THE FAMILY AND GENDER RELATIONS IN THE SPEECHES OF ISAEUS

Brandon H. Neblett

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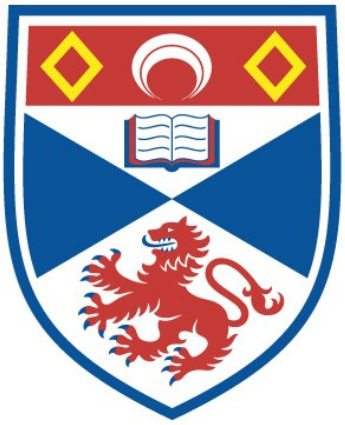

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IN

THE SPEECHES OF ISAEUS

by

Brandon H. Neblett

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PREFACE

This dissertation is a record of the work done by Brandon H. Neblett between 1 July 1998 and 26 August 1999 and has been composed entirely by him. It has not been accepted in any previous application for a degree.

Brandon H. Neblett was admitted as a research student to the Department of Ancient History, University of St. Andrews, St. Andrews, Scotland in September 1997.

Access to this dissertation in the St. Andrews University Library shall be unrestricted.

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Brandon H. Neblett, Candidate — Date

I hereby certify that Brandon H. Neblett has fulfilled the Regulations for the Thesis for M. Phil.

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Dr. M. M. Austin, Supervisor. — Date

ABSTRACT

This dissertation investigates the wealth of information regarding the Classical Athenian family, gender relations, and law found in the inheritance speeches of Isaeus. In examining Isaeus as a *corpus* of evidence, this thesis reveals both general conceptions of the family and the rules and customs that governed the sexual, legal, and economic relations within it. Inherent in its context-based approach to interpretation is a consideration of the Athenian legal system, specifically the forensic arena, and how it influenced disputes over the transmission of property in the *polis*. Isaeus illustrates the legal and economic capabilities of female citizens in fourth century Athens, the use of their sexuality as a weapon in court, the opportunities for and restrictions on exploitation within the citizen family, the role of the *logographos* in attaining and preventing that exploitation, and the simultaneous zeal and ambivalence of the Athenian legal system regarding familial and societal conflict.

TABLE OF CONTENTS

INTRODUCTION

The investigation of the speeches of Isaeus presents an exciting opportunity to the ancient historian. In studying the twelve extant speeches attributed to this fourth century B.C. Athenian *logographos* , the historian bridges three of the most thought-provoking and dynamic fields within Classical studies: the family, gender relations, and the law. Each of these fields has experienced dramatic growth in recent years,[1] and each has generated new approaches to, perspectives on, and interpretations of Athenian society. Yet, each is in a very different stage of development: while the interest in Athenian law is centuries-old, the study of the Athenian family is relatively new, and the field of Classical Athenian gender relations has barely celebrated its fifteenth birthday.[2] Isaeus himself has received substantial reference in recent works in these fields, but only as a source of individual passages, not as a *corpus* of evidence. A detailed investigation of the sibling rivalries, contested adoptions, financial wrangling, and familial mayhem found in Isaeus's speeches not only allows us to merge three exceptionally fertile areas of scholarly investigation with completely different theoretical and developmental identities, but also to more fully examine the work of an individual on whom we heavily rely for our progress in these fields. In answering the question "What can Isaeus tell us about the family and gender relations in fourth century Athens?" this dissertation will reveal the contributions that Isaeus makes to our understanding of the Classical *polis* and the contentious sexual, legal, and economic relations found there.

Isaeus: Life and Works

Who was Isaeus? We know very little of his life, and even these details come from commentators well removed from Isaeus and his time. Isaeus was born in 415 B.C. and began his career, one of exclusive focus on forensic oratory, ca. 380. Dionysius of Halicarnassus wrote that he was "the brilliant artistic resource which makes it the real spring from which the rhetorical

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[1] 1998 alone saw the publication of Cynthia Patterson's *The Family in Greek History*, Cheryl Anne Cox's *Household Interests: Property, Marriage Strategies, and Family Dynamics in Ancient Athens*, and Matthew Christ's *The Litigious Athenian*. See their bibliographies, as well as Todd's (1993).

[2] The study of women in Classical Athens is much older than the study of *gender relations*, by which I mean the study of the relations and relationships between men and women and how society was structured around them. That men and women cannot be studied separately from each other is a central tenet of gender relations, and materialised as a new approach to studying Athenian society in the mid 1980s, following developments in feminist history developed over the previous decade. See Katz (1995) 30-32, 35-36.

power of Demosthenes flows",[3] and his inclusion in [Plutarch]'s and Dionysius of Halicarnassus' accounts of the most famous Attic orators clearly points to his success. Yet, the information we possess about his life is wholly unsatisfactory. Dionysius devoted his treatment of Isaeus almost exclusively to his effectiveness as an orator, claiming that information about his birth and death, the kind of life he led, and his political opinions simply was not available. His ethnic origin is contested: some ancient sources, including Hermippus, claimed that Isaeus was of Athenian birth,[4] while [Plutarch] claimed that Isaeus hailed from Chalcis.[5] The accepted view today is that he, like his predecessor Lysias, was a metic, a foreign resident without the rights of citizenship. Isaeus studied in Athens under Isocrates as a young man and gained an enduring reputation for being the teacher of Demosthenes, possibly writing the speeches that his more famous pupil used against his guardians successfully in court.[6] According to [Plutarch], Isaeus wrote sixty-four speeches, fifty of which were genuine.[7] Today we possess a dozen, and their genuineness cannot be ascertained.

Isaeus was a forceful and effective speech-writer, and it was these qualities that made his reputation. [Plutarch] commented that "he was the first to give artistic form to his speeches and turn his attention to the urbane style of the orator".[8] He was praised for his clear, precise language, his technical skill, and his attention to detail.[9] Upon first reading, his speeches seem quite convincing, but the superficial strength of many of his arguments can be exposed through a more thorough analysis. Insinuation, subtle and outright defamation, contrived analysis, and the use of rhetorical questions and probability play important roles in his arguments. He repeats points and questions to shroud the weakness of an argument and emphasises the significance of only partially applicable laws. Dionysius portrays him as a writer of masterful abilities whose cleverness with the pen made him and his motives suspect: he had "a reputation among his contemporaries for chicanery and deception", he was the target of accusations of devising speeches for the worse cause, and he used stratagems to out-marshal the jury.[10] Pytheas, in a deliberate insult, accused Demosthenes of digesting the

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[3]Dion. Hali. *Isaios Athenaios* 3.
[4]ibid.. 1.
[5][Plu.] *Lives of the Ten Orators* 839E, 844B.
[6]ibid.. 839 F, 844B; Dion. Hali. *Isaios Athenaios* 1.
[7][Plu.] *Lives of the Ten Orators* 839F.
[8]ibid.
[9]Dion. Hali. *Isaios Athenaios* 3.
[10]ibid 3-4.

whole of Isaeus, rhetorical technique and all.[11] Apparently, the forceful effectiveness of his speeches and his success with his craft was somewhat counterproductive, casting a cloud of suspicion over his words and actions.

Yet, in the eyes of first century scholars, Isaeus was a significant figure.. Isaeus was included in the "Canon of Attic Orators", most likely the work of Dionysius' contemporary, Caecilius of Calacte,[12] and Dionysius himself viewed Isaeus as the link between Lysias, the master of early Attic oratory, and Demosthenes, the greatest of Athenian orators. Lysias (459-380 B.C.), whose forensic career spanned the last twenty- three years of his life, wrote two hundred speeches to be presented in court. A famed and prosperous shield-manufacturer who moved in the best intellectual circles in Athens, Lysias was not a citizen, and could not deliver any of the speeches he wrote. He took up the pen after returning from a forced exile under the reign of the Thirty Tyrants. A writer of moderation, simplicity, and precision, Lysias relied more on smoothness and regularity of structure than did Isaeus, and the personalities he developed in his speeches were more multi-dimensional. Lysias penned speeches for cases ranging from embezzlement and profiteering to murder and sacrilege.

Demosthenes (384-322 B.C.) was an even more versatile speech-writer. He wrote political orations as well as law-court speeches, and, as a citizen, was more heavily and directly invested in the city's political affairs. He is best known for his *Philippics* attacking Philip of Macedon, but he wrote and delivered speeches for legal cases on inheritance and guardianship, embezzlement and forgery, and homicide and assault. Demosthenes' greatest gifts were his sincerity and solemnity, and while moderate in his use of language, he was a master at conveying the import (or perceived import) of the matter at hand.

Dionysius's view of Isaeus as a central link in Attic oratory is an accurate one, on stylistic grounds as well as more fundamental historical grounds. Lysias, Isaeus, and Demosthenes are central *corpora* of evidence for any investigation of Classical Athenian law, courts, and families, but it is Isaeus, the expert in inheritance law, who provides us with the most diverse,

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[11]ibid.

[12]Worthington (1994) examines the possible origins of the "Canon" and concludes that Caecilius was its author. There were many more orators active in Athens than those whose speeches we possess. Worthington notes the destructive effect that the compilation of the "Canon" had on the survival of the works of orators not included in it. As with Lysisas, Demosthenes, and the other orators who have survived, Isaeus is represented by only a mere fraction of his complete work. We possess forty-one fragments in addition to his twelve speeches.

and therefore, advantageous, insight into family-oriented disputes and how the laws pertaining to them could be utilised effectively. As a source for the junction of the family, law, and courts in Athens, he is unparalleled. We cannot judge his versatility as a speech-writer, as we have only the twelve inheritance-related speeches,[13] and not the many others he scribed over the course of his career; a full assessment of Isaeus is impossible. That, however, is incidental to our task of evaluating the family and gender relations through his speeches. What we need for this undertaking, we possess.

Isaeus is neither an entertaining nor particularly engaging writer, although we cannot be sure that Isaeus did not coach his clients in delivery to achieve a more entertaining or engaging effect in court. What is most stimulating about his speeches is what they tell us about the relations among and between citizen men and women of his time, and it is this information -- societal expectations of a thirty-year old woman, the exploitation of a ward by a guardian, brothers disputing an inheritance, the rules governing an heiress, the tangible benefits of marriage --that is most valuable.

Approaching Isaeus

Isaeus is known to most ancient historians today either through the massive commentary on him by William Wyse or through the many references to him in recent works on Athenian oratory, the family, and gender relations. Wyse's monumental work, published in 1904, incorporated both edited text and detailed commentary, making it the most full-fledged treatment of Isaeus in English. Notable for its persistent criticism of rhetorical technique, it represents a high-water mark in the modern suspicion of ancient texts as trustworthy sources. This reflected Wyse's focus on Isaeus as a speech-writer and manipulator of law, although there are points of social history in the speeches that receive substantial consideration in his work.. Thorough, detailed, and well-referenced, it is also dense and difficult to read, but is nonetheless an indispensable tool for work on our *logographos.* More recently, Richard Wevers published a short volume on the chronology,

[13]Todd's (1990b) 165, n.28 176 examination of the questions of survival raises the related question of why we possess the twelve speeches of Isaeus we possess. Why these speeches and not others? In Isaeus' case, that all of the speeches of his we have are inheritance-related suggests that they were considered his most significant works from an early age, stylistically, historically, or both. Todd's emphasis on the stylistic concerns of the "edifying" Alexandrian schoolmasters, who preserved much of the Attic Orators, explains the lack of additional information about outcome, context, and identities that has traditionally accompanied texts of more historical interest. His reasoning would suggest primarily stylistic reasons for the survival of Isaeus' twelve speeches; I do not think their topical consistency, however, is merely coincidental .

prosopography, and social history of Isaeus (1969). Any investigation of Isaeus must begin with these two works. With the exception of W.A. Goligher and W.S. Maguiness's *Index To The Speeches of Isaeus*, originally published in parts in *Hermathena*, there have been no other books devoted solely to this orator in English. There remains one unpublished doctoral dissertation and barely a handful of articles.[14]

On the other hand, the recent interest in Athenian family, forensic oratory, and gender relations has made extensive use of Isaeus as a source. He is integral to discussions in Schapps (1979), Just (1989), and Sealey (1990), and Todd (1993), Scafuro (1994), and Cox (1998) have made ample use of him. Because the use of isolated passages from law court speeches has formed a fundamental part of these approaches,[15] we only gets bits and pieces of Isaeus in them, and often without reference to or consideration of significant forensic or inheritance-related points of the cases in which they are found. Taking evidence from a law court speech, particularly an inheritance speech, at face value is a mistake, and while the works mentioned above have for the most part treated Isaeus and the orators with due respect,[16] I believe that a much greater understanding of Isaeus, and the Athenian family, gender relations, and law can be made when we carefully examine the context of a case in which a pertinent passage is found. Representation of a family and of gender relations are always dependent on the arena in which they are presented; that representations found in Isaeus were presented in court for the specific purpose of winning a legal case means that we must be especially careful with them.

My approach will therefore be a context-based approach, founded in the belief that considerations of the court *ethos*, the jury, and perceived social norms must inform every interpretation. How are interactions between citizen men and women represented in Isaeus' speeches? What do those interactions tell us about society? About Athenian families and "the family"? What don't they tell us? How can a law court speech obscure or misrepresent an interaction? These are the questions I am seeking to answer. I will focus on

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[14]Lawless (1989); Dorjahn and Fairchild (1972), Thompson (1976), and Isager (1981-2).

[15]Specifically Schapps, Sealey, and, to a lesser degree, Just.

[16]Schapps (1979) is the exception. With Isaeus, as with much of his evidence, his stricture-dominated approach results in dangerously misleading conclusions about the reality of women's economic transactions in Athens. His consideration (48) of the "one medimnus law" (Is. 10.10) is a case in point: although he sums up the context of the passage well, he attempts to bring this problematic law into line with other Athenian and Greek laws without recognising that this particular law was incidental to the argument being made in the case in which it is found. Legal stricture represented in law must be fully analysed before given validity as an indicator of social norm or reality.

the *relations*, and where possible, the *relationships* between citizens in the speeches, elucidating both how they influenced the case in question and how they could have been strategically misrepresented.

It is necessary to examine what we know of Isaeus and the Athens in which he lived and worked before we evaluate the relations and relationships represented in his speeches. We must have an adequate background for interpretation. The first chapter of this dissertation will examine the wider legal and historical context in which Isaeus wrote his speeches, using his own words to inform us on historical as well as methodological grounds. Isaeus' comments about the legal system and the society in which he worked help to reveal the advantages and disadvantages of the family, gender relations, and the law as paradigms for reconstructing Athenian society. Chapter Two will examine two general conceptions of the family presented and used as evidence in speech 1 and speech 8: this will give us a broad legal and social foundation from which to launch into the more specific thematic investigations of the three chapters that follow. Sexual relations, focusing on the interconnections between citizenship, legitimacy, and citizen women, will be the focus of the third chapter and will be followed by two chapters on legal and economic relations. The Conclusion will draw the central points of the four chapters together to demonstrate how Isaeus's speeches contribute to gaining a better understanding of fourth-century Athenian life.

Chapter One

ISAEUS, THE LAW, AND ATHENIAN SOCIETY

An accurate interpretation of Isaeus's speeches requires an awareness of the context in which the speeches were written and delivered. What is the historical, social, and legal background against which Isaeus stands? What considerations must be made when drawing conclusions about the family and gender relations from his work? This chapter will answer these two questions, using selected passages from his speeches to initiate examinations of interpretative and methodological concerns.

A careful reading of Isaeus's speeches will alert one to the problems and limitations involved in using forensic oratory as evidence for investigating the family and gender relations in Classical Athens; Isaeus gives us most of what we need to acquire a sound awareness of the pitfalls involved. The appropriate historical information necessary to put us on solid hermeneutic ground will be added. We will begin with what Isaeus tells us about the Athenian legal system in general, and will then move on to the specifics of the forensic, familial, and gender contexts. I will conclude by outlining my methodological approach and how it attempts to handle these issues.

Isaeus: His Clients, Court, and Cases

Isaeus' clients were the social and economic elite of Athens: large fortunes were at stake in the cases for which he wrote. Isaeus states this specifically in 3.65 and 4.24, and although we get little direct evidence of the size of the estates in those speeches, the contention is amply justified in the others. Most notable are the descriptions of wealth in speeches 5, 6, 8, and 11. Euctemon, the deceased father of speech 6, had an estate worth in excess of three talents, the components of which included a tenement house/brothel, a 74-minae farm, a 30000-drachmae bath-house, goats and a goatherd worth thirteen minae, an eight-minae and a 550-drachmae pair of mules, and a handful of slave craftsmen (6.23, 33-34). The individual *oikoi* of speech 11 were even wealthier. Theophon left his adopted daughter property worth two talents, 60 sheep, 100 goats, furniture, a fine cavalry horse, and other goods and chattels (11.41-42), and the combined worth of his property and that of his son was over eight talents (11.45). Stratocles was worth more than 5 talents, receiving an annual income of twenty minae in

interest on loans and keeping 900 drachmae at home (11.42-43). The speaker possessed Hagnias's two-talent property, an additional 8000-drachmae piece of property, and a 2000-drachmae house in Athens (11.44-45), and Macartatus purchased and outfitted a trireme with the proceeds from the sale of his land (11. 48).

The father of speech 8 gave his daughter in marriage with a twenty-five-minae dowry plus clothes and gold, received her back without demanding restitution, and gave her away in a second marriage with a second dowry of 1000 drachmae (8.8). Ciron possessed a one-talent estate at Phyla, a 2000-drachmae city house and a thirteen-minae city house, and slaves and fittings worth an additional thirteen minae. He also received interest on loans (8.35). Part of Dicaeogenes II's property brought in an annual income of 80 minae (5.11, 35), and included two small buildings outside of the city walls and sixty plethra of land on the Plain, as well as a bath-house (5.22-24). Pyrrhus's estate in speech 3 was said to be worth three talents (3.49), and the fortune of Xenaetetus in speech 10 was valued at more than four talents (10.23). In speech 2, a sister took a twenty-minae dowry as well as garments and jewellery with her to Menecles, whose ward's land later sold for seventy minae (2.5).

These were clearly Athenian citizens of great wealth; they were also Athenian citizens of great standing. Isaeus' entreaties to the juries in the conclusions of his speeches underscore the importance of these families' financial commitment to the state and the plaudits that had come from such esteemed service. Euctemon and Philoctemon undertook the most costly public offices in Athens (6.38), and did so at no significant loss to the value of their holdings; one of Euctemon's other sons was trierarch seven times, and his grandson Chaerestratus was a trierarch at a young age as well as *choregus* and gymnasiarch (6.60). Both of them were among the Three Hundred, the richest class of citizens. Apollodorus was a trierarch, paid taxes as a knight, and contributed money when the state required it, supporting even a group of choir boys (7.35). Menexenus I spent three talents on dedications for the Acropolis (5.41) and died, a general, in battle (5.42), following the example set by his family of extensive military, religious, and civic service (5.41-43). There are numerous other examples.[1] While these figures could easily have been exaggerated, the point is

[1]See Wevers (1969) 63-68, esp. Table 10, "Instances of political and religious activity per family of Isaeus".

clear: these men were of considerable-- in most cases, the most considerable-- means.[2]

The size of such estates and the influence of the citizens fighting for them generated a bitterness and vindictiveness in the disputes relating to their ownership. Isaeus leaves us in no doubt about the nature of the Athenian courtroom: it was a nasty place, the inheritance battles waged there infused with vitriol, avarice, and the perversion of truth. Isaeus bluntly states that lawsuits abounded in Athens (8.4), that litigants often fabricated stories and gave false witness in court proceedings (8.4), and that perjury was a regular phenomenon (4.22). He notes that inheritance trials specifically involved despising the laws, insulting relatives, and contriving fictions (4.11), remarks time and again on the avarice, effrontery, and falsehood of his opposition (e.g. 6.30; 8.2, 3, 43; 10.1; 11.47), rails at the insanity of an opponent (2.40), and calls his opponents quarrel-loving busybodies (4.30). Legal action, especially when directed against kin, was a disgrace (1.1, 3.73), but relatives were betrayed in the interest of money (9.25), most notably, by one who hawked a forged will to the highest bidder (9.22-25) . Isaeus cites six individuals who "swooped down upon" the estate of a man who had just died, using all sorts of fabrications to assert their claims (4.8-10) and noted that this was a regular occurrence when an Athenian citizen died abroad (4.7-10, 21). As anyone could lay claim to an estate without penalty (4.11), the first stages of an inheritance adjudication could be something of a legal circus, undoubtedly one reason why the Athenian courtroom was such an offensive place that the mark of a discreet upbringing was never to have entered it as a child (1.1).

The variety of cases found in Isaeus speaks to the complexity of the legal system in which these individuals and families waged financial war on each other. Isaeus' third, fifth, and sixth speeches are perjury cases, initiated to convict witnesses of giving false testimony in previous trials, and speeches 3 and 5 make reference to three previous successful perjury trials (3.3; 5.12, 17). There is a surety case (5), one for the maltreatment of a ward (11), five that dispute the validity of a will or an adoption (1, 4, 7, 9, and 10) and two others in which adoption plays an important role (5, 6). Legitimacy plays a central role in speeches 3, 6, 8, and 12 and a more minor role in 2, either as an accusation hurled at the opponent or in response to such an accusation. Isaeus' final speech, the

[2]See Cox (1998) 3-37 and Davies (1971) for more detailed examinations of individual and familial wealth and social and political connections.

only one not specifically delivered in an inheritance case, was written to defend a man who had been expelled from his deme and therefore had serious implications for his right to inherit.

Time played an important role in these disputes. Often these cases dragged on for years, were part of disputes perpetuated through generations, or were brought long after the individual whose estate was in question had died. The challenge to an adoption in speech 1 took place twenty-three years after the fact, only upon the death of the adoptive father, and in speech 5, a new will was introduced twelve years after the original will had been accepted by the court. This case was part of a twenty-two year battle of contested wills, including ten years of contests that followed the introduction of the second will; it was the fifth formal legal action to be undertaken to settle the estate in question. It is highly likely that there was at least an eight-year delay for the lodging of a protestation in speech 10, and even more likely that it was between ten and fifteen years. The maltreatment case in speech 11 followed two challenges to the same will and a similar case for maltreatment; it has been suggested that Isaeus' case was brought thirty-five years after the death of Hagnias II, bequeather of the estate in question.[3] While this is arguable, it underscores the substantial duration of time involved in initiating and resolving inheritance disputes in court. As many, if not most, of these cases would have involved private or public arbitration before advancing to court,[4] the duration of the actual conflict may have been even longer.

This preliminary glimpse into the Athenian legal system, its courtroom, and the people who fought legal cases in it compels us to confront some important methodological issues. First, it is clear that the forensic arena is fraught with danger as a source for "the truth" in Athenian society: Isaeus' own unabashed comments on his legal system demonstrate that little in court was trusted by the Athenians themselves. Perjury, forgery, lies and falsehood suffused the Athenian forensic arena, and Isaeus' commentary on these prove to be the best evidence for suspecting his own words. As we shall see, Isaeus himself contributed significantly to the fog of misrepresentation and manipulation found in the Athenian *dikasteria*. Second, we are given access here only to the most privileged of Athenian families, not those that would have made up the vast majority of its citizen population, much less its total population.

