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Citizen *nothoi*? The cases of Phile (Isaeus 3) and the two 'Mantitheuses' (Dem. 39 and [Dem.] 40)

Nothoi cittadini? I casi di Phile (Iseo 3) e dei due 'Mantitei' (Dem. 39 and [Dem.] 40)[1]

Abstract
This article defends arguments expressed in an earlier article published in *Polis* 36 (2019), against the recent critique of Brenda Griffith-Williams (2020 and 2023), about the role of *nothoi* in the democratic polis. The evidence of Dem. 39 (*Against Boeothus* I), [Dem.] 40 (*Against Boeothus II*) and Isaeus 3 (*On the Estate of Pyrrhus*) shows that *nothoi* could be citizens at Athens, despite the assertions of many modern scholars to the contrary, and that the chief limitation which *nothoi* faced was to do with inheritance entitlements. A careful examination of the case against Boeothus shows that the issue at stake was the inheritance of Mantitheus' estate, not citizenship, even though the latter is at several points dragged in for rhetorical reasons. Similarly, Isaeus' third speech on closer analysis gives an overwhelmingly probable indication, though disputed by many scholars, that the daughter of Pyrrhus, a woman alternatively called Phile and Cleitarete, who married an Athenian named Xenocles, was an illegitimate daughter (*nothe*) of the deceased Pyrrhus, the rights to whose estate were up for dispute. These speeches give further confirmation to my earlier argument that legitimacy at Athens carried

[1] I am grateful to Pietro Cobetto Ghiggia, David Lewis, Rosalia Hatzilambrou, Edward Harris, and Alberto Maffi for reading earlier drafts of this paper, as well as to the anonymous referees for *Dike*, for their acute remarks. I should also like to thank and acknowledge Brenda Griffith-Williams, in reply to whose arguments the present article is chiefly directed, for pointing out various inadequacies in my article in *Polis* 2019 and, in consequence, for prompting me to clarify my earlier position. All remaining errors are my own.

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two distinct senses: citizenship legitimacy, which from 451/0 meant having two Athenian parents to whom the inductee to a deme could point on his eighteenth birthday, and engyetic legitimacy, which is what was required for inductees, male and female, to phratries.

Questo articolo difende le argomentazioni da me espresse in un precedente articolo pubblicato su *Polis* 36 (2019), contro la recente critica di Brenda Griffith-Williams (2020 e 2023), sul ruolo dei *nothoi* nella polis democratica. I casi di Dem. 39 (*Contro Beoto I*), [Dem.] 40 (*Contro Beoto* II) ed Iseo 3 (*Sulla proprietà di Pirro*) dimostrano che i *nothoi* potevano essere cittadini di Atene, nonostante le affermazioni contrarie di molti studiosi moderni, e che la principale limitazione a cui i *nothoi* andavano incontro riguardava i diritti ereditari. Un attento esame del caso contro Beoto mostra che la questione in gioco era l'eredità del patrimonio di Mantiteo, non la cittadinanza, sebbene quest'ultima venga introdotta in diversi punti per ragioni retoriche. Analogamente, il terzo discorso di Iseo, ad un'analisi più attenta, fornisce un'indicazione estremamente probabile, sebbene contestata da molti studiosi, che la figlia di Pirro, una donna chiamata alternativamente File o Clitarete, che aveva sposato un ateniese di nome Senocle, fosse una figlia illegittima (*nothe*) del defunto Pirro, i cui diritti sul patrimonio erano oggetto di controversia. Questi discorsi confermano ulteriormente la mia precedente argomentazione secondo cui la legittimità ad Atene aveva due significati distinti: legittimità di cittadinanza, che dal 451/0 significava avere due genitori ateniesi a cui chi veniva introdotto in un demo poteva fare riferimento al suo diciottesimo compleanno, e legittimità da *engye*, che è ciò che era richiesto per coloro che, maschi e femmine, venivano introdotti nelle fratrie.

Keywords: Citizenship, *nothoi*, legitimacy, inheritance, demes, phratries

Parole chiave: Cittadinanza, *nothoi*, legittimità, eredità, demi, fratrie

In an earlier article, I argued that legitimacy in Athens, from the mid fifth century onward, had two distinct legal senses: the first of these was about citizenship, which hinged on having two Athenian parents according to the requirements of Pericles' citizenship law, the second invoked the legal status of the parental union, *viz.* whether the parents had been lawfully conjoined by the formal procedure of *engye*.[2] The case of Phile, preserved in the third

[2] Thus, Joyce 2019: 447-8. The purpose of the present paper is to defend that reading against the most recent challenge of Griffith-Williams (2020, 2023). In my earlier article, I referred to Dem. 39 and [Dem.] 40 as an adoption case, which needs further nuance. It was not adoption *sensu stricto*, provided the case for the defence, *viz.* that the defendant was the legitimate son of Mantias, was credible. See further n. 9.

speech of Isaeus (*On the Estate of Pyrrhus*), shows that the matter of Phile's legitimacy in the inheritance case affected the right to inherit the estate, not the right to be counted a citizen of Athens by ethnicity.[3] D.M. MacDowell argued, to my mind persuasively, that the legal status of Phile as a *nothe* did not rule out her right to be conjoined in law to an Athenian.[4] Phratry membership, whilst implying citizenship (since non-citizens were excluded), established engyetic descent and, consequently, entitlement to inherit an estate.[5] The matter before the deme, by contrast, was the ethnicity of the parents, which, as [Arist.] *Ath. Pol.* 42.1 attests, was the criterion that decided citizenship; no mention is made there of the legal status of the union.[6]

In a practical sense, phratry and deme membership overlapped, and perhaps in the great majority of cases it was normally expected that citizens were born of legally recognised unions. After all, if unions were legally recognised, parentage would have been far easier to prove than otherwise, which

[3] Joyce 2019: 480-483.

[4] MacDowell 1976, accepted by Walters (1983: 317-32); Leduc (1990: 277); Cantarella (1997: 97-111); Avramovic (1997: 262); Carey (1999); Cobetto Ghiggia (1999); Joyce (2019). Earlier scholars who anticipated MacDowell include Erdmann (1934: 377-383); Latte (1936: col. 1072); Hignett (1952: 343-345); and Harrison (1968: 63-65). In support of the view that union with a concubine (*pallake*) from earliest times permitted the production of citizen children, see Sealey (1984); Bertazzoli (2003 and 2005). Those who deny that *nothoi* could be citizens include Rhodes (1978); Patterson (1981: 31; 1990: 39-73); Lotze (1981: 159-178); Hansen (1985: 73-75; Blok (2017); Dmitriev (2018); Maffi (2019); Griffith-Williams (2020, 2023). In her commentary on Isaeus 3, Hatzilambrou (2018: 31-35) presents some forceful arguments against those who claim that *nothoi* could not be citizens but remains tentative. Griffith-Williams (2023: 318, 325, n.11) defers to Rhodes as if his reply to MacDowell was convincing, but as Dmitriev, who himself takes the line that *nothoi* could not be citizens, acknowledges, Rhodes' arguments against MacDowell were inadequately framed because they failed to deal with the legal objections that arise from Isaeus 3.

[5] The evidence is summarised at Joyce 2019: 480-486.

