

PANTELIS NIGDELIS (THESSALONIKI)

COMMENTS ON „ERWERB UND VERÄÜBERUNG VON  
GRABSTÄTTEN IM GRIECHISCH-RÖMISCHEN KLEINASIEN  
AM BEISPIEL DER GRABINSCHRIFTEN AUS SMYRNA“  
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Despite occasional studies on specific issues or areas, the study of the influence exerted by Roman law on the public or private legal institutions of the Greek cities of the Roman Empire still remains an object of research. Any variations, as well as the general trends, can be identified through case studies, such as the work of Kaja Harter-Uibopuu (henceforth K. H.), which constitutes the first systematic attempt to study the subject of “acquisition and expropriation of tombs” in several cities of Asia Minor.

The methodology followed is the comparative one in the sense that it seeks to identify similarities and/or differences shown in the wording of various Greek and Latin tomb inscriptions. The study is based on four axes concerning: a) purchasers and sellers, b) the actual objects of any given purchase and sale transaction, c) the method of acquisition of the monuments or burial sites, and d) the process by which the imposition of punishment is established through protective prohibitions, stipulated by the very owners. Whereas the relevant available inscriptive material is comprehensive, Smyrna is chosen as a representative example due to the wide variety of information provided by the inscriptions there, although, where appropriate, the inscriptions from other cities are also examined.

The following observations relate only to aspects of the issue, which, in my opinion, require further explanation or elaboration.

1. The cities are also included among the tomb sellers, as shown for example by the inscription TAM II 752 (1st century BC) of the city of Kandyva, Lycia. Regarding this evidence K. H. is wondering whether the tomb that a certain lady named Lais purchased was a ruined monument that was sold by the original owner directly to the purchaser or it came to the possession of the city as such (i.e. ruined and apparently abandoned), thus resulting in being sold on the basis of the public records kept regarding its ownership status. In my opinion, between the two alternative options, the wording of the inscription renders possible only the second one. However, in our case it is not obvious how the city eventually became the owner of the tomb. The scenario that this occurred due to the abandonment thereof

(in this case, demographic or other factors may always play a role) is possible, yet it is not the only one. For example, an inscription from Aphrodisias shows that, under certain conditions, private burial property may have been bequeathed to a temple, such as Aphrodite's<sup>1</sup>. I do believe that it is not impossible that something similar was taking place with the cities themselves. After all, inscriptions from Pisidia and Lycia seem to suggest that in certain legal transactions the city would allow the use of the tomb for a limited time period. On two inscriptions, one from Termessos and the other possibly from Kalavatia, the city and the council of the city respectively grant in the first case obviously *honoris causa* the right of use of public land exclusively to a *Archiereus* of Augustus cult<sup>2</sup>, and in the second case to the members of a family for the next three generations<sup>3</sup>. The two transactions are indicated by the synonymous verbs of *συγχωρεῖν* and *ἐπιτρέπειν*, while in the second, the expression *during the term of Archiereus Licinnius Longus* seems to imply that the legal act followed an elsewhere-known procedure through the records held by the city. In a similar way, the usage of a monument, and consequently of the land which it is constructed upon, and which lies within the grounds of a *common burial place* (*πολυανδρεῖον*) in the city of Thyateira is also time-limited<sup>4</sup>. A certain Metrodoros had this monument erected while he was still alive, only for himself, his wife and their dead child. As a general debating point the question could be raised as to what extent the cities were involved in property purchase and sale transactions regarding burial sites. A remaining aspect to be searched in the work is the ownership status of

<sup>1</sup> I.Aphrodisias 15. 214: ὁ πλάτας ἐστὶν Ἀδράστου τοῦ Γλύκωνος τοῦ Γλύκωνος τοῦ Λέοντος τοῦ | Ἐκατόμνονος Πολυχρονίου ὄντινα πλάταν συνεχώρησεν αὐτῷ Πολυχρονία Καλλικράτου | εἰς ὃν πλάταν κατεσκεύασεν μνημεῖον τὸ ἐπικείμενον τῷ πλάτῃ σορὸν τε καὶ ἰσώστας τὰς ἐν αὐτῷ | καὶ τὰ λυπὰ τὰ ἐν αὐτῷ εἰς ἣν σορὸν ἔθαψα Βαρίλλα<v> τὴν ἑμαιοῦ γυναῖκα βούλομαι δὲ καὶ αὐτὸς ἢ ἐν τῇ σορῷ τεθῆναι ἕτερον δὲ μηδένα ἐν δὲ τῇ ἰσώστῃ τῇ πρώτῃ ὑποκειμένη σορῷ ἐνταφῆναι | βούλομαι τὴν γυναῖκά μου καὶ Πολυχρόνιον τὸν υἱόν μου ἐν δὲ τῇ ἑτέρᾳ ἰσώστῃ τεθῆναι βούλομαι | Τατιανὸν καὶ Ἄδραστον τὰ τέκνα μου ἕτερον δὲ μήδε ἐν τῷ σορῷ μήδε ἐν ταῖς ἰσώσταις | τεθῆναι εἰ δὲ τὸν ὕσπληγα οἱ κληρονόμοι μου μετὰ τὸ ἐντεθῆναί με ἐν τῇ σορῷ μὴ ἀσφαλίσωνται | ἔστω μου κληρονόμος ἢ θεὰ Ἀφροδεῖτη τοῦτο δὲ ἐκδικήσουσιν οἱ κατὰ καιρὸν νεωπυοὶ ...

