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Power and Opposition in the Ancient Near Eastern and
Mediterranean World

edited by Mait Kõiv and Vladimir Sazonov

Table of Contents

Power and Opposition in the Ancient Near Eastern and Mediterranean World

Mait KÕIV, Vladimir SAZONOV, Introduction	7
Walter SOMMERFELD, Sumerischer Widerstand gegen semitische Herrschaft. Migration, Machtkämpfe und Demographie im 3. Jahrtausend v. Chr.	11
Giulia TUCCI, Religious Syncretism and Control Over the Territory: Pharaohs in Southern Levant During the Late Bronze Age	41
Andres NÕMMIK, Egyptian Control in the Southern Levant and the Late Bronze Age Crisis	55
Vladimir SHELESTIN, Old Hittite Opposition in the Religious Aspect	83
Vladimir SAZONOV, Mait KÕIV, Justification of the Usurpation of Power by Hittite Kings	93
Siim MÕTTUS, Some Observations About Succession Principles in the Hittite New Kingdom	109
Lynette G. MITCHELL, The Politics of Power: The Rise and Fall of the Deinomenid Dynasty in Fifth-century Sicily .	123
Luca MACALE, «Like an unseen god» (Ctesias F1b §21, 7 Lenfant): The Unapproachability of the Near Eastern Kings in Greek Sources as Tool of Power	143

Priit-Hendrik KALDMA, The Tyranny of the Peisistratidai in Athens: Expenses, Revenues and the Opposition to the Sole Rule	157
Mait KÕIV, Monarchy in the Iron Age Levant and Archaic Greece: the Rulers of Corinth in a Comparative Context	179
Eleni TZOVLA, Compliance and Endurance. The Athenian Power Building through the Melian Dialogue	233
Salvatore TUFANO, Show Trials and The Opposition to Pelopidas and Epameinondas	245

Show Trials and The Opposition to Pelopidas and Epameinondas

Salvatore TUFANO*

Abstract. *The paper suggests that there are traces of political opposition in Thebes during the years of its hegemony in Greece (371-362 BCE). The analysis of a trial against Epameinondas in 369 BCE, signals this event as a political trial. Other episodes during these years demonstrate that this and other trials can be considered as examples of Schauprozeß, as lately theorized by Koskenniemi. In a system where political opposition was restrained by the lack of institutional provisos, the trials were used to attack opponents, using legal means for achieving political ends.*

Rezumat. Articolul de față sugerează faptul că pot fi identificate anumite amprente ale unor confruntări de ordin politic în Theba pe parcursul hegemoniei sale asupra Greciei (371-362 î.Hr.). Analizarea procesului împotriva lui Epaminondas din 369 î.Hr. scoate în evidență caracterul politic al acestuia. Alte episoade identificate pe parcursul acelor ani demonstrează că, pe lângă cel al lui Epaminondas, și alte procese reprezintă exemple de Schauprozeß, conform teoretizării lui Koskenniemi. Într-un sistem în care opoziția era descurajată de lipsa unor posibilități instituționale, procesele erau folosite pentru atacarea unor adversari, utilizând mijloace legale pentru îndeplinirea unor obiective politice.

Keywords: Epameinondas, Pelopidas, Thebes, Schauprozeß, Opposition.

Introduction: A Troubled Political Climate

Political opposition was a frequent phenomenon in classical Thebes. Yet, this process is not too easy to isolate, throughout the history of this city and of the league to which it variously belonged.¹ One will find a convenient starting point in a later observation, in the treatise *On the Cities of Greece*, written by Herakleides Kritikos in the Second Century BCE (16-7). The author claims that the Thebans use any excuse to kill each other (16),² and he lingers on the internal violence which characterizes the daily life of the city in the Hellenistic period. This view of a perennial internal strife draws on a long tradition, which was also applied to the Boiotian population as a whole. This is not the place to comment on the internal

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¹ The most recent and comprehensive surveys of the history of the city are DEMAND 2015, ROCKWELL 2017 and CARTLEDGE 2020.

² The chapters of Herakleides might reflect the conflicts following the redistribution of lands, after the reconstruction of Thebes in 316 BC: ARENZ 2006, 150-1.

subdivisions of the Boiotian cities during the Persian Wars³ but it is reasonable to claim that, already around the mid-5th century BCE, the tradition of Boiotia as a landscape of internal divisions was well established.

Pericles, for instance, claimed that the Boiotians could be compared «to holm-oaks, because they were ruining one another by civil wars just as one oak causes another oak's fall».⁴ Another example of this perception comes from a Theban himself. In his exhortation to the Boiotian soldiers who were about to fight the Athenians at Delion (424 BCE), the Theban boiotarch Pagondas warned against the dangers of a non-united stand to the enemies. In the past the Athenians «had gained control of our land as a result of our internal dissension».⁵ This ancient *stasis* dated by the speaker to 457 BCE cannot be a commonplace argument, since the existence of a regional structure in the first half of the 5th century BCE in Boiotia is now accepted.⁶ These two references imply that it was often taken for granted that the Boiotians could disagree among themselves.

Furthermore, there was a specific episode which was used to exemplify how, in Thebes itself, there was not a compact reaction to moments of political stress. From an early stage, some members of the Theban elite tried to detach themselves from the pan-hellenic view of Thebes as an inherently pro-Persian city. Herodotus is the first source on these internal debates, as he implies that, after the battle of Plataia, the Greeks put under siege Thebes and asked for «those among them who had medized», which must imply an internal subdivision and that there were Thebans who had *not* medized.⁷ Another prominent Theban politician, Timagenidas, confirms this conflicted climate, when he declares that «we have medized not alone, but recurring to the common treasure».⁸

³ Hdt. 7.132: «The following Greek peoples gave the king earth and water: the Thessalians, Dolopians, Enienians, Perrhaebians, Locrians, Magnesians, Malians, Achaeans of Phthiotis, and, led by the Thebans, the rest of the Boeotians except the Thespians and Plataeans» (tr. R. WATERFIELD). On the internal subdivision of the Boiotians, see VANNICELLI 2017, 449-50.

