

APOLLODOROS' MOTHER: THE WIVES OF ENFRANCHISED ALIENS IN ATHENS*

The banker Pasion, father of the notorious fourth-century litigant and politician Apollodoros, some of whose speeches have survived under the name of Demosthenes, was originally a slave; freed by his owners, he made a substantial fortune from banking and subsequently received Athenian citizenship for his generous gifts to the city.¹ At [Dem.] 59.2 we are given a paraphrase of the decree which enfranchised him: 'Ἀθηναίων εἶναι Πασίωνα καὶ ἐκγόνους τοὺς ἐκείνου, '[the Athenian people voted] that Pasion and his descendants should be Athenian'. In common with inscriptions recording grants of citizenship,² and unlike Roman military diplomata,³ the decree appears to have ignored Pasion's wife Archippe. The silence of the decrees of enfranchisement is echoed in the literary sources, with the result that we have no explicit testimony to the legal status of the wife of an alien who was granted Athenian citizenship. M. J. Osborne assumes that the status of the wife was in no way affected by the grant; she remained an alien.⁴ D. Whitehead has argued that in such cases the wife's status was indeterminate; in the event of the death of her first husband she might find herself married either to an Athenian citizen or to an alien, whereupon her status would be defined according to that of her husband.⁵ This article will argue that Archippe's status was unaffected by Pasion's receipt of citizenship, that is, that she remained a metic. I shall then proceed to consider the question of the implications of the difference in status of Pasion and Archippe subsequent to his enfranchisement for the legal basis of the relationship between them, and finally draw a tentative conclusion about the date of Pasion's receipt of citizenship.

I begin with what we know or can surmise about Archippe. We can be sure that she was not of Athenian birth. This, the view of Schäfer, Sandys and Gernet,⁶ needs to be restated since it has been doubted.⁷ At the date of Isok. 17 (late 390s) Pasion was still a metic.⁸ Archippe must have married Pasion c. 395 at the latest, for Apollodoros, her older son by Pasion, was twenty-four years old in 370 when Pasion died.⁹ To marry Pasion, Archippe cannot have been of Athenian birth. At some date in the fourth century it became punishable for an alien of either sex to contract a formal

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¹ For Pasion and his family see J. K. Davies, *Athenian Propertied Families* (Oxford, 1971), pp. 427ff. ² Cf., e.g., IG ii².405.8–12 εἶναι... Ἀθηναίων αὐτῶν καὶ ἐκγόνους αὐτοῦ.

³ Cf., e.g., CIL xvi.1.10–13 'ipsis liberis posterisque eorum civitatem dedit et conubium cum uxoribus quas tunc habuissent cum est civitas iis data'.

⁴ M. J. Osborne, *Naturalization in Athens*, iii–iv (Brussels, 1983), p. 150; cf. *ABSA* 67 (1972), 147 n. 5. ⁵ D. Whitehead, *CQ* 36 (1986), 109–14.

⁶ A. Schäfer, *Demosthenes und seine Zeit* (Leipzig, 1858), iii, 2, 176, J. E. Sandys and F. A. Paley, *Select Private Orations of Demosthenes* (Cambridge, 1875), ii. xxxv and 126, L. Gernet, *Démosthène, plaidoyers civils*, ii (Paris, 1957), p. 184 n. 1.

⁷ Davies (op. cit. n. 1), p. 429 leaves the question of Archippe's status open.

⁸ See Davies (op. cit. n. 1), pp. 429f.

