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A NEW READING IN POXY XIII 1606 (LYSIAS, *AGAINST HIPPOTHESES*)

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## A NEW READING IN POXY XIII 1606 (LYSIAS, AGAINST *HIPPOTHERSES*)\*

Until the discovery of the Oxyrhynchus papyri the speech of Lysias *Against Hippothereses* was known only by the references of Harpocration<sup>1</sup>. The text edited by Grenfell and Hunt was published in 1919<sup>2</sup>, and since then many scholars have discussed it, as the speech which was concerned with the confiscated property of Lysias furnished abundant information on the life of the orator himself and the political and social changes which followed the restoration of democracy in 403 B.C.<sup>3</sup> The speech seems to have been delivered soon after the restoration of the democracy in 403 B.C., and its title in the papyrus is Πρὸς Ἴπποθέρησιν ὑπὲρ θεραπαίνης (Fr. 6, ll. 237-238).

The speech is so fragmentary that much is left in obscurity about the dispute which Lysias seems to have been involved in. According to Grenfell's explanation, the orator prosecuted Hippothereses through his own servant (θεράπεινα), using some form of δίκη ἐξούλης to recover his own property (land and houses) and eject Hippothereses, who refused to return it without compensation<sup>4</sup>. However, it is not evident that Lysias had land and houses; rather it should be concluded from ll. 43-44 that he did not<sup>5</sup>.

Some interpretations differing from Grenfell's have been offered. Arguments have mainly focused on the facts of the case such as identifications of litigants<sup>6</sup>, type of lawsuit<sup>7</sup> and the kind of

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<sup>1</sup> Harpocration, s. v. ἀφανῆς οὐσία καὶ φανερά; Ἰερώνυμος.

<sup>2</sup> B. P. Grenfell and A. S. Hunt, *The Oxyrhynchus papyri*, XIII, London, 1919, No. 1606. Afterwards, a few more fragments were placed in their correct positions by E. Lobel, *Bodleian Quarterly Record*, IV (1923-25), Oxford, 1926, 47-48 and V (1926-8), 1929, 303-304.

<sup>3</sup> Grenfell/Hunt, POxy XIII, 50; L. Gernet et M. Bizos, *Lysias: Discours*, II. Paris, 1926, 231. However, J. H. Lipsius, "Lysias' Rede gegen Hippothereses und das attische Metoikenrecht" in *Berichte über die Verhandlungen der sächsischen Akademie der Wissenschaften*, 71-9 (1919), 2-3, dated the speech to soon after 394 B.C., while T. C. Loening, "The Autobiographical Speeches of Lysias and the Biographical Tradition" in *Hermes* 109 (1981), 287-289 infers that *Against Hippothereses* predated Lysias XII.

<sup>4</sup> Grenfell/Hunt, POxy XIII, 49-50.

<sup>5</sup> However, Gernet/Bizos, *Lys. Dis.* II, 230, n. 4; 253, n. 1 assumed that οὗτος does not represent Lysias.

<sup>6</sup> Lysias is always mentioned in the third person, and this shows that he did not deliver the speech himself. It is certain that Lysias was a defendant as φεύγει in line 183 tells us, and the speaker must be either his synegoros (U. Schindel, *RhM* 110 (1967), 35, n. 13; H. Hommel, *RE* 15A (1932), 1444) or his prostates. The latter view had been mainly based on the assumption that in the fifth and early fourth centuries B.C. metics were barred from appearing in court, but could only do so through the agency of a prostates (J. H. Lipsius, *Ber. sächs. Akad. Wiss.*, 71-9, 5; T. C. Loening, "The Autobiographical Speeches of Lysias, 289). However, D. Whitehead opposed this assumption (*The Ideology of the Athenian Metic*, Cambridge, 1977, 159): neither in the fifth century B.C. nor later did metics have to be represented by their prostatai, either before magistrates or in court. He contended that many xenoi (by virtue of symbolai or as members of the arche) had direct access to Athenian courts, so this can scarcely have been denied to resident foreigners. If so, Lysias could appear in court. The speech was probably delivered by a synegoros.

the property in dispute<sup>8</sup>. At the same time, lines 34-47 have been often cited and discussed, not only because they are the sole evidence we have of the property provisions of the reconciliation agreement<sup>9</sup>, but also because the text here is so damaged and hard to read.

Grenfell's reading was as follows.

