The Jurisdiction of the Athenians over Their Allies

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II.—THE JURISDICTION OF THE ATHENIANS OVER THEIR ALLIES.[1]

I had occasion some time ago, in the course of my regular work, to endeavor to arrive at a clear opinion about the meaning of the first four lines of Thuc. I 77 : *καὶ ἐλασσούμενοι γὰρ ἐν ταῖς ξυμβολαίαις πρὸς τοὺς ξυμμάχους δίκαις καὶ παρ' ἡμῖν αὐτοῖς ἐν τοῖς ὁμοίοις νόμοις ποιήσαντες τὰς κρίσεις φιλοδικεῖν δοκοῦμεν.* So far as I could come to a conclusion by my own lights and a study of the authorities quoted or referred to in the notes, I decided that Classen—who tells us he had modified his former view in consequence of an article of Stahl's in the Jahrbücher—was right, at least in this respect, that the two clauses of the sentence speak of two different matters: the former referring to the judgment of such cases as came within the range of *σύμβολα* or commercial treaties between states, and the latter to those causes of their allies which the Athenians insisted on having tried in their own courts at Athens. I naturally felt much interest in the article which Prof. Goodwin wrote for the first number of the American Journal of Philology; but as soon as I had been able to form an opinion of my own I found myself wholly unable to agree with his conclusion. In particular the translation which he gives of this passage of Thucydides, leaving out of consideration the sense in which he understood the words *συμβόλαιαι δίκαι*, appeared to be erroneous in that it interpreted the two clauses as having respect to the same subject matter. He renders: "For even when we put ourselves at a disadvantage in business suits with our allies, and have such cases tried in our own courts, under the same laws to which we ourselves are subject, we are thought to be fond of litigation." He had, however, a true instinct in this respect that, on the assumption that the latter clause referred to the same subject matter as the former, the expression *ξυμβόλαιαι δίκαι* could be understood to be equivalent to *δίκαι ἀπὸ ξυμβόλων* only on the supposition that the suits so designated had wholly changed their character. It would have to be assumed that "the reciprocity which was the essential feature of such suits was forcibly removed, and

[1] This paper was read before the Johns Hopkins Philological Association.

the whole relation was one-sided and compulsory." He thinks it necessary to argue that the case of the murder of Herodes in Antiphon could not have been classed with *δίκαι ἀπὸ ξυμβόλων*. And so, to get rid of the difficulty, he decides that *δίκαι ξυμβόλαιαι* are not *δίκαι ἀπὸ ξυμβόλων* at all; but are to be understood of suits about *ξυμβόλαια* or business contracts. In this opinion he has the high support of Boeckh and Grote. But both these authorities are led to their conclusion by the same interpretation of the passage in question. The former gives no translation of it; but Grote renders it: "For even though we put ourselves at disadvantage in matters litigated with our allies, and though we have appointed such matters to be judged among ourselves, and under laws equal to both parties, we are represented as animated by nothing better than a love of litigation." The special contribution to the elucidation of the subject which Prof. Goodwin conceived himself to have made, consisted in the citation of two passages from Aristotle's Politics, which appeared to him to prove that Aristotle at least recognized a distinction between the two expressions. But Prof. Jowett, in a note appended to the introduction to the second volume of his Translation of Thucydides, points out with great justice that the expressions quoted from Aristotle do not contain the same phrase as we find in Thucydides, but instead of this either *δίκαι τῶν συμβολαίων* or *δίκαι περὶ συμβολαίων*, and after some discussion he concludes that the settlement of the question is not materially affected by the passages quoted by Prof. Goodwin. In this I entirely agree with him. But as regards what I think the cardinal point in the interpretation of the sentence in question, Prof. Jowett's translation leaves as much to be desired as those of Prof. Goodwin, or Grote. He renders: "For because in our suits with our allies, regulated by treaty, we do not even stand upon our rights, but have instituted the practice of deciding them at Athens and by Athenian law, we are supposed to be litigious." It will be noticed that whereas Prof. Goodwin refuses to allow that *δίκαι ξυμβόλαιαι* can be identical with *δίκαι ἀπὸ ξυμβόλων*, because then he supposes we must include under the latter term all the compulsory interferences of the Athenians in the judicial affairs of their allies, Prof. Jowett divests the the technical phrase *δίκαι ἀπὸ ξυμβόλων* of all precise meaning and makes it cover all regulations of whatever kind which brought suits of the allies to Athenian courts. Curtius also, in his History, II[4] p. 218, n. 113, E. Tr., II p. 497, not only does the same thing, but offers an explanation of the way in which such a

misuse of the term may have come about. He tells us that all private disputes among the allies, except those involving trifling amounts, as well as all public and capital matters, were brought before Athenian judges; and that this state of things arose from the fact that, after the treasury of the Delian confederation had passed to Athens, the meetings of the diet entirely ceased and the Athenians occupied the place of the synod of the league; and by way of emphasizing her supremacy insisted on the allies transferring their legal business to her courts, since this, according to Greek ideas, was the most complete expression of subjection. But he further says, it is probable that the voluntary consent of the allies was, in outward appearance, obtained for this arrangement, and treaties on the subject concluded; and that in this way may be explained how the lawsuits of the allies could be counted among the class of legal cases settled according to treaties, *i*, *e*. with δίκαι ἀπὸ ξυμβόλων. It was a milder way of expressing the establishment of a new relation, just as the name of allies was retained instead of subjects.

Thus Goodwin, Grote and Boeckh on the one side, and Jowett and Curtius on the other, agree in finding in the passage of Thucydides an account of a single state of things, and do not see, as I think they should have done, that Thucydides intended to refer to two sets of causes.

A few months ago I procured a recent dissertation by J. M. Stahl (Münster, 1881) in which the whole question is discussed in the light not only of the passages in the authors cited by Prof. Goodwin and others but of several inscriptions. It is true that most of these which Stahl adduces are referred to by Prof. Jowett in the note I have quoted. Still to me Stahl's essay furnished just what I wanted to give precision to the interpretation of our passage of Thucydides, and I have thought it may be of interest to this Association to hear a short account of the whole matter as it now appears in the light thrown from these recently discovered sources on the statements found in the authors.

It is necessary, first of all, to consider the designations applied by Thucydides to the various members of the Athenian alliance. In VI 85, 2 he clearly discriminates three classes of them. The Athenian ambassador Euphemus, speaking at Camarina, divides the Athenian subject allies, ὑπήκοοι, into—

A. Those who were independent except in so far as they supplied ships: νεῶν παροκωχῇ αὐτόνομοι. In VII 57 these are spoken of

as *ναῦς παρέχοντες αὐτόνομοι*, and as *ναυσὶ καὶ οὐ φόρῳ ὑπήκοοι*. At the time of this speech, 415, only the Chians and the Methymnaeans were in this position. In III 10, 6; 11, 1, the Mytilenaeans, who were then in this class, speak of themselves as *αὐτόνομοι δὴ ὄντες*.

