Constitution and Coordination: Behavior, Institutions, and Institutional Change in Ancient Athens

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ABSTRACT: At the end of the 5th century BCE, a prosperous imperial democracy embarked on a long and demanding war. The conflict severely strained Athens' resources, compromised her commitment to democracy, and plunged the city into civil war. Within a few years, Athens was again a prosperous democracy. How did the polis manage to rebound so decisively? This article explores the dynamics of institutional change in ancient Athens by analyzing how beliefs affected institutional change, and how institutional change shaped long-term political and economic outcomes. I argue that, during the late 5th century crisis, the Athenians collectively articulated a consensus on law as a bulwark of constitutional stability. After the civil war, the commitment to law was weaved into the structure of a new, self-enforcing constitution. The constitution fostered political stability and economic recovery by enabling investments in institution building and infrastructure.

1. Introduction

At the end of the 5th century BCE, the world's first large-scale democracy failed.[1] Under the pressure of a long and demanding war, the Athenian Assembly (the polis' legislative organ) made a series of poor military decisions that plunged the city into a severe and protracted crisis. In the span of a decade, a prosperous, stable, imperial democracy lost its major sources of revenues (i.e. an Aegean empire; mineral resources), half of its citizen population, succumbed (albeit temporarily) to oligarchy, and ultimately devolved into civil war. But within a few years after the end of the civil conflict, Athens was again a prosperous democracy, and it remained so until the Macedonian conquest of Greece eighty years later (Ober 2008: ch. 2).

Why was democracy reestablished, after it had failed? Why was the new democracy stable, after a decade of instability? And how did the polis manage to recover so quickly from such a profound shock to its economic structure?

Athens provides a rare case of successful democratic consolidation and economic recovery in a post-conflict setting. However, neither classical scholars nor social scientists have adequately explained the sources of Athens' success. Despite the increasing attention devoted to classical Athens as a comparative case study in political economy, social scientists have yet to turn to this period of Athens' history.[2] Classicists, instead, have devoted a great deal of attention to the late 5th century. However, because the discovery of economic growth in ancient Greece is recent, the question of Athens'

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[1] All dates are BCE, unless otherwise specified.

[2] Ober's work focuses on the classical period writ large (Ober 2008) or on Greece as a whole (Ober 2015). Simonton (2012) focuses on oligarchy in Athens, but only as an instantiation of the larger phenomenon of Greek *oligarchia*. Acemoglu and Robinson (in progress) focus largely on the archaic period. Fleck and Hanssen's most recent work (in progress) takes up the transition between the 5th and 4th century, but theirs is a formal model to identify the conditions that make the establishment of the rule of law optimal.

post-war economic performance has not yet been addressed. Moreover, classical scholars view democracy as a given outcome of the constitutional struggles, they focus not on why democracy was reestablished, but on the conditions that made democracy stable after the civil conflict.

Some argue that stability was the product of the strength of Athens' democratic culture (Loening 1987, Loraux 2002; Joyce 2008; 2014; Shear 2011); others stress the role of Sparta as a third party enforcer of the Amnesty agreement that put an end to the civil war (Todd 1985); others still lay emphasis on the constitutional reforms that followed the civil war (Harrison 1955; MacDowell 1975; Hansen 1978; 1979a; 1979b; 1987; 1989b; 1999; Robertson 1990; Rhodes 1980; 1991; 2010; Eder 1995; Carawan 2002; 2013; Osborne 2003).[3] But whereas the strength of Athens' democratic culture is a hypothesis that cannot be empirically tested, Spartan enforcement is not borne out by the ancient evidence.[4] Finally, merely describing constitutional reforms fails to explain where the reforms came from, what challenges to constitutional stability they were supposed to fix, and why such fixes proved remarkably long-lasting.

Robust democratic institutions and high levels of growth were unlikely outcomes of the late 5th century struggles. Ancient constitutional theory and practice suggest that protracted instability and civil war were more likely to occur.[5] Had that been the case, the

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[3] On the contentious nature of pacification and the role of the courts: Quillin 2002; Wolpert 2002; Carawan 2013.

[4] Todd follows an established tradition in the ancient sources: Xen. *Hell.* 2.4.29; Diod. 14.38; [Arist.] *Ath.Pol.* 38. 4. However, the sources suggest that the agreement that the Spartans oversaw was the creation of two poleis, one at Athens and one at Eleusis, where the Thirty and their supporters could retreat. That agreement, however, failed (Carawan 2013: ch.4) and the Spartans played no role in the subsequent process of reunification. I return to this issue in section 5.

[5] Stasis is a pervasive phenomenon in the ancient world (Brunt 1972; Ruschenbusch 1978; de Ste. Croix 1981; Lintott 1982; Fuks 1984; Gehrke 1985; Berger 1992; van Wees 2008). The ancient sources, both Greek and Roman, view stasis as a threat not only to the economy, but also to the stability and survival of the polis: Hesiod, *W&D*, 189-201; Theognis, 4; Tyrtaeus, fr. 1-4; Solon. Fr. 4 1-8 West; Herodotus, 3.80-2;

Athenian economy would have failed to recover.[6] A permanent transition toward oligarchy was also possible, but the evidence suggest than an oligarchic Athens could only have survived in a low-growth, predatory environment.[7] The reestablishment of democracy was therefore critical to Athens' growth potential. However, had the Athenians in the 4th century merely reproduced the institutional structure of the 5th century, a weakened geopolitical position and a struggling economy would have put enormous pressure on institutions that had already shown their fragility – jeopardizing long-term stability.

To explore the roots of Athens' political and economic recovery, I combine historical approaches to the ancient sources with frameworks drawn from the fields of economics and political science. A new reading of the ancient sources allows me to reconstruct the social, cultural, and ideological negotiations that shaped the process of institutional change during the tumultuous last decade of the 5th century. I place that reconstruction within a framework for institutional analysis and a model of self-enforcing constitutions to explain how those negotiations led to the emergence of a new, stable *equilibrium* in the aftermath of a protracted shock.[8]

Thucydides, 3.69-85; Plato, *Resp.* 8; *Laws*, 628A *et passim*; Aristotle, *Pol.* 5; Xenophon, *Hell.* Aeneas Tacticus, *On Siegecraft*; Polybius 6.9.8; Lucan, 1.71, 76, 160-82; Sallust, *Cat.* 37. 7 ff. and *Jug.* 41.7-8; Florus, 1.47.7-13; 2.1.1-2; Appian, *BCiv.* 1.7-27; 5. 17.

[6] In both Syracuse (5th-4th century BCE) and in Rome (2nd-1st century BCE), economic growth occurred in the midst of protracted civil conflict. But Athens lacked Syracuse's and Rome's abundant financial and human resources. For a comparison between civil war in Rome, Syracuse, and Athens: Carugati 2015: ch.2.

