

# **Divorce in Classical Athenian Society: Law, Practice and Power**

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**ABSTRACT:** The practice of divorce in classical Athens sheds light on relationships which are fundamental to our understanding of Athenian society: between husband and wife, between separate households, and between household and state. The power which informs these relationships, as illuminated by divorce, can be measured not only in juridical terms, but in social and economic terms as well. The main primary sources for the study of divorce in classical Athens are the forensic speeches of the Attic orators. These speeches show that whereas it was easy, legally, to obtain a divorce, it was often complicated in actual practice. Divorce, in fact, was often avoided—even when the state intervened to mandate the dissolution of a marriage—and I argue that the practice of divorce, as opposed to the laws governing it, reveals an unexpected balance of power between the constituents to an Athenian marriage.

Divorce in classical Athens is a complex phenomenon. Evidence for the practice is slim and often difficult to interpret. Nevertheless, careful examination of the known cases of divorce is quite revealing. The practice of divorce at Athens sheds lights on a number of relationships which are fundamental to our understanding of Athenian society: the relationships between husband and wife, between separate households, and between the household and the state. The power which informs these relationships, as illuminated by divorce and its effects, can be measured not only in juridical terms—until recently the only barometer of power in modern surveys of classical Athens—but in social and economic terms as well.

Despite the importance of divorce for our understanding of the family in classical Athens, most legal and social historians have given divorce only cursory treatment in their discussions of Athenian law or the Athenian family.

In her recent monograph *Families in Classical and Hellenistic Greece*, for example, Sarah Pomeroy limits her treatment of divorce to a couple of isolated comments.<sup>1</sup> This lacuna was finally filled in 1995 with the publication of Louis Cohn-Haft's article on divorce in classical Athens.<sup>2</sup> Although thorough, Cohn-Haft's work is very conservative and traditional in its approach, focusing almost entirely on the legal rules of divorce. Social historians increasingly have come to recognize, however, that the law cannot be studied in isolation from social and economic reality.<sup>3</sup> We must consider not only the rules which governed divorce, but also its actual practice in everyday life.<sup>4</sup> This article is an effort in that direction.

A note on sources and method: the most important body of evidence for divorce in classical Athens is provided by the forensic speeches of the Attic orators. These speeches, of which we possess over one hundred spanning the period c.420-c.320 B.C., provide explicit and incidental evidence on a wide range of questions pertaining to all aspects of legal, social, economic and political history.<sup>5</sup> But this evidence must be used with caution. We must always keep in mind that these are law-court speeches, designed to convince, if not deceive, the jurors, and the details of any given transaction are always potentially subject to the most shameless rhetorical manipulation by the speaker.<sup>6</sup> In addition, the vast majority of these speeches were written by and for the elite: a small farmer from the countryside could never procure the services of a famous orator like Demosthenes if he became involved in a legal quarrel with his neighbor.<sup>7</sup> To this second point it should be added that these cases were heard by juries drawn mainly from the poorer segments of the population, to whom these speeches, however rhetorical and however conditioned by elite discourse, had to be intelligible.<sup>8</sup>

The long period covered by the speeches of the Attic orators also raises the question of continuity and change

in the practice of divorce. The answer to this question is straightforward: there is no evidence of any change over time in the classical period in the rules or practice of divorce at Athens. This study, therefore, like much recent work in Athenian social history, is synchronic.<sup>9</sup>

Divorce at Athens meant the dissolution of the socially recognized marital union between husband and wife. In order to understand the practice of divorce itself, we must briefly consider the nature of marriage at Athens.<sup>10</sup> Athenian marriage involved the transfer of a woman from her natal *oikos*, or household, to the *oikos* of her new husband. This transfer was effected by the woman's father (or, if he had died, by her nearest adult male relative) and the man to whom she was being given in marriage. Because an Athenian woman had to be represented in all legal transactions by a male relative acting as guardian, or *kurios*, one important result of this transfer was a change in the legal guardianship (*kurieia*) of the woman (i.e. she passed from her natal *kurios* to her new marital *kurios*).<sup>11</sup> The process normally included a private betrothal (*engue*) and a public celebration of the new marriage (*gamos*), but neither ceremony was a formal requirement for a marriage: what was important was simply that the new marital union be recognized as legitimate.<sup>12</sup> The condition which resulted from this transaction is most often described in the primary sources as *sunoikein*, "the setting up of a household together." One speaker in a forensic case provides us with a definition of the term: "for this is what *sunoikein* means—when someone produces children and introduces his sons to phratry and deme (to register them as Athenian citizens) and gives his daughters to their husbands as his own."<sup>13</sup> The marital union, then, was seen primarily as a vehicle for the production of legitimate offspring.

There was no one word which by itself denoted what we call "marriage." The Athenians also did not have a

technical term which singly covered all forms of divorce. This is important. The vocabulary employed by the Athenians to describe what we call "divorce" betrays a distinctly Athenian concept of marriage and family. From the multiplicity of Greek terms which can be translated as "divorce" it is clear that the Athenians were quite sensitive to the party (or parties) which initiated the divorce proceedings. Both the husband and the wife could initiate divorce, and they could do so unilaterally or by consensual agreement. It seems that the wife's father could also effect the dissolution of his daughter's marriage. In the public sphere, there is evidence that the state could, in certain specific contexts, require a husband and wife to terminate their marital union. These distinct forms of divorce involved different procedures and gave rise to a wide range of terms which the Athenians themselves employed to denote the dissolution of a marriage. In light of these separate categories of divorce, each shall be treated in turn.

First, divorce initiated by the husband. The husband who wished to divorce his wife, according to the prevailing view, was required to do nothing more than send her away from his *oikos*.<sup>14</sup> This process is known in the secondary literature as *apopempsis* (an abstract noun from the verb *apopempein*, lit. "to send off" or "away").<sup>15</sup> The procedure is normally thought to have been a private action between husband and wife, not subject to state interference.<sup>16</sup> The whole question may be more complicated.

Consider a sensational Athenian court speech from the late 340s, a prosecution of a former prostitute, Neaira, who is charged with living in marriage illegally with an Athenian citizen. The prosecutor Apollodoros mentions two cases of a husband divorcing his wife, the same woman in both cases.<sup>17</sup> In both instances we learn that the husband immediately terminated his marriage with Phano when he discovered that she was the illegitimate daughter of the prostitute Neaira. The first case involves Phrastor, to whom

Stephanos had given Phano in marriage, falsely claiming her to be his own daughter by a citizen wife.<sup>18</sup> When Phrastor learned that he had been deceived by Stephanos, he became enraged and threw Phano out of his *oikos*.<sup>19</sup> The terms used by Apollodoros are instructive. The verb which Apollodoros uses to describe Phrastor's action is not *apopempein*, but rather *ekballein* (lit. "to throw" or "cast out of" a place). Apollodoros does go on to say, however, that since Phrastor withheld the dowry, Stephanos brought a suit against him under the law which required the husband, upon ejecting his wife from his *oikos*, to return the dowry.<sup>20</sup> In this passage Apollodoros does use the verb *apopempein*.

