

Rethinking Isaeus III

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Abstract: *The article examines the two parts into which Isaeus III (On the Estate of Pyrrhus) is divided. In the first one the speaker intends to demonstrate that Pyrrhus did not marry Nicodemus' sister and is not Phile's father. In the second part the speaker intends to demonstrate that Endius did not give Phile in marriage to Xenocles. The conclusion is that Isaeus III does not demonstrate that an illegitimate daughter (nothē) could be regularly given in marriage to an Athenian citizen, as the dominant doctrine instead believes.*

Keywords: *false testimony, legitimate and illegitimate filiation, marriage, inheritance, citizenship.*

In recent years, several articles have been published that testify to a renewed interest in Isaeus III (*On the Estate of Pyrrhus*).¹ In my opinion, all these articles, even if they reach very divergent conclusions, suffer from a common methodological defect: they believe that by comparing the arguments of the speaker, Endius' brother, and those of his opponents, reported by him, it is possible to obtain objective data on the content of the legislation, in force in Athens in the 4th century BCE, regarding the legal status of *nothoi*. I had already expressed the reasons for my skepticism in a contribution presented forty years ago.² However, I have noted, reading the works mentioned above (see n. 1), that not even the scholars who cite my contribution have considered it useful to discuss the core of my point of view. For this reason, at the risk of remaining a *vox clamantis in deserto*, I have decided to reiterate my position, adding some

¹ Hatzilambrou 2018; B. Griffith-Williams 2023; Joyce 2025.

² Maffi 1989.

further remarks to clarify some of the many obscure points of a text which, in my opinion, must be considered in any case a masterpiece of rhetorical art and legal subtlety.

In Maffi 1989, my aim was above all to show that the Attic legal system does not know, alongside and beyond marriage based on *engyē*, a sort of informal marriage by virtue of which a *pallakē*, who was an Athenian citizen, and her children were recognized as having a legal status. Here I will adopt a partially different perspective, although based on the same assumption. I will try to frame the arguments, put forward by the speaker of Isaeus III, in the procedural sequence in which they occur. In fact, the judicial affair, to which the speaker refers, unfolds in two distinct phases.

The first, already passed, begins with the *diamartyria* with which Xenocles tries to block the *epidikasia* of the speaker's mother following the death of her son Endius. The latter is presented by the speaker as the heir, by virtue of testamentary adoption, of his uncle Pyrrhus, who in turn is the brother of the mother of Endius and of the speaker. In fact, since Endius had no legitimate descendants, the adopter's estate, reverts by law (cfr. Dem. 44.63) to the hands of the closest of the adopter's collaterals, that is, in this case, his sister (in § 72 it is specified that Pyrrhus had no brothers). However, Xenocles maintains, acting on behalf of his wife Phile, that the estate belongs to her, as the legitimate daughter of Pyrrhus, born from the marriage between the latter and the sister of a certain Nicodemus, who had in fact given her in *engyē*, that is, in legitimate marriage, to Pyrrhus.

Thus begins the first trial, in which the speaker, Endius' brother, challenges Xenocles' *diamartyria* by acting against him with the *dikē pseudomartyriōn* and wins. At this point the speaker's mother should be awarded the inheritance; however, there is probably still an obstacle to overcome. The speech mentions the fact that the opponents, namely Xenocles, supported moreover by Pyrrhus' maternal uncles, would have challenged the validity of Pyrrhus' testamentary adoption of Endius, presumably accusing of perjury the witnesses adduced by the speaker to attest that the adoption had taken place validly (see §§ 56 and 66). The speaker does not provide sufficient elements to place this initiative of Xenocles in the various stages of the trial, nor to understand what role Pyrrhus' uncles played in it:

we can assume that Xenocles' *episkepsis* was raised before the sentence that decided on the speaker's challenge to the *diamartyria* with the aim of ensuring that Phile would be the sole heir of Pyrrhus. However, it does not seem that Xenocles has yet started the trial against the witnesses of Endius' adoption. The fact remains that a victory for Xenocles in the eventual trial aimed at contesting the adoption of Endius by Pyrrhus would not cancel the consequences of the sentence that recognized the falsity of his *diamartyria*, and therefore the right to inherit of Endius' mother.³

At this point a second phase of the judicial clash between the speaker and the duo Nicodemus-Xenocles opens. According to the latter, in fact, Endius had given Phile in marriage to Xenocles as the legitimate daughter of Pyrrhus, which would confirm that Phile was born from the legitimate marriage between Pyrrhus and Nicodemus' sister and would have the right to inherit Pyrrhus' estate.

