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THE LEGAL HORIZON OF EURIPIDES' *ION* A RESPONSE TO DELFIM LEÃO

Leão offers a rich discussion of a wide variety of texts, using those presented in the first sections to create the “legal horizon” against which we are to view Euripides’ play. This is a thoughtful piece of work that offers new insights into the relationship between legitimate offspring (*gnēsioi*), immigrants (*epēlydes*), and, by analogy, adoptees, and between autochthony and the right to possess land. In the brief time allotted to me, I’d like to extend Leão’s “legal horizon” and offer denser detail.¹

I. Autochthony and citizenship laws

Let me start by trying to peg [Demosthenes]’ and Plato’s use of the myth of autochthony into an historical framework by asking: why and how do they use the myth? In the first instance, both authors use it to commemorate the past: the myth introduces the birth of brave men and leads to their legendary acts of bravery and then to historical deeds; but whereas the Demosthenic Epitaphios only advances as far as the Persian Wars and essentially elides the Peloponnesian War and the defeat of Athens (60, 11), the Menexenos carries its account of brave deeds to the Peace of Antalcidas in 387 BCE. The myth, then, is used in different ways to re-envision the past: the Demosthenic speech might be said to provide an ideologically constructed background for the first half of the fifth century, but where is Plato’s focus? Leão has called attention to Menexenos 237bc so as to demonstrate a connection between citizenship, autochthony and land possession and has focused on Plato’s reference to the earth as mother and shrewdly observes that ‘a true, diligent and devoted son cannot alienate it [the land] frivolously.’ Plato exploits autochthony and the earth as mother again in *Republic* book 3 (414B-415D), where the myth is the “noble lie” to be foisted on youngsters so they will participate happily in the just city. Plato again mentions earth as mother (but also as despoina) in the *Laws* in a passage where the Athenian visitor propounds different ways to maintain the magic number of 5,040 households in the second perfect polity (*Laws* 5, 740e-741a); here, great importance is ascribed to the inalienability of property and to inheritance conveyed to the best son; importance likewise is attached to the earth as parent and to its care by parent’s children; and here, too, appears an important statement regarding

¹ The author thanks Alan L. Boegehold, Jeffrey Henderson, and Robert Wallace for helpful discussion while composing this essay.

reaction to peril of oikos-diminishment: “If, on the other hand, there come a wave bearing a deluge of disease, or a plague of war, and the inhabitants become much fewer than the appointed number by reason of bereavement, we ought not, of our own volition, to introduce new citizens trained with a bastard training (πολίτας ... νόθη παιδείαι πεπαιδευμένους); but not even God – as the saying goes – is able to compel necessity.” Plato in these passages is looking backward to the fifth century, not to the grand Persian Wars and the Periklean age of empire as does the Demosthenic Epitaphios – but rather to its whimpering end. We have here a fourth century revisionary view of late fifth century constraints. Plato’s exploitation of the myth of autochthony has its own conservative agenda, the lessons to be learned for building a more perfect polis.

In creating an historical backdrop for Euripides’ play and its extensive allusion to the myth of autochthony, it is perhaps useful to take a cue from Plato’s *Laws* and to locate that backdrop, not against the Periklean law of citizenship nor in fourth century re-visioning of the past, but somewhere in-between. The date of the *Ion* is itself uncertain – indeed the *Cambridge History of Ancient Greek Literature* gives it as after 412 in its chapter on “Tragedy” but then as 418/17 in its authoritative “Appendix” (1985: p. 316 and 768); Wilamowitz himself waffled between an earlier and later date and was surely right to endorse the later one, after the occupation of Dekeleia and the Sicilian expedition.² Even if not absolutely secure, still, the *Ion* was composed after the plague – and after a great many citizen deaths. If I may borrow Leão’s metaphor once again, the legal horizon for the play, while it may start from the sunrise of Perikles’ citizenship law, surely extends to the collapsing of that same law during the course of the Peloponnesian War. It may also extend to that law’s “annulment”, which is controversial and undated but accepted by many authorities – some of whom place it immediately after the Sicilian disaster – to the effect that “the Athenians because of a shortage of men passed a vote (ψηφίσασθαί) with a view to increasing the population, that a man might marry one *astē* and have children from another.”³ And finally, the legal horizon might foreshadow the next morning’s dawn, that is, 403/02, when the ‘old’ citizenship law was reinstated by Nikomenes’ decree, with the proviso that it should not be enforced against individuals born before that year,⁴ and it should also show, later that same morning

² Wilamowitz-Moellendorff 1926, p. 24.

