



Ancient Greek Ideas of Justice **Melissa Lane, Professor of Rhetoric**

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Introduction

You've come here tonight to think about ancient Greek ideas of justice. But let me start with a modern American one. Imagine that before being allowed into this room or onto this livestream, you were required to put on a magic blindfold that erased most of your knowledge about yourself: your race, ethnicity, and gender; your skills, your life goals, your family background, your current income and wealth, your lifelong earning prospects. The idea is that only by veiling all those facts from view, could you be properly situated to think about what is just and fair. Otherwise, you would come to the table to debate justice already predisposed to think in ways that would benefit yourself—to seek, perhaps even subconsciously, to entrench any privileges that the real-life you might possess, or to smooth the path for your own group's later success.

That kind of magic blindfold was proposed by the twentieth-century American philosopher John Rawls, who called it a 'veil of ignorance' needed in order to reason properly about what social justice requires.¹ Rawls thought of justice as a social contract of a very special kind—one that we can identify not through an actual process of negotiation, but through hypothetical reasoning tested against our

¹ This is part of the standpoint of what he called the 'original position': 'a purely hypothetical situation' in which, because of the veil of ignorance, 'no one knows his place in society, his class position or social status...his fortune in the distribution of natural assets and abilities' nor even (speaking now of all parties in the plural) 'their conceptions of the good or their special psychological propensities' in John Rawls, *A Theory of Justice* (revised edition) (Cambridge, MA: Harvard University Press, 1999), 11.

fundamental convictions. While Rawls' masterpiece, *A Theory of Justice*, was first published in 1971, political theorists and economists continue to draw from it in works published in the last several years adopting the same approach. Two of them are Daniel Chandler and Baroness Minouche Shafik (former Director of the LSE, now President of Columbia University).

Chandler, describing Rawls' ideas in his own 2023 work *Free and Equal*, explains:

'In contrast to real life, where people with more resources or social status would be able to influence the outcome, the original position [in which we reason behind the veil of ignorance] asks us to envisage the contract that citizens would enter into if everyone had the same degree of influence and was unaware of their particular circumstances—how much money they had, their race, gender, or sexuality, even their religious beliefs and wider goals in life...'.²

And Chandler continues: 'The "veil of ignorance" encapsulates the intuitive idea that just because something is good for us individually doesn't mean it is fair'.³ And as Shafik has written, describing Rawls in her own study of *What We Owe Each Other* (2021): if 'we did not know if we would start life privileged or a pauper, we would create a social contract that was just'.⁴

While the hypothetical framework that Rawls constructed was novel, the role of a veil was supposed to be intuitively appealing. After all, courtrooms around the world are adorned with images of 'Lady Justice', a female figure very often depicted as wearing a blindfold, carrying scales, and sometimes a sword. The veil in the form of a blindfold has come to symbolize the impartiality of justice: judging without fear or favor.

² Daniel Chandler, *Free and Equal: What Would a Fair Society Look Like?* (London: Allen Lane, 2023), 53.

³ Chandler, *Free and Equal*, 53.

⁴ Minouche Shafik, *What We Owe Each Other: A New Social Contract for a Better Society* (Princeton: Princeton University Press, 2021), 8.

But the blindfold is a modern symbol, not a Greek or Roman or other ancient one.⁵ It is first attested in European imagery in 1494, in fact initially as a negative, satirical image, symbolising a failure of judges to pay appropriate attention to their jobs, as Valérie Hayaert writes: ‘The idea of placing a blindfold around her eyes arose only in 1494, in Germany, when in the first edition of *The Ship of Fools* by the lawyer Sebastian Brant, a woodcut showed a jester tying the eyes of Justitia with a blindfold. The blindfold was intended to imply an absence of judgment, and was originally meant to mock justice and criticise the ignorance and dishonesty of the courts’.⁶ However, from the sixteenth century onward the blindfold took on a widespread positive association as a central image of impartiality which became characteristic of Lady Justice.

By contrast to this (relatively late) modern innovation of the blindfold or veil, however, ancient Greek images of Justice were actually characterized by keenness of sight—which I will follow Valérie Hayaert in calling ‘clear-sightedness’.⁷ Neither of the Greek goddesses—Themis, representing divine justice, and her daughter (with Zeus), Dike, representing human justice—was ever depicted as blindfolded. They were iconographically identified solely by their iconic weighing scales, representing the balancing of claims which must be justly decided.⁸ The Roman author Aulus

⁵ Marcílio Franca, ‘The Blindness of Justice: An Iconographic Dialogue between Art and Law’, in *See*, edited by Andrea Pavoni et al. (University of Westminster Press, 2018), 159-96, at 169. For this observation, Franca credits Erwin Panofsky, *Studi di iconologia: i temi umanistici nell’arte del Rinascimento* (Torino: Einaudi, 1999) 151, and Robert Jacob, *Images de la justice: essai sur l’iconographie judiciaire du Moyen Âge Classique* (Paris: Léopard d’or, 1994), 232.