B. Those who were under a harder control and had to pay money, *τοὺς δὲ πολλοὺς χρημάτων βιαιότερον φορᾷ* (sc. *ἐξηγούμεθα*). The great majority of the allies were in this condition; and they are variously described as *ὑποτελεῖς*, II 9, 4; *ὑποτελεῖς φόρου*, VII 57, 4; or *ὑποχείριοι*, III, 11, 1.

Outside these two classes of *ὑπήκοοι* are placed—

C. *ἄλλους πάνυ ἐλευθέρως ξυμμαχοῦντας*, *i. e.* those who came into the Athenian alliance on independent terms after it was formed, as the Corcyraeans. These are called *οἱ ἀπὸ ξυμμαχίας αὐτόνομοι*, VII 57, 3, and simply *οἱ αὐτόνομοι* in VI 69, 3.

It is with the second of these classes, *ὑποχείριοι*, that we are chiefly here concerned, as those over whom the Athenians exercised complete control. They were not only careful to see that no constitutional changes were made adverse to their supremacy, but sometimes determined the form of their constitution and made them subject to the Athenian law courts. The first class were only so far despoiled of their liberty that they had to follow Athenian lead. The Mytilenaeans say, indeed, (III 10, 6) that they are *ἐλεύθεροι τῷ ὀνόματι*, but they go on to explain that they mean by this that they are forced to aid in the enslavement of other Greeks, which was not contemplated in the original terms of the league against the barbarians. These indeed, as, well as the absolutely autonomous allies, may have had *σύμβολα* or commercial treaties with the Athenians; but it is not to them that allusion is made in our passage of Thucydides, but only to the subject and tributary class, who are represented as finding the Athenian regulations in regard to *σύμβολα* and other judicial business a serious ground of complaint. To understand their grievances we must first ascertain what was the nature of *δίκαι ἀπὸ ξυμβόλων*. The most important passage on this subject is that so often cited in the oration *de Halonneso*, 9–14: *ἔτι περὶ συμβόλων φησὶ πεπομφέναι πρὸς ὑμᾶς τοὺς ποιησομένους, ταῦτα δὲ κύρια ἔσεσθαι οὐκ ἐπειδὰν ἐν τῷ δικαστηρίῳ τῷ παρ' ὑμῖν κυρωθῇ, ὥσπερ ὁ νόμος κελεύει, ἀλλ' ἐπειδὰν ὡς ἑαυτὸν ἐπανενεχθῇ, ἐφέσιμον τὴν παρ' ὑμῶν γενομένην γνῶσιν ὡς ἑαυτὸν ποιούμενος. βούλεται γὰρ ὑμῶν τοῦτο προλαβεῖν καὶ ὁμολογούμενον ἐν τοῖς συμβόλοις καταστῆσαι, ὅτι τῶν περὶ Ποτίδαιαν γεγενημένων ἀδικημάτων οὐδὲν ἐγκαλεῖτ' αὐτῷ ὡς ἀδικούμενοι, ἀλλὰ βεβαιοῦτε δικαίως αὐτὴν ἐκεῖνον καὶ λαβεῖν καὶ κεκτῆσθαι . . . ἐπεὶ ὅτι γε συμβόλων*

οὐδὲν δέονται Μακεδόνες πρὸς Ἀθηναίους ὁ παρεληλυθὼς ὑμῖν χρόνος τεκμήριον γενέσθω. οὔτε γὰρ Ἀμύντας ὁ πατὴρ ὁ Φιλίππου οὔθ' οἱ ἄλλοι βασιλεῖς οὐδεπώποτε σύμβολα ἐποιήσαντο πρὸς τὴν πόλιν τὴν ἡμετέραν. καίτοι γε πλείους γε ἦσαν αἱ ἐπιμιξίαι τότε πρὸς ἀλλήλους ἢ νῦν εἰσιν· ἐφ' ἡμῖν γὰρ ἦν ἡ Μακεδονία καὶ φόρους ἡμῖν ἔφερον, καὶ τοῖς ἐμπορίοις τότε μᾶλλον ἢ νῦν ἡμεῖς τοῖς ἐκεῖ κἀκεῖνοι τοῖς παρ' ἡμῖν ἐχρῶντο, καὶ ἐμπορικαὶ δίκαι οὐκ ἦσαν, ὥσπερ νῦν, ἀκριβεῖς, αἱ κατὰ μῆνα, ποιοῦσαι μηδὲν δεῖσθαι συμβόλων τοὺς τοσοῦτον ἀλλήλων ἀπέχοντας. ἀλλ' ὅμως, οὐδενὸς τοιούτου ὄντος τότε, οὐκ ἐλυσιτέλει σύμβολα ποιησαμένους οὔτ' ἐκ Μακεδονίας πλεῖν Ἀθήναζε δίκας ληψομένους, οὔθ' ἡμῖν εἰς Μακεδονίαν, ἀλλ' ἡμεῖς τε τοῖς ἐκεῖ νομίμοις ἐκεῖνοί τε τοῖς παρ' ἡμῖν τὰς δίκας ἐλάμβανον.

I may remark here in passing that Stahl, who comments at length on this passage, does not even notice the interpretation, which Prof. Goodwin defends, of the words *ταῦτα δὲ κύρια ἔσεσθαι οὐκ ἐπειδὰν ἐν τῷ δικαστηρίῳ τῷ παρ' ὑμῖν κυρωθῇ, ὥσπερ ὁ νόμος κελεύει, ἀλλ' ἐπειδὰν ὡς ἑαυτὸν ἐπανενεχθῇ*, making *ταῦτα* refer not to the *σύμβολα* which have just been named, but to legal decisions rendered under them. It seems to me that the explanation which Prof. Goodwin rejects is perfectly satisfactory. Nothing could be more natural than that the provisions of a proposed commercial treaty should be submitted to the scrutiny of a Heliastic body analogous to that which, under the name of *νομοθέται*, decided whether an old law should be abrogated and a new one instituted for it. I see that Meier and Schoemann in their explanation of the passage, refer to this analogy. The orator might with great justice protest against Philip's demand that in a commercial treaty to be made with him the established order of proceeding should be violated.

From an attentive examination of this passage it appears, (1) that *ξύμβολα* were agreements by which between the citizens of the contracting states there was reciprocity of suing and being sued: (2) that such agreements were ratified by a Heliastic court: (3) that they had the same sphere as *δίκαι ἐμπορικαί*: (4) that they were held in the courts of the defendant's city, *i. e. causam sequi forum rei:* (5) that the laws decisive of cases held under them were not those of the adjudging city, but laws made binding by the *ξύμβολα* on those who sued under them. It may be inferred also that in the *δίκαι ἐμπορικαί*, by which parties must sue in default of *ξύμβολα*, the suit would be held where the contract was made; *i. e.*, *causam sequi forum contractus*, and not *forum rei*, as with *δίκαι ἀπὸ ξυμβόλων*, and that, therefore, they could only be maintained, for instance, against an Athenian on a contract made in Macedonia if the Athenian were caught in Macedonia. We learn from [Andoc.] IV

18,[1] that *ξύμβολα* contained a special provision that a freeman should be exempt from arrest; and from this we may infer that such arrest in order to secure trial was lawful if not forbidden by a *ξύμβολον*. And the reason is plain; for whereas *δίκαι ἀπὸ ξυμβόλων* provided for the maintenance of suits in the defendant's city, *δίκαι ἐμπορικαί* could be prosecuted only if the defendant were caught in the country of the plaintiff.