³ D.L. 2, 26. Perikles’ law was still in force (or at least “on the books”) in 414 (Aristoph., *Av.* 1646-70). The decree reported by D.L. is not dated; Müller 1899, p. 786-811 suggested that it belongs soon after the Sicilian disaster; he is followed by Wolff 1944, p. 85-6 and by Jacoby (*FGrHist* 3b, Suppl. 2, p. 381 n. 35) who thinks it “more likely” than an annulment in 429. For a different view, that there was no annulment, and that the legislation of 403/02 was part of the codification of Athenian law that began in 411, see Walters 1983, p. 325-27.

⁴ Eumelos *FGrHist* 77 F 2 (= *schol. Aeschin.* 1, 39). The proviso is important. Boegehold 1994, p. 57-66 proposed that a motive for Perikles’ citizenship law may have been to end

– or year – when another law was passed, this time by Aristophon, that “whoever was not born from an *astē* was to be a *nothos*.”⁵

Now, whether Perikles' law was formally annulled or simply ignored, its reinstatement will have, to some degree, been a response to a perceived problem that may have been decades in the making. And as to the wording of the decree of annulment – paraphrase or verbatim, whatever it is that Diogenes Laertius has given us, that “a man might marry one *astē* and have children from another” – is it simply fortuitous that in the *Ion* we have a typical Euripidean gender-bending mimicry of it, namely an *astē* who has married one man and has had a child by another?⁶ In Euripides' play, however, the doubling of men is not acceptable, at least not to Ion, and of course Xuthos is totally unaware of Ion's true parentage but finds his own paternity creditable and a vague recollection of a temporary ‘hook-up’ suffices for establishing maternity. This is a world where social and family relations are immensely confused.

II. Autochthony and children: *gnēsioi* and adoptees

Thus far I have considered the diachronic extension of the legal horizon of the *Ion*. Now I would like to consider two points on the landscape: the position of adoptees *vis-à-vis gnēsioi* (legitimate children) and later, grants of *enktēsis*.

The speaker of the Demosthenic *Epitaphios* alludes to the Athenians as earthborn heirs to their land; he then juxtaposes these men, the *gnēsioi politai*, with migrants whom he assimilates to the status of adopted children (60, 4). As Leão puts it: the migrants “are in fact morally positioned at a lower level, as if they were adopted children (*eispoiētoi paides*).” Were the descendants of former immigrants morally positioned as inferior to *gnēsioi*, as if they were adopted children – and if so, is this a fifth or fourth century view? Here I should like to forego consideration of the children of immigrants and simply consider the relationship of *gnēsioi* to adopted children. There were strict rules of kinship by which legitimate citizens passed on property, that is, the *anchisteia*, and the *anchisteia* is undoubtedly an archaic institution: if *de cuius* has sons, the sons must inherit; if there are no sons, and he dies intestate, then the daughters inherit; if none of these, then the brothers, and so on. Sons adopted in the lifetime of the deceased can inherit just as if they were “born of the body”; they simply “enter the estate.” In the fourth century, at any rate, there is no disability in the matter of inheriting property, in theory, for children

inheritance disputes between *mētroxenoi* and sons with two Athenian parents; by “grandfathering in” children of mixed parentage, had the Athenians learned a lesson?

⁵ Athenaios 13, 577C mentions Aristophon's law (nomos), citing it from book 3 of Karystios' *Hypomnēmata* (= Karystios fr. 11 Mueller FHG 4, 358). For different scholarly views, see Scafuro 1994, p. 182 n. 5.

