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## AUCTIONS AND OWNERSHIP IN PTOLEMAIC EGYPT: A SOCIAL AND ECONOMIC APPROACH

The idea of ownership is one of the oldest legal concepts of mankind. In the ancient world, ownership or other types of control over agrarian land played an essential role in wealth and growth of individuals and of the whole community, the state. Legal institutions interacted and channeled the allocation of natural resources and the distribution of income; every type of interest in land really mattered.

The concept of property and especially of real property is a social fact. In societies throughout history, the definition of property rights is strongly influenced by social, political and economic phenomena. As Schmid recently stated: “Property is not simply a derivative of a physical fact, it also reflects a group choice about what kinds of effort are to count in creating an image in people’s minds that acknowledges a person’s rights.”<sup>1</sup>

In ancient societies there was always a strong connection between legally protected property rights and economic rights. However, economic performances can be carried out without a proper legal framework, too. Therefore Barzel is right stating that “legal rights, as a rule, enhance economic rights, but the former are neither necessary nor sufficient for the existence of the latter.”<sup>2</sup> Notwithstanding, economic choices can be made with more security—and at lower transaction costs—in an adequate legal environment. Furthermore, economic transformations and needs lead often to changes in the legal framework: the state, as the main decision maker, commonly interferes on behalf of economic growth.

Ownership is a complex and dynamic category embedded in its contemporary environment. Social, political and legal institutions have an important impact on economic performances.<sup>3</sup> The institutional environment “constitutes the framework within which human interaction takes place. It provides the so called ‘rules of the game’, which, in effect, are the institutional background constraints, under which individuals in society make choices.”<sup>4</sup>

My present concern is primarily the institutional arrangements of ownership in a rural economy, together with the legal environment surrounding that economy and

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<sup>1</sup> Schmid 2007: 83.

<sup>2</sup> Barzel 2007: 263.

<sup>3</sup> Mercurio – Medema 2006: 241–2.

<sup>4</sup> Mercurio – Medema 2006: 247.

its connection to changing economic and social conditions. If one looks at how property rights functioned, one should consider also the tension between individual decision makers and collective interests (enforced mostly by the state). If a legal system considers ownership functionally, this leads soon to the solution—especially regarding agrarian land—that the owner is never entitled to enjoy exclusive or unlimited property rights. If people leave their land idle this decision will necessarily not be accepted by the social, political and legal environment. There is a higher priority than an individual's abstract title: natural resources (especially if scarce) should be exploited.

I approach the problem from the special point of view of auctions of land by state authorities and I restrict the present paper to Ptolemaic Egypt. First I deal with the rules of auctions and their legal nature. Then I return to the problem of defining ownership in Hellenistic Egypt.

## I. Auctions in Ptolemaic Egypt

As an informative introduction to our topic, I have selected two petitions which can serve as case studies. The first is P.Ent 61, from the middle of the third century BCE, recording the application of a resident of the village Phanippos to the king for legal help (the name of the petitioner is lost with the first lines of the text):<sup>5</sup>

... [δέομαι οὖ]ν σου, βασιλεῦ, εἰ καί σοι δοκεῖ, προστάξαι Ἄμμωνίῳ τῷ ἰοῖκονόμῳ γράφαι Γλαύκωνι τὴν ὄνην κατατάξαι μοι ἵνα τὸ κτῆμα ἰκατεργάζωμαι καὶ μὴ καταφαρῆι, καθάπερ καὶ Ἡρακλείδῃ τῷ ἀγοράσαντι τὸν ἰ<sup>10</sup> ὑπάρχον[τα ...] ὄν ἐν τῷ Νέωνος κλήρῳ κεχρημάτισται. ἐὰν δὲ ὁ Νικόδημος ἰ ἀφεθεῖς [καὶ] παρα[γε]νόμενος ἐν ταῖς ξ ἡμέραις ἐπίλυσασθαι βούληται κατὰ τὸ διάγραμμα, ἰ δίδωμ[ι] αὐ[τῷ] τῆν ἐπίλυσιν ἀποδόντι τό τε ἀργύριον καὶ τὰ γινόμενα ἰ κα ...<sup>6</sup>

According to lines 1–6 (not quoted), the claimant had purchased some land (*ktema*) that belonged earlier to a certain Nikodemus. From the terminology it seems likely that he acquired the land by way of auction (*poloumenon* line 1, *egorasa* line 3, *prosbote* line 5) and paid 200 drachmas for it. The papyrus is in a rather fragmentary condition, yet it is striking that it doesn't give any hint about the category of the land—whether it was registered as royal land, temple land or orchards.<sup>7</sup> The auction

<sup>5</sup> P.Ent. 61, Ghoran, Arsinoite, BCE 246–40.

<sup>6</sup> P.Ent. 61.6–12: “Je te prie donc, o roi, si bon te semble, d'ordonner à Ammonios l'économe d'écrire à Glaucon qu'il enregistre la vente à mon nom, afin que je puisse cultiver le *ktema* et qu'il ne reste pas à l'abandon, et que l'on use envers moi de la procédure appliquée à Héracléidès, l'acheteur du [ ] contenu dans la tenure de Néon. Si Nicodémos, étant libéré, se présente dans les 60 jours et désire racheter son *ktema*, en vertu du règlement, je lui concède le droit de rachat, pourvu qu'il rembourse l'argent et ...” (Guéraud)

<sup>7</sup> For land in Ptolemaic Egypt see Crawford 1971: 53–7; Préaux 1978: 188–9; Habermann – Tenger 2004: 297–8. Based on the commonly accepted thesis that only garden land

was led by Glaukon, an official in charge (line 5 and 8) but never finished. Glaukon suspended the usual process of auctioning: he neither had confirmed that the land was sold to the petitioner (after his highest bid) nor ordered that ownership be registered under his name. The reason might have been that Nikodemos, the former possessor, suddenly re-appeared and claimed his land back.

The phrase *ek ton ergon* (line 6) points to Nikodemos' longer involvement with public works. Obviously during his absence his land was confiscated by the state and put up for auction. There are two different possibilities why it came to a public auction: on the one hand Nikodemos might have had left debts (public or private) unpaid behind;<sup>8</sup> on the other hand it seems likely that his land fell into disuse and was promptly registered as *adespoton* and put up for auction.<sup>9</sup>

Anyway, after his return Nikodemos immediately filed a claim to redeem his land (*epilysis*); such a redemption was common within a time limit, usually of 60 days (according to a *diagramma*).<sup>10</sup> This very claim for redemption worried the petitioner and it led to the present document asking for royal help. He asks that Ammonios, the *oikonomos* supervising the auction, should write to Glaukon and order him either to finish the auction (*proshole, katagprahē*) or to cancel the sale and return the money to him.<sup>11</sup> The complicated case demonstrates the daily practice of auctions in Ptolemaic Egypt. It points to important stages of the process (*proshole, katagraphe* etc.) and to the officials usually in charge.

A second petition singled out was drawn up some decades later and refers to a similar case about losing and acquiring land:<sup>12</sup>

... ἀδικούμαι ὑπὸ Π[ε]μσίας τ[οῦ] Φανούφιου· ὑπαρχούσης ἰ<sup>5</sup> γὰρ [τῆ]ι ἐμῆι [γυν]αικὶ Τσενονπμοῦτι γῆς ἠπέιρου, ἣ ἐστὶν ἐν τῆι κάτω τοπαρχίαι ἰ τοῦ Περιθήβ[ιας] (ἀρουρῶν) π, συνέβη ἐν τῆι ἰ γενομένηι τ[α]ραχῆι πραθῆναι ἀπὸ τούτων ἰ τῶι προγεγ[α]μμένῳι ἐν τοῖς ἀδεσπότηις<sup>10</sup> (ἀρούρας) νγ, τῆς γυναικὸς μου ἔτι π[ε]ριούσης ἰ ἐν τοῖς κάτω τόποις καὶ παραγεγεννημένης ἰ ἐπὶ τοὺς τόπους καὶ ὑπομενούσης ἰ συνπληρώσαι τὰς διὰ τῆς διαγραφῆς (ἀρούρας) νγ ἰ οὐχ ὑπομένει ἰ [ἐ]ξεδιαζόμενος τὰς λοιπὰς ἰ<sup>15</sup> (ἀρούρας) κ[ζ] παρὰ τὸ κ[α]θ[η]κον βιαζόμενος. ἰ ἀξιῶ οὖν σε μετὰ πάσης δεήσεως, ἐάν σοι ἰ φαίνηται, συντ[ά]ξαι γράψαι ἰμοῦθηι ἰ τῶι τοπογραμματεῖ προσανεγκεῖν τὰ κατὰ ἰ τὴν διαγραφὴν

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(orchards) could be privately owned Armoni 2007: 228 completed *ampelonos*, vineyard, in line 1.

<sup>8</sup> Armoni 2007: 229 prefers this solution.

<sup>9</sup> Already supposed by O. Guéraud, the editor.

<sup>10</sup> Cf. Pringsheim 1961: 295–6. Just because of the possibility of an *epilysis* (Lösungsrecht) I do not classify sales by public auctions as *praxis epi lysei*.

<sup>11</sup> It is likely that the petitioner paid at least an earnest money (*arrabon*) at the auction; cf. Pringsheim 1961: 296.