⁴ Ar. *Rhet.* 3.4.1407a, tr. W. RHYS ROBERTS. Aristoteles recalls this simile in the chapter on the similes in the third book of his *Rhetorics*, but does not specify where this passage originally occurred. He does not systematically offer the context for the other quotes of the speeches of Pericles: *Rhet.* 1.17.1365a; 3.10.1411a; 3.19.1419a.

⁵ Thuc. 4.92.6, tr. M. HAMMOND. Cp. Thuc. 3.62.5, with HORNBLLOWER 1996, 295-6 and ALLISON 2011.

⁶ See BECK – GANTER 2015 and SCHACHTER 2016, with previous scholarship. Rhetorical strategy by Pagondas: GOMME 1956b, *ad loc.*; HORNBLLOWER 1996, *ad loc.*; TUFANO 2021. Internal dissensions in the poleis, but not in the federation: GEHRKE 1985, 166 n.16.

⁷ Quote: Hdt. 9.86.1. Innocence of the children of Attaginus: Hdt. 9.88. See ASHERI in ASHERI – VANNICELLI 2006, 296-7 and STEINBOCK 2013, 318 on this ritual norm.

⁸ Hdt. 9.87.1. On the recurrence of the topos in Thebes, see HIGNETT 1963, 23-4; BUCK 1979, 135; FLOWER – MARINCOLA 2008, *ad loc.*; on the ambiguity of the sentence, see MACKIL 2013, 31. For the view that this reading of the political constitution of the time is moulded on the contraposition oligarchy/democracy, see OSTWALD 2000, 21-6 and ASHERI in ASHERI – VANNICELLI 2006, 296 (one should also consider the oligarchic elements of the constitution of the post-447 Boiotian koinon: see SIMONTON 2017, 200-4). Our understanding of these passages is also based on

This perspective may offer a different light on a discussed argument used by the Thebans against the Plataians in the debate of 427 BCE reported by Thucydides. To deny their past alignment with the Persians, the Thebans assert that they were governed, then, by a *dynasteia* which had imposed their will on the whole city.⁹ In light of the picture provided by Herodotus, the cursory remark deserves attention, since it offers further proof of this divided memory, which betrays a likely internal opposition to the pro-Persian faction. Later sources confirm this contraposition between the will of a few and the opposition of the many in Thebes in 480 BCE.

The picture of this internal opposition assigned by Thucydides to the Thebans resurfaces in Diodorus (11.4.7), who draws on Thucydides and on Ephorus, a good reader of Boiotian sources. In the second century CE, both Plutarch (*Arist.* 18.7) and Pausanias (9.6.2) know this tradition: the version of Pausanias has a further detail on the internal politics. He claims that «at that time an oligarchy was in power at Thebes, and not their ancestral form of government».¹⁰

The use of the memory of this internal conflict has been investigated elsewhere, with a special eye to the Athenian perception;¹¹ here, we would like to draw on its value as a clue to the early existence, in Thebes, of a lively climate of political opposition. In this paper, I concentrate instead on a specific later episode that represents an important manifestation of this internal opposition, in Thebes. The episode, a trial, occurred in 369 BCE, therefore under a different political climate, since in no way can we compare the *koinon* of the fourth century BCE (379/8 - 338) to the primordial stage of the classical period; however, I argue here that the trial of Pelopidas and Epameinondas offers an intriguing contribution to the implications at a federal level of what was, at first sight, a civic conflict among aristocrats.

A Political Trial

The first Peloponnesian campaign of Thebes (winter 370/69 BCE) was a success: not only did the Thebans provide help to the Arcadians, but they also launched a direct attack against

the awareness of the richness of the local tradition which arose in Thebes on the Persian Wars: see e.g. TUFANO 2019a, 249-59.

⁹ *Dynasteia*: Thuc. 3.62.3.

¹⁰ Tr. W. H. S. JONES. The allusion to the *patrios politeia*, whatever the sources of Pausanias for the history of Thebes are, draws us back to an oligarchic, aristocratic view. It remains unclear, however, what this ancestral government was. The suggestion that it entails an oligarchic perception is based on the Athenian use of the label, which was however multifaceted: SHEAR 2011.

¹¹ STEINBOCK 2013, 118 and 149-54.

Lakonia, at the urging of their Peloponnesian allies.¹² The decision to extend the goals of this mission to the area around Sparta had not been explicit from the outset; yet, any support to its enemies must have implied the possibility. This extension could not, on its own, look as an improper violation of the mandate that the army had received in Thebes.

In these years, foreign policy was in the hands of the federal assembly, which took place in Thebes: «external affairs were [...] formally the responsibility of the federation».¹³ A pivotal part was also played by the seven boiotarchs elected every year: as exemplified by a discussion that took place before the battle of Leuktra,¹⁴ on the battleground the single votes of the boiotarchs could decide something more than the military line of action. More in general, the military and the civil powers of the boiotarchs were often expressed in their management of alliances and treaties: in receiving the embassies and in referring to the assembly, the boiotarchs of these years prosecuted a tradition of administration of the foreign policy which constantly characterizes the history of boiotarchy in Boiotia.¹⁵ There were no significant additional institutional bodies: the eponymous archon is not known to have exerted real political tasks.¹⁶

On the return of the boiotarchs from the Peloponnesus, they were tried in Thebes for the violation of a law concerning the span of their task. The sources on this so-called ‘first trial’ of Epameinondas and Pelopidas, since there probably was a second one, actually concerned a decision which was taken in the Peloponnesus in the previous campaign.¹⁷ None of these sources is a historiographical text, which is a first limit to our understanding; secondly, they diverge on a number of relevant details. For this second reason, H. Beister aligned them in two subgroups, suggesting that a series of them offer the original version of the events, as it was probably transmitted in the 4th Century BCE, whereas others would preserve a fictionalized derivation of that core.¹⁸ Before commenting on this suggestion, the interpretation of the trial demands a brief summary of the relevant sources in chronological order.