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[3]Forster (1983) 386-387.

[4]We know that speeches 2, 5, and 12 followed arbitration (2.29-31; 5.21-33; 12.11).

These are wealthy, powerful, influence-peddling folk, and we are seeing them at an exceptional time, when they have experienced a significant loss and their family is relatively weak and vulnerable to exploitation. We do not get a view of "normal", everyday families. As representations of quotidian reality, these speeches make poor evidence.[5]

They are, however, valuable, and the four chapters that follow will detail more specifically what they can contribute to our understanding of Athenian society. Before we progress to them, we require a more detailed analysis of the forensic, familial, and gender issues with which we will deal throughout our investigation.

The Forensic Context: Background on Athenian Law

What elements of forensic dispute were important in a fourth century Athenian law court? How should these influence our investigation?

The Athenian court[6] was one that valued written law and believed in its power as an agent of behaviour modification. That the references to ὁ νόμος or οἱ νόμοι are most often found in the context of bestowing a right to do something (typically, with the verbs δίδωμι, κελεύω, or in the form κατὰ τούς νόμους)[7], that this right was given by the laws specifically (with αὔτος or διαρρήδην)[8], and that there are numerous examples of the laws forbidding or not allowing a certain action[9] demonstrates the value placed on them as justifiers or modifiers of behaviour. The laws were frequently read aloud in court,[10] and being able to cite a law that supported an assertion was important to presenting a solid case: Isaeus challenges his opponent in three places to name the law that prohibits the

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[5]But, perhaps, better than we might imagine. While we can say that the vast majority of citizen families would never have been confronted with the kinds of financial situations we have at hand in Isaeus, many, if not all, would have dealt with similar issues related to inheritance. We can argue that the forensic evils upon which Isaeus was so eager to expound stem from a love of money cultivated within wealthy circles; we can also argue that, in a land of widespread poverty, the desire for financial gain would have been equal or even greater among the poor(er). If the lower classes--though I use this term with caution--aspired to the mores of the wealthy, these forensic characteristics and the principles upon which the arguments in Isaeus were based may be more representative than we think.

[6]See MacDowell (1978) 34-45, 240-252.

[7]E.g. 1.46, 3.58, 4.14, 6.28, 9.23, 10.13.

[8]E.g. 2.16-17, 3.35, 6.63, 8.1, 10.15, 11.11.

[9]E.g. 4.16,;6.44,; 9.2, 13, 33; 10.10.

[10]2.16-17; 3.38,42, 53; 7.21-22; 8.34; 11.1, 4, 11.

action he claimed was prohibited.[11] That the law itself dictated the mandate of a public official gave it additional gravity.[12]

Written law was a highly valued legal and forensic tool; other forms of documentation were valued as well. Depositions are found in the majority of Isaeus' speeches,[13] and there are three examples of affidavits,[14] as well as references to an inventory of wealth (5.3), the inscription of the names of wards and their guardians before the archon (6.36), the phratry register (7.16-17, 27-28), a surety document (5.25), and the wills found in five of Isaeus' speeches. Yet, that the Athenian court utilised written documents in its resolution of disputes does not mean that such use was without its problems. Isaeus details very clearly the obstacles involved in attempting to use such documents in 5.25-26. In that case, a document had been drawn up before a tribunal at which Leochares had allegedly agreed to act as surety for the estate of a friend; Leochares later denied that he had ever agreed to such a position and pointed to the lack of a specific statement to that effect in the document. The speaker thus had to excuse the incompleteness of the document, saying that he was hurried when it was drawn up. He goes on to accuse his opponents of making use of implications in the document that were to their advantage while demanding that what was contrary to their interests be explicitly affirmed in writing. The passage raises three important points: first, that writing, witnesses, and oral agreements were often used in conjunction with each other and that each could be used to ensure separate aspects of an agreement; second, that there could be an argument in court over written and implied parts of a document; and third, that parties could refuse to execute either.

The suspicion and vulnerability that tainted written agreements in the forensic arena had an historical context: the use of writing in Athens, especially as a form of evidence or proof in court, was relatively new. The years 410-403, approximately 30 years before Isaeus began practising, represented a critical period in the development of the Athenian legal system as it was during these years that Athenians embraced systematic documentation as a significant legal tool. The appointment in 410 of *anagrapheis* to collect, organise, and inscribe the hundreds of decrees and laws scattered throughout the city[15] and the systematic

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[11] 10.14,;11.5, 34.
[12] 7.30.
[13] E.g. 2.16, 3.12, 5.2, 6.26, 7.17, 8.13, 9.6, 11.11.
[14] 3.6; 5.1, 5.
[15] See Harrison (1968) 26-34 , MacDowell (1978) 47-49, and Lys 30.2.

annual review of and supplementation to the *corpus* of laws initiated under a group of *nomothetai* in 403[16] signalled the development of a new legal consciousness. From 403 onwards, the validity of a law was wholly dependent on its inscription, and the old Bouleterion, renamed the Metroon, became the home of papyrus copies of all the laws, making it the first building in Athens devoted to the storage of documents.[17] The inscription of the official sacrificial calendar in the Stoa Basileus, just behind the inscriptions of the laws, followed in the same year,[18] and writing soon established itself in the courts as well. Isocrates' Trapeziticus speech (390s) is the first evidence of a written contract in Athens,[19] and the deposition in Isaeus 5.2 (ca. 389) is our first evidence of a written testimony.

Writing, and specifically, systematic legal documentation, made awareness, accessibility, and application of the law easier and more widespread, but acceptance of it was slow and grudging. Well after Isaeus had finished his speeches, Aristotle could still comment on the fallibility of written law.[20] While the methodological, access-oriented publication and preservation of legal documents generated greater legal clarity, those documents could still be effectively challenged when they were opposed to one's interests.

There were other important elements of forensic dispute to consider. Isaeus again tips us off, in three separate passages. In 8.30, he progresses to making his point by legal stricture only after insisting that his point is clear to everyone on its own: "It is clearly evident that..." he states. Such a statement, and the later insistence that it was "universally acknowledged" and "incontrovertible", presupposes an extra-strictural principle that the jury valued in its own right. A few lines later, in 8.39, Isaeus mentions consulting an ἐξηγητής, or interpreter of divine law, regarding funeral expenses and offerings. Both signal the importance of specifically non-strictural, and more generally, non-"legal", codes and principles; the former example accentuates the value of some kind of customary law or convention while the latter example accentuates the value of religious or "divine" law. Both were beyond the narrower realm of written stricture, and both were valued enough to be utilised in court.

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[16]And. 1.81-85, Aesch. 3.38, Dem. 24.18; MacDowell (1975).
[17]Dem. 19.129, Aesch. 3.187.
[18]Lys. 30.17-21.
[19]Isoc. 17.19-20.
[20]See Carey (1996), esp. 34-38, on Athenian criticisms of written law.

The third passage is of special significance. In 6.59, Isaeus criticises his opponent for "ranting in a loud voice", and in so doing, raises the issue of orality in the courtroom. Athens may have been a society that valued writing and written law, but it was still primarily an oral culture. In every aspect of society, it was the spoken word that reigned, the spoken word with which people were most familiar and comfortable. Life revolved around oral language and the body language that accompanied it, and consequently, Athens was a culture, especially for men, of public performance. In a society where prestige was of the highest import to individual citizens, a good performance, especially in a contest, was how a man was measured. Verbal duels and contests were an integral part of the public debate that the democracy fostered, and participation in a political audience was an accepted part of citizenship. Rhetoric was the leading area of education, and speaking on one's feet was a skill held in the highest regard.[21]

The Athenians took this value system with them when they entered the court room. Oral considerations were essential to the preparation and presentation of a case in what had originally been a wholly oral arena. We must not allow our own experience within a document-laden society and the particularly text-driven discipline of ancient history cloud our ability to perceive the full reality of the Athenian law court in which Isaeus practised. The speeches with which we will deal represent only one aspect of the presentation of cases which Isaeus helped to orchestrate, and as such, can only reveal so much about those cases. As Rosalind Thomas has written: "It is surely only our modern confidence in and obsession with the written text which sees documents as entirely self-sufficient."[22]

What were the specifically oral components of a strategy Isaeus and his client might pursue in court?[23] Success in court depended on maximising the effect of the words in a speech through vocal and bodily delivery. To jurors accustomed to regular attendance at the theatre and haggling in the *agora*, intonation, tempo, and stress would be very important. How a sentence was spoken could add emphasis to a particular word or point essential to the success of the case. Body language would contribute to the effect: gestures, facial expressions, and deportment could also add emphasis or communicate subtle

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[21]Alcidamas, *On the Sophists* 9.
[22]Thomas (1992) 76. The conceptual change Athenians struggled with in admitting a grudging acceptance to written evidence in the courts is a mirror image of our own recent struggle to recognise and value the significance of orality in the society and law courts of Classical Athens.
[23]See Hall (1995).

non-verbal communication, especially mocking or jesting one's adversary. Spontaneity, the use of wit and humour, and improvisation[24] were skills that could prove valuable in winning over a jury that, far from being silent, could become, and probably anticipated becoming, actively involved in the trial. Inciting the jury to whistling, hand-clapping, and heel-drumming and orchestrating a partiality in the jurors' mind could work to the litigant's advantage.[25] Entertainment via words and action was thus a central part of the trial--each court accommodated several hundred spectators who came to view the proceedings solely for their entertainment value--and litigants knew that the reward for catering to the jury's desire for active involvement could be a favourable verdict.

The degree to which Isaeus was a delivery coach in addition to a mere *logographos* we do not know,[26] but his success mandates that he was aware of how to manipulate a jury, and we can be confident that this extended beyond the literary argument of the case. The written speeches may have been intended more as a guide or model than as a verbatim recitation, and the litigant's copy may have been supplemented with notes and marginalia regarding delivery. The necessity of spontaneity and adaptation and the likelihood of considerable editing means that it is almost certain that, in each case, we do not possess the speeches that Isaeus' clients delivered in court. The crucial elements of each case may therefore be inaccessible to us. As our assumptions regarding the merits of the speech are based solely on their literary content, we chance substantial misinterpretation.

The design of the court and the proceedings of the trial reflect the oral nature of the legal arena. The court itself was an open area with rows of benches for the jury, a bar of some sort demarcating the witness stand, and, presumably, two benches for the opposing parties of the case. Around this space was room for the spectators who came to view the legal proceedings out of interest or pleasure. There was no judge or judge's bench, as only a magistrate, whose duty it was to open and close the trial, presided. He would appoint one juror to supervise the

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[24]Dorjahn and Fairchild (1972) have revealed Isaeus' attempts to create "an atmosphere of impromptu-speaking" through the deliberate inclusion of parenthetical remarks and references to the opponent's speech, the jury, and time in his speeches. Noteworthy is their point that Isaeus was the student of Isocrates, a champion of the written speech whose approach opposed the use of improvisation advocated by Alcidamus. It appears that Alcidamus' approach prevailed.

[25]See Bers (1985) 1-15, and Hall (1995) 43-45

[26]See Dover (1968) 150-160 on the possible collaboration between *logographos* and client and Usher (1971) 147-50 on the refutation of this point.

water-clock which regulated the time litigants could spend delivering their speeches and four jurors to supervise the voting procedure at the end. Upon entering the court, each juror was issued bronze tokens, one solid and one hollow, with which he would cast his vote at the end of the case. There were at least 300 jurors, and substantially more in many cases: Isaeus mentions 500 in *On The Estate of Dicaeogenes* (5.20). In a criminal trial, the juror would deposit one token, solid for guilty or hollow for innocent, into an urn, which would then have all of its contents counted, and the verdict would thus be decided numerically. How exactly the voting with tokens was accomplished in inheritance trials is unclear.

The trial itself was straightforward. The court clerk read the charge, the litigants gave their speeches, and the jury's vote immediately followed. Although there may have been murmurs and whispers among the jurors waiting in line to cast their tokens, there was no formal discussion or debate of any kind. The jury received no instructions or directions from the magistrate at any point in the course of the trial. Witnesses (or the depositions they provided) could be called upon in the speeches, but only to verify or assent to what a litigant had already said; there was only the most limited cross-examination and no rule regulated the relevance of evidence utilised in a case. Consequently, who was giving evidence or asserting the veracity of a claim as a witness was often more important than what the particular evidence was. It was the responsibility of the litigant or his *logographos* to find and utilise any law that was applicable (or seemingly applicable) in the case.

Every case that made it to trial had first been through arbitration, the purpose of which was to attempt a reconciliation between the contestants in the case. If reconciliation was not possible and the judgement handed down by the arbiters was not accepted, the case went to trial, and the decision of the jury was final. There was no further appeal. Since compromise had proven untenable in arbitration, the only option left to settling the dispute was to vote for one of the two sides and create a binding decision. Inheritance cases fell under the auspices of the *archon*, and a notice of each arbitration and trial regarding the adjudication of an estate was publicly posted in the *agora* or the Assembly.

The Athenian Concept of Justice

We have examined several influential aspects of an Athenian trial; what we must do now is examine the jury as the target of this influence and the arbiter

of justice, and come to a conclusion regarding how its two dimensions did or did not meet. What was the Athenian jury and their concept of justice, and how did this apply to cases in which families and family values were concerned?

The Athenian jury was exclusively male and its jurors received three obols a day for their service. The jury consisted mostly of peasant-farmers, the great bulk of the Athenian citizen population, for whom the opportunity to receive cash in hand made jury duty an appealing and financially rewarding prospect.[27] The connection between economic and judicial power did not end there, however. The consistent emphases on wealth and poverty and the good (civic) use of wealth in Isaeus' speeches supports the thesis that there was a significant decline in the political power of the poor in fourth century Athens.[28] Although this thesis is difficult to assess, Isaeus' calls for pity for the poor(er) litigants suggests a real concern with economic disparity, and a potential bias of at least some of the jurors to the party with lesser means. An historical sense of social and economic justice had informed court decisions ever since Solon had set down his laws to protect the weak and poor from exploitation and to prevent "socially indefensible concentrations of landed property" [29]. While the Athens of Isaeus possessed a stability that had been lacking in the days of the revered lawgiver, the poor may have attempted to combat a perceived decline in their power by condemning the rich(er) party in court. The concern for justice in tangible economic terms and any bias resulting from a decline in political power would have been manifested in an inheritance trial, in which financial concerns were central.

The jurors' own inheritance interests, pity, and the characters of the litigants were important factors in the jury's decision as well.[30] The jury was, however, specifically compelled to consider justice and the laws in coming to a verdict. Each juror took solemn oaths to that effect, and these were reinforced by references to them by the *logographoi*. Isaeus makes such reminders in all but two of his speeches, and they give us a clear idea of the loftier influences to which the

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[27]See Todd (1990a) 160, 168-169 on the appeal of three obols a day for those making their living outside of the cash economy and the peasant-farmer values of the court as a whole. Dover (1974) 113-114 hypothesises an exaggeration of the importance of farming and farming values in the sources, and argues 34-35 for a "fairly prosperous" juror or a poorer juror with pretenses to the "fairly prosperous" juror's values.

[28]Todd (1990a) 149-150.

[29]Todd and Millett (1990) 10.

[30]"Your own interest": 1.40, 44; characters of opponents (stated specifically): 4.27; pity: 2.44; 5.35; 9.35, 37; 11.38.

jury was subject and which the litigant could claim benefited him. Isaeus commands the jury to give their verdicts according to justice (τὰ δίκαια), the laws (οἱ νόμοι), and the oaths (οἱ ὅρκοι) in four speeches,[31] the laws and justice in two,[32] justice alone in four,[33] justice and the oaths in one,[34] and "what happened" in one.[35] In 9.35, Isaeus claims that justice alone should influence the jury; the jurors should be intent upon nothing else. The actual oath that the jurors swore is unclear, but an attempted reformulation has recently been made, and there is solid evidence to show that the jurors were instructed to "use their best judgement" when the laws themselves did not make clear the right decision.[36]

Justice, however, could easily be confused or made ambiguous, and in many inheritance trials there was no necessarily "right" or "just" decision, merely a decision in favour of one party.[37] The adversarial legal system that developed in Athens made possible the profession of *logographos*, and this in turn created a client-centred approach to the law that valued victory over justice. Persuasion or the infliction of maximum damage on the τιμή of an opponent took precedence over the consistent use of principles and stricture in the forensic arena. There was no duty or commitment to presenting cases consistent with either custom or written law on behalf of the *logographos*: it was up to the jury to take these things into consideration. As a master rhetorician, Isaeus was a skilled manipulator of the law, custom, and the legal system. He chastises opponents for rhetorical conventions he himself utilised and he used strategies in one speech that he roundly condemned in others. Later chapters will expose his clever plots to win over a jury. What is important to note here is that as valued as written law and custom were as vehicles for the attainment of justice in Athens, rhetoric,

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[31] 2.47, 4.31, 6.65, 8.46.
[32] 1.26, 9.35.
[33] 1.49-50, 4.23, 7.45, 9.35.
[34] 11.18.
[35] 8.4, 12.
[36] Scafuro (1997) 50 quotes J. F. Cronin's translation of M. Fraenkel's reformulation of the oath taken annually by jurors on the Adrettos: "I shall vote according to the laws and the decrees of the Athenian people and the Council of the Five Hundred, but concerning things about which there are no laws, I shall decide to the best of my judgment, neither with favour nor enmity". The fullest citation in the sources is Dem. 24. 149-151; the latter part of the reformulation quoted above comes from Dem. 20.118, 23.96, and 39.40. See also Arist. *Rhet.* 1.1374a26-b23 on awareness of "justice that goes beyond the written law".
[37] Consider Todd (1990 b) 172: "an Athenian trial is an adversarial and not an inquisitive procedure: the jury are not there to find out the truth, but to decide which of two theses they find preferable".

persuasion, and personal gain were also valued, and nowhere does this reveal itself more clearly than in the courts.

Isaeus's law court was governed by a different *ethos* than the law court of today. The oral nature of Athenian society, the incipient acceptance of writing as a legal tool, the procedure of the trial, and the economic and philosophical origins of Athenian law ensured this. In a court where there was no judge and any evidence was admissible, justice as *law enforcement* could never exist. As long as we lack the means precisely to evaluate the standard of judgement in the fourth century law court, the subtlety and elusiveness of Athenian justice will continue to remain both fascinating and frustrating.

The Familial and Gender Contexts: Background on Athenian Kinship

Implicit in our investigation is the assumption that inheritance and family were closely related, and that inheritance cases can reveal to us the workings of the Athenian family. There was no Greek word for "family" or "nuclear family", only *oikos*, "household", and *genos*, "kin-group" or "bloodline". We are not dealing with representations of families *per se* in Isaeus, but, rather, with groups of people contesting each other's right to an estate; the primary conflict to be settled in each case is one of property transmission, not one of family relationships. What, then, do we mean by "family"? How does this apply to Isaeus, and to Athens in general? Are we looking for something that existed in neither? Is "family" an idea or concept that is culture-specific, a social construct? These are essential questions to ask, and although satisfactory answers may not be forthcoming, neglecting them would compromise any family-oriented investigation into Isaeus' work. Defining or describing the "family" in the context of inheritance is a difficult undertaking.

It is, nevertheless, worthwhile, and while the picture we get of "family" life, however detailed, will only be partial at best, it is a picture of how individuals related by blood and connected by emotional, physical, and spatial ties interacted. For that reason, we can legitimately call our study one that deals with the family, provided that we keep in mind it is the lens of "our family" through which we look. As long as we impose our idea of a family upon Isaeus, we will fail; we will succeed if we realise that the systems of ties that bind in our society and those that bound in his are necessarily different, a major part of our undertaking being to define or describe the system that existed in Athens. The social and historical evidence will validate the linguistic evidence: "our family"

did not exist in Athens, and living in a "family" there meant not just living in a different unit or construct, but living differently.

Inheritance law is particularly suited as a filter for gender relations. Issues of birth, marriage, legitimacy, and adoption are central in trials concerned with the passage of money and assets from one family member to another. As opposed to other trials in Athens, women played a fundamental role in inheritance trials. They themselves could not directly participate in the law court proceedings, but their critical place in every family tree mandated that they would be involved, if only by procreative capacity, in every inheritance case. While Isaeus givers us only a small glimpse into the infinity of tasks and duties that characterised the life of a citizen woman in Classical Athens, he gives us a much more significant glimpse into their relations with their fathers, sons, husbands, and brothers.

There are three main limitations that restrict the effectiveness of investigating Isaeus through the lens of gender relations. First, the evidence is one-sided: few women were found in the Athenian court room, and none served on the juries or wrote speeches presented in it. Everything we have is from a male perspective. Second, the evidence is scanty: the vast majority of Isaeus' speeches deal with interactions between males, and those between males and females are almost always between relatives. There is a general anonymity of women in Isaeus, and the only two women named repeatedly are accused of having lived the lives of courtesans or prostitutes.[38] Third, the evidence is chronologically one-dimensional: a court speech may provide a glimpse into a relation but ignores the change and evolution in interactions that is inevitable in any family or relationship. We see simply an interaction or series of interactions in one time and one place, all of them *representations*, found in the form they possess not because they truthfully reflected family dynamics, but because they contributed to the success of the case in question.

My Approach

Plumbing the depths of the family and gender relations in Classical Athens is a challenging task. There is no shortage of recent examinations of the family, women, and Athenian law,[39] and though my work will draw extensively

[38]Phile in speech 3 and Alce in speech 6. See Chapter Three and Appendix.
[39]See, for example, Cox (1998), Patterson (1998), Cohen (1994) , Sealey (1990), Just (1989), and Schapps (1979) .

on those examinations, it will also take a more narrowly focused approach, centred on the forensic context of inheritance conflicts. As opposed to a general investigation of the family or women's economic or legal rights in Classical Athens, this dissertation deals exclusively with evidence by one author, written for one kind of legal conflict in one specific context. Such narrowness, while limiting our ability to make broad conclusions, has the advantage of penetrating more deeply into a fundamental source of evidence for our topic and thus reveals more clearly the limitations of its use in broader works.

