

## Chapter 9

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### **Megarian Local Adjudication: The Case of the Border Dispute between Epidauros and Corinth in 242-240 BCE (*IG IV<sup>2</sup>.I.70 and 71*)**

The study of interstate relations and arbitration in the ancient Greek world has a long history. To define it briefly: interstate relations pertain to the political, economic, and military aspects of the relationship between two independent states (be it polis to polis, polis to League, League to Kingdom, or conceivably even polis to Kingdom), whereas arbitration could be considered a different, but related, topic focusing on the legal sphere. In addition, perhaps even within the overall sphere of arbitration, there should be a distinction made between the concept of arbitration and the use of foreign judges.<sup>1</sup>

Even accepting that they are independent of each other, there could be an occasion on which interstate relations and the choosing of foreign judges overlaps and, in my view,

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<sup>1</sup> Louis Robert has demonstrated that these two should be treated independently of each other, see: Robert 1973. Indeed, the overall subject of interstate relations, arbitration and use of foreign judges in the Ancient Greek world has been reinvigorated, and much scholarly attention has been directed toward it in the last 20 years: for interstate relations, see for example Chaniotis 2005; Eckstein 2006; McNerney 2006; Koehn 2007; Low 2007; Figueira and Jensen 2013; Nelson 2013; Beck 2016; Kralli 2017; for arbitration and use of foreign judges, see for example Ager 1996, 2013, 2015; Crowther 1995, 1999, 2006, 2007; Magnetto 1997; Harter-Uibopuu 1998; Chaniotis 2004; Roebuck 2001. This non-exhaustive list shows that this area has become quite an interesting subject to investigate. It is hoped that further epigraphical evidence will surface which will allow more concrete analyses of interstate relations, arbitration and foreign adjudication.

such an occasion presents itself in these two particular inscriptions, which describe the adjudication by the Megarians of a border dispute between the two Achaian cities of Epidauros and Corinth. It has always puzzled me as to why the Megarians, of all people, were chosen as judges, given their much less than friendly historical relations with the Corinthians. It seems that these inscriptions effectively combine the concept of interstate relations with the issue of foreign judges in that an aspect of interstate relations – namely a political one – appears to have been incorporated into the choice of the foreign judges for this case. The Achaian League, who would be cognizant of the historical record between Megara and Corinth, still specifically chose the Megarians to judge this particular case, so there must be an underlying reason. The inscriptions were found in the Asklepieion in Epidauros.<sup>2</sup> Undoubtedly there was a copy erected in Corinth. The text describes the decision made, at the behest of the Achaian League to which they all belonged at this time (242–240 BCE), by an embassy of 151 judges from Megara concerning the location of the border between Corinthian and Epidaurian territory. The specific areas under dispute were Spiraion<sup>3</sup> and Sellas. The judges visited the location and decided in favour of the Epidaurians, but the Corinthians seemed to have objected to some of the specifics. Thus, a smaller group of 31 judges, taken from the original 151, revisited the area and clearly outlined the border region, utilizing specific geographical references. These details are recorded in lines 11–31 of the inscription. This rendering should be considered as final. After line 31, the remaining text consists of the names of all of the judges, organized by their Megarian tribal assignments: *Hylleis*, *Pamphyloi* and *Dymanes*. The relationship between the two inscriptions can be found in the first, shorter, one (#70), whereby the conditions for the entrance of Epidauros into the Achaian League are stipulated.<sup>4</sup> One of these conditions states that its outstanding border dispute with Corinth must be submitted to judgement. We are fortunate enough to have another, contemporary, example of this: the dispute between Orchomenos and Megalopolis. This inscription was discovered in Orchomenos in the late nineteenth century.<sup>5</sup> It seems evident that the Achaian League wished to have all territorial disputes settled in order for cities to become full members of

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2 The full text of the inscriptions can be found in Ager 1996: no.38 and Smith 2008: 215–216.

3 Wiseman 1978: 136–140 for the location of Cape Spiraion.

4 Ager 1996: 116.

5 IG V.2.344, Ager 1996: no.43.

the League, and I think that this is shown by the short duration between the agreement to join the League and the Megarian arbitration taking place.

If we then accept that this appears to be customary standard practice within the Achaian League, why were the Megarians chosen to be the judges? My initial thought was that this was quite unusual given the well-known and lengthy discordant relations between Corinth and Megara. The origin for the steadfastly unfriendly relationship between these two cities goes back to the Archaic Period and revolves around the territory of the Perachora and its shrine to Hera. In this period, the Perachoran territory belonged, and had belonged for a long time, to Megara, and was a very valuable portion of its *chōra*. Indeed, according to Plutarch, one of the 5 original tribes of Megara was called the ‘Heraieis’,<sup>6</sup> presumably named after the major cult of Hera found in Perachora. Whether or not previous Megarian ownership of the Perachora can be decisively proven is fodder for another paper, but suffice it to say that the Megarians themselves viewed the territory as part of their natural patrimony, hence the very tense relationship with the Corinthians.