The second case involves the chief religious magistrate at Athens, the archon basileus Theogenes. We learn that the Areopagos Council, a traditionally conservative body composed of ex-archons, proposed to punish Theogenes after it had ascertained the true identity of his wife Phano.<sup>21</sup> Theogenes begs and pleads with the Council and finally promises that he will dismiss Phano from his *oikos*.<sup>22</sup> Here Apollodoros uses the verb *apopempein*, but when he later reports that Theogenes complied with his promise, he returns to the verb *ekballein*.<sup>23</sup>

Apollodoros's free use of the verbs *apopempein* and *ekballein* requires attention. In a legal context, two separate terms, even if seemingly synonymous, might convey slightly different meanings. It is also possible that Apollodoros's language should not be understood as technical, but merely as representative of popular usage.<sup>24</sup> In either case, reliance on the term *apopempein* to refer to divorce initiated by the husband is potentially misleading. The speech against Neaira shows that other verbs could be used to describe this type of divorce, and the repeated use of the term *apopempein* in the modern literature imputes a technical vocabulary to the Athenians which may not have existed.<sup>25</sup>

The notion that a divorce initiated by the husband was a wholly private matter is also problematic. For example, in one forensic speech we are told that before expelling his wife from his *oikos*, a certain Hipponikos summoned to his presence a large group of witnesses.<sup>26</sup> The speaker does not report that this act of summoning witnesses was a formal requirement of the divorce proceedings, but its inclusion in the fast-moving narrative is conspicuous. The presence of witnesses suggests the possibility that Hipponikos intended to make known publicly his decision to cast his wife from his *oikos*. Because the speaker in the case does not comment on the summoning of these witnesses (noteworthy in itself—such a summons may have been seen as a matter of course), the purpose of their presence cannot be determined without resort to speculation. But the fact that Hipponikos summoned witnesses at all undermines the theory that a husband who wished to divorce his wife was required to do nothing more than send her away from his *oikos*. In a society in which practices such as marriage and divorce were not formally a matter of public record, the presence of a group of witnesses at the moment of the wife's departure from the *oikos* might be the only evidence that a divorce had indeed taken place. And we do know from other speeches that the veracity of a divorce could be disputed, so such evidence might prove useful.<sup>27</sup> In this sense, then, the divorce initiated by Hipponikos was in some sense public, precisely because the absence of a formal sphere of public records may have prompted Hipponikos to make a public display of the expulsion of his wife from his *oikos*. Again, there is no evidence here of a legal requirement to summon witnesses to a divorce, but it may have been a common practice.

Terminology and procedure aside, the sources do confirm that it was in fact easy, *legally*, for a husband to divorce his wife. The reality may have been different. There

was one key provision in the rules governing divorce which placed a serious check on the husband's power: the dowry. As we have seen in the case against Neaira, the dowry went with the woman upon divorce.<sup>28</sup> The rule is confirmed by other sources, and it is clear that the dowry safeguarded women against frivolous divorce.<sup>29</sup> The very existence of the dowry and its function in the case of divorce, namely its explicit attachment to the wife, created a balance of power between husband and wife. So while the sources give every indication that the law *per se* did not place obstacles in the way of a husband who sought a divorce, the dowry itself surely limited the husband's power, in real terms, to divorce his wife at will.

Whereas scholars seem to agree that divorce for a husband was an easy process, there is less consensus on the question of a divorce initiated by the husband's wife, known in the secondary literature as *apoleipsis* (from the verb *apoleipein*, lit. "to leave behind").<sup>30</sup> The distinguishing feature of a divorce initiated by the wife was the stipulation that she register her intention to leave her husband's *oikos* with an archon (a public magistrate).<sup>31</sup> The purpose and effects of this stipulation have provoked widespread debate.<sup>32</sup> At issue is the question of the wife's relative freedom to act independently and without male support. The most famous example of a woman attempting to initiate a divorce is the case of Hipparete, who sought a divorce from the flamboyant Athenian general, politician and playboy Alcibiades. In a court speech from the late fifth century we learn that Alcibiades, through his repeated use of prostitutes, drove his wife Hipparete to the archon to seek a divorce.<sup>33</sup> But as Hipparete made her public appearance in the market-place, Alcibiades seized her and forcibly carried her back home.<sup>34</sup> The two authors who narrate this episode characterize Alcibiades' public display of power in quite different terms. The speaker in the forensic speech claims that Alcibiades, through his actions,

“made it clear to everyone that he despised the archons, the laws and the other citizens.”<sup>35</sup> The Greek biographer and philosopher Plutarch, however, writing in the early second century A.D., provides an interpretation of the law which apparently accounts for Alcibiades’ seizure of his wife: “For it seems that the law which requires the woman seeking a divorce to present herself in public was designed so that the husband could meet his wife and restrain her.”<sup>36</sup> Scholars remain divided in their interpretations of Alcibiades’ actions and the purpose of the stipulation requiring a woman who sought a divorce to appear before the archon.<sup>37</sup>

It should be noted that both Plutarch and Andokides report that Alcibiades went to the archon *kata ton nomon* (lit. “in accordance with the law”). The question may rest on our interpretation of this phrase. We must determine whether *kata ton nomon* means that Hipparete went to the archon “as the law entitled her,” or, conversely, that she went to the archon “as prescribed by law.” Hipparete’s appearance before the archon, in other words, must be understood either as a privilege or a hindrance. The most literal translation of *kata ton nomon*, “in accordance with the law,” in my mind connotes requirement.<sup>38</sup> In lieu of further evidence, then, I think we must assume that the stipulation requiring a woman to present herself to the archon was intended more as an obstacle to divorce than as a legal privilege conceded to the wife. The example of Alcibiades and Hipparete, even if anecdotal, shows how serious this obstacle could be perceived to be.

The speakers in the other two court cases commonly cited as evidence for divorce initiated by a wife are both trying to establish that no legitimate divorce has taken place.<sup>39</sup> Clearly we can only use this evidence with extreme caution.<sup>40</sup> Still, important procedural points emerge from the two speeches. In the first speech, the famous orator Demosthenes attempts to convince a jury that the divorce

claimed by his opponents Aphobos and Onetor is a sham since Aphobos and his wife, Onetor's sister, continue to live together in marriage.<sup>41</sup> At one point in the speech Demosthenes calls forth witnesses to corroborate his claim that, in an illegal attempt to cover up money and property, the putative divorce was registered with the archon only after he had instituted a lawsuit: "After I brought a lawsuit these persons (*houtoi*) registered an *apoleipsis* with the archon."<sup>42</sup> The plural pronoun *houtoi* is the salient feature of the passage. This form is ambiguous with regard to gender, so we cannot know whether Demosthenes was referring to Aphobos and Onetor, in an attempt to show collusion, or to Aphobos and his wife. Because Demosthenes is in fact attempting to demonstrate collusion, the use of the plural here might be a rhetorical trick, and should not be taken as evidence that a husband participated with his wife in registering an *apoleipsis* before the archon.<sup>43</sup> But the rhetoric of Demosthenes, no matter how exaggerated, still had to be intelligible to an Athenian jury: if Demosthenes was referring to Aphobos and his wife—a possibility which the ambiguity of the Greek leaves perfectly open—this passage may be evidence that a wife who sought a divorce could not procure it without her husband's acquiescence. The lexical ambiguity permits other interpretations. If Demosthenes was in fact referring to Aphobos and Onetor, we might then take the passage as evidence that *apoleipsis* required not only the compliance of the wife's husband, but of her natal *kurios* as well (in this case Onetor). And because a woman who left her husband's *oikos* returned directly to her natal *oikos*, where her father (or natal *kurios*) would have been expected to maintain her, this scenario is quite plausible.<sup>44</sup>

Beyond the issue of the wife's power to act independently in the case of *apoleipsis*, the requirement that she appear before the archon raises other equally problematic questions. It is difficult to determine, for

example, whether the woman went to the archon merely to make a public announcement of her intention to leave her husband's *oikos*, or whether she presented her case to the archon for adjudication.<sup>45</sup> In the second case in which an attempt is made to show that no divorce has taken place, the speaker makes his point by asking rhetorically, "To which archon did this married woman go when she left behind her husband and his *oikos*?"<sup>46</sup> This question, of course, stresses the public aspect of the requirement, and the case of Hipparete and Alcibiades indeed suggests that it was the action of the wife, and not the decision of the archon, which caused the dissolution of the marriage. But we should not dismiss the role played by the archon. Although there is nothing in the sources to suggest that a woman who presented herself to the archon had to show cause, the fact that this provision applied to the wife and not to the husband highlights the complex relationship between the state and the *oikos*. As I will argue, the state had an interest in the status of the individual *oikoi*, and a woman's decision to leave her husband's *oikos* necessarily jeopardized that status.<sup>47</sup> Because a husband presumably would have acted with the interests of his own *oikos* in mind, this would not be the case of a divorce proceeding from the husband's initiative. This may explain the state's limited, or supervisory, role in *apoleipsis*.

