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# *APOTIMEMA*: ATHENIAN TERMINOLOGY FOR REAL SECURITY IN LEASES AND DOWRY AGREEMENTS

When entering into a legal agreement, it is not unusual for one of the parties to ask the other to provide some security so as to ensure that the latter's obligations under the agreement will be fulfilled. There are two basic forms of security, personal and real. In personal security for a loan, the borrower arranges for a third party to come forward and to promise the lender that he will fulfil the borrower's obligations in the event that the borrower does not make interest payments or repay the principal. In real security, the borrower pledges some of his property, either movable or immovable, as security to the creditor. If the borrower defaults, the creditor has the right to seize the property pledged as security, and, if he wishes, to sell it for cash in lieu of repayment.

During the Classical and Hellenistic periods, the Athenians used both personal and real security in their legal agreements. Real security appears to have primarily been used in three types of agreements: loans, dowries, and leases. Our information about the use of real security at this time comes from two main sources, one literary, the other epigraphical. First, there are the speeches of the Attic orators written for delivery in private suits. Second, there are the many Attic inscriptions that deal with financial matters, especially the *horoi*. The *horoi* are flat slabs of stone that were placed on properties that had been pledged as security.[1] The purpose of the *horoi* was to warn third parties that there was a lien on the property.[2] The amount of information inscribed on the *horoi* varies. All we find on some is a short statement that the property has been pledged as security.[3] Others are more forthcoming, giving the name of the creditor and the amount of the debt or obligation.[4]

In loan agreements, several terms or expressions are employed to express the idea of real security. The property or object that is provided as security is often called τὸ ἐνέχυρον.[5] On a handful of *horoi*, only seven, the property pledged as security is described as 'lying under (an obligation)' for a debt (e.g. *horos* no. 5: ὅρος οἰκίας | ὑποκειμένης | Ἀλαιεῦσι: HH).[6] On the vast majority of *horoi*, however, we encounter

[1] For a description of the physical characteristics of the *horoi*, see J. V. A. Fine, *Horoi: Studies in Mortgage, Real Security, and Land Tenure in Ancient Athens* (*Hesperia* Suppl. 9 (Princeton, 1951)), pp. 44–6. This work will hereafter be referred to by the author's name only.

[2] For the purpose of this kind of *horos*, see Fine, pp. 42–3; M. I. Finley, *Studies in Land and Credit in Ancient Athens, 500–200 B.C.* (New Brunswick, 1952), pp. 10–21. Finley's work was reprinted by Rutgers University Press in 1985 as a volume in its *Transactions* series. The reprinted edition contains a valuable new introduction by P. Millett, which provides a critical review of recent scholarship about the *horoi*. Millett's introduction also provides the texts of all *horoi* published since the appearance of Finley's original work. All references in this article will be to the 1985 edition, which will be cited by the author's name only. Millett's introduction to this edition will be cited as 'Millett in Finley'. When citing the texts of the *horoi*, I use the numbers assigned by Finley and Millett (e.g. *horos* no. 34, *horoi* nos. 6, 8, 10).

[3] e.g. *horos* no. 61.

[4] e.g. *horoi* nos. 14, 17, 18, etc.

[5] Dem. 33.10; [Dem.] 49.5, 52, 53; 56.3.

[6] *Horoi* nos. 1, 2, 2A, 4, 5, 6, 7. The term is restored on *horos* no. 3A. Since *horos* no. 3 does not actually contain the word ὑποκειμένης, I have excluded it from this category, although Finley placed it under the rubric *hypotheke*. Nor have I included *horoi* nos. 80A and 81A. For a discussion of the idiosyncratic formula found on these *horoi*, see E. M. Harris, 'When is a Sale

the expression 'sold on condition of release' (e.g. *horos* no. 16: ὅρος χωρί[ο]|καὶ οἰκίας πε|πραμένων|ἐπὶ λύσει|XXXX).[7] In the orators, we frequently come upon the verbs ὑποκεῖσθαι and ὑποτιθέναι to express the idea of real security and, in some passages, the verbs of sale πεπρᾶσθαι and ἀποδίδοσθαι, though neither verb is ever followed by the prepositional phrase ἐπὶ λύσει.[8]

Until recently, scholars believed that each type of expression found on the *horoi* was used to denote the presence of a different form of real security, one called *hypotheke*, the other *prasis epi lysei*.[9] In an article published in a recent volume of this journal, I argued that this view is based on an invalid analogy from Roman Law. Despite the claims of many scholars, there is no discernible difference between the forms of real security denoted by the two types of expression seen on the *horoi*. Athenian Law, unlike Roman Law, did not possess formal procedures for conveyance which would have enabled people to distinguish between a form of real security where ownership was passed to the creditor and another where it was not. The absence of these formal procedures meant that the Athenians were unable to answer the question, who owned the security, the creditor or the debtor? That is why we come upon situations recounted by the orators where the creditor describes the security as having been 'sold' to him, while the borrower at the same time contracts other loans on the same security as if it had never passed out of his ownership. Since it was the creditor who customarily placed the *horoi* on the property pledged as security, it is not surprising that the information inscribed on the *horoi* tends to reflect his view of the transaction. For this reason, the vast majority of *horoi* contain the expression 'sold on condition of release', which implies that the creditor is the owner of the security.[10]

What I did not discuss in my article 'When is a Sale Not a Sale?' (n. 6) is the terminology employed to denote real security in leases and dowry agreements. Here the terminology differs from the expressions normally used in the context of loans. For instance, when an orphan's guardian decided to lease his property, the law required that the archon supervise the leasing of the orphan's property. To protect the orphan's interests, the archon ordered the person who leased his property to furnish securities for the lease.[11] These securities are called ἀποτιμήματα. The term is also found on the *horoi* placed on the properties pledged as security for leases of orphans' property.[12] Identical terminology is found on the *horoi* placed on property which was

Not a Sale? The Riddle of Athenian Terminology for Real Security Revisited', *CQ* 38 (1988), 351–81, at pp. 359 and 379 n. 84. This article will hereafter be referred to by the author's name only.

[7] This formula is found or reasonably restored in a total of 125 texts. There are 92 in Appendix I of Finley, 22 in Appendix III of Finley, and 14 in Millett in Finley. F. Pringsheim, 'Griechische Kauf-Horoi', in *Festschrift Hans Lewald* (Basel, 1953), pp. 143–60, argued that *horoi* nos. 112, 113, 114, and 114A publicized sale, not real security. Cf. the same author's *Greek Law of Sale* (Weimar, 1950), pp. 163–5. For trenchant criticisms of Pringsheim's arguments, see Millett in Finley, pp. xv–xviii. For an explanation of the omission of the phrase ἐπὶ λύσει on these *horoi*, see E. M. Harris, 'Women and Lending in Classical Athens: A *Horos* Re-Examined', *Phoenix* forthcoming. The phrase may also be missing from *horos* no. 18A. See W. K. Pritchett, *AHR* 38 (1952), 338.

[8] For the terminology employed by the orators, see Harris, pp. 361–77.

[9] The view that the Athenians had three types of real security goes back at least as far as H. F. Hitzig, *Das griechische Pfandrecht* (Munich, 1895), and is accepted by both Finley and Fine.

[10] Harris, pp. 358–79.

[11] *Ath. Pol.* 56.7. H. Rackham in his Loeb translation of the passage incorrectly translates the word ἀποτιμήματα as 'rents'.

[12] It is generally agreed that the *horoi* containing the word ἀποτίμημα or ἀποτιμήματος followed by either παιδί or παισί with the name of the father in the genitive were set up in connection with leases of orphans' property. See Finley 38–9, Fine 96–8. This formula is found

pledged to secure the repayment of dowries.[13] Curiously enough, it is also seen on a few *horoi* set up on property pledged as security for a loan.

Several passages in the lexica give helpful discussions of the term *ἀποτίμημα* and the verb *ἀποτιμᾶν* from which it is derived. Here is what Harpocration (s.v. *ἀποτιμηταί*) has to say:

*ἀποτιμηταὶ καὶ ἀποτίμημα καὶ ἀποτιμᾶν καὶ τὰ ἀπ' αὐτῶν. οἱ μισθούμενοι τοὺς τῶν ὀρφανῶν οἴκους παρὰ τοῦ ἄρχοντος ἐνέχυρα τῆς μισθώσεως παρείχοντο. ἔδει δὲ τὸν ἄρχοντα ἐπιπέμπειν τινὰς ἀποτιμησομένους τὰ ἐνέχυρα. τὰ μὲν οὖν ἐνέχυρα τὰ ἀποτιμώμενα ἐλέγοντο ἀποτιμήματα, οἱ δὲ πεμπόμενοι ἐπὶ τῷ ἀποτιμήσασθαι ἀποτιμηταί, τὸ δὲ πρᾶγμα ἀποτιμᾶν. εἰώθεσαν δὲ καὶ οἱ τότε, εἰ γυναικὶ γαμουμένῃ προῖκα διδοῖεν οἱ προσήκοντες, αἰτεῖν παρὰ τοῦ ἀνδρὸς ὥσπερ ἐνέχυρόν τι τῆς προικὸς ἄξιον, οἷον οἰκίαν ἢ χωρίον. ὁ δ' αὐτὸς λόγος καὶ ἐπὶ τῶν ἄλλων ὀφλημάτων.*[14]

Pollux, *Onomasticon* 8.142 and the *Anecdota Graeca* 437.15 (Bekker) contain similar information. Both the Attic orators and the *horoi* confirm most of the statements made about *apotimema* by the lexica. Yet the lexica do not tell us the one thing we would most like to know: why did the Athenians use this terminology to denote real security in these contexts? Was the reason that *apotimema* was a distinct form of security that differed from other types of security? Or is there another explanation? The lexica do not say.

While the lexica are silent about this matter, modern scholars have been rather loquacious. Various proposals have been put forward to explain the term *apotimema*, but none has been able to win general approval. Despite their manifold disagreements, scholars have by and large shared the significant assumption that *apotimema* was a distinct form of security, which was distinguished from *hypotheke* and *prasis epi lysei*. In this article, I will take the conclusion I reached in my previous article one step further. I will argue that just as there is no distinction to be made between *hypotheke* and *prasis epi lysei*, there is likewise no essential difference between *apotimema* and other types of security used by the Athenians. Instead, we need to examine why the

on *horoi* nos. 117, 118, 119, 120, 121, 125, 126, 126B, 126C, 126D, 126E. The formula is reasonably restored on *horoi* nos. 123, 126A. On four *horoi* we find the genitive *παιδός* or *παίδων*: *horoi* nos. 122, 124, 129, 129A. The genitive is reasonably restored on *horos* no. 120A. The word *ὀρφάνοις* is found on only two *horoi*, nos. 116 and 128, which also use the perfect passive participle *ἀποτετιμημένων* instead of the noun *ἀποτίμημα* (*-τος*). *Horos* no. 130 from Arcesine on Amorgos also belongs in this category. For a discussion of *horos* no. 131, see Section I.

