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PROPERTY, LAW AND POLITICS: RESPONSE TO EMILY MACKIL

How to reunite the community in the aftermath of a stasis? How to achieve peace and reconciliation in a city divided by political and personal enmities? How to reintegrate returning exiles in the new regime, and how to deal with claims over confiscated property? These questions, faced again and again by the Greek poleis, were addressed by enacting new legislation which had to take into consideration the political and financial stakes. The usual practice was to draw a reconciliation agreement containing the main guidelines for *homonoia*; commitment to apply and implement the terms of the reconciliation had to be prompted on the community and enforced by a solemn oath taken by all citizens. Along with the agreement, a set of specific laws *ad hoc* was enacted, which addressed issues of both substantive law, for example, the principle according to which a person should be recognized as the owner of the confiscated property, and court procedure, for example, which courts were to adjudicate the relevant cases. Significantly, the responses to all these delicate matters were often heavily influenced by the intervention of third parties, such as cities allied to one of the factions, or were even imposed by an external force, such as the Macedonian kings.

Disputes about confiscated property could be very complicated for a number of reasons, not least because apart from returning exiles and purchasers of their property, third persons could be involved who disputed or had claims on the property, such as testamentary heirs, relatives claiming inheritance rights or dowry rights, creditors with real security[1], or simple usurpers who were exploiting the confiscated properties.

In her paper, Emily Mackil discusses a number of sources from the fifth and fourth centuries, upon which she bases her assumption that from the mid-fifth to the end of the fourth century there was "a major shift in legal procedure towards reliance on foreign courts, and a shift in the way both individual citizens and poleis thought about property". She concludes that in place of "a conception of property as an instrument of power in the relationship between state and individual", there began to emerge in the fourth century "a conception of property as an individual right, that needed to be protected from the inconsistency of the polis".

[1] Cf. Faraguna 2005: 94-95.

To trace such an evolution of the Greek perception of ownership, in the absence of theoretical treatises on property and ownership, we must turn to law, both substantive and procedural, and search for indications of change. As Mackil bases her argument on procedural change (the use of foreign courts instead of the city's ordinary tribunals), in what follows I discuss first procedure and then substantive law, checking for changes in the concept and application of confiscation. In the third section, I discuss the response given by the laws to the crucial question of establishing the principle to determine who was to own the confiscated property, and political and legal implications of these responses.

Procedure

According to Mackil, the shift in the perception of ownership is detected in the claims for impartiality in property trials, first attested in the Chian inscription (Matthaiou 2011) and more clearly so in the demand the Phleiasian exiled oligarchs made to Sparta for an equitable court to judge their property claims (Xen. *Hell*. 5.3.10); this, in turn, would be an indication of "a major shift toward reliance on foreign courts or tribunals of foreign judges".

The demand for impartiality, fairness and transparency at trials was at issue since the origins of the Greek poleis. Hesiod in *Works and Days* attacks injustice, partiality and corruption in courts personified by *dorophagoi* magistrates who administered justice according to the gifts they received and stresses the necessity of uncorrupted and impartial judges[2]. Numerous laws from Cretan cities of the sixth and fifth century put an emphasis on equality and fairness in court procedure[3]. The establishment of large juries composed of hundreds of citizens in democratic cities, and the sophisticated system of ballot for the designation of each jury at Athens aimed at eliminating the possibility of corruption and partiality. So did the dicastic oath and the laws against corruption, attested in many cities.

The Lygdamis inscription (*OR* 131), dated to the mid-fifth century, is an early attestation of the importance attached to court procedure. In the same manner as many archaic and classical statutes from different Greek poleis, the key concern of this law is to establish the procedure to be followed in court and in particular to determine the nature of proof to be accepted by the court. As is generally accepted, a period of civil strife, exile, confiscation of properties and return of the exiles lay behind this law; after an unsuccessful rise, Lygdamis' opponents were eventually accepted to return to Halikarnassos, and a reconciliation agreement was made. The reconciliation agreement is alluded to in the last lines of the law (43-45). In the light of the extensive treatment of the inscription since the 19th century, the content of the law presents no great difficulty[4].

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2 Hes. *Works and Days* 27-39; 213-285.

3 Youni 2011: 135-154; Gagarin & Perlman 2016: 136-139; 141-142.

4 Reinach 1888; Maffi 1988; Koerner 1993, no 84, with full bibliography.

The first part (ll. 8-16) sets a ban on the four mnemons in office to transfer any public land upon the expiration of their duties to the next mnemons[5]. Clearly, the administration – including renting and selling at auction – of any land that became public was among the duties of the mnemons. At the end of their term of office they probably accounted for their administration and handed on the list of public lands to their successors. The prohibition set by the law here suggests that the city (in other words, the assembly of the Halikarnassians and the Salmakitans in concert with Lygdamis) had decided to do away with pending private claims on confiscated land, and to proceed to a speedy solution of such relevant problems as had occurred.

Next, the law regulates court procedure: it distinguishes two different periods of time for the lawsuits to be filed and establishes the kind of proof to be binding for the court in each period. Lines 16-22 refer to suits filed within the eighteen months following the publication of the law[6] and lines 22-28 to suits filed after that period[7]. In lines 28-32 the principle for the recognition of ownership is set, according to which the person who owned the disputed real property in the year the present law was passed prevailed[8]. The fact that there is no hint to the composition of the jury implies that in both periods the cases were referred to the city's regular courts and were tried in accordance with the ordinary procedures.

Concerning suits on property filed during the first eighteen months, it is established that the testimony of the mnemons who were in office when the law took force was binding for the court (ὅ τ[ι] ἂν οἱ μνήμονες εἰδέωσιν, τοῦτο καρτερὸν ἔναι)[9]. If the *mnemones* testified that a citizen had bought the confiscated property at auction during their term of office, his ownership was confirmed by the court and no further claim would be accepted[10]. If, by contrast, the land had not been sold, it would be returned to the claimant. During these eighteen months, the city courts were to hear property disputes according to the existing laws, as they did before; the

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[5] Ll. 8-16: T]ὸς μνήμονας μὴ παρ[α]/διδό[ναι] μήτε γῆν μήτε οἰκ[ί/α] τοῖς μνήμοσιν ἐπὶ Ἀπολλω/νίδεω τῶ Λυγδάμιος μνημονε/ύοντος καὶ Παναμύω τῶ Κασβώ/λλιος καὶ Σαλμακιτέων μνη/μονευόντων Μεγαβάτεω τῶ Ἀ/φυάσιος καὶ Φορμίωνος τῶ Π[α]/νυάσσιος.

