

HADRIAN'S REFORM OF THE APPEAL PROCEDURE IN GREECE

(PLATE 80)

AS Geagan has shown,¹ the words *synedrion* and *synedroi* in the well attested *sermo publicus* of Athens occur particularly in the period of Hadrian, the Antonines and the Severi for councils, gerusia and boards of local magistrates, also for the meeting place of the gerusia. These words may bear the imprint of the great reforms when Hadrian at the request of the Athenians had the laws of Athens re-drafted professionally. Be that as it may, in the abundant Attic inscriptions these words are strikingly common from the time of Hadrian on.²

Hadrian, of course, may have picked up the usage from Plutarch, whom he much admired and who employs *synedrion* as a neutral term in *Political Precepts*, 814 F. The words *synedria* and *synedroi* doubtless everywhere in Greece from then on subsumed various councils, local senates and boards of city (or league) magistrates. One Laconian inscription, usually described as the epistle of an unknown emperor, has a peculiar interest because of its reference.

Mistra. Plate 80. Now in the Museum at Sparta. M. N. Tod, *A Catalogue of the Sparta Museum*, Oxford, 1906, p. 84, No. 782; W. Kolbe, *I. G.*, V, 1 (1913), 21 from Max Fränkel's copy; F. F. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire*, Princeton, 1926, pp. 446 f., No. 121; K. M. T. Chrimes, *Ancient Sparta*, Manchester University Press, 1949, pp. 54 f. and 59.

Col. I

[-----]
 [----] δὲ τοῦ[τ]ων ἑκα[στ -----]
 [--- οὐδεπ]ώποτε περὶ τῆς ἑμαντο[ὐ ---]
 [----] πότερον πραθῆναι ἢ μισθοῦσθαι καὶ πό-

¹ D. J. Geagan, *The Athenian Constitution after Sulla* (*Hesperia*, Suppl. XII), 1967, pp. 36-40.

² As is well known, *σύνεδροι* did exist before Hadrian, especially in the various leagues from the Second Athenian Confederacy on (see V. Ehrenberg, *The Greek State*, 2nd ed., London, 1969, *passim*), but the term was not regularly used for the city's own councillors or senators at Athens and Sparta. The citation at the top of the ephebic catalogue *I. G.*, II², 2103 provides a good illustration of the post-Hadrianic usage at Athens: 'Η ἐξ Ἀρείου πάγου βουλή καὶ ἡ βουλή τῶν Φ καὶ ὁ δῆμος ὁ Ἀθηναίων τὸν κοσμητῆν τῶν ἐφήβων Ἀὐρ Φίλωνα Πειραιέα ἀρετῆς ἕνεκεν καὶ τῆς εἰς τὰ συνέδρια καὶ τὸν δῆμον καὶ τοὺς ἐφήβους φιλοτιμίας. Silvio Accame, *Il dominio romano in Grecia dalla Guerra Acaica ad Augusto*, Rome, 1946, pp. 137-143 discusses the term *synedrion* and the importance of the secretary of the *synedroi* in the Messenian League (add now the Messenian inscriptions published by A. Orlandos, *Πρακτικά*, 1959, pp. 162-173 and *Ἀρχ. Ἐφ.*, 1965, pp. 110-115).

- [τερον σύμπαντας -- τ]οὺς ἀγροὺς ἢ κατὰ μέρος, παραινώ-
 5 [- - - - - προσ]όδους μέμνημαι πολλῶ μείζονας
 [- - - - -]ν καὶ δεδωρημένον ὑμῖν αἴτησιν
 [- - - προσόδ]ους ἔσσεσθαι, εἰ ἕτερα μίσθωσις γ[έν]οι
 [το - - - - π]οιεῖν ὑμᾶς, κ[αὶ] ἐὰν τὸ τρίτον τῆς νῦν
 [- - - - - τοῦ] τρίτου [- - - - -]σετε