¹² So ROY 1994, 190-1. Ancient sources: Xen. *Hell.* 6.5.25-32; Diod. 15.63.3-65.5; Paus. 9.14.4-7; Plut. *Ages.* 31-2. Discussion of the campaign: WISEMAN 1969; BUCKLER 1980, 135-42; ROY 1994, 189-94; MUNN 1997, 87-90; CARTLEDGE 2002, 253-5; HORNBLOWER 2011, 254-6.

¹³ Rhodes 2017, 61.

¹⁴ Paus. 9.13.6-7, with SALMON 1995, 376. A similar disagreement occurred before the battle of Delion in 424 BCE: the Theban boiotarch Pagondas had to persuade the other ten boiotarchs to attack (Thuc. 4.91-2; see ROESCH 1965, 98 and TUFANO 2021, 426-7).

¹⁵ For this diachronical approach to their functions, see SALMON 1995, 376-8.

¹⁶ On this eponymous archon, see SALMON 1995, 369-70.

¹⁷ The main treatment of this trial is still BEISTER 1970, 75-105, with a rich discussion of the previous scholarship. Later discussions include BUCKLER 1978 and 1980, 135-42.

¹⁸ BEISTER 1970, 85-97.

The first witness, Cicero,¹⁹ recalls in his *On Invention* that Epameinondas was at the time the sole general in command (*imperator*) and that he did not pass the army to his successor (*praetor*) who had been nominated *ex lege*: Epameinondas thus remained in office for a few days beyond the due time and was sequently prosecuted.²⁰ The reported speech concentrates on a rhetorical strategy allegedly used by Epameinondas, not mentioned by the other sources: one ought not always expect that the law literally authorizes such exceptions as the extension of the office, if this is done for the sake of the public interest. Most of the relevant chapters in Cicero, from the imprecise lexicon to the formalistic speech, show both the use of rhetorical texts and a deliberate alteration;²¹ the focus of the violation is on the extension of the office.

A few years later, Cornelius Nepos claims, in the *Life of Epameinondas* (7.3-8.5), that in 369 BCE Epameinondas was one of the three main generals, including Pelopidas, who had led the army in the Peloponnesus. Their successors came there, because, *criminibus adversariorum* (7.3), the men had raised hostilities in their fatherland (*invidiam*): a public vote had been obtained to remove the men from their leadership.²² In the words of Nepos, the legal grounds for this turnover was a law, which condemned to death those who would stay in power beyond the legal terms.²³ Epameinondas argued instead that they would stay to finish the war they had started: the law had been created to save the state (*rei publicae conservandae*) and, for this same reason, it could not be noxious to the public interest. Nepos is the most detailed source on this speech delivered by Epameinondas to his colleagues on the spot; however concise, the words of Epameinondas confirm the current interpretation of the law which demanded the boiotarchs to end their mandate at a certain point of the year, because this was linked to the mandatory declaration of their expenses and service.

¹⁹ Cic. *Inv.* 1.55-6.

²⁰ Cic. *Inv.* 1.55: *in hac causa, quae apud Graecos est pervagata, cum Epaminondas, Thebanorum imperator, quod ei, qui sibi ex lege praetor successerat, exercitum non tradidit et, cum paucos ipse dies contra legem exercitum tenuisset, Lacedaemonios funditus vicit* (tr. C. D. YONGE: «[i]n this cause which is very notorious among the Greeks, that of Epaminondas, the general of the Thebans, who did not give up his army to the magistrate who succeeded him in due course of law; and when he himself had retained his army a few days contrary to law, he utterly defeated the Lacedaemonians»).

²¹ «A model case in the schools for argumentation» (PRITCHETT 1974, 17).

²² Nep. *Ep.* 7.3: *maxime autem fuit illustre, cum in Peloponnesum exercitum duxisset adversus Lacedaemonios haberetque collegas duos, quorum alter erat Pelopidas, vir fortis ac strenuus. Ei cum criminibus adversariorum omnes in invidiam venissent ob eamque rem imperium iis esset abrogatum atque in eorum locum alii praetores successissent, Epaminondas populi scito non paruit* (tr. J. SELBY WATSON: «But the most remarkable instance was, when he had led an army into the Peloponnesus against the Lacedaemonians, and had two joined in command with him, of whom one was Pelopidas, a man of valour and activity; on this occasion, when, through the accusations of their enemies, they had all fallen under the displeasure of their countrymen, and their commission was in consequence taken from them, and other commanders came to take their place, Epaminondas did not obey the order of the people»).