The speech of Isaeus is a *dikē pseudomartyriōn* brought by the brother of Endius, who had since died, against Nicodemus for having testified, in the trial against Xenocles for false *diamartyria*, that he had given his own sister (whose name is not given to us) in *engyē* to Pyrrhus. The speech of Isaeus is divided into two easily distinguishable sections: in the first (§§ 1–44), arguments are adduced against the alleged marriage between Pyrrhus and Nicodemus' sister; in the second (§§ 45–56), arguments against the opponents' assertion that Endius had given in *engyē* to Xenocles Phile, the alleged legitimate daughter of Pyrrhus and Nicodemus' sister. My analysis of the speech will therefore examine separately the arguments against the first and second marriages, to demonstrate that, according to the speaker, neither marriage took place.

1. *The marriage between Pyrrhus and Nicodemus' sister*

First of all, it is appropriate to ask what evidence could have been presented by the two opponents in the first trial, that is, the one for false testimony against the *diamartyria* presented by Xenocles

³ I do not understand why Dmitriev 2018, 270, states “we do not know what that ‘false evidence’ was, exactly, that incriminated Xenocles”. It has simply been established that Phile's hereditary claim was not justified as she was not the legitimate daughter of Pyrrhus.

against the *epidikasia* of Pyrrhus' sister, mother of Endius and of the speaker. The strongest argument in favor of Xenocles, at least according to what can be deduced from the first part of the speech, was presumably the testimony with which Nicodemus stated that he had given his sister in *engyē* to Pyrrhus. He was joined by Pyrrhus' uncles, who declared that he had called them as witnesses of his marriage to Nicodemus' sister.

Here it should be noted that Xenocles' *diamartyria* and Nicodemus' testimony are convergent but are not exactly superimposable. Indeed, even if it were incontrovertibly demonstrated that the marriage between Pyrrhus and Nicodemus' sister took place, and if the speaker himself did not dispute that the woman whose brother Nicodemus claims to be (§ 52⁴) is Phile's mother (see § 31), it would still be necessary to demonstrate that Pyrrhus is Phile's father. The speaker does not exclude the possibility that there were intimate relations between Pyrrhus and Nicodemus's sister. He is probably unable to deny it because his opponents have relied on significant evidence in this regard. If the witnesses to the excesses that took place in Pyrrhus's house were indeed Pyrrhus's relatives and neighbors (§ 13), Xenocles may have exploited this testimony to his advantage, even though it was intended, in the speaker's intentions, to demonstrate that Nicodemus could not have given his sister in marriage to Pyrrhus.

However, the speaker does not admit in any way that Pyrrhus is Phile's father. Indeed, his strategy of attack seems to tend precisely to demonstrate, by circumstantial evidence, that Pyrrhus cannot have been Phile's father. The speaker uses mainly testimonies relating to the fact that the alleged wife of Pyrrhus had carnal relations with numerous men, before meeting Pyrrhus, during the period in which, according to his opponents, she would have been Pyrrhus' wife, and after Pyrrhus' death. We thus have a fact that, to my knowledge, is unique in the panorama of Attic judicial oratory that we know: the reuse of testimonies presented in a previous trial (which means that the witnesses must have been called to confirm,

⁴ Hatzilambrou 2018, 16, raises the well-founded suspicion that Nicodemus' 'sister', being a *hetaira*, was a foreigner whom Nicodemus passed off as his sister.

in front of the new judges, the statements already made in the first trial). The testimonies relating to the men who had relations with Nicodemus' sister, mentioned in § 12 (and apparently again in § 15), are followed by the testimonies of *oikeioi* and *geitones tou ekeinou* relating to the woman's unseemly behavior at banquets and parties that married women would be careful not to attend.

Who were the witnesses who attested to the behavior of Nicodemus' sister, who was in every way worthy of a courtesan and where did such behaviors take place? To answer these questions, we must examine the initial proposition of § 13. The first *ekeinos* we encounter (ἦν οὗτος ἐγγυῆσαι ἐκεῖνῳ μεμαρτύρηκεν), to whom Nicodemus testified that he had given his sister in marriage, can only refer to Pyrrhus. For the sake of consistency, let us say of a grammatical and syntactic nature, the commentators have unanimously held that the other *oikeioi* and the *geitones tou ekeinou* refer again to Pyrrhus.⁵ And that Pyrrhus is referred to *par'autoi* again at the end of § 13.⁶

However, if we believe, as is logical to expect, that the speaker intends to present a negative image of his opponents and a positive image of his own side, one might suppose that the *ekeinos*, whose *oikeioi* and *geitones* are the witnesses that Nicodemus' sister was a *hetaira*, is Xenocles, not Pyrrhus. Note, in this regard, that Xenocles is referred to as *ekeinos* in other passages of the speech (e.g. §§ 4,5, 24, 45, 70).⁷ The testimonies concerning the behavior of Nicodemus' sister must have been presented by the speaker also in the first trial, the one against the *diamartyria* of Xenocles. In fact, the speaker states (and I see no reason not to believe him) that the testimonies were not challenged by the opponents (§§ 12 and 14) (note, in this regard, that the speaker often lumps together Xenocles and Nicodemus, without distinguishing their role in the one trial and the other,

⁵ ὥς μὲν ἐταῖρα ἦν τῷ βουλομένῳ καὶ οὐ γυνὴ τοῦ ἡμετέρου θεοῦ, ἦν οὗτος ἐγγυῆσαι ἐκεῖνῳ μεμαρτύρηκεν, ὑπὸ τῶν ἄλλων οἰκείων καὶ ὑπὸ τῶν γειτόνων τῶν ἐκείνου μεμαρτύρηται πρὸς ὑμᾶς.

