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Family Law in [Demosthenes] 43: *Against Makartatos*, 75

I. INTRODUCTION

The speech 43, *Against Makartatos*, in the Demosthenic corpus concerns the succession to the estate of a certain Athenian Hagnias II who had died childless. This succession case is preserved for us by the Athenian advocates, Demosthenes and Isaaios¹.

Hagnias, son of Polemon of Oion Kerameikos, makes a will adopting his niece when about to embark on ambassadorial duties. He dies not long after making the will. His niece succeeds but dies, apparently even before her puberty. On her death, Hagnias' matrilineal half-brother Glaukon, named as residual heir in the will, takes control of the estate. But he is successfully challenged in court by Philomakhe II, an aunt of Hagnias and wife of Sositheos. Philomakhe II, represented by her husband Sositheos, eventually breaks the will and wins the case.

1. See also R.V.Cudjoe, 'Interpreting Dem. 43, *Against Makartatos*, 54: "Each One of Them... According to his Due Share," *JPN* 1 (2004), 39-51, number 2, University of Cape Coast.

However, she in turn is challenged and defeated by Theopompos, suing apparently as a cousin of Hagnias II. Theopompos takes the estate away from Philomakhe II. He then defends himself against his own ward who claims part of the property as his father's share. Isaïos, the specialist logographer on Athenian property litigation wrote his 11th speech, *On the Estate of Hagnias*, for this case. Theopompos holds the estate until he dies. On his death, his son, Makartatos takes control but is challenged by Sositheos who tries to wrest the estate from him, this time, on behalf of his second son Eubulides III, a grandson of Hagnias. Pseudo-Demosthenes 43 was composed for this latter case.²

According to the two surviving speeches, at least five separate claims to the estate were entered in several trials over a long period of time. But it would appear that in classical Athens, claims to the estate of the deceased intestate could continue as long as any member of the inheriting family of the deceased felt strongly that he was the best qualified relative to inherit the property of the deceased. This is because of the apparently elastic but, in fact, intricate nature of Athenian law of intestate succession and the lack of birth certificates which made it somehow difficult to prove relationships. The case therefore well illustrates the contentious and litigious nature of the Athenian and the complexity of Athenian succession procedure. In fact, this succession case appears to be the most squalid and protracted of all succession cases in the literary sources on Athenian social history.

II. THE LAW

The speech for the case has seven legal citations, bringing into focus some of the laws concerning the Athenian family. This paper, as noted, is based on the one cited in section 75 of the speech.³ The text of the law reads as follows:⁴

2. For the stemma of this large family see D.M. MacDowell, *The Law in Classical Athens*, Ithaca 1978, p. 104. Also, Wesley E. Thompson, 'De Hagniae Hereditate', *Mnemosyne* Supplement 44, Leiden 1976.

3. Dem. 43, 75: Ὁ ἄρχων ἐπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων καὶ τῶν οἰκῶν τῶν ἐξερημουμένων καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν, τούτων ἐπιμελείσθω καὶ μὴ ἐάτω ὑβρίζειν μηδένα περὶ τούτους, ἐὰν δέ τις ὑβρίζη ἢ ποιῇ τι παράνομον, κύριος ἔστω ἐπιβάλλειν κατὰ τὸ τέλος, ἐὰν δὲ μείζονος ζημίας δοκῇ ἄξιος εἶναι, προσκαλεσάμενος πρόπεμπτα καὶ τίμημα ἐπιγραψάμενος, ὃ τι ἂν δοκῇ αὐτῷ, εἰσαγέτω εἰς τὴν ἡλιαίαν, ἐὰν δ' ἄλῳ, τιμάτω ἢ ἡλιαία περὶ τοῦ ἀλόντος, ὃ τι χρὴ αὐτὸν παθεῖν ἢ ἀποτεῖσαι.

4. We adopt here the translation given by Ilias Arnaoutoglou in his, *Ancient*

“Let the archon take care of orphans and of *epikleroi*, (heiresses) and of *oikoi* which are about to be left empty and of all widows remaining in the *oikoi*s of their deceased husbands, claiming that they are pregnant. Let him take charge of them and ensure that nobody humiliates them. And if anyone humiliates them or does anything unlawful to them, the archon shall have the power to impose a fine according to the fixed limit⁵. If the archon thinks that the offender deserves a more severe penalty, he shall summon the offender, giving him five days’ notice, and bring him before the court of *Heliaia*, writing down the penalty he thinks the offender deserves. And if the offender is convicted, the court of *Heliaia* shall decide what penalty he ought to suffer or pay.”

Aristotle⁶ provides a summary of this law in the following words:

“He also supervises orphans and heiresses and women claiming that they are pregnant on the death of their husband, and he has absolute power to fine offenders against them or to bring them before the Jury-court. He grants leases of properties belonging to orphans and heiresses until they are fourteen years of age, and receives the rents, and he exacts maintenance for children from guardians who fail to provide it.”

The two texts have the same fundamental objective, as we hope to show below. But it is noteworthy here that the age of fourteen in Aristotle’s summary implies the age of “majority” of the Athenian girl at which age she was considered to have become matured for marriage, while the Athenian boy reached his majority at the age of eighteen.⁷

Greek Laws: A Sourcebook, London, 1998, p. 6, with some modifications. All other translations are from the *Loeb Classical Library* series, also in some cases with slight modification.

5. See also Aeschn. 1.35.

6. *Athenaion Politeia* (henceforth called *AP.*), 56.7: ἐπιμελεῖται δὲ καὶ τῶν [ὀρφ]ανῶν καὶ τῶν ἐπικλήρων, καὶ τῶν γυναικῶν ὅσαι ἂν τελευτή[σαντος τοῦ ἀνδρ]ὸς σκή[πτω]νται κύειν. καὶ κύριός ἐστι τοῖς ἀδικοῦσιν ἐπιβάλλ[λιν ἢ εἰσάγειν εἰς] τὸ δικα[στή]ριον. μισθοὶ δὲ καὶ τοὺς οἴκους τῶν ὀρφανῶν καὶ τῶν ἐπικλ[ήρων, ἕως ἄν τις τετταρ]ακαιδε[κέ]τις γένηται, καὶ τὰ ἀποτιμήματα λαμβάν[ει, καὶ τοὺς ἐπιτρόπους], ἐὰν μὴ [δι]δῶσι τοῖς παισὶ τὸν σῖτον, οὗτος εἰσπράττει.

7. Scholars are not completely agreed on the age of majority of Athenian boys, but that is not our main concern here. See for instance, J. M. Carter, ‘Eighteen Years of Age?’ *BICS* 14 (1967), 51-57; M. Golden, ‘Demosthenes and the Age of Majority at Athens’ *Phoenix* 33 (1979), 25-38; R. Sealey, ‘On Coming of Age in Athens’ *CR* 71 (1957), 195-197; S. Adam-Magnissali, ‘Droit et altérité dans le monde ancien: le cas des mineurs dans l’Athènes classique’, *Symposion 2007*, E. Harris-G. Thür (ed.), Wien 2008, 145-159, esp. p. 148-9.



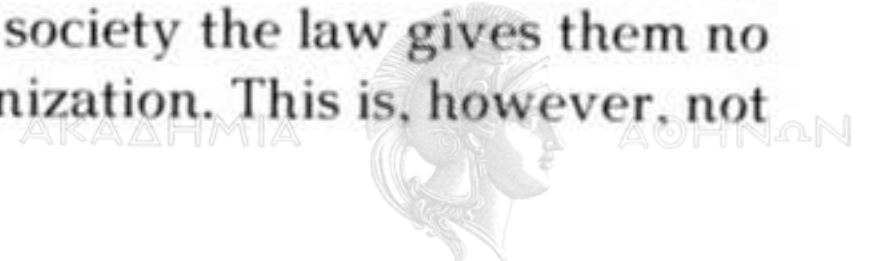
Dem. 43.75 is not dated, and the question as to whether or not the law is due to Solon may be raised as most Athenian laws are ascribed to him by the orators at their time even when a law does not in fact go back to him. Solon is traditionally supposed to have introduced his economic and legal innovations in the year 594/3 B.C. when he was archon. In this year, the legislative powers of the Athenian *Boule* (Council) and the *Ekklesia* (Assembly) were conferred on him by the Athenians to make laws and to reform the then existing governmental structures to avert the imminent socio-political crisis of the time. The general presumption thus is that Dem. 43.75, which particularly relates to Athenian family organization, would have been one of the earlier laws he instituted, defining the functions of the archon in general and spelling out his role in his administration of justice in the Athenian family.

