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CONFISCATION, EXILE, AND RETURN: THE PROPERTY PROBLEM AND ITS LEGAL SOLUTIONS

Abstract: This paper examines the evidence for legal solutions to the problem of returning exiles who demanded the return of their property in the Classical period. Fifth-century laws prioritize the interests of the political regime in power over the private economic interests of individuals, whereas in the fourth century they began to prioritize lasting peace and reconciliation, which entailed a new commitment to recognizing and protecting the property claims of returnees.

Keywords: property, *stasis*, exile, confiscation, reconciliation

On the island of Samos in 412, a popular uprising led to the execution of two hundred oligarchs and the exile of four hundred more; the land and houses of the victims of this purge became the property of its perpetrators (Thuc. 8.21). Eight years later the Samian democrats, besieged by the Spartan admiral Lysander, were driven out with nothing but the cloaks on their backs; Lysander then "gave control of the city and everything in it" to the exiled oligarchs, who must once again have claimed property on the island (Xen. *Hell*. 2.3.6-7). The events on Samos at the end of the Peloponnesian War are by no means unusual, but they highlight the dramatic impact of *stasis* on the ownership of private property.*

In the event of large-scale expulsions like those on Samos in the late fifth century, hundreds of families lost their land, their houses, and their movable property. When Thucydides (8.21) says that the Samian democrats "themselves took the land and houses" of the exiled oligarchs, he is certainly reporting in a compressed fashion a process well known from Athens in particular: the victors in the *stasis* confiscated the exiles' property, declared it public, and then auctioned it, publicly, to the highest bidder.[1] The proceeds from the sale were a source of revenue

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1 *E.g.* Hdt. 6.121.1-2; OR 172; Walbank 1982; *Ath.Pol.* 43.4 with Rhodes 1981, 525–26.

for the *polis*, but cash rarely appears to have been the motive.[2] This entire process was founded upon the recognition—indeed the insistence—that property ownership was a significant form of power within the *polis*, a power bestowed upon citizens and snatched away from those who were being expelled. The ownership of land and houses, restricted to citizens, was thus both carrot and stick. This underlying logic to the evidently universal association of exile with property confiscation provides the background to the story of how Greek *poleis* dealt with the problem of returning exiles who wanted their property to be restored to them.

The Samian oligarchs who returned in 404 were lucky: the democrats who had confiscated their property and reallocated it to others eight years before had now been driven out. When Xenophon says that Lysander "gave control of the city and everything in it" to the returning exiles, he leads us to imagine that they did not face any challenges from existing owners as they sought to reclaim their property. Yet it was precisely this challenging dynamic that many *poleis* faced when they had reached a reconciliation agreement with exiles who were then allowed to return. For the competing claims of buyer and returning former owner of confiscated property had the potential to disrupt hard-won settlements and incite further dispute and violence.

There were three tangled sets of problems. The first was the obvious *political* problem, that disputes of any kind between returning exiles and those who had stayed in a *polis* had the potential to rekindle *stasis*. The second was a set of *economic* problems. Rampant property confiscations, even in contexts of *stasis* and exile, must have undermined the trust that citizens had in the security of their property claims, and more profoundly in their states' willingness to protect their property claims despite having the power to overawe them through indiscriminate seizure. What is more, if those who purchased confiscated property at auction from the *polis* were not confident of the security of property claims they would make over the goods they purchased, they would not buy. And while this would deprive the state of some revenues, more importantly it would create another political problem, because it would undercut the efficacy of the strategy, adopted by *poleis* across the Classical Greek world, of using property ownership as both a privilege of citizenship and a means of punishment. Additionally, creditors who had made loans to exiles would expect to be repaid through the process of confiscation and auction, but if they had not been they are likely to have pressed their claims against returnees. The third set of problems was *legal*. If trials over property disputes were to be conducted, how could an unbiased jury be composed, when most citizens within the *polis* had either been involved or made a commitment of loyalty to one side or the other in *stasis*? Finally, those who purchased confiscated property at auction became the

[2] Lys. 30.22 alleges that the Athenian *boule* is willing to accept *eisangeliai* and confiscate the property of citizens when it needs funds (and, he implies, only for that purpose). This allegation appears exceptional.

legal owners; if they were forced to return the property, how could they be justly compensated?

Time after time, Greek states enacted legislation and had recourse to trials to settle disputes arising over property in the aftermath of confiscations and the return of exiles. And while the documentation of the legal procedures set in place to cope with this problem are rarely as detailed as we would like, there is in fact a robust set of more than a dozen cases across the period c. 450-300 that shed light on the problem of how Greek states used legal institutions to address the intractable problem of property disputes following the return of their citizens from exile. In 1991 Raoul Lonis published an important paper on this topic, but he focused largely on the fourth century and studied the problem primarily from a political perspective, side-stepping both the legal procedures and the question of how legal remedies related to political priorities.[3] In what follows I consider the surviving evidence for this problem in the Classical period, highlighting in each case both the legal institutions utilized by states struggling with this ferociously difficult problem, and what the surviving evidence reveals about the priorities of the regimes that enacted these decrees and deployed these legal strategies. Chronological developments in both of these areas will suggest that responses became markedly more judicious and balanced over time, a sign not only that the Greek states learned from their own mistakes and the mistakes of others, but that during the fourth century property claims, which originated in a political bargain between possessors and would-be ruling elites, became somewhat more secure as states recognized the complex, deleterious impact of property insecurity.[4]

The Fifth Century

In the surviving evidence one of the most common legal strategies for dealing with the anticipated demands for property restoration from returning exiles was to delegate responsibility for resolving the disputes to particular officials, courts, or a specially commissioned body. Such delegated authority was sometimes chronologically bounded, creating a window of opportunity within which all disputes had to be heard and trials conducted.

Our first insight into an attempt at this problem is at Halikarnassos in the mid-fifth century. The so-called Lygdamis inscription records a decision (ὁ ἄδος, l. 19) or law (ὁ νόμος, ll. 19, 32, 34-35) that resulted from deliberation in the *syllogos* of the Halikarnassians and the Salmakians and Lygdamis, generally believed to be the same Lygdamis who was the tyrant of Halikarnassos.[5] Although the law never

[3] Lonis 1991.

[4] See further Mackil 2017, Mackil 2018.

[5] OR 132; Maffi 1988; Koerner and Hallof 1993, 84. For the identity of Lygdamis see most recently Osborne and Rhodes 2017, 184. Although efforts seem to be made to recognize Salmakis as a separate entity with at least some of its own officials and political representatives, it appears here to be subordinate to Halikarnassos (its *mnemones*

explicitly mentions exiles and deals at least superficially only with property disputes in general terms, there are several reasons to believe that a period of civil strife, leading perhaps to exile, confiscation, and return lay behind its passage. First, our scant literary sources for Lygdamis suggest that he faced significant hostility, leading to both violence and exile; the late *Suda* tells us that Herodotos went into exile because of his tyranny, and that his uncle Panyassis was killed by him.[6] The late fourth-century author of the pseudo-Aristotelian *Oeconomica* reports that Lygdamis had exiled some citizens and confiscated their property, but found no buyers for their land, so he sold it back to the exiles themselves.[7] As one of many accounts in the treatise of semi-devious strategies adopted by rulers and dynasts for the generation of revenue, it is somewhat suspect, but it clearly derives from an otherwise lost Classical-period tradition of hostility toward Lygdamis and memories that he was responsible for the exile of his political opponents; it is natural that the confiscation of their property would have been a part of that process. Lygdamis clearly presides over the council of the Halikarnassians and Salmakians; if the property disputes that the law anticipates are brought by returning exiles, they must be his erstwhile opponents. Second, as Alberto Maffi and Edwin Carawan have both shown, the *mnemones* who are named in the law and whose term in office constitutes a temporal marker for those with a property dispute appear to have served at least part of their term prior to the passage of the law.[8]

Carawan also demonstrated convincingly that the *mnemones* were not archivists at this early date but rather rememberers, officials in charge of keeping track of property ownership within the community, perhaps among other things.[9] They appear in a related context in a document from nearby Iasos about a century later, where they are the μνήμονες συνεπώλησαν, the *mnemones* who were partners (of the *polis*) in the sale.[10] The point of their partnership was certainly to make them witnesses. The *mnemones* of Halikarnassos and Salmakis probably played a similar role. As witnesses to the confiscation and auctioning of the private property of

cease to be mentioned after ll. 13-16). Osborne and Rhodes (2017, 185) remark that "Salmacis was a community very close to Halicarnassus" while noting that in the fourth century it was fully incorporated. Piñol-Villanueva 2017 suggests that it had been absorbed by Halikarnassos in a *sympoliteia* by the time the law being discussed here was passed.