⁶ Valérie Hayaert, ‘The Paradoxes of Lady Justice’s Blindfold,’ in *The Art of Law: Artistic Representations and Iconography of Law and Justice in Context, from the Middle Ages to the First World War*, ed. Stefan Huygebaert et al., *Ius Gentium: Comparative Perspectives on Law and Justice* (Cham: Springer International Publishing, 2018), 201–21. Writes Hayaert at 212: ‘The idea of placing a blindfold around her eyes arose only in 1494, in Germany, when in the first edition of *The Ship of Fools* by the lawyer Sebastian Brant, a woodcut showed a jester tying the eyes of Justitia with a blindfold. The blindfold was intended to imply an absence of judgment, and was originally meant to mock justice and criticise the ignorance and dishonesty of the courts. In this derisive context, the blindfold is not to be considered an attribute on equal footing with the sword or the scales: instead it is momentaneous; it has to be removed as it is an obstacle created by human folly. Brant expects his readers to remove Lady Justice’s blindfold and restore her penetrating gaze’.

⁷ Hayaert, ‘Paradoxes’, 211 and *passim*.

⁸ As consort (Themis) and daughter (Dike) of Zeus, the goddesses’ association with the scales of justice also is associated with his, for example, in the scales attributed to Zeus as far back as Homer (*Iliad* XXII); the lyric poet Bacchylides, who flourished in the early fifth century, also refers in a dithyramb to fate which is ordained and is however ‘the scales of justice incline’ (17.25-6, trans. Lane from the Greek text in David A. Campbell (ed.) *Greek Lyric*, vol. IV: Bacchylides, Corinna, and Others (Cambridge, MA: Harvard University Press, 1992).

Gellius described the Stoic philosopher Chrysippus (who had written in Greek) as characterizing the goddess of Justice as gazing ‘with a sharp glance of the eyes (*luminibus oculorum acribus*)’.⁹

To be sure, the Greeks valued impartiality, especially in the context of a jury. The Athenian juror oath was described by the orator Demosthenes:

‘They have sworn to judge with their most just judgment...everyone who casts his vote neither through enmity nor through favor nor any other unjust reason against their judgment, is righteous (i.e. upholds his oath)’.

(Demosthenes, *Against Aristocrates* = Dem. 23.96-7)¹⁰

And a post-classical Greek author describes a couple of alternative Greek ways to symbolize the impartiality of judges: in Plutarch, writing in the late first century CE, we find the recollection that: ‘In Thebes there were set up statues of judges without hands, and the statue of the chief justice had its eyes closed, to indicate that justice is not influenced by gifts or by intercession’. But that alternative imagery never took off in classical Greece (though it may have inspired an early modern European pictorial motif alternative to the blindfold, flourishing around 1600 CE, depicting some judges with their hands amputated to capture their imperviousness to receiving bribes—which in Plutarch was described as their being *adōron* (literally, deprived of gifts, in the sense of not taking them as bribes)).¹¹

⁹ Aulus Gellius, *Noct. Att.* 4.4, reports the Hellenistic philosopher Chrysippus (in *On Beauty and Pleasure*) as having described ‘Justice’ as a female figure in detail, but with no mention of a blindfold and indeed an emphasis on her keen sight (‘a keen glance of the eye’), and as having argued that ‘the judge, who is the priest of Justice’, ought to be likewise ‘properly represented...as stern and dignified, with a serious expression and a keen, steadfast glance, in order that she may inspire fear in the wicked and courage in the good; to the latter, as her friends, she presents a friendly aspect, to the former a stern face’ (trans. Rolfe). This reference is also mentioned by Hayaert, ‘Paradoxes’, 211, in a different translation.

¹⁰ As translated by Edward M. Harris, ‘The Rule of Law in Athenian Democracy. Reflections on the Judicial Oath’, *Etica & Politica / Ethics & Politics* IX, no. 1 (2007) 55-74, at 58.

¹¹ Plutarch, *De Iside et Osiride*, sec. 10 = *Moralia* 355a, discussed in Michael Evans, ‘Two Sources for Maimed Justice’, *Source: Notes in the History of Art* 2, no. 1 (1982): 12-15, at 14. Even more strangely, as Hayaert, ‘Paradoxes’, 211, observes, Diodorus Siculus [I.96] mentions an Egyptian statue of justice without a head, suggesting that the head of justice lies in the heavens; this is also mentioned by others, including Adriano Prosperi, *Justice Blindfolded: The Historical Course of an Image* (Boston, MA: Brill, 2018), 10 n.13, who also gives further references for overall iconographic research on justice in n.16 on 10-11.

Overall, then, the thought that the standard way to decide what is just is to impose a blindfold, never occurred to the ancient Greeks (or to those early modern authors who followed them most closely).¹² When the playwright Aeschylus gave the Athenian jury a mythological origin in his play *Eumenides*—in which the goddess Athena herself joins such a jury that will replace previous practices of blood vengeance with a measured and formal trial giving the possibility of acquittal—this founding myth of Athenian courtroom justice was again carried out without any hint of a blindfold. On the contrary: Athena was iconographically symbolised by her keen gray eyes.

So we can contrast Greek clearsightedness as an image of justice, with the Rawlsian veil or blindfold. And indeed, there was an ancient Greek lawgiver who was otherwise most comparable to Rawls in rethinking the terms of social justice, Solon of Athens—who will shortly become the main focus of this lecture. While Rawls operated hypothetically and invoked a veil or blindfold, Solon operated in actuality, laying down laws that continued to govern Athens for centuries, while not adopting any kind of blindfold.