<sup>2</sup> TAM III 684: Ἀρχιερεὺς Θεοῦ | Αὐγούστου Οπλης τρίς | Πιλλακοῦ Μανησοῦ | τὴν θήκην κατεσκεύασεν ἑαυτῷ *συγχωρήματι δήμου*.

<sup>3</sup> TAM II 250: τὸ μνημεῖον κατεσκεύασεν | Εὐτύχης Ἐρμαόρτου, *καθὼς | ἢ βουλή ἐπέτρεπεν* ἐπὶ ἀρχιερέος | Λικιννίου Λόνγου Ἀρτεμεισίου β', | ἑαυτῷ καὶ γυναικὶ αὐτοῦ καὶ τοῖς ἐξ αὐτῶν καὶ γυναιξίν αὐτῶν καὶ τέλκνοισ· ἑτέρῳ δὲ μηδενὶ ἐξείναι ταφῆναι· εἰδὲ μή, ὁ θάψας | ἐκτείσει Σιδυμέαν τῷ δήμῳ (δηνάρια) φ' | ἐξ ὧν ὁ κατηγορῶν | λήνψεται τὸ πένιπτον τοῦ προστίμου.

<sup>4</sup> TAM V 2, 1113: Μητροδώρος Στρατοινείκης *κατεσκεύασεν | τὸ μνημεῖον ἐν τῷ πολυανδρίῳ* ζῶν αὐτῷ καὶ | Νοτίδι καὶ Μητροδώρῳ | τῷ τέκνῳ τῷ κατοιχομένῳ. εἰ δὲ τις τοῦτο τὸ | μνημεῖον ἢ πωλήσῃ | ἢ ἀγοράσῃ ἢ ἐκόψῃ | τι τῶν ἐπιγεγραμμένων ἢ τῶν ἔσω τεθέντων ἔξω τις | βάλῃ, δώσει τὴν (!) πόλιν (δηνάρια) ,βφ'.

the tombs belonging to members of private clubs / associations and the legal issues arising there from.

2. Moving on to the actual objects of the said legal transactions, I would like to dwell on the inscription from Smyrna I.Smyrna 234, where the purchaser, Noumerios Prosius, buys a piece of land (place) surrounded by four walls (περιοικοδομημένος τοίχοις τέσσαρσιν), which is *bare* and *clean* (ψιλός and καθαρός). Within this land, he has an arch (καμάρα) erected with niches (ἐνσόρια) for laying down the corpses or the ossuaries. Regarding the adjectives that are used to describe the land, the following interpretations are suggested: for the first one “uncultivated, bereft of any vegetation” and for the second “a piece of land used for the first time as a burial ground”, corresponding to the Latin phrase “*locus purus*”. K. H. ends up to this interpretation basically because the purchaser erected the *arch* after purchasing the land. Nonetheless, it is equally feasible that the piece of land could have hosted the remains of the previous owner / owners who were buried there either in simple graves or sarcophagi. Furthermore, the reference to a surrounding wall seems to indicate that this place was designated for a specific use. As a reminder, I would like to point out that common findings of ancient necropolises are burial enclosures. These are also epigraphically attested as e.g. in an inscription from Nicomedeia in Bithynia<sup>5</sup>, where we come across the term “a place surrounded by fence around” (περιτετρηνχισμένος τόπος). Therefore, for the inscription in Smyrna, I would suggest that the most likely interpretation is that of “an old burial ground which does not contain any previous remains” (see corpse-free, καθαρὸς πτωμάτων).