[6] Rhodes (1981: 496) tried to circumvent this objection by stating that 'there are many omissions in the second part of *A.P.* and I do not believe that a strong case can be based on this.' As read, this can only carry weight if there are strong independent reasons to believe that other criteria beside the ethnicity of the parents came into play. Unfortunately, neither Rhodes, nor those who have followed his lead, have been able to produce decisive evidence to show that considerations other than ethnicity were considered and seem to overlook the most important objection, which is that the second half of the *Ath*. *Pol*. is not the only place where the requirements of the law of Pericles were spelled out; its details are clarified at 26.3 which, like 42.1, states that only ethnic legitimacy was required.

explains why the psychological connection between phratry membership and citizenship was so closely forged.[7] The problem we have is not merely that no source expressly states that phratry membership was a prerequisite of citizenship, but that there exists positive evidence to show that *nothoi* – here, children of unrecognised unions – could indeed be counted citizens, provided the parents were Athenian on both sides.[8] This is clearly implied in Isaeus' third speech, to which I return in the second part of my paper. In the first part, I wish to examine a case of identity theft recorded in the two Demosthenic speeches *Against Boeotus I and II* (Dem. 39 and [Dem.] 40). Older scholarship described this as an adoption case, but more recently, B. Griffith-Williams has argued that the matter in dispute was not of adoption, even if terminology used in those speeches resembles adoption language, but acknowledgment of lawful parentage.[9] In addition, Griffith-Williams argues

[7] See Joyce 2019: 469. Alongside Dem. 39 and [Dem.] 40, Griffith-Williams (2023: 318) cites Isae. 7.27-28, which I did not discuss in my earlier article, as proof that the deme was concerned with matters beyond ethnicity but reads more into it than is warranted. This passage shows only that the deme could defer to the verdict of the phratry, since phratry entry implied legitimacy in both senses (engyetic descent and two citizen parents, on which see *IG* II^2 1237 lines 108-112). The reason the deme deferred to the phratry here was simply because the legality of the speaker's adoption had been questioned, and the deme needed proof that Apollodorus had adopted him. This does not prove that deme busied itself with family matters beyond requiring evidence that the family could give that the application was valid. In this instance, the testimony of the phratry was required because the fact of the adoption had been challenged by the speaker's opponents when he was introduced to the deme on his eighteenth birthday. The matter for the deme was the identity of the speaker as the son (by adoption) of two Athenian parents. There is no evidence, however, that the engyetic legitimacy of the adoptee came under scrutiny by the deme.

[8] That *nothoi* were from the earliest times understood to be legitimate members of the community is clear from the Draconian specifications for lawful killing, which specified that a man had an unlimited right to kill someone who slept with his wife or concubine, and that both were kept for the begetting of free children. Some but not all scholars have concluded that cohabitation with a concubine was a legally recognised union of sorts and that the offspring who resulted from it were 'lawful' in the sense that they were lawful members of the community, even if, as *nothoi*, they did not enjoy the inheritance entitlements of *gnesioi* (sprung from engyetic unions). As Bertazzoli (2005) has rightly argued, there is no reason to suppose that the circumstances of Pericles' citizenship law imposed any limitation on the legal protections granted to *nothoi* who, in the language of Classical Athenian law, were citizens just as, in the language of Draconian law, they were 'free' members of the community.

[9] For an overview, though selective and incomplete, of the relevant scholarship, see Griffith-Williams (2020: 40-42). As Griffith-Williams points out, this understanding is

from the two Demosthenic speeches that descent from an unlawful union ruled out any possibility of enrolment in the citizen body, and supports the arguments of J.H. Blok, that citizenship was about lawful descent.[10]

In my earlier paper, I argued that deme and phratry dealt with two separate areas of concern, the one with citizenship, the other with inheritance.[11] Griffith-Williams has questioned my argument that citizenship was about ethnicity, not wedded legitimacy, of parentage and has brought evidence into the discussion, which I did not discuss adequately, to argue the contrary case. Whilst noting the force of some of her criticisms, I defend my main argument by reference to further evidence that I did not discuss. In the first section, I examine two lawsuits filed by Mantitheus against his half-brother Boeotus (Dem. 39 and [Dem.] 40); in the second, I examine the case of Phile (Isae. 3). Citizenship and inheritance were separate concerns: the one was a public matter, determined by the deme when the candidate reached majority; the other a private, decided by the phratry into which initiands were enrolled.

I

Sometime around 348 BCE, Mantitheus, son of Mantias, sued his half-brother, Boeotus, for damages. The formal plaint was *blabe* ('harm'), a legal

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imprecise because the sense of *poiesis* need not be limited to adoption cases, though she grants that this is one of its attested meanings. Given that the speaker denies any blood relation, the act of recognition (from his point of view) might have had the appearance of an adoption but of an unlawful kind, given that Mantias had lawful male issue by a different relationship. Even if this is the case, 'recognition' or 'acknowledgement' is a better way to render the term because it does not bias the issue.

[10] Blok 2017; *contra* Joyce 2023.

[11] Referenced above, n. 2. This is not the place to decide whether *nothoi* had identical political rights as *gnesioi*, or were placed under certain legal restrictions, as argued by Bearzot (2005) and Kamen (2013: 62-70). In a more recent study of state support for orphans, Bearzot (2015: 26-27) has argued that orphan *nothoi* enjoyed the same rights as orphan *gnesioi* and, like *gnesioi*, participated in the parade of the fallen dead, served in the army, and appeared at the Great Dionysia, yet were not enlisted in demes. Even if their political rights were not identical with *gnesioi*, it is nevertheless certain, as Bearzot has noted, that they enjoined many more rights than metics or freed slaves. Bearzot's claim that *nothoi* did not appear on the deme lists depends on inconclusive evidence; see my remarks in the concluding section. Against Kamen's view of a sliding spectrum of social 'statuses' that situated *nothoi* in an inferior position to full citizens and differentiated them from citizens, see Joyce 2025.

concept that admitted wide interpretation. As E.M. Harris has shown, legal terminology at Athens entailed slippage in its application.[12] Even if the 'harm' done to the speaker was more theoretical than actual, nothing prevented Mantitheus from suing his opponent for damage if he could argue that the *dike blabes* could cover potential damage, as well as actual damage sustained. The issue was the usurpation of the name Mantitheus by the defendant. The speaker argues that his birthrights were being upended. The plaintiff did not prevail in 348 and, a year later, re-ignited the case to argue that the identity theft had implications for the return of his mother's dowry. By the time of the two trials, the defendant and his brother, Pamphilus, had been received into the family of Mantias. Both speeches refer to a past dispute some ten years earlier, when the defendant's mother, Plangon, arranged by deception to have Boeotus brought into the family of Mantias.[13] Throughout, the speaker states that the defendant was not the birth son of Mantias (*e.g.* at 39.2; 40.47, 49). Nevertheless, in 348 and again in 347, he had little choice but to recognise the decision of 358 as binding and must accept the defendant and his brother as his kinsmen.[14]

The earlier decision resulted in the legal recognition of Boeotus and Pamphilus (who from now on for convenience will be referred to thus, to distinguish the former, who claimed the name Mantitheus, from Mantitheus

[12] For a more general discussion of open texture in Athenian law, see Harris (2013: 213-245). Harris points out that legal terminology, as in modern legal systems, needed to be interpreted, and that the fact that the law was open to interpretation means not that it was loosely or casually applied but, to the contrary, that the Athenians took legal terms seriously; the case of Boeotus is discussed in detail (2013: 223-225).

[13] Griffith-Williams (2020: 34 and 44 n. 5) implies that this decision was the result of an arbitration, but the accounts at 39.2-3 and 40.10-12 of the process do not add up. In the first speech, we are informed that the case went before a court, not an arbitrator, whereas the second implies an arbitration. An arbitration *sensu stricto* was a process whereby two disputants came to an agreement or compromise *via* a private arbitrator, possibly to their mutual benefit, whereas in this case, the outcome was binary (yes or no). It is more likely that the hearing of 358 was decided in a lawcourt. For a fuller discussion of the distinction, see Harris 2018.