<sup>12</sup> SB V 8033, Diospolis Magna, BCE 182 (= P.Baraize). Edited by Collart – Jouguet 1933; later on Wilcken 1935: 292–4 and Wenger 1949 offered detailed legal interpretations.

τὸ πλῆ[θος] τῶν (ἀρουρῶν), ὅπ[ως] ἴ<sup>20</sup> ἀπομετρήσω αὐτῶι [κα]ὶ παραλάβω τὴν ἰ  
 ὑάρχουσάν μοι γῆν ἄ[πρ]ατον ...<sup>13</sup>

The Papyrus covers the text of a *hypomnema* of a certain Petearoeris,<sup>14</sup> a *georgos* (farmer) from the *chora*; it is addressed to the *strategos* and *diadochos* Daimachos.<sup>15</sup> *Adikoumai hypo Pemsaios*, “I am wronged by Pemsais,” the applicant claims bitterly. Obviously, he mentions only facts serving his version of the events; it makes a proper reconstruction of the case rather difficult. As far as I can see, his wife Tsenonpmous possessed originally 80 *arourai*<sup>16</sup> of land in the *chora* but a revolt forced her to flee the country.<sup>17</sup> The land (either arable or vineyard)<sup>18</sup> fell into disuse, was registered as derelict (*en tois adespotois*, line 9), confiscated by the state and put up for auction.<sup>19</sup> In this official auctioning process, Pemsais acquired 53 *arourai* of her land and obviously has already paid its price (or at least the first installment) to the state (actually to the *Idios logos*).<sup>20</sup> Later on Tsenonpmous returned and tried to recover (repurchase) her estate; according to the petition she offered Pemsais (the purchaser by auction) the whole price and expenses paid by him, but she failed.<sup>21</sup> Subsequently Tsenonpmous died and her husband became her heir; the petition includes his claims against Pemsais.

<sup>13</sup> SB V 8033.3–24: “Je suis lésé par Pemsais, fils de Phanouphis. Ma femme Tsénonpmous possédait une terre de la vallée, sise dans la Toparchie d’aval du Périthèbes, et d’une contenance de 80 aroures. Il arriva dans la période de troubles qu’il en fut vendu au susdit 53 aroures, comme biens vauquants. Ma femme vivait encore dans le district d’aval, elle était venue sur les lieux et elle consentait à payer complètement les 53 aroures du bordereau de vente; lui n’y consent pas, et il s’approprie les autres 27 aroures par une violence illégale. Je te demande donc avec instance, s’il te parait bon, de faire écrire à Imouthès le topogrammate qu’il ait à fournir un rapport sur le bordereau de vente et le nombre d’aroures y mentionnées, pour que je lui (Pemsais) en paie le prix en nature et que je receive de lui la terre qui m’appartient avant qu’elle soit vendue.” (Collart – Jouguet)

<sup>14</sup> For prosopography see Kuntz 1933.

<sup>15</sup> For the official see Collart – Jouguet 1933: 27–30; to the administration of the region see Thomas 1975: 35.

<sup>16</sup> 1 *aroura* = c. 2756 m<sup>2</sup>, cf. Pestman 1990: 49; Crawford 1971: 12.

<sup>17</sup> Wilcken 1935: 292–3 decided for the revolts of Dionysios 165 BCE; for a new dating see ZPE 107, 1995, 81.

<sup>18</sup> The category of the land remained unnamed in this petition, too. We learn only that the land was in the *chora* at Thebes. Anyway, 80 *arourai* were a considerable piece of land. Land surveys from Fayum record parcels from 10 to 50 *arourai*. Cf. P. Tebt. I 62 (119–118 BCE) and P. Tebt. 63 (116–115 BCE), see Crawford 1971: 22.

<sup>19</sup> Cf. Wenger 1949: 15–16; Swarney 1970: 26–28. Especially Wenger dealt with redeeming lost land (*epilysis*, Lösungsrecht).

<sup>20</sup> The price of land sold by auction had to be paid commonly to the royal bank, see Bingen 2007: 220.

<sup>21</sup> If the land turned unproductive (*hypologos*) as a consequence of ceasing cultivation the price was fixed commonly at a very low rate at public auctions, cf. Rowlandson 1996: 48–53.

As mentioned above, we are not able to reconstruct the exact facts.<sup>22</sup> Wilcken argued that the petitioner charged Pemsais with refusing to agree to his right of redemption and of having occupied much more territory by force. Therefore he asked for royal help and wished to draw the boundaries between the parcels sold and kept (the point may have been to choose the more fertile land).<sup>23</sup>

Both case studies demonstrate that state interference into ownership on agrarian land was a usual phenomenon in Ptolemaic Egypt. Regarding P.Ent. 61 and SB V 8033, the difference in times and places is a strong argument for the wide acceptance and unbroken continuity of a bureaucracy that intervenes.<sup>24</sup> Both deal with agrarian land and communicate the message that arable but abandoned land was soon noticed by officials, and was registered and sold by public auction to individuals who were eager to put it under cultivation. Since there is no hint as to the legal category of the land or to the title, these might have been of no relevance for the auction process. Both cases report sales of agrarian land and this characteristic seems to me of utmost importance.

There are many questions to be clarified in this complex field. For the present paper I single out especially two legal problems: a) What are the main rules of selling by auction in Ptolemaic Egypt? b) What conclusions can we draw from the documents of auctions about ownership over agrarian land?

First it seems useful to shed some light on the relevant sources. Modern databanks open a large scale of possibilities for checking papyri. However, for the present topic one has to consider the problem that an exact terminology for auctions did not exist. The typical phrases were *kata prokeryxin*, *dia kerykos*, *agorasmos*, *hypostasis*, *chersos*, *adespoton* etc. Looking at the databanks and checking the documents, one gets the impression that the papyri dealing with auctions refer mostly to public auctions in a double sense:<sup>25</sup> auctions were announced and carried out by state authorities and served mostly state interest (selling arable land, farming

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<sup>22</sup> Pringsheim 1949: 323–4 takes the statements of the petitioner for facts—but one should consider that every petition delivers a rather subjective version of the story.

<sup>23</sup> For this interpretation see Wilcken 1935: 293 and especially Wenger 1949: 18; to the meaning of *apometreo*: “1. to measure corn, to pay, 2. To measure of, to find out by taking measure, to make me verify for him the precincts of the *arourai* by measuring them.” Notwithstanding Pringsheim 1949: 323–4 argued that *apometreo* can mean only “paying in kind.” At first glance paying in agrarian products instead of money seems to be strange; but there is evidence for it also at auctions, e.g. P.Hauswaldt 16.

<sup>24</sup> Centuries later, in Roman Egypt similar procedures can be observed for confiscating and selling abandoned land, e.g. the archive of Petaus, cf. Kruse 1999.

<sup>25</sup> In some sense all Ptolemaic auctions were public, for every auction was announced and controlled by state authorities. As stated by Pringsheim 1969: 330: “Ptolemaic private auctions do not seem to exist; their private character is almost absorbed by the cooperation of the state and its officials.” Apart from these the economic content does matter: the auctions served public or private interests. Auctions for private interest are recorded in e.g. P.Cair.Zen. III 59371; P.Lond. VII 2016 and BGU XIV 2376.

out taxes or *apomoira*, executing tax debts etc.).<sup>26</sup> Furthermore it is really striking that the majority of the documents record selling agrarian land, especially the selling of abandoned land (*adespota* or *hypologos*), see P.Haun. 11; SB V 8033; BGU VI 1218 and 1219; P.Ryl. II 253 Kol. V; P.Eleph. 15–25; P.Köln. VI 268; SB I 4512 A and B; P.Tebt. III, 2853; UPZ I 114; UPZ II 220 and 221; P.Tebt. I 5 and 65; BGU XIV 2376 and 2377; P.Ent. 61 and probably P.Poethke 1.

Already this simple statistic shows that auctions could have aimed at some type of re-distribution of the most important natural resource, fertile land. This contradicts the traditional view of the economic purpose of auctions. For this, it is enough to quote Pringsheim's introduction to his first article to the topic: "Sale by auction played a more important part in Greece than in modern times. The lack of commercial intercourse and advertisement made a public announcement advantageous. The auction procedure secured the highest price; in Rome and Greece selling by auction took the place occupied today by agents and brokers."<sup>27</sup> Pringsheim (and modern scholarship) assumed that auctions served first of all private business and secured the best price in exchanging goods on private markets. Only a few scholars challenged the possible political and administrative background of land auctions.<sup>28</sup> Following this path and considering new evidence (papyri edited after Pringsheim) it seems necessary to undertake a re-thinking of the legal framework.

Looking at past research, its scarcity is striking. In the 1920s, Wilcken delivered valuable interpretations of papyri edited recently in his UPZ I and II.<sup>29</sup> Subsequently Pringsheim presented a comprehensive but a bit abstract legal analysis, according to private law theories of his time.<sup>30</sup> Soon afterwards, Talamanca showed up with a comparative approach.<sup>31</sup> Since Pringsheim (1961), no comprehensive legal treatment has been published about auctions in the Hellenic world. However, Wolff interpreted regularly and with critical eyes the documents published more recently.<sup>32</sup> Cantarella and Vélissaropoulos-Karakostas touched on the subject, dealing generally with sale in ancient Greek law.<sup>33</sup> In recent editions, some commentaries completed the old

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<sup>26</sup> Examples for farming out public construction works are P.Petrie III 43; P.Petr. III 68a and b; for collecting *apomoira* and other revenues BGU 1917; P.Col. III 13; P.Köln. VI 260; P.Köln VI 263; SB V 8008; P.Heid. VIII 418.

