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Did the Ancient Greeks have a Concept of Human Rights?

Anthony Preus

The quick answer to this question is "no," because it is generally believed that nobody in antiquity had the idea of "rights" as that word is understood in the phrase "human rights," or at any rate there seems to be no ancient Greek word or phrase that unambiguously translates that concept.¹ As a rough and ready approximation, I will take the *Declaration of Independence* as expressing the concept in its modern sense. Although Thomas Jefferson was well acquainted with ancient political thought, that is not where he got those famous words:²

¹ The best analysis of the concept of rights in relation to the classical Greek language is that of Fred Miller, *Nature, Justice, and Rights in Aristotle's Politics*, Oxford 1995, pp. 91ff. See also Phillip Mitsis, "The Stoic Origin of Natural Rights," in *Topics in Stoic Philosophy*, ed. K. Ierodiakonou, Oxford 1999, pp. 153-177. They point out that Leo Strauss, *Natural Right and History*, Chicago 1957, Jürgen Habermas, *Theory and Practice*, Boston 1974, Alasdair MacIntyre, *After Virtue* (Notre Dame 1984), among others, have made the *absence* of a concept of natural rights in Greek thought an important part of their historical interpretations.

² At least not directly. Miller, *op. cit.* pp. 121 ff, shows that Locke was influenced by Aristotle in his statement of natural rights, and Jefferson was working from Locke. Jefferson was also, as I note be-

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

But if these "truths" are "self-evident," would not the ancient Greeks, so clever in so many other respects, have discovered them?

Before we look at some ancient texts, let's try to be somewhat clear about what we might be looking for in them. As I understand it, the Jeffersonian rights to "life, liberty, and pursuit of happiness" are what are called "liberty" rights; one is at liberty to live and pursue one's goals as one likes so long as one does not interfere with equal liberty of others. Getting clear about the idea of "equality" is essential here—people sometimes misunderstand Jefferson's "created equal" phrase, as if it meant that everyone has equal ability or strength (obviously false); rather, I think that Jefferson means that each person has equal initial liberty rights. A lot more can be said about that, but for my present purposes that will have to do. Jefferson's point about "endowed by their Creator" is that these rights *precede* any political constitution, that governments are established in order to defend and make

low, well acquainted with Cicero; we may well trace some but not all of his expression to that source.

operable natural and pre-existing liberty rights, that those rights are not brought about by the establishment of government. We note also that Jefferson supposes that those rights inhere in human beings *qua* human, perhaps that it is something about the nature of human beings that grounds equality of liberty rights in them.

Even though there is no simple or straightforward translation of "human rights" into classical Greek, there are plenty of related concepts. For example, the ancient Greeks were *very* conscious of the ideas of law (*nomos*) and justice (*dikaio-syne*); they prized freedom (*eleutheria*) and liberty (*exousia*), and sometimes if not often tried to achieve some sort of equality before the law (*isonomia*),³ at least for citizens within a particular state. *Isegoria* means "equality of persuasive speech," and is more or less equivalent to our "freedom of speech." Sometimes, the ancients concluded that the idea of law, or justice, or freedom, or equality (or more than one of those ideas) had its basis on a divine decree or the natural order of things, that an "unwritten law" or "naturally best constitution" underlay all actual legislation, and that one might appeal to those sources to critique a current political arrangement. All of that moves more or less in the direction of Jeffersonian "human rights," even though perhaps none of it captures the entire package.

³ Hansen, *op. cit.*, points out that "isonomia" does not occur very often in the classical texts; the favorite "equality" word appears to be "isogoreia" or equal right to public speech, equal right to persuade others to one's own point of view.