So I am going to focus this lecture on exploring Solon's aims and methods of thinking about and seeking to institute social justice, contrasting them with Rawls, as a contrast between a clear-sighted approach to social justice and a blindfolded one. Then in conclusion, I'll explore some measures that might today instantiate the aims that either Solon, Rawls, or both of them sought to achieve.

Two brief caveats. Of course, there are many other ancient Greek ideas about justice which we could discuss (and might talk about in the question and answer period)—and I'll draw on some of them in my next lecture, on Greek ideas of equality under the law, as those ideas are intimately connected to ideas about justice and injustice. Conversely, there are modern debates about justice to which

¹² As Hayaert, 'Paradoxes', 211-12, notes of the early modern author Caelius Rhodiginus (*Lectiones Antiquarum*, book 29), for whom, as she writes, 'justice's symbol is an eye, and her gaze is penetrating'.

the Greeks were generally indifferent. Neither Solon nor other ancient Greeks envisaged equality of opportunity for upward mobility as a likely social outcome. While a few people did make fortunes, it was much more likely that people would slide into bankruptcy than make it to the economic top. So while Rawls builds 'fair equality of opportunity' into his framework for social justice, that's not a topic about which Greek ideas are going to be of much help to us.

Nevertheless, we can learn much by comparing both the different methods of Solon and Rawls (clear-sightedness versus the veil), and their basic approach to establishing terms of justice between the rich and the poor. To set up that contrast, let me present one of the principles of justice that Rawls argued people would have most reason to choose behind a veil of ignorance, which he called the 'difference principle':

*'Social and economic inequalities are to be arranged so that they are...to the greatest expected benefit of the least advantaged...'*¹³

Rawls held that justice did not require complete economic equality and in fact would not be achieved by imposing it. Rather, he argued for imposing a ceiling on the potential gains of the rich, by pegging them to their capacity to generate gains for the poorest, for example, by creating incentives for greater productivity or innovation. The idea is that behind the veil of ignorance or magic blindfold, no one would endorse any greater inequality than this, because everyone would be aware that while they themselves might have a chance of ending up in the top position, they have an equal chance of ending up at the bottom of the heap—and so the rational thing to do is to bolster that bottom position so far as can be done.

No more than Rawls did Solon hold that justice required perfectly equal economic holdings: as Solon wrote in one poem, 'it did not please me...to allow the equal

¹³ Rawls, *A Theory of Justice*, revised edition, 72.

division (*isomoira*) of our rich fatherland among poor and rich alike'.¹⁴ But whereas Rawls wanted to impose a ceiling on the gains of the rich, Solon focused on establishing a floor beneath the feet of the poor. (While this was not the only aim of his laws, it was a centrally important one.) So that brings me to my principal focus for the bulk of tonight's lecture: ideas of justice in the poetry, and laws, of Solon of Athens, who set up the terms of justice (of the kind that Rawls would later call 'fair terms of social cooperation' within which the Athenian democracy would in the two centuries after his work fully flower. My wager is that thinking about Solon, in dialogue with Rawls, can help us to think about what basic terms of social justice a democracy might require.

Solon of Athens: Poet, Arbitrator, Lawgiver

Whereas Aeschylus' play about Athenian justice was depicting a mythic, legendary time, Solon was a real person, who composed poetry as well as laws. We can read records of his words and deeds at least as they crystallised in the century or so after he died: in the writing down of his oral poems, and in the painted inscriptions of his laws on wooden notice boards (*axones*) which he ordered to be set up, and which were still visible centuries after he died. And besides the scattered references to Solon in the writings of other authors (including Herodotus, Aristophanes, Plato, and Aristotle), we have two major narrative sources from which I'll be quoting extensively. One of them is the 'Constitution of Athens' which was composed in the circle of Aristotle's Lyceum—I like to think of it as having been compiled by Aristotle's graduate students—in the late fourth century BCE. The other is a biography of Solon that features in the compilation of *Lives* of famous Greek and Roman statesmen and other figures, in which one Greek and one Roman were systematically paired and compared, that were composed by the post-classical philosopher and biographer Plutarch (whom I mentioned earlier, in fact). While

¹⁴ W34; translation in Michael Gagarin and Paul Woodruff, eds, *Early Greek Political Thought from Homer to the Sophists* (Cambridge and New York, NY: Cambridge University Press, 1995). All quotations from Solon's poetry are from the translations in this volume (credited in the Preface primarily to Woodruff) unless otherwise noted. Fragments of Solon's poetry are standardly numbered according to West's edition [as W] and this will be the method of citation for them below.

scholars have done much work on the differences of detail between these accounts, for our purposes tonight I will simply draw on them both. And more generally, while it is unlikely that every word attributed to Solon in these various texts is authentic, I follow the scholar Adele Scafuro who holds that it is reasonable to believe that there is ‘an authentic Solonian kernel’ in these various records.¹⁵

Solon was born to an elite family in Athens toward the end of the 7th century BCE—though Aristophanes’ *Clouds* (which also satirises Socrates) has one commoner remark that ‘By nature old Solon was a friend of the people’.¹⁶ This special status of having affinities with both the rich and the poor, seems to have derived from several of Solon’s attributes and activities. As a young man, he began to compose and publicly perform his own poetry—he is the earliest known Athenian poet—winning a public reputation as a wise, cultivated person who would be celebrated in antiquity as one of the “seven wise men” of ancient Greece. At the same time, because (on one account) his father’s generosity had depleted much of the family fortune, he went into trade. That allowed him to travel and amass wisdom from foreign sources, while also more concretely, building up a network of contacts and trust among the poorer citizens of Athens, as well as with foreign traders based in Athens and also abroad.

