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ADMINISTRATION OF JUSTICE IN THE AGE OF HESIOD

BY ROBERT J. BONNER

Voluntary arbitration was the first step in the direction of a systematic administration of justice in Greece. The Homeric Greeks took a second step by devising a system of challenge and wager to induce an unwilling opponent to submit to arbitration.¹ The third step was the development of compulsory processes of law by making arbitration obligatory in case either party to a dispute desired it. As the petty kings and chieftains were the natural arbitrators of the people, it was a simple matter for them to change a custom into a law. In all probability the change was effected by the aristocracies which succeeded the Homeric kings. The nobles would be quick to perceive the advantages of a step which so materially increased their political power.

There are several indications that by the time of Hesiod a plaintiff could compel an unwilling opponent to submit to the judgment of a regular court. It is only on this assumption that we can understand Hesiod's bitter denunciations of the nobles who oppressed the people by means of unjust judgments.² For the nobles could not have continued to render corrupt decisions had they acted as arbitrators to whom recourse was had by litigants only as the result of a voluntary agreement. The remedy would have been in the hands of the people. Neither is the appeal of Hesiod to his brother to settle their disputes amicably instead of resorting to the court of "bribe-devouring kings" intelligible unless Hesiod was obliged to submit to their adjudication.³

¹ For details see my paper on "Administration of Justice in the Age of Homer," *Classical Philology* VI, pp. 12 ff. The results obtained in that investigation are constantly used in the present paper, which constitutes a second chapter in the judicial history of Greece. In the main my conclusions are based upon the *Works and Days*. The case of Amphitryon in the *Shield of Hercules* and the case of Apollo versus Hermes in the *Hymn to Hermes* have been used chiefly for purposes of illustration. The proemium of the *Shield of Hercules* which contains the story of Alcmena and Amphitryon is taken from Hesiod's *Catalogue of Women* (cf. Hypothesis A). The *Hymn to Hermes* is not earlier than 536 B.C., the year in which Terpander is supposed to have invented the seven-stringed lyre. The age of Hesiod in all probability falls between 750 and 650 B.C.

² *Works and Days* (edited by Rzach) 220-21, 248 ff., 262-64.

³ *Ibid.* 35-36.

Evidently a uniform system for the administration of justice was established throughout Boeotia. Within each district the petty chiefs composing the dominant aristocracy met with some regularity in the chief city and adjudicated disputes. Thither flocked the country people from the villages either as litigants or as listeners; and a city *agora* on court day must have presented a scene strikingly similar to that pictured on the shield of Achilles.¹

Some machinery must have been available for summoning parties and witnesses, and for enforcing judgments, but it is nowhere mentioned. Thonissen² suggests that heralds were used for this purpose. In any event a judgment rendered by the men who controlled the government could not easily be evaded.

It is interesting to note that the processes of law were open to strangers as well as citizens.³ Access to the courts of a foreign city was in all likelihood regulated by special treaties.

Litigants commonly substantiated their claims by the evidence of witnesses. "Even when dealing with your brother," says Hesiod, "summon a witness; but do it with a smile."⁴ The smile was to cover the insistence on what might under the circumstances be regarded as a useless formality. Hesiod had learned this lesson from his experience with his own brother. That witnesses might give their testimony under oath is made plain by the poet's denunciation of the witness who knowingly commits perjury and thereby does an injury to justice,⁵

ὅς δέ κε μαρτυρήσῃ ἐκὼν ἐπίορκον ὁμόςσας
ψεύσεται, ἐν δὲ δίκῃν βλάβας νήκεστον ἀσθῆν,
τοῦ δέ τ' ἀμυροτέρῃ γενεῇ μετόπισθε λέλειπται.

The statement that "retribution for perjury attends crooked decisions"⁶ may refer either to the witness oath or to the oath of a party, evidentiary or confirmatory. For the practice of settling a dispute by means of an evidentiary oath was in common use. This is made clear by the following couplet:⁷

¹ *Works and Days* 27 ff.

