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aus / from

Chiron

Ausgabe / Issue **44 • 2014**
Seite / Page **67–86**
https://publications.dainst.org/journals/chiron/476/5084 • urn:nbn:de:0048-chiron-2014-44-p67-86-v5084.6

Verantwortliche Redaktion / Publishing editor
Redaktion Chiron | Kommission für Alte Geschichte und Epigraphik des Deutschen Archäologischen Instituts, Amalienstr. 73 b, 80799 München
Weitere Informationen unter / For further information see **https://publications.dainst.org/journals/chiron**
ISSN der Online-Ausgabe / ISSN of the online edition **2510-5396**
Verlag / Publisher **Walter de Gruyter GmbH, Berlin**

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Posthumous Adoption in Classical Athens

Louis Gernet (1882–1962) was the first to consistently articulate the view that, in ancient Athens, a childless person who died intestate would posthumously receive an adopted successor.[1] Since then, the theory of posthumous adoption has found a permanent place in studies on the social history of ancient Greece, and, more specifically, ancient Greek family, marriage, law, and property relations.[2] Although well entrenched in modern scholarship, the theory of posthumous adoption still leaves several problems unresolved.[3] One of them is that when an Athenian died intestate, his successor was not established through choice or a private initiative, as the concept of «adoption»

Some of these ideas were presented at the symposium Family, Clan, and Community in Antiquity, held by the Institute of World History at the Russian Academy of Sciences, Moscow, June 25–26, 2013. I am indebted to Larisa L. Selivanova for kindly taking care of necessary arrangements at the symposium, and also to the Editors for helpful comments and suggestions. The following editions have been used: Isaei Orationes cum deperditarum fragmentis, ed. Th. Thalheim, 1903; repr. 1963; Demosthenis Orationes, ed. M. R. Dilts, vol. 4, 2009. English translations of Isaeus and Demosthenes are those by M. Edwards and A. C. Scafuro in The Oratory of Classical Greece by the University of Texas Press, with occasional modifications, respectively.

[1] L. Gernet, REG 33, 1920, 262 n. 2; L. Gernet, Platon, Les Lois, 1–2, ed. É. de Places [Platon, Oeuvres complètes, 11, 1], 1951, clx, n. 1: on the «rule» in classical Athens that a collateral successor give one of his children into posthumous adoption («un héritier collatéral donne un de ses enfants en ‹adoption posthume›»); L. Gernet, Démosthène, Plaidoyers civils 2, 1957, 91.

[2] E.g., W. K. Lacey, The Family in Classical Greece, 1968, 298 n. 87; D. M. Schaps, Economic Rights of Women in Ancient Greece, 1979, 27–28, 32–33, 122, n. 19; V. J. Hunter, in: B. Halpern – D. W. Hobson, ed., Law, Politics, and Society in the Ancient Mediterranean World, 1993, 107–108; L. Rubinstein, Adoption in IV. Century Athens, 1993, 105–113; S. Avramović, Iseo e il diritto attico, 1997, 220–221; C. A. Cox, Household Interests. Property, Marriage Strategies, and Family Dynamics in Ancient Athens, 1998, 149–151; É. Karabélias, L'épiclérat attique, ^{2}2002, 32 n. 46 (= É. Karabélias, Mneme G. A. Petropoulou, 1984, 454 n. 46), 41, 147, 176 n. 8; B. Griffith-Williams, CQ 62, 2012, 146 n. 5.

[3] Cf. D. M. MacDowell, The Law in Classical Athens, 1978, 101: «details of the procedure are obscure»; Avramović (n. 2), 141: «l'adozione postuma è senz'altro uno tra i più strani istituti ateniesi»; Cox (n. 2), 148–149: «besides adoption *inter vivos*, there was testamentary adoption and the mysterious posthumous adoption»; S. Ferrucci, L'Atene di Iseo. L'organizzazione del privato nella prima metà del IV sec. a. C., 1998, 197: «L'adozione postuma è l'istituto che presenta le maggiori difficoltà ad essere ricostruito con certezza»; Karabélias (n. 2), 33: «une adoption posthume, dont les modalités et la fréquence restent à définir», 180 (see n. 10 below).

would imply. His successor was named from among the closest surviving relatives, by the law of kinship proximity, or ἀγχιστεία, whose authorship the Greeks ascribed to Solon.[4]

The law of ἀγχιστεία favored relatives on the father's side over those on the mother's side, and males over females.[5] According to the law of ἀγχιστεία, if someone died intestate without legitimate children, his property went to the relatives in the nearest degree (τοῖς ἐγγυτάτω γένους τὰ τοῦ τελευτήσαντος γίγνεσθαι) in the following order of preference: brother or half-brother by the same father, and his legitimate (γνήσιοι) descendants; sister or half-sister by the same father, and her legitimate descendants; other legitimate relatives on the father's side as far as children of first cousins. In their absence, the property passed to the relatives on the mother's side, according to the same degrees of proximity: half-brother by the same mother, and his legitimate descendants; half-sister by the same mother, and her legitimate descendants; other legitimate relatives on the mother's side as far as children of first cousins.[6] We need to distinguish between legitimate (γνήσιοι) relatives and relatives in general, or συγγενεῖς. The latter included bastards (νόθοι), who had no place in ἀγχιστεία.[7] The most important difference between the συγγενεῖς and the ἀγχιστεῖς was, thus, not that of kinship proximity – some have argued that the former group was comprised of relatives at large while the latter was of the closest kinsmen,[8] – but that ἀγχιστεία included only legitimate relatives who, for that reason, had the right to inherit by law. A bastard son was a closer kin (συγγενής) than a γνήσιος first cousin, but when a person died without legitimate male children of his own and intestate (i. e., without making either a will or an adoption) and the γνήσιος first cousin appeared to be his closest surviving relation by ἀγχιστεία, it was that cousin who became his successor and inherited his property. The closest ἀγχιστεύς was legally entitled to inherit, regardless of whether or not he was posthumously adopted.[9]

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[4] E.g., Dem. 20.102, [Dem.] 43.51, 78, and 46.14.

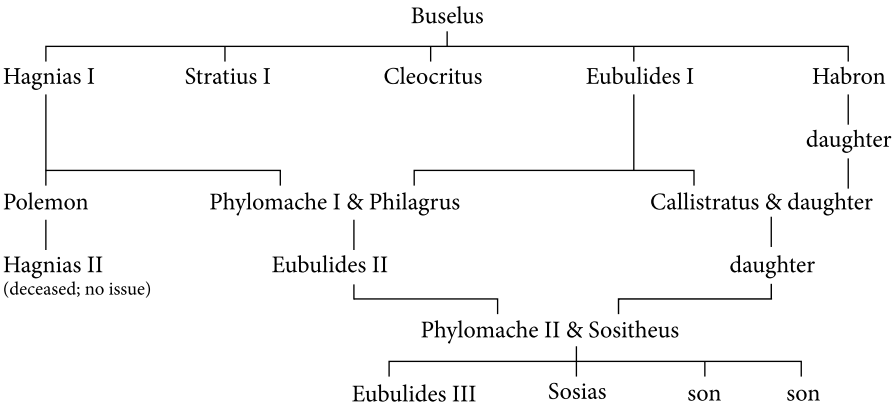
[5] The preference of males: e.g., [Dem.] 43.51, 78, and 44.12, 62; Isae. 7.20.

[6] Isae. 4.15–18 (4.15: the quote), 7.20, 11.1–3; [Dem.] 43.3 (ἡ κληρονομία κατὰ τὴν ἀγχιστείαν), 51, and 61, and 44.14–15 and 66. See esp. U. E. Paoli, SDHI 2, 1936, 78, 100–107 = U. E. Paoli, in: A. Biscardi – R. Martini, ed., Altri studi di diritto greco e romano, 1976, 323–361; Hunter (n. 2), 101–102. For defining «children of first cousins», see MacDowell (n. 3), 106; Rubinstein (n. 2), 44 n. 32; C. B. Patterson, in: S. Benhabib – J. Resnik, ed., Migrations and Mobilities: Citizenship, Borders, and Gender, 2009, 59; R. V. Cudjoe, The Social and Legal Position of Widows and Orphans in Classical Athens, 2010, 31–32.

[7] E.g., Aristoph. Av. 1660–1666; [Dem.] 43.51; Isae. 6.47.

