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DIADIKASIAI AND THE DEMOTIONID PROBLEM

For much of the Peloponnesian War the links between Athens and outlying areas of Attica were severely strained, if not severed. The disruption was most critical around Decelea under Spartan occupation (413–404). The traditional fabric of demes, phratries and *genē* unravelled, as many households relocated. Further frayed by civil conflict, the ties that bound these groups together must have been slow to mend, even after the reunification of Attica in 401/0. A curious document of that mending survives to us in the set of decrees for a phratry centred at Decelea, most often called 'the decrees of the Demotionidae'.[1] The decrees deal with procedures for contesting members' rights: the contest is called *diadikasia* but usually translated 'scrutiny', on the assumption that the aim of this procedure is to exclude those who lack citizen qualifications.[2] The first decree, moved by Hierocles in 396/5, focusses on the cases of standing phratry members (already on the roster) whose *diadikasiai* have not yet been decided; it also refers to annual *diadikasiai* for new members at the Apatouria. The second decree, moved by Nicodemus, deals with that annual procedure (the third decree was added much later and does not mention the *diadikasiai*). But it is disputed whether the phratry invoked in these decrees is indeed the Demotionidae, and the connection between this group and the 'house of the Deceleans', prominent in the first decree, is still a vexed question. Important studies in the 1990s, by Hedrick and Lambert, disposed of old assumptions with more sophisticated models of how these groups interact, but many difficulties remain.

In earlier studies there was a general presumption that the two named groups, Demotionidae and *oikos Dekeleiōn,* represent a phratry and a privileged body within it.[3] Wilamowitz identified the Demotionidae as the phratry and the *oikos Dekeleiōn* as the subgroup. Crucial to this identification is the appeal procedure

[1] *IG* ii^2 1237. For text and translation see now P.J. Rhodes and R. Osborne, *Greek Historical Inscriptions 404–323* BC (Oxford, 2003), 26–35; cf. C.W. Hedrick, Jr., *The Decrees of the Demotionidai* (Atlanta, 1990). See also S.D. Lambert, *The Phratries of Attica*^{2} (Ann Arbor, MI, 1998; 1st ed. 1993), 285–93; Rhodes, 'Deceleans and Demotionidae again', *CQ* 47 (1997), 110–13.

[2] E. Szanto, 'Zur attischen Phratrien- und Geschlechter-verfassung', *RhM* 40 (1885), 506–20 (working from Face A only) treated *diadikasia* in the first decree as analogous to *diapsēphisis* in the deme (esp. 508); on Leist's theory (1886), see nn. 3 and 10 below. When the other side of the stele was published, with Nicodemus' decree (J. Pantazides, '*Ἐπιγραφὴ ἐκ Δεκελείας*', *Ἀρχ. Ἐφ.*1888, cols. 1–20), scholars assumed an annual scrutiny: thus F.B. Tarbell, 'The decrees of the Demotionidai. A study of the Attic phratry', *AJA* 5 (1889), 135–53, at 151; similarly Wilamowitz, *Aristoteles und Athen,* (Berlin, 1893), 2.261, 'prüfung der neu eingeschriebenen'. Hedrick and Lambert (n. 1) use 'scrutiny' for both procedures (for old members and new). Rhodes and Osborne (n. 1) render it more aptly, 'adjudication', but seem to assume the same scrutiny of citizen qualifications (37–8).

