

BASTARDS AS ATHENIAN CITIZENS

Marriage is a subject of perennial interest, and we should like to be able to assess the exact degree of importance which the Greeks attached to this institution. One of the chief questions is how the formality of marriage, or the lack of it, affected the children of a union; above all, was illegitimate birth a bar to citizenship even in democratic Athens? Unfortunately there is still no general agreement about the answer to this question.

The problem does not involve Perikles' law on citizenship. That law excluded from citizenship persons whose mothers were not of Athenian-citizen status, and forbade marriage between an Athenian and an alien. But there is no evidence that it made any change concerning children whose parents were both Athenian. The question which I wish to consider here is simply: did bastardy (i.e. the fact that his parents were not formally married to each other) exclude from citizenship a person whose parents were both of Athenian citizen status?

The best recent discussion is that of A.R.W. Harrison, *The Law of Athens* i (1968), 63–5. He gives references to earlier discussions, and convincingly demolishes a number of arguments which had been used to support the view that bastards could not be citizens in Athens. This view rested partly on confusion between the right to belong to a deme, the right to belong to a phratry, and the right to inherit property. Everyone agrees that, at least if legitimate children existed, illegitimate children were excluded from inheritance of their father's property (Ar. *Birds* 1649–68, Dem. 43. 51). Everyone agrees that an illegitimate son was excluded from his father's phratry or genos (Ar. *Birds* 1668–70, Dem. 57. 54, 59. 60). But it does not necessarily follow from this that an illegitimate son was excluded from his father's deme, and it was enrolment in the deme which constituted admission to the rights of an Athenian citizen. When a speaker (notably the speaker of Dem. 57, *Against Euboulides*), claiming the right to be enrolled in a deme, adduces as evidence the fact that he was enrolled in a phratry, that does not show that admission to a deme required *all* the same birth qualifications as admission to a phratry, but only that the birth qualifications required for admission to a deme (Athenian parentage on both sides) were among those required for admission to a phratry, so that previous admission to a phratry was good evidence that one possessed the qualifications required for admission to a deme.

Nevertheless two other writers have lately maintained the view that bastards were excluded from citizenship; but they have failed to answer satisfactorily Harrison's objections to it. The first, W.K. Lacey, can hardly be blamed for this, since his book *The Family in Classical Greece* (1968) had gone to press before Harrison's was published; but his note on the problem (282, n. 15) is vitiated by failure to distinguish deme-membership from phratry-membership and inheritance of property. He does produce one new argument, but it is not valid. The argument is based on Ar. *Wasps* 718, a line which contains a comic complaint that Athenians claiming a dole of grain were subjected to prosecution for ξενία. Lacey suggests that this line refers to the chorus of the play, that the chorus undoubtedly had Athenian parents, and that the ground of prosecution must therefore have been that their parents were not married; but he has failed to realize that the point of the line is to complain that prosecutions were brought

unreasonably against men who in fact were genuine Athenians. (Cf. the note on line 718 in my edition of *Ar. Wasps*.)

More recently Mrs. S.C. Humphreys has adverted to the problem in her article 'The Nothoi of Kynosarges' (*JHS* 94, 1974, 88–95). Her suggestion that the enrolment of bastards at the gymnasium of Kynosarges had religious rather than political significance is interesting and acceptable. But it does not follow from this that bastards had no political rights. In fact she makes no attempt to consider or answer Harrison's arguments. She simply states (p. 89) that bastards were not admitted to demes, giving no evidence for this statement but the reference Dem. 57. 53. I find this mystifying. Dem. 57. 53 contains no reference to demes. It does refer to inheritance of property, and I can only suppose that Mrs. Humphreys, like others before her, has confused admission to a deme with the right to inherit. Her sweeping generalization 'Marriage, legitimacy and citizenship were tied together in the law of Athens' is valueless without supporting evidence.

So the negative part of Harrison's case stands unrefuted. But his positive reasons for believing that bastards were admitted to citizenship are less satisfactory, since his 'two very strong arguments' (p. 65) are both logical rather than factual. If bastards were excluded from citizenship, why, he asks, did Perikles' law on citizenship take the form it did, and what was the object of Solon's law excluding bastards from inheritance? These rhetorical questions have some force, but they do not amount to proof. We know virtually nothing about the political circumstances and motives which gave rise either to Perikles' law or to Solon's, and we cannot be sure that the motives were logical. It would therefore be much more satisfactory if we could bring forward not just presumptions that logically the Athenians must have admitted bastards to citizenship, but also evidence that they actually did. I suggest that the following three pieces of evidence are relevant.

(a) Arist. *Ath. Pol.* 42. 1, giving a definition of citizenship in a systematic account of the Athenian constitution, says: μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ' εἰς τοὺς δημότας ὀκτωκαίδεκα ἔτη γεγονότες. Birth from two citizen parents, and registration in the deme at the age of eighteen; that is all. There is no mention of the parents' marriage, and in a formal definition the silence must be significant. Its significance is not affected by the ensuing account of the procedure of registration, in the course of which we are told that the members of a deme consider whether a candidate for enrolment γέγονε κατὰ τοὺς νόμους. The phrase κατὰ τοὺς νόμους must not be mis-translated 'legitimately'. (The Greek for 'legitimate' is γνήσιος.) κατὰ τοὺς νόμους means 'according to the law'; what the law was on the birth of citizens has been stated in the earlier sentence.