Plutarch writes in his life of Solon that ‘At that time...the disparity between the rich and the poor had culminated, as it were, and the city was in an altogether perilous condition’ (sec. 13).¹⁷ We can picture this division in broad terms as between an elite group of perhaps 20% of the free population, and the other 80%, who would have ranged in wealth and independence from small craftsmen to landless farmers. Many of the latter owed a sixth of everything that they produced to the owners of the

¹⁵ Adele C. Scafuro, ‘Identifying Solonian Laws’, in Josine Blok and André P. M. H. Lardinois (eds) *Solon of Athens : New Historical and Philological Approaches* (Boston: Brill, 2006), 173-96, at 175 and *passim*.

¹⁶ Aristophanes, *Nub.* [*Clouds*] 1187, quoted in Andrew Szegedy-Maszak, ‘Thucydides’ Solonian Reflections’, in *Cultural Poetics in Archaic Greece: Cult, Performance, Politics*, edited by Carol Dougherty and Leslie Kurke (New York: Oxford University Press, 1998), 101-114, at 101.

¹⁷ *Life of Solon* (sec. 13), in Plutarch, *Lives*, translated by Bernadotte Perrin [Loeb Classical Library], 11 vols., vol. I: *Theseus and Romulus, Lycurgus and Numa, Solon and Publicola* (Cambridge, MA and London: Harvard University Press, 1914). All translations of the *Lives*, including the ‘Comparisons’ between the paired Greek and Roman lives, are from this volume, unless otherwise noted.

land they farmed, and were in various ways under their thumb as a result, potentially subject to further exploitation if they were unable to pay what they owed. Moreover, the poor were able, and often therefore virtually forced, to take loans on the security of their own bodies. Thus any Athenian who fell into debt secured on their own persons could be forced to sell their children into slavery in order to pay it, or be themselves forced into servitude or sold abroad—in the latter case permanently losing the protection of their Athenian citizenship. These dangers of debt servitude (even if in theory the debt could be paid off for freedom to be regained) or full-blown enslavement as a result of economic misfortune, made the position of the 80% profoundly precarious—even for those who never actually suffered these fates.

While scholars disagree about exactly how urgent and extreme the social tensions between rich and poor had become, the vulnerable position of the poor, perhaps alongside a churning in the ranks of the rich, seems to have given rise to a significant destabilization of the social fabric. At the same time, there were other significant fault-lines in Athenian society. At around the time of Solon's birth *circa* 630 BCE, two different elite families had wrangled for supremacy, one clan trying to claim tyrannical power for themselves, the other resisting them. And there were also political tensions between three different groups that were broadly identified with different geographical parts of the territory of Attica, those of the shore, the plain, and the hill. The elite-dominated political institutions of archaic Athens were ill equipped to manage all of these emerging tensions.

As Plutarch tells it, it was at this perilous juncture, in 594 BCE (so near the start of the sixth century BCE), that Solon was chosen for the position of the preeminent *archon*, which was the highest public office. While this office involved an annual term with defined duties, he was simultaneously given two further and unusual roles: to act as an 'arbitrator' between the elite and the masses, and to act as a 'lawgiver' (Plut. *Sol.* 14). He was asked to do so because the Athenians 'saw that he

was the one man least implicated in the errors of the time...neither associated with the rich in their injustice, nor involved in the necessities of the poor' (Plut. Sol. 14).

So what were Solon's aims in undertaking these roles? Amazingly, he tells us directly, in his poetry (both before and after the fact).

On the one hand, Solon describes himself as having aimed to establish a legal process that would treat everyone—rich or poor—fairly:

*'I put these things in force
by joining might and right (dikē [literally, justice]) together,
and I carried through as I had promised.
I wrote laws (thesmoi) too, equally for poor and rich [literally 'for bad and
good': standard reference]
And made justice that is fit and straight for all'.¹⁸*

But laws and legal process go only so far. The reality of economic division remained. And on that front, Solon set himself up in a clear-sighted way as a boundary marker, setting a fair boundary between rich and poor:

*'.. I took my stand like a boundary stone
In the ground between them'. [W37]*

He similarly describes his role in holding up a military shield, a kind of armor:

*'I gave the common people as much privilege as they needed
neither taking honor from them nor reaching out for more.
But as for those who had power and were admired for their wealth,
I arranged for them to have nothing unseemly.
And I set up a strong shield around both parties*

¹⁸ W36.

by not allowing either to defeat the other unjustly.¹⁹

A boundary-marker, a shield: neither of these can work well if veiled or blindfolded. Instead, Solon had to consider the actual demands and predicament of each side in order to work out where exactly to pitch his arbitration, positioning himself so as to protect each side from excessive demands or pressure from the other. The aim was to avoid *pleonexia*, excessive graspingness, as Plutarch recounts (*Sol.* 24.iii, speaking specifically of the kind of person who would eat more than their share at the public meals established for officeholders and others whom the city wished to honour).