[14] The hypothesis to Dem. 39 implies that the speaker and the defendant had the same birth father, which is what was established after the first trial. Yet, it is clear from main body of the first speech that the speaker denied this. It is perhaps, in part, because of the wording of the hypothesis that scholars have inferred that the legal point at issue was the matter of the defendant's legitimacy; this is not however easily supported by the text of the speech, which, as Griffith-Williams (see below) acknowledges, makes no reference to the legal circumstances under which the defendant was born.

the speaker) as the legitimate sons of Mantias. The speaker uses language of adoption to describe the process of legal acknowledgement. Some scholars have taken the cue and called this adoption,[15] but more recently, Griffith-Williams has drawn attention to some of the semantic and legal difficulties:

> When *poieisthai* and *poiēsis* are used, in other sources, as synonyms for *eispoieisthai* and *eispoiēsis*, that reflects the fact that the Athenian procedure for adopting a son was essentially the same as for acknowledging a natural, legitimate son: both required the son to be introduced to his (natural or adoptive) father's phratry and enrolled in his deme, although there was of course no equivalent of the *dekatē* in the case of an adoption. (2020: 42)

Whether or not the defendant was the son of Mantias, Mantitheus had to recognise him, at least officially, as his lawful half-brother. As Griffith-Williams observes, the reception of Boeotus into the family of Mantias could not have been adoption *sensu stricto*, because in Athenian law, no adoption could happen unless the adopting parents had no lawful male issue.[16] In this case, Mantias already had a recognised son, Mantitheus (the speaker), and if Boeotus was brought into the family as the natural son of Mantias, this cannot have been adoption in the normal sense. On this strict point of law, Griffith-Williams is correct. But in other respects, her treatment of the case misconstrues the legal point at issue. A little earlier, she writes:

> '[The speaker] never directly claims that Boeotus is illegitimate – the word *nothos* ('bastard') does not occur in either of the speeches – but this is strongly implied in the alternative identity that he constructs for Boeotus as an outsider who has inveigled his way through fraud both into Mantias' *oikos* and into the citizen body.' (2020: 38)

The speaker maintains not that Boeotus was illegitimate, which is neither stated nor implied, but that Boeotus and Pamphilus *were not the natural sons of Mantias*.[17] If believable, the problem for Mantias was that when

[15] As I did myself, casually and inaccurately, at Joyce 2019: 484.

[16] For comprehensive studies of the law of adoption in fourth-century Athens, see Rubinstein 1993 and Cobetto Ghiggia 1999. As Cobetto Ghiggia noted (1999: 81 n. 49), 'il verbo *poiesato* e il sostantivo *poiesin* non andranno intesi come riferiti ad una presunta adozione...ma ad un riconoscimento di paternità.'

[17] It might appear from 40.9 that the speaker alleges that Mantias fathered illegitimate children with Plangon and sought later to deny the fact. But the language rigorously

his *affaire de coeur* finally came to light, it was possible for Plangon's children to draw attention to it by claiming to be unlawful offspring; to offset the disgrace, they pressured him to acknowledge them as his natural and legitimate sons so that they would gain an inheritance, and so that he could avoid public humiliation.

The speaker states adamantly that they were not Mantias' sons (39.2; 40.9). If so, the mooted issue was not whether they were born in wedlock, but whether they were Mantias' natural children. If they were not, as the speaker claims, two possibilities arise: either (a) they were fathered by another man with whom Plangon had relations while still the wife of Mantias, a legal relationship which the speaker fervently denies; or (b) they were Plangon's children by a different (later or earlier) relationship and postured as the natural and legitimate children of Mantias for the sake of a richer inheritance, once Mantias formed an unlawful attachment to their mother.[18] The speaker implies that Mantias accepted paternity only under blackmail (39.2; 40.9). Does this mean that they were Mantias' illegitimate children with Plangon? This makes little sense. Mantias brought them before the phratry on the claim that they were lawfully his, and by declaring them to be his, he would be declaring that they were born in wedlock to Plangon, before divorcing her to marry the speaker's mother. Yet the speaker repeatedly denies that the children of Plangon were his father's children and that Mantias and Plangon had ever been lawfully conjoined. If the speaker's case is to be believed, the point is not that Boeotus and Pamphilus were illegitimate children, but that they were not Mantias' children at all.[19] Legally, for the speaker's purposes, this makes little difference, since they would not have been recognised in Mantias' phratry without either natural or engyetic descent that could be proved. However, it is

denies that they were Mantias' sons despite the protestation of Plangon that they were (τὸν μὲν ἄλλον χρόνον οὗτοι διῆγον οὐκ ὄντες τοῦ ἐμοῦ πατρός). The present participle οὐκ ὄντες means simply that the children did not belong to Mantias. The implication is not that they were illegitimate sons, but rather that they were not his natural sons.

[18] It is unclear from 39.26 whether the speaker denies that Plangon was Mantias' *pallake*. Hyperides, for example, kept *pallakai* in other residences, not an uncommon practice at Athens (Athen. 13.590d).

[19] The claim which Griffith-Williams (2020) makes throughout, that the case hinged on whether the defendant and his brother were *nothoi*, is unsupported. If that had been the legal issue, it is extraordinary that the prosecution makes nothing of it. The case hinges not on the engyetic status of the two brothers but whether Plangon's children belonged naturally to Mantias.

essential to observe accurately how the speaker frames the argument, since if the children could claim neither natural nor legitimate descent from two Athenian citizens, not only was inheritance closed off, but potentially so was citizenship if an Athenian father could not be produced. This is why the matter of citizenship is raised, not because it depended on engyetic descent, but because if no Athenian father could be confirmed, citizenship was ruled out.

On the speaker's side, the case went thus: (1) Mantias had one wife only, the speaker's (unnamed) mother (40.8); (2) Mantias had two natural and lawful children, the speaker and a younger brother (unnamed), who died in childhood (40.7); (3) the relationship with Plangon, the mother of Boeotus and Pamphilus, started before the death of the speaker's mother but never took the form of a lawful marriage (40.8, 24, 26, 27); (4) Plangon already had two infant sons, who were educated in Hippothontis, not Mantias' tribe (39.22-6); (5) when Mantias and Plangon started relations, they did not marry (40.9); (6) when the relationship with Plangon deteriorated, Plangon blackmailed Mantias, who bought her off so that she would refuse, when challenged, the oath (39.3; 40.10); (7) unexpectedly, Plangon went back on her promise and swore that the children were fathered by Mantias (39.4; 40.11, 41); (8) to save his reputation, Mantias enrolled the now adolescent son of Plangon into his phratry under the name Boeotus, acknowledging under duress that he and Plangon had been lawfully married (39.4; 40.11, 35, 54); (9) Mantias soon afterwards died (39.5; 40.13); (10) upon attaining his majority, Plangon's elder son, named Boeotus, introduced himself as 'Mantitheus', claiming on spurious evidence that he had been introduced by Mantias in infancy as 'Mantitheus' (39. 5; 40.18, 28).

On the defendant's side, we can at best reconstruct the argument from the way in which the speaker seeks to refute it, since no speech for the defence survives. In outline: (1) Mantias was married to Plangon, the defendant's mother;[20] (2) the defendant and his brother were born in lawful wedlock and presented in infancy to Mantias' phratry as Mantitheus and Pamphilus (40.28); (3) soon after their birth, Mantias formed an attachment to the mother of the speaker, which resulted in divorce and disownment of the children (40.25-6); (4) in adulthood, the defendant sued his father Mantias for recognition (39.2; 40.10); (5) the matter was decided in his favour

[20] This is implied by the fact that the trial of 358 was decided in the defendant's favour; see 39.3; 40.10-11, and by the fact that the speaker repeatedly tries to refute it.

and, in consequence, Mantias introduced him at the Apatouria under the name given in infancy (39.3; 40.11, 28); (6) after Mantias died, the defendant went to Thorikos, his father's deme, to be enrolled as a full citizen (39. 5; 40.18, 28); (7) he as allegedly the eldest, and not the speaker, was lawfully called Mantitheus, son of Mantias, of the deme Thorikos (39.5, 30).