[8] For this explanation, see, e.g., G. Glotz, La solidarité de la famille dans le droit criminel en Grèce, 1904, 347; J. C. Miles, Hermathena 75, 1950, 71; A. R. W. Harrison, The Law of Athens, 1968, 143; É. Karabélias, JJP 20, 1990, 67 (with n. 50) and É. Karabélias, Études d'histoire juridique et sociale de la Grèce ancienne, Recueil d'études, 2005, 152–153.

[9] Cf. J. H. Lipsius, Das Attische Recht und Rechtsverfahren, 1905–1915, 509 n. 33; Hunter (n. 2), 107: «In fact, whether such an adoption took place or not, the son (or sons) of an *epikleros* inherited his grandfather's estate when he reached his majority»; Karabélias (n. 2), 179 (with



Stemma 1. The family of Hagnias I ([Dem.] 43)

Among the unresolved issues is the fact that relatives were not obliged to provide their sons for posthumous adoption. This led some, including Gernet himself, to qualify posthumous adoption as a custom rather than a legal phenomenon.[10] The question of what constituted legal, and illegal, posthumous adoptions will be addressed below. Meanwhile, by taking a closer look at what Lene Rubinstein's study on adoptions in ancient Athens presented as the only two «allegedly legal cases (of posthumous adoption) known to us», even if she did not explain what she meant by «legal» in such cases, we can see how posthumous adoptions worked.[11] These cases are mentioned in two speeches pertaining to property disputes by members of the same extended family. The first case concerns the adoption of the natural son of Sositheus (see Stemma 1). According to Sositheus ([Dem.] 43.12–15), Eubulides II (who was first cousin to the late Hagnias II, and his closest relation) had no male children of his own and wished to

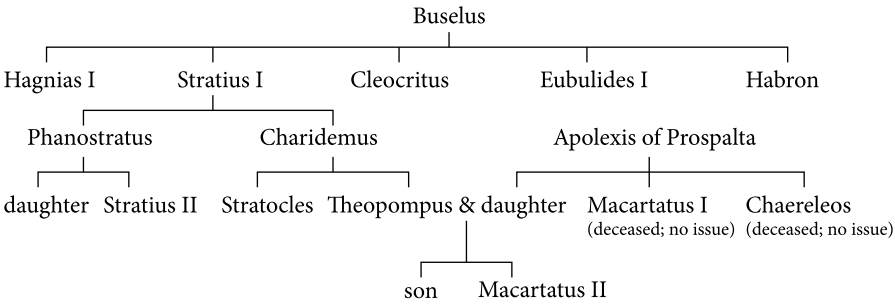
n. 23) and Karabélias (n. 8), 41–42. While such references were made specifically to the succession by the son(s) of the ἐπίκληρος, cases of posthumous adoption similarly reflected the law of ἀγχιστεία, as we shall see below.

[10] E.g., Gernet, Démosthène (n. 1), 91: «L'adoption posthume est une institution qui paraît être restée au marge du droit»; Karabélias (n. 2), 179 n. 22: «l'adoption posthume était plutôt pratiquée de façon facultative», 180: «l'adoption posthume qui, mal connue, semble être en marge du droit»; Griffith-Williams (n. 2), 146 n. 5: «a matter of custom rather than law».

[11] Rubinstein (n. 2), 107: «The law-text itself does not prove that the Archon was required to induce or force intestate heirs to carry out posthumous adoptions … I have found no instances of the Archon having initiated a procedure of posthumous adoption. This is in itself no proof that it did not happen, since most of our known examples of posthumous (sic) are alleged to have been illegal anyway. But even in the two allegedly legal cases known to us, we know that the Archon had not been involved at any stage».

adopt a son of his daughter Phylomache II, the wife of Sositheus, into his own household (οἶκος) and, therefore (as Sositheus insisted), that of Hagnias (43.12: ἐσπούδαζεν ὅπως ἐκ τῆς θυγατρὸς εἰσποιηθῇ αὐτῷ υἱὸς εἰς τὸν οἶκον τὸν ἑαυτοῦ καὶ τὸν Ἀγνίου).

Hence, after the death of Eubulides II, Sositheus arranged a posthumous adoption of one of his four sons by Phylomache II, introducing him into Eubulides II's household (43.15: εἰσπεποιηκότι τὸν παῖδα εἰς τὸν οἶκον τὸν Εὐβουλίδου).



Stemma 2. The family of Stratius I (Isae. 11)

The second case is about the posthumous adoption of Macartatus II (see Stemma 2). According to Theopompus, after the two brothers, Chaereleos and Macartatus, died,

καταλειφθέντος δὲ τοῦ Προσπαλτοῖ χωρίου καὶ γιγνομένου τῆς ἐκείνων ἀδελφῆς, ἐμῆς δὲ γυναικός, ἐπείσθην ὑπ᾽ ἐκείνης εἰσποιῆσαι Μακαρτάτῳ τὸν ἕτερον τῶν παίδων· οὐχ ἵνα ⟨μὴ⟩ λητουργοίην, εἰ προσγένοιτό μοι τοῦτο τὸ χωρίον. ὁμοίως γὰρ καὶ [μὴ] εἰσποιήσαντος τοῦτο γ᾽ ὑπῆρχε· οὐδὲ γὰρ ἐλητούργουν διὰ τοῦτό γ᾽ ἧττον οὐδέν («The estate at Prospalta was left and passed to their sister, my wife, and I was persuaded by her to let one of our sons be adopted into the family of Macartatus. I was not trying to avoid performing public services if this property accrued to me, since my situation remained unaltered after I had given him up: I did not perform fewer public services than before»).

Sositheus briefly mentioned the same episode as follows:

ἀλλὰ πόθεν δή ἐστι τὸ ὄνομα ὁ Μακάρτατος; ἐκ τῶν πρὸς μητρός. εἰσεποιήθη γὰρ οὗτος εἰς τὸν οἶκον τὸν Μακαρτάτου τοῦ Προσπαλτίου, ἀδελφοῦ ὄντος τῆς μητρὸς τῆς τούτου, καὶ ἔχει καὶ ἐκεῖνον τὸν οἶκον («Whence, then, does the name Macartatus come? From relatives on his mother's side. For this man was adopted into the household of Macartatus the Prospaltian, his mother's brother, and he possesses that household also»).[12]

[12] Isae. 11.49–50 and [Dem.] 43.77, respectively.

These cases reveal several important similarities: the property was adjudicated to a woman, who was the only successor – either a daughter ([Dem.] 43) or a sister (Isae. 11) – and thus an ἐπίκληρος;[13] in both cases, it was her son who was offered for posthumous adoption; as the closest male ἀγχιστεύς to the deceased person, this son was supposed to inherit the property anyway.[14] What, then, was the difference between posthumous adoption and succession by ἀγχιστεία? The only difference appears to have been that posthumous adoption installed the adoptee in the οἶκος of the deceased person. Sositheus made the manner in which he had introduced Eubulides III into the household of his late maternal grandfather clear, while Theopompus said that he did not control the estate of the late Macartatus because his son had taken possession of the οἶκος of his late maternal uncle as Macartatus II.

The difference between succession by ἀγχιστεία and succession with posthumous adoption was derived from a general understanding of adoption as being designed to prevent the adopter's household from becoming a «desolate household» (οἶκος ἔρημος). This ultimate purpose explains many specific aspects of adoptions, *inter vivos* and by testament, in ancient Athens: adoptions were not made between two individuals but into the household of the adopter;[15] the adoptee severed his connection with his original οἶκος and could not inherit its property;[16] the adoptee had to establish a legitimate son in his place if he wanted to leave the οἶκος of the adopter and return to his natal οἶκος;[17] and the adoptee usually had to marry the daughter of the adopter or at

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[13] This word is used here in its usual modern interpretation, as an «heiress», although women owned no immovable property in ancient Greece: see, e.g., J. E. Karnezis, The Epikleros, 1972, 206; R. Sealey, CA 3, 1984, 111 n. 1 and R. Sealey, The Justice of the Greeks, 1994, 17, with Karabélias (n. 2), 18–20 on the danger of applying modern terminology to ancient Greek realities.

