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In defense of Medea: a legal approach to Euripides*

Although the action of *Medea* sends us to the remote past of Corinth and, as a consequence of that, to a heroic time of exceptional characters, it is nevertheless a fact that the audience that followed the presentation of the play, during the Great Dionysia of 431 B.C., lived in a specific polis, which was organized according to a particular social structure. Because of that, the Athenian spectators must have taken into consideration, when watching the Euripidean drama, the juridical situation of an exiled woman, with a prog-

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eny recognized as legitimate by her husband, but who was nevertheless on the edge of being substituted by another woman of higher status and able to provide a much more comfortable social position to Jason. Besides that, the audience should also have considered the fact that Medea used to act with a masculine determination in a society clearly dominated by men and their way of ruling family, politics and legal practices. In a first approach, the juridical situation of this foreign woman seems therefore extremely difficult or even unbearable: apart from having a highly violent and brutal record, motivated by the passionate impulse of fleeing with Jason, to whom she was bound without a marriage legally recognized as valid, she was a barbarian who practiced sorcery and was about to incur in the hideous crime of killing her own children – when the maternal instinct should on the contrary have led her to protect them. The combination of all these factors sends Medea to the margins of an existence in society and transforms her into a most undesirable person in any politically organized community. Notwithstanding, important characters of the Euripidean drama – like the Nurse, the Chorus and Aegeus – recognize that, up to a certain point, she is right, and even if this is not enough to excuse her extreme and cold conduct, it contributes nevertheless to sustain the grounds of her grievance towards Jason.

In accordance with this perspective, this paper will focus on a legal approach to the reasons behind the tragic outcome of the play, caused by the way Medea and Jason interacted. No attempt will be made to absolve or condemn entirely the conduct of any of them (a task that would be impossible in the way Euripides conceived those characters); the aim is solely to discuss and analyze some of the legal circumstances that, together with ethical, religious, cultural and esthetical factors, may have contributed to the way the audience understood the drama. In order to prepare the ground for this comparative analysis, each section of the paper will start by evoking the main traits of the legal problems that may be pertinent to consider the position and argumentation of Medea, seen through the expectations of a fifth-century auditorium.

1. MARRIAGE AND LEGITIMATE OFFSPRING

One of the areas covered by Athenian law concerned the categorization of the kind of relations that a man could establish with women. In *Against Neera*, a speech whose author is almost certainly Apollodorus and not Demosthenes, to whom it is falsely attributed, there is a well-known passage where a very impressive cataloguing of women is provided (59.122):

τάς μὲν γὰρ ἐταίρας ἡδονῆς ἕνεκ' ἔχομεν, τὰς δὲ παλλακὰς τῆς καθ' ἡμέραν θερα-

πείας τοῦ σώματος, τὰς δὲ γυναῖκας τοῦ παιδοποιεῖσθαι γνησίως καὶ τῶν ἔνδον φύλακα πιστὴν ἔχειν.

We have *hetairai* for the sake of pleasure, concubines (*pallakai*) for meeting our bodily needs day-by-day, but wives (*gynaikes*) for having legitimate children (*gnesioi*) and to be trustworthy guardians of our household.¹

The typology of relations outlined in this passage implies the establishment of a ‘ranking’ of women, based on civic, ethical, and legal grounds. In the lower position of social consideration are the *hetairai*, seen as mere instruments of pleasure, who thereby are not expected to establish links with their clients other than those depending on the selling and paying for sexual services. In a step higher are the *pallakai*, who can be placed halfway between the *hetairai* and the *gynaikes*: they may live in the *oikos*, together with the man with whom they are involved, but their offspring would not be considered legitimate.² At the top of the social and juridical consideration were the *gynaikes*, those women formally married to a citizen and whose children were regarded as legitimate (*gnesioi*), with all the family and civic rights and obligations deriving from that social position.

The public recognition of a marital union would usually depend on a special procedure, which was very important in order to legitimate the marriage. The legal implications of this procedure are mentioned in another speech (also falsely) attributed to Demosthenes, where a law is quoted (46.18):

“Ἦν ἂν ἐγγυήσῃ ἐπὶ δικαίοις δάμαρτα εἶναι ἢ πατὴρ ἢ ἀδελφὸς ὁμοπάτωρ ἢ πάππος ὁ πρὸς πατρός, ἐκ ταύτης εἶναι παῖδας γνησίους. ἔαν δὲ μηδεὶς ἢ τούτων, ἔαν μὲν ἐπὶ κληρὸς τις ᾗ, τὸν κύριον ἔχειν, ἔαν δὲ μὴ ᾗ, ὅτῳ ἂν ἐπιτρέψῃ, τοῦτον κύριον εἶναι.

