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PUBLIC SALES AND PROPERTY RIGHTS: A RESPONSE TO EVA JAKAB

Contrary to her predecessors, Professor Eva Jakab has treated the institution of public sale in its socio-economic context, by pointing out the social and economic dimensions of the sale by auction and, more generally, of the right of real property in Egypt during the Ptolemaic centuries. Thus, her paper focuses on papyrological sources. The documentation is rich and eloquent, allowing us to trace the mechanisms of this specific kind of sale. We cannot say the same about information given by inscriptions coming from other parts of the Greek world, during both Classical and Hellenistic centuries. These include mostly catalogues, lists or simple allusions, which allow us only to see that a good has not been purchased in a usual transaction among private persons, but in a manner necessitating the intervention of the official authority.

As it appears from the papyrological documents, sale by auction was performed in three cases: first, in the case of a good without a master, the so called *adespoton*, second, as part of the compulsory enforcement procedure (*Zwangvollstreckung*) against an insolvent debtor and, third, for the public sale of tax farming, state monopoly goods, vineyards, cornfields and priesthoods.

The term *adespoton*, used in *P. Ent.* 61 and *SB V* 8033, documents quoted by Jakab, designates goods abandoned by their owners for reasons unknown to us. The terms *adespoton* and *eremos* attested by the sources do not designate identical situations. Contrary to *adespota* goods, whose master is unknown, things called *erema* constitute vacant properties that have no master, owner or even leaseholder.¹

Beyond the documents included in Jakab's handout, the *adespota* are also mentioned in a royal letter to the Cyrenians, preserved on stone, by which the king Ptolemy (Evergetes II?) and the Queen Cleopatra (II?) ordered the people of Cyrene to include in their legislation the royal *prostagma* on the appropriation by officials of things qualified as *adespota*.

V. Arangio-Ruiz, "Una nuova iscrizione sul protettorato dei Tolemei in Cirenaica," *Rivista di filologia* 65 (1937), p. 266–277; *SEG* 9 (1938), 5; M.-Th. Lenger, *C.Ord.Ptol.* 46, ll. 16–26:

¹ As for example in *I. Delos* 1416 B, col. II, ll. 41–49. For more examples, see J. Velissaropoulos-Karakostas, *Droit grec* II, p. 41–43.

- Βασιλέως καὶ βασιλίσεως προσταζάντων.
 Ἐάν τινες τῶν ἐπὶ χρεΐαις τεταγμένων
 ἢ τῶν ἄλλων τῶν ὑπὸ τὴν βασιλείαν
 τασσομένων ἀδέσποτα αἰτήσωνται
 20 ἢ κατηγιαμένα, μὴ παρασφραγιζέσθωσαν
 τὰ ὑπάρχοντα τῶν κατατιωμένων μηδὲ
 εἰς φυλακὴν παραδιδότωσαν μήτε αὐτοὺς
 μήτε τοὺς οἰκέτας αὐτῶν ἄνευ τοῦ παρὰ
 τῶν χρηματιστῶν κομίσει χρηματισμοὺς
 25 [καὶ π]ρὸς τοὺς ἐπὶ τῶν πόλεων τετα[γ]-
 [μένους -----]

The *adespota* also appear in another case of sale by auction, probably by means of a public herald,² that took place during the second century B.C.

BGU VI, 1218, ll. 7–9:

ἀγοράσαι Δίδυ[μον τοῦ εὐρίσκοντος]
 χαλκοῦ α κυριεύσει δὲ καθό[τ]ι [καὶ οἱ ἀρχαῖοι κύριοι]
 γίνεται ἀδεσπῶτων.

The use of the term *epilysis* in *P. Ent.* 61 (240 B.C.) is of particular interest for the purpose of public sale. It is, I believe, the Ptolemaic equivalent of the well known *prasis epi lysei*, that is the sale with a clause of redemption, or, more exactly with a clause of termination (*lysis*) of the sale.³

