

Mistrustful of oral reports “to the mob,” Nicias sent a letter to Athens on the three generals punished in 424 b.c. for failing to conquer Sicily.

Paradoxically, the oligarchs were restrained by the one means that could prevent the Assembly from becoming a tyrant: a law that permitted any citizen to challenge the legality of an Assembly proposal prior to a vote. The *graphe paranomon*, a charge that a proposal was “contrary to law,” was one of the central constitutional protections of the Athenian government. On *paranomos* as “illegal,” see Plato, *Apology*, where Socrates claims to be preventing illegal happenings in Athens, as he had done at the trial of the generals. Should any citizen challenge a proposal brought before the Assembly, a sworn jury would have to examine and accept the legality of the proposal before the Assembly could vote on it. The legality of the proposal was considered to be distinct from the question of its adoption, and this legality could be challenged even after the passage of the proposal. In principle, this allowed any citizen to act as a dampening force upon the Assembly, and to subject the Assembly to the limitations of law, as determined by a jury.

Under this law, any citizen, now or in the future, could challenge the proceedings taken at Colonus by bringing a *graphe paranomon* charge against the decision. This would force the Athenians to convene a jury to examine the decision. So when the Assembly was convened, among the first orders of business was to repeal the *graphe paranomon*. The Assembly voted to repeal this safeguard in order to eliminate legal challenges to the oligarchic clique. Thucydides reminisces that “in those days the *graphe* had to be put away to overthrow the democracy.” Constitutional protections were eviscerated, dissent was stifled, and the Assembly turned Athens over to a council dominated by wealthy, armored citizens.

Among the other paradoxes of the so-called oligarchic counterrevolution of 411 were its attempt to limit the power of the Assembly by calling an Assembly to vote itself out of existence, and its attempt to reestablish the ancestral laws of Athens by eliminating the means by which Athenian citizens could challenge proposals on the basis of those laws. The resultant oligarchic government — the so-called Four Hundred — governed nonviolently, but the desire for democracy in Athens was too strong, and within months the Athenians reestablished the *graphe paranomon* and citizen government. But the fact that the Assembly had been able to repeal the *graphe paranomon* shows that, ultimately, there was no law above the Assembly. This was the constitutional flaw that had yet to be corrected.

A few years later another event occurred that showed even more starkly the constitutional problem that bedeviled Athens. By 406 b.c., Athens was losing the war in the Aegean Sea. The Athenian navy was blockaded on the island of Lesbos, and Sparta was about to cut Athens’s jugular vein, the grain routes to the Black Sea. In a state of desperation, the Assembly appointed ten new generals, who manned the last of the city’s ships and rowers, won the battle against Sparta, relieved the blockaded navy, and secured the grain routes.

The response of the Assembly was to recall the generals on the charge of failing to pick up dead sailors in the water, to try them as a group, and to execute the six who returned. Socrates recalled his opposition to the trial. This violated at least three Athenian legal customs: that trials had to be before sworn jurors and not the Assembly; that each individual had a right to a separate trial; and that each had the right to speak in his own defense. Xenophon says the generals were not given the time allowed by law. The connection of group trials to tyranny may also be seen in the trial of