

THE *OIKOS* IN ATHENIAN LAW

## DEFINITION

If you look up *oikos* in Liddell and Scott, you find the instances classified in three main divisions:<sup>1</sup> first those meaning a house, or sometimes other kinds of building; secondly 'one's household goods, substance', for which I shall generally say 'property', though Liddell and Scott do not actually use that word; and thirdly 'family'.<sup>2</sup> This threefold distinction is sound, and I shall adhere to it here. Admittedly one sometimes finds an instance where it is not easy to decide which sense the word has. Two of the senses, occasionally even all three, may overlap. But in the great majority of instances it is clear which sense is meant.

The sense of 'house', which may be the original one, is very familiar to us from Homer and other poetry, including tragedy, but it becomes less common in the fifth and fourth centuries. There is the man in Antiphon's *First Tetralogy* who was asleep *ἐν οἴκῳ*, which certainly means 'in my house' (Ant. 2d.8). But generally in Attic prose the word in this sense is restricted to a few standard phrases like *κατ' οἶκον* and the locative form *οἴκοι* meaning 'at home'. I shall not discuss here *oikos* in the sense 'house'. The other two senses are both quite common in Attic. I will give an example of each. Lysias, recounting the wealth of various rich men, remarks that the *oikos* of Nikias was worth not less than 100 talents, and most of that was indoors (Lys. 19.47); there it is perfectly clear that the whole of Nikias' property is meant, not just his house. On the other hand, when Themistokles wrote his famous letter to Artaxerxes and said 'I have done more harm to your *oikos* than any other Greek, at the time when I resisted your father's invasion' (Thuc. 1.137.4), he means the family of Xerxes and Artaxerxes, not their house or property.<sup>3</sup>

Besides the three senses of *oikos* we should also consider the meaning of *oikia*. At the beginning of Xenophon's *Oikonomikos*, Sokrates is trying to define the topic of his conversation with Kritoboulos.

**Xen. Oik. 1.5.** 'οἶκος δὲ δὴ τί δοκεῖ ἡμῖν εἶναι; ἄρα ὅπερ οἰκία, ἣ καὶ ὅσα τις ἔξω τῆς οἰκίας κέκτηται, πάντα τοῦ οἴκου ταῦτά ἐστιν;' 'ἐμοὶ γοῦν' ἔφη ὁ Κριτόβουλος 'δοκεῖ, καὶ εἰ μὴδ' ἐν τῇ αὐτῇ πόλει εἴη τῷ κεκτημένῳ, πάντα τοῦ οἴκου εἶναι ὅσα τις κέκτηται.'

'What do we think an *oikos* is? Is it the same thing as an *oikia*? Or are the things which a person owns outside the *oikia* also all part of the *oikos*?' 'In my opinion' said Kritoboulos, 'even if they are not even in the same city as the owner, all the things that a person owns are part of the *oikos*.'

<sup>1</sup> I discussed the *oikos* briefly in *The Law in Classical Athens* (London, 1978), pp. 84–6. I now consider that discussion unsatisfactory, because I failed there to distinguish the different senses of the word. On the concept in general see W. K. Lacey, *The Family in Classical Greece* (London, 1968); E. Karabélias, 'Le contenu de l'oikos en droit grec ancien', in *Μνήμη Γεωργίου Α. Πετροπούλου* (ed. P. D. Dimakis, Athens, 1984), i.441–54.

<sup>2</sup> I leave aside here a fourth division, which is given only in the supplement to LSJ (1968) and seems to occur in no surviving Attic text except *IG* ii<sup>2</sup>.1237: there the *oikos* of the Dekeleians is either the whole or some part of a phratry.

<sup>3</sup> I do not know whether Thucydides here gives us a literal translation from the Persian, or merely the substance of the letter in his own words. But in either case it is clear that he expects his Athenian readers at the end of the fifth century to understand *oikos* as meaning persons, not property.

That appears to give a clear distinction: *oikos* means 'property' and *oikia* means 'house'. It is certainly true that in Attic writers of the fifth and fourth centuries a house is much more often called *oikia* than *oikos*. Yet it is also possible for *oikia* to mean 'property' or 'family'. Consider the case of Euktemon, who had the misfortune to fall in love at an advanced age.

**Isai. 6.18.** ἐπὶ γήρῳ δὲ αὐτῷ συμφορὰ ἐγένετο οὐ μικρά, ἣ ἐκείνου πᾶσαν τὴν οἰκίαν ἐλυμήνατο καὶ χρήματα πολλὰ διώλεσε.

But in old age a great calamity befell him, which ruined the man's whole *oikia* and wasted a large amount of money.

This does not mean that the *femme fatale* damaged the building; it means that Euktemon spent money on her. So there *oikia* means the whole of a man's property. Then consider this passage recounting the marriage of a rich man of Siphnos named Thrasyllus.

**Isok. 19.7.** καταπλεύσας δ' εἰς Σίφνον ἔγημεν ἀδελφὴν τοῦ πατρὸς τοῦμοῦ, πλούτῳ μὲν αὐτὸς πρῶτος ὢν τῶν πολιτῶν, γένει δὲ καὶ τοῖς ἄλλοις ἀξιώμασιν εἰδὼς τὴν ἡμετέραν οἰκίαν προέχουσιν.

