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FUAD-MEŠA ČIČIĆ

University of Pristina
<https://orcid.org/0009-0006-7617-4332>
e-mail: fuad.cicic@gmail.com

THE STRUCTURE AND DEVELOPMENT OF INHERITANCE LAW IN CLASSICAL ATHENS

1. INTRODUCTORY CONSIDERATIONS

The law of inheritance in ancient Greece, and particularly in Classical Athens, has long attracted scholarly attention for its conceptual complexity and relevance to broader questions concerning family structure, civic organization, and legal evolution. Despite the considerable volume of scholarship devoted to the subject, many aspects of Athenian inheritance law remain insufficiently understood, especially when approached solely through the lens of codified norms or isolated doctrinal categories. This is especially evident in the realm of testamentary and intestate succession, where apparent inconsistencies, such as the scope of testamentary capacity, the role of daughters (*epikleroi*), or the silence regarding parental inheritance continue to generate debate among legal historians.

This study aims to address several of these foundational issues by situating Athenian inheritance practices within their broader historical and comparative contexts. The core argument is that the Classical Athenian law of succession reflects not merely legal rationalization, but a layered historical process shaped by earlier social formations, most notably,

military-agrarian structures tied to the *proklēros* (original allotment) and the phratría as a kinship-based civic institution. The transformation from early collective landholding to individualized testamentary transfer is examined through a synthesis of Athenian sources and external comparanda.

By adopting this diachronic and comparative approach, this paper seeks to demonstrate that Athenian inheritance law cannot be adequately interpreted without reference to its embeddedness in sociopolitical structures and ideological continuities. Ultimately, the study contributes to a more integrated and historically grounded understanding of inheritance as both a legal institution and a mechanism of civic identity, continuity, and control.

2. STATUTORY INHERITANCE WITHIN THE FRAMEWORK OF CLASSICAL ATHENIAN LAW

The legal text concerning Athenian statutory inheritance law has been preserved in section 51 of Pseudo-Demosthenes' speech 43, *Against Macartatus*. The passage reads as follows: "ὅστις ἂν μὴ διαθέμενος ἀποθάνῃ, ἐὰν μὲν παῖδας καταλίπηθῃ θηλείας, σὺν ταύτησιν, ἐὰν δὲ μὴ, τοῦσδε κυρίους εἶναι τῶν χρημάτων. ἐὰν μὲν ἀδελφοὶ ὧσιν ὁμοπάτορες· καὶ ἐὰν παῖδες ἐξ ἀδελφῶν γνήσιοι, τὴν τοῦ πατρὸς μοῖραν λαγχάνειν: ἐὰν δὲ μὴ ἀδελφοὶ ὧσιν ἢ ἀδελφῶν παῖδες, [...] ἐξ αὐτῶν κατὰ ταῦτά λαγχάνειν: κρατεῖν δὲ τοὺς ἄρρενας καὶ τοὺς ἐκ τῶν ἀρρένων, ἐὰν ἐκ τῶν αὐτῶν ὧσι, καὶ ἐὰν γένει ἀπωτέρω. ἐὰν δὲ μὴ ὧσι πρὸς πατρός μέχρι ἀνεψιῶν παίδων, τοὺς πρὸς μητρὸς τοῦ ἀνδρὸς κατὰ ταῦτά κυρίους εἶναι. ἐὰν δὲ μηδετέρωθεν ἢ ἐντὸς τούτων, τὸν πρὸς πατρός ἐγγυτάτω κύριον εἶναι..."¹.

That is to say: If a man dies intestate, and leaves daughters, the inheritance remains with them. If he leaves no daughters, the estate passes

¹ L. Gernet, *Démosthène. Plaidoyers civils*. Tome II: Discours XXXIX-XLVIII, Paris 1957, p. 112; S.H. Butcher, *Demosthenis orationes* (Scriptorum classicorum bibliotheca Oxoniensis), Tome II, Pars I, Oxonii (Oxford) 1903.

to the following: if there are paternal brothers, they inherit; if there are legitimate children of such brothers (i.e., of deceased brothers), they are entitled to their father's share. If there are neither brothers nor their children [...?...], the inheritance devolves, in the same manner, upon their descendants. Male relatives and male-line descendants are granted precedence, even if they are more distantly related by blood. If there are no agnates up to and including the children of paternal cousins, the inheritance passes to the maternal relatives, likewise by order of proximity. In the absence of relatives within these categories on either side, the nearest male relative on the father's side inherits.

Based on the above legal provision and other sources² addressing the same issue, particularly the speeches of fourth-century Athenian orators, modern scholarship of both the past and present centuries has established the following fundamental principles of Athenian intestate succession law, i.e., statutory inheritance in Classical Athens:

The right to inherit from a person who dies without a will belongs to the deceased's relatives according to a predetermined order, in which the proximity of kinship by *parentelae* (lines of descent) plays the decisive role. The first to be called to the succession are the relatives belonging to the *parentela* headed by the deceased himself, namely his children and

² Of primary relevance in this context is *Ps.-Demosthenes* 46.14, wherein, among other matters, the inheritance rights of descendants are affirmed: "ὅσοι μὴ ἐπεποίηντο, ὥστε μήτε ἀπειπεῖν μήτ' ἐπιδικάσασθαι, ὅτε Σόλων εἰσῆι τὴν ἀρχήν, τὰ ἑαυτοῦ διαθέσθαι εἶναι ὅπως ἂν ἐθέλῃ, ἂν μὴ παῖδες ὥσι γνήσιοι ἄρρενες, ἂν μὴ μανιῶν ἢ γήρων ἢ φαρμάκων ἢ νόσου ἕνεκα, ἢ γυναικὶ πειθόμενος, ὑπὸ τούτων του παρανοῶν, ἢ ὑπ' ἀνάγκης ἢ ὑπὸ δεσμοῦ καταληφθεῖς." L. Gernet, *Démosthène...*, p. 190; Cf. S.H. Butcher, *op. cit.* Viz. Those who had not been adopted (so that they could neither renounce the inheritance nor require judicial adjudication to claim it) at the time when Solon assumed the archonship, may dispose of their property as they please, provided they have no legitimate male offspring, and provided that their mental faculties were not impaired, whether by age, poison, illness, or the influence of a woman, or that their testament was not made under mental or physical coercion. The bracketed clause has been the subject of prolonged scholarly debate. It appears that none of the proposed resolutions are entirely satisfactory. The most probable explanation is that we are dealing with a gloss, inadvertently incorporated into the text by a copyist's error, a hypothesis originally advanced by Rabel. This is all the more plausible in light of *Ps.-Demosthenes* 44.68, where a nearly identical passage occurs, notably without the problematic phrase.

their descendants. Only in the absence of such issue does the inheritance pass to the *parentela* of the father, and thereafter to that of the paternal grandfather. However, the latter is limited to kin up to and including the children of the deceased's paternal cousins. If there are no surviving paternal or grand paternal kin, the maternal relatives are called to the inheritance, followed by those of the maternal grandfather, again subject to the same limitations applied to the paternal grandfather's *parentela*.

The categories of heirs mentioned above fall under the institution known as *anchisteia* (ἄγχιστεῖα)³. If there are no heirs within the *anchisteia*, the nearest male agnate connected to the deceased by the male line becomes the successor. The right of representation is recognized within the *anchisteia*. Furthermore, within the same *parentela*, male relatives are granted precedence over females, even if they are more distantly related.

Daughters, and under certain conditions, sisters, assume the status of *epikleroi* (ἐπίκληροι) if the deceased did not designate an adoptive son, during his lifetime or upon his death, to whom the *epikleros* was to be married⁴. The right to marry an *epikleros* belongs to the closest male relative (*anchisteus*, ἄγχιστεύς), who acquires the inheritance and retains it until the children of this marriage attain legal majority⁵.

