THE SOCIAL AND LEGAL POSITION OF WIDOWS AND ORPHANS IN CLASSICAL ATHENS

A Thesis submitted to the Faculty of Arts, University of Glasgow, for the Degree of Doctor of Philosophy in Classics

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ABSTRACT

I have attempted in the following pages to examine Athenian law and customary practices that shaped the lives of widows and orphans in the society during the classical period, using evidence mainly from the Attic orators. The work has two main divisions classified as follows:

(A): The Athenian Widow in Law and Society;

(B): Orphans in Classical Athens.

Among the main issues discussed in section A are, the impact of the cycle of wars (foreign and internal) and other demographic features on family life and structure, instances of family laws about widows and orphans, and what role the archon could play to protect the welfare of widows and orphans in the society. Other matters discussed also are the status of the widow's marriage and dowry at the death of her husband, her residential status, rights to maintenance and support, the question of remarriage among widows, and what influence the widow could exert in either her deceased husband's household or that of her kindred.

One of the two categories of women in Athens who, together with male orphans, enjoyed the special protection of the law was the pregnant widow. Section A, therefore, deals also with the status of the pregnant widow, interpreting the law quoted in Demosthenes 43.75, and showing how she stood apart from her ordinary widow or woman

counterpart in the eyes of the law and society. And in the final chapter of section A, I revisit the question of women's property rights (one of the most thorny issues in Athenian socio-economic history), emphasising the widow's rights to property in relation to property given to her by her kindred, and bequests from her deceased husband.

The fundamental motives for the striking phenomenon of appointing nearest relatives as guardians of orphans are discussed in Section B. An attempt has also been made not only to resolve the seeming uncertainties among scholars as to whether or not an *epikleros*, the other of the two categories of females with special legal protection, could be claimed before her puberty at the death of her father, but to examine also her peculiar status in the family and kinship structure. Other issues discussed also in Section B are the assumption of responsibilities of guardians, how the duties of guardians reflected the social and legal status of orphans under their guardians, and the position of state orphans.

It is significant that an extension of the law referred to in Isaios 10.10 that precludes a minor orphan from disposing of his property by testament is a limitation on his legal capacity to manage his patrimony. The law thus transfers the orphan's right to administer his property to his guardian who managed it on his behalf. Section B, therefore, attempts also to examine the nature of the rules for managing the orphan's

patrimony and the socio-economic implications for the orphan whether or not his or her property was let out by the guardian.

It is not obvious what particular rewards a guardian derived from the onerous duty of guardianship. But it is evident that if he did not deliver satisfactory services to his ward(s), he could be held to account for his bad stewardship to his ward(s). Thus section B examines also the socio-economic and legal implications of the age of majority for the *epikleros* and the male orphan, and for the guardian. But since it was a common practice for remarried widows to enter their new marital households together with their orphaned children, and also because some Athenian sons held their inherited patrimony in common, or waited until late in life before sharing it, there is an attempt to examine the status of the orphan under a step-father, and what his or her position could be in matters relating to joint-ownership of property and collateral inheritance.

In general, I have not only attempted to interpret the relevant laws and customary practices, exploring their application and implications, but also tried to examine potential areas of socio-economic litigation, attitudes of family members and the society at large, how all these affected the lives of individual widows and orphans, and how they could assert their rights in practice. Given the greatly variegated nature of the Attic lawsuits, my main sources of information, and considering the fact that the great majority of them are not directly about widows and

orphans, my approach has been, where direct evidence seems lacking, to interpret the situation on the ground, teasing out silences and drawing out most probable conclusions. There are also in both sections, occasional references to British and Ghanaian experience or situations for the purpose of cross-cultural comparison to elucidate where these three cultures differ and where they converge, and to demonstrate also the resonance of human experience with time and change.

In the course of my general discussions, however, I have attempted to invalidate certain conventional opinions of some scholars in classical scholarship, two of which may be noted here. I consider the traditional view that women had no role to play in the politics of Athens as not quite tenable. It is my contention that if the woman's own citizenship and her legitimate marriage by ἐγγύη became a *sine qua non* for the citizenship of her sons, as well as in political suits against them, then the Athenian woman's status provided the basis for the citizenship of her sons who became the *dramatis personae* in the political life of Athens. She thus had a significant role to play in Athenian politics.

I deny also as wrong the view that a widow could decide whom she should get remarried to. I would hold that any exercise of choice by the widow seeks to undercut the law on marriage in Demosthenes 46.18, and plays down the conferred power of the father or legal representative of the woman who had such authority to give her in marriage.

ACKNOWLEDGEMENTS

I have accumulated many debts of gratitude to several people at this level of my academic pursuit, though it would not be possible for me to note all their names here in the circumstances. To those who are not mentioned here, I wish to state that I sincerely appreciated every kind of efforts each made to help me achieve my aim. To some of those whose names I mention here, I indeed cannot find the most appropriate words to express my gratitude for their immense help.

First and foremost is Prof. D.M.MacDowell, my supervisor, who funded my four-year studies in respect of my tuition fees required by the University when my home Government had refused to grant me sponsorship for my programme, not even for my maintenance. To him, I dedicate this thesis in most sincere and profound gratitude for this rare benefaction. I am grateful to him also for his countless hours of instruction and supervision as well as his several constructive criticisms and suggestions. His critical comments made me rethink about some of the issues I have discussed in this work and helped me in no small way to improve also my style. I thank him also for his understanding and patience for any moments of anxiety I might have given him in the course of my studies.

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aspect of my life since my undergraduate period. He inspired me into Greek literature and culture under his instruction when he was Head of the Department of Classics at the University of Ghana, Legon. After National Service as a Teaching Assistant under him, Prof. deGraft-Hanson encouraged me to take an M.A.Degree in Classics which qualified me for a lectureship position in the Department of Classics, University of Cape Coast. And he, as Head of Department (he had then joined the teaching staff of the University of Cape Coast), gave me the course, 'Social Life in Greece and Rome' to teach to third-year students reading Greek and Roman Civilisation in the Department. It was this course that spiced up my interest in Greek history and culture and paved the way for my present level. For all his contributions to my academic as well as my professional career, his financial assistance, incessant letters of encouragement and support, I am most sincerely grateful to him.

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Morne Jnr, Jemima Cudjoe, and Nana Baaboa Hanson-Cudjoe. And to my elder brother, Nana Kodjo Morne II, I am very thankful for giving me the foundation on which I have built.

I gave embryonic versions of some of the chapters of the thesis to various groups and bodies. Among them were a postgraduate Classics conference, staff and graduate students of my Department, the Scottish Hellenic Society, and the Classical Association of Scotland. I benefited immensely from the criticisms and observations from the respondents to whom also I am equally thankful. In overall terms, however, I take full responsibility for the thesis in its present form or condition, including any errors or omissions in it.

ABBREVIATIONS

The abbreviations for ancient authors and works, as well as periodicals used in this dissertation are based mainly on H.D. Liddell and R. Scott's edition of *A Greek-English Lexicon*, and the system of *L'Annee Philologique*. The following adaptations and others not covered by the above-mentioned authorities may, however, be noted.

Aeschn.	Aeschines
Alkib.	*Alcibiades*
Andok.	Andocides
APF	*Athenian Propertied Families*
Isok.	Isocrates
JFH	*Journal of Family History*
JRAS	*Journal of Royal Anthropological Society*
LJH	*Legon Journal of the Humanities*
Oikon.	*Oeconomicus*
PNDC	Provisional National Defence Council.

INTRODUCTION

Scholarship on the classical Athenian family during the last two or three decades has experienced such a boom that the sheer output of relevant publications appears intimidating and seems to dwarf any other recent innovations and redirections in the field of ancient social history. In view of the rate of proliferation of studies on this subject, anything else than the fashionable topics of the general position of women, marriage, kinship and inheritance, adoption, the household and property, and adultery would have been a big surprise and probably impossible to achieve.

But the busy and systematic study of these segments or features of Athenian family life can fully be vindicated only when the more shadowy and obscure regions of the family are not allowed to be passed over in silence. The juridical status of widows and orphans in the Athenian family and the society at large is an issue that falls squarely within that latter, underprivileged category of subjects. This does not mean, of course, that virtually no effort has been made in this direction. Isager's work on marriage patterns in Athens in the classical period in which she has documented the presence and numbers of widows[1] has its merits though it is based on only the speeches of Isaios.

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[1] See *C et M* 33(1981-82),81-96.

Equally illuminating and stimulating is Hunter's 21-page paper on the Athenian widow and her kin[2] to which I have had occasions to refer in this work. And although Harrison's chapter on guardianship of orphans[3] is limited in scope, it still remains an essential reference for any work on orphans in the Athenian society as at present.[4] Nevertheless, I think it is fair to say that very little progress has been made, given the lack of a more systematic and vigorous inquiry into the matter of widows and orphans, and that much further study is needed. The present attempt hopes to provide this missing factor of a more vigorous and extensive treatment of the subject.

There are two further points that are also noteworthy. The first of these is the controlling phrase 'social and legal position' in the topic itself. It is to be noted that the terms, 'social' and 'legal' stand in a complementary relationship to each other; and it is therefore difficult to draw a wedge between them in the discussions that follow. To the social historian, the legal institutions of a given society are embedded in the society, and they are studied in order for the laws to throw light on the society. For the law, after all, reflects the way in which a society perceives its own internal relationships or seeks to define its inner

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[2] *JFH* 14(1989),291-311.
[3] Harrison, *Law*, p.97-121.
[4] For other discussions on widows and orphans, see MacDowell, *Law*, p.93-98; Harrison, *Law*, p.97, n.1; Hunter, *JFH* 44(1989),306, n.1.

structure.[5] Thus in this study, no distinction is made between social position and juridical status. For we cannot simply say that the status of widows and orphans before the law is different from what we must address if we are to define their place within the structure of the Athenian society.

The other point to note is the occasional references to or comparisons with the Ghanaian and British experience in some of the chapters. The procedure might appear intrusive if not surprising in a discussion of a subject that is not a cross-cultural study; but considered on its own terms, as a purely descriptive account of Athenian law and customary practices that tend to underline and shape the status of widows and orphans in the Athenian society. My objective, however, is to illustrate what Ghanaians in particular have in common with the ancient Athenians in the family. It is also meant to show the differences between the two cultures, and to demonstrate the continuity of human experience despite the distance of centuries between ancient Athens and Ghana.

A study of the legal position of widows and orphans in classical Athens appears necessarily specific. But it requires one to ask certain general and non-legal questions. It is generally recognised that the sight of widows in the Athenian society during the classical period was

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[5] Cf. Stephen Todd, ' The Use and Abuse of the Attic Orators ', *G&R* 37(1990),159; John Gould, 'Law, Custom and Myth: Aspects of the Social Position of Women in Classical Athens', *JHS* 100(1980),43: J. A. Crook, 'Legal History and General History', *BICS* 41(1996),31.

ubiquitous, and their number high enough to create a potential social problem.[6] This omnipresence of widows in classical Athens would surely signify a corresponding high rate of orphans in many Athenian households that could also pose equally a compelling problem to the society. It is thus not surprising that we have instances of funeral speeches in Athens in which addresses are made to widows and orphans, highlighting their plight and elucidating what steps the state intends to take to cater for their interests.[7] All this is in a way a recognition of the disruptive force of the widows, and the vulnerability of the young orphans in the society.

What then does it mean to say that the presence of widows in classical Athens was a common sight with a corresponding high rate of orphans in many Athenian households? What circumstances must have prescribed for some Athenian wives and children such status as widows and orphans respectively in relation to other women and children of the population? How could the familiar sight of widows and orphans potentially have sociological consequences for the society in which they lived? Naturally, one is tempted to observe that such wives and children had become widows and orphans because of the death of their husbands and fathers. But such a terse observation is not likely to demonstrate and

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[6] Mark Golden, ' Demography and the Exposure of Girls at Athens ', *Phoenix* 35(1981),316-331, esp.329; V. Hunter, *JFH* 14(1989),291.
[7] See Thucy. 2.45.2: Lys. 2; Plato, *Menexenus*; Hyperides, *Epitaphios*.

reflect clearly the enormity of the situation, as death is necessarily the end of human life. A better and more informative answer therefore requires a sort of demographic exposition on classical Athens if we should have a deeper appreciation of its social impact on the Athenian society.

The first chapter of this study, therefore, has three fundamental objectives. In the first place, an attempt will be made to examine demographic features and their impact on family life during the classical period. I shall, however, not wish to delve into the several details of Athenian geographical and citizen population[8], but only to select for our purpose such demographic aspects as were likely to have social consequences for some Athenian wives and children, thereby prescribing for them the status of widows and orphans of the population.

The chapter will also look at some of the Solonian family laws that directly concern the widow and the orphan. This discussion will be made against the background of the prevailing socio-economic conditions of Solon's day that prompted him to enact these laws that subsisted to the classical period. The chapter will then close with an examination of the role of the archon as general overseer of the family in the administration of justice in cases concerning widows and orphans in the family and the society at large.

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[8] For this, see Gomme, A.W. *The Population of Athens in the Fifth and Fourth Centuries B.C.* (Oxford 1933); Hansen, M.H. *Demography and Democracy: The Number of Athenian Citizens in the Fourth Century* (Herming;Systime,1985); *Three Studies in Athenian Demography* (Copenhagen, 1988).

The theme of the position of widows will be examined against the background of the general position of women in classical Athens. The discussion may thus appear positively trendy in view of the spate of work recently produced, including two whole numbers of *Arethusa* about two decades ago devoted to the subject of women in antiquity.[9] But it is certainly through such perspective that we can interpret and elucidate the widow's status in the eyes of the law, and assess whether or how she stood apart from her ordinary Athenian woman counterpart.

It is common knowledge that women in Athens were severely restricted by law.[10] In marriage, for instance, a woman had no say in whom she married or how the marriage was contracted. She was given in marriage by her nearest adult male relative, as the case may be. If she was the only child of her father, *epikleros*, she formed part of the father's estate and could be claimed in marriage together with the father's property by his next-of-kin.(Dem.43.51)

In court, although a woman might be present either as a plaintiff or defendant, she could not herself give evidence in court, unless she was a metic.[11] She had to be represented by either a brother, or her husband,

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[9] *Arethusa*, 6 (1) (1973); 11 (1-2) (1978).
[10] Dem. 46.18; Harrison, *Law* (i), p.1-21; Lacey, *Family*, p.100-112; MacDowell, *Law*, p.86-89; Hans Julius Wolff, ' Marriage Law and Family Organisation in Ancient Athens ' *Traditio* 2(1944),43-95, esp.46-53. See also R. Sealey, *Women*, p.25-36; Sue Blundell, *Women*, p.119-124.
[11] Cf. Neaira in Dem.59.

or her son.[12] She could, however, attend a family arbitration and give evidence that could be used in court.[13]

The Athenian woman appears also legally restricted from transacting business beyond the value or measure of one *medimnos* of barley.[14] And in matters of intestate succession, although the woman could inherit property, as Phylomakhe does in Demosthenes 43.31, she could not legally dispose of it. She was, however, able to transmit right of succession in her own family to her sons, who were members of her husband's family.(Dem.43.51)

In the *oikos* the Athenian woman's position was vicarious. She belonged to the household through her relationship with her father or husband, or failing them, through some other man who was her *kyrios*. And the woman in the community or district, *deme*, of the city-state belonged to the *deme* in the same relationships as she belonged to the *oikos*.[15] It was very rare indeed for a woman either to use or be given a demotic name of her own; rather what was indicated, explicitly or implicitly, was her relationship with either her father or her husband or both of them. Thus in court women were identified by either the names of their husbands, or when unmarried the names of their fathers or male

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[12] Lys.19; Dem. 27-29; 40.
[13] Lys. 32.11-18; Dem.40.10; 55.27; Is.12.9.
[14] Is. 10.10.
[15] Cf. David Whitehead, *Demes*, p.78; Gould, *JHS* 100(1980),45-56.

relatives.[16] In fact, they were seldom identified by their own names, and mostly in a derogatory manner.[17]

The universal opinion is that the Athenian woman took no practical part in the politics of the city-state. In fact, women could not attend the Assembly, or vote and be voted for to hold any political position. It is, as noted already, against such general background of women in Athens that widows will be placed in chapters 2 to 5 in this study.

Chapter 2 discusses the immediate impact of the death of a husband on the widow's status as a married woman, and looks at what rights she could enjoy with regard to support and maintenance if she chose to live in her deceased husband's *oikos*. An attempt will also be made to establish the fact that although as a wife, her legal position certainly placed her in a position of great subservience to her husband like any ordinary Athenian woman in the household, the widow wielded considerable authority and influence in her deceased husband's household if she did not leave to live with her kindred. Following the pattern in chapter 2, chapter 3 takes up the position of the widow who returned to her family of origin to live with her kin. But as remarriage was a striking feature of Athenian family life, and some Athenian widows remarried at

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[16] See Is.2.18,36; 3.3; 5.5,9; Lys. 32.2,4-5; Dem. 28.3; 40.6; 57.8.
[17] See Is. 3.2,30,32,34; Andok. 1.16; Dem. 40.12; 45.28; 57.20-21,37,68; 59 passim. For various motives for avoiding or mentioning women's names in the orators, see Schaps, *CQ* 71(1977),323-330.

the decease of their husbands,[18]the chapter further examines remarriage of widows and some of the reasons for the practice.

One category of widows that has since antiquity received very little attention is the group of pregnant widows. This may not be surprising. The ancient sources on pregnant widows are indeed sparse. Thus there seems to be a marked reluctance on the part of scholars to investigate systematically their status in the society. And where some attempt is made, the available literature on their position is very marginal, with the information mostly appearing in a line or two in the works of commentators, or sometimes as a brief comment in their footnotes.[19] Chapter 4 therefore gives a much closer examination of pregnant widows' position from the scrappy and incidental references to them in the orators and shows their role in relation to the families of their deceased husbands. In this chapter, an effort will also be made to establish through the status of the pregnant Athenian widow that, contrary to the orthodox view that women were completely excluded from the politics of the city-state, the woman had a very significant role to play in the political life of Athens.

The question of women's property rights, including of course those of widows, at Athens in the fifth and fourth centuries is one of the most difficult issues in Athenian socio-economic history. The standard

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[18] W. E. Thompson, (a) ' The Prosopography of Demosthenes, LVII ' *AJP* 92(1971),89-91;
(b) ' Athenian Marriage Patterns: Remarriage ' *CSCA* 5(1972),211-225.

works on the subject[20] are not sufficiently helpful, partly because of apparently inconclusive observations offered by some scholars but chiefly because scholars are not agreed on what precisely were the property rights which a woman could enjoy, and what kinds of property she could own in classical Athens. In chapter 5, I take up the matter of widows' rights to property. Against this background, I shall examine the fundamental issues of property given to a wife by the husband at his death, her dowry, property owned by the widow in her own right, and property left with her as *epikleros* for her son. I shall go further to argue that the Athenian widow had rights of ownership, controlled her own property and managed it as she thought fit, and could dispose of it at will, but lost her rights when she got remarried.

From the general discussion of widows' status, the work turns to the position of orphans in the society. The Greek word ὀρφανός means 'fatherless' (translated orphan); but it does not necessarily imply that the child had lost his mother too. It has also the connotation of a fatherless female child. However, except where otherwise specified, I use orphan here collectively in the context of either a male child or a female child who had lost his or her father.

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[19] See Harrison, *Law* (i), p.38-39, n.9 on 39, 44, 111; Rhodes, *Commentary*, p.633; Davies *APF*, p.265; Boer, *Private Morality*, p.35; MacDowell, *Law*, p.88; Gould, *JHS* 100(1980),43; Thompson, *De Hagniae*, p.103.

[20] See the discussion on, ' The Athenian Widow and Ownership of Property. '

It is impossible to know the number of children who became orphaned during the classical period, though their numerical proportion appears considerably large. But given the high rate of orphans in the Athenian society and the general practice of guardianship, one can easily realise the society's great concern for the welfare of such unfortunate children in the affected households. Chapter 6 therefore discusses the procedure for, and the pattern of appointing guardians of orphans. The chapter examines also the question as to what point in time at the death of a father the appointed guardian assumed his duties of rearing and caring for the minor child or children. Chapter 7 then takes up the various duties and responsibilities of the guardian to his ward or wards.

The Athenian *epikleros* – the female orphan with no brother, or grandfather – was a distinctive female. This is so not just because she was a female heir, but because she was a female heir who remained with or upon her paternal estate, and was claimed together with the patrimony.[21] This unique status of the *epikleros* is reinforced by the Athenian public interest in her marriage. According to the *Athenaion Politeia*, a circumstance under which an *ephebe* could abandon his training and enter into the public domain was to marry an *epikleros*. Other circumstances pertained to inheritance to an estate or priesthood.[22] Athenian public

[21] See Dem.43.51.
[22] See *AP*, 42.5.

interest in the marriage of the *epikleros* is again reflected in a fragment of Isaios:

" For we consider the next-of-kin ought to marry this woman (the *epikleros*), and that the property ought for the present to belong to the heiress; but that, when there are sons who have completed their second year after puberty, they should have possession of it." (Is.frag.26. Cf. Is.8.31; Dem.46.20)

Thus the question as to who in the Athenian family should marry the *epikleros* is definite. Commentators are, however, not agreed on what point in time at the death of her father the *epikleros* should be claimed in marriage.[23] This is the issue that chapter 8 attempts to address. But an effort will be made also to examine rules relating to the *epikleros*, how a guardian was appointed for her, and what special marriage rights she enjoyed in view of the public interest in her marriage.

A very important function of the guardian was the administration of his ward's patrimony. In fact, it appears that the fundamental reason for the institution of guardianship of orphans had less to do with the welfare of the children than with the welfare of their property. In chapter 9, an attempt is made to examine rules and procedures relating to the administration of the orphan's estate, and to evaluate his or her position if the patrimony was administered either personally by the guardian or let

out to a lessee. The final chapter, chapter 10, has four main sections. The subject of the appointment of guardians as well as assumption of responsibilities naturally leads to termination of tutelage at the child's age of majority. The first section of chapter 10 therefore discusses the implications of the orphan's age of majority and the issue of accountability of the guardian.

The most notorious difficulties that faced the orphan during the period of tutelage seem to be three- fold. There was the question as to whether the guardian would show dedication in the administration of the patrimony. The second problem was whether he would render honest accounts at his or her majority; and finally what actions could be taken either to restrain a scoundrel guardian from looting his ward's patrimony during his or her minority, or punish him and retrieve the estate if he proved dishonest. These pertinent issues are also subjects for discussion in chapter 10. The last two sections of the chapter address the nature of the guardianship of orphans who lived with their stepfathers at the remarriage of their mothers, and what rights the orphan enjoyed in matters pertaining to joint-ownership of property and collateral inheritance.

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[23] See Harrison, *Law* (i), p.109, n.1, 138; MacDowell, *Law*, p.98; Thompson, *De Hagniae*, p.16, n.25.

SOURCES

I may appear eclectic in my selection of source material. My principal sources of evidence, however, are the Attic forensic speeches, given the nature of the subject. It is significant that the period before the Attic law-court speeches saw a radical restructuring of the Athenian society. However, not much is reflected in the sources of the time in terms of social history and family life. This is mainly because the sources are less preoccupied by history of things other than war and politics of the period. Thus information on the position of widows and orphans in the eyes of existing laws is scarcely available.

But as soon as we turn to the period of the Attic orators, and to their forensic speeches, we no longer have to explore remote corners to search for legal and social evidence. It is through the law-court speeches that we have glimpses of family and household dynamics and real family life which conventional historical narrative and inscriptions cannot give us. However, the orators have their strengths and pitfalls;[24] a few of which may be noted here.

The speeches are intensely predisposed to advocacy and sometimes reluctant to address the facts of the issues on the ground; the

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[24] See Ian Worthington, ' Greek Oratory, Revision of Speeches and Problem of Historical Reliability ', *C et M* 42(1991),55-74; Christ, *Litigious*, p.5; S. Hornblower, ' Sources and Their Uses ', in *CAH*, Vol.6 p.17-18; Stephen Todd, *G & R* 37(1990),159-178; V. Hunter, *JFH* 14(1989),292; S. C. Humphreys, ' The Discourse of Law in Archaic and Classical Greece ', *Law and History Review (LHR)* 6(1988),455-456,473-482; L. Cohn-Haft, *JHS* 115(1995),2; S. Swain, ' Law and Society in

speakers, quite naturally putting their clients' versions in the most favourable light and distorting their opponents' replies. They cannot therefore always be trusted for veracity since opposing speeches are rarely extant. They also highlight only conflicts that reached court; and often little is known about the court's verdicts, though they sometimes allude to those that were settled out of court. Furthermore, the orators, themselves typically members of the social elite, exhibit necessarily a bias towards the upper class in the Athenian society who had the means to employ their services in their suits. Not much light is thus thrown on the less privileged class. This tendency makes it not easy for us to know more about the family background of the underprivileged in society.[25]

None the less, the forensic speeches deal with real cases, questions of law and the social implications of legal rules as they affected individual members of the family and the society at large. They are thus especially valuable because they have the precious aspect of guaranteed verisimilitude, although some of the speeches could be revised versions of what was said in court. For one thing, there is no doubt that the orators often record with reasonable accuracy what the litigants said and did in court. For another, although we cannot simply assume that the speeches tell the truthful stories, it does seem most probable that the presence of an

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Thucydides', in *The Greek World* (ed.) Anton Powell (London, 1995),p.550; Cox, *Household*, p.xix-xx; Thompson, *De Hagniae*, p.ix.

audience in court could put a check on how far a speaker could distort information in his evidence.[26] Furthermore, it is significant that incidental references and comments in the speeches could contain grains of truth that the litigants would have had no reason to distort.[27]

Philosophical works, mainly, of course, those of Plato and Aristotle; for instance, *The Laws,* and *The Republic*, the *Politics* of Aristotle, and the disputed *Athenaion Politeia*, are also sometimes referred to. Although Aristotle, unlike Plato, was not an Athenian by birth, he nevertheless spent a greater part of his life in Athens; and his works much reflect Athenian thoughts and customary practices. It is noteworthy that while Aristotle appears to be a down-to-earth or pragmatic philosopher, Plato's works are much laden with imagery and myth, and directed towards philosophical speculation. In general, however, the philosophical works of both are necessarily theoretical and unhistorical; and the references to their texts do not mean that their regulations were applied. None the less, they are a source for comparative study; for in some cases they reflect Athenian legal and customary practices; and can confirm what is known though they do not establish Athenian practice.

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[25] Two of the possible exceptions of speeches which do not depict the world of the Athenian rich are Demosthenes, 55: *Against Kallikles*, and Lysias, 24: *For the Invalid*, as noted by Todd, n. 24 above.
[26] Cf. Humphreys, Sally 'Social Relations on Stage: Witnesses in Classical Athens.' *HA* I(1985),316-321; Jonstone, S. *Disputes*, p.12.
[27] Cf. Dover, K.J., *Popular Morality*, p.13-14; Ober, J., *Mass and Elite*, p.43-49; Todd, S.C., *G&R* 37(1990),171-175.

I have made references also to some of the comic plays of Aristophanes and Menander for the purposes of illustration, for it seems that their works virtually replicate every experience an individual might undergo in classical Athens. There is a striking difference between Aristophanes and Menander which must be noted. That is, Aristophanes' presentation is replete with much exaggeration and fantasy, and sometimes devoid of real life situation, while Menander's is more representative of real life situation, though the poet lived at a time when changes were taking place in Athenian family pattern and practices.

Both poets, however, employ satire, exaggeration, stereotypical characters, and fantasy.[28] None the less, their comedies are a valuable source for the social historian. As is said about Aristophanes, and quoted elsewhere in this work: "The extant plays of Aristophanes are firmly rooted in the present, and each of them explores the possibilities of a fantasy constructed out of the present."[29] There is no doubt that the evaluation of comic evidence could be a complex matter, but it is frequently possible to distinguish between a joke or a piece of abuse and the fact that makes a joke meaningful. As MacDowell rightly notes; "It is over-simple to assume that, if a play is a comedy, everything in it must be a joke…it is reasonable to expect that we shall find, at least occasionally, a scene or passage in which Aristophanes is not just trying to make the

Athenians laugh but is making some serious point which is intended to influence them."[30] Thus evidence from comedy is potentially useful, and must not be taken as mere poetic fiction; for Athenian comic characters and situations could have their real life counterparts in the society.

I have drawn information also from biographical and historical works of Plutarch, Diogenes Laertius, Diodorus Siculus, Herodotus, Thucydides, and Xenophon, though my reliance on them appears selective. It is noteworthy that evidence for the juridical position of widows and orphans is scarcely available in the histories or sources on those turbulent and anxious years of Athens' struggle for survival during the periods of the Persian and Peloponnesian Wars. Thucydides for instance, had treated certain types of history, particularly, social, economic, and religious subjects only selectively.[31] And even in the fourth century, Xenophon's works, the *Hellenica* and the *Anabasis* though in general provide a rich source of material for the period down to 362 B.C.[32] they do not address relevant questions of social history and family life as reflected in the existing laws.

However, despite his selective treatment of subjects other than matters political, Thucydides allows us peeps at the impact of the wars on the Athenian society, as well as the vulnerable status of war widows, and

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[28] Cf. Golden, M. *Children*, p.16; Hunter, *Policing*, p.6.
[29] Dover, K.J., *JHS* 86(1966),41.
[30] *Aristophanes and Athens*, p.5-6.

particularly war orphans, and the state's concern for the orphans of state warriors. There is also Xenophon's *Oeconomicus* as well as his *Memorabilia* from both of which I have drawn information. From its general perspectives, the *Oeconomicus*, seems to be a treatise on agricultural ethics for the Athenian farmer. But it could also be said to be on the social position of women in Athens. For its relevant sections on the status of the wife in relation to that of her husband cannot be denied. His reflections on the woman's contributions to the household economy, and the status of her dowry as a woman in marriage also illustrate the areas and roles in which the wife could be affected at the death of her husband.

One further point to note concerns the authenticity of the sources. Where the authenticity of a work is a matter for dispute, especially in the case of the Attic orators and their forensic speeches, I do not bracket the author's name. As I have observed in note 166 below on page111, certain questions regarding the authenticity of a speech may be broached. Particularly, whether the speech was written by the person attributed to, whether or not it was genuine (which might raise the question of dating), and whether or not it was a parody. But I find such questions not very material for my present purpose. I select the text and use the evidence if it best illustrates the situation under discussion. In this regard, I share the method of Prof. MacDowell in his work on Athenian law:

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[31] Cf. Hornblower, S. *CAH* 6(1994),p.1.

" I refer to Attic speeches by names of the orators to whom they are traditionally attributed; that should not be taken as implying necessarily that I think the attribution correct in any particular instance."[33]

I wish to state also that except where otherwise noted, the translations of Greek texts in the work as a whole are from the Loeb Classical Library series with occasional modifications and adaptations. Furthermore, it is worth noting that the word 'bastard' (*nothos*) as used in this work includes the child of two Athenians who were not married. And as regards references to British and Ghanaian situations, evidence is taken from British and Ghanaian newspapers, Parliamentary Reports of the House of Commons, and other documents all of which have been duly acknowledged in the relevant sections of the thesis.

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[32] Cf. Tritle, L.A. (ed). *The Greek World*, p.4.
[33] MacDowell, *Law*, p.9.

SECTION A : THE ATHENIAN WIDOW IN LAW AND SOCIETY

CHAPTER 1

DEMOGRAPHY, SOLON AND ADMINISTRATION OF JUSTICE IN THE ATHENIAN FAMILY

(1.a) *DEMOGRAPHY, WIDOWHOOD AND ORPHANAGE IN ATHENS*

" Every state is in a natural state of war with every other, not indeed proclaimed by heralds, but everlasting."[34] This is Plato's description of warfare in antiquity. His remarks are meant to emphasise the fact that warfare was endemic to Greek society, resulting mainly from competitive values of the classical system,[35] and really the main causes of wars. Thus for reasons of competition and other motives, Athens got embroiled in a spate of warfare for most of the fifth and fourth centuries B.C. Not altogether surprisingly, warfare is one area of human activity which greatly affected the demography of classical Athens. This situation no doubt contributed in no small way to bring about a high rate of widows and orphans in many Athenian households.

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[34] Plato, *Laws*, 1.626A

[35] On the competitive tendency of the Greek and Roman society, see A.W. Gouldner, *The Hellenic World: A Sociological Analysis* (New York, 1965,repr. New York,1969) p.41-77; Donald Angels, ' The Problem of Female Infanticide in the Greco-Roman World ' *CP* 75(1980),112-120, esp.114. See also Adkins, A.W.H, *Merit and Responsibility*: *A Study of Greek Values* (Oxford 1960); Finley, M.I. *The World of Odysseus* (New York 1954, repr. Chicago 1972).

Bradeen[36] has noted that Athenian defeats of any real magnitude in the fifth century occurred at Tanagra, Egypt, Koroneia, Delion, Amphipolis, Sicily, and Aigospotamoi. At Tanagra in Boiotia in 457 for instance, Thucydides informs us of the great loss to both the victor and the vanquished in the following words:

" The battle took place at Tanagra in Boiotia, and the Lacedaimonians and their allies were victorious, but there was much slaughter on both sides." (1.108.1)

We have no knowledge of the exact number of casualties to the Athenian side in the battle, but this could probably apply to a conservative figure of 500 or more losses on each side.

And in the Egyptian campaign, the minimum losses stood at 80 ships with most of their complements, around 15,000 men. The percentage of ships lost to the Athenians is not known. But Bradeen must be right that the losses could be more than 4%: " it is clearly very unlikely, if not impossible, that it would have been less than 4%."[37] Thucydides tells us also that at Koroneia, a combined force of Boiotians, Lokrians, Euboeans, and others defeated an Athenian allied army under Tolmides marching home after reducing Khaironeia (1.113), although we are not told the exact number of Athenians killed.

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[36] D.W.Bradeen, (i) 'Athenian Casualty Lists,' *Hesperia* 33(1964),16-62; (ii) 'The Athenian Casualty Lists,' *CQ* 63(1969),145-159.

But if Koroneia took place in the spring of 446, as ably argued by the editors of *Athenian Tribute Lists*,[38] there certainly would have been other casualties in a campaigning season which included the revolts of Megara and Euboea and the subjugation of the latter. If one considers also Thucydides' specific mention of the destruction of part of the Athenian garrison by the Megarians in their revolt (1.114.1), conservative figures of losses of from 550 to 850 as noted by Bradeen[39] would seem reasonable for that year. And at Amphipolis, Thucydides estimates that 600 Athenians were killed (5.11.2). Thucydides is not exact on the number of Athenian losses, but the estimated figure of 600 suggests that the Athenian casualties could be quite high. However, the Athenian losses in the Sicilian expedition seemed the greatest and most alarming by far. In 415, the proudest naval expedition ever launched by a Greek city-state set sail to Sicily. Two years later only 7,000 men out of a total number of 44,000 who had left Piraeus found themselves prisoners in the quarries of Syracuse where conditions were so appalling that many of them died later. But meanwhile, the rest beside the 7,000 had all perished in the battle.[40] And about a decade (424), before the disaster in Sicily, Thucydides informs us that the Boiotians defeated an Athenian contingent of 7,000 hoplites and some cavalry at Delion. (4.90)

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[37] Bradeen, *Hesperia* 33(1964),24-25. For the difficulties in trying to work out the percentage of Athenian losses, see Bradeen, ibid. 24, n.14.
[38] See 1-4 (1939-53), esp.3, p.174-178, n.65.

Then at Aigospotamoi in 405, Xenophon informs us that most of the Athenian crews were captured and all the prisoners put to death.[41] According to Diodorus (13.106.6-7), most of the soldiers escaped except Philokles who was killed. But his claim is contradicted by Plutarch and Pausanias. According to Plutarch,[42] the number of Athenians put to death stood at 3,000, and Pausanias (9.32.9) maintains that the number of Athenians executed was 4,000. In spite of the discrepancy in the number of Athenians executed as provided by the sources, the fact still remains that the Athenian losses may have been quite considerable.

Xenophon informs us also that even before 405 B.C., at Arginousai alone in 406, the Athenians lost 25 ships with most of the men killed. (*Hell.*1.6.34.) Although no actual numbers of Athenians killed are given, this is one battle in which, according to Xenophon, a good portion of the rowers were Athenians. It is therefore most certain that a considerable number of them lost their lives in the encounter. Besides this, in the same year (406) other casualties must have been recorded at Notion and Mytilene. For though Xenophon tells us that most of the men were able to escape to shore in those battles *(Hell.*1.5.14;6.17.23), the loss of 55 ships noted must have entailed a very great number of casualties.

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[39] *Hesperia* 33(1964),25.
[40] For details of the expedition, see Thucy. 6.30-32; 7.70-81.
[41] Xen. *Hell.* 2.1.28-32.

All these casualty figures come from some of the Athenian military campaigns abroad, and Athens' struggle with Sparta during the Peloponnesian War of 431-404. The civil war in Athens itself in the period 404-403 which followed in the wake of the Peloponnesian War is a well-known Athenian historical event. This also no doubt had its demographic consequences for Athens as a whole and certain individual families in particular. For the ancient sources inform us that the oligarchs who had supplanted the democratic constitution executed 1,500 men to bolster their regime.[43] This figure may be considered as exaggerated as it is possible that the sources may be biased against the oligarchs. But it is most likely that the executions must have been not less than 1,000 men.

The demography and sociology of the plague that convulsed Athens in the early years of the Peloponnesian War (430-426) may also be noted. Although it is a fact that both men and women became victims of the affliction, as is usually the case with every epidemic, its impact on the manpower needs, particularly the military strength of Athens, appears quite disastrous. The most precise information on the plague is given by Thucydides.[44] Noting its effects on the might of the Athenian army during the initial stages of the plague, Thucydides informs us that out of 4,000 hoplites in the expeditionary force led by Hagnon to Potidaea, 1,050

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[42] *Alkib.*37.4; *Lysand.*13.1.
[43] Isok.7.67; Aeschn.3.235; *AP* 35.4; Lys.12.6-7,83.
[44] See 2.47-58; 3.87.

perished in the plague in about forty days. (2.58.3) He then describes the helplessness of the situation in 427 and the toll on the Athenian army in particular and the population in general in the following words:

" In the course of the following winter the plague again fell upon the Athenians; and indeed it had not died out at any time entirely, though there had been a period of respite. And it continued the second time not less than a year, having run for two full years on the previous occasion, so that the Athenians were more distressed by it than by any other misfortune and their power more crippled. For no fewer than 4,400 of those enrolled as hoplites died and also 300 cavalry, and of the population ἀνεξεύρετος ἀριθμός a number that could not be ascertained." (3.87.1-3)

Strauss suggests that on the whole between 8,410 and 9,860 of the Athenian army were carried away by the plague.[45]

Athens in the fourth century also had no respite as far as warfare was concerned; though it would perhaps seem superfluous to give details of statements of Athenian army strengths and casualties in the several wars that also engulfed Athens during the period. For besides evidence from historical writings on the century, some of the Attic orators also inform us of families which had lost relatives in either military campaigns

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[45] B. S. Strauss, *Athens After the Peloponnesian War* (London, 1986), p.76. For the possible cause(s) of the plague, see J. C. F. Poole and A. J. Holladay, ' Thucydides and the Plague of Athens' *CQ* 29(1979), 282-300; J. A. H. Stubbs, 'The Plague of Athens: 430-428 B. C. Epidemic and Epizootic' *CQ* 33(1983),6-11; Donald Engels, 'The Use of Historical Demography in Ancient History' *CQ* 34(1984),386-93.

or on peace missions abroad during the period.[46] Nevertheless, one or two instances may be mentioned.

At Nemea in 394 for instance, Xenophon notes that 6,600 Athenians fought in the battle. (*Hell.*4.2.17) And Diodorus also, talking about the Athenian casualties in the battle of Khaironeia in 338/7, first notes the loss of their best generals (16.85.7), then the slaughter inflicted on them by Alexander resulting in piled up corpses (16.86.3-4). And then in a terse summary of the Athenian losses he writes:

" More than a thousand Athenians fell in the battle and no less than two thousand were captured. "[47] (16.86.5-6)

Concerning the Lamian War in 323/2, Diodorus informs us of a decree in the Athenian Assembly ordering the mobilisation of all Athenians above forty years, and the launching of 40 quadriremes and 200 triremes. (11.3;18.10.2) According to his account, the Athenian contingent which was subsequently sent away comprised Athenian citizen soldiers of 5,000 infantry and 500 cavalry, and 2,000 mercenaries. The Athenians, as narrated by Diodorus (18.10.2,11.3) were eventually defeated both on land and sea by the Macedonians under Antipater. Diodorus, however, does not tell us exactly how many of the Athenians were killed in the encounter, and although there were apparently few

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[46] Cf. Is.4.1,7-8,18,18-19,26; 5.6; 11.8; Lys.32.7; Dem.43 passim.

[47] For the fate of prisoners of war in the Greek world, see W. K. Pritchett, *The Greek State at War* V (Berkeley, 1991), p.203-312.

mercenaries in the fifth century but more in the fourth, the situation as described by Diodorus suggests that the Athenian citizen casualties may have been very alarming.

The catalogue of wars involving Athens in the fourth century could be quite lengthy, and the Athenian casualties countless. But in general, the evidence on Athenian casualties in the fifth and fourth centuries indicates that the scale of the Athenian losses was indeed high. The Athenian forces certainly comprised citizen soldiers, metics and mercenaries, apparently few in the fifth century but more in the fourth. And although most ships were manned by Athenians themselves, many of the sailors on the vessels would have been foreigners, as in the case of the Egyptian expedition.[48] Nevertheless, Bradeen notes[49] that in compiling casualties in the various wars, non-Athenian casualties were listed separately.

The impact of the Peloponnesian War on the manpower resources of Athens is equally illustrative. Although we know that the Athenians were able to press on with the war year after year, suggesting a high fertility rate of the Athenian population, it is obvious that in the last decades of the war manpower shortage began to be felt. And to forestall the drastic reduction of the population by replenishing it, the Assembly is

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[48] Cf. K.R.Walters, ' Perikles' Citizenship Law ' *CA* 2(1983),314-336, esp.330; Bradeen, *Hesperia* 33(1964),24,n.14.

[49] See Bradeen, *CQ* 63(1969),149-151,156.

said to have passed a decree permitting each Athenian citizen to have more than one wife to procreate children.[50] The motive of this decree is certainly a reflection of an imbalance of the sex ratio that had cropped up because of male casualties in the war.

What were the consequences for Athenian families, then, of the many deaths in the wars during most of the fifth and fourth centuries? There is no doubt that many families would be severely affected by the apparent depletion of their male members by death in military campaigns. A speaker in Lysias, for example, laments that in the Corinthian expedition in 394 his tribe " had the worst fortune and suffered the heaviest losses in the ranks"(16.15). Diodorus (18.10.2-3) also informs us that citizens from seven tribes out of the ten tribes of Athens were sent on the Lamian campaign which ended in the humiliating defeat of Athens, with only the remaining three tribes posting guards at Athens.

Taken as a whole, therefore, the demographic cost of the wars seems staggering. And although an immediate implication of it is that there would certainly be fewer mouths to feed, the impact of the death toll in wars on the man-power needs of Athens in general, and family structures in particular could be worrying. But more importantly, these examples point to an immense number of wives and children who

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[50] Diog. Laert. *Socrates* 2.26; Athenaeus, 13.555d-556; Dem.57.30. The question as to whether the Athenians practised polygamy or bigamy as a result of this decree has been the subject of an endless debate in scholarly circles. See Athenaeus 577b-c; Plutarch, *Aristeides* 27; J.W.Fitton, ' That Was No

respectively became bereft of their husbands and fathers. For it is obvious that the wars, foreign and civil, periodically produced a great number of widows and orphans in the Athenian society.

It is very hard to draw any firm conclusions as to how many Athenian citizens in the Athenian contingents during the wars were married. But the Athenian youth attained his age of majority at the age of eighteen, and was due for military service two years after this age. Thus there is no doubt that many of the Athenian citizens serving in the army at any point in time were within the year range of 25 and 49. This would certainly be the situation in that it would be this year class which would have the greater energy and strength to fight than any other year group. And granting that most Athenian males married within this year range, it is very possible that very many citizens of the Athenian forces had got wives and children.

In fact, one point of emphasis regarding the decree passed by the Assembly, as noted above, is not on whether or not the Athenians tolerated polygamy or bigamy, but that during this period the Assembly's recognition of the severely weakened military man-power of the city-state was actually a tacit recognition also of a shortage of husbands for

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Lady, That Was ' *CQ* 64(1970),56-66; Sallares, *Ecology*, p.98; Harrison, *Law* (i), p.16-17; R.Sealey, *CA* 3(1984),111-133; Wolff, *Traditio* 2(1944),85ff.

women of marriageable age in Athens.[51] Significantly, this shortage of husbands affected not only girls of marriageable age who had no men to marry them, but also wives who had lost their husbands in the wars. As widows, their male families would have wished to give them in marriage again but there were no men for them. Thus a great social consequence of the Athenian casualties in the campaigns of the fifth and fourth centuries is that the wars affected the Athenian population as a whole, and left a considerable number of widows and orphans in many families.

The age at first marriage of both sexes is also noteworthy. One of the primary factors determining the development cycle of the family is the age at first marriage of men and women. This is the age of admission to the breeding population, and thus the most important of all human demographic parameters. But, as rightly observed by Gallant,[52] age of marriage is not a static phenomenon, but a feature of society that can change quickly and in several cases is determined by socio-economic circumstances. In fact, a wide range of factors can affect the age at first marriage. Two factors easily come to mind.

In the first place, if property devolved at the death of the father, it is most likely that the sons would have to marry later. This is because they would lack the necessary resources to establish their own households

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[51] See Aristoph. *Lysistr.*591-597 where the women complain that there are too few men to marry, and so girls miss their chance. Cf. Strauss, *Athens*, p.74.
[52] Thomas W.Gallant, *Risk*, p.18.

(though this was not a regular practice) until the father was dead. Secondly, if in the case of male orphans with sisters it is incumbent on brothers to delay their own marriage until they have married off their sisters in the event of their father's death, then brothers would probably marry at a later age. The same would be the situation with male orphans for whom it was obligatory to look after their widowed mothers living with them(Is.2.6; Lys.16.10; Dem.27; 28.29).

Ancient literary sources are not very definite on the customary age for male Athenians at first marriage, and even the actual ages suggested are in doubt. Plato[53] and Aristotle[54] note that the age at first marriage of the male Athenian was 30, or at the latest, 37. But at another point, Plato twice puts the earliest suitable age at 35; then between 25 and 35.[55] On the other hand, Aristotle suggests 37 or a little before, but again notes that the body is most fully developed from 30 to 35 years.[56] Although the philosophers' recommendations may not correspond to real life, they throw some light on the stage at which the male Athenian was considered old enough to enter marriage life and begin to raise a family. What is significant about the suggestions of Plato and Aristotle, however, is that there seems to have been no hard and fast rule about the age at first

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[53] *Laws*, 721b,785b.
[54] *Pol.* 1335a6.
[55] *Leg.*4.721b; 6.772d, 785b.
[56] *Pol.* 7.1335a29; *Rhet.* 2.1390b9. Sallares notes that Aristotle's suggested age of 37 was simply due to the fact that he married his own wife Pythias when he was 37 years. See *Ecology*, p.48.

marriage of the man; though marriage usually took place at the age of 30 which was the regular Greek generation.(Lacey, p.106-107)

However, there is a general consensus that women in Athens, like women in Rome, married for the first time at a much younger age at 14, but at the latest 20. In fact, the young marriage age of the Athenian girls, like Roman girls, seems typical of the Mediterranean family pattern.[57] A speaker of Isaios (Is.6.14), also seems to suggest that a woman at 30 years who had not yet been given in marriage was probably regarded as a prostitute since a woman of that age should have been married long ago. And Demosthenes (27.5;29.43) informs the jury that his father expected that his five-year-old daughter would have reached puberty and got married to his nephew, Demophon, at the age of 15. Moreover, a speaker in Lysias (32.4), informs the jury of a brother marrying his other brother's daughter, suggesting a substantial age gap between husband and wife.

In general, the age at first marriage of men and women is significant for two main reasons, the one demographic, the other social; though the two are interdependent. Demographically, for those not afflicted by sterility, age of marriage is a crucial determinant of fertility levels and patterns. This is because it influences the rate of birth of a population; and the social consequence is that age at first marriage

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[57] *AP* 56.7; Xen. *Oik.* 7.5; Plato, *Laws*, 785b; *Rep.*, 5.460e. Cf. Albert G.Harkness, *TAPA* 27(1896),35; Mark Golden, *Phoenix* 35(1981),322; Arjava, *Women*, p.32-33, 157.

influences the size and form of families in no small way, either by increasing it or delimiting it.[58]

Concerning the classical Athenian population, although as noted above, it was thought to have a natural fertility rate, which in fact, implies a high birth rate, it does not seem to have been increasing rapidly for various reasons affecting the birth rate. It is a fact that males are most fertile at the age of 19, but the majority of Athenian males did not marry until later in their 30s. The majority of the ancient sources on Athens do not suggest demographic reasons for the late marriage of Athenian men. But Xenophon (*Mem*.2.2.4), who does not appear to conceive of the possibility of voluntary family limitation taken by couples within marriage, recommended that Athenian men should delay marriage until about the age of 30. This is because at this age sexual desire for men is less strong so that they would avoid having too many children.

One significant effect of this pattern of first marriage at about 30 for men and 15 to 20 for women is that the practice does not maximise fertility. It rather inherently tends to reduce it for the simple reason that women approaching the peak of their reproductive powers are joined to men whose reproductive powers are already waning. Thus to Xenophon, one way to reduce the number of children likely to be born in marriage is to delay marriage itself. Though this idea of family limitation may not

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[58] Cf. Sallares, *Ecology*, p.148; Richard P.Saller, *CP* 82(1987),21; Gallant, *Risk*, p.17.

have been a primary concern of the ancients regarding their customary age at first marriage for men and women, it necessarily became a by-product of their recommendations.

The concept and practice of delaying marriage, however, seems to have created a persistent family problem in Athens. Instead of solving the problem of having too many children in the family, the practice of late marriage of men in Athens tends to suggest an important determining factor for the prevalence of many widows with a corresponding high rate of orphans in a considerable number of Athenian households. This is because naturally, the men who would be approaching middle age before getting married were most likely to predecease their wives in the course of time.

One may consider also the ancient economy that may have had a significant impact on the life span of marriage. Because of the primitive nature of the ancient economy the motive force for commerce, industry and agriculture was largely the muscle power of men and animals. And all these occupations were no doubt accompanied by great risks to life and health, such as piracy, banditry, tedious drudgery, shipwreck and disease. It is therefore certain that the life of the majority of males who

were involved in these risk-running ventures could be shortened, resulting in the widowhood and orphanage of their wives and children.[59]

What the evidence adduced so far points to is a high probability of many widows and orphans in the Athenian society. There is no doubt that many of the widows would remarry for various reasons ranging from maintenance to the desire of men to marry them to bear children for them. In his article on remarriage in Athens, Thompson[60] notes that of eleven Athenians who married again after the death of their spouses, eight of them were women. This would probably indicate a significant percentage of remarriage of more widows than widowers if it were possible to know the number of married couples who had lost their spouses in Athens.

And since we know that Athenian widows who remarried would remarry Athenians, it implies that they removed eligible husbands from the pool available to young unmarried women. The obvious consequence of this would be the creation of another social problem of an excessive supply of marriageable girls. Even so, it does not necessarily imply that all the widows who were still capable of bearing children got men to remarry them. Thus there would still be a significant number of widows in the Athenian population without men to remarry them.

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[59] I omit murders resulting from domestic disharmony, as for example what we have in Is.9.16-17; for surely these cannot be significant demographically. It is, however, to be noted that another cause of death might be legal expulsion.

[60] W.E.Thompson, *CSCA* 5(1972),219,n.41.

(1.b) *SOLON AND THE FAMILY LAWS OF ATHENS*

In or around 594 B.C., Solon was chosen and given extraordinary powers as mediator and lawgiver to try to solve a socio-economic crisis that had gripped the archaic Athenian society.[61] Solon's solution to the crisis was termed σεισάχθεια, disburdenment. This was a liberation of the land and the people. Our primary literary evidence on this important episode in Athenian history is Solon's own testimony as contained in his fragmentary poems handed down to us by the author of the *Athenaion Politeia* and Plutarch. But for more information recourse must be had to:

(i) Plutarch, *Solon*,

(ii) The *Athenaion Politeia* (*AP*), and

(iii) Diogenes Laertius.

By far, the accounts given by the sources[62] seem to imply three situations relating to three categories of citizens in the society: (a) the aristocrats who constituted the ruling body, and who controlled the land, (b) a section of the citizens who tilled the land controlled by the aristocrats, and who paid a fraction of their annual yield to the aristocrats, failing to comply with which the aristocrats could seize the insolvent farmer and

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[61] Scholars are not agreed on the exact year in which Solon is supposed to have introduced his reforms. See MacDowell, *Law*, p.29; T.E.Rihll, "EKTHMOPOI: Partners in Crime" *JHS* 111(1991),101,n.1.

[62] Plutarch, *Solon*, 13.2-3;14.1,2;15.4;16.3; *AP* 2.1-3;5.1-2;6.1;12.4; Diog. Laert. *Solon*, 1.2.45.

his wife and children and sell into slavery,(c) another section of the people who had borrowed money from some aristocrats on their person's security, who also in default of repayment could, together with their wives and children be seized and sold into slavery by their creditors.

Against the background of these situations we find the following state of affairs: (i) the poverty and dependence of the underprivileged class, (ii) the existence and operation of a primitive law of debt, (iii) the degrading fate of the underprivileged and their wives and children. Above all, these conditions seem to have become compounded for the underprivileged majority by their political disability or marginalisation, as the *AP* informs us:

" The most grievous and bitter thing in the state of public affairs for the masses was their slavery; not but what they were discontented also about everything else, for they found themselves virtually without a share in anything."[63]

Economic and social reforms, like political reforms, are governed by three principal factors. These are, socio-economic necessity for change, favourable social and economic tendencies of the time proceeding out of earlier social developments which serve as precedents or preparation for the new modification, and the particular occasion

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[63] *AP*,2.3.

which sets the change in motion.[64] It is significant that all these three factors for change were present in archaic Athens when Solon was given the authority to undertake his reforms.

Plutarch's description[65] of the appointment of Solon, therefore, seems to suggest the terms of reference for his reforms as given to the lawgiver by the Athenians as follows:

(i) to set free condemned debtors,

(ii) to redistribute the land, and

(iii) to introduce constitutional reforms and restructure the form of government.

It is not very clear what the exact nature and background of the apparently general enslavement were.[66] But it seems undeniable that the enslavement threatened the central fabric or structure of the *oikos* and essential integrity of *oikos* relationships. As can be seen from the sources, particularly Plutarch and the *Athenaion Politeia*, children were no longer heirs but were taken and seized from the *oikos* as payment for debt. And the basic or essential material component of the *oikos*, the household plot (κλῆρος) was also bound and tied down by debt and itself held in bondage, if not seized completely by the creditor, in lieu of payment.

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[64] For the three factors which govern political reforms,cf. Stanley Barney Smith, ' The Establishment of the Public Courts at Athens ' *TAPA* 56(1925)106-119, esp.112.

[65] *Solon*, 13.3;14.1,2.

[66] Cf. Brook Manville, *The Origins of Citizenship in Ancient Athens* (Princeton, 1990) for a recent assessment of the crisis and bibliography on it.

The question as to how the socio-economic conditions as described in the sources affected the widow and the orphan because of which Solon enacted laws, as part of his reforms, to protect their welfare and interest may not be quite so easy to answer. This is because the evidence on it appears slight and oblique. For instance, neither the *AP* nor Plutarch in describing the conditions of Solon's time throws specific light on the position of the widow or the orphan during the period. And nowhere among Solon's own fragments, frequently referred to by Plutarch and the author of the *Athenaion Politeia*, does Solon himself allude to the subject.

In the light of the silence of our authorities, one choice left is to try to extract the situation of the widow and the orphan from the implications of the conditions presented by our sources. The following suppositions may therefore be made:(1) that if a defaulting father, having been seized and sold into slavery together with his wife and children by his creditor, died, his orphans and widow continued to live in slavery,(2) that if the landowner found it prudent to retain the insolvent tenant and his wife and children on the land, as seems to be the situation in the majority of cases,[67] the death of the insolvent tenant did not necessarily relieve the orphans of their subservient position. This is because they could either be

[67] See W.J.Woodhouse, *Solon the Liberator, A Study of the Agrarian Problem in Attika in the Seventh Century* (Oxford, 1938), p.72; Naphtali Lewis, ' Solon's Agrarian Legislation' *AJP* 62(1941),144-156, esp. 150.

used as security for loans or sold into slavery by their deceased father's next-of-kin who would then have become their guardian.

These conjectures, however, do not tell us much about the widow and the orphan. More importantly, our authorities describe conditions of only the underprivileged class and throw no light on what the situation was with the family of the aristocrats. In the circumstances, perhaps a more helpful approach seems to be to examine the family laws of Solon to find out how these laws reflected the social and legal position of widows and orphans during the period.

We have noted already our main sources of evidence on the reforms of Solon in general. Those authorities, however, do not give the texts of the laws. For instance, among the laws said to have been enacted by Solon, as enumerated by Plutarch (*Solon* 20-24.3), are those concerning the *epikleros*, contraction of marriage, making of wills, conduct of women in public and at funerals, and adultery.

However, Plutarch's account of the family laws, like the evidence given by the *AP*, falls short for two basic reasons. In the first place, Plutarch gives us just bare outlines or paraphrases of the laws without providing us with their texts as said to have been enacted by Solon. Second, it is clear that he informs us of Dionysios' mother asking her son to give her in marriage to one of his people (20.4). This statement implies that she was a widow, whose father was perhaps deceased. And in 21.4,

he informs us also of women's conduct at funerals. But he does not give us any hint of a law of Solon on widows.

With the defects of the evidence provided by the *AP* and Plutarch, the most informative sources for the texts of most of the Solonian family laws and their application therefore seem to be the Attic orators, particularly Demosthenes and Isaios, who frequently refer to them in their law court speeches. A characteristic feature of Isaios' presentation of the laws, however, is that although the orator shows clear evidence that he had the relevant laws in his possession, and his familiarity with them when he wrote his speeches, he does not normally give the full texts of the laws. Rather, he paraphrases the sections of the laws appropriate to the case at issue, except the law of succession part of which he quotes in one of his speeches.[68]

The texts of some of the Solonian family laws that directly concern the widow and the orphan preserved for us in some of the speeches of Demosthenes will be cited for the purpose of illustration. But it is worth noting that in the last decade of the fifth century (410-399 B.C.), the Athenians made substantial efforts to revise their code of laws to make them uniform and less complicated. Thus in 410 B.C., officials (*anagrapheis,* 'inscribers') were appointed to collect, among other laws, copies of all the laws of Solon and have them inscribed afresh on a

stone.(Lys.30.2-6;Andok.1.81-98;MacDowell, *Law*, p.46-49; Rhodes,*JHS* 111(1991),87-100)

It does seem, however, that the exercise took longer than it was otherwise expected since Athens was to have not only a complete code of laws but also a procedure for revising the laws in future. But eventually, the officials completed their assignment after the interruption by The Thirty in 404 B.C.; and the code finally approved after 403/2 during the archonship of Eukleides was to be applied in the circumstances of 403/2 and after.(Dem.57.30;MacDowell, *Andok.*128) And, it is interesting to note that with the revision of the laws, some of the Solonian laws bear features of recent enactments that do not make them completely Solonian, though they are often ascribed to him by the orators.(cf.p.54-56 below) The following may be cited and commented on:

(i) " Whenever a man dies without making a will, if he leaves female children his estate shall go with them, but if not, the persons herein mentioned shall be entitled to his property: if there are brothers by the same father, and if there are lawfully born sons of brothers, they shall take the share of the father. But if there are no brothers or sons of brothers, their descendants shall inherit it in like manner; but males and the sons of males shall take precedence, if they are of the same ancestors, even

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[68] Is.11.11

though they be more remote of kin. If there are no relatives on the father's side within the degree of children of cousins, those on the mother's side shall inherit in like manner. But if there shall be no relatives on either side within the degree mentioned, the nearest of kin on the father's side shall inherit. But no illegitimate child of either sex shall have the right of succession either to religious rites or civic privileges, from the time of the archonship of Eucleides"(*Dem.*43.51).

(ii) "In regard to all heiresses who are classified as Thetes, if the nearest of kin does not wish to marry one, let him give her in marriage with a portion of five hundred drachmae, if he is of the class of Pentacosiomedimni, if of the class of Knights, with a portion of three hundred, and if of the class of Zeugitae, with one hundred and fifty, in addition to what is her own. If there are several kinsmen in the same degree of relationship, each one of them shall contribute to the portion of the heiress according to his due share. And if there are several heiresses, it shall not be necessary for a single kinsman to give in marriage more than one, but the next of kin shall in each case give her in marriage or marry her himself. And if the nearest of kin does not marry or give her in marriage, the archon shall compel him either to marry her himself or give her in marriage. And if the archon shall not

compel him, let him be fined a thousand drachmae, which are to be consecrated to Hera. And let any person who chooses denounce to the archon any person who disobeys this law"(*Dem.*43.54).

(iii) "Let the archon take charge of orphans and of heiresses and of families that are becoming extinct, and of all women who remain in the houses of their deceased husbands, declaring that they are pregnant. Let him take charge of these, and not suffer anyone to do any outrage to them. And if anyone shall commit any outrage or any lawless act against them, he shall have power to impose a fine upon such person up to the limit fixed by law. And if the offender shall seem to him to be deserving of a more severe punishment, let him summon such a person, giving him five days' notice, and bring him before the court of Heliaea, writing upon the indictment the penalty which he thinks is deserved. And if there be a conviction, let the court of Heliaea appoint for the one convicted what penalty he ought to suffer or pay"(*Dem.*43.75).

(iv) "Any citizen, with the exception of those who had been adopted when Solon entered upon his office, and had thereby become unable either to renounce or to claim an inheritance, shall have the right to dispose of his own property by will as he

shall see fit, if he has no male children lawfully born, unless his mind is impaired by one of these things, lunacy or old age or drugs or deprived of his liberty"(*Dem.*46.14).

These laws are in fact not the only ones concerning the widow and the orphan. There are also those in Demosthenes 43.18,20,22, and others which will be examined as and when they become relevant and appropriate to the discussion. But these seem to be the ones most frequently quoted and referred to by litigants at the Athenian law courts. It is important to note that the succession law (*Dem.*43.51), also paraphrased in Isaios 6.47 and 11.1-2, seems to present peculiar problems that do not lend the law to easy interpretation and application. In the first place, some words of the text are lost. This makes a very definite and comprehensible interpretation of the law somehow difficult, leaving the commentator in a labyrinth of speculations and inferences some of which may be speculative and neither here nor there.

The other problematic section of the law is centred on the phrase, 'as far as children of cousins' (μέχρι ἀνεψιῶν παίδων). This has constituted a crux or point of interpretative issue, as illustrated by the cases in Isaios 11 and Demosthenes 43; and has therefore made the law severally discussed by commentators.[69] The word ἀνεψιός is such a key

[69] See Wyse, p.671-713; W.E. Thompson, *De Hagniae Hereditate, Mnemosyne Supplement* 14, 1976; D.M.MacDowell,*Law*, p.103-108; J.K.Davies, *APF,*77-89; Molly Broadbent, *Studies in Greek Genealogy,*(Leiden,1968)p.61-112;David Cohen, *Law,Violence and Community in Classical*

expression in the law, but its degree of reference appears so vague and indefinite that it is capable of various interpretations which intelligent and persuasive litigants could conveniently exploit to their advantage. The circle of relatives entitled to claim the property of a deceased man who had no son(s) was the ἀγχιστεία, and the law seeks to define and prescribe the order of precedence in it.

But according to Miller,[70] the word ἀνεψιός varies between cousin of the first degree and nephew, and each of these relationships also has its exact term, in both cases a compound of ἀδελφός. And that ἀνεψιαδοῦς and its synonym ἀνεψιοῦ παίς may be used not only for the cousin's child (the first cousin once removed), but also for cousin's parent's child (also a first cousin once removed). Thus the interpretation of the expression μέχρι ἀνεψιῶν παίδων in the law became infinite even to the Athenians themselves, and it continues to elude modern commentators. Consequently, in inheritance cases, anyone who was able to argue logically and convincingly to his and the jury's best understanding of the law and its application could win his case.

The four laws quoted here will be discussed in detail later in subsequent chapters, but a few observations, particularly regarding their referentials may be noted. In the law quoted in *Dem.*43.51, the main

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*Athens,*178-180;S.C.Todd, *The Shape of Athenian Law,*216-221;W.C.Lacey,*The Family in Classical Greece* 125ff.; A.R.W.Harrison, ' A Problem in the Rules of Intestate Succession at Athens' *CR* 61(1947),41-43; J.C.Miles, ' The Attic Law of Intestate Succession' *Hermathena* 75(1950),69-77.

subject matter, as can be seen, is intestate succession. The scope of the law appears quite wide. And some sections refer to male and female orphans, though there is no mention of the widow. The following may be noted: (a) female orphans (*epikleroi*) who should be claimed together with the deceased father's estate; (b) male orphans whose fathers were cousins, who should take their fathers' share of an inherited property; (c) the disability of the bastard orphan regarding succession in the family.

The following implications of the law are obvious: if a man died leaving a son or sons he or they automatically inherited the father's estate. The clauses on bastard sons: " if there are lawfully born sons of brothers; but no illegitimate child of either sex shall have the right of succession either to religious rites or civic privileges,..." seem to suggest that there may have been occasions when bastard sons could either inherit the whole lot of a father's estate or be given a share of it.

*Dem.*43.54, *Against Makartatos,* has the female orphan and her marriage as the main subject-matter. The law however relates to heiresses of the *Thetes* class and makes no mention of those of the other classes of citizens. But it is the only law which implicitly seeks to distinguish between women of the aristocratic class and the underprivileged group. It would appear surprising that Solon should stipulate the marriage portions for female orphans of the lowest class of citizens. The feeling one gets

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[70] M.Miller, ' Greek Kinship Terminology ' *JHS* 73(1953),46-52,esp.46.

from the force of the law and the powers vested in the archon is thus that heiresses from poor family background may have had difficulty getting husbands.

One of the family laws that explicitly seek to protect the interest of the widow is the one cited in *Dem.*43.75. The law has three main referentials: male orphans; female orphans; and pregnant widows. The implications of a pregnant woman granted permission by the law to continue to live in her deceased husband's house will be discussed in a later chapter. It would however seem a bit strange to the modern reader that the law is silent about non-pregnant widows. The presumption therefore is that a non-pregnant widow was at liberty to return to her kin on the death of her husband.

*Dem.*46.14 that specifically relates to wills had a great deal of press among the ancients, particularly the Attic orators,[71] and continues to draw attention among modern scholars. In a penetrating introductory appraisal of Solon's measure Plutarch writes:

" He was highly esteemed also for his law concerning wills. Before his time, no will could be made, but the entire estate of the deceased must remain in his family. Whereas he, by permitting a man who had no children to give his property to whom he wished, ranked

[71] Is.2.13;3.68;4.16;6.9; Dem.20.102;44.14; Isocr.19.49; Hyper.3.17; Plut.*Solon* 21.3.

friendship above kinship, and favour above necessity, and made a man's possessions his own property."[72]

This Solonian family law has a wide scope of implications from land tenure issues in general to particular family matters. I do not intend to enter into a discussion of law of property because of the difficult nature of the subject.[73] But it seems to me that Solon by this law took the first step towards making land legally alienable. In fact, land in pre-Solonian Athens was held under a system of family tenure and could not pass out of the family. This implies that the plot (*κλῆρος*) was something of which its holder enjoyed only the use; after whose death the plot was absorbed into the family land if he had no surviving sons. But as Plutarch points out, after the law, the plot became the property of the holder who could now bequeath it to anybody of his choice if he had no sons.

Plutarch's statement, "Before his time no will could be made, but the entire estate of the deceased must remain in his family," also appears very striking. It points back to the system of inheritance in Athens before Solon enacted his laws; and reflects the retention of land in family ownership over many centuries based on a law which was valid in the state and the clans before Solon's legislation. It is generally known that in pre-classical Athens the only one system of inheritance was intestate

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[72] *Solon* 21.2. I find Perrin's translation of *paides* as *children* without qualifying it rather simplistic and too general. I think Plutarch is using *paides* here in the technical sense to mean sons, as the text of the law cited in *Dem.*46.14 indicates, and not just children in general.

succession whereby sons were considered as the natural and legal heirs of their father's household. And in absence of male children his next-of-kin inherited from him. We do not know what happened if a man died leaving behind female orphans, except to assume that they most probably lived under the care of their father's next-of-kin. At any rate, this system of inheritance was likely to place the female orphans in a vulnerable position at a time when people could be used as security for loans, or when children could be sold into slavery because there was no law forbidding the practice.

Quite apart from any female orphans who may have been left behind by the deceased, one other issue is the continuity of the person's household. The system of inheritance by the next-of-kin if the deceased had no surviving sons, and the fact that a man was not permitted to make a will before the time of Solon promoted the extinction of the lineage of a man who died childless. This is because the household of the deceased without male children would eventually be absorbed into that of his next-of-kin; a situation which certainly constituted a serious threat to the independent continuity of the households generation after generation by the eventual lack of male issue. It would appear, therefore, that the Solonian law on wills was intended as a means to preserve the households of citizens without sons as independent units. At the same time, it was

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[73] Cf.Harrison, *Law* (i),p.200

also meant to prevent collaterals from inheriting and thus weakening the concentrative tendencies of the *genos*.[74]

The preservation of the household, which, in fact, is a social and religious implication of the law is certainly what Thrasyllos, a speaker in Isaios underlines when he tells the jury:

" All men, when they are near their end, take measures of precaution on their own behalf to prevent their families from becoming extinct and to secure that there shall be someone to perform sacrifices and carry out the customary rites over them. And so, even if they die without issue, they at any rate adopt children and leave them behind. And there is not merely a personal feeling in favour of this course, but the state has taken public measures to secure that it shall be followed, since by law it entrusts the archon with the duty of preventing families from becoming extinguished."[75]

The law, as noted already, makes no reference to female orphans, but it is clear that a man who had a surviving son could not make a will to bequeath his property to anybody, thereby protecting the source of livelihood of the male orphan. An interesting feature of the law on wills, however, is that, like the law on inheritance (*Dem.*43.51), this law also seeks to exclude bastard children from inheriting from their

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[74] Cf. David Asheri, ' Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece' *Historia* 12(1963),1-21,esp.8

[75] Is. 7.30

father, as is implied in a clause of the law, "if he has no male children lawfully born."

It has already been noted that the laws cited here are not the only laws of Solon concerning the family and which border on the welfare of the widow and the orphan. As discussions in the subsequent chapters will show, other family laws equally significant and relevant to the position of the widow and the orphan are attributed to Solon. A characteristic feature of the family laws is that, although Solon's reforms were prompted by the plight of the underprivileged class, his family laws do not apply to a particular class of citizens in Athens, except the one concerning the marriage of heiresses (*Dem.*43.54) which seeks to stipulate the dowry to be given to an *epikleros* given in marriage. We have no knowledge of how much was given to a woman not of the *thetes* class, but this suggests that Athenians gave dowries that were large in proportion to their means.

The family laws in fact, do not explicitly describe the conditions in which widows and orphans lived before Solon's measures, they none the less reflect what the situation may have been for the widow and the orphan in archaic Athens. And the fact that these and other laws were enacted to protect and promote their interest suggests that the widow and the orphan, whether high born or base born, may have had a raw deal for several decades before Solon.

We may take the sale of children as a typical example. If parents could sell their own children into slavery because of economic hardships, then one can imagine the fate of orphans whose nurture and care became additional burdens for their father's next-of-kin. The judicial role and extraordinary powers conferred on the archon (*Dem.*43.75) also seem to suggest that pregnant widows, male orphans, and heiresses may have suffered various kinds of injustice before the time of Solon. And these may have prompted him to extend special protection to them and to confer such powers on the archon.

As for the bastard orphan, if his lot was hard like that of some other orphans, his future did not look brighter either with regard to the family laws. The account given by the *AP* (56.6-7) of the functions of the archon in respect of the family makes no mention of bastards. And Demosthenes 43.51 which enjoins the archon to take care of orphans and to preserve *oikoi*, rather speaks against the interest of bastards, excluding them from the father's property.

Furthermore, another law attributed to Solon relieving the bastard son of the duty of looking after his father seems to have complicated the already worsened position of the bastard.[76] For duty to the father naturally goes with the reciprocal compensation of succeeding to him at his death.