So how exactly did Solon implement a legal programme to establish justice between rich and poor? If we move from the poetry to the actual laws credited to him, we find that Solon sought to partly decouple economic status from political power. His strategy in that decoupling was not Rawlsian, however: there was no ceiling put on the wealthy, nor any blindfold imposed to figure out a just policy. It was closer to the ‘spheres of justice’ approach advocated by the political theorist Michael Walzer, who argued that a just society is one that prevents, or at least significantly restricts, an inequality in one domain from generating inequality in a different domain.²⁰ So for example, if someone is much shorter than other people, that inequality in height should be insulated from having an effect on their life chances. While that’s not a totally trivial example (height discrimination is real, if minor), Solon tried to tackle a much more significant decoupling that still concerns us today: how to decouple wealth and social status from generating excessive political power and influence.

Solon did that with a set of laws aiming to put a secure floor underneath the poor, to protect them both economically and politically: he passed laws which proclaimed the ‘prohibition of loans on the security of the debtor’s person’ and also ‘cancelled all

¹⁹ W5.

²⁰ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983).

debts, both private and public' (*Ath. Pol.* 9.i, 6.i).²¹ The prohibition of loans secured on the person eliminated (in the words of the most recent editors of Solon's laws) 'the outright and permanent enslavement of defaulting debtors'.²² This insulated the sphere of economic losses from turning into the loss of political rights and personal liberty.

At the same time, Solon also passed what seems to have been a one-off abolition of debts, which he referred to with the resonant term *seisachtheia* or 'shaking-off-of-burdens' (the same root of the English word for seismic tremors or earthquakes). This imposed a one-off reset which freed the poor from current burdens and so made it more possible for them to engage with the rich as fellow citizens.

Already in antiquity, Plutarch offered a powerful analysis of the decoupling strategy in these measures:

'Peculiar to Solon was his remission of debts, and by this means especially he confirmed the liberties of the citizens. For equality under the laws is of no avail if the poor are robbed of it by their debts. Nay, in the very places where they are supposed to exercise their liberties most, there they are most in subjection to the rich, since in the courts of justice, the offices of state, and in public debates, they are under their orders and do them service'. (Plut. Comp. Sol. Publ. 3)

To be sure, one-off measures of this kind can be dangerous. Both of our main ancient Greek narratives about Solon allege that several of Solon's wealthy friends (to whom he had confided his intention to remit debts) engaged in profitable but unethical insider trading: they incurred huge debts, bought land, and then sat back as their debts were abolished but their land investments remained secure—though

²¹ As translated by F.G. Kenyon in Jonathan Barnes (ed.) *Aristotle's Politics: Writings from the Complete Works: Politics, Economics, Constitution of Athens* (Princeton: Princeton University Press, 2016).

²² Delfim Ferreira Leão and P. J. Rhodes (eds), *The Laws of Solon: A New Edition with Introduction, Translation and Commentary*, revised paperback edition (London: I.B. Tauris, 2016), 114.

the *Constitution of Athens* rejects an apparent accusation at the time that Solon himself was involved in the scam.²³

Finally, Solon also bolstered the political power of the Athenian poor from the other side—not simply decoupling their modest standing from the risk of disenfranchisement, but also setting up new measures of political inclusion. Whereas previously, the landed elite had monopolised virtually all political roles, Solon established a system of property classes which extended the eligibility for office downward to the moderately wealthy. To be sure, he still excluded the poorest citizens from holding any of the offices. But he created new political roles for them in hearing appeals from the decisions of those officeholders; judging most crimes and wrongs as members of popular juries (with the exception of cases of homicide); and in holding officeholders to account in other ways (as I discussed in my first Gresham lecture). While the word for ‘democracy’ was not invented until the next century (as I’ll discuss in my fourth Gresham lecture on 14 March), Solon was seen by later Athenians themselves as having laid down the foundations for democracy by giving these powers of political judgment to all citizens, which in socioeconomic terms at the time meant giving them to a majority who were poor.²⁴

So far I’ve argued that in contrast to Rawls’ blindfold approach, Solon sought to take a clear-sighted view of the possibilities for creating a new Athenian framework for social justice, negotiating between the actual rich and the actual poor. I now want to ask: is such a clear-sighted approach necessarily limiting, a way of giving in to social realities of unequal power, in the kind of way that Rawls would fear? The scholar Josiah Ober has recently analysed the dynamics of Solon’s intervention in terms of game theory, starting with the clear-sighted recognition of the unequal power between the two sides, and so having to impose a bargain that would be

²³ In the account of this affair in the *Constitution of Athens* [*Ath. Pol.*] 6.2-4, the unknown author thereof rejects an accusation that Solon himself was wittingly involved in this scam.

²⁴ The unknown author of the *Constitution of Athens* (9.i) refers anachronistically to the abolition of debt enslavement and the opening up of court procedure (including appeal to a popular jury) as the ‘most democratic features of his laws’, as translated by F.G. Kenyon in Jonathan Barnes (ed.) *Aristotle’s Politics: Writings from the Complete Works: Politics, Economics, Constitution of Athens* (Princeton: Princeton University Press, 2016).

acceptable to both sides. While the rich, on Ober's interpretation, were willing to give up some ground in order to avoid potential civil war, the poor could hope to receive from Solon only so much as the rich were willing to give up.