³ A.R.W. Harrison, *A Problem in the Rules of Intestate Succession at Athens*, *The Classical Review* 61.2/1947, pp. 41-43; J.C. Miles, *The Attic Law of intestate succession*, *Hermathena* 75/1950, pp. 69-77, have attempted, on tenuous grounds to broaden the concept of *anchisteia* in Attic law beyond the limits clearly defined by the statute.

⁴ If a woman had children within the marriage, divorce was not required, and she could retain full control over her property, unless she herself sought to dissolve the union. However, in the absence of children, she was obliged to divorce and marry a male relative legally entitled to claim her. In contrast, Athenian law required the *epikleros* to divorce her current husband regardless of whether the marriage had produced children, while the *epiballon*, if already married, was also compelled to divorce in order to wed the *epikleros* (See: Isaeus 3.64; F. Blass, *Die attische Beredsamkeit. Vol. II: Isokrates und Isaios*, Leipzig 1874; Cf. F. De Coulanges, *La Cité Antique*, Paris 1898, pp. 54-56).

⁵ It is evident that this institution in Gortyn primarily aimed to safeguard the patrimonial interests of male relatives and aristocratic households. In pursuit of this goal, both the woman's marital autonomy and the principle of exogamy were sacrificed. Another significant feature of the *epiklerate* was the nature of the property rights vested

Upon reaching adulthood, these children, born of the *epikleros*, become the lawful owners of their maternal grandfather's estate⁶.

Of course, there is no scholarly consensus on all the details of the principles outlined above⁷. Indeed, the contentious issues in this field would

in the *epikleros*. In comparative legal contexts, she served chiefly as a conduit through which family property was transmitted from grandfather to grandson, without herself acquiring proprietary rights over the estate (Cf. F. De Coulanges, *op. cit.*, pp. 55-56). In all other respects, she was prohibited from alienating or encumbering the family property. She did not inherit as an owner but merely acted as a custodian, charged with the fulfillment of the deceased's obligations and, often at the expense of her personal happiness, with ensuring the transfer of the estate to a male descendant.

⁶ This characteristic further supports the conclusion that the *raison d'être* of the *epiklerate* lay in the protection of property interests, specifically the preservation of economic power within aristocratic families and the hands of their male members. In early Greek law and comparative legal traditions, the *epiklerate* thus served not only to secure the material interests of male kin but also to guarantee the continuity of the family cult. Its religious dimension appears undeniable. Indeed, it is likely that religious considerations were decisive in the genesis of this institution: in a social context where dying without a male heir (*ἀπαίς*, *apais*) to perpetuate the ancestor cult was deemed a grave misfortune, and where religious norms dominated domestic life, the *epiklerate* would have played a crucial role. Over time, however, its economic function gained prominence, eventually becoming the principal rationale for its persistence (Cf. R.V. Cudjoe, *The purpose of the "epidikasia" for an "epikleros" in Classical Athens*, *Dike: Rivista di storia del diritto greco ed ellenistico* 8/2006, pp. 55-88).

⁷ Among older authors, we particularly refer to: R.D. De la Chavanne, *Études d'histoire du droit*, Paris 1926, p. 92 ff.; L. Beauchet, *Histoire du droit privé de la république athénienne*. Tome III: *Le droit de propriété*, Paris 1897, p. 451 ff.; L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs: mit Beiträgen zur kenntnis des griechischen Rechts und der spätrömischen Rechtsentwicklung*, Leipzig 1891, p. 319 ff.; M.H.E Meier, G.F. Schömann, *Das attische Recht und Rechtsverfahren: unter Benutzung des Attischen Prozesses*. Bd. III: *Der Processgang*, Leipzig 1915, p. 542 ff. While the following encyclopedic works are primarily considered: *Paulys Realencyclopädie der classischen Altertumswissenschaft*. Sechster Band, Erster Halbband (ed. W. Kroll), Stuttgart 1907 (Epikleros, *Ἐπικλήρος*; TH. Franz, A. Thalheim, pp. 114-117; *Erbrecht*: *Ibidem*, pp. 391-393); *Le Dictionnaire des Antiquités Grecques et Romaines: d'après les textes et les monumets*. Tome IV, 2^e Partie (eds. E. Saglio, M.E. Pottier), Paris 1877 (*Successio*, pp. 1553-1561); *Le Dictionnaire des Antiquités Grecques et Romaines: d'après les textes et les monumets*. Tome III, 1^{er} Partie (eds. CH. Darenberg, E. Saglio), Paris 1892 (Epikleros, *Ἐπικλήρος*; CH. Lécrivain, pp. 662-665).

suffice on their own as the subject of a comprehensive separate study. Yet, such an exhaustive critical inquiry no longer appears pressing, particularly because many of the once-disputed questions have effectively resolved themselves over time. Erroneous interpretations and speculative deductions unsupported by the sources have largely been abandoned, remaining isolated in the works of individual scholars who advocated them.

My focus will be limited to the textual incompleteness of the legal provision transmitted in *Pseudo-Demosthenes* 43, *Against Macartatus*, 51. This problem bears broader significance for the legal and historical interpretation of Athenian inheritance law, and a potential resolution may help to reconstruct the foundational principles underlying the Athenian system of succession and define a coherent interpretative framework.

Scholarly consensus holds that the statutory text preserved in *Pseudo-Demosthenes* 43, 51 is incomplete, at least in one place⁸. Moreover, it is generally believed that the omitted passage was relatively substantial. However, it seems plausible that the text has, in fact, been transmitted in its entirety, albeit in an extremely concise form. Its full implications can only be understood through careful and detailed analysis. In fact, the text appears both intelligible and legally coherent only if we assume that it has reached us in its complete version.

On the basis of such an assumption, the following conclusions may be drawn from the preserved legal text:

1. The legislator appears to operate on the presumption confirmed by the statute cited in *Pseudo-Demosthenes* 46, *Against Stephanos* 2, 14 that the testator is not entitled to make a will if he has legitimate male children or their male descendants. The legislator seemingly considers these male descendants not merely potential heirs but co-owners of the father's estate or, more precisely, regards the true owner and holder of the estate to be the "house" (*oikos*, *οἶκος*) as an enduring legal and familial entity. This foundational concept of Athenian law manifests in a distinctive

⁸ Some of the scholarly treatises that are classified as contemporary: U.E. Paoli, *Successioni legittime e testamentarie (Diritto greco)*, [in:] *Nuovo Digesto Italiano* 18/1940, pp. 1030-1032; and Gernet, *op. cit.*, p. 112.

manner: male children and their descendants are not required to assert their hereditary rights through a formal claim addressed to the archon (*epidikasia*, ἐπιδικασία); rather, they are entitled to directly, immediately, and autonomously enter into possession of the inheritance through the act known as *embateusis* or *embateia* (ἐμβάτευσις, ἐμβατεία)⁹. In my view, the unique legal position of male offspring is rooted in deep and ancient legal and historical traditions, which I will be address in more detail below.

2. A daughter does not, in essence, inherit in her own right, but functions as a conduit through which the inheritance is transmitted to the child born of her future marriage. The closest male relative has the right to claim both the estate and the “hand” of the daughter, such that he may enjoy control over the inheritance until the child born of this union reaches majority¹⁰. All of this, of course, is contingent upon the absence of male issue and the absence of a testamentary designation by the father. A daughter in this position, as described above is referred to as an *epikleros* (ἐπίκληρος)¹¹.

⁹ M.H.E. Meier, G.F. Schömann, *op. cit.*, p. 577; Cf. K.C. Cook, *Sexual Inequality in Aristotle's Theories of Reproduction and Inheritance*, *Feminism and ancient philosophy* 1996, pp. 51-67.

¹⁰ I.C. Secall, *El privilegio de masculinidad y los derechos femeninos en las transmisiones patrimoniales de la Grecia clásica*, [in:] *Nomos: Direito e sociedade na Antiguidade Clássica*, ed. D.F. Leão, L. Rossetti, M. Do Céu, G.Z. Fialho, Coimbra-Madrid 2004, pp. 153-174.

