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ADMINISTRATION OF JUSTICE IN BOEOTIA

ROBERT J. BONNER AND GERTRUDE SMITH

IN THE Homeric catalogue of ships the forces of central Greece are enumerated first, and those of Boeotia head the list. Twenty-nine towns are included, which together assembled fifty ships, with an average of one hundred and twenty men to each ship. Among the twenty-nine towns is Hypothebae, which is identified as the lower quarters of the town of Thebes, Thebes itself having been destroyed by the Epigoni.¹ Hypothebae does not have a conspicuous position in the list. With the epithet "a well-built city," it is included with no prominence over others in the list. It is clear that the Boeotians are looked upon as a unit. Orchomenus is not grouped with the Boeotian towns; but this city, along with Aspledon, follows immediately after the Boeotians with a muster of thirty ships. At the time of the composition of the catalogue, then, Orchomenus was not a member of the Boeotian group. It is called Minyan Orchomenus.

Hesiod, our next authority on Boeotia, presents to us in his *Works and Days* a political, social, and economic picture in an epoch, after the heroic age, of which little is known.² It is clear that the whole government rested in the hands of the *basileis*, who were not only rulers but also judges. Hesiod describes the situation in his own village of Ascra, but it may be

conceded that throughout Boeotia the little villages around one larger town constituted a sort of synoecism, just as they did in later times. So when Hesiod pictures Ascra as a minor town attached to Thespieae, he is giving a picture which may be applied to all Boeotia. Hesiod's remarks about the *basileis* are aimed specifically at those of Thespieae and its neighborhood, but the same aristocratic government obtained throughout the Boeotian towns. The poem indicates a far more highly developed judicial system than the one known in Homer. Recourse to peaceful settlement of disputes was practiced in the Homeric period, but as yet there was no compulsion to resort to arbitration. In such matters, however, public opinion is a strong force, and in the *Works and Days* it would appear that, if a claim were brought against a man, he had to submit to arbitration and to accept the decision of the *basileis*. This is the really important element which puts the judicial system in the age of Hesiod considerably in advance of that of Homer. Obligatory arbitration had been developed. Within each district the chiefs who made up the dominant aristocracy met with some regularity in the chief city, and before them the people brought their disputes for adjudication.³ Witnesses were commonly used to substantiate the claims of litigants. Both they and the litigants gave their statements under oath. Side by side with compulsory arbitration, the less formal system of the heroic age continued to flourish; i.e., private arbitration, as distinct from compulsory, continued to be

¹ *Iliad* ii. 494 ff. On the position of Boeotia in the catalogue cf. Allen, *The Homeric Catalogue of Ships* (Oxford, 1921), pp. 41 ff.

² Hesiod is variously dated. Allen, *Origins and Transmission of Homer* (Oxford, 1924), p. 88, on astronomical and other grounds, places his *floruit* around 800 B.C.; the *Cambridge Ancient History*, III, Synchronistic Table I, places the age of Hesiod at 750 B.C.; Bethe, *Einführung zur Altertumswissenschaft*, I, 281, brings him down to 650–600 B.C.

³ Bonner and Smith, *Administration of Justice from Homer to Aristotle*, I (Chicago, 1930), 44–48.

practiced. The evidentiary oath was employed in the settlement of disputes, and self-help still played an important part in the redress of wrongs. Homicide continued to be regarded as the concern of the relatives of the victim; but the idea that moral pollution was attached to homicide may be assumed to have been familiar to Hesiod and his contemporaries. This was the first step toward the intervention of the state in homicide cases.

Hesiod's litigation with his brother Perses is the only actual suit which has come down from this period. When their father, who appears to have been a substantial farmer, died, the two brothers divided his property. Apparently, by bribing the nobles who sat in judgment on the case, Perses obtained more than his share. Hesiod represents Perses as improvident. He soon needed more money and threatened to bring further legal proceedings against Hesiod. Just what the grounds for the action were to have been is not apparent. Perhaps Perses hoped by further bribery to suppress the fact that he had already had his fair share and thereby to acquire part of Hesiod's portion.⁴ Instead of refusing to appear again before the judges, as he might have done had it been a matter of voluntary arbitration,⁵ Hesiod appealed to his brother to settle the case out of court by impartial award—*ἀλλ' αὖθι διακρινώμεθα νείκος ἰθείησι δίκης*.⁶ He proposed then arbitration by agreement as an alternative to submitting the case to the adjudication of the nobles.

⁴ Cf. Burn, *The World of Hesiod* (New York, 1937), p. 35.

⁵ *Works and Days* 37–39:

ἦδη μὲν γὰρ κληρον ἔδασσάμεθ', ἄλλα τε πολλὰ
ἀρπάζων ἐφόρεις μέγα κυδαίνων βασιλῆας
δωροφάγους οἱ τήνδε δίκην ἐθέλουσι δικάσσαι.

Schoemann emended the MSS reading ἐθέλουσι δικάσσαι (the Schol. also so read) to ἐθέλουσι δίκασσαν, which assumes that the case had already been decided. For the arguments against the emendation cf. Sinclair, *Hesiod, Works and Days* (London, 1932), *ad loc.*

⁶ *Works and Days* 35 f.

This appears to be the natural interpretation of Hesiod's account; but several other explanations have been suggested, e.g., that Hesiod had appealed the case,⁷ or at least reopened it,⁸ or that the case had been heard but not yet decided.⁹ But these suggestions do not alter the situation materially. If Hesiod really believed that the nobles were corrupt and would decide the case unjustly for the sake of bribes, it is difficult to believe that he would ever have consented to accept them as arbitrators, if he had not felt compelled to do so. He could either have refused to do anything further about the matter or have insisted on other arbitrators. As he did neither, it is likely that he had to submit to the judgment of the court.

