

The Performance of Identity in Classical Athens

by

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DEDICATION

To Sara, Christine, and Rachel, φίλαται φίλοι.

And most especially to my mother—I'm proud to be your daughter.

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ABSTRACT

Between 350 and 330 BCE, Athenians, facing growing anxieties about attacks on the citizen body, passed a series of laws that penalized foreigners who usurped the rights of citizenship. Furthermore, Athenian citizens were required to reaffirm their identities before their communities and the court system. This legislation sparked numerous lawsuits which have survived in the speeches of the Attic orators. These orations give modern scholars critical insights into the complicated process through which Athenian citizens proved their identities in court.

In Classical Athens, citizens did not rely on public records to confirm their status. Instead, they were required to complete specific performances as members of key identifying groups. These groups included Athenians' families and their deme and phratry, the two institutions that controlled Athenian citizenship. If citizens' identities were ever questioned in court, they could call on the members of these organizations as witnesses to the performative acts that defined their civic identity. These performances could be political in nature; for example, citizens could point to the fact that they had held political office as evidence of their status. Athenians could also complete religious performances to establish themselves within their communities; litigants in court often called on their relatives as witnesses to testify that they had completed sacrifices together as a family.

Furthermore, Athenians considered mundane activities, or the performances of everyday life, as equally important proofs of identity. These quotidian actions also ranged in nature. Athenians could point to minute daily actions, like socializing with friends or attending school, as evidence of their citizenship. They could also carry out performances within formal institutions that fell outside of typical political activities. For example, Athenians often presented their participation in lawsuits or in arbitrations as proofs of status. This dissertation offers detailed analyses of legal decisions that highlight these everyday performative acts and make clear that mundane activities were as crucial to the establishment of civic identity as the participation within political and religious institutions on which modern scholars have most often concentrated. In examining Athenian forensic speeches in this way, this dissertation redefines Athenian citizenship as a complex identification process in which all Athenians—men, women, slaves, foreigners, citizens, and non-citizens—could take part, either as actors or as audience.

CHAPTER I

Introduction

Thesis statement

(77) Γεγόνασι διαψηφίσαις ἐν τοῖς δήμοις, καὶ ἕκαστος ὑμῶν ψῆφον δέδωκε περὶ τοῦ σώματος, ὅστις Ἀθηναῖος ὄντως ἐστὶ καὶ ὅστις μὴ. Καὶ ἔγωγε, ἐπειδὴν προσστῶ πρὸς τὸ δικαστήριον καὶ ἀκροάσωμαι τῶν ἀγωνιζομένων, ὁρῶ ὅτι ἀεὶ τὸ αὐτὸ παρ' ὑμῖν ἰσχύει. (78) Ἐπειδὴν γὰρ εἶπη ὁ κατήγορος· ἄνδρες δικασταί, τουτοῦ κατεψηφίσαντο οἱ δημόται ὁμόσαντες, οὐδενὸς ἀνθρώπων οὔτε κατηγορήσαντος οὔτε καταμαρτυρήσαντος, ἀλλ' αὐτοὶ συνειδότες, εὐθὺς οἶμαι θορυβεῖτε ὑμεῖς ὥς οὐ μετὸν τῷ κρινομένῳ τῆς πόλεως·

(77) There have been scrutinies among the demes, and each of you has submitted to a vote concerning himself, [to determine] who is really an Athenian and who is not. And I, whenever I'm in the law court and I hear those contending, I see that the same argument always holds strength among you. (78) For whenever the prosecutor says: "Gentlemen of the jury, the demesmen having sworn an oath have voted against this man, although no one accused him or gave testimony against him, but because they themselves knew [him]!" Straightaway, I think, you all shout on the grounds that the man who is being judged has no claim to citizenship.

In his speech *Against Timarchus*, Aeschines detailed the legal proceedings that sprang from the decree of Demophilus passed in 346 BCE that ordered all demes to conduct a general scrutiny of their members.¹ The Athenian demes were one of the key identifying groups that controlled citizenship. When their sons reached the age of eighteen, Athenian citizens introduced them to their demesmen at a special deme assembly during which each father swore that his son was his legitimate offspring by his lawfully wedded citizen-wife. The demesmen voted on whether to admit each new member. If the candidate were admitted into the deme, his name was

¹ For an interesting discussion of this decree and deme scrutinies in Athens, see Diller 1932 and Diller 1935; see also Gomme 1937; Cooper 2003, 66; Whitehead 1986, 104-109.

written in the deme rolls kept by the demarch. If he were denied admission, the candidate could appeal the vote to the Athenian courts. If he failed in his appeal, he could then be sold into slavery, his property confiscated, and the civic statuses of all his family members called into doubt.² A general scrutiny of the demes, such as the one called by Demophilus, thus represented a huge and stressful undertaking for all Athenian citizens. As Aeschines, and other Attic orators like Isaeus and Demosthenes, attested in their court speeches, the decree of Demophilus required every deme to hold a special assembly, where the demesmen voted to reaffirm the civic identities of all their members. As a result of these scrutinies, thousands of Athenians were disenfranchised and appealed their demesmen's decisions in court.³

Aeschines' description offers critical insights into the Athenians' response to the deme scrutinies. First, Aeschines appealed to his audience of jurors by characterizing the deme scrutinies and the court appeals that arose from them as shared experiences for all Athenian citizens. His language suggests that many disenfranchised Athenians appealed the decisions of their demes. Aeschines stressed that while he sat in court, he repeatedly heard the same arguments from prosecutors, and he expected his audience to be familiar with these proceedings. Second, Aeschines described the kind of arguments that moved Athenian jurors. Aeschines asserted that prosecutors relied more on the personal knowledge of demesmen than on witness testimony to discredit their opponents and call their civic status into question. In Aeschines'

² For an informative discussion of deme assemblies and expulsions from the deme, see Whitehead 1986, 86-109.

³ For a full consideration of the passages from the Attic orators which describe the scope of the scrutinies, see Gomme 1932, 194-196.

speech, we can begin to understand that the Athenians valued interpersonal relationships, especially among their demesmen, as critical proofs of civic identity.

Of the numerous appeals to the law courts described by Aeschines, only two have survived: Demosthenes' *Against Eubulides* and Isaeus' *On behalf of Euphiletus*.⁴ In both speeches, the litigants touched on the same key tropes that explain for modern readers the Athenians' motives in passing the decree of Demophilus and the methods they used to establish their identities in court. First, both speakers alluded to Athenian anxieties that foreigners might infiltrate into the ranks of citizens through the demes. In *Against Eubulides*, the speaker Euxitheus suggested that metics (or resident aliens) regularly bribed deme officials to register them illegally into the deme rolls (Dem. 57.49; Dem. 57.59). In Isaeus' appeal, the speaker, the half-brother of Euphiletus who acted as his advocate, suggested that childless Athenians were sometimes driven to claim foreigners as their own children to ensure that they would be cared for in their old age (Isaeus. 12.2). Both speakers clearly displayed the prejudice against foreigners particularly prominent between 350 and 330 BCE when the Athenians passed legislation to punish any pretender to citizenship.⁵ This legislation included the decree of Demophilus and the rearticulation of the laws governing foreigners which prompted the famous lawsuit against Neaira.⁶

⁴ The dates of both these speeches have come under question, but the general consensus among scholars dates them both close to 346 BCE. For a discussion of the dating of *Against Eubulides*, see Diller 1935, 303-304. For a discussion of the dating of *On behalf of Euphiletus*, see Wyse 1904, 715-716.

⁵ For further discussion of the widespread xenophobia in Athens during this period, see Cooper 2003 and Lape 2010. Cooper in particular gives a good account of the scholarship on this topic.

More critical to the arguments presented in this study are the insights that both these speeches offer about the methods by which Athenians established their civic identities in court. Both Euxitheus and Euphiletus' half-brother relied on their interpersonal relationships with their relatives, their demesmen, and the members of other key identifying groups to confirm their citizenship status and that of their family members. In his defense, Euxitheus stressed that numerous relatives and the members of his *genos*, phratry, and deme were all well-acquainted with him and his parents and were all willing to testify on his behalf. These people then acted as witnesses in court to attest to a wide range of performances that citizens needed to carry out on several different "stages"—both in the political and religious realms but also in their daily activities that fell outside of public institutions. To Euxitheus, his introduction into his deme represented the culmination of a series of performative acts he had carried out in all these identifying groups. Furthermore, in his own speech, Euphiletus' brother stressed that the formal performances that his father and mother carried out on their sons' behalf—for example, introducing them to their phratrymen—represented a larger set of performances that the family completed in their daily lives, caring for one another and managing their household.

Although modern scholars have often focused on the deme as the central institution that controlled citizenship, I argue that the speeches of Demosthenes and Isaeus demonstrate that Athenians had to establish their civic identities in a series of key identifying groups, most critically their relatives and the members of their *genos* and *orgeones*, phratry, and deme. Athenians' relationships within this network of people determined their status. All of these groups were equally important in confirming citizenship, and if even one group were to question a member, this would constitute a serious attack on that citizen. Furthermore, Athenian citizens

needed to carry out specific sets of performances within these key identifying groups to safeguard their status. Although modern scholars have focused specifically on political and religious performances, such as the holding of political office and membership in local cults, I argue that everyday activities, like the management of property and the household and the care for elderly parents, also constituted powerful performative acts. I would further assert that scholars have overlooked the fact that formal performances of identity carried out in public institutions meant nothing if not backed up by the reality of everyday life and daily activities.

In this introductory chapter, I describe the key identifying groups in Athenian society and discuss the work of modern scholars who have studied them. In my view, modern scholars have created artificial divides between these groups largely because they carry out narrow studies that focus on one group only and do not consider the many connections between them. Then I examine the performances that Athenians completed as citizens within these organizations and in the context of their larger communities. Again, scholars of Classical Studies have limited their analysis of these performances to those actions carried out within political and religious institutions. Furthermore, by concentrating too much on the legal requirements of citizenship within the context of formal political and religious institutions, scholars have overlooked the informal performances that were also critical in establishing Athenian civic identity. I argue that Athenian legal speeches give us a richer understanding of the informal performative acts that Athenians completed in everyday situations if we analyze them through the lens of performance studies. Finally, I give a summary of the dissertation's chapters, all of which are linked by my focus on the quotidian performances repeatedly described and emphasized in a variety of legal

cases that provide tremendous insight into how Athenians defined citizenship and into their persistent anxieties about identity.

Identifying groups

Although the demes formed important population centers in Attica in the seventh and sixth centuries BCE, they did not acquire their political and administrative importance until the reforms of the Cleisthenes in 508 BCE. At this time, Cleisthenes reorganized the democracy, splitting Attica into three sectors—urban, inland, and coastal—and dividing the 139 demes into thirty *trittyes* (“thirds”), ten urban *trittyes*, ten inland *trittyes*, and ten coastal *trittyes*. Each of the ten tribes created by Cleisthenes were made up of three *trittyes*, one from each zone.⁷

Furthermore, Cleisthenes shaped the demes into smaller *poleis* so to speak, administrative units that held their own assemblies and that were controlled by a demarch who acted as intermediary between the deme and the polis. Membership in the deme became the key legal requirement for Athenian citizenship, and so Athenians became known not by their patronymics but by their demotics.

Pseudo-Aristotle’s precise description of the criteria for citizenship and his focus on the deme as its sole controlling institution in the *Constitution of the Athenians* has had a profound effect on modern works on citizenship in Classical Studies:⁸

μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ’ εἰς τοὺς

⁷ For a good introduction to the demes, see Whitehead 1986, 3-16.

⁸ See in particular Finley 1981, Manville 1990; Todd 1993; Hansen 1991; Hansen 1998; Hansen 2000; Hansen 2006; Rhodes 2009. Although the French school of scholarship on Athenian citizenship follows a different theoretical framework, these scholars too focus on the performances of male citizens within political institutions like the deme. See Loraux 1981; Vernant 1985; Vidal-Naquet 1986; Detienne 1989; Goldhill 1994; Zeitlin 1996; Graeber 2001; Vernant 2006.

δημότας ὀκτωκαίδεκα ἔτη γεγονότες. ὅταν δ' ἐγγράφωνται, διαψηφίζονται περὶ αὐτῶν ὁμόσαντες οἱ δημόται, πρῶτον μὲν εἰ δοκοῦσι γεγονέναι τὴν ἡλικίαν τὴν ἐκ τοῦ νόμου, κἂν μὴ δόξωσι, ἀπέρχονται πάλιν εἰς παῖδας, δεύτερον δ' εἰ ἐλεύθερός ἐστι καὶ γέγονε κατὰ τοὺς νόμους.

They have a right to citizenship who have been born from citizens on both sides, and when they turn eighteen years of age they are registered among their demesmen. And when they are registered, the demesmen having sworn an oath vote concerning them, first if they are seem to have received the lawful age, and if they do not seem [to have reached the lawful age], they return them to [the status of] boys, and second whether [the boy] is free and is of legitimate birth ([Arist]. Ath.Pol.42.1).

Technically, the author has said nothing incorrect in this passage. Citizens were required to introduce their children to their demesmen, and their demesmen were responsible for sorting lawful citizens from those seeking to usurp the rights of citizens. If an Athenian were expelled from his deme, it could prove catastrophic to both him and his entire family. In the conclusion of Demosthenes' *Against Eubulides*, the speaker Euxitheus threatened to kill himself if he were to lose the case, so that both he and his aged mother could be buried together in their family cemetery (Dem. 57.70). The focus on demes by modern scholars then is completely understandable.

The works of the Attic orators, however, especially those of Demosthenes and Isaeus where speakers were forced to prove their identities in cases centered on both civic status and adoption, paint a far more complicated picture. In no surviving forensic speech does any Athenian litigant rely solely on his membership within the deme to establish citizenship.⁹ Athenians operated within a network of key identifying groups, and they were compelled to prove their identities to each of these groups in turn to safeguard their civic status and that of their families.

⁹ In fact, in the fragmentary speech *On behalf of Euphiletus*, in which the conclusion is recorded, the speaker emphasized his brother's membership in the phratry, *not* the deme (Isaeus. 12.3).

More important than the testimony of demesmen in confirming civic identity was the evidence given by relatives.¹⁰ In both their speeches, Euxitheus and Euphiletus' brother emphasized that, far more than their demesmen, their relatives respected their rights as citizens and were willing to testify on their behalf in court. In fact, Euxitheus spent the largest portion of his speech painstakingly introducing the relatives both from his father's and his mother's sides of the family, explaining their connections to him, and offering their testimony. Furthermore, speakers in court did not call their relatives to bear witness to their political or religious performances as citizens. More frequently, they emphasized their shared management of family property and their involvement in lawsuits together as proofs of identity, proofs that fell outside of the spectrum of performative acts on which modern scholars generally focus. Accordingly, I consider relatives as one of the key identifying groups on which Athenians relied if their identities were called into question, and their witness statements served a special purpose in court to establish the daily activities of litigants.

Just as important to Athenian identification were the phratries. Phratries were groups with hereditary membership that were active in numerous city-states, including Sparta and Argos.¹¹ Ionian Greeks, including Athenians, considered phratries an important Ionian institution, and all Ionians celebrated the Apatouria, the annual phratry festival at which new members were introduced. In Athens, before the Cleisthenic reforms, the phratries were the central group that controlled descent and citizenship. They were also a critical social institution; under the statutes

¹⁰ In her influential article, Scafuro discussed the role of relatives as witnesses in lawsuits. See Scafuro 1994, 166-168. See also Osborne 1985, 138-151.

¹¹ See Lambert 1993, 245-279. See also Guarducci 1937; Roussel 1976; Jones 1987, 195-214; Hedrick 1990; Parker 1996, 104ff; Rhodes and Osborne 2007.

of Draco's homicide law (originally dated to ca. 620 BCE and later revised in the late fifth century BCE), phratry members were required to support the family of the victim. If the victim had no family, the phratrymen were then obliged to pursue prosecution.¹² After the Cleisthenic reforms, the phratries were still critical in establishing descent, and they had similar administrative structures as the demes. The phratries were overseen by a phratrarch, and like the demes, they collected revenue and managed property.

In support of the theory that phratries mainly controlled descent, phratry members served as witnesses in inheritance cases, in which litigants often had to establish their ties to the estate owner, and in cases brought on the charge of ξενία (being a foreigner pretending to be a citizen).¹³ Phratry membership was not a legal requirement of citizenship, but we have no evidence either from epigraphic sources or from the speeches of the Attic orators that any Athenian citizen ever lived who was not a member of a phratry.¹⁴ Along similar lines, no American is obligated to have a birth certificate issued, but that citizen would have a particularly difficult time obtaining a passport or even enrolling in school.¹⁵ It would be impossible to be a functional member of society.

¹² For an interesting discussion of Draco's homicide law as evidence for relationships within the phratry, see Lambert 1993, 248-249.

¹³ See Lambert 1993, 35-36.

¹⁴ At the risk of undermining my own argument, there was one exception to the rule that all citizens were members of phratries. Foreigners who had been granted citizenship as a group by special decree, like Plataeans in 427 BCE and the Samians in 405/4 and 403/2 BCE, were not members of phratries. See Lambert 1993, 49-57. See also Lysias' speech *Against Panceleon*, where the defendant Panceleon is a Plataean.

¹⁵ See the case of Alecia Pennington, a woman from Texas, who was born at home, homeschooled, and never taken to the dentist or doctor. Her many attempts to acquire a birth certificate failed, and eventually her state senator was forced to intercede on her behalf. There is an excellent RadioLab on her story: <https://www.wnycstudios.org/story/invisible-girl>.

More complicated are the roles of the *genos* (plural *gene*; the members are known as *gennetai*) and the *orgeones* in Athenian identification. The *gene* were groups of citizen families or even of individual citizens who most likely considered themselves related through a common male ancestor and who shared a collective patronymic. Although not every Athenian was a part of a *genos*, membership in one still served as important evidence of citizenship in court.¹⁶ At least some *gene* were subgroups of phratries, and in Demosthenes' *Against Eubulides*, Euxitheus implied that the new members were admitted into the *genos* in the same ceremony as the phratry (Dem. 57.23). The nature of the *gene* and the performances that the *gennetai* carried out together have been contested in modern scholarship. Epigraphic evidence suggests that membership in a *genos* guaranteed its members certain priesthoods. Passages from the Attic orators, particularly from Apollodorus' description of Phrastor's *genos* in *Against Neaira*, suggest that certain *gene* were more concerned with the management of shared assets, for example (Dem. 59.59-60). We can clearly link the *gene* with other identifying groups, however, in its administrative organization. Like the phratry and the deme, the members of the *genos* held an annual meeting at which members introduced their sons to the group and swore that they were their offspring by a lawful citizen-wife. Moreover, if the *genos* refused any member, that man had the right to appeal their decision to the law courts, which suggests that rejection by the *gennetai* constituted a major threat to civic identity. Indeed, in Demosthenes' *Against Neaira*, Apollodorus treated the rejection of Phrastor's son by the members of his *genos* as proof positive that the child was illegitimate (Dem. 59.59).

¹⁶ See Roussel 1976, 17-88. The seminal work on the *gene* still remains Bourriot 1976. See also Ferguson 1944; Meritt 1940; Andrewes 1961a; MacKendrick 1969; Davies 1981; Rhodes 1993; Parker 1996, 284-327.

Membership in the *orgeones* was not a requirement of Athenian citizenship, but litigants could call on the members of their *orgeones* to testify to their citizenship in court. In Attica, *orgeones* fell into two distinct categories: the first type of *orgeones* were groups composed of citizens devoted to the worship of a single hero or even a heroine, and their administration was overseen by a single officer, the “host” (ὁ ἐστιάτωρ). The second type seems to have been made up entirely of non-citizens with the organization overseen by a company of officers.¹⁷ In this study, we are concerned with the first type. In the works of the Attic orators, speakers treated their membership in the *orgeones* along similar lines as membership in the *genos*. Like the *genos*, the *orgeones* held an annual meeting at which they admitted new members, often at the same time as the phratry. If the new member were rejected, this would constitute a serious attack on his identity as a citizen.

In this study of these key identifying groups, I disagree with the majority of modern scholars who in my view have created artificial divides between these organizations by conducting studies that narrowly focus on one group to the exclusion of the others, such as Whitehead’s work on the Attic demes, Lambert’s on the phratry, Bourriot’s on the *genos*, and Ferguson’s on the *orgeones*.¹⁸ This tendency is understandable given that these organizations operated separately from one another. Each of these subgroups had their own administration, managed their own shared property, and often celebrated different cults. The works of the Attic

¹⁷ Ferguson is responsible for the breakdown of the *orgeones* into types; see Ferguson 1944, 73-121. See also Ferguson 1949; Andrewes 1961a; Kearns 1989; Jones 1999, 249-267; Arnaoutoglou 2003.

¹⁸ See Whitehead 1986; Lambert 1993; Bourriot 1976; Ferguson 1944 and Ferguson 1949. There have been works which have discussed these key identifying groups all together, but these authors, especially Ismard, tend to discuss the groups separately and neglect the connections between them and the ways in which Athenians would operate within these groups; see Jones 1999 and Ismard 2010.

orators also make clear that demesmen were not all members of the same phratry, and sometimes in court the testimony of phratrymen and *gennetai* could differ from that of demesmen. What is compelling, however, is the fact that in no surviving speech did any Athenian litigant ever discuss these organizations singularly. Even if that speaker were not a member of a *genos* or *orgeones*, he would need to be part of a phratry and deme to be a citizen. Arguments in the legal cases I examine in this study strongly indicate that these groups were all part of an intricate network of organizations in which citizens had to operate and that they should not be considered in isolation.

My second focus in this study centers on the crucial interpersonal relationships that Athenians maintained within these associations. In recent studies, scholars have reacted against the hypothesis that Athens constituted the quintessential “face-to-face” society. Edward Cohen, the most prominent example, skewers the idea that “the entire population knew one another intimately and interacted closely on a societywide basis.”¹⁹ I do not entirely disagree with Cohen and the scholars who follow him; indeed, the Athenians controlled one of the largest territories among the Greek city-states, and thousands of people were spread across Attica.²⁰ It would be impossible for a single citizen to know all of his neighbors. Citizens who were members of the larger demes, like the deme of Acharnae, would also have a difficult time acquainting themselves with all of their demesmen.²¹ Scholars who pursue this track, however, overlook the numerous passages in Attic oratory in which litigants stressed the intimate relationships they cultivated

¹⁹ Cohen 2002, 104.

²⁰ See especially Vlassopoulos 2007; Vlassopoulos 2009; Osborne 2011.

²¹ On the deme at Acharnae, see Kellogg 2013.

with their key identifying groups. It was not necessary that a citizen know every single member of his phratry or deme to ensure his civic identity, but he did need to cultivate a circle of people who would support him. As I will contend in my next section, I also argue that these interpersonal relationships and friendships themselves constituted performances of identity that fell outside political and religious institutions.

Performances of civic identity

Athenians had to complete a range of performances both within their families and as members of these identifying groups to affirm their identities. Citizens did not necessarily have to complete every single performance possible, just as they did not need to be members of a *genos* or *orgeones*. If a man's identity were called into question in court, however, it would benefit him to produce as many witnesses as possible to as many of those performative acts as possible to clear his name. Modern scholars have often focused on Athenians' political performances, taking their cue from authors like Aristotle and the author of the *Constitution of the Athenians* who depicted citizenship as a wholly political institution.²² More recently, researchers like Josine Blok have considered the religious performances that also defined civic identity, particularly that of Athenian women.²³ In my analyses of key speeches of the Attic orators through the prism of performance studies, I argue that Athenians also considered daily activities that fell beyond the political and religious as equally critical proofs of civic status.

Viewed in this way, the arguments in cases involving challenges to adoptions, inheritances, or

²² Again, see Finley 1981, Manville 1990; Todd 1993; Hansen 1991; Hansen 1998; Hansen 2000; Hansen 2006; Rhodes 2009.

²³ See Blok 2017. See also Patterson 1986; Sourvinou-Inwood 1990; Sourvinou-Inwood 1995.

citizenship reflect the kinds of everyday performances that litigants described in detail, knowing that they would resonate with Athenian juries.

My approach carries with it some key advantages. First, although we can gain a much better understanding of Athenian identification through speeches like Demosthenes' *Against Eubulides*, the litigants were not representative of the Athenian citizen population. Euxitheus, despite his claims that he and his family lived in poverty (Dem. 57.36), would need substantial resources to be elected to prestigious offices like the phraternity and the demarchy and to support priestships (not to mention his ability to pay the speechwriter Demosthenes to write his defense). Only the richest Athenian citizens could complete these kind of performative acts. If we consider, however, everyday activities—the nurturing of children and the caring for the elderly, the management of property, relationships with family, and friendships with phratrymen and demesmen—as powerful performances of identity, we can begin to discern how Athenian citizens could establish themselves within their communities, regardless of their income.

Furthermore, in my focus on the mundane, I can also consider female citizens and the performances by which they affirmed their own identities. It is clear from the speeches of the Attic orators and other historical texts like the *Constitution of the Athenians* that the Athenians considered women citizens. Yet scholars, by focusing on the political aspects of civic identity, leave the precise nature of women's citizenship unexplored because women could not participate in key institutions like the assembly and the law courts.²⁴ In recent years, researchers have begun to explore the important roles that women played in the religious institutions of the city.²⁵ In this

²⁴ See especially Hansen 1991; Rhodes 2009.

²⁵ For a good summary of this scholarship, see Blok 2017, 35-36.

study, I suggest that women's everyday behaviors in large part defined their identities as citizens. The works of the Attic orators further suggest that women faced greater legal dangers if they engaged in aberrant behaviors. By considering the quotidian performances of identity, I can thus include citizens in my study that many researchers have overlooked.

While modern scholars have overstated their arguments that political performances alone defined citizenship, Athenian litigants clearly considered their roles in political institutions as important proofs of identity. Take, for example, Euxitheus' defense in Demosthenes' *Against Eubulides*.²⁶ Euxitheus referred to the political offices which he had held repeatedly throughout his speech. He called on his phratrymen to attest that he had been elected to the office of phratrarch (Dem. 57.23). Euxitheus also criticized his opponent Eubulides for plotting to disenfranchise him when he and his father Thucritus had passed multiple scrutinies by the deme: first when Thucritus had passed his deme scrutiny at the age of eighteen; second when he himself passed the scrutiny; third when he passed a scrutiny when the deme rolls were lost on a previous occasion; and fourth when his demesmen nominated him to draw lots for a priesthood of Heracles (Dem. 57.62). Furthermore, Euxitheus asserted that when he had acted as demarch, he had earned the hatred of his enemies within his deme by demanding that they pay the rents they owed on sacred land (Dem. 57.63). Euxitheus even claimed that conspirators within the deme had stolen shields he had dedicated to the temple of Athena and that they had destroyed a decree his demesmen had passed in his honor and which he might have used as evidence of his citizenship in court (Dem. 57.64). While I do not focus on these political performances in my

²⁶ Interestingly, Blok dismisses the importance of political performances almost entirely. See Blok 2017, 11.

chapter on the performative acts which defined civic identity, other scholars having already covered them extensively, I do not deny their importance in Euxitheus' defense.

Likewise, Athenians seeking to prove their identities in court also emphasized their duties when they were elected to priesthoods or simply as members of local cults. To return once again to Euxitheus' defense: throughout his speech, Euxitheus stressed his participation in the cults of his *genos*, phratry, and deme (see especially Dem. 57.67). Furthermore, in one of his most powerful rhetorical points, Euxitheus argued that he had been chosen by lot to become a priest of Heracles by his demesmen and carried out sacrifices on their behalf. His accuser Eubulides also joined in these sacrifices with him and raised no objections at the time (Dem. 57.47-48).

Likewise, in adoption cases where litigants often needed to establish ties between themselves and their adoptive fathers, they often emphasized that they accompanied their adopted fathers to public sacrifices as proofs of their identities (Isaeus. 1.31; Isaeus. 8.15; Isaeus. 9.21). Again, I do not disagree with scholars like Josine Blok that religious performances were crucial in establishing Athenian civic identity, but we need to consider them as part of a range of performative acts that Athenians completed.²⁷

We come then to those everyday performances that are the focus of this study. The first category of these performances involves the truly mundane activities of daily life. In court, Athenians often held up their interpersonal relationships with their family and within their key identifying groups as proofs of citizenship. Often, litigants stressed that they cared for their aging parents and helped them in the management of family property, and they could call on their demesmen as witnesses to this kind of behavior. Athenians in court also could point to the

²⁷ For Blok's discussion of *Against Eubulides*, see Blok 2017, 6-11.

completion of burial rites for their loved ones as evidence of family relationships.²⁸ Friendships within the phratry and deme could also serve as crucial evidence of identity. In Lysias' *Against Pancleon*, the speaker called Pancleon's civic identity into doubt because he had failed to form close bonds within his deme (Lys. 23.3). Furthermore, Athenians considered even the minutest actions as crucial to identity. In Demosthenes' *Against Eubulides*, Euxitheus claimed that his opponents were able to disenfranchise him in part because his father spoke with a foreign accent (Dem. 57.18). Here, too, is another crucial point in my argument: Athenians' failure to carry out normative performances, such as an Athenian woman leaving the family home to take up outside employment, could also spell disaster for them in court.

In the speeches of Demosthenes and Isaeus, Athenians defined women's civic identities by their quotidian activities.²⁹ Litigants who were attempting to call a woman's identity into question often would accuse her or her children of aberrant behaviors. These deviant activities provide modern scholars with negative examples of the positive performances that Athenian women needed to complete to affirm their identities. For example, in Demosthenes' *Against Eubulides*, Euxitheus devoted a major portion of his speech to the defense of his mother, whom his opponents had accused of being a foreigner on the grounds that she worked as wet-nurse and sold ribbons in the central agora, behaviors associated with slaves and metics (Dem. 57.35). In

²⁸ Blok considers the completion of burial rites as a religious performance of identity, but I believe that the Athenians' view of funeral rites was a bit more complex, especially if we consider them in the context of adoption cases. Athenians considered it key proof of their family identities that they completed the burial rites of their adopted fathers; see particularly Isaeus' *On the Estate of Ciron*, where the defendant made a special point to pay for his portion of his grandfather Ciron's burial to ensure his inheritance rights (Isaeus. 8.21-23). His attitude toward burial was quite mercenary and removed from religious considerations.

²⁹ Scafuro gives an excellent explanation of women's citizenship in Athens and the methods by which they established their identities. See Scafuro 1994, 162-163.

the pseudo-Demosthenic *Against Neaira*, the speaker Apollodorus repeatedly stressed that Neaira had been seen publicly dining and drinking with men, behavior which he took as proof that she was a prostitute and not a citizen (e.g. Dem. 59.24).³⁰ In Isaeus' *On the Estate of Pyrrhus*, the speaker accused his opponents of claiming that Pyrrhus's mistress was actually his citizen-wife. To prove that this woman was no citizen, the speaker asserted that whenever she was present at Pyrrhus' house, there were scenes of disorder, revelry, and serenading (Isaeus. 3.13). Again, these examples demonstrate the complexity of the performances associated with Athenian civic identity. As we have established, Athenians, both men and women, had to carry out certain actions to ensure their status. Likewise, if they failed to carry out these duties or deviated from normal behavior, they could also endanger themselves and their families.

I further argue that Athenians defined their identities by a second category of performances that constitute a middle ground between the everyday and the directly political. In this range of performative acts, Athenians engaged with formal institutions, such as the law-courts or publicly appointed arbitrators, outside of typical political performances. Perhaps most critically, litigants pointed to lawsuits and arbitrations in which they had taken part to establish their own or the civic identities of others in court. For example, in Lysias' *Against Pancleon*, the speaker originally believed that Pancleon was a non-citizen, because Pancleon had taken part in several lawsuits held before the polemarch, the official who had charge over metic affairs (Lys. 23.3). Likewise, in the speech *Against Neaira*, the speaker Apollodorus recounted an arbitration between Phrynion, Neaira's former lover from whom she had fled, and Stephanus, her partner in Athens. Phrynion entered into arbitration with Stephanus on the grounds that he still owned

³⁰ On this particular passage in *Against Neaira*, see Kapparis 1999, 216-221.

Neaira. The arbitrators decided that Neaira would split her time between the two men, a decision to which they could not have come had Neaira been a lawful citizen of Athens (Dem. 59.46).

Litigants in adoption cases also pointed to arbitration as proof of their identity. In Isaeus' *On the Estate of Menecles*, the speaker, attempting to prove that his adoption by Menecles was lawful, argued that his opponents had acknowledged him as Menecles' rightful heir when they willingly entered into arbitration with him at an earlier date (Isaeus. 2.38). Although we cannot categorize involvement in these kind of legal proceedings as daily activities, the Athenians clearly considered such participation as an important proof of identity, proof which had nothing to do with holding political office or joining in the city cults.

The Athenians offered other civic performances as important evidence of citizenship in court. For example, to return to Demosthenes' *Against Eubulides* once again, Euxitheus argued that if Eubulides wanted to prove that his mother was a metic, he should have offered proof that she had paid the metic tax. If she were a slave, Euxitheus claimed that Eubulides ought to have brought forward her owner as a witness (Dem. 59.34). Likewise, in *Against Pancleon*, the speaker offered testimony that several people had come forward to claim Pancleon as a slave as proof of his non-citizen status (Lys. 23.10). Furthermore, inheritance of property also served as proof of citizenship in court. In both the speeches *Against Eubulides* and *On behalf of Euphiletus*, the speakers considered that their relatives had acknowledged Euxitheus and Euphiletus' right to inherit their family property as their confirmation that the two men were citizens (Dem. 57.19; Isaeus. 12.4). Again, the payment of the metic tax and the division of property do not easily fall into the category of everyday activities, but we certainly need to

consider them separately from the political and religious performances by which the Athenians also established their civic status.

As I have outlined above, the Athenian legal speeches I will examine make clear that Athenians engaged in a complex set of performances carried out with their relatives, their phratrymen, and their demesmen as key witnesses to affirm their civic identities. I call this range of performative acts completed in every realm of life the Athenian identification process. Furthermore, I have chosen the term “process” to reflect that citizens constantly engaged in these behaviors and needed to repeat them multiple times over the course of their lives. They not only participated in these performances to affirm their own status but that of their children and other relatives. We can further understand the multiple and repeated nature of these performative acts that are referred to again and again by the Attic orators by considering them in the theoretical framework developed in performance studies.

Performance studies

We can gain better insight into the performances of identity in Classical Athens as reflected in surviving legal speeches by examining them in light of performance studies. The vein of scholarship within performance studies most pertinent to my own research was developed by Erving Goffman and scholars like Victor Turner and Richard Schechner who followed and expanded on his methodology. Goffman’s discussion of the performance of everyday life most informs my examination of identity.³¹ Goffman moved performance theory away from ritual spaces and civic institutions by considering performance more broadly in a

³¹ Goffman 1959; Goffman 1974.

variety of social settings. Essentially, Goffman developed an anthropological approach that established the daily routines of everyday life and even minute actions like speech, dress, and facial expressions as central to larger cultural processes. Goffman also constructed a spectrum ranging from the routines and habits (the “performances”) of everyday life to what Simon Goldhill referred to as “institutional events,” such as the public funeral orations and citizen assemblies of ancient Athens.³² Goffman concluded that people played “social roles” in their everyday life in accordance with a cultural script.

Goffman worked closely with the anthropologist Victor Turner, who began his work in performance studies with fieldwork on the Ndembu tribe in western Africa. Turner viewed ritual as a performance through which community members could negotiate cultural values and viewed participation in these symbolic performances as key to the formation of individual and collective identity.³³ Turner also collaborated with Richard Schechner, a prominent scholar in performance studies who ushered the field into the twenty-first century. Most notably, Schechner developed the concept of restored behavior.³⁴ Schechner defined restored behavior as “living behavior treated as a film director treats a strip of film. These strips of behavior can be rearranged or reconstructed.”³⁵

Restored behaviors, repeated and rearranged again and again by all members of a community, help shape the culture of a society and establish the specific social roles played by

³² See Goldhill 1999.

³³ See Turner 1967; Turner 1969; Turner 1974.

³⁴ Schechner, describes restored behaviors as “actions reified into the ‘rules of the game,’ ‘etiquette,’ or diplomatic ‘protocol’—or any other of the myriad, known-beforehand actions of life.” See Schechner 2002, 28.

³⁵ See Schechner and Turner 1985, 35.

particular members of that community. When an individual carries out these behaviors, he also reenacts the behaviors exhibited by his fellow community members, placing himself within the larger culture and forming his own unique identity. Schechner gave the examples of a boy from the Gahuku tribe from Papa New Guinea betraying no pain as his nostrils were slit during an initiation ceremony and of a bride blushing as she walked down the aisle, although she had lived with her fiancé for years. As Schechner elaborated, “the self can act in/as another; the social or transindividual self is a role or a set of roles.”³⁶ Taking an example from ancient Athens, consider an Athenian citizen from the deme of Decolea. He had a range of everyday performances open to him by which he could establish his identity. He might meet with his demesmen at the barbershop by the street of the Herms in Athens, where they regularly gathered to socialize (Lys. 23.3). He might walk his young children to school and speak with their teachers (Isaeus. 9.28; Isaeus. 12.3). He might care for his aged father and make preparations for his funeral (Isaeus. 4.19-20; Isaeus. 8.38; Isaeus. 9.4). That citizen could not complete all of the performances available to him—he chose among them and rearranged those behaviors at will (as Schechner suggested, behavior treated as a director treats film strips) to establish himself within his community. Moreover, these performances of identity both defined this individual citizen and every citizen; they were at once individual and universal. Any Athenian juror who listened to a litigant in court recount these everyday activities would recognize them and realize that he too had completed them as a member of the larger Athenian community.

I also employ another approach developed by Schechner in my consideration of Athenian identity, elaborating on his concepts of the “is” performance and “as” performance. In

³⁶ Schechner and Turner 1985, 36.

Schechner's theoretical framework, "is" performances are those ritualistic or institutional events consisting of actual performances delivered by actors to an audience.³⁷ In my own consideration of the quotidian performances of identity in Classical Athens, I consider citizens (and non-citizens, like metics) taking part in lawsuits or in arbitrations as the strongest examples of "is" performances. Essentially, they were actors delivering scripted speeches to a group of co-participants at public events that formed critical Athenian institutions. Also pertinent to this study is the fact that the litigants who delivered the speeches that make up the main body of evidence in this study were also delivering what Schechner would term "is" performances. Accordingly, the speeches of the Attic orators are not simply texts from which to draw information about public institutions. Rather, these speeches constituted performances in their own right by speakers fulfilling specific social roles. What makes these performances even more extraordinary is their depiction of other critical performative acts through multiple spheres of Athenian society.

Schechner defined "as" performances more broadly: "Any behavior, event, action, or thing can be studied 'as' performance, can be analyzed in terms of doing, behaving, and showing."³⁸ Into this category, Schechner placed the restored behaviors of everyday life—the acts we perform every day, rearranging and repeating them at will. The concepts of "as" performances and restored behaviors allow us to expand performative identity beyond religious rituals and civic institutions. I consider those truly mundane performances of daily life, such as a woman caring for her elderly father every day with the help of her family or even a man speaking with a particular accent, as potent "as" performances. Most crucially, I will argue that

³⁷ Schechner 2002, 30.

³⁸ Schechner 2002, 32.

in Athenian culture these everyday actions proved and established identity just as much as enrollment in groups like the phratries and demes and participation in political and religious institutions.

Summary of chapters

In the following chapters, I examine different types of legal cases involving the establishment of or challenges to civic identity. The common link between these speeches is the litigants' reliance on the quotidian performances that citizens engaged in repeatedly and by necessity to establish their civic status and protect themselves against any attacks on their rights or social status. In my second chapter, through a case study of Demosthenes' *Against Eubulides*, I consider Athenian civic identity as a broad range of performances which encapsulated the political, religious, and the mundane. I also question modern scholars who have argued that these kind of performances would have little impact on the civic identities of everyday Athenians because they lived in relative anonymity.³⁹ I argue rather that Athenians purposefully cultivated relationships within their communities, particularly their phratries and demes, to ensure that their performances of identity would be witnessed by the proper people. Moreover, these interpersonal relationships constituted powerful performative acts in and of themselves.

My third chapter, in which I reconsider the Athenian institution of adoption and link it closely with the Athenian identification process, builds from my chapter on civic identity. In this chapter, I perform case studies on two speeches of Isaeus: *On the Estate of Menecles* and *On the Estate of Apollodorus*. In both, citizens sought to affirm their adoptions called into question by

³⁹ See in particular Cohen 2002; Vlassopoulos 2007; Osborne 2011.

relatives. Although scholars have often considered adoption as a private transaction undertaken between two Athenian families, these cases indicate that adoption was a public institution controlled by the same identifying groups which governed citizenship.⁴⁰ Furthermore, Athenians affirmed their adoptive identities through the same set of performances, including everyday activities, by which they established their citizenship. Accordingly, I argue that legal cases centering on adoption can give modern scholars critical insights into the Athenian identification process.

In my fourth chapter, in a case study of the pseudo-Demosthenic *Against Neira*, I consider the methods by which Athenians confirmed women's civic identities. The speeches of the Attic orators clearly demonstrate that Athenians considered women citizens despite the fact that they could not participate in the political institutions by which scholars typically define citizenship. Moreover, I argue that Athenians defined women's identities through their quotidian activities. In the case against Neira in particular, the speaker Apollodorus attacked the identities of both Neira and her (alleged) daughter Phano by pointing to their aberrant behavior. Through an examination of the characters of both women, I further assert that Athenian families, both men and women, shared one civic identity, and litigants often attacked their opponents in court through their female relatives.

In my final body chapter, I focus on Athenian anxieties surrounding citizenship in a case study of Isaeus' *On the Estate of Philoctemon*. Researchers have focused on Athenian anxieties in studies of different pieces of legislation. For example, in scholarship on Pericles' Citizenship

⁴⁰ For another refutation of adoption as private transaction, see Rubinstein 1993, 33-36. Scholars who have argued for adoption as a private legal agreement include Beauchet 1969, 10-18; Bruck 1909, 54; Becker 1930, 301-306; Brindesi 1961, 45; Polacek 1967, 162; Todd 1993, 89.

Law (451/0 BCE), scholars often have considered the cultural anxieties that drove Athenians to pass such a law.⁴¹ In another vein of scholarship, writers have concentrated on Athenians' anxieties about foreigners and metics pretending to be citizens, concerns that became particularly prevalent between 350 and 330 BCE.⁴² In this chapter, however, I take an altogether different approach and focus on the major and minor catastrophes that could disrupt the Athenian identification process. I argue that Athenians felt acute anxieties about large-scale disasters, like the Peloponnesian War, and smaller events, like conniving women and deaths in the family, because they had the power to disturb the everyday activities by which they defined their civic identities.

In all these chapters, I reject the limiting nature of traditional studies of Athenian citizenship that have focused solely on groups of men sitting isolated in the assembly and law-courts, with the majority of the population trapped outside of the proverbial gates. If we continue to consider citizenship as a strictly political institution, we discount the most colorful and informative stories from Athenian litigants who sought to prove their identities in court, stories in which women, metics, and slaves often played key roles. Accordingly, my goal in this study is to redefine Athenian citizenship as a dynamic set of performances that all Athenians—men and women, citizens and non-citizens— participated in, as actors or as audience members.

⁴¹ For a good overview of this scholarship, see Boegehold 1994, 57-59.

⁴² See Cooper 2003; Lape 2010.

CHAPTER II

Citizen Status in Classical Athens

Introduction

In Demosthenes' *Against Eubulides*, one of two surviving speeches in which an Athenian citizen defended himself on a charge of ξενία, the speaker Euxitheus recounted his bitter feud with his fellow demesman Eubulides.⁴³ Eubulides, infuriated that Euxitheus had testified against him in an earlier trial, orchestrated Euxitheus' expulsion from their deme and so disenfranchised him. In his appeal to the Athenian courts, Euxitheus declared if the jury upheld his demesmen's decision, he would be utterly destroyed—he could be sold into slavery, his lands confiscated, and his elderly mother left destitute.

Scholars have often focused on Euxitheus' defense because of the insights it offers into the proofs of civic identity which the Athenians considered most critical in court.⁴⁴ For modern writers, the speech is especially valuable because the speaker provides so many details about the elaborate rites of passage which Euxitheus, and all Athenian citizens, underwent within particular political and religious institutions: most critically, his admission into his father's *genos*, his phratry, and his deme; his election to political

⁴³ The English translation of ξενία is a bit ungainly—put simply, it is the charge of a foreigner pretending to be a citizen.

⁴⁴ See especially Whitehead 1986, 88-104; Osborne 1985, 147-151; Vlassopoulos 2009, 347-363; Blok 2017, 5-13.

and religious offices; and his participation in local and city cults. In this chapter, whereas others have focused on civic participation as proofs of citizenship, my focus will be on the proofs of identity offered by both Eubulides in his prosecution and Euxitheus in his defense that centered on personal relationships and the daily activities of Euxitheus' family.

With their focus on political institutions, modern scholars often gloss over Eubulides' case.⁴⁵ Although Eubulides' speech has not survived, Euxitheus painstakingly surveyed his accusations in his own defense. For my purposes, his arguments against Euxitheus are extremely interesting, because they demonstrate that Athenian litigants considered everyday performances critical proofs of civic status. Notably, Eubulides did not call Euxitheus' participation in his phratry or deme, the two central groups that controlled citizenship, into question. Instead, he presented two accusations against Euxitheus' parents: that his father spoke with a foreign accent (Dem. 57.18) and his mother sold ribbons in the agora and worked as a wet-nurse (Dem. 57.31; 57.42). It was these everyday activities that Eubulides offered as evidence that both Euxitheus and his parents illegally lived as citizens.

