

Kinship Patterns in the Athenian Courts

S. C. Humphreys

I. Introduction

IN 1898 W. H. R. RIVERS joined an anthropological expedition from Cambridge to the Torres Straits islands, having been recruited to study the colour perceptions and other visual abilities of the 'primitive' islanders. He collected genealogies in order to determine whether defects of vision that he encountered were transmitted by heredity, and hit on a sociological revelation: what had seemed random movements between household and household, with continual transfers of small gifts of food, fell into a meaningful pattern of relationships between kin and affines. Apparently orderless behaviour revealed lines of structure.

Since that time the study of kinship has been one of the primary tasks and tools of the field ethnographer. Historians who seek similar patterns cannot observe at close hand the crisscrossing paths of casual contact in everyday life along which networks of relationships are reified and maintained, but some bodies of evidence can be used to provide at least a sample of such contacts. Visiting patterns in Montaiou were traced through inquisition records. For classical Athens some 100 lawcourt speeches or substantial fragments survive from the period 420–320 B.C. to provide sufficient data on the recruitment of kin as witnesses and supporters, and on the location of conflicts between kin, to justify a systematic analysis.

As a start we can address three standard anthropological questions to this material, two quantitative and one qualitative: (1) What is the range of kin and affines that Athenians consider worth identifying explicitly in court (in contrast to those witnesses and supporters who are frequently identified as kin or familiar associates, but whose relationship remains unspecified)? (2) Within this range, do some areas of the kin network show greater depth than others: are there differences in range and frequency of interaction between patrikin and matrikin, or between kin and affines? (3) What does study of the types of conflict and support represented in this evidence tell us about the content of different relationships? In approaching this ma-

terial we have to remember that forensic speeches have their own conventions; what they present is not raw data on kinship, but patterns refracted through a specific medium: private relations processed for public consumption. (The near-invisibility of women is one of the more obvious results of this transformation.)¹

It is worth keeping in mind, moreover, that advocacy was not a profession in Athens; a litigant had to conduct his case in person, unless incapacitated or debarred by sex or age from doing so, when his or her nearest relative would speak. A litigant could divide his allotted time as he wished between himself and supporting speakers (*synegoroi*), but the latter regularly present themselves as kin or close friends of the litigant even when they have a reputation as orators. A good example is [Dem.] 59, in which the litigant delivered §§1–16, and his brother- and father-in-law (thus both ZH and WF)² Apollodorus took over the rest of the argument. Demosthenes wrote 32 for his cousin Demon (FBS or FBSS)³ and apparently supported him in court. Witness testimonies were not included in the time allocated to the speakers, but from 378/7 onwards took the form of a written statement prepared in advance, which the witness had to affirm or deny on oath when he appeared in court. Cross-examination of witnesses was not allowed. Although texts of witness testimonies are preserved in only a few speeches, the identity of witnesses and the contents of their testimony can often be securely deduced from summaries in the body of the speech. Speeches may sometimes have been retouched for publication but were put into circulation initially among a well-informed Athenian public interested in the substance of the dispute, as well as in the rhetorical skill displayed in arguing the case; it seems therefore unlikely that revision would have seriously distorted the data on the identity of witnesses.⁴

The rules of inheritance law that provided kin with their principal motives for interaction and occasions for conflict can be stated briefly. An intestate estate went first, if the dead man had no direct descendants, to his brothers or brothers' heirs; if no brother, to his sisters or

¹ For further discussion see S. C. Humphreys, *The Family, Women and Death: Comparative Studies* (London 1983) 4–9.

² This standard anthropological shorthand is generally self-evident, except perhaps for Z, designating 'sister' (as distinguished from S=son), and SS, designating 'son's son'.

³ J. K. Davies, *Athenian Propertied Families 600–300 B.C.* (Oxford 1971 [hereafter *APF*]) 3597iv.

⁴ Cf. S. C. Humphreys, "Social Relations on Stage: Witnesses in Classical Athens," *History and Anthropology* 2.1 (1985) 313–69. E. Carawan, "Erotesis: Interrogation in the Courts of Fourth-Century Athens," *GRBS* 24 (1983) 209–26, deals with evidence for the cross-examination of litigants, rather than witnesses.

their heirs; then to father's and father's father's siblings or their heirs, males still taking precedence in each generation; then to mother's siblings and mother's father's siblings in the same order. Uterine half-siblings probably ranked after patrikin but before other matrikin. A childless man could avoid division of his estate by adopting (*inter vivos* or by will) one member of a sibling set due to inherit, but attempts to adopt an heir outside the regular line of succession were likely to meet with strong opposition. These rules gave every Athenian a bilateral network of kin linked to him by potential inheritance rights. In addition, membership in deme and phratry (these were patrilineal clans of varying size—some containing fewer than a hundred, some several thousand members—that controlled access to citizenship and financed cult in local shrines) was shared with agnates and very often, since there was no rule of exogamy, with matrikin and/or affines. Since the greater part of most estates still consisted of property in land, and estates were divided equally among brothers, patrikin were often neighbours, at least in rural areas. Thus interaction with kin was frequent; while diffuse solidarity was expected, potential for conflict remained. An analysis of the patterns of solidarity and conflict revealed by law-court speeches may be expected to yield regular patterns.

II. Three Case Studies

We may begin by looking at three cases in which litigants mobilised a particularly large number of kin as witnesses (see Tables 1–3). The litigants in Dem. 57 and Isae. 12⁵ were both defending their right to citizenship and thus in a situation in which all their kin had an interest in supporting them: suspicion could easily spread from one member of the family to others as well. The speaker of [Dem.] 43, on the other hand, was claiming an estate against another branch of the family; he had to mobilise as many kinsmen as possible to testify on his own behalf, in order to give the impression that the majority of the family considered him the legitimate heir. In this speech the witness testimonies are preserved and we can see how repetitive they were; the same must have been true in the other two speeches as well, where the testimonies are now lost.

⁵ The doubts of L. Gernet, "Sur le discours pour Euphiletos attribué à Isée," *Mél. Desrousseaux* (Paris 1937) 171–80, about the authenticity of this speech seem to me to have been satisfactorily answered by M. Just, "Le rôle des *diaitétai* dans Isée 12, 11," *RIDA SER. III* 15 (1968) 107–16; cf. U. E. Paoli, "La ἔφεσις εἰς τὸ δικαστήριον en droit attique," *RIDA* 5 (1950) 325–37 (= *Altri studi di diritto greco e romano* [Milan 1976] 211–20).

Demosthenes 57

The speaker, Euxitheus son of Thucritus of Halimous, was appealing against the decision of his deme to strike him from its register and so deprive him of citizenship. The deme was small, about 80 members (57.10, 15), of whom 73 had turned up to vote in the scrutiny of the register in 346/5, ordered by the city, in which his name was struck (9). Euxitheus seems to have made himself unpopular during his recent tenure as demarch and had been on bad terms with Eubulides (the deme's representative in court and probably the current demarch) since testifying against him in an earlier lawsuit (8).

Euxitheus describes his witnesses (Table 1) as his father's *oikeioi*: four cousins, a cousin's son, the husbands of his (F's) female cousins; his *phrateres*, his *gennetai*, those who share the same tombs (*ἡρία*), and his demesmen who witness to his having held office and passed scrutiny; his mother's *oikeioi*: a nephew, two sons of another nephew, a son of a cousin, the sons of her first husband, and the husband of her daughter by this marriage, and his son; and the *phrateres* and demesmen of her *oikeioi* (67–69). Table 1, in which these witnesses are indicated in bold type,⁶ is constructed largely from data supplied by Euxitheus himself, and therefore consists in the main of persons who were dead at the time of the lawsuit or who testified on his behalf. From epigraphical evidence we can add two more dead kinsmen to his mother's side of the family: Diodorus son of Apollodorus I of Plotheia (*APF* 3126) and Sosistratus son of Diodorus of Halai (*APF* 3933). More importantly, the name Thucritus occurs in another family epigraphically attested for Halimous, that of the descendants of Cephisodorus of Halimous (*APF* 3126), who were quite probably related to Euxitheus. We can conclude that they were unwilling to support him; if there had been no member of the family alive and old enough to testify, it would have been in his interest to

⁶ *APF* 3126 distinguishes Niciades son of Lysanias from Niciades the father of Nicostratus (57.20f), but this seems unnecessary. W. K. Lacey, *CQ* n.s. 30 (1980) 57–61, is probably right in thinking that Protomachus' sons were borne by his second wife, but the speaker's statements in 40, 43, and 68 are notably ambiguous. P. J. Bicknell, *Hermes* 104 (1976) 113–15, adds to the genealogy Charisandrus son of Charisiades, who organized deme sacrifices in Halimous in the 320's (*SEG* II 7), but his other suggestions are invalidated by 67. Charisandrus' office has no implications for the reconstruction of Euxitheus' family tree: in the first place we do not know that Euxitheus lost his case, and secondly it is clear that the accusation concerned his own legitimacy and not that of his forebears and collateral kin. W. E. Thompson, "The Prosopography of Dem. 57," *AJP* 92 (1971) 89–91, suggests that Cephisodorus was Lysarete's brother and Thucritus II one of the witnesses called in 57.22 (*cf.* 67), but since Thucritus II had been a member of the *boule*, one would rather expect him to have been named if he had appeared as a witness.