The unwritten law administered by the magistrates under the early aristocracy was naturally vague and was easily modified and interpreted to suit the interest of the ruling class. In the seventh century, however, owing to the dissatisfaction of the people with the uncertainty and difficulty of obtaining justice, there was general codification of the laws throughout Greece.¹⁰ Among the early lawgivers Philolaus is mentioned by Aristotle as having come from Corinth, as having settled in Thebes for the remainder of his life, and as having become a Theban legislator.¹¹ Aristotle seems to point out in the case of each lawgiver what he considers to be his outstanding contributions. So in the case of Philolaus, after crediting him vaguely with laws on many other things, he selects for special men-

⁷ Ehrenberg, *Die Rechtsidee im frühen Griechentum* (Leipzig, 1921), p. 63.

⁸ Steinwenter, *Die Streitbeendigung durch Urteil, Schiedsspruch und Vergleich nach griechischem Rechte* (Munich, 1925), p. 41.

⁹ Kirchhoff, *Hesiodos' Mahnlieder an Perses* (Berlin, 1889), p. 43.

¹⁰ Cf. Bonner and Smith, *op. cit.*, I, 67 ff.

¹¹ Arist. *Pol.* 1274 a–b.

tion the *nomoi thetikoi*, the laws relating to adoption, which he introduced especially to preserve the number of families. It has been pointed out that by permitting adoption Philolaus in effect introduced testation in Thebes.¹²

From early times there had been a religious union of the Boeotian towns, with its center at the temple of Athena Itonia near Coronea, where the festival of the Pamboeotia was celebrated. And it is generally conceded that from very early times the cities of Boeotia were brought together in a sort of loose federation, but evidence for a genuine political confederation is lacking until the first part of the sixth century. Material for the history of Boeotia from the age of Hesiod until the sixth century is very scanty, but by 550 B.C. it is clear that there was a definite federal coinage,¹³ with the "Boeotian buckler" as its distinctive type. It has been suggested that the Tanagraeans at first minted all of the federal coins. By the end of the century, in addition to the special federal coinage with the letters BOI on the reverse, individual issues for six cities with the initial letters of the cities were being produced by the federal mint. The six cities are Pharae, Aulis or Acraephium,¹⁴ Haliartus, Thebes, Mycalessus, Coronea. From this union Orchomenus held aloof and minted her own coins. Through this period Thebes was steadily asserting her dominance in the federation. In 519 B.C. Plataea seceded and put herself under the protection of Athens.¹⁵ But the superiority of Thebes seems to have become well established,

and by the end of the century she had opened her own mint.

About the constitution of the League during this early period little is known. The Boeotarchs were the chief officials,¹⁶ and it is necessary to presuppose some federal body with authority. For the individual towns, Swoboda¹⁷ thinks it possible to push back to this period the situation which obtained later. So the chief body in each city was the college of polemarchs, with primarily military functions. They commanded the city's forces in war and also had the right to arrest anyone who had committed a crime for conviction of which the death penalty was prescribed. The office of archon, originally the chief magistrate, was reduced mainly to religious functions. The real deciding-power belonged to the *boulé*, which had extensive judicial powers and judged those who were arrested by the polemarchs. The polemarchs were closely associated with the *boulé* and took part in its meetings, probably acting as presiding officers. There is no trace of a general assembly in this period.

An early instance of international arbitration occurred in Boeotia in 519 B.C.¹⁸ The story is told by Herodotus¹⁹ in one of his typical digressions. The Plataeans, being molested by the Thebans, applied for aid to Cleomenes,²⁰ who happened to be in the neighborhood with a contingent of Lacedaemonian troops. Cleomenes rejected the application and advised them to apply to Athens, their near neighbor.

¹² *Ibid.* ix. 15; Pausanias x. 20. 3.

¹³ Hermann-Swoboda, *Lehrbuch der griechischen Staatsaltertümer*, Part III (Tübingen, 1913), p. 253.

¹⁴ We have accepted the date given in the *Cambridge Ancient History*, IV, 78; cf. Raeder (*L'Arbitrage international chez les Hellènes* [Kristiania, 1912] pp. 23-24), who puts the date at 510 or 509, as do others.

¹⁵ vi. 108.

¹⁶ Seltman (*op. cit.*, p. 56) attributes the A to an issue from Aulis; Head (*op. cit.*, p. xxxvii) to Acraephium.

¹⁷ Herodotus vi. 108.

²⁰ It has been plausibly suggested that on this occasion Cleomenes induced Megara to join the Peloponnesian League (Larsen, *CP*, XXVII [1932], 147, n. 2).

The Athenians gladly acceded to their request. Eventually an alliance was consummated.²¹

The Thebans, on becoming aware of these negotiations, sent an expedition against Plataea. The Athenians at once went to the aid of the Plataeans; but, before hostilities began, some Corinthians appeared and proposed that the dispute be submitted to them for arbitration. Both Thebes and Plataea agreed to submit the dispute to the Corinthians as arbitrators. Just how the Corinthians happened to be on hand is nowhere stated. Herodotus, by using *παρατυχόντες*, is evidently warning his readers that he is not concerned with the reason for the presence of the Corinthians.²² It may be suggested as a plausible guess that the Corinthians, jealous of the growing power of Thebes, sent an embassy to intervene in the affair informally, just as they did.

The process of the arbitration is not clearly set forth by Herodotus. Writing loosely, not to say carelessly, he makes the decision of the political question contingent upon the delimitation of boundaries. This cannot be correct. Obviously, the first duty of the arbitrators was to decide whether Thebes had the right to coerce Plataea into joining a Boeotian federation.²³

In reaching their decision the arbitrators laid down the general principle that no Boeotian city should be forced to join the Boeotian League, which was obviously dominated by Thebes: *ἐὰν Θηβαίους Βοιωτῶν τοὺς μὴ βουλομένους ἐς Βοιωτοὺς τελέειν*.²⁴ Next the arbitrators fixed the

frontiers of Plataea and departed. The Thebans refused to accept the arbitration and made an unsuccessful attack on the Athenians and their allies, the Plataeans. The victorious Athenians proceeded to fix the boundaries to suit themselves and left for home.