¹¹ As previously mentioned, the defining features of the *epiklerate*, the incestuous-like sacrifice of the woman's marital autonomy to patriarchal property claims, the limitation of her property rights, and the religious foundations of the institution, all point to its origin in tribal structures where such religious conceptions prevailed, though already accompanied by pressing economic considerations (L. Gernet, *Démosthène...*, p. 373). Comparative legal analysis suggests that the familial structure in which both these elements, religious and proprietary, were simultaneously present was the large patriarchal family, which functioned as a transitional form between the matriarchal clan, rooted in group marriage, and the modern nuclear family (F. Engels, *Der Ursprung der Familie, des Privateigentums und des Staats*, Stuttgart 1886, pp. 62-63). Furthermore, if we accept the view that in the Roman-type patriarchal family (*consortium*), the closest agnate (*agnatus proximus*) was typically the brother, then it becomes easier to identify agnatic features within the *epiklerate* institution (See: É. Scheid-Tissinier,

3. The third order of succession, after sons in the first and daughters in the second, consists of the testator's brothers and their descendants *ad infinitum*¹². This conclusion follows from the text itself, assuming,

L'épiciérat athénien. Essai de mise au point, Cahiers "Mondes anciens" [online], 10/2018, [cit. 27.07.2025]. Available at: <https://doi.org/10.4000/mondesanciens.1998>.

For these reasons, it seems plausible to argue that the *epiklerate* emerged within the framework of the agnatic patriarchal family. It likely persisted even after the dissolution of the patriarchal household model, chiefly due to its robust proprietary function and the socio-economic effects that sustained its vitality (e.g., in Athens). The presence of the *epiklerate* in certain legal systems may reflect either the recent existence of patriarchal family forms or their continued presence, albeit diminished, alongside newer familial structures.

In this regard, evidence from South Slavic customary law is illustrative: with the decline and eventual disappearance of patriarchal family communities, the institution, and even the term *blagarica* (or *blagašica*) fell into oblivion (C.W. Westrup, *Introduction to Early Roman Law: Comparative Sociological Studies. Vol. II: Joint Family and Family Property*, Oxford 1944, pp. 106–107). For instance, in the Croatian littoral, as Bogišić describes, in cases where parents have only one daughter, who is their only legal heir, she is called *blagarica* (or *blagašica*), while her husband, as custom dictates, goes to live in her house (Cf. B. Bogišić, *Pravni običaji u Slovena: privatno pravo*, Zagreb 1867, p. 120; B. Bogišić, *Zbornik sadašnjih pravnih običaja u južnih slovena* (Collectio Consuetudinum Juris Apud Slavos Meridionales Etiamnum Vigentium), Vol. I, Zagreb 1874, p. 194, 215, 354).

¹² However, Solon's law contains no mention whatsoever of the right of the father, grandfather, or paternal uncle to inherit from their son, grandson, or nephew. This omission is particularly significant, as neither the Gortyn Code nor Plato's *Laws*, the only two extant comprehensive Greek legal sources, accord inheritance rights to the father or grandfather when their descendants die without legitimate issue. The parallel between the Gortyn Code and Athens law is all the more striking given that both are silent on the question of the uncle's right to inherit. This issue holds fundamental importance for the understanding of family law, as it is intimately linked to the broader problem of paternal authority (*patria potestas*), peculium, and in general, the property capacity of children under paternal power.

In the context of Athens law, it may be assumed with relative confidence that a paternal uncle held a right of succession to his nephew in the absence of closer relatives, a conclusion that can be drawn directly from the statutory language referring to "relatives on the father's side up to and including the children of paternal cousins," which implicitly does not exclude the father of the cousin, i.e., the uncle. The statutory text, in our view, provides sufficient support for the uncle's right to inherit (See: C. Vial, *L'épiciérat, facteur de régulation sociale?* [in:] *Les régulations sociales dans l'Antiquité*,

as I am inclined to do, that there is no lacuna after the phrase ἀδελφῶν παῖδες, contrary to prevailing scholarly opinion. There seems to be no compelling reason not to interpret the phrase ἐξ αὐτῶν as referring both to brothers and their offspring.

ed. M. Molin, Rennes 2006, pp. 189-194). Prevailing scholarship, however, remains unsatisfied with the letter of the law, not only regarding the uncle, whose position is not explicitly mentioned (Cf. L. Beauchet, *op. cit.*, p. 530; M.H.E. Meier, G.F. Schömann, *op. cit.*, p. 556), but even with respect to the paternal cousin himself (*Ibidem*). This has contributed to the widespread and nearly unanimous assertion that the transmitted legal text is incomplete. We are inclined to believe that in the 7th century BCE and the preceding period, the father did not have the right to inherit from his son, nor the grandfather from his grandson, even though the law does not explicitly exclude them. It is likely that even in the 5th and 4th centuries, Athenian opinion on this matter remained divided. After all, in a commercial city such as Athens, characterized by a highly mobile population and increasing wealth in movable goods, merchandise, valuables, and debts, there would be no theoretical or practical rationale to exclude the father from the inheritance of his deceased son. On the contrary, it is inconceivable that Athenians would not have been troubled by the idea that a father might be disinherited in favor of a more remote relative. This apparent paradox could only be explained if the father in Athens had possessed paternal authority (*patria potestas*) over his son, similar to that in Roman law, and if the son acquired property on behalf of his father until such time as he might be emancipated. But no such system existed in Athens. Even a minor son in Athens possessed independent legal capacity with regard to property, and we find no concrete evidence of a strong paternal authority, nor of formal emancipation, unless one considers the sparse references to *apokeryxis* (ἀποκήρυξις), which, in any case, seems to have functioned quite differently from Roman emancipation. Athens, by the 4th century BCE, was still applying legal norms rooted in the distant 7th century. Over time, however, judicial interpretation gradually reshaped and adapted this archaic legislation, much as interpretative jurisprudence in Rome extended the life of the Twelve Tables for centuries, thanks to the creative efforts of Roman jurists who continually adapted its provisions to evolving social and economic realities. If this parallel holds, then the question of ascendants' rights to the inheritance of their descendants must be examined exclusively through the lens of the historical evolution of Athenian law. It is evident that pre-Solonian Athens possessed a social structure and familial organization that presupposed the absence of inheritance rights for ascendants. Only later, through the cumulative effect of changing conditions and interpretive practice, did such rights gradually emerge, albeit always within the framework of a legal system initially structured to exclude them.

4. The phrase *κρατεῖν δὲ τοὺς ἄρρενας*, etc., according to its position within the passage, originally referred only to the third order of heirs, namely the brothers and their descendants, but in Athenian judicial interpretation, it acquired a broader meaning. It came to be applied to all orders of succession. The principle expressed is the following: if a male heir of the same class of kinship is related to the deceased through the male line, he has precedence over an heiress, even if he is more distantly related by blood. Furthermore, it appears that this provision even served as the basis for recognizing a fourth order of succession, that of the testator's sisters. The interpretative logic seems to have been as follows: brothers inherit; male heirs are preferred; therefore, by implication, daughters (i.e., female kin) also possess inheritance rights. If the interpretation of the phrase *κρατεῖν δὲ τοὺς ἄρρενας*, etc., leads to the conclusion that female relatives of the fifth order, that is female members of the third *parentela*, such as the testator's paternal aunts, were entirely excluded from succession¹³, this would confirm the proposition that female relatives were admitted to inheritance rights in Athenian law only gradually. This evolutionary development of inheritance rights for female kin is clearly illustrated in the very statute under examination.