⁹ Dem. 36.22.

marriage with an Athenian.¹⁰ It is unlikely that the law in question was in existence at the time of Pasion's marriage to Archippe. But even so it is quite inconceivable that Archippe's parents would marry her to the metic Pasion if she were of citizen birth, for they would be aware that under existing legislation the marriage would be invalid for the production of legitimate or citizen issue; any children would be bastards and aliens. Pasion died in 370. In his will he made his former slave Phormion guardian of Pasikles, the younger of his sons, and gave Phormion their mother Archippe in marriage.¹¹ She bore two sons to Phormion, and died in 360.¹²

The crucial incident for the definition of Archippe's status subsequent to Pasion's enfranchisement is the marriage with Phormion. As Apollodoros points out,¹³ Pasion died in 370, but Phormion did not receive Athenian citizenship until 360. Even if Apollodoros is lying about the latter date, it is clear from Dem. 36.6 that Phormion was still a metic in 371, shortly before Pasion made his will. The natural conclusion would appear to be that Archippe remained an alien despite Pasion's enfranchisement, and therefore that throughout her relationship with Pasion Archippe was of metic status.¹⁴ This conclusion is supported by two circumstances. The first of these is the size of Archippe's dowry, as given at Dem. 45.28; it consisted of a talent (on loan at) Peparethos, a talent in Athens, and a *synoikia* worth one hundred minae. A dowry of 3t.40m. was a substantial fortune, equivalent to the wealth required to place a man in the liturgical class. It would surely have been easy enough to find a citizen husband for Archippe, if this had been a possibility under the law. Phormion of course had Pasion's confidence, and Pasion was evidently concerned to ensure that Archippe was cared for. But the cost was high, involving for Archippe a dramatic reduction in status and, for his citizen sons, the prospect of a mother who was a metic. This problem is compounded by the second circumstance, which is Archippe's age. At the date of her marriage to Phormion, Archippe had not reached menopause. There was a possibility (subsequently realized) that she would bear more children. As Phormion's former owner, Pasion was under no illusions about Phormion's status. He knew that any sons born by Archippe to Phormion would not enjoy citizen status. Irrespective of any concern for Archippe's feelings in the matter, it is unlikely that Pasion, a man who knew the value of the citizenship he had worked so hard to obtain, would bequeath to his sons the disagreeable prospect of metic half-siblings if a citizen husband for Archippe was a legal alternative.

The conclusion that the wife of an enfranchised alien remained a metic is further supported, as Whitehead notes,¹⁵ by the rules for eligibility for the archonship and for priesthoods. The enfranchised alien was excluded from both, and his descendants were eligible only if they were legitimate issue by an Athenian mother; that is,

¹⁰ The law is not quoted before 343–340 ([Dem.] 59). Gernet, *Plaidoyers civils*, iv (Paris, 1960), 67 n. 3 suggests a date c. 350. This would bring the law into close proximity with the decree of Demophilos. Perikles' restrictive citizenship/marriage decree of 451/0 was followed in 445/4 by a scrutiny held in all the demes to test the qualifications for citizenship of all existing members (Philochoros F119 Jacoby, Plut., *Per.* 37). Although the scrutiny was not directly connected with the decree, which was not retrospective, both reflect the same jealousy by the demos of the privileges of citizenship. In 346/5 another general scrutiny was carried out at the instigation of Demophilos (Aischin. 1.82, Harpokration s.v. *διαψήφισις*). It would not be surprising if a law punishing marriages between citizens and foreigners belonged to the same period as the Demophilos decree, for both alike were intended to check the dilution of citizen rights.

¹¹ Dem. 36.8.

¹² [Dem.] 50.60, Archippe's death; Dem. 36.32, 45.4, her children to Phormion.

¹³ [Dem.] 46.13.

¹⁴ Cf. T. R. Glover, *From Pericles to Philip* (London, 1917), p. 324.

¹⁵ Whitehead (op. cit. n. 5), 112.

Apollodoros could not have become archon, but had Pasion sired children by an Athenian wife after his receipt of citizenship these would have been eligible. Whitehead notes: 'If women in Archippe's position remained ... simple *xenai* even after their husbands had become Athenian citizens, these eligibility rules would arguably make reasonable sense'.