Just as a husband who divorced his wife sacrificed his control over the dowry, so too did he lose the dowry when his wife abandoned his *oikos*.<sup>48</sup> And just as the dowry served as a safeguard for the wife against frivolous divorce, it also provided her with a "practical source of power."<sup>49</sup> Because the dowry went with the wife upon divorce, regardless of who had initiated the proceedings, a woman's threat to leave the *oikos* of her husband had an economic dimension as well as a social one. The dowry, in other words, was a major factor in the marital relationship at Athens. Before exploring other forms of divorce, I will

briefly consider the function of the dowry in the Athenian *oikos* system, focusing on its role in case of divorce.<sup>50</sup>

Although a bride's *kurios* was not legally required to provide her with a dowry, there is ample evidence that he was obligated, socially, to provide some sort of endowment.<sup>51</sup> The dowry served as the woman's material contribution to her husband's *oikos*.<sup>52</sup> As long as the marriage remained intact, the husband, by virtue of his position as *kurios* of the household, could make use of the dowry, but neither he nor his wife could dispose of it. For, as we have seen, the husband was required to return the dowry to the wife's natal *kurios* upon divorce, regardless of who had initiated the divorce proceedings. If the husband failed to return the dowry in case of divorce, the wife's natal *kurios* could bring two types of lawsuit against him: a suit for the full amount of the dowry, or a suit for interest at the high rate of 18 per cent on the dowry's original value.<sup>53</sup>

The wife's natal *kurios* had a substantial incentive to seek repayment of the dowry. It was a fundamental principle of Athenian law that the head of the *oikos* which controlled the woman's dowry had to maintain her, and the return of a divorced woman to her natal *kurios* would have entailed a renewed economic burden on her father.<sup>54</sup> It is only in this context that we can understand the function of the dowry. The dowry, in addition to protecting the wife against frivolous divorce, also served as a mechanism which created a permanent link between a woman and her natal *oikos*.<sup>55</sup> Because the dowry returned by law to the woman's natal *kurios* upon divorce, we can even call the dowry a type of investment. In fact, the father who provided his daughter with a large dowry often demanded from his son-in-law a security on the investment.<sup>56</sup> And there were occasions when the father wanted his investment back.

Most scholars agree that by a process which they call *aphairesis* (from the verb *aphairein*, lit. "to take away from"), a wife's father could legally dissolve his daughter's marriage at will.<sup>57</sup> Unlike the abstract nouns *apopempsis* and *apoleipsis*, however, the noun *aphairesis* does not appear in any primary text with the meaning "to dissolve a marriage."<sup>58</sup> We do find the verb in its participial form in one forensic speech, where the father, "taking away" his daughter, proceeds to give her in marriage to another man.<sup>59</sup> It has been argued that this participle is far too scanty a piece of evidence on which to base a claim of a father's right to dissolve his daughter's marriage unilaterally—nor is there any evidence in this case that the daughter did not in fact leave willingly.<sup>60</sup> But whether or not the daughter left of her own accord, the speaker's narrative leaves little doubt that she had no official role in the dissolution of her own marriage.

Most of our evidence for divorce of this type comes from dramatic sources. Although information culled from drama cannot be used as the sole basis for a legal argument, we can use the dramatic sources as gauges of the social norms which governed the practice of divorce.<sup>61</sup> In the four cases in the dramatic sources in which the wife's father wishes to end his daughter's marriage against her will, Vincent Rosivach has identified a unifying pattern and has summarized the stock dramatic situation: (1) the wife's father is wealthier than the son-in-law; (2) the wife's husband appears to have squandered all of his money in riotous living; (3) the wife's father, hoping to preserve the money from the dowry, informs the daughter that he wishes her to divorce her husband; (4) the husband is absent, leaving the daughter alone with no one to support her against her father; and (5) the wife is young and recently married.<sup>62</sup>

In the *Arbitrants*, a comedy by the poet Menander which includes every component of this stock situation, the wife's

father Smikrines claims, "according to reason," that he has the right "to take his daughter and go off with her" (ll. 655-59).<sup>63</sup> But Smikrines' daughter Pamphila issues a warning: "But if, in trying to rescue me, you do not persuade me, I would no longer consider you my father, but rather a master" (ll. 714-15). Precisely the same sentiment is expressed in a dramatic speech which is preserved on a papyrus roll: "I beg you father, by Hestia, for the sake of justice and benevolence, do not deprive me of the man to whom I am married. But if I cannot persuade you, you will do what you wish by force."<sup>64</sup> The nature of Pamphila's admonition, along with the desperate pleas of the anonymous speaker of the Didot papyrus, implies that a father could dissolve his daughter's marriage against her will, since in both cases the daughter confronts the possibility that her father will do precisely that. Rosivach contends that there is no evidence here of a father's legal right to dissolve his daughter's marriage, but instead notices the "psychological pressure" which a father could bring to bear on his daughter.<sup>65</sup> This argument raises the question of legal as opposed to social power, and is representative of the narrowly legalistic perspective from which Athenian divorce is normally viewed. For Pamphila and the speaker of the Didot papyrus, detailed questions of law were of little moment. If a father, by virtue of his relationship to his daughter, could pressure her and force her to leave her husband's *oikos* unwillingly, then he certainly had the power, in real terms, to force the dissolution of his daughter's marriage at will. And any perceived threat to the dowry will have provided the necessary incentive for a father to do just this. Indeed, when Smikrines finally goes to retrieve his daughter, the question which the husband's slave puts to Smikrines is revealing: "Smikrines, you harsh man, have you come for your dowry and your daughter?" (ll. 1102-03).

Divorce at Athens was not always a litigious or complicated affair. It was also possible for the husband and wife to terminate their marital union by consensual agreement.<sup>66</sup> There is no Athenian term to express the notion of “consensual agreement” in the context of divorce, but there are clear cases of divorce arising from the mutual decision of both spouses. In his *Life of Perikles* Plutarch reports that because the marital relationship between Perikles and his first wife was not agreeable, Perikles legally bestowed her on another man—with her own consent—and then took Aspasia as his wife.<sup>67</sup> If Plutarch’s account is accurate, this appears to be a case of divorce in which husband and wife, motivated strictly by personal considerations, mutually agreed to dissolve their marriage.<sup>68</sup>

It is less easy to discern the motives in other divorces which were ostensibly agreed to by both husband and wife. In one forensic speech, for example, we learn that a certain Menekles, concerned about his increasing age and childlessness, sought to give his wife (the speaker’s sister) in marriage to another man so that she might not have to grow old with no prospect of bearing children.<sup>69</sup> The wife of Menekles was at first opposed to this suggestion, but was ultimately persuaded to change *oikoi*.<sup>70</sup> It is apparent that Menekles’ wife had to be convinced to make this move, and we cannot be certain how much this “convincing” was the kind of psychological pressure adduced by Rosivach.<sup>71</sup> Nevertheless, the speaker in this case never even hints that the wife of Menekles was pressured into leaving her husband’s *oikos*, and there is no reference in the passage to the marriage ending in acrimony. The case of Menekles and his wife may be cited, tentatively, as an example of divorce by consensual agreement.<sup>72</sup>

We do not know by which procedure, if any, a divorce of this type was made official. It may have entailed nothing more than the wife’s physical departure from her husband’s

*oikos*. There is no evidence that a divorce of this sort was required to be made public, and there is no reason to believe that the state played any role in a divorce to which both husband and wife had agreed. If we assume that both parties in a divorce by consensual agreement will have acted in accordance with their perceived interests, and in the interests of the *oikoi* involved, there would be no grounds for state interference. As a private matter, then, the wife's departure from her husband's *oikos* will have been sufficient testimony for the parties involved that the marriage had, in real terms, come to an end.

