

Konstantinos A. Kapparis
Apollodoros: 'Against Neaira' [D. 59]



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Apollodoros
'Against Neaira' [D. 59]

Edited with Introduction, Translation and Commentary
by
Konstantinos A. Kapparis



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Στους γονείς μου
'Αντώνη καὶ Σαβέτα

Preface

This study began as a PhD Thesis in the University of Glasgow under the supervision of Professor D.M. MacDowell. The Thesis contained a predominantly linguistic commentary of the speech, with some historical notes and a brief introduction. In subsequent years I revised extensively that study, added the Greek text, an English translation and most of the historical notes appearing in this volume. The final product is a considerably larger and more encompassing study, which explores linguistic and textual matters, and discusses in detail most of the historical issues raised by this very important classical text. The introduction is intended to provide a comprehensive account of the main issues, such as the historical and legal background of the speech, an outline of the case against Neaira and the main lines of argumentation, the authorship of the speech, the style and technique of its author, and a presentation of the manuscripts and the textual tradition. For the Greek text I have collated all the main manuscripts, and most of the later manuscripts written in the 13th and 14th century, gathered the testimonia, taken into account the indirect transmission, and profited from the achievements of modern studies, such as the new *Grammar of the Attic Inscriptions* by Threatte. In the translation I have tried to keep as close to the original as possible, with a view to accuracy rather than elegance. The commentary covers all aspects of the speech. As this is the first linguistic analysis of this text, and indeed of any speech written by Apollodoros, I felt that I ought to provide a substantial amount of notes covering the language and style of this author, grammar, syntax, technical vocabulary, and lexicographic points. This study also contains detailed textual criticism, where I discuss all the textual variations recorded in the main manuscripts and all proposals by previous scholars which I considered to be plausible, or sometimes implausible but stimulating. The historical notes have two purposes: one is to illustrate the constitutional, legal, social and political background of the orator's remarks, the other is to provide a comprehensive and detailed presentation of the lively debate on many

issues for which this text is a primary source, and to make an original contribution to this debate, whenever possible.

This study is intended to function as a reference book providing an account of the debate which includes the most important primary sources, the main arguments, the views of previous scholars and my own views on the subject. It would not be possible to mention all the primary sources, arguments or studies, and indeed selection inevitably involves omissions, I hope not too serious. Regrettably a few important studies reached me after this volume had been completed (like the book of N.J. Davidson *Courtesans and fishcakes*, or the interesting collection of articles entitled *The sacred and the feminine*, edited by S. Blundell and M. Williamson). The positive side of it is that research into many issues for which the speech is a primary source continues vigorously.

I am grateful to a few people for their support and contribution: Professor J. Diggle removed many imperfections from the entire study and made some interesting textual suggestions. Professor D. Whitehead produced substantial improvements upon the translation. Professor Th.K. Stephanopoulos assisted me in the first stages of this work and Professor M. Mullett encouraged me and secured much needed technical equipment during the final stages of the production of this volume. Personal friends, especially Dr. C. Panagiotakis and Dr E. Urios-Aparisi, offered unconditional moral support, and several people offered generous assistance with practical matters, especially Dr. G. Grünkorn and Ms G. Müller of Walter de Gruyter, Mrs J. Murray, Mrs J. Boyd, and the rest of the staff in the University of Glasgow and the Queen's University of Belfast.

The assistance, and support of Professor D.M. MacDowell through the various stages of this project was invaluable. It would be difficult to make proper attributions for all the improvements he produced upon this study. Here I can only express my deepest gratitude.

Belfast, February 1999

K. A. Kapparis

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Introduction

1. The speech 'Against Neaira' as a source of information.

i. Why is the speech 'Against Neaira' an important source ?

The speech 'Against Neaira' is a prosecution speech against an ageing prostitute delivered before an Athenian law-court around 340 BC. (About the date cf. Intrd ch. 3 i). Neaira was not prosecuted because she had been a prostitute, but because she allegedly had breached the law which prohibited foreigners like herself to marry or pretend lawful marriage with an Athenian citizen. The orator capitalises on the fact that she was a well-known courtesan and tries to prejudice the jury by giving details about her life, family, lovers and her career as a prostitute. Many of these details are not strictly relevant to the case but the orator expects that they will leave a lasting impression upon the jury. He gives details about the events, makes rich portraits of the people involved, moralises and tries to support his version with as much information as he can. There are two digressions, one about the ritual of the sacred marriage during the festival of Anthesteria and one outlining the history of Plataia from the Persian Wars (490) until the destruction of the city at the beginning of the Peloponnesian War and the naturalisation of the Plataians in Athens (427). Because of the political background of this case we learn about the politics and political personalities of the time and this speech is a very important source for Athenian law and social history. Associations like the phratry and genos, institutions like the family, marriage, dowry, naturalisation of foreigners as Athenian citizens, slavery and manumission of slaves, evidence of slaves under torture and many more are illustrated in the narrative. The speech is a primary source for several laws, like the laws of adultery, naturalisation and citizenship, and legal procedures like the private arbitration, the penalties in case of the murder of a slave and the restrictions at the

ritual of the Haloa. It is also the most extensive and detailed source of information about prostitution in the classical period and one of the most realistic and reliable sources concerning women, gender relations in classical Athens, and the way of life of the ordinary Athenian. All this information, relevant or not, is accumulated into a loose, disproportionately long narrative (see ch. 5), which nevertheless has contributed to the popularity of the speech throughout the centuries. There is hardly any modern study of classical Athens which does not draw information from this text, since the speech substantially enriches our knowledge of Athenian life, society, religion, law, constitution and institutions.

ii. Is the speech 'Against Neaira' a reliable source?

The reliability of the evidence drawn from this speech has often been questioned by scholars and some have gone as far as dismissing the accuracy of the information supplied here simply on account of the general character of this evidence. These scholars seem to believe that, since Apollodoros is sometimes uncritical of the information he provides, in the sense that it may contain inconsistencies or inaccurate details, on the whole he must be unreliable.¹ Certainly the speech contains inaccuracies and deliberate lies but so does every speech delivered before an Athenian court. The orators distort events, situations and arguments to suit their purposes, and their accounts should be treated with suspicion when inconsistencies or external evidence cast doubt on the credibility of their statements. Good speechwriters would normally polish the text, so that the inconsistencies are limited and not easily detectable, and take care of the argumentation, so that it appears to be solid, sensible and coherent. Less skilful orators might pay less attention to the detail or be less capable of removing rough edges. Yet, the detection of inconsistencies

¹ D. Cohen (*RIDA* 31 (1984) 147-65), for example, dismisses the evidence of 64-71 and 85-87 that adultery (μοιχεία) could be committed with unmarried women simply on the ground that the narrative of this speech contains inaccuracies. However, the authority of the evidence drawn from this speech is corroborated by several other sources: *Lys.* 13,66 (in comparison with 3,23), *Men.Sam.* 717 and fr. 683 Körte, *Ach.Tat.* 4,8,4; cf. also com. 64-71 and 87.

and rough edges does not automatically make the narrative a less reliable source. By this I do not imply that we should uncritically accept whatever Apollodoros says as the plain truth. But, the fact that some of it may be unreliable does not mean that all of it should be cast aside. The accuracy of every piece of information should be tested individually. Probably Apollodoros is sometimes lying and sometimes telling the truth, like any other orator. It is our duty to examine his statements and try to separate fact from fiction.

iii. Women in the structure of the polis

The present speech is one of the most important sources of information concerning the position and roles of women in the state and the family, their legal status, rights and disabilities, and the perceptions and standards according to which they were expected to live in fourth century Athens. The female population of Attica was not a homogeneous body; women, like men, were divided into citizens, aliens and slaves, amid differences of wealth, social status, mentality and idiosyncrasy. Besides, Athenian society did not remain static throughout the classical period; dynamics of wealth, war and politics produced a number of significant changes in the law and the conditions of women's lives. However, some elements did not undergo considerable change and these were, generally speaking, factors deeply ingrained into the structure of the Athenian polis. Scholars have claimed that the democracy accentuated the disparity between men and women.² There is some truth in this statement but we should not overlook first the fact that the concept of women as active participants in politics would be an alien concept in the ancient world, and then the fact that legislation of the radical democracy safeguarded the legal rights of the citizen woman. Judging by the standards of the time and in comparison with non-democratic systems it would be fair to say that the democratic constitution set out in clear lines and protected the individual rights of women offering them a well defined and firmly

² Cf. S.B. Pomeroy *Goddesses, Whores, Wives and Slaves* London 1976, 57 ff., E. Cantarella *Pandora's Daughters* Baltimore-London 1987 (trsl), 38 ff., *Just Women* 22-3.

established role in the structure of the polis. The improvement of the status of the citizen woman inevitably coincided with deterioration of the status of all other women who did not belong to this category. However, the recognition of the former by the polis as an indispensable vehicle for the continuation of the citizen body, and the prestige and privileges resulting from this, did not come for nothing. The restrictions and regulations imposed upon her as a result of her accentuated role as a partner in the family structure and the functions of the city were a considerable price to pay. It seems like an irony that those women least respected, if not actively despised and marginalised, like foreign courtesans, were the most independent, and sometimes, well-off and influential women, while those most respected and well bred matrons, offspring of wealthy and powerful families, ideally should refrain from public life and entrust a large section of their public business to the hands of the men under whose guardianship they were placed.

In order to understand this paradox we need to consider the expectations of men and women and the concept of roles each gender had, and compare them with the actual reality in the political, social and economic structures of Athens. In the following sections I present an overview of the main issues, while detailed discussions on the matters raised by this speech can be found in the commentary.³

iv. Courtesans and common prostitutes

An appropriate starting point might be the famous and widely disputed statement of Apollodoros τὰς μὲν γὰρ ἑταίρας ἡδονῆς ἕνεκ' ἔχομεν, τὰς δὲ παλλακὰς τῆς καθ' ἡμέραν θεραπείας τοῦ σώματος, τὰς δὲ γυναῖκας τοῦ παιδοποιεῖσθαι γνησίως καὶ τῶν ἔνδον φύλακα πιστὴν ἔχειν (122: cf. com. ad loc.). Apollodoros divides women in three categories in order to describe the way men perceived women's functions in the family and society. The phrase is very important for this: the tripartite definition of Apollodoros

³ For a survey of the previous bibliography and an informative presentation of the debate see Schnurr-Redford *Frauen* 13-70, and the useful surveys by T. Fleming *CJ* 82 (1986/7) 73-80 and E. Fantham (*EMC* 30 (1986) 1-24.

reflects a division of roles and duties from a male point of view and describes what men expected from each category of women. The accuracy of this description of duties is more disputable.