In favour of his own view that the status of the wife of the recipient of citizenship was ambivalent, Whitehead offers two arguments. Firstly, Archippe's dowry included landed property. Unless the *synoikia* was meant to be sold off immediately, which 'there is no reason to think', Archippe was 'in some sense the owner of the *synoikia*', which appears to point to citizen status. However, Whitehead dismisses too lightly the possibility of bestowal by Pasion with a view to sale. At the time of Pasion's death, Phormion's subsequent enfranchisement could not have been anticipated with any confidence; and from the device employed to circumvent Phormion's inability to lend on land when Pasion leased the bank to Phormion not long before his death (36.6) it is clear that at the time when Pasion was making his will Phormion did not have the privilege of *enktesis*. So to the best of Pasion's knowledge the property could not be owned by any sons of Archippe by Phormion; he must therefore have envisaged when making his will that the property would be sold off at some point. It is a question of when, not whether, the property was to be sold, and there is no reason to suppose eventual sale more likely than immediate sale. Indeed, it seems likely that immediate sale would be the result even on Whitehead's hypothesis, for if Archippe's status was to be defined by her subsequent husband the effect of Pasion's bequest of Archippe to Phormion would presumably be to reduce her to metic status and therefore render her incapable of owning landed property. I conclude that the inclusion of the *synoikia* in Archippe's dowry does not affect the issue either way.

Whitehead also draws attention to [Dem.] 46.23, where Apollodoros says of Phormion's marriage with Archippe: οὐκοῦν αὐτόν, εἴπερ ἐβούλετο ὀρθῶς διαπράττεσθαι, λαχεῖν ἔδει τῆς ἐπικλήρου, εἴτε κατὰ δόσιν αὐτῷ προσήκεν εἴτε κατὰ γένος, εἰ μὲν ὡς ὑπὲρ ἀστῆς, πρὸς τὸν ἄρχοντα, εἰ δὲ ὡς ὑπὲρ ξένης, πρὸς τὸν πολέμαρχον, 'so then, if he wanted to act properly, he should have laid claim to the heiress, whether he was entitled to her by gift or by birth, before the archon if claiming her as a woman of citizen status, before the polemarchos if claiming her as a foreign woman'. Whitehead concludes: 'Since in 46.23 the generalities of the preceding chapter have plainly given way to statements about this specific case, it would appear that Apollodoros is saying that his mother's status, as *aste* or *xene*, was one of genuine and intrinsic ambiguity'. However, we cannot place much weight on this passage. Displays of knowledge, irrespective of immediate relevance, are typical of Apollodoros, and [Dem.] 46 is from first to last a demonstration of shallow legal expertise. In the passage in question the clause εἴτε κατὰ δόσιν αὐτῷ προσήκεν εἴτε κατὰ γένος ('whether he was entitled to her by gift or by birth') certainly shows the intrusion of the general (the law's prescriptions) into the particular (Phormion's right to Archippe), for Apollodoros does not envisage any claim from Phormion to be related to Archippe by birth. I see no reason not to detect the same redundancy in εἰ μὲν ὡς ὑπὲρ ἀστῆς, πρὸς τὸν ἄρχοντα, εἰ δὲ ὡς ὑπὲρ ξένης, πρὸς τὸν πολέμαρχον in the same sentence ('before the archon if claiming her as a woman of citizen status, before the polemarchos if claiming her as a foreign woman'). Apollodoros is not really suggesting that his mother could be regarded arbitrarily as either of citizen or alien status; he is vacillating between the procedures available to the claimant of any *epikleros* and what Phormion as an individual might have done. Again we have nothing of substance to set against the incontrovertible fact that Archippe was

married to a metic subsequent to her husband's enfranchisement, which according to the most obvious interpretation implies that her status was unaffected by Pasion's receipt of citizenship, and against the corroborative arguments adduced above to the effect that there were positive inducements to Pasion to choose a citizen husband for his wife if this was a possibility under Athenian law.