[14] Cf. Isae. 10.12: κατὰ τὸν νόμον ὃς οὐκ ἐᾷ τῶν τῆς ἐπικλήρου κύριον εἶναι, ἀλλ' ἢ τοὺς παῖδας ἐπὶ δίετες ἡβήσαντας κρατεῖν τῶν χρημάτων («the law does not allow anybody to control the property of an heiress except her sons, who obtain possession of it on reaching the second year after puberty») and 8.31, with Lipsius (n. 9), 509 n. 33; Karnezis (n. 13), 228; Hunter (n. 2), 107 (see n. 9 above); Karabélias (n. 2), 170, 181–183; and C. Leduc, Pallas 85, 2011, 176, 178.

[15] For example, [Dem.] 43.12, 15, 77 (see n. 12 above), and, e.g., Isae. 10.17; Isocr. 19.44 (νῦν δ' εἰς τὸν αὐτῶν μ' εἰσεποιήσατο). See S. Pomeroy, Families in Classical and Hellenistic Greece, 1997, 122 (with n. 71).

[16] E.g., Isae. 6.44–45, 10.11, with F. Brindesi, La famiglia attica: il matrimonio e l'adozione, 1961, 73–74; E. Ruschenbusch, ZRG R 79, 1962, 308; A. Maffi, Symposion 1990, 1991, 219; P. Cobetto Ghiggia, L'adozione ad Atene in epoca classica, 1999, 40–41.

[17] E.g., Dem. 44.61–63; cf. I.Cret. 4, 72, col. XI, 6–10, with, e.g., Lipsius (n. 9), 518; Brindesi (n. 16), 38–39; Harrison (n. 8), 85–87; Lacey (n. 2), 25, 106, 146; Rubinstein (n. 2), 17; C. A. Cox, ZPE 107, 1995, 251 with Cox (n. 2), 35–36, 88, 149; Avramović (n. 2), 143 (with n. 35); L. Gagliardi, Dike 5, 2002, 30–31 (with bibliography); A. C. Scafuro, Symposion 2011, 2012, 156; A. Damet, La septième porte. Les conflits familiaux dans l'Athènes classique, 2012, 155.

least take care of her.[18] However, once a person died intestate and his closest relative succeeded him by ἀγχιστεία, the likely outcome was that the οἶκος of the deceased became «desolate» and his property would be transferred to the οἶκος of the successor. The «desolation» implied that the household ceased to exist as an independent entity: even if someone inherited the property, as was usually the case, the household became extinct. A «desolate οἶκος» was the same as an extinct οἶκος.[19]

Adoption, therefore, meant an extension of the οἶκος,[20] which was an important argument in legal cases, when the closest relatives challenged the rights of the adoptees. The latter responded by claiming that if the relatives succeeded in invalidating the adoption and, therefore, inherited the property of the adopters, the οἶκοι would become extinct, as in the following texts:

(Isae. 2.15): the speaker, who was defending the validity of his adoption by the late Menecles against the claims of Menecles' brother, tried to strengthen his case by accusing his opponent of intending to desolate Menecles' household (ἐξερημοῦν αὐτοῦ τὸν οἶκον).

(Isae. 7.31): the sisters of Apollodorus inherited their brother's estate (κλῆρον) – evidently, as his closest surviving relatives – and their husbands sold his landed property, thus having left his household shamefully and deplorably desolate (τὸν δὲ οἶκον αἰσχρῶς οὕτως καὶ δεινῶς ἐξηρημωμένον).

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[18] E.g., the law quoted in [Dem.] 43.54 = E. Ruschenbusch, ΣΟΛΩΝΟΣ NOMOI. Die Fragmente des Solonischen Gesetzeswerkes mit einer Text- und Überlieferungsgeschichte, 1966, F 126 = A. Martina, Solone. Testimonianze sulla vita e l'opera, 1968, F 437, ascribed to Solon: e. g., Glotz (n. 8), 330–331, 338 n. 1 and A. C. Scafuro, in: J. H. Blok – A. P. M. H. Lardinois, ed., Solon of Athens. New Historical and Philological Approaches, 2006, 179, 18–190 (with n. 41), 195; pace E. Ruschenbusch, Kleine Schriften zur griechischen Rechtsgeschichte, 2005, 194; Isae. 1.39; and Menan. Dysc. 731–732, which show that the adoptee did not necessarily have to marry the adopter's daughter: for this opinion, see, e.g., Karnezis (n. 13), 218–219; Cox (n. 2), 88, 95 (with n. 112), 128; S. C. Humphreys, ZRG R 119, 2002, 340 n. 2. See esp. L. Gernet, Droit et société dans la Grèce ancienne, 1955, 136; Maffi (n. 16), 218 (with n. 12); Rubinstein (n. 2), 95–97. It has been argued, however, that the outcome depended on the type of adoption: the adoptee had to marry the adopter's daughter in adoptions by testament, and did not have to do so in adoptions *inter vivos*: e.g., Gagliardi (n. 17), 43 (with n. 133 for bibliography); cf. Karabélias (n. 2), 146–147, whose approach similarly distinguished between different types of adoptions. But see W. Schmitz, Nachbarschaft und Dorfgemeinschaft im archaischen und klassischen Griechenland, 2004, 223 (with n. 236), who believed that the option of not marrying the adopter's daughter was a later development and had no connection to any specific type of adoption; this view was evidently derived from the suggested dating of the law that was quoted in [Dem.] 43.54 to some time after Solon: see, e.g., Ruschenbusch, loc. cit.

[19] This simple conclusion has often been buried in debates on the meaning of οἶκος ἔρημος. For such debates, see, for example, D. Asheri, Archivio giuridico ‹Filippo Serafini›, 6 ser., 28, 1960, 8, 23 (but see 24: «l'οἶκος stesso veniva eliminato come entità independente ed absorbito in quello dell'ἐγγύτατα γένους»); Karabélias (n. 2), 30–33.

[20] E.g., Harrison (n. 8), 93; Rubinstein (n. 2), 69; A. Maffi, Il diritto di famiglia nel Codice di Gortina, 1997, 80; Avramović (n. 2), 164; Cox (n. 2), 184; Cobetto Ghiggia (n. 16), 296; Karabélias (n. 2), 67, 82.

(Isae. 7.43): the adoptee of Apollodorus disputed the claims to his estate by Apollodorus' cousins, arguing that they would make the household of Apollodorus desolate (μὴ ἐπὶ τούτοις ⟨εἶναι⟩ ἐξερημῶσαι τὸν οἶκον τὸν ἐκείνου), and pointing out (7.44) that their advocate had refused to provide a son for adoption by his relative, thus similarly leaving the household of that person desolate (ὁμοίως ἂν καὶ τοῦτον ἐξερημώσας).

(Isocr. 19.3): when a half-sister of the late Thrasylochus from the island of Siphnos disputed the rights of his adopted son, the latter accused her of trying to leave Thrasylochus' household desolate (τὸν οἶκον ἔρημον ποιῆσαι).

([Dem.] 43.78): Sositheus accused Macartatus II of having introduced his son by his mother's descent into the Prospaltians, thereby causing the household of Hagnias to become desolate (τὸν δὲ Ἀγνίου οἶκον εἴακεν ἔρημον εἶναι τὸ τούτου μέρος).

Succession by the closest relative did not guarantee the continuation of the οἶκος of the deceased person. In fact, the evidence shows that the opposite was more likely. Therefore, the argument commonly put forward by the adoptees was that adoption safeguarded the οἶκοι of the deceased heads of households, thus making it possible to hold their funerals, to preserve their names and family cults, and to perform annual rites for them.[21] Moral and religious claims were put in front of economic interests.