It seems reasonable to conclude that in the history of law, Athenian inheritance law had as its point of departure the principle of agnatic kinship, succession limited to males linked exclusively through male ancestors. There appears to be little doubt that the foundational norm lies in the expression *τὰ ἑαυτοῦ διαθέσθαι εἴτε ὅπως ἂν ἐθέλῃ ἂν μὴ παῖδες ὥσι γνήσιοι ἄρρενες* (*Ps.-Dem.* 46, § 14-20)¹⁴. This reflects the state of affairs

¹³ See, for instance, *Ps.-Demosthenes* 43, as well as *Isaeus*, *On the Estate of Apollodorus* 7 and *Isaeus*, *On the Estate of Hagnias* 11, where the inheritance rights of female relatives belonging to the third *parentela* are firmly acknowledged, even though detailed analysis of these speeches yields both intriguing and, at times, perplexing implications. There is little doubt that we are dealing here with a legal institution of great antiquity. Comparable mechanisms are attested in the legal traditions of other ancient cultures, including those well beyond the Greek world (Cf. M.J. Edwards, *Isaeus and the Athenian inheritance laws*, [in:] *Symposion 2007: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, E. Harris, G. Thür, Wien 2008, pp. 41-55).

¹⁴ A.R.W. Harrison, *op. cit.*, pp. 41-43; J. Miles, *op. cit.*, pp. 69-77.

that Solon encountered and codified in his legislation. According to this rule, only legitimate male children are the true heirs.

From the opening clause of that law, *ὅσοι μὴ ἐπεποιήντο*, one may infer the nature and content of wills in cases where the deceased had no male issue: undoubtedly, such wills took the form of adoptive testaments, bilateral legal acts through which the testator, in agreement with his closest sociopolitical group, designated a male person, usually a close relative, as his adoptive son and, consequently, his heir. In such cases, the will of the adopted person also played a constitutive role.

There is little doubt that in his legislation Solon merely codified a rule that had already enjoyed centuries of validity by his times, namely the norm regarding the *epikleros*. Institutions analogous to the *epiklerate* found in other regions of ancient Greek law, and even far beyond the Greek world¹⁵, lead to the conviction that the *epiklerate* of daughters was introduced into early Greek law perhaps as early as the initial

¹⁵ This institution also appears in the law code of Gortyn, to which we shall return later. Its presence, however, is not limited to the Greek world. One particularly illustrative parallel is found in ancient Hebrew law, notably in the biblical *Book of Numbers* 36:1–12. There, the daughters of Zelophehad petition for the right to inherit from their father, who had died without sons. The tribal elders respond by raising a concern: if these daughters marry outside their tribe, their inheritance would be transferred to another tribe, thus diminishing the patrimony of their ancestral group. Moses then decrees: “*They may marry anyone they please, provided they marry within the clan of their father’s tribe. No inheritance in Israel is to pass from one tribe to another, for each Israelite tribe is to keep the land it inherits*” (*Numbers* 36:6–7). Ultimately, the daughters of Zelophehad “*married their cousins on their father’s side*”, sons of their paternal uncles, thus preserving the integrity of the tribal estate. This passage offers striking parallels to the Greek institution of the *epiklerate*. In previous work, we have analyzed the levirate marriage within the Hebrew tradition and concluded that, in this context, the institution was not designed to safeguard the interests of the immediate agnatic family, but rather to ensure the preservation of the tribe or *clan* as the primary socio-legal unit. In this sense, the *epiklerate* appears as a structural analogue, designed to preserve the cohesion of the *oikos* or clan-based inheritance unit (D. Asheri, *L’oikos eremos nel diritto successorio attico*, *Archivio Giuridico* “Filippo Serafini” 159.1-2/1960, pp. 7–24). A similar principle is found in the Gortyn Code (5th century BCE), particularly in its stipulations regarding heiresses (*epikleroi*) and marriage obligations, which sought to retain landed property within the paternal kin-group, see e.g. *Gortyn Code*, Col. IX–X; Cf. R.F. Willetts (ed.), *The Law Code of Gortyn*, Berlin 1967.

Ionian incursions into the territory of what is now Greece. In other words, I am inclined to believe that the institution of the *epikleros* was known to the Greeks already in the second millennium BCE.

The *epiklerate* does not substantially disrupt the strictly agnatic order of succession, since the daughter, by virtue of her capacity for childbearing, provides her father with an heir who, precisely because of the daughter's status as *epikleros* and presumptive heiress, is regarded as the successor of the maternal grandfather's *oikos*, not as the successor of the father's or paternal grandfather's *oikos*. Comparative legal research has led elsewhere to the conclusion that the *epiklerate* was introduced primarily to serve the narrower sociopolitical organization of the *polis*, rather than the family in the sense of private law, whether agnatic or otherwise¹⁶.

Nevertheless, the very wording of Solon's law indicates that the earliest phase of Athenian statutory inheritance law was indeed strictly agnatic in character. There is scarcely any room for doubt that the un-amended and original norms applied exclusively to male relatives connected to the deceased through the male line. The original version of the norm found in *Ps.-Demosthenes* 43.51 probably contained only the following formulation: *ἐὰν μὲν ἀδελφοὶ ὥσιν ὁμοπάτορες καὶ ἐὰν παῖδες ἐξ ἀδελφῶν γνήσιοι...*, thereby establishing inheritance rights solely for paternal brothers. Presumably at a somewhat later stage, it was expanded by the addition of the clause *ἐὰν δὲ μή... ἐξ αὐτῶν κατὰ ταῦτα...* to include the descendants of paternal brothers.

Only at a much later point was inheritance gradually extended to female members of the second *parentela*, sisters and more remote female relatives of the same generational group¹⁷. The interpolated nature of this

¹⁶ S. Avramović, *Epiklera, kadestai i epibalontes—sporne ustaove antičkog grčkog prava*, Anali Pravnog fakulteta u Beogradu 27.5-6/1979, pp. 475-490. See also the previous citation and corresponding note regarding this matter.

¹⁷ Comparable restrictions on female inheritance rights, along with their gradual expansion may also be traced in early Germanic legal traditions, most notably in Lombard law. According to King Rothari's *Edictum Rothari* of 643 CE, inheritance passed to male agnatic relatives, with daughters permitted to inherit only alongside these agnates. This limited right of daughters was a deviation from the otherwise

expansion is evidenced by the stark contrast between the positions of female relatives in the first and second *parentelae*. Daughters do not truly inherit; rather, they are themselves transmitted *together with* the estate (*σὺν ταύτησιν*). Theoretically, this principle does not apply to sisters. From this, it follows that sisters only acquired inheritance rights to their brother's estate in a significantly later period, at a time when the institution of the *epiklerate* no longer had genuine socio-political grounding. In that context, the *epiklerate* survived merely as a legal relic of a long-past era maintained partly out of reverence for antiquity and partly due to the property interests of the closer agnatic family, but its true legal rationale was no longer properly understood.

Although sisters could, under certain conditions, assume the status of *epikleroi*, this no longer had a determinative effect on their legal position in relation to their brother's estate¹⁸. Thus, as previously stated, if my assumption regarding the integrity of the transmitted text is correct, then the inheritance rights of female members of the third *parentela* only emerged later as a result of the legal interpretation of Solon's law. For legal scholars, it was not overly difficult to extend the meaning

strict agnatic succession model and seems to have been introduced under external socio-political pressures or evolving family structures (see: *Edictum Rothari*, §§ 153-160). It was not until the reforms of King Liutprand in 717 CE that daughters acquired full rights of inheritance in the absence of sons. In the same year, the right of sisters to inherit from a deceased brother was also legally recognized. Even more delayed was the recognition of inheritance rights for paternal aunts (*amitae*), which only occurred with King Aistulf's reform in 755 CE, nearly two centuries after the Lombards had settled in Italy. These legal developments underscore the long resistance within Lombard society to recognizing women as independent heirs and reflect a broader European pattern of conservative agnatic structures slowly eroding under social and economic pressures (F. Bluhme (ed.), *Edictus ceteraeque Langobardorum leges. Cum constitutionibus et pactis principum beneventanorum: Ex maiore editione Monumentis Germaniae inserta*. Hannoverae (Hannover) 1869; G.H. Pertz (ed.), *Monumenta Germaniae historica: Legum*. Tomus 4, Hannoverae (Hannover) 1837; F. Beyerle, I. Schröbler, *Die Gesetze der Langobarden*, Weimar 1947).