It should be noted that in the two divorces by consensual agreement discussed above, three of the four spouses immediately remarried. Divorce was by no means an obstacle to remarriage in classical Athens. This pertains to all divorces, not just those which proceeded from consensual agreement between husband and wife. As Wesley Thompson has demonstrated, remarriage was a significant factor in Athenian society.<sup>73</sup> Thompson examined the 50 known cases of remarriage and, where it was possible to determine the reason for the dissolution of the previous marriage, found that it had been dissolved 17 times due to death, and 16 times due to divorce.<sup>74</sup> This evidence suggests that a divorced woman would reasonably expect to remarry. As Thompson writes, "In most western countries marriage has been regarded as a sacrament, and there have been legal and strong moral sanctions against divorce. In ancient Athens such attitudes did not exist."<sup>75</sup> The orators confirm Thompson's view. There is not a single example of an orator directing his invective against a divorced woman—based on her being divorced—even when the opportunity to cast such aspersions on an adversary's female relative would have benefited the speaker's case.<sup>76</sup> Nothing in the forensic speeches, then, creates the impression that any stigma was

attached to divorce.<sup>77</sup> Like her male counterpart, a divorced woman could presumably remarry freely.<sup>78</sup>

With the exception of divorce by consensual agreement, the institution of divorce did not belong wholly to the private sphere. We have already seen the state's involvement in the case of a divorce initiated by the wife. Some procedural requirement to make a divorce a matter of public record may be lurking behind Hipponikos's summoning of witnesses to the actual expulsion of his wife from his *oikos*.<sup>79</sup> Nevertheless, all the divorces discussed above, whether initiated by the husband, the wife, the husband and wife together, or the wife's father, were initiated by a private party. But the state, too, could initiate a divorce. In his case against Neaira, Apollodoros relates two scenarios in which the dissolution of a marriage was required by law:

(1) And when the husband has caught the adulterer, he may no longer live in marriage with his wife; if he continues to live with her, he is to suffer *atimia* ("loss of citizenship rights"). And the woman who is caught with an adulterer may not enter any of the public temples; if she does so enter she is to suffer any mistreatment with impunity, short of death.<sup>80</sup>

(2) If a non-citizen lives in marriage (*sunoikein*) with an Athenian woman by any device or manner, any Athenian at all who possesses the right may indict him before the Board of Six. If he is convicted both he and his property are to be sold, and one third is to go to the successful prosecutor. The same is to apply if a non-citizen woman lives in marriage with an Athenian man, and the man who lives with the non-citizen woman so convicted is to be fined one thousand drachmas.<sup>81</sup>

Consider first the case of adultery. Much has been written about the Athenian law on adultery, although most

scholars approach the problem not in order to gain a better understanding of divorce, but rather as part of an ongoing debate over Athenian attitudes towards adultery and rape.<sup>82</sup> The majority of scholars who do consider the question of divorce state bluntly and without further comment that a man who caught his wife in adultery was legally required to divorce her.<sup>83</sup> That view requires modification. We must consider above all the question of compliance. Once again it is the role of the dowry which must be examined. As we have seen, the dowry went with the woman upon divorce, and from this fact alone we might reasonably expect that the demand for compulsory divorce in the case of adultery was not always met by the husband. For, if the cuckolded husband was required to return the dowry with his adulteress wife, the law was in effect offering the husband a good reason to remain silent and acquiesce in his wife's crime.<sup>84</sup> In fact we are told by a speaker in one forensic speech that many husbands lived illegally with wives who had been caught in adultery.<sup>85</sup> But some scholars still question the fate of the dowry in the case of adultery. Alick Harrison notes that there is no direct evidence at Athens for what happened to the dowry of a woman divorced for adultery.<sup>86</sup> This observation, however, is more pertinent to the question of enforcement than to the question of law. There is absolutely nothing in the sources to suggest that the dowry was not returnable by law in case of adultery, and the comment noted above on men living illegally with adulterous wives is compelling testimony to the gap between the intent of the law and its actual effects.<sup>87</sup>

From the second law quoted above we learn that a non-citizen (*xenos*) and an Athenian citizen could not live together in marriage. That the case is treated as a public prosecution (*graphe*) reveals the public nature of marriage at Athens and the importance which the Athenians ascribed to legitimacy.<sup>88</sup> Because the relationship between a non-citizen and an Athenian citizen was never formally a

marriage (from a narrowly legal standpoint), this law did not technically empower the state, through the agency of "any citizen who possessed the right," to institute a "divorce." But the *de facto* situation is clear enough. The relationship between the non-citizen and the Athenian citizen, although technically illegal, is nevertheless characterized as a condition of marriage (*sunoikein*), and it is clear that it is a condition which the state did not tolerate. We might not call the enforcement of this law a "divorce," but it is certainly a state-initiated dissolution of a relationship which, from the perspective of its two constituents, was surely thought of as marriage.

The state could also become involved in the termination of a marriage in those cases which involved an *epikleros*. An *epikleros* was the daughter of a man who died leaving no male heir. In one court speech we are told that an *epikleros* must, when her father dies, marry her father's next-of-kin, even if she is already married.<sup>89</sup> The speaker says explicitly that "the law orders" this arrangement, noting that many husbands had indeed been deprived of their wives due to this very regulation.<sup>90</sup> Cohn-Haft argues that the dissolution of an *epikleros's* previous marriage would have manifested itself in the public sphere only if it were a matter of dispute, and would otherwise have been settled privately.<sup>91</sup> We cannot, however, overlook the language which the speaker in this case uses. The speaker's remark that "the law ordered" an *epikleros* to marry her father's next-of-kin suggests that the state had a keen interest in the preservation of the father's *oikos*. Regardless of whether or not this matter was settled privately the very existence of the law makes the state's role in a divorce of this type at least implicit.

We do not know if a husband who acquired an *epikleros* was required to divorce his own wife.<sup>92</sup> There are no examples of such a required divorce on record, but they must have occurred. The alternative—that a husband might

acquire more than one wife—is also unattested and inherently less plausible.<sup>93</sup> Finally, there is no evidence for the dissolution of a marriage which had originated in an *epikleros* marrying her father's next-of-kin. This may reflect the fact that the marriage had been required by the state and thus could not legally be dissolved.<sup>94</sup>

The state could require divorce, both as a penalty, as in the case of adultery, and as a means of preserving an *oikos*, as in the case of an *epikleros* who was already married. The law requiring the previously married *epikleros* to marry her father's next-of-kin may be the only case of divorce in classical Athens which actually secured the preservation of an *oikos*. It should be clear that there is much about state-initiated divorce which we do not know. In the case of adultery, for example, we saw that a husband could not continue to live in marriage with a wife caught in adultery, on pain of *atimia*, "loss of citizenship rights." In addition to the problem of the mandatory return of the dowry, which may have served as a deterrent to divorce in this case, it is difficult to assess the severity of *atimia*. The "loss of citizenship rights" sounds sufficiently dreadful, but it is not unreasonable to expect that some Athenians were unconcerned with citizenship rights. By the fourth century *atimia* meant that a man could not appear in some public places, could not take part in public life (e.g. in the Assembly), and could not appear in court.<sup>95</sup> For an Athenian unaccustomed to such cultural practices *atimia* would not have been a severe penalty, and it may be somewhat misleading to suggest that the state "required" divorce in the case of adultery. The important point to note, however, is that the state could initiate a divorce, and we must therefore recognize that divorce in Athenian society could indeed be a matter of public concern.