κατηλθεν κελουουσων  
των συνθηκων τα μεν  
40 πεπραμενα τους εωνη  
μενους εχειν τα δε α  
[π]ρατα τους κατελθοντας  
κομιζεσθαι ουτος ουτε γην  
[ου]τ οικιαν κεκτημενος  
45 [α] και αι συνθηκαι τοις κα  
[τε]λθουσιν απεδιδουσαν  
[εα]ν δε {αν δ[ε]} αποδω[σ]ι  
[.....]το[... ]ερα

In lines 39-43 there was quoted the regulation relating to the confiscated movables: “the buyers were to retain what was purchased and the returning exiles were to recover anything remaining unsold”. As for the confiscated immovables, the reference to the provision seems to start from line 45, but lines 47 and following are hard to read.

Grenfell wrote regarding line 47, “this line seems to be corrupt, though α[ ] (but not α[ντ] or any other letter than α) can be read in place of δ[ε]. A dittography of αν δε is the simplest hypothesis, but there may well be an omission of μη before αποδω[σ]ι, and possibly [ω]ν δε αν <μη> αποδω[σ]ι should be read”<sup>10</sup>. When Gernet and Bizos included this fragmentary speech in

As for the slave girl, T. Reinach (“Le plaidoyer de Lysias contre Hippotheres” in *REG* 32 (1919) 445-447) contended that she is not the defendant but the object of the litigation, interpreting the meaning of the title as “concerning the slave girl”, not as “for the defence of the slave girl”. F. Ferckel (*Lysias und Athen*, Diss. Würzburg, 1937, 65) follows Reinach. Gernet-Bizos (*Lys. Dis.* II, 22) admitted the possibility of the slave girl being a defendant, although they prefer the view that Lysias was the one.

The plaintiff was Hippotheres, but it is hard to reconstruct the circumstances in which he prosecuted Lysias.

<sup>7</sup> Gernet/Bizos (*Lys. Dis.* II, 229-230) and Ferckel (*Lysias und Athen*, 70-71) agreed with Grenfell/Hunt (POxy XIII, 50) that the law suit against Lysias was a type of δίκη ἐξούλης, but Reinach (“Le plaidoyer de Lysias”, 445) and Loening (*The Reconciliation Agreement of 403/402 BC in Athens: Its Content and Application*, *Hermes*, Einzelschriften 53, Stuttgart 1987, 92) assumed it was a δίκη βλάβης.

<sup>8</sup> Reinach (“Le plaidoyer de Lysias”, 446) and Loening (*Reconciliation Agreement*, 91-92) regarded the slave girl as the object of the litigation, while Gernet/Bizos (*Lys. Dis.* II, 230) supposed it was movable property such as arms. P. Cloché (“Le discours de Lysias contre Hippotheres” in *REA* XXIII (1921), 35) accepted the interpretation of Grenfell/Hunt, and regarded the object as the immovable property.

<sup>9</sup> Isocr. XVI, 23-24 and 46 offer no actual clauses of the regulation.

<sup>10</sup> Op. cit., 69. P. Collart, “Les papyrus d’Oxyrhynchos, à propos du Tome XIII” in *R.Ph.* 43 (1919), 47-62 was reluctant to accept Grenfell/Hunt’s text of this line. Reinach (“Le plaidoyer de Lysias”, 448) supposed that the complementary clause followed, which permitted returning exiles to recover the movables from the new owner at the purchase price. Lipsius (*Ber. sächs. Akad. Wiss.* 71-9,

their second volume of *Lysias: Discours* in 1926, they read the line as ..ν δὲ ἄν δ[ε] ἀποδῶ[σ]ι, giving the translation “pourvus qu’ils payassent(?)”<sup>11</sup>, and since then many scholars have interpreted the line more or less following the restoration of Gernet/Bizos. Therefore, what has been disputed is mainly whether the former owners of the immovable paid the full price or a part of it to recover their house or land<sup>12</sup>.

In August, 1994 I was able to examine POxy 1606 now in the Bodleian Library, (Ms. gr. Class. b. 19(p)), and came to the conclusion that the line should be transcribed as

[..]νδεονδ[ε] ἀποδων.

Based on this transcription, I offer the following restoration as most probable and appropriate

[τῶ]ν δὲ ἀνδ[ρ]απόδων.

Thus line 47 is to be read as a part of the main sentence which starts with the nominative οὗτος, while lines 45 and 46 quote the regulation relating to the confiscated immovables of the reconciliation agreement: line 48 is too fragmentary to be restored.

The new reading suggests: first, there is little doubt that the former owners of the immovables could recover their property without any payment. Such a regulation seems reasonable, if compared to other similar instances at Selymbria<sup>13</sup> or Phlius<sup>14</sup>. Moreover, many citizens could not have recovered their property, if they had had to pay all or even a part of the purchase price, for the Peloponnesian war and the subsequent civil war deprived them of sufficient resources for payment.

