

## *The Athenian Amnesty of 403/2 and the 'Forgotten' Amnesty of 405/4*

*Lene Rubinstein*

*Royal Holloway, University of London*

The reconciliation agreement that the Athenians concluded in 403/2, in the wake of their spectacular military defeat at Aigos Potamoi, a regime of terror, and a traumatic civil war, has, quite justifiably, been the object of extensive research and debate, not least in the twentieth century. The reconciliation was hailed as a success already in antiquity, and the settlement itself has continued to provide a source of inspiration also in current debates on methods of conflict resolution.

What has commanded particular admiration from ancient and modern observers alike is the apparent restraint of the Peiraieus faction. On the whole, the returnees of 403/2 seem to have been willing to refrain from seeking revenge through the courts on individuals belonging to the opposing faction. Their restraint has often been regarded as all the more remarkable, because of a widespread perception that the members of the Peiraieus faction, although victorious in broad political and constitutional terms, were nevertheless the ones who had to make the greatest sacrifices in material terms.<sup>1</sup> According to the terms of the reconciliation agreement, they were required not only to let the crimes committed under the oligarchy against themselves and their loved ones go unpunished, apparently with the exception of murder. They also had to accept that any moveable assets confiscated from their homes and subsequently sold on by public auction would never be returned to them, unless they were prepared to pay compensation to the new owners.<sup>2</sup> Thus, in Isokrates 18 *Against*

<sup>1</sup> See e.g. the succinct summary in Loening (1987: 147-148), see also Balot (2001: 227-230).

<sup>2</sup> In Lys. LXX πρὸς Ἱπποθέρησιν fr. 165 (Carey) these terms are paraphrased as follows: ἐ]πε[ι]δὴ τ[ο]ι[ῶ]ν μεθ' [ὑ]μῶν φ[ε]ύγων Λυσίας [ᾧ]χ]ετο καὶ μετ[α] τῶ ὑμ[ε]τέρου πλήθους κατῆλθεν, κελευουσῶν τῶν συνθηκῶν τὰ μὲν πεπραμμένα τοὺς ἐωνημένους ἔχειν, τὰ δὲ ἄ[π]ρατα τοὺς κατελθόντας [κ]ομίζεσθαι, οὗτος οὐτε γῆν [οὔ]τ' οἰκίαν κεκτημένος [ᾧ] καὶ αἰσυνθηκαί. τοῖς. κα[τε]λθοῦσιν ἀπεδίδοσαν, [τῶ]ν δὲ ἀνδ[ρ]απόδων. [.....] τῶ. [...]ερα. *Well, when Lysias went into exile with you and returned together with you the People, with the covenants prescribing that the purchasers are to remain in possession of the things that have been sold, whereas the returnees are to receive the unsold items, this man, having acquired no land or house, which the covenants, too, give back to the returnees, whereas of the slaves...*

*Kallimachos* 23-24, a speech delivered in a *paragraphe* in an attempt to make the court dismiss Kallimachos' claim for compensation for the loss of 10,000 *drachmai* allegedly confiscated from him under the Ten, Thrasyboulos and Anytos are held up as models of restraint. Both are characterised as extremely powerful individuals who, despite their influence, have decided to sacrifice their own financial interests in order to uphold the terms of the settlement:

*Now, this cannot have escaped him either that Thrasyboulos and Anytos, who are the most influential men in the polis, who have been deprived of much property, and who know the men who registered it for confiscation, nevertheless do not dare to file lawsuits against them or recall wrongs. On the contrary, even though they are better able than other people to accomplish their designs, they still deem it right that, in the matter of the covenants, they should be on an equal footing with the rest. And it is not just they who are of that opinion: no, none of you has dared to bring such a lawsuit before a court.<sup>3</sup>*

Indeed, there is no reason to doubt that a good number of the returnees, especially the less affluent ones, were required to accept some very painful financial losses without having the possibility of legal redress. And thus it is tempting to read the settlement of 403/2 as an ingenious compromise. The Peiraieus faction won the battle for the constitution, but had to accept financial losses in return. By contrast, those who had remained in the city, with a few notable exceptions, won immunity from prosecution as well as the permission to retain their own property along with any moveable assets bought at public auctions – probably at knock-down prices (see e.g. Lehmann (1972: 225)) – unless the previous owners offered to buy them back. And, as is well known, the settlement offered a further advantage to those of the city, namely a refuge in Eleusis for those who were unwilling to subject themselves to a democratic form of government.

However, my present aim is to suggest that this simplified contrast between the two factions, as well as between the losses and gains accruing

---

<sup>3</sup> Isokr. 18.23-24: Καὶ μὴν οὐδὲ τάδ' αὐτὸν λέληθεν, ὅτι Θρασύβουλος καὶ Ἄνυτος, μέγιστον μὲν δυνάμενοι τῶν ἐν τῇ πόλει, πολλῶν δ' ἀπεστερημένοι χρημάτων, εἰδότες δὲ τοὺς ἀπογράψαντας, ὁμῶς οὐ τολμῶσιν αὐτοῖς δίκας λαγχάνειν οὐδὲ μνησικακεῖν, ἄλλ' εἰ καὶ περὶ τῶν ἄλλων μᾶλλον ἐτέρων δύνανται διαπράττεσθαι, ἄλλ' οὔν περὶ γε τῶν ἐν ταῖς συνθήκαις ἴσον ἔχειν τοῖς ἄλλοις ἀξιοῦσιν. Καὶ οὐχ οὔτοι μόνοι ταῦτ' ἠξιώκασιν, ἀλλ' οὐδ' ὑμῶν οὐδεὶς τοιαύτην δίκην εἰσελθεῖν τετόλμηκεν.

to each, may be somewhat misleading. After a general discussion of the position of the exiles who returned to Athens after the capitulation in 404 and during 404/3 after the installation of the Thirty, I shall make the suggestion that, while a large proportion of the city faction probably did benefit from the settlement in financial terms, those who had returned with Lysander and later may in fact have suffered serious material losses as a direct result of the reconciliation agreement.

