THE PHASELIS DECREE

The Phaselis decree (*IG* I^2. 16+ = Meiggs–Lewis, No. 31 = *IG* I^3. 10) is our chief piece of evidence for the manner in which the Athenians regulated civil-suits arising between themselves and the allies in the mid-fifth century.[1] It reads as follows:[2]

[ἔδο]ξεν τῆι βολῆι καὶ τῶι δ[ή]-
[μωι, Ἀ]καμαντὶ[ς ἐ]πρυτάνευε,
[. . .] σιππος ἐγ[ραμ]μάτευεν, Ἐ-
[πιμ]ηδης ἐπεστάτει, Λέω[ν ϵ]ἶ-
[πε· τοῖ]ς Φασηλίταις τὸ ψ[ήφ]ι-
[σμα ἀν]αγράψαι· ὅ τι ἄμ μὲν Ἀθ-
[ήνησι ξ]υ[μβ]όλαιον γένηται
[πρὸς Φ]ασηλιτ[ῶ]ν τινα, Ἀθή[ν]η-
[σι τὰς δ]ίκας γίγνεσθαι παρ-
[ὰ τῶι πο]λεμάρχωι, καθάπερ Χ-
[ίοις, καὶ] ἄλλοθι μηδὲ ἀμῶ· τῶ-
[ν δὲ ἄλλω]ν ἀπὸ ξυμβολῶν κατ-
[ὰ τὰς ὅσας] ξυμβολὰς πρὸς Φα-
[σηλίτας] τ[ὰ]ς δίκας ἔναι· τὰς
[. . . 7 . . . .] το[ς] ἀφελῆν. ἐὰν δέ τ-
[ις ἄλλη τῶ]ν ἀρχῶν δέξηται δ-
[ίκην κατὰ] Φασηλίτων τινὸς
[. . . . 8 . . . . , ϵ]ἰ μὲν καταδικάσ-
[ει, ἡ καταδίκ]η ἄκ[υ]ρος ἔστω. ἐ-
[ὰν δέ τις παραβ]α[ἰν]ηι τὰ ἐψη-
[φισμένα, ὀφϵ]λϵ[τ]ω μυρίας δ[ρ]-
[αχμὰς ἱερ]ὰς τῆι Ἀθηναίαι· τ-
[ὸ δὲ ψήφισ]μα τό[δ]ϵ ἀναγραψά-
[τω ὁ γραμμ]ατεὺς ὁ τῆς βολῆς
[ἐστήληι λιθί]νηι καὶ καταθ-
[έτω ἐμ πόλει τ]έλεσι τοῖς τῶ
[ν Φασηλίτων.] *vacat*
vacat

[1] The decree is usually dated 469–450, though Mattingly, *PACA* 7 (1964), 38, has suggested that it was passed after 428/7, and Alan Henry, *The Prescripts of Athenian Decrees*, *Mnemosyne* Suppl. 49 (1977), p.4 n.13, objected to the early use of ephelkustic nu in line 3. This difficulty can be obviated by reading, with Wade-Gery, *Essays*, p.182, Νϵ ‖[. . .] δης instead of Ἐ ‖[πιμ] ηδης in lines 3 f. Wade-Gery, pp.182–5, followed by Meiggs and Lewis, p.68, argued that the decree was pre-Ephialtian, inferring from καταδικάσ ‖[ει (lines 18 f.) that Athenian archons were still responsible for verdicts. Sealey, *Essays in Greek Politics*, pp.49 f., denied the inference, citing Plato's use of the verb in *Laws* 958 B–C; A. R. W. Harrison, *The Law of Athens*, *Procedure*, p.38 with n.1, adduced other and more cogent parallels, most notably Ἀθπ. 57.4, which effectively undermine Wade-Gery's thesis. A mid-fifth century date, consistent with the letter-forms, is best.

[2] This text incorporates the improvements made in the version of Meiggs and Lewis by Bradeen and McGregor, *Studies in Fifth-Century Attic Epigraphy* (Norman, 1973), p.116.

It is certain, first of all, that this decree made a change in established procedure. The ξυμβολαί with the Phaselites (lines 13 f.) were altered by the stipulations contained in lines 6–11. Henceforth, if a legal dispute, ξυμβόλαιον,[1] arose at Athens, the Phaselites would argue their cases at Athens in the polemarch's court. The implication is that before this decree was passed the Phaselites were neither required to plead certain cases at Athens nor allowed to use the polemarch's court. G. E. M. de Ste. Croix,[2] however, took a different view. Emphasizing the beneficial aspects of the decree, especially the grant to the Phaselites of a privileged court,[3] he denied that the Athenians deprived the Phaselites of the use of their own courts for cases usually tried at Phaselis; he understood lines 6–11 to mean that the Phaselites were simply granted trial in the polemarch's court when the case would have been heard at Athens anyway. But more than one scholar has rejected this laboured interpretation;[4] it has been observed that the word Ἀθήνησι in lines 8–9 is meaningless unless it implies a shift in locale from Phaselis to Athens for the trial of at least some cases.