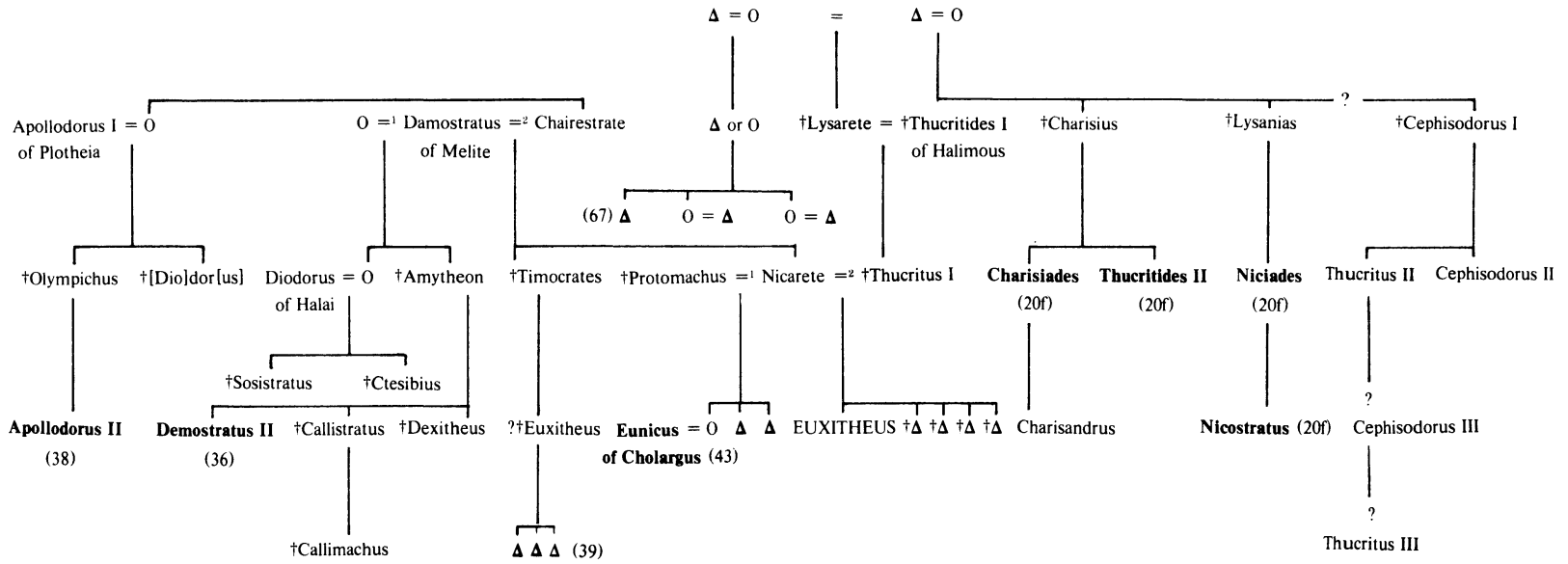


Table 1. Witnesses for Euxitheus (Dem. 57; *APF* 3126; W. E. Thompson, *AJA* 92 [1971] 89–93) (Witnesses in bold type)

say so. It is also worth noting that although one would expect him to be married—he was wealthy, his father was dead, and he was old enough to have held office in the deme—he has no support from his wife’s kin. Indeed, affines are distinctly rare in the list of his supporters: we find only the husband of his half-sister, Eunicus of Cholargus (57.43), and the husbands of two female cousins of his father, both daughters of a half-sibling of his father’s mother (*cf.* Thompson, *supra* n.6). It seems likely that he had some other affines who were unwilling to support him.

It also appears from Euxitheus’ report of the witness testimonies that no one was prepared to testify explicitly that Euxitheus was the legitimate son of his parents.⁷ He had witnesses to the citizenship of both his parents, to their marriage, and to the fact that he had been accepted by his father’s phratry and deme and had held office in both; but some room for doubt remained. The accusation brought by Eubulides is represented as consisting essentially of three points: (1) Euxitheus’ father spoke with a foreign accent (57.18); (2) his mother was so poor she had to sell ribbons in the market and hire herself out as a wet-nurse (30f, 34f, 42, 44f); (3) his witnesses had borrowed money from him (52). The most likely reconstruction of this accusation seems to be that Euxitheus’ mother Nicarete had been reduced, during her husband’s absence as a prisoner in the Peloponnesian War, to leading the kind of life in which she was likely to have an illegitimate child, and that Thucritus’ long period of absence had made him sufficiently careless of Athenian standards to accept it and pass it off as legitimate. Perhaps some of Euxitheus’ kin were poor enough to make the charge of bribery plausible;⁸ in any case, having acquiesced in fraud, they had some interest in maintaining the deception and could hardly refuse to testify to the legitimacy of his parents without calling their own rights to citizenship into question. The witness testimonies were evidently framed cleverly to give the jury the impression that Euxitheus was supported by a solid body of well-informed kin, without committing the witnesses to any assertion that was not common knowledge.

Isaeus 12

Euphiletus, the defendant in Isaeus 12, was in a similar situation, attempting to overturn a deme decision to deprive him of citizenship. Only part of the speech is preserved, so the list of witnesses may

⁷ *Cf.* L. Gernet, ed., *Démosthène. Plaidoyers civils* IV (Paris 1960) 11.

⁸ The descendants of Diodorus of Halai, a wealthy family, may have died out by this time (*APF* 3933).

not be complete: those named are his father, his stepbrothers by his father's second marriage and the husbands of their sisters, the brother of his stepmother, and his own mother's brother (Table 2). The question at issue was apparently whether he was his mother's son by her husband, as he claimed, or by some other union; support from patrilateral step-kin, who would have to share his father's estate with him if his legitimacy was confirmed, is likely to have impressed the jury, though it is understandable that his father, having once been persuaded to pass off an illegitimate child as his own, would not wish to acknowledge the error. The scarcity of support from his mother's kin, however (if it is not due to the incompleteness of the text), might look suspicious.

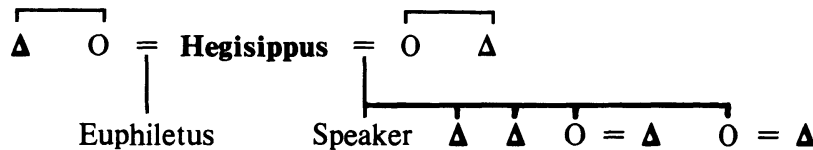


Table 2. Witnesses for Euphiletus (Isae. 12)
(Witnesses in bold type)

[Dem.] 43

Sositheus son of Sosias (deme unknown; *APF* 2921), who delivered [Dem.] 43 *ca* 344 B.C. on behalf of his second son Eubulides III, belonged to one of five descent lines springing from Buselus of Oion Kerameikon, the agnatic great-grandfather of Hagnias II, whose estate was the subject of dispute. His opponent Macartatus belonged to a second line of descent in the same family. Sositheus could not therefore mobilise his entire kindred to testify for him, but since he and his maternal grandfather had both married cousins (FFBSD and FBSD) he could claim to represent two of the five descent lines, and he had persuaded the members of an apparently structurally neutral third line, the descendants of Stratonides, to give him their support (Table 3).

After Hagnias' death *ca* 375–373 B.C.⁹ and the death of an adopted niece, his estate was claimed by his step-brother Glaucon, son of his mother by a second marriage to Glauces of Oion. Hagnias' mother had also married within the lineage; she was the sister of Stratus I and first cousin (FBD) of Macartatus' father Theopompus and his brother Stratocles. They made no move to oppose her son's claim until the inheritance had been successfully contested by Sositheus'

⁹ See S. C. Humphreys, "The Date of Hagnias' Death," *CP* 78 (1983) 219–25.

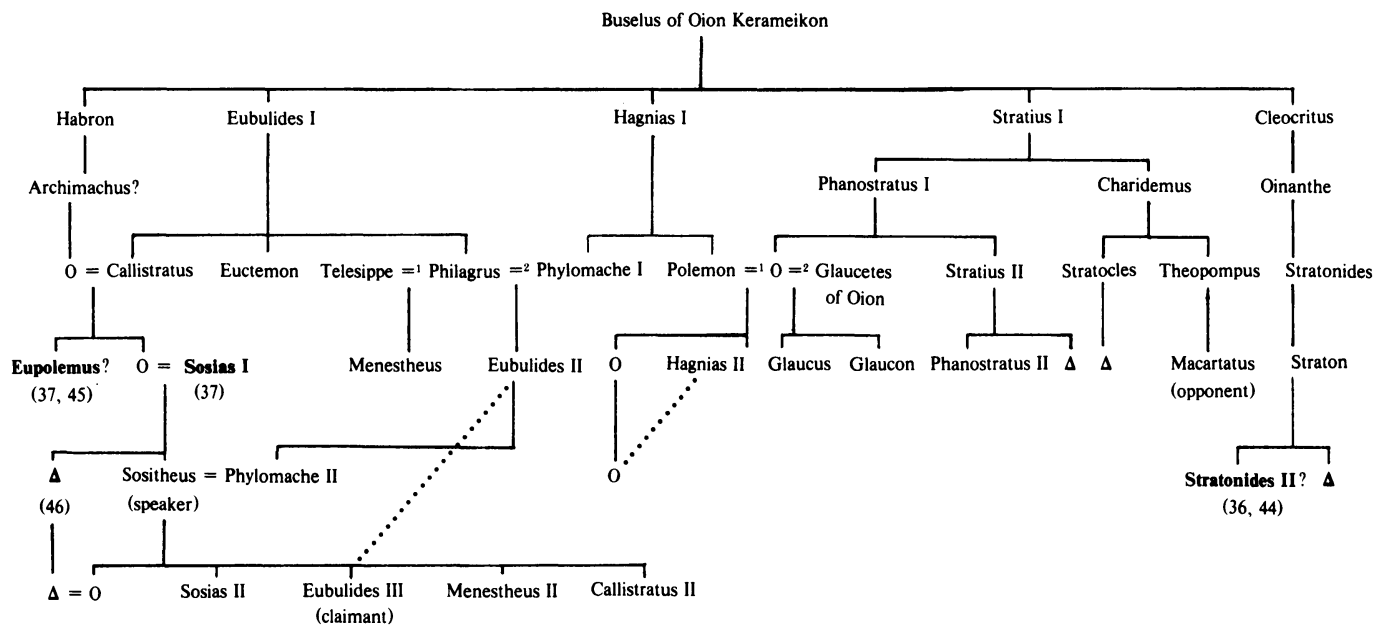


Table 3. Witnesses for Sositheus and Ebulides III in [Dem.] 43. (Witnesses in bold type) (Note that in *APF* 2129v1B 'niece' is twice used to refer to FBSD.) The birth order for Buselus' sons is not known. Dotted lines indicate posthumous adoption.

wife Phylomache II. At this point, in 361/0, Theopompus put in a claim alleging that Phylomache II's paternal grandmother, Phylomache I, was not a full sister of Hagnias' father Polemon, and the estate was awarded to him.¹⁰ The link created between the descent lines of Hagnias I and Stratius I by Polemon's marriage to his cousin (FBSD) may well have exerted a determining influence at this stage in the proceedings. Thirty years later, however, when Theopompus died, the dominant configurations in the family had changed. Macartatus had weakened his ties with his father's kin by being adopted into the family of his mother's brother; he had subsequently 'returned' to his father's house, leaving a son to carry on his mother's brother's line, but though this manoeuvre was permitted by law, it was never regarded favourably. Meanwhile Phylomache II and Sositheus—young and recently married at the time of the earlier proceedings—had produced four sons, all attentively named after kin (43.74), and had had some sixteen years in which to cultivate their relations with the rest of the kindred. On this occasion they hoped that it would be the endogamous marriages of Sositheus and his maternal grandfather Callistratus, rather than that of Hagnias II's mother, that determined where the weight of family opinion appeared to the jury to lie.