If a woman be betrothed for lawful marriage (*engyan*) by her father or by a brother begotten of the same father or by her grandfather on her father’s side, her children shall be legitimate (*gnesioi*). In case there be none of these relatives, if the woman be an heiress (*epikleros*), her guardian (*kyrios*) shall take her to wife, and if she be not, that man shall be her guardian (*kyrios*) to whom she may entrust herself.³

1. Translation by Bers (2003) 191.

2. However, they could be born free, in case the *pallake* already possessed this same status. Besides that, a hint that the *pallake* was considered part of the *oikos* can be found in the fact that the *kyrios* could kill, without legal retaliation, an adulterer caught *in flagrante* with a *pallake* — the same happened when a *moichos* was caught with the wife, the mother, a sister or a daughter of the *kyrios*. Cf. Demosthenes, 23.53. On this passage, see Leão (2001) 349-350.

3. Translation by A. T. Murray (Harvard, 1939).

The passage mentions several important aspects in what concerns family law and the preoccupation of preserving the integrity of an *oikos*, although its correct understanding depends on certain characteristics of Athenian law.⁴ First, it is necessary to take into consideration the social position of women (and children), who, in the eyes of the law, could not act autonomously, and because of that they depended legally on a *kyrios* (the 'head' or 'master' of the house). Until marriage, the *kyrios* would normally be the father of the young woman; after that, the husband would fulfil this function. Before the marriage, there should be a formal agreement between the former *kyrios* and the man that would play this role in the future, in order to recognize and legitimate the transfer of a woman from her original *oikos* to that of the husband. This formal act is usually known as *engyesis* or *engye*.⁵ As pointed out above, the bride's father should grant this procedure, but in case that was not possible (if he had already died), the function should be fulfilled by a brother begotten of the same father or by the grandfather on her father's side. The transfer or the 'giving in marriage' (*ekdosis*) of the woman to her new *kyrios*, together with the dowry, consolidated the public and official union of the couple, thus granting that their descendants would be considered legitimate. Nevertheless, the possibility that these male relatives were no longer alive or simply did not exist should also be considered: in such circumstances, the woman would become *epikleros*, universal heiress.⁶ In a case like this, the simplest solution would be to marry the *epikleros* with the nearest of kin, usually an uncle on her father's side. If this solution was not possible, she had to submit to the wish of the *kyrios* determined by her father (regularly by will) in order to face this situation. A *kyrios* designed under these circumstances would work as a kind of guardian or tutor, and should play a role equivalent to that of the normal *kyrios*: oversee the patrimony, protect and look after the woman, and in due time give her in marriage, according to the usual procedure of *engyesis*.

It is now time to approach Euripides, especially the kind of statutory relation that might exist between Medea and Jason. If one decides to juxtapose directly their situation and the legal procedure evoked in the previous paragraphs, it cannot be said that the marriage celebrated by the two fugi-

4. For more details, see Leão (2001) 365-367.

5. There was no technical word to denote by itself the concept of marriage, but the terms mentioned above derive from the verb that usually occurs in such contexts – as happens in fact in the passage under analysis (ἐγγυήση), thus denoting the official nature of the procedure. MacDowell (1978) 84 and 87.

6. For further details, see Biscardi (1982) 108-112; Ruschenbusch (1988) 15.

tives was legally binding, because Medea fled from her household in rupture with the natal *oikos*. In fact, she explicitly regrets this situation (vv. 166-167), when she understands that the sacrifices she had made in the name of her dedication to Jason had been vain.⁷ Besides the opposition of the father, Medea's escape from home also led to the inglorious death of her brother at her own hands. By acting like this, she became more and more isolated and made a return to the initial *oikos* impossible, because she destroyed all the personal links that connected her with the original *kyrios*: the father and the brother (who would be the natural successor as her guardian). The behaviour of Medea made her directly and completely dependent on the *oikos* of Jason, thus increasing also the responsibilities of the latter, because in case he ceased to grant his support to Medea, she would have no other safe place where to go.

At this point, an obvious counter-argument could perhaps be used by stating that, in the eyes of the Athenians living in the last quarter of the fifth century, Medea was simply a foreign *pallake* and hence Jason could get rid of her without being afraid of further ethical or legal obligations. At first sight this is true, but in the heroic world of the play, Medea is in fact the legitimate wife of Jason and, even if she cannot evoke in her own support the formal procedure of the *engye*, she still has on her side a clause that can be considered even more binding: the solemn oaths sworn by taking the gods as their witnesses.⁸ These same 'mighty oaths' (μεγάλοις ὅρκοις) are recalled by Medea when she appeals to the equally 'mighty' Themis and Artemis (vv. 160-163). And in fact her words find indirect support in the commentary of the Nurse, when she confirms (vv. 168-170) that Themis and especially Zeus are the 'guardians' of oaths among mortals (ὅρκων θνητοῖς ταμίης).

