

ΠΕΡΙΕΧΟΜΕΝΑ

Έμφυλη βία και μύθος, από τη Μέδουσα ως την Ωραία Κοιμωμένη	2
Circe: Restoring Power to the Women of Ancient Myth	6
Goddesses and Sexual Assault in Greek Myth – Ancient Greek Tragedy as Rape Culture?	9
Consent and Rape Culture in Ancient Greece	12
RAPE AND ADULTERY IN ATHENIAN LAW	18
DIVORCE IN CLASSICAL ATHENS	29

Έμφυλη βία και μύθος, από τη Μέδουσα ως την Ωραία Κοιμωμένη

Δημήτρης Πλαστήρας, 2018

Προειδοποίηση κειμένου: έμφυλη βία, βιασμός

«Κάτι θα του έκανε και τη χτύπησε», «Αν δεν ήθελε να τη βιάσουν δε θα πέταγε τα βυζιά και το κώλο της έξω», «Σιγά που δε γούσταρε», «Τον θέλει και τα λέει για να τον χωρίσει από την άλλη», «Είναι τρελή», «Έτσι κάνει, γαμιέται με όποιον βρει και μετά ζητάει και τα ρέστα». Αυτές είναι λίγες από τις σκέψεις και φράσεις που συνοδεύουν σχεδόν κάθε καταγγελία έμφυλης βίας και σεξουαλικής κακοποίησης. Και δεν μπορείς παρά να αναρωτηθείς τι είναι αυτό που κάνει τόσο διαδεδομένο φαινόμενο την απολογία του βιασμού από την κοινωνία;

Αναζητώντας τις ρίζες της κανονικοποίησης της έμφυλης βίας δεν μπορούμε παρά να κάνουμε μια στάση στον αρχαιοελληνικό μύθο. Η αρχαία ελληνική μυθολογία είναι γεμάτη από ιστορίες σεξουαλικής βίας και εκμετάλλευσης. Χαρακτηριστική είναι η περίπτωση του Δία που χάρη σε αυτόν η αρχαία ελληνική μυθολογία είναι γεμάτη από ημίθεους, αν και δεν ήταν ο μόνος. Παρόλο που τόσο η *κουλτούρα του βιασμού* όσο και ο *μισογνισμός*, ως έννοιες γεννήθηκαν και νοηματοδοτήθηκαν πολύ αργότερα, στην σύγχρονη εποχή, μιας και ακόμη και η ίδια η έννοια του βιασμού ήταν πολύ διαφορετική στον κλασσικό ελληνικό κόσμο¹, δεν υπάρχει αμφιβολία πως η σεξουαλική βία είναι αναπόσπαστο κομμάτι του αρχαιοελληνικού μύθου². Όπως αναμφισβήτητο είναι και το γεγονός πως ο απόλυτα πατριαρχικός χαρακτήρας της αρχαίας ελληνικής κοινωνίας αντανακλάται μέσα από τους μύθους αυτούς, αλλά και το ότι οι ρίζες αυτού που σήμερα ονομάζουμε κουλτούρα του βιασμού βρίσκονται εκεί.

Οι γυναικείες οντότητες, θνητές ή μη, δεν αποφεύγουν την σεξουαλική βία, ανεξάρτητα από την θέση τους μέσα στην κοινωνική ιεραρχία, είτε την ανθρώπινη, είτε την θεϊκή. Κάποιες φορές μάλιστα η δύναμη του αρσενικού πάνω στο θηλυκό υπερνικά την διαφορά φυσικής ισχύος και το θνητό αρσενικό κυριαρχεί ακόμη και σε θεϊκής προέλευσης θηλυκό με χαρακτηριστικό παράδειγμα την περίπτωση του Οδυσσέα με την Κίρκη, μια πανίσχυρη μάγισσα που μπροστά του μετατρέπεται σε αδύναμη και υποταγμένη γυναίκα που εκλιπαρεί για την ζωή της και υποτάσσεται σεξουαλικά σε αυτόν³. Παράλληλα η γυναίκα αποτελεί τόσο σεξουαλικό τρόπαιο πολέμου⁴ όσο και το δρόμο για τον ηθικό εκμηδενισμό του ηττημένου εχθρού μέσω του βιασμού που δεν τιμωρείται⁵. Τέλος ούτε ο δεσμός αίματος επιτρέπει στις γυναίκες να είναι ασφαλείς μέσα στα πλαίσια της οικογένειας, μιας και η γυναικεία οντότητα αποτελεί συχνά το θύμα είτε της πατρικής, είτε της αδελφικής σεξουαλικής επιθυμίας, όπως στη περίπτωση της Δήμητρας που βιάστηκε τόσο από τον Δία όσο και από τον Ποσειδώνα. Η περίπτωση ίσως της Δήμητρας αποτελεί και ιδιαίτερη περίπτωση στην διαμόρφωση της πατριαρχικής εκδοχής της κοινωνικής ιεραρχίας των φύλων καθώς ως θεότητα έχει τις ρίζες της στην λατρεία της μητέρας θεάς των πρώτων ανθρώπινων κοινοτήτων⁶, ενώ και στις δύο περιπτώσεις ο μύθος καταλήγει όχι σε κάποια συνέπεια για τους θύτες αλλά στον εξευμενισμό του θύματος. Πρέπει να σημειωθεί πως η σεξουαλική βία δεν στρέφεται αποκλειστικά εναντίον γυναικών στο μύθο αλλά και νεαρών αγοριών, αλλά αυτό δεν αποτελεί αντικείμενο αυτού του κειμένου.

Βλέπουμε λοιπόν πως η σεξουαλική βία αποτελεί ουσιαστικό κομμάτι της αρχαίας ελληνικής μυθολογίας, ενώ πολλές φορές αποτελεί την αρχή ολόκληρων κύκλων⁷ μέσα στην χαοτική πολλές φορές δομή της. Στο σύνολο των μύθων όμως ξεχωρίζει μια περίπτωση, αυτή της Μέδουσας, του μυθικού τέρατος που σκότωσε ο Περσέας.

Η Μέδουσα ήταν μια πανέμορφη νεαρή, και σε κάποιες εκδοχές του μύθου, ιέρεια της Αθηνάς. Είχε την ατυχία κάποια στιγμή να την δει και να την ποθήσει ο Ποσειδώνας, πράγμα που οδήγησε στο βιασμό της από τον θεό μέσα στο ναό της Αθηνάς. Η νεαρή ζήτησε την βοήθεια της προστάτιδας θεάς της. Η Αθηνά ωστόσο θεώρησε υπεύθυνη την ίδια για τον βιασμό της και αντί να ζητήσει επανόρθωση από τον Ποσειδώνα τιμώρησε την Μέδουσα, γιατί την θεώρησε εκείνη υπεύθυνη για τη βεβήλωση του ιερού της, μεταμορφώνοντάς την στο γνωστό τέρας, την Γοργόνα. Η τιμωρία της Μέδουσας έρχεται να πει πως στη συλλογική συνείδηση, έκφραση της οποίας είναι η μυθολογία, το θύμα είναι ένοχο. Η ενοχοποίηση του θύματος και η τιμωρία του δεν διαφέρει από τη σημερινή διαπόμπευση των θυμάτων βιασμού που τολμάνε και μιλάνε.

Η μοίρα των γυναικών που βιάστηκαν από θεούς στο μύθο είναι σχεδόν πάντα αυτή της τιμωρίας, αν κρίνουμε από τις περιπτώσεις των θυμάτων του Δία, με την διαφορά εδώ η τιμωρία να έρχεται από τα χέρια της Ήρας η οποία ανήμπορη να τιμωρήσει τον Δία, τιμωρεί τα θύματα του. Ίσως η περίπτωση δυο θυμάτων του Δία μας δώσει μια καλύτερη κατανόηση γιατί η Μέδουσα τιμωρήθηκε με αυτό τον τρόπο. Η πρώτη είναι η Καλλιστώ, μέλος της ακολουθίας της Άρτεμης, που ο Δίας βίασε παραπλανώντας την παίρνοντας τη μορφή της προστάτιδας θεάς της⁸. Όταν πλέον το αποτέλεσμα του βιασμού, δηλαδή η εγκυμοσύνη, δεν μπορούσε να κρατηθεί κρυφή, η θεά τιμώρησε την Καλλιστώ διώχνοντάς την και μεταμορφώνοντάς την σε αρκούδα. Η δεύτερη είναι η Δανάη, πριγκίπισσα του Άργους, ο μύθος εδώ θέλει τον Δία να πλησιάζει την Δανάη με την μορφή βροχής⁹, το αποτέλεσμα είναι η γέννηση του Περσέα και η τιμωρία της να ριχτεί στη θάλασσα μέσα σε ένα κιβώτιο μαζί με το παιδί της. Αυτό που είναι κοινό και στις δύο περιπτώσεις είναι η απουσία συναίνεσης και ο δόλος, αλλά αυτό δεν αρκεί ώστε τα θύματα να γλιτώσουν την τιμωρία, μιας και είναι δική τους ευθύνη να μην κάνουν εμφανή την ομορφιά τους.

Η πραγματικότητα δεν διέφερε αισθητά από το μύθο, η ίδια η έννοια του βιασμού πρακτικά δεν διαχωρίζεται από την *μοιχεία* όπου το θύμα νομικά δεν είναι η γυναίκα αλλά ο κηδεμόνας της, που αυτός είναι στον οποίο οφείλεται αποζημίωση και αποκατάσταση. Η γυναίκα στην κλασική Αθήνα δεν υπάρχει εκτός σπιτιού, δεν μπορεί να εμφανίζεται ασυνόδευτη, ακόμη και στην περίπτωση βιασμού της η ίδια δεν έχει λόγο, ο ρόλος αυτός ανήκει αποκλειστικά στο κηδεμόνα της. Ιδιαίτερα στην περίπτωση που η γυναίκα είναι παντρεμένη, δεν διαφέρει από τα υπόλοιπα περιουσιακά στοιχεία του άνδρα, και το πλαίσιο του εγκλήματος ουσιαστικά μετατρέπεται σε κάτι ανάλογο της φθοράς ξένης περιουσίας. Η γυναίκα πλέον έχει φθαρεί και τα παιδιά που θα φέρει στο κόσμο από εδώ και μπρος δεν μπορούν να είναι με βεβαιότητα του συζύγου¹⁰ και εξαιτίας αυτού η περιουσία του κινδυνεύει να περάσει σε ξένα χέρια. Η αποπομπή της γυναίκας, ιδιαίτερα στην περίπτωση της αρχαίας Αθήνας ήταν υποχρεωτική από το νόμο¹¹.

Θα ήταν άδικο να πούμε πως η αρχαία ελληνική μυθολογία έχει την αποκλειστικότητα σε βιασμούς. Μια ματιά στην εβραϊκή μυθολογία και είναι εξίσου γεμάτη από βιασμούς, δόλο και γενοκτονίες, όπως και η νορβηγική ή η κέλτικη. Αργότερα η εξάπλωση του χριστιανισμού στην Ευρώπη και η αυστηρή ηθική του, αν και πολέμησε σκληρά τις προγενέστερες θρησκείες και τις παραδόσεις τους, δεν απείλησε την κοινωνική δομή, και ίσως σε κάποιες περιπτώσεις να επιδείνωσε και τη θέση της γυναίκας. Οι ίδιες ιστορίες συνέχισαν να προειδοποιούν για τα κακά που μπορεί να συμβούν, αν και πλέον, ειδικά μετά τη συγκέντρωση και την κωδικοποίηση τους από τους αδερφούς Grimm οι ιστορίες γίνονται πιο αλληγορικές και ήπιες, αλλά η διατήρηση της αγνότητας παραμένει υποχρέωση της γυναίκας και μόνο, ουσιαστικά βλέπουμε ξανά το ίδιο μοτίβο διαπόμπευσης του θύματος και αντίθετα από τις μοντέρνες εκδοχές, δεν υπάρχει καλό τέλος που όλοι βρίσκονται όλοι μαζί¹². Η μεταγενέστερες εκδοχές πρόσθεσαν τον από μηχανής ήρωα/πρίγκηπα που σώζει τις αδύναμες και ανίκανες να σωθούν από μόνες τους νεαρές¹³, που πρόθυμα παραδίνουν το σώμα τους στο σωτήρα τους ως αντάλλαγμα, λειτουργώντας εκτός από προειδοποίηση και ως υπενθύμιση των υποχρεώσεων και του ρόλου του θηλυκού στη κοινωνία¹⁴.

Ξανά το μοτίβο είναι επαναλαμβανόμενο, παρά τις διαφορετικές πλοκές, το κεντρικό ζήτημα στα παραδοσιακά παραμύθια είναι η διατήρηση της αγνότητας μέσα από αλληγορίες. Ανάμεσα τους όμως υπάρχει μια ιστορία που είναι τουλάχιστον αμφιλεγόμενη στον τρόπο με τον οποίο ο πρίγκιπας σώζει τη πριγκίπισσα. Η ιστορία αυτή είναι η ιστορία της Ωραίας Κοιμωμένης, της πριγκίπισσας Aurora της Disney, ή όπως είναι το όνομα που έχει στην πρώτη καταγραφή της ιστορίας της από τον Giambattista Basile, Talia. Οι διαφορές δεν περιορίζονται στο όνομα, αλλά και στο ότι η ιστορία στην αρχική της μορφή είναι πολύ, πολύ πιο σκοτεινή. Σε αυτή ο βασιλιάς και όχι πρίγκιπας, βρίσκει ένα εγκαταλειμμένο παλάτι και μπαίνει σε αυτό, ψάχνει και στο τελευταίο δωμάτιο που μπαίνει βρίσκει την Ωραία Κοιμωμένη, εκεί νοιώθει το αίμα του να βράζει από θλίψη για την κατάσταση της λόγω της ομορφιάς της, και αφού την σήκωσε στα χέρια, και την μετέφερε στο κρεβάτι, όπου *«έδρεψε τους πρώτους καρπούς του έρωτά της»* και έφυγε αφήνοντάς την πίσω και δίχως να σκεφτεί οτιδήποτε για αυτή για πάρα πολύ καιρό. Το αποτέλεσμα του βιασμού ήταν η πριγκίπισσα να μείνει έγκυος και να γεννήσει ένα αγόρι και ένα κορίτσι. Τα βρέφη προσπάθησαν να τα φροντίσουν κάποιες νεράιδες, αλλά μη έχοντας πείρα στη προσπάθεια τους να βάλουν τα μωρά να θηλάσουν καταλήγουν αντί για το στήθος στα δάχτυλα της, αυτό έχει σαν αποτέλεσμα ρουφώντας να βγάλουν το νήμα που είχε στείλει την Talia σε κόμα, ξυπνά και αποδέχεται την κατάσταση ως φυσιολογική. Ο βασιλιάς που έχει αρχίσει να σκέφτεται ξανά την πριγκίπισσα, επιστρέφει και ενώ περιμένει να την βρει στην ίδια κατάσταση, την βρίσκει ξύπνια να φροντίζει δυο μωρά, της αποκαλύπτει ποιος και τι είναι και της ζητά να τον ακολουθήσει, αυτή δέχεται. Μια λεπτομέρεια που ξεχνά να αναφέρει είναι πως έχει ήδη σύζυγο. Η σύζυγος αυτή έχει τον ρόλο της κακιάς. Ανακαλύπτει την απάτη του συζύγου της, εκβιάζει έναν αυλικό να μάθει για την Talia, αποσπά τα παιδιά της, προσπαθεί να τα μαγειρέψει και να τα ταΐσει στον άπιστο σύζυγο της, και να κάψει την Talia ζωντανή πιστεύοντας πως εσκεμμένα ξελόγιασε τον άντρα της. Τελικά επεμβαίνει τελευταία στιγμή ο βασιλιάς σώζει την πριγκίπισσα και καίει ζωντανή τη βασίλισσα και ταυτόχρονα μαθαίνει πως τα παιδιά τα έσωσε ο μάγισσας του παλατιού που τα λυπήθηκε και δεν μπόρεσε να τα σκοτώσει. Το παραμύθι κλείνει με το απόφθεγμα πως εκείνοι που ευνοούνται από τη τύχη, αυτή δουλεύει και στον ύπνο τους¹⁵.

Η Talia, είναι λοιπόν τυχερή γιατί βιάστηκε στον ύπνο της από κάποιον που έτυχε να είναι βασιλιάς σύμφωνα με τον Basile. Όμως μέσα στις σελίδες της ιστορίας του όπως την κατέγραψε, μαζί με άλλες, στο βιβλίο του *Το βιβλίο των ιστοριών, Η ψυχαγωγία για μικρά παιδιά* το 1634 βλέπουμε μια σειρά πατριαρχικών στερεότυπων. Η γυναίκα αξίζει συμπάθεια μόνο αν είναι όμορφη, η παρθενιά της είναι λάφυρο, ο φυσικός της ρόλος που δίνει νόημα στην ύπαρξή της είναι αυτός της μητέρας, οφείλει ευγνωμοσύνη στον άνδρα που της προσφέρει την δυνατότητα να γίνει μητέρα, η σύζυγος που δεν έχει παιδιά είναι ανίκανη και διαβολική. Ο βιαστής δεν έχει κάνει κάτι κακό αλλά κερδίζει μια έφηβη γυναίκα τρόπαιο και παιδιά. Μια ακόμη λεπτομέρεια είναι πως ενώ στις μεταγενέστερες εκδοχές της ιστορίας η πριγκίπισσα κοιμάται όταν τρυπά το δάχτυλό της, στην αρχική εκδοχή η φράση που χρησιμοποιεί ο Basile είναι ότι αφού δηλητηριάστηκε από το νήμα είναι πως αυτή πέθανε, δηλαδή σαν να μην έφτανε πως ο βασιλιάς είναι βιαστής, είναι και νεκρόφιλος.

Οι μετέπειτα εκδοχές της ιστορίας αυτής, αλλά και όλων των άλλων παραμυθιών, αν και αφαιρεί μεγάλο μέρος της βίας και ωραιοποιήθηκε ώστε να είναι πιο περισσότερο κατάλληλη για παιδιά, δεν παύει να είναι εξίσου επικίνδυνη, και ίσως πιο πολύ. Στην νεότερη εκδοχή της η Ωραία Κοιμωμένη, σώζεται από τον όμορφο ξανθό πρίγκιπα και σε ανταπόδοση του προσφέρεται ως σύζυγος και έζησαν ευτυχισμένοι ως οικογένεια, προσφέρει δηλαδή στην πραγματικότητα ως έπαθλο στο σωτήρα της την παρθενιά της. Το ίδιο επαναλαμβάνεται και στις άλλες ιστορίες, από την Σταχτοπούτα μέχρι τη Ραπουνζέλ. Η συνεχής επανάληψη τροφοδοτεί, και ανατροφοδοτείται από, το στερεότυπο του ιππότη/άνδρα που σώζει την αβοήθητη πριγκίπισσα / γυναίκα, κατηχώντας τα παιδιά στα οποία απευθύνονται, πρώτα στην αποδοχή των έμφυλων ρόλων που κατασκευάστηκαν μέσα από τους αιώνες πατριαρχικής παράδοσης¹⁶ και δεύτερο πως το σεξ και η τεκνοποιία είναι το αντάλλαγμα που κάθε γυναίκα οφείλει στον άνδρα προστάτη και κηδεμόνα της.