I am going to look at several texts from classical Greece that approach, in different ways, expressions of "human rights" in the Jeffersonian sense. These are:

- A) Pericles' Funeral Oration, from Thucydides *History of the Peloponnesian War*, Book II.
- B) Socrates' representation of the Laws of Athens speaking to him, in Plato's *Crito*.
- C) Socrates' discussion with Thrasymachus about justice in Plato's *Republic*, Book I.
- D) Aristotle's account of Justice in *Nicomachean Ethics* book V.
- E) Aristotle's notorious defense of slavery in *Politics* book I.
- F) Some bits from Stoic philosophy, including Chrysippus and Cicero, that may anticipate, in some respects, the Jeffersonian statement of "human rights."

A) Pericles' Funeral Oration⁴

Pericles, honoring the Athenian dead in an early battle of the Peloponnesian war, is represented by Thucydides as speaking, in part, as follows:

Our constitution does not copy the laws of neighbouring states; we are rather a pattern to

⁴ M. H. Hansen, *Was Athens a Democracy?* Copenhagen, 1989, analyses the Funeral Oration in terms of "liberty" and "equality."

others than imitators ourselves. Its administration favours 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. The freedom 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 neighbour for doing what he likes, or even to indulge in those injurious looks which cannot fail to be offensive, although they inflict no positive penalty. But all this ease in our private relations does not make us lawless as citizens. Against this fear is our chief safeguard, teaching us to obey the magistrates and the laws, particularly such as regard the protection of the injured, whether they are actually on the statute book, or belong to that code which, although unwritten, yet cannot be broken without acknowledged disgrace.⁵

Some relevant points:

1. Pericles claims that Athenian law affords "equal justice."

⁵ See M. H. Hansen, *Was Athens a Democracy?* Copenhagen, 1989, for an account of political rights in the Athenian state.

2. Pericles claims that Athenian law and custom affords equal opportunity for advancement.
3. Pericles is proud of the degree of freedom Athenian citizens enjoy.
4. Pericles is proud of the degree of toleration Athenians show to each other.
5. Pericles is proud of Athenian law's instructing the citizen to "protect the injured."
6. Pericles claims that Athenians tend to obey "that code, which although unwritten, cannot be disobeyed without acknowledged disgrace."

From the Jeffersonian perspective, Pericles has captured many of the essentials. Although Pericles states no opinion about people's status outside the *polis* of Athens, within the *polis* citizens have juridical equality and equality of opportunity; they have the greatest degree of freedom consonant with an equal degree of freedom for other citizens, to phrase it in modern language; they recognize the authority of the "unwritten law" on which Athenian law is ultimately based. While Pericles does not speak in this passage explicitly about "life" and "pursuit of happiness," they are clearly implied in the rest of the oration. Indeed, Pericles 'goes Jefferson one better' in calling attention to legally enforced concern for the less fortunate, something that continues to cause theorists some problems.

B) Crito

In the *Crito*, Socrates is in prison, awaiting execution; his friend Crito offers to help him escape, but Socrates refuses, citing, among other things, the implied contract that Socrates, as a citizen of Athens, may be said to have. Socrates, having benefited from all the positive things that Athens had to offer—notably education and protection of the laws—consequently has an obligation to accept the bad with the good, so to speak.

The contractual picture of the laws is especially relevant to talk about "rights," since "rights" in the narrow sense frequently are consequent upon contractual agreements. One way of construing 'rights talk' is to interpret it in terms of fulfillment of contract; as Socrates represents the situation in the *Crito*, the State and the Citizen each has reasonable expectations about fulfillment of the fundamental contract by the other party. Down that road we would come to a conception of *legal* rights, to be sure, but perhaps not any *human* or *universal* rights. Or would the reference to the laws of the "world below" suggest the sort of universality as Pericles' "unwritten law" may enjoy?

Think not of life and children first, and of justice afterwards, but of justice first, that you may be justified before the princes of the world below. For neither will you nor any that belong to you be happier or holier or juster in this life, or happier in another, if you do as Crito bids. Now you depart in innocence, a sufferer and not a doer of evil; a victim, not of the laws, but of men. But if

you go forth, returning evil for evil, and injury for injury, breaking the covenants and agreements which you have made with us, and wronging those whom you ought least to wrong, that is to say, yourself, your friends, your country, and us, we shall be angry with you while you live, and our brethren, the laws in the world below, will receive you as an enemy; for they will know that you have done your best to destroy us.