The first category of Apollodoros, the *hetairai*, encompasses the numerous types of prostitutes living in Athens. The word *ἑταίρα* is a euphemism normally describing a high class prostitute,⁴ but in 122 it is used in a broader sense to describe all forms of prostitution practised in Athens. Female prostitution was perfectly legal and treated as a profession, albeit disreputable.⁵ Aeschines (1,124) lists organised prostitution among medicine, metal work, joinery and the fuller's art as one of the trades practised in the workshops of the market-place. The establishment of organised prostitution is attributed to Solon (Athen. 13,569 d-e). Although it would have been an on-going practice before, the Solonian law excluding prostitutes from the force of the adultery laws (67 and com. ad loc.) amounted to *de facto* legalisation. The earnings of those prostitutes who were established in brothels were taxed (*πορνικὸν τέλος*: Aesch. 1,119, Poll. 7,202) and the *agoranomoi* made sure that they did not overcharge their clients.⁶ In a society where neither law nor sexual morality intended to stop men from buying pleasure, and where slavery provided human resources in plenty, female prostitution flourished in a wide variety of forms. At the bottom of the scale we find common prostitutes established in brothels, available to every man, even to slaves (Ar. V. 500-2), for a price ceiling set by the law at two drachmas (Arist. *Ath.* 50,2). They were mainly slaves living in wretched conditions and several sources allow us to understand that working in a brothel would be a frightening prospect for most women (cf. com. 30). The conditions of life of freelance prostitutes such as street-walkers, flute-players and dancers (cf. com. 67) might be better, as they had more freedom, normally more money, and less coercion and pressure than common prostitutes.

At the top end of the scale we find the famous courtesans of the ancient world. These were too costly for brief encounters. They were

⁴ About the terminology cf. com. 114 τῇ πόρνῃ.

⁵ Like many other occupations, which we might consider as proper, but the Athenians would think as unsuitable for well-bred women: cf. D.57,45.

⁶ Arist. *Ath.* 50,2 and Rhodes *AP* 574, Hyp. 4,3, Sud. δ 528.

in the position to attract wealthy and influential men: Themistocles, Cyrus, Alexander and almost every important man in the ancient world has been linked with some notorious hetaira (Athen. 13,576c ff.). Later authors are full of references connecting the great personalities of classical Athens, such as Pericles, Isocrates, Demosthenes, or even Plato, with courtesans (Athen. 13,589 c-d, 592 b-593a, Alciph. 4,19). Much of this is anecdotal evidence of doubtful authority but, for example, the connections of Lysias with Metaneira (30), of Simos with Neaira (108), of Hyperides with Phryne⁷ and Phila the Theban (Idomeneus *FGrH* 338 f 14), or of Alcibiades with a string of courtesans (And. 4,14) are true. Such cases suggest that courtesans would be part of the erotic experience of rich and influential men with whom they formed long-term love affairs. In order to be able to establish this type of relationship, sustain the interest of the lovers and induce them to spend lavishly, courtesans needed something more than good looks. There is ample evidence suggesting that, unlike most women in the ancient world, they received education. Reading, writing and education which would enhance one's social skills would be useful tools for their trade (cf 18).⁸ Gnathaina, for example, is described by Athenaios (13,583f. 585b) εὐθικτος (sharp), ἐμμελής (adept) and οὐκ ἀνάστειος (not lacking a good sense of humour). These attributes reflect the goal of a courtesan's education: grace, charm, humour, ability to hold an intelligent conversation, and an urbane manner were the acquired qualities which placed properly educated courtesans in a class apart from other women for whom this type of education might be viewed with suspicion. Some courtesans might even choose to receive further education: Nikarete the Megarian studied with Stilpon the philosopher (Athen. 13,596e), and Leontion with Epikouros (Alciph. 4,17, Athen. 13,588b), while Glykera was supposed to be in the position to help Menander with the performance of his plays (Alciph. 4,19,5) and she appears to be grateful to him for

⁷ Fr. 30 Blass, G. Cooper *Phoenix* 49 (1995) 303-18.

⁸ Cf. Alciph. 4 passim, Luc. *DMeretr.* 4,3, 10,4. Many ordinary women, like many men, could not read and write, and those who could only acquired sufficient skills to see them through their household tasks: cf. D. 41,9. 21, Lys. 32,14-5, X. *Oec.* 9,10, S.G. Cole in *Reflections of Women* 219-45.

what he taught her (allegedly she writes: σὺ γάρ με ἐδίδαξας εὐφυᾶ γυναιῖκα ταχέως παρ' ἐρώωντων μανθάνειν).

The lifestyle of expensive courtesans was one of luxury and excitement. Their rich and powerful lovers showered them with gifts (cf. com. 67 ἀνηλωκέναι ὄλην) and honours,⁹ while outings in style (D. 48,55), parties, drink, dance and good food were part of everyday life.¹⁰ Courtesans were hardly expected to set an example of modesty and good behaviour,¹¹ but we do hear of suggestions of good behaviour aimed at them (Luc. *DMeretr.* 6,3, Athen 571f) and the character of the good courtesan (χρηστὴ ἐταίρα) is standard in New Comedy.¹² Men enjoyed their company and society was prepared to allow this outlet for their need of communication with the opposite sex at a level more profound than a physical encounter and in a type of erotic and emotional relationship the nature of which was different from the co-operative relationship which a man might be expecting from his wife. In general, however, keeping courtesans was considered to be a bad habit for prudent men, not on grounds of loyalty to their wives, but because they could cause financial ruin to the family.¹³

The career of a courtesan was short-lived. Those who were slaves (like the girls of Nikarete in 18) did not have the chance to save money for their old age, as their earnings would go to the owner (21 τὰ μὲν ἄλλα ἀναλώματα τὴν κεκτημένην αὐτὴν λαμβάνειν). Their highest hope would be to find a rich lover willing to buy them and eventually set them free (cf. com. 29-31). If this did not happen, they would probably end up in a brothel as common prostitutes, and maybe later as pimps (cf. com. 30). The free ones were in a more advantageous position since they could manage their own finances, and some courtesans, like Phryne (Athen. 13,591d), Lais (Gellius *Noct. Att.* 1,8) and Sinope (Amphis *PCG* fr. 23, cf. com. 116), are reported to have

⁹ Hdt. 2,135,1. 2, Alciphrr. 4,1, Athen. 13,573a ff., 594b ff., K. Schneider *RE* 8, 1355-6.

¹⁰ Cf. 24 and com. ad loc., Ar. *Ach.* 1093, Is. 3,13, Alciphrr. 4,11. 13. 14, Athen. 579e, 607c-d.

¹¹ Cf. 33-4 and com. ad loc., Luc. *DMeretr.* 12,1, Alciphrr. 4,13.

¹² See M.M. Henry *Menander's Courtesans and the Greek Comic Tradition* Frankfurt a.M. 1985, *passim*.

¹³ Cf. com. 21, X. *Mem.* 1,6,13, Isoc. 8,103, Amphis *PCG* fr. 23.

been wealthy. Those who could make the best out of their youth might come to a position of financial and social independence which no other woman could have imagined in the ancient world. Women like these were true masters of themselves, led their lives as they chose, and could dispense of their property in any way they wished without the need to ask for the permission or approval of any man. Some were strong enough to take their lives and destinies into their own hands, with all the risks that this entailed in a world where they could not legally defend themselves and their interests without the intervention of a man. For most, however, the prospect of becoming someone's concubine, or even lawful wife, at some stage of their lives, would appear to be a very attractive option because it meant safety, legal protection, financial security, family life and a degree of respectability.

v. Concubines and nothoi

Scholars have tried to understand the role of the concubine by concentrating on the woman, her status and her position in the man's *oikos*. Much of the debate has focused on the offspring of an Athenian man from a concubine, and on issues such as their possible *vóthos* status and the extent of their citizenship and inheritance rights. But this approach is elusive and the main issues slip away into a sea of controversy and difficult problems. It might simplify matters if we asked not 'what was a concubine in classical Athens and what did she do?', but 'why would an Athenian man choose to keep a woman as his concubine?'. Taking a wife along with a respectable sum of money as a dowry was sanctioned by the law, the family and the conventions of society (see below). On the other hand, although a concubine might be accompanied by a modest sum of money, like a dowry,¹⁴ most concubines would enter the relationship with nothing, and would need to be maintained by the man. In addition, keeping a concubine could meet the disapproval of the man's immediate family (for financial, if

¹⁴ Is. 3,39 and Harrison *Law* 1,14.

not ethical reasons: e.g. Is. 6,18), while society might not strongly disapprove but it did not approve either.¹⁵

There is only one rational explanation for the decision of a man to take a woman as his concubine: his single motive was love for the woman (love to be understood in the broadest sense). All clearly identifiable cases of concubines confirm this conclusion: Stephanos and Neaira, Phrynion and Neaira (33-4), Eucrates / Timanoridas and Neaira (while she was still a slave: 29-32), Euctemon and Alce (Is. 6,17-26), Hyperides and Phila (*FGrH* 338 f 14, *Plu. Mor.* 849d), Philoneos and his slave concubine (*Ant.* 1,14-20), Olympiodoros and his liberated courtesan (*D.* 48,53-5), the speaker / his opponent and their concubine in *Lys.* 4, Philocleon and the flute-player (whom he promises to set free and keep as his concubine in *Ar. V.* 1351-3), Demeas and Chrysis (*Men. Sam.*), and so on. The relationship with a concubine was understood as something more physical and less dignified than marriage,¹⁶ but in most cases it was built on the basis of stronger emotional ties.

