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FINLEY'S STUDIES IN LAND AND CREDIT SIXTY YEARS LATER

Studies in Land and Credit in Ancient Athens 500-200 B.C.: The Horos Inscriptions was published by Rutgers University Press in 1952¹ and was reprinted with a new introduction by Paul Millett by Transaction Books in 1985.² The book is unlike Finley's other books, which were based on lectures.³ *The World of Odysseus* had its origins in a series of lectures given at Bryn Mawr College.⁴ *Democracy Ancient and Modern* was based on the Mason Welch Gross Lectures given in New Brunswick, New Jersey in April 1972.⁵ *The Ancient Economy* was the publication of Finley's Sather Lectures given at the University of California, Berkeley in the Winter Quarter of 1972.⁶ *Ancient Slavery and Modern Ideology* was based on four lectures presented at the Collège de France in November and December 1978.⁷ *Politics in the Ancient World* was the publication of his Wiles Lectures delivered at the Queen's University, Belfast in May 1980.⁸ All of these works were written for the general public and address broad, general topics in Ancient History: there is little detailed analysis of the ancient sources, and the bibliographies in some cases contain few items.⁹

By contrast, *Studies in Land and Credit* focuses primarily on one city (Athens) and contains a detailed analysis of Greek texts found on *ho-roi*, stone markers used to indicate the presence of a loan or other

1. Finley 1952.

2. Finley 1985.

3. Finley's other books were collections of essays that had originally been published in academic or popular journals (for instance, Finley 1968a, Finley 1975, Finley 1981), edited volumes (Finley 1973b, Finley 1976), or general introductions to broad topics such as *The Ancient Greeks* (Finley 1963), *Ancient Sicily* (Finley 1968b) or *Early Greece* (Finley 1970). For a bibliography of Finley's work up to 1981, see Finley 1981, 312-18.

4. Finley 1954.

5. Finley 1973a, ix.

6. Finley 1973b, 9.

7. Finley 1980, 10.

8. Finley 1983, vii.

9. For instance, Finley 1983 lists only 89 books and articles, of which eleven are works by Finley himself. There is no bibliography in Finley 1973a, and Finley 1973b.

obligation on land or a building. Finley presented the texts found on 180 of these *horoi* in Appendix I of his work. Since some *horoi* contain two texts, there were a total of 182 texts. By coincidence John Fine published his *Horoi: Studies in Mortgage, Real Security and Land Tenure in Ancient Athens* as supplementary volume 9 of *Hesperia* in the previous year. This contained forty new texts found on 39 recently found *horoi*. Finley added these new texts in Appendix III of his work to bring the total to 222, though not all of the texts are security *horoi*.

Studies in Land and Credit contains many of the main views and assumptions that Finley developed at greater length in *The Ancient Economy*, published a little over twenty years later. These ideas were considered “the orthodoxy” for many years but in recent years have frequently been challenged, if not rejected.¹⁰ Despite the growing skepticism about Finley’s views on the ancient economy, there has been no critical assessment of *Studies in Land and Credit* in the past fifty years.¹¹ Over the past twenty-five years, I have published several essays on aspects of real security in ancient Greece and have shown that several of Finley’s views about the topic are not supported by a careful study of the evidence. This issue of *Dike* gives me a welcome opportunity to present a synthesis of these criticisms, to examine the main assumptions underlying Finley’s *Studies in Land and Credit*, and to show how these assumptions led him to present a distorted and tendentious analysis of the evidence.¹² Such a study is necessary because some scholars still accept some of Finley’s main conclusions.¹³ Finally,

10. For Finley’s views on the ancient economy viewed as “the orthodoxy”, see Hopkins in Garnsey, Hopkins, Whittaker 1983, x-xi and Morris 1994. For recent challenges to Finley’s views about the economy of ancient Greece, see Cohen 1992, Bresson 2000, Bresson 2007, Bresson 2008, and Harris 2002. For a more extensive critique see the essays in Harris, Lewis and Woolmer forthcoming.

11. For reviews of Finley 1952, see Pringsheim (1953), Arangio-Ruiz (1952), Berger (1952), Wolff (1953). Pringsheim and Wolff faulted Finley for his lack of interest in legal issues, but in general endorsed his views about the role of lending and credit in ancient Athens.

12. Harris 1988, Harris 1992, Harris 1993, Harris 2008, and Harris 2012a. Harris 1988, is reprinted in Harris 2006, 163-206, Harris 1993, reprinted in Harris 2006, 207-40, and Harris 1992, reprinted in Harris 2006, 333-46. In the rest of this essay I will refer only to the versions of these essays in Harris 2006. The first two essays are not mentioned in the chapters on the economy of Classical Greece in Scheidel, Morris, and Saller 2007, 333-406. The main conclusion of Harris 1988, namely, that there was no difference between the forms of security described with the language of sale and that by the terminology of *hypothèque* has now been endorsed by several scholars and is widely accepted - see Gauthier 1989, 396-7, Todd 1993, 254-5, Youni 1996, Hatzopoulos 1991, 59 (“des arguments convainquants [sic]”), Rhodes and Osborne 2003, 179, Thür 2008, Walser 2008, 127, note 83, and Game 2008, 17-8 (“E. M. Harris a montré qu’il n’existait à Athènes qu’un seul type de sûreté réelle”). See especially MacDowell 2004, 68, note 6: “Earlier work [i.e. on the terminology of real security] has now been superseded by Harris 1988 and 1993.”

13. For instance, Thür 2008, and Walser 2008, 127, 140, still believe that real security in Greek Law was substitutive, not collateral.

I believe it is important to take a closer look at Finley's first book because many of the problematic (I should say deeply problematic) aspects of Finley's general approach to ancient history are already on display: his dogmatism, his cavalier attitude toward ancient texts, his tendency to privilege a single piece of evidence and to dismiss, ignore or explain away inconvenient evidence, and finally his aversion to explaining economic activity in the ancient world in terms of markets.¹⁴

Finley's general analysis of the *horoi* was built on three main assumptions. First, Finley thought that there were three basic forms of real security in ancient Athens (*hypotheke*, *prasis epi lysei*, and *apotimema*).¹⁵ In this regard Finley agreed with Fine and previous scholars though (as we will see) differing with him on points of detail.¹⁶ Second, Finley believed that there were no property records in Classical and Hellenistic Athens.¹⁷ Third, Finley thought that there were no extensive markets in Classical Athens and that as a result the Athenians often did not think in market terms.¹⁸

These basic assumptions influenced several of his main conclusions. First, Finley argued that real security in Athenian Law in particular and Greek law in general was substitutive and not collateral. This view was also not original but went back to Manigk's article in Pauly-Wissowa.¹⁹ In the substitutive form of security, the creditor accepts the property as a substitute for the loan if the debtor defaults. The creditor does not view the property pledged as security as a commodity that can be exchanged for cash in the market to pay off the debt. He is not interested in the cash value of the security but in the security as property for his own use. This has two important implications. On the one hand, the borrower cannot make further loans on the security after pledging it to one creditor. On the other, if there is a difference

14. Cf. the criticism made by Pringsheim 1953, 226 : "Hier wie oft dringt er genau ein, wägt aber nicht ruhig genug ab."

15. One still finds this mistaken assumption in Maffi 2005, 261-62, who shows no awareness of Harris 1988, Harris 1992 and Harris 1993.

16. See Fine 1951, 61, note 3: "These three forms of real security can be roughly equated with certain institutions in Roman Law as follows: ἐνέχυρον and *pignus*, ὑποθήκη and *hypotheca*, πρᾶσις ἐπὶ λύσει and *fiducia (cum creditore)*." For criticism of Fine's analysis of the differences among the three types of security, see Harris 2006, 165-70. Even though they criticized the views of Fine and Finley, both Pringsheim 1953 and Wolff 1953 assumed that there were three different forms of real security.

17. Finley 1985, 13-15.

18. Finley 1985, 116-17. Cf. Goody 2006, 38-48, especially 42: "Taking a Polanyi view that the ancient economy was dominated by redistribution (and in this sense was non-modern) leads to an over-riding tendency to downplay anything that resembles a market transaction. This is what happens in Finley's study of the Ancient Economy in which his effort in this direction, like Polanyi's was motivated by a dislike of the market."