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[76] Plutarch, *Solon* 22.4. Cf. Wolff, *Traditio* 2(1944),87; Ogden, *Bastardy*, p.39.

And if the bastard son is relieved of his services to his father, then he could have no moral justification to inherit from him at his death.

However, it would appear that at some point in time in Athens, a bastard could get a share of his father's property. This is implicit in the *AP* 13.5 where the author tells us that a considerable part of those who joined Pisistratos' party were those who were not of pure descent because they feared for their rights as citizens. This position is partly implied in Demosthenes 43.51 and 46.14. But the law of succession abolished this flexibility and thus did away with the bastard's rights to his father's estate. This situation is explicitly dramatised in Aristophanes (*Birds*,1641-90), where the hopes of Herakles, the bastard son of Zeus, to inherit from his father are dashed by legal restrictions.

The Aristophanic passage may be thought to be no reliable historical source, presenting a funny situation involving comic characters as it does – speaking of the gods as if they were ordinary human beings, and Athenians at that. But the legal rules introduced one after the other by Aristophanes to develop the comic scene all reflect genuine rules of the Athenian law of inheritance as they existed under the democracy.[77] For the Aristophanic joke with the legal text raises Herakles' hopes by implying clearly in the first part of the law that bastards could indeed succeed in the absence of legitimate children, while the second part

dashes them again by passing over bastards in favour of collaterals as it happens in Demosthenes 43.51 and 46.14. Thus during the classical period the lot of the bastard orphan saw not much improvement with the existing rules of succession in the family.[78]

So far the attempt has been to sketch the deteriorating socio-economic conditions which compelled the Athenians to choose and empower Solon to introduce reforms in the society. Some of the laws relating to the family have also been outlined. One question, however, is whether all laws attributed to Solon were really Solon's. According to the *AP* (7.1), Solon repealed all the Drakonian laws, except those on homicide, and made new laws that the Athenians began to observe. Thus by the time of the orators the Athenian homicide laws were called 'the ordinances of Drakon' and the rest of the Athenian code of laws 'the laws of Solon.'[79] But whether all the laws attributed to Solon were, in fact, enacted by him is quite another matter.

A case in point is the law against subversion quoted by Andokides in his *On the Mysteries* (1.96-98).[80] The orator introduces the law as 'Solon's law' (1.95). But the law itself is shown by its preamble to

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[77] Cf. Ogden, *Bastardy*, p.34-37; MacDowell, *Aristophanes*, p.219-221.

[78] For the most extensive treatment of the status of bastards in Athens as at present, see Daniel Ogden, *Greek Bastardy* (Oxford, 1996), p.32-212. But see also Wolff, *Traditio* 2(1944),75-95; Harrison, *Law* (i), p.63-65; S.C.Humphreys, ' The Nothoi of Kynosarges ' *JHS* 94(1974),88-95; MacDowell, 'Bastards as Athenian Citizens' *CQ* 79(1976),88-91; K.R.Walters, ' Perikles' Citizenship Law ' *CA* (1983),314-336; Ogden, ' Women and Bastardy in Ancient Greece and the Hellenistic World ' in *The Greek World* (ed. Anton Powell, London 1995), p.226-228.

[79] Cf. MacDowell, *Law*, p.43; *Andok.* p.120.

have been proposed by Demophantos in 410 B.C., and passed under the presidency and secretaryship respectively of contemporaries of Demophantos (1.96). This law can therefore not have been a law passed by Solon, but the speaker attributes it to him.

A further example is Demosthenes 43.51 cited above. This law, as is obvious, presupposes the existence of will-making, and can therefore not be older than that institution. And according to Plutarch (*Solon*, 21.2), it was Solon who introduced wills. Thus Demosthenes 43.51 cannot be older than Solon; and he must be the author of it. However, the last sentence of the law refers to the authorship of Euklides, and that was in 403 B.C. But the orator seems to imply that it was Solon who enacted the law. This attribution to him is obvious from the background of will-making in the law itself. The other factor is the epithet or title 'the lawgiver' (ὁ νομοθέτης) most often applied to Solon, which the orator uses before (43.50) and after citing the law (43.53).[81]

Nevertheless, the law in its entirety cannot be ascribed to Solon. Thus although it is a fact, as Rhodes rightly points out,[82] that throughout the classical period and most of the Hellenistic era, the Athenians had direct access to the original laws of Solon, and the orators on various occasions often speak in general terms of their code of laws as 'laws of

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[80] For a more detailed discussion of this law, see Martin Ostwald, ' The Athenian Legislation Against Tyranny and Subversion ' *TAPA* 86(1955),103-128.
[81] See also Is.11.3; Lys.30.2,27,28; Dem.43.66,67.

Solon,' not all the legal rules attributed to him can be said to have been his, though they could be genuinely archaic Athenian laws.

Solon was aware that the mere enactment of his laws, whatever their number and the severity of penalties provided, would not have the desired effect if steps were not taken to make his enactments a real safeguard against a recurrence of the conditions he had sought to terminate. Linforth comments on Solon's realisation of the enormity of the task he had been given to address, and how to deal with the situation to restore Athens to a state of order and contentment in the following words:

"Solon, like a good physician, understood that quick and powerful remedies were needed to cure the acute disorder from which Athens was suffering, and that when the crisis was past and convalescence had begun, a sound regimen was required to safeguard the health which had been restored. The first of these requirements he met by issuing certain executive orders, which, however deeply they cut, the city had given him the power to enforce. Then when these had been put into effect, he proceeded to draw up a body of written laws calculated to prevent the recurrence of so grave a situation in the future."[83]

With regard to the widow and the orphan, the office of the archon eponymous that became guardian of the family was empowered to check

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[82] P.J.Rhodes, ' 'ΕΙΣΑΓΓΕΛΙΑ in Athens ' *JHS* 99(1979),104; *Commentary*, p.109-110.

any acts of injustice against them. An auxiliary agent to the authority of the archon was the third party prosecution, ὁ βουλόμενος. This was the legal right extended to any person to prosecute on behalf of an injured party against anyone who perpetrated any acts of injustice not only against a widow or an orphan, but also against any person in the society.

[83] I.M.Linforth, *Solon the Athenian* (California, 1919), p.61-62.

(1.c) THE ARCHON AND ADMINISTRATION OF JUSTICE IN MATTERS CONCERNING WIDOWS AND ORPHANS

The author of the *Athenaion Politeia* (*AP*) informs us that the office of the archon was the third of the first three greatest and oldest offices of the ancient constitution of Athens.[84] This implies that the archonship was older than Solon. It is not certain when exactly the archonship was established. But Bonner and Smith suggest that it may probably have been instituted in 683/2 B.C.[85]

As has been noted in the previous section, the archon became guardian of the family with the reforms of Solon. In this regard, he was not only to protect *oikos* interests in general, but had special powers to defend widows and orphans against those who could seriously harm them in the society. I do not intend to enter into the question of eligibility and manner of appointing archons as variously discussed.[86]

Briefly stated, the service periods for the officials differed with the years. In an earlier time after the monarchy, they were to serve for life; but this tenure of office was changed to ten years. And from 683/2

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[84] 3.3.

[85] R.J.Bonner and G.Smith, *The Administration of Justice from Homer to Aristotle* (i) (New York, 1968), p.169. But see the analysis by P. J. Rhodes based on chronological evidence dating the office back to 1069/8 B.C., *A Commentary on the Aristotelian Athenaion Politeia* (Oxford 1981)p.98.

[86] See *AP.* 8; I.M.Linforth, *Solon*, p.81-82; N.G.Hammond, ' Strategia and Hegemonia in Fifth-Century Athens' *CQ* 63 N.S.19(1969)111-144; D.M.MacDowell, *Law* ,p.25; E.Badian, ' Archons and Strategoi', *Antichthon* 5(1971)1-34; W.G.Forrest and D.L.Stockton, ' The Athenian Archons: A Note', *Historia* 36(1987)235-240; G.L.Cawkwell ' Nomophulakia and the Areopagus' *JHS* 108(1988)1-12; T.E.Rihll , 'Democracy Denied: Why Ephialtes Attacked the Areopagus'*JHS* 115(1995)87-98.

onwards, the archons were selected annually.[87] It does seem also that before 487/6 B.C. the archons were chosen by election. However, in 487/6 the method of selecting them was changed, and direct election to the office gave way to random selection by sortition.

I find it hard to be convinced by the impression created by Badian in his article that the archonship was an office for relatively young men who had just started a political career, particularly during the time of Cleisthenes.[88] One begins to wonder, if for all the importance and responsibility of their office, all the nine archons were mere novices. Of course there could be a situation whereby an archon might not be versed in administrative affairs due to the procedure of appointment by sortition.

A case in point is that of one Theogenes. In a speech of Demosthenes, Theogenes is said to have been appointed archon basileus though " without experience in affairs."[89] But even so, the Demosthenic evidence may be tendentious, considering the nature of the case at issue. My belief is that in spite of the fundamental idea of egalitarianism behind the Athenian democracy, the majority of men who were appointed to the office of archonship may have had some taste of state affairs though without any specialist knowledge or skill.

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[87] *AP* 3.1-4;8.1;22.5. Cf. MacDowell, *Law*, p.25; Forrest and Stockton, *Historia* 36(1987),236-237; Rhodes, *Commentary*, p.98-101,146-148,272-274.

[88] See also the harsh criticism by Forrest and Stockton who describe Badian's imputation as " a fashionable but questionable assumption."p.236.

[89] Dem.59.72. See also MacDowell, *Law*, p.25.

To return to the main trend of discussion, evidence from the *AP* indicates that the archon had wide-ranging responsibilities, and that in fact he became a very important agent of the administration of justice in the Athenian family. The author notes in describing the archon's areas of jurisdiction in matters concerning the family:

"The eponymous archon also holds preliminary hearing for some lawsuits, and having established a prima facie case he introduces them to the court. These are cases of maltreatment of parents (anyone can bring such a case with no penalty incurred for failing to convict), maltreatment of orphans (these are cases against guardians), maltreatment of heiresses (these are cases against guardians and husbands), mismanagement of an orphan's estate (these are also cases against guardians), madness (if someone claims that a man is squandering his property through madness), for the appointment of distributors (if someone does not want common property to be divided), for the establishment of a guardianship, for judgement over a guardianship, for production of a disputed object, for enrolment as a guardian, and decisions on claims to inheritance and heiresses. He is also concerned with orphans and heiresses and women who claim to be pregnant after their husbands have died. He can either himself fine wrongdoers or can introduce them to a court. He also leases out the estates of orphans and heiresses (until the heiress reaches the age

of 14) and takes land as surety for the lease. The archon exacts maintenance from guardians if they fail to provide it for their charges.''[90]

We may compare the following law in Demosthenes regarding the jurisdiction of the archon that we have already noted:

" Let the archon take charge of orphans and of heiresses and of families that are becoming extinct, and of all women who remain in the houses of their deceased husbands, declaring that they are pregnant. Let him take charge of these, and not suffer anyone to do any outrage to them. And if anyone shall commit any outrage or lawless act against them, he shall have power to impose a fine upon such person up to the limit fixed by law. And if the offender shall seem to him to be deserving of a more severe punishment, let him summon such a person, giving him five days' notice, and bring him before the court of Heliaea, writing upon the indictment the penalty which he thinks is deserved. And if there be a conviction, let the court of Heliaea appoint for the one convicted what penalty he ought to suffer or pay.'' [91]

Putting side by side the evidence in *AP* and what we have in Dem. 43.75, one can easily notice a close affinity between them in structure and substance. Wilamowitz and Rhodes therefore note quite rightly that what the *AP* has given us in 56.7 is a summary of the law

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[90] *AP*, 56.6-7. In the main, I follow here the translation given by Robin Osborne, ' Social and Economic Implications of the Leasing of Land and Property in Classical and Hellenistic Greece,' *Chiron* 18(1988)305.

quoted in Dem.43.75.[92] It is clear from the evidence that the circumstances and conditions of matters affecting the family in general and the widow and the orphan in particular in which the archon's role and responsibilities fell are different and various. The archon's role in the appointment of guardians is one such responsibility.

Legal or statutory guardianship in classical Athens seems to have grown out of convention or tradition. For it is evident that where families were kindly disposed to one another after the death of a father or both parents of a child, guardianship would conventionally devolve on them, and that one relative or another would take charge of the orphan without regard to any law.[93] Solon's law on guardianship may therefore have been introduced to reaffirm the convention, streamline the process or procedure, and give the tradition a legal backing.

The relevant clause of the law authorising the archon to appoint a guardian reads as follows after the preamble to the law: εἰς ἐπιτροπῆς κατάστασιν, εἰς ἐπιτροπῆς διαδικασίαν: " for the establishment of guardianship, for deciding rival claims to guardianship''(*AP*,56.6). These cases were submitted to the archon for action on them. The exact scope and limits of these cases are, however, not quite definite. But it is

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[91] Dem., 43.75.
[92] Wilamowitz-Moellendorff, U. von, *Aristoteles und Athen* (Berlin 1893)i.258-9, noted by Rhodes, *Commentary*, p.34.
[93] See Lys.19.9,33; Is.1.12; Dem.57.19-21.

conjectured by Wyse and others[94] that εἰς ἐπιτροπῆς κατάστασιν presupposes the appointment of a guardian by the archon to an orphaned child when no relative came forward to take up the burden of guardianship according to the law or under the terms of a will; and that εἰς ἐπιτροπῆς διαδικασίαν suggests a situation whereby parties would either be eager to avoid what they considered as a disadvantage, and thus shifting a burden, or competed to obtain a privilege by being the guardian.

In any case, it is evident that the archon had significant executive duties to perform. As Wyse correctly points out, either way the situation presupposes a law defining the conditions under which persons were called upon to undertake guardianship responsibilities. In a situation whereby the guardian, appointed *inter vivos* or by testament, happened to be away on the death of the testator, the most probable action would have been for the family, in consultation with the archon, to nominate a contingent guardian in conformity with the line of succession to act for the appointed guardian until he was back home to take over his duties.

The question of the appointment of guardians will receive a detailed discussion later, but I find not completely convincing the suggestion by Harrison and others that a guardian had to register with the archon even when he was nominated in the deceased's will, and that no

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[94] Wyse,p.191; Rhodes, *Comm.*p.632; MacDowell, *Law*,p.93.

guardian was allowed to enter on his duties before presenting himself to the archon and obtaining authorisation.[95] Harrison may probably be right on the issue of publicity for the sake of rival claimants or objectors, and I am, in fact, aware also of the suggestion of formal ratification of the appointment of a father's nominee(s).[96] But as I shall argue later on, the pressures of funeral rites and other immediate commitments in the wake of the decease would have compelled an appointed or nominated guardian to assume responsibilities before a formal appearance before the archon for registration (if any).

An essential family responsibility that Solon put on the archon was the prevention of any Athenian families from becoming extinct. In pre-Solonian Athens, as elsewhere in pre-classical Greece, male descendants had been considered the natural and legal heirs to the household of their father. But if a man had no male descendants he could not choose who should succeed him. The inheritance thus devolved, according to an invariable order of relationship, on collaterals and their descendants; and if there were no collaterals ascendants and their offspring came in turn.[97]

Nevertheless, it was possible for a man without a son to adopt one to be his heir. However, the system of inheritance by which the next-

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[95] Rhodes,ibid; Wyse,ibid. See also A.R.W.Harrison, *Law* (i) (Oxford,1968)p.103, who bases his conjecture on Is.4.8 and 6.36.
[96] See MacDowell, n. 11 above.

of-kin inherited from a deceased who had no natural son of his own was found to be unsatisfactory. This is because by that system the property of the deceased subsequently became absorbed into that of his next-of-kin, thereby making his own family become extinct.[98] To prevent this kind of situation from recurring therefore, Solon introduced the law permitting a man without a son to adopt one by will and for the adopted son to succeed him after his death. And if a man without a son died without making a will to adopt one to inherit from him, we are informed of posthumous adoption by which the family of the deceased could adopt a son to be his heir.[99] The right to adopt was thus given to a man without a son, or to his family to find an heir to inherit from him after his death in order to preserve his household as an independent unit.

But elsewhere in another law attributed to Solon, the archon is given the legal power to " take charge of families that are becoming extinct. "[100] What is not very clear however is the nature of the archon's role in preventing the extinction of families, as authorised by the law. For there seems to be no particular evidence on what special arrangements or steps the archon had to take if it became obvious that a family was becoming extinct. It may therefore be assumed that it was through the

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[97] Cf. Dem.43.51. See also Wyse,p.562ff.;680ff.

[98] MacDowell, *Law*, p.100; David Asheri, ' Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece' *Historia* 12(1963)1-12,but 6-7.

[99] See Dem.46.14; 43.12; Is.2.7-8,10; 7.30.For a more comprehensive discussion of the subject of adoption see L. Rubinstein, *Adoption in IV Century Athens* (Copenhagen,1993). Also MacDowell. *Law*, p.99-101; Harrison , *Law* (i), p.82-96.

settlement of inheritance disputes and claims to inheritance and heiresses, even where there were no disputes, that the archon exercised his authority of maintaining the continuity of families. For as will be discussed below, any claims to an estate except direct descendants of or men adopted by the deceased had to register their claim with the archon, who later arranged for the trial and adjudication of the estate; and in the case of an heiress (*epikleros*), for her award to her claimant in marriage.

There is no doubt that this procedure known as *epidikasia* conferred on the archon a right of betrothal in the case of *epikleroi*. This betrothal power of the archon is evident in a speech of Isaios, *On the Estate of Philoktemon*, where the orator argues that if an *epikleros* were already thirty years of age " she ought to have been no longer under a guardian, nor unmarried and childless, but long ago married, given in marriage either by her guardian, according to the law, or else by an adjudication of the court." (6.14-15)

One other issue is the families of executed men whose properties were also confiscated by the state. The *AP* and other ancient sources inform us that the brief oligarchic regime of the Thirty put to death without trial 1500 men during their short reign in 404/3 B.C. to prop up their regime.[101] We cannot be certain about the marital background of all the executed men. But what we can be sure of is that not all the executed

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[100] Dem.43.75; Is.7.30.

men were bachelors, and that among them who were married, some most probably had daughters but without sons, or no daughters and sons at all. In any case, when the property was confiscated, there is a greater problem about men who did leave sons than about those who left no children.

The question that seems to have had no answer, however, is, with the law's concern for the preservation of the family. How, for instance, were the families of executed men who had no sons prevented by the archon from dying out? This is a situation that Solon may not have foreseen in making his laws. Not quite surprisingly, the sources are silent on the archon's role in such a situation. For even with executed men who had sons and daughters, the position is not quite clear, although the archon has definite legal powers to watch the interests of orphans. Naturally, it appears that no authority would want to preserve the family of an executed man. For instance, a speaker in Lysias tells the jury of the embarrassed circumstances of the orphans of one Aristophanes who was summarily executed together with his father, and their property confiscated by the state after a military debacle in 390 B.C.[102]

The speaker who happens to be the brother-in-law of the executed Aristophanes laments that he has been compelled to rear the

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[101] *AP* 35.4; Lys.12.6-7,83; Dem.59.112-113; Isoc.7.67; Aesch.3.235.
[102] Lys.19.7-8.

three children of his sister.[103] This compulsory guardianship, I think, arose not because the archon had exercised his powers conferred on him by the law, as obliquely implied by Harrison,[104] but because of the circumstances of the case. For one thing, the property of Aristophanes, father of the children, had been confiscated by the state, resulting in a deprivation of the orphans' patrimony (19.8); for another, his sister, the children's mother, had been deprived of her dowry (19.9,32). Such circumstances would naturally 'compel' a sympathetic relative to assume guardianship responsibilities without any external pressure from the archon, as may be asserted. One even begins to wonder what initiative the archon may have taken on behalf of the orphans who seem to have had no source of sustenance for their future.

To return to the situation in the era of the Thirty, since there is no direct evidence on what happened to the families of executed husbands who had no heirs, one may conjecture that their families presumably died out. Perhaps the case of Theramenes may be taken as representative. According to the ancient sources, Theramenes, having played an active part in establishing the rule of the Four Hundred in 411 B.C., played an equally active role four months later in overthrowing them and establishing the Five Thousand.

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[103] 19.9
[104] *Law* (i), p.101.

Then in 404 B.C., he was very instrumental in setting up the brief oligarchy of the Thirty of which he was himself one, which put to death the 1500 men. But when Theramenes tried to broaden the franchise beyond the 3000 citizens initially approved, we are informed that he was condemned and executed by the same ruling body he had helped to establish.[105] With regard to his family, Davies[106] notes that there is absolute lack of evidence on collaterals or descendants of Theramenes, and that his family seems to have died with him after his execution.

The fact is that even if there were collaterals of an executed husband who had no sons of his own, his next-of-kin would have no property to inherit so that he could perhaps undertake a posthumous adoption in the future to continue the deceased's family. This is particularly because the estates of executed persons were also confiscated by the state. It seems therefore that under such political circumstances, the arms of the law apparently became defective, and that the archon had very little or no effective role to play to ensure the continuity of families, or protect the interests of orphans as prescribed by the law.

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[105] On the rule of the Thirty and the public career of Theramenes see Lys.12;13; *AP* 34-40; Diod. Sic.14.3-6; Xen. *Hell.*2.3-4. For modern discussion see P.E.Harding , ' The Theramenes Myth' *Phoenix* 28(1974)101-111; A.Andrewes, ' The Arginousai Trial' *Phoenix* 28(1974)112-122; M.Ostwald, *Popular Sovereignty* (Berkeley 1986),p.460-496; Rhodes, *Commentary,* p.415-480; Krentz, *The Thirty* (Ithaca, 1982); Usher, *JHS* 88(1968)128-35.

[106] Davies, J.K., *Athenian Propertied Families* 600-300 B.C. (Oxford 1971),p.228.

Athenian legal procedure required that before a case went to court there should be a preliminary investigation (*anakrisis)* of the matter.[107] The case was brought to the archon, and he in turn conducted the inquiry. As illustrated by Isocrates and Demosthenes, and noted by MacDowell, on the receipt of a charge or claim, the archon posted it on a notice board in the Agora near the statues of the ten Tribal Heroes for the purpose of informing or notifying the person or parties concerned.[108] This was the general practice whether the case was public or private.

Demosthenes informs us that if someone was accused of having committed an unlawful act, the defendant was asked by the archon whether or not he admitted the charge, and that if he denied it he had to submit a formal statement to the archon to that effect.[109]Among the cases in the family which would normally require preliminary investigation by the archon are claims to inheritance and heiresses, maltreatment of parents, widows and orphans, and embezzlement of an orphan's estate.

As the term for the procedure implies, the actual form of the *anakrisis* was examination or interrogation of the parties concerned in the case. The archon " put questions to the disputants or claimants, and they could also put questions to each other. This would give each of them a clearer idea of what the other was alleging and what were the exact

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[107] See MacDowell, *Law*, p.240-242.
[108] Isoc.15.237; Dem;21.103; MacDowell, ibid.240.
[109] Dem.45.46.

points of dispute, and it would help them to decide how it would be best to present their arguments in the trial and what supporting evidence would be needed.''[110] It is important to note that the *anakrisis* enabled the archon also to know the basis and legality or otherwise of the case that had been brought before him for action.

There is evidence to suggest that the archon could have considerable power and influence at the preliminary interrogations. In an inheritance dispute in a speech of Isaios in which some account of an *anakrisis* is given, the speaker seems to imply that the *anakrisis* took place on two occasions apparently on the authority of the archon:

" When the interrogations took place before the archon, and my opponents paid money into court in support of their claim that these young men were the legitimate sons of Euktemon, on being asked by us who, and whose daughter, their mother was, they could not supply the information, although we protested and the archon ordered them to reply in accordance with the law. It was surely a strange proceeding, gentlemen, to make a claim on their behalf as legitimate and to lodge a protestation, and yet not able to state who was their mother or name any of their relatives. At the time they alleged that she was a Lemnian and so secured a delay; subsequently, when they appeared at the interrogation, without giving time for anyone to ask a question, they immediately

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[110] MacDowell, ibid. Cf. also Todd, *Athenian Law*, p.126-129 where he notes problems of the

declared that the mother was Kallippe and that she was the daughter of Pistoxenos, as though it was enough for them merely to produce the name of Pistoxenos. When we asked who he was and whether he was alive or not, they said that he had died on military service in Sicily, leaving this daughter…''[111]

It would appear from this speaker's account that at the interrogations, if the archon was not satisfied with the facts of the case he could adjourn the *anakrisis* and send the claimants or plaintiffs off. He would then ask them to come again at a later time to restate their case. It seems also that at the interrogations the archon had the power either to suggest how a litigant should present his case or to compel him to amend his original deposition. In another speech of Isaios for instance, the speaker, son of an heiress, contests a posthumous adoption to his mother's father, and claims the grandfather's property for his mother. But he alleges that at the *anakrisis* he was compelled by the archon to state that his mother was sister of the adopted son.[112] The new position which the speaker had been compelled to take, however, would mean the recognition of the posthumous adoption of the son. This deposition could be damaging to his position, and he attempts to disprove it at the trial. For if the posthumous adoption is ratified by the speaker, as the archon's

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procedure and the obscurities of its purpose.

[111] Is.6.12-13.

[112] Is.10.2.

directives imply, he would then become a nephew to the adopted son, and could put in his claim as such. However this also would mean that in law neither he nor his mother could claim the property on the death of the adopted son as long as the deceased had a surviving brother if he died without a son of his own.[113]

Another implication of the position is that the speaker's mother too would not be able to claim the estate of her father as now the adopted son would be a recognised son of her father, and would therefore take precedence over her according to the Athenian law of succession. It appears quite easy to understand why the archon compelled the speaker to depose at the preliminary investigations that his mother was sister of the adopted son, thus being allowed to claim as a nephew of Aristarkhos (II). Wyse presumes that the archon was satisfied with the soundness of the testator's title,[114] though this is a mere conjecture. In any case, the matter clearly illustrates the extent of the authority and influence of the archon at the preliminary interrogations. After the *anakrisis*, the archon then sent the case to court for trial over which he presided.[115]

The claims which were to pass through the archon were of different kinds depending upon the circumstances. For instance, there was the claim to the property of men who died without sons or daughters.

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[113] Dem.43.51.
[114] P. 654.
[115] Dem.48.31.

The majority of the cases in Isaios illustrate this kind of claim. There was also claim to property for an orphan. This is illustrated by the cases in Isaios 11 where a co-guardian claims half-share of an estate from his fellow guardian for their ward, and Demosthenes 43 in which the prosecutor Sositheos claims a property for Euboulides (III), a posthumously adopted son of Euboulides (II). There were also issues of reclaiming an estate from a person to whom adjudication had already been made; and claims to heiresses.

In all these kinds of claim, the archon's executive role was indispensable. Every claimant had to apply to him in writing, maintaining either that "the deceased had left a will adopting him as a son, or that he was the nearest relative of the deceased,''or in the case of an heiress, he had to claim that "the deceased's nearest relative being a daughter and therefore epikleros, he himself was the nearest male relative and so was entitled to marry her and assume control of the property.''[116] The archon sent the claims to the Assembly at whose meeting they were announced and read the " lists of suits about inheritance and heiresses, so that all may have cognisance of any vacancy in an estate that occurs.''[117] The archon then arranged for a hearing of the claim after conducting the anakrisis: " The archon shall assign by lot days for the trial of claims to

[116] Andok.1.117-121. Cf. MacDowell, *Law*, p.102.
[117] *AP* 43.4.

inheritances or heiresses in every month except Scirophorion; and no one shall obtain an inheritance without adjudication.''[118]

An important area where the archon played an equally significant role is the management of an orphan's estate. Though it was possible for a guardian to manage the fortune of his ward himself, he could also lease the estate to an entrepreneur for a fixed income to the ward for his or her care. But the guardian could not lease out the estate without getting the archon involved. The *AP* informs us of the role of the archon, as already noted: "And he also leases out the estates of orphans and heiresses...and takes land as surety for the lease.''[119]

The archon's role in leasing out the estate of an orphan was both executive and supervisory, as illustrated by a speaker in Isaios.

In the first place, there must be an application by the guardian to the archon for the lease of the property; the archon put up the estate at a public auction over which he presided in the court; and chose the assessors for the security (*apotimema)* on the property to ensure that it was sufficient. He then took the security on behalf of the orphan and awarded the estate to the lessee who managed it for a period of time.[120] It is important to note also that the archon had every right to cancel the bid if his assessors decided that the highest bidder did not possess sufficient

[118] Dem.46.22. See Dem.48.23-26 for a postponement of the trial if a claimant or disputant later realised that he would not be adequately prepared for the trial at the time that the archon had sent the case to court.

property to guarantee his obligation. Furthermore, he had the absolute right to cancel the bid if it was found out that the application from the guardian was a plot to deprive the orphan of his or her patrimony, as the case in Isaios 6.36-37 indicates. The decision to cancel a bid outright thus shows the extent of the archon's authority and discretionary power.

The archon's concern for the heiress had two major implications. He was to see to it that she was not deprived of her property and did not suffer from lack of maintenance. The archon was also expected by law to ensure that the heiress got a husband. As it happened, the next-of-kin of an heiress' father was required by law to marry her himself or give her in marriage with a dowry. And if the next-of-kin would not marry her or give her in marriage, the archon, according to the law, had the power to compel the next-of-kin either to carry out either obligation or be fined one thousand drachmae which were to be dedicated to Hera.[121] It is worth noting also that the same law made it a general obligation for anyone to prosecute any next-of-kin who failed to perform such duties to an heiress under his care; and it is evident that such cases and other similar ones fell to the archon.[122]

In overall terms, the issues discussed above demonstrably indicate that the archon had a wide range of executive powers and

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[119] 56.7.
[120] Is.6.36-37. See also 11.34 where the petition to the archon is also mentioned.
[121] Dem.43.54.

responsibilities in his administration of justice in matters affecting widows and orphans in particular and the Athenian family in general. The question as to the extent to which the archon intervened in cases of maltreatment of widows and orphans, however, does not appear to have a definite answer to it. In fact, the available evidence seems to suggest that in many respects the archon had little or no power of initiative against offenders who committed lawless acts against widows and orphans in spite of the powers conferred on him by the law. The passivity of the archon in the matter of widows and orphans of executed men as well as the extinction of the households of such men has already been noted.

The law (quoted above, p.61) required the archon to take charge of women who on the death of their husbands decided to live in the deceased husbands' households, claiming that they were pregnant. That the law makes particular reference to the care of pregnant widows and not widows in general may not be surprising. As will be seen later in this work, a woman whose husband died leaving her with sons could probably make a choice between staying in her deceased husband's household and going back to her kin. But invariably if she had no children, or normally if she had only daughters she would go back to her father's household or her legal representative if the father was dead. She

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[122] Is.3.46,42,62;11.33.

could then remarry immediately or shortly after. In that case her care and protection would be the duty of her father or legal representative.

But in general, it is probable, as suggested by Rhodes,[123] that the archon's responsibility to care for those deprived of their master or guardian (*kyrios*), may have involved great executive duties in archaic Athens. This situation may have been at the back of Solon's mind in making his law concerning them. However, it is not clear the nature of the executive powers the archon could exercise in his care for such deprived persons including pregnant widows during the classical period. Neither is it clear the exact nature of his protection for them as he was obliged to do apart from bringing lawsuits concerning them to court and his presidency over the relevant court.

Athenians were required by law to care for their parents while alive and to give them proper burial when they died; and among those who suffered some civic disabilities were those " who were found guilty of maltreating their parents."[124]A speaker in Isaios showing consciousness of his familial duties upholds the law in the following words: " ...if my grandfather were alive and in want of the necessities of life, we, and not our opponent, would be liable to prosecution for neglect. For the law enjoins us to support our parents."[125] Frequent references to

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[123] *Commentary,* p.633.
[124] Andok.1.74.
[125] 8.32.

the law in other authorities are a significant pointer to the Athenian concern for aged parents.[126]

But the fact that there was a law punishing neglect may also suggest that some Athenian parents may have been living in indigence despite the natural obligation that sons should provide for the maintenance of their aged parents. A classic illustration of a son failing in his duty to his aged mother who by all indications was a widow is given by a speaker in Lysias who tells his audience:

" The strange things of which his mother accused him while she was alive I will pass over; but on the evidence of the measures that she took at the close of her life you can easily judge how he treated her. She demurred to committing herself to his care after her death, but as she had confidence in Antiphanes, who was no connexion of hers, she gave him three minae of silver for her burial, ignoring this man, who was her own son.''[127] The evidence provided by the speaker clearly shows that the accused was an undutiful son. With this kind of situation, one begins to wonder why the archon, with the powers conferred on him by law, did not take any action against the son when it became obvious that he was not living up to his obligations to his widowed and aged mother. For there is no doubt that if the archon had taken any action the speaker would not hesitate to use it also as a supporting evidence.

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[126] See Lys.13.91; Xen.*Mem.*2.2.13; Dem.10.40;24.105,107.

There is also the case of an heiress in Isaios who suffered injustice at the hands of her guardian while the archon apparently sat helpless. According to the account given by the speaker, his mother became an heiress to the whole of the family's estate on the death of her father, Aristarkhos (I). The heiress as a young girl came under the guardianship of the father's next-of-kin, Aristomenes. But when she came of age, the next-of-kin did not claim her in marriage with the estate. This is presumably because he already had a wife himself, and would probably not risk the implications involved in initiating divorce.

In fact, a law preserved for us in Demosthenes[128] indicates that the next-of-kin was not absolutely obliged to marry an heiress. But Aristomenes had a son to whom he could have given the heiress in marriage and given her father's estate to her. Rather, Aristomenes who had also a daughter, having failed to take to wife the heiress, or marry her to his own son, gave his own daughter in marriage to Kyronides, endowing her with the property which, in law, belonged to the heiress who was his ward.[129] However, Kyronides had been adopted from the family of the heiress' father and therefore in Athenian law could not inherit from him.

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[127] 31.20-21.
[128] 43.54.
[129] 10.4 -5

The speaker further notes that his mother was subsequently given in marriage to his father (10.6), a marriage which certainly took place at a later time after Aristomenes had given his own daughter in marriage and endowed her with the property. But when the husband of the heiress tried to negotiate for the return of the estate to his wife, he was met with the blunt threat from Aristomenes that he would hand the estate over and at the same time take it back by claiming the heiress if the husband did not keep quiet and be content with only the woman (10.19). Consequently, the husband gave up pursuing the matter since he would not wish to lose his wife by instituting a legal proceeding he was surely going to lose (10.20). Thus, the usurper's grandson who had inherited from Kyronides enjoyed possession of the estate until he perished in battle without issue. However, he left a will in which he named his brother Xenainetos (II) as his heir, but Xenainetos (II) was challenged by the speaker, son of the heiress, disputing the validity of the will.

The behaviour of Aristomenes was certainly a flagrant contravention of the law which provides that, "whenever a man dies without making a will, if he leaves female children his estate shall go with them...,"[130] and also the law which sought to protect the interest of the heiress and guarantee her welfare. With this apparent outrage or lawless act against the heiress, we have no evidence on what action the

archon took against Aristomenes in conformity with the powers conferred on him in that regard. Unless of course the speaker had purposely decided to conceal the evidence, which is doubtful, it appears from the trend of events that the archon took no practical action against Aristomenes until the heiress' son, the speaker, came of age to take the matter up himself.

There is quite a number of other similar guardianship cases in the surviving speeches of the Attic orators, of which one or two more may be cited here briefly. The best known of them is the case of Demosthenes because his patrimony is the most fully documented orphan estate in classical Athens. In his case, all the charges of mismanagement and misappropriation are present, though not of bodily ill-treatment. And in Lysias' *Against Diogeiton* it is alleged that the defendant not only turned his wards out without cloaks as soon as the elder boy was of age,[131] but also handed over to them at that time only a small fraction of the fortune that should have been theirs.

In Athenian law, wards in their minority were not legally in a position to complain of injustice at the hands of their guardians.[132] And although Solon in his judicial reforms had given the liberty to " anybody

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[130] Dem.43.51.
[131] 32.16
[132] See MacDowell, *Law,* p.53.

who wished to exact redress on behalf of injured persons, ''[133] such situations may be matters in which the archon had the right of initiative and was expected to see to it himself that wards were not deprived of their due. Emphasis on the paramount role of the archon as well as his expected right of initiative is reflected in the following passages. In an indictment case against Timarkhos for personal vices that could lead to his ban from speaking at the Assembly if convicted, Aeschines observes:

"Who of you does not know Diophantes, called " the orphan,'' who arrested the foreigner and brought him before the archon, whose associate on the bench was Aristophon of Azenia? For Diophantes accused the foreigner of having cheated him out of four drachmas in connection with this practice, and he cited the laws that command the archon to protect orphans, when he himself had violated the laws that enjoin chastity.''[134] And at the scrutiny (*dokimasia*) of a man for the post of archonship a speaker in Lysias also rhetorically asks the Council about the acceptability of the candidate by the people he was supposed to serve:

" What do you suppose will be the attitude of the great body of the citizens, when they find a man judging murder cases who should have been tried himself by the Council of the Areopagus; and when, moreover, they see him crowned and established in control of heiresses and

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[133] *AP* 9.1
[134] Aesch.1.158.

orphans, whose bereavement, in some cases, he has himself brought about?''[135]

We may note also a case in Demosthenes in which the speaker prosecutes the defendant for breach of contract. The prosecutor inquires from the jury: "But, men of the jury, where are we to obtain justice in the matter of commercial contracts? before what magistrates, or at what time? Before the Eleven? But they bring into court burglars and thieves and other evil-doers who are charged with capital crimes. Before the Archon? But it is for heiresses, and orphans, and parents that the Archon is appointed to care.''[136]

These passages reinforce the paramount role and authority of the archon as prescribed in the laws of Solon. However, the available evidence suggests that, although the archon's authority is set forth by law, in his administration of justice in matters concerning widows and orphans to protect them against unlawful acts, this enshrined authority had to be activated only if an interested individual called upon it.

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[135] 26.12.

[136] Dem.35 *Against Lakritos,*47-48.Cf. also 37.46; 46.22.

CHAPTER 2

THE WIDOW IN THE OIKOS OF HER DECEASED HUSBAND

It is very difficult to know the proportion of women in the Athenian population who became widowed during the classical period. This is particularly because there were no census returns at the time. Furthermore, the majority of the pieces of evidence on widows that have come to us through the Attic forensic speeches are on elite families who could afford the services of orators in their suits. Very little therefore is known about widows from the low class families. Even with the wealthy families, it is not possible to know the exact number of wives who had lost their husbands. For one thing, some widows are merely mentioned in passing if the evidence on them does not relate so much to the issue at stake. Also, others are not mentioned at all, especially in the case of wives of husbands executed by the state, except perhaps the case of the wife of the executed Agoratos in Lysias 19.39-42.

Among the elite class whose members could afford the services of orators, and on whom light is thrown in the speeches, however, a considerable number of widows can be identified. In Andokides, *On the Mysteries*, four widows can be identified. In Antiphon 1, the accused woman who is being defended by her son allegedly murdered her husband through poisoning, thus inflicting onto herself the condition of

widowhood. In Hyperides 1, the wife of Kharippos was a widow whose name and that of her father are not known, nor do we know the name of her former husband. Aeschines and Lysias inform us of two and seven widows respectively (Aeschn.1; Lys.3;7;13;19;24;31;32). Furthermore, of the thirty-three private orations of Demosthenes, the presence of seventeen widows is brought into focus in eighteen of the speeches (27-29;36;37;38;40;41;42;45;46;47;50;54;55; 58 ;59). And in the twelve extant speeches of Isaios the life of seventeen widows is reflected in eight of them (3;5;6;7;8;9;10;11). As compared to the other orators, Isaios has the highest figure of widows recorded in his speeches. This may not be surprising. Isaios as a *logographos* specialised in that thorny and delicate department of litigation, and his speeches, as we know, deal almost exclusively with wills and disputed cases of intestate succession. It would therefore appear not coincidental that the affairs of widows should become a common feature of the speeches of his clients.

In general, however, there are some widows whose state of affairs is obscure, as not much is said about them in the speeches of the litigants. In Lysias 17 for instance, Eraton the creditor of the speaker's grandfather died leaving three sons, Erasiphon, Eraton who bore the same name as his father, and Erasistratos (17.3). But there is no information on the sons' widowed mother, and we do not know whether or not at the time the speech was delivered she was still alive.

In Andokides 1.16, Agariste, former wife of Damon, and now married to Alkmeonides lays information against Alkibiades and others. There is an assumed silence on her widowhood life as well as her father and her previous husband; and so we do not know whether at the time of the speech her father was dead, and who gave her in remarriage to Alkmeonides. Kirchner makes no suggestion; and on her former husband Davies offers no definite decision due to problems of chronology and other things regarding the names of Damon and Damonides.[137]

The speaker of Lysias 19 is married to the daughter of Kritodemos of Alopeke. We are informed that Kritodemos was killed by the Lacedaimonians after the naval battle at the Hellespont (16-17). No light is thrown, however, on the circumstances of his widow, and therefore no safe guess can be made about her. In Demosthenes, *Against Euboulides*, the speaker's mother is an Athenian on both the male and female side who was given in marriage to Protomakhos her first husband by her brother Timokrates born of the same father and mother, from which marriage a daughter is said to have been born (57.40). Then in the subsequent paragraph, Protomakhos who was poor becomes entitled to inherit a large estate by marrying an heiress. As it happens, Protomakhos divorces the speaker's mother but arranges a second marriage for her to Thoukritos, his friend (57.41).

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[137] Kirchner, *Prosopographia Attica* (*PA*)3133; Davies, *APF* ,p.383.

We are told again that in this second marriage it is her brother Timokrates who gave her out in marriage in the presence of both his own uncles and other witnesses, from which marriage also the speaker was born (40-43,68-69). It is evident from the account given by the speaker that even during the time of his mother's first marriage, his mother and her brother Timokrates(37) had lost their father Damostratos, though we do not know exactly when he died. Hence it was her brother who contracted both marriages for her. However, the speaker does not tell us whether at the time of his mother's second marriage his maternal grandmother Khairestrate(37-38)was still alive or dead, though probably at the time his mother was first given in marriage his widowed grandmother might still be alive, and living with her son Timokrates.

There is also the statement on the atrocities of the Thirty Tyrants in a speech of Lysias regarding the mothers of the orphans.[138] This statement is so general that no specific conclusion on any individual widow can be drawn. In Isaios' speech *On the Estate of Kleonymos*, it is clear that the plaintiff orphans had first come under the guardianship of their paternal uncle,Deinias(1.9,10), though it is not known whether it was under their father's will or not.[139] On the death of Deinias they went to live with Kleonymos, probably their mother's brother (1.12-13). However, there is no information in the speech regarding their widowed

mother, and we do not know whether at the time the case came to trial she was alive or dead. In another speech of Isaios also the father of the three brothers Eupolis, Thrasyllos, and Mneson died, leaving them with a large fortune, so that each of them could perform public duties in the city (7.5). But like some of the other instances, no information is provided on the circumstances of their widowed mother, who probably lived with all or one of them in the dead husband's house.

There are several other widows whose exact situation seems problematic. In fact, the lack of information on them may have been the speaker's own discretion. For, women are not mentioned in the lawsuits unless they are central to the case. Thus though the vast majority of the instances of widowhood are drawn from lawsuits, some of them come from speeches in which the family relationship of the woman is incidental, and the speaker just happens to mention it in the course of his narrative. A reasonable certainty on the widow's status may thus not be possible.

In overall terms, however, forty-eight widows have been identified in the orators, although some of them later got married again.[140] This number is besides those whose circumstances appear uncertain. The figure may seem insignificant and unrepresentative of the population of

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[138] See 13.45-46.
[139] Wyse,p.176.

Athenian widows. But despite the fact that there is an imbalance of information on both classes of the Athenian population besides the seemingly insignificant number of widows identified among the elite class, it is generally recognised from demographic estimates that the number of widows in the classical Athenian population was high enough to create a potential social problem.[141] As noted in the previous chapter, this omnipresence of widows in the Athenian society must have been the consequence of a combination of factors such as the disparity in age at first marriage of couples , the exceptional battle casualties of the 460s and the Peloponnesian War, the executions which took place during the brief oligarchic regime in the last decade of the fifth century, and the famine and the plague of the 450s and 420s respectively, though these affected both males and females. We may note also the incidence of intentional homicide though this was rare.[142]

In order to determine the consequences of the death of an Athenian husband on his widowed wife, we may perhaps examine briefly how the Athenian wife herself influenced the permanency of her marriage after it had been contracted; and whether she continued to exercise such influence at the death of her husband. It is noted already that, the

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[140] For a comprehensive statistics of widows in the Attic orators, see S. Isager, ' The Marriage Pattern in Classical Athens: Men and Women in Isaios' *C et M* 33(1981-82)81-96,esp.92; V. Hunter, ' The Athenian Widow and Her Kin' *JFH* 14 (1989)291-311,esp.304-305.

[141] Mark Golden, ' Demography and the Exposure of Girls at Athens' *Phoenix* 35 (1981)316-329.

Athenian woman had no voice in her marriage transaction. It was arranged for her by her father, if he was alive, or by his legal heir who betrothed her to her suitor by ἐγγύη and gave her out in marriage by ἔκδοσις if her father was dead. Thus before marriage the woman was under the *kyrios* of her kin who exercised domestic power over her. The chief expression of this power was the right to give her in marriage (Dem.46.18).

After the marriage transaction, however, the woman was transferred from the *oikos* of her father to the *oikos* of her husband.[143] Her legal status then changed from being under the control of her natural *kyrios* to that of her husband, though she none the less continued to remain a member of her original family for four fundamental reasons. In the first place, the concept of the marriage itself implied a transfer or lending out of the woman to the man for the purpose of bearing offspring to maintain his family.[144] Also the dowry which had to be returned to the woman's kin on dissolution of the marriage implied a continued link between the woman and her original family. Moreover, the Attic law of succession made the woman fulfil a dual role in her marriage in her husband's family and that of her kin. For besides her function in her

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[142] On the last cause of death, see Isaios 9.16-17 where the speaker informs us that his half-brother's father, i.e. his mother's first husband, was killed by the man's own brother in a dispute over the sharing of their deceased father's land bequeathed to them.
[143] See MacDowell, *CQ* 39(1989)10-21,esp.18.
[144] Cf. Wolff, *Traditio* 2(1944),50.

husband's family, the woman had the task of bearing heirs for her own family who might continue it if no sons or descendants of sons or close agnates who could continue the lineage were available. Furthermore, if the woman was an *epikleros*, she had the task of bearing sons not only for her husband to continue his family at his death but also a son who, after attaining manhood, would succeed to his grandfather's property and continue his lineage.[145]

I think that it is on the basis of the legal authority a husband had over his wife, that is, as her *kyrios*, that some Athenian husbands betrothed their wives to second husbands in their wills. Demosthenes' father for instance, betrothed his wife in marriage to his nephew, dowering her with eighty minai (Dem.27.5;28.15,16). Pasion of Acharnae also betrothed his wife in marriage with a dowry of two talents to Phormio his former slave (Dem.45.28). And although Diodotos did not betroth his wife to any particular man, presumably because he hoped to return alive from the military expedition in which he unfortunately perished, he provided in his will a dowry of one talent to his wife in a second marriage if any thing should happen to him (Lys.32.5-7).

It is noteworthy that once the marriage had been contracted by her *kyrios*, there were two principal means by which the woman herself could ensure the stability and permanency of her marriage. As a speaker

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[145] Dem.46.20.

in Isaios observes, once a marriage took place, it healed bitter enmities and created a very strong bond among members of the family involved, and, in fact, between husband and wife.[146] But this strong bond between husband and wife depended, to a large extend, on the wife herself. In the first place, it depended on her fidelity to her husband, which was indispensable to the honour of her family of marriage,[147] and in the absence of which the marriage could be dissolved outright by law;[148] though fidelity in marriage did not, in fact, apply to the husband.

Secondly, although the Athenian woman had no voice in her marriage contract, and also the husband could just divorce her for any reason whatsoever, in some cases she had a say in the termination of her marriage by her consenting to the termination or refusing to get divorced. The case of Menekles and his wife in Isaios 2 may be recounted. Menekles, Isaios tells us, married the sister of the speaker after the death of his first wife (2.3-5). But later when the marriage would not produce a child and Menekles decided that in view of their childlessness his wife ought to be given the chance to remarry, her brothers insisted that they would take no divorce action until she herself had agreed to the divorce. The speaker informs the jury:

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[146] See Is.7.12. Cf. also C. A. Cox, *Household Interests* (Princeton, 1998),p.71.
[147] See Lys.1.26.
[148] For the law ordering immediate dissolution of marriage on grounds of a wife's infidelity, see Dem.59.87.

" A month or two later Menekles, with many expressions of praise for our sister, approached us and said that he viewed with apprehension his increasing age and childlessness: she ought not, he said, to be rewarded for her virtues by having to grow old with him without bearing children: it was enough that he himself was unfortunate…He, therefore, begged us to do him the favour of marrying her to someone else with his consent. We told him that it was for him to persuade her in the matter, for we would do whatever she agreed. At first she would not even listen to his suggestion, but in course of time she with difficulty consented. So we gave her in marriage " (2.7-9).

We may also recapitulate the case of Pamphile and her father, Smikrines a wealthy citizen of which Menander informs us in his *Epitrepontes*, for further illustration. Pamphile, on the occasion of one of the night festivals at Athens, some months before the play begins, had had an adventure with a youth inflamed with wine, resulting in her pregnancy. Four months later Pamphile is married to a young man named Kharisios (apparently the youth with whom she had had the affair at the festival); and five months afterwards, during her husband's absence abroad, she gives birth to the child she had conceived at the midnight festival.

She had told neither her father nor her husband of her adventure except her old nurse; and now, fearful of discovery, and concerned about

her marriage, exposes the child, which is found and ultimately adopted by a charcoal-burner, Syriskos. But Kharisios later hears of the event, and, outraged at his wife's bearing a child after five months of marriage, tries to drown his sorrow and forget his love for his wife by drinking and merrymaking with women.

Pamphile's father, Smikrines, becomes highly indignant at this treatment of his daughter by Kharisios (though ignorant of her story). And, being so anxious for the dowry which she brought to her husband, he visits her in great anger and tries to induce her to return to him and seek divorce, to save her own honour and his money. But Pamphile shows devotion to her husband, and knowing the true cause of his conduct, defends him and refuses to get divorced. Consequently, Smikrines returns to his house frustrated and disappointed.[149]

Thus if what Menander tells us about Pamphile and her father Smikrines is not a mere jest meant only for the comic stage (I conjecture it is not) but a reflection of a true life situation in fourth century Athens, we would then be right in assuming that though the father of a daughter could terminate the marriage of his daughter (Dem.41.4), this could not be done in all circumstances; and that the woman at any rate could also refuse to leave her husband's house and make the divorce effective even

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[149] Menander, *Epitrepontes*, tr. Norma Miller (Penguin Classics, England, 1987). Cf. A.W. Gomme, *CP* 20(1925),20-21.

if the father was very desirous to end the marriage.[150] This right however was not enshrined in law, and in several cases the women had to acquiesce in the dissolution of the marriage.

At any rate, we notice glimpses of legal and social parameters in respect of the Athenian woman and the widow. These, however, were at the family plane. But in general, how responsive was the Athenian society to the very livelihood and welfare of its numerous widows? And how did this sensitivity reflect their status in the society at large?

DEATH AND STATUS OF MARRIAGE

Death, as it affects the members of the kin group, also naturally affects the wife of the deceased in various ways, both immediately and afterwards. In Ghana, the Akans like the other Ghanaian tribes, consider the death of a husband as one of the worst fates that a woman could suffer in her married life. It is an ill luck or abomination, *munsuo*; and the effects on her life in the society could be various and considerable. Two other disturbing misfortunes are the death of a child and childlessness in a woman. Particularly, the intermittent infant mortality of a wife's children could be a cause for the husband to divorce her. In the same vein, barrenness in a married woman could cost her the marriage. By all

[150] See *Epitrepontes*, 492-545.For a detailed discussion on divorce in Athens, see Louis Cohn-Haft,

indications, a fertile woman has greater joy and honour than a barren woman in the Ghanaian society.

With the death of a husband, the situation could be equally humiliating and very frustrating, especially if she is a young woman. In the short term, she might not only be considered as a woman smeared with misfortune but also as an embarrassing burden on her kindred in respect of maintenance and support; and an immediate marriage, if possible, would be a good riddance. In the long term, her remarriage could be a problem because of society's socio-psychological attitude to widowhood. As noted above, widowhood, though natural, is considered by the Ghanaian society as an abominable condition of life. And sometimes a young and childbearing widow finds it very difficult to get a second husband, even if she has the wish to remarry. Although the majority of marriages are not registered, especially customary ones, hence a law was promulgated in 1985, enjoining couples who contract marriages under customary law to register their marriages (*PNDC Law* 112: *Customary Marriage and Divorce* (*Registration*) *Law*, 1985), it seems to be the traditional pattern that it is strangers, who are unaware of the 'ill-luck', who contract marriages with the widowed in the Ghanaian society. But even in certain situations, a stranger in a relationship or in marriage with a widow later tries every means to find a cause to end the

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'Divorce in Classical Athens' *JHS* 115(1995),1-14.

relationship or terminate the marriage. The reason for the end of the relationship or the divorce may be an ostensible one, but in fact, on learning of the widow's circumstances, for fear that the woman might pollute him with her 'ill-fate' and make him also a widower. Thus, a Ghanaian widow might remain in widowhood for a considerable length of time, sometimes against her wish, without getting remarried.

For the classical Athenian wife who became widowed, the immediate impact on her of the death of her husband was the status of her marriage, which also affected her residential status. But the status of her marriage and her future life was also greatly influenced by or depended on her own decision as an individual. She, in fact, had two choices before her on the decease of her husband. In the first place, she could decide to live in her defunct husband's house until she also died. Secondly, she could return to her original family. If she took the former decision she retained her dowry; and in that case there would be no change of her residence. But if she took the latter, she went back with her dowry; and her residential status automatically reverted to her kin. The widow thus exercised some element of choice and influence regarding the status of her marriage as well as her own position on the decease of her husband. In certain circumstances, the widow's choice regarding her residential status was backed by law, with the archon exercising an oversight responsibility over her.

In the much vexed inheritance dispute regarding the estate of Hagnias in the Demosthenic corpus for instance, the speaker quotes a law ascribed to Solon which, *inter alia* , enjoins the eponymous archon to give protection to pregnant widows who decided to live in their deceased husbands' households. The relevant section of the law reads as follows:

" Let the archon take charge of orphans and of heiresses and of families that are becoming extinct, and of all women who remain in the houses of their deceased husbands, declaring that they are pregnant. Let him take charge of these, and not suffer anyone to do any outrage to them. And if anyone shall commit any outrage or any lawless act against them, he shall have power to impose a fine upon such person up to the limit fixed by law."[151]

The law makes specific reference to pregnant widows who decided to live in their dead husbands' homes. Whether it implies that a pregnant widow might decide to leave her marital home on the death of her husband is not very clear. It is noteworthy, however, that it was not only pregnant widows who had the choice either to stay in their marital homes or go back to their kinsmen if their husbands died. A non-pregnant widow could as well decide to leave or remain. So much is demonstrable and obvious.

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[151] Dem.43.75. Cf. also *AP* 56.7

In Isaios, *On the Estate of Pyrrhos*, challenging the legitimacy of Phile the supposed heiress of Pyrrhos, the speaker poses the following questions to his opponents in which the widow's decision either to remain in her late husband's house or return to her original family is indicated: "He has deposed that he married his sister to a man who possessed a fortune of three talents; what dowry does he allege that he gave with her? Next, did this wedded wife leave her husband during his lifetime or quit his house after his death? "[152] In the third oration in his famous suit against his guardians, Demosthenes the orator asserts that it was for his own and his sister's sake that their mother gave herself up to the life of widowhood (29.26).

The events narrated by Demosthenes about the life of his mother Kleoboule in the three orations make this assertion of Demosthenes appear rather curious, and some critics have maintained that Demosthenes must probably be lying.[153] For throughout all the three speeches Demosthenes has persistently argued that Aphobos his cousin to whom his father had betrothed Kleoboule on his deathbed had failed to live up to his duties. Aphobos, according to the orator's account, had received his mother's dowry in conformity with his father's will, but refused to support her, and had finally married the daughter of Philomides of Melite (27.5,10,13,15-17,56; 28.11; 29.48). Thus with these facts, Demosthenes'

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[152] 3.8.

claim about his mother's widowhood life, as noted by Hunter,[154] seems not only paradoxical but also not even effective rhetoric.

However, Demosthenes' assertion should not just be jettisoned. It is informative as it emphasises the widow's right to decision regarding the status of her marriage after the decease of her husband. I find Hunter's imputation that " even Kleoboule's widowhood in her husband's house came about by default"[155] not quite convincing. For one thing, Hunter does not state who defaulted on whom. Also, whether or not it was by default, the element of choice cannot be ruled out completely.

In Demosthenes 40, we hear also of the widow of Kleomedon, who is said to have left her deceased husband's family after his death, receiving back her marriage portion (40.6,7). And in Lysias, there is the case of the widow of Phaedros of Myrrhinous, who went back to her father after the death of Phaedros, and who was later given in a second marriage (19.15). The right of the non-pregnant widow to leave or remain in the deceased husband's house however is not explicitly enshrined in law. It would appear that it is implicit in the law regarding orphans, heiresses and pregnant widows. But it seems that it was conventional.

There is however one situation in which a widow had no choice but to go back to her original family after the decease of her spouse. This

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[153] See particularly Hunter, *EMC* 33(1989),39-48.
[154] Ibid.40-41.
[155] *JFH* 14(1989),298.

was the case of widows of husbands executed by the state. We have a speech of Lysias that clearly describes the situation:

"Again consider this: in all other cases where you have confiscated the property, not merely have you had no sale of furniture, but even the doors were torn away from the apartments; whereas we, as soon as the confiscation was declared, posted a guard in the deserted house, in order that neither door-timber nor utensils nor anything else might be lost. Personal effects were realised to the value of over one thousand drachmae,- more than you had received in any previous instance."[156] As the account given by the speaker clearly illustrates, in a situation where a husband was executed by the state, and all his real estate and personal effects confiscated and sold, his widow, if he had a wife, certainly had no choice but to go back to her kinsmen.

In normal situations however, the evidence suggests that although one would have thought that the death of a husband naturally dissolved the marriage, some widows exercising their customary right of choice decided to live in their deceased husbands' households and conventionally remained married to their deceased husbands. Thus, a widow who did not remarry conventionally remained the wife of her late husband until she also died. Apparently, her membership of the defunct

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[156] Lys.19.31.

husband's household continued, especially if she had sons with whom she stayed in the house, till it was severed by her own death.[157]

Widows who decided to remain in their dead husbands' homes may be classified as non-pregnant widows and pregnant widows. Non-pregnant widows may also be grouped into three classes: widows living with their sons, those who had no sons but had daughters living with them, and childless widows. A few of these widows may be noted.

In a speech of Lysias at the *dokimasia* of Philon, an Athenian, for his membership on the Athenian Council, the speaker accuses Philon of neglect of his aged mother, and argues vehemently for his disqualification. The speaker alleges that because of Philon's irresponsible attitude towards his mother, the woman objected to the son's burying of her after death, and made her own arrangements for her burial before she died (31.20-21). The speaker is mute on the woman's background. But the tone of the passage and the circumstances of the evidence clearly show that Philon's mother was a widow who lived in the dead husband's home with her son until she died.

In Lysias 19 also, a certain Xenophon's daughter married the father of the speaker without a dowry(19.14).[158] But the husband, whose name and *deme* are not known , died as trierarch aged 70(62,58,60).

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[157] Cf. Wolf, *Traditio* 2(1944),47.

[158] Davies, *APF*, p.200, sounds sceptical about the speaker's statement that his mother was married without a dowry. But I think that the speaker might be speaking the truth, as a woman's father or legal

Apart from his mother's marriage to the then husband without a dowry, the speaker says nothing more about his widowed mother. But since the husband died at the ripe age of 70, and the son, the speaker, was also aged 30 when he delivered Lysias 19 (15), it is most probable that the widow was also advanced in age and never got married again, but lived with her son in the deceased husband's house.

The account given by the speaker of Demosthenes 57 clearly indicates that he is an orphan (52,54,55,67,70). But the same account shows also that though his mother had married twice (40-43,68-69), at the time of delivering the speech the woman was still alive and living with him as a widow in his deceased father's household (70).Nikarete is the widow's name. We are informed that sometime after her second marriage when two children had been born to her the husband went abroad on military service. Consequently she was compelled by desperate straits to serve as a nurse to Kleinias, the young child of Kleidikos (35,40,42,44), in order to maintain herself and her children. And it is evident that at the time of the speech, the widow was living with her son and seen by everybody selling ribbons in the *agora* (34).

The situation of the widowed mother of Mantitheos in Lysias 16 is not very clear, but a reasonable conjecture may be made. Before the Council at his *dokimasia* for membership on the body, Mantitheos

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representative was not legally obliged to dower her in marriage, though it was usual to do so. Cf.

answers charges of involvement in the activities of the Thirty (16.3-8). In his defence, the speaker alludes to the disasters that had befallen both his father and the city (4,10).[159] If his father was a victim of the disaster in 405 B.C. as he alleges, then, as Davies has suggested,[160] Mantitheos was certainly a little over 30 years of age at the time he delivered his defence speech at his scrutiny for his membership on the Council (392-390).

And granting that his mother married at the age of 15, and he himself was at about 34 years in 392 or about 390 B.C. then his widowed mother would have been about 49 years at the time of his scrutiny, if she was still alive. According to his account, although very little property had been bequeathed to him as a result of the disasters, he gave his two sisters in marriage with a dowry of thirty minae each. Besides that he allowed his brother to take such a portion of the property bequeathed to them as made him (his brother) acknowledge that he had got a larger share of their patrimony than he himself had. Furthermore, his conduct towards everyone else up to the time of his scrutiny had been such that not a single person had shown any grievance against him (10). Inferences from the speaker's own account therefore lead us to conclude that at the time of his *dokimasia*, his widowed mother was either still alive and living

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MacDowell, *Law*, p.87.

[159] The disasters being referred to were the one at the Hellespont at Aigospotami in 405B.C. and the brief reign of the Thirty in 404/403 B.C. For the one at the Hellespont, see Xen. *Hell.* 2.1.28-32; Plut. *Alcib.*37.4; *Lysand.*13.1; Paus.9.32.9. For the activities of the Thirty, see Isoc.7.67; Aeschn.3.235; *AP* 35.4; Lys. 12.6-7,83; Dem.59.112-113.

[160] *APF.*p.365.

with him, or was then dead, though she certainly would have lived with him in his deceased father's house until her death.

Lysias *On the Refusal of a Pension to the Invalid* provides yet another instance of a widow who lived in her deceased husband's house with her son until she also died. The speech was composed for an unnamed Athenian cripple in support of his claim to a continuation of the dole, to which an opponent, also not named, had alleged that he was not entitled. Significantly, what is regarded now in Europe and elsewhere in the US as a modern economic expedient was already in operation in ancient Athens. Anyone who had less than three minai and was disabled was entitled to receive the amount of one obol a day from the state.[161]

The speaker's accuser had advocated that the disabled defendant was of sound body; that he had a trade which sufficed for his support; that everybody knew that he rode about on horseback; and that above all, his shop was a meeting-place of undesirable characters and that he himself was a man of disorderly life (24.4-5). But the defendant begins the rebuttal of his accuser's charges in the following words: " My father left me nothing, and I have only ceased supporting my mother on her decease two years ago; while I as yet have no children to take care of me. "(24.6)

It is evident that the defendant's widowed mother died two years before he delivered his speech before the Council, although we have no

means of knowing when her husband died. However, we know from the speaker's opening remarks that on the decease of her husband, the woman lived in widowhood with her disabled son until she died. We learn also that as was expected of a son, he responsibly performed his duties of care and support for his widowed mother until her death, after which he performed all the customary rites for her.

We may note also the case of Kleoboule and Demosthenes, her son. Throughout the three speeches (27-9) she is a widow living in her deceased husband's household with her son and her daughter. A few factors may however be considered regarding Kleoboule's residential status after her husband's death. The evidence is not quite certain as to whether at the time her husband died her father was still alive or not. Davies however believes that Gylon, the father of Kleoboule was dead by 376/5 when the elder Demosthenes died, though the date of the death of the elder Demosthenes is also in dispute.[162]

Kleoboule does not seem to have had any adult brother either,[163] and there is no evidence of her father's next-of-kin, if at the time of her husband's death her father was also dead. A widow in such a situation would probably have no choice but to live in the deceased husband's house until she also died. For Kleoboule however, even if her father was

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[161] The author of the *AP* 49, puts it at two obols.
[162] See *Davies APF*, p.*122*-123; L. Gernet, *Demosthene*, I.28-29, in *Demosthene: Plaidoyers civils,*I-IV,(Paris,1954-60), and noted by Davies,ibid.

still alive when her husband died, the provisions made for her by her husband regarding her future at his death (27.5; 28.16) show that nobody envisaged that Kleoboule would return to her father's family.

Wolff suggests that a childless widow returned to her original family and became subject to her father or brother (*Traditio* 2(1944)47). But it seems that some childless widows could as well decide to remain in their deceased husbands' households and never remarried. The case of Kiron's widow in Isaios 8 readily comes to mind. In his proof of allegation of plots by Diokles and his widowed sister to have possession of Kiron's property, the speaker informs the jury:

" Furthermore, gentlemen, the conduct of Diokles on the occasion of our grandfather's death clearly shows that we were acknowledged as the grandchildren of Kiron. I presented myself, accompanied by one of my relatives, a cousin of my father, to convey away the body with the intention of conducting the funeral from my own house. I did not find Diokles in the house, and I entered and was prepared to remove the body, having bearers with me for the purpose. When, however, my grandfather's widow requested that the funeral should take place from that house, and declared that she would like herself to lay out and deck the corpse, and entreated me and wept, I acceded to her request and went to my opponent and told him in the presence of witnesses that I would

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[163] Davies, ibid. p.121; Aeschn.3.171-172; Plut. *Mor.*844a; *Dem.*4.2.

conduct the funeral from the house of the deceased, since Diokles' sister had begged me to do so" (8.21,22).

The speaker emphasises the effective role and influence of the widow of Kiron in her husband's house. Throughout the speech, the speaker informs the jury of persistent plots by Diokles and his sister to have the property of Kiron. We do not know whether the widow ever married again. But the various kinds of conspiracy between brother and sister to obtain the property of the deceased Kiron, as narrated by the speaker, imply that Diokles' sister most probably continued to live in her husband's house on her own choice after his death, though she was childless (8.36-37).

There appears to be some kind of uncertainty about the residential status of the widow of Polyeuktos in Demosthenes 41.[164] Polyeuktos, we are told, had no son but had two daughters both of whom were married at the time of his death (41.3 and passim). But before he died, Polyeuktos is said to have mortgaged a house to the speaker for a debt of 1,000 drachmae he owed him, and had given instructions in his will that pillars (*horoi*) be put on the house in favour of the speaker (5,6,19 and passim). This evidence makes Hunter suggest that the mortgaged house might be the family house, and that Polyeuktos' widow

[164] See Hunter, *JFH* 14(1989),301,309,n.23.

lived with one of her married daughters rather than in her husband's house (*JFH* 14(1989),309,n.23).

I think that the mortgaged house was not the family one but a different house. Indeed, it would be hard to understand why Polyeuktos would have mortgaged a family house in which his wife might be living after his death, because he owed a debt and was seriously ill. Finley is probably right in his interpretation of the situation: " When Polyeuktos realised he was dying, he wished to protect the husband of his elder daughter from any possible deprivation of the unpaid 1,000 drachmae. He therefore set aside, from his total estate, one house as the equivalent. If the plaintiff did not subsequently receive 1,000 drachmae in cash, he could take the house in satisfaction."[165]

The mortgaged house can therefore not have been the family house of Polyeuktos. Certain factors make this conclusion very plausible. In the first place, it is evident that the widow continued to look after the interests of her deceased husband, and appears to be in charge of all the family issues until she died (9,14). Also, she seems not to have been too old and beyond the age of remarriage, although from the speech we know that she had two grown up daughters who were already married. She most probably could therefore have got remarried and left for the new huaband's house. However, the speaker's remarks in section 9 of his

narrative give the indication that: (a) the woman gave out the loan when her husband was dead; (b) the presence of her brothers was at the house of the deceased husband and not at the homes of her brothers.

Moreover, if she decided to leave her defunct husband's house, she would certainly have gone back to live with one of her brothers, as was usually the case with widows who left their marital homes on the death of their spouses but had no fathers to return to. This position is supported by the fact that there seems to have been a very cordial relationship between the widow and her brothers (41.9). It may reasonably be maintained therefore, that although Polyeuktos' widow had no male child, she remained in her dead husband's house unmarried until she also died.

CARE AND MAINTENANCE

The mode of support and care for the Athenian widow in her deceased husband's *oikos* was in a way in line with, or influenced by the general Athenian attitude towards war widows regarding their maintenance. The attitude is reflected in funeral orations in the period. In the funeral speeches that have come to us in connection with fallen warriors in the classical period – those of Pericles, Lysias, Plato,

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[165] Moses I. Finley, *Studies in Land and Credit in Ancient Athens*, 500-200 B.C. (Oxford,1951),p.49.

Hyperides, and Demosthenes- although the widows' plight is noted in some of them, support for them seems quite peripheral to the state.[166]

In Pericles' speech for instance,[167] some concern for the widows' fate is shown by the orator (2.45.2), but nothing is said about their care, except to console them for their loss. I share in Boer's rejection of Gomme's comment on Pericles' statement in his address to the widows, βραχείᾳ παραινέσει ἅπαν σημανῶ (I will sum all up in a brief admonition) that Pericles' " explanation of the whole matter is not only brief and priggish, but advice, not consolation, and advice that is most of it not called for by the occasion."[168] I think that Pericles' statement is both advice and consolation. As Boer has pointed out, Pericles is not explaining anything but giving a speech meant above all to give consolation, such that there is a difference in the atmosphere and even in outlook.[169] The possibility that the widows were pleased by these words uttered by the city's leading politician at the time cannot easily be ruled out. There is no doubt that their suffering was thereby raised above the personal level of individual bereavement. But that was all; their maintenance did not form part of Pericles' speech.

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[166] Of course, questions of authenticity of the speech, as to whether or not it was say, by Lysias, whether the speech was real or fictional, and whether the speech was a parody or not, may be raised. But I find such questions not very material for my present purpose.

[167] See Thucy. 2.35-46.

[168] Gomme, A.W., *A Historical Commentary on Thucydides* Vol.2 (Oxford,1956),p.143.

[169] Cf.W. Den Boer, *Private Morality in Greece and Rome. Mnemosyne* Supplementum 57(1979),p.34. See also Pomeroy, *Goddesses*, p.59,243.

In the funeral oration of Lysias for those Athenians who had fallen in the Corinthian war, when the orator turns to console the affected families, after an impressive picture of the past glory of Athens he observes: "These (the fallen warriors), prizing valour above all else, deprived themselves of life, widowed their wives, left their own children orphans, and brothers, fathers, mothers in a state of desolation...We have but one way, as it seems to me, of showing our gratitude to those who lie here: it is to hold their parents in the same high regard as they did, to be as affectionate to their children as though we were ourselves their fathers, and to give such support to their wives as they did while they lived" (2.71,72). The speaker's words to the widows seem very comforting; but although there is evidence of state support for war orphans, there appears to be no single evidence in Lysias or elsewhere pointing to any kind of state support for war widows.

In Plato's *Menexenos* also, where the fallen warriors paradoxically address those who have been left behind, the relatives (parents and children) are entreated to take care of widows and children (248C), but both parents who have lost their sons, and children who have been orphaned are assured of the assistance of the state (248D). Furthermore, the admonitions in the funeral oration of Demosthenes are directed solely to parents and children of the fallen heroes: " The children of these men shall be reared in honour and the parents of these men shall

enjoy distinction and tender care in their old age, cherishing the fame of these men as an assuagement of their sorrow"(Dem.60.32).

The speech has no section on widows. And although the fragmentary speech of Hyperides mentions mothers and fathers, children and sisters of the fallen (27), it has nothing on the widows of the dead warriors. Evidently, the assumption is that a young widow will be married again, while an old widow will have an adult son (or son-in-law).

The decree of Theozotides, an Athenian, may also be noted. In 403/2 B.C., Theozotides is said to have proposed a decree in which, among other things, he sought public support for orphans of those Athenian citizens killed in war.[170] By and large, Theozotides' concern in his decree was with the sons of those who suffered violent death in the preceding oligarchy. In return for the loyalty and bravery of their fathers, the sons were to receive an obol a day each from the state. But Theozotides' decree made no provision for those wives who had lost their husbands in the revolution.