In this speech the witness testimonies are preserved. Commentators have frequently remarked that they are repetitive, contain information of marginal relevance, and tend to avoid what was clearly, from a legal point of view, the main point at issue: the question whether Phylomache I was a full sister of Hagnias II's father Polemon. This should cause no surprise. Sositheus' strategy was to give the jury the impression that he was supported by a large body of kinsmen who had a detailed knowledge of family relationships, without pressing his witnesses to testify to matters about which they had doubts. He hoped, probably, that the jury would pay more attention to current opinion within the family group than to the parentage of a remote ancestress. Both here and in Dem. 57 the effects of the ban on cross-examining witnesses in Athenian courts are clearly evident.

The witness testimonies in the speech against Macartatus exhibit another more surprising feature: the same (or nearly the same) set of witnesses appears twice; they are described in different ways on each occasion, and the descriptions conceal the fact that three of them

¹⁰ Theopompus also claimed that second cousins once removed of *de cuius* (which was also the relationship to Hagnias of Phylomache II and of his own brother's son) were not entitled to inherit. Whether this was the intention of the lawgiver remains open to question.

were very closely related to Sositheus: his father, his brother, and his mother's brother.¹¹ The descriptions are as follows:

35–37: fellow-demesmen (35); the grandsons of Stratonides; a kinsman (*syngenes*), fellow-demesman, and *phrater* of Hagnias II and Eubulides II (36); the grandson (DS) and adopted son of Archimachus (probably Sositheus' mother's brother);¹² the husband of the daughter of Callistratus (Sositheus' father [37]).¹³

42–46: a kinsman (*syngenes*: 42); kinsmen (*syngeneis*: 43); the sons of Straton (probably the witnesses of 36: 44);¹⁴ the son of Archimachus (45), *i.e.*, the witness of 37 (Archimachus could not have adopted if he had a living son of his own); the son of the daughter of Callistratus (Sositheus' brother, and probably the father of his daughter's husband [74]: 46). Further witnesses testify in 70 that *ca* 360 B.C. they were taken by Sositheus to inspect Hagnias' estate, but we are given no information on their identity.

In court each witness had to give his name, patronymic, and deme; jurors would have noticed when the same witness appeared for a second time, and Sositheus' relation to his father and his brother could not have been concealed from them. But in the published version of the speech, where the names of witnesses are not given,¹⁵ Sositheus' own relationship to Callistratus, by reference to whom his father and brother are identified, is not revealed until 73. An inattentive reader might well fail to make the connection. It seems, therefore, that a deliberate attempt was made in the published version of the speech to make Sositheus' witnesses look more numerous and less closely related to him than they actually were. If this inference is

¹¹ See W. E. Thompson, *De Hagniae Hereditate* (Leiden 1976) 86ff; Humphreys (*supra* n.9). Thompson emends *metros* to *gynaikos* in 57.46 to make the witness in 46 identical with the second witness in 37 (Sositheus' father); but since we know that Sositheus had a sibling (74), it is quite possible that the witness in 46 is his brother. There is also some doubt whether the fellow-demesmen of 35 should be identified with the kinsmen of 43.

¹² Humphreys (*supra* n.9).

¹³ As Thompson (*supra* n.11) points out, it is possible that Callistratus had two daughters and that the witnesses in 37 and 46 (if not identical) were an uncle and cousin of Sositheus (MZH and MZS) rather than his father and brother.

¹⁴ Straton son of Stratonides of Oion, named as an epebe in probably 325/4 (O. W. Reinmuth, *The Ephebic Inscriptions of the Fourth Century B.C.* [= *Mnemosyne* Suppl. 14 (Leiden 1971)] no. 15; *cf.* D. M. Lewis, *CR* N.S. 23 [1973] 254–56), is probably the son of one of these witnesses. It was common in Athens for the first son to be named after his paternal grandfather, and the use of linked names such as Straton-Stratonides is also common.

¹⁵ Practice in the publication of witness testimonies varies from speech to speech: see A. Westermann, "Untersuchungen über die in die attischen Redner eingelegten Urkunden, II," *AbhLeipzig* 1 (1850) 61–136.

correct, it supports the view that speeches were often launched into circulation by litigants who hoped to reopen a lost case or feared that their opponents might do so.

III. Relations with Kin: Quantity and Quality

These three speeches show clearly how a group of kin could be deployed as a supporting cast to give the impression that the speaker's version of events represented the consensus of a community. It seems likely that the popularity of cases concerning inheritance, guardianship, and other family matters that bulk large among the surviving speeches and titles was due at least in part to the jurors' and readers' sensation of enjoying a voyeur's view of the dramas of private life. The intrigues and hostilities represented in the speeches were similar to those of the theatre; courts and theatre had developed together since the fifth century under close reciprocal influence. Court dramas presented frequent opportunities for exaggerated representations of familial piety or villainy. In this section I consider what the encounters of kin in court, both as principals and as supporting speakers or witnesses, can tell us both about the relationships involved and about the functions of witnesses.

Tables 4 and 5 are an attempt to sum up this material in diagrammatic form. *Ego* represents the litigant: the table shows which of his or her kin was an opponent, which acted as supporting speaker to the litigant or to an opponent, and which acted as a supporting or hostile witness. General points to be noted are the marked predominance of nuclear family relations (including those with stepfathers and step-siblings) over more distant relationships, and the significant rôle of affines—wife's father and brother and sister's husband—and of the mother's brother. The circle of kin who are identified in terms of specific relationships is small; more distant kin appear under the general terms *syngeneis* and *oikeioi*, or else as *phrateres*, *gennetai*, and fellow-demesmen.

Fathers and Sons

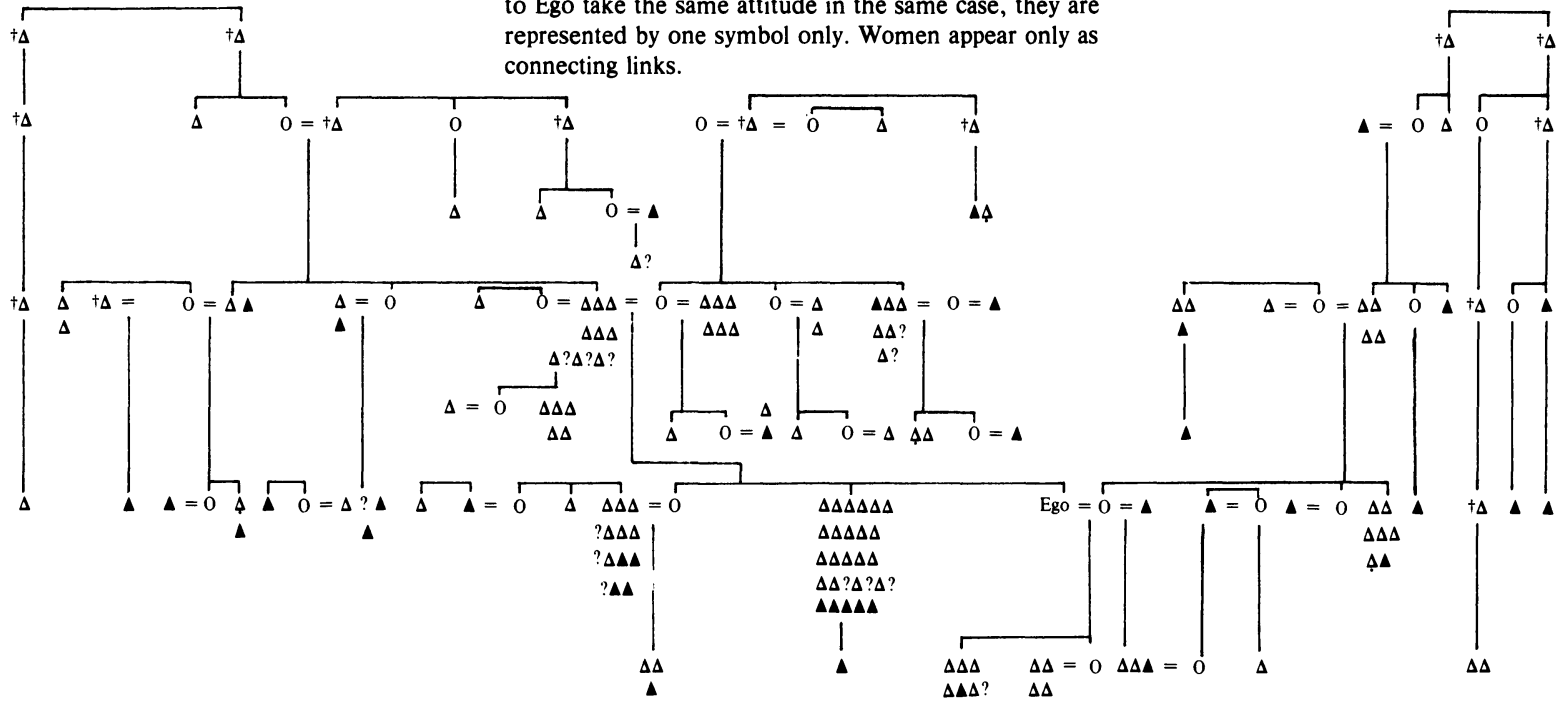
Where fathers and sons support each other in court, it is usually as speakers, the father speaking on behalf of the son because he is too young ([Dem.] 43, Antiph. *Tetr.* 2, the opposing parties in [Dem.] 44 (27), and Isae. 9; *cf.* Andoc. 1.117–21), or the son speaking for the father because he is too old (Lys. 20; *cf.* Aphareus' appearance on behalf of his adoptive father Isocrates, Plut. *Mor.* 839c, Dion. Hal. *Isoc.* 18, *Din.* 13), inexperienced as a speaker ([Dem.] 44.4), de-

Table 4: Kin in lawsuits, *Ego* male

Key:

- †Δ = deceased kin
- Δ = kin supporting Ego
- ▲ = kin opposing Ego
- ⚭ = kin whose attitude toward Ego changes
- ? = doubtful case

N.b.: Where two or more kinsmen in the same relation to Ego take the same attitude in the same case, they are represented by one symbol only. Women appear only as connecting links.



prived of civic rights ([Dem.] 58) or—in the case of a son pursuing his father's murderer—dead (Antiph. 1). In addition, the husband of the priestess of Artemis Brauronia intervened with a *graphe paranomon* when his son was accused of sacrilege (hyp. [Dem.] 25, based on Lycurgus' speech against Aristogiton; cf. Din. 2.12).

