

Nie pozwalam!

The *patrios politeia* debate and the procedure of *graphe paranomon* revisited

Problem:

Given the broad participatory and highly confrontational nature of Athenian lawmaking and given the absence of clear substantive rules regulating the exercise of veto power through the *graphe paranomon*, for every proposal, there is someone that on personal, factional or policy grounds has reason to exercise his veto.

Question:

What sort of consensus, or agreement allowed such a confrontational procedure to last?

Argument:

- In response to the late 5th century crisis, the Athenians grounded the democracy on a fundamental consensus on *patrios politeia* understood as ‘legitimate government through law’
- The consensus on *patrios politeia* led to the establishment of the ‘Athenian self-enforcing constitution’
- At the center of the new self-enforcing constitution, the *graphe paranomon* functioned as ‘the bulwark of the Athenian democracy.’¹

Plan of the presentation:

- A theory of self-enforcing constitutions – the model of S. Mittal and B. Weingast
- The *patrios politeia* debate: instability and oligarchic failure
- The outcome of the *patrios politeia* debate: civil strife, legislative reforms, amnesty and *graphe paranomon* as the four conditions of a self-enforcing constitutional pact

¹ Dem. 24.154; Aeschin. 3.5. See also, Hansen, 1999, pp. 207-8; Wolff, 1970, p. 22, n. 49 and p. 25, n. 56.

The model:

PROBLEMS

Rationality of Fear	Democratic Coordination Dilemma	Change
When a group of citizens feels threatened by the government, it may be willing to support extra-constitutional action	How can the citizens act in concert against political leaders who transgress constitutional rules?	The ubiquity and unpredictability of change complicates the possibility of finding long-term solutions to the rationality of fear and the coordination problems

SOLUTIONS

Limits Condition	Consensus Condition	Adaptive Efficiency
Successful constitutions lower the stakes of politics by establishing limits on government action	Well-designed constitutions create focal points ² to help citizens coordinate their actions against government violations.	The capacity to adapt existing institutions so that they continue to lower stakes in politics and enable widespread coordination as circumstances change



FOUR CONDITIONS OF A SELF-ENFORCING PACT

1	2	3	4
The consensus is embedded in a context with structure and processes that define limits on the government	The parties consenting must believe they are better off in it than outside it	Each party agrees to change its behavior in exchange for the other simultaneously doing so	The parties must be willing to defend the agreement against transgression

² Focal point: what two people sharing a common culture would agree on in a situation in which they could not communicate their preferences directly to each other (Schelling, T. *The Strategy of Conflict*, 1960).

Evidence:³

1)

Thuc. 8. 1. 1: “When the news reached Athens, for a time they distrusted those very soldiers who had survived the expedition and brought the truth to Athens—that everything had been so completely and utterly destroyed. When the news sank in, they were angry with the orators who had zealously joined in promoting the expedition, as if they had not themselves voted for it.”

2)

Lys. 18. 2: “as much as he was compelled to do, he didn’t want to do it and he acted against his will: on the one hand, he partook of not the least bit of the evil, while, on the other hand, those who have persuaded you would rightly take responsibility for the disaster.”

3)

Thuc. 8. 66. 4-5: “for the same reason, it was impossible for anyone vexed by the events to vent his grief against another and thereby defend themselves, for he would either have to speak with someone he did not know or with someone he knew but did not trust. All the people in the demos approached each other with suspicion as if each had a part in what was going on, in fact there were some among them whom no one would have thought could turn to oligarchy: these ones in particular made the many untrustworthy and greatly helped guarantee impunity for the few, confirming the mistrust of the demos against itself.”

4)

[Arist.] *Ath. Pol.* 29. 3: “On the one hand Cleitophon said all the rest according to Pitodorus but on the other hand he proposed that those who had been chosen also inquired about the *patrioi nomoi* which Cleisthenes laid down when he established the democracy so that hearing these, they might make the best decision.”

5)

Diod. 14. 3. 2: “At this time the Athenians, having been subdued, made a treaty with the Lacedaemonians, according to which they were bound to demolish the walls of the city and establish the *patrios politeia*.”

³ Translations are my own.

6)

Thuc. 8. 67. 2: “Afterwards, when the day arrived, they packed the Assembly at Colonus (...) and the *syngrapheis* simply introduced the motion that it was possible for the Athenians to propose with impunity whatever measure they wished: if anyone brought a *graphe paranomon* or committed an injury in any other way, they imposed heavy penalties upon him.”

7)

Aesch. 3. 191: “for it was still fresh in everyone’s memory that the demos was overthrown at the time when certain men abolished the procedure of *graphe paranomon*.”

8)

[Arist.] *Ath.Pol.* 35. 2: “At the beginning they were moderate toward the citizens and pretended to pursue the *patrios politeia* and they removed the laws of Ephialtes and Archestratus, those concerning the Areopagites, from the Areopagus and all those ordinances of Solon that were in dispute and they removed the authority of the jurymen with the intention of restoring the constitution and making it undisputable.”

9)

Thuc. 8. 66. 2: “Fear and the sight of the conspirators prevented anyone from speaking in opposition and if someone did, quickly he was put to death in a suitable way and there was neither search for the culprits nor justice if suspected, but the people kept quiet in the grip of consternation, so that every man considered it a gain to escape violence even if he held his tongue.”

10)

[Arist.] *Ath.Pol.* 35. 4: “when they strengthened their hold on the state, they kept their hand off none of the citizens, but they killed those who were outstanding in terms of wealth, birth and rank, wanting to remove the fear and desiring to plunder their estates.”