[6] Ll. 16-22: Ἤν δέ τις θέλῃι δικάζε/σθαι περὶ γῆς ἢ οἰκίων, ἐπικαλ[έ]/τω ἐν ὀκτωκαίδεκα μησὶν ἀπ' ὅτ[ε]/ ὁ ἄδος ἐγένετο· <u>νόμωι δὲ κατάπ[ε]/ρ νῦν ὀρκῶ{ι}σ<α>ι τὸς δικαστάς</u>· ὅ τ[ι]/ ἂν οἱ μνήμονες εἰδέωσιν, τοῦτο/ καρτερὸν ἔναι.

[7] Ll. 22-28: Ἤν δέ τις ὕστερον/ ἐπικαλῆι τούτο τῶ χρόνο τῶν/ ὀκτωκαίδεκα μηνῶν, <u>ὄρκον ἔναι τ/ῶι νεμομένωι τὴν γῆν ἢ τὰ οἰκ/[ί]α</u>, ὀρκῶν δὲ τὸς δικαστὰς ἡμί/[ε]κτον δεξαμένος· τὸν δὲ ὅρκον εἶ/[ν]αι παρεόντος τῶ ἐνεστηκότος.

[8] Ll. 28-32: <u>Κ/αρτερὸς δ' εἶναι γῆς καὶ οἰκίων οἵτινες/ τότ' εἶχον ὅτε Ἀπολλωνίδης καὶ Πανα/μύης ἐμνημόνευον</u>, εἰ μὴ ὕστερο/ν ἀπεπέρασαν.

[9] If the *mnemones* belonged to the opposing factions, as it has been suggested, this would provide for a guarantee of an impartial testimony.

[10] There is no mention to any compensation to the former owners, although we cannot exclude the possibility that such a provision was made elsewhere, e.g. in the reconciliation agreement.

new element introduced by the present law is that the mnemons' testimony was now binding proof[11].

At trials during the first period, the *dikastai* were to administer the oath to the litigant(s) according to the law in force. The content of the oath is not, as Mackil thinks, "to recognize the principle that 'whatever the *mnemons* know shall prevail'". Such an oath would be superfluous, since anyone going to court had to abide by the laws in force; in addition, only citizens who had sworn the oath of reconciliation were granted the right to file suits for recovering their property (ll. 41-45 below), which indicates that they had already formally accepted the validity of all relative legislation. The oath of a litigant in the courts of the Greek cities refers to the truth and validity of his claim and serves as proof – however different it may be regarding its binding force, the magistrate who administers the oath, the process, the stage of the procedure in which it takes place, the party who swears it, and so on[12]. What a litigant had to swear in the Halikarnassos law was that his claim was true and valid (cf. the oath of the parties in Athenian *anakrisis*).

Concerning lawsuits filed after the end of the eighteen months, a shift in the burden of proof is introduced by the law. Whereas in trials judged during the first period the plaintiff and the defendant, if there was one, had to swear the oath in the usual way, past this period, the oath was to be taken by the defendant (the person in possession of the property) in the presence of the plaintiff. It seems that the mnemons' testimony was no longer required, and was replaced by the oath of the defendant, who had to swear that "he had possession of the properties when Apollonides and Panamues were mnemons". If the defendant took this oath, this was binding proof for the court, and the defendant's ownership was confirmed (*pace* Mackil who believes the defendant was in a disadvantage).

Apart former owners/returning exiles and purchasers/persons from Lygdamis' entourage, usurpers might also be involved who were exploiting confiscated land during the owner's absence. In such cases, previous owners had prevalence over usurpers[13]. During the first eighteen months, the mnemons' testimony on whether the land had been sold or not was the only binding proof and the judges were compelled to give their verdict accordingly. After that time, it was up to the defendant to prove that he had acquired lawful ownership of the land in the year of mnemons Apollonides and Panamues, but if he swore that he had, this oath was binding for the judges and the purchase was sanctioned and valid. In both periods, before and after the eighteen months, the cases were heard by the city's ordinary courts.

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[11] The phrasing of the law rejects Carawan's (2007) hypothesis that the previous procedure consisted in a summary reclamation.

[12] Mirhady 1991; Thür 1996; Gagarin 1997; Gagarin 2007.

[13] Reinach 1888.

After setting a ban on changing the law's dispositions in ll. 32-41[14], the final part of the law (ll. 41-45) specifies the persons allowed to file lawsuits on property[15]. This right was accorded to all citizens of Halikarnasos, on condition they had sworn the oath imposed by the reconciliation agreement, which was deposed in written at the sanctuary of Apollo.

At Halikarnassos, it was Lygdamis' political choice to refer disputes over confiscated property to the city's courts, visibly a choice his political opponents were not able to oppose. In other instances, occurring in different contexts and under different political circumstances, the returning exiles were able to negotiate judgment by a more disinterested authority, often due to the intervention of an external power. At Phleious, the Assembly decreed that disputes over property were to be δίκῃ διακριθῆναι by the city's courts, as at Halikarnassos. After the Spartan army besieged and took the city, Agesilaos appointed a commission composed equally from both sides with absolute power to decide and impose the conditions of the new regime, including decisions on who was to stay in the city and who was to be punished by death, and to enact the laws according to which the new regime was to govern; in the meanwhile, a Spartan garrison was left at Phleious for six months[16]. At Mytilene, resorting to the ordinary courts was forbidden by Alexander's *diagramma*, and all cases of disputed property were referred to arbitration by twenty arbitrators chosen by the demos from both sides equally. The arbitrators were to reconcile the parties amicably, and if this was not possible, they were to issue their decision according to Alexander's ordinances[17]. At Tegea, on the other hand, the

[14] Ll. 32-41: Τὸν νόμον τοῦτον/ ἤν τις θέλῃι συγχέαι ἢ προθῆτα/[ι] ψῆφον ὥστε μὴ εἶναι τὸν νόμο/ν τοῦτον, τὰ ἔοντα αὐτῶ πεπρήσθω/ καὶ τὠπόλλωνος εἶναι ἱερὰ καὶ α/ὐτὸν φεύγεν αἰεί· ἢν δὲ μὴ ἦι αὐτ/ῶι ἄξια δέκα στατήρων, αὐτὸν [π]/επρῆσθαι ἐπ' ἐξαγωγῆι καὶ μη[δ]/αμὰ κάθοδον εἶναι ἐς Ἁλικαρν/ησσόν.