<sup>27</sup> Pringsheim 1949: 284; similarly Pringsheim 1961: 262.

<sup>28</sup> Swarney 1970: 31–4; Manning 1999: 282.

<sup>29</sup> See Wilcken, to UPZ I and II, especially his commentary to UPZ II.

<sup>30</sup> Pringsheim 1949: 284–342; Pringsheim 1961: 270–82.

<sup>31</sup> Talamanca 1954: 35–104.

<sup>32</sup> Wolff 1961 and 1971.

<sup>33</sup> Cantarella 1967; Vélissaropoulos-Karakostas 2011: 271–81; cf. recently Ruffing 2013 to Roman sources.

model with new details.<sup>34</sup> But an overall picture is lacking even now—especially a treatment in context, with regard to the social and economic components.

In my view, Pringsheim depicted a rather abstract model of the Greek auction, based on Attic sources and papyri from Ptolemaic and Roman Egypt as well. His effort was to shape the general rules using documents from different periods and territories of ancient Greek legal culture. In this way, he could not consider all differences that can be discovered in the social, political or economic setting.

Approaching the documents in their context I suggest that we treat the Attic, Ptolemaic and Roman sources separately. For the sake of a more sophisticated analysis I restrict the present paper to Ptolemaic Egypt. As a good basis I use the results of Swarney and Manning although they dealt with the topic from special aspects, different from mine. Swarney took into consideration the Ptolemaic and Roman *Idios logos*—on the one hand shaping his topic narrower (treating only the *Idios logos*), on the other hand much broader in time. Depicting the Ptolemaic *Idios logos* he starts with the year 162 BCE<sup>35</sup>—but auctions are attested in the early third century BCE as well. Furthermore Swarney focuses merely on one aspect of public auctions—that of depositing the price *basilei eis ton Idion logon*, for the king, at the *Idios logos*.

Recently, Manning has dealt with Demotic papyri about auctions.<sup>36</sup> His main source is P.Hauswaldt 16, the only entire Demotic document of acquiring land at a public auction; four further sales just mention a public auction as a foundation of title.<sup>37</sup> The main stages of the procedure are documented in small fragments: public announcement, proclamation by a herald, bidding, knocking down (confirming the sale), transfer of goods and payment of the first installment to the royal bank.<sup>38</sup> It is of utmost interest that the model of public auctions in Demotic texts seems closely related to the Greek one; there is an obvious continuity. Manning argued that “the auction of pharaoh ... is an institution that first appears in the Hellenistic period and its application as a method of disposing of derelict property is closely parallel to its use at Athens and elsewhere in the Hellenistic world.”<sup>39</sup>

As already mentioned above, Pringsheim’s concept of the “Greek sale by auction” has influenced scholarship up to now. Pringsheim’s aim was to offer a general model of auctions that could be applied all over the Hellenic world. However it is well known that a strong effort to generalization and systematization

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<sup>34</sup> First of all the commentaries of Armoni 2007: 228 and in P.Poethke 1 must be mentioned.

<sup>35</sup> BGU 992; Swarney 1970: 7.

<sup>36</sup> Manning 1999: 277–84.

<sup>37</sup> See Manning 1999: 277–8.

<sup>38</sup> See Manning 1999: 278–9.

<sup>39</sup> Manning 1999: 279; for a supposed political role of auctions see also Manning 2003: 160–1.

may dim the outlines. The historically shaped features of a legal institute may be neglected for the sake of a general rule.

In the following I try to offer a different approach with more interest in the social and economic context and daily practice.<sup>40</sup> Grouping the sources, it seems useful to distinguish between three different types of auctions:<sup>41</sup> a) auction of derelict land (this model can be applied also to redeeming former possession confiscated by the state); b) auction as part of an execution (whether initiated by private individuals or by the state); c) auction for farming out state contracts (letting and hiring of public land, tax farming, construction works, priest offices etc.).<sup>42</sup>

Concerning a), already Wilcken depicted convincingly the official way of auctioning *adespota* (derelict land). In the main I follow his thesis and base my survey upon his results. UPZ II 220 (Thebes, BCE 130) is a good illustration—and probably the key source—for the rules for selling *adespota* (derelict land) by auction:

Col. I

Διονύσιος Ἡρακλείδει χαίρειν. Ἐρμίου τοῦ Ἀμμωνίου τῶν ἀπὸ Διὸς πόλεως τῆς  
 | [Μεγάλης δόντος ἡμῖν τὸ ὑποτεταγμένον ὑπόμνημα, δι' οὗ [ὑ]φίστατο  
 [δεκάτου μέρους] | [γῆς ἐν τῇ κάτω τοπαρχίαι κειμένης (ἀρουρῶν) κ' ἀνὰ ζ  
 χ(οῖνικος) ἀπὸ <γῆς ἀδεσπότου> σφραγίδων] β' ἀναγρ[α]φομένης εἰς] |  
 [Σεμμῖνιν Πεπεπ ... ]<sup>5</sup> ἐγδοθείσης [αὐτῶι τῆς ἐκ βασιλικοῦ διαγραφῆς, τάξεσθαι]  
 χα(λκοῦ) (δραχμὰς) Δ, καὶ Πχορχώνσιος τοῦ τοπογραμματοῦ | [πρὸς τοῦτο  
 ἀνενεγκόντος διὰ τῆς προσκατακεχωρισμέ[νης ἀν]αφορᾶς, ἐξ ὧν Πετενεφάτης  
κομ[ο]γραμμα(τεὺς) | [ἀνενήνοχεν, δι' ἧς ἐδήλωσεν (δεκάτου) μέρους τῶν  
 ἀρουρῶν κ' ἀνὰ ζ χ(οῖνικος) γ', (ἀρουρῶν) δ' δ' ἢ ἀνὰ δ ζ, (ἀρουρῶν) δ' δ' ἀνὰ ε'  
 χ(οῖνικος) δ' εἰν]αι τὴν ἀξίαν χα(λκοῦ) (τάλαντον) α Α, ἐξεθήκαμε[ν] | [εἰς  
 πρῶσιν ...] | πρὸς τὸ [...]στασίας καὶ | [...]νος κ[αὶ] τ[οῖς] ...<sup>43</sup>

<sup>40</sup> Already Pringsheim pointed out the desire for such a treatment: Pringsheim 1961: 263 n. 9: “Eine gründlichere Würdigung ihrer (der Auktion) wirtschaftlichen Bedeutung und eine Schilderung, die der von Mommsens für das römische Recht gegebenen entspräche, wäre sehr wertvoll.”

<sup>41</sup> Rowlandson 1996: 48 argued for two types of auctions: “A distinction must be made between land sold at fixed price and that sold at auction to the highest bidder.” However she focused only on land and approached the problem from the aspect of tenancy.

<sup>42</sup> Pringsheim 1961: 264–6 treated separately selling priest offices; in my view P.Eleph. 14 is a strong argument against this grouping. But I agree with Pringsheim that enforcement had its special rules and therefore should be treated separately.

<sup>43</sup> UPZ II 220 col. I 1–9: “Dionysios Herakleides Grübe. Nachdem Hermias, Sohn des Ammonios, einer der Bewohner von Diospolis Magna, mir die unten beigefügte Eingabe übergeben hatte, durch die er das Angebot machte, für den 10. Teil eines in der unteren Toparchie gelegenen Saatlandes von 20 Aruren zu 7 Artaben ½ 1/3 Choinikes von herrenlosem Land, das eingetragen wird auf Semminis Petep... wenn ihm ausgehändigt wäre die *diagraphe* aus dem Königsschatz, zahlen zu wollen 4.000 Kupferdrachmen, und nachdem Pchorchonsis, der Bezirksschreiber, zu dieser (Eingabe) durch den daran angeschlossenen Bericht aufgrund des Berichtes des Petenephotos, des Dorfschreibers,



