury as both ideologically identical with the *demos* (1996: 117-119). Wolpert 2003 also argues that the use of direct address for the jury in instances where they could not have possibly participated in the events mentioned creates a timeless *demos* of which they are part. *Contra* Hansen 1989a and 1991: 154-155, who has argued that the jury court, while representative of, was not ‘identical’ with the *demos*, in the same way he views the Assembly was.

¹⁴⁴ *Ho demos kurios* as democracy itself: the result of Solon’s most democratic reforms, [Arist.] *Ath. Pol.* 9.1; when democracy is reinstated after the Thirty, [Arist.] *Ath. Pol.* 41.1; the defining feature when compared to other types of constitutions, Arist. *Pol.* 1278b10; in contrast to Sparta, D. 20.107. For modern interpretations of the meaning of δημοκρατία, see Sealey 1978, Raaflaub 1998, Ober 2008.

¹⁴⁵ Cf. D. 19.71, 21.57.

seen in its pairing with the objective genitive (e.g. “you, the many, powerful over everything...” ὑμῖν τοῖς πολλοῖς καὶ πάντων κυρίοις, D. 19.341).¹⁴⁶ Since the jury is the *demos*, they are already entitled to be empowered. Their particular position of power over the current vote adds to the fact that they are *kurioi*.

The insistence on each person’s responsibility, though, keeps sight of the individual and his discrete power within the group. While urging the jury to think about the consequences of acquitting Timarchos, who has been accused of illegally exercising citizen rights, Aeschines says,

Τίνα δ’ ἔχων ἕκαστος ὑμῶν γνώμην ἐπάνεισιν οἴκαδε ἐκ τοῦ δικαστηρίου;... Τί οὖν δὴ λέξετε οἱ τῆς ψήφου νυνὶ γεγονότες κύριοι, ὅταν οἱ ὑμέτεροι παῖδες ὑμᾶς ἔρωνται εἰ καταδικάσατε ἢ ἀπεψηφίσασθε; (Aeschin. 1.186-187)

What feeling will each of you have as he goes home from court? So what are you going to say, you who have power (*kurioi*) over the vote, when your sons ask you whether you voted for condemnation or acquittal?

While the final decision is that of the jury as a whole, it is the individuals that are tallied in the total. By asking ‘each’ person to consider his children, Aeschines zeroes in on the personal level.¹⁴⁷ These individuals are the people who are *kurioi* over the vote. The jury as a whole is powerful, but it is also constituted by powerful individuals. Importantly, the jury whether as an empowered whole or as empowered individuals is not presented as in conflict with the laws being *kurioi*. One does not challenge the power of the other. Instead, the jury is seen as key to keeping the laws *kurioi*.

The defendant and his associates, too, are portrayed as at least attempting to be *kurios*. While many defendants are citizens, and so should be *kurios*, they attempt to extend their power to an inappropriate level. The prosecutor is at pains to show that by gaining excessive power

¹⁴⁶ See also D. 20.5.

¹⁴⁷ See also e.g. [D.] 25.98-101, 59.110-111.

these defendants and their associates have used and will continue to use it for ill. They disturb the equilibrium of the system. Because their power comes at the expense of others these defendants, unlike the laws and the jury, should not be *kurios*. Aristokrates, for example, is indicted for his decree to make the person of Charidemos inviolable. Charidemos was a foreign mercenary leader who was granted citizenship and other honors by the Athenian people, but allegedly did not prove to be a true benefactor to Athens. Demosthenes sets out to prove that Aristokrates' decree was unconstitutional and undeserved by Charidemos. Since he is enfranchised, Charidemos has a claim to being *kurios* but Demosthenes aims to show that he is unworthy of this power, and that his status as powerful is a detriment to the city. Among other things, Charidemos has taken to acting as if part of the countryside belongs to him and has required that duties be controlled by his own custom houses, giving them power over taxes (τοὺς δεκατηλόγους ἀξιῶν τοὺς αὐτοῦ τῶν τελῶν κυρίου, 23.177). He is also accused by Demosthenes of generally misusing his power. Demosthenes tells the jury,

ἀλλ' ὦν, ὅσαχού κύριος γέγονεν τοῦ πράττειν ὅ τι βούλεται, πανταχοῦ κακῶς ἐπιχειρῶν ἡμᾶς ποιεῖν φαίνεται, τούτων πολὺ μᾶλλον ὀργίζεσθαι προσήκει. (23.184-185)

You have far better cause to resent those efforts to do you harm, which we know him to be making in every place where he has won the power (*kurios*) of doing whatever he wishes (*ho ti bouletai*).

Undeserving of both the positive freedom of and the power befitting a citizen, Charidemos has abused the privilege by using it against the state that has bestowed it upon him. Since Demosthenes claims he acts badly wherever he has become *kurios*, we must understand power as a precondition for effective harm. He does “whatever he wishes” with negative results. When unsuitable people or things are *kurios*, it is harmful to the city as a whole and its citizens.

Allowing the wrong men to become *kurios* is a dangerous business, then. Beyond simply

doing harmful things to the state, a defendant's misuse of power can actively disempower the laws and the people of Athens with stark consequences. To return to Demosthenes' prosecution of Timokrates for an unfitting law, he claims that the proposed law is not just contrary to the laws, but actually endangers the jury's power:

Τιμοκράτης τοίνυν ἐν δημοκρατουμένῃ τῇ πόλει νομοθετῶν τὴν ἐκ τῆς ὀλιγαρχίας ἀδικίαν εἰς τὸν αὐτοῦ νόμον μετήνεγκεν, καὶ περὶ τῶν παρεληλυθότων αὐτὸν κυριώτερον τῶν καταγνόντων δικαστῶν ἠξίωσε ποιῆσαι. (D. 24.76)

Timokrates however, legislating in a democratically governed city, has introduced into his law the characteristic iniquity of oligarchy; and in dealing with past transactions has presumed himself more powerful (*kuriōteron*) than the convicting jury.

He is not only contravening law, but he is puffing himself up with power at the expense of the jury and so acting oligarchic. To be sure, as a rhetorical ploy, Demosthenes is playing the defendant against the jury. The terms of the opposition, though, are terms of power. The author characterizes oligarchy as a constitution where each person has the power (*kurios*) to undo the past and arrange the future to his liking (ἕκαστος καὶ τὰ πεπραγμένα λύσαι καὶ περὶ τῶν μελλόντων ἂν αὐτῷ δοκῆ προστάξει κύριός ἐστιν, 76). In a democracy, by contrast, the laws properly determine the course of future events. Even here, the ideal conflation of the jury and the law still holds: note that Timokrates erred in assigning himself more power than the jurors, who presumably judge according to the law. Timokrates has placed himself above the laws and above the jurors. In doing so, his actions threaten other citizens' power, which is basic to them as private and public individuals. Moreover, the threat to the power of the jury's decisions is subversive of democracy. Demosthenes directly correlates the dissolution of democracy and the jury's loss of power (τὰ δεδικασμέν' ἄκυρα ποιεῖν...δήμου κατάλυσις, 152) and further asserts that the overthrow of democracy in 411 was accomplished through

abolishing the γραφή παρανόμων and so dispossessing the jury of its power (154).¹⁴⁸ The stakes are indeed high. While we have seen that the laws and the jury are called *kurios* with no apparent conflict, the defendant's power does not coexist harmoniously with the appropriate *kurioi*.

Aeschines uses the transferal of *kurieia* from the *oikos* to the polis in an explicit analogy to show how a bad citizen misuses his power, further connecting the dual aspect of the power designated by *kurios*. His *Against Timarchos* is a tour de force attacking Timarchos' character and his fitness to participate fully as a citizen in Athens. The trial is a δοκιμασία τῶν ῥητόρων, scrutiny of rhetors, and revolves around Timarchos' alleged prostitution, which would render him ineligible to exercise certain citizen rights. Aeschines does not hesitate to include various other allegations of vice and improper behavior. Timarchos' mismanagement of his inheritance, a prosecutable offense in itself, is among these other wrongs.¹⁴⁹ Aeschines summarizes his version of the events: Timarchos' father died while he was underage, and so after that time he and his estate had guardians (τῶν ἐπιτρόπων, 103), but once he came of age and was a full citizen, he became *kurios* of his property and promptly made it disappear (κύριος ἐγένετο τῆς οὐσίας... τὴν τε οὐσίαν ἠφάνισε, 103). Having established Timarchos as *kurios*, the proper status for a citizen, and having argued for his abuse thereof through wasting his estate, Aeschines can count Timarchos as responsible for his actions. Aeschines then carries the function and connotations of being *kurios* into the public sphere:

Οὐ τοίνυν μόνον τὰ πατρῶα κατεδήδοκεν, ἀλλὰ καὶ τὰ κοινὰ τὰ ὑμέτερα, ὅσων πώποτε κύριος γέγονεν. (Aeschin. 1.106)

¹⁴⁸ Cf. Thucydides account of the Assembly turning over power to the Four Hundred, where he also specifies that they dispensed with the charge against illegal proposals (8.67).

¹⁴⁹ While the mismanagement of his inheritance often takes a back seat to the charge of prostitution, it is central to his conviction (Fisher 2001: 6).

It is not only his inheritance he has consumed, but also your common possessions, all those over which he has become powerful (*kurios*).

Just as he had power over his patrimony (τῆς οὐσίας in the objective genitive), so too does he have power over the things of the state (ἔσων again in the genitive).¹⁵⁰ What parts of the state has he become *kurios* over? The list includes offices by lot,¹⁵¹ offices by election,¹⁵² and juridical activity.¹⁵³ Aeschines also implies that acquitting Timarchos will allow him to continue his activities in the Assembly (112), indicating that participation in the Assembly was logically included under the rubric of the κοινά one might be *kurios* over. From this list, one can see that regular citizen activity in various arms of the civic and legal systems is the sort of thing a citizen can exercise power in, or over. Individual citizens are *kurios* over various public activities just as they are *kurios* over their household or patrimony. In the case of errant citizens, they are characterized as misusing this feature of citizenship.

The misuse of power leads to conflicts between claimants to *kurieia*, which include citizens and laws. Due to the precarious nature of power, something or someone that is *kurios* is liable to become *akuros* in these struggles. Although each party should be able to be *kurios* simultaneously, certain actions create situations where the *kurieia* of one or more of the parties is endangered. This fear may be seen in *Against Leptines*, where Demosthenes argues that through Leptines' law, which prohibits exemptions from liturgies, Leptines is not only stating that those who currently have exemptions are unworthy of the gift, which may be true, but also taking away from the people the ability to bestow gifts in the future. Demosthenes contends that Leptines could not possibly claim that just as he thought the ones who have the gifts are unworthy:

¹⁵⁰ Fisher 2001: ad loc. notes the transition from private to public actions connected by the language of consumption.

¹⁵¹ Auditor, 107; magistrate, 107-108; member of the council, 109-112.

¹⁵² Mercenary paymaster, 113.

¹⁵³ Bringing a public suit, 114.

οὕτω καὶ τὸν δῆμον ἀνάξιον ἡγεῖτο κύριον εἶναι τοῦ δοῦναι, ἐάν τω βούληται.
(20.2-3)

so he thought that the people do not deserve to have the power (*kurion*) to grant them to whomever they wish (*tōi boulētai*).¹⁵⁴

Demosthenes implies that Leptines' law in effect makes the people *akuros* over what it should be *kurios* over. It limits the *demos*' ability to do "whatever it wishes" with regards to granting gifts. Leptines' law is based on the assumption that the *demos* will undoubtedly err and so give exemptions to undeserving parties. For democracy, though, the loss of the *demos*' power would be a more dire consequence than the cost of a few misguided gifts of exemption. Demosthenes goes on to claim that taking away the ability to grant this particular gift creates an unsettling precedent, whereby all the rights of the people may be stripped, since at any time they may make an error in administration of their power. He views the people becoming completely *akuros* as far more dangerous to the workings of democracy.

The anxiety about loss of power is also exploited in the opening of Demosthenes' *Against Timokrates*. As we saw earlier, Timokrates' new law jeopardizes the power of the jury. If the defendant's law becomes ratified and empowered, *kurios*, it will be detrimental to the common good of the city (24.1). The greatest (μέγιστον) consequence is that the new law, as it stands:

τὰ δικαστήρια ταῦτ' ἄκυρα ποιεῖ τῶν προστιμημάτων τῶν ἐπὶ τοῖς ἀδικήμασιν ἐκ τῶν νόμων ὠρισμένων. (2)

makes the courts lose their power (*akura*) over the additional penalties attached by the laws to transgressions.

Quite literally, his law threatens to make the courts un-powerful, *akura*, over a specific realm. If we are hesitant to understand the courts as standing in for the individuals that constitute the jury and Timokrates' law as standing in for himself, Demosthenes clarifies the conflation of those

¹⁵⁴ Translations of D. 20 from Harris 2008 with slight modifications.

elements:

... τὸ μὲν ὑμέτερον δόγμα καὶ τὴν τοῦ δικαστηρίου ψήφον καὶ τοὺς ἄλλους νόμους ἀκύρους οἶεται δεῖν εἶναι, αὐτὸν δὲ καὶ τὸν αὐτοῦ νόμον κύριον. (117)

... and therefore [Timokrates] demands that your (*humeteron*) decision, the judgment of the court, and every other statute shall be disempowered (*akurous*), and that he (*hauton*) and his law shall alone be powerful (*kurion*).

The actions of the defendants in both cases establish their own power to the detriment of the jury's and laws' power.

