

The Trial of Spartan Kings

by Ephraim DAVID

(University of Haifa)

The current view in the literature is that a Spartan king who was faced with severe charges was tried by a court of justice composed of the other king, the ephors and the gerontes, i.e., the gerousia (with the obvious exception of the defendant) and the ephors⁽¹⁾.

This view is mainly based on one piece of evidence: a passage in Pausanias the geographer, referring to the first trial of King Pausanias (403/2 B.C.). This passage explicitly states that the court (δικαστήριον) entitled to try a Spartan king was composed of the above members. Moreover, it specifies the verdicts of the

(1) See, e.g., E. CALLEMER, in DAREMBERG-SAGLIO, s.v. «Gerousia», p. 1552; G. BUSOLT (and H. SWOBODA), *Griechische Staatskunde*³, II (München, 1926), p. 677 and n. 5, p. 681 and n. 6; R.J. BONNER and G. SMITH, «The Administration of Justice in Sparta», *CPA* 37 (1942), pp. 113-15; 117-18; H. MICHELL, *Sparta* (Cambridge, 1964), pp. 138, 155; A.H.M. JONES, *Sparta* (Oxford, 1967), p. 17; G.E.M. DE STE CROIX, *The Origins of the Peloponnesian War* (London, 1972), pp. 132-33, 350-53; G. MARASCO, *Commento alle biografie plutarchee di Agide e di Cleomene*, I (Roma, 1980), p. 331. For a remarkable exception, see A. ANDREWES (A.W. GOMME, K.J. DOVER), *A Historical Commentary on Thucydides*, IV (Oxford, 1970), 1970, p. 89, who briefly notes that certain kings appear to have been tried by the assembly, which «possibly always kept control» (see also below, nn. 18, 19); however, ANDREWES too identifies «the standard form of court for the trial of a king» as the gerontes, the other king and the ephors.

Where minor charges were concerned, the disciplinary authority of the ephors, which enabled them to impose fines upon whomever they thought it proper (Xen. *Lac. Pol.* 8.4), appears to have been extended also to the kings; see Plut. *Mor.* 226f-227a; *Ages.* 2.6; 5.4. The ephors were even entitled to arrest a king: see below, n. 25.

judges: fourteen of the gerontes and Agis II found Pausanias guilty; the rest of the court (i.e., the other fourteen gerontes and the ephors) voted for his acquittal (2).

The purpose of this paper is to contest the accuracy of the current view, which regards the above passage as authoritative evidence for identifying the court responsible for the trial of Spartan kings. I shall try to demonstrate that this power of jurisdiction belonged rather to the Spartan people in its assembly, which, however, could delegate its authority to the court mentioned by Pausanias.

The starting point of our discussion has to be Pausanias' evidence, which, *prima facie*, appears to be very strong. Bonner and Smith express the current view when stating that « ... it is so detailed and circumstantial that it can surely be trusted » (3). Yet the same Pausanias relates, within the same part of his work, i.e., the book dealing with Laconia, that it was *the citizens* (viz., the assembly) who sentenced Leonidas II to exile (ἐπιβαλόντων οἱ φυγῆν τῶν πολιτῶν), most probably meaning that they deposed him (4).

Thus, Pausanias was able to advance, within the same book, and even almost within the same chapter, two contradictory views as to the court responsible for trying Spartan kings. This inconsistency should not be taken to mean that his account of King Pausanias' first trial is unreliable, for it certainly seems

(2) Paus. 3.5.2. On the political significance of this trial, see, e.g., R.E. SMITH, « Lysander and the Spartan Empire », *CPh* 43 (1948), pp. 146-48; P. OLIVA, *Sparta and Her Social Problems* (Amsterdam and Prague, 1971), pp. 182-83; C.D. HAMILTON, *Sparta's Bitter Victories* (Ithaca, 1979), pp. 81-86; J.-F. BOMMELAER, *Lysandre de Sparte* (Paris, 1981), pp. 160-62; E. DAVID, *Sparta between Empire and Revolution, 404-243 B.C.* (New York, 1981), pp. 11-12.

(3) BONNER and SMITH (above, n. 1), p. 118.