Notably, Euxitheus did not dismiss Eubulides' arguments as frivolous; in fact, he devoted a large portion of his defense (Dem. 57.18-46) to countering them. To prove his parents' civic identities, Euxitheus not only established his involvement in key Athenian

⁴⁵ See particularly Blok 2017, 8-9, where she overlooked the accusations which Eubulides brought against Euxitheus' parents. If modern scholars do consider Eubulides' accusation, it is usually within a larger discussion—See especially Lape's discussion of the case in the context of racism in Classical Athens: Lape 2010, 43-44. See also Osborne's discussion of Eubulides' accusations in a larger discussion of slavery in Classical Athens: Osborne 2010, 99-103.

political and religious institutions, but also called numerous relatives and the members of his *genos*, phratry, and deme to bear witness to the interpersonal relationships with his family and their daily activities. Athenian litigants thus considered participation in particular identifying groups *and* their quotidian performances as equally important proofs of identity.

In this argument, I depart from other scholars who have studied Athenian civic identity by focusing on the proofs of identity that fell outside political and religious institutions.⁴⁶ My goal is to adopt a holistic approach to the study of Athenian identification. Whereas previous scholars have focused on adult male citizens and the formal institutions through which they affirmed their citizen status, I concentrate on the informal performances that determined identity, so that I can include those actors—particularly women, metics, and slaves—in my study who are generally overlooked in modern studies. By adopting this framework, I redefine citizenship as an institution that penetrated every realm of Athenian life and that impacted the lives of every Athenian, both citizen and non-citizen. In sum, citizens needed to complete a range of performances before targeted audiences, most crucially before their relatives, phratrymen, and demesmen. They could then call upon these close associates as witnesses to these actions if their statuses as citizens were ever questioned in court. I call this series of witnessed performative acts the Athenian identification process.

In this chapter, I survey first the modern scholarship that has focused almost exclusively on the political and religious in the study of Athenian identification. Then, I

⁴⁶ For scholars whose definitions of citizenship focus particularly on political institutions, see especially Manville 1990, 3-34; Hansen 1991; Rhodes 2009, 57-69.

give a brief definition of the complicated identification process and the methods by which Athenian citizens safeguarded their identities. Most crucially, I then use my study of Demosthenes' *Against Eubulides* and related cases to go beyond theory and analyze the actual devices and evidence that speakers employed to establish and defend citizen identity. I examine the key identifying groups from which speakers such as Euxitheus drew witnesses to testify to civic identity, and I consider the emphasis which Euxitheus placed on the testimony of his family members in his counter-arguments against Eubulides, testimony that focused almost exclusively on interpersonal relationships and the daily activities of Euxitheus' parents. I then analyze the witness statements of Euxitheus' phratrymen, his demesmen, and the members of his *genos*. Again, I consider the importance of Euxitheus' personal connections within these identifying groups as proofs of his civic identity.

Modern scholarship

Scholarship on Athenian civic identity and status verification can be divided into three veins. In the first, scholars have focused on the identifying groups that controlled access to citizenship, especially the deme and the phratry. In his seminal work on the Attic deme, Whitehead undertook a comprehensive analysis of the political and religious functions of the demes and the various offices to which Athenian citizens could be elected as members. For example, Whitehead painstakingly described the proceedings of the deme assembly and the position of demarch.⁴⁷ Furthermore, he recognized (albeit

⁴⁷ Whitehead 1986, 67-114.

briefly) that demesmen actively socialized with one another outside of formal functions of the deme and could attest to one another's identities in court based on these personal relationships, an observation in line with my own arguments.⁴⁸

In his work on the phratries of Attica, Lambert adopted a similar approach in examining the political and religious functions which the phratry performed in Athenian society. Most important for this study, he convincingly argued that Athenians considered recognition by, and enrollment within, the phratry as a crucial step in establishing civic identity equal in importance to deme membership.⁴⁹ While both Whitehead and Lambert cursorily considered the personal relationships between demesmen and phratrymen, both scholars concentrated mainly on formal institutions and the formal performances citizens carried out within them.

In his broader consideration of "associations" in Classical Athens, Jones moved away from an emphasis on the operations and functions of institutions in the political realm.⁵⁰ Jones' work included not only studies of the Attic phylai (tribes), demes, and phratries, but also of smaller social institutions whose purposes have remained murky or unknown, such as the *gennetai* and the *orgeones*, and of associations like clubs and philosophical schools. His work represented a shift in focus from Athenian institutions with a distinct political function to those that apparently served a purely social or even educational function.

⁴⁸ Whitehead 1986, 68-69.

⁴⁹ . Lambert 1993, 14.

⁵⁰ Jones declared: "No assumptions about the presence or identity of any function of our classical Athenian associations (whatever they turn out to be) can be built into the definition of the subject matter to be studied." See Jones 1999, 25-26.

In a second vein of scholarship, scholars have focused on the methods Athenians adopted to verify their citizenship status. In her seminal article, Scafuro contended that in the absence of birth and death records, citizens carried out specific acts within Athenian political and religious institutions before family members, demesmen, and phratrymen.⁵¹ In fact, Scafuro made clear that Athenians considered demesmen, phratrymen, and close relatives to be the witnesses who could best testify to an Athenian's status if he were brought to court because his citizenship was questioned. She further argued that suits of false witnessing were "used as a remedy for the deficiencies and abuses of the system of status identification in fourth-century Athens."⁵² Like Jones, Scafuro took a more holistic approach to the study of Athenian citizenship by considering the complicated network of identifying groups in which Athenian citizens moved and the wide range of performances they needed to undertake to establish themselves in their communities. Yet she also had the same narrow focus as Whitehead and Lambert, in that she concentrated only on formal institutions and performances.

More recently, Blok has built on Scafuro's arguments and argued that the Athenians considered the religious performances they carried out as members of city and private cults the most important proofs of civic identity. Blok argued that modern scholars need to shift away from their focus on the simplified guidelines for citizenship set down by Aristotle in the *Politics* and pseudo-Aristotle in the *Constitution of the Athenians*, where the author claimed that enrollment in the deme was the essential requirement to become an Athenian citizen.⁵³ In line

⁵¹ Scafuro 1994, 156-198.

⁵² Scafuro 1994, 158.

⁵³ [Arist]. Ath.Pol.42.1. See Blok 2017, 13-21.

with my own work, Blok contended that the proofs of identity laid down by Euxitheus in *Against Eubulides* provided the best evidence for modern academics studying status verification in Classical Athens.⁵⁴ I do not disagree with Blok that Euxitheus emphasized his enrollment in local cults and his election as a priest of Heracles as key proofs of his civic identity, but they are hardly the only evidence of his identity that he offered in the speech. Furthermore, it seems odd that Blok would completely overlook the grounds on which Eubulides challenged Euxitheus' citizenship—that his father spoke with a foreign accent and his mother sold ribbons in the agora, activities that were in no way religious.

In a third vein of scholarship, Cohen and Vlassopoulos have painted a far different picture of the Athenians' methods for status verification. Rather than envision Classical Athens as a community marked by strict distinctions between citizen, metic, and slave, these scholars instead have argued for Athens as a community whose members did not define themselves solely through their personal relationships within identifying groups. Cohen in particular has argued against the claims presented by some scholars both in and outside of Classical Studies that Athens constituted a “face-to-face society” in which social categories were strictly enforced; rather, he has suggested that Athenians lived in relative anonymity, even within their own demes, and that their statuses were often difficult to determine.⁵⁵ Vlassopoulos further argued that the Athenians did not strictly enforce social distinctions in daily life and so every Athenian, whether a male citizen, a

⁵⁴ Blok 2017, 5-13.

⁵⁵ Cohen is reacting in particular to scholars who held Athens up as a prime example of the premodern face-to-face society: See Laslett 1956; Laslett 2009; Finley 1973; Finley 1983; Himmelfarb 1996; MacIntyre 2014. For critiques of this kind of scholarship, see Cohen 2002, Chapters 2 and 4; Vlassopoulos 2007, 33-52.

female ribbon-seller, or a slave, could potentially participate in the democracy in “free spaces” like the Athenian agora.⁵⁶

While these scholars have done much to open the scope of Athenian identity studies to include marginalized groups like women, metics, and slaves, they leave critical aspects of Athenian identity and the Athenian’ methods for verifying status unexplored. Cohen and Vlassopoulos have gone too far in their conception of Athens as a community in which people’s identities became “blurred” in daily life, apparently without consequences for ordinary Athenians like Euxitheus. While both scholars have observed the difficulties Athenians faced in identifying people in the absence of official records, neither has acknowledged that the Athenians had means by which they established their positions in their communities.⁵⁷ In particular, Cohen and Vlassopoulos have passed over Adele Scafuro’s article clearly outlining the methods Athenian citizens adopted to prove their civic identities in legal speeches.

In sum, modern scholars have done much to illuminate how central Athenian institutions like the phratry and deme operated and what were the duties of the citizen members of these groups. Yet in all three veins of scholarship I have discussed, the writers adopt too narrow a focus to consider fully the complex nature of the Athenian identification process. It is clear from Athenian legal speeches like *Against Eubulides* that no single group, not even the phratry or the deme, controlled citizenship. Furthermore, Athenian citizens clearly needed to carry out performances that fell outside the political

⁵⁶ See Vlassopoulos 2007, 39-51.

⁵⁷ See Cohen 2002, 128-129; Vlassopoulos 2007, 34-35; Vlassopoulos 2009, 358-360.

and religious spectrum to establish their civic status. Conversely, they could also have their identities questioned if they failed to adhere to certain standards of behavior.

The Athenian identification process: a brief definition

As I discussed in my introduction, in the *Constitution of the Athenians*, pseudo-Aristotle laid out the key requirements of Athenian citizenship. A citizen was born from the lawful marriage between a male citizen and a citizen wife. When he reached the age of eighteen, his father would introduce him to his demesmen at a special deme assembly where the demesmen would vote him a member once his father had sworn that he was his legitimate freeborn son. If the deme rejected him, the citizen had a right to appeal to the law courts. If the jury found against the son, he would be sold into slavery. If he prevailed in court, the deme was obligated to admit him ([Arist]. Ath.Pol.42.1).⁵⁸ This account of the identification process for citizens is quite tidy, but the reality presented in Athenian legal speeches seems to have been a bit more complicated.

Take, for example, Euxitheus' review of the witnesses after they testified to his parents' civic identities:

Τὰ μὲν τοίνυν ὑπὸ τῶν συγγενῶν καὶ φρατέρων καὶ δημοτῶν καὶ γεννητῶν, ὧν προσήκει, μαρτυροῦμεν' ἀκηκόατε. ἐξ ὧν ἔστιν ὑμῖν εἰδέναι, πότερόν ποτ' ἀστὸς ἢ ξένος ἦν ὃ ταῦθ' ὑπῆρχεν.

You have heard testimony from my relatives and phratrymen and demesmen and the members of my *genos*, from whom it is fitting [to hear], [and] from whom you

⁵⁸ The full Greek text reads:

Ἔχει δ' ἡ νῦν κατάστασις τῆς πολιτείας τόνδε τὸν τρόπον. μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ' εἰς τοὺς δημότας ὀκτωκαίδεκα ἔτη γεγονότες. ὅταν δ' ἐγγράφονται, διαψηφίζονται περὶ αὐτῶν ὁμόσαντες οἱ δημόται, πρῶτον μὲν εἰ δοκοῦσι γεγονέναι τὴν ἡλικίαν τὴν ἐκ τοῦ νόμου, κἂν μὴ δόξωσι, ἀπέρχονται πάλιν εἰς παῖδας, δεύτερον δ' εἰ ἐλεύθερός ἐστι καὶ γέγονε κατὰ τοὺς νόμους. ἔπειτ' ἂν μὲν ἀποψηφίσωνται μὴ εἶναι ἐλεύθερον, ὁ μὲν ἐφήσιν εἰς τὸ δικαστήριον, οἱ δὲ δημόται κατηγοροῦνται αἰροῦνται πέντε [ἄν]δρας ἐξ αὐτῶν, κἂν μὲν μὴ δόξη δικαίως ἐγγράφεσθαι, [ἄν]δρας ἐξ αὐτῶν, κἂν μὲν μὴ δόξη δικαίως ἐγγράφεσθαι, πωλεῖ τοῦτον ἢ πόλις· ἐὰν δὲ νικήσῃ, τοῖς [δ]ημόταις ἐπ' ἀνάγκης ἐγγράφειν. (Arist. Ath.pol. 42.1).

can know whether a man is a citizen or an alien who has this support [lit. for whom these things stand] (Dem. 57.24).

Here Euxitheus made clear that the testimony of the members of these central identifying groups *taken together* proved his civic status. To establish himself in his community, Euxitheus needed to carry out his political, religious, and everyday duties within each group—not simply within his deme—, and he needed to cultivate personal relationships with his relatives, demesmen, phratrymen, and any other association to which he belonged in case his identity were ever questioned in court. While I will consider each of these identifying groups and the performances that Euxitheus completed within them separately, the divides between these groups are artificial.⁵⁹

Put simply, the Athenian identification process can be described as follows. Citizens needed to engage in many identifying groups over the course of their lives to safeguard their citizenship. They could be part of smaller organizations like the *genos* and *orgeones*, religious groups with hereditary membership. Citizens absolutely had to be enrolled in the phratry and the deme.⁶⁰ Furthermore, Athenians did not participate in these institutions in isolation: membership in the *genos* guaranteed membership in the phratry, and phratry membership was a prerequisite of deme membership.⁶¹ These key

⁵⁹ To acknowledge the artificial divide between these key identifying groups is made more difficult by the fact that modern scholars tend to make one institution the focus of their studies, ie. Whitehead's work on demes, Lambert's on phratries, and Bourriot's on the *genos*. More astounding is the tendency of modern scholars to completely overlook some of these groups in their studies; for example, Cohen mentioned phratries *twice* in the main body of *The Athenian Nation* (69, 110), when it is quite clear that phratry membership was a requirement for citizenship.

⁶⁰ S.D. Lambert has previously concluded that "in practice, the phratry played the major role in controlling the major qualification for citizenship, Athenian descent." See Lambert 1993, 49. See also Adele Scafuro on the subject, Scafuro 1994, 158-159. See also Nicholas Jones: Jones 1999, 195-200.

⁶¹ See Osborne 1985, 72-74.

identifying groups were interconnected, and Athenians needed to carry out crucial performative acts before all of them. First, in the political sphere, citizens needed to be admitted to a phratry and deme and complete military service; if they met certain property requirements, they might also hold political offices and complete liturgies. Second, citizens also needed to participate in Athenian religious institutions, celebrating private cults and participating in the great Athenian religious festivals like the Panatheneia. Again, if they were wealthy, they might also hold religious office. Lastly, in their personal lives, citizens managed their households and estates, married wives, reared and educated children, arranged marriages for those children, cared for the sick, buried the dead, and completed their funeral rites.⁶² Failure to form close bonds within their communities or to carry out these specific behaviors could jeopardize citizens' statuses before the court.

As I discussed in my introduction, in my consideration of the Athenian identification process, I have drawn particularly on the performance theory developed by Erving Goffman, Victor Turner, and Richard Schechner.⁶³ Goffman and his supporters have developed an approach that establishes everyday activities, and even minute actions like speech and facial expressions, as vital to larger cultural processes. In this theoretical framework, I argue that even minute actions were critical to the identification process,

⁶² I should note that Blok considered the burial of the dead and the completion of funeral rites as a strictly religious activity and linked them with adoption and inheritance rights; see Blok 2017, 127-129. In my own view, in cases of adoption and inheritance Athenian litigants were quite mercenary about the completion of burial rites—They completed them in part to stake their claim on an estate, and that motivation seems to fall outside of the religious to me. See especially Isaeus. 4.19-20; Isaeus. 8.38; Isaeus. 9.4.

⁶³ See Goffman, 1959; Turner 1967; Turner 1974; Schechner and Turner 1985; Schechner 2002.

and Athenians regularly invoked daily routines as proof of identity in court. In particular, I draw on Schechner's theoretical framework to differentiate between two categories of performance that were crucial to establishing civic identity.⁶⁴ In the first category, what Schechner names "as" performances, I examine the truly mundane activities by which Athenians affirmed their citizen status. These kind of actions range from speaking with a certain accent to engaging in a particular profession. This first category could also include the relationships that Athenians nurtured with their families, friends, and the members of key identifying groups. In the second category, what Schechner terms "is" performances, I consider actions carried out in formal cultural institutions where citizens performed for an actual audience. For example, litigants often pointed to their participation in arbitrations and lawsuits as important proofs of identity. I further argue that even overtly political or religious performances, such as the *koureion* at which a father introduced his son to his phratrymen, served as the Athenians' acknowledgement of everyday performances, such as the birth, rearing, and education of a child, which were critical to civic identity. To borrow a trope from *The Bard*, for Athenians, all the world was a stage, and all the men and women were players.

Relatives

In the two surviving court cases in which speakers presented defenses on a charge of ξενία—Euxitheus in Demosthenes' *Against Eubulides* and the unnamed speaker who defended his brother in Isaeus' fragmentary *On Behalf of Euphiletus*—both men stressed

⁶⁴ See Schechner 2002, 30-32.

their families' everyday activities and their intimate relationships with one another.⁶⁵ As the author of the *Constitution of the Athenians* laid out ([Arist]. Ath.Pol.42.1), descent from two Athenian citizens was the key requirement for citizenship, and accordingly both speakers needed to establish their parentage. Euxitheus was at a particular disadvantage: his father was dead and could not testify on his son's behalf, and although she was alive, Euxitheus' mother was also not permitted to appear in court. To compensate for their absence, Euxitheus explained in detail his parents' aberrant behaviors on which Eubulides had focused his legal attacks, actions which were neither political nor religious in nature. For example, he produced witnesses to testify as to how his father Thucritus had acquired a foreign accent after he was taken as a prisoner of war. Euxitheus even called upon Cleinias, the man whom Euxitheus' mother had nursed as an infant, to establish that she was an Athenian citizen despite her dubious work history. Furthermore, Euxitheus called on his relatives to testify to his parents' everyday activities and to their intimate relationships with them. Isaeus' *On Behalf of Euphiletus* provides a useful comparison for Euxitheus' defense, since Euphiletus' parents were alive at the time of speech and took active part in his defense. The speaker, Euphiletus' brother, repeatedly stressed that both he and his parents were willing to swear oaths to their personal connection with Euphiletus. Most critical to my own argument, like Euxitheus, Euphiletus' brother also considered the testimony of his relatives as the best proof of his brother's civic status.

⁶⁵ As I discussed in my introduction, in 346 BCE, a decree proposed by an otherwise unknown Demophilus called for a review of all deme registers and for the expulsion of non-citizens who had been illegally enrolled into the demes. This set off a number of lawsuits, including those documented in Demosthenes 57 and Isaeus 12. See Diller 1935, 302-311. Blok also has an interesting discussion of the decree; see Blok 2017, 244-245.

Euxitheus began the main body of his speech by addressing Eubulides' first accusation against his family: that his father Thucritus spoke with a foreign accent (Dem. 57.18). Critically, Euxitheus neither dismissed Eubulides' accusations as insignificant, nor did he deny his father's aberrant behavior. His eagerness to counter this allegation suggests that his Athenian audience considered even minute everyday performances like speech key indicators of identity.⁶⁶ In his defense, he detailed Thucritus' history as a soldier during the Peloponnesian War and later as a prisoner of war:

Διαβεβλήκασιν γάρ μου τὸν πατέρα, ὡς ἐξένιζεν· καὶ ὅτι μὲν ἀλοὺς ὑπὸ τῶν πολεμίων ὑπὸ τὸν Δεκελεικὸν πόλεμον καὶ πραθεὶς εἰς Λευκάδα, Κλεάνδρῳ περιτυχὼν τῷ ὑποκριτῇ πρὸς τοὺς οἰκείους ἐσώθη δεῦρο πολλοστῷ χρόνῳ, παραλελοίπασιν, ὥσπερ δὲ δέον ἡμᾶς δι' ἐκείνας τὰς ἀτυχίας ἀπολέσθαι, τὸ ξενίζειν αὐτοῦ κατηγορήκασιν.

For they have stated slanderously that my father spoke with a foreign accent. And that he was captured by the enemy during the Deceleian War and taken to Leucas, that he fell in with Cleander the actor and was returned safely here to his kinsmen after a very long time, they have passed over! But as if it is right that we come to ruin on account of those misfortunes, they have brought his speaking with a foreign accent as an accusation [against me] (Dem. 57.18).

Both prosecutor and defendant relied on Thucritus' performances outside of the political and religious realms to determine his status as a citizen. While Eubulides considered the simple fact that he spoke with a foreign accent proof that he was a metic, Euxitheus made clear the importance of Thucritus' personal history in establishing his civic identity. Furthermore, the first depositions which Euxitheus presented in his defense were to validate this account of his father's imprisonment (Dem. 57.19). To Euxitheus, his father's actions during the Peloponnesian War determined his identity as much as his enrollment in his phratry and deme.

⁶⁶ See Vlassopoulos 2009, 358. Vlassopoulos took almost the polar opposite view to my own in his consideration of this passage; he argued that Eubulides' accusations against Thucritus and his wife indicated how difficult it was for Athenians to differentiate citizens, slaves, and metics.

As the second argument in his father's defense, Euxitheus further stressed the division of property and management of his family estate as proof of Thucritus' citizen identity. He called the children of his uncles Charisius and Lysanias as witnesses before the court, since they had inherited his father Thucritus's estate when he had disappeared during the Decelean War and subsequently returned it to him when he miraculously returned. Perhaps Euxitheus needed to address previous arguments made by Eubulides, since he particularly stressed that his father could not possibly have bribed all these men to pretend to be his relatives:

εἰ μὲν τοίνυν εὖπορος ὢν ὁ πατήρ χρήματα δοὺς τούτοις ἐφαίνετο πείσας συγγενεῖς αὐτοὺς ἑαυτοῦ φάσκειν εἶναι, λόγον εἶχεν ἂν ὑποψίαν τιν' ἔχειν ὥς οὐκ ἦν ἀστός· εἰ δὲ πένης ὢν ἅμα συγγενεῖς τε παρέσχετο τοὺς αὐτοὺς καὶ μεταδιδόντας τῶν ὄντων ἐπεδείκνυε, πῶς οὐκ εὐδηλον ὅτι τῇ ἀληθείᾳ προσῆκε τούτοις; οὐ γὰρ ἂν δῆπου, εἴ γε μηδενὶ ἦν οἰκεῖος, χρήματ' αὐτῷ προστιθέντες οὗτοι τοῦ γένους μετεδίδοσαν;

For if my father, being a wealthy man, appeared to have given money to these men to persuade them to claim they were his relatives, [Eubulides] would have some reason to suspect that he was not a citizen; but if, being a poor man, he produced these men as his relatives and proved that they shared their property with him, how is it not clear that he was fact related to them? For surely, if he had been a relative to none of them, they would not have given him money and given him a share in the *genos*? (Dem. 57.25).

Euxitheus' argument rested on the performative acts of property distribution that Thucritus' uncles Charisius and Lysanias completed to confirm he was was a legitimate member of their family. They gave him his fair portion of his father's (Euxitheus' grandfather's) estate and admitted him into their *genos*, two powerful confirmations both of his identity as their nephew and as an Athenian citizen. Inheritance in Athens was often closely linked to citizenship; only other citizens could inherit citizens' property, and speakers in Isaeus' speeches on inheritance disputes sometimes accused their opponents

of impersonating citizens to gain portions of the estate. Notably, Euxitheus' argument also slyly referred to Athenian greed. By admitting that Thucritus was their nephew after his emancipation from slavery, his uncles Charisius and Lysanias devalued their own shares in Thucritus' father's estate. Euxitheus thus argued that no Athenian would claim a man as his relative and thus lose money, unless that man really *were* his relative. The speaker in Isaeus' *On Behalf of Euphiletus* employed the same tactic, claiming that no could think him so insane as to falsely claim Euphiletus as his brother and so cut his inheritance in half (Isaeus. 12.4).

Also important to note is the structure that Euxitheus gave to his father's defense.

As he explained the order of the depositions to the jurors:

καὶ πρῶτον μὲν ὥς ἐάλω καὶ ἐσώθην, μάρτυρας ὑμῖν παρέξομαι, ἔπειθ' ὅτι ἀφικόμενος τῆς οὐσίας παρὰ τῶν θείων τὸ μέρος μετέλαβεν, εἴθ' ὅτι οὐτ' ἐν τοῖς δημόταις οὐτ' ἐν τοῖς φράτερσιν οὐτ' ἄλλοθι οὐδαμοῦ τὸν ξενίζοντ' οὐδεὶς πώποτ' ἠτιάσαθ' ὥς εἴη ξένος. καὶ μοι λαβὲτὰς μαρτυρίας.

And first that [Thucritus] was captured and redeemed [from slavery], I shall present witnesses to you, then that after he returned he received his portion of the estate from his uncles, then that neither among his demesmen nor among his phratrymen nor anywhere else did anyone ever accuse him, although he spoke with a foreign accent, of being a foreigner. Take the depositions for me (Dem. 57.19).

When he defended his father, Euxitheus placed the greatest emphasis on Thucritus' personal history, on his intimate relationship with his uncles, and on his inheritance of his portion of the family estate. Only after he established these facts did he move on to discuss Thucritus' position within the phratry and deme. In establishing his father's identity, Euxitheus' organization of his arguments suggests that he considered Thucritus' activities outside of key Athenian institutions equally if not more important than his involvement in those identifying groups.

In his defense of his mother, Euxitheus began by concentrating on the central accusation brought by Eubulides: that his mother worked as a ribbon-seller in the Athenian agora (Dem. 57.30). Euxitheus first countered this allegation by arguing that his mother's work in the agora in fact *proved* that she was a citizen. He explained:

καὶ εἴ σοι ἐστὶν τοῦτο σημεῖον, ὃ Εὐβουλίδη, τοῦ μὴ Ἀθηναίου εἶναι [ῥήμας], ἐγὼ σοι τοῦτου ὅλως τοῦναντίον ἐπιδείξω, ὅτι οὐκ ἔξεστιν ξένῳ ἐν τῇ ἀγορᾷ ἐργάζεσθαι. καὶ μοι λαβὼν ἀνάγνωθι πρῶτον τὸν Σόλωνος νόμον.

And if this seems to you to be proof, Eubulides, that we are not Athenians, I shall prove to you altogether the opposite of this, since it is not possible for a foreigner to work in the agora. Take up for me the law of Solon first and read it (Dem. 57.31).

By turning Eubulides' argument on its head, Euxitheus also acknowledged that his mother's work as a ribbon-seller was a powerful performance of identity, an action that could be manipulated to condemn or acquit her son. Apparently, in his accusations Eubulides had relied on Athenian prejudices against people in certain slavish occupations. Euxitheus cleverly countered his opponent by invoking the laws of Solon, a common tactic of Athenian litigants.⁶⁷ He tied his mother's work history in with the history of Athens and so legitimized her to the jurors. To further discredit Eubulides' accusations that his mother worked as a ribbon-seller, Euxitheus contended that Eubulides had failed to produce witnesses who had observed her working in the agora, although he declared that she had been visible to everyone (Dem. 57.33-34).⁶⁸ With this argument, Euxitheus again acknowledged that his mother's work in the marketplace was evidence of her civic status, evidence which Eubulides needed to corroborate through witness testimony.

⁶⁷ See Harris 2006, 290-318. Harris gives an informative overview of scholarship on the transmission of Solonian laws.

⁶⁸ The Greek text reads: (33) ἦν γάρ φησιν ταινιόπωλιν εἶναι καὶ φανεράν πᾶσιν, (34) προσῆκεν δῆπουθεν εἰδότας αὐτὴν πολλοὺς ἥτις ἐστὶ μαρτυρεῖν, καὶ μὴ μόνον ἀκοήν...

Euxitheus thus treated his mother's work history as a root cause of the lawsuit against him and as a major component of his defense.

Finally, Euxitheus also addressed Eubulides' secondary accusation against his mother: that she had worked as wet-nurse (Dem. 57.35). As in his father's defense, Euxitheus provided a detailed personal history for his mother. During the Peloponnesian War when his father was away performing military service, his mother was forced to work as a wet-nurse to Cleinias the son of Cleidicus (Dem. 57.42). To verify his account, Euxitheus called Cleinias and his relatives as witnesses:

λαβὲ δὴ μοι καὶ τὴν τοῦ Κλεινίου καὶ τὴν τῶν συγγενῶν αὐτοῦ μαρτυρίαν· οἱ ἴσασι δῆπου τίς οὐσά ποθ' ἡ ἐμὴ μήτηρ ἐτίθευσεν αὐτόν. οὐ γὰρ ἂν τήμερον ἡμεῖς φαμέν, εὖορκον αὐτοῖς μαρτυρεῖν, ἀλλ' ἂν πάντα τὸν χρόνον ᾔδεσαν τὴν ἡμετέραν μὲν μητέρα, τιτθὴν δὲ τούτου νομιζομένην.

Take also for me the deposition of Cleinias and of his relatives: they know, I suppose, who my mother was who once nursed him [Cleinias]. For it is in accordance with their oath to bear witness not to those things which we say today, but to those things which they have always known about her who is generally believed to be my mother and the nurse of [Cleinias] (Dem. 57.44).

Euxitheus made clear in his introduction of Cleinias that he called the man not to witness any formal performances of identity which his mother had carried out. Indeed, Cleinias and his family were not equipped to testify to any such institutional events in which his mother took part. Euxitheus called them precisely because of the intimate nature of their relationship with his mother. Cleinias and his relatives could bear witness that his mother worked as a wet-nurse not because she was a non-citizen but because she was poor and forced by her terrible circumstances during a tumultuous period of Athenian history.

Isaeus' *On Behalf of Euphiletus*, despite its fragmentary nature, provides an interesting parallel to Demosthenes' *Against Eubulides*. The defendant Euphiletus was expelled from the deme Erchia, although on what grounds remains unclear. The

commentator Wyse suggested that the prosecutors claimed Euphiletus was his mother's son from a first marriage to a foreigner and that his father had falsely claimed Euphiletus as his child.⁶⁹ Whatever the circumstances of the case may have been, the speaker, Euphiletus' brother, stressed his brother's intimate relationships with his parents and with a network of relatives. Since both Euphiletus' parents were alive at the time of the speech, they too could take an active part in his defense. Of particular interest is the emphasis which the speaker placed on oaths taken by his mother concerning her son's civic identity.

In the conclusion to his speech, the speaker claimed that Euphiletus' mother, whom his opponents admitted was of citizen descent, was willing to swear an oath on the altar of Delphinian Apollo that Euphiletus was her legitimate son before arbitrators who had previously given a decision in the case (Isaeus. 12.9). Women's oaths could provide strong confirmation of a citizen's birth and identity; in Demosthenes' *Against Boeotus I*, the speaker claimed that his father Mantias was actually forced to introduce the defendant Boeotus and his brother when their mother Plangon swore that she had borne Mantias legitimate children.⁷⁰ The oaths sworn by Euphiletus' mother and Plangon were themselves powerful performances to identify their children as Athenian citizens.⁷¹

⁶⁹ See Wyse 1904, 714-715.

⁷⁰ See Dem. 39.4. Note the force of the phrase **ὥς δὲ τοῦτ' ἐποίησεν, εἰσάγειν εἰς τοὺς φράτερας ἦν ἀνάγκη τούτους**: ἡ δὲ δεξαμένη, οὐ μόνον τοῦτον, ἀλλὰ καὶ τὸν ἀδελφὸν τὸν ἕτερον πρὸς τοῦτ' αὐτῷ κατωμόσατ' ἐκ τοῦ πατρὸς εἶναι τοῦ ἐμοῦ. ὥς δὲ τοῦτ' ἐποίησεν, εἰσάγειν εἰς τοὺς φράτερας ἦν ἀνάγκη τούτους καὶ λόγος οὐδεὶς ὑπελείπετο. εἰσήγαγεν, ἐποίησατο, ἵνα τὰν μέσῳ συντέμῳ, ἐγγράφει τοῖς Ἀπατουρίοις τουτονὶ μὲν Βοιωτὸν εἰς τοὺς φράτερας, τὸν δ' ἕτερον Πάμφιλον· Μαντίθεος δ' ἐνεγεγράμμην ἐγώ.

⁷¹ See Blok 2017, 62 for a full summary of references to women's oaths in the ancient sources and modern scholarship on the subject.

Furthermore, these women swore these oaths to confirm their sexual relationships with their husbands, the ultimate acts which determined their children's identities. As

Euphiletus' brother exclaimed,

ὄρκον ὁμόσαι ἐπὶ τοῦ διαιτητοῦ ἐβούλετο ἐπὶ Δελφινίῳ ἢ μὴν τουτονὶ Εὐφίλῃτον
εἶναι ἐξ αὐτῆς καὶ τοῦ ἡμετέρου πατρός. Καίτοι τίνα προσῆκε μᾶλλον αὐτῆς
ἐκείνης τοῦτ' εἰδέναι;

Before the arbitrator [Euphiletus' mother] wished to swear an oath in the sanctuary of Delphinian Apollo that indeed this man Euphiletus was the issue of her and our father; and who is more suitable to know this than she herself? (Isaeus. 12.9).

The speaker's joke highlighted that Euphiletus' mother had carried out the proper performances as a wife and mother to ensure her son's citizen status; she had remained faithful to her husband, become pregnant by him, and given birth to a legitimate son. As a woman, she could not swear to Euphiletus' political activities, for example, but she could attest to the realities of her daily life and relationships with her husband and children.

Furthermore, the speaker also declared that both he and his father were prepared to swear an oath that Euphiletus was their relative and an Athenian citizen (Isaeus. 12.9-10).

The father and son swore that they witnessed Euphiletus' birth as a legitimate son, and the speaker proclaimed that his father "could best recognize his own son after his mother"

(Isaeus. 12.9). The speaker also stressed that he had been thirteen years old when

Euphiletus was born (Isaeus. 12.10) and thus would have been old enough to remember the event clearly. Most crucially to my own argument, they were swearing to the reality of their relationship with Euphiletus and the performative acts, like the marriage between his father and mother and his birth to a lawfully married couple, which established his identity.

Euphiletus' brother also placed heavy emphasis on his brother's upbringing and education to establish his identity before the Athenian courts. Although only the final sections of Isaeus' speech have survived, the speaker seems to have employed arguments similar to those offered by Euxitheus, explaining that he had already offered depositions that his father "reared [Euphiletus] from childhood, educated him, and introduced him to his phratrymen" (Isaeus. 12.3). Litigants often referred to the rearing and education of a child as proofs of identity with the implication that an Athenian citizen would not bear the costs of educating an illegitimate son. Accordingly, the speaker took pains to point out the great expenses his father had incurred for Euphiletus' upbringing and education (Isaeus. 12.3). In Isaeus' *On the Estate of Astyphilus*, the speaker also established his intimate relationship with his half-brother Astyphilus by describing their childhood together, declaring that his father had reared his stepson Astyphilus in the family home, educated the boys together, and managed Astyphilus' property until he came of age (Isaeus. 9.27-28). The speaker even provided their school teachers as witnesses that they had attended the same lessons (Isaeus. 9.28). The Athenians considered even the most mundane realities of childhood—living at home and going to school—as strong confirmations of family and citizen identity.

Although modern scholars have often focused on participation in institutions like the phratry and deme as the best proof of identity, the arguments put forward by Athenian litigants suggest otherwise. In numerous cases, Athenians stressed their relationships with their relatives, both their immediate families and their more distant kin, as crucial

markers of their status as citizens. Perhaps the speaker in *On the Behalf of Euphiletus* put it best when he demanded this of his opponents in the case:

Ὡστε ἡδέως κἂν τῶν ἀντιδικούντων ἡμῖν τοῦ σεμνοτάτου πυθοίμην εἰ ἄλλοθεν ποθεν ἔχοι ἂν ἐπιδείξει αὐτὸν Ἀθηναῖον ἢ ἐκ τούτων ὧν καὶ ἡμεῖς Εὐφίλητον ἐπιδείκνυμεν. Ἐγὼ μὲν γὰρ οὐκ οἶμαι ἄλλο τι ἂν αὐτὸν <εἰπεῖν> ἢ ὅτι ἡ μήτηρ ἀσπὴ τέ ἐστι καὶ <γαμετὴ καὶ ἀστὸς> ὁ πατήρ, καὶ ὡς ταῦτ' ἀληθὴ λέγει, παρέχοιτ' ἂν αὐτῷ τοὺς συγγενεῖς μάρτυρας.

Gladly I'd learn from the most respectable of our opponents, whether he could show that he himself was an Athenian by any other methods than the ones by which we've shown Euphiletus [to be an Athenian]. For I don't think that he could say anything else but that his mother is a lawfully-wedded citizen-wife and his father is a citizen, and that he speaks the truth, he could offer as witnesses on his behalf his relatives (Isaeus. 12.7).

To Euphiletus' brother, the most important witnesses he could present at trial were his kin who could attest to the lawfulness of his parents' marriage and the reality of the family's life together. Litigants presented their relatives as witnesses before Athenian jurors so that they could give evidence of interpersonal relationships and daily routines, those seemingly innocuous performances which could prove so crucial to establishing civic identity. The importance of both these kind of performative identity acts and the role of relatives as witnesses to these kinds of actions cannot be overstated.

Phratries

While Athenian litigants like Euxitheus considered relatives to be crucial witnesses when they defended their civic status, they also needed to establish connections within key identifying groups, most particularly the phratry and deme. Numerous passages from Athenian legal speeches indicate that Athenians were admitted first into the phratry and then into the deme, probably because the phratry was the older institution that had

controlled access to citizenship before the Cleisthenic reforms.⁷² As Lambert suggested in his work on the Attic phratries, the Athenians followed this sequence because the phratries carried out a particular function within their identification process. The activities of the phratry, particularly the ceremonies phratrymen carried out during the special phratry festival, the Apatouria, verified members' parentage and controlled kinship networks. Citizens introduced their legitimate sons to their phratrymen in two ceremonies at the Apatouria, as infants or young children in the *meion* (τὸ μείον) and then again as adolescents during the *koureion* (τὸ κούρειον).⁷³ Also important to note is that the phratry played a crucial role in inheritance cases which often centered on questionable adoptions. When childless Athenians adopted an heir, they introduced him to the phratry because this group allowed for "the artificial creation of a legitimate relationship of descent."⁷⁴ Finally, citizens also introduced their wives to their phratrymen in a special ceremony called the *gamelia* (ἡ γαμηλία), another ritual by which Athenians could control family connections and to which litigants could point in establishing their citizen identities.

⁷² See Isaeus. 2.1414-15; Isaeus. 7.15-17 and 7.27-28; Dem. 43.11-15; Dem. 44.41.

⁷³ See particularly Lambert 1993, 161-178; see also Scafuro 1994, 158-159.

⁷⁴ Lambert 1993, 38. Jones argues against Lambert's assertion that the phratry served to confirm parentage, while the deme was mainly a political organization. Jones argues that in the political structure of the deme/trittys/phylai, which Lambert himself acknowledges, the phylai actually had the most control and the deme the least control. Jones also argues that demes, too, could confirm parentage, and demesmen often do so in cases revolving around status and inheritance. See Jones 1999, 196-198. I take the middle ground between Lambert and Jones. I agree with Lambert that the phratries did serve a special role in establishing parentage, a role which becomes quite clear if we examine legal cases revolving around adoption. On the other hand, I agree with Jones that Lambert overstated the role of the deme as a political institution. Numerous passages from Attic oratory make clear that Athenians had personal relationships with their fellow demesmen on which they relied to establish their status.

Through the institutional events of the phratry, which were themselves powerful performances of civic identity, Athenians acknowledged the everyday performative acts they carried out with their phratrymen as witnesses and the interpersonal relationships they developed with them. When Athenian citizens introduced their offspring to their phratry, they swore that their sons were borne from their lawfully wedded wives, an oath to which their phratrymen bore witness. By acknowledging these oaths and admitting these children as members of the phratry, the phratrymen gave a formal acknowledgement of their upbringing as Athenian citizens. Although scholars like Lambert argue that the phratrymen did not necessarily bear witness to these everyday activities, the speeches of the Attic orators demonstrate that these formal performances of civic identity meant very little if they were not supported by the reality of daily life.⁷⁵

Concerns with enrollment in the phratry naturally are reflected in Athenian legal speeches dealing with civic identity, but consistent and open participation in the rituals and performances of the phratry and everyday interactions with its members were much more important than mere membership. Euxitheus repeatedly stressed the crucial role of his phratrymen as witnesses to both his father's and his own birth and parentage. First, he called both his relatives and his phratrymen in quick succession to testify to his father's descent from Athenian citizens in both the paternal and maternal lines (Dem. 57.22-23).

He explained,

Οἱ μὲν τοίνυν ζῶντες οὗτοι τῶν συγγενῶν τοῦ πατρὸς καὶ πρὸς ἀνδρῶν καὶ πρὸς γυναικῶν μεμαρτυρήκασιν, ὥς ἦν ἀμφοτέρωθεν Ἀθηναῖος καὶ μετῆν τῆς πόλεως αὐτῷ δικαίως. κάλει δὴ μοι καὶ τοὺς φράτερας, ἔπειτα τοὺς γεννήτας.

⁷⁵ See Lambert 1993, 202-203.

Those who are still living from my father's relatives on both the paternal and maternal side have borne witness that he was an Athenian on both sides and justly held citizenship rights. And indeed call for me also my phratrymen, then the members of the *genos* (Dem. 57.23).

Euxitheus closely tied the testimony of his relatives, the people who could best attest to his father's parentage and upbringing, with the testimony of his phratrymen and the members of his *genos*. He also set his demesmen apart from these two other groups, calling upon them, along with his kinsmen, to testify to his election as phratrarch (Dem. 57.23). Euxitheus' selection of witnesses suggests that his relatives, his phratrymen, and the members of his *genos* were best equipped to testify to his kinship relationships and his father's parentage.

Euxitheus further emphasized the role of his phratrymen in establishing his own descent from two Athenian citizens. Apparently, in his prosecution, Eubulides had accused Euxitheus of bribing men to come forward as his relatives during the trial, an allegation which Euxitheus vehemently denied:

(53) ἀλλ' οἶμαι συγγενεῖς ὄντες τὰ δίκαια ποιοῦσι, (54) βοηθοῦντες αὐτῶν ἐνί. καὶ ταῦτ' οὐχὶ νῦν πεπεισμένοι ποιοῦσιν, ἀλλὰ παιδίον ὄντα μ' εὐθέως ἤγον εἰς τοὺς φράτερας, εἰς Ἀπόλλωνος πατρώου [ἤγον], εἰς τὰλλ' ἱερά. καίτοι οὐ δῆπου παῖς ὢν ἐγὼ ταῦτ' ἔπειθον αὐτοὺς ἀργύριον διδοῦς.

(53) But I think that, because they are my relatives, they act justly by helping one of their own. (54) And they were not "persuaded" to do these things at this time [only], but when I was a child straightaway they introduced me to my phratrymen, they led me to [the temple] of our ancestral Apollo, and to other sacred places. And yet I suppose being a child I could not persuade these men to do these things by giving them money! (Dem. 57.53-54).

In his defense of his relationship with his relatives, Euxitheus made clear what purpose enrollment into the phratry served for Athenian citizens. Not only did the phratry members accept Euxitheus into their ranks as a child and acknowledge him as a member of his family, but his relatives also recognized their personal relationship with him

through a series of performative acts, and they did so over the course of his entire life. They did this not only by introducing him into the phratry but by taking him to important religious sites. Enrollment into the phratry was one performance meant to acknowledge the intimate everyday connections between Euxitheus, his relatives, and his phratrymen, connections which Euxitheus argued he could not easily fabricate through bribery.

Finally, Euxitheus recounted how his father Thucritus acknowledged their relationship to one another in the oath he swore when he introduced his son to his phratrymen:

ἀλλὰ μὴν ὁ πατήρ αὐτὸς ζῶν ὁμόσας τὸν νόμιμον τοῖς φράτερσιν ὄρκον εἰσήγαγέν με, ἄστυν ἐξ ἀστῆς ἐγγυητῆς αὐτῷ γεγεννημένον εἰδώς, καὶ ταῦτα μεμαρτύρηται.

But truly my father himself while he was alive having sworn the customary oath introduced me to his phratrymen, because he knew that I had been born to him a citizen from his lawfully wedded citizen-wife, and these things have been witnessed (Dem. 57.54).

Again, Euxitheus stressed that when Thucritus swore the oath to his phratrymen, he acknowledged the reality of his daily life with his family. Thucritus could only complete the performative act of the oath because he *knew* that Euxitheus was his son and that his mother was his lawful citizen-wife. Most critically, his phratrymen witnessed not simply the oath that he swore but his relationship with Euxitheus. Formal performances of identity, like the enrollment into the phratry and the oath sworn by a father, represented the realities of Athenian life, where relatives cared for one of their own, in Euxitheus' own words.

Isaeus' *On Behalf of Euphiletus* also demonstrates that the phratry played a special role in maintaining lines of descent. In concluding his speech, the speaker, Euphiletus' brother, stressed that he had already presented witnesses to testify that his father had

“reared [Euphiletus] from childhood, educated him, and introduced him to his phratrymen” (Isaeus. 12.3). The speaker thus closely connected the testimony of his phratrymen with issues surrounding Euphiletus’ parentage and his relationship with his family. In fact, the speaker claimed that his relatives and his phratrymen were the *best* people to bear witness to his brother’s birth in an Athenian court (Isaeus. 12.7).

Several passages from Attic oratory, particularly from the speeches of Isaeus centering around adoptions and inheritance claims, jibe with Euxitheus’ depiction of the relationship between phratry membership, legitimacy, and descent.⁷⁶ To give a brief example, in Isaeus’ *On the Estate of Philoctemon*, the speaker defended his claim to Philoctemon’s estate against those put forward by the advocates of two young men who claimed to be Euctemon’s legitimate children (Euctemon was the father of Philoctemon), and whom the speaker claimed were actually the children of a prostitute named Alce. The speaker’s depiction of the elder son’s failed introduction to the phratry is crucial here. He explained that the phratrymen had rejected the young man and that at his *koureion* a phrater had pulled the sacrificial victim from the altar to mark his objection (Isaeus. 6.22). The speaker took the phratrymen’s refusal to carry out the ceremony as proof that the young man in question was not Philoctemon’s legitimate son. The phratrymen’s dismissal also represented their intimate knowledge of Euctemon’s life—they knew Euctemon’s family, including his son Philoctemon, and realized that the young man was actually the child of Alce and another man.