6 *Suda* s.v. Ἡρόδοτος (Adler η 536), Πανύασις (Adler π 248).

7 [Arist.] *Oec*. 1346b7-13 with van Groningen 1933, 41–44 and van Groningen and Wartelle 1968, xiii for the date.

8 Maffi 1988, 71–77; Carawan 2007, 168–9.

9 *Mnemones* as registrars, working with written documentation: Arist. *Pol*. 1321b34-40. For a critical discussion of the archivist view of the *mnemones* (Maffi 1988 *inter alios*) and a compelling argument in favor of viewing the *mnemones* as rememberers, see Carawan 2007, 166–76 with Thomas 1996, 19–25.

10 *I.Iasos* 1.32, 35, 41, 45.

exiled citizens, they became a source of authority in the disputes that arose when those exiles returned.

The section of the law most important for my purpose is this:

16 ἢν δέ τις θέληι δικάζε-
σθαι περὶ γῆς ἢ οἰκίων, ἐπικαλ[έ]-
τω ἐν ὀκτωκαίδεκα μησὶν ἀπ᾽ ὅτ[ε]
ὁ ἅδος ἐγένετο· νόμωι δὲ κατάπ[ε]-
20 ρ νῦν ὁρκῶ{ι}σ<α>ι τὸς δικαστάς· ὅ τ[ι]
ἂν οἱ μνήμονες εἰδέωσιν, τοῦτο
καρτερὸν ἐναι. ἢν δέ τις ὕστερον
ἐπικαλῆι τούτο τõ χρόνο τῶν
24 ὀκτωκαίδεκα μηνῶν, ὅρκον ἓναι τ-
ῶι νεμομένωι τὴν γῆν ἢ τὰ οἰκ-
[ί]α, ὁρκõν δὲ τὸς δικαστὰς ἡμί-
[ε]κτον δεξαμένος· τὸν δὲ ὅρκον εἶ-
28 [ν]αι παρεόντος τõ ἐνεστηκότος. κ-
αρτερὸς δ᾽εἶναι γῆς καὶ οἰκίων οἵτινες
τότ᾽ εἶχον ὅτε Ἀπολλωνίδης καὶ Πανα-
μύης ἐμνημόνευον, εἰ μὴ ὕστερο-
32 ν ἀπεπέρασαν.

> But if anyone wishes to bring suit regarding land or buildings, let him make his claim within eighteen months from the date of this decision. In accordance with this law as it is now, the *dikastai* shall administer the oath: whatever the *mnemones* know shall prevail. But if someone should bring suit after this eighteen-month period, the person in possession of the land or houses is to take an oath, with the *dikastai* receiving half a *hekteus* per oath. The oath is to be taken [by the possessor] in the presence of the one who has initiated the suit. They are to be owners of the land and houses who were in possession of them at the time when Apollonides and Panamyes were *mnemones*, unless they sold them later.

These lines establish distinct rules that will govern property disputes between current possessors and former owners, depending on the period of time in which they are brought. The first (lines 16-22) is the period of eighteen months from the passage of this law. During this time, the knowledge of the *mnemones* in lines 21-22 is to be authoritative at a trial presided over by *dikastai*. As Maffi showed, Apollonides and Panamyes were *mnemones* not at the time the *syllogos* was inscribed but at some time in the past, and it was presumably during their tenure that the strife arose from which confiscations (and possibly exile) were at least one

outcome.[11] Whether they themselves would testify before the *dikastai* in a trial during the initial eighteen-month period, or whether current holders of that office whose responsibility would have included knowledge of past transactions would do so is unclear. In either case, the current possessor is under no special obligation; he must only comply, like all others, with the implications of the testimony of the *mnemones*.

A different rule applies to the adjudication of disputes brought after the initial eighteen-month period (lines 22-32). In these cases, the current possessor must take an oath in the presence of the one who has initiated the suit, ὁ ἐνεστηκώς (*viz*., the claimant, likely the former owner), and is to pay the *dikastai* half a *hekteus*.[12] Both components—the oath and the payment—merit careful consideration but have received little attention in recent treatments of the text. There is no mention of a payment in the procedures to be followed in the first period, and its significance in the second period depends on our assessment of the value of a *hekteus*. Reinach assumed that the *hemiekton* was a court fee or judge's salary, but several scholars have insisted that this must have been an electrum coin, which would give it a dramatically higher value.[13] In this case, the function of the required payment would have been to place additional pressure on the current possessor, to dissuade him from pressing his claim to the property against the former owner. A *hekteus* is simply one-sixth of a stater, whether that coin was of gold, electrum, or silver. Yet hoard evidence and studies of coins minted within Karia in this period show that they were overwhelmingly silver and minted on the Aiginetan silver standard, with a 12.2g stater.[14] If this is indeed the standard referred to in the inscription, the *hemiekton* would be equivalent in value to roughly 1g of silver. Several examples are known of silver coins weighing 1.2g that are attributed to Halikarnassos in the early fifth century, and these are likely to be the *hemiekton*.[15] We are dealing, then, with a court fee or judge's salary, rather than a deterrent fine.

The role of the oath sworn in this period also seems to differ. In the first period, the oath is administered by the *dikastai*, presumably to everyone in the court, litigants and defendants alike, to recognize the principle that "whatever the *mnemones* know shall prevail" (ll. 19-22). In the second period, the oath is sworn

[11] Maffi 1988, 72–76, followed by Carawan 2007, 168–69 and Osborne and Rhodes 2017, 185.

[12] Maffi 1988, 111 recognizes that the payment must be closely connected to the swearing of the oath, and notes that it seems to have a decisive effect.

[13] Reinach 1888, 42–43. Newton 1862, 3:682–86 argued that the *stater* in use at Halikarnassos in this period (which appears in our text in l.38) was an electrum stater, and he is followed by Melville-Jones 2007 no. 316, who assumes that the staters referred to were Kyzikene electrum staters, and that the hemiekton was one-twelfth of this high-value coin.

[14] *IGCH* 1180, 1186; Kraay 1976, 274. The Kyzikene staters were struck to the Phokaic standard, which was narrowly restricted in regular use to the northeastern Aegean.

[15] *BMC Caria* p. 102, 1-2; *SNG Kayhan* 755-758.

only by the current possessor. Sommerstein suggests that this oath functioned as an assertion of ownership that would be the sole basis for a decisive judgment by the *dikastai*.[16] But the oath of the current possessor at Halikarnassos is not decisive. The following sentence (ll. 28-32) provides the rule that *dikastai* must follow.[17] The oath, in other words, will not have been decisive but the requirement of a current possessor to swear one, given the rule that follows, must have been intended to put pressure on current possessors and diminish their willingness to press their claims. If the payment was too small to do so, the oath might have been more effective.

In disputes pursued in this second period, the person who is recognized by the *mnemones* as having been the owner at the time of the mnemonship of Apollonides and Panamyes is granted possession again. The current possessor is at a disadvantage, and the text gives no indication as to how he might be compensated. Nor, however, does it state what "the one who has initiated the suit" must do to reclaim his property. We might assume that he would need the recognition of the *mnemones*, but the text does not say so. I shall return to this point below.

