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**Procedural Rights in Athenian Law**

"Individuals have rights, and there are things no person or group may do to them (without violating their rights)." -- Robert Nozick, *Anarchy, State, and Utopia*, p. ix.

The notion that rights exist -- that people "have" rights irrespective of who they are -- is firmly engrained in contemporary American thought. It is often assumed, moreover, that people everywhere (at least in the West) understand, and have understood, the existence of these rights even where repressive governments have not allowed such rights to be exercised. This idea, however, is severely tested by the culture of democratic Athens. Many scholars have denied that the Greeks ever had an idea of rights, and it is often observed that their ethical thinkers in general concerned themselves with the question of "virtue" (*arete*) and how it could be achieved rather than with rights and obligations. A good case can be made that rights are nowhere to be found in classical Greek thought.

My own thinking on the issue was stimulated by Fred Miller, who like many writers on rights uses Hohfeld's four-part analysis of our concept of right and identifies each part with a Greek expression or concept, as follows: (a) "just claim" (*to dikaion*), (b) "liberty, privilege" (*exousia*), (c) "authority, power" (*kyrios*), and (d) "immunity" (*adeia, akyros*). This analysis allows us to graft our language of rights onto the Greek texts but does not necessarily mean that the Greeks held such a concept. What is missing, I think, is the idea of universality. A right is not just any claim, privilege, power, or immunity, but only those that are generally available to all members of a community. In order to show that the Greeks had a concept of rights similar to ours, we need texts that speak of all persons having a certain claim, privilege, power or immunity. One could rewrite many of Miller's Greek examples in these terms, but none in fact is so written.

In forensic oratory, however, there are a few examples as early as Antiphon (5.13, 5.17) where the speaker asserts privileges shared, he insists, by all. The examples I have found thus far all concern procedural rights. I will suggest, therefore, that the orators (at least) came closest to our modern concept of rights in the area of legal procedure, and further that this reflects the greater importance of procedure over substance in Athenian law.