There are four principles that define my approach to the study of forensic oratory, the family, and gender relations. The first regards legal statutes. In Athens, they were anything but absolute, and rarely the scholarly bedrock for which we might easily take them. Although tangible and concrete evidence for an investigation of societal mores, written law should not be overvalued; what is most significant is not what it states, but how that statement is used in court. Second, an awareness of the "organic relationship" between the law and its socio-political context[40] must always inform the conclusions we draw from Isaeus. But because we are blind (and deaf) to substantial aspects of that organic relationship, restraint and humility must characterise our approach. This is the third point. Rigorous analysis of a speech is warranted in order to understand its complexities, but must be done with the understanding that many potentially decisive variables are beyond our reach. Such analyses can raise questions about Isaeus' strategy in a case, compare his consistency between cases, and present questions about how a jury might have responded to them; they cannot lead us to a position from which we can confidently pronounce the merits of a case and the legal actions that preceded it. We must remember that we only have one side of each case, the outcome of each case is usually unknown, and the speeches could well have been edited after their use in court. This last point is particularly important, as it casts Isaeus in the dubious roles of the self-conscious informant and the businessman advertising his skills and abilities to future clients.[41] Even

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[40]That the law is nourished on the social, economic, and political issues of society, see Todd and Millett (1990). Note especially 10, "the law has an organic relationship with its social and political context" and 15, "questions about Athenian law are in the last resort anthropological questions about the Athenians".

[41]Bourdieu (1977) 37, 196 cautions against the full acceptence of self-conscious informers. Isaeus published his speeches with the intention of building a reputation for himself--engaging in a literary *philotimia*--both for present and future generations. Wevers' (1969) 95 view of Isaeus in this regard is misguided: Isaeus, like other writers, *did* write for posterity, "with an eye on what later generations would say of him". This is precisely why he published his speeches. Those "late

obiter dicta or seemingly incidental remarks are not safe ground on which to stand, as a deliberate subtlety was part of Isaeus' logographic skill. We simply cannot say that a decision was "a manifest miscarriage of justice", an argument "sailing very near the wind",[42] or that one party "scarcely had a chance of winning".[43] Only an Athenian juror would have had the capacity to make such a statement. Finally, a wide perspective, incorporating historical and philological as well as anthropological and sociological approaches, is important if we are to gain a balanced view of the Classical family and the gender relations within it.

There are many questions to ask and many reasons for being sceptical. But enough with these methodological issues; over-concern with them can lead to investigative paralysis. It is now time to act on the evidence. What do the speeches of Isaeus tell us about the family and gender relations in Classical Athens?

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generations" were both later generations of clients and later generations of general readers. To say that "the total view of society unconsciously presented by Isaeus is certainly not distorted" is to neglect some of the most fundamental aspects of forensic oratory. There is no "total view of society" in Isaeus, he presented nothing "unconsciously", and much of it was, we can be sure, deliberately "distorted". See Dover (1968) 168-170 on the pre-publication "touching up" of Aeschines's and Demosthenes's speeches.

[42]Pronouncements such as these characterized Wyse's analysis (1904: 671, 562).

[43]Isager and Hansen (1975) 149.

Chapter Two

CONCEPTIONS OF THE FAMILY IN ISAEUS

Our investigation of the family in Isaeus will begin with an examination of how a family and its interactions were constructed on a conceptual level. Whereas chapters three, four, and five will focus on more specific relations within Athenian families, this chapter will focus on establishing some of the principles upon which those relations were based. It will take a more general approach, investigating some of the broader definitions and conceptions of the Classical Athenian family.

We will begin with a look at Isaeus's first speech, *On The Estate of Cleonymus*, and the role of the *anchisteia* in defining succession, as well as "exceptional" circumstances, such as childlessness, for which custom and law provided "exceptional" rules. We will also investigate *On The Estate of Ciron*, Isaeus's eighth speech, examining what arguments for lineal and collateral descent can tell us about the Athenian family. An analysis of Isaeus' rhetoric will be central to both, demonstrating the significance of the forensic context in mitigating our perception and understanding of the families represented and the Athenian family in general. It is important to remember that the families into whose lives we are penetrating were the wealthy elite of society, and, as a result, any view of "the Athenian family in general" is somewhat, though not completely, compromised. The chapter will conclude with an exposition of what these speeches and the principles used to establish and support the arguments in them can tell us about the development of Athenian law and society.

Isaeus 1: Affinity, Affection, and Adoption

The case that Isaeus argues in his first speech is directly dependent on an acknowledged understanding of succession as founded in affinity and affection, the closeness of an individual to another in blood and the emotional ties that bind them. Isaeus states this explicitly in 1.17: "if the claimants can prove...that they are nearer in blood (τῷ γένει) and in friendship to the deceased, all other arguments are superfluous", and in 1.37: "if succession is based on the *anchisteia* of kinship (διὰ τὴν τοῦ γένους ἀνχιστείαν)...or existing friendship ". It is implied in 1.41: "For you all surely know what closeness in blood (τοῦ γένους) is; one cannot misrepresent it to you", and reiterated in 1.45: "he was a next-of-kin (γένει

προσήκων ἐγγυτάτω) and most closely bound to us by ties of affection, for which reasons the laws have given him the right of succession". Isaeus establishes the authority of τό γένος in deciding a question of inheritance; the individual who was closest by blood had the rightful claim to the award. Isaeus' reasoning is first and foremost bloodline reasoning. Additionally, shared blood engendered the right kinds of feelings. Closest kindred were those kinder and more considerate to an individual (1.29). Affinity and affection were the two criteria for inheriting property and dictated a proper succession.

Legal precedent supported Isaeus' criteria and established them as part of an accepted custom. He claims "it would be very strange if in all other cases you were to vote in favour of those who prove themselves nearer either in kinship (ἢ γένει) or in friendship" (1.38) and "It is only right, gentlemen, that you should--as you do--deliver your verdict on account of affinity (διὰ τὴν συγγένειαν) and the true facts of the case to those who claim by right of kinship (κατὰ γένος) rather than those who claim by right of testament" (1.41). Athenian juries had consistently made a claim κατὰ γενός victorious; it was a valued principle of family law, and the significant bias towards it and against wills of the kind that Isaeus' opponent used to support his claim made it the significant component of Isaeus' case. Because Cleonymus was the plaintiffs' next of kin, supported and raised them as children (1.1, 12, 28-29), and lived "on terms of greater intimacy" with them than anyone else (1.4, 30), the plaintiffs necessarily deserved to be awarded his estate.

There was an understood reciprocity to such a close kin relationship. The plaintiffs had a responsibility to support Cleonymus' father, their grandfather, if he were old and poor, as well as to marry Cleonymus' daughters or find husbands and provide dowries for them if Cleonymus himself died (1.39). Their position as next of kin and personal sense of honour dictated this: "the claims of kinship, the laws, and public opinion in Athens would have forced us to do this or else become liable to heavy punishment and extreme disgrace". This responsibility carried with it the privilege of inheritance, stated explicitly in the same passage. The sharing of a man's misfortunes mandated an equal sharing of his inheritance.

The reciprocity of the family relationship was conceived in terms of privilege and responsibility that blended the ethical and financial. It could also be conceived in strictly financial terms, as a trade-off between two individuals, or, as above, between two families. "Whom, gentlemen, could he have wished to

have it rather than those to whom in his lifetime he gave more assistance out of his private means than to anyone else?" (1.27). Had the plaintiffs' *oikos* become extinct, Isaeus argues, Cleonymus could claim to be the rightful heir, and now that Cleonymus' *oikos* is extinct it is only right that the converse be true. "I think that you yourselves consider it your right to inherit--and feel a grievance if you do not do so--from those who have a claim to inherit from you...for it is only fair that those should possess his property from whom he had a right to inherit." (1.44). Reciprocity, the ability to give and receive an inheritance from a kin, defined one's relationship to a relative: "Thus, gentlemen, you will find us being his relatives (οἰκείουσ) in each of two ways, both in giving (δοῦναι) and in taking (λαβεῖν)" (1.47).

An Athenian inheritance, then, was taken by individuals who were bound by the ethical and financial ties of blood relationship and the affection that followed it. Affection was an appropriate rationale for inheritance only in the context of affinity, as a derivative of it. Affinity alone was primary, Isaeus suggests, and as defined by the *anchisteia*, the legal definition of those who were connected by blood to an individual and the priority given to them for claiming an inheritance, the *genos* was the customary and legal concept that determined inheritance and dictated pursuant affection. The Athenian family was concretely founded in biology, and this criterion, and the secondary emphasis on affection, demonstrate that inheritance was closely associated with our concept of "family", and that an investigation into succession can provide the kinds of insights for which we are looking.

Critiquing Isaeus 1

Isaeus seeks to present a "fair is fair" scenario in substantiating his client's claim to Cleonymus' estate. His emphases on the priority of kinship and the reciprocity of relationships give us an important glimpse into the expectations and ideals that guided family relations in fourth century Athens. Several points about his case warrant closer attention.

The first is that Isaeus' goal is to win an inheritance for his clients; the emphasis on the fairness of financial reciprocity detailed above should remind us that possession of an estate is the ultimate goal of this case. The representations of relationships are only means to that end, and as Cleonymus himself is dead, the speaker can say what he likes about his relationship with the deceased as long as he has witnesses to affirm his statements. Secondly, Isaeus does not

prove what he set out to prove. The repetition of assertions of the plaintiffs' closeness to their uncle (1.4, 18, 20, 27, 30) reveals the significance that the jury gave such closeness, but the closeness itself was never conclusively demonstrated. All that Isaeus has told us is that the plaintiffs were raised and supported by Cleonymus (1.12-13); that "he looked after our interests as though they were our own" can hardly be assumed from the flimsy story about desiring to change the will in the plaintiffs' favour (1.13-14). Even supposing that this story was credible, if Cleonymus and his nephews had been on such good terms for so long, why had the will not been changed earlier? Thirdly, Isaeus resorts to arguments based on relative merit after arguing for the absolute merit of his clients' case. He includes assertions of Cleonymus' disfavour with Pherenicus (1.31-32) following his assertions of Cleonymus' affection for the nephews as well as examples of a lack of reciprocity between his opponents' and Cleonymus (1.45, 47) following assertions of the nephews' reciprocity with him. Such negative/relative arguments suggest that Isaeus lacked confidence in the positive/absolute arguments upon which he was so insistent. Neither Isaeus nor the jury was convinced that "all other arguments" were "superfluous". More than just an a definition of the family was needed for the verdict. Fourthly, a host of rhetorical devices, including generalisations about the handling of conflicts with relatives (1.19, 24), the implied equivalence of an extraordinary verdict with a wrong verdict (1.23, 28, 29, 51), and the selective emphasis on insanity as the only explanation for a decision not fitting the criteria he himself has laid out for testamentary adoption (1.19-21), can be found in Isaeus' argument.

The overall generality and sentimentality of his case lead us to suspect that legal stricture was not on the side of the plaintiffs, and that this was, consequently, a weak legal case. Isaeus' final assurance that "we are not bringing a vexatious suit" (1.50) seems so out of place as to "protest too much". Most important to our investigation, however, is Isaeus' emphasis on the *genos* as the sole claim for inheriting. This is misleading. Testamentary adoption was legally and customarily valid in Athens (as demonstrated by Isaeus' attempts to show the falseness of his opponents' will in this case), so while inheritance may have been dependent on the *anchisteia* in most cases, in those where a male heir was lacking--exactly the scenario we have here--a citizen could execute his right to bequeath by will. The inheritance of kin via the *anchisteia* applied only by "default" in such a situation, but Isaeus implies that the *anchisteia* was

omnipotent, generalising its application from most inheritance cases to all of them.

Isaeus sought to give the impression that the principles of succession he promoted accorded effectively with legal stricture. Isaeus's stricture-based approach is evident in his utilisation of the paternal filial support *nomoi* of 1.39 and the references to the *anchisteia*, the legal definition of kin. Yet, neither of these examples exhibits the direct support of stricture. Instead, they only demonstrate a similarity of principle, and thus mimic, but do not manifest, a direct application of law to the situation. They follow the same lateral legal reasoning of the reciprocal inheritability principle Isaeus mentions in 1.44, "it is only fair that those should possess the property from whom he had a right to inherit". Where Isaeus cannot claim ὁ νόμος κελεύει, he claims δικαίον γαρ ἐστί, presumably, the next best thing.

Conclusions from Isaeus 1

Consequently, there were three legal approaches to an inheritance case (and most likely, to all cases): one that appealed to principles of custom and legal precedent, one that appealed to legal principle,[1] and one that appealed to the specifics of written law. Isaeus specifically mentions the importance of all in his case. His "normative" statements in 1.38 and 1.41, detailed above, are clear appeals to past patterns of legal decision and represent an awareness of and appeal to precedent (or at least a concept of it) in the Athenian courtroom. His appeal to legal principle infuses the lateral law and reciprocity reasoning of 1.39 and 1.44. His statements in 1.26: "our opponents...are trying to persuade you to give a verdict which is contrary to the laws and justice", 1.35: "we can show to be contrary both to the law and to justice", and 1.40: "Your verdict, then, will not be just or ...in harmony with the law " indicates that Athenian jurors were concerned with abiding by the strictures of written law. As Isaeus could argue effectively on the bases of principle and precedent, and not on the basis of stricture, we see that a *logographos* may only *appear* to utilise all approaches in a case, manipulating his

[1]Todd (1993) 13 doubts whether legal principles were ever consciously articulated in Athens. Although the sources do not include any systematic statement of legal principles, they do lie embedded in the law; our task is precisely to discover and articulate them. The legal principles he conceives of may be grander than the principles Isaeus uses here, but those grander principles are themselves derived from a conception of the law and whatever area of life that law regulates. Neither a legal system nor those other areas of life can exist without a foundation of principles, especially not if "the law is one of the most significant ways in which human beings regulate and indeed conceptualise their social relations" (10).

presentation of the law to give the impression of full legal corroboration for his argument.

Isaeus' approach reveals multiple views of the law; it also reveals multiple views of the family. Athenians clearly believed that kinship defined the family and dictated inheritance, but they also believed that family and inheritance could possess non-kin elements. The practicalities of life in Classical Athens made adoption a necessity, as the survival of children in Athens was a problem,[2] and provisions had to be made if preservation of the *oikos* was the preeminent concern. Yet, while kinship may have been the "rule" or "norm" while adoption was an "exception", it is an important point in our investigation because it represents a significant conceptual shift. The adoption of a son raised an important ideological challenge to the κατὰ γενος notion of the family: the adopted son was clearly not connected in this fundamental way, but was allowed to inherit his father's estate and carry on his blood as if he possessed it by birth. He severed his link with his biological family (9.2, 33), he was guaranteed an inheritance equal to that of a biological son (6.63), he performed the religious services for the father and his father's ancestors (9.7), and took his father's place in civic and religious activities (9.13).

The conceptual shift, however, was itself limited, and its limitation underscores the priority of kin relations in the family. The estate an adopted son inherited reverted to the *anchisteia* if he did not produce a legitimate biological child. The adopted son's full membership in the *oikos*, manifested in his entitlement to all the rights of a biological son, was contingent on this point. Only when a biological son was lacking would the law give priority to affection over affinity, and only once within a two generation span. The Athenian family was a biological unit connected through time and across space by common blood with occasional, unigenerational "non-blooded" links.

Isaeus' first case provides an enlightening look into concepts of the family, forensic methodology, and legal values. As our investigation shows, "other arguments" were not only anything but "superfluous" to cases of family law, they were essential. Isaeus' case in speech 1 was completely dependent on one view of the family and a legal tradition that supported that view, and it reveals the deliberate use of such a bias to cloud an opposing argument with a strong

[2]Isager (1982) 96. She also notes (89) the advanced ages of both adopters and adoptees as evidence of mutual insurance: the adopter wanted to ensure the survivability of the adoptee, and the adoptee's family wanted to ensure the survival of a brother or sister in his place.

legal position. It also reveals a belief in the adherence to written law, and at the same time, a lack of faith in the written documents that were both the end of such a law and essential to the preservation of a family and its material possessions.

Isaeus 8: Lineal versus Collateral Descent

Speech 8 presents an image of the family painted both in private and public terms and reveals the significance of the family's public activities as justifications for legitimacy and inheritance. Isaeus devotes twenty-two sections (8.7-8.29) to examples of the public interactions of the various members of the family and follows it with six sections (8.30-35) detailing the customary private handling of a family's inheritance. What are the particulars of this public and private interaction?

First, weddings as great celebrations. Both the father and the groom would provide a wedding-feast at the marriage of a daughter (8.8-9), and the groom would provide for a wedding banquet as well (8.18-19); these and the ἐγγύη ceremony itself would be attended by the close friends of the father and groom, who, as οἱ ἐγγυησάμενοι, "those who betrothed her", played some active role in the ceremony and would willingly attest to the fact in court (8.13-14). The father would provide a dowry of raiment and jewelry worth twenty-five minae at his daughter's first marriage and, having received her back into his *oikos* upon the death of her husband, would give her in a second marriage with a dowry of a thousand drachmae and a second wedding-feast (8.7-10).

Second, numerous domestic and civic religious festivals, attended by multiple generations, if not all generations, of the family. The grandfather took his grandchildren to the Dionysia and watched the public spectacles with them at his side, and they always attended αἱ ἑόρται with him at his house. He invited his grandchildren to all the sacrifices he made, whether large or small, and they were present with him at especially important family festivals, including the one devoted to Zeus Ctesius, a closed ceremony for members of the *oikos* exclusively (8.15-16).

Finally, more specific and exclusive religious and civic events supervised or attended by only one or two members of the family. The wives of a man's fellow demesmen might elect his wife to preside over the Thesmophoria (8.18-19), the annual, women-only Athenian religious festival, and the rightful heir directed the funeral procession of a deceased male and supervised the expenses of it (8.21-26, 39). A father forged a bond with his son at his presentation to the

phratry, in which the father gave the oath of legitimacy in the presence of his fellow *phrateres* (8.19).

The Athenian family was involved in public, semi-public, and private activities together, all of which were attended by at least several people, many of which were attended by dozens, if not hundreds. Large occasions, even if "private" in the sense that they were by invitation only, played an important role in the family's life and, more importantly for Isaeus, could be used as proof that the family in question was one composed of fully legitimate members.[3] The magnitude of a family gathering was essential for its ability to provide ample witnesses in any future forensic dispute: depositions and witness to the veracity of the events described were given in 8.13-14, 17, and 20. Legitimacy dictated public interaction and vice versa. Isaeus emphasises this explicitly in 8.18, "Now it is not only from these proofs that our mother is clearly shown to be the legitimate daughter of Ciron", and 8.20, "Yet do not for a moment suppose that, if our mother had been such as our opponents allege, our father would have...; or that the wives of the demesmen would have... or that the wardsmen would have...if it had not been universally admitted that our mother was a legitimate daughter of Ciron". The lineal nature of this legitimacy is significant: "Yet if he had not regarded us as his daughter's children and seen in us his only surviving lineal descendants, he would have done none of these things" (8.17).

A more detailed exposition of the virtues of lineal descent follows, and is Isaeus' central argument for his clients' claim to the estate in question. A lineal descendant (ἔκγονος) deserved favour over a collateral descendant (συγγενής) because first, a collateral descendant was not closer to a lineal descendant in the *anchisteia* (8.30), and second, a daughter was closer in the family (ἐγγυτέρω τοῦ γένους) to her father than the father's brother, and it followed that a daughter's children must have been closer than the brother's children (8.33). Furthermore, the *epikleros* law dictated that the sons of a mother take control of her property as opposed to the husband's brother who would marry her, so a mother's children were favoured as heirs over the brother-in-law and his children (8.31). The same

[3]The distinction between public and private spheres has been an important issue in recent examinations of Classical Athenian life and gender relations. Isaeus 8 demonstrates that the boundary between the spheres was blurred: the concern with witnesses and legitimacy especially reveal the more subtle "private" nature of public events and "public" nature of private events. There is clearly a concern with readiness for any future forensic action in family-oriented activities. The "individual consciousness of a dichotomy between the two spheres", to quote Sally Humphries, was not as strong or as clear as we would assume. See Humphries (1983) xii, 1-37, Foxhall (1989) 23, 28-30, and Patterson (1998) 108- 132, 157-179.

principle is found in the parental neglect law, Isaeus argues, which mandates the responsibility for the care of a grandparent to his grandchildren and not to his nephews; the reasoning of reciprocity ensured that the grandchildren would inherit their grandparents' property. There existed a bond of support and inheritance between the source of a family (ἀρχὴ τοῦ γένους) and their lineal descendants (οἱ ἐκγόνοι) that assumed the lineal transmission of an estate (8.32). That this practice was universal and incontrovertible (8.34) leads us to the conclusion that the linear transmission of property through the direct bloodline of offspring guided Athenian inheritance and family legislation.

In Isaeus' picture of the Athenian family in speech 8, legitimacy, lineality, inheritance, and participation in public spectacle were inextricably bound together. Grandparents and grandchildren supported each other, the latter's gift of religious, civic, and financial support the logical and legal reciprocation of the gift of inheritance. In public and in private, the oldest generation of a family had a special relationship with the youngest that had an unquestioned financial consequence.

Critiquing Isaeus 8

A closer investigation of the structure and methodology of the speech reveals the inadequacy of this image in both general and specific terms and the complexities of family law as it was conceptualised and practised in Athens. The initial problem is stylistic: Isaeus' tone is so non-committal that it immediately casts suspicion on the validity of the argument. Isaeus nowhere proves his own advantage over his opponents, only the lack of his opponents' advantage over him, leaving open the distinct possibility that both had an equal claim. He states that he will demonstrate his clients' right to claim over their opponents (8.6, 30), but nowhere does he directly state or prove that lineal descendants have direct superiority over collaterals. Instead, he only states that it was very clear that *collaterals* were *not nearer* in the *anchisteia* than lineals (8.30). He ends his parental neglect argument with a rhetorical question, and repeats the technique in his "analysis" of family relationships, which he concludes with an argument valid only out of deductive reasoning. He never says outright that his opponents deserve the claim because of the applicability of lineal descent in this case, only "it is obvious that we and not our opponents have the right to succeed to the estate" (8.31) and "...our opponent should be the heir and not we? Surely it cannot be right" (8.32).

The second problem is structural: why is the argument for lineal descent, the seemingly deciding issue in the case, given such short shrift in the speech as a whole? The argument presented here seems essential to the case, yet it occupies a mere six sections out of a total of forty-six; even the section devoted to the defamation of Diocles, the alleged third-party instigator of the whole conflict, takes up more space. The only section of the speech that speaks for the plaintiffs' advantage in the case is relatively tiny. Why?

The answer lies in the relative strength of the opposition's argument . While the inheritance pattern Isaeus emphasises was from grandparents to their grandchildren through their children--from the first generation to the third via the second--the case in speech 8 is one in which the grandfather, Ciron, outlived his own children. There were no parents through which to inherit the grandparents' estate. The *anchisteia* mandated that, in the absence of children, the first right of succession went to the (grand)father's brother. This is the opposition's primary argument. Legal stricture dictated collateral descent for the family of speech 8, as it did in speech 1. Isaeus has deliberately kept the role of the parents in the case ambiguous;[4] nowhere is there a reference to the direct lineal right of grandchildren to inherit through a grandparent. This one generation gap makes a significant difference in Athenian family law, and it is the fundamental aspect of Isaeus' argument in speech 11, *On The Estate of Hagnias*. In that case, Isaeus argues that a man's rightful claim could not be passed on to his son after his death specifically because the son fell outside of the relationships defined by the *anchisteia* (11.11-12).

