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From Exile of Citizens to Deportation of Non-Citizens: Ancient Greece as a Mirror to Illuminate a Modern Transition.[1]

Abstract

This article is an ancient Greek historian's response to an invitation to reflect upon modern liberal democratic deportation. The article identifies a revealing contrast between ancient Greek city-states and their modern republican successors. In ancient Greece, institutionalised lawful expulsion of non-citizens was not a major concern. Rather, it was lawful expulsion of citizens which was a prominent political issue, comparable to modern liberal democratic deportation. Indeed, modern liberal democratic deportation and associated rhetoric were significantly foreshadowed in the ancient Greek politics of expulsion: Greeks used and justified lawful expulsion of citizens as a means of constructing and reinforcing both state power and abstract, rationalistic norms of citizenship. The article suggests the hypothesis that the contrast between the ancient and modern situations can be explained by the modern prevalence of universalist human rights norms, not politically influential in ancient Greece. First, human rights norms exert pressures on modern liberal democratic states, unparalleled in ancient Greece, to integrate and assist outsiders. Deportation is partly a reaction against those pressures, of a type unnecessary in the ancient Greek world. Second, although the modern liberal democratic analogues of Classical republican ideas, partly derived from their Classical antecedents, encourage lawful citizen expulsion, the modern citizen's inalienable human right to residence in his home state militates against it. Modern liberal democratic deportation of non-citizens, and associated rhetoric, can thus be interpreted partly as alternative outlets for the use of expulsion and exclusionary rhetoric to construct and reinforce complex norms of citizenship.

In ancient Greek city-states, unlike in modern liberal democratic states, the institutionalised lawful expulsion of non-citizens was not a major practical or theoretical concern. By contrast, a prominent place in civic life, comparable to that occupied by deportation in modern liberal democratic political organisation and debates, was occupied by lawful expulsion of citizens (cf. Walters 2010, 82, 98). Indeed, ancient Greek civic practices of lawful citizen expulsion significantly resemble modern liberal democratic practices of deportation.

Like modern liberal democratic deportation practices, ancient Greek civic practices of lawful exclusion and expulsion involved separate consideration by courts and officials of individuals' cases, judged in accordance with purportedly impartial legal criteria. In this respect, ancient Greek practices of citizen expulsion were much closer to modern liberal democratic deportation practices than common historical forms of deportation of foreigners: in ancient Rome, for example, although some magistrates had powers to summarily expel individual resident non-citizens, the most prominent form of deportation of non-citizens was expulsion by special law or decree of whole groups, especially groups distinguished by ethnicity, religion or profession (Balsdon 1979, 98-102; Noy 2000, 37-47, 286). In addition, ancient Greek practices of lawful citizen expulsion resemble modern liberal democratic deportation in that their principal objective was to remove the expellee from the territory of the state concerned, not to subject him to transportation to another place under that state's control.

Moreover, ancient Greek citizens' principal justifications of practices of lawful citizen expulsion, through which they presented those practices as means of defending and promoting norms of citizenship, resemble modern liberal democratic citizens' similar justifications of deportation practices. For one thing, such ancient Greek justifications relied on appeal to political ideals which were abstract, rather than merely traditional or locally idiosyncratic, and thus susceptible to rational debate.[2] For another, the particular abstract, rationalistic notions of citizenship presented by ancient Greeks as in need of defence or promotion through lawful expulsion were very similar to those

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[2] For an argument that ancient Greek political life was distinctively rational: Murray 1990.

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presented by modern citizens as in need of protection or reinforcement through deportation.

Section 2 introduces ancient Greek city-states. Section 3 then examines the reasons for the paucity of direct correlates to modern liberal democratic deportation in most Greek city-states. After this divergence has been discussed, section 4 presents the full argument that ancient Greek practices of lawful expulsion and associated rhetoric were nonetheless important forerunners of modern liberal democratic deportation and deportation discourse, especially in their connections to citizenship and citizenship norms. Section 5 then shows how the ancient Greek case-study illuminates the shift in modern liberal democratic states, a gradual process extending from the later eighteenth to the twentieth century, from a preoccupation with lawful expulsion of individual citizens to a preoccupation with lawful deportation of individual non-citizens.

2. Ancient Greek city-states

In the Classical period (c. 480-336 BC), there were at any given moment around 1000 Greek city-states, concentrated in mainland Greece, the Aegean, Western Asia Minor, Sicily and South Italy. In the subsequent Hellenistic period, Alexander the Great and his successors established many more Greek city-states in the Near and Middle East. A great deal more evidence survives for Athens than for any other city-state. Nevertheless, many pieces of evidence, albeit often isolated inscribed civic laws and decrees, survive for the history of other Greek city-states, especially after 300 BC.

In most Greek city-states, long-term residents were divided into three status categories: citizens, resident free non-citizens (often called metics) and slaves. Citizenship was usually acquired on the basis of descent from one or, in stricter regimes, two citizen parents. Naturalisation of those lacking citizen parentage was probably legally possible in all city-states, but in most it seems to have been implemented rarely: as a response to exceptional civic contributions by individual non-citizens or a solution to acute manpower shortage.[3] Consequently, most free non-citizen residents of city-states had metic status. At Athens, metic status carried heavy

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[3] For Athens: Davies 1977/8; Osborne 1981-3.

military and financial obligations, including a monthly poll tax and registration with a citizen patron. It brought relatively few reciprocal entitlements, besides permission to reside in Athens: the status conferred some legal protections, but none of citizenship's political privileges (cf. Todd 1993, 195-9).

