WOMEN IN GREEK INHERITANCE LAW

In 1824 Eduard Gans, in the course of a study of inheritance law, had occasion to deal with the class of women known in Athens as *epikleroi*—daughters of a deceased man who, in the absence of sons, were married to their nearest relative, with the estate of the deceased passing to the son or sons of the new union.[1] 'For these,' he wrote, '. . . the basic concept throughout is not that, in the absence of descendants, they themselves appear as inheritors, but rather that they are inherited along with the property by the collaterals.'[2] Gans was speaking only of *epikleroi*, and he was doing so on the basis of the Athenian evidence, which was all that was available at the time; but his rather striking way of putting the matter has tempted later scholars to expand his dictum. Thomas Thalheim included all women who inherited: 'In general,' he wrote, '. . . female members of the family could claim from the estate only maintenance and a dowry; and even where, in the absence of males of equal rights, they appear as heiresses, they actually serve merely to mediate the inheritance for the claimant next in succession.'[3] Ludovic Beauchet drew conclusions about the proto-Greek situation which were even more far-reaching, seeing in the rights of the next-of-kin to the *epikleros* 'a singular right which is, perhaps, nothing but a vestige of the original exclusion of daughters by the collaterals on the father's side'.[4]

All of these authors were writing, in the nineteenth century, under the influence of an 'evolutionary' viewpoint which saw civilization as a development from a primitive patriarchal organization; with the growing unpopularity of this view, statements of the sort quoted above have disappeared from more reputable works. J. H. Lipsius, though he accepted Gans's formulation, applied it (as had Gans) only to *epikleroi*,[5] and A. R. W. Harrison, while describing the law of Athens in detail, avoided speculation on its historical or psychological origins.[6] Although no one ever disproved the old view, we should perhaps have been content to leave it in the graveyard which houses formerly fashionable opinions whose vogue has passed.[7]

[1] For a description of the *epikleros*' situation see A. R. W. Harrison, *The Law of Athens*, i (Oxford, 1968), 9–12, 113, 132–8, 309–11.

[2] Eduard Gans, *Das Erbrecht in weltgeschichtlicher Entwickelung*, i (Berlin, 1824), 338–9.

[3] K. R. Hermann, *Lehrbuch der griechischen Antiquitäten* ii[1] (Rechtsaltertümer), 4. Auflage von Th. Thalheim (Freiburg i. B. and Leipzig, 1895), 65–6. In one case (Isaeus 10), an Athenian presents his mother as having been *epikleros* to an estate which was technically her brother's, not her father's; but his representations are no reason to believe, as did E. Hafter (*Die Erbtochter nach attischem Recht* [Leipzig, 1887], 21 ff.), that all women who inherited were *epikleroi*. See G. E. M. de Ste Croix, 'Some Observations on the Property Rights of Athenian Women', *C.R.* N.S. xx (1970), 276; Harrison, op. cit. i. 113; and W. Wyse, *The Speeches of Isaeus* (Cambridge, 1904, reissued Hildesheim, 1967), 655–6.

[4] Ludovic Beauchet, *Histoire du droit privé de la république athénienne*, iii (Paris, 1897, reissued Amsterdam, 1969), 465. L. Gernet, 'Sur l'épiclérat', *R.E.G.* xxxiv (1921), 368–9, doubted this, but did not have the evidence to disprove it completely.

[5] J. H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig, 1905–15, reissued Hildesheim, 1966), 540–1.

[6] Op. cit.

[7] In 1932 Gustav Klaffenbach, publishing *I.G.* ix[2]. 1. 2, wrote, 'notatu dignum est, quod etiam feminae heredes fieri possunt', as though that were not the case in the rest of Greece; and in 1934 W. Erdmann, who should have known better, thought that the

More recently, however, the opposite view has been taken up by R. F. Willetts, who sees in Greek succession laws 'the encroachment of males upon the old established rights of tenure of females',[1] and in the Gortynian law 'traces of more ancient matriarchal traditions'.[2] Mr. Willetts bases his claim chiefly upon a comparison of the law of Gortyn with that of Athens, coupled with the assumption that the Gortynian situation is the more primitive. This is a step beyond the scholars cited in the first paragraph, who based their beliefs entirely upon Athens.