²³ Nep. *Ep.* 7.5: *lex erat Thebis, quae morte multabat si quis imperium diutius retinisset quam legis praefinitum foret.*

In the narrative of Nepos, on their return to Thebes after four months, Epameinondas persuaded his colleagues to argue that he had forced them to disobey the law and this strategy led to their acquittal (*Ep.*7.4). Epameinondas himself said to the judges, as the final speaker, that he had willingly disobeyed the law and accepted the consequences, on one caveat: the judges should write, on his future epitaph, all the merits and the deeds performed by the man for his fatherland, ever since the battle of Leuktra.²⁴ The judges laughed at this suggestion and acquitted him. Despite its exaggeration, this apology entails what may actually look like a list of the tasks performed by Epameinondas as a boiotarch, as any boiotarch should have done before the beginning of the new year (he had performed this duty also in 371/0, the year of Leuktra). One then begins to wonder whether the progressive and various rhetorical use of this material did not modify the original traces of a less dramatic confrontation.²⁵

After Nepos, the next source in chronological order is Plutarch. We lack, unfortunately, his *Life of Epameinondas*;²⁶ yet, it is possible that the differences between the representation of the event in the extant *Life of Pelopidas* and in the *Moralia* stem from the joint use of the two biographies. In the *Life of Pelopidas* (24.1-25.2), the boiotarchs in charge are more than three (unlike in Nepos), since there are ‘others’ apart from Pelopidas and Epameinondas:²⁷ still in the Peloponnesus, these colleagues remind the two of the law which demands the alternation in power, to little use. Epameinondas, in fact, succeeds in arguing for a permanence – here, too, of four months, as in Nepos –, and the men stay to invade Lakonia. Significantly, the sole fame of the two leaders persuades the Greek allies in their army, without an official vote:²⁸ this is the sole instance where we learn of the possibility of a legal extension. Perhaps, if we cautiously recall the *populi scito* which, in Cornelius Nepos (*Ep.* 7.3), had been communicated to Epameinondas, the institutions had a communication strategy to authorize an extension,

²⁴ Nep. *Ep.* 8.2-3, tr. J. SELBY WATSON: «[T]hat they would inscribe in their judicial record of the [sentence passed upon him, “Epaminondas was punished by the Thebans with death, because he obliged them to overthrow the Lacedaemonians at Leuctra, whom, before he was general, none of the Boeotians durst look upon in the field, and because he not only, by one battle, rescued Thebes from destruction, but also secured liberty for all Greece, and brought the power of both people to such a condition, that the Thebans attacked Sparta, and the Lacedaemonians were content if they could save their lives; nor did he cease to prosecute the war, till, after settling Messene, he shut up Sparta with a close siege”».

²⁵ For the reading that Epameinondas’ speech would be an example of account-giving, see BEISTER 1970, 102 and LURAGHI 2008, 220.

²⁶ On the relationship between this lost biography and Pausanias, see FRAKES 2017 and TUPLIN 1984, whose skepticism is here endorsed.

²⁷ Plut. *Pel.* 24.1: εἰς μέντοι Πελοπόννησον ἀμφότεροι βοιωτάρχοντες; 24.3: οἱ δ’ ἄλλοι βοιωτάρχαι.

²⁸ Plut. *Pel.* 24.5: ἀλλ’ ἡ δόξα τῶν ἀνδρῶν ἄνευ δόγματος κοινοῦ καὶ ψηφίσματος ἐποίει τοὺς συμμάχους ἔπειθαι σιωπῇ πάντας ἡγουμένους ἐκείνοις (tr. B. PERRIN: «[b]ut the reputation of the two men, without a general vote or decree, induced all the allies to follow their leadership without a murmur») See *infra* on the detail of the *dogma*.

or to publicly remind the existence of the law. In both cases, the enmity raised in Nepos by the adversaries (*invidiam*) remains exceptional and an ‘unnecessary’ detail, in contrast with the version of Plutarch, and thus retains particular relevance if it lay behind the call to the fatherland.

We thus gather the impression that the trial may not have been a formalistic application of a law. The same *invidia* of Nepos (*Ep.* 7.3) returns in the *politikos kai syggenes phthonos* which prompted, in Plutarch’s view (*Pel.* 25.1), the trial when the men returned to Thebes. Despite the previous narrative that Epameinondas had to persuade his colleagues (Pelopidas had voted for him)²⁹ to stay in the Peloponnesus, leading to a collegial responsibility, only Pelopidas and Epaminondas are isolated, summoned to the court, and acquitted. The biographical genre may distort the line of the events, but it is likely that only some of the boiotarchs on the field were actual leaders of the army. From this point of view, Appian’s later note on the reciprocal assignment of a part of the army may not only depend on his Roman reading of the events, as if the two men were two consuls.³⁰ Pelopidas was acquitted before Epameinondas, who proved great virtues in his speech, not recalled by Plutarch in the *Life of Pelopidas*.

The topic of Epameinondas’ virtues resurfaces, with more details on the speech, in the passages of the *Moralia* on the trial.³¹ These passages confirm that the army stayed for four additional months and that Epameinondas used his own merits to prove that his decision had been right for Thebes. In the list of achievements recorded in the *Sayings of Kings and Commanders* (194B),³² in particular, there is an interesting parallel with the merits recorded by Nepos, including the building of Messene, without the inclusion of Leuktra. Despite the mandatory prudence on the chronological grounds, this anecdotal perspective isolates the achievements of just one year, 370/69, and confirms the aforementioned strategy that Epameinondas used his defence speech to finally deliver his yearly account as a boiotarch.

²⁹ Plut. *Pel.* 24.2: Πελοπίδας δὲ πρῶτος Ἐπαμεινώνδα γενόμενος σύμψηφος. This note on the vote may depend on the emphasis on the role of Pelopidas by Plutarch (BEISTER 1970, 81 n.3), who may have derived this stress from his source Callisthenes (SORDI 1989, 128-30 = 2002, 485-7, also in favour of a date of the campaign in 371/0 BCE). Indeed, it is noteworthy that we lack any other name for the other boiotarch(s) on the spot.

³⁰ App. *Syr.* 213: στρατὸν ἑκάστω δόντες.

³¹ Plut. *Mor.* 194A-B; 540D-E; 817F.