The first Inscription which Stahl cites (C. I. A. IV 61a, Hicks, p. 111) is one which contains portions of a decree, passed in 409, prescribing the conditions under which Selymbria, which had been captured by Alcibiades, was restored to the Athenian alliance. The part of it used by Stahl is unfortunately marred by gaps which are supplied differently by himself and by Kirchhoff. It seems, however, to establish sufficiently the point for which he cites it, viz.: that *ξύμβολα* contained provisions by which not only could individual citizens, A and B, of the contracting states sue one another, but suits could be maintained between a state and an individual, *ἢ ἰδιώτῃ πρὸς τὸ κοινὸν ἢ κοινῷ πρὸς ἰδιώτην*. Stahl's object in referring to this is to show under what circumstances a resort to an *ἔκκλητος πόλις* or city of appeal might be reasonably allowed. For he agrees with Prof. Goodwin in rejecting as entirely untenable and as unsupported by a shred of real evidence the statement of Meier and Schoemann that in all cases of *δίκαι ἀπὸ ξυμβόλων* the defeated party could appeal to the courts of his own state, or if defeated in the courts of his own state could appeal to those of his antagonists. Prof. Goodwin supposes that *ξύμβολα* regularly contained the specification of a *πόλις ἔκκλητος* to which it was agreed that disputes between the citizens of the contracting states should be referred, when they could not be settled by the tribunals recognized in the treaty. Stahl, however, thinks that the services of such a city of appeal would be provided for only when a suit was brought by an individual citizen of the one state against the other *state*. As it could hardly be expected, *e. g.*, that an Athenian court would give judgment against Athens, the rule of *causam sequi forum rei* would in this case lead probably to a failure of justice; and to such suits it is not unlikely that the passages, which Prof. Goodwin quotes, about a *πόλις ἔκκλητος* are to be referred.

The next Inscription to which Stahl refers is a decree relating to a treaty between Athens and the people of Phaselis (C. I. A. II

[1] *καὶ πρὸς μὲν τὰς ἄλλας πόλεις ἐν τοῖς συμβόλοις συντιθέμεθα μὴ ἐξεῖναι μήθ' εἰρξαι μήτε δῆσαι τὸν ἐλεύθερον.*

11, Hicks, p. 127). Its date is somewhere between the battle of Cnidus (394) and the peace of Antalcidas (387) cir. B. C. 390. The gaps are unfortunately supplied differently by Köhler and by Stahl. Still some inferences can be drawn from it. First it is stated that a suit on a contract made *at Athens* with a Phaselitan must be tried at Athens before the Polemarch καθάπερ Χίοις: and from this it is seen that Chios had no ξύμβολα with Athens: for we are expressly told by Pollux, who no doubt follows Aristotle, that δίκαι ἀπὸ ξυμβόλων were under the ἡγεμονία of the Thesmothetae. The decree goes on to state that for all other contracts made with Phaselitans suits shall follow the terms of the ξύμβολα, *i. e.* shall follow *forum rei.* It seems then that the Phaselitans in suits based on contracts made at Athens were to avail themselves of ordinary δίκαι ἐμπορικαί, which would be decided by the general laws of Athens and not by the particular stipulations of ξύμβολα, while for all others the rules of the special ξύμβολα made with them were to prevail.[1] From this it is seen that in some cases ξύμβολα referred to a part only and not to the whole of commercial cases which might arise between Athenians and citizens of other contracting states. It is important too to notice that these suits which are thus expressly excepted from the provisions of the ξύμβολα are to be brought before the polemarch, who occupied the same relation to ξένοι as the ἄρχων ἐπώνυμος did to citizens. The existence of complete ξύμβολα gave to the citizens of the foreign state exactly the same rights as were enjoyed by the citizens of Athens in all matters covered by the treaty: as is shown by a passage of Arist. Pol. III 1, 4, quoted by Prof. Goodwin and also by Stahl, in which Aristotle says that equality in regard to suing and being sued does not constitute citizenship; for this ὑπάρχει καὶ τοῖς ἀπὸ συμβόλων κοινωνοῦσιν: and he goes on to say that even the resident aliens, μέτοικοι, do not possess this right fully, but must employ a προστάτης: from which it may be inferred with certainty that in δίκαι ἀπὸ ξυμβόλων the foreign plaintiff appeared in person as if he were a citizen. Stahl

[1] A. Fränkel, Diss. de condic. Soc. Athen. p. 71, argues from this decree that the rule of ξύμβολα was that *causam sequi forum contractus.* But it is evident that the decree makes a special exception to the rule in the case of the Phaselitans, as regards contracts made at Athens, in this particular assimilating them to the Chians; and it may be inferred that for the latter suits also on contracts made elsewhere than at Athens followed *forum contractus;* since unless this difference existed there would have been no reason for making a distinction between them and the people of Phaselis.

quotes next an inscription (C. I. A. IV 11, 96) in reference to the Mytilenaeans after their reduction in 427. Jowett refers to it also; but as it is much mutilated prefers to found no conclusion upon it. He says, however, that it seems to indicate what Stahl infers from it, viz.: that the Athenians had *δίκαι ἀπὸ ξυμβόλων* with the people of Mytilene both before and after the revolt; that is, not only when Mytilene was one of the autonomous allies, but also after it had been forced to receive Athenian cleruchs. It may be that it was under these circumstances that *ἐπίσκοποι* were sent to preside over trials held under the *ξύμβολα*. The words *πρὸ τούτου τοῦ χρόνου* are unfortunately in brackets; but as Stahl observes, the verb *ἦσαν*, of which the first three letters remain, suffices to show that the agreements spoken of existed before the revolt. Our inscriptions, therefore, have shown us *δίκαι ἀπὸ ξυμβόλων* with Selymbria, a subject and tributary ally, and with Mytilene, at first one of the autonomous states and afterwards a cleruchial district, during the time of the former Athenian alliance.