Ober takes this line of analysis to have been anticipated by Plutarch, who tells a fascinating anecdote about Solon, in which the Athenian is said to have rebutted a criticism of his laws made by the Scythian philosopher Anacharsis. Here is the story:

'Anacharsis...laughed at Solon for thinking that he could guard against the injustices and excessive graspingness of the citizens by means of written laws, that were no different from spiders' webs, which on capturing the weak and powerless, would hold them fast, but would be broken through by the powerful and wealthy.'

To these claims it is said that Solon replied that men safeguard (phulattousin) their agreements with each other when there is profit (lusiteles) for neither party in overstepping what has been laid down, and he was accommodating his laws to the citizens in such a way as to make it clear to all that the practice of justice was better than the transgression of the laws'.

(Plutarch, *Life of Solon*, 5.ii-iii, trans. Lane)

Ober emphasizes Solon's use of the word 'profit', reading the appeal to the citizens as to their self-interest. As he writes of this passage:

'The practice of justice is not predicated on a moral duty but rather on the prudent obedience to the laws by self-interested agents, who, despite preferring to do injustice, fear the loss of suffering it'.²⁵

²⁵ Ober, *The Greeks and the Rational*, 186.

This takes Solon's justice to be limited to the preexisting horizon of self-interest on the part of each citizen, rich or poor.

Now as I noted earlier, Rawls would think that this kind of clear-sighted approach was not justice at all: because Solon's line of justice was too much pulled in the direction of the power of the wealthy. Remember that Rawls warned that (as Daniel Chandler has more recently elaborated, as quoted above), forgoing a blindfold would mean that, in 'real life...people with more resources or social status would be able to influence the outcome' of a negotiation about social justice. Precisely because the rich were able to sway where the new line of justice would be drawn, this shouldn't count as justice at all, but as what Rawls would (in other work) call a 'mere' *modus vivendi*.²⁶ a settlement that people might be willing to tolerate, but to which they have little or no principled commitment—one that they don't value for its own sake. For him, such a clear-sighted approach wouldn't be stable to the same extent or in the same way as a just compact.

But I want to suggest that there were more productive possibilities opened up by Solon's clear-sighted arbitration than Rawls would allow. This is because, while Solon's arbitration took its original contours from the clear-sighted approach to self-interest on all sides that Ober's work illuminates, the Athenian lawgiver also sought in his law code—and described in his poetry—the importance of cultivating a deeper, more transformative sense of justice. It can be understood as a better way to live, according to a shared civic understanding of justice, not simply or solely as a tolerable bargain.²⁷

A further cluster of Solon's laws reveal this aim, not only to impose a clear-sighted *modus vivendi* bargain, but also, to help create a transformative commitment to justice shared by fellow citizens of the kind that Rawls would also seek. These additional measures sought to transform the social culture and practices, so as to

²⁶ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 145.

²⁷ The verb *phulattein*, which Ober translates 'keep', I have translated 'safeguard', as I have argued elsewhere that certainly in Plato, and arguably therefore also in the oft-Platonizing Plutarch, it has this stronger meaning. See for this argument regarding Plato, Melissa Lane, *Of Rule and Office: Plato's Ideas of the Political* (Princeton: Princeton University Press, 2023).

turn the laws from thin spiders' webs into a more durable social fabric—and I notice that this year's Reith Lecturer, Ben Ansell, similarly argued that 'the institutions of our liberal democracy are like a spider's web', in his first lecture on 'The Future of Democracy'.²⁸

For example, consider this remark in Solon's poetry:

'...the citizens themselves, lured by wealth, want to bring this great city down with their stupidities.

*The common people's leaders have a mind to do injustice, and much grief is about to come from their great hubris [arrogance], for they do not know how to hold excess in check, nor to give order to the pleasures of their present feast in peace'.*²⁹

Restraining excess, conducting feasts and banquets properly, were all issues to which Solon devoted attention in his laws, which also included severely restricting expenditure on funerals (not to mention his law about restraining dangerous dogs, another unfortunately topical issue today).³⁰ All these are (at least in principle and ideally) ways of inculcating a civic-minded, moderate orientation that can temper one-upmanship and the temptation to act unjustly in order to impress others or secure a temporary advantage. Achieving such a genuine mutual understanding helps to prevent those with more advantages from leveraging them at all costs to further entrench their own prospects.

Indeed, despite Rawls' official disdain for a clear-sighted *modus vivendi* kind of arrangement, this further dimension of Solon's laws actually resonates with the emphasis on the social bases of self-respect in Rawls's political theory. Rawls

²⁸ Transcript available at https://downloads.bbc.co.uk/radio4/reith2023/Reith_2023_Lecture1_V2.pdf.

²⁹ W4.

