

BASTARDS AS ATHENIAN CITIZENS

A. R. W. Harrison in *The Law of Athens*, i (O.U.P., 1968), 63–5, argued that the exclusion of bastards from the phratries and the severe restriction of their right of inheritance does not entail their exclusion from Athenian citizenship; and that the form of Pericles' citizenship law, not stating that μητροξένοι were to be νόθοι, and Solon's law restricting the inheritance rights of νόθοι, both point to the conclusion that bastards were not *ipso facto* debarred from citizenship. D. M. MacDowell in *CQ* N.S. 26 (1976), 88–91, rightly finds Harrison's positive arguments inconclusive, but suggests that three texts provide more definite support for this conclusion.¹

(a) *Ath. Pol.* 42.1: μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ' εἰς τοὺς δημότας ὀκτωκαίδεκα ἔτη γεγονότες. Nothing is said here about being born in wedlock, and MacDowell believes that 'in a formal definition the silence must be significant'; in the later clause εἰ . . . γέγονε κατὰ τοὺς νόμους he sees a reference not to legitimacy but to the legal requirement quoted above, ἐξ ἀμφοτέρων γεγονότες ἀστῶν.² He is surely right to insist that that question does not mean 'If he was born in wedlock'; but it is less certain that *Ath. Pol.*'s silence is significant. The remainder of ch. 42 implies that all who pass the δοκιμασία become ἐφηβοί, and are then subjected to two years of national service, including military training of a hoplite kind; some have compared Lyc. *Leocr.* 76, and have felt bound to believe this, but most have thought it more likely that Lycurgus is indulging in rhetorical exaggeration and *Ath. Pol.* is not telling the whole truth, and that the θῆτες were exempted from the ἐφηβεία.³ In 43.2 we read that the boule's year of office (in the fourth century coterminous with the archontic year) is divided into ten prytanies, four of thirty-six days followed by six of thirty-five: whether the year was always thus divided when it comprised 354 days is disputed, and no more need be said of the dispute here than that it too concerns the extent to which the statements of *Ath. Pol.* should be accepted as the whole truth; that a year might sometimes comprise 353 or 355 days may be regarded as trivial; that about three years in eight were intercalary years, comprising (approximately) 384 days, is less trivial. I could continue. *Ath. Pol.*'s silence, even in such a passage as 42.1, is an insecure basis for argument.

(b) The condemnation of Archeptolemus and Antiphon, *ap.* [Plut.] *X. Or.* 834 A-B: καὶ ἄτιμον εἶναι Ἀρχεπτόλεμον καὶ Ἀντιφῶντα καὶ γένος τὸ ἐκ τούτων, καὶ νόθους καὶ γνησίους. (The last phrase is not found in similar contexts elsewhere, and I imagine it is meant seriously, and has been added because one of the condemned was known to have illegitimate children.) MacDowell translates 'Their descendants are to be disfranchised', and comments, 'This clearly implies that illegitimate descendants of Athenians normally have citizenship.' Here everything depends on the meaning of ἄτιμον: Archeptolemus and Antiphon

¹ I should like to thank Professor MacDowell, Professor M. C. Stokes, and Mrs. S. C. Humphries for their comments on drafts of this reply.

² Cf. e.g. G. Gilbert, *The Constitutional*

Antiquities of Sparta and Athens (London: Sonnenschein, 1895), p.191 n.1.

³ e.g. A. W. Gomme, *The Population of Athens in the Fifth and Fourth Centuries B.C.* (Oxford: Blackwell, 1933), p.11.

have been sentenced to death, confiscation of their property, demolition of their houses, and exclusion of their mortal remains from all land under Athenian control—and they are to be *ἄτιμοι*, themselves and their descendants both illegitimate and legitimate, and any one who adopts any of their descendants will himself become *ἄτιμος*. In early Athens (it is generally agreed) *ἀτιμία* denoted total outlawry. In the fifth and fourth centuries we commonly encounter a form of *ἀτιμία* which is less drastic than outlawry, and when outlawry is intended we commonly find a stronger word used, such as *πολέμιος*: Harrison believed that *ἀτιμία* retained its stronger, archaic sense when combined with death, confiscation of property, and extension to the whole family,⁴ but M. H. Hansen argues that when *ἀτιμία* acquired its weaker sense the stronger sense must have been abandoned, even in old laws in which the stronger sense had originally been intended.⁵ We once find *ἄτιμος* and *πολέμιος* combined: fourth-century orators cited a fifth-century decree which had declared Arthmios of Zelea *ἄτιμος καὶ πολέμιος τοῦ δήμου τοῦ Ἀθηναίων καὶ τῶν συμμάχων αὐτός καὶ γένος*, and Demosthenes explained that *ἄτιμος* was used here not in its usual sense of ‘excluded from τῶν Ἀθηναίων κουνῶν’ but with the meaning ‘may be killed with impunity’ (Dem. 9. *Phil.* iii. 42–4).⁶ If the decree is authentic, *ἄτιμος* was used in its stronger sense, and used of a non-citizen, in the second quarter of the fifth century; if it is a forgery, it at least shows that the stronger sense of the word was remembered and was thought to be applicable to a non-citizen. When there is no stronger word added, as in the condemnation of Archeptolemus and Antiphon, it is impossible to prove that outlawry is intended; but when the offence is treason or revolution, and the penalty includes death, confiscation of property, and extension to the whole family, the stronger sense of the word is surely likely; anything less would be an anti-climax.⁷ I believe that Archeptolemus and Antiphon were declared outlaws, together with all their illegitimate and legitimate descendants; and the illegitimate need not have been citizens to be subjected to this kind of *ἀτιμία*.⁸

