

IV. Property Distribution by Lot in Present-Day Greece

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The division of a paternal estate by lot among the surviving sons is a trait of Greek culture attested from Homeric times downward. In the fictitious autobiography which Odysseus narrates to the swineherd Eumaeus, he speaks of his pretended half-brothers, the legitimate sons of the Cretan Castor, as having divided their father's property (ζῶην ἐδάσαντο) after his decease, and as having cast lots for the shares thus formed (ἐπὶ κλήρους ἐβάλοντο, *Od.* 14.208–9). The same trait is of course reflected in Poseidon's words to Iris in the fifteenth *Iliad*. He reminds her that Cronos' three sons had divided all their patrimony (πάντα δέδασται) and that each had then received his share through the casting of lots (παλλομένων, *Il.* 15.187–92).¹

In classical times, the distribution of inherited property by lot occurred in two different ways. If the brothers agreed amicably on a fair division into the appropriate number of shares, they proceeded to cast lots for the portions thus divided, either in private or in the presence of a trusted friend. It is this method which Plutarch (*Moral.* 483D) praises as conducive to fraternal friendship and harmony. If, on the other hand, they could not agree as to what constituted a just division, they might, in Athens at least, appeal to a government official (in the case of Athenian citizens, the eponymous Archon), to appoint apportioners (δατηγαί).² These would then divide the property equally, and lots would be cast to determine which share was to fall to each brother.

A striking echo of the custom which we have been describing occurs in Aeschylus' *Seven against Thebes*. The duel of Eteocles and Polynices over their patrimony, a struggle which ended in the death of both, is ironically conceived of by the poet as a form of division

¹ E. Buchholz, *Die Homerischen Realien* (Leipzig 1881) 2.95, who cites Eustathius *ad Od.* 14.211. Cf. also J. D. Zepos, 'Ἀρχαίων Ἰδιωτικοῦ Δικαίου 10 (1943) 262–63. I am indebted to Dr. Peter Topping and to Miss E. Dimitrakopoulou of the Gennadeion Library, Athens, for bibliographical assistance.

² E. Caillemer in *DarSag* s.v. "Datêtai," 27–28. See also *id.*, *Le droit de succession légitime à Athènes* (Paris 1879) 198–204; L. Beauchet, *Histoire du droit privé de la république athénienne* (Paris 1897) 3.454, 645, 651, 653.

by lot, with the steel of their swords as the grim divider. In the end, the division turns out to be perfectly equal: each receives enough of the paternal lands to furnish him with a grave. The theme recurs at intervals throughout the latter part of the play. The language is everywhere patterned on expressions normally appropriate to the division of inheritance by lot: the steel is a property-divider, *χρηματοδαίτας* (729), who has cast the divisory lots, *διαπήλας* (731), and has left the brothers without share in the broad acres, *ἀμοίρους* (733). The brothers are said to receive property by lot, *λαχεῖν κτήματα* (789–90, cf. 816–17, 906–10), and their graves are their portion, *τάφων πατρῶν λάχαι* (914). If instead of *λάχαι*, portions, the word *λαχαι*, excavations, is read, the word-play on *λάχαι* makes the point scarcely less evident.³ Finally, the word *δατητάς* itself occurs in verse 945.

I have enlarged on this passage because, while Aeschylus is obviously familiar with the system of distributing inheritances by lot and expects his audience to be equally familiar with it, it is apparently only here and in the Plutarch passage cited above that we find in classic Greek literature an explicit mention of this procedure. The custom is, however, amply attested by papyri dating from the first four Christian centuries,⁴ by an inscription of uncertain date from Mylasa in Caria,⁵ and by numerous Coptic documents from the eighth Christian century.⁶ Among the latter are extant ostraca which were actually used for the casting of lots. Some of these list the property included in the share on one side of the sherd, the name of the person to whom the lot fell on the other.⁷ For Byzantine times, I suggest that the use of the word *συνήθως* by Eustathius, the twelfth-century bishop of Thessalonica, in his commentary on *Odyssey* 14.209, points to the persistence of the custom in his own

³ See Verrall's edition (London 1887) *ad loc.*, which he numbers 898.