P. Ent. 61 recto, ll. 1–13:

- 1 [Βασιλεῖ Πτολεμαίῳ χαίρειν]νος πωλουμένου τοῦ Νικοδήμου
 [τ]ὴν [[κωμ]] Φαιν[ί]ππου κόμη
 [ἡγ]όρασα αὐτὸν σ', τοῦ δὲ κτήματος
 []έγλελειμμένου διὰ τὸ μηθένα προεστηκέναι
 5 [Γ]λαύκων οὐχ οἶός ἐστιν τὴν προσβολὴν
 [μ]ή ποτε ὁ {ο} Νικόδημος ἀφεθεῖς ἐκ τῶν ἔργων
 ἐπ.[..].α[Δέομαι οὖ]ν σου, βασιλεῦ, εἰ καὶ σοι δοκεῖ,
 προστάξαι
 Ἀμμωνίῳ τ[ῶ] ο[ἰκονόμ]ῳ γράψαι Γλαύκωνι τὴν ὄνην κατατάξαι μοι ἵνα τὸ
 κτῆμα
 κατεργάζομαι καὶ μὴ καταφ<θ>αρῆι, καθάπερ καὶ Ἑρακλείδῃ τῷ
 ἀγοράσαντι τὸν
 10 ὑπάρχον[τα.]. ον ἐν τῷ Νέωνος κλήρῳ κεχρημάτισται. Ἐάν δὲ
 Νικόδημος
 ἀφεθεῖς [καὶ] παρα[γε]νόμενος ἐν ταῖς ξ' ἡμέραις ἐπιλύσσασθαι βούληται
 κατὰ τὸ διάγραμμα,
 δίδωμ[ι] ἀ[ὐ]τῷ τὴν ἐπίλυσιν ἀποδόντι τό τε ἀργύριον καὶ τὰ γινόμενα
 κα. . . . [

² The words διὰ κήρυκος (line 6) have been restored by W. Schubart.

³ Especially E.M. Harris, "When a Sale is not a Sale?" p. 351–381.

- μέρει Παθύρεως πήχεις στερεοῦ β' ὄν ὑπέ-
 5 θετο Πατοῦτι Πελαίου καὶ Βοκενούπει Πατοῦτος κατὰ συγγραφὴν
 ὄνῃς ἐν πίστει ἐπὶ τοῦ Παθύρει ἀρχείου
 ἐφ' Ἡλιοδώρου ἀγορανόμου ἐν τῶ<ι> ε' ἔτει
 Μεσορῆ κζ' χα(λκού) (ταλάντου) α' (δραχμῶν) α', ὅς καὶ παρὸν
 Πατοῦς καὶ Βοκενοῦπις ἐπὶ τοῦ ἀρχείου ἀνωμολογήσατο
 10 ἀπέχειν καὶ μὴ ἐπικαλεῖν περὶ τῶν
 διὰ ὄνῃς γεγραμμένων πάντων
 τρόπω<ι> μηδενί. Ἀμμώ(νιος) κεχη(μάτικα).
Verso: Ἐπίλυσις Πανοβχοῦ(νιος).

Redemption of an *one en pistei* (?), 124 B.C., *P. Adler* I, G2, ll. 7–8:
 ἀρίστασθαι ἀπὸ τῶν ὑπ[ο]τεθειμένων σὺν Θάιβι
 Φίβιος τῆι τούτων μητρὶ κ[ατὰ] συγγραφὴν ὄνῃς ἐν πίστει].

Since at least the time of Alexander the Great, the term *epilysis* is used to denote the right of a former owner to recover his property, presumably lost after a public sale. In his *diagramma* on the return of the exiles of Tegea, Alexander provides, among others, that the daughters of the exiles who, during the exile of their fathers, remained in Tegea and got married there, do not have to suffer any patrimonial consequence if they have “bought the *epilysis*” (l. 51: *epilysin onesanto*).⁷ In other words, if they have redeemed the estates of their fathers and mothers, presumably sold by auction.

A. Plassart, *BCH* 38 (1914), 101; *Syll*³ 306; Tod, *GHI*, 202; A.-M. Vèrilhac – C. Vial, *Le mariage grec*, p. 156–158, ll. 48–57:

- ὄσαι δ-
 ἐ γυναῖκες τῶν φυγάδων ἢ θυγατέρες οἴκοι μίνονσ-
 50 αι ἐγά[μ]αντῶν ἢ φυγόνσαι ὕστερον ἐγάμαντῶ [ι]ν Τεγέ-
 αν κα[ι] ἐπίλυσιν ὠνήσαντῶ οἴκοι μίνονσαι, ταννὶ μ-
 ἦτ' ἀ[πυδοκ]ιμάζεσθαι τὰ πατρῶια μήτε τὰ ματρῶια μ-
 ηδὲ τὸς ἐσγόνος, ὄσοι μὴ ὕστερον ἔφυγον δι' ἀνάγκα-
 55 ς καὶ ἰν τοῖ νῦν ἐόντι καιροῖ καθέρπονσι ἢ αὐταὶ ἢ
 παῖδες ταννὶ, δοκιμάζεσθαι καὶ αὐτὰς καὶ τὸς ἐς τ-
 αιννὶ ἐσγόνος τὰ πατρῶια καὶ τὰ ματρῶια καὶ τὸ διά-
 γραμμα.