In many ways divorce in classical Athens remains a shadowy practice. One important question which the

surviving evidence makes very difficult to answer is that of frequency. With so few cases of divorce on record, and without the type of documentary evidence which modern historians have at their disposal, it is impossible to know how common the practice of divorce was in classical Athenian society.<sup>96</sup> In his monumental survey of divorce in Western culture, Roderick Phillips concluded that marriage in traditional societies was basically stable, and that it is only in the last century, especially after World War I, that rapidly escalating divorce rates have led to a repeated pattern of marriage breakdown in Western society.<sup>97</sup> The trend is perhaps most pronounced in California, where the introduction of no-fault divorce in 1969 has changed the face of marriage in that state: a recent estimate puts the divorce-rate in California at 80 per cent or higher.<sup>98</sup> And indeed if the rate of divorce in classical Athens were anything like that of California, we should certainly expect to hear more about it in the forensic speeches, since divorce always entailed some type of financial exchange, in the form of the dowry, and was therefore a natural occasion for dispute. But this is not to say that divorce in Athens was necessarily uncommon. Unfortunately, ancient Rome, the society for which comparative data on the frequency of divorce would be most helpful, has not left us with the necessary documentary evidence to draw any meaningful conclusions.<sup>99</sup> The relative frequency of divorce in classical Athens, then, cannot be determined by statistics or comparative evidence.<sup>100</sup>

Perhaps more important than the actual frequency of divorce in classical Athens is the underlying structure of relationships between the parties involved in a marriage which a study of the law and practice of divorce reveals. There were four constituent elements of an Athenian marriage: the husband, the wife, the wife's natal *kurios*, and the state. Each of these elements could exert pressure

on this structure in the pursuit of its own interests, and this is seen most clearly at the moment when the marriage was dissolved, i.e. at the moment when the interests of the various parties to a marriage might diverge. The one element which transcended these elements, and which held the structure together, was the dowry. As we have seen, the letter of the law in the case of divorce must have yielded in many cases to the more practical, economic considerations concerning the dowry. In my opinion the existence of the dowry created a certain balance of power between the various parties in a marriage. Above all the dowry seems to have provided a strong disincentive for the husband to divorce his wife. Not even the state, when it required the husband to divorce an adulterous wife, could always effect the dissolution of the marriage, and the explicit attachment of the dowry to the wife—even if caught in adultery—must have held many marital unions together. From a social and economic standpoint, then, we may conclude that marriage at Athens was indeed relatively stable—not, however, because the institution was held as sacrosanct, nor because the law made divorce difficult, but because the social reality of divorce created a balance of power between husband, wife, household and state that often made divorce an unappealing option.

## NOTES

\* I wish to thank Edward Cohen, Sheila Murnaghan, Brent Shaw, and the two anonymous referees of *Past Imperfect* for their assistance in preparing this article.

<sup>1</sup> Sarah Pomeroy, *Families in Classical and Hellenistic Greece: Representations and Realities* (Oxford: Clarendon Press, 1997).

<sup>2</sup> Louis Cohn-Haft, "Divorce in Classical Athens," *Journal of Hellenic Studies* 115 (1995): 1-14.

<sup>3</sup> For recent work on Athenian social history which considers both the law and social practice, see e.g. David Cohen, *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens* (Cambridge: Cambridge University Press, 1991); Virginia J. Hunter, *Policing Athens: Social Control in the Attic Lawsuits, 420-320 B.C.* (Princeton: Princeton University Press, 1994).

<sup>4</sup> As Lin Foxhall, "Household, Gender and Property in Classical Athens," *Classical Quarterly*, n.s. 39 (1989): 25 writes, "legal expectations (the norms most readily, if not always easily, culled from the documents) cannot be studied in isolation from social behavior, or absurdity results."

<sup>5</sup> All dates B.C. unless otherwise indicated. For a discussion of the Attic orators as sources for Athenian history, see Stephen Todd, "The Use and Abuse of the Attic Orators," *Greece & Rome* 37 (1990): 159-178.

<sup>6</sup> Todd, "Use and Abuse of the Attic Orators," 174 quotes the "ruthless method of interpretation" offered in a Cambridge lecture by Paul Millet: "disregard anything the orator says which might benefit his case; only believe the *obiter dicta* which he happens to mention in passing." As Todd notes, this is probably the safest approach, but it is unnecessarily rigid.

<sup>7</sup> See the comments of Hunter, *Policing Athens*, 192-3, n. 9.

<sup>8</sup> On the composition of the juries at Athens, see Mogens H. Hansen, *The Athenian Democracy in the Age of Demosthenes: Structure, Principles and Ideology* (Cambridge, MA: Blackwell Publishers, 1991), 184-86. On the complex relationship between the elite orators and their less privileged audiences, see especially Josiah Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People* (Princeton: Princeton University Press, 1989).

<sup>9</sup> On the value and viability of the synchronic approach, see Hunter, *Policing Athens*, 6-7; Kenneth J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Oxford: Blackwell Publishers, 1974), 30-32; and Ober, *Mass and Elite*, 37. For criticism of this approach, see Pomeroy, *Families in Classical and Hellenistic Greece*, 1-4.

<sup>10</sup> The bibliography on Athenian marriage is extensive. For a legal approach, with full references to the earlier literature (of which W. Erdmann, *Die Ehe im alten Griechenland* [Munich, Beck 1934] is the most important), see Alick R.W. Harrison, *The Law of Athens, vol. 1: The Family and Property* (Oxford: Clarendon Press, 1968), 1-60; cf. Joseph Modrzejewski, "La structure juridique du mariage grec," *Symposion* 1979 (1981): 39-71. For discussion of Athenian marriage as a social process, see Cynthia Patterson, "Marriage and the Married Woman in Athenian Law," in *Women's History and Ancient History*, ed. Sarah Pomeroy (Chapel Hill: University of North Carolina Press, 1991), 48-72. My brief treatment of Athenian marriage follows Patterson closely.

<sup>11</sup> For a discussion of the *kurios* and the Athenian woman, with references, see Hunter, *Policing Athens*, 9-42.

<sup>12</sup> As Patterson writes, "omission of any one element does not mean that there was no marriage. These are not the parts of a formal legal sequence but rather a cluster of ideas and actions associated with setting up a household," "Marriage and the Married Woman in Athenian Law": 60.

<sup>13</sup> [Demosthenes] 59.122. Although the speech was written by Apollodoros, it was mistakenly ascribed to Demosthenes in antiquity and preserved under his name, hence the brackets.

<sup>14</sup> See, for example, Harrison, *Law of Athens*, I, 40; Sarah Pomeroy, *Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity* (New York: Schocken Books, 1975), 64; Roger Just, *Women in Athenian Law and Life* (London: Routledge, 1989), 67. Cohn-Haft, "Divorce in Classical Athens," 1 may be taken as representative: "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."

<sup>15</sup> For use of the abstract noun *apopempsis* in the primary sources, cf. [Demosthenes] 59.59.

<sup>16</sup> Cf. Vincent J. Rosivach, "Aphairesis and Apoleipsis: A Study of the Sources," *Revue internationale des droits de l'antiquité* 31 (1984): 201.