⁶ The Athenian man of the late 410s has been turned into a mythical Athenian Queen and the Athenian woman of the same historical period has become the foreigner, Xuthos. For the male/female exchange, see Loraux 1993, p. 189-93.

adopted *inter vivos*,⁷ and it is difficult to find any elsewhere for adopted children – except in one circumstance that arises in the law cited in [Dem.] 46, 14:

Ὅσοι μὴ ἐπεποίηγτο, ὥστε μήτε ἀπειπεῖν μήτ’ ἐπιδικάσασθαι,
(5) ὅτε Σόλων εἰσήει τὴν ἀρχήν, τὰ ἑαυτοῦ διαθέσθαι εἶναι ὅπως ἂν
ἐθέλῃ, ἂν μὴ παῖδες ὧσι γνήσιοι ἄρρενες, ἂν μὴ μανιῶν ἢ γήρωσ
ἢ φαρμάκων ἢ νόσου ἔνεκα, ἢ γυναικί πειθόμενος, ὑπὸ τούτων
του παρανοῶν, ἢ ὑπ’ ἀνάγκης ἢ ὑπὸ δεσμοῦ καταληφθεῖς.

Everyone who had not been adopted when Solon entered on his archonship so as neither to renounce nor claim the inheritance at law is permitted to dispose of his own property, however he wishes, provided he has no legitimate sons, unless he is mad due to old age or drugs or illness, or under the influence of a woman, being deranged by any of these causes, or is constrained by need or actual fetters.

What Solon intended when he passed this law has been a matter of great controversy,⁸ but most scholars, I think, would at least agree that Solon barred adopted sons who remained childless from adopting in turn; in such a case, the *oikos* was to be returned to closest kin. So adopted son and natural son, at any rate, do not stand on the same footing when it comes to disposing of an estate. Can this be thought of as a “moral” inferiority? I think not.

While interesting affective distinctions between natural sons and adopted sons can be found in fourth century evidence,⁹ it is more relevant in the context of the *Ion* to keep to the earlier period. Here I point to two different phenomena: first, the

⁷ In practice it was of course different for children adopted by will; as the belligerent plaintiff in *Isaios 3* put it: Καίτοι – ὅπερ εἶπον καὶ πρότερον – ὅσοι μὲν <ἂν> καταλίπωσι γνησίους παῖδας ἐξ αὐτῶν, οὐ προσήκει τοῖς παισὶν ἐπιδικάσασθαι τῶν πατρῶων· ὅσοι δὲ διαθήκαις αὐτοῖς εἰσποιοῦνται, τούτοις ἐπιδικάζεσθαι προσήκει τῶν δοθέντων. (61) Τοῖς μὲν γάρ, ὅτι γόνῳ γεγόνασιν, οὐδεὶς ἂν δήπου ἀμφισβητήσῃε περὶ τῶν πατρῶων· πρὸς δὲ τοὺς εἰσποιοῦντας ἅπαντες οἱ κατὰ γένος προσήκοντες ἀμφισβητεῖν ἀξιοῦσιν.

⁸ The law is ascribed to Solon at *Dem. 20*, 102: Ἐμοὶ δ’, ὦ ἄνδρες Ἀθηναῖοι, δοκεῖ Λεπτίνης (καὶ μοι μηδὲν ὀργισθῆς· οὐδὲν γὰρ φλαῦρον ἐρῶ σε) ἢ οὐκ ἀνεγνωκέναι τοὺς Σόλωνος νόμους ἢ οὐ συνιέναι. εἰ γὰρ ὁ μὲν Σόλων ἔθηκε νόμον ἐξεῖναι δοῦναι τὰ ἑαυτοῦ ᾧ ἂν τις βούληται, ἐὰν μὴ παῖδες ὧσι γνήσιοι... For different interpretations of the difficult first eight words of the law cited at [Dem.] 46, 14, see Harrison 1968, p. 85-87, esp. 86 with n. 2. For the view (tendentious or not) that the usual procedure, in the absence of legitimate children, was to adopt a son, see *Is. 2*, 13-14.