³⁰ See the section of 'Sumptuary Laws' in Leão and Rhodes, *The Laws of Solon*, 115-125 (Frs. 71a-74g); for dangerous dogs, see the same, 54, for Fr. 35 (= Plut. *Sol.* 24.iii): 'He also wrote a law concerning damage caused by animals, in which he prescribed that a dog which had bitten anyone must be surrendered tied up with a leash three cubits long'.

judged self-respect to be ‘perhaps the most important...good’ because ‘[w]ithout it...we sink into apathy and cynicism’.³¹ He argued that for this reason ‘the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect’, and these conditions would be advanced by the desire ‘to live with others on terms that everyone would recognize as fair from a perspective that all would accept as reasonable’.³²

Both Solon and Rawls, in fact, see justice as having to be made sustainable over time, not just as a one-off bargain. Solon sought to do that by imposing a clear-sighted, unblindfolded settlement of the terms of justice that took account of the real distribution of social power—but then further requiring all citizens to behave suitably at funerals, weddings, gymnasia, and so on (suitably according to the conventions of the time, not all ones that we would accept as just), to create a common civic ethos. Rawls sought to do it by asking people to reflect hypothetically on what they would be willing to accept in terms of social inclusion—what kinds of social measures they would feel able to put up with, to feel included rather than excluded by, over a lifetime of potentially living as the least advantaged person in their society. He argued for the Difference Principle as the most rational choice in part because it would give confidence to the parties behind the veil of ignorance that they had acted so as to ‘insure themselves against the worst eventualities’ and so would be best able to cope with the ‘strains of commitment’ that living according to particular principles of justice might impose.³³

For Rawls, the importance of the common social ethos goes beyond the hypothetical method with which his theory begins. Readers of Rawls sometimes neglect the fact that he treated the original position solely as a stage within his theory, a device for testing potential principles. It was never meant to be the last word on whether principles were acceptable. That judgment was reserved for what

³¹ Rawls, *A Theory of Justice*, revised edition, 386.

³² Rawls, *A Theory of Justice*, revised edition, 386 and 418-19 respectively.

³³ Rawls, *A Theory of Justice*, 154, 153, and *passim*.

Rawls called 'reflective equilibrium':³⁴ in which we would return to being the people whom we know ourselves to be, and judge potential principles of justice in light of the insights of the 'original position' that we had gained, as well as the broader commitments and understanding that we have about justice. In other words, even for Rawls, the blindfold has to come off at some point.

In the final part of the lecture, I will consider three more of Solon's laws, comparing them to Rawls' ideas, and reflecting on how we might interpret and adapt their spirit to better achieve social justice today.

Demands of Justice: Then and Now

Let's start with transparency. This may seem a modern concern. But Solon is said to have borrowed a law from ancient Egypt, which, as Herodotus describes it, required each person to make an annual declaration to the political officeholders of the source of their livelihood, on pain of death for not doing so:

'It was Amasis...who made the law that every Egyptian declare his means of livelihood to the ruler of his district annually, and that omitting to do so or to prove that one had a legitimate livelihood be punishable with death. Solon the Athenian got this law from Egypt and established it among his people; may they always have it, for it is a perfect law'. (Hdt. II.177.ii)³⁵

While several ancient sources interpreted this as a law against idleness, we can also read it as a law mandating transparency about the sources of income and so (at least in part) of wealth.

³⁴ Rawls, *A Theory of Justice*, 18; see also 506-14, and *passim*.

³⁵ Hdt. II.177.ii, as translated in Herodotus, *The Histories*, trans. A. D. Godley (Cambridge, MA: Harvard University Press, 1920). See also Diod. Sic. I.77.v, Plut. Sol. 22.iii = Fr.66/1a-c Leão and Rhodes (frs. 78a, 78b, 78c and 148e Ruschenbusch).

What is interesting about this idea is that it applies transparency to everyone, at all levels of society, as a social good. This challenges a common way in which transparency is applied today, which is to reserve it for those with special privileges or status, but otherwise to allow or apply a blindfold for ordinary people. For example, the UK Government's commitment to disclose the individual annual salaries of civil servants earning £150,000 and above is a laudable step toward transparency, which is aimed at the kind of accountability of officeholders that, again, I focused on in my last lecture—and with which Solon was also deeply concerned. But if we combine Solon's call for transparency about incomes, to Rawls' concern with the status of the least advantaged, we might go further, and ask: what about disclosing the lowest salaries of the cleaners in the offices of those well paid civil servants – given the zero hours contracts on which many of them may be working? After all, the fact that zero hours contracts are subject to an *hourly* pay floor in the form of the National Minimum Wage and the National Living Wage [for those over age 23] does not guarantee sufficient hours to actually earn an *annual* living wage. Disclosure to help avoid the possible waste of public funds when concerned with larger salaries, needs to be matched by disclosure to help ensure the social bases of self-respect in whoever ends up occupying the lowest economic positions, by ensuring that a sufficient floor in the form of an annual living wage or income is in fact provided.