At the end of the decree (lines 43-45) there is a reference to oaths sworn and written down in the past. Carawan follows Maffi in taking lines 43–45 to be a reference to some kind of reconciliation agreement that preceded this document, and to which the decree is supplementary.[18] His inference is that without the decree the normal procedure would have been for the *mnemones* to simply recognize the original owners, a process he calls "summary reclamation."[19] Instead, the new law requires that all such cases be heard by a jury; the role of the *mnemones* is effectively reduced to that of providing expert testimony. Why was the change necessary? Carawan suggests that "a more public recognition of rights was needed to forestall divisive recriminations. By replacing the presumptive procedure with a court decision, this decree creates a more secure arrangement for the future, giving a stronger title to those who held property in the 'base year' established by the settlement."[20] In other words, the reason for the trial was publicity and transparency, the goal of which was to head off the possibility of a renewed cycle of dispute and violence.

There is, however, no parallel for any procedure like Carawan's "summary reclamation" without a regime change and the expulsion of those who had been responsible for the earlier round of confiscation and exile, as happened at Samos in

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16 Sommerstein 2013, 62–63, citing Hom. *Il*. 23.581-85

17 Its significance depends on the correct reading of the imperfect indicative verbs in lines 30–31 (εἶχον, ἐμνημόνευον). Sommerstein misconstrues the impact of the oath-taking here because he relies on the view of Meiggs and Lewis (ML 32) that Apollonides and Panamyes were just entering their term of office as *mnemones*, or that it had just begun; cf. Maffi 1988, 71–77; Carawan 2007, 168–69.

18 Maffi 1988, 68–70; Carawan 2007, 178–79.

19 Carawan 2007, 179.

20 Carawan 2007, 179.

408. That is clearly not the case here. Summary reclamation by the former owners would also have wreaked havoc within Halikarnassos if the confiscated property had been sold and become the legal property of new owners. But Carawan's argument that the public trial gave stronger title to those who won their suit is certainly correct.

The nature of the jury to be used in these trials might help us understand who was likely to win their suits. If it is correct that property disputes are anticipated because some exiles have been allowed to return, we want to understand what efforts were made to ensure a fair trial for claimants. Lygdamis clearly rules Halikarnassos and Salmakis; the *syllogos* with which he deliberated must have served at his pleasure or been the outcome of tense inter-elite negotiations. The *mnemones* may include representatives from both sides of the dispute, but even this is uncertain.[21] The law is strikingly silent on the composition of the jury, a matter that becomes a major preoccupation of later legislators dealing with this problem throughout the Greek world. The inscription is profoundly elusive. This silence may imply that the composition of the *dikastai* for these trials was to be consistent with then-standard practice at Halikarnassos. Or it may imply that Lygdamis and his regime were simply using the veneer of legal process to stave off otherwise inevitable charges of injustice from returning exiles who sought to recover their property.

A further possibility emerges from the peculiar silences of this text regarding the steps to be taken by ὁ ἐνεστηκώς, "the one who initiated the suit" (l. 28), to regain his property. We hear only that καρτερὸς δ'εἶναι γῆς καὶ οἰκίων οἵτινες τότ' εἶχον, "he is to be the owner of land and houses who held them at the time" of the mnemonship of Apollonides and Panamyes. The text makes no mention of compensation for the person who will be dispossessed. The two silences, both about payment, raise the possibility that the text, inscribed perhaps as much for propagandist as for archival purposes, intentionally glosses over at least one crucial step. Is it possible that [Aristotle] was right when he claimed (*Oec*. 1346b7-13) that Lygdamis allowed former owners to buy back their own property, even if it was not because he had no other buyers for the confiscated property? This suggestion is hypothetical but I see nothing in our text to preclude the possibility that what ὁ ἐνεστηκώς had to do to become καρτερός once again over his former property was to pay Lygdamis' regime for it. The veneer of reconciliation would be preserved, and Lygdamis would profit handsomely. As comparandum we can look to the provision in the Athenian reconciliation agreement of 403 that allowed returning

[21] One of the *mnemones* is a son of Lygdamis (ll. 10-11) but, as Reinach noted, another is a son of Panyassis (ll. 15-16); if that Panyassis were Herodotos' uncle, his son might be taken as a representative of the opposition to Lygdamis, a sign that the *mnemones* were constructed as a bipartisan board. In fact, both Lygdamis and Panyassis are rather common names in Karia (*LGPN* V.B s.v.), and we cannot be confident about either inference.

exiles to buy back their own moveable property if it had been sold after their departure.[22]

Whether or not that hypothesis is correct, in the absence of a total regime change that would have put the victims of the confiscation and exile, and their partisans, in power and expelled their opponents, it is unlikely that this law worked to ensure in any straightforward or genuine manner the restoration of all property confiscated during the *mnemonship* of Apollonides, with the possible exception of cases in which their return was swift enough that the confiscated property had not yet been sold to new buyers. I say this for two reasons. First, in the Greek world of the Archaic period, property rights were the outcome of a negotiation between individual possessors and nascent states seeking arenas for the generation of power. And the terms of that negotiation were that the state would recognize private ownership, impose obligations to the community on the owner, and commit to protecting the property claims of its citizens in a profoundly qualified sense.[23] The use of property confiscation by states as a means to punish their citizens was very much a product of this historical process. When confiscation became closely bound to exile, the punishment was institutionalized, and the threat of it thereby also formed an incentive to citizens. Even if Lygdamis and the Halikarnassians had recalled their exiles and implicitly or explicitly recognized the injustice of the original exile, it was not in their interest to recognize the injustice of the property confiscation by restoring what had been lost because they would have undermined both their own ability to reward partisans with new property, and their ability to threaten potential malefactors with loss. The second reason for scepticism is that, in the broader context of legislation to solve this problem, widespread and straightforward restoration is otherwise unattested.

Roughly contemporary with the Lygdamis inscription is a document from Chios that, despite some uncertainties, is nevertheless more straightforward, thanks largely to the meticulous work of Angelos Matthaiou.[24] The text, inscribed on all four sides of a marble stele that is broken at the top, begins on side A with what must be the end of a long delimitation of the boundaries of land, with a summary report that there are "seventy-five *horoi* in all" (A.6-7). The land thus delimited is called "Dophitis," a name that has puzzled commentators and inspired alternative restorations. It is curious and distinctive enough to have inspired a moniker for the text—the Dophitis inscription—but its meaning is ancillary to my purposes.[25] The delimitation is followed by a prohibition against the removal of *horoi*, with a harsh penalty of a one hundred stater fine and *atimia* for those who do so anyway. The

[22] Lysias, *Against Hippotherses* fr. 165 (Carey) lines 38-48; Rubinstein 2018, 123–24.

[23] Mackil 2017.

[24] Matthaiou 2011, 13–35 (OR 133). The inscription has been studied since the nineteenth century; see Malouchou and Matthaiou 2006, 204 and Matthaiou 2011, 13–14 for a complete bibliography of earlier scholarship.

[25] Matthaiou 2011, 24–27.

prohibition is to be enforced by the *horophylakes*; should they fail to act, the Fifteen are authorized to enforce the law.[26]

The text at the top of side B is lost; what survives begins with an order that the Fifteen are to bring something to the council within five days (B1-6). Given what comes next, it is presumably notice of a dispute over property. This is the crucial part of the text for my purposes:

Side B

τὸς δὲ κή-
ρυκας διαπέ-
μψαντες ἐς τ-
ὰς χώρας κη[ρ]-
υσσόντων κα-
ὶ διὰ τῆς πόλ-
εως ἀδηνέως
γεγωνέοντε-
ς, ἀποδεκνύν-
τες τὴν ἡμέ[ρ]-
ην ἣν ἂν λάβω-
ισιν καὶ τὸ π-
ρῆχμα προσκ-
ηρυσσόντων
ὅ τι ἂμ μέλλη-
ι πρήξεσθαι·
κἀγδικασάν-
των τριηκοσ-
ίων μὴλάσσο-
νες ἀνηρίθε-
υτοι ἐόντες.

[The Fifteen] are to send heralds off in different directions to the lands and have them make a clear and loud announcement, also throughout the city, without malice, indicating the date on which they will receive [the property in dispute], and let them also announce the matter that is going to be dealt with. Let no fewer than three hundred uncorrupted men decide the case.

