

principle not only distinguishes him from Plato, who calls the model according to which the Demiurge constructs the cosmos "father" (50D3), but also sets his account apart from the many creation myths which begin with Heaven and Earth.

JOHN BUSSANICH
Mt. Angel Seminary

THE DATE OF HAGNIAS' DEATH

Both Isaeus 11 and [Demosthenes] 43 deal with disputes over the estate of Hagnias son of Polemon of Oeum Cerameicum, who made his will when about to serve as ambassador and died not long after making it.¹ A niece was adopted by will and inherited; when she died, Hagnias' matrilateral half-brother Glaucon, named as residual heir in the will, was successfully challenged in court by Phylomache II, wife of Sositheus, the speaker of [Demosthenes] 43. Phylomache in turn was defeated by Theopompus, the speaker of Isaeus 11; he held the estate until his death, when his heir Macartatus was challenged by Sositheus, this time claiming on behalf of his second son Eubulides III. It was for this latter suit that [Demosthenes] 43 was composed.

Harpocraton refers to a Hagnias who was captured and killed by the Spartans while on an embassy to Persia, and it has generally been assumed that this Hagnias was the man with whose estate our speeches are concerned. Since a witness testimony in [Demosthenes] 43. 31 dates an early stage in the dispute to 361/360 B.C., Harpocraton's embassy was dated in the 370s until the publication of the *Hellenica Oxyrhynchia*, which dates it to 396. However, if Hagnias the son of Polemon died in 396, it is hard to understand what his kin were doing between that date and 361/360. Attempts to eliminate this problem have hitherto taken the form either of rejection of the chronological testimony of [Demosthenes] 43. 31 or of complicated hypotheses about the history of the family.² The aim of this article is to show that neither of these two approaches is satisfactory, and to argue instead that we should reject the identification of the testator Hagnias with the ambassador of 396, and return to a date in the 370s for the death of the testator.

REJECTION OF THE ARCHON-DATE IN [DEMOSTHENES] 43. 31

Both P. Roussel and L. Gernet, editors of the Budé texts of Isaeus and of Demosthenes' private speeches, felt that a 35-year gap between Hagnias' death and the delivery of Isaeus 11 was impossible, and rejected the date in [Demosthenes] 43. 31 on the grounds that the witness testimonies in this speech were of doubtful reliability. The strongest argument against the authenticity of this particular testimony arises from its statement that Phylomache II defeated all her rivals in 361/

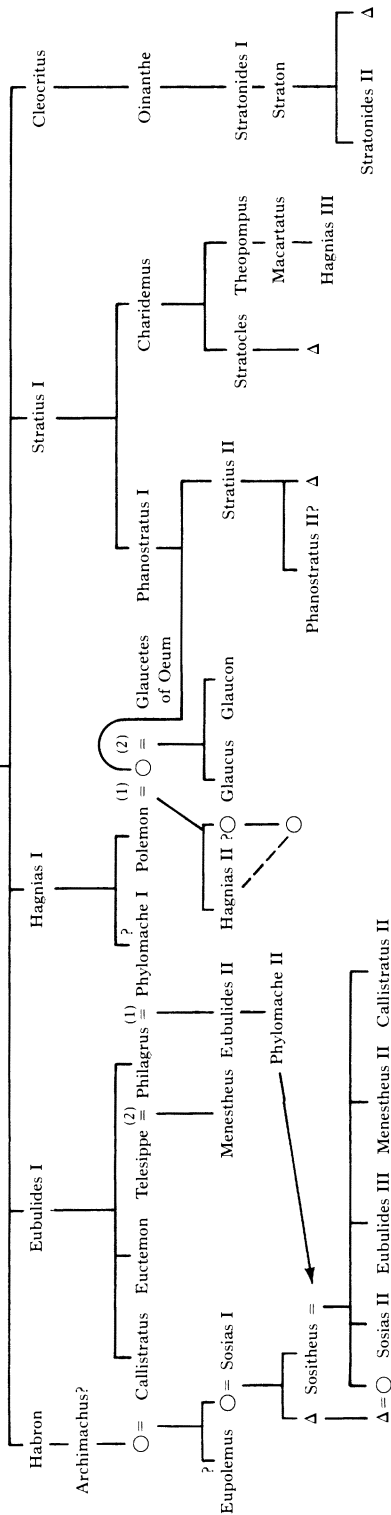
1. It is not explicitly stated in Isaeus 11. 8 that he died while on the embassy.