This situation casts a new light on the arguments by which the closest relatives disputed adoptions. In one such case, while contesting the estate of Hagnias, Sositheus ([Dem.] 43.74–75) told the judges that he gave his daughter in marriage to his own brother's son so that the children born of them would be of the same family as Hagnias (ἐκ τοῦ αὐτοῦ γένους ὦσιν Ἀγνίᾳ), and that the households springing from Buselus (i. e., the forefather of the entire family: see Stemma 1) should be preserved as completely as possible (ὅπως ἂν διασῴζωνται ὅτι μάλιστα οἱ οἶκοι οἱ ἀπὸ τοῦ Βουσέλου). While the words of Sositheus reflected the widespread practice of marriage among members of the same family, including cousins,[22] he also presented his actions as displays of loyalty to the well-being of the entire family rather than his individual interests. Likewise, when trying to wrestle the estate of the late Archiades from a string of several generations of adopted children, the speaker insisted that it was, in fact, the task of Archiades' closest relatives to ensure that his οἶκος did not become desolate after he died:

ἡμῖν μὲν γὰρ ἀναγκαῖον ἦν, τοῦ νόμου τὰς ἀγχιστείας τοῖς ἐγγυτάτω γένους ἀποδιδόντος, οὗσιν οἰκείοις Ἀρχιάδου τοῦ ἐξ ἀρχῆς καταλιπόντος τὸν κλῆρον, μήτε τὸν οἶκον ἐξερημωθέντα τὸν ἐκείνου περιιδεῖν μήτε τῆς οὐσίας ἑτέρους κληρονομήσαντας, οἷς οὐδ' ὁτιοῦν προσήκει

[21] E.g., Isae. 2.37, 46, 7.30, 8.21–23. On the importance of religious aspects of the preservation of households, see, e.g., Rubinstein (n. 2), 69–76 and Karabélias (n. 8), 126–128, both with further evidence.

[22] E.g., Cox (n. 2), 63–64; C. A. Cox, in: B. Rawson, ed., A Companion to Families in the Greek and Roman Worlds, 2011, 240–241. One of the best illustrations of this situation appears to be the legal requirement that the closest ἀγχιστεύς marry the ἐπίκληρος through the process of adjudication, or ἐπιδικασία: e.g., [Dem.] 43.54 (see n. 18 above); Isae. 1.39, 3.64–65, and 6.14, with Karabélias (n. 2), 59, 109–143.

(«Since the law grants the right of succession to the nearest of kin and since we are relatives of Archiades, who left the estate at the outset, it was incumbent upon us neither to suffer his household to become extinct nor to let others, who had no right whatever to it, to inherit his property»),

καὶ ἡ μὲν τοῦ γένους ἀγχιστεία τοῦ ἡμετέρου, ἐν ᾧ ἐστιν ὁ κλῆρος, σχεδὸν οὕτως ἔχει, ὦ ἄνδρες δικασταί. Ἀρχιάδῃ γὰρ πρὸς ἀνδρῶν ἡμεῖς μὲν γένει ἐγγυτάτω, καὶ κατὰ τοῦτον τὸν νόμον ἀξιοῦντες τῆς ἐκείνου οὐσίας κληρονομεῖν καὶ τὸ γένος μὴ περιδεῖν ἐξερημωθέν, ἐλάχομεν πρὸς τὸν ἄρχοντα τοῦ κλήρου («The right of inheritance in our family, to which the estate belongs, is essentially this, men of the jury. Since we are the nearest of kin to Archiades in the male line and since we deem it right that we should inherit his property according to this law and not allow the family to become extinct, we claimed the estate before the Archon»), and

ἡμεῖς δ' οἰόμεθα δεῖν, ὦ ἄνδρες δικασταί, ἐπειδὰν περὶ τούτου τοῦ ἀγῶνος ὑμεῖς τὴν ψῆφον ἐνέγκητε, τηνικαῦτα ἐκ τῶν κατὰ γένος ἐγγυτάτω ἡμῶν εἰσποιεῖν υἱὸν τῷ τετελευτηκότι, ὅπως ἂν ὁ οἶκος μὴ ἐξερημωθῇ («But in our opinion, men of the jury, it is only after you have given a verdict concerning the present case that a son should be adopted into the family of the deceased from among us as the closest by lineage, in order that the household may not become extinct»).[23]

By returning to the same topic again and again, the speaker stressed its importance to his overall argument. Such statements evidently countered accusations from the other side, which, as we have seen, were a common argument in legal cases involving adoptions. The emphasis on the rôle of the closest relatives only serves to prove, however, that the usual outcome, and the common perception, of succession by the closest relatives to a person who died intestate and without legitimate children was the extinction of his οἶκος.

The closest relatives likely often refused to give their sons for adoption precisely because they expected to inherit the property by virtue of ἀγχιστεία. Conversely, at least in some cases, Athenians adopted sons with the aim of depriving their closest relatives of their inheritance. This was the intention of Phrastor, who adopted a son because, according to Apollodorus, he neither wished to die childless, nor for his relatives (συγγενεῖς, οἰκεῖοι) to get his property ([Dem.] 59.57–58). Phrastor evidently realized that, should his relatives inherit his property through the law of ἀγχιστεία, his οἶκος would become desolate, and he intended to avoid this situation by adopting a son.[24] In the speech *On the Estate of Apollodorus*, the speaker accused the sisters of Apollodorus II of planning to make his household desolate by never giving him a son for adoption and, in the end, inheriting and taking over his property. Hence, argued the speaker (Isae. 7.31–33), Apollodorus I had adopted him, having realized that if he left his estate in the hands of his relatives, his household would be extinguished in a similar fashion. In another speech, *On the Estate of Cleonymus*, the speaker tried to overturn the will of his uncle, by arguing that Cleonymus made his will, and adopted

[23] Dem. 44.2, 11, and 43, respectively. See Schmitz (n. 18), 225, who pointed to the interchangeable use of λαγχάνειν and κύριος εἶναι in the law quoted in [Dem.] 43.51.

[24] As, correctly, D. Hamel, Trying Neaira, 2003, 87. Cf. K. A. Kapparis, Apollodoros. Against Neaira, 1999, 286–287, who passed this matter over.

a son, thus depriving his closest relatives (including the speaker and some other unnamed people), because he was angry with one of them (Isae. 1.3–4, incl. 1.3: ὀργισθεὶς τῶν οἰκείων τινὶ τῶν ἡμετέρων). Cases in which children were denied for adoption by close relatives, and when adoptees were specifically chosen from somewhere other than close relatives, not only reveal a considerable amount of tension among members of Athenian families,[25] but also show family strategies concerning succession, of which adoptions – including posthumous adoptions – comprised an important part.

The fact that the people who were adopted posthumously were the same people who expected to succeed by ἀγχιστεία without any adoption poses the problems of identifying the reasons for posthumous adoptions and how these adoptions were legally defined. Since the difference between a mere inheritance by ἀγχιστεία and a posthumous adoption was that the latter effectuated the survival of the οἶκος of the deceased person, it is perfectly legitimate to explain posthumous adoptions as a moral obligation of the closest relatives.[26] However, quite often, the relatives avoided that option. And when they used it, it could have been done for a variety of closely tied economic reasons. Asserting that he had offered his son by Phylomache II for posthumous adoption into the οἶκος of Eubulides II with the sole intention of preserving the οἶκος of Hagnias II, Sositheus emphasized that he lost guardianship over him ([Dem.] 43.74–75). However, the new guardian of Eubulides III appeared to be his brother Sosias, one of the four sons of Sositheus and Phylomache II ([Dem.] 43.14–15; see Stemma 1). Therefore, while the estate of Eubulides II formally remained a separate household, it passed into the control of the family of Sositheus.[27] In another case that we examined above, if Theopompus himself had taken charge of the estate of the late Macartatus, he would have been liable for more public services. Hence, his illogical statement that, regardless of the adoption of his son, he still performed no less public service than before.[28] It is likely that Sositheus would have found himself in a similar situation if he had come into direct control of the estate of Eubulides II via the ἀγχιστεία of Phylomache II. Posthumous adoptions allowed the Athenians to break their property into parts and, thus, to avoid performing more public service.[29]

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[25] See, e.g., Damet (n. 17), 150–162, with reference to disputes over inheritance and adoptions.

[26] As Hunter (n. 2), 107–108; Rubinstein (n. 2), 109–112 and L. Rubinstein, in: M. Corbier, ed., Adoption et fosterage, 2000, 60; Avramović (n. 2), 164–165; Karabélias (n. 2), 32 n. 46; R. Martini, Symposion 1999, 2003, 282 n. 30. See also n. 28 below.

[27] For a discussion of this text and an elaboration on family strategies, see Schmitz (n. 18), 225–226.

[28] Isae. 11.49–50 (see n. 12 above), with W. E. Thompson, De Hagniae Hereditate: An Athenian Inheritance Case, 1976, 57–58, who asserted that Theopompus was guided by considerations of morality; cf. the skepticism of W. Wyse, The Speeches of Isaeus, 1904, 712.