The light that these sources throw on Athenian attitude towards even war widows is that there seems to be a general unenthusiastic and uncommitted attitude towards widows in Athens. Thus, in the funeral orations, children, mothers and sisters are often mentioned, but the least attention is given to widows. Also in these orations, parents and children,

brothers and sisters are closely connected with the deeds of the dead, and are challenged to emulate such deeds. But the widows do not fall within this circle; they take no share in the glory of their husbands, and they stand apart as far as support from the state for parents or children is concerned.

We might as well note Dem. 43.75,which we have so often quoted: Ὁ ἄρχων ἐπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων καὶ τῶν οἴκων τῶν ἐξερημουμένων καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν : "Let the archon take charge of orphans and of heiresses and of families that are becoming extinct, and of all women who remain in the houses of their deceased husbands, declaring that they are pregnant."

It can easily be noticed from the sequence of those referred to in the law that the wife is mentioned last. The expression,καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν, also indicates clearly that the widow is of less importance, and that only the children matter. For it is only when she is pregnant that she comes under the protection of the archon. And, as has been noted by Boer,[171] even regarding the children, only the boys

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[170] See Ronald S. Stroud, ' Greek Inscriptions: Theozotides and the Athenian Orphans' *Hesperia* 40(1971),280-301.
[171] *Morality*, p.35.

count. Significantly, the only girl who has any status is the heiress, as is clear from the law.[172]

Thus, although the Athenians were very much aware of the embarrassed circumstances of widows in the society, unlike some modern societies where the state partly supports widows, albeit there could be problems, for instance, in UK over war widows and their pensions, the Athenian state gave no practical support to them, not even widows of fallen warriors. Thus their maintenance and care appear to have been the sole responsibilities of kinsmen. And among kinsmen, this deficiency of state support was mitigated by the duty of sons to support their parents. However, such support did not apply in the majority of cases to widowed wives for three main reasons: some of them might be relatively younger than their husbands who had died, either as civilians or as soldiers.

Such widows might have sons in their minority who would not be able to look after their mothers until after some years. Two cases readily come to mind: the case of Demosthenes' mother, and the widow of Diodotos in Lysias 32 who lived in her dead husband's house with her minor sons for one year before she was given out in a second marriage. Also some widows had no children at all. Kiron's widow in Isaios 8, for instance, never had children again after the death of her two sons. Other

[172] Cf. also Dem.43.51 for the distinct status of the heiress.

widows also had no sons but only daughters, as in the case of Polyeuktos' widow in Demosthenes 41.

The right to support and maintenance of the widow who remained in her deceased husband's house with her son or sons derives from two main sources: (I) The moral as well as the legal obligation for Athenian sons to support their parents. We may begin with the case of an *epikleros* mother. A law in Demosthenes prescribes that an *epikleros*' son who had attained his age of majority should take over the property of his mother and begin to provide for her support:

Καὶ ἐὰν ἐξ ἐπικλήρου τις γένηται, καὶ ἅμα ἡβήσῃ ἐπὶ δίετες, κρατεῖν τῶν χρημάτων, τὸν δὲ σῖτον μετρεῖν τῇ μητρί: "If any one is born the son of an heiress, two years after he has attained his age of manhood he shall assume control of the estate, and he shall make due provision for his mother's maintenance"(Dem.46.20).

It is not evident what kind of arrangements the son of an *epikleros* on reaching his majority had to make for the support of his mother if she was still living with her husband. But the situation becomes more definite if the woman became widowed. With the death of her husband, all the responsibilities of maintenance and legal support necessarily devolved upon the son. For at this time the adult son became the *kyrios* of his mother, and would be managing also the property of his

maternal grandfather which his mother together with his deceased father had held in trust for him, as is clear in the law.[173] The son's succession to his maternal grandfather's household was exclusively upon his legal capacity and did not depend in any way on the death of his father or mother.[174] But once his mother became widowed, he had a greater legal and moral responsibility to provide for her support than he would probably otherwise have done when his father was alive. Thus the *epikleros* widow had a specific legal protection regarding her support.

This law of support refers particularly to the *epikleros*. In general however, adult Athenian sons were morally and legally obliged to reciprocate the gestures of tendance and care from their parents. Hanson notes this filial obligation in his comment on relations in the ancient Roman family: " If the parent owes certain obligations of tendance, nurture and attention, the child in return must show dutifulness, obedience and devotion."[175] Hanson was writing on the Roman family, but his comment applies equally to the Athenian situation. For Xenophon is very emphatic on the issue. He writes in his *Memorabilia*: " We owe an obligation to our parents who created us out of that which was not, and our obligations are based on returning good deeds." Then in another

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[173] See also Is.8.31;10.12, where reference to the law and its implications are made.
[174] Cf. David Asheri, ' Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece' *Historia* 12(1963)1-21,esp.16.
[175] J. O. deGraft-Hanson, ' Pietatis Imago', *LJH* 1(1974)1.

section of the same work he notes: " The duty of honouring parents, like that of fearing the gods, is an unwritten law, observed in all countries."[176]

It is on this principle of sons' support for their parents that, giving reasons for his continued support by the state as a disabled person, the speaker of Lysias 24 argues that his resources are limited. For though his father had left him nothing, he had had to maintain his widowed mother too until her death, but he has no children to support him (24.6).

In our modern society it may certainly not appear quite natural for parents to let the expectation of reciprocal services be a primary motivation for loving and caring for their children. But parents in ancient Athens seem to have expected recompense, especially in their old age, for bringing up children; and they found in this nothing incompatible with natural love.

The moral obligation of sons to provide for the maintenance of their parents was reinforced by law which punished and disqualified from attending the Assembly and holding political position, sons who were found guilty of not living up to their responsibilities to their parents. Listing offences in the city, Andokides notes: "...all who were found guilty of maltreating their parents, were deprived of their personal rights, while retaining possession of their property "(1.74). It is noteworthy that maltreatment of parents seems to have three main dimensions of

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[176] *Mem.*2.2.13;4.4.19-20. Plato in his *Crito* presents a similar situation in his famous metaphorical analogy of parental relationship between the laws and the citizen in the state. Cf. also his *Hippias Major*, 291d-e; Lys.6.49.

application: (1) neglect of support for parents;(2) shirking of posthumous honours to deceased parents by not performing the customary rites; and(3) physical assault on parents.[177] The importance of the Athenian concern for parental care by sons is clearly shown by the fact that the ancient sources are replete with references to this law.

Significantly, at the *dokimasia* of people seeking positions in the state, one of the questions invariably put to the aspirant was whether he maintained his parents, or performed the customary funeral rites of his deceased parents. If it became evident that he shirked these responsibilities, he failed the scrutiny, and he was not only disqualified from holding the post he was aspiring to get, but also lost certain civic rights, as indicated by the laws cited above.[178] Thus every Athenian parent had the right in his or her old age to be fed, housed, and protected by his or her sons. A widow who lived with her son or sons was also protected by this law regarding her maintenance by the son or sons. This right was guaranteed by a prosecution for neglect or maltreatment of parents,γραφὴ γονέων κακώσεως; the victim relying on a third person,

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[177] See Dem.24.107; Plato,*HM* 291d-e, and Xen.*Mem*.2.2.13, noted supra; Aeschn.1.28,quoted supra; Lys.13.91. Also Harrison, *Law* (i), p.78,n.1.

[178] Cf..*AP*55.3; Lys.31.20-23; MacDowell, *Law*,p.167-69; Gabriel Adeleye, ' The Purpose of the Dokimasia' *GRBS* 24(1983),295-306,esp.297; Harrison, ibid; P.J.Rhodes, *Commentary on the Aristotelian Athenaion Politeia* (Oxford,1981),p.629.

ὁ βουλόμενος, who suffered no penalty if he failed to convict the accused by not receiving at least one-fifth of the votes cast.[179]

The right to maintenance of the widow who remained in her deceased husband's house with her adult son also derived from the retention of her dowry in the deceased husband's property. One of the purposes for a *kyrios* of giving a dowry with his daughter or sister in marriage was to secure her maintenance.[180] The woman in marriage thus became the beneficiary of the dowry. But since she was always subject to the head of the family, who was her husband, she never had any rights whatsoever of administration of her dowry. She handed it over to her husband, who might administer, use, and utilise it at his own discretion. In effect, the woman's dowry as a financial asset went into the estate of her husband. And if she decided to remain with her sons in her husband's household on his death, her dowry remained and became part of the deceased husband's estate inherited by his sons, who then were under obligation to maintain their mother.[181]

Apart from her right to maintenance, a widow living with her adult son as her *kyrios* enjoyed also legal rights of protection by the son. As noted already the widow as a woman, could not plead her own case in court, either actively as a plaintiff or passively as a defendant against

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[179] Is.8.32; *AP* 56.6; Harrison, *Law* (i),p. 59-60,77-78.
[180] Wolff, *Traditio* 2(1944),62-63; MacDowell, *Law*, p.89.
[181] Cf. Wolff, ibid; MacDowell,ibid; Hunter, *JFH* 14(1989),296.

attacks on either her person or her property. She also could not enter into any business contract on her own beyond a certain limit of measurement. In all these respects therefore, the widow's adult son as her *kyrios* had to act for her. So in Demosthenes' suit against his guardians (27-29) it is abundantly clear in his speeches that the orator is suing not only for the recovery of his patrimony, but also for the restitution of his mother's dowry from Aphobos, with interest paid on it (27.15-17;28.11).

The evidence is not very clear on support for other categories of widows who remained in their deceased husbands' households. These comprise childless widows, those who had daughters only, widows who lived with sons still in their minority, and pregnant widows.[182] Kiron's widow in Isaios 8 is a typical example of a widow without children. We are informed that the woman did not bear children again after the death of their two sons (8.36). As noted earlier on, though it is not explicitly stated, it is implicit in the tenor of the speech that the widow lived in the house of her deceased husband. It is not clear also who inherited from Kiron since he died without leaving a son, because of which his property became a subject of dispute. But it is evident from the speech that his widow, together with her brother Diokles, was in firm control of the estate of her deceased husband.

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[182] The position of the pregnant widow is examined in chapter 4.

The total value of the real property of the deceased, apart from considerable sums of money lent out on which interest accrued (8.35), is said to be ninety minai. We are informed also that before Kiron died, his wife's brother had managed to make Kiron let him handle all his sums and the interest upon them, and to manage his real property (8.37). With this kind of financial background, it would appear that Diokles' widowed sister would not lack material sustenance. We are not in a position to know what her status was concerning other responsibilities; but since there seem to have been very close ties between her and the brother, it is very probable that he would have been giving her the legal support and protection that she needed.

The widow of Polyeuktos, (Dem.41), had two daughters only and had no sons. But this widow seems to have achieved considerable economic independence within the family setting, and been virtually in control of the family matters after the decease of her husband.[183] Particularly, the speaker informs us that the widow had lent 1,000 drachmae to Spudias, husband of one of her daughters, on which loan the woman had left papers behind on her death as evidence of the transaction (41.8-11,21). It is therefore clear that this widow, though without sons, did not lack the sources of financial support. Her juridical status however, is not very precise. But since there is indication of very close ties between

her and her brothers until her death (41.9), there can be no doubt that they would have been giving her the legal protection she needed while alive.

The position of widows who remained in the households of their defunct husbands with minor sons, like Diodotos' widow, and Kleoboule, mother of Demosthenes, is also not very exact, and may give room for conjectures on certain issues. The speaker of Lysias 32 informs us that the widow of Diodotos was later given in a second marriage by her father. But she had stayed in her dead husband's house with her two minor sons and their sister in the Peiraeus for one year, after which period the second marriage took place (32.8). What was her position before her remarriage?

We do not know the exact size of Diodotos' property. However, the evidence suggests that his fortune may have been very considerable (4-6,13-16), out of which he had arranged for a dowry of one talent each for his wife in a second marriage, and for his daughter if anything should happen to him in the expedition (6). We also know that he held in partnership with his brother and father-in-law, Diogeiton, their father's real property bequeathed to them (4). On his death, all his own property and his share of their father's estate went under the control and administration of his brother and father-in-law whom he had appointed as guardian of his two sons and their sister, as the sons were still minors.

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[183] Cf. Schaps, *Economic Rights*, p15; Hunter, *JFH* 14(1989),301.

It is important to note that although the residential status of the widow of Diodotos did not change until after one year, the authority over her at any rate conventionally reverted to her father. The question as to whether her father was legally obliged to provide for her maintenance and support during her transitory period before remarriage, since her deceased husband had provided her with a dowry is quite another matter. The evidence suggests that, although technically she together with her children fell under the care and protection of her father, her sons being minors, in reality she lacked this support and protection from him.

We are informed that even on being remarried, her father dowered her with only five thousand drachmae, which was one thousand less than her dead husband had given her (8). The speaker does not tell us who her second husband was. But when it became very evident that the children had been defrauded by their uncle and grandfather when the elder son attained manhood, she had to turn to the husband of her daughter (9-10). It was he who supported the young boy to sue for the restitution of their property; and at this trial, she also gave evidence at a family meeting against her own father (12-13,15-17).

The mother of Demosthenes also lived with her minor son and his sister in the husband's household until her son came of age (Dem.27-29). But unlike Diodotos' widow, Kleoboule lived in widowhood and never got married again (29.26). There is no doubt that Kleoboule was still

quite young at the time her husband died. Nevertheless, we are informed that her arranged second marriage (27.5;28.16) did not materialise (27.56); and that Aphobos, to whom she had been betrothed, would not even maintain her though he had her dowry for the remarriage. Her son tells the jury:

" For when it proved that Aphobos, though he had her fortune, would not maintain my mother, and refused to let the property, choosing rather to administer it himself in conjunction with the other guardians, Demokhares remonstrated with him about the matter,.. Aphobos admitted the fact, and said that he was having a little dispute with my mother about the jewels, and that, when he had settled this matter, he would act regarding the maintenance and all else in such a way that I should have no ground for complaint" (27.15).

It does seem from Demosthenes' account and Aphobos' own admission that although Aphobos might have not left Kleoboule derelict, he appeared to have refused to provide support for the widow, though he had taken possession of the dowry for her. Thus Kleoboule was left to her fate regarding her sustenance, and without a *kyrios*. In the circumstances, certain questions come to mind. Who undertook the responsibility of caring for her and giving her legal protection until her son Demosthenes came of age to take over such responsibilities, bereft of her dowry, and without a *kyrios*? Could a widow live without a *kyrios*? What was her

status in the household while Demosthenes was so young and could not manage affairs?

The internal and external evidence on Kleoboule indicates that she did not lack the means of sustenance as a widow. The husband's house itself where she continued to live was a rich one, with furnishings and slaves left behind by her late husband (27.5,20,27,46). Kleoboule was also reputed to have entered the marriage with a fortune (27.4).[184] It is also important to note that since she was an *epikleros*, she certainly may have had property like clothes, jewels, slaves, and money of her own, which she had brought from her father who lived in exile.[185] As a married woman her husband had control of her property, but it is most probable that some of this wealth remained in her hands on the death of her husband even before Aphobos tried to take away her jewels (27.13-15).

As to the question of her being without a *kyrios*, we are informed that when she found herself at the mercy of Aphobos and his co-guardians she turned to her sister's husband Demokhares who confronted Aphobos for maltreating her (27.14-15). Thus, although Demokhares was not her official *kyrios*, it is very probable that he would have represented her in the event of any legal proceedings. But this does not rule out her vulnerable position in the society. For the situation apparently remained

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[184] See Aeschn.3.172.

[185] See Davies, *APF*, p.121-122; Hunter, *Policing Athens* (Princeton, 1994),p.30; Gernet, ' Notes sur les parents de Demosthenes' *REG* 31(1918)185-96, noted by Hunter,ibid.

unchanged until Demosthenes attained his majority before he took legal action against Aphobos on behalf of the woman.

Within the household itself, however, there can be no doubt that Kleoboule managed the house, including the family finances. For her son was still immature and incapable of doing so. We must bear in mind also the fact that as a widow in her dead husband's house her personal fortune and her dowry, though the latter was lost, were incorporated in the family fortune.[186] It would thus appear quite natural for her to take up the full responsibility of household management in the circumstances. This household management, including advice to her son, would certainly have continued for some time after Demosthenes had attained his majority, at least until he married.[187] Thus by all indications, Kleoboule seems to be one of the few widows of independence, and had become a *de facto* head of her deceased husband's household.

For those other widows living with their sons, and who were not so privileged like Kleoboule and the widow of Polyeuktos, the sources indicate that some of them took to income-generating activities such as petty trading in the market, wet nurse, and other such economic ventures for their livelihood. And for those in rural Attica, there is the strong

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[186] Cf. Hunter, *JFH* 14(1989),45-46.

[187] On the age of majority, see R. Sealey, ' On Coming of Age in Athens' *CR* 71(1957)195-197; J.M.Carter, ' Eighteen Years of Age?' *BICS* 14(1967),51-57; Mark Golden, ' Demosthenes and the Age of Majority at Athens' *Phoenix* 33(1979)25-38; Davies, *APF*, p.123-126; MacDowell, *Against Meidias*, p.370.

possibility that they may have engaged in agricultural work and other rural labour to contribute to the family finances.[188]

DOMESTIC INFLUENCE

It is common knowledge that Athenian women had no access to the courts, or to the male political sphere. They, none the less, may still be both highly respected and wield great informal authority and influence in the society through their own network within the confines of the *oikos*. This could particularly be so in the case of the widow in her deceased husband's household. A passage in Aeschines that seems to illustrate the authority and influence of some widows in their deceased husbands' households may be cited. The speaker tells the jury:

" But, fellow citizens, I beg you not to accept their irrelevant pleas at all, ...But I will go back a little way for your instruction. Demosthenes, after he had spent his patrimony, went up and down the city, hunting rich young fellows whose fathers were dead, and whose mothers were administering their property. I will omit many instances, and will mention only one of those who were outrageously treated. He discovered a household that was rich and ill-managed, the head of which was a

[188] Cf.Dem.57.30-35; Lys.32.8-10; Aristoph. *Thesmoph.*446-48. Also Lacey, ' The Family of Euxitheus: (Demosthenes LVII)' *CQ* 74(1980)57-71; Walter Scheidel, ' The Most Silent Women of Greece and Rome: Rural Labour and Women's Life in the Ancient World (I)' *G&R* 42(1995),202-217.

woman, proud and of poor judgement. A fatherless young man, half-crazy, was managing the estate, Aristarkhos, son of Moskhos"(1.170-72).

Aeschines is obviously slandering or taunting Demosthenes for allegedly exploiting rich and naïve orphans after depleting his own patrimony. Although the passage has been rejected by Harrison as self-contradictory, merely rhetorical and without significance,[189] the orator's comments certainly highlight what could be the situation, and the administrative role of some widows in the households of their deceased husbands.[190] For despite the administrative deficiency on the part of the widow as implied by the speaker, the passage does seem to suggest that some widows had affairs of their deceased husbands' household under their full control and management.

The widow's influence in the funeral rites for her deceased husband could also be quite considerable. Obligation to perform burial rites was closely associated in Athens with inheritance. By a law cited in Dem. 43.57-58, the heirs or next-of-kin had a legal obligation to bury the dead, and if they did not fulfil this obligation with the urgency that it required, they could be called upon to pay the costs of burial by *deme* officials.[191] However, although a widow might be her husband's niece or cousin, she, like any other wife, was not a close relative of her husband.

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[189] *Law* (i), p.114,n.1.
[190] Cf.Hunter, *EMC* 33(1989),45; Schaps, *Economic Rights,*p.15-16,117,n.104.

But evidence from Isaios suggests that the widow's role and influence regarding the burial rites for her deceased husband could be very great. For the speaker in Isaios 8 informs us that it was not only on the earnest request of Kiron's widow that the funeral for him was celebrated in his own house, but also his widow declared that she herself would help to lay out and deck the corpse (8.21-22).

As the widow in her dead husband's house with her adult son appears to continue to control affairs in the household when she would now have been under her adult son, she seems to have authority in matters of adoption in the household. Her consent had to be obtained before her son could be adopted in certain circumstances, especially if she was living alone with the son. And in Isaios (7.14), we hear of a request made to a boy's widowed mother before he was adopted.

It would appear that widows who lived with their sons exercised some kind of influence on their sons' decision to marry; and it is most likely that the sons of such widows might marry late in life when their mothers were very aged or when their mothers were dead. In Isaios, Pyrrhos' widowed sister in oration 3, the widows of Theopompos, Kephisophon, and Polyaratos all in oration 5, and the widow of Aristarkhos in oration 10, seem to have their sons as their guardians at the time the speeches in which they appear were given. The widows of

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[191] Cf.also S.C.Humphreys, ' Family Tombs and Tomb Cult in Athens: Tradition or Traditionalism?'

Theopompos, Kephisophon, and Polyaratos for instance have been widows for at least ten years, implying that they might most probably have passed the re-marriageable age, and therefore lived with their sons until they also died. In all these cases, however, no information is given about the marital status of their sons; and it is possible that they were still not married at the time the speeches were delivered.

Perhaps it would seem too premature to look for information about the marriage life of Demosthenes in his speeches against his guardians, as he had then just reached his majority. In fact, even his birth-year as well as the age at which he attained manhood in relation to the age at which males reached their majority in Athens seems to present a major prosopographical crux, as maintained on page 418-422 below. The puzzle arises from certain statements of the orator in his first speech in his suit against Aphobos, his principal guardian (27.4,6,19,63,69). Furthermore, at the time he delivered his speech against Meidias, the orator speaks of himself as being thirty-two years old and without children (21.154,187).

But if Demosthenes was thirty-two years old at the time, and his *Against Meidias* was delivered in 347, he cannot have been born in 384, as suggested by some commentators.[192] He would have been born in 379.

JHS 100(1980)96-126,esp. 98.

[192] See Davies, *APF*, p.138; J.H.Vince, *Against Meidias*, Loeb Vol.3,p.3; MacDowell, *Against Meidias*, p.370-371.

However, MacDowell (*Against Meidias*, p.370-371), argues that Demosthenes was rather thirty-seven years old when he delivered his *Against Meidias*, and that he wrote the figure in the form ΔΔΔΠΙΙ which was corrupted to ΔΔΔΙΙ. MacDowell's argument seems quite plaussible. For if the orator delivered his speech against Meidias in 347, and he was thirty-seven years old at the time, then he was born in 385/4.

This implies that his one certain child, a daughter, as the sources tell us, was born after his speech against Meidias in 347 B.C.[193] The mother of this daughter is said to have been married to Demosthenes in 343 B.C.; though her identity is not very clear.[194] If Demosthenes was born in 384, and his first marriage took place in 343, then the orator would have attained the age of 41 years before he married. This shows a period of twenty-three years after attaining his majority, and eleven years after reaching the usual marriageable age of thirty years. It is therefore most probable that he married late not only because of his political career but also because of his widowed mother.

We do not know whether the speaker of Lysias 24 subsequently married after his defence speech; but we do know that he had maintained his widowed mother until her death. But at the time of his speech he had still not yet married, and had had no children (24.6). Two more examples may be cited. In Demosthenes 54, Ariston informs the jury in his suit

against Konon that when his bearers who were carrying him to his home after the assault on him by Konon and his son and their band of gangsters reached his door, his widowed mother and the women servants began shrieking and wailing (54.9). Here, Ariston is not only portraying the helplessness of the women, but also stating implicitly that at the time of the assault on him, he was still not married, but was living with his widowed mother and the women slaves in his dead father's household.

And in Demosthenes 55,we are told of a pair of widowed mothers, the widow of Kallippides (55.3), and that of Teisias (55.5), living in the country with their sons. The two were neighbours; and as it turned out, visited each other frequently. On these visits they discussed the problems of their respective farms. But throughout the speech, the speaker gives no indication about his or his opponent's marital status, implying that neither of them was as yet married at the time of the trial. For it would seem that their wives might also have got drawn into the case in court as their mothers were, if they were married at the time. These instances seem to suggest that some adult orphans most probably delayed getting married if their widowed mothers lived with them and came under their care and maintenance until such mothers died.

The widow's knowledge of the contents of her husband's will, and related family matters can hardly be disputed. We have already noted

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[193] Cf. Aeschn.3.77; Plut.*Dem.*22.2, noted by Davies, ibid.

Kleoboule's management and counselling role in her dead husband's house. It is important to note also that Kleoboule was well apprised of her husband's will and of the state of the family fortune. In his suit against his guardians, Demosthenes alleges that his guardians had ignored instructions in his father's will to lease his property, and had mismanaged and misappropriated his estate. His guardians deny the charge, and claim that there were no such instructions in the will that his estate should be leased. (27.42; 28.7)

But Demosthenes persistently maintains that his guardians' claim is false, and informs the jury of the contents of the will:

(i) A statement of all the property left behind by his father;

(ii) Instructions regarding the funds from which his guardians were to take what had been given them;

(iii) Instructions that his estate should be leased;

(iv) That what his father had given to his mother in his will was in fact a gift to her from his father (27.40-41,45,65,69).

The most interesting feature of it all is that the said will was in fact in the possession of his guardians; and at the time of his suit against them they had still not given him the will despite several requests to them to do so (27.40-41; 28.5). What then, was Demosthenes' source of information regarding his father's will? Demosthenes' own statement

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[194] Aeschn.2.149. See also Davies,ibid.

provides the answer: it was his mother who told him the contents of the will (27.40). The question as to how Kleoboule also got to know that her husband's testament contained such statements may have three answers to it.

First, it is very certain that Kleoboule herself was at the meeting when her ailing husband summoned his brother Demon, and Aphobos and his co-guardians to his bedside and declared to them the arrangements he had made in his will regarding the future of his wife and the children (28.15). Moreover, it is most probable that Kleoboule was present when her husband prepared his document. The possibility that her husband told her of the will and discussed the arrangements in it with her cannot also be ruled out. Hence her perfect knowledge of its contents which she imparted to her son.

But it was not only Kleoboule who had such grasp of family finances, her husband's will and related family matters. Diodotos' widow also demonstrates absolute knowledge of her husband's will, and her father's shameful behaviour over what had been in trust for her and her children at the family gathering during which she gives evidence against her father (Lys.32.12-17). The woman appears literate and makes use of documents that her sons have found to convict her father.[195] We are informed also that the papers left behind by Polyeuktos' widow at her

death also contained a record of family debt amounting to 200 drachmae owed her dead husband by Spudias for a slave purchased from his father-in-law (Dem.41.21-22).

The social role of widows in their deceased husbands' households as the fount of knowledge on the internal affairs of the house, however, extended beyond the bounds of their husbands' households. For despite their legal disabilities as women,[196] evidence provided by them outside court could be tendered in court, and carried considerable weight and influence on court decisions. For instance, in Dem.41, the document recording the two debts left behind by Polyeuktos' widow was tendered in court and constituted the major section of the speaker's evidence.

We have already noted the conclusive and decisive evidence given by Diodotos' widow at the family council that she herself initiated. Significantly, the speaker effectively used it by recounting it in court (Lys.32.12-17). We do not know the result of the case; but if Diodotos got convicted, it would seem that the widow's evidence might have contributed in no small way to his conviction. The speaker of Dem.36 also laments that his client, Phormion, is being sued at a time when the prosecutor's widowed mother who knew everything about the case, and whose evidence would have been most valuable was dead:

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[195] Cf.Gould, *JHS* 100(1980),50,n.84.

[196] See R. Just, *Women in Athenian Law and Life* (London,1989),p.26-39; Harrison, *Law* (i), p.108; MacDowell, *Law*, p.84; R.Sealey, *Women and Law in Classical Athens* (London, 1990),p.12-49.

"Indeed, as long as his (prosecutor's) mother was living, who had an accurate knowledge of all these matters, Apollodoros never made any complaint against Phormio, the defendant; but after her death he brought a malicious and baseless suit claiming three thousand drachmae" (36.14).

Furthermore, the sons of Aristaekhmos in Demosthenes 38 are surprised that they should be taken to court by the sons of Nausikrates for a debt allegedly owed by their deceased father Aristaekhmos. For one thing their father had in fact been given a release of the debt in full before his death; for another, they are being tried at a time when the plaintiffs' "own mother, too, was dead, who was well-informed regarding all these matters..."(38.6). And in Demosthenes 55, it was the defendant's widowed mother who informed him of the extent of damage caused to their neighbours by the water because of her regular visits to her other widowed friend (55.24).

Moreover, the regular visits by the two widowed neighbours to each other made them know the facts of the case, and they consequently got drawn into the lawsuit involving their sons to the extent that they had to give evidence on oath which was tendered in court(55.27). The overall picture thus points to the fact that a widow in her deceased husband's house could have considerable authority and influence. And although she herself could not sue or defend in court because of her disabilities, her

evidence could be tendered in lawsuits and be a determining factor in the decisions of the jury.

CHAPTER 3

THE WIDOW IN HER TRANSITIONAL STATE

For how long did an Athenian widow have to remain in her transitional period under the authority of her kin?[197] Why would the widow remarry after the death of her husband even if she had support and maintenance from her kindred? Could an Athenian widow be given in marriage by her natal kin against her will? These questions, among other matters, will be addressed in this chapter. It has already been noted that the Athenian widow could decide either to remain in the *oikos* of her deceased husband or return to her original family. Some widows, as discussed, decided to remain in their dead husbands' households. However, young and childbearing widows invariably left their deceased husbands' homes for the households of their original families, and later got remarried to bear more children. And evidence from several Attic speeches indicates that many of those widows who later got remarried continued to bear children for their second or third husbands.[198]

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[197] By the period in transition I mean the length of time the widow had to wait between the decease of her husband and when she got remarried.

[198] Examples of widows who continued to bear children in their second marriages can be found in Isaios 7;8;9;11; Lysias 32; Dem. 36;40;45;46;50.

WIDOW'S DOWRY AND RESIDENTIAL STATUS

Once a widow returned to her family of origin on the death of her husband the marriage was considered dissolved, and the woman passed back into the legal powers or authority of her kin. An interesting feature of the status of the marriage at this stage is that, while contraction of the marriage involved a formal betrothal and giving out of the bride by her father or nearest adult male relative to the bridegroom, termination of the marriage and restoration of the woman's original authority took place automatically without any formal act to effect the change of status.

In fact, there is not yet sufficient evidence for a marriage that was formally terminated by both families of bride and bridegroom meeting together with witnesses present to end the marriage as they had met to contract it. But we may cite two instances, however marginal or slight as they might seem. Isaios informs us that when Menekles realised that he could not bear children with his young wife on account of his old age, and decided to divorce her, he discussed the matter with his wife and her brothers before the marriage was dissolved.(2.7-9) Also, in Demosthenes 57, when the already married Protomakhos became entitled to inherit a large estate by marrying an heiress, he divorced his first wife by arranging a second marriage for her (57.41). There is no doubt that he discussed the divorce with his own uncles, his wife and her brother, Timokrates before the marriage ended, and the new one contracted. But

even with such open discussions, it would seem most probable that as soon as mutual understanding had been reached between the couples, the women left the husbands' households without ceremony.

Although if a widow left her marital home on the decease of her spouse the restoration of her original *kyrios* was automatic by mere operation of law, it was legally obligatory for the dead husband's heir or next-of-kin to refund the full value of the widow's dowry to the head of the family to whom she returned. If the dowry was not returned, the widow had the right of maintenance by the deceased's heir or next-of-kin. And if the woman was neither maintained nor her dowry returned, the person keeping it could be prosecuted and asked to refund the dowry with interest paid on it. Demosthenes informs us of the law and the interest on the dowry in a passage where Phrastor is said to have been indicted for divorcing his wife without paying back her dowry:

"Stephanos brought alimony against him in the Odeion in accordance with the law which orders that, if a man puts away his wife, he must pay back the dowry or else interest on it at the rate of nine obols a month for each mina; and that on the woman's behalf her guardian may sue him for alimony in the Odeion."[199](59.52) It is noteworthy that although there was no divorce as such when the woman was a widow, as the death of the husband naturally terminated the marriage, the

deceased's next-of-kin could be prosecuted if he failed to pay back the widow's dowry to her next *kyrios*, unless of course, it was the deceased's own son who inherited from him.

Action for the restitution of the dowry, however, appears to be discretionary, and in certain situations a father or a legal representative of the woman might not decide to initiate any action to recover his ward's dowry. In Isaios' *On the Estate of Kiron*, for instance, the speaker gives an account of the widowhood of his mother and her father in which the status of her dowry is described:

" My grandfather Kiron, gentlemen, married my grandmother, his first cousin, herself the daughter of his own mother's sister.[200] She did not live long with him; she bore my mother, and died after four years. My grandfather, being left with an only daughter, married the sister of Diokles as his second wife, who bore him two sons. He brought up his daughter in the house with his wife and her children, and while the latter were still alive, he gave her in marriage, when she reached the proper age, to Nausimenes of Kholargos, giving her a dowry of twenty-five minae including raiment and jewelry. Three or four years later Nausimenes fell ill and died without leaving any issue by our mother. My grandfather

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[199] Dem.59.52. Cf.Is.3.8-9; Dem. 28.11;40.50. A.T.Murray in a footnote to Dem.59.52 (*Loeb*), p.390,n.b, notes that the rate of interest was 18% on the amount of money given as dowry.

[200] On endogamy and marriage of cousins in Athens, see W.E.Thompson, *Phoenix* 21(1967)273-282; *CSCA* 5(1972)211-225; R.J.Littman, *AS* 10(1979),5-31; C.A.Cox, *Household*, p.31-37; Davies,*APF*,p.437.

received her back again – without, however, recovering the dowry which he had given, owing to the embarrassed condition of Nausimenes' affairs – and gave her in a second marriage to my father with a dowry of one thousand drachmae " (8.7-8).

We do not know who inherited from Nausimenes; neither do we know exactly the nature of his " embarrassed condition of affairs " which made Kiron relinquish the dowry on his daughter. But the speaker's statement suggests that Nausimenes may probably have died in such an abject poverty that there was no means by which Kiron could have recovered the dowry. What is certain, however, is that Kiron received his daughter back without instituting any action whatsoever to recover the dowry he had given to his daughter in her first marriage; and later gave her in a second marriage with a dowry of one thousand drachmae.

The change of marital status subsequently affected the widow's residential status. Residence in Attica was patrilocal with the male descendants living in the various *demes* or localities on their ancestral lands which also contained the family tombs and residence.[201] This was usually the case, but of course, a man could move to another place and settle there.[202] With regard to living on ancestral lands, the speaker of Demosthenes 43, for instance, who painstakingly presents himself as a

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[201] See Is.9.18; Littman, *AS* 10(1979),24; S.C.Humphreys, *JHS* 100(1980),97-8; Lacey,*Family*,p.90-91.

[202] Cf. MacDowell, *Law*, p.69.

member of a household of faultless solidarity and piety towards the dead claims that the descendants of Bouselos, his great-great-grandfather, shared a common burial ground which was still being used by the descendants at the time of the speech, implying that they had their residence in the *deme* where they had the ancestral property:

" There is a place of burial common to all those descended from Bouselos (it is called the burial-place of the Bouselidae, a large area, enclosed, after the manner of the men of old). In this burial-place lie all the other descendants of Bouselos and Hagnias and Euboulides and Polemon, and all the rest of the host of those descended from Bouselos, and all these hold in common this place of burial''(43.79).

As rightly pointed out by Humphreys,[203] the information given in Isaios 11 and Demosthenes 43 in the series of suits regarding the estate of Hagnias indicates that this burial place might have contained at the time Dem.43 was given up to twenty-two members of the family (not counting those who died before producing offspring) spanning four generations.

On her marriage, therefore, a woman took up residence with her husband on his land in the *deme* where he lived. Thus the woman was transferred from the *oikos* of her father to that of her husband.[204] In Dem.55, for instance, we find the pair of widowed mothers living in the

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[203] *JHS* 100(1980),116.
[204] Is.3.8; MacDowell, *CQ* 39(1989),18; Cox, *Household*, p.28-31.

country with their sons on their deceased husbands' holdings (55.23-24). And in Lysias 32, the widow of Diodotos is said to have lived with her two minor sons and their sister in the Peiraieus where her husband had his residence, while her father lived in Athens. The widow and her children retained this residential position for one year before their status changed.

According to the account of the speaker, when the widow and the children's resources began to run out, the children's guardian who was also their grandfather and uncle, sent the children to the city to live with him, and gave their mother in a second marriage (32.8-9). If the husband died and the widow decided to go back to her original family, she thus left the *deme* or local area of her husband for that of her family of origin. In some cases, however, her husband and her kinsmen might come from the same *deme*;[205] but of course her status changed once she moved from the household of her deceased husband to that of her kindred.

Some of the widows who returned to their kinsmen on the decease of their husbands have been noted in the previous section. But a few more may be cited to establish exactly in which households they lived in the society. In Lysias 19, a sister of the speaker was first given in marriage by her father to a Phaidros of Myrrhinous with a dowry of fifty minae(19.15). Later, she was given in a second marriage by her father to Aristophanes, son of Nikophemos, with the same sum as her dowry

(19.16). The speaker does not tell why her sister's first marriage terminated. But Davies notes that Phaidros was dead by 393 B.C., apparently childless.[206] In any case, it is clear that after the termination of her first marriage, the widow went back to the household of her father who later gave her in the second marriage to Aristophanes.

The speaker of Demosthenes 40 also tells us about his widowed mother:

" My mother, men of the jury, was the daughter of Polyaratos of Kholargos, and sister of Menexenos and Bathyllos and Periander. Her father gave her in marriage to Kleomedon, son of Kleon, adding a talent as her dowry; and at first she dwelt with him as his wife, and bore him three daughters and one son, Kleon. After this her husband died, and she left his family, receiving back her dowry. Her brothers, Menexenos and Bathyllos (for Periander was still a boy) then gave her again in marriage with the talent for her dowry, and she dwelt with my father as his wife. There were born to them myself and another brother, younger than I, who died still a child " (Dem.40.6,7).

Here, the speaker gives us two important pieces of information about his mother. The first one concerns her residential status. On her first marriage she was transferred from the house of her father who contracted the marriage for her to that of Kleomedon, her husband. But this residential arrangement lapsed when the marriage terminated on the

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[205] Cox, *Household*, p.24-26,31-37.

death of Kleomedon (40.25-26). However, instead of going back from her dead husband's house to that of her father, she went to live with her brothers. This implies that either her father was dead at the time her husband died, or he had handed over the administration of his household to his sons on account of old age. It was, in fact, usual for fathers to retire from management of the household and turn it to their son.[207] It is possible, therefore, that her brothers were living in the house of their father as his heirs. None the less, in the technical sense of her position, her transfer of residence from the deceased husband's house was not to the house of her father but to that of her brothers who were then masters of their father's household.

The situation was the same with her legal position. We do not know for how long the widow had to wait between the decease of her first husband and the contraction of her second marriage. But it is certain that the woman came under the legal powers of five masters who could exercise legal authority over her. First, her father who contracted her first marriage for her; then her husband; then her two brothers, Menexenos and Bathyllos who gave her in the second marriage to Mantias; then Mantias. Thus, on her first marriage, the legal authority over her was transferred from her father to her first husband. But when the husband died the restoration of the authority to the head of her original family was

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[206] *APF*, p.201.

not reversed back to the father but to her brothers who exercised this authority to give her in the second marriage to Mantias.

In Isaios 9, the speaker's mother was given in first marriage (probably by her father) to Euthykrates. We are not told the name of the woman or that of her father. But we are told that after bearing a son and a daughter (9.1,27,29), the husband died having been assaulted by his brother in a quarrel over the property bequeathed to them by their dead father (9.17-18). The widow then went to live with her brother who had become her *kyrios* (9.27). We cannot tell how long she lived in widowhood in her brother's house; but certainly after some time, if not soon after the death of her husband, she was given in a second marriage to Theophrastos by Hierokles her brother (9.3-4,23,27,28).

The speaker of Lysias 3 who decries the hybristic behaviour of his opponent also informs us of his widowed sister together with her daughters living with him in his house (3.6-7).

The case of the widow in Lysias 19 needs mention again. As noted above, she seems to have had no children in her first marriage; but she bore three children to Aristophanes, her second husband (19.8-9). However, after an abortive military expedition in 390/89 in Ephesos (19.21-23), Aristophanes and his father Nikophemos, who were apparently in control of affairs, were recalled to Athens and summarily

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[207] Cf.Strauss, *Fathers*, p.66-72.

executed , and their property confiscated by the state (19.8).[208] This action by the state consequently made the sister of the speaker a widow for the second time in her life. It is evident from the speech that at the time Lysias 19 was delivered, the widow together with her three young children was living with her brother and had not yet got married (19.9,31,32). That she was living with her brother also implies that her father was probably dead at the time of the speech.

Thus at the time Lysias 19 was given, the speaker's sister had changed residence four times, and had come under the legal authority of four different people in her life: (a) from the house and authority of her father to that of Phaidros in her first marriage; (b) from the household and authority of the deceased Phaidros back to her father; (c) from her father to the household and authority of Aristophanes in her second marriage; and (d) from the household and authority of the deceased Aristophanes to the house and legal powers of her brother.

Arkhippe, the widow of the banker Pasion, may also be noted as one of those widows who later got remarried on the death of their husbands. Pasion, much the best-known enfranchised alien of them all, had in his will, betrothed his wife Arkhippe in a second marriage to Phormion his former slave and administrator of his bank (Dem.36.8;45.28). Pasion died in 370/69 B.C.(Dem.46.13), but the actual

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[208] See also Xen.*Hell*.4.8.24.

marriage of Arkhippe and Phormion did not come on until 368. Thus Arkhippe lived a year of her life in widowhood.

The status of Arkhippe regarding her citizenship has presented an ambiguity whose resolution continues to engage the attention of commentators not without much ambivalence.[209] But much of what is said about her as to whether or not she was an Athenian may be ignored here inasmuch as it does not affect her status as a widow.

The speeches in which some light is thrown on Arkhippe do not tell us much about her parental background(Dem.36;45;46;50;59). Certain passages in Demosthenes 46, however, suggest that Arkhippe was an *epikleros*. In 46.18, her son, Apollodoros cites the law that specifies persons who should be appointed as guardians and therefore empowered to give a woman in marriage. And in the subsequent section, he asserts that his mother has none of the persons named in the law living, and that she is an heiress, and he her *kyrios* (46.19). But Apollodoros does not tell the jury who his deceased grandfather was. A passage in Dem.36 citing examples of bankers who gave their wives to their former slaves also seems to imply that Arkhippe did not belong to the family of either of the former masters of Pasion (36.28-29). Commentators are therefore right to

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[209] See David Whitehead, ' Women and Naturalisation in Fourth-Century Athens: The case of Archippe' *CQ* 36(1986)109-114; C Carey, ' Apollodoros' Mother: The Wives of Enfranchised Aliens in Athens' *CQ* 41(1991)84-89; Jeremy Trevett, *Apollodoros, the Son of Pasion* (Oxford,1992),p.2,19.

conclude that Arkhippe had no male relative alive at the time her husband died in 370/69 B.C.[210]

Thus with no male relative alive, Arkhippe would certainly have had no male kindred to return to on the death of her husband. But as already noted, although betrothed by her deceased husband to Phormion in a second marriage, the actual marriage did not come on until a year after when her son was away from Athens on trierarchy to Sicily (Dem.45.3;46.20-21). This implies that during the one year that Arkhippe lived in widowhood she would certainly have to live with her son, though not in the family house in the Peiraieus. For we are informed that at the death of his father, Apollodoros moved out of the family house in Peiraieus and went to live in the countryside (Dem.53.4).

But it is not clear whether Apollodoros moved out because the residence in Peiraieus where there was the physical establishment of his father's bank itself, now under the full control and administration of Phormion, was Pasion's own house or the premises were rented by him.[211] At any rate, it is most natural that Apollodoros would not leave the family residence in Peiraieus to go and live in the country without taking his mother along to live with him. This supposition is confirmed by the fact that Apollodoros was very much opposed to the marriage of

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[210] Cf. Davies, *APF*, p.429; Trevett, *Apollodoros*, p.2,19,n.4.
[211] Cf.Davies, *APF*, p.431.

his mother to Phormion, and that it was not until he was away from Athens that the marriage could take place (36.8;45.3-4;46.20-21;53.9).

It is also evident that some widows remained in their deceased husbands' homes for some time but later got remarried. We may cite again the case of Diodotos' widow in Lysias 32, who lived in Diodotos' household with her children for one year after which the father gave her away in a second marriage (Lys.32.8).

We cannot say much about the widow of Thrasyllos, in Isaios 7. For the speaker does not tell the jury where she lived after the death of Thrasyllos, and who gave her in the second marriage to Arkhedamos, the speaker's grandfather. But it is certain that the orphan Apollodoros lived with his paternal uncle, Eupolis, for some time until he was taken away by his stepfather to live with him, on seeing that he was deprived of his patrimony (7.7). It is probable that the widow and her son either lived together in the same household of Eupolis until her remarriage, or she lived in her father's household if he was still alive, while Apollodoros lived with his uncle.

As for widows of executed husbands, the evidence indicates that they immediately moved out of their marital homes to live with their families of origin as soon as confiscation of their husbands' assets was announced. The speaker of Lysias 19 describes the situation to the jury as follows:

" In all other cases where you have confiscated the property, not merely have you had no sale of furniture, but even the doors were torn away from the apartments; whereas we, as soon as confiscation was declared and my sister had left the place, posted a guard in the deserted house, in order that neither door-timber nor utensils nor anything else might be lost "(19.31).

In the circumstances, a widow in this kind of situation would necessarily have to leave the executed spouse's household to live with either her father or a nearest adult male relative. It is significant, at any rate, that a widow who later got remarried may have lived in one of four 'transitional' homes before her remarriage. These 'transitional' homes, as have been identified, were the father's household if he was still alive at the time her husband died; a son's house, if he had attained his age of majority; a brother's home, if the father was dead at the time her husband also died; and the deceased husband's household.

MAINTENANCE AND SUPPORT

The status of a widow living with her brother or brothers has already been noted. In all legal matters and economic transactions beyond a *medimnos* of barley (Is.10.10) until she got remarried, it was her brother or brothers who represented her, as we find in Lysias 19. The situation was the same with widows of executed husbands. As we are informed,

the assets of executed men were confiscated and sold to people who wanted to buy them. It appears that confiscated assets comprised farm-lands, houses and the furniture in them, and all kinds of personal effects including utensils.[212] And as the dowry of the wife became part of her husband's estate for her maintenance, an executed man who had a wife had the dowry of his wife also confiscated together with his property. However, her dowry was treated as a debt that could be set apart from the rest of her husband's assets. But in such a situation, either the father of the widow or her legal representative, if her father was dead, had to apply to the state for the restitution of the dowry of the widow (Lys.19.32).

It is evident, nevertheless, that Athenian sentimental feelings for children and wives might have restrained the hands of the laws in confiscation matters, so that the wives and children of executed men may at least be left something to live on. Contrasting the leniency of the jury with the mercilessness of his guardians, Demosthenes observes in his first speech against his guardians:

" They have done away with the will, thinking to avoid discovery, their own estates they have administered from the income, and have greatly increased their capital by drawing upon my funds, while, as for my own estate, they have destroyed my entire capital, as if in requital for some grievous wrong we had done them. You, on your part, do not act

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[212] Lys.7.4;19.31,32,38; M.B.Walbank, ' The Confiscation and Sale by the Poletai in 402/1 B.C.of the

thus even towards those who sin against you: when you give judgement against any of them, you do not take away all that they have, but in pity for their wives and children you leave something even to these."[213]

The point of emphasis here is that even when the property of an executed husband had been confiscated, some portion of it was left for the maintenance of his widow and his orphans. However, a question that demands consideration is whether a brother or a father was legally obliged to maintain and support a widowed sister or a widowed daughter. Evidence is, in fact, lacking in the sources on any father having been prosecuted for not providing maintenance and support for a son or a daughter; neither is there any evidence of a brother sued for not maintaining and supporting his sister or sisters.

Even in marriage, a father or *kyrios* was under no statutory obligation to dower a daughter or a sister in order to guarantee her maintenance. For that matter, the determination of the size of the dowry, as already noted, was within the discretion of the father or the legal representative, as a speaker in Demosthenes seems to tell the jury in his *Against Spudias*:

" For, while he disputes my claim to this sum, he has received not less, but more, as will presently be made clear to you. Nay more, even if all these statements of his were indeed true, it is not just, I take it, if the

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Property of the Thirty Tyrants' *Hesperia* 51(1982),74-98.

laws are good for anything, that I should lose the dowry which was promised me, or that Polyeuktos, if he chose to give a smaller portion to one daughter and a larger to the other, should now be thwarted."[214]

Isaios in his *On the Estate of Kiron* also informs us of the speaker's mother who was given a dowry of twenty-five minae including raiment and jewelry by her father in a first marriage. But when her husband died and she was given in a second marriage, the father gave her a dowry of one thousand drachmae, which was less than half of the amount of her earlier dowry in her first marriage (8.8-9).

Thus in general, it would appear that a father or a brother was under no legal obligation to support his ward, unless in the case of a brother, his ward was an heir himself. In fact, none of the indictments for ill-treatment which have come to us so far in the sources covers the case of a father or a brother for neglect of his ward. It stands to reason also that there was no express law obliging a father or a brother to maintain his widowed daughter or widowed sister. For that matter, there appears to be no evidence of a father or a brother prosecuted for not maintaining a widowed daughter or a widowed sister.

Thus, the widow's right to support and maintenance by her kin derived from convention or custom rather than from any statute, and

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[213] Dem.27.64-65.

[214] Dem.41.25-26.

neglect was not penalised by law. It would indeed appear that once the widow's dowry returned to her *kyrios* at the death of her husband, its legal existence seems to have been at an end.[215] Thus the responsibility of her *kyrios* for her maintenance now became independent of her dowry. In this way, the responsibility of her *kyrios* does not seem to have differed from his responsibility before the marriage. Her maintenance, therefore, became a matter of family ties rather than legal responsibilities.

Nevertheless, if the widow lived with her adult son, failing to maintain and support and to give the necessary protection to the widowed mother was socially censured or sanctioned. Whether or not the widow's dowry returned to him was beside the point. Such behaviour amounted to irresponsibility and lack of empathy towards one's kindred. The consequences could be socially and even politically damaging. It could so discredit a man in popular opinion that he could be disqualified from speaking at the Assembly or from appearing at certain public places. Furthermore, it could lead to his disqualification at the *dokimasia* for a public office in the state. For if one showed irresponsibility and lack of empathy towards one's own kin, there could be no guarantee that he would conduct himself creditably well or behave responsibly towards others in the state, and show commitment to the state itself.[216]

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[215] Cf. Schaps, *Economic Rights*, p.81.
[216] Cf.Lys.31.23; Aeschn.1.28.

Significantly, in their speeches litigants most often resorted to the non-legal argument of highlighting their support for, and giving in marriage of their sisters and kinswomen with dowries, to demonstrate their commitment and consciousness of their social responsibilities to their womenkind, in the hope of affecting the jury in this direction in their verdict. And although the jury was not legally bound to accept such arguments, the evidence added no small weight to the overall contention of a litigant. And so a speaker in Isaios, in order to justify his and his brothers' claim to the estate of Kleonymos, proclaims to the jury:

" If Polyarkhos, the father of Kleonymos and our grandfather, were alive and lacked the necessities of life, or if Kleonymos had died leaving daughters unprovided for, we should have been obliged on grounds of affinity to support our grandfather, and either ourselves marry Kleonymos' daughters or else provide dowries and find other husbands for them – the claims of kinship, the laws, and public opinion in Athens would have forced us to do this or else become liable to heavy punishment and extreme disgrace – but now that property has been left, will you regard it as just that others, rather than we, should inherit it?"[217]

Thus, in the case of their grandfather, the law compelling sons to support their parents would have punished the speaker and his brothers if

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[217] Is.1.39.

the grandfather were alive and was not supported by them. But in the case of Kleonymos' daughters who are their cousins, the natural bond of kinship and public opinion would have compelled him and his brothers either themselves to marry the daughters of Kleonymos or give them in marriage with dowries if Kleonymos had died leaving the daughters unprovided for. Another speaker in Isaios also shows his and his brother's moral duties to their sisters in the following words:

" My father, gentlemen, Eponymos of Acharnae, was a friend and close acquaintance of Menekles and lived on terms of intimacy with him; there were four of us children, two sons and two daughters. After my father's death we married our elder sister, when she reached a suitable age, to Leukolophos, giving her a dowry of twenty minae. Four or five years later, when our younger sister was almost of marriageable age, Menekles lost his first wife. When he had carried out the customary rites over her, he asked for our sister in marriage,...we gave her to him in marriage – not dowerless, as my opponent asserts on every possible occasion, but with the same portion as we gave to our elder sister...Having thus settled our sisters, gentlemen, and, being ourselves of military age, we adopted the career of a soldier and went abroad " (2.3-6).

Furthermore, in Lysias 19, the speaker refers not only to his care of his widowed sister's daughters but also his support and maintenance of his sister as well (19.33). The atrocities of the Thirty Tyrants are also said

to have left some sisters unwedded (Lys.13.45). In fact, what the speaker implies here is that orphaned sisters whose brothers would have demonstrated their moral obligations to them by giving them in marriage and dowering them remained unmarried because their brothers had either been forced into exile or executed by the Thirty Tyrants. The speaker of Isaios 11 *On the Estate of Hagnias* also shows his avowed commitment to the children of his deceased brother and his efficient administration of their estate in the following words:

" Gentlemen, I would admit myself to be the basest of all men, if it could be shown that the affairs of Stratokles were left in a state of embarrassment at his death and that I, being myself in easy circumstances, gave not a thought to his children. But if he left them a fortune more considerable and better secured than my own and sufficient to endow his daughters fittingly without sensibly diminishing his son's wealth, and if I am so managing the property as greatly to increase it, surely I cannot reasonably be blamed for not giving them my own money as well; I rather deserve to be praised for preserving and increasing their fortune " (11.38-39).

Support for a sister is also reflected in cases where we find a brother suing on behalf of his widowed sister, as in Lysias 19.8,9. A brother could also demonstrate his support for her sister by decrying hybristic behaviour in the form of either physical assault, sexual abuse or

verbal abuse laced with sexual innuendo against his widowed sister and her daughters, or against his sister and widowed mother.[218]

Showing concern for the material welfare of a sister was also another aspect of support that a brother could give to her. Demosthenes, in his *Against Onetor* contends that the chief aim in contracting a marriage for a sister or daughter is to give her the greatest amount of security:

" No man, in concluding a transaction of such importance, I will not say with such a man as Aphobos, but with anybody whatever, would have acted without a witness. This is the reason why we celebrate marriage-feasts and call together our closest friends and relations, because we are dealing with no little affair, but are entrusting to the care of others the lives of our sisters and daughters, for whom we seek the greatest possible security " (30.21).

On the basis of this concept of marriage, the orator laments that because Aphobos and his co-trustees have defrauded him and his sister, she would not have a good marriage apparently because he would not be able to give her a deserving dowry to guarantee her security and welfare on account of his limited resources.[219] We may also note the uneasiness evident in the speech of the speaker of Lysias 19 about the confiscation of

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[218] Lys.3.6-7,29; Dem.21.78-79; 24.202-203; 25.55; 57.38-39.
[219] Cf. Dem.27.65; 28.21.

his widowed sister's dowry, along with her late husband's property, which was needed to care for her and her daughters (19.32-33).

Fathers are also seen severally extolled for demonstrating awareness of their filial duties to their sons and daughters by contracting marriages for them and giving attractive dowries to their daughters. The list of instances for such filial gestures could be inexhaustible.[220] And in contracting marriages for their wards, we are informed that particular concern was shown by fathers for their wards' welfare by marrying sons and daughters not just into wealthy families but into well-behaved ones.[221]

The moral or societal sanctions against maltreatment or neglect of support and maintenance for a ward or a sister were usually reflected in situations where litigants slandered their opponents for irresponsible conduct towards their kindred; as can be seen in Isaios 11:

" I notice, gentlemen, that most of his speech is taken up with a discussion of my fortune and that of the child; he represents the circumstances of the child as embarrassed, while he attributes to me a position of wealth and accuses me of baseness on the ground that I cannot bring myself to provide any of the four daughters of Stratokles with a

[220] See for instance, Is.8.7-8;11.39; Lys.19.14-15;32.6; Dem.27.5.28.15-16;29.43;40.6-7,20-22,56-57.
[221] Lys.19.15-17.

dowry, although, according to his account, I am in possession of the child's property." [222]

Here, we see the obvious reproach in the account of the speaker's opponent, as noted by the speaker himself, that the speaker is living in wealth but sits unconcerned while his deceased brother's son and daughters are not only in destitution but also the daughters remain unmarried and undowered. This is the charge the speaker rebuts in sections 38-39 quoted above. The irresponsible conduct of Diokles against his sisters and their husbands as told the jury by the speaker of Isaios 8 may also be noted:

" If you understood the impudence of Diokles and his behaviour on all other occasions, you would have no difficulty in believing anything in my story. For the fortune which he makes such a brave show, is not really his; for when his three half-sisters, the children of his mother, were left heiresses, he represented himself as the adopted son of their father, though the latter left no will to this effect. When the husbands of two of the sisters tried to obtain possession of their fortune, he imprisoned the husband of the elder of them by walling him up[223] and by a plot deprived

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[222] Is.11.37.

[223] The meaning of the expression ' he imprisoned...by walling him up' is not clear. But Wyse, p.621, and Forster, *Isaeus, LCL*, p.316-317, n.a, suggest that Diokles may possibly have forcibly detained his brother-in-law, making it impossible for him to perform some state duty and thus caused his disenfranchisement.

him of his civic rights, and though he was indicted for outrage he has not yet been punished. As for the husband of the next sister, he ordered a slave to kill him and smuggled away the murderer, and then threw the guilt upon his sister, and having terrified her by his abominable conduct he has robbed her son, whose guardian he became, of his property, and is still in possession of his land and has only given him some stony ground."[224]

It is also noteworthy to mention the shameful behaviour of Diogeiton towards his widowed daughter and her children, which the speaker of Lysias 32 recounts and uses to his advantage at the trial.

It becomes apparent from the foregoing discussion that, although fathers and brothers were under no legal obligation to support and maintain their daughters or sisters, whether or not they were widows, the bond of kinship, convention and societal reproach with damaging socio-political consequences were enough sanctions to compel Athenian fathers and brothers to maintain and support their unfortunate womenfolk.

THE WIDOW AND HER REMARRIAGE

It may be interesting to note that more than fifty instances of remarriage can be cited in the orators and other literary sources in the fifth and fourth centuries; and that there are many examples with an

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[224] 8.40-42.Cf. also Lys.31.20-23.

impressive number of clusters.[225] From Demosthenes 57, for instance, it is evident that no fewer than five of the speaker's ancestors remarried: his grandfather, his mother, his mother's first husband, his father's grandfather, and his father's grandmother (57.20,37,40-41). The speaker of Isaios 8 also mentions to the jury three instances of a remarriage cluster (8.7-8,40). In fact, several clusters and other examples of remarriage can be found in the sources.

Thus, remarriage was a significant feature in Athenian family life. It may therefore not be surprising that several Athenian widows remarried after the decease of their spouses. In modern Greece, Italy, and Spain, twice as many widowers marry as widows, but in ancient Athens, the reverse was the situation.[226] Among the Akans in Ghana, it is a customary law that a widower or a widow must wear black clothes[227] for a period of one year after which the clothes are discarded. During this period of one year, the widow is expected to live in her deceased husband's house and be maintained by his heir who may either be her husband's brother or his nephew. Of course, her son could play a role in her maintenance, but that has no legal implications. At the end of the

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[225] Cf. W. E Thompson, (a) ' The Prosopography of Demosthenes, LVII ' *AJP* 92(1971),89-91; (b) 'Athenian Marriage Patterns: Remarriage ' *CSCA* 5(1972),211-225,esp.211.

[226] See Thompson, *CSCA* 5(1972),221,n.52,223,n.59.

[227] Cf. also Is.4.7 where wearing black as a sign of mourning is mentioned as a funeral practice in ancient Athens.

year, annual and final funeral rites are observed for the deceased, and the widow is given a ritual bath and purification.

To the Akans, as well as the other tribes of Ghana, the death of a spouse involves religious pollution and therefore requires expiation. Thus, one year after the decease and final funeral rites of her husband, the Akan widow has not only to be purified of the pollution or abomination that has afflicted her as a result of the death of her husband, but she in turn has to purify her community of the pollution. After the purification rites the widow is expected to wear white clothes on that day. She could also wear any kind of clothes for the rest of her life, unless of course on other funeral days when she might wear mourning clothes. It is worth noting that a widower is also required to undergo the same rituals to purify him of the pollution of death.

At a family council of members of her natal and deceased husband's families after the final funeral rites, the Akan widow is given three options of decision regarding her future life. In the first place, she has the choice to remain in widowhood in her dead husband's house until she also dies. Secondly, unless otherwise constrained by a canon law, as in the case of marriage in the church, or a legal rule as with registered marriages, she could be remarried to the deceased husband's heir, who as noted already, may be the deceased's brother or nephew; but most often

the nephew of the deceased. She could, however, turn down remarriage to the deceased's heir, even if the heir so wishes to marry her.

Finally, the widow could decide to return to her natural family. If she decides to return to her kin, the marriage is formally terminated, and the widow leaves the dead spouse's house for that of her kin after which she could get remarried. As to when her second marriage could take place, the circumstances vary from widow to widow; and the waiting period could be longer or shorter. In the traditional set-up where the majority of the marriages are customary ones, all the four options apply.

It may be interesting to note, however, that the family meeting and the widow's options seem to depend on the kind of ties between the wife and her husband's relatives. If there is cordial relationship between the woman and her husband's kindred, the widow is given the options to decide as she wishes. But if there is any kind of strained relationship between her and the husband's kindred, sometimes the widow is forced out of her husband's house by his relatives in most Akan societies in Ghana, either immediately the decease takes place, or as soon as the annual and final funeral rites are performed and the widow is purified. It is only about a decade ago that widows in the Ghanaian society were given some kind of protection by a law of the last military regime.[228]

With regard to the ancient Athenian widow, however, it appears that she had no such widowhood rites to go through. She could, in fact, leave her defunct husband's house for her kin's household as soon as her husband was dead. But like her Ghanaian counterpart, several factors could prolong or shorten her period in transition, and much remains uncertain about the precise time she had to wait until she got married again after going back to her kindred. The Athenian widower's case appears definite. A speaker of Isaios informs us that a widower could remarry as soon as the customary rites of his deceased wife were over:

" After my father's death we married our sister, when she had reached a suitable age, to Leukolophos, giving her a dowry of twenty minae. Four or five years later, when our younger sister was almost of marriageable age, Menekles lost his first wife. When he had carried out the customary rites over her, he asked for our sister in marriage,... Knowing that our father would have given her to no one with greater pleasure, we gave her to him in marriage " (2.4-5). It is most probable also that the remarriage of the speaker's grandfather in Isaios 8 may have taken place not long after the death of his wife, since the woman died leaving her husband with a young daughter (8.7). The Athenian widower could therefore terminate his widowhood soon after the death of his wife.

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[228] *Intestate Succession Law, PNDC Law 111*, 1985. Some of the issues raised in this law concerning the widow will be discussed in the chapter on the Athenian widow and ownership of property.

But the case of the widow seems different. Like her Ghanaian counterpart, the interval between death of husband and remarriage could be longer or shorter; but unlike the Ghanaian situation, the Athenian widow was not constrained by custom to remain in widowhood in her deceased husband's household for a year before deciding about her future married life. The remarriage of the Athenian widow was also conditioned by three main circumstances. In the first place, her early or late remarriage was influenced in no small way by the age of the widow at the time of her husband's death. There is also the question of what provisions, if any, had been made by the widow's deceased husband in his will regarding her future marriage life. The widow's own financial background also could either attract or deter a prospective second husband. In fact, there is evidence suggesting that in general, women with very wealthy backgrounds could be very competitive on the marriage market, and attracted prospective husbands; though it was not every man who made financial consideration a priority in his choice of a wife.[229]

The case of Kleoboule comes to mind again regarding testamentary arrangements made by husbands about the future marriage life of their widows. It is most probable that if Aphobos to whom the elder Demosthenes had betrothed his wife in a second marriage after his death (Dem.27.5,28.16), had lived up to his responsibilities (Dem.27.15),

her remarriage to Aphobos would have materialised in no time, as arranged for her by her deceased husband, since, according to Demosthenes the orator, Aphobos moved to live in their house immediately after the death of the elder Demosthenes (Dem.27.13,16).

We may also cite the case of the widow of Pasion noted above. Pasion, as we know, had betrothed his wife Arkhippe in a second marriage after his death to Phormion, with a substantial amount of dowry of three talents and fifty minae, partly derived from a tenement house (Dem.36.8;45.28). The sources indicate that Arkhippe got remarried to Phormion a year after the death of Pasion and bore him two sons.[230] Even so, the available evidence seems to suggest that the remarriage of Arkhippe to Phormion would have taken place soon after the death of Pasion but for the attitude of her son Apollodoros who persistently objected to the arranged marriage for his mother (Dem.36.8-9;45.3;53.9). It is not surprising, that the remarriage could take place only when Apollodoros was away on an expedition to Sicily (Dem.45.3;46.20-1).

Age as a determining factor for the early or late remarriage of a widow is reflected in a speech of Demosthenes,(Dem.30), where the orator himself sues Onetor, the brother-in-law of Aphobos, and seeks to eject him from a piece of land. In this speech, Demosthenes implies in a passage that a young widow could be remarried so quickly that her *kyrios*

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[229] Lys.19.14.

might not have time to amass her dowry for immediate payment (30.11). Then elsewhere in the same speech,(30.33), the orator implies that a young woman, whether widowed or divorced, would not remain long before getting remarried if she was a wealthy woman:

" Besides all this, men of the jury, there is strong evidence from which it is easy to see that the woman in reality continued to live with Aphobos and even up to the present day has not separated from him. In fact, this woman, before she came to Aphobos, was not unwedded for one single day, but left her husband Timokrates, to come and live with Aphobos; and now during the space of three years she has manifestly married no one else. Can anyone believe that she then went directly from husband to husband, in order to avoid living as a widow, but that now, supposing she has really left her husband, she would have endured to remain a widow for so long when she might have married someone else, seeing that her brother possessed so large a fortune, and she herself was so young?"(30.33).

We may compare the following also in his *Against Stephanos I* :

" If Phormion had been poor, and it had been our fortune to be wealthy, and if, in the course of nature, anything had happened to me, this fellow's (Phormion's) sons would have claimed my daughters in marriage...for they are their uncles since the man married my mother; but

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[230] Dem.45.75; Davies, *APF*, p.435.

seeing that it is we who are poor, he will not help to portion them off."[231] And in his speech against Neaera, Demosthenes observes:

" For the property of Apollodoros did not amount to as much as three talents to enable him to pay in full a fine of such magnitude, yet if it were not paid by the ninth prytany the fine would have been doubled and Apollodoros would have been inscribed as owing thirty talents to the treasury, all the property that he has would have been scheduled as belonging to the state, and upon its being sold Apollodoros himself and his children and his wife and all of us would have been reduced to extremest distress. And more than this, his other daughter would never have been given in marriage; for who would ever have taken to wife a portionless girl from a father who was a debtor to the treasury and without resources? "(59.7-8).

Thus, it is apparent that where provision had been made for a second marriage for her in the deceased husband's will, the widow under normal circumstances would not need to join the queue for remarriage. She could get remarried as soon as the husband was dead, as arranged for her in his will. And if she was a young widow, or she had a very strong financial background, she might not need to remain unmarried for a long

[231] Dem. 45.75. Cf. also Lys.19.14.

period of time in the marriage market at the death of her husband before she got married again to another man.

COULD THE WIDOW PLAY A ROLE IN HER REMARRIAGE?

A law in Demosthenes states categorically who in the Athenian family had the legal right to give a woman in marriage, or who could legally take a woman for his wife. The law reads: "Ην ἃ ἐγγυήση ἐπὶ δικαίοις δάμαρτα εἶναι ἢ πατὴρ ἢ ἀδελφὸς ὁμοπάτωρ ἢ πάππος ὁ πρὸς πατρός, ἐκ ταύτης εἶναι παῖδας γνησίους. ἐὰν δὲ μηδεὶς ᾖ τούτων, ἐὰν μὲν ἐπίκληρός τις ᾖ, τὸν κύριον ἔχειν, ἐὰν δὲ μὴ ᾖ, ὅτῳ ἂν ἐπιτρέψῃ, τοῦτον κύριον εἶναι.

" If a woman is betrothed for a lawful marriage by her father or by a brother born of the same father or by her grandfather on her father's side, her children shall be legitimate. But in case there is none of these relatives, if the woman is an heiress, her guardian shall take her to wife, and if she is not, that man shall be her guardian to whom he entrusts her." (Dem.46.18)

This law, as noted above, states which persons in the Athenian family should be guardians and therefore have the right to give a woman in marriage. None the less, it is argued by Wolff that there seems to be no statutory definition of lawful marriage in Athens, and that this law which

puts a distinguishing mark on marital unions established with the observance of the formalities, does not deal with the conception of marriage, but with the status of sons.[232] That the law deals with the status of sons is very certain. On the question of legal marriage, however, it seems to me that Wolff fails to realise the full impact of the law. The legal concept of marriage is, in fact, implicit in the law; as the following phrase testifies: "Ην ἂν ἐγγυήση ἐπὶ δικαίοις δάμαρτα εἶναι': " If a woman is betrothed for a lawful marriage."

I therefore think that the established legal union is the antecedent of the status of sons. For it is on the basis of the legality of the marital union, established through the recognised formal procedures of marriage preceded by ἐγγύη (betrothal), that the sons shall be legitimate. This is what Demosthenes means in a passage where he distinguishes between a man's own children and an adopted son. He says to the jury:

" Surely, when he says 'lawfully born and rightfully established according to the statute,' he is quibbling and defying the laws. For the 'lawfully born' exists, when it is born of the body; and the law bears testimony to this, when it says, 'Lawfully born are children of a woman whom her father or brother or grandfather has given in marriage' (ἣν ἂν ἐγγυήση πατὴρ ἢ ἀδελφὸς ἢ πάππος, ἐκ ταύτης εἶναι παῖδας

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[232] See Wolff, *Traditio* 2(1944),75.

γνησίους). But 'rightfully established' the lawgiver understood of adoptions, considering that when a man, being childless and master of his property, adopts a son, this action ought to be rightful" (Dem.44.49). We may cite also Isaios 6.64-65 where marriage is given as an essential indicator of legitimacy.

Thus by extension, the lack or absence of the recognised formalities by the procedure of ἐγγύη renders any cohabitation unlawful, or illegitimate, and therefore makes children born in the union illegitimate. Lacey[233] is right on the ambiguity posed by the phrase, ὅτῳ ἂν ἐπιτρέψῃ, τοῦτον κύριον εἶναι; and his views on the translation given are noteworthy. But I think that this law in its entirety defines clearly what was a legal marriage. The status of sons is therefore the corollary of the established legal union. One other law that seems to complement Dem.46.18, and to reaffirm the legal concept of marriage is the one on intestate succession cited in Dem.43.51. It is quoted in Isaios 6.47, seeking to exclude a son of an unlawful marriage from any succession in his father's family either directly or collaterally, and barring him from any other family rights. The relevant section of the law reads:

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[233] See *Family*,p.283,note 21.

" But no illegitimate son or daughter shall enjoy the rights of legitimate kinship, neither with respect to matters of public religion nor with respect to domestic relations, from the time of the archon Euklides." We may note also Isaios 3.8-10 that seeks to define a legal marriage and its implications.

It is agreed that the Greek language did not do much to clarify the definition of marriage, as admitted by Aristotle in his discussion of the composition of the household (*Pol.*1253b9). But as Just rightly points out (*Women*, p.43), an institutionalised relationship does not depend on a term for its definition or its existence. Of course, there could be some degree of ambiguity or uncertainty about the precise nature of the implications of ἐγγύη. Furthermore, we find no evidence of any legal action to compel either the family of the bride or that of the bridegroom to go through the procedure of ἐγγύη. Moreover, it is not easy to define which further step was needed to convert ἐγγύη into full marriage (Harrison, *Law*, p.6-7). Nevertheless, the importance of marriage by ἐγγύη within the social structure of Athens is obvious.

Significantly, the distinction between legitimate and illegitimate children, and their rights of citizenship and inheritance in the city and the family is based on marriage by ἐγγύη as is manifest in Dem.46.18; 43.51; and Is.6.47, noted above. Moreover, it appears that strict standards

of propriety were attached to marriage by ἐγγύη which did not apply to other forms of relationship, to underline the moral as well as the legal distinction between a legitimate wife and other women. This distinction is clear in the words of the speaker of Isaios 3:

" That the woman, whom the defendant has deposed that he gave in legal marriage to our uncle (οὗτος ἐγγυῆσαι ἐκείνῳ), was a courtesan (ἑταίρα ἦν) who gave herself to anyone and not his wife (καὶ οὐ γυνή), has been testified to you by the other acquaintances and by the neighbours of Pyrrhos, who have given evidence of quarrels, serenades, and frequent scenes of disorder which the defendant's sister occasioned whenever she was at Pyrrhos' house. Yet no one, I presume, would serenade a married woman (καίτοι οὐ δή πού γε ἐπὶ γαμετὰς γυναῖκας οὐδεὶς ἂν κωμάζειν τολμήσειεν." (3.13-14)

The same distinction is echoed in 3.39, where the speaker says:

" Even those who give their women to others as mistresses make stipulations in advance as to the benefits which such women are to enjoy. And was Nikodemos, when, according to his own account, he was going to give his sister in marriage, content with simply securing the requirements of a legal marriage?"

