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Research Paper

Legal Equality and Unequal Punishment: From Classical Athens to Modern America

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Abstract
Formal legal equality does not guarantee that people can exercise their rights in practice. This essay traces that gap from classical Athens and Rome to modern America, examining how legal systems have depended on the agency of marginalized groups while limiting their ability to act on equal terms. Drawing on Nicole J. Giannella's work on legal ownership and human agency in antiquity, this essay considers how these contradictions persist even after explicit status hierarchies such as slavery have been abolished. In the United States, pretrial detention, underfunded legal defense, and sentencing disparities can prevent indigent defendants and other marginalized groups from exercising rights that the law formally guarantees. The comparison suggests that eliminating unequal legal classifications is only a starting point, as justice also depends on whether people have the practical means to claim and exercise their rights.

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I. Introduction

Athenian democracy and today's American justice system are separated by nearly 2,400 years. Yet, both raise the same fundamental question: does equality before the law produce equality in the experience of law? Socrates was tried by an Athenian jury, found guilty, and sentenced to death. Kalief Browder in modern-day New York spent about three years in jail on Rikers Island while awaiting trial, even though he was never tried and the robbery charge against him was eventually dismissed. Their situations could not have been more different, and the two systems are not directly comparable. The two cases are nonetheless about the gap between the form of justice and the substance of justice.

That distance has changed over time. In classical Athens, citizenship and the various forms of status determined who could access the political and legal institutions (Kierstead). In modern liberal democracies, we have formally abandoned many of the status distinctions of the past. However, unequal access to lawyers, bail, etc. can still have a very real impact on a case's outcome (Wiseman). Nicole J. Giannella's work on Roman slavery offers a different and more fundamental point of comparison. Roman law and society recognised the capacity of enslaved people to think and to act, yet they were still regarded as property. Her work illustrates a wider issue in legal history: the gap between recognising human agency and recognising equal legal status (Giannella). From Athens to modern-day America, the idea of legal equality has certainly expanded, but it has not eradicated the reality of unequal vulnerability to punishment (Zatz). This essay argues that, across both periods, formal legal equality has repeatedly coexisted with unequal exposure to punishment: in antiquity through explicit status categories, and in modern America through unequal practical power to use rights that are formally universal.

Ancient Athens: Legal Status and Unequal Standing

Classical Athens was not a society where everyone stood on equal legal footing. Citizenship came with political rights which metics (resident foreigners) did not have, and enslaved people were in an even more restricted position (Watson). The categories were not rigid, and Athenian society was considerably more heterogeneous than a simple three-way division into citizens, metics, and enslaved people would suggest (Vlassopoulos; Kamen). Deborah Kamen's work on status in classical Athens shows that legal and social distinctions existed within the groups of citizens, metics, and slaves (Kamen). The key point is not that status determined the outcome of every case, but that it shaped a person's rights and institutional access when entering a dispute (Carugati et al.).

Giannella's *The Mind of the Slave: The Limits of Ownership in Roman Law and Society* (2026) makes this point very clearly through the Roman evidence. She examines the slave's dual status as both property and a human being whose mind, intentions, and autonomy were central to running the household and the economy. The master relied on the slave as an agent to make decisions, but that very reliance created uncertainty, since the slave could act in ways the master could not. Giannella contends that this dependence on the slave's mind revealed the limits of ownership (Giannella).

Rome and Athens had very different legal traditions, but Giannella's account offers a legal-historical model for how ancient legal systems managed a recurring structural contradiction: they needed human labour, choice and agency in order to function, yet they stratified people by law in ways that denied them equal protection. Athens fits this model. The city relied on metics, who paid a special resident tax and served in its army and navy, and on enslaved people, some of whom worked for the state itself as clerks and public officials; yet only citizens held full political and legal standing (Kamen). Its courts also depended on what enslaved people knew, but an enslaved person's testimony was normally admissible only if it was extracted under torture (Gagarin). In each case the system made use of a person's mind while refusing that person equal status. Legal inequality is therefore not simply a question of how a judge will treat a particular individual in a particular case. It can be a question of the individual's legal status from the outset (Riggsby; Light).