According to *P. Ent.* 61, the royal *diagramma* gives the seller the right to proceed to the redemption within 60 days following the sale. A similar provision, although providing a longer delay, is to be found in a tablet from Sicily (Morgantina) of the first century B.C., according to which, the seller (probably in a *prasis epi lysei* between private persons) has to proceed to the resale of the real property within a year or a year and a half.

Ed. pr. D. Comparetti, “Laminetta argentea iscritta di Aidone in Sicilia,” *ASAA* 1 (1914), p. 113–118; *SEG* 4 (1929), 62; V. Arangio-Ruiz – A. Olivieri, *Inscriptiones*

⁷ *Supra* note 4.

graecae Siciliae et infimae Italiae ad ius pertinentes (Milano 1925), p. 139–142, n^o 17; G. Manganaro, “*Tavolette di piombo inscritte della Sicilia greca*,” *ASNP* 7.4 (1977), p. 1342–1344; J. Game, *Actes de vente* 84, ll. 1–9:

- 1 [- - - τ] ἄ ἐπόμεινα π[άντα - - -]
 [ἐ]πι λύσει· λύσσασθαι δ' ἐνι[αυτῶι ἢ τῶι ἔξ]-
 [αν ἐ]ξαμήνωι Δίωνος εἰμ[εν - - -].
 Ἄμποχοι· Αἰσχρίων Στρατίου, Στρά-
 5 τιος Αἰσχρίωνος, Φίλων, Ἀριστάρχ[ος]
 Φιλιστίωνος. *vacat*
 Ἄμποχοι· Αἰσχρίων Στρατίου - -
 Σ(τράτιος) Αἰσχρίωνο(ς) <λτου>, Φίλων, Ἀριστα[ρχος]
 Φιλιστίωνος.

In Ptolemaic Egypt, in Dura Europos and most probably in fourth-century Athens,⁸ the sale with the clause of redemption seems in some cases to be prescribed by law, as for instance the public sale of real property belonging to an insolvent debtor.

Let me end my brief response to Jakab's paper with some short remarks on property rights. I totally agree with her in refusing to identify the Greek property with Roman *proprietas* or *dominium*. Nevertheless, I believe that Greeks knew very well that a person could, in some cases, have all powers available over a thing, being authorized not only to use it, but also to alienate or even abuse it. This plenary right is not the simple *kyrieia*, which can be recognized even to a lessee. In the few inscriptions mentioning such a right, it is described by the term *panktesia*, a word composed of the adjective *pan* and the verb *ptaomai*, to acquire.

The first of the two great laws of Ephesos, recognizes three particular kinds of real rights exercised by the beneficiary directly over the thing: first, the power of the person who is authorized “to *have* the thing and to receive the fruits” (*echein kai nemesthai*), in other words the usufructuary and tenant for life ; second, the owner who has been deprived of the right of usufruct over his property and, third, the person who has all possible powers over the thing, who is exercising the *panktesia*.

IEphesos Ia, 4; *Syll.*³ 364; *RIJG* I, V, ll. 74–78:

- 75 τῶν δανε[ιστῶν] τῶν ἐμβεβηκότων εἰς κτήματα· ὅσοι μὲν πρὸ μηνὸς
 Ποσιδεῶνος
 τοῦ ἐπὶ Δη[μα]γόρου ἐμβάντες εἰς τὰ κτήματα κατὰ πράξεις ἔχουσιν
 κτήματα καὶ νέμον-
 ται, εἶναι [αὐ]τοῖς κυρίας τὰς ἐμβάσεις, εἰ μὴ τι ἄλλο ἐκόντες πρὸς αὐτοῦς
 ὁμολογήκασιν· περὶ

⁸ Athens, 367/6 BC, *Agora* 19, P 5, ll. 30–39: Αἰσχίνης Μελιτε<ὸ> καὶ κοινὸν ὀργεῶνων ἐνεπεσκήψαντο ἐν τῇ οἰκίαι ἣν ἀπέγραψεν Θεόμνηστος Ἰωνίδης ἐνοφείλεσθαι ἑαυτοῖς :ΙΔΔΗΗΗ δραχμάς, πριαμένων ἡμῶν τὴν οἰκίαν ταύτην παρὰ Θεοφίλου τοῦτο τοῦ ἀργυρίου ἐπὶ λύσει· ἔδilloξεν ἐνοφείλεσθαι. ὠνητής, Λυσανίας Παλαθίωνος Λακι Π^ρΔΔΓ· τοῦτο τὴν προκαταβολὴν τὸ πέμπτον ἢ μέρος ἔχει ἢ πόλις καὶ τὰ ἐπάνια καὶ τὰ κηρύκεια ἢ καὶ Σμίκυθος Τειθράσιος τὰς πεντήκοντα καὶ ἐκλατόν· ἄθρόον κατὰ τὴν ἀπογραφὴν.