III. THE SUBJECT OF THE LAW

The law (Dem. 43.75) has four prescribed referents: orphans, heir-esses (*epikleroi*), houses about to become empty and pregnant widows. In scope, therefore, the law is limited. This is because it makes no provisions for women and children in general, let alone ordinary widows. In any case, there are a few socio-legal presumptions here, relating to the referents as well as the general application of the law. To the classical Athenian for whom the law was made, the context and the implications of the law might be obvious. But to the modern reader there is the need for clarifications.

In the first place, one category of the referents is non-specific, and therefore ambiguous. It is 'orphans'. It is not clear which category of orphans the law refers to. But in Athens there were two categories of orphans in the society: (i) minors whose fathers had died in battle defending the *polis*, and were therefore referred to as war-orphans; (ii) minors whose fathers had died not in war. For our purpose these may be called ordinary orphans. Which of these does the law refer to?

There is, again, an amorphous category of orphans whose socio-legal position is not highlighted in the sources. It is female orphans with brothers. We cite only two cases in point: the sister of Demosthenes in the speeches of the orator against his guardians (Dem. 27; 28; 29), and the daughter of Diodotus in Lysias 32 (*Against Diogeiton*) who had two brothers. They are amorphous because in all the cases involving this category of orphans in the society the law gives them no particular status in Athenian family organization. This is, however, not



a problem because where a female orphan has a brother, her brother is heir. In overall terms, however, the socio-legal presumption is that 'orphans' in the law refers to minor orphans in general, whether war orphans or ordinary orphans incapable of managing their own affairs.

Furthermore, there is the case of the *epikleroi* (heiresses).⁸ These were daughters of a deceased man who had no sons, and were to be married to their father's nearest relative with the estate of the deceased passing to the son(s) born in the marriage (Dem. 46.20). The legal position of these female orphans with no brothers is prescriptive in the law because of the unique role they played in the Athenian family. It would appear, however, that the law covers only minor and widowed *epikleroi* but not the married ones. For, the socio-legal presumption, once again, is that the married *epikleroi* would have been living under the legal authority of their husbands, who would have been responsible for all legal matters and maintenance concerning them. But widowed *epikleroi* had been bereft of their legal representatives; and particularly, the minor *epikleroi* were still young and unmarried, and lived under the guardianship of their successful claimants who most often exploited their vulnerable situation and misappropriated their patrimonies. These female orphans, other orphans and pregnant widows were to come under the care of the archon.

A further socio-legal presumption relates to women and children in general not covered by the law. These, by Athenian law and custom, were expected to be under the legal authority of either their husbands, in the case of married women, or their parents, in the case of children and unmarried women. Again, ordinary widows had the prerogative to decide either to continue to live in the deceased husbands' households under the legal authority of their adult sons, if any, or their husbands' next of kin. This would have been the general rule; but there seems to have been an exception. There is evidence that even a widow who had children by her deceased husband could decide to leave his household to live with her kin (Dem. 40.6). Alternatively, however, they could leave to live with their kin who acted as their legal representatives (Isai. 3.8; Dem. 27; 28; 29.26; 55.23, 24; Lys. 32.8, 9).

But in the case of pregnant widows, heiresses who were unmarried, and orphans, they had suffered the ill-luck to be bereaved and

8. For the *epikleros* see E. Karabélias, *L'épiciélat attique*, Académie d'Athènes, 2002.

been bereft of their legal representatives. And, like other women in general and minor children, these people, by Athenian law, had legal limitations and could therefore not initiate legal actions on their own if their rights were infringed upon (Isai. 10.10). And since widows, whether pregnant or not, minor orphans and heiresses had no legal ways of asserting their rights, they were the category of people easiest to blackmail and exploit in Athenian society. Attic forensic oratory is, in fact, replete particularly with evidence of minor heiresses and orphans who became victims of intolerable exploitation and social violence by their guardians or legal representatives, not just as a result of the individual's evils, but often as a direct consequence of the corrupt and greedy behaviour of the guardians and legal representatives. Such people, pregnant widows, heiresses and orphans who were so vulnerable and could easily be exploited in Athenian society were necessarily to be in the care of the archon as prescribed in the law.

A further socio-legal presumption of the law is the status of the other referential which is inanimate. That is, "houses which are about to be empty" (τῶν οἴκων τῶν ἐξερημουμένων). The Greek word *oikos*, which appears in two different forms here in the text, *oikōn* (οἴκων) and *oikois* (οἴκοις), has three interpretative connotations. In one sense, it means property;⁹ in another sense it means house, that is, a locative place of residence;¹⁰ and yet in a third sense, particularly during the age of the Attic orators, it means lineage.¹¹

In fact, it would appear that *oikos* originally meant *property* and *house* (locative place of residence) until the late fifth and fourth centuries B.C. that it acquired the meaning of *family* in the sense of lineage when the orators used it in that sense in their arguments in family litigations at the law courts. And although the term was not usually used in the formulation of Athenian statutes, it would appear that it played a very important role in family and citizenship law.¹² Thus by usage, the third sense of *oikos* in the late fifth and fourth centuries became a legal register or terminology, implying family lineage and inheritance in the family.

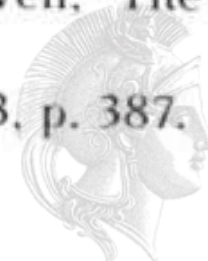
Now, what are "houses which are about to be left empty" (τῶν

9. Xen. *Oik.* 1.5; Isai. 2.9, 5.14, 6.18, 11.45; Lys. 19.47; Dem. 44.10.

10. Ant. 2d.8; Dem. 27.13; 43.19.

11. Thuc. 1.137; Isai. 7.29-30; Dem. 43.52. Cf. D.M. MacDowell, 'The *Oikos* in Athenian Law' *CQ* 39 (i) (1989), 10-21.

12. Cf. S. C. Todd, *The Shape of Athenian Law*, Oxford 1993, p. 387.



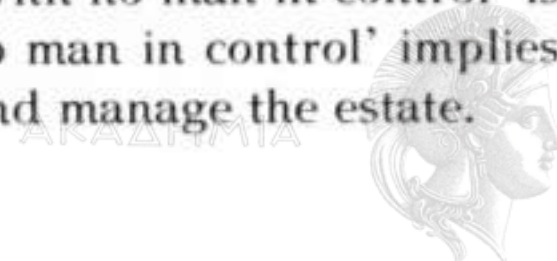
οἴκων τῶν ἐξερημουμένων) as referred to in the first instance in Dem. 43.75 which is our main concern? The Greek adjective, *exerēmos*, the participial form of which (ἐξερημουμένων) is used in the text means *empty, desolate, deserted*. Referred to a house as a locative place of residence, it means an empty house, a house without inhabitants. But this is too literal; and does not fit within the context of *oikos* as used here in the law. Here, it has the sense of family with no one to continue the lineage. So the participial phrase τῶν οἴκων τῶν ἐξερημουμένων in the text of the law has the sense of lineages with no apparent heirs, and for that matter at the brink of extinction.¹³ In fact, the plaintiff in Dem. 43 refers to the extinction of Hagnias' household twelve times in his speech: sections 11, 12, 68, 72, 73, 2x in 75, where in the first instance, he observes that he administered matters such that the families springing from Buselus should be preserved; then in the second instance, mention is made of houses about to become empty in the law, then in sections 76, 78, 80, 83, 84.