(4) Paus. 3.6.8; cfr Plut. *Agis*, 11.9; 12, who relates that Leonidas II was summoned to trial, did not appear, was deposed *in absentia* and fled to Tegea; cfr MARASCO (above, n. 1), p. 287. On his deposition, see also H.W. PARKE, « The Deposing of Spartan Kings », *OQ* 39 (1945), pp. 106-09, who, however, does not discuss the problem of the court responsible for trying a Spartan king.

to be well-documented. This account was most probably based on Ephorus⁽⁵⁾, who was familiar with many details of political life in Sparta during her hegemony. One of Ephorus' main sources was, in turn, the pamphlet written by King Pausanias himself in exile⁽⁶⁾. Ephorus' dependence on this pamphlet can explain his remarkable familiarity with many details of political life in late fifth- and early fourth-century Sparta not mentioned even by Xenophon, a great part of which could have come only from the personal knowledge of a man highly versed in Spartan politics⁽⁷⁾. Thus, the pamphlet of King Pausanias was most probably (*via* Ephorus) the source of Pausanias the geographer for the trial of 403/2 B.C.

Now, it should be remembered that King Pausanias addressed himself in his pamphlet to a Spartan audience. His purpose was, as I hope to have shown elsewhere⁽⁸⁾, to attack his political enemies and prove that their policy was contrary to the laws of Lycurgus. Within his polemics against his former opponents he should have mentioned, *inter alia*, the political trial they had staged for him on his return from Athens in 403/2 and the verdicts of the judges at that trial. This assumption is most reasonable, since the very charge of which he had been acquitted on that occasion — that he had allowed the Athenian democrats to escape after having them in his power at Piræus — was one of the charges brought against him in 395 at his second trial⁽⁹⁾,

(5) Pausanias' reliance upon Ephorus in his references to late fifth- and early fourth-century Sparta was stressed long ago by H. STEDEFELDT, *De Lysandri Plutarchei Fontibus* (Diss. Bonn, 1867), pp. 3, 43-44, and W. IMMERWAHR, *Die Lakonika des Pausanias* (Berlin, 1899), pp. 26-28, 40ff. Cfr. e.g., O. REGENBOGEN, in *RE*, Suppl. VIII (1956), s.v. « Pausanias », coll. 1019ff.; 1067; P. LEVI, *Pausanias' Guide to Greece*, II (Harmondsworth, 1971), p. 32 and n. 56, p. 155 and n. 91. However, E.N. TIGERSTEDT, *The Legend of Sparta in Classical Antiquity*, II (Stockholm, 1974), pp. 195, 482-83 and n. 414, believes that Pausanias did not use Ephorus directly but through an intermediary source.

(6) Ephorus *ap.* Strabo, 8.5.5 (366). See E. DAVID, « The Pamphlet of Pausanias », *PP* 34 (1979), pp. 94ff., with bibliography.

(7) See DAVID, *ibid.*, pp. 105, 110-12.

(8) *Ibid.*, pp. 98ff.

(9) Xen. *Hell.* 3.5.25. This charge reflects a peculiar feature of the

at which he was condemned to death *in absentia* ⁽¹⁰⁾. It should be stressed, however, that Pausanias hardly needed to explain to the Spartan public, to whom he addressed himself in his *logos*, which court was responsible for trying a Spartan king. One may therefore rightly conclude that as far as the first trial of King Pausanias is concerned, Pausanias the geographer and his source, the historian Ephorus, had no more (and no less) than accurate information regarding the verdicts of the judges. Hence the general statement on the tribunal authorized to try a Spartan king should be considered the personal inference of Pausanias (or, possibly, of his source, Ephorus). As such, I would say, it has too often been treated with a remarkable overdose of unreserved credit. Moreover, despite Pausanias' inconsistency noted above, his statement has not only been taken as an authoritative testimony but also used as the clue for interpreting whatever other evidence we possess regarding the trials of Spartan kings.

This method has led to a considerable amount of historical distortion. The most obvious example of such distortion is provided by the interpretation of Plutarch's reference to the « trial » of Agis IV (241 B.C.). Plutarch (based on Phylarchus) ⁽¹¹⁾ relates that after the revolutionary king had been arrested, Leonidas II and the ephors, who were his supporters, came to the prison

Spartan law system: an acquitted defendant could be brought to trial a second time on an identical charge; the principle of « *exceptio rei judicatae* » or « *autrefois acquitté* » was not valid in Spartan law; see also Plut. *Mor.* 217b; cfr BONNER and SMITH (above, n. 1), p. 125.

(10) Xen. *loc. cit.*; Diod. 14.89.1; Plut. *Lys.* 30.1; Paus. 3.5.5-6. None of them specifies the composition of the court at this trial. Diodorus and Pausanias maintain that the king was accused by his fellow citizens; Plutarch states that the Spartiatai summoned him to trial. These references to the Spartan citizens within the context of Pausanias' second trial are hardly intelligible unless we assume that this trial was staged in the assembly. See also below and nn. 14, 18, 19, 26, 27.