⁶ οἱ μάχας καὶ κόμους καὶ ἀσέλγειαν πολλήν, ὅποτε ἡ τοῦτου ἀδελφὴ εἴη παρ' αὐτῷ, μεμαρτυρήκασιν γίνεσθαι περὶ αὐτῆς.

⁷ In § 24 it refers to the opponent who calls the witnesses to the trial, and this can only be Xenocles, as confirmed in § 25; in § 45 ἐκεῖνῳ clearly takes up τῷ Ξενοκλεῖ at the beginning of the interrogative sentence, and § 70 is = in § 45.

because in fact he considers them members of a criminal association: see in particular §§ 11, 14, 16, 24, 66, 67, and whenever the opponents are indicated generically in the plural, as in §§ 12, 24).

However, it must be recognized that there are logical-argumentative difficulties, rather than linguistic ones, that prevent the second *ekeinos* of § 13 from being referred to Xenokles. A first difficulty can be identified in the fact that the speaker would have obtained testimony contrary to their relative from Xenokles' *oikeioi* (it does not matter whether they are considered relatives, as in §§ 27 and 73, or close friends, as Hatzilambrou 2018, 125, most recently believes). To overcome this objection, one could adduce the argument put forward by the speaker in § 23: to testify that his mother-in-law had been given as a legitimate wife to Pyrrhus, Xenocles should have summoned his own relatives and not two strangers, who were moreover unreliable as witnesses.

One might, therefore, suppose that the speaker is suggesting to the judges that Xenocles' failure to summon his relatives suggests that they did not intend to be accomplices in the false testimony introduced by their relative; this might explain their agreement to testify in favor of Endius' brother in the first trial, the one against Xenocles for having given a false *diamartyria*. It is true that the singular phenomenon of a breakdown in family solidarity also occurs on the speaker's side, given that Pyrrhus' uncles side with his opponents.⁸ However, they had a financial interest in testifying in favor of their opponents, while in the case of Xenokles' relatives (and, ultimately, also neighbors) we find no evidence in the oration that could justify their behavior.

A second obstacle to referring *oikeioi* and *geitones* to Xenokles is that Xenokles had not yet entered the scene in the time in which the behavior of Nicodemus and his sister takes place (at least until the death of Pyrrhus). Once Xenokles is excluded, considering that we are talking about Nicodemus's sister, one might expect that the 'other *oikeioi*' and the neighbors were those of Nicodemus, not those of Pyrrhus. But the same argument that leads to rejecting the reference to Xenokles also applies against this identification: how could

⁸ For other cases of testimony against one's relatives in Attic judicial speeches see Humphreys 1986, 57–91, at 80–83.

the speaker have convinced Nicodemus's inner circle and neighbors to testify against him? There is, however, a linguistic argument to consider: throughout the speech, Nicodemus is constantly referred to by the pronoun οὗτος.⁹ One could, therefore, understand the words ὅποτε ἡ τούτου ἀδελφὴ εἶη παρ' αὐτῷ as an indication that the unseemly behavior of Nicodemus' sister occurred in Nicodemus' own home, not in Pyrrhus' home. All the more so since Nicodemus is presented, not even implicitly, as a pimp:¹⁰ it is no coincidence that the refrain "give as a hetaira" recurs obsessively throughout the oration, starting with the *ekdosis*, sarcastically underlined at the end of § 11, and even theorized in § 39 (where the speaker goes so far as to exclude not only the giving in *engyē*, but even in *pallakia*, on Nicodemus' part). The fact remains, however, that the licentious behavior exhibited at her brother's house would not be proof, even considering § 17, that the woman also engaged in such behavior at Pyrrhus' house, if it is true that she had become his wife. Therefore, all in all it is confirmed that the second *ekeinos* of § 13 cannot but refer to Pyrrhus just as much as the first.

It remains strange, however, that the speaker, while presenting Pyrrhus as a citizen careful to safeguard his reputation (see in particular § 27),¹¹ does not hesitate, in § 13, to rely on testimonies relating to his uncle Pyrrhus' propensity for excess. It must be considered, however, that the characterization of people by the logographers is functional to the aim they wish to achieve. In our case, the aim is not so much to admit, so to speak winking at the jury, that Pyrrhus was "a reckless young man" (Paoli 1935, 1), but to reiterate that the woman's behavior, when she was at Pyrrhus's house, was incompatible with that which befits a married woman. The fact that Pyrrhus tolerated, or even provoked, such behavior is completely ignored by the speaker.¹² It would have been in the opponents' interest to

⁹ Roussel's translation at the end of § 6 is wrong: *toutou* must be Nicodemus.