δὲ τῆς π[αγ]κτησίας ἄν τινες ἀμφισβητῶσιν, κρίσιν εἶναι αὐτοῖς κατὰ τοὺς νόμους.

The second inscription mentioning the full property, the *panktetike kyreia*, is used by arbitrators from Pergamon called in order to resolve the dispute between Mytilene and Pitane, dating between 150 and 133 B.C.

IPergamon 245; OGIS 335; IG XII Suppl. 142; Sh. Ager, Interstate Arbitrations 146 III, ll. 125–143:

125 τῶν δὲ Πιταναιῶν ὁμοίως ἐκ τῶν ἰστ[οριογράφων -----]
 [----- τὴν χ[ώ]ραν αὐτὴν κατε[σχ]ηκότας ἑαυτοὺς -----]
 [--- πολλὰς γ[ενεὰς πα]ρ' αὐτοῖς τετηρημένον ἢ με -----]
 [----- ἐπρ[ί]ατο ταῖς μεταπτώσεσιν τ-----]
 ----- ας ἐλη[λυ]θέν[α]ι κυρ[ε]ί[α] -----]
 130 [----- ἐν πολλαῖς γε]νεαῖς τῶν τόπων ἐ[π. κ]ρα[τη]σ[αν] -----]
 ----- καὶ τεσσάρων ταλάντων καὶ μετὰ τα[ῦ]- --
 [τ]α Σελεύκου τῆι πρός] Λυσίμαχον μάχηι ἐπι]κρατήσαντος ὁ υἱὸς αὐτοῦ
 διαδεξάμενος
 τὴν βασιλείαν [Ἀντίο]χος τὴν πεδ[ιάδα χῶ]ραν αὐτοῖς ἐπώλησεν ταλάντων
 τριακοσίω[ν]
 τριάκοντα καὶ π[ροσει]σέπραξεν ἄλλ[α τ]άλαντα πεντήκοντα καὶ περὶ
 τούτων τὰς πίστει
 135 ἐ[γγ]ράφος παρατιθέ[ασι]ν, δόντος [εἰς τ]αῦτα Πιταναίοις καὶ Φιλεταίου
 τ[ά]λαντα -----]
 κοντα, καθότι ἐκ τῆς ἀν[αγεγραμμένης πα]ρ' ἡμῖν [ἐ]ν τῷ ἱερῷ τῆς Ἀθηνᾶ[ς
 ἐπιστῶ]σα[ντο στή]-
 λης, κ[α]ὶ ὡς ἡ παγκτητικὴ τ[ῆ]ς χ[ώρας] κυρε[ί]α καὶ διὰ τῶν ἐγγράφων [ἐ]ν ἐπι
 τῆς δια]νομῆς α[ὐ]-
 τοῖς ὑπὸ τῶν κρατούντων παρεκε[χώρη]το, ἀναντη<ρ>ήτως δεικ[νύ]ντες ἐκ
 τ[ῶν] καθιερω]-
 μένων στηλῶν ἔν τε Ἰλίοι καὶ Δήλ[ω]ι καὶ Ἐφέ[σ]ωι, ἐν αἷς ἡ γε[γραμμένη
 ὑ]πὸ Ἀντιό[χου]
 140 [ἐ]πιστολῆ περὶ τῆς κατὰ τὴν χώραν τα[ύτην] κυρ[ε]ίας κατετέ[τακτο,
 παρα]σχομένω[ν τε]
 [κ]αὶ ὡς Εὐμένης παραλαβὼν τὰ πράγ[ματα] τὴν Σε]λεύκου [ἐκύρω]σεν
 ἐπ[ιστολὴν] π[ρὸς]
 [Π]ιταναίους, ἐν ἧι σὺν τοῖς ἄλλοις ἐγγέ[γραπτο] κ[ατὰ] λέξιν ὄδε·
 “συγχορῶμεν δὲ καὶ τ[ῆς] χῶ]-
 [ρας] εἰς τὸν αἰεὶ χρό[νον] τὴν ἀναμφισ[βή]τη[τ]ον καὶ ὁμολογουμέν[η]ν
 κυρεῖαν τὴν παγκτητικ[ή]ν.”