Socrates: Participation Does Not Guarantee Justice

Socrates complicates the picture. As an Athenian citizen, he could present his case to the jury. In Plato's *Apology*, he explicitly rejects the rhetorical flourishes which he sees in his accusers. He says he will speak in his normal way rather than give them a finely tuned performance (Plato, *Apology* 17a–18a). He has every right to be there and to present his case; he chooses not to play by all the rules of courtroom argument. The jury still finds him guilty, and the process ends with a death sentence.

Socrates' case should not be read as evidence that he was punished for being poor or that his experience was in any way comparable to that of the enslaved. His status as a citizen, his education and his ability to speak in court all set him apart from the enslaved. His trial illustrates a different constraint: mere participation in the legal process does not necessarily lead to an outcome that the defendant, or indeed the subsequent observer, would regard as just. The previous section asked who is regarded as a legal participant. Socrates' case asks what participation can achieve once a person is inside the system.

This distinction also avoids the trap of reducing the whole history of ancient inequality to the proposition that the rich always win. Legal status, citizenship, social standing, rhetorical ability and the political context of the case could all have been factors. The issue is how these various forms of power affected an individual's ability to obtain protection or to escape punishment.

Demosthenes' *Against Meidias*: Power Within the Legal System

Demosthenes' *Against Meidias* provides another view of power and the law. It is about Meidias' attack on Demosthenes at a public festival. Demosthenes does not present it as merely a personal attack, but as behaviour that directly challenges the laws and the order of the state (Demosthenes, *Against Meidias* 7, 32–34). The speech we have, however, is an advocate's speech, and as such it must be read with some scepticism. It is designed to make the jury see the case in a particular way, so it is not an objective account of what happened or the evidence, and it does not tell us what the outcome was.

The speech is nonetheless useful for thinking about how people use the law against those with money and influence. The law may establish rules which in principle apply to all citizens. Still, the reality of bringing a claim, making a case that will have any effect, and resisting opposition will depend largely on a litigant's resources and position in society (Minow). Read alongside Socrates, it suggests that formal citizenship did not erase differences in power between citizens.

Modern America: The Promise and Limits of Formal Equality

Modern American law takes a different approach. In *Gideon v. Wainwright* (1963), the Supreme Court established that the Constitution's right to counsel requires states to provide lawyers to indigent defendants charged with serious crimes. Clarence Earl Gideon asked a Florida court to appoint a lawyer because he could not afford one, but the court refused under the state's then-existing practice. The Court held that the right to legal representation is a fundamental element of a fair trial and that an indigent defendant cannot be expected to defend himself on a level playing field with the state (*Gideon v. Wainwright*).

Gideon marked a major step away from the old system, in which one's legal status could itself be a barrier to access to the courts. A bare right to a defence is of little value if a defendant lacks the means to use it. It does not, however, guarantee that every defendant will have equal access to legal resources. The public defender system is resource-constrained, and a rich defendant can afford a large team of lawyers and all the

experts they need. The real issue is whether the practical means of exercising one's rights are equally distributed (Villamarín López).

Giannella's work can carry the comparison into the modern period, as long as the link is drawn through the idea of contradiction and the historical differences remain in view. In Roman law, the contradiction lay between agency and property status: the slave was classified as a thing, yet the household and the economy depended on the slave's mind. In modern America, every defendant is a full legal person, and the contradiction takes a different form, between formal rights on paper and the practical power to use them. In both cases a legal category looks clean on paper, whether "property" in Rome or "the right to counsel" today, yet it breaks down under the weight of real human circumstances. A right may exist in law, and a person may be legally recognised as having that right, but that does not necessarily mean the person can benefit from it in the real world. The power to benefit from it is not the same as legal recognition of a right (Villamarín López).

Pretrial Detention and Sentencing Disparities

The Kalief Browder case is a stark example of how unequal outcomes can occur before conviction. He was arrested at sixteen in the Bronx in 2010 on robbery and related charges. His family could not afford his $3,000 bail, and because the arrest also violated an earlier probation, a judge then ordered him held without bail; he spent about three years at Rikers Island while the case was pending. He was never tried or convicted, and the charges were dismissed in 2013 (Gonnerman). The case is a clear example of the serious loss of liberty that pretrial detention can impose. It may be pretrial detention rather than punishment per se, but in reality, it is profoundly punitive.