¹⁰ So also, Hatzilambrou 2018, 121.

¹¹ It is therefore completely inadequate to the view that the speaker offers of Pyrrhus to speak, as Paoli 1935, 1, does, of "un giovanotto scapestrato" ("a reckless youth"). With British humor Edwards 2007, 43 n. 2, comments "nor was Pyrrhus perfect".

¹² Wolff 1961, 281, argues that Nicodemus' sister was Pyrrhus' "Maitresse". According to Dmitriev, 2018, 271, married women, especially those of lower

attribute the responsibility to Pyrrhus, had they not considered contesting the perjury of the testimonies on the matter, as they do not contest (§§ 11 and 14). But in the speech, there is no trace of such an adversarial tactic: Pyrrhus therefore comes out clean. And it is confirmed that from a wife (but not even from a *pallakē*) Pyrrhus would not have tolerated behavior such as that described in § 14.¹³ And above all it is confirmed that Phile cannot be considered Pyrrhus' legitimate daughter.

I will leave aside the other arguments advanced by the speaker against Nicodemus in the first part of the speech: the unreliability of the witnesses called to attest to the marriage between Pyrrhus and Nicodemus's sister (§§ 17–27); the lack of a dowry contract, and therefore presumably of a dowry (§§ 27–29, and again 35–39); the disagreement between Pyrrhus's uncles and Xenocles regarding the name of Pyrrhus's alleged daughter on the occasion of the *dekatē* (§§ 30–34); the failure to oppose the *epidikasia* presented by Endius (§§ 40–44). The speaker himself probably realized that these were not decisive arguments, and that they therefore needed to be

class, enjoyed greater freedom. In support of this thesis, which is difficult to reconcile with the 'Greek popular morality' that certainly inspired the speaker of Isaeus III, Dmitriev cites Arist. *Pol.* 1300a7. But Arist. *Pol.* 1300a7 certainly refers to women leaving home to go to work (as confirmed by *Pol.* 1323a5, not cited by Dmitriev), certainly not to go out for fun. As for Paoli 1935, 1, referring to Pyrrhus, he presents us with an image that is even caricatural (perhaps to attract high school students to read the oration): "nella [sua] breve vita aveva pensato anche a divertirsi: non è detto che questa fosse la sua unica occupazione; certo è che si divertiva, e quando in casa banchettava con gli amici e con facili donne, c'era un patassio tale che, a tanti anni di distanza, i vicini di casa se li ricordano ancora" ("in [his] short life he had also thought about having fun: it is not certain that this was his only occupation; It is certain that he enjoyed himself, and when he feasted at home with friends and easy women, there was such a ruckus that, after so many years, the neighbors still remember them"). It seems to me that both the attempt to justify the woman's behavior and the attempt to "turn a blind eye" to Pyrrhus' excesses do not correspond to the image of the two protagonists that the speaker intends to convey.

¹³ An authoritative part of the commentators of the oration believes, starting from Paoli 1935, 2 ("lover" with whom Pyrrhus lived "common life") and from Wolff 1961, 211, that Nicodemus' sister had essentially come to occupy the position of Pyrrhus' *pallakē*.

strengthened with further evidence. Hence the opportunity to now turn our attention to Xenocles' marriage following Endius' alleged *engyē*.

2. *The marriage of Xenocles and Phile*

In the second part of the speech (§§ 45 ff.) the arguments of the speaker focus in a consistent manner on the marriage of Phile with Xenocles. According to the opponents, Endius would have given Phile in marriage (through regular *engyē*) to Xenocles as his sister, that is, as a legitimate daughter of Pyrrhus. The speaker, instead, uses a whole series of clues from which it can be deduced that Phile would have been given in marriage as (if she were) the daughter of a *hetaira*. The meaning of this statement, which recurs repeatedly during this second part of the text, is discussed among the commentators of the speech.¹⁴ What, however, is agreed upon in doctrine is that Endius did in any case give Phile in marriage to Xenocles, either as a legitimate sister, as the opponents claim, or as an illegitimate daughter of Pyrrhus, that is, as a *nothē*. To assess the reliability of these opinions, it is necessary to try to clarify the positions of the opposing parties in the trial.

In my opinion, the second part of the speech appears largely as a replica of the speech relating to the trial against the *diamartyria* in which Xenokles claimed Pyrrhus's estate on behalf of his wife Phile, presented as *epiklēros*. During the eight years that elapsed between the alleged marriage between Phile and Xenokles and the death of Endius (§ 31), the opponents did not challenge the legitimacy of the marriage. If we put ourselves from the point of view of the speaker's opponents, we can imagine that their inertia was due to the difficulty of proving that Endius had given Phile in *engyē*. Now that Endius is dead, it is presumable that Xenokles opposed the *diamartyria* because he believed it easier to prove that he had received Phile in *engyē*. But the *diamartyria* was declared false by the court following the speaker's challenge (§§ 4–6). On the basis of what evidence and what arguments did the speaker manage to obtain victory in that first trial?

