

Nie Pozwalam!¹

The *Patrios Politeia* Debate and the
Procedure of *Graphe Paranomon* Revisited

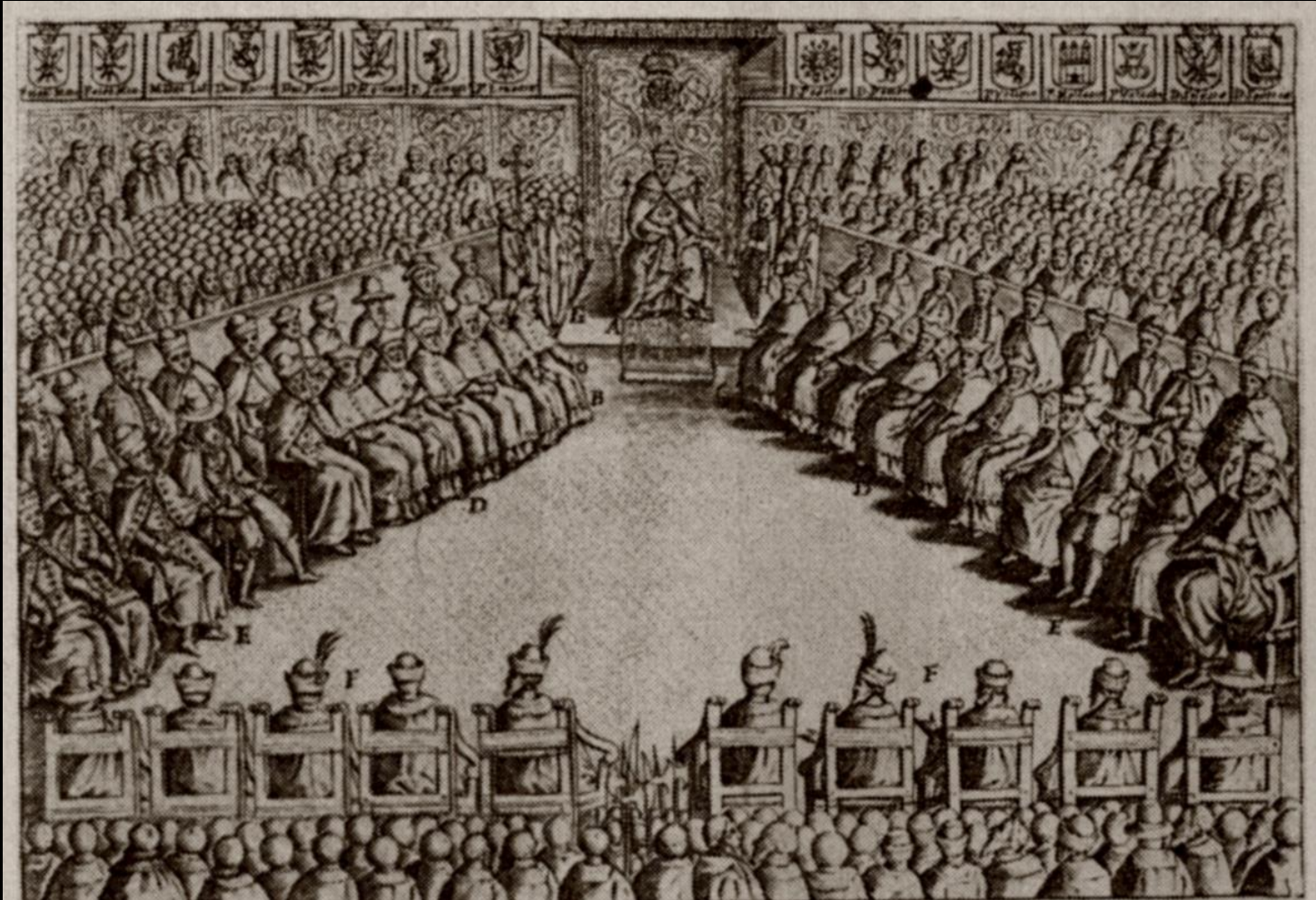
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¹ Polish: 'I do not allow'

Polish-Lithuanian Sejm

Frequency of meetings: less than once a year

Membership: 160 (mid-15th c.) – 340 (1780-90s)



Athenian Assembly

Frequency of meetings: 40/yr
Membership: 6000 adult male citizens



The ambiguity in the letter of the law



The number of veto holders



Problem:

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

Mr. Smith Goes to Washington, 1939



Low-cost veto



(An ordinary day in the Italian Parliament..)

High-cost veto



(Another ordinary day in the Italian Parliament..)



What prevented the
Assembly...

... from becoming the Polish
Sejm?