<sup>17</sup> For an introduction, translation, and commentary on this speech, one of the most illuminating documents from classical Athens on the life of women, see Christopher Carey, *Greek Orators, Vol. 6. Apollodoros Against Neaira, [Demosthenes] 59* (Warminster: Aris & Phillips Ltd., 1992).

<sup>18</sup> [Demosthenes] 59.50. From the middle of the fifth century, citizenship at Athens depended on the full Athenian citizenship of both parents. See Cynthia Patterson, *Pericles' Citizenship Law of 451-50 B.C.* (New York: Arno Press, 1981).

<sup>19</sup>[Demosthenes] 59.51.

<sup>20</sup>[Demosthenes] 59.52.

<sup>21</sup>[Demosthenes] 59.80-1. On the Areopagos Council, see Robert W. Wallace, *The Areopagos Council, to 307 B.C.* (Baltimore: Johns Hopkins University Press, 1985).

<sup>22</sup>[Demosthenes] 59.82.

<sup>23</sup>[Demosthenes] 59.83.

<sup>24</sup> As Stephen Todd, *The Shape of Athenian Law* (Oxford: Clarendon Press, 1993), 205 notes, "It is indeed misleading to suggest that any word can have a 'legal definition' at Athens: Athenian law never developed a fully technical vocabulary precisely because there was no way for words to be legally defined." Cf. the comments of

Cohn-Haft, "Divorce in Classical Athens," 3, n. 8. Lack of a technical vocabulary, however, does not necessarily mean, as Cohn-Haft believes, that the Athenians were not concerned with the "legality and technicalities of the fact of divorce."

<sup>25</sup> It bears repeating, however, that a term can have a specific meaning in a given context without being "technical." A similar question of terminology is addressed by Patterson, "Marriage and the Married Woman in Athenian Law," 58. Discussing the Athenian use of the word *gune* to denote both "woman" and "wife" (with parallels in modern German, French, Greek and Spanish), Patterson writes, "The lack of what seems to us clear husband and wife 'labels' does not indicate the lack of a clear idea of what marriage was or that marriage itself was without significance."

<sup>26</sup> Lysias 14.28: *pollous parakalesas* ("summoning many"). Note that in this passage the speaker uses neither *apopempein* nor *ekballein* to describe the process, but instead uses *ekpempeln* (lit. "to send out").

<sup>27</sup> The speakers in both Demosthenes 30 and Isaios 3 are trying to establish that no legitimate divorce has taken place.

<sup>28</sup> [Demosthenes] 59.52.

<sup>29</sup> Dowry attaches to a woman in case of divorce: Isaios 3.35; Demosthenes 27.17, 40.59, 42.27. Dowry as safeguard: Todd, *Shape of Athenian Law*, 216. Foxhall, "Household, Gender and Property in Classical Athens," 38 calls the dowry a wife's "covert right" which provided her with "economic muscle"; cf. David M. Schaps, *The Economic Rights of Women in Ancient Greece* (Edinburgh: University Press, 1979), 11 and following pages. I will consider the function of the dowry in the Athenian *oikos* system in more detail below, 10-12.

<sup>30</sup> For use of the abstract noun *apoleipsis* in the primary sources, cf. Demosthenes 30.17 and Plutarch, *Alcibiades* 8.

<sup>31</sup> Woman seeking divorce required to appear before an archon: Andokides 4.14; Isaios 3.78; Demosthenes 30.17, 26; Plutarch, *Alcibiades* 8. The sources do not tell us to which of the nine archons a woman went in order to register her intention to leave her husband's *oikos*. Harrison, *Law of Athens*, I, 42 believes it must have been the eponymous archon, the official at Athens who gave his name to the year and who presided over cases involving family and inheritance cases involving citizens.

<sup>32</sup> Most scholars believe that a woman leaving the *oikos* of her husband would have needed some form of male support. See e.g. Harrison, *Law of Athens*, I, 43; Pomeroy, *Goddesses*, 64; Rosivach, "Aphaireisis and Apoleipsis," 206. But cf. Foxhall, "Household, Gender

and Property in Classical Athens," 39, who writes, "For a woman's ultimate act of disposal -- that of taking a dowry out of her husband's power—she needed no *kurios*." For criticism of Foxhall's view, see especially Todd, *Shape of Athenian Law*, 210. See also Cohn-Haft, "Divorce in Classical Athens," 12, who argues that male support would have manifested itself in the form of legal representation: "Moreover, in the secluded world of a respectable Athenian wife, the only men to whom she normally had access . . . were members of her father's family. Given the need for a 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 argument, however, rests more on the stereotype of the "respectable Athenian wife" than on any ancient evidence—indeed, Cohn-Haft does not cite one source to support this statement.

<sup>33</sup> [Andokides] 4.14: "He forced his wife, who was extremely chaste, to leave him, and she went to the archon in accordance with the law." Some scholars do not accept the attribution of this speech to Andokides. See discussion, with references, in Michael Edwards, *Greek Orators, Vol. 4. Andokides* (Warminster: Aris & Phillips Ltd., 1995), 131-136. The account preserved in this speech is also found in Plutarch, *Alcibiades* 8: "She was bound to register a document of divorce with the archon." Note the sense in these passages that Alcibiades' actions literally "forced" Hipparete to seek a divorce.

<sup>34</sup> [Andokides] 4.14; Plutarch, *Alcibiades* 8.

<sup>35</sup> [Andokides] 4.14.

<sup>36</sup> Plutarch, *Alcibiades* 8.

<sup>37</sup> For Schaps, *Economic Rights of Women*, 77, the involvement of Alcibiades makes the whole episode anomalous. Hans Julius Wolff, "Marriage Law and Family Organization in Ancient Athens: A Study on the Interrelation of Public and Private Law," *Traditio* 2 (1944): 72, n. 38, finds Plutarch's explanation of the law unconvincing. Douglas M. MacDowell, *The Law in Classical Athens* (Ithaca, NY: Cornell University Press, 1978), 88 interprets the purpose of the law in accordance with Plutarch's formulation.

<sup>38</sup> Cf. Liddell, Scott and Jones, *Greek-English Lexicon*<sup>9</sup> (Oxford: Clarendon Press, 1940), s.v. *kata*, b.iv.1.

<sup>39</sup> See note 29.

<sup>40</sup> For some remarks on the value of this evidence, see Rosivach, "Aphairesis and Apoleipsis," 194.

<sup>41</sup> Demosthenes 30.25.

<sup>42</sup> Demosthenes 30.17.

<sup>43</sup> See Rosivach, "Aphairesis and Apoleipsis," 198-99.

<sup>44</sup> On the requirement of a divorced wife's natal *kurios* to maintain her, see Harrison, *Law of Athens*, I, 109-111.

<sup>45</sup> Cf. Harrison, *Law of Athens*, I, 40-44; Rosivach, "Aphairesis and Apoleipsis," 197-98. Cohn-Haft, "Divorce in Classical Athens," 11 declares that "the very fact of the aggrieved woman's having to appear before the archon indicates that significant cause had to be shown," but he adduces no evidence for this assertion.

<sup>46</sup> Isaios 3.78.

<sup>47</sup> The state's interest in the status of the individual *oikoi* is seen most clearly in the case of the *epikleros*. See below, 18.

<sup>48</sup> For examples of the dowry's attachment to the wife regardless of who initiated the divorce, see Isaios 3.35; Demosthenes 27.17, 40.59, 42.27, 59.52.

<sup>49</sup> Schaps, *Economic Rights of Women in Ancient Greece*, 76.

<sup>50</sup> A full examination of the dowry is outside the scope of this paper. For the best overall treatment, see Hans Julius Wolff, "proix," in *Real-Encyclopädie der klassischen Altertumswissenschaft*, ed. A. Pauly and G. Wissowa (Stuttgart: Vorlag, 1957).