He sailed back to Siphnos and married my father's sister; he himself was foremost of the citizens in wealth, and he knew that our *oikia* was outstanding in birth and other distinctions.

This is the marriage of a *nouveau riche* into the aristocracy, and the *oikia* is the aristocratic family itself, not its house or its property; it is evident that property was just what the bride's family was short of. So we see that even in lawcourt speeches by Attic writers *oikia* does not invariably mean 'house'; sometimes it means 'family', and sometimes it means 'property'. In Aristotle's *Politics* the distinction between *oikia* and *oikos* breaks down altogether, and he uses both words indiscriminately in his account of the nuclear family (Arist. *Pol.* 1252b9–16). But in this paper I am not concerned with Aristotle but with Athenian law. In legal contexts it is more usual for *oikia* to mean 'house' and for *oikos* to mean either 'property' or 'family', and so I shall observe that distinction.

## PROPERTY

When *oikos* means 'property', it means the sum total of goods belonging to an individual man, including land, buildings, crops, animals, slaves, furniture, clothes, money, credits owed to him by debtors, and anything else. Legal disputes about an *oikos* are disputes about the ownership of this totality, not about some particular item. A question about the ownership of a man's entire property normally arises only at his death, when it must inevitably pass to someone else. In such a context there is no significant difference between the words *oikos* and *kleros*, meaning 'estate', and we sometimes find the two words used interchangeably (e.g. Isai. 5.14). When a man dies, his *oikos*, in this sense, passes to his heir and becomes part of the heir's *oikos*. A man who already has some property and then inherits someone else's is not said to have two *oikoi*; rather, his *oikos* has become larger.

It has sometimes been thought that an *oikos* belonged not to one man but to a family. But, at least in classical Athens, that is not correct. The error arises from confusion of two senses of the word. *Oikos* may itself mean 'family', but when it means 'property' it refers to the property owned by one individual. The only cases which may be regarded as exceptions to that rule are those in which property seems to be owned by two brothers, and even then we must be careful to distinguish adult

brothers from those who are still minors. In the speech *Against Leokhares* we read of two adult brothers named Meidylides and Arkhiades.

**Dem. 44.10.** ὁ Ἀρχιάδης οὐκ ἔφη προαιρεῖσθαι γαμεῖν, ἀλλὰ καὶ τὴν οὐσίαν ἀνέμητον διὰ ταῦτα συγχωρήσας εἶναι ᾧκει καθ' αὐτόν ἐν τῇ Σαλαμῖνι.

Arkhiades said that he did not choose to marry. For this reason he even agreed that the property should be undivided, and lived on his own in Salamis.

The point here is that Arkhiades would have no children. Only Meidylides would have children to inherit in the next generation the property (probably a farm) which the father of the two brothers left, and Arkhiades considered it more practical to leave that property undivided meanwhile instead of splitting it up. But the word used for the undivided property is *οὐσία*. That does not mean that the two brothers had a joint *oikos*. Each had his own *oikos*; that is shown, not so much by the verb ᾧκει (which may mean merely that Arkhiades lived in a separate house), but by a reference later in the speech to the *oikos* of Arkhiades, in a context in which it clearly means 'property', not 'house' or 'family' (Dem. 44.27).

So there seems to be no known instance of an *oikos* held jointly by two adult brothers, but there are instances of an *oikos* held jointly by minors. When a father died leaving more than one son, equal division of his *oikos* between them was the rule. But, if the sons were still minors, the division could be postponed until they came of age. Thus it is possible to speak of two or more orphaned children as being the owners of one *oikos* (Isai. 2.9, 11.45), and those are perhaps the only circumstances in which an *oikos*, in the sense of property, can be said to belong to more than one person.

In this connection we sometimes hear of a leasing arrangement (*μίσθωσις οἴκου*). Orphans (I use this word in the sense of the Greek ὀρφανός, meaning a minor whose father, but not necessarily mother, had died) had guardians. The guardian (or guardians) had the responsibility of looking after the *oikos* of the ward (or wards). This meant putting it to use: land had to be cultivated, money had to be invested or lent on interest, and so on. The income from these activities was available to pay for the ward's maintenance, and any surplus income had to be handed over to the ward with the whole estate when he came of age. This could give rise to disputes about the amount of the income, as in the well-known case of Demosthenes and his guardian Aphobos. To preclude such disputes it was possible to arrange for the *oikos* to be leased. The lease for the years until the ward came of age was put up for auction and sold to the highest bidder. There could then be no dispute about the amount of the income of the orphan's *oikos*, since it was the amount which the lessee had agreed to pay.

It is not necessary here to go into details of the leasing procedure.<sup>4</sup> What is of concern here is the nature of the *oikos* which was leased. Was it the whole of the orphan's property, or only part of it? In the few cases for which details are given in the surviving speeches, the property under consideration seems not to be land or buildings, but money or other movable property (*ἀφανὴς οὐσία*); and this led to the suggestion by Paoli that only movable property of an orphan was leased, not real estate.<sup>5</sup> The suggestion can be countered by saying that it may be just an accident that we do not know of a case in which real estate was leased, or more plausibly by saying that real estate was more easily defined and controlled and so was less likely to be involved in the kinds of dispute for which the surviving speeches were written. Finley

<sup>4</sup> See A. R. W. Harrison, *The Law of Athens* i (Oxford, 1968), pp. 105–7, 293–6.