Most city-states had consistently republican constitutions in this period: they were either consistently democratic or oligarchic or alternated between the two, sometimes with interludes of tyrannical government. In ancient Greek democracies, all free citizens could vote in the primary assembly, serve as jurors in the courts or members of the civic council and hold civic magistracies. In more radical democracies, such as the Classical Athenian democracy, selection for the council and magistracies was by lot, not by election. In such radical democracies, pay from public funds was often provided for magistrates and even for those participating in assemblies or serving on juries. The distinguishing feature of ancient Greek oligarchies was that citizens had to satisfy a certain property qualification in order to fulfil some or all of the major functions of citizenship.[4]

3. The paucity of evidence for institutionalised deportation of non-citizens in Greek city-states

The closest parallel to modern liberal democratic deportation in the ancient Greek world was the Spartan institution of *xenelasia* (literally 'driving out of foreigners'): Spartan magistrates were legally entitled intermittently to expel foreigners from Spartan territory. As Rebenich (1998) shows, the meagre evidence for *xenelasia* is subject to heavy ideological distortions: anti-Spartans presented it as emblematic of Spartan secrecy (Thucydides 2.39.1, cf. 1.144.2; Rebenich 1998, 348, 356), while pro-Spartans presented it as a necessary means of preserving the integrity of Sparta as an austerely virtuous, militaristic civic community (Xenophon *Constitution of the Spartans* 14.4; Plutarch *Lycurgus* 27.3-4; Figueira 2003, 52-6).

Attempting to penetrate these ideological distortions, Rebenich analyses the few known cases of actual *xenelasia*. He concludes (Rebenich 1998, 352-3) that the institution was not a reflection of particular Spartan xenophobia: it was used

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[4] For a full collection of the evidence for individual city-states' constitutions: Hansen and Nielsen 2004. For a general overview: Hansen 2006.

sparingly, to guarantee Sparta's diplomatic and military security. Some other Greek-states probably used expulsion of foreigners for similar purposes of security, but only as a pragmatic and non-systematic response to crisis. City-states sometimes resorted, principally in the Archaic period (seventh-sixth centuries), to expulsion of 'scapegoats' (*pharmakoi*), who could be non-citizens, as an *ad hoc* religious solution to particular crises (cf. Parker 1983, ch. 9; Figueira 2003, 71). City-states also sometimes engaged in entirely secular *ad hoc* expulsions of burdensome or troublesome foreigners: resident foreigners for whom food supplies were considered insufficient[5] or politically partisan resident mercenaries.[6] Moreover, Aeneas Tacticus, author of a fourth-century work explaining how to survive a siege, makes a general recommendation that vagrants among the non-citizen population of a besieged city should be banished by a herald's proclamation 'after some time' (Aeneas Tacticus 10.10; cf. Whitehead 2002, 122).

Some city-states probably also at least exerted pressure to depart on metics who challenged religious and ethical orthodoxy. In the case of democratic Athens, for example, the fifth-century atheist thinker Diagoras of Melos reportedly fled Athens after accusations of impiety (Diodorus Siculus 13.6.7), while a large number of professional philosophers, including many non-citizens, probably fled the city after a decree of 307/6 ordered some form of democratic regulation of their activities (Athenaeus *Deipnosophistae* 610ef; Diogenes Laertius 5.38; cf. Habicht 1997, 73-4; Haake 2007, 29, 42-3).

However, despite the common suspicion evident in these cases that certain non-citizens' activities and ideas could compromise civic life, there is a striking paucity of evidence for institutionalised practices of lawful expulsion of non-citizens, comparable to Spartan *xenelasia*, in other Greek city-states.[7] Although this appears difficult to reconcile with most city-states' notorious particularism, it is explained by significant factors which made such institutions inappropriate or unnecessary.

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[5] Philochorus *FGrH* 328 F119; Figueira 2003, 47, n. 11 (an Athenian case).
[6] Cf. Diodorus Siculus 11.76.5 (concerning fifth-century Sicilian city-states). Incarceration of disruptive mercenaries was another possibility: Polyaenus *Strategemata* 2.30.1.
[7] *Xenelasia* is securely attested elsewhere only at the city-state of Apollonia on the Adriatic (Aelian *Varia Historia* 13.16; Figueira 2003, 46, n. 9); there is also a possible attestation at Lyttos on Crete (Whitehead 2002, 122; *SEG* 39.974).

First, when it came to punishing foreign visitors and residents for serious crimes, expulsion was probably commonly considered too lenient a penalty. In Athens, for example, metics who did not comply with the strict regulations governing metic status, or illegitimately claimed citizen privileges, were not deported, but sold into slavery (Todd (1993), 139; Demosthenes 25.57-8). Admittedly, it is unclear what penalty was imposed on metics who were convicted at Athens of crimes for which a citizen would have been sentenced to exile. It is unlikely, however, that deportation was simply substituted for exile. A metic accused of murder, unlike a citizen accused of murder, could lawfully be hauled before the responsible magistrate by his accuser and imprisoned by the magistrate while awaiting trial. This was probably because pre-emptive flight to avoid trial was considered a punishment in itself for a proud Athenian citizen, but no punishment at all for a 'rootless' metic (Gauthier, 1972, 143).

Second, the existence of the subordinate status category of metics removed any pressure on city-states to fully integrate immigrants or to assign substantial weight to their welfare. Indeed, the existence of this subordinate status category enabled city-states to benefit from resident non-citizens' financial and military contributions, and wider abilities and expertise, without granting them citizenship or related privileges.[8] Institutions for expulling immigrants would thus often have been obviously counterproductive for citizens themselves. Moreover, at least in Athens, as Whitehead (1977) argued, the operation of the status category of metics succeeded in imbuing in its members an ideology of subordination, which restrained them from challenging established civic practices. Third, probably partly because the first and second factors made it prudent, some Greeks rejected *xenelasia* as xenophobic, exploitative and culturally isolating for the expelling state (Figueira 2003, 56-62; cf. Thucydides 2.39.1).

4. Lawful expulsion of citizens from ancient Greek city-states
a) Introduction
The contrasting centrality of institutionalised lawful expulsion of citizens to ancient Greek political debates is clear from a significant recent book, Forsdyke 2005. In line

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[8] Walzer 1983, 52-5, compares modern *Gastarbeiter* with Athenian metics.

with the dominant trend in recent scholarship on ancient Greek politics, spearheaded by J. Ober (e.g. 1999, 2003), Forsdyke presents the Athenian democracy as a stable, pluralist polity.[9] In her view, Athenian democrats strove to limit exilings through the development of pluralist institutions and norms, stigmatising expulsion of leading citizens as a sign of political exclusivity and elite factionalism. Expulsions of citizens were nonetheless sometimes considered necessary, to release social and political tensions. However, in Forsdyke's view, the Athenians sought to minimise the disruptive effects and possible injustice of such expulsions by giving prominence to the institution of ostracism, which led only to a 'mild', circumscribed ten-year exile, without confiscation of property. Conversely, Forsdyke implies that, in other Greek city-states, expulsion was viewed and deployed as an inextricable part of politics, conceived as power struggle among elite citizens.