⁷⁶ I discuss this subject further in my chapter on Athenian adoptions, so I have limited my discussion to one case. In oratory, see particularly Isaeus. 7.15; Dem. 44.41. In drama, see Ar. Birds 1667-1670.

Finally, the phratries also played a crucial role in Athenian marriages, particularly if a citizen needed to prove the legitimacy of his union in court. A citizen married in three stages: first, a father betrothed his daughter to a fellow citizen, after he had sworn that she was his legitimate child by his Athenian citizen-wife; second, the husband and wife consummated their marriage and began their life together as a married couple—this stage was often accompanied by private celebrations; third, the husband arranged a feast, the *gamelia*, to introduce his phratrymen to his new wife. While Lambert has dismissed the importance of this second stage as a proof of identity in court, I suggest here that the phratrymen oversaw citizens’ kinship networks by bearing witness to the reality of the couple’s relationship when they participated in the *gamelia*.⁷⁷

When Euxitheus discussed his parents’ wedding, he did not simply call his phratrymen who had attended the *gamelia* as witnesses. First, he explained the circumstances under which his father Thucritus married his mother. She had actually been married once before to a man named Protomachus:

ὁ Πρωτόμαχος πένης ἦν· ἐπικλήρου δὲ κληρονομήσας εὐπόρου, τὴν μητέρα βουλευθεὶς ἐκδοῦναι πείθει λαβεῖν αὐτὴν Θούκριτον τὸν πατέρα τὸν ἐμὸν, ὄνθ’ ἑαυτοῦ γνῶριμον, καὶ ἐγγυᾶται ὁ πατὴρ τὴν μητέρα τὴν ἐμὴν παρὰ τοῦ ἀδελφοῦ αὐτῆς Τιμοκράτους Μελιτέως, παρόντων τῶν τε θείων ἀμφοτέρων τῶν ἑαυτοῦ καὶ ἄλλων μαρτύρων·

Protomachus was a poor man: And when he became entitled to inherit an estate by marrying a wealthy heiress, he wished to give my mother in marriage and he persuaded my father Thucritus, an acquaintance of his, to take her, and my father married my mother having received her from her brother Timocrates of Melite, with both his uncles present and other witnesses (Dem. 57.41).⁷⁸

⁷⁷ See Lambert 1993, 181-185.

⁷⁸ The literal translation of the beginning of this passage would read: “Protomachus was a poor man. And when he inherited a wealthy heiress...”

Note the structure which Euxitheus gave his narrative here. First, he gave a detailed account of Protomachus' arrangement with Thucritus, and only then did he focus on the ritual events that sealed the marriage, including the handing over of the bride by her closest male relative with witnesses present. Only after this, did Euxitheus call the sons of Protomachus to testify in tandem with the phratrymen who attended the *gamelia* (Dem. 57.43). Euxitheus believed that these two groups of witnesses were best equipped to confirm that Thucritus took Euxitheus' mother in marriage in good faith, as the lawfully wedded wife of his friend Protomachus.

Isaeus' *On the Estate of Ciron* provides an interesting parallel to Thucritus' marriage and the *gamelia* he threw on behalf of his new wife. The speaker, Ciron's grandson by a daughter, claimed his grandfather's estate. Ciron's nephew then put in a claim on the estate, alleging that the speaker had fabricated his parentage and that Ciron in fact had no daughter. In defending his rights to the estate and proving his mother's identity, the speaker pointed to those performative acts which Ciron and the speaker's father carried out on her behalf. He explained,

Ὅτε γὰρ ὁ πατὴρ αὐτὴν ἐλάμβανε, γάμους εἰστίασε καὶ ἐκάλεσε τρεῖς αὐτοῦ φίλους μετὰ τῶν αὐτοῦ προσηκόντων, τοῖς τε φράτερσι γαμηλίαν εἰσήνεγκε κατὰ τοὺς ἐκείνων νόμους.

For when my father took [my mother] in marriage, he [my father] gave the wedding breakfast and invited three of his friends along with his relatives, and he conducted the *gamelia* for his phratrymen in accordance with their laws (Isaeus. 8.18).⁷⁹

⁷⁹ I base my translation here on Edwards' to differentiate between the informal wedding breakfast and the formal *gamelia*, at which the phratrymen would officially recognize the relationship between bride and groom. See Edwards 2007, 139.

In this passage, the speaker closely linked his father's private wedding celebration with his friends and relatives, which he organized to acknowledge the beginning of his sexual relationship and married life with his new wife, with the *gamelia* which he arranged for his phratrymen. Note too that the speaker stipulated that his father was obligated to put on the *gamelia* for his mother by the law of the phratry. This law ensured that the phratry could easily control the kinship networks of its members and affirm the identities of the women whose duty it was to give birth to another generation of phratrymen.

As these Athenian legal cases demonstrate, the phratry played a vital role in the Athenian identification process. When a citizen introduced his children to their phratry, he was undertaking a complicated set of performances both with his family and his phratrymen as players: First, by swearing the oath to his phratrymen, the citizen was acknowledging that he had had this child by his lawfully-wedded wife; his relatives also bore witness to the reality of the citizen's intimate relationships; and by accepting this oath, his phratrymen formally acknowledged that they knew this citizen on an intimate level. As Euxitheus himself argued, these were not connections which any one man could easily fabricate, but relationships that he would need to build over the course of his lifetime and that would be witnessed by his phratrymen many times over.

Demes

Many modern scholars characterize the demes as the backdrop against which citizens carried out political performances, and the demes, unlike the phratries, were closely linked with the political and military activities of the city as a whole. Athenian

litigants at any rate often called their demesmen to witness their carrying out the duties required by political offices. Euxitheus, for example, stressed that he had passed multiple scrutinies in his deme and held many offices within it, including that of demarch, the administrator who served as a liaison between the deme and the state (Dem. 57.67). In fact, speakers in the Athenian courts and assemblies employed the common trope of pointing to their services both to the deme and state as proof that they were worthy of being called citizens.

A case can certainly be made that the Athenians believed that their demes were more than political units within the democracy. Citizens actively socialized with their demesmen, and Athenian litigants considered these intimate relationships critical proofs of identity in court. This position is controversial, however. Scholars such as Cohen and Vlassopoulos, and even Lambert to a certain extent, have claimed that citizens would not interact with their fellow demesmen on regular basis. Cohen in particular asserts that Athenians would not have had formed close bonds within their demes, especially within the larger demes that could have as many as 1500 members.⁸⁰ To support this claim, he has contended that demesmen did not usually live within the deme territory and were widely dispersed throughout Attica, that deme assemblies were seldom held, and that Athenians did not typically identify themselves by their demotics.⁸¹ Vlassopoulos also carefully follows Cohen's arguments, when he claims that Athens was simply too extensive a territory, its population too large and demesmen spread too far apart, to ever

⁸⁰ Demes could range in size; the smallest demes might have 50 members, while the largest, like the deme at Acharnae, might have between 1000 and 1500 members. See Hansen 1991, 102.

⁸¹ See especially Cohen 2002, 112-129.

constitute a face-to-face society. Instead, Vlassopoulos considers Athens a true imagined community, in which it proved difficult if not impossible for Athenians to establish their civic identities.⁸² In this section of the chapter, I question Cohen's and Vlassopoulos' assertions that the demes did not constitute face-to-face communities within Athenian society. I will demonstrate that Athenians did in fact form relationships within their demes, so much so that they could call their demesmen to court to attest to their everyday activities and their close connections with one another as proofs of identity.

To support their view of the demes, Cohen and Vlassopoulos focused particularly on Euxitheus' speech and asserted that Euxitheus' description of the deme assembly of the Halimousians indicates that demesmen would have little interaction with one another outside of these deme assemblies. Euxitheus, for example, stated that the majority of the demesmen lived thirty-five stades from the city, where the assembly was held (Dem. 57.10). Given that demesmen could be scattered geographically, Cohen in particular concluded that the demesmen would therefore be less likely to participate actively in deme activities, which often took place in the city center.⁸³ I believe a more comprehensive case study supports the argument that Euxitheus' description of his dysfunctional deme provides unique insights into the kinds of relationships that demesmen did form with one another and into the ways in which those relationships might prove beneficial or destructive.

⁸² See Vlassopoulos 2007, 36-37. Vlassopoulos adopts his theoretical framework particularly from B. Anderson 2016; Cohen 2002; G. Anderson 2003.

⁸³ Cohen 2002, 116-118.

Euxitheus' vivid account of the assembly that expelled him from the ranks of the Halimousians especially demonstrates how factions might form within a deme. Euxitheus stressed that Eubulides was able to disenfranchise him because his opponent could rely on his own group of allies within the deme. When the deme held its assembly to review its registry, as had been commanded by the decree of Demophilus, Euxitheus explained that Eubulides, the demarch at the time, allowed the meeting to continue late into the evening. By the time Euxitheus' name was called, the majority of the demesmen had departed the city where the meeting was taking place to return to their farms (Dem. 57.9-10). Eubulides then stood up and spoke against Euxitheus, and despite Euxitheus' protests to allow him time to rebut Eubulides' accusations, Eubulides took the vote (Dem. 57.13). Euxitheus explained,

διότι, ὧ ἄνδρες δικασταί, οὐκ ἠγνόει Εὐβουλίδης ὅτι, εἰ λόγος ἀποδοθήσοιτο καὶ παραγένοντό μοι πάντες οἱ δημόται καὶ ἡ ψῆφος δικαίως δοθείη, οὐδαμοῦ γενήσονται οἱ μετὰ τούτου συνεστηκότες.

The reason was, gentlemen of the jury, that Eubulides was not unaware that if a chance to speak was given and all my demesmen came to support me and the vote was justly conducted, those men who conspired with him would be nowhere! (Dem. 57.16).

Euxitheus portrayed a deme divided against itself. Eubulides had his own group of men within the deme on whom he relied in his plot against his old enemy. Euxitheus suggested later in the speech that Eubulides persuaded these men to vote to disenfranchise him because they too had grudges with him. When Euxitheus had served as demarch, he had forced these men to pay rent on sacred lands and to refund money which they had embezzled from the public funds (Dem. 57.63). Euxitheus' claims were based on the personal relationships which Eubulides would have needed to form with these men in his

conspiracy. He would have needed to seek them out and contrive to stretch out the deme assembly late into the evening with them, so that Euxitheus would be without his allies when he was under scrutiny. Euxitheus also stressed that if his own supporters within the deme had been present at the assembly, they would have stood up for him. Euxitheus' narrative demonstrates that citizens did not need to know everyone within their demes on an intimate level, but Athenians did need to form enough relationships and alliances within their demes (and phratries) to ensure that they had people who would speak on their behalf if their identities were called into question.

Euxitheus also emphasized the intimate knowledge that his demesmen, including his opponent Eubulides, had concerning his family. Eubulides' accusations against Euxitheus' parents, that his father Thucritus spoke with a foreign accent and his mother sold ribbons in the agora, suggest his familiarity with Euxitheus' family history (Dem. 57.18). Eubulides took advantage of this knowledge to expel his rival from the deme and deny him his citizenship rights.

Notably, Euxitheus did not attempt to deny these allegations. He explained that his father Thucritus had been taken prisoner during the Decelean War and sold into slavery on Leucas (Dem. 57.18):

Οἶεταί τις οὖν ὑμῶν ἔᾶσαι ποτ' ἂν τοὺς δημότας ἐκεῖνον τὸν ξένον καὶ μὴ πολίτην ἄρχειν παρ' αὐτοῖς, ἀλλ' οὐκ ἂν κατηγορεῖν; οὐ τοίνυν κατηγορήσεν οὐδὲ εἷς, οὐδ' ἠτιάσατο. ἀλλὰ μὴν καὶ διαγρηφίσεις ἐξ ἀνάγκης ἐγένοντο τοῖς δημόταις ὁμόσασιν καθ' ἱερῶν, ὅτ' ἀπώλετ' αὐτοῖς τὸ ληξιαρχικὸν γραμματεῖον δημαρχοῦντος Ἀντιφίλου τοῦ πατρὸς τοῦ Εὐβουλίδου, καὶ τινὰς ἀπῆλασαν αὐτῶν· περὶ ἐκείνου δ' οὐδεὶς οὔτ' εἶπεν οὔτ' ἠτιάσατο τοιοῦτον οὐδέν.

Does any one of you really think that the demesmen would ever have allowed that man, if he were an alien and not a citizen, to hold office among them, but that they would not accuse him? But no one did accuse him, nor even did they bring charges against him. But truly the demesmen, having sworn an oath, did vote on one another by necessity, when their registry was lost when Antiphilus the father of

Eubulides was demarch, and they expelled some of their members: but no one spoke concerning that man [Thucritus] nor did they accuse him of any such thing (Dem. 57.26).

Euxitheus stressed that the demesmen were well aware of this history and never took steps to expel Thucritus from the deme. He repeated multiple times that “no one among [Thucritus’] demesmen nor among his phratrymen nor anywhere else ever accused him of being a foreigner, *although he spoke with a foreign accent*” (Dem. 57.19). Critically, Euxitheus demonstrated that many people who were intimately acquainted with Thucritus, most especially his phratrymen and his demesmen, observed that he had a foreign accent. Yet none of these people took action against him—in fact, they affirmed his identity many times. Thucritus’ demesmen would have been obligated to expel him from the deme when they reviewed their lost registry, if they had recognized him as an alien and not a citizen. That they admitted Thucritus and his son Euxitheus as members of the deme reflected on their personal knowledge of their family and their relationships with both father and son.

Also important to note is that Athenians stressed their intimate relationships with their demesmen in cases of adoption. In Isaeus’ *On the Estate of Apollodorus*, the speaker Thrasyllus defended his adoption by his uncle Apollodorus by emphasizing the close bonds between Apollodorus, Thrasyllus, and their demesmen.⁸⁴ While Apollodorus had successfully introduced Thrasyllus to his phratrymen, the old man died before he could admit his nephew into his deme. Thrasyllus explained the measures Apollodorus took to ensure that his demesmen would vote his nephew one of their members:

⁸⁴ I review this case further in my chapter on adoptions.

πρὶν γὰρ ἐμὲ ἦκειν ἐκ τῆς Πυθαίδος, ἔλεγε πρὸς τοὺς δημότας Ἀπολλόδορος ὅτι πεποιημένος εἶη με υἱὸν καὶ ἐγγεγραφῶς εἰς τοὺς συγγενεῖς καὶ φράτορας, καὶ παραδεδώκοι τὴν οὐσίαν, καὶ διεκελεύεθ' ὅπως, ἂν τι πάθῃ πρότερον, ἐγγράψουσίν με εἰς τὸ ληξιαρχικὸν γραμματεῖον Θράσυλλον Ἀπολλοδώρου καὶ μὴ ὡς ἄλλως ποιήσουσι.

For before I returned from the Pythaid, Apollodorus told his demesmen that he had adopted me as his son and had enrolled me among his family members and phratrymen, and he entrusted his estate [to me], and he bid them that, if he should suffer anything before, register me in the lexiarchic register as Thrasyllus the son of Apollodorus and not to do otherwise (Isaeus. 7.27).

Thrasyllus stressed that the Apollodorus took advantage of his personal relationships with his demesmen to ensure that his nephew would be admitted to the deme as his adopted son. He informed his fellow demesmen that he had already taken the necessary steps to identify Thrasyllus as his heir, introducing him to his family members and his phratrymen. Furthermore, the demesmen followed Apollodorus' instructions and admitted Thrasyllus as a member, despite the objections of Thrasyllus' opponents in the case at the actual assembly meeting. Thrasyllus explained, "such was the conspicuousness of my adoption among those men [the demesmen]" (Isaeus. 7.28). Thrasyllus' case demonstrates that Athenians did not determine either civic or family identity by single relationships, like the one between Thrasyllus and Apollodorus. More critical to Thrasyllus' suit were his connections to Apollodorus' relatives, his phratrymen, and his demesmen.

Perhaps even more than either Euxitheus' or Thrasyllus' speeches, Lysias' *Against Pancleon* clearly demonstrates the critical role that demes and their members played in establishing civic identity in Classical Athens.⁸⁵ The unnamed speaker recounted his efforts to bring a certain Pancleon to court. He first attempted to call Pancleon before the

⁸⁵ Vlassopoulos in particular has discussed this case. See Vlassopoulos 2007, 50-51; Vlassopoulos 2009, 358-360.

polemarch on the assumption that the man was a resident alien.⁸⁶ Pancleon objected to the form of the suit, claiming that he was in fact a Plataean and therefore an Athenian citizen. The speaker explained,

(2) εἰπόντος δὲ τούτου ὅτι Πλαταιεὺς εἶη, ἠρόμην ὁπόθεν δημοτεύοιτο, παραινέσαντός τινος τῶν παρόντων προσκαλέσασθαι καὶ πρὸς τὴν φυλὴν, ἥστινος εἶναι σκῆπτοιο. ἐπειδὴ δὲ ἀπεκρίνατο ὅτι Δεκελειόθεν, προσκαλεσάμενος αὐτὸν καὶ πρὸς τοὺς τῇ Ἱπποθωντίδι δικάζοντας, (3) ἔλθων ἐπὶ τὸ κουρεῖον τὸ παρὰ τοὺς Ἑρμᾶς, ἵνα οἱ Δεκελειεῖς προσφοιτῶσιν, ἠρώτων, οὓς τε ἐξευρίσκοιμι Δεκελειέων ἐπυνθανόμην εἴ τινα γινώσκουσιν Δεκελειόθεν δημοτευόμενον Παγκλέωνα. ἐπειδὴ δὲ οὐδεὶς ἔφασκεν γινώσκειν αὐτόν, πυθόμενος ὅτι καὶ ἑτέρας δίκας τὰς μὲν φεύγοι τὰς δ' ὠφλήκοι παρὰ τῷ πολεμάρχῳ, ἔλαχον καὶ ἐγώ.

(2) And when this man said he was a Plataean, I asked him to which deme did he belong, when one of those present urged me to bring my case before his tribe, to which he might pretend to belong. And when he answered that he was from Decelea, I summoned him also before the court of Hippothontis, (3) and I went to the barber's shop by the street of the Herms, where the Deceleans frequent, and I asked those whom I could find of the Deceleans if they knew any Pancleon who was a demesman from Decelea. And when no one said that they knew him, learning that he had also been a defendant in other suits and had been found guilty in suits before the polemarch, I also obtained leave to bring my suit [before the polemarch] (Lys. 23.2-3).

When Pancleon objected to the suit which the speaker had brought against him on the grounds that he was a citizen and not a metic, the speaker immediately sought to confirm his identity by inquiring about his deme. More significant, however, was the fact that Pancleon could not simply state his deme to establish himself as a citizen. The speaker sought out the Deceleans to speak with them, so that they themselves could verify his membership in the deme. Although Cohen and Vlassopoulos have both argued that demesmen seldom met, perhaps even just once a year at their deme assemblies, the speaker's narrative contradicts this argument.⁸⁷ The Deceleans apparently frequented the

⁸⁶ In the fourth century BCE, the polemarch heard legal cases from metics. For a discussion of the polemarch's full duties see Harrison 1998, 10-13.

⁸⁷ See Cohen 2002, 116-118; Vlassopoulos 2007, 36-37.

barber's shop by street of the Herms, where they could form relationships with their fellow demesmen. In fact, the speaker's arguments suggest that simply socializing with one's demesmen in casual settings constituted a powerful identifying act to which demesmen could testify in court to confirm citizen status. Apparently, while the Deceleans did not recognize Pancleon as a demesman, they did have knowledge that Pancleon had participated as a litigant in other suits before the polemarch. The speaker took the Deceleans' ignorance of any member named Pancleon and Pancleon's appearances before the polemarch in court as proof that he was in fact a metic. He then produced the Deceleans whom he had questioned and the people who had brought suit against Pancleon before the polemarch as witnesses in court (Lys. 23.4).

When Pancleon objected to this form of lawsuit, apparently for the second time, the speaker took further measures to ensure the viability of his lawsuit and to establish Pancleon's status as metic. The speaker reported that he sought out Euthycritus, the oldest citizen of Plataea, and asked him whether he knew a certain Pancleon, the son of Hipparmodorus. Euthycritus replied that he knew Hipparmodorus but denied that the man had any sons (Lys. 23.6). The speaker thus slyly suggested that Pancleon had adopted a false identity by claiming to be the son of a Plataean citizen. When he inquired of other Plataeans, they urged him to go to the cheese market on the last day of the month, because Plataeans gathered there (Lys. 23.6). When the speaker attended the market and spoke with the Plataeans, he recounted:

(7) ἐλθὼν οὖν εἰς τὸν τυρὸν ταύτῃ τῇ ἡμέρᾳ ἐπυνθανόμην αὐτῶν, εἴ τινα γινώσκοιεν Παγκλέωνα πολίτην σφέτερον. καὶ οἱ μὲν ἄλλοι οὐκ ἔφασαν γινώσκειν, εἷς δὲ τις εἶπεν ὅτι τῶν μὲν πολιτῶν οὐδενὶ εἰδείη τοῦτο ὃν τὸ ὄνομα, δοῦλον μέντοι ἔφη ἑαυτοῦ ἀφεστῶτα εἶναι Παγκλέωνα, (8) τήν τε ἡλικίαν λέγων

τὴν τούτου καὶ τὴν τέχνην ἣ οὗτος χρῆται.

(7) Accordingly when I went to the cheese-market on this day I inquired of them [the Plataeans], if they knew any Pancleon, their fellow citizen. And some denied they knew him but one said that he knew no one of the citizens who had this name, but he said that a slave of his, Pancleon, had deserted, (8) describing both his age and business, which this man shares (Lys. 23.7-8).

To confirm his suspicions concerning Pancleon's identity, the speaker sought out the Plataeans, who were awarded citizenship in 427 BCE and then assigned to various demes. The speaker's narrative suggests that the Plataeans served the same role as the phratry as a secondary identifying group that confirmed descent for Plataean citizens. That the Plataeans met once a month at the cheese market, just as the Deceleans frequented the street of the Herms, suggests that it was critical that Plataeans maintain relationships within that circle to maintain their civic identity. They also needed to establish connections with certain people within that social group, particularly a man like Euthycritus, the oldest Plataean citizen who seemed to hold standing among them. The speaker stressed, however, that although the Plataeans did not recognize a citizen named Pancleon, one of them did know a runaway slave by that name that resembled the Pancleon in this case in both age and manner. In the absence of any ally to speak on Pancleon's behalf, the speaker took this as proof that he was not even a metic but a slave. He offered as witnesses Euthycritus, the Plataeans with whom he had spoken, and the man who claimed Pancleon as his slave (Lys. 23.8).

The speaker used Pancleon's failure to form bonds within the deme of Decelea and among the Plataeans as proof of his non-citizen identity in court. The speaker's account of his conversations with the Deceleans and Plataeans also demonstrates that simple actions, like socializing with demesmen in the street, constituted powerful performances

of identity within the Athenian community. Furthermore, the speaker's interactions with the Deceleans in his inquiries about Pancleon suggests that demesmen had multiple avenues through which they could interact and develop relationships with one another which were not limited to annual deme assemblies.

Although modern scholars have often depicted the demes as the impersonal cogs in the larger machine of the democracy, I argue here demesmen formed interconnected communities where they often interacted with one another, not just in their annual deme assemblies but in their daily lives. Demesmen could take advantage of their intimate knowledge of one another's lives to attack their political rivals in court, as in the case of Eubulides and Euxitheus. They also used these close relationships as evidence of their civic identities in court. In fact, one could not be an Athenian if he did not actively participate within the deme and within other identifying groups, as in the case of Pancleon. The speaker argued for his non-citizen identity by stressing his failure to engage with his demesmen or with his fellow Plataeans. It little mattered to the speaker's case whether Pancleon was actually a Plataean. If no one stepped forward as a witness on his behalf, he was effectively a non-citizen. Athenians could not simply declare themselves citizens; their demesmen and phratrymen determined their civic identities, both in their rituals and in their everyday interactions with one another.

The *genos* and *orgeones*

In the conclusion to his speech against Eubulides, Euxitheus summarized the witnesses whom he had summoned to attest to his citizenship. First, his relatives had

stood as witnesses in his trial; second, his fellow phratrymen; third, the members of his *genos* who worshipped both Apollo and Zeus; fourth, the men with whom he shared ancestral burial grounds; and fifth, the members of his deme, who admitted him as a member and elected him to numerous offices (Dem. 57.67). Modern scholars who have focused on the deme as the key identifying group in Classical Athens have often overlooked the emphasis which Athenians like Euxitheus placed on their relationships within smaller social groups such as the *genos*. In this section, I rely on key legal speeches to argue that, although not all Athenians could claim membership in a *genos* or *orgeones*, these phratry sub-groups still played key roles in the Athenian identification process. Citizens could call upon their fellow members in these groups to attest to their personal relationships with one another, and conversely Athenians' rejection from these fraternities could serve as proof of their non-citizen identities.

Although modern scholars have debated about the origins of the *genos* and the nature of its activities in both the archaic and classical periods, evidence from both epigraphic and literary sources makes clear that a *genos* was a clan comprised of several dozen families.⁸⁸ Its members, the *gennetai* (οἱ γεννηταί), carried out shared cult activities together, usually in reverence of a common ancestor. Although some scholars have suggested that aristocratic families exclusively belonged to a *genos* and exercised control of the phratry through such a group, no evidence from inscriptions or from

⁸⁸ A full consideration of the *genos* falls outside the scope of this work. See especially Bourriot 1976; see also Roussel 1976; Ismard 2010. Lambert also offers a good summary of the evidence; see Lambert 1993, 60-74.

Athenian legal speeches supports this theory.⁸⁹ Certainly, in his speech against Eubulides, Euxitheus simply listed his and his father's membership in their *genos* with his membership in his phratry with no mention of any aristocratic connections within the organization (Dem. 57.67). Euxitheus did closely link the testimony of his fellow *gennetai* with his phratrymen when he called them to testify to his father's family history and his descent from Athenian citizens. His arguments implied that the *gennetai*, like the phratrymen and demesmen, enjoyed close personal relationships with one another.

Likewise, the speaker Thrasyllus in Isaeus' *On the Estate of Apollodorus*, a case centered on his identity as an adopted son, presented his adoptive father Apollodorus' registration of him with the members of his phratry and *genos* as proof of his status (Isaeus. 7.13). Thrasyllus' description of his joint admission into his new phratry and *genos* has led to some debate among modern scholars, since his statements might suggest that the *genos* kept its own separate register of members apart from the register of the phratry. I agree with Lambert's suggestion that the phratry kept a single register for membership, which the *genos* naturally shared, since all *gennetai* were members of the same phratry.⁹⁰ More critical to my own argument is Thrasyllus' depiction of the *genos* as an organization the structure of which closely mirrored that of the phratry and deme. Its members held annual meetings in conjunction with the phratry. The *gennetai* voted to admit new members just as phratrymen and demesmen did, and they shared a register of these members with the phratry. If the *gennetai* rejected a new member or his child, that

⁸⁹ See Andrews 1961a, 1-15; Andrewes 1961b, 129-40; Wade-Gery, 1931, 129-143.

⁹⁰ Lambert 1993, 66-68.

man had the right to appeal their decision before the Athenian courts, just as he could with his phratry and deme. The Athenians considered rejection by the *gennetai* as a calamity and proof of non-citizen status. Thus the *genos* served as a key identifying group for its members, and the *gennetai* were crucial witnesses in court for men like Euxitheus and Thrasyllus. Thrasyllus in particular stressed his intimate relationship with his adoptive father's fellow *gennetai*, claiming that they accepted him into their ranks because "they did not distrust that man [Apollodorus] nor were they unfamiliar with [Thrasyllus], because [he] had been born from [Apollodorus'] sister" (Isaeus. 7.17).⁹¹ Thrasyllus stressed that the members of Apollodorus' *genos* knew the intimate details of his family life and their unanimous vote to grant him membership was proof positive of his identity.

Finally, in his supporting speech for his brother-in-law Theomnestus against Neaira, the speaker Apollodorus also provided crucial evidence for the role of the *gennetai* in affirming citizen identity.⁹² Apollodorus described how Phrastor, the first husband of Phano, Neaira's illegitimate daughter, desperate because he was ill without an heir, had attempted to introduce his child by her to the members of his phratry and *genos* illegally. As Apollodorus explained,

ὥς γὰρ εἰσηγεν ὁ Φράστωρ εἰς τοὺς φράτερας τὸν παῖδα ἐν τῇ ἀσθενείᾳ ὧν τὸν ἐκ τῆς θυγατρὸς τῆς Νεαίρας, καὶ εἰς τοὺς Βρυτίδας ὧν καὶ αὐτός ἐστιν ὁ Φράστωρ γεννήτης, εἰδότες οἶμαι οἱ γεννῆται τὴν γυναῖκα ἣτις ἦν, ἣν ἔλαβεν ὁ Φράστωρ τὸ πρῶτον, τὴν τῆς Νεαίρας θυγατέρα, καὶ τὴν ἀπόπεμψιν τῆς ἀνθρώπου, καὶ διὰ τὴν

⁹¹ The full Greek text reads: Τοῦ νόμου δὴ οὕτως ἔχοντος καὶ τῶν φρατέρων τε καὶ γεννητῶν ἐκεῖνῳ <τε> οὐκ ἀπιστούντων ἐμέ τε οὐκ ἀγνοούντων ὅτι ἦν ἐξ ἀδελφῆς αὐτῷ γεγονώς, ἐγγράφουσί με εἰς τὸ κοινὸν γραμματεῖον ψηφισάμενοι πάντες, ἐπιθέντος ἐκείνου τὴν πίστιν καθ' ἱερῶν (Isaeus. 7.17).

⁹² I explore this case in more detail in my chapter on women's civic identity.

ἀσθένειαν πεπεισμένον αὐτὸν πάλιν ἀναλαβεῖν τὸν παῖδα, ἀποψηφίζονται τοῦ παιδὸς καὶ οὐκ ἐνέγραφον αὐτὸν εἰς σφᾶς αὐτοῦς.

For when Phrastor in his illness attempted to introduce this child, although he was his by the daughter of Neaira, to his phratrymen and to the Brytidae, of which *genos* Phrastor was a member, the *gennetai*, knowing, I think, whom his wife was, whom Phrastor had married first of all, that she was the daughter of Neaira, and his divorce from this woman, and that on account of his illness he had been persuaded to receive this child again, they voted against this child and did not register him into their ranks (Dem. 59.59).

Apollodorus' description of the *gennetai*'s rejection of Phrastor's son correlates with the account given by Thrasyllus in Isaeus' *On the Estate of Apollodorus*. The *gennetai* admitted new members in conjunction with the phratry, and they could reject men presented to them if they suspected they were not in fact Athenian citizens. Crucial here is Apollodorus' emphasis on the *gennetai*'s knowledge of Phrastor and Neaira's personal lives. Apollodorus surmised that the members of Phrastor's *genos* would have been quite familiar with his personal travails and his divorce from his wife Phano. While Apollodorus was most definitely attempting to paint Phrastor in the worst possible light, he presented a plausible account of Phrastor's relationships with the members of his phratry and *genos*.

What was remarkable in Apollodorus' description of Phrastor's attempts to introduce his son to these crucial identifying groups was that Phrastor appealed the decision of the *gennetai* and entered into arbitration with them (Dem. 59.60). The decision of his fellow *gennetai* also determined his son's admission into his phratry, and so Phrastor had to act quickly. When he and his fellow *gennetai* came before the arbitrator, he was challenged to swear an oath that his son was his legitimate offspring from a lawfully wedded citizen-wife. Phrastor refused the oath, and the *gennetai*

prevailed (Dem. 59.61). Apollodorus presented them as witnesses in his case against Neaira, and he proclaimed that the *gennetai*'s refusal to admit the child and their victory in the arbitration proved that Phrastor's child was illegitimate.

Apollodorus' description of the arbitration between Phrastor and the members of his *genos* demonstrates the *gennetai*'s crucial role in the Athenian identification process. First, the *gennetai*'s decisions about membership may have influenced the decisions of the phratrymen. After all, Apollodorus gave no description of Phrastor's son's admission into his phratry. Second, Apollodorus strongly implied that the *gennetai* were aware of Phrastor's family situation. When they called on him to swear an oath, they did so knowing that Phrastor could not swear that the child was his legitimate son. The *gennetai*, like phratrymen and demesmen, would have shared close connections with one another. Third, Apollodorus presented Phrastor's fellow *gennetai* as crucial witnesses for his own case against Neaira. Their refusal to admit her grandson into their ranks cast doubt on both Neaira and her daughter Phano's identities.

Finally, several passages from the speeches of Isaeus suggest that the Athenians considered other sub-phratry associations, particularly the *orgeones*, as key identifying groups for Athenian citizens. Lambert suggests that membership in the *orgeones* might have been less common than membership in the *gene*, since we have relatively more evidence of *genos* membership in Athenian legal speeches.⁹³ This group seems to have

⁹³ Lambert 1993, 74-77.

shared a similar structure and admission procedures with the *genos*, phratry, and deme.⁹⁴ The *orgeones*, like the *genos*, centered on cult activity and formed to worship lesser deities and especially heroes. Citizens introduced their legitimate children to their *orgeones*, the members of which then voted whether to admit them (Isaeus. 2.14).⁹⁵ The speaker in Isaeus' *On the Estate of Menecles*, defending his adoption by his former brother-in-law Menecles, presented his acceptance by Menecles' phratrymen, demesmen, and the members of his *orgeones* as proof of his identity as Menecles' adoptive son (Isaeus. 2.14). He thus treated the *orgeones* as other Athenian litigants treated the *genos*, as an identifying group on par with the phratry and deme. Further, the speaker stressed that the members of Menecles' *orgeones* knew him personally and the events surrounding his adoption and called them as witnesses on his behalf, just as he did with his phratrymen and demesmen (Isaeus. 2.16).⁹⁶ Participation in organizations such as the *genos* and *orgeones*, although not a requirement of citizenship, demonstrated the complexity of the Athenian identification process.

Conclusion

⁹⁴ Also interesting to note is that the speaker in Isaeus' *On the Estate of Astyphilus*, claiming the estate of his half-brother, presented evidence of Astyphilus' introduction to the *thiasioi* of Heracles, and called the members of this fraternity as witnesses on his behalf (Isaeus. 9.30). Although modern scholars have linked the activities of the *orgeones* and the *thiasioi*, I believe this connection is tenuous. *Thiasioi* seems here to have been a general term used for an association or even a band of revelers, and the speaker in *On the Estate of Astyphilus* mentioned no special admissions procedure for the group, and he did not link them with his phratrymen or demesmen.

⁹⁵ See Ferguson 1944.

⁹⁶ The full Greek text reads: Καὶ ὡς ἀληθῆ λέγω ταῦτα, τῆς μὲν ποιήσεως ὑμῖν τοὺς φράτερας καὶ τοὺς ὀργεῶνας καὶ τοὺς δημότας παρέξομαι μάρτυρας, ὡς δ' ἐξῆν ποιήσασθαι, τὸν νόμον αὐτὸν ὑμῖν ἀναγνώσεται, καθ' ὃν ἡ ποίησις ἐγένετο. Καὶ μοι τὰς μαρτυρίας ἀνάγνωθι ταύτας καὶ τὸν νόμον (Isaeus 2.16).

Scholars like Cohen and Vlassopoulos have argued that the Athenians' everyday activities effectively blurred their identities. Slaves and metics were indistinguishable in appearance from citizens, and they often engaged in the same activities as citizens. Vlassopoulos in particular has argued that metics and slaves carried out the same identifying performative acts as citizens.⁹⁷ I do not disagree on this point, but I suggest that the Athenians purposefully developed personal relationships within key identifying groups for this reason. Take, for example, Euxitheus' plea to the jury in his own case. His demesmen had affirmed his and his father's identities many times when they confirmed their membership in the deme. If Eubulides had allowed the deme assembly to continue in the morning, Euxitheus claimed his relatives and his own friends within the deme would have spoken on his behalf. Note also Thrasyllus' defense of his adoption by his uncle Apollodorus. He did not argue simply that Apollodorus had acknowledged him as his adoptive son before his phratrymen and demesman. Rather, he stressed that Apollodorus went to the members of his phratry and deme, told them about his wish to adopt Thrasyllus as his son, and even though he died before he could introduce his nephew to his deme, his demesmen followed his wishes because they knew his adoption was valid. Clearly, Athenians valued their relationships within these key identifying groups. The notion of citizens living in an anonymous society, where they had little contact with their demesmen, and were content to live with "blurred identities," seems improbable given the surviving evidence from the speeches of the Attic orators.

⁹⁷ See Vlassopoulos 2009, 347-363.

Although it is tempting to follow the example of the author of the *Constitution of the Athenians* and focus on one or two institutions, like the phratry and the deme, as central identifying groups, this was not the reality which Athenians presented when they defended their identities in court. Instead, they relied on complicated networks of associations to establish their status in court, and these networks included smaller fraternities like the *genos* and *orgeones*. Athenian litigants also made clear that these groups were inexorably linked with one another: in several cases, membership in the *genos* guaranteed membership in the phratry, and of course, membership in the phratry was a requirement, whether legal or traditional, of membership in a deme. To ignore any institution in this chain, and the relationships that Athenians developed as members of these groups, would be a gross oversight. It was this complex web of associations and personal connections that governed civic identity in Classical Athens. To be a citizen was to be a member of an *oikos*, of a *genos*, of a phratry, of a deme, and it was the careful observance of the formal and informal performative acts required by all these groups that offered the best safeguard of identity and citizenship.

CHAPTER III

Adoption in the Athenian Identification Process

Introduction

(27) ἔλεγε πρὸς τοὺς δημότας Ἀπολλόδωρος ὅτι πεποιημένος εἶη με υἱὸν καὶ ἐγγεγραφῶς εἰς τοὺς συγγενεῖς καὶ φράτορας, καὶ παραδεδώκοι τὴν οὐσίαν, καὶ διεκελεύεθ' ὅπως, ἂν τι πάθῃ πρότερον, ἐγγράψουσί με εἰς τὸ ληξιαρχικὸν γραμματεῖον Θράσυλλον Ἀπολλοδώρου καὶ μὴ ὡς ἄλλως ποιήσουσι. (28) καὶ οὗτοι ταῦτα ἀκούσαντες, τούτων ἐν ἀρχαιρεσίαις κατηγορούντων καὶ λεγόντων ὡς οὐκ ἐποίησάτο με υἱόν, καὶ ἐξ ὧν ἤκουσαν καὶ ἐξ ὧν ἤδεσαν, ὁμόσαντες καθ' ἱερῶν ἐνέγραψάν με, καθάπερ ἐκεῖνος ἐκέλευε.

(27) Apollodorus told the demesmen that he had adopted me as his son and had registered me among his kinsmen and his phratrymen, and he entrusted his property (to me), and he bid them, if he suffered anything before (my return), to enroll me on the lexiarchic register as Thrasyllus the son of Apollodorus and not to do otherwise. (28) And those men heard his commands and when these men (my opponents) brought accusations during the annual election of magistrates and claimed that he did not adopt me as his son, from the things they heard and the facts they knew, swearing an oath on the sacrificial victims (the demesmen) registered me, just as (Apollodorus) commanded (Isaeus. 7.27-28).

Isaeus' speech *On the Estate of Apollodorus* deals with a wealthy Athenian citizen, Apollodorus, who decided to adopt his nephew Thrasyllus as his heir when his own son fell ill and died. Thrasyllus, however, was traveling to the Pythaid festival when Apollodorus' deme held its annual assembly, the meeting at which citizens introduced adopted children. When he realized that he faced a terminal illness and so would be unable to introduce Thrasyllus to his demesmen the following year, Apollodorus instructed the members of his deme to complete the adoption. I have reviewed this passage in my earlier chapter on civic identity, but here I take the opportunity to point out

the extraordinary nature of Thrasyllus' defense of his adoption. Given our knowledge of methods by which Athenians established their civic identity, we might expect Thrasyllus to be defending his citizenship in his speech. For example, in the scene above, Thrasyllus emphasized the solemnity of the scene in which the demesmen all together swore the customary oaths on the sacrificial victims to adopt him as one of their members, a ritual that we most associate with the formal acknowledgement of citizenship. Thrasyllus also presented the members of his phratry and *genos* to testify that they too had admitted them among their members as Apollodorus' adopted child and also maintained an intimate relationship with both men. Furthermore, throughout his defense of his identity as an adopted son, Thrasyllus stressed the same kind of performances, both formal and informal, by which Athenians affirmed their citizenship. In his speech, Thrasyllus framed his adoption not simply as a private family affair but as a public institution controlled by the phratry and deme.

Thrasyllus' account of his extraordinary adoption illustrates the crucial role that this process played within Athenian society in the fourth century BCE. Athenian citizens who were unable to have natural-born children adopted heirs to ensure the survival of their estates and to prevent the kind of legal struggles which Isaeus documented in his legal speeches centering on inheritance cases. Modern scholars have often relegated studies of adoption to brief mentions in legal handbooks or in commentaries. In this chapter, however, I bring adoption into the spotlight and argue that it was more than just a mechanism by which wealthy Athenian citizens guarded against attacks on their estates. I consider Athenian adoption procedures identical to the Athenian identification process

that controlled citizenship. In Athenian courts, the proofs of adoptive identity and civic identity—membership in key identifying groups and the performances carried out within them—aligned perfectly. By examining legal cases that center on adoption, we can gain a greater understanding of citizenship as an institution.

In this chapter, I first discuss the three methods of adoption open to Athenian citizens and the procedures for each while touching on the limited scholarship that focuses on Athenian adoption. In particular, I will question past scholars who have considered adoption a private transaction between two Athenian families. These researchers have argued that Athenians carried out adoption in two distinct phases: the adoptive parent and child would enter into a private agreement with one another, and only then did the father introduce his new son to his phratry and deme. I will contend that private agreements played no role in the process. Instead, I consider adoption as a public institution in which adoptive fathers followed identical procedures as natural fathers to affirm their sons' civic identities. The adoptive father needed to secure his adopted son's admission into his phratry and deme. Just as crucially, the adoptive father and son had to undertake everyday performative acts, such as the father arranging for his new son's marriage and the adoptive son taking over the management of the estate, to ensure their legal relationship to one another. To illustrate the complexity of the adoption process and its place in the Athenian identification process, I will analyze two selected speeches of Isaeus: *On the Estate of Menecles*, in which the unnamed speaker outlined his close relationship with his adopted father Menecles over twenty years, and *On the Estate of Apollodorus*, summarized above.

Procedures of adoption in Classical Athens

Athenian citizens did not adopt to foster or mentor young children as is generally the case in the modern world. Adoption provided Athenians an effective means of establishing the identity of heirs to their estates and ensuring the survival of their household in the absence of legitimate offspring. Athenians could employ three methods of adoption: 1) adoption *inter vivos*, in which a citizen could adopt a fully grown adult, usually a close male family member, by introducing this relative to the same key identifying groups to which he would present his natural children; 2) testamentary adoption, or adoption by will, in which an Athenian could adopt an adult in a written will and so establish an heir and ensure the protection of his property; and, 3) posthumous adoptions, in which the relatives of a deceased citizen could create an heir on his behalf, again usually with the intention of safeguarding the man's estate. Adoptions *inter vivos* and testamentary adoptions could be invalidated, if the adoptive father were found to be senile, insane, ill, or under the influence of a woman.⁹⁸

Older Athenian citizens usually undertook adoptions *inter vivos* when they could no longer expect natural children. In this kind of adoption the adopted son could enter into the estate immediately after his adoptive father's death, exercising the same right of entering immediately into possession of the estate (ἡ ἐμβατεύσις) as a natural-born son. The Athenians, however, had no mechanisms in place to reverse adoptions *inter vivos*, a

⁹⁸ Our best evidence for this law originates from the two cases I discuss in this chapter. See Isaeus. 2.14; Isaeus. 2.19; Isaeus. 2.43; Isaeus. 7.1; Isaeus. 7.14; Isaeus. 7.43. See also Griffith-Williams's discussion of this law: Griffith-Williams 2013, 43.

severe disadvantage.⁹⁹ Even in cases where a father had his own natural-born son after he had adopted another Athenian, the two sons would become co-heirs and each take a half share in the estate on their father's death.¹⁰⁰

Young men, often those about to set out on campaigns or about to travel, usually employed testamentary adoptions, since they could renounce these adoptions on their safe return to Athens in the expectation that they would marry an Athenian citizen-wife and have natural legitimate children.¹⁰¹ Only in the event of the adopter's death would an heir adopted by will come into his or her inheritance. In testamentary adoptions, the heir by will needed to put in a claim on the estate before the Athenian courts; once the court had ruled on the validity of his claim, the heir could be introduced into his adoptive father's phratry and deme. In legal cases which centered on testamentary adoptions, litigants would often attack the validity of the will, either by claiming that the document was a

⁹⁹ See especially Thompson 1981; Thompson laid out the different types of adoptions undertaken by Athenian citizens. See also Scafuro 2011, 15-17.

¹⁰⁰ See especially Isaeus. 6.63, where the speaker lays out this provision of the law.

¹⁰¹ We know of twelve testamentary adoptions in fourth century Athens, and in six of these adoptions, the testator died while away in war or traveling. See especially Isaeus 4, *On the Estate of Nicostratus*, Isaeus 5, *On the Estate of Dicaeogenes*, Isaeus 6, *On the Estate of Philoctemon*, Isaeus 9, *On the Estate of Astyphilus*, Isaeus 10, *On the Estate of Aristarchus*, Isaeus 11, *On the Estate of Hagnias*.

forgery or that it did not reflect the true intentions of the estate owner.¹⁰² Since these legal speeches focused less on the roles of the phratry and deme, they fall outside of the scope of my study.