What were these cases? Ste. Croix, consistently with his view of the benignity of the Phaselis decree, concentrated almost exclusively upon suits involving a Phaselite plaintiff. But though this has the advantage of making the decree as favourable as possible, the difficulty is that a Phaselite plaintiff already was under the necessity of pleading his case at Athens, if not in the polemarch's court. Normal inter-state procedure, as Ste. Croix has made abundantly clear, was in the nature of things governed by the principle *actio sequitur forum rei.*[5] One could only prosecute in courts where the civil authority had the coercive power to execute judgments in one's favour. Just as a Phaselite required the authority of an Athenian court to enforce his claim against an Athenian defendant, so did a Phaselite need to be pursued to Phaselis if an Athenian wished to have a judgment executed against him. It follows from the emphasis placed on Ἀθήνησι, therefore, that the change contemplated by this decree concerned not the Phaselite plaintiff but the Phaselite defendant, and it would thus appear that, contrary to established procedures, he was now required to argue his case before an Athenian jury.

That this decree was indeed passed with reference to the Phaselite defendant, and to him alone, is demonstrable from the phraseology employed.[6] For although ὅ τι ἂμ μὲ[ν] Ἀθ|[ήνησι ξ[υ[μβ]όλαιον γένηται|[πρὸς Φ]ασηλιτ[ῶ]ν τινα has been understood to express nothing more than the participation of two people in a legal action without making any indication of their mutually exclusive legal positions, i.e. plaintiff and defendant, there is evidence to prove that the dative and πρός (with συμβόλαιον) conveyed precisely those distinctions. Thus, *IG* I^2. 116+ (= Meiggs–Lewis, No. 87 = *IG* I^3. 118), the Selymbrian

[1] See G. E. M. de Ste. Croix, *CQ* N. S. 11 (1961), 101–4. Cf. R. J. Hopper, *JHS* 63 (1943), 40, P. Gauthier, *Symbola* (Nancy, 1974), pp.160 f.

[2] Art cit. 94–112.

[3] We do not know the reason why the polemarch's court was more favourable than the thesmothetes'. Wade-Gery, *Essays*, p.188 n.2, inferred that a *prostates* might have been unnecessary in this court, Ste. Croix, art. cit. 101, that it was less busy and so speedier. Gauthier, p.186, supposes that previously the Phaselites had been subject to summary decisions reached by magistrates with police powers.

[4] R. Seager, *Historia* 15 (1966), 509, R. Meiggs, *Athenian Empire*, p.232.

[5] Cf. Meiggs, *Athenian Empire*, p.230.

[6] Gauthier, *Symbola*, p.186, drew the same conclusion from the use of καταδικάζειν in lines 18 f., appropriate only to a defendant's defeat in a suit.

decree of 407, contains the following sentence (lines 22–6), covering a whole spectrum of legal contingencies: ὅσα δὲ ἄ]λλα χσυμβόλαια προτῶ ἐν τοῖς ἰ|[διόταις πρ]ὸς ἰδιότας ἢ ἰδιώτει πρὸς τὸ κ|[οινὸν ἢ κο]ινῶι πρὸς ἰδιότεν ν̲ ἢ ἐάν τι ἄλλο γίγ|[νεται, δια]λύεμ π[ρ]ὸς ἀλλέλος· ὅ τι δ' ἀμφισβη|[τῶσι, δίκας] ἔναι ἀπὸ χσυμβολῶν. The use, back-to-back, of the phrases ἰδιότει πρὸς τὸ κ|[οινόν and κο]ινῶι πρὸς ἰδιότεν makes it indisputable that provision has been made for the two alternative types of legal suits that can arise between the state and a private person. In one of them the individual takes the state to court and in the other the state takes the individual to court. In this context, incidentally, it becomes possible to understand the otherwise baffling usage of Dionysius of Halicarnassus in *Ant. Rom.* 6.95.2. Speaking of a peace-treaty concluded between the Romans and the Latins, he gives one of its terms as follows: τῶν τ' ἰδιωτικῶν συμβολαίων αἱ κρίσεις ἐν ἡμέραις γιγνέσθωσαν δέκα, παρ' οἷς ἂν γένηται τὸ συμβόλαιον. Plainly, the use of the dative here, without further explanation, specifically identified either the plaintiff or the defendant and was not ambiguous in the least.[1]

Now that we know that the phrase under discussion 'technically' defines the status of each of the parties in a legal dispute, the question of determining the legal identities of the persons described in the dative case and with the preposition πρός becomes an easy one. For there can be no doubt that the dative was used of the plaintiff. Datives are more intimately connected with verbs like γίγνεσθαι or εἶναι than are attaching prepositions; πρός marks a friendly, hostile, or neutral connection depending on the nuance of the verb introducing it.[2] Since, therefore, as we know from the Selymbrian decree, it must be one or the other, the possessor of a συμβόλαιον, expressed in the dative, can only be the plaintiff; the object of his suit, expressed with πρός, must be the defendant.