(c) Isaeus, 3. *Her. Pyrrh.* 45: ἐπειδὴ δὲ τῷ Ξενοκλεῖ ἡγγυῖα ὁ Ἐνδριος τὴν ἀδελφιδὴν σου, ἐπέτρεψας, ὧ Νικόδημε, τὴν ἐκ τῆς ἡγενητῆς τῷ Πύρρῳ γεγενημένην ὡς ἐξ ἐταίρας ἐκείνῳ οὖσαν ἐγγυᾶσθαι; if the woman was legitimate, she would have been ἀν’ ἐπὶ κληρος; she has been given in marriage on the assumption that she is illegitimate and so not an ἐπὶ κληρος; the speaker says nothing to suggest that there was anything wrong in Xenocles’ marrying an illegitimate woman; ‘but’, MacDowell comments, ‘in the fourth century marriage or cohabitation of a citizen and a non-citizen as husband and wife was forbidden’

⁴ *The Law of Athens*, ii (O.U.P., 1971), 169–76.

⁵ *Atimistrafen i Athen i klassisk tid* (Odense U. P., 1973), pp. 42–52, cf. English summary, pp. 282–3, and *Apagoge, Endeixis and Ephegesis* . . . (Odense U. P., 1976), pp. 75–82. In the latter book, p. 55 n. 8, Hansen draws the same conclusion as MacDowell from *X. Or.* 834 A–B.

⁶ Texts collected and discussed by R. Meiggs, *The Athenian Empire* (O.U.P., 1972), pp. 508–12.

⁷ Against Hansen I believe that *ἀτιμία* also denotes outlawry at any rate in *Hesp.*

21 (1952), 355–9, no. 5 = *SEG* xii. 87, 11–22 (cf. decree *ap. And.* 1. *Myst.* 96, where εἰάν τις . . . ἀρχὴν τινα ἄρχῃ καταλελυμένης τῆς δημοκρατίας, πολέμιος ἔστω Ἀθηναίων καὶ νηπιουεὶ τεθνάτω).

⁸ In Hansen’s view the weaker, classical sense of *ἀτιμία* still denotes the withdrawal of personal as well as of civic rights, falling scarcely short of outlawry; and although he limits its application to citizens (and indeed many ways of incurring it were open only to citizens) if the weaker *ἀτιμία* was as drastic as that it too could meaningfully be extended to non-citizens.

([Dem.] 59. *Neaer.* 16, 52). Here I grant that the most straightforward interpretation of the texts supports MacDowell's conclusion—if a bastard could enter into a formal Athenian marriage, bastards ought not to have been debarred from Athenian citizenship—but for two reasons it may be wrong to insist on the straightforward interpretation of these texts. The first was advanced by W. Wyse: Xenocles claimed (whether rightly or wrongly, whether sincerely or insincerely) that Phile was not illegitimate; despite what is said in the passage quoted above, it may also have been presumed that she was not illegitimate when he married her; and the speaker's reason for not challenging the validity of the marriage may be not that marriage to a bastard was unexceptionable but that if the marriage was illegal his own brother Endius was guilty of giving away Phile in an illegal marriage.⁹ Secondly, there may have been an ambiguity in the law: what was forbidden by the texts quoted in [Dem.] 59 was marriage or cohabitation between an *ἄστος* or *ἄσπῃ* and a *ξένη* or *ξένος*; if bastards were debarred from citizenship, they will not have been *ἄστοι* in the full sense of the word (they will presumably have ranked officially as *μέτοικοι*¹⁰), yet any whose parents were both Athenians will not in the ordinary meaning of the word have been *ξένοι*. If this was so, a man who was illegitimate will have had little chance to exploit the ambiguity: he should have failed to be admitted to his father's deme and so to the citizenship when he came of age, and thereafter should not have been able to marry as if he were a citizen. But for women it will have been easier, since they did not have to justify their claim to membership of a phratry or a deme, could not exercise the civic rights of a citizen, and unless in the absence of legitimate sons they became *ἐπίκληροι* they could not inherit their father's property; a daughter's status was never officially acknowledged as a son's was when he came of age. The object of Pericles' citizenship law and of the laws which reaffirmed and strengthened it was to exclude foreign blood; and a woman who was Athenian but illegitimate, who had been brought up in her father's household, may although not legally a *πολίτις* have been able in practice to marry as if she were.