My translation is necessarily an act of interpretation, and several words are troubling. πρῆχμα in lines 16-17 was taken by Buck to mean a lawsuit; Koerner embraced the indeterminacy of the word and translated it *Gegenstand*.[27] Matthaiou, noting the wide range of meanings for the word in ancient as in modern Greek, suggests that it means "public sale," with the passive πρήξεσθαι in line 21 the

[26] Koerner 1987, 473, accepting the original "correction" of the territory name to Λοφῖτις, suggested that these officials were *orophylakes*, mountain-guards; cf. Osborne and Rhodes 2017, 193–94 who leave open the possibility that these might be *orophylakes*, noting that the words are indistinguishable in Ionic. The context, however, clearly demands that they be "boundary-guards," and Matthaiou (2011, 15) has correctly accentuated the text: τὸς ὁροφύλακας.

[27] Buck 1955, 187–9 no. 4; Koerner and Hallof 1993, 231.

related verbal form.[28] πράσσω is frequently used in later inscriptions and literary texts to describe the confiscation and sale of property, making this an attractive suggestion. Yet because this clause is immediately followed by one that indisputably references a trial, it is difficult to understand the logic if we take πρῆχμα (16-17), with Matthaiou, to mean a public sale or auction. The difficulty is compounded by the recurrence of πρῆχμα on side C line 5, in a clause that once again, and more clearly, references a trial. Before turning to the text on that side, however, it is important to note the role of the heralds in this procedure. At Athens they seem to have been responsible for announcing the public auctions of confiscated property and serving as auctioneers, so it is logical that at least at Chios they should also have announced disputes over that property, which could challenge the right of the buyer to continue to own what he had purchased.[29] And if at Halikarnassos the *mnemones* were expected to remember the detailed history of ownership, the Chians appear instead to be relying on a large, uncorrupted jury and on the knowledge of the public.

The lacuna at the top of Side C hinders our understanding of how the first part of the text on this side relates to that on side B, but it appears to address the procedure for handling a special type of dispute.[30]

Side C

	[. .]ḤΔḭḭ[. . . 14 . . .]	… the *polis*, having received …
	[.]ι̣ομενος ἡ π̣[ό]λις δεξαμ[έ]-	shall bring a case, and if it loses
	[ν]η δικαζέσθω, κὰν ὄφλει, [ὐ]-	the trial, let the *polis* pay on
4	περαποδότω, τῶι δὲ πρια[μ]-	their behalf. There is to be no
	έ̣νωι πρῆχμα ἔστω μηδέν· [ὃ]-	lawsuit against the buyer.
	ς̣ ἄν τὰς πρήσις ἀκρατέα[ς]	Anyone who makes the sales
	ποιῆι, ἐπαράσθω κατ’ αὐτ[ὸ]	invalid, the basileus shall make
8	ὁ βασιλεός, ἐπὴν τὰς νομ̣[α]-	a curse against him when he
	ίας ἐπαρὰς ποιῆται.	makes the customary curses.

δικαζέσθω in line 3 assures us that we are dealing here with a lawsuit, but the verb must be understood as a middle imperative, which seems to have escaped notice in recent editions and commentaries. In the passive it means “to have actions brought against one” (*LSJ s.v.* I.6) and this is not consonant with the phrase that follows. In

[28] Matthaiou 2011, 19.

[29] The earliest evidence is Hdt. 6.121.2, describing the sale by auctioneer/herald of the property of Peisistratos after one of his exiles in the mid-sixth century. The role of heralds in the sales of confiscated property at Athens are inferred from the mention of herald’s fees, κηρύκεια, in the records of the *poletai* (Agora XIX P3 lines 4-5, P5 line 37, P45 line 3, P53 line 46). The evidence is carefully evaluated by Langdon 1991, 57–58; Langdon 1994, 262–63.

[30] See Matthaiou 2011, 20 with references to the full history of restorations of lines 1-2.

the middle, δικάζω means "to plead one's case, go to law" (*LSJ s.v.* II). In other words, the *polis* must be the plaintiff here. The defendant is the man who brought whatever the *polis* received (ἡ π̣[ό]λις δεξαμ[έν]η); because of the lacuna at the top of side C, we cannot be sure what it was. Matthaiou supposes that what the *polis* will have received is a claim that a property that has been sold by the city properly belongs to another.[31] He seems to envision exiles who have returned and are demanding the restoration of their property.[32] But there is another possibility. The detailed records of the *poletai* from fourth-century Athens reveal that before the state could claim its revenue from the sale of confiscated property, creditors to whom the victim of confiscation owed money had to be satisfied; it was the *polis* that paid them.[33] It seems possible that in fifth-century Chios these creditors were the people whose claims were received by the *polis*. The *polis* then "went to law" with them, but if their claim was susbstantiated, and the *polis* lost its suit, then the *polis* had to pay the creditors on behalf of the debtors whose property it had confiscated; this may be the sense of ὑπεραποδότω in lines 3-4.[34] πρῆχμα appears again in line 5, and Matthaiou also understands it as a reference to a lawsuit here. ὁ πριάμενος is not, on this reconstruction, the defendant but rather the person who bought the property at auction; he is indemnified from any obligation to pay the outstanding debts of the man whose property was confiscated, as was demonstrably true at Athens in the fourth century.

The text on side C continues with a clause cursing "anyone who makes the sales invalid," and then records purchases of land and houses in a list that continues onto side D.[35] The need to repay creditors, apparently addressed in C.2-5, is only a small part of this complicated process. The provisions made on side B for the handling of disputes, likely between former owners and buyers, and on side C for the claims of creditors, are anticipatory. The Chians make no promises that confiscated properties will be returned to their former owners; if it is indeed returning exiles who make the

[31] Matthaiou 2011, 21, seemingly followed by Osborne and Rhodes 2017, 194.

[32] Asheri 1966, 47 suggested that a history of exile, confiscation, and return lay behind this law. Koerner and Hallof 1993, 236–38 reject this background and suggest instead that the previous owners were forced to sell their properties (in a *Zwangsverkaüfe*) to enable a land redistribution. But as Matthaiou 2011, 29 notes, this "explanation does not accord well with the very small number of the preserved properties and purchasers." Karabelias 2005, 214–24 studies the four attested cases in which private property was expropriated for public purposes; none align with the kind of event Asheri hypothesized here.

[33] See, for example, the very detailed and complete *Agora* XIX P5 (RO 36) lines 14-35 with a list of four creditors (both individuals and groups) making claims on the property of Theosebes son of Theophilos of Xypete in 367/6.

[34] I follow Matthaiou (2011, 20–21) in understanding the rare ὑπεραποδιδόναι, attested only here and at *IOSPE* I2 32 A.18 (Olbia, third century BCE), to mean "pay on behalf of someone."

[35] The question of whether or not the confiscated properties were all within the territory delimited as "Dophitis" on side A (Faraguna 2005, 97–98; Matthaiou 2011, 28–29) is not relevant to my current purpose.

kinds of claims anticipated in B.6-26, the legal measure provided to deal with this challenging problem is trial before a large jury of "three hundred uncorrupted men." The Chian *polis* likewise commits to repaying those who can prove that they were owed money by the dispossessed at the time of confiscation, and forestalls the possibility that such creditors might demand money from the buyers of the confiscated property by prohibiting them from filing suit (τῶι δὲ πρια[μ]ί̣νωι πρῆχμα ἔστω μηδέν, C.4-5). The legal solutions here are both positive and negative: both the proper and improper uses of litigation are delimited by the *polis*. The goal here appears to be avoiding the erosion of public trust, both in the security of the property rights of the buyer of confiscated property, which would seriously threaten the ability of the *polis* to use property as both punishment and reward for its citizens, and of the creditor, which might discourage lending in future on the expectation that confiscations might occur at any time and eradicate the claims of the creditor. The same goal lies behind the final clause of the law on side C (lines 5-9): the *basileus*, evidently a public official, is to curse anyone who attempts to invalidate the sales. In sum, the Chian *polis* seeks to protect the efficacy of confiscation as a penalty in future, while also using the courts to deal fairly with the claims of those impacted by the practice.