Our current state of knowledge, however, is much better than it was in the nineteenth century. We now have significant fragments from the inheritance law of four different states of Greece, plus two succession-rules laid down by individuals. They have received no unified treatment, but taken as a whole, as we shall see, they shed considerable light on the question of women's place in Greek inheritance law.

At Athens, the basic principles are fairly clear, though their precise application is a matter of heated debate among the moderns as it was among the Athenians. In essence, a man's sons were his automatic heirs, and his estate was divided among them; daughters, in the presence of sons, had no claim. If there were no sons, natural or adopted, the daughter became an *epikleros*: she married the next-of-kin, and the sons of this union, when they came of age, were the heirs of the property. If the man had neither sons nor daughters, his paternal relatives inherited: first brothers (or their children); failing these, his sisters; next his uncles; then his aunts; next, perhaps, his great-uncles, and then his great-aunts.[3] If there were no paternal relatives within this circle, maternal relatives came in the same order: brothers, sisters, etc. Failing these, the estate reverted to the nearest paternal relative.[4]

The place of women here is clear enough: they inherit in preference to more distant men, but are excluded by men of the same proximity.[5] Without pre-

Athenian woman was 'in her entire legal status (*sic!*) actually more a part of the family property, whose value was originally even realizable in cash through bride-purchase, than a true legal person, who could be an independent bearer of rights and responsibilities' (W. Erdmann, *Die Ehe im alten Griechenland*, vol. xx of *Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* [Munich, 1934], 50). Since then, however, under the influence of Gomme's 'rehabilitation' of the Athenian woman's position ('The Position of Women in Athens in the Fifth and Fourth Centuries B.C.', *C.P.* xx [1925], 1–25, reprinted in his *Essays in Greek History and Literature* [Oxford, 1937], 89–115), scholars have tended to avoid this kind of statement.

[1] R. F. Willetts, *The Law Code of Gortyn* (*Kadmos*, Supplement i, 1967), 21; his views are expressed at greater length in *Aristocratic Society in Ancient Crete* (London, 1955), 69–100.

[2] Id. *Law Code of Gortyn*, 18.

[3] Whether or not great-uncles and their descendants were within the inner circle of heirs depends upon the interpretation of the phrase μέχρι ἀνεψιῶν παίδων in the Athenian law: cf. A. R. W. Harrison, 'A Problem in the Rules of Intestate Succession at Athens,' *C.R.* lxi (1947), 41–3; J. C. Miles, 'Attic Law of Intestate Succession', *Hermathena* lxxv (1950), 77; L. Lepri, *Sui rapporti di parentela in diritto attico* (Milan, 1959), 8–13. It is not certain that the Athenians themselves were agreed on this point, for there was no lack of confusion as to the precise intent of the various provisions of this law: cf. Arist. *Ath. Pol.* 9. 2. On the extent to which there is any 'correct' interpretation of an Athenian law, see Robert J. Bonner, *Lawyers and Litigants in Ancient Athens* (Chicago, 1927, reissued Rome, 1970), 74–5.

[4] The law of intestate inheritance is preserved in Ps.-Dem. 43. 51 and paraphrased in Isaeus 11. 1–2; neither text, however, is perfectly reliable (there is a serious lacuna in the first), and much still remains in doubt. See A. R. W. Harrison, op. cit. i. 130–49.

[5] Besides being apparent from the particulars of the legislation, this seems to be stated as a general principle by the words κρατεῖν

judging details of the case—what rights they exercised over property so inherited, and whether the particular position of the *epikleros* or the apparently simpler position of the inheriting sister was the more archaic—let us pass on to Gortyn.

In Gortyn, the deceased's sons received certain items of the estate, but the rest was shared with his daughters, each daughter receiving half a son's portion. If there were no sons, the daughters became πατροιôκοι—the Gortynian term for *epikleroi*. Failing descendants, the brothers inherited; in absence of brothers, the sisters.[1] Here, then, daughters are only partially excluded by sons, but sisters are entirely excluded by brothers. Which is the rule, which the exception?

The Athenian parallel would suggest that the position of the sisters in Gortyn was the normal one, while the rights of daughters were exceptional; but Athens is not the only community of which we know. A similar conclusion is suggested by an inscription of Naupactus which, on the occasion of a land division, prescribes the order (*a*) sons, (*b*) daughters, (*c*) brothers, and explicitly excludes the daughters in the presence of sons.[2]

Our fourth document is an inscription from Thermus in Aetolia; it is apparently a fragment of a law founding a colony at Same on Cephallene around the year 223 before the Christian era. Here we find (*a*) sons, (*b*) daughters, (*c*) brothers or sisters, and (*d*) at least one other category.[3] The text is unfortunately too fragmentary for us to know the details: sons may exclude daughters, but that is hardly certain, and while brothers may not exclude sisters, that is not certain either. All we can really say is that all four categories occur.