⁹ The speaker of *Dem. 39* and [Dem.] 40, for example, repeatedly uses (twenty times) a verb and noun, *poeisthai* and *poiēsis*, for *Mantias*’ recognition of *Boeotus* as his natural born and legitimate son – yet these words would seem, more properly, to refer to an adoption. The designation is a slur, as if being “adopted” is somehow spurious; for details, see Scafuro 2011, p. 40-42.

scarcity of adopted children in fifth century drama and secondly, some evidence that might suggest an on-going debate about adopted children at the end of the century.

Instead of adopted children in fifth century drama, foundlings and supposititious children more regularly appear: the latter are mentioned on four occasions in Aristophanes' *Thesmophoriazousai*, a play probably produced in that interesting year 412/11.¹⁰ Crotylla reels off a series of offences against her sex and includes denouncing a woman who has passed off another's child as her own (339-40); Mica complains that a childless wife who wants to pass off another's baby as her own can't even get away with it (407-08); she later describes how one childless woman pretended she was in labor for ten days until her maid could purchase a new born infant for her to bear and pass off as her own (502-11); and Euripides' kinsman dressed as a woman accuses lady-friends with exchanging a new-born daughter for a slave girl's new born son as if it were a common thing (564-5).¹¹ Adopted children, on the other hand, are a rarity – or perhaps, it would be more accurate to say, the “technical” language of adoption is rare; it appears, so far as I know, only in the Old Comedy poet Eupolis who apparently smeared Theramenes for having been born on the island of Keos and having been adopted as the son of Hagnon (*Poleis*, K-A 251, dated 422 BCE).

Non-technical language, however, appears elsewhere – for example, in the *Ion*. At the end of the long dialogue that follows Kreousa's recognition of her son and her revelation to him of his paternity, Ion is still suspicious. Why did Apollo give him away to another father? he asks. Why does Apollo say that he, Ion, is Xuthos' son? Kreousa answers:

πεφυκέναι μὲν οὐχί, δωρεῖται δέ σε
 αὐτοῦ γεγῶτα· καὶ γὰρ ἄν φίλος φίλῳ
 δοίη τὸν αὐτοῦ παῖδα δεσπότην δόμων (1534-36).

*He doesn't say you are Xuthos's son; he is giving you,
 His own son, as a present – in fact, just as one friend might give
 To a friend his own son to be heir of his house.*

¹⁰ Henderson 2000, p. 444-45 dates the production to the Dionysia of 411.

¹¹ In Euripides' *Alkestis* produced earlier, in 438, Admetos, upset with his father Pheres, denies he is his natural son; he was borne of a slave woman and given to his mother (636-41). A pun on a supposititious child appears at Aristoph. *Pax* 677-8 (421 BCE); in *Clouds* 530-31 (423 BCE), the chorus leader uses the exposing of an infant and its acquisition by another girl as a metaphor for the production of earlier comedies composed by Aristophanes (but not produced by him). Another Old Comedy poet, Telekleides, smears a sycophant as taking a *mna* from one Charikles so keep secret his mother's purchase of him (K-A 44; after 415 BCE). In contrast, New Comedy is rich with adoptees (e.g. Moschion in the *Samia*, and the brothers in *Adelphoi*) as well as supposititious children who regularly turn out to be of citizen birth.