(11) For Plutarch's reliance upon Phylarchus in his biographies of Agis and Cleomenes, see, e.g., J. KROYMANN, in *RE*, Suppl. VIII (1956), s.v. « Phylarchos », coll. 484ff.; T.W. AFRICA, *Phylarchus and the Spartan Revolution* (Berkeley and Los Angeles, 1961); cfr MARASCO (above, n. 1), pp. 24-42.

accompanied by those among the gerontes whom they trusted to be on their side, just « as if it were to be a trial » (ὡς δὴ κρίσεως αὐτῷ γινομένης) (12). It is obvious from Plutarch's wording that this was not a real trial, but a superficial semblance of a trial, even a mock-trial. It is also evident that the composition of this « court of justice » was different from that mentioned by Pausanias, since not all the gerontes were present, only those who could be trusted by Leonidas II. Yet, despite these facts, Agis' « trial » has been interpreted in the light of Pausanias' statement and concomitantly advanced as evidence to confirm that very statement (13).

This obviously circular argument has not been disturbed by Plutarch's subsequent reference to the demand of Agis' mother and grandmother, that « the king of the Spartans should have a hearing and a trial before the citizens » (δεόμεναι τὸν βασιλέα τῶν Σπαρτιατῶν λόγου καὶ κρίσεως τυχεῖν ἐν τοῖς πολίταις) (14). Moreover, it has been strangely argued that the procedure followed by Leonidas and his puppets reflects the constitutional norms, whereas the demand of a trial by the assembly has been presented as unconstitutional. De Ste. Croix, for instance, remarks that « in view of *Agis*, 19.5 (viz., the « trial » staged by Leonidas) and the fact that the whole situation was disturbed by violence, it is not constitutionally significant that Agis' mother and grandmother should have demanded that he be tried among the citizens » (15). It is worth noting, however, that the two women did not demand that Agis be granted a special privilege, but pointed to a certain rule of general impact with which they must therefore have assumed the Spartans to be familiar. Further-

(12) Plut. *Agis*, 19.5.

(13) See, e.g., BUSOLT, *Gr. Staatsk.*³, II, p. 677, n. 5; DE STE. CROIX (above n. 1), pp. 350, 352; MARASCO (above, n. 1), p. 333.

(14) Plut. *Agis*, 19.10. Cfr *ibid.*, 18.5, where Leonidas is reported to have tried to persuade Agis to leave his asylum, pretending that « the citizens » had pardoned him.

(15) DE STE. CROIX (above, n. 1), p. 352; followed by MARASCO (above, n. 1), p. 333: « la richiesta era contraria alla tradizione costituzionale spartana ed è evidente la parzialità di Filarco nel riferirla, sottolineando così il carattere oligarchico del giudizio subito da Agide ».

more, the subsequent murder of Agesistrata and Archidamia⁽¹⁶⁾ should warn us against ascribing too much weight to the observance of « legal » or « constitutional » procedures by Leonidas' supporters.

At this juncture I shall try to show that despite the efforts of various scholars to interpret the evidence provided by earlier sources with respect to the trials of Spartan kings in the light of Pausanias' statement, the latter is frequently incompatible with what Herodotus, Thucydides and Xenophon had to say on this issue.

Herodotus relates, for instance, that « the ephors and the gerontes » told King Anaxandridas, who was still childless, to take a second wife, threatening him that otherwise the Spartiatai might take some harsh measure against him⁽¹⁷⁾. It is evident from this passage that the ephors and gerontes did not threaten the king with their own power of jurisdiction but with that of the Spartiatai, which could hardly have meant only themselves; the term most probably refers to the Spartan citizens in their assembly⁽¹⁸⁾.

There are two other cases in which « the Spartiatai » are mentioned by Herodotus as the body responsible for trying a Spartan king. The historian relates that Cleomenes was denounced to the ephors (on the charge of not having captured Argos because of bribery) and had to defend himself; his defence is said to have been accepted by « the Spartiatai »: Cleomenes was fully acquitted (ca. 494 B.C.)⁽¹⁹⁾. The deposition of Demaratus (491/90 B.C.), as related by Herodotus, once more presents

(16) Plut. *Agis*, 20.

(17) Herod. 5.40.1; cfr Paus. 3.3.9.