Most scholars agree that Athenian women could be given as concubines.¹⁷ This assumption is based on very shaky evidence and has been effectively challenged by Ogden (*Bastardy* 157-63). Is. 3,39, which is thought to imply that Athenian women could be given as concubines, nowhere mentions Athenian citizens. Even if the speaker had in mind Athenian men when he said that they gave away their women as concubines, the orator could simply mean that they gave their illegitimate daughters for concubinage, while they would give their legitimate daughters in lawful marriage (cf. MacDowell *Law* 90). The celebrated case of the mother of Phile in Is. 3 is far too complicated to make a positive contribution to the debate.¹⁸ Similarly

¹⁵ *D.* 48,53-5, Is. 3,17. 39, 6,21, *Lys.* 1,31 ταῖς παλλακαῖς ταῖς ἐλάττωνος δέξιας.

¹⁶ Cf. Buermann *NJ Suppl.* 9 (1877-8) 569 ff.

¹⁷ *Just Women* 52-4, R. Sealey *CAnt* 3 (1984) 111-33, C. Mossé *Symposion* 1990, 273-9, C. Patterson [with reservations] *Symposion* 1990, 281-87.

¹⁸ I am convinced that she was the lawful wife of Pyrrhos (Is. 3,4), even though she must have been a former courtesan, who never reformed her licentious ways, with her husband's consent. The house of Pyrrhos might be untypical and their morals far too liberal for the taste of their neighbours, but this does not mean that they could not have been legally married with *engye*.

the cases of Plangon (in D. 39 and 40) or Chrysilla (in And. 1,125) cannot answer the question, as both basically were in adulterous relationships with the consent and full understanding of the parties involved. I know of no Athenian woman about whom it can be provably said that she had been the concubine of an Athenian man (see also Ogden *loc. cit.*), and I agree with Patterson (n.17, 284) that such a relationship would seriously undermine the status of the Athenian woman depriving her of her most fundamental function in society, namely the production of legitimate heirs. For an Athenian woman to be given as a concubine would amount to termination of her citizen status. Citizenship for a woman consisted in the possibility of being given in lawful marriage, the right to give birth to citizens, and participation in the life of the community as a member and representative of an Athenian *oikos*. An Athenian woman given as a concubine would be deprived of all this and society, if not the law, would disapprove strongly of such actions,¹⁹ while an ordinary Athenian family would not allow a legitimate daughter to be thus degraded, no matter how poor they were. The institution of the dowry has often been brought into the debate. Sealey and Mossé seem to understand that a family unable to provide an appropriate dowry might agree to give a legitimate daughter for concubinage. However, Patterson (n.17, 286) correctly points out that even the poorest families would offer their daughters some kind of a dowry according to their means. If they could not afford one, they might try to find a husband willing to marry them without a dowry (perhaps not a difficult task if the woman was attractive: cf. com. 50), or to collect a dowry through an *eranos* (cf. com. 31), rather than see a legitimate daughter reduced to the status of a concubine. Such a prospect, although not illegal, would be highly undesirable and it seems that in practice it was avoided. If we judge from the words of Apollodoros in 111-14, concubinage was not an option for the poor citizen woman but prostitution was.

A point which has been widely debated in connection with the institution of concubinage is the problem of the *nothoi*. When would

¹⁹ See, for example, D. 24,202-3, where Timokrates is accused of having 'sold' his sister, simply because he betrothed her to an influential man from Kerkyra. The couple apparently moved to the island.

someone be a nothos, according to Athenian law, and what was his/her position in the family and the polis has caused a lot of controversy. In the homicide law of Drakon (D.23,53) it is stated that a man could be killed with immunity if he was caught committing adultery with one's concubine kept with a view to the birth of free children. Mossé and Patterson²⁰ have tried to explore the historical background of this law (cf. also Ogden, *Bastardy* 32-44) and connect it with the definition of concubinage in classical Athens, but, as I have stated elsewhere,²¹ what was the meaning of this phrase in relation to the status of a concubine at the time of Drakon would be unimportant in the fourth century. In the classical period the law of Drakon would be interpreted by the standards of the time. If the concubine was free her children were free, too, if she were a slave they were born slaves (but certainly the father of the children, who was also their owner, could set them free). Somebody's concubine would be under the authority of the adultery laws in the classical period, whether she had children or not.

Diogenes Laertios²² says that in the late years of the Peloponnesian war, because of the lack of men (διὰ τὸ λιπανδρεῖν), the Athenians were allowed to marry one woman and have legitimate children from a concubine at the same time: γαμεῖν μὲν ἀσπὴν μίαν παιδοποιεῖσθαι δὲ καὶ ἐξ ἑτέρας.²³ Ogden (72-7) maintains that this decree legalised bigamy in a period when there was shortage of Athenian males and sees it as the first step towards the complete relaxation of Pericles' citizenship law. However, the evidence suggesting that such a decree was ever approved is post-classical and very weak. The years of the Peloponnesian war were times of hardship and children with one Athenian parent understandably might be allowed to join the citizen body, but bigamy would be a measure far too radical for the social practices of the Athenians. The story about this decree seems to be rationalising the fact that the law of Pericles had fallen into disuse in those years. Children from free concubines of

²⁰ n.17 and Patterson, *ClAnt* 9 (1990) 40-73.

²¹ K. Kapparis *RIDA* 42 (1995) 109-10.

²² D.L. 2,26; cf. Athen. 13,556a, Gellius 15,20,6, MacDowell *Law* 90.

²³ I understand ἑτέρας here as 'another woman', not 'another citizen', as Ogden seems to understand.

whatever origin would be legitimate and Athenian citizens until 403. Children born after that date would be Athenian only if both parents were Athenian (cf. com. 16). After 403 I can hardly imagine why an Athenian man would keep a free woman for the birth of children. In fourth century Athens the children born outside lawful marriage were excluded from the ἀγχιστεία, the ἱερὰ καὶ ὄσια, and could not be the heirs of their father.²⁴ They were also excluded from the obligation to provide for their old parents. Therefore, emotional considerations aside, there was no practical reason for keeping a concubine with a view to the birth of children; one would need to take a wife for this purpose. Alternatively he could resort to adoption of an Athenian citizen and this option was frequently taken by men who for some reason could not secure direct succession of their oikos through legitimate offspring.²⁵

Sealey has understood that the nothoi were children of uncertain paternity and that children of recognised paternity were not nothoi. However, Mossé, Patterson and Ogden (especially 15-17) have firmly rejected this understanding of the word. Patterson (n. 20) correctly says that a nothos would be a child of recognised paternity, whom his/her father identified as such. Either engye or epidikasia were indispensable for lawful marriage, although not sufficient by themselves (cf. com. 16 and 50). Any union not created by one of these procedures was concubinage and the children from such a union, like children from adulterous relationships (e.g. Kallias - Chrysilla, or perhaps Mantias - Plangon after their divorce), should be considered as nothoi (cf. MacDowell *Law* 91). However, in practice, as Ogden (161-2) points out, adulterine nothoi were not easily detectable, and in general it might not be difficult to pass off as citizens the children of two Athenians who were not legally married, provided that the father was willing (or somehow compelled) to use some device and introduce them to the citizen bodies. This is what Kallias and Mantias did, and allegedly the bolder Euctemon went as far as presenting his apparently illegitimate son from Alce as a legitimate son of his, eventually with the consent of his adult son Philoctemon (Is. 6,20-6). I think that Ogden (157-63) is essentially right when he says that there were no real

²⁴ Cf. D.43,51, Is. 6,47, com. 16, 56 ποιήσασθαι υἱόν, 104, Ogden 98-100.

²⁵ See L. Rubinstein *Adoption* passim.

Athenian bastards, as Athenian citizens could always find a way of manipulating the process of legitimisation (see Ogden 83-135). Thus the troublesome question whether these children had the right to citizenship in the fourth century may be in practical terms a false dilemma, in the sense that no such cases really existed because fathers wishing to secure citizenship for such children would always find a way.²⁶

A concubine was a woman living with a man in a long-term relationship in a sense quite similar to marriage, but inferior and less formal. The woman could be free or a slave, but hardly ever an Athenian citizen. This union would normally be based on the strong emotional ties between the participants. Society did not disapprove of such relations but lawful marriage was certainly a more dignified form of union, sanctioned by family, social norm and law. A married man could take a concubine as well, but in the classical period he needed to be able to afford a separate residence for her, since it was entirely unacceptable to bring another woman into the marital home. Even then such a union could be met by strong disapproval and objections by the wife, those supporting her interests, and society in general (cf. com. 22). A man would take the woman he loved as his concubine when he could not (or perhaps, did not really wish) to marry her, normally on account of their different status, if not other obstacles, too. The assimilation of the average situation of concubinage with a morganatic marriage is to a certain extent valid:²⁷ two people of unequal status came together in a long-term union, recognised and protected by the law. The children of this union were not heirs to their father's oikos and the union itself was perceived as inferior than marriage, even though the emotional bond of the participants could often be stronger than that of a couple tied together in an arranged marriage.

²⁶ Cf. com. 16 and 55-63, Erdmann *Ebe* 363, Harrison *Law* 2,61-65., S.C. Humphreys *JHS* 94 (1974), 88-95, J.P. Vernant *Myth and Thought in Ancient Greece* London 1980 (trsl) 48, Just *Women* 55-4, P.J. Rhodes *AP* 496-7 and CQ 28 (1978) 89-92, D.M. MacDowell CQ 26 (1976) 88-91, C. Patterson *CLAnt* 9 (1990) 40-73.

²⁷ Cf. O. Müller *JbCLPh* Suppl. 25 (1899) 710-32.

vi. Marriage and the family

Most marriages in classical Athens were arranged. Considering that contemporary moral standards did not allow respectable women to have leisurely encounters with strange men and that these standards were enforced with particular strictness in the case of young unmarried women (cf. com. 24), the opportunities for courtship were limited. Opportunities for the woman to be seen by potential suitors were always present during festivals (cf. com. 87) or other outings, and surely families with eligible daughters would parade them, but the women would go out accompanied and the whole operation had to be done with decorum.²⁸ Marriage because of love, attested mainly in New Comedy,²⁹ is not absent from other classical sources, but it was the exception rather than the rule.³⁰ In general, marriages were not conducted for emotional fulfilment, but with a view to good household management and succession by legitimate heirs. The woman who appeared to be more suitable for these roles would make the best wife and a large dowry would be an irresistible bonus. It is not surprising that most men would marry women whose background they knew, that is, relatives or daughters of friends through an arranged marriage.