[7] On oligarchic means of survival: Simonton 2012. But Simonton neglects the role of economic institutions and the sources of economic rents. After the civil war, resources in Athens were scarce. The harbor of Piraeus was critical to Athens' recovery (Amit 1965; Garland 1987). But the oligarchy of the Thirty (403/3) actively destroyed the harbor's infrastructure in an effort to weaken the democratic opposition (Carugati 2015: ch. 2). Without Piraeus, it remains unclear where the oligarchs would have turned for money. External gifts (e.g. from Persia, or Sparta) and expropriations are likely options – neither of which would have ensured a secure stream of revenue.

[8] In this article, I employ the term self-enforcing to indicate an agreement that is enforced by the parties without the need of a third party enforcer. On self-enforcing democracy: Przeworski 1991; 2001; Weingast 1997; 2004; Boix 2003; Acemoglu and Robinson 2006; North, Wallis, and Weingast 2009; Fearon 2011.

I argue that Athens' political and economic recovery rested on the establishment of a new self-enforcing constitution. The new constitution was the product of a long and contentious debate over the nature of the best government for the polis. During a decade of constitutional struggles, the Athenians articulated a collective consensus on how Athens ought to be ruled. The consensus, enshrined in the notion of *patrios politeia* (i.e., the constitution of the fathers), expressed a commitment to law as a bulwark of constitutional stability.[9] Dismissed by classical scholars as an "empty slogan" (Hansen 1999: 300; *contra* Shear 2011) *patrios politeia* played instead a critical coordinating function in the debate, and guided the process of institutional change when democracy was ultimately reestablished.[10]

Athens' constitutional solution to the late 5th century crisis fostered stability and prosperity because it addressed the root causes of the political instability that had lacerated the city in the previous decade; because the consensus on the new form of government was devised collectively by a large section of the population; and because it created robust institutional structures to address personal and economic grievances and stimulate investments in critical sectors of the economy, such as defense and commerce.

Athens' recovery brings new empirical evidence to bear on a series of debates in economics and political science. First, it contributes to the literature on the institutional sources of democratic stability and consolidation (e.g. economic growth: Lipset 1959;

On self-enforcing constitutions: Hardin 1989; North and Weingast 1989; Ordeshook 1992; Greif and Laitin 2004; Elkins, Ginsburg and Melton 2009; Mittal and Weingast 2013.

[9] Here, I do not take up the question of whether these institutions established or strengthened the rule of law in Athens. On whether we can, or should, speak of rule of law in Athens rule of law, see Forsdyke 2016; Carugati 2014, 2015.

[10] I return to Shear's interpretation in section 4. *Patrios politeia* was not a late 5th century invention (Hansen 1989a), but its use in the constitutional debate marks the beginning of a period in which the Athenians began to perceive the past as an age of stability and prosperity, a model to restore, in contrast with the 5th century view (expressed most cogently by Thucydides in Pericles' funeral oration) that the past was great, but the present is better (Thuc. 2. 35-46).

Przeworski and Limongi 1997; cultural and social factors: Almond and Verba 1963; Moore 1966; income inequality: Boix 2003; ethnic fractionalization and other forms of heterogeneity: Lijphart 1999; political institutions: Linz and Stepan 1996; Diamond 2008)[11] by stressing the central role of legal institutions. Second, Athens provides an out-of-sample test case to support the argument that constitutions play an important role in fostering political stability and economic development (e.g. North and Weingast 1989; Persson and Tabellini 2004; Elkins, Ginsburg, and Melton 2009). Third, Athens' recovery provides a counterargument to the view that instability and civil war have pernicious effects on political and economic structures (Alesina et al. 1996; Collier 1999; Herbst 2000; Kang and Meernik 2005; Miguel and Satyanath 2011), and that negotiated settlements fail to end civil wars, especially in the absence of a third party enforcer (Walter 1997; 2002).[12]

By analyzing closely the case of Athens, this article advances the study of institutions in two additional respects. First, Athens' constitution-building process illustrates the role of beliefs in shaping behaviors in a time of crisis, and the mechanisms whereby beliefs get purchase on behavior through credible commitment, coordinating the creation of new institutions. As such, this article sheds lights on two critical, but still understudied processes: namely, the relationship between beliefs, behaviors, and

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[11] The list does not aim at exhaustiveness. The literature on the sources of democratic stability and consolidation is vast. Legal institutions do play a role, but they are often couched either as a legacy of colonial development (Jackson and Rosberg 1982; La Porta et al. 1999) or in terms of a vaguely defined "rule of law" that boils down to accountability for rulers (Diamond 2008: 22; Linz and Stepan 1996: 10).

[12] Modern definitions of civil war apply to the Athenian case only in part. Following Fearon and Laitin's (2003) definition, Athenian combatants were "agents of (or claimants to) a state and organized groups who sought…to take control of a government." The available evidence does not provide reliable measures of war casualties. According to Xenophon's numbers, which as all numbers in the ancient sources must be taken with a grain of salt, casualties in the civil war were ca. 370. Of these, ca. 180 were either supporters of the Thirty or Spartan soldiers. (Xen. *Hell.* 2.4. 6; 19; 32; 34). These numbers thus meet only one of the two criteria (at least 1000 deaths, of whom 100 on the government side).

institutions, and the dynamics of institutional change (Hall and Taylor 1996).[13] Second, the positive analysis of institutional change generates an important normative argument: political theorists, ancient and modern, often emphasize equality and freedom as the hallmarks of democracy. This article stresses legality as the third, fundamental attribute of democratic discourse and practice. Law, however, ought not to be conceived, in the Austinian/Weberian tradition, as a set of rules emanating from a sovereign authority that is endowed with the coercive power to enforce such rules. The nature of law in Athens and the structure of the Athenian legal system were consistent with, and fostered an understanding of law as a coordination device for collective action (Hadfield and Weingast 2012; 2013; 2014; Carugati, Hadfield, and Weingast 2015).