Grappe paranomon

COSTS	BENEFITS
To the individual: Fines (25dr to 10T), <i>atimia</i> (temporary and permanent)	Gains from cooperation: <ul style="list-style-type: none">- Functioning legal system
To the polis: Legislative failure	<ul style="list-style-type: none">- Stable and prosperous polis

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.’

Plan of the presentation:

- A theory of self-enforcing constitutions – the model of S. Mittal and B. Weingast
- The *patrios politeia* debate: problems that led to 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

Hypothesis:

**In the 4th century, a self-enforcing
constitutional order drove Athenian
political stability**

...in the making...

‘Self-enforcing’ constitution:

- at any given moment, all actors find it in their interests to adhere to the constitutional rules;
- moreover, the actors are able to adapt policies and institutions to maintain that stability over time.

i.e. sustainability over time does not require a third party enforcer

A theory of self-enforcing constitutions¹

Goal: constitutional stability

Problems	Solutions
1) Rationality of Fear	1) Limits condition
2) Democratic coordination dilemma	2) Consensus condition
3) Change	3) Adaptive efficiency

¹ Mittal, S. and Weingast, B. "Self-Enforcing Constitutions: With an Application to Democratic Stability in America's First Century," SSRN, available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1643199

Rationality of fear

when a group of citizens feels threatened by the government, it may be willing to support extra-constitutional action

Limits condition

successful constitutions lower the stakes of politics by establishing limits on government action

Democratic Coordination Dilemma

how can the citizens act in concert against governments that transgress constitutional rules?

Consensus condition

well-designed constitutions create focal points* to help citizens coordinate their actions against government violations

* 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

The consensus is self-enforcing when:

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

Change

the ubiquity and unpredictability of change complicates the possibility of finding long-term solutions to the rationality of fear and the coordination problems

Adaptive efficiency

the capacity to adapt existing institutions so that they continue to lower stakes in politics and enable widespread coordination as circumstances change

(work in progress)



Sicilian disaster



Failure of the radical
democracy



Domain of discursive
possibilities:

How ought Athens to be
ruled?



Νικίας



Αλκιβιάδης

How ought Athens to be ruled?

“patrios politeia debate”

- Importance of law emerges as central for the stability of the democracy
 - Revision and codification of the laws of the polis
 - 403 reforms: *nomothetai* and *nomothesia*
- Concept of *patrios politeia* is the focal point of the debate
- *Patrios politeia* allows actors with different preferences and interests to articulate what kind of government they want to be led by

Type of government	Problem	Theory	Practice
Radical democracy	-Rationality of fear	-Limits condition	-No restraint on the power of the demos (#1, 2 on handout)
	- Coordination dilemma	-Consensus condition	- Consensus shattered by the conspirators (#3 on handout)
Radical oligarchy	-Rationality of fear	-Limits condition	-Disrespect for the laws (# 6,7,8 on handout) and violence against the the people (# 9, 10 on handout)
	- Coordination dilemma	-Consensus condition	-Oligarchic behavior as the antithesis of <i>patrios politeia</i>

The task of the democracy in 403

Problem	Solution
Rationality of fear	Limits condition: lower the stakes of politics
Democratic Coordination Dilemma	Consensus condition: <i>patrios politeia</i> as legitimate government through law

LIMITS CONDITION

Legislative reforms, ca. 403-399 BC

- Law-code
- Definition of law
 - The prohibition to avail oneself of unwritten laws;
 - A distinction between *nomoi* and *psephismata* whereby no decree could prevail over a law;
 - The prohibition to ratify *leges ad personam*.
- Organ of legislation
 - *Nomothetai* appointed to ratify laws, join the Assembly, in charge of the ratification of decrees
- Procedures for the introduction and scrutiny of the laws
 - The review law (Dem. 24.20-3);
 - The repeal law (Dem. 24.33 and 20.89-94).

CONSENSUS CONDITION

patrios politeia as legitimate government under the respect for the laws of the fathers conceived as a check on the decision-making power of the people

Decree of Teisamenus, 403/2

“On the motion of Teisamenus, the People decreed that Athens be governed in accordance with the laws of the fathers - the laws of Solon, his weights and his measures, and the statutes of Draco, which we used aforetime.”

Andoc. 1. 83.

The consensus is self-enforcing when:

- 1) It is embedded in a context with structure and processes that define limits on the state
 - *structure: nomothetai*
processes: review law, repeal law
- 2) The parties consenting must believe they are better off in it than outside it
 - *protracted stasis (or Spartan intervention) as alternative*
- 3) Each party agrees to change its behavior in exchange for the other simultaneously doing so
 - *amnesty*
- 4) The parties must be willing to defend the agreement against transgression
 - *graphe paranomon*
graphe nomon me epitedeion theinai



Thank you

This paper is a work in progress.
Comments and questions are welcome at:
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