Thucydides tells us that during the Persian Wars a *δυναστεία ὀλίγων ἀνδρῶν* was in control in Thebes.²⁵ According to Aristotle,²⁶ this is the rule of a faction which has forcibly assumed control and rules without regard to the law—i.e., an unconstitutional government which may be compared to the rule of the Four Hundred or of the Thirty in Athens. From the general tendency of the Boeotian cities to Medize at this period, it has been inferred that such *δυναστεῖαι* were in control in the other cities as well.²⁷

At the end of the war the Boeotian League was dissolved, and Thebes's domination was brought to an end. Other cities issued their own coinage.²⁸ This situation obtained until 457 B.C., when the Spartans again forced the Boeotian cities to be subordinate to Thebes. But in the same year Athens, under the generalship of Myronides, defeated the Boeotians in the battle of Oenophyta²⁹ and held sway in Boeotia for the next ten years, during which the League was in abeyance. Democracies were set up in the Boeotian cities—even in Thebes, which Diodorus³⁰ expressly says was not captured by Myronides. Here again our knowledge of the various institutions

²⁵ Thuc. iii. 62. 3–4; cf. Plutarch *Arist.* 18; Paus. ix. 6. 2.

²⁶ *Pol.* 1272 b 7. This oligarchic regime was urged by the Thebans as an excuse for their Medizing. Cf. Paus. ix. 6. 2, who says that, if the Persian War had occurred during the rule of the Peisistratidae, Athens would doubtless have gone over to the Persian king. For an apology for the Theban attitude at this time cf. Hermann-Swoboda, *op. cit.*, p. 254, n. 4; Grundy, *The Great Persian War* (London, 1901), pp. 229 ff.

²⁷ Hermann-Swoboda, *op. cit.*, p. 254, n. 5.

²⁸ Head, *op. cit.*, p. xxxviii.

²⁹ Thuc. i. 108; Diodorus xi. 81. ³⁰ xi. 83. 1.

²¹ Larsen, in Pauly-Wissowa, XIX, 824, s.v. *περίοικοι*.

²² Raeder (*op. cit.*, p. 24) believes that they constituted a part of the forces of Cleomenes. But this view is quite unlikely, as there is nowhere in Herodotus' account a suggestion of a threat of force.

²³ Cf. *ibid.*: "Ils [the arbitrators] tracèrent la ligne frontière après avoir décidé que les Thébains devraient laisser en paix les Béotiens qui ne voudraient pas entrer dans la Ligue Béotienne."

²⁴ Herod. vi. 108. 5.

under which the cities were governed is pitifully meager. The dissatisfied oligarchs, exiled from their cities, gathered at Thebes, and there a counterrevolution broke out, as happened also in Chaeronea and Orchomenus. It was to quell these revolutions that an Athenian force advanced into Boeotia in 447 B.C. The army was defeated at Coronea, and Athens was forced to relinquish her pretensions to land empire. The Boeotian League was rehabilitated.³¹ And for this period, owing to the discovery of the so-called *Hellenica Oxyrhynchia*, the constitution is known in some detail. This constitution lasted from 447 until the King's Peace in 387 B.C. It has been discussed frequently and at great length, and there is no need for repetition of the material here.³² The only feature of the federal government which is pertinent to the present discussion is the federal court. "To speak generally, it was in proportion to the distribution of their magistrates that they enjoyed the privileges of the League, made their contributions, sent judges, and took part in everything whether good or bad." The duties of these judges are not specified, but they must have tried all cases which involved offenses against the League. Undoubtedly the Boeotarchs and the other federal officials were responsible to this court. There must also have been provision for the local administration of justice. Probably the local senates settled lawsuits as they did later and as they very likely did in the earlier period. And un-

doubtedly in addition to the senates there were also local courts.

There is no reference to a trial in this period which affords information about the operation of the legal system in Boeotia. The trial³³ of the few surviving Plataeans in 427 B.C. was not really a Boeotian trial, except that Boeotians were the defendants. The Lacedaemonian commander of the forces besieging Plataea was instructed by Sparta not to take the city by storm but to secure a voluntary surrender. If peace was ever made on condition that captured cities were to be restored, the Lacedaemonians desired to be in a position to refuse to give up Plataea. Accordingly, a herald was sent to the Plataeans with a proposal that they surrender to the Lacedaemonians on condition that they be tried by them. The Lacedaemonians promised that they would punish only the guilty: *τούς τε ἀδίκους κολάζειν παρὰ δίκην δὲ οὐδένα*.³⁴ The Plataeans surrendered on these terms; but when a commission of five Spartans arrived, they did not hold a regular trial but simply asked this question: "Have you rendered any service to the Lacedaemonians in this war?" It is true that as a result of their protests the Plataeans were permitted to make a defense, to which the Thebans replied. But their plea was of no avail. The judges called up the defendants in turn and asked the same question. As they all answered "No," they were forthwith condemned to death. One gets a very definite idea that, while this was not technically a League trial, it was actually handled by Sparta as head of the Peloponnesian League. This is clearly indicated by the question asked the defendants: "Have you rendered any service to the Lacedaemonians and their allies in this war?"

With the Peace of Antalcidas in 387 B.C., the Boeotian League was broken up.

³¹ For the coinage of this period cf. Head, *op. cit.*, p. xxxix.

³² *Hell. Oxy.* xi. Grenfell and Hunt, *Oxyrhynchus Papyri*, V (1908), 223 ff.; Bonner, "The Boeotian Federal Constitution," *CP*, V (1910), 405 ff.; "The Four Senates of the Boeotians," *ibid.*, X (1915), 381 ff.; Golligher, "The Boeotian Constitution," *CR*, XXII (1908), 80 ff.; Walker, *Hellenica Oxyrhynchia* (Oxford, 1913); Swoboda, "Studien zur Verfassung Boiotiens," *Klio*, X (1910), 315 ff.; Busolt-Swoboda, *Griechische Staatskunde* (Munich, 1920-26), pp. 1414 ff.; Hermann-Swoboda, *op. cit.*, pp. 256 ff.; Bussmann, *Die böotische Verfassung* (Fulda, 1912); *Cambridge Ancient History*, VI, 56.