It is, of course, widely recognised that the city-faction was far from being a united block.<sup>4</sup> The divisions within the oligarchy itself are highlighted both by Xenophon, not least in his celebrated dramatisation of Theramenes' last stand against Kritias, and by the author of the Aristotelian *Athenaion Politeia*, as well as by litigants who had remained in the *asty* during the oligarchy, and whom we encounter in the speeches of Lysias and Isokrates. Those litigants, for obvious reasons, have a clear interest in highlighting the differences between those who had lent their active support to the oligarchic regime and those who had kept as low a profile as possible, professing that they themselves had belonged to the latter category. One of them, the speaker who delivered Lys. 25, even goes as far as to claim that the morale of the democratic faction was considerably increased by reports of internal conflicts not only within the *asty* dwellers generally but even within the board of the Thirty itself.<sup>5</sup> Modern discussions have, on the whole, followed these sources in dividing the city-faction into 'extremists' and 'moderates', that is, primarily along ideological lines.

Yet, as far as the settlement of 403/2 is concerned, it is normally assumed that its terms would have affected all of those who had remained in the *asty* in equal measure, regardless of the level of enthusiasm with which they had embraced the oligarchic regime. And it is of course the

---

<sup>4</sup> The divisions within the city faction have been emphasised by, *i.a.* Natalicchio (1996, esp. 107-109). For a recent prosopographical discussion of the Thirty and their adherents, see Németh (2006).

<sup>5</sup> Lys. 25.22: ἐπειδὴ δὲ ἐπυθάνεσθε τοὺς μὲν τρισχιλίους στασιάζοντας, τοὺς ἄλλους δὲ πολίτας ἐκ τοῦ ἄστεως ἐκκεκηρυγμένους, τοὺς δὲ τριάκοντα μὴ τὴν αὐτὴν γνώμην ἔχοντας, πλείους δ' ὄντας τοὺς ὑπὲρ ὑμῶν δεδιότας ἢ τοὺς ὑμῖν πολεμοῦντας, τότε ἤδη καὶ κατιέναι προσεδοκᾶτε καὶ παρὰ τῶν ἐχθρῶν λήψεσθαι δίκην. *But when you heard that the three thousand were at loggerheads, and that the rest of the citizens were being expelled from the asty and that the Thirty were not of one opinion, and that there were more who feared for your sake than were warring against you, at that point you expected both that you would return from exile and that you would dispense justice against your enemies.*

case that the terms of the reconciliation agreement that have been preserved in *Ath. Pol.* 39.6 made special provisions only for the Thirty, the Ten of the Peiraieus, and the Eleven, and possibly also the Ten who took over after the Thirty had been deposed.<sup>6</sup> Likewise, residence in the separate community created at Eleusis was clearly optional. The report in *Ath. Pol.* 40.1 that Archinos, who knew the number of people wishing to register, cut short the registration period, *so that many were compelled at the same time to remain despite their wishes, until they felt safe*, suggests that fear of repercussions arising from their association with the regime, be it military or political or both, was widespread across the city-faction as a whole.<sup>7</sup>

There can be no doubt that ideology did play a part in creating divisions within the city-faction. But when it comes to the settlement of

---

<sup>6</sup> I follow Rhodes (1983: 469) and Scheibelreiter (2013: 110-111) in assuming that these panels were not protected by the amnesty, unless and until they had consented to undergo *euthynai* specifically relating to their period in office. By contrast, Carawan has argued (2006) that the agreement neither excluded the Thirty, the Ten of Peiraieus and the Eleven from the protection offered by the undertaking 'not to recall wrongs', nor exempted other boards of officials from having to undergo *euthynai*. However, Carawan's argument rests on the assumption that the Thirty, already resident at Eleusis when the reconciliation agreement was drafted, were considered to be a party to the agreement, which is highly debatable, and on the assumption that all officials who had served under the oligarchy (including, presumably, members of the council) had to undergo a full process of *euthynai*. Certainly, as demonstrated by Lewis (1997: 205-211), there is epigraphical evidence for an orderly transfer (*paradosis*) of public assets from the treasurers who had served in the archonship of Pythodoros to the treasurers appointed after the restoration of democracy. However, this does not in itself imply that the treasurers were open to prosecutions *generally* concerning their conduct in office, let alone that such prosecutions could be brought against other types of officials. It must be noted, too, that the formal recording of assets transferred to the incoming board was vital to the interests of the latter, especially when they in turn were required to hand over the assets to their successors, with the concomitant risks of prosecutions for embezzlement.

<sup>7</sup> Γενομένων δὲ τοιούτων τῶν διαλύσεων, καὶ φοβουμένων, ὅσοι μετὰ τῶν τριάκοντα συνεπολέμησαν, καὶ πολλῶν μὲν ἐπινοούντων ἐξοικεῖν, ἀναβαλλομένων δὲ τὴν ἀπογραφὴν εἰς τὰς ἐσχάτας ἡμέρας, ὅπερ εἰώθασιν ποιεῖν ἅπαντες, Ἀρχίνος συνιδὼν τὸ πλῆθος καὶ βουλόμενος κατασχεῖν αὐτούς, ὑφείλε τὰς ὑπολοίπους ἡμέρας τῆς ἀπογραφῆς, ὥστε συναναγκασθῆναι μένειν πολλοὺς ἄκοντας, ἕως ἐθάρρησαν. *When the settlement had been concluded along these lines, and when those who had fought on the side of the Thirty were fearful and many planning to move out, yet were postponing their registration until the very last days, which all people normally do, Archinos, who knew their number and wished to hold them back, took away the remaining days of the registration period, so that many were compelled at the same time to remain against their will, until they felt safe.*

403/2 and its consequences for those who had remained in the *asty*, it is important to recognise also another line dividing the city-faction, namely that between the former exiles, who had returned only after Athens' capitulation to Sparta, and the men who had endured the long, painful months of siege and starvation inside the city's walls before the final surrender. No doubt, many of the oligarchic returnees shared the same ideological convictions as the oligarchs who had managed to avoid exile prior to Athens' capitulation. That much is suggested by *Ath. Pol.* 34.3. Yet, some of the known stipulations in the reconciliation agreement very likely affected each of these two groups very differently in financial terms, with the former exiles suffering the more serious losses. But before the discussion of the clauses that may have differentiated between the two groups *de facto*, though not *de jure*, it is necessary first to turn to the amnesty forced upon Athens in 405/4 by the victorious Spartans.