Από τους κλασικούς μύθους του ελληνορωμαϊκού κόσμου ως τα μεταγενέστερα παραμύθια, που έχουν τις ρίζες τους στις προφορικές παραδόσεις της κεντρικής Ευρώπης, η έμφυλη βία είναι αναπόσπαστο κομμάτι τους. Οι ιστορίες αυτές αποτελούσαν, και αποτελούν ακόμη και σήμερα τους μηχανισμούς μεταβίβασης των ηθικών και κοινωνικών παραδόσεων από τη μια γενιά στην άλλη, και αν αυτό με την πρώτη ματιά μοιάζει ως κάτι καλοήθες, ίσως πρέπει να αναρωτηθούμε γιατί, στον δυτικό κόσμο τουλάχιστον, ο μυθικός ήρωας που συναρπάζει περισσότερο το συλλογικό νου, ο Ηρακλής, είναι ένας κατά συρροή βιαστής, παιδόφιλος, συζυγοκτόνος, παιδοκτόνος, δολοφόνος, νταής, ιδιότητες για τις οποίες φταίει όχι ο ίδιος αλλά μια γυναικεία οντότητα.

ΠΑΡΑΠΟΜΠΕΣ

1. http://www.stoa.org/diotima/essays/rape_harris.shtml
2. [Goddesses and Sexual Assault in Greek Myth](#)
3. [Restoring Power to the Women of Ancient Myth](#)
4. Ιλιάδα ραψ. Α΄
5. Η αρπαγή και ο άγριος βιασμός της Κασσάνδρας από τον Αίαντα τον Λοκρό, όπου δεν διστάζει να γκρεμίσει το άγαλμα της Αθηνάς πάνω στο οποίο έχει γαντζωθεί ικετεύοντας για οίκτο βλ. Τρωάδες του Ευριπίδη
6. <https://pantheon.org/articles/d/demeter.html>
7. <https://pantheon.org/articles/c/cadmus.html>
8. http://www.greek-language.gr/digitalResources/ancient_greek/mythology/lexicon/metamorphoseis/page_117.html
9. <https://pantheon.org/articles/d/danae.html>
10. <https://womeninantiquity.wordpress.com/2017/12/06/consent-and-rape-culture-in-ancient-greece/>
11. <https://www.cambridge.org/core/journals/journal-of-hellenic-studies/article/divorce-in-classical-athens/4C1B6C7E0308ED2263E86DEB61E87171>
12. <https://witchesandfolklore.wordpress.com/2016/04/14/sexuality-in-fairy-tales-little-red-riding-hood/>
13. <https://www.tandfonline.com/doi/abs/10.1080/09766634.2013.11885597>
14. <https://www.hercampus.com/school/mcgill/princess-problem-fairy-tales-and-gender-roles>
15. <https://www.ranker.com/list/details-from-the-original-sleeping-beauty/genevieve-carlton>
16. https://www.huffingtonpost.com/samara-green/fairy-tales-and-gender-st_b_1273872.html



Circe Offering the Cup to Odysseus, by John William Waterhouse.

Restoring Power to the Women of Ancient Myth

Madeline Miller*, April 11,

The first time I read the Circe episode in the *Odyssey*, I hated it.

I was 13, sitting cross-legged on my bed. The book in my hands, Fitzgerald's translation of the *Odyssey*, was only a month old, but it was already foxed from being handled so often. Greek mythology had long been an obsession of mine, and now that I had my own copy of the almost 3,000-year-old poem, I could scarcely stand to set it down. So it meant something for me to hurl the book across the room.

The hero of the story, Odysseus, was desperately trying to get back home to his wife and son in Ithaca, after ten years fighting at Troy. This had proved challenging, thanks to a series of monsters and misfires. Now, grieving and in despair, he had washed up on an island called Aiaia, where a witch named Circe lived.

It was all good stuff, and I had been steaming along. I loved the wolves and lions who draped themselves over Circe's threshold. I loved Odysseus's buffoonish men being transformed to pigs by Circe's drugged wine and magic. I loved sneaky Hermes coming to tell Odysseus that if he used a special herb, her sorcery would have no power over him. Then Circe served him the drugged wine, and lifted her wand.

Article continues after advertisement

This was going to be fun, I thought. There would be a real duel, a battle of wits between two clever, headstrong people.

Instead, Odysseus drew his sword and the powerful sorceress dropped to her knees. She wailed, begging for mercy, and offered to take him to her bed. Reading that, I felt a shocked and roiling disappointment, as if I had been betrayed by a friend.

I retrieved the book to see if the section had improved during its time on the floor. But it was all still there, the sexual slavishness, Circe's demeaning loss of power. I stared at the pages in fury. It didn't even make sense to me. Circe was a goddess, why was she afraid of a sword? And the phallic symbol was so grossly obvious, even my 13-year-old eyes could see it. Odysseus shows a blade, and suddenly she has to kneel and offer herself to him?

“Sexism in the ancient world was so ubiquitous that if I got angry about it every time I saw it, I would be in a state of perpetual rage.”

It was not the first time I'd been frustrated by a woman's portrayal in Greek mythology. I'd long been familiar with two major types: the tragic victims (Eurydice, Iphigenia, Cassandra), and the bloody villains (Medea, Clytemnestra). There was also a third type, which encompassed nearly all the other female characters I encountered: those who barely registered. They were there only as plot points: to be kidnapped, chased, married, or raped, to inspire the hero or to conveniently help him, or, most often, to give birth to him. Then they would vanish from the story.

So I had been pleased to see a character like Circe, so vivid and unusual and powerful. But of course that power was the problem. A woman who could control men was unacceptable. She must be corrected by the hero, set back in her place. Instead of Odysseus being transformed by her spell, she is the one changed: from potent, independent goddess to bedmate, helpmeet, patient nurse of men's pain.

At 13, I couldn't articulate all this, I just knew that something about the scene made my skin crawl. I quickly read onward, glad when Odysseus sailed off to face more monsters.

As I continued to study Classics I grew adept at such compartmentalization. I learned to read past the rapes and routine violence directed at women, the casual equation of a woman's value with her virginity. When the poet Ovid wrote of Daphne fleeing from the god Apollo, and how her flushed panic enflamed his desire all the more, I distantly noted the idea's grotesqueness before moving on to the matter of Ovid's poetic devices and word play. Sexism in the ancient world was so ubiquitous that if I got angry about it every time I saw it, I would be in a state of perpetual rage.

Still, that old feeling would break through from time to time, prickling across my skin. When I read about yet another rape; when another powerful female figure had to be killed, constrained or safely married off. In those moments I was acutely aware of my own female body. Ovid compares the fleeing Daphne to a hare, and Apollo to a hound on her heels. She is prey, something to be consumed before moving onto the next meal.

I looked around the classroom, which was all, or nearly all, men. I examined their faces, wondering what they made of Ovid's lightly comedic approach to sexual assault. Did they even notice these moments, disguised as they were in Ovid's charming, soufflé style? And if they noticed, had these sentiments been so validated by the weight of centuries, by all the scholars who had read these lines and written in their honor, that they gave it a pass?

I don't know. None of them said anything, and I didn't say anything either. The conversation was about metrical effects, and I would have had to wrench the subject away. I was young then, and shy in the best of circumstances. Though I proudly called myself a feminist, I didn't want to be, you know, *difficult*. I remember feeling glad that the next section we would read was about Daedalus and his son Icarus. Perverse as it sounds, it was easier when there were no women to deal with at all; when, so I told myself, I could be a scholar purely, without having to constantly negotiate my own place in the room.

It was the old dilemma of a disenfranchised group. Be silent, and feel complicit in letting the injustice stand; speak up and become the standard-bearer of resistance. I didn't want to be silent, but the truth was, I didn't want to be the standard-bearer either. I didn't want to have to become a specialist in women in Classical literature just because I myself was a woman. And even if I became the world's foremost scholar on ancient sexism, I would never be given the respect of a scholar who studied something more time-honored and traditional. I would always be suspect: as a woman studying women, I would be seen to have an "agenda."

I also knew that there was a history in Classical scholarship of women scholars being steered towards "softer" aspects of Classics. Female students had often been encouraged towards things like love poetry and art history, which were seen as more domestic, more naturally a female realm. The great epics, the *Iliad*, *Odyssey* and *Aeneid*, were about so-called important things: heroes and war, power politics and destiny. They were reserved for the most serious scholars, ie, men. (I think it is no coincidence that it was only very recently that the first English translations of Homer by women were published.)

In the end, I decided that the most feminist thing to do would be to pursue the ideas I was most passionately invested in as a scholar. Some of these included issues of gender in ancient literature, but many of them did not.

My experience as a female Classicist was a fortunate one. I can count on one hand the number of open acts of sexism I have experienced in my career. Yes, there was the one older professor who started the semester warning us not to ask questions about "slaves and women" because "this is a course about history." There was the one professor who always sat uncomfortably close, and invited me to be his "companion" on trips (I declined). But they were outliers. My universities were progressive, and my departments more so. My professors were collegial and warm, rigorous scholars who were incredibly supportive of my work. They went out of their way to encourage my interests, including in those grand epic texts. I ended up specializing in Homer and Virgil, whose works are great passions of my life.

The irony, of course, is that all these issues of sexism that I struggled with in ancient literature are still very much with us. As recent news has made abundantly clear, treating women as prey or unimportant plot points in a male narrative has proven to be timeless. We still distrust powerful women, and are encouraged to revel when they fall. We still struggle to allow women to stand at the center of their own story. Too often, they are still asked to kneel at the feet of men, serving as faceless support.

I never forgot my reaction to Circe and Odysseus's meeting. I never stopped wanting to respond to it. It took me 25 years from that first frustration to work out a reply, which turned into my second novel, *Circe*. In it, I got to write my own version of that scene, from Circe's perspective. She still yields to Odysseus's trick, that is a piece of the plot. But she does not kneel.

* **Madeline Miller** was born in Boston and attended Brown University where she earned her BA and MA in Classics. She lives in Narbeth, PA with her husband and two children. *The Song of Achilles* was awarded the Orange Prize for Fiction and has been translated into 25 languages.

Goddesses and Sexual Assault in Greek Myth

Ancient Greek Tragedy as Rape Culture?



*Persephone sitting alongside her husband/rapist, Hades.
De Agostini Picture Library/Getty Images*

Carly Silver, December 29, 2017

Everyone knows the stories of gods getting it on with mortal women, such as when Zeus stole Europa in the shape of a bull and ravished her. Then, there was the time he mated with Leda as a swan, and when he turned poor Io into a cow after having his way with her.

But not only human women suffered violent sexual attention from the opposite sex. Even the most powerful females of them all - the goddesses of ancient Greece - fell victim to sexual assault and harassment in myth.

Athena and the Snake Baby

Patroness of [Athens](#) and all-around brilliant divinity, [Athena](#) was rightly proud of her chastity. Unfortunately, she ended up enduring harassment from fellow gods - there was one in particular, her half-brother, [Hephaestus](#). As Hyginus recounts in his *Fabulae*, Hephaestus approached Athena - whom he says agreed to marry her bro, although that's doubtful. The bride-to-be resisted. Hephaestus was too excited to keep control, and, "as they struggled, some of his seed fell to earth, and from it a boy was born, the lower part of whose body was snake-formed."

Another account has Athena coming to her blacksmith brother for some armor, and, after he attempted to rape her, he “dropped his seed on the leg of the goddess.” Appalled, Athena wiped his sperm off with a piece of wool and dropped it on the ground, inadvertently fertilizing the earth. Who was the mother, then, if not Athena? Why, Hephaestus’s own ancestress, Gaia, a.k.a. Earth.

The child resulting from Hephaestus’s attempted rape of Athena was dubbed Erichthonius – although he may have been one and the same with his descendant, the similarly-named Erechtheus. Summarizes Pausanias, “Men say that Erichthonius had no human father, but that his parents were Hephaestus and Earth.” Dubbed “earth-born,” as in Euripides’ *Ion*, Athena took an interest in her new nephew. Perhaps that was because Erichthonius was an interesting fellow – after all, he was to be king over her city of Athens.

Athena stuck Erichthonius in a box and wrapped a snake around him, then entrusted the child to the daughters of Athens’ king. These girls were “Aglaurus, Pandrosus, and Herse, daughters of Cecrops,” as Hyginus says. As Ovid recounts in his [*Metamorphoses*](#), Athena “ordered them not to pry into its secret,” but they did anyway...and were either repelled by the snake and baby snuggling - or the fact he might've been half-snake - or were even driven insane by Athena. Either way, they ended up committing suicide by jumping off the Acropolis.

Erichthonius wound up becoming king of Athens. He established both his foster mother’s worship on the Acropolis and the festival of the Panathenaia.

Hera's Hardly on Cloud Nine

Not even the Queen Bee of Olympus, Hera, was immune to disgusting advances. For one, Zeus, her husband and king of the gods, may have raped her to shame her into marrying him. Even after her wedding, Hera was still subjected to such horrible incidences.

During the war between the gods and the Giants, the latter stormed their rivals’ home on Mt. Olympus. For some reason, Zeus decided to make one giant in particular, Porphyron, lust after Hera, whom he was already attacking. Then, when Porphyron tried to rape Hera, “she called for help, and Zeus smote him with a thunderbolt, and Hercules shot him dead with an arrow.” Why Zeus felt the need to jeopardize his wife in order to justify his murder of a giant – when the gods were already slaying the monsters left and right – boggles the mind.

This wasn’t the only time Hera was almost raped. At one point, she had an ardent mortal admirer named Ixion. In order to satisfy this guy’s lust, Zeus created a cloud that looked exactly like Hera for Ixion to sleep with. Not knowing the difference, Ixion had sex with the cloud, which produced the half-human, half-horse Centaurs. For presuming to sleep with Hera, Zeus sentenced this man to be strapped to a wheel in the Underworld that never stopped turning.

This cloud-Hera had a long career of her own. Named Nephele, she ended up marrying Athamas, a king of Boeotia; when Athamas’s second wife wanted to harm Nephele’s children, the cloud lady popped her kids onto a ram - who just happened to have a Golden Fleece – and they flew off.

In a similar episode to Hera and Porphyron, the giant Tityus lusted after Leto, the divine mother of Apollo and Artemis. Writes Pseudo-Apollodorus, “When Latona [Leto in Latin] came to Pytho [Delphi], Tityus beheld her, and overpowered by lust drew her to him. But she called her children to her aid, and they shot him down with their arrows.” Also, like Ixion, Tityus suffered for his misdeeds in the afterlife, “for vultures eat his heart in Hades.”

Holding Helen and Pursuing Persephone

Apparently, sexual assault on the divine ran in Ixion's family. His son by a prior marriage, Pirithous, became best friends with Theseus. Both guys made vows to abduct and seduce – read: rape – daughters of Zeus, as Diodorus Siculus notes. Theseus kidnapped a pre-teen Helen and may have fathered a daughter on her. That child was Iphigenia, who, in this version of the story, was raised as Agamemnon and Clytemnestra's kid and was, of course, sacrificed at Aulis in order for the Greek ships to get good winds to sail to Troy.

Pirithous dreamed even bigger, lusting after Persephone, daughter of Zeus and Demeter and wife of Hades. Persephone's own husband kidnapped and raped her, ending up forcing her to stay in the Underworld a good part of the year. Theseus was reluctant to try to abduct a goddess, but he had sworn to help his friend. The two went into the Underworld, but Hades figured out their plan and chained them down. When Heracles trotted down to Hades once, he freed his old pal Theseus, but Pirithous remained in the Underworld for eternity.

Ancient Greece as a "Rape Culture"?

Can we actually identify consent or rape in Greek myth? In some colleges, students now request trigger warnings before discussing particularly violent Greek texts. The incredibly violent circumstances that appear in Greek myths and tragic plays have led some scholars to deem ancient Greek tragedy a "rape culture." It's an interesting notion; a few classicists have argued that misogyny and rape are modern constructs and such ideas can't be used effectively when evaluating the past.

For example, Mary Lefkowitz argues for terms like "seduction" and "kidnapping" over "rape," which seems far-fetched. negates the character's anguish, while other scholars see "rape" as an initiation rite or identify victims as the aggressors.

This article attempts to neither confirm nor deny the above hypotheses, but present different arguments for the reader to consider both sides ... and to add a few more stories to the repertoire of "seduction" or "sexual violence" in Greek myth. This time, there are stories of the highest ladies in the land - goddesses - suffering as their female counterparts did.

Consent and Rape Culture in Ancient Greece



The Rape of Proserpina, Hans von Aachen

“Rape Culture is an environment in which rape is prevalent and in which sexual violence against women is normalized and excused in the media and popular culture.”

Marshall University Women’s Center

While it may not have been referred to as such at the time, the misogynistic culture of Ancient Greece certainly qualifies under rape culture. Our sources (most of them Athenian) paint a picture of a society in which women did not have full access to consensual sexual relations. Laws maintained a second-class citizenship under which a culture of rape was allowed to fester. Pop culture, contemporary writings, and myths paint a picture in which the trauma of marriage and sex was acknowledged, but also in which subordination was expected and fetishized nonetheless.

Women Under the Law

Looking at the laws in Athens, we can see the institutionalized inequality. Women “could not bring cases... and could not appear before the court or even give evidence in any direct way” (Omitowoju 17). Wives were expected to remain inside (excepting festivals, funerals, and weddings), and it was illegal for them to “make important social and financial decisions without the supervision of a guardian” (Fantham et al. 72, 79). This means that any case, rape included, would need to be filtered through the men in her life, giving him power to decide what had happened, how to present it, and what to seek in recompense. This would be a second-hand account, and would mean that justice was being sought, at best, on behalf of the woman wronged, if not entirely for her guardian.



Phryne before the Areopagus, Jean-Léon Gérôme

Punishment for Rape vs Adultery

While it's agreed that rape was looked upon as a bad thing, exactly how heinous it was remains up for debate, particularly in relation to what we would loosely refer to today as adultery. The term in question, *moicheia*, is something that happens to the woman, and has been taken to mean either sex with any woman under the guardianship of another man, or specifically an act that violates the marriage contract (Carey 408). This has often been framed as an act that was considered worse than rape, as in the 4th century trial of Euphiletus, a man who had murdered his wife's lover after discovering him committing *moicheia*. He put forth that the law "considered violators deserving of a lesser penalty than seducers: for the latter he provided the death penalty; for the former, the doubled fine," (Lysias, *On the Murder of Eratosthenes* 32).