³³ Thuc. iii. 52-68.

³⁴ *Ibid.* 52. 2.

There is no longer reference to the Boeotarchs, the federal council, the federal court, or the federal troops. Each city was now supreme with regard to both local and foreign affairs.³⁵ The local governments were termed *δυναστεῖαι* by Xenophon.³⁶ There is no detailed information for the government of this period. The archon, selected by lot, in all probability for one year, served to date the year. His duties were apparently entirely religious. The chief officials in each city were the polemarchs, probably three in number and chosen by election. This is an inference from the fact that for Thebes, the only city for which there is information, the polemarchs in 382 B.C., Ismenias and Leontiades, were the party leaders, a situation which seems unlikely if their choice was left to the accident of the lot. Further, when Ismenias was put to death, the Thebans elected (*εἰλοντο*) another to take his place.³⁷ The polemarchs were assisted by a secretary.³⁸ That the polemarchs had important judicial powers seems clear. These officials could arrest anyone who appeared to them to be committing a crime deserving of the death penalty.³⁹ So Leontiades arrested Ismenias on a charge of instigating war. And in 379 B.C., at the time of the recovery of the Cadmea, Phillidas, the ringleader in the plot, was enabled to gain entrance to the prison and to release the anti-Spartan leaders by telling the keeper of the prison that he was bringing a man from the polemarchs for incarceration.⁴⁰ Courts must have existed in each of the cities; but their number, their personnel, their juris-

diction, and the method of recruiting them are unknown. The boulé or council also had judicial powers.

In 382 B.C. the Cadmea was captured by the Spartan Phoebeidas with the connivance of Leontiades, one of the polemarchs.⁴¹ Leontiades at once took measures to deal with the Thebans, who were scandalized by the high-handed act of Phoebeidas. One of the chief leaders of the anti-Spartans was Ismenias, a man of means,⁴² whom Leontiades ordered to be arrested and confined in the Cadmea. In a speech to the boulé he justified his action by claiming that, as polemarch, he had authority by law to arrest anyone who seemed guilty of deeds deserving of death: "Hence I arrested Ismenias as a warmonger." Several hundred Thebans, alarmed by the fate of Ismenias, sought refuge in Athens, among them Androcleididas.⁴³

The right of arrest carried legally the right to prosecute. Ismenias was in the Cadmea in the hands of the Spartan garrison and could, one imagines, have been easily eliminated by an overawed boulé or a selected dicastery. But there was an element in the situation which no doubt determined Leontiades not to act precipitately. What would Sparta do about the high-handed and unwarranted act of Phoebeidas? If Phoebeidas' action was repudiated, Leontiades would be in a dangerous position. Leontiades⁴⁴ betook himself to Sparta. Here he found the ephors and the people generally much incensed by the action of Phoebeidas.⁴⁵

³⁵ During this period there were coin issues from many different mints (Head, *op. cit.*, p. xli). For trade convenience the Boeotian buckler was retained as the obverse type, but each city adopted its own reverse (Seltman, *op. cit.*, p. 158).

³⁶ *Hell.* v. 4. 46.

³⁷ *Ibid.* 2. 32.

³⁸ *Ibid.* 4. 2.

³⁹ *Ibid.* 2. 30; cf. Bussmann, *op. cit.*, p. 18.

⁴⁰ *Hell.* v. 4. 8.

⁴¹ Whether there were two or three polemarchs is uncertain (Busolt-Swoboda, *op. cit.*, p. 580; Marchant and Underhill, *Xenophon, Hellenica* (Oxford, 1900), on v. 2. 25).

⁴² Cf. Marchant and Underhill, *op. cit.*; cf. *Hell. Oxy.* xiii. Androcleididas was also a prominent anti-Spartan.

⁴³ *Xen. Hell.* v. 2. 31.

⁴⁴ Leontiades' family was closely connected with Sparta (Marchant and Underhill, *op. cit.*, on v. 2. 25).

⁴⁵ *Xen. Hell.* v. 2. 32.

At a meeting of the Spartans,⁴⁶ Agesilaus took the view that expediency alone should be the test of such actions. If an act was beneficial to the state, it should be adjudged good, otherwise it should be disclaimed. Leontiades, on the other hand, undertook to justify the view of Agesilaus by pointing out in detail the many hostile and unfriendly actions of Thebes in her relations with Sparta.⁴⁷ As a result of these arguments, the Spartans decided to retain possession of the Cadmea; but they also brought Phoebeidas to trial, deprived him of his command, and fined him 100,000 drachmae. The Hellenes were amazed at the cynical inconsistency of a people that profited by a deed and at the same time punished the doer.⁴⁸ The Spartans also decided to bring Ismenias to trial. The process of the trial has some interesting features.

Ismenias was arrested as a warmonger, but at the trial he was accused of Medizing, of being a guest-friend of the Persian satrap to the injury of Greece, and of receiving a share of the money which Pharnabazus gave Timocrates the Rhodian to bribe influential leaders in Athens, Thebes, Corinth, and Argos to stir up the Corinthian War against Sparta. He failed to persuade the court that he was not a very dangerous man and was condemned to death. It was a travesty of justice that Sparta should accuse any Greek of Medizing after the King's Peace (387 B.C.). The real reason for the condemnation of Ismenias was doubtless his part in bringing on the Corinthian War in 394 B.C.⁴⁹

⁴⁶ For the meaning of ἐκλήθους see Marchant and Underhill, *op. cit.*, v. 2. 33; ii. 4. 38.

⁴⁷ Xen. *Hell.* v. 2. 33-34.