The power of the defendant is also an issue in suits unrelated to laws or decrees. Let us return to Demosthenes' speech against Meidias, which centers on Meidias' physical assault on Demosthenes at the City Dionysia.¹⁵⁵ In §I, we saw how Demosthenes attacks Meidias' character by alleging he is not a true citizen, but a foreigner purchased as a child and smuggled into the citizen pool. Demosthenes elaborates on the results of Meidias' alleged usurpation of citizenship:

καὶ γὰρ τοι διὰ τοῦτο τῶν οὐ προσηκόντων ἀγαθῶν κύριος γεγονώς, καὶ πατρίδος τετυχηκώς ἢ νόμοις τῶν ἀπασῶν πόλεων μάλιστ' οἰκείσθαι δοκεῖ, οὐδέν' οἶμαι τρόπον φέρειν οὐδὲ χρῆσθαι τούτοις δύναται, ἀλλὰ τὸ τῆς φύσεως ὡς ἀληθῶς βάρβαρον καὶ θεοῖς ἐχθρὸν ἔλκει καὶ βιάζεται, καὶ φανερόν ποιεῖ τοῖς παροῦσιν ὥσπερ ἀλλοτριῖς, ὅπερ ἔστιν, αὐτὸν χρώμενον. (D. 21.150)

In fact, this is the means by which he became powerful (*kurios*) over goods to which he has no claim and acquired a country that has the best reputation for following the laws when managing its affairs. In my opinion, he finds it impossible to put up with these laws or even to follow them in any way. Instead, the truly barbarian, god-forsaken side of his nature exerts its influence through sheer force and makes it obvious that he treats the privileges he now enjoys as if they did not really belong to him—which in fact they do not.

As noted in §I, Demosthenes connects Meidias' stolen citizenship with becoming *kurios* over what does not truly belong to him. We should further note how Demosthenes charges that rather

¹⁵⁵ For a summary of the evidence on whether it was delivered or not, Harris 1989. For the view that it was delivered, Ober 1996: 86-106 *contra* MacDowell 1990.

than appreciating the opportunity granted by citizenship, Meidias has been unable to abide by the laws of the city, which betrays his foreign origin. The implication is that it is characteristic of a citizen not only to be *kurios* but also to be law-abiding. Meidias does not adhere to the law code and thus his abuse of power can affect his victims as well as the overall power structure in the city. Besides destabilizing the city and the democratic system by decreasing the power of the jury and laws, the accused is portrayed as increasing the power of other undesirable knaves. Meidias' attack on Demosthenes therefore has implications for the rest of the citizens. Just as Meidias hates him, other people may hate members of the jury:

ἀρ' οὖν συγχωρήσαιτ' ἂν τοῦτον, ὅστις ἐστὶν ἕκαστος ὁ μισῶν, κύριον γενέσθαι τοῦ ταῦθ' ἄπερ οὗτος ἐμὲ ὑμῶν ἕκαστον ποιῆσαι; (21.220)

Would you then allow this man, whoever it is that hates you, to have power (*kurion*) to do to each one of you the very things this man did to me?

Allowing Meidias to get away with assault empowers others to commit hubris.

The use of *kurios* and *akuros* to describe the laws, defendant, and jury shows that the courts are an arena for power and its contestation. Comparing these uses to those within the framework of the *kurios* institution in the household, we see similarities in the ideology of power. First, *kurieia* can unproblematically indicate power over free people, just as a household *kurios* controls the free individuals in his household. Second, since various entities can also be simultaneously *kurios*, the power indicated by *kurieia* does not seem to be absolute. Finally, and most strikingly, the claims to power are not stable: just as a citizen must always be careful to secure his status as *kurios* in the private sphere, so too in public is a *kurios*, whether law, citizen, or *demos*, liable to become *akuros* if another infringes on his or its power.

III. Power Resolutions

While the law and jury versus the defendant and his ilk provide the main dichotomy presented by the prosecution, another potential power conflict is also in play. The laws and the jury are presented by the speakers as a harmonious unit to which the defendant should be subordinate. As citizens, though, the defendant and jury member are on a similar footing. Is not the jury, and the *demos* too, then subordinate to the laws? This would seem to be required by the conscious self-description of Athens as a particularly law-abiding city. The apparently far-reaching and unrestricted arm of the law has led some scholars to claim that Athens lacked true freedom, since there was no area in which the law is prevented from interfering. If this is the case, citizens' freedom is at jeopardy. They are not actually free, neither free from external rule nor free to act as they wish in the public and private spheres. Instead, at best they have some negative freedom in private life and some positive freedom in public life.¹⁵⁶

This would not only be problematic for my thesis that freedom and power are basic characteristics of citizenship but also point to a paradox in the Athenians' self-perception. Rather than looking at this issue in the terms of freedom, however, I will show it is more helpful to continue looking at it as an issue of power. Instead of the power of the laws versus individual freedom, I will look at the power of the laws and the power of the individual. The tension between power roles of the jury, as *demos*, and the laws could be more contentious than that between undesirable actors and the law. That is, while the temporary restriction of the freedom of an errant citizen could be rationalized as protecting the power of the *demos* and laws, oppression of the *demos* itself seems at cross-purposes to the concept of democracy. Clearly, the Athenians were not anarchists, despite what their critics claimed, and so subordination to the

¹⁵⁶ As per Hansen 2010. See fuller discussion in chapter 2.

laws was a practical necessity. Still, it needed to be ideologically accounted for. If the jury is the *demos* and its constituent citizens, how can it stay empowered, which follows from its positive freedom, when it is under the power of the law? I argue that the imagined conflict between laws and the individual is not merely top-down domination infringing upon the freedom of the individual, but an instance of two sets of *kurioi* with overlapping spheres of power.

In a state constituted by its citizens, the government had not yet been separated into an abstract and potentially oppressive entity. Aristotle, along with other critics, decries the supposed lawlessness of democracy as the outcome of extreme freedom. In doing so, he implicitly creates an opposition between citizen and state. He goes as far as to imply that the democratic viewpoint sees living under a constitution as analogous to slavery (*Pol.* 1310a34-36). The antagonism between state and citizen, though, is artificial and turns on the assumed conflict between power of the government and freedom of the individual. In this model, the citizen lacks freedom from the state and the laws are the restrictive arm of the government. But if democrats viewed laws as slavery, as Aristotle contends, we would expect the same texts that revere freedom to reveal a disdain for the law. On the contrary, democrats constantly affirm their law-abiding nature. The state and the citizen are not perceived as being at odds, nor could they be. Ideologically, the citizen must be the source of power for the state, even if one wishes to relegate the citizen to a lesser importance than the polis as a whole. The primary building block of the democratic constitution is the free, empowered citizen.

The attempt to reconcile the power of the citizen and the power of the laws rests on the reasoning about the source of their power. To begin with, the jury, in so far as it is a body constituted by law, is also empowered by the laws. Demosthenes claims, addressing a defendant, “Laws which are powerful (*kurioi*) make these men powerful (*kurious*) over everything” (οἱ μὲν

ὄντες ἡμῖν κύριοι νόμοι τουτουσὶ ποιούσι κυρίους ἀπάντων, 24.118). The laws give the jury, these individuals, power. To be sure, the laws are what created the institution of the *dikasteria*, regulating its make-up and so forth. In this way, the laws have formally made these citizens play a particular role with particular powers. This passage, though, appears directly after Demosthenes has accused Timokrates of attempting to make himself and his law powerful at the expense of disempowering everyone else (24.117, see above). In this context, the ‘power’ referred to is not simply dikastic or legal power, but something a bit more general. Still, the power vector thus far seems unidirectional: the laws which are powerful imbue the *demos* with power.

The same applies to citizens as individuals, independent of the jury. While condemning Meidias for assaulting him, Demosthenes asks rhetorically, “What power does the law grant you even if you are the archon himself?” (τίνος ἐκ τῶν νόμων εἶ κύριος, καὶ ὁ ἄρχων αὐτός; 21.179). The individual citizen is *kurios* and the laws appear to be the source of his power. Demosthenes answers his own question using infinitives to show what the citizen is and is not empowered to do (“[The power] to tell the attendants to remove me, not to strike me yourself.” τοῖς ὑπηρέταις ἐξείργειν εἰπεῖν, οὐκ αὐτὸς τύπτειν, 21.179). In this passage the laws give power, but also deny power. If they do not give the power to strike, by inference they prohibit one from striking. This passage makes clear that the laws make citizens powerful not only *qua* jurors, but also *qua* citizens.

If the laws are the source of one’s power, it is personally beneficial for one to uphold the law. Thus, focusing on the laws as the source of power is a persuasive tactic in forensic speeches. If the relation were in fact unidirectional, though, the law would have ultimate power, in so far as it grants power to citizens. Therefore, without the laws, citizens would not be *kurios*.

The laws would then determine the freedom and power of the citizen, rather than the free, powerful citizen being the basis of the state. This would be consistent with democracy's focus on law, but would have severe consequences for its ideology of freedom that begins with the citizen. The solution is to ideologically refocus the source of the power of the laws. An example of how this was resolved is provided by Aeschines in an appeal to the jurors to convict Timarchos:

Τούτους μέντοι τοὺς νόμους εἶναι χρησίμους ἢ ἀχρήστους ἐφ' ὑμῖν ἐστίν· ἐὰν μὲν γὰρ κολάζητε τοὺς ἀδικούντας, ἔσονται ὑμῖν οἱ νόμοι καλοὶ καὶ κύριοι, ἐὰν δ' ἀφιήτε, καλοὶ μὲν, κύριοι δὲ οὐκέτι. (Aeschin. 1.36)¹⁵⁷

But it is in your hands whether these laws are useful or useless. If you punish those who do wrong, the laws will be excellent and have power (*kurioi*), but if you let them lapse, they will be fine, but powerful (*kurioi*) no more.

We have seen how the power of the laws is at stake in the law courts. Here, the prosecutor places the onus for the law's survival on the people. The laws will not be *kurioi* unless the people uphold them. While the laws may bestow power on the *demos*, the *demos* generates the power of the laws and protects them from losing their power. Citizens, dependent on the laws for their own power, must reestablish the laws' power. This creates a closed circuit of power between citizens and the laws.

A common trope in prosecution speeches is the appeal to the jury to uphold the law. Indeed, the jury had leeway in its rulings.¹⁵⁸ The prosecutor had to prove not only that the defendant was guilty of breaking the law, but also that the jury should vote in accordance with the laws. As a consequence, much rhetoric is applied to the reasons why upholding the law is important for each member of the jury. As mentioned earlier, the greatness of the state is attributed to the laws. The jury's decision is framed in turn as protecting the laws.

¹⁵⁷ Also see §177.

¹⁵⁸ For the view that the law was not binding (i.e. the law and society view), Todd 1993: 58-60.

Demosthenes gives us an extended and explicit version of this argument in *Against*

Meidias. I give the entire text of the relevant passage here:

μηδαμῶς, ὦ ἄνδρες δικασταί, μὴ προδώτε μήτ' ἐμὲ μήθ' ὑμᾶς αὐτοὺς μήτε τοὺς νόμους. καὶ γὰρ αὐτὸ τοῦτ' εἰ θέλοιτε σκοπεῖν καὶ ζητεῖν, τῷ ποτ' εἰσὶν ὑμῶν οἱ ἀεὶ δικάζοντες ἰσχυροὶ καὶ κύριοι τῶν ἐν τῇ πόλει πάντων, ἐὰν τε διακοσίους ἐὰν τε χιλίους ἐὰν θ' ὅποσουσοῦν ἡ πόλις καθίσῃ, οὔτε τῷ μεθ' ὄπλων εἶναι συντεταγμένοι μόνοι τῶν ἄλλων πολιτῶν, εὗροιστ' ἄν, οὔτε τῷ τὰ σώματ' ἄριστ' ἔχειν καὶ μάλιστ' ἰσχύειν [τοὺς δικάζοντας], οὔτε τῷ τὴν ἡλικίαν εἶναι νεώτατοι, οὔτε τῶν τοιούτων οὐδενί, ἀλλὰ τῷ τοὺς νόμους ἰσχύειν. ἡ δὲ τῶν νόμων ἰσχὺς τίς ἐστίν; ἄρ' ἐὰν τις ὑμῶν ἀδικούμενος ἀνακράγῃ, προσδραμοῦνται καὶ παρέσσονται βοηθοῦντες; οὐ· γράμματα γὰρ γεγραμμέν' ἐστί, καὶ οὐχὶ δύναιντ' ἂν τοῦτο ποιῆσαι. τίς οὖν ἡ δύναμις αὐτῶν ἐστίν; ὑμεῖς ἐὰν βεβαιώτ' αὐτοὺς καὶ παρέχητε κυρίουσ ἀεὶ τῷ δεομένῳ. οὐκοῦν οἱ νόμοι θ' ὑμῖν εἰσὶν ἰσχυροὶ καὶ ὑμεῖς τοῖς νόμοις. (21.222-224)

No, men of the court, do not betray me, yourselves, or the laws. If you should be willing to consider and examine what makes those of you who judge cases at any time strong and gives them power (*kurioi*) over all the city's affairs, whether the city appoints a hundred, or a thousand, or however many, you would discover it is not because you judges are the only citizens who are drawn up in arms, nor because you are in the best physical shape and are the strongest, nor because you are the youngest in age, or anything like this, but because the laws are strong. And what makes the law strong? Will they come running and be there to help someone if he is wronged and cries out? No: the laws are only written letters, and they could not do this. What then gives them strength? You do if you confirm them and make them powerful (*kurios*) each time someone asks. So, the laws are strong through you, and you through the laws.