Ager states that “the geographic location of Megara” played an important part in the selection of this city to judge.<sup>7</sup> This is indeed one important aspect for choosing judges, but there were certainly other member cities of the League that were equidistant from the disputed area and relatively free from the negative historical relationship with the Corinthians which the Megarians had. For example, the distance from Megara to the arbitration zone is about 80 kilometers, which is a similar distance from either Troizen or Sikyon, two other League cities which could also have filled this role respectably. If we accept that there were other, possibly better suited, candidates based on geographical proximity for providing judges in this important dispute, we must ask, what other reason could the Achaians have had for choosing Megara?

The answer may lie with another specific characteristic of the Megarian state, a characteristic that had been in practice for about one and a half centuries by the time of this judgement. Namely, the established Megarian practice of what I term functional or practical neutrality.

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<sup>6</sup> Plut. *Greek Questions* #17, *Mor.* 295b–c.

<sup>7</sup> Ager 1996: 117.

What do I mean by functional or practical neutrality? The devastation wrought by the Peloponnesian War, amongst which was the economically disastrous Megarian Decree, coupled with the loss of their extensive maritime trading network, forced the Megarians to look inward and take the time to reflect and to recover economically. Additionally, and unfortunately for them, their aforementioned geographic location on the Isthmus resulted in numerous crossings of their territory by many different groups, which could be quite disruptive by nature.<sup>8</sup> The Megarians had to devise some method of dealing with these intrusions in a manner that would permit them to rebuild their economy and state, but at the same time remain aloof from conflict. I would argue that functional neutrality was the method on which they settled, at least unofficially. It is unclear if there were other methodologies attempted prior to this, including military action, but, ultimately, they evidently had not been successful.<sup>9</sup> One of the indicators that the policy of neutrality, whether formal or informal, was a success is that we do have evidence for an economic recovery, and indications of a healthy economy during the fourth century BCE. For example, the Megarians first started minting coinage in the fourth century.<sup>10</sup>

One point that, I think, can be clearly gleaned from the above evidence is that during the fourth century BCE, the Megarians shifted their focus from a more outward looking one to a more local one. The examples above show that they steered clear, for the most part, of becoming involved in what could be termed “international” activities. It has even been suggested that the Megarians totally withdrew from the international scene because of the lack of an army, which in turn forced them to reconsider any involvement in external affairs.<sup>11</sup> This suggestion can be refuted by the fact that the Megarians did become involved in external military conflict on at least two occasions late in the fourth century BCE: the Battle of Chaironeia in 338<sup>12</sup> and again in 335, after the death of Philip II of Makedon. Indeed, after the last debacle, we have an inscription from Megara awarding

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8 See Ager, this volume, who says that Megaris was considered very early on to be a “place of passage”.

9 One could imagine here signs being placed at the main border crossings indicating “This way to Boiotia”, “This way to Attica” or “This way to the Peloponnese”, with the locals selling provisions to travellers.

10 Pafford 2000.

11 Pausanias (10.20.4) states that Megara only supplied 400 hoplites and a handful of cavalry to a Greek force of 27,000 hoplites ranging against the Gauls in 280 BCE.

12 ... συμμάχους μὲν ὑμῖν ἐποίησα Εὐβοέας, Ἀχαιοὺς, Κορινθίους, Θηβαίους, Μεγαρέας, Λευκαδίου, Κερκυραίου... (Dem. 18.237; cf. Aesch. 3.97; Diod. 16.84.1; Paus. 10.3.3).

*proxenia* to Alexander the Great in order to soothe his wrath against them.<sup>13</sup> In all probability, they then resumed their stance of practical neutrality and continued down to the Imperial period generally in the same fashion.

Even though we have seen that the Megarians did not, and perhaps could not, practice neutrality all the time, it seems, based on our available evidence, that this preferred policy ultimately proved successful in their case, and resulted in an economic recovery during the Hellenistic period. It should be pointed out that Megara was one of only two city-states (the other being Rhodes) whose level of settlement did not decline between the Classical and Hellenistic periods.<sup>14</sup> In fact, contrary to the downward trend in the rest of the Greek world, there was an increase in the number of settlements in Megaris.<sup>15</sup> Additionally, it is worth noting that the bulk of known decrees of *proxenia* from Megaris are fairly local in nature: Boiotia, Sikyon, Epidauros, Troizen, Argos, Lokris, Phlius.