He is at least partially corroborated by the Gortyn Law Code in Crete, which also prescribes fines as punishment for rape (*Inscriptiones Creticae* 4.72, cols. ii.3-27). This was a punishment that did not directly benefit the victim, but instead paid restitution to her guardian, placing her in a social position near to property, rather than as a human in her own right. The greater crime in this interpretation is that another man has entered the household, not that a woman has potentially been hurt and traumatized, creating a hierarchy of crime and victims. The concern of the law here is that the legitimacy of children has been undermined, as well as the wife's loyalty to her husband. The potential victim herself is pushed aside in favor of the stability of the household and the multiple people living in it.

Another perspective holds that both *moicheia* and rape were considered equally, if not differently, illegal. It is possible that punishment for rape fell under the laws against hubris, which would have constituted "behavior carried out with the intent to dishonor and taking pleasure in doing so" (Omitowaju 32). Like the punishment for *moicheia*, an act of hubris could possibly warrant death, but "whether or not an action was judged to be hubris depended less on the offense than on an individual's interpretation of that action" (Lape 86). If the woman could not bring her case or defense directly to court, then her guardian could decide how to interpret the event, whether she was complicit, and what wrongs were being committed against the household. An act of rape, then, could be instead interpreted as *moicheia*, depending entirely on the benevolence of the husband or father. In either model, the consent of the woman is relative to the situation and people at hand, and irrelevant to the culture at large.



The Rape of Proserpina, Peter Paul Rubens

Popular Culture

Rape under Athenian law assumed it as a physically violent act against another person, with the punishment ranging anywhere from a fine to possibly death. Even if the definition was narrow, what did fall into that category was certainly a crime. However, there may have been some instances when the illegality of rape had wiggle room. Some playwrights, such as Menander and his contemporaries, utilize rape in much more casual, comedic situations. These plays typically focus on “normalizing and resolving the consequences of the rape by uniting the rapist and victim in marriage, or uncovering the fact that the rapist has unknowingly already married his victim” (Lape 79). This contrasts very drastically with the law, and suggests that there are some circumstances under which it is understandable, if not outright acceptable, that a woman would be raped. In fact, the common denominator in the comedies seems to be “a potent combination of youth, passion, and alcohol,” employed within the context of festivals specifically to “decriminalize the rape” (Lape 94). And rape it is, as in Menander’s *Epitrepontes*, where the girl is described as “weeping and tearing her hair,” with her cloak “torn to rags” (Omitowujo 173). This is an action clearly against the woman’s will, but the festival setting, and the inebriated state of the rapist, are presented so that the act moves from the illegal into the relatively mundane. The fact that she is later (unknowingly) married to her rapist moves the act into the comedic trope mentioned above. It shows that men, under certain circumstances, are allowed to be caught up in the moment, with the consequences being morally akin to those of any other daily happenstance.

Other quotes from contemporary literature and popular culture show that violence against women and rape fell well within the norm, both in and out of the household:

“If against my will he takes me by force... I’ll be a lousy lay” (Ar. *Lys.* 246-249).

In Aristophanes' play *Lysistrata*, the wives of Greece go on a sex strike to force their husbands to end the Peloponnesian War. In their oath to one another, they treat rape as a real possibility, but gloss over any seriousness by describing resistance as merely being a "lousy lay." Subordination is treated as an inevitability.

"A man cannot stop her by threatening, nor by losing his temper and knocking out her teeth with a stone" (Semonides, *On Women* 18-19).

Semonides used animal metaphors to describe types of wives a man could end up with, many of them negative. Here he suggests that some women are resistant to or deserve violence, setting up a picture of home life in which the needs and desires of the husband are not to be resisted.

"I said no more, but took the girl and laid her down amidst the blooming flowers, covering her [body] with a soft [cloak] and encircling her neck with my arms, while she [fell silent in fear] like a fawn [before a wolf?]. Then gently I touched her [breasts] with my hands, and she revealed a part of her young flesh, the harbinger of her prime. And caressing her beautiful body [all] round I released the [white] life-force, lightly touching her fair [hair]" (Archilochus, *P.Colon. inv.* 7511).

Prior to this act, the girl has already stated her "no." The poet pushes past this, coercing her with compliments until she gives in. The language here also suggests great fear on the part of the girl.

"Your wife should be four years past puberty and be married to you in the fifth. Marry a virgin, so you can teach her good habits" (Hesiod, *Works and Days*, 695-705).

"...she wasn't fifteen years old when she came to me, and in the time before that she had lived such a protected life that she saw and heard as little as possible..." (Xenophon, *Oeconomicus* 7.5).

The two quotes show that women were married young so that they may be trained up by their husbands. This presents a sort of brainwashing, where the wife is intended to be an empty vessel, into which her husband can pour whatever values he desires. There was the option of divorce, but such an act would require either the wife appearing in public before the archon, as well as the cooperation of the courts, or it could be initiated by her father, in which case she would return to his home (Cohn-Haft 4-7). Both instances require the final judgment of men to decide that a situation was dire enough that the wife could leave her husband.

Mythology

The religion of Ancient Greece shows us that consent was not a necessity in the marriage bed. In the story of Persephone and Hades, the young girl is kidnapped by her uncle to be his wife (*Homeric Hymn to Demeter*, verses 370-95). Zeus had promised his daughter "in marriage to his brother Hades without the permission (and here even the knowledge) of either mother or daughter" (Fantham et al. 27). What results is a terrifying allegory for a girl leaving the home of her parents for the home of her husband.

The story has in fact been put forth as a "description of a woman's initiation," a symbolic story of a young girl entering womanhood (Lincoln 223). Though a kidnapping is clearly not a situation in which anybody could consent to sexual relations, Persephone's subsequent marriage is upheld. Mythology, reflecting the culture in which it existed, leaves the final say in the marriage to Persephone's father, Zeus. Hades' abduction of the girl, and her resistance, point to an acknowledgment of fear on the part of any young woman going into marriage. However, that fear is treated as a fact of life, and something to be overcome, rather than a flaw in the system.

(Rape is a recurring theme in many other myths as well, though many stories are from later Roman sources and it can be difficult to directly relate them to contemporary Greek society. Theoi has a good compendium of sourced myths for further reading.)



A Spartan Woman Giving a Shield to Her Son, Jean-Jacques-François Le Barbier

Consent in Sparta

While the sources on Sparta are spread out, and rarely from within the city-state themselves, they agree that Spartan women were encouraged to be outside the home, and to participate in physical education (Fantham et al. 62). However, this did not eliminate instances of what would be considered rape. The first example is in the marriage ritual, in which Plutarch describes how “men married the girls by kidnapping them” (Plutarch, *Life of Lycurgus* 15.3). As Plutarch was writing in the 2nd century CE, the veracity of this specific event is hard to corroborate without sources from inside Sparta itself. There’s also no mention if this was intended to be a ritualized “kidnapping,” or if women were plucked randomly off the street. If this was the case, however, the kidnapping of women is hardly a consensual method. Even ritualized, the symbolism is, at best, questionable in its motivations.

The second Spartan example is more legal in nature. Xenophon, an Athenian writing in the 4th century BCE, states that an older man could choose a younger man to provide healthier children with the former’s wife, and that a husband desiring “worthy children” could seek them with another woman, providing he persuaded her husband first (Xenophon, *Constitution of the Lacedaemonians* 1.7-8). A problem arises with this source as well, as Xenophon was not from Sparta, and his information was certainly second-hand. The lack of the wife’s consent in these two instances could very well have been part of Spartan law, which is to say that the consent was unimportant. Or, the absence could reflect the Athenian indifference to a wife’s consent in marriage, transposed onto the Spartans. The evidence, unfortunately, is shaky. That said, it remains unlikely that a single city-state was able to eliminate rape wholesale. As a culture that valued healthy children as a contribution to society, resistance in Sparta could be viewed as deviance.

Works Cited

- Archilocus, and Miroslav Marcovich. "A New Poem of Archilochus: *P.Colon. inv. 7511.*" *Greek, Roman, and Byzantine Studies*. 1974. Duke University Libraries.
<http://grbs.library.duke.edu/article/viewFile/8631/6049>
- Aristophanes, and Ian Johnston. "Lysistrata." *Johnstonia*. 2008.
<http://johnstoniatexts.x10host.com/aristophanes/lysistratahtml.html>.
- Carey, C. "Rape and Adultery in Athenian Law." *The Classical Quarterly*, vol. 45, no. 02, 1995. JSTOR, <http://www.jstor.org/stable/639529>.
- Cohn-Haft, Louis. "Divorce in Classical Athens." *The Journal of Hellenic Studies*, vol. 115, 1995, pp. 1–14., <http://www.jstor.org/stable/631640>.
- Fant, Maureen B., and Mary R. Lefkowitz, trans. "Homeric Hymn to Demeter." *Women's Life in Greece and Rome: A Source Book in Translation*. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.
- Fant, Maureen B., M. Garducci, and Mary R. Lefkowitz, eds. "Inscriptiones Creticae." *Women's Life in Greece and Rome: A Source Book in Translation*. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.
- Fantham, Elaine, Helene P. Foley, Natalie B. Kampen, Sarah B. Pomeroy, and H. Alan Shapiro. *Women in the Classical World: Image and Text*. New York, NY: Oxford University Press, 1994.
- Hesiod. "Works and Days." Trans. Maureen B. Fant and Mary R. Lefkowitz. *Women's Life in Greece and Rome: A Source Book in Translation*. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.
- Lape, Susan. "Democratic Ideology and The Poetics of Rape in Menandrian Comedy." *Classical Antiquity*, vol. 20, no. 1, 1 Apr. 2001, pp. 79–119. JSTOR, <http://www.jstor.org/stable/10.1525/ca.2001.20.1.79>
- Lincoln, Bruce. "The Rape of Persephone: A Greek Scenario of Women's Initiation." *Harvard Theological Review*, vol. 72, no. 3-4, 1979, pp. 223–235. JSTOR, <http://www.jstor.org/stable/1509722>.
- Lysis. "On the Murder of Eratosthenes." Trans. K. Freeman. *Women's Life in Greece and Rome: A Sourcebook in Translation*. Eds. Maureen B. Fant and Mary R. Lefkowitz. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.
- Omitowaju, Rosanna. *Rape and the Politics of Consent in Classical Athens*. Cambridge University Press, 2008.
- Plutarch. "Life of Lycurgus." Trans. Maureen B. Fant and Mary R. Lefkowitz. *Women's Life in Greece and Rome: A Source Book in Translation*. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.
- Rape Culture*. Marshall University Women's Center. 2017. <http://www.marshall.edu/wcenter/sexual-assault/rape-culture/>
- Semonides. "On Women." Trans. H. Lloyd-Jones. *Women's Life in Greece and Rome: A Sourcebook in Translation*. Eds. Maureen B. Fant and Mary R. Lefkowitz. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.
- Xenophon. "Oeconomicus." Trans. Maureen B. Fant and Mary R. Lefkowitz. *Women's Life in Greece and Rome: A Source Book in Translation*. 4th ed. Baltimore, MD: Johns Hopkins University Press, 2016.

RAPE AND ADULTERY IN ATHENIAN LAW

It is a truism of modern discussions of Athenian law and oratory that the Athenians regarded adultery as a more heinous offence than rape. This consensus has been challenged in a valuable paper by E. M. Harris.¹ But although Harris has successfully (at least in my view) placed in question a number of assumptions about this area of Athenian law and ethics, I wish to argue that the traditional position is in its broad outlines correct. In this as in so many aspects of Athenian law it is difficult to make firm statements. Firstly, for the Athenian system as a whole we lack evidence for many issues of legal prescription and procedure for the period before the restoration of the democracy, and our evidence is frequently lacunose even for the period after the restoration. As a result we are presented with a ‘snapshot’ of the Athenian system at a particular stage in its development and are rarely able to trace chronological developments in detail and frequently unable to trace them in broad outline. A further result of this ‘snapshot’ effect is a false impression of coherence. Legislative measures belonging to different periods are likely to present themselves as the result of an integrated design rather than the product of accretion. Finally, and most importantly, our sources distort. Occasionally they provide information on the laws and on legal procedure in passing, in order to contextualize an argument or narrative; but in general they are presenting us with information in an attempt to persuade. Their jurisprudence is therefore not objective but designed to produce specific effects as part of the process of persuasion. Nonetheless, a careful scrutiny of such evidence as is available will show that adultery was viewed more seriously than rape.

I begin with definitions. By ‘adultery’ I mean what the Greeks called *moicheia*. The translation is inexact, since there is good reason to believe that the Greek word was broader in its implications; not in terms of actions committed but in terms of the circumstances under which a sexual act constituted *moicheia*. For the term covered illicit sex with relatives other than a man’s wife. This has been denied (by Cohen, followed recently by Todd),² but the evidence of [Dem.]59.67 is conclusive:

κατὰ δὴ τοῦτον τὸν νόμον γράφεται αὐτὸν ὁ Ἐπαίνετος, καὶ ὠμολόγει μὲν χρῆσθαι τῇ ἀνθρώπῳ, οὐ μέντοι μοιχὸς γε εἶναι· οὔτε γὰρ Στεφάνου θυγατέρα αὐτὴν εἶναι ἀλλὰ Νεαίρας, τὴν τε μητέρα αὐτῆς συνειδέναι πλησιάζουσιν αὐτῷ, ἀνηλωκέναι τε πολλὰ εἰς αὐτάς, τρέφειν τε ὁπότῃ ἐπιδημήσειεν τὴν οἰκίαν ὅλην· τὸν τε νόμον ἐπὶ τούτοις παρεχόμενος, ὃς οὐκ ἔαι ἐπὶ ταύτησι μοιχὸν λαβεῖν ὅποσαι ἂν ἐπ’ ἐργαστηρίου καθῶνται ἢ πωλῶνται ἀποπεφασμένως, ἐργαστήριον φάσκων καὶ τοῦτο εἶναι, τὴν Στεφάνου οἰκίαν...

It was under this law that Epainetos indicated him. He admitted that he had had the use of the woman, but denied being an adulterer; he said that she was not Stephanos’ daughter but Neaira’s, and that her mother knew that she was having relations with him, that he had spent

¹ See E. M. Harris, *CQ* 40 (1990), 370–77. S. C. Todd, *The shape of Athenian law* (Oxford, 1993) 276 is sceptical.

² D. Cohen, *RIDA* 31 (1984), 147ff., *Law, sexuality and society* (Cambridge, 1991) 98ff.; cf. Todd (cited n. 1 above) 277. The view taken in the text is that of U. E. Paoli, *SDHI* 16 (1950), 123–182, esp. 130ff. (= *Altri studi di diritto greco e romano* (Milan, 1976), 251–307, esp. 257ff.). That the effect of the broad definition of *moicheia* is to make the Athenian system radically different from the other systems known to us in its definition of non-violent illicit sex (as Cohen emphasizes), is not a compelling reason for normalizing the Athenian system. Moreover, it is to be stressed that our evidence for the definition of *moicheia* in other Greek states is minimal. The broad definition of *moicheia* in Athens is of a piece with the right which Solonian law granted to a father or brother to sell into slavery a daughter or sister found in illicit sex (Plut. *Sol.* 23).

a great deal of money on them, and that whenever he was in town he used to meet the expenses of the whole household; in addition he cited the law which forbids seizing a man as an adulterer with any women who sit in a brothel or parade publicly, and he said that this was what Stephanos' house was, a brothel...

There Stephanos imprisons and holds to ransom Epainetos of Andros for sexual acts involving a female, Phano, alleged to be Stephanos' daughter. Since the narrator locates the incident after Phano's divorce (as §69 makes clear) and before her (alleged) subsequent marriage (cf. §72), breach of the marriage bond appears to be ruled out.³ It seems that Stephanos' action is based on his claim to be Phano's father. We are fortunate that the speaker Apollodoros, with the garrulity which makes him an invaluable source of information on some otherwise badly attested aspects of Athenian law, incorporates the details of Epainetos' defence in the private arbitration which led to an extra-judicial resolution of the dispute. Part of his defence is that the female in question is not Stephanos' daughter, the point being (in part) that Stephanos cannot therefore bring an action against him as a *moichos*. The obvious answer to Stephanos, if the law did not recognize sex with a man's daughter as actionable under the law dealing with *moicheia*, would be to insist on this fact. Epainetos' failure to make this obvious riposte suggests that Athenian law did recognize a father's rights as well as a husband's in cases of unsanctioned non-violent sex. Whether this represents a widening of the scope of the definition of and legal provision for *moicheia* with time, as is sometimes assumed, is difficult to say. With the exception of [Dem.]59 all texts which use the term *moicheia* and cognates appear to envisage breach of the marital relationship. None however purports to give the legal prescriptions relating to *moicheia* in their entirety, and it is entirely possible that in concentrating on marriage they are merely reflecting the most common context for *moicheia*. It is also difficult to determine the degree of affinity required for a man to take action under the prescriptions for *moicheia*. The surviving texts which indicate relationships deal with homicide law. Not only is the term *moicheia* not used, with the result, as Cohen⁴ has rightly emphasized, that the use of this evidence in the context of definitions of *moicheia* is potentially misleading; in addition, this tells us nothing about other laws dealing with *moicheia*. I shall return to this issue at the end.

Rape differs from adultery in a number of respects. The presence or absence of violence is the most important discriminator. From numerous texts of the classical period it is clear that *moicheia* involves persuasion. Moreover, whereas *moicheia* is always committed upon (though with the consent of) women, rape of both males and females was covered by law (unlike British law, which until recently recognized only the rape of females).

I return to the issue of the seriousness of adultery and rape under the Athenian system. Harris has rightly called into question one of the most important pieces of evidence in support of the traditional view. Euphiletos in Lysias 1 asserts that the law punishes *moichoi* with death, while for rapists the penalty is pecuniary:

ἀκούετε, ὦ ἄνδρες, ὅτι κελεύει, εἰάν τις ἄνθρωπον ἐλεύθερον ἢ παῖδα αἰσχύνῃ βίαι, διπλὴν τὴν βλάβην ὀφείλειν· εἰ δὲ γυναῖκα, ἐφ' αἵσπερ ἀποκτείνειν ἔξεστιν, ἐν τοῖς αὐτοῖς ἐνέχεσθαι.