With regards to the second marriage of the widow at the death of her husband, Lacey claims that the woman could make a choice as to

whom she would like to be married to if her husband died: "In the choice of their second husbands widows were certainly sometimes able to exercise some element of choice."[234] Lacey's view is given credence by Andersen in his examination of Perikles' funeral speech, and he uses it to establish his own thesis that " widows were not so smoothly adapted to Athenian norms and ideals for women."[235]

Lacey's view certainly seems to undercut the principle and procedures of betrothing and giving in marriage of the Athenian woman, or contracting marriage for her by her father or legal representative. It also seeks to take away the right or authority of the father or legal representative given to him by the law in Dem.46.18 to exercise such authority by marrying off his female ward, just as a father would look for a wife for his son.[236] If the widow had a choice in her second marriage, she could as well exercise the same element of choice in her first marriage. But as we know, an Athenian woman did not marry but was given in marriage; and her consent was not necessarily required, neither did she know that she was going to get married.

Also, she was not necessarily expected by law to be present when the actual marriage contract was taking place.[237] Thus, like her first marriage, the widow had no active part to play in the contraction of her

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[234] Lacey, *Family*, p.108.
[235] Andersen, *SO* 62(1987),43.
[236] Cf. Is.2.18.

second marriage. What she did was to move into her new husband's household after the contraction of her marriage by her father or whoever had the legal authority over her, and begin to exercise her role as a wife. It is instructive that this used to be the practice in Ghana, but now the consent of the Ghanaian woman is always sought by her parents before the marriage rites about her are performed, though her presence is not necessarily required when the rites are taking place.

The alleged attitude of the widow cited by Lacey in Hyperides sits oddly with the idea of choice. The evidence is that in the indictment against Lykophron for an alleged adultery with the woman, the prosecutors argue that the woman had sworn that she would refuse to have intercourse with her husband to whom her brother had given her in marriage because she had promised herself to her alleged lover (*Lyk*,1.7). It is important to note that the widow's refusal to have coition with her second husband to whom she had been given in marriage is not quite the same thing as refusal to marry, which would imply her making a choice of her own. As is evident, the second marriage of the young widow had certainly been contracted for her already by her brother. But the woman would not carry out her marital obligation of coition with her husband.

It may be possible that at the private level the widow may have expressed some reservations about her marriage; for, as noted by

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[237] Sealey, *Women*, p.25; MacDowell, *Law*, p.86.

Harrison,[238] at the private level the woman could try to play on the feelings of her *kyrios* if she found the proposed match distasteful. The alleged refusal of the woman to play her marital role, which in fact might give cause for suspicion of adultery, may therefore have been a calculated pressure from the woman to demonstrate her distaste for the marriage despite the consequences of her action.[239] As Cox has recently noted,[240] the chastity of a woman in Athens was indispensable to the honour of her family of marriage, and, therefore, she could gain leverage by threatening to trespass against chastity.

But this was at the private level of her husband's household, and would not imply a choice of husband in her marriage. The marriage after all had already been arranged and formalised for her by the person exercising legal authority over her. However, if this is taken as a choice, then it is indeed an unprecedented choice. And how many Athenian widows would want to use this procedure as a means to make a choice between husbands, anyway? I would rather hold that this widow's case is an obvious instance of a widow given in marriage against her will.

Kleoboule's case, which Lacey cites, also appears problematic. I have argued elsewhere in the section on *The Classical Athenian Widow in Law and Society*, against Hunter's imputation that Kleoboule's

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[238] *Law* (i),p.12.
[239] On the consequences of adultery to a wife, see Dem.59.87.
[240] *Household*, p.69.

widowhood in her husband's house came as a default. Hunter argues against the general opinion that at the death of her husband a woman had the choice of remaining in her husband's *oikos* , or of returning to her natal family; and claims that there is not a single example of a widow of childbearing age who chose or was allowed to choose to remain in her husband's house, and that even Kleoboule's case came by default (*JFH*,1989,p.298). My point is that Hunter fails to state whether it was Aphobos who defaulted on Kleoboule or vice versa, and that whether or not it was by default the conventional right of choice between the husband's household in widowhood and the natal family must not be ruled out. I would further hold that this conventional right of choice does not imply a choice between husbands in the woman's marriage.

Demosthenes' statement about his mother (Dem.29.26) which Lacey takes to be her right of choice in her second marriage makes Kleoboule's case even more curious and paradoxical. Lacey's own presentation of the case reflects the paradox.[241] Of course, Demosthenes creates the impression in 29.26 that it was his mother who decided to live in widowhood. But throughout all his three speeches against his guardians Demosthenes persistently claims that Aphobos rather did not live up to his responsibilities to Kleoboule, but had married the daughter

[241] *Family*, p.108.

of Philonides of Melite.[242] The paradox is even made more complex by the spat between Kleoboule and Aphobos. But, as rightly noted by Hunter, it is difficult to say what the precise nature of this quarrel was, and any reconstruction of the evidence regarding the quarrel is complicated by the fact that the whole family appeared to have come together to protect Demosthenes' patrimony from state confiscation to defray the debt owed to the state by his grandfather Gylon.[243]

In any case, it would appear that the onus of blame lay with Aphobos. For the evidence seems to suggest that, if Aphobos had not been the rapacious man that he became, and had lived up to his responsibilities to Kleoboule by providing for her support and maintenance, their marriage would certainly have materialised as arranged for them by Demosthenes' father in his will. Kleoboule would have had no option but to acquiesce to the marriage. Her case does not therefore give a definite evidence for a widow exercising some element of choice in her second marriage.

The case of Diodotos' widow in Lysias 32 comes to mind again. The widow, as we are informed, got remarried (32.8) and thus moved to a new *oikos* and a second family. But under what circumstances was the second marriage contracted? In point of fact, the subsequent developments after her husband's death seem to suggest that, but for the

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[242] Dem.27.15,56;28.11;29.48. Cf. also Hunter, *EMC* 33(1989),40-41; Cox, *Household*, p.147.

dubious motives of her father she would most probably have chosen to live in her husband's household with her children until she also died.

The husband's wealth and the provisions he had made for her and the children would have been enough to sustain them in his household. According to the sources, Diodotos had amassed considerable wealth by trade, and his property on his death totalled approximately fifteen talents, twenty-eight minae.[244] Before he set out on his campaign, Diodotos had charged his brother Diogeiton to support his family from his estate, and to provide a dowry of a talent each for his wife and her daughter, and also to give to his wife the contents of the room if he should perish in the expedition.[245] In addition, Diodotos bequeathed to his wife twenty minae and thirty Cyzicus staters (32.6-7); and Demosthenes [246] informs us that the Cyzicene stater was worth there twenty-eight Attic drachmai. These were the arrangements Diodotos made for the support of his wife and children before setting out on his expedition in which he perished.

But the account given by the speaker reveals that Diogeiton plotted mischief and actually executed it against his brother's widow (his

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[243] On Gylon's debt see Dem.27.4;28.1-4;Davies,op.cit.p.122; Hunter,ibid. 41,note12.

[244] 32.5-6,15. See also Davies, *APF*, p.152-153; C. Carey, *Lysias*: *Selected Speeches* (London,1989),p.205.

[245] 32.6. Lamb, *LCL*, translates τὰ ἐν τῷ δωματίῳ as ' the contents of the room.' I would have preferred ' the things in their bed-chamber', since "the room" makes the location appear rather too general. But Prof. MacDowell has drawn my attention to the fact that this will be the room inhabited by the wife, as is the situation in Lys.1.9. Cf.also Morgan, ' Euphiletos' House: Lys.1' *TAPA* 112(1982),115-123,esp.116-117.

own daughter) and her orphaned children of whom he was the uncle and grandfather. The speaker informs the jury that when Diogeiton got news of his brother's death he for a time concealed from his daughter the death of her husband, and took possession of the legal documents which the deceased had left under seal, alleging that the documents were needed for recovering the debts owed to Diodotos (32.7). Then when eventually he broke the sad news to his daughter, and all the funeral rites for the deceased had been performed, he let the widow and her children live in the husband's house in the Peiraieus for one year. But after the year Diogeiton sent away the children to live with him in the city, and gave their mother in a second marriage when times became hard for them.

We have no knowledge of how much dowry Diodotos received from his brother on the marriage of his brother's daughter, but we know from Diodotos' will that if he should die in the expedition his wife should be dowered with one talent (32.6). None the less, the speaker informs the jury that the dowry given to Diodotos' widow in her second marriage was a thousand drachmas less than her husband had given her (32.8-9). This could be viewed as a kind of injustice done to the widow. For although a father had the discretion in deciding how much dowry he would wish to give to a daughter on giving her in marriage, at least the widow's dowry

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[246] Dem.34.23. Lamb in a footnote to Lys.12.11,*LCL*,p.231, states that a stater of Cyzicus was equal to 28 Attic drachmae. See also Murray's note to Dem.34.23, *LCL*,p.252.

should have been equal to what her deceased husband had given her in his will.

The circumstances under which she was given in the second marriage too appear suspicious. Of course, we know that Diogeiton also had a wife and children (32.17), though the sources are silent on the state of affairs regarding his first wife with whom he had the daughter whom he gave in marriage to Diodotos. Therefore, it would presumably appear financially difficult for him to maintain the three orphans and their widowed mother together with his own wife and children. This also might probably explain why the widow and her children continued to live in the deceased Diodotos' house in the Peiraieus, as Diogeiton may not have got adequate accommodation for all of them in his house in the city.

These arguments of pressures of financial support and accommodation for the widow and her children on Diogeiton may be plausible but not quite convincing. It is significant that if Diogeiton had good intentions for his brother's wife and children, and had managed the estate in their interest, the vast wealth of Diodotos and the provisions he made for his family could certainly have sustained them until the eldest son had reached his majority to take over the assets left behind by his father, and the responsibilities of maintenance and support for his mother and the other two children. And as for the question of accommodation, one wonders whether the widow and her children could not conveniently

have lived in her husband's *oikos* in the Peiraieus. And, in any case, what happened to Diodotos' house after the children had been taken to the city and their mother had been given in the second marriage?

An interesting feature of the case of Diodotos' widow and her father is the manifest sour relationship between father and daughter. Even the main reason the speaker alleges to have been behind Diogeiton's decision to eventually take the children away to live with him in the city and remarry off their mother reflects a lukewarm attitude towards the widow and her children: " When at length he informed them of the death, and they had done what is customary, they lived for the first year in the Peiraieus, as all their provisions had been left there. But when these began to give out, he sent up the children to the city, and gave their mother in marriage with a dowry of five thousand drachmai''(32.8).

The situation suggests apparent neglect of care and maintenance for the widow and her children. The indications therefore, are that, the widow would probably have decided to remain in her husband's *oikos* and perhaps reared her children there until she also died, but for the decision of her father to remarry her. This contention may be supported by the fact that her deceased husband betrothed her to no particular man in his will, as in the case of Kleoboule and other widows in similar situations. But since by Athenian marriage custom and practice it would have been inconceivable for her as a woman to turn down a

marriage contracted for her by her father, she had to abide by the decision of her father, even if she found the marriage completely against her wish.

From these three cases, we notice a significant aspect of the social position of the Athenian widow. In the organisation of her own life, even as an adult person in the society, the widow as a woman by all indications appears to be a passive participant, though in certain situations she could have the opportunity to make her own choice. This social inertia was particularly reflected in matters of marriage. But this culture of passivity might probably have revolved around a fundamental family or social concept. That is, just as a wife was expected to obey her husband in silence while the children held him in awe and respect,[247] so also was she obliged to accord the same obedience in humility and submissiveness to her father who had the legal power and authority over her,[248] albeit this legal power might in certain circumstances appear to be inherent with overtones of rigid control and absolute compulsion.

WHY WOULD THE ATHENIAN WIDOW GET REMARRIED?

In Isaios, we learn that public opinion in Athens was against the marriage of a man if he was thought to be too old to sire children.[249] But there appears to be no evidence of a woman who gave offence by

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[247] See Dem.59.50-51; Is.2.18.

[248] Cf. T.R. Stevenson, ' The Ideal Benefactor and the Father Analogy in Greek and Roman Thought'*CQ* 42(1992),421-436,esp.428.

getting married when she was considered too old, nor do we have any general warnings nor implied remonstrations about it. She would in fact, be considered lucky if she got married at an advanced age, because naturally her old age would be a disadvantage since many younger girls would always be on the marriage market. It is not surprising, therefore, that evidence of older widows remarrying is yet to be found in the sources, if any exists at all.

However, in spite of the fact that social pressures morally compelled Athenian kinsmen to maintain and support their widowed daughters and sisters, the sources point to several cases of younger widows who got remarried; some of them more than once as in the case of the widow in Lysias 19. For instance, of forty-eight widows noted in the orators, eighteen out of twenty-five who appear to be still young and capable of bearing children got remarried at the death of their husbands.[250] The social role of the woman may have been one of the factors for the high incidence of remarriage among Athenian widows. This social role is evident in the following words of a speaker of Isaios, on the alleged intrigues employed by Diokles and his sister to continue to keep possession of the estate of Kiron:

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[249] Is.6.22-24.

[250] Cf.Hunter, *JFH* 14(1989),294. See also Thompson, *CSCA* 5(1972),211-225; Golden, *Phoenix* 35(1981),316-331; Andersen, *SO* 62(1987),33-49; Isager, *C et M* 33(1981-82),81-96.

" It was to obtain this property that Diokles, together with his sister, carried on his plots for a long time, ever since the death of Kiron's son. For he did not try to find another husband for her, although she was still capable of bearing children for another man" (8.36).

Here, the speaker highlights the authority and responsibility of the father of a woman or her *kyrios*. Although we are not told anything about the father of Diokles and his sister, this evidence seems to suggest that at the time of his sister's marriage to Kiron, their father was probably dead, leaving them as orphans, and Diokles as guardian and *kyrios* of his sister. And as *kyrios* he had the authority or power not only to look for a husband for his sister, but also to terminate her marriage and give her in a second marriage to another man to bear children for him when he realised that, though still very young she was not getting children by Kiron after the death of their two sons.[251]

But more importantly, the speaker in fact emphasises also what was considered as the fundamental virtue and social duty of a woman in the Athenian society; that is, to produce children for her husband. It is this social role of the woman that the speaker of Demosthenes 59 re-echoes and re-emphasises when he tells the jury:

" For this is what living with a woman as one's wife means – to have children by her and to introduce the sons to the members of the clan

and of the *deme*, and to betroth the daughters to husbands as one's own. Mistresses we keep for the sake of pleasure, concubines for the daily care of our persons, but wives to bear us legitimate children and to be faithful guardians of our households" (59.122). Thus, for the basic social role or virtue of a woman to bear children for her husband, a widow who was still of childbearing age at the death of her husband was expected to get married to fulfil her social responsibility to her husband and society.

Of equal importance also is the Attic law of succession, which in a way made the woman play a dual role in her marriage life. As noted above, though as a daughter of her father, or as a woman, she herself was deprived of the right to receive inheritances, she could in law transmit a right of succession in her own family through her sons who were of course members of her husband's family. The Athenian woman in marriage, therefore fulfilled the dual responsibility of bearing children for her husband to maintain his family, and also for her own natal kin for the purpose of succession in her own family; thereby meeting also family expectations since her lineage was also important. This is why, as rightly noted by Wolff,[252] even after having given birth to a son, the widow was not definitely bound to her husband's family group; and it was in

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[251] For authority of father or *kyrios* to terminate marriage, and grounds for the action see Harrison, *Law* (i), p.38-44; L.Cohn-Haft, ' Divorce in Classical Athens' *JHS* 115(1995),1-14.
[252] *Traditio* 2(1944),50.

deference of ethical demands that in the event of death of the husband the decision to remain or leave his *oikos* was left to her.

It is significant that widowhood itself as a condition of life was dreaded in ancient Athens; and even those who were alleged to have chosen the life of a widow, appear to have done so on pain of hardships and considerable self-denials and sacrifices. It is not surprising then, that whenever a speaker wanted to pull the heartstrings he could revert to the topic of widowhood of his female kindred. So Demosthenes speaks of his mother accepting the life of widowhood for the sake of her children (29.26). In the same vein, Khairestratos the speaker of Isaios 6, expresses fear that if his unworthy opponents are awarded the property of Philoktemon, the widow of Khaireas, sister of Philoktemon, might be left to grow old in widowhood (6.51). Demosthenes also informs us that a woman could go from husband to husband for the fear that she might be left a widow if she lived permanently with one husband:

" Can anyone believe that although then she went directly from husband to husband, in order to avoid living as a widow, but that now, supposing she has really left her husband, she would have endured to remain a widow for so long when she might have married someone else, seeing that her brother possessed so large a fortune, and she herself was so young?" (30.33)

It does appear, therefore, that once an Athenian woman was widowed the prospect of growing old unmarried could be an essential factor to raise her expectations for remarriage.

It is not easy to know whether many Athenian women remained unmarried in classical Athens. Not much is told about spinsters in the sources probably because Athenian males lacked interest in non-reproducing females. However, the few references to the plight of unmarried women seem to suggest that spinsterhood was viewed by men in Athens as a disastrous and humiliating fate. A speaker of Lysias for instance, maintains that one of the evil consequences of the reign of terror instituted by the Thirty Tyrants at the end of the Peloponnesian War was that women had been robbed of potential husbands:

" For they sent many of the citizens into exile with the enemy; they unjustly put many of them to death, and then deprived them of burial; many who had full civic rights they excluded from the citizenship; and the daughters of many they debarred from intended marriage"(12.21).

We may compare also what the speaker of Lysias 13 says about the atrocities of the Thirty, which caused so much discomfort and deprivation to both the aged and the youth:

" You remember also our people here who were haled to prison on account of private enmities; and who, having done no harm to the city, were compelled to perish by the most shameful, the most infamous, of

deaths. Some left elderly parents behind them, who were expecting to be supported in their old age by their own children and, when they should end their days, to be laid by them in their grave; others left sisters not wedded, and others little children who still required much attention."[253]

Apollodoros in a speech of Demosthenes also laments that because of his poverty his daughters are doomed to grow old in maidenhood with no one to dower them (45.74-75).[254] And in Aristophanes, the heroine of *Lysistrata* who is trying to put an end to war also expresses the sorrow she feels for " maidens growing old in the bridal chambers"[255] because of the persistent wars which are causing acute shortage of men in the city. It would thus appear that not only the prospect of growing old unmarried was greatly dreaded, but also the general Athenian attitude to spinsterhood was averse and discouraging. The majority of Athenian widows therefore got remarried to avoid living the life of a spinster and growing old in widowhood. This situation, however, would probably not be the case of a widow with adult sons.

Financial consideration may also have been a factor for the remarriage of the Athenian widow. An unmarried woman would certainly have been financially dependent on her kin, and one whose relatives were

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[253] 13.44-46.
[254] Cf. also Is.6.51 noted above.
[255] Ar. *Lys.*493.

poor could face destitution and be driven into prostitution, as the jury is informed in a speech of Demosthenes:

" For as things are now, even if a girl is poor, the law provides for her an adequate dowry, if nature has endowed her with even moderate comeliness; but if through the acquittal of this woman you drag the law through the mire and make it of no effect, then the trade of the harlot will absolutely make its way to the daughters of citizens, who through poverty are unable to marry, and the dignity of free-born women will descend to the courtesans, if they are given licence to bear children to whomsoever they please, and still share in all the rights and ceremonies and honours in the state" (59.113).

It is a fact that some work was available to women in Athens, it was probably scarce and certainly not remunerative, and opportunities for paid work within one's own home must have been very limited.[256] At any rate, it is informative that some women did some work to contribute to the family budget. In Xenophon's *Memorabilia*, Aristarkhos complains to Socrates that as a result of the political turmoil brought about by the oligarchic revolution in Athens several homeless female relatives have moved into his house, and consequently he has to maintain no less than fourteen people. But as a solution to this financial strain, Socrates suggests that these relatives must be put to work to make clothes. Though

Aristarkhos,as we are told, is at first reluctant, he subsequently sets his womenfolk up in a wool-working business, and in the end they make clothes for their own maintenance and also achieve great job satisfaction.[257]

It is not possible to assess what proportion of Athenian women undertook paid work, or how easy it was for them to find it. Moreover, it is obvious that in the fourth century there was still a stigma attached to the working woman, implying that any such woman was an alien.[258] However, the economic stress which Athens experienced as a result of the Peloponnesian War, and her subsequent loss of empire, would, without doubt, have caused an increase in the number of women seeking employment of any kind, and some of them, like Aristarkhos' relatives, may have been relatively well-born. The situation is evident in the account of the speaker of Demosthenes 57:

" For even if a nurse is a lowly thing, I do not shun the truth. For it is not our being poor that would mark us as wrongdoers, but our not being citizens; and the present trial has to do, not with our fortune or our money, but with our descent. Many are the servile acts which free men

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[256] Cf.Lacey, *Family*, p.170-172; Schaps, *Economic Rights* ,p.18-20; Blundell, *Women*, p.145; Cox, *Household*, p.152-155.
[257] Xen. *Mem*.2.7.1-12.
[258] Dem.57.31.

are compelled to perform, and for these they should be pitied, men of Athens, rather than be brought also to ruin. For, as I am informed, many women have become nurses and labourers at the loom or in the vineyards owing to the misfortunes of the city in those days, women of civic birth, too; and many who were poor then are now rich" (57.45).

Thus, on the strength of the prevailing circumstances, it is not surprising that some widows would have taken up some kind of job as their contribution to their care and maintenance. Incidentally, at the time Demosthenes 57 was delivered, the speaker's mother had been left a widow and was still seen selling ribbons in the *agora* (57.34). Aristophanes also informs us of a widowed mother said to be producing garments in great quantity and taking orders in advance.[259] However, such economic ventures as a widow might engage in may not be financially rewarding to enable her to live on her own without marrying again.

The situation of widows whose husbands died leaving them with children in their minority, as in the case of Kleoboule in Dem.27-29, or the widow of Euthykrates in Is.9, or Diodotos' widow in Lys.32, could be a factor for remarriage. The sons who would still be in their minority would certainly not be in a position to support their widowed mothers.

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[259] Ar. *Thesm.*457-458.

And a widow's *kyrios*, if he was married and also had children, might certainly find it a heavy sponge on the family's resources if he should continue to keep the widow in the house. Therefore, for most kinsmen of such widows, the most prudent action would have been to give them in second marriages to relieve them of the financial pressures on their own families.

The socio-political aims of marriage in Athens could also urge the father of a widowed daughter, or the brother of a widowed sister to give her in a second marriage. For beside the fundamental aim of marriage to produce children, marriage in Athens was considered as a form of alliance with socio-political groups, and a harmonising agent for bringing together acquaintances and feuding families. As Isaios says:

" A convincing proof of their enmity is the fact that, though Eupolis had two daughters and was descended from the same ancestors and saw that Apollodoros was possessed of money, yet he gave neither of them to him in marriage. Yet it is generally held that marriages reconcile serious animosities not only between relatives but also between ordinary acquaintances, when they entrust one another with what they value most."[260]

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[260] Is.7.12.

Here, not only do we see that certain marriages could be arranged to strengthen family bonds and promote the general welfare of the families, but also the principle of socio-political alliances by marriages is quite evident.

It is significant also that the marriage of Diogeiton's daughter to his brother in Lysias (32.4-7), as well as the intended marriage of Meidylides' daughter to his own brother Arkhiades in (Dem.44.10), was in fact, also meant to ally the *oikoi* of the brothers concerned who held joint property, and to concentrate the family estate within the households.[261] Thus, the young and childbearing Athenian widow, like any other Athenian female of marriageable age, was obviously an asset to her natal kin for the necessary socio-political links and the deterence of feuds. She would thus in no time be given in marriage by her father or nearest adult male relative whenever the occasion arose.

Above all, a woman's legal and economic rights were severely constrained by Athenian custom and law, as noted above. By and large it was her father, and then her husband or legal representative who represented her in law and in any large-scale economic venture. In economic transaction for instance, a speaker of Isaios informs us of a law that seems to forbid a woman to engage in any economic activity beyond a certain limit:

" Again, if they declare that Demokhares adopted Aristarkhos(II) after the death of Aristarkhos(I), they will likewise be lying. For a minor is not allowed to make a will; for the law expressly forbids any child, or woman, to contract for the disposal of more than a *medimnos* of barley"(10.9-10).

It would appear that although we have evidence of women engaging in economic transactions,[262] technically, the law seeks to forbid a woman from all transactions involving large sums. In such ventures she would have to be represented by her *kyrios*.

The early age at which women married in Athens also certainly contributed to maintain and justify her dependence on a man, although as a wife she had certain responsibilities in her husband's household.[263] And, if the woman was of the poorer class, she herself was responsible for domestic production, or worked in the market.[264] Thus, although she certainly did what her husband told her, she must no doubt have some sense of her own capabilities. And at the death of her husband, she might probably wish for more independence by living on her own.

But there was also the suspicion hanging on her head, or the societal scrutiny of her conduct as a widow. As Perikles' address to the

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[261] Cf. Davies, *APF*, p.195; Cox, *Household*, p.35. For further discussion on socio-political reasons for marriage, see Thompson in *Phoenix* 21(1967),273-282,esp.280; Wevers, *Isaeus*, p.105-106.

[262] Lys.31.21; Dem.36.14-15; 41.8-9. For information from inscriptions on women transacting economic ventures apparently above the limit set by the law see Schaps, *Economic Rights*, p.52-53,133,notes 49-51.

[263] See Dem.59.122; Xen. *Oec.*7.19,35-39.

widows of fallen warriors (Thucy.2.45.2) is interpreted,[265] the widow could trespass the bounds of morality, as well as become sexually predatory towards young men, and was therefore considered sexually dangerous. A kinsman may therefore expect his young and childbearing widowed daughter or sister to get remarried and perhaps to avoid being under societal scrutiny.

Furthermore, if her husband died, the widow's father might also be dead, and if she had an adult son or a brother he could hardly exercise the same authority as *kyrios* in certain circumstances as a husband. And her situation became even more vulnerable if she was childless. In the circumstances, it would not be surprising for such a widow to be given in marriage again by whoever would be exercising legal authority over her.

The remarriage of the widow who was not an heiress followed the same procedure as her first marriage. But the position is not very clear with that of a widow who was already an heiress. It is, however, most probable that her remarriage followed the same procedure as her first marriage, in conformity with the line of succession in the ἀγχιστεία according to the Athenian law and by the judgement of the court.[266] Certain passages in Demosthenes also seem to imply that even if a widow who was an heiress had been betrothed by her husband in his will to a

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[264] Cf. Dem.57.33-35; Schaps, *Economic Rights*, p.61-63; Golden, *Phoenix* 33(1981),329.
[265] Walcot, *G&R* 20(1973),111-121; Andersen, *SO* 62(1987),33-49.

second husband, the prospective second husband could lay claim to her as would have been the case with an heiress who was not a widow.[267]

The examination above attempted to establish, among other things, that in her widowhood during the transitional period until she got remarried, the Athenian widow came under the guardianship and care of her father if he was still alive, or her nearest adult male relative(s), most often her brother(s), if the father was dead at the time her husband died. In law she was represented by her father or whoever exercised legal power over her, and who had the authority to give her in marriage. Her maintenance also became the responsibility of her father or brother(s). And although kinsmen were not legally obliged to maintain and support their women who became widowed, social sanctions and possible damaging political consequences compelled kinsmen to maintain and support their unfortunate womenfolk.

It is also evident that the majority of young and childbearing widows got remarried after the death of their husbands. And, although even among this category of widows, some of them who had got children would probably have wished to remain in widowhood, they could be given in marriage against their will. This is because Athenian marriage custom and practice gave the woman no voice in the choice of her husband, or any part to play in the contraction of her marriage. Also, the

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[266] Is.3.58; 6.51-52; Dem.43.16,51;46.22; MacDowell, *Law*, p.103.

remarriage of the Athenian widow was not only conditioned by her age, financial background, and the provisions made by the husband in that respect in his will, but also motivated by prevailing social, economic, and political circumstances, and the general legal restrictions on women.

But once she got remarried, she certainly went out of the class of widows, and the condition of widowhood. Now her legal duties, care and maintenance, and everything else became the responsibilities of her new husband who was expected dutifully to perform them, as a speaker in Demosthenes seems to imply in the following words:

" My father, then having thus married my mother, maintained her as his wife in his own house; and he brought me up and showed me a father's affection such as you also all show to your children" (40.8). Thus, while an orphan would still remain an orphan, a widow could cease to be a widow by getting remarried after the death of her husband.

[267] Dem.45.3-7;46.18-23.

CHAPTER 4

PREGNANT WIDOWS

The ancient sources on pregnant widows in classical Athens are indeed slender. None the less, it appears from the scrappy and incidental references to them in the orators that the pregnant widow was one of the two categories of women who, together with male orphans, enjoyed the special protection of law in Athens. The other was the heiress. The legal protection of the pregnant widow is derived from a law quoted in Demosthenes, *Against Makartatos*. The relevant section of the law, the full text of which is quoted elsewhere reads as follows:

Ὁ ἄρχων ἐπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων καὶ τῶν οἴκων τῶν ἐξερημουμένων καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν...

"The archon shall take care of orphans, heiresses, houses which are left empty, and those women who remain in the houses of their deceased husbands, saying that they are pregnant..."[268]

The law is not dated, as noted by MacDowell;[269] and as far as we can tell, the laws to be administered by the archon came first in the Solonian code.[270] It thus seems clear that the archon's office was the

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[268] Dem.43.75. The full text of the law has been quoted above in the discussion on ' The Archon and Administration of Justice in Matters Concerning Widows and Orphans.'
[269] *CQ* 39(1989),19.
[270] Cf.R Stroud, *Drakon*,p.32-33.

greatest authority in the sixth century.[271] Since we have no knowledge of any existing laws about the heiress before the time of Solon, and this law has its concern for the care of the heiress as well as the male orphan and the pregnant widow, and since Solon had assigned to the archon the responsibility to administer the entire law affecting the family and its property, the law may most probably be ascribed to Solon.[272]

The occurrence of οἶκος twice in the text of the law, however, appears problematic. Particularly, it is not very clear what the referential of τῶν οἴκων is in the law; and so the phrase appears intrusive. But MacDowell, in his article in the *CQ* cited above has offered possible interpretations of it (19-20), that I think resolve the issue. In fact, τῶν οἴκων connotes economic and social implications. In the economic sense, it implies property of all kinds, as noted by MacDowell. In social context, it implies locative places of residence (houses), for social interactions among the inmates. But as rightly pointed out by MacDowell, οἶκος in the text of the law does not imply 'family' in the legal sense. It had indeed acquired the sense of 'family' by the late fifth and the fourth centuries, when the orators used it in that sense in their arguments.[273]

But Pomeroy(*Xen.* p.213-214,n.2), and Patterson(*Family*, p.241,n.8), reject MacDowell's claim. They rest their criticisms on

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[271] See *AP*,13.2; Thucy.6.54.6.
[272] Cf.Lacey, *Family*,p.90; MacDowell, see n.2 above.

Aristotle and Xenophon's concepts of the nuclear family of which the slave was a member. What then, do the orators mean by οἶκος? If Isaios or Demsothenes says that the οἶκος of an Athenian is left desolate or empty, he means that the person has no direct male descendant, though the collateral family is still in existence. And if an Athenian has no direct male descendant, then he has no heir.[274] It is evident that the language is technical, with legal implications. But that could not have been the context in which τῶν οἴκων is used in the law. As MacDowell has noted, it refers to 'properties' under the control of no man, or empty houses with no male inhabitant.

Thus, if MacDowell argues that οἶκος in the law is not a legal term for 'family' he means family in the sense of rightful membership or right of inheritance in the household. He does not mean the literal and later Aristotelian *oikos*, of which the slave was a member,[275] or the Xenophontean nuclear family.[276] This was a later concept resulting from the social and political trends of the late fifth and the fourth centuries when self-conscious attention to lineage and ancestors became more typical of the elite families who were striving for pre-eminence in the

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[273] Cf. also Rhodes, *Comm. AP*,p.633-4.
[274] Cf.Dem.44.2; MacDowell, *CQ* 39(1989),20.
[275] Arist. *Pol.*,1252a25ff.
[276] Xen. *Oikon.*,7.21.

increasingly democratic Athenian society than of earlier archaic Greek society in general.

It seems to me, therefore, that Pomeroy's and Patterson's rejection of MacDowell's claim is particularly hypercritical. It is noteworthy that Aristotle and Xenophon are classical writers, and wrote at a time when οἶκος had either completely imbibed, or was in the rapid process of assimilating the extended technical meaning of 'family', which in fact was not originally implied in the law in Demosthenes 43.75.

RESIDENTIAL STATUS

One other aspect of the law, which also requires attention, is the expression: καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν: " and those women who remain in the houses of their deceased husbands, saying that they are pregnant." Does it imply that all pregnant widows were bound to remain in the houses of their deceased husbands, or some left to live with their kindred? If the latter situation also applied, does it mean that such widows were not to be taken care of by the archon? What did Solon mean by this statement when he enacted his law? And what did Demosthenes think that Solon meant when he quoted the law for his client? These are by no means very easy questions to answer. To the contemporary

Athenian there would have been no ambiguity. For us the indication in the law is not decisive enough to enable us to know clearly the implications and what exactly the residential position of the expectant widows was at the death of their husbands. Hence, commentators have had to approach the issue not only guardedly, but also with seeming inconsistency and much hesitation.[277] In seeking the most probable implications of the statement, therefore, we must examine evidence from Lysias and Hyperides from which we may hopefully be able to establish the pregnant widow's residential status.

In a speech in which the defendant, Agoratos, is accused of the murder of Dionysodoros, one of the victims of the Thirty Tyrants whose atrocities had such damaging consequences on Athenian family life at the time, Lysias' client recounts a meeting between a group of condemned men waiting to be executed and their womenfolk in the following light:

" Now, when sentence of death, gentlemen, had been passed on them, and they had to die, each of them sent for his sister, or his mother, or his wife, or any female relative that he had, to see them in the prison, in order that they might take the last farewell of their people before they should end their days. In particular, Dionysodoros sent for my sister (she was his wife) to see him in the prison. On receiving the message she

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[277] See Harrison, *Law* (i), p.38-39,n.9 on 39, also 44,111; Rhodes, *Commentary*, p.633; Davies, *APF*, p.265; Boer, *Morality*, p.35; MacDowell, *Law*, p.88; Gould, *JHS* 100(1980),43; Thompson, *De Hagniae*, p.103.

came, dressed in a black cloak …[278] as was natural in view of the sad fate that had befallen her husband. In the presence of my sister, Dionysodoros, after disposing of his personal property as he thought fit, referred to this man Agoratos as responsible for his death, and charged me and Dionysios his brother here, and all his friends to execute his vengeance upon Agoratos; and he charged his wife, believing her to be pregnant by him, that if she should bear a son she should tell the child that Agoratos had taken his father's life, and should bid him execute his father's vengeance on the man for his murder."[279]

We cannot tell exactly why the victims invited only their womenfolk to this farewell meeting. None the less, the passage is very significant, particularly with its emphasis on the meeting between Dionysodoros and his wife. Here, we are informed of the wife's presence when her husband made his will. There is no doubt that this gave the woman the opportunity to know the contents of the husband's will and how his property had been disposed of by him. But more importantly, Lysias informs us of a pregnant woman whose husband had been executed by the state, making her a pregnant widow. From this passage also we may be able to establish the residential status of pregnant widows in the situation of the widowed wife of Dionysodoros.

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[278] There is a lacuna here in the text; but Lamb in a footnote,p.301,note c, suggests that there might be some words describing another sign of mourning.
[279] Lys.13.39-42.

We are not in a position to know the contents of the will of Dionysodoros regarding his pregnant widow. But it is most probable that both his brother, and his brother-in-law the speaker, were given a joint oversight responsibility over the woman. Alternatively, Dionysios his brother, most likely to have been appointed guardian of the posthumous child, would probably have had to act as guardian of the woman as well.

And although the passage does not say precisely where the woman should stay, it appears from the tone that under normal circumstances, Dionysodoros' pregnant widow would certainly have remained in his house. But we also know that the property of a man executed by the state was confiscated and sold out to people who wanted to buy them. In the circumstances, a pregnant widow, like the widow of Dionysodoros, was bound to vacate the οἶκος of her deceased husband to live with either her kin, or a brother of the husband. Thus, if some pregnant widows did not so remain in the houses of their deceased husbands, it was pregnant widows in the category of the widow of Dionysodoros.

With regard to the position of pregnant widows not in the situation of that of the widow of Dionysodoros, the fragmentary speeches of Hyperides in defence of Lykophron provide valuable information.[280] In

[280] On the background of Lykophron and the circumstances leading to his indictment, see the editorial introduction to the speeches by Burtt, *Minor Attic Orators II*,p.370-374. Burtt seems to doubt the

the first speech for the defence, the orator informs the jury that the woman's husband died leaving her pregnant by him.[281] Like several other Athenian women, her name is not mentioned. This should not be surprising; Athenian women were scarcely identified by their own names.[282] However, she is identified as the sister of Dioxippos.[283] What seems a bit strange is that the husband's name is not mentioned either, except that he was disabled. We have no idea of what provisions the husband made for his widow. But we do know from the two speeches that he had made certain arrangements for the posthumous child in his will.

In the husband's will, a certain Euphemos[284] had been appointed as guardian of the posthumous child to be responsible for its nurture and care, and for the management of its property until his age of majority. If the child should die, at birth or later, certain relatives should inherit the property (1.frag.4(5).47). The relationship of Euphemos to the deceased does not seem quite clear. It has been suggested that he was a brother to the deceased.[285] But this is not likely. First, the speaker indicates in 1.frag.4b.5 that the brother Dioxippos, in fact, attended the woman's wedding for her second marriage because he was giving the widow in

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authenticity of the second speech,p.398-399. But since he does not prove his claim with certainty, and appears to be the only dissenting voice, we may assume that the speech was by Hyperides.

[281] 1. Frag.4(5).47.

[282] Cf. Schaps, *CQ* 27(1977),323-330; Gould, *JHS* 100(1980),45.

[283] 1. Frag.4(b).6. On Dioxippos see Diodor.17.100-101.

[284] Probably the Euphemos whose daughter the speaker of Dem.40 married. See 40.12.

[285] Blass, noted by Burtt, n.280 above,p.327,n.b.

marriage. This implies that he was the only brother of the bride.[286] Secondly, the speaker informs the jury in the preceding section that the nearest relatives of the deceased tried to eject Euphemos from the property of the deceased, but others of them prevented those relatives from ejecting him(1.frag.4(5).47). It would seem therefore, that Euphemos could not have been a brother of the woman, or a relative of the deceased but most probably his trusted friend.

A few seeming obscurities in the evidence need to be addressed. It is noteworthy that Euphemos' appointment as guardian of the posthumous child naturally implies that he had been given immediate responsibility to be guardian of the woman as well. The widow would thus live under his legal authority until she gave birth to the child. We are also informed that in her second marriage it was Euphemos who dowered the woman to the tune of one talent of silver.[287] But as already noted, the speaker informs us of Dioxippos' presence at the sister's wedding because he was giving the widow away in marriage.

Significantly, the Greek text is emphatic on his presence: ...ἔπειτα δὲ παῖδας τοὺς προπέμποντας αὐτὴν ἀκολουθεῖν καὶ Διώξιππον. καὶ γὰρ οὗτος ἠκολούθει διὰ τὸ χήραν ἐκδίδοσθαι

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[286] Cf.Burtt, ibid.
[287] 1.Frag.4b.13.

αὐτήν: "And then her escort of boys, and also Dioxippos. For he was in attendance, too, since she was a widow being given away in marriage."

However, in the second speech, the speaker indicates that when he was about to marry his sister to Kharippos the second husband, Dioxippos went away to Olympia where he won a crown for his city.[288] So under whose authority was the woman living at her second marriage? And was it usual in Athenian marriage custom for one person to betroth and give a woman in marriage and another to dower her? Again, how do we reconcile the evidence regarding Dioxippos' presence at his sister's wedding and his absence to Olympia at the same time?

In the first place, we should dismiss forthwith any idea that Euphemos' attempted ejection by the deceased's relatives was meant to make him vacate the deceased's house. For as we know, being appointed as guardian did not imply that the person so appointed should necessarily move into the residence of the deceased, unless otherwise stated by the testator himself, especially if he betrothed his widow to the guardian in a second marriage.[289] Thus, Euphemos' guardianship of the woman did not imply that he moved into the house of the deceased. With regard to Dioxippos' presence at the wedding and absence to Olympia, the simple explanation is that his sister's wedding did not take place until his return

[288] 2.frag.13.
[289] Cf. Dem.27.5,13.

from Olympia. But the question is, why is it that it was Euphemos who provided the dowry in her second marriage, and not Dioxippos?

By Athenian marriage custom and practice, it was a woman's kin or her legal representative like her husband, or appointed guardian who dowered her in marriage. And since Euphemos seems to have held her dowry (we do not know how much dowry she went with in her first marriage) until her second marriage when he dowered her, it could be assumed that the woman remained in her deceased husband's house though under the legal authority of Euphemos until she gave birth to the child. It is most probable that even after the child was born she continued to live in the deceased husband's household until her second marriage when she left to take up residence with her second husband.

A second and weightier evidence for the woman's continued residence in her husband's house until the child was born is the orator's refutation of the prosecutor's allegation that Lykophron had dug through the wall of the deceased's house to have intercourse with his wife when he was alive. The speaker argues to the jury in the second speech:

" As for his digging through the wall to have intercourse with the woman: that is quite incredible. For the accuser has not shown either that he fell out with the people who had previously been serving him and readily submitting to any orders he gave them, or that they had a quarrel with him and so refused their services, thus inducing Lykophron to dig

through the wall,...Besides, it is almost out of the question for her servants to have quarrelled with him. Which one of them could have grown so rash as to withhold either his messages to her or hers to him for reasons of personal spite? For the danger was imminent...In actual fact they saw their master in an extremely weak condition and had their mistress, the future ruler of the household, constantly before their eyes as a reminder, if he died, they would be punished in return for what they had done against her wishes. It is therefore incredible that Lykophron dug through the wall; nor was he accustomed, as the accuser claims, to converse with the servants'' (2frag.1.1-3).

It is noteworthy that the slaves' acknowledgement of their mistress' status as the future ruler of the household at the death of her husband, as told to the jury in this passage, emphasises three aspects of the woman's position in her husband's house. First, it shows the woman's power and authority to punish or reward any of the slaves as she thought fit in the deceased husband's house. The passage indicates also the widow's administrative role in the household until the husband's heir took over the administration of the household from her. But most importantly, it underscores the widow's continued residence in her husband's house, hence the slaves' fear of punitive measures from her after the death of her husband if they should incur her displeasure when their master was alive.

I therefore give the following interpretations to; "...and those women who remain in the houses of their husbands who have died, saying that they are pregnant": At the death of their husbands:

(i) some non-pregnant widows, exercising their customary right of choice, left their deceased husbands' households to live with their kindred; (ii) some pregnant widows, because of some special circumstances applying in their case or situation necessarily had to vacate their husbands' households also to live with either their kindred or their husbands' kindred; (iii) some others, although not pregnant, but on grounds of age, and of the fact that they had adult sons living in their fathers' houses, also exercised their customary right of choice and decided to remain in their husbands' houses with their adult sons; (iv) then there was another category of widows who, under normal circumstances, had to remain in their husbands' houses. These, no doubt, were pregnant widows.

In fact, but for any disruptive situation, like the case of the pregnant widow of Dionysodoros, which would necessitate the immediate vacation of the husband's house by the widow as soon as confiscation of property was announced, this category of widows remained in their deceased husbands' households under the authority of their appointed guardians. They were placed under the special protection of the archon, as the law directs, until they gave birth to their children. For pregnant

widows, therefore, the customary right of choice for a widow whether to remain in her deceased husband's household or leave for that of her kin was just notional and not practically effective.

What is not clear is whether expectant widows whose husbands were executed by the state were not covered by the law cited in Dem.43.75. It in fact seems most probable that the archon's special protection did not stretch over them. This may not be surprising. An Athenian son inherited from his father not only his property and debts, but also his enmities.[290] It would appear, therefore, that the state had no concern for the families of men who were considered as criminals, and executed by the state, but would even punish the sons of such men for the offences committed by their deceased fathers or ancestors.[291]

And since it was for the sake of the child a pregnant widow was bearing that she came under the protection of the archon, if the husband of a pregnant woman was considered a criminal and therefore put to death by the state, it would imply that she and the posthumous child most probably became disqualified from coming under the special protection of the archon. There is no evidence for that to enable us draw a definite conclusion, though; but that appears to be the most logical corollary of the situation. Naturally, it seems that no one would want to protect and

[290] Is.1.11; 9.16-20; Lys.13.42; 17.3.
[291] Lys. 14.39-42;18.11,22; 19.

preserve the family of a criminal, let alone the Athenians who visited the offences of fathers and ancestors unto their sons or descendants.

MAINTENANCE AND SUPPORT

The fact seems to be stressed by Stroud that widows and orphans were supported by the Athenian state in the form of grain or food distribution, and that the archon was to see to this kind of state support. The basis for this state support for widows and orphans is derived from the lexicon of Harpokration under the word σῖτος. The reference is made to Demosthenes *Against Aphobos* (I) (Dem.27.15), in which the word occurs. The citation further implies that it was, according to Aristotle, a provision with regard to maintenance of women and orphans; and attributes its institution to Solon as in his first axon.[292] The same evidence and ascription of the rule to Solon is found in Dindorf's edition of Harpokration's Lexicon.[293]

On the basis of this evidence, Stroud cites a Harpokration mention of a Solonian law sanctioning state distribution of food to widows and orphans.[294] He reinforces his confirmation of the Harpokration evidence in an article in the following words: "In view of Solon's concern for the preservation of the Athenian οἶκοι and the certain

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[292] See Bekker,1833,p.166.
[293] Cf.Dindorf, *Harpocrationis Lexicon*, 1(1969),p274.
[294] Cf. R. Stroud, *Drakon's Law on Homicide* (Berkeley, 1968),p.32.

evidence that his first axon instructed the archon to provide food for widows and orphans, excessive scepticism is unjustified."[295]

It is quite evident that Stroud has pieced together the first part of the law cited in Dem.43.75, and the first and last bits of the summary of the same law in the *AP* 56.7. As far as we know, the Solonian law that puts orphans, heiresses, and widows under the care of the archon is what we have in these references. A few questions must therefore be addressed regarding this law *vis-à-vis* support for widows and orphans. Does the evidence in Dem.43.75 and *AP* 56.7 necessarily imply maintenance of widows and orphans by the state? And which category of widows, granted that, that is the implication?

But " The archon shall take care of orphans, and heiresses, and of all widows..." in Dem. 43.75 does not indicate that the archon should provide food for orphans, heiresses, and pregnant widows. And none of the cases in which the law is cited in the sources does imply state provision of support to these people through the archon. Furthermore, the evidence in *AP* 56.7 that editors refer to does not say that the archon was expected to distribute food provided by the state to those under his care. Or is that what...τοῖς παισὶν τὸν σῖτον οὗτος εἰσπράττει: "he exacts

[295] Stroud, *Hesperia* 40(1971),288. See also n.18, where he cites several other references in support of his claim.

maintenance for children" points to? And so the archon was expected to take the state to task if it failed to meet this commitment.

This statement in *AP* 56.7 has technical implications at the state level. I think that it implies the enforcement of a duty by a legal procedure administered by the archon against a guardian who failed to provide for his ward or wards. It does not point to the fact that the archon should see to the provision of maintenance for orphans by the state. So the alleged scepticism that Stroud tries to discard becomes deepened.

Even the archon's preservation of the Athenian οἶκοι, as contained in the law appears to raise questions. For instance, in what way was the archon expected to prevent an Athenian household from becoming extinct? As noted in the section on ' The Archon and Administration of Justice in Matters Concerning Widows and Orphans,' it is not quite clear what was the nature of the archon's role in this task. For it does seem that he could exercise his authority of maintaining the continuity of a family only through the settlement of inheritance disputes, and claims to inheritance and heiresses. For the sources indicate that all such disputes, claims, and other legal matters concerning orphans, widows, and parents fell under his jurisdiction.[296]

[296] See *AP*,43.4;56.6; Andok.1.117-121; Aeschn.1.158; Is.3.46-7; Lys.26.12-13; Dem.35.47-48;37.46;43.54;46.22;48.23-26; Hyp.4.6.

I think, therefore, that, to take the reference to σῖτος in Demosthenes *Against Aphobos* (a) (Dem.27.15) to imply state distribution of food to widows could be misleading. Demosthenes certainly uses the word in this speech. But throughout the 69 sections of the speech, the orator uses the word once (27.15), in the context of general maintenance: he says that though his guardian Aphobos has the widow's dowry he did not care for the woman. Here, Demosthenes says that Aphobos has failed to provide for the general maintenance and support of the widow. He expresses the same sentiment, using the word σῖτος, in speech 28.11, and then in 29.33. But in all these instances, the orator, in fact, uses the word from a financial point of view. The evidence can therefore not imply any kind of state support for the widow.

That the practice of state support for orphans was known as far back as 478-462B.C. is certain, as the author of the *AP* tells us, writing about this period: " Furthermore the prytaneion, orphans, and warders of prisoners – for all of these had their maintenance from public funds."[297] But even here, the orphans mentioned were war-orphans, as editors rightly identify, and on which I totally agree with Stroud.[298] It was this category of orphans who were supported at public expense, and not orphans in general, let alone widows.

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[297] *AP*,24.3.
[298] *Hesperia*,op.cit.288.

It is significant that soon after his Seisachtheia in 594/3B.C., Solon made a law forbidding the export of natural products except olive oil (Plut.*Solon*,24.1). It would appear that this law had the objectives not just to encourage the cultivation of olives as the increased output of olives would take a generation to become effective,[299] but particularly to promote the export of olive-oil in which there was already a surplus. And more importantly for our purpose, Solon passed this law in order to retain all food supplies for the feeding of the great number of liberated slaves and repatriated slaves and exiles which may have caused a sudden increase in the population of Attica as a result of his Seisachtheia.

The law regarding the care of orphans, heiresses, and widows, cited in Dem.43.75, and *AP*,56.7, may most probably also belong to this period of social upheaval. Possibly, the law punishing a son by stripping him of his franchise for failing to maintain his parents also belongs to this period.[300] However, there is no evidence that even in Solonian Athens the archon's care of orphans and widows included provision of food to widows. And for his obligation to care for these people, it is not quite clear whether his duties went beyond bringing cases about them to court and presiding over their hearing and implementing the court's decision.

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[299] Cf. Hammond, *JHS* 60(1940),80.
[300] Cf.Diog. Laert.1 *Solon*,55.

Of course, it is hard to ignore the fact that state support for war-orphans may have been one of the Solonian laws, as evidence from Diogenes Laertios seems to point to:

" He curtailed the honours of athletes who took part in the games, fixing the allowance for an Olympic victor at five hundred drachmae,...It was in bad taste, he urged, to increase the reward of these victors, and to ignore the exclusive claims of those who had fallen in battle, whose sons ought, moreover, to be maintained and educated by the state.''[301] It is significant, however, that only orphans of those killed in war were maintained by the state, and that neither ordinary orphans and widows, nor war-widows were covered by the law.

From this rather lengthy and seemingly digressive discussion, the following conclusions clearly emerge: (i) Demosthenes 27.15 does not imply state distribution of grain to widows;

(ii) public support for widows cannot have been part of Solon's first axon; (iii) *AP*, 56.7 does not mean the archon was to distribute grain to widows on behalf of the state. He was to be responsible for legal matters concerning orphans in general and pregnant widows, and to see to it that they were maintained by their guardians;

(iv) similarly, Dem.43.75 instructs the archon to see to the legal affairs of all orphans and pregnant widows, and to punish anyone who commits any

unlawful act against any of them; (v) widows were not supported in any way by the state even if they were war-widows.

It would therefore seem erroneous to regard the reference to σῖτος in the lexicon of Harpokration as evidence for state support for widows in the form of grain or food distribution by the archon.

Concerning the maintenance and support of pregnant widows, then, Lysias 13, *Against Agoratos*, and Hyperides 1and 2, *In Defence of Lykophron*, which have already been cited, are again valuable in that they present us with information, both implicit and explicit, about the care and support of the pregnant widow. The difficulty of knowing the contents of the will of Dionysodoros in Lysias(13.41) has been already noted. The most probable residential status of such a widow has also been stated. For special circumstances applying in the case of a pregnant wife of a husband executed by the state, the widow would be expected to live under the authority of either her kin, or the nearest adult relative of the deceased husband. He became her guardian, maintained her, and was responsible for all matters concerning her until she gave birth to the child.

As already noted, Euphemos' appointment by the unnamed deceased as guardian of his posthumous child in Hyperides naturally implies that the widow also came under his guardianship. It is a common knowledge of Athenian law of maintenance of a woman that whoever

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[301] Ibid.

supported a divorced woman, or a widow who left her deceased husband's house received her dowry. But if a widow remained in her husband's house, her dowry was kept by her grown-up son(s), if she had any, or her guardian for her support.[302] And since it was Euphemos who dowered the widow in her second marriage, it logically follows that it was Euphemos who provided for her needs, and was responsible for all other matters concerning the woman until she gave birth to the child. It could even be assumed that he maintained her until her second marriage when her second husband received her dowry for her maintenance, since it is at this stage that we hear about her dowry.

THE PREGNANT WIDOW AND HER HUSBAND'S OIKOS

As the law quoted in Dem.43.75 clearly indicates, it is their role, like heiresses, as transmitters of their husbands' property and continuity of their families that the Athenian society displayed concern for and extended protection to pregnant widows in their deceased husbands' households through the jurisdiction of the archon. For although the mention of the woman's person in the law seems to be incidental and an afterthought, it would appear that the pregnant widow served as the taproot for the future growth and continuity of her defunct husband's

[302] Dem.27.17;42.27;59.52; Is.3.35. See also Harrison, *Law* (i),p.56-57; MacDowell, *Law*,p.88.

household. This is so because it was through her that a male heir could be supplied for a household that was temporarily left without an heir.

If the woman gave birth to a girl it became an *epikleros*; and on reaching the marriageable age, was married by her father's next-of-kin. The children of the *epikleros*, in turn, were regarded as descendants of their grandfather and heir of the property. They became members of his *oikos* and continued his family line. And if there was a son among the children of the *epikleros* he inherited the estate of the grandfather on attaining his majority and continued his lineage.[303] Thus, although she could not provide the desired continuity of her father's *oikos* by her own person, the posthumous heiress through the mother as agent was nevertheless a potential supplier of a male heir to her father. This would also naturally be the situation if the pregnant widow was an *epikleros* herself, and she gave birth to a girl who also happened to be the only child of the deceased father. She herself as an *epikleros* merely served to mediate the inheritance for the claimant next in succession.

But if the pregnant widow gave birth to a son, he would on reaching his age of majority directly succeed to his father's household and inherit its wealth,[304] as well as its family cult, thereby maintaining the continuity of the *oikos* of his father. For in point of fact, the main concern

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[303] Dem. 46.20.Cf. also D. Schaps, ' Women in Greek Inheritance Law' *CQ* 69(1975),53-57; Asheri , *Historia* 12(1963),1-21,esp.16-17; Just ,*Women*,p.31-32; Pomeroy, *Families*,p.123.
[304] Hyp.*Lyk.*1frag.4(5).47.

of the law in this matter of succession and continuity of the *oikos* was to ensure the correct or proper transmission of property and of religious rights and duties through direct male descent.[305] Thus, whether the pregnant widow gave birth to a girl or a son, she served as the life-line of her deceased husband's household for the proper transmission of her husband's property and religious responsibilities.

The pregnant widow's position seems to extend beyond being the live-wire of her husband's household. She was indeed the principal determinant of the fate or future position of her husband's estate in relation to his kinsmen; and for a period, played the role of postponing any litigation and portioning out of the husband's property by his kinsmen. This could be seen from two fundamental principles. Whether her deceased husband's estate would be inherited directly by his own son or indirectly by his grandson depended upon her. Moreover, if the husband died without an issue, his estate in any case, would devolve on his next-of-kin in the ἀγγιστεία.[306] But for all we know from the orators, inheritance by kinsmen in the ἀγγιστεία was not quite an easy matter in Athens; and in the majority of cases the issue had resulted in almost endless litigation with the estate passing from kinsman to kinsman.[307]

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[305] Cf. Is.2.46;7.30.
[306] Dem.43.51.
[307] Dem.43, and the speeches of Isaios are excellent illustrations.

And the case of Mantitheos and Boiotos (Dem.39;40), is illustrative of how lengthy and persistent litigation could be even where there were direct descendants. We learn also from Hyperides' speech for the defence of Lykophron the concerted efforts of the kinsmen of the deceased brother-in-law of Dioxippos to prove his posthumous child illegitimate to deprive him of his patrimony. The situation appears even more complex and irritating in cases like that of Nikostratos in Isaios 4, where no direct adult descendants were readily available to defend their right to their patrimony.

Such a situation would naturally seem to present an open invitation to those ready to construct fictive genealogies, or exaggerate the closeness of existing kin relations in order to inherit the estate. The pregnant widow therefore served as a brake on claims to her husband's estate by his kinsmen, and postponed some of the inheritance disputes. In the majority of cases also, she served as a deterrent to relatives of the deceased who would otherwise have litigated for his estate at his death.

In the two cases of pregnant widows cited in Lysias and Hyperides, the indication is that the widows' pregnancies were the first in their marriages. It would seem that under normal circumstances, a pregnant widow of this status – with no living children – became the immediate occupier of the otherwise desolate house of her deceased husband. This seems to explain further τῶν οἴκων in Dem.43.75

implying the sense of houses, as pointed out by MacDowell (*CQ* 39(1989),20); and with reference to pregnant wives who remain ἐν τοῖς οἴκοις of their dead husbands. At the man's death, his house became temporarily desolate without a male inhabitant; and it was his pregnant widow who became the immediate occupier and *de facto* administrator of the otherwise desolate house of the husband (Hyp.*Lyk.*2,frag.1.3).

It is significant that the law's concern with regard to the archon's protection for pregnant widows in their defunct husbands' households has also a political dimension. Aristotle informs us that the household was the fundamental unit of the *polis*.[308] And, as Just rightly points out,[309] in a society still expressing its unity through the medium of kinship and family, any interference with the correct or right succession of the constitutive houses of the *polis* amounted to a threat to the state itself. The pregnant widow, therefore, served as a regulator for the right succession in her husband's house as a unit of the composite houses of the *polis*. In this way, she played the important role of contributing to the maintenance of a continuing social and political order in the husband's community to ensure the stability of the general fabric of the state.

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[308] *Pol.*1.1.3-6.
[309] *Women*,p.32.

CONCLUSION

To summarise then. In this attempt, some of the issues raised regarding the status of pregnant widows may seem inferential; but although inferences *ex silentio* may always be suspect, in this exercise they are hard to resist. It is noted that the pregnant widow enjoyed special protection not extended to ordinary widows in the society in general. This special protection under the jurisdiction of the archon, however, appears to be conditioned by two important circumstances. First and foremost, the protection was given to them because of the children they were bearing. Secondly, it seems that it was pregnant widows living in their husbands' houses who were covered by the law.

Οἶκος in the law quoted in Dem.43.75 did not originally imply 'family'; it acquired that technically extended meaning in the orators in their law court speeches during the classical period when self-conscious attention to lineage and ancestry became very typical of the Athenian intelligentsia who were striving for pre-eminence in the fast-growing democratic Athenian society. Normally, a pregnant widow was expected to remain in the deceased husband's house under the guardianship of the man appointed to be guardian of the posthumous child when it was born, until she gave birth to the child. Because of special circumstances applying in the case of pregnant wives of men executed by the state, such

widows were bound to vacate their husbands' houses to live with their relatives or their husbands' kin.

There was no kind of state support in the form of provision of grain or food to any group of widows in classical Athens, as the impression seems to be created by some commentators. Even with war-orphans, it is not certain whether the state distributed grain to them, besides the grant of an obol a day each that was given. The archon's care for orphans, heiresses and widows as authorised by the law cited in Dem.43.75, and summarised in the *AP*,56.7,was a directive to the archon to ensure that these people, deprived of their masters, were provided for by their guardians; and to take legal action against any guardian who failed to do so, or committed any unlawful act against any of them.

It would therefore appear misleading to regard the lexicographer's citation of σῖτος as state provision of food to widows and orphans. The lexicographer is certainly showing awareness of two entirely different facts: (i) a material fact; that is, maintenance for women and orphans as part of Solon's laws, as is evident in the *AP*; (ii) a linguistic fact, indicating the occurrence of the word in the orator's speech. In these two instances, the lexicographer does not imply state provision of food to widows instituted by Solon. For classical Athens we have far more sources in which such evidence ought to appear, if there were any reason for its existence; but it seems to be entirely absent.

It is noticeable that the pregnant widow became the agent through whom her deceased husband could be avenged by his son if his death was intentionally caused by a fellow citizen. She also played the role of the posthumous child's first tutor or instructor regarding the family history of its father. This is evident in Lysias 13.42, where the condemned Dionysodoros enjoins his pregnant wife that if she should bear a son, she should inform him of who caused his father's death for him to execute his father's vengeance on the person.

It has also been noted that the Athenian society demonstrated concern for and extended protection to pregnant widows in their deceased husbands' households for two main reasons. First, they acted as taproots for the future growth and continuity of their husbands' lineal descent. They also became regulators for the correct or right succession in their husbands' households in order to maintain a stable social and political order in the community or the state. This civic responsibility of contributing to maintain a stable social and political order in the community and the state at large certainly gives the pregnant widow an essential role to play in the politics of the state.

The political duty of the pregnant widow runs rather contrary to the traditionally held view by commentators that women had no political role to play in the politics of Athens. I consider this orthodox opinion of commentators as groundless. Marriage in Athens was closely linked with

the political life of the state, in that it was through marriage that legitimate offspring were produced for the husband and for the state. But the woman's own citizenship, in the first instance, and her marriage by ἐγγύη, in the second instance as an Athenian woman, became a *sine qua non* of, and an essential evidence for the citizenship of her children and in any political suit regarding their status.

The pregnant widow would certainly have passed through the various customary and political processes as an Athenian woman before the death of her husband. Thus she, like her ordinary married woman counterpart in the society, had a dual political role to play deriving from her status: (i) at the state level, to produce legitimate offspring for the state; (ii) at the local level she had the civic duty to help maintain a social and political order in the community by producing citizen children. This dual political role of the pregnant widow as a woman implies, therefore, that the Athenian woman was not completely excluded from Athenian politics. But that, although she could not vote or be voted for, or speak at the Assembly, she in fact, had an essential role to play in the political life of the state; unless bearing citizen sons by the Athenian woman and using her citizenship to prove that of her children in a political suit had nothing to do with the politics of Athens.

CHAPTER 5

THE WIDOW AND PROPERTY RIGHTS

Attic lawsuits provide a number of significant examples of women holding property inherited from a brother, a cousin, or an uncle.[310] We also find some of such women claiming or contesting an inheritance in court, though not in their capacity as mothers.[311] Significantly, the court recognised such claims, and the speakers refer to the women who brought them as active disputants, though in each case a *kyrios* was the woman's representative in court. And by and large, ownership seems to be in theory, for in practice the property was always under the control and management of the woman's *kyrios*.

However, the rules of intestate succession in Athens did not provide for a widow to have a title to any portion of her deceased husband's estate.[312] In fact, Athenian women in general had no title to their husbands' estate. One might therefore think that because of the system of inheritance which gave the legitimate son all the property of his father, the totality of the deceased's estate would pass into the hands of his son or sons, or his next-of-kin if there were no children, while the widow got nothing from her late husband. But it is evident that some Athenian husbands, provided for the future needs and sustenance of their

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[310] Is.5.6,27;7.31;11.9,49; Dem.43.3-6.
[311] Is.3.3;7.2;11.17.

widows in their wills. They not only gave substantial amount of money for their dowries in second marriages, but in fact also bequeathed part of their property to them, and indeed fulfilled their social obligation by choosing their widows' husbands. A few examples may suffice.

In Lysias, we are told that before Diodotos set off for his military campaign in which he was killed, he gave a will to his brother, Diogeiton, instructing him that if he should perish in the campaign, his brother should give his wife away in a second marriage with a dowry of one talent. He further charged Diogeiton to give to his wife all the personal effects in the room. Besides these arrangements, Diodotos bequeathed to his wife twenty minae and thirty staters of Cyzicus.[313]

Kleoboule also happens to be one of the fortunate widows whose husbands provided for their future. In his will, Demosthenes (I.), her husband, had betrothed her to his nephew, Aphobos. Her dowry in this arranged second marriage was eighty minae; fifty minae of it made up from her jewelry and some cups or plates, and the other thirty minae derived from the sale of some slaves. In addition to the financial arrangements, the elder Demosthenes had left the house and its furniture

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[312] See Dem.43.51.

[313] Lys.32.5-6. For the particular room referred to in the will see above, ' The Widow and Her Kindred in Her Transitional State,' n. 245. For the value of the staters of Cyzicus see Dem.34.23; and cf. Lamb's note to Lys.12.11,*LCL*,p.252.

for the use of Kleoboule and her children, and her future husband Aphobos.[314]

We are told in Demosthenes 45 also that under Pasion's will, Arkhippe, his widow, was left a tenement house valued at a substantial amount of one hundred minae, and two talents in cash as part of her dowry in a second arranged marriage to Phormion. Moreover, Pasion bequeathed to Arkhippe some female slaves, jewelry, and everything else that the woman had in the house.[315]

Furthermore, the allegation by Aphobos against Kleoboule is also worth noting. As narrated by Demosthenes, Aphobos had alleged that his uncle, Demosthenes (I.)had left the younger Demosthenes four talents buried in the house, and had put Kleoboule in charge of that amount (Dem.27.53). Aphobos did not give the source of his information; and quite naturally, Demosthenes denies the allegation in no uncertain terms, and rejects outright any clue that it was his father who may have told Aphobos about the allegedly buried money (27.55-57). But the allegation and the denial indicate that a woman, or a widow could be put in control of a large sum of money by her husband.

We notice, therefore, the various types or categories of property a widow could have and their sources. There could be a bequest to her by

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[314] Dem.27.5,10,13,16;28.16,19;29.44.
[315] Dem.45.28. See also Wolff, *Traditio* 2(1944),57; Davies,*APF*,p.431; Whitehead,*CQ* 36(1986),12; Hunter, *Policing*,p.21; Lacey, *Family*,p.132.

her husband at his death. This category of property could comprise cash, female slaves, articles of clothing and jewels, and household items (Dem.45.28; Lys.32.6-7). A widow could also be given a dowry by her deceased husband as a kind of property for a second marriage. It is important to note, however, that since the husband would have received his wife with a dowry from her kindred which he would have had to return in the event of death or divorce of the wife, the woman's new dowry was usually a composite of her original dowry and an additional sum of money as would have been directed by her deceased husband. And her new dowry might comprise cash, as was usually the case, plates, clothes, jewelry, and a tenement house, all of which were valued as part of the dowry (Dem.27.5,13-14; 45.28; Lys.32.6).

There could also be property owned by the widow in her own right. Such property of the widow could most probably be articles given to her by her kindred at her marriage before the decease of her husband, as the case of Kiron's daughter (Is.8.8). It is also evident that Kleoboule had a very wealthy family background,[316] and thus may have entered marriage with a lot of property like clothes, jewels, and cash as gifts from her parents which she owned in her own right at the death of her husband.

The status of the *epikleros* and her patrimony will be examined in chapter 8 below. One significant thing to note here about her, however, is

that if she were a widowed *epikleros* who had no son, she would have to be claimed again by the next-of-kin according to the rules of succession in the family. Her patrimony would then transfer to him who would manage and hold it in trust for her future son. But it seems that she could also be left with property by her deceased husband for her son, as is said to have been alleged by Aphobos (Dem.27.53,55-57). It is important to note also that the house with its furniture that Demosthenes' father instructed in his will that his widow should live in with her new proposed husband and the children (Dem.27.5), was also left for her son when he came of age.

The question is, how much of such property as might be given to the widow did she own, manage, or control with rights to dispose of it? Could the Athenian widow dispose of her own property in the legal sense? For talking of ownership of property has the technical meaning of property rights which embody the right of the individual to own and dispose of his or her own property.

THE BRITISH AND GHANAIAN EXPERIENCE

In modern Europe and elsewhere including the United States, it is common knowledge that a widow has a title to her husband's estate. In 1925, the United Kingdom for instance, as part of her reforms for her

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[316] Dem.27.4; Plut. *Dem*.4.2; Aeschn.3.172. Cf. also Davies, *APF*, 121-122; Hunter, *Policing*, p.30;

welfare society, introduced the first national scheme of contributory pensions for widows and orphans in British society. By this scheme, widows and orphans were to receive a kind of support from the state. For several years the rate of benefit remained at 10 shillings a week. By and large, British widows of all categories were entitled to this benefit. And in 1946, the National Insurance Act was passed. The Act retained the benefit for widowed mothers, but restricted entitlement of childless widows to those over 50 years. Younger widows were expected to find a paid job to support themselves after a few months on benefits.

Then according to reforms of the bereavement benefits in 1998, instead of an existing lump sum of £1,000.00 to the widow within four days at the decease of her husband to defray immediate funeral expenses and unpaid bills, the British widow would now be entitled to £2,000.00 for funeral expenses and unpaid bills. But this is besides her and any children's exclusive entitlement to her deceased husband's property. Furthermore, the British widow is entitled to a pension of £85.00 a week, that is, £340.00 a month drawn on her late husband's contributions to the National Insurance scheme until her youngest child leaves full-time further education.[317] The British widow, together with her children, thus becomes the automatic heiress or inheritor of her deceased husband.

Gernet, 'Notes sur les parents de Demosthenes,' *REG* 31(1918),185-96, noted by Hunter, ibid.

[317] Cf. *The Herald*, Thursday,19 November,1998,p.6,17; *The Guardian*,19 November,1998,p.15. See also *Understanding Your Tax Code*, 1998,p.11,15; 1999,p.12; *Finance Act*, 1(1998),p.1, published by

But like the 1946 Act, the new scheme restricted to six months the bereavement benefits for those over 45 years with no children, the policy designed "to ensure benefits go to those for whom they were intended. All these reforms are driven by our central objective – work for those who can and security for those who cannot."[318] This implies that the grant for a childless widow ceases six months after the death of her husband. Furthermore, it is obvious that younger widows are expected to find paid jobs to maintain themselves after six months of receiving the benefits.

Putting the British experience and the Athenian situation side by side, there is one thing in the British experience that reflects the widow's protection law in Demosthenes 43.75. That is, the emphasis for support appears to be on the orphaned child but not on the widow's personal welfare. In Demosthenes 43.75, it is because of the child the pregnant widow is bearing that she is given special legal protection. But for the pregnancy, she would, like her counterparts, have had no special protection by society. With the British policy too, it appears mainly because of the orphaned child that the widow with a child is given the benefit. None the less, it is significant that the British widow with or

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the United Kingdom Inland Revenue Department. In the Tax Code and Finance Act documents, a widow's bereavement allowance of £1830 for the tax year 1997-98 was increased to £1900 for the tax year ending 5 April 1999, and from 6 April 1999 to 5 April 2000. It is presumed that this amount of £1900 which is less than £200 a month is what has now been increased to £340 per month, based on the deceased husband's contributions to the scheme. On the establishment of the National Insurance Scheme and support for widows and orphans, see *House of Commons Official Report*, Vol.1,1947-48: Standing Committee C: National Assistance Bill; Vol.3, 1955-56: Standing Committee E: Family Allowance and National Insurance Bill.

[318] Mr. Alistair Darling, Secretary for Social Benefits. *The Herald*, Thursday 19 November, 1998,p.17.

without a child is entitled to her deceased husband's property which she controls, manages, and could dispose of at will.

In most African societies where lineage is traced through the matrilineal line, the issue of inheritance and ownership of property is not quite such an easy matter. Even where succession is patrilineal, the pattern does not transmit easily and straight from father to son, and the real situation appears much more complex than the superficial picture patrilineality presents to the ordinary African. Either way, however, the widow appears to be at a great disadvantage.