⁴ F. Preisigke, *Wörterbuch der griechischen Papyrusurkunden* 1 (Berlin 1925) s.v. *κληρώω* (2).

⁵ R. Dareste, B. Haussoulier, Th. Reinach, *Recueil des inscriptions juridiques grecques*, Série 1 (1891–95) 244, B, 2–3.

⁶ W. C. Till, *Erbrechtliche Untersuchungen* [= Akademie der Wissenschaften (Wien), Phil.-hist. Kl., Sitzungsab., 229, Abh. 2 (1954)] 20–21, 128 (KRU 41), 131 (KRU 42), 140 (KRU 45–46) (KRU, as cited by Till = *Koptische Rechtsurkunden des achten Jahrhunderts auf Djême [Theben]*, ed. Walter E. Crum [Leipzig 1912]); A. Steinwenter, *Das Recht der koptischen Urkunden* [= Müller-Otto, *Handbuch*, 10 Abt., 4 Teil, Bd. 2 (1955)] 51–52; H. Kreller, *Erbrechtliche Untersuchungen* (Leipzig 1919) 88. I am indebted to Prof. A. A. Schiller of Columbia for the reference to Steinwenter's work.

⁷ Cf. Till (above, note 6) 20.

age and locality. There is other evidence from the same general period.⁸

In view of this long history, stretching from the Homeric to the Byzantine epoch, it was with considerable interest that I discovered what appears to be the persistence of the trait in present-day Boeotia. In the little village of Vasilika at the foot of Mt. Parnassus, where my wife and I devoted the academic year 1955–56 to an ethnographic study of the small community, the casting of lots is regarded as a normal way to divide τὰ πατρικά among the surviving sons. Within the last few years, the procedure has been used by two of the forty-odd families of the village.

Taken by itself, this fact provides an interesting instance of the survival of customary law alongside of statutory law — for our method of property distribution, I am informed, appears nowhere in the Roman codes, though nothing in those codes would have prevented its continuance, on an extra-legal basis, as a form of voluntary agreement.⁹ Nor is it recognized — and again, neither is it prohibited — by the contemporary Greek Civil Code. The cultural trait has survived, passed down from generation to generation, through the centuries of Roman, and later of Turkish domination.¹⁰

But it is not merely a matter of survival as a formal and fossilized relic. The trait has been elaborated by our villagers, or their forebears more or less remote, into a social mechanism peculiarly Greek in its character and operation, and in the attitudes surrounding it.

Let us take the case of three brothers living as tenants in common in the house and on the land left by their father. Each has brought home a wife; the three couples live together in the paternal house, and work the family fields together. With the advent of children,

⁸ Cf. A. P. Christophilopoulos, *Σχέσεις γονέων καὶ τέκνων κατὰ τὸ Βυζαντινὸν δίκαιον* (Athens 1946) 62: ἀμπέλιον . . . δ ἔλαχεν κόμου . . . ἐκ πατρικοῦ κλήρου, from a Cyprian codex now in the Vatican.

⁹ Personal communication from Prof. Adolph Berger of the École Libre des Hautes Études, New York.

¹⁰ On the survival of Greek law, see Christophilopoulos (above, note 8) 52, 156; G. Michaélidès-Nouaros, *Contribution à l'étude des pactes successoraux* (Paris 1937) 209–10; K. D. Triantaphyllopoulos, *Laographia* 5 (1915) 239–48; P. I. Zepos, *Greek Law* (Athens 1949) 12. Traces in Turkish law of the custom of dividing inheritance by lot may perhaps represent a borrowing by the Turks from their Greek subjects; if the custom was a trait of Turkish culture prior to the capture of Constantinople, it may be assumed that it served to reinforce the Greek pattern. For the Turkish law referred to, see J. Leonides and Ph. Tsellentes, *Ὁδηγὸς ἐπὶ τῆς διεξαγωγῆς τῶν κυριωτέρων κτηματικῶν υποθέσεων* (Constantinople 1903) 58.