A woman could be given in marriage by one of her closest male relatives (father, brother, paternal grandfather) with *engye*; if none of these was alive, she became an *epicleros* given in marriage with *epidikasia* (cf. com. 16). Neither of these procedures was sufficient to complete the marriage, but this stage was the legally significant first step. Patterson³¹ underestimates the legal significance of this stage and thinks that the ἀνακαλυπτῆρια, a ceremony which followed the wedding (cf. com. 74-8), might be the step which actually legally established a marriage. However, no case of lawful marriage conducted

²⁸ Cf. Stob. 4,23,61, Thphr. *Char.* 22,10, J. Henderson *TAPhA* 121 (1991) 133-47.

²⁹ Cf. P. Walcot *AncSoc* 18 (1987) 5-33, P.G. McC Brown *CQ* 43 (1993) 189-205.

³⁰ For example, in Lys. 19,14 the speaker says that his father married his mother without a dowry, obviously because she was attractive, and in And. 1,117-23 the contenders for the hand of the poor daughters of Epilykos surely were drawn by their charms.

³¹ C. Patterson, in *Women's History* 40-73.

without *engye* or *epidikasia* is attested, and the law quoted in D. 46,18 makes unambiguously clear that one of these procedures was the legally indispensable first stage. The union was complete when the woman moved into her husband's *oikos*. From that moment she was under his legal protection and guardianship and her husband would represent her in most financial or legal affairs. Scholars have pointed out that Athenian marriage was a composite process having as its goal the establishment of a new household (Patterson n. 31, 60; see also com. 16). Sealey correctly stresses the fact that the central concept in a marriage was not the bond or union itself (although these were important too), but the capacity of this union to produce heirs. Hunter³² speaking about the role of the *kyrios* says 'it is incorrect to think of it (*kyrieia*) in individual terms but rather as an institution signifying a bundle of roles and responsibilities, all very concrete but not all lodged in one person' (p. 18). Although the husband would be the man mainly responsible for her, the woman was never alienated from her original family and her father or brothers could always step in to defend her interests, if necessary. The woman always retained inheritance rights in her natal *oikos*, while she could never directly inherit from her husband.³³ Throughout her life a woman remained first her father's daughter and then her husband's wife. In general, Athenian marriage has been described as an alliance of two *oikoi* (Littman, n. 33) or as a partnership between husband and wife.³⁴

Ancient sources quite often stress that the domain of a man was outdoors, in the political and financial life of the city, while that of a woman was indoors, in charge of the household.³⁵ In the house the Athenian woman was far from an idle figure with plenty of time and nothing to do. Several sources provide lists of typically female tasks.³⁶ The woman had to delegate duties to the domestic slaves and supervise their performance, look after the slaves and the household property,

³² About the role and duties of the *kyrios* see Hunter *Policing* 9-42.

³³ See R.J. Littman *AncSoc* 10 (1979) 5-31, esp. 20-4, L. Foxhall, *CQ* 39 (1989) 22-44, S. Pomeroy, in *Women in Antiquity, New assessments* ed. R. Hawley - B. Levick, London 1995, 111-121.

³⁴ See Hunter, *Policing* 38; cf. also Blundell *Women* 119-24.

³⁵ Pl. *Lg.* 781c-d, *R.* 579b, *Men.* 71 e, X. *Oec.* 7,22, 30 ff., A. *Th.* 200-2, E. *Tr.* 647-56, *I.A.* 739 ff., Fr. 521 and 522 Nauck, Thgn. 1, 581 ff., Stob. 4,23,61.

³⁶ X.*Oec.* 7 ff., *LP* 1,3, *Mem.* 2,7,2-14, *Ar. Ec.* 215 ff.

and help with a number of domestic tasks, such as food preparation and cooking, processing and storage of crops, wool and cloth manufacture, or equipment maintenance. She was in charge of almost every matter concerning the household, childcare, supervision and discipline of slaves, and so on. This endless list of duties suggests that the *oikos* was seen not just as 'a locus of consumption but a productive unit aimed ideally at self-sufficiency'.³⁷ Since women were normally given in marriage at a very young age with very little knowledge or experience,³⁸ these tasks would be a daunting prospect and it was the husband's duty to supervise and train his wife in her domestic roles until he felt that she was able and confident enough to take full responsibility (X. *Oec.* 7,10-3, *Lys.* 1,6-7).³⁹ The ability of women to manage efficiently their domestic affairs is often praised: for example, one of the reasons for handing over the city and the administration to the women in Ar. *Ec.* 211-12 is their ability to run well the household and manage its finances (Ar. *Ecc.* 236).

vii. Women's work and property rights

Women's work was not limited to the household. Many women could not afford staying indoors; hardship or necessity took them out to do a number of jobs normally based on skills acquired from domestic tasks,⁴⁰ such as wet nurses, weavers, harvest-hands (D.57,45), wreath plaiters (Ar. *Th.* 446-9), or vegetable sellers (Ar. *Th.* 387). Women's agricultural work, with the exception of female slaves, is largely ignored in the sources,⁴¹ but presumably it was more widespread than it appears in a society extensively dependent on agriculture. A passage from the speech 'against Eubulides' characteristically explains how a

³⁷ Hunter *Policing* 35; cf. also Just *Women* 114-8.

³⁸ About 14-15 years old: cf. X. *Oec.* 7,5 and com. 22.

³⁹ The wife of Euphiletos proved to be, in her husband's words, οἰκονόμος δεινὴ καὶ φειδωλὸς {ἀγαθὴ} καὶ ἀκριβῶς πάντα διοικοῦσα.

⁴⁰ See R. Brock CQ 44 (1994) 336-46; the practice of women employing domestic skills at work was already in existence in the Mycenaean era A. Uchitel *Historia* 33 (1984) 257 ff.

⁴¹ See W. Scheidel G&R 43 (1996) 1-10.

citizen woman might need to put aside pride or respectability and go out to do jobs more suitable for slaves or aliens. The speaker says that his father was on a campaign in Thrace while his mother was left with two children and, it seems, no support by better off relatives. She had no other option than to go out and work as a wet nurse (D. 57,42). The speaker says πολλὰ καὶ δουλικά καὶ ταπεινὰ πράγματα τοὺς ἐλευθέρους ἢ πενία βιάζεται ποιεῖν (D. 57,45). This statement describes well the background of the work of poor citizen women. Several studies have stressed that the ideology of seclusion (cf. com. 24) might be suitable for some females from affluent families, and as such it could become something of a status symbol, but it could hardly be an option for those who had to work for a living.⁴² However, in general women did not go out to work unless they had to, and if they did so, their activities would normally be limited to menial, low earning jobs. The only women who viewed work as the means of an independent lifestyle were those outside the boundaries and protection of a family, that is courtesans and other prostitutes, or perhaps some alien women.⁴³

The property rights of women and their ability to perform financial transactions have been contentious issues. A law quoted in Is. 10.10 states that a woman was not entitled to conduct transactions involving more than one medimnos of barley.⁴⁴ If this law had been enforced it would place women in Athens in a disadvantageous position compared with women in other parts of Greece⁴⁵ or women in the Hellenistic world.⁴⁶ However, a fair number of passages demonstrates that women did and could perform transactions involving larger sums of money (e.g. D. 36,14-5, 41,8-9, Lys. 31,21, Hyp. 3,2). To this we need to add the evidence about wealthy

⁴² R. Brock, 346, S. Walker in *Images of Women in Antiquity* ed. A. Cameron-A. Kuhrt, London 1983, 81-91.

⁴³ About women's work see P. Herfst *Le travail de la femme dans la Grèce ancienne* (Diss.) Utrecht 1922, Lacey, *Family* 171 ff., Ehrenberg *Aristophanes* 203 ff., Schnurr-Redford *Frauen* 213-24

⁴⁴ According to L.J.T. Kuenen-Janssens *Mnemosyne* 9 (1941) 199-214, equivalent to the food supply of an ordinary family for a week.

⁴⁵ Cf. G.E.M. De Ste Croix CR 20 (1970) 273-8, M. Gagarin *Symposion* 1993, 61-71 and the response by A. Maffi *Symposion* 1993 73-8.

⁴⁶ H. Van Bremen, in *Images of Women* 223-42.

courtesans living in Athens as independent persons without direct control of their finances by a man.⁴⁷ One explanation could be that transactions above the sum mentioned in the law took place with the consent of the woman's *kyrios*, but the problem is that such a procedure is not mentioned anywhere; where women are mentioned as participants in transactions involving large sums, they are presented as acting in their own right. In addition, such an explanation cannot cover courtesans who managed their own wealth without any *kyrios*. De Ste Croix on the basis of the evidence of manumission inscriptions and *horoi* takes a bleak view stating that women had very limited property rights, and he is followed by Schaps (*Women* 52-6). On the other hand, Hunter and Foxhall⁴⁸ take a more optimistic view and conclude that women in practice had control over their finances, as they could often hold properties (Is. 5,6. 27, 7,31, 11,9. 49) or make claims for large inheritances, represented in court by their *kyrios* (Is. 3,3, 7,2, 11,17). E.M. Harris⁴⁹ correctly emphasises that in reality people found ways of bypassing the law, and that, although the property was under the authority of the husband, the woman would need from time to time to take important decisions about the finances of the household and manage considerable sums of money.