³ Cohen, 1991 (cited n. 2 above) 108–9 suggests that Stephanos' action could be based on a fraudulent misrepresentation of the divorced Phano as still married. This is unlikely to be the case. In a narrative which emphasizes Stephanos' duplicity, it would be remarkable if this falsehood went unnoted. It is equally surprising that there is no attempt on Epainetos' part to assail the fraudulent claim. Indeed §69 (where Phano's divorce is introduced in a matter-of-fact way) suggests that Phano's situation was familiar to all parties.

⁴ Cohen, 1984 (cited n. 2 above) 151, Cohen, 1991 (cited n. 2 above) 104.

οὕτως, ὡς ἄνδρες, τοὺς βιαζομένους ἐλάττονος ζημίας ἀξίους ἡγήσατο εἶναι ἢ τοὺς πείθοντας· τῶν μὲν γὰρ θάνατον κατέγνω, τοῖς δὲ διπλὴν ἐποίησε τὴν βλάβην.

You hear, gentlemen, that it prescribes that if anyone forcibly shames a free man or boy he is liable to double the damages. If a woman, in those cases where it is permissible to kill, he is liable to the same penalty. Which shows, gentlemen, that he considered those who use force deserving of a lesser penalty than those who use persuasion. For the latter he condemned to death, while for the former he doubled the damages.

Though this formulation has been accepted by many modern scholars,⁵ including the present writer, at the very least it oversimplifies the picture. That the *dike biaiōn*, available in cases of rape, prescribed damages for the victim (where this was an adult male) or for *kyrios* if the victim was a female or male minor is incontrovertible. On this Lysias' quotation from the law is explicit. His distortion consists in suppressing less lenient punishments which a rapist might suffer. As Harris notes,⁶ the text on which Euphiletos relies for his distinction is not concerned with definitions of *moicheia* but with justifiable homicide. It has been pointed out that it would be difficult on many occasions for the aggrieved party to determine whether rape or *moicheia* was taking place.⁷ If a man caught another in bed with a female relative it would be easy to distinguish rape only if physical violence had been used; if only threats of violence had been used, there would be no way to distinguish the rapist from the *moichos*. That a distinction is problematic does not however mean that the law could not draw it. More to the point is Harrison's observation that the law signally fails to distinguish between adultery and rape.⁸ The text is cited at Dem.23.53–4. It reads:

ἐάν τις ἀποκτείνῃ ἐν ἄθλοις ἄκων, ἢ ἐν ὁδῶι καθελὼν ἢ ἐν πολέμῳ ἀγνοήσας ἢ ἐπὶ δάμαρτι ἢ ἐπ' ἀδελφῇ ἢ ἐπὶ θυγατρὶ ἢ ἐπὶ παλακῇ ἢν ἂν ἐπ' ἐλευθέροις παισὶν ἔχῃ, τούτων ἕνεκα μὴ φεύγειν κτείναντα.

If someone kills involuntarily in a contest, or catching him on the road or unwittingly in war, or with his spouse or sister or daughter or a concubine whom he keeps for free children, on these counts he is not to be exiled.

There is here no attempt to define different derelictions. A man may be killed, if he is caught 'with/at'⁹ the wife, daughter, mother, sister or concubine of another. It is clear, though not stated explicitly, that what is envisaged by the law is sexual intercourse.¹⁰ The failure to specify the nature of the offence (whether achieved by

⁵ See the citations of Harris (cited n. 1 above) 370 n. 2.

⁶ Harris (cited n. 1 above) 371.

⁷ A. R. W. Harrison, *The law of Athens* I (Oxford, 1968), 34; cf. Harris (cited n. 1 above) 372.

⁸ Harrison (cited n. 7 above) 34.

⁹ Probably not 'on top of', *pace* Harris (cited n. 1 above) 372, which would effectively narrow the law to cases involving the missionary position. Moreover, it is unlikely that Euphiletos in Lys. 1.24 would tell us so circumstantially that he found the alleged adulterer *lying next to his wife* (οἱ μὲν πρῶτοι εἰσιόντες ἔτι εἶδομεν αὐτὸν κατακείμενον παρὰ τῇ γυναικί, οἱ δ' ὕστερον ἐν τῇ κλίνῃ γυμνὸν ἐστηκότα, 'those of us who entered first still saw him lying next to my wife, while those who came in after saw him standing naked on the bed'), if one of the laws on which he proposes to base his defence was generally understood to mean that the perpetrator should be *on top of* the female. Better is Paoli's 'presso la moglie' (cited n. 2 above) 127 = 254. I take it that the prepositional phrase expresses the circumstances ('at'), as in ἐπ' αὐτοφώρῳ λαβεῖν, rather than the position. See also next note.

¹⁰ Interestingly the law does not specify that sex should have been completed or even that it should be in progress when the man is caught. There is moreover no indication that the couple should be naked or partly clothed (though Lysias in speech 1 feels obliged to provide this information; see preceding note). It is of course always possible, since Greek laws notoriously rely on common sense interpretation ('the man on the Clapham omnibus' approach) that sexual

violence or persuasion) means that a defence could probably be offered under this clause of Drakon's law irrespective of whether the dead man was a rapist or a seducer. This remained theoretically true not only in the age of Drakon but also throughout the classical period, since the law remained in force.

It is also probable, as Harris rightly stresses,¹¹ that the rapist could be prosecuted under a *graphe hybreos*. We have of course no single instance of such a prosecution. But given that the verb ὑβρίζειν is used of rape, that with the exception of a single action brought under unusual circumstances and rapidly withdrawn¹² the actual or potential cases of *hybris* known to us involve physical force, and that the *graphe hybreos* appears to have been available for a wide variety of offences, it is exceedingly likely that rape could be pursued as *hybris*. We cannot now gauge the prospects for success. But since the *graphe hybreos* was a *timetos agon*, it was open to the prosecutor to propose the death penalty. If he could convince the jurors, the perpetrator would be killed.

It is reasonably clear therefore that Lysias is guilty at least of a distortion. He also suppresses the alternative remedies available to the aggrieved party in cases of *moicheia*, as has been observed. The aggrieved male could subject the *moichos* to physical abuse, or he could hold him to ransom, or bring a *graphe moicheias*.¹³ He was not obliged to kill, as Euphiletos would have us believe. We do not know the penalty under the *graphe moicheias*. But the possibility of financial reparation further erodes the neat distinction between rape and *moicheia* which Lysias creates. This is presumably why he cites the law on homicide rather than the law or laws on *moicheia* to prove his point. The latter would have exposed his distortion of the legal position.

However, to argue that a distinction is exaggerated is not to invalidate the distinction altogether. It can be shown that the extreme position of Euphiletos in Lys. 1 rests on a real distinction drawn by the Athenians. To demonstrate this it will be necessary to examine in greater detail the penalties for the *moichos* and the attitudes to women involved in rape and in *moicheia*.

The law on homicide cited at Lys. 1.30 is not in fact the sole support for Euphiletos' defence. After his account of the capture and evasive reference to the killing of the alleged seducer Eratosthenes, Euphiletos says (1.28): Πρῶτον μὲν οὖν ἀνάγνωθι τὸν νόμον ('first of all, read out the law'). That this is the law which justifies his killing of Eratosthenes appears inescapable, from the introduction of 'the law' (τὸν νόμον,

intercourse begun or completed is to be understood. More probably in a society which discouraged contact between unrelated males and females the presence of a man alone with a decent woman offers a *prima facie* case for assuming that illicit sex is intended or in progress.

¹¹ Harris (cited n. 1 above) 373; cf. Todd (cited n. 1 above) 277 and Paoli (cited n. 2 above) 168f. = 294f.

¹² Dem. 45.4, Apollodoros brings a *graphe hybreos* against Phormion for marrying his mother. Since the case never came to court, we do not know how Apollodoros defined the alleged *hybris* and we can only guess at the arguments Apollodoros might have used to induce the jurors to accept his definition of the alleged actions. He does however state that he brought this action because procedures for private suits had been temporarily suspended. The only certain trial for *hybris* known to us, Isai. 8.41 (alleged wrongful imprisonment with the intention of bringing about the disfranchisement of the victim, presumably by preventing him from performing military service or discharging a debt to the treasury) involves the use of force (the treatment of this instance by O. Murray, in *Nomos: studies in Athenian law, politics and society*, Cartledge-Millett-Todd, (ed.), (Cambridge, 1990) 141, places too much emphasis on *atimia* to the detriment of the element of force). For other possible actions for *hybris* (and threats to bring such an action) see N. R. E. Fisher in *Nomos: studies in Athenian law, politics and society* (cited above) 125–6.

¹³ See Harrison (cited n. 7 above) 32f. Whether the *graphe hybreos* was also available in cases of *moicheia* (as Harrison 35 supposes) is not clear.

not τοῦτον τὸν νόμον), which suggests that its authority in this context is self-evident, from the position of the citation immediately after the narrative, and from the fact that the speaker goes on immediately afterward (§29) to state that death is the statutory penalty for adultery. This is almost certainly not the same law which is quoted in §30. Firstly, the law in §30 is introduced with the words ἀνάγνωθι δέ μοι καὶ τοῦτον τὸν νόμον <τὸν> ἐκ τῆς στήλης τῆς ἐξ Ἀρείου πάγου ('please read out this law too from the column on the Areopagos'). καί indicates that this law is cited in addition to that cited in §28; this is not a repetition (a very rare event in the orators in itself). The specification of the location of the law points in the same direction, since one expects further details of a law to be given at the time of its first citation, as is normal practice. The only alternative is to suppose that the word νόμος is used in §§29 and 30 of two distinct clauses in the same law. But since, as we know from Demosthenes 23.53–4, the reference to the killing of a man caught with a female relative was a single brief mention in the homicide law, not a feature developed over several clauses, this alternative appears to be ruled out.

If the law cited in §28 is not the homicide law, what is it? It has been suggested, and is still suggested by Todd,¹⁴ that the law is that dealing with *kakourgon apagoge*. Harris seems to me to have disposed conclusively of the possibility that *moichoi* were classed as *kakourgoi*.¹⁵ The only passage which can plausibly be cited in support of this view is (Aischin. 1.90f.). The text reads:

δέδεικται φανερά ὁδός, δι' ἧς οἱ τὰ μέγιστα κακουργοῦντες ἀποφύεσθαι. τίς γὰρ ἢ τῶν λωποδυτῶν ἢ τῶν κλεπτῶν ἢ τῶν μοιχῶν ἢ τῶν ἀνδροφόνων ἢ τῶν τὰ μέγιστα μὲν ἀδικούντων, λάθραι δὲ τοῦτο πραττόντων, δώσει δίκην; καὶ γὰρ τούτων οἱ μὲν ἐπ' αὐτοφώρῳ ἀλόντες, ἐὰν ὁμολογῶσι, παραχρῆμα θανάτῳ ζημιοῦνται, οἱ δὲ λαθόντες καὶ ἔξαρνοι γενόμενοι κρίνονται ἐν τοῖς δικαστηρίοις, εὐρίσκεται δὲ ἡ ἀλήθεια ἐκ τῶν εἰκότων.

A clear way has been revealed whereby those guilty of the greatest wrongs will escape punishment. For what mugger or thief or adulterer or killer or any other of those who commit the most serious wrongs but do so in secret will be punished? For any of these who are caught in the act are punished with death at once if they confess, while those who go undetected and deny their guilt are judged in court and the truth is discovered on the basis of probability.

That it lists the *moichos* along with thieves and *lopodytai*, who were certainly classed as *kakourgoi*, is of doubtful significance, since it makes no mention of *apagoge* and does not use the term *kakourgos*. Since it is unlikely that the law dealing with *kakourgoi* listed all categories of *kakourgos*,¹⁶ in principle there is no reason why *moichoi* could not be included in the term. However, it is also likely that there was a general understanding of the types of malefactor who could be so classified, and as Harris stresses no text which explicitly speaks of *apagoge* or *kakourgoi* ever mentions *moichoi*. In support of the view that Aischines' discussion may be taken as a reliable statement on the categories of offender covered by the term *kakourgos*, Hansen has stressed Aischines' knowledge of Athenian law.¹⁷ But in fact the passage is inaccurate in at least one important respect. Although some of the malefactors who were classified as *kakourgoi* could be killed with impunity under Drakon's provision for justifiable homicide,¹⁸ not all could. Moreover, whereas *moichoi* could be killed on the spot, the *Ath. Pol.* tells us that as a class *kakourgoi* were liable to summary arrest and referral to the Eleven; if they then confessed, they were liable to summary execution.¹⁹ Clearly the law or laws dealing with *apagoge kakourgon* did not empower the

¹⁴ D. Cohen, 1984 (cited n. 2 above) 155ff., Cohen, 1990 (cited n. 2 above) 110ff., Todd (cited n. 1 above) 276.

¹⁵ Harris (cited n. 1 above) 376f.

¹⁶ M. H. Hansen, *GRBS* 22 (1981), 22f.

¹⁷ M. H. Hansen, *GRBS* 22 (1981), 26.

¹⁸ See [Dem.] 23, quoted above.

¹⁹ Arist. *Ath. Pol.* 52.1.

individual who seized a *kakourgos* to kill him as an alternative to handing him over to the Eleven. Aischines' παραχρήμα θανάτῳ ζημιοῦνται is therefore at best misleading.

However, even if we accept that *moichoi* were subject to the procedure of *kakourgon apagoge*, it is exceedingly unlikely that the law governing this procedure is cited in Lys. 1. Since Euphiletos' point is that in killing Eratosthenes he acted as required by law, and since he cites the law which authorized his action, it is most unlikely that he is referring to the law on the *apagoge* of *kakourgoi*, which neither required nor permitted the killing of *kakourgoi*.

If the law cited at Lys. 1.28 is not that which deals with *kakourgoi*, the only obvious alternative is a citation from the law (or a law, if there was more than one) specifying procedure in cases of *moicheia*. That the law (or laws) dealing with *moicheia* specified procedures to be taken by the aggrieved party, as was the case with most Athenian laws, is clear from [Dem.] 59.87, which lays down the action to be taken by a husband after catching his wife with a *moichos*. If we are correct in detecting a reference to *moicheia* law at Lys. 1.28, then we can be sure that it did specify killing as an option open to the aggrieved party. This agrees with the evidence of Plutarch *Sol.* 23, who states that Solon gave the aggrieved party the right to kill the *moichos* (μοιχὸν μὲν γὰρ ἀνελεῖν τῷ λαβόντι δέδωκεν). We can also be sure that *moicheia* law specified other penalties, which Lysias elects not to mention. However, the important point is that homicide was explicitly allowed as a legitimate procedure in the case of *moicheia* (parallel to abuse, prosecution etc.), not merely as a defence under homicide law. From Euphiletos' insistence in §29 that Eratosthenes confessed to being a *moichos* immediately after the citation of the relevant clause of the law, we should probably conclude²⁰ that it was a precondition for the exercise of this right under the *nomos moicheias* that the individual apprehended should not only be taken in the act but should also admit to the charge. This would explain the inclusion of *moichoi* among those who could be killed if they confessed in Aischin. 1.90. In this respect Aischines is right to include *moichoi* along with *kakourgoi*. Both categories were subject to execution without trial if they admitted their guilt. Aischines distorts only in combining summary execution under the self-help procedure allowed under *moicheia* law (and under the homicide laws of Drakon) with that carried out by the Eleven in the case of *kakourgoi* who confessed after being caught in the act.

There is thus a significant difference between *moicheia* and rape in post-Drakonian legislation. With *moicheia*, the right to a defence allowed under homicide law was further reinforced by subsequent legislation, which listed the right to kill alongside other remedies available to the aggrieved male. In contrast, Solonian legislation dealing with rape specified damages to be paid to the victim or the *kyrios*. There was no supplementary enactment specifying the right to kill. In this respect post-Drakonian legislation did treat *moicheia* as a more serious crime. It is particularly important in this context to differentiate between the possibility of execution resulting from prosecution for rape under the *graphe hybreos* (conditional upon the jury accepting the extreme sanction proposed by the prosecutor), and the formally granted right to kill *without trial* and without reference to any state official or body in the case of the *moichos*.

Probably the right to kill the rapist was still available under the letter of the homicide law of Drakon. But was this a realistic option in the classical period? It is

²⁰ Pace C. Carey *Lysias, selected speeches* (Cambridge, 1989) 75, who errs in concentrating on the law of justifiable homicide, not the law on *moicheia*.

important to note the line of defence taken by Euphiletos in Lys. 1. The law on *moicheia* is given pride of place, while the homicide law is cited by Euphiletos only as a supplementary proof of his right to kill, and to emphasize the seriousness of *moicheia*. This suggests that a defence based on homicide law, together with a claim that the dead man had committed rape, would be unlikely to succeed in practice. Even in the case of *moicheia*, the killer may have found the jury lukewarm in its sympathy, since it would appear that by the classical period the use of ransom had become the most common remedy against *moichoi*.²¹ But the claim that the dead man was a *moichos* evidently offered firmer ground for a defence. We may perhaps go further. We have no text from the classical period, beyond the homicide law, which speaks of the right to kill the rapist. In contrast, we do have references to the right to kill the *moichos*. Sometimes the *moichos* is merely cited *exempli gratia* with reference to justifiable homicide.²² Sometimes a specific point is being made which could not be applied to the rapist.²³ But it is striking that it is the *moichos*, never the rapist, who is cited. Nor, with the exception of the text of Drakon's law, do we get vague references to the right to kill someone caught 'at/with' one's wife etc. in the classical period. It would seem therefore that the homicide law was generally taken in practice as enshrining the right to kill *moichoi*. In this respect the impact of the post-Drakonian legislation dealing with *moicheia* and rape was probably to narrow the definition of the phrase ἐπὶ δάμαρτι. An alternative explanation is simply that the code of Drakon acknowledged no distinction between adultery and rape, and that this distinction begins with the code of Solon. At any rate, the letter of the law would still allow a defence on the generic ground that a man was caught 'at/with' one's wife etc. But in the Athenian context a defence based on the letter of the law was not necessarily a strong defence.

The impression that *moicheia* is regarded as a more serious offence is reinforced by a consideration of the alternatives to homicide allowed under the *nomos moicheias*. One of these, it appears from Lys. 1.48, was to abuse the *moichos*.²⁴ As an alternative to death this was probably not without its attractions to the *moichos* caught in the act. But it was not a light penalty. In a society like our own which places less premium on public face it is difficult to grasp the severity of this sanction. But the effect of this clause in the law was to deprive the *moichos* of the sanction of the *graphe hybreos* when subjected to acts which normally would be classed as *hybris* and which were

²¹ Cf. Carey (cited n. 20 above) 60 n. 5.

²² Cf. Arist. *Ath. Pol.* 57.3 ἐὰν δ' ἀποκτείναι μὲν τις ὁμολογῇ, φῆμι δὲ κατὰ τοὺς νόμους, οἶον μοιχὸν λαβὼν ἢ ἐν πολέμῳ ἀγνοήσας ἢ ἐν ἄθλῳ ἀγωνιζόμενος, τούτῳ ἐπὶ Δελφινίῳ δικάζουσιν.