The often quoted passage of Antiphon, V 78, is cited by Prof. Goodwin, Jowett and Stahl.[1] Here Stahl accepts from A. Fränkel the suggestion that before the last words a clause should be inserted such as *τοὺς δὲ εἰς τοὺς ξυμμάχους ἀπαλλαχθέντας τοὺς ὑμετέρους*. For he argues justly that the words *τοὺς μὲν εἰς τὴν ἤπειρον ἰόντας κτέ.* imply a clause with *τοὺς δέ*—this Reiske noticed—and that the expression *ἐν τοῖς πολεμίοις τοῖς ὑμετέροις* is incompatible with the notion that persons so described could have had *ξύμβολα* with the Athenians, though Prof. Goodwin follows Boeckh in thinking this possible. There must, therefore, have been allied cities in that quarter with whom the Athenians had *ξύμβολα*, after the reduction of Mytilene, to which time this speech has reference; and as there is no reason to suppose that the speaker is thinking specially of Chios and Methymna—which were the only remaining independent cities—and the other cities were either tributary or hostile, it is a fair inference that *ξύμβολα* existed between Athens and some, at least, of her tributary allies during the Peloponnesian war, which has been already shown to be probable on other grounds. The citations from the grammarians which are made by Prof. Goodwin are brought forward also by Stahl. Bekk. Anect. p. 436, 1: *Ἀθηναῖοι*

[1] *εἰ δ' ἐν Αἴνῳ χωροφιλεῖ, τοῦτο* [*ποιεῖ* Reiske] *οὐκ ἀποστερῶν γε τῶν εἰς τὴν πόλιν ἑαυτὸν οὐδενὸς οὐδ' ἑτέρας πόλεως πολίτης γεγενημένος, ὥσπερ ἑτέρους ὁρῶ τοὺς μὲν εἰς τὴν ἤπειρον ἰόντας καὶ οἰκοῦντας ἐν τοῖς πολεμίοις τοῖς ὑμετέροις . . . καὶ δίκας ἀπὸ ξυμβόλων ὑμῖν δικαζομένους.*

ἀπὸ συμβόλων ἐδίκαζον τοῖς ὑπηκόοις· οὕτως Ἀριστοτέλης. Poll. VIII 63, ἀπὸ συμβόλων δὲ δίκη ἦν ὅτε οἱ σύμμαχοι ἐδικάζοντο. Hesych. ἀπὸ συμβόλων δικάζειν· ἐδίκαζον Ἀθηναῖοι ἀπὸ συμβόλων τοῖς ὑπηκόοις· καὶ τοῦτο ἦν χαλεπόν. These expressions, which probably all come from Aristotle, are understood by Stahl to assert generally the existence of *σύμβολα* between Athens and her subject allies; and he does not admit, what Prof. Goodwin suggests, in this following Grote, that possibly they may have reference to the second maritime alliance of the Athenians of 378, though the term *ὑπήκοοι* is confessedly inapplicable to its members; or that they may require to be limited to the members of the old alliance who were independent of tribute and as long as they remained so. He does not, however, touch upon what seems to me the chief difficulty in accepting them in their strict sense of the relation between the Athenians and those allies with whom they had *σύμβολα*. We have seen that such agreements called for reciprocity; and that trials held under them were maintained in the courts of the defendant's city. If, therefore, they were observed with perfect equity, it ought to be as true to say that *ἐδίκαζον οἱ ὑπήκοοι ἀπὸ συμβόλων τοῖς Ἀθηναίοις* as that *ἐδίκαζον Ἀθηναῖοι τοῖς ὑπηκόοις*. It would no doubt practically come to pass that most of such suits would, even by the terms of the treaties, have to be tried in Athenian courts. For in most cases the Athenians would be the defendants. The feelings with which the dominant Athenian Demos, as a whole, regarded the subject allies could hardly fail to exhibit themselves in the dealings of individual Athenians with those with whom they had commercial relations; and so it would come to pass that in the great majority of such cases it would be the citizen of an allied state who was the plaintiff, and he must necessarily, therefore, sue in an Athenian court. We may consider also that suits brought against Athenians by citizens of any one of the subject cities would all be tried at Athens; whereas the suits brought by Athenians against any citizens of their tributary states would be tried one at Rhodes, another at Phaselis, another at Samos, and so on. The judicial range, therefore, of the Athenian courts must have greatly surpassed that of the courts of any one of the allies, perhaps of all of them together; and thus, even without any formal infraction of the reciprocity implied by the existence of *σύμβολα*, the impression may easily have come to exist, which the statements quoted from the grammarians express, that it was the Athenians who decided, in accordance with the terms of the several *σύμβολα*,

the commercial suits of their subjects. Stahl comments on the words of Hesychius, *καὶ τοῦτο ἦν χαλεπόν*. This expression certainly can have no reference to the second alliance. It was, he says, possible and even likely that, though the *σύμβολα* which the Athenians had with their allies in the fifth century, assumed and called for perfect reciprocity between the contracting cities, in actual working the citizens of the dominant city would get an advantage, and that the Athenians in negociating such treaties would see to it that the terms were such as to conduce mainly to their own interests. Still they must have felt that in the long run their advantage would be mainly secured by augmenting and rendering safe their commercial relations; and that this result would be greatly promoted by facilitating the equitable settlement of commercial disputes. On the whole then, we seem to have adequate warrant for believing that the Athenians had such commercial treaties with at least several of the subject members of their first alliance.

But we have now to consider the other points in which Athenian courts had control of the affairs of citizens of the subject states. The passages in the authors which throw any light on this question are few and inadequate. The writer of the tract *de republica Atheniensium*, c. 1, §16–18 insists upon the advantages the Athenians derived from this jurisdiction and the hardship it was to the allies; but he does not define its extent. We learn, indeed, from Antiphon, V 47,[1] that a city in the position of Mytilene could not inflict the penalty of death: and the case of the parodist Hegemon which Prof. Goodwin cites after Boeckh from Athenaeus was most likely a *γραφὴ ὕβρεως* and so involved a serious punishment. This is nearly all that we can learn from the authors. But much more can be elicited from the inscription which records the decree defining the status of Chalcis after its reduction by Pericles in 445 (C. I. A. I suppl. p. 10, Hicks, p. 33). This decree is in three portions moved by as many proposers. The last part, which was proposed by Archestratus, contains the words: *τὰς δὲ εὐθύνας Χαλκιδεῦσι κατὰ σφῶν αὐτῶν εἶναι ἐν Χαλκίδι καθάπερ Ἀθήνησιν Ἀθηναίοις, πλὴν φυγῆς καὶ θανάτου καὶ ἀτιμίας. περὶ δὲ τούτων ἔφεσιν εἶναι Ἀθήναζε ἐς τὴν ἡλιαίαν τὴν τῶν θεσμοθετῶν κατὰ τὸ ψήφισμα τοῦ δήμου*. Mr. Hicks interprets this in his marginal comment: "the Chalkidian magistrates accountable to their own courts, with certain exceptions." That is, he understands *εὔθυναι* in the sense it ordinarily bore in Attic constitutional law. But it is much more likely that the word is here