⁴⁸ Plut. *Pelopidas* 6.

⁴⁹ *Hell. Oxy.* xiii; Xen. *Hell.* v. 2. 35. According to *ibid.* iii. 5. 1-2, Tithraustes sent Timocrates on his mission, but the author of *Hell. Oxy.* ii. 5 names Pharnabazus as the satrap. The date is given as 397 or 396, instead of 395. Xenophon also says that the Athenian leaders were not bribed. Here again there is disagreement. *Hell. Oxy.* ii. 2 specifically mentions the

The composition of the court that tried Ismenias presents an interesting problem. The Peloponnesians sent to Thebes a commission composed of three Lacedaemonians and one from each of the allies both large and small.⁵⁰ Marchant and Underhill make no attempt to solve the problem; they content themselves with referring to a passage where practically the same phraseology is used in a political sense.⁵¹ On the eve of the Peloponnesian War the Spartans held a meeting in which they listened to the complaints of their allies against Athens. Then in their own assembly they decided that the Athenians were wrongdoers and had broken the treaty.⁵² Later, they had all their allied states who were present vote on the question of war or peace. The majority was for war.⁵³

There is one point of resemblance between the group that voted for war and the court that tried Ismenias that is significant. In both cases the bodies represent the Peloponnesian League. The participation of all the League members in the trial would seem to point to an expansion of original judicial functions on the part of the League.⁵⁴ If that be true, the court that tried Ismenias was simply a representative commission of the League assembly: three Spartans and one from each of the allies both large and small.⁵⁵

After the recovery of the Theban Cad-

Athenians as recipients of the Persian gold. So also Plut. *Agesilaus* 15 and Paus. iii. 9. 8; cf. *Oxyrhynchus Papyri*, V, pp. 115 ff.

⁵⁰ Xen. *Hell.* v. 2. 35 ff.

⁵¹ Thuc. i. 125.

⁵² *Ibid.* 87.

⁵³ *Ibid.* 125.

⁵⁴ Cf. Larsen, *CP*, XXVIII (1933), 269.

⁵⁵ Xen. *Hell.* v. 2. 35. Plut. *Pelopidas* 5 says that Ismenias was tried at Sparta, but Xenophon puts the trial in Thebes. Marchant and Underhill accept Xenophon as the more reliable authority. In a sense the trial of the Plataeans by a commission of five Spartans affords a precedent for this case (cf. above, p. 15).

mea from the Spartans in 379 B.C., democracy was established in Thebes.⁵⁶ In course of time this became the established form of government in the other Boeotian cities.⁵⁷ And in the meantime Thebes set about the rehabilitation of the Boeotian union. It has been held, on the one hand, that Thebes formed a synoecism with herself as the head and, on the other hand, that she resuscitated the federation.⁵⁸ The second is the correct view.⁵⁹ The name *Βοιωτοί* served to designate the federation just as in the earlier period.⁶⁰ A new federal coinage was instituted, the coins bearing the name neither of the Boeotians nor of the Thebans but only that of a federal magistrate, a Boeotarch,⁶¹ and with the Boeotian buckler on the obverse as always. In place of the four senates of the preceding period, the general assembly appears, designated *δᾶμος τῶν Βοιωτῶν* in the inscriptions.⁶² This body took cognizance of crimes against the federation.⁶³ There is no trace of a federal senate in this period. But there was a federal court composed of judges selected by lot which had jurisdiction in cases against federal officials.⁶⁴ These judges must have been drawn from the federal assembly. Among the federal officials, the archon held the highest rank and gave his name to the year,⁶⁵ but

his functions were limited to the sphere of religion. The really important officers, as in former times, were the Boeotarchs, whose number under the rehabilitated federation was diminished to seven.⁶⁶ Citizenship in any one of the cities in the federation automatically brought about citizenship in the federation. Each city was independent and directed its own affairs. About the organization of each city little is known. That there was a *boulé* is clear from the story of Euphron, who was murdered during a meeting of the Theban *boulé*. His assassins were tried before the *boulé*.⁶⁷ It may reasonably be assumed that in addition to the *boulé* there were courts in each of the cities of the federation for the trial of local cases.

In 377 B.C. Agesilaus led an expedition against Thebes, but no decisive action occurred. As he retired, Agesilaus stopped at Thespieae, where he found the citizens divided into two factions, the philo-Laconian faction wishing to kill their opponents. Agesilaus reconciled the two factions and forced them to give oaths to one another.⁶⁸ This practice is by no means unknown in Greek procedure, i.e., the use of a foreigner as arbitrator in a dispute.⁶⁹ As Plutarch tells the story, it appears that Agesilaus took the initiative, but in bringing about a settlement between the two parties he was certainly acting in the capacity of arbitrator.

There was a law in force in Boeotia according to which a Boeotarch who failed to relinquish his command at the end of his year of office was liable to the death penalty if convicted. Plutarch⁷⁰ says

⁵⁶ Plut. *Pelopidas* 12; Xen. *Hell.* v. 4. 46.

⁵⁷ Cf. Hermann-Swoboda, *op. cit.*, p. 262.

⁵⁸ For full bibliography cf. Hermann-Swoboda, *op. cit.*, p. 264, nn. 7 and 8; Busolt-Swoboda, *op. cit.*, p. 1426, n. 2.

⁵⁹ For the evidence cf. Busolt-Swoboda, *op. cit.*, p. 1426, n. 3.

⁶⁰ *IG*, VII, 2407, 2408, 2418; Diod. xv. 80. 2; xvi. 85. 3.

⁶¹ Head, *op. cit.*, p. xlii; Seltman, *op. cit.*, p. 158 and Pl. XXXIII, 12, 13.

⁶² *IG*, VII, 2407, 2408. Cf. κοινὴ σύνοδος τῶν Βοιωτῶν (Diod. xv. 80. 2); τὸ κοινὸν συνέδριον (Diod. xv. 29. 7; xvi. 85. 3).