## Col. II

[Διονυσίωι τῶν ἀρχισωματοφυλάκων καὶ διαδεχομένωι τὰ κατὰ τὴν θηβαρχίαν] | π[αρὰ Ἑρμίου ... ]<sup>15</sup> ὑφίσταμαι ἐκδοθείσης μοι τῆς ἐκ βασιλικοῦ διαγραφῆς τάξεσθαι χα(λκοῦ) (δραχμὰς) Δ]. | ἀξιῶ συν[τάξαι ...] | Πχορχώνσ[ιος ...] | ὑφίσ[τατο] [ἐκδοθείσης αὐτῶι τῆς ἐκ βασιλικοῦ διαγραφῆς τάξεσθαι χα(λκοῦ) (δραχμὰς) Δ]. |<sup>10</sup> ... [παρὰ Πετενεφώτου κωμογραμματοῦ τοῦ Περι Θήβας ... μετηνέχθη ἡμῖν] | [τὸ ἐπίδοθῆν] ὑπόμ[νημα ὑφ' Ἑρμίου ... τῶι διαδεχομένωι] | [τὰ κ]ατὰ τὴν θηβαρχίαν ὑπὲρ [(δεκάτου) μέρους γῆς (ἀρουρῶν) κ ἀνὰ ζ χ(οίνικος) ἢ ἀπὸ γῆς ἀδεσπότου τῆς ἀναγραφο-] |<sup>15</sup> μέν[η]ς εἰς Φίβιν Ψεμμίνιος ἀ[πὸ βορρᾶ καὶ λιβὸς καὶ ἄλλης σφρα(γίδων) β (ἀρουρῶν) η' δ ἢ, μίαν μὲν δ δ ἀνὰ ε' χ(οίνικος) δ] | ἄλλην δὲ (ἀρουρῶν) δ' ἢ ἀν(ὰ) δ ζ, ὁμοί[ως ἀδεσπότην τῶν ἀναγραφομένων εἰς Σεμμῖνιν Πετεπ ... ιος] | ὄντ[ω]ν πάντων (ἀρουρῶν) κη' δ ἢ, δι' οὗ [σημαίνει ἐκδοθείσης αὐτῶι τῆς ἐκ βασιλικοῦ διαγραφῆς] | [τά]ξ[εσθαι χα(λκοῦ)] (δραχμὰς) Δ, π[α]ραπειγραφὲν δ' ἡ[μῖν ἐπισκεψαμένου] ἀνεγκεῖν, παραθέντας καὶ τὴν ἀξίαν]. | ἐπισκοπο[ῦντε]ς εὐρίσκομεν δ[ιὰ τῶν φυλασσομένων ἡμῖν βιβλίων τὰς γὰς ἀδεσπότητος] |<sup>20</sup> καὶ ἀναγραφομένας εἰς τοὺς προγ[εγραμμένους]. δέον ἐστὶν συντιμηθῆναι ἀξίας (δραχμῶν) Ε]. | [... (ἔτους) μ Μεχεῖρ ις.]<sup>44</sup>

At the top of the papyrus (Col. I) we read the *diagraphe* of the vice-thebarch Dionysios. It is a notice to Herakleides, the banker (*trapezites*) of the royal bank at Thebes, to accept 8,000 drachmas, the price of *adespota* sold by auction and purchased by a certain Hermias. This *diagraphe* of Dionysios, a high official in the Ptolemaic administration,<sup>45</sup> was the last step in a long process of selling derelict land by auction. Actually it started with a *hypomnema* of Hermias to Dionysios which survived below in Column II, on the same sheet: Hermias, the son of Ammonios, resident of Diospolis Magna asks the authority to initiate an auction of a piece of

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einen Bericht erstattet hatte, in dem er erklärte, dass der Wert des Zehntels der 20 Aruren zu 7 Artaben ½ 1/3 Choi., der 4 ½ 1/8 Aruren zu 4 1/6 Artaben, (und) der 4 ¼ Aruren zu 5 ½ Artaben 2/3 ¼ Choi. betrage 1 Talent 1.000 Drachmen, habe ich es zur Versteigerung ausgehändigt ...” (Wilcken)

<sup>44</sup> UPZ II 220 Col. II 1–20: “An Dionysios vom Range der Erzleibwächter und Vertreter der thebarchischen Geschäfte, von Hermias ... Ich biete, wenn mir ausgehändigt ist die *diagraphe* aus dem Königsschatz, zahlen zu wollen 4.000 Kupferdrachmen. Ich bitte anzuordnen.” “Von Petenephotos, dem Dorfschreiber des Perithebischen Gaus. Es wurde uns zugesendet die von Hermias ... dem Dionysios, eingereichte Eingabe über den zehnten Teil eines Saatlandes von 20 Aruren zu 7 Artaben ... durch welche (Eingabe) er anzeigt, dass, wenn ihm ausgehändigt wäre die *diagraphe* aus dem Königsschatz, er zahlen wolle 4.000 Kupferdrachmen, für uns aber mit der Randbemerkung versehen ‘Zu untersuchen und zu berichten, hinzufügen auch den Wert.’ Bei der Untersuchung fanden wir in den von uns bewahrten Akten (die Saatländer) als herrenlos und eingetragen auf die oben Genannten. Sie müssen abgeschätzt werden auf 5.000 Drachmen Wert. Jahr 40 Mecheir 16.” (Wilcken)

<sup>45</sup> It is worth to note that the thebarch or the vice-thebarch were the royal officials in charge of auctions in Demotic papyri from the Thebaid as well, cf. P.Hauswaldt 16; Manning 1999: 277.

land, named exactly in the papyrus, and offers to pay a price of 4,000 drachmas for it.<sup>46</sup>

It is remarkable that the very person who intended to purchase the land applied in a petition to the office of the vice-thebarch and asked him to put up for sale some derelict parcels. Furthermore the purchaser offered already a price he was ready to pay.<sup>47</sup> As we see, the public auction of *adespota* was set in motion by private initiative.<sup>48</sup> Subsequently the bureaucratic procedure was ordered and controlled by high administrative authorities. Through official channels, the vice-thebarch Dionysios asked for information about the same land. He ordered that the data be checked by the *topogrammateus* who forwarded the files to the *komogrammateus*.<sup>49</sup> The village scribe duly reported (although in Demotic) the names of the persons to whom the parcels were registered and that in fact they were derelict. He attached also an estimated market value of 5,000 drachmas. The *topogrammateus* translated his report for Dionysios into Greek and in his comment increased the price to 7,000 drachmas. Hereupon Dionysios announced the auction with a proclaimed price of 8,000 drachmas. In Thebes, the auctions were proclaimed by a herald and posted in writing at the *dromos* of the temple of Ammon.<sup>50</sup>

At first sight, the process seems to be complicated and lengthy. But looking at the files we notice that the reports of both scribes involved are dated the same day, sixteenth Mecheir.<sup>51</sup> Only three days later, the vice-thebarch drew up his *diagraphé* to the royal bank, notifying that the sale was concluded. All together it seems to have been a highly effective settlement.

Dionysios' *diagraphé* to the royal bank was necessary for the bank's accounting: the payment of Hermias must have been recorded properly in the archives. Swarney and Manning hold that it replaced also the sale contract in the hands of the purchaser (as evidence).<sup>52</sup> On this point, I disagree. Scrutinizing the *diagraphai* of royal and private banks, Drewes already underlined the difference between *diagraphai* written to a bank or by a bank.<sup>53</sup> Considering the usual wording of bank *diagraphai* I would assume that Hermias received a slightly different

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<sup>46</sup> It was a common method in archival practice that all documents concerning the case were copied on one sheet, cf. Johnson 2004: 39–41.

<sup>47</sup> For the economic context see Criscuolo 1979: 94–8.

<sup>48</sup> Cf. Talamanca 1954: 38, who argued that the first step of the procedure was initiated by the *topogrammateus* or *komogrammateus*.

<sup>49</sup> The same communication with the *topogrammateus* and *komogrammateus* can be observed in Demotic auction documents, cf. Manning 1999: 277–8.

<sup>50</sup> Cf. UPZ II 220.

<sup>51</sup> The Egyptian month Mecheir run from January, 26 to February, 26; cf. Rupprecht 1994: 29.

<sup>52</sup> Swarney 1970: 40; Manning 1999: 280.

<sup>53</sup> Drewes 1970, 35.

version, a regular bank *diagraphé* drawn up at the bank as evidence of his fulfilled payment.<sup>54</sup>

Summing up, I classify this type of auction as an overwhelmingly administrative act. The process was never initiated by the seller (as one would expect), but rather by the purchaser. He also calculated and offered a reasonable price at once. In the course of the official procedure his offer was checked and eventually modified by state officials.

Receiving a purchase offer from an individual, the state bureaucracy reacted and set an administrative procedure in motion. The vice-thebarch (a chief official responsible for the entire administration) took care of Hermias' desire and turned to officials who were in charge of land and crop surveys. The papyrus is dated to the month Mecheir, the same month in which several other land surveys from the Fayum were drawn up.<sup>55</sup> Such surveys were prepared by the *komogrammateus* and controlled by the *topogrammateus*; they inspected the villages regularly and registered the holders of parcels. Such documents cover commonly all three main administrative categories of land (cleruchic, sacred and crown).<sup>56</sup> The reports were examined and probably headed by the *basilikos grammateus*. As we see the officials involved in the auction in UPZ II 220 are the same who were in charge of the administration of land and state revenues all around the *chora*.<sup>57</sup>

The usual devices of auctions were put into action only in the second part of the process—for securing transparency and avoiding corruption. In theory, the standard clauses of auction were fully applied. In practice, its essential elements (bidding, seeking and accepting the best price) never came into consideration.

In my view, these are strong arguments for denying the overall applicability of the legal terms which survived in these documents to other models of auctions (not concerned with *adespota*). Recalling our second case study (SB V 8033), we can suppose that the 53 *arourai* of Tsenonpmous, the wife of the petitioner, were sold as *adespota* to Pamseis according to this model.<sup>58</sup>

Concerning b), let us turn to the second model of auctions. As I already suggested above, I think public auctions resulting in enforcement should be treated separately.<sup>59</sup> In my view, there are substantial differences in carrying out the

<sup>54</sup> For the usual wording and formula of such *diagraphai* see Drewes 1970.