And in Isaios 2, *On the Estate of Menecles* 15, the speaker alleges that his opponent wants to make the *oikos* of Menecles desolate by trying to invalidate his adoption by Menecles as his son to continue his family. The same sentiment is echoed in 2.35-36. In 2.37, he observes: "...he (*sic* his opponent) wishes to render him (*sic* Menecles) childless and wipe out his very name." Then in what seems to be the climax of his concern for the family of Menecles, he argues:

My opponent wishes ...to render the deceased childless and nameless, so that there may be no one to honour in his place the family cults and perform for him the annual rites...(2.46).

Furthermore, the speaker of Isaios 7, *On the Estate of Apollodorus*,

13. Dem. 43 passim. We believe that Aristotle and Xenophon's inclusion of the slave as a member of the family (*Pol.* 1252a25 ff; *Oik.* 7.21) does not imply the sense of having the right of inheritance in the family. Otherwise we reject their concepts of the nuclear family of which the slave was a member, and thus take exception to the claims of S. B. Pomeroy, *Xenophon, Oeconomicus: A Social and Historical Commentary*, 1994, p. 213-14, n. 2; and C. B. Patterson, *The Family in Greek History*, Harvard, 1998, p. 241, n. 8, who also hold the same opinion as Aristotle and Xenophon. And, although one may agree with MacDowell, *op. cit.* that *oikos* had acquired the sense of 'family' by the late fifth and fourth centuries when the orators used it in that sense, his argument that *oikos* in the orators does not imply family in the legal sense of lineage but 'properties left with no man in control' is not quite convincing. Certainly, 'properties left with no man in control' implies the absence of a lineal heir to succeed to the deceased and manage the estate.



maintains that by law the state entrusts the archon with the duty of preventing families from being extinguished (7.30). And except section 42 where *oikos erēmos* occurs in the context of property, the speaker refers to *oikos erēmos* eight times (30 (2x), 31 (2x), 32, 43, 44 (2x) in his speech. The speaker of Dem. 44 also asserts that since the law grants the right of succession to those nearest of kin, and he and his father are relatives of the deceased Archiades, it is incumbent upon them not to allow his *oikos* to become extinct (44.2). He then refers to *oikos erēmos* (desolate house) six more times in his speech (11, 15, 27, 43, 47, 48) to draw home his point that it would be a sad fate if they were deprived of the succession, thereby allowing the *oikos* of Archiades to be brought to extinction.

In each of all these cases, the *oikos* of the deceased becoming empty or desolate is used in the context of the deceased having no one to succeed to him and to carry on with his name, as the plaintiff of Dem. 43, contents in section 80 of his speech. This, in fact, is his concern when he argues that his opponents care nothing about the extinction of the house (*oikos*) of Hagnias (68, 72, and passim). The archon was therefore mandated to have charge of or responsibility for such families. As regards the second occurrence of *oikos* in its dative plural form, *oikois* (οἴκοις), in the case of pregnant widows, the sense of *houses* as locative places of residence is quite obvious here.

IV. THE NATURE OF THE LAW

As normally happens in Athenian legal history, and like most Athenian laws, the law in Dem 43.75 is administrative in nature rather than constitutional. It is an administrative law because it was neither proposed, discussed at the *Boule* and the *Ekklesia* and ratified by a majority vote of the people;¹⁴ nor was it enacted by the *nomothetai*. This was a general feature of the laws ascribed to Solon. The Athenians in the face of an imminent violent socio-economic and political crisis, as noted above, chose Solon by consensus and entrusted the government of Athens to him to act as arbitrator between the rich and the poor; and also as a lawgiver with wide-ranging powers to

14. Here, we use the terms 'administrative' and 'constitutional' guardedly. For, administrative law and constitutional law appear complementary; and in the interest of justice, administrative law, like constitutional law must of necessity, be impartially and duly administered in order to realise its objectives.

make laws for the governance of Athens.¹⁵ These laws, including Dem. 43.75, were generally accepted by the Athenians; and by their mere operation became administratively enforceable and executable at the Athenian courts. Thus, in modern legal terminology, Dem. 43.75 could be described as a delegated legislation; that is, a law made under powers conferred by a legislating body on an agent.

Moreover, like most Athenian laws, Dem. 43.75 is descriptive in nature; describing what action the archon should take against any culprit in respect of an offence against an orphan, heiress, or a pregnant widow; though it does not necessarily define closely the transgression and what procedure the archon should follow in taking his action. But this appears to have been a general subject and form of the early Greek laws. Many of the earliest extant Greek laws show an overwhelming preoccupation with setting penalties and specifying the officials responsible for dealing with misdemeanours without necessarily defining the offence.¹⁶

Note should also be taken of the fact that like modern statutes, it was not all Athenian laws which were mandatory, and therefore strictly applied. The law on leasing the orphan's estate by the guardian (Dem. 27; 28; 29; Lys. 32.23), and the one on claiming an estate (Isai. 3.58), are two cases in point. These laws are permissive; therefore, their compliance is discretionary. For in the case of leasing an orphan's estate, the guardian was not bound to comply with the regulation though it was possible to do so. And regarding claim to an inheritance, though the law (Isai. 3.58) provides that any qualified inheritor who wished to claim an estate could do so within a mandatory period of five years after which no claim would be entertained, it was discretionary for a next of kin either to put in his claim or forfeit his right by not claiming the property at all.

Demosthenes 43.75, however, does not give such latitudes. Particularly, the powers of the archon are descriptive, and reinforced by potent sanctions unequivocally imposed with specific clauses or legal terminologies:

The archon shall take care ...; it is his duty to look after them and ensure that nobody humiliates them ... the archon shall have the power

15. Arist. *AP.*, 5-10; Plutarch *Solon*, 13-24, tr. Robin Waterfield. Cf. Bonner and Smith, *The Administration of Justice from Homer to Aristotle II*, New York 1968, p. 72, 149 ff.

16. Cf. R. Thomas, 'Writing, Law, and Written Law', in M. Gagarin and D. Cohen (ed.) *Cambridge Companion to Ancient Greek Law*, 41-60, esp. p. 45.



to impose a fine ...; he shall summon the offender ...; the court of Heliaia shall decide what he (the offender) ought to suffer or pay.

It is important to note, as Todd rightly points out,¹⁷ that Athenian law had no fully developed technical vocabulary because there was apparently no way for words to be legally defined. In any case, the shade of meaning connoted makes the language of an Athenian statute technical. This is because the absence of a legal term does not necessarily imply the absence of the corresponding idea from the legal system. Such is the nature of Dem. 43.75, and certain features of it. The clauses noted above make the language of the law very formal and legal, making the law technical and mandatory with endowing authority, and demanding compulsion and strict compliance. Thus in modern legal terminology, Dem. 43.75 is potentially an enforceable or justifiable bill or law of rights of the subject of the law.¹⁸ By extension, therefore, Dem. 43.75 is also punitive in nature, giving plenary authority to the archon and the court of *Heliaia* to take action against anyone who acts contrary to the law.

The problem, however, is that the law does not prescribe the specific rights of orphans, heiresses, pregnant widows, and even houses which are about to be left empty, the infringement of which the archon should evoke his plenary powers. In fact, one of the most notable features of Athenian statutes is that they are normative in nature, establishing guiding rules but do not generally define their terms or establish substantive rights the infringement of which calls for judicial intervention. For instance, at Dem. 21.47, we read in the text:

If a man commits *hybris* (ὕβρις), the following procedure shall be available against him...