Finally, in posthumous adoptions, an Athenian family could name an heir to an estate even decades after the estate owner's death if the owner had neglected to adopt a child while he still lived and had left no will.¹⁰³ A representative of the relatives would introduce the adopted son to his new phratrymen and demesmen, and the members would admit them in accordance with the same procedures they used in other cases of adoption.¹⁰⁴ The Athenians appear to have considered posthumous adoption quite unusual.¹⁰⁵ Moreover, its exact procedures, aside from the admittance into the phratry and deme, are difficult to determine. Seven legal cases featuring posthumous adoptions have

¹⁰² See in particular Isaeus' *On the Estate of Cleonymus*: Pherenicus and Posieidippus claimed Cleonymus' estate, claiming that he had named them as his heirs in the will. The nephews of Cleonymus put forth a claim, as well. Interestingly, they did not argue that the will was a forgery but that Cleonymus had written the will at a time when he was particularly angry with their guardian, Deinias. The nephews contended that in his later years, Cleonymus had treated them as sons and accordingly, they were the rightful heirs.

See also Isaeus' *On the Estate of Nicostratus*: a certain Chariades claimed the estate, claiming that he and Nicostratus were close friends while they were performing military service and so Nicostratus had named him his heir in a will. Nicostratus' first cousins, Hagnon and Hagnotheus, claimed the estate as his closest kin and claimed that Chariades no companion of Nicostratus and the will was a forgery.

Finally, see Isaeus' *On the Estate of Astyphilus*: Cleon, Astyphilus' first cousin, claimed that he had named Cleon's son as his heir in a will. The speaker, Astyphilus' half-brother, claimed the estate and argued that the will was a forgery.

¹⁰³ See especially Dem. 44.19-24, in which the speaker complained of the posthumous adoptions undertaken by one branch of his family to deprive the other branch (the speaker and his siblings) of its inheritance.

¹⁰⁴ See especially Dem. 43.13-15, where the speaker describes the posthumous adoption of Macartatus and his acceptance into his adoptive father's phratry.

¹⁰⁵ See especially Isaeus. 6.3, Dem. 43.11; Dem. 44.19. See also Todd 1993, 225.

survived, and in each speech the adoption was completed under different circumstances and often questioned only after the adoptive son himself had died.¹⁰⁶

Accordingly, in this chapter I focus on legal disputes involving adoptions *inter vivos* for which the procedures are clear and the interested parties still living. I examine in particular two cases that best illustrate the relationships that adopted children needed to cultivate with their adoptive fathers and within their new phratries and demes to establish an unassailable new civic identity: Isaeus' speeches *On the Estate of Menecles* and *On the Estate of Apollodorus*.

Modern scholarship

Modern studies on the Athenian institution of adoption have often been limited to legal handbooks, works on the Greek family and family law, and commentaries on Isaeus, who specialized in inheritance cases in which litigants were especially likely to question the legitimacy of their opponents' adoptions or else force them to defend their own status as adopted heirs.¹⁰⁷ Moreover, scholars who have examined adoption have considered it within the context of family relationships and property law and not as an institution that granted citizenship.

For example, in his legal handbook, Harrison argued that adoptions were contracts between two Athenian citizens in which the adopted father acknowledged that

¹⁰⁶ See Rubinstein 1993, 25-28.

¹⁰⁷ For legal handbooks, see especially J. Jones 1956; MacDowell 1986; Todd 1993; Harrison 1998. For works on family structure and law, see especially Lacey 1989; see also Cox 2014. For commentaries on and translations of Isaeus, see Wyse 1904; Edwards 2007; Griffith-Williams 2013. Griffith-Williams has a good discussion of the modern reception of Isaeus; see Griffith-Williams 2013, 27-33.

he would entrust his property to his new son. Although Harrison allowed that citizens generally introduced their adopted children into their phratry and deme, he argued “this agreement between the parties was sufficient to validate the adoption.”¹⁰⁸ He thus construed adoption as a private agreement rather than as a larger institution controlled by the same key groups that granted citizenship. In his own legal handbook, MacDowell pushed Harrison’s arguments further and described adoption as a simple arrangement struck between two Athenian families. Take MacDowell’s description of the legal position of an adopted son: “By his adoption he entirely lost his membership and right of succession in his own family and became in all legal respects the son of his adopter.”¹⁰⁹ MacDowell omitted entirely that an adopted son would be admitted into his new father’s phratry and deme and so acquire an entirely new civic identity. To both Harrison and MacDowell, adoption was primarily an economic transaction by which an Athenian citizen could transfer his property to another, an agreement in which groups like the phratry and deme had little interest.

W.E. Thompson, in an article that focused solely on testamentary adoption as an institution, questioned the assertions in the legal guides of Jones, Harrison, and MacDowell that Athenian wills were simple mechanisms by which Athenians could dispose of their property. Thompson further argued against Harrison’s claim that Athenian jurors inherently distrusted adoptions by will and habitually awarded disputed estates to the next of kin. Most critical to my own work, Thompson asserted that

¹⁰⁸ Harrison 1998, 89.

¹⁰⁹ MacDowell 1986, 100.

Athenian jurors listening to inheritance cases considered testamentary adoptions an important religious and social institution by which citizens ensured that their heirs would care for their households and would perform the proper religious rites when they passed away.¹¹⁰ Thompson construed Athenian adoption not as a private agreement but as a critical public institution meant to protect the Athenian family and their cults.

Like Thompson, Lene Rubinstein, in her study of adoption in the fourth century BCE, considered the process in the wider context of Athenian society. Rubinstein's work catalogued the thirty-six cases of adoption of which we have knowledge from Athenian history. She described each kind of adoption in detail and the reasons why Athenian citizens adopted. Rubinstein criticized scholars who argued that an adoptive father and son came to a private agreement as the first step in the adoption process.¹¹¹ She argued that the introduction to the phratry and deme constituted the entire adoption process with no prior private legal agreement necessary. In this chapter, I push Rubinstein's arguments further and consider adoption procedures as identical to the Athenian identification process.

The myth of private contracts

Before I move on to my analysis of Isaeus' speeches, I first want to dispel further the notion that Athenians needed to enter into a private agreement as the first step in an

¹¹⁰ See especially Thompson 1981, 18-21.

¹¹¹ Scholars who argued that private agreements constituted Athenian adoptions by law include: Beauchet 1969, 10-18; Bruck 1909, 54; Becker 1930, 301-306; Brindesi 1961, 45; Polacek 1967, 162; Todd 1993, 89.

adoption. By focusing on this argument, researchers have relegated adoption to studies on the family and property law and have missed the opportunity to consider adoption as a critical public institution. I believe that scholars have argued this point because they have misunderstood two key excerpts from the two legal speeches of Isaeus that I analyze in this chapter.¹¹² In Isaeus' speech *On the Estate of Menecles*, the elderly Menecles approached the brothers of his former wife to adopt one of them:

(11) λόγους οὖν πρὸς ἡμᾶς ἐποιεῖτο, καὶ ἔφη δοκεῖν αὐτῷ καλῶς ἔχειν, ἐπειδὴ οὕτως αὐτῷ ἡ τύχη συνέβη ὥστε ἐκ τῆς ἀδελφῆς τῆς ἡμετέρας παῖδας αὐτῷ μὴ γενέσθαι, ἐκ ταύτης τῆς οἰκίας ὑὸν αὐτῷ ποιήσασθαι, ὅθεν καὶ φύσει παῖδας ἐβουλήθη ἂν αὐτῷ γενέσθαι: “ὕμῶν οὖν” ἔφη “βούλομαι τὸν ἕτερον ποιήσασθαι, ὁποτέρῳ ὑμῶν καλῶς ἔχει.” (12) καὶ ὁ ἀδελφὸς ἀκούσας ταῦτα [ἐπειδὴ προετίμησεν αὐτοὺς πάντων], ἐπήνεσέ τε τοὺς λόγους αὐτοῦ, καὶ εἶπεν ὅτι δέοιτο ἢ τε ἡλικία καὶ ἡ παροῦσα ἐρημία ἐκείνου τοῦ θεραπεύσοντος αὐτὸν καὶ ἐπιδημήσοντος: “ἐμοὶ μὲν οὖν” ἔφη “συμβαίνει ἀποδημία, ὥς σὺ οἶσθα: ὁ δὲ ἀδελφὸς οὐτοσί” ἐμὲ λέγων “τῶν τε σῶν ἐπιμελήσεται καὶ τῶν ἐμῶν, ἐὰν βούλη τοῦτον ποιήσασθαι.” καὶ ὁ Μενεκλῆς καλῶς ἔφη αὐτὸν λέγειν, καὶ ἐκ τοῦ τρόπου τοῦτου ποιεῖται με.

(11) He addressed us, and he said that it seemed fair to him, since such a fate had befallen him that he could have not children by our sister, to adopt a son from the same house from which he had wished to have children: He said, ‘Accordingly, I wish to adopt one of the two of you, to whichever one of you this seems agreeable.’ (12) My brother, having heard this, praised his suggestions, and he said that his old age and present loneliness demanded someone to attend him and

¹¹² Other examples of adoptions *inter vivos* from Attic oratory do not specify the adoption proceedings. We have five examples of adoptions *inter vivos* in Attic oratory. The two adoptions most commonly discussed in scholarship on Athenian adoptions and on which I will also focus appear in Isaeus' speeches *On the Estate of Menecles* (Menecles adopted the son of Eponymus, the brother of his former wife) and *On the Estate of Apollodorus* (Apollodorus adopted his half-nephew, Thrasyllus). See also Dem. 44.19, Dem. 44.46—the speaker first asserted (Dem. 44.19) that the adoption of Leocrates by the owner of the estate in question, Archiades, had been carried out as a posthumous adoption, but he seems to have contradicted himself later in the speech (Dem. 44.46), where he implied the adoption was *inter vivos*. Because of the uncertainty surrounding the nature of this particular adoption, I pass it over in this chapter. See also Dem. 41.3-5—Polyceutus adopted Leocrates and married him to one of his two daughters. The two men quarreled, and then Polyceutus took away his daughter from Leocrates and gave her in marriage to Spudias. The speaker gave no details as to the procedures surrounding the adoption. Finally, see [Plut]. Vit.X.Orat.838-839 and Dio.Hal. Isocr.18—Pseudo-Plutarch in his *Life of the Ten Orators* described Isocrates' marriage to Plathane late in life and his adoption of her son Aphareus but made no mention of the specific adoption procedures he followed. Dionysius of Halicarnassus mentioned in his *Life of Isocrates* that his ancestor Aphareus was an adoptive son of Isocrates, but he also gives no details as to the adoption procedures. For further discussion, see Rubinstein 1993, 33-36.

to remain home; he said, 'It happens that I am away [often] now, as you know; but my brother here,' (meaning me), 'will care for your affairs and for mine, if you wish to adopt him.' And Menecles agreed with him, and in this way he adopted me (Isaeus. 2.11-12).

Most critical to my own argument, the speaker did not describe anything that resembled a private contract in this passage. Instead, he recounted an informal encounter between himself, his brother, and their former brother-in-law Menecles. Menecles had married the speaker's sister, but when he realized that he was impotent, he convinced his wife to seek a divorce and marry a man who could give her children. Years after his divorce, Menecles sought out his wife's two brothers to ask whether one of them might become his adopted son and heir to his estate. The speaker did not specify where this conversation took place, whether he and Menecles had drawn up a written agreement, or whether there were any witnesses other than the three men themselves, evidence that proved crucial in Athenian contracts (Isaeus. 2.11-12). Furthermore, the speaker made clear in the opening of his case that his opponents had accused the speaker's sister, Menecles' former wife, of exercising undue influence in Menecles' adoption (Isaeus. 2.1). By presenting this conversation, in which Menecles approached the speaker and his brother of his own free will and in his right mind, the speaker could effectively counter his opponents' accusations against his sister.

Scholars have also cited a second passage from Isaeus' *On the Estate of Apollodorus*, the speech I discussed above, to argue that adoptive fathers and sons entered into private contracts with one another. The speaker Thrasyllus described how Apollodorus went to his half-sister, Thrasyllus' mother, to ask her whether he could adopt her son:

Ἀπολλοδώρῳ γὰρ ἦν υἱός, ὃν ἐκεῖνος καὶ ἤσκει καὶ δι' ἐπιμελείας εἶχεν, ὥσπερ καὶ προσῆκον ἦν. ἕως μὲν οὖν ἐκεῖνος ἔζη, διάδοχον τῆς οὐσίας ἤλπιζεν αὐτὸν καταστήσειν τῆς ἑαυτοῦ· ἐπειδὴ δὲ ἐτελεύτησε νοσήσας τοῦ ἐξελθόντος ἐνιαυτοῦ μηνὸς Μαιμακτηριῶνος, ἐπὶ τοῖς παροῦσιν ἀθυμήσας καὶ τὴν ἡλικίαν τὴν ἑαυτοῦ καταμεμψάμενος οὐκ ἐπελάθετο ὑφ' ὧν καὶ ἐξ ἀρχῆς εὖ πεπονθὼς ἦν, ἀλλ' ἐλθὼν ὡς τὴν ἐμὴν μητέρα ἑαυτοῦ δὲ ἀδελφήν, ἦν περὶ πλείστου πάντων ἐποιεῖτο, λαβεῖν ἡξίωσε με υἱὸν καὶ ἦτησε καὶ ἔτυχεν.

Apollodorus had a son, whom he both brought up and cherished, just as was fitting. And as long as he lived, he expected to make him the heir to his property. But when [his son] became sick and died in the month of Maemacterion last year, depressed by the present events and viewing his age with regret, [Apollodorus] did not forget those by whom even from the beginning he had been treated well. But coming to my mother, his own sister, whom he held in the greatest esteem, he deemed it right to take me as son, asked her, and received [permission] (Isaeus. 7.14).

Again, Thrasyllus did not describe a private contract in this scene. He did not specify where the conversation took place, whether a written agreement was drawn up, or whether there were any witnesses to these events. Furthermore, as in the case with Menecles' adoptive son, Thrasyllus also needed to counter his opponents' arguments that his mother, Apollodorus' half-sister, had influenced Apollodorus too much in his decision to adopt her son. In this particular passage, Thrasyllus took care in describing the despair Apollodorus experienced at the death of his son and the desperation he felt when he realized that he would be unable to have any more children before his death. Thrasyllus also stipulated that Apollodorus approached Thrasyllus' mother concerning the adoption, and neither she nor her children approached him. Finally, if Thrasyllus were describing some kind of private agreement in this passage, he would be describing one made between Apollodorus and his *sister*, not between Apollodorus and Thrasyllus.

The speakers in *On the Estate of Menecles* and *On the Estate of Apollodorus* both described not private contracts but informal conversations between themselves and their adoptive fathers as a prelude to the actual adoption proceedings. The casual nature of

these conversations becomes even clearer when we consider them in comparison to the examples of actual contracts that have survived in Attic oratory. In Hyperides' speech *Against Athenogenes*, the speaker Epicrates detailed the contract he entered into with a man named Athenogenes for the purchase of three slaves and the perfumery which they operated. Epicrates described how Athenogenes produced a written agreement with the details of the contract and deposited it with Lysicles of Leuconoe (Hyp. 3.8-9). Epicrates also later produced the document as evidence in his lawsuit (Hyp. 3.12).¹¹³ Likewise, in Demosthenes' *Against Olympiodorus*, the speaker Callistratus brought his brother-in-law Olympiodorus to court on the grounds that he had broken their contract to share the estate of Comon, a wealthy relative who had died intestate. Callistratus described how he and his brother-in-law drew up a written agreement, swore oaths to one another, and then deposited the agreement with Androcleides of Acharnae (Dem. 48.9-11). Callistratus also produced a number of witnesses to the written agreement (Dem. 48.11).¹¹⁴ Finally, the laws governing maritime contracts stipulated that to bring a lawsuit against another merchant for breach of contract, an Athenian merchant would need to produce a written agreement in court that had been made in the Athenian market in front of witnesses.¹¹⁵

The conversations described in Isaeus' two speeches lack the key features of contracts described in the speeches of Hyperides and Demosthenes. First, Isaeus'

¹¹³ For a more detailed discussion of Hyperides' *Against Athenogenes* and Athenian contract law, see Phillips 2009.

¹¹⁴ Athenian contract law did not require the presence of witnesses, although Athenians regularly provided witnesses in court to prove the validity of the contract. On the importance of witnesses in Athenian contract law, see Phillips 2009, 105.

¹¹⁵ See MacDowell 1986, 232-234; see also Cohen 2016, 100-114. See also Dem. 32.1, Dem. 33.1-3, Dem. 34.3-4, and Dem. 34.42.

speakers never described any written agreements with Menecles and Apollodorus, and so they could never deposit such a document with any third party. Also, the two speakers did not provide any witnesses to their supposed agreements with their adoptive fathers. Although witnesses were not a requirement for legal contracts, it would certainly be in the best interest of both parties to have witnesses present so that they could prove the validity of their contracts in court.

The dearth of actual evidence that adoptions were private legal contracts gives even more import to the argument Lene Rubinstein first presented that Athenian adoptions were valid only with the introduction of the adopted son into his adopted father's phratry and deme.¹¹⁶ Moreover, when they defended their identities as adopted children in court, Menecles' son and Thrasyllus presented the following as proofs that their adoptions were valid: their witnessed personal relationships within their phratry, deme, and other key identifying groups like the *orgeones* and *genos*; and the informal performative acts they carried out as adoptive sons, including managing their estates, caring for their fathers in old age, and even representing them in legal conflicts. Athenians established their identities as adopted children not through private contracts but through public performances carried out with their phratrymen and demesmen as witnesses, using the same methods by which they confirmed their civic identities.

The estates of Menecles and of Apollodorus

Isaeus' speeches depicting the disputes about the estates of Menecles and

¹¹⁶ See Rubinstein 1993, 34-45.

Apollodorus provide excellent insight into the important roles that interpersonal relationships within the phratry and deme and everyday activities played in establishing the identities of adopted children. In Isaeus' *On the Estate of Menecles*, the childless Menecles adopted the brother of his ex-wife, an unnamed son of Eponymous. This was an unusual arrangement in that Athenians often adopted within their immediate family, and the speaker's opponents seem to have taken advantage of this fact by suggesting that Menecles' ex-wife, the speaker's sister, cajoled him to go through with the adoption. Menecles lived for twenty years after the adoption, and in that period of time Menecles treated the speaker as his son; the speaker claimed that Menecles lived with him, arranged his marriage, and gave him management over his estate. Likewise, the speaker emphasized that he and his wife cared for Menecles in his old age and carried out his funeral rites. After the old man's death, Menecles' brother and nephew, the speaker's opponents, attempted to claim Menecles' estate. Philonides, the speaker's father-in-law, blocked their claim on the grounds that Menecles had adopted a son. Menecles' relatives then indicted Philonides on a charge of false witness. The unnamed speaker spoke in Philonides' defense in this particular speech.¹¹⁷

The speaker's account of his history with Menecles is particularly striking because he repeatedly stressed that Menecles carried out the procedures for the adoption under the most ideal circumstances:

- (13) Ὡς οὖν κατὰ τοὺς νόμους ἐγένετο ἢ ποιήσεις, τοῦτο ὑμᾶς βούλομαι διδάξαι...
 (14) ἐμὲ ποιεῖται, οὐκ ἐν διαθήκαις, ὧ ἄνδρες, γράψας, μέλλων ἀποθνήσκειν, ὥσπερ ἄλλοι τινὲς τῶν πολιτῶν, οὐδ' ἀσθενῶν· ἀλλ' ὑγιαίνων, εὖ φρονῶν, εὖ νοῶν

¹¹⁷ For an excellent overview of the case, see Edwards 2007, 27-32; see also Wyse 1904, 232-237.

ποιησάμενος εισάγει με εἰς τοὺς φράτερας παρόντων τούτων, καὶ εἰς τοὺς δημότας με ἐγγράφει καὶ εἰς τοὺς ὀργεῶνας.

(13) Accordingly that the adoption proceeded in accordance with the laws, I wish to teach you this... (14) He adopted me, gentlemen, not having written in a will, about to die, as some other citizens have done, nor even being ill; but being in good health, of sound mind, with good will, he adopted me and introduced me to his phratrymen, with these men [my opponents] present, and he enrolled me among his demesmen and the members of his *orgeones* (Isaeus. 2.13-14).

The speaker first considered his adoptive father's state of mind and pointed out that Menecles was not ill when he took the speaker as his son, a condition which could invalidate the adoption. Furthermore, the speaker argued that Menecles was of sound mind precisely because he followed the correct procedures for the adoption and completed the formal performances that established adoptive and civic identity. He introduced the speaker to his *orgeones*, his phratry, and his deme with witnesses present, including the speaker's present opponents. If the opponents had actually believed that Menecles had been under the influence of a woman or was ill, they could have raised objections to the adoption with his phratrymen or demesmen.¹¹⁸ That they stood witness to the adoption and failed to lodge a protest was a powerful proof of the speaker's identity as Menecles' adopted son.

As proof of his adoptive identity as an adopted son, the speaker further emphasized the informal performances of daily life: he claimed that Menecles and he had lived as father and son for over twenty years before the older man died. Moreover, the members of Menecles' *orgeones*, phratry, and deme had an intimate knowledge of this relationship. As the speaker explained:

¹¹⁸ For a nice parallel, see Dem. 57.49. Euxitheus argued that Eubulides ought to have objected to his membership in the deme at a much earlier date.

(15) Ἐπεβίω γὰρ ἐκεῖνος μετὰ τὴν ποίησιν οὐκ ἐνιαυτὸν ἓνα ἢ δύο, ἀλλὰ τρία καὶ εἴκοσιν ἔτη· καὶ ἐν τούτῳ τῷ χρόνῳ, τοσούτῳ ὄντι, οὐδὲν ἐκεῖνος μετέγνων τῶν πεπραγμένων ἑαυτῷ, διὰ τὸ παρὰ πάντων ὁμολογεῖσθαι ὅτι ἦν ὀρθῶς βεβουλευμένος. (16) Καὶ ὡς ἀληθῆ λέγω ταῦτα, τῆς μὲν ποιήσεως ὑμῖν τοὺς φράτερας καὶ τοὺς ὀργεῶνας καὶ τοὺς δημότας παρέξομαι μάρτυρας...

(15) For that man [Menecles] lived on after the adoption not for one year or two, but for twenty three years. And in this time, such a long time, he never regretted the things which he did, because it was agreed by all that he had decided rightly. (16) And that I speak the truth, I shall call for you as witnesses of the adoption the members of my phratry, of my *orgeones*, and of my deme (Isaeus. 2.15-16).

Here the speaker painted an intimate portrait of his relationship with Menecles and with the members of these identifying groups. By living with him in full view of their community, Menecles made clear that that he did not regret his decision to adopt the speaker. Moreover, note the speaker's phrasing when he declared, "It was agreed *by all* that he had decided rightly [in adopting me]" (Isaeus. 2.15). I would argue that the group of people to whom he referred in this passage were his phratrymen and demesmen, given that their testimony immediately followed this passage. Critically, the speaker treated the phratrymen and demesmen's approval of their relationship as a key proof of his identity as adoptive son.

Repeatedly throughout his defense, the speaker focused on informal performative acts and the realities of the life he had led as Menecles' adopted son and particularly as a member of Menecles' deme. As further proof of his close relationship with his adoptive father, he recounted the arrangements that Menecles made for his marriage:

πραχθέντων δὲ τούτων ἐσκόπει ὁ Μενεκλῆς γυναῖκά μοι, καὶ ἔφη με χρῆναι γῆμαι· καὶ ἐγὼ λαμβάνω τὴν τοῦ Φιλωνίδου θυγατέρα. κάκεῖνός τε τὴν πρόνοιαν εἶχεν ὥσπερ εἰκός ἐστι πατέρα περὶ υἱοῦ ἔχειν, καὶ ἐγὼ τὸν αὐτὸν τρόπον ὥσπερ γόνῳ ὄντι πατέρα ἑμαντοῦ ἐθεράπευόν τε καὶ ἡσυχνόμην, καὶ ἐγὼ καὶ ἡ γυνὴ ἡ ἐμή, ὥστε ἐκεῖνον πρὸς τοὺς δημότας ἐπαινεῖν ἅπαντας.

And after this, Menecles sought a wife for me, and said it was right that I marry; and I took the daughter of Philonides as wife. He had the concern for me which it is fitting that a father have for a son, and in the same way I attended and revered

him as if he were my own father, both myself and my wife, so that he praised us to all his demesmen (Isaeus. 2.18).

The speaker described a reciprocal relationship between himself and Menecles, one in which Menecles showed him the care and attention he would show to a natural-born son, and both the speaker and his wife showed Menecles the respect he was due as the speaker's father. The speaker's mention of Menecles' demesmen is no coincidence here. The speaker's pointed reference suggests that Menecles and his family enjoyed a close relationship with their demesmen who served as crucial witnesses for even the most casual performances of everyday life.

The speaker returned to this theme by contrasting his own devotion to Menecles with his opponents' mistreatment of his adoptive father. While Menecles' brother and nephew had engaged with him in a lengthy legal battle concerning his estate and the sale of some property, the speaker recounted,

Καὶ ἐγὼ μὲν ὁ ποιητὸς ἐκεῖνόν τε ζῶντα ἐθεράπευον καὶ αὐτὸς καὶ ἡ ἐμὴ γυνή, θυγάτηρ οὖσα τουτοῦ Φιλωνίδου, καὶ τῷ ἐμῷ παιδίῳ ἐθέμην τὸ ὄνομα τὸ ἐκείνου, ἵνα μὴ ἀνώνυμος ὁ οἶκος αὐτοῦ γένηται, καὶ τελευτήσαντα ἔθαψα ἀξίως ἐκείνου τε καὶ ἐμαντοῦ καὶ ἐπίθημα καλὸν ἐπέθηκα <καὶ τὰ τρίτα> καὶ τὰ ἔνατα καὶ τᾶλλα πάντα ἐποίησα τὰ περὶ τὴν ταφὴν ὡς οἷόν τε κάλλιστα, ὥστε τοὺς δημότας ἐπαινεῖν ᾅπαντας.

I, his adopted son, tended that man while he lived, both myself and my wife, the daughter of this Philonides here, and I named my own little son after him, so that his house might not become desolate, and when he died I buried him in a manner which befitted both him and myself, and then I erected a fine monument, I performed all the rites around his grave as best I could, so that all our demesmen praised me (Isaeus. 2.36).

The speaker again stressed his and his wife's devotion to Menecles, both while he lived and after his death. He had cared for Menecles, named his son after Menecles (continuing a tradition whereby firstborn sons were named after their grandfathers), and conducted his adoptive father's funeral when he died. Funeral rites were often a source of contention

in inheritances cases; litigants often used their completion of the last rites as proof that they had the strongest claim to an estate.¹¹⁹ Furthermore, the speaker stressed that all his demesmen praised him for his efforts. Cumulatively, these everyday actions became powerful performances of both adoptive and civic identity which the speaker carried out before his entire community.

The speaker also provided proofs that he was Menecles' rightful adopted son that fall into that second category of informal performances that I discussed in my introduction. With these performative acts, the speaker engaged with formal Athenian institutions outside of typical political performances. In a dramatic turn, the speaker called on his opponents to act as witnesses on his behalf. Before Menecles' death, Menecles' brother and his son, the opponents in the present case, sued him for a piece of property he was attempting to sell. The two parties agreed to enter into arbitration with one another, with the opponent's brother-in-law and unnamed mutual friends acting as arbitrators. As the speaker dramatically asked:

Καίτοι εἴ γε μὴ κατὰ τοὺς νόμους ἐγεγένητο ἡ ποίησις, μηδὲ κληρονόμος ἦν ἐγὼ τῶν Μενεκλέους ὑπ' αὐτῶν τούτων δεδοκιμασμένος, τί ἔδει αὐτοὺς ὁμνύναι ἔμοι ἢ παρ' ἐμοῦ λαμβάνειν ὅρκους; Οὐδὲν δήπου. Οὐκοῦν ὅποτε ἐποίησαν ταῦτα, φαίνονται αὐτοὶ οὗτοι ἐμοὶ μαρτυροῦντες ὅτι κατὰ τοὺς νόμους ἐποιήθην [ἢ ποίησις] καὶ δικαίως εἰμὶ κληρονόμος τῶν Μενεκλέους.

And yet if the adoption had not been carried out in accordance with the laws, and I had not been recognized as Menecles' heir by these men themselves, what need would there be for them to swear an oath to me or to receive one from me? Surely none! When they did these things, they themselves appear to bear witness on my behalf that I was adopted in accordance with the laws and I am the rightful heir of Menecles (Isaeus. 2.39).

Here the speaker built on his earlier argument that he had been living as Menecles' son for many years before his death. Not only had he cared for the old man and managed his

¹¹⁹ See especially Isaeus. 5.38-39; see also Isaeus. 6.39-41; Dem. 57.40 and 57.69-70.

estate, he also had acted as his representative in this earlier legal battle. The speaker and his opponents had both acted as actors when they took part in the arbitration, a formal performance of adoptive and civic identity. If his opponents truly felt that Menecles had carried out the adoption under the influence of a woman or while he was insane, they would have been obligated to lodge a protest at this point in time (if not even earlier at his original introduction into the phratry and deme). As the speaker argued, the opponents' failure to act was an equally strong indicator of his identity as the actions which Menecles carried out on his behalf.

In his closing argument, the speaker claimed that he had to defend his claim to Menecles' estate to protect not only his identity as an adoptive son but his reputation as a citizen. When the speaker and his opponents had entered into arbitration, the arbitrators found against Menecles; the older man was forced to hand over the majority of his property (Isaeus. 2.31).¹²⁰ The speaker claimed that his opponents already possessed the majority of the estate from this earlier judgement, and now he only sought to defend his adoption. In a passionate plea to the jurors, he exclaimed:

μη οὖν, ὦ ἄνδρες, πεισθέντες ὑπὸ τούτων ἀφέλησθέ μου τὸ ὄνομα, τῆς κληρονομίας ὃ ἔτι μόνον λοιπὸν ἐστίν, ἄκυρον δὲ τὴν ποιήσιν αὐτοῦ καταστήσητε.

Do not, gentlemen, be persuaded by these men and rob me of my name, the only remainder of my inheritance, and annul [Menecles'] adoption of me! (Isaeus. 2.47).

The speaker understood that the right of inheritance served as a powerful legal proof of his adoptive identity. He would certainly face fewer legal and financial difficulties if he

¹²⁰ The speaker, perhaps purposefully, presents the events surrounding this previous lawsuit in which Menecles and his opponents were involved in a confusing manner. For a clear discussion of this, see Wyse 1904, 260-263.

were to hand over the estate to his opponents, but he would be implicitly agreeing with them that he had no right to the property. Although the speaker had taken pains to mention his service to Menecles' phratry and deme both as a gymnasiarch and as a soldier, he did not focus on these actions as the most important evidence for his case (Isaeus. 2.42). He concentrated instead on his loyalty to Menecles and his desire to live on as his adopted son, despite the fact that his estate was virtually worthless.

In Isaeus' *On the Estate of Menecles*, the speaker did not consider his adoption a private transaction between adoptive father and son. In fact, his description of his adoption by Menecles is identical to the narratives of the Athenian identification process presented by speakers like Euxitheus in Demosthenes' *Against Eubulides*. First, Menecles introduced the speaker to the members of his *orgeones*, phratry, and deme. The speaker cultivated relationships within these key identifying groups, most particularly the deme, which he mentioned several times over the course of his speech. Furthermore, Menecles and he had lived as father and son for over twenty years. Menecles arranged the speaker's marriage, and the speaker managed Menecles' estate and cared for the old man along with his wife. He presented the adoption as a series of performative acts, both formal and informal, that he and Menecles had carried out together over time in full view of their community.

As I mentioned above, the proofs of his adoptive identity that Menecles' son offered align perfectly with the evidence of his civic identity that Euxitheus presented in Demosthenes' *Against Eubulides*. Like Menecles' adopted son, Euxitheus stressed the official performances that determined his civic identity, most critically his admission into

his father's phratry and deme. Likewise, Euxitheus also considered informal performative acts as equally important in his defense, proofs of status that fell outside of the political and religious spectrum. Like the speaker in *On the Estate of Menecles*, Euxitheus stressed his interpersonal relationships with his relatives and his demesmen. Furthermore, in the closest parallel to the arguments of Menecles' son, Euxitheus stressed the division of property and management of his father's estate as proof of his citizen identity. In his speech, he highlighted the fact that his uncles had inherited his father Thucritus' estate when he had disappeared during the Decelean War; they had returned control of the estate over to his father when he was redeemed from slavery (Dem. 57.19). The speaker in Isaeus' *On Behalf of Euphiletus* employed the same argument, claiming that no could think him as insane as to falsely claim Euphiletus as his brother and so cut his inheritance in half (Isaeus. 12.4). The arguments from these three legal cases taken together indicate that adoption was not a private transaction within Athenian families. Rather, we can characterize it as a public institution controlled by and carried out before the same key groups that controlled citizenship. Most critically to my own argument, Athenian litigants considered the quotidian performances of daily life of immense importance in establishing both their adoptive and civic identities.

I turn now to Isaeus' speech *On the Estate of Apollodorus*, a second speech that gives perhaps even greater insight into the key roles of the phratry and deme in the adoption process. In this case a certain Archedamus acted as de-facto guardian for his stepson Apollodorus after Apollodorus' uncle had mismanaged the estate.¹²¹ Many years

¹²¹ For an excellent overview of the case, see Griffith-Williams 2013, 33-40.

later, after his own son had died, Apollodorus adopted Thrasyllus (the speaker in the case), Apollodorus' half-nephew and the grandson of Archedamus. Apollodorus successfully introduced Thrasyllus to the members of his *genos* and of his phratry but died before he could admit him into the deme. The representatives of the wife of Pronapes, Apollodorus' first cousin, challenged the adoption, on the grounds that it did not reflect Apollodorus' true intent, perhaps because he had been under the influence of his half-sister, Thrasyllus' mother. In several ways, this speech may seem more typical than the one in the case surrounding Menecles' estate. Apollodorus adopted a close family member, his half-nephew, and his adoption came under legal attack in part because there were some significant irregularities in his admission into the deme. His defense, like that of Menecles, relied in large part on his family's close relationship with Apollodorus and on his close relationships within Apollodorus' phratry and deme. He proved these interpersonal connections by emphasizing informal performative acts, mundane activities like the management of money and his uncle's estate.

The speaker Thrasyllus opened his speech by asserting his adoptive identity based on the official public performances that Apollodorus had carried out. To defend his own adoption, he contrasted adoptions *inter vivos* with testamentary adoptions, claiming that the adoptions by will were more likely to come under attack in court because they were done in private:

(1) Ὡμην μὲν, ὦ ἄνδρες, προσήκειν οὐ τὰς τοιαύτας ἀμφισβητεῖσθαι ποιήσεις, εἴ τις αὐτὸς ζῶν καὶ εὖ φρονῶν ἐποίησατο καὶ ἐπὶ τὰ ἱερὰ ἀγαγὼν εἰς τοὺς συγγενεῖς ἀπέδειξε καὶ εἰς τὰ κοινὰ γραμματεῖα ἐνέγραψεν, ἅπανθ' ὅσα προσῆκεν αὐτὸς ποιήσας, ἀλλ' εἴ τις τελευτήσῃν μέλλων διέθετο, εἴ τι πάθοι, τὴν οὐσίαν ἑτέρῳ καὶ ταῦτ' ἐν γράμμασι κατέθετο παρά τισι σημηνάμενος. (2) Ἐκεῖνον μὲν γὰρ τὸν τρόπον ποιησάμενος φανεράς κατέστησε τὰς αὐτοῦ βουλήσεις, ὅλον τὸ πρᾶγμα

ἐπικυρώσας, δόντων αὐτῷ τῶν νόμων· ὁ δ' ἐν διαθήκαις σημηνάμενος
ἀδήλους ἐποίησε, δι' ὃ πολλοὶ πεπλάσθαι φάσκοντες αὐτὰς ἀμφισβητεῖν ἀξιοῦσι
πρὸς τοὺς ποιηθέντας.

(1) I should think, gentlemen, that such adoptions ought not to be disputed, if [the adopter] himself, while he was alive and being of sound mind performed the adoption, led [his adopted son] to the holy shrines, introduced [him] to his kinsmen and inscribed [his name] on the public registers, all such things as were befitting in an adoption... (2) For in this way the adopter makes his wishes clear, having confirmed everything, with the laws granting him this right; on the other hand, the one who seals up his wishes in a will makes them unclear, on which account many, claiming that the will is a forgery, will deem it right to dispute it with the adopted sons.

In this passage, Thrasyllus neatly summarized the formal and informal performances by which Athenians validated both adoptive and civic identity. Thrasyllus listed Apollodorus' actions in a sequence: in the religious realm, Apollodorus led Thrasyllus to the family shrines; in the political realm, he registered him with his phratry and deme; and outside of these institutions, he introduced him to his relatives. Note, too, that Thrasyllus did not single out any of these performative acts as the most critical to establishing his status as adopted son. Athenians considered *all* of these performances taken together as safeguards against legal attacks on adoptive and civic identity.

Furthermore, as Thrasyllus himself noted, Athenians often attacked testamentary adoptions by claiming that the will was a forgery or did not reflect the true intentions of the estate owner. Litigants could also challenge adoptions by calling the adoptive father's state of mind into question; some common tactics included claiming that the adoptive father was senile, insane, ill, or under the influence of a woman. Apollodorus could best protect Thrasyllus and his estate by ensuring that his state of mind would be unassailable in court, and he did so by undertaking the same actions, in front of the same set of witnesses, by which Athenians established their civic identities.

When Thrasyllus turned to the direct proofs of his identity, he focused particularly on the management of Apollodorus' estate, an informal performance of identity, and the key role it played in his adoption. When his own son died, Apollodorus, depressed, went to his sister and asked her permission to adopt her son Thrasyllus (Isaeus. 7.14).

Thrasyllus recounted,

Οὕτω δ' ἐπείσθη ταῦτα ποιῆσαι διὰ ταχέων ὥστ' εὐθέως με λαβὼν
ᾤχετο ἔχων πρὸς αὐτὸν καὶ πάντα τὰ αὐτοῦ διοικεῖν παρέδωκεν, ὥς αὐτὸς μὲν
οὐδὲν ἂν ἔτι πράττειν τούτων δυνηθείς, ἐμοῦ δὲ ταῦτα πάντα οἴου τε ἐσομένου ποιεῖν.
Καὶ ἐπειδὴ Θαργήλια ἦν, ἤγαγέ με ἐπὶ τοὺς βωμοὺς εἰς τοὺς γεννήτας τε καὶ φράτερας.

And he was so intent on completing this quickly, that straightaway he took me home and entrusted all his affairs to me, on the grounds that he himself was no longer able to do any of these things, and that I was able to do all these things. And when the Thargelia came around, he led me to the altars in front of the members of his *genos* and his phratrymen (Isaeus. 7.15).

According to Thrasyllus' account, he had already taken over the control of Apollodorus' estate before the adoption had taken place. He was effectively acting as Apollodorus' adopted son, living in his home with the old man, tending to him, and caring for his estate, just as his grandfather Archedamus had done when Apollodorus was a child. The informal performance came *before* Apollodorus' official acknowledgement that he had adopted Thrasyllus as his son. This passage indicates that the reality of Thrasyllus' life with Apollodorus validated his later introduction to the *genos* and phratry.

Thrasyllus further argued that other relatives of Apollodorus had recognized his right to inherit his adoptive father's estate. In the present case, Apollodorus' first cousin, the wife of Pronapes, argued that Thrasyllus' adoption was invalid and so claimed the

estate. She had already inherited the estate of her brother, also named Apollodorus, along with her nephew, Thrasybulus (Isaeus. 7.19).¹²² As Thrasyllus argued, if his adoption were really invalid, Thrasybulus also should have joined the wife of Pronapes in her present lawsuit against him:

Οὕτως μὲν οὐχ οἱ γεννῆται μόνον καὶ φράτερες γεγόνασι μάρτυρες τῆς ἐμῆς ποιήσεως, ἀλλὰ καὶ Θρασύβουλος οὐκ ἀμφισβητῶν αὐτὸς ἔργῳ δεδήλωκεν ὅτι τὰ πεπραγμένα Ἀπολλοδώρῳ κυρίως ἔχειν νομίζει καὶ κατὰ τοὺς νόμους· οὐ γὰρ ἂν ποτε τοσούτων χρημάτων οὐκ ἐλάγχανε.

Thus not only are the member of my *genos* and of my phratry witnesses of my adoption, but also Thrasybulus who, by not disputing the estate, himself by his deed made clear that he believes the actions of Apollodorus to be valid and in accordance with the laws. For he would not ever let so great a fortune slip by (Isaeus. 7.26).

Whereas before Thrasyllus stressed the performances of Apollodorus to validate his adoptive identity, in this passage he emphasized Thrasybulus' failure to act. Thrasybulus' choice not to join in the present lawsuit was his tacit admission that Thrasyllus was Apollodorus' rightful heir. Moreover, Thrasyllus listed Thrasybulus' inaction along with the witness testimony of his *gennetai* and phratrymen as equally important proofs of identity. If we were to characterize the Athenian adoption process, and the Athenian identification process as a whole, from this passage, we would conclude that both consisted of a range of performative acts. To protect their adoptive identity, Athenians needed to perform as many of these actions as they could in front as many people as they could muster, preferably their relatives, their phratrymen, and their demesmen. Conversely, we could also note a range of performances *not* carried out and

¹²² The circumstances under which the wife of Pronapes and Thrasybulus inherited the other Apollodorus' state are a bit confusing. For further clarification, see Wyse 1904, 560-563 (Wyse believed that Thrasyllus was telling a blatant lie with this argument); see also Griffith-Williams 2013, 61-68.

find that these failures to act were equally important in establishing both adoptive and civic identity.

In his defense, Thrasyllus also concentrated on his close relationships as informal performances of identity. Thrasyllus relied on his connections within Apollodorus' *genos*, phratry, and deme to overcome some distinct irregularities in his admission into these key identifying groups. For one thing, Apollodorus introduced Thrasyllus to his phratrymen during the Thargelia, while the Apatouria traditionally was the phratry festival at which new members were admitted.¹²³ Thrasyllus was able to gloss over this deviation from tradition by stressing Apollodorus' and his own intimate connections with the members of their *genos* and phratry:

καὶ τῶν φρατόρων τε καὶ γεννητῶν ἐκείνῳ οὐκ ἀπιστούντων ἐμέ τε οὐκ ἀγνοούντων, ὅτι ἦν ἐξ ἀδελφῆς αὐτοῦ γεγονώς, ἐγγράφουσί με εἰς τὸ κοινὸν γραμματεῖον ψηφισάμενοι πάντες, ἐπιθέντος ἐκείνου τὴν πίστιν καθ' ἱερῶν.

Since [Apollodorus'] phratrymen and the members of his *genos* did not distrust me and were not ignorant that I was the son of his sister, they inscribed my name onto the public register, all of them having voted, after [Apollodorus] had pledged on the sacrificial victims (Isaeus. 7.17).

The phratrymen not only recognized Thrasyllus as Apollodorus' heir, but they were familiar with him, his family, and their connections to Apollodorus wholly apart from the adoption proceedings. The members of the *genos* and phratry performed this ritual—Apollodorus swearing on the sacrificial animal and the members voting Thrasyllus into their ranks—as an acknowledgement of his relationship with his adoptive father. As Thrasyllus argued, that the phratrymen knew the reality of his life together with Apollodorus was more important than the ritual itself. Whether the ceremony took place

¹²³ For an excellent discussion of the Apatouria festival, see Lambert 1993, 144-161.

at the Thargelia or at the Apatouria little mattered; his intimate connections with the members of his *genos* and phratry constituted powerful informal performances of identity.

As I noted in the introduction to this chapter, Thrasyllus' description of his admittance into Apollodorus' deme revealed other serious irregularities in his adoption. After Apollodorus introduced him into his familial phratry, Thrasyllus was forced to travel to Delphi for the Pythiad festival. Apollodorus, perhaps sensing that he was near death, met with his demesmen, informed them that he had adopted a son, and instructed them to enroll him in the deme if he died before Thrasyllus returned (Isaeus. 7.27-28). Apollodorus realized that he could best safeguard Thrasyllus' identity as his adopted son by taking advantage of his personal ties within his deme. Just as in his description of his enrollment into his *genos* and phratry, Thrasyllus here stressed that the demesmen carried out their rituals as an acknowledgment of their personal relationships with one another. It little mattered that Apollodorus was not at the annual meeting to admit Thrasyllus; the demesmen's personal relationship with both men constituted the most powerful performative act. That the demesmen enrolled him despite both Apollodorus' death and over the objections of his opponents at the annual deme assembly would also serve as compelling evidence that Thrasyllus was Apollodorus' rightful heir.

As in the case of Menecles' son, Thrasyllus presented proofs of his adoptive identity that closely align with evidence offered by litigants defending their civic identity. Like Thrasyllus, Euxitheus in Demosthenes' *Against Eubulides* stressed that his relatives had acknowledged his right to inherit his father's estate as key evidence in his case (Dem.

57.19). Furthermore, both Thrasyllus and the speaker in Isaeus' *On the Estate of Euphiletus* referred to Athenian greed to strengthen their defense. Both men argued that no Athenian citizen would fail to lay claim to a valuable property or devalue his own inheritance by claiming another person as an heir (Isaeus. 12.4). Lastly, Apollodorus' intimate relationship with his phratrymen and demesmen closely mirrors the portrait of these key identifying groups presented by the speaker in Lysias' *Against Pancleon*. In Lysias' work, the speaker argued that Pancleon could not be a citizen because he had no personal connections within any of these organizations (Lys. 23.3). In contrast, Thrasyllus' description of Apollodorus' interactions with the members of his deme exemplifies the ideal relationship of an Athenian with the members of these key identifying groups. Just as if he were defending his family's civic identity, Apollodorus leveraged his connections within these institutions to protect his own interests and those of his adopted son.