2. The most recent discussions are those by J. K. Davies, *Athenian Propertied Families* (Oxford, 1971), no. 2921 (cited as *APP*), and W. E. Thompson, *De Hagniae Hereditate*, *Mnemosyne* Supp. 44 (Leyden, 1976); cf. the stemma in table 1.

TABLE 1

A SIMPLIFIED GENEALOGY OF HAGNIAS' KIN

Buselus of Oeum Cerameicum



NOTE: The birth order of Buselus' sons is not known.

360 in a hearing before an arbitrator: inheritance cases were not in the category of suits for which a preliminary hearing before an arbitrator was required.³

Against this argument one may point out, in the first place, that there are other reasons—though admittedly not compelling ones—for dating Isaeus 11 and the lawsuits associated with it in the late 360s. The interval between the suits associated with Isaeus 11 and that for which [Demosthenes] 43 was composed is approximately known: Eubulides III, the claimant in [Demosthenes] 43, was between 16 and 18 at the time when that speech was delivered, and probably was not yet born at the time of the earlier litigation.⁴ At the time when [Demosthenes] 43 was delivered Sositheus' opponent Macartatus had a son (§§ 77–78), but a younger son, Hagnias III, was not yet born; Hagnias III appears in a list of *epheboi* probably to be dated in 325/324, and consequently was born ca. 343.⁵ Furthermore, [Demosthenes] 43 has stylistic affinities with [Demosthenes] 48, which is dated in the late 340s. These arguments are not conclusive, but on the assumption that the families concerned were normally spaced, they fit very well with a date of 361/360 for the beginning of the earlier round of lawsuits.

Second, the arguments for rejecting the witness testimonies in [Demosthenes] 43 are not strong. The point of law—that inheritance cases did not come before the public arbitrators—is not a conclusive argument. We do not know how Sositheus and Phylomache chose to proceed with her claim to the estate. They had to overturn a will which had been accepted as valid at the time of Hagnias' death and perhaps again later (see below), and they may have chosen to reopen the issue by prosecuting one of the witnesses to the will for perjury.⁶ The fact that

3. P. Roussel, *Isée* (Paris, 1922), p. 189; L. Gernet, *Démosthène: Plaidoyers civils* II (Paris, 1957), pp. 93–94, 105. The point about arbitration is already made by A. Westermann, "Untersuchungen über die in die attischen Redner eingelegten Urkunden, II. Prüfung sämtlicher in die attischen Redner eingelegten Zeugenaussagen," *Abh. phil.-hist. d. Königlich sächs. Ges. Wiss.* (Leipzig) 1 (1850): 61–136, in a general attack on the authenticity of all the witness testimonies included in our texts of the Attic orators. This extreme position was refuted by E. Drerup, "Über die bei den attischen Rednern eingelegten Urkunden," *Jahrb. f. cl. Phil.*, Supp. 24 (1898): 223–381; epigraphic discoveries since Drerup's day have strengthened his position by establishing the historicity of some of the persons named only in witness testimonies.

4. The age of Eubulides III is deduced from the fact that he had been presented to the family's phratry as adoptive son of his mother's father ([Dem.] 43. 11–14), but had not yet been presented to his deme and consequently was not able to plead in person; his elder brother acted as his legal guardian (§11). As to his date of birth: in §11, after describing the defeat of his wife in the earlier round of lawsuits, Sositheus says, "But after the birth of this boy [Eubulides III], when the time came . . . I introduced him to Hagnias' phratry as the adopted son of Eubulides, born of Eubulides' daughter. . ."; he implies that the boy was born after Phylomache had lost control of Hagnias' estate—though of course he may be indulging in *suggestio falsi*.