[13] For *apotimema* used in connection with dowry, see Dem. 30, *passim*. The standard formula on the *horoi* set up on property pledged to secure the return of a dowry is *ἀποτίμημα προικός*, with the name of the woman for whom the dowry was given in the dative. This formula is found on *horoi* nos. 133, 134, 135, 135A, 136, 137, 138, 139, 140, 142, 148, 152. The formula is reasonably restored on *horoi* nos. 144, 149, 151, 152A. On two *horoi* we find the genitive of *ἀποτίμημα*: *horos* no. 132 (*ἀποτιμημάτων*) and *horos* no. 141 (*ἀποτιμήματος*). On six *horoi* the noun is replaced by the perfect passive participle of the verb followed by *προικός*: *horoi* nos. 143, 145, 147, 148A, 153. On *horos* no. 150 there is a slight variation (*ἐν προικί* instead of *προικός*). The name of the woman is always in the dative except on *horoi* nos. 145 and 148A where it is in the genitive. On *horoi* nos. 146 and 146B the word *προικός* is found without the word *ἀποτίμημα*.

[14] Translation: '*Apotimetai* and *apotimema* and *apotiman* and the things related to them. Those who leased the estates of orphans from the archon used to furnish securities for (the payment of) rent. The *archon* was required to send out some persons to receive (or evaluate) the securities. The securities which were received (or evaluated) were called *apotimemata*, those who were sent out to receive (or evaluate) them were called *apotimetai*, and the action was called *apotiman*. Men in that period were also accustomed, if the relatives gave a dowry for a woman who was being married, to demand from her husband something equivalent in value to the dowry as a security, such as a house or a plot of land. The same is also true for other (kinds of) debts.'

Athenians chose to employ the term *apotimema* to denote real security primarily in certain contexts, in particular, leases and dowry agreements, and only rarely in regard to loans.

The solution offered here to the conundrum posed by the term *apotimema* will do more than resolve a scholarly dispute about a narrow issue in Athenian law. A proper understanding of the term will enable us to decipher the meaning of the only extant Athenian statute concerning real security (Dem. 41.7–10). More important, an analysis of the term *apotimema* will help us to appreciate the legal sophistication of those Athenians who conducted transactions involving real security. Scholars have on occasion criticized the Athenians for their imprecise use of legal terminology.[15] Though the Athenians did not develop the subtle legal distinctions and sophisticated technical vocabulary of Roman Law, they did possess a rudimentary understanding of basic legal principles and were able to use their own simple terminology consistently and correctly. The confusion about Athenian terminology for real security was not created by the Athenians. It is the product of modern scholars operating on mistaken assumptions.

Section I of this article discusses the analyses of *apotimema* presented by M. I. Finley and H. J. Wolff respectively, the two scholars whose views on the subject have been most influential in the past forty years.[16] A detailed examination of their views is necessary, since they often rest on misinterpretations of texts containing valuable evidence about the term *apotimema*. Once we have reached a better understanding of these texts, we will be in a position to present a new explanation of the term in Section II. In Section III, I will apply this explanation of the term to an analysis of the law on real security found at Dem. 41.7–10.

## I

Finley, like earlier scholars, assumed that the Athenians possessed three types of security: *hypotheke*, *prasis epi lysei*, and *apotimema*. Unlike Fine and several others, who held that *hypotheke* was a collateral form of security, whereas *prasis epi lysei* was substitutive in nature, Finley (pp. 51–2, 107–17) argued persuasively that all three forms of security were substitutive.[17] This meant that when an Athenian creditor

[15] Fine, pp. 62, 92, 105 ('... the Athenians undoubtedly on occasions employed this term, as they did other technical expressions, rather loosely'); A. R. W. Harrison, *The Law of Athens: Family and Property* (Oxford, 1968), p. 254 ('Once more we are hampered by the absence of a developed technical terminology. This makes it difficult to mark in as sharp outline as we should like the distinctions between various kinds of real security'); M. I. Finley, 'Some Problems of Greek Law: A Consideration of Pringsheim on Sale', *Seminar* 9 (1951), 89. One should compare the distinction between *nomos* and *psephisma* that was strictly observed in regard to motions enacted by the Assembly and by the *nomothetai* respectively. See M. H. Hansen, '*Nomos and Psephisma* in Fourth-Century Athens', *GRBS* 19 (1978), 315–30.

[16] Finley, pp. 38–52; H. J. Wolff, 'Das attische Apotimema', in *Festschrift für Ernst Rabel* (Tubingen, 1954), 2.293–333. This article will hereafter be cited by the author's name only. Millett in Finley, whose review of recent scholarship is generally thorough, makes no reference to this article.

For references to earlier discussions of *apotimema*, see Fine, Finley, and Wolff. Harrison (n. 15, above), pp. 293–303, summarizes the view of these and other scholars, but makes no original contribution to the debate. L. R. F. Germain, 'Une sûreté mal connue: l'apotimema attique. Étude de la troisième famille d'apotimema', in *Studi in onore di Arnaldo Biscardi* (Milan, 1982–4) 3.445–57, offers some speculations about the use of *apotimema* in agreements other than the leases of orphans' estates and dowries. His views are criticized by P. Millett, *Lending and Borrowing in Ancient Athens* (Cambridge, 1991), p. 223. Fine's view of *apotimema* is based on a mistaken conception of *hypotheke*; see Millett in Finley, pp. xiii–xiv; Harris, pp. 352–6.

[17] For criticism of Finley's analysis of the difference between *hypotheke* and *prasis epi lysei*, see Harris, pp. 356–8.

seized the security as a result of the borrower's default and sold it, he was under no obligation to refund to the borrower the difference between the sale price of the security and the amount of the obligation due to the creditor.

Finley noted that *apotimema* appeared to be used primarily, but not exclusively, in two types of agreement: leases of orphan's property (pupillary *apotimema*) and dowry agreements (dotal *apotimema*). When leasing the estates of orphans, the archon sent out official evaluators to assess the value of the *apotimema*.[18] According to Finley (p. 43), pupillary *apotimema* differed from other security transactions in that it guaranteed not only a sum of money (the annual rent-interest) but also the return of the leased property. The reason why almost all of the *horoi* set up in connection with this procedure do not record a sum of money is that most of the orphans' property consisted of realty rather than cash. Finley (p. 44) observed that if 'the orphan's estate consisted entirely of money (...) that sum together with the interest-total could be inscribed on the *horos* placed on the property tendered by the lessees as security. If, however, the estate was in realty, (...) only a fictitious sum could be inscribed.'[19]

Dotal *apotimema* was different from its pupillary counterpart in two ways. The dowry was normally a sum of money, and if the dowry were not in cash, it was customary to assess its monetary value. The *apotimema* for a dowry 'therefore guaranteed the return of a fixed sum, which could be indicated on the *horos* like any other monetary debt'. This accounts for the fact that most of the *horoi* set up to publicize dotal *apotimema* indicate an amount of money. Finley (pp. 45–6) was aware that the terms *apotimema* and the related term *timema* appear in other contexts than dowry and the leases of orphans' property, but did not discuss these exceptional cases.[20] This is a serious weakness in his analysis.

According to Finley, pupillary and dotal *apotimema* shared two common features that set them apart from other forms of security. In his opinion, 'if Y needs a loan for whatever reason and offers his house as security, the potential lender will fix the size of the loan he is willing to make by his estimate of the value of the house'. In secured loans, therefore, 'the property comes first and the money second, so to speak' and 'the property is the fixed amount, the prior item'. In *apotimema*, however, the money comes first, the property second. When a man marries off his daughter, he fixes in advance the monetary value of the dowry, 'so the problem becomes one of evaluating the husband's land to determine what proportion is an acceptable equivalent'. The same is true of pupillary *apotimema* where 'we begin with a fixed property holding, the orphan's *oikos*, and a fixed amount of money, the annual rent to be paid by the lessee as determined through the mechanism of the auction. Then comes the evaluation, the measuring off of a proportionate share of the successful lessee's holdings, proportionate to an amount of money and property that has been fixed beforehand.'[21] This meant that the *apotimema* might consist not of an entire property but 'only a particular share' that 'has been decided upon as the proper equivalent for the debt'. In this case there occurs 'a kind of redefinition of the property which might now be divided into two parts, 'one unencumbered and one encumbered'. Finley's view is that 'the distinction between *apotimema* and *hypotheke*

[18] Finley (p. 44) believed that the 'official evaluators' did not 'operate in monetary terms'. If so, in what terms did they operate?

[19] Finley adds that such 'a procedure would be pointless since it was the orphan's property that was to be restored to him when he came of age, not its price.' But if the orphan's property was damaged or contained movables that were stolen, then the price would have been of some concern.

[20] Fine, pp. 104–6, was at a loss for an explanation of these *horoi*.

[21] Finley, p. 46. Finley appears to contradict himself here, since above he seems to imply that the fixed value was not reckoned in monetary terms.

was not one of juristic substance at all, but one of practical procedure'. The main distinguishing feature of *apotimema* was that 'a more or less precise determination was made at the time the agreement was reached, fixing the property that would be accepted as the substitute for the debt'.[22] The other common feature that lay behind the different uses of *apotimema* was 'the time factor'. Most loans in this period were short-term; leases of orphans' estates would last until the child reached the age of majority. No term was set on dotal *apotimema*, which would last as long as the marriage for which the dowry was given.

There are three objections to be made against Finley's analysis of *apotimema*. First, it is incorrect to state that *apotimema* in a lease guaranteed 'the return of the leased property'. Second, there is no reason to think that in secured loans, 'the property comes first and the money second'. Third, evidence from the *horoi* and the literary sources contradicts Finley's view that *apotimema* fixed the 'property that would be accepted as the substitute for the debt'.