There are four probable instances of fathers appearing as witnesses for their sons. Sosias' testimony for his son Sositheus in [Dem.] 43.37 has already been discussed. In Isae. 6, where the claimant had been adopted to succeed to his mother's brother, it seems likely that his *genitor* Phanostratus testified in 6f and 31–34 to the contents of the will of his wife's brother Philoctemon and to the attempted annulment of the will of his wife's father Euctemon. In Isae. 12.1, 8, it is stated that the father of the speaker and of the half-brother whom he was defending testified to the defendant's legitimacy. Finally, it seems quite likely that in Isae. 7, where the speaker was claiming the estate of his mother's stepbrother Apollodorus, the speaker's father testified in 7–10 to the good relations between Apollodorus and his step-kin (the witness's wife and father-in-law), although this is not stated explicitly.

In one instance a son accused his father in court: the religious specialist Euthyphro prosecuted his father for killing a client of the family (Pl. *Euthphr.* 4ff). In Athenian eyes this was an incomprehensible way to behave.

Stepfather and Stepson

Since Athenian men usually married some fifteen years later than women, and many of them had active military careers, it was not uncommon for a woman to remarry while the children of her first husband were still minors. Demosthenes' father, who died when his son was seven, had directed in his will that his widow should marry his nephew (ZS) Aphobus, who was to be one of the guardians of the children (*APF* 3597v); more successfully the banker Pasion arranged for his widow Archippe to marry his ex-slave Phormio, who was to take over the running of the bank until Pasion's younger son Pasicles came of age (*APF* 11672v–v1). The stepfather of Apollodorus of Leukonoe, mentioned above, does not appear to have been a friend of his father, but he helped the boy to recover property from his guardians when he came of age, probably acting as his supporting speaker (Isae. 7.7). Phormio testified for his stepson Apollodorus son of Pasion concerning bank transactions in two extant speeches ([Dem.] 49.18, 33; 52.7, 19) before Apollodorus quarrelled with him. In Lys. 32 Hegemon, the second husband of Diogiton's daughter,

attended the family council at which she denounced her father for depriving her sons by her first marriage of their property (12), and probably bore witness in court to the arguments she had brought forward there (18)—*de facto* a testimony in favour of his stepsons, whose case was presented in court by their sister's husband. At Isae. 8.13f the speaker's stepfather mobilised his own kin to testify that the speaker's mother had been legitimately betrothed to him (*APF* 3885).

In the converse relation, Pasion's younger son Pasicles remained loyal to his stepfather Phormio and testified for him against his own brother Apollodorus (Dem. 36.22, [Dem.] 45.37, 84). Isocrates' adopted son Aphareus, whose speech for Isocrates has already been noted, was by birth his stepson.

The relation between stepson and stepfather could also, however, give rise to hostility, as in the case of Apollodorus' attacks on Phormio (Dem. 36). Apollodorus was already twenty-four when his father died (36.22); he resented Phormio's guardianship of his younger brother, which gave Phormio control of the family bank for another eight years; anxious to have the slave origins of his own father forgotten, he resented his mother's remarriage to another ex-slave. It is perhaps worth noting, in this connection, that it was the youngest of his three stepsons whom Isocrates adopted. A younger boy was probably more likely to develop a warm relationship with his stepfather than one old enough to resent the control of even his natural father.

Women's Supporters in Court

Close relations between stepfather and stepson are one of the indications of women's ability to get their interests looked after despite their own formal legal incapacity;¹⁶ this is therefore an appropriate point to collect the scanty evidence for the relationships between women and the men who speak or testify for them in court or in legal transactions of a type liable to lead to court proceedings (Table 5). Husbands and sons perform this function most often; while still under her father's care a girl was less likely to get into legal entanglements, though there may well have been cases in which a father or brother sued for the restitution of the dowry of a divorced woman. In Isae. 3 a husband (the opponent) pleads for his wife's inheritance (*cf.* [Dem.] 43.9); in Isae. 5.9 we are told that Polyaratus, husband of one of the sisters of Dicaeogenes II, had been preparing, just before his death, to prosecute Dicaeogenes III's witnesses for perjury in the suit that had deprived his wife and her sisters of their

¹⁶ See A. R. W. Harrison, *The Law of Athens* (Oxford 1968–71) I 108, II 136f, 152.

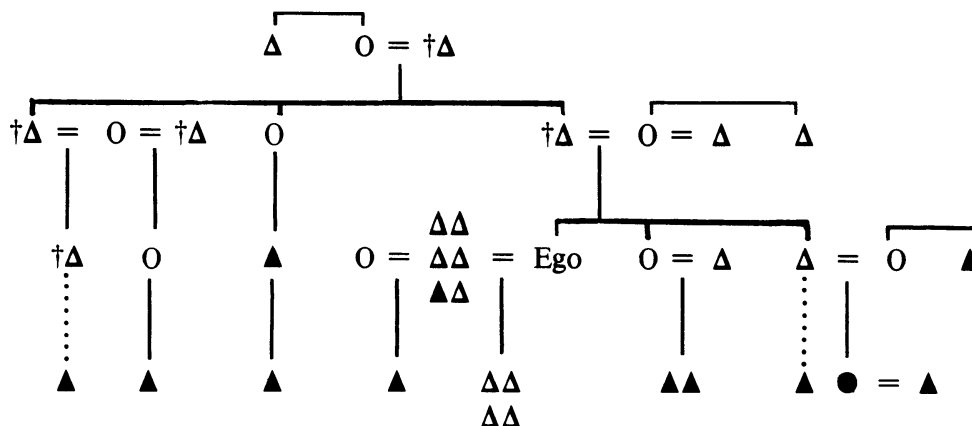


Table 5. Kin in lawsuits, *Ego* female
(for key see Table 4; dotted lines signify adoption)

property. Hegemon's probable appearance as witness in support of his wife and her sons in Lys. 32.18 has already been mentioned.

Sons speak for their mothers in Isae. 3 (inheritance), Lys. fr.10 (the speaker's mother has apparently been accused by a close kinsman of her second husband of aborting the latter's posthumous child),¹⁷ and Antiph. 1. In this last case a woman is accused by her stepson of having poisoned his father, and is defended by her son. When a man married twice, the children of his two marriages came into direct competition for property, whereas this was not the case when a woman remarried (*cf.* n.26 *infra*). In Isae. 12 the speaker remarks that it is rare to find the husbands of a man's daughters by one marriage testifying, as in this case, in favour of his son by another wife: "stepmothers and stepdaughters (*αἱ τε μητρικαὶ καὶ αἱ πρόγονοι*) usually get on badly." The saying is borne out by the resentment of Diogiton's daughter against the children of her father's second wife (Lys. 32.17). Here the daughter had been in the position of an *epikleros* until her father remarried, so economic interests were involved as well as competition for the father's attention.

In Isae. 5 the cause of the four sisters of Dicaeogenes II against their cousin Dicaeogenes III (FZSS), who claimed to be their adoptive brother, was championed first by Polyaratus, husband of one of the sisters, and after his death by his son. In Isae. 3 Phile was claiming Pyrrhus' estate as his daughter: her mother's brother Nicodemus had testified on her behalf (4-7), as had her father's mother's brothers (29f, 33f, 69-71). Her opponent, the speaker, was her cousin (FZS),

¹⁷ L. Gernet, ed., *Lysias. Discours* (Paris 1926) 239.

claiming in his mother's name. In *Isae.* 7 the speaker's opponent, Pronapes, represented his wife; the speaker was her cousin (FBS) by adoption, and by birth a step-grandson of her uncle (FBWHDS). The refusal of her nephew (ZS) Thrasybulus to involve himself in the case in any way (7.18–21) might be seen as tacit support for the speaker and opposition to her.¹⁸

Women were rarely able to give their kin overt support in court; they could not speak or testify (a state of affairs that Plato proposed to remedy in part, *Leg.* 937A), though they could appear and weep in the hope of arousing the jurors' pity. At *Isae.* 12.9 the defendant's mother is said to have offered in the hearing before the public arbitrator to take an oath affirming his legitimacy, but the legal status of this offer is unclear.¹⁹ The oath sworn in similar circumstances by Plangon, mother of Boeotus (*Dem.* 39.3f), was taken in an attempt to settle the dispute out of court. There were, however, ways of circumventing the rule that women could not testify. In *Lys.* 13.39–42 (a murder charge) the speaker reports that his sister, the wife of the victim Dionysodorus, was the sole witness to the will that Dionysodorus had made in prison—apparently men were not permitted, or did not feel it safe, to visit the victims of the Thirty in prison—and he produces her brother (and others?) as witnesses to her report of the occasion.²⁰ In *Lys.* 32.12–17 the speaker reports, partly in *oratio recta*, an impassioned speech made by his wife's mother to a family council at which he was present; this report includes a reference to her discovery of the account books in which the joint ventures of her first husband and his brother Diogiton (her father) were recorded. Demosthenes (27.40) reported that his mother had told him that his father's will had contained a full inventory of the estate. The two daughters of Polyeuctus of Teithras were present when their father announced the contents of his will; Spudias, the husband of one of them (according to his opponent: [*Dem.*] 41.17), thought it enough for his wife to be present and did not attend himself. A dying woman could make a formal statement of the contents of her estate and of

¹⁸ *APF* 1395. Thrasybulus had been adopted, apparently after his father's death; he had already inherited his father's estate and half that of his MB, and stood to inherit from his adoptive father also. He would have cut a poor figure in court if he had claimed Apollodorus' estate as well. He may have quarrelled with his MZ, the speaker's opponent, over the division of her brother's estate.

¹⁹ On Gernet's doubts about this passage *cf. supra* n.5; however, we know very little about the use of oaths in Athenian courts. Harrison's discussion (*supra* n.16: II 150–53) confuses references to evidentiary oaths with references to oaths of disclaimer.

²⁰ This is not 'hearsay' by Athenian rules, which were designed only to eliminate gossip.

debts owed to her, as Polyuctus' wife did, summoning her brothers to act as witnesses (9f).²¹ Moreover, as we shall see, the active part played by matrikin and affines as witnesses in Athenian courts shows that women were well able to mobilise their own kin when support was needed.

Brothers

Brothers²² appear in Table 4 more frequently than any other category of relatives, in twenty-four instances, of which only three are doubtful. The main reason for this is that brothers shared equally in inheritance, so that it is common to find one brother speaking for a sibling group in an inheritance claim (Lys. 18; Isae. 1, 8, and probably the first speech in the case for which Isae. 4 was written), or in a suit concerning guardianship: in Dem. 38 two brothers are suing the four sons of their ex-guardian. As this example shows, brothers might also be held jointly responsible for their father's debts after his death, or even for those of their grandfather ([Dem.] 58.17). Alternatively, one brother might be sued as heir of another ([Dem.] 35.3), or asked to provide information concerning a dead brother's financial affairs (Lys. 32.26f; cf. *APF* 551) or other activities (Pl. *Ap.* 21A: Chaerephon's brother gives evidence about Chaerephon's consultation of the Delphic oracle).