But the law does not say what constitutes *hybris* the infringement of which is actionable. In the same vein, Dem. 43.75, has in the text:

...and not suffer anyone to do any outrage to them: and if anyone humiliates them or does anything unlawful to them ...

These are entrenched clauses and protective in nature. But the law does not define the term *outrage* or *unlawful*; that is, what action constitutes *outrage* or *unlawful*. This was a significant feature

17. S. C. Todd, op. cit., p. 205.

18. A similar law of this nature is the law cited in section 54 of the speech under discussion, prescribing the rights of the *epikleros*.



of Athenian statutes, as noted above. There were no rules of statutory interpretation; and it was the responsibility of rival litigants on whom lay the burden of proof, to offer interpretations of any law they put forward, though every judge (jury-man) had absolute discretion as he saw appropriate to interpret a statute. He may even ignore it if he felt that by doing so it did not conflict greatly with his conscience and his judicial oath.¹⁹

Fortunately, in the case of the referents in Dem. 43.75, Attic forensic oratory provides sufficient evidence for the substantive rights of pregnant widows, orphans, and heiresses, the infringement of any of which would constitute an *outrage* or an *unlawful* act.²⁰ Thus Dem. 43.75, like most Athenian laws, is procedural in nature rather than substantive, defining means of redress rather than offences.²¹

It would appear from the technical, mandatory and strict nature of the law that the archon's hands are tied, and that he has no option but to execute the law to its letter. But a closer examination of the features of the law would show that, despite its technical, mandatory and strict demand for compliance, the law has some elements of permissiveness, not only giving scope for the archon to exercise discretionary powers but also providing punitive options against an accused. We cite two clauses or statements which are quite obvious and illustrative. The first one relates to the archon's discretionary powers. The law directs in the following terms:

If anyone does anything unlawful to them, the archon shall have the power to impose a fine according to the limit fixed by law.

Here, although it is mandatory for the archon to take action against a culprit, plenary authority is restricted and could not be exercised beyond a certain limit, particularly with regard to fines. Arnaoutoglou²² suggests that the amount according to the fixed limit was fifty drachmae. Thus, beyond this ceiling of fine the archon's plenary power becomes somehow legally maximized, though not nugatory in anyway.

However, it is not clear what degree of offence the fine of which should not exceed the legally fixed limit. This gives the archon the

19. See Dem. 24.149-51. Cf. Todd, *op. cit.*, p. 62.

20. See for instance, Dem. 43.51, 54; 46.20; Hyp. Fr. 192 (*Πρὸς Χάρητα ἐπιτροπικός*); Isai. 8.31; Fr. 26.

21. It is noteworthy that some Athenian laws were substantive in nature, particularly inheritance laws, an instance of which is Dem. 43-51.

22. See I. Arnaoutoglou, *op. cit.*, p. 6, n. 5.



judicial discretion to decide which nature and degree of offence should attract the minimum fine, and which should not. We may compare the following provision also:

If the archon thinks that the offender deserves a more severe penalty, he shall summon the offender ... to the court of *Heliaia*, writing down the penalty he thinks the offender deserves.

Again, here, the archon had discretion to decide whether the offence committed should attract a heavier penalty, and if so, suggesting to the court of *Heliaia* what he thought the heavier penalty should be, for their action. By and large, the legal authority reposed in the archon implies that he could hear statements and evidence at an inquiry (*anakrasis*)²³ and could settle minor cases himself without taking it to court,²⁴ but otherwise would decide if the case should be sent to court for trial.

The other permissive feature of the law relates to the kind of penalty for a convict within the jurisdiction of the archon and beyond that. The law states:

If the offender is convicted, the court of *Heliaia* shall decide what he ought to suffer or pay.

Here again, the court of *Heliaia* is granted punitive options in the event of conviction of an accused; and there are two plausible options. The court of *Heliaia* could decide either to send him into exile, or ask him to pay a fine as may be agreed upon by the court; of course, apparently depending upon the degree of offence.

There seems also to be the impression that the archon has the final authority; but he does not; he is in an advisory role beyond a certain limit of his jurisdiction. That is, where he thinks that a heavier penalty should be inflicted on the culprit. This brings into focus the occurrence of *Heliaia* in the law. Now, if the Solonian court of appeal was one body and that it was called *Heliaia*, as claimed by Bonner and Smith²⁵ who then, within the context of Dem. 43.75, could bring suit before this court? A very careful reading of the law reveals that it was the archon who sent the accused to this court if he felt that the defendant's offence required a heavier penalty than what was in his power to execute. In this case, he would be acting in an advisory

23. Dem. 21.103; 48.31; 53.14, 17; AP. 56.6.

24. Isai. 6.32.

25. Op. cit., p. 154.

role. In the circumstance, was the archon requiring his own view to be reviewed by the *Heliaia*, and what judicial procedure was available to the accused (the defendant) for the archon's judgement to be reviewed if he also felt that the archon, in performing his administrative duty, had been unfair to him, and therefore had erred in law?

There could typically be various opinions as to whether the archon's judgement and fine could be reviewed by the *Heliaia*. It would appear, however, that the *Heliaia* would normally administer the archon's suggested fine, though it is possible that they had the power to review it if they felt that it was too harsh. The question, as to whether or not a defendant could appeal to this body for a review against his judgement and fine is beyond the scope of this paper, though it would seem from the wording of the law that once the archon kept the penalty within the limit of his powers, no appeal was allowed against it. In fact, in general, if the defendant was found guilty by the jury, the normal procedure was for the prosecutor, in this case the archon, and the defendant each to propose a penalty. The jury then voted to decide between them.

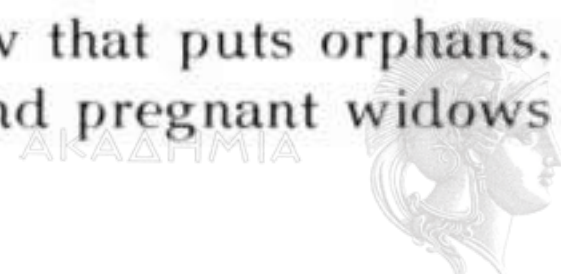
In the preceding paragraphs, we tried to examine the subject and nature of the law. In the following ones, an attempt is made to look at the object of the law and the processes by which what the law intended to realize could be achieved. But before then, the question worth answering is; at what point in time in the life of the Athenian family was the archon expected to exercise the judicial powers granted him in Dem. 43.75? Five circumstances arise in the event of the death of the *kyrios* of a household which make it imperative for the archon to assume responsibility for the four referents in the law;

- (i) the death of the father of male minor children;
- (ii) the death intestate of the father of minor *epikleroi*;
- (iii) the death of the husband of a pregnant woman, thus making her a pregnant widow;
- (iv) the death intestate of a childless man;
- (v) the death of the husband of an *epikleros* who has no child.

In the event of the decease of any of these, the affected referent in the law technically became a ward of the archon who began to exercise the role prescribed for him in the law.

V. THE OBJECT OF THE LAW

As far as we know, this is the Athenian law that puts orphans, heiresses, families at the brink of extinction, and pregnant widows



under the care of the archon. The law thus was a direct state policy to cater for the interest and well-being of the referents. A summary of the same law, as noted above, is preserved for us in Aristotle's *Athenaion Politeia*, 56.7. A litigant in *Isaios* also bolsters his claim in the following words:

All men, when they are near their end, take measures of precaution on their own behalf to prevent their families from becoming extinct and to secure that there shall be someone to perform sacrifices and carry out the customary rites over them. And so, even if they die without issue, they at any rate adopt children and leave them behind. And there is not merely a personal feeling in favour of this course, but the state has taken public measures to secure that it shall be followed, since by law it entrusts the archon with the duty of preventing families from being extinguished (*Isai.* 7.30-31).