¹⁸ See especially in context of: *Ps.-Demosthenes* 43.51, which remains a pivotal text in this discourse. For a detailed discussion, see: L. Beauchet, *op. cit.*, pp. 421 ff., who provides an in-depth analysis of the relevant statutes and their transmission.

of the phrase *κρατεῖν δὲ τοὺς ἄρρενας*, etc., from the second *parentela* to include the third as well.

Indeed, the very insertion of the clause *κρατεῖν δὲ τοὺς ἄρρενας*, etc., into the original text effectively abrogated the agnatic principle of the Athenian family and inheritance system, at least with respect to the second *parentela*, to which the clause initially applied exclusively. Once female relatives were granted the right to inherit, the principle of representation inevitably came into question, with the result that even the children of sisters were recognized as lawful heirs. This development undoubtedly marked a significant erosion of the agnatic structure.

If such changes occurred relatively soon after Solon, which seems quite probable, then this would indicate that Athens advanced rapidly in terms of economic development. The agnatic family presupposes, above all, a predominantly military and agrarian society.¹⁹ Finally, the agnatic principle was decisively undermined by the recognition of *anchisteia* (*ἄγχιστεία*) to maternal relatives, up to and including the children of maternal cousins. This granted the closest non-agnatic kin priority over all agnatic relatives, except those most closely related and thus included within the *anchisteia*.

Mutatis mutandis, the evolution of Athenian inheritance law up to the 4th century BCE reveals a structural parallel with the development of Roman succession law from the Law of the Twelve Tables (5th century BCE) to the codifications of Justinian (6th century CE). In both cases, the law of succession began with the exclusive recognition of the agnatic family and concluded, after many complex developments, with substantial concessions to cognatic kinship²⁰.

¹⁹ Cf. D. Asheri, *Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece*, *Historia: Zeitschrift für Alte Geschichte* 12.1/1963, pp. 1-21.

²⁰ For Roman inheritance law, the transformation from a strictly agnatic model toward increased cognatic inclusivity, from the *Lex Duodecim Tabularum* (Law of the Twelve Tables) to the Justinianic codifications offers a compelling parallel to the Athenian trajectory. While this extensive topic cannot be fully explored here, reference may be made to standard works such as: M. Kaser, *Das römische Privatrecht*, Vol. I-II, München 1955-1959; M. Kaser, *Das römische Privatrecht*. München, 1971; and P. Voci, *Diritto ereditario romano*, Vol. I-II, Milano 1963-1967, which comprehensively trace the gradual dissolution of the agnatic ideal in favor of a more flexible conception

3. LEGAL PROBLEMATICS OF THE TESTAMENT: ORIGINS, EVOLUTION, AND FUNCTION IN ATHENS

The earliest known Greek law concerning wills is attributed to Solon²¹. This foundational piece of Athenian legislation is frequently cited by fourth-century orators²², especially *Isaeus* and *Pseudo-Demosthenes*, although it is also relayed, albeit with some inaccuracies, by Plutarch in his *Life of Solon* (cf. Plutarch *Solon* 21.3–4; *Isaeus On the Estate of Menecles* 2.13; *On the Estate of Pyrrhus* 3.68; *On the Estate of Nicostratus* 4.16; *On the Estate of Philokles* 6.9; *Ps.-Dem. Against Leochares* 44.14; *Isocrates Aegineticus* 19.49).

The orators regularly emphasize that Solon's law prohibited testamentary disposition when the testator had legitimate male offspring²³. In such cases, the estate was to devolve by operation of law to the sons, without room for testamentary interference.

The Solonian will, comprised testamentary adoption: the legal mechanism by which a childless *kurios* (head of a household) could appoint an heir by adopting him. Upon the death of the testator, the adopted son would enter the household (*oikos*) of his adoptive father to inherit the estate and perpetuate the household cult (*sacra*). This type of legal adoption severed the adopted son from his biological family; he forfeited *ipso iure* all rights of inheritance to his natural father's household²⁴. Conversely, he could not return to that household unless he had already secured succession in the adoptive house by producing a legitimate son therein²⁵.

of kinship and succession. For the further development of Roman law in Byzantine law, see still: K.E.Z. Von Lingenthal, *Griechisch-Römischen Rechts*, Berlin 1892.

²¹ L. Gernet, *La création du testament*, *Revue des Études Grecques* 33.152/1920, pp. 123–124. Cf. D.G. Tucker, *Testamentary inheritance in Athenian law*, M.Litt. Degree Thesis, Glasgow 1988, pp. 32–55.

²² M.H.E. Meier, G.F. Schömann, *op. cit.*, pp. 561 ff. Cf. S.C. Humphreys, *Solon on adoption and wills*, *ZSSR RA* 119.1/2002, pp. 340–347.

²³ *Isaeus* 2.3, 6; *Isaeus* 9.9, 28; *Hyperides* 8.102.

²⁴ *Isaeus* 7.24; 9.2, 33; 10.4; 11.45; *Demosthenes* 44.26.

²⁵ *Isaeus* 6.44; 10.11; *Demosthenes* 44.21, 22. Cf. L. Gagliardi, *Das solonische Gesetz über Erbschaft: Vorschrift über Testament oder Adoption?* *ZSSR RA* 131.1/2014, pp. 23–31.

From these provisions, it becomes evident that the primary function of testamentary adoption under Solon's law was not to secure private economic interests, but to preserve the integrity and continuity of the Athenian *oikos*, respectively to prevent collateral kin or ascendants from dismembering the estate through intestate succession. This goal is explicitly stated in the formulation preserved by Pseudo-Demosthenes, where the aim of adoption is that households be preserved "to the greatest extent possible" (διασώζονται ὅτι μάλιστα, *Ps.-Dem.* 43.75). It is noteworthy that this rationale, preservation of the household (*oikos*) appears already in the seventh-century legislation of Philolaus in Thebes, which regulated adoption in a similar spirit (Cf. [*Philolaus*], *frag. apud Aristotle*, *Pol.* 1274 B 2). Solon's testamentary legislation must also be situated within a broader political context. It was part of his overarching effort to diminish the power of the *Eupatridae*, the hereditary aristocracy that had long dominated the Athenian polity²⁶. The possibility of selecting an heir by adoption, rather than relying solely on patrilineal descent, democratized the transmission of property and helped to fragment traditional structures of elite landholding. Indeed, this reform may have contributed to the progressive parcelling of land belonging to Athens, a trend that persisted until at least the end of the fifth century BCE.²⁷

However, the practical application of Solon's inheritance norms was more complex. Several fourth-century orations attest to deviations from the ideal model of disinheritance by testators with legitimate sons. For instance: 1. Lysias, *On the Estate of Aristophanes* 19.39–40: cites the will of General Conon is cited, who, despite having a legitimate son, bequeathed over half of his estate, valued at over forty talents to a nephew and his brother for religious purposes. The son was left with only seventeen talents, less than half of the total inheritance; 2. Demosthenes, *Against Aphobus* 27–28, I.4–5, II.15: on his deathbed, Demosthenes' father appointed two relatives and a friend as guardians for his children

²⁶ Plutarch 15.6; Aristotle 6.2 (*Athenaion Politeia*); W. Kamps, *Testament grec et testament romain*, *Revue historique de droit français et étranger* 14/1935, pp. 404–405.