[3] Among early studies: Szanto (n. 2) supposed that the Demotionidae were a phratry and subdivision of a genos whose main branch was represented in the *oikos Dekeleiōn*; G. Leist, *Die attische Eigentümerstreit im System der Diadikasien* (Jena, 1886), 20–7, treated the *oikos Dekeleiōn* as the privileged *genos*; Tarbell (n. 2) 148 supposed 'a gentile or quasi-gentile thiasos'.

prescribed by Hierocles in the first decree: those who are disqualified may appeal to the Demotionidae, and that appeal could only be to the full phratry. But the *oikos Dekeleiōn* is given a prominent role in the appeal, for the *oikos* will appoint *synēgoroi* to argue against the appellants. Moreover, the priest serving the phratry is specifically identified as the priest of the *oikos Dekeleiōn,* and it is he who must enforce the heavy fine against those whose appeal is rejected. Thus Wilamowitz supposed that the *oikos Dekeleiōn* was a group within the phratry Demotionidae, with special authority for confirmation of new members, and that view prevailed for more than a generation. But then, in 1931, Wade-Gery reversed the roles: the *oikos Dekeleiōn* is the phratry that authored these decrees; the five *synēgoroi* whom they appointed were judges or 'assessors' rather than advocates; the Demotionidae, whose *nomos* is invoked and who have the ultimate decision on appeals, must be a committee of judicial experts. Following Wade-Gery's approach, Andrewes later identified the Demotionidae as, indeed, a governing *genos* within the phratry.[4]

But in 1990 Hedrick published a more thorough study of the inscription, drawing important implications from features on the stone that had gone unnoticed, and he recast the relationship between the two groups. As key terms in the prescript had been erased and reinscribed not once but twice, we can no longer assume that the first two decrees were passed at the same meeting. For the extant name of the priest, Theodorus, was in fact the third name to stand in that place; there must have been a second name inscribed there at the enactment of the second decree. And so, as Nicodemus' measure was approved under a new priesthood, a year or more after Hierocles' decree, it may be addressing a rather different situation. Hedrick concluded that the appeal procedure that Hierocles prescribed in the first decree applied to an 'extraordinary scrutiny' of incumbent phrateres; and then, a year or more later, in the second decree, Nicodemus revised the 'regular scrutiny' (the annual review of new members) to which Hierocles made but brief reference.[5] From this perspective, the Demotionidae are the phratry that authorized the decrees, but the *oikos Dekeleiōn* does not appear to be a *genos* or committee in charge of inductions. In Nicodemus' decree the initial decision to confirm or reject belongs to the *thiasos*, which probably plays that role implicitly in Hierocles' decree as well. By this reading, there is no reason to suppose that the *oikos Dekeleiōn* represents anything other than the deme: it is only involved in the trial-on-appeal of incumbent phrateres whose disqualification would also affect their place in the deme. Hedrick's study was admirably clear and persuasive on most points, but it was soon followed by a dynamic model that forces us to reconsider.

Lambert's study of the Attic phratries emphasizes the continuing reconfiguration of such groups. By his view, the *oikos Dekeleiōn* is a phratry in the making, which these decrees capture in the very process of splitting off from the parent phratry. The so-called decrees of the Demotionidae are thus decrees enacted by the seceding group, the *Dekeleieis*, as they establish independent governance. Thus in Hierocles' decree the *Dekeleieis* appoint *synēgoroi* to oppose those who appeal from their

[4] H.T. Wade-Gery, 'Studies in the structure of Attic society: I. Demotionidai', *CQ* 25 (1931), 129–43 (= *Essays in Greek History* [Oxford, 1958], 89–115); A. Andrewes, 'Philochoros on Phratries', *JHS* 81 (1961), 1–15. Similarly W.E. Thompson, 'An interpretation of the "Demotionid" decrees', *SO* 62 (1968), 51–68; L. Wysocki, 'The so-called Demotionid decrees', *Eos* 76 (1988), 39–46, at 44–5.

[5] As Hedrick acknowledges (n. 1), 62, this is essentially in agreement with J.H. Lipsius, 'Der Phratrie der Demontionidai', *Leipziger Studien* 16 (1894), 161–71.

decisions to the wider body; in Nicodemus' decree their control over the induction of new members is complete (so there is no appeal to the Demotionidae). This model has certain advantages over Hedrick's in explaining discrepancies between the two decrees, but it is open to some of the same objections.[6]

By Hedrick's reconstruction we have to suppose that the phratry Demotionidae dictates to the deme *Dekeleieis* in the appeal process, ordering that the deme appoint *synēgoroi* and that its priest take responsibility for collecting the fine. Such hegemony seems unlikely. But Lambert's construction poses a similar complication; for in Hierocles'decree we find the breakaway phratry relying on the parent body to decide appeals but insisting upon its own authority to present the case and collect the fines. So, by either model we have to assume that the authoring group has negotiated certain arrangements with a body that would not ordinarily take orders from it.