A strong case can be made that Athenian political life was not so moderate and inclusive and that of other city-states not so anarchic and competitive. All ancient Greek city-states were early experiments in republican government, often utopian or extreme and rarely politically stable or pluralist. As far as can be judged from the surviving evidence, practices, norms and rhetoric of citizen expulsion were remarkably consistent across different city-states. The relevant practices, norms and rhetoric indicate an overriding concern to uphold and defend certain fundamental, abstract obligations of citizenship: exclusion and expulsion were intrinsic to the Classical civic ideal.

b) Legal grounds and procedures for citizen expulsion
The most common means by which Greek city-states lawfully expelled citizens was by imposing a penalty of exile or outlawry. The distinction between the two penalties was that no prosecution could be brought in the expelling city-state's courts if anyone killed an outlaw, no matter where the killing took place, whereas a prosecution could be brought if anyone killed an exile outside the territory of his (former) home city-state (MacDowell 1978, 255). The fact that an exile or outlaw could be killed with impunity if found within the borders of the city-state rendered unnecessary the

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[9] For a related view of Greek normative political thought: Balot 2006.

development of mechanisms for the physical removal of exiles, comparable to the machinery of modern liberal democratic deportation.

The penalties of exile and outlawry were almost always enforced by a civic court or by the civic assembly or other civic body acting in a judicial capacity. They were imposed on those found guilty of severe crimes. In Athens, for example, exile was the penalty for the unintentional homicide or intentional wounding of a citizen or intentional homicide of a metic or slave (cf. Todd 1993, 274). It was probably also at least an option for the assembly and courts as a penalty for treason, temple-robbery (MacDowell 1978, 177) and certain other forms of impiety (cf. Lysias 7). Ruling as a tyrant, or collaborating with a tyrannical regime, were, by contrast, punishable by outlawry ([Aristotle] *Athenaion Politeia* 16.10). Outside Athens, both exile and outlawry are attested as penalties for a wider range of crimes against the city-state. Exile, for example, could be the penalty for corrupt conduct as a civic magistrate[10] or collaboration with a tyrannical regime.[11] Moreover, both exile and outlawry are attested as the penalty for opposition to, or violation of, laws and decrees regulating fundamental aspects of civic organisation, such as the distribution of property,[12] membership of the citizen body,[13] the terms of civic reconciliation after civil war[14] or the terms of a major public works contract.[15] The character of offences against the city-state punishable by expulsion from citizenship could also be left open-ended.[16]

A more mundane penalty of exclusion, which could lead indirectly to exile, was *atimia*, a form of disenfranchisement. In Athens, citizens subject to *atimia* lost, among other privileges, their entitlement to participate in the civic assembly or to appear as a litigant or witness in court. They were not deprived of formal citizen status or denied residence in Athens, but some evidence suggests that semi-voluntary exile was an attractive choice for an *atimos*: life in Athens probably often became intolerable, due to the loss of recourse to legal remedies and the risk of death as the penalty for

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[10] *Nomima* I, no. 105 (Teos, early fifth century), fragment b, ll. 5-12; *SEG* 26.1306 (Teos, third century), ll. 21-6.

[11] *I.Ilion* 25 (Ilion, Hellenistic), ll. 97-104.

[12] *Nomima* I, no. 19 (Halicarnassus, 475-450 (?)), ll. 32-41.

[13] Michel *Recueil* 1334 (Elis, c. 350 or c. 335), ll. 3-5.

[14] Voutiras and Sismanides 2008, text (pp. 257-9) (Dikaia, 365-359), ll. 17-21.

[15] *IG* XII 9 191 (Eretria, c. 322-309/8), ll 29-33, 56-8.

[16] E.g. *SEG* 53.565, ll. 1-13.

illegitimately exercising lost citizen privileges (Isocrates 16.47; Lysias 9.17, 21; cf. Hansen 1976, 59; Todd 1993, 142).

In Athens and elsewhere, *atimia* was the penalty for a range of offences against the city-state less severe than those punishable by exile and outlawry. In Athens, these included falling into debt to the city-state, cowardice or desertion in war and insulting one's parents or a civic magistrate.[17] Outside Athens, offences attested as punishable by *atimia* include non-payment of a fine,[18] failure to swear an obligatory oath,[19] neglect of duty or illegal iteration of office as a magistrate[20] and, in the most common case, contravening or challenging provisions of a specific law or decree.[21] *Atimia* might be incurred automatically (for example, by public debtors) or imposed by a magistrate or court.

In certain city-states in some periods, there was a further lawful means by which a city-state could expel its citizens: ostracism.[22] Ostracism was not a penalty: it was a mechanism by which a democratic vote could bring about the expulsion of any particular citizen from the city-state, for a limited period. In the Athenian case, there was probably an annual vote in the assembly on the question whether to hold an ostracism. If the result was positive, a further vote was held on a later date, in which each citizen was entitled to submit a potsherd (*ostrakon*) bearing the name of his preferred candidate for ostracism. If a quorum of 6000 citizens voted, the individual receiving the most votes was ostracised. As a result, he was barred from Athenian territory for ten years, after which period he could resume full citizen privileges (Forsdyke 2005, 146-9).

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[17] For a full list: Hansen 1976, 72-4.

[18] *E.g. IG* XII 6 1 172 (Hellenistic Samos), face A, ll. 78-9 (*atimia* until the fine is paid).

[19] *IG* XII 9 191 (Eretria, late fourth century), l. 43.

[20] *Nomima* I, no. 43 (Hypoknemidian Lokrian law concerning a new colony at Naupaktos, c. 460-450), ll. 43-5; *Nomima* I, no. 84 (Erythrai, mid-fifth to early fourth century), ll. 9-13.

[21] E.g. *IG* XII 7 515 (Aegiale, late second century), ll. 125-9.