The speaker alleges that Plangon swore falsely that Boeotus was her child by Mantias (39.3; 40. 10-11); and, in consequence, that the latter was left with no alternative but to enrol him in his phratry. He testifies that in childhood, Boeotus visited the chorus of boys in the tribe Hippothontis, not Acamantis, the tribe of Mantias (39.23-24).[21] Full enrolment in the deme did not happen until eighteen, but infants were introduced to one of the ten Cleisthenic tribes long before they were inducted into the deme at adulthood.[22] The fact that the children of Plangon had been recognised in Hippothontis suggests either that they were introduced not as Mantias' offspring but as children by a different man, or that they were Mantias' lawful

[21] Rosalia Hatzilambrou reminds me in private correspondence that Boeotus is not said to have been enrolled in the tribe of his grandfather but only participated in the chorus of the boys (the verb used is φοιτᾶν, not ἐγγράφεσθαι). Whilst true, the force of the argument stands whether we can envisage a formal process of infant enrolment or a *de facto* recognition of lineage, as the speaker makes clear subsequently (39. 25-28). We have no conclusive evidence that tribes formally 'enrolled' children and, in any case, citizenship was not finalised until eighteen, when formal enrolment in the deme took place. However, as I have argued elsewhere (see Joyce 2022), the maintenance of a register did not indicate finality when it came to membership of an institutional body: phratries, for example, kept rosters of potential as well as actual members, since infants were introduced at the *dekate* and records were maintained of their introduction to those bodies, even though confirmation did not happen before adolescence; even after the Apatouria, an initiand could be removed from the register if successfully challenged at the *diadikasia*.

[22] This is implied at *IG* II² 1237 lines 119-121, which refer to the name, patronymic and demotic of initiands to the phratry through the paternal, as well as the maternal, lines. Scholars have debated whether the demotics belonged to the candidate, not yet enrolled in either the phratry or the deme, or to their father and maternal grandfather, seeing that women did not possess demotics in the same way that male citizens did, though it was not uncommon to see the suffix -θεν to denote a female demotic; see Whitehead 1986: 77. Recently, Polito (2020: 74) has argued that the demotics here cannot belong to the initiands but were acquired vicariously, on the grounds that the phrase τὸ ὄνομα πατρόθεν does not match the ordinary formulation of the genitive as attested in the phrase that follows, τῆς μητρὸς πατρόθεν. At Joyce 2022: 70, n. 16, I voiced objections to that reading, arguing that citizen children were from infancy referred to by the demotics of both parents, as proof of ethnic legitimacy.

children but moved to the tribe of their maternal grandfather, once relations with Plangon had soured.[23] If citizenship hinged on engyetic legitimacy, as Griffith-Williams and others have argued, and if, as Griffith-Williams simultaneously argues, the thrust of the speaker's case is to cast doubt on the defendant's legitimate descent, a salient self-contradiction presents itself: why then did an illegitimate boy visit a Cleisthenic tribe if the issue at stake was indeed that he was a *nothos*, and if the law of citizenship debarred *nothoi* from access to the citizen body?

The speaker adds another twist. In the event Plangon kept to her initial promise to refuse the oath challenge, arrangements were in place to have the children adopted by their maternal uncles (40.10-11). Ordinarily, without the acknowledged paternity of Mantias, Plangon would have pointed to lawful paternity by someone else. As P. Cobetto Ghiggia has pointed out, it remains unclear when the requirement for marriage between the natural parents of the adoptee became a legal prerequisite for adoption.[24] Quite possibly, in 358, it was not yet required that an adoptee show engyetic descent and that it was enough to be born of two citizen parents. If so, we might have an explanation for why the sons of Plangon could be adopted in the event Mantias disowned them, provided they could point to an Athenian father, married to their mother or otherwise. Even if lawful parentage was not required, if the decision had gone Mantias' way, he would have denied paternity, in which case Plangon had a fall-back position whereby she could arrange adoption for the two boys, so that citizen status was not jeopardised. This means that despite superficial impressions (see further below),

[23] Rudhardt (1962: 61) maintained that the visitation to Hippothontis in childhood implies that Boeotus and his brother were legitimate offspring. This has been questioned more recently by Maffi (2019), who argues that if the children had been legitimate, they would have visited Acamantis, the tribe of Mantias, and, furthermore, that the practice of introduction to the mother's tribe reflects a panhellenic custom witnessed elsewhere, for example, at Gortyn, which recognised maternal filiation and allowed a degree of recognition for those who could not point to a legitimate father. As the speaker's objection shows (39.28), the matter is not about the engyetic descent of the boys but solely about their paternity: if they had been the natural sons of Mantias, they would have belonged to Acamantis. The objective is to argue not for the illegitimacy of Plangon's sons but for their unrelatedness by blood to Mantias.

[24] Thus, Cobetto Ghiggia (1999: 82): 'Il discorso è datato intorno al 348, ma il contesto in cui collocare l'episodio analizzato risale ad almeno un ventennio precedente. Non si può pertanto affermare con assoluta certezza che il requisito della purezza dei natali per l'adottando fosse comunque e sempre necessario.'

the citizenship of Plangon's children did not hinge on the possibility that Mantias was their lawful father.

There is no mention in either speech that Plangon's children were *nothoi*. The most that is stated is that the defendant and his brother were not the sons of Mantias. If the speaker is to be believed, Mantias arranged initially for the children to be adopted by their maternal uncles (40.11). If so, it must be assumed either that Mantias really was the legitimate father, as the defence claimed, and sought some dubious way to deny paternity at the trial of 358 but affirmed it later when he and Plangon organised transferral to the guardianship to the uncles; or that their father was someone else who had been Plangon's husband. Who was the mystery man? We are not told. Probability suggests that the sons of Plangon were the legitimate children of Mantias, as the defence held; that the parents had been married but later separated; that because of the separation, he did not enrol them in adolescence; and that this led to Boeotus, who had by now come of age, to sue his birth father. The material about conflicting oaths taken by Plangon looks very much like invective to discredit her and her sons. On that reconstruction, Mantias had fathered lawful children by his first wife, Plangon, before he divorced her to marry the (unnamed) mother of the speaker. Because of the divorce, which might have taken place when Mantias suspected the paternity of the two boys, he was unprepared to recognise the sons at the Apatouria. Yet, it seems unlikely that Boeotus would have launched a recognition claim unless he had been presented in infancy and was therefore the legitimate son of Mantias.

There are passages in both speeches to suggest that his rightful place as a citizen had come into dispute (39.2, 39.31; 40.10, 40.42). Griffith-Williams points to them to argue that without engyetic legitimacy, citizenship was barred.[25] The first (39.2) states that the defendant had protested that his citizenship was under threat (τῆς πατρίδος ἀποστερεῖσθαι). If Mantias was not the father, then who was? Without an Athenian father who could be identified, it was impossible to register in a deme at eighteen. The key point here is natural paternity, not engyetic legitimacy. The second (39.31) shows that by claiming to be Mantias' son, the defendant was able to claim

[25] This claim is made also by Maffi (2019), whose reconstruction makes two foundational assumptions: (1) that Pericles' citizenship law required birth from engyetic union; and (2) that if Mantias had kept the boys after separating from Plangon, he would by implication have recognised their legitimacy.

citizenship and Mantias' estate. It is important not to conflate two issues. Boeotus needed Mantias as his birth father so that he could register in the deme; he needed Mantias as his legitimate father so that he could inherit the estate. The third (40.10) indicates, *pace* Griffith-Williams, that the claim to citizenship did not rest on his acknowledgement by Mantias: the speaker claims that on the eve of the trial of 358, Mantias and Plangon had come to an arrangement whereby she would have her sons adopted, on the condition that she would decline, and citizenship would not be affected (οὔτε τούτους ἀποστερήσεσθαι τῆς πολιτείας). The fourth (40.42) shows that the recognition of the defendant as the son of Mantias secured two outcomes, (1) right of inheritance and (2) right of citizenship. Rhetorically, the speaker presents the decision as an affront to the city as well as to the *oikos*. Yet, as the second speech shows (40.10-11), if the denial by Mantias had stood, this would not have presented a problem if adoption by the uncles had gone ahead, normally if they could point to engyetic parentage.