² *Le droit pénal de la république athénienne* 31.

³ *Works and Days* 225 ff., 327; cf. Glotz *La solidarité de la famille dans le droit criminel en Grèce* 220 ff.

⁴ *Ibid.* 371.

⁵ *Ibid.* 282-84.

⁶ *Ibid.* 219.

⁷ *Ibid.* 193-94; cf. 322.

βλάβει δ' ὁ κακὸς τὸν ἀρείονα φῶτα
 μύθοισιν σκολιοῖς ἐνέπων, ἐπὶ δ' ὄρκον ὁμείται.

Tzetzes explains this passage as meaning that a man deprives another of some property and when called to account, swears that he is innocent just as Hermes offered to swear that he did not steal the cattle of Apollo. Even if the *Hymn to Hermes*, in which the dispute between Hermes and Apollo is described, is considerably later than the poems of Hesiod, it may be safely used to add some details to the picture of legal procedure in the age of Hesiod. For it no doubt reflects in the main the practice in vogue down to the period of written codes. Apollo on discovering the loss of the cattle, at once set out to trace them and secure witnesses to establish the identity of the culprit.¹ So important was testimonial evidence that rewards for information leading to the finding of the thief were sometimes offered.² If witnesses could be produced the accused had the option of returning the booty with suitable damages or of facing almost certain defeat in court. Apollo, though he was unable to secure a witness, confidently charged Hermes with the theft. Irritated by the accusations, Hermes threatened to bring the matter before Zeus, and offered to swear that he was innocent. It is not stated that Apollo agreed to accept the oath as decisive, as did Menelaus when he challenged Antilochus to swear that he had not won the race by a foul. At any rate the case was taken before Zeus for adjudication.³

αἶψα δ' ἵκοντο κάρηνα θνώδεος Οὐλύμποιο
 ἐς πατέρα Κρονίωνα Διὸς περικαλλέα τέκνα.
 κεῖθι γὰρ ἀμφοτέροισι δίκης κατέκειτο τάλαντα.

The words *δίκης τάλαντα* are commonly explained to be scales of justice, but I am strongly inclined to accept the view of Ridgeway⁴

¹ *Hymn to Hermes* 185 ff.

² *Ibid.* 264 ff., where Hermes says,

οὐκ ἂν μὲνύσαιμι, οὐκ ἂν μὲνυτρον ἀροίμην.

Cf. Hesiod *Fragments* 153, where he is said to have offered Battus (cf. *Hymn to Hermes* 87 ff.) a reward for information in order to test him.

³ *Ibid.* 322 ff.

⁴ "Homeric," *Journal of Philology* XVII, 111-12. He points out that *κατέκειτο* recalls *κεῖτο* in the Homeric trial scene in the sense of "deposited":

κεῖτο δ' ἄρ' ἐν μέσσοισι δῶα χρυσοῖο τάλαντα

In the *Iliad* (viii. 69 ff.; xxii. 209 ff.) Zeus uses scales to weigh the fates of men, never to decide a dispute between gods. "Scales of justice" are not mentioned in Homer. But

that *τάλαντα* were sums of money deposited by the litigants as in the trial pictured on the shield of Achilles. In this case, however, the talents are not wagers. Under compulsory arbitration, wagers were not needed to induce an unwilling opponent to appear in court. Among primitive peoples customs are not apt to be discarded; they are more likely to be modified and adapted to changed conditions. On the introduction of compulsory arbitration the custom of depositing wagers was continued though the need for it no longer existed. It may very well have been that for a time the money went to the successful litigant as a species of damages, but its conversion into court fees could not long have been delayed when the aristocracy controlled the courts. Under these circumstances damages would be assessed by the court.¹

After the payment of the money into court, Apollo proceeded to plead his case. Hermes denied the charge and affirmed his innocence with an oath.² Apparently this was not an evidentiary oath, for Hermes was not acquitted as he would have been had Apollo agreed to stake the issue on an oath. The oath was simply a means of lending weight to a litigant's plea.