19. Manigk 1916. This view was anticipated by Pappulias and Dareste. See the discussion of their views in Pelloso 2008, 47-49.

between the market value of the security and the amount of the loan, the borrower does not have a right to the excess, and the creditor cannot demand the payment of any deficit. In more general terms, it means that the creditor does not view the security as a commodity, only as property capable of being transferred to his ownership.

Second, Finley thought that the practice of real security was confined mainly to the wealthy and did not extend to the other members of society.²⁰ Third, because Finley believed the use of real security was restricted primarily to the upper class, he claimed that there were no laws regulating the practice of real security.²¹ Fourth, according to Finley most loans were for the purposes of consumption, not for productive uses.²²

In what follows, I shall examine Finley's first assumption (there were more than one form of real security) (Section I), his second and third assumptions and his second and third conclusions (Section II), and his first conclusion (real security in Athens was substitutive, not collateral) (Section III). I am not going to deal with Finley's view that lending was almost exclusively for purposes of consumption because other scholars have already drawn attention to the evidence contradicting his view.²³ Even Finley's student P. C. Millett is compelled to admit that maritime loans were "apparently productive" and that they provide evidence "for productive borrowing in a society supposedly dominated by a profoundly unproductive mentality."²⁴

I. How Many Forms of Real Security?

Before discussing the views of Finley about real security, it is necessary to say a few words about the *horoi* that formed the basis of Finley's study. The word *horos* was originally used to denote a boundary marker and is used in this sense in the Homeric poems and in Solon's poems.²⁵ Several *horoi* of this type have been found and dated to the

20. This view was endorsed by both Pringsheim 1953, 229 and Wolff 1953, 413 ("sein wichtigstes Ergebnis").

21. Finley 1952, 113: "I am convinced that neither the law nor the practice of Athenian hypothecation was set by legislative enactment, at least in the fourth century B. C. from which most of the material comes."

22. Finley 1952, 86-7 ("In sum, when we study land and credit in Athens, the normal link between the two all through the classical period, hypothecation, is an institution limited largely to men of property acting in non-economic capacities, so to speak.").

23. See, for example, Thompson 1982, and Cohen 1990, though I am skeptical about Cohen's claim that banks played a large role in maritime finance. Even Finley 1985, 87 had to admit that many of the loans recorded on the *horoi* were productive because they were used "to purchase or improve income-producing property."

24. Millett 1983, 42, 44.

25. On the use of the word *horos* in the Archaic period, see Harris 1997.

Archaic period on the basis of their lettering. At some time in the early fourth century these *horoi* started to be used to indicate that the property on which they were placed had been pledged as security for some obligation. The earliest reference to a *horos* of this type comes from Isaeus' speech *On the Estate of Philoctemon* dated to around 364 BCE. There are several security-*horoi* dated by an archonship – the earliest possible is dated to the archonship of Chaericleides in 363/2. In the vast majority of cases the *horos* was placed on property that had been pledged as security for a loan. In a smaller number of cases they secure the return of a dowry or the payment of rent. The amount of information on the *horoi* varies. Most give the name and demotic of the person to whom the property is pledged, and many contain the amount of the obligation. The purpose of this kind of *horos* was to warn third parties that there was already a lien on the property.

To my knowledge, Finley was the first scholar to make a collection of all known *horoi*. When Finley started to work on this project sometime in the 1940s, Fine had already been given the *horoi* found in the American excavations in the Agora. Fine decided to add a general discussion of all the security *horoi* to these documents, but he did include previously published *horoi*. Finley learned about Fine's work after he had already begun his thesis, and contacted Fine, who generously gave him the texts of his *horoi* from the Agora. Finley makes no acknowledgment of this correspondence in his book, but the exchange with Fine was crucial in Finley's developing the appendices of sources that are perhaps the most useful feature of *Studies in Land and Credit*.²⁶

Fine augmented Finley's collection for the biggest of three classes of *horoi* (all described in some detail immediately below). For *horoi* with the "sold on condition of release" vocabulary, Finley had gathered 92, and Fine gave him 22 more. Fine did not add any in the smaller categories of *horoi* described as "lying under an obligation" or described as "mortgaged." Since the work of Finley and Fine, Paul Millett added 14 more *horoi* of the first class in his second edition of *Studies in Land and Credit* in 1985. A check of *Supplementum Epigraphicum Graecum* reveal around 42 additional security *horoi* published since that date. The work of Finley and Fine laid the basis for the study of these documents, which I hope to advance farther by gathering all the known *horoi*, including numerous examples as yet unpublished, in a new collection.

The division of labor between Finley and Fine reflected circumstances at the time. Fine was able to see the stones whereas Finley could not. Finley did not have the funds to travel to Greece (as far as I know), and there was a civil war in Greece from 1946 to 1949 (though that would not have prevented access to the finds in the Agora). For this reason, Finley relied on Fine's readings of the new *horoi* in the

26. The late A. Raubitschek informed me of this exchange between the two men. Pringsheim 1953, 230 predicted that Finley's collection would hardly "allgemeine Billigung und Anwendung finden," but his prediction did not prove to be correct.

class of “sold on condition of release.” Finley, in turn, made the first collection aiming at completeness, which, as revised by Millett, still remains the standard reference work.

Perhaps the most perplexing feature of the *horoi* is the terminology used for real security.²⁷ On just seven *horoi*, we find the term *hypokeymenou*, -es, -on, which we can translate “lying under an obligation.” On a much larger number of *horoi*, 128 in the collection of Finley and Millett, we find a different kind of expression: *pepramenou*, -es, -on *epi lysei*, which is often translated as “sale on condition of release.” On roughly fifty *horoi* we find a third type of expression, either the noun *apotimema* in the nominative or genitive or the perfect passive participle: *apotetimemenou*, -es, -on. In the literary sources we find a fourth term for real security, *enechyron*, which is not found on the *horoi* (D. 33.10; [D.] 49.2, 52, 53; 56.3).

The traditional view of this terminology was that *prasis epi lysei* equated with *fiducia cum creditore* in Roman Law, *hypotheke* equated with *hypotheca*, and *enechyron* with *pignus*. This view originated with Hitzig in 1895 and was followed by Beauchet in 1897, by Lipsius, and by Fine in his *Horoi*, published in 1951. To understand the meaning of this, we need to review the meaning of these terms in Roman Law.²⁸

- 1) *fiducia cum creditore* – Ownership (*dominium*) is transferred to the creditor by *manipatio* or *cessio in iure*. The borrower may remain on the property at the will of the creditor (*precario*). This form of security was usually employed for immovables. The creditor and the debtor might conclude *pactum de vendendo* setting terms for the sale of the security.
- 2) *hypotheca* – The borrower retains both ownership and possession. The creditor gains nothing more than a lien on the property. The borrower has the right to contract additional loans on the property. If there are several loans, the creditors are ranked according to the principle *prior tempore, potior iure*.
- 3) *pignus* – The borrower retains ownership (*dominium*), but the creditor gains lawful possession (*possessio*). If the borrower attempts to regain possession of the security, this is considered theft. This form of security was usually employed for movables (pawn).