[29] For social pressure on wealthy people, and the correlation between the burden of public service and the amount of personal wealth, see, e.g., Aeschin. 1.101 (the father of Timarchus

This was certainly possible if the family had more than one son: both Eubulides III and Macartatus II had brothers. Adoption was avoided when a family had only one son, to a large extent because of the same religious considerations we have seen above: the son was expected to arrange his parents' funerals and perform sacral rites (Isae. 2.10–11).

The evidence does not support the view that posthumous adoption «conferred rights of inheritance».[30] Quite the opposite, the right of inheritance by ἀγχιστεία served as the basis for posthumous adoptions. Hence, a family's decision to arrange for a posthumous adoption for reasons other than, or in addition to, a moral obligation, was made because posthumous adoption *ipso facto* proved that, as his closest ἀγχιστεύς, the adoptee was the lawful successor of the deceased person. Posthumous adoption, therefore, was a powerful argument when the property was contested, as well as when the family that arranged a posthumous adoption also laid claim to the estates of the adopter's other relatives. In the latter case, Sositheus went out of his way to show that the posthumous adoption of his son into the οἶκος of Eubulides II ([Dem.] 43.15) also meant his adoption into the οἶκος of Hagnias II (43.14: ὀρθῶς καὶ προσηκόντως τὸν παῖδα τουτονὶ εἰσάγεσθαι Εὐβουλίδῃ υἱὸν εἰς τὸν οἶκον τὸν Ἀγνίου), which was, allegedly, Eubulides II's own desire, as we have seen above (43.12). Sositheus claimed that he introduced his son as the adopted son of Eubulides II to the phrateres of Hagnias II and Eubulides II (43.11 and 13: εἰς τοὺς Ἀγνίου καὶ Εὐβουλίδου φράτερας).[31] Although the introduction of the boy into a phratry only confirmed his status as a γνήσιος,[32] since Phylomache II was Eubulides II's ἐπίκληρος, having her son acknowledged as legitimate guaranteed him the inheritance of her father. The situation with Hagnias II was different. However, in this case, too, the rôle of posthumous adoption was important: it not only brought one of Sositheus' sons

allegedly sold a part of his property in order to avoid the obligation to perform public services), with M. R. Christ, TAPA 120, 1990, 147–169; P. Liddel, Civic Obligation and Individual Liberty in Ancient Athens, 2007, 262–274; M. R. Christ, The Bad Citizen in Classical Athens, 2006, 146–154, 194–198, who, however, did not discuss these cases in his overview of «Concealment of property»: 191–194.

[30] Schaps (n. 2), 28. Cf. similar inferences by J. K. Davies, Athenian Propertied Families, 1971, 86 (posthumous adoption was «the only means of gaining a secure hold on a property on which someone else would otherwise have had a better claim»); Rubinstein (n. 2), 48–49 («the adoption got its legal validity from the rites of affiliation»); and Cobetto Ghiggia (n. 16), 278: «Filoctemone aveva un discendente legittimo e diretto a mezzo di adozione postuma», and 283: «come successore di Filoctemone attraverso un' adozione postuma».

[31] Among those convinced by that argument was Libanius, Hypoth. Dem. 56.1: Phylomache ἐπεδικάζετο τοῦ κλήρου τοῦ Ἀγνίου ὡς οὖσα ἐγγύτατα τῷ γένει, and 4.

[32] Thompson (n. 28), 71: on the vote by the phrateres – «all their vote really signifies is that they regard Phylomache as Euboulides' daughter and her son as legitimate … Sositheos, however, by constantly coupling Euboulides and Hagnias, tries to make it appear that the phrateres recognized the boy as Hagnias' heir».

«a degree nearer to Hagnias»,[33] but, by presenting the boy as the closest relation to Eubulides II, it also laid a claim for him as the closest relation to Hagnias II. Sositheus ([Dem.] 43.17) asserted the right of his son, as Eubulides III, to the estate of Hagnias II in even stronger terms, by telling the judges that

[… γὰρ] ἐπιδείξω Θεοπόμπου τοῦ πατρὸς τοῦ Μακαρτάτου γένει ὄντας Ἀγνίᾳ ἐγγυτέρω Εὐβουλίδην τε τὸν παῖδα τουτονὶ καὶ Φιλομάχην, ἥ ἐστιν μήτηρ τῷ παιδί, Εὐβουλίδου δὲ θυγάτηρ, καὶ οὐ μόνον γένει ἐγγυτάτω ὄντας, ἀλλὰ τὸ παράπαν οὐδὲ ὄντα οὐδένα ἀνθρώπων ἐν τῷ οἴκῳ τῷ Ἀγνίου ἄλλον ἢ τὴν μητέρα τοῦ παιδὸς τουτουὶ καὶ αὐτὸν τοῦτον τὸν παῖδα («[… for] I will prove to you that this boy Eubulides here and Phylomache, who is the mother of the boy and the daughter of Eubulides II, are nearer of kin to Hagnias than Theopompus, the father of Macartatus, and not only that they are nearest of kin, but also – that not a single living being, none at all, belongs to the household of Hagnias except for the mother of this boy and the boy himself»).

Sositheus used the posthumous adoption of one of his sons into the οἶκος of Eubulides II to also claim the estate of Hagnias II on behalf of his wife and that son.

This brings us to the question of how posthumous adoptions were defined in legal terms. According to Athenian law, the responsibility for preserving households of Athenians from extinction belonged to the Archon, as explained by Isaeus:

πάντες γὰρ οἱ τελευτήσειν μέλλοντες πρόνοιαν ποιοῦνται σφῶν αὐτῶν, ὅπως μὴ ἐξερημώσουσι τοὺς σφετέρους αὐτῶν οἴκους, ἀλλ' ἔσται τις καὶ ὁ ἐναγιῶν καὶ πάντα τὰ νομιζόμενα αὐτοῖς ποιήσων· δι' ὃ κἂν ἄπαιδες τελευτήσωσιν, ἀλλ' οὖν ποιησάμενοι καταλείπουσι. καὶ οὐ μόνον ἰδίᾳ ταῦτα γιγνώσκουσιν, ἀλλὰ καὶ δημοσίᾳ τὸ κοινὸν τῆς πόλεως οὕτω ταῦτ' ἔγνωκε· νόμῳ γὰρ τῷ ἄρχοντι τῶν οἴκων, ὅπως ἂν μὴ ἐξερημῶνται, προστάττει τὴν ἐπιμέλειαν («All men, when they are near their end, take precautions on their own behalf to prevent their households from becoming desolate and to ensure that there will be somebody to perform sacrifices and carry out the customary rites over them. And so, even if they die childless, they at least leave behind adopted children. And not only do they decide to do this for themselves, but the city too has publicly so decided, since by law it enjoins on the Archon the duty of preventing households from being extinguished»).[34]

Modern studies have questioned the validity of this passage, because neither the Archon nor any law could enforce posthumous adoption in Athens.[35] This opinion

[33] As Wyse (n. 28), 674: the posthumous adoption brought «the boy a degree nearer to Hagnias II, in order that a claim to the estate might be presented in the name of a son of a first cousin.»

[34] Isae. 7.30. The other document usually adduced in such discussions is a purported quote from the law, which was inserted in [Dem.] 43.75 at some later date. For its authenticity, see Scafuro (n. 18), 182–189, 194–195.

[35] E.g., Lipsius (n. 9), 509 (with notes); Harrison (n. 8), 92–93; Rubinstein (n. 2), 105–106 and 107 (see n. 11 above); Cobetto Ghiggia (n. 16), 214–216. Cf. Ferrucci (n. 3), 197–198, incl. 197: posthumous adoption «parrebbe comunque trattarsi dell' unico caso nel quale la *polis* interveniva direttamente nell' assegnazione dell' eredità», and Gagliardi (n. 17), 9 n. 7: at the posthumous adoption, «l'arconte provvedeva (o poteva provvedere) a nominargli un successore come capo dell' οἶκος».

reflects both the nature of posthumous adoption, which could not be imposed (hence, the views about the non-legal nature of posthumous adoption, and attempts to explain it as a moral obligation[36]), and also the uncertain part played by the Archon in posthumous adoptions. It has been debated whether the Archon was proactive and responsible for establishing adoptees through his own initiative, or whether his rôle was much more modest, and was limited, for the most part, to protecting the property of the οἶκος whose head had passed away, leaving neither a will nor legitimate children.[37] No evidence exists, however, that the Archon, or any other official, or the law for that matter, foresaw and enforced posthumous adoptions. It is, therefore, difficult to see how the city could use posthumous adoptions to keep οἶκοι from extinction.[38] What rôle, then, did the Archon play in posthumous adoptions, and how were they defined legally?