It is more difficult to establish the implications (if any) of the decree of enfranchisement for the relationship between Pasion and Archippe. Taken absolutely literally, the wording of the decree of enfranchisement ('Pasion and his descendants') would appear to have given Pasion the right to produce citizen issue by any female at all. I take it however that Pasion's rights and responsibilities under this decree were defined by the law governing grants of citizenship. It is in fact most unlikely that these were spelled out in detail. Athenian laws did not as a rule contain precise definitions of their scope; they tended to be formulated broadly, and in ordinary rather than legal language, with the result that it was often for the courts to determine the scope of a particular law, as well as deciding questions of fact. Probably the law contained a vague clause such as that found in the Plataian decree quoted at [Dem.] 59.104: *καὶ μετεῖναι αὐτοῖς ὥνπερ Ἀθηναῖοις μέτεστι πάντων, καὶ ἱερῶν καὶ ὁσίων, πλὴν εἴ τις ἱερωσύνη ἢ τελετὴ ἐστὶν ἐκ γένους, μηδὲ τῶν ἐννέα ἀρχόντων, τοῖς δ' ἐκ τούτων*, 'and they [the Plataians] are to share in all the rights of the Athenians, sacred and profane, save any priesthood or rite which belongs to a family, nor the nine archons, though their descendants may share in these'. In all probability we are dealing therefore not with the explicit prescriptions of the law but with the way in which the law was, or was likely to be, interpreted in practice. Probably any imprecision in the law would cause little confusion, for the enfranchised alien knew by observation the rights and responsibilities of the citizen, and would apply these to himself, subject to the explicit exceptions laid down by law. Now, even if the law imposing severe penalties on aliens contracting marriage with Athenian citizens was not in existence at the time of Pasion's receipt of citizenship, from the middle of the fifth century such marriages were not recognised by law; the offspring were neither Athenian citizens nor legitimate. This would of course apply to any enfranchised alien proposing to contract a marriage. But in view of the time, expense and effort required for the acquisition of Athenian citizenship, most if not all of the small number of aliens who achieved this must have been mature in years, and many if not most will already have been married. It is conceivable that in such cases it was accepted on all sides that the marriage would continue unaffected by the change of status of one of the partners. However, this degree of tolerance seems inherently unlikely, for it would create a remarkable anomaly. The effect would be not to place the adopted citizen on the same footing as existing citizens ('share all the rights of the Athenians') but to allow an enfranchised alien a right which no Athenian citizen by birth enjoyed, the right to produce legitimate and citizen issue by a foreign female. This does not sort with the Athenian (indeed the Greek) jealousy of the privileges of citizenship. If we exclude oversight or indifference (both of which appear to be ruled out by the explicit provision that the archonship and priesthoods should be closed to the sons of an enfranchised alien not born of an Athenian mother), the only possible grounds for allowing such a marriage to continue would be sentiment. However, the Athenians were not sentimental about marriage, as the nature of the betrothal process (which excludes the bride), the factors operative in known marriage matches, and the reasons for marriage advanced in Athenian sources, demonstrate quite clearly. This lack of sentimentality can be seen especially in the case of the *epikleros*, a situation which resembles that of the enfranchised alien to the extent that both could give rise to

circumstances in which the status of one partner in a marriage was fundamentally altered. 'If a woman who was already married became an *ἐπίκληρος* her nearest male relative could claim her hand and force the dissolution of her existing marriage' (though not, perhaps, if the existing marriage had produced male issue).¹⁶ The law ignored the feelings of the *epikleros* and her first husband. If the female belonged to the thetic class, the nearest male relative was compelled either to marry her or to dower her.¹⁷ Where she brought property with her presumably no compulsion was necessary. Athenian males were sufficiently dutiful (and businesslike) to divorce existing wives in order to marry an *epikleros*, evidently without rancour on either side.¹⁸ Athenian citizenship was the highest prize a metic might aspire to, a prize which, according to Greek values, would more than compensate for the loss of a wife. There was no more room for sentiment in Pasion's case than in that of the *epikleros*.