<sup>5</sup> U. E. Paoli, *Studi di diritto attico* (Firenze, 1930), pp. 166–9.

affirmed strongly that what was leased was always the estate as a whole;<sup>6</sup> but Wolff supported Paoli's suggestion by pointing to a passage which refers to the leasing of only part of the property.<sup>7</sup> As far as I know, no one has answered Wolff's argument, and I should like to take this opportunity of doing so.

This takes us back again to the family of old Euktemon in the sixth speech of Isaios. By his first wife (or, as the speaker of the extant speech maintains, his only wife) he had three sons and two daughters. The three sons all died before him without issue, but the two daughters were married and had children. The property which had belonged to the three sons reverted to Euktemon while he lived,<sup>8</sup> and on his death would pass to the children of his daughters. However, an attempt was made to prevent that course of events by bringing forward two boys who were allegedly younger sons of Euktemon. Whether Euktemon had actually married their mother was later disputed, and if they were illegitimate they were not entitled to automatic inheritance of his property; but two men acting on their behalf (Androkles and Antidoros) tried to contrive that they would inherit all the same, by using the legal device of posthumous adoption. The plan was that the two boys would be registered as the adopted sons of two of the deceased sons of Euktemon (Philoktemon and Ergamenes); this would enable them to inherit all Euktemon's property when he died, because as sons of Euktemon's sons they would take precedence over the children of Euktemon's daughters.

**Isai. 6.35–6.** ὁρῶντες γὰρ τὸν Εὐκτῆμονα κομιδῇ ἀπειρηκότα ὑπὸ γήρως καὶ οὐδὲ τῆς κλίνης ἀνίστασθαι δυνάμενον, ἐσκόπουν ὅπως καὶ τελευτήσαντος ἐκείνου δι' αὐτῶν ἔσσιτο ἡ οὐσία. καὶ τί ποιοῦσιν; ἀπογράφουσι τῶν παίδε τούτῳ πρὸς τὸν ἀρχοντα ὡς εἰσποιητῶ τοῖς τοῦ Εὐκτῆμονος ὑέσι τοῖς τετελευτηκόσιν, ἐπιγράφαντες σφᾶς αὐτοὺς ἐπιτρόπους, καὶ μισθοῦν ἐκέλευον τὸν ἀρχοντα τοὺς οἶκους ὡς ὀρφανῶν ὄντων, ὅπως ἐπὶ τοῖς τούτων ὀνόμασι τὰ μὲν μισθωθεῖ τῆς οὐσίας, τὰ δὲ ἀποτιμήματα κατασταθεῖ καὶ ὅροι τεθείεν ζώντος ἔτι τοῦ Εὐκτῆμονος, μισθωταὶ δὲ αὐτοὶ γενόμενοι τὰς προσόδους λαμβάνοιεν.

Seeing that Euktemon was very weak from old age and not even able to get up from his bed, they considered how his property could still be kept in their hands after his death. And what did they do? They registered these two boys before the archon as adopted sons to the deceased sons of Euktemon, putting themselves down as guardians; and they told the archon to put up the *oikoi* for lease, on the ground that the boys were orphans. Their purpose was that, in the names of these boys, part of the property might be leased and part of it established as securities [or the securities established] and marker-stones put in position while Euktemon was still alive, and that they themselves should become the lessees and get the income.

Wolff takes the words τὰ μὲν... τὰ δὲ... to mean that part of the property was to be leased and another part of it (the real property) was to be provided as ἀποτιμήματα. The implication is that the part of the orphan's property which was to be provided as ἀποτιμήματα was not to be leased, and μίσθωσις οἴκου therefore did not mean lease of the whole property. It seems to follow (though Wolff does not say this explicitly) that *oikos* does not mean the whole of a person's property, but only part of it.

<sup>6</sup> M. I. Finley, *Studies in Land and Credit in Ancient Athens* (New Brunswick, NJ, 1951), pp. 40–1.

<sup>7</sup> H. J. Wolff in *Festschrift Hans Lewald* (Basel, 1953), p. 205 n. 23, and in *Festschrift für Ernst Rabel* ii (Tübingen, 1954), pp. 301–3, 320–2.

<sup>8</sup> It is a disputed question whether, if a man died leaving no children and his father was still alive, his father was his heir. Dem. 44.33 implies that he was. See Harrison, *The Law of Athens* i.138–41 for the evidence and references to other discussions; Harrison himself evidently could not make up his mind, and his presentation is not self-consistent. But the problem hardly affects the present discussion, since, even if the view be taken that Euktemon was not the legal heir of his sons, it is clear that their property was in his hands and had not yet been claimed by any other relative at the time when the two boys were put forward for posthumous adoption.

There does not seem to be any evidence which contradicts Wolff's view explicitly. Yet it has two strange features which make it difficult to accept. The first is the use of the term ἀποτίμημα. This is a very complex subject, to which I can make only brief reference here. The word means literally 'valuation', and it is normally taken as referring to a piece of property which was offered as security for a loan or lease or other item (most often a dowry) which would, or might, have to be repaid at a later date; this property was valued to check that it was at least equal in value to the item for which it was to serve as security, and if it consisted of land (as it usually did) ὄροι or markers were placed on it to show that it was serving this purpose and could not be disposed of otherwise.<sup>9</sup> Wolff's view, however, requires us to suppose that, when part of an orphan's property was leased, it was not some item of the lessee's property but the rest of the orphan's own property which was called ἀποτιμήματα and had ὄροι affixed to it. But that would not have been a security, and it is not clear what purpose the valuation and the ὄροι would have served.<sup>10</sup> The second difficulty about Wolff's view is the use of the term οἶκος. I have already said that οἶκος commonly means a man's property, not just his house, but Wolff's view that μίσθωσις οἴκου meant lease of movable property seems to mean that the οἶκος actually excluded houses. It is hard to believe that an orphan's house was not even a part of his οἶκος.