[22] Ostracism is best attested for Athens, but similar practices are known from some other Greek city-states: Forsdyke 2005, 285-8.

c) Ancient justifications for the stipulation and enforcement of citizen expulsion

i) Citizen expulsion as a tool of social regulation

Several broad ancient Greek justifications for practices of lawful citizen expulsion can be identified: each is echoed in debates about deportation in modern liberal democracies. First, the threat and enforcement of lawful expulsion could be presented as legitimate for non-ethical reasons: they could be conceived as pragmatic devices of social regulation. Indeed, Greek citizens could consider it legitimate to lawfully expel even citizens who only involuntarily or unwittingly posed perceived threats to civic order. For example, the Athenians exiled those who committed unintentional homicide until the victim's family issued a pardon. This practice was probably designed principally to protect civic order by preventing the outbreak of blood feud between the families involved (Herman 2006, 295). In a separate, striking example, Greeks could conceive some citizens as blameless threats to social order, legitimate targets for state expulsion, because of their superiority over other citizens, especially in strength, wealth or number of friends: Aristotle (*Politics* 1284a3-b34) presents as a claim possessing 'a measure of political justice' the argument, advanced by some democrats, that it is legitimate to ostracise exceptional individuals for the sake of civic harmony. Such ancient Greek justifications of lawful expulsion as a device of social regulation prefigured some modern utilitarian justifications of deportation practices: in particular, justifications emphasising the need for control of population and labour supply.

In practice, ancient Greek civic practices of citizen expulsion also served as devices of social regulation in ways more basic than those explicitly identified by Greek observers: they served to constitute and reinforce city-state sovereignty and territorial borders. For example, Forsdyke (2005) well demonstrates that the establishment of centralised popular control over expulsion of citizens in late sixth- and fifth-century Athens was a crucial factor in the establishment of durable democratic sovereignty. As for the demarcation of territory, the Athenian law stipulating exile for involuntary homicides explicitly barred resulting exiles from the 'border market' (*IG* I^3 104, ll. 27-8). These cases are consistent with the influential argument of Agamben (1998, esp. 110-11) that Classical civic practices of exile and outlawry, through which city-states stripped citizens of their civic status and residence while still hemming them within an overarching juridical order, were important forerunners of the modern

practices of 'inclusive exclusion', involving denial of individual rights, which he sees as constitutive of modern liberal democratic territorial sovereignty.

ii) Civic republican justifications of citizen expulsion

DeCaroli (2007, 55-8), interpreting Agamben and giving prominence to Aristotle's discussion of ostracism, implies that ancient Greek citizens justified practices of citizen expulsion predominantly as means of basic social regulation, vital to maintaining the basic sovereignty of civic law itself. However, Greek citizens very commonly went beyond considerations of social regulation in their justifications of state expulsion, justifying it in explicitly ethical terms: as a means of removing citizens who willingly contravened abstract, rationalistic standards of good citizen behaviour, and thereby enforcing and promoting those standards. Indeed, unlike modern liberal democratic citizens, ancient Greek citizens generally did not regard imprisonment as an effective punishment, deterrent or bolster to abstract civic norms: they preferred to comprehensively expunge those judged to be culpably deficient citizens, erasing them from civic life (cf. Allen 2000, 202-24) through death, expulsion and disenfranchisement.

Relevant justifications of citizen expulsion in ethical terms can be divided into two contrasting categories: first, civic republican justifications, predicated on the ideal of the virtuous, self-sacrificing participatory citizen; and, second, social contractarian justifications. Within political philosophy, Plato offers a civic republican justification of citizen expulsions in terms of abstract political virtue and vice. In his *Laws*, his late work of political theory of the 350s, Plato makes his Athenian speaker draw a parallel between lawgivers and herdsmen: lawgivers should purge from their city-states, by death, exile or compulsory emigration, those citizens who have deficient natures or who have been nurtured badly (Plato *Laws* 735a7-736c4). Related civic republican justifications for civic expulsion are also clear in actual Greek civic rhetoric, from democratic as well as oligarchic city-states.

For example, a third-century decree of the small Central Greek city-state of Phthiotic Thebes praises a certain citizen, Eurydamas, probably a naturalised foreigner, on account of his abstract, unspecified 'good will and justice' to the city-state and to the affairs of the city-state. However, it also makes it legitimate for Eurydamas to be

'driven out of citizenship' if 'those who wish to expel him' prove that he has done 'something vicious' (*poneron*) to the city-state or its affairs (*SEG* 53.565, ll. 1-13). This text vividly reveals the corollary of Greek civic republican emphasis on abstract notions of civic virtue: an uncompromising resolve to expel from citizenship those whose conduct was rationally proved to be 'vicious' by abstract standards before the civic assembly.

The relevant standards of abstract civic virtue were sometimes made explicit in civic laws and decrees. The standards in question could be aristocratic. According to the constitution for the Greek city-state of Cyrene in North Africa promulgated by King Ptolemy I in c. 320, *atimia* was to be imposed on Cyreneian citizens who engaged in practices characteristic of the poor: manual labour, persistent litigation and retail.[23] This measure reflects a controversial civic republican approach to citizenship similar to Aristotle's: those who must earn a living lack the leisure required for reflection and ensuing virtuous political activity (Poddighe 2001, 47-9). Alternatively, the standards in question could be strongly democratic: the citizens of fourth-century Eretria stipulated outlawry as the penalty for citizens who failed to demonstrate their commitment to democracy by attending the democratic Council in the event of an attempted anti-democratic coup.[24] In this case, the Eretrians enshrined in law an ideal advocated by Thucydides' Pericles in his Funeral Oration (cf. Thucydides 2.40.2): the Eretrians made fulfilment of the abstract, purely political ideal of active democratic participation, rather than mere acquiescence in democracy, a prerequisite of continued citizenship.

As well as being reflected in laws and decrees, civic republican justifications for citizen exclusion and expulsion are also evident in the rhetoric of Athenian citizens who advocated their enforcement in particular cases. Surviving 'ostraka' (voting tablets) from fifth-century ostracisms sometimes bear short descriptions of the candidate for ostracism. Although abstract standards of civic virtue are not invoked, the descriptions usually imply that the candidate was a threat to Athenian communitarian solidarity and Athenian political and ethical values: the leading politician Themistocles was accused of possessing excessive personal honour and of

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[23] *SEG* 18.726, ll. 46-8, with Heraclides Lembus *Constitutions* 18.
[24] *SEG* 51.1105B, ll. 3-6.

being a source of religious pollution, while the leading politician Megakles was accused of being a breeder of horses, lover of money and adulterer (Forsdyke 2005, 155-7).