Browder's case concerns the circumstances of the person awaiting trial rather than the sentence imposed after conviction. Poverty can make release impossible. Detention can profoundly affect a person's education, employment, family life, and ability to prepare a defence (Anderson et al.). The system may formally separate detention from punishment, but that distinction is not felt in practice. Browder's case shows how a person's rights can be eroded in practice by the resources they have at their disposal.

Federal crack and powder cocaine sentencing is a clear example of institutional inequality. For many years, federal law imposed vastly different penalties for crack and powder cocaine at the same quantity. The statutory ratio was 100-to-1 in favour of powder cocaine, and the Fair Sentencing Act of 2010 reduced that to about 18-to-1 (United States Sentencing Commission). The Act also eliminated the mandatory minimum for simple possession of crack cocaine. The previous system was clearly inequitable and had a disproportionate impact on Black Americans ("Unjust Burden"). The Act acknowledged that the old sentencing regime needed correction. However, it did not eliminate all consequences of the old sentences or all disparities in the justice system.

Together, Browder and the sentencing disparity reveal two different mechanisms. Browder's case shows how poverty, compounded by procedural holds, can determine a person's exposure to detention before guilt is even established. The sentencing framework concerns statutory classifications that lead to systematically different penalties. Neither case is simply the story of one judge being unfair. Both show how the system's normal operation and the application of rules can produce unequal outcomes for different groups (Zatz).

Comparative Analysis: From Status to Unequal Outcomes

The comparison between the ancient and modern systems must account for both continuities and changes. In Athens, citizenship and other status distinctions directly determined the extent of political participation and legal standing. Giannella's account of Roman slavery shows that the agency of the enslaved could be vital to the system's operation even though their status as enslaved people meant they were not on an equal footing. Modern American law has abolished slavery and has in place a range of constitutional rights, most obviously the right to counsel. It would be entirely wrong to say that the modern defendant is in the same position as the slave in antiquity or that there has been absolutely no change.

The historical cases all show that equality cannot be judged simply by the principles a legal system enunciates. One must also look at how that system's protections are actually used (Minow). Socrates had the chance to speak and still was not acquitted. Demosthenes' speech shows how prevailing social and political forces shaped the law's claims. *Gideon*recognised that a right to a fair trial means little without counsel, yet the right to counsel itself depends on the resources behind it. Browder's case shows how unaffordable bail, compounded by a probation hold, cost a legally innocent person his liberty before trial. Federal drug sentencing shows how statutory distinctions can lead to very unequal outcomes at a large scale.

Giannella's work provides the theoretical bookend for this comparison. Her central distinction is between human agency and legal status: a legal system can depend on what a person thinks and decides while classifying that person in a way that denies them equal standing (Giannella; see also Webber). In the Roman world, the slave's capacity to reason and act directly challenged the very concept of ownership. Athens, too, relied on the participation of metics and enslaved people while reserving full legal and political standing for

citizens. Modern American law has abolished those status categories, and the contradiction that remains is of a different kind: between rights that exist on paper and the practical power to use them. The historical mechanisms are not the same, but both cases prompt us to examine the gap between what the law says a person is and what it actually allows that person to do.

II. Conclusion

From classical Athens to the modern United States, equality before the law has never, in itself, been a sufficient guarantee of equality in the experience of justice. In antiquity, legal status determined who could participate and the range of protections available. Giannella's work on Roman slavery shows how a system could be predicated on the autonomy of people who were at the same time regarded as property. Modern American constitutional law has made considerable headway in recognising equal rights and providing legal aid to indigent defendants. Inequalities remain in bail, representation, and sentencing.

The point is not that the old and new systems are the same; it is that formal legal principles must be assessed in light of the circumstances in which people can exercise them. A system may recognise a person's autonomy or enshrine a right as universal without guaranteeing equal practical protection. The history of punishment makes clear that removing explicit legal hierarchies is a necessary step toward justice, but not the last one. Equality of outcome also depends on whether people can, in fact, claim the rights the law has conferred upon them.

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