It is therefore worth-while to consider whether a different interpretation of Isai. 6.36 is possible, to avoid these strange consequences. I wish to suggest different interpretations both of τὰ μὲν... and of τὰ δὲ... In the case of τὰ δὲ..., I do not think it is essential to take this as a pronoun, understanding τῆς οὐσίας, in the sense, 'and the other part of the property'. Another possibility is to take it as the article with ἀποτιμήματα: 'so that part of the property might be leased and the securities [*sc.* for that part] might be established and markers might be placed while Euktemon was still alive'. If we take it this way, the whole of this clause refers to the leasing of property and there is no mention in these words of the part of the property which was not to be leased. This δέ is a simple connective, not responding to μὲν, and although τὰ μὲν... leads one to expect τὰ δὲ τῆς οὐσίας later, the sentence pursues a different path and in the end Isaïos never supplies a responding δέ. Nevertheless τὰ μὲν... τῆς οὐσίας certainly does mean 'part of the property'. What part?

I suggest that the explanation is that part of the property had belonged to the sons of Euktemon and part had always belonged to Euktemon himself.<sup>11</sup> At the time of the incident described in Isai. 6.36 Euktemon's sons had died without issue, and their property had passed into the hands of Euktemon. In practical terms this meant that Androkles and Antidoros controlled it, because Euktemon was aged and bedridden.<sup>12</sup> Their aim was to continue controlling, after Euktemon's death, all the property which had belonged to either Euktemon or his sons.<sup>13</sup> But the device of registering the

<sup>9</sup> On ὄροι and ἀποτιμήματα in general see J. V. A. Fine, *Horoi* (*Hesperia* suppl. 9, 1951); Finley, *Studies in Land and Credit in Ancient Athens*; Harrison, *The Law of Athens* i.253–304.

<sup>10</sup> Cf. Harrison, *The Law of Athens* i.295 n. 1.

<sup>11</sup> W. Wyse, *The Speeches of Isaeus* (Cambridge, 1904), p. 484 asserts that Euktemon's son Philoktemon possessed no separate estate of his own. It is certainly possible that Euktemon and Philoktemon lived together and controlled their property jointly; but in principle each of them must have been the owner of substantial property, since both performed liturgies (Isai. 6.38). We are not told how Philoktemon acquired his wealth; it may have been by trade, manufacturing, or other activities.

<sup>12</sup> Isai. 6.35 καὶ τελευτήσαντος ἐκείνου implies that Androkles and Antidoros already controlled the property before Euktemon's death. The reason why they were able to do so is probably that they were friends of the woman with whom Euktemon was living.

<sup>13</sup> Cf. Isai. 6.37 εἰ δ' ἔλαθεν, ἀπολώλει ἂν ἅπανα ἡ οὐσία.

two boys as posthumously adopted sons of the sons of Euktemon, while Euktemon was still alive, would only affect property which had belonged to the sons of Euktemon. Property which had belonged to Euktemon himself all along could not be legally claimed by anyone else until after his death.<sup>14</sup> The meaning is, therefore, that Androkles and Antidoros intended that part of the property (namely, all that part which had belonged to the sons of Euktemon) should be legally transferred to the two boys now, and should be leased as property of orphans. If that were accepted by the *arkhon* and his court, the rest of the property (namely, the part that had always belonged to Euktemon himself) would be transferred without question to the two boys on Euktemon's death; and Androkles and Antidoros would then control it all.

I conclude that τὰ μὲν... τῆς οὐσίας may mean all the property which was declared to belong to the two boys at that time. If so, the passage does not adequately support the view that the leasing of an *oikos* might be the leasing of only part of an orphan's property; and it is not necessary to abandon the view that the term *oikos*, when referring to a man's property, always means the whole of it.

## FAMILY

I turn now to *oikos* in the sense of 'family', referring to persons rather than property. How was it defined? By what criterion was it decided whether a person was a member of a particular *oikos*? If we judged by the word itself, we might suppose that an *oikos* consisted of all the people living in a particular house. That is indeed what Aristotle seems to mean when he discusses an *oikos* or an *oikia*. He defines an *oikos* as a 'natural association for everyday purposes' (*Pol.* 1252b12–14), and he regards it as including not only a husband, wife, and children but also slaves (*Pol.* 1253b4–7). But it is not normal Attic usage to regard slaves as members of the *oikos* in this sense. Normally the term *oikos*, when it refers to persons, refers to the line of descent from father to son through successive generations, as in this account of the ancestry of Makartatos.

**Dem. 43.48.** ...Μακάρτατος. τίνος ὦν πατρός; Θεοπόμπου...ὁ δὲ Θεόπομπος τίμος ἦν πατρός; Χαριδήμου. ὁ δὲ Χαριδήμος τίμος; Στρατίου. ὁ δὲ Στρατίος τίμος; Βουσέλου. οὗτοςί, ὧ ἄνδρες δικασταί, ἐστίν ὁ Στρατίου οἶκος, ἐνὸς τῶν Βουσέλου υἱέων, καὶ ἐκγονοὶ οὗτοί εἰσιν Στρατίου, οὓς ὑμεῖς ἀκηκόατε.