Since Stahl's detailed discussion (1891: 267-275), this amnesty has not received much attention in contemporary discussions of the reconciliation of 403/2. Usteri (1903: 143-144) devoted little more than a page to it, Dorjahn about the same (1946:4-5). Like Stahl before him (1891: 267-268), Dorjahn characterised it as a 'complement' to the amnesty ratified by the Athenians themselves in the decree of Patrokleides, passed soon after their defeat at Aigos Potamoi. The terms of that decree, as is well known, had specifically excluded citizens in exile (And. 1.80). It did not explicitly reverse verdicts already passed against citizens inside Athens, which must have meant that no confiscated property was to be returned to citizens already convicted. However, Patrokleides' decree cancelled outstanding debts, including judgement debts, which, in effect, wiped the slate clean for all citizens inside Athens' walls.<sup>8</sup>

Far fewer details are known about the terms on which the returnees were readmitted in 405/4.<sup>9</sup> But two points seem certain. The first is that

---

<sup>8</sup> Patrokleides decree may in addition have restricted or even prohibited litigation arising over crimes committed prior to its ratification, but this cannot be established with certainty.

<sup>9</sup> The evidence for this amnesty is conveniently presented in Rhodes (1983: 430-431). Stahl (1891: 271-272) suggested that, while the peace agreement with the Peloponnesians stipulated the return of Athenian exiles in broad terms, the Athenians themselves may have implemented this through a decree, proposed by Oinobios (whose decree, according to Pausanias 1.23.9, had brought about the return of Thucydides son of Oloros). Stahl's contention that Oinobios' decree was passed as a measure relating to Athenian exiles as a group, rather than as an enactment pertaining specifically to Thucydides was met with scepticism (see e.g. Usteri (1903: 143)), but none of the

outstanding death-sentences and sentences involving *atimia* must have been cancelled as a result of the peace agreement with Sparta. It would have made no sense for the Spartans to accept a situation where the exiles were allowed to return, only to face execution at worst or, at best, political and social marginalisation. Together with the evidence of Xen. *Hell.* 2.2.23, the active role attributed by *Ath. Pol.* 34.3 to the returnees in the efforts to undermine the democracy from within strongly suggests that such an amnesty must have been imposed on – and ratified by – the Athenians while they were still democratically governed.<sup>10</sup>

The second point is that this amnesty was, to all appearances, one-sided. The returnees were, as far as we can determine, protected against litigation relating to their past conduct – including not least acts committed by those who had attacked the city from the Peloponnesian base at Dekeleia, acts that can only be characterised as treason. By contrast, the citizens who had been resident in the city during the siege did not enjoy this protection. This is clear not least from the trial and execution of several prominent military commanders, who had been apprehended before the abolition of the democracy, but who were tried and executed only after the Thirty had come to power.<sup>11</sup>

However, it is impossible to determine whether or not the amnesty imposed by the Spartans also provided for the return of confiscated property that had belonged to the returnees before their convictions. The fact that they had managed to escape Athens prior to their trials did not mean that they would have escaped penalty entirely; quite the contrary. It seems to have been normal Athenian practice in the fourth as well as the fifth century to let the sentences be pronounced and then executed against the defendants *in absentia*. This would have meant not only that verdicts prescribing full-scale confiscation of property would most likely have been implemented, but also that any fines imposed on the absentee would have been first doubled and then exacted through a process of confiscation,

---

arguments against his position can be said to have settled the matter definitively. See further Hornblower (2008: 50-52) for a more recent discussion of the evidence for Oinobios' measure.

<sup>10</sup> This has implications for Wolpert's suggestion (2002: 33-34) that those who were in exile when the decree of Patrokleides was passed, and who were therefore not protected by its terms, would not have been able to return under the terms of the reconciliation agreement of 403/2 unless formally pardoned. Precisely this kind of pardon was provided by the 404 peace agreement with the Peloponnesians, and it would have had some legitimacy *qua* an enactment passed by a democratic decision-making body.

<sup>11</sup> See above all Lys. 13.34-38 with Bearzot' commentary (1997: 290-294).

unless the defendant's friends or family had taken the precaution of paying the outstanding fine in his absence.

The most famous evidence for confiscation of property belonging to defendants convicted *in absentia* is of course the Attic Stelai, which relate to the two major religious scandals of 415, but as Lysias 25.25-26 makes clear, the practice also affected citizens who had been convicted later, for different offences. The perfunctory nature of such trials held in the defendant's absence is probably the reason why the speaker of Lysias 25, a former member of the city-faction, could characterise the procedures with the words '*to vote to impose the death sentence on men not subjected to trial*'.<sup>12</sup> It does not take a wild-eyed, fanatical ideological commitment to oligarchy for such an absentee defendant firmly to believe that his treatment at the hands of the democratic administration of justice had been wrong, if not wholly illegitimate. He may thus also have felt justified in demanding compensation for his losses, over and above the political and social rehabilitation granted in connection with his return.

Usteri, who set out the scanty evidence for the amnesty of 405/4 (1903: 143-144), noted the lack of sources confirming that restoration of property to the returning exiles was part of the agreement with the Spartans. He asserted, perhaps too confidently, that a property restitution should not be assumed ('an eine Restitution des Vermögens ist hier nicht zu denken').<sup>13</sup> Despite the uncertainty that surrounds Usteri's claim, it is entirely possible that the Spartans left it open to the Athenians to decide for themselves how the exiles were to be reintegrated in purely practical and financial terms. Indeed, if that is the case, it would have provided the

---

<sup>12</sup> Lys. 25.26: ἐνίωv μὲν γὰρ ἔπεισαν ὑμᾶς ἀκρίτων θάνατον καταψηφίσασθαι, πολλῶν δὲ ἀδίκως δημεῦσαι τὰς οὐσίας, τοὺς δ' ἐξελᾶσαι καὶ ἀτιμῶσαι τῶν πολιτῶν. *For they persuaded you to vote to impose the death sentence on men not subjected to trial and unjustly to confiscate the property of many, and to drive some of the citizens into exile and to impose atimia on them.* The expression ἀκρίτων θάνατον καταψηφίζεσαι must be differentiated from the expressions ἀκρίτον ἀποκτείνειν/ἀκριτος ἀποθνήσκειν *et sim.* The latter normally refer to purely summary procedures (sometimes represented as entirely legitimate, but more frequently associated with the excesses of oligarchic or tyrannical regimes). Lys. 27.8 provides the only other juxtaposition of the verb (κατα)ψηφίσεσθαι and the adjective ἀκριτος attested in Greek literature from the fifth and fourth centuries. Here it is applied to a hypothetical situation where the defendants are not being given a proper hearing before the court decides on the question of their guilt.