Isaeus was compelled to keep his main argument short and ambiguous: the longer he drew it out, the more he would risk a juror's thoughtful examination of his fallacious reasoning. Asking forgiveness for "repeating tiresome truths" was Isaeus' way both of ingratiating himself to the jury by preventing a further waste of their time and of moving into the defamation of Diocles, about which he could speak more strongly and convincingly. The weakness of his central argument is precisely why no case such as this had ever been brought before (8.34).

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[4] Isaeus refers only to οἱ ἔκγονοι "the descendents" in the first part of the argument (8.30) and keeps the analysis of family relationships in the final part (8.33-34) to one generation.

Conclusions from Isaeus 8

While we can trust Isaeus' emphasis on the importance and prevalence of lineal descent in dictating inheritance in Classical Athens, we must give collateral descent its due. The *anchisteia* mandated collateral descent in situations where there was no child to directly inherit, and the frequency of this general situation (the case of a father outliving his son, specifically, was much less frequent) in Athens, with its relatively high infant mortality rate and regular warfare, meant that this was a familiar scenario. A conflict between lineal and collateral descent did exist in Athens, and, although it was not a valid aspect of this case, it could be utilised in court to further the interests of a plaintiff. Brothers, and, to a lesser extent, sisters, and their children had an important place in the scheme of succession, and, therefore, in family life.

There are numerous similarities between Isaeus' first and eighth speeches. As in speech 1, Isaeus abstracts the exceptional nature of his case, presenting it as one that should fall into line with the predominant, normative custom. Thus his claim to "repeating truths so universal" and "the incontrovertible title of lineal descent" by which "you all inherit the property of your fathers...". There is little doubt that the majority of jurors received their inheritance via a direct and unquestioned inheritance from their fathers; in no way, however, did that make lineal descent "universal" and "incontrovertible". The *anchisteia* is again a focal point, as are the emphases on lateral legal reasoning and precedent. Isaeus begins the section dealing with lineal descent by stating, "I think it is already very clear to you that those who grew up with a man are not closer in the *anchisteia* (ἐγγυτέρω ταῖς ἀγχιστείαις) than those who are descended from him" (8.30). His argument that the *epikleros* and parental neglect laws support this assertion are well-reasoned: by all due "blood" logic, grandchildren should, and did, he reminds us, inherit their grandparents' property. Precedent is again on his side, or appears to be.

Yet, he is again deprived of laws directly applicable to his case. Nominally arguments in stricture, his use of the *epikleros* and parental neglect laws in 8.31 and 8.32, as in speech 1, are principle arguments, relying on lateral, not direct, legal reasoning. A mere approximation of the support of legal stricture, these laws have only a similar logic that can be applied, not an actual mandate or rule, leaving Isaeus' claim to prove his case ἐξ αὐτῶν τῶν νόμων (8.30) empty. Isaeus utilises legal arguments based on principle when he cannot utilise legal arguments based on stricture.

Conclusion

The issues revealed in speeches 1 and 8 underscore the conceptual development of the Athenians in the fields of family and the law. In the fourth century, they tackled the challenges found in two of the most important areas of their lives in a complex and sophisticated manner, developing flexible structures for overcoming those challenges. As their democracy developed, they honed their problem-solving skills, communally--with an accessible and flexible system of law, familially--with a flexible means of perpetuating the *oikoi* of the *polis*, and individually--with a utilisation of the court to secure an citizen's interests. The diversity which characterised the image of the family and the approach to solving its economic problems reflected the diversity of the growing democracy's legal and ideological foundations. Fourth century Athens lacked one coherent and unified concept of the family as it lacked one coherent and unified concept of the law: collateral and lineal descent, affine and non-affine succession, legal stricture and legal principle each represented different approaches to and conceptions of the family and the law. A diversity of values made possible the different solutions that could be utilised to solve or remedy the challenges facing a family, and this diversity of values regarding the family was itself valued.

The awareness of this diversity, however, generated a manipulation of it, and this manipulation, in turn, generated and directly facilitated familial conflict. A multiplicity of conceptions of the family and the law provided a multiplicity of options for making a claim to an estate in court. Athens was fertile ground for the promotion of individual interests, especially those linked to inheritance. The availability of *logographoi*, whose job was specifically to facilitate that self-promotion, fertilised Athens for familial conflict to an even greater degree. The speech-writer's *raison d'etre* was conflict: he was compensated to further the direct opposition of one family member to another in court. The generation and facilitation of the means of conflict was his job, so it was in his interest to utilise the flexibility and diversity of Athenian legal and familial systems and to push them as far as they could go in securing his client's interests. In his hands, the law and the family became tools with which to provide a client with what he desired. If conflict resolution was the origin and ideal of Athenian law, it was significantly compromised, if not destroyed, with the arrival of the professional speech-writer. The profession of *logographos* was itself a threat to the Athenian family.

Chapter Three

SEXUAL RELATIONS

Legitimacy was a significant factor in determining succession in fourth century inheritance cases, and in examining legitimacy and sucession, this chapter will examine sexual relationships and their regulation in Athenian society. We will first examine the general sexual culture of Athens, combining information regarding sexual relations from Isaeus' speeches with a few pertinent passages from other sources. We will then investigate Isaeus' third speech, *On The Estate of Pyrrhus*, more specifically, synthesising the speech's explicit and implicit presentation of sexual relations to comment on the sexual divisions within the citizenry, how this contributes to the sexual structure of Athenian society, and the influence of both on forensic disputes.

Sexual Relationships in Athens: Background Information from Isaeus

Before examining questions of legitimacy and succession specifically, we need to have an overall picture of the sexual relationships available to Athenian citizens and the principles upon which they were based. What can the speeches of Isaeus tell us about the general sexual *ethos* of Athens?

Procreation , pleasure, and paternity

We must begin with the *oikos*. The *oikos* was the integral institution of Athenian society, the basic familial and economic unit, and an important political unit. Its preservation, through the production of legitimate children, was of the highest concern to the Athenian citizenry, and was considered a religious, and even political, duty. On a practical level, children were heirs who provided material support and comfort to parents in old age (12.2-3). On a more abstract level, they had important religious duties to fulfill. "All men take precautions to prevent their families from becoming extinct" exclaims the speaker of Isaeus 7: they ensure that they have children to perform the familial sacrifices and carry out the proper rites over their tombs (7.30-31). This is reiterated in speech 2: a good citizen deserved a successor to honour his family cults and perform the annual rites necessary to the religious health of his family (2.10, 12, 46). To be denied this would be a degrading injustice (2.46). Consequently, a childless citizen approached old age with apprehension (2.7); his condition was an evil that should not have been unnecessarily shared with a wife who was still of child-bearing age (2.8), and

adoption, his only consolation left in life (2.13), was a specific remedy for his "dry" *oikos* (2.10, 6.5).[1]

The need to prevent the extinction of *oikoi* was not a solely private matter. Both extended families and the *polis* more generally had responsibilities to provide children for the childless. It was an insult to one's paternal gods and the gods of the city to attempt to deprive a relative of children (2.1); any family member that would allow another's *oikos* to die out neglected his duty and was a shameful and irreligious reprobate (7.31, 2.46).[2] This accusation, a common one levied against opponents in inheritance claims, worked on a fear of wiping out not just the lineage but also the very name of a citizen (2.37, 47), and its repetition in speech 2[3] and speech 7[4] reflects the force that such a fear carried in Athens. As the wealthier *oikoi* of the *polis* provided the trierarchies that supported the Athenian empire, the state had a vested interest in preserving these households in particular (7.32). The common good relied on private and public maintenance of *oikoi*, and the *archon* himself was charged with ensuring their preservation (7.30).

Procreation was one major objective of sexual relationships in Athens. Pleasure was another. Demosthenes articulates this quite clearly: "We have mistresses (ἑταίραι) for the sake of pleasure, concubines (παλλακαί) for the daily care of our body, and wives (γυναῖκες) for the purpose of begetting legitimate children and having a reliable guardian of the contents of our house."[5] To this we can add prostitutes (πόρναι) and slaves. As both παλλακαί and slaves were usually resident within the *oikos*, Athenian men not only pursued sexual contact with women other than those with whom they intended to produce children, they did so within the walls of their own

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[1]Note Lacey (1968) 118: "A man's *oikos* provided both his place in the citizen body and what measure of social security there was." Thus, the state intervened to ensure social security only for those who were, or could soon be, outside of an *oikos*: *epikleroi*, orphans, widows, and the elderly. For them, the security was secondary, and, necessarily, more fragile.

[2]As the perpetuation of family ties and cults was an especially important concern, marriage and adoption were commonly enacted between the members of the same larger family. Cousins often married, and cousins and nephews were often adopted, in fourth century Athens. Common ancestry and wealth are described as good reasons for the enactment of a marriage (7.11), and that a marriage, represented as a means for the strengthening of bonds between feuding relatives (7.12), with these advantages did *not* happen is represented as only resulting from the magnitude of envy between the fathers of the bride and groom (7.11-12). The closest young male relative was the first sought for in adoption (2.11), and adoption out of a (childless) wife's family was seen as a desirable substitute for a biological son (2.11). The father of the bride is represented as the most important person in the establishment of a marriage between a citizen man and woman. His friendship with the groom was an important element in considering an agreement to marry (2.3-4).

[3]2.10, 15, 26-27, 36, 46.

[4]7.30-31, 43.

[5]Dem. 59.122.

homes. A multiplicity of sexual realtionships was available to male citizens in Athens. Choice was a defining characteristic of the male sexual culture there.

That it was not a defining characteristic of female sexual culture was mandated by the Athenian concern with paternity. *Oikoi* were male structures, and the familial, religious, and financial traditions that characterised them originated in male lineages. The common blood that made an Athenian family a biological unit connected through time and across space was male blood, and where there was no biological son to succeed to an estate, provisions were made to ensure that a biological grandson would. An *epikleros* was a daughter who, in the absence of a legitimate male heir, inherited her father's estate; the deceased father's nearest relative, usually his brother, had the right to claim her and her estate (3.64-66). When sons born from the sexual union of the daughter and relative came of age, they took control of the estate (8.31). As they possessed their grandfather's blood through their mother, they were the legitimate heirs to the estate, the *oikos* of the deceased father having been successfully reestablished by them. The adoption of a son worked similarly: when adopted, the son was compelled to take as his wife any legitimate daughter of the adoptive father (3.41-42, 68). Any child produced from their sexual union would possess the deceased father's blood and thus preserve his *oikos*. An Athenian father's blood was guaranteed to be in the children who inherited the estate via his daughter. Sons were often adopted from within the extended family,[6] so even if a father was completely childless, there could still exist common blood between him and his successor. The adoption of a son from outside the extended family in the same situation made the preservation of the *oikos* purely conceptual, although wholly legal and valid.[7]

How did this concern with paternity affect a woman's sexual liberty? As a child could be conceived from any sexual relationship, regardless of whether it was pursued for pleasure or procreation, allowing a woman the same sexual liberty as a man necessarily called into question the father of the child she bore. Assuring that a child possessed the paternal blood requisite to perpetuating the *oikos* meant assuring that the woman who bore him engaged in sexual contact with that child's father alone. The preservation of the *oikos*, of which succession was a part, depended on assured paternity,

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[6]See note 2.

[7]This purely conceptual adoption, we can be assured, happened frequently enough. If adoption was the only comfort a childless couple had late in life, adopting a son with no familial connection would have been a viable option. This is the situation of the opposition in Isaeus 4.

which likewise depended on the mother's sexual exclusivity. Consequently, a *legitimate* heir, or γνήσιος, was one whose right to succeed to an estate was uncontested by virtue of his mother's monagamy. Only women who lived in an *oikos* with a citizen man and who shared with him the intent of recreating that *oikos* ("to συνοῖκειν")--a woman for whom alternative sexual relationships were forbidden--could produce γνήσιοι. These women were γυναῖκες, wed through the process known as ἐγγύη and παλλακαί, concubines given in a similar but less formal process.[8] As Harrison points out, these women's chastity was protected--I would say *enforced*-- because they were the necessary vehicles for carrying on the *oikos* .[9]

The sexual structure of Athenian society

The Periclean Citizenship Law further complicated matters. After 450 B.C., only children whose parents were both citizens could claim Athenian citizenship. This additional restriction on sexual relationships solidified the sexual-procreative hierarchy that characterised social relations in Isaeus' day. The top stratum of this hierarchy was held by full citizens with full inheritance rights, those born of citizen father and a sexually exclusive citizen mother who raised a family together. The next stratum down was also held by full citizens, but those who were νόθοι, conceived by citizens outside of a "to συνοῖκειν" relationship. As the children of adulterous citizens, they possessed only partial inheritance rights, "the bastard's portion". The third stratum was the first non-citizen stratum of society: those who were the offspring of an alien parent. This included the other category of νόθοι, the children of a

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[8]Ἐγγύη, commonly translated as "marriage", was the formal process by which a γύνη was given to her husband by her father (or guardian), and was usually accompanied by the exchange of an assessed dowry in the presence of witnesses. Both γυναῖκες and παλλακαί changed residence through the respective procedures, moving from their father's (or guardian's) *oikos* and into the *oikos* of their ἀνήρ. This arrangement was known as συνοῖκειν, "to live in, create, and recreate an *oikos* with". The reason for giving such a woman as a concubine instead of in ἐγγύη may have been for reasons of poverty , maliciousness, or simply to rid an *oikos* of another undesired mouth to feed. There is no record of a procedure other than payment for entering into a sexual relationship with an ἑταῖρα or πόρνη, and while there was a clear restriction against "to συνοῖκειν" with an alien ἑταῖρα, there was no such restriction for one who was a citizen.

Wyse (1904: 289-293) saw the legitimacy of the children as the most important effect of a marriage (ἐγγύη) and claimed that this resulted from the origin of ἐγγύη as a marriage by purchase, including a process of betrothal which represented a specific contract carried out between suitor and father. "That the validity of a betrothal should determine the legitimacy of the issue of a marriage ceases to be amazing as soon as we free ourselves from modern conceptions of the nature of marriage." (292) Yet origin does not necessarily dictate contemporary meaning. There could have been a significant change in conceptual ization over the centuries he indicates.

[9]Harrison (1968) 38

citizen father and a (foreign) ἑταῖρα or πόρνη. The lowest stratum of society were the slaves, and unless elevated by their fathers, included the offspring of a citizen father and a household slave.

Athens was a sexually structured society: the socio-political status of a male citizen's sexual partner determined his offspring's capabilities to vote and inherit. Seen another way, women in Athens were valued according to the ability of their offspring to inherit a citizen estate, and the greater that ability, the lesser their sexual liberty. Because only they could provide legitimate children, citizen women became the recognized child-bearers in Athens. Thus, daughters were given away when they had reached an age suitable "to συνοῖκειν" (2.4, 8.8), and a citizen marriage convened without a child-producing intent was exceptional and explicitly stated as such (6.24). In court, an opponent could be deprecated for not finding a second husband for a widowed female relative of child-bearing age (8.36), and it was unfair to subject a wife of child-bearing age to a childless marriage (2.8). A citizen woman of thirty, it was argued, ought to have been "long ago married" and not without children (6.14).

Isaeus's speeches illustrate very clearly the seriousness with which Athenians took the maintenance of the sexual hierarchy and its political and economic repercussions.[10] Foreigners found guilty of cohabitating with citizens could be sold as slaves, and the Athenians with whom they cohabitated fined 1000 drachmae. Moreover, Athenians who gave such foreigners away in marriage could suffer a loss of their civic rights and rewards were offerred to the prosecutors of such cases.[11] Not surprisingly, a client of Isaeus whose citizenship has been challenged by his opponent describes the suit as one "of no trifling importance" (8.43), a public affront that would stigmatise him for the rest of his life (8.1, 8.44-45).[12] The deliberate adoption of an alien, even if it was perpetrated by a poor and childless couple with no other means of gaining material support, was a "wicked action" (12.3). After 346/345 B.C., each deme in Athens underwent periodic revisions of its rolls to ensure that non-citizens did not occupy places on them: the case presented in speech 12 was made in defense of a citizen so eliminated. Such

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[10]Thus, the duality of childbirth within the Athenian citizenry. If legitimate, the child brought order and security; if illegitimate, disorder and confusion. The value of a child and its contribution to the *oikos* and *polis* depended directly on the circumstances in which it was conceived.

[11]See Dem. 59 and Osbourne (1985) 44. It is important to note that we have no knowledge of how frequently such cases were tried, as Dem. 59 is our only evidence. The severity of the punishments, however, amply testifies to the gravity of the offences.

[12]Such an action was serious and insulting enough to warrant use of the verb ὑβρίζω.

an elimination deprived him one of the only "proofs" of citizenship that existed, jeopardizing both his citizenship and inheritance rights.

Additional regulations further illustrate the gravity of the issue. Anyone who interfered with the automatic devolution of an estate to an *epikleros* was subject to punishment and a summons to the *archon*'s court (3.46-48). Draco's homicide law[13] permitted the killing of a man if he were caught *in flagrante delicto* with the ἐγγυήτη γυνή, παλλακή, or θυγάτηρ of another Athenian citizen. If discovered otherwise or saved from such an extreme penalty, he would be subject to whatever physical or financial punishment the husband deemed appropriate, short of using a knife. The severity of this law and the prescription that an adulterous citizen woman caught in such an act was compelled to leave her husband, vulnerable to condoned public humiliation, and prevented from participating in religious rituals[14] underscores the mutual responsibility for the offence, a legal anomaly in Athens.[15] The rigorous chastisement of the citizen woman involved indicts her as a responsible and decisive legal agent; she is not a minor in this matter, as she is in other legal matters.[16] She, and other women known to have been scandalous in sexual matters, were restricted from participation in the annual Thesmophoria, the women-only festival in honor of Demeter and Persephone (6.48-49). The revelation in court that an enemy was an adulterer and punished as such formed part of Isaeus' defamation of that enemy (8.44); it was considered so harmful he concluded the case with the depositions substantiating the accusation (8.46). Similarly, the insinuation that a legal opponent wasted the resources of his *oikos* on young boys cast him in a negative light as one who neglected the duty of perpetuating a trierarchy-supporting household (5.43). The threat to the legitimate perpetuation of an *oikos* was the determining principle in sexual regulation and was utilised as

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[13]Dem. 23.53.

[14]Dem. 59.87.

[15]As Cohen (1994) 118, 122-132 points out, the content of the legal strictures about adultery are deceptively simple answers to the broader question of regulation. He notes the total lack of evidence for prosecutions against adulterers, indicates that Isaeus 8.44 and Xen. *Memor.* 2. 1. 5 demonstrate that it was not customary to kill adulterers, and shows that there may well have been a conflict between the older Draconian law and a newer law of κακούργοι covering adultery. Ultimately, the conception of adultery that mattered and its proper punishment rested in the minds of the jurors. It is an exceedingly complex issue, but the point here is more conceptual than procedural: the actual regulation of adultery may have been very different than our sources indicate, but the laws themselves show a fundamental preoccupation with ensuring the paternity of citizen children.

[16]Sealey (1990) 28-29 maintains that these regulations illustrate the "legal passivity of the woman": because she was not tried, she was not legally liable. That the law both mandated that she leave her husband and allowed the infliction of abuse and social sanction against her should leave no doubt as to her position as a responsible legal agent.

such in court. When there was no risk of a paternity crisis, a sexual relationship with a woman--such as with an ἑταῖρα, πόρνη, or slave--was not liable to legal penalty.

The problem of proof, forensic disputes and Isaeus 3

One irony of the creation of this sexual hierarchy was that, while a citizen's position in it was a serious matter, substantiating that position was difficult. There existed no indisputable means of proving one's socio-sexual status, or, more precisely, the socio-sexual status of one's mother. There were no records of ἐγγυή marriages, citizen παλλακαί, or the children produced from the unions of those relationships. The only relevant record was of legitimate sons introduced into the phratries by their fathers and the rolls of the demes. Each phratry required its members to swear to the legitimacy of their sons when introducing them to the phratry. This oath, that the son was ἐξ ἀστῆς και γεγονότα ὀρθῶς (7.16) or ἐξ ἀστῆς καὶ ἐγγυητῆς γυναικος (8.19) was followed by an inscription into the public register if no members objected (7.16-17). One's presence at sacrifices, festivals, and feasts with close relatives (8.15-17), the arrangement of wedding feasts and marriage banquets (8. 18-19), and the election, by the wives of deme members, of one's mother to preside over the Thesmophoria (8.19) were also used as "proofs", as was information regarding a mother's burial, her tomb, and the performance of customary rites over it (6.64-65). That the strongest of these legitimacy tests, the phratry oath, did not prove legitimacy but only confirmed that the phratry members believed in the subject's claim to it reveals the complexity and ambiguity of substantiating legitimacy under challenge in court.

Consequently, disputes over legitimacy and paternity abounded in inheritance-related cases. Speeches 3, 6, 8, and 12 revolve partially or wholly around paternity or legitimacy claims and the speaker in 4 asserts that the opposition has attempted to distract the jury "by inventing another father for the deceased". The central argument of speech 6 is that a πόρνη exerted a powerful enough influence over a citizen man to use him to obtain the rights of citizenship and inheritance for her νόθος son (6.10-34). Speech 3, *On the Estate of Pyrrhus*, is the most enlightening of Isaeus' cases in regard to the sexual *ethos* of Athens and the problems that that *ethos* created. It underscores how ambiguous and yet how important for inheritance purposes the nature of a union between a citizen man and a citizen woman was in the fourth century *polis*. The case rests on the assumption that the ἑταῖρα with whom a male citizen had a sexual relationship was a citizen: she was neither an alien, like the vast majority of ἑταίραι in Athens, nor a wedded wife, nor a concubine

kept specifically for raising legitimate children. It is an exceptional case, but one that reveals clearly the sexual mores, attitudes, and hierarchies within Athenian society and the citizenry itself.

Isaeus 3, *On The Estate of Pyrrhus*

The contest was one between the deceased's allegedly legitimate daughter and his sister. Isaeus argues that Phile, Pyrrhus' daughter,[17] could not legally inherit her father's estate because she was ἐξ ἑταίρας and not ἐξ ἐγγυητῆς. The mother of Isaeus' client had laid claim to an estate originally belonging to her brother, Pyrrhus. Pyrrhus had adopted his sister's son, Endius, and, after Pyrrhus' death, Endius had enjoyed the estate for twenty years. He had no sons of his own, and being an adopted son, the estate necessarily reverted back to his adoptive father's *oikos* upon his own death, opening it to claims. The speaker's mother claimed the inheritance as next of kin, but had been challenged by Phile.