Demosthenes conflates the laws and the jurors to present them as the victims in the suit, since they are both at risk of losing power. Self-preservation entails that each party, the laws and the people, support the other. Demosthenes uses many words for power throughout these sections, but the word *kurios* specifically at the beginning and the end. What makes the jurors *kurioi*? The answer is the laws, which in turn gain their strength (*ισχύς*, *δύναμις*) when those same people make them *kurioi*. Although this particular passage is about the jury as *demos*, I think we can also use the same reasoning to include the individual citizen in this account.

Power, then, is neither unidirectional nor exclusive to either the laws or the people. The laws empower the people who empower the laws. This rests on a conception of power as both

shareable and constantly negotiated through action. Each citizen, then, has selfish reasons to uphold the law, whether in his own private law-abiding actions or in his actions in the courts, Assembly, or any other public forum: undercutting the law is undercutting one's own power.¹⁵⁹ Power, like freedom, is integral to one's status as a citizen. Acting in accordance with the law is thus also integral to citizenship and not in conflict with it. Ultimately, the state empowers the citizen, on whom it depends for its own power, and vice versa, in a feedback loop that permits the democratic citizen to both be law-abiding and powerfully free.

As we have seen, the struggles for and affirmations of power are set in the law courts. By using the word *kurios* as a marker for power, and *akuros* for lack thereof, I have tracked the negotiation of power within forensic speeches and have shown that power in the courts displays many of the same facets as *kurieia* in the private sphere. One notable feature of power is its performative nature: whoever acts *kurios*, is *kurios*. These performances of power are key to the court system, where defendants who have acted inordinately powerful threaten the power of other *kurioi*, which are the laws and the other citizens. Since democratic citizens are naturally *kurios* and are the basis of the civic and legal systems, the prosecution appeals to the jury to punish the criminal and uphold the laws in order to keep their own power intact. Thus, there is no inconsistency in portraying democracy as both the government most obedient to the law and the one where citizens have the most freedom and power.

¹⁵⁹ For a different view of the reconciliation between obligations and freedom, see Liddel 2007: ch. 4.

Chapter 4: *Against Neaira*, a Case Study

As we have seen, the law courts provide a venue where personal and political power struggles are played out in front of the *demos*. The jury is the idealized *demos*, which is supposed to work in harmony with the laws. Together, they interdependently strengthen each other. Criminals, instead, destroy the basic social contract of society by weakening the power of the laws and in turn the power of citizenship. This struggle is the backdrop to all cases, but cases that directly deal with citizenship project it into the forefront. Included in the Demosthenic corpus, but most likely written by the speaker, Apollodoros, *Against Neaira* (59) is concerned with legitimate versus usurped citizenship. The question of who is allowed to do what is central to the case. In this chapter, I use the ideas of citizenship established in chapters 2 and 3 to trace the conflict between appropriate and inappropriate freedom and power in a close reading of this text. The severity of a γραφή ξενίας, or illegal claim to citizenship, becomes apparent when we take into account the precarious nature of freedom and power along with their essential relationship to citizenship. The ability to act, circumscribed by the phrase “whatever one wishes,” appears with both positive and negative connotations, and the terms *kurios* and *akuros* play a role in defining power relations. We shall see the imagined dangers of allowing someone who is not a citizen to wield the power to do “whatever they wish” illegitimately. By employing an interpretation based on questions of freedom and power, I will clarify both the nature of citizenship and the consequences of the defendant’s misuse of it.

Composed around 341, *Against Neaira* is the only extant prosecution speech for a γραφή ξενίας.¹⁶⁰ Theomnestos is the official prosecutor, but after a short introduction (1-15) he yields

¹⁶⁰ For [D.] 59 as a γραφή ξενίας, see Todd 1993: 208, Hamel 2003: 135. *Contra* Kapparis 1999 on 16 and Kapparis 2005 who argues that it is a suit for illegal marriage to a citizen, stemming from an additional law from the fourth-century further distinguishing metics from

the platform to Apollodoros, who is both his father-in-law and his brother-in-law. The speech is attributed to Demosthenes, but his authorship has been doubted since antiquity. Following general consensus, I attribute the speech to Apollodoros.¹⁶¹ Neaira, a metic and courtesan, is alleged to be married to Stephanos, an Athenian. While the Perikles' double descent requirement for citizenship law in 451/0 prohibited offspring from mixed marriages from being citizens, additional laws were introduced in the fourth century to further distinguish citizens from aliens. One such law prevented mixed marriages (16, 52).¹⁶² Marriage to a citizen became exclusively a citizen privilege. Much of the speech is dedicated to establishing that Neaira is a foreigner through her uncitizen-like behavior. Since alien-citizen cohabitation was not illegal in itself, the distinction between wife and concubine becomes important. The prosecution's proof of illegal marriage mostly rests on Neaira's alleged daughter, Phano, who Stephanos claims is from a previous lawful marriage. Phano has enjoyed the benefits of citizenship such as being married off by Stephanos to Athenian men and participating in religious roles reserved for citizens. The legitimacy of offspring is a privilege of citizen marriage and appropriating that right is tantamount to pretending to be a lawfully wedded wife and, thus, a citizen. Thus, although the charge is technically against Neaira, Stephanos and Phano often figure in the case as unofficial co-defendants.

citizens. He cites Harrison, who also takes it as arising out of a new law regarding marriage (1968: 24-29). He also cites MacDowell, who does include it in his section on marriage law but ascribes it to part of the Periklean citizenship law (1978: 87). Since MacDowell defines γρᾶφῆ ξενίας simply as "masquerading as a citizen" (70), I think the charge could in fact apply to Neaira, who would be doing just that. Even if we allow that the law is distinct and thus the charge is not technically a γρᾶφῆ ξενίας, the nature of the offense is still regarding an alien usurping a citizen's privilege, namely marrying a citizen. Either way the case then revolves around citizen versus alien abilities.

¹⁶¹ For a review of the internal evidence, see Kapparis 1999: 48-56.

¹⁶² Kapparis 1999: ad loc. considers both of these sections authentic parts of the same fourth-century law.

Against Neaira offers a wealth of information about Athenian life that is not otherwise well-attested. It is often cited for its usefulness for understanding issues of gender, sex work, the enfranchisement process, contemporary politics, and the Anthesteria festival. As Konstantinos Kapparis puts it, “there is hardly any modern study of classical Athens which does not draw information from this text, since the speech substantially enriches our knowledge of Athenian life, society, religion, law, constitution and institutions” (1999: 2). Since it is such a rich source of details about Athenian life and ideologies, I believe *Against Neaira* is a suitable case study for the analysis of freedom and power. These two aspects of Athenian ideology have not been previously explored in the speech.

A cross-section of both private and public concerns are also represented in *Against Neaira*. This feature of the speech is particularly useful to my study. Cynthia Patterson has shown that although the speech may be politically motivated, the strands of public and private are so interwoven in Athens that, although the charge is technically a public one about citizenship, Apollodoros’ attack centers on what we may consider private concerns (1994). The *oikos* is the basis not only of women’s identity, but also men’s. The household both “allowed and constructed an Athenian’s public identity and participation” (200). Thus, citizenship extends outward from the unit of the family. While my focus is on the individual experience of citizenship, Patterson prefers to steer away from the “individualistic bias in modern perceptions of Athenian society” and instead notes how the status of the *oikos* as a whole determined the fate of the people within it (200). Nonetheless, even if one must sink or swim with the family, the individual still experiences his or her own freedom and power to succeed or fail within that structure. Thus, while I will look at the individual, Patterson’s view of the role of the *oikos* in matters of citizenship is important to my study. The intersection of the public and private

spheres in *Against Neaira* is typical of the blurred distinction between the two realms in Athens. The parameters and ideals of citizenship, including the freedom and power to do whatever one wishes, straddle both domains.

Apollodoros' speech presents ideologically appropriate and inappropriate *kurioi* throughout as a means to measure the behaviors of the defendants and the prosecution. While the jurors are *kurioi* since they are citizens, as are the laws engendered by them, Neaira as a paradigmatic Other (female, foreign, former slave, sex-worker) should obviously not be *kuria*. More than simply intending to arouse disgust or contempt at a courtesan acting as a citizen wife, the prosecution also tries to exploit the jury's prejudice in order to arouse fear. We shall see that since power is negotiable, Neaira is presented as a threat to the whole community because she assumes power and thus the ability to pursue goals for herself and her children.¹⁶³ Stephanos, an empowered citizen himself, is shown deploying his power to undermine citizenship. Ultimately, citizenship is what makes citizens powerful. In the zero-sum game of power, the prosecution claims that, as a consequence, the *demos* becomes disempowered and others like Neaira become empowered.

The role of power and citizenship is a clear motif throughout the narrative. In Athenian ideology these two elements should be linked, and when the link is broken, the system deteriorates, accompanied by consequences for the individual. In §I, I will show that citizens and laws are portrayed as rightfully *kurios* throughout *Against Neaira* and link the term *kurios* to the free range of action described by the phrase to do "whatever one wishes." I will then demonstrate in §II that Apollodoros treats Neaira's metic status and courtesan livelihood as key

¹⁶³ Cf. Bakewell 2008/2009.

features that should indicate a lack of power. Finally, §III examines how power accretes to Neaira's actions and what destabilizing consequences it could precipitate.

I. Who Should Be *Kurios*?

From the very beginning, Apollodoros establishes citizens as inherently powerful using the term *kurios*. As we have seen in chapter 3, the autonomy intrinsic to freedom can be expressed by the adjective *kurios* and its lack by *akuros*, with individual citizens and the *demos* as a whole seen as normally *kurios*. The prosecution establish themselves as good members of the community by claiming that they empower citizens. Conversely, they also claim that the defense undermines that very power. The focus on being *kurios* as an early and continual factor in distinguishing between the litigants points to the importance of power in the work as a whole.

The opening speaker and prosecutor of record, Theomnestos, begins by describing Stephanos' wrongs against Apollodoros, Theomnestos' in-law. Although the charge is technically against Neaira, it is her affiliation with Stephanos that makes her the target. Establishing vengeance as a clear motive for a suit is par for the course, since it protects the prosecutor from suspicion of sycophancy. The prosecution also uses it as an opportunity to bias the jury against the defendant. Theomnestos claims that Stephanos has previously attacked Apollodoros frivolously. Apollodoros had proposed to allow the Assembly to vote on whether to add the state's surplus to the theoric or stratiotic fund. In response, Stephanos brought a *γραφὴ παρανόμων*, an indictment for an illegal decree, against Apollodoros since there was an extant law which required that any surplus should automatically go to military expenses.¹⁶⁴

¹⁶⁴ Our knowledge of the details of Apollodoros' actual proposal and the relevant laws is fairly confused. For a summary of issues and scholarship, see Kapparis 1999: ad loc.

In addition to making Stephanos look litigious, Theomnestos also attempts to improve the prosecutions standing in the eyes of the jury. He defends Apollodoros and his proposition, explaining his actions thus:

ἔγραψε ψήφισμα ἐν τῇ βουλῇ Ἀπολλόδωρος βουλευὼν καὶ ἐξήνεγκε προβούλευμα εἰς τὸν δῆμον, λέγον διαχειροτονῆσαι τὸν δῆμον... κύριον δ' ἡγούμενος δεῖν τὸν δῆμον εἶναι περὶ τῶν αὐτοῦ ὅ τι ἂν βούληται πράξει, ὁμομοκῶς δὲ τὰ βέλτιστα βουλευέσθαι τῷ δήμῳ τῷ Ἀθηναίων. (4)

Apollodoros as councillor drafted a decree in the Council and brought a resolution before the Assembly proposing that the people decide by show of hands... he thought that the people should have the power (*kurion*) to do what it wished (*ho ti an boulētai*) with its own property, and he had sworn to act as councillor for the best interests of the Athenian people.¹⁶⁵

Theomnestos' claim is part of his *captatio benevolentiae*. Since this is meant to garner goodwill for the prosecution, it must be to a certain degree in line with popular ideas. Unpacking Theomnestos' claims reveals two assumed premises. First, since Apollodoros' act is tacitly equated with his oath to act in the best interest of the people, for the *demos* to be empowered (*kurios*) is a good thing. Second, power is considered performative, since Apollodoros' act confirmed the people's power by putting them in a position to exercise it. Power is also associated here with the ability to do "whatever one wishes" (ὅ τι ἂν βούληται).

Theomnestos' own decision to charge Neaira, although based on personal revenge, is also supposedly meant to empower the people. Theomnestos describes how his initial reluctance to bring the case was overcome by combined public and private concerns:

παρακαλούντων δὴ με ἀπάντων, ἰδίᾳ προσιόντων μοι, ἐπὶ τιμωρίαν τρέπεσθαι ὧν ἐπάθομεν ὑπ' αὐτοῦ, καὶ ὄνειδιζόντων μοι ἀνανδρότατον ἀνθρώπων εἶναι, εἰ οὕτως οἰκείως ἔχων τὰ πρὸς τούτους μὴ λήψομαι δίκην ὑπὲρ ἀδελφῆς καὶ κηδεστοῦ καὶ ἀδελφιδῶν καὶ γυναικὸς ἑμαυτοῦ, μηδὲ τὴν περιφανῶς εἰς τοὺς θεοὺς ἀσεβοῦσαν καὶ εἰς τὴν πόλιν ὑβρίζουσαν καὶ τῶν νόμων καταφρονοῦσαν τῶν ὑμετέρων εἰσαγαγῶν εἰς ὑμᾶς καὶ ἐξελέγξας τῷ λόγῳ ὡς ἀδικεῖ, κυρίου καταστήσω ὅ τι ἂν βούλησθε χρῆσθαι αὐτῇ. (12)

¹⁶⁵ All translations are based on Carey 1992 with some changes.