[15] Ll. 41-45: Ἁλικαρνασσέων δὲ τῶς σ/υμπάντων τούτωι ἐλεύθερον ε[ἶ]/ναι, ὃς ἂν ταῦτα μὴ παραβαίνηι κατό/περ τὰ ὅρκια ἔταμον καὶ ὡς γέγραπτ/αι ἐν τῶι Ἀπολλω[νί]ωι, ἐπικαλῆν.

[16] Xen. *Hell.* 5.3.25: ἐπεὶ δὲ ἦκον ἐκ τῆς Λακεδαίμονος ἀπαγγέλλοντες ὅτι ἡ πόλις ἐπιτρέποι Ἀγησιλάῳ διαγνῶναι τὰ ἐν Φλειοῦντι ὅπως αὐτῷ δοκοίη, Ἀγησίλαος δὴ οὕτως ἔγνω, πεντήκοντα μὲν ἄνδρας τῶν κατεληλυθότων, πεντήκοντα δὲ τῶν οἴκοθεν πρῶτον μὲν ἀνακρῖναι ὄντινά τε ζῆν ἐν τῇ πόλει καὶ ὄντινα ἀποθανεῖν δίκαιον εἴη: ἔπειτα δὲ νόμους θεῖναι, καθ' οὓς πολιτεύσοιντο: ἕως δ' ἂν ταῦτα διαπράξωνται, φυλακὴν καὶ μισθὸν τοῖς φρουροῖς ἐξ μηνῶν κατέλιπε.

[17] *IG* XII 2 no 6, ll. 21-31: [διαιτάτας δὲ ἔλεσθ]αι τὸν δᾶμον ἄνδρας εἴκοσι, δέκα/ [μὲν ἐγ τῶν κατελθόντων, δέκα] δὲ ἐκ τῶν ἐν τᾶι πόλι πρόσθε ἐόντων·/ [οὗτοι δὲ πρῶτον μὲν φυλάσσ]οντον καὶ ἐπιμέλεσθον ὡς μηδὲν ἔσ/[σεται διάφορον τοῖς κατε]λθόντεσσι καὶ τοῖς ἐν τᾶι πόλι πρόσ/[θε ἐόντεσσι μηδετέρως]. καὶ περὶ τῶν ἀμφισβατημένων κτημάτων/ [ὡς οἰ ……]αι πρὸς τοὶς ἐν τᾶι πόλι ἔοντας καὶ πρὸς/ [ἀλλάλοις μάλιστα μ]ὲν διαλυθήσονται, αἰ δὲ μή, ἔσσονται ὡς δικ/[αζόμενοι καὶ ἐν τα]ῖς διαλυσίεσσι ταὶς ὁ βασίλευς ἐπέκριννε/ [καὶ ἐν τᾶι συναλλάγ]αι ἐμμενέοισι πάντες καὶ οἰκήσοισι τὰμ πό[λιν καὶ τὰγ χώραν ὀ]μονόεντες πρὸς ἀλλάλοις. καὶ περὶ χρημάτων/ [ὡς ἔσται εἰς τὸ θέσ]θαι ταὶς διαλύσις ὡς πλεῖστα. Disputes over movables were also subject of arbitration where possible.

negotiations of the city with Alexander resulted in the establishment of a foreign court, which was to adjudicate property disputes for sixty days, after which claims were to be addressed to the city's tribunals[18].

We see, then, that a variety of means was applied by the cities for solving claims on property and other legal problems that derived from confiscation. The question to be asked is whether these various means were new and specifically devised to be employed in solving claims over confiscated property previously owned by exiles.

Submitting a dispute to arbitration was a means as old as Greek history[19]. Entrusting critical disputes to the arbitration of a third party, whose lack of involvement in the case guaranteed impartiality, is a well-attested practice in Greek international law since the archaic period[20]. And the laws of Classical Athens contained detailed regulations on both private and public arbitration, two procedures that were amply used as shown by the evidence[21].

The practice of using μετάπεμπτοι δικασταί is first attested in the last quarter of the fourth century in some cities of Asia Minor and the Aegean coast and gained more popularity from the third century on[22]. Initially encouraged – or imposed – by Hellenistic kings on cities under their sovereignty undergoing a situation of political crisis[23], this practice later spread from the East into mainland Greece and survived in some cases until the late second century CE[24]. It was usually times of crisis and division in the city that led to the invitation of a foreign court, as a guarantee of impartiality and fairness in trials[25]. But was this expedient reserved for trials over confiscated property, which would justify Mackil's assertion that the concept of property had changed, or was it a general tendency of the epoch towards the establishment of a new practice in the administration of justice in the Greek poleis? Although mention of the exact circumstances that led to the need for a *xenikon dikasterion* or of the kind of cases it was assigned is not usual among the hundreds of preserved decrees honoring foreign judges, there is, however, clear evidence that

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[18] *IPArk* 5, ll. 24-28: τὸ δὲ δικαστήριον τὸ ξενικὸν δικάζεν ἐξήκ/οντα ἀμερῶν· ὅσοι δ' ἂν ἰν ταῖς/ ἐξήκοντα ἀμέραις μὴ/ διαδικάσωντοι, μὴ ἦναι αὐτοῖς δικάσασθαι ἐπὲς τ/οῖς πάμασι ἰν τοῖ ξενικοῖ δικαστηρίοι, ἀλλ' ἰν τοῖ/ πολιτικοῖ ἀΐ.