Phile had previously claimed to be the daughter of Pyrrhus via an ἐγγύη union with Nicodemus' sister. Pyrrhus and Nicodemus' sister had clearly enjoyed a relationship of some duration, and both sides were in agreement that they raised the child and made suitable provisions for her protection. But Phile was not the child of an ἐγγύη marriage; this had been proven in an earlier perjury case (3.5-6), brought against Phile's husband, Xenocles, who had testified to the validity of the ἐγγύη. Nicodemus had also testified to the validity of the ἐγγυή between his sister and Pyrrhus, and the present case was brought to convict him of perjury in a similar manner. Using the same evidence that had been used successfully against Xenocles, the speaker sought either further to substantiate his mother's claim or publicly to humiliate Nicodemus, who would now have been considered a personal enemy. Technically a perjury case, its main focus is the right to claim the estate. The speech rather confusingly indicates that Phile had given up her claim to the estate (3.6) and that her husband wished to continue with the claim (3.56).

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[17]The speaker does not contest Phile's status as a citizen; there are no challenges to the citizenship either of Pyrrhus, her father, to Nicodemus, her maternal uncle, or her mother, and she herself was married, with her κύριος' apparent knowledge, by ἐγγύη (3.45, 49, 70). Any such challenge to her citizenship would have represented a far stronger claim. By virtue of non-citizenship, Phile would automatically have been ineligible to inherit the estate. We would have to assume that the speaker would have argued that if he had the option. The issue, as Isaeus presents it, is whether a citizen whose mother was (or was perceived to be) an ἑταῖρα could inherit her father's estate.

This case and the case that preceded it rested on proving "whether the woman challenging the possession of my uncle's estate was the offspring of a wedded wife (ἐξ ἐγγυητῆς) or an *hetaira* (ἐξ ἑταίρας)" (3.6). Isaeus clearly states the significance of this point: "Perhaps it will be urged that it was a trifling matter of secondary importance....How so when the trial for perjury, in which Xenocles was defendant, turned upon this very point, as to whether his own wife was ἐξ ἑταίρας or ἐξ ἐγγυητῆς ?"(3.24). Isaeus shies away from a direct statement that the previous case proved that, not being a child of a γυνή ἐγγυήτη , Phile could not inherit, but his emphasis on the contention of marriage by ἐγγυή (3.4, 6, 8-13, 24, 77), his repeated statements that that contention was disproved by perjury in the previous trial of Xenocles (3.4-7), and his note that Phile had since dropped her claim to the estate (3.6) leave the point in no doubt. If Phile had been able to prove her claim to be the child of a woman in an ἐγγύη union, she would have been established as the rightful heir to the estate (3.5)[18]. She chose the ἐγγύη claim and she lost; her claim was now lost (3.6)[19].

Isaeus seeks to demonstrate that the ἐγγυή could not have happened because of the lack of credible witnesses and an assessed dowry (3.18-39). There never could have been an ἐγγύη between Pyrrhus and Phile's mother, Isaeus argues, because of the lack of a dowry and the limited number of witnesses (3.18-39). Isaeus insists that an ἐγγύη marriage to a man of Pyrrhus' wealth would have to be accompanied by a dowry and a multitude of witnesses (8,18); if these were not present, the ἐγγύη simply did not happen. Because an ἑταῖρα did not need witnesses or a dowry when she entered into a relationship with a citizen man, and she was distinct from both ἐγγυῆται and παλλακαί (3.39). The latter, even though of a lower status than ἐγγυῆται, were still provided with provisions for maintenance. Phile's mother could in no way have enjoyed a "to συνοῖκειν" relationship with Pyrrhus; this living arrangement always included financial stipulations to solidify the bond between a man and woman and to prevent the woman from being thrown out of the *oikos* (3.29, 36). An ἑταῖρα could be easily cast off, for there was no dowry to keep a man faithful and committed to her.

Two arguments allegedly support these contentions, one procedural, one conjectural. Isaeus argues that previous protestations could have been

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[18]"[Nicodemus] dared to give witness that he gave his sister to to our uncle in ἐγγύη to be his γυναῖκά κατα τοὺς νόμους....For if the present defendant [Nicodemus] had not been recognized as having given false witness.....the woman who was testified to be the γνήσια θυγάτηρ of my uncle would have been established as κληρονόμος, and not our mother." (3.4-5)

[19]"But since the witness was convicted and the woman who claimed to be the γνήσια θυγάτηρ of Pyrrhus abandoned her claim to the estate" (3.6).

made in favour of Phile as the rightful successor to her father's estate (3.40-53) and that Xenocles and Pyrrhus, by their very actions, did not consider Phile to be ἐγγυήτη (3.54-77). The protestation filed by Phile to claim the inheritance upon the death of Endius must have been contrived because at two earlier occasions, the succession of Endius to the estate and the marriage of Phile to Xenocles, the provisions pursuant to Phile's stature as an inheritable daughter were not established. If Phile's mother were Pyrrhus' ἐγγυήτη, Isaeus argues, Phile would have had the estate as *epikleros* upon the death of Pyrrhus; it would have devolved naturally to her (3.40-48). No proceedings were brought denouncing Endius as abusing the rights of an *epikleros* (3.46-48), and he could not have been so foolish or negligent not to marry her himself had she been legitimate (3.50-51). The dowry given by Endius when he gave Phile in ἐγγυή to Xenocles was too low to be considered that of a legitimate child (3.49, 51). Neither Xenocles nor Pyrrhus nor Endius' uncles, all of whom acted as *kurios* for Phile, recognised her as being born from an ἐγγυή marriage (3.57-77).

Isaeus strives to create as negative an impression of Phile's mother as possible. The main force of his opening argument is to underscore that Phile's mother was κοινή, common, and available to all who wanted her for a sexual relationship.[20] He states this five times in the course of six sections (3.11-16) and in his final summary (3.77), and intersperses his claims about her sexual availability with assertions that Phile was born of irregular birth (12)[21], her mother's lovers could not be easily enumerated (3.11), and she had never engaged in any type of ἐγγύη or "to συνοῖκειν" relationship (3.16). He addresses her as τοιαύτης "such a woman" or "this type of woman" repeatedly (3.16, 28-29). A woman such as Phile's mother, Isaeus argues, could not, by her very commonness, be γυνή ἐγγυήτη. "Yet when once they have admitted that the woman was at the disposal of anyone who wished to take her, how can it reasonably be conceived that she was also a wedded wife?" (3.11). Furthermore, her social behaviour reinforced this: the cause of

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[20]Although Sealey (1990) 31 notes that the issue is not strictly the sexual status of Phile's mother, but the question of paternity, he neglects the central link between these. He contends that "the law of inheritance and citizenship inquired only into the identity of the actual parents and their status as citizens; the nature of the union between the parents...was a matter of indifference to the law" (32-33). That Phile could be given in ἐγγύη and raise children who themselves could legally inherit supports this point, but there is an additional and equally important one to be considered: could Phile *herself* legally inherit? According to the speaker of Isaeus 3, she could not, and this was determined by her mother's sexual liberty. The law of inheritance *did* inquire into the nature of the union between the parents, because the nature of the union was itself dependent on the sexual exclusivity of the mother.

[21]Isaeus argues that the jury of the preceding case had judged that the estate could not devolve to a μὴ ὀρθῶς γεγενημένῃ γυναικί.

frequent quarrels, serenades, and scenes, she accompanied Pyrrhus to dinners and feasted in the company of strangers (3.13-14).

According to Isaeus' representation, there was a division within the citizen class, the ἐξ ἀστῆς community at the top of Athenian society: it consisted of those ἐξ ἐγγυητῆς and those ἐξ ἑταίρας, and that division, based on the presence or absence of ἐγγύη, determined inheritance rights. Isaeus' entire case rests on the supposition that there was a wide gulf between an ἐγγυήτη and an ἑταῖρα in every regard, and that the inheritability of a child from one of these two women was validated or invalidated as a result. Phile's mother's sexual activity was the origin of her invalidation: Isaeus' explicit preoccupation with it in the beginning of the speech and his implicit concern with it throughout the speech reveals the link between paternity, sexual exclusivity, and inheritance that dictated Athenian citizen succession rights. Isaeus himself acknowledged that proof of ἐγγύη would have entitled Phile to rightful succession to the estate (3.5). A sexually exclusive relationship was either ἐγγύη or "to συνοῖκειν" (3.16), one in which both the man and the woman involved lived in the same household, which they could pass on to children who resulted from their sexual union, who were "properly born" (3.12).

Critiquing Isaeus 3

There are several points to consider before drawing conclusions from Isaeus' representation of sexual relations in his third speech. *On The Estate of Pyrrhus* is a case built almost entirely on probabilities, and Isaeus himself admits the role of them in his argument (3.18)[22]. It is littered with rhetorical questions about the plausibility of actions (3.48, 50, 51, 11, 31-32, 37, 39, 43), irrelevant or undisputed laws and arguments (the provision of a dowry: 3.28-40; the *epikleros* law: 3.64), hypothetical circumstances (Xenocles: 3.56-62; Pyrrhus: 3.72-77), insinuation, the repetition of laws and arguments (3.42, 64, 68; 44-53) and a general verbosity that betrays a long-winded argument of little substance. There is a notable lack of supportive legal stricture for Isaeus' arguments. Nowhere does Isaeus cite a law claiming that ἐγγύη was the only legally valid relationship for claiming succession rights, nor does he cite a law stating that a union of a citizen man and a citizen ἑταῖρα would not result in children who could inherit an estate. He fails to mention any law mandating the presence of dowries in ἐγγύη marriages; numerous references from Athenian forensic oratory demonstrate that ἐγγύη marriages often did not

[22]πόθεν οὖν ἄν τις σαφέστερον.....τὸ πρᾶγμα σκεψάμενος

include them.[23] Throughout the speech Isaeus states that Phile was given in ἐγγύη to Xenocles "as if she were the child of an ἑταῖρα" (3.45, 48, 52, 55, 70) but makes no legal reference to what that means. Finally, the arguments Isaeus makes based on the lack of previous protestations and the actions of Xenocles and Pyrrhus are almost wholly reliant on the substantiations made in the earlier arguments on ἐγγύη and the dowry; they do not stand on their own.

Isaeus also conveniently ignores important considerations. It is clear that ἐγγύη is a major issue in the case, and would have greatly benefitted Phile had she been able to prove it. Yet, it was not the only legitimate form of sexual union in Athens: citizen παλλακαί lived with citizen men in their homes and bore them legitimate children. Isaeus himself recognizes this in 3.16 and 3.39,[24] but his entire argument is one that depends on seeing Phile's mother as either ἐγγυήτη or ἑταῖρα. Isaeus abstracts the sexual scenario, choosing the two ends of a continuum of possibilities appropriate for a female citizen.[25] Was Phile's mother a παλλακή? Did Isaeus frame her as an ἑταῖρα because the behaviours that characterised one were less appealing to a jury in an inheritance case? The questions are worth asking. And while we could argue that Isaeus had the liberty to do this exactly because Phile had at first claimed that her mother was married by ἐγγύη when she was not, the point remains that Isaeus attempted to transform an argument based on relative merit into one based on absolute or singular merit.

On The Estate of Pyrrhus is not at all a case that utilises what we would consider to be legal evidence. We must acknowledge that our notions of what

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[23]Lys. 19.14-17 presents accepting a wife without a dowry as an honorable act of charity. Wyse (1904) 295 notes that the "plea of poverty" is a simple answer to this argument. He states (275) in his characteristically derisive manner: "The arguments based on the absence of a marriage portion are so patently ineffective that the stress laid on the point is not a little puzzling". But it would be wrong to think that this argument, whether law-based or not, was *necessarily* puzzling to an Athenian jury.

[24]3.16 is clearest: "this woman....was common to all who wished to associate with her, and ...obviously was never married to or lived with the intention of recreating an *oikos* (ἐγγυηθεῖσα οὐδὲ συνοικήσασα) with anyone else." This passage demonstrates that ἐγγύη and"to συνοῖκειν" are not entirely synonomous: there existed another form of "legitimate" relationship, which must be that with a παλλακή. Inexplicably, thispassage has been ignored in recent discussions of "legitimate" sexual relationships.

[25] The number of citizen ἑταίραι in Athens must have been small. While Antiphanes ap. Athen. 13.29, 572a states that Athenian women sometimes became ἑταίραι, it is difficult to imagine that such a group would even exist after the institution of the Periclean Citizenship Law and the Thesmophoria restrictions. Not all citizen woman would necessarily have entered into a sexual relationship with a citizen man to bear children, but it seems doubtful that there could have been many citizen women who chose the lifestyle of an ἑταῖρα and made a living for themselves as such. Isaeus may have deliberately cast her as a unique citizen woman--one who acted as the foreign ἑταῖρα did--to cultivate a negative reaction against her.

we believe constitutes credibility and what the Athenians believed constituted credibility could be two very different things. We make a significant error if we approach an analysis of this case supposing that the Athenian jury valued those same things we value, that its task was the same, or even that the task of the judicial system was the same.[26] That Isaeus made such arguments, however fallacious or unconvincing they seem to us, is enough to make us consider the issue seriously.

Furthermore, in knowing his male jury and what would appeal to them, Isaeus could well have known their desires for a reality that did not exist, but which could be partially realised in the court room. An issue as laden with gender-specific connotations and biases as sexuality could be grossly exploited in an arena where the judges and speakers were all of one sex. At best, the sexual "norms" that we are getting are compromised. If Isaeus appealed to the jury using *perceived* social norms, behaviours or actions that male Athenians thought were normative but were not, in fact, or *desired* social norms, behaviours or actions that they knew were not normative but wanted to be, the image we receive becomes even more distorted. The judges of Isaeus 3 could have utilised their verdicts to realise their desire for a particular image of gender relations and expectations, mandating a reality for others that did not exist for themselves in the only opportunity they would have had to condone and implement such an image without the possibility of a female challenge.[27] There could well have been a dual reality of sexual/gender relations, one mandated by and manifested in court, the other, mandated by and manifested in everyday, non-forensic experience. Our search for quotidian reality, however we define that, is frustrated by the fact that we possess a relative abundance of the former, less representative evidence and a relative lack of the latter, more representative evidence.

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[26]And even "we" is itself ambiguous in the legal context: the United States, Scotland, and England have significantly different legal systems and procedures. A caution to the kind of error to which we can easily fall prey is best provided by Wyse. His comments on the "noise and bluster" (294), "artful dilemnas" (276), "utterly worthless" arguments (320) and "disagreeable impression of trickiness and dishonesty" (276) in this speech betray a belief in some ability to, having transcended the barriers of space and time, have participated in a fourth century Athenian jury.

[27]Bourdieu's (1977) 37, 196 comments on informers apply here as well: the lack of possible challenge in any such situation is cause for concern as to the validity of what is stated as reflecting a true social norm. Neither a Kabyle informant nor an Athenian juror would have been faced with the prospect of having to defend or support his statement or decision to those who would most likely challenge it. The possibility of such a challenge is a telling test for ensuring, to the highest degree possible, that the truth is being divulged. Athenian women were, however, clearly interested in the decisions their male relatives made, and made detailed inquisitions about them: see Dem. 59.110-112 on justifying a verdict to female relatives.

A masterful Isaeus would have knowingly catered to this dual reality. Views of sexuality and gender relations in Athens were not strictly delineated along male-female lines, but the fact that there are two human sexes means that it is an issue to be considered. We cannot measure these possible sex-based delineations, but we can question, as informed critics, the image of sexuality and gender relations we have received. Is this image a forensic facade or a more substantial social reality?

Conclusions From Isaeus 3

We can draw five main conclusions from Isaeus 3. First, the perception of a women's sexual relationship is what mattered in court. The lack of a specific legal definition of marriage, distinct definitions of γήσιος and νόθος, and state records of marriage meant that accusations and anecdotal evidence about behaviour and social contact were influential in persuading a jury that a specific sexual relationship did or did not exist. At its most basic level, succession was a sexual affair. Substantiating citizenship and legitimacy meant validating one's place, and one's mother's place, in the sexual hierarchy that defined Classical Athens. Where two or more citizen parties made a claim to the same estate, the nature of the sexual unions between family and non-family members--or, rather, the perception of those sexual unions--could be significant factors in determining succession.

Consequently, there existed four separate sub-classes within the citizen class, based on the nature of the sexual unions available to them. This is the second point. The first two sub-classes form the "to συνοῖκειν" group: the children of a citizen man and citizen woman married by ἐγγύη (who had full inheritance rights) and the children of a citizen man and citizen παλλακή (whose inheritance rights were more ambiguous, but most likely equal to or close to those of the first group). The last two form the non-"to συνοῖκειν" group: those who were the children of adulterous citizens (who could receive a "bastard's portion" inheritance) and the children of a citizen man and citizen ἑταῖρα, of which Isaeus argues Phile is one. Only the top sub-class, the children of a citizen man and citizen woman perceived to have been married by ἐγγύη, held an irrefutable claim to an estate as legitimate children.

The third point is that these divisions, and the others within the sexual hierarchy of Athens, were not rigid and inflexible: the ambiguity of definitions and proofs and the value placed on perceptions in Athenian law made possible a great deal of fluidity between and manipulation of these divisions. Isaeus rests much of his case in *On The Estate of Pyrrhus* on traditional *alien* characteristics of an ἑταῖρα, yet the woman at the centre of the

argument is a *citizen*, and the traditional characteristics utilised in the argument bear precisely upon the sexual norms associated with citizenship and succession. The ἑταῖρα or, more accurately, the behaviours associated with one, was a cross-class phenomenon, and would be everywhere disadvantaged. The sexual mores of an ἑταῖρα or one perceived to have acted like one invalidated her offspring as inheritors, even though those offspring may have been able to vote and participate in the politics of the *polis*.

That such a disinherited offspring could herself have children that inherited accentuates the complexity and contradiction inherent in Athenian inheritance law and the core of social values it represented, our fourth point. A woman such as Phile could pass on to her children rights she herself did not possess: since her children were citizens, they could create their own citizen *oikos* and pass on the inheritance of that *oikos* to their own offspring. A citizen ἑταῖρα's grandchild was enabled in a way that her child was not. Yet, for the family of an alien ἑταῖρα, the question was moot: without citizenship, neither the child nor grandchild could inherit an *oikos*, much less pass one on. The rights of νόθοι were structured similarly. The children of adulterous citizens enjoyed all the rights of citizenship but were denied full inheritance, yet could create and pass on their own *oikoi*, which their children could inherit. The offspring of a citizen and alien, however, were denied all political and succession rights, as would be all of their descendants. In Athens, there existed a complex and deceptive matrix of citizenship rights, succession rights, and succession rights held in abeyance.

Finally, although Isaeus 3 provides an insight into the principles that governed Athenian inheritance law, it would be misguided to assume that these principles necessitated a certain *legal consistency*. Consistency was not, as far as we can tell, a feature or concern of the Athenian legal system; the classes and sub-classes made possible by the legal regulation of citizenship and succession through sexual relations made manipulation of the law and the hierarchies it created not only feasible but an encouraged, even integral, aspect of winning a case. The greater the regulation, the more to exploit. The courtroom became a political arena, a ground for exercising interpersonal, interfamilial, or intrafamilial conflict and accomplishing retribution or vengeance, stripping an enemy of treasured possessions by stripping him or his loved ones of their sexual privacy. The sexuality of Athenian citizen women was a weapon to be used and abused in court.

Citizenship, Succession, and Sexuality in Athens

The regulation of citizen sexuality in Athens had two strong political dimensions, both of which created the *ethos* of honour that was integral to citizen life. The law regulated sexuality when it created unanswerable paternity questions, and the honour of both male and female citizens was dependent on ensuring the sanctity of the *oikos* as a civic institution defined by the paternity and inheritability of the children within it. The law also regulated sexuality where it infringed upon the personal autonomy of male citizens. Citizen male prostitutes, along with the persons responsible for hiring them and hiring them out, were forbidden under the threat of ἀτιμία, a partial or total loss of civic rights.[28] Such a man was literally "without honour" or "without civic and social prestige" because he placed himself at the mercy of his client, surrenduring his personal autonomy. He could no longer lay claim to the freedom and privilege of full citizenship if forced into sexual submission. The conventions and laws dictating a citizen adult male's pursuit of a citizen youth reveal a similar fear of bodily penetration: to give in to advances without resistance, and to submit to anal intercourse specifically, garnered social sanction.[29] Submission was beneath the role of a respectable citizen and resistance to it was a cornerstone of personal and political honor, The law regulated those situations in which it could take place.

The possibility of the penetration of a citizen male or citizen female in a sexual relationship dictated its legality: the socio-political and procreative status of those involved determined the validity of the relationship. The threat was not sexual intercourse itself but what it could do to the social order.[30] Consequently, a "penetration principle", originating in the concern with inheritance and sucesson, and manifested in the direct conflict between sexual protection and the desire for sexual gratification, governed citizen sexuality in Athens. A citizen male had to ensure his own physical well-being and the physical well-being of his *oikos* , which, at its most fundamental level, was the sum of the bodies of citizen women living within it.[31] This element of

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[28]Aesch. 1.13-14, 18-19, 195; Andoc. 1.100.

[29]See Dover (1978) 81-84, 91-100, 103.

[30]Harrison (1968) 38: "it was not the [sexual] acts themselves, but the involvement of two citizens that made them sufficiently abhorrent to entail legal punishment."

[31]Or, possibly, the sum of *all* bodies within it, male and female. An attractive youth was at the risk of anal penetration when courted by an *erastes* while still under the *kureia* of his father. Had such an act have taken place, his father failed in his duty to protect the lad, as he would have failed to protect his daughter had she been caught in a similar situation. The conventional disparagement of intercourse through the emphasis placed on resisting the advances of a male *erastes*, the legal strictures restricting the time and place for such contact , and the case of Timarchus (Aesch. 1) suggest that this broader conclusion has merit. (See Dover (1978) 81-103.)

protection was the first test for being a man of honour: to possess τιμή, a male citizen must have come from and ensure an impenetrable *oikos*. But a desire for sexual penetration (as the subject) balanced out this fear of it (as the object). A secondary, offensive component of τιμή complemented its primary, defensive component. The multiplicity of outlets for sexual energy and the severe proscription of adultery in Athens testify to male citizens' varied pursuit of sexual gratification. Honour came not only from protecting one's own wife or concubine, but also from penetrating another's. The conqueror of another man's *oikos* was a man of standing in the *polis* as well.[32]

There was a second conflict present in Athenian sexual regulation, that between νόμος and φύσις. The legal system of Athens was a means of controlling the undeniable procreative and seductive bases of female sexual power. Athenian law and custom sought to put the male citizen in sexual control. At the least, it attempted to give him control of the consequences of his sexual relationships. The double standards of Athenian sexual regulation reveal the artificiality of the system necessary to do this, and the legal battles, in their revelation of the vulnerability of this system to contravention and manipulation, reveal its ultimate failure.