<sup>55</sup> P.Tebt. I 24.52 (117 BCE) was drawn up on Mecheir 12; P.Tebt. I 32.2–3 records a crop survey from Mecheir; P.Tebt. I 826 reports on uncultivated land dated Mecheir 18; further examples are P.Tebt. I 85.1–3 (113 BCE); P.Tebt. IV 1110 (116/115 BCE) etc.

<sup>56</sup> Cf. Crawford 1971: 10–24.

<sup>57</sup> It is remarkable that the *topogrammateus* and *komogrammateus* were concerned with the cession of 5 *arourai* catoecic land in P.Tebt. IV 1100 (114 BCE) as well; the procedure seems to be closely related in its administrative part; cf. Keenan – Shelton 1976: 29–33.

<sup>58</sup> Cf. above at note 11.

<sup>59</sup> Further examples for enforcement are P.Eleph. 15–25; P.Köln VI 268; SB I 4512 A + B; P.Tebt. III 2, 814; P.Tebt. III 2, 853; P.Tebt. III 2, 871; UPZ I 114; and probably BGU VI 1219 Col. II.

procedure. Probably the most important is the fact that the price was actually fixed through bidding. State officials or individuals could have initiated such auctions as well forcing unpaid debts to be fulfilled. A papyrus edited by Brashear some years ago can serve as a good illustration:<sup>60</sup>

... προσέβαλεν Μουσαῖος πράκτωρ | [ξενικῶν καὶ] νομοφύλαξ τοῦ δηλο[υ]μένου [νομ]οῦ Πτολεμαῖου Ἡρωίδου ἀφ' οὗ μετήνεγκεν ἐκ τοῦ κριτηρίου |<sup>5</sup> [τῆς δίκης χρηματισμοῦ [οὔ χρόνος] τὸ διελ[ηλυ]θὸς [ις] τὸ καὶ α (ἔτος) Θωὺθ ι πρὸς ἣν συνεστήσατο ἔγκλησιν | [ἐπὶ τῶν ἐπὶ τῶν τόπων χρηματισάντων χρηματιστῶν καὶ Δωροθέου εἰσαγωγέως κατὰ Ἡρακλείδου τοῦ καὶ Ἀρθώτου | [τοῦ Ἡφαιστῖανος περὶ πράξεως ἀργυρίου) (δραγμαὶ) Γπ] καὶ βλαβεῶν καὶ δαπανημάτων χα[λκοῦ] (τάλαντων) ε τὸ κατὰ τὸ παρὸν παραδειχθὲν | ὑπ' αὐτοῦ εἰς [ἐνεχυρασ]ίαν ἐγγαι[ον τοῦ] ... κλείδου τοῦ καὶ Λόχου, μενούσης [αὐτῶι τῆς τοῦ] ἐνλείποντος | κεφαλαίου πραξέως ἐκ τε αὐτ[οῦ] καὶ ἐξ ὧν ἐὰν ἄλλων εὐ[ρί]σκη αὐτῶι ὑπαρχόντων, οὐ μόνον δὲ τῶν |<sup>10</sup> εἰς τὴν ἐνεχυρασίαν καὶ προσβολῆν ὠρισμένων ἡμερῶν διεληλυθότων ἀλλὰ καὶ ἐπὶ [τῶν ἐπιγεγονότων, | μηδενός] δὲ ἐν τῶι ἀνά μέσον μήτε [πρὸς] ἐξομοσίαν ἢ ἀφαίρεισιν τοῦ ἠνεχυρασμένου κατηντηκός | ἀπὸ δὲ τῶν γραφέντων ὑφ' ἡμῶν τῶι βασιλικῶι γραμματεῖ ἀντιπεφωνηκός ὡς καθήκει ἐπικηρυσσομένου | τοῦ ἐγγαίου ἀγορᾶς πληθουσίης δι[ὰ] κήρυκος, Πτολεμαίου παρόντος καὶ τοῦ παρὰ τοῦ βασιλικοῦ γραμματέως | Ἡρακλείδου τοῦ Ἡρακλείδου, καὶ μηδενός προσπορευομένου μηδ' ὑπερβάλλοντος ἀλλὰ μηδὲ ὑφισσόμενου |<sup>15</sup> προσεβλήθη τῶι ἠνεχυρακότηι] ...<sup>61</sup>

Wolff recognized at once the great importance of the text from a legal point of view, and I mostly follow his interpretation.<sup>62</sup> It is a (double) protocol about an enforcement that was carried out in 35 BCE in Herakleopolis, at Memphis. The document (drawn up in objective style) records that Mousaios, the *praktor xenikoon*

<sup>60</sup> BGU XIV 2376, Herakleopolis, BCE 35; remarkably it has a duplicate, BGU XIV 2377.

<sup>61</sup> BGU XIV 2376.3–15: “... Musaios, Praktor Xenikon und Nomophylax des genannten Gaus, hat dem Ptolemaios, Sohn des Heroides den Zuschlag auf das neulich von ihm für die Pfändung bezeichnete Grundstück des Isakleides (?), alias Lochos, gegeben. Dies hat er (Musaios) aufgrund des Pfändungsbeschlusses des Gerichts getan, das im vergangenen 16. und 1. Jahr getagt hatte. Vor diesem Gericht, den ortszuständigen Chrematisten und ihrem Geschäftsführer, Dorotheos, führte er Klage gegen Herakleides, alias Harthotes, Sohn des Hephastion, auf Vollstreckung von 3080 Silberdrachmen und fünf Kupfertalenten bedingt durch Schäden und Aufwendungen. Er (Ptolemaios) hat wegen der restlichen Schulden weiterhin Anspruch auf die Vollstreckung, sowohl hinsichtlich dieses als auch eventuell anderer Vermögen. Dies gilt nicht nur für die bereits verstrichene Frist zwischen Pfändungsbewilligung und Zuschlag, sondern auch für die Zukunft, sofern kein Dritrintervent auftaucht, der nach unserer schriftlichen Mitteilung an den königlichen Schreiber in gehöriger Weise zwecks eidlicher Inanspruchnahme oder zur Inanspruchnahme des gepfändeten Vermögensstücks Einspruch erhebt. Da sich bei der Versteigerung nach Ausrufen durch den Ausrufer vor einem vollen Marktplatz in Anwesenheit von Ptolemaios und Herakleides, Sohn des Herakleides, dem Untergebenen des königlichen Schreibers, kein anderer um das Grundstück bewarb weder überbietend noch ..., erhielt Ptolemaios den Zuschlag für das Grundstück, für das zwei Kupfertalente erlöst werden könnten. Geschehen, wie die Verordnung vorschreibt ...” (Brashear)

<sup>62</sup> Wolff 1983: 444–7.

(and *nomophylax*),<sup>63</sup> held an auction of some orchards accepting the bid of Ptolemaios (lines 3–4). It is of great interest that auctions for enforcement were commonly led by a *praktor* (*xenikoon*); also the royal scribe took part in it and supervised the event (line 12).

One can reconstruct the facts as follows: some months earlier, Ptolemaios granted a loan to Herakleides, and Isakleides might have taken over personal surety for him. After Herakleides defaulted, Ptolemaios filed a lawsuit and the *chrematistai* passed a sentence.<sup>64</sup> Months later, Ptolemaios filed a claim for 3,080 drachmas and named some orchards of Isakleides as objects for enforcement (*paradeixis*). Thereupon the *praktor xenikon* impounded the land and put it up for auction.

It is of much interest that enforcement was filed pursuant to a sentence in a trial. Furthermore it is striking that the creditor (complainant) was the one who designated the object put up for auction. He communicated to Mouseios, the *praktor*, which land of the guarantor he wished to have sold (*paradeixis*).<sup>65</sup> Then the *praktor* secured the land (*enechyrasin*) and proclaimed the auction, obviously using the common procedure of public auctions.

Some detail steps of the procedure are preserved in other documents. Of much interest is a papyrus from the archive of Apollonios from the third century BCE with the wording of an auction proclamation:<sup>66</sup>

τοὺς βουλομένους | ὀνειῆσθαι τ[ην]ο/ Κολήφιος | \[π. ]/ τοῦ ἐγγυησαμένου | Πᾶσιν τὸν ζυτοποιὸν \Μέμφεως θεμέλιον καὶ/ [οἰκίαν τὴν οὐσαν]<sup>6a</sup> οἴκημα καὶ ἀύλην καὶ τὰ προσι<sup>6b</sup>κύ(ροντα) τὰ ὄντα πη(χῶν) ἰ ἐπὶ πῆ(χεις) μ | ἐν Μέμφει διδόναι | τὰς ὑποστάσεις | Ἀπολλωνίωι τῶι | πρὸς τῇ οἰκονομίαι |<sup>10</sup> καὶ Μανρεῖ τῶι τοπογραμματοεῖ ὠ[ς] τῆς | κυρώσεως ἐσ[ο]μ[έ]νης | παραχρῆμα. [...] | εὐρίσκει δὲ [...]<sup>67</sup>

This proclamation also concerns an auction for enforcement (line 3) but it differs from BGU XIV 2376 in that it was initiated by public officials.<sup>68</sup> In this document, some property of Kolephis was put up for auction, because he gave personal surety for Pasis, a brewer (very likely at a past public auction of the beer-making

<sup>63</sup> For the official see Préaux 1978: 451.

<sup>64</sup> For the *chrematisthai* see Préaux 1978: 279 and 598; Méléze Modrzejewski 1975: 699.