¹⁴ §§ 45, 48, 52, 55. See Maffi 1989, 184; Hatzilambrou 2018, 173.

The speaker mentions only the testimony of Nicodemus, accused of perjury in the current trial, according to which he had given his sister in *engyē* to Pyrrhus. However, it is plausible to assume that testimonies relating to the marriage between Xenokles and Phile had also been presented (in § 31 there is mention of witnesses in favor of Xenocles, evidently different from Nicodemus). However, Isaeus doesn't think it's worth dealing with them. That Endius gave Phile in *engyē* to Xenokles results only from the statements of the opponents (§ 58). Pyrrhus' uncles in fact appear only as witnesses to Pyrrhus' marriage to Nicodemus' sister (§ 70), not to Xenocles' marriage. We must therefore take a closer look at the arguments the speaker relies on to argue that Endius would have given Phile as the daughter of a *hetaira*. In conducting this examination, however, we must not forget that the primary target remains Nicodemus: the criticism of Phile's marriage to Xenokles aims to confirm the falsity of Nicodemus' testimony.

Let us first ask ourselves what the parties stated in the trial's introductory documents. In § 7, the speaker requests the reading of his *antōmosia*, Xenokles' *diamartyria* (recognized as false in the previous trial), and Nicodemus' testimony, given in the previous trial, which he intends to demonstrate as false. We do not know, however, how Nicodemus's reply (*antigraphē*) was formulated. In § 4, the speaker argues that Xenokles's conviction in the first trial demonstrates that Nicodemus's testimony was also false. However, the fact that the speaker deems it appropriate to reiterate that the judges in the first trial had judged correctly (§ 12) suggests that his opponents intend to argue that those judges were deceived. This presupposes that the principle of *res judicata* is subject to an exception in the case in which the action for perjury ends with a judgment in favor of the accused. Nicodemus will therefore have reiterated the truthfulness of his testimony regarding the fact that he had given his sister in *engyē* to Pyrrhus. If the judges were to rule in his favor, the ruling declaring Xenokles' *diamartyria* false would essentially lose its force. Xenokles could file an action for perjury against the witnesses to Endius's adoption and, having won, attempt to gain access to Pyrrhus' estate, since Phile would have been recognized as his *epiklēros* daughter.

The reconstruction I propose does not clarify all the obscure

points of the story.¹⁵ However, it perhaps helps clarify the meaning of the speaker's argument when he claims that Endius would have given Phile in *engyē* as if she were the daughter of a *hetaira*.

As we have seen, the opponents maintain that Endius gave Pyrrhus's legitimate daughter in *engyē* to Xenokles; the speaker, however, maintains that he gave her in *engyē* as if she were the daughter of a *hetaira*, that is, as an illegitimate daughter (*nothē*: § 75). Commentators on the speech have interpreted the speaker's statement at face value; the only dispute is whether Endius gave Phile in *engyē* as Pyrrhus's legitimate daughter or as an illegitimate daughter. Those who maintain that he gave her in marriage as Pyrrhus' legitimate daughter conclude that this was an abuse of an *epiklēros*. Those who maintain that he gave her in *engyē* as a *nothē* draw the conclusion that marriage between a citizen and a *nothē* (*ex astēs*) was permissible, with the consequence that the couple's children would be citizens.¹⁶

In my opinion, however, the contrast between the parties in the trial is not between the *engyē* of a legitimate daughter and the *engyē* of an illegitimate daughter, but between an *engyētē* woman and a *hetaira*, to whom the daughter of a *hetaira* is equated. Regarding Nicodemus's sister, this is clarified in §§ 6 and 77. But the same contrast, according to the speaker, also concerns Phile: only that the qualification of *hetaira* is replaced by that of daughter of a *hetaira*. The speaker could also have said "as if she were a *nothē*"; but, in this specific case, referring to the daughter of Nicodemus's sister, whose status as a *hetaira* and therefore by definition as a woman not *engyētē* has been demonstrated in the first part of the speech, is rhetorically more effective. Therefore, to give in *engyē* as the daughter of a *hetaira* is a paradoxical expression that gives rise to an argument by contradiction: the daughter of a *hetaira* cannot be legitimately given in *engyē*, precisely because she cannot boast of a legitimate birth (§ 12).

¹⁵ I mention two here. It is unclear how Xenokles intended to ward off a possible claim in marriage to Phile by a collateral relative of Pyrrhus (unless one accepts my thesis regarding the non-existence in Attic law of the *epiklēros' aphairesis*: see Maffi 1990). It is unclear how the marriage between Xenokles and Phile could have been considered legitimate if Endius had not given Phile in *engyē* as Pyrrhus' heir.