2. Evidence and Methodology

The literary sources on the late 5th century constitutional struggles pose enormous interpretive problems: they are partial because written by elite Athenians, often critics of democracy—including historians like Thucydides and Xenophon, philosophers and political theorists like Plato and Aristotle, and orators like Lysias. The sources are also fragmentary because accidents of transmission have biased the sample by limiting the scope of the available evidence and by over-representing selected genres and authors based on the preferences of later readers. Finally, the sources are at times contradictory

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[13] Pioneering work on institutional change and the relationship between institutions and behavior includes North 1990 and Ostrom 1990. More recent contributions have focused on constructing broad frameworks to analyze the impact of institutional change on long-term political and economic outcomes (e.g. North, Wallis, and Weingast 2009; Acemoglu and Robinson 2012). Others have focused on the question of where institutions come from, emphasizing the role of beliefs in shaping institutional change (e.g. Mokyr 1990; North 2005; Schofield 2006; Alston et al. 2016).

because written for different audiences and purposes. Epigraphic and archeological evidence is less biased, but limited and equally difficult to interpret.[14]

I analyze the available ancient evidence through traditional historical and philological methods of inquiry. But to investigate the sources of Athens' recovery, we cannot rely uniquely on the primary sources: literary, epigraphic, and archaeological evidence from the period in question offer only a limited perspective on long-term processes of institutional change. For this reason, I deploy frameworks drawn from the social sciences to place the analysis of the primary evidence within a narrative that is problem-driven in its nature and explanatory in its aims.

The narrative follows two separate, but interrelated themes: first, the collective, discursive process of constitution building that unfolded during the transition from the 5th century democracy to its novel instantiation in the aftermath of the civil war; and second, the structure of the new constitution. The former topic deals with the dynamics of institutional change; the latter deals instead with the statics of a solution that, for analytical purposes, is best described as an *equilibrium*: a snapshot, at a moment in time, of how the world works. Each theme is essential to the other: we cannot understand how institutions arise if we don't understand the processes that shape them into place. But each theme requires a distinctive approach.[15]

I analyze the dynamic process of constitution building through the lens of the framework for institutional analysis recently proposed by Alston, Melo, Mueller, and Pereira in *Brazil in Transition: Beliefs, Leadership and Institutional Change* (2016). The

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[14] To date, the most comprehensive analysis of Athens' constitutional struggles is Shear (2011), which employs a combination of literary, epigraphic, and archaeological sources. Carawan (2013) is the most recent account of the institutional changes that followed the civil war.

[15] Combining these approaches allows me exploit the explanatory power of a rational choice model, while tempering its functionalist nature and simplistic view of human behavior.

framework is particularly well suited to structure my analysis of constitutional negotiation in ancient Athens in that it emphasizes the role of beliefs in shaping the process of institutional change.[16] Alston et al. suggest that the process of institutional change, under normal conditions, is highly path dependent. Belief structures, on which institutions rest, are a stable matter and path dependent beliefs maintain institutions in place.[17] Sometimes, however, countries break away from the equilibrium. Shocks make beliefs malleable and malleable beliefs open up windows of opportunity for institutional change. During these times, leadership plays a crucial role in coordinating the creation of new beliefs.[18] But change can only occur through a process of sustained institutional deepening – the process of weaving the new belief into a new institutional structure.

Following this framework, in section 4, I reconstruct a fundamental change in beliefs that occurred in Athens in the late 5th century: a change from a belief in a form of democracy where, as Xenophon put it, "it was monstrous if the people were to be prevented from doing whatever they wished" (Xen. *Hell.* 1.7.12), to a belief in a form of democracy where the will of the people ought to be regulated by the dictates of law. This change in beliefs, I argue, can best be seen in the collective articulation of the notion of *patrios politeia* as a commitment to law – a process that occupies the entire last decade of the 5th century.

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[16] For an overview of theories of institutional change see Kingston and Caballero 2009. For a public policy perspective, see Sabatier and Weible 2014. Other approaches include the 'fourth institutionalism'—i.e. discursive institutionalism (Schmidt 2008). A recent development, discursive institutionalism still lacks a coherent theory of institutional change.

[17] Beliefs, in Alston et al.'s framework (2016:25), are defined as *core beliefs* (Greif 2006; Schofield 2006) or *causal beliefs* as opposed to behavioral beliefs: that is, beliefs about the relationship between institutions and outcomes, not beliefs about other people's behavior.

[18] In the framework, leadership is a complex concept that draws from Riker's (1986) notion of herestetics as well as Greif's (2012) concept of leadership as involving cognition, moral authority and coordination.

But how was the new belief weaved into a set of new institutions? How, in other words, did institutional deepening occur? To answer this question, in section 5, I deploy the model of self-enforcing constitutions developed by Sonia Mittal and Barry Weingast (2013). Mittal and Weingast's model is flexible enough that it can be applied to pre-modern instantiations of democracy: in fact, the model focuses less on the resilience of particular (modern) democratic institutions—such as, for example, free and fair elections—and more on the incentives that subjects of democratic institutions (that is, officials, as well as citizens) have to abide by the rules of the political game. Mittal and Weingast suggest that stable democratic constitutions accomplish two goals: first, they lower the stakes of politics by establishing limits on government action; and second, they create focal solutions that enable citizens to coordinate against violations of constitutional rules. A self-enforcing constitutional pact must respect four conditions: first, the solution to the problem of coordination must be embedded in institutional structures; second, the pact must make all parties better off; third, the parties must simultaneously agree to respect the pact; and fourth, the parties must commit to protecting the pact against transgression.[19]

Drawing on Mittal and Weingast's model, I show that the notion of *patrios politeia* operated as a focal point for collective action throughout the constitutional debate, enabling the Athenians to mobilize against the excesses of oligarchic as well as democratic governments. As they struggled to identify the best government for the city, the Athenians progressively elaborated *patrios politeia* as a commitment to law. When

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[19] Mittal and Weingast discuss a third goal (2013: 280, 286-7): to adapt institutions so that they continue to lower the threat of violence as circumstances change. I take up this goal in the larger book project of which this article is an excerpt. In the book, I show that the Athenian solution to constitutional instability, which for the purposes of this paper I conceptualize as an *equilibrium*, featured in-built mechanisms for change that made it capable of subsequent adaptations throughout the 4th century.

democracy was reestablished, such a commitment was weaved into a new institutional structure through a series of reforms of legislative and juridical institutions.

The next section provides an overview of Athens' institutional structure prior to the late 5th century crisis.

3. Athens before the Late 5th Century Crisis

When crisis struck at the end of the 5th century, Athens' democratic institutions had a long and illustrious history. Established a century earlier (508/7), they were regarded by contemporaries as the key to the polis' success. In the words of the historian Herodotus,

> "the Athenians grew in power and proved, not in one respect only but in all, that equality of speech (*isegoria*) is a good thing. Evidence for this is the fact that while they were under tyrannical rulers, the Athenians were no better in war than any of their neighbors, yet once they got rid of their tyrants, they were by far the best of all." (Hdt. 5.78)

For Herodotus, as for many of his contemporaries, democracy was coextensive with equality of speech: that is, the power of the people to make decisions by participating in the polis' deliberative institutions, namely the Assembly and its agenda-setting organ, the Council.