<sup>65</sup> The land need not to belong to the debtor; see footnote 67 below.

<sup>66</sup> P.Köln VI 268, Arsinoite, second half of the third century BCE. Apollonios is a rather famous figure in government administration of this period, cf. Walbank 1982: 104.

<sup>67</sup> P.Köln VI 268.1–15: “Diejenigen, die das in Memphis befindliche Haus des Kolephis, der für den Brauer Pasis gebürgt hat, kaufen wollen ... Diejenigen, die Fundament, Haus, Hof und Dazugehöriges, befindlich in Memphis, 10x40 Ellen, aus dem Besitz des Kolephis, der für Pasis, Brauer in Memphis, gebürgt hat, kaufen wollen ... sollen ihr Gebot dem Oikonomos Apollonios und dem Topogrammateus Manres vorlegen, damit der Zuschlag unverzüglich erfolgen kann. Die Liegenschaft erzielte (bis jetzt) ein Gebot von [...] Drachmen.” (Maresch)

<sup>68</sup> Enforcement against state debtor is recorded also in P.Tebt. III 2, 871 and 814.

monopoly). Pasis defaulted and the state official (probably the *oikonomos* Apollonios) impounded the guarantor's land in order to sell it by auction.<sup>69</sup>

Commonly, written announcements of this type are called *programma* in the sources;<sup>70</sup> they were posted in public places somewhere in the town.<sup>71</sup> It is really striking that the whole process was carried out in a written form, bidding as well. In P.Köln VI 268, the last line of the *programma* contains already the first offer.

Such *programmata* were kept posted for several days (six or ten days came down in other papyri).<sup>72</sup> During this period, any third party somehow involved could object to carrying out the auction.<sup>73</sup> Such an objection may be preserved in BGU XIV 2376: Isakleides could have obtained a delay because he—and not Herakleides—was the owner of the orchards impounded for execution. Already Wolff stated that obviously no proof of the debtor's title was required from a creditor by naming objects for execution.<sup>74</sup> I will underline that such a possibility of stopping the auction existed only in enforcement auctions.

If nobody objected within the time limit, the *praktor* had to announce the auction again. The process of bidding was carried out publicly, in our case (BGU XIV 2376) on a crowded market place in the presence of the *basilikos grammateus*, the *praktor xenikoon* and both parties. The involvement of an *oikonomos* or of a *trapezites* of a royal bank (as we have seen it above) was not necessary if the plaintiff was a private person. The auction was ended through confirming sale of the impounded items (here an orchard) to the highest bidder—or, in our case, to the creditor himself.

Despite some new papyri, even now it is unclear who was in charge of estimating the impounded object (and setting the lowest price). Also unclear is whether the protocol (as preserved in BGU XIV 2376) was sufficient for registering the land sold in the name of the purchaser. Could the debtor or the guarantor redeem the orchards within a certain limit (*epilysis*) as was possible after selling *adespota*, derelict land?

Concerning c), as a third model I classify auctions of tax farming, state monopoly or letting out public works. Some new papyri inform us about the stages of the process. In a business letter the *oikonomos* Metrodor announced his arrival at the village Oxyrhyncha on a certain date in order to be present at the coming auction

<sup>69</sup> A similar case is depicted in SB III 7202.45–49.

<sup>70</sup> The editors, K. Maresch and Ch. Armoni p. 187 consider *programma* as a typical terminology of auctions. On this point I disagree. Every type of proclamation published by officials can be called *programma* in the papyri, cf. P.Bingen 28.

<sup>71</sup> According to P.Eleph. 14 e.g. on the *dromos* of the temple of Apollo, in other documents on the market place, cf. BGU XIV 2376.

<sup>72</sup> In BGU 992 I six days are announced, in P.Eleph. 14 ten days.

<sup>73</sup> See also P.Tebt. III 2, 871.1–3; 1071; probably in the recently published P.Poethke 1 as well.

<sup>74</sup> Wolff 1983: 448.

of state monopolies.<sup>75</sup> He asked businessmen who could be interested to assemble. It is very likely that the addressee, Apollonios, proclaimed the auction immediately on the very day; it is likely that the proclamation was made public through heralds and posters, as we have seen above.

Another papyrus reports careful preparations, too.<sup>76</sup> It is an *entole* (circular) of a *basilikos grammateus* to the *topogrammatoi*, ordering him to estimate the coming harvest in the vineyards. A herald travelled around in the district and handed over the document to every scribe. In a *hypographe* each scribe acknowledged that he had received the letter and promised to send the required lists soon. The higher administration collected the estimated data and upon this basis prepared to auction the *apomoira* on wine.

In the following papyrus we can see the main terms of an auction already in motion (P.Eleph. 14, Apollonopolis, BCE 223–2):

ἐπὶ τοῖσδε παλούμεν ἐφ' οἷς [...] οἱ [κ]υρωθέντες διορθώσονται | εἰς τὸ βα(σιλικόν) κατ' εἰ[ν]ιαυτὸν τῶν μὲν ἀμπελώνων τοὺς καθήκοντας ἀργυρικοὺς φόρους καὶ τὴν γενομένην ἀπόμοιραν τῆι | Φιλαδ[έλφωι, τῆς] δὲ γῆς τὰ ἐπιγεγραμμένα σιτικά ἐκφόρια καὶ εἴ<sup>5</sup> [τι ἄλλο καθήκει] πρὸς [τὴν] γῆν δίδοσθαι, τάζονται δὲ τὰς τιμὰς | [τῶν μὲν πιπτόν(?)]των εἰς τὸ βα[σιλικόν] ἐπὶ τὴν βα(σιλικὴν) τρά(πεζαν) ...

<sup>21</sup> κυριεύσουσιν δὲ | καθ' ἃ καὶ οἱ πρῶτον κύριοι ἐπέκτηντο· ἐξέσται δὲ τῶι βουιλομένωι ὑπερβάλλειν, ἕως ἔτι ἐν τοῖς κύκλοις εἰσὶν ὅσωι ἂν<sup>25</sup> βούλη[τ]αί, ὅταν δὲ ἀπὸ τῆς πράσεως γένωνται, τοῖς ἐπιδικ[ά]τοις, μέχρι τοῦ τὴν ἀ ἀναφορὰν διαγραφῆναι· τὰ δὲ | παλούμενα ἄπρατα ἐν ταῖς κὰ τὸ διάγραμμα ἡ(μέραις) ς.<sup>77</sup>

Most scholars (among them also Manning) held that this document contains a *programma*, a first announcement of an auction.<sup>78</sup> In my view, this doesn't really fit the text. On the contrary, lines 1 to 5 depict the objects of the auction so vaguely, that the lack of a *programma* seems to me striking. From this vagueness one may suppose that there must have been some separate *programmata* (formulated more

<sup>75</sup> P.Köln VI 268, Arsinoite, second half of the third century BCE.

<sup>76</sup> P.Heid. VIII 418, Herakleopolis, 155–144 BCE.

<sup>77</sup> P.Eleph. 14.1–6, 21–27: “We offer (the properties) for sale on the following terms. The successful bidders shall pay annually to the Crown in the case of the vineyards the appropriate money taxes and the *apomoira* due to (Arsinoe) Philadelphos, and for the arable land the rents in kind which have been imposed upon it and [whatever other payment is required] in respect of such land. They shall pay the price of that which [is due to] the Crown to the royal bank ... They shall own the properties in the same way as those who formerly possessed them. Whoever wishes shall be permitted to raise the bid, by as much as he pleases while the auction-ring is still open, but only by ten per cent after the auction is ended and until the first installment has been paid; and (if there is no purchaser) the objects offered shall be classed as unsold after the 6(?) days prescribed by the ordinance.” (Bagnall – Derow)

<sup>78</sup> Manning 1999: 280.

precisely and already earlier published) with an exact description—as we have seen in P.Köln VI 268 above. In my view, P.Eleph. 14 preserves rather the legal terms of a future sale that was just announced here: it specifies the rights and duties of the purchaser regarding payment and transfer of possession etc.

Scholars have interpreted P.Eleph. 14 in different ways: some thought of a decree, others of a concrete, completed sale by auction.<sup>79</sup> However, style and content remind me of contract formulas, commonly used in daily life. Looking at the text, we find fixed rates and taxes to be paid by the purchaser (line 1 to 5), the conditions for paying the price to the royal bank etc. A sales tax (1/60) and an auction fee (1/1000) have to be paid at once. Probably also the land sold was to be transferred immediately (*paradosis*).

In this text, the payment is provided in four installments. Therefore the editors took the transaction as a lease and not as a sale. However, later finds prove that payment in installments was very common in sale contracts and auctions as well. With the first payment, the purchaser acquired full rights for obtaining, using and getting income from the fruits. However, until the first installment was paid, anybody could bring in a better bid within the prescribed time limit (six days in our document) if he offered at least 10% more than the highest bid was. Only the first payment released the buyer from that risk. Here, bidding was required in a written form, too. As a trifling illustration I can quote P.Hal. 14 (third century BCE).

Summing up, it can be stated that a great many papyri record public auctions from Ptolemaic Egypt. Therefore the stages of the process can be reconstructed rather well. Since Pringsheim's treating the topic (1949 and 1961), a remarkable number of new papyri, really relevant to the topic, have been published. They allow a probable reconstruction of the daily practice of auctioning. Instead of a highly abstract definition that often neglects the political and economic environment, I suggest that we look at the legal content in its economic and social context. For this purpose, I have restricted my present overview to Ptolemaic Egypt.