2. MIXED MARRIAGES AND CITIZENSHIP RIGHTS

Some modern states defend that citizenship depends on a 'territorial principle' (*ius soli*), i.e. that a child who was born in the territory of a certain state may acquire, *ipso facto*, the right of being citizen of that same state. Others, on the contrary, sustain a 'personal principle', which determines that citizenship is a direct heritage of the statutory situation of a child's parents (*ius sanguinis*). Classical Athens, like other ancient Greek poleis, followed this second principle, but added to it an even stronger hereditary factor: Athenian citizens are said to have believed that their ancestors had always

7. The same idea had already been expressed by the Nurse (vv. 31-35).

8. On this see the observations of Allan (2002) 50-51.



lived in Attica, that they were *autochthones* – even that their ancestors were literally ‘sprung from the earth’. However, it is not the aim of this paper to discuss in detail the development of the concept of autochthony among Athenians; nor to analyze the way this concept can be related to the ideology of Athenian democracy and to the concepts of inclusion and exclusion.⁹ More pertinent to the present discussion is the idea that having residence in Attic territory did not grant, by itself, to a foreign person – even if this *xenos* was a Greek coming from another polis – the right to Athenian citizenship, not even if residence extended already for several generations. To be granted the privilege of citizenship, a prospective candidate had to be the beneficiary of a special (and thereby exceptional) treatment. Nevertheless, the mere authorization to settle in Attica was a strong motivation, to the point of attracting many foreigners, who became, in fact, a very important part of the population, mainly in terms of economic activities. Athens did not try to limit this affluence of foreigners, proudly establishing a contrast with the policy of seclusion put into practice by other poleis, in particular the rival Sparta.

Thus, in Attica the majority of the elements of the civic body had acquired their status of *politai* as a direct consequence of being the legitimate offspring of other citizens, i.e. of being children who were born regularly (and publically recognized as such) from parents officially married who already had Athenian citizenship. Until the middle of the fifth century, it would have been enough, in principle, that the father was a citizen, in order to pass the same right to his descendants. Under these circumstances, citizenship of the progeny would not be affected even when marriage was celebrated with a foreign woman. This is the case of Megacles, one of the most important members of the Alcmaeonid family, who, in the first half of the sixth century, had married Agariste, a daughter of Cleisthenes, tyrant of Sicyon: one of his children was the future creator of democracy at Athens, also named Cleisthenes.¹⁰

This principle would undergo an important change under Pericles, in a law passed in 451/0, which determined that both parents ought to be citizens if they wanted their offspring to have the same rights of citizenship. It is highly improbable that this disposition could be retroactive, because it would otherwise have affected important figures of the Athenian political estab-

9. On autochthony and citizenship, see Loraux (1984), 35-73; Rosivach (1987); Todd (1995) 170-171; Bearzot (2007); Blok (2009). On the idea of citizenship and the right of property concerning the Attic soil (*enktesis*), see Leão (2010).

10. Cf. Herodotus, 6.130.2. On a similar situation concerning Themistocles and Cimon, whose rights of citizenship were never questioned, see Rhodes (1981) 279; 324-325.

lishment. Besides that, not many scholars would concede that the law was applied with no restrictions from then onwards, especially during the last phases of the Peloponnesian War, because this regulation was re-enacted by the end of the fifth century, affecting only those who were born in 403/2 or after that date.¹¹ The law in question is mentioned briefly by the Aristotelian *Constitution of the Athenians*. Although it is not in the objective of this study to discuss the many questions involving this regulation, it is nevertheless useful to recall the main problems under consideration (*Ath.* 26.4):

καὶ τρίτῳ μετὰ τοῦτον ἐπὶ Ἀντιδότου διὰ τὸ πλῆθος τῶν πολιτῶν Περικλέους εἰπόντος ἔγνωσαν μὴ μετέχειν τῆς πόλεως, ὅς ἂν μὴ ἐξ ἀμφοῖν ἀστοῖν ᾗ γεγυνώς.

In the archonship of Antidotos, on account of the large number of citizens and on the proposal of Pericles, they [the Athenians] decided that anyone not born from both citizen parents would not have a share in the city.¹²

The author of the *AP* justifies this measure as a way of controlling «the large number of citizens», and this may be an indication that, when approving this law, the Athenians wanted to circumscribe, within a less wide circle of people, the civic prerogatives granted by the democratic regime. Scholars who studied this much debated question have suggested other complementary reasons, such as the desire to preserve the racial purity of the Athenians, the concern with the prospective threat of losing suitable husbands for the young women of the best aristocratic families, the intent to dissuade Athenian noblemen from establishing alliances with citizens from other poleis or even to prevent the prosperity of the empire from being shared by too many people.¹³ Despite these uncertainties, the global effect of Pericles' citizenship law seems quite obvious and indisputable: to limit the number of *politai*, by

11. Cf. Demosthenes, 57.30. This is the interpretation adopted by many scholars, e.g. Harrison (1968-1971) I.26 n. 1; MacDowell (1978) 67; Rhodes (1981) 332-333.