Scholars have often noted that Kreousa likens Apollo's conduct to adoption¹² – but they have not noted how odd the articulation is: ἄν φίλος φίλοι δοίη τὸν αὐτοῦ παῖδα. Now, who has ever heard of Athenians giving their sons away *as one friend to another*? Athenians give their sons, not to friends, but to kinsmen, to blood relatives – for adoption (εἰσποιεῖν) and not as presents.¹³ I suspect that Euripides has carefully chosen his words here in harmony with the gender-bending strategy that guides the rest of the play along: Kreousa is depicting Ion as a *supposititious* child – not an adopted one – from an alternatively gendered standpoint: instead of one woman selling or giving a child to another woman to raise as her own, Kreousa euphemistically depicts Apollo as fobbing off a child on a man – with a view to the child profiting from the estate.¹⁴ This idiosyncratic formulation of the scenario of a supposititious child perverts adoption: both strategies secure inheritance, but the former entails secretive delivery and the latter a manifest fiction legitimized by law.¹⁵ Did the Athenians recognize the one scenario as a perversion of the other? In the period when the Periklean citizenship law had lapsed – whether formally or informally – they very well may have. The “sudden” quadruple appearance of supposititious children in Aristophanes' *Thesmophoriazousai* in close temporal proximity to the presumed date of the *Ion* is certainly suggestive: a woman's acquisition of a child from an outside source was a way to maintain a traditional marriage after the passage of a decree – or a communal agreement – to allow a man to keep one woman as a wife and another to bear his children.¹⁶ The acquisition of a “supposititious child” is an adoption controlled by a woman.

Non-technical language for the acquisition (adoption?) of children also appears in two fragmentary plays of Euripides. In *Erechtheus*, a speaker, possibly Praxitheia,

¹² E.g., Wilamowitz-Moellendorff 1926; Owen 1939, *apud* 1535: “Eur. Is referring to the contemporary custom of adoption”; Ogden 1996, p. 172: “The play reaches its most bathetically parochial at the point at which it is explained why Apollo told Xuthos that Ion was his son when he was really Apollo's own: the explanation is made in terms of the banalities of classical Athenian adoption law.”

¹³ The *noun philos* refers to “friend” and not to “kinsman”; see Konstan 1997, p. 52-82, esp. 59 and n. 9.

¹⁴ Kreousa explains further after their next exchange: if he were called the god's son, he would have had no inheritance or a father's name (τοῦ θεοῦ δὲ λεγόμενος/ οὐκ ἔσχεε ἄν ποτ' οὔτε παγκλήρους δόμους / οὔτ' ὄνομα πατρός, 1541-43).

¹⁵ Similarly Cohen 2000, p. 87: “Euripides traumatizes Athenian norms by deriving the ‘autochthonous’ line through maternal, not paternal, filiation (while the putative father is forced into the usually feminine role of trying to gain entry into the family for a supposititious child).”

¹⁶ Gardner 1989, p. 56-57 considers the passages from *Thesmophoriazousai* about supposititious children from both the male and female point of view; the woman would be “safeguarding her own position” in her marriage whereas a man would see it as “trickery and deceit,” used “to take advantage of the material security the oikos could offer.” She does not directly link these views with the collapse of the citizenship law during this period.

complains (*TrGF* 5, 359): θετῶν δὲ παίδων ποῦ κράτος; τὰ φύντα γὰρ / κρείσσω νομίζειν τῶν δοκημάτων χρεῶν (“Where is the advantage in ‘acquired’ [‘adopted’? suppositious?] children? For we should realize that those born naturally are superior to make-believe children!”). And in *Melanippe Captive*, a speaker says (*TrGF* 5, 491):

ἴστω δ' ἄφρων ὦν ὅστις ἄτεκνος ὦν τὸ πρὶν
 παίδας θυραίους εἰς δόμους ἐκτήσατο,
 τὴν μοῖραν εἰς τὸ μὴ χρεῶν παραστρέφων·
 ᾧ γὰρ θεοὶ διδῶσι μὴ φῦναι τέκνα,
 οὐ χρὴ μάχεσθαι πρὸς τὸ θεῖον, ἀλλ' ἔαν.

A man who, though childless earlier in life, acquires the children of others for his house and thereby perverts his fate into the undestined, let him know he is a fool – for a man who is destined by the gods to be childless should not fight against their will but let it be.

Neither play can be precisely dated but metrical evidence and probable allusions in other datable dramas suggest a date in the lower range of 421-410 for *Erechtheus* and a date close to 412 for *Melanippe Captive*.¹⁷ It is hazardous here to attempt to reconstruct the precise point in the plots at which these speeches were made;¹⁸ suffice it to say that one speaker has expressed the view that non-natural children (i.e., whether adopted or suppositious) are inferior to natural children in a play (*Erechtheus*) in which a child has (apparently) been taken in as heir for an imperiled household; and another speaker has expressed the view that to raise such children is a perversion of a man's destiny in a play (*Melanippe Captive*) in which children born outside of one family have been raised to adulthood in another. In other words, disapprobation is a response to “adoptions” (whether official or not) that have already taken place.