In the middle of the 5th century, under the leadership of Ephialtes and Pericles, Athens consolidated its democratic institutions ([Arist]. *Ath.Pol*. 27. 3). The process of consolidation focused primarily on the judiciary: first, the elite council of the Areopagus was deprived of most of its judicial powers, which were transferred to the popular courts;

second, the introduction of pay for jury duty, which enabled the lower classes to participate as jurors in the popular courts, increased the power of the people. In the Assembly and in the law-courts, the people of Athens made decisions concerning both domestic and foreign policy, debating issues and voting on them by simple majority rule. In the law-courts, verdicts were final and unappealable. In the Assembly, no procedural mechanisms were in place to modify or reverse decisions.[20]

The Athenian historian Thucydides grappled with the question of whether and how democracy was sustainable in the absence of checks on the people's decision-making power. For Thucydides, democracy was viable only under capable and moderate (*metrios*) leadership, crystallized in the figure of Pericles (2.65.5-10). The *History of the Peloponnesian War* documents the progressive breakdown of unrestrained popular power in the absence of enlightened leaders and under the pressure of war (Ober 1998: ch. 2). But because Thucydides' history breaks off abruptly in 411, we will never know how he would have accounted for Athens' recovery.[21]

Another explanation to be found in the sources relates the resilience of the 5th century democracy to Athens' naval empire. Because the people provided security to the city as rowers in Athens' powerful fleet, the Old Oligarch caustically comments, "it is only just that the poorer classes and the people of Athens should be better off than the

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[20] The Mytilenean affair as reconstructed by Thucydides suggests that at least down to 427 a) the only way to repeal a bad decision made in the Assembly was to call another meeting of the Assembly; b) there were no guarantees that the second decision, rather than the first, would be implemented. At some point between 427 and 415, the Athenians introduced the *graphe paranomon*, a procedure that allowed the courts to review decisions made in the Assembly. As Lanni and Vermeule have shown, in the absence of credible commitment, the *graphe paranomon* proved futile at least down to 406 (2013: 19-21). I will return to the relevance of the *graphe paranomon* in the new constitutional structure in section 5 below.

[21] Xenophon's *Hellenica*, which picks up where Thucydides' account left off, lacks Thucydides' sharp critique of Athenian institutions.

men of birth and wealth." ([Xen]. *Ath. Pol*. 1.2).[22] The quote may suggest that if the poorer people were better off, the richer and more powerful people were worse off. However, Athens' status as an imperial power may have assuaged class conflict, providing enough resources to turn a zero-sum game into a win-win situation. Resentment toward the democracy existed among the elite (and in fact, it punctuates the writings of our sources: Ober 1998), but as the Old Oligarch himself notes (2.6), some elite were quite happy to live under the democracy, either "to smooth [their] own path towards iniquity," or because they profited from it (Thuc. 8.48.5-6: cf. Finley 1978). The empire, then, brought wealth, prestige, and stability to the polis: it attracted revenues through both commerce and tribute-paying allies; it funded the polis' democratic institutions, its military might, and conspicuous public building programs; and it justified democratic culture before the eyes of rich Athenians who may have preferred a different type of government. But if democracy and empire went hand in hand in the 5th century, then we must strive to explain the sources of democratic stability and prosperity in a post-imperial dimension.[23]

If the empire contributed to Athens' stability and prosperity in the 5th century, it was also responsible for triggering the twenty-seven-year conflict that brought the polis to its knees. According to Thucydides (1.23), the growth of Athens' power "and the fear which this caused in Sparta" led to open hostilities between the two city-states in the year

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[22] The empire arose in the aftermath of the Persian Wars (490 and 480-79), when Athens found itself at the head of the multi-city alliance that had repelled the Persian *armada*. Soon after the end of the conflict, Athenian leadership began to morph into rulership, as allied cities that sought to defect from the alliance were brought back in line with the use of force. For Morris (2010) we should not refer to the alliance as an 'empire' but as a 'greater state' on account of the differences with other pre-modern and modern empires.

[23] Other explanations of the resilience of democracy in the 5th century include the denial that Athens was a democracy (Pearson 1937; and de Laix 1973); the reliance on slavery (Jameson 1978); the existence of a large middle class (Jones 1957) and a 'middling ideology' (Perlman 1963; 1967); the fact that Athens was a face-to-face society (Finley 1973); and that its leaders were democratic geniuses (Gomme 1951; Ehrenberg 1950). These positions are discussed and rejected in Ober 1989: 20-35.

431. In 415, the Peloponnesian war was still ongoing when the Athenian Assembly voted to send a massive military expedition to Sicily. Within two years, a large part of the conspicuous human, financial, and material resources accumulated over a century of military and economic successes was lost.[24] The defeat in Sicily plunged Athens into a severe crisis, triggering political instability.

Between 411 and 403, a series of regimes replaced the democracy that had governed Athens for almost a century (see fig.1): the oligarchy of the Four Hundred was established in 411 and ruled Athens for about four months. When the Four Hundred collapsed, another oligarchy—the regime of the Five Thousand—took power for another handful of months.[25] Democracy was restored in 410/9 and remained in place until the end of the Peloponnesian War in 405. After Athens' defeat in the Peloponnesian War, Spartan interference in Athenian domestic affairs led to the establishment of the oligarchy of the Thirty, in the year 404. Efforts to rid the city of the oligarchs devolved into civil war. Democracy was reestablished, once and for all, in 403.
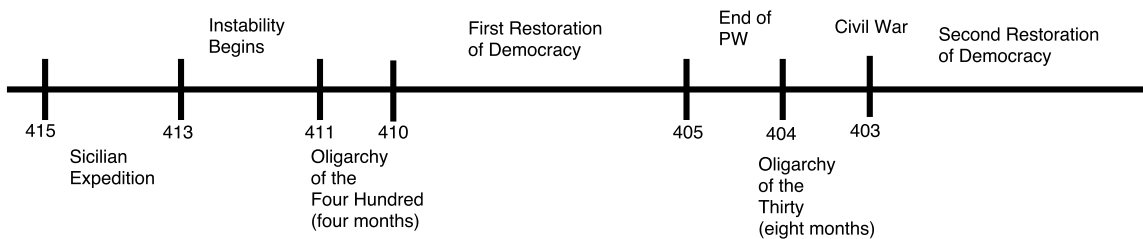

FIG 1. Timeline of Political Instability in Athens, 413-403

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[24] According to Hansen's estimates, 10,000 Athenians may have died in Sicily (Hansen 1988: 15-6). On Athenian finances in this period, see Blamire 2001: 114-5.

[25] In this article, I do not discuss the Five Thousand. However, it is worth noting in passing that their establishment suggests that the Athenians were less keen on restoring democracy after the experience of oligarchy than some classical scholars maintain (e.g., Shear 2011: 16, 69).