the house becomes crowded, and numerous petty irritations lead to a decision to divide the inheritance. Now each conjugal family needs a house of its own: the old house will do for one, so that two others must be constructed. Before setting out to make any division either of fields or of movable property, the three brothers co-operate in building two new houses on suitable plots of the family land, and in refurbishing the paternal house to bring it as nearly as possible up to the same standard as the houses being newly built. In this building program, which in present-day Greece requires several years of slow if steady progress, all brothers work with exemplary cooperativeness. In view of the strong sense of individuality and the suspiciousness as regards the motives of others which are predominant traits of the Greek personality, modern as well as ancient, and particularly in view of the feelings which led up to the decision to divide the inheritance, one may well ask, "Whence this disinterested pooling of effort during years of labor?" The answer lies in the mechanism which we have been describing, extended now to cover not only the property which the father left, but the houses which are newly coming into being. During the course of construction, no one of the three families can possibly know which house is to be its own. This question will ultimately be decided by the inexorable operation of chance. In the meantime, then, it is to the interest of all that the three houses be made as nearly equal in value as possible, and that all be equally desirable. Thus is enlightened self-interest harnessed for the common good of the entire family. Even if the old house cannot quite be brought up to the standard of the new, there is honest effort to improve it as much as possible. Only when the houses are ready is a division of the fields into shares agreed upon. Then lots are cast separately for fields and for the houses, since except for the little plot on which each house stands, the family fields are scattered here and there in the village domain. As in the case of the Coptic ostraca, the description of the property constituting the share is written on the lot itself; the writing is then concealed, and the lots are distributed at random by a disinterested party. The outcome of the lottery is eagerly awaited, particularly as regards the houses. The families which draw new houses are overjoyed, the recipients of the refurbished paternal homestead accept it with resignation.

There is general agreement that this is one good way to divide family property, if it must be divided, *μὲ ἀγάπῃ*, with love. In this

the remarks of the villagers parallel those of their old neighbor Plutarch (for Chaeronea is just five miles from Vasilika), who states that the division of family property by lot is the method which provides an occasion of friendship and harmony (*Moral.* 483D). Similarly the Byzantine Eustathius speaks of the process as contributing to ungrudgingness and justice (*ad Od.* 14.209). This is not the only parallel between ancient and modern Greek thought on the subject. Our villagers, while agreeing that lots provide a very good way of accomplishing the division, speak of the division itself as a rather lamentable necessity, for it means a breaking up of the family unit. Note Plutarch again: he urges that, even as they divide the property, the brothers deem it to be the care and management that they are dividing, while allowing the use and possession ἐν μέσῳ κείσθαι κοινὴν καὶ ἀνέμητον ἀπάντων (*Moral.* 483D). Surely this paradox of a division which is not a division is a sign of Plutarch's feeling of repugnance at the idea of division itself.

One more possible point of similarity. The words in which the wife of the brother who had drawn the old house expressed her resignation — τί νὰ κάνουμε; "What can we do?" — are typical of our villagers' rather good-natured fatalism in the face of adverse circumstances over which they have no control. I suggest that in their use of lots to divide inheritances our villagers are voluntarily placing a situation beyond their control so as to avoid the responsibility for a deliberate and rational choice. The suggestion that the wide-spread ancient Greek use of lots represented a voluntary submission of man to the will of the gods has been put forward by Ehrenberg.¹¹

Sterling Dow, in his discussion of the Athenian allotment machine, the κληρωτήριο,¹² mentions the ancient Greeks' suspicion of human nature, their fascination with luck, and their penchant for machine-like institutions. All these are illustrated in the development and the operation of the procedure which we have been discussing. I particularly suggest that the cultural descendants of the ancient Greeks, these villagers of Boeotia, have displayed a social inventiveness worthy of those who contrived the Athenian mechanism of the *antidōsis*, and to a similar end: that the forces of personal self-interest themselves might be harnessed to produce the very equity of which, if not thus harnessed, they would be most destructive.

¹¹ *RE* s.v. "Losung" 1464.36–37.

¹² *HSCP* 50 (1939) 1.