3. Possible ways of acquisition of graves or burial monuments are often stated in Greek inscriptions, usually through the prohibitive provisions, which, as a rule, constitute an integral part thereof. Quite often, such provisions include general concepts such “expropriation” (ἐξάλλοτριῶσαι or ἀπαλλοτριῶσαι) that make it difficult to understand the specific way by which these assets might have changed hands. One such case is the famous inscription of “Origanion” from Smyrna I. Smyrna 210. In the relevant prohibitive clause we can read the expression “*neither is it allowed to sell, transfer or expropriate or act mischievously upon this monument nor any part of it*” («μηδενὶ ἐξέστω τοῦτο τὸ μνημῆον ἢ μέρος τι αὐτοῦ μήτε πωλῆσαι μήτε μεταθεῖναι μήτε ἐξάλλοτριῶσαι μήτε δόλωι πονηρῶι τι ποιῆσαι»). I do agree with K. H., that the verb “*transfer*” (μεταθεῖναι) should be taken here in a metaphorical-legal sense rather than literally, i.e. the transfer of the monument to another location, as it occurs in cases involving sarcophagi, for the very reason that the monument is not a sarcophagus. In support of this, and in order to gain a better understanding of the factors involved, one could cite as evidence the

<sup>5</sup> TAM IV 1, 239: Ἀριστόδημος Ταυρέου | καὶ Λύκος Ἀριστοδήμου | Βοοσπορανοὶ ζῶντες ἑαυτοῖς σὺν τῷ περιτετρηνχισμένῳ, | τόπω τὴν πύελον ἐθήκαμεν καὶ τοῖς ἀδελφοῖς ἡμῶν | Σαμβίῳνι Ἀριστοδήμου | καὶ Σαμβίῳνι Ταυρ[έ]ου ...

expression “*if sold or transferred any of the dispositions of the inscription*” («εἰ δὲ τις πωλήσῃ ἢ μεταθῇ τῶν κατὰ τὴν ἐπιγραφὴν διατεταγμένων») that is found in a funerary inscription of Magnesia near Sipyron<sup>6</sup>. In other words, “*transfer*” (μεταθεῖναι) concerns changes in the terms of a will regarding the use or the ownership of the monument or the land upon which it was erected. An insight as to the ways these terms could have been changed is provided by the 2<sup>nd</sup>/3<sup>rd</sup> century AD funerary inscription from Aphrodisias, where the owner prohibits any change in the terms of his will, by, among others, *a city’s decree or a petition to a provincial governor* (διὰ ψηφίσματος ἢ διὰ ἡγεμονικῆς ἐντεύξεως)<sup>7</sup>.

4. The filing of documents with public archives pertaining to burial properties constitutes, according to K. H. a Greek characteristic of the whole issue since it is attested by inscriptions from various regions of Asia Minor such as Ionia, Karia and Lycia yet not from the West. It is correctly observed that the procedure can also be connected, *inter alia*, with the enforcement of various penalties provided for in these documents regarding the protection of the monuments: copies of the wills, certified by witnesses and kept in their archives, were the legal basis that allowed cities to monitor through their competent bodies any burial property violation and impose such sanctions, as stipulated by their owners. In support of this interpretation, such expressions may be brought as evidence as “*the safety is cited in the public records*” («ἡ ἀσφάλεια ἀναγέγραπται διὰ τῶν δημοσίων γραμματοφυλακίων») that accompanied various funerary inscriptions. One very interesting aspect of this process that is missing from the treatise of K. H. is the submission and filing of copies of such documents in the archives of provincial governors. This conclusion is derived, for example, by two inscriptions from Lycia and Pisidia respectively. In the first one that comes probably from Karmylessos the owner, a certain Aurelius, son of Ermolykos, submits a written application to the provincial governor requesting

<sup>6</sup> TAM V 2, 1410: Τίτος Φλάβιος Σπόρος τὴν καμάραν ζῶν κατεσκεύασεν ἐαυτῷ καὶ τῇ γυναικὶ αὐτοῦ Τατίῳ | καὶ τοῖς ἐγγόνιοις αὐτοῦ. εἰ δέ τις | πωλήσῃ ἢ μεταθῇ τῶν κατὰ τὴν | ἐπιγραφὴν διατεταγμένων, ἀποτεῖσει τῷ φίσκῳ ἀργυρίου (δηνάρια) χεῖλι[α].