When the Archon helped to preserve existing οἶκοι from extinction by taking care of the ἐπίκληροι, orphans, and widows (including those who stayed in the οἶκοι of their late husbands, claiming to be pregnant),[39] his major task was to determine the closest relative via ἀγχιστεία. Thus, the Archon compelled the closest relative (ὁ ἐγγύτατα γένους) to either marry the ἐπίκληρος or, if he refused to do so, arrange for her to be married with a dowry to someone else.[40] When disputes arose over rights to guardianships, estates, and ἐπίκληροι (Arist. Ath. Pol. 56.6), the Archon's job was to ascertain the closest ἀγχιστεύς, because the rights belonged to that person. The speaker in *On the Estate of Nicostratus* reflected that fact when he said that the right to an estate could be disputed by relatives on the basis of kinship proximity (Isae. 4.25: κατὰ τὸ γένος), and that there was no place for such a dispute when the estate was inherited through a testament. Hence, after the son of Sositheus was introduced as the posthumously adopted son of Eubulides II, he «summoned Macartatus to an adjudication of the estate of Hagnias, and filed a suit before the Archon». By being posthumously adopted into the οἶκος of Eubulides II, the son of Sositheus presented himself as the closest relative of Eubulides II and, thus, as the closest relative to Hagnias II, which allowed him to also claim the estate of Hagnias II. He filed a suit «before the Archon» (ἔλαχε πρὸς τὸν ἄρχοντα), which was a standard procedure if inheritance, that is the property of the deceased person, was contested.[41]

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[36] The non-legal nature of posthumous adoption: see n. 10 above. Its moral character: see n. 26 above.

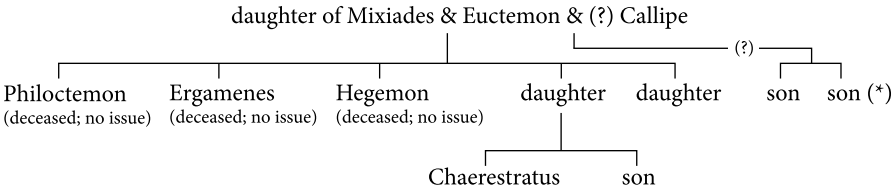
[37] For overviews, see Avramović (n. 2), 164; Cobetto Ghiggia (n. 16), 215–216; Karabélias (n. 2), 31 n. 43.

[38] As M. Podo, L'adozione nel diritto attico, 1957, 7; Brindesi (n. 16), 50–53, 71, 81; S. Ferrucci, Dike 9, 2006, 196 (with n. 41). Cf. H. Lindsay, in: Rawson (n. 22), 348: «a posthumous adoption was … mediated by the courts».

[39] See Arist. Ath. Pol. 56.6–7 and [Dem.] 43.75 (see n. 34 above).

[40] [Dem.] 43.54 (see n. 18 above); cf. Arist. Ath. Pol. 56.7.

[41] [Dem.] 43.15: προσεκαλέσατο Μακάρτατον τοῦ κλήρου τοῦ Ἀγνίου εἰς διαδικασίαν, καὶ ἔλαχε πρὸς τὸν ἄρχοντα. Cf. Dem. 44.11 (see n. 23 above).



(*) for the disputed status of these young men, see in the text

Stemma 3. The family of Euctemon (Isae. 6)

It appears that in cases of posthumous adoptions, which were also made on the basis of kinship proximity, the task of the Archon was, similarly, to ascertain that the adoptee was the closest relative by ἀγχιστεία, as the following two speeches from the *corpus Isaeacum* illustrate. In the first, the speech *On the Estate of Philoctemon* (see Stemma 3), the speaker, a friend of the family of Chaerestratus (who had allegedly been adopted by Philoctemon in a will), accused his opponents of plotting to appropriate the property (οὐσία) of the old and incapacitated Euctemon after his death (Isae. 6.35). He pointed out that, when Euctemon fell gravely ill, these people registered before the Archon (πρὸς τὸν ἄρχοντα) two young men – allegedly the legitimate children of Euctemon by a certain Callipe – as the posthumously adopted children of Philoctemon and Ergamenes, i.e. the two late sons of Euctemon, respectively, and inscribed themselves as the guardians of those youths.[42]

In this case, as in that of Eubulides III, posthumous adoption was a strategy intended to seal a legal claim not only to the οἶκος of the adopter, the late Philoctemon, but also to the οἶκος of his closest relative, his old father Euctemon.[43] As soon as the court met, the Archon put the lease of the property that now belonged to the

[42] Isae. 6.36: ἀπογράφουσι τὼ παῖδε τούτω πρὸς τὸν ἄρχοντα ὡς εἰσποιήτω τοῖς τοῦ Εὐκτήμονος ὑέσι τοῖς τετελευτηκόσιν, ἐπιγράψαντες σφᾶς αὐτοὺς ἐπιτρόπους, and 44: οἵτινες πρὸς μὲν τὸν ἄρχοντα ἀπέγραψαν αὐτοὺς ὡς ὄντας τὸν μὲν Φιλοκτήμονος τὸν δ' Ἐργαμένους.

[43] See Harrison (n. 8), 140: «at one point at least the orator's language suggests that there had never been a formal division of property between Euktemon and his son, Philoktemon» (with n. 1), and Cobetto Ghiggia (n. 16), 276: «il patrimonio di Filoctemone ed Euctemone era indiviso» (and n. 265), both with reference to the words of the speaker (Isae. 6.38) that Euctemon and his son Philoctemon possessed so large a fortune (οὕτω πολλὴν οὐσίαν ἐκέκτητο Εὐκτήμων μετὰ τοῦ ὑέος Φιλοκτήμονος) that both of them were able to undertake the most costly public liturgies (ὥστε ἅμα τε τὰ μέγιστα ὑμῖν λητουργεῖν ἀμφοτέρους) without spending their primary capital. Cf. Wyse (n. 28), 484: «Chaerestratus appears to have assumed that the estate of Philoctemon was identical with the estate of Euctemon», and 528: «Although in fact Philoctemon shared the property with his father, Euctemon alone was the legal owner. ‹The estate of Philoctemon› is a fiction of the orator».

adoptees up for auction, which was a standard procedure.[44] However, the judges then cancelled the lease because of the appeal of the «relatives», thus also indicating that the posthumous adoption of the two youths was invalid.[45] The only reason a posthumous adoption could be nullified was because the adoptee turned out to be not the closest ἀγχιστεύς to the adopter. Hence, the most important points at the trial were, first, the status of the two youths in the sense of whether they were of legitimate birth and, second, their ἀγχιστεία, that is kinship proximity to Euctemon.[46] At the cross-examination (ἀνάκρισις), over which the Archon presided and which preceded the trial, the opponents of Chaerestratus claimed that the two youths were legitimate sons of Euctemon by a certain Callipe.[47] This turned the young men into the closest ἀγχιστεῖς of the late Philoctemon and Ergamenes and, thus, made their posthumous adoption possible.

The speaker certainly questioned the legitimacy of the young men's status, with reference to the records of the cross-examination as well as depositions and challenges (Isae. 6.13–16).[48] He asserted that the young men were children of a freeman Dion and a former prostitute Alce, who persuaded the elderly Euctemon to acknowledge them as his legitimate sons and introduce them in his phratry.[49] However, the introduction into a phratry was a reflection of one's status as a legitimate child; it was difficult to

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[44] The lease of the property of the wards by their guardians was an expected step, so that it alone could in no way serve as a proof of the guardians' malicious intent. The fact that the property had not been leased could be brought as a part of an accusation against the guardians: e.g., G. Thür, Belgrade Law Review 58, 2010, 12–13.