³² Plut. *Mor.* 194B: εἰ δὲ δεῖ τι πάντως εἰπεῖν πρὸς τοὺς δικαστάς, ἀξιοῦν, ἂν ἀποκτείνωσιν αὐτόν, ἐπιγράψαι τῇ στήλῃ τὴν καταδικήν, ὅπως οἱ Ἕλληνες εἰδῶσιν ὅτι μὴ βουλομῆ ἐννοῦς Θηβαίους Ἐπαμεινώνδας ἠνάγκασε, τὴν Λακωνικὴν πυρπολῆσαι, πεντακοσίοις ἑνιαυτοῖς δῆλωτον οὖσαν οἰκίσαι δὲ Μεσσηνίην δι’ ἐτῶν τριάκοντα καὶ διακοσίων· συντάξαι δὲ καὶ συναγαγεῖν εἰς ταῦτον Ἀρκάδας ἀποδοῦναι δὲ τοῖς Ἕλλησι τὴν αὐτονομίαν. ταῦτα γὰρ ἐπράχθη κατ’ ἐκείνην τὴν στρατείαν (tr. W. GOODWIN: «if any thing at all were to be answered to the judges, he entreated them, if they put him to death, to write his fault upon his monument, that the Greeks might know that Epaminondas compelled the Thebans against their will to plunder and fire Laconia, which in five hundred years before had never suffered the like, - to build Messene two hundred»).

Both the extant *Life* by Plutarch and the relevant passages in the *Moralia* convey an exaltation of the role of Epameinondas in these events, which is absent in Pausanias. This point and further arguments invite us to reconsider carefully the old view that Pausanias drew on the lost *Life of Epameinondas*.³³ In Pausanias (9.14.5-7), Epameinondas chooses to stay *despite* the law; there is not the common rhetorical strategy that violating it is for a good scope: «Epameinondas, disregarding the law as out of date (οὐκ ὄντα ἐν καιρῶ), remained in office».³⁴ Instead, the general claims that it is an outdated custom and he only decides to return, apparently over an unclear disagreement concerning the behaviour of his own army around Sparta.³⁵ Epameinondas alone stands in front of the jury and is acquitted. This is described as an obvious decision, clearly in light of the achievements of the man, and all we can infer is that, as in the *Life of Pelopidas* and in Cicero, the isolation of one's defence may depend on his leading position in the army.

The version of Appian in the *Syrian Wars* (212-8) is not a proper historical description of the event, as the comparison of the trial with that of Scipio the Elder may suggest that he is drawing on a rhetorical source. There is also the possibility that Appian drew on Cornelius Nepos. However, there are some relevant differences between the two authors which suggest they were probably offering different versions of the same sources.³⁶ In Appian, Epameinondas and his two colleagues are summoned back for the weight of the *diabole* against Epameinondas (213: ἐπὶ διαβολῇ μετεκάλου). Nonetheless, they choose to stay for another six months (not four, as everywhere else) and thus attack the Lacedemonian garrisons and help the Arcadians. In this version, there is no mention of the attack against Lakonia, which reappears only in the defence speech of Epameinondas.

This man speaks after the pitious and long speeches of the other two, which are not recorded.³⁷ Appian seems aware of the personal vein of the trial. The list of the achievements in the speech is the same as in Nepos's version, but this time the jurors do not laugh and, conscious of the merits of the man, acquit him without even voting and escape.³⁸ This final detail is in line with the concise note by Pausanias on the absence of a vote procedure. The absence of the laugh is significant, because another author is also silent on this. Aelian almost

³³ This view can be contrasted from two points of view: on one side, the contrast between Plutarch's surviving texts and Pausanias speaks against a likely derivative origin (TUPLIN 1984); on the other side, the complex range of the sources underlying Pausanias' Boiotian book can hardly be reduced to few and contemporary sources (see, with previous scholarship, GARTLAND 2017).

³⁴ Paus. 9.14.5, tr. W. H. S. JONES.

³⁵ Paus. 9.14.6: ἐν τούτῳ δὲ οἱ τῶν Θηβαίων σύμμαχοι κατέτρεχον διασκευασθέντες χώραν τὴν Λακωνικὴν καὶ ἥραζον τὰ ἐξ αὐτῆς τοῦτο Ἐπαμεινώνδα παρέστησεν ὀπίσω Θηβαίους ἐς Βοιωτίαν ἀπαγαγεῖν.

³⁶ BEISTER 1970, 94-6; BUCKLER 1978, 40.

³⁷ App. Syr. 215: οἴκτω τε χρώμενοι καὶ λόγοις πλείοις καὶ τὴν αἰτίαν ἐς τὸν Ἐπαμεινώνδα ἀναφέροντες.

³⁸ App. Syr. 218: ἐξέδραμον ἐκ τοῦ δικαστήριου.

literally quotes Plutarch from the *Sayings* in his *Varia Historia* (13.42), where he does not comment on the reaction. Despite some attempts at understanding it, it is really left apparently to the sensitivity of the single source whether the paradoxical reply by Epameinondas deserves laughter or serious praise.

To sum up the picture which emerges from the sources, I suggest the following scenario. Epameinondas, Pelopidas and possibly one or two boiotarchs had been dispatched to the Peloponnesus. None of our sources claims that all the seven boiotarchs had been sent: the total number had been seven on the battlefield at Leuktra,³⁹ also thanks to the proximity to Thebes, but it may have looked dangerous to send all the leaders abroad at the same time. Moreover, what we know from the later events suggests that, preferably, the boiotarchs performed tasks in different areas: Pelopidas seems to have been seen, especially afterwards, as a 'King in the North'.⁴⁰ It is therefore likely that a number between four and three boiotarchs remained in Thebes. Since this was the first big mission abroad on behalf of the relatively newborn Boiotian league, the events were to prove the difficulties deriving from a miscalculation in the months spent abroad: Plutarch recalls that, apart from the fear of the law, the other boiotarchs wanted to come back τὸν χεῖμωνα φεύγοντες (Plut. *Pel.* 24.2).