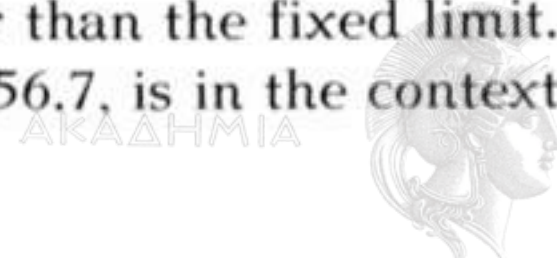
Now, what exactly was the archon's prescribed role; and what was the intention or objective of Solon, and for that matter, the state as expressed in this law? Does the law necessarily imply state maintenance of the referents – pregnant widows, orphans, heiresses and families at the brink of extinction – in the form of grain distribution through the archon? For, the fact seems to be stressed by Stroud that, by *Dem.* 43.75 and *AP.* 56.7, all minor orphans and widows were supported by the Athenian state in the form of grain or food distribution, and that the archon was to see to this kind of support.²⁶ But Stroud is certainly mistaken in his opinion. The expressions and or phrases in the two texts which may possibly have informed his opinion are, ἐπιμελείσθω, 'let him take care of' in *Dem.* 43.75, and ἐπιμελεῖται, 'he cares for', and τοὺς ἐπιτρόπους ἐὰν μὴ διδῶσι τοῖς παισὶ τὸν σῖτον, οὗτος εἰσπράττει, 'he exacts maintenance for children from guardians who fail to provide it', in *AP.* 56.7. In point of fact, *Dem.* 43.75 does not imply that the archon should, on behalf of the state, provide maintenance in the form of food distribution to these under his care. Neither do the statements, ἐπιμελεῖται, 'he cares for', and τοῖς παισὶ τὸν σῖτον, οὗτος εἰσπράττει 'he exacts maintenance for children,' in *AP.* 56.7 admit of any interpretation that the archon was to distribute food provided by the state to orphans or the other referents in the law.

26. R. S. Stroud, 'Greek Inscriptions: Theozotides and the Athenian Orphans', *Hesperia* 40 (1971), 280-301, esp. 288. See also his, *Drakon's Law on Homicide*, Berkeley 1968, p. 32.

Particularly, the statement τοῖς παισὶ τὸν σῖτον, οὗτος εἰσπράττει, 'he exacts maintenance for children,' in *AP.* 56.7 has technical implications at the state level. It implies the enforcement of a duty by a legal procedure administered by the archon against a guardian who failed to provide for his ward(s). It is important to note also that, ἐπιμελείσθω, 'let him take care of', in *Dem.* 43.75, and ἐπιμελεῖται, 'he cares for', in *AP.* 56.7, are not only the same but also technical with legal implications at the state level. In either case, the law illustrates a direct state policy and intervention in family matters, implying the enforcement of a duty by a legal procedure administered by the archon against anyone who committed a crime against any of the referents in the law.

Thus the statement, τὸν σῖτον οὗτος εἰσπράττει, 'he exacts maintenance', in *AP.* 56.7, does not even imply that the archon was expected to distribute food to orphans after demanding it from their guardians because of the occurrence of σῖτον (*siton*) in the statement. This statement implies an executive fiat given to the archon to legally insist on the minor child's right to maintenance by his guardian, and to invoke the laid-down legal procedure to prosecute any guardian who failed to provide for his ward(s).

It is the same legal role that the archon was expected to play regarding minor orphans, heiresses, and pregnant widows, referred to in *Dem.* 43.75. In fact, the archon's legal care had various dimensions, though not including physical maintenance of the referents. With regard to minor orphans and heiresses, he may, in some instances have had to decide which relative was to be the orphan's guardian, and was to see to it that they were not deprived of their patrimony and did not suffer from lack of maintenance; he could exact proper maintenance from a legal representative or a guardian if that person failed to provide it for his ward(s). He was expected also by law to ensure that the minor heiress got a husband at her marriageable age (*Dem.* 43.54), as well as the widowed heiress. The archon was also authorised to supervise the lease of the patrimony of a minor orphan or heiress until the age of majority (*AP.* 56.7; *Isai.* 6.36, 37, 46). The other dimension of the archon's care was that he had to see to it that the pregnant widow did not lack maintenance from the guardian of her posthumous child. Above all, he had the right summarily to impose fines up to a fixed limit on anyone who committed an offence against any of the referents in the law, and could cite the offender before the court of *Heliaia* if the fine should be higher than the fixed limit. Thus, the archon's care in *Dem.* 43.75 and *AP.* 56.7, is in the context



of legal oversight responsibility. It did not imply state distribution of food to the referents in the law.

Of course, σῖτος (food) occurs in *AP*. 56.7; and Demosthenes also certainly makes reference to σῖτος in his first speech against his guardian, *Against Aphobos* (27), to which reference is made by the Harpocraton lexicon and Liddell and Scott. But throughout the 69 sections of the speech, the orator uses the word once, in section 15, in the context of general physical maintenance. He argues that, though Aphobos, his guardian, has his (the orator's) widowed mother's dowry, he does not care for the woman: οὐ γὰρ διδόντος τούτου σῖτον τῇ μητρί, τὴν προῖκ' ἔχοντος.

Here, Demosthenes implies that his guardian has failed to provide for the general maintenance and support of the widow though he has her dowry in his possession. The orator expresses the same sentiment, using the word σῖτος in speech 28.11, and then in 29.33. But in all these instances, Demosthenes, in fact, uses σῖτος from a financial point of view, implying that Aphobos has failed in his duty as their guardian to give financial support and provide general maintenance for the widow.

The independent evidence about the status of a wife's dowry shows conclusively that Demosthenes in 27.15, 28.11 and 29.33, meant nothing more or less than financial support and general maintenance for his mother. In classical Athens, the dowry, *proix* (προῖξ), as it was technically called in Attic legal language, of a wife was invested by the husband and the profits used to maintain the woman in her married life. It is general knowledge that this was the woman's financial contribution, sometimes very considerable, to augment the economic value of the husband's estate. Thus it was an estate which a woman brought to her husband. If the marriage terminated by whatever means, the woman was entitled to her dowry which she took back to her *kyrios*. If the husband died, his next of kin was legally obliged to return the dowry to the woman's father or legal representative. Failing return of the dowry, the woman had the right to maintenance by her ex-husband, if he was still alive, or his next-of-kin, if the husband was deceased. Otherwise, the person holding the dowry could be dragged to court by the woman's *kyrios* for the archon to legally and forcibly urge a return of the dowry with an interest on it.²⁷ This rule about the status of the dowry and the widow's right to financial sup-

27. See Dem. 28.11; 40.50; Isai. 3.8-9, Cf. H. J. Wolff, 'Marriage Law and Family Organisation in Ancient Athens,' *Traditio* 2 (1944), 43-95, esp. 53-65.

port and general maintenance is what Demosthenes alludes to in his speeches, 27.15, 28.11 and 29.33. It is the same right to maintenance for the minor orphans that Aristotle refers to in *AP*. 56.7.

It would, thus appear too literal and misleading to regard the lexicographer's citation of *sitos* in Demosthenes as state provision of food to widows and orphans. The lexicographer is certainly showing awareness of two entirely different facts: (i) a material fact; that is, care for women and minor orphans as part of Solon's laws, as evident in Dem. 43.75, and *AP*. 56.7; (ii) a linguistic fact, indicating the occurrence of the word in the orator's speech. In these two instances, the lexicographer does not imply state provision of food for widows and orphans through the archon. Even the reference to *σίτος* in Liddell and Scott to Demosthenes (27.15, 28.11) that in Attic Law it is "allowance of grain made to widows and orphans"²⁸ should be rejected as rather too sanguine about the law and therefore speculative. For classical Athens we have far more sources in which such evidence ought to appear, if there were any reason for its existence, considering the ubiquitous number of widows and orphans we come across in Attic forensic oratory; but it seems to be entirely absent.