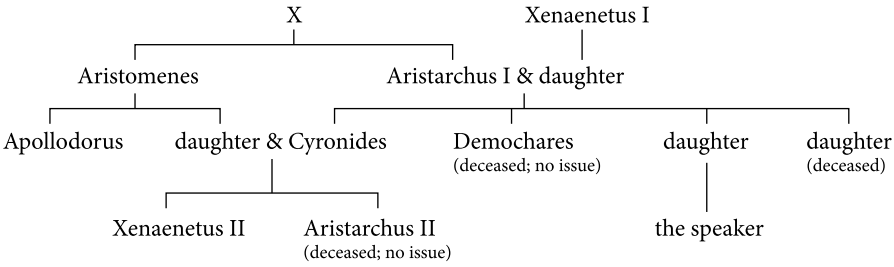
[45] Isae. 6.37 (οἱ οἰκεῖοι). Cf. a later reference in Isae 6.44 (see n. 42 above). It is certainly true that when it came to leasing orphans' estates, «the law court, not the magistrate, had the last word»: Thür (n. 44), 14. However, the same can be said about any step involving the handling and transfer of property: Arist. Ath. Pol. 56.6 (see n. 61 below). The rôle of the Archon should not be underestimated: he not only put the estates of the orphans, and of the ἐπίκληροι, up for auction, but also received a piece of property as security (ἀποτίμημα) for the lease of those estates: e.g., M. I. Finley, Studies in Land and Credit in Ancient Athens, 500–200 B.C., 1951, 44–52, 72, 80, 243 n. 56; Harrison (n. 8), 293–303; S. C. Todd, The Shape of Athenian Law, 1993, 252–255; and E. M. Harris, Democracy and the Rule of Law in Classical Athens. Essays on Law, Society, and Politics, 2006, 211, 213 (and n. 22), 226 n. 48. He, thus, acted similar to a κύριος: e.g., Dem. 30.8. On the importance of the cross-examination, presided over by the Archon, for the subsequent trial and the decision of the jury-court, see below.

[46] It is incorrect to follow the view that the debate was more concerned with the validity of the posthumous adoption of the two youths than with their status as legitimate children: e.g., Avramović (n. 2), 140. In fact, the two considerations were inseparable, because the latter served as one of the foundations of the former.

[47] Isae. 6.12: ὅτε γὰρ αἱ ἀνακρίσεις ἦσαν πρὸς τῷ ἄρχοντι, with Wyse (n. 28), 209 (on documents produced at the ἀνάκρισις), 498 (on πρὸς τῷ ἄρχοντι).

[48] See Isae. 6.16: καί μοι λαβὲ τήν τ' ἀπόκρισιν αὐτῶν καὶ τὰς ἡμετέρας μαρτυρίας καὶ προκλήσεις, with Wyse (n. 28), 503 on depositions.

[49] Isae. 6.17–26: the speaker refers to the introduction of only one of the two youths, presumably being interested in the young man who was then registered as the posthumously adopted son of Philoctemon.



Stemma 4. The family of Xenaenetus I (Isae. 10)

argue against this fact. Hence, the speaker decried his opponents of, first, inscribing the two young men as posthumously adopted sons of Philoctemon and Ergamenes and, then, of claiming that the two youths were sons of Euctemon. This was illegal, declared the speaker, because according to the law, an adoptee could return to his natal family only after leaving a legitimate son in his place.[50] The inference was both that the posthumous adoptions were questionable and that the opponents of Chaerestratus were driven exclusively by their desire to appropriate the property, first, of Philoctemon and Ergamenes, and, then, of the now late Euctemon.

However, this statement was an act of desperation: the speaker falsely juxtaposed the claim for arranging the posthumous adoption of the two young men into the οἶκοι of the late Philoctemon and Ergamenes, respectively, with the claim that those young men were Euctemon's legitimate natural-born sons, thus implying that they now wanted to be (again) recognized as the sons of Euctemon.[51] The opponents of Chaerestratus insisted that the two young men were the sons of Euctemon as part of the argument for their posthumous adoption into the οἶκοι of Philoctemon and Ergamenes, not for their readoption into the οἶκος of Euctemon. It was not necessary to make this «readoption», because, if acknowledged as the posthumously adopted sons of Philoctemon and Ergamenes, the two young men were expected to inherit the property of Euctemon as his closest ἀγχιστεῖς in any event. The reason why the opponents of Chaerestratus stressed that the two young men were legitimate sons of Euctemon was

[50] Isae. 6.44: οἵτινες πρὸς μὲν τὸν ἄρχοντα ἀπέγραψαν αὐτοὺς ὡς ὄντας τὸν μὲν Φιλοκτήμονος τὸν δ' Ἐργαμένους, νῦν δὲ διαμεμαρτυρήκασιν Εὐκτήμονος εἶναι. For this law, see n. 17 above. This is not the place to examine whether the adopted son, who left a legitimate son in his place and returned to his original family, also became reinscribed into the registers of the deme of his original, i.e. natural, father or remained a member of the deme of his adoptive father: see Rubinstein (n. 2), 58 with Cobetto Ghiggia (n. 16), 234, and Harris (n. 45), 365–370, respectively.

[51] This argument has been accepted as valid: e.g., Wyse (n. 28), 530–531; Avramović (n. 2), 150; cf. D. Kamen, Isaeus' Orations 2 and 6, 2000, 57.

evidently that the judges had cancelled the lease of the property in question and, therefore, nullified the posthumous adoption of the two young men. The supporters of the two youths argued that the young men had the right to be posthumously adopted by virtue of their status as legitimate children of Euctemon, thus repeating what had been said at the ἀνάκρισις before the cancellation of the lease by the judges and before the current trial.

In the second speech, *On the Estate of Aristarchus* (see Stemma 4), the speaker (the plaintiff), a maternal grandson of Aristarchus I, argued that since his late uncle Cyronides had been adopted by Xenaenetus I (who was Cyronides' maternal grandfather) and, thus, forfeited his right to inherit the οἶκος of Aristarchus I, Cyronides' son could not be posthumously adopted into the οἶκος of Aristarchus I ([Isae.] 10.11, 15–16). However, this is exactly what happened: one of Cyronides' sons was posthumously adopted into the οἶκος of Aristarchus I as Aristarchus II. This Aristarchus II then died without issue, having made his brother, Xenaenetus II (the defendant), his heir by testament. The speaker contested the validity of the testament, since the earlier posthumous adoption of Aristarchus II was not founded on any law (10.6: οὐδὲ καθ' ἕνα νόμον). Therefore, asserted the speaker, the closest remaining ἀγχιστεύς of Aristarchus I was the speaker's mother (10.26), to whom his estate should be adjudicated.

Thus, the speaker both challenged the posthumous adoption of Aristarchus II – who allegedly was not the nearest ἀγχιστεύς of Aristarchus I because Cyronides' ties to the οἶκος of his father had been severed by Cyronides' adoption into another οἶκος – and asserted his own right to the estate of Aristarchus I by advancing his (the speaker's) mother as the person who was the closest relative of Aristarchus I by ἀγχιστεία.

However, it appears that during the ἀνάκρισις, the speaker admitted – allegedly by force of circumstances – that his mother was a sister to Aristarchus II (10.2: τὴν μητέρα τὴν ἐμὴν ἐν τῇ ἀνακρίσει Ἀριστάρχου εἶναι ἀδελφὴν προσγράψασθαι) and, therefore, the speaker acknowledged the validity of Aristarchus II's posthumous adoption.[52] It is generally agreed that the purpose of ἀνάκρισις, which was a typical feature of inheritance cases, was to determine the relationship on which a claim to the estate was based,[53] regardless of whether ἀνάκρισις was a «preliminary inquiry» or an «examination» in a basic, general sense.[54] Although not mentioned by the speaker,

[52] As Wyse (n. 28), 654; Avramović (n. 2), 214.

[53] E.g., Harrison (n. 8), 124 n. 2, 143 n. 1, 160 (with n. 1); P. Cobetto Ghiggia, Iseo. Orazioni, 2012, 508.

[54] A «preliminary inquiry» or a «preliminary investigation»: e.g., E. S. Forster (LCL); Harrison (n. 8), 124 n. 2; S. C. Todd, in: P. Cartledge et al., ed., Nomos. Essays in Athenian Law, Politics and Society, 1990, 216; R. Omitowoju, Rape and the Politics of Consent in Classical Athens, 2002, 61; Cudjoe (n. 6), 45; Cobetto Ghiggia (n. 16), 94 (with n. 121) and Cobetto Ghiggia, Iseo. Orazioni, 509. Cf. MacDowell (n. 3), 241: the Archon «put questions to the disputants or claimants, and they could also put questions to each other», and 240–242 for a detailed discussion.