Although modern scholars have characterized adoption as a private contract between adoptive father or as a process meant solely to designate an heir to a property, Thrasyllus' account of his own adoption suggests otherwise. Apollodorus' adoption of Thrasyllus was not unilateral. Both father and son needed to undertake a series of performances, in the political and religious realms and outside of them, to safeguard their identity in case the adoption was questioned in court. Furthermore, they needed to complete these actions in front of witnesses, most especially their relatives and the members of their *genos*, phratry, and deme. Lastly, by law Thrasyllus could only be considered Apollodorus' son if these key identifying groups recognized the validity of the

adoption. In short, the procedures by which Athenians confirmed adoptions were exactly the same as the methods by which they established citizenship. Any study of legal cases centering on citizenship should also take into account speeches that concentrated on adoption.

Conclusion

In this chapter, I have argued that Athenian adoption involved the same processes that Athenians used to establish their civic identities. To view adoption as a private matter between the adoptive parent and child ignores the considerable evidence from key legal cases of the public nature of the institution. Adoptive identity, just as citizenship, required the recognition of the community. These cases also indicate that Athenians believed that the state had a vested interest in adoptions. As Thrasyllus himself argued, Apollodorus and he were exemplary citizens. Apollodorus never made any attempts to hide his wealth but gladly paid taxes to the state. The older man also performed his liturgies exceptionally well and won accolades when he sponsored a chorus (Isaeus. 7.40). Thrasyllus himself acted as a gymnasiarch (Isaeus. 7.36) and carried out his military service as a member of Apollodorus' tribe (Isaeus. 7.41). He contrasted his own public spirit and that of Apollodorus with the greed of his opponents, claiming:

Καὶ ἐκείνων οὖν ἕνεκα καὶ ἡμῶν εἰκότως ἂν ποιήσαισθε πρόνοιαν, ἄλλως τε καὶ τούτων μὲν τριηραρχοῦντα οἶκον πέντε ταλάντων ἀνηρηκότων καὶ πεπρακότων καὶ ἔρημον πεποιηκότων, ἡμῶν δὲ καὶ λελητουργηκότων ἤδη καὶ λητουργησόντων, ἐὰν ὑμεῖς ἐπικυρώσητε τὴν Ἀπολλοδώρου γνώμην ἀποδόντες ἡμῖν τοῦτον τὸν κλῆρον.

And accordingly for the sake of those men [our family] and for our sake fittingly you should take thought, especially since these men [my opponents] have snatched up, sold off, and left desolate [ie. without an heir] an estate which supported a trierarchy worth five talents, while we have already performed

liturgies and will perform liturgies [in the future], if you ratify the decision of Apollodorus by granting us his estate (Isaeus. 7.42).

In this passage, Thrasyllus painted a complicated portrait of the responsibilities of all the parties involved in the adoption process. As he argued, Apollodorus as an estate owner had an obligation to ensure that his heirs would continue to use his property to benefit the state as a whole. Accordingly, the older man could not leave his property to the wife of Pronapes and her representatives, since they had already squandered another property and so deprived the Athenian population of key services. Furthermore, adopted children were required to use their wealth to the state's advantage, as described above. Lastly, the Athenian jurors had a responsibility to block the claims of litigants who only sought to enrich themselves by asserting ownership of valuable estates and to ensure that the true wishes of adoptive fathers were respected.

It was no coincidence that Thrasyllus linked the duties of adopted children with the duties of citizens, since adoption was an integral part of the Athenian identification process as a whole. It allowed childless Athenians to safeguard their estates and ensure that their heirs would continue to serve the state. Through adoption, citizens could also guarantee that their heirs would continue to carry out the cult duties of the household and complete the funeral rites for their adoptive fathers. Finally, adoption was an institution that played out not just in the political and religious aspects of Athenian life but in daily activities as well. As the cases of Menecles and Apollodorus illustrate, the intimate relationship and routine interactions between adoptive father and son were key components of the adoption process. Menecles' adopted son stressed that he and his wife loved Menecles and cared for him as he aged; he even named his young son for

Meneclēs. Thrasyllus also described his close connection with Apollodorus and the trust which the old man placed in him when he gave him control over his estate. Importantly, these were relationships which played out in front of key identifying groups like the phratry and deme, and both speakers claimed their intimate connections within these groups as key proofs of their adoptive identities. Their struggles to prove their adoptive identities in court are indicative of the challenges that Athenians as a whole encountered in negotiating their citizen identities during their lifetimes and even after death.

CHAPTER IV

Neaira and Phano: Attacks on Women's Citizenship in Classical Athens

Introduction

καὶ γὰρ εἰ ταπεινὸν ἢ τιθή, τὴν ἀλήθειαν οὐ φεύγω· οὐ γὰρ εἰ πένητες ἤμεν, ἡδίκηκαμεν, ἀλλ' εἰ μὴ πολῖται· οὐδὲ περὶ τύχης οὐδὲ περὶ χρημάτων ἡμῖν ἐστὶν ὁ παρὼν ἀγὼν, ἀλλ' ὑπὲρ γένους. πολλὰ δουρικὰ καὶ ταπεινὰ πράγματα τοὺς ἐλευθέρους ἢ πενία βιάζεται ποιεῖν, ἐφ' οἷς ἐλεοῖντ' ἄν, ὃ ἄνδρες Ἀθηναῖοι, δικαιοτέρον ἢ προσαπολλύοιντο. ὥς γὰρ ἐγὼ ἀκούω, πολλαὶ καὶ τιθαὶ καὶ ἔριθοι καὶ τρυγήτριαι γεγόνασιν ὑπὸ τῶν τῆς πόλεως κατ' ἐκείνους τοὺς χρόνους συμφορῶν ἀσταὶ γυναῖκες, πολλαὶ δ' ἐκ πενήτων πλούσιαι νῦν.

For even if a nurse is a lowly thing, I shall not flee the truth; for we would be doing wrong, not if we were poor, but if we were not citizens. Nor even is the present trial concerning our fortune nor our money but our descent. Poverty forces free people to do many slavish and lowly tasks, for which they should be pitied, gentlemen, more justly than they should be utterly destroyed. For as I hear, many citizen wives became nurses and spinsters and vineyard workers because of the misfortunes of the city in those times, and many who were poor then are rich now (Dem. 57.45).

In *Against Eubulides*, the speaker Euxitheus, defending himself against a charge of ξενία, devoted a large portion of his speech to establishing his mother's citizen status. Although Euxitheus proclaimed that his family's wealth and fortune had no bearing on a lawsuit centered on his descent, he did feel compelled to respond to Eubulides' accusations that his mother sold ribbons in the marketplace and worked as a wet-nurse, occupations apparently associated with non-citizens (Dem. 57.34-35). Eubulides' allegations demonstrate that the Athenians considered daily activities and work history as potent proofs of women's civic identities. As Euxitheus himself acknowledged, Athenian jurors deemed certain occupations "slavish and lowly," and if citizen-wives engaged in

these activities, they were actually putting their status, and the status of their children, at risk. Modern scholars often note that it was not technically illegal for citizen-women to work outside the home (and indeed, Euxitheus made this exact point), but nevertheless, this kind of attack, which was not uncommon, seemed to carry great weight with an Athenian jury.

In Attic oratory, perhaps the best model of a woman attacked for her daily activities and work history would be Neaira, the infamous prostitute against whom Theomnestus (aided by his brother-in-law, the orator Apollodorus) brought a charge of *ξενία* as an indirect attack against his political enemy, Stephanus. To attack Neaira and prove that she was living illegally as an Athenian citizen, Apollodorus devoted much of his supporting speech to Neaira's work history as a prostitute who lived in Corinth, Megara, and Athens. Furthermore, Apollodorus attacked Phano, Neaira's alleged daughter, based on her daily activities, which he believed were proofs of her non-citizen identity.

In legal speeches, orators such as Apollodorus often cited everyday activities as proofs of women's identities. For example, Apollodorus proved Neaira's alien status by providing witnesses that she had dined and drunk openly with men, behaviors associated with prostitutes. These were everyday activities which fall into the second category of informal performances I discussed in my introduction. Furthermore, Apollodorus pointed to other performative acts in which Neaira and her family engaged with formal institutions outside of typical political performances. For example, Apollodorus argued that Stephanus' failure to recover Phano's dowry from her first husband served as proof

that Phano was illegitimate. He also emphasized Phano's treatment by her male relatives and their reluctance to defend her in court on numerous occasions as proof that she and her son were non-citizens. These performative acts fall under the first category of everyday performances I discussed in my introduction. Both types of performances were crucial to determining women's identities and the identities of their male relatives. Although they did not enjoy political power, women in many ways were central to the Athenian identification process.

In this chapter, I focus on both Neaira and Phano in arguing that women's daily activities were indices of their civic identities. Conversely, their failure to carry out everyday duties or aberrant behavior could be taken as proof that they were non-citizens. Furthermore, Athenian women were forced to rely on their male relatives to carry out certain actions, often in political and religious settings, to establish their civic identities. If the male relatives failed to carry out expected rituals or traditions, they, like their female relatives, could be vulnerable to attacks in court. Ultimately, I argue that Apollodorus' attacks against Neaira and Phano demonstrate that Athenian families—fathers, mothers, sons, daughters—essentially shared one civic identity. If a mother's or daughter's civic identity was cast into doubt, even on the basis of daily activities that fell outside the political and the religious spheres, the status of the entire family could be threatened.

In this chapter, first I examine the scholarship on women's social status, since modern scholars have often debated whether we can even consider Athenian women citizens. Having established that the Athenians did have a clear conception of women's

civic identity, I will move on to scholarship that focuses on the methods available to Athenian citizen-women to establish their identities within their communities. Then in an examination of idealized portraits of Athenian citizen women, I describe the everyday activities by which Athenians affirmed women's status. After that, I use the speech featuring Neaira and Phano to argue that Apollodorus' proofs of the women's non-citizen status exemplify the categories of evidence by which women proved their identities in Classical Athenian courts. Finally, I will demonstrate that women's status as citizens (or non-citizens) was crucial to the civic identity and standing of the family as a whole.

Scholarship on the citizen status of women

Litigants like Euxitheus in *Against Eubulides* clearly considered it crucial to establish their mothers' civic identities as proof of their own civic status in court. Euxitheus even laid out his mother's descent from Damostratus of Melite and called his relatives to testify to her identity, completely separate from his proofs for his father's descent (Dem.57.37). It seems surprising then that modern scholars, unable to maintain a consistent definition of Athenian citizenship, have continued to debate whether women were citizens in Classical Athens.¹²⁴

Modern scholars have often struggled to include women in their definition of citizenship.¹²⁵ They will often acknowledge that legislation like Pericles' Citizenship Law of 451/0 BCE and texts like the *Constitution of the Athenians* indicate that the Athenians

¹²⁴ For a good summary of this scholarship, see Osborne 2011, 91.

¹²⁵ See also Finley 1981; Todd 1993; Walter 1993; Manville 1990; Cartledge 2000; Hall 2007; Ober 2009; Rhodes 2009.

considered women citizens, but they struggle to implement this idea throughout their arguments. For example, in his classic textbook, Mogens Hansen initially adopted a gender-neutral definition of Athenian citizenship: “At Athens, in the fourth century at any rate, a citizen could be defined as someone whose parents were Athenian citizens.”¹²⁶ Like many other modern scholars, however, Hansen conceptualized the Greek *polis* and the people who lived within it as a strictly political enterprise in which women could not take part.¹²⁷ Hansen focused on political rights as the defining privilege of citizenship. He argued that these rights “were more than just a ‘privilege’: they constituted ‘the essence of citizenship’.”¹²⁸ Hansen thus departed from his original inclusive definition of the citizen body and focused instead on the exclusionary nature of Athenian citizenship. He contrasted the full rights enjoyed by adult male citizens with the limited rights of metics and slaves.¹²⁹ Furthermore, in his consideration of the rights and duties of citizenship, Hansen made no further mention of female citizens, presumably because they lacked what he termed “the essence of citizenship”.

Hansen, with his inconsistent view of Athenian citizenship, was not alone in being unable to reconcile the role that female citizens played in the *polis* with their non-participation in democratic institutions. Philip Manville also initially provided a gender-neutral definition of citizenship: “To be an Athenian citizen, as an Athenian himself might

¹²⁶ Hansen 1991, 94.

¹²⁷ See Osborne 2011, 91.

¹²⁸ See Hansen 1991, 97.

¹²⁹ Josiah Ober, too, focused on the exclusionary nature of citizenship in his consideration of the citizen body as the Athenian “in-group” which stood in opposition to foreigners and slaves, the “out-group.” See Ober 2009, 261.

say, was to be someone who *metechei tes poleos*: someone who shares in the *polis*.”¹³⁰

Manville was then quick to exclude women from the citizen body, closely following Aristotle’s definition of citizenship in the *Constitution of the Athenians*—that citizens were males who had reached the age of eighteen ([Arist]. Ath.Pol.42.1). Also like Hansen, Manville viewed the question of Athenian citizenship through Aristotle’s lens in the *Politics*, one that focused almost exclusively on the role of citizens within the political realm. Manville, however, did go so far as to acknowledge that “other Athenian groups, women and children, deserve a brief mention because of their ambiguous position in the society.”¹³¹ He conceded, for example, that women held an interest in the state through their male children, who would become citizens.¹³²

Josine Blok offers key critiques of these earlier views of Athenian citizenship. Blok criticizes scholars who have centered their definitions of citizenship around Aristotle’s *Politics* and the *Constitution of the Athenians*, since this focus limits their work to only the political aspects of citizenship. In her definition of citizenship, Blok focuses not on the old Aristotelian standbys but on Demosthenes’ *Against Eubulides*.¹³³ As Blok argues, the speaker Euxitheus emphasized not the political offices that he had held but the local cults in which both he and his father were involved. In Blok’s estimation, the Athenians defined citizenship not by the holding of political office but by

¹³⁰ See Manville 1990, 6-7. Josine Blok later criticized Manville in this definition, pointing out that Athenians also described female citizens as “sharing in the *polis*.” See Blok 2017, 33 n. 94.

¹³¹ Manville 1990, 12-13.

¹³² P.J. Rhodes held a similar opinion: see Rhodes 2009, 60. See also Finley 1981 and Todd 1993.

¹³³ See especially Blok 2017, 1-43.

participation in the state religion and local cult. Blok thus considers Athenian women full citizens because they could freely participate in the religious institutions of the state.

Blok also draws attention to a third vein of scholarship whose adherents have generally not gained traction with traditionalists. This third group of scholars, who have most influenced my arguments in this chapter, seeks to answer the key question: how could women be considered citizens in Classical Athens if they did not participate in the governing of the state? In a 1995 article, Christiane Sourvinou-Inwood argued that women did not act as a complement to and an equal of men within the space of the household but were subordinate to men.¹³⁴ She believed that women's position in the household mirrored their positions in the legal and political spheres. Sourvinou-Inwood further asserted that only in the state religion and local cults did women play an equal and complementary role to their male counterparts. Long before Blok, Sourvinou-Inwood considered women's participation in religious cults a crucial means of establishing their citizen identity.¹³⁵

Cynthia Patterson has further considered Athenians' perceptions of female citizenship in the Athenian law courts in her examination of *Against Neaira*.¹³⁶ Patterson argued that Apollodorus purposefully linked the private with the public realm in his depiction of Neaira and Phano as conniving women who manipulated men like Stephanus, Phrastor, and Theogenes to gain access to the citizen body. In Patterson's

¹³⁴ See Sourvinou-Inwood 1995, 111-120.

¹³⁵ See also Cohen 2002, 46-48, where Cohen emphasizes the crucial role which Athenian citizen-women played in state and local cults.

¹³⁶ Patterson 1994, 199-216.

estimation, Apollodorus placed legitimate marriage at the center of the Athenian civic ideology of the fourth century BCE. Patterson's arguments are significant to my own in two ways: first because she acknowledged that the Athenians had a clear conception of female citizenship as seen through Apollodorus' negative depiction of Neaira and Phano as absurd caricatures of Athenian citizen-wives; second, because Patterson recognized that the Athenians considered everyday behaviors crucial to establishing citizen identity.

In a departure from previous scholars, Adele Scafuro began her seminal article with the assumption that women were citizens. She instead focused on the methods by which women established their citizenship given their non-participation in political institutions. Scafuro argued that an Athenian woman established and proved her civic identity "by witnesses to her descent at kin and communal events and by participation in some of those events."¹³⁷ Scafuro's arguments are significant to my own work because she recognized that, like men, women needed to establish their identities throughout their lives in multiple communal events and not only in a religious context. Furthermore, Scafuro observed that women often relied on their male relatives to participate in these communal events on their behalf.

In this chapter, I build on this third vein of scholarship in particular in my own consideration of women's citizenship in Classical Athens. Like Sourvinou-Inwood and Blok, I consider Athenian women to be citizens whose participation in religious cults served as a potent proof of their citizen identity, but not the only or most important proof.

¹³⁷ Scafuro 1994, 162. See also Cohen 2002, 38-39. See also Blok 2017, 41-43; Josine Blok built on Scafuro's arguments and claimed convincingly that women often took prominent roles in the celebration of public sacrifices or other religious ceremonies reserved for ἄσται. As I wrote above, to Blok, a woman's participation in the state religion and local cults constituted her citizen identity.

Here I argue that Athenians considered observed activities of daily life as equally important proofs of both citizen and non-citizen status, especially for female citizens who could not participate in key identifying institutions like the deme and phratry. In the next section, I support my argument by demonstrating the prevalence of quotidian activities as evidence litigants offered in court to both prove and disprove women's civic status.

The ideal woman: Xenophon's wife

In the past thirty years, scholars have cast some doubt on the traditional depiction of Athenian women as confined in the home and barred from participation in social, political, and economic institutions. For example, David Cohen has argued convincingly that the ideological portrait of the citizen-wife presented in drama and oratory differed greatly from reality. He noted that Athenian women worked in agriculture and wet-nursing, actively participated in state and local religious festivals, and regularly visited friends and neighbors.¹³⁸ In Cohen's view, the women in Aristophanes' comedies, women who actively engaged in their communities, are more representative of the realities of Athenian life than Xenophon's meek wife who was kept indoors in his *Oeconomicus*, to name one example.¹³⁹

The recognition that Athenian women played a more active role in Athenian society than originally thought should not, however, minimize the complexity and precariousness of their citizenship status. For all of his insights, Cohen passed over the

¹³⁸ See D. Cohen 1989, 3-15.

¹³⁹ See D. Cohen 1989, 8. See also: Cohen 2002, 30-48.

dangers that Athenian citizen-women could face when they deviated from societal norms. For example, to demonstrate the variety of professions that Athenian women could take up, Cohen cited two passages from Demosthenes' *Against Eubulides*, in which Euxitheus described his mother's work as a ribbon-seller and a wet-nurse (Dem. 57.30-31).¹⁴⁰ Yet he overlooked that the prosecutor Eubulides treated this work history as proof of this woman's non-citizen status. By crossing the threshold of the home into the marketplace, Euxitheus' mother not only jeopardized her own civic identity but also her son's. In this section, I examine the ideological portraits of the ideal Athenian citizen-wife whose domain was the home and whose master was her husband, and the dangerous depictions of non-citizen women who worked outside the home and dominated their husbands and lovers.

Scholars like Adele Scafuro and Josine Blok have described in detail the communal events in which Athenian women participated to establish their citizen status. As Scafuro noted, when a citizen had a daughter, he would acknowledge her legitimacy at the purification rituals (ἀμφοιδρόμια) performed after her birth and on her name-giving day (celebrated on the seventh or tenth day after her birth).¹⁴¹ When a citizen gave his daughter in marriage, her husband's phratrymen would celebrate the occasion at the wedding feast (γάμηλία).¹⁴² When the daughter's own children were married to other

¹⁴⁰ See D. Cohen 1989, 7.

¹⁴¹ See Scafuro 1994, 162-164. See also Isaeus 3.30: Xenocles claimed the estate of Pyrrhus on behalf of his wife, Phile, whom he claimed was Pyrrhus' child. He called as witnesses her uncles, who testified that they were present at her ten-day naming ceremony (Isaeus. 3.30).

¹⁴² See Dem. 30.21; Dem. 57.54; Isaeus. 8.19.

Athenian citizens, and when her sons were admitted into their father's *genos*, phratry and deme, these events too would serve as proof of her citizen identity.¹⁴³ Blok has also catalogued the numerous festivals in which Athenian women played crucial roles, most notably the Thesmophoria.¹⁴⁴

Perhaps Xenophon described the daily activities which ideal Athenian citizen-wives were expected to perform in the home most succinctly in his *Oeconomicus*:

(35) Δεήσει μέντοι σε, ἔφην ἐγώ, ἔνδον τε μένειν καὶ οἷς μὲν ἂν ἔξω τὸ ἔργον ἢ τῶν οἰκετῶν, τούτους συνεκπέμπειν, οἷς δ' (36) ἂν ἔνδον ἔργον ἐργαστέον, τούτων σοι ἐπιστατητέον, καὶ τὰ τε εἰσφερόμενα ἀποδεκτέον καὶ ἃ μὲν ἂν αὐτῶν δέῃ δαπανᾶν σοὶ διανεμητέον, ἃ δ' ἂν περιττεύειν δέῃ, προνοητέον καὶ φυλακτέον ὅπως μὴ ἢ εἰς τὸν ἐνιαυτὸν κειμένη δαπάνη εἰς τὸν μῆνα δαπανᾶται. καὶ ὅταν ἔρια εἰσενεχθῇ σοι, ἐπιμελητέον ὅπως οἷς δεῖ ἱμάτια γίγνηται. καὶ ὃ γε ξηρὸς σῖτος ὅπως καλῶς ἐδώδιμος γίγνηται ἐπιμελητέον.

(35) You will need to remain indoors, I said, and to send out those of the servants whose work is outdoors, (36) and you must manage those who must work indoors, and you must receive the things that have come [into the household], and you must distribute those things that must be spent, and you must watch over those things that need to be put away and guard them so that the sum that has been laid away for the year is not spent in a month. And when wool is brought in to you, you must see to it that cloaks are made for those who need them. And you must take care that the dry corn is in a good edible condition (Xen. Oec.7.35-36).

Generally, when Classical scholars have examined this passage, they consider Xenophon's orders a reflection of the standards of Athenian society: a woman was kept cloistered, her duty to remain in the household and manage it discreetly and efficiently in partnership with her husband. I would argue, however, that Xenophon has given a detailed description of the ideal work history for an Athenian housewife, a work history that in large part defined her identity. The tasks that a wife undertook, managing the household stores and supervising the maids when they spun wool and weaved cloaks,

¹⁴³ See Dem. 59.59: Conversely, the rejection of Phano's son by her husband Phrastor's *genos* is taken as proof of her illegitimacy.

¹⁴⁴ See Blok 2017, 204-206. See also Isaeus. 8.20.

were not simply mundane chores—they were also the critical performances she needed to carry out to maintain her status in society.

Numerous ancient authors described the boundary between the household and the outside world which only men were empowered to cross without fear of retribution. The ideal citizen-woman, whether wife or daughter, was expected to remain in the home. For example, in a number of his tragedies, Euripides portrayed women as apologizing for leaving the house because women were expected to remain indoors.¹⁴⁵ Even within the household, the citizen-wife respected the boundaries laid down by her husband. Often, women had their own quarters within the home.¹⁴⁶ When her husband had guests over or even held symposia, the citizen-wife might help prepare for the gathering but then retire to these rooms.¹⁴⁷

The model citizen-wife was also defined by her relationships with her male relatives, particularly her husband. Both wife and husband had specific performances that they needed to carry out in their marriage. The citizen-wife tended the home and obeyed the husband, who gave orders and took reasonable measures to control his spouse's behavior. Consider Lysias' *On the Murder of Eratosthenes*, in which the speaker Euphiletus depicted his adulterous wife as the consummate actress who perfectly mimicked the conduct of the ideal citizen-wife. He painted a perfect picture of his marriage—his wife was a frugal housekeeper (Lys. 1.7); she took care of their child by

¹⁴⁵ See Eur. Tr.645; Eur. Heracl.474; Eur. Andr.943; Eur. Or.108; Eur. El.343.

¹⁴⁶ See Lys. 1.9.

¹⁴⁷ See Ar. Lys.130-134, 1060-1071; Pl. Symp.176e.

breastfeeding it and tending to it when it cried (Lys. 1.9); she acted pleased when her husband returned from the country to the house (Lys. 1.12). Even when Euphiletus described an argument with his wife during which he ordered her downstairs to care for their child, he noted that she complied as a good citizen-wife should (Lys. 1.13). He declared, “I was so foolish that I thought my wife was the most chaste of all the wives in the city.”¹⁴⁸ Euphiletus accounted for his own failure to recognize his wife’s affair by pointing to her behavior. How could he suspect anything of her, when she seemed a paragon of wifely virtues?

The ideal citizen-wife was also defined by her relationships with other men, or rather, her lack of relationships with men outside her immediate family. Women were not allowed to socialize with men outside their family, and societal standards dictated that male visitors not call on a household without the man of house being present. In Lysias’ *Against Simon*, the speaker claimed, “My sister and nieces...have lived such orderly lives that they feel shame to be seen even by their male relatives” (Lys. 3.6).¹⁴⁹ In another fragmentary speech of Lysias, *Against Diogeiton*, the unnamed speaker described a mother’s hesitance to speak in front of her male relatives even to defend her two sons who stood to lose their inheritance:

εἰποῦσα ὅτι, εἰ καὶ μὴ πρότερον εἴθισται λέγειν ἐν ἀνδράσι, τὸ μέγεθος αὐτὴν ἀναγκάσει τῶν συμφορῶν περὶ τῶν σφετέρων κακῶν δηλῶσαι πάντα πρὸς ἡμᾶς.

¹⁴⁸ Lys. 1.10. The Greek reads: ἀλλ’ οὕτως ἡλιθίως διεκείμην, ὥστε ὄμην τὴν ἑαυτοῦ γυναῖκα πασῶν σωφρονεστάτην εἶναι τῶν ἐν τῇ πόλει.

¹⁴⁹ The full Greek reads: πυθόμενος γὰρ ὅτι τὸ μεράκιον ἦν παρ’ ἐμοί, ἐλθὼν ἐπὶ τὴν οἰκίαν τὴν ἐμὴν νύκτωρ μεθύων, ἐκκόψας τὰς θύρας εἰσῆλθεν εἰς τὴν γυναικωνῖτιν, ἔνδον οὐσῶν τῆς τε ἀδελφῆς τῆς ἐμῆς καὶ τῶν ἀδελφιδῶν, αἱ οὕτω κοσμίως βεβιώκασιν ὥστε καὶ ὑπὸ τῶν οἰκείων ὀρώμεναι αἰσχύνεσθαι.

She said that, even if she were not accustomed to speak among men before [this occasion], the magnitude of their misfortunes would force her to make all of their evils clear to us (Lys. 32.11).

In the speaker's estimation, only the greatest danger to her children would compel the ideal citizen-wife to break her silence and speak out among a group of men, even if they were friends and relatives.

As we will see, Apollodorus played on Athenian civic ideology surrounding marriage and the portrait of the ideal citizen-wife in his prosecution of Neaira. Again and again, he depicted Neaira and her daughter Phano as disregarding the societal norms that controlled women's behavior. In Apollodorus' narrative, Neaira, born a slave, worked as a prostitute traveling through Corinth, Megara, and Athens, shattering the stereotype of the Athenian wife who managed the household and kept indoors. She kept company with strange men, drinking and dining with them late into the night, actions that would horrify the meek ladies depicted in Lysias' speeches. Neaira's daughter Phano later behaved so deplorably to her first husband that he divorced her on the grounds that no good citizen-wife would act in such a manner. Thus, Apollodorus' narrative highlights the dangers that women could encounter if their everyday behavior failed to conform to the standards of Athenian society.

Neaira

Although scholars, writers, and translators have taken different approaches to *Against Neaira*, they all generally agree about the extraordinary nature of the speech.¹⁵⁰ From a legal perspective, the speech is the sole surviving prosecution on the charge of ξενία, and it is one of two surviving speeches that prosecutes a woman (the other being Antiphon's *Against the Stepmother*). Furthermore, the laws restricting marriages between aliens and Athenian citizens (both male and female) survive only as quoted in *Against Neaira*. From a social perspective, the content of the speech also provides some extraordinary details about the lives of ἑταίραι (prostitutes) in both Athens and other city-states. Apollodorus' arguments, especially those on Phano, also give modern scholars a clear picture of the social and religious roles that Athenian citizen women were expected to fill.

Scholars who studied *Against Neaira* in the early twentieth century concentrated on what they considered Apollodorus' "real motive" for bringing his prosecution.¹⁵¹ For example, Macurdy dated the speech to 340 BCE and argued that Apollodorus, allied with Demosthenes, planned to propose that the Athenians divert the Theoric fund to the war effort against the Macedonians. Apollodorus brought the suit against Neaira to disenfranchise her lover Stephanus, his old political enemy, and remove him from the political scene, so that he could not stand against Apollodorus and Demosthenes. In

¹⁵⁰ See Macurdy 1942, 269-270; Hansen 1976; Carey 1991; Carey 1992; Trevett 1992, especially chapter 3; Patterson 1994; Kapparis 1999, 1-2; Hamel 2003; Glazebrook 2005, 161; Bakewell 2008/2009. Although Kapparis' commentary has proven tremendously helpful in writing this study, I have chosen not to discuss it in my survey of scholarship on *Against Neaira*. In my view, Kapparis' work is a synthesis of materials relevant to Neaira rather than an argumentative study.

¹⁵¹ Macurdy 1942, 258. See also Hansen 1976 for a discussion of the Theoric fund in *Against Neaira*.

Macurdy's interpretation, "[Neaira] is really of no importance in the case except for the purpose of discrediting Stephanus."¹⁵² Macurdy dismissed Apollodorus' arguments against Neaira almost entirely by claiming that he had proven Neaira a prostitute but not an alien, since it was not illegal for women citizens to work as prostitutes.¹⁵³ In her cursory examination of the attacks against Neaira, Macurdy overlooked that Apollodorus played on Athenian prejudices and relied on extra-legal proofs of identity in his depiction of Neaira and her daughter Phano.

In more recent scholarship, Patterson has considered *Against Neaira* as a representation of Athenian civic ideology. As Patterson argues, Apollodorus drew on the ideology of the Athenian family and household to portray Neaira and her (alleged) daughter Phano as pernicious women who usurped the rights of citizenship and so threatened Athenian societal norms.¹⁵⁴ Patterson's work has perhaps most influenced my own study of *Against Neaira*. She has repeatedly argued that the Athenians considered women full citizens and not simply place markers by whom Athenian men could beget legitimate sons.¹⁵⁵ Patterson has also argued that the Athenian family and interpersonal relationships defined citizenship at least in part. Although Patterson has done much to advance the study of Athenian women's civic identities, in her article on *Against Neaira*,

¹⁵² Macurdy 1942, 268. Phano is even less important in Macurdy's arguments—she appears three times in the article.

¹⁵³ Macurdy 1942, 267.

¹⁵⁴ Patterson 1994, 199-200.

¹⁵⁵ I also discussed this above. See Patterson 1994, 201-203. See also Patterson 1987, where Patterson discusses the terminology for women citizens.

she completely passes over Apollodorus' accusations against Neaira and does not consider the informal performances to which he pointed to prove Neaira an alien.¹⁵⁶

Most recently, Glazebrook has placed Apollodorus' depiction of Neaira in the wider context of Attic oratory. She argues that Apollodorus exploited common stereotypes of alien women and prostitutes to render Neaira completely despicable to the Athenian jurors. Most in line with my own work, Glazebrook considers Neaira almost a stock character in Athenian legal speeches and compares her portrayal with the characterizations of women like Phile's mother in Isaeus' *On the Estate of Ciron* (3), Alce in Isaeus' *On the Estate of Philoctemon* (6), Olympiodorus' unnamed companion in Demosthenes' *Against Olympiodorus* (48), and Plangon in *Against Boeotus I and II* (39 and 40). Like researchers before her, however, Glazebrook considers Apollodorus' accusations as titillating stories meant to scandalize his Athenian audience rather than as serious legal arguments that he supported with proofs of Neaira's identity.¹⁵⁷

In modern studies of *Against Neaira*, scholars have generally dismissed Apollodorus' attacks against Neaira and Phano, because he relied in large part on extra-legal proofs and informal performances of identity to establish the status of both women. Here I take an altogether different approach. Drawing on the themes I have already established in the foregoing chapters, I consider Apollodorus' arguments against Neaira and Phano as serious attacks supported by informal proofs of their identity that Athenian jurors would nevertheless find compelling. As with Apollodorus' argument against

¹⁵⁶ She claims that "the details of Neaira's legal and social status or of earlier litigation concerning that status are outside of the scope of this essay." See Patterson 1994, 207.

¹⁵⁷ See Glazebrook 2005, 163-164.

Neaira, Athenian litigants commonly discredited women by claiming that they were non-citizens.¹⁵⁸ They often based their arguments on the everyday activities of these women and their male relatives, particularly if the women had engaged in aberrant behavior. Furthermore, as Apollodorus argued against Phano, litigants often emphasized women's relationships with their male relatives, especially if the women had exercised undue influence over men (as in inheritance cases), or if men failed to protect their female relatives in court. Thus the speech against Neaira lays out categories of evidence that were commonly used to prove that a woman was a non-citizen.

To begin: in his case against Neaira, Apollodorus (acting as advocate for Theomnestus) had to prove two central points: first, that Neaira was a non-citizen, and second, that she had been living as a citizen-wife with Stephanus against the laws of Athens. Here I consider Neaira's status as a slave and prostitute in full detail, since Apollodorus was attempting to prove that Neaira was an alien by following established legal categories that centered on women's behavior in everyday life.

We can gain a richer understanding of the prosecution against Neaira by examining once more Euxitheus' defense of his mother in *Against Eubulides*. I believe Euxitheus' arguments concerning his mother's status best exemplify the proofs of identity by which Athenians could establish women's civic identities in court:

ἀλλ' εἰ μὲν ξένη ἦν, τὰ τέλη ἐξετάσαντας τὰ ἐν τῇ ἀγορᾷ, εἰ ξενικὰ ἐτέλει, καὶ ποδαπὴ ἦν ἐπιδεικνύοντας· εἰ δὲ δούλη, μάλιστα μὲν τὸν πριάμενον, εἰ δὲ μὴ, τὸν ἀποδόμενον ἤκειν καταμαρτυροῦντα, εἰ δὲ μὴ, τῶν ἄλλων τινά, ἢ ὡς ἐδοῦλευσεν ἢ ὡς ἀφείθη ἐλευθέρα. νῦν δὲ τούτων μὲν ἀπέδειξεν οὐδέν, λελοιδόρηκεν δέ, ὡς ἔμοι δοκεῖ, οὐδὲν ὅ τι οὐ.

¹⁵⁸ In some extraordinary circumstances, speakers might even argue that their opponents had fabricated the existence of certain female relatives to damage their case. See especially Isaeus' *On the Estate of Philoctemon* and the pseudo-Demosthenic *Against Macartatus*.

But if she were an alien, [they ought] to have examined the tolls in the market, [and] to have demonstrated whether she paid the metic-tax, and from where she came; and if she were a slave, the one who sold her [ought] to have come to give testimony against her, and if not he, the one who bought her, and if not those men, someone else to testify that she lived as a slave or that she had been set free. But now he has shown none of these things, but, as it seems to me, he has done nothing but slander (Dem. 57.34).

Conveniently, Euxitheus precisely laid out the proofs that his opponent Eubulides should have offered to prove that his mother was a metic. Furthermore, if a litigant were attempting to prove that his opponent was a metic, he might also provide evidence that the opponent had participated in a trial before the polemarch, the Athenian official who presided over metic affairs.¹⁵⁹ Notably, the critical proofs that separated a citizen woman from a metic were not based on any political or religious performances but on daily occurrences.

Likewise, if Euxitheus' mother were a slave, Eubulides ought to have provided her owner as a witness against her, or at the very least, someone who could bear witness "that she lived as slave." Although Eubulides had indeed accused Euxitheus' mother of some serious breaches in behavior by working outside the home, apparently, he had failed to produce witnesses to her actions. Eubulides' argument then prompts the question: what did "living as a slave" mean to an Athenian jury? For Athenian women, crossing that boundary between home and the outside world could constitute slavish behavior. Consider the differences between the idealized portrait of the citizen-wife presented by Xenophon and Lysias and Apollodorus' caricature of the former slave Neaira. The perfect wife worked in the home supervising the household slaves, and she was subservient to

¹⁵⁹ See especially Lys. 23.3; Dem. 59.40.

her husband. She never ventured outside without a chaperone, and she never associated with men outside her family. As if Apollodorus were checking off a list, he depicted Neaira breaking every one of these societal norms. She worked outside the home and traveled across several city-states on her own initiative. She was promiscuous; she fled from Phrynion, an Athenian man who partially owned her, to take up with Stephanus. Furthermore, Neaira openly dined and drank in the company of strange omen and acted in every way a prostitute and a slave.

In sum, Athenian litigants could prove someone a slave first by pointing to certain legal proofs; for example, to establish Neaira was a former slave, Apollodorus summoned witnesses to testify that many people had owned her over the course of her life. He also provided evidence that Stephanus had participated in an arbitration where Neaira was treated as a slave woman. In this kind of performative act, Stephanus engaged with a formal institution, like publicly appointed arbitrators, outside of typical political performances. An Athenian might also prove someone a slave in court by pointing to their behaviors, those truly everyday performances of identity. Apollodorus, for example, repeatedly stressed that Neaira had openly dined with men outside her family. While this was not illegal, Apollodorus treated this as particularly damning evidence against Neaira.

To open his case, Apollodorus needed to establish that Neaira was indeed a slave and had engaged in slavish behaviors. He called Philostratus as his first witness to testify that Neaira had belonged to a madam named Nicarete and that she had stayed in his home with Metaneira at the behest of Lysias:

ΜΑΡΤΥΡΙΑ.

Φιλόστρατος Διονυσίου Κολωνῆθεν μαρτυρεῖ εἰδέναι Νέαιραν Νικαρέτης οὔσαν,

ἥσπερ καὶ Μετάνειρα ἐγένετο, καὶ κατάγεσθαι παρ' αὐτῷ, ὅτε εἰς τὰ μυστήρια ἐπεδήμησαν ἐν Κορίνθῳ οἰκοῦσαι· καταστήσαι δὲ αὐτὰς ὡς αὐτὸν Λυσίαν τὸν Κεφάλου, φίλον ὄντα ἑαυτῷ καὶ ἐπιτήδειον.

Witness testimony:

Philostratus the son of Dionysus of the deme Colonus bears witness that he knew Neaira used to be the slave of Nicarete, to whom Metaneira also belonged, and that they stayed in his house when [they came] for the Mysteries [and] that they were residents in Corinth. And [he bore witness] that Lysias the son of Cephaleus, his close friend and associate, established them in his house (Dem. 59.23).

Notably, Philostratus was the first witness whom Apollodorus called in his speech, which suggests that the evidence he provided formed the basis for Apollodorus' case against Neaira. Although Neaira had been active as a prostitute in Corinth before she met Philostratus, this was her first visit to Athens. Philostratus was thus one of the first Athenians to meet Neaira and to witness her relationship with Nicarete, her mistress, and with her fellow slave, Metaneira. Philostratus' testimony established Nicarete's legal ownership of Neaira, a legal proof of identity that did not center on normal political or religious performances. In fact, Lysias seems to have used the Mysteries as an excuse to bring his lover Metaneira to Athens. Philostratus simply testified that Neaira had stayed in his home and that she had a slave-master relationship with Nicarete.

At a later point in the speech, Apollodorus also called one Philagrus to testify that Phrynion, an Athenian, had purchased Neaira from Timanoridas the Corinthian and Eucrates the Leucadian, the two men who had purchased her from Nicarete (Dem. 59.32). Apollodorus gave his audience a clear picture of Neaira's history as a slave and the long list of people who had owned her. First, Nicarete had purchased her as a small girl and trained her as a prostitute. Timanoridas and Eucrates then purchased Neaira for their own pleasure; they later sold her when they wished to marry and presumably lead more

respectable lives (Dem. 59.30). Third, Phrynion, another customer and lover of Neaira, purchased her and brought her to Athens. Apollodorus called these witnesses not simply to slander Neaira, although the description of Neaira's pleas to her numerous lovers to help her buy her freedom from Timanoridas and Eucrates would seem quite damning. Rather, in these passages Apollodorus laid out a chain of custody over Neaira, tracing the people who had bought and sold her, from Corinth to Megara and finally to Athens herself.

Apollodorus carefully followed the formula that he had laid out in the opening of his supporting speech; he established that Neaira had belonged to multiple owners, while he proved that she had lived and worked as a slave. After his initial description of her early childhood, Apollodorus recounted how Neaira first came to Athens as a companion to Metaneira, another prostitute and the lover of Lysias the orator, when she came to be initiated in the Mysteries. Lysias, unable to house Neaira, Metaneira, and their mistress Nicarete in his own home with his wife and elderly mother, had them room with Philostratus of Colonus, an unmarried man (Dem. 59.22). Here Apollodorus established the relationship between Nicarete, Neaira, and Metaneira. They were not relatives or friends but mistress and slaves. Furthermore, he contrasted Nicarete, Neaira and Metaneira with Lysias' lawful wife and mother. The women were not even allowed to stay in the same house as two respectable Athenian citizen-women; only an unmarried man could house them without scandal. Apollodorus' narrative suggests that citizen-women and foreign prostitutes like Neaira simply did not operate in the same circles of

society. These explicit details of the complicated transactions involving Neaira and her companions made his accusations against Neaira even more vivid for an Athenian jury.

Apollodorus provided further evidence that Neaira had “lived as a slave.” He called a certain Euphiletus and Aristomachus to testify that Neaira had come to Athens as the companion of Simus the Thessalian to attend the Panathenaea festival. The two men also bore witness that Neaira and Simus had lodged with a certain Ctesippus and that Neaira drank with them while many other men were present at Ctesippus’ house (Dem. 59.25). Again, Apollodorus treated the Panathenaea festival as a simple excuse for Neaira to come to Athens and ply her trade. Apollodorus clearly considered the fact that she openly celebrated and drank with guests in the house of Ctesippus as the true proof of her slave origins. Again, he stressed the private events that occurred in the home and not her participation or non-participation in any political or religious activities to prove Neaira’s identity. As Apollodorus argued, Neaira had not only crossed the invisible boundary between the home and the outside world, but her open interactions with men breached almost all Athenian social norms that controlled women’s behavior.

Apollodorus also established that Neaira had lived and worked as a prostitute in her native Corinth. In the third deposition of the case, Apollodorus called on the actor Hipparchus to bear witness to two kinds of informal performances that Neaira had carried out as a prostitute. First, he testified that he and the poet Xenocleides had hired Neaira as a prostitute in Corinth, evidence of her work history that fell outside the political and religious spectrums. Second, Hipparchus claimed that she drank publicly with him and Xenocleides, a truly quotidian performative act (Dem. 59.26; 59.28). I do not believe that

Apollodorus was simply attempting to slander Neaira by producing Hipparchus as a witness, although that was surely one of the reasons he called on him to testify. Rather, Hipparchus established that she had worked as a prostitute in Corinth for a substantial amount of time, enough time that she acquired some fame. Like her fellow slave Metaneira, who had attracted Lysias as a lover, Neaira also consorted with famous men from across Greece.

Apollodorus called other witnesses to testify that Neaira continued to work as a prostitute after Phrynion had purchased her from Timanoridas and Eucrates and brought her to Athens. He claimed that Phrynion lived an extravagant lifestyle with Neaira, bringing her to many dinners and celebrations. Apollodorus then called Chionides of Xypetê and Euthetion of Cydathenaeum to testify about one particularly wild party:

(33) καὶ ὥς ἄλλους τε πολλοὺς ἐπὶ κῶμον ἔχων ἦλθεν αὐτὴν καὶ ὥς Χαβρίαν τὸν Αἰξωνέα, ὅτε ἐνίκα ἐπὶ Σωκρατίδου ἄρχοντος τὰ Πύθια τῷ τεθρίπῳ δέπριατο παρὰ τῶν παίδων τῶν Μίτυος τοῦ Ἀργείου, καὶ ἦκων ἐκ Δελφῶν εἰστία τὰ ἐπινίκια ἐπὶ Κωλιάδῃ. καὶ ἐκεῖ ἄλλοι τε πολλοὶ συνεγίνοντο αὐτῇ μεθυσίᾳ καθεύδοντος τοῦ Φρυνίωνος, καὶ οἱ διάκονοι οἱ Χαβρίου τράπεζαν παραθέμενοι. (34) καὶ ὅτι ταῦτ' ἀληθὴ λέγω, τοὺς ὁρῶντας ὑμῖν καὶ παρόντας μάρτυρας παρέξομαι. καὶ μοι κάλει Χιονίδην Ξυπεταίονα καὶ Εὐθετίωνα Κυδαθηναίᾳ.

(33) And, having her [Neaira] with him, [Phrynion] went to many homes for revelry and to the house of Chabrias of Aexonê, when, in the archonship of Socratidas [373 BCE], he won at the Pythian games with the four-horse chariot which he bought from the sons of Mitys the Argive, and returning from Delphi he gave a victory feast at Colias. And there many other men had intercourse with her when she was drunk, while Phrynion slept, even the serving men of Chabrias waiting the table. (34) And that I tell the truth, I shall present as witnesses for you those who saw [these things] and were present. And call for me Chionides of Xypetê and Euthetion of Cydathenaeum (Dem. 59.33-34).

Apollodorus seems to have treated this episode as the climax of his narrative of Neaira's life as a courtesan before she fell in with Stephanus. But consider the extraordinary nature of Chionides and Euthetion's testimony. Both men witnessed that Neaira engaged in sex with many men at Chabrias' victory feast, openly and before many witnesses. We

could easily dismiss this testimony as slander, meant to tarnish Neaira's reputation. Yet we also need to consider the details that Apollodorus listed about this incident.