[1] *ὃ οὐδὲ πόλει ἔξεστιν, ἄνευ Ἀθηναίων οὐδένα θανάτῳ ζημιῶσαι.*

used in a more general meaning, as defined by Hesych. *εὐθύνας· τιμωρίας, δίκας, τὸ δοῦναι λόγον ἐφ' ἑκάστῳ ἁμαρτήματι*, and recognized by Meier and Schoemann, p. 215. See also Ar. Vesp. 571; Pl. Prot. 326d; and *εὐθύνειν* in Thuc. I 95, 5. Stahl calls attention to the words *κατὰ σφῶν αὐτῶν* as indicating this meaning, since it should read *κατὰ τῶν ἀρξάντων* if reference were made only to the accounts of magistrates. The character of the offences which were to be sent for trial on appeal to Athens is determined by the penalties to which they were liable, viz.: *φυγή, θάνατος, ἀτιμία*. And from this it will follow that all *γραφαί* or public suits, in which an offence against the state was charged, whether prosecuted by an injured citizen or by one who brought an action against the wrong-doer merely from public spirit, would admit of appeal to the Athenian courts, in case the defendant had been convicted in the courts of Chalcis. Stahl thinks that also all those *δίκαι* or private actions, which are characterized as *κατά τινος* (*actiones ex delicto*), *i. e.* those in which the defendant was liable not merely to make good a damage caused to the individual prosecutor, but also to suffer some penalty inflicted by the state, are to be included in the class of appealable actions. He is led to this conclusion by the consideration that we have evidence that certain degrees of *ἀτιμία* were inflicted in actions for false witness and for theft. It appears to me that in this he is assuming too close a similarity between the technicalities of Attic procedure and what may have prevailed at Chalcis. And without including either class of *δίκαι*, the range of appealable cases would have been sufficiently large. The list of *γραφαί* given in Meier and Schoemann comprises some fifty causes of action; and if it may be taken as probable that a considerable number of these had special reference to peculiarities of Athenian constitutional law, still a large part of them must have had their *analoga* in any civilized Hellenic state. It is at any rate clear that whatever may have been the technical form of the action, a defendant who was condemned in a Chalcidian court to death, exile or disfranchisement, had a right of appeal to a court at Athens: and it naturally follows that all cases in which a lesser penalty was imposed and all suits for non-fulfilment of obligations, *ex contractu*, *i. e.*, *δίκαι πρός τινα* were left to the final decision of the Chalcidian courts.

But the earlier portion also of the Chalcidian *ψήφισμα*, which was adopted on the motion of Diognetus, gives us additional information. It states the substance of the oath which was to be taken by the *βουλή* and the *δικασταί* of Athens in reference to their dealings

with Chalcis. After declaring in general terms that the place shall not be destroyed the oath proceeds: *οὐδὲ ἰδιώτην οὐδένα ἀτιμώσω οὐδὲ φυγῇ ζημιώσω οὐδὲ ξυλλήψομαι οὐδὲ ἀποκτενῶ οὐδὲ χρήματα ἀφαιρήσομαι ἀκρίτου οὐδενὸς ἄνευ τοῦ δήμου τοῦ Ἀθηναίων.* Now here Mr. Hicks, in his commentary, says that these provisions apply to the Athenian dicasts when trying a case brought to them from Chalcis. But Stahl is certainly right in his opinion that they have an entirely different meaning. The cases heretofore spoken of are those which were to be brought before Athenian courts on appeal from courts in Chalcis, where the sentence of disfranchisement, exile, or death had been pronounced. But in the provisions now treated of we have the additional penalties of imprisonment and fine referred to; and Stahl points out also that the words used in the resolution moved by Archestratus: *τὰς εὐθύνας Χαλκιδεῦσι κατὰ σφῶν αὐτῶν εἶναι ἐν Χαλκίδι*, imply that the words employed in that of Diognetus must refer to actions commenced elsewhere and not between Chalcidians. These can only be actions between Athenians and Chalcidians; and he infers, therefore, that, as before, the penalties named decided what classes of actions might be appealed to Athens, so here the actions against Chalcidians in which Athens is to have original jurisdiction, are in like manner determined by the punishments which they could result in. The words *οὐ χρήματα ἀφαιρήσομαι* do not refer to confiscation of goods only, but also to the imposition of fines, and so evidently apply to cases of private injury, *δίκαι κατά τινος*. So the words *οὐ ξυλλήψομαι* are probably to be understood of placing in confinement—not for the purpose of securing the accused person's presence at the trial or the payment of his fine—but inflicted as a punishment. It is true we do not hear much of imprisonment as a punishment; but Meier and Schoemann, p. 745, refer to Dem. 24, 114, who says that a person convicted of theft in a private suit, besides having to pay to the plaintiff twice the value of the thing stolen, might at the discretion of the judges be punished in the way of a *προστίμησις* by confinement (*δεσμός*) for five days and five nights, *ὅπως ὁρῷεν ἅπαντες αὐτὸν δεδεμένον*, which is probably to be understood of the stocks. As to *δίκαι πρός τινα* arising between Athenians and Chalcidians, as these would be almost always, if not invariably, on mercantile disputes, and it has been shown that with some allies at least the Athenians had *σύμβολα* for such questions, Stahl thinks that it was so with Chalcis; and thus we have provision made for all private actions as well as public ones.

There remains still in this decree one expression of which, it seems to me, Stahl has given the correct explanation. The oath says that the penalties mentioned shall not be exacted *ἀκρίτου οὐδενὸς ἄνευ τοῦ δήμου τοῦ Ἀθηναίων*. This seems at first sight to imply that every accused Chalcidian should have a fair trial, unless the people decreed that he should not have one. But it does not need many words to show that the Chalcidians would not have much to be thankful for if this was the intention of the oath. Stahl argues that the words *ἄνευ τοῦ δήμου τοῦ Ἀθηναίων* refer to cases of *εἰσαγγελία* or information laid before the Senate or the assembled people. In such cases the assembly either decided itself, and directly, on the guilt or innocence of the accused person, or voted that the matter should be referred to one of the heliastic courts. The meaning, therefore, of the words quoted will be that in all matters which are brought before the courts, whether by the act of an individual accuser or by vote of the assembly the defendant shall have a fair trial; in cases of *εἰσαγγελία* in which the assembly itself condemned, the senators and judges who take this oath, being themselves members of the *ἐκκλησία*, would not be under any obligation by the terms of this oath to vote for the acquittal of the accused person, but might, if they saw fit, condemn him. It is assumed in this interpretation that *ἄκριτος* may mean 'without a trial formally regular'; and to illustrate this meaning Stahl quotes Pseud.-Plat. Axioch. 368e, where Theramenes and his partisans are said to have procured irregularly the destruction of the commanders at Arginusai: *προέδρους ἐγκαθέτους ὑφέντες κατεχειροτόνησαν τῶν ἀνδρῶν ἄκριτον θάνατον*. There is a passage in Lysias, XII 81, 82, which Stahl does not cite, but which illustrates, I think, still better this use of *ἄκριτος*. Lysias argues that the circumstances in which Eratosthenes is placed on his trial are far more favorable than he deserved as one of the Thirty. *οὗτος μὲν γὰρ κατήγορος καὶ δικαστὴς αὐτὸς ἦν τῶν κρινομένων* (Reiske, Scheibe, Rauchenstein), *ἡμεῖς δὲ νυνὶ εἰς κατηγορίαν καὶ ἀπολογίαν καθέσταμεν. καὶ οὗτοι μὲν τοὺς οὐδὲν ἀδικοῦντας ἀκρίτους ἀπέκτειναν, ὑμεῖς δὲ τοὺς ἀπολέσαντας τὴν πόλιν κατὰ τὸν νόμον ἀξιοῦτε κρίνειν*. Here those who have just been spoken of as *κρινόμενοι* are said to have been put to death, *ἄκριτοι*, and this term is opposed to *κατὰ τὸν νόμον κρίνειν*.

