

issues. Should we go to war against Chios? Should we send aid to the Corcyraeans? Should we make friends with the Thebans? Who should fund the next tragic chorus? Should we build a new building? Assembly decrees (psephismata) passed for such purposes could have far-reaching effects, as did the decision in the 480s to build a navy rather than distribute the wealth of the Laurion silver mines, but the decisions were for the most part conceptually less general than nomoi. A nomos was of wider application than a psephisma; the former applied to more particular cases than the latter.⁶⁰ It is important, however, not to elevate the issue of generality to a position of fundamental importance; decrees of the Assembly could be quite general. The basic issue at stake is not the degree of generality of a decree, but rather the requirement that it be consistent with the written laws; that is, the basic issue is its constitutionality.

Most important to preventing the usurpation of the laws, the Athenians established a legal hierarchy between nomos and psephisma. In essence, a psephisma was never to be more authoritative than a nomos. In any discrepancy between a psephisma and a nomos, the nomos had precedence. This served to set limits on the Assembly; it could not pass decrees that countermanded written laws. This rule is cited in the speech of the orator Andocides (*On the Mysteries*), where he states that psephismata must accord with nomoi: "In no case shall a magistrate enforce a law that is unwritten. No decree of the council or of the Assembly shall override a law. No decree shall be imposed on an individual that does not apply to all the Athenians, unless an Assembly of 6,000 shall so vote in a secret ballot."

To further place the written laws outside the reach of the Assembly, the authority to change a nomos was made procedurally, institutionally, and conceptually distinct from the procedure used to enact a psephisma. In a direct parallel to the process for amending the American Constitution, which cannot be done by an act of the legislative or executive branches, the procedures for passing an Assembly decree were different from those required to change the written laws. In essence, the fundamental laws of Athens—its written nomoi—were placed beyond the reach of the Assembly. All changes to the written laws were subject to legal review by a jury sworn to uphold the laws. Any citizen could initiate a challenge to any proposal.

The law courts are the key to understanding how the Assembly was brought under the control of the laws. An Athenian jury was a group of several hundred citizens selected by lot, who heard two sides of a case and then decided without deliberation by a vote. The fundamental difference between the Assembly and the jury was a juror's sworn obligation to judge a case according to law. The so-called Heliastic oath reads, in part:

I will give verdict in accordance with the statutes [written laws] and decrees of the people of Athens [the Assembly] and the Council of 500. . . . I will not allow private debts to be cancelled, nor land nor houses belonging to Athenian citizens to be redistributed. . . . I will give impartial hearing to prosecutor and defendant alike, and I will give my verdict strictly on the charge named in the prosecution.⁶⁴ Juries did not, of course, always function legally—but the Assembly was not limited by such an oath, and could, on principle, pass any measure at any time. The lack of a law that was firmly authoritative over the Assembly is the factor that Aristotle identified as having allowed the democracy to become a composite monarchy, and a tyranny.

Should any citizen challenge an Assembly proposal with a graphe paranomon—literally, a charge that a proposal was "beside the law" or "illegal"—debate in the Assembly would stop, and the case