The *panktesia* is also mentioned in a decree of Colophon, dating after 120/119 B.C.

Ed. pr. L. et J. Robert, Claros I. Décrets hellénistiques (Paris 1989), p. 63–104; *SEG* 39 (1989), 1244, col. I, ll. 32–40:

πάσαις δὲ μετὰ τῶν συμπρεσβευτῶν κατωρθω-
 κῶς καὶ κάλλιστα καὶ συμφορώτατα δόγματα παρὰ
 τῶν κρατούντων ἐνηνοχῶς, τῆς μὲν παραλίου
 35 χώρας τὴν πανκτησίαν βεβαιότεραν πεποίηκε τῷ
 δήμῳ, τῆς δὲ κατὰ τὰ Στενά καὶ τὸ Πρεπέλαιον

τοὺς πατρίους ὄρους τετήρηκεν, τοὺς δὲ κατοικούντας τὴν πόλιν ἤλευθέρωσε κατεγγυήσεων καὶ στρατηγικῆς ἐξουσίας, τῆς ἐπαρχείας ἀπὸ τῆς
40 αὐτονομίας χωρισθείσης.

Finally, in Roman times, in an inscription from Smyrna, the right of the owners on a tomb is specified as being *panktetikon*.

ISmyrna I, 193, l. 6:

[ἐχ]όν[τ]ων δίκαιον πανκτητικὸν ἐνσορίων.⁹

Unlike *panktesia*, the expression *es ta patrika*, attested by documents from Macedonia,¹⁰ Skythopolis,¹¹ Mylasa,¹² Thessaly,¹³ the island of Ikaros (Kyweit)¹⁴ and Egypt,¹⁵ does not imply total rights to property. Because *es ta patrika*, *en patrikois* or simply *patrika* are related in some inscriptions to the rights of an owner and in others to those of a lessee, W. Dittenberger and the editors of the *Recueil des inscriptions juridiques grecques*, followed by L. Robert,¹⁶ M. Hatzopoulos¹⁷ and others, identified it as the right to property, although M. Rostovzef estimated that the terms *es patrika* indicate the rights recognized as belonging to the tenant.¹⁸

Finally, I let me note the conclusion of the late Dieter Behrend, in his article on the leases *es patrika* of Mylasa.¹⁹ According to Behrend, the lessee, as well as the beneficiary of a royal grant were authorized to behave “as an owner [...] but not as the owner,” “wie ein Eigentümer [...] aber offenbar nicht als Eigentümer.” If the grant was made simply *eis ta patrika*, without further indications regarding the particular rights of the beneficiary, the full property remained the king’s. All these situations of minor property rights will be elevated by the Romans (and accepted by the Moderns) to the status of specific rights, whereas for the Greeks they constituted different degrees of property rights, differing in the amount of power attributed to each of them.

⁹ Translation of G. Petzl *ad ISmyrna*: “Das Recht zur vollen Inbesitznahme der Grabnischen haben.”

¹⁰ *RIJG* II, XXV A; *Syll.*³ 332; M. Hatzopoulos, *Une donation du roi Lysimaque*.

¹¹ J. H. Landau, “A Greek Inscription found near Hefzibah,” p. 54–70; T. Fischer, “Zur Seleukideninschrift von Hefzibah,” p. 131–138; K. J. Rigsby, “Seleucid Notes,” p. 248–254; F. Piejko, “Antiochos III and Ptolemy Son of Thrasesas,” p. 245–259; *SEG* 41 (1991), 1574.

¹² Among the lease contracts from Mylasa, 13 includes the clause *es ta patrika*. J. Velissaropoulos-Karakostas, *Droit grec* II, p. 105–118.

¹³ *IG* IX 2, 234; L. Moretti, *Iscrizioni storiche* 96; J.C. Decourt, “Décret de Pharsale,” p. 163–184; *SEG* 40 (1990), 486.

¹⁴ K. Jeppesen, “A Royal Message to Ikaros,” p. 153–198; *SEG* 20 (1964), 411, l. 30–33.

¹⁵ *P. Tebt.* I, 5; M.-Th. Lenger, *C.Ord. Ptol.* 53, I, l. 10–13.

¹⁶ *BullÉpigr.* 1970, 627.

¹⁷ *Loc. cit.*

¹⁸ M. Rostovzef, *Studien zur Geschichte des römischen Kolonates*, p. 252.

¹⁹ D. Behrend, “Pachturkunden aus Mylasa,” p. 145–168.

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