If someone admits homicide but claims that he killed legally, for instance having caught a *moichos* or in war through ignorance or in an athletic competition, he is tried at the Delphinion.

²³ Cf. Xen. *Hieron* 3.6 οὐ μὲν δὴ λέληθεν οὐδὲ τὰς πόλεις ὅτι ἡ φιλία μέγιστον ἀγαθὸν καὶ ἡδιστον ἀνθρώποις ἐστίν· μόνους γοῦν τοὺς μοιχοὺς νομίζουσι νηποινεῖ ἀποκτείνειν, δῆλον ὅτι διὰ ταῦτα ὅτι λυμαντήρας αὐτοὺς νομίζουσι τῆς τῶν γυναικῶν φιλίας πρὸς τοὺς ἄνδρας εἶναι.

Not even cities are unaware that friendship is the greatest boon and pleasure for mankind. At any rate, they see fit to kill only *moichoi* with impunity, evidently because they consider them defilers of the affection of wives for their husbands.

²⁴ Lys. 1.48 [οἱ νόμοι] κελεύουσι μὲν, ἐὰν τις μοιχὸν λάβῃ, ὅτι ἂν βούληται χρῆσθαι.

[the laws] prescribe that if anyone catches a *moichos* he should treat him as he pleases.

For punishments see C. Carey, *LCM* 18 (1993), 53ff. It is conceivable, but unprovable, that the right to kill granted under *moicheia* law rested on this clause allowing physical maltreatment at will.

normally actionable even when committed against slaves. The existence of the *graphe hybreos* confirms the impression given by many classical sources that personal *time* was important not only to the individual but also to society at large. But under the *nomos moicheias* one citizen was granted the right to commit *hybris* against another. This would always be done in front of witnesses, and would therefore involve public humiliation. In certain circumstances the degree of publicity was increased. For those who were falsely imprisoned and held to ransom as *moichoi* the law allowed the *graphe adikos eirchthenai hos moichon*, which if successful freed the individual imprisoned from the obligation to pay the ransom agreed. If it failed, the aggrieved male had the right to subject the *moichos* to physical abuse in front of the court.²⁵ Although the principle of self-help remained firmly rooted in Athenian law (the right to *apagoge* in appropriate circumstances, the right to kill, the right to distrain on property under certain circumstances), only in the case of *moicheia* did this include the right to physical abuse. Equally unusual was the right to hold the wrongdoer to ransom. It would of course be wrong to conclude from this that the Athenians regarded *moicheia* as the most serious offence of all. But it remains significant that no such rights were granted in the case of rape.

It is also important to note the different treatment of women in cases of *moicheia* and rape. In some cultures rape and adultery are regarded as equally damning for the woman involved. A woman who is penetrated by a male outside marriage is unchaste, whether or not she consents. There is no reason to suppose that an Athenian would take this view. We do of course find terms such as *αἰσχύνειν* used of rape. Rape involves a loss of *τιμή*. But it is important to bear in mind the difference between the objective sense of *τιμή* and the ambiguity of our term 'honour', which can be both subjective ('chastity') and objective ('face'). Rape shames in the Greek context, since it involves humiliation. But it does not compromise the subjective chastity of the victim. There is no evidence to suggest that a man felt obliged to put aside a wife who had been raped. Nor do we have evidence for any other sanction against the victim. On the other hand, the penalties for a woman taken with a *moichos* were severe. She was barred from the public temples, and if she ignored the bar could be beaten by anyone with impunity; she was also banned from wearing any kind of ornament.²⁶ Since religion was the only area of Greek life in which a woman could approach anything like the influence of a man, this was a very severe sanction indeed, the nearest equivalent in female terms to *atimia*. Moreover, where the woman was married her husband was compelled to divorce her on pain of *atimia*. Any attempt to determine the attitudes to adultery and rape must take account of this dimension also.

If we accept that *moicheia* was regarded as a more serious offence than rape, we must attempt to answer the question: *why*? Euphiletos in Lys. 1 offers two

²⁵ [ὁ νόμος] κελεύει, εἴαν τις ἀδίκως εἴρξει ὡς μοιχόν, γράψασθαι πρὸς τοὺς θεσμοθέτας ἀδίκως εἰρχθῆναι, καὶ εἴαν μὲν ἔλῃ τὸν εἴρξαντα καὶ δόξῃ ἀδίκως ἐπιβεβουλευθῆναι, ἀθώιον εἶναι αὐτὸν καὶ τοὺς ἐγγυητὰς ἀπηλλάχθαι τῆς ἐγγύης· εἴαν δὲ δόξῃ μοιχὸς εἶναι, παραδύναι αὐτὸν κελεύει τοὺς ἐγγυητὰς τῷ ἐλόντι, ἐπὶ δὲ τοῦ δικαστηρίου ἄνευ ἐγχειριδίου χρῆσθαι ὅ τι αὖ βουληθῇ.

[the law] prescribes that if anyone falsely imprisons another as an adulterer the victim may indict him before the Thesmothetai for false imprisonment, and that if he secures the conviction of the man who imprisoned him and it is decided that he has been the victim of a dishonest plot, he is liable to no penalty and his sureties are quit of their bail; however, if it is decided that he is an adulterer, the law prescribes that his sureties are to deliver him to his captor, who may treat him as he chooses in the court, short of using a knife.

²⁶ Cf. [Dem.] 59.87, Aischin. 1.183.

explanations:²⁷ (i) while the rapist defiles only the body of the woman, the seducer corrupts the mind as well; (ii) the existence of a clandestine relationship makes it difficult to determine the paternity of all children of the woman in question. The first of these finds an echo in Xenophon's *Hieron*,²⁸ where it is claimed that throughout the cities of Greece only *moichoi* may be killed with impunity, the reason being that they corrupt a woman's affection for her husband. This is erroneous of course; in Athens at least justifiable homicide extended to others beside *moichoi*, and not all Greek cities allowed the killing of *moichoi*. But in essence it agrees with Lysias in placing the emphasis on the corruption of the mind of a married woman. As an explanation of Athenian law it has little to recommend it. Firstly, it places too much emphasis on the marital relationship. *Moichoi* were certainly included even under Dracon's homicide code (if not exclusively) which allowed the killing of a man taken 'with'/'at' certain categories of female relative, and this extended beyond the marital bond. Subsequent legislation on *moicheia* certainly, as was argued above, allowed for action to be taken against a man who seduced other relatives besides the wife. Equally important, the explanation is psychologically wrong with reference to the attitude of the Athenian laws to marriage. Although we have evidence from the archaic period onwards that personal relationships between husband and wife could be very warm, the purpose of marriage was not to provide a man with a soulmate but to provide the *oikos* with heirs. The formal treatment of marriage always reflects this. When speaking of decisions to marry Athenian speakers always place procreation to the fore. The betrothal formula which we find several times in Menander likewise emphasizes procreation.²⁹ Arrangements for marriage reflect this perspective, since the betrothal is treated as an agreement between father and prospective groom. The practice of betrothing dependent females, including wives, by will, though it clearly reflects a desire to provide for such relatives, places the emphasis on the practical, not the psychological well-being of the woman. The laws take the same practical perspective, as can be seen especially in the case of the *epikleros*,³⁰ where the nearest male relative has the right to marry, and where the process sanctioned by law consists of making a claim before the archon (or the polemarchos in the case of metic women). The law appears to have allowed the nearest male relative to compel the divorce of the *epikleros* in certain circumstances. That legislation should seek to preserve the *philia* of man and wife is inherently implausible. Clearly both Lysias and Xenophon are rationalizing.

²⁷ οὕτως, ὦ ἄνδρες, τοὺς βιαζομένους ἐλάττονος ζημίας ἀξίους ἡγήσατο εἶναι ἢ τοὺς πείθοντας· τῶν μὲν γὰρ θάνατον κατέγνω, τοῖς δὲ διπλὴν ἐποίησε τὴν βλάβην, ἡγούμενος τοὺς μὲν διαπραττομένους βίαι ὑπὸ τῶν βιασθέντων μισεῖσθαι, τοὺς δὲ πείσαντας οὕτως αὐτῶν τὰς ψυχὰς διαφθεῖρειν ὥστ' οἰκειοτέρας αὐτοῖς ποιεῖν τὰς ἀλλοτρίας γυναῖκας ἢ τοῖς ἀνδράσι, καὶ πᾶσαν ἐπ' ἐκείνοις τὴν οἰκίαν γεγενῆναι, καὶ τοὺς παῖδας ἀδελφούς εἶναι ὁποτέρων τυγχάνουσιν ὄντες, τῶν ἀνδρῶν ἢ τῶν μοιχῶν.

Which shows, gentlemen, that he considered those who use force deserving of a lesser penalty than those who use persuasion. For the latter he condemned to death, while for the former he doubled the damages, because he thought that those who get their way with violence are hated by their victims, while those who use persuasion so corrupt the minds of the women that they make other men's wives more their own than their husbands', with the result that the whole household is firmly under their control and it is unclear whose the children are, the husbands' or the lovers'.

²⁸ Xen. *Hieron* 3.6, quoted n. 23 above.

²⁹ E.g. *Dysc.* 842f. ἀλλ' ἐγγυῶ παίδων ἐπ' ἀρότῳ γνησίῳ τὴν θυγατέρ'...

I bestow my daughter for the sowing [lit. ploughing] of legitimate children...

³⁰ For the *epikleros* see in general Harrison (cited n. 7 above) 132ff.

Lysias' second explanation is the more plausible. Before the advent of blood tests and DNA 'fingerprinting', paternity is impossible to prove with certainty. The only absolutely certain way of ensuring paternity is to restrict the access of other males to one's women. Paternity is important for inheritance purposes in a patrilineal society. In the Greek context, where inheritance involved religious acts, including the cult of the family dead, purity of the blood line was especially important. Rape does not present a significant danger. By avoiding intercourse for the rest of the month (in the case of married women) a husband can prevent confusion about paternity if it should turn out that the wife is pregnant. If she is, the child may then be disposed of by abortion or in due course by exposure. *Moicheia*, because clandestine and difficult to pinpoint precisely in time, raises a doubt about the paternity of any children born to a woman. And since the woman is by definition unreliable, a clandestine affair involving, say, a widow or divorced woman, raises the possibility that any existing children may be the result of an affair, while in the case of an unmarried female it opens the threat of future affairs which will corrupt the bloodline of her future *oikos*; as a result her *kyrios* will be left with a dependent relative for the rest of his life. Thus the position adopted by Paoli,³¹ that the gravity of *moicheia* as an offence resides in its implications for the *oikos*, would appear to be correct. Hence the requirement that a married woman caught in adultery must be divorced by her husband. The legislation on *moicheia* is thus of a piece with the protection of orphans and *epikleroi*, and the duty of the archon to take care of *oikoi* in danger of dying out. It reflects the interest of the state in the preservation of the *oikos*. There was more broadly an issue of citizenship. Where paternity could not be determined with certainty, there was a possibility that individuals enjoying citizen rights were the offspring of aliens, a risk which grew with the increase in the metic population in the late archaic and early classical period. The *oikos* perspective best explains the list of females under the Draconian provision for justifiable homicide. The most puzzling item is the inclusion of the *pallake* which a man has 'for the purpose of free children'. Since personal relationships did not receive legal protection as such, this provision presumably has a practical purpose. The Draconian provision is most easily understood if we suppose that an Athenian's male bastards enjoyed substantial inheritance rights.³² In addition, we know that before 451/0 the requirement for citizenship was Athenian paternity. We have no solid evidence to suppose that marriage was a precondition before or after that date.³³ If, as is entirely possible, bastards enjoyed political rights in pre-

³¹ Paoli (cited n. 2 above) 139/266. His further argument (142/269) that the act must take place *within* the family house to count as *moicheia* is supported by no evidence. It is important to note that the relative seriousness of adultery and rape has nothing whatever to do with the value attached to women as a sex or as individuals, since the penalties for rape are not affected by the sex of the victim.

³² For the developments in the inheritance rights of bastards see Harrison (cited n. 7 above) 67f.

³³ The issue of the citizen status of *nothoi* with Athenian parentage on both sides is controversial (for a recent discussion which argues against the view taken here, with bibliography of the debate, see C. Patterson *Classical Antiquity* 9 [1990], 40–73) and likely to remain so. There is no reason *a priori* to suppose that adult males in this category were or were not included within the number of full citizens, since practice with reference to the rights of bastards varied from polis to polis (Arist. *Pol.* 1278a29). And ancient evidence is disappointingly ambiguous. My own view, that bastards with an Athenian father before 451/0 or two Athenian parents after 451/50 were entitled to citizen rights, is based on four passages, Arist. *Ath. Pol.* 42.1, [Dem.] 57.17, Isai. 12.7, Hyp. fr. 29. *Ath. Pol.* 42.1 omits legitimacy from the criteria for citizenship. This silence alone is inconclusive, but the conspiracy of silence between *Ath. Pol.* and [Dem.] 57.17, which again ignores legitimacy, is more difficult to dismiss. In particular, the speaker of [Dem.] 57 is facing a potentially hostile jury (as he stresses in the proem) who know the conditions for

Solonian Athens, in Drakon's code too the aim may be to protect both the *oikos* and the state.

We can now return to the question of the degree of affinity required for a man to take action under the law or laws dealing with *moicheia*. If, as was argued above and as is generally believed, the purpose of the *moicheia* law was to protect the *oikos*, it is likely that a man could exercise the right to abuse or to hold to ransom in the case of any relative for whom he stood in the position of *kyrios*. But we have seen that *moicheia* law also enshrined the right to kill. How widely could this right be exercised? There is no certain answer. But since the remedies available after Drakon were enhanced at least by the addition of the *graphe moicheias* (even if we assume, as seems possible, particularly in the light of the Demodokos' song of Ares and Aphrodite in *Odyssey* 8.266–366, that ransom and perhaps abuse were already established practice in pre-Solonian Athens), and since the effect was to increase the emphasis on judicial remedies, it is unlikely that the range allowed under Drakon's homicide code was widened by subsequent legislation. Probably therefore the right to kill was reserved under *moicheia* law for the limited sphere of relationships already allowed under Drakon's homicide law.

This is perhaps an opportune moment to deal with another misunderstanding which has been disseminated recently. Cohen has argued,³⁴ on the basis of comparative evidence, that *moicheia* was an area in which the Greek competitive spirit came to the fore. It was a source of status to seduce the womenfolk of other men and a source of shame to have one's own women seduced. This view is based on a simplistic model of Greek society which has become all too prevalent in recent decades, a model which emphasizes competitive at the expense of cooperative virtues, which ignores the Greek capacity for compromise and pragmatism. It also runs counter to the evidence. *Moicheia* is certainly a source of humour for the comic poets.³⁵ But comedy makes a habit of treating in a humorous way topics which in real life are taken in earnest. Non-comic sources which discuss *moicheia* are unanimous in their condemnation of the practice. There is thus no support whatsoever for the competitive picture painted by Cohen.³⁶

Royal Holloway, University of London

C. CAREY

citizenship as well as he does and will notice any obvious omission. The MSS. text at Isai. 12.7 says that a man is a citizen because *ἡ μήτηρ ἀσθή τ' ἐστὶ καὶ ὁ πατήρ*; the reference to marriage in printed texts is modern conjecture. In 338 Hypereides (fr. 29) lists as lacking rights slaves, debtors to the treasury, the *ἄτιμοι*, the *ἀπεψηφισμένοι* (under the Demophilos decree) and metics, but not *nothoi*. *Nothoi* of Athenian parentage on both sides cannot be tacitly subsumed as a class under the reference to *ἄτιμοι* (on the assumption that this category automatically lacked citizen rights), since only someone who had lost his rights would be referred to as *ἄτιμος*. It would be strange if Hypereides ignored a group with a seemingly better claim to citizenship, while mentioning metics and slaves.

³⁵ E.g. Ar. *Av.* 793–5, *Thesm.* 478ff.

³⁴ Cohen, 1990 (cited n. 2 above) 168.

³⁶ This paper was originally delivered at a seminar at the University of Genoa in February 1994. I wish to record my thanks to my colleague at Royal Holloway, Dr. Isa Busicardi, for correcting the original Italian version, and to the Dipartimento di Archeologia e Filologia Classica at Genoa for their hospitality, in particular to Prof. Umberto Albini. Finally, I wish to thank the anonymous referee for sharp criticisms from which the discussion has benefited.

DIVORCE IN CLASSICAL ATHENS

THE modern literature on divorce in Classical Athens is slight, the only detailed discussion that of W. Erdmann, *Die Ehe im alten Griechenland* (Munich 1934; repr. New York 1979) 384-403. A rare certainty in our knowledge is the ease with which a husband could terminate marriage. He had only to send his wife away, that is, back to her paternal family, and the marriage was at an end. From this it is tempting to infer that divorce in Athens was frequent, even casual. Not surprisingly that view has had a long tradition in works on marriage and family, law, society, and ancient Greece in general.¹ It is a view almost surely incorrect, however, as the following examination of the evidence will show.