Since people on all sides urged me, approaching me privately, to seek revenge for what was done to us by him and condemned me as the most cowardly man alive, if though so closely related to them I failed to exact punishment for my sister, father-in-law, nieces, and wife, and by bringing before you the woman who is so blatantly committing impiety against the gods and outrage against the city and showing contempt for your laws, and by proving her guilt in my speech, make you powerful (*kurios katastēsō*) to treat her as you wish (*ho ti an boulēsthe*).

Part of the shame is from his duty to his family, the other part is from his duty to the state and the people. Theomnestos underscores how in order not to be shameful he must exact punishment on behalf of his sister and also create a situation in which the *demos*, here in its capacity as jury, can act in its rightful role as powerful to do “whatever it wishes” (ὅ τι ἂν βούλησθε). Since he is delivering a prosecution speech in the suit he has brought, he implies that he has in fact established the people as *kurios*. The range of action is here again stressed as unlimited: the people are empowered to do what they wish with the defendant. That we see the *demos* described as powerful in these passages is not surprising; rather, it is the *way* in which their power is discussed that is striking. The *demos* and its laws should be *kurios*, but they are presented as dependent on situations to confirm their power, for which the prosecution is all too happy to take credit.

Theomnestos is also, of course, extending his defense against the accusation of sycophancy. Earlier, he emphasized Stephanos’ injury to his family. In this passage, he highlights the city and its people as victims. He claims that he is not acting for his own benefit, as a sycophant might, but as an agent of his family and the state.¹⁶⁶ While this may be a rhetorical strategy to add authority to his case and hide the fact that he is an instrument of Apollodoros, it works in part because it aligns the prosecution with the jury through the use of

¹⁶⁶ Kapparis notes the use of εἰσαγαγών as especially highlighting his role as agent (1999: ad loc.).

power. Theomnestos makes it seem as if justice for his personal *oikos* is bound up with justice for the city. He claims that “everyone” condemned him as cowardly if he did not exact punishment on behalf of his family members *and* allow the jury to deal with Neaira as they wish.¹⁶⁷ Theomnestos’ power as a citizen is in harmony with the power of the rest of the citizen body and the laws. Indeed, the prosecution does well to demonstrate that their family’s public identity properly accords with the city’s expectations.

In stark contrast, the *oikos* of Stephanos and Neaira is at complete odds with the people and the city. Their misdeeds have affected Theomnestos’ family in the past and now they are affecting the whole polis. Theomnestos now clearly delineates his concern for the effect of their deeds on the *demos*. He asserts:

καὶ ὡσπερ Στέφανος οὕτωσὶ ἐμὲ ἀφηρείτο τοὺς οἰκείους παρὰ τοὺς νόμους καὶ τὰ ψηφίσματα τὰ ὑμέτερα, οὕτω καὶ ἐγὼ τοῦτον ἤκω ἐπιδείξων εἰς ὑμᾶς ξένη μὲν γυναικὶ συνοικοῦντα παρὰ τὸν νόμον, ἀλλοτρίους δὲ παῖδας εἰσαγαγόντα εἰς τε τοὺς φράτερας καὶ εἰς τοὺς δημότας, ἐγγυῶντα δὲ τὰς τῶν ἐταιρῶν θυγατέρας ὡς αὐτοῦ οὔσας, ἠσεβηκότα δ’ εἰς τοὺς θεοὺς, ἄκυρον δὲ ποιοῦντα τὸν δῆμον τῶν αὐτοῦ, ἂν τινα βούληται πολίτην ποιήσασθαι· τίς γὰρ ἂν ἔτι παρὰ τοῦ δήμου ζητήσῃε λαβεῖν δωρεάν, μετὰ πολλῶν ἀναλωμάτων καὶ πραγματείας πολίτης μέλλων ἔσεσθαι, ἐξὸν παρὰ Στεφάνου ἀπ’ ἐλάττονος ἀναλώματος, εἴ γε τὸ αὐτὸ τοῦτο γενήσεται αὐτῷ; (13)

And just as Stephanos tried to deprive me of my relatives, contrary to your laws and decrees, so I too have come before you to prove that this man is living in marriage with a foreign woman contrary to the law, that he introduced another’s children into his phratry and deme, that he gives the daughters of courtesans in marriage as though they were his own, that he has committed impiety against the gods and makes the people powerless (*poiounta... akuron*) over granting citizenship to anyone it wishes (*an tina boulētai*). For who would seek to obtain this gift from the people, when it would cost much expense and trouble to become a citizen, if he can get it from Stephanos with less expense, provided that the result for him will be exactly the same?

By emphasizing that the injury to his family violated the city’s laws and *demos*’ decrees, Theomnestos furthers the case of the prosecution as a case for the city and drives a wedge

¹⁶⁷ I agree with Carey, who sees his claim that various people urged him to prosecute is probably false (1992: ad loc.).

between the defendants and the jury before even introducing the nature of the charge against Neaira. Once he addresses the current accusation, that Neaira pretends to be a citizen, he again returns to the effect on the jury. He wishes to show that just as Stephanos earlier transgressed the jury's decrees in an attempt to harm Apollodoros, now he and Neaira are attempting even more clearly to strip the *demos* of their power (ἄκυρον ποιοῦντα) and limit their sphere of action of giving citizenship to "anyone they wish" (ἄν τινα βούληται). As usual, the jurors stand in for the whole *demos*.¹⁶⁸

A pattern thus emerges of the defendants challenging the jury's power. Theomnestos alleges that rather than strengthening the power of the people, Stephanos, through his proxy Neaira, uses his power not only for himself, but also to actively disempower the people. This serves as a foil to the prosecution's actions. Theomnestos' allegations begin at the level of Stephanos' *oikos* and expand to the public sphere: he is living with a foreigner as a wife, is acting as if their children are citizens, has wronged the gods, and, finally, has disempowered the people by granting citizenship illegitimately. At one end of the spectrum, living with an illegal wife is centered in the *oikos*, while at the other end illegal enfranchisement carries the action into the public sphere. In sum, Theomnestos claims that Stephanos has committed many wrongs against the city, just as he has committed wrongs against Theomnestos' family (14). He appeals to the jury to vote on behalf of the laws, as well as on their own behalf. The laws, jury, people, and city all become one interconnected entity with which Theomnestos allies the prosecution.

The structure of the comparative clause furthers the connection between Theomnestos and the jury: just as Stephanos has attempted to deprive Theomnestos of his relatives contrary to the law and the people's decrees, so Theomnestos has brought him into the law court. At first

¹⁶⁸ Cf. Carey 1992: ad loc.

sight, this comparison can seem awkward. Carey has suggested that the expected follow-up to the first clause might be something like “so I, too, am trying to deprive Stephanos of his loved ones,” but the plaintiff uses a milder statement to avoid creating sympathy for Neaira and Stephanos (1999: ad loc.). I do not think this is the comparison Apollodoros is getting at. While the beginnings of each clause appear parallel (Στέφανος οὕτως ἐμέ ... ἐγὼ τοῦτον), it is not simply an inversion of Stephanos and Theomnestos as subject and object, whereby we should infer an identical action (namely, the depriving of loved ones). Stephanos’ attempt to harm Theomnestos’ family was contrary to the law, just as Stephanos’ own personal life is also contrary to the law. Theomnestos has brought him to court in order to show (ἐπιδείξων) that Stephanos has been harming the city all along, too, by transgressing other laws. The comparison is instead centered on Stephanos’ injurious actions. As part of a longer run-on sentence, the loose comparison amounts to something like “Just as he has wronged me, I’ve come to show how he is wronging *you*.”

Apollodoros himself takes up the prosecution after §16. The themes of power and its proper distribution remain important throughout his arguments. During his speech, he highlights just how important citizenship is in order to justify serious treatment of those who abuse it. Part of his argument hinges on the enfranchisement process, which Neaira and Stephanos have overridden by creating citizens out of their illegitimate offspring. In a continued effort to make his cause a common one, Apollodoros calls to witness the people of Athens themselves to testify to the gravity of enfranchisement. Technically, using the actions of the Athenian people as evidence rather than procuring a statement would be a τεκμήριον, not a μαρτυρία.¹⁶⁹ By

¹⁶⁹ See Carey 1992: ad loc.

calling it a ‘testimony,’ Apollodoros implicitly converts the jurors from passive observers to active participants in the trial:

Βούλομαι τοίνυν ὑμῖν, ὦ ἄνδρες Ἀθηναῖοι, καὶ τοῦ δήμου τοῦ Ἀθηναίων μαρτυρίαν παρασχέσθαι, ὡς σπουδάζει περὶ τὰ ἱερὰ ταῦτα καὶ ὡς πολλὴν πρόνοιαν περὶ αὐτῶν πεποιήται. ὁ γὰρ δῆμος ὁ Ἀθηναίων κυριώτατος ὢν τῶν ἐν τῇ πόλει ἀπάντων, καὶ ἐξὸν αὐτῷ ποιεῖν ὅ τι ἂν βούληται, οὕτω καλὸν καὶ σεμνὸν ἡγήσατ’ εἶναι δῶρον τὸ Ἀθηναῖον γενέσθαι, ὥστε νόμους ἔθετο αὐτῷ καθ’ οὓς ποιεῖσθαι δεῖ, ἐάν τινα βούλωνται, πολίτην, οἱ νῦν προπεπηλακισμένοι εἰσὶν ὑπὸ Στεφάνου τουτουὶ καὶ τῶν οὕτω γεγαμηκότων. (88)

I now wish, men of Athens, to provide testimony from the Athenian people, to show the gravity with which it treats these rites and how much care it has devoted to them. For the Athenian people, though possessing absolute authority (*kuriōtatos*) over everything in the city and able to do whatever it wishes (*ho ti an boulētai*), believed that the grant of Athenian citizenship was such a noble and solemn gift that it imposed laws on itself defining terms on which it must admit a man as citizen, if they so wish (*tina boulōntai*), laws which have now been treated with contempt by this man Stephanos and people who marry as he has.

In this passage, Apollodoros expressly reaffirms the power of the *demos* while also explicating the strict limitations on gifts of citizenship. The language of power is central to the actions of the people, who are called *κυριώτατος*. Again, he links power with “doing whatever one wishes” (ὅ τι ἂν βούληται); they are complementary features of the *demos*. Yet, citizenship, which is what constitutes the *demos*, must be so carefully guarded that the people have chosen to add restrictions via laws, *νόμοι*, to creating new citizens. Note that he does not imply that this renders the *demos* any less *kurios* or altogether *akuros*, unlike the consequences of Stephanos’ and Neaira’s deeds. Like any other law, these have been created by and for the people, and so proceed from and assert their power rather than diminish it. Throughout the entire account, in fact, he does not distinguish “between actions of the *nomos* and the *demos*,” further integrating them (Kapparis 1999: §88). By treating enfranchisement in a cavalier fashion, the defendants have challenged the power and ability of the *demos*.

Apollodoros then examines the details of the enfranchisement process, which is safeguarded by a system of checks in the courts and assembly. First, there is a requirement that the potential citizen be a benefactor to his city (89). Next, the assembly must vote to pass the decree awarding citizenship. Then, the matter must be brought again to the assembly, with at least 6000 in attendance in order to be ratified. Apollodoros specifies that this second round of voting occurs as the citizens enter the Pnyx, before any foreigners enter (90). It is done this way

ἵνα κύριος ὢν αὐτὸς αὐτοῦ ἕκαστος σκοπῆται πρὸς αὐτὸν ὄντινα μέλλει πολίτην ποιήσεσθαι... (90)

so that each man on his own authority (*kurios*) may consider in his own mind who the man is who is going to be made citizen...

Apollodoros calls the individual *kurios* but the term here does not simply indicate free citizen status and the subsequent authority over oneself. It also denotes independence of thought. This special vote takes place before the assembly is open to spectators.¹⁷⁰ The express exclusion of foreigners underscores the need for objectivity from each citizen. The implication is that autonomous thought can be affected by outside influence. Apollodoros plays on the underlying assumption that citizens should be *kurios* in all aspects, but that this condition is unstable. Non-citizens can affect an individual's power, in this case by potentially influencing his decision. The effect of Apollodoros' digression regarding this second vote is twofold: since the citizenship requirements are so stringent, so, too, should the jurors treat this case with the utmost severity. Also, just as when they sit in assembly, in the courts too they should be unswayed by foreigners, namely Neaira.

The final step in the enfranchisement process is the possibility of a γραφή παρανόμων (90). The check imposed by the law court on the Assembly's citizenship grant was "not seen as

¹⁷⁰ Carey 1992 and Kapparis 1999: ad loc. For more on the procedure for opening an *ekklesia*, see Hansen 1985.

a limitation, but rather as an additional safeguard and the means for a more accurate expression of the true wishes of the sovereign *demos*.”¹⁷¹ The ability to bring a suit for an illegal decree is in the province of any Athenian who wishes (τῷ βουλομένῳ Ἀθηναίων 91). As I showed in chapter 2, the primary feature of a citizen is his autonomy, or the prerogative of bringing his desires to fruition. Thus, ὁ βουλόμενος is shorthand for “citizen.” Mediated through the courts that are composed of citizens, the final safeguard of citizenship is the individual citizen himself. The reminder, which works rhetorically to inflate the position of the jurors currently sitting on the case, rests on the notion of the empowered citizen.

While the *demos* and the citizens who comprise it should be *kurios*, Neaira and Stephanos instead act as if they are more powerful than the *demos*.¹⁷² Citizenship is so important to the city that the most powerful entity, the people, has limited the way in which it can be conferred. The defense, though, has chosen to circumvent the procedure, thus granting themselves a power allowed neither to any individual citizen nor to the collective *demos*. While all the citizens are empowered, they are also equal. By asserting more power than he should, Stephanos threatens the power, and arguably the equality, germane to citizenship. Apollodoros aims to show

ὅσων ὑμᾶς ἀγαθῶν κωλύουσι κυρίουσ εἶναι Στέφανός τε οὔτοσὶ καὶ οἱ τὸν αὐτὸν τρόπον τούτῳ γεγαμηκότες καὶ παιδοποιούμενοι. (93)

how important are the privileges over which Stephanos here and all who marry and have children the same way he has are preventing you from having power (*kurios*).