<sup>7</sup> I.Aphrodisias 12. 1107: ἡ σορὸς καὶ ὁ βωμὸς καὶ α[ἰ] εἰσώσται | καὶ τὰ περὶ αὐτὰ πάντα | κατεσκευάσθησαν καὶ εἰσὶν Τι[β] (ερίου) Ίουλ[ίου] Γλύκωνος καθὼς καὶ διὰ | τῆς γενομένης ἐκδόσεως διὰ τοῦ χρε]οφυλακίου δηλοῦται ἐν ἡ | σολρῷ κηδευθήσεται αὐτὸς τε ὁ Γλύκων ἢ οὐς ἂν αὐτὸς βουλευθῇ ἢ διατάλλῃται ἐν δὲ ταῖς εἰσώσταις κηδευθήσονται οὐς ἂν ἐνθάψαι βουλευθῇ ὁ Γλύκων ἢ ἐνγράφως τινὶ συνχωρήσῃ ἢ διατάξῃται ἕτερος δὲ | οὐδεις ἐξουσίαν ἔξει ἐνθάψαι τινὰ οὔτε εἰς τὴν σορὸν οὔτε εἰς τὰς | εἰσώστας ἢ οὐς ἂν Γλύκων αὐτὸς ζῶν βουλευθῇ ἐνθάψαι οὐδεις δὲ | ἔξει ἐξουσίαν ἐνθάψαι τινὰ ἕτερος ἢ ἐκθάψαι σωματίων τῶν ἐν | ταφέντων τῇ τοῦ Γλύκωνος βουλήσε[ι] οὔτε διὰ ψηφίσματος οὔτε | δι' ἐντεύξεως ἡγεμονικῆς οὔτε ἄλλῳ τρόπῳ οὐδενὶ οὐδὲ ἀπαλλοτριῶσαι οὐδὲ μετακεινήσαι τὴν σορὸν ἐπεὶ ὁ τούτων τι τολμήσας ἢ συνχωρήσας ἀποτεῖσει τῷ ἱερωτάτῳ ταμείῳ (δηνάρια) πεντακίς | χεῖλια ὧν τὸ τρίτον γενήσεται τοῦ ἐκδικήσαντος ταύτης | τῆς ἐπιγραφῆς ἀπετέθη ἀντίγραφον καὶ εἰς τὸ χρεοφυλάκιον ἐπὶ | στεφανηφόρου τὸ τρις καὶ δέκατο[v] Ἀταλίδος τῆς Μενεκράτους || μηνὸς Ξανδ[ι]κουῦ.

permission to repair, along with his brother, the base of a sarcophagus, which was the burial monument of his ancestors<sup>8</sup>. The second one, from Termessos, Aurelius Nikephoros and his wife erect a sarcophagus for themselves and their children on condition that a fine of 2,500 dinars would be payable to the imperial treasure in case any other corpse was placed in it. At the end of the inscription, it is stated that a copy of the document was filed in the “*proconsular archives*” («ἐν τοῖς σκρινείοις ἀνθυπατικοῦ»)<sup>9</sup>. The reasons that led to this option, instead of being filed in the city archives, were not of course declared in the document, however, it cannot be excluded that they were personal in the sense of having more confidence in the effectiveness of the institutions and bodies of the empire in comparison with the institutions of the city, especially after the *Constitutio Antoniana*. Since the filing in the archives implies a procedure invented and applied by Greeks, one could deduce from these examples that gradually the Greek and Roman legal perceptions are intermingled into a indistinct new structure, as shown convincingly, I believe, by the work of K. H. concerning on the issue “acquisition and expropriation of tombs” in Asia Minor.

<sup>8</sup> TAM II 122: ἡ σωματοθήκη ἥδε προγονικὴ Αὐρηλι[ί]ου Ἐρμολύκου τοῦ Εὐτυχέου Τελημισσο[ί]ο[ς]· ἥς ὑπέ[ρ] τῆς ἀσ|φαι[λ]είας [τ]οῦ θεμε[λί]ου [ἐ]πι[τ]ῆ| ἐπι[σκευ]ῆ| π[ρο]ν[ο]ή[σ]ασθαι ὁ Ἐρμόλυκος κα[ὶ] ὁ ἀ|δελ[φ]ο[ς] α [ἔ]π[ι]το[ῦ] Αὐρ[ή]λι[ο]ς Σ[τ]έ[φαν]ος πα[ρὰ] ἀνθ[υ]π[ά]το[υ] | Μ(άρκου) · Ἰουλιανοῦ Σούρα Μ[ά]γ[ν]ο[υ] ἡτή-σαν[τ]ο δ[ιὰ] β[ι]βλίου(?) καὶ συνεχώ[ρη]σε[ν] αὐτοῖς ...

<sup>9</sup> TAM III 657: Αὐρ(ήλιος) Νεικαφόρος Αρ(τειμου) καὶ Αὐρ(ηλία) Νουμηνίς | κατέστησεν τὴν σωματοθήκην ἑαυτοῖς | καὶ τοῖς τέκνοις αὐτῶν Αὐρ(ηλίω) Νεικαφόρῳ | καὶ Αὐρ(ηλίω) Ἀρτέμωνι· ἐτέρῳ δὲ οὐδενὶ ἐξέσπτε μετὰ τὴν ἀπόθεσιν αὐτῶν· ἄλ<λ>φ δὲ | οὐδενὶ ἐξέστε ἀνῶξε ἢ ἐπιθάσαι τινά, | ἐπεὶ ὁ πειράσας τι τούτων ἐνεχεθήσετε | τυνβαρυχία κὲ ἐκτεῖσει τῷ ἱερωτάτῳ ταλλμείῳ (δηνάρια), βφ' | τὸ δὲ ἀντίγραφον ἀνατέτακτε ἐν τοῖς | σκρινείοις ἀνθυπατικοῦ.