The sources are sparse. Tragic drama, for all its focus upon family life and marriage, is just about silent on the subject of divorce. The “other woman” is common enough in tragedy, and although her appearance may bring domestic distress on a grand scale, it does not result in divorce. The single exception, the one instance in the surviving tragedies in which a wife is divorced, is in Euripides *Medea*. The divorce is carried out by nothing more complicated than the husband’s unilateral decision (17-19) to improve his financial and social position by an advantageous new marriage. Although there is no impediment to equating both procedure and motivation in the drama to Athenian practice, *Medea*’s position is not comparable to that of an Athenian wife and therefore provides us with no genuine insight into Athenian divorce. Since she was not given in marriage by a father or brother, and indeed was not even a Hellene, in Athenian eyes the marriage to Jason was not a legal union; moreover, she had no family to whom she could be sent back, and whose reaction to the dismissal of their relative had to be taken into consideration, as would normally have been the case in Athenian marriage. In Old Comedy (which, unlike myth-based tragedy, deals with contemporary matters) no passage can be discerned that refers usefully to divorce,² and other fifth- and fourth-century authors are no

¹ See above all, Erdmann 388; also *inter alios*, C.A. Savage, *The Athenian family: a sociological and legal study* (Diss. Johns Hopkins U) (Baltimore 1907) 61, U.E. Paoli, *La donna greca nell'antichità* (Firenze 1953) 48, A.R.W. Harrison, *The law of Athens: the family and property* (Oxford 1968) 40 (hereafter Harrison), the implications in S.B. Pomeroy, *Goddesses, whores, wives, and slaves: women in classical antiquity* (NY 1975) 64, A. Biscardi, *Diritto greco antico* (Milano 1982) 99-100, E. Cantarella, *Pandora's daughters: the role and status of women in Greek and Roman antiquity*, trans. M.B. Fant (Baltimore 1987) 47; and such durable or recent general or popular works as H. Blümner, *The home life of the ancient Greeks*, trans. A. Zimmern (1893) (repr. NY 1966) 149, R. Cohen, *La Grèce au 5e siècle* (1953 ed.), Vol. ii in G. Glotz, *Histoire ancienne*, 4 vols. (Paris 1925-38) 255, G.W. Botsford and C.A. Robinson jr., *Hellenic history* (5th edit., rev. D. Kagan) (NY and London 1969) 358, L.P. Wilkinson, *Classical attitudes to modern issues* (London 1979) 53, JACT [P.V. Jones *et al.*], *The world of Athens: an introduction to classical Athenian culture*, (Cambridge 1984) 163. S. Isager ‘The marriage pattern in classical Athens: men and women in Isaios’, *C & M* xxxiii (1981-82) 85-87, dealing solely with the evidence from Isaeus, is a rare exception. She notes that divorce ‘is held to have been common’ in Athens, citing several recent authorities, then observes that although there are five cases in the works of Isaeus in which it is possible that a divorce occurred, only one is certain. The generalization quoted by H. Medick and D.W. Sabeau ‘Interest and emotion in family and kinship studies: a critique of social history and anthropology’, in Medick and Sabeau, eds. *Interest and emotion: essays on the study of family and kinship* (Cambridge 1984) 21 provides an interesting comment on this point, but whether it applies to Athens is uncertain: ‘It is...almost a universal rule that when married life is insecure, the wife turns for support to her family of origin, so that a weak marriage tie produces a strong blood tie....’ (quoted from M. Young and P. Willmott, *Family and kinship in East London* (London 1957, repr. 1972) 189.

² Ar. *Lys.* 156 can be squeezed to appear to be a reference to divorce for adultery, but Menelaus is there depicted not as about to divorce Helen, but to kill her. We have no evidence that such a “Divorzio all’Italiano” was permissible under the law that required a cuckolded husband to divorce his erring wife; see below, n. 11. In the next line of the play *Kalonike* refers to the possibility of husbands simply walking out. Such action, given the freedom of movement of Athenian men, should not be construed as divorce; see, for example, the behavior of Euktemon in Isaeus vi. One may wonder too as to why Strepsiades does not divorce the wife he rants against in *Clouds* 41-74, and a guess is permissible that an inability to return her presumably large dowry might be the reason. (On dowry as a deterrent to divorce, see below, nn. 14, 48, and esp. 53.) The question, however, does not explicitly arise anywhere in the play.

more fruitful than the dramatic poets. There are a few references to divorce in Herodotus, whose examples are all in specifically pre-Classical contexts and chiefly outside of Athens.³ At best they can serve to confirm what is known, but not to establish Athenian practice. Xenophon also gives no genuine information, although inferences from passages in the *Oikonomikos* have been made to yield dubious support to shaky assertions.⁴ Plato in the *Laws* sets up legal norms, but they have no necessary relation to Athenian law or practice and therefore do not serve to inform us.⁵ New Comedy and Roman Comedy provide very suggestive material on one particular procedure. Since that material looms large amid the paucity of contemporary evidence and has often been accepted as reliable testimony, it will be considered in detail below. As for the Orators, given the frequency with which the vicissitudes of family life appear in the court cases, the small number of references to divorce is surprising, but it is in this modest number of sources that the most important information is found. Their testimony is especially valuable, because, although the trial orations always have the fierce bias of advocacy and cannot therefore be trusted for veracity, they have the precious aspect of guaranteed verisimilitude. That is, the speaker's assertions were aimed at those ordinary Athenian men who comprised the dikastery, and had to be believable to them: in short, he could make his case with lies, but only if they were credible.⁶

In approximately chronological order, divorces are found in:

1. [Andok.] iv (*Against Alkibiades*) 14
2. Lys. xiv 28
3. Is. ii 7-12
4. Is. iii 78
5. Dem. xxx 4 *et passim*
6. Dem. xli 4
7. Dem. lvii 41
8. Dem. lix 51 and 63.

To these may be added the testimony of:

9. Plut. *Pericles* 24.5, which is, however, neither contemporary nor above suspicion.⁷

In addition, cases of adultery like that in Lys. i may be presumed to have resulted certainly in divorce, but we have no details.

The testimony of these sources forms the bulk of the inquiry. From them two distinguishing

³ Hdt. i 59 *ekpempsein*, v 39-41 *exeō*, *apenta*, *tēs exesios*, vi 61-63 *apagesthai*, *apopempsamenos*. Not unexpectedly Herodotus, whose interest is not in law but in literary effect, uses a variety of expressions. *Exesis* (v 40) is the only noun in this collection, and it is found nowhere else: L-S-J s.v.

⁴ Xen. *Oik.* 3.12 and the tendentious inference drawn by Erdmann 88.

⁵ Plato *Laws* vi 784b-c, viii 841c-d, ix 868c-d, xi 926b-c, xi 929e. These are all cited by Erdmann 401-03, who concludes his treatment of divorce by observing that Plato's arrangements, being closer to modern law than to the contemporary laws of Athens, are therefore a notable advance.

⁶ See S.C. Humphreys, 'The discourse of law in archaic and classical Greece', *Law and History Review* vi (1988) esp. 455-456, 473-482.

⁷ C.A. Cox, 'Sibling relationships in classical Athens: Brother-sister ties', *J. Fam. Hist.* xiii (1988) 381 finds another case by treating one feature of the tangled relationship of Plangon and Mantias in Dem. xxxix 24-25, 28 as a divorce 'because she (*sic*) could not provide a dowry from her father's impoverished estate: she and her sons were cared for by her brothers'. To be sure the rejection by Mantias of his sons by Plangon and of Plangon herself can be called a divorce by the loose standard of Athenian procedure, but his later resumption of the marriage renders such a concept of divorce almost meaningless. (In the matter of dowry Cox is surely wrong on several counts: although the speaker asserts (xl 22-24) that Plangon's father was too poor to provide a dowry, her sons claimed there was a dowry (xl 14, 20); after living with a woman as his wife for a long enough time to have two sons, a man would not suddenly discover that he had received no dowry; if the brothers could support her and her sons, they could surely have supplied a dowry; and to split a technical hair, the woman would not herself have been responsible for provision of a dowry.)

features stand out, which will be treated successively: variety of procedure and the grounds on which divorce might be obtained.

PROCEDURE FOR DIVORCE

There were four different procedures, divorce initiated by the husband (*apopempsis*), divorce initiated by the wife (*apoleipsis*), divorce initiated by the wife's father (*aphairesis*), and the disposition (*epidikasia*) of an heiress, who, if already married, would have to be divorced.⁸

Of the nine divorces contained in the list above, five were clearly or probably instituted by the husband.

(9) In Plutarch *Pericles* 24.5, the famous statesman is said to have divorced his wife upon mutual agreement, the amicable nature of the transaction being shown by his having made arrangements for her immediate remarriage.⁹ While the testimony of Plutarch is suspect, we do have secure evidence that divorce along these lines did in fact occur in Athens, as shown by:

(3) Menekles, in Is. ii 7-12 a middle-aged, perhaps elderly, man, divorced his young wife after first gaining her acquiescence and that of her brothers.¹⁰ He arranged for her marriage to another man, and as a final demonstration of the absence of any rancor in the case, he allegedly adopted one of her brothers.

The remaining divorces in this group are attended by a sufficient measure of anger, enmity, and bitterness to meet traditional expectations.

(2) According to Lys. xiv 28, the daughter of the famous Alkibiades was divorced by her husband on the ground that her brother, having access to the house, visited her 'not as a brother, but as a husband'. Incest adds an extra dimension of scandal, but the presumption is that the divorce was for adultery, and the law required the cuckolded husband to divorce.¹¹

⁸ I use the words regularly employed by scholarship, but it needs to be said that, as usual in Athenian law, these words lack the precision and exclusivity that we expect from legal terminology. Indeed one of them, as will be seen, is not found as a noun at all in the sources. It is also the case that there is no single word that corresponds to our "divorce", meaning the legal termination of a marriage: Athenians, as the present discussion will show, were more concerned with how and why a divorce occurred than with the legality and the technicalities of the fact of a divorce. Marriage was fundamentally a private matter, defined by law but with no legal or public action required; so with divorce, which normally was a private action.

⁹ On divorce by mutual consent, see Harrison 39-40. Although mutual consent is humanly interesting, it was technically of no significance: the divorce was initiated by the husband. As for Plutarch's dependability for fifth century private life, note the difficulty of so much as identifying the lady in question: P. A. Stadter, *A commentary on Plutarch's Pericles* (Chapel Hill 1989) 238-39, where reference is made also to the very different version of the divorce in Athen. xii 533c-d.

¹⁰ While one must always preserve a skeptical stance with regard to any assertion of fact in a trial oration, there is no reason to doubt these allegations, and in any case they are important as indicating that a concern for the blameless wife's feelings would go over well with the ordinary Athenians on the dikastery.

¹¹ The law is cited in Dem. lix 87. On adultery in Athens the fundamental treatment, that of U.E. Paoli, 'Il reato d'adulterio (moicheia) in diritto attico', *Studia et documenta historiae et iuris* xvi (1950) 123-82, was for decades accepted by legal scholars. (A good summary in Harrison 32-36.) A complete bibliography is provided in the notes to D. Cohen 'The Athenian law of adultery', *RIDA* xxxi (1984) 147-65, who proposed a radically different understanding of the Athenian law(s). Cohen's views have been refined and expanded in Chapter 5 of his *Law, sexuality and society* (Cambridge 1991). They are discussed by E. Cantarella, 'Moicheia: reconsidering a problem', *Symposion 1990* (Cologne 1991) 289-296, who had access to Cohen's new formulation. Cantarella focusses on legalistic issues and rejects the fundamental novelty of Cohen, namely that adultery was defined in Athens, as universally in other societies, as a crime against marriage (that is, in which at least one of the partners is a married person). On this issue she returns to the traditional view (Paoli's) that even for an unmarried man, sexual intercourse with women in certain other categories, including widows and unmarried women, was included under the rubric "moicheia" (which thus ought perhaps to be rendered otherwise than as "adultery"). L. Foxhall, 'Response to Eva Cantarella' 297-304 in the same volume, does not deal with legal questions, but with "the social construction of gender" (297) and the "ideology of sexual control" (299). The relation of this controversy to divorce is limited to conjectures as to the underlying attitudes of Athenians toward female sexuality.

(8) In Dem. lix 51 and 63 a husband, one Phrastor, learning that his wife Phano was not an Athenian, simply “threw her out” (*ekbalonta*). The implication of physical violence need not be taken literally, but ought perhaps to be construed as something like ‘got rid of without ceremony’.¹² On the other hand, since she was not an Athenian, violence might have been seen as appropriate, and there had been in any case no proper marriage.¹³ All the motions as it were of a lawful marriage had been executed, including provision of an appropriate dowry. The efforts of the woman’s putative father, Stephanos, to receive monthly interest on the unreturned dowry (52) failed, as did his hope to have the dowry itself restored (62). Although in law there were no circumstances that could prevent a dowry from going with the woman, this instance shows how in practice it might be difficult, even impossible to extract it from an ex-husband.¹⁴

(5) The circumstances of the divorce(s) talked of in Dem. xxx 4 *et passim* are obscure. The speaker alleges that the divorce in question never in fact occurred but was faked in order to tie up money and property. One of the parties to the financial arrangements is referred to as a previous husband of the woman in the case, implicitly pointing to an earlier divorce, but there is no indication of how or why the earlier marriage ended. Although the terminology for the current actions is that of divorce initiated by the wife, it is clear that the men controlled all aspects of the putative divorce, so that it cannot be known whether the wife in fact wanted a divorce.¹⁵

There are two divorces instituted by a wife.

(1) The first is the unsuccessful effort of Alkibiades’ wife, Hipparete, to divorce him, as recounted in [Andok.] iv 14. The circumstances are interesting and unusually illuminating. The most important feature of the attempted divorce was its formal and public nature. The woman had to appear before the *archon*, obviously a drastically different procedure from the right of a husband simply to send his wife back to her family. Another remarkable feature of the case was Hipparete’s failure in her attempt at divorce, for Alkibiades interrupted the proceedings and carried her off by force.¹⁶

(4) The other instance of divorce initiated by the wife is an oddity in that it is known only because the speaker in Is. iii 78 denies any such divorce (as presumably claimed by his opponent) ever actually occurred. In scoffing at the opponent’s claim, he observes the failure to provide evidence of the alleged divorce, and thereby in passing gives us a precious bit of information by confirming that a woman who sought a divorce was required to appear before the *archon*, with the effect of making the action a matter of public record.¹⁷

¹² The verb is *ekballein*, which L-S-J s.v., i 4, citing this passage, renders simply as ‘divorce’. In Dem. lix 59, in reference to the same incident, the more or less technical term, *apopempein*, is used. One may reasonably infer that the more graphic and forceful verb was employed for rhetorical effect, whether to be taken literally or not.

¹³ A law cited in Dem. lix 16 indicates that marriage of an Athenian to a non-Athenian was in the fourth century a criminal offense.

¹⁴ In the Athenian system dowry was a significant aspect of marriage. As regards divorce the requirement that dowry be returned with the woman must sometimes have served as a deterrent. On dowry, see n. 40.

¹⁵ Dem. xxvii-xxxi all relate to the orator’s efforts to prove that his guardians had swindled him and thereby to recover his patrimony. The woman in the present case was the sister of the defendant, Onetor, and following the alleged divorce he supposedly gave her in marriage to Aphobos, the defendant in xxvii-xxix, to whom Demosthenes’ father had willed his widow Kleoboule as wife, but who had taken the dowry and failed to marry her. Demosthenes’ mother’s fate is a significant part of that story (on which see V. Hunter, *EMC* 8 (1989) 39-48), but is unrelated to the divorce here under discussion.

¹⁶ οὐ δὴ μάλιστα τὴν αὐτοῦ δύναμιν ἐπεδείξατο· παρακαλέσας γὰρ τοὺς ἐταίρους, ἀρπάσας ἐκ τῆς ἀγορᾶς τὴν γυναῖκα ᾤχετο βίᾳ, καὶ πᾶσιν ἐδήλωτε καὶ τῶν ἀρχόντων καὶ τῶν νόμων καὶ τῶν ἄλλων πολιτῶν καταφρονῶν. Reported also by Plut. *Alk.* 8.4: ὥς οὖν παρῆν τοῦτο αὐτὴν πράξουσα κατὰ τὸν νόμον, ἐπελθὼν ὁ Ἀλκιβιάδης καὶ συναρπάσας αὐτὴν ἀπῆλθε δι’ ἀγορᾶς οἴκαδε κομίζων, μηδενὸς ἐναντιωθῆναι μηδ’ ἀφελῆσθαι τολμήσαντος.

¹⁷ πρὸς ὅποιον ἀρχοντα ἢ ἐγγυητὴ γυνὴ ἀπέλιπε τὸν ἀνδρα ἢ τὸν οἶκον [τὸν] αὐτοῦ.

(6) The single case of divorce initiated by the wife's father, Dem. xli 4, is apparently supported by four other instances from New and Roman Comedy, but is nevertheless very problematic in important details, and requires considerable discussion.¹⁸ In the Demosthenic passage a father, Polyeuktos, is said to have had a quarrel with his daughter's husband, Leokrates, to have taken her away (*aphelomenos*) from him, and to have married her to another man. The passage is sufficiently unequivocal in its wording to lead to the conclusion that in Athenian law a father had the right to remove his daughter from a marriage of which he no longer approved, a right that is accepted with remarkable unanimity by historians of Athenian law.¹⁹ As for the supporting evidence from the four passages cited, in two of them, those from Menander and Plautus, the father threatens but does not carry out the action; in the other two the passages are too fragmentary to allow us to know either the circumstances or the outcome of the same threatened action. These four pieces of evidence, along with the Demosthenic text, numerous related passages, and the modern literature, have been vigorously discussed.²⁰ The most recent conclusions, those of Rosivach, are that no legal right of *aphairesis* is at issue; that the terminology of the four supporting texts differs from the Demosthenic passage, in that the verb used is *apagein* (in one place, *apienai*) in the Greek texts, which parallels the *abducere* of the Latin, suggesting that *aphairesis* was not a technical nor even a usual term; and that the force that is explicitly mentioned or implied in all the texts is psychological or moral pressure, not physical force in the assertion of a legally supported right. Rosivach acknowledges that a legal power of *aphairesis* may have existed, but finds that the five cases cited can all be interpreted as instances of divorce initiated by the wife,²¹ whose resistance to such a course could be worn down by a father whose authority she had been accustomed to accept. This is an attractive view and applies readily to the four supporting texts, in all of which the daughter is depicted as trying to oppose the paternal will, and in none of which is the outcome the actual victory of the father in the divorce of the daughter.²²

¹⁸ The four supporting sources are: Menander *Epileptontes*, several passages, esp. 656-58, 714-15, 929-31, 1064, 1102-03 (Sandbach); *P. Didot* 1, especially 1-44; Plautus *Stichus*, opening scene through line 148; *Rhetorica ad Herennium* ii 38 (10 lines).

¹⁹ The right is understood as stemming from the nature of the agreement between the father of the bride and the bridegroom, which has the form of a conditional transfer of 'ownership', *engyē* (see also below, n. 26). It is this conditional nature which gives to the father the power to abrogate the agreement. See especially H.J. Wolff, 'Marriage law and family organization in ancient Athens: a study on the interrelation of public and private law in the Greek city', *Traditio* ii (1944) 53 (repr. 1961 in *Beiträge zur Rechtsgeschichte Altgriechenlands und des hellenistisch-römischen Ägypten* (Weimar 1961), who emphasizes the limited nature of the exchange: 'The aim of the *engyē* was to entrust rather than to alienate the object'. S. B. Pomeroy 'Greek marriage', in M. Grant and R. Kitzinger, eds., *Civilization of the ancient Mediterranean* (NY 1988) 1340 puts it most strongly: 'A married woman was actually only lent to a husband for the production of legitimate children for his *oikos*. Her family retained the right to reclaim her services to produce its own children'. The reclaiming appears in the legal literature as *aphairesis*: see especially U.E. Paoli, 'La legittima afèresi dell'epikleros nel diritto attico', *Miscellanea G. Mercati*, Vol. 5 (*Biblioteca apostolica vaticana. Studi e testi* cxxv [1946] 524-38) and Harrison 30-32. The noun is entirely appropriate, but not in fact attested in this context. Only verb forms appear in the texts. (R. Just, *Women in Athenian law and life* (London 1989) 74-75 opines that 'most probably' a woman's brothers, if the father was no longer living, could exercise the right. There can, however, be no question but that sons inherited whatever rights and obligations their father had had.)