In Ghana, for instance, neither spouse has a right to the property of the other. Even children from the marriage have no automatic right to their father's estate; and the children and the widow's continued residence in her deceased husband's house is subject to good behaviour, or they are thrown out of the matrimonial home by the husband's relatives. And in the majority of cases they are ejected on the whims and caprices of the deceased relatives with no provocation by the widow and her children. It was just recently in 1985, that some kind of protection was given to the widow and her children by a law enacted by the then military regime. The relevant portions of the law read as follows:

" Where the intestate is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled absolutely to the household chattels of the intestate. And where the estate

includes only one house the surviving spouse or child or both of them, as the case may be, shall be entitled to that house, and where it devolves to both spouse and child, they shall hold it as tenants-in-common."[319]

The law provides also that where the estate includes more than one house, the surviving spouse or child or both shall decide which of those houses shall devolve to either or both of them. And the residue of the estate is to be divided by specific fractional proportions among the surviving widow and her child or children, and relatives of the deceased.[320]

Notwithstanding the provisions of the law, intestate succession in Ghana is still a thorny and murky issue. For it appears that the widow and her children continue to be at the mercy of the deceased husband's relatives. One case in point. Just after the promulgation of the law, one Emmanuel Kofi Sefah died intestate leaving a widow and eight children. When the final funeral rites had been observed a year after his decease, the elders of his family ignored the law and decided to share his estate according to Akan custom.[321] Consequently, the widow and her children were forcefully ejected from the deceased Sefah's house by his relatives. They also took possession of his saloon car and a truck, and all household properties. This resulted in a lengthy and squalid litigation between the

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[319] *PNDC Law* 111: *Intestate Succession Law*, 1985,p.2, Section 3-4.
[320] Ibid.,p.2-3, sections 5&6.
[321] The Akans in Ghana trace their kinship through the female, and therefore inherit matrilineally.

widow and her children on one hand, and the relatives of the deceased on the other hand.[322]

None the less, it is noteworthy that if a husband feels that his wife has been good or helpful to him, he could make a formal gift of a house or a farmland, or some such valuable property to her *inter vivos*. This normally takes place in the presence of members of his family and witnesses, including members of the woman's family. And the wife's family is customarily obliged to show appreciation of the gift, and gratitude to the husband by presenting to him a bottle of schnapps or whisky, or any such drink as certified by custom, also in the presence of witnesses including members of the man's family.

Failing these customary formalities, the property may be incorporated into the general pool of the estate of the husband by his relatives at his death and shared according to custom. But any such property as shall be generally recognised or attested as a gift of deed to the wife certainly remains her own property, administered, and controlled by her at the death of her husband.

Putting the three cultures (the British, the Ghanaian, and the Athenian), side by side, the classical Athenian widow seems to have no comparable status with the modern British widow. With her Ghanaian counterpart, however, her situation does not seem quite so different in

certain respects. Particularly, just as the Ghanaian widow has no stake in her husband's property, so did the Athenian widow have no title to her husband's estate. However, unlike the Athenian widow, it is definite that whatever property the Ghanaian widow would have entered her marriage with remained her bona fide property while in marriage and at the death of her husband. But there seems to be no clear evidence of the Athenian widow's ownership of not only property bequeathed to her by her deceased husband, but even property with which she entered marriage.

DOWRY AND ARTICLES OF TROUSSEAU

The question as to whether the Athenian widow could own property, and what kinds of property she could own seems to be embedded in the whole issue of women's property rights in Athens. But this branch of the Athenian legal system is disputed among modern commentators who do not agree on whether the Athenian woman, and for that matter the widow, could own property of any kind.[323]

The basis for the conflicting opinions appears to be grounded on the general juridical status of women in Athens that seems to place the

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[322] Cf. *The Mirror*, 9 June, 1990,p.3, published by The New Times Corporation, Ghana.

[323] The most extensive work as at now on women's economic rights in Athens is that of David Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh, 1979). But see Wolff, *Traditio* 2(1944),53-65; Harrison, *Law* i ,p.73 n.3,108-109,112-114,236; L.J.TH. Kuenen-Janssens, ' Some Notes Upon the Competence of the Athenian Women to Conduct a Transaction' *Mnemosyne* 9(1940-41),199-214; Croix, ' Some Observations on the Property Rights of Athenian Women' *CR* 84(1970),273-278; Lin Foxhall, ' Household, Gender and Property in Classical Athens' *CQ* 39(1989),122-144; Hunter, *Policing*, p.19-33.

woman in perpetual minority.[324] On this principle, it is even claimed by Schaps that Athenian law never permitted a woman to acquire and own any property at all:

" If the law could afford to treat Athenian women as having no property, it was because they had, in fact, no real way of acquiring it."[325] The diversity of views notwithstanding, the status of the widow's dowry is very certain.

It is generally acknowledged that the wife was the beneficiary of the dowry transaction between her *kyrios* and her husband. But since she was always subject to the head of the family, her husband, who then became her *kyrios* had control of it. Significantly, by the general principles of the dowry law, the husband might administer, use and utilise it for his own interest and at his own discretion. None the less, he was subject to certain limitations consequent upon future obligation to return its full value, either on divorce or on the woman's return to her natural *kyrios* at her husband's death. She thus does seem to have no right of her own in any way in the dowry.[326]

However, commenting on the inheritance rights of the Athenian woman, Schaps claims that the dowry was the woman's share of her

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[324] The best full discussion of this subject is in Harrison, noted above and passim. But cf. also the lucid treatment by MacDowell, *Law*, p.84-108. See also Gould, *JHS* 100(1980),38-59.
[325] Schaps, *Economic Rights,*p.17. For his views that Athenian legal structure refused to see a woman as *kyria* of property see ibid, p.14-16.
[326] Cf. Wolff, *Traditio* 2(1944),63; Harrison, *Law* (i), p.45-60; de Ste Croix, *CR* 84(1970),275; MacDowell, *Law*, p.87-89.

father's property set aside for her maintenance, to compensate for her disability to share the patrimony equally with her brothers. Schaps' argument seems to be reinforced by Foxhall who maintains that a woman's dowry belonged to her alone and that it was her share of the patrimony of her original household.(cf.n.330 below)

That the dowry was meant for a woman's maintenance in marriage cannot be disputed. But the view that it was her share of her father's estate and that it belonged to her alone because she could not have equal share of the patrimony with her brother(s) is not completely convincing. It is a fact that the dowry is referred to in the sources as the woman's dowry.[327] But this is so because it was for her sake that the dowry was given to secure her maintenance. This, however, does not imply that she technically owned the dowry. The language of the texts in which dowries for women are mentioned clearly illustrates the position – the dowry was given along with the woman to the husband but not to her.[328]

If her husband died and she left his household, his heir was obliged to return the full value of her dowry to him who had given her away in marriage. He might then decide to give her away again in a second marriage with a greater or smaller amount of dowry or with no dowry at all.[329] Also, as is evident in Isaios 8 *On the Estate of Kiron*, a

[327] See Dem.27.15; 40.25; 47.57; Lys. 19.32.
[328] Cf. Dem. 27.5 28.15-16; 45.28; Is. 2.9; Lys. 32.6.
[329] Cf. Is. 8.8-9; Dem.41.26; Lys. 19.14; 32.15.

father or legal representative might decide not to sue for his woman's dowry if her marriage became terminated (8.8). This, I believe, would normally not be the case if the dowry was her share of her patrimony and thus belonged to her. Furthermore, giving a dowry was optional and not mandatory as it was the case with paternal inheritance by the son(s) of a father. A woman's father, or legal representative was therefore not legally obliged to dower her in marriage (unless of course she was an *epikleros*), though it was usual to do so. This implies that the woman did not have an inalienable right to the dowry as the son(s) of a father had to inherit from the father. Thus there could be no means by which a widow could keep the dowry on her in her possession since it was not a separate sum of money set apart for her. Schaps and Foxhall therefore seem to have over-stretched the property rights of the woman.[330]

The issue that seems to generate much controversy among commentators is that of personal effects given to women by their natural kin, or their ex-husbands at their marriage, and bequests from the deceased husbands to their widows. Sometimes we find mention of ἱμάτια καὶ χρυσία (garments and ornaments) given by either the father of the woman at her marriage (Is.8.8; Dem.41.27), or a deceased husband in his will for the second marriage of his widow (Dem.27.13,16; 45.28).

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[330] See for instance, Schaps, *Economic Rights*, p.23; Foxhall, *CQ* 39(1989),35.

Two schools of thought express different views about the status of these items given to the woman at her marriage. One argues that these items could either be reckoned in the value of the dowry, or set apart from the dowry.[331] But the other maintains strongly that the wife's trousseau was never included in the value of the dowry;[332] both resting on Isaios 2.9;8.8 and Demosthenes 41.27 as the basis for their claims. Since the issue borders on what categories of property a widow could, in practice, own personally, we may go into the matter again in spite of what has so far been said.

The passage in Isaios 8.8 reads as follows:

" He gave her in marriage to Nausimenes of Kholargos giving with her a dowry of twenty-five minai besides garments and jewelry." (ἐκδίδωσιν αὐτὴν...σὺν ἱματίοις καὶ χρυσίοις πέντε καὶ εἴκοσι μνᾶς ἐπιδούς).

I refrain from the analysis of the use of σύν in the orators.[333] I would, however, submit that σύν with the dative ἱματίοις καὶ χρυσίοις here in this passage could also be used adverbially and translated as 'in addition to' or besides' garments and jewelry. This implies that apart from giving for her a dowry of twenty-five minai, the speaker's

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[331] See Schaps, ibid.p.101,150, Appendix III,n.2; Wyse, p.245-246,595.
[332] See Wolff,53-57.
[333] See Wyse, p.523 on Is. 6.33; Schaps, *Economic Rights*, p.102.

grandfather gave his daughter clothes and jewels. These articles were not meant as part of her dowry, but for her own personal use.

Two things make the distinction clearer. In the first place, the articles of clothing and jewelry were not qualified or valued as part of her dowry. Secondly, in subsequent statements to the jury, the speaker says that when the woman became widowed and left to live with her father, the father did not recover her dowry from the heir to Nausimenes because of the deceased's financial straits. Nevertheless, the man gave his daughter away in a second marriage with a dowry of one thousand drachmai (8.8-9), which was far less than what she previously got.

Here, there is no mention of the articles of clothing and jewelry again. The presumption is that the woman still had her clothes and jewelry given to her at her first marriage in her possession. What the daughter needed in her second marriage was another dowry as her contribution to her second husband's estate for her maintenance, which her father provided. In this passage of Isaios, therefore, the articles of clothing and jewelry did not form part of the woman's dowry. It would thus be too tempting for commentators to cite it as an instance of a woman's articles forming part of her dowry. They would be over-stretching the boundaries of the law or the customary practice of giving a dowry to a woman at her marriage, and assume that she always entered marriage with virtually nothing for her own use.

Even the citing of Isaios 2.9 by Wyse (p.595), as evidence of clothes and trinkets reckoned in the dowry appears presumptious. The speaker tells the jury:

Καὶ ὁ Μενεκλῆς τήν τε προῖκα ἐπιδίδωσιν αὐτῷ,...καὶ τὰ ἱμάτια, ἃ ἦλθεν ἔχουσα παὰ ἐκεῖνον, καὶ τὰ χρυσίδια, ἃ ἦν, δίδωσιν αὐτῇ; " and Menekles handed over her dowry to him,...and he gave to her the garments which she had brought with her to his house and the jewelry which was there."

It is noteworthy that the statement, καὶ τὰ χρυσία ἃ ἦν, 'and the jewelry which was there', seems *prima facie* ambiguous, and open to interpretation as either the woman brought the jewelry, like she brought her clothes, to Menekles' house at her marriage to him, or it was bought for her by Menekles in her marriage. Either way, there is no indication that these were a dowry in kind to the woman's second husband.

Secondly, the status of the woman's clothes is definite. The clothes were personal effects given to her by her brothers for her own use. For there is no hint in the preceding sections where giving her in marriage is discussed (2.3-5) that her clothes were a dowry in kind in addition to her dowry cash of twenty-five minai given to Menekles on her behalf (2.5).

Furthermore, the recipients of the dowry and the items given by Menekles indicate two categories of property for different purposes. In the first place, it seems that it was the same amount of dowry of twenty

minai at her first marriage that Menekles handed over to Elios, the woman's second husband. But because it was to become part of the husband's household estate, it was given on behalf of the woman to him, ἐπιδίδωσιν αὐτῷ. But because the clothes and trinkets were a separate category of property for a different purpose (the personal use of the woman), they were given to her: δίδωσιν αὐτῇ with no qualification or value put on them. The articles of garments and jewelry in Isaios 2.9 and 2.8 can therefore not be taken as always included in the woman's dowry.

Of course, a dowry was a sign of legitimate marriage, as attested in Isaios 3.8-9,35-39, and rightly noted by Schaps.[334] But I think that it was not a large amount of dowry that certified the legitimacy of a marriage, as Schaps would want us to believe. I believe that once the generally accepted marriage procedures of ἐγγύη and giving of the dowry had been followed, the marriage was accepted as legitimate whether or not the dowry was small, although a substantial amount of dowry certainly enhanced the social status of the woman and her family of origin.

But perhaps the most irritating passage regarding dowry and trousseau is Demosthenes 41.27. The plaintiff tells the jury:

Πῶς οὖν οὐδὲν ἔλαττον ἔχει, φήσει τις, εἰ τούτῳ μὲν ἐν ταῖς τετταράκοντα μναῖς ἐνετιμᾶτο τὰ χρυσία καὶ ἱμάτια τῶν χιλίων, ἐμοὶ δ' αἱ δέκα μναῖ χωρὶς προσαπεδίδοντο; τοῦτο δὴ καὶ μέλλω λέγειν. ὁ μὲν

γὰρ Σπουδίας, ὦ ἄνδρες δικασταί, παρὰ τοῦ Λεωκράτους ἔχουσαν τὰ χρυσία καὶ ἱμάτια τὴν γυναῖκ' ἔλαβεν, ὧν ὁ Πολύευκτος προσαπέτεισε τῷ Λεωκράτει πλεῖν ἢ χιλίας· ἐγὼ δ', ἅπερ ἔπεμψέ μοι χωρὶς τῆς προικός, ὅσ' ἔχω μόνον, πρὸς τὰ τούτῳ δοθέντ' ἐὰν ἀντιθῇ τις, εὑρήσει παραπλήσια, χωρὶς τῶν εἰς τὰς χιλίας ἀποτιμηθέντων.

" How can he not have received less, someone may say, if with respect to him the jewelry and apparel, worth 1000 drachmas, were included in the valuation set at 40 minas, while with respect to me the 10 minas were paid in addition and separately? This is precisely what I am going to explain. For Spudias, men of the jury, took over his wife from Leocrates with the jewelry and clothing for which Polyeuctus paid Leocrates more than 1000 drachmas. I, however – if one compares what he sent to me apart from the dowry, that is to say, so much as I have really received, with what was given to him, he will find it of about equal value, apart from what was mortgaged for the 1000 drachmas."[335]

The passage has been ably analysed by Wolff [336] and Schaps,[337] either version of which is possible. On the whole, it presents two inevitable ambiguities which Wolff and Schaps have rightly noted. There is the bizarre computation of all the values of what was received by Spoudias in relation to what the plaintiff received for his wife. As can be

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[334] *Economic Rights*, p.102.
[335] I follow here the translation given by Wolff, *Traditio* 2(1944), 55.
[336] Ibid, 55-57.

noticed, the logic of the plaintiff's mathematics involves a combination of words like ἄπερ, πρὸς, πλεῖν, and παραπλήσια which could be used either adverbially, adjectivally, or comparatively. But all these verbal complexities tend to obscure the relationship between the values of items each person received.

There is also the structure of the last sentence of the passage. This begins as if it were to compare the trousseau of the two wives, but changes into a comparison of the total amounts received by Spoudias and his rival. So the reader is at a loss as to what exactly the plaintiff intends to put across.

The crucial focus of conflict among commentators, however, is whether the articles of clothing and the jewelry of Spoudias' wife were valued in her dowry. The confused state of affairs seems to be wrapped up in the plaintiff's strange computation. Nevertheless, it does appear from the passage as a whole that the articles of clothing and jewelry were, in fact, reckoned in the dowry of Spoudias' wife. On this, I side with Schaps; though I differ from him that the items in Isaios 8.8 are included in the woman's dowry. (*Economic Rights*, p.103-104)

It is significant that ἐνετιμᾶτο, προσαπέτεισε and ἀποτιμηθέντων in the passage here denote the concept of valuation; and the speaker himself adverts to this when he says that Polyeuktos had charged (valued)

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[337] *Economic Rights*, p.103-104.

the items against Leokrates, the former husband of the woman, who handed over the dowry to Spoudias, the new husband. Thus from the woman's items together with her dowry, Spoudias received 40 minai. I think, therefore, that Wyse must be in error that the objects were apart from the dowry and not technically valued (Wyse, p.55). In general, however, I am inclined to believe that whether the woman's garments and trinkets should be reckoned and valued in her dowry or not appears to be at the discretion of her *kyrios*.

At any rate, one thing seems very certain. That is, if garments and trinkets, slaves, or any such property was reckoned in the value of the dowry for a woman, it went under the control and management of her husband, and the full value of such items could be retrieved at his death by the woman's natural kin. This position is corroborated elsewhere by evidence from other passages in Demosthenes and Isaios. In the first speech of his suit against Stephanos for perjury, Apollodoros laments at the apparent authoritative and assertive tendency of Phormion regarding property in their house. In his protest the status of items valued as part of the dowry clearly comes out:

" Of the effects in the house he made himself master by the will, on the ground that they had been given as a dowry with my mother."[338] We may compare also the following passage of Isaios on the position of

property given to a woman that was not included in the evaluation of the dowry:

"If a man gives with a woman a sum not duly assessed in a contract, and if the wife leaves the husband or the husband puts away his wife, the man who gave money cannot, as far as the law is concerned, demand back what he gave but did not assess in a contract."[339]

It stands to reason then, that any kind of property given to the woman either by her natural *kyrios* or by her deceased husband in his will that was not reckoned in the value of the dowry belonged to her. The essential question is whether articles listed in a deceased husband's will for his widow already belonged to the woman before her husband's death, or they belonged to the husband until his death. In order to address this issue I shall take the case of Arkhippe and pose the question again: Did the items listed in Pasion's will already belong to Arkhippe before Pasion's death, or did they belong to Pasion before he died?

First, about the items valued in her dowry. We do not know how much dowry Arkhippe brought to Pasion on her marriage to him. We thus do not know the nature of her dowry, as to whether it was only cash, or it was a combination of cash and other properties in kind valued as part of the dowry. But it is definite from the will that the two talents and the tenement house belonged to Pasion until he died.

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[338] Dem.45.30. Cf. also Dem.50.60.

Now the slaves, jewelry, and the other items in the house. We have no knowledge of the composition of the items that Arkhippe had in the house (certainly her quarters). It is, however, fair to presume that they included chattels like utensils, clothes, and most probably furniture.[340] It is evident from the last sentence of the will that these items – the slaves, ornaments, and all the other unmentioned personal effects - were supposed to be bequests to Arkhippe for her personal use. This is denoted by the words: 'Αρχίππη δίδωμι, in the will and that they did not form part of her dowry.[341] But the question as to whether these articles already belonged to Arkhippe before Pasion's death, or they belonged to Pasion before he died could be difficult to answer.

It certainly cannot be conceived that Arkhippe entered marriage with nothing in her hands from her *kyrios* or kin who gave her in marriage to Pasion. For it does seem from Demosthenes 46 that Arkhippe must have entered marriage with some amount of property including personal effects, to which Pasion must have added more and bequeathed to her.

In Demosthenes 46.20, Apollodoros cites the law regarding the take over of the estate of an *epikleros* by her son, apparently repudiating the guardianship of Phormion over his mother, and for that matter control

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[339] Is.3.35. Cf. also Dem.59.35,46.

[340] Cf.Lys.19.31; 32.6. It is interesting to note that in Ghana, a husband could collect everything that he had bought for his wife on divorce.

over her property, and maintaining that he must be his mother's guardian. And in 46.22, he calls for a reading of the law requiring the assignment of *epikleroi*, citizen and alien – the former by the archon, the latter by the polemarch. After the law has been read out, he then goes on to say that if Phormion had wanted to proceed properly he should have entered his claim for Arkhippe as an *epikleros* before the archon if he claimed her as a citizen, and before the polemarch, if as an alien (Dem.46.23).

Imperatively, Apollodoros is telling the jury in these three sections of his speech that his mother was an *epikleros*. Thus as an *epikleros*, Arkhippe must most probably have entered marriage with Pasion with her own personal effects apart from her dowry to which Pasion had certainly added. It is therefore possible that some of the slaves, and some amount of the articles of clothing and jewelry, as well as some chattels already belonged to Arkhippe before Pasion's death; although we have no means of knowing which categories of personal effects these would have been. And with the will of Pasion, all these came into the possession of Arkhippe.

Thus in general, it would appear that legally all such items including strictly personal effects as had not been expressively qualified as valued together with the dowry but considered as bequests were regarded as the woman's personal property. The contents of the room,

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[341] Cf. Wolff, *Traditio* 2(1944),57. Whitehead, *CQ* 36(1986),112, creates the impression that all the

like those in the house of Arkhippe, and the twenty minai and thirty staters of Cyzicus which Diodotos bequeathed to his wife (Lys.32.6), were therefore meant to be kept by her as her personal property.

It is also most probable that some of the wealth with which Kleoboule entered marriage remained in her hands at the death of her husband. And, as rightly noted by Harrison, any interference with a woman's or a widow's title to such personal effects would have to be defended on her behalf, if necessary by proceedings in court, by her guardian against that third party. But if the guardian himself chose to interfere with her possession of them in his own interests, or proved unwilling to take action against third parties on her behalf, she would have little hope of redress if she were not an heiress. In such a case the archon would have to intervene.[342] It may not therefore be surprising that the spat between Kleoboule and Aphobos over her trinkets could not be resolved effectively by Demokhares until Demosthenes came of age and sued Aphobos to retrieve his and his mother's property.

WOMEN'S ECONOMIC CAPACITY AND TRADING WIDOWS

I now turn to the subject of the widow's rights in relation to economic ventures. In general, the Athenian woman was restricted from

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items listed in the will constituted Arkhippe's dowry, but, like Wolff, I think that is not the case.

[342] Cf. Harrison, *Law* (i), p.112; *AP*.56.6; Schaps, *Economic Rights*, p.9-12.

transacting business beyond a bushel of barley. The limitation rests on the rule cited by the speaker of Isaios 10:

παιδὸς γὰρ οὐκ ἔξεστι διαθήκη γενέσθαι· ὁ γὰρ νόμος διαρρήδην κωλύει παιδὶ μὴ ἐξεῖναι συμβάλλειν μηδὲ γυναικὶ πέρα μεδίμνου κριθῶν: " For a minor is not allowed to make a will; for the law expressly forbids any child – or woman- to contract for the disposal of more than a bushel of barley " (Is.10.10).[343]

Some scholars including Kuenen-Janssens and Harrison[344] take the law to mean that an Athenian woman could not legally contract above the limit set without the consent of her *kyrios*; but that with his permission she could dispose of, and therefore, acquire property of any value. It seems to me that this arbitrary interpretation does not fit into the context of the passage, where the woman's situation is made analogous to that of the child, who, in any case, cannot make a will at all. Similarly, the Athenian woman could not make a will either.

But as can be noticed from the text, the language of the law implies that a woman could make transactions for less or up to the value of a medimnos (bushel). The law seems to forbid women from transacting business for larger sums; but it does not mention anything about situations in which such transactions may be permitted. Moreover, there

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[343] Cf.also Harp. sv. ὅτι παιδί.

is no suggestion, either explicit or implicit, in the law that a woman needed the consent of her *kyrios* to transact business beyond the limit set; and there seems to be no evidence in the sources to that effect. By all indications, the Athenian woman was, by law, not permitted to undertake any business transaction beyond the set value of a bushel of barley. And I think that Croix[345] is right in rejecting the assumption of Kuenen-Janssens and Harrison.

It is noteworthy that the general term συμβάλλειν in the law comprises every kind of contract, including purchase and sale (trading), letting and hiring, lending and borrowing, bailment, exchange, partnership, suretyship, and any such related transactions.[346] Wyse[347] believes that πέρα μεδίμνου κριθῶν: "more than a bushel of barley," does not apply only to the woman, but to the child as well. But I believe that the object of this section of the law is only the woman, and that Wyse is probably over-stretching the arm of the law. For in every manner of transaction regarding the child, it is his guardian who would undertake to do everything on his behalf and be legally answerable for the conduct of business.[348] I do not therefore see how the same law could allow the

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[344] See Kuenen-Janssens, *Mnemosyne* 9(1940-41),199-214; Harrison, *Law*,i,p.236. See also Hunter, *JFH* 14(1989),294.

[345] Croix, *CR* 84(1970),274.

[346] Cf. Wyse, p.659; Kuenen-Janssens, 200. On bailment see also Isocrates 21.2,παρακαταθήκη, noted by Wyse, ibid. Significantly, in Ghana it is not legally permitted of a woman to bail a prisoner, or act as surety.

[347] Ibid.

[348] Cf. also Kuenen-Janssens' views on Wyse's position, op.cit.200,n.4.

minor child to undertake economic ventures even within the minimum amount of bushel of barley.

It appears that no ancient author mentions the reason for the law, though there must certainly have been a cause for it; otherwise the Athenians would never have taken the trouble to define the margin of women's competence. For, as it seems to me, a law does not presume a hypothetical foresight of a future crime. It is enacted to deal with a present situation, event, or crime in order to forestall a future recurrence of the situation and other related acts. I thus find Kuenen-Janssens' suppositions for the probable cause of the law quite feasible:

"In the most ancient times there was probably no need for it at all; only later, when human intercourse became more complicated and difficulties might arise between a woman and her *kyrios* – the appearance of trade women in the market may have contributed to it – it was advisable to make a definite regulation of the competence of a woman."[349] Thus, the law was probably enacted to avert any possible conflict of interests, either financial or social, between a woman and her *kyrios*.

A medimnos of barley is calculated by Kuenen-Janssen and Wyse to be the amount of money that could provide food for a family of five people for not less than six days in Athens at the time. This obviously

represents a considerable amount of value in food. In money value, it is agreed that although there were great variations and great differences in the normal price at different periods, the minimum price of one medimnos of barley was three drachmae.[350] By law therefore, the Athenian woman was not permitted to undertake any transaction beyond the ceiling value of three drachmae.

But laws are one thing, life another. And whether the legal rule reflected what was actually in practice is quite another matter. For in spite of the restriction, we quite often come across widows engaged in trading activities and other forms of financial transactions which could involve sums of money over and above what their legal capacity as women allowed them.

In Aristophanes, a widow tells the Athenian audience about her life in the following words:

"My husband died in Cyprus, leaving me with five children. I had a hard time feeding them, working in the myrtle market making garlands."[351]

In this situation, we have what seems to be a highly articulate and prominent presentation of a helpless widow and her life in society. But it is most probable that the widow's business activities must be involving

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[349] Ibid. 208.
[350] Kuenen-Janssens, op.cit. 206,210-211; Wyse,p.659.
[351] *Thesm.*446-48.

money above the ceiling set by the law for women. For she is said to be producing a great number of garlands and taking orders in advance (*Thesm.*457-458). The widow's situation might perhaps be taken as mere fiction. Nevertheless, it is important to note that " the extant plays of Aristophanes are firmly rooted in the present, and each of them explores the possibilities of a fantasy constructed out of the present."[352] At any rate, the comic widow has her real-life counterpart in Attic oratory.

In Demosthenes 57 in which Euxitheos, the speaker, defends his status as citizen, we are told that when Nikarete, the mother of the speaker, was much younger and a mother of two, she used to work as a wet-nurse because of her financial straits when the husband was abroad on a military campaign (57.42). And when she later became widowed, now with five children to feed, we find her selling ribbons in the Agora (57.30-34); a trade which might also involve a working capital of more than three drachmae to sustain the continuity of the business.

We know also that the widow of Polyeuktos granted a loan of 1800 drachmae to Spoudias, one of her two sons-in-law, leaving papers under seals on the loan at her death. The same widow is said also to have taken a bowl and some pieces of ornaments as security for money borrowed from her by the defendants in the speech. The speaker alleges that although his defendants later collected the bowl and the ornaments from

[352] K.J.Dover, 'Aristophanes' Speech in Plato's *Symposium*', *JHS* 86(1966),41-50,esp.41.

the widow, they had not as yet paid back the money they borrowed from her at the time the case went to trial.[353] The speaker does not mention how much the items were pawned for; but the grants indicate the substantial financial resources of the widow from which she could make these loans.

Lysias also informs us of the widowed mother of Philon, who, embittered by the irresponsible behaviour of her son, gave three minas to a trusted acquaintance to pay for her funeral expenses (31.21). We may note also the gift of 2000 drachmae given by Arkhippe to her two children from her marriage to Phormion (Dem.36.14).

What is not very clear is the sources of the money for the loans and donations made by the widows. Even though the loans and dispositions may legally be considered as non-commercial, and therefore on friendly basis, as it is maintained,[354] it is most probable that they may have come out of the considerable personal property bequeathed to the widows, or from money accumulated in some other way.[355]

In point of fact, the granting of loans and monetary gifts, and the trading activities of some widows seem to suggest a kind of independent life of such widows in the society. This makes one begin to re-examine the orthodox view about the social position of women that the Athenian

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[353] See Dem.41.8-9,11-12,17,21-22. For the significance of the papers on the loan see Hunter, *JFH* 14(1989),302.
[354] See Croix, *CR* 20(1970),274; Hunter, *JFH*, ibid.

woman long remained in tutelage. For although we find clearly expressed in a law a definite limitation of the competence of the woman for independent action, we might not be justified in drawing conclusions on legal grounds regarding her position in practice, as the case of these widows shows. One might thus assume that presumably, either an exception was made regarding trading women, or widows were given some kind of latitude, or the act of Isaios 10.10 lapsed later on; thereby making widows and some women have the liberty to operate beyond the legal limit.

In overall terms, the picture we get regarding the property rights of widows is that the Athenian widow could own considerable gifts and bequests from a devoted father or husband. She could, moreover, have money of her own that she could use in any way as she wished. And as the sources seem to indicate, it would appear that she retained such ownership rights so long as she remained as an independent widow.[356]

In fact, there certainly was no rule which obliged a widow to hand over to her new husband such property as her deceased husband had bequeathed to her. None the less, her rights of ownership seem to have lapsed in theory as soon as she got remarried to another man.

We may take up again the case of the widow of Polyeuktos who granted the loan to her son-in-law (Dem.41.9). Here in this matter, there

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[355] Cf. Dem.36.32,38; Croix, ibid; Hunter, ibid; *Policing*,p.28.

is no mention of a *kyrios* of the woman. But we are informed that the brothers of the woman were present at all times and questioned her on every point of the transaction. It might be argued that these brothers were *kyrioi* of their sister after the decease of her husband. However, I suppose that the brothers' presence was just conventional and nominal but not mandatory. They were not there to sanction the loan as *kyrioi* of their widowed sister. The loan, as it seems to me, had apparently been agreed upon already by the woman on her own and acting independently as creditor, and her son-in-law as debtor. The brothers were therefore called only as witnesses so that Spoudias could not in any way deny the transaction at any time in the future.

And, at any rate, in the event of a legal matter arising out of the loan transaction between Spoudias and the widow, it would have been her brothers who should have to represent her in court. Thus their presence was essential as witnesses but not to grant their *auctoritas* to the loan. The widow who was not married but lived independently, therefore, was mistress, *kyria*, of her own property, and could dispose of it as she would. But once the widow got remarried and is no more living on her own, she seems to have lost her rights of ownership to her new husband, now her *kyrios*. Demosthenes provides evidence for this apparent lapse of rights of

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[356] Cf. Schaps, *Economic Rights*, p.4; Hunter, *JFH* 14(1989),301-302.

ownership. In Demosthenes 45.30, Apollodoros tells the jury about Phormion, his mother's new husband:

" He has made himself master of the possessions in the house by the will, on the ground that they had been given as a dowry with my mother."

Then further in 45.74 Apollodoros indignantly declares:

" But for himself he has not scrupled to marry his mistress, and he lives as husband with her,...nor to write a clause giving himself a dowry of five talents in addition to the large sums of which he became master, inasmuch as they were in the custody of my mother – for why do you suppose he wrote in the will the clause, 'and all else which she has I give to Arkhippe'?"

As will be noticed, ἐπὶ τῇ μητρὶ δοθέντων (Dem.45.30) and Ἀρχίππῃ δίδωμι (45.74) have two different connotations, the former implying items as part of the dowry for his mother, the latter, connoting articles given to Arkhippe personally.[357] The significant point from the two passages, however, is that either way, Arkhippe had lost her rights of ownership to her property to her husband, and that Phormion had become the new master of not only her dowry but also her other property including her personal effects. Thus besides her dowry, it appears that an

[357] Cf. Wolff, *Traditio* 2(1944),57; Harrison, *Law* (i), p.47,112,n.3; Schaps, *Economic Rights*, p.10-11; Hunter, *EMC* 8(1989),43,n.22.

Athenian widow's remarriage made her husband have virtual control over her property.

But this apparent loss of the widow's rights of ownership to her new husband on the one hand and the husband's control over her property on the other appears to be only theoretical, and just in conformity with the usual norms. For there is evidence that with regard to her own personal property that was not part of her dowry, the ex-widow in remarriage had practical control of her property and could dispose of it. In Demosthenes 36.14-15, the speaker informs the jury that before her death, Arkhippe had given two thousand drachmai to the children she had borne to Phormion. And in 50.60, Apollodoros tells the jury about his financial straits and his mother's inability to help him because of her ill-health and subsequent death in the following words:

"My mother lay sick, and was at the point of death while I was abroad, so that she was unable to help in the depletion of my resources save to a slight extent. I had been but six days at home, when, after she had seen and greeted me, she breathed her last, being no longer (οὐκέτι) mistress of her property, so as to give me as much as she wished" (Dem.50.60).

The statement that Arkhippe was no longer mistress of her property might be construed that it was because she was then in marriage to Phormion. But that does not seem to be the situation; it was because

she was seriously ill and could therefore not do anything. Apollodoros' own words imply that the mother gave him some help; and although she was in marriage, she controlled her own property and could have given her son some of her own money to prevent depletion of his resources but for her deplorable condition of health. It is clear then, that before her death, Arkhippe's personal property was practically in her own possession, and under her control.

Thus when she was not remarried, the Athenian widow was mistress, *kyria*, of the property her late husband had bequeathed to her. But when she was in a second marriage, and no more a widow living on her own, she seems to have lost her rights of ownership to her husband, now her *kyrios*.[358] But this loss of rights appears theoretical, for in practice she controlled her own property and could dispose of it as she wished.

[358] See Dem.27.56;45.30,74. Cf.also de Ste Croix, *CR* 84(1970),277; Hunter, *EMC* 33(1989),39-48,esp.43; *Policing*, p.31-32; David Whitehead, *CQ* 36(1986),109-114,esp.112-113.

SECTION B: ORPHANS IN CLASSICAL ATHENS

CHAPTER 6

GUARDIANS OF ORPHANS

It is impossible to know the number of children who became orphaned during the classical period. One reason for this is the composite causes of widowhood and orphanage in the fifth and the fourth centuries B.C.[359] In some situations, we are not in a position to know whether a deceased man had a wife and children. For instance, in cases of men executed by the state, we are most often not informed of the prosopographical background of the executed men in sufficient detail for us to know how many of them were survived by wives and children.

The Attic orators also, our principal sources of information for the position of orphans, themselves typically members of the social elite, exhibit necessarily a bias towards the upper class in the Athenian society who had the means to employ the services of orators in their suits. Consequently, not much light is thrown on the less privileged class, thus making it not very easy for us to know more about the family background of the underprivileged in the society.[360] In any case, if one considers the

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[359] See the section on 'Demography, Widowhood and Orphanage in Athens.' For my definition of orphan, see Introduction, p.10 above.

[360] Four possible exceptions of speeches which do not depict the world of the Athenian rich are Antiphon, 1: *Prosecution for Poisoning*; Demosthenes, 55: *Against Kallikles* and Lysias, *1 On the Murder of Eratothenes* ; 24: *For the Invalid*. Cf. Stephen Todd, ' The Use and Abuse of the Attic Orators ' *G&R* 37(1990),159-178,esp.168.

omnipresence of widows in the Athenian society,[361] one cannot fail to be struck by a corresponding ubiquity of orphans in many Athenian households.

APPOINTMENT OF GUARDIANS

It is presumed that all children lived under the guardianship of the father until they reached their age of majority.[362] Naturally, the father exercised his authority over his wards until he died. But the death of the man affects not only the members of the kin group but also naturally the widow and the children of the deceased in various ways, both immediately and afterwards.

If a man died leaving behind a widow with children in their minority, his death gave rise to certain basic familial duties; particularly:

(i) the nurture and support of the orphaned children,

(ii) the management of the estate left behind for the children, and

(iii) the maintenance and care for his widow.

In most cases, the widows were given away in marriage again to second or third husbands who then assumed responsibilities for their maintenance and support. Thus, the majority of bereaved wives ceased to be widows on getting remarried. The orphan's status, however, was

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[361] Mark Golden, ' Demography and the Exposure of Girls at Athens ', *Phoenix* 35(1981),316-331,esp.329; Virginia Hunter, ' The Athenian Widow and Her Kin ' *JFH* 14(1989), 291-311, esp.291.
[362] On the age of majority in Athens, see n.187 above.

completely different from that of the widow. For it is a fact that while a widow could cease to be a widow, an orphan could not cease to be an orphan.

In certain situations, the father appointed guardians either *inter vivos*, or named them in his will to take charge of the children and the management of their property in the event of his death.[363] But in many cases people died intestate without making any provisions for their wives or minor children. In any case, it is essential to note that regarding the rules of guardianship and the extent of their application, the law of guardianship (and, in fact, of infants in general) appears to have one peculiarity which is not always noticed. That is, it is only required in a minority of cases. For it would appear that on the death of a man intestate, if the families were reasonably united, even after the death of one or both parents of a child, they would often manage without much regard to the law. It is only when there is much property involved that some definite legal arrangement becomes imperative. But otherwise, one relative or another, in conformity with an established order, would in fact, take charge. This order would certainly be the same as the order of

[363] Dem.27.4-6; 28.15-16; 36; Lys.32.5-7; Hyp. *Lyk.*1.4.

succession in the family, as in Demosthenes 43.51. And if the orphan were old enough, he would look after himself.[364]

In an inheritance case regarding the property of Kleonymos in Isaios for instance, there seems to be not much property involved, and we have glimpses of good will between the orphans' uncles and their mother. For it is evident that the plaintiffs, as orphans, had first come under the guardianship of their paternal uncle, Deinias, in their minority, though it is not known whether they did so under their father's will or not. And when Deinias died they went to live with Kleonymos, probably their mother's brother, who as their guardian brought them up and looked after their affairs as if they were his own children,[365] reflecting a situation of good will between him and his sister.

A speaker in one of the speeches in the Demosthenic corpus also describes a similar situation. He informs us that when his father was made a prisoner of war and enslaved for a very long time, his paternal uncles kept intact his father's share in the property which derived from their deceased father's entitlement. Moreover, they collectively supported their brother's wife (the speaker's mother), and looked after his two children in their minority during their brother's long absence overseas.[366]

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[364] Cf. H.F.Jolowicz, ' The Wicked Guardian ' *JRS* 37(1947),82-90,esp.83; Harrison, *Law* i ,p.99-100. See also the section on ' The Archon and Administration of Justice in Matters Concerning Widows and Orphans.'

[365] Is.1.9,12. See also Wyse, p.176.

[366] Dem.57.19-21. Cf also Lacey, ' The Family of Euxitheus (Demosthenes LVII) ' *CQ* 74(1980),57-61,esp.58-60.

The conduct of these uncles of the speaker thus certainly represents a remarkable example of family solidarity, and there is no doubt that in the lack of any other determination they would be guardians of their brother's children without any formal legal requirement.

A comment by a speaker in Lysias is interpreted by Harrison to imply an imposition of guardianship on the speaker by the archon. The speaker informs the jury of the following among other things:

" Moreover we, deprived of our kinsfolk, deprived of the dowry, and compelled to rear three small children, are attacked besides by base informers, and are in danger of losing what our ancestors bequeathed to us after they had acquired it by honest means." (Lys.19.9).

Harrison takes this statement as a "probable instance of a guardianship compulsorily laid upon a man," and in a footnote to his presumption he rejects Lipsius' suggestion that this obligation related to something other than guardianship.[367] The fact that Harrison appears to establish is that in certain situations the duty of guardianship could be imposed on a man. It seems to me, however, that Harrison's presumption and Lipsius' suggestion are both beside the point.

I take first the suggestion by Lipsius, whom I believe Harrison has reported correctly, that the speaker's liability was something other than guardianship. Rather contrarily, the speaker's compulsion certainly

concerns the guardianship of his sister's children and no other thing else. The predicament of the young children resulting from all the privations as narrated by the speaker (19.7-9) is enough evidence for the call of guardianship for the children, and the need for their uncle to take up the responsibility. This position will probably be clearer from the reasons why I think that Harrison's opinion of compulsory guardianship too is not quite tenable.

It would appear from the will of Aristotle,[368] that Athenian practice of guardianship required that the consent of an appointed guardian was sought before the duties were conferred on him, though there is, in fact, no evidence of a legal rule to this requirement. In Demosthenes 28.14-15 also, Aphobos is said to have claimed that he did not enter the house of the elder Demosthenes who had sent for him, nor entered into any agreement with him regarding matters in his will.

But the younger Demosthenes refutes Aphobos' claim by telling the jury that Aphobos in fact met the elder Demosthenes before he died, and had agreed with him to carry out in all respects precisely what he wrote in his will. In both claim and rebuttal, I think that consent to guardianship with its attendant responsibilities is implicit. Thus, a guardian appointed

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[367] Harrison, *Law* (i),p.101, n.3 to 101, on Lips., *AR* 525,n.22. Cf. also Harrison, ibid.,p.103-104.

[368] See Diog. Laert. 5.11-13. It is common knowledge that Aristotle was not an Athenian. But he lived much of his time in Athens as a metic. It is therefore most probable that he may have made his will according to Athenian laws.

by a testator could decline to act as such, as Harrison rightly notes.[369] It would therefore seem a bit hard to conjecture how a reluctant man could be compelled to be the guardian of a ward, let alone be expected to perform his duties satisfactorily. As regards the case of the speaker of Lysias 19, there is no doubt that he is the guardian of the three minor children of his sister. But his duty does not appear to have been a legal imposition implemented by the archon, as Harrison seems to imply, apparently on the basis of the authority given to the archon in the law quoted in Demosthenes 43.75.

In the first place, an imposition of guardianship by the archon would have meant a kind of state involvement in maintaining and preserving the family of the executed Aristophanes whom the Athenians regarded as a treasonable felon (19.7-8). But it appears that the Athenian state had no concern for the maintenance and preservation of the families of men executed by the state for criminal offences. They would rather punish sons for the crimes committed by their fathers and ancestors, as the case of Lysias 19 itself illustrates. We may note also what a speaker in Demosthenes says about visiting ancestral crimes on sons:

" For all men the end of life is death; and with whatever wrongdoings a man may be charged during his lifetime, it is right that for these his children should forever be held accountable; but in matters concerning

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[369] *Law* (i),p.104,n.1.

which no man ever made accusation against him while he lived, is it not outrageous that anyone so wishing should bring his children to trial?"[370]

Under the circumstances, therefore, an imposition of guardianship on the speaker of Lysias 19 by the archon, which indeed implies a state concern for the family of Aristophanes, would be unlikely. The compulsion of guardianship mentioned by the speaker is therefore the consequence of factors such as the circumstances of his brother-in-law's death, and lack of resources to maintain his sister's children and their mother, as recounted by the speaker himself (19.7-9,31-33). Quite obviously the children of Aristophanes had suffered loss of their parental care and support, and their patrimony. These situations of privation made it morally obligatory for their uncle (the speaker) to take up the responsibility of guardianship.

The speaker's obligation may also have been reinforced by the ties of kinship and Athenian public opinion, both of which could bring compelling pressures on him to undertake to look after the children.[371] It may therefore be presumed that the gesture of the speaker regarding his guardianship of his sister's three children in Lysias 19, was another instance of guardianship undertaken on the basis of cordial relationship and family solidarity rather than an imposition executed by the archon as supposed by Harrison.

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[370] Dem. 57.27. Cf. also Lys.18.11,22, and see the chapter on ' Pregnant Widows,'p.215-216.

With regard to statutory guardianship, the Attic orators from whom we get considerable information on family issues do not tell us exactly when the institution arose in Athens whereby if no other guardian existed it became necessary for the authorities to appoint one. We are not informed also of the degree of the archon's involvement and what form the appointment should take. Significantly, the text of a law on widows and orphans quoted in Demosthenes makes the archon a very important agent of statutory guardianship in Athens.[372]

The law most probably dates back to the period of Solon's Seisachtheia in 594/3 B.C., and obviously illustrates the circumscribed power of the archon and prescribing protective measures against maltreatment of orphans. Certain sources also seem to suggest rules whereby, failing appointment *inter vivos* or by testament, the archon should intervene to appoint guardians for orphans in such a situation. For instance, there are implicit legal rules in the actions or powers of the archon eponymous listed in *AP*, 56:

εἰς ἐπιτροπῆς κατάστασιν; εἰς ἐπιτροπῆς διαδικασίαν: "Actions for the institution of guardianship: actions for deciding rival claims for guardianship. "(*AP*, 56.6)

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[371] Cf.Is.1.39.

[372] See Dem. 43.75. Cf. Arist. *AP*, 56.7. Various sections of the law have been quoted severally in this work.

We may note also Isaios 3.58, and Demosthenes 43.16,54, which provide evidence for rules to claim inheritance in the event of a person dying intestate.

Nevertheless, the law quoted in Demosthenes 43.75 does not tell us exactly what the nature or the extent of the archon's involvement in the appointment of guardians should be in the case of a child who needed one. With regard to *AP*,56.6, Wyse is certainly right that whether the parties to the διαδικασία are considered as willing to shift a burden or competing to win a privilege, the suit is suggestive of a law defining the conditions under which persons were called upon to take up guardianship.[373]

But it seems to me that *AP*, 56.6, and the sources noted in Isaios 3 and Demosthenes 43 point to rules for the confirmation of already appointed or nominated guardians, situations of claims to inheritance in the event of a man dying intestate and without children, and rules for claim to heiresses, who were only a category of orphans in the society.Thus, the sources do not suggest general rules for the appointment of guardians for orphans whose fathers died intestate, and the exact role of the archon in the exercise.

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[373] Wyse, p.191. For a detailed account of διαδικασία see MacDowell, *Law,* p.58,103-8,145-7,163-4,166,218,249.

However, although direct evidence is lacking, it appears that Athenian laws provided for the appointment of a guardian or guardians in contingent situations. Some of the situations could be when a father of minors had not left a will, or had not nominated a guardian; or when a guardian appointed by testament declined or was unable to serve. It seems also that provisions were made either for an interim guardian in the event of the absence of the one appointed by the testator, or a co-guardian to take charge of affairs in the circumstances. This guardian would act in that capacity until the principal guardian returned if he happened to be away and the testator made provisions for more guardians.[374]

There is one other situation for which evidence also seems lacking. That is, if the appointed guardian died while the male orphan was still in his minority. In a modern society where the institution of guardianship is also practised, it appears that the child could live under the guardianship of either a paternal uncle or a maternal one. But he could also be adopted into a different family. A member of the British House of Commons narrates his personal experience as a minor orphan to his colleagues in a debate on state support for widows and orphans in the following words which show what could be done in the circumstances:

"In supporting the Amendment, I shall not use statistical approach. Nor shall I talk about comfortable standards, because the term

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[374] Cf. Aristotle's will , Diog. Laert. 5.11-12.

is not applicable in any shape or form. I can make my case in a single sentence. Having twice seen the struggle that takes place in a working-class home when the breadwinner dies I say that there is nobody who is left with children who has sufficient money – nobody. It happens that I was sufficiently unfortunate to lose both my parents before I was ten years of age. Before I was eleven years of age I lost my guardian, and I was then the subject of negotiation between two workhouses as to which one I shall enter, but I was adopted through another channel."[375]

The speaker does not tell his colleagues through what channel he was adopted, and into whose family he was eventually adopted. But there is no doubt that the negotiation about his tutelage after the death of his guardian would have been going on between his paternal and maternal uncles. The Athenian male orphan in such a situation would certainly not pass through adoption to get a new guardian, though evidence is lacking as to what could be done to appoint a new guardian for him.

The position of the *epikleros* who lost her guardian while in her minority is definite. The situation called for a fresh claim to her and her patrimony, a *diadikasia*, in conformity with the laid down rules for succession in the family, as discussed in chapter 7 below. With regard to the male orphan in such a situation, however, it is not evident in the

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[375] Mr. H. Boardman, Member of Parliament for Leigh, *The House of Commons Official Report* Vol.III(1955-56): *Standing Committee E*, p.1-129: *Family Allowance and National Insurance Bill, 31st May-7th June, 1956,* esp. p.29.

sources as to what procedure to follow to appoint him a new guardian if the designated one died during the child's minority. It would appear, however, that: (i) he could also be the subject of negotiation between his paternal and maternal uncles as to whose authority he should live under until he reached his majority; (ii) either his paternal uncles, or both families could, in consultation with the archon, appoint a new guardian to be responsible for his general welfare and the administration of his estate.

It is noteworthy that although there appear to be no specific general rules regarding the appointment of guardians, the available sources on guardianship point to a particular pattern in appointing guardians for orphans. Kharondas of Katane is said to have made laws for other Greek cities of Sicily and Italy as well as for his own city.[376] And among the laws made by Kharondas was one that sought to protect orphans in the Katane society. According to Diodoros, Kharondas legislated that the orphan's estate should be managed and controlled by his paternal uncles, while his maternal uncles took charge of his nurture and care.[377]

The primary reasons for Kharondas' division of responsibilities to the orphan, as reported by Diodoros, seem quite ingenious. The maternal uncles, having no share in the orphan's inheritance, will not plot against

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[376] See Arist. *Pol.* 2.9.5. Also R. Sealey, *The Justice of the Greeks* (Michigan, 1994),p.25; M. Gagarin, *Early Greek Law* (Berkeley, 1986),p.51ff.; A. Szegedy-Maszak, ' Legends of the Greek Lawgivers'

him; and the paternal uncles who have a share in his fortune, would not have the opportunity to plot against his life, since he is not entrusted into their care. Moreover, since the paternal uncles could inherit the orphan's estate in the event of his death, they will manage his estate with greater care, hoping that they would succeed him if he died.[378]

The Athenians, however, did not separate the custody of an orphan's person from the administration of his fortune. But their practice of guardianship seems to reflect the principle of appointing close relatives as guardians of their orphans, which the rules of Kharondas appear to emphasise. In 376/5 the dying Demosthenes (I) for instance, made a will in which he appointed three guardians for his son and daughter. Two of them were his close relatives – his nephews. Aphobos, the principal guardian, was his sister's son, to whom also he bequeathed the children's mother. The other, Demophon, to whom also the elder Demosthenes betrothed his daughter, was the son of his brother, Demon.[379]

In the third speech of his suit against his guardian Aphobos, Demosthenes describes Demon as Aphobos' fellow-guardian (συνεπίτροπος, 29.56). This has been taken by some scholars as contradictory, implying that there were four guardians, not three; as noted

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GRBS 19(1974),199-209; Adcock, ' Literary Tradition and Early Greek Code-makers' *CHJ* 2(1927),95ff.

[377] Diod. Sic. 12.15.

[378] Cf. also Jolowicz, *JRS* 73(1947),82, though he is suspicious of the reason attributed to Kharondas that the separation of personal custody from the administration of a ward's property was motivated by fears for his safety.

by the orator in Dem. 27 and 28, and that the third speech was not by Demosthenes. But these presumptions have been ably dismissed by MacDowell, who convincingly establishes that Demosthenes 29 was by the orator himself, and that there were in fact, three guardians, not four; as maintained by the sceptics.[380] Thus, Demon was certainly not one of the guardians of the younger Demosthenes.

Davies may probably be right in pointing out the seeming oddity in the failure of the elder Demosthenes to appoint his brother Demon as one of the guardians for his children.[381] Burke shares in Davies' apparent surprise, which idea I am also inclined to entertain. But he speculates in a footnote that the elder Demosthenes' failure to appoint Demon as a guardian may have been the consequence of some animosity between the two brothers, though this may have been played down during the critical moments of the illness of the elder Demosthenes.[382]

It would, indeed, appear difficult to suggest any strained relationship between the elder Demosthenes and his brother. It is quite certain that the younger Demosthenes accuses Demon of complicity with Aphobos in the rape of his patrimony (29.20), and that Demon was himself prosecuted by

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[379] Dem.27.4-5; 28.15. See also Davies, *APF*, p.116,118.

[380] See MacDowell, ' The Authenticity of Demosthenes 29 (Against Aphobos III) As a Source of Information About Athenian Law ' *Symposion,* (1985),253-262). Davies, *APF*, p.115 shares the view that Demon was not one of the guardians of the orator. For holders of the contrary views see MacDowell,ibid. n.1,2,3,4,13,16.

[381] *APF*, p.115.

[382] E. M. Burke, ' The Looting of the Estate of the Elder Demosthenes ' *CetM* IL(1998),45-65, esp.47, n.6,on 47.

the orator (29.20,52,56). These events could be tempting enough for one to conceive of earlier tensions between the two brothers that may have spilled into the maladministration of the estate of the younger Demosthenes. However, there is no evidence, either direct or oblique, for the existence of any ill-feeling between the two brothers. We may therefore presume that the failure of Demosthenes (I) to appoint Demon as a guardian of his children was by discretion and choice rather than the consequence of any existing animosity between them.

It is the prosecution of Demon by the orator (29.20,52,56), that obviously makes Burke suggest a sort of bitterness between the elder Demosthenes and his brother. However, it should be noted that it was not probably a separate case from the proceedings against Demophon (27.12) but a single action[383] and on a different legal basis as the father and legal representative of the under-aged Demophon, as maintained by MacDowell.[384] I shall expand this point later in chapter 10 of this work. The question of an existing enmity or strained relationship between Demosthenes the elder and his brother Demon does not therefore come in.

To return to the issue of appointing close relatives as guardians of orphans, we are informed in Lysias 32, that the sole guardian appointed by Diodotos for his children was his own brother, Diogeiton (32.4-5). The

appointment of Diogeiton as guardian of his brother's children exhibits an intricate and interesting kind of relationship that easily attracts notice:

" When Diodotos was enrolled for infantry service, he summoned his wife...καὶ τὸν ἐκείνης μὲν πατέρα αὐτοῦ δὲ κηδεστὴν καὶ ἀδελφὸν, πάππον δὲ τῶν παιδίων καὶ θεῖον,: and her father, who was also his father-in-law and his brother, and grandfather and uncle of the little ones"(32.5).

As recounted by the speaker, Diodotos and Diogeiton were brothers born of the same father and mother. The two brothers held the real property bequeathed them by their father in partnership. And when Diodotos was ready to marry, Diogeiton induced him to marry the one daughter that he had, and two sons and a daughter were born to them (32.4-5). The relationship between Diogeiton and his brother's children therefore shows an intricate network of close bonds which appears unique to all the situations of kinship ties in Athenian guardianship.

Quite a number of guardianship cases in other surviving speeches also show the same pattern of appointing close relatives as guardians of orphans. In Isaios *On the Estate of Kleonymos*, Deinias is guardian of his brother's sons (1.9); and even when Deinias dies it is Kleonymos the children's maternal uncle who takes over the sons and cares for them

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[383] Cf. MacDowell, *Symposion* (1985),257,n.21.
[384] Ibid.,257.

(1.12,28). In the same speech, and in Demosthenes 46, the orators inform us that on the death of the father of an heiress (*epikleros*), a brother of the same father, or a paternal grandfather was appointed guardian of the girl. But if none of these was alive, then the nearest of kin was made her guardian, to whom she was entrusted in marriage (Is.1.39; Dem.46.18).

Moreover, in Isaios 7, Eupolis is guardian of his brother's son (7.5-6); and in his *On the Estate of Kiron*, Diokles is guardian of his half-sister's son (Is.8.41-42). In the famous case of the estate of Hagnias too, Theopompos is guardian of his brother's son (11.10ff). Other cases may also be noted. The speaker of Lysias 19 is guardian of his sister's three children (19.8-9). The two elder brothers in Isaios 2 were guardians of their two sisters whom they later married off to Leukolophos and Menekles (2.3-5).

It is also most probable that in Demosthenes 40, Menexenos and Bathyllos became guardians not only of their brother Periander and their sister whom they later gave away in marriage, but also the four children of their sister (Dem.40.6-7). And in Lysias 13, although we do not know the contents of the will of Dionysodoros (13.41-42), it is also most probable that either his brother Dionysios might have been appointed as sole guardian of his posthumous child. Alternatively, both Dionysios and the speaker, Dionysodoros' brother-in-law, might have been designated as joint-guardians.

It is to be noted, however, that it was not only close relatives who were appointed as guardians but also friends or colleagues were appointed either as sole guardians or as co-guardians of orphans. For instance, Demosthenes informs us that his father appointed Therippides who was not his father's relative, but had been his friend from boyhood as one of their guardians (Dem.27.4-5). And in Demosthenes 36 and 45, Pasion is said to have appointed Phormion his freedman and colleague, and an unknown Nikokles who was also probably not a relative as joint-guardians of his son Pasikles (36.9; 45.37).[385]

It appears also from the will of Aristotle (Diog.Laert.5.12-13) that neither of the guardians of his two children had any kinship ties with the philosopher. For instance, Theophrastos was his colleague, and subsequently successor of his philosophical school, the Lykeion. And although Nikanor, to whom Aristotle betrothed his daughter in marriage, was a native of Stagira, he was not a family relation. And in one of the fragmentary speeches of Hyperides, the deceased husband of the sister of Dioxippos had appointed Euphemos, not a relation but most probably a trusted friend as sole guardian of his posthumous child.[386]

Two cases, one in Lysias, the other in Demosthenes, seem to suggest that the appointment of guardians *inter vivos* was usually done at a family gathering, on which occasion the testator made his intentions or

[385] Cf. also Harrison, *Law*, (i), p.99, n.4; Davies, *APF*, p.435.

arrangements regarding his wife and child or children known. And that naturally, as would be expected, the meeting was usually on the initiative of the testator.[387] The former case may look unlikely, especially in the case of a documentary will, since the testator would have prepared his document before calling the family meeting to make his intentions known to the gathering. This would help to prevent the genuineness of the will being disputed after his death. But he could make a verbal declaration of his wishes at a meeting at which he nominated a guardian or guardians for his children. The verbal declaration may then be confirmed later by provisions in a will.[388]

The latter case may, however be very plausible. Thus, it was Diodotos who summoned his wife and his brother to the meeting at which he gave him his will and the related instructions regarding the wife and the children (Lys.32.5-6). And when the elder Demosthenes realised that he would not recover from his illness, it was he who summoned his brother and the guardians he had appointed for his wife and his children. And at this meeting, he told them the provisions he had made for their care and support in the event of his death (Dem.27.14-16).

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[386] *Lyk.* 1 frag.4 (5).47.
[387] See Lys.32.5-6; Dem.28.14-16.
[388] Cf. Harrison, *Law* (i), p.99.

The appointment of Demophon as one of the guardians of Demosthenes and his sister[389] raises the question of age in appointing guardians of orphans in Athens. We do not know the exact age of Demophon when his uncle died in 376/5 B.C. Davies speculates that Demophon " must have been born by 400 or very soon after."[390] If this conjecture is accepted, Demophon would have been about twenty-four years at the time his uncle died, or perhaps twenty-two years (accommodating Davies' uncertain period of " very soon after "). At this age, he would have been old enough to manage his own affairs, and as a co-guardian, help manage the affairs of Demosthenes and his sister, his future wife ten years later (Dem.29.43).

But in his article on the authenticity of Demosthenes 29 in the *Symposion* already referred to, Prof. MacDowell asserts that Demophon was probably young, possibly fifteen or sixteen years of age, when his uncle chose him as guardian and betrothed his daughter to him.[391] MacDowell is most probably right. And if Demophon was not yet adult at the beginning of the period of guardianship, then his case is an instance of a man appointed as a guardian before he himself attained adulthood.

The question that readily comes to mind is whether the case of Demophon illustrates a regular practice of guardianship in Athens or

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[389] Dem. 27.4-5,42-5,65; 28.15,19; 29.43.
[390] *APF*, p.116.
[391] See p.278 n.379 above.

occurred only rarely. It is unfortunate that lack of information does not permit further investigation of the matter. As MacDowell rightly points out, no other sources mention any other Athenian example of a guardian below the age of majority. In the absence of any certain evidence, therefore, we can only speculate that if there were any other instances, it probably would have been only girls betrothed to young men appointed at the same time as co-guardians. This might be done on the assumption of the girls' fathers that the fathers of the young men would, together with other appointed guardians, care for the girls until the sons and the betrothed reached their majority and got married.

One other thing that emerges from the pattern of appointing guardians of orphans is the number of guardians that a father could appoint for his child or children. The orphans in Isaios 1 on the estate of Kleonymos lived under two guardians, though one at a time, as minors: first, Deinias, then Kleonymos on the death of Deinias (1.12). In Isaios 11 on the estate of Hagnias, the son of Stratokles was appointed two guardians, Theopompos and a co-guardian who prosecuted Theopompos for misappropriating the money of their ward. We know from Lysias also that Diodotos appointed only one guardian for his children (Lys.32.5-6).

Pasion is said to have appointed two guardians, Phormion and Nikokles, as guardians of his son Pasikles.[392] And although Aristotle provided for seven guardians for his two children,[393] we are told that the elder Demosthenes appointed three men to be the guardian of his children and their property.[394] The sources thus point to the fact that there were no constraints on the number of guardians a father should appoint for his orphans. Any number of men could be appointed as guardians, perhaps to forestall cases of death of the principal guardian, or as a check against squabbles either between relatives of the deceased and the principal guardian or between the guardian and the orphan at his age of majority.

NEAREST RELATIVES AS GUARDIANS

While scholars of Athenian law and social history have always recognised that the pattern of appointing nearest relatives as guardians of orphans was quite typical a feature of Athenian family life, we are yet to determine the fundamental principles or motives for this striking phenomenon.

It is significant that in many patriarchal and patrilineal societies like that of Athens, a special relationship exists between a young man and his

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[392] See Dem. 36.8; 45.37. Cf. also Harrison, *Law* (i), p.99,n.4; Davies, *APF* , p.435.
[393] Diog. Laert. 5.11-16.
[394] Dem. 27.4-5; 28.15.

maternal uncle or grandfather.[395] The same kind of relationship is expected to exist with a paternal uncle or the paternal grandfather. When Herodotus relates the story of Periander's sons and their reception by their mother's father, he adds that they were treated very kindly, " as was only natural, they being the sons of his own daughter."[396] Nearly the same expression can be found in Isaios in his *On the Estate of Kiron*. The young men who claim to be the sons of Kiron's daughter relate the many activities their supposed grandfather shared with them, " as was natural, seeing that we were the sons of his own daughter."[397] And in Lysias 32, the speaker reproaches Diogeiton with the maltreatment of his daughter's children (32.16,24,27).

Furthermore, in Isaios 11 Theopompos is indicted for defrauding his brother's children of whom he is their guardian. But he offers a defence in which his kindly feelings as well as his moral obligations towards the children are evident. The deceased Stratokles was closely related to him, both being the sons of the same father and mother (11.8). Stratokles' son and daughters are therefore his own nephews and nieces. If Stratokles is dead and he is guardian of his children, he would not mismanage affairs of his own brother at his death, live in wealth and sit

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[395] Cf. Luc de Heusch, ' The Debt of the Maternal Uncle: Contribution to the Study of Complex Structures of Kinship ' *Man* 9(1974),609-619; Jan Bremmer, ' The Importance of the Maternal Uncle and Grandfather in Archaic and Classical Greece and Early Byzantium ' *ZPE* 50(1983),173-186; J. Goody, ' The Mother's Brother and the Sister's Son in West Africa ' *J. Royal Anthrop. Soc.* 89(1959),61-88.

[396] Hdt. 3.50.

unconcerned while his brother's children live in abject poverty. He should, therefore, be considered the most wicked (κάκιστος) man among men if it is proved beyond doubt that he has mismanaged the affairs of his deceased brother and left his orphans with whom he has blood ties without caring for them (11.37-39).

It is the same kinship sentiments and familial touch that are emphasised in Demosthenes 27.4-6,65; 28.15-16, in Isaios 11.37-39, and in Lysias 32.4-5,12-13,16-18,24, and 27.[398] As can be noticed in Lysias 32. and rightly noted by Carey[399] regarding the nature of the kinship ties, the expression " father…father-in-law and brother… grandfather…and uncle of the little ones"(32.5), stresses the intricate network of close relationships, and therefore the closeness of the bonds which Diogeiton the guardian has betrayed. Here the closeness is implicit and factual as in 32.4 where the fact of the affinity is stated: " they were brothers…born of the same father and mother;" and in 32.12, it is explicit and emotive.[400]

The sources thus make it very obvious that kinship relationships were of crucial importance in the Athenian social structure, defining significant rights, and duties and sentiments of the individual.[401] And

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[397] Is.8.15.
[398] See also Diog. Laert. 5.12 on Aristotle's will.
[399] C. Carey, *Lysias Selected Speeches* (Cambridge, 1989),p.213.
[400] Cf. Lys.32.5 ἀναγκαίοτητας - ties of kinship: Dem.28.15 παρακαταθήκην -as a deposit, in trust.
[401] See W. E. Thompson, ' The Marriage of First Cousins in Athenian Society ' *Phoenix* 21(1967),273-282; Robert J. Littman, ' Kinship in Athens ' *AS* 10(1979),5-31; C.A.Cox, ' Sibling Relationships in Classical Athens: Brother-Sister Ties ' *JFH* 13(1983),377-395; S.C.Humphreys, ' Kinship Patterns in the Athenian Courts ' *GRBS* 27(1986),57-91.

because the Athenians were so family-conscious, the laws and public opinion had also carefully defined the duties of kinship. This is shown in what the nephew of Kleonymos and grandson of Polyarkhos tells the jury in Isaios on the estate of Kleonymos:

" If Polyarkhos, the father of Kleonymos and our grandfather, were alive and lacked the necessities of life, or if Kleonymos had died leaving daughters unprovided for, we should have been obliged on grounds of affinity to support our grandfather, and either ourselves marry Kleonymos' daughters or else provide dowries and find other husbands for them – the claims of kinship, the laws, and public opinion in Athens would have forced us to do this or else become liable to heavy punishment and extreme disgrace."[402]

It is significant that even in other cases which do not relate to guardianship, kinship relationship was considered paramount above everything else. And so it was regarded as a shameful act to take a kinsman to court (Is.1.5-7; Lys.32.1), and even more discreditable to treat a relative unkindly or to do any harm to him even in defending yourself against him in court (Is.1.6,29).

In Demosthenes' *Against Olympiodoros*, Kallistratos would not come into court and risk a trial with the fellow, " who is a relative, and to say unpleasant things of one who is a brother of my wife and the uncle of my

children, and hear disagreeable things from him."(Dem.48.8) In *Against Neaira*, Theomnestos relates how he was reproached for not seeking vengeance for the injuries done to his sister and her sister's children. (Dem.59.12) And in Isaios' *On the Estate of Pyrrhos*, all the maternal uncles declare that they were witnesses to his wedding with the sister of Nikodemos and at the naming ceremony when the child was born.(Is.3.26,29-30) It should therefore be regrettable for one to do wrong against one's kin:

"All other men afterwards repent of wrongs which they have done to their relatives in moments of anger." (Is.1.19)

And it was not only shocking but also painful to notice that a relative who should naturally be well-disposed towards his kin had turned against him as an enemy:

" Nothing is more painful, men of the jury, than when a man is addressed by name as ' brother 'of certain persons, when in fact he regards them as enemies." (Dem.40.1)

Thus, although litigation among kin frequently occurred in Athens,[403] it did not accord well with social expectations of proper disputing conduct; and so litigating kinsmen seem to be under strong social pressure to explain why they were opposing relatives in court.[404]

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[402] Is.1.39.
[403] Cf. Matthew R. Christ, *The Litigious Athenian* (Baltimore and London, 1998),p.169.
[404] See Is.1.6; Dem.39.1,6; 40.1-2; 48.1-2; Antiphon, 1.2.

But then, litigants also claim that if relatives are the last persons with whom one should quarrel, they are also the last persons who should wrong their kin and act as enemies; for this misfortune compels them to go to court.[405]

It is interesting to note also that every time opponents in Isaios use a will to bolster their claim, the jury is asked to put no faith in such a claim but to consider blood ties as the basis for their judgement, although in every respect the will seems completely legitimate.[406] Thus, a speaker tells the jury:

" It is only right, gentlemen, that you should give your verdicts on grounds of affinity and the true facts of the case in favour of those who claim by right of kinship rather than of those who rely on a will. For you all know surely what a family relationship is; one cannot misrepresent it to you."[407]

It is evident that kinship sentiments and attachment were demonstrated not only in the appointment of guardians of orphans but also in other areas of Athenian life outside matters of guardianship. It would therefore not seem surprising that the appointment of guardians was based on social and humane considerations resulting from kinship ties.

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[405] Dem.27.65; 48.1; Lys. 32.1,10; Is.1.5-8; 5.9-10. Cf. also Christ, ibid.p.168-169.
[406] Cf. Richard Wevers, *Isaeus*, p.107.
[407] Is.1.41. See also Is.1.3,4,12,13,17,27; 4.14-16,21,22.

It is not clear why friends and colleagues with no kinship ties were also appointed either as sole guardians or as co-guardians of orphans. The reasons could be various; though the evidence we have does not allow us to follow up this theme in detail. It is reasonable, however, to suggest that a reason for the choice of friends and colleagues was probably to protect the business interests of the testator even after his death.

The choice and protection may have different motivating factors. A non-kinsman could be appointed as a guardian by the testator so that the business he had established might not suffer mismanagement, and his property dissipated by unscrupulous relatives or a direct heir, resulting in the collapse of the business and his orphan living in destitution. Such a turn of events after his death would certainly tend to tarnish the good memory of him as a noble man, and bring disgrace upon himself and his ascendants.

Secondly, and particularly if the non-kinsman appointed as guardian is given a stake in the business, he would be compelled by his interests in the business to run it with devoted efficiency, to be able to pay the rent regularly and also to keep the business going in order to reap returns from his management. And for the testator to establish a closer attachment between the guardian and his household, the testator

sometimes betrothed his widow in marriage to the non-relative guardian of his orphan(s), as Pasion did.[408]

Lack of close relatives may also have been a factor. For it appears that if a father had no near relatives ready at hand, he would most probably have to designate friends and colleagues to be guardians of his orphans, as perhaps was the case of Aristotle who most probably had no kinship ties, nor did his children with the guardians he appointed for them (Diog.Laert.5.12-13).

One other possible reason for appointing non-relatives may have been apparent intrigues by the close relatives of a father to defraud the child, or to deprive him completely of his patrimony. A father who could foresee such a situation would most likely bypass his family members and designate an outsider as the guardian of the child. This seems to be the case in Hyperides' *In Defence of Lykophron* where all the close relatives of the deceased seem to have united not long after the death of the husband of the sister of Dioxippos to prove his young orphan illegitimate and take away his patrimony from him.

The motives for appointing nearest kinsmen as guardians of orphans seem to have been rooted in Athenian cultural practice. In Katane, Kharondas, as noted above, had ruled for the separation of personal custody from the management of a ward's estate by his paternal and

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[408] See Dem.36.30-31,51.

maternal uncles because of fears for his safety. While there may be some grounds for this motive, it seems that plotting against the ward may be possible only in a minority of cases, especially if there was only one child of the deceased. But where there were two or three orphans living with a paternal uncle it would seem hardly possible for him to plot against them all. He would easily fall under suspicion of plotting their murder, and would not find it quite so easy to escape prosecution. And if the child happened to be an heiress, it may be unlikely for a paternal uncle to plot against her life. This is because her death, at any rate, would not make him an automatic inheritor of the property if it was not very obvious that he was the nearest relative; and that would rather necessitate claims to the estate by the father's other collateral relatives.