²⁷ R. Martini, *Testamento e adozione ad Atene (e Roma)*, [in:] *Symposion 1999: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, G. Thür, F.H.F. Nieto, Köln 2003, pp. 273–277.

and wife. He bequeathed eighty minas as a legacy to one guardian until Demosthenes came of age, gave his daughter (Demosthenes' sister) in marriage to another with a dowry of two talents, and promised his widow in marriage to the third, along with a dowry of eighty minas and rights to the household furnishings and residence; and 3. Demosthenes, *Against Stephanus* 45, I.28: the will of Pasion²⁸, a wealthy Athenian banker and ex-slave. Although he had two sons, he left his wife to his freedman Phormion, along with a dowry consisting of a talent in claims, a talent in cash, a residential property worth one hundred minas, several household slaves, valuable goods, and furnishings.²⁹

These examples illustrate how, by the fourth century, testamentary practice had expanded beyond Solon's restrictive framework, often reflecting personal, familial, or pragmatic considerations rather than adherence to ancestral norms. Two particularly illustrative cases from the same period further underscore the shifting legal and moral landscape: 1. In Pseudo-Demosthenes, *Against Phainippos* 42.21–22, the speaker reproaches his opponent, a wealthy landowner, not for violating the norms of adoption, but for failing to declare his dual inheritance (both from his biological father Callippos and from his adoptive father Philostratus) in order to avoid state-imposed litigation. Notably, the rhetorical attack centres on fiscal evasion rather than breach of customary law. 2. In Pseudo-Demosthenes 44.23, a case is described wherein adoptive sons systematically exploited the estates of their adoptive fathers while retaining the right to inherit from their biological families. The orator denounces a practice in which sons “exploit the substance (of their adoptive father) and are brought up there in their infancy, and afterwards always return to the property of their (natural) father, which had remained intact while they used up the other”, a scheme repeated across generations.

How can we account for the inconsistency between Solon's law, frequently cited by Athenian orators as valid legislation, and

²⁸ Cf. G.M. Calhoun, *The will of Pasion and its seals. Demosthenes, XIV, 17.*, *Classical Philology* 10.1/1915, pp. 75–76.

²⁹ M.R. Cataudella, *Intomo alla legge di Solone sul testament*, *Iura: rivista internazionale di diritto romano e antico* 23/1972, pp. 50–55.

the well-documented practices in fourth-century BCE Athens? According to Beauchet, practical developments had modified Solon's legislative framework³⁰. In line with earlier legal theories, Beauchet suggests that testamentary succession may have existed even prior to Solon. Moreover, he asserts unequivocally that adoption *inter vivos* ("during lifetime") predated Solon and, significantly, functioned as a form of testamentary disposition.

By contrast, Bruck³¹ interprets Solon's law as pertaining specifically to adoption *inter vivos*, a practice which was subsequently extended to include testamentary adoption. In his view, however, the *legatum-type* will (i.e., the non-adoptive, bequest-based will) originated from *donatio mortis causa* (ἐὰν τι πάθῃ ἐπιδούναί, a gift in anticipation of death). According to Bruck, two distinct bilateral legal transactions originally existed in Athenian law: adoption *inter vivos* and *donatio mortis causa* (ἐὰν τι πάθῃ ἐπιδούναί). Adoption *inter vivos* allowed a childless man to select an heir, initially restricted to members of the same *genos*, but later after Solon's reforms, expanded beyond that circle. Thus, Solon did not introduce a new form of will but rather adapted an existing mechanism to limit aristocratic dominance and empower testators with broader rights.

Therefore, in Bruck's interpretation, Solon's prohibition against testation in the presence of legitimate male offspring applied solely to adoption *inter vivos* and, later, to testamentary adoption, but not to *legatum-type* wills.

Other testamentary mechanisms, largely unknown before the late fifth century, also began to proliferate in fourth-century Athens. Gifts *inter vivos* and *donationes mortis causa* (ἐὰν τι πάθῃ ἐπιδούναί) represented new avenues by which individuals could transfer part or all of their estate without designating the recipient as an adopted son³². A man could even

³⁰ L. Beauchet, *op. cit.*, p. 1674.

³¹ E.F. Bruck, *Die Schenkung auf den Todesfall im griechischen und römischen Recht, zugleich ein Beitrag zur Geschichte des Testaments*. Studien zur Erläuterung des bürgerlichen Rechts. 31. Heft, Breslau (Wrocław) 1909, pp. 51-55, 107-110. Also, see the review by E. Rabel in ZSSR RA 30/1909, pp. 465-171.

³² *Isaeus* 3.36; *Lysias*, 32.6; *Demosthenes*, 52.23, 24, etc.

alienate the entire *patrōia* (ancestral property) despite having a biological son, whose only legal recourse would be to accuse the father of wasteful dissipation (*τὰ πατρῶα καταδωκέναι*) or insanity (*παράνοια*), and to persuade the court to preserve part of the estate for him³³.

Another significant innovation was the testamentary provision for a testator's wife. Earlier legal systems, such as that in Gortyn³⁴, had prohibited or limited substantial property transfers between spouses to prevent the estate from passing to non-agnatic descendants (e.g., children from a widow's subsequent marriage). By the fourth century, however, this concern had diminished in Athens³⁵.

Bruck's conclusions dealt a substantial blow to the prevailing scholarly view that wills had existed before Solon and that Solon merely codified existing practices³⁶. His interpretation was vigorously challenged by scholars like Thalheim³⁷ and Lipsius³⁸, who defended the traditional theory of pre-Solonian wills. However, their arguments failed to gain traction, with later authorities like Becker³⁹ and, to a considerable extent, Rabel⁴⁰, who concurred with Bruck.

Given these changes, it comes as no surprise that Athenian courts became increasingly wary of wills and frequently ruled in favour of plaintiffs who initiated inheritance proceedings (*κατά γένος*). Orators would

³³ M.H.E. Meier, G.F. Schömann, *op. cit.*, pp. 340 ff.

³⁴ *Inscriptiones Creticae* IV.72, Col. X (no. 40).

³⁵ The wealthy banker Pasion, for instance, lawfully bequeathed a large part of his estate to his wife and even appointed her future husband, Phormion, who was to marry her upon his death. This arrangement was upheld despite Pasion having a legitimate son, Apollodorus, who unsuccessfully sought to reclaim the inheritance through litigation (Ps.-Demosthenes, *Against Stephanus*, 45.28; *Against Stephanus*, 46.14).

³⁶ For instance: F. Schulin, *Das griechische Testament verglichen mit dem römischen*, Basel 1882.

³⁷ TH. Thalheim, *Testament, Adoption und Schenkung auf den Todesfall*, ZSSR RA 31.1/1910, pp. 338-401. Also, see the feedback by E.F. Bruck, *Die Entstehung des griechischen Testaments und Platos Nomoi*, ZSSR RA 32.1/1911, pp. 355-359.

³⁸ M.H.E. Meier, G.F. Schömann, *op. cit.*, p. 562.

³⁹ W.G. Becker, *Platons Gesetze und das griechische Familienrecht. Eine rechtsvergleichende Untersuchung* (Münchener Beiträge zur Papyrusforschung und antiken Rechtsgesch. 14. Heft), München 1932.

⁴⁰ E. Rabel, *op. cit.*, pp. 465-171.

even idealize the earlier inheritance system as fairer and more devout, while discrediting testamentary innovations (κατὰ διαθήκην) before the judges⁴¹. Although it is clear that new testamentary practices and even forgery of wills were common in fourth-century Athens, the judicial preference for inheritance claims (κατὰ γένος) had broader social implications: often the financial interests of collaterals' prevailed, while sometimes the revival of extinct households through (occasionally dubious) adoption was neglected.