²⁰ V.J. Rosivach 'Apharesis and apoleipsis: a study of the sources', *RIDA* xxxi (1984) 193-230 (hereafter Rosivach) provides an exhaustive analysis, with references to the previous literature. The most detailed earlier treatment is that of N. Lewis 'Apharesis in Athenian law and custom', *Symposion* 1977 (*Actes du 3e colloque internationale d'histoire du droit grecque et hellénistique*) 161-78, who concludes that 'Attic law invested a father with an absolute right of *aphairesis*...'. F. Sbordone 'Una tipica contesa familiare nella realtà giuridica e nel teatro antico', *Sileno* xi (1985) (= *Studi Barigazzi* ii) 207-10 deals only with literary questions arising from the texts.

²¹ Others have also favored this interpretation of the Demosthenic text, e.g., A.T. Murray p. 7 n. c in Vol. v of the LCL Demosthenes (1939), Wilkinson (n. 1) 53.

²² In the *Epileptontes* and the *Stichus* the women retain their husbands and all ends happily. If the other two texts followed the conventions of New Comedy they too ended happily with divorce avoided.

The relevance of the four fictional texts to fourth century Athenian law and practice is, however, doubtful. The passage from the *Stichus*, by all odds the most imposing and detailed, simply cannot pass muster as a dependable source for Athenian institutions and manners. In the play respectable women stroll about the city and domestic slaves have drinking parties, dinner parties, and love affairs. These activities are asserted to be specifically the custom in Athens (446-48), a notion so bizarre that it ought to have laid to rest the pretension that such material can selectively be made to yield dependable data.²³ In the *Epitrepontes* the father's power to take his daughter back is not certain,²⁴ so the text does not support either view in the matter of legal right. In the other two texts the emphasis is upon the arguments for and against divorce, and the question of paternal power is not even clearly raised; they are therefore of minimal use. In the two texts from which significant details are known, the comedies of Menander and Plautus, there exists the important circumstance that the husbands have left home; and in the other two texts there is reference to the father finding some fault in the previously approved husband. In short, it can be argued in respect to all four poetic texts that the father is assuming a responsibility to protect his daughter, rather than arbitrarily asserting a legal right to force a divorce against her will. In the Demosthenic text the situation is quite different, in that the daughter is taken back and married off to another man. According to Rosivach (200-202), the father's action in 'taking away' his daughter, as the text bluntly puts it, is simply a summary way of saying what Athenian hearers would readily know, namely that the father had prevailed upon her to appear before the *archon* to seek a divorce. That is possible, to be sure, but seems an artificial way out of the difficulty of believing what was flatly stated in court, that a father actually exercised control over a married daughter. There is no reason *a priori* to believe that Athenians as well as Athenian law did not distinguish between *aphairesis* and *apoleipsis*.²⁵ If the latter was the procedure envisaged, why describe it as the former? One might argue (although Rosivach does not) that the speaker in the case wanted to depict the father as a brutal person, but there is nothing in the oration to indicate enmity between him and the now deceased Polyeuktos, who was his father-in-law, the speaker being married to another daughter. Whatever may in fact have occurred, there is no substantive reason to doubt that Polyeuktos had the *right* to remove his daughter from her marriage whether or not she wished it. Both *aphairesis* and *apoleipsis* were legally acceptable procedures, and the choice of which one to employ depended upon specific circumstances.

The father's right to remove his daughter from her marriage may have been unrestricted in

²³ Reliance on Roman Comedy dies hard: see E.J. Bickerman, 'La conception du mariage à Athènes', *BIDR* xvii (1975) 21 n. 102, who on the authority of Paoli accepts that Plautus and Terence 'generally reproduce faithfully the customs and legal rules presented in the original'; also Lewis (n. 20) 171 n. 34, who holds to 'Fraenkel's Law', according to which 'legal elements indispensable to the plot...are surely Greek, while those only superficially connected with the action of the play are likely to be Roman'; M. McDonnell 'Divorce initiated by women in Rome', *AJAH* viii (1983) 54-57 and nn. 7-24; and D. Konstan 'Between courtesan and wife: Menander's *Perikeiromene*', *Phoenix* xli (1987) 122 n. 6 who strains to show that Plautus and Terence knew Greek law and strove to cite it accurately, but fails to explain why comic writers would subject a Roman audience to scholarly precision or what such pedantry would accomplish, even if we allow them to have been students of Classical Attic law. On the other hand Harrison 19 is appropriately cautious and sparing: see his index of sources.

²⁴ In line 930 Charisios says his wife has not left (divorced?) him (the verb used is *apoleipein*), and there is the possible implication that *her* failure to initiate a divorce settles the matter. The text, however, is fragmentary and does not demonstrate definitively that Smikrines could not on his own have removed his daughter from the marriage. It does suggest that the father would prefer to persuade her to initiate the divorce herself, on which point see below, Grounds for Divorce (p. 9).

²⁵ Given the fundamentally private and informal nature of the various procedures, an outsider might have been unable to distinguish which one had been used, with the one important exception noted above: *apoleipsis* was a matter of public record.

law,²⁶ but in sentiment it would probably be limited to situations in which the father could claim that he was exercising it over a daughter who was being abused by her husband and would not herself take the step available to her to end the abuse.²⁷ The critical question would then have been the husband's response to his father-in-law's action. In this respect it is useful to compare the Demosthenic situation with those found in the four texts from Comedy. In the *Epitrepontes* and the *Stichus* the husbands are not currently living at home with their wives, so that they are in no position to assert their powers over a wife or in any other way dispute the proposed action. Indeed in the *Stichus* the husbands of the two sisters have been away and unheard from for three years, and patently can do nothing in their own behalf. As Rosivach observes (212-18), what we have in all four passages is obviously a stock dramatic situation, so there is a fair probability that in the fragments too an absent husband may be in question. Again, the Demosthenic text offers a different situation, in that there is no suggestion of desertion or any other failure of marital duty on the part of the husband.

The circumstance that may obtain in the two fragmentary texts, and is definite in the *Epitrepontes* and essential in the *Stichus*, namely the absence of the husbands, raises a question that has important bearing upon the lives of married women, a question to which no sure answer is found in the ancient evidence: What provision was made for the guardianship of a wife whose husband was away for a significant period of time on such commonplace activities for an Athenian as, say, military service or business? It is easy to make reasonable conjectures, but there is very little evidence.²⁸ A husband departing on a lengthy business voyage might have appointed a substitute, or foremost among other possibilities, the right and responsibility of looking after his wife might automatically have devolved upon her father. If the latter conjecture

²⁶ Wolff (n. 19) 46-53 argues that the terms *engyē* ('solemn promise') and *ekdosis* (giving of the bride), imply a transfer of property that is for a limited purpose, procreation, and allow the original owner to retain his interest in the 'property'. J. Modrzejewski, 'La structure juridique du mariage grec', *Scritti in onore di Orsolina Montevicchi* (Bologna 1981) 258-60 takes the same position, emphasizing the critical importance of offspring: that is, the existence of a legitimate child nullified the right of *aphairesis*. That view has logic on its side, but no concrete evidence, and is appropriately treated by D.M. MacDowell, *The law in classical Athens* (Ithaca, NY 1977) 88 (hereafter MacDowell) as no more than a conjecture. The sentiments of jurors might, of course, have overridden the letter of the law in such an instance; see below, n. 32. A fresh treatment of the significance and meaning of *engyē*, emphasizing social reality rather than legalistic detail is found in a valuable article by C.B. Patterson, 'Marriage and the married woman in Athenian law', in S.B. Pomeroy, ed. *Women's history and ancient history* (New York 1991) 49-54.

²⁷ One may conjecture that in such a situation, with the facts not publicly known, a cloud might permanently hover over the reputation of a woman peremptorily taken back by her father, who would therefore prefer she take the step herself rather than leave the initiative to him. Such an hypothesis may explain the apparent contradictions among the passages cited from the comedy of Menander, in which the father tries to persuade his daughter, but says he will remove her anyway.

²⁸ In Lys. xxxii 4-6 a certain Diodotos, a man of considerable wealth, departing on a military campaign (in which he in fact lost his life), left a will providing for the settlement of his estate and the remarriage of his wife, who was his niece, in case of his death. All these matters he put into the hands of his brother, who as her father would anyway have automatically become her *kyrios* upon her husband's death. This is the only evidence we have directly on this score. In two other instances, Dem. xxvii 4ff. and xxxvi 7-8 men who were ill and anticipating death made wills in which they provided for the guardianship and remarriage of their wives. One is tempted, in the face of such substantial evidence, to take these cases as normative, but the cautionary note needs to be sounded that written wills were always looked upon with suspicion in the fourth century as being untraditional and also easily forged. And apparently with some reason: in two of the cited cases, the appointed guardians swindled their wards, and in the third, Dem. xxxvi, a grown son, whose normal receipt of his father's estate had been pointedly and insultingly bypassed by the will, claimed that there was no such document at all. That he lost the case does not lessen the force of his argument that a man with a mature son would not normally make a will. One may doubt that men leaving home on military service or a lengthy voyage left wills. It is altogether more likely that a verbal transfer of authority to a close relative was customary. For example, Apollodoros (the loser in Dem. xxxvi) describes in another case, Dem. I 24 ff., how while he was on military service, an acquaintance back in Athens, attempting to assist him in a financial matter, brought to the meeting Apollodoros' father-in-law who, although no statement is made to this effect, was the person most likely to have had charge of his affairs and of his family during his absence.

is correct, then the father in the *Stichus* had an unquestionably legitimate power over his daughters, in the *Epitrepontes* an only slightly less secure right, in the other two a possible right, but with insufficient evidence for its confident assertion. In Dem. xli, however, the situation does not conform to the pattern of the fictional cases.

Two items stand out sharply in Dem. xli, the family relationship among the principal parties, and the consequences of the father's forcible ending of his daughter's marriage. The family relationship was one of those complicated interconnections that dazzle the modern observer but appear to have been everyday occurrences in Classical Athens. The husband in this case, Leokrates, was his wife's uncle, that is her mother's brother, her father's brother-in-law. If that were not a sufficiently close family relationship, he had prior to the marriage been brought even more decisively into the family by being adopted by the bride's father. The relation, therefore, of the husband to his wife's father was threefold: he had become brother-in-law, son, and son-in-law, in chronological order. Moreover, the speaker in the case is the husband of Polyeuktos' other daughter, and the defendant, Spoudias, is the man who succeeded Leokrates as husband of the younger daughter.²⁹ The laconic presentation in Dem. xli 4 gives no hint as to the ground of the quarrel (*diaphora*) between Polyeuktos and his son/son-in-law that caused him to take back his daughter. It does, however, go on to recount in an equally brief way the anger of Leokrates, and the suit he instituted against the father and the new husband, a suit which resulted in a payment to Leokrates, a formal reconciliation, and a quittance from all claims and counterclaims. Included, understandably, was Leokrates' departure from the family.³⁰ There is no indication here or elsewhere in the speech that Leokrates tried to get his wife back, nor is there any hint as to what his claims might have been against his former father/father-in-law (and still brother-in-law) and against Spoudias, the new husband. The question is therefore left open as to whether Polyeuktos' action in taking his daughter back exceeded what Athenians would have felt to have been his right. If that specific question had come before an Athenian jury one may guess that the decision would have been based not upon what the law permitted, but upon the jurors' sense of the father's justification, perhaps also whether there were children of the marriage. The speaker presents the quarrel between Polyeuktos and Leokrates with no detail, introducing it simply as historical background. This allows free speculation as to the grounds of the quarrel and also as to the speaker's role. He might for example, have been sympathetic to Leokrates, and so presents Polyeuktos as behaving in a peremptory manner. Even so, the jurors would still have to believe that Polyeuktos, overbearing or not, had the power to remove his daughter from her marriage. Since the case actually at issue in Dem. xli concerns money and property, it is tempting to see the divorce and subsequent litigation as entirely venal in character. One may be tempted to imagine a cold-blooded financial calculation, with Polyeuktos having decided that his daughter ought to have a 'better' marriage. The fact that Leokrates' lawsuit ended in a money settlement lends credence to this conjectural reconstruction of the event. Yet one hesitates to find that a divorce would be undertaken with no motive beyond simple greed when the family relationships were as close as those between Polyeuktos and Leokrates.³¹ In any case we have no reason to doubt the speaker's flat statement that Polyeuktos on his own "took back" his daughter.

²⁹ A welcome confirmation of the historicity of at least part of the tale is found in a dedication from the agora, *Hesperia* vi (1937) 341, mentioning 'Kleokrateia, daughter of Polyeuktos of Teithras, and wife of Spoudias'.

³⁰ He was Polyeuktos' son, and the disinheritance of a son required legal action, see J. Rudhardt, 'La reconnaissance de la paternité: sa nature et sa portée dans la société athénienne (Sur un discours de Démosthène)', *MH* xix (1962) 50-52. In Dem. xli 5 Leokrates' ouster from the family is discreetly glided over: τέως μὲν ὁ Λεωκράτης ἦν κληρονόμος τῶν Πολυεύκτου, ... ἐπειδὴ δ' ὁ τε Λεωκράτης ἐξεκεχώρηκεν....

³¹ The speaker's circumlocutory claim that the quarrel between Polyeuktos and Leokrates is irrelevant to the present case perhaps suggests a ground other than money for their enmity.

GROUNDS FOR DIVORCE

However the father's action is interpreted, and whatever its basis in law, the case raises the question of grounds for divorce, a question that focuses sharply on the nature and quality of Athenian marriage. Except for the law of adultery, which made the divorce of an adulterous wife mandatory, we have no evidence that there was any legal concept in Athens of what might constitute adequate grounds for divorce. Although a man could divorce his wife for any reason whatsoever simply by sending her back to her father's house, and although a father could apparently reclaim his married daughter equally cavalierly, the pressure of social custom rather than law surely restricted them.³² Inquiry into the grounds for divorce may usefully begin with the case from among the total of nine that has not yet been examined.

(7) Dem. lvii 41 presents in a few words the situation of the *epikleros*, the heiress.³³ The requirement that she be married to a blood relation could be compromised by the fact that either she or the specified relative or both were already married. In the case in point a poor man, Protomachos, was entitled to claim an heiress and thereby to acquire a large estate.³⁴ He therefore, with the normal prerogative of a husband, divested himself of the wife he already had, to whom he had been married a sufficiently long time for her to have borne a daughter. The stated ground for the divorce is clear and uncomplicated: financial advantage. It is also clear from the text that his action in divorcing a blameless wife was in the particular circumstance considered not admirable but acceptable. The fortunate Protomachos found a friend to whom his wife's brother gave her in remarriage, testifying at the same time to his maintaining at the least a courteous relation to her family, and to his own appropriate concern for her future, circumstances similar to those presented in Isaeus ii.³⁵ It is tempting to extend a husband's freedom to divorce to any situation in which advantage, monetary or other, is found, but although there is no reason to doubt that some individuals sought marriage for worldly gain and dissolved it out of the same motive, we have no evidence beyond this single case of any divorce that can be traced securely to that motive. In a reciprocal situation, that in which an already married woman became an heiress, the eligible male relative had the power to claim her, thereby taking her from her husband and putting an end to her current marriage. In the only case in

³² The distance between law and social sanction is put neatly, in the context of divorce initiated by a wife's father, by Lewis (n. 20) 178: '[the father] was under no legal constraint to justify such action...; ...he...was under strong emotional and social pressures to seek an accommodation'.

³³ There is a huge literature on this subject, in which controversy over technical detail abounds but is not germane to the present problem. The most recent comprehensive treatment is that of J.E. Karnezis, *The epikleros* (Athens 1972) (in Greek with detailed English summaries), containing thorough references to the previous literature; the ancient sources are listed 236-38. Karnezis' work is not universally admired; see the harsh review by MacDowell, *JHS* (1976) xcvi 228. Some of the nuances in interpretation may be observed especially in the work of E. Balogh, 'Some notes on adultery and the epikleros according to ancient Athenian law', *Studi in memoria di Emilio Albertario*, 2 vols. (Milano 1953) ii 697-719, Harrison 10-12, 132-38, W.K. Lacey, *The family in classical Greece* (Ithaca, NY 1968) 139-45, D.M. Schaps, 'Women in Greek inheritance law', *CQ* xxv (1975) 53-57, and *Economic rights of women in ancient Greece* (Edinburgh 1979) Chap. 3, MacDowell 95-97.

³⁴ The question of whether claiming an heiress was a right or an obligation is readily—and cynically—answered by reference to her fortune. If a substantial property came with her, marriage to her was a right which the eligible relative was probably glad to exercise, and if he failed to do so, the next in line could be counted on to supply the necessary eagerness; if she was poor or still worse destitute, it was a duty that could be avoided only by supplying a dowry of a value specified by law. Andok. i 117 ff. is refreshingly explicit and unambiguous on this distinction.

³⁵ If the existence of legitimate offspring was decisive in sealing a marriage, as some have argued (see n. 26), the situation here under examination illustrates either the apparently still more powerful element of a husband's freedom to divorce at will or the overriding importance of keeping property within the family. Possibly if the child had been a son (the text is messy on this point: in 40 she had a daughter, in 43 "children", of whom only the daughter is specified), it would not have been permissible to remove the mother from her marriage; see Harrison 11-12, 308-11. Perhaps then the mention of the divorced wife's having been given in the new marriage by her brother in the presence of other relatives is an indication of her family's having accepted a situation they might legally have opposed.

which there is concrete evidence for this right, Is. x 19, divorce did not occur: the woman remained with her husband, the estate being taken, by default as it were, by the man who could have claimed her. She preserved her marriage on condition that she not contest (through her husband, of course, who was her *kyrios*) the appropriation of the estate, but the text makes clear that the usurper could have demanded her as his wife had he so wished or if that had been the only way to acquire the estate. In sum, even in the case of an *epikleros*, the purely mercenary divorce could be bypassed for reasons of sentiment.

In the other eight cases of divorce the grounds are not always clear nor even hinted at, and in those for which there is testimony, the grounds are not always what we might expect. In two of the instances of divorce initiated by the husband, the grounds alleged were simple and to an Athenian unexceptionable. In Lys. xiv 28 the ground was adultery, with incest added as an extra spice. In Dem. lix 51 and 63, divorce was the inevitable sequel to a non-marriage, caused by the gross deception practiced upon a husband by the bride's supposed father in falsely claiming her an Athenian citizen. In fact no ground for divorce was in question, there having been, strictly speaking, no marriage.