The sexual structuring of Athenian society originated partially in the inheritance concerns at the heart of Isaeus's speeches. Privilege in Athens, in its highest legal and political terms, was dependent on sexual restriction, which was in turn dominated by a preoccupation with bodily penetration, and more specifically, the threat that such penetration represented to patrimony. The perception of the sexual behaviour of female Athenian citizens was an essential aspect of this sexual restriction and the privilege it

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A conclusion following the narrower definition of an *oikos* would be that the fear of penetration *in toto* originated in the specific threat to inheritance it represented in sexual relationship with a woman: i.e., the conceptual condemnation of penetration, applicable to all relationships, originated in the threat to inheritance that penetration of the *oikos* and the women within it represented. The threat of penetration in relationships where paternity was at issue affected those where it was not.

Whether penetration was seen as unfavorable first in procreative relationships and later translated to all sexual relationships or was unfavorable "to begin with", the point remains: being the object of penetration was deemed unsuitable for the possession of full τιμή and the political participation it entailed.

[32]If proven or insinuated in court, as in 8.44, 46, such a conquest became a liability. Thus, this secondary component of honour was contextual: in the neighborhood or among friends, an adulterous conquest was a source of pride, while in the public, law-oriented setting of court, it was a source of sanction.

There were many, if not myriad, ways to manipulate one's image, and thus, one's τιμή. Cohen (1994) 81, 92-96 emphasises the strategic nature of τιμή in a culture where "it is more important to be thought honorable by the community than to be honorable before one's conscience". Note Bourdieu's (1977) 161 comment on the furtiveness and suspicion of the movements of women at mid-day, when their menfolk rested at work.

determined. The economic manifestations of sexual regulation found in Isaeus were a building block of the Athenian democracy.

Chapter Four

LEGAL AND ECONOMIC RELATIONS I

The previous chapter has illustrated the sexual dimensions of the Athenian family; we will now investigate its legal and economic dimensions. Integral to our investigation will be an examination of aspects of the family's security and the institutions upon which that security depended: the *kurios*, *epitropos*, and adopted son. The legal and economic relations in Isaeus's speeches reveal the strengths and the weaknesses of family structure in Athens, the principles which dictated that structure, and those that dictated state intervention.[1] We will see how the custom and law that Isaeus utilised both created smooth channels through which estates and assets could flow and made possible the eclipse of the family ethic by personal greed.

Legal and economic relations in Classical Athens differed substantially based upon the sex of the agents involved. Consequently, we must investigate legal and economic relations in which men and women were involved separately from those in which only men were involved. This chapter will begin with a look at the evidence for women's direct and indirect influence in inheritance cases, continue with representations of women as independent economic agents, and proceed with a more detailed examination of their legal and economic relations with members of the *anchisteia*. The next chapter will examine representations of men in economic and legal relationships with other male family members, and its conclusion will bridge the two chapters, drawing out the similarities and accentuating the differences between those interactions and the ones addressed in this chapter.

Women as Legal/Economic Agents

Court cases in Isaeus, as in all of the Attic Orators, are overwhelmingly male affairs. The lack of significant women in Isaeus's speeches and the necessarily mediated form in which the few significant women in his speeches act restrains our ability to dig as deeply into gender relations as we might like. There are, however, some important pieces of evidence to consider. A citizen

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[1] Lacey (1968) addresses some of these issues in chapters five and six of his classic book but only partially, or in passing. His work is an excellent survey of the evidence regarding women, the family, and the state, but it fails to present any coherent and articulate conclusions about the structure, continuity, and security of the Athenian family.

woman is a primary adversary in speeches 7 and 11, while in 3, both the claimant and the defendant are women. Women are mentioned in four other speeches (5, 6, 10, 12) in a legal or economic capacity, but only in speech 10 is the reference to the woman essential to the argument of the case; the other references are made primarily as background or secondary information. We will begin with a look at representations of women as influential legal and forensic agents and then progress to a more specific focus on the economic capabilities of the speaker's mother in speech 10. We will conclude with an examination of their position as *epikleroi* and minors.

How does Isaeus represent women as acting in a forensic or legal capacity? The language of speeches 3, 5, 7, and 11 clearly puts the initiative for pursuing legal action with the citizen women whose rights allegedly were being violated. In 3.2-6, it is Phile herself who is represented as coming forward to claim the estate; as ἡ εἰληχυία τοῦ κλήρου γυνή (3.3) and ἡ ἀμφισβητοῦσα τοῦ κλήρου (3.6), she instigated and pursued the case of her own accord. She made the decisions related to the claim, including the decision to abandon it (3.6).[2] Phile occupies the active role in the account of the history of the dispute with which these opening sections are concerned. Similarly, the wife of Pronapes is ἡ ἀμφισβητοῦσα (7.43), and the speaker in speech 7 states that a claim was not available to her specifically (ταύτῃ μὲν οὖν οὐδὲ μέρους λαχεῖν προσῆκε: 7.20). This phrase is echoed in 5.6 in reference to the wife of Protarchides. She is one of the two women to whom Dicaeogenes forfeited two-thirds of the estate in the following sentence (5.27).

Each of these women is necessarily represented in court by her husband. Phile's husband "demanded to be given possession of the estate" (3.2), and was responsible for claiming his wife's patrimony (3.55, 30). The speaker suggests in 5.27 that Protarchides himself receive the share of the estate in question on behalf of his wife. Similarly, Pronapes claimed on behalf of his wife (7.2, 43). But these representations are themselves qualified: Phile's husband is mentioned as her *kurios* specifically in 3.3, but only τῆς εἰληχυίας τοῦ κλήρου γυναικὸς "of the woman who was suing for the estate", and Pronapes claimed "on behalf of the woman claiming" (ὑπὲρ τῆς ἀμφισβητούσης· 7.43). He bears the blame for actions previously directed at his wife in the closing arguments, of which she herself is the focus (7.45).

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[2]In 3.6 Phile is said to have abandoned her case after the initial perjury case against one of her witnesses, yet the case was clearly continued.

Phile and the wife of Protarchides were legal decision-makers who utilised their husbands to act where they themselves could not act. The case of the wife of Pronapes is ambiguous, but it is clear that the claims of these cases were mutual endeavours that relied on a partnership of husband and wife working together to achieve justice (or, at least, victory). The definition of *kurios* as we see it in the first passages of 3, and as it likely would have been applied in 5 and 7 and in similar cases where a husband and wife act together in making a claim, has the sole meaning of "legal representative", or "forensic stand-in".

Speech 11 paints a similar picture for an adult woman represented in a claim by a male representative who is (most likely) not her husband. Phylomache II, Euboulides' daughter, successfully challenged a will (11.9) and held possession of the estate (11.9, 17-18). The mother of Hagnias is represented as having a similar right to claiming and possessing the estate. Justice and the laws gave her a specific right to it (11.30) in a hypothetical situation described by the speaker. When the speaker of the case lodged his claim to her estate, it was "those acting on behalf of the daughter of Euboulides" and "the *kurioi* of Hagnias' mother" who protested. The next sentence mentions "those acting on behalf of Hagnias' mother" in the same manner.

Both Phylomache II and the mother of Hagnias were represented by Isaeus as capable of legal action. That Phylomache II was in clear possession of the estate, that she and the mother of Hagnias could make a legal agreement between themselves, and that they were represented as potentially either ἡ ἑτέρα νικᾷ, "the one who won" or τῇ ἡττηθείσῃ, "the one who was defeated" (11.21), indicates that their *kurioi* were strictly legal representatives. It was "these women" specifically whom the speaker defeated (11.19) when he won the previous case that entitled him to possession of the estate. In Isaeus, adult citizen women are represented as having directed cases in which they were the main figures. They are represented by men in the pursuit of those cases in court, but their claims were mutual actions, undertaken in cooperation with their male representatives.

This public legal initiative of the forensic arena is complemented by a private legal influence in the domestic sphere. In speech 11, the sister of Macartatus persuaded her husband to allow one of their sons to be adopted into her brother's *oikos* (11.49), and in speech 12, the speaker argues that his half-sisters had enough influence over their husbands to prevent them from giving false evidence in court (12.5). The speaker in speech 10 states that his mother insisted that her husband raise the issue of claiming her property in court (10.19).

The final decision to break a childless marriage and give the wife an opportunity to bear children with another husband was the wife's in 2.7-9: while her husband and her brothers were early disposed to the idea, they only agreed after she had given her very reluctant consent. Apollodorus requested permission from his stepsister to adopt one of her sons in 7.14. The opposing speaker in the case described in speech 2 argued that the influence of Menecles' second wife was strong enough to dictate whom he adopted. Because the will revealing the adoption was drawn up "under the influence of a woman", he argued, it was invalid. The speaker responds to the charge five times (2.1, 19, 20, 25, 38) and states that the woman in question had been the main focus of the opposition's case (2.19).

It is difficult to explain precisely why the law considered the influence of a woman detrimental to the validity of a will. Two reasonable explanations present themselves. The first is a desire to perpetuate the all-male province of the preparation and preservation of legal documents. The second is a belief that the recreation of *oikoi* must remain firmly within the control of the male *kurios* of an estate. Womanly influence, especially if made through a conspiracy of related females,[3] might allow for the financial weakening of a husband's *oikos* in favour of brothers-in-law or nephews, threatening the continuation of the financially secure male family line.[4] That we can find so many examples of female influence in legal affairs in Isaeus seems logical in a family-oriented society such as Athens. Women, and especially wives, would make their intentions known in matters that would affect them and their loved ones.

In the preceding passages, Isaeus has presented us with women who are legally and economically capable and assertive. To these we can add several others. Dicaeogenes II split his estate between his adopted son and his sisters in his will (5.20), Apollodorus willed his estate to his sister and provided for her marriage in it (7.9), and Hagnias II left his niece his considerable estate over his nearest male relative (11.8). In speech 11, the mother of the ward suing the speaker drew up an inventory of wealth in the company of witnesses, apparently after her husband had died (11.43). These passages clearly challenge Just's assertion, and others like it common in recent work on women and Athenian

[3]Lysias 1 illustrates how real the fear of a female conspiracy was.
[4]Proving such an accusation (as the opposition in speech 2 would have attempted to do) must have relied almost entirely on circumstantial evidence. This would not, however, have necessarily made it less acceptable to an Athenian jury.

law, that citizen women's "legal status made it impossible for them to be influential owners or administrators of property, and even in the domestic sphere, their allocated domain, they were scarcely controllers of their own destiny".[5] Yet, when we examine the evidence in which the legal/economic relationship is more developed--those in which the woman is an *epikleros* or ward under the guardianship of an adult male relative--we find that Isaeus' women could also be quite vulnerable. The cases argued in speeches 3, 5, and 10 depend on the argument that a woman in such a position could be ruthlessly exploited. Because it provides some of the clearest and most consistent language of female economic power in the entire Greek *corpus* , depends directly on the reality of economic exploitation, and thus acts as an effective transition into examining the evidence for legally and economically vulnerable women, we will begin with speech 10.

Speech 10: *On The Estate of Aristarchus*

Isaeus wrote speech 10 for the grandson of the deceased Aristarchus, who argues that his estate had devolved to his mother and had been wrongfully held by other members of the family. Aristomenes, the uncle, took supervision of the estate following his brother's death and later gave it to his own daughter and her husband Cyronides, who had been previously adopted out of the family (10.5). Aristomenes is not directly mentioned as *epitropos*, but is represented as the decision-maker regarding the estate and the niece's well-being. He was ὁ ἐγγύτατα γένους, the closest relative to whom "she should have passed by marriage, together with her fortune" (10.5) as heiress to the estate following her father's death. That she did not, and that he "neglected to make her his own wife or to have her married to his son" (10.5) is represented as "abominable treatment": Aristomenes neglected his duty to look after his closest female relative. Aristomenes and Cyronides are both dead at the time the case is tried (10. 7-8), almost thirty-seven years after the marriage of the mother. The speaker acts for his mother only indirectly, as it appears that she is now dead (although this is not exactly clear),[6] and he would stand to inherit the estate if his argument was accepted. His argument, however, is framed almost exclusively in terms of

[5]Just (1989) 98. See also Fox (1985) 227: "women had no legal capacity to inherit property" .

[6]The language of the speech indicates both that he is claiming for her and that he is claiming for himself. 10.1, 20, 21, and 23 refer to "we" or "ours"; 10. 21, 23, and 25 to "I" , "me", and "my". 10. 21 is strongest: "the estate is mine" (ἐμὸν αὐτὸν εἶναι). That the case was argued so long after the marriage of the mother supports the view that she was no longer alive.

his mother, and it is this use of language in this speech that makes it so interesting and relevant to our investigation.

The speaker's main assertion is that "this estate was not theirs, but my mother's patrimony, from the beginning" (10.3). He emphasises the rightful devolution of the property to her, as *her* patrimony, throughout the case.[7] Yet, the estate is also hers in a more forceful and direct way. The repeated use of the genitive of possession with κλήρος and χρήματα suggests that she had more interest in the estate than just as a portion set aside for her.[8] The estate was not merely her patrimony, as opposed to her opposition's, it was *hers*. Further references to the manner in which she was forcibly separated from or deprived of the estate[9] underscore the speaker's mother's possession of it, as does the use of feminine form of *kurios* in reference to the mother in 10.23 (τῆς μητρὸς οὔσης κυρίας).

The estate was "hers" in three linguistic usages of increasing strength, and these usages match the language of ownership utilised with the opposing (male) side in the speech. This is specifically articulated in 10. 8, in which the mother is stated as receiving the estate from her brother Democharès (after he died) in precisely the same language as she received it from Aristarchus.[10] The conclusion that a citizen woman, or, more narrowly, an *epikleros*, could own and possess property and occupy the same authority (as *kuria*) over her property as a citizen man seems a convincing one. But we must consider some important points that compromise such a conclusion. The extenuating circumstances of the case and the nature of the language both mandate that we carefully consider what we have read.

First, it is the son who is arguing the case, and his hope of winning the verdict is dependent on his representation of the estate as his mother's. It in no way benefits him to represent the estate as anyone else's, even if someone else, such as his father, did have, or would have had, control over it. Isaeus's intent

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[7] ἅπαντα ταυτὶ τῆς ἐμῆς μητρὸς ἐγένετο (10.5), ὥστε τὸν κλῆρον ἐπὶ τῇ ἐμῇ μητρὶ γενέσθαι (10.7), ὁ μὲν κλῆρος ...τῆς ἐμῆς μητρὸς ἐγένετο (10.17), τῶν τῆς μητρὸς πατρῴων (10.25), and εἰς τὴν ἐμὴν μητέρα τοῦτον τὸν κλῆρον ἐπιγιγνόμενον (10.26).

[8] ὡς οὐ τῆς ἐμῆς μητρὸς οὗτος (ὁ) κλῆρός ἐστι (10.14), τὸν κλῆρον εἶναι τῆς μητρὸς (10.15), τὸν τῆς μητρὸς κλῆρον (10.23), ἐπὶ τοῖς τῆς ἐμῆς μητρὸς χρήμασι (10.5), τὰ τῆς μητρὸς χρήματα (10.11), and εἰς τὰ ταύτης χρήματα (10.12).

[9] ἐμὴν δὲ μητέρα, ἐκ τῶν πατρῴων ἐκβάλλειν (10.24) and ὅν τρόπον τῶν χρημάτων ἀπεστερήθη, τοῦτ ' ἐστίν (10.6).

[10] τοῦ δὲ πατρὸς ' Αριστάρχου τῷ ὑεῖ Δημοχάρει καταλιπόντος, ἐκείνου δὲ τῇ ἀδελφῇ τῇ ἑαυτοῦ ταύτῃ, μητρὶ δὲ ἐμῇ.

was to keep direct and unambiguous the line of devolution from the speaker's maternal grandfather through his mother to him. His father was from outside of the family and may have been dead or remarried at the time of trial. The speaker was likely soliciting the sympathy of the jury by deliberately acting the part of dutiful son, standing up for or guarding the honour and rights of his mother, shrouding his self-interest in constant reference to her.

Second, the verb tenses here and in 10.8, 12, and 14 suggest that the property was still the mother's or at least, that she had a claim to it as the trial was proceeding. She may not have been dead. Yet, even if she were alive, her son was well past the age at which he would have taken over the estate. Why would it have been "hers"?

Third, it is difficult to explain the presence of the "one medimnus law" in 10. 10. It states that a woman, like a child, was expressly forbidden from contracting for the disposal of (συμβάλλω) more than one medimnus of barley, about the amount of grain required to feed a family of four for a week. This law has often been cited as evidence that an Athenian woman was severely restricted in her economic power. The incidental nature of its reference to women in this passage and the lack of a reference to it anywhere else in Athenian law cast doubt on this kind of application. Much more important is why Isaeus mentions it in a case throughout which he explicitly stresses the language of female ownership; it should bring our investigation to a complete, if brief, halt to consider whether ownership as we conceive of it is really at issue here.

Fourth, the question of a *kuria* is a difficult one. The speaker links *kurios* with the verb κράτειν in 10.12; it is only the children, he says, who have the right, as *kurioi*, to κρατεῖν τῶν χρημάτων, lay hold of the possessions of the *epikleros* when they had reached two years past puberty. As the strongest expression of ownership used in the speech, this passage suggests that *kurios* has a meaning which bears specifically on direct control or "disposal-management". This meaning is supported by the use of *kurios* in 10.2, in which the speaker links it with the verb διάτεσθαι, to bequeathe or dispose, and in 10.13, in which it is linked with the giving away of a daughter. That "the law ordains that a man can dispose of those things that are his to whomever he wishes, but it has never made anyone *kurios* of another person's things" (10.2) is reiterated in 10.13: "for the law ordains the *kurios* can give his things to whomever he wishes, if he takes the daughter with him". A *kurios*, and, presumably, a *kuria*, was one who had the

ownership of an estate or a possession requisite with disposing of it or giving it away.

Yet, whether *kurios* had a total "disposal-management" meaning is questionable. In 10.12, the speaker, in disputing the alleged adoption of Cyronides, states that neither Aristarchus nor Aristomenes would have been able to become *kurios* of his mother's property had either married her, because only the sons of an *epikleros* could become *kurioi* of her property. Were young men two years past puberty in a position to make judgements about the supervision and management of property? The mother would surely regulate or inform her sixteen year-old's decisions about property from which all of them benefited, and their authority as *kurioi* would be somewhat mediated. This passage also makes clear that the mother's property would have had a male *kurios* under "normal" circumstances and that that *kurios* would have been her husband. It appears that she is the exception that underscores the rule. Whether the use of *kuria* in 10.23 was exceptional in Athenian law--it is "so strange" to Wyse that he suspects it to be a textual flaw[11]-- and Isaeus deliberately utilised it as such to give emphasis to his argument or not, it could be that the female *kureia* applied only to *epikleroi* and/or had a different connotation than the masculine form of the word. It could be that there existed a double standard of ownership, *kuria* and the genitive of possession simply indicating the property with which the *epikleros* went, following the literal meaning of *epikleros*. Equally possible is that the language used may have been intended and understood to be relative, more clearly setting two parties in opposition to each other, and nothing more.

Consequently, it is difficult to tell precisely what the jury was deciding in giving its verdict. Lynn Foxhall has argued that ownership was a private, domestic matter that would have been decided within each actual family.[12] Attempting to define narrowly individualistic rights and capabilities is frustratingly difficult, if not impossible, and her view that the entire issue of defining individual ownership is irrelevant seems both appealing and appropriate. This perspective dictates that the jury's task was to determine who was entitled to the estate and not to determine, or even to consider, who had (or should have had) authoritative and personal control over it. But entitlement was not always the first issue in inheritance cases. Isaeus shows us how it was within the power of guardians to abuse their power to control an estate when

[11]Wyse (1904) 668.
[12]Foxhall (1989) 22-34.

entitlement was not challenged. (This is fully examined in the following section and in the next chapter.) The jury's task in those cases must have been to decide specifically who owned and controlled an estate; under these circumstances, it was in the public's interest to ensure that this usually private affair was resolved publicly.

The kind of abuse of family responsibility that we find in speech 10 was outrageous to the Athenians, and that made it, as an accusation, liable to abuse itself, especially in a weak case. Speech 10 is a such a case. As Wyse notes, "in this speech there is more reason than usual to mistrust Isaeus"[13], and this weakness could well have influenced the structure and content of the argument.[14] Beyond "standard" rhetorical considerations--here, generalisations, an emphasis on the extraordinary nature of the situation and not on its actual injustice--are three important points. First, it is immediately suspect as Isaeus' shortest speech, a mere twenty-six sections consisting of only two arguments (that the estate devolved to the mother and that the adoption was illegal) and two short counter-arguments (the indebtedness of the estate and the lack of previous protestations). Second, Isaeus' justification for the lack of previous protestations, the opposition's strongest argument, is hardly convincing; he argues that it is "unjust that anyone should have less than his due rights through inability or neglect to assert them" (10.18), but the active asserion of one's rights was a principle that governed inheritance in Athens[15] and was a significant argument of his in speech 3. Third, the case is built on convincing the jury to override a decision that the *archon* had made. The will which was presented adopting Cyronides's son as the son of Aristarchus had been approved by the *archon* and the speaker was forced to acknowledge that this adoption was valid in the opening of the speech (10.2). Either the *archon* heard no protestation to it or overruled the protestation that

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[13]Wyse (1904) 656.

[14]It is always dangerous to make judgements about the relative strength or weakness of a court case in the Attic Orators, but an orator searching for ways to convince his jury may have distorted language in a way that, when language is the key concern, will affect our interpretation. Here is where Millett's argument (1991) 243 that most "attempts to determine the relative strength or weakness of a speaker's case are...only marginally relevant to the understanding of Athenian society" falters.