<sup>13</sup> Contrast Seibert (1979: 91) who regarded some form of compensation as very probable.

returnees with a financial motive for desiring the overthrow of the democracy. A different and more narrow constitution, in which they could exercise more direct control over the shaping of policy, might facilitate their claims to compensation for any losses they had sustained as a result of their previous sentences.

One piece of evidence, Aristotle's *Rhetoric* 1400a30-37 suggests that the Thirty, once in power, may have gone further than prescribed by the peace agreement itself in reversing past verdicts passed against the exiles and obliterating the record of such sentences:

*For example, Leodamas, when defending himself against the accusation made by Thrasyboulos that his name had been inscribed on a stele in the Akropolis [recording the names of persons convicted of treason and serious religious offences], but that it had been erased under the Thirty, declared that it was impossible, for the Thirty would have had more confidence in him if his hatred against the demos had been graven in stone.*<sup>14</sup>

This points to at least some tampering with the records of previous convictions after the Thirty's ascent to power, an important symbolic gesture which confirmed that the verdicts pronounced by the democratic courts were now to be considered null and void.

Both ancient commentators and modern observers alike give the impression that the oligarchic regime was one of mindless brutality and violence. Violent and brutal it certainly was. However, as has been argued by Krentz (1982: 82), it was not necessarily mindless. But unlike Krentz, who plays down the issue of material greed as a motivating force behind this violence, I think it very likely that a financial motive on the part of the regime was a very important factor, along with a motive of revenge. The oligarchs' actions may be interpreted not as motivated by personal greed on the part of a handful of individuals, but rather as part of the returnees' attempt to reclaim and consolidate their original political *and* economic position within their community. Arguably, the Athenian oligarchs did not behave any differently from countless other groups of returning exiles in other Greek states, be it in the archaic, classical or Hellenistic period.

---

<sup>14</sup> Aristotle *Rhetoric* 1400a30-37: ...οἷον Λεωδάμας ἀπολογούμενος ἔλεγε, κατηγορήσαντος Θρασυβούλου ὅτι ἦν στηλίτης γεγονῶς ἐν τῇ ἀκροπόλει, ἀλλ' ἐκκέκοπται ἐπὶ τῶν τριάκοντα· οὐκ ἐνδέχασθαι ἔφη· μᾶλλον γὰρ ἂν πιστεύειν αὐτῷ τοὺς τριάκοντα ἐγγεγραμμένης τῆς ἐχθρας πρὸς τὸν δῆμον.



That the returning exiles wielded a great deal of power under the oligarchic regime is incontrovertible: according to Seibert's cautious estimate (1979: 91), at least six of the Thirty themselves had returned from exile after Athens' capitulation. Among their numbers were, notoriously, Kritias and Charikles, of whom the latter had been based in Dekeleia and had actively engaged in fighting on the Peloponnesian side. His unsavoury record is highlighted by Andokides, when the latter imagines how he himself might have faced interrogation by Charikles (And. 1.101), and confirmed, obliquely, by the young Alkibiades in Isokr. 16.42 in his contrast of Charikles' actions with those of his own father. Moreover, the influence of the returnees in setting the violent agenda of the oligarchy is further suggested by the fact that their first targets were, in the glib words of Xenophon (*Hell.* 2.3.12),

*those who everybody knew had been living from sykophancy under the democracy, and who had been oppressive to the aristocracy. Having arrested them, they subjected them to capital charges. And the Council happily voted for their conviction, while the rest, who knew in their hearts that they were not people of that sort, did not object in any way.*<sup>15</sup>

A similar priority is attributed to the new regime by *Ath. Pol.* 35.3. Although an ideological motive may well have been part of the explanation for this purge, it is hard not to read into it also a motive of revenge on the part of the returnees. For, to judge from, for example, Lysias 18.9 and 25.25-26, many, if not all, of these so-called 'sykophants' would have been taking an active part in the legal proceedings that had forced them into exile. And it is precisely Kritias' thirst for revenge which Xenophon represents as the main reason for the rift between himself and Theramenes – who of course was precisely *not* among the returnees (*Xen. Hell.* 2.3.15).

Significantly, both Xenophon and *Ath. Pol.* 35.4 emphasise that the oligarchic regime soon afterwards turned against what both authors regarded as the persons who ought to have been natural supporters of the new constitution. Both authors, along with numerous fourth-century Athenian litigants, including Lysias himself (12.6-7), convey the impression that *greed* was the Thirty's primary motivation. In this they

---

<sup>15</sup> ἔπειτα πρῶτον μὲν οὓς πάντες ἤδεσαν ἐν τῇ δημοκρατίᾳ ἀπὸ συκοφαντίας ζῶντας καὶ τοῖς καλοῖς κάγαθοῖς βαρεῖς ὄντας, συλλαμβάνοντες ὑπήγον θανάτου· καὶ ἡ τε βουλή ἡδέως αὐτῶν κατεψηφίζετο οἱ τε ἄλλοι ὅσοι συνήδεσαν ἑαυτοῖς μὴ ὄντες τοιοῦτοι οὐδὲν ἤχθοντο.

have been followed by countless modern scholars, including recently Bearzot (1997: 113-115), Balot (2001: 219-224), Németh (2006: 154-166), and Riess (2012: 38), who have highlighted the alleged insatiability for wealth exhibited by the Thirty as an essential feature of the stereotypical tyrant, which is also reflected in our (generally hostile) sources. Yet, scholars have also often noted Lysias' own concession that the regime was under severe financial constraint, and that at least some of the confiscated moveable property ended up in the treasury, despite Lysias' allegation of embezzlement (Lys. 12.19).<sup>16</sup>

That the public finances were indeed under severe strain is beyond question. It is more than likely that at least part of that strain was created by very high defence costs, including not least the massive price of maintaining a Lakedaimonian garrison.<sup>17</sup> But it cannot be ruled out that a further huge demand was put on the public treasury because of the need to satisfy the demands of the returnees, demands that are attested in connection with numerous other amnesties in classical Greece.