...Makartatos. Who was his father? Theopompos...Who was Theopompos' father? Kharidemos. Who was Kharidemos' father? Stratios. Who was Stratios' father? Bouselos. That, men of the jury, is the *oikos* of Stratios, one of the sons of Bouselos; and those men, whose names I have given you, are descendants of Stratios.

Here the *oikos* seems to be defined as the descendants through the male line. In many extant speeches there are expressions of concern that an *oikos* may be 'deserted' or 'left empty' (ἐξερημωθῆναι), which means that a man has died without leaving a son or grandson to succeed him.<sup>15</sup> The reason for this concern was at least partly religious, as two passages of Isaios show.

<sup>14</sup> Wolff, in *Festschrift für E. Rabel* ii.302, writes as if the boys were put forward as κληρονόμοι of Euktemon while Euktemon was alive. But the speaker does not allege that Androkles and Antidoros pretended that Euktemon was dead.

<sup>15</sup> Cf. D. Asheri, 'L'*oikos* ἐρημος nel diritto successorio attico', *Archivio Giuridico* 28 (1960), 7–24.

**Isai. 2.10.** μετὰ δὲ ταῦτα χρόνου διαγενομένου ἐσκόπει ὁ Μενεκλῆς ὅπως μὴ ἔσοιτο ἄπαις, ἀλλ' ἔσοιτο αὐτῷ ὅστις ζῶντα γηροτροφήσοι καὶ τελευτήσαντα θάψοι αὐτὸν καὶ εἰς τὸν ἔπειτα χρόνον τὰ νομιζόμενα αὐτῷ ποιήσοι.

After this, when time had passed, Menekles began to consider how he might avoid being childless, and might have someone who during his lifetime would support him in his old age, and after his death would bury him and do what was customary for him in the future.

**Isai. 7.30.** πάντες γὰρ οἱ τελευτήσιν μέλλοντες πρόνοιαν ποιοῦνται σφῶν αὐτῶν, ὅπως μὴ ἐξηρημώσουσι τοὺς σφετέρους αὐτῶν οἴκους, ἀλλ' ἔσται τις καὶ ὁ ἐναγιῶν καὶ πάντα τὰ νομιζόμενα αὐτοῖς ποιήσων· δι' ὃ κἂν ἄπαιδες τελευτήσωσιν, ἀλλ' οὖν ποιησάμενοι καταλείπουσι.

All who are approaching death take thought for themselves, to make sure that they do not leave their *oikoi* empty and that there will be someone to perform sacrifices and all the customary rituals for them. For that reason, even if they die childless, they at any rate adopt sons and leave them behind.

These passages do not mean that there was concern that a house should not be left unoccupied; we are told explicitly that Menekles did not have a house (Isai. 2.27). Rather, the concern is for the continuation of the family. A man who had no legitimate son of his own could achieve this aim by adopting one, or this could be arranged for him by his relatives after his death. An adopted son was legally transferred to the *oikos* of his adopter and ceased to be a member of his original *oikos*; but he could return to his original *oikos* later, if he so wished, provided that he left a son of his own in the *oikos* of his adopter to ensure its continuation. I quote two passages to illustrate these rules.<sup>16</sup>

**Isai. 9.2.** εἰσποιητὸς δ' ἦν ὁ πατήρ ὁ Κλέωνος εἰς ἄλλον οἶκον, καὶ οὗτοι ἔτι εἰσὶν ἐν ἐκείνῳ τῷ οἴκῳ, ὥστε γένει μὲν διὰ τὸν νόμον οὐδὲν προσήκουσιν Ἀστυφίλῳ.

Kleon's father was adopted into another *oikos*, and they are still in that *oikos*, so that legally they have no family relationship to Astyphilos.

**Dem. 44.21.** ὁ γὰρ Λεωκράτης ὁ εἰσποιητὸς γενόμενος τῷ Ἀρχιάδῃ, ἐγκαταλιπὼν τουτονὶ Λεωστρατον ἐν τῷ οἴκῳ υἱὸν γνήσιον, ἐπανήλθεν αὐτὸς εἰς τοὺς Ἐλευσινίους, ὅθεν ἦν τὸ ἐξ ἀρχῆς.

Leokrates, who had been made the adoptive son of Arkhiades, left in the *oikos* this man Leostratos, who was a legitimate son, and himself returned to the Eleusinioi, from whom he originally came.

That was the situation of the *oikos* which was in danger of dying out because there was no son. The converse situation was that of the *oikos* in which there was more than one son. Here the *locus classicus* is the account of the family of Bouselos. Bouselos had five sons; each received a fair share of their father's property, and they all married and had children.

**Dem. 43.19.** καὶ ἐγένοντο πέντε οἴκοι ἐκ τοῦ Βουσέλου οἴκου ἐνὸς ὄντος, καὶ χωρὶς ἕκαστος ὥκει τὸν ἑαυτοῦ ἔχων.

And out of the one *oikos* of Bouselos five *oikoi* came into being, and each man lived separately with his own *oikos*.