Scholars universally accept that the law quoted in Is. 10.10 was in force in the classical period and their opinions diverge only when it comes to the explanation of the numerous instances showing that the law was not observed. In my opinion, the evidence strongly suggests that this law was virtually obsolete in the classical period. This was an old Solonian text (mentioning *medimnoi*, not *drachmas*) never formally abolished but not observed in practice, as transactions of money whether conducted by a woman or a man created the same obligations. To put it simply, whoever had the control over the money could dispense it in any way he/she thought fit. If there were impediments these were imposed by the inability of the woman to

⁴⁷ Sinope, for example, was wealthy enough to finance a sacrifice during the *Haloa*. This would be truly expensive, if we compare it with a sacrifice at the same festival commemorated by *IG ii2 1299*. Sinope was showing off her wealth at a festival attended by many courtesans: cf. com. 116 and *Amphis* PCG fr.23

⁴⁸ Hunter (*Policing* 20-9), L. Foxhall CQ 39 (1989) 22-44.

⁴⁹ E.M. Harris *Phoenix* 46 (1992) 309-21

appear in court and defend her interests, or turn up in the financial centres of Athens and deal with strange men without the fear of compromising her reputation. These were obstacles far more concrete and serious than an antiquated Solonian law, and a woman could not overcome them without legal representation by a man, whether *kyrios* or *προστάτης*.

viii. Emotional communication between men and women

The authority of the woman in the house and her role as a cherished companion is often mentioned.⁵⁰ An interpretation of Athenian marriage as an institution with practical goals but uninterested in the feelings of the participants would be too narrow to reflect the reality. There is a fair number of references to the affectionate relationships between husbands and wives.⁵¹ Just (131-5) has drawn attention to a number of funeral inscriptions which demonstrate the affection of the men who had commissioned them for the dead women mentioned. The closeness of the relationship between husband and wife is often described as physical. Athenian men relied mainly upon their wives for sexual gratification (Just 135-51), although undoubtedly extramarital sex was not perceived as unlawful or improper for men, provided that it was not with a free woman under the legal protection of another man, i.e. his wife, concubine, mother, sister, or daughter (cf. com. 64-71). Perceptions of women as lustful and dominated by their sexual desires are widespread among male Athenian authors.⁵²

Homosexual affairs were common among Athenian men, but it seems that wives did not feel threatened by the erotic encounters of their husbands with other men. E. Cantarella in her sober account of

⁵⁰ See e.g. Eur. *I.A.* 1158-61: ὡς ἄμεμπτος ἦ γυνή / ἐς τ' Ἀφροδίτην
σωφρονοῦσα καὶ τὸ σὸν / μέλαθρον αὔξουσ', ὥστε σ' εἰσιόντα τε /
χαίρειν, θύραζέ τ' ἐξιόντ' εὐδαιμονεῖν, Eur. fr. 822 Nauck: γυνή γὰρ
ἐν κακοῖσι καὶ νόσοις πόσει / ἡδιστόν ἐστι, δώματ' ἦν οἴκῃ καλῶς, /
ὀργήν τε πρᾶννοῦσα καὶ δυσθυμίας / ψυχὴν μεθιστᾶσα, Erdmann, *Ehe*
276 ff.

⁵¹ See M.R. Lefkowitz *G&R* 30 (1983) 31-47, P. Walcot *AncSoc* 18 (1987) 5-33,
Just *Women* 126-31, P.G. McC Brown *CQ* 43 (1993) 189-205.

⁵² Just 158-65, 217 ff., Finnegan *Women* 101-20.

homosexual behaviour in the Greek world⁵³ discredits many misconceptions of previous scholars and asserts the view that Athenian men were seeking romantic love with their equals and for their own sake when they engaged in affairs with other men.⁵⁴ She correctly sees homosexual love as an encouragement for a man to practise public virtues, while the love for the wife would be an encouragement to practise private ones. Humphreys' concept of men as substitute for women in homosexual relationships (*Women* 44) is erroneous and simplistic in the sense that it undermines the complexity of male sexuality. Athenian men had no shortage of female sexual partners, if this was what they desired. In their love affairs with men they sought a different more idealistic type of love, certainly including sex, but also based on companionship, comradeship, and the inevitable games of power, control, possession, challenge and conquest, dimensions so significant in courtship and romantic love but absent from any type of relationship a man would normally have with a properly brought up woman.⁵⁵ These differences between homosexual and heterosexual love should explain why Athenian women did not feel jealousy towards their husband's male lovers. Jealousy when present would be directed towards the other woman, the one who represented a threat to the wife's status and privileges: for example, the wife of Alcibiades was not jealous of his male lovers but of his courtesans and concubines (And. 4,14) and Euctemon's wife was jealous of Alce (Is. 6,21).

ix. An overall view of Athenian women

The strong woman of Greek Tragedy or the free and uninhibited female of Comedy have been interpreted either as transgressions from female to male,⁵⁶ from oikos to polis,⁵⁷ from the 'inside' to the

⁵³ E. Cantarella *Bisexuality in the Ancient World* (Trsl) New Haven and London 1992

⁵⁴ This view is also held firmly by Just *Women* 135-51.

⁵⁵ It is characteristic that the verb ἐπαύ is absent from the definitions of women's roles in the above-mentioned statement of Apollodoros

⁵⁶ Blundell, *Women* 172-80

⁵⁷ M. Shaw *CPh* 70 (1975) 255-66.

'outside' space,⁵⁸ or as a dialectic between *oikos* and *polis*.⁵⁹ F. Zeitlin interprets these characters in a dramatic/art context,⁶⁰ while H.J. Tschiadel⁶¹ rightly draws attention to the dramatic prospects created by the use of female characters on stage. The strong woman as a dramatic character has appealed to audiences from various cultural backgrounds and no doubt strong women existed in classical Athens and acted as such given the circumstances,⁶² but in real life Athenian women did not act like tragic heroines. In general the Athenian woman exercised considerable authority in the *oikos*, she had an important role to play in the state religion (cf. com. 87), her individual political, personal and property rights were protected by law and custom, and she was recognised as a citizen at her birth⁶³ and throughout her life (cf. com. 107 πολῖτις). Lefkowitz rightly says that Athenian women did not have or seek political power, but they participated in the Athenian polis as a community (Just 13-25) and exercised influence through the men of their families (cf. e.g. Is. 12,5 and com. 110). Their interest in decisions over peace or war was legitimate, not only because it affected directly their own lives but also because in war times women functioned in a partnership with men.⁶⁴ Wars, however, as well as politics were conducted by men and this is why historians like Thucydides have marginalised women.⁶⁵ Nevertheless the voice of women was not ignored. We often hear the orators echoing statements made by their womenfolk, or considering the impact of the decisions taken in the assembly and the courts over the lives of their loved ones at home (cf. com. 110). Hunter (*Policing* 38) rightly concludes 'In practice the two (sc. husband and wife) shared power and authority in a partnership based on the division of labour and separation of spheres'. It is fair to say that the male citizens of Athens would never be able to respond to the daunting demands of the

⁵⁸ P.E. Easterling *BICS* 34 (1987) 15-26.

⁵⁹ H. Foley *CPh* 77 (1982) 1-21.

⁶⁰ F. Zeitlin in *Images of Women* 92-106.

⁶¹ H.J. Tschiadel *CB* 11 (1984) 29-49.

⁶² V. Hunter *EMC* 33 (1989) 39-48, M. Lefkowitz, in *Images of Women* 49-64.

⁶³ In the ceremony of ἀμφιδρόμια: cf. Ogden, *Bastardy* 88-91.

⁶⁴ D. Schaps *CPh* 77 (1982) 193-213.

⁶⁵ D. Harvey *Arethousa* 18 (1985) 67-90.

direct democracy, unless they were able to delegate a considerable amount of authority over private affairs to female citizens, with the confidence and trust that the women would be willing and able to exercise this authority and manage well the private matters of the *oikos*. To perceive this role as unworthy, or the contribution of Athenian women to the progress and prosperity of their society as minimal, would be a historical injustice.

2. *Athenian citizenship and the Athenian state*

The present speech is a very important source for a number of issues concerning Athenian citizenship and the primary literary source illustrating naturalisation of foreigners in Athens. All these issues are discussed in detail in the commentary (mainly com. 16, 55-63, 88-93). Here I present a summary sufficient to illustrate my point of view and serve as a guide for a better understanding of the legal implications of this case expounded in chapter 3.

i. Male Athenian citizens

A decade after the establishment of the radical democracy (462) a law with far-reaching implications was passed by Pericles (451) establishing a concept of Athenian citizenship which remained inextricably linked with the democratic constitution throughout the classical period.¹ The content of this law and the reasons behind its introduction have been highly controversial issues. Some scholars argue that this legislation was quite extensive, others, I think rightly, argue that this was a simple, clear-cut piece of legislation with defined objectives.² According to the existing evidence,³ the only statement certainly included in this law was that a person could be an Athenian citizen

¹ About the Periclean citizenship law cf. com. 16, Hignett *Constitution* 343-7, Rhodes *AP* 331-5, Patterson *Pericles* passim, Sealey *Women* 12-6 and *AJAH* 8 (1983) 97-129, A. Boegehold, in *Ideology* 57-67, Ogden, *Bastardy* 59-69.

² Cf. K.R. Walters *ClAnt* 2 (1983) 314-36

³ Arist. *Ath.* 26,4, *Pol.* 1275 b 31, 1278 a 34, *Plu. Per.* 37.

only if the father and the mother were Athenian. Such a person would be citizen by birth.

Athenian citizenship could be conferred upon an alien man, a freedman, or even a slave through a personal naturalisation decree, on grounds of ἀνδραγαθία, namely for great services to the Athenian state.⁴ During the years of the Peloponnesian war the Athenians awarded citizenship to large groups of people like the Plataians, the Samians, the heroes from Phyle and those who took part in the battle of Arginousai, for what was perceived as extraordinary bravery and exemplary loyalty to the interests of Athens.⁵ The large numbers of new citizens made the Athenians question the extent of the rights to be awarded to the new citizens and the demos decided to grant them full rights on an equal basis in all spheres, except a few practically insignificant but sensitive areas related to religion.⁶ On the whole, I maintain (com. 88) that the naturalisation laws underwent constant changes throughout the classical period always with a view to tougher controls and regulations. A naturalised citizen would be citizen by decree and could pass on citizenship to his descendants, born before or after the citizenship award, regardless of the status of their mother. If the mother was Athenian they would be considered as citizens by birth; if she was an alien they would be citizens by decree. The only difference between citizens by birth and by decree was that the latter, clearly for reasons of religious observance, could not be appointed as one of the nine archons or selected for one of the priesthoods which were hereditary and restricted to the members of certain gene (cf. com. 92, 104). Individual naturalised citizens were allowed to join a phratry of their own choice, but those naturalised *en masse* did not acquire phratry membership automatically because, I suppose, this membership was not obligatory for the exercise of one's citizenship rights. All male citizens, by birth or by decree, were members of a deme and a tribe and registration with the deme was the legal way of entering the citizen body (cf. com. 13). Phratry membership was technically separate from citizenship in the classical period; however,

⁴ Cf. com. 88 and Osborne *Naturalization* passim

⁵ Cf. Osborne, o.c., about the Plataians: K.Kapparis *GRBS* 36 (1995) 359-78, about the Samians: C. Koch *Tyche* 8 (1993) 63-75.