(18) *Pace DE STE. CROIX* (above, n. 1), pp. 350-351, whose attempt to identify the Spartiatai as the gerousia and ephors is unconvincing. See A. ANDREWES, « The Government of Classical Sparta », in *Studies... V. Ehrenberg* (Oxford, 1966), pp. 3-4; for the use of the word Spartiatai with reference to the assembly, cfr *ibid.*, p. 6.

(19) Herod. 6.82.1-2; cfr ANDREWES, *ibid.*, p. 9 and p. 19, n. 15: « we should probably understand that the case was brought before the assembly ».

« the Spartiatai » as the body authorized to try a Spartan king: for it was they who, according to the historian, decided to refer the case of legitimacy to the Delphic oracle⁽²⁰⁾.

On the other hand, Leotychidas II, who had succeeded in deposing Demaratus and taking his throne, is reported by Herodotus to have himself stood trial twice, and in both cases mention is made of a certain tribunal (δικαστήριον) whose identity, however, is not further specified⁽²¹⁾. If δικαστήριον is taken to refer to the court of justice mentioned by Pausanias⁽²²⁾, one may reasonably assume that in these cases the assembly conferred its power of jurisdiction on that tribunal, as it most probably did later, at the first trial of King Pausanias.

Within his account of the trial of Agis II (418 B.C.), Thucydides provides further evidence for our subject. Despite the possibility he had in the summer of 418 to win a decisive victory over Argos, Agis preferred diplomacy to a military confrontation. The Lacedaemonians obeyed the law, according to which a Spartan king enjoyed supreme powers in the field, and followed him home, but were deeply disappointed with his policy⁽²³⁾. When later developments intensified their conviction that his policy had been misguided, the Lacedaemonians were so furious that they almost decided to demolish his house and fine him 100,000 drachmae. Agis succeeded in convincing them not to inflict these penalties but to give him the opportunity of rehabilitating himself by good service in the war. However, they

(20) Herod. 6.65.1-67.1. Despite the fact that he had committed no crime whatsoever, Demaratus was faced with a trial at which he had to defend himself against the charge of illegitimate birth, advanced by Leotychidas, the claimant to the throne. This case was different from two later contests for the succession which followed the deaths of Agis II (in 398 B.C.) and Cleomenes II (in 309 B.C.), since those contests did not involve the trial and deposition of a Spartan king: in both cases a throne was left vacant, there were rival claims to it, and a decision had to be taken.

(21) Herod. 6.85.1 (ca. 489 B.C.); 6.72.2 (ca. 476 B.C.). At the first trial it was decided to hand him over to the Aeginetans, who, however, did not take him; at the second trial he was banished.

(22) Cfr. ANDREWES, in *HCT*, IV, p. 89.

(23) Thuc. 5.60.2: cfr 63.1.

enacted an unprecedented law restricting his full powers as commander-in-chief of the Spartan army by attaching to him ten military counsellors ⁽²⁴⁾.

Thus far Thucydides' account of this episode. Regrettably, he is not primarily interested in constitutional and legal aspects of the Spartan *politeia*, and his account is not sufficiently detailed and clear on the subject discussed in this paper ⁽²⁵⁾. Nonetheless, the unmistakable impression one gets when reading this chapter of Thucydides' work is that we are faced with the feelings and reactions of the masses, not with the judgement of a small elitist body, like the gerousia. The use of the term Lacedaemonians as the subject of the whole chapter can only strengthen this impression. Furthermore, Thucydides explicitly mentions the enactment of a law; and since those who enacted the law (i.e., the Lacedaemonians, who are the subject of this chapter) could only be the Spartan citizens in their assembly ⁽²⁶⁾, one may reasonably infer that the term Lacedaemonians is equivalent in this case

(24) Thuc. 5.63.2-4, with ANDREWES, in *HCT*, IV, p. 89 (*ad loc.*).

(25) Thucydides mentions also the trial of Pausanias the regent, in 478/7 B.C. (1.95.5; 128.3; cfr 1.131.2) and the trial of Pleistoanax, in 446 B.C. (1.114.2; 2.21), but in both cases he fails to specify by whom they were tried; for the trial of Pleistoanax, see also Plut. *Pericl.* 22.3.

It is worth noting here that according to Thucydides (1.131.2; 134.1) the ephors could arrest a king and put him into prison (cfr Polyb. 5.29.9; Plut. *Agis*, 19.3), presumably until his trial was to take place.