When we turn to fifth century documents and oratory, we find two pieces of evidence for what may have been a serious debate in the late fifth century. First, there is Theozotides' proposal to provide state support for the children of fathers who had died violent deaths while coming to the aid of the democracy (*SEG* 28, 46); according to Stroud's interpretation, the children are the orphans of men who died

¹⁷ Collard-Cropp 2008, p. 366 for the lower date for *Erechtheus*, pointing out probable allusions to *Erechtheus* in Aristophanes' plays of 411, namely *Lysistr.* 1135 (cf. fr. 363) and *Thesmoph.* 120 (cf. fr. 369d); *ibid.*, p. 589, for a date close to 412 for *Melanippe Captive*, citing the coincidence of F 507.1 with a line from Eupolis' *Demes* (412 BCE), possible imitations in Aristoph. *Thesmoph.*, and similarity of romantic plot to other plays such as *Antiope*, *Hypsipyle*, and *Ion*.

¹⁸ Collard-Cropp 2008, p. 363-66 for brief remarks on the plot for *Erechtheus* and 587-89 for *Melanippe Captive*.

under an oligarchy.¹⁹ In his decree, Theozotides proposes to restrict support to the orphans who are *gnēsioi* and exclude *nothoi* and *poiētoi*. Secondly, there is Lysias' speech against the same Theozotides, for proposing to exclude the latter two categories of children (Lysias, frag. 128 Carey). I have already pointed out that during the Peloponnesian War the Perikleian citizenship law had lapsed; indeed, the supposititious children of Aristophanes' *Thesmophoriazousai* and Euripides' *Ion* might be added to the stew of evidence suggesting that lapse. Stroud, in the *editio princeps* of Theozotides' decree, summed up more reliable evidence when trying to date that document (was the oligarchy of 411 or 404/03 in question?): "Theozotides' discrimination against νόθοι and ποιητοί is not easy to explain," he argued, "in the period before the citizenship laws of 403/2." He continued:

*Slaves, metics, and foreigners who fought at Arginousai in 407/6 were rewarded with Athenian citizenship. Samians in large numbers were voted full Athenian rights in 405/4. Euboians were granted rights of intermarriage with Athenians sometime before 405. After the Sicilian expedition a decree was passed which permitted citizens to have legitimate children by one Athenian woman while still remaining legally married to another. All available evidence indicates that prior to 403/2 νόθοι had full rights of citizenship; it would be very surprising to find those νόθοι whose fathers fell in battle excluded from public support before the end of the war.*²⁰

If speech and decree are connected, then Theozotides' decree passed amidst controversy; νόθοι and ποιητοί were excluded. While some scholars have doubted both the date and the connection of the two documents, the speech by itself nevertheless testifies to the negative début of adopted children into fifth century documentary history. That negative sentiment (or at least "bad odor") is illustrated as well in the near contemporary literary document (the decree dates to 411/10 BCE) that provided the verdict for Antiphon and Archeptolemos; at its end, it directs: καὶ ἐάν <τις> ποιήσῃται τινα τῶν ἐξ Ἀρχεπτολέμου καὶ Ἀντιφῶντος, ἄτιμος ἔστω ὁ ποιησάμενος (Plut., *Mor.* 834B: "and if <anyone> adopts any descendant of Archeptolemos and Antiphon, let the adopter be *atimos*"). This is important: for there is little evidence elsewhere concerning adopted children earlier in the fifth century – they certainly existed (Plut., *Them.* 32),²¹ but apparently did not attract much attention. Is it possible, then, that the view of the moral superiority of *gnēsioi* over adopted children is a late fifth century view, reflecting, in the first instance, an

¹⁹ Stroud 1971. See now Matthaïou 2011, dating the decree to 411, with which the argument here accords.