Stahl further remarks that if he is right in interpreting the words in question of the process called *εἰσαγγελία*, we have in this inscription the earliest allusion to it. The so-called *νόμος εἰσαγγελτικός* is supposed not to have been earlier than the archonship of Eukleides;

but that law probably summed up the cases in which experience had shown that εἰσαγγελία was a neccessary supplement to the regular provisions of the laws, in order to bring to trial serious offenses which, perhaps, violated no particular law, but required immediate punishment. In the case of the Chalcidians these would probably be acts which tended to the damage of the Athenian state or league, incitement to revolt, etc.

Stahl now proceeds to discuss the passage before referred to in the tract *de republica Atheniensium*, I 14–17. 14: περὶ δὲ τῶν συμμάχων, ὅτι ἐκπλέοντες συκοφαντοῦσιν, ὡς δοκοῦσι, καὶ μειοῦσι (μισοῦσι D.) τοὺς χρηστούς, γιγνώσκοντες ὅτι μισεῖσθαι μὲν ἀνάγκη τὸν ἄρχοντα ὑπὸ τοῦ ἀρχομένου· εἰ δὲ ἰσχύσουσιν οἱ πλούσιοι καὶ οἱ χρηστοὶ (ἰσχυροὶ D.) ἐν ταῖς πόλεσιν, ὀλίγιστον χρόνον ἡ ἀρχὴ ἔσται τοῦ δήμου τοῦ Ἀθήνησι. διὰ ταῦτ' οὖν τοὺς μὲν χρηστοὺς ἀτιμοῦσι καὶ χρήματα ἀφαιροῦνται καὶ ἐξελαύνουσι καὶ ἀποκτείνουσι, τοὺς δὲ πονηροὺς αὔξουσιν. οἱ δὲ χρηστοὶ Ἀθηναίων τοὺς χρηστοὺς ἐν ταῖς συμμαχίσι πόλεσι σῴζουσι, γιγνώσκοντες ὅτι σφίσιν ἀγαθόν ἐστι τοὺς βελτίστους σῴζειν ἀεὶ ἐν ταῖς πόλεσιν. 15. εἴποι δέ τις ἂν ὅτι ἰσχύς ἐστιν αὕτη Ἀθηναίων, ἐὰν οἱ σύμμαχοι δυνατοὶ ὦσι χρήματα εἰσφέρειν. τοῖς δὲ δημοτικοῖς δοκεῖ μεῖζον ἀγαθὸν εἶναι τὰ τῶν συμμάχων χρήματα ἕνα ἕκαστον Ἀθηναίων ἔχειν, ἐκείνους δὲ ὅσον ζῆν καὶ ἐργάζεσθαι, ἀδυνάτους ὄντας ἐπιβουλεύειν. 16. δοκεῖ δὲ ὁ δῆμος ὁ Ἀθηναίων καὶ ἐν τῷδε κακῶς βουλεύεσθαι ὅτι τοὺς συμμάχους ἀναγκάζουσι πλεῖν ἐπὶ δίκας Ἀθήναζε. οἱ δὲ ἀντιλογίζονται ὅσα ἐν τούτῳ ἔνι ἀγαθὰ τῷ δήμῳ τῷ Ἀθηναίων. πρῶτον μὲν ἀπὸ τῶν πρυτανείων τὸν μισθὸν δι' ἐνιαυτοῦ λαμβάνειν· εἶτ' οἴκοι καθήμενοι ἄνευ νεῶν ἔκπλου διοικοῦσι τὰς πόλεις τὰς συμμαχίδας, καὶ τοὺς μὲν τοῦ δήμου σῴζουσι, τοὺς δὲ ἐναντίους ἀπολλύουσιν ἐν τοῖς δικαστηρίοις. εἰ δ' οἴκοι εἶχον ἕκαστοι τὰς δίκας, ἅτε ἀχθόμενοι Ἀθηναίοις τούτους ἂν σφῶν αὐτῶν ἀπώλλυσαν, οἵτινες φίλοι μάλιστα ἦσαν Ἀθηναίων τῷ δήμῳ. 17. πρὸς δὲ τούτοις ὁ δῆμος τῶν Ἀθηναίων τάδε κερδαίνει τῶν δικῶν Ἀθήνησι οὐσῶν τοῖς συμμάχοις. πρῶτον μὲν γὰρ ἡ ἑκατοστὴ τῇ πόλει πλείων ἡ ἐν Πειραιεῖ. ἔπειτα εἴ τῳ συνοικία ἔστιν, ἄμεινον πράττει. ἔπειτα εἴ τῳ ζεῦγος ἔστιν ἢ ἀνδράποδον μισθοφοροῦν. 18. ἔπειτα οἱ κήρυκες ἄμεινον πράττουσι διὰ τὰς ἐπιδημίας τὰς τῶν συμμάχων. πρὸς δὲ τούτοις εἰ μὲν μὴ ἐπὶ δίκας ἦεσαν οἱ σύμμαχοι τοὺς ἐκπλέοντας Ἀθηναίων ἐτίμων ἂν μόνους, τούς τε στρατηγοὺς καὶ τοὺς τριηράρχους καὶ πρέσβεις· νῦν δ' ἠνάγκασται τὸν δῆμον κολακεύειν τῶν Ἀθηναίων εἷς ἕκαστος τῶν συμμάχων, γιγνώσκων ὅτι δεῖ μὲν ἀφικόμενον Ἀθήναζε δίκην δοῦναι καὶ λαβεῖν οὐκ ἐν ἄλλοις τισὶν ἀλλ' ἐν τῷ δήμῳ, ὅς ἐστι δὴ νόμος Ἀθήνησι· καὶ ἀντιβολῆσαι ἀναγκάζεται ἐν τοῖς δικαστηρίοις καὶ εἰσιόντος του ἐπιλαμβάνεσθαι τῆς χειρός. διὰ τοῦτο οὖν οἱ σύμμαχοι δοῦλοι τοῦ δήμου τῶν Ἀθηναίων καθεστᾶσι μᾶλλον.