The attack on Sparta may have actually been decided on the spot, but it will hardly have been the real allegation against the men: however risky, a mission in support of the enemies of Sparta could have been a possible future prospect of the campaign from the beginning. Perhaps time management was indeed the issue, despite Epameinondas' claims, in all the sources, that it was the 'good for Thebes' and the military mandate. The necessity to be in Thebes at the end of the Boiotian year was probably introduced to present the accounts of the tasks performed: the capital sanction confirms what we perceive as a pivotal importance for the whole federation. As stated before, this was still a relatively new political creation: the conventional date of 379 BCE for the institution of the *koinon* after the liberation of Thebes actually implied that it must have taken years to introduce a series of new institutions and laws.

We know that Epameinondas, Pelopidas, and the other unknown boiotarch(s) were supposed in any case to be in Thebes before the winter solstice. What remains unclear is whether the new appointed boiotarchs actually reached the men in the Peloponnesus, to remind them of this necessity, or whether they remained in Thebes. Both Plutarch and Cornelius Nepos highlight that, had there been a public authorization, the decision to stay would have looked less controversial.⁴¹ In the current state, the *doxa* of the men (Plutarch)

³⁹ Paus. 9.13.6. BUCKLER 1980, 138-9 posits that there were seven boiotarchs.

⁴⁰ See shorty, on the Northern ventures of the Thebans in the early 360s, HORNBLLOWER 2011, 256-60.

⁴¹ Plut. *Pel.* 24.3: ἄνευ δόγματος κοινοῦ καὶ ψηφίσματος; Nep. *Ep.* 7.3: *ei cum omnibus adversariorum omnes in invidiam venissent ob eamque rem imperium iis esset abrogatum*. The second passage is linked to the problem whether the new

and their awareness that the law had not been thought for such a *kairos* (Pausanias) could persuade the army to stay. However, their enemies in Thebes did not agree with this extension, which arrived after a series of events that had been extremely successful for the army led by Epameinondas and Pelopidas. In the first place, it is likely that the appointees themselves had not been aware of the possibility to stay longer abroad, since all the previous military campaigns of the Boiotians had never required more time than the campaigning season.⁴²

It is then almost certain that the decision to stay was a clear violation of the law. Despite the pending punishment, the boiotarchs stayed in the Peloponnesus: only Cicero, who is not interested in these minor details, dares suggest that this extension was a minor one (*paucis diebus*). It is reasonable to claim that four months, spent in victorious commitments, were spent by the army in the Peloponnesus. The commanders were aware of the pending trial and its indictment does not raise suspicions; a further perspective derives, nonetheless, from the inclusion of the motif of the envy and of the hatred, behind the trial.

The same motif is attested for what was the 'so-called' second trial, recorded by Diodorus (15.72.1-2): after the second Peloponnesian campaign, Epameinondas was tried for having allegedly favoured the Spartans, by granting a truce in a difficult moment. Notwithstanding the ambivalence of this accusation, even on this occasion οἱ φθονοῦντες αὐτοῦ took the chance to charge him with treason.⁴³ Thenceforth, Epameinondas participated to the next campaign to rescue Pelopidas in the North as a private soldier, because he was found guilty and deprived of the boiotarchy.

A Show Trial and Theban Oppositions

In a federation inevitably bound to its chief city, Thebes, there was little space for debate: the principal assembly was held in Thebes and even the boiotarchs, to our knowledge, always came from Thebes.⁴⁴ This second point may be due to our scarcity of sources, but it remains likely, in light both of the permanence of the property qualification and of the technical necessity to be in the city in the decision-making processes. Moreover, the boiotarchs represent a complex political reality, because they form a board that can move and settle important federal decisions regarding internal and external policies. This mobility expands

elections had already taken place before the departure of the army. The law seems to imply that, even if that had been the case, the appointees should have been present all the same to account for their year. According to Nepos and to Appian, the successors even reached the boiotarchs; the aforementioned passage by Nepos would imply that Epameinondas had already been not reelected (*ob eam rem*, sc. *invidiam*). If this is true, the suggestion remains that, had they been re-elected, they would not have been immediately summoned back.

⁴² On this detail, BUCKLER 1980, 138-9.

⁴³ Xen. *Hell.* 7.1.15-7. On the second trial, see BEISTER 1970, 105-10.

⁴⁴ See SORDI 1973 and RHODES 2016, 60-1 on this point.

the weight of their power, but also delimits and makes any form of political opposition difficult.

It is then perhaps unsurprising that these three events that can be linked with the existence of political opponents to Pelopidas and Epameinondas occurred in the physical absence of the men from the city. After the first instance previously discussed, a second charge was levied against Epameinondas on his return from his second Peloponnesian campaign: despite the different accusation (of bribery), we are again in the pattern of the political use of justice, in the words of Diodorus.⁴⁵ Finally,⁴⁶ there was the famous episode which resulted in the destruction of Orchomenos.

The city was razed by the Thebans, probably in 364 BCE.⁴⁷ The tragic decision implied that the Thebans «slew the male inhabitants and sold into slavery the women and children»; as such, it was recalled as a vivid example of the realist approach of the Boiotians among themselves.⁴⁸ It all started from a plot organized by some Thebans and three hundred Orchomenian knights: the detail of the absence of Epameinondas and Pelopidas is meaningful. According to Plutarch and Pausanias, had the famous generals been there, Orchomenos would not have suffered such a harsh retaliation.⁴⁹ Different views of the Theban imperialistic policies were probably at stake here.⁵⁰ In support of this thesis, the political use of these trials is confirmed by the presence in Thebes of *other* boiotarchs, those who actually enacted the entire trial:

«the men who had originated the action [...] disclosed to the boiotarchs the projected attack, thus betraying their fellow conspirators [...]. The officials arrested the knights from

⁴⁵ Diod. 15.72.2.