⁶³ Diod. xv. 79. 5.

⁶⁴ Cf. the trials of Epaminondas and Pelopidas (below, p. 19).

⁶⁵ *IG*, VII, 2407, 2418.

⁶⁶ *IG*, VII, 2407, 2408; Diod. xv. 52. 1; 53. 3; Paus. ix. 13. 6-7. Seltman (*op. cit.*, p. 158) erroneously refers to the eleven annual Boeotarchs of the League for this period (cf. Busolt-Swoboda, *op. cit.*, p. 1429).

⁶⁷ Xen. *Hell.* vii. 3. 5.

⁶⁸ *Ibid.* v. 4. 55.

⁶⁹ Cf. Bonner and Smith, *CP*, XXXVIII, 11; cf. above, p. 14.

⁷⁰ *Pelopidas* 25.

definitely that Pelopidas, Epaminondas, and others (τοὺς συνάρχοντας) were brought to trial under this law and were acquitted. Pelopidas, being tried first, was on that account in serious danger.

Before further discussion of the trial a divergent view of the charge must be noted. Cary says: "The true charge was probably that Epaminondas had exceeded his instructions on his first Peloponnesian campaign and had carried the war beyond the territorial limits assigned to him."⁷¹ The source cited by Cary is Diodorus.⁷² This seems to be the correct view of the charge.

There is at least one unusual feature in the process of the trial. Epaminondas⁷³ bade his fellow-commanders plead in court that he accepted full responsibility for the conduct of the campaign. Any court, ancient or modern, would expect some evidence to support the claim of Pelopidas and his codefendants that Epaminondas applied pressure (ὡς ἐκβιασθέντας) to induce them to do an illegal act. So far as we know, the only authority Epaminondas possessed, beyond that of his official rank, was his military skill and his moral force. It is certain that Epaminondas did not appear as a witness. Pelopidas, a forceful and vigorous speaker, must have made an effective defense without Epaminondas' direct aid.

Next came the trial of Epaminondas himself. According to Cornelius Nepos,⁷⁴ "no one thought he would appear for trial for no one could imagine what he could say in his defense." Under the circumstances this was not an unnatural view. However, Epaminondas made no

real defense. He asserted that deeds spoke louder than words. If he must put in a plea, he simply requested the judges, if they condemned him, to inscribe their verdict on his tomb, that the Hellenes might know that Epaminondas had forced the Boeotians against their will to lay waste with fire Laconia, which had not been ravaged for five hundred years, that he had restored the Messenians after two hundred and fifty years, and that he had unified the Arcadians and had restored independence to the Hellenes. All these things had been accomplished in the campaign which was in question. This unparalleled defense so surprised the judges that, convulsed with laughter, they left the court without casting their ballots. No votes, of course, meant acquittal. In modern parlance, the case was dismissed.⁷⁵

There was formerly lack of agreement as to the status of the court that tried Pelopidas and Epaminondas. Plutarch⁷⁶ calls the court τὸ δικαστήριον. This is not an explicit term. Pausanias is more definite when he says: λέγονται δὲ οἱ δικάζειν λαχόντες οὐδὲ ἀρχὴν περὶ αὐτοῦ [Epaminondas] θέσθαι τὴν ψήφον.⁷⁷ It is now conceded that it was a federal court drawn by lot from the citizens as occasion arose. Cary presents⁷⁸ the most convincing argument.

Menecleides had enough political power to exclude Epaminondas from the office of Boeotarch. On one occasion he proposed to honor one Charon for a very minor victory over a small body of Spartans. Pelopidas, as prosecutor, challenged the proposed measure as unconstitutional. He was successful in his action. He claimed that it was not a Theban

⁷¹ *CQ*, XVIII (1924), 182-84.

⁷² xv. 72: ἐπενεγκάντων οὖν αὐτῷ προδοσίας ἔγκλημα. The date of the trial is 369 B.C. (Cary, *op. cit.*, p. 182). Cf. Hermann-Swoboda, *op. cit.*, p. 268, n. 4; Beloch, *Griechische Geschichte*², III, 2, p. 247.

⁷³ Plut. *Moralia*, p. 194, sec. 23.

⁷⁴ *Epaminondas* 8.

⁷⁵ Plut. *Moralia*, p. 194, sec. 23; cf. Nepos, *loc. cit.*

⁷⁶ *Pelopidas* 25, 2.

⁷⁷ Paus. ix. 14. 5-7.

⁷⁸ *Op. cit.*, p. 184; cf. Busolt-Swoboda, *op. cit.*, p. 1428, n. 7; Hermann-Swoboda, *op. cit.*, p. 267, n. 7. Undoubtedly these judges were drawn from the federal assembly.

custom to honor a single individual for a victory but for the whole country to have the honor. The case was tried in a Theban court, which inflicted so heavy a fine on Menecleides⁷⁹ that he was unable to pay it. Plutarch makes the statement⁸⁰ that Menecleides, an orator of some distinction, continued to accuse and calumniate his betters, "even after the trial" of Pelopidas and Epaminondas. It may reasonably be assumed from this statement that he was the prosecutor. In these two Boeotian trials alone do we know the names of the prosecutors.

When Pelopidas and Ismenias were captured and imprisoned by Alexander of Pherae, the Thebans sent an army to Thessaly. When the leaders of the invasion failed to accomplish anything, they retired disgracefully. The city fined each of them 10,000 drachmae.⁸¹ This occurred in 367 B.C. when the governments of the Boeotian cities had become democratic under the restored League. The use of ἡ πόλις seems to point to the Theban assembly's acting in a judicial capacity.