In the first place the words ἐκπλέοντες συκοφαντοῦσι indicate that the cases the writer speaks of first are actions brought by the

Athenians against allies, and not ones arising among the citizens of an allied city themselves; and these, we have seen, were regularly tried at Athens. The punishments here said to be inflicted are the same, and are expressed also in nearly the same words, as in the Chalcidian decree. They are said here *ἀτιμοῦν τοὺς χρηστούς, χρήματα ἀφαιρεῖσθαι, ἐξελαύνειν καὶ ἀποκτείνειν.* It is true there is no mention of imprisonment, *συλλαμβάνειν*· for this seems to have been employed only in certain private causes and to a very limited extent in combination with other penalties. But we must not suppose that the writer has in view public causes only: for he says *τοῖς δημοτικοῖς δοκεῖ μεῖζον ἀγαθὸν εἶναι τὰ τῶν συμμάχων χρήματα ἕνα ἕκαστον Ἀθηναίων ἔχειν*, and this could be secured only or mainly by private suits; for in public ones (*γραφαί*), it was quite the exception for the accuser to derive any pecuniary benefit from the successful prosecution of his case. But, on the other hand, the last words of § 16, *εἰ δ' οἵκοι εἶχον ἕκαστοι τὰς δίκας, ἅτε ἀχθόμενοι Ἀθηναίοις τούτους ἂν σφῶν αὐτῶν ἀπώλλυσαν οἵ τινες φίλοι μάλιστα ἦσαν Ἀθηναίων τῷ δήμῳ*, show clearly that the cases here spoken of would, in the natural course of things, and in default of any compulsion on the part of Athens, have been tried in the courts of the allied city. Stahl calls special attention to the fact that the pronoun *σφῶν αὐτῶν* is used here with the implication that the disputes were among citizens of the same city, which was the meaning assigned to it in the psephism of Archestratus. That the suits thus brought before Athenian courts must have been of a grave character is shown by the words *τοὺς ἐναντίους ἀπολλύουσιν ἐν τοῖς δικαστηρίοις.* To this point Prof. Jowett also alludes in his reply to Prof. Goodwin, who thinks Xenophon refers only to civil suits tried by compulsion in Athenian courts, and says "it is unlikely that any criminal suits, except the more important, were carried from the subject states to the Athenian courts, and in these it was probably a matter of indifference to the accused where he was tried, as he had no expenses." "*ἀπολλύουσιν*," says Prof. Jowett, "means surely in this place 'they are the death of them,' not merely 'they plunder them.'" Prof. Goodwin's notion that persons in the allied cities accused of crimes would as soon be tried at Athens as at home 'because they had no expenses' seems founded on a very inadequate conception of the terrors of the heliastic courts. He is probably referring to the fact, that according to the common opinion, it was only in private causes that *πρυτανεῖα* or court-fees were paid in advance by the parties to a suit. These, however, were not heavy, and in a serious case

could not have been regarded as adding greatly to its dangers. Stahl, indeed, asserts that the present passage proves that this opinion as to the limitation of *πρυτανεῖα* to private suits is erroneous, and he refers to an Inscription (C. I. A. IV 22), which speaks of *πρυτανεῖα* being paid when we cannot suppose that only private causes are in question. Boeckh,[1] however, who was the first to lay down this rule as to *πρυτανεῖα* himself admits that in public causes where the accuser, if successful, would be entitled to a part of the penalty, it was natural that he should deposit the usual sum. And it does not seem to me that Prof. Goodwin is justified in inferring that in the whole passage only private suits are referred to, even if we suppose that, where the *πρυτανεῖα* are mentioned, the writer is thinking only of such suits. The *πρυτανεῖα* paid in private causes would be one source of the profit made by the Athenians; but fines and confiscations, if defendants could be plausibly condemned, would be a much more prolific branch of revenue; and, whether prosecutions were by *γραφαί*, or *δίκαι*, all the other sources of profit which the writer enumerates would be equally productive.

This passage then, of Pseud.-Xenophon, shows that the writer had in view the same two classes of causes which appeared to be implied in the Chalcidian decree; those, namely, which Athenians had with citizens of allied cities and those which, arising among the allies themselves, were tried on appeal in Athenian courts. And since this writer speaks of the allies in general, and we find that in its main features his account tallies with the arrangements of the Chalcidian decree, it is natural to infer that the detailed provisions there made were in force also in regard to the great body of the allied states. The motives too which are attributed to the Athenian demos in enforcing their jurisdiction on the allies, are seen to be substantially the same as may be inferred from the provisions of the decree. We read that *εἰ ἰσχύσουσιν οἱ πλούσιοι καὶ οἱ ἰσχυροὶ (χρηστοὶ) ἐν ταῖς πόλεσιν ὀλίγιστον χρόνον ἡ ἀρχὴ ἔσται τοῦ δήμου τοῦ Ἀθήνησι. διὰ ταῦτα οὖν τοὺς μὲν χρηστοὺς ἀτιμοῦσι καὶ χρήματα ἀφαιροῦνται καὶ ἐξελαύνουσι καὶ ἀποκτείνουσι τοὺς δὲ πονηροὺς αὔξουσιν.* Here we are told that it was the rich and oligarchical citizens of the allied states that the Athenians brought suits against, and having got them before their courts visited them with disfranchisement, fines, banishment, or death; and that they did this in order to prevent the growth in the dependent cities of that element which was naturally

[1] A. Fränkel, p. 34, successfully refutes this opinion of Boeckh's.

hostile to the ascendancy of the Athenian democracy: and that they exerted their influence to exalt the popular party. We find the other side of this policy in the decree. We see in it that any citizens of Chalcis who were condemned by a Chalcidian court to disfranchisement, exile, or death, were entitled to appeal to an Athenian court. With the feelings of the subject states, as described by [Xen.], it would be the leaders of the popular and philo-Athenian party who would be exposed to such serious attacks in the Chalcidian courts as would involve these penalties; and the Athenians were naturally anxious that those who were disposed to maintain their supremacy should not be deprived of their power to give effect to their wishes by losing their civic rights or by being put out of the way by banishment or death. By crushing, therefore, the rich and oligarchical in their own courts and by preventing the leaders of the popular party being treated in the same way in the Chalcidian courts, the Athenians take the most efficient means of keeping up their ascendancy; *τοὺς μὲν τοῦ δήμου σῴζουσι, τοὺς δὲ ἐναντίους ἀπολλύουσιν ἐν τοῖς δικαστηρίοις· εἰ δὲ οἴκοι εἶχον ἕκαστοι τὰς δίκας, ἅτε ἀχθόμενοι Ἀθηναίοις, τούτους ἂν σφῶν αὐτῶν ἀπώλλυσαν, οἵτινες φίλοι μάλιστα ἦσαν Ἀθηναίων τῷ δήμῳ.* It may probably be considered that the evident correspondence between the general statements of [Xen.] and the inferences legitimately drawn from the decree, is evidence enough that substantially the same relations subsisted between Athens and her subject allies in general as those that have been deduced. There is, however, one important respect in which the state of things disclosed by [Xen.] seems to differ from that contemplated in the decree. We have nothing hinted about appeal. The expression of the writer is quite general—*εἰ δὲ οἴκοι εἶχον ἕκαστοι τὰς δίκας*—and the natural implication of the words is that all serious suits were tried at Athens. The date of this treatise on the Athenian state cannot be fixed with exactness. Boeckh places it cir. B. C. 425. Now the Chalcidian decree is dated B. C. 445. We have, therefore, an interval of some twenty years during which the Athenian system of controlling their allies had been developing itself. Stahl suggests, with great probability, that by their mode of dealing with cases appealed to their courts the Athenians had brought it about that a larger and larger number of such suits were sent in the first instance to Athens for adjudication; so that it came gradually to be the rule that all cases involving serious penalties were sent directly to Athens; and thus, there being no longer practically any use made of the permission