The language is strong. Stephanos is again accused of depriving the *demos* of its power. Compare this to the language Apollodoros used to describe the enfranchisement procedures imposed by the people themselves, in which there is no emphatic word for prevention or limitation (88-91). In that passage, rather than speaking of the *demos* as limiting its power by

¹⁷¹ Kapparis 1999: §88.

¹⁷² Cf. Carey 1991: §88.

creating enfranchisement laws, Apollodoros underscores how its power is what allows it to create the laws in the first place. It places laws upon itself (νόμους ἔθετο αὐτῷ) but does not become *akuros*. Simply put, it is still the most powerful entity (κυριώτατος). Stephanos, on the other hand, actively prevents (κωλύουσι) the people from being *kurios*. As a citizen himself, Stephanos is of course also *kurios*, but this is not the issue. In carefully designating when the *demos* is *kurios* or not, Apollodoros frames the problem as arising from neither the law nor an individual citizen's empowerment, but from an individual stripping other citizens of their power.

Towards the close of the oration, Apollodoros returns to demonstrating the prosecution's role in supporting the power of the jury, as Theomnestos did in the opening sections. After detailing the restrictions placed even on the recently enfranchised Plataians, who were Athenian allies *par excellence*, Apollodoros elaborates on Neaira's career in order to contrast the deserving new citizens and the unworthy pretender (104-108). Since the disparity is so great, he argues, it is clear that she is not, nor could she be, a citizen.¹⁷³ It is now up to the jury to act appropriately. Apollodoros concedes that they may have had a reasonable excuse not to act before because of either ignorance or inability, but that they no longer have one since Theomnestos and Apollodoros have brought her to court (109). He claims that since she is now at the jury's disposal, their power is reaffirmed (κύριοί ἐστε 109). The responsibility of each individual member, a function of their power, is stressed (ὑμῶν ἕκαστος 110, 114, 126). Rather than limiting the power of the people, Apollodoros and Theomnestos attempt to show that they have facilitated it.

To sum up, the theme of the power of the *demos* recurs throughout *Against Neaira*. The *demos* is identified with the jury and with the laws. The prosecution draws attention to its

¹⁷³ Apollodoros specifies she is neither a citizen by birth nor decree (οἱ πρόγονοι ἀστέην κατέλιπον οὐθ' ὁ δῆμος πολίτιν ἐποίησατο, 107).

activities as empowering the people and portrays the accused as consistently working against the power of the *demos*. Since power is central to citizenship, the prosecution hopes to make each individual *kurios* in the jury anxious about the potential loss of his status. Just as there are members of the polis intended to have power based on citizen status, as shown, there are others who are not. The case rests equally on both, and so now I turn to the speech's presentation of the people who should not be empowered.

II. Who Should Not Be *Kurios*?

In order to convict Neaira, Apollodoros must show that she is not a citizen (ἄστυή) and yet is married to a citizen. The defense does not seem to be contesting the first point but rather the second.¹⁷⁴ Yet, Apollodoros goes to great lengths to prove that Neaira is a foreign ex-slave and a courtesan, both of which prove the former rather than the latter point. Apollodoros does not have very much evidence to show that Stephanos in fact kept Neaira as a wife and not a concubine. Thus, the first part of Apollodoros' narrative focuses on what he claims is Neaira's well-known notorious behavior as a way to color the jury's disposition towards her and 'prove' that she could in no way be a citizen (18-48). The rest of the narrative focuses similarly on the alleged indecent behavior of her purported daughter, Phano (49-84). As female metics, they should not be empowered. I will argue that it is this characteristic that underlies the explicit contrast between the behavior of a foreigner woman and that of a proper female citizen. Neaira's assumption of power by acting like a citizen, then, is threatening to the city's structure.

Clearly, the speech's *ad hominem* strategy should make us hesitate to take any of Apollodoros' statements at face value. While most scholars recognize the tendentious nature of

¹⁷⁴ See §118 and Carey 1992: ad loc.

the claims made by the prosecution, they also generally believe that Neaira was a courtesan and many also accept her alleged notoriety as true.¹⁷⁵ Allison Glazebrook has taken the extremely skeptical position that, based on the speech alone, we cannot even be sure that Neaira was a sex worker (2005). She focuses instead on how the characterization of Neaira as such is a rhetorical device in which the worst attributes of prostitutes in the Athenian imagination apply to her in order to underscore her Otherness. While it is not within the scope of this chapter to debate how much of Apollodoros' presentation of Neaira is factually accurate, I believe that understanding Neaira's identity as an intentional construct by the prosecution for a specific purpose is both appropriate and useful. Whatever the practical reality of the situation, Apollodoros appeals to the ideological state of affairs. Looking closely at his characterization of Neaira reveals the continued importance of power in democratic thought.

Two aspects of Apollodoros' accusations are germane to our purposes: sexual availability and lack of control. Neaira's past as a sex worker undergirds the allegations of sexual availability and the lack of control it supposedly exhibits. Throughout the text, Apollodoros underscores how she was "working with her body" (ἐργαζομένη τῷ σώματι, *vel sim.* 20, 22, 36, 49, 108), had many lovers (26, 29, 30, 31, 32), and attended symposia (24, 33, 48). The focus on prostitution does not simply make Neaira and later Phano disreputable, but ideologically un-Athenian and so impossible to consider as legitimate wives. Prostitution was not imagined as a suitable role for an Athenian woman.¹⁷⁶ As opposed to the self-control and moderation (σωφροσύνη) expected of a proper citizen woman, prostitutes were associated with

¹⁷⁵ While most scholars refer to her as a courtesan, the title of Hamel 2003 will suffice as an example: *Trying Neaira: The True Story of a Courtesan's Scandalous Life in Ancient Greece*.

¹⁷⁶ This was, of course, not strictly adhered to in reality. See E. Cohen 2000 and 2006.

excess in all modes of consumption (alcohol, sex, and luxury) and general shamelessness.¹⁷⁷ The portrait of Neaira is that of an immodest prostitute who has been with many men, even in public. These salacious details of the life of a courtesan are calculated to incite outrage in the jury at the idea that such a woman could even pretend to be a citizen wife. Beyond showing a lack of propriety, Apollodoros also uses her work as a way to show that she has no control over herself. He uses Neaira's past as a slave to further support this portrayal. She not only does not have legitimate power due to her lack of citizenship, but her station and behavior make manifest that she is *incapable* of being *kuria* and so should not do "whatever she wishes."¹⁷⁸ In fact, she should be subject to the whims of others because of her deficiency of character as well as her trade and status.

One might correctly observe that even a female citizen is always subject to her *kurios* and so she is not truly her own master, or *kuria*. Indeed, in earlier chapters I have stressed how most of what can be said about the ideology of citizenship pertains fully only to the idealized, adult male citizen and not to the female citizen. Like all ideals, though, even those members that are an imperfect fit must still be accommodated. That is, while a citizen woman did not enjoy a man's measure of freedom and power, she did participate in those qualities to a certain extent by virtue of being a citizen. In practical terms, in so far as she was a citizen she was afforded, for example, protection from bodily violation and she was not the property of a *δεσπότης*. In contrast, to do "whatever one wishes" to another attests to a status imbalance; an Athenian woman was a citizen, and thus her status was secure, although she had a *kurios* and expressed

¹⁷⁷ See Glazebrook 2006. Schaps 1979: 95 also mentions 'independence' as an attribute. For prostitution in antiquity, see Faraone and McClure 2006 and Glazebrook and Henry 2011.

¹⁷⁸ For the view that courtesans in actuality were generally independent, and so might be considered as having effective if not formal power, see Cohen 2006. Neaira is also called *kuria* at one point to indicate her newly affirmed liberated status (46). For further discussion, see n. 128.

her citizenship in a markedly different way than a male citizen.¹⁷⁹ She would not be subject to suffer “whatever one wishes.”

Apollodoros introduces Neaira’s background with her original mistress, Nikarete, as key to his case by showing that Neaira, unlike a citizen, did deserve to be the object of another’s will.

ὡς δὲ Νέαιρα αὐτῇ Νικαρέτης ἦν καὶ ἠργάζετο τῷ σώματι μισθαροῦσα τοῖς βουλομένοις αὐτῇ πλησιάζειν, τοῦθ’ ὑμῖν βούλομαι πάλιν ἐπανελθεῖν. (20)

The fact that this woman Neaira belonged to Nikarete and worked with her body on hire to all who wished (*tois boulomenois*) to have relations with her, this is the point to which I wish to return.

This introduction gets at the crux of the matter. The connection between prostitution and having others do what they wish with her is intensified by her status as a slave. Slaves were considered unable to effect their own desires. Aristotle’s characterization of slaves as living possessions succinctly summarizes this idea: they are to be used for the ends of others.¹⁸⁰ While in reality, there were also relatively wealthy and independent slaves in Athens, the archetype of the slave remained a person defined by being completely of another and used for the achievement of that person’s desires.¹⁸¹

While we have seen that citizens are thought of as powerful and entitled to do what they wish, a slave and a courtesan should be passive. As both, Neaira is not entitled to autonomy in any sense. Apollodoros’ portrait of Neaira is full of the language of subjection, specifying her as subordinate to others’ desires. Later in her career, for example, two of her lovers, Timanoridas and Eukrates

κατατιθέασιν αὐτῆς τιμὴν τριάκοντα μνᾶς τοῦ σώματος τῇ Νικαρέτῃ, καὶ

¹⁷⁹ Further discussion of differences in male and female citizenship can be found in chapter 3.

¹⁸⁰ οὕτω καὶ τὸ κτήμα ὄργανον πρὸς ζώην ἐστὶ, καὶ ἡ κτήσις πλῆθος ὀργάνων ἐστί, ὁ δούλος κτήμά τι ἔμψυχον (*Pol.* 1253b30-31).

¹⁸¹ For more on the ideological divide between slave and free, see ch. 2. For ‘privileged’ slaves, see Kamen 2013: 19-31.

ὠνοῦνται αὐτὴν παρ' αὐτῆς νόμῳ πόλεως καθάπαξ αὐτῶν δούλην εἶναι. καὶ εἶχον καὶ ἐχρῶντο ὅσον ἐβούλοντο αὐτῇ χρόνον. (29).

paid Nikarete thirty minas for Neaira's person (*sōmatos*) and bought her outright in accordance with the law of the city to be their slave. And they kept her and used her for as long as they wished (*hoson eboulonto*).

The use of the word σῶμα, typical for a slave transaction, underscores her status as a possession. She is a body to be traded, not the stuff of a citizen wife. The added detail that they kept Neaira only for as long as it suited them (ἐχρῶντο ὅσον ἐβούλοντο αὐτῇ χρόνον) also flaunts the power imbalance. The use of the verb βούλομαι stresses their control of the situation. She is at the disposal of others for whatever they wish for as long as they wish.

Even once Neaira is freed, she remains unable to control her life. When Timanoridas and Eukrates decide to marry, they no longer want her as a mistress nor do they want to see her working around their city (30). Thus, they offer to free her for a price of thirty minae, ten of which they contribute themselves. Neaira turns to her former lovers as a means of collecting the balance. Phrynion, a previous customer who is introduced at this point in the narrative, pays off the remaining amount (32). Neaira moves with Phrynion to his native Attica, but the arrangement is not as Neaira presumably anticipated. Apollodoros elaborates:

Ἀφικόμενος τοίνυν δεῦρο ἔχων αὐτὴν ἀσελγῶς καὶ προπετῶς ἐχρήτο αὐτῇ, καὶ ἐπὶ τὰ δεῖπνα ἔχων αὐτὴν πανταχοῖ ἐπορεύετο ὅπου πίνοι, ἐκώμαζέ τ' ἀεὶ μετ' αὐτοῦ, συνῆν τ' ἐμφανῶς ὅποτε βουλευθεῖη πανταχοῦ, φιλοτιμίαν τὴν ἐξουσίαν πρὸς τοὺς ὀρώντας ποιούμενος. (33)

When he came here with her he treated her in an outrageous and reckless way; he took her to dinner with him everywhere wherever he was drinking, she joined in all his carousals, and he had intercourse with her in public anywhere whenever he wished (*hopote boulētheiē*), making a display of his privilege in front of onlookers.

Although she is a free woman, she is still subject to another's desire, not her own. Indeed, Apollodoros says Phrynion "did not grant her wishes" (οὐδ' ὑπηρέτει αὐτῇ ἃ ἐβούλετο 35).¹⁸² He treats her as if she is still a possession, or, in other words, a slave.¹⁸³ This is presented as foul treatment, to be sure, but after she leaves Phrynion, Apollodoros criticizes her as wronging Phrynion (τὸ ἠδικηκέναι 37).¹⁸⁴ He also makes a point of calling witnesses to the above events, including one when she drunkenly had sex with slaves (34). Whatever pity the modern reader may feel for Neaira's exploitation, Apollodoros' inclusion of details which seem tangential to the official charge must conform to his purpose.¹⁸⁵ As aforementioned, his portrait of her is meant to arouse contempt in the jury, and this episode is one more instance of him conjuring up character-damaging anecdotes.¹⁸⁶ Even when granted freedom, Neaira carries on in a way that suggests she is able not to satisfy her own desires but only to serve the wishes of others, like a slave.