⁶ Cf. Kapparis o.c. and com. 92, 104.

since only legitimately born males of citizen status were entered into the phratry registers, this membership was a strong proof in support of a person's claim to citizenship, if the deme questioned a man's entitlement.⁷ Phratry membership was also a strong proof of legitimate descent. We cannot decide for sure whether legitimate descent was a requirement for citizenship *per se* (cf. Intrd. 1 v and com. 16), but we know that only legitimate offspring could inherit from their father. Thus phratry membership might be very significant for one's economic rights. Finally phratry membership was the strongest available proof of citizen status for boys under eighteen years of age (that is, before the registration with the deme took place) and a clear proof that an adoption had taken place, since an adopted son would have to be introduced to the phratry of the man who adopted him (cf. com. 13 and 55-63).

Women were not registered with deme and phratry, but they might be presented to the phratry. A man could offer a sacrifice as a means of publication of his marriage or the birth of his daughter, and this would be advisable in cases where one's daughter was likely to become the heiress of her father, and a public acknowledgement of her legitimate descent might be a good idea.⁸ Although other cities conferred citizenship upon women in their own right, the Athenians did not, because, it seems, ἀνδραγαθία was not perceived as applicable to women. The prospect of a woman being naturalised for services to the Athenian State, although in theory not impossible, in practice it did not happen. Besides, there was no specific reason why citizenship should be conferred upon the womenfolk of naturalised citizens: in any case their offspring would be citizens by force of the decree awarding citizenship to the father (cf. com. 92).

The concept of Athenian citizenship in the radical democracy consisted of a series of well defined rights, which placed the citizen population into a class apart compared with the free non citizens and the large number of slaves living in Attica. Citizenship applied to men and women but it meant different things for each gender. A citizen man (ἀστικός or πολίτης: cf. com. 107 about the terminology and com. 16) could participate fully in the political and financial life of the city,

⁷ Lambert *Phratryes* 25-57, com. 55-63, 92, 104.

⁸ Cf. com. 13 and Intrd. ch. 1 v-vii.

elect and be elected to offices, be appointed by lot as a magistrate or judge, appear in court as a litigant or witness, participate fully in religious events, own real estate and, in short, be a full member of the state and the community. A man who was disfranchised (ἄτιμος: com. 8) either for debts to the state or because a law-court had stripped him of his civil rights could not participate in politics, the judicial system, or some religious events. As a consequence of these prohibitions his financial activities could be seriously impeded and his role as a defender and representative of the interests of his *oikos* diminished. An alien man could not own landed property, unless granted this right through a personal decree as an honour (ἐγκτησις: cf. com. 2), he could not actively participate in the political and judicial system, and paid higher taxes, but he could trade freely, engage in litigation, serve as a witness, and was afforded in many instances the same protection by the law as a citizen.⁹ We know a fair number of wealthy metics who lived in Athens for their entire lives as active and respectable members of the Athenian society (cf. com. 16), like Pasion, the father of Apollodoros (cf. com. 2). Slaves, male or female, were owned and had no rights over their bodies, but some protection was afforded to them by the homicide law and by social standards recommending humane treatment (cf. com. 9-10 and 29-32).

ii. Female Athenian citizens

Women did not participate in the political or judicial system and in their financial activities were represented by the men under whose guardianship they were placed (cf. Intrd. ch. 1 vi, vii) normally represented them. Citizenship for a woman (ἄσπῃ or πολῖτις) meant that she had the exclusive right to become the lawful wife of an Athenian man and give birth to Athenian citizens, legitimate offspring and heirs to their father. A citizen woman could become in her own right the heiress of her natal *oikos* in the absence of legitimate brothers (cf. Intrd. ch. 1 vii). She could also participate actively in religious

⁹ Cf. com. 16, D. Whitehead *Metic* passim, MacDowell *Law* 75-79.

occasions as a representative of her family.¹⁰ The citizen woman was destined to become an Athenian man's wife and as such she might come to exercise considerable authority and control over the affairs of the family, being the figure in charge of most private affairs of the *oikos* (cf. Intrd. ch. 1 vi). An alien woman could not marry an Athenian man at the time of this trial (cf. com. 16), but she could become his concubine, namely enter into a permanent relationship with him; however, her offspring would not be Athenian citizens and legitimate heirs to their father. Otherwise she could attend religious events, but not participate in them in a leading role (cf. com. 87), and she could share authority with her partner in the running of the household, even though from a position inferior to that of a lawful wife (cf. com. 87 and Intrd. ch. 1 v). An alien woman could become the lawful wife of an alien man. Their union would be formal and perhaps registered, either with the polemarch or the demes (Ogden *Bastardy* 129-35). Their offspring would be considered as legitimate and heirs of their father, but certainly they would be alien themselves (cf. com. 16). Alien women, mainly free courtesans, could be living independently outside the boundaries of a family unit and these would be the only females in Attica not enjoying the protection of a family, but also not impeded by its restrictions (cf. Intrd. ch. 1 iv, vi). Slaves might come together and have children, sometimes with the consent of their masters, but their offspring would be slaves and, like their parents, property of the owner.

iii. Athenian citizenship, the law and the family

The Periclean citizenship law which established citizen descent from both sides as an essential requirement for Athenian citizenship remained valid for the most part of the classical period. It is not clear whether Pericles foresaw the changes which this legislation would effect upon the structures of the Athenian democracy, but, whether intentionally or not, his law affected many areas of public life. The entire legislation of Athens concerning family law, marriage,

¹⁰ In some like the Thesmophoria, admission was restricted to citizen women: cf. com. 87.

introduction and participation into the citizen bodies, along with the authority which these exercised in the political and financial life of Athens, had to be adjusted to the requirements of the Periclean citizenship law. This is why, whatever the reasons for its introduction, the impact of it upon the structures of the Athenian polis was tremendous. The law fell in disuse during the Peloponnesian war, when the shortage of men led to the legitimisation of offspring of mixed unions (μητρογένου). Ogden (70-7) has seen the collapse of the Periclean citizenship law as a deliberate process taken step by step. However, it seems to me that the law simply stopped being observed in practice. When war and plague had devastated most households, the Athenians would rather legitimise their children from mixed unions than be deprived of heirs and the city in these circumstances did nothing to stop these men entering the citizen body. The force of the Periclean law was re-instated with the decrees of Aristophon and Nicomenes in 403,¹¹ and it was rigorously observed in the fourth century.

By the time of this trial another even stricter law was in force. There is disagreement about the date of its introduction, but I argue that it dates from the 380's (cf. com. 16). This law prohibited lawful marriage between citizens and aliens. Such marriages were discouraged by the Periclean citizenship law, but seemingly did not cease to take place throughout the fifth century (cf. com. 16). This law did not intend to stop Athenians living with aliens; mixed unions in the form of concubinage are well attested throughout the classical period, acceptable by social standards and affording a kind of legal protection (cf. com. 64-71). The new law, however, by making lawful marriage between a citizen and an alien theoretically impossible intended to draw the line between concubinage and lawful marriage, especially keeping a watchful eye on the status of the offspring of each form of union. The real target of this law was pretence and the deception of individuals and the state-bodies, such as the deme and the phratry with its subgroups. An Athenian and a foreigner who openly lived together in concubinage, without the intention of deceiving anybody about the nature of their relationship and without trying to pass off their offspring as legitimately born Athenian citizens, had nothing to fear

¹¹ Carystios *FGrH* 358 f 11, Eumelos *FGrH* 77 f 2.

from this law. But those who knowingly acted as if they were a citizen couple and attempted fraudulently to usurp the rights of legally married Athenians, especially with regard to the status of their offspring, were subject to the force of this law and both faced penalties, more severe for the alien partner, if prosecuted and convicted (16 and com. ad loc.). Even harsher were the penalties for someone who deliberately deceived an Athenian man and betrothed an alien woman to him (52, cf. com. 16). This last section of the law very clearly intended to prevent the deception of an Athenian man who might take an alien woman believing that she was Athenian, and, unaware of her true status, act with her as a legally married Athenian couple unwittingly deceiving in turn the city. Neaira and Stephanos as the prosecution alleged were living in terms equivalent to lawful marriage although she was an alien and had deliberately attempted to deceive the city about the type of their relationship (see ch. 3 ii).

3. The prosecution and trial of Neaira

i. The date of the speech

The date of the speech is set between 343 and 340. Xenokleides left Athens to go to Macedonia after his disfranchisement in 369. In 343 he was dismissed from Macedonia for political reasons and returned to Athens (D.19,331). In 26-28 we understand that he was back in Athens, therefore the speech must be dated after 343. On the other hand, in 339 Demosthenes succeeded in giving effect to the decree of Apollodoros about the theoric fund (cf. com. 4). Apollodoros would certainly have mentioned this if the speech had been composed after 339, therefore it must be placed before this date. From the narrative in 3, where the only reference to a war against Philip belongs to the years before 348, we can conclude that the speech was probably composed even before 341/0. Besides, the language used for events which took place in 348 implies that they happened some time ago, yet most Athenians would still be able to remember them (5, 91 καὶ τοὺς μὲν πολλοὺς καὶ παλαιοὺς ἔργον διηγήσασθαι· ἃ δὲ πάντες μνημονεύετε).

ii. The background of the prosecution of Neaira

The enmity between Stephanos, the alleged husband and advocate of Neaira, and Apollodoros, the actual prosecutor, was old and founded upon political differences. It started in 348, when Apollodoros as a member of the Council proposed a decree, the aim of which was to increase funding for the military campaign against Philip, probably encouraged by members of the anti-Macedonian party (3-5). The decree was approved by the assembly but Stephanos, acting on behalf of the party around Eubulos, succeeded in blocking the proposal of Apollodoros in court through a γραφή παρανόμων (cf. com. 4 στρατιωτικά). The objectives of Stephanos were to have the decree annulled and Apollodoros disfranchised. He succeeded in the first, but failed in the second. When Stephanos won the trial he proposed as a penalty a heavy fine (6-8) which Apollodoros would be unable to pay. If Apollodoros became a debtor to the state he would lose his civil rights. However, the jury imposed a lighter fine which Apollodoros paid. Around 346 Stephanos tried again to remove Apollodoros from the political stage of Athens, this time by organising a plot and prosecuting Apollodoros for homicide. This attempt failed badly: the judges realised that the allegations of homicide were false and Stephanos lost the trial (cf. com. 9-10).