¹⁶ For a summary of the various positions that have emerged over time in doctrine, see most recently Joyce 2025.

The parallelism in the speaker's attacks on the two women is not perfect, however. In the case of Nicodemus's sister (assuming she is his legitimate sister), the speaker doesn't go so far as to deny that she is an Athenian citizen (and this also applies to Phile).¹⁷ As for Phile's mother, the demonstration that she was not Pyrrhus's wife is based on three main arguments: her unseemly behavior, the lack of a dowry, and suspicions about the reliability of the wedding witnesses. In the case of Phile's marriage, the first argument fails: Phile cannot be accused of unseemly behavior, that is, of being a *hetaira*. Indeed, the speaker's silence suggests that it would not have been possible to find testimony of a similar nature to that adduced against Nicodemus' sister in the first part of the speech (§§ 11–15). On the other hand, the speaker would be careful not to blame his own brother, Endius, for having made Phile available in the same way he accuses Nicodemus of having behaved towards his sister, at least according to § 10.

Instead, the speaker insists a lot on the second argument (§§ 49–52), perhaps precisely because it actually appears rather weak: in fact, unlike in the case of Nicodemus' sister, for Phile it appears that a dowry, albeit a paltry one, has been established.¹⁸ The opponents must have presented witnesses on this matter, but the speaker, as we have seen, does not attack or even mention them.¹⁹

¹⁷ However, see the doubt about Nicodemus' actual membership, and therefore by extension his sister's, to the citizen body (§ 37).

¹⁸ If it is true, as I will try to demonstrate (below, n. 6), that the testimony regarding the amount of the dowry was presented by the opponents, one might wonder why they stated such a low figure. One might suppose that they did so to forestall the speaker's objection (§§ 49–51) and prepare a more solid case for claiming the inheritance belonging to the *epiklēros*.

¹⁹ A difficult interpretative problem concerns the testimonies adduced by the speaker in §§ 53–55. § 53 mentions two testimonies, the first concerning the *epidikasia* of Pyrrhus's inheritance, the second concerning the woman's *engyēsis*. The first testimony echoes the one already read in § 43, which evidently concerns the fact that Endius's *epidikasia* was not opposed. The second testimony concerns the woman's *engyē*. It is natural to think that this woman is Phile for at least two reasons: a) the previous paragraphs discuss Phile's marriage; b) the testimony of Nicodemus, on which the ongoing trial hinges, concerning his sister's marriage to Pyrrhus, is read again at the end of § 53. However, if one approaches the problem from the perspective I

The main argument, to which the speaker resorts, is, ultimately, the inertia of the opponents both in the face of the awarding of the inheritance to Endius (§§ 43–44), and in the face of Phile’s marriage to Xenokles (the two circumstances are connected to § 52).²⁰ Now, the inertia, especially of Nicodemus (§§ 45–49), but also of Xenokles (§§ 55 and 62), from the argumentative point of view finds its counterpart in the inertia of Pyrrhus, underlined by the

advocate here, a difficulty arises: the testimony concerning the woman’s *engyē* is evidently presented by a witness summoned by the speaker. According to Wyse 1904, 335 (echoed by Hatzilambrou 2018, 185), “Probably the witness or witnesses produced merely declared, what was not denied, that Phile was given to Xenocles with a modest dowry.” It seems more likely to me, however, that it was the opponents who presented witnesses to the marriage between Xenokles and Phile, specifying, to confirm that it was a regular *engyē* since a dowry had been stipulated. This is confirmed by the fact that the opponents also presented witnesses to the marriage between Pyrrhus and Nicodemus’s sister. It therefore seems more likely to me, although apparently anomalous because of its negative content (but see the similar testimony in § 43), that the testimony presented here by the speaker concerns the opponents’ inertia in the face of an *engyē* that would have seemed scandalous if, as they maintain, Phile was truly Pyrrhus’s legitimate daughter. This is the same testimony that is recalled in § 55: that the testimony in question was presented by the speaker seems to me to be further confirmed by the reference to Xenocles’ behavior, a reference that would not make sense if the testimony had been presented by the opponents. Humphreys 1986, 87 n. 40, also seems to believe that the testimony is presented by the speaker since, according to her, from Isae. 3.52f. one can infer that “...the speaker implies that witnesses will testify that Endius betrothed his adoptive sister Phile ‘as the daughter of a *hetaira*’. But once again the statement “as the daughter of a *hetaira*” is taken at its face value, which, in my opinion, cannot be attributed to Endius.