For a better appreciation and understanding of the archon's legal role in Dem. 43.75, we perhaps need to apply the concept of distinguishing between the grammatical and dialectical connotations of words; that is, the distinction between the meaning of words (grammatical), and what they imply (dialectical). In this connection should be cited the word, ἐπιμελείσθω, in Dem. 43.75. What is the distinction between its grammatical and dialectical connotations? The verb, ἐπιμελοῦμαι, which imperative mood, ἐπιμελείσθω, occurs in Dem. 43.75, certainly means, 'to take care of,' 'have charge of.' This, in fact, is the grammatical meaning of the word. In a more literal sense, it may mean 'support,' depending upon the prevailing contextual situation. According to Liddell and Scott, ἐπιμελοῦμαι occurs in Herodotus, Plato, Xenophon, and Thucydides, though the various chapters or works of the authors in which the word occurs are not cited.

The imperative mood, ἐπιμελείσθω, as it occurs in Dem. 43.75, obviously means, 'let him take care,' or 'let him have charge,' or 'he shall take charge.' Now, what is the dialectical connotation of 'let him take care'? The meaning is the same as is in the indicative mood, but here, the dialectical implication is different. It does not connote

28. A Greek-English Lexicon by Liddell and Scott, Oxford 1968, p. 1602.



physical maintenance like providing food, clothing and shelter. The mood is commanding, or authorizing; implying authority which is legal rather than physical. Thus, the archon is given legal authority to protect the referents in the law. This legal protection, which, in fact, is the dialectical implication of ἐπιμελείσθω is made even more explicit by the prescribed action in the law that the archon should not allow anyone to commit any unlawful act against anyone of the referents; and that in the event of any such act, he should punish the culprit according to the dictates of the law, as we have already noted above. For instance, Sositheos proclaims in his argument that he would hand over his son, whom he had adopted into the family of the deceased Hagnias through Eubulides to be his heir, to the jury to be the object of their care:

Παραδίδωμι οὖν ὑμῖν τὸν παῖδα τουτονί, ὃ ἄνδρες δικασταί, ἐπιμεληθῆναι, ὅπως ἂν ὑμῖν δοκῇ δικαιοτάτον εἶναι; ‘I therefore deliver over to you this boy, men of the jury, *to be the object of your care* in whatever way you may deem most just’ (Dem. 43.81).

Here, Sositheos does not imply that members of the jury or the jury as a body should provide physical maintenance for the boy. What he is asking them to do is to exercise legal supervisory responsibility over him.

Thus ἐπιμελείσθω in the law does not technically imply provision of food by the archon to any of the referents. It is noteworthy that in statutory interpretation although there could be a complex relationship between the meanings given to words and the purposes of a given statute, the meanings and applications of a statute may well differ according to the objectives behind that statute, and that ordinary words must be given their ordinary meanings and technical words their technical meanings. This is the case with ἐπιμελείσθω, σῖτος, and εἰσπράττει in Dem. 43.75 and AP. 56.7, and in the three speeches of Demosthenes against his guardians. They are expressively and legally technical in the texts and should be given their appropriate technical implications.

Now, what of households or families about to become empty which were entrusted to the care of the archon by Solon? It is certain that this refers to the imminent extinction of the lineage of families. Dem. 43.75 and AP. 56.7 are abundant evidence for Solon’s, and for that matter, the *polis*’ concern for the continuity of every lineage in the society. And there is unchallengeable evidential support in that respect furnished by Isaïos in his, *On the Estate of Apollodorus*. We

have already quoted the passage, but we take the liberty to quote it again because of its relevance here also. The litigant bolsters his claim as follows which clearly illustrates the society's concern for the continuity of every Athenian lineage:

All men, when they are near their end, take measures of precaution on their behalf to prevent their families from becoming extinct and to secure that there shall be someone to perform sacrifices and carry out the customary rites over them. And so, even if they die without issue, they at any rate adopt children and leave them behind. And there is not merely a personal feeling in favour of this course, but the state has taken public measures to secure that it shall be followed, since by law it entrusts the archon with the duty of preventing families from becoming extinguished (Isai. 7.30-31).

There seems to be a state of uncertainty among scholars about the clause, 'by law it (the state) entrusts the archon with the duty of preventing families from becoming extinguished' in this passage. Some scholars think that the archon was expected to take a direct initiative in the matter, while others claim that the litigant is just twisting the law in Dem. 43.75 for his own purpose instead of laying on the archon the duty of seeing that houses should not be extinguished.²⁹ These views are neither here nor there, and that the archon took no direct initiative in the matter of a family at the brink of extinction. As will be established below, principally the archon's role was a supervisory one, presiding over cases of succession and inheritance which would be brought to his attention, and seeing to it that the rightful person succeeded in the family to continue the lineage. By and large, however, this passage in Isaios clearly emphasizes the immense, moral, and socio-political importance the Athenians attached to ancestry; but of course, ancestry within the context of lineal descent and patri-filiation to continue the man's family line and perpetuate his name. Moreover, it is obvious from the passage that the reason for the general concern for the continuation of the family was partly religious, as the following passage also shows:

Some time after this Menekles began to consider how he might end his childless condition and have someone who would look after him in his old age during his lifetime and bury him after his death and carry out the funeral rites over him (Isai. 2.10).

29. See Harrison, *Law* (i), p. 92, 147, n. 1.

In any case, what could be the implications of an extinct household or a lineage and in what way(s) was the archon expected to prevent an Athenian family from becoming extinct as enshrined in Dem. 43.75? The sources indicate that an Athenian household about to become extinct implies a family with no one to continue the lineage.³⁰ There could be several implications of this kind of situation. We note only a few here: amalgamation of the deceased's estate into that of his next of kin; a protracted litigation among collateral relatives of the deceased over his property, as in the case of the property of Hagnias II (Isai. 11, Dem. 43); the passing out of the possession of the property of the family or of the larger unit of kinship, the *genos*, and lack of religious observances in the household if the head of the family, (*oikos* or *oikia*), left no male heir.

It appears that this problem of a lineage at the brink of extinction became the concern of most of the seventh-century lawgivers (AP. 9.2), against the background of which Solon also passed laws on the subject in Athens. We note a typical case in point. Aristotle informs us that the situation of a property passing out of the family actually happened in Sparta in the fourth century B.C. for lack of a heir to continue the lineage.³¹ It was such families with a precarious future in Athens whose care Solon entrusted to the archon in his law. But again, here, the import of the archon's care does not imply that he should distribute grain, *sitos*, to such families with no *kyrioi* or no one to continue the lineage. His care of families about to become extinct implies a legal responsibility, and he could exercise his legal authority of maintaining the continuity of a family through the settlement of inheritance disputes in the family, and claims to inheritance and heiresses. Precisely, the archon had to see to it that the rightful person succeeded in the family.

In point of fact, until the time of Solon, the property and the house had to remain in the *genos* of the deceased.³² But Solon reversed the situation and permitted a man with no male heir to adopt a son, who thus became a member of his *genos* to continue his lineage on his death. And if there was a brotherless daughter (an heiress), the father could adopt a man as his son (Isai. 7.13) to marry the heiress and beget an heir to continue his lineage; and if there was no male issue of the union the property passed from the deceased's lineal

30. Cf. Thuc. 1.137; Isai. 7.30-31; Dem 43 passim.

31. Arist. *Pol.* 1270 a 20 f.

32. Plutarch, *Solon*, 21 (tr. Robin Waterfield, 1998).



family to the *genos*, thereby making his lineage become extinct; a situation which Solon authorized the archon in Dem. 43.75, to prevent from happening.