For further insight into the legal procedures adopted to deal with this problem we have to jump to Selymbria in the last decade of the fifth century. And thanks to literary evidence for related events, our interpretation of what occurred is more straightforward than in the cases of Halikarnassos and Chios. In 408, Selymbria was one of the cities brought back over to the Athenian side, along with Chalkedon and Byzantion, by Alkibiades.[36] Among our sources, Diodoros (13.66.4) reports an important detail: καὶ μετὰ πάσης τῆς δυνάμεως ἀναζεύξας πρῶτον μὲν Σηλυβρίαν διὰ προδοσίας εἶλεν, ἐξ ἧς <u>πολλὰ χρήματα πραξάμενος</u> ἐν μὲν ταύτῃ φρουρὰν κατέλιπεν, "setting out again with his full force [Alkibiades] first took Sely(m)bria by betrayal, and *after exacting much property* from it he left a garrison behind in the city."[37] In the following year, the Athenians ratified the treaty that Alkibiades made with the Selymbrians. The stele that records the agreement, *IG* I^3 118, survives in five fragments and much of the upper left part of the stone is lost.[38] After some reference (lines 8-9) to hostages, plausibly restored as a clause committing the Athenians to return any hostages they held and not to take any from Selymbria in future, the text turns to the problem of confiscated property.

From the surviving text we have the impression not that people were formally exiled, but rather that in conditions of hostility property was confiscated—I believe

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[36] Xen. *Hell*. 1.1.21, 1.3.10; Diod. Sic. 13.66.4; Plut. *Alc*. 30.

[37] Cf. Plut. *Alc*. 30.5: ἀλλὰ <u>χρήματα λαβὼν</u> καὶ φρουρὰν ἐγκαταστήσας ἀπῆλθεν. In both cases χρήματα might be (and indeed often is) translated "money." I opt however for the more general translation, "property," in light of the documentary evidence.

[38] EM 6603. *IG* I^2 116 (Cataldi 1983, 315–48 no. 12; ML 87). OR 185 reproduce the text of *IG* I^3 118.

by partisans on both sides. Lines 12-17, unfortunately lacunose in key places, deal with what to do ε̣ἴ το [χ]ρέματα ἐδεδέμε|[υτο], "if anybody's property had been confiscated" (lines 14-15) and then mentions Selymbrian exiles. With the texts of Diodoros and Plutarch as background, it seems likely that this clause dealt with restoration of or compensation for property that had been confiscated from Selymbrians, either by the Athenians themselves or by their partisans within the city, when they took the place in the previous year.[39] Unfortunately the legal remedy is not preserved, nor does it seem like there is much space on the stone for anything detailed.

The next clause turns to the problem of how to resolve claims to damaged or confiscated property previously held by Athenians and their allies.

[. . . 14 . . .] ὰ̣ δὲ ἀπόλετο ἐν τôι πολέμοι
[χρέματα Ἀθεναί]ον ἢ τôν συμμάχον ἢ εἴ τι ὀφελ-
[όμενον ἢ παρακ]αταθέκεν ἔχοντός το ἔπραχσα-
[ν οἱ ἄρχοντες], μὴ ἐναι πρᾶχσιν πλὴγ γῆς καὶ οἰ-
[κίας·

With regard to any property of the Athenians or the allies which has been lost in the war, or anything that may be owed or deposited and which [the *archons*] exacted from the one who had it, there shall be no exaction except for land and house.[40]

We have to infer that when Selymbria revolted from Athens and went over to Pharnabazos and the Peloponnesians around 410, they confiscated the property of at least some Athenians and their allies at Selymbria. The generally conciliatory tone of this decree has been long noted; Osborne and Rhodes remark that, among other things, this treaty that restores Selymbria to the Athenian alliance "limited the Athenians' rights to reclaim property."[41] The final clause, however, should give us pause: "except for land and houses." The Athenians appear to have conceded the right to reclaim moveable goods that they lost in the upheaval, but they pointedly reserve the right to exact—πρᾶχσιν—from the Selymbrians the land and houses that they lost.[42] We do not learn from the treaty about any legal remedies for the disputes

[39] So too Cataldi 1983, 325. Plut. *Alc*. 30.2-3 reports a pro-Athenian faction within Selymbria that sought to hand the city over to Alkibiades when it was still under the control of Pharnabazos and the Peloponnesian forces; Diod. Sic. 13.66.4 implies as much when he says that Alkibiades Σηλυβρίαν διὰ προδοσίας εἷλεν. On the internal conflict see Gehrke 1985, 145–46.

[40] Trans. Lambert and Rhodes at https://www.atticinscriptions.com/inscription/IGI3/118, preferable for its clarity to the translation of Osborne and Rhodes 2017, 519.

[41] Conciliatory tone: ML 87; Papazarkadas 2013, 226. Osborne and Rhodes 2017, 521.

[42] I follow Gauthier 1972, 162, who understands πρᾶχσις here to mean "saisie pour recouvrement, c'est-à-dire saisie légale." The most familiar comparandum for the ownership of landed property by Athenians in *poleis* subordinated to Athens in the fifth

that might arise, a sign I suspect that the Athenians intended simply to "exact" the land and houses that had been taken from them, with no legal recourse for the current possessors of the property. Other disputes, we learn, are to be resolved in lawsuits ἀπὸ χσυμβόλον, in accordance with a convention between Athens and Selymbria that is otherwise unattested.[43] It is curious that disputes over property appear to have been excluded from that convention. Rachel Zelnick-Abramowitz has noted that the land owned by Athenians in Selymbria appears to have been acquired by individuals, in contravention of Greek legal norms but apparently without the political framework of a cleruchy; it is precisely the sort of abuse that the decree of Aristoteles later sought to forswear.[44]

The Selymbria treaty differs formally from the other texts considered here; while it is an interstate treaty that restores Selymbria to the Athenian alliance and imposes some conditions, it nevertheless exposes dynamics similar to those arising from *stasis*, exile, and return. Former property owners are returning to Selymbria; those who had achieved their expulsion are making choices about what concessions to make to ease tensions. Crucially, however, the Athenians have the upper hand. If the treaty that they ratify in this decree is the outcome of negotiations between Alkibiades, as representative of the Athenian state, and the Selymbrian *demos*, we may read the clause πλὴγ γῆς καὶ οἰ[κίας as a concession made by the Selymbrians to Athenian demands. The Athenians who had been expelled and are now returning do not differ significantly from citizens who were returning from exile; their right to own the property is not called into question. It is only the method by which they regain it that differs. Whereas citizens returning from exile would have to rely on negotiations with the regime in power to regain their property, the Athenians could utilize πρᾶχσις. Their interest in achieving a peaceful and long-lasting settlement with Selymbria is tempered by their desire to protect their economic interests in this strategically located allied community.[45]

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century comes from the so-called Attic stelai, the records of the property of the Hermokopidai confiscated by the Athenian state and auctioned by the *poletai*: *IG* I^3 426 frag. C col. 2 line 45 (Thasos); IG I3 428 lines 4, 6 (Oropos); IG I3 422 col. I lines 90, 218, 376, IG I3 424 lines 17-21 (Euboia); *IG* I^3 427 col. 1 line 78 (Abydos). Zelnick-Abramovitz 2004, 328 rightly notes that for all their limitations these documents do reveal that "the Athenians acknowledged the legal ownership of these individuals and sold the lands as their legitimate property." In the fourth century the practice persisted at least in the Attic cleruchies: a record of the *poletai* from 370/69 records the auctioning of property confiscated from an Athenian citizen on Lemnos (*Agora* XIX P4; *SEG* XIX.133.)

43 The Athenian *symbolon* with Phaselis from the mid-fifth century (*IG* I^3 10; OR 120) likewise references a more detailed convention that governs lawsuits, but which does not survive. Cataldi 1983, 99–143; Gauthier 1972, 162–63, 177–81, 184–86.