After the overthrow of the Spartan supremacy, Thebes, following the policy of Sparta, stationed a harmost in Sicyon. In 367 B.C. a Sicyonian named Euphron, with the aid of Argives and Arcadians, set aside the ruling oligarchy and proclaimed a democracy.⁸² Euphron and five others were appointed generals. Of these he assassinated some and banished others. In the ensuing civil tumult, Euphron was expelled from the city. As long as the Thebans still held the citadel, Euphron could not hope to regain his tyranny, so with ample funds for bribery he set out to

Thebes to get aid in banishing the aristocrats and supporting his tyranny. Some aristocrats, fearing he might succeed, followed him and, seeing him in conference with the authorities, took a desperate chance and slew him in the Cadmea while the boulé was in session.

The authorities at once brought his assassins before the Theban boulé. The accusation ran as follows:

Fellow citizens, we bring the slayers of Euphron to trial on a capital charge. Wicked men usually try to commit their crimes in secret. But these men had the hardihood to kill Euphron in the presence of the magistrates and you, the members of the boulé. If they are not adequately punished matters will come to such a pass that men who wish to deal with the authorities will fear to come to the city. And the city itself will suffer if we are not permitted to know for what purpose men come to our city.

All of the defendants except one pleaded "Not guilty." The defendant who pleaded "Guilty" made a considerable speech in his defense. "I slew Euphron, O Thebans, in the belief that I was doing a righteous deed and that you would regard it as such." Here he cites a precedent. The cases of Archias and Hypates, however, to which he refers do not constitute a legal precedent. When in 379-378 a group of Thebans under the leadership of Pelopidas and others planned to overthrow the local government supported by Spartan troops in the Cadmea, they simply hunted down and assassinated these men without any semblance of a trial.⁸³ The defendant proceeds to make various accusations against Euphron, charging that he was both a traitor and a tyrant. He had handed over the port of Sicyon to the Lacedaemonians, enslaved, put to death, and banished his opponents. In the end the murderers were

⁷⁹ Cf. γραφή παρανόμων in Athenian practice. The language of Plutarch (τὸ συκοφαντεῖν) suggests that Menecleides was a professional prosecutor such as flourished in Athens.

⁸⁰ *Pelopidas* 25. 3.

⁸¹ *Ibid.* 29: ἐκέλευον μὲν ἕκαστον ἡ πόλις μυρίαὶς δραχμαῖς ἐξημίωσεν.

⁸² *Xen. Hell.* vii. 1. 44 ff.; 3. 1 ff.

⁸³ *Plut. Pelopidas* 11.

acquitted. Xenophon, however, observes that the Sicyonians brought his body home and buried him in the market place and paid him pious honors.⁸⁴

The assassins of Euphron were tried by the Theban boulé. This was the city boulé of Thebes, which, like all local senates, had the right to exercise criminal jurisdiction within its own territory.⁸⁵ Marchant and Underhill⁸⁶ regard the *ἄρχοντες* who participated in the trial as Boeotarchs. This view can scarcely be correct, as the local officials were polemarchs, who had both military and judicial functions.⁸⁷ Boeotarchs would naturally deal only with offenders against the League.

In 364 B.C. some Theban exiles planned to establish an aristocratic form of government in the city. They persuaded three hundred knights of Orchomenus to join in the enterprise. That suspicion might be avoided, a day was chosen to carry out the plot which was fixed for a review under arms. But the plot became widely known outside the ranks of the original plotters. In terror they abandoned the plot and betrayed to the Boeotarchs their accomplices, the three hundred Orchomenian knights. For this service they secured immunity for themselves. In modern legal parlance, they gave evidence against the defendants, who were convicted and executed. This appears to be the only instance in Boeotian practice where accused persons turned state's evidence. The case was tried in the ecclesia. The Thebans took this case as an excuse for attacking and destroying the city of Orchomenus. They slew the male adults and sold the women and children.⁸⁸

⁸⁴ vii. 3. 7-12. The date of the trial was 367 B.C. (cf. Busolt-Swoboda, *op. cit.*, p. 400).

⁸⁵ Hermann-Swoboda, *op. cit.*, p. 267, n. 4.

⁸⁶ *Op. cit.*, on vii. 3. 5.

⁸⁷ Hermann-Swoboda, *op. cit.*, p. 253.

⁸⁸ Diod. xv. 79. 3-6; cf. Grote, *History of Greece*, X, 426.

For the period following the battle of Chaeronea in 338 B.C. there is evidence of the continued existence of the Boeotian federation,⁸⁹ but there is little that is of interest for legal antiquities. That the federal assembly continued to have judicial functions—at least the power of inflicting punishment—is indicated.⁹⁰ By the beginning of the second century the Boeotarchs were no longer the chief officials, for they had been superseded by a strategos, who was chosen annually by the assembly.⁹¹

The individual cities had governments modeled on that of the federation, although they retained the boulé, with judicial functions, just as in the period before Chaeronea.⁹² It is apparent from inscriptional evidence that the leasing of sacred property was regulated in Greek towns by decrees of the people. A badly mutilated inscription from Thespieae deals with this subject. As partially restored by Lolling,⁹³ this provides for various fines for infractions of the regulations relative to sureties and to rent payments. These fines appear as once and a half the amount or double the amount. Foucart, by comparison with an inscription of Tegea, is of the opinion that lines 17-19 contain a prohibition against taking disputes relative to rents before any other town than Thespieae.⁹⁴ The imposition of fines presupposes some investigation. Such investigation, even the most simple and informal, must be regarded as a trial.⁹⁵ So several building inscriptions from Lebadea⁹⁶ provide for exclusion from the work

⁸⁹ For Boeotian coinage after 338 B.C. cf. Head, *op. cit.*, pp. xlii ff.

⁹⁰ Livy xlii. 43. 8-9; Polybius xxvii. 2; Diogenes Laertius ii. 142; Busolt-Swoboda, *op. cit.*, p. 1435, n. 5.

⁹¹ Busolt-Swoboda, *op. cit.*, p. 1436.

⁹² *Ibid.*, p. 1439.

⁹³ *IG*, VII, 1739.

⁹⁴ Foucart, *BCH*, IX (1885), 412 ff.