Fine developed a theory that *prasis epi lysei* was the earlier institution and *hypotheca* the later institution.²⁹ He based this theory on the assumption that in earlier periods the law tended to favor the creditor while in later periods it favored the borrower. Since in *prasis epi lysei* the borrower did not have the right to make further loans on the same

27. On the three basic terms, see Harris 2006, 163–64, 206–9.

28. For a brief account with references to the sources, see Schulz 1951, 406–7.

29. Fine 1951, 90–93.

security it must have been the earlier practice. Since in *hypothèque* the borrower could make additional loans on the same security, it must have been the later practice. The fatal problem with this theory is that the terminology of *hypothèque* for real security occurs earlier than the language of sale for real security.³⁰

Finley discussed each of the terms for real security in separate chapters, but his analysis is very vague. In his analysis of the security transactions in Demosthenes' speech *Against Pantaenetus*, he cannot identify any specific differences among the three types of security:

Essentially, then, the speech deals with a series of manoeuvres and deals in the field of security, not genuine sale. Though conveyance of the property occurs and recurs over his head, Pantaenetus remains in continuous possession and control as long as he meets the interest payments and the mysterious unidentified terms of the agreement. When he defaults, the creditors take the security as forfeit; this they would have done whether the transaction was called *prasis epi lysei* or *hypothèque* or *apotimema*.³¹

Finley saw (rightly as it turns out) that "*prasis epi lysei* was not a genuine, complete sale" and that "its outward form, then, is sale, the essence hypothecation."³² This formulation is very elegant and epigrammatic, but it explains absolutely nothing about the difference between *prasis epi lysei* and *hypothèque*.³³ All Finley could suggest was "the *hypothèque* was somehow more flexible than the *prasis epi lysei* and lent itself more readily to special terms and conditions, hence the more frequent need to commit the agreement to writing."³⁴ He then hazarded a guess about the origin of *prasis epi lysei*:

The reasons for the creation of such a mixed institution (...) will be found historically in the rise of security transactions in the period where free alienability of landed property was difficult and socially as well as legally restricted, juristically in the problems of execution after default and in the need for a device that would strengthen the creditor's right to evict the debtor and that would protect the new owner's claim to the property.³⁵

30. For detailed criticism of Fine's theory, see Harris 2006, 165-70.

31. Finley 1985, 33-4.

32. Finley 1985, 35.

33. Cf. Wolff 1953: "er aber unerklärt läßt, was er damit meint."

34. Finley 1985, 24.

35. Finley 1985, 35.

Again we encounter the same vagueness. Finley does not explain how the institution was “mixed” nor how it helped to overcome these alleged obstacles to alienability and execution. Furthermore he never specifies what these obstacles were. Finally, in an essay published in 1968 Finley actually contradicted himself by showing that there were no major restrictions on alienability in early Greece.³⁶

Even though Finley noted the difficulties in identifying any key differences between *prasis epi lysei* and *hypotheke*, he did not question the basic assumption shared by all scholars writing on the subject that the Athenians possessed two or three forms of real security. Scholars had observed that in Roman Law there were three basic forms of security and therefore assumed that the different terms used to describe real security in Greek must refer to different types of real security. But Finley and other scholars did not take into account the reasons why the Roman legal system could make a clear distinction among different forms of real security. Unlike the case in Athenian law, Roman law provided formal procedures for conveyance (*mancipatio* and *cessio in iure*) and also created one legal procedure to protect ownership (*dominium*), namely, the *vindicatio*, and another to protect legitimate possession (*possessio*), namely, the possessory interdict. These procedures made it possible to differentiate among three forms of real security. In the first form, *fiducia cum creditore*, the creditor gained ownership of the security through a formal transfer of ownership (*mancipatio*). In the second form, *hypotheca*, the creditor gained neither ownership nor legitimate possession but only a lien on the security, which he could then seize in the event of the borrower’s default. In the third form, *pignus*, the creditor gained legitimate possession (*possessio*) but not ownership (*dominium*) of the security when the borrower handed it to him. The law of Athens and other Greek city-states did not have formal modes of conveyance like the *mancipatio* and did not create formal procedures for protecting legitimate possession as opposed to ownership. This meant that Athenian law had no procedural mechanisms for creating distinctions among different types of real security.³⁷

Several pieces of evidence show that from a legal perspective there were no differences between the transactions involving real security expressed by the term *hypotheke* and its related verbs and those denoted by the language of sale. First, Pollux (*Onomasticon* 8.142) explicitly equates the two terms. The lexicographer observes that in his speech *Against Chares* Hyperides uses the term “selling” (ἁποδόμενος) instead of the term “pledging as security” (ὑποθείς). This indicates that he regarded the two terms as virtual synonyms, not as terms denoting different forms of real security.³⁸ Second, on one *horos* (Finley-Millett no.

36. Finley 1968c.

37. On these points, see Harris 2006, 174, 198–99.

38. Finley 1985, 224, note 11 attempted to explain away the evidence of Pollux, but, see Harris 2006, 190, note 68. Pelloso 2008 takes no account of this passage, which is key evidence against his view that there were two different kinds of real security.

80A and 81A) one finds two inscriptions about real security. Instead of using the language of *hypothēke* or the language of sale, the two inscriptions combine the language of the two standard formulas (80A, lines 2-3: ὑποκειμένης | ἐπὶ λύσει and 81A, lines 2-3: ὑποκειμένης | ἐπὶ λύσει). One cannot argue that this is a mistake because there is no sign that the inscriber attempted to correct the mistake; in fact, he repeated the formula. There are alternative ways of interpreting the expression: first, this denotes a third kind of real security, which is attested nowhere else in our sources; or second, that there was no essential difference between the transactions denoted by the different formulas, making it possible to combine elements from both. The first explanation is highly improbable; the second is supported by the statement of Pollux indicating that the two formulas referred to the same form of security.³⁹

Third, the terminology of *hypothēke* and the terminology of sale for real security are used interchangeably in the records of the *poletai* for the year 367/66 BCE.⁴⁰ The records for this year include the confiscation of property owned by Theosebes, who was accused of impiety, fled into exile, and was condemned in absentia. Before the *poletai* sold his property, three sets of creditors came forward to ask for repayment of loans made to Theosebes on the security of his property. The first loan was made by Smicythus of Teithras, to whom Theosebes' house had been pledged for a loan of 150 drachmas (lines 14-15: ὑπόκειται). The second loan was made by Kichonides of Gargettos and the *koinon* of the Medontidai *phrateres*, to whom the house had been "sold" (line 23: ἀποδομένο) for a loan of 100 drachmas (lines 16-25). Since Kichonides clearly did not claim that the house belonged to him, this line must refer to a loan on security. The final loan, this one for 24 drachmas, was made by Aeschines of Melite and a *koinon* of *orgeones*, who had also "bought" the house (lines 33-4: πριαμένων... ἡμῶν) (lines 30-35). In each case, the loan only creates a lien on Theosebes' property. Despite the language of sale used to describe two of the transactions, they did not create a conveyance because other loans were made on the same security and recognized as valid by the *poletai*.⁴¹ What is striking for the question of terminology is that the two formulas for real security are used interchangeably.

Fourth, the two formulas are also used interchangeably in the works of Demosthenes. When describing his father's estate, Demosthenes says that it included slaves pledged as security for a loan of forty *mnai* (D.

39. Cf. Harris 2006, 174-75.

40. The inscription was originally published in Crosby 1941, 14, no. 1. The inscription has been republished in Rhodes and Osborne 2003, no. 36.

41. Pelloso 2008, 77-78, note 154 claims that only the claim of Smicythus was considered valid and that "le altre due vendite erano da considerarsi invalide." But this assertion is contradicted by the language of the inscription, which clearly indicates that both claims were in fact considered valid (lines 25, 34-5: ἔδοξεν ἐνοφείλεσθαι). This undermines much of Pelloso's argument that there were two different types of real security.

27.9: ὑποκειμένου. See also D. 27.24). Later on in the speech, however, we learn that Demosthenes' guardians made another loan on the security of the same slaves (D. 27.27). This would indicate that the type of security called *hypothēke* did not transfer ownership to the creditor but only created a lien on the property. In the speech *Against Pantaenetus*, the speaker Nicobulus recounts how he and his partner made a loan of 105 *mnai* to Pantaenetus on the security of a workshop and thirty slaves (D. 37.4).⁴² Throughout the speech, Nicobulus uses the language of sale to describe the pledge of security (D. 37). Yet Nicobulus later tells us that there was another set of creditors on the same security (D. 37.13-15).⁴³ Even though Nicobulus casts doubts on their claims, he never argues that their lien was not binding because Pantaenetus' property had already been sold to them. The use of the language of sale is therefore misleading in this speech: although Pantaenetus claims that he had "bought" the property of Nicobulus, the latter was still able to make loans on the security of the same property in exactly the same way that Demosthenes' guardians made further loans on the same security.⁴⁴

The evidence reveals that Pollux was correct in viewing the terms "pledging as security" (ὑποθεῖς) and "selling" (ὑποδόμενος) as virtual synonyms. There is no reason to believe that the Athenians (or other Greeks) had two or more forms of security, one called *hypothēke*, the other *prasis epi lysei*. As we saw before, their legal conceptions and procedures did not allow them to make the same kinds of distinctions between different kinds of real security as were made in Roman law.⁴⁵ Finley realized that there were differences between Athenian law and Roman law, but this insight did not lead him to question the basic assumption made by previous scholars about real security in Greek law.⁴⁶ In this regard, *Studies in Land and Credit* was a conservative work, which did not break new ground.