4. The Constitutional Debate

Thucydides describes the decision to sail to Sicily as the product of the unrestrained power of an Athenian demos too often inclined to uncritically follow the lead of self-interested politicians. When the news of the Sicilian disaster spread in Athens, these politicians became the target of Athenian anger, "just as if they [i.e., the demos] had not themselves voted it" (Thuc. 8.1.1; Lys. 18.2; Ober 1998: ch. 2).

The defeat in Sicily led the Athenians to question the ability of the people to make sound decisions under the pressure of war. The inadequacy of democracy was particularly plain to the elites: because decision-making in the Assembly was subject to few procedural constraints, the Athenian elite began to fear that the demos would expropriate in a desperate attempt to fund the ongoing war against Sparta ([Arist.] *Ath.Pol.* 29.1; Thuc. 8.47-48).

Between 413 and 411, the absence of checks on the people's decision-making power put enormous pressure on the belief that democracy was the best form of government for the city. As this belief began to fade in the face of its catastrophic consequences, a window of opportunity for constitutional change opened up. But establishing an alternative form of government in Athens after a century of democracy was "no light matter" (Thuc. 8.67.4).

According to [Aristotle] and Diodorus, the oligarchic governments that were established over the course of the following decade—that is, the Four Hundred in 411/10 and the Thirty in 404/3—came to power pledging to restore the constitution of the fathers: the *patrios politeia* ([Arist.] *AthPol.* 29. 2-3; Diod. 14. 3. 2-3). As Shear (2011) has convincingly argued, epigraphic and archaeological evidence supports the literary

sources in suggesting that the oligarchs' appeals to *patrios politeia* were no mere slogans, but revealed a serious attempt at legitimizing constitutional reforms in the direction of oligarchy. Their rule, however, soon degenerated into violence (Thuc. 8. 66. 1-2; [Arist.] *Ath.Pol.* 35. 2-4).

Why did serious attempts at constitutional reform morph into blood baths? Discussing the reasons that led to the collapse of the oligarchic governments, the ancient sources emphasize the oligarchs' failure to meet their foreign policy obligations. Both the Four Hundred and the Thirty utterly failed to deliver on the promises made to justify constitutional change: in 411, the Four Hundred failed to gain the support of Persia in the war against Sparta (Thuc. 8. 48), and failed to ratify peace with Sparta (Thuc. 8. 70-1); in 404, the Thirty failed to secure the support of Sparta, the winner of the Peloponnesian War and now the foremost power in Greece (Diod. 14.33.6; Xen. *Hell.* 2.4.29; [Arist.] *Ath.Pol.* 38.4). In the context of a massive security crisis, such as the one Athens faced in the last decade of the 5th century, these foreign policy fiascoes played a critical role in the rapid collapse of both governments.

The sources, however, also emphasize another reason: in both 411 and 404, the oligarchs came to power in the course of constitutional assemblies, but they proved unwilling to respect their mandate. First, they refused to share power with a larger constituency, as they were constitutionally bound to do.[26] Second, as soon as they came to power, the oligarchs proceeded to do away with the polis' laws as it befit them.[27] In the

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[26] For the Four Hundred, see [Arist.] *AthPol.* 29-32; Thuc. 8. 67-9, 89. For the Thirty, see Diod. 14.4.1; Xen. *Hell.* 2.3.11; [Arist.] *AthPol.* 35.1. The Four Hundred refused to elect the Five Thousand; the Thirty either refused to draft a new constitution and promulgate new laws (Diod. 14.4.1; Xen. *Hell.* 2.3.11), or ignored the constitutional mandate ([Arist.] *AthPol.* 35.1).
[27] The Four Hundred abolished the *graphe paranomon* and *eisangelia* during the constitutional assembly held at Colonus (Thuc. 67.2; [Arist.] *Ath.Pol.* 29.3). The Thirty too abolished the *graphe paranomon*

absence of any check on their authority, the rule of the oligarchs degenerated into arbitrary violence and expropriations carried out against citizens and foreigners alike.[28]

Against the excesses of the ruling oligarchs, the Athenians coordinated a concerted reaction under the banner of *patrios politeia*.[29] In 411, the moderate oligarchic faction, led by the leader Theramenes, spearheaded the revolt against the Four Hundred after learning that the army stationed on Samos would support constitutional change to restore the laws of the fathers (Thuc. 8.76; 86; 89; 92). Coordination against the Four Hundred yielded a broader, but fragile oligarchic regime (the oligarchy of the Five Thousand) that soon collapsed, enabling the restoration of democracy. In 403, the opposition to the Thirty mobilized when, after the oligarchs put to death Theramenes, the democratic leader Thrasyboulos took the fortress of Phyle and marched on Athens to restore the archaic laws (Xen. *Hell.* 2.4.1-2; 42; Diod. 14.32.6). This time, coordination against the Thirty led to the militarization of the conflict between the Thirty's supporters and the advocates of democracy. In the aftermath of a brief but bloody civil war, the victorious democrats reestablished democracy in Athens.

Patrios politeia, then, facilitated coordination throughout the constitutional debate, as it was deployed both to rally support for constitutional change in the direction of oligarchy (in 413-11), and to respond to the excesses of the ruling oligarchs (in both 410 and 403). But what did *patrios politeia* precisely mean?

(Aesch. 3. 191). On the unchecked power of the oligarchs to abolish whatever laws they wanted see Thuc. 66; 70 (Four Hundred) and [Arist.] *Ath.Pol.* 35.2 (Thirty). Cf. Shear 2011: chs. 2, 6.

[28] In emphasizing the legal and constitutional aspects of the oligarchs' failure, I do not wish to suggest that the constitutional agenda was somehow more relevant than the security agenda. Conversely, I simply show that the constitutional agenda evolved in response to the security agenda, which complicated the process of finding a stable solution to the problem of political instability.

[29] On the use of *patrios politeia*: Thuc. 8.76.6; 92.11 (Four Hundred); Xen. *Hell.* 2.3.17; [Arist.] *Ath.Pol.* 36.1; Diod. 14.4.5 (Thirty).

As the Athenians sought to identify the features of the best constitution in the midst of a long and protracted crisis, they increasingly associated *patrios politeia* with legitimacy and legitimacy with law. Between 410 and 405, the first restored democracy embarked on a wide-ranging project of revision and publication of the laws of the city (Shear 2011: ch. 3; Carawan 2013: chs. 8 and 10).[30] The collection encompassed legislation enacted since archaic times, but included measures passed under the 5th century democracy (Shear 2011: 83-4). Notably, however, the new government attributed the whole collection to the archaic legislators Solon and Draco – the *fathers* of the Athenian constitution.