Finley's view that *apotimema* guaranteed the return of the leased property clashes with the testimony of the lexica. Harpocration (s.v. ἀποτιμηταί) states that those who leased the property of orphans provided securities for the payment of rent (ἐνέχυρα τῆς μισθώσεως). Pollux (*Onomasticon* 8.142) informs us that the *apotimema* was like a security, but it was pledged for the payment of rent (πρὸς τὰς μισθώσεις). The testimony of the lexica, which derives from literary sources, is independently corroborated by contemporary inscriptions. A decree of the deme of Peiraieus from the year 321/320 (*IG* ii² 2498, lines 1–7) stipulates that those who lease certain deme properties for above 10 *drachmai* must provide security for the payment of rent (καθιστάναι ἀποτίμημα τῆς μ[ι]σθώσεως ἀξιοχρέων). The figure of 10 *drachmai* must represent an amount of rent to be paid, since it is far too low a sum for a property value.[23]

We should not mislead ourselves into thinking that an analogy can be drawn between the return of the principal in a loan and the return of leased property in a rental agreement. In a loan the borrower receives a sum of money to which he acquires full rights for the duration of the agreement. After receiving the money, the borrower can exchange the money for goods or services. The risk for the lender is that the borrower will spend the entire principal and then become insolvent before the time comes for him to repay the loan. The pledge of real security is designed to protect him against that risk by ensuring that the borrower does not alienate an amount of property equivalent in value to the principal. The lessor does not face the same risk as the lender. While the lender relinquishes all rights to his money in return for a promise to repay, the lessor does not part with the ownership of the property he leases. All the lessee has a right to is the use of the property. He does not acquire the right to alienate it, or, to be more specific, to exchange it for cash. If the lessee tries to sell the property to an unsuspecting third party, the sale will not be valid. The lessee does not have title to the land so he cannot pass title to someone else. And if the lessee refuses to vacate the property at the end of the lease, the lessor can evict him. Should the lessee resist eviction, the lessor has resort to the courts. In Athenian law, the person who occupied a building or plot of land and refused to yield it to the rightful owner was subject to prosecution by a *dike exoules* and faced stiff penalties if he lost the case.[24] Thus if the lessee proved to be insolvent, the only thing the lessor stood to

[22] Finley, pp. 51–2. Unlike Fine, Finley (pp. 47, 51) dismisses any link between *apotimema* and family matters as 'irrelevant'.

[23] A similar phrase is restored with a high degree of probability in *IG* ii² 2494, lines 7–8.

[24] For the *dike exoules*, see Harrison (n. 15, above), pp. 217–21.

lose was the payment of rent. To protect the lessor against this risk, the lessee was required to furnish an *apotimema*, real security. He did not need to demand security for the value of his property, since the laws already protected his ownership. After all, a lessee could not abscond with a building or a plot of land, those assets that would have constituted the bulk of an orphan's property.[25]

The one piece of evidence Finley (p. 239 n. 27) adduces to prove his claim that *apotimema* guaranteed the return of the leased property is irrelevant to the discussion. The text is *horos* no. 131, an inscription from the island of Naxos. I gave the relevant portion of the *horos*:

| | |
|---|---|
| [ὅ]ρος χωρίων καὶ | *Horos* of properties and |
| οἰκίας καὶ κεράμου | house including roof |
| ἀποτετιμημέν | which have been pledged as security |
| ων τοῖς παιδίοις | (*apotimema*) to the children |
| τοῖς Ἐπίφρονος τοῦ | of Epiphron for the |
| ἀρχαίου XXXI[H] καὶ | *archaion* of 3,500 *drachmai* and |
| τῶν μισθωμάτων | for the *misthomata* |
| τετρακοσίων δρα | of four hundred *drachmai* |
| χμῶν τοῦ ἐνιαυ | each year... |
| [το]ῦ ἑκάστου... | |

Finley noted the word μισθωμάτων, which he interpreted as payment of rent, and assumed that the figure of 3,500 *drachmai* represented the value assigned to the property of Epiphron's children. But Finley appears to have overlooked the word ἀρχαίου in line 6, which means 'principal of a loan'.[26] Furthermore, Finley did not observe that the word μίσθωμα can refer to the payment of interest in secured loans.[27] Finley's interpretation of *horos* no. 131 must therefore be rejected. The language of the inscription indicates rather that the sons of Epiphron had received a cash inheritance of 3,500 *drachmai* and had loaned this amount for an annual payment of 400 *drachmai* (an interest rate a little over 14 per cent) to a borrower who put up several properties as security for the loan.[28]

A similar arrangement appears in a speech of Isaeus (2.9, 27–8). In the speech we hear that Menecles was able to provide a dowry for his daughter because he had become joint lessee of the property of Nicias' children (μετασχὼν τοῦ οἴκου τῆς μισθώσεως τῶν παίδων τῶν Νικίου). The sentence indicates that Menecles received a sum of money as a result of entering into this 'lease', suggesting that the arrangement was in fact a secured loan. This inference is confirmed later in the speech (27–9), where we are told that Menecles had to repay a sum of money (ἀργύριον, χρήματα) and that interest had accumulated for a long time (τόκοι δὲ πολλοῦ χρόνου συνερρυηκότες ἦσαν αὐτῷ). To repay the loan, Menecles attempted to sell some land, which otherwise would have been subject to seizure (κατοκώχιμον). There is only one

[25] If an orphan's inheritance consisted partly of slaves, which were included in the lease, his ownership would be protected by the law of theft (*dike klopes*). D. Cohen, *The Athenian Law of Theft* (Munich, 1983), pp. 10–33, claims that the term *klope* was limited to larceny and did not extend to cases of embezzlement, but his attempt to find such a distinction in Athenian Law rests on an anachronistic comparison with Common Law and is contradicted by the use of the word *klope* to refer to embezzlement by public officials (Aeschin. 1.110–11; 3.9–10; *Ath. Pol.* 54.2; Dem. 22.65; 24.112; 58.15). I hope to discuss the topic at length elsewhere.

[26] Ar. *Nub.* 1156; Dem. 27.28, 38, 50, 64; 34.26; [Dem.] 56.30, 32, 33, 43. I know of no passage where the word refers to leased property. The word is mistranslated by J. H. Vince as 'estates' in his Loeb translation of Dem. 1.15. The passage compares Athenian policy to borrowing at a high rate of interest. The context indicates that the word must refer to the principal of a loan.

[27] *Horos* no. 102, line 15; Dem. 37.5–6 with the discussion in Harris, pp. 365–6, 371–3.

[28] Fine, pp. 103–5, made the same mistake. The interest rate of 14% per annum is comparable to other interest rates attested in this period. See Millett (n. 16, above), pp. 98–108.

way to explain the statement that the land would be subject to seizure if the money was not paid to the orphans: the land had been pledged as security for the money Menecles had received from the orphans.[29] The arrangement is precisely identical to that found on *horos* no. 131.

Since the *apotimema* in a lease was given to secure the payment of rent, Finley's explanation for the absence of an amount of money on all the Attic *horoi* marking pupillary *apotimema* cannot stand. Finley claimed that the *apotimema* was given to guarantee the return of the orphan's property; since any value assigned to the property would be a 'fictitious amount', no amount was indicated on the *horoi* in these cases. But, as we have now seen, the *apotimema* in the lease of an orphan's estate was pledged for the payment of rent, and that figure was no 'fictitious amount'. The rent was a specific sum that was determined through the bidding supervised by the archon. Why was that amount not placed on the horoi?

We can now turn to Finley's explanation of the difference between *apotimema* and other types of security. In *apotimema*, whether dotal or pupillary, the amount of money is fixed in advance. That is to say, the amount of the dowry or the value of the orphan's property and the amount of the rent are determined first, and the evaluation of the property which will serve as security comes second. According to Finley, the situation is reversed in a secured loan where 'the potential lender will fix the size of the loan he is willing to make by his estimate of the value of the property' that will stand as security. In a secured loan, therefore, 'the property comes first and the money second'.

Does the money really come second in a secured loan? In normal circumstances, the borrower knows in advance how much he needs to borrow. If he wants to buy a house, he finds out how much the house is worth, then deducts what he can afford to give as a down-payment in order to determine what he has to borrow. Of if he has fallen behind with his taxes or his rent, he has a precise amount he has to pay off. The person who is willing to lend money first asks the borrower how much money he needs, then determines if the borrower has an amount of property adequate to secure the requested amount of the loan. If the borrower does not have enough property to meet this criterion, the lender may deny his request. But the same thing would presumably happen if the man who put in the highest bid for the rental of an orphan's estate turned out not to have enough property to furnish the necessary *apotimema*. In that case, the archon would no doubt have denied his request to lease the orphan's property. Viewed from this perspective, a secured loan was no different from a lease secured by *apotimema*.

The story of Nicostratus' attempts to pay off his creditors illustrates the point ([Dem.] 53.6–13). Nicostratus was captured while pursuing his fugitive slave and sold on Aegina. His brother Deinon went to rescue him. Upon returning to Attica, Nicostratus told Apollodorus that some foreigners had loaned him 26 *mnai* to pay his random. Apollodorus gave him a gift of 1,000 *drachmai* to repay part of the loan, and Nicostratus then tried to raise the remainder of his own. He attempted to borrow money on the security of his farm, but his brother Arethusius, who had a claim of his own on the property, would not permit it. Nicostratus then turned to Apollodorus and asked him to lend him what he needed. His situation was growing desperate, since the terms of the loan stipulated that the full amount be repaid in thirty days or his

[29] W. Wyse, *The Speeches of Isaeus* (Cambridge, 1904; repr. New York, 1979), pp. 258–9 provides a good discussion of the passage, but does not observe how Menecles' lease differed from the standard leases of orphans' property. See Fine, p. 109 n. 60 for references to other discussions of the passage.

debt would be doubled, and the thirty-day period was about to end. Apollodorus, having no ready cash on hand, borrowed 16 *mnai* from Arcesas on the security of his lodging-house and handed this sum over to Nicostratus on the understanding that the debt would be repaid as soon as Nicostratus could raise an *eranos*-loan. What is significant for our purposes is that the amount Nicostratus needed to borrow remained constant throughout his negotiations with Apollodorus and others. For Nicostratus, the amount of money in the loan was fixed ahead of time by the ransom he was forced to pay. Finding some property to serve as security came second.

Finally, there is Finley's view that in *apotimema* 'a more or less precise determination was made at the time the agreement was reached, fixing the property that would be accepted as the substitute for the debt'. This collides with the evidence from the *Anecdota Graeca* (437.15 Bekker), which states that the property offered as *apotimema* was evaluated to ensure that it was worth not less, but more than the dowry (ἵνα μὴ ἔλαττον ᾖ, ἀλλὰ πλέον αὐτῆς). That makes sense. No person in his right mind would accept an arrangement whereby the security given to him was assigned a value that would remain constant regardless of any fluctuations in its market value. The lesser or the father who gave a dowry for his daughter would naturally check to see that the value of the property offered as security was greater than the amount of the obligation so that even if the market value of the property dropped considerably, its sale would still provide enough cash to pay off the obligation.