⁴⁶ The last line of *CEG* 2.632 seems to allude to an internal contraposition with Epameinondas (οὐδ' Ἐπαμεινώνδα δεύτεροι ἐδράμομεν), as argued, e.g., by Tod (*GHI* II 130) and TUFANO 2019b. The text looks like the epitaph of three distinguished members of the Theban elite (Xenokrates, Theopompos, and Mnasilaos); the recent redating to the late Fourth Century BCE (PAPAZARKADAS 2017), despite the immediate reference of the lines to the battle of Leuktra, raises a number of issues on the overall reading of the document (cp. TUFANO 2019b). Another possible instance of a statue erected to commemorate a boiotarch emerges from a dedication published by DUCREY – CALAME 2006: the dedicant, Hippias son of Erotion, was a boiotarch and dedicated a statue by Lysippos to Zeus Saotas.

⁴⁷ The date results from the chronology of Diodorus and from the silence of Isocrates in the *Archidamus* (Isoc. 6.27). In the passage, Isocrates only recalls the destruction of Thespiiai and Plataiai (373 and 371 BCE, respectively). The fictional date of the dialogue is 366/5 BCE and it is believed that the author wrote it not considerably after (ZINGG 2017, 80): for this reason, the absence of the indication of Orchomenos represents a relatively safe argument. On his own, Diodorus may be proven wrong against the generally accurate Pausanias (9.15.3), who dates the plot in 368 BCE.

⁴⁸ Quote: Diod. 15.79.6; example of political realism: Dem. 20.109.

⁴⁹ Full narrative of the episode: Diod. 15.79.3-6. Relevance of the absence of Epameinondas and Pelopidas: Plut. *Comp. Pel. et Marcell.* 1; Paus. 9.15.3.

⁵⁰ So BERTOLI 2005, 129-30.

Orchomenus and brought them before the assembly, where the people voted to execute them, to sell the inhabitants of Orchomenus into slavery, and to raze the city». ⁵¹

This combination between the central role of the boiotarchs, who bring to the assembly the conspirators, and the will of the assembly, resembles from a close distance what must have occurred when Epameinondas and his colleagues came back from the Peloponnesus in early 369 BCE. Some sources state that there were three boiotarchs in the army; others adopt a general plural. Notwithstanding the silence on this point, it is legitimate to claim that some boiotarchs, as already argued in the previous section, were still in Thebes and brought to the assembly in the first place for the violation of the law. It was a political trial, as already evidenced by Beister, but there was probably more behind the episode. ⁵²

Our consideration of these trials which involved Epameinondas and Pelopidas showed that these were the moments when political opposition became visible and used its most convenient instruments of action. If we consider the output of these trials, they were twice victorious for the people not directly associated with Epameinondas: in the second process, the boiotarch was made a simple soldier; in 364 BCE, our sources explicitly claim that he was not content with such a harsh verdict. ⁵³ The real political rationale of this plot, moreover, remains mysterious. According to Diodorus the plot aimed at the establishment of an aristocracy in Thebes, ⁵⁴ which is in contradiction with our understanding of the constitution of these years. To the aforementioned episodes, finally, we may add a series of undated anecdotes which also betray a form of juridical opposition to Epameinondas and to Pelopidas. ⁵⁵

On the one hand, then, these small sketches highlight a debated political climate, where the adversaries of the leaders of imperialistic Thebes were active and often aggressive in

⁵¹ Diod. 15.79.5, tr. W. OLDFATHER. On the actual extent of *andrapodismos*, see GACA 2010.

⁵² BEISTER 1970, 104: «Der Spruch der Richter ist also weniger juristischen Maßstaben zu messen, sondern vielmehr als ein politisches Urteil über die Hegemoniepolitik des Epameinondas anzusehen».

⁵³ Paus. 9.15.3.

⁵⁴ Diod. 15.79.3: βουλόμενοι τὴν ἐν Θήβαις πολιτείαν εἰς ἀριστοκρατικὴν κατάστασιν μεταστῆσαι.

⁵⁵ Plut. *Pel.* 25.5-7 (Menekleidas has the Thebans dedicate a commemorative painting to another man rather than to Pelopidas: the victory concerned, at Plataea, is dated to before Leuctra, and the outcome of the process is a heavy fine on Menekleidas, whereas Pelopidas bestows his merits on the entire Theban community); *Mor.* 799E-F (Epameinondas refuses to reply to a general *katagoria* and leaves the theatre to reach the gymnasium: this is also the only source on the setting of these trials); *Mor.* 811B (Epameinondas is appointed τέλαρχος as an insult, but succeeds in displaying great virtues in this task, connected with «the removal of dung and the draining off of water in the street». The words τέλαρχος and τελαρχία in the passage are a correction by WINCKELMANN and VAN HERWERDEN to the transmitted forms in τελε-; we have no further indication in the sources on this office, which must have been of extreme importance in a city where, according to Euboulos in the *Mysoi*, F 66.3 Hunter, each house had its own latrine by the door).

court. On the other hand, once we consider the actual influence and success of the policies enacted by Epameinondas and Pelopidas, we get the impression that «legal and historical truth are far from identical».⁵⁶

To understand the impact of these trials in the context, one can look at what contemporary political realists define as a “show trial” (*Schauprozess*). The label was clarified firstly by Hans Morgenthau, who is well-known for his contributions to the study of political realism. His suggestion was reprised, among others, by Winfried Meyer in his investigation of a trial which took place in 1947 against sixteen people, who were convicted for crimes against humanity and war crimes, for their responsibilities in the concentration camp of Sachsenhausen. According to Meyer, the trial took the form of a *Schauprozess* and five characteristics of this spectacularization are singled out.⁵⁷ Firstly, the confession and the awareness of the responsibility are the premise, and not the outcome of the process (1); this is based on the principle of the maximal probability and the objective possibility that the violation occurred (2). Not all the usual technicalities of the trial are followed (3): the formal rights of the defendants, in fact, are not protected (4) in what is an uncommonly officialized and sponsored public event (5).