42. For detailed analysis of the transactions in the speech, see Harris 2006, 190-99.

43. Pelloso 2008, 73, 75 only looks at the language of sale in D. 37.4 but does not notice that Pantaenetus also pledged the workshop and the slaves as security to other lenders and that Nicobulus deals with these creditors as if their claims were valid. This shows that Pelloso's view that the pledge of security in this case was an actual sale is wrong. This evidence also demonstrates that we must not interpret the language of sale too literally at D. 33.8, a passage on which Pelloso 2008, 72-3 places much weight.

44. Note that Nicobulus contrasts the "sales" of the security by Pantaenetus to his creditors with his later actual sale of the workshop and slaves (D. 37.31) by adding the term *kathapax* to mark the latter sale as different from the former. Pelloso 2008, 71-77 does not notice this passage and the contrast with D. 37.4, which undermines his argument that there was a distinction between two types of security.

45. The term *apotimema* does not refer to another kind of real security *pace* Finley 1952, 43-46, but is a general term for real security that is found not only in loan transactions but also in dowry agreements and leases - see Harris 2006, 207-40.

46. For the differences, see Finley 1985, 8.

II. Property Records and Market Activity

The two most influential assumptions for Finley's study of the *horoi* were that extensive markets did not exist in Classical Athens and that the Athenians did not keep written records about property transactions. Finley did not discuss markets in *Studies in Land and Credit*, but his view that real security was substitutive depends heavily on his conception of markets, a subject in *The Ancient Economy*.⁴⁷ At the end of the first chapter of this later book, Finley states (without citing any ancient sources) that the level of the specialization of labor was not high enough to create extensive inter-regional markets. On the basis of this assertion, Finley then omitted the terms "market" and "market-exchange" from the remaining chapters of *The Ancient Economy*. Recent work however has shown that the level of specialization was much higher than Finley assumed. For Athens alone, there is evidence for over 170 different occupations, which led to the creation of a permanent market in Athens, where prices were determined by supply and demand.⁴⁸

Finley was not alone in believing that the Greek city-states did not maintain documents about the ownership or property. This was a widespread assumption in 1952, and most scholars (myself included) accepted it in the following decades.⁴⁹ In two path-breaking essays published in 1997 and 2000, however, Michele Faraguna showed that there is much evidence for property records both in Athens and in other Greek city-states.⁵⁰ In the *Politics* Aristotle says that one of the regular offices found in a community is one having responsibility for records about property: "Another superintendency connected very closely with this one is the supervision of public and private properties in the city, to secure good order and the preservation and rectification of falling buildings and roads, and of the boundaries between different persons' properties, so that disputes may not arise about them, and all the other duties of supervision similar to these" (Ar. *Pol.* 1321b18-23). The purpose of these records is not to help the state to collect taxes but to make it easier to resolve disputes between individuals, in other words, to secure the rights of private owners. In another passage Aristotle (*Pol.* 1331b6-11) stresses the need to maintain records about legal relationships between individuals and court

47. See in particular his assertion that in calculating the value of the slave making he inherited from his father, Demosthenes did not think in market terms. Finley 1985, 116-17.

48. For occupations and the existence of permanent markets in Athens, see Harris 2002. For retail occupations outside Athens, see Ruffing 2008.

49. Note however that Wolff 1953, 420 drew attention to the Theophrastus fragment about the *hekatoste*, which I discuss below.

50. Faraguna 1997 and Faraguna 2000. For a recent study, see Game 2008. Frier and Kehoe 2007, 135-36 appear to be unaware of Faraguna's important studies ("the Greeks and Romans generally lacked the systematic public registries that are necessary for conclusive resolution of disputes over ownership, boundaries, land use, servitudes, liens; adequate resources and bureaucracies were simply unavailable").

decisions, which could be used as evidence in court to prove title. An entry in the lexicon of Hesychius (s.v. ἐν λευκώμασι) reports: “It was customary to register pieces of land and slaves sold on white boards, and they wrote on tablets of box-wood smeared with white clay the names of the properties and the slaves and those who purchased them so that if anyone wished, he could safely make a charge when he saw the white board.” This gives the impression that the practice of keeping records of sales was widespread.

At Athens sellers provided advance written notification of a sale, and buyers might pay a tax of 1% (*hekatoste*) as a kind of registration fee. As Theophrastus (Theophrastus fr. 21 (Szegedy-Maszak) [= Stobaeus 4.2.20]) says, “Some say that there should be advance written notification with a magistrate no fewer than sixty days before as at Athens and that the buyer should deposit one percent of the price so that whoever wishes to may raise a protest and lodge an objection and so that it may be clear by virtue of the payment who is the legal purchaser.” To provide documentation, the *poletai* kept records of these payments, which provided the name of the seller, the name of the buyer and a brief description of the property.⁵¹ These records are clearly not similar to modern property registers, which are organized by place with each property given a set of coordinates on a grid. They are records of a tax paid for a sale and serve as accounts for magistrates, the *poletai*, who had to report on public revenues at the end of their term of office. But by recording that the payment was made, these records could be used to prove ownership and therefore fulfilled one of the main functions of modern property registers.

The records of payment of the one-percent tax were not the only documentation of sales. The *poletai* also kept records of properties that had been confiscated and sold to new owners.⁵² The most famous example is a set of records for the property confiscated from those who were convicted of impiety during the affair of the desecration of the Herms and the parody of the Mysteries in 415.⁵³ These records do not give a helpful description of the land that is sold, but the records of the property sold after being confiscated from the Thirty in 403/2 are more informative.⁵⁴ There is the name and demotic of the person who reported the property, followed by the verb “reported” (ἀπέγραφεν) and by the property and the owner. The neighbors on the north and the south are given, then name of the buyer, and the surety who promises to pay the remaining amount of the price if the buyer does not. In the left-hand margin is the price of the property and the amount of the sales-tax.

51. For the texts of these inscriptions, see Lambert 1997, 5-74.

52. For the records of the *poletai*, see Langdon in Lalonde, Langdon and Walbank 1991, 58-60.

53. See IG i³ 421-430.

54. On these records, see Walbank 1982.

This kind of document served several purposes. First, it was a financial document, which recorded the revenue gained by the state from the sale and from the sales tax. In this regard it served to keep public officials, the *poletai*, accountable.⁵⁵ It also recorded the name of the surety who pledged to pay the purchase price if the buyer did not. But the document also provided evidence of the owner's title. The method of describing the property is very crude (only the deme and the names of the neighbors), but it should have been sufficient to identify its location. Another example comes from the records of the *poletai* for the year 367/6, discussed in the previous section. These records include the confiscation and sale of a house belonging to a certain Theosebes of Xypete located at Alopeke.⁵⁶ These records are more detailed and give the deme of the property as well as its borders: a road leading to the sanctuary of Daedalus, the sanctuary itself and the neighbor to the south, Philippus of Agryle. The records of the *poletai* were located at Athens, but there may have been other records located in the demes.⁵⁷

All this evidence was available to Finley, but he chose not to pay attention to it. This is not the minor oversight that it might appear to be. As Hernando de Soto has recently shown, the existence of public records to prove title are important for economic development. In a society where such records do not exist, transfers of land tend to move in a restricted circle of neighbors, family and friends. In a society where public authorities maintain such records, land tends to be transferred among a much wider group and expands the market in land. The existence of such records also encourages owners to view their land as a commodity that can be moved on the market. Finally, such records provide documentation of ownership, which in turn makes it possible for small landholders to obtain credit. As de Soto observes,

Any asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the market.... Without such a system, any trade of an asset, say a piece of real estate, requires an enormous effort just to determine the basics of the transaction: does the seller own the real estate and have the right to transfer it? Can he pledge it? Will the new owner be accepted as such by those who enforce property rights? What are the effective means to exclude the other claimants?⁵⁸

We can see these processes at work in Attica during the Classical period. First, the *hekatostai* records and the confiscation records reveal that many who purchased land came from outside the deme in which the property was located and were not family members. Second, many

55. For the examination of accounts presented by officials after their term of office, see Arist. *Ath. Pol.* 54.2 with Rhodes 1981, 597-99.