Of MacDowell's three pieces of evidence, the first is an omission in a text which abounds in omissions, the second is an instance of *ἀπικία* which I believe to have been intended as outlawry, capable of being imposed on non-citizens, the last arises from a lawcourt speech where the direct approach leads to his conclusion but may not be the right approach; the last is the case in which I am least sure that he is wrong, but none proves his point beyond reasonable doubt. Moreover, the argument from membership of phratries should not be dismissed too lightly. If bastards were excluded from the phratries (which MacDowell accepts), and if before Cleisthenes' reforms citizenship depended on membership of a phratry (which is generally believed), then at that time bastards were debarred from citizenship. After Cleisthenes' reforms citizenship depended on membership of a deme, and I accept that although it remained normal membership of a phratry was no longer essential;¹¹ but if in the fifth and fourth centuries

⁹ *The Speeches of Isaeus* (C.U.P., 1904), pp.278–82.

¹⁰ Cf. S. C. Humphreys, *JHS* 94 (1974), 94.

¹¹ It is generally accepted that after Cleisthenes' reforms it was not necessary to belong to a phratry to be a citizen: Harrison

considered the strongest argument to be that *'Ath. Pol.* 42.1, which gives in some detail the qualifications for entry on the deme register, does not list membership of a phratry' (*The Law of Athens*, i.64 n.1); as I have shown, I do not trust *Ath. Pol.* to tell the whole truth, but Cleisthenes'

bastards were entitled to citizenship that represents a departure from older practice: Cleisthenes is of course said to have included *νεοπολίται* in the citizen body (*Ath. Pol.* 21.4, *Arist. Pol.* 3.1275^b 34–7), and his *νεοπολίται* may have comprised or included bastards, but the burden of proof must rest with those who believe that older practice was abandoned in this respect.¹² As shown by the passages in *Arist. Pol.* which MacDowell cites (3.1278^a 26–34, 6.1319^b 8–10) neither the admission of bastards to citizenship nor their exclusion was unthinkable in classical Greece. In view of Athens' reliance on *ὁ βουλόμενος* to demand enforcement of the law, I should not wish to deny that on occasions a man with no influential or persistent enemy may have succeeded in registering an illegitimate son both in his phratry and in his deme;¹³ but I am not yet persuaded that bastards were entitled to Athenian citizenship.

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APPENDIX: DEMOSTHENES, 57. *EUB.*

When the registers were revised in 346/5 Euxitheus was expelled from the deme Halimus, apparently on the grounds that he was not *ἐξ ἀμφοτέρων γεγονὼς ἀστών*. His principal concern in the speech is to show that his father and mother were both *ἀστοί*; he also invokes the evidence of phratry membership (§§ 23–5, 40, 46, cf. 69)—not, I believe, because phratry membership was required for citizenship, but because the members of phratries were a more exclusive body than the Athenian citizens, to provide an *argumentum a fortiori*; he also insists that his parents were duly married and that he is their legitimate son (§§ 40–3, 53, 69). In

fourth-century Athens a citizen could not legally marry a non-citizen (cf. on passage (c), above): the sceptic could maintain that Euxitheus lays comparatively little stress on this part of his case, and that here as with phratry membership he is not proving something that he has to prove but arguing *a fortiori*; I should reply that Euxitheus had not been challenged on grounds of legitimacy, and that at any rate his legitimacy seemed important enough to be worth reasserting in his peroration (§ 69). This speech does not prove that Athenian citizens were required to be of legitimate birth, but it does not weaken my belief in that requirement.

reforms are more easily explained if *δοκιμασία* in and admission to a deme supplanted, rather than were added to, *δοκιμασία* in and admission to a phratry as the prerequisite of citizenship (see H. T. Wade-Gery, *CQ* 27 (1933), 26 n.2, 26–7 with 27 n.2, cf. *CQ* 25 (1931), 129–43 = *Essays in Greek History* (Oxford: Blackwell, 1958), pp.149 n.2, 150–1 with 151 n.2, cf. 116–34). According to *Plut. Per.* 37.5, after the death of his legitimate sons Pericles was allowed to have his son by Aspasia enrolled in his phratry (whereas according to *Suid. δημοποίητος* [Δ 451] the young man was made a citizen): but even if Plutarch is right (as he may well be) this does not prove that membership of a phratry was still required for citizenship.

¹² There is another argument which is not conclusive but has some force. There is a tendency in our sources to use *νόθος* of men who were, or were alleged to be, *μητρόξενοι* (e.g. *Plut. Them.* 1.1–3; *Ael. V.H.* 6.10, 13.24, *Suid. δημοποίητος* [Δ 451]; cf. *Ath.* 13.577 B, *Lex. Seg.* [I. Bekker, *Anecdota Graeca*, I], 274.21, *Suid. Κυνόσαργες* [K 2721]): assimilation in this direction would be surprising if (Athenian) *νόθοι* were entitled to citizenship but *μητρόξενοι* were of lower status and were not so entitled.

¹³ On the other hand, if bastards were entitled to citizenship, we may wonder who would sponsor a man for admission to a deme, and to which deme, if his father refused to acknowledge him.