12. Translation by Patterson (1981) 1.

13. For a synopsis on these interpretations and their proponents, see Stadter (1989) 334-335. Papageorgiou (1997), 124, thinks that the law aimed at preventing especially Athenian *politai* living abroad from marrying local women, with the undesirable consequence of spreading Athenian citizenship throughout other parts of the Attic empire. More recently, Blok (2009), 268-270, sustained that behind this regulation might have been the aspiration to eliminate an inequality that persisted even after Cleisthenes' reforms: the access to priesthoods. The idea that Pericles wanted to 'democratize' that access, thus reducing some of the privileges of the more traditional aristocratic families, is an acute argumentation, but applicable only to those inhabitants that were already fully integrated as *politai*.

putting into practice a more restrictive interpretation of the *ius sanguinis*.¹⁴ As a consequence, children born from mixed marriages would not have (at least total) access to the rights of citizenship, although ancient sources are ambivalent concerning this problem.¹⁵

Returning again to the case of Medea and Jason, the previous discussion would be pertinent only if Jason had obtained the right of citizenship – a scenario that did not apply when they arrived at Corinth, since the status of both of them corresponded to that of refugees. It should nevertheless be recalled that there were, in the early constitutional history of Athens, formal instances of groups of exiles to whom full citizenship was granted.¹⁶ The first and most significant example occurs during the time Solon enacted his laws, and is mentioned in a controversial passage of the biography written by Plutarch on the Athenian statesman (*Sol.* 24.4):

Παρέχει δ' ἀπορίαν καὶ ὁ τῶν δημοποιήτων νόμος, ὅτι γενέσθαι πολίτας οὐ δίδωσι πλὴν τοῖς φεύγουσιν ἀειφυγία τὴν ἐαυτῶν ἢ πανεστίοις Ἀθήναζε μετοικιζομένοις ἐπὶ τέχνῃ. τοῦτο δὲ ποιῆσαί φασιν αὐτὸν οὐχ οὕτως ἀπελαύνοντα τοὺς ἄλλους, ὥς κατακαλούμενον Ἀθήναζε τούτους ἐπὶ βεβαίῳ τῷ μεθέξειν τῆς πολιτείας, καὶ ἅμα πιστοὺς νομίζοντα τοὺς μὲν ἀποβεβληκότας τὴν ἐαυτῶν διὰ τὴν ἀνάγκην, τοὺς δ' ἀπολελοιπότας διὰ τὴν γνώμην.

But the law concerning naturalized citizens is of doubtful character. He permitted only those to be made citizens (*politai*) who were permanently exiled from their own country, or who removed (*metoikizein*) to Athens with their entire families to ply a trade. This he did, as we are told, not so much to drive away other foreigners, as to invite these particular ones to Athens with the full assurance of becoming citizens; he also thought that reliance could be placed both on those who had

14. When mentioning the same law, Plutarch (*Per.* 37.2-5) also records that, after the death of his legitimate sons, Pericles managed to convince the Athenians to grant citizenship to the son he had from Aspasia (also named Pericles). Cf. also Aelian, *VH* 6.10; 13.24; frg. 68 (= *Suda* s.v. *demopoietos*).

15. For two flagrant instances of divergent interpretations, see MacDowell (1976), who sustains that the sources support the idea that those people had access to citizenship; Rhodes (1978) uses the same passages to sustain exactly the opposite view. There are several other implications of this law that remain obscure, although they are secondary to the objectives of this study. For more details, see Patterson (1981), (1990); Boegehold (1994); Leão (2005) 55-57. The sources pertinent to the way Athenian law dealt with mixed marriages and illegitimate offspring are collected in Harrison (1968-1971) I.61-68.

16. Besides that, the image of Athens as a city open to receive and protect exiles and refugees who tried, with little success, to get the same support from other poleis is quite recurrent in tragedy. In *Medea*, Aegeus' behaviour illustrates this very paradigm, thus making it clear, once again, that the plot could be put in poleis like Corinth or Argos, but the context involving the performance would nevertheless be Athenian.

been forced to abandon their own country, and on those who had left it with a fixed purpose.¹⁷