The Athenians, however, entrusted the administration of the estate and the upbringing of the orphan to the same person, whether the paternal or maternal uncle, and had more positive social and humane considerations for their choice of guardians. It may be presumed that the maternal uncle had an active hand in the overall education of his sister's son, and that for the young nephew, his mother's brother functioned as the model par excellence for imitation. This relationship also seems to have been a factor in the lives of some celebrated men. Davies[409] informs us that the orator Demokhares was the sister's son of Demosthenes. We

are told also that Speusippos succeeded his mother's brother Plato as head of the Academy.[410] The same consideration also goes for the role of the paternal uncle. And if it was natural that the maternal uncle or the paternal uncle served as the model for the boy during his youth and apparently had an active hand in his education, it is understandable that this role could reflect itself in laws concerning guardianship.

Kinship considerations were also meant to ensure that the man appointed as guardian was a reliable person whose reliability would be reinforced by the ties of kinship. So, just as for marriage, whenever an Athenian father sought a worthy guardian for his son or daughter, he would often turn to a relative whose qualities he knew firsthand, and whose loyalty he could expect. This was to ensure that such a guardian would feel morally obliged to watch the interest of the ward and justly render duties to him. And there is no doubt that the ward would also have the natural rights of protection by the paternal or maternal uncle.

It would appear that the Athenians considered maltreatment of, or injustice to kin as an offence against humanity and the gods, for which the gods might send retribution onto the offender against the ethics of kinship. Thus, although quite a few relatives are alleged to have suffered injustice at the hands of their kinsmen, perhaps reflecting changed religious views in the fourth century, it was generally felt that sentiments

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[409] *APF*, p.142.

of affinity with the attendant religious connotations would make kinsmen who were guardians refrain from perfidious acts against their wards. The widow of Diodotos therefore emphasises in her evidence against her father that the fear of the gods should have restrained his hands from mistreating the children and mismanaging their estate because of the nearness of their relationship.

And in his second speech against Aphobos, Demosthenes brands Aphobos as " the most impious of men." (28.16) Aphobos, his uncle and the one who should least have had evil thoughts about him, let alone treat him unkindly or cruelly, has, together with his co-guardians, allegedly defiled the sacred ties of kinship (the "sacred deposit":28.15), and defrauded him of all his fortune bequeathed him by his father. In overall terms, the strong moral bond from natural affinity is an important behavioural phenomenon regarding the nurture and maintenance of orphans, and the management of their property. This is because it tends to imply a certain rejection of wickedness or lack of concern for the orphan of a nearest kin, and invokes a kinship relationship that is naturally characterised by special attitudes of mind reflected in filial duties or gestures to kin.

It is indeed evident that the moral intent underlying the appointment of nearest relatives as guardians suggests a promising focal

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[410] Plut. *M.*10D; Diog. Laert.3.4.

point. This is based on the one main reason that once the guardian was closely related to the orphan by kinship or blood, he would morally feel restrained from mismanaging the affairs of the ward, let alone physically harming him or her. This is what Theopompos implies in Isaios 11.38; it is the same theme that is expressed in Lysias 32.4-7, especially in 32. 5: " as he felt that owing to these connections there was nobody more bound to act justly by his children."

Demosthenes' account in his first two speeches against Aphobos emphasises the same moral intent which his father had in appointing his own nephews as guardians of his children (Dem.27.5;28.15). But " they (the guardians) have thought nothing of kinship, as though they had been left to us, not as friends and kinsmen, but as bitterest enemies." (27.65)

ASSUMPTION OF RESPONSIBILITIES AS GUARDIAN

Given the ubiquity of orphans in the Athenian society, and the general practice of guardianship, what evidence do we have that points to when the designated guardian assumed his duties? If we turn to what we would consider as the rules on guardianship, particularly the law quoted in Demosthenes 43.75 on the legal protection for orphans by the archon, we do not get much help from it. Neither is it overt or implicit in *AP* 56.6 where certain actions that the archon was empowered to take regarding guardianship are listed. For none of them indicates exactly at what point

in time after the death of the father a guardian should assume his responsibilities, whether he was appointed *inter vivos* or by testament, or by a joint action of the family and the archon.

In spite of the lack of the evidence in the supposed rules on guardianship, a passage in Demosthenes' first speech in his suit against Aphobos throws some light on this important event in the life of the orphan. It will be recalled that in the will of the elder Demosthenes, he had arranged for a second marriage of his wife, Kleoboule, to his own nephew, Aphobos. Besides, he had left the house and its furnishings for the use of the same Aphobos and his future wife and her children.[411] Kleoboule's dowry in this projected second marriage was eighty minae, fifty of it made up from her jewelry and some cups, and the thirty minae derived from the sale of some slaves (27.5,10,16).

We are informed, however, that although Aphobos took the dowry, this second arranged marriage did not take place (27.15-17). And, informing the jury of how Aphobos got the widow's dowry and kept it, but would neither marry her nor provide for her maintenance, Demosthenes asserts:

Οὗτος γὰρ εὐθὺς μετὰ τὸν τοῦ πατρὸς θάνατον ᾤκει τὴν οἰκίαν εἰσελθὼν κατὰ τὴν ἐκείνου διαθήκην, καὶ λαμβάνει τά τε χρυσία τῆς μητρὸς καὶ τὰ ἐκπώματα τὰ καταλειφθέντα.

"Immediately after my father's death the defendant came and dwelt in the house according to the terms of the will, and took possession of my mother's jewels and the cups left behind." (27.13)

A commonplace of stylistic criticism in Demosthenes as an orator noted by a critic, is that style in his speeches is always functional, that it always clarifies a point which he wants to make, or reinforces an idea which he wants to convey to his audience.[412] There is no doubt that Demosthenes' statement in 27.13 quoted above fits in this feature of his style. For quite apart from the dramatic connotation and effect of εὐθὺς μετὰ in the statement, we easily notice also a dramatic shift from the imperfect tense ᾤκει to the historic present λαμβάνει.

And although we have no way of judging the exact force of εὐθὺς μετὰ (it may mean a few days later or on the day of the elder Demosthenes' death), the style certainly reflects the thought of speed or promptness with which Aphobos acted. Golden, a disputant in a controversy over the orator's age of majority, pooh-poohs the statement, and, considering the evidence as of less importance, brushes it aside and presumes that the statement " need be no more than an attempt (by the orator) to emphasise Aphobos' unseemly hurry and greed."[413] However

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[411] Dem.27.5.
[412] Cf. C.A.Wooten, ' A Few Observations on Form and Content in Demosthenes ' *Phoenix* 31(1977),258-261, esp.258.
[413] Mark Golden, *Phoenix* 33(1979),25-38,esp.34.

that may be, it seems to me that if the statement is taken in its entirety and examined carefully without prejudice, we would realise that it illustrates also two important facts about the guardianship of Demosthenes. In the first place, it points to the guardian's sense of duty and concern for the orphans and their mother. For the decease of the elder Demosthenes had left a social vacuum regarding the administration of the *oikos* which needed to be filled in no time. Secondly, and more importantly, the statement highlights the fact that Aphobos assumed his duties as guardian of the orphans and the widow with immediate effect at the death of his uncle.

This immediate assumption of responsibilities is evident in a later statement by Demosthenes to the jury. According to the orator, when it became obvious and certain that Aphobos had got the widow's dowry and yet would not marry her or provide for her maintenance, he was challenged by Demokhares, the husband of the orator's aunt. Aphobos, Demosthenes says, admitted having received the dowry, but offered the excuse that he and the widow were having a little spat about some gold trinkets; and that, as soon as that matter was settled, he would comply in the matter of her maintenance and in other ways as well such that he, Demosthenes, would have no cause to complain (27.15).[414] And illustrating the proofs of Aphobos' admissions of the facts about the

events during Demokhares' remonstration with him, Demosthenes observes rhetorically:

" If it is shown that he made these admissions before Demokhares and the others who were present;...and that he occupied the house immediately after the death of my father; will it not be clear, the matter being admitted by everybody, that he has received the dowry..."? (27.16)

This rhetorical question evidently suggests that Aphobos moved into his uncle's *oikos* no sooner than he had died, obviously to begin to perform his role and duties as guardian of the orphans and their mother. If on the basis of the orator's account, it is agreed that Aphobos assumed his duties as guardian of Demosthenes and his sister and mother, it follows that this assumption of responsibilities would have taken place before the burial and all other immediate rites of the elder Demosthenes were performed. Certain passages in Isaios, and other sources concerning funeral ceremonies in Athens seem to corroborate the Demosthenic evidence.

In an inheritance dispute in Isaios, the speaker tells the jury:

" The conduct of Diokles on the occasion of our grandfather's death clearly shows that we were acknowledged as the grandchildren of Kiron. I presented myself, accompanied by one of my relatives, a cousin of my father, to convey away the body with the intention of conducting the

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[414] Cf. also Hunter, *EMC/CR* 33(1989),41.

funeral from my own house. I did not find Diokles in the house, and I entered and was prepared to remove the body, having bearers with me for this purpose. When, however, my grandfather's widow requested that the funeral should take place from that house, and declared that she would like herself to help us to lay out and deck the corpse, and entreated me and wept, I acceded to her request and went to my opponent and told him in the presence of witnesses that I would conduct the funeral from the house of the deceased, since Diokles' sister had begged me to do so." (8.21-22)

In the next section of the same speech, the speaker goes on:

" Diokles, on hearing this, made no objection, but asserting that he had actually bought some of the requisites for the funeral and had himself paid a deposit for the rest, demanded that I should pay him for these, and arranged to recover from me the costs of the objects which he had purchased and to produce those who had received the deposit for the objects for which he alleged that he had paid a deposit." (8.23)

These passages here no doubt emphasise the intensive funeral preparations which require immediate attention before the burial of the deceased. The following passages may as well be considered. In a dispute over the estate of Nikostratos in Isaios, the speaker rhetorically complains to the jury:

" Whereas he (Khariades) neither took up the body of his adopted father nor committed it to the flames nor collected the bones, but left all these duties to be done by complete strangers, should he not be regarded as most impious in claiming to inherit the property of the deceased, though he never performed any of the customary rites over him? Shall I be told that, after having performed none of these duties, he administered Nikostratos' property?" (4.19-20)

On the estate of Astyphilos, also in Isaios, where the half-brother of the deceased claims his property, the plaintiff asserts:

" So confident, indeed, has Kleon here always been, and still is, that no one but himself is to have the estate, that, as soon as the news of Astyphilos' death was reported…he entered into possession of the landed estate and declared that anything else which Astyphilos left belonged to his own son, without ever giving you the opportunity to decide the matter. When, however, my brother's remains were brought home, the person who claims to have been long ago adopted as his son did not lay them out or bury them, but Astyphilos' friends and companions-in-arms, seeing that my father was ill and I was abroad, themselves laid out the remains and carried out all the other customary rites." (9.3-4)

Here in these two passages, we are not interested in the inheritance disputes between the speakers and the defendants. What concerns us is what actually goes into the performance of the deceased's funeral rites.

The urgency of these rites is attested by a law on funeral procedure in Athens attributed to Solon, and preserved for us in a speech of Demosthenes, the relevant section of which reads as follows:

" The deceased shall be laid out in the house in any way one chooses, and they (the relatives) shall carry out the deceased on the day after that on which they lay out, before the sun rises."[415]

These sources are quoted not just for the purpose of dwelling longer on funeral ceremony in Athens. On the contrary, they are to offer further illustrations in which the evidence, in its detail and rigour, is the equal of the Demosthenic evidence provided in his statements to the jury. It is quite noticeable from the passages cited so far that great importance was attached to funeral celebration in Athens, and also that funeral ceremony involved a great deal of organisation and financial costs.

In a situation where a man died leaving an adult son, natural or adopted, who then became the automatic heir, such a son shouldered all the funeral responsibilities of the deceased father. These were special conventional filial duties of the son towards his father. If he failed to perform them, there could be very damaging consequences for the son. For one thing, the general conventional opinions and attitudes of the Athenians, and in fact, Greeks in general, viewed the performance by the son of the funeral rites of a parent as the crowning glory in the life of a

parent who has lived a happy life. This, in part, is what Plato implies in one of his works where, when Socrates questions Hippias about what constitutes 'the beautiful', Hippias answers that it includes a man arriving at old age and " having buried his parents beautifully, to be buried beautifully and fittingly by his own offspring."[416]

Against this background of happy life, the Athenian parent considered it a very terrible and incurable misfortune to survive a son.[417] And at the *dokimasia*(the vetting procedure partly charged with the screening of people for public office) in Athens, the city's concern for the cults of the families was reflected in a question which required the person being vetted to demonstrate his care for his parents and knowledge of the tombs of his ancestors. If a man did not look after his parents, or perform the funeral and other customary rites of his deceased parents, he failed the scrutiny, and was disqualified from the post he was aspiring to get.[418] On the other hand, if a man died without legitimate offspring, his next-of-kin carried out all the funeral duties with the hope of inheriting from the deceased after all the funeral toil.[419]

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[415] Dem.43.62.
[416] *Hippias Major*, 291d-e. Euripides also echoes the same sentiment. Cf. *Med.* 129-134; *Supp.* 168-75,538-41; *Troades*, 387-90. For modern references to the notion, see Lacey, *Family*, p.16; Rush Rehm, *Marriage to Death*: *The Conflation of Wedding and Funeral Rituals in Greek Tragedy* (Princeton 1994),p.21.
[417] Is.7.14; Lys.2.73.
[418] See Xen. *Mem.* 2.2.13; Arist. *AP*, 55.3; Lys.31.20-23. Also MacDowell, *Law*, p.167-69; Gabriel Adeleye, ' The Purpose of the *Dokimasia* ' *GRBS* 24(1983),295-306.
[419] Cf. the passages cited above in the inheritance disputes in Isaios. Also Wevers, *Isaeus*, p.101.

But if a man died leaving an orphan in his minority, as in the case of Demosthenes, and Diodotos' orphans in Lysias 32, the practice, both customary and legal, was that the guardian of the orphan, though not the heir, carried out all the funeral responsibilities and bore all the financial costs involved on behalf of the orphan. The expenses were then charged on the ward's estate.[420] One may consider also the immediate filial needs of the orphan – his or her comfort and emotional disposition- until the funeral rites were over.

It would imply, therefore, that, the guardian, if appointed *inter vivos* or by testament, would begin performing his duties on the very day of the death of the father. And if a guardian was not appointed either *inter vivos* before the decease occurred, or by testament, it would seem that one was immediately appointed or nominated on the day the person died. He would then assume immediate responsibility to see to not only the celebration of the funeral of the deceased, but also the care as well as the administration of the estate of the orphan. It is possible that there could be rival claimants to the estate of the deceased. This would imply that the appointment of a guardian by the archon and legal process might take some time. But this situation could arise in the case of an *epikleros*, and not that of a surviving minor son. And even in the case of an *epikleros*, the presumption is that if there were rival claimants, the most possible

[420] See Lys.32.21.

nearest relative of the deceased would be nominated to assume immediate responsibilities until the claims had been decided by court.

It stands to reason also that, as it has been noted already, if the guardian appointed *inter vivos* or by testament happened to be away on the death of the testator, the family in consultation with the archon would nominate a deputy guardian, in conformity with the line of succession, to act in place of the formally appointed guardian until he was back home to take over his duties. We would presume then, that Aphobos, Demosthenes' guardian, began exercising his role and functions on the very day the elder Demostnenes died. In the same vein, in a situation whereby guardianship informally devolved on family members on the death of a father, it could well be maintained that such relatives assumed responsibilities as guardians immediately the person died.

Two passages in Isaios seem to suggest that a guardian appointed *inter vivos* or by testament had to get himself registered as guardian by the archon before he could act as guardian.[421] This would also mean that a guardian nominated by the family in consultation with the archon had to get registered before he could begin to perform his duties. However, the situation described in these two passages may be regarded as peculiar. They, in fact, relate to disputes about the property some time after the death and burial rites of the deceased, and not immediately after his

death, at which time the residential status of the orphan would most probably also have been in dispute.

Besides that, the circumstances are such that we cannot be certain whether or not the status of the people as the guardians they profess to be is genuine. And even if it is genuine, their registration with the archon seems quite remote from the time their alleged testators had died. It may be probable that registration of the guardian may have been required, without which the general protection of the interests of the orphan could not have been nominally discharged by the archon.[422] In any case, the passages do not even suggest what point in time the guardian should get registered, if he really had to.

I would maintain that if any registration with the archon was required, which probably it was, that would be done before the testator's death, so that he could assume immediate responsibility as soon as the testator died. The presumed registration would therefore not take place years later as the situations presented in the two passages of Isaios seem to suggest. This immediate assumption of responsibilities becomes equally incumbent in a situation where the man died leaving a posthumous child, as in the situations in Lysias 13.39-42 and Hyperides' *In Defence of Lykophron*. Although the child would not yet be born, his

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[421] See Is.4.8; 6.36.

appointed guardian would have begun performing his role by managing its property as soon as the decease occurred before the child was born.

Demosthenes' statement about Aphobos should therefore not be brushed aside as a mere oratorical art to embellish and emphasise Aphobos' unseemly haste and greed to misappropriate Demosthenes' estate. Rather, taking it from the most positive point of view, the statement marks the immediate assumption of the responsibilities of Aphobos as required of him as guardian on the death of his uncle, and the beginning of the orphan's tutelage under his guardianship. I believe that this, as far as the sources go, would have been the general practice and situation for all guardians and orphans in classical Athens.

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[422] Cf. Harrison, *Law* (i),p.103. The view that guardians had to register with the archon is in dispute. See Wyse, p.524; Jolowicz, *JRS* 37(1947),83,n.14; Robin Osborne, *Chiron* 18(1988),305. But see Dem.43.75, and Arist. *AP*,56.6-7 which are likely to prompt an inference for registration.

CHAPTER 7

THE GUARDIAN FOR THE HEIRESS (EPIKLEROS)

It is generally recognised that the Athenian *epikleros* was the daughter, granddaughter, or great-granddaughter of a man who died leaving behind him no legitimate son or grandson or great-grandson.[423] A few basic facts need be noted first in discussing the question of a guardian for the *epikleros*. The position of the *epikleros* seems to differ from that of the male orphan in three fundamental respects.

In the first place, the male orphan was appointed a guardian at the death of his father but the *epikleros* had to be claimed at the court by her prospective guardian. This could be the result of one of two conditions: if her father died without adopting a son, or appointing a guardian for her *inter vivos*. At the death of the father, if the only daughter had not been married already to one whom her father had adopted as his son, she became assignable or liable to adjudication (*epidikos*),[424] and was assigned or adjudicated by the archon. The adjudication was based on claims submitted to him, to the nearest male kinsman of the deceased in a fixed order of precedence. This fixed order of precedence obviously

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[423] On the *epikleros* see MacDowell, *Law*, p.95-108; *Andokides*, p.145-6; J.E.Karnezis,Ἡ ἐπίκληρος (1972); E.Karabelias in *Symposion* (ed. H.J.Wolff,1975),215-54, noted by MacDowell, *Law*, p.266,n.207; Harrison, *Law* (i), p.132-8; Lacey,*Family*,p.139-45; D.Schaps, in *CQ* 25(1975),53-7; *Economic Rights*,p.25-42; Cox, *Household*,p.94-99,95,n.109; C.B.Patterson, *Family*,p.91-101; Sealey, *Justice*, p.16-21.

reflected the same pattern as the one for claiming the inheritance of a man who died without any issue, as set out in Demosthenes 43.51.[425]

Second, an adult male orphan did not need to be appointed a guardian to provide for him and manage his estate but the adult *epikleros* necessarily needed to have a guardian to maintain and support her and administer her property until her adult son took over her property and maintenance.[426] Furthermore, while the young male orphan, like all other young boys, was expected to emerge from his period of tutelage to adulthood at the age of eighteen not only to manage his own affairs but also to participate in the affairs of the state,[427] the *epikleros*, like any other female, continued to live under tutelage throughout her life from the period of minority to death.

The other notable fact about the *epikleros* is that the situation in which an *epikleros* was a minor or unmarried at the time of her father's death seems rather rare in the sources. Two instances that readily come to mind are the daughters of Epilykos[428] and the second wife of Protomakhos because of whom he divorced his first wife.[429] It seems most probable also that Philomakhe II, daughter of Euboulides II, became *epikleros* while still an infant during which time she was probably

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[424] See Is.2.2;6.4;7.3; Dem.44.46; and cf. Harrison,*Law* (i),p.95,156,n.2and3; John Gould in *JHS* 100(1980),43.
[425] For the full order of precedence see Dem.43.51. Cf. Harrison, *Law* (i),p.144-146.
[426] Dem.46.20; Is. frag.26; Hyper. Frag.B,39.
[427] Arist. *AP*,42.1.
[428] Andok.1.117-119.

awarded to Sositheos, the speaker of Demosthenes 43.[430] However, in the majority of cases where the *epikleros* is mentioned, it appears to have been the adult and married *epikleros* who features in the situations described. It would seem therefore, that most of the laws concerning the *epikleros* tend to have the adult *epikleros* in mind.[431]

In Demosthenes *Against Pantainetos*, the defendant Pantainetos, alleges, as reported by Nikoboulos,[432] that Evagoras had gone into his home in the country, and "made his way into the apartments of his daughters, who were heiresses" (Dem.37.35). The mention of heiresses (*epikleroi*) by Pantainetos, however, cannot be taken seriously to mean that his daughters were in fact *epikleroi*, and unmarried. It is noteworthy that an only daughter whose father was still alive was not referred to as an *epikleros*. It appears most probable that Pantainetos was just being metaphorical if not rhetorical - that his daughters were potential *epikleroi*, believing that he would most probably not be able to sire a male child before his death; or he said that in anticipation of what was probable. It seems to me that the sarcastic comment by the speaker that Pantainetos had not as yet had the case tried by the archon, the protector of heiresses, illustrates the falsity of the reference. In fact, if Pantainetos secured a

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[429] Dem.57.41.
[430] Dem.43.12-13,15. Cf. Davies *APF*, p.78; Thompson, *De Hagniae*, p.14.
[431] For instance, Plut. *Solon*,20.2-3. For the rarity of the true *epikleros* in the sources see J.E.Karnezis, *The Epikleros*, p.206-12, noted by Cox, *Household*, p.95,n.110.
[432] Dem. 37.45-46.

verdict for two talents for his charges, it was most probably for unlawful entry into his house but not for anything against his "heiresses."

With regard to the appointment or selection of a guardian for the *epikleros*, three surviving speeches[433] together with a few independent references yield considerable information on the procedure. In his second speech in his suit against Stephanos, Apollodoros the plaintiff cites the following law to establish that his mother Arkhippe is an *epikleros*:

" If a woman is betrothed for lawful marriage by her father or by a brother born of the same father or by her grandfather on her father's side, her children shall be legitimate. In case there is none of these relatives, if the woman is an heiress, her guardian shall take her to wife, and if she is not, that man shall be her guardian to whom he entrusts her." (Dem.46.18)[434]

The same law is partly quoted and explained in Demosthenes 44.49 and Hyperides, *Against Athenogenes*, 16. As can be noticed from the law, and from the explanations given to it by the speaker of Demosthenes 44, and by Hyperides, the law has three main objectives. In the first place, it fundamentally defines the requisite for a woman to be considered as lawfully married for the purpose of bearing legitimate children. Secondly, it clearly states, on the principle of closeness of kin to the woman, which people could be her guardian and therefore could legally give her away in

marriage. But the law indicates also a specific duty of the guardian of an *epikleros*: if the woman is an *epikleros*, her guardian is required to marry her. And in another section of the same speech, Apollodoros quotes another law that requires that the son of an *epikleros* who has reached his age of majority should be the guardian of his mother and provide for her maintenance:

" If any one is born the son of an heiress, two years after he has reached the age of manhood he shall assume control of the estate, and he shall make due provision for his mother's maintenance." (Dem.46.20)[435]

As has been discussed on page 417 below, it does appear that Apollodoros is exploiting this law to suit his own argument and convenience. For the application of the law regarding the legal representation of the *epikleros* seems to be different in a situation whereby the woman was a married *epikleros* either to her guardian or to someone else. But we may note also the law quoted in Demosthenes 43.54 that talks about the marriage of the poor *epikleros* and how this should be done:

" With regard to all heiresses who are classified as Thetes, if the nearest of kin does not wish to marry one, he shall give her in marriage with a dowry of five hundred drachmai, if he is of the class of

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[433] Dem.43;46; Is.3.
[434] Cf. Harrison, *Law* (i), p.110.
[435] Cf. Is.8.31;10.12;frag.26; Hyper. frag.B,39.

Pentakosiomedimni, if of the class of Knights, with a dowry of three hundred, and if of the class of Zeugitai, with one hundred and fifty, in addition to what is her own. If there are several kinsmen in the same degree of relationship, each one of them shall contribute to the dowry of the heiress according to his due share. And if there are several heiresses, it shall not be necessary for a single kinsman to give in marriage more than one, but the next-of-kin shall in each case give her in marriage or marry her himself. And if the next-of-kin does not marry her or give her in marriage, the archon shall compel him either to marry her himself or give her in marriage...."

The texts of these laws clearly show that the *epikleros* whom the three laws have in mind is the adult *epikleros*. This situation becomes more evident in Apollodoros' explanatory note to the law in Dem. 46.18 in section 19. Thus it is assumed that the now adult *epikleros* would, then in her minority, have lived under a designated guardian until the marriageable age when she should either be married by her father's next-of-kin himself or given in marriage by him according to the laws.

The selection of a guardian for the *epikleros* may take various forms. While still alive, if a father realised that the daughter would be his only child, he might, if she had reached puberty, attempt to marry her off to his brother or anybody of his choice. Demosthenes 44 provides an instance. When Meidylides realised that Kleitomakhe would be his only

child, he wished to marry her off to his brother Arkhiades. Arkhiades, however, turned down the match because he did not wish to marry. Consequently, Meidylides gave his daughter in marriage to Aristoteles who was probably not a close relative.(Dem.44.10) Giving away an only daughter in marriage to a non-kinsman whom a father had not adopted could, however, create a problem later in the family. This is because if the children of the *epikleros* later claim the estate of her father there could be fierce rivalry between them and their grandfather's patriline.[436]

But the father could adopt a son *inter vivos*, or by testament, or appoint a guardian for the girl before his death.[437] If the father adopted a son *inter vivos*, the adopted son had the right of immediate entry into possession of the estate at the death of his adoptive father.[438] His immediate responsibility, if the *epikleros* were an infant, would then be to be her guardian responsible for her nurture and care as well as the management of the estate until she reached puberty. He may then take her to wife, or else give her away in marriage and dower her accordingly.[439]

There is evidence that seems to suggest that the father of an only daughter may also appoint a guardian *inter vivos* for his infant or unmarried daughter, though the designated guardian may not necessarily be a relative. In Isaios, Pistoxenos is alleged to have died in battle in

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[436] Cf. Cox, *Household*, p.99.
[437] Dem.20.102;41.3-4;46.16.
[438] Harrison, *Law* (i),p.93,95; (ii),p.125; MacDowell, *Law*, p.100; Todd, *Law*, p.220,223.

Sicily, leaving his only daughter, Kallippe, in the house of Euktemon as her guardian.(Is.6.13.14) We are not in a position to know whether Euktemon was a relative of the deceased Pistoxenos. It is most probable that he was a friend whom he trusted. But it is certain that Pistoxenos had appointed Euktemon as guardian of Kallippe, who was most probably still young, before the Sicilian expedition in which he perished.

It is also not stated by what marriage procedure Euktemon took Kallippe to wife, from which marriage the two alleged sons were born.(6.14) But, as Wyse notes,[440] if their alleged marriage had been illegal, the speaker would not have passed over the point without commenting on it. One thing, however, is obvious. The legitimacy of Kallippe and her sons is the subject of dispute at the court. But the situation described throws light on the fact that if the father of an only daughter did not adopt a son, he might appoint a guardian for her while he was alive to take charge of the daughter in the event of his death.

In absence of an adoption of a son, or appointment of a guardian *inter vivos* by the father before he died, the *epikleros* had to be claimed by her prospective guardian, and was adjudicated to him by the procedure of *epidikasia* administered by the court presided over by the archon. Demosthenes and Isaios give us some information about the procedure for the *epidikasia.* In his suit against Stephanos, Apollodoros cites the

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[439] Dem.43.54;46.18; Is.6.14. Cf. also Just, *Women*, p.95.

following law to establish the irregularity of the alleged marriage of his mother to Phormion, and therefore the illegality of the marriage:

" The archon shall assign by lot days for the trial of claims to inheritances or heiresses in every month except Skirophorion; and no one shall obtain an inheritance without adjudication."[441]

And a speaker in Isaios also tells the jury:

" Now the law ordains that a petition for the adjudication of an inheritance must be presented within five years of the death of the last heir."[442]

It would appear that Demosthenes 46.22 and Isaios 3.58 complement each other. In Demosthenes 46.22, the law sets out the procedure for claims: the archon advertises any vacant inheritances or available heiresses every month except the last month of the Attic year. In Isaios 3.58, it is allowed of any one who felt that he was entitled to an inheritance or to an *epikleros* to put in his claim within five years of the death of the last heir.

It appears from what the speaker of Demosthenes 43 says also that there was a wider publicity after the advertisement by the archon declaring an estate vacant, or an *epikleros* assignable before claimants came forward with their claims:

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[440] Wyse, p.499.
[441] Dem.46.22. Cf. Harrison, *Law* (i), p.9-12; MacDowell, *Law*, p.103. On Skirophorion see Murray, *Demosthenes* V, *LCL*, p.260, note a.

" Theopompos, the father of Makartatos here, although he was in town when the herald asked by proclamation whether anyone wished to lay claim to the estate of Hagnias by virtue of kinship or under a will, or to deposit security for the costs of such claim, yet did not venture to make a deposit, but by his own act gave judgement against himself that he had no conceivable claim on the estate of Hagnias."(Dem.43.4-5)

As noted by Thompson,[443] there is no other reference in the sources to a herald's invitation to contest an estate or an *epikleros*. But we learn from Aristotle that during the main assembly of each month " it is necessary to read out the claims on the estates and the heiresses so that it will not go unnoticed that one has become vacant."[444] It is therefore most probable that Aristotle is referring to an aspect of the archon's functions as conferred on him by the law in Demosthenes 46.22, and that the reading of the available claims by the archon and the proclamation by the herald probably took place at the same meeting of the assembly.

Demosthenes 43.4-5 and 46.23 define two bases for claims to an inheritance or to an *epikleros*. An *epikleros* could be claimed either on grounds of kinship or by a will. But the circumstances for the *epidikasia* appear various. If the claim for the *epikleros* was by virtue of kinship, the order for those who were best qualified to claim her and be her guardian

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[442] Is.3.58.
[443] *De Hagniae*, p.16,65.
[444] *AP*, 43.4.

was the same order of precedence as set out in the law quoted in Demosthenes 43.51. This was the situation in the majority of cases. It is, in fact, on the basis of Demosthenes 43.51 that the archon exercises his functions conferred on him by the law in Demosthenes 46.22. The *epikleros* becomes assignable or claimable in Demosthenes 43.51. The archon declares her status to the people at the assembly as directed by Demosthenes 46.22;[445] then any one who qualifies to claim her submits his claims to the archon within the specified period of time stated in Isaios 3.58 for the adjudication.

Once she is awarded to him by court presided over by the archon, he becomes her guardian, and responsible for everything about her. But if any one later feels that the first adjudication was made to the wrong person and he is better qualified than that person, he petitions to the archon and puts in his claim for her. The petitioner's claim should be based on the rules set out in Demosthenes 43.16 and in conformity with the time limit in Isaios 3.58 for a *diadikasia*.[446]

It would appear that Demosthenes 46.22 and Isaios 3.58 assume four possible situations with regard to the status of the *epikleros*. The first situation would probably be if the adopted son *inter vivos* who had already entered into possession of the estate and taken over the guardianship of the *epikleros* had died. As the last heir to the property and

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[445] Cf. Arist. *AP*, 43.4.

guardian of the *epikleros*, his death without a son would make the estate vacant again. The *epikleros* once more became liable to claim by other collateral relatives who would then sue for both of them.

Second, is the situation of an *epikleros* in her minority. At the death of her father, the minor *epikleros* had been claimed by her father's next-of-kin under whose guardianship she had lived. But the next-of-kin and guardian of the *epikleros* dies while she is still in her minority. In such a situation, the deceased would have been the last heir to the property and guardian of the minor *epikleros*. There would therefore be the need for a fresh *epidikasia* to claim the property and her.

There could also be the situation of the adult *epikleros* living with her husband. If the husband died leaving no son, his death would necessitate a fresh claim to the property and the *epikleros*. Furthermore, there appears to be the case of a female orphan with a brother born of the same father and mother who inherited their father's property, and therefore became guardian of his sister. If the brother died without a son his death would thus leave her an *epikleros*. This situation would then call for new claims to the estate and for the *epikleros* by the father's next-of-kin in the family.[447] This is the situation believed to have arisen at the beginning of Menander's *Shield*.

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[446] Cf. MacDowell, *Law*, p.103,217-218.
[447] See Is. 10.4,7,8,10,14,26.

There is one other situation that called for an *epidikasia*. If the father of an only daughter adopted a son by testament; or if he adopted a girl or a woman, the death of her adoptive father would make her an *epikleros*. [448] The adoption of females, however, appears quite rare in the sources. It is significant that a son adopted *inter vivos* and duly admitted to the phratry and deme of his adoptive father was on the same footing as a son born in lawful wedlock. He could therefore enter into direct possession of the estate like a natural son, and have the *epikleros* under his guardianship without court authorisation. No such privilege, however, was allowed to a son adopted by testament.[449] Thus no rights for claims to the estate or the *epikleros* existed for such a son until he had been certified by a court that he was the rightful heir to the deceased.

Todd[450] claims that it is nowhere made explicit in the sources the reason for the distinction that a son adopted by will needed judicial ratification but the one duly adopted *inter vivos* did not require to go through that procedure. His view, however, seems to lack credibility. It is generally acknowledged that adoption by testament is the same as a will bequeathing property. And Isaios tells us in 3.59-61 that adoption *inter vivos* made the adoptee a legally recognised son of the adopted father, and therefore barred other claimants from disputing the legitimacy of the

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[448] Is.7.9; 11.41. Cf. MacDowell, *Law*, p.100-101.
[449] Is.6.3;9.3;10.9; Dem.44.19. Cf. MacDowell, *Andokides*, p.147-148.
[450] *Athenian Law*, p.224.

adoptee or the relationship that he professed to the deceased. But adopted sons by testament should apply to the court for adjudication not only because collateral relatives were always zealous to dispute a bequest to an adopted son by will, but also because most claims of some collaterals were suspect. Thus, the genuineness of their claims required certification by the court.[451] This is a very striking piece of evidence for the distinction that Todd ignores.

He is, none the less, certainly right, following Wyse[452] and Harrison[453] on the contractual nature of adoption *inter vivos* between the adoptive father and his adopted son-to-be. And Isaios further informs us that the consent of a widow living with her son in her defunct husband's household might be obtained before her son could be adopted,[454] though there is no evidence that the permission was a legal requirement.

Isaios and Demosthenes provide information that implies that the position of the *epikleros* could be quite unstable both in marriage and her residential status regarding the selection of her guardian. In Isaios 3.64, the speaker refers to a law stating that if a man died leaving no sons but only a daughter who was married but childless, his nearest male relative could take her away from her husband and marry her himself. The same law seems to have been the grounds for the threat to the father of the

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[451] For Athenians' reservations about the authenticity of the documents tendered for probate, see Is. 1.38,41;4.12,23;7.2;9.7-8. Then cf. Thompson, *Prudentia* 13 i (1981),13-23.
[452] See Wyse, p.249. But for a hint to the contract see, Dem.46.14.

speaker of Isaios 10 by Aristomenes (10.19) regarding the property of Aristarkhos. And in Demosthenes 43, the speaker cites a law that emphasises the fact that the award of an estate or an *epikleros* was not final provided a new contestant came forward with a better claim. (43.16)[455]

The laws could have three major effects on the position of the *epikleros*. In the first place, she could be transferred from guardian to guardian, if she was a minor *epikleros*, as new contestants came forward with apparently better claims. Secondly, if there were two or more collateral relatives of the deceased father who wished to claim her, she might become an object of rivalry and competition among them,[456] and was awarded to the claimant who best qualified. In the third place, the married *epikleros* might have her marriage terminated resulting in her transfer from one husband to another, especially if a large estate was involved, thereby creating an unstable married life for her if claims for her by new contestants happened to be successful. And Isaios notes that "indeed it has frequently happened that husbands have been thus deprived of their own wives." (3.64) The effects of subsequent claims and transfers on her residential status are indeed obvious.

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[453] *Law* (i),p.20,n.1, and p.71,88-89.
[454] Is. 7.14.
[455] Cf. Is.11.7; MacDowell, *Law*, p.103.
[456] See Andok. 1.117-119.

Forster[457] notes that in practice the law did not apply to all cases indiscriminately, and that an *epikleros* could, even if she had no children, renounce her rights, to remain with her husband. But I doubt if Forster is correct here. For the patriarchal nature of the Athenian society as well as the status of women was such that it would seem both socially and legally disadvantageous for a woman in the circumstances to renounce her paternal rights, even if she had no children, in order to remain in marriage with her husband if the court ruled that she had been awarded to the wrong person in the family.[458]

The question that Demosthenes 46.22 on the procedure for claims to an *epikleros* does not answer is what happened in the interim between the decease of an *epikleros'* father or guardian (whether she was young or an adult) and the time the archon advertised the vacant inheritance and the assignable status of the *epikleros*. Did prospective claimants and guardians have to wait until the archon's declaration was out, or could they submit their claims as soon as the father or the guardian of the *epikleros* died, and wait until the official declaration by the archon by which a claim was certified and confirmed?

The law cited in Isaios 3.58 certainly gives a long span of time, presumably to give claimants the opportunity to examine their claims carefully before attempting to claim the adjudication. However, it appears

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[457] *Isaeus, LCL*,p.114-115,note a.

that claims could be made immediately after the death of the father of the *epikleros* or the last heir,[459] or shortly after the vacant inheritances had been declared by the archon. Thus, although there was a deadline for claims, an action to claim an inheritance or an *epikleros* appears circumstantial. But an urgent claim would seem more feasible than any other situation especially if an infant *epikleros*, whose nurture and care required immediate attention, was involved.

The foregoing discussion is hoped to settle the apparent uncertainties expressed in scholarly circles as to whether an *epikleros* could be claimed before she reached puberty at the death of her father or how her guardian was selected.[460] It is certainly right that *AP* 56.7 mentions the archon's authority to grant leases of the estates of *epikleroi* until they were fourteen years of age. This implies that at the death of the infant *epikleros'* father, a guardian (he might or might not be the father's next-of-kin) might be designated to take charge of the girl and the management of the estate until she reached the marriageable age before she was claimed together with the estate by the father's next-of-kin. This reasoning may be plausible. But the problem with this procedure is that it leaves the heir-apparent (the next-of-kin) kicking his heels for an uncomfortably long period of time between the decease of the young

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[458] See Harrison, *Law* (i),p.309-311 for various opinions on the application of the law.
[459] See Is.3.57-58.
[460] See Harrison, *Law* (i), p.138; MacDowell, *Law*, p.98; Thompson, *De Hagniae*, p.16,n.25.

epikleros' father and the age at which the property with which she goes could be claimed. This waiting period would be particularly awkward if a large estate was involved. But more importantly, the time limit for claims in Isaios, 3.58, seems to make the situation not quite feasible, unless some other special latitudes were allowed in the case of infant *epikleroi*.

It seems to me that the law cited at Demosthenes 43.51 caters for both minor and adult *epikleroi*. Besides, it is the accepted view that this law, cited also at Isaios 3.42,68-69,72-73, and 10.13, makes the *epikleros* practically inseparable from her father's estate, and that the two are claimed together.[461] It is of course a fact, that appointing a guardian for an *epikleros* and putting him in charge of the estate bequeathed to her does not imply separation of her from the estate. For at any rate, her father's next-of-kin would claim both of them anyway. But most importantly, Demosthenes 43.51;46.22; and Isaios 3.58,74-75, appear to make the *epikleros* (whether young or an adult) subject to claim by her father's next-of-kin as soon as the father was dead. Thus, appointing a guardian to take charge of her and the estate during her age of minority, and awarding her later to a husband at her puberty may seem a remote situation.

With regard to the lease of the estates as mentioned by *AP*, 56.7, the number τεττταρακαιδεκέτις is certainly feminine and must refer

specifically to *epikleroi*, as pointed out by Rhodes.[462] This would imply that the young *epikleros* was appointed a guardian (like the male orphan) who took responsibility of the estate as well. And exercising his authority as guardian, he either let it out or administered it himself until she reached the marriageable age of fourteen when the estate was handed over to her to be managed by whoever later claimed her hand in marriage. If this is what the *AP* wrote and intended, I would maintain that the evidence appears misleading, taking account of Demosthenes 43.51,54; 46.22, and Isaios 3.58 concerning the limitation on the time within which claims could be registered with the archon.

I should believe that Demosthenes 43.54 is the corollary of Demosthenes 43.51, whether the *epikleros* involved "is of the *thetic*" class or a wealthy one. She was claimed as a minor *epikleros* at the death of her father by his next-of-kin in conformity with Demosthenes 43.51, which as noted already, caters for both minor and adult *epikleroi*. At her puberty, her guardian and father's inheritor might decide either to take her to wife himself or else give her away in marriage and dower her accordingly, as directed by Demosthenes 43.54. It seems conclusive, therefore, that the *epikleros* could be claimed in advance of puberty by her father's next-of-kin at his death.

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[461] Cf. Todd, *Law*. p.221; Just, *Women*, p.95; Lacey, *Family*, p.140; Finley, *Studies*,p.83; Sealey, *Justice* p.16-17; Asheri, *Historia* 12(1963),1-21,esp.16.
[462] *Comm. AP*, p.635.

CHAPTER 8

NURTURE AND TENDANCE OF ORPHANS

TERMINOLOGY

The Greek word for guardianship, ἐπιτροπή, has a variety of connotations. According to Liddell and Scott, it means protection, overseeing, trusteeship, guardianship, or arbitration.[463] The word, ἐπιτροπεία, guardianship, may be used; but it seems to be of rare occurrence.[464] The person who performed such role and functions was called ἐπίτροπος: a protector, trustee, overseer, or guardian.[465] And so Demosthenes calls Demophon and Therippides συνεπίτροποι, co-trustees or co-guardians.[466] But because of the variety of his responsibilities, he may be called ἐπιμελητής: one who has charge of a thing or a person, a manager, or superintendent.[467] However, 'manager', as suggested,[468] has a general sense having no legal significance.

The guardian may also be called προστάτης: a champion. But this may have the more political sense of 'leader' than the legal sense of 'guardian;' although it may have the sense of guardian of minors. Thus the person championed the course of his ward(s) in legal matters. The guardian may also be called κύριος: master, frequently used for the

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[463] See also Dem. 27.39;30.8.
[464] Cf. Harrison, *Law* (i), p. 98.
[465] Dem.38.7,10; Lys.10.5; Is.1.9,10.
[466] Dem.27.14,16,49,51,57;28.14,16;29.3,33,49,59.
[467] Dem.27.19;43.75; *AP,*56.7.
[468] See MacDowell, *Symposion* (1985),256, and his note 10, ibid.

guardian of a woman after her age of puberty.[469] ὀρφανιστής; a tender of orphans, a guardian, may as well be used for the person; or κηδεμών; one who has charge of a person, a trustee, protector, guardian.

It is not possible to say exactly in which circumstance this terminology or that one may be used. The Attic orators who give us considerable information about guardianship seem to be eclectic in their choice of usage. By and large, however, ἐπίτροπος and κύριος seem to be the most common terminologies as far as guardianship of orphans was concerned. Thus in Isaios, *On the Estate of Dikaiogenes*, Dikaiogenes (III), alleged to have defrauded his wards, is described as the guardian and legal representative (ἐπίτροπος καὶ κύριος) and the legal adversary of the orphaned children of Theopompos.[470]

It is significant, however, that no matter which terminology is used in the orators, it implies guardianship of a minor or other person not legally qualified to manage his or her own affairs. This certainly means that his or her guardian had certain specific duties to perform on his or her behalf. These functions may be classified under two basic headings:(I) responsibilities to the orphaned person; that is, his or her physical maintenance and general care;(II) management of the property

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[469] Cf. Harrison, *Law* (i), p.98.
[470] Is.5.10. Cf. also Aeschn.1.13,18; Is.1.10; Dem.27.55;36.22;38.6; Lys.32.18. See also Diog. Laert. 5.12 on the will of Aristotle, and cf. Harrison, *Law* (i), p.98 and his note 3.

bequeathed to him or her.[471] These duties constituted, as may be presumed, inalienable rights of the orphan under his or her guardian, and the infringement of any one of them could have very serious and damaging social and political consequences for the guardian.

DUTIES OF GUARDIANS

A responsibility of the guardian was the provision of accommodation and shelter for his ward. He was also to make sure that furniture and any such personal effects as might be bequeathed to the ward were carefully kept and handed over to him or her at the age of majority. If the guardian failed in these duties he attracted censure and social condemnation.[472]

But the residential position of the orphan does not seem to be laid down by law. In Lysias 32, the speaker tells the jury that when Diodotos died, his children and their mother lived in their father's house in the Peiraieus for a year while their guardian lived in the city. But when their provisions began to dwindle, their guardian sent up the children to the city to live with him, and gave their mother in marriage.[473]

In Isaios, *On the Estate of Kleonymos*, the orphaned plaintiffs are said to have lived first under the guardianship of their paternal uncle,

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[471] For a brief discussion of the duties of the guardian see MacDowell, *Law*, p.93-94. See also Harrison, *Law* (i), p.104-108,111-115.
[472] Lys.32.16,17.
[473] 32.8.

Deinias (1.9). And when Deinias died Kleonymos took over their guardianship. The speaker does not tell us about Kleonymos' relationship to the orphans. But it does seem that he was probably their mother's brother, and therefore their maternal uncle, who, it is in their own interest to say that he was kind to them (1.12).

The status of Kleonymos is also not stated by the speaker; probably, there being no rift at that time, no one bothered about his exact legal position. But it is assumed, though with some hesitation,[474] that Kleonymos was most probably their guardian. The suggestion seems quite plausible since in the absence of paternal uncles, maternal cognates have had to be guardians of their sisters' orphaned children in the majority of cases. At any rate, it appears that the orphans lived in the house of Kleonymos who tendered them and effectively managed their property for them.(1.12-13)

Plato also informs us[475] that Perikles, the guardian of Kleinias, sent his ward to live with Ariphron to be educated in order to remove him from the corrupting influence of his elder brother Alkibiades, also under the guardianship of Perikles. And in Isaios 9, the speaker recounts that Euthykrates died leaving his widow with two children; a daughter and Astyphilos whose estate is in dispute.

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[474] See Jolowicz, *JRS* 37(1947),83.
[475] *Protag.*320A.

We have no evidence of a formal appointment of a guardian for Astyphilos and his sister, neither are we told explicitly about their new residence after the death of their father. But since their mother lived with Hierokles, her brother, until she was later given in a second marriage to Theophrastos by him (9.3-4,23,27), it is implied that they lived with Hierokles their maternal uncle, until the remarriage of their mother. We are informed, however, that when the widow was remarried to Theophrastos, she took to her new marital home her two children, Astyphilos and the daughter who was later given in marriage to a man whose identity we do not know (9.27,29). Thus the orphans lived together with their mother in the house of Theophrastos, the second husband of their mother.[476]

One may wonder about the residential status of the orphans of Stratokles in Isaios 11 in view of the litigation. In fact, a situation in which more than one guardian was designated for an orphan or orphans raises certain fundamental questions regarding the duties of the guardians to their ward(s). Particularly, where was or were the orphan(s) expected to live? Who of the guardians should be personally responsible for the physical support and maintenance of the orphan(s)? Who managed and controlled the estate of the ward(s), let alone representing him or them in legal matters and business transactions?

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[476] Cf. also Is.7.5-7; Dem.40.6-7; 58.22,30-32.

These are pertinent questions to which our sources do not provide definite answers. Perhaps the only clear case is that of Demosthenes whereby his deceased father seems to have prescribed definite role for each of the three guardians. The elder Demosthenes stated categorically that Demosthenes and his sister should live together with their mother in the house bequeathed to them with Aphobos, who was to be their stepfather.(27.4,5;28.15,16) Thus it is manifest from the will of the elder Demosthenes and throughout the speeches of the orator against his guardians that Aphobos was their principal guardian, and responsible for their maintenance and general care. It is also clear that Aphobos was in charge of the general administration of their property; though Demophon and Therippides also had important roles to play, apparently as complementary hands in the management of the estate.

In the case of the orphans of Stratokles in Isaios 11, it is certainly not likely that they were living with Theopompos' prosecutor, the other guardian, since he had no control over their estate. It is therefore likely that they were living with Theopompos, as is implied in his own words, (11.37). But in general, although wards sometimes lived with their guardians it became a common practice for them to remain with their mother unless or until she got remarried. And even in some cases when their mothers got remarried, orphaned children were taken along by their mothers to their new marital households. It is not evident in the sources

regarding the procedure for the maintenance of wards who lived with their mothers in second marital homes. It is possible, however, that some kind of arrangements could be made between the guardians of such wards, who would still control the fortune of the orphans, and the new husbands of the children's mothers.

The various responsibilities of the guardian to his ward are summed up by Isaios in his *On the Estate of Astyphilos*. The speaker tells the jury in four sections of his speech:

"When my father Theophrastos received my mother (who was also the mother of Astyphilos) in marriage from Hierokles, she brought with her Astyphilos, then a young child, and he lived continuously in our house, and was brought up by my father. When I was born and was of an age to be instructed, I was educated with him. My father, gentlemen, planted the paternal estate of Astyphilos and continued to cultivate it and doubled its value."(9.27-28)

"When my brother came of age, he received all his possessions in so correct and regular a manner that he never had any complaint to make against my father. After this my father gave Astyphilos' sister in marriage to a man of his choice and managed everything else to Astyphilos' complete satisfaction; for the latter thought he had received an ample proof from my father of his goodwill towards him in the fact that he had been brought up by him from early childhood." (9.29)

"My father took Astyphilos with him when he was a child, as also he took me, to the religious ceremonies on every occasion; he also introduced him to the confraternity of Herakles in order that he might become a member of this association."(9.30)

We may compare also what another speaker of Isaios says in a passage where the plaintiff props up their arguments for their nearness of kin to the deceased Kleonymos which was reflected in his care for them as orphans, and their entitlement to his property as his natural heirs:

"After Deinias' death, when things were going badly with us, he (Kleonymos) would not allow us to lack anything, but took us into his house and brought us up, and saved our property when our creditors were scheming against it, and looked after our interests as though they were his own." (1.12-13)

These passages of Isaios highlight eight basic duties of the guardian to his ward(s), though these do not exhaust all his responsibilities:(i) accommodating the ward;(ii) bringing him or her up;(iii) provision of formal education;(iv) management of the ward's estate;(v) making accounts of the general management of the property and handing everything over to him or her at the age of majority;(vi) contracting marriage for the female ward;(vii) provision of religious education to the male orphan;(viii) protection of the ward's fortune

against scheming creditors and any intruders on the orphan's landed property.

Bringing up the orphan in fact involves giving him or her the emotional touch and feeling that he or she is also part of the new household as illustrated in the passages quoted above. But more importantly, the orphan had the right to provision for his or her personal needs. Some of the items for his needs are listed and quantified by the speaker of Lysias 32 after a denunciatory preamble against the defendant:

"So gross is his impudence that, not knowing under what headings to enter the sums spent, he reckoned for the viands of the two young boys and their sister five obols a day; for shoes, laundry and hairdressing he kept no monthly or yearly account, but he shows it inclusively, for the whole period, as more than a talent of silver." (32.20)

Provision for the physical maintenance and all the necessities of life as is implied in Isaios 1.12 and 9.27-30, and itemised in Lysias 32.20 comprised food, clothes, shoes, bedding, laundry, and hairdressing. The overall expenses on these until the orphan reached his or her majority were charged to the property bequeathed to him or her.[477]

The orphan's right to support for his or her body and general welfare was protected by law,[478] the breach of which could result in not only a social

[477] See Lys.32.20-29.
[478] See Dem. 43.75; Is. 1.39; *AP* 56.7.

stigma but also a legal action (δίκη σίτου) against the guardian.[479] This important duty of personal support for the ward is what Theopompos, a defendant in Isaios, is accused of having neglected to perform.[480] So the orphaned son of Stratokles is alleged to be living in embarrassed circumstances while Theopompos his guardian who has his estate under his management is living in opulence and does not care about the boy, neither does he dower the boy's four sisters.

It is the same charge levelled against Diogeiton in Lysias 32 where it is alleged that he had thrown his wards out of their own house in tattered clothes, without shoes or bedding or cloaks, while he is bringing up his own children in all the comforts of affluence.[481] There seems to be some element of jealousy in the widow's statement, as she feels that Diogeiton is using her children's fortune to look after his own wife and children. But it nevertheless emphasises the importance of maintenance and general care of the orphans, and Diogeiton's lack of concern for the young orphans.

Besides the physical maintenance of the ward, the orphan was entitled also to an attendant or a maid as an aspect of his or her right to support, and it was the duty of the guardian to provide him or her with these helping hands (Lys.32.16,28;Dem.27.46). The male attendant

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[479] Is.1.39; Dem.43.75; *AP*,56.7.
[480] Is.11.37.
[481] Lys.32.16-17. Cf. Is.5.10.

accompanied the boy to and from school, and, with the assistance of the guardian, supervised the child's upbringing from his minutest act to his general conduct in society.[482] Although specific duties of the maid are not detailed, it is likely that she would also assist in the general domestic training and any nursing duties concerning the care of the female orphan.[483] It is notable that quite apart from supporting the orphan himself or herself, it was also a responsibility of the guardian to maintain on behalf of his ward or wards any number of attendants as well as slaves appropriate to the property of his ward(s). In fact, there could be two categories of slaves, though in some cases there might be no slaves at all.

In his first speech against Aphobos, Demosthenes informs us that besides the house and thirty silver minai, his guardians handed over to him fourteen slaves (27.6). And elsewhere in the same speech, he argues that his father had about thirty-three slaves working in his sword-manufactory, and twenty slaves working in his sofa-manufactory (27.9); but argues later that one-half of the slaves had been sold by Aphobos (27.18). Furthermore, in his second speech against Aphobos, Demosthenes makes three complaints about some slaves that his father bequeathed to him. He asserts that Aphobos has taken away the slaves.

We are not in a position to know the fate or status of the slaves. It is possible that Aphobos has either sold the slaves or hired them out to

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[482] See Plato, *Protag.* 325C-D; *Symp.*183C-D; *Rep.* 4.425A; *Laws*,3.700C; *Alk.* 1.122; Xen. *Symp.*1.8.

someone elsewhere, and is receiving revenues on them. But he maintains also that the defendant has recorded a heavy expenditure for the maintenance of the slaves, and further laments that in spite of the heavy expenditure for the maintenance of the slaves, he has been given nothing as profits accruing from their services.(28.12)

It is important to note that the fourteen slaves handed over to Demosthenes at his majority, those who had been taken away by Aphobos, and those sold by him were all part of the fifty-three slaves Demosthenes' father left working in his two factories at his death. As guardian of the orphans, it was also Aphobos' additional duty to maintain all these slaves of the orphans, and harmonise their services to derive profits for them. But these were workshop slaves whose services, if properly harnessed, would in turn pay for their maintenance.

The other category of slaves an orphan could have was that of domestic attendants or maids. In Lysias 32.16, among the allegations levelled against the defendant is the non-provision of an attendant. But in 32.28, the speaker argues that Diogeiton's annual expenditure on the three orphans (two boys and their sister), an attendant and a maid must have been one thousand drachmai. It appears difficult to reconcile the two statements of non-provision of an attendant and the expenses on an attendant and a maid. But it would seem that the orphans had an attendant

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[483] Cf. Dem.47.56.

and a maid who were not handed over to the elder of the boys when he reached manhood. And in Dem.27.46, the orator alleges that Aphobos has taken possession of the female slaves besides holding on to his mother's dowry. This shows that there were also domestic slaves in the household when the elder Demosthenes died. In general, however, where there were slaves of the orphan, whether workshop slaves or domestic slaves, the guardian had the added responsibility not only to monitor their services but also to look after their welfare as he would do for his wards.

Demosthenes and Isaios inform us also that the orphan had the right to education, and it was the guardian's duty to employ an instructor for him. In this respect also, it was the guardian's obligation to pay all expenditures involved, including tuition fees for the instructors. Thus against this background, Demosthenes complains that Aphobos, his guardian, is so grasping that he has cheated his tutors of their fees for his education although he charges him with the amounts. And in Isaios 9, the speaker tells the jury that when he was born and was at the school-going age, he was educated together with his orphaned half-brother (Dem.27.46; Is.9.28). But the education of the orphan, like any other Athenian youth, went hand in hand with religious training at both the domestic and civic levels. This seems to have been the personal responsibility of the guardian as demonstrated by Theophrastos, the stepfather of Astyphilos in Isaios 9. In this speech of Isaios, it is

recounted that Astyphilos was taken to all religious functions by his stepfather, and introduced to the religious cult of Herakles (9.30).

It is noteworthy that the religious training of the orphaned boy, like any other male child, meant more than being taught to pay honours to the gods and to sacrifice to them in adulthood. For, such acts, as rightly pointed out by Golden,[484] solemn and significant as they must have been, naturally united children who shared in them; and by making sons worship together as a realisation of a common purpose, Athenian fathers strengthened bonds and unity among their sons. The orphan's religious career with his guardian thus reflects one obvious way in which heads of households fostered a sense of identity in the children under their authority. This cultivation of sense of selfhood and identity might perhaps not be possible if a guardian lacked that sense of filial devotion towards his ward.

Like the male orphan, a female orphan was equally entitled to general physical support, education, and accommodation. But her guardian had other specific social duties to perform. At puberty, she had the right to marriage. If she was not an *epikleros*, her guardian had to give her away in marriage and dower her.[485] But if the female orphan was an *epikleros*, she was awarded to the next-of-kin of her father, or to his adopted son by testament at the same time as the property was

adjudicated to him.[486] This dual adjudication to the father's next-of-kin or adopted son by will had two fundamental reasons.

First, it was expected that the estate be administered for the maintenance and support of the *epikleros*. Second, and more importantly, it was through the *epikleros* that the deceased's line could be continued as her son or sons had to take over the property as heir or heirs to the grandfather to perpetuate his line (Dem.46.20). Thus having been claimed by her father's next-of-kin, or the testamentary adopted son, the *epikleros* at puberty had the right to marriage and regular sexual intercourse by him, or else to be given away in marriage and dowered appropriately.[487]

In fact, the married *epikleros'* sexual rights were also protected by law, attributed to Solon (Plutarch, *Solon*, 20.3). According to Diogenes Laertios,[488] Solon legislated that a guardian must not marry the mother of his ward, and that the person who would inherit from the ward must not be his guardian. But this alleged law of Solon must certainly be spurious. If it ever existed, it would not be thinkable that the very practice which was forbidden, that is, marriage between the mother of an orphan and his guardian, should have become so common a thing for many Athenian testators to prescribe in their wills as it was in historical times in

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[484] Golden, *Children*, p.31-32.
[485] Lys.32.20-29; Dem.27.36;44.17; Is.2.3-5;3.4,8,26;6.14.
[486] Is.3.40-41; Dem.43.51. See also the discussion on 'The Guardian for the Epikleros.'
[487] Dem.43.54;46.18; Is.1.39; Plut. *Solon*, 20.2-3.
[488] Diog. Laert. 1.56.

Athens.[489] The second part of the law also seems to have no roots. For a law preserved for us in Demosthenes[490] categorically states that if a son is born of an *epikleros*, he must take over the property of his mother after attaining his majority and be her guardian. And in the case of a male orphan, it is not conceivable how the law would be operative, since in the majority of cases the child was under the care of his father's next-of-kin who, in the event of the death of the child would inherit the property.

The functions of the guardian involved juridical matters also. In general, there was express legal limitation of the competence of the Athenian youth for independent action in business transactions. Until he acquired the full rights of citizenship at the age of eighteen on admission into his father's *deme* after the appropriate scrutiny, the Attic youth was incapable of entering into any contract.[491] Furthermore, until he had attained his majority, the young Athenian could not sue or be sued in court. And in the case of the female orphan, her guardianship, like that of any other female, appears to have had no termination, thereby making her a perpetual minor throughout her life. Thus in all legal and business transactions, procedural before a court or in matters of contract, it was his or her guardian who represented him or her at the law courts.

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[489] See Dem.27.5;28.16;36.8;45.28.
[490] Dem.46.20.
[491] Arist .*AP*, 42.1; Is.10.10; Harrison, *Law* (i),p.73, and n.3, ibid.

The majority of the legal duties of the guardian concern the management of the orphan's property, which will be discussed extensively in a later chapter. However, we may note about the female orphan that besides her guardian's duty to protect her interests and guarantee her rights, social or economic, it was incumbent on him to institute action to recover her dowry in the event of the termination of her marriage or the death of her husband. And if the dowry was not refunded, he could prosecute the holder of it, either compelling him to maintain the ward, or to pay back the dowry with interest on it.[492]

According to Lysias (32.24) and the author of the *AP* (42.5), orphans in their minority were exempt from performing and contributing towards state religious rites or festivals and sacrifices. They were not required also to pay property tax (εἰσφορά), or perform any public duties during their minority and a year after their majority. But it is evident that during the time of Demosthenes, rich orphans did have to pay εἰσφορά.[493] I find no evidence in the sources pointing to a rule effecting a change of policy on minors' exemption from property tax. But it does seem that there had been a change in the law on εἰσφορά in Demosthenes' days, so that minor orphans, if rich enough, were required to pay tax according to the value of their patrimony. On religious festivals, however, they were

[492] Is.3.3-4,8-9,11-12,78; Lys.19.32-33; Dem.59.52.
[493] Cf. the case of Demosthenes in Dem. 21.157; 27.7; 28.4,8.

exempt; and it appears surprising that Diogeiton should charge expenditures on lamb for the Dionysia and other public festivals and sacrifices to the orphans' estate. (Lys.32.21-22).

In a speech of Demosthenes, however, the orator makes the performance of customary rites for a deceased parent a legal obligation for his children.[494] The Athenians, like the Akans in Ghana, required that minors provided a coffin, or bore the cost of it for a deceased father. However, in the Akan society it is the maternal uncles of the minors who provide the coffin or shoulder the cost of it. But in the Athenian family this was the responsibility of the guardian. Thus if a man died leaving behind an orphan in his minority, it was his guardian who performed all the funeral responsibilities and bore all the expenditures involved on behalf of the orphan, and charged the expenses to the ward's estate.[495]

STATE SUPPORT OF WAR-ORPHANS

Some Athenians who had families but had to face the dangers of military campaign made provisions by testament for their families before going away. A warrior could appoint a guardian to take care of his family in the event of his death. He could provide also a dowry for his wife in a

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[494] Dem.24.107.
[495] Is.1.10; Lys.32.21. For the specific funeral rites see Is.4.19-21; 9.3-4; Dem.43.62.

second marriage, or a daughter, and make other arrangements regarding the management of his property.

For instance, Lysias informs us that Diodotos made similar provisions in a will for his wife and children before embarking on the Sicilian expedition in which he perished.[496] It is also most certain that Kleinias (II.) might have prepared his will in which he sufficiently provided for the guardianship and maintenance of his two sons, Alkibiades (later the famous Athenian politician) and his brother before leaving for the campaign to Koroneia in which he fell in 447/6 B.C.[497] Even if a young man still capable of siring a son had to enrol for a campaign abroad, he could make provisions for a contingent heir by adoption. If he should perish, the adoption went into effect; if he survived, it did not.[498]

But in certain circumstances, warriors could not make the necessary arrangements for the care of their families before going away on campaigns in which they perished. However, it is not clear in the sources whether it was the state that appointed guardians for the orphans of such fallen warriors who did not have any guardians; and even where

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[496] See Lys. 32.6.

[497] See Plato, *Alk.*(I) 104B; *Protag.* 320A. Cf.also H.T.Wade-Gery, *CQ* 25(1931),82ff; E. Vanderpool, *Hesperia* 21(1952),1-8; Davies, *APF* , p.16-21.

[498] On adoption for a contingent heir, see Is.7.9. It does seem that Apollodoros adopted his homometric sister with the hope that she would bear a son in the future to succeed to him. If the young testator survived and returned from the campaign, he could revoke his will or allow it to stay. On revoking a will see, Is.1.14.

there were guardians, whether the state provided additional guardians in view of the public concern for such children.

In the absence of evidence of a definite state intervention regarding the children of deceased warriors who did not have guardians, we may assume that such orphans lived under either the guardianship of paternal uncles or maternal kinsmen. The archon, however, exercised his usual supervisory role over their legal matters and general welfare.[499] For instance, in a speech of Isaios, we are informed that Thrasyllos, the father of Apollodoros, perished in battle in Sicily (7.5). We have no information of a will appointing a guardian for the young Apollodoros. But Isaios informs us that at the death of Thrasyllos, Eupolis, his brother and therefore the paternal uncle of Apollodoros, became guardian of the young boy. However, he "so administered the affairs of Apollodoros that he was convicted to restore three talents to him."(7.6)

What is certain about the care of war-orphans, however, is that from early times the state had been accustomed to care for war-orphans.[500] In compensation for the devotion and courage of their fathers, the orphans were to receive from the state a grant for food. This practice of maintenance of war-orphans at public expense was known in 478-462 B.C. Although literary evidence for the exact amount of grant when the

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[499] See Dem.43.75; *AP*, 56.7.
[500] Thucy.2.46.1; Plato, *Menex.*,248C-249A; Diog. Laert.1 *Solon*,55; Lys.2,71,72; Dem.60.32; *AP*,24.3.

custom was first started is lacking, it appears that the regular payment was an obol per day for every orphan. This was equivalent to the daily allotment to the disabled at the end of the fifth century. It would appear, however, that there might have been war-orphans who did not collect their daily grant. This may have been true of Alkibiades whose wealthy father seems to have sufficiently provided for him in his will. The orphans of Diodotos also seem not to have collected it; for in the detailed accounts for their upkeep no mention is made of state support.[501]

Against the background of this ancient custom of state support for war-orphans, Theozotides, as already noted,[502] is said to have proposed a decree in 403/2 seeking public support for the orphans of those who suffered violent death during the period of the preceding oligarchy. The orphans were to be compensated at the rate of an obol a day each from the state as a grant for food in appreciation of the courage and loyalty of their deceased fathers who fought for the democracy.

It does seem, however, that the decree of Theozotides was as discriminatory and vindictive as it was characterised by political bias. For the decree restricted state support to citizen-orphans only, and excluded adopted sons and bastards, who at the time of the decree enjoyed full

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[501] See Lys.32.19-29.
[502] See p.113-114 above. Cf.Stroud, *Hesperia* 40(1970),280-301.

citizenship status.[503] Furthermore, the sons of fallen members of the oligarchy were also excluded from the benefits of public maintenance, though such fathers may also have perished in similar circumstances defending their regime as those fighting in defence of the democracy. The decree of Theozotides therefore, may not be taken as representative of the general Athenian practice of state support of war-orphans.

None the less, in making arrangements for the sons of those who died in the oligarchy, Theozotides seems to have referred to the orphans of the war-dead, perhaps as a model. The beneficiaries of his decree were to receive an obol per day just as the war-orphans were paid their obol. The question as to whether female orphans also benefited from the general grant has no answer to it in the sources. And since there is no mention of female beneficiaries in the sources, it is likely that they had no share in the state's support of their male counterparts. Such a situation would appear rather unfair, especially in the case of females who were the only children of their fallen fathers. But it is possible they received some kind of consideration that perhaps did not receive official publicity.

It is not definite as to which magistrate was responsible for war-orphans. Plato in his *Menexenos* 249A notes that "the highest authority in the state is instructed to watch over them beyond all other citizens." But the Scholiast on Demosthenes 24.20 names the polemarch as the officer

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[503] Diod.,13.98.1; Aristoph., *Frogs*,190-191,693-694; Stroud, *Hesperia* 40(1970),280-301; MacDowell,

in charge of them. And in Xenophon's *Poroi* 2.7, the author mentions the institution of ὀρφανοφύλακες as responsible for orphans, which should be the model for a suggested board of guardians of aliens μετοικοφύλακες: Καὶ εἰ μετοικοφύλακάς γε ὥσπερ ὀρφανοφύλακας ἀρχὴν καθισταῖμεν..."And if we appoint a board of guardians of aliens like that of the guardians of orphans."

These testimonies have triggered off several arguments regarding the particular magistrate who was in charge of war-orphans and therefore saw to the issue of their dole.[504] It would appear that by "the highest authority in the state," Plato seems to have in mind the archon under whose general care and supervision the Solonian law (Dem.43.75) had placed all orphans and heiresses. For the law, in part, makes it imperative for the archon to take charge of all legal matters concerning orphans and heiresses, and to make sure that their guardians provided them with maintenance and support.[505]But whether his jurisdiction embodied the social responsibility of seeing to the payment of the dole to war-orphans is quite another matter.

At any rate, as suggested by J. H. Thiel and noted by Stroud,[506] the guardians of orphans (ὀρφανοφύλακες) referred to by Xenophon in his *Poroi* 2.7 must have been the magistrates responsible for the dole of war-

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CQ 70(1976),88-91.
[504] See Stroud, *Hesperia* 40(1970),289-290.
[505] Cf. *AP*,56.7; Aeschn.1.158; Dem.26.12;35.47-48;37.46;46.22.

orphans. These magistrates may have played an intermediate role between the archon and their guardians as disbursing officials, and to make sure that the grant was properly used for the support of the war-orphans. This role of the ὀρφανοφύλακες becomes very plausible in that there is no reference to the officials later than 355 B.C. when Xenophon wrote his *Poroi,* as the office would have become defunct when public support of war-orphans had apparently been stopped by the middle of the fourth century.

The ancient sources inform us that the public support extended as far as to the age of majority of the orphans.[507] It is important to note, however, that public support did not imply a complete take-over by the state of the general nurture and care as well as the general administration of the patrimonies of the affected orphans. The grant, as noted above, was a subsidiary benefit to the children in recognition of the loyalty and patriotism of their fathers who had died fighting for the state.

When the male orphans came of age they were, after the appropriate scrutiny, presented to the assembled Athenians and their allies in the theatre at the Great Dionysia, were supplied with a suit of armour by the state, and sent home as full citizens with political and legal

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[506] Stroud, ibid.,290.
[507] Thucy.2.46; Plato, *Menex.*248E; Aeschn.3.154.

rights.[508] It is most likely that there must have been an initial scrutiny to determine that an orphan's father had, in fact, died in war and that he had been an Athenian citizen to qualify for the dole. It is not clear what requirements the war-orphans were expected to satisfy before they were adjudged matured, and which magistrate or body carried out the scrutiny. But since normal orphans went through a *dokimasia* on attaining the age of majority to certify that they were capable of taking up their patrimony,[509] war-orphans, as suggested by Stroud,[510] underwent a similar screening before they were given their war outfit.

It is significant that by the middle of the fourth century, the grant for the disabled had been increased to two obols a day.[511] However, public support of war-orphans seems to have been a thing of the past by the time when the author of the *AP* described the state of the Athenian Constitution apparently because of Athens' economic straits after the Peloponnesian War. The city's change of policy on support for state orphans is explicit in Aeschines 3, and implicit in Isokrates and Hyperides.[512] It is therefore not altogether surprising that in listing the

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[508] Plato, *Menex.*,248E; Isokrates, 8.82; Aeschn.3.153-155; Stroud, *Hesperia* 40(1971),288-289); Bryant, 'Boyhood and Youth in the Days of Aristophanes' *HSCP* 18(1907),78,87-88; S.Goldhill, *JHS* 107(1987),58-76.
[509] Lys.32.24.
[510] Ibid.,291.
[511] Lys.24.26; *AP* 49.4.
[512] See Aeschn.,3.153-155; Isokrates,8.82; Hyper. *Epitaphios*, 42. Cf.Bryant, *HSCP* 18(1907),87-88; Stroud, *Hesperia* 40(1970),289-290.

functions of the polemarch in *AP*,58 during the period, the author makes no mention of maintenance of war-orphans as one of his duties.

In general terms, it need be stressed in conclusion that, apart from the marriage of the *epikleros* with the attendant rule of sexual duties to her by the father's next-of-kin to prevent the possibility of her father's *oikos* becoming extinct, and matters regarding the administration of the orphan's patrimony, it would appear that the majority of the responsibilities a guardian had to render to his ward or wards would, under normal circumstances, have been filial duties that every Athenian father would have rendered to his own children.