[19] Harter-Uibopuu 2002.

[20] For sources from c. 740 to 338 see Piccirilli 1973; from 337 to 90 BCE see Ager 1996. Aesch. 1.89 speaks of trial at an *ekkletos polis* as of a familiar option: Εἰ μὲν τοίνυν ἦν ὁ ἀγὼν οὑτοσὶ ἐν πόλει ἐκκλήτῳ, ὑμᾶς ἂν ἔγωγε ἠξίωσα μάρτυράς μοι γενέσθαι, τοὺς ἄριστα εἰδότας ὅτι ἀληθῆ λέγω. Εἰ δ' ὁ μὲν ἀγών ἐστιν Ἀθήνησιν, οἱ δ' αὐτοὶ δικασταί μοι καὶ μάρτυρές ἐστε τῶν λόγων.

[21] Private arbitration: Dem. 21.94. Public arbitration as a mandatory preliminary stage in most *dikai*: *Ath. Pol.* 53.1-6.

[22] Crowther 1992; Crowther 1993; Crowther 1994; Walser 2008: 258-272; Scafuro 2014: 365-6.

[23] Gauthier 1974.

[24] Crowther 2006; Crowther 2007; Fournier 2010: 537-542.

[25] Hamon 2012.

foreign judges were summoned to judge (or settle) a variety of cases, both private and public, for example cases arising from debt and breached contracts (συμβόλαια)[26], violent crimes (παρανόμων καὶ βιαίων)[27], denunciations (μήνυσις)[28], and unconstitutional decrees (υπέρ ψηφίσματος ὡς παρανόμου κεκ[ριμένου])[29].

Clearly, recourse to arbitration or to foreign judges was not restricted to disputes over confiscated property. According to the prevailing view, first stated by Louis Robert in his 1973 seminal work, the use of foreign judges replaced the city's ordinary courts and became the regular institution for the administration of justice in many Hellenistic cities[30]. Employing foreign judges to decide private and public lawsuits was a long-lasting expedient that strengthened the prestige of and guaranteed impartiality and fairness in the administration of justice in the Hellenistic poleis, rather than a testimony of a transformation of Greek thinking about property.

Substantive law

Although there is no specific indication in procedural law of a shift in the way individual citizens and poleis thought about property from the fifth to the fourth century, we may still examine whether such a shift is reflected on the way substantive law treated property. A new perception of ownership would imply a change in the way the laws treated private ownership, and the best way to examine that is the concept and application of confiscation of property. One would expect an evolution in the conception of property to result primarily in the abolition or at least the restriction of confiscation, both as a regular penalty for criminals and as a means of punishment for political opponents. However, no substantial change of this

[26] For example, a decree of Samos honors the *dikastai* from three cities who were summoned to judge cases on breached contracts (*IG* XII 6,1 no 95, l. 3: ἐπὶ τὰ μετέωρα συμβόλαια; ll. 8-9: δικασ/τήριον τὸ διαλῦσον τὰ μετέωρα συμβόλαια). A decree of Priene honors the *paragenomenoi dikastai* from three cities who adjudicated cases relating to private and public contracts (*IPriene* 8, ll. 4-5: αἰτησαμένων ἡμῶν δικαστήριον ἐπὶ τὰ συμβόλαια τά τε κοινὰ καὶ τὰ ἴδια). Contracts and debts are also a concern in a decree of Phalanna in Thessaly (*IG* IX 2 no 1230), which bestows honors on a foreign judge who was successful in τὴν ἐ[ν]σ[τᾶ]/[σ]αν δ[ιαφ]ορὰν καὶ ταραχὴν ἐν τοῖ[ς]/πολίταις [δι]αλῦσαι, ll. 1-3), and "settled each case of contract" (καθ' ἕκασ[τον] τῶ[ν συ]μβολαίων) by taking into consideration the necessity of each debtor ([κ]ατὰ μ[ηθὲν τῆς] μὲν ἑκάστου τῶν/[ὀ]φειλό[ντων χρείας] καταλειφθείς, ll. 6-9). A decree from Cos honors a *dikastagogos* who stood by the two judges from Smyrna with vigilance ἕως οὗ διεξάχθη τά τε δαμόσια καὶ ἰδιωτικὰ συμβόλαια: *IG* XII 4,1 no 59 ll. 21-23.

[27] A decree of Alexandria Troas honors Prienian judges because "they judged fairly and justly all the trials τὰς τε τῶν παρανόμων καὶ τὰς τῶμ βιαίων (*IPriene* 44, ll. 17-18).

[28] A judge is summoned to decide one specific case, arising from a denunciation: *IErythrai* 111. *dikai* and *paragraphai* in general. Scafuro 2014: 367.

[29] Helly 1971: 555.

[30] Robert 1973: 776; Fournier 2010: 201-226; Frölich 2011: 305; Scafuro 2014: 367.

perception is supported by the evidence. As in the fifth century, total confiscation of property continued to be imposed by the laws and to be inflicted by the courts of the Greek cities in the fourth century and later. Abundant evidence from Athens shows that confiscation of property was inflicted by the courts either as the main penalty or along with the penalties of death, exile and *atimia*.[31] When it comes to political crime, detailed laws were promulgated time after time by the Greek cities, or by powerful rulers on behalf of a city, which imposed the death penalty or, alternatively, proscription, along with confiscation of property on tyrants, leaders of oligarchies, and anyone who attempted to overthrow the constitution. Among many examples of laws imposing confiscation of property on political criminals from the fourth and third century, I shall briefly discuss four well known examples, from Amphipolis, Eretria, Athens, and Ilion.

In 357 the government established by Philip at Amphipolis[32] enacted a decree against two democratic leaders, Philon and Stratocles, imposing perpetual exile against them and their children, along with confiscation of their property[33]. Anyone who attempted to annul the decree or gave shelter to Philon and Stratocles was also to be punished with confiscation of property and perpetual exile.