From the fourth-century Athenian democracy, there survive several prosecution speeches from legal cases in which the defendant faced possible expulsion or disenfranchisement. In most, the speaker represents the defendant as lacking in civic virtue (cf. [Demosthenes] 25.76-80) or even vicious (*poneros*; compare Demosthenes 58.27): for example, as a recipient of bribes (Lysias 21 or Demosthenes 19), coward or military deserter (Lysias 14-15) or divisive citizen and inveterate malicious prosecutor (Demosthenes 58).

All the legal provisions and rhetoric discussed, like the associated practices of exclusion and expulsion themselves, helped to construct and reinforce abstract civic republican notions of citizenship. Some Greek citizens even made explicit the educational and ideological functions of citizen exclusion and expulsion. Those penalties could be presented as means of imbuing and reinforcing abstract civic ethical standards in the minds of other citizens: an Athenian prosecutor argues that the Athenians will make other citizens more virtuous, self-controlled and courageous in battle if they disenfranchise the younger Alcibiades for neglect of military duties (cf. Lysias 14.11-15, 15.9). Moreover, some Greek observers probably conceived expulsion as a means of educating or rehabilitating the exile himself, for subsequent reintegration into the civic community.[25]

Significantly, rhetoric resembling ancient Greek abstract, rationalistic civic republican arguments for citizen expulsion finds expression in modern liberal democratic discourse in a slightly different context: in justifications offered for deportation of non-citizens, examined more fully elsewhere in this volume. Non-citizens convicted of crimes can be perceived as liable for deportation on the grounds that they have infringed the abstract legal and moral standards of their host state. Moreover, purely abstract legal justifications are offered in liberal democratic states for the deportation of terrorist suspects: for example, the British Home Secretary is entitled to order the

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[25] Cf. Plato *Laws* 867c4-d3, with Saunders 1991, 227.

deportation of a foreign national on the grounds that his/her presence is contrary to the 'interests of the public good'.

There is a less direct correspondence between ancient Greek civic republican justifications of citizen expulsion and modern liberal democrats' justifications of the deportation or administrative removal of asylum-seekers and economic migrants who are not even suspected of any crime. As mentioned in the previous sub-section, the deportation or removal of such people is often justified as a means of morally-neutral social regulation. However, it is also sometimes justified, like ancient Greek citizen expulsion, as a means of protecting the supposed integrity of the political community of a particular state and its political values. Indeed, liberal democratic immigration control can be justified, especially by theorists, as a legitimate pragmatic means of protecting the practical viability of abstract, purely political values and practices: for example, the values and practices of the welfare state or of participatory democracy (cf. Benhabib 2004, 220; Gibney 2004, e.g. 84, 232-3).

Some other modern justifications of expulsion as a means of preserving political community and substantive values, more common in popular discourse, are further removed from the Greek cases considered here. Indeed, stress is often placed on the preservation through immigration control of collective cultural, religious and linguistic standards, rather than purely abstract and rationalistic political ones.[26] Nonetheless, even in such cases, the gulf between ancient and modern is not necessarily vast. In modern liberal democratic law, if not always in popular discourse, simple non-membership of an ethnic, cultural or religious group is not in itself sufficient grounds for expulsion (cf. Walzer 1983, 42-3). Moreover, in modern liberal democratic debates about deportation, even notions of shared culture commonly have a strong ethical and political element, at least potentially susceptible to an abstract formulation.[27]

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[26] Analysis of this tendency: Walzer 1983, 32, 39, 61-2; Gibney 2004, 25-7; de Genova and Peutz 2010, introduction, 1-2.

[27] In political history: the entanglement of racial and religious criteria for deportation with notions of political virtue in the United States from the eighteenth century onwards is clear from King 2000; Kanstroom 2007. Compare some political philosophy: Walzer 1983, 39, refers to the shared political culture of a national political community.

There are two significant possible objections, from opposite directions, to the parallels suggested here. First, it could be objected that modern liberal democratic theorists and citizens have successfully 'thinned' the content of the shared political values which they claim to protect through exclusion and expulsion: whereas ancient Greek citizens claimed to be defending substantive notions of the common good and civic virtue, modern liberal democrats generally claim to be concerned predominantly with the preservation of equitable, transparent political procedures. More substantive normative questions are held to be open to perpetual debate, in which all affected individuals have the right and opportunity to participate.

Admittedly, most modern liberal democratic theorists who discuss exclusion and expulsion seek to replace traditional civic republican ideals with neo-Kantian proceduralist, deliberative democratic ones (e.g. Benhabib 2004, 176-9). However, even at the level of theory, state practices of lawful exclusion and expulsion remain very problematic. Benhabib (2004, 21, 177-8) admits that it is an insurmountable paradox that applicants for membership can have no political say concerning their inclusion or exclusion, or the relevant criteria. Indeed, even if a state's citizens subsequently rigorously review their decision, the moment at which they decide to exclude applicants for membership is arguably one at which they necessarily constitute themselves as a traditional civic republican *demos*, with clear boundaries, fixed political values and a particularist identity, in contrast to the 'outsiders' applying for membership (cf. Gibney 2004, 209). The liberal democratic ideal of the 'thinned', perpetually renegotiable *demos* is certainly not particularly prominent in actual political rhetoric concerning deportation. British Prime Minister Gordon Brown was able in 2010 to claim straightforwardly in a political speech that immigrants who do not attempt to respect 'our way of life' and 'the values that make Britain what it is' are 'not welcome'.[28] Such rhetoric serves not only to define insiders and outsiders, but also, like ancient Greek exile rhetoric, to define the types of political attitudes and behaviour appropriate for citizens (cf. Benhabib 2004, 173).