However, all the responsibilities became special duties for the guardian. This is because the ward's patrimony had been formally placed under the control and management of the guardian, and also because of the legal implications involved if some of the duties were not performed by him. But the legal rules and censure were also the fruits of the special position of the orphan in the society. He or she as an orphan, had been deprived of his or her natural prop in society, and thus had become unprotected and vulnerable. And once he or she had been entrusted together with the patrimony into the hands of a guardian, the orphan became a sacred trust or deposit in the hands of the guardian. Such a status did not only have social and religious implications but also legal rules regarding his or her personal welfare and the management of his or

her patrimony. This unique position and the sacredness of it are emphasised by Demosthenes in his second speech against Aphobos:

"My father, when he saw that he was not to recover from his illness...placed our persons in their hands (their guardians), calling us a sacred deposit."(28.15)

Thus with the situation of deprivation of the natural *kyrios* and source of livelihood and protection, all responsibilities which a natural father would otherwise render to his own children, and which he might not be prosecuted for failing to perform, became legally obligatory on the guardian, and he could be indicted for failing to perform any of them.

CHAPTER 9

MANAGING THE ESTATE OF THE ORPHAN

THE NATURE OF THE RULES FOR MANAGEMENT

There can be no doubt that an extension of the law paraphrased in Isaios 10.10 precluding a minor from making a will is a limitation on the orphan to manage his patrimony. As a minor, the law does not only prevent him from disposing his property by testament but also delimits the orphan's right to administer the patrimony bequeathed to him. Isaios does not provide reasons for the limitations on the minor orphan. But I would believe that the fundamental objective of the law was to protect the orphan against any exploitation of his inexperience, either in will making or in business transaction. The minor orphan could make a bad deal, or there could be trickery or genuine exploitation of his inexperience in life by anybody in the society regarding his patrimony.

But it seems that the Athenians had no definite remedy or law for revocation of a transaction by which the minor child could at some future point challenge and revoke what seems to have been an invalid transaction he may have undertaken during his minority. The only reasonable course, I think, can have been to prevent any dealings with those who were minors so that advantage would not be taken of their naivety or inexperience to exploit them. The law, therefore, is not just a

mere imposition on the minor child's legal capacity, but establishes an inherent counter protection for him. In the same vein with regard to will making, the minor orphan was protected against wrong disposition and apparent dissipation of his patrimony. Thus with the administration of his patrimony, the law in Isaios 10.10 transfers the orphan's estate to his guardian who managed it on his behalf during the period of his tutelage.

Of the several guardianship cases in the surviving speeches of the Attic orators, the case of Demosthenes is the best known. As an orphan, his estate is the most fully documented orphan estate in the period.[513] His lawsuit against his guardians thus throws a considerable amount of light on the administration of an orphan's patrimony in classical Athens. However, more than a century ago, Westermann pronounced the third of Demosthenes' speeches in his suit against Aphobos, his principal guardian, spurious.[514] This triggered off several arguments, pro and con, for decades regarding the authenticity of the speech until the convincing examination of the issues involved by Prof. MacDowell[515] settled the matter and established that the speech was an authentic work of Demosthenes. A bone of contention in the disputations

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[513] Davies, *APF*,p.126.

[514] A. Westermann, *Quaestionum Demosthenicarum particula tertia, " De litibus quas Demosthenes oravit ipse"* (Leipzig, 1834),5-18; reprinted in Dindorf, *Demosthenes* (Oxford, 1846), vii,1045-1053, noted by Calhoun *TAPA* 65(1934),8.

[515] See MacDowell, 'The Authenticity of Demosthenes 29 (Against Aphobos III) as a Source of Information about Athenian Law,' *Symposion* (1985),253-262.

is a passage in the speech in connection with the administration of the estate of the younger Demosthenes. The orator complains to the jury:

τὸν οἶκον οὐκ ἐμίσθωσεν τῶν νόμων κελευόντων καὶ τοῦ πατρὸς ἐν τῃ διαθήκῃ γράψαντος. "He did not lease the estate, although the laws order that and my father wrote it in his will."[516]

Demosthenes does not quote the laws that he argues that Aphobos had not complied with. But he certainly may have got the basis for his argument from the power vested in the archon, as Aristotle tells us,[517] and against the background of which he accuses his guardian. The guardians, however, in turn, deny the allegation, and claim that the will, in fact, left instructions that the estate should not be leased out (Dem.27.42; 28.1,7). But Demosthenes persists in his claim. He maintains that Aphobos could have avoided all the trouble if he had let out the estate according to the laws, and refers to the terminology μίσθωσις οἴκου in different verb and noun forms in the context of letting out his estate, at least eleven times in his second speech (27.15,40-41,42,43,58{3x},59{2x},60,64), five times in the second speech (28.1,5,6,7,15), and six times in the third speech (29.29,42,43,57,59,60). In all these instances, the orator obviously accuses his guardians of

[516] Dem.29.29, tr. MacDowell, *Symposion* (1985),257.
[517] See *AP*, 56.7.

breaking the laws as well as ignoring the wishes of his father, and laments the great loss that his guardians had caused him.

In the face of the accusation and denial, various interpretations, both contextual and philological, were put to the passage in speech 29.29 quoted above. Contextually, it was argued in the disputes about the authenticity of the speech that it was mandatory to lease out the orphan's estate. None the less, it is generally recognised that the law on leasing an orphan's estate was permissive, not obligatory.[518] It would in fact appear that if the law made it mandatory for an orphan's estate to be leased, Demosthenes most probably would not have claimed also that his father had directed in his will that his patrimony must be leased. He would surely have been only too keen, in absence of his father's will, now lost, to refer to that law which made it compulsory for his guardians to lease his property. And in any case, his father would not find the need to give instructions in his will to that effect.

Significantly, the speaker of Lysias 32 confirms the permissive nature of the rule regarding the lease of an orphan's estate in a passage to the jury:

Καίτοι εἰ ἐβούλετο δίκαιος εἶναι περὶ τοὺς παῖδας, ἐξῆν αὐτῷ κατὰ τοὺς νόμους, οἱ κεῖνται περὶ τῶν ὀρφανῶν καὶ τοῖς ἀδυνάτοις τῶν ἐπιτρόπων καὶ τοῖς δυναμένοις, μισθῶσαι τὸν οἶκον ἀπηλλαγμένον

πολλῶν πραγμάτων, ἢ γῆν πριάμενον ἐκ τῶν προσιόντων τοὺς παῖδας τρέφειν· καὶ ὁπότερα τούτων ἐποίησεν, οὐδενὸς ἂν ἧττον Ἀθηναίων πλούσιοι ἦσαν.

" However, if he had wished to be just about the children, it was possible (ἐξῆν) for him to act according to the laws which deal with orphans for the guidance of incapable as well as capable guardians: he might have leased the estate and so got rid of a load of cares, or have purchased land and used the income for the children's support; whichever course he had taken, they would have been as rich as anyone in Athens."[519]

It is important to note that τοῖς ἀδυνάτοις τῶν ἐπιτρόπων καὶ τοῖς δυναμένοις here in the passage implies guardians who thought they could not administer their wards' estates themselves as well as those who felt that they would be able themselves to manage their wards' estates. The import of the passage, therefore, is that a guardian might decide either to lease his ward's patrimony or manage it himself. However, although the lease of an orphan's estate was not a legal obligation, a speaker of another Demosthenic speech informs us that if a guardian did not want to lease the estate of his ward during the period of guardianship, he could

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[518] See Finley, *Land*,p.42-43; Harrison, *Law*,p.105-108; MacDowell, *Symposion*(1985),257-259; Osborne, *Chiron* 18(1988),305-310; Cox, *Household*,p.145-146.
[519] Lys.32.23. Cf. also Dem.27.58.

be denounced for mismanagement by anyone who wished and be compelled by court to lease the estate.[520]

Furthermore, it is evident that whether a guardian should administer the estate of his ward himself or lease it could be predetermined by the father's will. Thus Demosthenes accuses his guardians of failing to carry out such a provision of his father's will, though his guardians deny that the will left instructions that the estate should be leased.[521] Thus if the father gave instructions in his will that his orphan's estate should be leased, or if the guardian decided to put the estate up for lease, he could arrange for it to be leased. The lessee then managed the property, and the income from it was the amount that the lessee paid according to the terms of the lease agreement.

In any case, there is some evidence which suggests that even if a guardian had been instructed in the will of his ward's father to lease the ward's estate, or if he was sued by anyone who wished, compelling him to proceed to a lease of the estate, he could decide not to lease the estate if he felt that it would be more profitable, and in the interest of his ward to manage it himself. Thus Demosthenes counteracts this possible argument by Aphobos that it was better not to lease his estate, by asking

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[520] Dem.38.23. Cf. also Is.11.34-35, and Dem.27.15, though in Dem.27.15 Demokhares takes no legal action against Aphobos. Add Harp.*s.v.* φάσις; Arist. *AP*.56.6.
[521] Dem.27.15,40,42; 28.1,7. See also Dem.30.6.

him to prove that the mere principal of his estate had been paid in full to him even if there was no profit from his management.[522]

And in Demosthenes *Against Nausimakhos and Xenopeithes*, we learn that a guardian is taken to court for failing to lease his orphans' estate that consists mainly of loans receivable. But he obtains permission from the jury to remain in control of the money. The speaker further recounts that the guardian eventually bought multiple-dwellings with the money all of which he handed over to his wards at their majority.[523] By and large, therefore, because of the permissive nature of the regulation, whether or not an orphan's estate should be leased depended on the mood and circumstances of the guardian rather than on a prescribed rule on the nature of the property.[524] A guardian's decision to retain administration of the estate in his hands thus constituted a matter for reproach in case of loss, not grounds for prosecution.

One thing that is not completely clear is a definite pattern or line of reasoning that determined when a guardian decided to manage the estate himself and when he preferred to lease it. And what even compounds the problem is the fact that references to lease of orphans' estates in the speeches where estates are discussed are a heap of allegations, charges, and counterclaims. It does seem, however, that although a guardian was

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[522] Dem.27.59.
[523] Dem.38.7,23.
[524] Cf.Finley, *Land*,p.40.

likely to retain landed or visible property and administer it himself and lease the invisible or liquid one, there was a greater tendency to retain administration of an orphan's invisible estate.

This brings up a few fundamental questions that need be addressed, even if briefly. How many Athenian fathers died having sons and daughters below the age of eighteen, or fourteen, as in the case of daughters? What constituted the estate of an orphan? What proportion of an orphan's estate could have been leased? And of the orphans' estates that could have been leased, how many of them came under lease?

An exact precision of the number of households orphaned in classical Athens would be impossible. But it is suggested[525] that allowing for different demographic conditions and an earlier age of marriage for women in Athens, not less than 20% of Athenian fathers died leaving sons below the age of eighteen, or daughters only who were under thirteen, and that it is most likely that the proportion may have been closer to a quarter or even a third. It is, therefore, not surprising that a considerable number of orphans was a common sight in the Athenian society. And it would seem that quite a great number of estates in classical Athens would have become liable to be leased as estates of orphans.

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[525] Golden, *Phoenix* 35(1981),316-331; W.E Thompson, *Phoenix* 21(1967),273-282; Osborne, *Chiron* 33(1988),309; Richard P. Saller, *CP* 82(1987),21-34.

Of what constituted an orphan's estate, the sources indicate that such estates comprised both visible or immovable property and invisible or movable property. These were liquid holdings or cash, personal effects, stock, seed, tools, slaves, agricultural lands and buildings.[526] It is noteworthy, however, that there are inherent problems regarding the distinction between visible and invisible property. For Attic, and in fact, Greek writers in general, are not consistent in their distinction between visible (φανερά) and invisible (ἀφανής) property. Land and buildings are always counted as visible.

But the problem is with movable property like slaves, animals, and household effects. In a speech of Isaios, these are counted as visible estate (8.35); but Harpokration on ἀφανὴς οὐσία καὶ φανερά regards them as invisible, citing Lysias as his authority. Concerning liquid cash, a man's money in his own possession is regarded by Lysias and Demosthenes as visible (Lys.12.83; Dem.*Ep*.3.41), but to Aristophanes, it is invisible property (*Ekkl*.602). Also, Demosthenes considers money deposited with a banker as a visible estate (48.12); but in Isokrates 17.7, it is invisible. Furthermore, money lent out on interest is visible property in one speech of Isaios (11.42-43), but invisible in another speech of the same author (8.35).

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[526] See for instance, Is.11.41-43; Lys.32.5-6; Dem. 27-29 passim. For a definitive outline of the composite parts of the patrimony of Demosthenes, see Davies, *APF*,p.127-128.

Thus the words visible (φανερά) and invisible (ἀφανής) cannot be regarded as technical terms of invariable application in that with regard to different forms of wealth, the distinction between them remained helplessly fluid. Consequently, any attempt to explain these words in terms of related pairs like immovable and movable assets turns out to be fallible, and an author's precise meaning can be decided only from the context.[527] As to the proportion of an orphan's estate that could have been leased, it is generally agreed that it was always the totality of the property as a whole that was leased.[528]

With regard to how much of the proportion of orphan estates that could have been leased was leased, it does seem that not many orphans had much property to be leased; for it appears that not all fathers who died leaving children in their minority had significant real property. And although the figure of five thousand Athenian citizens at the end of the fifth century mentioned in the hypothesis of Lysias 34 may not be quite reliable, it is a pointer that about 20% of the people did not have real or visible property.[529]

Furthermore, evidence for orphan estates discussed in the Attic orators indicates that not all orphan estates that could be leased were, in

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[527] Cf. MacDowell, *Andokides*, p.146-147; Finley, *Land*, p.54-55; Davies, *APF,* p.151-154; Harrison, *Law* (i), p.230-232. MacDowell notes that the Harpokration distinction based on Lysias is possibly on a misunderstanding of the author. For a more detailed discussion of visible and invisible property, see Vincent Gabrielsen, ' ΦΑΝΕΡΑ and ΑΦΑΝΗΣ ΟΥΣΙΑ in Classical Athens ' *C et M* 37(1986),99-114.
[528] Finley, *Land*, p.40-41,236,n.14; MacDowell, *Law*, p.94; *CQ* 39(1989),10-21, esp.11-15; Harrison, *Law*, p.294; Osborne *Chiron* 18(1988),316; Fine *Horoi*, p.98.

fact, leased. For it seems that where a father bequeathed to his orphaned children an estate consisting substantially of liquid holdings rather than visible property, guardians might find it more attractive to manage it personally than to put it up for lease. For instance, the estate of Demosthenes (Dem.27-29), that of Nausikrates discussed in Demosthenes 38, as well as the estate of Diodotos' orphans in Lysias 32, the bulk of which comprised invisible property, were not leased but administered by the guardians themselves.

It is very obvious also that the orphan estates mentioned in Isaios 7.6;8.42; and 11.34 were not leased. And it is most probable that the orphan's property mentioned in Isaios 5.10-11 was also not put up for lease but administered by the guardian himself. As far as the evidence goes, only the estate of the sons of Nikias in Isaios 2 (2.9,28-29) as well as that of Antidoros mentioned in Demosthenes 27.58 is known to have been leased. It is noteworthy, however, that the forensic speeches almost invariably mention estates that were not leased, and are in fact barely adequate on those that were leased. For, as rightly noted by Osborne,[530] if a guardian, following the possibilities created by the law, leased his ward's estate, cases of mismanagement and misappropriation would be

[529] Cf. Osborne, *Chiron* 18(1988),309.
[530] Ibid. 310.

less likely to come up than when he decided to manage the estate himself.

LEASING AN ORPHAN'S ESTATE

(Μίσθωσις Ορφανικοῦ Οἴκου)

The device whereby an orphan's estate during his or her minority was transferred from the guardian, if he did not manage it himself, to a lessee to administer was called μίσθωσις οἴκου. The device, as pointed out by Finley, is known solely from the *horoi*, the *AP* of Aristotle, and the lawcourt speeches of the Attic orators, with no sources of these types known elsewhere than Athens, though the institution cannot be said to be peculiar to Athens.[531]

Among the many and varied responsibilities of the archon for ensuring smooth and fair succession to property in the family was also his role as the overseer in leasing the estate of an orphan. In listing the diverse family responsibilities of the archon, Aristotle tells of the archon's superintending role:

"He also leases out the estates of orphans and heiresses, until the heiress reaches the age of fourteen, and takes securities for the lease."[532]

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[531] Finley, *Land*,p.39. For a systematic treatment of misthosis oikou, see Otto Schulthess, *Vormundschaft nachattischem Recht* (Freiburg, 1886),p.139-173,209-220; Weiss, *Untersuchungen* I 129-138, both noted by Finley, *Land*,p.234,n.6. See also Fine, *Horoi*, p.96-115.

[532] Arist. *AP*,56.7. Not only is H. Rackham's translation of οἴκους as 'houses' too literal, but also ἀποτιμήματα as 'rents' rather misleading. Following Liddell and Scott, 'securities' for the plural, ἀποτιμήματα appears more suitable.

Harpocration gives us an expanded version of what Aristotle tells us in his description of ἀποτίμημα:

"Those who leased the estates of orphans from the archon provided securities for the lease. It was necessary for the archon to send out persons to evaluate the securities. Therefore the evaluated securities were called apotimetai, and the procedure apotiman."[533]

These two passages set out the procedure and the archon's role in the procedure for the lease, though not the legal rule for the guardian to lease the estate. It is obvious that the lease was conducted under the chairmanship and supervision of the archon. Isaios gives us the outline of the actual procedure to follow and a demonstration of it in his sixth speech:

"Seeing that Euktemon was very weak from old age and not even able to get up from his bed, they considered how his property could still be kept in their hands after his death. And what did they do? They registered these two boys before the archon as adopted sons to the deceased sons of Euktemon, putting themselves down as guardians; and they told the archon to put up the oikoi for lease, on the ground that the boys were orphans. Their purpose was that, in the names of these boys, part of the property might be leased and part of it established as

[533] G. Dindorf, ed. (GRONINGEN, 1965), tr. Finley, *Land*,p.38-39,234,n.4. Cf. Bekker, *Anecdota Graeca*, I,p.437, lines15ff. noted by Fine, *Horoi*,p.

securities and marker-stones put in position while Euktemon was still alive, and that they themselves should become the lessees and get the income. On the first day when the court met, the archon put the lease up for auction and they offered to lease the property. But certain persons who were present, denounced the plot to the relatives, and they came and informed the judges of the real state of affairs. The result was that the judges voted against allowing the property to be leased."(Is.6.35-37)

We may compare the following passage also:

" If he contends that there is no need to have the half-share adjudicated or to go to law with me at all, but that this share already belongs to the child, let him make an application to the archon for its inclusion in the lease of the orphan's estate and let the lessee exact from me this portion as belonging to the child."[534]

We notice from the four passages quoted above that leasing an orphan's property was not just a single-act transaction between the lessor and the lessee. Guardians who wanted to put up their wards' estates applied to the archon to grant lease of the property. It is reasonable to assume that the guardian would provide an inventory of the property to be let in the application to the archon, though the sources do not mention that. Evidence for inventories in wills regarding orphans' estates is not

[534] Is.11.34-35.

lacking;[535] and it is most obvious that the guardian would inform the archon of the worth of the property to be leased. Fine is therefore right in noting that "it is hardly conceivable that the archon should have supervised the leasing without having an accurate knowledge of the nature and value of the property concerned."[536]

Following the application to the archon, a public proclamation of the lease was made by the archon, after which lessees submitted their bids including their securities to the archon. In accordance with his responsibility as supervisor of the interests of orphans,[537] the archon sent out assessors to evaluate the security offered by each lessee in his bid. The primary purpose of the evaluation was to ensure that the security was at least equal in value to that of the property to be leased. And to show that the property provided as security was encumbered, some flat slabs of stones (*horoi*) were set up on the property. Finally, an auction of the property to be leased was held in the presence of the jury presided over by the archon, and the property was leased obviously to the highest bidder. It is significant that the archon, together with the jury, had authority to stop proceedings if cause were shown.(Is.6.37)

With regard to the period for the lease of the property and the rates at which orphans' estates were leased, it would seem obvious that these

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[535] See Dem.27.40;28.14; Is.11.41-43; Lys.32.5-6.
[536] Fine, *Horoi*, p.101,n.22.
[537] Arist. *AP*,56.7; Lys.26.12; Dem.35.48;43.75; Aeschn.1.158.

differed from circumstance to circumstance; although normally, it would be ideal for an orphan's estate to be leased until his or her age of majority. Two passages in Demosthenes, (Dem.27.58-59;29.60) seem to suggest that the rental rate for a leased property was fixed by law, probably at 18%. But this evidence is dismissed by commentators as neither feasible nor representative. For the estate was leased at a public auction where the bids differed and the rates of interest could be high or low according to the nature and circumstances of the property being put up for lease. It is, however, suggested that the average rate was 12% of the total value of the property leased.[538]

Concerning the lease of the liquid estate of an orphan, we have no evidence which shows how that was done, though it is possible that there must have been some laid down procedure to follow. Demosthenes 27.58 seems to indicate that the estate of Antidoros leased by his guardian was a liquid holding given out as a loan. All we know about the transaction is that at the end of the lease period of six years, Antidoros was repaid an amount of money at least twice as much as what was borrowed by the lessee.

And in Isaios 2, the speaker informs us that Menekles had become part-lessee of the estate of the orphans of Nikias (2.9), which by all

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[538] See Schulthess, p149-156; Beauchet, II,p.247-249, both noted by Fine, *Horoi*, p.101,n.24; Harrison, *Law* (i), p.106,n.1.

indications seems to be liquid property. But, as the speaker recounts, when Menekles had to repay the loan to the orphans at the end of the lease period he could not honour the debt. Meanwhile, interest on the loan had accumulated during the period until Menekles apparently became insolvent; and he could only repay the loan together with the accumulated interest after selling his piece of land.(Is.2.28-29)

In both cases (Dem.27.58; Is.2.9,28-29), we have no idea of how the orphans' liquid estates were leased to the lessees, or what procedures were followed in the transactions. It would, none the less, be quite reasonable to presume that the procedures for leasing an orphan's liquid holdings most probably followed the same procedures for leasing his landed property. A typical difference, however, is that, as normally happens in loan transaction, the loan, that is, the lease, was definitely made in cash. But as in the procedures for a landed property, security in the form of landed property was required, though it could also be movable items.[539] The creditor's (the orphan's) right to the security and the debtor's right to redeem it formed part of a legally enforceable agreement the terms of which were often recorded in writing embodying the period for the lease and the interest on the principal lent.[540]

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[539] Cf. Harris, *CQ* 82(1988),379; 87(1993),73,80.
[540] See Dem.33.15;34.6;35.10-13 for written documents in loan transactions.

The methods of paying the interest may, however, vary. It does seem that the borrower might make periodic payments of the interest, as the case of Menekles appears to indicate (Is.2.28-29), or he might make a lump sum payment of the interest together with the principal at the end of the lease period, as Demosthenes informs us about the estate of Antidoros (27.58). It would appear also that the archon's role in leasing liquid estate of an orphan was limited. He could still possibly exercise his functions of having the security provided evaluated, approve or reject the adequacy or otherwise of the value of the security. However, the actual handing over of the loan to the lessee might not necessarily take place at a public auction as in the case of leasing a landed property. This might be done in his presence. But it is quite conjectural, as there is no evidence for the situation just as there is none for the procedure.

Isaios 6.36 quoted above is again significant for another reason regarding the provision of security in leasing an orphan's estate. Various interpretations have been put to a section of it; particularly to the effect that the orphan whose estate was to be let had himself to provide security for his estate. I find the reasoning as confusing as it is illogical in practice. The perplexing section reads as follows:

ὁπως ἐπὶ τοῖς τούτων ὀνόμασι τὰ μὲν μισθωθείη τῆς οὐσίας, τὰ δὲ ἀποτιμήματα κατασταθείη καὶ ὅροι τεθεῖεν ζῶντος ἔτι τοῦ Εὐκτήμονος,...

"Their purpose was that, in the name of these boys, part of the property might be leased and part of it established as securities and marker-stones put in position while Euktemon was still alive."

The phrases τὰ μὲν μισθωθείη τῆς οὐσίας, τὰ δὲ ἀποτιμήματα κατασταθείη with the contrasting particles τὰ μὲν...τὰ δε seems to be the crux of the matter.[541] But of the various interpretations given, the ones offered by MacDowell and Harris appear most plausible and seem to reflect the practice of providing securities. As Harris points out, the contrast seems to be a general one between two actions rather than a narrow one between two pieces of property. That is, the leasing of the orphan's estate on one hand (τὰ μὲν μισθωθείη τῆς οὐσίας), and the furnishing of securities by the lessee on the other hand (τὰ δὲ ἀποτιμήματα κατασταθείη). Accompanying the furnishing of securities is the placing of *horoi* on the property pledged (καὶ ὅροι τεθεῖεν). Thus, one property, that of the orphans is being leased; while the other, that of the lessees, is being provided as securities.

Harris' thesis may be expanded by a simple logic. In leasing an orphan's estate, the lessee was expected to provide security for the period of the lease. The adequacy of the value of the security *vis-à-vis* the value of the orphan's estate once established, marker-stones were placed on the

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[541] For the various interpretations given to the phrases, see Wyse, p.525; P. Roussel, *Isée*: *discours* (Paris, 1922),p.104, noted by Harris *CQ* 87(1993),82; Harris, ibid.,82-83: Forster, *Isaeus*, (Loeb),p.225; Finley, *Land*, p.41-42; Fine, *Horoi*, p.100; MacDowell, *CQ* 39(1989),13-15.

property pledged as security. The lessee was handed over the property being leased to administer and to pay the agreed rent on it. The orphan whose property was to be leased was not required by law or custom to provide security for his own property being leased. Naturally, nobody would want to lease his estate for a period of years only to relinquish another property of the value or more as security for the one he had leased.

It is not very definite whether it was mandatory for a lessee always to provide security for the lease of an orphan's estate. According to *AP*, 56.7, and Harpokration, security was legally binding. But Isaios 2.28-29 which throws some light on pledging of land as security for an orphan's estate in practice appears not only incoherent but also confusing in content regarding the issue. Commentators are therefore not agreed on what exactly the situation was.[542] The prelude to the confusion goes back to an early section of the speech.

According to the speaker, Menekles was able to provide a dowry for his daughter because he had become joint lessee of the property of the children of Nikias (μετασχὼν τοῦ οἴκου τῆς μισθώσεως τῶν παίδων τῶν Νικίου). (2.9) The statement indicates that Menekles received a sum of money (apparently a secured loan) as a result of entering into this lease. This loan with its subsequent repayment crisis is what is confirmed

later in a passage of the speech in 2.28-29, which does not lend itself easily to interpretation. The passage reads as follows:

" When it became necessary to pay back the money to the orphan, and Menekles did not possess the requisite sum, and interest had accumulated against him over a long period, he was for selling the land. My opponent, seizing the opportunity and being desirous to pick a quarrel with him because he had adopted me, tried to prevent the land from being sold, in order that it might be held as a pledge, and that Menekles might be obliged to cede the possession of it to the orphan. My opponent, therefore, claimed a part of the property from Menekles, though he had never previously made any such claim, and tried to prevent the purchasers from completing the purchase. Menekles was annoyed, and was obliged to reserve the portion which my opponent claimed; the rest he sold to Philippos of Pithos for seventy minai and thus paid off the orphan, giving him one talent and seven minai out of the price of the property; and he brought an action against his brother for restraining the sale."

A few obscurities occur in the passage which need to be addressed; for the account in general seems so deliberately garbled by the speaker that he must probably have either omitted or distorted some essential details. It is not clear whether it was a portion of the land or the

[542] For various works on the issue, see Fine, ibid. p.109, n. 60.

whole land that Menekles had apparently pledged as security for his loan. Neither is it clear whether it was the part of the land Menekles had apparently pledged as security or the whole land that he tried to sell.

If it was a portion of the whole estate that he had attempted to sell, but the whole lot had been pledged as security for his loan and marked by mortgage pillars (*horoi*) for many years, a completely new claim to a portion of it for sale would mean that the representatives (the guardians) of the children of Nikias, and in fact, the archon himself who looked after the interests of orphans, or his deputies should have to go to the field to inspect and value the security offered.[543] But this does not seem to be the situation. For normally, as MacDowell rightly points out,[544] to avoid the risk of having all his property seized, or any part of it picked at random, it was convenient for a borrower to earmark a particular piece of his property which should become the creditor's if he could not pay his debt.

The motives for the fracas between Menekles and his brother with the subsequent division of the land are also not clear. Their quarrel may have been the result of some other factors than the speaker's claim that it was because Menekles had adopted him that his brother tried to stop him from selling the land. It is most probable that Menekles' brother prevented him from putting up the land for sale because it was their

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[543] See *AP*, 56.7; Harp.*s.v.* ἀποτιμηταί. Cf. Wyse, p.259.
[544] *Law*, p.142-143. Cf. J.W Jones, *Law and Legal Theory of the Greeks* (Oxford, 1956),p.239.

patrimony that they were holding in common. In that case, if Menekles were allowed to sell the whole land or an additional portion besides what had already been put under pledge, as it was risky to mortgage a whole property, he would be depriving his brother of his share of their patrimony. Their joint-ownership of the land is confirmed by the statement that Menekles' brother claimed a part of the property from him, though he had never previously made any such claim.

Confirmation of their joint-ownership is further reinforced by the fact that Menekles was compelled to reserve the portion claimed by his brother, and sold the rest for seventy minai from which he paid the orphan's due to him. (2.29) Furthermore, although we are not in a position to know the legal relationship between Menekles and his brother *vis-à-vis* the land (except that it was most probably their jointly-held patrimony), and their respective personal obligations on grounds of which Menekles indicted his brother for stopping the sale,[545] neither do we know what arguments he used in his suit. But it does seem that Menekles sued his brother not just because he had restrained the sale. He in fact, sued for a formal division of the land for him to take his share so that he might manage it independently. This is evident in the speaker's subsequent remarks that the matter was later submitted to arbitration

[545] Wyse, p.259, conjectures that Menekles may probably have borrowed money from his brother on the land, hence his reaction.

which eventually resulted in the formal division of the land between Menekles and his brother, and the swearing of an oath as a seal of the agreement (2.29-33). It is important to note that it is Menekles' share of the land that is the subject of dispute in Isaios' second speech. Until then, it was a jointly held estate.

One further crucial issue is the status of the land proposed for sale by Menekles. According to the speaker, Menekles' brother tried to stop him from selling the land so that it might be held as a pledge, and that Menekles might be obliged to give up possession of it to the orphan: διεκώλυε τὸ χωρίον πραθῆναι, ἵνα κατοκώχιμον γένηται καὶ ἀναγκασθῇ τῷ ὀρφανῷ ἀποστῆναι: " he tried to prevent the land from being sold, in order that it might be held as a pledge, and that Menekles might be obliged to cede the possession of it to the orphan."(2.28) This seems to be one of the most confusing sections of the passage as a whole. It is not clear whether the land was already under a pledge, or it was yet to be pledged because of Menekles' inability to pay the loan.

If the land was yet to be pledged as security, the senses of the two main verbs following their introductory antecedent ἵνα would represent the normal sequence of events. Thus if his brother tried to prevent him from selling the land in order to pay the orphan, it would be used as security until the loan was paid; but otherwise be seized if Menekles was still unable to pay the loan together with the interest on it. In that case, it

would imply that Menekles had contracted the loan without providing security for it. This case could then be an instance of a situation whereby an orphan's estate had been leased without security, though usually agreement on or certification of the security for an orphan's liquid estate preceded the granting of the loan.

But if the land was already under a pledge, the conjunction καί linking the two purpose clauses might seem intrusive. Without the καί therefore, the` sense would then run thus: he tried to stop the land from being sold so that having come or since being under a pledge, Menekles might be obliged to cede the possession of it to the orphan. It does seem to me that this second interpretation better suits the situation and normal practice. The point here is that the land had already been pledged as security for the loan, though Menekles still held possession of it. And, knowing that property pledged under security could be seized if it was not redeemed, Menekles' brother tried to prevent him from selling the land in order to pay his debts because of the enmity between them, so that the law would take its course. This also seems the only way to explain the statement that the land would be subject to seizure if the money were not paid to the orphans. It implies as well, that if the lessee failed to repay the principal at the proper time the orphan acquired a right to the whole security; and, if he wishes, to sell it in lieu of repayment.

That the whole subject of real security for loans was already well developed in the time of the orators may be inferred from a speech of Demosthenes. In his *Against Phormion* where he speaks of the death penalty being inflicted for obtaining large additional loans in fraud of earlier creditors, the orator remarks that there were many rules for the protection of creditors against fraudulent acts of borrowers who, for instance, did not hand over to the lenders their securities and went on to obtain further loans. (Dem. 34.49-52)

The suggestion by Hitzig, noted by Wyse (p.258-259), that Menekles' brother was guardian of the orphans of Nikias is reasonable but not quite convincing. If only the portion of the land proposed for sale by Menekles was under a pledge, his brother's reaction to his attempt to sell the land would have been unwarranted; for the orphans had a prior right on it already. The brother, as noted by Wyse, would have had to maintain his own rights in the other portion and stop Menekles from putting the whole estate up for sale.

And if the brother was a guardian of the orphans as suggested by Hitzig, and the piece of land that Menekles eventually put up for sale was already under mortgage to the orphans, Menekles would have had to consult his brother as guardian on his plans to sell the land in order to pay his loan. But he could not have sold the land without the approval of his brother as guardian of the children. However, it is most unlikely that

his brother, the orphans' guardian, would have sanctioned the sale of the mortgaged land. And although Menekles himself also seems to have been a guardian of the children (cf.Harrison, *Law* (i), p.291), agreement between him and his brother on the sale of the land would not seem very likely to be reached on account of their strained relationship if both of them were guardians of the children.

Also, if the brother was guardian of the orphans he would most probably not have sat unconcerned while interest on the loan kept accumulating. Judging from his uncompromising reaction to the sale of the land, he would certainly have pressurised Menekles to make the periodic payments of the interest on the loan, or he would have sued him for bad guardianship. It is therefore not likely that Menekles' brother was guardian of the orphans of Nikias.

To return to the issue of providing security for the lease of an orphan's estate, it is implicit in Isaios 2.28-29 discussed above that security was always to be provided for the lease of an orphan's estate. However, it does appear that in practice, if the estate of the orphan comprised largely landed property, a strict insistence on the provision of security equal in value to that of the orphan's estate was not adhered to, presumably on condition that the orphan's property would in no way be

alienated or mortgaged.[546] This apparent relaxation of the regulation had two main advantages. First, it would have enabled a guardian without much real property of his own to apply to lease the property to himself. Second, it would have made it also not too difficult to get a lessee if an orphan had a very large amount of real property.

The evidence from *AP*, 56.7 and Harpokration (n.543 above), as well as Isaios 6.36-37 points strongly to the fact that a lessee always had to furnish security for the orphan's property which he had to lease, making the condition appear mandatory. The security was in the form of real property. But if the estate to be leased itself was land, it would appear that land might not be provided for it. For it would not seem quite creditable or economically viable that a lessee would offer to obtain the management of property on which he must pay rent, only to abandon all profits from an equivalent amount of his own property, unless of course his own land was far less productive.

And in any case, if the guardian could not or would not manage his ward's estate, he would have no particular desire to administer a lessee's property under a pledge.[547] However, it does seem that land had always to be provided as security, unless the leased estate was itself land. For instance, and as noted already, where the orphan's fortune comprised

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[546] Cf. Harrison, *Law* (i), p.293.
[547] Cf. Finley, *Land*, p.237-238,n.23; Fine, *Horoi*, p.108.

mainly liquid assets to be leased, land or buildings would be required as security to protect the orphan's interests. None the less, it appears that there could be instances whereby this was not always the case.

We have already noted the case of Menekles whose loan he contracted from the children of Nikias that does not seem to have been secured by him. The case of Xenopeithes, the guardian of the orphans in Demosthenes 48, may also be noted. We are informed that on being prosecuted for not leasing the estate of his wards, Xenopeithes managed to convince the court to grant him permission to administer his wards' estate himself. (48.23) It is very obvious that he was not required to provide security for the orphans' fortune that appears to have comprised mainly liquid assets. However, although there could be instances of situations whereby an orphan's fortune rather than land was leased without providing land or buildings as security, there is not sufficient evidence to make this clear.[548] At any rate, it is recognised[549] that security was generally required to give the orphan whose estate was being leased protection against fraud, and also to underline official supervision of the procedure.

The incident described in Isaios 2.35-37 illustrates the fact that a guardian could also take a lease of his ward's estate. Finley (*Land*, p.41)

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[548] Cf. MacDowell, *Law*, p.144.
[549] See Fine, *Horoi*, p.99,108-109; Finley, *Land*, p.42-43; Wyse, p.258-259; Harrison, *Law* (i), p.295.

maintains that a guardian's decision to bid for his ward's estate might probably be for the reason that the orphan's father may have failed to make adequate arrangement to reward the guardian for his efforts. Thus to benefit from managing the estate, the latter decided to lease it thereby retaining control and at the same time obtaining an income. But Wyse (p.526-527) finds the practice rather suspicious. It may be true that if the guardian himself bid for his ward's property it presumably raised suspicion that he might not render fair and honest accounts to the ward at the end of his guardianship. This inherent suspicion thus made the practice generally rare; and perhaps a reason why the family of Euktemon protested, thereby causing the guardians' bid to be cancelled. But it does appear that the practice was good incentive for a guardian to manage his ward's estate efficiently.

Without such a contract, the guardian could not legally profit from his administration of his ward's property, and thus had no reason to increase its productivity. As a lessee he could exploit the patrimony of the orphan for his own profit and would have a strong motive for increasing the revenue derived from it. The practice would certainly be advantageous to the orphan also. For he would definitely be entitled to a

share of these profits through the lease and have his property well maintained, if not substantially improved by his guardian.[550]

Two questions that are not addressed by the sources are whether a guardian who decided to manage his ward's fortune himself had to apply to the court, and whether he also had to provide security as required by any other lessee for the lease. We may search the sources in vain for evidence that a guardian who decided to administer his ward's property himself had to apply to the archon before he could assume that responsibility. The evidence in Demosthenes 38.23 is circumstantial and cannot be taken as representative. It would therefore be a reasonable presumption that a guardian did not need any administrative consent to manage his ward's estate himself.

With regard to the provision of security, unless of course, he decided to compete with other lessees for the estate at the public auction conducted by the archon (Is.6.36-37), it does appear certain that it was not required of the guardian to provide security for certain fundamental reasons. In the first place, a concomitant of the application to the archon for the lease of an orphan's estate was the provision of security by the lessee before the lease was granted. And as the guardian did not need to apply to the archon before he could administer his ward's estate himself

[550] See Dem.27.64 which gives several instances of orphans who profited handsomely from having their estates leased.

if he so wished, he was presumably not required to furnish security in that respect. Secondly, any suggestion that the guardian was expected to provide security if he decided to manage his ward's property seems to negate the permissive nature of the rules regarding the lease of the estate.

Furthermore, it would certainly have been impossible for a poor guardian to provide security equal in value to the property of an orphan much richer than himself if he had to furnish security before he was permitted to administer his ward's property.[551] In any case, the orphan had the right to have his fortune invested to yield income. A guardian who decided to administer his ward's patrimony was therefore obliged to invest his ward's capital (if it is liquid assets) or put it to work (if it is a landed property), and by this transaction the ward's fortune might be expanded considerably.[552] To protect the interests of the orphan and to keep proper accounts, however, the orphan was usually considered as the creditor.

An issue that needs to be addressed is the problem of the guardian who himself took the lease of the orphan's estate and then failed to pay the rents or interest on it. We have several cases of misappropriation by guardians who did not lease their wards' estates but personally administered them. But we have no definite information on any case of a

[551] Cf. Harrison, *Law* (i), p.294, and ibid.n.1; Paoli, noted by Fine, *Horoi*, p.111,n.71.
[552] See Lys.32.23; Dem.27.60-61; Is. 11.39.

guardian who officially took the lease of his ward's property but failed to pay the rents or interest, neither is there any evidence in the sources of any action taken by the adult orphan against a lessee.

The two cases, which, I think, but for their controversial nature, could perhaps be cited as evidence of guardians taking the lease of their wards' estates are the ones in Isaios 2.9,28-29, and 6.35-36. In Isaios 6.35-36, we are told of an attempt by the two guardians to lease their wards' estate to themselves, which allegedly turned out to be a conspiracy by the guardians to defraud their wards. The alleged conspiracy was later foiled, and the bid to lease the property to themselves, cancelled. But otherwise we could have had a typical case of guardians who would have officially taken the lease of their wards' property, though we cannot say that they would have failed to pay the rents or interest. Their case can therefore not be taken as representative of the situation of failure to pay the rent, except that it points to the fact that a guardian could officially take the lease of his ward's patrimony.

And in Isaios 2.9,28-29, the status of Menekles in relation to the children of Nikias is not clearly defined. But Harrison is probably correct that Menekles was the guardian of the orphans.[553] Despite the indefinite nature of his status, we could use his case as an analogy of a guardian who took the lease of his ward's estate but failed to pay the interest.

In every contract regarding the lease of an orphan's estate, there must have been stated when the payment of rents or interest should be made. Two sources bear on this time stipulation, one of which is the passage in Isaios under discussion. The other is in Demosthenes' first speech against Aphobos. The implication of that passage in Demosthenes is that at the end of the contract period (apparently at the majority of the orphan), the principal and the total amount of income due to the orphan were paid at the same time.(27.58) And in the Isaios passage, when Menekles settled down with the orphan who had attained his majority, he paid back the principal and the interest which had accumulated for a long period.(2.28-29) In Demosthenes 27.58, it is not clear whether or not the terminal six-year period of the lease when the lessee discharged his obligations is what was stipulated in the contract regarding the payment of the principal and rents or interest to the orphan, Antidoros. But in Isaios 2.28-29, it is obvious that the interest should have been paid periodically by Menekles, which he failed to do, resulting in its accumulation until the orphan's majority.

It does seem from these two passages in Demosthenes and Isaios that a lessee could defer payment of the rent or interest on the property leased to him until a later time. However, I think that if it were possible to postpone payment of all or a large part of the rents or interest on the

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[553] *Law* (i), p.291.

lease until the end of the contract period, the practice would appear unusual. This is because the guardian would need the periodic revenues on the estate to meet the expenses of his ward's maintenance and education, and to pay the *eisphora*, the only liturgy a male orphan was liable to pay.[554]

It appears difficult to say whether a guardian who took the lease of his ward's estate and then failed to pay the rents represented the orphan's interest as well as his own. In any case, it is reasonable to say that if the guardian took the lease himself but failed to pay the rents or interest, as it seems to be the case with Menekles, the orphan seems worse of in terms of revenue from his property, and on grounds of his minor status. A crafty guardian could argue that he had been using all the revenues from the estate to foot expenditures on his ward's person and the estate.[555] This argument would appear plausible and logical, especially if there were no complaints about the orphan's general maintenance; and the guardian handed over to him at his majority his original patrimony, even with no profits. After all, as guardian, although he was expected to invest his ward's property, he was obliged to turn over the estate to the ward as the father left it, and render accounting to

[554] On the orphan's liability to pay the *eisphora*, see page 349 above.
[555] A parallel example of this is Lys.32.9-10, where the guardian implies that he had spent all the fortune the orphans' father left for them together with his own money for their general maintenance.

him, but not necessarily to declare profits. It would, however, denote good and creditable management if any profits were declared.

Nevertheless, it would appear that such an argument as would be advanced by the guardian would have no technical or legal extenuation regarding the terms of the agreement for the lease. The guardian could, in all probability, be liable to prosecution; and more so especially where, besides failure to pay the rents or interest, there is evidence of lack of maintenance of the orphan, as is implied in Lysias 32.16-17. However, the ward, because of his minority, naturally could not engage in legal proceedings himself (*AP*,42.5). And his guardian, as his legal representative who would have taken the necessary steps to protect his interests when the estate had been leased is the one who has taken lease of the estate but failed to pay the rents or interest on it. It would therefore have been a concerned third party prosecutor, ὁ βουλόμενος, who could bring action against the defaulting guardian for failing to fulfil his obligations.

Some of the legal actions that could be initiated on behalf of a minor orphan have been discussed on page 435 below. But one other avenue that was also open to the orphan to be taken on his behalf if the guardian failed to carry out his duties satisfactorily was apparently the ἐνοικίου δίκη to compel the guardian to pay the rents or interest. Demosthenes provides the evidence for this kind of suit.. In his *Against*

Olympiodoros, the speaker refers to the action which Olympiodoros should have taken against him for failing to pay the rent on Olympiodoros' house that had allegedly been leased to him. (48.45) The passage refers to an ordinary lease, but since it borders on failure to pay rent on a leased estate, it is fair to assume that the same action could be applied to the lease of an orphan's estate. But if no such action was taken against the guardian, and the orphan, at his majority, felt strongly that his guardian's accounts to him regarding his general maintenance and the administration of his patrimony fell short of expectations, he could bring suit against his guardian by the δίκη ἐπιτροπῆς.[556]

Regarding the arrears of rents or interest on the leased estate, there is no evidence, as noted above, for any action taken by an adult orphan against a lessee in that respect. But this is presumably because, as Isaios informs us about Menekles (2.28), if full payment of the principal and rents or interest was not made to the orphan, he could seize the security provided by the lessee. However, as seems to be the case with Menekles, an orphan who wished to have cash rather than the real property represented by the security, may permit the lessee to sell the security and, in this way, discharge his obligation through the proceeds of the sale.[557]

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[556] Various kinds of actions against dishonest guardians will be discussed in Chapter 10 below.
[557] On the question as to what the position could be in case the value of the security was greater than that of the obligation, see Fine, *Horoi*, p.101-102.

Concerning the lease of an orphan's estate in general, it may be noted that the archon's supervisory role in the lease procedure of a real estate is probably the only case in which we have state interference in private land leasing and administration. The transaction was publicised officially, and the archon saw to it that procedural requirements were met. This apparent state interference must basically have been for the purpose of preventing fraudulent administration of the estate, or forestalling against any conspiracy by unscrupulous relatives to deprive the orphan of his rightful patrimony. However, it may also have been against the background of two other related rationales. Socially, orphans were exceptionally vulnerable, and therefore merited extra protection by the state. Politically, many orphans were children of deceased warriors. It was thus a basic tenet of civic ideology that the city should provide for them and protect the orphans of those who sacrificed their lives for the city.[558]

THE IMPLICATIONS OF Μίσθωσις Οἴκου FOR THE ORPHAN

Isaios 2.28-29 and Demosthenes 41.7-10 throw some light on the position of the orphan in leasing his patrimony. The passages are our principal sources for the much-vexed issue of real security in Athens. Isaios 2.28-29 informs us of the pledging of real security with its

[558] Cf. Todd, *Law*, p.250; MacDowell, *Law*, p.94; Lacey, *Family*, p.140-141; S.D.Goldhill, ' The Great

attendant fate of seizure in the event of default in leasing an orphan's estate. And Demosthenes 41.7-10 most probably stands as the only extant Athenian statute concerning the status of property pledged as security in loans and lease agreements in classical Athens.

The plaintiff in Demosthenes 41, *Against Spoudias*, does not quote the law, but gives a short paraphrase of its contents. According to the speaker, the law explicitly forbids prosecution by lessees and their heirs against those in possession of property that they had pledged as security. The question as to who possessed the property that had been pledged as security is the subject of what seems to be an endless controversy regarding pledging of security in loans and leases in Athens.

Fine[559] maintains that the debtor retained possession and ownership of the property pledged as security. But his view is rejected by Harris[560] and Harrison.[561] A defect of Fine's claim is the assumption that every property pledged as security was landed property be it in a loan transaction or in leasing a landed estate. But among the items listed in Demosthenes' account of his patrimony are twenty slaves engaged in the manufacture of beds from which his father received an annual revenue of twenty minai. These slaves, he recounts, had been received as security

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Dionysia and Civic Ideology ' *JHS* 107(1987),58-76; Christ, *Litigious*, p.128.

[559] *Horoi*, p.67-69,94,107-109.

[560] *CQ* 82(1988),351-381.

[561] *Law* (i), p.267,n.1.

for a debt of forty minai owed his father by a certain Moiriades (27.9,27). What does Fine say about this kind of security?

Fine would probably differentiate between Demosthenes' possession of these slaves and the thirty-three others who were engaged in making knives, also included in the orator's inventory of his fortune. However, Demosthenes himself makes no distinction, but evaluates both categories of slaves as included in his patrimony.[562] Furthermore, in his second speech against Aphobos, Demosthenes tells the jury that if he is convicted he would be left in abject poverty because much of what he owned had been pledged as security for a loan, and thus belonged to his creditors. (Dem.28.18)

We notice that in the first instance, movable property had been pledged as security, but in the second situation, the property provided was a landed property. And with regard to the possession of the property pledged as security, Demosthenes in 27.9-11,27, considers his father as the owner of the twenty slaves; and therefore assesses their capital value together with his patrimony. But in 28.18, he regards his mortgaged property as property of his creditors if he is condemned and is unable to redeem it by repaying the loan for which he had pledged the security. The presumption, however, is that he continued to keep possession of the

[562] Cf. Davies, *APF*, p.129-130; Harris, *CQ* 82(1988),363; Finley, *Land*, p.116.

property until default occurred when he would have to lose his entitlement to it.

It does seem, therefore, that in certain situations, the property pledged as security was regarded as the creditor's property. For if the Athenians thought that all encumbered property belonged to the debtor, and that the creditor could not claim to be the owner of the security, Demosthenes would not have maintained that the slaves in the beds factory had been pledged as security to his father; and therefore belonged to him. None the less, in other situations, especially in leasing a piece of land whereby real property was pledged, it appears that the property pledged as security continued to be in the lessee's possession during the period of the lease.

Thus the question as to who possessed property pledged as security in a loan or a lease transaction still remains a matter for controversy, and does seem to have no definite answer to it. For there appears to be no concrete evidence for any relevant legislation or regulations to guide the Athenians in the field of real security; and the question as to who owned property pledged as security in a loan or lease is not easy to answer. In a pledge or mortgage, the creditor loaned money to the borrower, or the lessor lent his property to the lessee who in turn pledged some of his property as security. By pledging this piece of property, the borrower or the lessee temporarily lost his right to alienate

it, and the creditor or the lessor gained the right to seize it if default took place.[563] But as to who owned or controlled the pledged property until it was redeemed or until default might take place is an issue which the Athenians, as Harris has noted,[564] seem to have had no definite criteria to resolve. And so the problem of ownership of the security appears to have remained in a legal limbo in which there reigned a sort of free-for-all with everyone guided by his own self-interest, and not by any juristic precepts.

So far, the available evidence points to certain reflections on the position of the orphan with regard to the administration of his or her patrimony. These reflections may be noted against the background of the fact that although in all situations the reference is to the orphan whose interest is the fundamental concern, all transactions would have been undertaken on his or her behalf by the guardian or legal representative because of the orphan's own legal disabilities. If an orphan's liquid estate is leased as a loan, the borrower receives the money to which he acquires full rights for the duration of the lease agreement.

After handing the money over to the borrower, the guardian or legal representative of the orphan, and for that matter the orphan, has no further obligations to the lessee under the terms of the agreement. He has

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[563] Cf. Finley, *Land*, p.115; Harris, *CQ* 82(1988),370; Harrison, *Law* (i), p.282-283.
[564] See *CQ* 82(1988),370.

fulfilled his part of the bargain and has received in turn a right to the repayment of the loan. The borrower, that is, the lessee, on the other hand, is in debt to the lessor (the orphan) the instant he receives the loan and has no rights against him (the lessor). He, as lessee, can exchange the money for goods and services; and does not, of course, have to repay the principal until the due date or the expiring time for the lease arrives. But his full obligation under the agreement remains unfulfilled until he repays the lessor (the orphan). The risk for the orphan, therefore, is that the borrower might spend the entire principal, and then become insolvent before the time comes for him to repay the loan.

Thus the orphan and the lessee or the borrower are not on the same footing. For while the orphan has a right against the borrower and no further obligation, the borrower has an obligation to the orphan, but no claim against him. This apparent asymmetry puts the orphan in a vulnerable position. This vulnerable position is patent from the fact that he, as lender, must perform his part of the agreement immediately, and then trust the borrower to perform his obligation to repay the loan at some time in the future. At any rate, the security that should cover the interest and the principal protects the vulnerable orphan against the possibility that the borrower reneges on his promise to repay the loan or become insolvent. In effect, the security is meant to ensure that the

borrower does not alienate an amount of property equivalent in value to the principal.

It is remarkable that an obvious implication of this is that the lender or the orphan acquires a legal share in the property pledged as security, and this property can, in fact, not be alienated without his consent. Furthermore, the orphan has the right to seize the pledged property if the borrower should become insolvent by the end of the lease period. Isaios 2.9,28-29 is very germane, and may be taken as illustrative. The speaker informs us that Menekles had become joint-lessee of the property of the children of Nikias (2.9). This statement not only indicates that it was permissible for two or more people to take a lease jointly, but more importantly, that Menekles received a sum of money as a result of entering into this lease. It also suggests that the arrangement was, in fact, a secured loan.

This loan contract is confirmed later in the speech where we are informed that Menekles had to repay a sum of money, and that interest on it had accumulated for a long period (2.28). And to repay the loan, Menekles attempted to sell some piece of land which otherwise would have been subject to seizure. It is significant to note that the land would be subject to seizure if the money was not paid at the proper time to the orphan because it had been pledged as security for the loan Menekles had taken. And to forestall the situation of seizure, Menekles was compelled,

in the circumstances, to sell the piece of land he had pledged as security to pay off his debt to the orphan.

But it is important to note also that he could not lawfully sell the land without coming to terms with the guardian or legal representatives of the orphans of Nikias. For it was not permitted by law for a man who had mortgaged a real estate to sell it at will or pleasure.(Dem.41.7-10) Significantly, since the mortgaged land was security of the orphans, they had a share in it by law. It could therefore not be sold without the consent of their guardian or legal representatives, or the person who held it as security.[565] Menekles may therefore have certainly consulted the orphans' legal representatives and come to terms with them before putting up the land for sale.

When the landed property of an orphan is leased, the orphan does not face the same risk as he would otherwise have faced in leasing his liquid estate. While the orphan, in leasing his liquid property, seems to relinquish all rights to his money in return for a promise to repay, in leasing his real property he does not part with the ownership of the property he leases. The lessee indeed has a right to the use of the property; but he does not acquire the right to alienate it, or to exchange it for cash. In case he attempts to sell the property to an unsuspecting third party the sale would not be valid. And if the lessee refuses to vacate the

property at the end of the lease period he could be evicted. Furthermore, if the lessee resists eviction he could be prosecuted by the orphan by a δίκη ἐξούλης with stiff penalties if he was found guilty.[566]

It would imply, therefore, that if the lessee of an orphan's real estate became insolvent, the only thing the orphan stood to lose was the payment of rent for use of his property. And to protect him against this risk, the lessee was required to furnish real security. It does appear then, that the orphan, in fact, did not need to demand security for the value of his property to guarantee his right of ownership if the lessee should renege on his obligations to him. For, as Harris rightly notes,[567] his ownership is already protected by the laws; and after all, a lessee would not possibly be able to abscond with a building or a plot of land leased to him, those assets that would have constituted the bulk of an orphan's patrimony.

The position of the orphan in a lease of his landed property therefore appears different from his position in leasing his liquid estate. In leasing his landed property he agrees to permit the lessee to occupy and make use of his property for a certain period of time in return for payment of rent. As long as the lessee pays his rent on time, he never falls into debt to the orphan. Thus at the outset the lessee in a landed

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[565] See Dem.53.10. Cf.Harrison, *Law* (i), p.267.
[566] Cf. Harrison, *Law* (i), p.217-221; Harris, *CQ* 87(1993),78-79.
[567] Ibid.

property is in a different position *vis-à-vis* the orphan than the borrower is *vis-à-vis* the orphan (the lender) in a loan transaction.

It becomes obvious then, that in leasing a real property the lessee and the orphan are on equal terms. For the orphan has an obligation to the lessee to allow him to use his property, and the lessee in turn has the obligation to pay rent. Provided that the lessee does not fall into arrears but makes regular payments of rent, he remains on equal footing with the orphan. Each has both a right and an obligation towards the other, and neither is in debt to the other as long as the lessee fulfils his obligation of regularly paying his rent on the property. But if the lessee failed to make regular payments of the rent, he became indebted to the orphan; and in the event of his becoming insolvent at the end of the lease period, the orphan could seize the property pledged as security in lieu of the rent.

It would appear also that leasing an orphan's estate gave two obvious guarantees to him. For one thing, at his age of majority he received exactly the same property left by the father at his death. For another, during the period of guardianship the orphan got a steady and guaranteed periodic revenue which could be used to provide for his general maintenance, and to meet expenditures on the estate. Thus

leasing the estate enabled the orphan to take over at exactly the stage of the property where the father had left.[568]

It is noteworthy also that the orphan's socio-economic position might be improved if the lease terms were quite favourable. And this appears to have been especially the case with estates comprising largely liquid cash, as it seems to be implied in Demosthenes 27.57,62. The orator speaks also in general terms, (27.64), of estates of orphans which had been doubled and trebled by being leased, and cites the particular example of the property of Antidoros which was leased, and which grew in six years from three talents thirty minai to six talents and more.

It is the same socio-economic values that the speaker of Lysias *Against Diogeiton* implies when he tells the jury that, if the orphans' guardian wished to act justly by the children, he might have farmed out their estate and so got rid of a load of cares, or have purchased land and used the income for the children's support. (32.23) Significantly, another socio-economic implication for the orphan if his estate was leased and improved on favourable terms is that he would be classed among the wealthy citizens, and be called upon for state services to enhance his economic and social standing in the society.

In any case, the economic security that the orphan derived from leasing his patrimony would not go without a social cost. Although if a

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[568] Cf. Osborne, *Chiron* 18(1988),313.

guardian decided to administer his ward's property he could lease part of it privately, the general and formal practice, if a guardian decided to lease the orphan's patrimony was that the estate as a whole was leased and not a portion or part of it. But leasing the whole of the estate implied leasing property of the ancestry, which might comprise agricultural and residential property.

This would mean that the orphan family should have to be accommodated elsewhere if the guardian himself did not decide to bid for the lease, or the lessee did not agree to sublet part of the estate back to the orphans. The obvious consequence is physical and emotional disruption, because sentimental links with the ancestral land, and with any slave force would be broken. This might particularly be the case if the orphans were almost at their majority, or if the guardian was a very close relative and the property was part of his own past history.(Cf.Finley, *Land*, p.236,n.16; Osborne, *Chiron* 18(1988),313-314) Some soft-hearted uncles might therefore not lease their wards' estates.

In overall terms, however, leasing an orphan's estate might apparently have become a regular feature of managing the patrimony of the orphan. The intentions of a guardian who failed to lease his ward's fortune, no doubt, were therefore suspected.

CHAPTER 10

TERMINATION OF GUARDIANSHIPAND ACCOUNTABILITY

THE AGE OF MAJORITY: THE EPIKLEROS

In the majority of cases the transfer of the patrimony of the *epikleros* from her guardian to her husband at her marriage was straightforward. But where the status of the *epikleros* as well as that of her patrimony was litigated the transfer of the property could be a complicated affair. The case of the daughter of Aristarkhos (I.) in Isaios 10 is a typical example of the latter situation. The speech is delivered against a certain Xenainetos (II.) regarding the property of Aristarkhos (I.). According to the speaker who is suing for the estate of his maternal grandfather, Aristarkhos (I.) married a daughter of Xenainetos (I.) by whom he had four children – two sons, Kyronides and Demokhares, and two daughters. The eldest child Kyronides was however adopted during his father's lifetime by Xenainetos (I.), his maternal grandfather (Is.10.4,5). With the adoption of Kyronides, Aristarkhos (I.) was technically left with three children, Demokhares and his two sisters.

When Aristarkhos (I.) died, Demokhares became heir apparent, his elder brother having been adopted into another family. Meanwhile he and his sister came under the guardianship of Aristomenes their paternal uncle. Demokhares, however, died a minor, one sister having died

already. Thus the estate of Aristarkhos (I.) devolved on his last surviving daughter, the mother of the speaker (10.5), who was still a minor under the guardianship of her paternal uncle. In effect, therefore, the estate of Aristarkhos (I.) was still under the control of Aristomenes, his brother and guardian of his daughter.

In course of time Aristomenes gave his own daughter in marriage to Kyronides, the girl's brother who had been adopted out of the family, and handed over to him the estate to which he had lost his right because of his adoption (10.5-6). This union was blessed with two sons, Xenainetos (II.), named after Kyronides' adoptive father, and Aristarkhos (II.), named after Kyronides' natural father (10.6). Subsequently, Aristomenes gave the daughter of his brother of whom he was the guardian in marriage to a man outside the family since neither he, as next-of-kin, nor his son, Apollodoros, as cousin of the girl, claimed her in marriage by Athenian law. It was from this marriage that the speaker of Isaios 10 was born (10.5,6).

On the death of Kyronides, Aristarkhos (II.) was introduced into the phratry of Aristarkhos (I.) as his adopted son (10.6), and he inherited his estate, the possession of which he enjoyed until he perished in battle without issue. But he left a will in which he named his brother, Xenainetos (II.) as his heir. When Xenainetos (II.) came before the archon and put in his claim to the estate, he was met by a competitor, the

son of the daughter of Aristarkhos (I.), who challenged the validity of the will, and claimed the estate for his mother. It is clear from the speech that before Demokhares died, his father's estate was certainly not in his hands. He was still a minor under the guardianship of his paternal uncle who managed the estate on his behalf. It seems probable that things went on well with the orphans until Demokhares deceased, which event created a dicey position for his sister the reconstruction of which seems to elude commentators. The crux of the matter is whether Demokhares' sister was *epikleros* of her father Aristarkhos (I.), or of her brother Demokhares.

The legal juggle regarding the status of the woman *vis-à -vis* the estate in dispute can hardly be denied. But the situation may not seem so difficult as Wyse would want us to believe,[569] if a more dispassionate examination of the state of affairs is made. Of course, we may search the sources in vain for a precedent of the situation in Athenian law. Prof. MacDowell rightly senses it in his observations on an *epikleros* whose father dies while she is still a minor.[570] None the less, if one trusts all the implications of the speaker's narrative, his mother had a legal right to the estate of her father even before she was married to the speaker's father.

It is explicit from the speaker's account that Demokhares had not actually entered into possession of their father's estate at the time he died. The property was still in the hands of their guardian, holding it in trust for

them, later to be handed over to him at his majority. But we are informed severally in the speech that Demokhares died a minor before he could take possession of the estate. And at the time he died, his sister, the speaker's mother was also still a minor and not yet married. It is important to note that after the death of Demokhares the guardianship obligations of Aristomenes were still in force since the speaker's mother was still a minor. Thus technically, her father's property devolved on her, but in fact, it was still under the control and management of her paternal uncle and guardian, Aristomenes, until she got married at her puberty. And in conformity with the law the estate would then pass from the hands of her guardian to her husband, and then eventually to a son born out of their union.[571]

One may also question whether a boy, while still a minor, could be the 'owner' of an estate though his guardian was looking after it. This may seem a hard question to answer. In theory or technically, however, the property is his, whether he inherited it automatically as a son, or by collateral kinship in conformity with the Athenian law of succession (Dem.43.51). But if the test of ownership is the right to dispose of property, then the minor boy would not be the practical 'owner' of the property until he is certified to have attained his majority, since as a

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[569] See p.649.
[570] *Law*, p.98.
[571] See Dem.46.20.

minor he could not make a will at all in order to dispose of property, as contained in Isaios 10.10.

The state of affairs therefore points to the conclusion that the speaker's mother was *epikleros* of her father and not her brother who never entered into possession of the estate. This conclusion appears contrary to the opinion of de Ste Croix on Is.10.4 that "a sister inherited the estate of a brother who died while still a minor" and should therefore be treated as an exception to the rule.[572] It is also poles apart from the contention of Wyse[573] that the speaker is merely calling his mother *epikleros* to whip up indignation in the jury against his opponents for abuse of guardianship.

Harrison has seeming doubts about the position, and therefore stays out of any detailed discussion of Is.10.4, but nevertheless notes that 'a woman without brothers might be entitled to inherit from a relative other than her father, and if she did it is fairly certain that she was not technically an *epikleros*.[574] This may certainly be possible in some other cases, but we may conveniently discount it in the case of this speaker's mother the events of which point to her right to her father's estate on grounds that her brother never entered into possession of the property. Schaps' claim is probably in line with the situation and in conformity

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[572] G.E.M. de Ste. Croix, 'Some Observations on the Property Rights of Athenian Women' *CR* 84(1970),276.
[573] See p.656.

with the often-quoted law. As he notes,[575] a man's sons were his automatic heirs, and his estate was divided among them; daughters, in the presence of sons had no claim. If there were no sons, natural or adopted, the daughter became an *epikleros*; she married the next-of-kin, and the sons of this union, when they came of age, were the heirs of the property.

As noted above, where there was no litigation about the status of the *epikleros*, and for that matter her patrimony, the transfer of her estate from her guardian to her husband, which of course embodied rendering account of its management by her guardian was quite straightforward. In Isaios 11 for instance, a niece is adopted by will by Hagnias (II.), and technically inherits as *epikleros*. There is no mention of a guardian for her, but she may most probably have lived under the guardianship of either Glaukos or Glaukon, named as residual heir in the will; or both of them, half-brothers of Hagnias (11.8-9).

Furthermore, there is no evidence that her position was the subject of dispute at any point in time. In the event of her reaching her puberty, she would either have to be married to one of them or be given away in marriage together with her patrimony. But she dies still a minor, and the residual heir who inherits is successfully challenged in court, resulting in a protracted and tedious litigation over precisely who was entitled to inherit that seems never to have ended. If she had not died a

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[574] *Law* (i),p.108-9,112-14,136-8,142-236.

minor, she would have received her patrimony with no difficulty at her majority.

And in Demosthenes 43, Philomakhe (II.) becomes an *epikleros* and is claimed by Sositheos (Dem.43.13,55), who represents her throughout the trial. It is not clear whether she became an *epikleros* in her infancy and lived under the guardianship of Sositheos who later took her to wife at her puberty, or the father died just when she reached her puberty at which time she was adjudicated in marriage to Sositheos. Neither is it clear whether she went under the guardianship of some other paternal or maternal relative and was later claimed in marriage by Sositheos; though this last situation seems to be a remote one. At any rate, it is reasonable to assume that her position was not disputed in any way, and her patrimony went into her hands accordingly.

Thus in a normal situation for the *epikleros* whose status or property did not come under any dispute, accountability regarding her patrimony may take two forms. At her marriageable age the *epikleros* continued to live under the legal authority of the man under whose guardianship she had been placed at the death of her father if he took her to wife. There was no account of her estate rendered at this stage. He as her husband and legal representative would normally continue to administer and control her patrimony. But if the guardian did not take her to wife but married her

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[575] D.M.Schaps, 'Women in Greek Inheritance Law' *CQ* 69(1975),53-7,esp.54.

off to another man, her patrimony transferred to the administration of her husband. The guardian then became accountable to her husband regarding her estate, and her tutelage under her former guardian terminated.

The age of majority, that is, the marriageable age, of the young *epikleros* has three obvious domestic and political implications for her at her marriage. First, her guardianship, unlike that of a male orphan, persisted under her husband. Secondly, she as a wife, and an *epikleros* one at that, was naturally expected to begin to bear children for her husband, hoping that sooner or later a son would be born to assume responsibility of her patrimony, and to continue her father's lineage. But the children were not for her husband alone; they were citizen children, and therefore for the state; and society expected them to play their role as citizens of the community and the state.[576]

It is significant, however, that either way the husband was in no way the inheritor of the estate, nor could he dispose of it to anyone else. The law does not give the husband of an *epikleros* unconditional right to ownership or disposal of her property.[577] None the less, he could enjoy the profits from the lease or investment of the property. But as a husband of the *epikleros*, he had a solemn task to perform; that is, to procreate a son to his wife who should take over the estate immediately after

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[576] Cf. Dem.59.122.
[577] Is. 8.31; 10.12,23; Dem.46.20.

attaining his age of majority.[578] It is at this stage that the husband of the *epikleros* rendered accounts of his management of his wife's property to the adult son and handed everything to him as required by law. Thus the husband's administration and control of the estate of his *epikleros* wife terminated at this point. It does not, however, mean that his guardianship of his wife terminated in practice at this stage.

The speaker's interpretative remarks on the law quoted in Demosthenes 46.20 regarding the *epikleros*, and a paraphrase of the same law in a fragment of Hyperides, (frag.39), seem to imply that sons of *epikleroi* assumed full guardianship of their mothers in the technical sense. That is, to represent their mothers in every kind of legal transaction besides being responsible for their property and support after reaching their manhood. But a fragment of Isaios, (frag.26), which is a terse summary of the first part of the law in Demosthenes 43.51 and 46.20 merely states that sons of *epikleroi* should have possession of their mothers' property two years after attaining their puberty. This fragment does not mention them as being guardians of their mothers, although it is implicit that the sons should provide for their mothers' maintenance once they assume control of their property. I should believe that this is what the law itself means. Having taken full management and control of his

[578] Dem.46.20. Cf. Asheri, *Historia* 12(1963),16. On the pitiful position of the husband of the *epikleros*, see Arist.*Eth.Nic.*1161A1, and add Asheri note 69, ibid.

mother's estate at his age of majority, the son of the *epikleros* was obliged by law to contribute to her maintenance.

The law referred to on page 318 above as quoted by Apollodoros, the speaker of Demosthenes 46, does not in fact imply that the son of a married *epikleros* should assume full legal representation of the mother on taking management and control of her patrimony. It is certainly in the interest of Apollodoros to argue that he should assume full guardianship of his *epikleros* widowed mother in the legal sense of representing her in every kind of business transaction and being responsible for her maintenance and the administration of her patrimony. For he is contesting the document purported to be his father's will that makes his stepfather, Phormion, have absolute authority over his mother's estate. However, I think that the crucial or controlling phrase in the text of the law itself regarding the woman's maintenance is σῖτον μετρεῖν τῇ μητρί (to dole out food to his mother). That is, to provide maintenance for her. And I believe that besides contributing to her maintenance while his father was still alive, this law does not imply official assumption of guardianship of the mother and becoming her legal representative as Apollodoros would wish the jury to accept. Thus their adult son contributed a portion of the estate under his control towards the mother's care. But the husband of the *epikleros* continued to be the legal guardian of his wife, though his control of her estate terminated at their son's majority.

It is important to note also that when the son of the *epikleros* has taken over the management and control of the estate, his mother's position as *epikleros* would also be deemed to have lapsed in fact if not in law. Indeed, the purpose of her unique position was to maintain her father's estate in his family by serving as a channel for transmitting it to a male heir born by her. And once the male heir is born and is certified to have reached manhood, she would appear to have completed fulfilling her role and exercising her function. Her special status would thus seem to terminate when the son comes into the inheritance of his grandfather.

THE MALE ORPHAN

With regard to the termination of guardianship of the male orphan, I shall try to establish this by drawing on three passages in Demosthenes which have been the cause of one of the most vexed controversies in Athenian prosopography, though I do not intend here to resolve the riddle. The irritating passages come from Demosthenes' first speech (Dem.27) in his suit against Aphobos. When the orator begins to present the facts of his case to the jury, he says to them:

" Demosthenes my father, men of the jury, left behind an estate of nearly fourteen talents, and myself aged seven, and my sister aged five, and moreover our mother, who had brought him as dowry a fortune of fifty minae." (27.4)

And after recounting the terms on which his guardians were appointed he observes:

" But these men, who took at once their own legacies from the estate, and as our guardians administered all the remainder for ten years, have robbed me of my entire fortune except the house, and fourteen slaves and thirty silver minae, which they have handed over to me – amounting to about seventy minae." (27.6)

He reiterates the same sentiments in 27.17, and 29.34,59. Then towards the end of his speech Demosthenes laments:

" If I had been left an orphan of a year old, and had been six years more under their guardianship, I should never have recovered even the pitiful amounts I now have." (27.63)

These statements, as noted already, have been the subject of what seems to be an endless debate for more than a century now. The bone of contention is the age of Demosthenes when his father died, and his exact age when he attained his majority in relation to the age at which boys reached manhood in Athens. One school of thought led by Schaefer strongly believes that the Demosthenic evidence indicates that Athenian boys reached their age of majority and got registered in their demes when they were already seventeen years and had entered their eighteenth year. It is thus concluded that Demosthenes was above seventeen years, though not yet eighteen when he reached his majority. But the other championed

by Hoeck, maintains that boys came of age at the beginning of the year after their eighteenth birthday; and that Demosthenes was eighteen years when he attained manhood.[579]

Other statements that the various critics use to support their respective claims may also be noted. In the same speech, Demosthenes maintains that Therippides managed his factory for seven years. (27.19)This gives a period of nine years in all. In a neighbouring passage, however, interest from the profits earned during Aphobos' superintendence is calculated for a period of eight years, which must represent the time of Therippides' control of the property. This makes it look like Therippides was manager for well over seven years. Then elsewhere in the same speech Demosthenes claims that Aphobos has refused to pay back the dowry for his mother which he took and kept for ten years (27.69). The orator's claim implies Aphobos' control of the dowry for ten years which tallies with the period Aphobos and his co-guardians administered the estate. These are auxiliary references.