Other factors, however, were also involved. Since males married late, a man might well find himself in a situation in which his father was elderly or dead, his sons were not yet adult, and his brother was the closest kinsman able to provide vigorous support. The speaker of Lys. 12 and the plaintiff against whom the speaker of Antiph. 6 was defending himself were prosecuting the killers of their brothers; Lys. 13, another homicide prosecution, this time by the victim's sister's husband, was probably followed by a supporting speech from the victim's brother Dionysius, who testified in 41f.²³ [Dem.] 58, a prosecution motivated by resentment of the defendant's ill-treatment of the speaker's father, was probably followed by a supporting speech from the speaker's brother (67). When Apollodorus son of Pasion of Acharnae succeeded in getting Arethusius condemned in court for falsely claiming that he had served him with a summons (15, 17), Arethusius' brother Nicostratus and other associates, perhaps includ-

²¹ Whether this can be called a will is a purely terminological question. For an Athenian woman's right to make bequests when dying see D. M. Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh 1979) 55f, 67f.

²² For support from sisters see the section on sisters' husbands *infra*.

²³ Dionysius was presumably younger and less experienced in speaking than his ZH.

ing another brother, pleaded that he should be fined rather than put to death, and promised to help him pay the fine ([Dem.] 53.26, *cf.* 28; *APF* 12413 n.1). Aristogiton's brother Eunomus bought up his property when it was confiscated for debt to the state, and defaulted on the payments (*hyp.* [Dem.] 25, from Lycurgus). Aeschines was supported by his brothers in the case of the 'false embassy' (Dem. 19.237, 287); and in *Lys. fr.17 Gernet* the brothers of a man who has been beaten up carry him on a stretcher to the *deigma*, where traders displayed their wares in the Piraeus, to show his injuries to the crowd and perhaps to recruit suitable witnesses to support him in court. The speaker of [Dem.] 55 had been sued previously by his opponent's brother (2) and cousin (*anepsios*: 1, 31); he claimed that the three were in league to try to drive him off his land, which adjoined theirs. In many cases where the speaker does not identify his witnesses, or characterises them only as close associates (*oikeioi*, *epitedeioi*, *anankaioi*), brothers may be included.

It was, however, rash to rely on close kin alone as witnesses, for they might be suspected of putting loyalty before honesty. Demosthenes pours scorn on the oaths taken in the council by Aeschines' brother and the doctor Execestus that Aeschines was too ill to take part in the third embassy to Philip of Macedon in 346 (Dem. 19. 124; it is indicative of the structural equivalence of brothers that Aphobetus, the brother, was appointed to replace Aeschines). Similarly, the speaker of [Dem.] 47 considers it a sign of fraud that his opponent produced only his brother and an affine (*kedestes*, probably brother-in-law: see *infra*) as witnesses of his offer to allow his slave to be tortured.

Nevertheless, there were matters to which a brother was the appropriate witness. The will of Demosthenes' father was witnessed by his brother Demon as well as by the three men appointed guardians of the family, one of whom was Demon's son (Dem. 28.15). Pasicles testified for his brother Apollodorus about the statement of his financial affairs made by their father Pasion on his deathbed, although he had been only about ten years old when his father died ([Dem.] 49.42; *APF* 11672III, v).

Pasicles, however, acted as a witness hostile to his brother in the latter's suit against their stepfather Phormio (Dem. 36.22, *cf.* [Dem.] 45.37). Such confrontations between brothers in court were unusual, but we hear of conflicts that did not reach court. Meneclis, the adoptive father of the speaker of *Isae. 2*, had had a dispute with his brother over this adoption (depriving his brother's son of the chance of inheriting) that had been settled temporarily by arbitration; subsequently the adoption was contested in court by Meneclis' brother

when he died (28–33). At Lys. 10.5 the speaker mentions that he had been defrauded of property by an elder brother acting as his guardian; his reference seems to imply that the case was well known, so we can probably assume that he sued on coming of age. This offender may however have been a patrilateral stepbrother. The speaker of Isae. 9 claimed that his mother's first husband had been killed by his brother in a fight, but the case had not come to court (17).

For the sake of completeness and for the light they throw on ideas current in the rhetorical tradition, I add two references to brothers in court from speeches that may be late rhetorical exercises.²⁴ In [Dem.] 25.55 the speaker says that Aristogiton's brother, who is standing by to speak in his defence, has a suit pending against Aristogiton for having sold their sister (illegitimate half-sister?) into slavery; and in [Dem.] 29.15–18 (*cf.* 23, 55) Demosthenes is represented as saying that in his previous suit against Aphobus he had compelled the latter's brother Aesius to testify for him against Aphobus, although Aesius is now disclaiming his testimony and will speak in support of Aphobus. There is no reference to this witness testimony in the two genuine speeches against Aphobus (Dem. 27f). The interest shown by the authors of rhetorical exercises—if that is what these two speeches are—in the paradoxical situation of the brother torn between distaste for his sibling's behaviour and the wish to present a united front in public may be indicative of the structural tensions present in the relationship. Brothers normally divided their father's estate when he died and set up separate households, yet they remained closely linked both in property interests and in people's minds. Speakers can derive advantage from citing the exploits of their brothers—like those of other living kin or of ancestors—as evidence of the good character of the family (Lys. 20.28f); equally, they are vulnerable to opponents' tirades about brothers' misdeeds (Dem. 19.27, 54.14; *cf.* [Dem.] 58.27).

Half-brothers

In two cases concerning legitimacy and citizen rights, *P.Oxy.* XXXI 2538²⁵ and Isae. 12.8, the defendant's patrilineal half-brothers testify on his behalf. There could in some cases have been a risk that loss of citizenship might have repercussions for the victim's father or his patrilineal half-brothers. In other cases, however, as we have already

²⁴ See Humphreys (*supra* n.4) nn.69–70. G. Thür's arguments for the genuineness of [Dem.] 29 (*RIDA* 19 [1972] 151–77) are not decisive.

²⁵ *Cf.* W. E. Thompson, "An oratorical fragment. *P.Oxy.* 2538," *RivFC* 96 (1968) 149f.

indicated, relations were strained. The speaker of Dem. 39 and 40 contested the legitimacy of his patrilineal half-brother and, when this move failed, quarrelled with him over the division of their father's estate (*cf.* *APF* 9667); the speaker of [Dem.] 48 was clearly on poor terms with his patrilineal half-brother. With stepbrothers on the mother's side the relation seems different: the uterine brother of Hagnias II had claimed to be his heir (Isae. 11.8f; *APF* 2921), and the speaker of Isae. 9 was making a parallel claim.²⁶

Affines: Brothers-in-law

The general term *kedestes* in classical Athens can cover any affinal relationship (an affine of one's affines being a *synkedestes*), but when used without further qualification in legal contexts can with reasonable confidence be taken to allude to a sister's husband (ZH) or wife's brother (WB); both were called on frequently for support, an index of the strength of the ties persisting between brother and sister after marriage.²⁷ Given the difference in the ages at which men and women married, a man's ZH was quite likely to be some 10 to 15 years his senior in age, and his WB some 10 to 15 years younger.²⁸ Like a brother, a *kedestes* was expected to be a loyal supporter of his brother-in-law, and therefore could be considered suspect as a witness ([Dem.] 47.11). References to the notoriety of an opponent's *kedestai*, implying guilt by association, are made in Dem. 19.287 (Aeschines' WBs) and Isoc. 16.42 (Charicles, one of the Thirty, was the *kedestes* of the speaker's opponent Tisias).

Sisters' Husbands

[Dem.] 59 consists of two speeches: the first fifteen paragraphs were delivered by Theomnestus III son of Dinias of Athmonon (*APF* 11672x), and the rest by his ZH and father-in-law Apollodorus son of Pasion of Acharnae. Apollodorus probably married soon after his father's death, which took place when he was twenty-four, and was perhaps about ten years older than Theomnestus. He was an experi-

²⁶ In law a stepson had no right to inherit from his stepfather, and a uterine half-sibling ranked below patrikin (Harrison [*supra* n.16] I 146); but it was not uncommon for a woman to try to secure for a child of one husband a share in the estate of another. Besides the two examples already given, note the claim of Thrasyllus III (Isae. 7; *APF* 1395) to the estate of Apollodorus II, his MMS (mother's stepbrother), by whom he had been adopted, and Diocles of Phlya's claim that he had been posthumously adopted by his mother's second husband in a will (Isae. 8.40, *APF* 8443).

²⁷ *Cf.* Humphreys (*supra* n.1) 71.

²⁸ *Cf.* J. P. Hallett, *Fathers and Daughters: Women in Roman Society* (Princeton 1984) 145ff.

enced speaker and litigant; in addition, he was the real mover behind the whole action—Stephanus of Eroiadae, the defendant, having incurred his enmity in two previous lawsuits (4–10).

The speaker of Lys. 32 was defending the rights of his wife's two young brothers, who may still have been under age. The speaker of Lys. 13, as already noted, was prosecuting the killer of his sister's husband; his ZHB, the victim's brother, Dionysius, in this case apparently younger and less experienced as a speaker, gave testimony (41f) and perhaps made a speech in support. In these two instances it is clear that women—the speaker's mother-in-law in the first case and his sister, the victim's wife, in the second—played an active rôle in getting the speakers to prosecute.

The speaker of [Dem.] 48 plotted with his WB Olympiodorus to claim the estate of a kinsman together. Eventually they quarrelled, but while they were still coöperating the speaker testified under oath on Olympiodorus' behalf that he had been sent abroad on military service and therefore requested that the hearing of their claims should be deferred—a testimony treated with suspicion by the court (25).

The testimony by Theophemus' *kedestes* (ZH)²⁹ Mnesibulus ([Dem.] 47.9, 11, 46) has been mentioned already; he and Theophemus' brother Euergus were being sued for giving false testimony, in a previous suit, that Theophemus had offered to hand a slave witness over for torture.

In Isae. 6 the husbands of Philoctemon's sisters were present to witness his will, made before leaving on campaign; in the will he adopted one of the two sons of one ZH, and the will was deposited with the other.

It is quite likely that the speaker's elder sister's husband (eZH) gave evidence in Isae. 2.3–5 that the speaker and his brother had dowered their sisters; whether the younger sister's second husband also testified is not clear. The Callias who testified in Andoc. 1.18 to the accuracy of Andocides' account of denunciations for parodying the Eleusinian Mysteries may have been Andocides' ZH, but there are other possibilities.