Col. II

- [- - - - -]
 [- - - - - βασι]λέα.
 [- - - - -] vacat
 Οὔτε τῆν ἐκ τῶν ἐπικλήσεων βοήθειαν τοὺς ἀδικουμέ-
 νους οἴομαι δὴν ἀφειρήσθαι οὔτε ἀφορμὴν ταύτην γίνε-
 5 σθαι τοῖς συκοφαντοῦσιν ὡς τά τε δημόσια καὶ ιδιωτικὰ
 μὴ τελείσθαι κατὰ τοὺς νόμους· διὸ δὴ περὶ μὲν τῶν ἀμφι-
 σβητήσεων, αἴτινες ἀν ὧσιν ἐλάττους 2 δηναρίων καὶ μή-
 τε κριτήριον ἢ πρόκριμα κεφαλικῆς δίκης ἢ ἐπιτιμίας ἔξου-
 σιν, ἐπικαλεῖσθαι με ἢ πείθεσθαι τοῖς ἐπικαλεσαμένοις κω-
 10 [λ]ύει· τὰς δὲ ἐπικλήσεις, ἂς [γ]είνεσθαι ἐπιτρέπω, διακρινέτω-
 [σαν οἱ σύνεδ]ροι, πότερον δ<ι>καίως γίνονται, ἢ ἐπὶ τῶ τ[ὰ]ς δι-
 [κας εἶναι ἐγγυᾶσθαι ἢ π]ροβολὰς ποιεῖσθαι εἰς τὸ μὴ κριθῆ-
 [ναι - - - - - οἱ σύν]εδροι τῶι πατρίωι ἔ-
 [θει - - - - - ἢ]μέρα ἢ ἐντ[ὸ]ς
 15 [- - - - - κρι]γέτωσαν.

Col. II, line 11: stone ΔΚΑΙΩΞ.

Restorations: Col. I, lines 1-6 Kolbe; 7 προσόδ]ους Kolbe, γ[έν]οι|[το Tod; 8-9 Kolbe. Col. II, lines 1-2 Oliver; 10-11 Kolbe; 12 κας and τὰς τε π]ροβολὰς Kolbe, εἶναι ἐγγυᾶσθαι ἢ Oliver; 13-15 Kolbe.

Before the First World War the stone was 1.07 m. (so Tod) or 1.09 m. (so Fränkel) wide, but when the author reexamined it on Oct. 9, 1970, the width was merely 0.695 m. Column I has disappeared except for the last three letters of lines 8 and 9, the last two letters of lines 3, 5 and 7 and the last letter of lines 4 and 6; see Plate 80. Tod's copy is more accurate than Fränkel's in his rendering of the numeral in Column II, line 7 with an Arabic numeral 2. The numeral is sampi,³ i.e.

³ F. W. G. Foat, "Tsade and Sampi," *J.H.S.*, XXV, 1905, pp. 338-365; A. N. Jannaris, "The Digamma, Κορρα, and Sampi as Numerals in Greek," *Cl. Q.*, I, 1907, pp. 37-40; V. Gardthausen, *Griechische Paläographie*, 2nd ed., Leipzig, 1913, pp. 363-374; M. N. Tod, "The Alphabetic Numeral System in Attica," *B.S.A.*, XLV, 1950, pp. 126-139. This example at Sparta represents a development from the common type with one stroke down to the left from a curved line.

900. Fränkel's copy, altering the numeral into something with which he was more familiar, has falsified the figure.

The right side is original and has anathyrosis, but the stone is broken below in such a way that we cannot tell whether or not we have the last line of the block. The inscription contained at least two documents, of which the second begins in Column II, line 3. A translation of the second document might read somewhat as follows:

It is my opinion that the victims of injustice should not be deprived of the relief they can get by appealing and that this aid should not become, for those who might like to bring false charges, a temptation to frustrate the completion of public and private business in accord with the laws. Therefore, I forbid that any disputes which may be for less than 900 denarii and will not involve a trial or pre-judicial ruling in a capital case or case concerning civil rights be appealed to me or, once the litigants have already appealed, be settled out of court. As for the appeals which I do permit to be made,⁴ let the *synedroi*, voting whether or not they are being made with just cause, decide either [to put up security for the trials or] to recommend that the cases not be tried — — — *synedroi* by the ancestral custom — — — day — —