But turning to the three main passages cited before, and examining them from a different and neutral perspective, I think that they illustrate two important events in the life of the younger Demosthenes, the one political, which concerns also every youth in Athens; the other,

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[579] For both arguments as advanced by the critics, see references for n. 187 on p.127 above. Add Lacey, *Family*, p.106-107,141,279 n.63; Saller, *CP* 82(1987),21-34; Engels, *CP* 75(1980),112-120; Wyse, p.610-611; Schaefer, (1858),2.19ff; Hoeck, *Hermes* 30(1895),347-54.

familial, and especially relates to orphans in the society. Politically, the passages emphasise the period or moment of transition from childhood to adulthood. They also stress the beginning of civic involvement in the city. And of course, the most important moment of this transition is certainly the *dokimasia*. At this vetting procedure, the young Athenian was certified old enough and fit to be enrolled (ἐγγράφεσθαι) as a citizen unto the register of his deme.[580] But the notion of being a citizen or a member of the deme implies becoming a man and stopping being a child.

This socio-political process or notion of childhood catabolism and adulthood anabolism, as it were, is reflected in or emphasised by certain common terminologies such as δοκιμάσεσθαι εἰς ἄνδρας, (to be certified to manhood) or ἄνδρα γίγνεσθαι,(to become a man) or ἄνδρα εἶναι δοκιμασθῆναι,(to have been certified to be a man) or ἐξελθεῖν ἐκ παίδων, or ἀπαλλάττεσθαι ἐκ παίδων,(to emerge out of childhood), which are used to characterise the transition.[581] Thus the age of majority is not just a question of becoming a citizen but also of becoming a man. It in fact connotes a leap from the youth to face the hazardous challenges of adulthood life. At this age, the young Athenian was thought to have become an adult, and thus capable of taking part in the politics of the city and carrying out his responsibilities as a man. He was liable for military service; and qualified also to vote and be voted for in the Assembly.

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[580] Arist. *AP* 42.1-2; Dem.40.11. Cf. Lacey, *Family*, p.94-5,128-9.

I refrain from going into the details of the tedious and difficult processes in the calculation of conciliar and civil years in Athens, and the exact year of birth of the young orator. But the Demosthenic passages suggest that at the time he sued Aphobos, Demosthenes was considered to have come of age to be able to exercise his rights as a citizen in this particular case of suing his guardian in court. For other procedural rights, however, he might have to wait till he had completed two years as an *ephebe*;[582] a status that I think provides the notional and ritual separation between the two classes of childhood and adulthood. Quite invariably, there appears to be a general consensus among critics or commentators on this important event in the life of Demosthenes.

The other aspect that the statements highlight, but which seems not to have been noticed by critics is familial, or social. In domestic affairs, the passages point fairly clearly also to the period of termination of guardianship over the orphan. The sources on family laws and customary practices of the Athenians in fact suggest that one of the most marked continuities of ethical norms in Athenian society is the belief in the need to continue the *oikos* through both economic stability and the generational continuity of children. Significantly, economic stability and generational continuity of the *oikos* begin at the child's age of majority.

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[581] See Is.7.3,34; 9.29; Lys. 32.9-10; Dem.27.36; 30.6-7; 36.10; 38.12; Aeschn. 3.15.
[582] Dem. 30.15; Lys.10.31;21.1; Arist.*AP*,55.3. Cf. Harrison, *Law* (i),p.75,n.1; MacDowell, *Law*,p.69.

At this age, therefore, the Athenian male orphan, like his ordinary male counterpart, was considered to be mature having passed from childhood to adulthood. His tutelage under his guardian came to an end. He was released from all legal control of his guardian after the usual *dokimasia*. The Athenian male orphan then became morally accountable for his own actions, and was punishable for his wrongs. And of course, he could also sue for wrongs done him. But for him, this also meant a radical change in *oikos* role and responsibility. This period also marked the beginning of the continuity of his deceased father's *oikos*, and to strengthen the foundations for the economic stability of the household. This social role or position with its attendant economic responsibility is emphasised with a motif of the knee in Greek culture in the second speech of Demosthenes in his suit against Aphobos. He tells the jury:

"Men of the jury, when my father saw that he was not to recover from his illness, he called together these three men, and causing his brother Demon to sit with them by his side, placed our persons in their hands, calling us a sacred deposit…; he committed me together with my property, to the care of them all in common, charging them to lease the property, and by their joint efforts to preserve the estate for me. At the same time he gave to Therippides the seventy minai, and betrothed my mother to the defendant with her dowry of eighty minai, and placed me on his knees." (Dem.28.15-16)

The placing of the younger Demosthenes on the knees of his father is very significant. It is a symbolic expression that he was to assume his father's role in the *oikos* at a point in the future and begin to fulfil the functions concomitant with the position. This implies that he was to be his father's successor and live-wire of his father's household. But the young orphan could not assume this social role and take over the responsibility of *oikos* management until he had attained his age of majority. In a non-legal argument appealing to the jury for a favourable judgement for him and conviction for his guardian later in the same speech, Demosthenes makes his position in his father's *oikos* more explicit than before as follows:

"Do not, men of the jury, be to us the cause of such deep distress; do not allow my mother, my sister and myself to suffer undeserved misfortunes. Rather, my sister was to be the wife of Demophon with a dowry of two talents, my mother the wife of this most ruthless of all men with a dowry of eighty minai, and I as my father's successor was to perform state services as he had done." (Dem.28.19-20)

An implicit but essential extension of the male orphan's *oikos* role is the responsibility of self-maintenance. At his age of majority, the male orphan was regarded as an adult capable of supporting himself and maintaining the household. This socio-economic significance of his new

status is reflected in what a guardian tells his ward at his age of majority in Lysias:

"Now I have spent a great deal of my own money on your support: so long as I had the means, I did not mind; but at this moment I too am in difficulties myself. You, therefore, since you have been certified and have attained manhood must henceforth contrive to provide for yourself." (Lysias 32.9-10)

But the male orphan cannot fend for himself and maintain the *oikos'* economic stability as his father's successor without getting his patrimony under his management and control. Thus, following his *dokimasia*, came the accountability also of his guardian; a kind of domestic εὔθυναι. In Athens, politicians and other public officials after they demitted office were required to account for their stewardship or conduct while in office to the people and the state. The accountability had two features. He was expected to render an account of any state money placed in his charge (λόγος) while in office. But he was also required to undergo a public scrutiny or inquiry (εὔθυνος) regarding his past conduct or behaviour in office. If he was found to have embezzled state funds, or committed any atrocities against anybody, he was liable to prosecution.

In the same vein, the guardian at the age of majority of his ward(s), and therefore the end of his own stewardship as a guardian, was

'required to give account for his stewardship to his ward(s). In this respect, his guardian had two important obligations to him. In the first place, it was obligatory for the guardian to hand over the property of his ward to him to begin his adulthood life. But of equal importance also is the state of the orphan's patrimony. As manager of the orphan's general affairs, the guardian must provide accounts of his general control and management of his ward's fortune. The guardian must be able to show in his accounts that the property now being handed over was equal to the estate left by his ward's deceased father. The accounts must, in fact, also reflect accumulated income from the estate, whether it was managed personally by himself as guardian, or leased out to lessees, minus all expenses incurred by the guardian in respect of his general maintenance and support of the ward during his period of tutelage.[583] But whether or not the guardian would show honest and proper accountability is quite another matter.

ORPHANS UNDER HONEST AND PERFIDIOUS GUARDIANS

The issue of honest guardianship is actually not the subject of any of the surviving forensic speeches, though a few of them make passing references to cases of this type. Naturally, the affairs of honest guardians would be less likely to appear in court, whereas matters of

[583] Lys. 32.19-29; Dem. 27-29.

perfidy seemed to have been the order of the day, as can be noticed from the law-court speeches. It is, however, noteworthy that despite various acts of perfidy by most guardians, evidence for bodily ill-treatment or attempted murder of an orphan, or that a guardian was likely to cause any serious personal danger to his ward is lacking.

Of course, physical distress was obviously sometimes caused by failure to provide sustenance. For instance, in Isaios 5.10, it is alleged that the orphans under Dikaiogenes (III.) were unprotected, penniless and lacked all the necessities of life. Note may also be taken of the case in Lysias 32.10, where the defendant is alleged to have turned his wards out of doors barefoot and in worn-out clothes as soon as the elder boy attained his majority. The single worst personal offence alleged against a guardian of which we know appears to be the charge in Isaios 5.11. Here, it is alleged that the defendant sent his ward out as a body servant or attendant with his own brother to Korinth. This probably means that the boy was sent as a military attendant on a campaign. The sources indicate that the body-servant in peace and war-time was generally a slave;[584] and Naber[585] maintains it is incredible that this servile office could have been imposed on an Athenian citizen of good family. He thus concludes that although Isaios might not be exaggerating, the text is corrupt.

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[584] Thucy.7.75; Lys.32.16; Dem.49.22,55;54.4.
[585] *Mnemosyne* N.S. 5(1877),403ff., noted by Wyse, p.419.

Nevertheless, the seriousness of the case obviously lay rather in the shame in sending away the orphaned boy as an attendant, whether or not it was for pecuniary reasons, than in the danger of it all.[586] In any case, it is not even alleged that it was the aim of the guardian to get rid of his ward. And in the rest of the available sources, charges of personal maltreatment of orphans, or allegations of a plot by their guardians hardly occur. Thus although there are several cases of perfidy or wickedness in guardianship, the evil reputation of guardians is not justified by facts of any menace to the life of the ward, like bodily ill-treatment or attempted murder, but by facts of seizure of patrimony and failure to render just accounts.

It is very obvious that the orators highlight several cases of plunder of orphans' estates by their guardians, and that sources on honest and dutiful guardianship are scarcely adequate. But this is primarily because the law-court speeches that we have naturally discuss only the disputed cases. None the less, there is evidence for guardians who dutifully and honestly discharged their responsibilities to their guardians. The speaker of Isaios 9, for instance, informs us that his homopatric brother, Astyphilos, lived under the care of his father who managed his patrimony. When he reached his manhood, he received all his possessions in so correct and regular a manner that he never had any complaint to

[586] Cf. Joliwicz, *JRS*, 37(1947),85.

make against his stepfather who had become his unofficial guardian. And when Astyphilos' sister reached her puberty, his stepfather gave her in marriage to a man of his choice and administered everything else to Astyphilos' complete satisfaction. (Is.9.29)

Demosthenes also informs us of the dutiful and efficient management of the affairs of the orphan, Antidoros, as a result of which his patrimony trebled at the end of his tutelage.(27.58) And, although the orator speaks in general terms of estates of orphans having been doubled or trebled because they were leased, so that the owners had been selected among the wealthy citizens and called upon for state services (27.64), we get indications of guardians who dutifully and honestly performed their duties to their wards. In his *For Phormion* also, the orator tells the jury that when Pasikles came of age, Phormion, his guardian, relinquished his lease of the orphan's estate and handed over everything to him accordingly. This honest conduct made Pasikles and his elder brother, Apollodoros, release and discharge Phormion from all claims on the estate. (36.10)

However, the general image of guardians as presented to us in Attic forensic speeches is one of consistent trickery, mismanagement, deceit, misappropriation and outright looting of the estates of their wards under their control. In Isaios' *On the Estate of Kleonymos*, a dim view of the general honesty of guardians is painted. Kleonymos the testator, in his

will bypassed the allegedly rightful claimants of his property, not because he had any ill-feeling towards them but because at the time of making his will they were minors under the guardianship of their paternal uncle, Deinias, whom he feared might obtain absolute control of the orphans' property.[587] In Isaios 2, it is not explicitly stated that Menekles had been the guardian of the orphans of Nikias. But it seems most likely that he was when he became part-lessee of the orphans' estate.(2.9) And when the elder son came of age and Menekles had to repay a contracted loan together with the interest on it to the orphan, Menekles did not have the money readily available.[588] And although the orator does not make the matter very clear, the case, no doubt, points to poor guardianship.

In Isaios 5, Dikaiogenes (III.) is painted as a pitiless and grabbing guardian. (5.9-11) The allegation that he bought the house which the orphans under him inherited from their father and demolished it and used the site to make a garden adjoining his house in the city while the orphans were minors is striking. It is not clear whether the house was sold to Dikaiogenes (III.) by creditors of the orphans' deceased father, Theopompos. But the speaker's statement, " what the father Theopompos left them he gave over to their enemies," (5.10) seems to suggest that Theopompos might perhaps have died insolvent; and so his creditors took

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[587] Is.1.10.
[588] 2.27,28.

possession of the estate, which might have been pledged as security, and subsequently sold to Dikaiogenes (III.).

Under Roman family or guardianship law, as noted by Wyse,[589] a guardian might buy property from his ward on two main grounds. The first situation is when the property of the ward was sold by a creditor. But I think that this situation would be possible only if the property became insolvent. Secondly, the guardian could buy the ward's property when the sale was a portion of the property that the guardian did not manage, with the consent of the managing guardian. Since the Romans separated the custody of the orphan's person from the administration of his property, the guardian who had charge of the orphan's person could buy a portion of the ward's estate but with the approval of the other guardian who administered and controlled his property.

The Athenian rules on the matter of a guardian buying the property of his ward, thereby alienating it, however, are unfortunately skimpy, if not non-existent. Wyse maintains that the Athenian guardian could alienate his ward's estate as well as become himself a buyer.[590] But we may note the prohibitive clause in Plato's will, as reported by Diogenes Laertius:

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[589] Wyse, p.418.
[590] Ibid.

" This it shall be unlawful for anyone to sell or alienate, but it shall be the property of the boy Adeimantos."[591]

Although Plato may have directed this prohibitive statement particularly to the guardians of Adeimantos, his son, and may perhaps not be taken as a general rule interdicting alienation of the orphan's property, it does appear that the Athenians refrained from the sale of a ward's property. For one thing, although an Athenian may have been legally entitled to sell his land, such behaviour might arouse strong prejudice against him. This is because to sell off ancestral property, as the speaker of Isaios 5 seems to imply (5.41-47), is the characteristic behaviour of a man who is wasting rather than investing the proceeds.[592]

Furthermore, at his majority, the orphan had a claim against either his guardian or a lessee, if his estate was leased, or perhaps against both for his actual land if any part of his property was land. And the fact that much importance was attached to ancestral shrines would certainly make it improbable to accept another piece of land as a substitute for his own, or make a total sale of a ward's land quite feasible.[593] In any case, the overall situation as described by the speaker of Isaios suggests that there certainly must have been some truth in the charges levelled against Dikaiogenes (III.), the wicked guardian as he was.

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[591] Diog. Laert. 3.41.
[592] Aeschn. 1.95-105. Cf. Todd, *Law*, p.245-246.
[593] Cf. Harrison, *Law* (i), p.295.

According to the speaker of Isaios' *On the Estate of Kiron*, Diokles is not only a greedy usurper but also the most villainous and heartless guardian. And the plaintiff does not merely make these allegations against Diokles but calls witnesses to prove them. (8.40-43) In Isaios 7.6-8, Eupolis (I.) becomes guardian of his brother's son, Apollodoros. But he so badly administers the affairs of Apollodoros that it takes two lawsuits to convict him and retrieve what he had embezzled.

The speaker of Isaios 10 presents an interesting situation of yet another case of alleged perfidy in guardianship. The speaker's mother becomes a young *epikleros* to the whole estate of her father. At her puberty, her father's next-of-kin under whose guardianship she lived marries her off with only a dowry (10.4,5), and in collusion with the girl's brother who has been adopted out of the family, keeps all the remaining part of the woman's patrimony. But when her husband tries to negotiate for the return of her patrimony to her, he is met with the blunt threat by the alleged usurper that he would hand the property over, and at the same time take it back by claiming the *epikleros* according to law if the husband does not keep quiet and be content with the woman and only the dowry on her.(10.19) And because the man does not wish to lose his wife, the threat temporarily settles the matter until the eldest son of the woman takes up the issue again on attaining his majority.

In Lysias 32, it is the same dim picture of dishonesty and rapacity. Diogeiton who becomes guardian of the orphaned children of his brother is alleged to have misappropriated their patrimony and reduced them to beggary. The case of Demosthenes the orator is so notorious that it would sound too tedious to recount the degree of perfidy. We may only note that out of an estimated patrimony of nearly fourteen talents, his guardians handed over to him at his majority, only thirty silver minae besides his father's house and fourteen slaves.[594]

The catalogue of persistent greed and misappropriation on the part of guardians suggests a very vulnerable position of orphans in the Athenian society, and creates the great impression that the Athenians presumably had no effective laws regulating the conduct of the practice of guardianship and the behaviour of guardians. However, it seems that the financial injustice allegedly suffered by orphans at the hands of their guardians was not so much due to an absence of laws as the means of enforcing them to protect the interest of the affected minor orphans. For it is evident that orphans, whether in their minority, or at the age of majority, did not lack avenues, public or private, to exact vengeance from their perfidious guardians. For naturally, rights do not only go with responsibilities but also with remedies. Thus just as orphans had rights so also did they have remedial processes by which their guardians could be

[594] Dem.27.4-7.

compelled either to act responsibly if it was noticed that their affairs were being mismanaged, or to recover their looted patrimony from their scoundrel guardians. But because a minor could not prosecute his guardian, in the majority of cases, the orphan had to wait till he was an adult to stop the drain on his patrimony.

ACTIONS AGAINST PERFIDIOUS GUARDIANS

A judicial process available to the orphan which could be used against a perfidious guardian for maltreating his ward was volunteer or third party prosecution (ὁ βουλόμενος). Ancient literary sources credit Solon with the introduction of the third party or volunteer prosecution into Athenian judicial procedure. Aristotle informs us that among the three most democratic features of Solon's constitutional reforms was "the permission granted to anybody who wished to take vengeance on behalf of wronged persons." (*AP*, 9.1:)[595]

Plutarch records an expanded version of the tradition in the following words:

" Solon, thinking it necessary to make still further provision for the weakness of the people, gave every citizen the privilege of taking legal

[595] See also Dem.22.25-30; 24.212-214. Cf. Alen, D.S. *Prometheus*, p.39; Todd, *Law*, p.100.

action on behalf of one who had suffered wrong…to step forward to punish the wrong-doers."[596]

There is some kind of scepticism about the fact that Solon was the originator of the institution of volunteer prosecution. It is maintained[597] that the process was already in existence, but he may most probably have extended its scope. At any rate, volunteer or a third-party prosecution became a firmly established Athenian legal process.

In cases involving orphans, public and private actions were available which anyone could volunteer to initiate against not only mischievous guardians but also anyone believed to have committed any offence against an orphan. Among the private and public actions were, impeachment for the maltreatment of an orphan (εἰσαγγελία κακώσεως ὀρφανοῦ and φάσις) on the one hand, and δίκη ἐπιτροπῆς and δίκη σίτου (indictment for guardianship, and for maintenance) on the other hand. There was also ἐπικλήρου κακώσεως which could be instituted against a guardian or anyone who maltreated an ἐπίκληρος.[598]

It is not evident what kinds of act or neglect constituted maltreatment of an orphan for which an action could be taken. But the procedure for εἰσαγγελία κακώσεως ὀρφανοῦ could be initiated by a third

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[596] *Solon*, 18.5. For a detailed discussion of volunteer prosecutors, see Christ, *Litigious*,p.118-159; Osborne, ' Law in Action in Classical Athens' *JHS* 105(1985),40-58.

[597] See Christ, ibid, then p.256,n.6.

[598] Arist. *AP* 56.6; Harrison, *Law* (i), p.115-121; MacDowell, *Law,* p.94-95; Christ, *Litigious,* p.127-130; Rhodes, *Commentary*, p.629-630; *JHS* 105(1985),40-58, esp.48-49.

party against a guardian or anyone, if it became obvious that an offence had been committed against the orphan. To be impeached by εἰσαγγελία was an unusually a great charge, a criminal prosecution, reserved principally for offences against the state. These crimes included treason, attempting to overthrow the constitution, deceiving the people, and perjury.[599] But the action covered wards who, during their minority were not legally in a position to complain of injustice from their guardians as well as adult orphans.

In most Athenian cases, either criminal or civil, the prosecutor stood to lose money or his civil rights if he failed to obtain 20% of the number of votes cast, to prevent trifling or malicious law-suits. But in cases involving orphans and *epikleroi* anybody could volunteer to lay information before the archon against a scoundrel guardian, or anyone believed to have wronged the ward without any risk or constraints.[600]

Two cases of public impeachment by a third party on behalf of orphans in their minority may be noted. In Isaios 11, *On the Estate of Hagnias*, the prosecutor is the unnamed fellow guardian of the son of Theopompos representing their ward in the action. The plaintiff claims throughout the trial that Theopompos had wronged their ward by defrauding him of his father's share of their father's estate, which

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[599] Dem.49.67; Hyper. 4.7-8. Cf. Hansen, *Εἰσαγγελία*, p.12-20; Hunter, *Policing*, p.144.
[600] See Arist, *AP* 56.6 noted above. Also Is.3.46-47;11.6; Dem.36.47. Cf. Thompson, *De Hagniae*, p.42; Hansen, *JHS* 100(1980),90.

Theopompos should have given to the orphan on the death of his brother. And in Demosthenes 58, we have another reference to a public impeachment brought by Theokrines of Hybadai against a certain Polyeuktos.[601] Theokrines seeks to prevent the orphan from being transferred from the household of his adoptive father, Aiskhylos, who has since died; evoking that the transfer would result in the misappropriation of the orphan's patrimony by Polyeuktos who has married into the family.(Dem.58.32).

Instituting an action of εἰσαγγελία (a public suit) against a bad guardian on behalf of an orphan involved no risk on the part of the plaintiff, but it could be damaging to the accused. For it put the defendant in a very great danger of losing his rights if he was found guilty, which could also lead to his deprivation of his guardianship of the ward.[602]

Another legal action which a volunteer prosecutor could initiate on behalf of a ward in his minority was φάσις ὀρφανικοῦ οἴκου (prosecution regarding an orphan's estate), by which a guardian could be compelled to lease his ward's patrimony if he failed to do so. A case in point is what we have in Demosthenes 38.23. It is in connection with the estate of two young orphans, Nausimakhos and Xenopeithes. Nikides, a

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[601] For the background of this Polyeuktos, see Davies, *APF*, p.7.
[602] Is.11.13,31-32. Cf. Harrison, *Law* (i), p.118; Rhodes, *JHS* 105(1985),48.

volunteer prosecutor[603] indicted the uncle of the two boys, also named Xenopeithes, and obviously one of their guardians, by the procedure of φάσις, arguing that the orphans' estate must be leased until they reached their majority. When, however, the case came to court, the orphans' uncle successfully argued that he could manage the estate himself, and it was therefore, not necessary to lease it.

It would appear difficult to see why φάσις, a public action open to a volunteer prosecutor in criminal cases, should be used for the offence of failing to lease an orphan's estate. As Prof. MacDowell points out,[604] the orphan's estate was not an object that could be confiscated and sold for the benefit of the state and the prosecutor. That would have been completely unjust to the innocent orphan. It is not clear what kind of reward a prosecutor stood to gain, or what privileges or immunities he could enjoy in initiating this kind of impeachment regarding the estate of an orphan. Demosthenes 38.23 sheds no light in that respect, neither does it hint to the kind of penalty[605] that could be exacted from a convicted guardian in such a case.

In any case, the availability of the procedure to orphans demonstrates the deep public concern to protect their interests against their own guardians, since they could not take legal action for themselves.

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[603] The identity of Nikides is not known, but I should assume that he was probably a co-guardian for the orphans who played a minor role in the administration of their estate.
[604] MacDowell, ' The Athenian Procedure of *Phasis,*' *Symposion* 1990 (1991),187-198, esp.196-197.

The procedure of φάσις, however, is evidently rare in prosecutions of guardians reported in the law-court speeches, most probably because of inherent limitations. And if the prosecutor was subject to constraints such as those mentioned by Harrison,[606] then it is not surprising that we scarcely come across impeachment of this nature by orphans, though there are cases of orphans whose estates were not leased.

If the orphan, at his majority, was dissatisfied with the accounts rendered to him regarding the administration of his estate, he could himself bring a suit, δίκη ἐπιτροπῆς, prosecution for guardianship, against his guardians. In some of these cases, the wards' relations supported the orphans. In Isaios 7, for instance, Apollodoros, supported by his stepfather is said to have prosecuted his uncle and former guardian for bad guardianship.[607] In Lysias 32, the husband of the daughter of Diodotos helps her brothers against Diogeiton , their guardian, uncle and grandfather.

But in other cases of indictment for bad guardianship, we notice that the wronged adult orphans themselves single-handedly sued their guardians for the restitution of their estates, though it is possible that they might get some support from other relatives though the support might not be quite overt. Demosthenes' own legal battle against Aphobos, his

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[605] On this see MacDowell, ibid. 197, and n.21.
[606] Ibid, p.116. Cf. also Rhodes, ibid,47; MacDowell, *Law*, p.95.
[607] Is.7.7-8.

guardian, which was followed by a prosecution for eviction against Onetor, is a typical example of an adult orphan indicting his guardian for bad guardianship and to recover his patrimony. And in Demosthenes 38.1ff., Xenopeithes and Nausimakhos revive a series of actions by prosecuting the heirs of their guardian for their guardian's mismanagement of their affairs.

In a situation where more than one guardian administered the affairs of an orphan, the orphan could institute a suit against each separately, (Dem.29.6), for a specified proportion of the amount claimed. And if the prosecution was to be made against the heirs of the guardian in the event of his death, the action was instituted against each heir, as the suits of Demosthenes against his guardians, and the action against the heirs of Aristaikhmos clearly illustrate.

The separate prosecution of guardians who mismanaged the affairs of their ward brings into focus the indictment of Demon, the father of Demophon, by Demosthenes. Discussing the genealogy of the younger Demosthenes, and citing Demosthenes 29.43, Pomeroy notes[608] that Demophon was about twenty-five years when the elder Demosthenes betrothed his five-year old daughter to him, expecting them to marry ten years later. This statement implies that Demophon was already of age when the elder Demosthenes died.

Pomeroy's claim corroborates the speculation by Davies[609] that Demophon must have been about twenty-four years when his uncle deceased. It also reinforces Calhoun's contention[610] that besides having property of his own during his father's lifetime, Demophon must have had a contingent interest in the estate of his father, so that when Demosthenes sued him (Demophon) for the large sum of ten talents he deemed it expedient to sue his father as well, perhaps in anticipation that the father might attempt to save Demophon's property by claiming that it is his own. And in a recent article, Burke also maintains that Demophon, like Aphobos, was not more than thirty when the elder Demosthenes died;[611] implying that Demophon was already a man at the time his uncle died. But the facts and situation of the case, particularly regarding Demon's connection with the estate and the subsequent litigation, make these presumptions seem less plausible.

If it was a situation of Demon attempting to protect the property of his son, Demosthenes would certainly have complained and gone ahead with an independent suit against Demon. The case of Demosthenes versus Onetor should suffice to illustrate the point. After Demosthenes was declared victor in his suit against Aphobos, he was compelled to go to court against Aphobos' brother-in-law Onetor. According to the orator,

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608 *Families*, p.166.
609 *APF*, p.116.
610 See *TAPA* 65(1934),89,then note 24.

the two had conspired to conceal Aphobos' possessions by claiming that he had divorced his wife, Onetor's sister, without refunding her dowry, thereby giving Onetor prior right over Aphobos' house and farm in restitution of the dowry(Dem.30.8-9;31.6). As a measure and proof of the matter, they had affixed *horoi* to the property which they pointed out to Demosthenes when he attempted to seize the estate. Demosthenes was thus prevented from collecting his judgement against Aphobos. Consequently, Demosthenes brought an independent suit against Onetor to eject him from the property, the speeches of which survive in Demosthenes 30 and 31.

In this case, there is a definite complaint at issue. But in the Demon case, there is no firm evidence for any particular complaint against Demon, except that he had taken part in the plunder of Demosthenes' fortune. Demon, however, was not one of the appointed guardians of Demosthenes; and, how part of Demosthenes' patrimony came under his control, and how much he got involved in the looting of the orator's estate is not stated. So on what grounds did Demosthenes drag Demon into court? It is also very significant that for Demosthenes to have referred to Demon as fellow-guardian of Aphobos, συνεπίτροπος (Dem.29.56), and partner in his crimes, κοινωνοῦ τῶν ἀδικημάτων (29.20), during his (Demosthenes') tutelage implies that in a way, Demon

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[611] *C et M* 49(1998),46.

certainly had a hand in the administration of the orator's patrimony. There is no doubt, therefore, that this constituted the principal reason why Demosthenes prosecuted him for complicity with the other guardians to loot his property.

But we know very well that Demon was not one of the legally appointed guardians of Demosthenes. And so how did he become connected with the management of the orator's estate? It is at this point that Professor MacDowell's suggestion regarding the age of Demophon and the status of Demon in respect of the administration of Demosthenes' estate during his guardianship becomes very germane. As he notes,[612] when the period of Demosthenes' guardianship began, Demophon was not yet at his majority, though he was old enough to participate actively in what was going on, judging from Demosthenes 28.14 (possibly between fifteen or sixteen years of age). And for the first year or two his father was legally responsible for him. Thus when Demosthenes reached manhood and indicted Demophon for misappropriating his patrimony during the ten years' guardianship, Demon, his father would have been legally answerable for the management of business during the first year or two. He could thus be rightly called co-trustee, συνεπίτροπος, with Aphobos during that period. Demophon, therefore, was not yet adult when the elder Demosthenes died.

However, Demosthenes' suit against him (Dem.29.6) was procedurally legal because technically he was one of his guardians despite his youthful age. In practice, though, he had to be represented by his father because he himself could not be legally answerable.[613] And in any case, it is most certain that Demosthenes indicted Demophon and Demon together in a single suit, and that the proceedings against Demon were probably not a separate case from those against Demophon.(Dem.27.12)[614] Thus, in a situation where a guardian was not at the legal age (though this seems quite rare), a suit against him for bad guardianship would of necessity imply a suit against his father or his legal representative. It is on such grounds that Demon became connected with Demosthenes' suit against Demophon.

To return to the matter of actions against mischievous guardians for mismanagement and misappropriation of their wards' estates, it is evident that besides formal legal actions there were other avenues in the form of arbitration, public or private, to safeguard the interests of orphans. Demosthenes tells the jury that when it proved obvious that though Aphobos had his mother's dowry, he would not maintain her neither would he put up their estate for lease, Demokhares, his aunt's husband, remonstrated with him about the matter.

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[612] *Symposion* (1985), 256-257.
[613] See Is.10.10.
[614] Cf.MacDowell, *Symposion* (1985),257,n.21.

We are told (27.15), that Aphobos admitted his fault but explained that he was having a little spat with the woman about some jewels, and that as soon as that was settled he would act accordingly regarding her maintenance and everything else. And in his suit against Onetor, the orator informs us of several discussions and arguments held at arbitration before the archon regarding his affairs when it became very clear that his guardians were proving false to their trust and looting his estate.(Dem.27.49-51; 30.6-7)

Furthermore, in Lysias 32, the jury is told that when it became very obvious that Diogeiton had proved a bad guardian of his brother's orphaned children, many private arbitration attempts were made by friends and relatives to make him render honest and just accounts of his guardianship. But Diogeiton also attempted on several occasions to resist the efforts to arrive at an amicable solution of the dispute. And it does appear that it was at the last arbitration meeting when the orphans' mother gave the damning evidence against him. (32.2,12-13,15-18,26)

Athens' eulogists praised the Athenians for their willingness to institute military intervention to help other Greeks wronged by other powerful city states,(Lys.2.12,14,22), and to take vengeance on their behalf, (Dem.60.11). It does appear that it was the same basic ideal that was invoked regarding life in Athens itself by establishing the institution of any willing person, (ὁ βουλόμενος), to indict a wrong-doer on behalf of

his victim in certain circumstances. None the less, the Athenians do not appear to have employed volunteer prosecution to assist their fellow neighbours to any appreciable degree. What seems obvious is that they typically prosecuted only in cases where they were in fact victims or personally involved in the trial. For it appears that there are only four surviving speeches (Hyp.1; Din.1; Lyc.1; Lys.22) in which each prosecutor claims to be acting as a purely disinterested party.[615]

And although the city could have assumed the role of legal patron of weak citizens including orphans and *epikleroi* by entrusting state prosecutors with the protection of their interests, the Athenians seem to have viewed direct intervention by the state, particularly in family affairs as inappropriate, despite the family laws in Demosthenes 43.54 and 43.75. Christ is probably right that this is because to the Athenians, no harm to a private individual constituted any threat to the collective interest of the city that was so great as to warrant intervention by the city through its agents.[616]And although the city instituted the third-party prosecution with its attendant privileges on behalf of orphans, it appears that very few citizens were willing to undertake this duty.

Thus in general, the city apparently lacked a legal safety net for the weak. Consequently, Athenians were generally left to help themselves

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[615] Cf. Osborne, *JHS* 105(1985),40-58, esp.51; Allen, *Prometheus*, p.40. For a more detailed discussion, see Allen, ibid. chapters 7 and 8.
[616] *Litigious*, p.120-130.

as best they could by resorting to the law-courts. It is not surprising then, that despite the avenues for arbitration and the legal processes put in place by the society to protect the welfare of those unable to act for themselves, the mechanisms appear hardly effective in protecting the interests of orphans in their minority in the majority of cases. For although the measures aimed at preventing exploitation of the orphan's vulnerable position, mismanagement of his affairs persisted in the majority of cases until he attained his majority before he himself would prosecute his scoundrel guardian(s).[617]

It is a fact that in most cases when relatives and friends became aware of abuses against orphans in their minority,[618] they appeared unwilling to stand up for the interests of the victims. We may search the sources in vain for evidence for this apparent reluctance of relatives and friends to champion the cause of wronged orphans. However, Christ suggests[619] that in spite of the privileges of a third-party prosecution, where guardians were very closely related to their wards, relations and friends who were not so close to the injured wards felt no urge to take any actions against the guardians. This tends to worsen the position of *epikleroi* who would find it very difficult to get a man outside the household willing to champion their cause if their affairs were

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[617] For examples of orphans indicting their guardians at their majority, see Is.7; Lys.32; Dem.27-31; 36; 38.
[618] See for instance, Dem.30.6,7; Lys.32.

mismanaged by their guardians or legal representatives. And it would be more difficult for an orphan whose guardian himself took the lease of his ward's estate and then failed to pay the rent during the period of the lease.

At his age of majority, however, the orphan could bring a private suit against his guardian regarding his guardianship, δίκη ἐπιτροπῆς, if he felt strongly that his guardian had not rendered fair and honest accounts to him. But the orphan could take such action not without overt constraints on his position. In the first place, a law paraphrased in a speech of Demosthenes specifically states that an aggrieved orphan could initiate action against his wicked guardian only within five years of attaining his majority. (Dem.38.17-18,27) This implies that after the five-year period the courts would no more entertain the case.

It is also most probable that written records concerning the orphan's affairs were not kept by either testators or guardians in some cases. And even if records were kept, vile guardians could easily manipulate the documents. Diogeiton's case may be illustrative. Having concealed Diodotos' death from his wife for some time, Diogeiton removed also all the documents relating to his brother's assets, ostensibly in order to recover the debts owed to Diodotos. (Lys.32.7-8) Claims of misappropriation would therefore seem difficult to prove in many such cases.

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[619] Christ, *Litigious*, p.129; Humphreys, *Family*, p.5.

Furthermore, the likely social stigma that an orphan might be branded as ungrateful to his guardians, and perhaps sycophantic, (Dem.38.3,20; Aeschn.3.255), could also be a social constraint. This situation is most likely to arise when arbitration attempts to resolve the issue amicably break down; and especially more so since there were no obvious benefits for taking up the responsibilities of guardianship of an orphan. It is thus possible that some orphans more often endured the deprivation in order to avoid the social stigma than to seek redress at the courts, and try as much as possible to reconstruct their lives even in the face of naked robbery of their estates by their perfidious guardians.

Moreover, the financial risk, besides the political dangers to the orphan who had just begun his adulthood life, could also be off-putting. For if the orphan failed to convict his guardian by not getting one-fifth of the jurors' votes, he was subject to a penalty of one-sixth of the value of his claim, and a loss of his civic rights. Even where a guardian was convicted, his penalty was assessed by the jury and not necessarily what the orphan would claim in the suit; and sometimes the orphan could have difficulty getting the court's verdict against the guardian enforced in order to recover what was his due.(Dem.27.67; 30;31)[620]

The evidence for the apparent catalogue of corrupt guardians, and the series of suits against them by their aggrieved wards seem to reflect a

certain feature of Athenian society. Very close relatives, as noted above,[621] were the commonest guardians in Athens. But the perfidy of some of them, as the sources indicate, went beyond human imagination in spite of the blood ties between them and their wards. The alarming situation, however, does not just suggest a mere household or family cancer destroying the fabric of kinship ties. It is suggestive of a decaying society. As to the roots of this social decay, that is not the subject of my present concern. But it is claimed by Wevers[622] that the situation is the consequence of the grip of opportunism, greed and avarice on the part of the wealthy in the society. For it is very evident that here we have guardians the majority of whom were men of means, using their position of trust to increase their own wealth at the expense of their wards. This conclusion contradicts Burke's claim[623] that the patrimony of Demosthenes was squandered by his guardians because his father's estate comprised mainly invisible or liquid assets.

ORPHANS UNDER STEPFATHERS

The essential prerequisite for step-fatherly conduct is the remarriage of a woman with minor children from a previous marriage. It would appear that this circumstance was commonplace of Athenian

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[620] Cf.Harrison, *Law* (i), p.120; Christ, *Litigious*, p.129.
[621] See ' Orphans in Classical Athens.' Cf. Cox, *Household*, p.144; Harrison, *Law* (i), p.99-101; MacDowell, *Law*, p.93.
[622] Wevers, *Isaeus*, p.112.

family life in the classical period.[624] For in the majority of cases, the first marriage of women had produced children. But most first marriages had been terminated by demographic realities including natural plagues, the large age span between husband and wife, and women's death in childbirth and men's in war, producing a society in which a considerable number of widows as well as widowers were not uncommon. In ancient Athens too, more widows than widowers re-married; and since it was a common practice for remarried widows to take along their orphaned children to their second marital homes,[625] step-fatherly situation was quite inevitable.

The circumstance of step-fatherly practice resulting from the remarriage of a widow, however, had various facets. One of the situations is where a widow with a minor child is betrothed in marriage to the guardian of her child by her deceased husband. Two instances of this kind of situation are Demosthenes and his sister,(Dem.27-29), and Pasikles, son of Pasion (Dem.36, and 45). In the case of Demosthenes and his sister, however, Aphobos to whom their mother had been betrothed reneged. If their marriage had been completed, Aphobos would have

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[623] See *C et M* 49(1998),45-65.
[624] Watson, *Ancient Stepmothers*, p.50.

[625] Cf. Thompson, *CSCA* 5(1972),222-223, and n.59; Isager, *CetM* 33(1981-82),86-88; Hunter, *JFH* 14(1989),296-30.

concurrently combined the status of the children's guardian and stepfather.

With regard to Pasikles, we learn from Demosthenes 36.8 that Phormion took his widowed mother, Arkhippe, to wife in accordance with Pasion's will. This evidence tallies with that in Demosthenes 45.28 where the woman had been betrothed in a second marriage to Phormion, by her deceased husband. In the former speech (36), the speaker persistently accuses Apollodoros, Pasion's elder son, of extravagance and wanton dissipation of their patrimony, alleging that at the death of their father, Apollodoros spent so much money out of the undivided estate to the effect that Pasikles' guardians felt obliged to protect the interest of their ward by dividing the property (36.8-9). This implies that Pasion appointed more than one guardian for Pasikles, though we are not in a position to know the number of guardians appointed for the young child.

However, in Demosthenes 45.37, one Nikokles is mentioned as one of the guardians of the boy; and since no other persons are mentioned besides Phormion and Nikokles, it is reasonable to presume that it was only Phormion and Nikokles who were designated as guardians for Pasikles.[626] Significantly, however, the document purported to be Pasion's will as cited in Demosthenes 45.28, makes no mention of guardians appointed for Pasikles, neither does it say anything about the

status of the property bequeathed to him and his elder brother, Apollodoros.

Schucht and Drerup[627] may probably be right that Apollodoros did not intend the full text of the purported will to be read to court. Presumably, he selected those sections of the alleged document that related to his mother's betrothal to Phormion and the bequests to her, leaving out essential details regarding the guardianship of Pasikles and the state of their patrimony at the death of their father. For it is evident (Dem.45.27) that he so vehemently objected to the marriage that it could not take place until he left Athens on a campaign. But if this was not the situation, we cannot assume that the guardians for Pasikles were appointed by testament. And the contention by commentators that Phormion and Nikokles acted as the guardians of Pasikles according to Pasion's will[628] must be considered as tendentious and evidentially intrusive, not based on any textual evidence. It is quite obvious that Phormion and Nikokles acted as guardians of the young Pasikles, but whether they were guardians by testament is not evident in Pasion's will as quoted in Demosthenes 45.28.

The second circumstance by which an orphan lived with his stepfather is where an appointed guardian loses his rights of guardianship

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[626] Cf. Harrison, *Law* (i), p.99, n.4; Davies *APF*, p.435; Trevett, *Apollodoros*, p.167-168.
[627] Schucht, *De documentis*, 77-79; Drerup, 'Urkunden,' 334, both noted by Trevett, ibid. p.183.
[628] See Davies, *APF*, p.435; Trevett, *Apollodoros*, p.8,26.

to the husband of his ward's mother. This situation is obviously the result of bad management of the ward's affairs, as in the case of Apollodoros in Isaios 7. In this speech of Isaios, we are informed that at the death of his father, Apollodoros was still young, and therefore came under the guardianship of his paternal uncle, Eupolis. (7.5-6) The young Apollodoros' mother was later remarried to Arkhedamos and so moved to live with him (7.7), while the orphan lived with his guardian. But as the speaker recounts, Eupolis deprived the young Apollodoros of all his fortune by fraud, and mismanaged his affairs, causing him to live in apparent poverty and distress. (7.6) And his stepfather, " seeing that he was deprived of all his fortune, took him to his own house and brought him up while he was a boy." (7.7)

The speaker does not tell us by what means or procedure the young Apollodoros was transferred from the household of his legal guardian to that of his stepfather. It would seem that it was by some form of arbitration, most probably on the initiative of the orphan's mother;[629] or perhaps just by mutual agreement after some kind of negotiation between the two men. But it is evident that Eupolis subsequently lost his guardianship rights to Arkhedamos, Apollodoros' stepfather who took up the responsibility of bringing up the boy.

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[629] Cf. Lys.32.11-12.

Furthermore, step-fatherly situation could arise where a minor child's mother was remarried not by testament to the guardian of the child. Four cases of this step-fatherly situation readily come to mind. In Isaios 8, the grandsons of Kiron claim his property as natural heirs in conformity with Demosthenes 46.20, and against the background of Demosthenes 43.51. According to the speaker, his grandfather and grandmother remarried (8.7-8), and his opponent, Diokles had three homometric sisters (8.40). We have no knowledge of Diokles' father. But the fact that Diokles had three homometric sisters implies that he was a stepson brought up in a second marital household.

The speaker alleges further that Diokles represented himself as the adopted son of his half-sisters' father at his death (8.40-41), though we are not told by what means or procedure that was effected. But as adopted son, Diokles became guardian of his three half-sisters and got possession of all the estate of Kiron to which his three daughters were *epikleroi*. The evidence seems striking if the allegation is true. For Kiron who had daughters was, by law, prevented from adopting a son by testament, unless he willed that the adopted son should marry one of them.(Is.3.42,68; 10.13) And it is presumed, on the basis of Demosthenes 41.3, that the same prohibition applied to adoption *inter vivos*.[630]

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[630] Cf. Wyse, p.621.

It is not evident in the sources whether a father like Kiron with daughters already married, could lawfully adopt a man who was not a son-in-law. That Diokles allegedly represented himself as the adopted son of his deceased stepfather therefore seems rather questionable. It may therefore not be surprising that the speaker is disputing his position. But we have an instance of a situation whereby a stepfather could adopt his stepson. Plutarch[631] adds to our knowledge of this situation where he informs us that Isokrates, having brought up his wife's son by her first marriage as a stepson, adopted him as his heir.

In Isaios 9, we are not told who became the guardian of Astyphilos during the time between his father's death (9.17-19), and his mother's second marriage (9.3-4,23,27). But it is most likely that he lived under the guardianship of his maternal uncle, Hierokles, with whom his mother might also have lived until her remarriage to Theophrastos (9.27). For it is certain that Astyphilos did not live with his paternal uncle, Thoudippos, for two fundamental reasons. First, Thoudippos is alleged to have caused the death of Euthykrates, the father of Astyphilos (9.17-18,20). Furthermore, the speaker informs the jury that "Euthykrates, the father of Astyphilos, on his death-bed charged his relatives never to allow any of Thoudippos' family to come near his tomb." (9.19) It is therefore not possible that Euthykrates would have appointed Thoudippos, or any other

[631] *Mor.*, 838a, 839b.

kinsman of Thoudippos to be guardian of his son. We do not know for how long Astyphilos' tutelage under his maternal uncle lasted. But it does seem that his guardianship did not last long under Hierokles as he was still a young child when his mother got remarried and thus took him to her second marital home. (9.27-28)

The speakers of Isaios 11 and Demosthenes 43 also inform us of yet another step-fatherly and stepson situation arising out of non-testamentary remarriage of the orphan's mother. Hagnias (II.), as it is recounted, had two maternal half-brothers, Glaukon and Glaukos, the former of whom he adopted as his heir in the event of the death of his adopted niece. (Is.11.8-9; Dem.43.3-5) We of course have no knowledge of the childhood life of Hagnias (II.). But the fact that he had homometric brothers one of whom, possibly the younger of the two, he selected as his contingent heir implies that he would also most probably have been brought up as a stepson by Glauketes, his mother's second husband.[632]

It is significant that despite the various circumstances giving rise to stepfather-stepson situation, we can easily notice two main categories of this kind of family life in the Athenian society. There was the testamentary step-fatherly situation whereby a testator betrothed his widow in a second marriage in a will to the guardian he would designate

[632] Cf. Thompson, *De Hagniae*, p.11-13, add n.17 on p.11; Davies, *APF*, p.77-84; Broadbent, *Studies*, p86. We may cite also the remarriage of Khrysilla by Kallias (III), the guardian of her two orphaned

for his orphan(s). The other category is what could be termed as the informal or customary step-fatherly situation arising from the non-prearranged remarriage of a widow with orphans to a man.

The status or position of Astyphilos in the household of his mother's second husband, Theophrastos, in Isaios 9 noted above attracts a few further comments. Harrison[633] and Wevers[634] maintain that Theophrastos was the guardian of Astyphilos, without qualifying the nature of the guardianship; and I cannot find it easy to accept their bare claims. If Theophrastos was guardian of Astyphilos because Astyphilos came under his care and protection, and was brought up by him by virtue of the fact that Astyphilos' mother was remarried to the man, so be it.

But if their claim is based on the formal principle of guardianship of orphans as it operated in Athens, then their stance needs further clarification. For I find no hint in the speech that Theophrastos had been formally or informally appointed as guardian of the orphans of Euthykrates. If there is any hint at all of a guardian based on the principle and practice of guardianship, then it was Hierokles who had supported his sister and the orphans until she was given in the second marriage by him, at which time the sister went away with the children. (9.27)

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sons. See Andok. *On the Mystries*, 124-127; Thompson, *CSCA* 5(1972),212; Cox, *CJ* 85(1990),34-46; *Household*, p.90; F.D.Harvey, ' The Wicked Wife of Ischomachos' *EMC* 28(1984),68-70).

633 *Law* (i), p.97.

634 *Isaeus*, p.112. Cf. also Wyse, p.642.

And, indeed, if Theophrastos had been appointed as guardian either *inter vivos* or by a will by Euthykrates, as Harrison and Wevers seem to imply, he would not need to be kicking his heels until he got the orphans' mother in marriage before receiving them into his household. It may be argued that though appointed as guardian, Theophrastos may not have been able to effectively care for the children, young as they were, unless he got a wife in his household. Presumably so, but why not some woman other than the orphans' mother? Thus though the argument is plausible, we cannot easily assume what the speaker does not say, and imply. Quite guardedly, Harrison does not make reference to the speech again in his general discussion of guardianship, neither does he cite it as a supporting evidence in his footnotes on guardianship but once, although he cites severally other speeches in the corpus of Isaios in that discussion. (p.97-121)

Perhaps, Theophrastos' management of the paternal estate of Astyphilos, (9.28,29), may have prompted Harrison and others to assume that Theophrastos was guardian of Astyphilos. Two possibilities, however, may have given Theophrastos the opportunity to have the estate under his control. Theophrastos may possibly have taken a lease of the estate from the orphans, arranged by the archon;[635] and his eagerness in

[635] Is.2.9,27; 6.36ff.

planting and improving the land, as observed by the speaker,[636] is natural in order to get returns from his investment. Secondly, the estate may have been in the hands of Hierokles, maternal uncle and brief guardian of the orphans, who might have handed it over to Theophrastos for their support, once they passed from his tutelage, albeit informally, and went under the care and protection of Theophrastos with the remarriage of their mother to him. It is most probable, therefore, that Hierokles' desire to retrieve, at least, part of the estate with the decease of Astyphilos, may have motivated him to align himself with Kleon to deprive the plaintiff of the property, if the allegations levelled against him are true.(9.22,26)

My conclusion thus is, Theophrastos was not a guardian of Astyphilos in the legal context of the practice. If there was any trace of his guardianship at all, it had fused into his status as a stepfather with the remarriage of the orphans' mother to him. It is noteworthy, that unless otherwise specified by a testator either verbally or in a will, it is nowhere indicated by Athenian practice and law that a man could automatically assume guardianship of a minor child and become his or her official representative merely by being his or her stepfather.

As the speaker of Isaios 7 informs us, it was only when the orphaned Apollodoros had been deprived of all his fortune by his official guardian that his stepfather, Arkhedamos, took him to his own household

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[636] Is.9.28,29.

and brought him up. And the fact that Arkhedamos waited until Apollodoros reached manhood before assisting him to institute actions against his official guardian to secure restitution of his patrimony(7.7-8) illustrates that the stepfather was not an official representative of the orphan, in spite of his marriage with the orphan's mother.[637]

By and large, it would appear that whether an orphan's mother was betrothed by testament to his or her official guardian, or she was later remarried to a man with whom she lived with her orphaned child or children, the position of the orphan(s) *vis-à-vis* that of the man obviously became ambivalent and dichromatic. This is so because, while the mother's second husband became a stepfather to the orphan, he was also at the same time his or her guardian, though where the orphan's mother was not remarried by testament, the powers of the stepfather were limited in a way, as noted above.

None the less, whatever be the situation, it is obvious that the stepfather gained managerial control of the orphan's patrimony, and either leased or himself managed it until the orphan reached his or her age of majority. For instance, Kallias (III.) is noted to have leased the estate of his stepsons, and appears to have indicted the lessees for attempting not only to offer inadequate security but also to deprive the orphans of

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[637] Cf. Harrison, *Law* (i), p.108; Cox, *CJ* 85(1990),44-45.

their patrimony.[638] And in Isaios 9, the speaker informs the jury that Astyphilos' stepfather not only brought him up and gave him civic and religious education but also he effectively managed his paternal estate and doubled its value, gave Astyphilos' daughter in marriage and managed everything else to Astyphilos' complete satisfaction. (9.28-30)

It appears also that where an orphan had a great fortune, his guardianship as well as that of his estate could be solidified by the marriage of the guardian to the deceased's widow, as Demosthenes seems to imply. (Dem.27.4-5;28.15;29.43,45) In any case, the stepfather was accountable to the orphan. And in the event of mismanagement or maltreatment, the archon or anyone could on his behalf bring the stepfather to justice; or the orphan himself if a male could at his majority prosecute his stepfather for the restitution of his patrimony. It is noteworthy, however, that especially if an orphan's mother was remarried to his guardian not by testament arranged by her deceased husband, but by ordinary marriage procedure, it does seem that the orphan's rights, apart from his right to know how his patrimony had been administered, during the period of his tutelage under his stepfather derived from gratuitous considerations of the stepfather. The stepfather had no other legal obligations to his stepson in such a situation.

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[638] *P Oxy*.31.2537 v 8-11, noted by Davies, *APF*, p.266; Cox, *CJ* 85(1990),44.

JOINT-OWNERSHIP OF PROPERTY, COLLATERAL INHERITANCE AND THE ORPHAN

The equal division of a paternal estate among surviving sons irrespective of age is a trait of Athenian culture attested in the sources. In family laws and the forensic speeches of the orators, we hear of sons as being entitled to equal shares of their patrimony, and as having shared their paternal estate equally at the decease of their father. In Demosthenes 43 for instance, we are told of the five sons of Bouselos having received from their father equitable shares of his property as was fitting.(43.19)

Even females were also entitled to equal shares of the paternal inheritance. Isaios informs us that under a will Dikaiogenes (III.) received a third of the estate of Menexenos (I.) as the adopted son of Dikaiogenes (II.), the son of Menexenos (I.); and " of the remainder an equal share was adjudicated to each of the (four) daughters of Menexenos (I.)" on the death of their only brother. " When they had thus divided up the inheritance, having sworn not to transgress the terms agreed upon, each remained in possession of the share which he had received for twelve years."[639]

We do not know the procedure Bouselos used to distribute his property to his sons during his lifetime. But Plutarch[640] informs us that on the decease of a father, the division of his estate by his surviving sons

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[639] Is. 5.6-7.

was done by lot that occurred in two different ways. If the brothers agreed amicably on a fair distribution of the inherited property into the appropriate number of shares, they went ahead to cast lots for the portions thus divided; and the lot was cast either privately or in the presence of a trusted friend. But if they could not agree as to what constituted a just division, they might appeal to the archon eponymous to appoint proportioners, who would then divide the property equally, and cast lots to determine which portion was to fall to each brother.[641]

Despite the existence of customary practice alongside of statutory law regarding division of inherited property, there is evidence that some Athenian sons preferred to hold their inherited patrimony in partnership rather than to distribute it equally among themselves, or waited until late in life before sharing their patrimony. The speaker of Demosthenes 44 for instance, tells the jury that Meidylides wished to give his daughter in marriage to his own brother Arkhiades; but Arkhiades declared that he did not wish to marry, and for this reason allowed their inherited property to remain undivided.[642] In general, however, whether or not the joint-ownership of the paternal estate was meant to resolve disagreement as to what constituted a fair or just division of the property with its attendant

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[640] *Moral.* 483D.

[641] Cf. Harry L. Levy, ' Property Distribution by Lot in Present-Day Greece ' *TAPA* 87(1956), 42-46, esp.42. Isaios is silent in 5.6-7 on the procedure by which the husbands of the four daughters of Menexenos (I.) received their wives' shares of their patrimony, but the aorist of λαγχάνω, ἔλαχε, in the text suggests that the distribution was done by lot.

[642] Dem. 44.10. Cf. Aeschn. 1.102; Is.2.28-29; Lys.18.21; Dem.47.34.

bitterness and potential family wrangles, as is evident in Isaios 9.17-18.20, we are not in a position to know. What is evident is that in the course of time, the joint-ownership of paternal property could lead to bitter family disputes once each son begins to rear a family, or obvious robbery of orphans with the decease of the orphans' father.

The case of the orphans of Diodotos in Lysias 32 readily comes to mind. According to the speaker, Diodotos had amassed great wealth by trade, and his property at his death amounted to approximately 15talents 28 minai. Besides, Diodotos' estate included a share in their visible patrimony which he held in partnership with his brother, Diogeiton. Out of this vast fortune, Diodotos had made considerable financial arrangements for the support of his family, including a dowry of one talent each for his wife and her daughter if he died in battle (32.4-7,13,15). Everything seemed regular except Diogeiton's failure to pay the full amount of the widow's dowry at her remarriage (32.8). But when the elder boy came into his inheritance following his age of majority, Diogeiton told him that his father bequeathed to him only 28 minai, and said nothing about the 15 talents.

But as is evident in the speech, it became obvious that Diogeiton had misappropriated the orphan's patrimony. The speaker does not tell us how much of the estate held in partnership was due Diodotos which should have gone into the hands of his orphans, neither do we know even

the position of the patrimony itself held in partnership. The situation thus illustrates the potential insecurity for the orphan whose father held an inherited property in common with his brother. For if Diogeiton had misappropriated the individual property left behind by his brother to his orphans, he would as well have taken absolute control of the estate he and his brother held in partnership, though in law, half the share of it should have been given to his orphans.

The position of the male orphan in matters of collateral inheritance was equally undefined. It is common knowledge that inheriting from a deceased father as a son, natural or adopted, was straightforward without any complications. Thus, in Demosthenes 43, the five sons of Bouselos had inherited from their father without quarrels; and Hagnias (II.) might certainly have inherited from his father Polemon with no difficulty; just as Theopompos as well as Sositheos might as well have got their patrimony without any legal dispute. In the same vein, Demosthenes the orator, and the orphans in Lysias 32 got their fathers' estates with no opposing claims from any relatives; and it is most certain that the orphans in Demosthenes 44.9 also got their patrimony with no legal battle.

Thus one would imagine that succession in Athens transmitted easily from father to son. But it does seem that actual social practice was sometimes at variance with what could be expected; and that in some

cases the real situation was much more complex than the superficial picture that patriarchy or patrilineality presented to the ordinary Athenian. Particularly, when we have a situation in which we find the orphan involved in collateral inheritance, the law of succession as quoted in Demosthenes 43.51, seems to have no guarantee for the interest of the orphan. The case of the orphan of Stratokles in Isaios 11 regarding the estate of Hagnias (II.) may be taken as representative. A deposition in Demosthenes 43.31 indicates that Phylomakhe (II.) got the estate of Hagnias (II.) awarded to her on the grounds that she was the sole aunt, that is, first cousin once removed of Hagnias (II.) on his father's side, and therefore nearest of kin to him. (43.32)

However, before Phylomakhe (II.) and her husband Sositheos could possess the property for any length of time, Theopompos, Stratios, and Stratokles, all second cousins of Hagnias considered putting in their claims since the rejection of a will which Phylomakhe (II.) had defeated made other collateral relatives have interest in the inheritance. As it happened, Stratios and Stratokles died before the case came for trial; but Theopompos went ahead and submitted his claim to the archon. And by and large, he triumphed in the subsequent trial as is evident in Isaios 11.

But sooner than later after Theopompos had entered into possession of the estate he was prosecuted by a fellow guardian of the son of Stratokles for robbing the orphan of his property by refusing to give

him his father's share of the estate of Hagnias. Theopompos' defence against the charge, as is generally known, is the subject of Isaios 11. But he also had to face another trial for a prosecution of one or more of his witnesses for perjury (11.45,46). However, Theopompos won in both cases and kept the estate in his possession until he died.

One would have thought that the victory of Theopompos meant a victory for Stratokles as well, if he were alive (11.21). And even with his death, it would seem that his son should have been given what was due to his father (11.1,5). But this could only be possible if the estate was the property of the father of Theopompos and Stratokles. In the present circumstances, however, though an orphan of his father, Stratokles' son could not legally continue the suit from where his father left off. He could also not put in a claim himself as his father's heir because it does appear that the law does not cover sons of cousins' sons. Here, it is obvious that the orphan's rights as an indirect heir were simply not recognised by the court. This shows a complete contrast to the immediate and automatic rights of the heir to the father and therefore the undefined position of the orphan in collateral inheritance.

CONCLUSIONS

This study points to certain significant conclusions that are numerous and varied, some of which have been incorporated into the main texts of the various chapters. The following final remarks may, however, be noted.

As to how the decadent and volatile socio-economic conditions in the sixth century B.C. that necessitated the appointment of Solon to introduce reforms in the society affected widows and orphans, the evidence for it appears sparse and indirect. But inferences from the slender pieces of evidence indicate that if a husband in slavery died his widow and orphan(s) continued to live in slavery to the deceased's creditor. In the same vein, the death of an insolvent tenant, though not in slavery, but whom a prudent landowner decided to retain on his farm, did not necessarily relieve his orphans of their subservient position.

Among Solon's reforms were two significant innovations that concerned widows and orphans. He redefined the role of the archon, gave him wide-ranging powers to protect and guarantee the interests and welfare of widows and orphans, and made family matters in general as some of his areas of jurisdiction. Solon ruled also that the right of anyone (ὁ βουλόμενος) to take a legal action against suspected offenders which was used principally in public cases, could also be used in private suits in

matters concerning widows and orphans because of their legal disabilities to sue in court themselves. But although the archon's executive and supervisory role was indispensable, his authority had to be activated only if a third party called upon it.

The cumulative impact of a composite of demographic factors was the ubiquity of widows and orphans in many Athenian households. The immediate impact of the loss of a spouse on the Athenian wife was the status of her marriage, and that also affected her residential status. Although the husband's death naturally terminated the wife's marriage, the widow's residential position also depended greatly on her own choice as an individual, either to continue to live in the deceased husband's household until she also died, or leave to live with her kindred.

In certain situations the widow of a deceased husband had no choice but to vacate his household. This was the case of widows whose husbands were executed by the state. In the majority of cases, widows who remained in their deceased husbands' households were either older widows who lived with their adult sons, or pregnant widows who enjoyed special protection by law (Dem.43.75).

The Athenians had an unenthusiastic and uncommitted attitude towards widows in the society. Even widows of warriors were not supported by the state. However, widows had the right to support and maintenance derived from two main sources. There was the moral and

legal obligation for Athenian sons to support their parents. The legal right was reinforced by the law disfranchising sons who were convicted for not living up to their duties to their parents (Andok.1.74). The second source of a widow's support was her dowry in the property of the deceased husband if she decided to live in his household. This made the son(s) who inherited from the father morally and legally obliged to maintain the widowed mother. The loss of the husband could establish a closer correlation between the surviving children and the widow than would have been the case regarding a married woman (Dem. 27-29;55).

A widow who lived in her deceased husband's household could wield considerable power and influence; especially in matters of adoption of her son, and funeral rites for her deceased husband.(Is.7.14;8.21,22). She could also punish or reward a slave in the deceased husband's household as she thought fit (Lyk.2 frag.1.1-3). The loss of a spouse and changes in household position resulted in the majority of widows vacating the defunct husbands' homes to live with their kindred. An interesting feature of the status of the marriage at the loss of the husband is that the widow's change of household status was automatic by mere operation of law without any formal act to effect the change, and the widow could leave the deceased husband's house without ceremony.

The widow, however, had a title to her dowry. Action for the restitution of the dowry, however, appears to be discretionary, and the

father or the legal representative of the widow might or might not decide to initiate any action for it (Dem.59.52; Is.8.7-8). If a widow left at the death of her husband to live with her kindred, her right to maintenance by them derived from convention rather than from any legal statute. Societal sanctions, however, could damage the social and political status of a guilty kin for neglect. Younger widows and widows with substantial financial backgrounds could be very competitive on the marriage market, and got remarried earlier than the less privileged ones.

I have denied as a wrong opinion the view that a widow had a choice as regards the person to whom she should get remarried. I think that any exercise of choice by a widow in her second or third marriage, as the case may be, seems to undercut the principle and procedures of betrothing and giving in marriage of the woman as contained in the law quoted in Demosthenes 46.18. It also seeks to take away the conferred authority of the father or the legal representative of the woman who had such rights to give her in marriage.

Among the reasons why a widow got married again was her dual role as a woman to bear children for her husband to maintain his family, and also for her own natal kin for the purpose of succession in her own family if she were an *epikleros*. Marriage in Athens had socio-political objectives also; one, as a form of alliance with powerful socio-political groups, another, as a counterpoint chain between feuding families. These

also could urge the father of a widowed daughter, or the brother of a widowed sister to give her away in a second marriage.

A pregnant widow was granted special permission and protection by law to remain in the deceased husband's house under the guardianship of the man appointed to be guardian of the posthumous child when it was born, until she gave birth to the child. I think it misleading for commentators to regard Harpokration's citation of σῖτος as it occurs in Demosthenes 27.15 as state provision of food to widows and orphans. The lexicographer is certainly showing awareness of two entirely different facts: (i) a material fact; that is, maintenance for women and orphans as part of Solon's laws, evident in *AP* 56.7; (ii) a linguistic fact, indicating the occurrence of the word in the orator's speech. In these two instances, the lexicographer does not imply state provision of food to widows instituted by Solon.

The pregnant widow became the agent through whom her deceased husband could be avenged by his son. She also became the taproot for the future growth and continuity of her husband's lineal descent, as well as the regulator for the right succession in her husband's household in order to maintain a stable social and political order in the community and the state at large.

The orthodox opinion that Athenian women were excluded completely from the politics of Athens cannot be quite tenable,

considering the political significance of the pregnant widow. Marriage was closely linked with political life in Athens. The woman's own citizenship, in the first instance, and her marriage by ἐγγύη, in the second instance as an Athenian woman, became a *sine qua non* of, and an essential evidence for the citizenship of her children, and in political suits against them. Thus the pregnant widow, like her ordinary married woman counterpart, had a dual political role to play deriving from her status. At the state level, to produce legitimate offspring for the state to fulfil their father's role in state politics; at the local community level, she had the civic duty to produce citizen children in order to maintain a stable social and political order in the community. The Athenian woman was thus not completely excluded from Athenian politics.

The widow, like any married woman in Athens, had no title to her husband's estate. Some Athenian husbands, however, in their wills, gave substantial amount of dowries to their widows in second marriages, and willed various kinds of bequests to them. The trousseau of a widow, like that of the ordinary married woman, did not always form part of her dowry, unless otherwise stated by the giver. The Athenian widow could own considerable gifts and bequests from a father, or a devoted husband. The widow retained her ownership rights as long as she remained as an independent widow. But if she got remarried she lost her rights of

ownership to her new husband in theory, though in practice she continued to control her own personal property, and could dispose of it.

Older orphans in Athens who had attained the age of majority did not need guardians. Appointed guardians were most often nearest relatives. A reason for the choice of nearest relatives was that kinship sentiments would restrain the hands of nearest relatives from mismanaging the affairs of their wards. It was, however, usual for fathers to appoint trusted friends as guardians of their children. An appointed guardian assumed his responsibilities immediately the decease of a father occurred. In the event that no guardian had been designated by the father, the affected family in consultation with the archon appointed one to assume immediate responsibility.

Most of the laws concerning the *epikleros* tend to have the adult *epikleros* in mind, implying a rare occurrence of the minor *epikleros*. A son adopted by testament as guardian of an *epikleros* required judicial certification before he could act in the capacity for which he had been appointed. I think unfounded the uncertainty in scholarly circles as to whether an *epikleros* in her minority could be claimed before she reached her puberty, or a guardian was appointed for her until her age of puberty before she was claimed. As I have argued, it is evident from the sources (Dem.43.51;46.22; Is.3.42,58,68-69,72-73;10.13) that an *epikleros* in her minority could, in fact, be claimed in advance of her puberty by her

father's next-of-kin as soon as the father was dead. An interesting feature of the status of the *epikleros* is that, although she was the inheritor of her father's estate, she in turn was inherited in that she was always an appendix 'property' and was claimed together with her patrimony.

The majority of the responsibilities of a guardian would, under normal circumstances, have been filial duties that every Athenian father would have rendered to his own children. But they became special duties for the guardian because of the peculiar status of the orphan and the legal consequences for a guardian who neglected his duties to his ward or wards. The guardian was to protect not just the minor child but the people dealing with him, since if a transaction had been entered into with his advice, it would be difficult or impossible for the minor to get it set aside.

One category of orphans who also drew special attention from the state was orphans of Athenian warriors. Although there is no evidence for state support for female orphans of warriors, the male orphans of Athenians who died fighting for the state received public support in the form of a grant of one obol a day per son. Public support continued until the orphan reached his majority; though this did not mean a complete take-over of all the duties to him. By the middle of the fourth century, however, public support for war orphans had been discontinued.

The law in Isaios 10.10 does not only preclude a minor from making a will, but also restricts the minor orphan from managing his

patrimony, and transfers administration of the estate to his guardian. The law, however, is not just an imposition on the child's legal capacity but establishes an inherent counter protection for him so that his inexperience would not be exploited. The lease of an orphan's estate was not mandatory unless otherwise directed by the deceased father in his will. The archon's role in the lease of an orphan's liquid estate was limited. A guardian who himself managed the patrimony of his ward without taking it under lease did not need any administrative consent from the archon, neither did he need to provide security for the property. An orphan whose estate was leased acquired a legal share in the security provided by the lessee. In the event of default the lessee's property pledged as security became subject to seizure by the orphan.

Guardianship of the male orphan terminated at the age of 18, the recognised age of majority for males in Athens. That of the female, however, continued even after the recognised minimum marriageable age of 14, until her death. I maintain, contrary to a seeming general opinion, that a female orphan on whom the father's property devolved at the death in the minority of an only brother who would otherwise have succeeded to the father, became an *epikleros* of her father but not of her brother who never entered into possession of the father's estate.

The patrimony of an *epikleros* might continue to be under the management of her certified guardian if he took her to wife; no accounts

of the estate were rendered in that case. But if the guardian did not marry her but gave her away in marriage, her property transferred to the administration of her husband. Her former guardian then rendered accounts of her property to her husband who controlled and managed it for her maintenance and support in her marriage. Either way, the husband was in no way the inheritor of the estate, but held it in trust for a future son born from their marriage who then inherited it at his age of majority.

The purpose of the unique position of the *epikleros* was to retain her father's estate in his family. She fulfilled this objective by serving as the agent for transmitting the estate to a male heir born by her. Once the male heir was born and was certified to have attained manhood, she would have finished playing her role. On her son's coming into possession of the property, her position as *epikleros* was deemed to have lapsed in fact if not in law.

The age of majority, and for that matter, the termination of guardianship of the male orphan was not just a question of being a citizen and qualified to take part in the politics of the state. He, like his ordinary male counterpart, was considered to have matured from childhood to adulthood. This change also means a radical shift in his role in the *oikos*, and his responsibilities in two major respects. In the first place, the male orphan at his majority was regarded as a fully-grown man capable of making his own decisions and maintaining himself. Secondly, his age of

majority marked the beginning of the social and economic continuity of his deceased father's household.

The orphan's age of majority signified the accountability of his guardian. The orphan's guardian had two important final duties to him. He was obliged not only to hand over the orphan's patrimony to him to begin his adulthood life, but as manager of the orphan's general welfare, to provide accounts of his general control and management of his patrimony. Orphans in either their minority or their majority did not lack avenues, private or public, to seek redress in the event of any act of injustice against them either in respect of their personal welfare, or regarding their estates, and to exact vengeance from their perfidious guardians. In a situation where more than one guardian administered the affairs of an orphan, they could be sued separately for a definite portion of the total amount claimed from them. In the majority of cases, however, because a minor could not prosecute his guardian, matters of misappropriation remained unresolved until the orphan reached his majority before taking action himself against his offending guardian. The case of the *epikleros* was more serious than that of the male orphan, especially if the guardian who would have pilfered her patrimony took her to wife at her puberty.

Some orphans lived with their stepfathers. If the mother of an orphaned child had been betrothed in marriage to the guardian of the

child by the deceased father, the orphan had the legal right to support and maintenance by his guardian-stepfather, who also saw to all legal matters in respect of his estate. But if the mother was not betrothed in marriage by testament to his guardian, the orphan's rights other than his right to know how his patrimony had been administered by his stepfather during the time he lived with him derived from gratuitous considerations of the stepfather rather than from any legal obligations.

The practice that some brothers preferred to hold their inherited patrimony in common, or waited until late in life before sharing it could lead to deprivation of an orphan's property by the deceased father's brothers. If the orphan came under the guardianship of his paternal uncle with whom his deceased father jointly held their paternal estate, the paternal uncle could take absolute control of the jointly owned property, and leave nothing for his brother's orphan in the event of mismanagement of the orphan's affairs.

In matters relating to collateral inheritance too, the Athenian courts did not recognise the rights of cousins' orphans as indirect heirs, in that the Athenian law of succession (Dem.43.51) did not cover the sons of cousins' sons, though it guaranteed the rights of cousins' sons. In the circumstances, the orphan of a cousin's son could not lay claim to an estate to which his deceased father, as the son of a cousin, was entitled. This makes the situation appear that actual social practice was sometimes

at variance with the principle of automatic rights of succession and puts the orphan in a very undefined position in collateral succession.

The Athenian orphan was an automatic heir to his father's entire estate; but the Akan orphan in Ghana has no such rights at customary law. His or her father's brother or nephew succeeds, and he or she as an orphan, lives at the mercy of the father's heir with no specific rights to maintenance and support. In general, customary practices and legal rules protected the rights and welfare of the Athenian orphan; but for the Akan orphan, customary and legal protection still remains a mirage.

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