More evidence refuting Finley's view comes from Demosthenes' speeches against Onetor (Dem. 30 and 31). Prior to bringing his suit against Onetor, Demosthenes had won a judgment against his guardian Aphobus for defrauding him of a large part of his inheritance. To execute this judgment, Demosthenes attempted to seize a plot of land held by Aphobus, but was driven off the property by Onetor. Onetor claimed that the property had been pledged to him as *apotimema* for the dowry of his sister, who was married to Aphobus. According to Onetor, Aphobus had divorced his sister, so he had taken possession of the land in lieu of recovering the dowry (Dem. 30.8–9). The reliability of Onetor's assertions does not concern us. What is relevant for our discussion is Onetor's statement during the trial that he would not deprive Demosthenes of the difference between the value of the land and the talent Aphobus owed to him for the return of the dowry (Dem. 31.6: οὐκ ἀποστερεῖ μ' ὅσῳ πλείονος ἄξιόν ἐστι ταλάντου). Yet if the value of the property was fixed at a price equivalent to the dowry, there could be no excess to give to Demosthenes.[30]

*Horos* no. 147 conveys a similar message. Here we read that a house has been pledged as *apotimema* for a dowry of 1,000 *drachmai* given for the daughter of Antidorus. The value of the property beyond that amount has been pledged as security to the Gephyraioi and possibly other creditors as well. Once more, it is clear that the property furnished as *apotimema* is not assigned a value equivalent to the value of the dowry.[31]

In short, Finley's analysis of *apotimema* is unsatisfactory. The differences he claimed to detect between *apotimema* and other forms of security simply do not exist. And Finley cannot explain why on virtually every *horos* set up in connection with pupillary *apotimema* no amount of money is recorded.

[30] Fine, pp. 139–40, uses Dem. 31.6 as evidence for this theory about *hypotheke*. For criticism of his theory, see Harris, pp. 353–4. In that article, I endorsed Finley's view of dotal *apotimema*. I now retract that endorsement.

[31] *Horos* no. 146 exhibits similar language, but the term ἀποτίμημα is missing. Wolff, pp. 316–17, made the same criticisms of Finley.

While Finley (p. 52) believed that 'the distinction between *apotimema* and *hypotheke* (...) was one of practical procedure', Wolff (p. 316) thought that *apotimema* must differ from other forms of security in terms of juristic substance. Wolff's most original idea was his view that the definition of *apotimema* given by Harpocration, Pollux, and the *Anecdota Graeca* does not cover all the uses of the term and thus gives an incomplete picture of the institution. Wolff's definition of the term is much wider: *apotimema* is an object which the debtor could surrender for an agreed value to protect himself from a legal action threatened by the creditor seeking a monetary judgment.[32] Other types of security ensure that the creditor will receive payment while *apotimema* protects the debtor from a legal action.

Wolff launched his assault on the evidence of the lexica by drawing attention to a passage from Isaeus' speech on the estate of Philoctemon (Is. 6.36). The speaker describes how his opponents Androcles and Antidorus attempted to lay their hands on the property of Euctemon, who was at death's door. Their scheme was to register two young boys as the adopted sons of Euctemon's sons. Since Euctemon's sons had passed away several years before, his grandsons had become his heirs and would be entitled to his estate at his death. As part of the scheme, Androcles and Antidorus had themselves registered as the grandchildren's guardians and requested the archon to supervise the leasing of their wards' property so they could become lessees and gain control of its revenues (*μισθωταὶ δὲ αὐτοὶ γενόμενοι τὰς προσόδους λαμβάνοιεν*).[33] The description of their request to the archon contains a reference to offering *apotimema*:

*καὶ μισθοῦν ἐκέλευον τὸν ἄρχοντα τοὺς οἴκους ὡς ὀρφανῶν ὄντων, ὅπως ἐπὶ τοῖς τούτων ὀνόμασι τὰ μὲν μισθωθείη τῆς οὐσίας, τὰ δὲ ἀποτιμήματα κατασταθείη καὶ ὅροι τεθεῖεν ζῶντος ἔτι τοῦ Εὐκτήμονος,...*

Wolff interpreted the phrase *τὰ μὲν μισθωθείη τῆς οὐσίας, τὰ δὲ ἀποτιμήματα κατασταθείη* to mean that part of the boys' property was to be leased and part to be provided as *apotimema*.[34] Wolff's interpretation of the passage was not original. Wyse, though perplexed by it, had interpreted the passage in the same way. The translations provided by Roussel and Forster reveal that they concurred with Wyse's view of the passage.[35] Finley agreed with his predecessors' interpretation, but shied away from analysing the difficulties it presented.[36] Fine, too, accepted the traditional

[32] Wolff, p. 318: 'Auf das technische *ἀποτίμημα* angewendet, muss das heissen, dass dieses ein Gegenstand war, durch dessen Hingabe zu einem vereinbarten Wert der Schuldner eine ihm drohende, auf Geldverurteilung gerichtete Klage von sich abwenden konnte.'

[33] The details of the plot are a bit murky; it appears that the conspirators planned to bid for the lease themselves. The passage thus indicates that the guardians themselves could bid for the lease of their wards' property (37: *οἱ δ' ἐμισθοῦντο*). Cf. Harrison (n. 15, above), pp. 105–6. The practice raised the eyebrows of Wyse (n. 29, above), pp. 526–7, who felt it somehow violated the sacred bond of trust between guardian and ward. His view is needlessly moralistic. The practice made good sense, for it gave the guardian an incentive to manage his ward's property efficiently. Without such a contract, the guardian could not legally profit from his management of the orphan's property and thus had no reason to increase its productivity. As lessees, they could exploit the property for their own profit (*τὰς προσόδους λαμβάνοιεν*) and would have a strong motive for increasing the revenues derived from it. The orphan would receive a share of these profits through the lease and have his property well maintained, if not substantially improved. Demosthenes (27.64) gives several examples of orphans who profited handsomely from the leasing of their estates.

[34] Wolff, pp. 301–3, with references to earlier discussions.

[35] Wyse (n. 29, above), p. 525; P. Roussel, *Isée: discours* (Paris, 1922), p. 104; E. S. Forster, *Isaeus* (Cambridge, MA, 1927), p. 225: 'part of the property might be leased and part might be used as security.'

[36] Finley, pp. 41–2: 'some of the property would be leased in the children's names and some put up as *apotimema*.'

interpretation and shared Wyse's bewilderment: 'it seems fantastic that in a μίσθωσις οἴκου part of the estate should be leased and part of the same estate should serve as security for the lessees.'[37] Wolff believed that to solve the puzzle one had to go beyond Harpocration's account of *apotimema* and recognize that it was more than just a form of security.

If one translates Isaeus 6.36 in the traditional way, it is indeed difficult to reconcile the passage with Harpocration's explanation of *apotimema*. Harpocration says that *apotimema* was a security that lessees were required to furnish for the rent in a lease of an orphan's property, while the traditional interpretation of Isaeus 6.36 appears to indicate that the *apotimema* could come from the orphan's property, not that of the lessee. Luckily there is another way of translating the passage that makes far better sense and removes the apparent conflict with Harpocration's discussion of *apotimema*. The key to understanding the mysterious pair of clauses is the role of the particles μέν and δέ. Previous scholars have assumed that these particles contrast two parts of the orphans' property (τὰ μὲν ... οὐσίας, τὰ δὲ ...). One part is the portion that was leased (μισθωθείη), the other the portion provided as security (ἀποτιμήματα κατασταθείη).[38] As H. Pelliccia has recently observed, however, the 'particles can be used to contrast ideas that are not embedded in single words or phrases'. The contrast may be a more general one between two actions or ideas, each one expressed by an entire clause.[39]

There is a contrast implied by the μέν and the δέ in Isaeus 6.36, but it is not a narrow one between two pieces of property. It is a more general one between two actions. On the one hand, there is the leasing of the orphans' property (τὰ μὲν μισθωθείη τῆς οὐσίας), and, on the other, there is the furnishing of securities by the lessee (τὰ δὲ ἀποτιμήματα κατασταθείη). Concomitant with the latter is the placing of *horoi* on the property pledged as security (καὶ ὅροι τεθεῖεν). One property, that of the orphans, is being leased, while the other, that of the lessees, is being provided as security. There is no clash with the information given by Harpocration. Contrary to Wolff's assertion, Isaeus 6.36 cannot be adduced as evidence to show that Harpocration's account of *apotimema* is deficient.

Wolff next turned to the use of *apotimema* in dowries. He noted the law cited at Isaeus 3.35, which stipulates that if a man gives a woman in marriage with an item that has not been included in the evaluation of the dowry (ὃ μὴ ἐν προικὶ τιμήσας ἔδωκεν), he cannot demand the return of this item in the event of divorce. This formal evaluation of property given as part of the dowry was especially important when land or valuables were given in place of money. This formal evaluation provided a means of avoiding disputes about the value of any property the husband might have

[37] Fine, p. 100: 'it seems fantastic that in a μίσθωσις οἴκου part of the estate should serve as security for the lessees.'

[38] D. M. MacDowell, 'The Oikos in Athenian Law', *CQ* 39 (1989), 13–15, thinks that τὰ μέν means 'part of the property', but that the δέ is a simple connective and does not respond to the μέν. But if the δέ does not respond to the μέν, τὰ μέν cannot mean 'part of the property'. MacDowell suggests that the part of the property to be leased was that which belonged to Euctemon's sons, the boys' fathers. But if Euctemon's sons left property at their death, guardians would have been appointed at that time to look after their sons, not several years later. MacDowell fails to see the outrageous part of the scheme, which caused the court to reject the conspirators' proposal. This was that they attempted to have the boys registered as orphans who had inherited their grandfather's property before they were actually orphaned by the death of their adoptive grandfather Euctemon. The words ζῶντος ἔτι τοῦ Εὐκτήμονος (with the stress on ἔτι) bring this out clearly.