⁹⁵ Cf. Bonner and Smith, *op. cit.*, I, 121.

⁹⁶ *IG*, VII, 3073, 3074, 3075.

if workmen fail in performance and also for fines if the contractors fail to carry out their contracts. The *naopoioi* are in charge of the work and impose the fines.

As the chief municipal officials, the polemarchs appear in the inscriptions. They had charge of freedmen and had power to punish those who molested them. There is extant a large group of manumission decrees from various parts of Boeotia.⁹⁷ These decrees are similar to those from other parts of Greece in that the act of manumission consists in the dedication or sale of the slave to the divinity of the local shrine, the dedication being made through the synedrion in accordance with the law. This assures the slave who has received his freedom of the protection of his rights. Certain provisions appear in these decrees which afford a clear picture of the procedure to be followed in case a manumitted slave was molested. Authority was given to various officials to seize the culprit and to fine him. The penalty seems always to have been a fine. One decree provides for a fine of one thousand drachmae in case the manumitted slave is molested.⁹⁸ The officials involved are sometimes the priests of the local shrine, the hierarchs, and the synedroi. Sometimes they are the priests, the polemarchs, and the synedroi. Frequently there is also a clause to the effect that anyone who pleases (ὁ βελόμενος) may join in the prosecution. This is interesting as recalling the provision of Solon in Athenian procedure that any citizen might claim legal satisfaction on behalf of anyone who was wronged.⁹⁹ This provision was always

regarded as one of the cornerstones of Athenian democracy.¹⁰⁰ It is, of course, a natural development in democracy, and its appearance in these inscriptions is by no means its first appearance in Boeotian legal history. The activities of Menecleides¹⁰¹ and the prosecution of Menecleides by Pelopidas for unconstitutional legislation furnish examples of the volunteer prosecutor. In Athens the encouragement of citizens to prosecute public offenders resulted in a serious abuse, namely, the development of the sycophants. The case of Menecleides shows that a similar abuse had developed in Thebes. Plutarch¹⁰² uses the term τὸ συκοφαντεῖν of his activities. Again, the people of Orchomenus are said by Plutarch¹⁰³ to have employed a Roman sycophant to prosecute the city of Chaeronea in 87 B.C. after the murder of some Roman soldiers by Damon. This is undoubtedly a reference to a professional prosecutor.

A Roman captain made unwelcome advances to a youth of Chaeronea named Damon.¹⁰⁴ The young man with some companions set upon the captain and slew him and a number of his soldiers. The boulé at once met and passed sentence of death upon Damon and his accomplices *in absentia*. That same evening the culprits attacked and killed the members of the boulé in the hall where they were at supper.¹⁰⁵

Damon and his accomplices escaped and proceeded to ravage the neighboring

⁹⁷ Cf., e.g., *IG*, VII, 3080; Buck, *Greek Dialects*² (Boston, 1928), No. 45; Schwyzler, *Dialectorum Graecarum exempla epigraphica potiora* (Leipzig, 1923), No. 512; *IG*, VII, 3303, 3304, 3305; Buck, No. 46; Schwyzler, No. 516; *IG*, VII, 3352; Buck, No. 47; *IG*, VII, 3200; Buck, No. 48; *IG*, VII, 3081; Schwyzler, No. 511; *IG*, VII, 3198, 3199.

⁹⁸ *IG*, VII, 2872.

⁹⁹ Aristotle *Ath. Pol.* 9, 1; Plut. *Solon* 18.

¹⁰⁰ Cf. Lofberg, *Sycophancy in Athens* (dissertation, Chicago, 1917), p. 1; Bonner and Smith, *op. cit.*, I, 167 ff.

¹⁰¹ Cf. above, p. 19.

¹⁰² *Pelopidas* 25.

¹⁰³ *Cimon* 2.

¹⁰⁴ *Ibid.* 1.

¹⁰⁵ Bussmann (*op. cit.*, p. 12) wrongly dates the event in the third century B.C. Evidently he was misled by the mention of an invasion of the Gauls in 278 B.C. But the mention of Lucullus definitely puts the date in the first century B.C., probably about 87 B.C. (Larsen, in *An Economic Survey of Ancient Rome* [Baltimore, 1933-40], IV, 307).

country. Evidently there was some criticism of the government of Chaeronea for not apprehending the murderers. At any rate, Lucius Lucullus, a Roman official, happened to come to Chaeronea with an armed force and stayed to investigate the whole occurrence. He found the city was in no wise to blame but rather had itself suffered.¹⁰⁶ Meanwhile, Damon, who continued to terrorize the environs of Chaeronea, was enticed into the city by the government and slain in a bath. But this was not the end of the affair. The people of Orchomenus, being at variance with their neighbor Chaeronea, secured the services of a Roman informer¹⁰⁷ to prosecute the city of Chaeronea as if it were an individual for the murder of the Roman soldiers slain by Damon. The trial was conducted by the governor of Macedonia. The advocates appointed to defend the city asked the governor to secure the evi-

dence of Lucius Lucullus. This he did by writing to him and obtaining a report of his investigation of the Damon affair. On the basis of his evidence, obviously transmitted to the court in writing, the city of Chaeronea was acquitted and escaped serious punishment. In gratitude the citizens erected a marble statue of Lucullus in the market place.

From the foregoing study it is obvious that the evidence for the political and judicial history of Boeotia is meager and often unsatisfactory. But one point emerges clearly, namely, the tendency of institutions to survive despite revolutions and conquests with their attendant changes in the form of government. As has been noticed elsewhere, institutions arise and develop most frequently by a process of evolution and rarely disappear without leaving some trace or influence, even where revolution has intervened.¹⁰⁸

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¹⁰⁶ Plut. *Cimon* 1.

¹⁰⁷ Plutarch (*ibid.* 2) uses the word *συκοφάντης*.

¹⁰⁸ Cf. Bonner and Smith, *op. cit.*, I, vii.