(26) *Pace* DE STE. CROIX (above, n. 1), p. 351, who on the one hand states that « only in this case is there the least likelihood that the trial may have been staged in the Assembly », but on the other hand goes on remarking that « the Gerousia may also have been responsible for the restriction on Agis' future commands, which, though called a νόμος in Thuc., applied only to him and was not a general law applying to other kings ». However, there is no basis in the sources for the suggestion that the gerousia could legislate a νόμος ἐπ' ἄνδρσι. See also D.M. LEWIS, *Sparta and Persia* (Leiden, 1977), p. 39: « ... if the Spartans are passing a law we are dealing with the assembly, and I cannot really believe that Thucydides' language allows of anything else throughout the whole episode ». Cfr ANDREWES, in *HCT*, IV, p. 89. For the legislation process in Sparta, see W.G. FORREST, in *Phœnix* 21 (1967), pp. 11ff., with evidence and bibliography.

to Spartiatai⁽²⁷⁾ and refers to the same body (the assembly) also as far as the trial of Agis II is concerned.

We can now turn to Xenophon. In view of his excellent knowledge of the Spartan *politeia*, it is regrettable that nowhere does he explicitly state which court was responsible for trying a Spartan king. Even when he mentions the second trial of King Pausanias and specifies all the charges brought against him⁽²⁸⁾, he says nothing as far as the composition of the tribunal is concerned.

There is, however, one passage in Xenophon's *Hellenica* which is relevant to our subject. When relating the way in which Cleombrotus was persuaded, despite his unwillingness, to lead the fatal attack on the Thebans at Leuctra, the historian quotes the king's friends warning him: « if you let the Thebans escape without a battle, you will be in the danger of suffering the most severe penalty at the hands of the polis »⁽²⁹⁾.

Xenophon makes frequent use of the word « polis » when referring to the deliberation and decisions of the Spartan assembly⁽³⁰⁾. In this case too he would hardly have used this word, or ascribed it to Cleombrotus' friends, had he only the gerousia in mind. The use of the word « polis » is, on the other hand, perfectly intelligible if the historian (or the speakers quoted by him) referred to the danger of a penalty which could be imposed either by the *πολιται* in their assembly or by a court acting on behalf of the assembly.

In summary, the cumulative evidence of Herodotus, Thucydides and Xenophon supports the argument that, unlike the other Spartan citizens who were tried on severe charges by the

(27) For the frequent use of the word Lakedaimonioi as a synonym of Spartiatai, see, e.g., W.G. FORREST, *A History of Sparta* (London, 1968), pp. 131-32; A.J. TOYNBEE, *Some Problems of Greek History* (London, 1969), pp. 159-61.

(28) See above, n. 9.

(29) Xen. *Hell.* 6.4.4-5.

(30) See, e.g., *ibid.*, 3.3.4 (with BONNER and SMITH [above, n. 1], p. 128); cf. 2.3.34; 3.5.6; 5.2.3; 5.3.25; 6.1.18.

gerousia⁽³¹⁾, the Spartan kings were usually tried by the assembly. The demand reported by Plutarch (based on Phylarchus) that Agis IV should be given a trial before the assembly was based on juridical precedents and was in line with constitutional practice. However, the assembly could, and in certain cases did, decide to confer the right of jurisdiction on a tribunal composed of the gerousia and ephors, like that which acquitted Pausanias at his first trial. The verdict of this court was equivalent to a decision of the Spartan people, since the court was held to act on behalf of the assembly and to represent its will. In other words, in certain cases the ephors and the gerousia played the role of a « small assembly ». This may explain the origin of the mysterious term « μικρὰ ἐκκλησία », which is used by Xenophon when referring most probably to the gerousia (although not specifically in its capacity as a court of justice) under the presidency of the ephors⁽³²⁾.

(31) Xen. *Lac. Pol.* 10.2; Arist. *Pol.* 1270b 38-40; 1275b 10-11; Plut. *Lyc.* 26.2.

(32) Xen. *Hell.* 3.3.8. Within his account of the conspiracy of Cinadon, Xenophon relates that the ephors were so alarmed that they did not even convene the so-called μικρὰ ἐκκλησία but held secret consultations only with some of the gerontes. This institution is not mentioned elsewhere in the sources. For various interpretations of its essence, see, e.g., BUSOLT, *Gr. Staatsk.*³, II, 693; JONES (above, n. 1), p. 27; OLIVA (above, n. 2), p. 193, n. 2; E. DAVID, « The Conspiracy of Cinadon », *Athenaeum* 57 (1979), pp. 254-55 and n. 64, with references to further literature.