Not only did Apollodorus specify that Chabrias of Aexonê threw this particular party; he also identified the occasion for which he organized the feast—to celebrate his victory at the Pythian games—and stated the archon year. Why would Apollodorus provide such extensive detail, even naming the people from whom Chabrias purchased his four-horse chariot? Apollodorus considered Neaira's behavior during Chabrias' party evidence of her slave status. He supported his argument by carefully naming the date and location of the party and by presenting multiple witnesses who were present and observed Neaira's actions. Apollodorus' narrative was not meant simply to titillate his audience and prejudice them against Neaira. He treated this story as an extra-legal proof of Neaira's alien status, proof that revolved around Neaira's everyday activities outside of the political and religious realms.

Before I move on to Apollodorus' final proofs that Neaira was a non-citizen, let me review his accusations against her thus far. In the first part of his narrative of Neaira's life, Apollodorus had established first that she had belonged to a series of owners and second that she performed the work of a slave. In a close parallel to Apollodorus' accusations that Neaira worked as a prostitute, the unnamed speaker in Isaeus' *On the Estate of Pyrrhus* offered similar evidence about his opponent's sister. The speaker acted as the prosecutor in a case of ψευδομαρτυρία (false witnessing) against a certain Nicodemus, who had testified in an earlier trial that his sister was the lawful wife of Pyrrhus, and so her daughter Phile should rightfully inherit the estate. The speaker

represented his mother, Pyrrhus' sister, and claimed the estate on her behalf. The speaker was attempting to prove that Phile's mother had been a prostitute and that, as a result, Phile herself was illegitimate. He made some particularly pointed remarks about her mother's history:

(13) Ὡς μὲν ἐταῖρα ἦν τῷ βουλομένῳ καὶ οὐ γυνὴ τοῦ ἡμετέρου θείου, ἦν οὗτος ἐγγυῆσαι ἐκείνῳ μεμαρτύρηκεν, ὑπὸ τῶν ἄλλων οἰκείων καὶ ὑπὸ τῶν γειτόνων τῶν ἐκείνου μεμαρτύρηται πρὸς ὑμᾶς· οἱ μάχας καὶ κώμους καὶ ἀσέλγειαν πολλήν, ὅποτε ἡ τοῦτου ἀδελφὴ εἶη παρ' αὐτῷ, μεμαρτυρήκασιν γίγνεσθαι περὶ αὐτῆς. (14) Καίτοι οὐ δὴ πού γε ἐπὶ γαμετὰς γυναῖκας οὐδεὶς ἂν κωμάζειν τολμήσειεν· οὐδὲ αἱ γαμεταὶ γυναῖκες ἔρχονται μετὰ τῶν ἀνδρῶν ἐπὶ τὰ δεῖπνα, οὐ δὲ συνδειπνεῖν ἀξιοῦσι μετὰ τῶν ἀλλοτρίων, καὶ ταῦτα μετὰ τῶν ἐπιτυχόντων.

(13) And that she was a prostitute for anyone who wished and not the wife of our uncle [Pyrrhus], whom this man [Nicodemus] has testified that he gave in marriage to that man [Pyrrhus], this has been witnessed for you by his other relatives and his neighbors. And they have born witness concerning her, that there were fights and revelries and much wantonness, whenever that man's sister was at [Pyrrhus'] house. (14) And yet no one, I think, would dare to serenade to lawfully wedded wives; nor would lawfully wedded wives go with their husbands to feasts, nor even would they deem it right to dine with strangers, and especially with chance-comers! (Isaeus. 3.13-14).

Consider the evidence which the speaker emphasized in this passage. First, he stressed that Pyrrhus' own relatives and his neighbors, the people closest to him and who knew him best, testified to the chaos which Nicodemus' sister inspired. The speaker thus suggested that this woman's behavior was not that of the ideal citizen-wife, meek and mild, but that of a prostitute who engaged in wild partying. He also slyly hinted that she was only sporadically present at his house (Note the phrase: "Whenever that man's sister was at [Pyrrhus'] house") and thus could not be his lawful wife. The speaker proved the woman's identity by providing witnesses to her everyday behavior.

Consider then the speaker's second point: that no one in Athenian society would dare to sing to a citizen-wife, nor would a citizen-wife attend banquets with her husband in the company of strangers. The speaker purposefully played off the ideological portrait

of the ideal citizen-wife, claiming that Nicodemus' sister had broken so many Athenian societal taboos that she could not possibly be a citizen. No law prevented the woman from carousing or attending banquets with her husband. In fact, the speaker's language suggests otherwise; he claimed that "no would dare to serenade [οὐδεις ἄν κωμάζειν τολμήσειεν] lawfully wedded wives...nor even would [citizen-wives] deem it right to dine with strangers [συνδειπνεῖν ἀξιοῦσι μετὰ τῶν ἀλλοτρίων]." Societal norms dictated that Athenian citizen-women behave in certain ways. If citizen-women engaged in aberrant behavior, however, then this behavior could be used as evidence against them in an Athenian court. Nicodemus' sister may very well have been a true Athenian citizen-wife, just one who engaged in outlandish behavior. This, however, not only jeopardized her own civic status but the status of her daughter even many years later.

To return to the accusations against Neaira: Apollodorus' next set of proofs against the notorious prostitute centered not on her presence at parties and feasts but on her involvement in the Athenian courts. As Apollodorus narrated, Neaira eventually ran away from Phrynion because he treated her so poorly. She ultimately became partners with the Athenian Stephanus, with whom she traveled to Athens and settled there. When Phrynion learned that she was living in Athens, he attempted to seize her from Stephanus:

ἀφαιρουμένου δὲ τοῦ Στεφάνου κατὰ τὸν νόμον εἰς ἐλευθερίαν, κατηγγύησεν αὐτήν πρὸς τῷ πολεμάρχῳ. καὶ ὡς ἀληθῆ λέγω, τούτων αὐτὸν μάρτυρα ὑμῖν τὸν τό τε πολέμαρχον παρέξομαι. καὶ μοι κάλει Αἰήτην Κειριάδην.

And when Stephanus had declared her [Neaira] to be free (lit. took her away to freedom) in accordance with the law, [Phrynion] compelled her to give securities before the polemarch. And that I speak the truth, I shall present as a witness of these things for you the polemarch at the time. Call for me Aeetes of Ceiriadae (Dem. 59.40).¹⁶⁰

¹⁶⁰ For more on the legal action of ἀφαίρεσις εἰς ἐλευθερίαν, see Harrison 1998, 178-180. See also MacDowell 1986, 80.

The fact that Neaira had appeared before the polemarch did not necessarily prove that she was a slave or a metic. Neaira's advocates gave securities before the polemarch as a preliminary action, before the case went to arbitration or to trial where Neaira's status would be officially decided.¹⁶¹ Apollodorus, however, seems to have treated Neaira's appearance before the polemarch as proof of her non-citizen identity because the polemarch was responsible for hearing legal cases concerning metics and slaves in Athens. In another legal case, Lysias' *Against Pancleon*, the unnamed speaker seems to have made similar assumptions about the status of his opponent when he learned that Pancleon had been involved in other actions before the polemarch. The speaker even produced as witnesses those who had brought lawsuits against Pancleon before the polemarch to establish that he had strong reason to believe that Pancleon was a metic (Lys. 23.3-4). Like the speaker in *Against Pancleon*, in his own case against Neaira Apollodorus took advantage of the jurors' prejudices against those who appeared in court before the polemarch.

Apollodorus treated the arbitrators' decision in the dispute between Phrynion and Stephanus about Neaira as another powerful proof of her non-citizen identity. Once Neaira had appeared before the polemarch, Phrynion brought a suit against Stephanus for stealing Neaira from him and for receiving the items that she had stolen from Phrynion

¹⁶¹ In fact, later in the speech (as I shall discuss in more detail), Apollodorus himself admitted that when this particular action against Neaira came to arbitration, the arbitrators found in her favor and declared her a free person. Apollodorus seems to treat Phrynion's attempts to claim Neaira as a slave as unlawful. For more, see Kapparis 1999, 248-250.

during her escape from Megara (Dem. 59.45). The two men's friends, however, convinced them to come to arbitration, and Apollodorus described their decision in detail:

γνώμην ἀπεφώνησαντο, καὶ οὗτοι ἐνέμειναν αὐτῇ, τὴν μὲν ἄνθρωπον ἐλευθέραν εἶναι καὶ αὐτὴν αὐτῆς κυρίαν, ἃ δ' ἐξῆλθεν ἔχουσα Νέαιρα παρὰ Φρυνίωνος χωρὶς ἱματίων καὶ χρυσίων καὶ θεραπαινῶν, ἃ αὐτῇ τῇ ἀνθρώπῳ ἡγοράσθη, ἀποδοῦναι Φρυνίῳ πάντα· συνεῖναι δ' ἑκατέρῳ ἡμέραν παρ' ἡμέραν· ἐὰν δὲ καὶ ἄλλως πῶς ἀλλήλους πείθωσι, ταῦτα κύρια εἶναι· τὰ δ' ἐπιτήδεια τῇ ἀνθρώπῳ τὸν ἔχοντα ἀεὶ παρέχειν, καὶ ἐκ τοῦ λοιποῦ χρόνου φίλους εἶναι ἀλλήλοις καὶ μὴ μνησικακεῖν.

[The arbitrators] gave their opinion, and these men [Stephanus and Phrynion] abided by it, first that the woman was free and her own mistress, second that the things which Neaira had taken from Phrynion, apart from the clothing and gold and maids that were purchased for the woman herself, all these she was to return to Phrynion: third that she was to remain with each man on alternating days: But if they agreed with one another about some other arrangement, this arrangement was to be binding; and finally that the one who had her was to provide her necessities at all times and that for the future the men were to be friends with one another and bear no malice (Dem. 59.46).

We can interpret Apollodorus' description of the arbitrators' terms in two distinct ways.

First, we could assume that Apollodorus artfully juxtaposed the ideological portrait of the citizen and his dutiful citizen-wife with his depiction of Neaira and her two lovers. While the model Athenian household revolved around one citizen and his wife, Neaira was compelled to split her time with two men. Furthermore, the arbitrators forced both men to come to terms with one another, with the result that Stephanus became less a husband to Neaira than a share-owner.

On the other hand, we could view the arbitrators' decisions concerning Phrynion and Stephanus' living situation with Neaira as not particularly unusual. It appears that men regularly divided the costs associated with keeping a prostitute. Even earlier in his speech against Neaira, Apollodorus described the circumstances under which Timanoridas and Eucrates purchased Neaira from Nicarete because the old woman had demanded such exorbitant sums from them for the enjoyment of Neaira's company (Dem.

59.29). While Timanoridas and Eucrates kept Neaira as a slave, apparently Phrynion and Stephanus agreed to provide for Neaira and liberate her (Dem. 59.46). In a similar circumstance, in Lysias' fragmentary *On A Wound By Premeditation* (4), the unnamed speaker was brought before the Areopagus council to defend himself for wounding the plaintiff because the two men were fighting for possession of a female slave.¹⁶² The speaker explained that while the two men were enemies, their friends reconciled them and acted as arbitrators on their behalf. He claimed that when the men exchanged property, they agreed to share ownership of the slave-girl, much like the case between Phrynion and Stephanus. Thus, Apollodorus could simply have been describing a situation with which Athenian jurors would be quite familiar—two citizens foolishly quarreling over the services of a beautiful slave-woman. In any case, Apollodorus, through his detailed descriptions of Neaira's legal entanglements, demonstrated that although Neaira was a free woman, she was a former slave and certainly *not* a citizen of Athens.

In his final proof of Neaira's status, Apollodorus returned once again to his earlier trope concerning her eating and drinking habits. He brought witnesses to testify that once Phrynion and Stephanus had been reconciled with one another, they and their friends and gathered to feast and drink with one another in each of their houses. Apollodorus pointedly observed that Neaira herself also ate and drank with the men, "just as if she

¹⁶² Whether she was a prostitute remains unclear but seems likely given the circumstances of the case. See especially Lys. 4.8.

were a prostitute.”¹⁶³ In his final argument against Neaira, Apollodorus relied on Neaira’s activities and her (too) intimate relationships with Phrynion, Stephanus, and their circle of friends. In Apollodorus’ opinion, and presumably in the minds of the Athenian jurors, when Neaira openly dined and drank with Phrynion and Stephanus, and when she consorted with their friends, she acted like a prostitute and therefore *was* a prostitute and a former slave. Apollodorus thus directly equated her actions in the private homes of her lovers with her status as a non-citizen.

Quite conveniently for the modern reader, Apollodorus provided a neat summary of his accusations against Neaira before he moved on to attack her daughter Phano:

Ὅτι μὲν τοίνυν ἐξ ἀρχῆς δούλη ἦν καὶ ἐπράθη δις καὶ ἡργάζετο τῷ σώματι ὡς ἑταίρα οὖσα, καὶ ἀπέδρα τὸν Φρυνίωνα εἰς Μέγαρα, καὶ ἤκουσα κατηγγυήθη ὡς ξένη οὖσα πρὸς τῷ πολεμάρχῳ, τῷ τε λόγῳ ἀποφαίνω ὑμῖν καὶ μεμαρτύρηται.

(1) That first of all she was a slave and (2) that she was twice sold and (3) that she made her living by prostitution as a courtesan, and (4) that she ran away from Phrynion to Megara, and (5) that having come here she gave securities before the polemarch on the grounds that she was an alien, I have shown you in my speech and it has been witnessed (Dem. 59.49).¹⁶⁴

Apollodorus’ accusations against Neaira, and his proofs which supported them, align almost perfectly with the list of proofs that Euxitheus claimed his opponent Eubulides would need to furnish to prove his mother a slave. Apollodorus established that Neaira had been a slave by proving the identities of her numerous owners and the number of times she had been bought and sold. He had proven that she had lived as a slave by

¹⁶³ See Dem. 59.48. The full Greek text reads: Ὡς δ’ ἀπηλλαγμένοι ἦσαν, οἱ παρόντες ἑκατέρῳ ἐπὶ τῇ διαίτῃ καὶ τοῖς πράγμασιν, οἷον οἶμαι φιλεῖ γίνεσθαι ἐκάστοτε, ἄλλως τε καὶ περὶ ἑταίρας οὔσης αὐτοῖς τῆς διαφορᾶς, ἐπὶ δεῖπνον ἦσαν ὡς ἑκάτερον αὐτῶν, ὁπότε καὶ Νέαιραν ἔχουσιν, καὶ αὐτῇ συνεδείπνει καὶ συνέπινεν ὡς ἑταίρα οὖσα. καὶ ὅτι ταῦτ’ ἀληθὴ λέγω, κάλει μοι μάρτυρας τοὺς συνόντας αὐτοῖς, Εὐβουλον Προβαλίσιον, Διοπείθην Μελιτέα, Κτήσωνα ἐκ Κεραμέων.

¹⁶⁴ The numbering is my own.

pointing to her activities as a prostitute, openly dining and drinking with strangers. He had also provided witnesses that she had bought her own freedom with the aid of Phrynon. Finally, although he did not claim that Neaira had paid the metic-tax, as Euxitheus suggested Eubulides might argue against his own mother, Apollodorus was able to furnish witness testimony that Neaira had appeared before the polemarch to establish that she had been living as a metic in Athens for a long period of time. Most critically to my own arguments, Apollodorus' proofs of Neaira's identity all centered around her everyday activities, her personal relationships, and her appearances before formal institutions outside of common political activities. Membership or participation in civic institutions or lack thereof never came into play.

Phano

Scholars like Konstantinos Kapparis and Cynthia Patterson have considered Apollodorus' accusations against Neaira separately from his claims against her daughter, Phano. As Patterson noted, Apollodorus' suit against Neaira seems quite strong, given the number of witnesses he provided to attest to her activities as a prostitute. His case against Phano appears quite weak in comparison, especially because he was unable to identify her as Neaira's daughter with any certainty.¹⁶⁵ Despite this distinction, I believe there are important similarities between Apollodorus' characterizations of Neaira and Phano that go to the essence of how women's civic identities were established in Athens. In particular, in the case of both women, Apollodorus, manipulating civic ideology

¹⁶⁵ See Patterson 1994, 207-208. See also Kapparis 1999, 33-34.

surrounding Athenian women, harped on their failures to conform to societal standards and act like model citizen-wives. He also emphasized the failures of their male relatives, particularly Stephanus and Phano's husbands, to protect Neaira and Phano's reputations, and thus their status as citizens, adequately. Apollodorus concentrated his arguments against both Neaira and Phano on their everyday activities and their personal relationships. Consequently, Apollodorus' accusations against both women are more closely linked and his case against Phano stronger than modern scholars have yet to acknowledge.

Having established that Neaira was indeed a non-citizen, Apollodorus moved on to the second point of his speech: that Neaira had passed herself off as a citizen-wife and enjoyed the privileges of Athenian citizenship. We might expect Apollodorus to present evidence that Stephanus had contracted a marriage with Neaira's family (ἐγγύην... ποιεῖσθαι) or that he threw a wedding-feast (γαμηλία) for his phratrymen.¹⁶⁶ Apollodorus, however, offered no direct proofs that Neaira had assumed the identity of an Athenian citizen-wife. Instead, he claimed that Stephanus had passed off Neaira's children as his own by an unnamed former wife. Apollodorus further declared that Stephanus gave her daughter Phano in marriage as a citizen-wife to two Athenian citizens.¹⁶⁷

Given his inability to establish that Stephanus had formally married Neaira, we might expect Apollodorus to provide proof that Stephanus had failed to introduce his sons

¹⁶⁶ For examples of the marriage contract (ἐγγύη) as proof of a woman's identity, see Isaeus. 3.16; Isaeus. 6.22; Isaeus. 8.14; Isaeus. 9.29; Isaeus. 10.19. For examples of the wedding feast (γαμηλία) as proof of identity, see Isaeus. 3.76; Isaeus. 8.18; Dem. 57.43.

¹⁶⁷ For Neaira's alleged sons, Proxenus, Ariston, and Antidorides, see Dem. 59.38; Dem. 59.121; Dem. 59.124.

—the deceased Proxenus and the living Ariston and Antidorides—to his phratry and deme. Apollodorus, however, mentioned Neaira’s alleged sons only three times in the course of his speech, and his hesitance to attack them directly may suggest that all three men had successfully faced the intense scrutinies of these identifying groups, powerful proofs of their citizen identities. Apollodorus’ disregard for Neaira’s sons might also indicate that they had never been introduced to Stephanus’ phrartymen and demesmen at all. Whatever the case was, Apollodorus turned the full force of his argument against Phano. Again, we might expect Apollodorus to provide proof that there were irregularities with Phano’s birth or her naming ceremony, for example.¹⁶⁸ Yet he failed to establish any firm connection between Neaira and Phano as mother and daughter.

To prove that Phano was an alien, Apollodorus focused first on her everyday behaviors and failure to conform to Athenian norms in her daily life. In Apollodorus’ view, Phano did not act like an Athenian citizen-wife, and so she was not a citizen. Second, Apollodorus stressed Phano’s often tempestuous personal relationships with her father and husbands. In Apollodorus’ narrative, these men—Stephanus, Phrastor, and Theogenes—failed to complete crucial performative acts on Phano’s behalf to affirm her status to their community. By neglecting Phano, her male relatives ultimately endangered the citizen status of her entire family.

In his first arguments against Phano aimed at establishing her non-citizen status, Apollodorus concentrated on her failure to act like a model citizen-wife in her first marriage to Phrastor:

¹⁶⁸ The speaker in Isaeus’ *On the Estate of Pyrrhus* employed this tactic: see Isaeus. 3.30-34.

(50) ὥς δ' ἦλθεν ὡς τὸν Φράστορα, ἄνδρα ἐργάτην καὶ ἀκριβῶς τὸν βίον συνειλεγμένον, οὐκ ἠπίστατο τοῖς τοῦ Φράστορος τρόποις ἀρέσκειν, ἀλλ' ἐζήτει τὰ τῆς μητρὸς ἔθη καὶ τὴν παρ' αὐτῇ ἀκολασίαν, ἐν τοιαύτῃ οἶμαι ἐξουσία τεθραμμένη. (51) ὁρῶν δὲ Φράστῳ αὐτὴν οὔτε κοσμίαν οὔσαν οὔτ' ἐθέλουσαν αὐτοῦ ἀκροᾶσθαι, ἅμα δὲ καὶ πεπυσμένος σαφῶς ἦδη ὅτι Στεφάνου μὲν οὐκ εἶη θυγάτηρ, Νεαίρας δέ, τὸ δὲ πρῶτον ἐξηπατήθη, ὅτ' ἠγγυᾶτο ὡς Στεφάνου θυγατέρα λαμβάνων καὶ οὐ Νεαίρας, ἀλλὰ τούτῳ ἐξ ἀστῆς αὐτὴν γυναικὸς οὔσαν πρότερον πρὶν ταύτῃ συνοικῆσαι, ὀργισθεὶς δ' ἐπὶ τούτοις ἅπασιν, καὶ ὑβρίσθαι ἡγούμενος καὶ ἐξηπατῆσθαι, ἐκβάλλει τὴν ἄνθρωπον ὡς ἐνιαυτὸν συνοικήσας αὐτῇ, κυοῦσαν, καὶ τὴν προῖκα οὐκ ἀποδίδωσιν.

(50) And when [Phano] came to the house of Phrastor, a hard-working man and one who earned his livelihood by frugal living, she did not understand how to adjust to his habits, but she desired the customs of her mother and the intemperance in her house, having been brought up, I suppose, in such licentiousness. (51) And Phrastor, seeing that she was neither a decent woman nor would she willingly heed him, and at the same time having learned clearly now that she was not the daughter of Stephanus but the daughter of Neaira, and [having learned] he was deceived in the first place, when he was betrothed, receiving [Phano] not as the daughter of Neaira, but as the daughter of Stephanus from an Athenian citizen wife to whom he had been married before. And angry on account of all these things, and believing that he was insulted and deceived, [Phrastor] threw the woman [Phano] out, after he had lived with her for about a year, while she was pregnant, and he did not give back her dowry (Dem. 59.50-51).

Apollodorus' logic here, while complicated, ultimately demonstrates the connections between everyday behavior and women's civic identity in Athenian society. As Apollodorus claimed, Phano first subverted societal norms by failing to conform to her husband's moderate lifestyle. As in his arguments against Neaira, here Apollodorus manipulated the portraits of the ideal citizen and his citizen-wife. He depicted Phrastor as the pragmatic Athenian citizen who managed his household frugally and who demanded a wife who would respect and obey him. In comparison with her sober husband, Phano, as portrayed by Apollodorus, would be all the more alarming to an Athenian audience—a woman so accustomed to the hedonistic lifestyle of her mother Neaira, the notorious courtesan, that she could never carry out the tame daily duties of the true citizen-wife. Moreover, Phrastor divorced Phano when she was pregnant with his child, quite an extreme action unless he suspected his wife or her family of serious wrong-doings.

Furthermore, Apollodorus took care to link Phano's behavior with her identity as Neaira's daughter. Consider the phrasing Apollodorus adopted when he described Phrastor's reaction to Phano: "Phrastor, seeing that she was not a decent woman ..., at the same time (ἄμα δὲ καὶ) [learned] clearly now (πεπυσμένος σαφῶς ἤδη) that she was not the daughter of Stephanus but the daughter of Neaira" (Dem. 59.51). Apollodorus implied that, when he observed her poor character, Phrastor immediately realized that Phano was the daughter of Neaira. In this scenario, a woman could fail in her marital duties only if she had been exposed to a vice-laden environment, perhaps as the child of a notorious prostitute. Of course, Apollodorus may have stretched the truth a bit for the Athenian jurors. In his commentary, Kapparis suggested that Phrastor and Phano were simply incompatible with one another, a situation that Apollodorus may have manipulated in his later speech against Neaira.¹⁶⁹ Apollodorus' language implies, however, that an Athenian audience would find it natural to equate immoral behavior with non-citizen status.

Critically, Phrastor's testimony that he refused to return Phano's dowry to her family was damning evidence that established she was an illegitimate alien. Although dowries were not a legal requirement of marriage, Athenians considered it normal practice to provide a woman with at least a small dowry. As Linn Foxhall has noted, a woman had some property rights over her dowry, and she could veto sales or investments that might deplete or decrease its value.¹⁷⁰ Furthermore, her dowry served as both a financial contribution to a wife's new household and as a guarantee that her husband would not be able to divorce her easily. A husband was obligated to

¹⁶⁹ See Kapparis 1999, 34-35.

¹⁷⁰ See Foxhall 1989.

return his wife's dowry to her family if he divorced her (Dem. 59.52). Phrastor's refusal to return Phano's dowry thus had serious implications about her identity as an Athenian citizen.

Modern scholars have often dismissed the importance of the dowry as proof of women's legitimacy and citizen status, but many Athenian litigants held up the dowry as proof of a woman's civic identity.¹⁷¹ In Isaeus' *On the Estate of Pyrrhus*, discussed above, the unnamed speaker treated Nicodemus' failure to provide his sister with a dowry as a proof of her non-citizen status. He even expressed surprise that Nicodemus would overlook such a critical step in marrying his sister to Pyrrhus (Isaeus. 3.28). Moreover, in Isaeus' *On the Estate of Menecles*, the unnamed speaker was forced to address his opponent's allegations that his sister had brought no dowry to her marriage. His opponent in the case had apparently claimed that Menecles had adopted the speaker under the influence of a woman, the speaker's sister, who was Menecles' second wife. His opponent seems to have further discredited the sister by claiming that she brought no dowry to the marriage.¹⁷² Interestingly, as his very first piece of evidence, the speaker presented witness testimony that his father had given twenty minae as his sister's dowry (Isaeus. 2.5). In this context, Apollodorus' continued emphasis on Phrastor's failure to return Phano's dowry is quite understandable. Most critically to my own argument, Apollodorus relied on legal evidence—a financial transaction like a dowry, which fell outside the political and the religious—as proof of Phano's non-citizen identity.

¹⁷¹ See Isaeus. 1.39; Isaeus. 2.5; Isaeus. 3.8; Dem. 30.21.

¹⁷² In fact, the speaker addresses that his opponents repeatedly brought up the issue of his sister's dowry. The Greek reads: καὶ ἡμεῖς εἰδότες ὅτι καὶ ὁ πατὴρ οὐδενὶ ἂν ἔδωκεν ἥδιον ἢ ἐκείνῳ, δίδομεν αὐτῷ, **οὐκ ἄπρoικον, ὥς οὗτος λέγει ἐκάστοτε**, ἀλλὰ τὴν ἴσην προῖκα ἐπιδόντες ἦνπερ καὶ τῇ πρεσβυτέρᾳ ἀδελφῇ ἐπέδομεν· καὶ ἐκ τοῦ τρόπου τούτου, πρότερον ὄντες αὐτοῦ φίλοι, κατέστημεν οἰκεῖοι. Καὶ ὥς ἔλαβεν εἴκοσι μνᾶς ὁ Μενεκλῆς ἐπὶ τῇ ἀδελφῇ προῖκα, τὴν μαρτυρίαν ταύτην πρῶτον βούλομαι παρασχέσθαι (Isaeus. 2.5).

With Phrastor's refusal to return Phano's dowry, Apollodorus began to establish a pattern which he would repeat throughout his attack on Phano. Again and again, the men closest to Phano failed to protect her rights as a citizen-woman. Apollodorus thus treated Phano's personal relationships, and especially her male relatives' negligence, as proofs that Phano was in fact not a citizen. To his credit, though, Stephanus did attempt to sue Phrastor for his daughter's dowry, but Phrastor threatened him with a countersuit—he would bring Stephanus before the Thesmothetae for marrying an alien woman to an Athenian citizen (Dem. 59.52). Stephanus then dropped his lawsuit against Phrastor and apparently never recovered Phano's dowry from him. In dramatic fashion, later in the speech, Apollodorus used Stephanus' hesitation to stand up to Phrastor on Phano's behalf as evidence against Neaira (Dem. 59.62). Phano's strained relationships with her male relatives were thus potent proofs that cast doubt on her citizenship status and that of her mother. Apollodorus bet that an Athenian jury would suspect a woman whose former husband so disrespected her that he refused to return her dowry and whose father could not or would not assert her rights in court.

Apollodorus treated Phrastor as a central character in the next part of his narrative involving the failure of Phano's former husband to uphold his ex-wife's rights and the rights of their son. After Phano had given birth, at an unspecified later time, Phrastor became quite ill. Neaira and Phano then nursed Phrastor and regained his trust (Dem. 59.55). Because he was childless and was engaged in an old feud with his relatives who stood to inherit his estate, Phrastor decided to accept Phano's son as his legitimate offspring (Dem. 59.56), an event that had great potential to derail Apollodorus' case. By admitting that the child was legitimate, Phrastor implicitly acknowledged Phano's citizen status and strengthened his relationship with

his former wife. Apollodorus needed to explain why Phrastor chose to reconcile with Phano and why he would feel compelled to acknowledge her illegitimate child. In his elaborate backstory, Apollodorus wove together the elements of the family melodramas most common in inheritance cases to discredit both Neaira and Phano.¹⁷³ By alleging that both women unduly influenced an ill man engaged in a bitter feud with his relatives, Apollodorus shored up his portrayal of mother and daughter as two foreign harlots bent on breaking all social conventions and infiltrating the Athenian citizen body.

Not only did Phrastor acknowledge Phano's child as his legitimate son, he also introduced this child to his *genos*, one of the key identifying groups in which Athenian citizens could be enrolled. Apollodorus discredited Phrastor's relationships with Phano and his son by focusing on Phrastor's personal connections within his *genos*. As Apollodorus described, when Phrastor attempted to introduce his son to his phratrymen and to the members of his *genos*, the Brytidae, the *gennetai* initially refused to admit Phrastor's son because they knew that the child's mother was the daughter of Neaira (Dem. 59.59). In his case against Neaira, Apollodorus called the *gennetai* as witnesses to testify that they had hindered Phrastor when he attempted to introduce his son to them (Dem. 59.61). Kapparis dismissed the testimony of the *gennetai*, on the grounds that the men were responding to rumors and had no substantial proof that Phano was a non-citizen.¹⁷⁴ Very possibly, however, this testimony could not be dismissed so easily. We have

¹⁷³ See both Isaeus' *On the Estate of Cleonymus* (1) and *On the Estate of Apollodorus* (7). The speakers describe intense family feuds that pushed family members to adopt or change their wills to ensure that certain relatives would not inherit their estate. See also Isaeus' *On the Estate of Menecles* (2) and *On the Estate of Apollodorus* (7) for cases where adoptions were questioned due to the influence of a woman. In *On the Estate of Philoctemon* (6), Isaeus also described a case where the metic Alce seduced an older Athenian citizen, Euctemon, and convinced him to adopt her own sons and introduce them into his phratry.

¹⁷⁴ See Kapparis 1999, 35-36.

ample evidence that Athenians considered the members of the *genos*, phratry, and deme crucial witnesses in cases centering on citizenship and inheritance. Athenian litigants often called members of these identifying groups to testify on their behalf because they were on close terms with one another, knew the intimate details of each other's daily lives, and were in the best position to establish the identities of their members.¹⁷⁵ An Athenian jury would find the testimony of the *gennetai* against Phano quite persuasive.

Also telling in Phano's case is the fact that in his attempts to introduce his son to his *genos*, Phrastor once again failed to defend Phano's civic identity in court. Phrastor brought a lawsuit against the *gennetai*, when they initially refused to register his son, and they eventually entered into arbitration with one another. When the *gennetai* challenged Phrastor to swear an oath that he believed that the boy was born of a citizen-woman, he refused to swear the oath (Dem. 59.60).¹⁷⁶ Critically, the *gennetai* were not asking Phrastor to swear to the rituals which he had completed on his son's behalf in any formal institutions. They asked him to swear that he had a personal relationship with the child and his mother and that he, Phrastor, had intimate knowledge that Phano was a citizen. Furthermore, just as he did with Stephanus, in a dramatic rhetorical turn, Apollodorus claimed that Phrastor's refusal to take this oath was proof of Phano's alien status (Dem. 59.63). In Apollodorus' view, Phrastor's failure to defend Phano condemned her. Repeatedly in the accusations against Phano, evidence of personal interactions and

¹⁷⁵ Some particularly good examples: in *Against Eubulides*, the speaker Euxitheus took great pains to explain why he might have been expelled from his deme, and he alleged that there was a conspiracy led by Eubulides himself. See particularly Dem. 57.6. See also Isaeus' *On the Estate of Apollodorus*. The speaker Thrasyllus stressed that his adoptive father's phratrymen and demesmen knew him personally and knew the validity of the adoption. See particularly Isaeus 2. 17-18 and Isaeus 2. 27-28.

¹⁷⁶ See particularly the work of Fletcher and Sommerstein on oaths: Fletcher and Sommerstein, 2007.

relationships was key in establishing or challenging civic identity. How members of families were observed to treat each other in matters both trivial and consequential provided critical evidence of identity and social status for the individuals and the group.

Athenian litigants often treated oaths of this kind—where Athenians swore to their intimate connections with close relatives—as crucial proofs of civic status. In Isaeus’ *On Behalf of Euphiletus*, where the unnamed speaker represented his brother Euphiletus when he had been charged with *ξενία*, the speaker particularly stressed his own, his father’s, *and* his mother’s willingness to swear an oath in the sanctuary of Delphinian Apollo that Euphiletus was their relative and a legitimate Athenian citizen (Isaeus. 12.9-10). In addition, in Demosthenes’ *Against Boeotus I*, in an arbitration, the woman Plangon was actually able to force her former husband Mantias to introduce their sons to his phratry and deme by swearing a similar oath (Dem. 39.3-4). Such oaths carried enormous weight in Athenian legal proceedings, and I agree with Apollodorus that Phrastor’s refusal to swear the oath on behalf of his own child would be taken as particularly damning evidence of Phano’s non-citizen status.

Later in his narrative, Apollodorus continued to play on the theme of male relatives failing to defend Phano in court. In perhaps the most shocking episode, Apollodorus claimed that Stephanus plotted against Epaenetus of Andros and purposefully caught him committing adultery with Phano, who apparently had already given him services many times. Stephanus then intimidated Epaenetus and demanded sureties from the man before he would release him (Dem. 59.64). In a turn of events that eerily mirrored Phrastor’s countersuit against his former father-in-law, when Stephanus released Epaenetus, Epaenetus brought a suit for false imprisonment against him. In his defense, Epaenetus pointed to a law “that forbids one from being taken as an

adulterer who has to do with women who sit in (work out of) a brothel and or who openly sell themselves” (Dem. 59.67).¹⁷⁷

As Epaenetus argued, Stephanus arranged for him to come to his home and have intimate relations with Phano on at least a somewhat regular basis. Furthermore, each time he had stayed with Stephanus’ family, Epaenetus had supported the household financially (Dem. 59.67). Like Apollodorus, Epaenetus claimed that Stephanus’ behavior was the best indicator of Phano’s status. Formerly, he had treated Epaenetus as a customer and Phano as a prostitute, and therefore she *was* a prostitute and the daughter of Neaira, another prostitute. As Kapparis has noted, Apollodorus apparently was hesitant to accuse Phano of being a foreign prostitute outright in court.¹⁷⁸ In Epaenetus, he found the perfect mouthpiece, a man who had known Stephanus’ family over a long period of time and had observed their personal habits. Again, Apollodorus considered Phano’s everyday actions and her personal relationships as the best proofs of her identity. Furthermore, Apollodorus had once more manipulated the idealized portrait of the citizen-wife, when he depicted Phano’s affair, entirely inappropriate relationship for an Athenian citizen-woman. Kapparis has argued that Apollodorus entirely misrepresented this episode, and Phano was simply a misguided woman who had been seduced after her failed first marriage.¹⁷⁹ However we consider this episode, Phano was either an adulterous woman or, at worst, a prostitute. At any rate, she would not make a sympathetic figure to an Athenian jury.

¹⁷⁷ The full Greek text reads: τόν τε νόμον ἐπὶ τούτοις παρεχόμενος, ὃς οὐκ ἔῃ ἐπὶ ταύτησι μοιχὸν λαβεῖν ὅποσαι ἂν ἐπ’ ἐργαστηρίου καθῶνται ἢ πωλῶνται ἀποπεφασμένως, ἐργαστήριον φάσκων καὶ τοῦτο εἶναι, τὴν Στεφάνου οἰκίαν, καὶ τὴν ἐργασίαν αὐτὴν εἶναι, καὶ ἀπὸ τούτων αὐτοὺς εὐπορεῖν μάλιστα.

¹⁷⁸ Kapparis 1999, 37.

¹⁷⁹ Kapparis 1999, 37.

As with Phrastor, rather than face Epaenetus in court, Stephanus chose another route. He entered into arbitration with Epaenetus, and the men came to an agreement that Epaenetus would contribute 1000 drachmae to Phano's dowry, "since [Stephanus] had lost her dowry and could not provide her another again" (Dem. 59.69).¹⁸⁰ Although Epaenetus accused Phano of behavior that would shame any citizen-wife, Stephanus chose not to address these allegations and so yet again failed to defend Phano's identity as a citizen-woman in court. Moreover, when he solicited 1000 drachmae from Epaenetus for Phano's dowry, he publicly admitted that he had failed to protect her dowry when Phrastor refused to return it. If a dowry served as a symbol of a woman's legitimacy and of her citizen status, Apollodorus created a powerful image in his description of Epaenetus' payment to Phano's dowry. Just as Stephanus tarnished Phano's image as a citizen by allowing her to associate freely with a strange man, he also compromised her dowry when he solicited money from Epaenetus. Yet again, Apollodorus emphasized Stephanus' behavior toward his daughter and his failure to protect her in court as proofs of Phano's non-citizen status.

Finally, we come to Phano's second marriage to Theogenes.¹⁸¹ Modern scholars have often discussed Phano's marriage to Theogenes for its religious significance: Theogenes served as the king archon (βασιλεύς) while he was married to Phano.¹⁸² As the king archon's wife,

¹⁸⁰ In the terms of reconciliation given at Dem. 59.71, Epaenetus agreed to put 1,000 drachmae toward Phano's dowry, and Stephanus apparently agreed "to offer Phano up to Epaenetus, whenever he stayed with him and wished to have relations with her." I agree with Kapparis, however, that this document is likely a forgery. Stephanus did not treat Phano as a prostitute, when he demanded Epaenetus contribute to her dowry. This clearly implies that Stephanus wanted Phano to remarry, and indeed, she did! For more, see Kapparis 1999, 316-317.

¹⁸¹ See also Dem. 59.72: As Apollodorus narrated the events surrounding Phano's second marriage, there was also a political element to the match. Apparently, Stephanus met the inexperienced Theogenes and ingratiated himself with the man. Theogenes appointed Stephanus to his board of magistrates (as πάρεδρος). The marriage followed from the political ties between the two men.

¹⁸² For an excellent summary of this scholarship, see Kapparis 1999, 324-331. See especially Macurdy 1928; Hamilton 1992, 53-56.

Phano, as the ritual queen of Athens (βασίλιννα), became the bride of Dionysus during the festival of Anthesteria (Dem. 59.73). As both Kapparis and Blok have mentioned, a woman could usually consider her position as the ritual queen of Athens as almost unassailable proof of her citizen identity.¹⁸³ Apollodorus thus took special care in attacking Phano for performing these sacred rites, when she herself was an alien.

In attacking Phano as the queen of Athens, Apollodorus again manipulated the ideological portrait of the citizen-wife. When he recounted the history of the rites at the Anthesteria, he declared,

τὴν δὲ γυναῖκα αὐτοῦ νόμον ἔθεντο ἀστὴν εἶναι καὶ μὴ ἐπιμεμειγμένην ἑτέρῳ ἀνδρὶ ἀλλὰ παρθένον γαμεῖν, ἵνα κατὰ τὰ πάτρια θύηται τὰ ἄρρητα ἱερὰ ὑπὲρ τῆς πόλεως, καὶ τὰ νομιζόμενα γίγνηται τοῖς θεοῖς εὐσεβῶς καὶ μηδὲν καταλύηται μηδὲ καινοτομῇται.

And [the old Athenians] set down a law that [the king archon's] wife was to be a citizen-woman who had not known another man but married as a virgin, so that the sacred rights of which none may speak may be celebrated on behalf of the city, and so that the sacrifices may be made for the gods piously, and in no way left undone or changed (Dem. 59.75).

In his description, Apollodorus stressed that the wife of the king archon was supposed to be a citizen-woman and a virgin before she married him. In other words, she was in every aspect the opposite of the Phano whom Apollodorus had described in his speech, a woman whose husband had divorced her without ceremony, who had borne a child, who had an affair, and whose civic identity was questioned not only by her family but by the Athenian community as a whole.

Perhaps Apollodorus had not fully proven that Phano was the daughter of Neaira, but he certainly established that she had been married to Phrastor. Phrastor himself and the members of his *genos* had borne witness to this union, and therefore, no matter whether she was an alien or a citizen,

¹⁸³ See Kapparis 1999, 38; see also Blok 2017, 195.

Phano was unfit to serve as the queen of Athens. Apollodorus thus used Phano's personal relationships as proof that she was the antithesis of the chaste, dutiful Athenian citizen-wife.

Furthermore, Apollodorus also stressed that Theogenes, like Stephanus and Phrastor, failed to defend Phano's civic identity at a critical moment. After the conclusion of the Anthesteria, the Areopagus Council apparently undertook an investigation and discovered that Phano was of a questionable character. They then demanded that Theogenes pay a fine (Dem. 59.81). Rather than pay the fine, however, Theogenes instead offered to divorce Phano, and Apollodorus credited him with an impassioned speech:

‘ὅτι δὲ’ ἔφη ‘οὐ ψεύδομαι, μέγαλ’ τεκμηρίῳ καὶ περιφανεί ἐπιδείξω ὑμῖν·
τὴν γὰρ ἄνθρωπον ἀποπέμνω ἐκ τῆς οἰκίας, ἐπειδὴ οὐκ ἔστιν Στεφάνου θυγάτηρ
ἀλλὰ Νεαίρας. κἂν μὲν ταῦτα ποιήσω, ἤδη πιστοὶ ὑμῖν ὄντων οἱ λόγοι οἱ παρ’
ἐμοῦ λεγόμενοι, ὅτι ἐξηπατήθην· ἐὰν δὲ μὴ ποιήσω, τότε ἤδη με κολάζετε ὡς
πονηρὸν ὄντα καὶ εἰς τοὺς θεοὺς ἡσεβηκότα.’

He said, “That I am not lying [about my ignorance of Phano's true parentage], I shall show you with great and manifest proof: For I shall send the woman away from my house, since she is not the daughter of Stephanus but of Neaira. And if I do these things, let the words spoken by myself be trustworthy to you now, that I was deceived: But if I fail to do these tasks, then punish me as a wretched man and one who committed impiety against the gods (Dem. 59.82).

Apollodorus created a powerful image of the choices open to Theogenes: first, he could remain married to Phano, a tacit admission that he had known about her previous marriage and perhaps even her origins as the daughter of a prostitute. Second, and undoubtedly the more appealing option, Theogenes could divorce Phano and thus save his own reputation while painting Stephanus as the ultimate manipulator, a man who risked the wrath of the gods to advance his own political agenda and marry his “daughter” to the king archon. If Phano had established her civic identity by serving as the king archon's wife and becoming the bride of Dionysus, Theogenes certainly undermined her efforts by reportedly divorcing her immediately after the

Anthesteria. Yet again, Apollodorus discredited Phano by pointing to her personal relationships and her male relatives' inability or reluctance to defend her before the wider Athenian community.

The connections that Apollodorus created between Neaira, Phano, and their male relatives are certainly complicated. As Apollodorus argued, Phrastor, Theogenes and Stephanus's behavior toward Phano was a strong indicator of her civic status. When Phrastor refused to return her dowry, he signaled to the larger Athenian community that his ex-wife did not enjoy the rights of the Athenian citizen, who could expect to have her dowry returned to her family in the event of a divorce. When Stephanus failed to bring Phrastor to court to sue for Phano's dowry, he too communicated Phano's weak position in society. In Apollodorus' narrative, the *gennetai*'s later refusal to admit Phrastor's son was only natural. Why would the Athenian community accept Phano and her children as citizens, when the implications of her relatives' actions were clear—they treated Phano as illegitimate, and so she was illegitimate. Theogenes' decision to divorce Phano after the Anthesteria festival was almost a foregone conclusion when Apollodorus closed his narrative on Phano's dysfunctional relationships with her two husbands and father. A man with a promising political career, who had served as king archon, could never afford to be married to a woman with even a hint of scandal attached to her name. In Apollodorus' accusations against Phano, the connection between personal relationships, especially within the immediate family, and civic identity becomes clear.

Moreover, Apollodorus' arguments against Phano also demonstrate that the Athenians linked behavior with citizen status. Consider again Phrastor's initial impressions of his young wife. Phano could not adjust to Phrastor's moderate lifestyle, and she would not heed him. She

could not act the part of the model citizen-wife, and therefore Phrastor concluded that she could not be a citizen. With Stephanus' relationship with Neaira widely known, Apollodorus offered the simplest explanation for the situation when he claimed that Phano was Neaira's daughter and that this was a well-known secret in her circle of family and friends. Critically, however, Apollodorus could only connect Phano to Neaira through her inappropriate behavior.

Finally, Apollodorus' attacks against Phano demonstrate that the Athenian family shared one civic identity. Consider his arguments concerning Phrastor's failure to introduce his son into his *genos*. As Apollodorus argued, when the *gennetai* denied that the child was a citizen, they also impugned the civic identity of his mother, Phano. Apollodorus then took this conclusion to its logical extreme: if Phano were not an Athenian citizen, then she must be the daughter of the former slave and alien, Neaira. Apollodorus treated the attacks on the grandson's civic identity as proof of the grandmother's non-citizen identity (if we accept that Neaira was indeed the mother of Phano). Moreover, Neaira and Phano's male relatives made a bad situation worse when they failed to defend the two women in court. As Apollodorus so clearly demonstrated throughout his speech, Athenians constantly negotiated their civic identities, and the civic identities of their female relatives, at communal events and through Athenian institutions like the law courts. An Athenian citizen stood up in court not only to defend his own status as a citizen but the status of his entire family.