Apollodoros had the opportunity to retaliate a few years later, when he prosecuted Neaira, the concubine of Stephanos, alleging that she was living with him practically as his lawful wife, contrary to the law which forbade foreigners like herself to marry or pretend marriage with Athenian citizens (cf. ch. 2 iii, 3 ii and com. 16). Apollodoros for some reason (cf. com. 14 συνήγορον) did not bring the prosecution himself. The formal prosecutor of Neaira was his brother-in-law and son-in-law (2) Theomnestos, who after a brief introductory speech handed over to Apollodoros. After this point the latter acted as the actual prosecutor: he had summoned the witnesses, challenged Stephanos (123-4), investigated the case very thoroughly, produced documents, and by the end of the speech he had forgotten that he was only the advocate of Theomnestos (126 τὴν γραφὴν ἣν Νέαιραν ἐγὼ ἐγραψάμην).

Theomnestos offers two reasons for prosecuting Neaira, a woman otherwise unknown to him: revenge for the previous lawsuits against

Apollodoros, and his desire to see the authority of the law reinstated. The second reason is nothing more than a patriotic generality. Revenge could be a more credible motive, yet not entirely convincing, when we think of the risk of a fine, if the *graphe* failed miserably, the time and effort put into the investigation and preparation of this case, and the viciousness of this attack primarily against an ageing woman who had never personally harmed Apollodoros or Theomnestos. After all, the wrath of Apollodoros and his relatives might be mollified, since Stephanos had failed to have Apollodoros disfranchised, or convicted in the homicide case. In addition, if my suggestion that the homicide trial should be dated around 346 is correct (cf. com. 9-10), the motive of revenge becomes entirely unconvincing, since a prosecution motivated by mere revenge should have come shortly after the homicide trial, not four or five years later.

G. Macurdy¹ suggested that the ulterior motives behind this trial were political. Stephanos had been a supporter of Euboulos while Apollodoros had been a supporter of Demosthenes and the anti-Macedonian party. Macurdy believes that before 340 the two opposite sides started merging in the face of the imminent threat from Philip. Stephanos opposed this manoeuvring and was attacked with the consent of Demosthenes and Eubulos (who appear as witnesses in 123) through the prosecution of Neaira. Carey (4-8) shares Macurdy's opinion that the trial was politically motivated but, with good reason, objects to this pattern of political alliances, on the ground that, if Eubulos had moved closer to the anti-Macedonian party, his supporter Stephanos would have followed. Trevett² and Carey believe that this prosecution was part of a preliminary operation trying to test public opinion before the final attack on the theoric fund by Demosthenes in 339. Both scholars correctly point out the difficulty of seeing the whole picture of political alliances in such critical times, when Athens could no longer avoid facing the reality of the forthcoming conflict with Philip and old enemies had to unite, reluctantly or not. But, all the same, it seems clear that the motives behind this public prosecution extended beyond personal animosities. The real target of this trial was not an old courtesan, now in her late fifties or sixties,

¹ G. Macurdy *AJP* 63 (1942) 257-71.

² Trevett *Apollodoros* 149-150.

who had faded into respectable anonymity long ago. The targets were not the four children either: Apollodoros only makes a couple of eponymous references to the boys and treats Phano rather as an immature girl without personal responsibility. This prosecution has been conceived and brought forward as an attack primarily on Stephanos. A successful outcome for Apollodoros could result in the disfranchisement of Stephanos, if the latter was unable to pay a fixed fine of 1000 drachmas (cf. com. 16). But even if Stephanos paid the fine and succeeded in avoiding disfranchisement, his entire household would be in ruins, as his life-long partner would have to be sold into slavery and doubt would be cast upon the citizen status of his children. Like the rest of the public forensic speeches in the *Corpus Demosthenicum*, this speech was motivated by political strife and had political ends.³ The viciousness of this attack is demonstrated by the fact that it is directed against the lives of people who did not have any personal connection with the political links of Stephanos, that is, his old partner and his children. Even austere scholars, like Blass, have been appalled by these tactics: 'Dass der Racheacht der beiden (sc. Apollodoros and Theomnestos) gelang, und Neaira verkauft wurde, möchte ich nicht glauben'.⁴ Neaira has won almost universal sympathy in her battle to avoid slavery in her old age.

iii. The case against Neaira

Neaira was prosecuted according to a law which prohibited marriage between a foreigner and an Athenian citizen under severe penalties. The law is quoted by Apollodoros verbatim (16, cf. com. ad loc.):

If an alien man lives in marriage with a citizen woman, by any means or device, let any Athenian with the right to do so, bring a prosecution against him to the Thesmothetai. If he is convicted, he and his property are to be sold, and the one third of the sale is to be given to the successful prosecutor. The same applies if an alien woman lives in marriage with a citizen man,

³ For the use of the courts for political ends see R.A. Bauman *Political Trials in Ancient Greece* London 1990.

⁴ Blass *Beredsamkeit* 3, 539.

and the man living in marriage with the convicted alien woman is to pay a fine of one thousand drachmas.

Apollodoros speaking in anticipation of the arguments of the defence summarises the points which they should have to prove in order to demonstrate that Neaira was not guilty. These points also specify what the prosecution had to prove in order to show that Neaira was guilty (118-122). In the first place the prosecution had to establish the fact that Neaira was an alien (there was no doubt about the citizen status of Stephanos). This was not difficult, as a number of Athenian men were called to testify about the career of Neaira as an expensive courtesan in her younger days (namely 30 to 40 years ago) and support firmly the claim of the prosecutor that she was originally a slave, then a freedwoman. Apollodoros devotes one third of his speech to this point (18-49). But putting so much effort into proving that she was a foreign courtesan was not necessary from a legal point of view. The defence agreed that she was an alien and a former courtesan (118).

Then the prosecutor had to prove that she was legally married to Stephanos. The most conclusive way of proving this would be to present witnesses that she was betrothed to him with *engye* or *epidikasia* as a citizen woman. But neither of these procedures had preceded their union; Stephanos met Neaira when she was working as a courtesan in Megara, they fell in love, and decided to return to Athens and live together as a couple (37-9). The prosecution and the defence agree that neither *engye* nor *epidikasia* took place between Stephanos and Neaira. The defence claims that she was living with him as his concubine. The prosecution claims that, although in reality she was nothing more than a concubine, the actions and behaviour of the couple demonstrated that they were living as a legally married couple of Athenian citizens, namely that they were pretending lawful marriage. But, where does Apollodoros base his claim that they were acting as a legally married couple?

Apollodoros claims that Stephanos enrolled with the *phratry* and the *deme* two boys, Ariston and Proxenos, who were in fact Neaira's children from an unnamed father, born in Megara, while she was working there as a courtesan (35 and 38). The judges are also left to understand that a third son of Neaira from Stephanos, named Antidorides after the father of Stephanos (cf. com. 121), was also

registered with the phratry and the deme. When Apollodoros says that Stephanos had these children introduced to the phratry and the deme, he means that the later had presented them as Athenian citizens (cf. com. 13 and 55-63). Apollodoros also claims that Stephanos gave twice in lawful marriage to Athenian husbands a daughter of Neaira, called Phano, by an unnamed father. Stephanos would not have been able to betroth Phano to an Athenian man as his lawful wife, unless he had presented her as an Athenian citizen (cf. com. 16). Stephanos introduced the three boys into the phratry and the deme, after taking an oath that they were his own children lawfully born from a citizen woman, his former wife, before he met Neaira. He also presented himself and the same citizen woman as the parents of Phano. So the prosecution claims that Stephanos had fraudulently presented the children of Neaira as his own legitimate offspring, in order to secure for them the rights and privileges of Athenian citizenship. The defence claims that these children were lawfully born offspring of Stephanos and a citizen woman, and that Neaira, who was a mere concubine of Stephanos, was not the mother of these children. This is the real point of contention. The type and validity of the union between Stephanos and Neaira mattered with regard to the status of any offspring (cf. Intrd. ch. 1 v and com. 16). If the defence succeeded in persuading the jury that the parents of the children were Stephanos and a citizen woman, there would be no grounds for Neaira to be convicted. Stephanos and Neaira would have done nothing unlawful simply by living together in an exclusive, long-term relationship (cf. Intrd. ch. 1 v). However, if the prosecution succeeded in persuading the judges that the children were Neaira's, then she should be convicted. The type of union between Stephanos and Neaira would matter little, if they did not attempt to usurp the rights and privileges of a lawfully married citizen couple. But if it was established that they had presented non-citizen children as citizens, this would mean that *de facto* they had acted as a legally married citizen couple and that they had broken the above mentioned law. Apollodoros is not far off the mark when, in the context of this prosecution, he interprets the crucial verb συνουκεῖν (literally 'to be living together in lawful marriage') as 'to introduce to the phratry and deme the sons, and to betroth the daughters to (Athenian) men, as one's own (citizen) daughters' (122; cf. com. 16).