At what point in time was the one *oikos* transmuted into five? The sentence just quoted might be taken to mean that it was when each son began to live in a separate house. But I do not think it necessarily means that; it could mean merely that they began living in separate houses some time after the five *oikoi* came into existence. The

<sup>16</sup> For a more detailed account of the law of adoption see Harrison, *The Law of Athens* i.82–96.

possibilities remain open that the time when the five *oikoi* were created was when Bouselos died, or when the property was shared out, or when each son came of age. It is also not clear whether one of the five (perhaps that of the eldest son) was regarded as the *oikos* of Bouselos continuing into the next generation while the other four were new *oikoi*. These questions are of legal importance if, but only if, membership of a particular *oikos* had some legal significance.

### RIGHTS AND DUTIES OF RELATIVES

What legal significance, then, did membership of an *oikos* have? What rights or duties arose from belonging to the same *oikos* as another person? Three legal topics need to be considered here: political rights, death, and inheritance.<sup>17</sup> It will be convenient to consider these in reverse order, so as to take first the topic about which we have most information.

The Athenian law of inheritance is quite well known, because it is the subject of a fairly large number of extant speeches, especially those of Isaios, and I need not go into much detail here.<sup>18</sup> When a man died, his property normally passed to his children or grandchildren, or to an adopted son. If none of these existed, the nearest relatives could claim. The circle of relatives entitled to claim was known as the *ἀγχιστεία*. The law defining this group and the order of precedence within it is quoted in Dem. 43.51. Some words are lost from the text there, but it is fairly clear that the order of precedence was: brother (or half-brother by the same father), and his descendants; sister (or half-sister by the same father), and her descendants; other relatives on the father's side 'as far as children of cousins' (*μέχρι ἀνεψιῶν παίδων*); half-brother (by the same mother), and his descendants; half-sister (by the same mother), and her descendants; other relatives on the mother's side 'as far as children of cousins'. All this is well known, but what is worth noticing on the present occasion is that this law nowhere uses the term *oikos*. It does use the term *ἀγχιστεία*, but that denotes a much wider group. The *ἀγχιστεία* included such relatives as uncles and cousins, who were not members of the *oikos*. Admittedly the order of precedence is constructed in such a way that relatives who were members of the same *oikos* as the deceased would almost always be preferred to relatives who were not. A few exceptions are conceivable: for example, the deceased's daughter's son, who would be in a different *oikos*, would take precedence over the deceased's unmarried sister, who would be in the same *oikos*. Such cases were probably rare; but even if they were very rare indeed, the fact remains that the text of the law of inheritance does not seem to attach any significance to crossing the boundary of the *oikos*.

Yet very great significance is attached to that in the speech in which the law is quoted (Dem. 43). This is the speech *Against Makartatos*, one of the two surviving speeches in the notoriously long dispute about the estate of Hagnias.<sup>19</sup> Sositheos is speaking on behalf of his wife and their young son Euboulides. They had used the device of posthumous adoption to register the boy as the adopted son of his wife's

<sup>17</sup> It no longer seems necessary to discuss Paoli's strange theory that the *oikos* had a law of its own, separate from the law of Athens. It is rightly rejected by H. J. Wolff, *Tijdschrift voor Rechtsgeschiedenis* 20 (1952), 6–7 n. 19, and by E. Karabélias in *Μνήμη Γ. Α. Πετροπούλου* i.451–2.

<sup>18</sup> For more details of inheritance law see Harrison, *The Law of Athens* i.122–62; MacDowell, *The Law in Classical Athens*, pp. 92–108.

<sup>19</sup> For a commentary on these speeches see W. E. Thompson, *De Hagniae Hereditate* (*Mnemosyne* suppl. 44, 1976). A summary of the whole dispute is given by MacDowell, *The Law in Classical Athens*, pp. 103–8.



deceased father, also named Euboulides; and they claimed that the boy should inherit the estate of Hagnias, on the ground that he now belonged to the same *oikos* as Hagnias whereas the rival claimant, Makartatos, did not. I have already quoted his account of the ancestry of Makartatos, tracing the *oikos* of Stratios up through the generations from son to father (Dem. 43.48). But now look at his account of the *oikos* of Hagnias.

**Dem. 43.49–50.** ...Εὐβουλίδης. τίνος ὦν πατρός; Εὐβουλίδου τοῦ Ἀγνίου ἀνεψιοῦ...ὁ Εὐβουλίδης δὲ τίμος ἦν πατρός; Φιλάγρου [τοῦ ἀνεψιοῦ τοῦ Ἀγνίου]. μητρός δὲ τίμος; Φυλομάχης τῆς τηθίδος τῆς Ἀγνίου. ὁ δ' Ἀγνίας τίμος ἦν υἱός; Πολέμωνος. ὁ δὲ Πολέμων τίμος; Ἀγνίου. ὁ δ' Ἀγνίας τίμος; Βουσέλου. οὐτοσί ἕτερος οἶκος ἐστὶν ὁ Ἀγνίου, ἐνὸς τῶν Βουσέλου υἱέων.

... Euboulides. Who was his father? Euboulides the cousin of Hagnias... Who was Euboulides' father? Philagros. Who was his mother? Phylomakhe the aunt of Hagnias. Who was the father of Hagnias? Polemon. Who was the father of Polemon? Hagnias. Who was the father of Hagnias? Bouselos. That is a second *oikos*, the *oikos* of Hagnias, one of the sons of Bouselos.