The way Plutarch presents the law shows that there was already much dispute concerning its interpretation even in antiquity. According to the biographer, Solon's regulation was directed mainly at two kinds of people, for two different and equally meaningful reasons. The first one has to do with the support given to refugees¹⁸, and the most surprising aspect is that Solon was not satisfied by the idea of conceding them asylum, but went to the point of granting these people something as precious as citizenship. Maybe the objective was to get a feeling of special gratitude on the part of the beneficiaries (as was the opinion already in antiquity, according to Plutarch) or perhaps the law had simply philanthropic motivations – although this interpretation is less likely. In what concerns the second group of beneficiaries, it is easier to detect the pragmatism characteristic of other laws enacted by Solon: the statesman promised full integration in the Athenian polis to those who were qualified in a certain *techné* and were ready to settle in Attica together with their families, thus giving a determinant incentive in order to stimulate an anaemic economy. At any rate, this information concerning the expansion of the citizen body by the time of Solon is to be found only in Plutarch, and even accepting that it may be reliable, it still remains an exceptional measure, because those foreigners who moved to Athens during the fifth and fourth centuries would not obtain the rights of citizenship so easily.¹⁹ At any rate, this does not change the fact that Athenians were aware of the fact that they sometimes conceded full citizenship to foreigners and refugees.

In what regards the situation of Medea and Jason, the difficulties concerning their status would be quite strong, because both lovers carried with them the burden of being involved, either directly or indirectly, in a crime as violent as homicide. Adding to this factor the natural cautiousness of Greek poleis in conceding citizenship to foreigners, then only a very exceptional situation would allow the two refugees to make a qualitative leap in social ranking. In the case of Medea (who besides was a barbarian woman), there are no hints in the play suggesting that a reward of this kind might occur; on the contrary, the protagonist is in fact facing an actual threat of being expelled from Corinth

17. Translation by B. Perrin (1914).

18. It is not possible to tell, from the way the law is presented, whether the exile was motivated by political reasons or by other causes.

19. MacDowell (1978), 71, is cautious in interpreting the passage and suggests the idea that Plutarch is misreporting a law that enabled foreigners to become metics and not full citizens.

in the immediate future. In opposition to that, the argumentation used by Jason (in order to camouflage his real intentions) shows in fact that his expectations were quite different. As he himself sustains, the best way of making a qualitative leap in the social hierarchy and of leaving behind the status of exile would be for him to marry the daughter of Creon, the sovereign of Corinth. Jason insists in the idea that this attitude is motivated by the noble objective of protecting Medea and their children (vv. 547-565; 593-597), but he is betrayed by his own words, since his project is to have a legitimate offspring with Glauce, who might later be able to inherit the throne (v. 597: *φῦσαι τυράννους παῖδας*), certainly because Jason was also expecting to rise to power first – as Medea would shortly thereafter confess to Aegeus (vv. 700-702).

In the eyes of the Athenian spectators of the play, a marriage between the daughter of a local sovereign with a *xenos* would surely be considered an uneven union, which would lead to the degradation of the social status not only of the wife, but mainly of their children, who would thereby not have the prerogatives of full citizens. In order to obviate this difficulty, the easiest solution would be to grant citizenship to Jason, thus making him a *poietos polites*²⁰. If this scenario turned into reality, then the presence of Medea would become a continuous source of problems, and this is the reason why the idea of expelling her from Corinth presented itself as the most practical solution within the frame of the new alliances in preparation. If Medea decided to stay, it had to be as a *pallake*, and the children she had from Jason would become *nothoi* (in comparison to those that were expected to be originated from the new wedding), thereby not being able to obtain the full benefits deriving from the new position of their father. To sum up: contrary to the false sentiment of abnegation expressed by Jason in his argumentation with Medea, the accord that he had unilaterally celebrated with Creon was in fact advantageous only to himself, exposing to the most uncertain future Medea and the children they both already had. By acting like this, he was in fact making exactly the opposite of what should be expected from a respectable *kyrios*. At this point, the promise made by Aegeus to Medea of offering her asylum in Athens is the only solid support that the former princess of Colchis could count on, and this is the reason why it will also be used as the basis for her drastic retaliation.²¹

20. In classical Athens, the *ekklesia* could propose a decree attributing citizenship to a foreigner (making that person a *poietos polites*). But in order to become valid, such a deliberation had to be ratified by secret vote, with a *quorum* of at least six thousand voters – the same number demanded to send someone to ostracism, a fact which is a clear sign of the defensive character of that measure. Nevertheless, in the mythical universe of the play, this procedure is not really needed nor binding, since Creon is an autocratic sovereign.

21. Even taking into account that, when Aegeus makes that offer, he is more concerned about his own profits, without being fully aware of Medea's intentions of revenge.