As Lonis has pointed out in his seminal studies of the problems relating to the restoration of property to returning exiles (1991: 109), there are at least four types of settlement attested in the classical and Hellenistic evidence:

1. A total restoration of the actual real estate that had originally belonged to the returnees, but with compensation paid by the public treasury to the persons who had acquired it in the interim.
2. The grant of real estate of a value equivalent to that originally possessed by the returnees, funded by the public treasury.
3. A partial restoration of the real estate that had originally belonged to the returnees, with monetary compensation paid by the public treasury for the part that was not returned.
4. A total redistribution of land.

Of these we can confidently rule out option 4, whereas each of the options 1-3 must be considered a possibility. Option 2 is attested for Athens in connection with the return of individual exiles, including Alkibiades in 408/7, and perhaps also other individuals who may have been able to

---

<sup>16</sup> see e.g. Phillips (2008: 169).

<sup>17</sup> For the enormous amounts borrowed by the regime for military purposes, see Migeotte (1984: 19-23 no. 1). See also Xenophon *Hell.* 2.3.21, who asserts that the Thirty's arrests and executions of wealthy metics was motivated specifically by their need to pay for the Lakedaimonian garrison.

obtain similar pardon during the Dekeleian War.<sup>18</sup> Option 1 was almost certainly applied in connection with the reconciliation and readmission of democratic exiles in 403/2, to which I shall return shortly. Option 3 is, to my knowledge, not attested for Athens, but is known e.g. from fourth-century Tegea. It must be stressed that any of these options must have been extremely expensive for the treasury to honour. For not only did the returnees appear to have been quite numerous; a good proportion of them belonged to the upper socio-economic stratum. Some of them, indeed, are known to have been extraordinarily rich.

To sum up briefly. If the Thirty had indeed committed themselves to adopting a consistent policy of compensating the returnees either in cash or in kind, the notorious course adopted by them in their administration of justice may have been inspired by need as well as by greed, in addition to fear and to the returnees' desire for revenge. If they had not, it may be more appropriate for us to construe the convictions, killings, and confiscations as acts that came very close to self-help when viewed specifically from the returnees' point of view.<sup>19</sup> However, it must be noted that at least some these acts were, in purely formal terms, carried out

---

<sup>18</sup> This may have applied to the four men denounced by Andokides for their involvement in the mutilation of the Herms (And. 1.52-60), and who, according to Andokides himself (1.53), had returned to Athens where they were now (400/399) in possession of τὰ σφέτερα αὐτῶν. Yet if the Panaitios mentioned here was identical with the Panaitios recorded in the Attic stelai (*JG* I<sup>3</sup> 222 II 204, III 210-211 and 426 II 53), his property was confiscated and sold. However, MacDowell (1962: 72) rightly queried this identification. As for Andokides himself, it is important to note that he was not among the oligarchic exiles who returned to Athens in 405/4 or 404/3. Upon his return, after the restoration of the democracy, he seems to have reacquired his ancestral home (And. 1.146), but this may have been through normal purchase. Kleophon the Lyremaker, who had bought the house and occupied it during Andokides' exile, had left no direct descendants (Lys. 19.48). This may well have facilitated the negotiation of a re-purchase in or after 403/2.

<sup>19</sup> Xen. *Hell.* 2.4.1 may be taken to suggest that, after the death of Theramenes, the Thirty became less concerned with maintaining an appearance of formal procedure when evicting those Athenians not registered in their *katalogos*, from their farms in the countryside 'so that they and their friends could have possession of their land' (ἵν' αὐτοῖ καὶ οἱ φίλοι τοῦς τούτων ἀγροῦς ἔχοιεν). However, it is not inconceivable that some of these evictions consisted in the returnees' asserting ownership of their confiscated estate through *embateusis* in much the same way as the returnees in third-century Sikyon, who were to cause their leader Aratos a good deal of headache, and whose attempts to reappropriate their ancestral estates brought Sikyon to the brink of renewed *stasis*. On this episode, allegedly resolved by a combination of an enormous donation of cash from Ptolemy II and a judicious process of *dialysis* between individuals with competing claims to the same items of immovable assets, see Rubinstein (2013: 145-155).

through the involvement of and with authorisation from a 'state-like' apparatus.

That the oligarchic regime did not entirely dispense with the *semblance* of due process in their handling of property and its redistribution is further suggested by the fact that two of Lysias' *asty*-faction clients vehemently assert that they had not been involved in *diaitai* to the detriment of any fellow citizen.<sup>20</sup> It is widely assumed by modern scholars (see e.g. MacDowell (1962: 128), Scafuro (1997: 392-394) and Scheibelreiter (2013: 120 n. 189)) that such *diaitai* had been carried out between private individuals, on their own initiative, while the courts had been closed for normal business under the Thirty and during the civil war after their fall. But if this is really true, it is extremely hard to explain why participation in such *diaitai* appear to have been so compromising that it deserved to be juxtaposed with arrests and the entry of fellow citizens on the list kept by Lysander. It is more likely that these *diaitai* were formalised along the lines attested much later in a decree honouring a board of Iasian foreign judges,<sup>21</sup> and that the *diaitai* in question were