We know four instances of hostile action by a ZH in the courts. The suit brought against Olympiodorus by his ZH, the speaker of [Dem.] 48, has been mentioned above. Andoc. 1.120f records that Callias III son of Hipponicus of Alopeke supported his son's claim to marry an *epikleros* (heiress) against his WB Leagrus son of Glaucon

²⁹ Theophemus was unmarried (47.38); therefore his *kedestes* must have been his ZH and not his WB or, as suggested by Davies (*APF* 7094), his WF.

of Kerameis (*APF* 7826_{XI}, xv; 3027); in this case Leagrus was apparently ready to be bought off. Timocrates, the ex-husband of Onetor's sister, testified against Onetor (Dem. 30.9) that he was due to repay his ex-wife's dowry to her second husband, Aphobus, and not to her brother; this constituted evidence for the falsity of Onetor's claim that his sister and Aphobus had been divorced. At Lycurg. 1.23f Timochares of Acharnae, husband of Leocrates' younger sister, testified for the prosecution that he had purchased slaves belonging to Leocrates from his WZH, the husband of Leocrates' elder sister, who in turn had purchased them from Leocrates. The content of the testimony was uncontroversial and irrelevant, but the fact that Timochares was prepared to testify against his WB is an indication that relations were poor. Leocrates had abandoned Athens after her defeat at the battle of Chaeronea and had remained abroad for eight years; it seems likely that he had regarded the sale of his house and slave workshop to his brothers-in-law as a redeemable mortgage, a *prasis epi lysei*,³⁰ and that a dispute had arisen with the surviving brother-in-law, Timochares, when he returned and tried to reclaim his property.

Husbands of Half-sisters

In Isae. 12.5 the husbands of the litigant's patrilateral half-sisters (who are full sisters of the speaker) are said to have testified to his legitimacy. In Isae. 9.29 the husband of the speaker's uterine half-sister—full sister of Astyphilus, whose estate the speaker was claiming—probably testified among “those who know the facts about her betrothal”; he may have testified also in 28 and 30. In so doing he was opposing his wife's cousin (WFBS).

In Isae. 8.40–42 the speaker calls on the husband of one of the matrilateral half-sisters of Diocles—who, he asserts, has inspired his opponent's claim to the estate of Ciron, the deceased husband of another half-sister³¹—and on the son of a third half-sister to testify to Diocles' ill-treatment of them, if they are not afraid to do so. Diocles, he alleges, had claimed to have been adopted posthumously by his mother's second husband and thus deprived his half-sisters of their property.

³⁰ Cf. M. I. Finley, *Studies in Land and Credit in Ancient Athens* (Brunswick [N.J.] 1952) 31–37.

³¹ If Ciron's wife were the third half-sister of Diocles and therefore in the speaker's view an *epikleros*, this would explain his implication in 36 that after the death of her sons Diocles should have divorced her from Ciron and married her to a husband more likely to father children, noted as problematic by W. Wyse, *The Speeches of Isaeus* (Cambridge 1904) 616f.

Wife's Brothers

In Demosthenes' case against his guardian Aphobus, Aphobus' WB Onetor³² appealed on his behalf at the end of the trial and offered to stand surety for his payment of the damages imposed, if they were limited to one talent (Dem. 30.31f; *ca* 6,000 days' wages). Subsequently he made a formal declaration that he had a prior claim on land that Demosthenes was claiming from Aphobus, because it was due to him as repayment for the dowry of his sister, now supposedly divorced. This led Demosthenes to sue him (Dem. 30.8).

The speaker of [Dem.] 48 gave up putting forward his own claim to the estate of Comon because the hearing took place in the absence of his WB Olympiodorus (26); this is presented as an act of loyalty to his accomplice, but more probably implies that supporting testimony from Olympiodorus was essential to the speaker's case.

Aeschines' WBs apparently made supporting speeches on his behalf in the 'false embassy' case (Dem. 19.287). In Lys. 19 the speaker is defending himself and his father on a charge that part of their property actually belonged to the speaker's sister's deceased husband Aristophanes (*APF* 5951); this involves the speaker in defending the reputation of Aristophanes. In Lys. 13 the speaker was the WB of Dionysodorus, whose killer was being prosecuted. Aristogenes, who was present when Polyeuctus of Teithras made his will and with whom Polyeuctus' wife's will was deposited, was probably one of her brothers ([Dem.] 41.8–10, 17–21).

In [Andoc.] 4.15—a text that probably belongs to the early fourth century, although it is not a genuine court speech³³—Callias III, WB of the famous Alcibiades, is said to have denounced Alcibiades in the assembly for plotting to murder him. According to the same speech (14), Alcibiades' wife had attempted to divorce herself from her husband on her own initiative. Apparently she did not care to appeal to her own brother for help, as would have been natural in a more conventional family; but her action cannot have improved relations between Alcibiades and Callias.

Kedestai

In some cases we cannot tell whether the term *kedestes* refers to WB or ZH.³⁴ In Isoc. 18.52–54 we are told that the opponent, Callim-

³² *APF* 35971v; 11473. Aphobus and Onetor were approximately the same age, Aphobus being the second husband of Onetor's sister.

³³ L. Gernet, "Notes sur Andocide," *RevPhil* 57 (1931) 308–26.

³⁴ Where a guess can be made, these men are included in Table 4.

achus, had given false testimony for his *kedestes* in an earlier case. In *P.Oxy.* XIII 1607 (Hyperides?) fr.5.212–25 the speaker refers to testimony given by the opponent's *kedestai* Anaschetus, Theomnestus, and Criton which, he says, will not bear close examination. Criton may be *APF* 8828, named by Aeschines³⁵ in 346 as having been famous for his beauty and his lovers; Theomnestus apparently helped the opponent to conduct his case (*P.Lond.* I 115).

Aeschines (1.114f) says that his opponent Timarchus of Sphettus got Philotades of Cydathenaeon expelled from his deme, claiming that Philotades had been his slave; Philotades' *kedestes* in turn sued Timarchus and convicted him of having been bribed by Philemon the actor to do so. In this instance the *kedestes* is likely to have been ZH, since the legitimacy of the ZH's own children would have been directly affected by a court decision that the brother of their mother was an ex-slave. In *Isae.* 2.29–34 the opponent's *kedestes*, who had acted as arbitrator between the opponent and his brother Meneclis, is asked to testify to this. He should be the opponent's WB, since we do not hear of the opponent and Meneclis having a sister, and he is said to be an *oikeios* of the opponent only (33). At [Dem.] 45.10 Cephisophon, with whom the will of the banker Pasion had been deposited, is said to have sent his *kedestes* Amphias to bring it to court and testify on his behalf; a WB is perhaps a more likely candidate for this somewhat client-like rôle.

In *Hyperid.* 3.34 a *kedestes* of Athenogenes, the opponent, testifies against him, apparently concerning his loose morals (the text is fragmentary); Revillout³⁶ suggested that this was the opponent's father-in-law, but since Athenogenes was notorious for his association with a prostitute, it is perhaps more likely that he was unmarried and the *kedestes* was his ZH.

There is one possible case of support in court by a *synkedestes*: in *Andoc.* 1.14f the Diognetus who testifies concerning the denunciations in the affair of the Eleusinian Mysteries may be Diognetus son of Niceratus of Cydantidae, brother of the general Nicias and Andocides' ZHZHB. But this identification is far from certain (*APF* 10808c).

Wife's Father/Daughter's Husband

Apollodorus' speech for Theomnestus ([Dem.] 59), who was his DH as well as his WB, has already been discussed (*supra* 76f). Dinias, Apollodorus' own WF, testified for him in two extant speeches.

³⁵ Aeschin. 1.156; cf. Grenfell and Hunt on *P.Oxy.* 1607.

³⁶ E. Revillout, "Une importante découverte," *RevEgyptol* 7 (1892) 1–21.

In [Dem.] 45.55 he claimed that he had no knowledge that Apollodorus had released his stepfather Phormio from all liability towards him. Apollodorus was suing Dinias' nephew (ZS, *APF* 11672x) for having falsely testified to the existence of such a release document. Dinias is presented as a reluctant witness who was not prepared to testify positively against his nephew but was obliged to admit that he could not support the latter's statement; however cautiously his testimony was worded—and it certainly contributed nothing substantive to Apollodorus' case—his appearance in court as one of Apollodorus' witnesses was a declaration of support for his son-in-law and hostility to his nephew.

Dinias acted as witness for Apollodorus again, in a more respectable cause ([Dem.] 50.24–28), testifying that he had gone with an officer from Apollodorus' trireme crew to Polycles, who was supposed to take over the trireme from Apollodorus, to urge him to do his duty.

In *Isae.* 2 the speaker is defending his WF, who had testified on his behalf (*hyp.*; 2, 36) that he had been adopted by Meneclēs, whose estate he was claiming. The defendant in *Antiph.* 6 had put the chorus he was financing into the hands of his DH, a fellow-demesman, and three non-relatives; it appears likely that these four testified for him in 15 (*cf.* 28). Euctemon of Cephisia's sons-in-law Chaereas and Phanostratus were present when a copy of Euctemon's agreement with his son Philoctemon on the rights of the children of Euctemon's mistress Alce was deposited with Pythodorus of Cephisia (*Isae.* 6.27); Phanostratus, the *genitor* of the speaker, may have testified to this in 34 (Chaereas had died). The husband of one of the daughters of Polyuctus of Teithras was present when he made his will ([Dem.] 41.17).

More Distant Affines

Stephanus, sued by Apollodorus for testifying against him in the case against Phormio, was Apollodorus' wife's cousin (WFZS). Apart from this case (and the relations with WF and WB that we have already examined, *supra* 79ff), where a man finds himself cooperating with or in conflict with a kinsman or affine of his wife in court, it is because the suit concerns the wife's inheritance rights or family affairs. In [Dem.] 41 the two opposed speakers, disputing the division of their father-in-law's estate, stood in the relation of WZH to each other. Aristogenes, who testified for the speaker in 8–10, 17f, 24, and perhaps also 11 and 26, was probably the speaker's wife's uncle (WMB), and of course stood in the same relation to his opponent—a

fact that is likely to have made his support, as a structurally impartial witness, particularly valuable. The speaker of *Isae. 3* was suing Nicodemus for perjury; in a previous suit, Nicodemus had testified to the legitimacy of his niece Phile (*ZD; 4–7, etc.*). In the same suit Phile and her husband Xenocles were also supported by her great-uncles (FMB) who were also great-uncles, on the maternal side (MMB), of Phile's opponent, the speaker of *Isae. 3*.

The speaker of *Lys. 32*, pleading on behalf of his wife's brothers against their guardian, grandfather (MF), and uncle (FB) Diogiton, the speaker's WMF/WFB, was supported by his wife's stepfather (WMH; 12, 18).