3. DIVORCE: TYPOLOGY AND MOTIVATIONS

When discussing the daily life and the family structure in ancient Greece, it is not unusual to find expressed some ideas that, despite not being necessarily wrong, may lead to a misunderstanding of reality, because of the abusive way they are used in generalizing considerations. One of these ideas has to do with the concepts of space and sphere of influence, either female (interior and private) or male (exterior and public). Taken too far, this understanding of Greek society may induce to think that women lived incarcerated at home, not being allowed to go out in order to give assistance to a friend, to participate in funeral ceremonies and in religious festivals, or even to perform simpler daily responsibilities, like collecting fruit, going to the market or getting fresh water from a public fountain – tasks mostly connoted with female activity in Mediterranean civilizations. It is true that, in an *oikos* abundant in material and human resources, the *kyrios* could afford to prevent his mother, wife and daughters from leaving the house in order to fulfil those services, which should thereby be relegated to the slaves. Nevertheless, it is highly improbable that a family of modest resources could similarly release from such activities the ‘serious’ women of the *oikos*.

A comparable process of oversimplification can be detected in what concerns the question of divorce, if one assumes that it would be enough for a husband to take the unilateral decision of divorcing from his wife, consequently sending her back to the original *oikos*, together with the dowry given by the initial *kyrios* when the marriage had been celebrated. In itself, this assumption is not incorrect, because a husband had in fact the right to act like this, but this way of considering the question is misleading in several aspects, starting with the obvious implication of suggesting that divorce must have been very common – a hypothesis that, conversely, the sources do not sustain, as shall later be seen. On the other hand, Greece was not limited to Athens, and it is enough to think about the situation of women in Sparta or in Gortyn to conclude that their legal status could be subject to important variations from one region to another. Even though, it is the reality of Athens, and not that of other poleis, which now has a direct relevance, because, as pointed out at the beginning of this study, the plot of *Medea* is set in Corinth, in a heroic and distant past, whereas the spectators that saw the performance of Euripides’ play lived in Athens, in the last quarter of the fifth century.

The testimonies pertinent to the analysis of divorce in classical Athens are relatively scanty and derive, essentially, from the work of the Attic orators. This implies two important consequences: on the one hand, the fact that most of the information derives from speeches presented to a collec-

tive board of *dikastai* may strengthen its authenticity or at least verisimilitude, because even if a speaker could lie in court regarding factual details, his argumentation should nevertheless be credible; on the other hand, it is somehow surprising that, if divorce was a social phenomenon as common as some seem eager to admit, the sources provide only nine examples of dissolutions of marriage.²² It is not the aim of this paper to discuss in detail this much-debated problem. For present purposes, it will be enough to evoke the main lines of the question, by recalling the four categories to which a divorce might correspond in classical Athens²³:

a) *Apopempsis* (from *apopempein* 'to send away'): in this case, the divorce was initiated by the husband, who could send the woman back to the original *oikos* (together with the dowry) and thus dissolve the marriage. This was the most common typology, as is shown by the fact that five of the very few examples provided by the sources seem to fit this kind of divorce. Plutarch (*Per.* 24.8) reports that Pericles had divorced his first wife by mutual accord, because of the unhappiness that both experienced in being married. Isaeus (2.7-12) provides a more detailed example, with an identical justification: a man called Menecles, perhaps already elderly and apparently sterile, divorced his young wife so that she should not be forced to remain childless and share with him that same unhappiness. Thus, after having granted her acceptance and that of her brothers, he went ahead with the divorce, but before he found her another husband, to whom he would give the dowry he had previously received from her family. The other divorces that fall under this category (Lysias, 14.28; Demosthenes, 30.4; [Demosthenes], 59.51 and 63) are motivated by feelings of hostility, distrust and anger between spouses.

b) *Apoleipsis* (from *apoleipein* 'to leave behind'): the divorce was initiated by the wife, who should nevertheless report it in writing to the archon in order to grant the validity of the act.²⁴ This obligation was most probably designed to give an official and public character to the divorce (as may be

22. For an identification and analysis of these testimonies, see Cohn-Haft (1995), whose approach is generally followed at this point of the exposition. For other more recent works dealing with this question, see Noreña (1998); Buis (2003).

23. In this number of categories is not included the legal obligation of getting divorced, which was required when a husband happened to catch his wife *in flagrante* with a *moichos*, because in such cases law determined that the adulterous woman could no longer attend public cult ceremonies and that the husband ought to divorce his wife, or otherwise face the possibility of being punished with *atimia*. The penalty for the *moichos* was much more severe, because the husband could kill *in situ* an adulterous man caught in the act, and that killing would be considered justified and lawful. See [Demosthenes], 59.87.