56. For the text, see Lalonde, Langdon and Walbank 1991, P5, lines 8-39.

57. On property records kept in the demes, see Faraguna 1997, 23-28.

58. de Soto 2000, 45.

lenders mentioned on the *horoi* come from outside the deme. Both circumstances show credit relations did not just move in the restricted circle of family, friends and neighbors.⁵⁹ Finley had this evidence before him, but did not compare the addresses of buyers and creditors on the one side, and properties on the other.

The *horoi* also reveal that credit on security was available to farmers of modest means. In the collection of *horoi* made by Finley and supplemented by Millett in 1985, there were 135 concerned with loans on real security. As we noted in section I, there are two kinds of expression used to indicate real security. The median value of the loans using the *hypothekē* terminology is 750 dr., and that for the *prasis epi lysei* terminology is 1,100 drachmas.⁶⁰ For both groups the median is therefore around 1,000 drachmas. These are relatively low figures: we should keep in mind that those in the liturgical class, which was probably about 1,200 of the citizen population in the fourth century, had at least three talents or 18,000 drachmas and in most cases much more.⁶¹ Probably over three-quarters of the male citizens in Attica owned property. There are also sixteen loans for 500 dr. or less. This reveals that even those with a small amount of land could still obtain access to credit. This would tend to confirm the anecdotal evidence found in Aristophanes' *Clouds* (1178-1200) that the *demos*, that is the non-elite part of the population, was in debt. This evidence, which Finley compiled himself and supplemented by his student Millett, completely undermines one of his main conclusions.

Because Finley believed that most lending was confined to the elite and credit was not widely available (despite the abundant evidence of the *horoi*), he assumed that there were no laws about real security, which allegedly reflected the low level of economic development. This is Finley's second conclusion in my list. Finley overlooked three key passages that prove him wrong.⁶² First, Isaeus (10.24) states that the person in possession of a disputed property was compelled to bring forward either the seller or the person who pledged the property as security, or to demonstrate that the property had been awarded to him by a legal judgment. This shows that Athenian law placed the person who acquired a property through a pledge of real security on the same footing as someone who acquired it by sale or by a court judgment. It therefore recognized the right of a creditor to acquire a property from a borrower after default. Second, the law provided a private action, the *dike exoules*, for the creditor against a debtor who had pledged his property as security and refused to yield possession.

59. For the evidence, see Harris forthcoming. This seriously undermines the analysis of lending and borrowing by Millett 1991, a student of Finley.

60. See Millett in Finley 1985, xx-xxi. New security *horoi* have been published since 1985, but they do not appear to change these figures.

61. For the size of estates owned by those in the liturgical class, see Davies 1971, xx-xxii.

62. For analysis and discussion of these three laws, see Harris 2006, 234-39.

The evidence for this procedure is found in an entry in Harpocration (s.v. ἐξούλης), who cites several sources.

The name of a private action that those who claim that they have been excluded from their property bring against those who exclude them....Those who do not receive (the money) before the relevant deadline also bring actions for the payment of penalties....Those who are convicted on a charge of *exoule* give the winner of the suit what they took away from him and also pay the treasury the assessed penalty. The creditor who was attempting to take possession of property belonging to a debtor, but was prevented by someone, also used to bring a private suit for ejectment.⁶³

This law recognized therefore the right of the creditor to take possession of a property pledged to him as security.

The third law is paraphrased twice in Demosthenes' speech *Against Spudias* (41.7-10). Polyeuctus had given his daughter in marriage to the speaker but not paid the entire dowry. He therefore pledged a house as security for the remainder. When Polyeuctus died, the speaker took possession of the house, but Spudias attempted to prevent him from collecting the payment of rent on the house. The speaker then cites a law that forbids those who have pledged a property as security from making a claim on it once the creditor has taken possession. Previous law granted the creditor the right to take possession of a security, but this new law protected the creditor against any claims made by the debtor or his heirs after he has taken possession.

Finley cites all three of these passages in *Studies in Land and Credit*, but when discussing legislation about credit and real security in the sixth chapter of his book, ignores them.⁶⁴

III. Substitutive vs. Collateral Security

Finley's view that real security in Athens was substitutive and not collateral, his first conclusion in my list, was closely connected with his view that the Athenians did not think in market terms, his second main assumption. His view that real security at Athens was substitutive rested mainly on the account Demosthenes gives of his father's estate in his first speech *Against Aphobus* (D. 27.9-11). Finley (1985) 116

63. ὄνομα δίκης ἦν ἐπάγουσιν οἱ φάσκοντες ἐξείργεσθαι τῶν ιδίων κατὰ τῶν ἐξειργόντων....δικάζονται δὲ ἐξούλης καπὶ τοῖς ἐπιτιμίοις οἱ μὴ ἀπολαμβάνοντες ἐν τῇ προσηκούσῃ προθεσμίᾳ,.... οἱ δὲ ἀλόντες ἐξούλης καὶ τῷ ἐλόντι ἐδίδοσαν ἅ ἀφηροῦντο αὐτόν, καὶ τῷ δημοσίῳ κατετίθεσαν τὰ τιμηθέντα. ἐδικάζετο ἐξούλης καὶ ὁ χρήστης κατέχειν ἐπιχειρῶν χρήμα τοῦ χρεωστοῦντος καὶ κωλυόμενος ὑπὸ τινος.

64. Finley 1985, 228, note 33, 233, note 51 cites Is. 10.24; Finley 1985, 245, note 61, 296, note 20 cites D. 41.7. Though Finley cites several passages from Harpocration's lexicon, I can find no reference to the entry on ἐξούλης.

quotes the passage, then notes that Demosthenes' "arithmetic is hopelessly inaccurate." He then continues:

For the slaves who made cutlery, Demosthenes indicates, in a rough way, a market price. It is uncertain whether this was the price his father actually paid or what the slaves would have brought if they had been sold at the time the elder Demosthenes died, but it is a genuine price in either event. For the twenty bed-makers, however, he gives the size of the debt which they secured, and this figure is correlated with the actual price of the other group of slaves. That the bedmakers were worth more on the market than the amount of the debt is obvious. Yet Demosthenes, who is seeking to show the magnitude of his inheritance and hence the great wealth of which he has been robbed by Aphobus, does not think of re-calculating the value of the twenty slaves in market terms.

Now comes the epigrammatic conclusion of this passage, which I have cited partly as an example of Finley's style in this book:

His father had received them against a loan of forty minas, and forty minas was to be their figure forevermore. The idea of hypothecation, like the reality, was purely substitutive.⁶⁵

If we accept Finley's view, there is a problem with Demosthenes' arithmetic. He gives the value of slaves making cutlery as five or six *mnai* each, none worth less than three *mnai* (D. 27.9-11).⁶⁶ This points toward an average value of five *mnai* each and a total of two talents, forty or forty-five *mnai* in total. Later Demosthenes says that the value of the productive assets in the estate, that is, the slaves making cutlery, the slaves making beds, and a talent loaned at interest was four talents, fifty *mnai*. The slaves making beds must be worth more than the 40 *mnai* of the loan. But if we assume that Demosthenes put the market value of these slaves at sixty-five or seventy *mnai*, the arithmetic works very well. One should note that in the rest of the passage there is nothing wrong with Demosthenes' arithmetic. Finally, if we calculate the value of the bed-makers at 65-70 *mnai* the annual income of 12 *mnai* is a return on investment of roughly 18%, which is comparable to the return on investment for the slaves in the cutlery shop (30 *mnai* a year on an investment of 160-5 *mnai*). There is nothing wrong with Demosthenes' arithmetic – the problem lies with Finley's assumption about the substitutive nature of real security.

65. Finley 1985, 116.

66. For detailed analysis of the passage, see Harris 2006, 179-81. For an analysis of Demosthenes' father's estate, see Harris 2002, 81-83.