It was crucial for the prosecutor to establish that the four children, Ariston, Proxenos, Antidorides and Phano, were the children of Neaira and as such not entitled to Athenian citizenship. But Apollodoros takes it for granted that the children are Neaira's and presents no witnesses or any other evidence regarding their parentage. Moreover, apart from a couple of passing references, he ignores totally the three boys, evidently because he finds this expedient for his line of argumentation. The three boys should be in their late twenties or early thirties at the time of this trial. They were registered with the phratry and the deme of Eroiadai (cf. Intrd. ch. 4 i) and nobody had ever attempted to cast doubt upon their citizen status during the consecutive and rigorous scrutinies which preceded registration with these bodies. Apollodoros would not have failed to mention any such dispute. Their citizen status was firmly established and Apollodoros was well aware of the fact that one could not put into question the citizen status of adult Athenian males without substantial evidence. But Apollodoros did not have this kind of evidence in his hands. This is why he chose to leave out the three boys and concentrate on the status of Phano.

It was much easier to question the citizen status of a woman, since women were not included either in the phratry or the deme registers (cf. com. 13). Apollodoros does not present any evidence or witnesses regarding her circumstances of birth. As with the boys, he takes it for granted that she was the daughter of Neaira. However, the prosecutor devotes the one quarter of his speech to the two marriages, divorces, and misadventures of Phano (50-87), trying to prove that she was twice divorced because her husbands discovered that she was an alien. According to Apollodoros, Stephanos first betrothed Phano to a man named Phrastor (50-63), with whom she lived for a fairly short period of time, amid difficulties caused by differences of character and temperament (50 ὥς δ' ἤλθεν...τετραμμένη). Phano was brought up by Neaira in a household with fairly relaxed habits and did not show much enthusiasm for the austere ways and morals of her mean, difficult and authoritarian husband. It seems clear from the narrative (50-51) that the two of them did not get along at all. Phrastor in a rage divorced her while she was pregnant (51). Apollodoros claims that the main reason for the divorce was Phrastor's suspicion, after he received some information about her status. However, the orator, in

accordance with his habit of providing many details, important and expedient as well as unimportant and essentially harmful for his case, allows us to understand that the reason behind the divorce was complete incompatibility between the couple. Apollodoros may be saying that Phrastor was suspicious of the citizen status of his wife, but the actions of Phrastor prove that he was prepared to acknowledge her citizen status during court proceedings. When Phano gave birth to Phrastor's son, he was persuaded to take back the boy and acknowledge him as his legitimate son and heir (cf. com. 55-63 and 56 ποιήσασθαι υἱόν). By doing so Phrastor simultaneously acknowledged that Phano was of citizen birth (even though he might have suspicions in private). The first serious test of the citizen status of Phano came when Phrastor introduced his son to his *genos* and *phratry* (55-63; cf. com. ad loc. for a detailed presentation of the issues mentioned here). Some members of the *genos* tried to block the admission of the boy on the ground that his mother was the daughter of Neaira and consequently an alien. Phrastor took legal action against the *genos* and the case went to public arbitration. Before the arbitrator Phrastor claimed that he was introducing to the *genos* a legitimate son of his and the daughter of Stephanos, from the deme of Eroiadai, and surely he was in a position to present at least a testimony from Stephanos that Phano was his own legitimate daughter from a citizen woman. The burden of proof fell upon the *genos*. The *gennetai* needed to be able to prove that Phano was the daughter of Neaira. The only proof that they could present was their own knowledge, that is, nothing more conclusive than rumours which had reached their ears. In order to compensate for this shortage of evidence, they tried to extract a confession from Phrastor through challenge to an oath. The wording of the oath would have been arranged in such a way that it served the purposes of the *genos*. Phrastor was probably asked to swear that he was introducing a legitimate son of his from an Athenian woman, and not Phano, the daughter of Neaira. If Phrastor had taken this oath, he would have confessed that Phano was the daughter of Neaira and therefore an alien, providing the *genos* with the missing proof. Naturally Phrastor rejected the challenge. Apollodoros mentions twice (60 and 63) the refusal of Phrastor to swear, but nowhere the actual outcome of the case. In addition, no specific reference to the outcome is made in the testimony of the *gennetai* presented in this trial. Instead,

the six representatives of the *genos*, whom Apollodoros has asked to testify about the arbitration, ambiguously say that they put obstacles in Phrastor's way on account of his wife's status (61 *καλύειν εἰσάγειν Φράστορα τὸν υἱόν*). Scholars unanimously understand that this last sentence indicates the outcome of the case. However, this phrase does not mean that Phrastor did not succeed in his attempt to introduce his son; it only says that this introduction was contested. Three times the orator had the opportunity to indicate that Phrastor failed to have his son registered with the *genos* and three times he avoids saying so. He employs various ambiguous phrases which might lead someone to believe that Phrastor failed, but carefully considered they do not confirm this. Did Apollodoros have anything to hide? If Phrastor had lost the arbitration and failed to have his son registered on account of the status of Phano, would Apollodoros fail to mention it? This would be the most conclusive piece of evidence regarding the status of Phano in the entire speech; Apollodoros could not possibly have omitted to mention it. It is obvious that the arbitrator having to choose between the father's confirmation of the boy's legitimacy, possibly supported by a number of testimonies from relatives, and the basically unsubstantiated claim of the *genos* regarding Phano's status, had no option but to decide for Phrastor. The *gennetai* were compelled to register the boy, even though initially they had objected his enrolment. Phrastor's son from Phano remained in his father's *oikos* as his legitimate son and heir, as phrases like *ποιήσασθαι υἱὸν αὐτοῦ* (56), or Apollodoros' rather apologetic presentation of the reasons behind Phrastor's decision to acknowledge the boy (*βιασθεῖς... ἅν τι πάθῃ*), indicate. The boy beyond reasonable doubt was registered with *genos* and *phratry* and universally recognised as legitimate and heir to his father at the time of this trial, otherwise the orator would not be at pains to explain how this boy had been legitimised. If the boy were living in his father's house as a *vóthos* when this trial took place, it would be sufficient for the orator to say so and he could have produced perhaps the most substantial piece of evidence proving the alien status of Phano, in just a few words. Thus the first and most serious test of Phano's citizen status failed to prove that she was an alien; on the contrary, it provided in a sense a formal recognition of her citizenship.

Another way of disproving the citizen status of Phano is the attempt of Apollodoros to present her as a foreign prostitute (64-71, cf. com. ad loc.). He alleges that Stephanos and Neaira organised a plot with the intention to entrap the rich foreign merchant Epainetos and accuse him of adultery with Phano. Stephanos confined Epainetos and later let him go on the condition that the latter would pay a compensation of thirty minae.⁵ But Epainetos defied the agreement and prosecuted Stephanos for unlawful confinement, according to a law of Solon which excluded from the force of the adultery laws any woman who openly practised prostitution. Epainetos claimed that the house of Stephanos was a brothel and that he had spent a lot of money there, on Neaira and Phano. Rather than undergo a humiliating ordeal in court, Stephanos agreed to private arbitration and persuaded Epainetos to contribute ten minae towards a dowry for Phano. These sections are thought to suggest that Phano was a courtesan, like her mother Neaira. However, this is certainly wrong. Apollodoros does not say that Phano was a courtesan, although he would not have missed the opportunity to say so, if this was the case, as such an allegation would have undermined seriously her citizen status (cf. Intrd. ch. 1 iv and com. 24). Instead, he places these allegations in the mouth of Epainetos. We can see that Apollodoros did not dare to suggest in a straightforward manner that Phano was a courtesan, surely because it would be so blatantly untrue. Such allegations against a woman were not easily made and Apollodoros was not in the position to mention any other love affair of Phano. She was given in marriage at a young age, surely while still a virgin, she was faithful to Phrastor as well as to her second husband, and, in short, Epainetos was the only man, except her husbands, with whom she had an intimate relationship. The most likely explanation of the love affair with Epainetos is that it was a genuine case of adultery: this young woman, ill-treated and divorced by her first husband, with hardly any prospect of another marriage, due to the lack of a dowry, was fair game in the hands of a mature man lavishing presents on her, and probably showing her genuine affection. It seems likely that Stephanos and Neaira were aware of the affair, but allowed it with a view to financial

⁵ Equivalent to the dowry of Phano in her first marriage, unlawfully withheld by Phrastor.

benefits. However, during the affair and in the final settlement Phano was treated by her family not as an asset, a daughter brought up to become an expensive courtesan, but as a marriageable woman, a daughter destined to become somebody's wife. Here again the orator implicitly tries to convince the jury that Phano was nothing more than an alien practising prostitution, but he does not say so explicitly, and in 85-87 he changes the line of his argumentation, as this suits his purposes, presenting Phano as a genuine adulteress, that is, he places her into the same position as a citizen woman caught committing adultery.

The second marriage of Phano must have come not long after, as she was presented as a virgin bride to a man who was appointed as archon basileus (72-78; cf. *com. ad loc.*). The basileus ought to have a living wife in her first marriage, and this rule was dictated by the sacral duties which she had to perform alongside her husband during his year in office. Phano as basilinna became the bride to the god Dionysos in the symbolic ritual of the sacred Marriage during the festival of Anthesteria. One can hardly imagine a more public proof of a woman's citizen status than her role as the wife of the archon basileus. Phano performed the ancestral ritual leading a team of respectable citizen women (γέραιραι), in front of the entire population of Athens. In this respect she was not a person unknown to most men except her kin and neighbours, like many a citizen woman leading a life of dignified obscurity, but a public figure in her own right. A prosecutor trying to prove that this woman was not a citizen would need to produce truly substantial evidence. Apollodoros cannot provide this evidence. Instead, he tries to interpret the facts in a way that suits his purposes. Theogenes divorced Phano during his year in office compelled by the Areopagos, after a secret enquiry. Apollodoros alleges that the Council discovered that Phano was the daughter of Neaira and intended to fine Theogenes for taking such a wife and allowing her to perform the rituals of the Anthesteria. Theogenes pleaded with the Council saying that he did not know her background and promised to divorce her. The Council was satisfied and let the matter rest, while Theogenes divorced Phano.

Let us suppose that the Areopagos could firmly establish that Phano was in fact the daughter of Neaira and as such an alien. This would mean the following: 1) Stephanos had deliberately deceived the