Some confirmation of this conclusion (if it is necessary) can be found in the orators.[3] However, a more appropriate and cogent support is provided by *SIG* 286 (= Tod, No. 195). In this document, dated about 330 B.C., the Olbians guarantee the Milesians the following privilege (lines 14–17): ἐὰν δέ τι συμβό||λαιον ἢ <ι> τῶι Μιλησίωι ἐν Ὀλβίαι, ἰσχέτω δί|κην καὶ ὑπεχέτω ἐμ πένθ' ἡμέραις ἐπὶ | τοῦ δημοτικοῦ δικαστηρίου. That the Milesians are being regarded here as potential plaintiffs is certain: the decree envisages normal circumstances, *forum rei*; were a Milesian under prosecution he would need to be sued at Miletus. To put it another way, it would have been a topsy-turvy world if, on the contrary, these two cities, operating on the principle of reciprocity,[4] ordained that an Olbian defendant was required to travel to Miletus in order to be prosecuted and a Milesian needed to journey to Olbia for the same reason.

To return to the Phaselis decree: just as we may supplement the sentence in *SIG* 286 by naming the defendant with the words πρὸς Ὀλβιοπολίτην τινά, so may we add Ἀθηναίῳ to line 7 of this decree to make explicit the identity of the plaintiff. Not that this supplement is necessary: as I trust is clear,

[1] Dionysius probably is referring here to an instance of *forum contractus*, not *forum rei*. However, the linguistic point of material importance is that the dative with συμβόλαιον adequately and incontestably identifies only one of the two parties involved.

[2] See, e.g., Kühner–Gerth, *Ausführliche Grammatik*, i. 518 f.

[3] See Lysias 3.26, [Dem.] 32.2, 35.32; for a good example with ἔγκλημα, see Dem. 5.14.

[4] See Tod, p.271.

designation of one of the actors in a legal dispute obviated the need for any mention of the other. It follows, then, that the sole object of this decree was to shift the locale in which Phaselites defended themselves against Athenians. Until it was passed, therefore, Phaselites either defended themselves in their own courts at Phaselis or, having already been required to plead such cases at Athens, were wont to use the court of the thesmothetes. In either case, whether directly or by one remove, the Athenians transferred jurisdiction from Phaselis to Athens. Contrary to established principle, therefore, Athenian judgments at law had become authoritative for the city-state of Phaselis either by the time of this decree or at some earlier point.[1]

But Athens' treatment of Phaselis was not unique. Lines 10 f. indicate that the Athenian arrangement with Phaselis followed a pattern already made for Chios. The Chians must already have similarly been compelled to undergo prosecution at Athens, albeit in the court of the polemarch. Since Chios enjoyed a special status within the empire, we may consequently infer that the Athenians had imposed this limitative rule on all the cities of the empire, precisely as one of the two possible renderings of Thucydides 1.77.1 suggests.[2] And, in this context, we can see how the favourable tone of the Phaselis decree should be understood. Unlike the majority of the allies, and like 'autonomous' Chios, Phaselis was granted a significant benefit none the less real because it presupposed a detriment universally shared; benefits are relative, not absolute. But for all that, the Phaselis decree remains proof, as Wade-Gery inferred,[3] of Athenian 'judicial hegemony'. For however charitably we explain this Athenian decision to transfer the trials of alien defendants to Athens,[4] the decision itself represents a radical alteration in normal procedure which only the Athenian ἀρχή could have managed.

Brown University CHARLES W. FORNARA

[1] The use of Aθ|[ήνησι in lines 6 f. seems to favour the second alternative. 'Whatever cause of action arises at Athens with a Phaselite as a defendant' is a statement implying that Phaselites were already required to use Athenian courts when under legal attack. On the other hand, it is just possible that the author of the decree used the locative 'at Athens' in the place of Ἀθηναίῳ τινί because he was specifically thinking of the Athenians domiciled at Athens whom the decree was intended to convenience. Certainly the bulk of Athenian-Phaselite trade was conducted at Athens and the ἐγκλήματα would predictably arise there.

[2] καὶ ἐλασσούμενοι γὰρ ἐν ταῖς ξυμβολαίαις δίκαις καὶ παρ' ἡμῖν αὐτοῖς ἐν τοῖς ὁμοίοις νόμοις ποιήσαντες τὰς κρίσεις φιλοδικεῖν δοκοῦμεν. See Meiggs, *Athenian Empire*, p.229, for recent discussion of the question whether the first participle is causal and subordinate to the second or both are coordinate. The preference of some scholars for the second alternative, Meiggs included, hinges on the belief that the Athenians were responsible for no such transferral of judicial venue. Now, however, there is every reason to prefer the first: the Athenians brought such trials to Athens *because* they were unfairly treated as prosecutors in foreign law-courts.

[3] *Essays*, pp.180–200.

[4] It must be kept in mind, of course, that Athens allowed other ξυμβολαί to go on as before (lines 11–14 of the Phaselis decree). These will have included, presumably, the right of the allies to ensure that Athenians observed local laws governing imposts, taxes, property-ownership, civil order, piracy, etc.