²⁰ Stroud 1971, p. 299 with n. 58-62 (abbreviated here): (1) for awards after Arginousai, Aristoph. *Frogs* 190-91, 693-94; Hellanikos *FGrHist* F 25; Diod. 13, 97, 1; (2) rights for Samians, *IG II*², 1; (3) rights for Euboians, Lys. 34, 3; (4) citizens allowed one *asté* as wife and another for bearing children, see n. 1 above and add (*inter alios*) Harrison 1968, p. 16-17 and Wolff 1944, p. 85-87; (5) *nothoi* with full rights of citizenship prior to 403/02, Wolff 1944, p. 75-85; Harrison 1968, p. 24-29, 61-68.

²¹ For testimony, see Ghiglia 1999, p. 152-54.

increase in the number of “adoptions” (official or otherwise) as households tried to increase their members in the face of drastic mortality rates from disease and war,²² and in the second instance, of a “backlash” against adoptions as polis coffers shrank (a possible motivation for Theozotides’ decree)²³ and as relatives became disgruntled when inheritances did not come their way? If so, then the “adoption scenario” in Euripides’ *Ion* fits neatly into the socio-economic climate depicted here.

III. Autochthony: an explanation for the inalienability of land and non-hereditary *enktēsis*

Finally, I turn to the topics of the inalienability of land and the right of *enktēsis*: Leão has adduced the ideology of autochthony to explain Athenian restraint in alienating land and making awards of hereditary *enktēsis*. Plato’s exploitation of that ideology in the *Laws*, to promote the policy of inalienability at a time when the policy itself had largely disappeared, attests its long lasting vigor. Contemporary scholars, viz., Maria Niku and Nikolaos Papazarkadas, have also latched onto autochthony as one explanation, together with the scarcity of arable land, to explain the longevity of the inalienability of land in Athens²⁴ In the brief time that remains, I note just a couple of relevant landmarks on the fifth century legal horizon.

First, the question can be raised: when did land become alienable? Scholars seem to have agreed with John Fine’s conclusions in 1951, unorthodox at the time, that property was inalienable from the time of Solon down to the beginning of the Peloponnesian War.²⁵ Family property, however, must have become alienable

²² For stimulating discussion of the downward shift in Athens’ population during and after the Peloponnesian War, see Akrigg 2007, p. 31-33.

²³ That an argument to exclude *nothoi* and *poiētoi* was essentially economic: Slater 1993. Todd 2000, p. 383 suggests: “The care taken [sc. in the inscribed decree] to scrutinize claims, and the fact that the seven names recorded on the side of the stele are reported with full formal details (name, father’s name, deme), makes it plausible that maintenance was extended only to legitimate sons by blood, but Lysias’ attack on the proposal for denying the rights of adoptive and illegitimate children (Frs. 10.a and 10b) may be an attempt to raise the temperature by focusing on a side issue.”

²⁴ Niku 2007, p. 114-38 is the most recent treatment of *enktēsis*; she covers the Classical period as well as Hellenistic. Both she (p. 114) and Papazarkadas 2011, p. 231-32 ascribe Athenian wariness in disposing of their land to others to the scarcity of arable land and the ideology of autochthony.

²⁵ Ashieri 1963, p. 3 with n. 10 even suggested that: “It is probable that prohibition of selling the family lot was introduced in Attica during the sixth century: such a restriction certainly does not contradict the general social aims of the Solonian reforms; moreover, it could have been enforced as a result of Pisistratus’ confiscations and land redistribution, in order to attach the new settlers to their holdings, or as a part of the Cleisthenian reorganization of the Athenian territory and citizen-body.” There is less agreement regarding the category of land: whether only “oikos property” was inalienable or all property; see, e.g. Pečírka 1963, p. 193-201.