Plangon needed to secure her sons not citizen status but entry to a wealthy household. The emotive language used to imply that without that acceptance, their identity as Athenians would have been imperilled, is exaggerated. Even if, in practice, it was extraordinarily difficult to document natural parentage outside engyetic descent, there is no sign in these speeches or elsewhere that it was impossible. Mantias' acknowledgement of Boeotus as his natural son, at very least, was important in the practical sense that, without it or some other arrangement, such as adoption by their uncles, it would have been hard in practice for Plangon's sons to prove dual Athenian parentage when approaching the deme. The need to document engyetic descent was thus a practical matter, rather than a strict point of law, as far as citizenship was concerned. The problem which all *nothoi* faced was that the practical barriers to documenting ethnicity as Athenians were considerable if their father denied paternity. Even if not *nothoi*, this was the very same practical issue which Boeotus and Pamphilus theoretically faced if they could not identify a father. Thus, it makes sense for the speaker to claim that everything – inheritance and citizenship – rode on the verdict of the court in 358, but the evidence does not necessitate the conclusion that without the acknowledgment by Mantias, citizenship was closed off.

In short, the argument that *nothoi* could not be citizens makes several prior assumptions. The first is that the matter before the deme, in addition to the ethnicity of the parents, was the nature of the union. There is no source

to show this. The wording of Pericles' citizenship law ([Arist.] *Ath. Pol.* 26.4; Plut. *Per.* 37.2-5; Ael. *V.H.* 6.10 and 13.24) entails only that ethnic legitimacy – i.e., two Athenian parents, married or otherwise – was required.[26] The second is that without the acknowledgement by Mantias of paternity, Plangon's children would have been disinherited not only of an estate but also of their rights to citizenship. Yet, by visiting the tribe Hippothontis in childhood, their citizenship was *de facto* recognised already.[27]

II

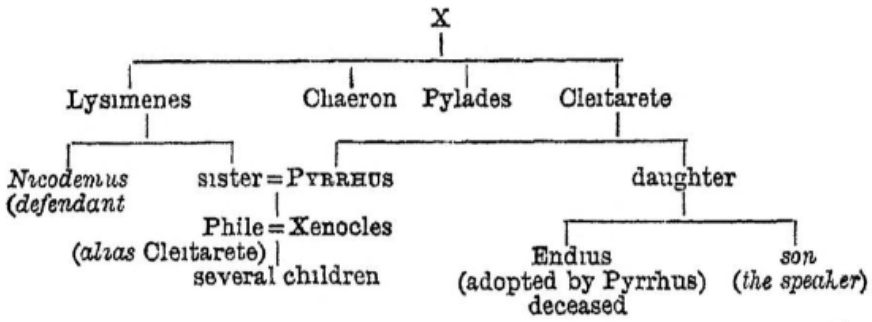
The third speech of Isaeus (*On the Estate of Pyrrhus*) is one of the most contested documents on Athenian family law.[28] It concerns a disputed in-

[26] As Cobetto Ghiggia (1999: 82) states, 'La cittadinanza ad Atene, infatti, si determinava *iure sanguinis* e non *iure soli*, e, prima del decreto proposto da Pericle, per possederla era sufficiente la qualità di *polites* del padre, con qualche limitazione nel caso in cui la madre fosse straniera... Si aggiunga inoltre, che, per essere cittadino, non era necessaria la nascita da un matrimonio legittimo: poteva infatti essere iscritto nelle liste della propria tribù anche il figlio naturale, nato da una relazione fra un uomo e una donna *astoi*, seppure non regolarmente sposati.' This is an important observation. Before Pericles' law, the matter was determined based on blood line (*ius sanguinis*) and not by being born on Attic soil (*ius soli*). Therefore, if the arguments of Griffith-Williams are to stand, we would need to envisage a shift in the conception of citizenship after 451/0, so that the determining criterion ceased to be bloodline only. The institution of the male demotic, and the near total absence of a female demotic (except vicariously, through the woman's father), is an institutional relic of a time when the only thing that mattered was the ethnicity of the father, nothing more, not the ethnicity of the mother or the condition in which the man was joined.

[27] Some will object that because registration into the citizen body did not happen until eighteen, the tribal registers kept tentative, not finalised, records of citizen children. As I have already argued (Joyce 2022), this is to make misleading assumptions about the purpose of registers in the Athenian system. Entry on a register did not necessary imply final membership, since *IG* II^2 1237 lines 29-44 show that final membership in the phratry was not confirmed until the year after the Apatouria, at the *diadikasia*, even though a register of inductees was maintained prior to that point; see also Isae. 7.16. The verb used in the orators to refer to infant enrolment is *eisagein*, not *engraphein* (thus, Isae. 8.19-20; [Dem.] 43.11; Dem. 57.54), but cognates of *eisagein* are used at *IG* II^2 1237 lines 18-19, 115, 117 to suggest enrolment; see Joyce 2022: 68. Even though the entry on to a tribal register in infancy was not final in the sense that citizenship was not confirmed until the candidate was fully enrolled in the deme upon reaching his eighteenth birthday, there was nevertheless a conceptual distinction kept before then between citizen and non-citizen children.

[28] The dating of the speech has been a matter of some controversy. Wevers (1969: 21), followed by MacDowell (1971: 24-26), suggested a date around 389, but it has also

heritance claim between the nephew and the alleged brother-in-law of a wealthy Athenian who adopted the speaker's brother, since deceased. The speaker, who is unnamed, sued Nicodemus, the brother-in-law of his maternal uncle, Pyrrhus, for providing false testimony concerning the legal status of his sister's child by Pyrrhus (called alternatively Phile and Cleitarete). Nicodemus, her maternal uncle, had earlier claimed that he had given his unnamed sister, the mother of Phile, in marriage to Pyrrhus, in which case Phile was their lawful offspring and therefore entitled to inherit the estate. To assist, I insert a family tree (taken from the Loeb edition of Isaeus 3):



The complication was that Pyrrhus had adopted his sister's eldest son, named Endius, now deceased, the speaker's brother. In Athenian law, if the only lawful issue was a daughter, a father could dispose of the property with the heiress (*epikleros*), who would then normally marry the nearest-of-kin, in this case Endius (Isae. 3.50).[29] Thus, if the daughter of Pyrrhus by the defendant's sister was her father's lawful offspring, it would have been unusual for Endius to marry off his cousin and adoptive sister to anyone else. The

been suggested that the law forbidding citizens to marry non-citizens ([Dem.] 59. 15, 52) did not appear until c. 380 (see Kapparis 1999: 198-202); on a possible *terminus ante quem* see Hatzilambrou 2018: 10. However, as Cobetto Ghiggia (2012: 91-92) observes, the only real dating criterion we have in the speech comes from the references at §22 to Diophantus of Sphettus and Dorotheus of Eleusis, who were alive in the second half of the fourth century, which makes the earlier dating far less possible, as was first argued by Wyse (1904: 276-277).

[29] Hatzilambrou (2018: 28) allows for the possibility that this was not legally mandatory, even if it was normal in social custom. The problem is that too much rests on speculation. The argument at Isae. 3.50 to my mind makes sense in law *if and only if* it is taken as read that this was a legal obligation. The marriage of Phile to Xenocles, according to the speaker, necessitates that she was a *nothe*, as otherwise she would have been married off to Endius.

speaker protests that Nicodemus' sister had cohabited with Pyrrhus without a dowry, in which case Phile could not have been heiress to the estate.[30] The legal issue is whether Phile was the lawful daughter of Pyrrhus.[31]

The speaker argues that the woman whom Nicodemus claims to have married off, and whom the defence claimed to have been the wife of Pyrrhus, could not have been eligible for marriage because, being sexually loose, no one could have chosen to live with her either as his wife or as his concubine (§§15-16). The Greek says οὐδ᾽ ἐξ ἑνὸς ἄλλου φαίνεται τεκοῦσα (§15) and οὐδενὶ ἄλλῳ ἐγγυηθεῖσα οὐδὲ συνοικήσασα φαίνεται (§16). The argument is that no self-respecting man could even have cohabited with her, let alone married her, and that if Pyrrhus could convince himself to do the former, he could not have persuaded himself to do the latter. It was recognised by relatives who knew her as Phile, not as Cleitarete, that she was Pyrrhus' daughter (οὐκ ἂν ᾔδει τὸ ὄνομα τῆς θυγατρός, ὥς φασι, τῆς αὐτοῦ; §34). The disputed matter was whether the sister of Nicodemus was Pyrrhus' lawful wife.