All the innovations I have discussed appear to have emerged as practical developments rather than through formal legislative reform. Unlike fourth-century Sparta, there is no record of a comprehensive Athenian reform of testamentary law. The sole identifiable legislative intervention came during the brief rule of the Thirty in 404 BCE. According to Aristotle (*Ath. Pol.* 35.2), this oligarchic regime initially claimed it would restore the ancestral constitution (πάτριος πολιτεία) and, as part of this agenda, abolished previous restrictions on testamentary freedom, particularly those based on old age, insanity, or female influence, in order to eliminate openings for sycophantic litigation.

Aristotle's interpretation implies that this reform curtailed the courts' tendency to favour inheritance claims that were *katà génos* (κατὰ γένος, by kinship) over *katà diathékēn* (κατὰ διαθήκην, by will).⁴² The measure was probably a reaction against democratic-era abuse and intended to reaffirm testamentary succession under Solonian law⁴³. At the time, testamentary innovations such as *donatio mortis causa* and *inter vivos* gifts may not yet have been widespread, making legal manipulation of existing clauses the primary strategy for undermining wills. Officially, the reform could be framed as preserving the integrity of the newly limited citizen body (the 3,000 ὄπλα παρεχόμενοι), appealing to moderate and agrarian elements. Significantly, the democratic restoration later

⁴¹ *Isaeus* 4.11, 12; 1.3, 4, 31, 41; 9.12, 31, 32; 11.25; *Ps.-Demos.* 44.7, etc.

⁴² See: S.C. Humphreys, *Kinship patterns in the Athenian courts*, *Greek, Roman, and Byzantine Studies* 27/1986, pp. 57-92.

⁴³ Cf. the curious utterance of Philocleon in *Aristophanes, Wasps*. See: J. Henderson (ed. trans.), *Aristophanes. Wasps*, Cambridge 1998, pp. 583 ff.

annulled the reform, re-opening the door to sycophancy and renewed judicial suspicion of wills⁴⁴.

More recently, in the context of contemporary legal history, Gernet proposed a different resolution to the apparent antinomy between Solon's inheritance law and the contents of fourth century BCE Athenian wills⁴⁵. He perceptively observed that even in the fourth century, an adopter would introduce his adopted son into his *phratry*, although such an introduction was no longer a condition for the validity of adoption. From this, Gernet concluded that prior to Solon, adoption had required approval by the *phratry*, whereas Solon's legislation permitted adoption regardless of such collective consent.

Furthermore, Gernet accepted the prevailing view that Athenian law did not impose any statutory restriction in the form of a *pars legitima* (a reserved portion of the estate), which would have limited the testator's freedom of disposition. Nonetheless, he argued for a distinction between inherited and acquired property: while inherited assets (*patrōia*) had to be transmitted to legitimate sons, the testator was presumed to have complete freedom in disposing of property he had acquired himself.

However, Gernet's attempt to reconcile the discrepancy between Solon's testamentary law and the structure of fourth-century wills ultimately proves unconvincing. It is highly improbable that Athenian orators, or other sources of Athenian legal thought would have failed to highlight such a critical legal distinction, had it existed. In the majority of extant cases, the term *patrōia* (πατρώα, "ancestral property") merely refers to an individual's estate, whether inherited or expected to be inherited, and does not carry any discernible implication of legal differentiation from acquired property⁴⁶. Even when the contrast

⁴⁴ *Demosthenes* 46.14; 48.56; *Isaeus* 4.14; 6.9, 21. Cf. M.R. Cataudella, *op. cit.*, pp. 60-66.

⁴⁵ L. Gernet, *Droit et société dans la Grèce ancienne*. Publications de l'Institut de droit romain de l'Université de Paris. Tome XII, Paris 1955; L. Gernet, M. Bizos, *Lysias. Discours*. Tome II, Paris 1962, pp. 48-49; L. Gagliardi, *op. cit.*, p. 35-39.

⁴⁶ See: *Lysias* 10.5; 16.10; 19.7, 10; 27.11; 32.10, 22; *Fragm.* 17.2; *Demosthenes* 27.67; 28.18, 21; 29.3; 30.31; 36.19; 38.7; 39.6, 35; 45.21, 76, 80; *Ps.-Demos.* 40.2, 15; 53.9; *Isaeus* 3.62.

between inherited and acquired property is explicitly drawn, it appears to serve only a descriptive function, without attaching any legal consequences to the distinction⁴⁷. In fact, this point had already been recognized by Beauchet⁴⁸.

4. CONCLUSIONS

There are several puzzling inconsistencies in Athenian inheritance law. One is the silence of the sources regarding the rights of a father or grandfather to inherit from a deceased son or grandson. Another is the remarkable freedom of testation granted to childless men, which sharply contrasts with the prohibition of testamentary disposition by those who had children, yet even this principle is contradicted in practice by frequent instances of testation by men with surviving children. Such contradictions demand a unified explanation capable of reconciling the disparate and seemingly incoherent elements of Athenian inheritance law.

However, coherence must be sought solely from the perspective of the history of law. In other words, one must attempt to identify the sociological foundations of these ambiguities and inconsistencies, even though they remained a factual reality in the Classical period, clearly felt and experienced by the Athenians themselves.

If we take a fresh look at Athenian law informed by the structure of ancient society and the principles of inheritance in other poleis, no matter how fragmentary and incomplete such an comparative insight may be, we may reach the following conclusions:

1. The “*silence*” of the Athenian legislator concerning the right of a father or grandfather to inherit from a deceased son or grandson probably dates back to a very early period, specifically to the time of the Ionian settlement of Attica. Upon their conquest of the region, the Ionians were organized into military units, which were subsequently territorialized

⁴⁷ See: *Lysias* 19.37.

⁴⁸ L. Beauchet, *op. cit.*, pp. 11-40.

into tribes (*phylai*) and clans (*phratiriai*). The conquered lands together with their subdued inhabitants were distributed among the victors in the form of original allotments, which were conceived as indivisible agrarian and economic units.

Women, sons and their wives, household servants, and slaves were all considered to be subject to the authority (*kuria*) of the male soldier and landholder, just like the land itself. In this legal context, a son did not possess property of his own and, in a sense, could be said to be his father's chattel. In the context of this militarized agrarian society where commerce and craftsmanship were still held in contempt, the original allotment was the only form of property the soldier, citizen and landowner was permitted to hold. A son owned nothing while the father was alive; and when his father died, everything devolved upon him, but he could no longer "return" the property, as his father had passed away.

None of this, of course, was still valid in Classical Athenian law. It appears more plausible to suggest that by the Classical period, a father could inherit from his son through a new interpretation of the same legal texts, in response to evolving social realities. The law did not mention the son, not because he was his father's heir, but because he was the continuer of the *oikos* (household); the father was not mentioned, either, again - not because he was legally excluded, but because the early law could not envisage a scenario in which he might be called to inherit.

Thus, the legislator's silence concerning both father and son may have enabled later jurists or practitioners to interpret this mutual silence as indicative of reciprocal inheritance rights. Such an interpretation would be all the more natural considering that father and son were, in fact, *agnates* (*syngeneis ex andros*), linked by male descent. Within this framework, which seems to have prevailed in Classical Athens, the father would most likely have been called to inherit from his son, provided the son had left no surviving male descendants.

Legal practice in this area may have remained uncertain or inconsistent precisely because of the law's silence. Yet it is this silence itself that permitted the development of new interpretative strategies, reflecting the dynamic adaptation of ancestral norms to the changing demands of economic life and civic ideology in Classical Athens.

2. The seemingly contradictory position between the full testamentary freedom granted to a childless testator and the prohibition on making a will in the presence of male offspring disappears once the concept of testamentary disposition is viewed through its historical evolution.