Side by side with compulsory processes of law, voluntary arbitration flourished just as it did under the highly organized judicial

against this interpretation may be urged the consideration that although Apollo and Hermes are said to have resorted to Zeus because (*γάρ*) their talents had already been deposited, the story contains no previous mention of this fact. Indeed such a possibility seems to be excluded. On the other hand *ἀμφοτέροισι*, which is quite appropriate if the reference is to a deposit of money, is without point in a reference to scales of justice. Furthermore Zeus does not use the scales as he does in the *Iliad*, but proceeds to pronounce judgment after hearing the pleas of the litigants. Later poets used *δίκης τάλαντα* in the sense of "scales of justice." But this may be due to a misapprehension. The poet, using the expression to indicate that they joined issue before Zeus as judge, added *δίκης* to make this clear. Later writers, thinking the reference was to the scales of Zeus, perpetuated the phrase *δίκης τάλαντα* in the sense of "scales of justice":

οὐ γὰρ ἀφανρῶς
ἐκ Διὸς λείψις οἶδε τάλαντα δίκης. (*Anthol. Pal.* VI 267, 3-4.)

Cf. Aesch. *Agam.* 250.

The passage thus interpreted, however, furnishes no support for the view that the Homeric talents went to one of the judges, as Ridgeway argues.

¹ Glotz (*La solidarité de la famille dans le droit criminel en Grèce* 149) regards the lyre given by Hermes to Apollo as damages. Zeus in his decision said nothing about damages. Hermes gave the lyre of his own free will. The incident throws no light on the purpose of the talents.

² *Hymn to Hermes* 383-84; cf. 274 ff.

system of Athens. Thus Hesiod proposed to his brother to submit their differences to arbitration rather than to resort again to the court of "bribe-devouring kings."¹

Courts did not on their own motion take cognizance of wrongs done to individuals on the theory that they were a menace to society. Hesiod, it is true, constantly insists that the wrongdoing of individuals would inevitably bring down the wrath of the gods upon the whole community.² But as Thonissen remarks, "bien des siècles devaient s'écouler avant le jour où le législateur criminel, à la suite d'une interminable série d'efforts et de déceptions, devait enfin comprendre que, dans le sphère du droit pénal, les souffrances individuelles renferment toujours des lésions sociales."³

In the age of Homer the community did at times undertake the punishment of a public offender. And Hesiod's reference to the popular outcry against those who thwarted the ends of justice shows that public opinion in his day was active.⁴ But specific cases are lacking.

Self-help continued to play an important part in the redress of wrongs. An injured man always sought to gain partisans among his kinsmen and neighbors. Hesiod emphasizes the folly of relying too much on one's relatives, and the advantage of being on good terms with neighbors. Then in time of need neighbors will come in haste to assist. Relatives are likely to be more deliberate.⁵

In cases of homicide the Homeric practice was followed. Thus Amphitryon, who slew Electryon, his kinsman and father-in-law, went into banishment in Thebes to purify himself from pollution. His wife Alcmene, daughter of Electryon, accompanied him. Later she induced him to avenge the death of her brothers. It would seem that his going into exile freed him from any fear of vengeance at the hands of the other relatives of his victim. Only in this way can we reconcile Alcmene's strong desire for vengeance on her brother's slayers with her loyalty to the man who slew her father.⁶

All homicides were regarded alike. Hyettus who slew Molurus, whom he surprised in adultery with his wife, was obliged to flee from

¹ *Works and Days* 35-36.

² *Ibid.* 240.

³ *Op. cit.*, p. 26.

⁴ *Works and Days* 220.

⁵ *Ibid.* 342 ff.; cf. Glotz *op. cit.* 193 ff.