<sup>20</sup> Lys. 25.17: οὐ τοίνυν οὐδ' εἰς τὸν κατάλογον Ἀθηναίων καταλέξας οὐδένα φανήσομαι, οὐδὲ δίαιταν καταδιαιτησάμενος οὐδενός, οὐδὲ πλουσιώτερος ἐκ τῶν ὑμετέρων γεγονῶς συμφορῶν. *It will be clear that I have not registered any of the Athenians in the katalogos, nor had a diaita pronounced against anyone, nor become richer from your misfortune.* A nearly identical claim is made in Lys. L ὑπὲρ Ἐρυξιμάχου μείναντος ἐν ἄστει fr. 107 (Carey): καὶ ἐπὶ τῶν τριάκοντα, ᾧ ἄνδρες δικασταὶ, οὐδεὶς ἄν. ἐμὲ ἀποδείξαι δύναίτο ἢ βουλευσάντα ἢ ἀρχὴν ἀρχαντα· ἀπαγαγόντων δὲ αὐτῶν ἐχθρῶν τινα. [τι]μ[ω]ρησάμενον ἢ δίαιταν κ[α]ταδιαιτησάμε[ν]ον. ἢ εἰς τοῦ(ν) κατάλογον τῶν μετὰ Λυσά(ν)δρου τ[ιν]α ἐν[γρ]αψάντα... *And, judges, no one could possibly demonstrate that I either served on the council or held office under the Thirty. Or, when they had carried out arrests, that I avenged myself on any of my enemies or that I had any diaita pronounced against anyone, or that I entered anyone on the katalogos of those with Lysandros.*

<sup>21</sup> *IK Iasos* 82: [καὶ ἀ]πογραφεισῶν δικῶν εἰς τὸ δικαστήριον [πλε]όνων [ἢ τρι]ακοσιῶν πεντήκοντα, τὰς μὲν πλείσ<τα> διέλυσαν [πείσ]αντες τοὺς ἀντιδίκους, ὅπως μὴ διὰ ψάφου τῶν πρα[γμ]άτων κρινομένων εἰς πλέω ταραχῶν ὁ δᾶμος [καθισ]τάται· τινὰς δὲ καὶ διαίτασαν συμφερόντως [ἐκ]άτέροις τοῖς ἀντιδίκοις· δέκα δὲ δικῶν εἰσαχθεισῶν [εἰς τὸ] <δι>καστήριον ἔκριναν διὰ ψάφου κατὰ τε τὸ διάγραμ[μα τοῦ] βασιλέως καὶ τοὺς νόμους... *And although more than 350 lawsuits had been registered, they resolved most of them by persuading the opposing parties, so that the demos would not be brought into further turmoil because the cases had been decided by vote. And some suits they also settled by arbitration in a way that benefitted both parties. The ten lawsuits that were brought before the court they judged by vote in accordance with the King's diagramma and the laws...*

related especially to disputes arising in connection with the confiscation of property, not least whenever such property happened to be encumbered. This would account for the suggestion of compulsion in Lys. 25.17 and L  $\upsilon\pi\epsilon\rho$  Ἐρυξιμάχου fr. 107 (Carey), and for its juxtaposition with what are clearly acts of harrassment and outright persecution. It would also explain why the stipulations in the reconciliation process of 403/2 referred not only to *dikai* but also to *diaitai*, declaring the results of each type of process valid only if the procedure itself had taken place while Athens was democratically governed.<sup>22</sup> Conversely, according to the terms of the settlement, all lawsuits decided under the oligarchy, both those pertaining to individuals and those pertaining to the collectivity, were declared invalid, probably along with the acts and processes by which the execution of those sentences was carried out (ἐπράχθη).<sup>23</sup>

Both the stipulation that *dikai* and *diaitai* concluded under the democracy were to remain in force and the stipulation that rendered void all transactions and verdicts concluded under the Thirty were likely to have very significant consequences for the returnees of 404. Although the terms of the reconciliation agreement placed severe restrictions on the

---

<sup>22</sup> And. 1.87-88: <Νόμος.> "Τὰς δὲ δίκας καὶ τὰς διαίτας κυρίας εἶναι, ὅποσαι ἐν δημοκρατουμένῃ τῇ πόλει ἐγένοντο. Τοῖς δὲ νόμοις χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος." Τὰς μὲν δίκας, ὧ ἄνδρες, καὶ τὰς διαίτας ἐποιήσατε κυρίας εἶναι, ὅποσαι ἐν δημοκρατουμένῃ <τῇ> πόλει ἐγένοντο, ὅπως μήτε χρεῶν ἀποκοπαὶ εἶεν μήτε δίκαι ἀνάδικοι γίγνοιτο, ἀλλὰ τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν· τῶν δὲ δημοσίων (sc. συμβολαίων) <ἐφ'> ὅποσοις ἢ γραφαί εἰσιν ἢ φάσεις ἢ ἐνδείξεις ἢ ἀπαγωγαί, τούτων ἔνεκα τοῖς νόμοις ἐψηφίσασθε χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος. *Law.* "All *dikai* and arbitrations that have taken place while the polis was democratically governed shall be valid. They must apply the laws from the archonship of Eukleides." *Gentlemen, you rendered valid all dikai and arbitrations that had taken place while the polis was democratically governed, so that there would neither be any cancellations of debts nor dikai that would be subject to retrial, but so that there would be exacting of money (praxeis) in disputes between individuals. But as for disputes of a public nature, for which there are graphai, or phaseis, or endeixeis, or apagogai, on account of these you voted to apply the laws from the archonship of Eukleides.* For my interpretation of the phrase τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν, see above all Gauthier's discussion of similar terminology in Athenian fifth-century decrees (1972: 160-163). Compare also the language used in Dem. 18.210.