Endius gave his cousin, Phile, in matrimony to a man called Xenocles, with whom she had at least two children. Seeing that under such circumstances, Endius should marry Phile himself if she were legitimate, the fact that he gave her in marriage to Xenocles must therefore indicate either that Endius had disregarded the law, or that Phile was a *nothe.* If, as the speaker claims, Phile was the bastard child of Pyrrhus, Endius did nothing wrong by marrying her off, in which case it was permitted in law for *nothoi* to marry. If she was the rightful claimant to the estate of her natural father, then her marriage to Xenocles was null and void. If, however, she was a *nothe*, the legal consequence was not that her own marriage would now be declared invalid, but that she would not have been allowed to inherit her father's property. Either way, there is no sign that by getting wedded to Xenocles she was doing anything that the law did not permit.[32] The

[30] The dowry was an important component for the union to be legal, on which see Cobetto Ghiggia 2011. Hatzilambrou (2018: 116-117), whilst recognising the strength of the dowry as a social convention, denies that the dowry was absolutely required in law for the marriage to be legally binding.

[31] The hypothesis states: ὁ Ἐνδίου δὲ ἀδελφὸς νόθην εἶναί φησιν, ἐξ ἑταίρας Πύρρῳ γενομένην, which shows that the legal question was the circumstances of the parental union. At §24, we are informed that the legal matter at an earlier hearing was ἢ ἐξ ἑταίρας ἢ ἐξ ἐγγυητῆς τὴν ἑαυτοῦ γυναῖκα εἶναι.

[32] The law referred to at [Dem.] 59.16 and 52 specified that it was illegal for an Athenian

terms under which Endius, as the lawful heir to the estate of his uncle and adoptive father, gave Phile in marriage indicate that she was a *nothe* and thus debarred from the inheritance. As MacDowell deduced, the natural implication must be that illegitimate offspring could marry, which means that illegitimate offspring could be citizens, whereas the only type of marriage that was forbidden in law was intermarriage between citizens and foreigners. Legitimacy in the engyetic, as distinct from the ethnic, sense, affected status not as a citizen but as an heir or heiress, a matter of private law without wider ramifications.[33]

Aware of these difficulties, Griffith-Williams refers to the speaker's disbelief that the marriage could ever have gone unchallenged and infers that the marriage was therefore illegal:

> First, in the rhetorical question addressed sarcastically to the defendant, Nicodemus, he asks whether the latter did not realise that he was making his niece, Phile, a *nothe* by allowing Endius to claim the estate without respecting her position as an *epikleros* (3.41). Secondly, he accuses Pyrrhus himself of disinheriting Phile and making her a *nothe* by adopting Endius without introducing Phile to his phratry (3.75)…He also repeatedly insinuates that Phyle was given in marriage by *engye* to Xenocles as the daughter of a *hetaira* (*hos ex hetairas*) (3.6, 24, 45, 48, 52, 55, 70, 71). What he does *not* say is that such a marriage, if it happened, would have been legally valid; indeed, he strongly implies that it would not, in his denunciation of Nicodemus (Isae. 3.52). (2023: 321).

The last of these statements, that the marriage could not have been legally binding, is the one which I most wish to challenge. The point is not

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to marry a non-Athenian, not that it was illegal for two Athenians to marry, one of whom was born out of wedlock. When after 403 this law was implemented has no meaningful bearing upon this case, provided the sense legitimacy defined in the law was ethnic and not engyetic. As Hatzilambrou (2018: 31-32) rightly observes, 'since from probably the first decades of the fourth century, marriage and co-habitation as spouses (*to synoikein*) between a citizen and non-Athenian woman (*aste*) was not permitted…the fact that an illegitimate woman could be given in marriage as a lawful wife to an Athenian citizen can be taken as a strong indication that illegitimate children were entitled to hold Athenian citizenship.'

[33] For my earlier discussion of this case, see Joyce 2019: 481-483. Rhodes' objection (1978: 91-2) that there was no reliable way to establish the legal status of Phile because she was female ignored the evidence of *IG* II^2 1237 lines 116-121, which shows that the legal status of fathers and mothers of phratry initiands was meticulously recorded; for the reference to MacDowell, see note 4.

that the marriage was unlawful.[34] The point is rather that since Phile was given in marriage by Endius as a *nothe*, Nicodemus the defendant put up no protest at the time that her legal status was being misrepresented, in which case Endius conducted himself in conformity with all the laws that specified that he could marry off his illegitimate cousin. When the speaker states that the laws are precise on these matters, he is not saying that the laws forbade marriage between illegitimate parties, but that the laws laid down rules for dowries, inheritance, legitimacy, and adoption, which would have been violated if Endius had given the lawful progeny of Pyrrhus in betrothal and hoped to retain his claim as the adoptive heir. The moot point is whether Phile was legitimate. If she were lawful offspring, then the right thing for Endius to have done would have been to marry her himself, as the speaker clarifies (3.50).[35] Instead, Endius married her off, which implies she was a *nothe*.[36]

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[34] There is an important assumption at the heart of the reasoning chain, which is that, unless legitimate, Phile would not have been permitted to marry. Nothing, however, in Athenian law that we know of makes any of this self-evident. Cobetto Ghiggia (2011) has inferred from a wide range of oratorical passages that what made a bride legitimate in Athenian law was not the condition into which she was born (*viz.* to parents lawfully or unlawfully conjoined), but the condition through which she was married; *engye* was normally accompanied by a dowry, which was expected, but not mandatory in law; of course, a woman married dowerless raised suspicions which could be rhetorically exploited; *engye* was the condition through which a woman was considered legitimate and, on that basis, was lawfully wedded.

[35] This is implied also at 3.42 and 68, both of which refer to a law of Solon which specified that anyone who died leaving legitimate daughters, and no legitimate sons, was not entitled to bequeath any part of the estate without including the daughters in the inheritance. The second of those passages clarifies that if he had legitimate daughters, a man could not adopt a male heir without including his daughter in the inheritance. This legal requirement is attested also at Isae. 10.13 and [Dem.] 43.51. Hatzilambrou (2018: 170) points to passages elsewhere in the orators (e.g., Lys. 19.39.41; Dem. 27.5, 42-46; 28.15-16; 36.34-35; 45.28) which might suggest that the law was not applied so strictly in the fourth century, seeing that they attest fathers with legitimate male heirs who nevertheless left wills with stipulations about the estate. Even if the law was applied less stringently in some cases, this should not undermine the force of what the speaker recognises: if Endius had been lawfully adopted, the normal expectation was that he should marry the legitimate daughter of his adoptive father; the fact that this did not happen means either that Phile was a *nothe* or that Endius had conducted himself very unconventionally.