[15]Priority was what courts decided, and if one party gave up their right to claim, the next-in-line had rights to it. The *anchisteia* is the prime example of this: it established a hierarchy of possible claimants so that if one party did not claim, the next in line was clearly articulated. In speech 10, no claim was made on the previous two occasions when such a claim would have been most expected, when the speaker's mother was married off to an outsider and the property was not transferred with her and when Aristomenes passed the property on to his daughter and Cyronides, who reinstated himself in the family after having been adopted outside of it.

was made; in either regard, the adopted son Aristarchus II was the legal heir, and an attempt to overrule this decision seems legal nonsense.[16]

In the final analysis, there is a fundamental ambiguity of language that is impossible to overcome. Isaeus' strong and consistent phrasing was clearly an effort to get the jury accustomed to viewing the estate as the mother's, but the language used does not necessarily indicate the mother's actual possession and right to disposal over the property. Such language might never indicate actual possession and right to disposal: Greek, like English, has no litmus test for ownership. There is no word that distinguishes absolutely the ability to control or dispose. We can speak of the differences between possession and ownership, control and disposal, positive ownership and negative ownership,[17] but the matter still remains unclear. The test of ownership must always be: why is the representation given essential to the case being argued? With this in mind, we can make three points about Isaeus 10 with confidence. First, there is a continuum of ownership language describing a citizen woman's relationship to property that is unique; second, that ownership language reflects the language used describing citizen men's relationship with property; and third, this case is perhaps the best evidence we have for what Foxhall (1996b) calls "the malleable and manipulable nature of the *kyreia* as an institution".[18] Outside of specific

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[16]It is possible that the *archon* accepted the will only because no protestation was made. This could have been the case if Cyronides returned to the family expressly to prevent his father's *oikos* from dying out, neither he nor his father having anticipated the death of his brother when he was adopted out of the family. The death of Democharés, then, would have been the turning point of the whole series of events: Cyronides and Aristomenes technically broke the law, but with the interest of Aristarchus' *oikos* in mind. The *archon*, as overseer of the perpetuation of citizen *oikoi* in Athens, may have been keen to accept such a scheme, ignoring an applicable law in favour of saving the *oikos*. This is precisely the kind of scenario Foxhall (1996b) 142-143 sees as a valuation of "social preference" over legal right. If this did indeed happen, the tragedy of the case (for Cyronides) is that Aristarchus II, Cyronides' son, died without issue, and the estate, reverting to the heir Xenaenetus, was now outside of Aristarchus I's *oikos*. The basic struggle in this situation, between the perpetuation of an *oikos* and narrow financial self-interest, may have been more common than we would imagine. But this would almost always depend on conjecture, and may be equally misleading in a case where it is stated as such.

It could also be that the son was pursuing a case that his mother had no intention of pursuing; she herself may have given Cyronides the blessing to go forward with his plan to save her father's *oikos*. Ths would explain the speaker's weak reasoning that the threats of Aristomenes, the Corinthian Wars, and the public treasury kept his father from claiming on his mother's behalf (18-21). The law stated that that an adopted son could not bequeath his adoptive father's estate, so a second law may have been broken as well.

[17]The discussion of what constituted ownership in Athens is long and uninspiring. See Schapps (1979) chapters 1, 3, and 4, Harrison (1968) 200-204, and Sealey (1990) 45-48.

[18]Foxhall (1996b) 142-150 examines other examples of women as *kuriai* and manipulators of their *kurioi*.

observations of usage, we enter the realm of conjecture. Many of our key words--*epikleros, kurios, kuria, kratein*-- may have had several layers of socio-economic meaning, varying according to the specific context in which they were used.

Additional *Epikleroi* and Minors

An adopted son could act in a manner similar to the uncles in speech 10. Speech 5, *On the Estate of Dicaeogenes*, is a surety suit, the fourth formal legal action in a long battle to recover the portion of an estate owed to the speaker and those he represents. Ten years previous, the courts accepted a will that Dicaeogenes III presented (5.8) giving him the shares in the estate belonging to the two aunts and two cousins (his adoptive father's sisters, one of their sons, and the daughter of a third sister) for whom he was acting as *epitropos* and *kurios* (5.10). With this new power, the speaker argues, Dicaeogenes III stripped his wards of their possessions (5.9), handed some of those possessions over to their enemies, appropriated others, and sold their ancestral home while they were still minors (5.10). These charges are lent credence by Dicaeogenes III's later surrender, after two successful perjury charges brought against his witnesses, of the estate in an action sanctioned by the court (5.18). Such actions made Dicaeogenes III ἀντίδικος (5.10) to those he was entrusted with looking after: "they did not meet with the slightest degree of pity from him on account of their relationship, but orphans and unprotected and penniless, they even lacked all the necessities of life" (5.10). The plight of the wards is undoubtedly exaggerated here, as is the language denoting "robbery" following the acceptance of the will by the court (5.9), but this case highlights the potential vulnerability of female wards, the legal and economic power of their *epitropos*, and the disgrace that the abuse of such power held in the eyes of an Athenian jury.

In speeches 5 and 10, there has been one man designated to look out after the woman or women mentioned; speech 3 suggests that a young woman may have had two, three, or even more such guardians, official or unofficial, and that these could have served her interests even after she was married. The speaker argues that Nicodemus, a maternal uncle, Endius, an adopted brother, and the paternal uncles who witnessed the marriage of her mother and father all possessed roles as Phile's guardian. It was Nicodemus's responsibility to ensure his niece's title and to lodge any appropriate protestation should that title be threatened (3.43), to ensure that she should be married as a legitimate child, to monitor the size of the dowry given with her, and to make any claim to the

archon necessary to protect her (3.46, 48, 51). Phile's paternal great-uncles had been specifically sworn to look after Phile by her father (3.69, 71) and did not interfere to protest Endius' refusal to take Phile as his wife (3.69, 70). Endius, having taken possession of the estate, gave Phile away in marriage (3.45). Phile, as a young woman of fifteen or sixteen, had at least four guardians, all of whom had specific duties to perform on her behalf, and three of whom had the opportunity to take her as wife.

In these cases, the male guardian was able to exploit his position to the benefit of his own financial interest and to the detriment of those he was in a moral and legal position to guard. This scenario was a double-edged sword to the female ward or *epikleros* because it involved not only a betrayal, but also an obstacle to proper redress. As the closest relative, it was the guardian who was supposed to take up her defence and protection in any legal or economic crisis; finding another male relative willing and able to do so could have been an additional challenge and may have been accomplished only after a significant lapse of time and missed opportunities of the kind described in 10.18-21.[19]

For *epikleroi*, the sword was triple-edged, as her relatives or the jury could have utilised their right to decide her fate. The speaker in speech 6 asks the jury to decide whether Philoctemon's sister, a widow, ought to "fall upon" her relatives (ἐπὶ τούτοις γενέσθαι) either to be given away to whomever they wish or to grow old in widowhood, or, whether, as a legitimate daughter, she should be given to her relatives in *epidikasia* by the jury to whomever they wished (6.51). Thus, while an heiress with little money might have trouble finding a male relative with whom to live, a large fortune may have been a curse as well. In speech 3, the speaker argues that Pyrrhus' uncles would not have left a legitimate daughter "who belonged to them by right of kinship" (3.63, 72, 74) to be taken by Xenocles, a stranger to the family (3.65). His stress on the pure financial advantage of this, stating that doing so would have made him heir to a large fortune (3.65), underscores the financial aspect of claiming *epikleroi* and the wrangling that went on in order to make (at least temporary) claim to the fortune that accompanied them.

[19]Whether this specific delay was due to the lack of an available male to take up the case is doubtful, as the mother was married throughout. It does, however, accentuate the long delays in putting forth inheritance claims, which could almost certainly be exacerbated or explained by the scenario described.

This vulnerability is further accentuated in 10.19-20 by the argument that the husband of an *epikleros* was frightened off from making a claim to his wife's patrimony by greedy relatives who threatened to take his wife in *epidikasia*. This argument is extreme and of questionable applicability--the opposing relatives gave up their claim to marry the *epikleros* when they themselves married her to her husband (10.5-6, 19)-- but we know from Isaeus that some wives were taken from their husbands in such a manner.[20] All *epikleroi*, whether minors or adults, married, unmarried or widowed, were in potentially hazardous situations, as the protective measures provided for them by custom and law could have been used against them. [21]

Conclusion

Ambiguities abound in an investigation of the kind that we have undertaken, and it is probable that many of these ambiguities existed in Athens among the citizens.[22] The speeches of Isaeus reveal a family ethic centred on the concepts of legal, economic, and moral protection of those members of a family most vulnerable when a male head-of-household died. This family ethic was clearly violated in the name of financial self-interest, which, our evidence shows, both men and women possessed and expressed. The security of a family was a male responsibility, and it was always males who brought a case that sought to prove or disprove that this responsibility had been shouldered appropriately. Male interest, if not self-interest, determined the security of the family. At the most basic level, a male was needed for making a case happen, presenting an imbalance in which men could act without the consent of the women they might

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[20]Isa. 3.64: "they...in spite of the fact that they are thus married, shall, if their father dies without leaving them legitimate brothers, pass into the legal power of their next of kin; and indeed it has frequently happened that husbands have been thus deprived of their own wives". Fox (1985) 230 suggests that, while many relatives probably disregarded their right to claim in such a situation, bargains were often struck with those who were relentless in pursuing their "right". This is the situation, he believes, in Isaeus 10: a deal was done to secure the mother and placate the relative, but her son pursued the case as if this had not happened.

[21]Fox also notes (229) that Menander had at least three plays called *Epikleros*: the situation of such a woman was not only dramatic, but could be entertainingly so.

[22]Yet, perhaps not. The questions we are asking, saturated with the concept of modern egalitarian rights as they are, may simply not have mattered to the Athenians of the fourth century. They may not have known the distinctions we are seeking, but more importantly, they may not have cared.

represent,[23] but women could not act without the consent of the men who would represent them. A woman who had seen her male relatives pass away and who had married a non-family husband, as in 10, was in a particularly difficult situation, abandoned by her relatives who still, it appears, held some rights-in-abeyance over her. Humphries' accusation that "the laws offering protection from exploitation within the *oikos* were often completely ineffectual" [24] echoes resoundingly.

But we must be careful not to cast these conclusions in terms that are too easily divided along lines of sex. That Isaeus could argue in speech 10 that an uncle had illegally detained and passed on his niece's estate and contend in speech 3 that such a disgraceful act was beyond consideration (3.51) demonstrates the artifice that suffused these speeches and the scenarios they represent. They also provide a critical warning to our evaluation of vulnerable women and positions of vulnerability within the family because they reveal the ease with which such an accusation could be utilised as an offensive weapon. Who, then, was vulnerable? That the Athenians developed customs and enacted complex legislation designed to protect those perceived to be vulnerable was both ethically and practically sound: in an agonistic male world, orphans, *epikleroi*, and others warranted aid from the state which was itself built on a collection of stable and financially secure *oikoi*. But there are two ironies to this. The first is since only families like the ones we see in Isaeus may have been able to afford the time and money to take their cases to court, only they may have been ensured an opportunity at such protection. The second is the creation of formal rules and regulations always engenders their abuse, and it is impossible to tell the extent to which the cases we have abuse those rules and regulations. In seeking to settle inheritance conflicts in the courts, the state distanced those conflicts another degree from the *oikoi* in which they originated and thus allowed for an additional degree of misrepresentation and abuse. The citizens who themselves listened, debated, and voted on laws composed the juries that passed judgment on cases increasingly dependent on the use of written law. They could penetrate the cases with better insight and understanding than we can; whether they believed that the court provided, or could provide, justice in inheritance conflicts is another question.

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[23]The reference to Phile's abandonment of the case in 3.6 and the scenario outlined in note 7 above are possible examples.
[24]Humphries (1983) 5.

Chapter Five

LEGAL AND ECONOMIC RELATIONS II

Having investigated legal and economic relationships between women and men in Isaeus, we will now look at those economic and legal relationships that involved only men. Our task is three-fold: to articulate what Isaeus tells us about such relationships, to compare that with our conclusions from the previous chapter, and to utilise the insights from both to examine with a more critical eye the Athenian legal system and our conceptions of it. We will begin with a look at the concept of reciprocity and its role in the Athenian family before moving into a detailed examination of guardianship and exploitation, investigating additional uses of *kurios* and giving a special focus to speech 11. We will conclude with a comparison of legal and economic relationships defined by sex and the questions our investigation has raised about the functions of law and justice in Athens.

Reciprocity and the Family

In Athens, a blood relationship was an economic relationship. The law mandated that a father could not devise his property to anyone if he possessed a legitimate son (10.9), and the *anchisteia* clearly detailed the order in which the appointed relatives could claim, and in what order, the property of the deceased (11.1-2). Inheritance was first and foremost a family matter; the relationship one had by blood with another dictated a potential economic relationship, and because that relationship might have to be proven in court, it formed a legal relationship as well. The faithful disposal of specific rituals distinguished one both as religiously faithful as well as the rightful heir. The funeral battle between the speaker and Diocles in speech 8 (8.21-27, 39) underscores the fusion of religion, legitimacy, economics, and the law that placed an inherent economic self-interest firmly within the bounds of a conception of family duty defined by reciprocity.

Speech 7 illustrates that the benefits and injuries received by one's relatives significantly influenced family decisions with financial implications.[1]

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[1]This is stated specifically in 7.4: "I shall prove to you not only that Apollodorus did not leave his estate to his nearest relatives, having received many injuries (πολλά δεινά) from them, but also that he legally adopted me, his nephew, having received great things (εὐεργετημένος) from me."

Apollodorus requited in concrete financial terms the assistance he had received from his step-father. This assistance had enabled him to win back rightful ownership of his estate from his avaricious guardian Eupolis. Apollodorus contributed money for Archedamus' ransom when Archedamus was held hostage, shared money with Archedamus when he was in financial straits, and devised his property to Archedamus' daughter (7.8). "By his actions, it is best witnessed that Apollodorus thought fit to do well back to those who had done well by him...Such was his conduct towards us who had saved him from financial ruin...he requited these good services of ours..." (7.8-10). Both Apollodorus and Archedamus, and, the speaker argues, those on Archedamus's side of the family, benefited from their relationship. Apollodorus and the speaker were in a reciprocal relationship as well, the speaker having proved his financial prudence in personal, familial, and official capacities and having himself provided considerable services to Apollodorus (7.34). These things dictated that Apollodorus acted with full knowledge when he made the speaker *kurios* of his property. Conversely, Apollodorus did not leave his estate to those nearest to him, the descendants of Eupolis, because they had done many injuries to him (7.4). Eupolis's embezzlement of Apollodorus's estate precluded any type of financial relationship with Apollodorus or his immediate family. Additionally, the neglect of Apollodorus II's *oikos* by his sisters precluded any similar relationship with them or their sons.

This reciprocity also extended to a family's relationship with the state and could be passed on from one generation to another in like fashion. In speech 10, the speaker states that Xenaenetus's father paid a judgement-debt on behalf of the estate (10.15) and then refers to those who "when they have had monetary losses, introduce their children into other families in order that they may not share in their parents' loss of civic rights" because the family was insolvent or encumbered to the state (10.17). Indebtedness to the state thus mandated a loss of civic rights, and that loss was passed on to the heir to the estate. Debt to the state was tied directly to civic rights. The speaker of 7 could ask the jury in his closing statement to requite the financial services Apollodorus provided to the state while he was alive by ratifying his intentions for the disposal of his estate as detailed in his will (7.40-41). The state could thus requite financial benefit from a citizen by granting approval of his will through the jury acting on its behalf.

This biological/legal/economic relationship, while necessitated by law, did not always manifest itself in unambiguous terms. Even the simplest of the

law's mandates--that of a father's economic relationship to his son--was open to manipulation. The speaker of speech 6 asserts that Euctemon successfully blackmailed his son Philoctemon over his inheritance by threatening to marry a second wife and recognizing any children born of their union as legitimate unless Philoctemon consented to allowing the sons of his father's prostitute acceptance into the phratry (6.22). That he could make such a threat, and that his son would give in to it,[2] highlights the lack of documentation and the near-total power of the father in determining legitimacy, as well as the priority of economic self-interest over prestige to the son. The split in the estate necessitated by the presence of brothers was more persuasive than the desire to ensure the phratry's and the family's legitimate blood. Philoctemon's legitimacy was never in question, only his ability to inherit the estate in its entirety.

Speech 5 reveals a similar under-handedness. Menexenus II, representing all five cousins suing for shares in an estate, successfully prosecuted a witness who testified on behalf of the estate's possessor, Dicaeogenes III, for perjury. His possession of the estate compromised, Dicaeogenes III persuaded Menexenus II to throw over his fellow-claimants by accepting a share of the estate and abandoning further action (5.13). Only when Dicaeogenes III refused to hand over the promised share of the estate did Menexenus II go back to the cousins he had betrayed and continue the legal action against him (5.14-16).

This kind of exploitation may also have occurred in the case argued in speech 1. The former wards of Deinias may well have taken advantage of their closeness to Cleonymus as next-of-kin to gain control over his estate after he died. They relied on the argument that, because he had raised them in his own home as sons, Cleonymus intended to change his will in favour of them. In contrast to the *lateral* exploitation which is found in speech 11--that in which one man took advantage of one possessing the same legal and economic power--this kind of exploitation was, like the kinds we find in most guardianship maltreatment cases, *vertical* : there was a significant difference in the legal and economic authority of the one exploiting and the one being exploited. Ironically, however, and in contrast to most cases of vertical exploitation, the kind found in speech 1 is carried out by the (former) wards themselves, the death of the grandfather having presented an opportunity for them to claim his property. As

[2]Philoctemon backed down on the advice of his relatives, on the condition that he immediately receive a single farm.

with the scenarios outlined in speeches 5 and 6, economic considerations prevailed over familial fidelity.

Guardianship and Exploitation

The most significant indications of the priority of economic self-interest over biological fidelity are found in those cases in which a guardian was entrusted with the supervision of a ward and his estate. The difference between these cases and the ones examined above is that the presence of *epitropoi* was not mandated by law; instead, an *epitropos* was simply named or assumed by custom. Guardianship issues between males are found in five of Isaeus' speeches (1, 2, 6, 7, and 11) and in two (1 and 11) they are central to the case being argued. In investigating these issues, we will focus on what they can tell us about opportunities for exploitation and actual ownership of property, how these two are linked, and what similarities and differences exist between these guardian-ward relationships and those we investigated in the previous chapter.

In Speech 1, Isaeus represents two uncles, one maternal, one paternal, as having been at odds with each other, and, he argues, this conflict prevented the wards of the latter from inheriting the estate of the former. The plaintiffs were orphaned at an early age and the paternal uncle, Deinias, assumed guardianship over them (1.9-10). The maternal uncle, Cleonymus, with whom the wards had a close relationship, was childless and willed his estate to other relatives over the wards, who were themselves his next-of-kin. The argument was that although the orphans had claim to the property, Deinias would have become *kurios* of it because they were still minors (1.10). Allowing such a position to devolve to his "bitterest enemy" was unthinkable to Cleonymus.[3] The case rests on the assumption that Deinias would have had economic control of the estate and would have profitted directly from it. Isaeus clearly distinguishes entitlement to an estate from financial control of it here. *kurios* has a distinct economic meaning in this passage and is more closely tied to ownership and disposal than the genitive absolute indicating the wards' possession of the estate. The guardian of a ward's estate would profit from that estate, or could profit from it, even if he did not abuse his position.

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[3] The argument seems a relatively weak one, as Deinias died long before Cleonymus (1.12), and he thus had ample opportunity to change his will, especially if his relationship was as strong with his nephews as is argued (1.30; also 1.4, 12-15, 18, 27-29).

A passage in speech 6, μισθωταὶ δὲ αὐτοὶ γενόμενοι τὰς προσόδους λαμβάνοιεν (6.36), indicates that the guardians themselves received the profits from the lease of their ward's estate. A lease for orphans was distinguished from other leases by the presence and authority of an agent who was not himself entitled to the estate. It was this that made financial exploitation possible. Although the *horoi* of the leased land were inscribed with the orphans' names, it was the guardians themselves who profited from the lease. This arrangement, it seems, is precisely what is indicated by μισθοῦν...τοὺς οἴκους ὡς ὀρφανῶν ὄντων (6.36), literally, "to lease the *oikos* as being the orphans". The opponents inscribed themselves as guardians of the allegedly legitimate sons of Euctemon and obtained the *archon*'s permission to lease out part of their property (6.36) specifically to obtain control of the deceased's property.

Eupolis similarly exploited his ward to his own advantage in speech 7. Eupolis's two brothers, Mneson and Thrasyllus, had recently died, and he had become guardian of Thrasyllus' son Apollodorus. He not only "seized for himself the whole of Mneson's estate, half of which belonged to Apollodorus" but also "as guardian, so administered the affairs of Apollodorus that he was condemned to restore three talents to him" (7.6). It was only on attaining the age of majority and receiving aid from his stepfather that Apollodorus was able to obtain justice (7.7, 10). While Eupolis neither married his brother's wife nor took in his brother's son, he did control his nephew's estate. Isaeus implies a normative separation of a ward from his widowed mother which accentuates the guardian's control and possible exploitation of the ward, who was much like an *epikleros* in that he (or she) simply moved with the estate, to be "taken" by the first claimant in the *anchisteia*. It also characterizes the *oikos* as a financial entity in which the wife had--at best--a secondary and disposable place and in which the minor heir's place was contingent upon his attainment of the age of majority.

Guardianship, Accountability, and Exploitation

The opportunity for exploitation inherent in the position of guardian was ample, but it was also somewhat mitigated. Speeches 2, 6, and 11 demonstrate that Athenians were concerned with ensuring at least a small measure of accountability in the guardians who supervised their wards' estates. Menecles was one of the guardians of the unnamed children of Nicias (2.9) and was compelled to sell land that he jointly owned with his brother in order to "pay back the money due to the orphan" (2.27, 28). While a guardian or guardians

could share in the leasing out of a ward's estate, surety of some kind may have been required from the guardian to ensure that the ward received the capital of the estate and the interest accrued on it when they came of age (2.28). Isaeus implies this kind of provision for protection in 6.36, where the speaker mentions that part of the estate was leased out and part kept as security (τὰ δὲ ἀποτιμήματα κατασταθείη), but here it is much clearer: at a later point, the guardian had to fully reimburse his ward. It seems likely that this was a specific part of the μισθοῦν procedure undertaken in the *archon*'s court (6.36), but it is not specifically stated as being mandated by law. Isaeus depicts an ethically and financially accountable guardian taking the necessary action (the sale of land) necessary to fulfill his obligation to his wards. Were these obligations representative of typical guardian-ward relationships? Or only of those in which estates were leased out? It is difficult to say, as nowhere else in Isaeus do we have such a picture.

Speech 11, *On The Estate of Hagnias*, reveals a similar provision to ensure the accountability of guardians, as well as the opportunities for manipulation and exploitation that such provisions created. Theopompus was one of two guardians of his deceased brother's (Stratocles) son. Theopompus had won control over Hagnias's estate and the second guardian was suing him for maltreatment of the mutual ward on the grounds that Theopompus did not rightfully share his newly-won estate with him. Surprisingly, the ward seems to have no interest in the case. There is no reference to the ward himself pursuing the case or any indication that the guardian was the facilitator of his ward's quest for justice. While the ward is mentioned several times as having a hypothetical share in the estate (11.1, 3-5, 33- 34) and as having the right to make a claim if he were being exploited (11.27-28, 33, 34), the hypothetical and technical contexts of these references are generally impersonal. The venomous rhetoric directed specifically at the second guardian, surpassing the accusations of injustice and vexatious dealing (11.4, 22, 23, 31, 36) that typify Isaeus' speeches, suggests that the dispute was one between the guardians and not a guardian and the ward. The direct addresses to the opposing guardian,[4] the vitriol with which he indicts his opponent ("such is the wicked and shameless scoundrel he is": 11.6, "his rascality": 11.20, and "fabricated it all out of his greediness": 11.36), and the

[4]Specifically, the use of οὗτοςthroughout, the demand "you, come up here, since you are so clever at misrepresenting the laws...I wish to question you" (11.4-5), and the sting of third person verbs in the opening lines (ἰσχυρίζεται: 11.1, εἰπάτο: 11.3, ἐξει εἰπεῖν: 11.3, and ἐλεγχθήσεται: 11.4).

sentiment expressed in 11.13--that "this fellow should dare to play these pettifogging tricks"--accentuate the enmity between two entrusted with looking after the child. The opposing speaker's malicious and illegal intent is quite distinct from his ward's: "if he can carry out his wishes, he will henceforward squander the child's estate with impunity" (11.31).