A law of Eretria dated to c. 340 inflicted deprivation of citizenship, confiscation of property and prohibition of burial in Eretria on magistrates or citizens who attempted to abolish the constitution[34]. Another clause in the law rewarded the

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[31] *Ath. Pol.* 67.5. *Apographe* procedure: *Ath. Pol.* 43.4; 52.1; Dem. 59.7; Dem. 49.45-7; Dem. 53.1-2; Independent penalty: Dem. 24.50; Dem 24.40; Dem. 21.152. With death: Dem. 24.7; Dem. 21.43; Lys.1.50; *IG* II^2 125:10; Hdt. 6.121; Xen. Hell. 1.7.20-2. With exile: Lys. 3.38; Lys. 4.18; Dem. 40.32; Dem. 23.45. With *atimia*: Dem. 59.52; Dem. 23.62; *IG* I^3 46: 20-5; *IG* II^2 43:51-7; *IG* I^3 71:31-3. State debtors: Dem. 59.7; Dem. 49.24-7.

[32] For the expulsion by Philip of the opposing Amphipolitans see Diod. Sic. 16.8.2: μετὰ δὲ ταῦτα τῶν τὴν Ἀμφίπολιν οἰκούντων ἀλλοτρίως πρὸς αὐτὸν διατεθέντων καὶ πολλὰς ἀφορμὰς δόντων εἰς πόλεμον ἐστράτευσεν ἐπ᾽ αὐτοὺς ἀξιολόγῳ δυνάμει. (…) παρεισελθὼν δ᾽ εἰς τὴν πόλιν διὰ τοῦ πτώματος καὶ τῶν ἀντιστάντων πολλοὺς καταβαλὼν ἐκυρίευσε τῆς πόλεως καὶ τοὺς μὲν ἀλλοτρίως πρὸς αὐτὸν διακειμένους ἐφυγάδευσε, τοῖς δ᾽ ἄλλοις φιλανθρώπως προσηνέχθη. Isocr. 5.2; Aeschin. 2.21, 70, 72, Aeschin. 3.54; *IG* II^2 127; Dem. 2.6; 7.27-28.

[33] *RO* 49: ἔδοξεν τῶι δήμωι. Φί/λωνα καὶ Στρατοκλέ/α φεόγειν Ἀμφίπολι/ν καὶ τὴγ γῆν τὴν Ἀμφ/ιπολιτέων ἀειφυγί/ην καὶ αὐτὸς καὶ τὸς παῖδας καὶ ἤμ πο ἀλί/σκωνται πάσχειν αὐ/τὸς ὡς πολεμίος καὶ/ νηποινεὶ τεθνάναι,/ τὰ δὲ χρήματ᾽ αὐτῶν δ/ημόσια εἶναι, τὸ δ᾽ ἐπ/ιδέκατον ἱρὸν τοῦ Ἀ/πόλλωνος καὶ τῶ Στρ/υμόνος, τὸς δὲ προστ/άτας ἀναγράψαι αὐτ/ὸς ἐστήλην λιθίνην·/ ἢν δέ τις τὸ ψήφισμα/ ἀναψηφίζει ἢ καταδ/έχηται τούτος τέχν/ηι ἢ μηχανῆι ὁτεωιῶ/ν, τὰ χρήματ᾽ αὐτῶ δημ/όσια ἔστω καὶ αὐτὸς/ φεογέτω Ἀμφίπολιν/ ἀειφυγίην.

[34] *IG* XII, 9, 190 with Knoepfler 2001 and Knoepfler 2002. B ll. 6-10: Καὶ ἐὰν τις τήνδε τὴν πο[λ/ιτείην ἐπιχειρε]ῖ καταλύειν [τὴν νῦν] οὔρην ἢ λέγων ἢ ἐπιψηφίζ[ω/ν ἂν τε ἄρχων ἂν τε] ἰδιώτης, ἄτιμος ἔστω καὶ τὰ χρήματα αὐτοῦ δ[ημ/[όσια ἔστω καὶ τῆς] Ἀρτέμιδος τῆς Ἀμαρυρίης ἱερόν τὸ ἐπιδέκατ[ο/[ν καὶ ταφῆναι μὴ ἐ]ξέστω ἐν τεῖ γεῖ τεῖ Ἐρετριάδι.

Eretrians who opposed tyrants or oligarchs and fought for the resurrection of democracy with part of the property of the supporters of a tyranny or oligarchy[35].

A clause in the Athenian law of Eucrates of 336 imposed hereditary *atimia* and confiscation of property against members of the Areopagus who would collaborate in any way in subverting the democracy[36].

In 281, the city of Ilion enacted a law against tyranny and oligarchy to protect the newly established constitution[37]. The law treats in detail all possible aspects of threats coming from tyrants, oligarchs, subverters of the democracy in general, and their accomplices. All such persons were to be proscribed and their property confiscated. Purchases made by them or by another citizen who collaborated with them or by a third person in their name are declared null and void and the property in question is to be returned to its original owner[38]. Citizens who had suffered injustice were to be compensated from the confiscated property. Furthermore, any acquisition or transfer of property, whether by sale, mortgage or dowry, made by accomplices to the subversion is declared null and void, and whoever has been wronged may seize the property in question whenever he wishes[39]; the rest is to be confiscated to the profit of the city. Prosecution is open to any citizen, and the law expressly establishes no time limit to the lawsuits, until democracy is restored. The same liability applied to anyone who received public property as a gift under a tyranny or an oligarchy.

The connection of private property with political priorities and motives is clearly imprinted not only on Hellenistic law-making, but on documents concerning

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35 *Ibid*. ll. 32-36: ὁπόροι] δ' ἂν Ἐρετριῶν καταλαβόντες τι τῆς χώ/[ρης τ αὐτόνομον (?) και ἐλεύθ]ερον ποιήρωρι τόν δῆμον τὸν Ἐρετριῶ/[ν, <u>τούτοις (?) μέρος τι διαδιδ]όσθω τῆς γῆς καὶ τῆς οὐσίης τῶν ὑπομε/[ινάντων ἄρχεσθαι τεῖ τυρα]ννίδι ἢ ἄλλει τινὶ πολιτείει</u> ἀλλ' ἢ β/[ουλεὶ ἐκ πάντων κληρωτεῖ].