If the *polis* originally granted an inalienable and indivisible allotment (*klēros*) to the citizen and soldier doing so by authorizing the phratry, as a territorial military unit, to oversee the preservation of this indivisibility and inalienability then it follows that a citizen soldier with several sons, upon his death, designated one of them (with the consent and approval of the phratry) as the new holder of authority over the ancestral allotment. Similarly, if a citizen soldier with no sons, he would designate a successor, again with the phratry consent, to run his household (*oikos*) after his death. The legal form of such an arrangement was a form of *inter vivos* adoption with the phratry's approval. Clearly, then, one can hardly speak of absolute freedom exercised by an independent owner of agricultural property, though it may appear to be the case from a modern perspective. The inalienability and indivisibility of the ancestral allotment, coupled with the necessary approval of the phratry, sharply constrained the "freedom" of the holder of the *oikos*.

Only if a citizen and his phratry failed for any reason to make a testamentary designation, did intestate succession take place. In such cases, the legislator codified the presumed will of the deceased. It is likely that there existed an intermediate stage in which the phratry deliberated over the successor, a process that competed with inheritance claims by the next-of-kin. This, in turn, may have prompted the *polis* to intervene and legislate for such cases in order to prevent anarchy, especially as phratries were already losing their former influence.

In Classical Athens, the premises described above no longer held. The ancestral allotment had been absorbed into the broader estate. There was no longer a prohibition on the alienation or division of any part of a testator's property. Citizens engaged freely in commerce and craftsmanship, and land was no longer the sole form of wealth; on the contrary, many fortunes consisted primarily of financial claims, tradable goods, and ships. The phratry had completely lost its original role and survived only as a religious vestige within certain aristocratic families.

As a result, adoptive wills disappeared, replaced by testaments without adoption. Adoptive testaments were retained merely as formal relics, largely due to legal inertia, a phenomenon common in legal development. In Classical Athens, the prohibition on a testator making a will if he had male offspring amounted merely to a ban on his adopting some other person as his heir.

3. The apparent contradiction between Athenian legal prohibitions against testation by fathers with male children and the numerous extant wills from the Classical period made by such fathers may also be resolved through the historical method. As I have observed, the original allotment was indivisible and inalienable. It was granted by the *polis* to the citizen and soldier, and thereby the *polis* claimed the right to regulate all legal relationships concerning it. One of the many norms by which the *polis* regulated ownership and transfer of this original allotment was the rule that the *klēros* was to be transmitted from father to son. Conversely, if a citizen acquired property outside the scope of the original *klēros*, he retained full liberty to dispose of it. Initially, such property was acquired through military plunder, and later through trade and craftsmanship.

Eventually, the original *klēros* ceased to exist as a distinct legal entity, having been absorbed into the remainder of the estate. The phratries lost their role, and the *polis* abandoned its interest in regulating these ancestral plots. Nevertheless, the statutory prohibition on testation by fathers with male children survived. At the time of its promulgation, this ban covered nearly all the property a citizen and soldier held, yet it never extended to property he had acquired outside the ancestral *klēros*.

In my view, the adoptive will was intrinsically linked to the original *klēros* and the military and territorial division of the *polis* into phratries. From the outset, citizens had the legal possibility to freely bequeath individual items acquired outside the *klēros*, entirely outside the scope of the phratry's consent, which, in my view, was required only in the case of adoptive wills⁴⁹.

⁴⁹ The prevailing opinion on this issue was best expressed by L. Beauchet, *op. cit.*, pp. 680-681: "At the beginning, when the right to make a will, long prohibited, was introduced by Solon into Athenian legislation, its exercise seemed justified only by the necessity of providing the testator with an adoptive son, and therefore the making

Thus, in the earliest period, there existed two distinct legal instruments: first, *inter vivos* adoption, whereby a successor was designated to the ancestral *klēros*; and second, the *donatio mortis causa*, whereby individual items were conditionally donated upon the testator's death.

The study of inheritance law in Classical Athens has led me to infer from certain inconsistencies and illogicalities that there must have been an earlier social structure and legal order. All the evidence points to the formerly decisive role of the phratry and the existence of an original, indivisible and inalienable *klēros*, and the fundamentally military and agrarian character of early Athenian society.

THE STRUCTURE AND DEVELOPMENT OF INHERITANCE LAW IN CLASSICAL ATHENS

Summary

This study provides an analysis of Athenian inheritance law in the Classical period in the basis of the history of law, examining the relationship between testamentary freedom, agnatic kinship, and civic organization. Although Athenian law is often seen as divided between limited testamentary succession (allowed only in the absence of male heirs) and a rigid system of intestate inheritance, this paper argues that these categories obscure a more fluid legal reality. Using literary, epigraphic, and comparative sources, this review identifies the archaic foundations of Athenian succession rules rooted in military and landholding structures focused on kinship. Special attention is given to the original allotment (*proklēros*) and phratrerial oversight in determining limits on alienation and descent. The study suggests that the apparent contradictions in the sources, such as the silence on

of a will had to be strictly forbidden... to anyone who already had legitimate children... But this inability to dispose of property became less and less compatible with the spirit of individualism... In order to reconcile old laws with new ideas, jurisprudence finally recognized for a citizen, the father of one or more sons the right to make a will, either in favor of one of the sons or in favor of a stranger... Athenian law thus presents us with an evolution opposite to the one found in Roman law. While in Rome the starting point was the principle of the *paterfamilias*' complete freedom of testation... in Athens, it was precisely the opposite..." Roman legal scholarship has long rejected the notion of an alleged original and absolute freedom of the head of the household. Is it not time for scholarship on Greek law to do the same with the thesis of a complete inability to dispose of property in early Athens?

parental inheritance or disputes over testamentary scope, reflect the gradual transformation of ancestral allotments into private estates and the decline of phratry authority. By reinterpreting key legal texts through their historical development, it shows how Athenian jurists adapted inherited kinship norms to operate in a more commercial and individualistic polis. Thus, inheritance law appears not only as a means of property transmission but also as a instrument for managing Athens' social and political transformations.

STRUKTURA I ROZWÓJ PRAWA SPADKOWEGO W KLASYCZNYCH ATENACH

Streszczenie

Niniejsze opracowanie przedstawia analizę prawną i historyczną ateńskiego prawa spadkowego w okresie klasycznym, koncentrując się na relacjach między wolnością testamentową, pokrewieństwem agnatycznym a strukturą obywatelską. Choć prawo ateńskie często postrzegane jest jako system podzielony między ograniczone dziedziczenie testamentowe (dopuszczalne jedynie przy braku męskich potomków) a sztywny model dziedziczenia beztestamentowego, autor dowodzi, że takie ujęcie zaciemnia bardziej elastyczną rzeczywistość prawną. Wykorzystując źródła literackie, epigraficzne i porównawcze, analiza odsłania archaiczne podstawy ateńskich zasad dziedziczenia, zakorzenione w rodowych strukturach wojskowych i ziemskich. Szczególną uwagę poświęcono pierwotnemu nadziałowi ziemi (*proklēros*) oraz nadzorowi fratrialnemu, które kształtowały ograniczenia zbywalności i dziedziczenia. Artykuł wskazuje, że pozorne sprzeczności w źródłach, takie jak milczenie na temat dziedziczenia po rodzicach czy spory dotyczące zakresu testamentu, odzwierciedlają stopniową przemianę rodowych nadziałów w majątki prywatne oraz upadek władzy fratrialnej. Poprzez reinterpretację kluczowych tekstów prawnych w ich ewolucyjnym kontekście ukazano, jak ateńscy prawnicy dostosowywali odziedziczone normy rodowe do coraz bardziej handlowego i indywidualistycznego polis. W ten sposób prawo spadkowe jawi się nie tylko jako mechanizm przekazywania własności, lecz także jako narzędzie zarządzania przemianami społecznymi i politycznymi w klasycznych Atenach.

Keywords: inheritance; ancient Greece; testamentary freedom; *epikleros* institution; kinship; phratry.

Słowa kluczowe: dziedziczenie; starożytna Grecja; wolność testamentowa; instytucja *epikleros*; pokrewieństwo; fratria.

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