Abbott and Johnson rightly draw attention to W. R. Paton and E. L. Hicks, *Inscriptions of Cos*, No. 26 (= Abbott and Johnson, No. 119). To *Cos*, No. 26 Mario Segre, *Aevum*, IX, 1935, p. 254 (which I know only through David Magie, *Roman Rule in Asia Minor*, Princeton, 1950, pp. 544 f.) added a new fragment that identifies the letter as that of the proconsul of Asia, Cn. Domitius Corbulo, from the last years of Claudius. It seems to me that the governor is saying:

— — having learned from] your decree [that so and so] made an appeal to [the emperor], I gathered that he had done so [for the sake] of calumnation. Accordingly, it is necessary for me to examine the charge first, if he did appeal to the emperor. But if the appeal is to me, the ar[chon]s must take the amount which is a sufficient guarantee of 2500 denarii, the scale published by me on account of those who avoid trial (by settling out of court).⁵

⁴ On appeals to the emperor see J. M. Kelly, *Princeps Iudex, Eine Untersuchung zur Entwicklung und zu den Grundlagen der kaiserlichen Gerichtsbarkeit* (Forschungen zum römischen Recht, IX), Weimar, 1957; W. Litewski, "Die römische Apellation in Zivilsachen," *Revue internationale des droits de l'antiquité*, 3^e série, XII-XV, 1965-1968, *passim*, XIII, pp. 310-323 on *causae*, and XV, pp. 217-222 on the *cautio*.

⁵ In line 8 Mommsen followed by Hicks, restored *παρὸ]ν*. In lines 8-9 I retain Mommsen's reading from the squeeze rather than *ἀρρ|[αβὼν]ας* (so Hicks). In line 10 I eliminate *κατά*, for which there is no space, and place a comma after the numeral. In lines 10-11 I substitute another noun for *σ[ύν|ταγ]μα* (so Hicks). The passage, lines 7-11, then reads:

εἰ δὲ ἐπ' ἐμέ, τὸ
 [ἔγγυο]ν ἀξιοχρέως λαβε[ῖ]ν τοὺς ἄρ
 [χοντ]ας δηναρίων δισχειλίων πεν
 10 [τακοσίων], τὸ προτε[θ]ὲν ὑπ' ἐ[μ]ο[ῦ] σ[ύ]
 [στη]μα διὰ τοὺς φυγοδ[ι]κοῦντας.

Hicks' text is now most conveniently available in Smallwood, *Documents Illustrating the Principates of Gaius, Claudius and Nero*, No. 379.

Probi homines, who feared the cost and time of a journey, had to be protected from *callidiores* who would use the appeal as a means of extortion and might appeal, if they could, to settle out of court.

The second document of the inscription from Mistra (or Sparta) prescribes that local *synedroi* determine which cases meet the emperor's requirements for appeals to his court. In the "epistle" at Athens which I published in *Marcus Aurelius (Hesperia, Suppl. XIII)*, 1970, No. 1, the deposits of the parties appear to have been made with the city and the *synedrion* of the Areopagus, before the cases were forwarded to the emperor's court (E 48-49 on p. 6). The interest of *I.G.*, V, 1, 21 lies in the clue it contains to a general rule, not just a rule for Sparta at a particular moment, but a general rule for all cases in free (?) cities (in Greece or a wider area).

The emperor opens his court to a degree to which it had not previously been open. He replaces a rather arbitrary system of *justice de grace* with a new system wherein certain rules are set up and a procedure utilizing the institutions of the city or federal state concerned is introduced. Both the independence of the city and the remedy through the emperor are protected.