36 *SEG* 12.87; *RO* 79, ll. 11-23: μὴ ἐξεῖναι δὲ τῶν βουλευ/τῶν τῶν τῆς βουλῆς τῆς ἐξ Ἀρείου Πάγου καταλ/ελυμένου τοῦ δήμου ἢ τῆς δημοκρατίας τῆς Ἀθ/ήνησιν ἀνιέναι εἰς Ἄρειον Πάγον μηδὲ συνκα/θίζειν ἐν τῶι συνεδρίωι μηδὲ βουλεύειν μη/δὲ περὶ ἑνός· ἐὰν δέ τις τοῦ δήμου ἢ τῆς δημοκρ/ατίας καταλελυμένων τῶν Ἀθήνησιν ἀνίηι τῶ/ν βουλευτῶν τῶν ἐξ Ἀρείου Πάγου εἰς Ἄρειον Π/άγον ἢ συνκαθίζηι ἐν τῶι συνεδρίωι ἢ βολεύη/ι περί τινος ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος/ τὸ ἐξ ἐκείνου <u>καὶ ἡ οὐσία δημοσία ἔστω αὐτοῦ/</u> καὶ τῆς θεοῦ τὸ ἐπιδέκατον.

37 Dössel 2003: 197-202, transl. 202-205, commentary 205; *IK* 3, 25.

38 III 106-111: ἐ/ὰν δέ τις τύραννος ἢ ἡγεμὼν ὀλιγαρχίας ἢ ὅσ/τις Ἰλιέων ἀρχὰς συ[ν]αποδεικνύηι μετὰ τού[των]/ ἢ ἄλλος πρὸ τούτων πρίηται γῆν ἢ οἰκίαν ἢ κτήν[η]/ ἢ ἀνδράποδα ἢ ἄλλο ὁτιοῦν, <u>ἀκύρως ἐωνήσθω κα[ὶ]/ ἐπανίτω εἰς τοὺς ἀποδομένους.</u>

39 III 53-71: ὃς ἂν ἐπὶ τυράννο<υ> ἢ/ ὀλιγαρχία<ς> στρατηγήσηι/ ἢ ἄλλην τινὰ ἀρχὴν ἄρξηι/ [ἢν]τιναοῦν, δι' ἧς ἀργυ[ρί/ου λ]όγον ἔρχεται, ἢ ἐπιγρ[α/φὴν ἐ]πιγράψηι Ἰλιέων [τ]ινὶ ἢ/ [τῶν με]τοίκων, <u>π[αρ]ὰ μηδε/νὸς τούτων ὠν]εῖσθαι μηδὲ/ [παρατίθεσθαι μ]ήτε γῆν μή/[τε οἰκί]α[μ μήτ]ε κτήνη μήτε/ [ἀνδ]ράποδα [μή]τε ἄλλο μη/[δ]ὲν μηδὲ φ[ερν]ὴν δέχεσθαι·/ ὃς/ δ' ἂν παρὰ [τού]των τινὸς πρί/ηταί τι ἢ/ παρ[αθ]ῆται ἢ φερ[ν]ὴν/ λάβηι ἢ ἄλλ[ως] πως κτήση/ται, ἄκυρον ε[ἶνα]ι τὴγ κτῆσιν/ καὶ τὸν ἀδικ[ηθέ]ντα ἰέναι εἰς/ τὰ τοῦ ἀδικήσ[αν]τος ἀτιμη/τεί, ὁπόταν θ[έλ]ηι.</u>

trials of political exiles as well. One famous example is the series of documents from Eresos on Lesbos reporting the trials of Eurysilaos and Agonippos, the tyrants established by Persia in 333[40]. In 332 Lesbos was reconquered by Alexander, who issued a *diagraphe* instructing the people of Eressos to put the tyrants on trial; if found guilty, they were to be executed and their property was to be confiscated[41]. Both were found guilty and sentenced to death and confiscation of their property. From the surviving details on Agonippos' case we learn that the trial was conducted at the assembly; eight hundred eighty three citizens voted by secret ballot; all but seven found Agonippos guilty; any citizen who publicly supported the return of Agonippos or the restitution of his property was to be accursed[42]. In 324/3, after Alexander's decree for the return of exiles to the Greek cities[43], the grandsons of some earlier tyrants appealed to the king asking to be reinstated and offered to stand trial[44]. A court was convened at Eresos in accordance with a *diagraphe* sent by Alexander to decide the matter. The court decided that the law against the tyrants should be valid and that their descendants were not allowed to return[45]. The same persons made another unsuccessful plea to be restored in 319, after Philip Arrhidaeus' decree for the return of the exiles[46]. Finally, between 306 and 301 the sons of the tyrants Eurysialus and Agonippus made an appeal to king Antigonus, who reported the case to the Eresians. Once again, the Eresians resolved that the laws against the tyrants and the earlier sentences of the courts should remain in force[47]. As Athina Dimopoulou remarked[48], after half a century's diplomatic, political, and judicial developments, old tyrants and their deeds had not been forgotten at Eresos. Alexander established himself as an arbitrator of property claims of exiles, and in his *diagrammata* he dictated in detail the procedures to be followed. There is no sign in Alexander's *diagrammata* or in the decrees issued by the cities to implement Alexander's measures that property was perceived as an individual right which was protected against political upheavals.

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40 Dimopoulou 2015: 218-50; Heisserer 1980: 27-78; *RO* 406-18, no 83.

41 *IG* XII 2 no 526 a ll. 15-26: κρῖνα[ι]/ [μ]ὲν αὖτον κρύπται ψάφιγγι ὀμόσσαντας περ[ὶ]/ [θ]ανάτω· αἰ δέ κε καταψαφίσθη θάνατος, ἀντιτ[ι]/μασαμ[έ]νω Ἀγωνίππω τὰν δευτέραν διαφόραν/ ποήσασθαι, τίνα τρό[πο]ν δεύει αὖτον ἀποθά/20νην· αἰ δέ κε καλλάφθε[ν]τος Ἀγωνίππω τᾶ δίκα/ κατάγη τίς τινα τῶν Ἀγωνίππω ἢ εἴπη ἢ πρόθη/ περὶ καθόδω <u>ἢ τῶν κτημάτων ἀποδόσιος</u>, κατά/ρατον ἔμμεναι καὶ αὖτον καὶ γένος τὸ κ<ή>νω.