<sup>51</sup> Absence of legal requirement: MacDowell, *Law in Classical Athens*, 87. Dowry as social responsibility: Isaios 3.25, 29; Demosthenes 30.12. See discussion in Foxhall, "Household, Gender and Property in Classical Athens," 32-34. Cf. Schaps, *Economic Rights of Women in Ancient Greece*, 74, who argues that the primary purpose of a dowry was to attract a suitable husband. Schaps also believes that a normal dowry represented anywhere from five to fifteen percent of the giver's estate, but this is mere conjecture. Nor does the figure account for the "invisible economy" which thrived at Athens; cf. Edward Cohen, *Athenian Economy and Society: A Banker's Perspective* (Princeton: Princeton University Press, 1992), 191-207.

<sup>52</sup> Foxhall, "Household, Gender and Property in Classical Athens," 32 views the dowry as the woman's patrimonial inheritance, *contra* Wolff, "Marriage Law and Family Organization in Ancient Athens," 62, n. 104. For a strong objection to Foxhall's interpretation of the dowry, see Todd, *Shape of Athenian Law*, 215-16.

<sup>53</sup> The suit for the full amount of the dowry was the *dike proikos*; for interest on the original value, the *dike sitou*. On the different legal suits, see especially Harrison, *Law of Athens*, I, 57-60, 298 and following pages. We know the rate of interest from Demosthenes 27.17 and 59.52. On the Athenian concept of interest, see Cohen, *Athenian Economy and Society*, 44-46. We do not know to whom

the dowry was returned in the case that a bride's *kurios* had not himself dowered the woman seeking a divorce. Harrison conjectures that regardless of who had actually paid the cost of the dowry, it went to the wife's natal *kurios* upon divorce, 48.

<sup>54</sup> On the principle that possession of the dowry entailed maintenance, see Walter K. Lacey, *The Family in Classical Greece* (Ithaca, NY: Cornell University Press, 1968), 109; cf. Todd, *Shape of Athenian Law*, 89.

<sup>55</sup> As Harrison, *Law of Athens*, I, 46, n. 1 notes, "Nor is it likely that the woman's rights as such were being protected; rather, her rights as a possible vehicle for perpetuating her father's *oikos*. Her potentialities in this respect would have vanished if she had been completely swallowed up in the *oikos* of her husband."

<sup>56</sup> This security, normally in the form of land, was known as the (dotal) *apotimema*. Cf. Harrison, *Law of Athens*, I, 296 and following pages.

<sup>57</sup> For the most thorough treatment of this type of divorce, see Nate Lewis, "Apharesis in Athenian Law and Custom," *Symposion 1977* (Actes du 3<sup>e</sup> colloque internationale d'histoire du droit grecque et hellénistique), 161-178. Cf. Harrison, *Law of Athens*, I, 32-3; Pomeroy, *Goddesses*, 62; MacDowell, *Law in Classical Athens*, 88; Just, *Women in Athenian Law and Life*, 33.

<sup>58</sup> *Apopempsis*: [Demosthenes] 59.59. *Apoleipsis*: Demosthenes 30.17; Plutarch, *Alcibiades* 8.

<sup>59</sup> Demosthenes 41.4: *aphelomenos*.

<sup>60</sup> Rosivach, "Apharesis and Apoleipsis," 200.

<sup>61</sup> For some recent comments on the value of dramatic sources, especially comedy, for Athenian social history, see e.g. Mark Golden, *Children and Childhood in Classical Greece* (Baltimore: Johns Hopkins University Press, 1990), xvi; Hunter, *Policing Athens*, 6.

<sup>62</sup> Rosivach, "Apharesis and Apoleipsis," 212-13.

<sup>63</sup> Line numbers and assignment of lines according to F.H. Sandbach, *Menandri reliquiae selectae*<sup>2</sup> (Oxford: Oxford University Press, 1990).

<sup>64</sup> *Didot papyrus* I, ll. 39-43. On this source, see Rosivach, "Apharesis and Apoleipsis," 194.

<sup>65</sup> Rosivach, "Apharesis and Apoleipsis," 223-24, *contra* Harrison, *Law of Athens*, I, 31, who writes, "both the general situation and the actual words used demand the hypothesis that Smikrines had the legal right to remove his daughter."

<sup>66</sup> Cf. Isaios 2.7-9; Demosthenes 30.7, 57.40-1; Plutarch, *Perikles* 24. See discussion in Harrison, *Law of Athens*, I, 39 and following pages.

<sup>67</sup> Plutarch, *Perikles* 24. The first wife's willingness is expressed by the participle *boulomenen* (lit. "wishing," "being willing"). On this passage, see Philip A. Stadter, *A Commentary on Plutarch's Perikles* (Chapel Hill: University of North Carolina Press, 1989), 238-39.

<sup>68</sup> The fact that Plutarch does not provide the identity of Perikles' first wife is not a valid reason for discarding the evidence, as Cohn-Haft, "Divorce in Classical Athens," 3, n. 9 does, which this passage provides for divorce by consensual agreement.

<sup>69</sup> Isaios 2.7.

<sup>70</sup> Isaios 2.9.

<sup>71</sup> See above, 13. For a discussion of Menekles' possible motives for divorce, see Cohn-Haft, "Divorce in Classical Athens," 10. There is not enough evidence, according to Cohn-Haft, to support the view that childlessness often led to divorce (10, n. 36).

<sup>72</sup> Cohn-Haft, "Divorce in Classical Athens," 3, n. 9 does not recognize this category of divorce: "although mutual consent is humanly interesting, it was technically of no significance: the divorce was initiated by the husband." Cohn-Haft's failure to recognize the possibility that a divorce could proceed from both parties causes him to search in vain for the underlying causes of this type of divorce which, according to his view, necessarily proceeded from the husband. But Cohn-Haft himself is forced to concede on one point: "A final and very significant aspect of both these divorces (i.e. of Perikles and Menekles) is that the wife's wishes are alleged to have been consulted, the entire transaction having been conducted in an unhappy but amicable atmosphere." That the wives were consulted suggests to me that these divorces did in fact proceed from both parties. The consultation otherwise makes little sense.

<sup>73</sup> Wesley E. Thompson, "Athenian Marriage Patterns: Remarriage," *California Studies in Classical Antiquity* 5 (1972): 211-225. Cf. MacDowell, *Law in Classical Athens*, 89; Just, *Women in Athenian Law and Life*, 66; Pomeroy, *Goddesses*, 65.

<sup>74</sup> Thompson, "Athenian Marriage Patterns," 219. On the remarriage of widows see Virginia J. Hunter, "The Athenian Widow and her Kin," *Journal of Family History* 14 (1989): 291-311.

<sup>75</sup> Thompson, "Athenian Marriage Patterns," 221.

<sup>76</sup> Thompson, "Athenian Marriage Patterns," 222, n. 53 points out that Apollodoros did not exploit the fact that Neaira's daughter had been divorced twice as evidence that she was a foreigner ([Demosthenes] 59.52-54, 80-83). But as Thompson himself makes clear, Apollodoros is trying to show that Phano is a foreigner, not that she is inferior by virtue of having been divorced. Cohn-Haft's

statement that a "divorced woman was inevitable under suspicion as in some sense worthy" is not supported by the sources ("Divorce in Classical Athens," 13).

<sup>77</sup> In one passage from the *Medea* of Euripides, Medea does claim that divorce is not respectable for women (ll. 236-38). Medea's attitude, however, is shaped by a specific dramatic context and should not be counted against the prevailing attitudes revealed in the speeches of the orators.