²⁰ It may be interesting to note that, in § 45, the speaker tries to pit Nicodemus and Xenokles against each other, while in the rest of the speech they are instead always presented as accomplices. In any case, it is not the fact that Xenocles and Phile are regularly married that is directly attacked: the speaker’s reference to the eight years of marriage (§ 31) attests to this. But this does not imply that Phile “jedenfalls die legitime Frau ihres Gattes war, und zwar auf Grund einer *engye*, die ihr Adoptivbruder Endios fuer sie vorgenommen hatte” (Wolff 1961, 197). The status of the *paides* that Xenocles fathered with Phile (§ 55) is not discussed by the speaker: they are mentioned only to strengthen the accusation that Xenocles did not care about Phile’s just claims. So, the speaker here places himself from the opponents’ point of view, although obviously he does not share it.

speaker in the last paragraphs of the speech (§§ 75–80). The omission by Pyrrhus of fundamental acts to confirm the quality of wife and daughter, respectively of the sister of Nicodemus and of Phile, confirms that Nicodemus did not give him his sister in marriage and that Phile is not his daughter. The same efficacy is attributed by the speaker to the inertia of Nicodemus (and of Xenokles). The inertia of the opponents demonstrates, according to the orator, that Xenokles knew that Phile was not Pyrrhus' legitimate daughter (as demonstrated by the omissions of Nicodemus and Pyrrhus' uncles in protecting Phile's right to inherit); therefore, indirectly, they demonstrate that Endius could not have given Phile in *engyē* to Xenokles. But does this mean that Endius gave Phile in marriage to Xenokles as Pyrrhus' illegitimate daughter, that is, as a *nothē*?

As we have said, an authoritative part of the commentators of the speech affirms this, maintaining that giving a *nothē* in *engyē* was perfectly permitted by the Attic legal system.²¹ This thesis can be countered with an objection, drawn from the speech itself, that, in my opinion, is decisive. If it were true that Endius gave Phile in marriage, qualifying her as a *nothē*, it would necessarily follow that Xenokles accepted her as such. It is not clear, therefore, how he could have then claimed Pyrrhus' inheritance by presenting his wife as Pyrrhus' legitimate daughter. The speaker would certainly have emphasized this inconsistency, but there is no trace of it in the speech. Xenokles and Nicodemus insist that Endius gave Phile in *engyē* to Xenokles because it is the proof that he considered her to be Pyrrhus's legitimate daughter; if it were possible to give a *nothē* in *engyē*, their insistence would be difficult to explain.

The considerations exposed thus far show that Endius did not give Phile in *engyē* either as Pyrrhus's legitimate daughter or as a *nothē*. "Giving in *engyē* as the daughter of a *hetaira*" is essentially an oxymoron because a *hetaira* cannot, by definition, aspire to the role of legitimate wife; that is, no respectable citizen would have received her in *engyē*, and the same applies to any daughter of her, as she cannot have been born from a legitimate marriage. Whenever the speaker alludes to the *engyē* claim of Phile, referring it explicitly

²¹ Among the most authoritative supporters of this thesis, we should mention at least MacDowell 1976, Harrison 1968, 66.

(as in the paragraphs I have already indicated in Maffi 1989, 187), or implicitly (that is, mostly through direct or indirect rhetorical questions, as in §§ 45, 48, 52, 55, 70, 71), to the daughter of a *hetaira*, he means that the *engyē* attributed to Endius exists only in the false presentation of the facts by the adversaries.²²

The prohibition on giving or receiving a *hetaira* in *engyē* is not sanctioned by law, provided the woman is a citizen, that is, born of a legitimate marriage: § 17 attests to this unequivocally (see also § 11). But the speaker's line of argument is based on the model of moral behavior expected of a good citizen, which, as we have seen, both Pyrrhus and Endius present. Pyrrhus would never have taken as a legitimate wife a woman who worked as a *hetaira*; Endius would never have given in marriage the daughter of an unmarried woman, as confirmed, in our case, by the fact that she was the daughter of a *hetaira*, that is, the sister of Nicodemus.

The Solonian law reported in Dem. 46, *c. Steph. I*, 18, confirms that only a legitimate daughter or sister can be given in *engyē*. The only alternative to the *engyē* of a *astē* of legitimate birth is the *ekdosis* as *hetaira* (§ 10) or as *pallakē* (§ 39). This does not mean that there was an official control over the status of the bride or the actual implementation of the *engyē*. The case of Nicodemus' sister shows that, for an Athenian citizen, it was possible to claim to have given in *engyē* a citizen (*astē*) in the capacity of father, brother or paternal grandfather without incurring particular sanctions if it was later ascertained through a court ruling that the *engyē* had not taken place or that the woman was not linked by an effective legitimate kinship relationship with the person who had given her in *engyē* (only the attempt to give a foreigner in marriage by passing her off as a citizen was sanctioned, as can be seen from the law reported in Dem. 59.16). Similarly, it was possible to claim to have received a citizen in *engyē*, when indeed there had been no *engyē* from the person to whom it was attributed, because he would never have given an illegitimate woman in *engyē*: the case of Endius and Phile demonstrates this, if one accepts my interpretation.²³

²² It is also confirmed by the recurring remark 'if this were true', that is, if Endius had really given Phile in marriage to Xenocles: see Maffi 1989, 187.