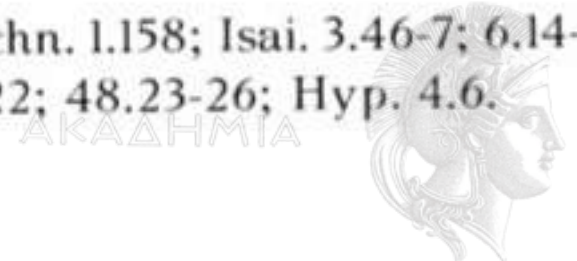
Indeed, the state was much concerned with the maintaining of the clans, the fundamental basis of the families; though in fact, it was all geared towards the continuity of the various family genealogies. The fundamental objective of the continuity of the family was reflected in the routine agenda at the first Assembly of each month which include the hearing of claims to heiresses and inheritances: τὰς λήξεις τῶν κλήρων καὶ τῶν ἐπικλήρων (AP. 43.4). Significantly, even an *ephebe* on military service could only obtain leave to prosecute or if he became entitled to a priesthood, or any of such claims (AP. 42.5), if it became obvious that the kin's lineage was at the brink of extinction. All such cases, disputes, claims, and other legal matters concerning orphans, pregnant widows, heiresses, and families about to become extinct fell under the archon's jurisdiction.³³

It is clear, then, that the archon's prescribed role in Dem. 43.75, is a supervisory jurisdiction but not a physical maintenance. The law-giver is at great pains to emphasize this legal oversight responsibility in the following carefully and technically worded statements:

He shall take charge of these and not let anyone do any outrage to them. And if anyone should maltreat or commit any lawless act against them, he shall have power to impose a fine upon such a person to the limit fixed by law (emphasis ours).

The careful wording of these clauses is indeed remarkable as far as the object of the law is concerned. It does not only highlight the legal functions of the archon but also provides the framework or scope within which he should exercise his authority. This legal oversight has various facets which appear legion. The archon had authority to take legal action against any guardian who failed in his responsibilities to his ward(s), or anybody who wronged an orphan, heiress, or a pregnant widow in the society. He had to see to it also that the rightful person inherited in the family to continue the lineage. For it would be very abominable for an Athenian family, where there are no lawful heirs, for alien and illegitimate children to inherit in it, enter into possession of the estate and begin to dissipate it because it is not theirs. This would certainly constitute an outrage against the

33. See Arist. AP, 43.4; 56.6, 7; Andok. 1.117-121; Aeschn. 1.158; Isai. 3.46-7; 6.14-15; 7.30; Lys. 26.12-13; Dem. 35.47-48; 37.46; 43.54; 46.22; 48.23-26; Hyp. 4.6.



person's family and which the archon should prevent from happening. These responsibilities of the archon, indeed, had nothing to do with physical maintenance of the referents in the law. The claim by Stroud³⁴ that all minor orphans and widows were maintained by the state in the form of grain or food distribution, and that the archon was responsible for the distribution is therefore anything but convincing.

At this point, the object of the law becomes obvious. The law certainly aimed at protecting such vulnerable members of the society who had legal disabilities, guaranteeing their interest and welfare, as well as sustaining the continuity of every Athenian lineage for the survival of the *polis*. In a wider dimension, the law demonstrates the great concern of Athenian society for the family. This great concern is reinforced by the summary powers vested in the archon who had absolute power to impose a penalty without necessarily sending the case to court for trial (AP. 56.7).

It is thus evident from AP. 56.6,7 Dem. 43.75, Isaios 7.29-30, and indeed other sources that the archon had great authority and wide-ranging responsibilities, and therefore became a very important agent of the administration of justice in the Athenian family; defending orphans, heiresses and pregnant widows against those who could seriously harm them in the society, and protecting *oikos* interests in general.

VI. EXERCISE OF EXECUTIVE FUNCTIONS

A fundamental issue which Dem. 43.75 does not address, is how the archon had to exercise his executive functions in his administration of justice in the Athenian family for the object of the law to be realized. For instance, how did the archon become aware of maltreatment of any of the referents in the law for him to take legal action against the perpetrator of the injustice? Again, how did it come to his notice that an Athenian lineage was about to become extinct? Furthermore, how was he expected to prevent such a situation from happening? The law in Dem. 43.75, is in fact, completely silent on these issues. But despite the absence of procedural directives, evidence is not lacking on how the archon could exercise the powers vested in him by the law.

34. See n. 26 above.

We take first the question of families becoming extinct. Evidence from Attic forensic oratory seems to suggest two situations in which the lineage and continuity of a family became threatened, and therefore extinction imminent – either the person died intestate, leaving only daughters but no sons, or he died childless and intestate. In either case, the estate of the deceased, and for that matter the inheritance, was presumed to have become vacant, claimable and assignable (*epidikos*). The archon caused a public announcement to be made, inviting any relative(s) who had a claim to the inheritance to submit their claims to him (Dem. 43.5). The list of claimants was read to the public at the main meeting of the Assembly (*kyria Ekklesia*) after which the archon conducted a preliminary investigation (*anakrisis*) to know the merits of each claim.³⁵ He then fixed a day for the hearing and adjudication of the inheritance.³⁶

On the day of the trial, the *onus probandi* lay on the claimant to convince the jury of the basis for his claim, either on closeness of kin to the deceased or on adoption by the deceased. And the jury, chaired by the archon, adjudicated the estate, and for that matter, the inheritance of the deceased to the successful claimant (Dem. 46.23). The fundamental responsibility of the successful claimant, then, was to continue the lineage of the deceased, and thereby preventing extinction of the deceased's lineage through economic stability and the generational continuity of children. Thus in the event of an Athenian family at the brink of extinction, although the direct intervention of the archon appears absent in some cases, his legal role is obvious. It was he who administered the necessary legal procedures meant to sustain the deceased's *oikos* to prevent the calamity of that family becoming extinct from happening.

In the case of the other referents in the law, the heiress seems to be in a unique socio-legal position. It was through her that the deceased father's lineage or family could be continued by being married to either the deceased father's next of kin or to some other man, according to a law about heiresses (Dem. 43.54).³⁷ If the heiress came from a poor financial background so that she might not attract a prospective husband (Lys. 19.14), and the father's next of kin too did not marry her, or give her in marriage to another man, this constituted *hybris*

35. Arist. AP, 56.6; Dem. 48.23-26; Isai. 6.12; 10.2.

36. AP. 43.4; 56.6-7; Dem. 46.22.

37. For a detailed interpretation of the statement, 'Each One of Them ... According to His Due Share', in this law see Cudjoe, n.1 above.

against her. More importantly, it meant also that she would not be able to fulfil her role as the agent through whom her father's lineage could be continued, resulting in the extinction of the father's lineage. In such a circumstance, the law about heiresses (Dem. 43.54), invests the archon with the authority to compel the next of kin to either marry the heiress himself or give her away in marriage and dower her accordingly, or face legal sanctions the process of which the archon himself had power to initiate.

In all other cases regarding orphans, heiresses and pregnant widows, however, the intervention of the archon was not direct. The available evidence suggests that in the majority of cases, the archon's enshrined authority to protect such vulnerable members of Athenian society had to be activated only by an interested individual. In fact, as noted above, minor orphans, both ordinary and heiresses, and women in general, and for that matter widows in Athens, had legal limitations or disabilities, and could therefore not, by themselves, sue anybody, be he their legal representative or any other citizen in the society for wrongdoing or injustice against them. It is therefore not surprising that the maltreated minor orphan had to wait until his majority before taking action against his perfidious guarding, as is quite evident in Attic forensic oratory.