42 Ll. 30-32.

43 Diod. Sic. 17.109.1.

44 *IG* XII 2 no 526 a 33-41.

45 *IG* XII 2 no 526 d 4-39.

46 *IG* XII 2 no 526 c 21-28.

47 *IG* XII 2 no 526 c 29-43.

48 Dimopoulou 2015: 249.

Establishing a principle of ownership

As I suggested above, in the aftermath of a civil strife involving exile and confiscation, it was crucial for the polis to establish a principle that determined who was to own confiscated property, and to regulate eventual compensation for lost properties. Different responses to these issues are attested in the evidence from the classical and Hellenistic periods[49].

Turning to Mackil's examples, the evidence from the fifth-century Chian inscription (Matthaiou 2011) is inconclusive. It is dubious whether the trials mentioned on side C concern returning exiles claiming back their property, and even if confiscations are implied, it is unclear whether they involved political exiles or state-debtors or sanctions imposed for other offenses. Nor are there any indications of the potential parties to the trials; Mackil herself seems to embrace the assumption proposed by Faraguna (2005: 95-96) that the trials concerned creditors of previous owners. Similarly, the fourth-century inscription from Chios (*SEG* 51.1075) is too fragmentary to provide any insight on the actual regulations it contained.

In the remaining examples, in which the rule on who is to be the owner can be safely adduced, it appears that in all but one (Halikarnassos) confiscated real estate was to be returned to the original owners. This is true of Selymbria in 408/7[50], Athens in 403[51], Phleious in 391[52], and Mytilene after 324, where the reconciliation agreement (*dialysis*) provided that the returning exiles were to recover their real property on condition they abided by the agreement[53]. At Tegea in 324, following negotiations with Alexander, the city had to amend its original decree according to the objections raised in the king's *diagramma*.[54] The principle of restoring their land to returning exiles was established by the law[55] but restitution was only partial: each

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[49] Lonis 1991: 109.

[50] *IG* I^3 118, 18-22: ἃ̣ δὲ ἀπόλετο ἐν τοῖι πολέμοι/ [χρέματα Ἀθεναί]ον ἢ τῶν συμμάχον ἢ εἴ τι ὀφελ/[όμενον ἢ παρακ]αταθέκεν ἔχοντός το ἔπραχσα/[ν οἱ ἄρχοντες], μὴ ἐναι πρᾶχσιν πλὴγ γ̂ες καὶ οἰ/[κίας·

[51] Lys. 70 *Against Hippotherses* frg. 165 (Carey): οὗτος οὔτε γῆν [οὔ]τ' οἰκίαν κεκτημένος [ἃ] καὶ αἱ συνθῆκαι τοὶς κα[τε]λθοῦσιν ἀπεδίδοσαν. Sakurai 1995; Rubinstein 2018.

[52] Xen. *Hell.* 5.2.10: τοιαῦτα μὲν δὴ φοβηθέντες, ἐψηφίσαντο καταδέχεσθαι τοὺς φυγάδας, καὶ ἐκείνοις μὲν ἀποδοῦναι τὰ ἐμφανῆ κτήματα, τοὺς δὲ τὰ ἐκείνων πριαμένους ἐκ δημοσίου τὴν τιμὴν ἀπολαβεῖν: εἰ δέ τι ἀμφίλογον πρὸς ἀλλήλους γίγνοιτο, δίκῃ διακριθῆναι.

[53] *IG* XII 2 no 6, ll. 2-7: [αἰ δέ κέ τις/ [τῶν κατεληλυθόν]των μὴ ἐμμένη ἐν ταῖς/ διαλυσί[ε]σσι ταύτ[αισι],/ [μὴ …7… ἐφ]εζέσθω πὰρ τᾶς πόλιος κτήματος μήδενος μη[δὲ στ/ειχέτω ἐπὶ μῆ]δεν τῶμ παρεχώρησαν αὔτωι οἱ ἐν τᾶι πόλι πρό[σθε]/ [ἔοντες, ἀλλὰ σ]τείχοντον ἐπὶ ταῦτα τὰ κτήματα οἱ παρχωρήσαν[τ/ες αὔτωι ἐκ τῶν] ἐν τᾶι πόλι πρόσθε ἐόντων. Dimopoulou 2015: 256-265.

[54] *IPArk* 5 ll. 1-4: ...Βασι/λεὺς Ἀλέξ]ανδρος τὸ διάγρ[α]μμα, γραφῆναι κατὺ τὰ ἐ/[πανωρ]θώσατυ ἁ πόλις τὰ ἰν τοῖ διαγράμματι ἀντιλ/εγόμενα.

[55] *IPArk* 5 ll. 4-9: τὸς φυγάδας τὸς κατενθόντας τὰ πατρῶια/ κομίζεσθαι, ἐς τοῖς ἔφευγον, καὶ τὰ ματρῶια, ὅσαι ἀ/νέσδοτοι τὰ πάματα κατῆχον καὶ οὐκ ἐτύνχανον

returnee was to take back one house and one garden according to the detailed prescription of the law[56], whereas those who owned more landed property were to receive a compensation for the rest[57] (despite Mackil who thinks that all the returnees actually received "monetary compensation by the polis for house and garden at a fixed price established by the polis").

From the above regulations, there is not much we can conclude about the way these cities or their individual citizens thought about property. On the other hand, they reveal a lot about the political background to these laws. The treaty between Athens and Selymbria was an unequal treaty where Athens, as the strong party, dictated the conditions to the treaty. At Phleious it was the intervention of Sparta that imposed restitution of the returnees' property and compensation of purchasers, whereas the Phleiasians were reluctant to apply Sparta's conditions. Again, diplomacy and negotiations were involved in Alexander's interventions in Chios, Mytilene, and Tegea, where the cities were struggling to modify the conditions imposed by the king[58], although they were finally compelled to submit to his orders. When instructing the Greek cities to accept the exiles and restore their property, or when ordering the Chians to restore "his friend"[59], Alexander was implementing his politics, not considerations of fairness and impartiality, nor was he adopting a new concept of ownership.