to appeal, the writer of the tract may well have left it unmentioned. Stahl is careful, however, to admit the probability that the degree in which these regulations were carried out in practice would depend on various circumstances; and that in the case of the more distant allies or the more unimportant ones, the Athenians would be likely to content themselves with hearing such cases as might be sent to Athens on appeal, leaving the majority to be settled by the local courts. But whatever differences may have existed in practice, it is likely that all the tributary allies stood in substantially the same formal relation to the ruling city; for the tendency of things must have been that described by the Athenian speaker in Th. I 75, 3, where the motives are stated which led the Athenians to change their free ἡγεμονία into an ἀρχή. *ἐξ αὐτοῦ τοῦ ἔργου κατηναγκάσθημεν τὸ πρῶτον προαγαγεῖν αὐτὴν ἐς τόδε, μάλιστα μὲν ὑπὸ δέους, ἔπειτα δὲ καὶ τιμῆς, ὕστερον καὶ ὠφελείας.* We know from the case of Potidaea, described in the first book of Thucydides, that it was not necessary that a tribute-paying ally should have actually taken any steps towards asserting its complete independence to cause the Athenians to decide to reduce it to subjection. The fear that such attempt may be made is enough: the Athenians are said, in this case (I 56, 2), to have acted as they did *δείσαντες μὴ ἀποστῶσιν . . . τούς τε ἄλλους ἐπὶ Θρᾴκης ξυναποστήσωσι ξυμμάχους . . . βουλόμενοι προκαταλαμβάνειν τῶν πόλεων τὰς ἀποστάσεις.* And in the speech of the Mytilenaeans (III 11, 6), the speakers say that they had maintained their independence so far *ἀπὸ θεραπείας τοῦ τε κοινοῦ αὐτῶν καὶ τῶν ἀεὶ προεστώτων· οὐ μέντοι ἐπὶ πολύ γ' ἂν ἐδοκοῦμεν δυνηθῆναι, εἰ μὴ ὁ πόλεμος ὅδε κατέστη, παραδείγμασι χρώμενοι τοῖς ἐς τοὺς ἄλλους.*

We may now sum up the results that have been reached:

(1) Suits arising out of commercial dealings between Athenians and their allies, *ex contractu*, were decided *ἀπὸ συμβόλων* on terms of equitable reciprocity, more or less, and in the courts of the defendant's city.

(2) Suits arising *ex delictis* between *Athenians and allies*, were decided in Athenian courts.

(3) Suits arising *ex delictis* between citizens of an allied state were at first tried in the local courts, with the provision that there should be an appeal to Athens in case the sentence were death, exile, or *ἀτιμία*. Later, however, the more important of such cases were brought to Athens at once, and only the trivial matters decided in the local courts.

(4) Ordinary civil cases arising between citizens of an allied city were always decided at home.

We may recur now to our passage of Thucydides. Stahl, who, in his edition printed *ξυμβολαίαις*, now proposes to follow Cobet, N. L. p. 432, in reading *ξυμβολιμαίαις*, since Hesych. has the gloss *ξυμβολιμαίας δίκας· Ἀττικοὶ τὰς κατὰ σύμβολα.* His interpretation coincides in the main with that of Classen, with whom he agrees, particularly in separating *αὐτοῖς* from *ἡμῖν*. He takes the first *καί* as aiding the concessive force of the two participles which are connected by the second *καί*. He points out also that *παρ' ἡμῖν* in the second clause can have its proper meaning only if the cases spoken of in the first are *δίκαι ἀπὸ ξυμβόλων*, which we have seen would be tried in the courts of the defendant's city and not necessarily at Athens. The words may then be thus paraphrased: "for even though we exact less than our power would justify in cases decided under commercial treaties made with our allies, and though we have established for them trials in our own courts on the basis of impartial laws for us and them, we are thought to be litigious." In the latter clause the circumstances of the subject and tributary allies are evidently thought of; and in the former there is no reason why they should not be equally in view. For even if it be assumed that the Athenians would not negotiate a commercial treaty with a city already reduced to complete subordination, there is no reason to suppose that such treaties already existing would be abrogated when a state originally autonomous passed into the tributary condition, particularly if this came about, as it must in many, perhaps most cases, in the gradual and almost unconscious way described by Thuc. I 99, 3 and Plutarch Cim. 11. For we have seen that when Selymbria was restored to the alliance after revolt, its old *ξύμβολα* continued in force.

The way in which the jurisdiction of the Athenians was developed is well explained by Grote (VI[3] p. 61). It was, he says, an indispensable element of the Delian confederacy that the members should forego their right of private war and submit their differences to peaceable arbitration; and the synod of Delos was the natural court of appeal in all such questions. From the beginning the Athenians had been the guiding and enforcing presidents of the synod; and when it gradually died away, as it must have done as more and more of the contracting states subsided into the condition of tribute-paying allies, the Athenians were found occupying its place and fulfilling its functions. He argues, also, that these functions must have been productive of more good than evil to the subject allies themselves. In case one of the weaker states had a complaint against a larger

one, there was no channel, except the synod of Delos or the Athenian tribunal, through which it could have any reasonable assurance of fair trial and justice. When some of the states had passed into the tributary condition while others continued to act as independent members of the synod, no doubt Athens would act as the patron of a complaining tributary state and present its claims before the synod; while disputes arising between two tributary states would probably be decided by the Athenians themselves without reference to the general assembly. And the conclusions to which Grote comes as to the suits which would naturally come to be decided by Athenian tribunals agree very nearly with what we have been able to deduce from the Inscriptions. "It is not to be supposed," he says, "that all the private complaints and suits between citizen and citizen, in each respective subject town, were carried up for trial to Athens, yet we do not know distinctly how the line was drawn between matters carried up thither and matters tried at home. The subject cities appear to have been interdicted from the power of capital punishment, which could only be inflicted after previous trial and condemnation at Athens; so that the latter reserved to herself the cognizance of most of the grave crimes—or what may be called 'the higher justice' generally. And the political accusations preferred by citizen against citizen in any subject city, for alleged treason, corruption, non-fulfilment of public duty, etc., were, doubtless, carried to Athens for trial—perhaps the most important part of her jurisdiction."

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