

tial attitude of course underlies Professor Keeton's whole approach to the English Constitution—his harking back to the halcyon days of the eighteenth century in invoking the apparent praises heaped upon the English Constitution of that day by Montesquieu and Voltaire, glosses too readily over the essentially oligarchic character of a constitutional system that Mr. Disraeli was later scornfully to characterize as the "Venetian Constitution" of England.<sup>4</sup> When Professor Keeton, therefore, informs us at the close of his volume that the choice is either "individual initiative and increased opportunity" or the "ant-like existence of the fully-integrated and planned State" one is compelled to ask,—Are these the only alternatives? Professor Keeton's strictures upon the welfare state suggest that he would cross swords not merely with Mr. Attlee and the Labor Party, but (in the light of the present Government's budget proposals) with Mr. R. A. B. Butler and the reconstructed Conservatives of to-day; just as Professor Keeton's criticisms of the results of the extended franchise necessarily involve his being at odds with Mr. Disraeli and the Young England group within the nineteenth century Tory Party. The answer for Professor Keeton therefore may well have to be—back to the Duke of Wellington and the Venetian Constitution! Others, however, may well conclude that so far as the United Kingdom is concerned the welfare state is, for better or for worse, here to stay, and that the real problem is *how* (that is to say, by what techniques) it can best be kept reconciled with the traditional values of the free democratic society. Unfortunately this is a matter in respect to which Professor Keeton, by his own choice, has not seen fit to give us the benefit of his scholarship and experience.

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<sup>4</sup> Disraeli. *Coningsby* (1844).

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**Studies in Land and Credit in Ancient Athens, 500-200 B.C. The *Horos*-Inscriptions.** By Moses I. Finley. New Brunswick, New Jersey: Rutgers University Press, 1952. Pp. xii, 332. \$3.50.

This book grew out of a projected study of business practices in the ancient Greek cities. Since it became apparent that an examination of security as the link between land and credit was a prerequisite for the larger study, the author, limiting this volume to Athens from 500 to 200 B.C., has here examined the outward forms of security transactions, the legal instruments, the kinds of real property offered as security, and the parties engaging in these transactions, both individuals and groups. The volume is thus the first of a promised series intended eventually to include a study of the business practices of the entire city-state world, in which there will be a full discussion of many problems to which only abbreviated consideration could be given in the present volume. The author declares his guiding methodological principle to be "concentration on the basic

patterns of economic behavior, rather than on the exceptional instances, and consideration of the whole range of literary and epigraphical documents, of the 'negative' evidence as well as the 'positive.' "

Roughly one third of the book is the author's own text. The remainder consists of a transcription of the texts of the horoi-inscriptions with elaborate tables breaking down the horoi in terms of the obligations involved, a brief appendix on Ferguson's theory of the legislation of Demetrios on horoi, and an enormous body of important notes on Finley's own discussion. There are also a convenient list of abbreviations, a selected bibliography, an index of literary, epigraphical, papyrological, and lexicographical sources, an index of Greek words, and a general index.

Finley's book follows by only a few months another important study of the horoi-inscriptions, John V. A. Fine's *Horoi, Studies in Mortgage, Real Security, and Land Tenure in Ancient Athens*,<sup>1</sup> which Finley did not see until his own manuscript was in press. He was able, however, to add an appendix, reprinting the texts of the horoi from the Athenian agora, first published by Fine, with some comments of his own. An examination of the two books shows that, while there is agreement on many important points, there are also significant divergences in the conclusions reached on various problems. Finley states, however, that nothing in Fine's texts or discussion has led him to alter his own views in any significant way.<sup>2</sup>

Like Fine, Finley limits his discussion to those horoi which gave notice of the legal condition of a piece of property and to the problems which arose from them, treating them as a statistical series rather than emphasizing individual texts, and examining them in the light of the abundant literary material. Three distinct terms for security are discussed: *hypothekē*, *prasis epi lysei* ("sale on condition that the seller may release the property from the buyer's claim on it"), and *apotimema* of two kinds, i.e., dotal *apotimema* (the property offered as security served to guarantee the return of the dowry in case of dissolution of the marriage) and pupillary *apotimema* (the property served as security for the return of an orphan's estate which had been leased for the period of the child's minority). Finley does not consider the differences among the three types to have been very sharp in the fourth and third centuries B.C.