When the Thirty came to power after Athens' dramatic defeat in the Peloponnesian War, the connection between *patrios politeia*, law, and legitimacy was well enough established that the Thirty had to respond to the democracy's appropriation of Athens' laws. The oligarchs' own "revision" concentrated primarily on curtailing the power of the people's courts, the "most democratic" of Athens' institutions ([Arist.] *Ath.Pol.* 9.2; 35. 2).

After the civil war that was fought to remove the Thirty from power, the emphasis of the second restored democracy on law and legality became paramount. Before we turn to the restoration of democracy, however, a final note on the process of elaboration of *patrios politeia* is in order.

For the purposes of this article, I concentrated primarily on the evolution of the notion of *patrios politeia* as it emerges from the literary evidence. This focus is critical to the argument that *patrios politeia* functioned as a focal point, but it might give the

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[30] Through this process, a conspicuous body of Athenian laws became available for consultation in the central archive (Sickinger 1999: ch. 4). Other laws were inscribed on stone slabs and located in front of the courts that administered them (Shear 2011: 89-96).

impression that the elaboration of *patrios politeia qua* law was a mysterious process of will-formation that I forcefully extracted from fragmentary literary accounts. However, literary, epigraphic, and archaeological evidence consistently show that the elaboration of *patrios politeia* throughout the constitutional debate was a highly public, extremely visible, and powerfully staged process (Shear 2011). Such a process featured public debates in popular assemblies, as well as inscribed documents, construction projects, rituals, and even changes to the city's physical appearance.

The elaboration of *patrios politeia* as a commitment to law was thus not a mysterious process, but rather an agreement on a new core belief about the nature of good government that emerged in the course of a very public debate and in the context of an ongoing series of crises.

5. The Athenian Self-Enforcing Constitution

When the ashes of the civil war settled, the Athenians were exhausted, broke, and divided. Passions ran high and civil discord was rife. The advocates of democracy had won the civil war, defeating the ruling oligarchs and their supporters. After the violence perpetrated by the Thirty, revenge was the easiest path. The Athenians, however, did not take that path. In 403, winners and losers sat down at the negotiating table, ratified an amnesty to define and enforce personal and property rights, and drafted a series of constitutional and legal reforms to regulate the decision-making process.

The Athenian case presents modern students of civil war with two puzzles: first, why did the civil war end in a negotiated settlement, especially given that the democrats had unquestionably prevailed on the battlefield? Second, why did the settlement proved

robust over time in the absence of third party enforcement? To answer these questions, I analyze the process of pacification through the lens of Mittal and Weingast's model of self-enforcing constitutions.

Mittal and Weingast suggests that successful constitutions impose limits on government action. The Athenians imposed limits on the power of the people to make decisions in the Assembly by introducing another legislative institution—the *nomothetai* (lit. lawgivers)—and by coordinating the relative spheres of influence of the two institutions. The Assembly maintained the power to pass decrees, subject to the provision that decrees could not contradict existing laws. Laws were the domain of the *nomothetai*, but their power to draft legislation was in turn limited by the provision that the *nomothetai* could only be convened by the Assembly. Moreover, both decrees of the Assembly and laws of the *nomothetai* had to conform to the body of existing laws, which had been collected and republished between 410 and 405. Finally, new legal procedures came to regulate how new laws were to be introduced and old laws amended or repealed.[31] If in the 5th century the Assembly monopolized the power to make law, in the 4th century legislation became the product of a complex and highly regulated mechanism of checks and balances among decision-making institutions.

Second, the model suggests that successful constitutions create focal solutions to help citizens coordinate against violations. As I discussed in the previous sections, the creation of a stable focal solution required intense debate, and much time. Under the

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[31] The *nomothetai* were panels of lay citizens who had sworn the jurors' oath. On the composition of these boards and the process of legislation see Hansen 1985; Pierart 2000; Rhodes 2003; Canevaro and Harris 2012; Canevaro 2013; 2015; forthcoming; Carawan 2013: 269-70. The *locus classicus* for the distinction between laws (general rules) and decrees (rules that apply to specific cases) is Arist. *NE* 1137b13-32. The distinction was customary in 4th century Athens (MacDowell 1978: 43-6). On how the procedures for introducing and amending laws changed over time see Carawan 2013: ch. 11.

pressure of war and protracted political instability, the Athenians struggled for years to reach a consensus on how Athens ought to be ruled. But when the constitutional debate came to a close, the Athenians reaped the bloodstained fruit of their overlapping consensus on *patrios politeia* as a commitment to law. The ancient sources suggest that *patrios politeia*—variously identified with the ancestral constitution, the ancient laws (*patrioi* or *archaioi nomoi*), or, more straightforwardly, the "laws of Solon and Draco"—stood at the very heart of the new democratic constitution (e.g. [Arist.] *Ath.Pol.* 39.5; Xen. *Hell.* 2.4.42; Andoc. 1.81-2). There, *patrios politeia* expressed a collective (because devised by both oligarchs and democrats) consensus on the basic features of the best *politeia* for Athens: a *politeia* committed to respecting the laws of the city whose violation had caused instability, oligarchy, and the worst of all evils – civil war.

Why did the new constitution succeed, where others had failed? Mittal and Weingast suggest that a self-enforcing constitutional pact must respect four conditions: first, the solution to the coordination problem must be embedded in institutional structures; second, the pact must make both parties better off; third, both parties must simultaneously agree to respect the pact; and fourth, the parties must commit to protecting the pact against future violation. I have already addressed the first condition (that is, the process of embedding the new commitment to law into the new institutional structure through legal reforms) and I will therefore concentrate on the remaining three.

Were both parties better off? Having lost the civil war, the supporters of oligarchy were better off under the new constitutional structure than they would have been if the democrats had chosen the path of retaliation and revenge. But were the democrats better off? The sources suggest that the process of pacification was not entirely smooth. The

settlement that put an end to the civil war, overseen by Sparta, created a safe haven in the neighboring polis of Eleusis for the Thirty and those of their supporters who chose to leave Athens, thus physically separating the warring factions.[32] That agreement failed (around 401/0) when the Athenians heard that the Thirty were hiring mercenaries to resume hostilities, and marched on Eleusis to defeat them (Xen. *Hell.* 2.4.43). After the failure of the first settlement, a process of reunification began in earnest, unassisted by Sparta (Carawan 2013: ch. 4).

But even before reunification in 401/0, the winners of the civil war did not show any desire to take revenge on those supporters of the Thirty who remained in Athens. Instead, according to Xenophon, the leader Thrasyboulos exhorted them to "keep their oath, not stir trouble, and respect the ancient laws" (*archaioi nomoi*: Xen. *Hell.* 2.4. 42). If we follow Xenophon's testimony, then, the new commitment to law played an important role in constraining the victorious democrats. But to understand why reconciliation proved appealing to the winners, we must also take into account exogenous conditions.