None the less, Athenian society instituted adequate modes of procedure to complement the archon's authority to secure and protect their welfare. One of such procedures was a law authorizing anyone who wished and was qualified to do so, (ὁ βουλόμενος) to intervene and lodge a suit (an *eisangelia*) with the archon on behalf of a victim of wrongdoing who had legal limitations. The relevant sections of the law read:

If anyone assaults any child or woman or man, whether free or slave, or commits any unlawful act against anyone of these, any Athenian citizen who desires to do so, being qualified, may indict him before the Judges;³⁸

Perhaps we need to distinguish here, even if briefly, private cases from public cases before we comment on this law. In the former, the offence was one which affected the individual; and it was only the indi-

38. Dem. 21.47. Cf. also Arist., *AP*. 9.1; Plutarch, *Solon*, 19 (tr. Robin Waterfield, 1998). For various references to the law see, Isai. 3.45-46; 11.15, 28, 33, 34. For the law on treason and other criminal acts requiring *eisangelia* see Hyper., *Euxen.* 7-8, 29.

vidual victim of the wrong who could take legal action for redress. But in the later, the offence was deemed a serious threat to public order; one affecting the community as a whole and which required immediate action or speedy redress by the authorities. Some of the offences in this category of cases include taking bribes by an orator, making deceptive promises to the people, embezzlement of public funds, desertion from the army, and treasonable acts like conspiracy to overthrow the constitution, or any acts threatening the stability of the state. In any of these cases, any Athenian who wished and had the right to do so, (ὁ βουλόμενος), could report the matter to the appropriate authority and prosecute the wrong-doer at the court.

It is significant that offences against orphans, heiresses, and pregnant widows were also put in the category of public offences because they were incapable of taking legal action for themselves. Now, the latter part of the law quoted above contains penal actions against any volunteer prosecutor who failed to satisfy certain requirements to prevent abuse of the liberty. For instance, the prosecutor was required to deposit a court fee to be forfeit if his prosecution failed; he was also subject to pay a fine of one thousand *drachmai* if he failed to secure one-fifth of the jurors' votes, or withdrew the case (Isai.3; 8). But in cases regarding orphans, heiresses and women in general, however, the penal actions were not invoked.

The liberty granted anybody who wished (ὁ βουλόμενος) to exact redress on behalf of injured persons was made an important regular item on the agenda of the meeting of the *Ekklesia* in each presidential term of office. At this meeting, information was presented to the Assembly by those who wished, that is, informants (AP. 43.4), so that the necessary legal processes could be initiated by the archon for the trial itself. Aristotle informs us that among the three most democratic features of Solon's constitutional reforms was, "the permission granted to anybody who wished to take vengeance on behalf of wronged persons" (AP. 9.1).³⁹ This legal liberty, as well as the suspension of the penalties on initiators of the process extended to any person to prosecute on behalf of orphans, heiresses, and pregnant widows against anyone who perpetrated any acts of injustice against them in the society, not only became an important auxiliary agent to the authority

39. See Plutarch, op. cit. for an expanded version of the tradition. Also M. Christ, *The Litigious Athenian*, Baltimore 1998, p. 118-159; and R. Osborne, 'Law in Action in Classical Athens,' *JHS* 105 (1985), 40-58, for a detailed discussion on volunteer prosecutors.

vested in the archon in Dem. 43.75, in his administration of justice in the Athenian family, but also demonstrates the importance the Athenians attached to the welfare of the referents in the law and the gravity with which any offence against them was considered.

VII. CONCLUSION

What we hope to have shown so far in this paper is briefly this. The law cited in Dem. 43.75 is limited in scope. It does not provide for women and children in general and ordinary widows. The socio-legal presumption, however, is that these categories of Athenian citizens were expected to live under the legal authority of their parents or legal representatives who gave them legal protection and provided for their physical maintenance and support in the family. Despite any shades of ambiguity regarding the referents 'orphans' and '*epikleroi*' in the law, the general socio-legal presumptions are that while 'orphans' implies minor orphans in general incapable of managing their own affairs, '*epikleroi*' refers to minor females without brothers whose fathers died intestate, as well as widowed *epikleroi* both categories of whom had to be claimed by their fathers' next of kin.

It is established also that the law is not only administrative but also procedural and descriptive in nature, describing the action the archon should take in the event of an injustice against any of the referents, though it does not establish substantive rights of the referents. Fundamentally, the object of the law is to provide legal protection for orphans, heiresses, families about to become extinct and pregnant widows who had been bereft of their legal representatives; and the archon's role is purely a supervisory jurisdiction over them but not physical maintenance.

Since in classical Athens there was no police force or the institution of a public prosecutor, the legal right granted any individual who wished (ὁ βουλόμενος) to disclose information relating to unlawful acts or other illegal conduct or corrupt practices of others, and to prosecute on behalf of an injured party became an important auxiliary agent to the authority vested in the archon in Dem. 43.75 to administer justice in the Athenian family.

ΠΕΡΙΛΗΨΗ

R. V. CUDJOE - ΣΟΦΙΑ ΑΔΑΜ-ΜΑΓΝΗΣΑΛΗ: *Οικογενειακό Δίκαιο στον «Προς Μακάρτατον» λόγο του Δημοσθένη*

Οι φιλολογικές πηγές έχουν διασώσει μια κληρονομική υπόθεση μέσα από την οποία διαφαίνεται πλήρως η φιλόδικη φύση των Αθηναίων, οι φιλονικίες τους και η πολυπλοκότητα των αθηναϊκών δικονομικών μηχανισμών. Πρόκειται για τον *Προς Μακάρτατον* λόγο του Δημοσθένη που περιγράφει την τύχη της περιουσίας του Αθηναίου Αγνία, που πέθανε άτεκνος.

Στο λόγο αυτόν μνημονεύεται ένας αθηναϊκός νόμος (Δημοσθένης, 43.75) ο οποίος προσδιορίζει τις αρμοδιότητες του επωνύμου άρχοντα και το ρόλο του στην απονομή της δικαιοσύνης για ορισμένες οικογενειακής φύσεως υποθέσεις.

Η παρούσα μελέτη επικεντρώνεται στον πιο πάνω νόμο και αναλύει τις νομικές και κοινωνικές προεκτάσεις του. Ειδικότερα καθορίζει τα υποκείμενα και προσδιορίζει τη φύση του νόμου, το αντικείμενό του, τα χαρακτηριστικά του, και τα μέσα με τα οποία επιτυγχανόταν ο σκοπός του σε σχέση με την αθηναϊκή οικογένεια.

Ο νομοθέτης (πιθανότατα ο Σόλων) ανέθεσε στην αρμοδιότητα του επωνύμου άρχοντα την επιμέλεια μιας κατηγορίας προσώπων που θεωρούσε ότι ήταν ευάλωτα σε εκμετάλλευση και επομένως έχρηζαν ιδιαίτερης προστασίας. Τα πρόσωπα αυτά ήταν τα ορφανά παιδιά, οι επίκληρες κόρες, οι χήρες που κυοφορούσαν και παρέμεναν στον οίκο του θανόντος συζύγου τους. Στην αρμοδιότητα του επωνύμου άρχοντα υπάγονταν γενικά όσοι «οίκοι» κινδύνευαν να «ερημωθούν» με την έννοια ότι δεν υπήρχε κληρονόμος και συνεχιστής του ονόματος των οικογενειών αυτών. Ο νόμος πάντως δεν ήταν ευρύς, με την έννοια ότι η αρμοδιότητα του άρχοντα ήταν περιορισμένη και δεν περιλάμβανε όλες τις γυναίκες και τα παιδιά, αλλά μόνο τις τρεις κατηγορίες που προαναφέρθηκαν, οι οποίες ήταν και οι πιο αδύναμες.

Η επιμέλεια που ασκούσε ο άρχων είχε την έννοια της νομικής προστασίας των πιο πάνω προσώπων και των περιουσιών τους: είχε εξουσία να τιμωρεί κάθε προσβολή στο πρόσωπό τους και να εισάγει στο δικαστήριο της Ηλιαίας τις σχετικές υποθέσεις.

Τέλος η παρούσα μελέτη καταδεικνύει ότι ο προαναφερόμενος νόμος αντικατοπτρίζει χαρακτηριστικά των κοινωνικών και πολιτιστικών αντι-