Secondly, in lines 47 and following, the slaves owned by Polemarchos and Lysias were probably referred to. Those slaves must be the ones mentioned in Lysias XII 19: “... καὶ ἀνδράποδα εἴκοσι καὶ ἑκατόν, ὧν τὰ μὲν βέλτιστα ἄλαβον, τὰ δὲ λοιπὰ εἰς τὸ δημόσιον ἀπέδοσαν, ...”. Is the regulation about the movables quoted in lines 39-43 pertinent to them? Most of the slaves handed over to the public treasury (τὸ δημόσιον) must have been put on sale<sup>15</sup>, so that the regulation was applied to them, but the best slaves (τὰ βέλτιστα) taken by the Oligarchs were not, because they were neither put on sale nor, in consequence, remained unsold.

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3-4) restored the line as ἐάν γε ἀνταποδῶσι [τὴν τιμὴν and assumed that the exiles paid the full purchase price.

<sup>11</sup> Gernet/Bizos, *Lys. Dis.* II, 253.

<sup>12</sup> J.W. Jones (*The Law and Legal Theory of the Greeks*, Oxford, 1956, 199-200) assumed that the exiles paid the purchase price, while P. Krentz (*The Thirty at Athens*, Ithaca and London, 1982, 105) and Loening (*Reconciliation Agreement*, 93) follow the interpretation of Gernet/Bizos, although the latter on p. 52 seems to be slightly hesitant in following it. However, Cloché (*REA* 23, 32-33) and A. Dorjahn (*Political Forgiveness in Old Athens: The Amnesty of 403 BC.*, Evanston, 1946, 26, n. 16) seem to think that the immovables were returned to the former owners without any payment, although neither one refers to line 47 and its restoration by Grenfell/Hunt. B. S. Strauss (*Athens after the Peloponnesian War: Class, Faction and Policy, 403-386 B.C.*, Ithaca and New York, 1986, 55) shows his doubt about compensation of the exiles for regaining land or a house, referring to the instances of Selymbria and Phlius (see below). M. Sakurai, “Property Confiscated by the Thirty Tyrants and the Restored Democracy of Athens” in *JCS* (Kyoto) 40 (1992), 22-32 (in Japanese with an English summary) inferred that the immovables were returned without any payment.

<sup>13</sup> Selymbria, *IG* I<sup>3</sup> 118 (= *ML* 87). In the Athenian treaty with Selymbria in 407 B.C., restitution of land and houses is specifically indicated (ll. 18-23).

<sup>14</sup> Phlius, Xen. *Hell.* V 2, 8-10. In c. 385 B.C. the Phliasian exiles, having returned home, were given back their confiscated visible properties (ἐμφανῆ κτήματα) at the public expense. Probably the reference was to real property, cf. M.I. Finley, *Studies in Land and Credit in Ancient Athens, 500-200 BC*, New Brunswick, 1951, 55.

<sup>15</sup> *Greek Orators I, Antiphon and Lysias*, translated with commentary and notes by M. Edwards and S. Usher, London, 1985, 160-161.

It seems that none of Lysias' movables put on sale remained unsold (line 28-34), but there were some slaves of his that were neither sold nor unsold. The slave girl must be one of those that the Oligarchs took for themselves. Therefore, Lysias could claim his right over her, providing the regulation as a legal foundation for his right.

However, it is hard to surmise the reason whereby Hippotherses prosecuted Lysias in relation to the slave girl. According to the speaker, Hippotherses took flight at the fall of the Four Hundred, and fought with the enemy from the camp of Decelea against his country (ll. 184-189). He must have been oligarchic himself and may have been in a position quite close to the Thirty. He may then have been given the slave girl as a gift by one of the Oligarchs, or more likely, he paid a small amount of money in private to acquire her not from the public treasury but from one of the Oligarchs who took over the best of the slaves for themselves<sup>16</sup>, as lines 77 to 79 suggest that he demanded half the price of some item. If this were the case, it is no wonder that the speaker cited the property provisions, even though Hippotherses insisted on his purchase of the slave girl.

If the new reading is accepted, it permits a better understanding of the speech and of the reconciliation agreement.

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<sup>16</sup> The stelai published by M. B. Walbank, *Hesperia* 51 (1982), 74-98 are the evidence of the confiscation and sale of only the real property of the Thirty and their close adherents. According to Philochoros (*FGH* 328, fr. 181) their goods and chattels were confiscated and processional implements were made from them. However, it remains obscure how the movables appropriated by the Oligarchs such as some of Lysias' slaves were treated after the restoration of the democracy.