5. *APF* 2921.XII; for the date of the ephebic list in which Hagnias III figures, see the review of O. W. Reinmuth, *The Ephebic Inscriptions of the Fourth Century B.C.*, *Mnemosyne* Supp. 14 (Leyden, 1971), by D. M. Lewis, *CR* 23 (1973): 254–56. This paper several times makes use of normative expectations about marriage age and family spacing. I am aware that such arguments are fragile; but they serve to show that the difficulties created by assuming a 35-year gap between Hagnias' death and the lawsuits connected with Isaeus 11 are at least as great as those involved in the view that Hagnias did not die in 396.

6. See below for the question whether the claim of Phylomache's father, Eubulides II ([Dem.] 43. 43–45), was made at the time of Hagnias' death or on a later occasion. The witness sued for perjury would presumably have been Glaucus (brother of the beneficiary of the will, Glaucon), named in [Dem.] 43. 7 as Phylomache's principal opponent at this stage. The decision that the will was invalid was followed by a herald's proclamation inviting anyone who wished to claim the estate to come forward; this may be a further indication that the initial suit was not a *diadikasia* for the estate, although the question of the legal consequences of a successful perjury suit is a particularly obscure point in Attic law (A. R. W.

two emendations are required in the testimony in § 42, Φανόστρατον τὸν Στρατίου πατέρα for Φανοστράτην τὴν Στρατίου θυγατέρα and Σωσίον for Σωσιθέον, is not particularly disquieting, especially since the former is now supported by epigraphic evidence.⁷ Gernet himself admits (p. 110) that the witness testimonies contain “des données de fait dont l’invention serait bien gratuite,” and accepts the other documents in the speech as genuine. He is disturbed by the way in which the witnesses constantly harp on the fact that Hagnias’ father Polemon had no brother, which does not seem to have been a controversial issue; but Thompson has pointed out that the speaker, Sositheus, was hard pressed to prove that his wife’s father’s mother Phylomache I was a full sister of Polemon, and had to fall back on irrelevancies. As I shall argue more fully elsewhere,⁸ what was important for Sositheus was to give the jury the impression that the greater part of Hagnias’ kindred was lined up on his own side; the precise content of their testimony did not matter. From this point of view the witness testimonies are skilfully framed and certainly do not look as if they were composed by a late editor whose interest was in prose style rather than the practice of law.

SUPPOSED MARRIAGE OF HAGNIAS’ ADOPTED DAUGHTER

We now have to look more closely at the events between Hagnias’ death and Phylomache’s bid for his estate in 361/360. The controversial points are: (1) the relation between Hagnias and his adopted niece; (2) the date of Eubulides II’s claim to the estate ([Dem.] 43. 43) and of his death (Isae. 11. 9); (3) whether the adopted niece married, and if so, who was her husband.

Harrison, *The Law of Athens*, vol. 2: *Procedure* [Oxford, 1971], pp. 192–95). Theopompus’ initial support for Glaucus and Glaucon ([Dem.] 43. 4) was presumably due to the fact that their mother (also mother of Hagnias) was his father’s brother’s daughter: this is an interesting example of the influence which could be exerted in intrafamilial disputes by women, particularly those who married within their own kindred.

7. A Phanostratus son of Stratius of Oeum Cerameicum is now attested in a list of councillors dated epigraphically between ca. 380 and 353/352, and probably to be assigned to 371/370 (J. S. Traill, “Diakris, the Inland Tritty of Leontis,” *Hesperia* 47 [1978]: 84–109); this in itself is almost sufficient to confirm the reading *Phanostratus* in §22, where A has *Phanostratus* and all the other MSS have *Phanostrate*, and to require the emendation of A (the only MS which contains the documents and witness testimonies) in §42 from *Phanostrate* to *Phanostratus*. In addition, the sense of the testimony requires that each of the persons named should be a male, identified by relation to a son or daughter.