24. Probably the eponymous archon. See Harrison (1968-1971) I.42.

deduced from Isaeus, 3.78), because of the well-known legal limitations of women. On the other hand, it is also not improbable that this disposition provided the husband with the opportunity of intervening before the divorce was accomplished. This was the case of the wife of Alcibiades, whose divorce was interrupted by the husband, who carried her back and prevented the procedure from being completed.²⁵

c) *Aphairesis* (from *aphairein* 'to take away from'): in this form, the divorce was initiated by the wife's father, her former *kyrios*, who kept the power of putting an end to a marriage that he no longer approved. This can be inferred from Demosthenes (41.4), where a father decides to initiate a divorce and marry his daughter to another person, after having quarrelled with her former husband.²⁶

d) *Aphairesis* of an *epikleros* ('heiress'): this form of divorce was initiated not by the father of the wife, who, in this case, had already died, but by the next of kin from her father's side who was in conditions of requiring to marry the heiress, in order to safeguard the continuity of the original *oikos*. However, it could be the case that the *epikleros* or the envisaged relative (or both of them) were married already to other persons. Under those circumstances, the marriage had to be dissolved, so that the heiress and the dowry could return to the family of the father. This is the situation described by Demosthenes (57.41), according to whom a certain Protomachos, a man of scarce resources, decided to seize the opportunity of improving his life by claiming the right to marry a rich *epikleros*. His former marriage had already lasted sufficiently long to make it possible for the couple to have offspring (57.43) and there were no signs of existing problems in their relationship. Thus, the reason why Protomachos decided to divorce his first wife was simply the expectation of having financial advantage, which means that to repudiate a wife under these circumstances could perhaps be criticized from an ethical perspective, but was legally justified. Yet, in this particular case, the divorce was accomplished with the approval of the wife's brother, because Protomachos managed to find another person to whom she could be given in marriage. By acting like this, they were able to keep polite relations between

25. See [Andocides], 4.14; Plutarch, *Alc.* 8.4. It must anyway not be forgotten that the provocative character and anomalous behaviour of Alcibiades may have turned this attempted divorce into an atypical procedure. On the difficulties raised by the interpretation of the sources, see Noreña (1998) 9-13.

26. It is debated whether the right to initiate a divorce was a legal prerogative of the father or simply a way of exerting psychological pressure on the daughter, in order to force her to initiate the divorce. At any rate, it seems at least reasonable to sustain that the father could intervene in a marriage of a daughter if he had notice of ill-treatment or of severe disagreements. On the main lines of the debate, see Cohn-Haft (1995) 5-8.

the two *oikoi* and, at the same time (and most important of all), to prevent a divorced woman from being exposed to a difficult situation.

This is the moment to return again to Euripides' *Medea*. The first remarkable aspect of the play is that this is the only surviving tragedy that puts forward the issue of divorce. In fact, questions dealing with family affairs, with the relations between husband and wife and with the presence of 'other' women in the *oikos*, emerge quite often in tragedy, but not to the point of envisaging divorce as a possible consequence. In Euripides' drama, the decision of divorcing Medea in order to marry Creon's daughter is taken unilaterally by Jason (vv. 17-19), and despite his tortuous efforts to hide himself behind a noble motivation, his objectives are quite clear: to make a qualitative leap in his social and financial status, by celebrating a marriage much more profitable to him than the previous arrangement he had with Medea. As indicated before (section 2), his real intentions were evident to Medea, who accused him directly of thinking that, in old age, a barbarian thalamus (βάρβαρον λέχος) would bring him no good honour (οὐκ εὐδοξον ἐξέβαινέ σοι)²⁷. Accordingly, of all the motivations evoked previously in this section as a justification to initiate a divorce, this would be the most dishonourable from an ethical perspective, although it was still legitimate from a legal standpoint²⁸. Jason certainly says that he cares about Medea and their children, and he even offers to give them financial support and to recommend them to his friends (vv. 610-613). Despite all that, this willingness is a fruitless assistance, because it aims more at appeasing his heavy conscience than at effectively helping the prospective refugees: he is well aware of the fact that, soon after repudiating Medea, she will have no other place to go. That is why the asylum offered by Aegeus is so important, although it is directly assured by Medea's argumentation and not through the intervention of her *kyrios*, as would be expected according to legal practice.

4. CONCLUSIONS

In many respects, the connection between Medea and Jason is exceptional and anomalous, but the Athenian audience that saw the performance must have been sensible to some legal problems that helped to shape the character of these personae in a more impressive way. The two lovers were not formally married by the usual procedure of *engyesis*, although their rela-

27. Vv. 591-592.

28. Jason also tries to make Medea personally responsible for the inevitability of the separation and of the exile (vv. 446-458).

tion was initially granted by an even stronger security: the oaths celebrated by taking the gods as witnesses. They both were exiles in a foreign land and hence the best they could expect would be to get the status of metics. Nevertheless, Jason secretly negotiated with the sovereign of Corinth a qualitative leap up the social ladder, by marrying Creon's daughter. This way, he would be in a good position to win full citizenship (as a *poietos polites*), and thereby prepare the path to reach power and pass it on to the *gnesioi* descendants that he might have from his new relationship. If Medea were to remain in Corinth, it would be as a foreign *pallake*, with the implicit social degradation that this situation carried both to her and to her children (who would be seen as *nothoi* and would not extract any benefit from the new status of their father).