It is obviously Socrates' point that he is obligated to act *justly*, and life, liberty, and the pursuit of happiness are, as it were, *consequent* goods following upon the pursuit of justice. Socrates has a contractual relationship with the State, and religious obligations to the gods; his discussion here does not readily lend itself to talk of universal human rights.

So, according to the speech of the Laws in Plato's *Crito*:

1. The citizen is in a contractual relationship with the state: in exchange for obedience to the laws, the citizen receives benefits such as education and the protection of the laws.
2. The laws of the state have some sort of backing from divine law so that good citizens may expect rewards, and bad citizens punishment, even after death.
3. There is no talk of equality, or of liberty, and duty seems to trump "pursuit of happiness."

C) Thrasymachus and Socrates in *Republic* Book I

It is understood that not everyone in ancient Athens felt an obligation to act justly. Notably the Sophist Thrasymachus, in *Republic* I, claims that "justice is the will of the stronger." Thrasymachus makes clear, in subsequent questioning, that he means that "justice" is whatever is in the interest of those who are in power. On further questioning, Thrasymachus commits himself to the position that the ruler "in the strict sense" does not make mistakes (about what is in the interest of the ruler). In response, Socrates argues on analogy with arts like medicine and ship-captaining that the "strict sense" of "ruler" must be stated in accordance with the *function* of the ruler, and that must be something that furthers the interest of the governed and of the community—that is, it is the function of medicine to cure the patient, and of ship-captaining to get the passenger to his or her destination; the physician or ship captain or ruler may earn money by performing that function, but the art "in the precise sense" is the furtherance of the interest of subject. Thrasymachus retorts that the shepherd takes care of the sheep too, until it is time to shear or slaughter them. "People censure injustice, fearing that they may be the victims of it and not because they shrink from committing it."

My reason for referring to this part of the *Republic* stems partly from the idea that if Socrates can demonstrate that the function of government is to benefit the governed, or something in that territory, then citizens of a state would have a reasonable expectation that their government will benefit them, rather than exploit them.

One may say that Jefferson's objection to King George was that he appeared to be governing according to a Thrasymachean model of government, exploiting the American colonies so far as he was able, and Jefferson's argument, in the *Declaration of Independence*, was essentially Socratic in that the King was therefore not behaving as a proper ruler, thus giving moral justification to the colonists to revolt. I dare say that Thrasymachus' view of the situation in 1776 would be a little different. In the context of an ongoing conflict in Europe, it was difficult for the King to commit the resources necessary to keep the colonists in line, and the colonists took advantage of that in order to maximize their own capacity to exploit their African slaves and to steal the lands of the Native Americans. Justice, having been the interest of the Crown, became as a consequence of the Revolutionary War, the interest of the White Anglo-Saxon Protestant colonials. Thrasymachus would likely say that the Declaration of Independence sounds very well from a rhetorical perspective, but there was little indication that the people who signed it were really committed to putting its principles into practice once in power themselves. But I digress.

In the rest of the *Republic*, Plato argues, among many other things, that there is a Form, or transcendental ideal, of "justice." In principle, it would be possible to argue for universal rights on something resembling Platonic grounds, but Plato does not do that. Instead, he argues that justice in the individual is each psychological faculty doing its own business, and wisdom ruling everything, and in the state, justice is a matter of each person carrying

out his or her own proper role, under the ultimate direction of the wisest rulers. Freedom and individual rights seem very remote from the discussion in the *Republic*. When Plato does talk about liberty and equality, it is with a certain degree of disdain, if not horror.