We have also an inscription from Tegea, where one Xuthias, son of Philachaeus (not, apparently, a Tegean, though his origin is uncertain), deposits two hundred minae and prescribes that they are to be inherited by his children, should he have any. He apparently came back and deposited another two hundred minae, at which time he mutilated the old inscription and substituted a more detailed rule.[4] Now he prescribes that his legitimate sons are to inherit

δὲ τοὺς ἄρρενας καὶ τοὺς ἐκ τῶν ἀρρένων (Ps.-Dem., loc. cit.; cf. W. Wyse, op. cit. (above, p. 53 n. 3), 564–5, ad Isae. 7. 20), though speakers who could find an advantage might argue in court that it meant something quite different (Isae. 7. 20, 8 hyp.). In fact the passage summarizes a number of the basic principles of Attic succession: κρατεῖν δὲ τοὺς ἄρρενας (males exclude females) καὶ τοὺς ἐκ τῶν ἀρρένων (the division is *per stirpes*, so that a man's heir occupies his place in the succession—e.g., a brother's son excludes a sister's son, though both are males), ἐὰν ἐκ τῶν αὐτῶν ὦσι (proximity depends upon proximity of the common ancestor—e.g. a sister is not excluded by an uncle, since she descends from the deceased's father, he from his grandfather), καὶ ἐὰν γένει ἀπωτέρω (distance of the claimant from the common ascendant does not affect proximity; a brother's son is as close as a sister, and so excludes her).

[1] Lex Gort. iv. 31–43 and v. 9–28 (the text is available in Willetts, op. cit. (above, p. 54 n. 1), or in M. Guarducci, *Inscriptiones Creticae*, iv (Rome, 1950), no. 72). In the absence of sisters, the heirs were 'those to whom the money falls'; failing these, 'those of the household who are the estate'. These last two phrases are exceedingly opaque, but they are generally taken to mean (*a*) relatives more distant than those mentioned, and (*b*) either the serfs of the estate, or the neighbours (cf. Willetts ad loc. for the literature on the question).

[2] *I.G.* ix². 1. 609.

[3] Ibid. no. 2. The son is mentioned in line 9; unidentified women, presumably daughters, in line 13; brothers and sisters in line 15; and line 17 clearly begins another category.

[4] *I.G.* v. 2. 159. Between the first and second inscription, Xuthias had begotten children: where he had earlier written 'if no

the deposit; failing these, his legitimate daughters; failing either, his illegitimate children; and should none of these be alive, his other relatives. We do not know whether this order was that of his own city, or of Tegea, or an order based on personal preference; but in the matter of female inheritance it tallies well with our other material, putting women after men of the same class, but before more distant ones.

Inheritance has, of course, no place in Plato's communistic *Republic*; but in the *Laws* he does set down a succession-pattern of sorts, conditioned by the principle that the family plot must be occupied, and should be neither divided nor joined to another. The estate of a deceased man is to pass to his son; if he has no sons and has made no will, it goes to his daughter, who becomes an *epikleros*.[1] Up to this point, the matter is reasonably simple, for the son may choose his wife, and the husband of the *epikleros* is prescribed; but should the estate pass to collaterals, Plato felt it necessary to designate not a single heir, but a man and a woman, who were then to marry and raise children for the estate. Both members are chosen by proximity to the deceased, according to the following order:

Male Claimants	*Female Claimants*
(*a*) brother	(*a*) sister
(*b*) brother's son	(*b*) brother's daughter
(*c*) sister's son	(*c*) sister's daughter
(*d*) father's brother	(*d*) father's sister
(*e*) father's brother's son	(*e*) father's brother's daughter
(*f*) father's sister's son	(*f*) father's sister's daughter[2]

The male side here is simply the Attic succession-order, with all females (but not their male descendants) having been eliminated. The female side is built by analogy with the male side, as can be seen at a glance; hence the anomaly that although the sister has first rights, her daughter does not succeed to her position, but is cut out by the brother's daughter. The principle of male precedence on which the first list was built is thus maintained, though the force of analogy has moved the sister to a precedence she did not have in Attic law, where she would have been completely excluded by her brother's descendants just as she was by her brother. Plato does not seem to have considered the possibility that descendants of females should have precedence on the female side, as descendants of males did on their side; to him the precedence of a brother's children over a sister's children was so natural a matter that he maintained it even in an inheritance from which the brother was excluded.