(b) The formal condemnation of Arkheptolemos and Antiphon for their part in the oligarchy of 411 B.C. is quoted in [Plu.] *Ethika* 834 ab. One of its stipulations is: ἀτιμον εἶναι Ἀρχεπτόλεμον καὶ Ἀντιφῶντα καὶ γένος τὸ ἐκ τούτων, καὶ νόθους καὶ γνησίους. Their descendants are to be disfranchised, both bastard and legitimate. This clearly implies that illegitimate descendants of Athenians normally have citizenship.

(c) In *Isaios* 3. 45 the speaker, claiming that Pyrrhos' daughter is illegitimate and therefore not entitled to inherit Pyrrhos' estate, says to her uncle Nikodemos, who claims that she is legitimate:

ἐπειδὴ δὲ τῷ Ξενοκλεῖ ἡγγύα ὁ Ἐνδῖος τὴν ἀδελφιδὴν σου, ἐπέτρεψας, ὦ Νικόδημε, τὴν ἐκ τῆς ἐγγυητῆς τῷ Πύρρῳ γεγενημένην ὥς ἐξ ἐταίρας ἐκεῖνῳ οὖσαν ἐγγυᾶσθαι;

When Endios was giving your niece in marriage to Xenokles, did you, Nikodemos, allow the daughter of Pyrrhos by his wedded wife to be given away in marriage as a daughter he had had by a mistress?

If the woman had been legitimate, she would have been *ἐπίκληρος*, and the nearest male relative would have been entitled to claim her in marriage, and the estate with her. On the assumption that she was illegitimate, the relatives could claim the estate without her and it did not matter to them who married her; and so she was given in marriage to a citizen who was not a relative, Xenokles. Whether the speaker is telling the truth about her legitimacy is questionable; but there can be no question that he expects the jury to believe him, and thus that the kind of act which he mentions was possible in Athens. So the passage shows that it was possible for a bastard daughter to be given in marriage to an Athenian citizen. But in the fourth century marriage or cohabitation of a citizen and a non-citizen as husband and wife was forbidden (Dem. 59. 16 and 52). I conclude that a bastard was not necessarily a non-citizen.

APPENDIX: BASTARDS IN ARISTOTLE'S *POLITICS*

Aristotle in *Politics* 1278^a26–34 and 1319^b8–10 acknowledges that in some democracies bastards are citizens and in others not, but he does not say whether they were so in Athens. These passages therefore do not help to solve the particular problem which I have been considering; but, since the first of them has been found hard to interpret, it may be worth while to say here what I think it does mean. The text is:

ἐν πολλαῖς δὲ

πολιτείαις προσεφέλκει τῶας καὶ τῶν ξένων ὁ νόμος· ὁ γὰρ
ἐκ πολίτιδος ἐν τισι δημοκρατίαις πολίτης ἐστίν, τὸν αὐτὸν
δὲ τρόπον ἔχει καὶ τὰ περὶ τοὺς νόθους παρὰ πολλοῖς. οὐ
μὴν ἀλλ' ἐπεὶ δι' ἔνδειαν τῶν γησίων πολιτῶν ποιοῦνται
πολίτας τοὺς τοιούτους (διὰ γὰρ ὀλιγανθρωπίαν οὕτω χρῶνται
τοῖς νόμοις), εὐποροῦντες δὴ ὄχλου κατὰ μικρὸν παραιροῦν-
ται τοὺς ἐκ δούλου πρῶτον ἢ δούλης, εἴτα τοὺς ἀπὸ γυναικῶν,
τέλος δὲ μόνον τοὺς ἐξ ἀμφοῶν ἀστῶν πολίτας ποιοῦσιν.

30

I translate as follows, adding in angled brackets phrases of my own to clarify what I take to be Aristotle's meaning.

In many constitutions the law adds <to the list of citizens> some of the <persons who in other constitutions are> aliens: (a) the son of a citizen woman <and a non-citizen man> is a citizen in some democracies; (b) the arrangements concerning bastards are similar <i.e. bastards are citizens> in many places. Nevertheless, since a shortage of legitimate citizens is the reason why they make such people citizens (underpopulation is the reason why they modify their laws in this way), when they do have plenty of people they gradually make exclusions: first <they exclude> the sons of a slave man <and a citizen woman> or of a slave woman <and a citizen man>; secondly <they exclude> those <whose citizen descent is only> on the female side <i.e. the sons of citizen women and non-citizen men>; finally they <exclude even the sons of citizen men and non-citizen women and thus> make only the sons of two citizen parents citizens.

Aristotle here mentions two possible criteria for excluding a man from citizenship: (*a*) one of his parents was not a citizen, (*b*) his parents were not married to each other. An individual constitution may employ either criterion (*a*) or criterion (*b*) or both or neither. At line 30 he still has (*b*) in mind (τῶν γνησίων πολιτῶν means 'citizens whose parents were married to each other', or perhaps 'citizens whose parents were both citizens and were married to each other'; cf. 1319^b9, where τοὺς γνησίους seems to be treated as the antonym of the whole phrase τοὺς νόθους καὶ ἐξ ὁποτεροῦν πολίτου). But by line 32 he has forgotten about (*b*), and his account of the successive stages of restriction of citizenship refers only to the use of varieties of criterion (*a*).

University of Glasgow

DOUGLAS M. MACDOWELL