If the restriction on marriage with aliens applied in practice to newly created citizens like Pasion, then the grant of citizenship fundamentally altered the basis of the relationship between Pasion and Archippe. Any children born subsequently to Pasion and Archippe would not be Athenian citizens, nor could they inherit more than the *notheia* from Pasion. In practical terms this need not have any effect on their domestic arrangements. Since Archippe's family were already dead (46.19), there was nobody to receive her back and demand the return of her dowry, and since Pasion already had at least one healthy son (Apollodoros) enfranchised along with himself, there was no incentive to eject her and bring in an Athenian wife to produce a citizen issue. Pasion could even continue to call Archippe his wife.¹⁹ All could go on as before, with no distress to either partner, provided that there was no further issue. Only in that eventuality would the change in the legal basis of their relationship become apparent. But if any Athenian had been asked to define Archippe's relationship with Pasion, he would have termed her *pallake* ('concubine', 'kept mistress'), not *gyne* ('wife').²⁰

If this is correct, then we have a paradox. Any further children of the citizen Pasion by Archippe would not be citizens, while any existing offspring of the metic Pasion by Archippe had already been enfranchised by decree. This gives us a *terminus post quem* for Pasion's receipt of citizenship. His younger son Pasikles came of age in 362.²¹ Thus, accordingly as Athenians came of age at seventeen or eighteen²² Pasikles was born in 379 or 380. If we suppose that the relationship between Pasion and Archippe was incapable of producing citizen issue after Pasion's receipt of citizenship, we must conclude that Pasikles like Apollodoros was born before the enfranchisement

¹⁶ A. R. W. Harrison, *The Law of Athens*, i (Oxford, 1968), p. 11.

¹⁷ [Dem.] 43.54.

¹⁸ [Dem.] 57.41.

¹⁹ In Pasion's will cited at 45.28 (see however next note) Archippe is referred to as Pasion's wife; cf. 36.8, 30, 51, 45.35, 46.13, 17.

²⁰ Libanios in the ancient hypothesis to Dem. 36 describes Archippe as Pasion's *pallake*. If he had any objective support for this remarkable statement, it may have come from Pasion's will, cited in 36.8 and 45.28. In the latter case there is a piece of Greek in our texts which claims to be a citation from the will. But a comparison with Apollodoros' subsequent comment suggests that the document may have been cobbled together from the speaker's paraphrase; especially suspicious is the item *θεραπαίνας* ('maidservants'), which reproduces the vagueness of Apollodoros' paraphrase, and where we expect either a global ('the maidservants', 'all the maidservants') or a particular ('maidservants x and y and z') specification. Libanios appears to have had a text of Demosthenes which contained original documents now lost, for he is able to give the names of the litigants in [Dem.] 56, 57 and 58, though these are not supplied by the surviving speech. However, it is also conceivable that Libanios reached his statement by a logic such as that used in this paper.

²¹ Davies (op. cit. n. 1), p. 430.

²² For the problem see Davies (op. cit. n. 1), pp. 123ff.

of Pasion. Pasion was therefore enfranchised late in 380 at the earliest. Davies suggests that the military *epidoseis* which earned Pasion his citizenship were more likely to be made before 386 or after 377.²³ *Prima facie* the latter now seems the likelier date. However, Pasion could well have been rewarded during the period 380–377 for benefactions bestowed much earlier.²⁴ Enfranchisement in or after 380 appears to leave little time for Pasion to acquire approximately 20 talents in landed property (36.5), which only a citizen could own. But Pasion's friend Pythodoros²⁵ may have 'lent' on landed property, and stood debtor to the bank for the same amount of cash; a similar fiction was employed when Phormion leased the bank from Pasion (36.6). If this device was employed by Pasion, he may have been the real owner of a substantial amount of land on which the bank had foreclosed long before he became an Athenian citizen.

One question still needs to be answered. By what right did Pasion give Archippe in marriage to Phormion, if she had ceased to be his wife? No certain answer is forthcoming; indeed, it is quite possible that Athenian law made no provision for a case such as this, for it seems clear from 46.19 that Archippe had no surviving kin to receive her from Pasion. Under the circumstances Pasion, even if he were no longer her husband, could reasonably claim to be her *κύριος*. Certainly nobody at the time doubted Pasion's right to dispose of Archippe in his will.²⁶

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²³ Davies (op. cit. n. 1), p. 430.

²⁴ For the delay cf. *IG* ii².398.

²⁵ For Pythodoros see Isok. 17.33.

²⁶ Apollodoros was the exception, and he was induced to drop his objections, Dem. 45.4. It was nearly two decades later before he objected again.