Patrikin and their Affines

At *Dem. 57.41* we are told that when the speaker's mother was betrothed by her brother to his father, both the groom's paternal uncles (FB) were present, together with other witnesses. The will of Demosthenes' father was witnessed by his brother Demon and the latter's son Demophon, who was appointed one of Demosthenes' guardians, the others being his father's sister's son (FZS) Aphobus and a family friend (*Dem. 28.15f; APF 3597*). Pythodorus of Cephisia, with whom an agreement was deposited between Euctemon of Cephisia and his son Philoctemon concerning Euctemon's estate (*Isae. 6.27, 31–34*), was a kinsman (*prosekon*) and, since he belonged to the same deme, very probably an agnate. At *Isae. 8.14 prosekontes* (not further specified) of both the speaker's parents testified to the validity of their marriage.

In family matters such as these, patrikin were bound to take an interest; in other cases they show a more generalised solidarity. The speaker of *Isae. 8* took a cousin of his father (*anepsion patros, 21–24*) to act as witness when he tried to take the body of his mother's father to his own home for the funeral; this kinsman testified in court to the interviews that took place with the widow (the speaker's step-grandmother, MFW) and with her brother Diocles. Here the witness was an older man who was not directly involved in the dispute but could be relied upon for support in court.

The Callias who testified for Andocides in his defence concerning the profanation of the Eleusinian Mysteries (*Andoc. 1.18*) may have been his father's cousin (FFZS? *APF 8281vB*). Plutarch (*Aristid. 25.4–8*) says that Aristides testified on behalf of his *anepsios*, cousin, Callias II son of Hipponicus of Alopeke—probably his FZS, if the story is reliable (*APF 7826iv*). Euryptolemus III, who defended the younger Pericles and the other generals accused of failing to save the

victims of shipwreck after the battle of Arginusae in 406 B.C., may well have been a much more distant cousin, Pericles II's FMFBSSS (*APF* 9688^{viii}).³⁷ Though the connection was distant, it was widely known; it gave Eurypolemus a legitimate excuse to speak out in protest at the behaviour of the assembly, by allowing him to present himself as motivated by family loyalty rather than class feeling.

The structural ties that bound patrikin together could, of course, lead to conflict rather than solidarity. Arignotus, the paternal uncle (FB) of Timarchus of Sphettus, testified for Aeschines (1.102–04) against his nephew, that Timarchus had deprived him of his property, which had been held in indivision with his brother, and had even failed to support him when he appealed to the council for a disability allowance because he was blind. Demosthenes came into conflict with the two cousins (FBS and FZS) who acted as his guardians (Dem. 27); yet in the flurry of their attempts to salvage some of their ill-gotten gain, the guardians were on occasion prepared to testify against each other, as Demophon did when he acted as witness for Demosthenes in Dem. 27.14 and 16. Aeschines (2.93) alleged that Demosthenes had laid an accusation for assault against another FBS, Demophon's brother Demomeles, but did not pursue it in court. Demosthenes' younger cousin Demon, for whom Demosthenes wrote a speech and apparently acted as *synegoros* in a business affair (Dem. 32), and who proposed the motion for the orator's recall in 323 B.C. (Plut. *Dem.* 27.6), was probably the son of this Demomeles (*APF* 3597^{iv}; Demosthenes was Demon's FFBS).

The witness in Isae. 9.29 was probably the FBDH of Cleon, whose cause he was opposing. Cleon was supported by his FBWB Hierocles (6, 18); his main opponent was his uncle's stepson (FBWS). Cleon's father Thudippus had come to blows with his brother Euthycrates, and Euthycrates' descendants maintained that Thudippus was responsible for his death. Their aunt, the sister of Euthycrates and Thudippus, evidently shared this view; her husband, Cleon's FZH, testified against him in 19 and perhaps also 20.

Protarchides, who testified against Dicaeogenes III in Isae. 5.26f, was the husband of a sister of Dicaeogenes' adoptive father (FZH);

³⁷ W. E. Thompson, "Eurypolemus," *TAPA* 100 (1969) 583–86, argues that Eurypolemus was Pericles II's FMBS or FMZS. He may be right, but in Table 4 I have used Davies' reconstruction of a more distant cousinship to make the point that *if* a relationship at such a distance is noted, it is done so in exceptional circumstances. In any case Xenophon's reference to the relationship occurs not in his account of the condemnation of the generals (*Hell.* 1.7.12), but in his description of Alcibiades' return to Athens (1.4.19).

before the adoption, FFBDH). Onetor, who supported his ZH Aphobus against Demosthenes and was subsequently sued, was Demosthenes' FZSWB.

In Isae. 7.18–21 the speaker, Thrasyllus II, tried to make capital out of the fact that Thrasylochus son of Aeschines of Lusias, who had been adopted by Hippolochides of Lusias and was a nephew (ZS) by birth of Thrasyllus' opponent, had not put in any claim in opposition to that of Thrasyllus. By birth Thrasylochus was Thrasyllus' FFBDS.

Matrikin and their Affines

As we have already seen, in Isae. 9 the sister of Thudippus and Euthykrates got her husband to testify for the speaker—being affinally connected to his mother through her first husband, the speaker's MHZH—against her nephew (BS) Cleon. In the same case the speaker's maternal uncle (MB) testified against him in support of Cleon, the witness' ZHBS, a shift of allegiance that the speaker confronts with indignation and, probably, anxiety. The tie between litigant and witness was less close in this case than when Dinias testified for his son-in-law Apollodorus against his nephew Stephanus ([Dem.] 45.55), and the jury might well think that this witness considered his nephew's case to be unfounded.

Mother's brothers support their nephews with testimony in Isae. 12.5, in which the witness was MB to the speaker and FWB to the litigant; probably in [Dem.] 40.6f (*cf.* 24), where the testimony concerns the speaker's mother's dowry; and in Isae. 3.4ff, with testimony to the validity of Phileas' parents' marriage. According to [Dem.] 29.20 Demosthenes forced Aphobus' MB Demon to testify against him, but the authenticity of this speech is doubtful. Demon, Demosthenes' FB, makes no other appearance in Demosthenes' conflict with his guardians, one of whom was his son Demophon. The latter, a matrilineal cousin of Aphobus (MBS), testified against him in Dem. 27.14 and 17.

Callias III son of Hipponicus of Alopecce, Andocides' accuser in the affair of the Eleusinian Mysteries in 399 B.C. (Andoc. 1.115–23), was married to the ex-wife of Andocides' MB Epilycus son of Tisander. He was also, by an earlier marriage, Andocides' MZDH (*APF* 838, 7826). The speaker of Isae. 3 was prosecuting for perjury Nicodemus, who claimed to be the brother of the speaker's MB's wife. The speaker did not, however, recognise the validity of the marriage.

When Stephanus son of Meneclides of Acharnae testified for Phormio against Apollodorus he was testifying against his MBDH. Stephanus had business connections with Phormio.

Demosthenes' MZH Demochares testified for him in his suit against Aphobus (Dem. 27.14–17, perhaps also in 8 and 41); his son later married Demosthenes' sister. Protarchides, who testified for the speaker in Isae. 5.26f, was the speaker's MZH; Cephisodotus, to whom the speaker appealed as present in court and able to confirm the truth of his assertions, was the speaker's MZS, son of a second aunt.

In links traced through the grandparents' generation, the speaker of Isae. 8 was competing for an inheritance against his MFBS who, he claimed (3), was aided and abetted by the speaker's MFWB Diocles. In the affair of Hagnias' estate ([Dem.] 43, Isae. 11; *supra* 63 ff) Glaucon, who claimed to inherit under the terms of Hagnias' will, was initially supported by his MFBS Theopompus ([Dem.] 43.4), who later acquired the estate for himself. The speaker of Isae. 3 was opposed by his MMBs, who, to the detriment of his case, testified for his opponents (29f, 69–71).

At Isae. 8.14 relatives of the speaker's stepfather testified for him concerning his mother's filiation and marriage; and in Dem. 57.40 the speaker's matrikin from her family's phratry and deme, and "those who share the same tombs" on his mother's side, testify to her legitimacy. In Lys. 31.21–23, on the other hand, a relative of the opponent's mother (not further specified) testified that she gave the witness three minas of silver for her funeral expenses, not trusting her son—the opponent—to bury her.

Kin, Unspecified

There are numerous passages in which the witnesses are said to be kin (*prosekontes*, *syngeneis*) or are described by terms that could well include kin (*philoï*,³⁸ *oikeioi*, *anankaioi*, *epitedeioi*). Members of phratry and deme who testify to the admission of members' sons and to rituals performed by or on behalf of their wives will also often have been kin, especially patrikin, though not identified as such; it was to the litigant's advantage, when he could do so, to make his witnesses in such situations appear to be impartial.

Witnesses are explicitly identified as kin either when they are acting in a clearly partisan fashion or when they are called to testify on genealogical questions. Euxitheus of Cholleidae, a *syngenes* of the speaker, testified in Dem. 54.10 that he and a friend, Midias, had met the speaker, Ariston, being carried home after having been beaten up by the opponent; they had taken him to the baths for

³⁸ *Philos* can refer both to kin and to friends: *cf.* Humphreys (*supra* n.1) 67.

a clean-up, then to a doctor, and finally back to Midias' house for the night. This witness is clearly a contemporary of the speaker; similarly, a cousin (*anepsios*) of the opponent, Callicles, is alleged in [Dem.] 55.1, 31, to have abetted him by suing the speaker in a previous case.

Kin often appeared in court to plead on behalf of defendants, especially to appeal for light penalties for those who had been declared guilty.³⁹ Demosthenes says scornfully that when Hegesileus, a cousin (*anepsios*) of the politician Eubulus, was on trial Eubulus refused to speak on his behalf in the first part of the trial and when called upon to plead for a low penalty merely apologised to the jury for being connected with the man (19.290). Apollodorus in [Dem.] 59.117 mentions the case of Archias, the hierophant of the Eleusinian Mysteries, whose *syngeneis* and *philo*i appealed to the court but failed to get him acquitted.