44 Zelnick-Abramovitz 2004, 329.

45 The restoration of Alkibiades himself is not instructive for the question pursued in this paper. Our sources suggest that the restoration was effected by political means: the *demos* itself voted "gifts" (Lys. 14.31; Isocr. 16.11) for Alkibiades upon his return, and in

In the tumultuous final years of the Peloponnesian War, the return of large numbers of exiles, both democratic and oligarchic, resulted in a ferociously complicated set of claims for restoration. Lene Rubinstein has suggested that the return of those who had been exiled by the democracy (including those, like Alkibiades, who were condemned *in absentia*) must have brought a high number of demands for the restoration of their property. The sources for the terms of the peace negotiated by the democratic regime in 405, before the installation of the Thirty, are extremely scant; while no mention is made of provisions for the restoration of property to returning exiles, it cannot be ruled out.[46] And Rubinstein has suggested that the coup of the Thirty, and their notorious confiscation of the property of citizens and metics alike, may have been motivated by a desire to restore the wealth of those who had been attacked by the democracy following their exile.[47] When the Thirty were defeated and democracy restored in Athens, the property of the Thirty Tyrants was confiscated and auctioned.[48] Democratic exiles, in turn, streamed back into the city, demanding the return of their property. Athenian law normally held that returning exiles would not be compensated for property that had been confiscated from them by legal procedures, and it also prohibited them from lodging claims against the purchasers of their estates; sales made by the *poletai* were unconditional.[49] Yet, according to Lysias, our only source for the question, the Athenian democrats utilized the political settlement to override that law, invalidating all trials conducted

a speech written by Isokrates Alkibiades' own son, returning from his own brief exile in 403, complained that he had been stripped even of "that land, which the *demos* gave to us in compensation for the confiscated property," τὴν γῆν, ἣν ἡμῖν ἀπέδωκεν ὁ δῆμος ἀντὶ τῶν δημευθέντων χρημάτων (Isocr. 16.46). The gifts were compensatory (Rubinstein 2018, 134); the impression given by later authors in breathless accounts of his glittering return in 407 are misleading in their claim that the *demos* simply "gave back his property" (Diod. 13.69.2; Plut. *Alc*. 33.3). The fact that the Attic stelai (*IG* I^3 421 col. i frag. 1 lines 12-25) record only moveable goods confiscated from Alkibiades and sold might be taken to imply that his land was never sold and could have been restored, but the testimony of Isokrates argues against this hypothesis and it is most likely that the stele on which the sale of his landed property was recorded has not survived. It is only a good reminder that compensation rather than restoration was sometimes practiced (and attested again at Tegea in the late fourth century, which will be discussed below), and that the whole matter was both profoundly political and highly complex.

46 Rhodes 1981, 430–31 lists the sources. Usteri 1903, 143–44 rejects the possibility that it had any provision for the return of property; Seibert 1979, 91 regards it as "sehr wahrscheinlich."

47 Rubinstein 2018.

48 Walbank 1982. The discovery of a large new fragment of this record at Acharnai has been recently reported; the new text is to be published by Maria Platonos.

49 Langdon 1991, 59, citing Usteri 1903, 119–127. Prohibition on lawsuits against buyers of confiscated property: Dem. 24.54; Pollux 8.99. Canevaro 2013, 138–142 notes that although the law as quoted here appears to have been the work of "someone who was well versed in the Demosthenic corpus" rather than of Demosthenes himself, he allows that it has "no blatantly incorrect provisions."

under the Thirty and reversing the confiscation of immovable property and unsold movable goods.[50] With no evidence for the question of whether or how buyers were to be compensated, it is difficult to understand what the new democracy intended here; Rubinstein's suggestion that the provision of Eleusis as a settlement for willing oligarchs might have eased the tensions that flared between recent buyers, former owners, and unsatisfied creditors over property disputes in this complex and volatile suggestion is highly attractive. What is clear is that the new democracy was as intent as ever on protecting its ability to determine who would own property and who would not. The concern to provide property for the oligarchs in Eleusis was motivated by a desire to segregate opponents and maintain the political settlement, not by any sense that they as individuals had a right to property that the state could (or should) not override.

The fifth-century evidence suggests, on the whole, that in this period Greek states viewed property as largely epiphenomenal to political participation. The right to hold it was a reward for citizens and supporters of the regime in power. And its confiscation by the state represented an almost natural punishment for those who sought to undermine the regime. Thus at Halikarnassos and Selymbria we see legislation enacted to deal with property disputes between returning exiles, the purchasers of their property, and the state that sold it. In neither case do we find certain evidence for recourse to fair trials to resolve the disputes nor any mention of compensation for the dispossessed on either side. At Chios a more careful balance is struck, with the appointment of a jury of 300 "uncorrputed men" to judge cases evidently related to property disputes, probably between returning exiles and the buyers of confiscated property, and a commitment from the *polis* to use public funds to repay creditors who had made outstanding loans to those who lost their property. No rules, or lines of interpretation, are provided in the text for the jury of 300 to implement in deciding the cases brought before it, and without them we cannot be certain about the priorities of the *polis*.[51] The *polis* seems genuinely open to the possibility that some returning exiles will be victorious in their suits, but we do not hear what would happen next. The commitment of the *polis* to pay creditors, and to protect the buyers of confiscated property against lawsuits brought by them, reveals its collective desire to protect both the political practice of using confiscation as a penalty and the willingness of individuals to extend credit to others. The Athenians' solution after 403, by contrast, was neat from an economic and bureaucratic standpoint, but hardly met the demands of justice: some would have been lucky and others unlucky. Again here law was merely an instrument for achieving the political

[50] Lys. frag. 165.38-48 Carey (*P.Oxy.* 13.1606 frag. 2) with Sakurai 1995; Medda 2003, 123.

[51] It seems to me possible that this rather unusual measure can be explained by hypothesizing that some other context than full-blown *stasis* lay behind the measures described in the decree.

goal of an end to *stasis*; but the logic of expulsion and confiscation still applied to the Thirty and their most devoted adherents.

The Fourth Century

In the fourth century a few *poleis* became remarkably more innovative in dealing with this problem, most notably but not exclusively in response to the shifting politics of the eastern Aegean in the early years of Alexander's reign and to his Exiles Decree of 324. Their innovations, certainly driven by the political risks inherent in the old approach, contributed significantly to a transformation of Greek thinking about property and with it an increased commitment, by the end of the Classical period, to rooting individual rights to private property in law rather than in politics. Given limitations of space, a few case studies will serve to illustrate my argument.

At the start of the Corinthian War, a pro-Spartan faction was exiled from Phleious, which struggled to protect its autonomy in the turbulent conditions of the time.[52] After the King's Peace, when Spartan policies in mainland Greece had been largely vindicated, the Phleiasian exiles made an appeal to Sparta for help. The Spartans made a rather gentle request to Phleious that its exiles be restored; the Phleiasians, under pressure,

> voted to receive back the exiles, to return any visible property (τὰ ἐμφανῆ κτήματα), and to compensate from the public treasury any of those who had previously purchased the exiles' property (τοὺς δὲ τὰ ἐκείνων πριαμένους ἐκ δημοσίου τὴν τιμὴν ἀπολαβεῖν). And if a dispute were to arise between the two parties, the matter would be decided in court.[53]

We have here, then, the promise of a neat solution to the problem: land and houses would be returned to their original owners, based probably on written property registers and on documents recording the original confiscation (and perhaps auction), while buyers of the confiscated property would be compensated by the *polis* and the returning exiles would surrender any claims to "invisible" property they had lost.[54] Any disputes that could not be resolved by these three principles were to be heard in court.

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[52] Xen. *Hell.* 4.4.15 records the Phleiasians' decision in 391 to seek a Spartan garrison to protect the city from attacks by Iphikrates, despite their anxiety that the Spartans would ask them to restore the pro-Spartan faction which they had previously exiled. The original exile has been dated to 395 (Pièrart in Hansen and Nielsen 2004, 614) or 394 (Gehrke 1985, 128).

[53] Xen. *Hell*. 5.2.10. Marincola incorrectly translates τὰ ἐμφανῆ κτήματα as "undisputed property" (*The Landmark Xenophon's Hellenica* 189). On the ἀφανῆς-ἐμφανῆς distinction see Gernet 1956 and, from a tax-law perspective, Cohen 2005.