(In the Democratic constitution) Aren't they free? And isn't the city full of freedom and freedom of speech? And doesn't everyone have the license to do what he wants? [...] And where people have this license, each will arrange his own life in whatever manner pleases him. (*Republic* VIII. 557)⁶

From Plato's point of view, this is nearly the *worst* sort of state, only marginally better than the society ruled by a vicious and greedy tyrant.

In his later work, the *Laws*, Plato presents a somewhat more balanced political theory. There he claims that there are two "mother" constitutions, monarchy and democracy, and that every constitution must have some of each in order to achieve the goals of "friendship, wisdom, and freedom (*eleutheria*)." (III.693b-3)

⁶ Gregory Vlastos, "The Rights of Persons in Plato's Conception of the Foundations of Justice", in Engelhardt & Callahan, eds., *Morals, Science, and Sociality*, New York 1978, pp. 172-214, and *Isonomia Politike* in *Platonic Studies*, 2nd ed. 1981, Princeton, 164-203, argues for the existence of a Platonic concept of rights.

D) Nicomachean Ethics V.

In the *Nicomachean Ethics* book V, Aristotle distinguishes two basic conceptions of "justice:" justice as fair distribution of goods, and justice as legality. While the *Nicomachean Ethics* is more concerned with the good qualities of a person, and the location of a disposition to act fairly and legally within the general spectrum of a good person's dispositions, there is some discussion of the philosophical basis for fairness and legality. Simply put, there is a presumption in favor of equal distribution, but at the same time the objective of civil society is the production and preservation of "happiness and its components" for civil society. So if something other than an equal distribution tends to produce and preserve happiness and its components, then that unequal, but presumably proportionate, distribution would be justified.

Political justice, Aristotle says, exists between people whose mutual relations are governed by law, and such people are free and "either arithmetically or proportionately equal." Thus there is no political justice between parent and children, nor between master and slave, since either there is no freedom or there is no equality, or both. More on that in a moment. But among those whose relations are governed by law one might say that there exist what nowadays we call "legal rights." So as one extends the scope of those whose relations are governed by law, one also, in principle, extends the scope of those who may be said to enjoy rights under the law so extended.

Very interestingly, in *EN* V.7, Aristotle says, rather strikingly, that of political justice, part is natural, part

conventional. The natural part is "that which everywhere has the same force and does not exist by people's thinking this or that;" the conventional part is that which was indifferent before enactment, but obligatory after enactment. Natural justice is dependent ultimately on 'that constitution which is everywhere the best.'

There are, therefore, within *EN* V two conceptions of legal justice, a narrow conception, consequent upon a specific legal arrangement, and a broad conception, based on the idea of that constitution which is "naturally best:"

a) According to the "narrow" conception of political justice, justice is obtained within a particular political arrangement, so that we might paraphrase Jefferson's statement into this Aristotelian-like form: "All Athenian men are born equal and endowed by the Polis with certain *alienable* (not "inalienable") rights, life, liberty, and participation in the general happiness."

b) According to the "broad" or "natural law" conception of political justice, there is a political constitution that is "everywhere by nature the best." Aristotle does not say much about the content of that naturally best constitution in the *Nicomachean Ethics*, but staying within the parameters of *EN*, we might speculate that Aristotle would imagine that the Jeffersonian statement could be paraphrased into this form: "According to the political arrangement that is everywhere best, all people who are free and eligible to participate as citizens in their state in principle have the right and indeed obligation to contribute to the general happiness of their state by participating in the governance and life of the community."

We might be able to broaden that conception of "natural justice" a bit by looking at what Aristotle says in the *Politics*.⁷

E) Politics I

In *Politics* book VII.2, Aristotle says that we should never hunt human beings for the purpose of sacrificing them or eating them, but we must hunt only edible animals. One could argue from that statement that Aristotle believes that all human beings have the "natural" right not to be hunted as food.⁸ We know from *Nicomachean Ethics* VII that Aristotle had a particular horror of cannibalism, and thought that those who practiced it were in a way surrendering their humanity. He calls these practices "theriotes" or "bestial." But in the same passage in *Pol.* VII.2, he also says that if one person is "born to serve" and the other is not, the one has (as the Oxford translation puts it) the "right" to command those who are intended to be subjects. He defends the idea that some people are naturally destined to be slaves in *Politics* I.