<sup>23</sup> The clause is cited as a document in Dem. 24.56-57. Even if the document itself is rejected, the gist of its contents are confirmed by Demosthenes' paraphrase in the surrounding text. The verb ἐπράχθη in the text of the document is, if genuine, probably to be understood in the specific sense of 'exact' (e.g. Aisch. 3.104-105, Isokr. 18.7), 'collect' (Lys. 17.3, 32.27), or 'execute a court decision' (Lys. 9.12, Isaios 11.33).

launching of fresh prosecutions over matters predating the archonship of Eukleides, the continued validity of *dikai* and *diatai* decided under the democracy allowed the enforcements of such verdicts to go ahead. As far as private actions were concerned, this would mean that the winner of the original suit was permitted to enforce the court's ruling and collect the debt owing to him. He would have been free to distrain upon the debtor's property and, if his opponent tried to obstruct him, to resort to a *dike exoules*. Several actions that may have been of this type are attested for the period following soon after 403/2.<sup>24</sup>

As far as public actions are concerned, we are on more shaky ground. It can be ruled out categorically that the clause permitted the execution of death penalties and the imposition of *atimia* on the returnees of 404. On the other hand, the clause that affirmed the validity of verdicts passed under the democracy probably allowed the interpretation that fines exacted and confiscations that had already been carried out before the fall of the democracy were to remain in force. This might then, in effect, be denying the oligarchic returnees their claim to compensation for the property that had originally been confiscated from them. And if this clause is combined with two other stipulations from the settlement of 403/2, its potential heavy consequences for the returnees of 404 begin to emerge.

The stipulation that all *dikai* conducted under the Thirty, public and private, were to be invalid in principle swept away and reversed all confiscations imposed through legal procedures under the oligarchy,

---

<sup>24</sup> *P. Oxy.* 2537 (Carey fr. 308) lists five Lysianic speeches delivered in *dikai exoules*. None of them are sufficiently well preserved to allow a clear link to be made between the individual disputes and the general confusion relating to ownership of and entitlement to real estate that most likely followed in the wake of the settlement of 403/2, especially when we take into account the numerous casualties of the long siege and starvation after Aigos Potamoi and of the civil war of 404/3. At least two of them (XXXIX πρὸς Διογένην ὑπὲρ Ἀρχεστράτου περὶ οἰκίου (Carey) and CXXXVIII πρὸς Φιλοστέφανον (Carey)) concerned real estate that allegedly belonged to orphans, while a further two (πρὸς ? = LIX κατ' Εὐκλέους ἐξοὔλης (Carey) and LXXII πρὸς Ἰππόμαχον (Carey)) appear to have concerned disputed land that one of the parties alleged to have received as part of his inheritance. A further case that was very likely a *dike exoules* is Isokr. 16 *On the Horseteam*. This dispute almost certainly arose because of Alkibiades junior's attempt to resist the collection of a judgement debt incurred *in absentia* by his father, the general Alkibiades, after his retreat into exile in 407, and for which his son was now liable (on this case see Whitehead and Rubinstein (forthcoming)). A further dispute, Lys. XII περὶ τῆς Ἀντιφῶντος θυγατρὸς frs. 25-29 (Carey)), for which the procedure cannot be determined with certainty, provides further evidence for the chaos; see the tentative reconstruction of the case in Carey (2004).

although the settlement in actual fact applied it to immovables and unsold movables. It also made void all the decisions that may have been reached in disputes arising in connection with the confiscation and disposal of encumbered real estate to the detriment of any interested third party.

This clause was reinforced by the stipulation that all real estate that had been confiscated under the Thirty was to be returned to those who had originally owned it, that is to the individuals who had been in possession of the land or houses prior to the abolition of the democracy. The precise meaning of the clause has been disputed (not least because of the sorry state of the papyrus), and it is not clear if the person who had purchased the estate was entitled to any kind of financial compensation when handing it over to the relevant Peiraieus returnee. But that the *asty* member was required to part with the real estate is beyond doubt.<sup>25</sup>

Any citizen who had remained in the *asty* and who had made use of the opportunity to acquire confiscated real estate on the cheap, through public auction, would have been affected by these two clauses. However, for a citizen who had been in residence in Athens during the period before the capitulation, the requirement that he should hand back any such real estate meant, in terms of his ownership of land, only a return to the *status quo ante*. Although he had to give up some of the profit he had made as a result of the oligarchy, he would be entitled to keep any immovables that he may have received as his inheritance along with any estate acquired by normal purchase at any time prior to the archonship of Eukleides. And this was not all: he was even allowed to remain in possession of any moveable asset that he had acquired at a favourable price under the oligarchy, unless the previous owner chose to buy them from him. In other words, some *asty* dwellers may have emerged from the reconciliation process not only relatively unscathed, but actually in profit.

By contrast, for an exile who had returned to Athens in 405/4 or 404/3, and whose property had been confiscated under the previous

---

<sup>25</sup> See Lys. LXX πρὸς Ἰπποθέροισιν fr. 165 (Carey) cited in n. 000 above. Until the publication of Sakurai (1995), it was generally maintained that the democratic returnees were required themselves to pay compensation to those who had acquired the immovables in the meantime (e.g. Krentz (1982: 105) and Loening (1987: 66-67), the latter with reservations (1987: 52)). More recently, several scholars have adopted the position of Sakurai (but see e.g. Todd (1993: 234-235)), and her reading has been adopted in Carey's recent edition of Lysias' speeches (see further Medda (2003: 121-122 and 196)). Some have preferred to leave the question open (e.g. Wolpert (2002: 154 n. 7), Scheibelreiter (2013: 115)). It is in any case not known if the interim owners were entitled to some compensation from the public treasury.

democracy, the implications were far more serious. He would in many cases be left with no real estate at all. As far as this conclusion is concerned, it doesn't really matter if he had received real estate under the Thirty in a formal process of property restoration, or whether he had acquired it at auction in the wake of the killings and confiscations carried out by the regime. He would be required to give it up in either case, if the former owner was still alive or had left direct descendants. Even if we assume that he would be entitled to some form of compensation, the symbolic significance of his having to relinquish his existing claim to specific land and house(s) is likely to have been high. The difference between his position on the one hand, and, on the other, the position of the returning democrats and those *asty* men who had been in Athens before its capitulation very likely would have contributed further to his marginalisation. Moreover, the problems associated with the distribution and ownership of real estate would most likely continue, unless a satisfactory answer could be found.