The councillor is probably Phanostratus II, son of Stratius II, who died shortly before Theopompus acquired the estate, ca. 360 (Isae. 11. 10). Phanostratus I, father of Stratius II and of Hagnias’ mother, would have been over 65 even on the shortest chronology in 371, since we must assume that Hagnias was at least 30 when appointed as ambassador, that his mother was at least 15 when he was born, and that Phanostratus himself was over 20 when he married. If he was about 30 at marriage, as was normal for men whose fathers did not die young, he would have been over 75 in 371. It is unlikely that there was any age limit for the post of councillor in Athens; giving advice was traditionally the prerogative of the elderly, and Spartan councillors began their term of office at 60. Socrates was councillor at 63 (cf. P. J. Rhodes, *The Athenian Boule* [Oxford, 1972], pp. 1–2, n. 8); other men who were councillors at or near the age of 60 may be found at *APF* nos. 4719, 5463, 5791 (+ Add. p. 597), 8065, and 8157. Oeum Cerameicum was a small deme which elected only one councillor per year and this family probably held a dominant position in it (one of the only three other fourth-century councillors known is Hagnias’ half-brother Glaucus); it would not be surprising that Phanostratus II should have been elected as councillor shortly after reaching the minimum age of 30. If Hagnias died in the 370s, it is even possible that the councillor is Phanostratus I, elected in his 70s. It should be noted that a birth-date of ca. 450–440 is required for his brother Charidemus, which makes a difficulty for the view that Hagnias died in 396 (*APF* 2921.VIII).

8. S. C. Humphreys, “Witnessing in Athenian Lawcourts,” *History and Anthropology* (forthcoming).

Hagnias' adoption of his niece (ἀδελφίδη) was evidently testamentary, and the family therefore had an opportunity to contest it at his death if they wished. Most commentators assume that there was no conflict at this point, because the girl was the child of a full sibling of Hagnias and in any case his next of kin. Thompson, however, suggests that the girl was the daughter of one of Hagnias' matrilineal half-brothers, Glaucus or Glaucôn,⁹ and that the will was contested by Eubulides II. He deals with the reference in [Demosthenes] 43. 43 (as usually emended) to a suit of Eubulides against Glaucôn (πρὸς Γλαύκωνα for προσκλαίονσα codd.) by hypothesizing that Eubulides and Glaucôn may have been rival claimants for the right to marry the girl when she grew up. However, the witness testimony in [Demosthenes] 43. 43 says that the suit was for the estate (ἐπιδικασία τοῦ κλήρου), not for the *epikleros*; and it is doubtful whether an *epikleros* could be claimed in court before she reached marriageable age.¹⁰ On Thompson's reconstruction, first Eubulides II and then the adopted niece had died by ca. 385. This creates major chronological difficulties. Glaucôn is left to hold the estate, apparently undisputed, for 25 years before Sositheus and Phylomache II put in their claim to it, although Phylomache, being conceived before her father's death, in 386 at the latest according to Thompson's chronology, and being an *epikleros* ([Dem.] 43. 13), must have married ca. 370, as soon as she reached marriageable age. It is hard to see why Sositheus should have waited almost 10 years before challenging Glaucôn's possession of the estate.¹¹ Furthermore, his second son, Eubulides III, appears to have been still unborn in 361/360 (see n. 4), which again suggests that the couple had not been married for long.

A more common view is that the adoption of the niece was unchallenged because she was Hagnias' next of kin; that Eubulides II challenged Glaucôn's right to inherit when she died, but lost his case; and that Phylomache II could not claim until her father died. But this view too leaves Glaucôn in possession of the estate for an awkwardly long period, since *ex hypothesi* the adopted daughter died before reaching the age of marriage.¹²

Davies (*APF* 2129.IX) therefore suggested that the adopted niece did marry, presumably between ca. 385 and 382.¹³ The problem here is that one might expect

9. He considers that Theopompus' statement in Isaeus 11. 8, that "Hagnias did not leave his property to us, the next of kin . . . but adopted a niece," implies that the niece was more distantly related to Hagnias than Theopompus was. But one might equally well argue that, if Theopompus really had grounds for such a claim, he would have made them explicit.

10. Cf. A. R. W. Harrison, *The Law of Athens*, vol. 1: *The Family and Property* (Oxford, 1968), p. 138. I think it unlikely that an *epikleros* could be claimed before she reached marriageable age, because there would be such a high probability that the issue would be reopened when the girl grew up.

11. On this chronology, Glaucôn would have had ample time to father a son and adopt him posthumously to Hagnias to bolster his right to the estate, a stratagem that could hardly have failed to occur to him.