Because Finley assumed that there were no extensive markets, he also assumed that the Athenians could not conceive of land and other kinds of property as commodities. This in turn led him either to ignore or to explain away the following seven pieces of evidence for collateral security in Athens and other Greek cities.⁶⁷

1) D. 28.18

To where would we turn if you should vote for any other verdict? To the property pledged as security to our creditors? But that belongs to them. To the excess (resulting from the sale of the security)? But that belongs to him if we owe the *epobolia*.⁶⁸

Demosthenes brought a private suit against his guardians for mismanaging and embezzling his inheritance. In this passage he tells the judges that if they vote against him, he will not have any property left. He claims that he has pledged most of his property as security to his creditors for loans contracted to pay for liturgies and other expenses. Demosthenes states that should his creditors seize and sell this property, he would still have a right to the excess (περίοντα) from which he can pay Aphobus the *epobolia* for losing his suit. The *epobolia* was a penalty of one-sixth the amount claimed in a private suit for plaintiffs who lost their cases.⁶⁹ Demosthenes therefore assumes that he will have a right to any difference between the sale price of the security and the amount of his obligation to his creditors. If real security in Athenian law was substitutive, Demosthenes would not have a right to any excess.

2) D. 33.10

After stationing men to guard the ship, I told the whole story to the sureties of the bank and turned the security over to them, telling them that the foreigner had a lien of ten *mnai* on the ship. Having arranged this, I attached the slaves, in order that, if any shortage occurred, the deficiency might be made up by the proceeds of their sale.⁷⁰

67. In an essay published the year after *Studies in Land and Credit*, Finley 1953, recognized that the loans recorded in the *poletai* records for the year 367/6 do provide examples of collateral security but tried to dismiss them as exceptional. This inscription was published by Crosby in 1941 and is mentioned by Finley 1952, 111-13, but Finley strangely enough did not mention its implications for his ideas about substitutive security in that work. Wolff 1953, 424-25 noted that Finley's views about multiple creditors created problems for his view that real security was substitutive.

68. ποῖ δ' ἂν τραποίμεθα, εἴ τι ἄλλο ψηφίσαισθ' ὑμεῖς περὶ αὐτῶν; εἰς τὰ ὑποκείμενα τοῖς δανείσασιν; ἀλλὰ τῶν ὑποθεμένων ἐστίν. ἀλλ' εἰς τὰ περιόντα αὐτῶν; ἀλλὰ τούτου γίγνεται, τὴν ἐπωβελίαν ἔαν ὀφλωμεν.

69. On the *epobolia*, see MacDowell 2008.

70. καταστήσας δὲ φύλακας τῆς νεώς, διηγησάμην τοῖς ἐγγυηταῖς τῆς τραπέζης τὴν πρᾶξιν, καὶ παρέδωκα τὸ ἐνέχυρον, εἰπὼν αὐτοῖς ὅτι δέκα μναὶ ἐνεῖησαν τῷ ξένῳ ἐν τῇ νηί. ταῦτα πράξας κατηγγύησα τοὺς παῖδας, ἵν' εἴ τις ἐκδεῖα γίγνοιτο, τὰ ἐλλείποντα ἐκ τῶν παίδων εἴη.

This passage comes from the speech *Against Apaturius*. The speaker tells how Apaturius had failed to make repay a loan and was being pressed by his creditors, who were about to seize his ship. Parmeno, a friend of Apaturius, consented to lend him ten *mnai*, which he borrowed from the banker Heracleides, and asked the speaker to contribute thirty *mnai*. Parmeno then quarrelled with Apaturius and asked the speaker to assume full responsibility for the loan. The speaker drew up an agreement in which he listed himself as creditor for ten *mnai*. The speaker however does not consider the ship as equivalent to the debt (substitutive security) because he envisages the possibility that the proceeds from the sale of the ship might not cover the entire loan. In this case, he would be entitled to ask for the shortfall from Apaturius (collateral).

3) *IG ii2 2670* = Finley (1985) no. 146.

Marker [of a property] pledged as security for the dowry of Hippocleia, the daughter of Demochares of Leuconoion, 1 talent. The excess value has been pledged to the Kekropidai, the Lukonidai, and the Phleians.⁷¹

4) *Hesperia* Suppl. 7 (1943) 1, no. 1 = Finley (1985) no. 147, lines 1-7.

Marker of a house pledged as security for the dowry of Eirene (?), daughter of Antidorus of Leuconoion, 1,000 drachmas. The excess value have been pledged as security to Aglaotime for 200 drachmas, and to the Gephyraioi for 200 drachmas...⁷²

In both of these arrangements, there is an implicit agreement that the security would be sold in case of default and the excess of the amount over the amount of the first lien would be given to the other creditors. In others words, this presupposes a forced sale, not joint ownership by the creditors. Once more, even though the security is already pledged to one set of creditors, the borrower still has the right to pledge the difference between the amount of the first loan and the market value of the security to another creditor. The property is not a substitute for the debt but serves as collateral.

5) *SIG³ 976*, lines 64-68 – Law about Grain from Samos – 200-150 BCE

If any of the borrowers does not pay back the money either the entire sum or a part, let the *Chiliastys* sell the security (*hypothema*). If there is an excess amount, let him return it to the person who gave the security. If there is a deficit, let him collect it from the person who provides the security.⁷³

71. ὅρος χωρίο προικὸς | Ἰποκλείαι Δημοχάρ[ρ]ος Λευκονοιῶς Τ· | [ὄσ]ωι πλειονος ἄξι[ον] Κεκροπίδαις | [ὑπό]κειται καὶ Λυκ[ομί]δαις καὶ Φλυεῦ[σι].

72. ὄ[ρ]ος οἰκίας ἀποτε[τιμ]ημένης προικὸς Ε[ιρη?]νεί Ἀντιδώρου Λευ[κονοι]έως θυγατρὶ Χ δρα[χμῶν] | ὄσωι πλέονος ἀξία ἐ[τιμήθ]η Ἀγλαοτίμει ὑπόκε[ιται] | ΗΗ καὶ Γεφυραίοις ΗΗ [...]

73. ἐὰν δέ τις τῶν | δανεισαμένων μὴ ἀποδιδῷ τὸ ἀργύριον ἢ πᾶν ἢ μέρος τι, τὸ ὑπόθεμα ἀποδόσθω ἢ χιλαστὺς, καὶ ἐὰν τις ὑπεροχὴ γένηται[ι], | ἀποδότω τῷ τὸ ὑπόθεμα δόντι. ἐὰν δέ τι ἐνλίπη, τὴν πρᾶξιν | ποιησάσθω ἐκ τοῦ ἐγγύου.

This law indicates that in the event of default a public official will sell the security. If the sale brings in an amount larger than the debt, the debtor has the right to the excess. On the other hand, if the proceeds from the sale are less than the amount of the loan, the debtor must pay the shortfall. Once more, the security is not a substitute for the loan but is viewed as a commodity that has a cash value. The creditor is interested not in gaining ownership of the property but in the cash value of the property.

6) SIG³ 672, lines 64-72 – Decree of Delphi – 162-160 BCE

If they do not pay back in accordance with what has been recorded, let their securities belong to the city, and the Overseers who made the loans have the power to sell them. If the securities once they are sold do not provide the money (i.e. the loan) for which they were pledged to the city, let the borrower and his sureties be liable to the Overseers for the remaining sum (which they can collect) in any way they wish to collect, in the same way as they do with other public and temple money.⁷⁴

As in the law from Samos, the security is not viewed as a substitute for the loan, but as providing cash from its sale. The debtor has the right to the excess. In both of these laws there is a forced sale carried out by public officials.

7) SIG³ 364, lines 32-41 – Law of Ephesus about Debt (early third century BCE)

All those who have lent money on the surplus (of property already pledged as security) can recover their money from the excess, whether there is one (creditor) or are more (than one), the first (lenders) and the others in that order. If some have given property to others as security when borrowing money from others making them believe that this property is unencumbered and deceive the later lenders, it is permitted for the later lenders to exchange places with the previous lenders taking into consideration the Common War and take possession of the property. But if there is still something owing to them, the lenders have the right to recover from all the property of the borrower in whatever way they can without incurring any penalty.⁷⁵

74. εἰ δέ κα μὴ ἀποδιδῶντι καθὼς γέγραπται, τὰ ἐνέχυρα αὐτῶν τᾷς πόλεις ἔστω, καὶ οἱ ἐπιμεληταὶ αἱ οἱ ἐγδανείζοντες κύρι[ι]οι ἔστωσαν πωλέοντες· εἰ δὲ πωλείμενα τὰ ἐνέχυρα μὴ εὐρίσκοι τὸ ἀργύριον ποθ' ὃ ὑπέκειτο τῇ πόλει, πρᾶκτιμοὶ ἔστωσαν τοῖς ἐπιμεληταῖς αἱ τοῖς ἐνάρχουσιν τοῦ ἑλλείποντος ἀργυρίου αὐτὸς τε ὁ δανεισάμενος καὶ οἱ γενόμενοι ἑγγυοὶ, τρόπῳ ᾧ θέλοιεν πράσσειν, καθὼς καὶ τᾷ[λ]α δαμόσια καὶ ποθίερα πράσσονται.