[39] H. Pelliccia, 'Anacreon 13 (358 PMG)', *CP* 86 (1991), 35. Cf. J. D. Denniston, *The Greek Particles*[2] (Oxford, 1954), p. 371.

alienated during the marriage when it became necessary to return the dowry. The procedure of evaluating items in the assessment of the total value of the dowry was called τιμᾶν ἐν προικί or ἐντιμᾶν. Wolff claims that there was a close connection between ἀποτιμᾶν and (ἐν)τιμᾶν. By evaluating some property given as part of a dowry (τιμᾶν ἐν προικί), one made it into an ἀποτίμημα.[40]

This inspired Wolff to advance a novel interpretation of the *horoi* publicizing dotal *apotimema*. In most of the *horoi* in this category, we find the word *horos*, followed by a noun (or nouns) denoting property in the genitive, then the term ἀποτίμημα (nom./acc.) or ἀποτιμήματος (gen.) followed by the word προικός (gen.). Wolff argued that the noun προικός must be taken with ἀποτίμημα 'an evaluated item of the dowry'. On this reading, these *horoi* show that the land to which they were affixed had been given as part of the dowry and included in the legal evaluation of the entire dowry. Wolff then drew attention to three *horoi* which appear to indicate not that the husband has put up property as security for the return of the dowry, but that the land or house was itself the dowry given to the husband. Only one of these is from Attica (*horos* no. 175: ὅρος χωρ[ί]ου καὶ οἰκίας προικὸς Ναυσικρίτη[ι]). The other two are from Syros (*horos* no. 179: Ἡγησοῦ τῆς Κλεομόρτου θυγατρὸ[ς] προὶξ τὸ χωρίον and *horos* no. 180: τῆς Δεξικράτου προὶξ ἡ οἰκία).[41] In addition, Wolff noticed the phrase ἐν προικὶ ἀποτετιμημένης on *horos* no. 150 and ἀποτετιμημ[ένων ...]ἐν προικὶ on *horos* no. 156 (Naxos) as well as a similar phrase ἀποτετιμημένων ... εἰς τὴν προῖκα on *horos* no. 155 (Amorgos). In Wolff's opinion, these phrases indicate that the property had been given to the husband and evaluated as part of the dowry.

There are several objections to be made against Wolff's interpretation of the *horoi* set up in connection with dowry. First, no ancient source states that the term *apotimema* could refer to property that was evaluated as part of the dowry. Wolff essentially bases his argument on the common root shared by the verbs ἐντιμᾶν and ἀποτιμᾶν, but there is no reason to assume the latter is a subset of the former. Indeed, Harpocration (s.v. ἐνετιμᾶτο) draws a sharp distinction between the two verbs (Finley, p. 239 n. 32). When we come upon the noun ἀποτίμημα or the verb ἀποτιμᾶν in the Attic orators, they never refer to an evaluation of items in the dowry, but always to a pledge of security. Wolff claimed that his own interpretation of the *horoi* was superior from a linguistic point of view, but one does no violence to the Greek found on the *horoi* if the word προικός in the phrase ἀποτίμημα προικός is construed as a genitive of purpose ('security for the dowry').[42] On *horoi* nos. 175, 179, and 180, it does appear that land and buildings have been given as dowry, but on one of these *horoi* do we find the term ἀποτίμημα. They are therefore irrelevant to the discussion.[43]

Wolff argued that Demosthenes' speech against Spudias lends support to his interpretation of the *horoi* set up for dotal *apotimema* (Dem. 41). The case for which this speech was written concerns the property of Polyeuctus, who left two daughters as his heirs. The speaker is married to one of Polyeuctus' daughters and has brought

[40] Wolff, pp. 303–5 with Dem. 41.27 and 47.57. The verb in the latter passage (εἴη ... τετιμημένα) is mistranslated by A. T. Murray, *Demosthenes V: Private Orations* (Cambridge, MA, 1939), p. 311 ('mortgaged to secure her marriage portion').

[41] For other examples of similar phrases, see Wolff, p. 306 n. 55.

[42] For the genitive of purpose, see H. W. Smyth, *Greek Grammar*, rev. by G. M. Messing (Cambridge, MA, 1956), p. 331. Compare the similar use of the genitive in the phrase τιμῆς ἐνοφειλομένης on *horos* no. 3 ('for the price owing'). Smyth (pp. 376–7) also lists passages where εἰς can be used to express purpose and ἐν can indicate cause.

[43] Finley, p. 266 n. 23, suggested that the word ἀποτίμημα had been accidentally omitted on *horos* no. 175 as it appears to have been on *horos* no. 146.

suit against Spudias, the husband of the other daughter, in a dispute over the division of Polyeuctus' property. Polyeuctus had given his daughter in marriage to the speaker with a dowry of 40 *mnai*, of which he received 3,000 *drachmai* at the time of the wedding. The remaining 10 *mnai* were to be paid to him at Polyeuctus' death and until then constituted a debt (*ὀφείλειν*) against his property. Not long before Polyeuctus' death, the speaker took his father-in-law's house as security for the 10 *mnai* owed to him (5). This was done in accordance with the instructions of the dying Polyeuctus, who ordered that *horoi* be placed on his property (6). Wolff (307–11) followed Paoli and claimed that the house was given as a *datio in solutum*, that is, the surrender of some property evaluated at 10 *mnai* in satisfaction of the outstanding debt. In Wolff's opinion, this text confirms his view of the *horoi* set up in connection with dowry, since the verb *ἀποτιμᾶν* is several times used to describe the transaction.

The trouble with Wolff's view of the transaction is that the language of the speech indicates rather that the house was given as security for the debt of ten *mnai* owed by Polyeuctus to the speaker. The speaker says he received the house as security for the 10 *mnai*, that is, the debt, not as part of the dowry (5: *τὴν οἰκίαν ταύτην ἀποτιμῶμαι πρὸς τὰς δέκα μνᾶς*). When Polyeuctus instructs the *horoi* to be set up on the property, it is for the 1,000 *drachmai* debt he owes on the dowry (6: *διέθεθ' ὅρους ἐπιστῆσαι χιλίων δραχμῶν ἐμοὶ τῆς προικὸς ἐπὶ τὴν οἰκίαν*). Later in the speech, the speaker once more asserts Polyeuctus pledged the house as security for money owed (19: *προσοφειλομένων ἀπετίμησέ μοι τὴν οἰκίαν Πολύευκτος*). Besides, it is nowhere stated that the house was included in an evaluation of the dowry made at the beginning of the marriage. The verb *ἀποτιμᾶν* is strictly to refer to a pledge of security for a debt. The *horoi* are placed around the house to show that it stands as security for a debt, not that it was evaluated as part of the dowry. After Polyeuctus died, the speaker attempted to take possession of the house and collect the rents paid by its tenants (5: *με τὰς μισθώσεις κομίζεσθαι*). In this respect, the speaker acted just like a creditor who has seized a security in lieu of repayment.[44]

Our examination of the respective views of Finley and Wolff has not been entirely negative. Neither scholar presents a convincing account of the differences between *apotimema* and other forms of security, yet that in itself is significant. In each case where Finley and Wolff claimed to identify a feature of *apotimema* that set it apart from other security transactions, we have found precisely the opposite: the verb *ἀποτιμᾶν* appears to be used in much the same way as the other verbs employed to denote a pledge of real security. As Harpocration states, *ἀποτίμημα* are things pledged as security (*ἐνέχυρα*). Like other securities, they were usually worth more than the amount of the obligation they secured. When the person who provided an *ἀποτίμημα* for some obligation defaulted, the creditor had the right to seize it. The question asked by previous scholars, namely, how did *ἀποτίμημα* differ from other forms of security, turns out to be the wrong question. We do not need a new answer to the old question. What we need is a new question.

## II

The first step towards a solution to the enigma posed by the term *ἀποτίμημα* is to examine the contexts in which the word is found. Previous studies of the term have looked almost exclusively at its use in two contexts: dowry agreements and the leasing

[44] Finley, p. 49, correctly noted the 'dowry was irrelevant and accidental in this case, so to speak'. He aptly drew attention to Libanius' interpretation of the transaction (Dem. 41, *hypoth.* 1): *τὴν οἰκίαν τῆς ἄλλης οὐσίας ἐξελεῖν καὶ ταύτην εἰς τὸ χρέος δοῦναι.*

of orphans' property. Though the term is found primarily in these contexts, it is also found in other contexts as well. Pollux (8.142) states that the term ἀποτίμημα was employed to refer to security for the payment of rent in general (πρὸς τὰς μισθώσεις), not just for the leases of orphans' property. The decree from the Piraeus noted above (*IG* ii² 2498, lines 1–7) bears him out. Here the term is used to refer to real security in leases of the deme's property. In a document concerning the leasing of the property of Apollo Lyceius (*IG* ii² 2494, lines 7–8), the term is restored with a high degree of probability in a clause requiring lessees to provide real security. Further evidence comes from a fragment of Isaeus.[45] The speaker describes his financial straits, saying that no one will lend to him since all his resources have been spent on liturgies (κατελελῃτούργητο) or pledged as security (ἀποτιμηθέντων). He reveals in the next phrase that he is paying rent on leased property (ἀποδεδωκότι τὰς μισθώσεις). The obvious explanation of his predicament is that he cannot borrow further on his property since it has been pledged as security for one or more leases. Once again the terminology is that of *apotimema*.

Harpocration (s.v. ἀποτιμηταί) observes that the term ἀποτίμημα was applied to real security for other obligations beyond the payment of rent or the return of a dowry (ὁ δ'αὐτὸς λόγος καὶ ἐπὶ τῶν ἄλλων ὀφλημάτων). A decree from the deme of Plotheia confirms his observation (*IG* ii² 1172, lines 19–22). The decree orders the magistrates to make loans from the deme's funds to whoever offers to pay the highest rate of interest (δανείζοντας ὅ[στι]ς ἂν πλεῖστον τόκον διδῶι). In addition, the potential borrower must persuade the magistrates that he can provide either real security or personal security (ἂν [πείθ]ηι τὸς δανείζοντας ἄρχοντα[ς τιμ]ήματι ἢ ἐγγυητῆι). The term employed to denote real security is τιμήματι, the simplex form of the noun, which obviously has the same meaning as the compound.[46]

Several *horoi* lend further support to Harpocration's observation. *Horos* no. 163A was set up on a property to indicate that it stood as security for an *eranos*-loan of one talent, and the term for security is ἀποτίμημα (line 3). *Horos* no. 32 records three debts secured by land and a house. The first is a loan of 500 *drachmai* made by Hieromnemon, the second a loan of 30 *drachmai* given by a group called the *dekadistai*, and the third a loan furnished by a group of *eranistai*, that is, men who had made an *eranos*-loan.[47] The phrase πεπραμένου ἐπὶ λύσει is used to indicate that the property had been pledged as security to the first two groups, and the term ἀποτίμημα for the third group of lenders.[48]

*Horos* no. 163 has the term ἀποτίμημα, but does not appear to have been set up in connection with either a dowry agreement or the lease of an orphan's property. There is no mention of dowry, and the words παιδί and παισί are likewise absent. Instead of the woman's name normally found on the *horoi* set up in connection with dowry, a man's name has been inscribed (Διονύσωι). Unlike the *horoi* set up in connection with the leasing of an orphan's property, an amount of money is recorded.

[45] Isaeus fr. 29 (Thalheim). Note also Lysias fr. 52 (Thalheim) [= Harpocration s.v. τίμημα]: οὗτοι φάσκοντες πλείονος μισθώσασθαι καὶ τίμημα καταστήσασθαι. Note the similarities between the phraseology in this fragment and that used in Is. 6.36.