[36] Hatzilambrou (2018: 26, 169-170, 208-210) questions this legal point, claiming that the law at most placed a legitimate daughter at the disposal of the adoptee but did not obligate the adoptee to take her in marriage. However, what sections 69-71, discussed

At some point, a law was passed that forbade marriage between Athenians and *xenoi* ([Dem.] 59.16, 52). When a child was introduced to the phratry of his natural or adoptive parents, it was required that he be born of two Athenian parents who were lawfully conjoined (Isae. 7.16). Our best attested process for phratry admission (*IG* II^2 1237 lines 108-112) shows that what was sworn at the altar was that the child was born legitimately from married parents. The lexical definition of legitimacy (Poll. 3.21) stated that one had to be born of a woman who was both a citizen and married but says nothing of the circumstances in which the woman was born. The orators attest the importance of the dowry in cementing the lawful status of the woman's union to her husband but do not refer to the woman's birth status.[37] If the birth status of the woman was unimportant, as the silence of the orators implies, there can be no forceful objection against Endius giving Phile in marriage as a *nothe*.

The speaker clarifies (69-71) that the adoption of Endius by Pyrrhus could have been lawful only if Phile had been a *nothe* or, if she had been born of legitimate parentage, betrothed to the adoptee. If the betrothal of Phile to Xenocles was unlawful, this was not because Phile was a *nothe*. The marriage to Xenocles would have been unlawful if Phile had been *legitimate*, not illegitimate. The objection hinges on the testimony of the uncles of Pyrrhus that Phile was legitimate and that they had been present at the *dekate*.[38] If true, their testimony is contradicted by the fact that they al-

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below, of the speech indicate is that if Phile had been the legitimate daughter of Pyrrhus, it would have been proper for Endius to marry her, not betroth her. The fact that Phile was betrothed to Xenocles is used by the speaker as proof that she was not legitimate, as otherwise that marriage should not have gone ahead.

[37] See, for example, Andoc. 4.13-14; Dem. 27.5, 65-66; 30.4; 41.6; 46.18; Isae. 8.29.

[38] At Joyce 2019: 482, I pointed out that girls could be presented to the phratry if legitimate, as implied also at sections 73 and 76 of the speech. Griffith-Williams (2023: 325 n. 5) contests my statement as an over-simplification. Even if female children did not have the same status in the phratry that male children did, it is untrue that the legitimacy of girls was not recognised in the same way as was the legitimacy of boys. The third speech of Isaeus shows that unlike the deme, for which we have no evidence of female enrolment, in the case of the phratry there is clear evidence that girls were introduced, which suggests, therefore, that the criteria for each was different. As Lambert (1998: 36-37) observed: 'It does not seem to have been uniform practice, but there is evidence that women might sometimes be introduced to their fathers' phratries as children and it was normal, probably necessary, that a new wife be presented to and received by her husband's phratry at a ceremony known as the *gamelia*. This seems not to have amounted to the same sort of tight control that the phratries exercised

lowed Phile, whom they called Cleitarete, to be betrothed to Xenocles. The phrase ὡς ἐξ ἑταίρας οὖσαν ἐκείνῳ ἐγγυᾶσθαι ('as one being born of a mistress to be betrothed to him') might imply that the scandal consisted of the fact that Phile, as illegitimate daughter of Pyrrhus, was given to Xenocles in a relationship that took on the form of a lawful union. Yet such a reading would miss the point. The implication is rather that if Phile/Cleitarete had been the legitimate daughter of Pyrrhus, as her great-uncles were claiming, the law forbade her to be betrothed to Xenocles once Pyrrhus had lawfully adopted Endius as his rightful heir.

Some have argued that Isaeus interpreted the law with excessive rigidity because he needed to maintain Phile's illegitimacy.[39] L. Rubinstein, for example, has argued that the only firm legal requirement was that a man who had legitimate daughters should make satisfactory provisions for a dowry if that meant that their financial needs were met, and then arrange for the estate to be taken over by an adoptive son. The problem here is that we have no evidence outside Menander to support the claim and, as R. Hatzilambrou rightly cautions, the *Dyscolus* is not reliable evidence because, according to that comedy, the adoptee was his wife's son by an earlier relationship who could not marry his half-sister. [40] Menander describes adoption *inter vivos*,

over admission of their male members – women do not as a rule seem to have been regarded actually as members of phratries; but there was oversight of a sort exercised by the phratry, whereas there is no evidence for demes having taken any interest in overseeing women's descent qualifications.' If correct, Lambert's observation implies that the criteria for admission to each body were different and that the purpose of each was different. The statement that women were not 'regarded actually as members of phratries' demands a clear definition of 'membership'. Presumably, Lambert meant that women could not exercise the same voting rights as men, but this does not mean that women were not 'members' of the phratry if indeed they were inducted, as these two passages from Isaeus show; comparable evidence for their induction to the deme, by contrast, is lacking.

[39] Thus, Hatzilambrou 2018: 208: 'It is possible…that Isaeus is interpreting the law very strictly because it is in his client's best interests to do so, whereas in fact it might be the case that someone could adopt without the adopted son being obliged to marry the legitimate daughter of his adoptive father, even if his adoption were not *inter vivos*.' Hatzilambrou points to Men. *Dysc.* 738-739, where Cnemon adopts his stepson and tells him to marry off his legitimate daughter with a dowry.

[40] Rubinstein 1993: 96; see the cautionary remarks of MacDowell (1982: 46) and Hatzilambrou (2018: 209); for the Menander reference, see the previous note. Griffith-Williams (2013: 205-209) suggests that the law was generally in force but, in some special cases, could not always be firmly applied.

whereas Endius was adopted in Pyrrhus' will. Others, for example A. Maffi, have argued that the requirement was fixed in law and that Isaeus was hence not being overly literalist.[41] Hatzilambrou proposes a compromise whereby the law as interpreted by Isaeus was standard in the event one legitimate daughter only was left, and the father had adopted a son in his will, but if the father had specified in his will that the daughter could be dowered and married off to someone other than his adoptive son, the law under those circumstances permitted this.[42] As she points out, this would have to happen anyway in the event the father had more than one legitimate daughter, but in this case, we have no evidence of any daughter other than Phile. Yet, the explanation that the law was massaged assumes the very thing that needs to be proved.

There is no implication in the speech that Phile's marriage to Xenocles was illegal.[43] This could of course be taken to mean, as MacDowell inferred, that *nothoi* could marry,[44] but it might alternatively suggest, as S. Dmitriev has recently understood it, that Phile was not a *nothe* after all.[45] If, however, the legal status of Phile had not been in dispute, as Dmitriev seems to infer, it would be difficult then to understand how this case would ever have come before the court. The point at dispute was whether Phile was the lawful daughter of Pyrrhus and, by implication, whether Endius had behaved lawfully in giving Phile in marriage to Xenocles. When the speaker refers to the laws of Athens (§50), he is not suggesting or implying that the laws of the

[41] Maffi 1991: 218.

[42] Hatzilambrou 2018: 209-210.

[43] Thus, Hatzilambrou 2018: 33: 'It is certainly striking that the orator omits any reference to illegality regarding the marriage of Phile.'

[44] This is also recognised by Cobetto Ghiggia (2012: 96-7), who states: 'È più probabile pensare che File fosse nata da una relazione "non ufficiale" di Pirro e quindi non fosse figlia legittima, mentre la madre di File non era concubina di Pirro, in quanto più volte viene designata come etera.'

[45] Dmitriev 2018: appendix 1: '[A] legitimate daughter was allegedly given in marriage as if she were the "child of a mistress". It was not the status of Phile as the legitimate child that the speaker was disputing but the status in which she had been given to Xenocles.' As I have already argued (see Joyce 2019: 483), that misconstrues the purpose of the speech, which is to show that Phile was not due to inherit the estate of Pyrrhus. The idea that Pyrrhus might have been married to Phile's mother, and therefore that Phile was indeed legitimate, was rejected by Maffi (1989: 189), who claimed that 'possa essere data in moglie soltanto la donna nata da un legittimo matrimonio fra un cittadino e una cittadina'. From a different perspective, and with different conclusions, the suggestion is rejected also by Cobetto Ghiggia (2012: 96).

city made marriage between *nothoi* and *gnesioi* illegal. The point he makes is just that the laws had *not* been violated precisely because Phile was a *nothe* and married off without any conflict of interest with Endius arising. Had Phile been the heiress to the estate, as her uncle Nicodemus claimed, then by marrying Xenocles, the laws would have been abused.