The date of *I.G.*, V, 1, 21 is now to be considered. The lettering suggested to Fränkel a date in the second century after Christ. K. M. T. Chrimes, on the other hand, finds similarity of lettering in *I.G.*, V, 1, 48 (perhaps first century B.C.), 1432 (perhaps first century after Christ) and 97 (*ca.* A.D. 100). In this eclectic period one cannot place too much emphasis on similarity of lettering, and what one scholar recognizes as similar lettering may seem less significant to another. As for me, a tour of the park, the museum, the courtyard, and the ordinarily locked storage shed turned up only two inscriptions which because of marble, arrangement and lettering I venture to assign to the same workshop as our own text, the stones, Sparta Museum 2609 and 6289.

"The interest that the author of the imperial letter takes in the question of precisely how the territory is to be administered for revenue purposes, and the recommendation of a method which is likely to bring the highest return, is certainly characteristic of Vespasian" (Chrimes, p. 59). This does not constitute a real argument. The historical argument should be based on Column II, which provided a new system of appeal. The system of appeal had already been regularized, or was about to be regularized, at the moment when Hadrian published the Oil Law at Athens, *S.E.G.*, XV, 108, lines 55-57. The system had not yet been regularized at the time when Plutarch wrote the *Political Precepts*, which C. P. Jones, "Towards a Chronology of Plutarch's Works," *J.R.S.*, LVI, 1966, p. 72 dates between A.D. 96 and 114. Plutarch, who in 815 D mentions an incident "recently in the time of Domitian," in 815 A accuses fellow-Greeks of destroying their own courts and political institutions by calling, in every question and dispute, for a decision by the Roman authorities.

No one doubts the importance of the reign of Hadrian in the development of the emperor's court, in the hearings and in the rescript procedure, in the freezing of the

edict, and in other ways. The *consilium* may not have been radically changed, but it certainly became more professional. A nucleus of jurists now obtained a firm position within the *consilium*.⁶ One student⁷ says, "If there is a new element here, it must be that of regularity."

All these considerations make the choice among Nerva, Trajan and Hadrian, the only emperors within the chronological limits, a choice that imposes itself. The imperial author of the second document of *I.G.*, V, 1, 21 can only be Hadrian. The role of the *synedroi* in this constitution and the role of the appellants' "*patris* and *synedrion* of the Areopagus" in the epistle of Marcus Aurelius concerning appeals from Athens by various parties shed great light on the spirit of Hadrian's reform. He protected the cities and federal states and gave them a control which the old *justice de grace* had not provided.

The fact that the city collected the deposits and passed them over to the *fiscus* saved the central government much trouble, but at the same time it gave the city itself an essential part in the system. Furthermore, the regularity of the new system made it more fair. Much inequality still existed, but the procedure was at least improved. The city had a right to judge which cases deserved a hearing in a higher court, and this fact arrested for a while the decline of the cities. Together with the creation of the Panhellenion⁸ the reform of the appeal system so as to work through local *synedria* restored the vitality of old cities and federal states. Both the establishment of the Panhellenion and the reform of the appeal system in Greece are foreshadowed in the complaint of Plutarch.⁹

JAMES H. OLIVER

AMERICAN SCHOOL OF CLASSICAL STUDIES
ATHENS

⁶ W. Kunkel, "Die Funktion des Konsiliums . . . im Kaisergericht," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Romanistische Abt., LXXXV, 1968, pp. 253 ff., especially 323-329.

⁷ J. A. Crook, *Consilium Principis*, Cambridge University Press, 1955, p. 59.

⁸ J. H. Oliver, *Marcus Aurelius (Hesperia)*, Suppl. XIII, 1970, Ch. IV.

⁹ On Plutarch see Oliver, *Marcus Aurelius*, pp. 70-71 and especially 134.



a.



b.



c.

ROBERT L. HOHLFELDER: PAUSANIAS, II, 2, 3: A COLLATION OF ARCHAEOLOGICAL AND NUMISMATIC EVIDENCE



I. G., V, 1, 21 in 1970

JAMES H. OLIVER: HADRIAN'S REFORM OF THE APPEAL PROCEDURE IN GREECE