The inverse objection to the argument offered here is that the shared political values which ancient Greeks sought to defend through exclusion and expulsion were *less* rich

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[28] See R. Watson, 'Gordon Brown: "immigrants must honour British values"', *The Times*, 1.4.2010, available from http://www.timesonline.co.uk/tol/news/politics/article7083270 [accessed 18.3.2011].

in content than those to which modern supporters of deportation appeal. For example, Walters (2010, 84-8) suggests that it is a distinctively modern development, related to the supersession of simple 'sovereignty' by 'governmentality', that it is no longer merely traitors, but also those perceived to pose a threat to efficient government, social cohesion or the functioning of the welfare state, who are deemed to merit expulsion.[29] In fact, however, the ancient Greek case was quite close to the modern situation: ancient Greek defenders of lawful state expulsion made no sharp distinction between high political offenders and those who posed a more mundane perceived threat to orderly, prosperous civic life. Indeed, the abstract civic virtue necessary for continued citizenship could be held to encompass both political loyalty and a wider range of public-spirited dispositions: for example, willingness to participate in politics or to abstain from activities which carried a social stigma, ranging from manual labour to horse-breeding.

iii) Social contractarian justifications of citizen expulsion

Some Greek citizens advanced abstract, rationalistic social contractarian justifications of citizen expulsion as alternatives to civic republican justifications; others advanced them alongside civic republican justifications. Such justifications presupposed that the good citizen-body is an association of egoistic, unequal individuals for mutual security and advantage. In some cases, expulsion was explicitly presented as a means of defending such a civic contract. More commonly, expulsion was presented as a means of protecting or enforcing procedures or principles of types likely to be yielded by a hypothetical civic contract of this kind: laws and procedures designed to protect individuals' liberty and property; to promote good faith in citizens' relations with one another; to defend political and legal procedures enabling bargaining between citizens; and to guarantee a strictly proportional relationship between individuals' material civic contributions and civic benefits. In advancing such justifications, citizens departed from the overriding civic republican concern to protect the civic political community and its substantive values as goods in themselves: they made primary the material obligations and entitlements of individual citizens, conceived as autonomous individuals with significantly conflicting ends.

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[29] Compare Kingston 2005, 35-6, on revolutionary France.

Around the middle of the fourth century, Demosthenes wrote a speech, which he subsequently decided not to deliver, prosecuting his political rival Meidias for committing *hybris* (arrogant infringement of Demosthenes' honour) by striking Demosthenes while he was in charge of a civic festival. If Demosthenes had pursued and won this prosecution, Meidias would have suffered *atimia* for *hybris* against a public official. In the speech, which is dominated by civic republican horror at Meidias' disrespect for a civic magistrate and a civic festival, Demosthenes at one point (21.7) adopts a pragmatic, rationalistic style of argument implying that the Athenian city-state is a mutual security pact: any jury member could randomly become a victim of Meidias' *hybris* and need the support of a jury. It is thus in the jurors' narrow personal interests to defend Demosthenes' honour by depriving Meidias of his citizenship.[30]

In a similar case from a city-state on the fringes of the Greek world, a recently discovered inscription from Sagalassos in southern Asia Minor dating to c. 300 contains fundamental civic regulations, explicitly described as abstract 'agreements (*homologiai*) and contracts (*sunthekai*)' (implicitly, among citizens). These agreements make outlawry the penalty for any citizen who seizes power in the city or expels another citizen illegitimately, before avoiding a death sentence through flight (Vandorpe 2007, text pp. 123, 125, ll. 1-20, esp. 9-15). In this case, the threat of outlawry was deployed to guarantee the basic citizen obligations contained in an explicit, rationalistic civic contract: respect for the civic constitution and for the personal security and citizenship of fellow citizens.

Similarly, in fourth-century decrees of the city-states of Dikaia in Northern Greece and Arkesine on the island of Amorgos, disenfranchisement was made the penalty for bringing or hearing legal suits relating to disputes which had already been resolved through wide-ranging arbitration (Voutiras and Sismanides 2008, text pp. 257-9, ll. 41-3; *IG* XII 7 3, ll. 38-46). In these cases, the penalty of disenfranchisement was used to reinforce consensual terms of civic reconciliation: renewals of an abstract, impersonal civic contract in each case.

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[30] Contrast Ober 1996, esp. 101.

As for the use of the threat and enforcement of lawful exclusion to protect strict abstract principles of material reciprocity, the most striking evidence is a provision common to the law of Athens and a range of other city-states: the provision that those who became indebted to the state, through failure to pay fines, to pay public rents or to repay public loans, should be disenfranchised, until they were able to pay. The stipulation of disenfranchisement for public debt, and its reversibility, reflected and reinforced the view that citizenship and its benefits are straightforwardly conditional on tangible civic contributions: an individual's civic entitlements can be straightforwardly calculated.

The basic abstract, rationalistic social contractarian styles of justification for citizen expulsion considered here are paralleled in some arguments for the deportation of non-citizens offered in modern liberal democratic states: stress is sometimes placed on enforcing and protecting the obligations and entitlements of individual residents, not on preserving a particular liberal democratic political system or culture as a good in itself. For example, these styles of justification are mirrored in the common modern assumption that non-citizen criminals have defaulted on their part of a hypothetical social contract with their host state.[31] They are also mirrored in the common modern assumption that illegal migrants or those who have overstayed their leave to remain have received benefits through residence in the host state, and continue to accrue benefits through residence there, which neither they nor their ancestors have 'earned'. Also relevant is the closely-related assumption that certain migrants are not entitled to residence in their host state, because they have not made, or are not sufficiently skilled to make, valuable contributions to the host state or to the welfare of individual host citizens.[32]

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[31] Compare the rhetoric of British Prime Minister Gordon Brown in 2007, concerning the deportation of foreign criminals: 'you play by the rules or you face the consequences' (P. Johnston, 'Foreign criminals "won't be deported"', *Daily Telegraph* 21.12.2007 (available at http://www.telegraph.co.uk/news/uknews/1573291/Foreign-criminals-wont-be-deported.html) [accessed 18.3.2011]).

[32] Compare Gordon Brown's rhetoric about the conditionality of immigrants' privileges in 2010: 'I know people think it's unfair when it feels as though some can take advantage of the freedoms and opportunities we offer in Britain without making a fair contribution or playing by the rules. So do I' (quoted in *The Times*, 1.4.2010; see n. 28 above). In an earlier speech, Brown explicitly invoked a citizenship 'contract' in this context: G. Wilson, 'Immigrants must earn citizenship, says Brown', *Daily Telegraph* 27.2.2007 (available from http://www.telegraph.co.uk/news/uknews/1543939/Immigrants-must-earn-citizenship-says-Brown.html) [accessed 18.3.2011].