Conclusion

I could go on, and indeed, Apollodorus continued his speech long after his narrative of Phano's marriage to Theogenes, even delving into a lengthy tangent on the grant of Athenian

citizenship to the Plataeans (Dem.59.94-106). I conclude, however, with a discussion of Apollodorus' dramatic imagining of the chaos that would engulf Athens if the jurors were to acquit Neaira:

ὥστε πολὺ μᾶλλον ἐλυσιτέλει μὴ γενέσθαι τὸν ἀγῶνα τουτονὶ ἢ γενομένου ἀποψηφίσασθαι ὑμᾶς. κομιδῇ γὰρ ἤδη [παντελῶς] ἐξουσία ἔσται ταῖς πόρναις συνοικεῖν οἷς ἂν βούλωνται, καὶ τοὺς παῖδας φάσκειν οὗ ἂν τύχῳσιν εἶναι· καὶ οἱ μὲν νόμοι ἄκυροι ὑμῖν ἔσονται, οἱ δὲ τρόποι τῶν ἐταιρῶν κύριοι ὅ τι ἂν βούλωνται διαπράττεσθαι.

It would be far better if this trial had never happened than, when it has happened, you vote for acquittal. For then there will be absolute liberty for prostitutes to live with whomever they choose, and to name their children the children of whomever they chance to meet; and your laws will be powerless, and the customs of the courtesans will have power to do whatever they wish! (Dem. 59.112).

In Apollodorus' arguments, the jurors decided not only the civic status of Neaira but the very definition of Athenian citizenship. Apparently, if the jurors voted to acquit Neaira, they would also transform her and her daughter Phano into the new models for the Athenian citizen-woman. In this nightmare landscape, Athenian women would become prostitutes who would show no respect for the institution of marriage. They would live with whomever they pleased and have illegitimate children who did not belong to any single household. In short, if Neaira and Phano were to set Athenian societal standards, they would destroy the city. In one of his final rhetorical flourishes, Apollodorus thus tied daily activities and personal relationships directly to the Athenian civic ideology surrounding citizenship.

Moreover, Apollodorus characterized his lawsuit against Neaira not as an attack on a single woman's civic identity but as a defense of Athenian women and of the city as whole. In Apollodorus' portrayal of Athens, if a single household shared one civic identity, then so did the city. Women like Neaira and Phano threatened not only their own

families with their behavior but the entire Athenian citizenry, because individuals—both men and women—were responsible for maintaining societal norms. By modern standards, we consider Apollodorus a man with a grudge against Stephanus who sought to destroy the man's household by attacking his partner, Neaira. Apollodorus, however, masterfully painted himself as a man defending his community against a woman who sought to destroy it.

CHAPTER V

Athenian Anxieties about Family and Citizen Identity

Introduction

εὐθὺς ἔλεγον ὅτι Καλλίππη μήτηρ, αὕτη δ' εἷη Πιστοξένου θυγάτηρ, ὥς
ἐξαρκέσον εἰ ὄνομα μόνον πορίσαιντο τὸν Πιστόξενον. Ἐρομένων δ' ἡμῶν ὅστις
εἷη καὶ εἰ ζῇ ἢ μή, ἐν Σικελίᾳ ἔφασαν ἀποθανεῖν στρατευόμενον, καταλιπόντα
ταύτην θυγατέρα παρὰ τῷ Εὐκτήμονι, ἐξ ἐπιτροπευομένης δὲ τούτῳ γενέσθαι,
πρᾶγμα πλάττοντες ἀναιδεῖα ὑπερβάλλον καὶ οὐδὲ γενόμενον...

Straightaway they claimed that [the boys'] mother was Callippe, and that she herself was the daughter of Pistoxenus, as if it were sufficient if they produced the name Pistoxenus alone. And when we asked who he was and if he was alive or not, they claimed he had died in Sicily while on military expedition, leaving behind this daughter in the house of Euctemon, and that Euctemon had children by her while she was under his guardianship, fabricating a story surpassing in impudence and not even true (Isaeus. 6.13).

In disputing the estate of Euctemon, the orator Isaeus depicted the plaintiff Androcles as a mercenary rascal who sought to rob Chaerestratus, Euctemon's adopted grandson, of his inheritance. Apparently, Androcles had declared himself the guardian of Euctemon's two sons by his late wife Callippe and claimed his estate on their behalf. But the unnamed speaker, a close friend of Chaerestratus, asserted that Euctemon had only one son, the late Philoctemon, the adoptive father of Chaerestratus. The speaker further claimed that Androcles lied about the boys' parentage and, even more incredible, fabricated the existence of Callippe, the putative wife of Euctemon and mother of his two sons. In making this argument, the orator was taking advantage of particular Athenian anxieties surrounding civic and family identity. Not only did Athenians fear that litigants like Androcles would manipulate women's identities to gain control over

estates, they also had numerous other anxieties about a variety of circumstances, both global and personal, that could disrupt the fragile social fabric and make citizenship status vulnerable to attacks.

In my previous chapters, I focused on the performances of daily life that helped to establish civic identity and the personal relationships that defined Athenian institutions like adoption. In this chapter, I concentrate on evidence of Athenian anxieties surrounding these performances in two kinds of legal actions that often overlapped—lawsuits involving citizenship and inheritance. The legal speeches of Isaeus and Demosthenes illustrate that Athenians were acutely aware that both major catastrophes—such as the Peloponnesian War—and small-scale catastrophes—feuds among relatives, for example—threatened their ability to complete the everyday performative acts by which they defined their civic identities. Furthermore, Athenian concerns about their inability to complete quotidian performances demonstrate the importance of these kind of mundane activities to the their identification process.

To prove that the Athenians realized that even minor disruptions could weaken their fragile methods of identification, in this chapter I examine Isaeus' *On the Estate of Philoctemon*. This particular case touches on the full panoply of Athenian fears surrounding performances of family and civic identity through the speaker's extraordinary account of the struggle between Chaerestratus and his opponents Androcles and Antidorus for the estate of Euctemon. In this chapter, I first examine the Athenian concerns about how war and other large-scale catastrophes could upset everyday performative acts. For example, the speaker claimed that the death of Philoctemon, Euctemon's son, during the Peloponnesian War emboldened Euctemon's other relatives to come forward and claim his estate. When Athenian men died in battle or abroad, their

deaths could have lasting consequences for their families in Athens and could even endanger their civic identities and their estates. Secondly, I consider Athenians' anxieties surrounding women's civic identities and how Athenian litigants might manipulate them to threaten the informal performances that defined Athenian societal norms. As I discussed above, Chaerestratus' representative claimed that his opponent Androcles, a distant relative of Euctemon, had fabricated Callippe to gain control over the old man's estate. He had also previously sought to claim Euctemon's daughter as an heiress, again so that he could acquire the family property. Third, I examine Athenian anxieties that women themselves might subvert the Athenian identification process. The speaker claimed that the former prostitute Alce manipulated the aged Euctemon, her lover, into giving away almost his entire estate and into admitting her son into his phratry and granting the boy citizenship. Lastly, I examine how family feuds, like the one between Euctemon and his son Philoctemon, could disrupt the performances associated with family and civic identity.

Modern scholarship

In my own study, I focus on Athenian anxieties that centered around the family and the household, and I argue that concerns about disruptions to the mundane performances of identity demonstrate the vital role these quotidian activities played in the Athenian identification process. Other academics who have examined Athenian anxieties about civic identity, however, have taken an altogether different approach. In large part, they have focused on larger anxieties on the level of the polis. In one group, scholars have focused on two key pieces of legislation: Solon's reforms of 594 BCE and the Periclean citizenship law of 451/0 BCE. Both laws have inspired

distinct branches of scholarship involving their reconstruction and extensive consideration of the anxieties that motivated the Athenians to pass legislation. Researchers treat the anxieties as the unknown cause and the laws as a natural result. The second group of scholars have focused on Athenian anxieties surrounding the infiltration of slaves and metics into the citizenry through institutions like the deme. In particular, these writers describe the measures that Athenians took to control the metic population and to deal with the characters who Athenians feared would try to introduce foreigners as citizens.

Scholars concentrating on Solon's reforms have hypothesized that the law-giver was reacting to a number of intense anxieties during the sixth century BCE. Manville, for example, focused in particular on Solon's ban on debt bondage, arguing that by prohibiting this practice, Solon guaranteed freedom to citizens and drew a clear boundary between citizen and non-citizen for the first time.¹⁸⁴ A second branch of this scholarship concentrated on Solon's legal reforms concerning the structure of the Athenian family. Although debate has arisen about the actual content of these laws, Susan Lape, for example, has argued convincingly that Solon might have made legitimacy a key requirement of citizenship, barring illegitimate children from becoming citizens and incentivizing Athenians to have children only within lawful marriages. Lape claimed that Solon's reforms addressed Athenian anxieties surrounding social status; she asserted that Solon's laws on the family "equalized sexual opportunity" and put Athenians, both wealthy and poor, on equal footing through marriage.¹⁸⁵ Finally, scholars like Paulin Ismard and Alain DuPlouy have argued for the authenticity of Solon's so-called law of associations, a fifth-century

¹⁸⁴ See particularly Manville 1990, 124-156, where he concentrates in particular on Solon's focus in his reforms on creating both physical and legal boundaries.

¹⁸⁵ Lape 2002, 134.

law often credited to Solon by scholiasts. The law stipulated that agreements among members of demes, phratries, and other minor organizations were binding unless they went against the city's laws. Ismard and DuPlouy have argued that these private organizations controlled citizenship in this period and so dominated the archaic Athenian community. The Athenians were thus eager to regulate their interactions.¹⁸⁶

Researchers who have analyzed Pericles' Citizenship Law have focused on a key passage from the *Constitution of the Athenians*, in which Pericles limited citizens to those born from two citizen parents "on account of the number of citizens" (διὰ τὸ πλῆθος τῶν πολιτῶν).¹⁸⁷ As Alan Boegehold asked in his article on the Periclean legislation, "How did a πλῆθος of citizens create pressure? What did that πλῆθος do? Who exactly was being pressed?"¹⁸⁸ With these questions in mind, modern scholars have put forward numerous interpretations of Aristotle's explanation of the law. Again, these writers generally treat Pericles' legislation as a remedy for growing anxiety among the Athenian population.

Modern academics have considered Pericles' citizenship law as an expression of Athenian anxieties concerning the increasing number of marriages between Athenians and non-citizens. After the Persian Wars, large numbers of foreigners entered Attica and settled there, prompting the Athenians to classify them as metics and create a number of provisions to control

¹⁸⁶ See Ismard 2010, 44-83; Duploux 2014.

¹⁸⁷ The Greek text reads: ἐπὶ Ἀντιδότου διὰ τὸ πλῆθος τῶν πολιτῶν Περικλέους εἰπόντος ἔγνωσαν μὴ μετέχειν τῆς πόλεως, ὅς ἂν μὴ ἐξ ἀμφοῖν ἀστοῖν ἦ γεγονώς. ([Arist]. Ath.Pol.26.3).

Likewise, in his brief description of the law, Plutarch stated that Pericles defined citizens as "those... who were born from Athenians on both sides." Plutarch's text reads: εἶχε δ' οὕτω τὰ περὶ τὸν νόμον. ἀκμάζων ὁ Περικλῆς ἐν τῇ πολιτείᾳ πρὸ πάντων πολλῶν χρόνων καὶ παιδᾶς ἔχων ὥσπερ εἴρηται γνησίους, νόμον ἔγραψε, μόνους Ἀθηναίους εἶναι τοὺς ἐκ δυεῖν Ἀθηναίων γεγονότας (Plut. Per.37.3).

¹⁸⁸ Boegehold 1994, 58.

this population (e.g. the payment of the metic tax). In earlier scholarship, academics like Charles Hignett argued that the Athenians passed this law to defend ethnic purity. Hignett surmised that the influx of immigrants would prompt the Athenians to consider more fully their own cultural identity: “The main object of the law of 451/0 was probably to preserve the racial purity of the citizen-body.”¹⁸⁹ Later scholars dropped arguments concerning the racial makeup of the Athenian populace but retained a focus on the increasing number of foreign marriages in Attica. Humphreys, for example, argued that Pericles proposed his legislation to prevent aristocratic Athenians from marrying wealthy foreign women and perhaps getting their allegiances confused.¹⁹⁰

In another vein of scholarship, scholars have considered the Periclean law in light of the privileges that Athenian citizenship ensured. Lambert argued that, as the Athenian empire grew in the early fifth century, the Athenians began to realize the high value of citizenship and saw a need to curb the number of citizens to fully defend these rights.¹⁹¹ Patterson considered the legislation in the wider context of fifth century politics, observing that during this period, the Athenians passed a number of measures meant to protect the rights of citizens. Patterson noted that such a legislative movement required the state first to define who were rightful citizens and

¹⁸⁹ Hignett 1952, 345. As Alan Boegehold has noted, Hignett viewed the politics of fifth century Athens as a scholar who had lived through the second world war, where racial politics obviously played a critical role in the crisis. See Boegehold 1994, 58.

¹⁹⁰ Humphreys 1974, 93-94. Likewise, Walters argued that Pericles sought to prevent Athenian citizen men from enfranchising their children by slaves or foreign women and thus increasing the citizen-body to the point where Athenian institutions would become unworkable. See Walters 1983, 332-336. See also Ruschenbusch 1974; Davies 1977; Sealey 1984; Raaflaub 1998; de Ste. Croix 2004.

¹⁹¹ Lambert 1993, 43.

second to limit and control the citizen population.¹⁹² Likewise, in his later study of Pericles' law, Boegehold considered those privileges of citizenship where too great a number of citizens might pose a significant issue. He argued that the legislation sought to reduce the number of citizens with valid claims to land in Attica, the most precious commodity.¹⁹³ All of these scholars have suggested logical solutions to the question of what prompted the Periclean citizenship law, but unfortunately, there is a distinct lack of evidence to support the majority of these claims. I agree with Josine Blok that we need a different approach when we consider Athenian anxieties surrounding citizen identity, an approach that does not follow the history of the Athenian constitution and which is not tied to specific pieces of legislation.¹⁹⁴

In a completely different mode of scholarship, Classicists like Whitehead have considered anxieties around the metic population of Attica and the often-ambivalent feelings of citizens towards non-citizens. In his early work, Whitehead argued that metics were defined by their "exclusion from the whole political, social, economic and religious nucleus of Athenian life."¹⁹⁵ He did not classify metics as quasi-citizens, enjoying limited rights within the city, but

¹⁹² Patterson 1981, 104.

¹⁹³ Boegehold 1994, 61-64. Along similar lines, Blok has suggested that the Periclean law was meant to curb the number of people who had a right to share in the religious traditions of the city on both a local and state level. She has argued that the Athenians were able to extend the rights to hold both political and religious office to all Athenians only because they limited the number of citizens. Blok 2009, 158-168.

¹⁹⁴ In the first vein of scholarship on Pericles' Citizenship Law, we have no evidence that the Athenians felt particular concern about the growing number of non-citizens within Attica or an increase in marriages between citizens and non-citizens. In the second vein of scholarship, there is no indication in the ancient sources that Athenian institutions were becoming "unworkable" because of a swell in population.

For a more detailed discussion of the shortcomings of the scholarship concerning Pericles' Citizenship Law, see Blok 2009, 155-157.

¹⁹⁵ Whitehead 1977, 70. Whitehead did acknowledge that metics played active roles in the Athenian community, in particular taking part in major state festivals like the Panathenaia and the Dionysia.

anti-citizens, the negative image of Athenians who enjoyed all the privileges of citizenship. Most importantly, Whitehead noted that the Athenians were careful to demarcate between non-citizen and citizen. In his later work, Whitehead addressed more fully the Athenians' anxieties concerning the penetration of metics into the citizenry in his consideration of corruption within the demes. In particular, Whitehead considered the dual concerns that the Athenians felt during the examination of the deme rolls in 346 BCE.¹⁹⁶ The Athenians feared that non-citizens would bribe deme officials to enroll them illegally, and conversely, they were also concerned that legitimate Athenian citizens might be disenfranchised because of private feuds with their demesmen.

More recently, scholars have focused less on the rights of metics and their roles within specific institutions and more on the relationship between the metic population and the polis as a whole. Von Reden has argued that although the Athenians exploited the port of Piraeus and its population for money, ultimately civic ideology prevented the Athenian citizenry from feeling any obligation toward the metic population in Piraeus.¹⁹⁷ Von Reden concludes that, while the Athenians were not necessarily anxious about metics in Piraeus, they were not eager to embrace them either. Cooper has built on these arguments, observing that the Athenians adopted an ambivalent attitude toward the metic population between 350 and 330 BCE. In this period, while the Athenians allowed foreigners more access to the legal system to encourage trade, they simultaneously passed harsher penalties for metics attempting to gain access to the citizenry.¹⁹⁸

¹⁹⁶ Whitehead 1986, 291-301.

¹⁹⁷ Von Reden 1995, 35.

¹⁹⁸ Cooper 2003, 66-71.

He also noted that during this period, the Athenian litigants often expressed extreme prejudices against metics to gain sympathy from jurors.¹⁹⁹

I differ from other scholars both in the scale of my study and in the legal speeches which I will examine. Modern writers have conducted large-scale studies that focus on the anxieties of the polis and synthesize evidence from a wide variety of historical sources. I focus on specific legal cases because of the insight they offer into the workings of the Athenian family and household. I consider how Athenian litigants in court represented the anxieties that individual Athenians felt when they were unable to complete those performative acts that defined their family and civic identities. Furthermore, while modern scholars have focused almost exclusively on cases centering on citizenship when they have looked at legal speeches, I also consider the inheritance cases of Isaeus. As I argued in my previous chapter on adoption, the institutions that governed the adoption process also governed citizenship. Accordingly, Athenian anxieties concerning adoption also mirrored their anxieties about civic identity.

War as disruptive force

Periods of conflict and unrest especially threatened the performative acts that established Athenians' civic identities and their identities as adoptive children. Wars could prove particularly disruptive to testamentary adoptions, since a citizen often completed these adoptions before they departed on military service. If that citizen then died in battle or abroad, his will might be contested. His relatives could completely ignore the document, or, most egregiously, they might even forge a will in his name in which the citizen adopted someone of his relatives' own

¹⁹⁹ Cooper 2003, 71-78.

choosing. Thus unprincipled Athenians, who took advantage of the chaos that often arose after a relative's death in battle, undermined the complicated set of performances that confirmed adoptions. Moreover, major catastrophes like the Peloponnesian War profoundly disrupted the Athenian identification process. Citizens who died or were taken prisoners of war could not perform the duties and daily tasks that defined their identities, endangering their own civic status and that of their family members.

In Isaeus' *On the Estate of Philoctemon*, the speaker opened his arguments by explaining to the jurors why he acted as his friend Chaerestratus' advocate in the case. He claimed that he and Chaerestratus were such close friends, that he willingly followed his friend to war when Chaerestratus acted as trierarch during the Sicilian expedition (415 BCE). During the conflict, the two were captured by the enemy and were held as prisoners of war together. The speaker asked the jury how could he face such perils with Chaerestratus in war and neglect to help him in court, as well? (Isaeus. 6.1-2). Particularly compelling is the speaker's explicit comparison between the dangers that Chaerestratus faced in war and those he faced in court at the hands of Androcles and Antidorus. Both struggles could endanger Chaerestratus' family and his status as Philoctemon's adopted son. In his introduction, the speaker touched on a key theme to which he returned throughout his speech: the destructive effects of war on the Athenian adoption and identification processes.

Critically, Chaerestratus and the speaker were not the only men in the course of the speech to go to war. The speaker's descriptions of Philoctemon's life and the events leading to his death in battle (~370s BCE) are particularly revealing.²⁰⁰ When Philoctemon was alive, he

²⁰⁰ See Wyse 1904, 512-513 for the difficulties in dating Philoctemon's death. See also Edwards 2007, 95-100.

attempted to prevent his father from illegally admitting the son of the prostitute Alce, Euctemon's lover, into their phratry (Isaeus. 6.22). Euctemon eventually introduced the boy to his phratrymen, despite Philoctemon's protests. It appears, however, that the old man's estate remained mostly intact, and Euctemon left his new "son" only a single plot of land (Isaeus. 6.23). Sometime after these events, Philoctemon, while he was acting as trierarch, died in battle near the island of Chios, after he had adopted Chaerestratus by will. After Philoctemon's death, Euctemon apparently felt emboldened and drew up a will that described the conditions under which his son was admitted into the phratry (Isaeus. 6.27). More incredible, Alce and her accomplices Androcles and Antidorus later persuaded the senile and sick Euctemon to cancel this will and sell off his estate piecemeal (Isaeus. 6.30).

Although Philoctemon was unable to prevent fully his father from giving Alce's alleged son a portion of his property, he did ensure that Euctemon could not destroy the family estate. Furthermore, before Philoctemon died, he had also prevented his father Euctemon from undermining the Athenian identification process by acknowledging an alien child as a citizen.²⁰¹ When Philoctemon died in battle, however, his elderly father was left vulnerable to the attacks of Alce, Androcles, and Antidorus who wanted to gain possession over his property. By influencing Euctemon, these conspirators disrupted those everyday performances, like management of one's estate, that defined both civic and adoptive identities. Moreover, the speaker accused his opponents of ignoring Philoctemon's will in which he adopted Chaerestratus. If this will were genuine, Chaerestratus would be considered Euctemon's grandson and heir to his estate. By

²⁰¹ It appears that Euctemon never introduced his alleged son to his demesmen, and so the boy would not have been considered a "full" citizen. Judging from the text of this speech, it is possible that admission into the phratry was enough to guarantee the child his portion of Euctemon's estate. For a more detailed discussion of this issue, see Wyse 1904, 516-519.

laying claim to the property, Androcles and Antidorus were also ignoring Philoctemon's final wishes and disrupting the order of inheritance set out by Athenian custom and law.

Consider, too, the speaker's account of Callippe's childhood, the woman whom he claimed was the mother of Euctemon's two children. The speaker claimed that her father was Pistoxenus, a man who died during the Sicilian Expedition (415 BCE). This account would give them a significant advantage in the case. They could draw sympathy from their audience by invoking the worst disaster that the Athenians faced during the Peloponnesian War and take advantage of the disruptions resulting from the conflict that meant that many of their assertions would go unchallenged. For example, Androcles and Antidorus might use Pistoxenus' untimely death as a plausible excuse as to why he had never carried out performative acts on Callippe's behalf and given her a proper introduction into Athenian society. They could also cite the chaos during the Peloponnesian War to explain why Pistoxenus and Euctemon had ignored many other normal social customs. Like the speaker and the jurors, Androcles and Antidorus were aware of the Athenian concerns about the fragility of the Athenian identification process, particularly during periods of war.

Likewise, in other inheritance cases that centered on testamentary adoptions, Athenian litigants were especially concerned when citizens died in combat. Customarily, Athenians drew up wills before they set out on military expeditions.²⁰² They could thus ensure that their chosen heirs could gain possession of the estate and avoid lengthy legal battles. Throughout the legal speeches of Isaeus, Athenian litigants showed two distinct concerns: first, they were anxious that greedy relatives might take advantage of chaotic periods and ignore a will in which a citizen

²⁰² See Rubinstein 1993, 22-24. For ancient sources, see Isaeus. 2.14; Isaeus. 5.6; Isaeus. 9.15; Isaeus. 10.22; Isaeus. 11.8.

adopted an heir, as in Isaeus' *On the Estate of Philoctemon*. Second, they were also concerned that disreputable characters might forge a will, particularly during chaotic periods, to insert their own heir into the order of succession. By fabricating a will, Athenians could circumvent the usual performances by which they confirmed their relationships with their family.

Isaeus' *On the Estate of Dicaeogenes* gives us particularly important insights into Athenian anxieties about testamentary adoptions during periods of wartime and political unrest.²⁰³ A certain Dicaeogenes II, son of Menexenus, died in the battle of Syme (411 BCE). The struggle for Dicaeogenes II's property took place in two stages. First, Dicaeogenes II died in combat, and he left a will granting one-third of his estate to his nephew, Dicaeogenes III. Dicaeogenes II willed the remaining two-thirds of his estate to his sisters, the daughters of Menexenus. In the second stage of the struggle for the estate, twelve years later, "when the city was suffering misfortunes and civil strife arose," Dicaeogenes III came forward and claimed his uncle's entire estate, allegedly with a forged will, asserting that Dicaeogenes II had adopted him as his sole heir (Isaeus. 5.7).²⁰⁴ As in *On the Estate of Philoctemon*, Isaeus here played on a variety of Athenian anxieties that arose during periods of conflict. He depicted a family whose lives were upended when the owner of the ancestral property died in war. He further stressed that Athenians like Dicaeogenes might be tempted to take advantage of periods of political unrest to win possession of their family's entire estate. Even years or decades after war or civil strife,

²⁰³ See also Isaeus. 10.22: Aristarchus made a will, before he died in battle. The speaker feared that his opponents might play on the jurors' sympathy that a man's will be set aside, when he had died bravely in war. For similar circumstances, see Isaeus. 11.8: Hagnias made a will, when he acted as ambassador, probably during the Theban War (378-371 BCE). See Wyse 1904, 671.

²⁰⁴ The full Greek reads: καὶ ἐν τοσούτῳ χρόνῳ οὐσῶν δικῶν οὐδείς αὐτῶν ἡξίωσε τὰ πεπραγμένα εἰπεῖν ἀδίκως πεπράχθαι, πρὶν δυστυχησάσης τῆς πόλεως καὶ στάσεως γενομένης Δικαιογένης οὐτοσί, πεισθεὶς ὑπὸ Μέλανος τοῦ Αἰγυπτίου, ὃ περ καὶ τὰλλα ἐπείθετο, ἡμφεσβήτει ἡμῖν ἅπαντος τοῦ κλήρου, φάσκων ἐφ' ὅλῳ ποιηθῆναι ὕδς ὑπὸ τοῦ θεοῦ τοῦ ἡμετέρου.

Athenians could still face disruptions to those performative acts, like the inheritance and management of property, by which they affirmed their status.

In Isaeus' *On the Estate of Astyphilus*, the speaker, Astyphilus' half-brother, accused his cousin Cleon of forging a will in which Astyphilus had adopted Cleon's son and granted him control over his entire property. Astyphilus died in a military expedition to Mytilene (Isaeus. 9.1).²⁰⁵ When Astyphilus' body was brought back to Athens, the speaker further claimed that their father was ill and he himself was away on military service. Cleon took this opportunity to claim the estate on his son's behalf (Isaeus. 9.3). The speaker's narrative here follows the same pattern as the speaker's story in *On the Estate of Dicaeogenes*, in that the struggle for Astyphilus' estate took place in two stages. First, Astyphilus died unexpectedly while traveling abroad as a soldier. Because he died without a legitimate son to inherit his estate, Astyphilus' property would immediately be vulnerable to litigation. As legal speeches like Isaeus' *On the Estate of Nicostratus* demonstrate, Athenians could engage in lengthy court battles for properties where the line of succession was unclear.²⁰⁶ In the second stage of the conflict, the situation was exacerbated because the speaker himself was away on military expedition and his father was ill. Astyphilus' male relatives, most particularly his brother and father, could best defend his estate against false claimants. Cleon, aware that Astyphilus' property was left unguarded, apparently took advantage of the chaotic situation and forged a will. Isaeus' *On the Estate of Astyphilus* demonstrates the fragility of the Athenian adoption process during wartime, when Athenians like

²⁰⁵ The date of this expedition remains unclear. As the speaker stated later in the speech, Astyphilus had served throughout the Theban War (Isaeus.9.14), so this work must be later than 371 BCE. Wyse has suggested a date in the mid-360's BCE; see Wyse 1904, 627. Welsh has also argued that Astyphilus could have served in a garrison on Lesbos in the 360's. See Welsh 1991.

²⁰⁶ There were no less than seven claimants to Nicostratus's estate. See Isaeus. 4.8.

Cleon could take advantage of the death of one relative and the absence of another to circumvent the performances by which adoptive identity was usually established.

Finally, catastrophes like the Peloponnesian War did not impact the adoption process alone—these disruptive events also had an acute effect on the Athenian identification process, the duties and daily activities by which citizens established their status before the wider community. Most crucial for my own argument, the narrative presented by Euxitheus in Demosthenes' *Against Eubulides* shares striking similarities with the speeches of Isaeus discussed above. Euxitheus' civic identity came under suspicion in two distinct stages that again play on Athenian anxieties. First, Euxitheus claimed that his father served as a soldier in the Peloponnesian War, was taken prisoner, and sold into slavery on the island of Leucas, where he acquired a foreign accent (Dem. 57.18). His father's long absence required his mother to work as a ribbon-seller and a wet-nurse, slavish occupations which endangered her civic identity (Dem. 57.35).

In the second stage, Euxitheus alleged that his opponent Eubulides had taken advantage of a period of political unrest in the city to expel him from their deme, Halimous. In 346 BCE, a citizen named Demophilus proposed a decree that required an examination (διαπήφισις) of the deme registries on the grounds that demes admitted foreigners and metics either through ignorance or bribery.²⁰⁷ This legislation led to many legal cases, and Euxitheus claimed that Eubulides had realized this and seized his chance to get revenge on his old political rival:

διόπερ τὸν μὲν ἄλλον ἅπαντα χρόνον δημοτευόμενος μετ' ἐμοῦ καὶ κληρούμενος
οὐδὲν ἑώρα τούτων, ἐπειδὴ δ' ἡ πόλις πᾶσα τοῖς ἀσελγῶς εἰσπεπηδηκόσιν εἰς

²⁰⁷ See the introduction to this study for more detail on this decree. See also Whitehead 1986, 104-109; Cooper 2003, 66.

τοὺς δῆμους ὀργιζομένη παρώξυντο, τηνικαῦτα μοι ἐπεβούλευσεν. ἦν δ' ἐκεῖνος
μὲν ὁ καιρὸς τοῦ συνειδότος αὐτῷ τάληθ' ἔλεγειν, ὁ δὲ νυνὶ παρὼν ἐχθροῦ καὶ
συκοφαντεῖν βουλομένου.

Although in the past when he acted as a demesman and drew lots for office with me, he observed none of these [accusations], but when the entire city was spurred on, angry at those people who unlawfully forced their way into the demes, only then did he plot against me. That earlier time was the right moment for one who knew that he was speaking the truth, but the present moment belongs to an enemy and one who wishes to bring malicious accusations (Dem. 57.49).

Like Androcles, Dicaeogenes III, and Cleon, Eubulides seized on a chaotic moment in Athenian history. It was not only wars and civil unrest that destabilized the Athenian identification process; Athenian citizens used these major catastrophes to their own advantage to question the civic identity of others and the performative acts they had carried out as citizens. In this series of legal speeches, we can thus observe the anxieties that these kind of large-scale events invoked for Athenians in their everyday lives. Not only could wars prove disastrous for the city as a whole, but they could also spur on litigants to fight over their family estates and even to challenge the identities of their fellow citizens.

The manipulation and fabrication of women's identities

In his *On the Estate of Philoctemon*, Isaeus purposefully played on another kind of Athenian anxiety surrounding women's civic identities in his depictions of Callippe, allegedly Euctemon's second wife and the mother of his two younger sons. In the case of Callippe, the speaker argued that his opponents Androcles and Antidorus had fabricated the woman so that they could insert two alien children into the line of inheritance. As the speaker claimed, the mother of these children was actually Alce, a notorious prostitute, the lover of Euctemon, and the accomplice of Androcles and Antidorus. In inventing Callippe, these men bypassed (and by extension undermined) those performances of identity by which Athenian women affirmed their

identities. I would also argue, however, that Callippe's case and others like it prove that the identification process effectively controlled access to the citizen body.

To begin, the speaker harped on the question of the two children's mother and the unreliable nature of Androcles' and his accomplice Antidorus' claim to the estate. At the first hearing for the case, the men had been unable to name their ward's mother, and the speaker considered this evidence in support of his own version of events:

Ὅτε γὰρ αἱ ἀνακρίσεις ἦσαν πρὸς τῷ ἄρχοντι καὶ οὗτοι παρακατέβαλον ὥς ὑπὲρ γνησίων τῶνδ' Εὐκτήμενος ὄντων, ἐρωτώμενοι ὑφ' ἡμῶν τίς εἴη αὐτῶν μήτηρ καὶ ὅτου θυγάτηρ, οὐκ εἶχον ἀποδεῖξαι, διαμαρτυρομένων ἡμῶν καὶ τοῦ ἄρχοντος κελεύοντος ἀποκρίνασθαι κατὰ τὸν νόμον. <Καίτοι δεινόν>, ὧ ἄνδρες, ἀμφισβητεῖν μὲν ὥς ὑπὲρ γνησίων καὶ διαμαρτυρεῖν, μητέρα δὲ ἥτις ἦν μὴ ἔχειν ἀποδεῖξαι μηδὲ προσήκοντα αὐτοῖς μηδένα.

For when the interrogations took place before the archon, and these men made a claim to the property as if on behalf of the legitimate sons of Euctemon, when they were asked by us who was their mother and whose daughter she was, they could not produce an answer, although we protested and the archon ordered them to answer in accordance with the law. And yet it is a strange thing, gentlemen, to make a claim as if on behalf of legitimate sons and to lodge a protest, but not to be able to demonstrate who the mother was, nor even anyone related to them (Isaeus. 6.12).

Here I believe that the speaker offers modern scholars two critical insights into how the Athenians viewed their identification process. On one hand, if we believe the speaker's claims, Androcles and Antidorus constituted a serious threat to the institutions that controlled citizenship. By fabricating a woman's existence and claiming Alce's two sons as Euctemon's legitimate children, they sidestepped the usual performances by which Athenians recognized citizens. On the other hand, the speaker's arguments in this case also suggest that the identification process was an effective mechanism by which to control the citizen body. Androcles and Antidorus could not simply concoct a citizen-mother for their two wards. They needed to establish that she had lived in society, married Euctemon, and carried out the usual

performative acts—both the religious and mundane—of the typical Athenian woman. Moreover, Androcles and Antidorus also needed to produce witnesses to testify on her behalf. As I have demonstrated in the previous chapters, relatives were the most important witnesses an Athenian litigant could provide in cases which centered on citizenship and inheritance. It would be difficult if not impossible for Androcles and his accomplices to establish that their wards were Euctemon's legitimate children if they could produce no witnesses to confirm their mother's identity.

The speaker considered his opponents' changing accounts concerning their ward's parentage as even more damning evidence of their nefarious intentions. After Androcles and Antidorus had secured a delay in the court proceedings, at the second hearing they returned with what the speaker deemed "a story surpassing in impudence and not even true" (Isaeus. 6.13). According to these men, Euctemon had his two sons by Callippe, a woman whose father Pistoxenus had appointed Euctemon as his daughter's guardian, before he perished in the Sicilian Expedition (Isaeus. 6.13). In this passage, I believe that the speaker subtly suggested that the story his opponents presented was too convenient. If the children whom the plaintiffs represented as Euctemon's legitimate sons were in fact the illegitimate children of Alce, Androcles and Antidorus would need to fabricate a more appealing woman to present to an Athenian jury. At the preliminary hearing, they fumbled (Isaeus. 6.13). Apparently, by the trial, they had created Callippe, the daughter of a war hero, a far more appealing character to Athenian jurors. As I argued above, Androcles and Antidorus might also be able to claim that Callippe's father had died before he could introduce his daughter to Athenian society properly and carry out the

requisite performative acts on her behalf. Although the speaker had dealt his opponents a blow in the first hearing, they still proved to be formidable.

The speaker's allegations that his opponents had completely fabricated the boy's mother may seem extreme to a modern reader, but examples of this peculiar legal tactic actually appear at least three times in other legal speeches by Isaeus and Demosthenes. In Isaeus' *On the Estate of Ciron*, the unnamed speaker attempted to claim his maternal grandfather's estate. He began his case by criticizing his opponents' underhanded tactics: "These men lay claim to the estate on the grounds that they are the nearest kin, and they insult us by alleging that we were not born from [Ciron]'s daughter, nor even was a daughter ever born to that man" (Isaeus. 8.1).²⁰⁸ Crucially, the speaker in this case seemed to consider his opponents' allegations a common tactic. They manipulated his mother's identity, so that they could claim his grandfather's estate. In doing so, they undermined the identification process that controlled inheritance and civic identity.

Moreover, the speaker took great pains in the case to offer proofs that Ciron in fact had a daughter and that he himself was her son. He first stressed that his opponents had refused to hand over Ciron's household slaves for torture, so that they could attest that Ciron had reared a daughter in his house, given two marriage feasts in her honor, and given a dowry to each of her husbands (Isaeus. 8.9). The speaker further highlighted the attention that Ciron had given him and his brothers: he claimed that Ciron always offered sacrifices, both at the local and state levels, with his grandsons at his side, as a public acknowledgement of their status as his relatives

²⁰⁸ The full Greek reads: Ἐπὶ τοῖς τοιούτοις, ὧς ἄνδρες, ἀνάγκη ἐστὶ χαλεπῶς φέρειν, ὅταν τινὲς μὴ μόνον τῶν ἀλλοτρίων ἀμφισβητεῖν τολμῶσιν, ἀλλὰ καὶ τὰ ἐκ τῶν νόμων δίκαια τοῖς σφετέροις αὐτῶν λόγοις ἀφανιεῖν ἐλπίζωσιν· ὅπερ καὶ νῦν οὗτοι ποιεῖν ἐγχειροῦσι. Τοῦ γὰρ ἡμετέρου πάππου Κίρωνος οὐκ ἄπαιδος τελευτήσαντος, ἀλλ' ἡμᾶς ἐκ θυγατρὸς αὐτοῦ γνησίας παῖδας αὐτῷ καταλελοιπότος, οὗτοι τοῦ τε κλήρου λαγχάνουσιν ὡς ἐγγυτάτω γένους ὄντες, ἡμᾶς <τε> ὑβρίζουσιν ὡς οὐκ ἐξ ἐκείνου θυγατρὸς ὄντας, οὐδὲ γενομένης αὐτῷ πρόποτε τὸ παράπαν (Isaeus. 8.1).

and heirs (Isaeus. 8.15). The speaker's arguments demonstrate the Athenian identification process at work. He could rely on the performances that his grandfather had carried out on his mother's and his own behalf to establish his identity.

In the pseudo-Demosthenic *Against Macartatus*, perhaps the most complicated surviving legal speech concerning an inheritance case, the speaker Sositheus, like Ciron's grandson, had to defend the existence of a female claimant to an estate. Sositheus asserted ownership of the estate of Hagnias on behalf of Eubulides III, the adopted grandson of Hagnias' first maternal cousin, Eubulides II. To establish the claim of Eubulides III to the estate, Sositheus first had to prove the legitimacy of original claimant to the estate: Phylomache, the paternal aunt of Hagnias and the mother of Eubulides II. As in the case of Callippe and Ciron's daughter, Sositheus' opponents claimed that Phylomache did not exist. As Sositheus indignantly explained,

οἵτινες κατεχρῶντο ὡς τῷ Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου τὸ παράπαν οὐδεμία γένοιτο ἀδελφὴ ὁμοπατρία καὶ ὁμομητρία· οὕτως ἦσαν ἀναίσχυντοι καὶ βδελυροί, τηλικουτοὶ πρᾶγμα παρακρουόμενοι τοὺς δικαστὰς καὶ οὕτως ἐπιφανέες, καὶ ἐσπούδαζον καὶ ἠγωνίζοντο περὶ τούτου μάλιστα. ἡμεῖς δέ γε νυνὶ μάρτυρας ὑμῶν τοσούτοις παρεσχήμεθα περὶ τῆς Πολέμωνος ἀδελφῆς, τηθίδος δὲ Ἀγνίου.

[They] alleged that Polemon the father of Hagnias did not have any sister born of the same father and the same mother: So shameless and so disgusting were they in misleading the jurors in such a great and well-known matter, they zealously [sought to prove this] and fought especially concerning this [argument]. But we now have produced so many witnesses for you concerning the sister of Polemon and the aunt of Hagnias (Dem. 43.39).

Considered closely, the case on Hagnias' estate becomes almost comical—one party vehemently proclaiming that Phylomache had never existed, and the other zealously defending her. I believe, however, that Sositheus' description of the proceedings perfectly encapsulates Athenian anxieties around the manipulation of women's identities. First, if we can trust Sositheus' version of events, his opponents attempted to portray Sositheus himself as a devious man who would fabricate a woman to gain control over the estate of his wife's distant relatives. Apparently they presented

their case with passion, and they may have used similar arguments as the speaker in Isaeus' *On the Estate of Philoctemon* concerning the difficulties Sositheus encountered in producing witnesses to attest to both Phylomache's existence and her legitimacy.

Second, like Ciron's grandson, Sositheus condemned his opponents as "disgusting" men who themselves manipulated the identity of Phylomache to gain control over the estate of their long-dead distant relative. He fiercely defended Eubulides III's claim to the estate, and he presented multiple witnesses to attest to Phylomache's birth and her position as Polemon's sister. Most crucially, I believe that Sositheus considered his opponents' arguments so threatening, because they undermined the entire identification process for Athenian women. His opponents adopted a clever strategy by attacking the identity of a woman who had died decades before the case. Athenian identification depended almost entirely on the witness testimony of key identifying groups to certain performative acts. Given that Phylomache was long dead by the time of this trial, Sositheus found it difficult to produce living witnesses to those communal events by which she would have established her civic identity. Sositheus did manage to find witnesses, however, and through their testimony we can observe the Athenian identification process as it was meant to function. But the accusations against Phylomache suggest that crafty Athenian litigants took advantage of certain weak points of their identification process, the most serious shortcoming being that it was difficult to establish the identities of people who had died years before.

Finally, in the pseudo-Demonsthenic *Against Neaira*, the speaker Apollodorus claimed that his political enemy Stephanus had been living with Neaira, a notorious former prostitute, as

his wife, and given her daughter Phano in marriage to two Athenian citizens. Apollodorus offered an interesting conjecture concerning Stephanus' possible defense:

ἀκούω δὲ αὐτὸν τοιοῦτόν τι μέλλειν ἀπολογεῖσθαι, ὥς οὐ γυναῖκα ἔχει αὐτὴν ἀλλ' ἐταίραν, καὶ οἱ παῖδες οὐκ εἰσὶν ταύτης ἀλλ' ἐξ ἑτέρας γυναικὸς αὐτῷ ἀστῆς, ἣν φησὶ πρότερον γῆμαι συγγενῇ αὐτοῦ.

But I hear that he will make some such defense, that he does not keep her as a wife but as a mistress, and that the children are not hers but from another citizen-wife of his, a relative of his whom he had married before (Dem. 59.119).

Apollodorus' speculation concerning Stephanus' defense is particularly striking, given that it almost perfectly mirrors the speaker's accusations in Isaeus' *On the Estate of Philoctemon*. In both cases, the speakers claimed that the children in question—Alce's sons and Neaira's daughter Phano—were in fact the offspring of prostitutes. Both the opponents in the cases apparently offered the same defense, that the children were the product of an earlier marriage to a phantom citizen-wife. Furthermore, Apollodorus offered another interesting parallel to a case that I discussed earlier. Like the speaker in *On the Estate of Ciron*, Apollodorus stressed that Stephanus had refused to surrender Neaira's household slaves who would best be able to attest to the children's parentage and to the realities of the family's daily activities (Dem. 59.120).

Apollodorus' case against Neaira thus shares key similarities with inheritance cases, where we can observe anxieties about the manipulation of women's identities. There is, however, a key difference between these cases: Apollodorus argued not about a struggle for an inheritance but a conflict about Athenian citizenship. Stephanus apparently fabricated the identity of his former citizen-wife to win citizenship for Neaira's children. Indeed, Apollodorus' case rested on his central accusation that Stephanus was a monster who "robbed native citizens...of their freedom of speech, but forced upon [the jurors] as Athenians those who have no right against all

laws” (Dem. 59.28). Through the character of Stephanus, we can observe that Athenian anxieties surrounding the manipulation of women’s identities extended from inheritance suits to legal cases concerning civic rights. By controlling and exploiting women’s identities, litigants could not only acquire valuable estates but also circumvent the performative acts that affirmed civic identity.

The manipulation of heiresses

To return to my original case on the estate of Euctemon: the speaker brought even more urgency to the case in his accusation that Androcles had previously attempted to claim Euctemon’s widowed daughter as an heiress (Isaeus. 6.46). In Athenian inheritance law, if a citizen died and left a daughter (or even daughters) as his only legitimate child, she became an heiress (ἐπίκληρος). Her nearest male relative was then entitled to claim the right to marry her and so keep the estate within the family.²⁰⁹ When Androcles sought the right to wed Euctemon’s daughter, he threatened the processes that controlled both inheritance and civic identity. I would argue that this marriage would constitute a major disruption to the performances by which Euctemon’s family defined its identity. First, Androcles would gain partial control over the family estate. Furthermore, Athenians relied most especially on their relatives as participants in and witnesses to the performative acts that controlled family identity. If Androcles married into Euctemon’s family, he would be irrevocably linked with all of his relatives.

Anxiety for the well-being of heiresses is well-attested in Athenian law. The eponymous archon was charged with protecting particularly vulnerable Athenians: orphans, heiresses,

²⁰⁹ For more detail and a good summary of the scholarship on heiresses, see especially Rubinstein 1993, 87-97.

pregnant widows, and aged parents. He was authorized to fine any person who committed outrages against these people. Furthermore, any Athenian (ὁ βουλόμενος) could bring an impeachment (ἡ εἰσαγγελία) against any person who injured an orphan or an heiress.²¹⁰ An impeachment differed from a state prosecution (ἡ γραφή) or a private lawsuit (ἡ δίκη) in that the prosecutor ran no risks. He was not forced to pay a court fee that he might have to forfeit if he lost his case. He also incurred no penalty if he failed to secure a certain percentage of the jurors' votes.

The use of the impeachment procedure indicates that the Athenians were particularly concerned about the protection of orphans and heiresses, and they wanted to facilitate the prosecution of any person who dared maltreat these vulnerable populations. That the eponymous archon was charged with safeguarding both heiresses and widows pregnant by their deceased husbands is also suggestive. The Athenians sought to protect women on whom the continuance of particular households depended. Heiresses, after all, did not inherit estates—their male children did, and Athenians were concerned that unsavory men would attempt to insert themselves into an Athenian family by marrying an heiress.