After the defeat in the Peloponnesian War and after the civil war, many Athenians may have realized that escalating the conflict further could have only meant plunging the city deeper into ruin. The financial crisis that began in the aftermath of Sicily had never been so dire. Between 413 and 403 the Athenians lost their walls, ships, and allies. The Thirty had compromised the infrastructure of Athens' harbor, Piraeus, in an attempt to weaken the democratic opposition (Carugati, 2015: 127-9). The Laurion silver mines, a conspicuous source of revenues in the 5th century, were shut down and their slave

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[32] It is important to stress that the first reconciliation was merely overseen, not enforced by Sparta whose military contingent left Athens as soon as the civil war was over (Xen. Hell. 2.4.41).

workers gone. The countryside lay idle, after a decade of Spartan occupation. The emergency fund that the 5th century democratic leader Pericles had put aside for rainy days was long gone. Since the beginning of the Peloponnesian war, Athens had suffered a plague, 27 almost consecutive years of war, and a civil war: the casualties had decimated Athens' adult male citizen population. The losses compounded each other: without men (and slaves), Laurion and Piraeus were useless; without Laurion and Piraeus resources were scarce. Choosing to abide by the new democratic rules must have appeared to many a leap of faith, but the price for not jumping was prohibitive.

How did the parties simultaneously agree to respect the agreement? As Carawan (2013: ch. 4) suggests, the critical role of many of the clauses of the amnesty agreement ratified after the civil war was to help define and enforce personal and property rights for those who had chosen to remain in Athens. The agreement included a right-of-return clause whereby Athenian citizens—that is, Athenians who were citizens before 403, including the supporters of the Thirty—could reclaim political and legal rights if they so wished, and whereby both citizens and non-citizens who suffered from expropriation and displacement under the Thirty and during the civil war could reclaim their property. The agreement also created new procedures to enforce these rights in court. To protect the legal system against a wave of litigation that threatened to crush it, the Athenians passed legislation aimed at determining which claims could, and which couldn't go to court.[33] These procedures surely created winners and losers, but the lack of violence (at least after

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[33] According to Carawan, among these procedures were a distinction between arrangements concluded under the first restored democracy and those concluded under the oligarchy of the Thirty, whereby the former were valid and the latter were not; a distinction between private claims and liabilities to the city, whereby the former were valid if concluded under the democracy (subject to a bar against suits in matters that the parties had already decided) and the latter were valid from the year 403; and finally, a distinction between offenders and informers, whereby offenders were liable, while informers were not (Carawan 2013: chs. 4, 5 and 7).

the fall of Eleusis) indicates that the new system provided sufficient incentives to choose settlement over revenge, and that the institutional channels proved resilient to the pressure of personal hatreds.

Finally, how did the Athenians credibly commit to enforcing the constitution? As I mentioned above, the new constitutional structure revolved around the principle of coordination between the Assembly and the *nomothetai*. Coordination could only be preserved by policing the integrity of the corpus of laws, to which both Assembly decrees and *nomothetai*'s laws had to conform: if the Assembly or the *nomothetai* passed new decrees and laws that contradicted existing statutes, then the institutional balance of power would crumble, allowing the proposers of contradicting measures to elevate themselves above the laws. Such behavior, associated with the experience of oligarchy, was among the threats that the Athenians sought to inhibit.[34]

To police the integrity of the corpus, the Athenians brushed up an old procedure that allowed any adult male citizen to challenge measures that contradicted existing laws: the *graphe paranomon* – a public action against a legislative proposal that was considered either against the laws (*paranomon*) or inconvenient (*asymphoron*) to the interests of the Athenian demos. Because the new reforms had introduced a distinction between laws and decrees, the Athenians maintained the old *graphe paranomon* to challenge decrees, and devised a new procedure to challenge laws: the so-called *graphe nomon me epitedeion theinai* – a public action against an unsuitable law. Credible commitment thus rested on the mandate bestowed equally on every adult male citizen to police the corpus of the city's laws, on which the stability of the new constitutional structure rested.

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[34] A parallel development, analyzed in Teegarden (2012; 2014), is the emphasis on anti-tyranny legislation.

But this was a risky move. First, the two procedures technically allowed whoever wished (*ho boulomenos*) of the roughly 6000 Athenians sitting in the Assembly to bring a public action against the proposer of a new legislative measure. Second, the grounds for indictment were rather loose: although one had to show that the new proposal contradicted an existing statute, the vague substantive nature of Athens' laws left ample room to articulate the *inconvenience* or *unsuitability* of new proposals.[35] Third, these types of public actions slowed down the legislative process: if someone brought an indictment, the whole procedure was transferred from the Assembly to the People's court for adjudication.[36] Especially at a time when the city was divided and personal resentments were heightened by the recent experience of protracted political instability and civil war, the chance that people would use the *graphe paranomon* and *graphe nomon me epitedeion theinai* to prosecute *proposers*, rather than *proposals*, was extremely high.[37] Because indictments could be brought against just about any proposal (including various highly time-sensitive policies, such as military actions), had the Athenians frequently used the *graphe paranomon* and the *graphe paranomon me epitedeion theinai* to pursue personal feuds, the legislative process would have ground to a halt. Systematic abuse, in sum, would have jeopardized the entire constitutional structure.

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[35] On vague laws see Gagarin, 2005; 2008; Sickinger, 2008; Rubinstein, 2008; *contra* Harris, 2009/10.

[36] In court, the man who brought the indictment acted as the prosecutor, while the proposer of new legislation acted as the defendant. The litigants were allotted equal time to speak. A large panel of Athenian citizen jurors, usually numbering 501, judged the dispute.

[37] Classical scholars have long debated whether the *graphe paranomon* performed the function of political (Cloche, 1960) or judicial review (Goodell, 1893-4; Goodwin, 1895; Bonner and Smith, 1938; Wolff, 1970). Most interpreters recognize that the *graphe paranomon* performed both functions at once, though the relative emphasis varies: Hansen, 1974; 1987; 1999; Yunis, 1988; Sundahl, 2000; 2003; Carawan, 2007; Lanni, 2010; and Schwartzberg, 2013.

How did the Athenians coordinate to prevent abuses? In part, the Athenians relied on institutional design. The use of the *graphe paranomon* and *graphe nomon me epitedeion theinai* was regulated through a system of fines and other forms of punishment for those who initiated frivolous litigation: as in other public cases (*graphai*), punishment awaited a litigant who failed to gather one fifth of the votes. The fear of punishment thus acted as a deterrent for those who sought to abuse the procedure to pursue personal feuds.[38] But the one-fifth rule was quite lax, in that it set the bar for failure close to unanimity (80%).