ἀνάκρισις was conducted «before the Archon».[55] Since the right of inheritance belonged to the closest ἀγχιστεύς, the task of the Archon was to ascertain the relationships between members of the family and, accordingly, the degrees of their proximity to the late owner of the estate.[56] According to the speech *On the Estate of Philoctemon*, children offered for posthumous adoption were inscribed «before the Archon» (Isae. 6.35), who evidently confirmed the posthumous adoption of Aristarchus II on the basis of the evidence produced at the ἀνάκρισις.

The Archon then passed the results of the latter on to the judges, who acknowledged Aristarchus II as the lawful successor, and as the brother of the speaker's mother. This turned the speaker from the only son of the ἐπίκληρος into a nephew to Aristarchus II, thus eliminating his chances to inherit the estate of Aristarchus I. After Aristarchus II died, the speaker demanded the estate of Aristarchus I for himself, staking his claim on presenting the earlier ἀνάκρισις as invalid to the judges, whom he addressed with this speech. The decision of the judges had to be based on «law»,[57] which was the law of ἀγχιστεία. Hence, the speaker of *On the Estate of Aristarchus* put together the claim that the estate of the late Aristarchus I should be adjudicated to his (the speaker's) mother as the closest ἀγχιστεύς of Aristarchus I, and that the posthumous adoption of Aristarchus II and his enrollment in the phratry of Aristarchus I was illegal (Isae. 10.15: οὐκ ἐπὶ τῷ δικαίως), because he was not the closest ἀγχιστεύς of Aristarchus I after Cyronides had been adopted by Xenaenetus I. Therefore, he claimed, the testament of Aristarchus II and the inheritance of Xenaenetus II were also illegal. Both claims were thus derived from the law of ἀγχιστεία.[58]

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[55] E.g., Isae. 6.12 (see n. 47 above), with E. S. Forster (LCL); Harrison (n. 8), 143 n. 1, 160 (with n. 1); Cudjoe (n. 6), 47. Cf. Wyse (n. 28), 654.

[56] Cf. [Dem.] 43.16: ἐὰν δ' ἐπιδεδικασμένου ἀμφισβητῇ τοῦ κλήρου ἢ τῆς ἐπικλήρου, προσκαλείσθω τὸν ἐπιδεδικασμένον πρὸς τὸν ἄρχοντα … ἐὰν δὲ μὴ ζῇ ὁ ἐπιδικασάμενος τοῦ κλήρου, προσκαλείσθω κατὰ ταὐτά, ᾧ ⟨ἄν⟩ ἡ προθεσμία μήπω ἐξήκῃ («if anyone lays claim to an estate or an heiress after an adjudication has been made, he is to summon before the Archon the person who has obtained the adjudication … and if the person who has had the estate adjudged to him is no longer alive, he is to summon the successor in the like manner, provided that the period covered by the statute of limitations has not expired», and Isae. 10.21: ἀλλὰ νυνὶ δίκαιον εἰπεῖν ἐστιν, ὦ ἄνδρες, τίνος δόντος ἔχει τὸν κλῆρον («But now it is only right, gentlemen, for my opponent to say who gave him the estate») and 24: ὥσπερ τῶν ἀμφισβητησίμων χωρίων δεῖ τὸν ἔχοντα ἢ θέτην ἢ πρατῆρα παρέχεσθαι ἢ καταδεδικασμένον φαίνεσθαι, οὕτω καὶ τούτους καθ' ἕν τι τούτων ἀποφήναντας αὐτῶν ἀξιοῦν ἐπιδικάζεσθαι («just as when estates are disputed the holder must produce the mortgagee or vendor, or else prove that it has been adjudicated to him, so ought these men claim to have the estate adjudicated to them only after proving their entitlement in detail»).

[57] E.g., Isae. 10.8 (καθ' ἕνα νόμον), 15.

[58] Pace Cobetto Ghiggia (n. 16), 259–260, who was unable to make sense of the words of the speaker, and interpreted them as a confused attempt to challenge the validity of the presumed testament of Aristarchus I (sic) or that of Aristarchus II, and 265–268 for the development of that idea.

Conclusions

Like adoptions *inter vivos* and by testament, posthumous adoption was aimed at avoiding the desolation of the οἶκος, by giving its possession to an adopted son. However, unlike the first two kinds of adoption – which allowed the adopter to choose an adoptee from more than just his immediate relatives – posthumous adoption was only possible for the closest legitimate relative, as established by the law of ἀγχιστεία.[59] Because the closest relative by ἀγχιστεία was acknowledged as the successor by law, posthumous adoption was not necessary in legal terms. Therefore, the Archon neither did nor could enforce posthumous adoptions. If someone wished to be posthumously adopted as the closest ἀγχιστεύς of the deceased person, the Archon made a public announcement in case someone else claimed the property (Arist. Ath. Pol. 43.4). If no one objected, he confirmed the status of the adoptee, who severed ties with his natal οἶκος, became the head of the household of his deceased adopter, and owned the property either in his own right or through a guardian. The Archon thus fulfilled another task, to preserve the οἶκοι of the Athenians from desolation: Athenian posthumous adoption transferred the adoptee to the οἶκος of the deceased person, which ensured its survival. Even if no one objected to the decision of the Archon at the moment, it still had to be approved by the jury-court: the judges either confirmed or overturned the Archon's decision if another person claimed a closer degree of kinship to the deceased head of the οἶκος (as happened in the case of the contested estate of Philoctemon). Hence, posthumous adoptions could only be challenged as illegal by claiming that the adoptee was not the closest ἀγχιστεύς.[60] If someone's claim to the property, i.e. to the status of the closest ἀγχιστεύς of the deceased person, was disputed, the Archon accepted written claims from the contesting parties, held their cross-examination (ἀνάκρισις), and passed the case on to the jury-court.[61] The judges then examined degrees of kinship proximity, which constituted the essence of trials over claimed property, and made their verdict. Although the judges made a decision on the basis of the trial,[62] the outcome of the ἀνάκρισις, as presided by the Archon, played an important rôle in their decision. This is demonstrated by the speech *On the Estate of Philoctemon*, in which the findings written down at the ἀνάκρισις were produced and used by both sides at the trial, and by the speech *On the Estate of Arist-*

[59] Pace, e.g., Glotz (n. 8), 345: «Par adoption entre vifs ou par adoption posthume, chacun peut se donner un fils en le prenant où il veut», and similar references in n. 30 above.

[60] Leduc (n. 14), 178. This answers the question why «a posthumous adoption could be carried out regardless of whether the deceased had ever intimated intent to adopt him. The choice was not made by him but for him»: Lindsay (n. 38), 354. There was no choice in such situations, in fact, because the adoptee had to be the person who was acknowledged as the closest ἀγχιστεύς of the deceased.

[61] Arist. Ath. Pol. 56.6: γραφαὶ δὲ καὶ δίκαι λαγχάνονται πρὸς αὐτόν, ἃς ἀνακρίνας εἰς τὸ δικαστήριον εἰσάγει. Cf. [Dem.] 43.15 and Dem. 44.11 (see nn. 41 and 23 above, respectively).

[62] Disputing ἀγχιστεία, on which claims to contested property were based, continued at the trial itself: cf. Isae. 6.37, and 10.21 and 24 (see nn. 45 and 56 above, respectively).

archus, in which the speaker did not try to undermine the earlier decision of the jury-court but the result of the earlier ἀνάκρισις, which evidently served as the basis for that decision.

If the judges acknowledged the claimant as the closest ἀγχιστεύς, and thus the lawful heir, and if they confirmed his posthumous adoption, the οἶκος of the deceased person survived. Conversely, succession *ab intestato*, although also based on ἀγχιστεία, usually resulted in the desolation of the οἶκος. For this reason, and since it was not indispensable, arranging a posthumous adoption required the family to make a special decision, guided by views of morality and practicality, which were not necessarily mutually exclusive. Among the practical considerations was a chance for the family to possess a larger property, which would formally belong to different family members, thereby eliminating the need to perform more public service for the state. Posthumous adoption was also a way to formally confirm the status of being the closest relatives of the deceased person. This was an asset in potential disputes over an estate, as well as for laying claim to the property of any of that person's closest relatives who had also died intestate and without legitimate male children.

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