75. ὅσοι δὲ ἐπὶ τοῖς ὑπερέχουσιν δεδανείκασιν, εἶναι τὴν κομιδὴν αὐτοῖς ἐκ τοῦ περιόντος μέρους τῷ γεωργῷ, κἂν εἷς κἂμ πλείους ᾦσι, τοῖς πρώτοις πρώτοις καὶ τοῖς ἄλλοις ἐπεξῆς, τὸν δὲ νόμον εἶναι καὶ τούτοις καθάπερ καὶ τοῖς πρώτοις δανείκασιν; εἰ δὲ τινες ὑποθέ[ν]τες ἄλλοις κτήματα δεδανεισμένοι εἰσὶν παρ' ἐτέρων ὡς ἐπ' ἐλευθέρους [τοῖς κ]τήμασι, ἐξαπατήσαντες τοὺς ὑστέρους δανειστάς; ἐξεῖναι τοῖς ὑστέροις [δανεισ]ταῖς ἐξαλλάξασιν τοὺς πρότερον δανειστάς κατὰ τὸν

Here again, the creditor has the right to demand any deficit between the price obtained by the sale of the security and the amount of the obligation.

In all these passages it is taken for granted that the security can readily be converted into cash. In an economy where there were permanent markets in most communities, that should come as no surprise. This evidence also confirms one of de Soto's insights about the role of property records in enhancing the economic potential of assets. When one records the ownership of a house or land in writing, one starts to think about the object as an economic asset. What was formerly viewed as a place to live or to grow crops becomes something which can produce value either as collateral for a loan or as equity that can be exchanged in the market.⁷⁶

Conclusion

A careful analysis of the basic assumptions and main conclusions of *Studies in Land and Credit* reveals it to be a deeply flawed work. Although it contains a useful collection of texts, its approach is based on three assumptions that recent research has shown to be incorrect. These assumptions in turn influenced his main conclusions, several of which are not supported by the evidence Finley himself assembled in Appendix I and Appendix III of his work. It is ironic that Finley, who so often scolded other scholars for selective use of evidence, did not examine his own appendices when studying the *horoi*. It is also ironic when, in his discussion of the nature of social relations in the Attic countryside, he cites Wilamowitz, not Marx or Weber.⁷⁷ *Studies in Land and Credit* is in some respects a conservative work, almost timid; it does not question many traditional views about the subject. The views that there were two or three forms of real security in Greek Law, that there were no property records and that real security was substitutive, were all staples in the scholarly literature long before 1952.

The same is true of much of Finley's later writing. His views about the role of slavery in the Homeric poems and the late Archaic period owe much to the work of E. Meyer and his own teacher W. L. Westermann.⁷⁸ Much of the analysis in *The Ancient Economy* draws extensively on the work of M. Weber and J. Hasebroek. Many of his comparisons between Ancient Greece and the Near East rely on assumptions (now generally

συλλογισμὸν τοῦ κοινοῦ πο[λέμου] ἔχειν τὰ κτήματα. ἐὰν δὲ ἐνοφείληται τι αὐτοῖς ἔτι, εἶναι τὴν κομιδὴν τοῖς | [δανειστ]αῖς ἐκ τῆς ἄλλης οὐσίας τοῦ χρειστοῦ πάσης, τρόπῳ ᾧ ἂν δύνωνται, ἀζημίους | [ἀπάση]ς ζημίας.

76. On the advantages of property records, see de Soto 2000, 47-62.

77. Finley 1952, 27 with 220, note 86. It is amusing to note that in his review of *Studies in Land and Credit* Pringsheim 1953, 224 faulted Finley for not heeding the views of Max Weber about the relationship between law and economy.

78. For Finley's debt to E. Meyer, see Harris 2012b.

rejected) about “the Asiatic mode of production,” one of Marx’s less successful ideas and Polanyi’s views about the economy of the ancient Near Eastern, now widely rejected.⁷⁹ One can view much of *The World of Odysseus* as an attempt to popularize the ideas of K. Polanyi about gift-giving. And his view that Solon abolished debt-bondage, now shown to be untenable, was a traditional one shared by many scholars.⁸⁰

The time has come for a new study of the security *horoi* and of real security in the law of Athens and other Greek *poleis*. This study should contain a collection of all published *horoi* with readings based on autopsy and with an attempt to record the find spots of all the stones (something Finley did not do in a systematic way).⁸¹ The analysis of the *horoi* must also place the legal analysis of real security in its proper historical context, that is, in a society that had extensive written records documenting sales and ownership of land and markets in commodities, land and credit.⁸²

Bibliography

- Arangio-Ruiz, V. (1952). Review of Finley 1952. *AG* 142: 164-73.
 Beauchet, L. 1897. *Histoire du droit privé de la république athénienne*. Paris.
 Berger, A. (1952). Review of Finley. *Seminar* 10: 87-97.
 Bresson, A. 2000. *La cité marchande*. Bordeaux.
 Bresson, A. 2007. *L'économie de la Grèce des cités (fin VI^e-I^{er} siècle a.C.) I: Les structures et la production*. Paris.
 Bresson, A. 2008. *L'économie de la Grèce des cités (fin VI^e-I^{er} siècle a.C.) II: Les espaces de l'échange*. Paris.
 Cartledge, P., Cohen, E. and Foxhall, L. eds. 2002. *Money, Labour and Land in Ancient Greece*. London and New York.
 Cohen, E. E. 1990. “Commercial Lending by Athenian Banks: Cliometric Fallacies and Forensic Methodology,” *CPh* 85: 177-90.
 Cohen, E. E. 1992. *Athenian Economy and Society: A Banking Perspective*. Princeton.
 Crosby, M. 1941. “Greek Inscriptions,” *Hesperia* 10: 14-27.
 Davies, J. K. 1971. *Athenian Propertied Families, 600-300 B.C.* Oxford.
 de Soto, H. 1989. *The Other Path: The Economic Answer to Terrorism*. New York.

79. For trenchant criticism of Finley’s views about Greek slavery and the Near East see Lewis 2011, especially 31-2, note 50.

80. On Solon’s reform and the continued existence of debt-bondage in Classical Greece, see Harris 2006, 249-69.

81. On the importance of the find spots of the Attic *horoi* see Harris forthcoming.

82. An earlier version of this essay was presented at a panel about Finley organized for the meeting of the Association of Ancient Historians in North Carolina in May 2012. I would like to thanks the organizers of this panel for the invitation to speak. I would also like to thank Alain Bresson for reading over a draft and offering encouraging remarks. Finally, I owe an enormous debt to David Lewis and Vasia Psilakakou for proof-reading this essay and checking references.