[54] On property registers see now Zelnick-Abramovitz 2015; Harris 2016. Zelnick-Abramowitz emphasizes the exceptional nature of the inscribed registers of land sales that survive, and argues persuasively that they are to be explained by the desire of

The Phleiasians were, however, not eager to make good on this commitment, and evidently deployed one of the standard weapons of the weak: they simply did nothing, or did nothing very quickly.[55] Xenophon (*Hell*. 5.3.10) reports that in 381 the exiles

> had demanded that any disputed matters be resolved before an impartial court (οἱ μὲν γὰρ δὴ φυγάδες ἠξίουν τὰ ἀμφίλογα ἐν ἴσῳ δικαστηρίῳ κρίνεσθαι), but the men in control of the city compelled them to have their cases decided in the city itself, where they paid no attention to the complaints of the returned exiles, who wondered what sort of justice could result where those who had committed the crimes were sitting in judgment.

So the exiles went to Sparta to complain, and they were accompanied by other citizens "who felt that the exiles were not receiving justice" (5.3.11). The Phleiasians then fined these citizens who went to Sparta to complain on behalf of the exiles. Those fined became reluctant to return and complained in Sparta "that the men in the city who were now acting high-handedly were the very ones who had driven out the exiles, closed their gates to the Spartans, and acquired the exiles' property and were now acting with violence so as not to give it up" (οὗτοι δὲ οἱ πριάμενοί τε τὰ σφέτερα καὶ βιαζόμενοι μὴ ἀποδιδόναι) (5.3.12). The number of exiles was clearly not insignificant; even if Xenophon's report of 1,000 is inflated, they must have been numerous to motivate the Spartans to besiege Phleious, where the defenders held out for twenty months before their surrender.[56] Agesilaos, empowered by the Spartans to arrange matters, established a commission of one hundred men, "fifty from the men who had returned and fifty from the men in the city, to judge who should live and who should die. Then they were to establish laws by which they would be governed."[57] Although Xenophon tells us nothing about how the property disputes were ultimately resolved, several important legal developments emerge from this episode. In 381 the exiles, frustrated by what they saw as a biased legal process within which they were being forced to seek restoration of their property, asked instead for an *ison dikasterion*, an impartial

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individuals to increase the security of their property claims. On compensation note Seibert 1979, 112. Lonis 1991, 95–96 rightly observes the implicit resignation over "invisible property" and hints that this decision may have contributed to establishing a norm when he notes that in Hellenistic *asylia* decrees it is only "visible property" that is protected. In his treatment of the *stasis* at Phleious and its aftermath, Gehrke 1985, 129 implicitly dismisses the significance of the struggle over property restoration when, after citing Xen. *Hell*. 5.2.10, he remarks that "Gerade dabei nun kam es zu ernsten Differenzen," as though the property dispute was not a "serious difference."

55 Scott 1985.

56 Xen. *Hell*. 5.3.21-25; cf. Isocr. 4.126 and Diod. Sic. 15.19.3. On the population of Phleious see Legon 1967, 326–7; Pièrart in Hansen and Nielsen 2004, 613.

57 Xen. *Hell*. 5.3.25.

court.[58] The commission that was eventually established, despite having far broader powers than the court which the exiles had hoped for, might have been the sort of thing they had in mind.[59] It certainly foreshadows a solution that became more widespread in the late fourth century.

Three inscriptions from Chios, belonging to the last third of the fourth century, help to illustrate the development. The letter of Alexander the Great to the *demos* of the Chians, a well known text, calls for the return of exiles and the establishment of a democratic constitution following the expulsion of Persian rulers and their supporters in 334.[60] He establishes himself as the arbiter of any disputes "between those who have returned and those in the city" (15-16). A second document, widely recognized as a second letter of Alexander to Chios, written in the aftermath of the first, urges the Chians to restore an individual whose name is lost, on the grounds that "he is a friend of mine" and tried to restore the exiles and free Chios from oligarchy.[61] He therefore asks "[that the city should invalid]ate what was voted against his fa[th]er, and give back to him first of those who have come back [*sc*. from exile] what it took away (ὅσ' ἀ[φεῖλεν] ἡ πόλις ἀποδ|οῦναι πρώτωι τ̣[ῶν] <ἡκ>όντων)" (ll. 22-24). We see here only that Alexander is intervening in what must otherwise have been an internal process for restoring the exiles' property, seeking priority for his *philos*. A highly fragmentary decree, probably belonging just a few years later, in 332/1, appears to record something of that internal process.[62] The entire left half of the stone is lost and it is impossible to make continuous sense of what survives. But with mention of τῶμ φυγαδικῶν κτή[- (8), χρήματα (2, 3), disputes (3-4), a concern for justice (4), and forms of ἀποδίδωμι (5-6) and ἀπολαμβάνω (7), it is clear that the document addresses the restoration of the property of exiles who have returned to Chios. Georgia Malouchou, the editor of the text, recognizes two possibilities here: either the returning exiles were to have their property restored to them, if they could prove that they had been the rightful owners before their exile, while the buyers of the confiscated property would be compensated by the city; or if the confiscated property could not be returned to the

[58] Compare Pl. *Leg*. 957c where a δικαστὴς ἴσος is one who will be governed by all existing laws and learn all existing written expositions about the laws. Dem. frequently (29.1, 18.7, 7.36) expresses hope for an ἴσον δικαστήριον, an "impartial court."

[59] I thus disagree with Legon 1967, 328 who takes this to mean the establishment of a narrow oligarchy, "government by a body of 100 men."

[60] RO 84A; Heisserer 1979, 79–95. On the historical background see Rhodes and Osborne 2003, 415–417.

[61] RO 84B, following Heisserer 1979, 96–117; early editions utilized four fragments, of which two have since been lost.

[62] *Ed.pr.* Malouchou 2000 (*SEG* 51.1075), with Kholod 2012 for a detailed discussion of the date. It is worth noting here that the letter forms on this fragmentary decree are very similar to those on RO 84A-B, suggesting a close association with those documents Malouchou 2000; Bencivenni 2003, 15–38.

exiles, they would be compensated by the city.[63] There is mention of houses (line 10) and a Board of Ten who order or arrange something (οἱ δέκα τάξωσ[ι], line 11). Malouchou suggests that the Ten were a commission appointed to manage the process of restoration; with the Phleious episode in mind it is possible that the board was comprised equally of returning exiles and of those who had remained.[64]

That is exactly what happened at Mytilene in the same period. A fragmentary decree of Mytilene records a reconciliation agreement after *stasis* and the re-establishment of democracy.[65] The agreement upholds the decisions of lawful courts that resulted (during the *stasis* or the previous regime) in the exile or execution of citizens. But it allows for the possibility that people were exiled ἄλλον τινα τρόπο[ν, in any other way, and then seems to turn to the problem of their property (χρήματα τ̣[ού]των τινί) before the stone breaks off. A second decree, which seems to follow closely from this one, provides further procedural details for how the reconciliation is to be carried out.[66] Restoration of the property of returning exiles, we learn, is to be conditional upon their adherence to the terms of the reconciliation agreement (ll.2-6); should they fail to abide by the agreement, their property is to be possessed by those who had remained in the city, and the duty of effecting this allocation is assigned to the *strategoi* and the *basileis* (ll. 6-11). Appeal by an exile who has violated the agreement to a court of law for the restoration of his property is expressly prohibited (ll. 11-12). The Mytileneans, then, are relying on the text of their agreement and upon the officials whose duty is to enforce it; no regular legal procedure for resolving disputes over property is allowed. Instead, they appoint a board of twenty arbitrators, "ten [from those who have returned, and te]n from those who were previously in the city" (ll. 21-22), responsible for ensuring fair treatment of both sides and a just settlement "regarding the disputed property" (καὶ περὶ τῶν ἀμφισβατημένων κτημάτων) (ll.25-30).[67]

But the internal commission may have been inadequate in some cases. A final inscription from Chios honors ten foreign judges, *dikastai*, five from Naxos and five from Andros, who had come to Chios at the city's request.[68] They stayed for a long time (πολύς) and are praised for having "tried the cases well and justly" ([κ]α̣λ̣ῶς καὶ δικαίως ἐδίκαζον τὰς [δίκας]). This inscription was initially (and rather casually) dated circa 300, but Heisserer placed it circa 320 by identifying its carver with the mason of another text of that date.[69] There is no mention of the nature of the