Such justifications of deportation of non-citizens might be thought to imply only that foreign visitors and residents enter an abstract, hypothetical social contract with the citizens of their host state. However, those who offer such justifications arguably imply that citizens are also members of an overarching civic contract. Indeed, similar rhetoric surfaces in proposals to introduce principles of conditionality into the distribution of benefits to citizens by liberal democratic welfare states.

5. Ancient Greek light on the modern transition from exile to deportation

The contrasts and similarities between ancient Greek and modern liberal democratic practices and rhetoric concerning lawful expulsion cast in a new light the modern decline of exile and rise of deportation. Two hypotheses can be sketched here; much further work is required to test and refine them.

First, the ancient Greek situation makes clear that an absence of an influential ideal of universal, inalienable human rights makes deportation of non-citizens unnecessary or even counterproductive for some sophisticated republican states: deportation practices are not necessary consequences of particularism or even xenophobia. In the modern world, however, the ideal of universal, inalienable human rights exerts strong pressure on liberal democratic states to treat resident non-citizens in a fair and humane way, and even to enable them to qualify for citizenship. That ideal also generally constrains modern liberal democratic states from using the draconian measures employed by ancient Greek city-states against law-breaking resident non-citizens: execution or sale into slavery. Deportation of non-citizens, justified in terms of abstract political ideals resembling Classical civic ideals, is one of the best available means for liberal democratic states to resist the pressure to integrate non-citizens exerted by rights norms, and to alleviate resulting strains on their resources. The contrast between the ancient and the modern situation is paralleled in a contrast between ancient Greek and Roman civic practices: at Rome, where law and convention made it much easier than in the Greek world for immigrants to gain citizenship (cf. Purcell 1990), deportation of groups of non-citizens was, as mentioned in the introduction, a significant political concern.

Second, comparison with ancient Greek practices suggests that deportation in modern liberal democratic states serves a subsidiary, but very important, function: it is a

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substitute for traditional republican exile. The mutually reinforcing, but potentially conflicting Classical civic ideals which directly authorised lawful citizen expulsion in ancient Greece continue to exert a strong influence in modern liberal democratic states: the idea that republican governments should regulate civic membership in the interests of stability and prosperity, if necessary to the detriment of particular individuals; the idea that citizenship involves possession and exercise of abstract civic virtue, whose requirements strongly shape the whole lifestyles and mentalities of citizens; and the idea that to be a citizen is to participate, as an autonomous, instrumentally rational agent, in an abstract, rationalistic civic contract.

This sharing of political ideals is partly a reflection of shared challenges, encountered by both ancient and modern attempts to secure egalitarian self-government: in particular, the challenges involved in convincing citizens to make voluntary political contributions and to identify with abstract political values. However, it is also a matter of genealogy. The political thought of Aristotle and the Spartan paradigm of republican civic organisation exerted wide-ranging influence on attempts in the Renaissance and Enlightenment to develop models of non-monarchical state organisation (Rawson 1969, Skinner 2002). Since the nineteenth century, the Classical Athenian democratic paradigm has exerted a strong influence on the theory and practice of modern liberal democratic government and citizenship (e.g. Liddel 2006; Nippel 2008). In addition, Greek republicanism has indirectly shaped modern republicanism through the modern influence of the institutions of the Roman Republic and the works of Cicero, both strongly influenced by earlier Greek models (cf. Millar 2002).

If they stood alone, the analogues of Classical civic ideals in modern liberal democratic political cultures would, like their counterparts in ancient Greek city-states, legitimate, or even demand, state expulsion of citizens, as a vital means of defining the boundaries and powers of an abstract state political community and of constructing, enforcing and reinforcing abstract standards of citizenship. However, in the period after the American and French Revolutions, the distinctively modern concern for universal, inalienable individual rights gradually came to exercise a counterbalancing influence: it gradually rendered expulsion of citizens illegitimate in

liberal democratic states. This was because it became established as a basic, *de facto* human right that the citizen is entitled to residence in his home state.

Although probably the most significant factor, the influence of rights norms must be considered alongside other modern factors which have inhibited intrinsic republican tendencies towards expulsion: many factors contributed to this major historical shift, which requires further investigation.[33] A few factors relevant to a wide range of liberal democratic states can be mentioned.[34] For one thing, democratic egalitarian ideals have made imprisonment more acceptable than expulsion: prisoners experience the same living conditions while undergoing their punishment, whereas exiles can have widely differing qualities of life while in exile. Indeed, in the mobile modern world, in which national citizenship is no longer necessarily the predominant focus of individuals' political and social identities, emigration is not necessarily any hardship at all for a citizen. At a more pragmatic level, improved inter-state relations, regulated through formal institutions, have made it illegitimate for states simply to deport their unwanted citizens to other states (cf. Walters 2010, 98).

Nevertheless, universalism, egalitarianism and internationalism are probably not the only relevant factors: modern nationalism is also significant. If a citizen owes his identity and character to ethnic inheritance and participation in an integral national community, the nation has a duty to rehabilitate him/her if he/she shows a lack of political virtue: the fault is social rather than personal. Despite the otherwise useful modern stereotypical distinction between Classical communitarian and modern individualistic notions of self, this aspect of modern nationalist thinking and practice is more radically communitarian than much of the ancient Greek thinking and practice considered here: it gives full weight to the social constitution of individual citizens.

The initial consequence of this range of factors in liberal democratic states with overseas empires was that straightforward banishment gave way to penal transportation of citizens to colonies, where they remained under the expelling state's sovereignty, subject to surveillance and possible rehabilitation (cf. Walters 2010, 76-

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[33] I am very grateful to Matthew Gibney for discussion.

[34] Some other relevant factors are specific to particular liberal states: compare Kingston 2005, 28-30, discussing anti-banishment arguments in revolutionary France.

8). Indeed, Kingston (2005, 30-6) shows that post-revolutionary republican regimes in France used penal transportation of citizens as a means of promoting new complex, all-encompassing notions of republican virtue. Nevertheless, by the earlier twentieth century, even penal transportation became generally impractical or discredited.