In the course of that discussion, he makes a very significant move: not only does he defend the idea that some people are naturally (*physei*) free, and others are naturally slaves, but toward the end of his discussion of natural slavery (I.6, 1255a3-12) he concedes that there is a distinc-

⁷ For this entire section, see also Fred Miller, *Nature Justice and Rights in Aristotle's Politics*.

⁸ 1324b38. Phillip Mitsis *op. cit.* p. 162, thanks Richard Kraut for the reference.

tion between "natural" slavery and "conventional/legal:" (*kata nomon*) slavery. He notes that some "legal experts" deny that conventional slavery, i.e. slavery as a consequence of capture in warfare, is a valid law. Aristotle is clearly aware that some argued that slavery is *only* conventional, never natural; for example, Alcidamas, who said (c. 360) "God has set all men freed, nature has made no man a slave," and Philemon (368-267), who said "No one was ever a slave by nature, though chance enslaves the body."

Aristotle argues that those who are essentially destined by nature to be slaves "lack the deliberative function" and thus cannot function on their own in society. They need to be directed by someone who will tell them what to do. Aristotle goes on to say that children (normally) have the deliberative function, but it is immature, and women have it, but it is "without authority" (*akuron*).

If we bring Aristotle and Jefferson face-to-face, so to speak, what is the result? Jefferson says "all men were created equal." The basis of Aristotle's theory of slavery is that it is *not* the case that all men were created equal, but that they are unequal precisely in regard to characteristics that would entitle them to liberty. Aristotle's theory of the best constitution yields directly the idea that under that constitutional arrangement that is everywhere the best, *some* people are equally free to pursue happiness for themselves, their families, and their communities, consonant with an equal freedom for others. Those would be the individuals who would be entitled to be citizens of the best state. Individuals who lack the deliberative capac-

ity are in contrast, we gather from Aristotle's *Politics* I, best served by being enslaved.

This is a good moment to say something about the "human" side of "human rights." Aristotle's definition of *anthropos* is "rational animal" or "social animal" (*zoon politikon*). From an Aristotelian perspective, an individual who is *not* rational, or an individual who is radically anti-social, is not fully human. A common word for "slave" in classical Greek is "*anthropopodes*," that is, "human-footed," as if the individual shared only erect posture and two-footed progression with humanity. Greeks generally, and to a large extent Aristotle himself, regarded non-Greeks as significantly inferior to Greeks—Europeans tended to be brave but rather stupid, Asians tended to be clever but cowardly—only Greeks have all the necessary virtues. So Aristotle tends to think that many non-Greeks would be better off as slaves of Greeks. And seriously antisocial individuals are beyond vice, they are bestial (*theriotes*), and they too would need close supervision.⁹

In the Greek world-view up until the time of Aristotle humanity was not all that strictly demarcated from the rest of the living universe. Not only are people more or less continuous with the more intelligent animals in terms of intellectual abilities (though we have yet to find an animal capable of participating in the sort of discourse required of a voting citizen or magistrate), but Aristotle, like most of his contemporaries, believed in the existence of a whole continuum of divine beings occupying various

⁹ *Nicomachean Ethics* VII.

parts of the universe. Human beings not only rule over animals as well as each other, they may be subject to the rule of divinities who are not necessarily benevolent or even in agreement with each other. The Jeffersonian ideal of human rights explicitly trades on the concept of a benevolent monotheism, a religious stance that is distinctly a minority opinion in the days of Aristotle.