While Apollodoros spends a lot of time demonstrating that Neaira is not a citizen, his real work is to prove that she has been usurping the rights of citizenship. That is, he must show that she is acting like a citizen's wife, a privilege allotted only to citizen women. Since mixed-status concubinage was legal, Apollodoros must find a way to show that she and Stephanos were not just living together, but acting married. As mentioned earlier, he chooses to attempt to prove that Stephanos has treated Neaira's children as citizens. While the sons would have been enrolled in the phratries and demes, making their citizenship more difficult to disprove, the daughter, Phano,

¹⁸² Some see this passage as unsuccessful for the prosecution, since it might rouse pity for Neaira from the jury (Kapparis 1999: 46-47). Although it shows Neaira unfairly treated, it also characterizes her as very clearly not a citizen, which is the main thrust of Apollodoros' speech.

¹⁸³ Cf. Carey 1992: ad loc.

¹⁸⁴ I am following the emendation αὐτῆ for the transmitted αὐτῆν, making Neaira the subject, not object, of the infinitive. See Kapparis 1999: ad loc. and Carey 1992: ad loc., who both do the same.

¹⁸⁵ For the relevance of extra-legal arguments in Athenian courts, see Lanni 2006.

¹⁸⁶ Cf. Carey 1992: *passim*; Glazebrook 2005: 169-170 *contra* Kapparis 1999:46-47.

was an easier target. She had been twice married to and divorced from citizen men. To give a daughter lawfully in marriage to a citizen man is the privilege of citizens, so proof that he had done so with an illegitimate daughter would be evidence of Neaira's false claim to citizenship. Of course, this argument rests on the premise that Phano is a daughter of Neaira, and not a daughter from a citizen ex-wife as Stephanos claims, which Apollodoros does not go to great lengths to prove. Since he does not appear to have much evidence to demonstrate that Phano really is Neaira's daughter, Apollodoros instead focuses on defaming the character of Phano. He shows their character to be similar in order to make Phano seem like Neaira's daughter.¹⁸⁷

During his attack on Phano, Apollodoros introduces a story of adultery in which he discusses the pertinent laws on the subject. The issue first arises during a visit of a former lover of Neaira's, Epainetos. While he is a guest at Stephanos and Neaira's country home, he sleeps with Phano. Apollodoros alleges that Stephanos, motivated by money, apprehended Epainetos in the act and accused him of adultery, supposedly expecting to extort money from him in exchange for not pressing charges (64-65). Once he is set free, Epainetos in return brings a charge of illegal imprisonment against Stephanos on the grounds that, first, Stephanos is not Phano's *kurios* since she is not his daughter but Neaira's and, second, one cannot commit adultery with a prostitute (66-67). This is key to Apollodoros' arguments since it is evidence that Phano is Neaira's daughter and also a prostitute, which shows her non-citizen status.

Of interest for the investigation of power is the discussion of the law relevant to his suit. The law on illegal imprisonment prescribes that if a free man is wrongfully imprisoned for

¹⁸⁷ Cf. Glazebrook 2005.

adultery and secures a conviction against the one who imprisoned him, his adultery charges are dropped and his sureties are released from liability.¹⁸⁸ On the other hand,

ἐὰν δὲ δόξη μοιχὸς εἶναι, παραδοῦναι αὐτὸν κελεύει τοὺς ἐγγυητὰς τῷ ἐλόντι, ἐπὶ δὲ τοῦ δικαστηρίου ἄνευ ἐγγχειριδίου χρῆσθαι ὅ τι ἂν βουλευθῆ, ὡς μοιχῶ ὄντι. (66)

if it is decided that he is an adulterer, the law prescribes that his sureties are to deliver him to his captor, who may treat him as he wishes (*ho ti an boulēthēi*) in the court, short of using a knife, on the grounds that he is an adulterer.

The penalty for the μοιχός is, in short, a temporary loss of power and freedom. In this case, even the normally sacrosanct citizen body is open to abuse. For a moment, the adulterer is as disempowered as a prostitute or slave and rather than he himself doing “whatever he wishes,” he must suffer whatever the successful litigant wishes (ὅ τι ἂν βουλευθῆ). As Demosthenes writes succinctly, “If you wish to see in what way a slave differs from a free man, you would find the most important distinction in the fact that slaves are responsible in body for all offenses, while free men, even in the most unfortunate circumstances, can protect their body” (22.55).¹⁸⁹ This type of punishment, then, treats the citizen like a slave. Once the province of the *oikos*, the issue of adultery becomes part of the public sphere as citizenship grows in import, since it threatens the citizen pool.¹⁹⁰ It is also a direct offense to the *kurios* of a woman, threatening his standing as a citizen. In turn, the convicted adulterer is dispossessed of his power, being *kurios*, albeit temporarily.¹⁹¹ As Kapparis points out, in this passage “the suspension of his protection from abuse, guaranteed for all free persons, deprived him of some of his most precious civil rights”

¹⁸⁸ Harrison 1968: 33, MacDowell 1978: 125; both use this passage as evidence for the law and its penalties. The protection against illegal imprisonment does not seem automatically guaranteed to free foreigners (see Harrison 1971: 241-242). It seems that typically this charge would be a δίκη and perhaps is a γράφη here precisely because the victim is a foreigner.

¹⁸⁹ Cf. 24.167.

¹⁹⁰ For adultery as a greater offense than rape, see Kapparis 1999: 65, McDowell 1978: 124, Carey 1995; *contra* Harris 1990. For a reconsideration of rape terminology, Omitowaju 2002.

¹⁹¹ While Epainetos is a foreign visitor, the law also applied to citizens (see McDowell 1978: 124-125).

(1999). Since the crime is against the power of both the state and a citizen, it follows that the punishment is equally severe and unusual: he loses his *kurieia* over his own person at that moment.¹⁹² Although the term *kurios* is not used, he clearly does not have control over his body.¹⁹³

Apollodoros continues the adultery motif with a twist. While the story was used first to show that adultery was not possible with Phano, he now goes on to use the same events to peg Phano as an adulteress. In the following section of the tale, the adultery law for women is discussed. After the episode with Epainetos, Phano is married to the citizen Theogenes (72). He is the *basileus* for the year and so as his wife, the *basilinna*, Phano has specific religious duties. Significantly, she must take part in secret rites for the festival of Anthesteria (73-4). The role of *basilinna* requires one to be a virgin before marriage to the *basileus*, as well as a citizen of good character (75). Regardless of her civic status, Phano had previously been married, which should have precluded her from acting as *basilinna*. After she performed her duties, there seems to have been an investigation by the Areopagus of the situation. While her first divorce is more readily proven, and probably the real reason the Areopagus investigated her, Apollodoros focuses instead on her alleged foreign status and unsavory character.¹⁹⁴ Since he does not have proof of her foreignness, he employs more *ad hominem* tactics. Apollodoros employs the disparaging demonstrative *τοιαύτη*—“that sort of woman”—throughout (73, 81, 85).¹⁹⁵ Not only does her

¹⁹² Similarly, after Epainetos is released from Stephanos’ imprisonment, he becomes master over himself again (literally, *αὐτὸς αὐτοῦ κύριος* 66; again at 71, although this latter section is probably spurious). A free man should be his own *kurios*, but he is not so while imprisoned, or, I argue, while suffering physical punishment as prescribed by the adultery law.

¹⁹³ Cf. Ar. *Pl.* 6.

¹⁹⁴ Cf. Kapparis 1999: 73.

¹⁹⁵ For further exploration of this term in constructing Neaira’s identity as a prostitute, see Glazebrook 2005.

non-citizen status break religious law and tradition, but the fact that she is of bad character further pollutes the office.

He then uses her affair with Epainetos as an example of how she is “this sort” (τοιαύτη) of woman. This time, he charges that as an adulteress she was doubly befouling the sacred role of *baslinna* since adulteresses are not allowed to enter any temples or participate in any rites (85). His argument here contradicts his earlier account of the events. Still, Apollodoros details the severe consequences for breaking the law and entering sacred sites:

ἐὰν δ' εἰσῴωσι καὶ παρανομῶσι, νηποινεὶ πάσχειν ὑπὸ τοῦ βουλομένου ὅ τι ἂν πάσχη, πλὴν θανάτου, καὶ ἔδωκεν ὁ νόμος τὴν τιμωρίαν ὑπὲρ αὐτῶν τῷ ἐντυχόντι. (86)

If [adulteresses] enter illegally, let them suffer whatever they suffer, short of death, at the hands of anyone who wishes (*tou boulomenou*) with impunity, and the law has granted the right to punish them to anyone who encounters them.¹⁹⁶

Shortly after this passage, the law itself, most likely authentic, is quoted and notably employs the same wording (87). This law is an apposite counterpart to the earlier law regarding male adulterers. Just as the convicted male citizen is forced to be at the mercy of whatever his captor wishes, a convicted woman must endure whatever anyone wishes (πάσχειν ὑπὸ τοῦ βουλομένου ὅ τι ἂν πάσχη). Likewise, this is not the expected condition of a citizen and enacts a type of ἀτιμία. The connection between loss of citizenship and the passive experience of convicted criminals is common to both. The threat to her identity within Athens is total. The punitive measures are explicitly meant to show that adultery will affect both the private and public status of an adulterous woman, leaving her “banished both from her husband’s house and from the temples of the city” (86). Religious activity was a significant portion of women’s civic

¹⁹⁶ Cf. Aeschin. 1.183.

lives.¹⁹⁷ Hence, banishment from temples and rites is tantamount to partial disenfranchisement. The harsh corporal punishment is a physical reminder that her citizenship status, and thus her ability to assert some sort of autonomy, is revoked. For the moment, her body is no longer inviolable.

These laws are notable because they authorize the disempowerment of convicted citizens, which is contrary to the natural state of a citizen as we have seen presented thus far. The terminology used to describe their momentary subjugation recalls the passivity of slaves or prostitutes, that is, those who are at the whim of what *others* want. These two vignettes are the exceptions that prove the rule and serve to show further the connection between citizenship and power. Complete disenfranchisement, ἀτιμία, was a harsh penalty available to the courts. Since adultery was a threat to the city, not just the household, a punishment that threatens one's citizenship, even temporarily, fits the offense. In the larger structure of the prosecution's arguments, these examples reveal citizens who are stripped of power by being subject to another's power. These cases are meant to be outliers and stand in contrast to the norm experienced by citizens. The prosecution has tried to show that the defense acts as they wish at the expense of the *demos*. If this is the case, the *demos* are being treated either as people without citizenship or as citizens who have lost their rights. While Apollodoros does not make the explicit connection here, these passages still serve in the grander infrastructure of power as examples where a citizen is *not* empowered, and they are clearly unusual, undesirable situations.

As Apollodoros draws to the conclusion of the speech, he returns to Neaira and ties together the strands of citizenship and autonomy explicitly. He asks the jury:

¹⁹⁷ For the role of women in religion see Dillon 2002 and Connelly 2007. Blok 2004 and 2009 show the importance of cult to city in comparison to politics. For the role of gendered spaces in religion, see Cole 2004.

ἐάσετε ὑβρίζουσιν εἰς τὴν πόλιν καὶ ἀσεβοῦσιν εἰς τοὺς θεοὺς ἀτιμώρητον, ἣν οὔτε οἱ πρόγονοι ἀστὴν κατέλιπον οὔθ' ὁ δῆμος πολίτην ἐποίησατο; ποῦ γὰρ αὕτη οὐκ εἴργασται τῷ σώματι, ἢ ποῖ οὐκ ἐλήλυθεν ἐπὶ τῷ καθ' ἡμέραν μισθῷ; ... τὴν δὴ ὑφ' ἑτέροις οὔσαν καὶ ἀκολουθοῦσαν τῷ διδόντι τί οἴεσθε ποιεῖν; ἄρ' οὐχ ὑπηρετεῖν τοῖς χρωμένοις εἰς ἀπάσας ἡδονάς; εἶτα τὴν τοιαύτην καὶ περιφανῶς ἐγνωσμένην ὑπὸ πάντων γῆς περίοδον εἰργασμένην ψηφιεῖσθε ἀστὴν εἶναι; (107-108)

Will you leave this woman... unpunished for insulting the city so shamefully and contemptuously and committing sacrilege against the gods, a woman who was neither bequeathed citizenship by her ancestors nor granted it by the people? For where has she not prostituted herself? Where has she not gone to earn her daily wage?... And what do you expect a woman to do when she is under the control of different men and goes with anyone who pays? Surely to serve her customers in every type of pleasure? So then, will your verdict be that a woman of her character who is known for certain by all to have plied her trade over the breadth of the world is a citizen?

Apollodoros certainly wishes to show that Neaira's sexual wantonness is diametrically opposed to the behavior expected of a wife.¹⁹⁸ But he also draws attention to her being the possession of another. Although both δέ and δὴ are transmitted in the manuscripts as part of the sentence τὴν δὴ ὑφ' ἑτέροις οὔσαν... τί οἴεσθε ποιεῖν (108), editors generally choose the emphatic particle δὴ since Apollodoros is stating the obvious: Neaira did these things no citizen would and nothing else would be expected of her.¹⁹⁹ The defense itself will not even argue against the fact that she was a courtesan. Indeed, her travel around Greece and her sexual activity mark her as non-citizen, but the passage also draws attention to power wielded over her by her customers: what other kind of life could one expect from someone who is like the possession of many others (τὴν δὴ ὑφ' ἑτέροις οὔσαν καὶ ἀκολουθοῦσαν τῷ διδόντι)? The outcome of her subordinate position is that she serves her customers in all pleasures. Neaira's lack of autonomy is coupled with her excessive sexual availability. Such a woman (τοιαύτη) is clearly not a citizen.