In the other passages in which a term is used that emphasises the relationship of the witnesses to the litigant, the testimony concerns genealogical and family matters. In Isae. 6.46 witnesses who must be kin of *de cuius*, Euctemon, since they were claiming his daughters as *epikleroi*, are said to have testified that the opposing claimants to Euctemon's estate (whom the speaker describes as sons of the freed-woman Alce) were Euctemon's legitimate sons. In Isae. 4.24f we are told that the opponent had produced witnesses who claimed to be *syngeneis* of Nicostratus, whose estate was in dispute, and who said that his father was called Smicrus and not, as the speaker's party maintained, Thrasymachus. In Isae. 12.1 and 8 *syngeneis* of speaker and defendant are said to have testified to the defendant's legitimacy. In Isae. 8.18–20 *prosekontes* of the speaker's father testify that they were invited to a feast (*ἑστία*) to celebrate the marriage of the speaker's parents. In [Dem.] 43.36 and 42f, as we have already seen, witnesses identify themselves as *syngeneis*. In *P.Oxy.* XXXI 2538 iii.2ff and iv.21ff *syngeneis* testify to the litigant's introduction to his father's phratry. In Dem. 57.23 *syngeneis* in the speaker's phratry testify that he was elected to be its phratriarch; *syngeneis* and *oikeioi* in the phratry bear witness that his father celebrated the *gamelia* for his mother when he married her (43); and *syngeneis* witness that his four siblings were buried in the family tomb (*πατρῶα μνήματα*, 28). Some of these witnesses are likely to be identical with those denoted

³⁹ Athenian courts separated verdict from sentence except where fixed penalties were prescribed by law, but the sentencing procedure was still adversarial, with the two parties proposing alternative penalties, or estimates of damages, to the jury (Harrison [*supra* n.16] II 166).

by a more precise genealogical reference in other testimonies, who have been discussed above.

In other passages kin are not explicitly mentioned, but we can be fairly sure that they were included. [Dem.] 49.10 refers to appeals by *oikeioi* and *epitedeioi* on behalf of Timotheus, and in [Dem.] 58.4 (*cf.* 70) the speaker refers to *oikeioi* who will speak on his behalf. In other cases the subject of the testimony makes it likely that the witnesses were kin or affines. In Isae. 3.52f,⁴⁰ [Dem.] 41.26, and Dem. 57.43 witnesses testify concerning arrangements made at betrothals; in Dem. 39.20 and 36, to the name given to Mantitheus (*APF* 9667) at his tenth-day naming ceremony (*ἡ δεκάτη*); in Isae. 6.26 (*cf.* 23) *anankaioi*, and in Lys. 32.18 (*cf.* 12) *epitedeioi*, testify about what was said at family councils. In Lys. 19.41 and Isae. 5.6 witnesses testify to the contents of wills (*cf.* [Dem.] 41.16–18, *etc.*); in Isae. 8.27, to an accusation made at a funeral; in [Dem.] 41.11, to financial contributions made for commemorative rites and sums borrowed from a woman, the speaker's mother-in-law; in Isae. 9.25 there is testimony that Hierocles, one of the opponent's witnesses, had offered to produce a will in favour of anyone who would share the estate with him (an offer that can only have been made to kin of *de cuius*); in Isae. 5.12f witnesses testify that the speaker's cousin (MZS) had deserted their common cause in a previous suit over their inheritance rights; in Lys. 10.5 witnesses state that the speaker's elder brother defrauded him while acting as his guardian; in [Dem.] 40.14f witness testimony concerns the division of an inheritance. *Oikeioi* testify at Isae. 6.35–37 on the opponents' attempt to register the sons of Alce as orphan heirs of Philoctemon and his brother, and their bid to have the disputed estate of Philoctemon's father Euctemon leased to them as guardians; these may also have been relatives of Euctemon and of the speaker.

IV. Patterns of Athenian Kinship

Table 4 shows that the range of kin explicitly and precisely identified as such in Athenian courts was narrow; frequency of attested interaction falls off rapidly outside the limits of trust based on co-

⁴⁰ Although the speaker implies that witnesses will testify that Endius betrothed his adoptive sister Phile "as the daughter of a *hetaira*," it is unlikely that they referred to any formal statement of the girl's illegitimacy made at her betrothal. Wyse (*supra* n.31, *ad loc.*) suggested that the jury was being directed to make this inference from the smallness of the dowry, but it is simpler to assume that the witnesses testified to their own understanding of Phile's status, and that the air of formality added to this testimony by associating it with the occasion of her betrothal is quite spurious.

residence at some stage in a nuclear family unit. Ties traced through women seem to have been rather more likely to produce support than those traced through males: affines and step-kin figure positively in solid numbers, and there is perhaps a slight tendency for matrilin to appear as more supportive than patrikin, although the difference is certainly not statistically significant.

The narrow range of kin ties asserted in court, and their essentially bilateral distribution, is the pattern one would expect from the lack of any exogamy rule in Athenian descent groups and from the structure of Athenian inheritance law, in which in each generation a sister's son could inherit if there were no brothers or brothers' descendants. The position of an Athenian within the descent group (deme and phratry) did not depend on remembering agnatic genealogy in depth; subgroups that formed within these units are likely to have been fluid in membership and recruited through a mixture of ties (kinship, affinity, neighbourhood, *etc.*). This structure is characteristic of societies that permit marriage within unilineal descent groups (Semites, Kurds, Tswana). There were no jural rights or obligations in Athens, other than citizenship and inheritance (and prosecution in homicide cases), that depended on precise degrees of kinship. Furthermore, the tone of references to kin in court speeches indicates that where genealogical testimony was not in question there was no advantage in stressing kinship, except when excusing behaviour that did not conform strictly to the standards of the public sphere. Kinship or friendship is emphasized, however, where a supporting speaker might otherwise be suspected of acting for political motives or as a professional expert (Dem. 32, [Dem.] 59), or where the speaker stresses his helplessness and the pathos of his situation after an attack (Lys. fr.17 G.). The law on homicide explicitly charged the victim's next-of-kin with the duty of prosecuting the killer. But where reliable testimony on non-genealogical matters was required, the ideal witness was not a kinsman, but a respectable acquaintance of long standing with a reputation of probity to uphold.⁴¹ It was, however, exceedingly valuable to be able to produce a witness who was kin or friend both to the litigant and to his opponent. If a witness had ties of loyalty to both sides, it might be supposed that the truth would prevail.

Earlier work on the use of kin as witnesses in court has taken a very different line, regarding the frequent appearance of kin as witnesses and supporters as a survival, motivated by a sense of moral obligation that had its historical roots and *raison d'être* in an earlier

⁴¹ Humphreys (*supra* n.4).

stage of society when cases were decided by oath-helping or when group members had to support each other because, in a state of generalized feud, other groups treated them as structurally equivalent. Such views rested on conceptions both of oath-helping and of primitive society that are clearly obsolete. Oath-helpers are not selected primarily for their structural closeness to litigants, but for the weight carried by their words; the society made up of isolated descent groups as conceived by Maine and Glotz⁴² is a myth. Glotz, in addition, systematically confused the use of the Greek term *genos* to refer to bilateral kindred with its later use as a quasi-technical term for aristocratic patricians owning rights to priesthoods. Certainly the material from Attic forensic speeches in no way suggests that agnates had a particular obligation to support each other in court. I have argued elsewhere⁴³ that the use of large city courts to try Athenian cases from 460 onwards radically altered the context in which litigants had to justify their actions; in assessing this new situation and the way in which Athenians responded to it, comparisons with anthropological studies of village moots or historical data from small mediaeval communities are not likely to be of much relevance.

To turn from the structure of the kindred, as presented in the courts, to the content of relationships implies focusing on the strategic choices made by litigants in presenting a case, insofar as they can be reconstructed, and on the implicit categories and assumptions that underlie these strategies.

Age seems to emerge as the main general principle that differentiates the quality of relations between kin and the type of support that can be expected from them. Coevals and juniors, whether patrikin, matrikin, or affines, can be called on for physical action and for more doubtful manoeuvres than the older generation would be asked to engage in. Even the difference in relative age between sister's husband (older than Ego) and wife's brother (younger) may be significant. The litigant who took along a cousin of his father when trying to remove his maternal grandfather's corpse to his own home for funeral rites (Isae. 8.21–24) selected a witness who had no personal involvement in the affair but whose age and kinship to the litigant were appropriate to the solemn and intimate character of the situation. At first sight this evidence of respect for the old in democratic Athens may seem surprising, but perhaps the generation gap that has

⁴² H. S. Maine, *Ancient Law* (London 1861); G. Glotz, *La solidarité de la famille dans le droit criminel en Grèce* (Paris 1904).

⁴³ S. C. Humphreys, "The Evolution of Social Process in Attica," in *Tria Cordia: Studi in onore di Arnaldo Momigliano* (Como 1983) 229–56, and *supra* n.4.

been detected in classical Athenian society may have had the effect of heightening the difference in weight between the testimony of an older man and that of the speaker's contemporaries, especially when the speaker was himself under thirty.

Perhaps the most striking implication to emerge from this study, however, is the structural importance of women in maintaining ties between males in Athenian society. Mothers ensure positive relations between their sons and the latter's stepfathers, at least when the sons are sufficiently young at the time of their mother's second marriage (whereas remarried men seem less successful in securing harmonious relations between their two families); wives and sisters encourage brothers-in-law to cooperate; wives maintain ties between their fathers and their husbands. Diogiton's daughter (Lys. 32) mobilises her DH, her second husband, and other kin in defence of the inheritance rights of her sons by her first marriage; Hagnias' mother, married within her own kindred, affects reactions to the disposal of her son's estate (Isae. 11). Women are seldom mentioned in court, but the traces of their activities are nevertheless inscribed in the network of alliances that emerges there. Indeed, given the evident relationship between court speeches and theatre and the prominent rôle of women in tragedy and comedy, it might seem surprising that Lysias' presentation of Diogiton's daughter as a tragic heroine was not imitated and developed by later speech-writers. But conceptions of the material and behaviour proper for the public milieu of the courts may well have intervened. A speaker had to argue that his case was objectively just, and to give women a dramatic part in the narrative would not aid in that enterprise. The place for women and children to appear in court was, normally, after the preliminary verdict had been given, when the defendant's arguments gave way to appeals for pity and a light sentence.

The sparseness of the evidence available to the ancient historian, though frustrating, at least highlights problems of combining data from different contexts and genres; in anthropology it is still comparatively rare to find a study that insists that strategies in the use and presentation of kinship vary from one context to another.⁴⁴ Though this paper has stressed the influence of the legal context on the picture of kinship conveyed in forensic speeches, the problem is not peculiar to societies in which rhetoric is highly developed. Stereotyped conceptions of kinship rôles always imply some kind of public con-

⁴⁴ Cf., however, M. Bloch, "The Moral and Tactical Meaning of Kinship Terms," *Man* 6 (1971) 79-87.

text, even if it is only the spaces between huts that Rivers watched in the Torres Straits islands. It was when Athenian society became more mobile and people no longer lived out their lives in a village or neighbourhood shared with their kin that kinship rôles became material for representation before a new kind of audience, no longer in the community but in the courts or the theatre. Here the tensions between the demand of the public sphere for objectivity and private demands for loyalty and unconditional solidarity became more explicit. But even in the most intimate contexts kinship involves struggles between patterns of interaction built up out of the sediment of private experience and expectations drawn from a common cultural stock. This paper is intended as a contribution to the reconstruction of this stock of common expectations.

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