Even if this catalogue is recited at high speed, it is hardly possible to overlook the fact that the line of descent is traced through a woman, Phylomakhe, who was merely an aunt of the Hagnias whose estate was being claimed. The argument used here is unparalleled. Other evidence (e.g. Isai. 3.8) indicates that when a woman was married she was transferred from the *oikos* of her father to the *oikos* of her husband. Thus Phylomakhe and her descendants must surely have belonged to the *oikos* of her husband, Philagros.<sup>20</sup> There is no other evidence that it was considered acceptable to trace an *oikos* through a female line, and thus the argument used by Sositheos is probably wrong. He was desperately trying to find some way of maintaining that the young Euboulides was more closely related to Hagnias than Makartatos was, and he thought that a claim to membership of the same *oikos* would be effective with the jury. Presumably he did have some hope that the jury would believe it. This suggests that, though the normal rule was to trace an *oikos* through the male line, there was no law actually requiring it to be defined in that way.

So the conclusion which I draw from the evidence about inheritance is that membership of an *ἀγχιστεία* was legally significant, but membership of an *oikos* was not significant legally, but only rhetorically, and consequently there was no need for a legal definition of an *oikos*. I can now deal rather more quickly with laws concerning death, which seem to point to the same conclusion. Two laws are relevant, both quoted by Sositheos in the speech *Against Makartatos*. One is the well-known law about homicide, attributed to Drakon and also partly preserved in an inscription, which specifies the relatives who are to be involved in prosecuting or in pardoning a killer. The other is a law about funerals, permitting only certain categories of women to attend.

**IG I<sup>3</sup> 104.13–16, 20–23** (cf. Dem. 43.57). [αἰδέσασθαι δ' ἂμ μὲν πατέ]ρ ἔι ἔ ἀδελφός[ς] ἔ ἡνῆς, ἡπάντ[α]ς, ἔ τὸν κο[λύ]οντα κρατέν· ἐὰν δὲ μὲ] ἡούτοι ὅσι, μέχρ' ἀνεφ[σι]ότετος καὶ [ἀνεψιό, ἐὰν ἡάπαντες αἰδέσ[α]σθαι ἐθέλοσι, τὸν κο[λύ]οντα [κ]ρα[τέν]...[προειπέν δ]ὲ τοῖ κτέναν[τι ἐν ἀ]γορ[αῖ μέχρ' ἀνεψιούτετος καὶ ἀνεψιό· συνδιόκ]εν δὲ [κ]ἀνεψιός καὶ ἀνεψιὸν παῖδας καὶ γαμβρός καὶ πενθερός καὶ φρ[ά]τ[ρο]ρ[ας].

Pardon is to be granted, if there is a father or brother or sons, by all, or whoever opposes is to prevail; and if these do not exist, by relatives as far as cousinhood and cousin, if they are all willing to grant pardon, or whoever opposes is to prevail... Proclamation is to be made to the

<sup>20</sup> Philagros too, as it happened, was descended from Bouselos, but through a different son of Bouselos (Dem. 43.24), and we have already seen that each of the sons of Bouselos established a separate *oikos* (Dem. 43.19).

killer in the Agora by relatives as far as cousinhood and cousin; the prosecution is to be shared by cousins, sons of cousins, sons-in-law, fathers-in-law, and members of the phratry.

**Law quoted in Dem. 43.62.** γυναῖκα δὲ μὴ ἐξεῖναι εἰσιέναι εἰς τὰ τοῦ ἀποθανόντος μηδ' ἀκολουθεῖν ἀποθανόντι, ὅταν εἰς τὰ σήματα ἄγῃται, ἐντὸς ἐξήκοντ' ἐτῶν γεγονυῖαν, πλὴν ὅσαι ἐντὸς ἀνεψιαδῶν εἰσι· μηδ' εἰς τὰ τοῦ ἀποθανόντος εἰσιέναι, ἐπειδὴν ἐξενεχθῇ ὁ νέκυσ, γυναῖκα μηδεμίαν πλὴν ὅσαι ἐντὸς ἀνεψιαδῶν εἰσίν.

It is not to be lawful for a woman to enter the house of the deceased, or to follow a deceased when he is taken to the cemetery, if she is under sixty years of age, except those women who are within the degree of cousins' children; nor for any woman to enter the house of the deceased after the corpse is carried out, except those women who are within the degree of cousins' children.

There has been a good deal of modern discussion about the exact interpretation of *μέχρι ἀνεψιότητος καὶ ἀνεψιοῦ* in the homicide law. Does it mean the same as *ἐντὸς ἀνεψιαδῶν* in the funeral law and *μέχρι ἀνεψιῶν παίδων* in the inheritance law? I am inclined to think that it probably does, and that all three phrases are intended to define the same degree of relationship, the *ἀγχιστεία*, 'as far as children of cousins'; but it has recently been argued that the relatives defined in the homicide law are a smaller circle (as far as first cousins once removed) than the *ἀγχιστεία* (as far as second cousins),<sup>21</sup> and the definition remains uncertain. What is certain, however, is that all these phrases refer to a larger circle than the *oikos*. They all include at least first cousins, who would not be members of the same *oikos*. Even when the homicide law defines a smaller group of relatives who have a prior right to grant pardon to a killer, it specifies 'father or brother or sons'. That is still not a definition of the *oikos*. A deceased man's father or sons would probably belong to the same *oikos* as himself, but his brother, if adult, would probably not (cf. Dem. 43.19, already quoted). The very fact that the brother is sandwiched between the father and the sons in this list confirms that the author of the law (Drakon, if it was he) was not thinking about membership of the *oikos* when he drafted it.