[46] For a thorough discussion of this inscription, see D. Whitehead, *The Demes of Attica* (Princeton, 1986), pp. 165–9. Cf. Finley, p. 284 n. 39. For the simplex used in place of the compound, see the previous note.

[47] For the *eranos*-loan, see G. Maier, *Eranos als Kreditinstitut* (Diss. Erlangen, 1969).

[48] Finley, pp. 45–6, observed that the term ἀποτίμημα was used in loans, but gave no explanation for its use in this context. Note that these cases pose a serious problem for his analysis of the term, which relies on a strict distinction between the procedure for taking security in a loan and that followed in dowry and the leases of orphans' property.

Finally, there is a reference to a written copy of the agreement (*ἐπὶ συνθήκαις*), a feature found only on *horoi* set up on property pledged as security for a loan.[49] *Horos* no. 159 is similar in so far as the word [*ἀπ*]*οτιμήματος*, restored with certainty, is followed by the name of a man in the dative (*Ἀρχίαι*). These two *horoi* must by process of elimination fall into the category of those set up on property pledged as security for a loan.

The contrast with the terms *ὑποτίθεναι* and *ὑποκεῖσθαι* and the phrase *πεπρᾶσθαι ἐπὶ λύσει* is noteworthy. This terminology is never seen in the context of leases.[50] And on merely three *horoi* is the phrase *πεπραμένου* (*-ης, -ων*) *ἐπὶ λύσει* seen in connection with a dowry.[51] An unmistakable pattern emerges from this survey of the contexts in which each type of term occurs. The term *ἀποτίμημα* appears in all three contexts – leases, dowries, and loans. The other terms occur almost without exception only in the context of loans. This strongly suggests that *ἀποτίμημα* is a general term for real security, while the other terms are appropriate only in the restricted context of loans. This would explain why we find the term *τίμημα*, the simplex form of the compound, in the expression [*τιμ*]*ήματι ἢ ἐγγυητῆι* in the decree passed by the deme of Plotheia about leasing of deme property. The expression is clearly meant to cover all forms of security, both real and personal. The term chosen to designate real security in general as opposed to personal security is *τίμημα*, not *ὑποθήκη* or *πρᾶσις ἐπὶ λύσει*.

The next step towards solving the enigma is to look into the meaning of each type of term for real security and to determine why it is appropriate to the contexts where it occurs. As several scholars have noted, the verb *ἀποτιμᾶν* contains two elements, the prefix *ἀπο-* which means 'off', or 'apart', and *τιμᾶν* which means 'to evaluate'.[52] Whether pledged for a loan, a lease, or the return of a dowry, the property offered as security is normally assessed by the person who accepts it to ensure that its value is equivalent to, if not more than, the amount of the obligation owed to him. When Pantaenetus borrowed money from two sets of creditors on the same property, it is clear from the resulting dispute that one set of creditors had made an evaluation of the property's value, since they declare it is sufficient to cover both debts (Dem. 37.12).[53] After its value is determined, the property offered as security is then set apart and marked as separate by placing *horoi* on it.

The two actions implied by the verb *ἀποτιμᾶν* – evaluating and setting apart – are performed in all three cases where security is found. In rental, the property pledged as security is evaluated and set aside on the understanding that the lessor can seize it in the event the lessee fails to keep up with the payment of rent. In a dowry agreement,

[49] Written copy of agreement: *horoi* nos. 1, 2, 2A, 3A, 6, 11, 13, 17, 27, 39, 65. Cf. *horoi* nos. 9 (Amorgos), 10 and 104 (Lemnos). The word *γραμματεῖον* on *horoi* nos. 107 and 108 (Amorgos) probably refers to a written copy of the agreement. On these documents, see Finley, pp. 21–7. For the meaning of the term *συνθῆκαι*, see P. Kussmaul, *Synthekai: Beiträge zur Geschichte des attischen Obligationenrechtes* (Diss. Basel, 1969).

[50] For the verbs *ὑποτιθέναι*, *τιθέναι* and *ὑποκεῖσθαι* used to express the idea of real security in loans, see Dem. 27.9; 28.18; 35.11; 41.11; [Dem.] 49.11, 12, 35, 50, 52, 53, 54; 50.55; 53.10, 12–13; 56.4, 38; Aeschin. 3.104; Is. 5.21–2; 6.33–4; Isocr. 21.2; Hdt. 2.136.

[51] *Horoi* nos. 21A, 49, and 82. *Horoi* 82A and 93 may also belong in this category, but are too fragmentary to allow for certain restorations.

[52] Finley, p. 233 n. 1; p. 242 n. 51; Harrison (n. 15, above), p. 256; D. M. MacDowell, *The Law in Classical Athens* (London, 1978), pp. 144–5 ('property valued and set apart'). Cf. the phrase used by Libanius (n. 44): *τὴν οἰκίαν τῆς ἄλλης οὐσίας ἐξελεῖν*.

[53] Finley, p. 117, grudgingly admitted this. Other examples of evaluating the security: Dem. 35.18; [Dem.] 49.52. The latter passage reveals that Pasion regularly checked the value of all items given to him as security.

land or buildings are evaluated to determine whether their value is greater than the value of the dowry given to the husband. *Horoi* are set up around the security offered by the husband, and if the husband and wife dissolve their union and the husband does not return the dowry, the *kyrios* of the woman has the right to take possession of the security. In a loan, the lender inspects the property the borrower intends to furnish as security and makes sure it is worth more than the amount of the loan. If the borrower defaults, the lender takes over the property. The verb ἀποτιμᾶν and the noun ἀποτίμημα are thus appropriate in all three contexts and can serve as general terms. What these terms do not indicate is whether the person who accepts the security has an existing claim on the property or only a contingent claim. All the terms imply is that the property has been evaluated and set apart.

If ἀποτίμημα is a general term used to denote real security in all three types of agreements, why are the expressions ὑποκειμένου (-ης, -ων) and πεπραμένου (-ης, -ων) ἐπὶ λύσει used to describe property pledged as security in loans, but not in leases? Here it is necessary to examine the different structures of legal obligation in the two agreements.[54] In a loan, the lender gives the borrower a sum of money, which the latter can exchange for goods or services. After handing his money over to the borrower, the lender has no further obligations under the terms of the agreement. He has fulfilled his part of the bargain and has received in return a right to the repayment of the loan. The borrower, on the other hand, is in debt to the lender the instant he receives the loan and has no rights against the lender. The borrower, of course, does not have to repay the principal until the due date arrives.[55] But his full obligation under the agreement remains unfulfilled until he repays the lender. There is thus an inherent asymmetry in the legal structure of the agreement: the lender has a right against the borrower and no further obligation whereas the borrower has an obligation to the lender, but no claim against him. This asymmetry puts the lender in a vulnerable position, since he must perform his part of the agreement immediately and trust the borrower to perform his obligation to repay at some time in the future. The purpose of the security is to protect the vulnerable lender against the possibility that the borrower reneges on his promise to repay or becomes insolvent.

The structure of legal obligation in a lease is different.[56] The lessor agrees to permit the lessee to occupy and make use of his property for a certain period of time in return for the payment of rent. As long as the lessee pays his rent on time, he never falls into debt to the lessor. At the outset of the lease, therefore, the lessee is in a very different position *vis-à-vis* the lessor than the borrower is *vis-à-vis* the lender. The lessee and the lessor being the lease on equal terms: the lessor has an obligation to the lessee to allow the lessor to use his property, and the lessee has the obligation to pay rent. The lessee may have other duties such as a requirement to plant certain types of crops, but these are incidental and do not affect the fundamental structure of the agreement.[57]

[54] This is not the place to enter into the debate about the existence of consensual contracts in Classical Athens. F. Pringsheim, *Greek Law of Sale* (Weimar, 1950), pp. 14–57, denied their existence, as did H. J. Wolff, 'Die Grundlagen des griechischen Vertragsrecht', *ZSS* 74 (1957), 26–72. L. Gernet, 'Le Droit de la vente et la notion du contrat en Grèce d'après M. Pringsheim', *RDFE* 29 (1951), 560–84, rightly questions much of Pringsheim's analysis and his attempt to explain away such passages as [Dem.] 56.2.

[55] The borrower's right to redeem the security was strictly speaking not part of the loan agreement, but part of an accessory agreement. See Harris, pp. 364–5.

[56] On leases in general, see D. Behrend, *Attische Pachturkunden: ein Beitrag zur Beschreibung der μίσθωσις nach der griechischen Inschriften* (Munich, 1979).

[57] Requirement to plant certain crops: *IG* ii² 2494, lines 11–16. Restrictions on ploughing: *IG* ii² 2498, lines 17–21.

Provided that the lessee does not fall into arrears, he remains on an equal footing with the lessor. Each has both a right and an obligation toward the other, and neither is in debt to the other.[58] This makes a lease different from a loan where the borrower is in debt to the lender for the duration of the agreement.

This difference between the structures of legal obligation in the two agreements had an effect on the terminology applied to the security in each case. In a loan the debtor immediately incurs an obligation the instant he receives the money from the lender, who thereby acquires a claim on the property pledged to him as security. Since the property is immediately placed 'under an obligation', it can be described as **ὑποκειμένου** and remains that way for the duration of the loan. Since the lender has given money to the borrower and received the pledge of security in return, it is natural for him to view the transaction as a sale and to describe the property as sold to him with the right of redemption (*πεπραμένου, -ης, -ων ἐπὶ λύσει*).[59]

In leases, however, this terminology is not appropriate for the security. Provided that the lessee makes regular payments of rent, he and the lessor remain on equal terms. Nor can the lessor contend that the security furnished by the lessee has been 'sold' to him since at the outset of the agreement, he has not 'paid' anything to the lessee. He has merely permitted the lessee the use of the property, which the lessee pays for in regular instalments. Unlike the lender, the lessor's main obligation to the lessee lasts as long as the lease does. The lessee falls into debt to the lessor only if he falls behind in his payment of rent (*IG* ii² 2496, lines 17–20). Thus the debt for which the property of the lessee has been pledged as security is only contingent. It may arise at some time during the course of the lease, or it may never arise at all. Because there is no outstanding debt against the property pledged as security when the *horoi* are placed on it, there is not an amount of debt that can be inscribed on the *horoi*. That is the reason why the *horoi* affixed to property standing as security for the lease of an orphan's estate never record an amount of money in the way the *horoi* set up in connection with loans do. It is also the reason why the term *ἀποτίμημα* is employed to denote the security in leases instead of the phrases *ὑποκειμένου* (*-ης, -ων*) or *πεπραμένου* (*-ης, -ων*) *ἐπὶ λύσει*. The latter phrases imply that the property secures an existing obligation. The word *ἀποτίμημα* does not imply there is an existing obligation and is thus suitable to be inscribed on the *horoi* set up in connection with leases.