¹⁹⁸ Kapparis 1999: ad loc.; Glazebrook 2005.

¹⁹⁹ Kapparis 1999: ad loc.

Apollodoros draws attention to the jurors' wives, daughters, and mothers in further contrast to the alleged foreigners' behavior. As opposed to these Athenian women, foreign women were imagined as more outspoken, independent, and wayward, and thus detrimental to society at large. In fact, Geoffrey Bakewell has argued that the law against mixed marriages cited in *Against Neaira* was motivated not solely by anxiety about surreptitiously contaminating the citizen pool, but also by the anxiety about "irresistible nubile metics" from whom *kurioi* could not keep their sons (2008/2009: 99). A danger to the *oikos* is also a danger to the polis as a whole. Apollodoros has implied that Neaira, as a metic, ex-slave, and courtesan, falls squarely in the camp of the disempowered inhabitants of Attica, as does her daughter Phano. Consistent with the prevailing ideology, the prosecution demonstrates that her lack of power is as much in contrast to citizenship as is her behavior. Such women should have no power in the state, but by pretending to be citizens, they effectively do. The potential consequences of their empowerment form the concluding sections of the prosecution's speech and are explored below.

III. Consequences of Power Reversal

Apollodoros plays on the fears of the jury in order to create a vision of the possible repercussions if the defendants are unpunished. The allegation that Stephanos, Neaira, and those like them do in fact threaten citizenship is coherent because they disempower citizens by attacking the very basis of their unique Athenian freedom and autonomy. By the standard of appropriate and inappropriate *kurioi* presented in the work, the defense falls short of adhering to ideological norms, which leads to large-scale consequences. I argue that Neaira is depicted as a threat to the whole community because she illegitimately assumes power and so the ability to pursue goals for

herself and her children.²⁰⁰ Since acting powerfully is indeed power in itself, Neaira's newly empowered status enables her to affect other female citizens and hamper the power of citizens and the law. Neaira's actions are an exercise of power in real ways.

To begin with, Neaira, if unchecked, will lead women astray. Since she has acted as she wished and contrary to the laws, other women may be inspired to follow her example. Apollodoros warns the jury that

αἱ μὲν σωφρονέσταται τῶν γυναικῶν ὀργισθήσονται ὑμῖν, διότι ὁμοίως αὐταῖς ταύτην κατηξιούτε μετέχειν τῶν τῆς πόλεως καὶ τῶν ἱερῶν· ὅσαι δ' ἀνόητοι, φανερώς ἐπιδείκνυτε ποιεῖν ὅ τι ἂν βούλωνται, ὡς ἄδειαν ὑμῶν καὶ τῶν νόμων δεδωκότων· (111)

the most decent of the womenfolk will be furious with you, because you thought it right that this woman should have the same share as they in public life and religion; while to all the foolish ones you are giving a clear signal to do whatever they wish (*ho ti an boulōntai*), since you and the laws have given them permission (*adeian*).

The worse sort will be likely the most affected. They, too, will begin to act “however they wish” (ὅ τι ἂν βούλωνται). Although the women are not called powerful, this phrase has been linked with power. Let us recall the outset of the speech, where Theomnestos had identified both his and Apollodoros' actions as empowering the *demos* to do just that, “whatever they wish,” in contrast to the defendants' disempowering actions. Here, Apollodoros takes the accusation a step further. Beyond making the *demos akuros*, Neaira has also makes foolish women empowered to an inappropriate degree so that they can act “however they wish.” The implicit sanction of the jury and the laws in acquitting Neaira gives the women permission (ἄδειαν) to do so. The term ἄδεια indicates primarily indicates amnesty or safety.²⁰¹ The sort of permission granted, then, is a special dispensation, one that is contrary to convention. Neaira's power will be institutionalized through this ‘grant.’

²⁰⁰ Cf. Bakewell 2008/2009.

²⁰¹ s.v. LSJ.

Even other prostitutes, presumably non-citizen women, will appropriate the new power and benefit from it:

κομιδῆ γὰρ ἤδη [παντελῶς] ἐξουσία ἔσται ταῖς πόρνοις συνοικεῖν οἷς ἂν βούλωνται, καὶ τοὺς παῖδας φάσκειν οὐ ἂν τύχωσιν εἶναι· (112)

For there will then be complete license (*exousia*) for whores to live in marriage with anyone they please (*hois an boulōntai*), and to declare anyone at all the father of their children.

Again, a version of the phrase “whatever they wish” is employed to underscore their new capacity. The focus here is on contravening the regulation of marriage and legitimate offspring. If Neaira is acquitted, and thus receives implicit approval by the jury, prostitutes instead of adhering to the law will marry “whomever they wish” (οἷς ἂν βούλωνται). Key to the outcomes in both of the above passages is the increased latitude of action for each individual without regard for the law. While following the law and being powerful are not mutually exclusive, empowering the wrong people results in disorder and lawlessness. Foolish citizen women will act however they wish and non-citizens will act like citizens by marrying whomever they wish and claiming the paternity of their children likewise as freely.

For the prostitutes, their ability to act is connected to ἐξουσία. Although not exclusively a negative word, it can have negative connotations. In addition to ‘power’ or ‘authority’ (LSJ I.1), it can signify an abuse of that power or license (LSJ I.2). It is also used of citizen privileges.²⁰² The ambivalent word ἐξουσία, chosen instead of a generally more positive word, such as ἐλευθερία or κύριος, makes it more suitable for the frightening scenario Apollodoros is painting of prostitutes taking on citizen rights. On the one hand, it has civic applications, but on the other, because of its negative uses, it is not as exclusively associated with citizenship as the

²⁰² For the use of ἐξουσία to denote citizen ‘rights’, see Ostwald 1996. Also compare the verb ἔξεστι in the formula discussed in chapter 2. For ἐξουσία as positive freedom, Mulgan 1984.

other terms. If, as the prosecution alleges, Neaira's daughter has been passed off as a citizen, we can see that she has gained status and, subsequently, power. The effects of that power can be seen, for example, when Phano infiltrates the city's religious duties and acts as the *basilinna*. While Neaira is not participating in the ceremony directly, it is her 'citizenship,' in conjunction with Stephanos', that ultimately allows Phano to take on religious duties. The life of Phano is used as a concrete example of both Neaira's effect on others like her and her newfound ability to pursue goals for her children.

Neaira's actions also actively interfere with the existing power structure. We have seen the prosecutor claim that Stephanos has made the *demos akuros*. Now, Apollodoros points directly to Neaira as the cause of this disempowerment, which is avoidable if the jury asserts its own power and condemns her. He warns the jury that if Neaira remains unpunished

οἱ μὲν νόμοι ἄκυροι ὑμῖν ἔσονται, οἱ δὲ τρόποι τῶν ἐταιρῶν κύριοι ὅ τι ἂν βούλωνται διαπραττεσθαι. (112)

your laws will be powerless (*akuroi*), while the characters of courtesans will have the power (*kurioi*) to achieve whatever they wish (*ho ti an boulōntai*).

The possibility of doing "whatever one wishes" is again the distinguishing factor. The parallel construction implies that the infinitive (διαπραττεσθαι) and indefinite relative clause (ὅ τι ἂν βούλωνται) apply to both cola: in an utter reversal of the normal course of events, the laws will no longer be able to do "whatever they wish" and courtesans will be able to do so. Although *kurios* can specify what the person or thing has the ability to do, throughout we have seen it used to indicate an unbounded sphere of action. In the worse-case scenario constructed by Apollodoros, the laws are completely stripped of their power. Here we see also a restatement of the zero-sum and performative aspects of power. Whoever acts powerfully *is* powerful. Thus, Neaira's acts of empowerment, unchecked, result in her actual empowerment and a trickle-down

effect to others like her. As she gains power, the established laws and the *demos* inversely lose power.

While hyperbolizing the global effects of an individual's actions is common in the forensic genre, the fear of bad women setting bad examples is not unique to oratory and is part of a larger set of worries exploited by the rhetor. The anxiety towards the effect wicked women can have on other women can be seen throughout literature. In Aristophanes' *Frogs*, Euripides is chastised for his portrayal of unsavory women precisely because of how Athenian women are affected (1039-1054).²⁰³ The Aristophanic Aeschylus contrasts his brave male characters and the virtues they instill in the audience with Euripides' female characters who, by acting inappropriately, encourage the same behavior in women watching. The general concern about the effects of negative female exempla is put into specific terms by Apollodoros to arouse the jury's fear. His particular take on the fear focuses on the effect of Neaira's power on the power of others. Including this tactic as part of his closing arguments, Apollodoros no doubt expected it to appeal strongly to the emotions and beliefs of the jury. That is, the sense that power could so easily be wielded and overturned, and thus that jurors played an important role in protecting their own power, must have seemed reasonable to the average Athenian.

The antithesis between the laws of the citizens and the characters of the courtesans (οἱ μὲν νόμοι... ὑμῖν..., οἱ δὲ τρόποι τῶν ἑταιρῶν) further contrasts the law-abiding nature of the Athenians with courtesans and, by extension, the defendant. Their behavior will take the place of longstanding laws. While we have seen citizens called *kurios* both individually and collectively, here the focus is on the laws rather than the citizens.²⁰⁴ The conflation of citizen,

²⁰³ One might even read the closing lines in Perikles' funeral oration urging women to remain little talked of as betraying the fear of an unruly woman's power over others (Thuc. 2.45.2).

²⁰⁴ For laws that are *kurioi*, see chapter 3.

jury, and laws, though, allows the concept to extend across the three entities.²⁰⁵ Thus, the disempowerment of the laws is the disempowerment of the jury. Laws also reflect the character of Athens.²⁰⁶ Likewise, even though the “characters” of courtesans and not the courtesans themselves are called *kurioi*, we should understand identity between them. Unlike citizens, who are empowered in harmony with the laws, the empowerment of the wrong people operates within a zero-sum situation. As they increase their power, they detract from that of the standing establishment.

The abstract idea of power loss and the concrete effect of this woman on other citizens come together as Apollodoros’ argument reaches a close. The two threads are related to each other through the fate of citizen women:

ὥστε καὶ ὑπὲρ τῶν πολιτίδων σκοπεῖτε, τοῦ μὴ ἀνεκδότους γενέσθαι τὰς τῶν πενήτων θυγατέρας. νῦν μὲν γάρ, κὰν ἀπορηθῆ τις, ἰκανὴν προῖκ’ αὐτῇ ὁ νόμος συμβάλλεται, ἂν καὶ ὀπωσιοῦν μετρίαν ἢ φύσις ὄψιν ἀποδῶ· προπηλακισθέντος δὲ τοῦ νόμου ὑφ’ ὑμῶν ἀποφυγούσης ταύτης, καὶ ἀκύρου γενομένου, παντελῶς ἤδη ἢ μὲν τῶν πορνῶν ἐργασία ἤξει εἰς τὰς τῶν πολιτῶν θυγατέρας, δι’ ἀπορίαν ὅσαι ἂν μὴ δύνωνται ἐκδοθῆναι, τὸ δὲ τῶν ἐλευθέρων γυναικῶν ἀξίωμα εἰς τὰς ἐταίρας, ἂν ἄδειαν λάβωσι τοῦ ἐξεῖναι αὐταῖς παιδοποιεῖσθαι ὡς ἂν βούλωνται καὶ τελετῶν καὶ ἱερῶν καὶ τιμῶν μετέχειν τῶν ἐν τῇ πόλει. (112-13)

So you must also show concern for the women of citizen birth, to prevent the daughters of poor men becoming unmarriageable. For as matters stand, even if a girl is needy, the law contributes an adequate dowry for her, if nature gives her even a remotely moderate appearance. But if the law is brought into contempt by you with this woman’s acquittal and becomes powerless (*akouros*), then without a doubt the trade of whores will fall to the daughters of citizens, all those who because of poverty cannot be married, while the status of free women will fall to the courtesans, if they receive permission to be able (*adeian tou exeinai*) to bear children however they wish (*hōs an boulōntai*) and to share in the civic rituals and ceremonies and rights.

The potential consequence is a reversal of roles, where citizens are prostitutes and prostitutes, citizens. The cause of this chaos is the law becoming *akouros*, and subsequently, the citizens also

²⁰⁵ This can be seen throughout this speech particularly and forensic oratory in general. See §I.

²⁰⁶ Cf. D. 24.210. For the connection between law and character, see de Brauw 2001/2002.

losing their power. Granted, the free women (ἐλευθέρων), a term which here exclusively indicates citizens, are not called *akuroi* directly.²⁰⁷ Since women are not commonly called *kuriai*, unlike male citizens, it is thus no surprise that Apollodoros does not directly ascribe to them the term *akuroi* but points to their lack of power in a roundabout fashion.²⁰⁸ Their civic rights and responsibilities, though, are explicitly challenged. If prostitutes are having “citizen” children and participating in the life of the city, they are taking the place of citizen women, who in turn now supposedly must ply the prostitute’s trade. The protasis (beginning with ἂν ἄδειαν λάβωσι) indicates that what gives them the status (ἀξίωμα) of citizen women is the ability to make legitimate children and participate in the city through religious ceremonies and other duties. Although not explicit disenfranchisement, the loss of exclusive access to those spheres of activity, spanning private and public, would be a blow to Athenian women’s citizenship. The restriction of their ability to act is a limitation on women’s power. In contrast, prostitutes will gain all the power citizens are losing. Apollodoros again utilizes the language of permission (ἄδειαν) and license (ἐξεῖναι) to elevate these women to positions of power where they can act as they wish (ὡς ἂν βούλωνται). The orator says they might receive not simply permission to have children but the *ability* to have children however they wish.²⁰⁹ By focusing on their ability, Apollodoros continues to implicate power as a key factor. Like citizens, they will have the ability, or power, to act as they wish.