Is there then no Athenian legal text which mentions the *oikos* in the sense of 'family'? Sositheos, in the speech *Against Makartatos*, has obviously made an exhaustive search for such texts, and he has found only one.

**Law quoted in Dem. 43.75.** ὁ ἄρχων ἐπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων καὶ τῶν οἰκῶν τῶν ἐξερημουμένων καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκειν κτείν.

The archon is to care for orphans, *epikleroi*, *oikoi* which are left empty, and those women who remain in the *oikoi* of their husbands who have died, saying that they are pregnant.

Here the word *oikos* occurs twice in one sentence, and the participle *ἐξερημουμένων* naturally reminds us of the passages in the orators where the same verb is used to express concern about a man's *oikos* dying out because he leaves no son. We may therefore be tempted to think that here we do have a clear instance of *oikos* as a legal term for 'family', and that it must have had a precise legal definition, because, if it had not been clear who counted as a member of the *oikos*, it would not have been clear when the archon was required to act. But here some caution is needed. The law is undated, and it is possible, or even probable, that it is one of the early laws defining the functions of the archon, to be attributed perhaps to Solon; we must therefore not take for granted that its use of terminology is the same as that of the orators.<sup>22</sup> When

<sup>21</sup> S. Bianchetti, *SIFC* 54 (1982), 129–65.

<sup>22</sup> P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981), pp. 633–4, implies that this function of the archon existed 'in archaic Athens', and points out differences between the terminology of the law and normal fourth-century terminology.

Isaios says that an *oikos* is 'left empty', he means that a family has no male member left alive. But this law cannot mean that the arkhon is to care for non-existent sons. Does it mean, by the phrase τῶν οἰκῶν τῶν ἐξερημουμένων, that the arkhon is to care for females left with no father or husband? No, because unmarried daughters have already been covered by the previous words τῶν ὀρφανῶν καὶ ἐπικλήρων, and if the phrase referred to the widows of deceased men there would be no point in adding τῶν γυναικῶν, ὅσαι... as a further category. Thus there seem to be no persons to whom τῶν οἰκῶν refers. I believe therefore that τῶν οἰκῶν in this law does not mean 'families'; it means 'properties' left with no man in control. Or possibly it may even have the more primitive sense of 'houses' left with no male inhabitant; certainly the sense of 'houses' seems quite appropriate for the reference to pregnant wives who remain ἐν τοῖς οἴκοις. Thus this text provides no adequate evidence that *oikos* is a legal term for 'family'.

One other legal function of the *oikos* has been postulated by some modern writers, who make it a fundamental part of the political constitution. This view also was held by Wolff: 'the πόλις was an aggregation of οἶκοι'.<sup>23</sup> He seems to have meant that the citizens of Athens were the heads of all the families. Each family would send, as it were, one representative to meetings of the Ekklesia: 'the heir replaced his predecessor in representing the "house" within the political organization'.<sup>24</sup> But there is virtually no evidence to support this view, and a great deal of evidence against it. It is simply not true that a son did not succeed to political rights until his father was dead or incapacitated. Every young man entitled to citizenship was enrolled as a citizen at the age of eighteen, and this meant that his name was entered on the ληξιαρχικὸν γραμματεῖον, the lists of those who could enter the lottery for offices (e.g. Lykourg. *Leokr.* 76). There are known instances of men who held office while their fathers were still alive and active (e.g. Dem. 21.178). The only passage I have found which might be taken as meaning that a political function belonged to an *oikos* rather than to an individual is one which mentions an οἶκον τριηραρχοῦντα (Isai. 7.32, cf. 42). But since this comes immediately after a reference to χρήματα, it should not be taken as meaning a family which provided a trierarch, but property large enough for the owner to serve as a trierarch. There is, then, no evidence that the *oikos* as a family unit had any political function.

## CONCLUSION

So my conclusion is that in the texts of Athenian laws *oikos* means 'property' or 'house'. These were the older senses of the word. Probably *oikos* did not begin to be used to refer to persons before the fifth century. (Liddell and Scott give no instances of this sense earlier than Herodotos and the letter attributed to Themistokles in Thuc. 1.137.4.) Athenian laws about family matters were mostly formulated in an earlier period, perhaps by Drakon and Solon. Those laws were certainly concerned with relationships between members of a family, as the laws about inheritance and homicide show, but there is no evidence that a family unit called *oikos* played any part in them. By the late fifth and fourth centuries, when the extant forensic speeches were composed, the word *oikos* had acquired the sense of 'family', and so the orators used it in that sense in the course of their arguments. But it had no legal definition or significance in that sense; and the attempt made by Sositheos, in the speech *Against*

<sup>23</sup> H. J. Wolff, *Traditio* 2 (1944), 93.

<sup>24</sup> *Ibid.* 50.

*Makartatos*, to maintain that this concept is fundamental to the Athenian law of inheritance, is tendentious and unconvincing. Athenian law did not recognise rights of families, but rights of individual persons.

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