F) Stoics

That brings us to the Stoics. The Stoic school of philosophy was founded in Athens by Zeno of Cittium (a town in Cyprus) just a few years after the death of Aristotle. Stoicism has features that enable the construction of a more consistent theory of "human rights" than is possible within the Aristotelian politics, at least as Aristotle lays it out himself. It is very far from positing the whole Jeffersonian declaration, but it marks what may be taken to be a necessary stage in the transition from the philosophies of Plato and Aristotle to the legal theory at the basis of Roman jurisprudence that was transformed by Locke and adopted, with further transformations, by Jefferson.

- Stoic theology posits a benevolent monotheism allowing attribution of human beings' moral nature to the will of that deity. (Diogenes Laertius 1.147)
- The god of the Stoic is, from a certain point of view, present in all rational beings as their rational principle. (Cicero, *Nat Deor* 1.39, citing Chrysippus) There is a certain equality of all rational creatures in respect of the fact that they share in the rational principle, and non-rational creatures (e.g.,

- lower animals) do not. (Cicero, *de officiis* I.107, Porphyry, *de abstinent* 3.20.1)
- The Stoic god is, at the same time, the source of law and justice in the universe. (Cleanthes Hymn to Zeus, Cicero *de legibus* I.6)
 - From the Stoic perspective, all human beings are in principle free, even if they are conventionally enslaved, since their "governing faculty" or what we would call "free will" could never be commanded by another without one's assent. At the same time, only the wise person is truly free (Diogenes Laertius 7.121), because only the wise person wills the truly correct action.
 - For the Stoic, the "naturally best constitution" is not just a theoretical basis for the construction of actual (and probably inferior) constitutions, but a very real environment for living and acting.
 - The world is like a city consisting of gods and men, with the gods serving as rulers and men as their subjects. They are members of a community because of their participation in reason, which is natural law; and everything else is created for their sake. (Arius Didymus SVF 2.528)
 - Epictetus: "Consider who you are: to begin with, you are a human being, that is, one who has no quality more sovereign than moral choice, and who holds everything else subordinate to it, and moral choice itself free from slavery and subjection [...] In addition to this you are a citizen of the world and a part of it."

If you are a citizen of the world, then the laws "of the world" apply primarily to you. That is, *qua* citizen of the world, you are equal to every other citizen of the world, in virtue of that joint citizenship, and you share in whatever liberties belong to citizens of the world in virtue of that citizenship.¹⁰

I hasten to add, with Phillip Mitsis, that the Stoics do not have the *entire* Jeffersonian ball of wax:

- The Stoic does believe that all human beings are "endowed by their Creator" with certain inalienable rights:
 - There is a fundamental equality of rational creatures;
 - (Stoic) freedom, *eleutheria*, is inalienable.
- The Stoic does NOT believe that there is a "right to life." Self-preservation is a natural impulse or instinct, but it may be appropriate at some moment to die. Whether one lives or dies is ultimately a matter of indifference to the Stoic.
- The Stoic does NOT believe that there is a "right to the pursuit of happiness:" the maximization of one's own happiness is a natural impulse or instinct, but ultimately happiness itself is a matter of indifference to the Stoic.¹¹

¹⁰ Cf. Dirk Obbink, "The Stoic Sage in the Cosmic City", K. Ierodiakonou, ed., *Topics in Stoic Philosophy*, Oxford U.P. 1999, pp. 178-195.

¹¹ Mitsis *op. cit.* p. 172.

Cicero

A major channel of classical Greek philosophical ideas to the European and American thinkers of the Enlightenment was Cicero. Although Cicero was much influenced by Stoic philosophy, his own point of view is considerably less austere than that of Chrysippus, which is more expansive. In Cicero's Latin, the word *ius* captures a good deal of the content of our word *right* as it appears in the Jeffersonian declaration, and more than that, the translations of Cicero that Jefferson used often translated *ius* as "right."¹² He proposes a rather strong statement on human equality: "There is no difference in kind [between one human being and another] ... there is no human being of any nationality [*gens*] who, if he finds a guide, cannot attain to virtue." (*de Legibus* I) "All men have received reason; therefore all men have received justice." Like the Greek Stoics, Cicero finds that there is one divine law that is the basis of all human legislation: "Justice is one; it binds all human society, and is based on one Law, which is right reason applied to command and prohibition.