To understand why the word *ἀποτίμημα* was used to refer to real security in a dowry agreement, it is necessary to examine briefly the historical antecedents of the institution. The custom of giving a dowry had its roots in the practice of gift-giving in marriage during the Archaic period.[60] In fact, the Athenian term for dowry in the

[58] For the rights of the lessee, see *IG* ii² 2492, lines 9–12 (right to use property for duration of lease), 29–31 (breach of agreement by lessors makes them liable to legal action); 2496, lines 22–4 (lessors promise to warrant lease and promise to pay the penalty for failing to do so).

[59] For the tendency of the creditor to describe a secured loan as a 'sale', see Harris, pp. 362–75.

[60] The two most important studies of gift-giving in marriage are M. I. Finley, 'Marriage, Gift, and Sale in the Homeric World', *RIDA*³ 2 (1955), 167–94 and W. K. C. Lacey, 'Homeric HEDNA and Penelope's *KYRIOS*', *JHS* 86 (1966), 55–68. Hom. *Il.* 9.144–8 implies that it was customary for gifts to be given to the husband of the bride. I. Morris, 'The Use and Abuse of Homer', *CA* 5 (1986), 104–12, has mistaken notions about the difference between marriage in the Homeric world and marriage in Classical Athens. As a result, he fails to see the similarities and continuity between the two forms of marriage. H. J. Wolff, 'Marriage Law and Family Organization in Ancient Athens', *Traditio* 2 (1944), 53–65, was written before the works of Finley and Lacey and consequently does not understand the historical origins of the dowry. For brief, but trenchant, criticisms of Wolff's view of the dowry, see Finley, p. 243 n. 53. Despite its

Classical period, προίξ, carries a trace of these roots, for the word appears to have meant 'gift' in the Homeric poems (Hom. *Od.* 13.15). The right of the woman's relatives to the return of the dowry in the event of divorce had its origin in the Archaic custom of recompensing the woman's family with gifts if she was dismissed from her husband's household (Hom. *Od.* 2.112–13, 130–3 – ἀποτίνειν). As Greek society developed formal legal procedures, these gift-giving practices became formalized and subject to written regulations. The dowry was now assigned a monetary value and became part of the formal legal agreement called the ἐγγύη. The social pressure on the husband to allay the wrath of his wife's relatives in the event of divorce by recompensing them with gifts received formal expression in the law that gave the relatives of the divorced woman the legal right to bring an action for the return of the dowry.[61] At the same time, the husband was legally protected against exorbitant demands from his irate in-laws by the law which limited the amount of recompense that could be exacted to the original value of the dowry (Is. 3.35). As a result of these historical antecedents, the Athenians tended for the most part to view the dowry as a gift which did not create an obligation. Since the right to recompense was only contingent, the Athenians did not place the security given for the return of a dowry in the same category as that given for the repayment of a loan. In so far as the husband's obligation to return the dowry was only contingent, the dowry agreement was similar to a lease, which explains why in most cases the property given as security for a dowry is denoted by the same term, ἀποτίμημα, employed to refer to security in a lease agreement.

That, at any rate, was the majority view. There appears, however, to have been a dissenting faction, which held a minority view of the dowry. Three *horoi*, nos. 21A, 49, and 82, constitute our epigraphic evidence for the minority view.[62] On these *horoi* the term ἀποτίμημα is replaced by the phrase πεπραμένου (-ης, -ων) ἐπὶ λύσει, which is normally applied to security pledged for a loan and never to security in a lease agreement. One might dismiss these few exceptional cases as the products of carelessness in the use of legal terminology. Yet there was actually some legal justification for choosing the phrase πεπραμένου (-ης, -ων) ἐπὶ λύσει to describe property standing as security for the return of a dowry. One could argue that a dowry was in a way similar to a loan. Just as the lender gave the borrower a sum of money and received the right to repayment of an equivalent amount of cash, the man who gave a female relative in marriage and presented her husband with money or property as a dowry received the right to the repayment of an equivalent amount in the event

many flaws, Wolff's article is still regarded as authoritative in recent treatments of marriage in Classical Athens. See, for example, R. Just, *Women in Athenian Law and Life* (London, 1989), pp. 73, 284 n. 8. The entire topic demands a fresh study.

[61] For the *dike proikos*, see *Ath. Pol.* 52.2 with P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981), p. 584. I doubt this action could be used by the husband to force payment of part of a dowry promised to him, but not paid. As our analysis of Dem. 41.6–10 revealed, an outstanding amount of dowry was considered a debt and was thus subject to the laws concerning the repayment of loans.

[62] These *horoi* cannot have been put up on property pledged as security for the payment of dowry by a woman's relatives and are thus not comparable to the *horoi* set up by Polyeuctus (Dem. 41.6). In that case, the property was pledged to the husband, but on *horoi* nos. 49 and 82 we find the names of women just as on the other *horoi* set up to secure the return of a dowry. *Horos* 21A is fragmentary, but Fine's restoration, which gives the names of a woman and her *kyrios*, is highly probable. *Horos* no. 93 is restored by Kirchner in *IG* ii² 2683 to give a similar formula, but there are too few letters legible to guarantee certainty. The discussion of these *horoi* by Finley, p. 51 is too brief and vague to be helpful; the criticism made by Finley, pp. 244 n. 59 in regard to Kirchner's classification of *IG* ii² 2681–3 is off the mark.

of divorce. If the dowry was thought of in these terms, the husband's obligation to his wife's relatives began as soon as he received the dowry. The repayment of the 'loan' then fell due on the day the couple dissolved their union. Viewed in this manner, the dowry agreement contained the same asymmetry in its structure of legal obligation as did a loan. The husband 'fell into debt' to his in-laws the moment they gave him the dowry. If the dowry was considered a debt, it created an immediate claim on the security furnished by the husband. Those who viewed the dowry in this way accordingly used the phrase *πεπραμένου* (*-ης*, *-ων*) *ἐπὶ λύσει*, the terminology applied to the security in a loan, to describe the land or building provided as security by the husband.

Whether one conceived of the dowry as a loan or as a gift had no effect on the legal relationship between the husband and his wife's relatives. This difference of opinion only created problems when the husband had to calculate his total assets for liturgical purposes. The law granted the husband full rights over the dowry, which made it into an asset of his household ([Dem.] 42.67).[63] If the dowry was considered a gift, its value could not be counted as a debt against the husband's property. On the other hand, if the dowry was considered a loan, it created a debt and its value could be deducted from the total value of the husband's assets. As a matter of book-keeping, the dowry posed something of a conundrum.

This difference of opinion led to the dispute we read about in the speech *Against Phaenippus* ([Dem.] 42.26–7). The speech was delivered at a trial arising from an *antidosis*. As part of the *antidosis* procedure, each party was required to provide an inventory of all his holdings. When Phaenippus drew up the list of all his possessions, he counted the dowry given for his mother Aristonoe as a debt and no doubt deducted its value from his total assets (*ταύτῃ χρέως φησὶν ὀφείλεσθαι Φαίνιππος τὴν προῖκα*). The speaker follows a different method of book-keeping and does not list his own mother's dowry as a debt (*οὐκ ἀπογράφω τὴν προῖκα χρέως αὐτῇ*). The speaker implicitly accuses Phaenippus of deceitful accounting practices when he declares that he himself has not attempted to mislead the court. As *horoi* nos. 21A, 49, and 82 demonstrate, however, Phaenippus' view of the dowry was shared by other Athenians. The speaker cites the law which gave the husband full rights over the dowry to support his view that the dowry should be counted as an unencumbered asset. The law may support the speaker's interpretation, but does not prove it correct, for the law addresses only the issue of ownership. The law is silent about the way to treat the right to the return of the dowry held by the woman's relatives. If this right was similar to the right of the lender to the repayment, then the dowry must be treated as creating an obligation. Despite the speaker's allegation of deceit, Phaenippus' view of the dowry had sound legal precedent in the procedures followed during the confiscation of property. When a man had his property seized by public officials as a result of conviction on a serious charge, his wife was put on the same footing as his creditors, and her dowry was treated as a debt that could be set apart from the rest of his assets.[64]

This conflict of opinion about the legal status of the dowry illustrates the kind of problems the Athenians encountered when attempting to translate a social custom

[63] Harrison (n. 15, above), pp. 52–4, gives a short summary of the debate about the ownership of the dowry, but does not see the legal issue involved.

[64] Bekker, *Anecdota Graeca*, 250: *ἐνεπίσκημμα καὶ ἐνεπισκήψασθαι· προφώνησις γυναικὸς καὶ δανειστοῦ, δημενομένης οὐσίας, περὶ προικὸς καὶ χρέους, ὀφείλοντων αὐτὰ ἐξ αὐτῆς λαμβάνειν*. The information presented in this passage is confirmed by the publication of a fragment of the *poletai* records for 367/366 (*Hesperia* 10 (1941), 14).

rooted in the practice of gift-giving into the idiom of formal legal agreements. The existence of such an unresolved legal issue in Classical Athens is exactly what we would expect in a society whose law-code was relatively rudimentary and nowhere near as thorough and detailed as the system of Roman Law became under the Empire. As I have shown in an earlier article, a comparable conflict of views existed about the ownership of real security in loans.[65]

The chief advantage of this approach to the enigma of the term ἀποτίμημα is that it enables us to explain why each term is used in the context in which it is found. Neither Finley nor Wolff was able to explain, for example, the use of the term in loans or the fluctuations in terminology for the security pledged in a dowry agreement. This analysis of Athenian terminology for real security reveals that the Athenians were sophisticated enough in legal matters to recognize an important difference between the structures of obligation in leases and in loans respectively and to understand the effect these differences had on the nature of the creditor's claim on the security. For instance, when Apollodorus ([Dem.] 49.11) describes the property of the general Timotheus and distinguishes between his land in the plain, which stood as ἀποτίμημα for the son of Eumelides, and the rest of his land, which ὑπέκειτο to several trierarchs for a loan, he was not using different terms for real security merely out of a desire to vary his style. The land in the plain had been pledged as security for the lease of an orphan's estate, the rest for a loan. Apollodorus knew that the structure of legal obligation was different in each arrangement and accordingly chose one term to refer to the security given for the lease and other expression for the security pledged in the loan. And he would not have troubled to make such a distinction unless the members of the court who heard the case shared his knowledge and expected Apollodorus to choose his words with care.[66]

## III

We are now in a position to study the law on real security cited and discussed in Demosthenes' speech *Against Spudias* (Dem. 41.7–10).[67] The first thing to notice is that the statute uses the verb ἀποτιμᾶν. That is in accord with our conclusions so far. As we have seen, the verbs ὑποτιθέναι and ὑπόκεισθαι as well as the verbs of sale πιπράσκειν and ἀποδίδοσθαι are appropriate to describe the act of pledging security only in the context of loans. Unlike these verbs, ἀποτιμᾶν is suitable for describing a pledge of security in all three transactions where it is used. Since it is a general term, it was naturally chosen as the term employed in this general statute concerning real security.