Four additional passages further clarify the rivalry between the two guardians and the secondary, if not incidental, role of the child. The speaker claims that his opponent wished "to annoy me in the name of the child" (11.13), refutes the opponent's claim that he took a bit of the ward's money (11.14), and accuses him of deserving prosecution for his own supervision of the child's estate (11.14) and of contriving "these court actions upon my things which you yourself have awarded me". Most significantly, he states that his opponent would not now be troubling him with this action had the speaker not previously opposed his dissipation of the child's estate (11.15). The true nature of the case is now clear. The suit was the means of attaining vengeance for a previous attack, in which the speaker had sued him for maltreatment of the ward, and of gaining control of the estate that had been awarded by adjudication to the speaker. The speaker's defeat in the present suit would necessitate his surrender of guardianship (11.31), and (at least, part of) the estate he had inherited would be placed under the name of the ward, to be controlled solely by his enemy, the second guardian.

The common relationship that the guardians had with their ward made this double-edged case of lateral exploitation possible, and the financial control they exerted over their ward's property specifically facilitated it. Had the guardians not been able to accuse each other of mismanagement and dissipation of their ward's estates, and were the speaker's holdings in the name of his ward not now vulnerable to take-over by the second guardian, this case could not have been brought to court. The provision to ensure the accountability of guardians lies here: the two guardians in speech 11 were named in order to prevent a situation in which a sole guardian utilised his control over his ward's finances to his own advantage. The dual guardianship was a provision, like the surety guarantee in speech 2, to ensure that the *epitropos* was accountable. The presence of a second guardian would give the minor an immediate advocate if the first attempted to exploit him, and the knowledge of such a presence would presumably keep both *epitropoi* honest.

Yet, this provision itself created the opportunity for the exploitation. The ward was merely a pawn in the next stage of an ongoing conflict between his guardians. Although it may have reduced conflict in some circumstances, in speech 11 the dual guardianship exacerbated conflict, providing an additional tool for one enemy to strike at another. Nominally a suit for maltreatment of a ward, it had little to do with the child for which the guardians were responsible and was the second, and very possibly the third, legal action of the bitter rivalry. Had the guardians not been enemies, the ward would still have been incapable of stopping either of from advancing a vexatious suit against the other. One could always attempt to strip a fellow-guardian of his position in order to obtain the total control over the ward's property (11.31) necessary for unhindered exploitation. Like both the child it was intended to protect and the court in which it was utilised, the dual guardianship became an instrument of advantage.

The laws regulating inheritance were similarly manipulated in speech 2. This case was fought between the deceased's brother and adopted son, the speaker. He argued that a quarrel had broken out between the two brothers over the sale of land required to pay back the orphan mentioned above. The opposing speaker had allegedly been scheming to get control of all of his brother's property (2.27-31, 37) and charged that the will adopting the speaker was made "under the influence of a woman" and therefore invalid. He, consequently, was entitled to the estate. Even though the opposing speaker's forensic opponent was no longer his brother, the issue was still one of fraternal greed. The dispute was merely carried down to the next generation,[5] the law prohibiting female influence on the making of a will having become the new means of obtaining possession of the land.

Conclusions

Isaeus reveals significant similarities between legal/economic relations involving men and women and those involving only men. The relations to which we have the best access are those in which there has been some kind of exploitation by an older male; most notably, a guardian. Minors, whether male or female, were vulnerable to exploitation in a manner similar to *epikleroi*. They

[5]The intention of keeping the estate within the father's family line here is muddled. The adopted son (although he would have left his own father's *oikos*) was the father's brother-in-law, and thus the estate in a sense moved into the wife's family. Ensuring the paternal name and bloodline could have been the main issue of the dispute.

were unable to pursue justice on their own, their guardians were often their closest relatives, and those guardians had financial control over their resources. Yet provisions were made to reduce the risk of this vulnerability for both males and females, especially in the dual guardianship and the surety-requirement for leases on land in the ward's name.

The differences, however, are more significant and point to the advantage that males had over females in the realm of family law. Upon "coming of age", a male ward could represent himself in court and pursue a suit for maltreatment on his own if there were no other relative to take up his case. "Coming of age" for a woman always meant getting married, and because she could not represent herself in court, her claim for maltreatment may have been significantly delayed, if not dropped altogether.[6] A male ward would never be in the situation that Philoctemon's sister in 6.51 found herself, where either the relatives or the court was to decide her fate, or in the situation of the speaker's mother in 10.19-20, where her only possible advocate, her new husband, was silenced by a threat that she might be claimed by them as an *epikleros.*

At the center of this question is the institution of the *kurios.* Our examination of the use of the term in speech 1 demonstrated a distinct economic capability, closely tied to rights of disposal and ownership. *Kurios* has a wholly economic sense in speech 8 as well. In the context of explicit financial benefit, the speaker of speech 8 says of his intentions towards his grandfather's estate, "...in accordance with what was forthcoming, I should seek to be *kurios* when my grandfather died" (8.37). This echoes the economic ramifications of *kurios* found in 8.31, where the speaker states that the brother of the deceased would be *kurios* to the deceased's daughter in marriage, but he would not be *kurios* of the property, as only the sons born of that marriage could be: "...if she were living, he himself would not become *kurios* of the woman's things, but their children, when they had come of age."

In speech 7 *kurios* is associated very closely with the language of succession to and bestowal of property. The establishment of the *kurios* of a citizen's things is closely linked with the establishment of a successor (διάδοχον) in 7.13-14 and further linked with the commission of property (with παραδίδωμι) in 7.27. This is given a final emphasis in 7.33-34 where the speaker mentions adoption as giving (with δίδωμι) one's property to another, and implies that his

[6]Especially as her guardian would probably give her away to a man with whom he had good relations, and who would therefore be resistant to filing suit against him.

financial capabilities persuaded the grandfather to make him "*kurios* of his things", and in 7.41 where the will is said to have established "the *kuria* of his things".

Yet, the *kurios* did not necessarily entail an exclusive right to such economic power, nor did he possess a solely economic capability. We have seen from the previous chapter that women who had *kurioi* inherited property and were knowledgeable about financial affairs; they were also active and influential legal agents whose *kurioi* simply presented their cases in court. A female citizen, a minor citizen, and a piece of property always had a *kurios*, but the meaning of the word in relation to each differed. The relation of the individuals involved to each other and to the property in question is what mattered. Adult female citizens made legal and economic decisions and could have "owned" or "disposed of" property in the same manner as a male citizen; wards, whatever their sex, could not. The financial exploitation at the heart of Isaeus' speeches was the result of broader cultural mores, and while context was significant to the meaning of *kurios* and the role that individuals played in relation to each other, the imbalances between the sexes regarding marriage, the age at which marriage happened, and representation in court dictated that men had a significant advantage in attaining recourse for a crime.

The provisions Athenians constructed and implemented to prevent the exploitation of those who were vulnerable in the family seem laudable and ethically sound, as they were intended to facilitate the attainment of justice for those who did not have reasonable access to it. Isaeus' reference to the successful condemnation of the greedy guardian in 7.6 and the restitution to his ward of the finances he robbed demonstrates that these provisions were both utilised and successful in attaining their objective. Contrary, then, to what we discovered in the previous chapter, the laws preventing exploitation in the *oikos were* effectual. But it is clear that the ease and lack of risk with which an accusation of exploitation could be levied made it an effective offensive weapon for use against an enemy. The great irony of the implementation and use of provisions to prevent exploitation was that those provisions themselves could be exploited, either to further the exploitation of one who was to be protected, or to take advantage of an enemy. As this exploitation was both overt and veiled, those whom a modern reader might think least responsible for exploitation could themselves have been the instigators. Attempts to prevent exploitation in a formal legal manner created new opportunities for it, and the law court became

an arena of preference for such matters. It was public, powerful, and adversarial, and in it, it seems, the law itself became less powerful, more private, and less resolutive.

We must be very cautious, however, in making such a judgment. It is easy to judge the case in speech 11 as one that abused the laws by utilising them for motives other than the attainment of justice. Yet, we assume in drawing such a conclusion that the laws as we see them were meant to be utilised with the intention of attaining justice as we conceive it.[7] Speech 11 demonstrates that a suit could be only one part of a much larger matrix of political, social, and economic competition. Consequently, the attainment of justice would have been of little concern to the plaintiffs and probably played a minor role, if any, in the jurors' verdict. The long-standing rivalry we find in speech 11 must have been at the heart of many of Athenian law court cases, and the Athenian public's knowledge of this determined both the function of the law and any justice it may have served in a particular case. Conflict and court were symbiotic in Athens. The law and the court in which it was utilised were not simply social structures to be contravened or obeyed, they were social structures to be manipulated. Whatever the principles behind its early development in the fifth century, by the time of Isaeus, Athenian law was as much an engine for conflict perpetuation as for conflict resolution, each trial another round in the personal, familial, and communal struggles that defined the *polis* and the life and the honour of the men and women who lived in it.

[7]Isaeus' s many references to the abuse of the laws in his speeches do not tell us specifically what constituted "abuse", whether it was different from what we consider it to be, or whether a case such as speech 11 was considered to be an example of abuse. Morever, this was always an effective accusation to lodge at an opponent, applicable or not.

CONCLUSION

The speeches of Isaeus possess a wealth of information regarding the Athenian family, gender relations, and the law. This dissertation has undertaken a preliminary investigation of the speeches as a *corpus* of evidence. It is by no means complete or comprehensive, as the constraints of time and dissertation length have dictated that numerous areas are left only partially explored, others altogether unexplored. There remains much to do before Isaeus has been fully treated. In this dissertation I hope to have revealed the advantages of Isaeus as a source for examinations of the Athenian family, gender relations, and the law, made a substantive exposition of his contributions in these areas, and used these contributions in conjunction with what we know from other sources to clarify significant aspects of fourth century Athenian society and social relations.

Inheritance law brought out the worst in the Classical Athenians. In contrast to the Funeral Oration of Pericles and other noted passages revealing Athenian attitudes and mores, the speeches of Isaeus present an image of a bickering, combative, vitriolic people who willingly betrayed their close relatives for material gain. In them, we see one of the worst sides of Athenian society, yet, ironically, it is the *agathoi*, the "best ones", whose lives the speeches expose. The wrenching nature of these conflicts was partially due to the belief that the preservation of wealth was a family responsibility. The Athenians developed a diversity of solutions to match the diversity of problems generated by their preoccupation with the continuation of the male bloodline and the adequate means to support it. Greed was one solution, as Isaeus makes painfully clear. Yet there is a more important point. The complexities of life in Classical Athens, in particular, war, death, and prolonged male absence from the *oikos*, made strenuous demands on the Athenian family.[1] The *anchisteia* and the inheritance laws of which it was a part provided a clear and comprehensible structure to guide the transmission of property, but law and custom often did not adequately meet those demands. As a result, *oikoi* were recreated in a variety of ways,[2] often unexpected and turbulent. The speeches of Isaeus reveal both the struggles that families endured, and the belligerent, venomous atmosphere in which they were

[1]Cox (1998) 130-167.
[2]ibid.

endured, sometimes, over the course of generations. The balance of *oikal* security in Athens was a tenuous one.

The wrenching nature of these speeches was also due to the litigious nature of the fourth century *polis*. Isaeus wrote his speeches in a legal world that addressed more articulately and methodically the needs and desires of the Athenian people; in his lifetime, the law and its utilisation evolved through ever more sophisticated forms. This increase in sophistication, however, generated a reciprocal increase in manipulation, drawing both individuals and families into the forensic fray that became characteristic of late Classical life. The Athenian legal system provided wronged family members recourse to justice; it also provided avaricious family members the opportunity to attain wealth and offended family members the opportunity to attain vengeance. The democratic legal system aided each: citizens were entitled to "self-help" via access to and utilisation of the law created by and for them. The expertise of the *logographos* aided each: Isaeus knew the laws of Athens and how to utilise them effectively to make a persuasive argument.[3] And the court itself aided each: the adversarial forensic arena gave a citizen the opportunity to meet his opponent face to face in front of those who would pass judgment.

Consequently, an entire family, and not merely the individual charged with an offense, could be on trial in an inheritance conflict. Cases challenging the legitimacy or citizenship of a member of one's household put the entire *oikos* at risk. A judgement of illegitimacy had long-lasting repercussions: the individual charged would lose the ability to inherit and would suffer the social shame of *notheia* as well as the loss of a significant means of supporting a family. A judgement depriving one of citizenship was even worse: the individual in question and all members of his/her future bloodline would lose rights to inheritance and political participation. The benefits of Athenian citizenship would be closed forever to the descendants of that family. One indiscretion or mistake in private life could have public affects of the greatest magnitude. Sexual relationships in Classical Athens were more determinate and the situations in

[3] A brief summary of Isaeus's cleverness and skill as a *logographos*: he argued that affinity dictated succession in two cases (4, 8), that affinity and affection together dictated inheritance in another (1), and that affection alone should dictate it in a third (9); he accentuated the importance of a one-generation gap (11) and a lack of previous challenges to adjudication (3) when these benefited him but ignored or refuted them when they did not (8, 10); and he asserted that uncles could not possibly have exploited a female ward (3) in one case when such an assertion formed the basis of his argument in another (10).

which they were pursued more open to question than in modern Britain or the United States because the Athenian family was linked directly to the state via legitimacy and citizenship. As the accusation that a citizen or a citizen's *oikos* had been penetrated was one of the most potent weapons a citizen could levy against another in court, succession to property may have been only one, and perhaps the least important, concern in an inheritance-related trial. Isaeus's speeches illustrate the battles to gain entry into and force exit from the gate of sexuality that guarded social, economic, and political privilege in Athens. They also illustrate the special vulnerability of women in these battles.

We should pause briefly to consider one important point: we lack reasonable access to evidence of the emotional bonds that for many, if not most Athenians, would have proven to be the strongest and most definitive manifestations of family. Isaeus provides only a few convincing examples of these bonds. He argues for the merits of affection in adjudicating an estate (9), he tells us that a wife of child-bearing age left her infertile husband only upon the insistence of her closest relatives (2.7-9), and he demonstrates the help and affection a father-in-law provided a son-in-law abandoned and robbed by his guardian (7.7). These are enough to demonstrate that emotional issues and love mattered to the Athenians and would often have overridden the more concrete and tangible manifestations of family to which we have much greater access. In many situations, and over the course of many years, these bonds would have provided the Athenian family with stability and security in the face of change and hardship.

One scholar has recently declared that the family is "the active fashioner of relationships and identities from which and with which its members engage the larger world".[4]To what degree, then, did the *oikos* and its members contribute to or create the conflicts about which we have read? Our investigation has shown that female citizens possessed overt capabilities that were beneficial to themselves and their families. They also possessed equally, if not more significant, covert capabilities,[5] which put them in influential roles as mediators and advisors in family conflicts.[6] In these capacities, Athenian women specifically benefited from family conflict. On both public and private levels, they, like their menfolk, manipulated the law and custom for themselves and

[4]Patterson (1998) 229.
[5]Foxhall (1989, 1996).
[6]Cox (1998) vi-vii, 68-104.

their households and accumulated "social wealth" as a result. Conflict consequently became a behaviour learned at home, its rewards realised and valued by the children that man and wife raised in the *oikos* . If the private sphere of Athenian life was the "source and focus of relationships essential to the well-being of the community",[7] it was also the source and focus of relationships essential to the community's ill-health.

The study of the Athenian family hinges on the view one takes of conflict. Richard Wevers sees the speeches of Isaeus as a savage indictment of the Athenian elite and symptomatic of a society in decline.[8] Cynthia Patterson, on the other hand, emphasises the dynamism and resilience of the Athenian family and its interest in the well-being and protection of its members.[9] It is on this issue that social anthropology has aided the study of the Athenian family the most:[10] it has taught us the importance of examining conflict outside of our own value systems and from multiple perspectives. In Athens, the legal system reflected the benefits of conflict to the Athenian in its curious combination of zeal and ambivalence.[11] The jury-selection and court-assignment machines testify to the Athenian preoccupation for fairness and objectivity; the forensic valuation of personal character, wealth, and sexual behaviour testify to its obsession with context and subjectivity. The absence of legal definitions and records in a society that recognised the significance of writing and its application to the law is telling. The multiplicity of means of pursuing litigation in Athens[12] is telling as well. Both signal to us that the Athenians could easily have provided themselves with what they needed to ensure greater legal clarity in the interest of regulating conflict. Yet, they did not. The regulation of conflict may have been an objective of the Athenian legal system, but it was clearly not its end or ultimate priority.

Like all legal systems, Athens's was embedded in a matrix of social values and relationships; the tensions between objectivity and subjectivity, zeal and ambivalence, stricture and principle provided fuel for the "social drama"[13] that fired Athenian life. This drama depended on conflict. The law court necessarily developed out of the desire to regulate conflict in society, but its values were

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[7]Patterson (1998) 226.
[8]Wevers (1969) 121.
[9]Patterson (1998) esp. 3, 88, 97, 226-230.
[10]See Foxhall (1996) and Cohen (1994) 1-70.
[11]See Cary (1996) for an extensive review of "the ambiguity in the Athenian attitude to the law".
[12]Osbourne (1985) 52.
[13]ibid.

never divorced from those that infused daily life. Conflict was too valuable to be resolved, restricted, or eliminated by the "rule of law".[14] Such a concept would have been severely criticised, if not wholly misunderstood, by a Classical Athenian. Consequently, many of the advantages and disadvantages the Athenian legal system provided to its citizen-actors[15] are either dimly visible or wholly invisible to us. The "meaning and location of law"[16] was different in Athens because the "meaning and location" of both conflict and the family were different. The question with which we are faced is ultimately one of character. The Athenians themselves utilised the law for their own purposes against their own relatives, instigating and pursuing conflict with those to whom they were closest in affinity and affection. Family and city alike existed in a tight tension between the forces of harmony and strife.

In one final sense, the conflict that defines Isaeus's speeches was inarguably positive: it was the sign of an active, accessible, and well-utilised legal system. In Athens the law did what it was supposed to do. It gave the citizens the opportunity to seek justice or, at very least, to pursue their interests when they felt they had a rightful claim. Athens was an open society in which inheritance conflicts helped to define and maintain a social equilibrium; because it was also a competitive society that highly valued public manifestations of honour, those conflicts contributed to the evolution of individual and collective self-definition. Isaeus's speeches reflect an important societal health and vigour. In contrast to totalitarian regimes which impose order on society, democracies are characterised by conflict. Much more importantly, they are characterised by the freedom to pursue it.

The presence of legal manipulation, its manipulators, and familial conflict was neither new nor unanticipated in Athens. In realising the potential for such

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[14]Foxhall (1996a) 7: "Law, for the Greeks, was a tool, not a master." Contrast this with Lawless's (1991) comments, "non-legal arguments and irrelevancies are prominent" (130) and "according to strict rules, the adoption was incomplete and therefore invalid" (24). While valuable in demarcating the differences in the basis of legal judgement between the Athenian system and the modern American system, they betray an anachronistic view of the Athenian legal system. Lawless does not consider that such things as strict rules simply did not matter, or mattered no more than alternative considerations, to the Athenians. So, also, the "difficulty of proof" and "some basic Athenian uncertainty" (46) regarding what constituted a legal marriage.

[15]Access for each citizen to as many of the roles in the "social drama" as possible was of profound import for that drama to be effective and democratic. Thus, Todd (1993) 291: "The most important underlying characteristic of Athenian democracy is that it was and remained an amateur system".

[16]Foxhall (1996) 140.

manipulation and conflict, the Athenian law-givers constructed a system that would do all it could do: trust the representative sample of citizens that made up the jury to give its verdict to the best of its ability. This was the simplicity and the genius of the Athenian legal system. A democratic society must ultimately entrust its own well-being and the resolution of its conflicts to its citizens, placing faith in them above the static and unyielding words of stricture or even the nobler and more sensitive principles out of which they develop.[17] It was a realistic approach to law and its trials, fully aware of the potential for manipulation by litigants and *logographoi*, wholly cognisant of the ignorance and fickleness of citizen juries, but equally committed to the flexibility, freedom of interpretation, and awareness of extenuating circumstance that real justice requires.

[17]This faith in the jury typifies the Athenian concept of the state asa κοινονία, or "community of interests" . See Todd and Millett (1990) 16.

Appendix: The Women of Isaeus

This is a list of the most significant women mentioned in Isaeus. Capital letters indicate the name by which the woman is most easily identified: first names are only provided for five women, so most refer to her closest male relative.

ALCE, prostitute and manager of Euctemon's tenement house, persuaded him to adopt her sons: 6.20f.

sister of APOLLODORUS, daughter of Archedamus, asked permission by her brother to adopt her son as his heir: 7.14.

daughter of ARISTARCHUS, mother of the speaker, entitled to the estate of Aristarchus: 10.3f.

CALLIPE, daughter of Pistoxenus, alleged second wife of Euctemon: 6.13.

daughter of CIRON, mother of the speaker, object of the opposition's speech as illegitimate, presided at the Thesmophoria: 8.19.

CLEITARETE, alternate name for Phile, also Phile's grandmother 3.30f..

mother of DICAEOGENES III, accused her son of scandalous acts from the shrine of Eileithyia: 5.39.

wife of DIOCLES of Pithus, presided at the Thesmophoria: 8.19.

mother of HAGNIAS, claimant to the estate of Hagnias: 11.16f.

sister of MACARTATUS, persuaded her husband to allow their son to be adopted: 11.49.

second wife of MENECLES, sister of the speaker, alleged to have persuaded him to adopt the speaker by will: 2.1f.

sister of NICODEMUS, wife of Pyrrhus, mother of Phile, alleged citizen *hetaira*: 3.8f.

PHILE, sister of Nicodemus, wife of Xenocles, alleged daughter of Pyrrhus, and claimant to Pyrrhus' estate: 3.1f.

PHYLOMACHE II, daughter of Euboulides, claimant to the estate of Hagnias: 11.9f.

wife of PRONAPES, daughter of Eupolis, wife of Aeschines of Lusia, and claimant to the estate of Apollodorus: 7.2f.

wife of PROTARCHIDES, daughter of Menexenus, formerly married to Democles, and claimant to the estate of Dicaeogenes II: 5.6f.

sister of PYRRHUS, mother of the opposing speaker, claimant to Pyrrhus's estate: 3.3f.

wife of STRATOCLES, drew up inventory of her husband's wealth: 11.43.

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