According to the sources, almost all auctions were public in nature. Auctions were carried out by public officials and served public goals, as well. Especially our first model, that of selling derelict land, demonstrates state interference into individual activity. Simple statistics prove that in the papyri most sales by auction refer to agrarian land (arable, vineyards or orchards); this hints at a close connection with land surveys and administration of state revenues. Furthermore I classified three main groups of auctions: selling derelict land (*adespota*), enforcement, and farming state monopolies. Through the separate treatment of these groups, Pringsheim's abstract definition can be partly deconstructed.

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<sup>79</sup> Literature discussed by Pringsheim 1961: 277 and Manning 1977: 279.



## II. Ownership of land in Ptolemaic Egypt

Pringsheim delivered an entirely detailed and legally founded analysis of the Greek sale by auction. Nevertheless, he worked with sharply shaped dogmatic categories of German legal theory.<sup>80</sup> According to his main idea about the exclusive use of cash sale, he distinguished between the transfer of possession and that of ownership which he considers relevant at auctions, too. In his view, the purchaser acquired possession by paying the first installment.<sup>81</sup> Only later, with full payment of the price did he become owner of the items bought. Pringsheim pointed out that *kyrosis* and *prosbolē* should have different meanings in the sources: “Probably they are two sides of the same act, the *prosbolē* meaning exclusively the knocking down [confirmation of sale], the *kyrosis* emphasizing as a consequence of this knocking down the acquisition of title. This title does not mean ownership; for before the payment of the full price ownership does not pass; it means only the expectancy of acquiring ownership in the future.”<sup>82</sup>

I wonder if this distinction fits the sources. One has to notice that Pringsheim’s idea is based on a Roman law rooted, rather modern definition of ownership. It is well known that nineteenth-century Pandectists worked out this strikingly abstract concept. Probably its most typical articulation was formulated by Bernhard Windscheid:

Eigentum bezeichnet, dass Jemandem eine (körperliche) Sache eigen ist ..., dass nach dem Rechte sein Wille für sie entscheidend ist in der Gesamtheit ihrer Beziehungen. Dies zeigt sich nach einer doppelten Richtung: 1) der Eigentümer darf über die Sache verfügen, wie er will; 2) ein anderer darf ohne seinen Willen über die Sache nicht verfügen ... das Eigentum ist als solches schränkenlos.<sup>83</sup>

To him, ownership as such is absolute, unlimited and exclusive. This was the most important premise for the ongoing codification in Germany and other European countries. The owner should be entitled to an exclusive use of his property, without interferences by individuals or the state.

But can it be assumed that ownership was understood in this sense already in Ptolemaic Egypt? It is very likely that it was not. It is sufficient to remember the papyri dealt with above; in none of them can be found any traces of a distinction between possession and ownership. On the contrary, the concept of ownership itself

<sup>80</sup> Pringsheim 1961.

<sup>81</sup> Pringsheim 1966: 277–8 explained also P.Eleph. 14 in this sense.

<sup>82</sup> Pringsheim 1949: 300; similarly in the German version, see Pringsheim 1961: 277: “Dieser Titel ist noch nicht Eigentum; denn vor der Zahlung des vollen Preises geht Eigentum nicht über: er bedeutet nur die Anwartschaft auf zukünftigen Eigentumserwerb. Der Höchstbietende hat einen Titel zum Erwerb endgültigen Eigentums durch Zahlung des vollen Preises.”

<sup>83</sup> Windscheid 1900: 758. This definition was fully adopted by legal historians, see Kaser – Knütel 2014: 127–8 or Buckland 1939: 107: “Ownership (Dominium) is a *res* in the technical sense: it is the greatest of all rights over a *res* in the physical sense.”

seems to be rather elastic and dimly shaped according to documentary sources. Especially focusing on ownership of land, one has the impression that the title for holding a parcel was closely related to the proper cultivation of it. To keep an estate one had to care about sowing and harvesting it properly year by year. Unoccupied land was promptly discovered, registered as *adespota* and put up for auction.

This phenomenon cannot be reasonably explained with an abstract and rigid definition of ownership. Long ago the applicability of such an ownership concept was questioned by some scholars. One has to consider that political and economic environment tends to shape the real content and the legal concept of property rights.

Recently Gerhard Thür has alluded to difficulties with modern ownership concepts in ancient context. He emphasizes that “the Athenians were not uncertain about their idea of ownership; rather, our modern concept of ‘absolute and exclusive’ title does not conform to Athenian legal thought. In their eyes, ownership was a position that was elastic and separated by function, one that could be modified by mutual agreements between different parties.”<sup>84</sup> Because his paper focused on real security and *praxis epi lysei*, he just touched on the problem. Some scholars expressed doubts or caution even earlier. Indeed, already Kränzlein defined ownership carefully in his “Eigentum und Besitz im griechischen Recht.” He underlined that the main feature of it may have been the right to a comprehensive use of the item owned; an abstract idea of an absolute title did not exist.<sup>85</sup> Some years later Wolff noticed more sharply: “Die Griechen haben sich niemals bemüht, die Sachherrschaft in scharf definierte oder doch definierbare materiellrechtliche Begriffe zu fassen.”<sup>86</sup> He criticized Kränzlein directly: “Hier nenne ich als Beispiel allzu romanistischer Betrachtungsweise noch im Schrifttum der letzten Jahre Arnold Kränzleins Versuch, griechische Formen der Sachherrschaft und ihres prozessuellen Schutzes unter Zugrundelegung der Kategorien vom Besitz und Eigentum zu interpretieren.”<sup>87</sup>

Todd too has criticized Kränzlein’s thesis, especially his distinction between ownership and possession: for Kränzlein “it is the latter and not the former category that is a doubtful starter at Athens.”<sup>88</sup> Todd emphasizes that there are almost no

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<sup>84</sup> Thür 2008: 175. Notwithstanding Harris 2008: 195 defended the traditional doctrine.

<sup>85</sup> Kränzlein 1963: 33: “Diese Zeugnisse berechtigen zu der Feststellung, dass für die Griechen jener Zeit das Eigentum sich nicht in dem Recht, die Sache zu haben und zu beherrschen, in der Berechtigung zum Zugriff auf den Gegenstand erschöpfte ... Das Eigentum erscheint hier als das umfassende Recht zum Gebrauch. Nicht die Befugnis zur tatsächlichen Sachherrschaft oder zur Verschaffung derselben stand im Vordergrund, sondern das Recht zur Benutzung.”

<sup>86</sup> Wolff 1971: 337. Nevertheless Wolff expressed his doubts already in earlier works, cf. Wolff 1961: 187. Cantarella and Vélissaropoulos-Karakostas have each offered an overall survey focused on Attic sources; cf. Cantarella 1967: 99 and Vélissaropoulos-Karakostas 2011: 70–3.

<sup>87</sup> Wolff 1967: 698.

<sup>88</sup> Todd 1993: 240.

traces of ownership (possession) in Attic speeches.<sup>89</sup> This can be explained by the peculiarities of our sources, as “the topics which interest the philosopher and the jurist are not necessarily those which concern the litigant or even (at least at Athens) the legislator.”<sup>90</sup> To the definition of ownership he remarks that it is “dangerous to begin with modern doctrines, because this can too easily result in the game of trading definitions: having decided in the abstract the appropriate categories of analysis, it is easy enough to find ancient texts which can be accommodated to fit them.”<sup>91</sup>

Discussing the terms of juristic papyrology, Rupprecht offered a rather careful treatment of the problem of ownership: “Zwar war dem griechischen Recht das Eigentum auch an Grund und Boden bekannt, aber es hat in seiner gesamten Entwicklung kein dem römischen Recht vergleichbares Institut wie *dominium* = Eigentum (als absolutes, gegenüber jedermann wirkendes dingliches Vollrecht) und *possessio* = Besitz (als rechtlich geschützte tatsächliche Gewalt) entwickelt.”<sup>92</sup>

Investigating different types of legal control over arable land in Ptolemaic or Roman Egypt, some ancient historians give valuable hints of a simpler concept of property rights. Probably the most important feature of these works can be seen in the fact that institutions do matter: social and economic environment has a strong input on legal concepts. Some scholars argue for neglecting such sophisticated and artificial legal categories as possession and ownership at all. Manning, for example, states: “The distinction usually made by legal historians is that between the norm in Egypt of long-term ‘hereditary lease’ (‘bail héréditaire’, ‘Erbpacht’) and true individualized private property rights on land. But the practical difference between conveyance of rights in land and true sales was negligible, and, in terms of Egyptian law, it is important to note that the terms of such transfers of rights were couched as sale ... The terms ‘ownership’ and ‘possession’ have caused much debate and considerable confusion when it comes to the interpretation of Egyptian evidence.”<sup>93</sup> Rowlandson underlines the often dim borders between ownership, *emphyteusis* (long term tenancy) and short term tenancy in Roman Egypt.<sup>94</sup>

Up to now, the critical voices left only few traces in legal history. Nevertheless, new investigations and issues seem to me badly needed regarding the tensions sketched above. In the present paper, I can promise just some remarks but no comprehensive solutions. First of all I would stress that the concept of ownership of land (arable, agrarian land) and that of movables should be treated separately. I

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<sup>89</sup> Todd 1993: 236–7.