After painting the consequences of acquittal in broad strokes, Apollodoros makes the trial

²⁰⁷ For ἐλεύθερος meaning ‘citizen,’ see Hansen 2010.

²⁰⁸ As Dr. Kamen has pointed out to me, another reason women may not be called *akuros* is that it may be equivocal, since it may denote “lacking a *kurios*.” Although we do see the term meaning “not yet one’s own *kurios*” referring to an underage male in Aeschin. 1.139, it is more ambiguous in the case of women since they never became their own *kurios*. See ch. 3 for a discussion of that passage.

²⁰⁹ Cf. Kapparis 1999: ad loc.

personal for the jurors. In order to do so, he uses the families of the jurors as models of good citizen households to continue elucidating the power distinctions between Neaira as a prostitute and citizens. In particular, he ties the uprightness of the female citizen to her *oikos*.

ὥστε εἰς ἕκαστος ὑμῶν νομιζέτω, ὁ μὲν ὑπὲρ γυναικός, ὁ δ' ὑπὲρ θυγατρὸς, ὁ δ' ὑπὲρ μητρὸς, ὁ δ' ὑπὲρ τῆς πόλεως καὶ τῶν νόμων καὶ τῶν ἱερῶν τὴν ψήφον φέρειν, τοῦ μὴ ἐξ ἴσου φανῆναι ἐκείνας τιμωμένας ταύτη τῇ πόρῃ, μηδὲ τὰς μετὰ πολλῆς καὶ καλῆς σωφροσύνης καὶ ἐπιμελείας τραφείσας ὑπὸ τῶν προσηκόντων καὶ ἐκδοθείσας κατὰ τοὺς νόμους, ταύτας ἐν τῷ ἴσῳ φαίνεσθαι μετεχούσας τῇ μετὰ πολλῶν καὶ ἀσελγῶν τρόπων πολλάκις πολλοῖς ἐκάστης ἡμέρας συγγεγεννημένη, ὡς ἕκαστος ἐβούλετο. (114)

So let each one of you believe that he is casting his vote, one in defence of his wife, another his daughter, another his mother, another the city and its laws and religion, so that those women are not seen to be held in equal esteem with this whore, and that women reared by their kinsmen with great and proper decency and care and given in marriage according to the laws are not shown to have an equal share as a woman who has been with many men many times each day, in many lascivious ways, as each man wished (*hōs hekastos ebouleto*).

This works doubly on the jury. First, it assumes that they have female relations who have been brought up virtuously and who display that virtue, thus flattering them as upstanding *kurioi* themselves. Second, it identifies the idealized *oikos* with the city and its laws. Whether one juror is thinking of his mother and another juror of the laws, they will come to the same conclusion. They are also described as giving their daughters in marriage “according to the laws.” In the way discussed in §I, the prosecution unabashedly works to align itself with the state and *demos*. The aims of the jurors’ *oikoi* are likewise allied with the aims of the polis as a whole. Neaira as a sex slave, in contrast, was not part of such an *oikos*. As a result, instead of being raised to cultivate virtue, she is subject to the base wishes of others. Apollodoros returns again to the phrase ὡς ἕκαστος ἐβούλετο to show Neaira’s complete lack of control in contrast to the proper Athenian woman’s discretion. The essential qualities of the latter are being raised with moderation in an *oikos* and betrothed according to the laws, and of the former, being subject

to another's desires every day. He does not intend for the jury to pity the prostitute. Rather, he expects the jury to be appalled that someone with such a lack of control should be considered equal to women in their own family.

Apollodoros also draws attention to the civic importance of the distinction between statuses: he warns against citizen women being held in equal esteem with Neaira, but also in sharing in the state equally (ἐν τῷ ἴσῳ... μετεχούσας). Although the *kurios* language is absent from this passage, I take the "whatever one wishes" phrase to echo its previous iterations as showing that the person who is at the whim of others lacks power. Since power has been shown to be an essential feature of citizenship, this emphasizes the ideological gap between Neaira and citizen women. Neaira should not be powerful or share in citizens' rights. The jurors' female relatives, on the other hand, should have the power to participate in the city in specific ways, which are threatened by the likes of the defendant. By mentioning the jury's own families, Apollodoros makes the consequences personal, but keeps the importance of power and civic life in the forefront.

The charges against Neaira reveal how power and freedom, or the ability to do as one wishes, are central to notions of citizenship. As a basis upon which to build citizenship, it justifies many of the hyperbolic claims of the prosecution. Since power is negotiable, whoever acts *kurios*, is *kurios*. An assumption of citizen privilege by a non-citizen is a claim to power. Apollodoros depends on that notion to argue that when someone like Neaira acts *kuria*, it is not in harmony with the complex ideology of power and authority. Thus, it reduces the power of the ideologically privileged elements in the system. If unchecked, it can disempower the laws and the citizens so closely associated with them. Neaira essentially destabilizes democratic ideology from the bottom up; that is, from the individual to the *demos*.

Chapter 5 Conclusion: Looking Ahead

In this study, I have regarded freedom as the chief principle of Athenian democracy and as the basis of democratic citizenship. In doing so, I have explored what freedom meant to the Athenians and what logical conclusions this definition entailed. Since the *demos* is the central political body for democracy and citizens are the individuals that constitute the *demos*, the role of the citizen has remained a focal point throughout. I have argued that ‘freedom’ in Athens is best understood as the ability to do “whatever one wishes.” Scholars have often noted this phrase and either linked it solely to critics of democracy or explained it as representing negative freedom, i.e. the lack of external domination, in the private sphere. I have contended, instead, that it expresses positive freedom; that is, the ability to act or ‘autonomy.’ In addition to being expressed at an ideological level, we also see this idea of freedom expressed institutionally through the political process, especially through the voluntarism inherent in Athenian democracy, wherein the citizen is identified with ὁ βουλόμενος, his actions predicated on his will. Since this is the case, we must consider the citizen as ideally not only unencumbered by another’s control but also in control himself. This type of freedom accords, in turn, with a sense of power. I have argued that power is best tracked by tracing the use of the adjective κύριος and its opposite, ἄκυρος. In this way, we can see the power of the ideal citizen manifested on a practical level in the public and private spheres, as well as in ideology. In addition, I hope to have shown that democracy negotiates a balance between its free citizens and its laws by creating a situation where the two parties symbiotically draw power from each other. Finally, I have closed with a case study of *Against Neaira* ([D.] 59), exemplifying how freedom, power, and their attributes may be deployed for textual analysis.

Interpreting freedom as signifying autonomy and power has applications for investigating other areas outside of law and oratory, however. Here I would like to offer three potential areas of future exploration: the concept of citizen ‘rights,’ the relationship between democracy and tyranny, and the Platonic critique of democracy.

The first avenue of inquiry that may be illuminated through the lens of freedom-as-power is the question of citizen rights in classical Athens. Some scholars claim that there was no concept of ‘rights’ in antiquity, even at Athens. Martin Ostwald, for example, has argued that the concept of rights overall is anachronistic (1996). Instead, he argues, Athenians considered themselves as part of a collective which imbued them with the ability to “share in (μετέχειν) the *politeia*.” This sharing consisted of powers as well as responsibilities, but not an individualistic sense of rights. While there is much to be said against importing the idea of ‘rights’ directly into classical Athens, I hope that my exploration of freedom and power has shown that there *was* something different occurring at Athens than in other *poleis*. Furthermore, the individual, however much he was defined or even empowered by his group, was still free and empowered in and of himself. At the same time, rather than simply changing the political arena by redefining who could participate, and so increasing the participatory understanding of positive freedom, Athenian democracy also placed a limit on what could be done with that individual and state power. Since power was constructed from the bottom up, the value of autonomy formed a general boundary to political power. Any account of ‘rights’ or lack thereof must therefore contend with the ideology of the individual as free and *kurios*.

Another branch of future inquiry is the relationship between tyranny and democracy. A tyrant, the very antithesis of democratic ideals, is often said to be able to do “whatever he wishes.” In Sophocles’ *Antigone*, the eponymous heroine tells Kreon that she did right to bury

her brother and that the rest of the city would agree with her, if only they were not so afraid of him. As it stands, though, “a tyrant says and does what he pleases. That’s his great good fortune” (ἀλλ’ ἡ τυραννὶς πολλά τ’ ἄλλ’ εὐδαιμονεῖ / κάξεισιν αὐτῇ δοῶν λέγειν θ’ ἂ βούλεται, 506-507).²¹⁰ It is clear, then, that the excessive license of tyrannical behavior can be described by the same sort of phrase I have identified as indicating positive freedom in a democracy. How can these two things be reconciled? The answer here may perhaps lie more with the absolute nature of the tyrant’s power than with the amount of freedom he enjoys. Rather than acting like a *kurios*, who, as the head of a household, is empowered but shares his power to varying degrees, the tyrant is more like a δεσπότης. In fact, the tyrant is often equated with a slave master. It is not that he has too much freedom, but that his power is the wrong *kind* of power. As such, he does not follow the rules democracy has in place for power.

Democracy’s anxiety about tyranny could perhaps be approached from this angle as well. It seems that as the concept of political freedom evolved from personal freedom, citizens sought to express positive freedom in both private and public realms. A tyrant, by nature, excludes citizens from such participation, thus infringing on their freedom and power. Thus, he eliminates not only their negative freedom, since he rules as a master, but also their positive freedom. Just as we have seen that power can be a good thing, *viz.* when applied to the *demos*, the jury, and good citizens, so too can it take on a negative connotation when lawbreakers threaten the power of others. Tyrants take this threat to the extreme by effectively controlling the distribution of power rather than allowing the delicate balance between the collective and individual necessary to the democratic process. Still, we cannot simply ignore the fact that the phrase used bears such a close similarity to descriptions of democratic freedom. Critics of democracy, in fact, often

²¹⁰ Translation of *Antigone* by Woodruff 2001.

compare it to a tyranny, whether of the *demos* or a particular political body.²¹¹ Further investigation into the types of sources that attribute this phrase to tyrants and to democracy would, I believe, yield more insight into the contours of freedom and power.

Finally, the theme of tyrannical rule and unbridled ‘freedom’ is also a central piece of Plato’s critique of democracy. In his *Republic*, democracy is second only to tyranny in the ranking of bad constitutions, just as the democratic man is second only to the tyrannical man in terms of bad souls. Plato’s Socrates establishes an isomorphism between constitutions and souls through which his critiques on one side of the analogy hold true on the other side as well. He claims that, just as in a democratic city every citizen gets a vote and alternate rule, in the soul this translates to giving different vices equal ‘votes’ and alternating ‘rule.’ By this logic, Socrates claims that the democratic man is thus ruled at one moment by reason, at another by appetite, and at another by spiritedness as he satisfies each desire that arises. This, of course, is contrary to the functional theory of the good found in the *Republic*: put most simply, it is that every part of a whole has a set function based on its natural abilities. At the macro level, this means that some citizens are meant to be craftsmen, others guardians, and so forth. Analogously, at the level of the soul, reason should rule. The democratic soul obviously leaves no room for this rigid classification system, since every part has an equal voice. In the end, for the Socrates character this means that the democratic man is enslaved, since reason does not rule his soul. He is also very close to becoming a tyrannical man, who Plato depicts as controlled by vices and basically as a psychopath. Gerasimos Santas claims that Plato’s “central criticism is that democracy prizes equality and freedom far too much and the knowledge required for ruling well far too little” (2010: 159). As a consequence, the application of these principles to the soul

²¹¹ E.g. Arist. *Pol.* 1274a.

leads to a *reductio ad absurdum* of a democratic person's decision-making process, since satisfying desires randomly, on the grounds that they are all equal, is ludicrous.

Taking into account the view of freedom as positive freedom, and so being able to do “whatever one wishes,” could provide a fruitful approach to Plato's critique. I would argue that it is not strictly a quantitative issue (i.e. too much freedom in democracy) as much as a qualitative issue. The very definition of democratic freedom is at odds with the importance of psychic freedom from unnecessary desires as presented in the *Republic*.²¹² Socrates goes as far as to claim that “extreme freedom can't be expected to lead to anything but a change to extreme slavery, whether for the private individual or the city” (Ἡ γὰρ ἄγαν ἐλευθερία ἔοικεν οὐκ εἰς ἄλλο τι ἢ εἰς ἄγαν δουλείαν μεταβάλλειν καὶ ἰδιώτη καὶ πόλει, 564a3-4). It is possible to show that this line of reasoning faults democratic ideology's misunderstanding of freedom for the democratic man's psychic enslavement. In this view, a democratic man does *not* in fact do what he wants, since he is subject to various desires pulling him in different directions. In this way, democracy is self-contradictory. *This* is another *reductio ad absurdum* argument Plato's Socrates offers against democracy. The democratic man, and by extension the democratic *politeia*, is absurd. The most free constitution is actually one of the most enslaved. This criticism is actually more effective since it shows an inconsistency within democracy's own self-representation and value system rather than simply not measuring up to a Platonic ideal. Using an interpretation that draws on the link between freedom and power could, moreover, show that this lack of freedom is also a lack of empowerment.

In sum, freedom has long been associated with classical Athenian democracy, but in a rather passive form. By identifying the link between freedom and power, I have aimed to

²¹² As noted by Hansen 2010.

recognize citizens as empowered individuals who can *do* things. In doing so, I hope to have done justice to the meaning of δημοκρατία, ‘the people’s power to do things,’²¹³ while not losing sight of the citizen within the group, and to have opened up new avenues of inquiry.

²¹³ Cf. Ober 2008.

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