Here's a second way of combining the concerns of both Solon and Rawls: imposing a progressive tax on wealth. While Solon preserved (albeit limiting certain sources of) inequalities of wealth, and even imposed a minimum threshold of wealth for holding political office, the Athenian democracy for which he laid the foundations, would impose high and special taxes on the wealthy. Individuals were identified as potential funders of distinct public goods (a warship, a festival chorus, and so on). The burden on the wealthy so imposed was testable through a unique measure known as *antidosis*: a given litigant could declare that he was not able to pay for so expensive a good, but in that case, was given a choice of switching fortunes with someone else who would then have to pay for it out of the original litigant's purse, or

keeping his own fortune but paying for the good required. This was akin to the Rawlsian measure which Daniel Chandler advocates of ‘an annual wealth tax on the largest fortunes’,³⁶ and to the idea of a ‘citizen’s stake’ funded by an annual wealth tax of the wealthiest 2% of Americans (rather than by inheritance taxes) previously advanced by Bruce Ackerman and Anne Alstott in 2000, anticipated (as they observe) by Thomas Paine.³⁷ The economist Thomas Piketty has likewise argued for a combination of ‘a progressive tax on labor income and a progressive tax on inherited wealth’, with the latter being optimally potentially ‘as high as 50% to 60%, or even higher for top bequests’, supplemented by ‘annual taxation of wealth and capital income’.³⁸ Philosopher Liam Murphy has interpreted Piketty’s motivating concern in *Capital in the Twenty-First Century* (a point that applies more generally) to be:

*‘that rentiers have simply done nothing to deserve their wealth and that economic policy should take account of this fact. This is why [Piketty holds that], although we should not simply confiscate the wealth, we should tax wealth progressively, with potentially very high rates at the very high end where, as he explains, anyone with that much capital is essentially a rentier’.*³⁹

For Solon and subsequent Athenians, again, imposing burdens on the wealthy required knowing who they were, even singling them out individually to make sure that they were shouldering a proportionate share and burden of public goods provision. In other words, it required a clear-sighted approach. For Rawls and modern economists, the emphasis is more on the overall structure of the system, so one could in principle be blindfolded as to who occupies which positions—though the granular focus on the gains of the 1%, and even the 0.1%, is difficult to imagine without attention to the real economy and real society.

³⁶ Advocated by Chandler, *Free and Equal*, 238.

³⁷ Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven, Conn.: Yale University Press, 2000), discussing Paine on 181-2.

³⁸ Thomas Piketty, ‘Property, Inequality, and Taxation: Reflections on Capital in the Twenty-First Century’, *Tax L. Rev.* 68 (2014): 638, 639, 639 respectively.

³⁹ Liam Murphy, ‘Why Does Inequality Matter: Reflections on the Political Morality of Piketty’s Capital in the Twenty-First Century’ *Tax Law Review* 68, no. 3 (2015): 613-30, at 627.

To be sure, this kind of progressive taxation of wealth (which can be thought of, roughly, as a radical way of operationalizing Rawls' difference principle) goes well beyond Athenian practices and Greek ideas. Nevertheless, we can see the Greek ideas that I have been discussing as its precursors. Solon's cancellation of debts would have in effect cancelled a significant potential bequeathal of assets for the generation on which it was imposed. And the later Athenian practice of soaking individual rich citizens to pay for public goods may be thought of as a rough form of progressive taxation of wealth as well.

Let me close with one final law of Solon which I have not yet mentioned. It is paradoxical from the standpoint of Solon's approach overall, because it seeks not to moderate and reconcile opposing factions, but rather, at least on the face of it, to reinforce them. As Plutarch puts it, the law prescribes that 'he who in strife does not take either side shall become *atimos* [lose their citizen privileges]' (Plut. *Sol.* 20.i; Leão and Rhodes fr. 38d)—and another report of the law confirms that such a person 'shall become *atimos*' and adds that they 'shall have no share (*mē metechēin*) in the city' (Ath. Pol. 8.v; Leão and Rhodes fr. 38a).⁴⁰

This is highly counterintuitive, both because we think of Solon as a reconciler of strife rather than someone stirring it up, and because polarisation is one of the most serious concerns in contemporary democracies, as again Ben Ansell's first Reith Lecture observed.⁴¹

Plutarch again offers a compelling interpretation of this law:

'it seems that the goal is to avoid apathy and indifference towards common interests, by putting one's private affairs in safety and glorying in not having shared the disgrace and the sickness of the country. On the contrary, they

⁴⁰ Note that 'share (*metechēin*) in the city' (or 'in the constitution') is a standard classical Greek way of expressing a kind of political belonging, as discussed in Lane, *Of Rule and Office*, 229-30. Becoming *atimos* (literally, lacking in or deprived of honour) is in principle a deprivation of the 'honours' (*timai*, plural) that would typically include officeholding and even potentially citizenship itself. In Solon's lifetime, it 'corresponded probably to a state of outlawry, according to which the *atimos* could suffer maltreatment, lose his property or even be killed with impunity', as argued by Leão and Rhodes, *The Laws of Solon*, 64.

⁴¹ Transcript available at https://downloads.bbc.co.uk/radio4/reith2023/Reith_2023_Lecture1_V2.pdf.

*should immediately support the better and more righteous cause, face the same perils and provide assistance, instead of waiting safely for the dispositions of the winners’.*⁴²

This would be in keeping with the clear-sighted approach to justice that I have argued Solon to hold. One has to recognise that there are factions (perhaps most often, though not always only, of the privileged), who remain too tempted to impose terms of justice that suit themselves (an intuition which many other ancient Greek authors also shared), and who can be countered only by those who see them for what they are. So while justice should indeed be blindfolded in some circumstances, as generally for judges and jurors, the ancient Greek vision of the goddesses of Justice as having keen and uncovered eyesight also offers compelling food for thought. We have to be able to spot and arbitrate the injustices that society faces if we are to live up to the ideals of justice now, as they sought to do—imperfectly also—then.

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