12. This view implies rejection of the statement at Isaeus 11. 9 that Eubulides II died before Hagnias' adopted daughter. As Thompson says, it is hard to see what Theopompus stood to gain by lying on this point. But accepting the statement creates more difficulties than rejecting it.

13. He suggests that Eupolemus, who competed for the estate against Phylomache with Theopompus, Glaucus, Glaucôn, and Hagnias' mother in ca. 360, was a son of this marriage; but as Thompson has already noted, a son would have outranked all the other claimants so decisively that one could scarcely understand how the case came into court. Another possible identity for Eupolemus is that of the witness who testified in [Dem.] 43. 37 and 45. He was a kinsman of Hagnias who had been adopted by his grandfather, therefore the son of an *epikleros*. (Adoption to the maternal grandfather in this situation was morally obligatory and is well attested; adoption by paternal grandfathers is unknown and would have been structurally redundant.) Possibly, therefore, he was the son of Callistratus, who married the

that Eubulides II (or indeed some other kinsman) would have tried to claim her as *epikleros*; yet no mention is made of such a claim. There is no reason to suppose that Eubulides was already married when the girl reached marriageable age;¹⁴ his daughter Phylomache II need not have been born until ca. 375.

These difficulties attendant on the various solutions proposed to deal with the problem of the 35-year interval between 396/395 and 361/360 seem to me sufficiently grave to warrant a closer look at the reasons for accepting 396/395 as the date of the death of Hagnias the son of Polemon.

THE EVIDENCE FOR DATING HAGNIAS' DEATH

Isaeus 11. 8 says that Hagnias adopted his niece "while preparing to sail off on that embassy which had favorable results for the city" (ὅτε ἐκπλεῖν παρεσκευάζετο πρεσβεύσων ἐπὶ ταύτας τὰς πράξεις αἱ τῇ πόλει συμφερόντως εἶχον). Harpocration, s.n. "Hagnias," says, "Isaeus mentions him in his speech *Against Eucleides about a Farm*. Androtion in Book 5 of his *History of Attica*, and Philochorus, say that he and his fellow-ambassadors were captured and put to death by the Spartans" (Ἰσαῖος ἐν τῷ πρὸς Εὐκλείδην περὶ χωρίου. τοῦτον καὶ τοὺς συμπρεσβευτὰς αὐτοῦ φησὶν Ἀνδροτίων ἐν Ἐ τῆς Ἀττικῆς [FGrH 324 F18] καὶ Φιλόχορος [FGrH 328 F 147] ὡς ἐάλωσαν τε καὶ ἀπέθανον ὑπὸ Λακεδαιμονίων). It was suggested by G. F. Schoemann,¹⁵ and has since been generally assumed, that Harpocration's Hagnias was also the Hagnias of Isaeus 11, although Harpocration does not say so. The omission is, however, puzzling. Can Harpocration (or his sources) have overlooked, in writing this lemma, that Isaeus 11 also referred to a Hagnias whose death was connected with an embassy? If the failure to mention Isaeus 11 is not an oversight, does it indicate that ancient scholars felt it obvious that the two men called Hagnias were different, or that they had no means of telling whether they were identical or not? Since other entries in Harpocration do distinguish homonyms, I am inclined to take silence as an indication of uncertainty.

Even before the discovery of the *Hellenica Oxyrhynchia*, which firmly dated the embassy of Harpocration's Hagnias to 396/395 and thereby introduced the problem of the 35-year gap, there was room for doubt about the identification. How can Isaeus' reference to an embassy which the jury is apparently expected to remember for its successful outcome be taken to apply to one known in the historical tradition only for the death of all the ambassadors? W. Wyse noted the difficulty and tried to mitigate it by suggesting that when the speaker called the