When even transportation of citizens is rejected or impossible, a more radical transformation of republican exile commonly can occur. Most modern liberal democratic states continue to rely on practices and rhetoric of expulsion, like ancient Greek city-states, as crucial means of constructing and reinforcing state sovereignty, abstract political community and abstract norms of citizenship, especially in times of tension. However, since citizens are no longer legitimate objects of any form of state expulsion or associated rhetoric, non-citizens have taken their place. For example, contemporary British politicians can describe the basic rights of citizenship as conditional on particular political dispositions, behaviour and contributions when discussing immigrants' aspirations to residence and citizenship,[35] in a way which would be unthinkable in relation to existing citizens' citizenship. As argued in section 4 above, such rhetoric serves to encourage particular political behaviour by citizens, as well as by non-citizens. When deportation is actually imposed on a non-citizen resident, the enforcement of expulsion continues to be a vivid practical demonstration, far more compelling than imprisonment, that the individual concerned lies outside the state's abstract political community, often because he has transgressed abstract political norms: the deportee, unlike the prisoner or detainee, is forced outside the bounds of the relevant political territory and community, denied any political recognition.[36] As a result, he becomes the polar antithesis of the legally protected citizen, filling a pivotal role vacated by the now obsolete figures of the exile and the *atimos*.

Although the overall transition was a long-term, gradual one, it may be possible to study the precise dynamics of the shift in the evidence for particular periods of crisis for modern liberal democratic states, in which the imperative to defend existing notions of good citizenship was particularly strong. For example, the passing of

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[35] See ns. 28 and 31-2 above.
[36] Compare de Genova 2010, 37-46, and Walters 2010, 74-5, developing arguments of Arendt and Agamben.

Aliens Acts and associated political rhetoric show that it was principally resident aliens who were identified as expellable political subversives, because significant potential sources of unrest, in the USA in the aftermath of the French Revolution, at a time when the new American republic had recently eschewed expulsion of citizens (cf. Kanstroom 2007, 46-63), and in Britain after 1789, 1848 and 1917 (cf. Walters 2010, 85; Cesarini 1993, 37-40), during and after the long transformation and decline of British practices of expulsion of citizens. In comparable periods of insecurity and potential unrest in ancient Greek city-states, as in other modern contexts, the threat and enforcement of lawful expulsion would, by contrast, have been deployed principally against potential citizen revolutionaries, as a means of reasserting the established political order: for example, the fifth-century Athenian democracy ostracised or exiled citizens suspected of being unfavourable to democracy or to radical democracy, such as Cimon and Critias.

The argument for a transference of republican practices and rhetoric of expulsion from citizens to non-citizens is strengthened by signs that the boundary between deportation and exile has remained porous. For example, Kanstroom (2007, 49) shows that opponents of early US deportation legislation, that of the 1790s, warned that similar measures would soon be used against citizens. To turn to a phenomenon from the other end of the history of modern liberal democratic deportation, the porousness of the deportation-exile boundary is evident from the fact that, in recent years, liberal democratic states have begun to reassert an entitlement to expel citizens: an entitlement to deprive of their citizenship dual nationals, acceptable because such individuals will not become stateless if deported (Gibney 2008, 29).

6. Conclusion: expulsion, necessary partisanship and cosmopolitanism

Although ancient Greek citizens commonly justified lawful citizen expulsion as a means of securing stability and political community, the practice did not always have that effect. In particular, even in Greek city-states, much more homogeneous in linguistic and ethnic terms than most modern liberal democratic states, it was usually very difficult to identify or invent simple common interests or a single code of unifying abstract civic ethical standards, with determinate interpretations, to supply

content to the civic republican paradigm of the good citizen-body.[37] The result could be destabilising expulsions and factionalism.

Indeed, Knox (1985) demonstrates that an extraordinarily high proportion of known leading Classical Athenian political figures suffered severe penalties, including exile, at the hands of the Athenian people. This striking proportion is arguably partly a result of the presupposition of most Classical Athenian political debate that the *demos* had unique, internally consistent interests and abstract political values, in need of ferocious defence through the use of exile and other severe penalties. Because there was rarely consensus about the nature of those interests and values, and their application to any given situation, it was common for rival politicians each to claim a monopoly of legitimacy for a particular, contentious interpretation:[38] the expulsion of the weaker party was often a consequence.

For example, the main area of disagreement concerning foreign policy in fifth-century Athens was whether Athens should be an expansionist naval power, hostile to both Persia and Sparta, or whether Athens should curtail its naval ambitions and remain on good terms with Sparta. At different times in the century, partisans of one or the other of these rival attitudes (e.g. Aristides, Themistocles, Cimon, Thucydides, son of Melesias, Critias) suffered exile or ostracism or were forced to flee Athens: in a way troubling for modern liberal democratic interpretations of Athenian democratic politics, pluralistic political exchange was difficult to sustain within the normative constraints of the Athenian politics of exclusion and expulsion. This precedent confirms problems which have been raised for modern communitarian justifications of immigration control: decisions about the character and membership of a modern *demos* are often as partisan and exclusionary as comparable ancient decisions, because they necessarily reflect their exponents' social class, gender and political views (cf. Gibney 2004, 36, 45-7; 2008, 26-7; de Genova 2010, 45-6).

Ancient Greek city-states' exclusivity helped to create cosmopolitan ideals. Some Cynic and Stoic exiles living on the margins of particularist city-states, such as

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[37] Cf. Dougherty and Kurke 2003.

[38] For comparable modern criticisms of civic republican and communitarian politics in general, see (for example) Derrida 1994, 176-9, 247-52; Frazer 1999; Rawls 2001, 21-3.

Diogenes of Sinope, Crates of Thebes and Zeno of Kition, some of whom were victims of exclusionary civic unrest, became among cosmopolitanism's earliest philosophical advocates. Moreover, some of their ideas arguably evolved into an early form of universalist Natural Law theory in the Hellenistic period (cf. Schofield 1999, chs. 3-4). Similarly, in the modern world, modern concepts of universal human rights were developed partly by theorists and citizens anxious to curtail the destabilising and exclusionary tendencies of Classical republican political institutions and norms (cf. Rawls 2000). Despite the broad successes of that project, practices of deportation in modern liberal democratic states, and associated rhetoric, represent a field of modern liberal democratic politics in which those Classical institutions and norms reassert themselves.

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