- de Soto, H. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. London.
- Faraguna, M. 1997. "Registrazioni catastali nel mondo greco: il caso di Atene," *Athenaeum* 85: 7-33.
- Faraguna, M. 2000. "A proposito degli archivi nel mondo greco: terra e registrazioni fondiariae," *Chiron* 30: 65-115.
- Fine, J. V. A. 1951. *Horoi: Studies in Mortgage, Real Security and Land Tenure in Ancient Athens* = *Hesperia* Suppl. 9. Baltimore.
- Finley, M. I. 1952. *Studies in Land and Credit in Ancient Athens, 500-200 B. C.* New Brunswick NJ.
- Finley, M. I. 1953. "Multiple charges on real property in Athenian law: new evidence from an Agora inscription" in *Studi in onore di Vincenzo Arangio-Ruiz*. I, vol. III. Naples; 473-91.
- Finley, M. I. 1954. *The World of Odysseus*. New York.
- Finley, M. I. 1963. *The Ancient Greeks*. London.
- Finley, M. I. 1968a. *Aspects of Antiquity: Discoveries and Controversies*. London.
- Finley, M. I. 1968b. *A History of Sicily: Ancient Sicily to the Arab Conquest*. London.
- Finley, M. I. 1968c. "The Alienability of Land in Early Greece: A Point of View," *Eirene* 7: 25-32.
- Finley, M. I. 1970. *Early Greece: The Bronze and Archaic Ages*. London.
- Finley, M. I. 1973a. *Democracy Ancient and Modern*. London.
- Finley, M. I. 1973b. *The Ancient Economy*. Berkeley and Los Angeles.
- Finley, M. I., ed. 1973c. *Problèmes de la terre en Grèce ancienne*. Paris and The Hague.
- Finley, M. I. 1975. *The Use and Abuse of History*. London.
- Finley, M. I., ed. 1976. *Studies in Roman Property*. Cambridge.
- Finley, M. I. 1980. *Ancient Slavery and Modern Ideology*. London.
- Finley, M. I. 1981. *Economy and Society in Ancient Greece*. Edited with an introduction by B. D. Shaw and R. P. Saller. London.
- Finley, M. I. 1983. *Politics in the Ancient World*. Cambridge.
- Finley, M. I. 1985. *Studies in Land and Credit in Ancient Athens, 500-200 B. C.* 2nd ed. rev. and with new introduction by P. Millett. New Brunswick and Oxford.
- Frier, B. and Kehoe, D. P. 2007. "Law and Economic Institutions," in Scheidel, Morris and Saller 2007: 113-43.
- Gagarin, M. and Cohen, D., eds. 2005. *The Cambridge Companion to Ancient Greek Law*. Cambridge.
- Game, J. 2008. *Actes de vente dans le monde grec: témoignages épigraphiques des ventes immobilières*. Lyon.
- Garnsey, P., Hopkins, K. and Whittaker, C. R., eds. 1983. *Trade in the Ancient Economy*. London.
- Gauthier, P. 1989. "Bulletin épigraphique: Institutions," *REG* 102: 39-408.
- Goody, J. 2006. *The Theft of History*. Cambridge.
- Harris, E. M. 1988. "When is a Sale not a Sale? The Riddle of Athenian Terminology for Real Security Revisited," *CQ* 38: 351-81.
- Harris, E. M. 1989. "The Liability of Business Partners in Athenian Law: The Dispute between Lycon and Megalceides ([Dem.] 52.20-1)," *CQ* 39: 339-43.
- Harris, E. M. 1992. "Women and Lending in Athenian Society: A Horos Re-Examined", *Phoenix* 46: 309-21

- Harris, E. M. 1993. "Apotimema: Athenian Terminology for Real Security in Leases and Dowry Agreements," CQ 43: 73-95.
- Harris, E. M. 1997. "A New Solution to the Riddle of the *Seisachtheia*" in Mitchell and Rhodes 1997: 103-112.
- Harris, E. M. 2002. "Workshop, Marketplace, and Household: The Nature of Technical Specialization in Classical Athens and its Influence on Economy and Society" in Cartledge, Cohen and Foxhall 2002: 67-99.
- Harris, E. M. 2004. "More Thoughts on Open Texture in Athenian Law" in Leão, Rossetti and Fialho 2004: 241-63.
- Harris, E. M. 2006. *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics*. Cambridge and New York.
- Harris, E. M. 2008. "Response to Gerhard Thür," in Harris and Thür 2008: 189-200.
- Harris, E. M. 2012a. "Hypotheca in Roman Law and ὑποθήκη in Greek Law," in Legras 2012: 433-42.
- Harris, E. M. 2012b. "Homer, Hesiod, and the 'Origins' of Greek Slavery," REA 114.2: 345-66.
- Harris, E. M. forthcoming. "The Legal Foundations of Economic Growth in Ancient Greece: The Role of Property Records" in Harris, Lewis and Woolmer forthcoming.
- Harris, E. M., Lewis, D. M. and Woolmer, M., eds. forthcoming. *Households, City-States, and Markets*. Cambridge and New York.
- Harris, E. M. and Thür, G., eds. 2008. *Symposion 2007: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Vienna.
- Hatzopoulos, M. B. 1991. *Actes de vente d'Amphipolis* (= MELETEMATATA 14). Athens.
- Hitzig, H. F. 1895. *Das griechische Pfandrecht*. Munich.
- Lalonde, G. V., Langdon, M. K. and Walbank, M. B. 1991. *Horoï, Poletai Records, Leases of Public Lands* (= Agora XIX). Princeton.
- Lambert, S. D. 1997. *Rationes Centesimarum: Sales of Public Land in Lykourgan Athens*. Amsterdam.
- Leão, D., Rossetti, D. and Fialho, M., eds. 2004. *Nomos — estudos sobre direito antigo*. Coimbra.
- Legras, B. ed. 2012. *Transferts culturels et droits dans le monde grec et hellénistique*. Paris.
- Lewis, D. M. 2011. *Greek Slavery in a Near Eastern Context: A Comparative Study of the Legal and Economic Distinctiveness of Greek Slave Systems*. diss. Durham University.
- Lipsius, J. H. 1905-15. *Das attische Recht und Rechtsverfahren*. 3 vols. Leipzig.
- MacDowell, D. M. 2004. *Demosthenes, Speeches 27-38*. Austin TX.
- MacDowell, D. M. 2008. "The Athenian Penalty of *Epobelía*," in Harris and Thür 2008: 87-94.
- Maffi, A. 2005. "Family and Property Law," in Gagarin and Cohen 2005: 254-66.
- Manigk, A. 1916. "Hyperocha," RE 9: cols. 292-321.
- Millett, P. C. 1983. "Maritime loans and the structure of credit in Fourth-Century Athens" in Garnsey, Hopkins, Whittaker 1983: 36-52.
- Millett, P. 1991. *Lending and Borrowing in Ancient Athens*. Cambridge.
- Mitchell, L. G. and Rhodes, P. J., eds. 1997. *The Development of the Polis in Archaic Greece*. London and New York.
- Morris, I. 1994. "The Athenian Economy Twenty Years After *The Ancient Economy*," CPh 89: 351-66.

- Pelloso, C. 2008. "Influenze greche sul regime romano della 'hypotheca'?" *Teoria e storia del diritto privato* 1: 1-106.
- Pringsheim, F. 1950. *The Greek Law of Sale*. Weimar.
- Pringsheim, F. 1953. Review of Finley 1952. *Gnomon* 25: 223-31.
- Rhodes, P. J. 1981. *A commentary on the Aristotelian Athenaion Politeia*. Oxford.
- Rhodes, P. J. and Osborne, R. 2003. *Greek Historical Inscriptions (404-323 B.C.)*, Oxford.
- Ruffing, K. 2008. *Die berufliche Spezialisierung in Handel und Handwerk: Untersuchungen zu ihrer Entwicklung und zu ihren Bedingungen in der römischen Kaiserzeit im östlichen Mittelmeerraum auf der Grundlage griechischer Inschriften und Papyri*. 2 vols. Rahden.
- Scheidel, W., Morris, I. and Saller R., eds. 2007. *The Cambridge Economic History of the Greco-Roman World*. Cambridge.
- Schulz, F. 1951. *Classical Roman Law*. Oxford.
- Thompson, W. E. 1982. "The Athenian entrepreneur," *AC* 51: 53-85.
- Thür, G. 2008. "Ownership and Security in Macedonian Sale Documents" in Harris and Thür 2008: 173-187.
- Todd, S. C. 1993. *The Shape of Athenian Law*. Oxford.
- Walbank, M. B. 1982. "The Confiscation and Sale by the Poletai in 402/1 B. C. of the Property of the Thirty Tyrants," *Hesperia* 51: 74-98.
- Walser, A. V. 2008. *Bauern und Zinsnehmer: Politik, Recht und Wirtschaft im frühhellenistischen Ephesos (= Vestigia 59)*. Munich.
- Wolff, H.-J. 1953. Review of Finley 1952 and Fine 1951. *ZRG* 70: 411-25.
- Youni, M. 1996. "À propos de quatre inscriptions olynthiennes: Quelques remarques sur la sûreté réelle au 4ème siècle av. J.-C.," *Tekmeria* 2: 135-53.