In 403/2, Eleusis and its landed property may have been that answer. Because of the massacre already carried out under the Thirty, the problems arising from Eleusinians who refused to part with their own real estate were likely to be manageable. From part of the reconciliation agreement cited in *Ath. Pol.* 39.3 that relates to Eleusis, it is evident that, although outright confiscation of Eleusinian land is not on the agenda, any person who owned property there would be compelled to sell it if requested.<sup>26</sup> Thus, the creation of this new community may have been intended as a solution to the perennial Greek problem of competing claims to real estate advanced by opposing factions, as well as a method of segregating the two factions, each of which would have regarded itself as a victim and the opponent as perpetrator. It is also very likely that those people who would find the prospect of residence in Eleusis most attractive, and who would therefore have registered well in advance of the deadline, were precisely those who had kept few or no immovable assets elsewhere in Attica – in

---

<sup>26</sup> ἐὰν δὲ τινες τῶν ἀπιόντων οἰκίαν λαμβάνωσιν Ἐλευσίῃ, συμπεῖθειν τὸν κεκτημένον. ἐὰν δὲ μὴ συμβαίνωσιν ἀλλήλοις, τιμητὰς ἐλέσθαι τρεῖς ἑκάτερον, καὶ ἦντιν' ἂν οὗτοι τάξωσιν τιμὴν λαμβάνειν. Ἐλευσινίων δὲ συνοικεῖν οὐς ἂν οὗτοι βούλωνται. *If any of the emigrants takes a house at Eleusis, he must persuade the owner. If they cannot reach agreement with each other, each of them shall appoint three evaluators, and the owner shall receive whatever price the evaluators assess. Of the Eleusinians those whom they [the new settlers] want shall reside with them.*



other words the oligarchic returnees of 404 who, among the *asty* faction, were likely to hold the most deep-seated, bitter, and vindictive feelings towards their democratic opponents.

Eleusis, notoriously, did not prove a particularly good answer in the longer run, as is amply demonstrated by the new phase of *stasis* that ended only in 401/0. It is an intriguing question how precisely and on what terms the population of Eleusis was subsequently reintegrated into the Athenian *demos*, and how matters of property were regulated according to the new reconciliation agreement concluded in the archonship of Xenainetos. But whatever they were, it was this settlement that provided a true resolution to the *stasis* that had menaced Athens for more than a decade. Perhaps, then, it is the reconciliation in 401/0 that ought to be celebrated as the real miracle. But that is a different story.

#### Literature cited

- Balot, R. K. (2001) *Greed and Injustice in Classical Athens*. Princeton.
- Bearzot, C. (1997) *Lisia e la tradizione su Teramene. Commento storico alle orazioni XII e XIII del Corpus Lysiicum*. Milano.
- Carawan, E. (2006) 'Amnesty and Accounting for the Thirty' *Classical Quarterly* 56, 57-76.
- Carey, C. (2004) 'Antiphon's Daughter' in D. L. Cairns and R. A. Knox [eds] *Law, Rhetoric and Comedy in Classical Athens. Essays in Honour of Douglas M. MacDowell*, Swansea, 123-150.
- Dorjahn, A. P. (1946) *Political Forgiveness in Old Athens. The Amnesty of 403 B.C.* Evanston.
- Gauthier, P. (1972) *Symbola. Les étrangers et la justice dans les cités grecques*. Nancy.
- Hornblower, S. (2008) *A Commentary on Thucydides. Volume III: Books 5.25-8.109*. Oxford.
- Krentz, P. (1982) *The Thirty at Athens*. Ithaca.
- Lehmann, G. A. (1972) 'Die revolutionäre Machtergreifung der "Dreißig" und die staatsliche Teilung Attikas (404-401/0 v. Chr)' in G. A. Lehmann and R. Stiehl (eds.) *Antike und Universalgeschichte. Festschrift Hans Erich Stier*. Münster, 201-233.
- Lewis, D. M. (1997). *Selected Papers in Greek and Near Eastern History*. Cambridge.
- Loening, T. C. (1987) *The Reconciliation Agreement of 403/2 B.C. in Athens*. Stuttgart.
- Lonis, R. (1991) 'La réintégration des exilés politiques en Grèce: le problème des biens' in P. Goukowsky and C. Brixhe (eds.) *Hellènika Symmikta: Histoire, Archéologie, Épigraphie*, Nancy, 91-109.
- MacDowell, D. M. (1962) *Andokides. On the Mysteries*. Oxford.
- Medda, E. (2003) *In Hippothersem, In Theomnestum et fragmena ex incertis orationibus*. Firenze.
- Migeotte, L. (1984) *L'emprunt public dans les cités grecques*. Quebec and Paris.
- Natalicchio, A. (1996) *Atene e la crisi della democrazia*. Bari.
- Németh, G. (2006) *Kritias und die dreißig Tyrannen. Untersuchungen zur Politik und Prosopographie der Führungselite in Athen 404/403 v. Chr.* Stuttgart.

- Phillips, D. (2008) *Avengers of Blood. Homicide in Athenian Law and Custom*. Stuttgart.
- Rhodes, P. J. (1983) *A Commentary on the Aristotelian Athenaion Politeia*. Oxford.
- Riess, W. (2012) *Performing Interpersonal Violence. Court, Curse and Comedy in Fourth-Century BCE Athens*. Berlin and Boston.
- Rubinstein, L. (2013) 'Forgive and Forget? Amnesty in the Hellenistic Period' in F. Mitthof and K. Harter-Uibopuu *Vergeben und Vergessen? Amnestie in der Antike*. Wien, 127-161.
- Scafuro, A. C. (1997) *The Forensic Stage. Settling Disputes in Graeco-Roman New Comedy*. Cambridge.
- Scheibelreiter, P. 'Atheniensium Vetus Exemplum: Zum Paradigma einer antiken Amnestie' in F. Mitthof and K. Harter-Uibopuu *Vergeben und Vergessen? Amnestie in der Antike*. Wien, 95-126.
- Seibert, J. (1979) *Die politische Flüchtlinge und Verbannten in der griechischen Geschichte*. Darmstadt.
- Stahl, J. M. (1891) 'Über athenische Amnestiebeschlüsse' *Rheinisches Museum* 46, 250-286.
- Todd, S. C. (1993) *The shape of Athenian Law*. Oxford.
- Usteri, P. (1903) *Ächtung und Verbannung im griechischen Recht*. Berlin.
- Wolpert, A. (2002) *Remembering Defeat. Civil War and Civic Memory in Ancient Athens*. Baltimore.