¹² "Marcus Tullius Cicero (106-43 B.C.) Roman philosopher, orator, and statesman, was Jefferson's favorite classical scholar. Jefferson is believed to have modeled his own life on Cicero's love of study and aristocratic country life. Most of Jefferson's Ciceronian extracts are from the *Tusculan Disputations* a discourse or dialogue about pain, grief, and the necessity of coming to grips with death. Jefferson owned more than forty Cicero titles during his life. This is one of the fourteen Cicero titles that came to the Library of Congress in 1815." <http://www.loc.gov/exhibits/jefferson/jefflib.html> <
Legend from a slide in a Jefferson Library exhibit.

Whoever knows not this Law, whether it has been recorded in writing anywhere or not, is without Justice." (*de Legibus* I) "Laws were invented for the safety of citizens, the preservation of States, and the tranquility and happiness of human life." (*de Legibus* I)

So Cicero certainly believes that:

- All human beings were created equal.
- That they were endowed by their creator with something very like "human rights"—a sense of justice that is the foundation of all legislation, at any rate.

He does *not* emphasize "freedom" or "liberty" in this connection; rather, somewhat like Jefferson, he emphasizes the goals of legislation in furthering "safety" and "happiness."

"Excessive liberty leads both nations and individuals into excessive slavery." (*De Republica* (I, 44))¹³

¹³ Cicero's feelings about *libertas* might be somewhat colored by the fact that his enemy Clodia tore down Cicero's house in Rome, while Cicero was in exile and writing the *de Legibus*, and built a temple to *Libertas* on the site. "LIBERTAS (2): the shrine which Clodius built to *Libertas* on the site of Cicero's house on the Palatine, which he had destroyed (Cic. de domo 116; Plut. Cic. 33: *naos eleutherias*; Cass. Dio xxxviii.17.6, *neos eleutherias*: xxxix.11.1, 20.3). The temple was taken down when Cicero returned from exile." Samuel Ball Platner (as completed and revised by Thomas Ashby): *A Topographical Dictionary of Ancient Rome*, London: Oxford University Press, 1929.

He also thinks that legislation properly maximizes the good of all people: "nature made us just that we might share our goods with each other, and supply each others' wants."

A more extensive study of *de Legibus* and its possible link with the concept of human rights would be warranted and has to be reserved for a separate investigation.

Summary and Conclusion

Although there is no single word in classical Greek that captures the sense that modern political thinkers give to the word "rights" as it is used in the phrase "human rights," classical Greek and Roman texts have a good deal to contribute to 21st century discussions of human rights. With this essay, we have just briefly scratched the surface in a few places, providing a sense of how ancient Greek and Roman thinkers conceived these issues.

Islamic and Western Moral and Legal Foundations for Humanitarian Intervention and for the Protection of Civilians in Armed Conflict

Achim D. Köddermann

This article argues that there is a common foundation for legal principles that transcend national legal standards:¹ a moral framework that allows protecting non-combatants and that allows for humanitarian intervention when such protection cannot be given by nation states. First, Islamic arguments will be examined to show that the concept of defensible unalienable human rights coexists in Islamic and Western traditions. The second part of the article argues for the application of such universal standards in cases of genocide. The foundational principles have to hold independently of the secular Western or

¹ In current international law this standard is codified in the Geneva Convention (No. IV) Relative to the Protection of Civilian Persons in Time of War, Art 27, 6 UST 3516, 3536, 75 UNTS 287, 306. For the problematic assumption that U.S. legal Sovereignty trumps all international moral or legal horizontal structures see Frederic L. Kirgis, Distinctions Between International and U.S. Foreign Relations Law Issues Regarding Treatment of Suspected Terrorists, *ASIL Insights*, June 2004.