⁶ "*Shield of Hercules*" 9 ff., 80 ff.

Argos to Orchomenus, notwithstanding the ample excuse for slaying Molurus.¹

There is no indication in Homer that homicide involved moral pollution which must be removed by purificatory rites. Two of the Greek arguments to the *Shield of Hercules* state that Amphitryon went into exile in Thebes in accordance with a custom requiring those who started a πόλεμος ἐμφύλιος to undergo purification for a period of three years. In the poem itself nothing is said about pollution or purification.² In the *Aethiopis* of Arctinus³ occurs the first explicit reference to rites of purification. Achilles is said to have been obliged to go to Lesbos in order to be freed from the pollution resulting from the slaying of Thersites. As Arctinus belongs to about the same period as Hesiod it may safely be assumed that the idea of moral pollution was familiar to the Greeks of the age of Hesiod. This is the first step toward the intervention of the state in homicide cases to protect its citizens from pollution communicated to them by a murderer in their midst.

In case of adultery the injured husband would naturally exact satisfaction from his wife's paramour without recourse to the courts, either by slaying him as did Hyettus,⁴ or by forcing him to pay substantial damages (μοιχάγρια), like Hephaestus in the lay of Demodocus. The slayer of an adulterer, however, became involved in a blood-feud with the relatives. There was a possibility of litigation in case the compensation agreed upon was not paid.

In all probability self-help is implied in the statement that a man who has good neighbors will never lose his cattle;⁵ that is to say, they will aid him in recovering stolen animals by the use of force. They could be useful as witnesses by identifying the raider. Custom required that witnesses should accompany a man when he searched the premises of the suspected thief.⁶

¹ Hesiod *Fragments* 144.

² *Shield of Hercules*; Hypotheses Δ, 13-16; E, 12-14.

³ Kinkel *Epici Graeci* 33, 9 ff., 80 ff. For a discussion of the whole question see Glotz *op. cit.* 228 ff. The "floruit" of Arctinus is 750 B.C.

⁴ Hesiod *Fragments* 144.

⁵ *Works and Days* 348.

⁶ Apollo made a thorough search of the abode of Maia (*Hymn to Hermes* 246 ff.). Hermes objected that the search was conducted without witnesses (*ibid.* 372; cf. 385-86); cf. Glotz *op. cit.* 203 ff.

For other wrongs which Hesiod mentions—ill-treatment of strangers, suppliants, parents, or orphans¹—redress could usually be obtained most easily by legal proceedings. Hesiod's dispute with his brother regarding the division of their patrimony was in the first instance settled in court.

Hesiod is outspoken in his denunciation of the maladministration of justice by judges corrupted by bribes and flattery. Unjust judges are threatened with the displeasure of the gods, which will inevitably involve the whole community in ruin; the prosperity of the city that deals out even-handed justice to all is painted in glowing colors.² The poet significantly reminds his brother of the disadvantages of litigation for the poor man. The habitual frequenter of the law courts neglects his farm to his manifest loss; and if, as is natural³ he is led to engage in litigation for the purpose of possessing himself of the property of others he will eventually be ruined unless he is a wealthy man.³

In brief, then, the judicial system of the age of Hesiod was considerably in advance of that of the Homeric age.⁴ The processes of law were compulsory. Witnesses were produced. The statements of both parties and witnesses were made under oath. Evidentiary oaths were common to both periods. Homicide continued to be regarded as the affair of the relatives, but the idea that it involved moral pollution, and the practice of lustral rites by homicides constituted the first steps toward state intervention.

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¹ Hesiod (*Works and Days* 327 ff.) warns his brother against these wrongs as well, as adultery. They are severely punished by the gods.

² *Works and Days* 213 ff. Cf. the picture of the just judge in the *Theogony* 88 ff.

³ *Ibid.* 26 ff.

⁴ Lipsius *Das attische Recht und Rechtsverfahren* 10, 11.