

## DIVORCE IN CLASSICAL ATHENS

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

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

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

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

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

In approximately chronological order, divorces are found in:

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

To these may be added the testimony of:

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

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

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

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

<sup>4</sup> Xen. *Oik.* 3.12 and the tendentious inference drawn by Erdmann 88.

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

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

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

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

#### PROCEDURE FOR DIVORCE

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

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

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

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

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

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

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

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

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

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

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

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

There are two divorces instituted by a wife.

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

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

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

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

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

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

<sup>16</sup> οὐ δὴ μάλιστα τὴν αὐτοῦ δύναμιν ἐπεδείξατο· παρακαλέσας γὰρ τοὺς ἑταίρους, ἀρπάσας ἐκ τῆς ἀγορᾶς τὴν γυναῖκα ᾗχετο βίαι, καὶ πᾶσιν ἐδήλωτε καὶ τῶν ἀρχόντων καὶ τῶν νόμων καὶ τῶν ἄλλων πολιτῶν καταφρονῶν. Reported also by Plut. *Alk.* 8.4: ὡς οὖν παρήν τοῦτο αὐτὴν πράξουσα κατὰ τὸν νόμον, ἐπελθὼν ὁ Ἀλκιβιάδης καὶ συναρπάσας αὐτὴν ἀπήγαγε δι’ ἀγορᾶς οἴκαδε κομίζων, μηδενὸς ἐναντιωθῆναι μηδ’ ἀφελῆσθαι τολμήσαντος.

<sup>17</sup> πρὸς ὅποιον ἀρχοντα ἢ ἐγγυητὴ γυνὴ ἀπέλιπε τὸν ἄνδρα ἢ τὸν οἶκον [τὸν] αὐτοῦ.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## GROUNDS FOR DIVORCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>39</sup> In 18, and twice in 33, in the active.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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