<sup>78</sup> In fact, there is ample evidence that it was a dreaded prospect for a woman, whether divorced or not, to grow old without a husband. Cf. Lysias 13.45; Isaios 2.7, 22; Demosthenes 45.74; Hypereides 1.13.

<sup>79</sup> Lysias 14.28.

<sup>80</sup> [Demosthenes] 59.87.

<sup>81</sup> [Demosthenes] 59.16. On this law, Carey, *Greek Orators, Vol. 6*, 93 writes, "the discrepancy between the treatment of a male and female of citizen status married to an alien is intelligible in the context of Athenian society. Since the marriage was negotiated between the prospective groom and the bride's father, an Athenian woman who found herself married to an alien could not reasonably be held responsible for any fraud." The Board of Six, the *Thesmothetai*, was an annually elected board of magistrates, the principal duties of which were to convene the People's Court (*dikasteria*) for all lawsuits and to preside over most public prosecutions (*graphai*). See Hansen, *Athenian Democracy*, 178 and following pages.

<sup>82</sup> On the question of adultery in Athenian law, see Ugo E. Paoli, "Il reato d' adulterio (moicheia) in diritto attico," *Studia et documenta historiae et iuris* 16 (1950): 123-82; Harrison, *Law of Athens*, I, 32-36; David Cohen, "The Athenian Law of Adultery," *Revue internationale des droits de l'antiquité* 31 (1984): 147-65 and *Law, Sexuality and Society*, 98 and following pages; Edward M. Harris, "Did the Athenians Regard Seduction as a Worse Crime than Rape?" *Classical Quarterly*, n.s. 40 (1990): 370-77; Eva Cantarella, "Moichea: Reconsidering a Problem," *Symposium 1990* (Cologne, 1991), 289-296; L. Foxhall, "Response to Eva Cantarella," *Symposium 1990* (Cologne, 1991), 297-304; Christopher Carey, "Rape and Adultery in Athenian Law," *Classical Quarterly*, n.s. 45 (1995): 407-417. The traditional view, based on an explicit statement in a forensic speech (Lysias 1.32-3), is that the Athenians considered adultery a more heinous crime than rape, since it implied the willingness of the wife and therefore threatened the stability of

the *oikos*. This view was challenged by Harris in his 1990 article (see above), but remains the *communis opinio*.

<sup>83</sup> Cf. Pomeroy, *Goddesses*, 86; MacDowell, *Law in Classical Athens*, 88; Just, *Women in Athenian Law and Life*, 70.

<sup>84</sup> Lacey, *Family in Classical Greece*, 115 believes that this law was often flouted precisely because of the mandatory return of the dowry. Cf. Schaps, *Economic Rights of Women in Ancient Greece*, 83, who finds this situation "hard to imagine" and questions whether the dowry had to be returned in case of adultery. He notices that at Ephesos, at least, a wife caught in adultery lost her right to the dowry (cf. W. Dittenberger [ed.], *Sylloge Inscriptionum Graecarum*<sup>3</sup> 364.1.57).

<sup>85</sup> Hypereides 1.12.

<sup>86</sup> Harrison, *Law of Athens*, I, 55. Harrison then concedes: "but if by law the dowry was returnable to a *kurios* who had acted fraudulently, it was certainly a fortiori returnable to the innocent *kurios* of a woman who had committed adultery" (56).

<sup>87</sup> It should be noted that one speaker in a court case, Aeschines, in his discussion of the penalties imposed on a wife caught in adultery, does not include mandatory divorce (Aeschines 1.183), nor does the defendant in another case (Lysias 1), charged with the murder of an adulterer (*moichos*), mention his marital status. At least in the second case this omission can be explained by the nature of the speech. The defendant needed to show that he had caught the adulterer in the act and that the murder was in no way premeditated. His current marital status was therefore immaterial to his defense.

<sup>88</sup> Lawsuits at Athens were divided into public prosecutions (*graphai*), which could be brought by any citizen, and private suits (*dikai*), which could only be brought by the aggrieved party. See discussion in Hansen, *Athenian Democracy*, 191 and following pages.

<sup>89</sup> Isaios 3.64. The process by which the *epikleros* married her father's next-of-kin was called *epidikasia*. See discussion in Harrison, *Law of Athens*, I, 11 and following pages. Harrison conjectures that if the *epikleros* had given birth to a son, the next-of-kin could not force the dissolution of her marriage (12).

<sup>90</sup> Isaios 3.64.

<sup>91</sup> Cohn-Haft, "Divorce in Classical Athens," 13-14.

<sup>92</sup> One man did divorce his wife to marry an *epikleros*, but we do not know if he was required to do so: cf. Demosthenes 57.41.

<sup>93</sup> See discussion in Lacey, *Family in Classical Greece*, 142-44.

<sup>94</sup> Cf. Todd, *Shape of Athenian Law*, 229. Todd suggests that perhaps the marriage could be dissolved only after the woman had "fulfilled her function as *epikleros* by bearing a son."

<sup>95</sup> Cf. Todd, *Shape of Athenian Law*, 365. Todd notices that in archaic Athens *atimia* meant the total deprivation of all rights, such that a citizen could kill an *atimos* without committing an offense. But *atimia* had been restricted in scope, as he observes, "well before" the classical period.

<sup>96</sup> This is a convenient place to gather together all the primary evidence for divorce in classical Athens, most of which has been discussed above. Divorce initiated by the husband: Lysias 14.28; [Demosthenes] 59.51, 81-3; Demosthenes 39.24-25, 28. The evidence of Demosthenes 39 is rejected by Cohn-Haft, "Divorce in Classical Athens," 2, n. 7; see discussion in Cheryl A. Cox, "Sibling Relationships in Classical Athens: Brother-sister Ties," *Journal of Family History* 13 (1988): 377-395. Divorce initiated by the wife: [Andokides] 4.14; Isaios 3.8, 35, 78; Demosthenes 30.17, 26; Plutarch, *Alcibiades* 8. Divorce initiated by the wife's father: Demosthenes 41.4; Isaios 6.35-36 (contemplated); Menander, *Epitrepontes*, ll. 655-59, 714-15, 1064, 1102-3; *Didot papyrus* I, ll. 28-44. Divorce by consensual agreement: Isaios 2.7-9; Demosthenes 30.7, 57.40-1; Plutarch, *Perikles* 24. Divorce initiated by the state: [Demosthenes] 59.16, 87; Isaios 3.64. For a slightly different list of the evidence, arranged not by procedure but in chronological order, see Cohn-Haft, "Divorce in Classical Athens," 2.

<sup>97</sup> Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), 531, 561 and following pages, 615, 636. For an abridged version of this massive work, see Phillips, *Untying the Knot: A Shorter History of Divorce* (Cambridge: Cambridge University Press, 1991).

<sup>98</sup> On the Family Law Act of 1969, see J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997), 167 and following pages. The California divorce-rate is taken from the *Palo Alto Weekly*, 11 Feb. 1987, quoted by Susan M. Treggiari, *Roman Marriage: Iusti Coniuges From the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon Press, 1991), 475, n. 200.

<sup>99</sup> See discussion in Treggiari, *Roman Marriage*, 481-82; cf. Mireille Corbier, "Divorce and Adoption as Roman Familiar Strategies," in *Marriage, Divorce, and Children in Ancient Rome*, ed. Beryl Rawson (Oxford: Clarendon Press, 1991), 47-78.

<sup>100</sup> Cohn-Haft, "Divorce in Classical Athens," 14 concludes, "The most reasonable generalization is that divorce was relatively infrequent and marriage a fundamentally stable institution." This is a plausible conclusion, but it is based ultimately on nothing more than the small number of divorces mentioned in the speeches of the Attic orators.