granddaughter of Habron, daughter of a child of his father's brother ([Dem.] 43. 73)—in which case he was Sositheus' mother's brother. As son of Callistratus he stood in the same relationship to Hagnias as Theopompus, Stratocles, and Stratius II. This identification would explain why Sositheus was vague about Eupolemus' identity in [Dem.] 43. 7. Few jurors, however, would be acute enough to ask themselves, when the witness gave his name, whether this was the same man who had been mentioned 28 paragraphs earlier. This identification is admittedly open to the objection that, since in this case Eupolemus' claim to the estate would have been as good as Theopompus', they should have shared the inheritance. However, Theopompus was clearly good at impressing jurors; in my opinion, since I do not believe that Attic inheritance law placed any limit on inheritance *per stirpes*, Phylomache II and the sons of Stratius and Stratocles, being all children of agnatic second cousins of Hagnias, also had as good a right to inherit as Theopompus. In any case, the whole procedure in this suit is extremely puzzling (it is impossible to understand on what basis Hagnias' mother was claiming, or on what basis Glaucus and Glaucón claimed if they were not representing her), and speculation cannot carry us very far.

14. In any case a man could divorce his wife in order to marry an *epikleros*.

15. *Isaei orationes XI cum aliquot deperditarum fragmentis* (Greifswald, 1831).

embassy "successful *for the city*," the jury would understand him to imply "though not for Hagnias himself."¹⁶ But this is scarcely convincing; and in fact modern scholars mostly assume that the ambassadors of 396 were captured on their way to the Persian court and therefore failed even to reach their destination. Certainly if they did reach the Persian court their negotiations were not considered worth recording by Athenian historians, and Theopompus could not have expected an Athenian jury to remember them in 359.

To find another embassy which would fit Isaeus' description better is not an impossible task. The name Hagnias was common enough in Attica, and the times were sufficiently insecure in the early fourth century for almost any ambassador to make a will before leaving. Nor need death on the journey be regarded as too exceptional to have happened to two men of the same name within the same quarter-century; yet it should be noted that Isaeus 11 does not state that Hagnias actually died while serving as ambassador.

Plenty of embassies left Athens between 400 and 360—more even than are recorded in our sources. But one seems especially suitable. Probably in 375 or 373 Athens sent five or seven ambassadors, only two of whose names survive, to the court of Amyntas, king of Macedon¹⁷ (*IG* 2².102; Tod, *GHI* 2.129). Amyntas became Athens' ally, and in 371 his representative at the peace congress in Sparta recognized Athens' right to control Amphipolis and supported the motion that the Hellenes should help her regain it. Amyntas died in 369, but in 359—the probable date of delivery of Isaeus 11—Philip, newly established as king of Macedon, reiterated the recognition of Athens' rights. It is highly likely that mention was made in the Assembly at this time of Athens' earlier alliance with Amyntas and its favorable results. Amphipolis meant much to the Athenians; one can easily imagine Theopompus taking advantage of the euphoria produced by Philip's concession to present the jury with a moving sketch of Hagnias adopting his little niece before setting out on the embassy which indirectly led to this happy result, in the will which he, Theopompus, would never have dreamed of upsetting had not the wicked Phylomache unjustly gained possession of Hagnias' estate.

This identification of the embassy on which Hagnias the son of Polemon served is of course no more than a conjecture. The point I wish to establish is that the identification with the embassy of 396 is not obligatory, creates serious chronological difficulties, and does not even fit with Isaeus' text in 11. 8. We should therefore return to a date in the 370s for Hagnias' death and assume that his adopted daughter died, before reaching marriageable age, in the late 360s, after which the claim to the estate by Glaucon, the opposition of Eubulides II, his death, the attack on the will by Sositheus and Phylomache, and the *diadikasia* in which the estate was awarded to Theopompus, all followed in fairly rapid succession.¹⁸

S. C. HUMPHREYS
University College London

16. *Isaeus* (Cambridge, 1904), p. 684.

17. Hagnias' embassy went by sea (Isae. 11. 8). In 346 Philip's ambassadors to Athens traveled by land (Aeschin. 2. 111), but both Athenian embassies to Macedon traveled via Oreos, therefore by sea (Dem. 19. 163, 154–55). The third embassy, to Philip and the Amphictyons, traveled via Chalcis (Aeschin. 2. 95; Dem. 19. 125), which also seems to imply a sea journey.

18. I should like to thank D. M. Lewis for his extremely helpful comments on an earlier draft of this paper.