To understand the meaning of the statute, our first task will be to examine the two paraphrases of its contents given by the speaker in *Against Spudias*. Our interpretation of the statute must then be tested to see whether it applies to the case described by the speaker. Our final job will be to place the law in the context of other Athenian laws about property and to search for the rationale behind its provisions.

[65] Harris, pp. 362–76.

[66] The legal knowledge of the average member of the Athenian court should not be underestimated. See E. M. Harris, 'Response to Trevor Saunders', *Symposion 1990* (Cologne, Weimar, and Vienna, 1991), 134–6.

[67] Previous attempts to interpret the law, such as those of Finley, pp. 52, 245 n. 61 and 62, and of Wolff, pp. 330–1, are based on erroneous views of ἀποτίμημα. For references to earlier treatments, see Wolff, pp. 330–1. My own view is closest to that of D. P. Pappulias, *Ἡ ἐμπράγματος ἀσφάλεια κατὰ τὸ ἑλληνικὸν καὶ τὸ ῥωμαϊκὸν νόμον* (Leipzig, 1909), pp. 159–60, though his view of *apotimema* differs from mine, and he makes no attempt to place the law in the context of other Athenian laws about protecting ownership.

After describing his dispute with Spudias over a house pledged to him as security by Polyeuctus, the speaker calls witnesses to corroborate his account of events. He next refers to the law that supports his claim to the house, then lists two unpaid loans made by Polyeuctus to Spudias (8–10). At the end of this part of his narrative, he calls more witnesses, cites documents, and has the law about real security read out by the clerk (10). As he instructs the clerk to read the law, he gives a short paraphrase of its contents, which ought to be accurate since the court would have been able immediately to catch any misrepresentation when it was read out to them by the clerk. According to the speaker, the law does not allow a suit to be brought (*οὐκ ἐᾷ ... ἔτι δίκην εἶναι*) in regard to property pledged as security (*τῶν ἀποτιμηθέντων*) against those in possession (*πρὸς τοὺς ἔχοντας*). The participle *ἔχοντας* is the standard term used of those who are in possession of a property at the time a dispute arises over its ownership.[68]

The question immediately emerges, who are those in possession? In a pledge of real security, there are two parties, the person who pledges the security for some obligation and the person who receives the pledge. If 'those in possession' are the persons who pledged the property as security, the statute would deny those who received the pledge the right to bring an action in regard to the security. This cannot be the correct interpretation. If it were, the statute would bar the creditor who attempted to seize the security from a defaulting debtor from bringing an action to enforce his right to the debtor's property. That possibility is ruled out by the existence of the *dike exoules*, which did give the creditor the right to bring such a suit. Yet if 'those in possession' are creditors who have seized a property pledged as security after the debtor has defaulted, the statute bars the debtor and his heirs from bringing an action against the creditor in possession of his property. By denying the debtor's right to challenge the creditor's possession of the property, the statute in effect protects the creditor's right of ownership to property he has accepted as security and distrained upon in satisfaction of an unpaid debt.

This interpretation is confirmed by the speaker's first version of the law, which he claims sticks closely to its actual wording. According to the speaker, the law explicitly forbids (*τὸν νόμον ὃς οὐκ ἐᾷ διαρρήδην*) cases to be brought in regard to property which one has pledged as security (*ὅσα τις ἀπετίμησεν εἶναι δίκας*) by them and their heirs (*οὔτ' αὐτοῖς οὔτε κληρονόμοις*). Who are 'them' (*αὐτοῖς*)? The pronoun must refer to persons who pledge their property as security, since there is no other noun in the sentence indicating who 'them' might be. The difference in number between *τις* and *αὐτοῖς* need not trouble us. The word *τις* is a generalizing pronoun and the word *αὐτοῖς* is a generalizing plural.[69] The word *αὐτοῖς* cannot refer to persons who have accepted the security, since they are nowhere mentioned in what precedes. The first version of the statute thus forbids whoever has pledged property as security and his heirs from bringing a suit in regard to this property. Both versions of the law are in perfect accord.

On this interpretation, the law directly applies to the dispute recounted by the speaker. Since we have already analysed the case in detail in Section I, all that is necessary here is to recapitulate the relevant aspects of the case. Polyeuctus owed

[68] This was arbitrarily denied by Finley, p. 245 n. 61. The verb *ἔχειν* is used at [Dem.] 7.26 to denote possession in contrast to ownership. Many other passages show the word used in the same sense. See, for example, Dem. 24.13; [Dem.] 52.32; Is. 10.24.

[69] For the generalizing plural, see V. Bers. *Greek Poetic Syntax in the Classical Age* (New Haven, 1984), pp. 24–7. For a comparable shift from singular to plural in a general statement, see X. *Hi.* 5.4. Cf. Smyth (n. 42, above), p. 271.

money to the speaker and shortly before his death pledged a house belonging to him as security for the debt. After Polyeuctus' death, the speaker appears to have considered himself the owner of the house, for he considered himself entitled to collect rent from the property. Spudias is attempting to prevent the speaker from collecting rent by bringing an action against him.[70] As the husband of Polyeuctus' daughter, Spudias has no doubt claimed that he has an equal right to the revenues generated by the property. In response to Spudias' challenge to his ownership of the house, the speaker cites the law about real security. The law is directly relevant to the speaker's case. It forbids Spudias, who is acting on behalf of an heir of Polyeuctus, the person who pledged the house as security, to bring an action concerning the house. The speaker now considers himself to be in possession of the house and cites the law to protect himself against the claim made by Polyeuctus' heir.

Since the purpose of the law is to protect the creditor's right to retain property he has accepted as security and seized as a result of default, the law must be placed in the context of Athenian procedures for protecting ownership. When one Athenian challenged another Athenian's ownership of some property, the person in possession was required to show that he had legally acquired the property. In a speech of Isaeus (10.24) we learn that the person in possession (*τὸν ἔχοντα*) of a disputed property (*τῶν ἀμφισβητησίμων χωρίων*) was compelled to bring forward the person who pledged the property as security (*θέτην*) or the seller (*πρατῆρα*) or to demonstrate that the property had been awarded to him by a legal judgment (*καταδεδικασμένον*).[71] The procedure of appealing to the seller to warrant legitimate ownership is well attested in our sources and is referred to by the verb *ἀνάγειν*.[72] These procedures provided the person in possession with adequate proof of legitimate ownership in almost all cases. There is one significant exception: the situation where the creditor's right to the property pledged as security and seized after default was challenged by the debtor who pledged it to him. In this case the person whom the creditor would call on to warrant his ownership would be the very person who is contesting his ownership. The existing provisions about proving legitimate ownership thus failed to protect the creditor's title against the person from whom he had accepted the security. This defect in the law was remedied by the law about real security cited at Dem. 41.10. If a creditor seized property pledged to him as security, and the debtor from whom he had seized it brought an action against him in order to recover the property, the creditor could challenge the legality of his suit by bringing a counter-suit, or *παραγραφή*.[73] The creditor would then show that the debtor had pledged the property as security and defaulted on his obligation. Once he had established these facts, he would cite the law about real security to demonstrate that the debtor was not legally entitled to bring his suit. If he could convince the court of his version of the facts, the court would vote in his favour and bar the debtor from bringing his suit against the creditor.

[70] The word *διακωλύει* at Dem. 41.5 is a conative present – see Smyth (n. 42, above), p. 421. The verb refers to Spudias' suit, which was aimed in part at challenging the speaker's right to the property. It cannot refer to a physical attempt by Spudias to bar the speaker from entering the property, since the property was clearly occupied by those who were paying rent. It is also wrong to interpret this 'lease' as a secured loan and to view the payment of rent as interest payments. There is no evidence from the speech that Polyeuctus ever agreed to pay the speaker interest on the unpaid portion of the dowry.

[71] For the correct interpretation of the passage, see Wyse (n. 29, above), pp. 668–9, who cited the relevant passages from Harpocration and Photius. Finley, pp. 232–3 n. 51, arbitrarily rejects Wyse's interpretation.

[72] For the procedure, see Wyse, p. 436.

[73] For the *paragraphe* procedure, see H. J. Wolff, *Die attische Paragraphe* (Weimar, 1966).

Our discussion of the law cited at Dem. 41.10 decisively refutes Finley's contention that the Athenian law-code had no laws pertaining to real security. Though this law appears to have been the only one exclusively concerned with real security, the creditor who had received property as security could resort to the *dike exoules* to enforce his rights against a defaulting debtor who refused to yield possession of the security. And there was evidently a general provision about methods of proving legitimate ownership which covered property obtained through a pledge of security.

The Athenian way of dealing with the legal issues surrounding real security stands in sharp contrast to the procedures of Roman Law. As I pointed out in my earlier article, Roman Law differed from Athenian Law by providing formal modes of conveyance (*mancipatio* and *cessio in iure*) and separate procedures for asserting *iura in rem* (*vindicatio*) and *iura in personam* (*condictio*). Roman Law also draw a sharp distinction between the right of possession and the right of ownership by providing one remedy, the possessory interdict, to protect *possessio*, and another remedy, the *vindicatio*, to protect *dominium*. These formal procedures allowed the Romans to distinguish between *fiducia cum creditore*, where the ownership of the security passed to the creditor, *pignus*, where the creditor gained only *possessio*, and *hypotheca*, where the debtor retained both *dominium* and *possessio*. If the creditor received a pledge of security by *fiducia cum creditore*, he could protect his ownership of the security by means of *vindicatio* if the debtor defaulted and either refused to yield possession or challenged the creditor's right of ownership. In *pignus* the situation was different: the creditor could protect his possession of the security by means of a possessory interdict (Harris, pp. 358–61). The Athenians, unlike the Romans, had no such formal procedures that could be applied in a wide variety of situations to clarify legal issues in complex transactions like real security. Instead, they proceeded on an *ad hoc* basis. When they encountered a legal issue such as this one, they did not appeal to a specialized group of jurists whose task it was to apply their expert knowledge of broad legal principles to the solution of hard cases, but rather passed a law designed to address the particular problem. Yet the absence of legal specialists in Classical Athens should not cause us to underestimate the legal knowledge of the men who staffed the Athenian courts.[74] As I hope to have shown, the terminology used by the Athenians to describe real security reveals a careful awareness of subtle legal differences. The rule of law was not an empty slogan in democratic Athens; it was an ideal which the average Athenian took very seriously.

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[74] See n. 66.

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