Proceeding in this direction, Martti Koskenniemi applied the theory of the show trial to further case studies of trials concerning genocides and humanity crimes between the end of last century and ours.⁵⁸ Very often, the discovery and the listing of the evidence look redundant in the face of what appears to be the real goal of the process: the accused party is already known as guilty and the trial only looks like a performance of truth, where the thesis and the voices of the victims are finally given voice, after years of silence and of persecutions. No real or proper defence is expected, but mostly the officialization and publicity of the crime. Both Meyer and Koskenniemi address show trials that are inevitably linked to emergencies (Koskenniemi) and to violations connected with dictatorships and totalitarisms (Meyer): the topics of their investigations thus explain why points (3) and (4), in the systematization of Meyer, cannot be traced in the case of the trial of Epameinondas; at the same time, the performance of truth in Thebes resulted in a glorification of the voice of Epameinondas, whereas normally convicted criminals of international crimes are not allowed long speeches (purportedly so, in the analysis of Koskenniemi).

Epameinondas and the boiotarchs close to him were never guilty of such vast crimes: on the contrary, the only instance where such a parallel may partially work, in terms of extent and cruelty, concerns the destruction of Orchomenus, which was later reproached by Epameinondas himself. The previous treatment of these trials, nonetheless, with a focus on

⁵⁶ KOSKENNIEMI 2002, 11.

⁵⁷ MEYER 1997, 154-5.

⁵⁸ KOSKENNIEMI 2002.

the first one, proves that these were used to promote the image of the 'other Thebes': this peculiar opposition betrayed the existence of the Thebes of the boiotarchs less enamoured with the prospect of a hegemonial Thebes, or who were perhaps more favourably inclined to the Spartans and were therefore unwilling to let brash men like Epameinondas burn the bridges with the Lacedaimonians. Another aspect of the novelties implied by the institution of the new koinon after 379 BCE is the apparent disappearance of the parties in Thebes: until 395 BCE, for instance, we know that different groups had confronted in Thebes. There had been an 'anti-Spartan' group and a group which, to balance this leaning, had been accused of 'atticizing', although, for a lacuna (*H. Oxy.* 20.1 Chambers), this may equally have been a way by their opponents to indict them in the eyes of their fellow Thebans. Whether these groups were actual parties in the contemporary meaning of the word is still debated, although we incline to believe so, once we exclude from the label of 'party' all those traits which are inevitably linked with contemporary politics.⁵⁹

Our sources tend to describe these groups as 'those around X', *hoi peri tou deina*, so that these clubs did not suddenly disappear with the new constitution. Only, the structures of the new federal state denied them that space in the public confrontation, which had hitherto existed, even during the Peloponnesian War, when different voices had coexisted in the federal assembly of Thebes.⁶⁰ In the Thebes of Epameinondas and Pelopidas, the members of the opposite party must have found these show trials a convenient starting point to expose their enemies and let them show their own truth. It is probably no coincidence that the list of merits uttered by Epameinondas in the trial of 369 BCE echoes so closely the literary epitaph of Epameinondas:⁶¹ both the traditions develop from a climate where the *persona loquens* was showing his own deeds as well as using them to defend formalistic illegal actions.

The defence of Epameinondas was successful not only because it provided the Thebans with the *apologia* which, as a boiotarch, he was obliged to provide at the end of the year; Epameinondas was also successful because, on that occasion, his violation of the law had been counterbalanced by the merits for Thebes. As far as the second trial is concerned, Xenophon

⁵⁹ See TUFANO 2019b, 201-2.

⁶⁰ Thuc. 5.36-8, with SALMON 1995, 378.

⁶¹ This is the epitaph of Epameinondas as recorded by the richest source, Pausanias (9.15.6), who claims to have seen it in Thebes (but see KNOEPFLER 2007, 121-2): «By our counsels Sparta was shorn of her glory,/ And holy Messene finally received her children:/ With Thebes' arms Megalopolis was surrounded,/ and all Greece won independence and freedom» (tr. H. BECK). All these merits resemble «un manifesto di propaganda politica» (BREGLIA 2008, 385); they are also recorded in the version of Epameinondas' fictional epitaph recorded by Nepos (*Ep.* 8.3-4, tr. J. SELBY WATSON: «Epaminondas was punished by the Thebans with death, because he obliged them to overthrow the Lacedaemonians at Leuctra, [...], and because he not only, by one battle, rescued Thebes from destruction, but also secured liberty for all Greece, and brought the power of both people to such a condition, that the Thebans attacked Sparta, and the Lacedaemonians were content if they could save their lives; nor did he cease to prosecute the war, till, after settling Messene, he shut up Sparta with a close siege»).

almost lauds the man,⁶² who was nonetheless probably found guilty in Thebes, if his rank changed. «As a trial writes history in the immediate aftermath of the events, its interpretation will necessarily be based on fragmentary evidence and influenced by interpretations by contemporaries with a concrete stake in the result». ⁶³ And yet, it was argued here that political opposition in Thebes had to write history, if it wanted to survive under the current political system. These trials were a feasible strategy which can be retrieved, through a careful consideration of the sources.

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⁶² Xen. *Hell.* 7.1.17: σπονδὰς ποιηράμενος, ὡς τοῖς πλείστοις ἐδόκει, πρὸς Θηβαίων μᾶλλον ἢ πρὸς ἑαυτῶν [Λακεδαιμονίων].

⁶³ KOSKENNIEMI 2002, 22.

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