Two other cases, those of Pericles and Menekles, are quite different from the preceding in that no blame was alleged on the part of the wife. Pericles is said (Plut. *Pericles* 24.5) to have reached an agreement with his wife to divorce because of their mutual unhappiness. One may doubt this report, appearing as it does in a source over half a millennium after the fact, and all the more so because the motive imputed, although appealing to modern tastes and also to the sentiments of Plutarch's day, might have seemed somewhat flighty to Athenians in the fifth century. The case of Menekles proposes grounds for divorce that appear thoroughly proper in an Athenian context. Given the emphasis upon procreation as a motive for marriage, one assumes barrenness to have been a principal reason for its dissolution. Perhaps so, but the case of Menekles is the only instance we have in which that motive is explicit.³⁶ Another unique element in the case is that Menekles held himself responsible for his wife's barrenness,³⁷ and whether we are to attribute this opinion to gallantry, honesty, or self-contempt, it is to be noted that his earlier marriage, which had left him a widower, was also childless (4, 7). Menekles' express motive in seeking a divorce was to enable his wife to have children,³⁸ and he therefore, like Pericles, undertook with her brothers' approval to arrange a second marriage for her. A final and very significant aspect of both these divorces is that the wife's wishes are alleged to have been consulted, the entire transaction having been conducted in an unhappy but amicable atmosphere. (The fifth case, in Dem. xxx, will be treated among divorces initiated by the wife.)

It appears certain from these cases that no formalities and no grounds were required for a man to divorce his wife. He need only dismiss her. At the same time it is clear that in practice attention was paid to the motive for divorce, a number of motives having apparently been acceptable to Athenian sensibilities. Attention was evidently also paid to the effect of the divorce upon the wife in those cases in which no fault was imputed to her. One may infer that in those cases it was normal to arrange a prompt remarriage.

³⁶ The absence of concrete evidence has not prevented the notion that, as expressed by V. Ehrenberg, *The people of Aristophanes: a sociology of old Attic comedy* (NY 1962) (orig. Oxford 1943) 146, 'childlessness often led to divorce'. The famous instance in Hdt. v 39-41 is not germane: it occurred in an earlier period, in Sparta not in Athens, had to do with royalty not ordinary citizens, and the king in that anecdote, although acknowledging his duty to produce an heir, refused to divorce his childless wife.

³⁷ Athenians were as unlikely as any others to acknowledge sterility, which was comfortably denied by men before the advent of modern science, as in the case of another Spartan king, Ariston: Hdt. vi 61.2.

³⁸ He is quoted (7) as saying her goodness should not be rewarded by letting her grow old childless with him. The assertion is clear, the sentiment subject to a variety of interpretation, ranging from the prudential concern to be looked after in old age to the emotional satisfaction of realizing her female destiny by bearing children.

Although the divorces in Dem. xxx appear to have been initiated by the woman's husbands and brother, the verb that is consistently used is *apoleipo* in the passive (4, 8, 25, 26, 29),³⁹ and the noun *apoleipsis* also occurs (15, 17, 31). The effort seems to have been to show that the woman's initiation of divorce was why her dowry could not be recovered.⁴⁰ In any case, no motive on her part is indicated, but the two husbands and the brother appear to have been jointly engaged in a swindle of money and property. These circumstances lend some credence to the possible practice of casual divorce for motives not primarily connected with the marital relationship. On the other hand, the allegation by the speaker that divorce did not actually occur, as evidenced by the fact that the supposedly twice divorced woman was still living with her second husband, suggests that when property and money were at stake, the ease with which a divorce could be had might have been exploited to produce purely *pro forma* divorces, and perhaps reciprocally unconsummated remarriages as well.

Of the two remaining cases of divorce initiated by wives, grounds appear in only one. The other, Is. iii 78, refers to a divorce that according to the speaker did not occur, and no motive for the alleged event is given or suggested. In the case of Alkibiades, recounted in [Andok.] iv 14, the motive of Hipparete, Alkibiades' wife, is explicitly stated as having been a response to her husband's unacceptable behavior in bringing '*hetairai*, slave and free', into their home. The family dwelling was the protected domain of a wife, and to bring into it a disreputable person was a violation of its sanctity.⁴¹ The speaker may be making the point simply to discredit Alkibiades, but it does suggest that a wife had to have serious grounds to terminate her marriage. Indeed even without this explicit testimony to the contrary, one would not have assumed that a woman had the right to divorce without asserting a reason. The very fact of the aggrieved woman's having had to appear before the *archon* indicates that significant cause had to be shown.⁴² It is understandable, therefore, when one comes to evaluate this prerogative of women, to emphasize how difficult it was for a woman to divorce her husband, in contrast to the ease with which he could divorce her.⁴³ Although that is unquestionably true, it is

³⁹ In 18, and twice in 33, in the active.

⁴⁰ Since the divorce was officially inscribed (15), it must have been technically an *apoleipsis*, initiated by the wife. Still, in describing the actions, Demosthenes asserts (17) that it was the men who had the divorce registered, and nowhere is there mention of the wife appearing before the *archon*. One supposes that these confusing details occur because the language of a speaker before an Athenian court was not the precise technical jargon of a lawyer and because the generalities were sufficiently well known so that no confusion resulted. There is, of course, always the possibility of a deliberate effort to befuddle the hearers. Amid a large scholarly literature on dowry, a detailed and balanced account may be found in Harrison 8, 45-60, 297-301, to which may be added the treatment in Schaps (n. 33) Chap. 6, with full bibliography. Divorce provided a real test of the control over dowry. In principle and in law dowry went with the woman, to be administered by whoever was her legal guardian. A divorcee had no place to go but back to her father's family, which would thereby gain control of the dowry. In practice, however, the guardian of a divorced wife might have found it difficult to recover the dowry from her ex-husband, since the breakup of the marriage would strain if not sever the relations between the two families. In the case of divorce instituted by the wife there would almost surely be hostility between the husband and the wife's blood relations, and that could have served to encourage the husband to be defiant about returning the dowry.

⁴¹ For the seriousness of acts envisaged as causing corruption of family and home, see Paoli (n. 11) especially 123, 126, 140-41. The point is powerfully made by Euphiletos in his speech to his wife's lover, Lys. i 26. A slave woman who was part of the household was a different matter, and a husband's trifling with her was a trifle indeed, as indicated in Euphiletos' rather coy reference to his own dalliance with his wife's maid, Lys. i 12.

⁴² Harrison 41 disagrees, but on the basis of the quite inadequate evidence of Dem. xxx.

⁴³ Surprisingly, even this ostensibly unexceptionable assertion has been contested. L. Foxhall, 'Household, gender and property in classical Athens', *CQ* xxxix (1989) 38 finds, with no evidence cited but perhaps following Wolff, that if a woman did not like her husband's management of her dowry 'or anything else he did' she could easily walk out, 'taking her dowry with her'. Although it is possible, even likely, that a wife could walk out without ceremony, there would be no place for her to walk to unless she had persuaded her male kin that her move was justified. The problem of how she was to get hold of the dowry to take with her is discreetly ignored. H.J. Wolff, 'Die Grundlagen des griechischen Eherechts', *Tijdschrift voor rechtsgeschiedenis* (=Rev. d'histoire du droit) (1952)

unremarkable, given the legal disabilities of women. What *is* remarkable is that formal provision was made at all for a woman to take steps to extricate herself from an insupportable marriage. How remarkable can be appreciated by recalling that women had no capacity to undertake legal actions, and that although women could be accused and brought to trial, no woman could defend herself before an Athenian court.⁴⁴ The procedure for divorce seems to have been the unique circumstance in which a woman had not merely the right but the requirement of public action in her own behalf.

We have no evidence upon which to base a description of the details of the procedure, and can only speculate upon such matters as what sort of effort was made to confirm the allegations of the woman, and whether the husband was expected to or had the right to rebut charges against him.⁴⁵ On one point it is possible to have general agreement, that the woman must have been accompanied by a male relative from her own, that is her father's, family. It is simply inconceivable in the setting of Athenian custom and law that a woman participate in a legal action of the sort without the support of a man.⁴⁶ Her solitary appearance before the *archon* would have scandalized the bystanders and, given her normally secluded and protected life, would have been a cruel ordeal for her. More important, her unsupported testimony was worthless in an official proceeding. Since the man who would normally act in her behalf, her *kyrios*, was her husband and in this circumstance her adversary, the reasonable and correct substitute could only have been a member of her original family, under whose guardianship she would again fall once the divorce had taken place. Moreover, in the secluded world of a respectable Athenian wife, the only men to whom she normally had access, and from whom she could expect sympathy and support, were the members of her father's family. Given the need for the woman to be accompanied, indeed represented by male next-of-kin, the potentially complicated hearing becomes clear and probably quite simple, as befits the action of an Athenian magistrate. The critical decision had already been made: her father or brother had accepted her complaint as valid, evidenced by his very appearance in her behalf. The *archon* need only hear his statement and her acquiescence in order to register the divorce. The sole

11 (repr. in *Zur griechische Rechtsgeschichte*, ed. E. Berneker, *Wege der Forschung* xlv [Darmstadt 1968]), perhaps bemused by his effort to show that an Athenian wife was less strictly tied than a Roman *manus*-wife, flatly states that an Athenian wife was free to divorce at will, but he does observe that the actual practice of this right was bound to be restricted by social pressure. E.C. Keuls, *The reign of the phallus* (NY 1985) 101 on the other hand sees the woman's position as very bad indeed: '...the wife's technical right to divorce in case of maltreatment was largely illusory....' because 'her guardian...would normally be loath to have her back to marry off a second time'.

⁴⁴ The only way the direct testimony of a woman (as distinct from simply quoting her, for what that would be worth) could be brought into court was by quoting a formal oath, taken in an appropriate temple before witnesses. This procedure is referred to occasionally in the trial orations, but there is no single instance in which it was actually introduced in the proceedings. In Dem. lv 27 and Is. xii 9 reference is to the offer of such oaths, not to their having been taken. The unique case in which the oath was actually taken—with decisive effect—is referred to, but not introduced in court, in Dem. xxxix 25 and xl 10-11. On the subject of women's testimony in court, see S.C. Humphreys 'Kinship patterns in the Athenian Courts', *GRBS* xxvii (1986) *passim*, esp. 72.

⁴⁵ The following effort at a reconstruction of the rationale and procedure of this type of divorce is entirely conjectural. Others have imagined the generalities and specific details differently; see e.g., C. Mossé, *La femme dans la Grèce antique* (Paris 1983) 54-55, Wolff (n. 43) 11.

⁴⁶ Erdmann 395-96 sees the support of a male relative as crucial. This view is not attested in any source but seems certain anyway. Nevertheless J. Gould, 'Law, custom and myth: aspects of the social position of women in classical Athens', *JHS* c (1980) 44 n. 40 believes on the authority of Plutarch that she 'could not be represented by others'. A question arises to which no one has found an answer and that is the relation of the procedure under examination to that of divorce by peremptory action of the wife's father (*pace* Rosivach, see above, who solves the problem by reducing *aphairesis* to a kakophemism for *apoleipsis*, but one may doubt that the undoubted amateurism of Athenian law was quite that casual). If the residual right of a married woman's family to take her back was an unrestricted right, why not just take her back and not bother with the divorce before the magistrate? Perhaps a desire to make the husband's culpability a matter of public record? Or perhaps the publicity of a divorce before the *archon* made recovery of the dowry easier? Or ...?

potential difficulty could have been the husband's contesting of the divorce. This, in the setting of the *archon's* hearing and in the absence of a formal trial, might have taken the form of a blunt assertion of his rights as *kyrios* of his wife.

For none of this imagined procedure is there documentary evidence, and although it is founded only on probability, one may feel a good deal more confidence in it than in some of the conjectures with which we customarily try to flesh out the skeleton of our knowledge of antiquity. If these speculations are correct, the dramatic incident described in [Andok.] iv 14 (in which the arrogant Alkibiades brought his wife's effort at divorce to a halt by simply carrying her back home) takes on a different coloration from that specified in the source. It is not clear whether a woman seeking divorce, no matter how strong her grounds of complaint, could make good her effort in the face of her husband's determination to retain her.⁴⁷ Thus, although Alkibiades may well have been performing an arrogant and defiant action, he may also have been asserting a genuine right.⁴⁸

What does appear to be entirely clear, despite the absence of explicit assertion, is that the point of the procedure before the *archon*, with its particular feature of a written record of the event,⁴⁹ was the protection of the woman's reputation. A divorced woman was inevitably under suspicion as in some way unworthy. In order to avoid that stigma the woman whose blood relations supported her desire for divorce would have the disinterested public record as confirmation of her blamelessness. The same motivation is undoubtedly to be seen in the cases in which a husband divorced his wife without wishing to impute any fault to her. In all three instances, arrangements were made simultaneously for the divorce and the remarriage of the woman.⁵⁰ The engagement of the husband in the enterprise of immediately marrying off the wife he was divorcing can be understood as comprising a guarantee of her reputation, her qualification to be an acceptable wife to another Athenian.

There is one further procedure and motive for divorce that for the sake of completeness needs to be noticed, that is, divorce initiated by a public agency. The *archon* had the obligation to look out for the welfare of an heiress and the *dikasteries* had the responsibility and power to dispose of her in marriage, but there is no evidence to show how action was initiated. It is reasonable to suppose that as usual in Athenian litigation such cases came before courts or officials only when initiated by individuals.⁵¹ It is therefore probable that the dissolution of an

⁴⁷ Plut. *Alkibiades* 8.5 interprets the episode differently, slightly closer to the conjecture above. Neither the testimony of [Andokides] nor that of Plutarch is altogether reliable. On the less than dependable and perhaps not contemporary text of Pseudo-Andokides, see Maidment 534-39 in the LCL *Andokides* (1941). Cox (n. 7) 381 believes that the husband's right prevailed.

⁴⁸ It is perhaps at this point that the woman's blood relations, if they still wanted the divorce, could resort to *aphairesis*, a power presumably greater than that of the husband's claim, if the argument above, at n.19, is correct; unless, of course, the existence of a child served to nullify the family's power (see n. 26), which may have been the situation in the case of Hipparete's unsuccessful effort. Alkibiades' determination to keep his unwilling wife may perhaps be credited to the fabulous dowry ([Andok.] iv.13-14) he would have had to return had she succeeded in divorcing him.

⁴⁹ Dem. xxx 15: ἡ δ' ἀπόλειψις ἐγράφη, 'the wife-initiated divorce was registered.' MacDowell 48 notes that a central record office in Athens was an innovation of the period 403-399.

⁵⁰ Plut. *Per.* 24.5, Is. ii 8-9, Dem. lvii 41. So also in Dem. xli, the single case of *aphairesis*, the father had a new husband ready, thereby nullifying the possibility of his daughter's return being understood as dismissal by her husband. The situation of a divorcee was somewhat similar to that of a widow of child-bearing age, except that a widow was not as it were automatically under suspicion as somehow unworthy. On widows see the detailed study of V. Hunter, 'The Athenian widow and her kin', *J. Fam. Hist.* xiv (1989) 291-311.

⁵¹ See esp. MacDowell 235-37. It is a commonplace that in general Athenian officials had extremely little initiatory or discretionary power. Divorce for adultery was required by law (above, n. 11), but although some cuckolded husbands may have—for whatever reason—evaded the requirement, there is absolutely no evidence for any public agency ever having taken the initiative to correct such a situation. Even in the hypothetical instance of a husband bringing an adulterer before the Eleven for punishment, Cohen (n. 11) (1991) 116-122 does not suggest that

epikleros' previous marriage would only have come to official notice if it was a matter of dispute. Otherwise it would be settled privately. Support for this negative proposition may be found in Is. x 19, cited above. There an already married woman had become an *epikleros*. The man who could claim her in marriage did not do so, but simply appropriated the estate. When the woman's husband tried to negotiate for the return of the estate to his wife, he was met by the blunt threat that the usurper would hand it over and at the same time get it back by claiming the heiress. The *archon* apparently played no part in the disposition of either the heiress or her estate, and further, the usurper did not indicate that he would take his claim to the *archon* or the courts, but would simply demand the woman, leaving it to her present husband to institute a legal proceeding he was surely bound to lose. The role of public authority was set forth by law, but from this illustration appears to have been activated, as one would expect, only if an interested individual called upon it.⁵²

* * *

Patently nine cases of divorce provide too small a body of evidence to be of statistical value. Yet given the large number of family hostilities that occur in the scores of court cases that have come down to us, the small number of divorces that are mentioned may be in itself significant. Also of interest to observe is that in five of the cases the woman either herself played an active role (Alkibiades' wife and the non-instance in Is. iii) or was the subject of considerate treatment by the husband who was divorcing her (Pericles' wife, Menekles' wife, and the wife in Dem. lvii). In two cases (Dem. lix 51 and 63 and Lys. xiv 28) the woman was divorced for behavior that was entirely unacceptable by Athenian standards, but in none of the divorces is there evidence that the woman was mistreated or carelessly used. Even in Dem. xxx, where the woman was evidently a pawn, the allegations of a hostile witness indicate that she was not being abused. Only in Dem. xli is the wife depicted as entirely passive and perhaps the victim of an arbitrary action—and that by her father, not her husband. In sum, the actual cases of divorce that are available for examination offer no support to the view that divorce by an Athenian husband was a casual or frivolous action, indicative of indifference or worse toward his wife. One should not expect it to have been so. Marriage in Athens joined two families as well as two individuals, and the man who would divorce a wife, even for a dazzling improvement in his circumstances, would need to consider carefully his potential advantage as against the almost certain enmity of the family he was rejecting.⁵³ There may have been numerous divorces in Athens, but the deterrent of family enmity and the general tenor of such evidence as we have suggest the contrary. The most reasonable generalization is that divorce was relatively infrequent and marriage a fundamentally stable institution.

LOUIS COHN-HAFT

Castellina in Chianti
Siena, Italy

this or any other public body would take steps to determine whether the required divorce had in fact occurred. Presumably the mere fact of the public airing of the crime would be sufficient to guarantee the husband's conforming to the law.

⁵² Just as laws themselves were enforced through suits brought by individuals. One needs to remember that Athens maintained no public prosecutor nor any other agency to initiate legal action even in crimes against the state.

⁵³ The requirement that the dowry be returned with a rejected wife may well have contributed as a deterrent to divorce. It is emphasized as primary by MacDowell 88, R. Flacelière, 'Crete and Greece', in P. Grimal (ed.), *Histoire mondiale de la femme* i (Paris 1965) 314, Murray (1936) 136-37 in Vol. iv of the LCL *Demosthenes*. While it no doubt played a part, if one wishes to argue on such purely monetary grounds one must accept that the prospect of greater fortune was a simple arithmetical calculation, but the element of enmity with a closely tied family would need to be balanced against the new tie with a richer but not necessarily more powerful family.