The evidence suggests that institutional design was not the only mechanism to prevent abuses. To effectively police the corpus of law, the Athenians relied, as they had done throughout a decade of constitutional struggles, on the notion of *patrios politeia*, which provided a bright line to judge the constitutionality of proposals.[39] At the heart of the Athenian constitution, *patrios politeia* expressed a series of juridical and right-based principles, which we can distill by focusing on the post-war legislation and reforms. These principles included the integrity of the corpus of laws; the primary role of law in protecting the democratic constitution from the threats of civil war and oligarchy; the role of the Athenian people, in their capacity as jurors, to judge the conformity of new laws and policies with existing statutes. But besides these juridical principles, the constitution also enshrined critical rights—or, with Ober (2000), quasi-rights[40]—including personal

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[38] Deterrence, in turn, worked because enforcement was incentive-compatible for punishers (Carugati, Hadfield and Weingast, 2015).

[39] The evidence from cases of *graphe paranomon* and *graphe nomon me epitedeion theinai* dated to the restoration of democracy is very scanty (in fact, it is limited to two fragments in Lysias' corpus). These principles emerge in full force in later cases of *graphe paranomon* and *graphe nomon me epitedeion theinai* (esp. Dem. 24: Carawan, in progress). I discuss this process more fully in the larger book project, where I analyze how the Athenian constitution adapted in response to new challenges in the 4th century.

[40] With the label "quasi-right," Ober (2000:4) distinguishes between the modern definition of right as "natural, innate and inalienable," and the Athenian notion of rights as "performative and contingent."

security and dignity, and protection of one's property against expropriation (which emerge with particular force in the Amnesty). The notion of *patrios politeia*, the focal point of the Athenian constitutional debate and the pillar of the new constitution, thus suggested to all Athenians that any new measure that contradicted these fundamental principles could, indeed ought to be indicted as *paranomon*—illegal or inconvenient— and *me epitedeion*—unsuitable to foster the interests of the Athenian demos. By the same token, any measure that could not readily be shown to contradict constitutional principles was not to be attacked in the courts: anyone who did attack, for example attempting to disguise a frivolous private feud as a constitutional issue, was liable to severe legal and social censure.[41]

6. Conclusion

In response to a dire military and economic crisis, the citizens of the world's first large-scale democracy lost trust in their political system. For the first time in almost a century, the belief that the people ought to be all-powerful was put to question. In the course of a decade of constitutional struggles, the Athenians articulated a new belief in a form of democracy where the will of the people ought to be subject to the law. At the end of the civil war, the Athenians weaved their commitment to law into the fabric of a new, self-enforcing constitution. The constitution fostered stability by addressing the root

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[41] In the course of the 4th century, as the crisis receded, Athens recovered, and the stakes of the political conflict got lower, repeated interactions in the law courts built trust around the principles of the Athenian constitution, solidifying the consensus around them. Instead of the term *patrios politeia*, which bore negative associations with the political instability that had characterized the constitutional debate, the Athenians began to deploy the figure of Solon to facilitate coordination on matters of constitutionality. On Solon as a trope in 4th century discourse, and on the negative associations of *patrios politeia* with the late 5th century experience of oligarchy: Hansen, 1989a. In the larger book project, I argue that the notion of *patrios politeia* operated in 4th century litigation as a "*What-Would-Solon-Do?*" rule of thumb that helped jurors evaluate the constitutionality of a new proposal.

causes of the protracted instability that had lacerated the polis in the previous decade. Against the dangers of unrestrained popular decision-making crystallized in the Sicilian disaster, they introduced the principle of coordination in lawmaking. Against the lawless behavior of the ruling oligarchs, the new democracy defined personal and economic rights for all citizens, created robust institutional channels to enforce those rights, and bestowed the responsibility to protect the constitution on everyone who freely chose to subject himself to it.

These investments in institution building contributed to the city's economic recovery by lowering the threat of violence in the aftermath of the civil war. Although the financial input for robust economic recovery, at least in its earliest stages, owed largely to exogenous causes—namely, an influx of much-needed cash from Persia—the way in which the democracy used the money also contributed to the city's long-term growth. Investments ranged from the rebuilding of the city's walls and fleet to the infrastructure of Piraeus, Athens' foremost military and commercial resource. Like the investments in institution building, investments in infrastructure raised the costs of fighting, thus enhancing both the polis' stability and its potential for growth. The 4th century was not a peaceful time, but the Athenian constitution proved robust to endogenous and exogenous shocks. By the 330s, in the absence of the imperial structure that had made the city the "school of Hellas" (Thuc. 2.41.1) in the 5th century, Athens soared back to, and probably exceeded, 5th century levels of prosperity (Ober, 2008).

What lessons can we learn from Athens' successful post-war recovery? Athens' case illustrates the importance of creating robust legal structures to channel private disputes through institutional bodies, and to prevent such institutions from collapsing

under the weight of partisan resentment. But institutions capable of eliciting credible commitment from relevant stakeholders are rooted in belief structures that neither emerge out of nowhere nor can be grafted onto a society. As Rawls suggests, democratic stability requires an *overlapping consensus* (Rawls, 1971:340; 1993:133-172). My analysis throws a dark veil on Rawls' argument, in that it suggests that consensus may be a product of civil war, rather than peaceful public reasoning. Nonetheless, the bloodstained overlapping consensus on *patrios politeia* laid the foundation for political and economic recovery by fostering a commitment to legality that created the conditions for sustainable order, prosperity, and the protection of people's liberty, equality, and dignity.

The problem of drawing generalizable insights from one case study is perhaps particularly cogent, but by no means specific to ancient Athens. Unlike modern countries, Athens was small and culturally homogenous, which may have facilitated both coordination and the articulation of a collective consensus on the best form of government for the polis. It is not my goal here to deny the complexities of weaving pre-modern case studies more firmly into a comparative framework. Yet, if we are to take up Acemoglu and coauthors' (2008; 2012) challenge seriously—that historically contingent factors explain much of the variation in development measures across countries—then neglecting relevant evidence from pre-modern case studies will necessarily yield partial answers to the question of why some countries prosper and others do not. But there is more to pre-modernity than that.

This article will be incorporated into a book that reconstructs how the new constitutional order that emerged from the late 5th century crisis shaped the direction of social choices and economic policy throughout the 4th century. By the mid-4th century,

the book argues, Athens was an orderly, prosperous, and inclusive society - a developed society. The institutions that sustained development in Athens, however, differed substantially from their contemporary counterparts. As such, studying Athens' institutions may point to an alternative path to development. Such path, the book suggests, can help us rethink the process and aims of institution-building in developing countries, where existing models of development predicated on the experience of contemporary nation-states have failed to promote order, prosperity, and inclusion.

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