We do not, as yet, possess any direct evidence of an active political plan for official neutrality, but the preponderance of circumstantial and situational evidence from both literary and epigraphical sources would seem to indicate that they pursued this avenue. As a result of this path the Megarians built up, over a period of about one and a half centuries by 240 BCE, a local reputation for fairness and diplomacy, which may have resulted in them being perceived as possessing a certain *gravitas* for dispute resolution.<sup>16</sup>

In her recent article,<sup>17</sup> Ager clearly notes the three main characteristics that an appropriate adjudicator must have:

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13 ... Ἀλεξάνδρῳ πολιτείαν Μεγαρεῖς ψηφίσασθαι· τοῦ δ' εἰς γέλωτα θεμένου τὴν σπουδὴν αὐτῶν, εἰπεῖν ἐκείνους, ὅτι μόνῳ πρότερον τὴν πολιτείαν Ἡρακλεῖ καὶ μετ' ἐκείνον αὐτῷ ψηφίσαιτο· τὸν δὲ θαυμάσαντα δέξασθαι, τὸ τίμιον ἐν τῷ σπανίῳ τιθέμενον. (Plutarch *Mor.* 826c-d).

14 It is remarkable to note that Rhodes is also the other city-state for which we have evidence of being a “neutral” state and called upon in the sphere of foreign judges, see Ager 1991.

15 Smith 2008: 80.

16 Further support for this may perhaps also be found in a passage in Plutarch's *Moralia*, in which he records an Athenian request for Megara to adjudicate a dispute between Athens and Sparta in the early fourth century. Although it appears that the Spartans did not accept the Athenian proposal for Megarian judges, it is important to note that another “natural enemy” of the Megarians – Athens – made a request for their services in regard to dispute resolution.

17 Ager 2015: 477.

### **Stature and Authority (Must Have Legitimacy in International System)**

[I think in the case of *IG IV.2.71*, the aforementioned Megarian acquired *gravitas* would provide this aspect]

### **Leverage**

[This, in the case of *IG IV.2.71*, would most likely have been provided by the Achaian League]

### **Impartiality (but not Necessarily Neutrality)**

[A case can be made for Megarian local impartiality via their practiced neutrality]

It seems that the result of the Megarian adjudication between Corinth and Epidauros stood as is, which reflects the respect for their judgement.<sup>18</sup> This respect served them well, as they will be sought after local adjudicators in the second century BCE, and perhaps even later.<sup>19</sup>

This judgement between Epidauros and Corinth is not the only example of Megarian judgement for which we have evidence, it is just the most documented. There are five other known cases, dating to the second century BCE, all of which, with one possible exception, are local. These cases are specifically concentrated in the North East

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18 See Kralli (2017: 167) with regard to Corinthian acceptance of the judgement, where she states, “That there is no trace of protest by the Corinthians about the choice of the arbiter may indicate that they did not think that the Megarians had a hidden agenda”.

19 It is probable that Megara, similar to Rhodes, continued acting as adjudicators into the Roman period. Unlike the Rhodians, however, the Megarians probably confined their activities to the local.

Peloponnese and Boiotia: Tanagra; Boiotian Orchomenos; Boiotia/Achaian League; Akraiphia/neighbours; and an unknown Doric city.<sup>20</sup>

The Megarian judgement between Boiotia and the Achaian League is a particularly illustrative case because the Achaians accepted a city which had only recently rejoined the League from the Boiotian League as judge. The Boiotian League, on the other hand, accepted as judge a city that had just recently left them. The same can also be said of the Megarian adjudication at Orchomenos. This choice of Megara as judge serves as evidence of the high regard in which Megarian judgement was held by this time.<sup>21</sup> Indeed, it is perhaps this high regard which also served as the basis for the political catalyst mentioned above as a putative motivation for the Achaian League to appoint the Megarians in this case. It is plausible that the implicit message to be imparted to the Corinthians was that it was time to get over (or at least put aside) their long-standing hostilities for the good of the League, and what better way than to accept their long-time rivals as judges, based on their earned *gravitas*.

Megarian neutrality could not function in all cases (as was also the case for Rhodes<sup>22</sup>), but it was a practice that seemed to serve them well enough in the long run, given that several centuries later, in the sixth century CE, the region was still sufficiently stable and prosperous enough that all three major Megarian cities, Megara, Aigosthena, and Pagai, were seats of bishops.<sup>23</sup>

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20 Tanagra (*IG VII.20*), Boiotian Orchomenos (*IG VII.21*), Boiotia/Achaian League (Polyb. 22.4, 9-17; Ager 1996: no.105), Akraiphia/neighbours (*BCH 1900: 74-79*, *BCH 1936: 15-18*), unknown Doric city (*IG VII.19*).

21 For the importance of federalism to the Boiotians, see for example Beck and Ganter 2015; cf. Beck 2016: 95-96.

22 Ager 1991: 38-41.

23 Cf. the list in Hierokles, *Synekdemos* 645: Βουμελιττά, Θέσπαι, Ὑττος Θίσθαι, Θῆβαι, μητρόπολις Βοιωτίας, Τάναγρα, Χαλκίς νῆσος Εὐβοία, Πορθμός, Κάρυστος, Πλατέαι, Αἰγόσθυνα, Αθήναι, μητρόπολις Ἀττικῆς, Μάγαρα, Πάγαι, Ἐμπόριον Κρόμων, Αἰγινῆσος.

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