In Isaeus' *On the Estate of Philoctemon*, the speaker was purposefully playing on Athenian anxiety about women's identities and how heiresses in particular might be exploited. If the speaker's claims were true, Androcles proved quite creative in his attempts to claim Euctemon's property. First, he sought to claim the estate through Euctemon's daughter (Isaeus. 6.46) and then through the fabricated Callippe. I would argue that his actions toward both women align with one another perfectly. As the speaker depicted him, Androcles manipulated a number

²¹⁰ For modern scholarship, see particularly Harrison 1998, 10-13; 132-138; Just 2016, 21-22. For ancient sources, see Isaeus. 3.46; Dem. 35.48.

of women's identities—Euctemon's daughter, Callippe, and even Alce—to gain control over the estate. Androcles is perhaps the most dangerous character in the entire speech, given his willingness to subvert all societal norms and to undermine the Athenian identification process and the performances, like marriage, that defined it.

Apparently, Androcles abandoned his plan for Euctemon's daughter, and his earlier legal action certainly weakened this case where he claimed that Euctemon had left two legitimate sons (Isaeus. 6.46).²¹¹ More critical to my own argument, the speaker offered a passionate plea to the jurors because Euctemon's daughter was still in danger from the speaker's opponents if they won their case: "You ought to consider...whether it's right that the daughter of Euctemon...come under the power of these men either to be married to anyone they choose or to be allowed to grow old [unmarried]" (Isaeus. 6.51).²¹² In the current case, Androcles and Antidorus unlawfully claimed both Euctemon's estate and custody over his widowed daughter, a living, breathing Athenian citizen-woman, a far more serious offense than merely fabricating Callippe. The speaker painted a nightmare vision for the future: If the speaker's opponents gained possession of Euctemon's estate, it would no doubt prove catastrophic to his daughter. Whether the men managed to marry her off or to leave her a widow for the rest of her life, they would determine the future of Euctemon's family. In one scenario, the daughter may have children, but by a

²¹¹ As the speaker himself noted: Ἔτι δὲ καὶ τοῦ μάρτυρος αὐτοῦ σκέψασθε τὴν τόλμαν καὶ ἀναίδειαν, ὅστις εἵληχε μὲν αὐτῷ τῆς θυγατρὸς τῆς Εὐκτῆμονος ὡς οὐσης ἐπικλήρου, καὶ αὐτοῦ τοῦ κλήρου τοῦ Εὐκτῆμονος [πέμπτου] μέρους ὡς ἐπιδίκου ὄντος, μεμαρτύρηκε δ' Εὐκτῆμονος ὕδν εἶναι γνήσιον. Καίτοι πῶς οὗτος οὐ σαφῶς ἐξελέγχει αὐτὸς αὐτὸν τὰ ψευδῇ μεμαρτυρηκότα; (Isaeus. 6.46).

²¹² The full Greek reads: Ἐνθυμεῖσθαι τοίνυν χρή, ὧ ἄνδρες, πότερον δεῖ τὸν ἐκ ταύτης τῶν Φιλοκτῆμονος εἶναι κληρονόμον καὶ ἐπὶ τὰ μνήματα ἰέναι χεόμενον καὶ ἐναγιοῦντα, ἢ τὸν ἐκ τῆς ἀδελφῆς τοῦτον, ὃν ὕδν αὐτὸς ἐποίησατο· καὶ πότερον δεῖ τὴν ἀδελφὴν <τὴν> Φιλοκτῆμονος, ἢ Χαιρέα συνώκησε, νῦν δὲ χηρεύει, ἐπὶ τούτοις γενέσθαι ἢ ἐκδοῦναι ὅτῳ βούλονται ἢ ἔαν καταγῆραςκεν, ἢ γνήσιαν οὖσαν ὑφ' ὑμῶν ἐπιδικασθεῖσαν συνοικεῖν ὅτῳ ἂν ὑμῖν δοκῇ· (Isaeus. 6.51).

husband who shared the same evil character as Androcles and Antidorus; in the second, Euctemon's daughter died alone and ensured the end of her father's line. In either case, Androcles and Antidorus would illicitly acquire Euctemon's estate and insert themselves into his family. They would thus upset the performances by which Euctemon's family, most especially his female relatives, established their identities. The speaker thus painted his opponents as the ultimate manipulators of the Athenian household.

The pseudo-Demosthenic *Against Stephanus II* provides an interesting parallel to the scenario surrounding Euctemon's daughter. The orator Apollodorus delivered the speech against his relative Stephanus on a charge of false-witnessing. Stephanus had testified in an earlier trial on behalf of Phormio, who was attempting to block Apollodorus from suing him for embezzling from Apollodorus' father's, Pasio's, bank. Apollodorus, however, aimed the majority of his attacks against Phormio; in one argument, Apollodorus claimed Phormio had illegally married Apollodorus' mother Archippe, whom he considered an heiress (Dem. 46.19). Apollodorus first cited the law concerning betrothals: A woman could only be given in marriage by her father, her brother, or her paternal grandfather. If she had none of these relatives, her legal guardian was obligated to marry her or to give her a dowry (Dem. 46.18). Because his mother had none of these male relatives living, Apollodorus declared *himself* Archippe's guardian and her an heiress. As Adele Scafuro has convincingly demonstrated, however, this was a ludicrous claim.²¹³ Simply put, the Athenians defined an heiress as the daughter of a man without male heirs. When the daughter had a male child, he would inherit his grandfather's estate.

²¹³ Scafuro 2011, 272-273.

Why would Apollodorus argue that his mother was an heiress? In his speech, Apollodorus attempted to damage the reputation of Phormio through a number of arguments. To name just a few: Apollodorus claimed that Phormio had illegally used Stephanus as his own personal mouthpiece, when the man testified for him; Apollodorus also argued that litigants were barred from testifying on their own behalf (Dem. 46.10). Moreover, Apollodorus claimed that Phormio had forged his father's will, because Pasio had no authority to draw up a will and therefore would not have done so (Dem. 46.15).²¹⁴ Although modern scholars have often dismissed Apollodorus' speech, his accusations fit into a larger pattern. Apollodorus sought to further discredit Phormio by taking advantage of Athenian concern about the treatment of heiresses. Apollodorus portrayed Phormio as a man like Androcles: deceptive, greedy, and willing to manipulate a woman and subvert the Athenian identification process that controlled inheritance to gain control over a wealthy estate.

Woman as manipulator: Alce

To return again to Isaeus' speech on the estate of the aged Euctemon, if Androcles and Antidorus had invented Callippe, then who was the mother of the two boys for whom these men claimed Euctemon's estate? The speaker claimed that as an old man, Euctemon had begun an affair with a woman named Alce, a retired prostitute who managed an apartment building that Euctemon owned in the Ceramicus district of Athens (Isaeus. 6.19-20). He declared that the two boys were actually Alce's sons by a freedman named Dion. In Alce, Chaerestratus' advocate

²¹⁴ Apollodorus' arguments here are almost incomprehensible. He argued that his father was an adoptive son—of the Athenian people—and therefore had no authority to make a will. He further argued that Pasio had legitimate sons and so could not make a will.

created a Scylla meant to terrify his Athenian audience. She embodied all the traits of an “evil” woman. She manipulated Euctemon, so that he illegally introduced her son to his phratrymen. Then, with the aid of Androcles and Antidorus, she exploited Euctemon’s senility and manipulated the old man into selling the majority of his assets. Finally, Alce even violated Athenian customs and laws by participating in a procession for Demeter and Persephone. The speaker thus portrayed Alce as the ultimate manipulator and the embodiment of Athenian anxieties concerning dishonest women. She effectively undermined every kind of performance—political, religious, and mundane—by which Athenians established their family and civic identities.

The speaker explained that Euctemon had gradually abandoned his wife and daughters to live with Alce and her children, exclaiming that “he would go out to the house and on each occasion he would spend much time there, and sometimes he would even dine with the woman, leaving behind his wife and his children and the home in which he lived” (Isaeus. 6.21).²¹⁵ The speaker described Euctemon’s actions toward Alce and her children as a kind of sad parody of the quotidian routines an Athenian citizen would carry out with his family. Euctemon lived with Alce, took meals with her, and considered her children as his own. Alce and her two sons thus took the place of his lawfully wedded wife and his legitimate children, subverting Athenian societal norms. By engaging in an unnatural relationship with Euctemon, Alce adopted the role of his wife rather than of his mistress. She also undermined the performative acts Euctemon was

²¹⁵ The Greek reads: φοιτῶν γὰρ ὁ Εὐκτῆμων ἐπὶ τὸ ἐνοίκιον ἐκάστοτε τὰ πολλὰ διέτριβεν ἐν τῇ συνοικίᾳ, ἐνίστε δὲ καὶ ἐσιτεῖτο μετὰ τῆς ἀνθρώπου, καταλιπὼν καὶ τὴν γυναῖκα καὶ τοὺς παῖδας καὶ τὴν οἰκίαν ἣν ᾔκει (Isaeus. 6.21).

obligated to complete as a citizen; he needed to safeguard his familial home and to maintain relationships with his relatives. Yet Alce did not threaten Euctemon's family alone.

Eventually, the speaker conjectured, Alce had addled Euctemon with drugs and convinced him to introduce her elder son to his phratry, an act through which Euctemon could win him Athenian citizenship (Isaeus. 6.21-22). While an Athenian jury would frown upon Alce living with Euctemon in a pseudo-marriage, this arrangement was not technically illegal. The speaker, however, expanded on his allegations when he claimed that Alce had actually manipulated Euctemon into acknowledging her son to his phratrymen. The speaker credited Alce with even greater powers that extended not only to the household but even to key institutions, like the phratry, that controlled citizenship. Moreover, in his accusations, Chaerestratus' advocate also alluded to the laws concerning adoption that forbid citizens from adopting if they were senile, ill, drugged, or under the influence of a woman.²¹⁶ In his narrative concerning the woman Alce, the speaker combined all four of these elements to fully discredit Euctemon's acknowledgement of her elder son.

The speaker also played on tropes that appear in other legal cases, perhaps most famously in the pseudo-Demosthenic *Against Neaira*, which featured the prostitute Neaira who schemed with her lover Stephanus to pass off her children as Athenian citizens. The speaker Apollodorus depicted Neaira and her daughter Phano as particularly crafty in their treatment of Phano's ex-husband Phrastor. When Phrastor fell ill, the pair nursed him back to health. Apollodorus conjectured that the two women had cajoled Phrastor to acknowledge his son by Phano as his legitimate child, although Phano herself was illegitimate (Dem. 59.55-56). Like the speaker in

²¹⁶ For more discussion on this topic, see my chapter concerning the institution of adoption.

Isaeus' *On the Estate of Philoctemon*, Apollodorus needed to explain why Phrastor might have introduced this child to the members of his *genos*, a clear proof of the child's legitimacy. Apollodorus found an effective means to discredit Phrastor's son by painting his putative grandmother and mother as conniving women who were willing to manipulate a sick man into carrying out formal performances of citizenship for an illegitimate child.

Likewise, in the legal speeches on inheritance cases written by Isaeus, litigants often took advantage of the Athenian anxiety that a clever woman might influence a man when he adopted a child.²¹⁷ In Isaeus' *On the Estate of Menecles*, the speaker took particular pains to disprove his opponent's claim that his sister had influenced her ex-husband, Menecles, when he adopted the speaker. As the adopted son proclaimed,

Ὅτι δὲ οὐ παρὰ νοῶν οὐδὲ γυναικὶ πιθόμενος ὁ Μενεκλῆς ἐποίησατο, ἀλλ' εὖ φρονῶν, ἐνθένδε ἐστὶν ὑμῖν ῥάδιον ἐπιγινῶναι. Πρῶτον μὲν γὰρ ἡ ἀδελφή, περὶ ἧς οὗτος τὸν πλεῖστον τοῦ λόγου πεποιήται, ὥς ἐκείνη πεισθεὶς ἐμὲ ἐποίησατο, πολλῷ πρότερον ἢν ἐκδεδομένη πρὶν ἢ τὴν ποίησιν γενέσθαι, ὥστ' εἴ γ' ἐκείνη πεισθεὶς τὸν ὕον ἐποιεῖτο, τῶν ἐκείνης παίδων τὸν ἕτερον ἐποίησατ' ἄν· δύο γὰρ εἰσιν αὐτῇ.

That Menecles, not insane nor even persuaded by a woman, adopted me, but being in his right mind, it is easy for you to understand from the following circumstances. For first, my sister, concerning whom this opponent has made the majority of his argument, under whose influence he claims that he adopted me, had been married long before the adoption took place, so that if he adopted a son under her influence, he would have adopted one of her own children; for she had two sons (Isaeus. 2.19).

Like the speaker in Isaeus' *On the Estate of Philoctemon*, the adopted son's opponent had portrayed his sister as the archetypal manipulative woman who had influenced her ex-husband to benefit her relatives. Also interesting is that the speaker in this particular case did not treat his opponent's argument as outlandish. In fact, he treated the accusations as quite commonplace, and

²¹⁷ See also Isaeus 7, where the speaker Thrasyllus must also defend the legitimacy of his adoption against a charge that his adoptive father Apollodorus had been under the influence of a woman.

he suggested a more likely scenario in which his sister would have manipulated Menecles into adopting one of her own children, a far more profitable arrangement for her immediate family. Again, the speakers in these cases—Chaerestratus’ advocate, Apollodorus, and the opponent of Menecles’ adopted son—, all fell back on tropes which would be familiar to their audience and play on Athenian anxieties.

The speaker in Isaeus’ *On the Estate of Philoctemon* did not solely accuse Alce of inserting her children into the citizenry, although an Athenian jury would think this alone was a serious allegation. He also described her financial motives in living with Euctemon and assigned her the leading role in Androcles and Antidorus’ plot to gain possession of the old man’s entire property. As the speaker recounted, Euctemon made a will to ensure that his alleged son would inherit property upon his death (Isaeus. 6.27-28).²¹⁸ Androcles and Antidorus “came under the influence of that woman” and manipulated Euctemon into canceling the will to expedite their theft of his entire estate (Isaeus. 6.29).²¹⁹ The senile Euctemon then sold off the majority of his land and his possessions for cash, which Alce, Androcles, and Antidorus immediately seized, avoiding the pains of laying claim to the property through legal proceedings (Isaeus. 6.33-34). The sequence of events that the speaker presented is particularly notable: only when Androcles and Antidorus came under the influence of the woman Alce did they make moves against Euctemon’s estate. He assigned Alce an enormous amount of power here. In ending this portion of the speech, he further lamented: “Before my opponents made their acquaintance with the

²¹⁸ Scholars disagree whether this document would have constituted a will in Athenian law. See Wyse 1904, 514-516.

²¹⁹ The Greek reads: Κειμένου δὲ τοῦ γραμματείου σχεδὸν δύο ἔτη καὶ τοῦ Χαιρέου τετελευτηκότος, ὑποπεπτωκότες οἶδε τῇ ἀνθρώπῳ καὶ ὁρῶντες ἀπολλύμενον τὸν οἶκον καὶ τὸ γῆρας καὶ τὴν ἄνοιαν τοῦ Εὐκτήμονος, ὅτι εἴη αὐτοῖς ἰκανὴ ἀφορμή, συνεπιτίθενται (Isaeus. 6.29).

woman and plotted with her against Euctemon, Euctemon and his son Philoctemon possessed...a large fortune” (Isaeus. 6.38).²²⁰ Although Chaerestratus’ advocate faced Androcles and Antidorus in court, he made it clear that Alce was mainly responsible for stripping Euctemon’s family of their property, a potent symbol of their family and civic identities.

When Euctemon died, the speaker claimed that Alce neglected the old man’s body and committed her first offense against Athenian religious customs. While Euctemon’s corpse was lying out in the house, the conspirators locked his slaves in a closet to prevent them from delivering news of his death to his family and carried off the furniture from the home to the adjoining house owned by Antidorus (Isaeus. 6.39). When Euctemon’s wife and daughters finally arrived, Alce and her accomplices barred the women from the house and declared “it was not fitting that they bury Euctemon” (Isaeus. 6.40).²²¹ In this account, the speaker portrayed Alce as a woman who manipulated Euctemon’s family structure and, even worse, Athenian religious practices. First, she barred Euctemon’s lawful wife and his legitimate daughters from tending to his body, claiming that right for herself even though she was in no way related to Euctemon. Especially in inheritance cases, Athenian litigants often held up the performance of burial rites as proof of their identities as adoptive children.²²² Second, Alce then failed to carry out Euctemon’s

²²⁰ The full Greek reads: Πρὶν μὲν τοίνυν τούτους γνωρίσαι τὴν ἄνθρωπον καὶ μετ’ ἐκείνης ἐπιβουλεῦσαι Εὐκτῆμονι, οὕτω πολλὴν οὐσίαν ἐκέκτητο Εὐκτῆμων μετὰ τοῦ υἱοῦ Φιλοκτῆμονος ὥστε ἅμα τὰ τε μέγιστα ὑμῖν λητουργεῖν ἀμφοτέρους τῶν τε ἀρχαίων μηδὲν πραθῆναι τῶν τε προσόδων περιποιεῖν ὥστε ἀεὶ τι προσκτᾶσθαι (Isaeus. 6.38).

²²¹ The full Greek reads: Καὶ οὐδ’ ἐπειδὴ ἐτέρων πυθόμεναι ἤλθον αἱ θυγατέρες αὐτοῦ καὶ ἡ γυνή, οὐδὲ τότε εἶων εἰσιέναι, ἀλλ’ ἀπέκλεισαν τῇ θύρᾳ, φάσκοντες οὐ προσήκειν αὐταῖς θάπτειν Εὐκτῆμονα· καὶ οὐδ’ εἰσελθεῖν ἐδύναντο, εἰ μὴ μόλις καὶ περὶ ἡλίου δυσμάς (Isaeus. 6.40).

²²² See especially Isaeus.2. 36-37; Isaeus. 4.19; Isaeus. 8.24. Litigants could also use the failure to perform burial rites to disprove the legitimacy of adoptive children. See especially Isaeus. 9.4-5; Isocr. 19.31-33.

funeral. Given the emphasis that the Athenians placed on proper burial, the speaker's extraordinary account of Alce would certainly have an impact on jurors. If we believe the speaker's portrayal of Alce, she managed to subvert every performative act that defined the Athenian identification process.

Finally, the speaker accused Alce of perhaps her most shocking indiscretion when he claimed that she joined in a procession in honor of Demeter and Persephone and entered their temple against Athenian law and custom (Isaeus. 6.49-50). As he exclaimed,

ἡ διαφθείρασα τὴν Εὐκτῆμονος γνώμην καὶ πολλῶν ἐγκρατῆς γενομένη οὕτως
ὕβριζει σφόδρα πιστεύουσα τούτοις ὥστε οὐ μόνον τῶν Εὐκτῆμονος οἰκείων
καταφρονεῖ, ἀλλὰ καὶ τῆς πόλεως ἀπάσης.

The woman who destroyed Euctemon's reason and who was master of so much property was so insolent in her reliance on these men [Androcles and Antidorus], that not only did she show her contempt for Euctemon's family but even for the whole city! (Isaeus. 6.48).

The speaker painted Alce as a woman who subverted all social norms. First, she destroyed Euctemon and his relatives by inserting her own child into the line of succession, when Euctemon introduced her son to his phratrymen. Second, she had "become the master" (ἐγκρατῆς γενομένη) of Euctemon's entire estate, when she and her accomplices convinced the old man to sell off his properties. Finally, she undermined Athenian religious customs when she failed to perform Euctemon's burial rites and when she illicitly took part in the procession celebrating Demeter and Persephone meant only for initiates.²²³ Alce thus failed to carry out all the duties and daily activities by which Athenians identified citizen women. By the end of the speaker's account, Alce became the anti-wife, a caricature of the worst character traits which Athenian women could embody. But Alce offers us important insights into those peculiar feminine

²²³ See also Dem.59.73. In a famous passage, Apollodorus accused Neaira's daughter Phano of illicitly taking part in the Anthesteria festival.

characteristics that invoked anxieties for Athenian audiences. To the Athenians, if women exerted too much control, they not only threatened their family structure but also jeopardized the Athenian identification process itself.

Family feuds

In his account of the legal battle for Euctemon's estate, Isaeus presented a sensational story in which he purposefully touched on key tropes that triggered strong feelings for Athenians: the effects of war on the family, greedy kinsmen who manipulated their female relatives to gain property, and harlots like Alce who cheated citizens of their money. Isaeus further described the family feud between Philoctemon, Euctemon, and Androcles, a quarrel that Philoctemon's relatives had attempted to prevent. Indeed, throughout his corpus, Isaeus again and again discussed family fights to elicit emotion from his audience of jurors. Not only were Athenians anxious that in-fighting among relatives might disrupt the order of succession in inheritance cases; they were also concerned that kinsmen might scheme against one another to gain possession of the familial estate and so disrupt the performances that determined family identity.

In the opening of his case, the speaker lamented that a great misfortune had befallen Euctemon in his old age, a misfortune "that ruined his entire house, squandered his money, and threw him into a quarrel with his nearest relatives."²²⁴ The speaker acknowledged that Alce and her accomplices' worst crime was not only that they brought about financial ruin for Euctemon's

²²⁴ The full Greek reads: Εὐκτῆμων μὲν γὰρ ἐβίω ἔτη ἑξ καὶ ἐνενήκοντα, τούτου δὲ τοῦ χρόνου τὸν μὲν πλεῖστον ἐδόκει εὐδαίμων εἶναι—καὶ γὰρ οὐσία ἦν οὐκ ὀλίγη αὐτῷ καὶ παῖδες καὶ γυνή, καὶ τὰλλ' ἐπιεικῶς ἠτύχαι—ἐπὶ γήρῳ δὲ αὐτῷ συμφορὰ ἐγένετο οὐ μικρά, ἣ ἐκείνου πᾶσαν τὴν οἰκίαν ἐλυμήνατο καὶ χρήματα πολλὰ διώλεσε καὶ αὐτὸν τοῖς οἰκειοτάτοις εἰς διαφορὰν κατέστησεν (Isaeus. 6.18).

family but that they also created painful divides between Euctemon and his relatives, especially his son Philoctemon. When Euctemon attempted to introduce Alce's child to his phratry, Philoctemon and his phratrymen barred the old man from doing so. Euctemon then threatened to marry another woman so that he could produce more children (Isaeus. 6.22). Euctemon did not idly threaten his son. The Athenians adopted a partible inheritance system, where each male heir could claim an equal portion of his father's property. By siring more children, Euctemon would guarantee that each of his sons, including Philoctemon, would receive a smaller share of his estate. If the estate were divided among multiple heirs, this would also split up and greatly devalue a property which the speaker proudly declared had supported many liturgies (Isaeus. 6.60). Philoctemon's other relatives understandably advised him to permit his father to introduce Alce's child to the phratry because they feared that "greater quarrels would arise" (Isaeus. 6.23).²²⁵ Euctemon's family realized the devastating consequences that in-fighting could have on the cultural processes that controlled inheritance. Heirs with competing claims might attempt to win the entire estate through one or more lawsuits.

In his conclusion, the speaker lingered on another quarrel among Euctemon's family members, the ongoing feud between Philoctemon and his distant relative Androcles. Apparently, Alce had not chosen Androcles as her partner at random but because the man had close ties with her target, Euctemon. Androcles had apparently insisted that Philoctemon had never written a will and that Chaerestratus had concocted the entire adoption (Isaeus. 6.54). In response, the speaker argued:

²²⁵ The full Greek reads: Εἰδότες δ' οἱ ἀναγκαῖοι ὅτι ἐξ ἐκείνου μὲν οὐκ ἂν ἔτι γένοιτο παῖδες ταύτην τὴν ἡλικίαν ἔχοντος, φανήσονται δ' ἄλλῳ τινὶ τρόπῳ, καὶ ἐκ τούτων ἔσονται ἔτι μείζους διαφοραί, ἐπειθὲν, ὦ ἄνδρες, τὸν Φιλοκτῆμονα εἰσαγαγεῖν τοῦτον τὸν παῖδα ἐφ' οἷς ἐζήτει ὁ Εὐκτῆμων, χωρίον ἐν δόντα (Isaeus. 6.23).

(54) σὺ δ' οὐ παραγενόμενος διαρρήδην μεμαρτύρηκας ὥς οὐ διέθετο
 Φιλοκτήμων, ἀλλ' ἄπαις ἐτελεύτησε. Καίτοι πῶς οἶόν τε εἰδέναι, ὦ ἄνδρες;...
 (55) Πάντων γὰρ αὐτὸν ἐκεῖνος ἔχθιστον ἐνόμιζε διὰ <τε> τὴν ἄλλην πονηρίαν
 καὶ διότι τῶν συγγενῶν μόνος μετὰ τῆς Ἀλκῆς ἐκείνης τούτῳ καὶ τοῖς ἄλλοις
 συνεπιβουλεύσας τοῖς τοῦ Εὐκτῆμονος χρήμασι τοιαῦτα διεπράξατο, οἷά περ
 ὑμῖν ἀπέδειξα.

(54) But you [Androcles], although you weren't present, you have provided clear
 testimony that Philoctemon did not write a will, but he died childless. And yet
 how could he know this, gentlemen?... (55) For that man [Philoctemon] regarded
 him as his worst enemy because of his general wickedness, and because he
 [Androcles] alone of his relatives, along with Alce, plotted with this man
 [Antidorus] and others against the property of Euctemon and committed those
 acts which I have described to you (Isaeus. 6.54-55).

Here, the speaker sought to discredit Androcles' arguments that Philoctemon died without an heir by pointing to the enmity between the two men. In this passage, however, the speaker contradicted his earlier family history. Consider his earlier narrative: Philoctemon and his phratrymen attempted to block Euctemon from introducing his "son" to the phratry (Isaeus.6. 21-22). Philoctemon finally agreed to admit the boy, on the condition that he would receive only a single farm on Euctemon's death (Isaeus. 6.24). At some point after this drama, Philoctemon died serving as a trierarch (Isaeus. 6.27). Euctemon then drew up a will to further validate Alce's child's claim to the estate (Isaeus. 6.27). Only then, *after* Philoctemon died and Euctemon drew up the will, did Androcles and Antidorus join with Alce to gain possession of Euctemon's estate (Isaeus. 6.29). We can consider the speaker's claim that Philoctemon hated Androcles because he plotted with Alce and Antidorus against his father an exaggeration of the truth or even an outright lie.

Still, the speaker's accusation that Philoctemon considered Androcles "his worst enemy" offers important insights into Athenian concerns about family quarrels. The speaker sought to discredit Androcles by claiming that he was engaged in a fight with Philoctemon before his

death, with the implication that Androcles would have no way of knowing whether Philoctemon had written a will. With this argument the speaker may have also suggested that Philoctemon would never have neglected to write a will and so allow his family estate to pass to two illegitimate boys whose guardian, Androcles, was his bitter enemy. In any case, Isaeus returned to one of the key themes that appears throughout his corpus: the destructive effects of family feuds on the everyday performances that defined the institution of adoption and the Athenian identification process as a whole.

Likewise, in Isaeus' *On the Estate of Cleonymus*, the nephews of Cleonymus claimed his estate as his natural heirs. But before his death, Cleonymus had written a will that named his relatives Pherenicus and Poseidippus as his heirs, allegedly because at the time he was quarreling with his nephews' guardian Deinias. As the speaker claimed:

Τότε γοῦν ἐκ ταύτης τῆς ὀργῆς Κλεώνυμος ταύτας ποιεῖται τὰς διαθήκας, οὐχ ἡμῖν ἐγκαλῶν, ὥς ὕστερον ἔσώθη· ἔλεγεν, ὁρῶν δὲ ἡμᾶς ἐπιτροπευομένους ὑπὸ Δεινίου καὶ δεδιῶς μὴ τελευτήσειεν αὐτὸς ἐπὶ παῖδας ἡμᾶς καταλιπὼν καὶ τῆς οὐσίας ἡμετέρας οὐσης γένοιτο κύριος Δεινίας· ἠγεῖτο γὰρ δεινὸν εἶναι τὸν ἔχθιστον τῶν οἰκείων ἐπίτροπον καὶ κύριον τῶν αὐτοῦ καταλιπεῖν, καὶ ποιεῖν αὐτῷ τὰ νομιζόμενα τοῦτον, ἕως ἡμεῖς ἠβήσαμεν, ὃ ζῶν διάφορος ἦν·

At that time Cleonymus made this will because of his anger, not because he had any charge against us, as he [Pherenicus] later said, but because he saw that we were under the guardianship of Deinias, and because he feared that he himself might die and leave us behind while we were still children, and Deinias might become master of the property if it were ours: For he thought it terrible to leave his worse enemy as guardian of his relatives and master of his estate, and [he thought it terrible] that this man perform the customary rites for him, with whom he had been quarreling while he lived, until we grew up (Isaeus. 1.10).

The speaker apparently used his uncle Cleonymus' quarrel with Deinias to counter his opponents' arguments and bolster his own case. First, he stressed that Cleonymus had no complaint against his *nephews* when he wrote the will. In his speech, Pherenicus had apparently declared that the speaker and his brothers actually had the dispute with their uncle to discredit

their claim to the estate. Both parties then had made a quarrel the center of their legal cases. Furthermore, the speaker needed to address *why* Cleonymus had written the will. The most damning argument against the nephews' case was that Cleonymus had made a will in the first place. As the speaker asserted, his uncle could not bear the idea that a man he hated might gain control over his property and, even worse, perform his burial rites. In this passage the speaker depicted the quarrel between Cleonymus and Deinias as a force that had destroyed the natural order of the household. In an ideal Athenian family, Cleonymus ought to have left his estate to his natural heirs and trusted that their guardian would manage the property efficiently. Moreover, he ought to have confidence that his nephew's guardian would carry out his funeral rites in accordance with custom. I believe the quarrel between the two men would arouse anxieties for the jury because it disrupted the everyday performances which defined Athenian family—and more critically to my own argument, civic—identity.

In his *On the Estate of Menecles*, Isaeus depicted a quarrel between brothers that destroyed Menecles' estate. The speaker, Menecles' nephew and his adopted son, sought to defend his claim to his adoptive father's property against the counterclaim brought by Menecles' brother. To attack his opponent, the speaker pointed to the brothers' ongoing quarrel concerning their family property. Before his death, Menecles sought to sell a piece of his land to discharge a debt (Isaeus. 2.28). His brother, apparently angry because Menecles had chosen to adopt the speaker, claimed a part of the property from Menecles to prevent the sale. Menecles reserved this portion of the land for his brother and then sold the remainder to pay off his debt (Isaeus. 2.9). Later in arbitration, Menecles' brother was awarded the portion of land he had claimed, thus depriving Menecles of the majority of his own estate. As the speaker exclaimed,

Εἰ μὲν γὰρ περὶ τοῦ ὀνόματός μοι διαφέρεται, καὶ ἀναίνεται εἰ ἐγὼ ἔσομαι υἱὸς Μενεκλέους, πῶς οὐ φθονερός ἐστίν; Εἰ δὲ περὶ χρημάτων ἐστὶν ὁ λόγος αὐτῷ, ἐπιδειξάτω ὑμῖν ὅποιον χωρίον ἢ συνοικίαν ἢ οἰκίαν κατέλιπεν ἐκεῖνος, ἃ ἐγὼ ἔχω νυνί. Εἰ δὲ μηδὲν τούτων κατέλιπεν, ἃ δ' ἦν αὐτῷ ὑπόλοιπα... οὗτος ἔλαβε ζῶντος ἐκείνου ἔτι, πῶς οὐ περιφανῶς ἐξελέγχεται ἀναιδὴς ὢν;

But if it is a question of money for him, let him show to you what land or house or building that man [Menecles] left behind, which I now possess. But if he left none of these things, and the things which remained to him, this man [Menecles' brother] took while that man [Menecles] lived, how is he not clearly proven to be a shameless wretch? (Isaeus. 2.27).

Again, the speaker bolstered his own case by demonstrating the base character of Menecles' brother. Because he was jealous that Menecles had chosen to adopt a son (the speaker) outside of his immediate family, Menecles' brother had subverted Athenian norms by robbing him of the majority of his estate. The speaker also argued that, even more egregiously, the brother's current lawsuit was his final step in claiming the entire property and thus robbing the speaker of his own right to inherit his father's estate. Athenian citizens defined themselves in part by their family properties.²²⁶ The speaker characterized the feud between the two brothers as a disruptive force that threatened both Menecles and his adoptive son's ability to carry out a key performance of civic identity and take possession over their family estate.

Isaeus often depicted these types of feuds and the terrible effects they had on Athenians' family and civic identities. To return, for a moment, to Isaeus' *On the Estate of Philoctemon*, the speaker explained Philoctemon's allowing his father to introduce an alien child into their phratry by pointing out that Philoctemon and his relatives *were afraid of greater quarrels* (Isaeus. 6.23). He made this argument because he thought the jurors would empathize with Philoctemon and would understand that family in-fighting and the fear of its results could drive otherwise

²²⁶ In Demosthenes' *Against Eubulides*, Euxitheus argued that he was undoubtedly a citizen because he had taken possession of his portion of the family estate (Dem. 57.46). Furthermore, Athenian citizens might be disenfranchised if they squandered their inheritance (Aeschin. 1.19-21).

respectable citizens to undermine Athenian custom. A citizen might be driven to write a will so that his estate would not pass into the hands of a bitter enemy. A brother might claim a portion of his brother's property out of spite. In sum, family feuds were feared and avoided at all costs because they subverted those daily performances, including the right of inheritance and management of the family estate, that were so crucial in defining Athenian citizenship.

Conclusion

In his speech *On the Estate of Philoctemon*, Isaeus provided a broad overview of the anxieties which seemed to trouble his audience of Athenian jurors. First, he touched on the disastrous effects of war on the Athenian family. Philoctemon's death in battle afforded Alce and her accomplices the opportunity to rob the senile Euctemon of his property. Isaeus realized, however, that Athenian fears were not limited to major catastrophes like war or political unrest. The orator focused next on those smaller, everyday disruptions that could have equally deleterious effects on the Athenian household. With Callippe, Euctemon's putative wife, Isaeus played on the Athenians' concern that unscrupulous men might manipulate women's identities to disrupt the everyday performances that defined their civic identity. In Alce, Isaeus created a character who was the antithesis of the good Athenian citizen-wife. Rather than protect and maintain Euctemon's household, Alce actively sought to acquire and sell off all of Euctemon's properties. Finally, Isaeus portrayed the vicious family feuds that his audience would realize had the potential to divide relatives and threaten family estates.

In one interpretation of this speech, Isaeus strung together a series of sensational incidents to concoct a true melodrama. I believe, however, that Isaeus tied the fears that are

reflected in each episode to an overarching anxiety about disruptions to the Athenian social order. In war, the death of a son before his father constituted a rupture in the line of succession that could lead to family in-fighting and prolonged court cases. Moreover, if a citizen were taken prisoner, he would be prevented from carrying out those duties that defined his civic identity and from protecting the citizen status of his family members. In daily life, a woman who manipulated her husband into adopting a son, for example, again represented a break in the order of inheritance. Athenians were further concerned that a woman might also persuade her husband or lover to introduce an illegitimate child to his phratry and deme, a terrible blow to the citizen body. A woman like Alce might even set off a feud that could damage intimate relationships and jeopardize familial estates. The Athenians' anxieties suggest that these kinds of daily occurrences had the power to undermine the performances that defined Athenian family and civic identity just as dramatically as large-scale conflicts and populations shifts.

The legal speeches of Isaeus and Demosthenes provide a fresh way of looking at Athenian anxieties about establishing and retaining both family and civic identity. We need not rely on fragmentary texts and sweeping theories to consider the root causes of these kind of fears. Works like Isaeus' *On the Estate of Philoctemon* provide us with extraordinary details about the practical concerns of Athenians who were trying to keep possession of their estates or establish their position within their communities. As these speeches indicate, these kinds of catastrophes could happen to anyone, and an audience of citizens would particularly empathize with an Athenian litigant defending his family and safeguarding his civic rights.

CHAPTER VI

Conclusions: Identification Ancient and Modern

When modern scholars examine the Athenian identification process, they often emphasize its fundamental differences from our current systems. Take, for example, Scafuro's introduction to her study on identification: "It is a well-known phenomenon of Attic life that no central or local archive preserved a written record of the births of polis inhabitants. The absence of such a record appears from a modern perspective all the more startling in view of the strict requirements for citizenship that were set out in Perikles' famous enactment of 451/0."²²⁷ The analyses I have presented of speeches like Euxitheus' in defense of his identity provide a very different perspective, however. The arguments that the Attic orators made in defense of challenges to identity reveal far more similarities between the Athenian process and modern systems of identity verification, especially the one in place in the United States, than differences. Both approaches to identification share fluid requirements for proofs of identity and authentications that favor certain citizens over others. Moreover, in each of these systems, both documentation and everyday activities confirm identity. While we ought to study the Athenian identification process in its own right as an effective mechanism both to establish civic identity and to control the citizen body, the challenges faced by Athenians trying to place themselves in their culture invite comparisons with the challenges Americans of all stripes face today.

²²⁷ Scafuro 1994, 156.

I can speak to this issue directly. I recently moved to Cambridge, Massachusetts and needed to apply for a new driver's license. I could choose from a range of documents to establish my Massachusetts residency and my citizenship.²²⁸ I needed only to provide the requisite number of documents to prove my identity. Likewise, when the Athenians established their own civic identities, they did not have to complete every single performative act associated with citizenship. They could choose from a series of performances spread over the political, religious, and the everyday. Moreover, the documents I brought to the RMV represented my activities in daily life. My apartment lease confirmed that I actually resided in Cambridge. The fact that I live in Massachusetts is crucial, not the documentation itself. In a similar vein, Athenians did not present their phratrymen and demesmen as witnesses in court to attest only to their formal performances of identity. Rituals like the introduction into the phratry and deme symbolized citizens' network of relationships within these groups. The introduction meant nothing, if an Athenian did not forge personal connections within these associations.

Furthermore, I faced my own scrutiny when I visited my local Registry of Motor Vehicles. Fern, the first of three clerks to inspect my pile of papers, told me that the leasing agreement I had brought to establish residency was invalid because my name was not listed on the same page as the address of my apartment. I argued that this was the only copy of the lease in

²²⁸ A person seeking a driver's license in Massachusetts needs three types of documents: First, "lawful presence documents" confirm legal residency in the United States. A citizen can present either a passport or a birth certificate. Second, "social security number documents" establish that the applicant has a valid social security number; these might include a social security card or a W-2 form. Finally, one needs documents to establish residency in the state. These might include: federal, state, county, city, or town issued documents (like a Medicaid statement dated within sixty days or property taxes for the current year); bills (including utility bills or a credit card statement dated within sixty years); a lease or mortgage; financial-related documents (such as a bank statement or a pay stub dated within sixty days); school-issued documents (like a school transcript or a tuition bill for the current year); or insurance documents (like a home or rental insurance policy for the current year). For more information on the application for a Massachusetts Class D Driver's License, visit: <https://www.mass.gov/passenger-class-d-drivers-licenses>.

my possession. I was juggled between four different clerks, until a senior administrator decided that my lease was valid. A far more serious example of citizenship scrutiny in the U.S. involves a growing number of Americans in South Texas who hold U.S. birth certificates but have been denied passports by the state department. The government claims that between 1950 and 1990 several physicians and midwives operating in the Rio Grande Valley accepted bribes to forge birth certificates for an undetermined number of infants. People who have been in this country since birth and have always considered themselves Americans are now faced with challenges to their civic status that will require them to find means of proving their citizenship.²²⁹ I am certain that a man like Euxitheus felt the same anxieties as these Americans do today when he was forced to establish facts that were so fundamental to his personhood—that he was a citizen, that his parents were citizens, and that he had lived as a citizen his entire life.

Finally, both verification systems, ancient and modern, favor certain classes of citizens. In facing my own challenges during my visit to the RMV, I had key advantages. Both of my parents are employed in state government, and I am familiar with the types of arguments which would appeal to Fern and her colleagues. Even if I had been denied registration on that first expedition to the RMV, I also have the time, money, and knowledge to acquire other documents to establish my residency. As to the scrutiny of citizens in the Rio Grande Valley, certain passport applicants whose citizenship has come under question have appealed their cases to the federal government. Others who cannot afford the legal fees face deportation proceedings; in some extreme circumstances, people who have lived as U.S. citizens their entire lives are effectively

²²⁹ Kevin Sieff has reported on this issue over the course of the fall 2018. See his September 13, 2018 article in the *Washington Post* titled, “U.S. is denying passports to Americans along the border, throwing their citizenship into question.” Rachel Martin of *NPR* also interviewed Kevin Sieff on this topic. See her August 30, 2018 interview.

trapped in Mexico, their passports confiscated at the border.²³⁰ Likewise, in Classical Athens, litigants like Euxitheus had distinct advantages when they presented their cases. Euxitheus, despite his pleas about his family's poverty during the Peloponnesian War, was evidently wealthy enough to hire the famous Demosthenes to write his defense. Moreover, over the course of his life, he held offices like the phratrarchy and the demarchy and stood as priest of Heracles (Dem. 57.23; 57.46; 57.63).

In her modern study of the Athenian identification process, Scafuro has framed Athenian methods for status verification as a system that arose in the absence of documentation, implying that the Athenians would have adopted identification procedures that relied on public records if they were available. But as the speeches the Attic orators indicate, the Athenians *did* have these kind of records available to them.²³¹ As Euxitheus attested, one of the demarch's primary duties was to keep an accurate account of the deme's members in its official register (Dem. 57.26). Euxitheus also made clear that the demarch had access to tax records that listed individual demesmen (Dem. 57.63). Furthermore, the phratries also kept an official register of their members.²³² Most critically, although Athenian litigants often made reference to these registries in speeches that focused on civic and family identity, no speaker ever pointed to these rolls as proof of identity. As I have argued throughout this study, the Athenians did not devise their

²³⁰ Again, see Kevin Sieff's September 13, 2018 *Washington Post* article.

²³¹ See Sickinger 1999 for a comprehensive study of public archives in Athens. See also Faraguna 2015 for an overview of the importance of writing practices in ancient Greek law.

²³² Lambert lists the passages from the Attic orators where the phratry registers are described. See Lambert 1993, 176 n.187.

identification process in the absence of public records; rather, they preferred proofs of identity that relied on witnessed performances over documentary evidence.

The goal of this study of Athenian legal speeches has been to examine how the Athenian identification process actually functioned. Here too I believe that modern scholars have focused too much on political and religious activities as the critical proofs of civic identity in Classical Athens. This single focus on participation in formal institutions excludes major actors in the identification process, most particularly women. The arguments presented in Athenian legal cases belie this narrow focus. If these performances were the most important evidence of civic identity, the arguments presented by litigants in the speeches of Demosthenes and Isaeus would be almost nonsensical. Consider Euxitheus' defense once again: If political and religious offices truly constituted the "essence of citizenship" (to borrow a phrase from Hansen), why would Euxitheus devote just under half of his speech to defending the non-political activities of his parents (Dem. 57.18-46)?²³³ Why would he call his uncles to testify that they had given his father Thucritus his portion of the family estate (Dem. 57.19)? Why would he call the Athenian Cleinias to testify to his personal relationship with Euxitheus' mother who acted as his wet-nurse (Dem. 57.44)? Moreover, why would Euxitheus bother to defend his mother's citizenship at all, if her identity was determined entirely by her male relatives? If the Athenians felt that only formal performances determined civic identity, Euxitheus ought to have called the members of his *genos*, *phratry*, and *deme* to testify that he and his father had passed their scrutinies and held offices within these associations and then rested his case. The simplest explanation that accounts for all of the evidence presented in the speeches of the Attic orators is that the Athenian

²³³ Hansen 1991, 97.

identification process included and even emphasized performative acts completed outside of political and religious institutions. This focus on everyday activities and participation in public institutions outside of typical political performances (e.g. taking part in lawsuits and arbitrations) as proofs of citizenship broadens our view of Athenian society and allows us to appreciate the roles that women, metics, and slaves played in establishing and defending civic identity.

Like the American system for citizenship verification, the Athenian process had weak points, as the Athenians themselves were well aware. For example, Euxitheus claimed that non-citizens bribed officials to include their names on the deme register (Dem. 57.59). Both Euxitheus and the speaker in Isaeus' *On Behalf of Euphiletus* argued that their demesmen had conspired against them to expel them from their ranks, possibly for political purposes (Dem. 57.16-17; Isaeus. 12.12). Moreover, Euphiletus' brother also suggested that childless Athenians might be driven to pass a non-citizen as their own child and illegally admit them into their phratry and deme (Isaeus. 12.2). These vulnerabilities, however, did not render the Athenian identification process non-functional, as scholars like Cohen and Vlassopoulos suggest.²³⁴ In fact, we have ample evidence that the Athenian system effectively controlled access to the citizen body. Chaerestratus' representative in Isaeus' *On the Estate of Philoctemon* established that it was difficult for his opponents to fabricate a woman like Callippe as the mother of their two wards (Isaeus. 6.64-65). Athenian citizen women, like men, needed to carry out their own set of performative acts over the course of their lives to establish their identities. These acts were almost impossible to falsify or to circumvent, because everyday performances, like managing the

²³⁴ See Cohen 2002, especially Chapter 4. See also Vlassopoulos 2007.

household and caring for children, needed to take place repeatedly over the course of a lifetime and because they required many witnesses.

In this study, I have offered analyses of key Athenian legal speeches with the goal of redefining the performances of identity in Classical Athens. In my view, the farmer who socialized with his demesmen completed a performance of citizenship as powerful as Demosthenes' delivery of a speech to the assembly. The man who stood as witness in court and affirmed his brother's right to inherit attested to both of their civic identities. The woman who kept to the house and cared for her family confirmed her civic status and that of her children. These performances defined both individuals and the Athenians as a people. The Attic orators then offer a picture of the Athenian identification process as a dynamic range of performances that encompassed every aspect of Athenian life and involved every Athenian.

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