There is a particularly interesting section on the meaning of *apotimema* and its effect on practice. The idea of evaluation ties all of the uses of *apotimema* together.<sup>3</sup> In the case of dotal *apotimema* the husband's land was evaluated in order to determine what portion was an acceptable equivalent for the dowry. In pupillary *apotimema* the orphan's estate was of fixed value. When the estate was leased, a part of the lessee's property, proportionate to the value of the orphan's

<sup>1</sup> See my review, 20 Univ. Chi. L. Rev. 176 (1952).

<sup>2</sup> P. 182.

<sup>3</sup> P. 46 et seq.

estate plus the annual rent to be paid by the lessee, was measured off as security. Once a particular piece of property had been decided upon as the equivalent of a debt the valuation could not later be disputed and the *apotimema* became an ordinary security obligation. Both of these transactions concerned the family, but that was irrelevant. *Apotimema* could be used in the case of other debts and the distinction between *apotimema* on the one hand and *hypotheke* and *prasis epi lysei* on the other hand originated in the need for evaluation. *Apotimema* combined evaluation and hypothecation.

Interesting comparisons with modern practice along with pertinent observations on Greek social and economic conditions emerge out of the author's extensive treatment of types of property and of the parties to loans, both individuals and groups.<sup>4</sup> To illustrate: there is no word in Greek for "real property" and no important distinction is made in Greek between real and personal property.<sup>5</sup> Workshops (*ergasteria*) were often not distinct buildings; hence the buildings played little part in the hypothecation of a workshop.<sup>6</sup> Slavery in Athens played its chief role in mining and handicrafts, not in agriculture where it was relatively unimportant.<sup>7</sup> Among the Greeks sales were cash sales and there are few exceptions to this rule.<sup>8</sup> Loans in ancient Athens were not a device to secure funds with which to purchase or to improve income-producing property. They were made to secure cash for non-business obligations. From the size of Athenian dowries, the size of other types of debts, and the non-productive nature of loans on hypothecated property, Finley draws the conclusion that the horoi take us into the world of the wealthier Athenians. Hypothecation was limited largely to men of property acting in non-economic capacities.<sup>9</sup> There were often friendly loans from individuals without witnesses or documents and without security or interest.<sup>10</sup> Furthermore, there were many group loans (*eranos*).<sup>11</sup> *Eranos* means either a picnic, a friendly loan made by an ad hoc group of individuals, or a certain kind of club. In some of the horoi the property is spoken of as put up for security to the "eraniasts." In view of the use of *eranos* regularly in Greek literature as loan, the rather late appearance of the term in literary texts as an association, and its use on the horoi as early as the fourth century, Finley eliminates any form of permanent or continuing group as a factor in hypothecation. *Eranos* loans then were made by ad hoc groups for particular purposes, such as payment of taxes, performance of liturgies, payment of ransom, and manumission of slaves. Such loans were without interest and frequently without security. Again in *eranos* loans we are in the circle of wealthy Athenians and they are unproductive loans. Underlying such loans there was a philanthropic idea. Where such loans are

<sup>4</sup> Cc. V-VIII.

<sup>5</sup> P. 54.

<sup>6</sup> P. 65.

<sup>7</sup> P. 73.

<sup>8</sup> P. 82.

<sup>9</sup> P. 87.

<sup>10</sup> P. 85.

<sup>11</sup> P. 100.

indicated on the horoi, doubtless real property was put up as security. In secured obligations the pattern was controlled by the concept of substitution as opposed to collateral.<sup>12</sup> This precluded the use of property once encumbered to serve as security for second or third debts except on infrequent occasions. The idea of collateral had not yet developed.

This is an important book and it is to be hoped that further volumes in the series will soon appear.

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<sup>12</sup> P. 115.

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