The opposing forces within the city and the correlations of the city's ruling class with a powerful ally or a sovereign king form the complex political background to these laws. Specific circumstances, such as the time that had elapsed between the purchase at auction of the property and the claim of its previous owner, the number of confiscations that had taken place, and the percentage of confiscated properties that had been sold at auction were also significant. Legal problems, as inheritance rights, dowries, debts, and real securities that had occurred in the interim, had also to be considered. And, last but not least, the state of public finances was a very important consideration when dealing with compensation of purchasers or previous

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ἀδ/ελφεὸς πεπαμέναι· εἰ δέ τινι ἐσδοθένσαι συνέπεσ/ε τὸν ἀδελφεὸν καὶ αὐτὸν καὶ τὰν γενεὰν ἀπολέσθα/ι, καὶ τανὶ ματρῶια ἦναι, ἀνώτερον δὲ μηκέτι ἦναι.

[56] *IPArk* 5 ll. 9-16: ἐ/πὲς δὲ ταῖς οἰκίαις μίαν ἕκαστον ἔχεν κατὺ τὸ διά/γραμμα· εἰ δέ τις ἔχει οἰκία κᾶπον πὸς αὐτᾶι, ἄ<λλ>ον μ/ὴ λαμβανέτω· εἰ δὲ πὸς τᾶι οἰκίαι μὴ πόεστι κᾶπος, ἐ/ξαντίαι δ' ἔστι ἰσόθι πλέθρω, λαμβανέτω τὸν κᾶπον·/ εἰ δὲ πλέον ἀπέχων ὁ κᾶπός ἐστι πλέθρω, τωνὶ τὸ ἥμι/σσον λαμβανέτω, ὥσπερ καὶ τῶν ἄλλων χωρίων γέγρα/πται.

[57] *IPArk* 5 ll. 16-21: τᾶν δὲ οἰκιᾶν τιμὰν κομιζέσθω τῶ οἴκω ἑκάστ/ω δύο μνᾶς, τὰν δὲ τιμασίαν ἦναι τᾶν οἰκιᾶν κατάπε/ρ ἁ πόλις νομίζει· τῶν δὲ κάπων διπλάσιον τὸ τίμαμ/α κομίζεσθαι ἢ ἐς τοῖ νόμοι. τὰ δὲ χρήματα ἀφεῶσθα/ ι τὰν πόλιν καὶ μὴ ἀπυλιῶναι μήτε τοῖς φυγάσι μήτ/ε τοῖς πρότερον οἴκοι πολιτεύονσι.

[58] E.g. the amendations invoked in the Tegean law.

[59] *RO* 84B.

owners for loss of property; at Tegea, for example, a large part of the exiles' property had been given away as guarantee for loans contracted by sanctuaries[60].

In shaping the reconciliation agreement and the laws on the destinies of confiscated property, the ruling classes had to take into consideration issues of fairness, impartiality, and justice, but the final solutions were determined by ideologies, political strategies, and symbolisms. After all, the laws embodied the city's formal narrative about amnesty and conciliation, and reflected the place attributed to the returning exiles by the rulers of the polis.

Conclusion

Private property had been recognized as a privilege closely attached to citizenship and was protected by law since the earliest times of the Greek poleis. From Lycurgus of Sparta to Pheidon of Corinth, the early legislators employed different methods to achieve a fair distribution of land. (cf. Arist. *Pol*. 1265 b 12). Laws on theft and damage of property for the protection of owners existed in every Greek polis. In the sixth century, Solon enacted elaborate measures for the protection of neighboring estates (Plut. *Sol*. 23.6-8). Each year, the Athenian *dikastai* took a solemn oath "not to allow the invalidation of private debts or the redistribution of the land and the houses of the Athenians" (Dem. 24.149). While the law protected property, as well as citizenship and life, it also had the authority to deprive citizens of their property, citizenship or life by imposing pecuniary penalties and total confiscation of property, or *atimia* or the death penalty on offenders. The evidence of substantive and procedural laws from the Greek cities does not indicate that a change in the perception of ownership had taken place in the fourth century – or, for that matter, later, during Greco-Roman antiquity. It indicates, however, that in circumstances of stasis and civil strife the legal responses did not cease to be connected to politics, and suggests that law-making, including laws about property, was still conditioned by political motives and strategies.

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[60] *IPArk* 5 ll. 37-48: ἐπὲς δὲ τοῖς ἱεροῖς χρήμασιν .ΛΩ…Ν τ/οῖς ὀφειλήμασι, τὰ μὲμ πὸς τὰν θεὸν ἁ πόλις διωρθώ/σατυ, ὁ ἔχων τὸ πᾶμα ἀπυδότω τῶι κατηνθηκότι τὸ ἥμ/ισσον κατάπερ οἱ ἄλλοι· ὅσοι δὲ αὐτοὶ ὤφηλον τᾶι θ/εοῖ συνινγύας ἢ ἄλλως, εἰ μὲν ἂν φαίνητοι ὁ ἔχων τὸ/ πᾶμα διωρθωμένος τᾶι θεοῖ τὸ χρέος, ἀπυδότω τὸ ἥμ/ισσον τῶι κατιόντι, κατάπερ οἱ ἄλλοι, μηδὲν παρέλ/[κ]ων· εἰ δ' ἂν μὴ φαίνητοι ἀπυδεδωκὼς τᾶι θεοῖ, ἀπυδό/τω τοῖ κατιόντι τὸ ἥμισσον τῶ πάματος, ἐς δὲ τοῖ ἥμ/ίσσοι αὐτὸς τὸ χρέος διαλυέτω· εἰ δ' ἂν μὴ βόλητοι δ/ιαλῦσαι, ἀπυδότω τοῖ κατιόντι τὸ πᾶμα ὅλον, ὁ δὲ κο/μισάμενος διαλυσάτω τὸ χρέος τᾶι θεοῖ πᾶν. Worthington 1993.

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