before mortgage contracts allowed foreclosure;²⁶ and property must have been alienable before *enktēsis* was granted – but there is no evidence for mortgage contracts until the 420s, and then only slight – from fragments of Old Comedy,²⁷ and the first grant of *enktēsis*, to the Thracians for a sanctuary to the goddess Bendis, appears to have been made, at latest, in 430/29.²⁸ These slight indications of the alienability of property in the fifth century do not appear to have ruptured into any kind of massive sell-off. Evidence for mortgaging property remains scant at the end of the century.²⁹ Moreover, grants of *enktēsis* were infrequent in the fifth century: only three or four are certain, and this small number should be set against the thirty or so proxeny grants of the same period that do not award the privilege of the right to purchase and own land in Attica. On the other hand, there are ca. forty grants of *enktēsis* in the next century.³⁰ The numbers suggest that *enktēsis* was a brand new privilege in the fifth century; hereditary grants, rare at the beginning, continue to be rare through the centuries.³¹ Is there any hint, however, of distress over foreclosures on mortgages, over the alienability of property and grants of *enktēsis* to foreigners in the *Ion*? Really, I think not; but surely the absence of children in the Erechtheid *oikos* raised concerns for its continued existence.

More could be added regarding property and the loosening of the social fabric by the presumed date of the production of the *Ion* ca. 412 – e.g., the decimation of the population by the plague and the toll taken by that and by invasions into Attica on the property of her inhabitants, the confiscations of property in 414/13, and the

²⁶ Presuming that, in the case of a fully developed mortgage contract, “the creditor on non-payment of the debt can foreclose on and become owner of the property which had served as security,” there can be no such contract unless land is alienable; thus Fine 1951, p. 177.

²⁷ Only the first is datable to the 420s: Kratinos K-A 81; Pherekrates K-A 64. Evidence for such contracts during the last decade of the fifth century: Isokr. 21, 2 and Lysias 32, 1: Fine 1951, p. 168-9.

²⁸ *IG II²*, 1283: see Pečírka 1963, p. 194-95 with nn. 45-49.

²⁹ See n. 24.

³⁰ Pečírka 1963, p. 195-6; 1966, chart p. 152-59. Since the latter work, I have noticed only two new grants of *enktēsis* that are certain: *Hesp.* 43, p. 322-24; this is a grant of proxeny accompanied by *enktēsis* for Sopatras of Akragas between 331-324 (?). Meritt restored a scrappy fragment published in *Hesp.* 37 (1968), p. 268-9 no. 4 as an honorary decree; while the *enktēsis* is plausible, much else is not: see *SEG* 25, 84, and Henry 1983, p. 213 where he offers an alternative.

³¹ There are no preserved mentions of hereditary *enktēsis* in fifth century decrees – though one must imagine that such grants to sanctuaries were forever. Niku 2007, p. 124 n. 161 lists six hereditary grants for the Classical period (down to 322 BCE): *IG II²*, 80, 162bc, 287, 360, 425; *SEG* 21, 300. The last is to be excluded; there are only five such grants. She is right to describe the grants as “rarely hereditary” until the end of the third century; she hypothesizes (p. 130) that thereafter, the grant may have become automatically hereditary without explicit mention, in the same way as in grants of naturalization after 229/8.

conferrals of citizenship on loyal friends of Athens:³² these factors, too, corroded and frayed the social and economic fabric of Athenian society.³³ All this is background to Euripides' *Ion*: the myth of autochthony was collapsing and its fiction was manifest.

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³² The earliest naturalizations in decrees cited by Osborne 1981-83 are: D1, the Plataians in 427 (literary source: [Dem.] 59, 104); D2 Thrasyboulos of Kalydon in 410/09 (*IG*); D3, King Evagoras of Salamis and his sons in (?) early 407 (*IG* I³, 113); D4, the Samians in 405/04 (*IG* II², 1). The earliest attested in literary sources: T1, Menon of Pharsalos ca. 476; T2, Polygnotos of Thasos ca. 460; T3, Karystion of Samos ca. 439; T4, Sadokos of Odrysian Thrace in 431; T5, Perikles, son of Perikles and Aspasia, in 430; T6, Tharyps of Molossia ca. 428-24; T7, Apollodoros of Megara in 410/09.

³³ Fine 1951, p. 202.

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