²³ Hatzilambrou 2018, 173, commenting on § 45 (ἐπειδὴ δὲ τῷ Ξενοκλεί

The negative legal consequences of the false *engyē* of a legitimate daughter, sister, or niece, or of the *engyē* of a *nothē*, manifested themselves primarily either in relation to the public recognition process of the legitimacy of children (registration in the phratry for males and females, registration in the deme for males), which implied a control over the mother's status as a legitimate daughter, not just her right to citizenship;²⁴ or in the context of inheritance (particularly when the woman claimed to inherit as *epiklēros*, as happens precisely in Isaeus III).

So, to conclude, according to the speaker, Endius did not give Phile in marriage to Xenocles and did not provide her with any dowry: by giving her in marriage 'as the daughter of a *hetaira*', it is as if Endius had behaved towards Phile in the same way that Nicodemus, in the speaker's view, behaved towards his 'sister'. But since Endius was not a pimp (and obviously, as we have seen, he is not presented as such either by the speaker or by his opponents), it is entirely paradoxical to say that Endius gave Phile in marriage to Xenocles 'as the daughter of a *hetaira*': it is equivalent to saying, on the speaker's part, that Endius not only did not give Phile in marriage to Xenocles, but he did not even place her at his disposal as a *hetaira*. That is, the speaker denies that Endius ever had anything to do with Phile, in accordance with the thesis he supports that the testamentary adoption of Endius and the failure to introduce Phile into the phratry (§ 75) demonstrate that Pyrrhus had already noth-

ἡγγύα ὁ Ἐνδιος τὴν ἀδελφιδῆν σου, ἐπέτρεψας, ὃ Νικόδημε, τὴν ἐκ τῆς ἐγγυητῆς τῷ Πύρρῳ (γεγεννημένην ὡς ἐξ ἐταίρας ἐκείνῳ οὖσαν ἐγγυᾶσθαι), writes: "It is worth noting that Isaeus' client, while asserting that Phile was the daughter of a hetaira, cannot conceal the fact that she was given in an *engye* by Endius himself, who...was obliged to act as the *kyrios* of Pyrrhus' legitimate daughter and arrange her marriage". Now, it seems to me that the paradoxical nature of the speaker's statement is evident from the fact that he alludes to Phile as the daughter of the woman given in *engyē* to Pyrrhus, while we know that the first part of the speech is dedicated by the speaker precisely to denying this fact. Thus, according to the speaker, Nicodemus' inertia proves that Endius never gave Phile in *engyē*, and that only after Endius' death did the opponents put this construction into action (in my opinion, the speaker clearly alludes to this in § 33).

²⁴ It seems to me that this is confirmed by the arguments put forward in Dem. 57, in particular §§ 37–43, on which see recently Poddighe-Loddo 2022.

ing to do with Phile.

My aim in writing this article was to demonstrate that Isaeus III is by no means a crucial text for the study of illegitimate filiation (particularly the status of illegitimate daughters). Indeed, Nicodemus claims to have given his sister in *engyē* to Pyrrhus, and Xenocles (with Nicodemus) claims that Endius gave him Phile in *engyē* as Pyrrhus's legitimate daughter (based on a presumption of legitimacy of offspring produced by a married woman, which still holds true today, for example, in the Italian legal system). The speaker, however, denies that Nicodemus's sister was given in *engyē* to Pyrrhus, and that Endius gave Phile in *engyē* to Xenocles, thus recognizing her as Pyrrhus's legitimate daughter. There is no evidence whatsoever that the orator considers Phile to be the *nothē* daughter of Pyrrhus and Nicodemus' sister, nor that Endius gave Phile in *engyē* to Xenocles as the *nothē* daughter of Pyrrhus. We are not interested in knowing which version of events was deemed truthful by the judges. What is important is to note that Isaeus III does not at all confirm that it is permissible to give a *nothē* in *engyē*; indeed, it is a text that proves the opposite.²⁵ With this, I obviously do not mean that in Attic law, as in the rest of Greece, the problem of the legal status of sons and daughters born out of wedlock does not exist. I simply affirm that it must be resolved on the basis of sources other than the third speech of Isaeus.

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²⁵ The debate about whether the marriage of Xenocles and Phile was legal or illegal (see Ogden 1996, 163; Griffith-Williams 2023; Hatzilambrou 2018, 22, 31, 173) thus turns out to be inconsistent. Even if in a doubtful way, Carey 2012, 116, goes in the right direction: "We cannot be sure that the marriage of Phile to Xenocles would have been valid if she were illegitimate and we cannot therefore conclude that we have evidence for the legal rights of bastards".

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