M.J. Edwards has suggested that Isaeus often interprets the law as he chooses and that definitive conclusions from the speeches as to what the law precisely stated are impossible.[46] Developing those observations, Hatzilambrou raises the possibility that the phrase *syn taute* or *syn tautais* (3.42, 58) does not necessitate that the heiress had to marry the adopted son, only that the father must provide for his daughter or daughters. If true, the adopted son had the legal right to give the *epikleros* in marriage to another if it were in her best interest to do so. Thus, by adopting Endius, Pyrrhus was declaring his daughter no longer to be the *epikleros* but left a channel open whereby she could become the heiress again upon Endius' death.[47] If true, we might have reason to think that Phile was legitimate, lost her right to the inheritance when Endius was adopted, and regained her right to the inheritance once Endius died. That suggestion offers a route around the conundrum if it was unlawful for *nothoi* to marry. Yet the solution she proposes is necessary only if the last statement has independent warrant, which it does not.

Other scholars have pointed out that Isaeus does not explicitly refer to the legitimacy of the marriage between Xenocles and Phile and argued *a fortiori* that in the absence of such a mention, we should not assume with confidence that the marriage was legal.[48] It has also been suggested that the law referenced at [Dem.] 59. 16 and 52, which forbade cohabitation between citizens and foreigners, might have applied to Phile if illegitimate, even if she could not be classed as a 'foreigner' *sensu stricto* but nevertheless lacked recognition as a citizen.[49] The first of those arguments proceeds *e silentio* and cannot have force without some independent reason to believe that *nothoi* were not classed as citizens. The second assumes that metic status might have included those who were born of two Athenian parents but could not point to engyetic union, but that is only a hypothetical possibility that claims no authority in any ancient source.

[46] Edwards 2009: 41-54.
[47] Hatzilambrou 2018: 29.
[48] This argument was first launched by Wyse (1904: 279).
[49] Rhodes (1978: 91); Ogden (1996: 164-165).

Others still have argued that though *nothoi* were not citizens, they could nevertheless marry and produce lawful citizen offspring through their unions. That claim directly contradicts the wording of Pericles' citizenship law, which expressly stated that no one could be a citizen unless both parents were Athenian.[50] In concession to those who hold that *nothoi* could not be citizens, Hatzilambrou grants that the silence of Isaeus on the matter of illegality should not imply with certainty that *nothoi* could be citizens given that the law prohibiting marriage between a citizen and a non-*aste* may not at this time have been effective. However, as she also points out, the silence of the logographer on the matter is not a good reason to suppose that the legal technicality was omitted by the brother of Endius (*viz.* the speaker), who was simply too embarrassed to comment on it, since with or without an explicit mention the point would have stood in law that by marrying off his cousin to Xenocles, Endius would have conducted himself unlawfully if such marriages were forbidden.[51] Either the laws mentioned in the Demosthenic speech *Against Neaera* were not in force at the time this speech was delivered or, if they were, they did not apply to the case of Phile and Endius for the simple reason that Phile was not a *xene*. Hatzilambrou goes on to argue that '[w]hat does seem inexplicable is the motive which drove Xenocles to contract a lawful marriage with an illegitimate girl, as Isaeus' client alleges, if in fact illegitimate children were debarred from becoming Athenian citizens' and that 'it would be unlikely for an Athenian citizen to agree to marry a woman (and in addition with such a small dowry) if by so doing their children would be debarred from citizenship.'[52]

III

The third speech of Isaeus thus confirms the impression we gain from Dem. 39 and [Dem.] 40 *Against Boeotus I* and *II* that it was possible in law for

[50] Wolff (1944: 82-84); Bickerman (1975: 1-25); Hansen (1986: 75); *contra* Hatzilambrou (2018: 32-33).
[51] Hatzilambrou 2018: 33-34.
[52] Hatzilambrou 2018: 34. On the following page (35), Hatzilambrou expresses doubts that 'the information in Isaeus' third speech helps us materially in deciding whether the illegitimate children of two Athenian citizens were able to claim Athenian citizenship'. However, combined with inferences from the first and second Demosthenic speeches discussed in the first section, her perceptive arguments against the pronouncements of Rhodes, Ogden and Hansen weigh strongly in favour of citizen *nothoi*.

nothoi to be citizens. The insistence that *nothoi* could not be citizens has only ever been speculation and proceeds from the fact that, in practicality, the testimony of the phratry was with regularity used by initiands to the deme because phratry membership confirmed legitimacy in all senses. That should not be taken to mean that the issue which the deme decided was identical. In very many cases, especially when parents were not alive when a citizen male was inducted into the deme, the only meaningful back-up was the phratry, yet this should not mean that phratry testimony was absolutely required. The purpose of the deme was to decide legitimacy in the ethnic sense, that of the phratry to decide legitimacy in the engyetic sense though the latter sense implied the former.[53]

Some may dismiss this debate as arcane in the light of the poverty of the evidence. I believe nevertheless that the issue is important because it affects our understanding of what the Athenian community understood by citizenship. The distinction between *gnesioi* and *nothoi* is in origin Homeric, and the legal conception of this did not change over time, despite what scholars have claimed about the significance of the citizenship law of 451/0.[54] Just as *nothoi* could be members of the archaic community, so could they be members of the democratic *polis*. The benefactions bestowed in the last decade of the fifth century upon orphans of Athenian citizens who had lost their lives under the Four Hundred in 411 illustrate this. The wording of Theozotides' decree of c. 410 (*SEG* 28.46 = OR 178) does not clarify that the beneficiaries included both *gnesioi* and *nothoi*, but a later rider (*SEG* 14.36; cf. *IG* II^2 5), dated c. 400, to an earlier honorary decree, whose exact identity is disputed, seems to have limited the support for *nothoi*.[55] A fragment of Lysias (fr. 64 Carey) refers to a trial for an illegal proposal (*graphe paranomon*). Though the circumstances are too shadowy to reach firm conclusions, if the rider refers to Theozotides, then the list of names, which begins at line 24 of Theozotides and refers to orphans by patronymic and demotic, implies that *nothoi*, if included, had both patronymics and demotics. If so, we have circumstantial evidence for the enrolment of *nothoi* in demes.[56]

[53] As argued at Joyce 2019.
[54] Thus, Il. 2.727; 11.202; 13.173; cf. Ar. *Av.* 1650; Soph. fr. 87.
[55] On the uncertain relationship, see Blok 2015: 95-96.
[56] Clearly, the final enrolment did not happen until age eighteen, but as I have argued elsewhere, demes and phratries maintained rosters of potential as well as confirmed applicants; see Joyce 2022.

If citizenship was about engyetic legitimacy, we must imagine the *polis* to be an outgrowth of the *oikos*. Certainly, there is evidence to imply this, such as the first book of Aristotle's *Politics*, which envisages the *oikos* to be a fundamental building block of the city, but we should not push the model too hard. The tradition is clear that Cleisthenes made the deme, not the *oikos*, the most important structural sub-unit of the city, mainly to undercut the importance of the family as a determinant of citizenship. When Cleisthenes legislated, only one Athenian parent (the father) was required, which implies that, from the start, membership of the citizen community was not about engyetic legitimacy. What we do know is that in 451/0, the requirement was elevated to two parents, but nothing in the tradition confirms that a new understanding of citizenship at that time, based upon the right to inherit, was inaugurated. Such a measure would have been reactionary and against the spirit of democratic reform which, most importantly, aimed to break the tenure of the propertied over citizenship and, consequently, self-governance. The matter will perhaps never be decided, but in the absence of positive evidence to the contrary, it is easier to believe that whilst phratry membership was the norm for practical purposes, it was not absolutely required.

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