This repeated pattern, in which women inherit in the absence of males, can be explained only on the assumption that it was a feature of common Greek law dating to a period before the separation of the Greeks, the rise of the *polis*, and the *nomothetai*; for neither Beauchet's explanation nor Willetts's will account for it. If Greek women had originally been excluded completely from the succession, it is remarkable to see such uniformity in their inclusion: not only do

children be born', he now writes, 'if they should not be alive'. This is presumably the reason for the more explicit provisions of the second text.

[1] Although Plato's *epikleros*-law is not identical with any other (we should hardly have expected it to be), the essentials of the Athenian institution are retained, with a justification (*Leg.* 9. 924 d–e).

[2] Ibid. 925 c–d. The male order is the same as that of claimants to the hand of the *epikleros*, ibid. 924 e.

they inherit in every case of which we have any knowledge, but they regularly do so in precisely the same position. Only in Gortyn[1] do they have any right at all in the presence of equally close males, and even there this is not the general rule, but a special provision applying only to daughters; nowhere at all does a more distant male, in any case, have precedence over them. The peculiar law of the *epikleros* remains to be explained;[2] but wherever we look for the explanation, it cannot be denied that according to principles in force all over Greece she, and not the next-of-kin who married her, was the legitimate heir.

Mr. Willetts's explanation fails for the same reason: if women had originally been accorded equal rights with men (or rights superior to men), it is remarkable that they have not only preserved them in no case at all—but have *not lost them* beyond a single point, identical in all cases. For there were many other possibilities: we could have had agnate succession, in which men and their descendants are the only legal heirs; or women could have been excluded, while their male descendants retained their rights; women might have received a lesser portion, as daughters (but *not* sisters) did at Gortyn. But no Greek community of which we know ever passed through any of these possibilities. The most likely explanation is surely that the system which all our documents share is one which was already fixed in the common Greek period, and one which they shared as they shared their language—with differences in the particulars, but a basically identical structure.[3]

The acceptance of this assertion does not, of course, affect speculations about 'ultimate origins'; it simply requires that the supporters of Beauchet and those of Mr. Willetts place their proposed 'primitive states' yet further into the past. But those who would like to speculate about prehistory should not forget that the society of the Greeks was a complex one well before they learned to write, and that it probably included as many contradictions and struggles as the one we know. From our very limited remnants, and our presumptions about the origins of later institutions, we can reconstruct proto-Greek society but vaguely, and with a limited accuracy—and even that can be obtained only by a scrupulous refusal to argue from any but attested facts.

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[1] A similar situation may have obtained in Sparta, where Aristotle estimates (*Pol.* 1270^{a}23–5) that two-fifths of the land belonged to women; but at least as far as Aristotle knew, this was not because the women shared in the inheritance, but 'because there are many *epikleroi*, and they give large dowries'. This situation may in fact not have differed from the Gortynian, as I hope to show elsewhere; see next note.

[2] I hope to address myself to this problem, as well as that of the Gortynian daughters, in a forthcoming work on the property rights of Greek women.

[3] Besides the matter with which this paper deals, one or two other points may be noted about this structure. For one thing, relatives of the same sex and class share equally—there is no trace in Greece of complete or partial primogeniture. The only exception to this rule is in the *Laws* (923 c–e), where only one son—whom the father may pick—inherits the estate, in line with Plato's desire to avoid division of the *kleroi*. Various expressions in the inscriptions (*ἀνχιστέδαν* in *I.G.* ix^{2}. 1. 609, *τοὶ 'ς ἄσιστα πόθικες* in *I.G.* v. 2. 159, and the two Gortynian categories mentioned in p. 55 n. 1 above) may perhaps point to an 'inner circle' in inheritance law. This group of near relations (which scholars call the *ἀγχιστεία*, though the word does not have this technical meaning in the sources) was definitely a factor at Athens, where (as noted above) maternal relatives within the circle preceded paternal relatives outside of it; but none of the terms mentioned can be said to indicate clearly that it affected inheritance anywhere else.