<sup>90</sup> Todd 1993: 241.

<sup>91</sup> Todd 1993: 240. As a striking example he quotes Beauchet 1897: iii.45–6 who specified ownership as a right for *utendi, fruendi, abutendi*, and he found Athenian equivalents in the sources.

<sup>92</sup> Rupprecht 1994: 132.

<sup>93</sup> Manning 2003: 194; see also Vandorpe 2000: 173–4.

<sup>94</sup> Rowlandson 1996: 55–61.

consider a generalizing abstract definition too rigid and not appropriate for ancient societies. The strictly outlined, highly systematized legal categories of civil law tradition seem mostly to fail in historical context. Dealing with the sources one should adhere more to the facts, to the reality experienced in every day legal life. Depicting legal phenomena in ancient societies one should seek for alternative modern theories (legal and social) with a more practice oriented approach.

Returning to our sources about auction, it can be stated that these reflect a striking uncertainty of property rights on agrarian land. Ownership of land seems to have been conditional: a person could hold a parcel as long as he was able to cultivate it properly. Ceasing cultivation led automatically to the loss of title: the land was confiscated by the state and re-distributed by auction. How can we explain this phenomenon?

Apart from the Civil law tradition, there are some modern theories approaching the complex problem of property rights in its political and ecological setting; one of them is the so called “New Institutional Economics” (NIE).<sup>95</sup> The premise of NIE can be seen in the issue that institutions should not be neglected: social, political and economical institutions—as environment—have an important impact on the legal framework, and vice-versa. Economic transformations and needs often lead to changes in the legal framework: the state, the main decision maker, interferes on behalf of economic growth.

Property is a social fact. In every society, the closer definition of property rights is influenced by social, political and economic phenomena. As Schmid states: “Property is not simply a derivative of a physical fact, it also reflects a group choice about what kinds of effort are to count in creating an image in people’s minds that acknowledges a person’s rights.”<sup>96</sup> Ownership exists always in a certain social and economic context. With regard to property rights, in practice rising tensions between individual and public interests are unavoidable. In every society, the concept of property rights is considerably influenced by public choice. Therefore an abstract definition, isolated from its social and economic context can never work properly.

Property rights are outlined in NIE rather by their economic content. Barzel especially points out “an individual’s ability, in expected terms, to directly consume the services of an asset, or indirectly consume it through exchange.”<sup>97</sup>

Ownership and government and their interrelationships are important matters in every society throughout our history. Thinking of Ptolemaic Egypt, one should consider the strikingly high level of state investment in economy that was introduced and supported by the Ptolemaic kings. Fertile land was far the most important natural resource and its extent depended partly on the Nile flood, partly of human

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<sup>95</sup> Kehoe 2010 has valuable research about tenancy in late antiquity using the methods of NIE.

<sup>96</sup> Schmid 2007: 83, quoted already at n. 1.

<sup>97</sup> Barzel 2007: 263. Remarkably, this approach awakens some reminiscences of Plato *Euthydemus* 301E; Aristot. *Rhet.* 1361a.; Aristot. *Pol.* 1257a.

innovation. By initiating irrigation or drainage and raising dykes the political regime had an important effect on the landscape. Just to give a hint to the extension of the high level of state interference I quote some examples. P.Tebt. III 703 (third century) records the duties of high royal officials inspecting canals, sowing and crops; P.Lille 1 (259 BCE) preserves a land reclamation project;<sup>98</sup> P.Yale 36 (232 BCE) reports the sowing schedule compiled by the bureaucracy; P.Hib. I 85 (261 BCE) depicts how seed-grain was issued by officials; in P.Ent. 60 (218 BCE) we can read about a trial resulting from accidents at flooding a field; P.Tebt. I 50 (112/1) claims the loss of water supply; SB XVIII 13881 (256 BCE) reports the transport of stones for irrigation works; P.Köln VIII 342 (232 BCE) is a letter to officials asking them to open canals for irrigation etc.<sup>99</sup>

Control of the Nile flood, with the irrigation and drainage work that this necessitates, has always been of crucial importance for whoever controlled the land of Egypt.<sup>100</sup> It is sufficient to mention here two important archives: the Petrie Papyri include documents of two famous engineers (Kleon and Theodoros) who worked on irrigation and drainage works in the Fayum in the middle of the third century BCE.<sup>101</sup> One learns a lot about the extent of state investment for reclaiming land from these texts. Also the Zenon archive includes many interesting details.<sup>102</sup> Zenon was engaged as chief manager for a large estate (of 10,000 *arourai*, or approximately 2.750 hectares) close to Philadelphia. The land belonged to Apollonios, a high official of Ptolemy II.<sup>103</sup>

Several papyri show a steady concern of the government with the development of the irrigation system of the Fayum basin.<sup>104</sup> Indeed the settlement and exploitation of the land so reclaimed stood in the centre of state interferences.<sup>105</sup> This state policy

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<sup>98</sup> Cf. Thompson 1999: 118–20.

<sup>99</sup> Cf. Bagnall – Derow 1981: 131. Similarly SB I 5124; most of the papyri are coming from the Ghoran (Sorbonne Collection), others from Gurob (Petrie Papyri), cf. Thompson 1999a: 107–8; Walbank 1982: 106–12 also points out the strong state interference in economy.

<sup>100</sup> The contributions of the recently published volume *Agriculture in Egypt. From Pharaonic to Modern Times*, ed. by A. K. Bowman – E. Rogan, Oxford 1999, give a hint to the economic context.

<sup>101</sup> Cf. P.Petrie III 40; P.Petrie III 42 G (8); P.Petrie III 43 (1); P.Petrie III 43 (8); P. Petrie III 44 (2).

<sup>102</sup> P.L.Bat. 20; cf. Thompson 1999a: 111; PSI V 488 16–17 (257 BCE); SB XII 10844 (247 BCE); furthermore P.Cair.Zen. II 59256 (250 BCE); P.Cair.Zen. V 59816 etc.

<sup>103</sup> Thompson 1999a: 108 calls him the “finance minister” of Ptolemy II. See also Walbank 1982: 104–6.

<sup>104</sup> On the contrary, the Athenian state took almost no interest in the cultivation of agrarian land, cf. Todd 1993: 247 “indeed, what is perhaps most surprising about Athenian land law was the low level of state interference overall.”

<sup>105</sup> Cf. Thompson 1999a: 108 and 112–5; Crawford 1971: 106–12; Manning 2003: 65.

required a rather high level of administrative organization, of state investment and control all over agricultural activities.<sup>106</sup>

Some further facts must be mentioned. After the Nile flood, arable land must have been measured every year, before the landholders began their work. Also the boundaries were set every year anew (at least partly).<sup>107</sup> Besides this, the fertility of the land was highly dependent on the extent of the flood. In fact, no proprietor could fully trust that the following year he would have a fertile plot for cultivation again. It means that not even the physical existence (or fertile quality) of a piece of land could have been taken for certain. Already this peculiarity explains the highly relative nature of property rights.

The unique political and economic environment—and the landscape itself—may have influenced the local understanding of ownership of agrarian land. *Adespota* and *hypologoi*, unoccupied arable land produced no revenue for the crown. Furthermore, abandoned parcels lost their value, which was costly to obtain, in a short time. Unrepaired dykes, channels not cleaned, or neglected drains damaged public investments and may have caused considerable damage to neighboring lands, too.<sup>108</sup>

All this justified the quick and merciless way in which the state interfered in property relations. Obviously, “public choice” ruled over the legal framework. The main interest of the community (realized by the political regime) was of greater account than any abstract private title.

Furthermore, not even the property rights were homogenous. Different forms of control (or title) over land obtained different forms of property rights—with public and private tasks of different extent. Ownership over land was never absolute, unlimited and exclusive. Just the contrary: as we have seen, ownership was an elastic and dynamic category with changing legal content according to the contemporary political and economic environment. Landscape and technology level, economic transformation and political changes were essential factors in the formation of property rights. Egypt can be characterized in every period of its history as having a very strong and decided state interference in property rights over land—for the sake of a better exploitation of the most important natural resource, fertile land.

Summing up, I will underline that this newly discovered concept of ownership—which is clearly reflected in our sources about auction—earnestly questions also Pringsheim’s theory about the transfer of ownership in Greek law. How can a sharp distinction between possession and ownership be reasonable, if not even the physical extent and legal content of ownership could be taken for indubitable?

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<sup>106</sup> Thompson states that so much land was never under cultivation in the Nile valley as that time; cf. Thompson 1999a: 114; similarly Thompson 1999b: 124.

<sup>107</sup> Cf. Crawford 1971: 7.

<sup>108</sup> Cf. Crawford 1971, 106–7.

Working with a “soft” concept of ownership also makes the distinction between possession and ownership seem of less importance. Paying the first installment, the purchaser gets the land transferred. A distinction between obtaining income (fruits) and full rights doesn’t seem to me to fit the sources. Acquiring full rights with full payment? And what about *epilysis*, confiscation of *adespota* and *hypologoi* and other forms of state interference? In Ptolemaic Egypt, landscape and political regime could never have lived with the abstract and rigid definitions of the Pandectists.

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