Taking these factors into consideration, the unilateral decision (taken by Jason) of divorcing Medea, as well as the subsequent exile of his former wife and of their offspring, would be the most advantageous solution to the new *oikos* restructured around Creon. Yet it would also leave Medea in an extremely unprotected situation, because she was a *xene*, with a violent and criminal past, deprived of *kyrios*, of *oikos* and of *polis*. This scenario helps to understand more fully Medea's isolation and, conversely, it also stresses Jason's selfishness. Even if this severe situation does not excuse the radical action of Medea as a mother, it would at least make very meaningful to an Athenian audience the words that she addressed to the chorus, through which she expressed her extreme solitude. At the same time, these words also express in a nutshell the juridical essence of Medea's personal drama, thus providing the most suitable conclusion to this analysis (vv. 255-258):

ἐγὼ δ' ἔρημος ἄπολις οὐσ' ὑβρίζομαι
πρὸς ἄνδρός, ἐκ γῆς βαρβάρου λεληισμένη.
οὐ μητέρ', οὐκ ἀδελφόν, οὐχὶ συγγενῇ
μεθορμίσασθαι τῇσδ' ἔχουσα συμφορᾶς.

I, without relatives or city, am suffering outrage from my husband. I was carried off as booty from a foreign land and have no mother, no brother, no kinsman to shelter me from this calamity.²⁹

Key-words: Marriage, mixed marriages, legitimate offspring, citizenship rights, divorce typology and motivations, Euripides, Medes, Jason, law and ancient tragedy.

29. Translation by D. Kovacs (1994).

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ΠΕΡΙΛΗΨΗ

D. LEÃO: *Υπερασπίζοντας τη Μήδεια. Μία νομική προσέγγιση στον Ευριπίδη*

Ο συγγραφέας αναλύει τις ειδικότερες νομικές παραμέτρους που συμβάλλουν στην κατανόηση της ευριπίδειας τραγωδίας. Εκκινώντας από την αποτίμηση του «γάμου», μεταξύ Ιάσωνα και Μήδειας, σύμφωνα με τα αττικά νομικά ήθη, εκτιμά ότι ο γάμος αυτός στηρίχθηκε απλώς και μόνον στους όρκους που δόθηκαν στην Άρτεμι και Θέμιδα και όχι σε κάποια έννομη τάξη. Το γεγονός της διαφορετικής καταγωγής τους από τον τόπο της εγκαταστάσεώς τους αποδεικνύεται ένα ακανθώδες πρόβλημα, τόσο για τους ίδιους, όσο και για τους απογόνους τους. Η λύση που προκρίνει ο Ιάσωνας στην τραγωδία, δηλαδή ο χωρισμός του από τη Μήδεια με μονομερή δήλωσή του, αν και σύμφωνος με τα αθηναϊκά νομικά δεδομένα, αιτιολογεί απολύτως, -λόγω των παρενεργειών νομικής και κοινωνικής φύσεως που συνεπάγεται για τη Μήδεια και τα τέκνα της,- τη δυσχερή θέση της Μήδειας. Για τη διατύπωση των προεκτεθέντων συμπερασμάτων εξετάζονται διεξοδικά τα ακόλουθα νομικά ζητήματα. 1. Η θέση της γυναίκας στην αθηναϊκή κοινωνία με βάση κυρίως τις διακρίσεις στο κοινωνικό και νομικό status των αθηναίων γυναικών που αναφέρονται ρητώς στο χωρίο [Δημ.] 59.122. 2. Η έννοια του νομίμου γάμου σε συνδυασμό με τη διαδικασία της «εγγυήσεως» (εγγύη) κατά τα αθηναϊκά νομικά ήθη. 3. Ο προεξάρχων ρόλος του «κυρίου» της νυμφευομένης, τόσο κατά τη διαδικασία της «εκδόσεως» της στον μέλλοντα σύζυγο, όσο και κατά τη διαδικασία της λύσεως του γάμου. 4. Η τυπολογία και τα κίνητρα των τρόπων λύσεως του γάμου και οι νομικές και κοινωνικές συνέπειες αυτών. 5. Οι τρόποι κτήσεως της ιδιότητας του αθηναίου πολίτη, και κυρίως του «ποιητοῦ πολίτου» με βάση τις κατά καιρούς διακυμάνσεις της αθηναϊκής νομοθεσίας.

Λέξεις-Κλειδιά: Γάμος, μικτοί γάμοι, γνήσια τέκνα, πολιτικά δικαιώματα, μορφές και κίνητρα διαζυγίων, Ευριπίδης, Μήδεια, Ιάσων, νόμος και αρχαία τραγωδία.