[63] Malouchou 2000, 283–4.
[64] Malouchou 2000, 285–6.
[65] RO 85A.
[66] RO 85B (*IG* XII.2.6) with Heisserer and Hodot 1986.
[67] Lonis 1991, 107 rightly recognizes this commission as "la principale originalité de leur dispositif … une véritable commission de conciliation, apte à désamorcer les conflits."
[68] *Ed.pr.* Hunt 1940 (*SEG* 10.390); independent of Hunt, Condoléon 1949, 9–13 edited the same text, and gives slightly different readings. *SEG* 18.334 reports several emendations and restorations by Dunst.
[69] *Circa* 300: Hunt 1940. Circa 320: Heisserer 1979, 111–17, comparing to *Syll.*[3] 283.

disputes that these foreign judges heard, but given the series of three documents belonging to the late 330's that are overwhelmingly preoccupied with the challenge of responding to the demands of returning exiles for the restoration of their property, it seems to me not at all unlikely that this was the issue behind the Chians' request. Indeed, as Malcolm Errington has suggested, the difficulty of this problem was so overwhelming to the court system of a small *polis*, where it would be difficult to find an impartial jury—an ἴσον δικαστήριον in Xenophon's terms—that the solution may have been to bring in foreign judges.[70]

This was also the solution at Tegea, where in response to a *diagramma* of Alexander—probably a reference to his infamous Exiles' Decree of 324—the *polis* laid out in great detail a set of regulations for the process of restoring property to returning exiles.[71] The text begins with the lofty promise that "their paternal property, from which they went into exile, shall be conveyed (κομίζεσθαι) to the exiles who are returning, and the maternal property to women who were unmarried and did not have brothers" at the time of their exile (ll. 4-9).[72] But it quickly becomes clear that conveyance actually means monetary compensation by the *polis* for house and garden at a fixed price established by the *polis* (ll.9-21). We then learn that a foreign court, a δικαστήριον ξενικόν (ll. 24, 27), will hear cases for sixty days; after that time, the city court, the δικαστήριον πολιτικόν (ll. 27-28), will process claims made by returning exiles for another sixty days. If any of those claims are contested, however, the case will be heard by a court in Mantineia.[73] The

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[70] Errington 2006, 139–40. Compare *IG* XII.4.132 (*SEG* 63.663), a decree of Telos c. 300 in honor of foreign judges from Kos, which remarkably includes the (fragmentary) text of the reconciliation agreement itself; whatever the nature of the original offences, they had led to exile and confiscation; the victims later returned to Telos and demanded the restoration of their property, which at least in some measure the foreign judges ordered in the reconciliation agreement. See Thür 2011; Scafuro 2014. Crowther 1999 discusses decrees of foreign cities for Koan judges, mentioning the Telos inscription, which was then unpublished.

[71] *Syll*.[3] 306; Tod 1948 no. 202; Buck 1955 no. 22; Heisserer 1979, 204–29, follwed by RO 101. The text was dated to 324 or shortly after by the *editor princeps* Plassart 1914, but Heisserer 1979, 219–20 noted that Polyperchon proclaimed a restoration of exiles in 319, and that Kassandros besieged Tegea but came to terms in 317, both episodes that might have engendered this text as a response. Ultimately, however he supports Plassart's original date and it remains widely accepted (Worthington 1993; Rhodes and Osborne 2003, 530). For my purposes the precise date does not matter.

[72] On the meaning and significance of τὰ ματρῶια in this decree see Maffi 1994.

[73] The choice of Mantineia is perhaps not especially odd. Although Tegea and Mantineia were on opposite sides of the schism that led to the collapse of the ephemeral Arkadian *koinon* (Xen. *Hell*. 7.5.5; Diod. Sic. 15.82.2), that was four decades before our decree was passed. Not much is known of the internal history of Arkadia in the second half of the fourth century, but there are hints that Mantineia remained a regional leader (Diod. Sic. 15.94.1-3, 16.39.1-3 with Nielsen in Hansen and Nielsen 2004, 519). If it did play a role of that kind, however informal, it would have been natural enough for the Tegeans to

Tegeans thus attempted to utilize both a foreign court and a court in a neighboring *polis* to forestall the possibility of bias among jurors from harming the claims of returning exiles to their property; they were also committed to utilizing public funds to compensate those who had been expelled, a means of preventing the bitterness and recrimination that would arise from counter-seizure, while implicitly recognizing the *polis*' own debt to those whom it had exiled and then allowed to return. This in itself reveals an increasing recognition by the *polis* of the property rights of individuals and of its own obligation to uphold them.

Conclusion

There is a striking shift in the way *poleis* handled the problems created by the demands of returning exiles for the restoration of their property from the mid fifth to the late fourth century. The Lygdamis inscription from Halikarnassos is very difficult to interpret, but suggests more than anything that the oligarchic-tyrannical regime in power sought to protect both its own supporters and the appearance of legal process and the pursuit of justice; in reality, I have suggested, the returning exiles may have been required to buy back the property they had lost if their claim to prior ownership was recognized by the *mnemones*. The Athenian treaty with Selymbria protects the property claims of Athenian owners of land and houses at Selymbria, a variation on the theme of using legal process to recognize the claims of supporters of the regime in power regardless of the justice of claims made by their opponents. In this approach we should recognize property ownership not as an individual right protected by law in an unbiased way, but rather a privilege bestowed upon individuals by the community with a strong set of implicit conditions. If I have read the Dophitis inscription correctly, it represents a slight departure from this approach, by specifying that a large and uncorrupted jury would hear cases regarding disputed property. It is impossible to say how well this intended departure worked, but if we are in fact dealing with a group of returning exiles it is difficult to imagine that the Chians could find 300 unbiased jurors. We also see the *polis* making itself responsible for compensating creditors who held outstanding loans that had been secured on property now confiscated, an important step to protect its own ability to utilize property confiscation as a penalty without undermining the availability of credit within the community. The Athenian amnesty agreement of 403 is not a significant departure: the democrats agreed to allow those (oligarchs) who had remained in the city to keep moveable goods that were unsold, but as at Selymbria land and houses were to be restored to returnees. The real compromise in that agreement, with respect to the property problem, lay in the provision of Eleusis as a settlement for oligarchs, which itself must have entailed a significant compulsory sale of properties by democrats who owned land in that deme (*Ath.Pol*.

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rely on a Mantineian court as a kind of neutral, third-party arbiter. Lonis 1991, 108 compares it to the institution of the *ekkletos polis*, on which see Gauthier 1972, 308–38.

39.3). Small wonder that tensions and violence continued between Athens and Eleusis, requiring a new reconciliation agreement in 401.[74]

But we detect the beginnings of a major shift toward reliance on foreign courts or tribunals of foreign judges with the demands of the Phleiasian oligarchic exiles in the late 380's. Their request for an "impartial court," and the Spartans' ultimate establishment of a bipartisan commission to resolve matters between exiles and those who had remained, may have set a precedent for a new legal solution to an old and intractable problem. The idea certainly took hold, as we can see from the cluster of inscriptions at Chios, Mytilene, and Tegea in the 330s and 320s. Along with the shift in legal procedure that we can document, there occurred also a shift in the way both individual citizens and *poleis* thought about property, and this to my mind is where the real significance of this problem lies. In place of a conception of property as an instrument of power in the relationship between state and individual, a tacit agreement hedged about by conditions and mutual obligations, there began to emerge a conception of property as an individual right, an instrument for the maintenance of individuals and families, that needed to be protected from the inconsistency of the *polis* that had promised to protect it. Insofar as property owners were still obligated to use some of their wealth for the good of their *polis*, in the form of liturgies, *eisphorai*, and acts of euergetism, the notion of property that underpinned the evolving laws governing ownership remained distant from the modern individual notion of a right. But it had also, by the end of the Classical period, traveled far from its point of origin.

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[74] Xen. *Hell*. 2.4.43 with Just. *Epit*. 5.10.8-11; *Ath.Pol*. 40.4; Lys. 25.9. See also Hansen in Hansen and Nielsen 2004, 637.

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