Lambert argues that the *oikos Dekeleiōn* cannot represent the deme, as Hedrick maintains: 'if it were a deme there is no apparent reason why it should not have been called one' in our inscription.[7] And tradition suggests that the Deceleans assumed a certain 'institutional identity' long before the Cleisthenic demes were created: as Herodotus reports (9.73), the Deceleans of old welcomed the Tyndaridae and enjoyed a special relationship with Sparta ever after. But, by the same token, if the *oikos Dekeleiōn* is an emerging phratry,[8] we might ask why it is never recognized as such, even in Nicodemus' decree, where we might expect some assertion of that new-found independence. And, in this regard, Herodotus' testimony only confirms what we would otherwise suspect: at Decelea, as in many villages, the Cleisthenic deme was readily constructed from an older association.

But Herodotus does provide an important clue to the problem that would later emerge at Decelea, where he tells us that the Deceleans had a long-standing relationship with Sparta. It is reasonable to suppose that this is one of the advantages that recommended Decelea as a site for Spartan occupation: the dominant families were sympathetic. These pro-Spartan families most probably remained on their property (or had access to it) during the occupation, while other households from the area relocated to Athens (or elsewhere); and that split must have contributed to the stubborn divisions indicated in our inscription.[9]

In this essay I argue that the essential problem addressed by the two decrees is not (or not primarily) infiltration by *nothoi* and others who lack citizen qualification but a backlog of disputes between those who claim to represent the constituent households; the adversaries were the heirs and incumbents from rival branches that had taken root in the course of nearly a generation while Attica was divided. The most troublesome cases would involve families with wide ramification, of which one branch had remained at Decelea while others relocated to Athens or elsewhere. Those who remained outside Athens would convene in local *thiasoi* in order to

[6] Rhodes (n. 1), taking issue with Lambert, revived Wade-Gery's theory (n. 4): the phratry and authoring body are, indeed, *Dekeleieis*; but the Demotionidae are a body of priestly and legal authority (whether a *genos* or not). Lambert, 'The Attic *genos*', *CQ* 49 (1999), 484–9, defended his adaptation of the 'community-based model'.

[7] Lambert (n. 1), 99 n. 15, and 133.

[8] Rhodes (n. 1), 115 with n. 17, cites a phratry *oikos* in Hellenistic Ceos. But there is at least one contemporary parallel for the deme, the *oikos Meliteōn,* as noted by Hedrick (n. 1), 50–1.

[9] This point is recognized by most commentators (as early as Tarbell, 1889 [n. 2]), pursued by few.

induct their sons and successors. Those who relocated to Athens convened in larger numbers at a regular meeting place, and there they inducted their sons and adoptees; their claims would inevitably conflict with those established at Decelea. When the branches were rejoined, those conflicting claims had to be resolved in an adversarial procedure, aptly described as *diadikasia.*

In this reconstruction I proceed from the common footing that Hedrick and Lambert have laid down: the Demotionidae are a phratry and, whatever the standing of the *oikos Dekeleiōn*, the latter are not a governing *genos* or other aristocratic body with control of the induction process. That theory (Wade-Gery's reconstruction, defended by Rhodes) certainly remains viable, and along the way I will suggest how my reading might accommodate it. But I generally follow Hedrick's solution as the most cogent and most nearly complete (differing on details). In the following sections we begin with the discrepancies that emerge in the two decrees, if we interpret the procedure along conventional lines. Then we turn to the testimony on comparable proceedings in the fourth-century speeches. And from that comparison (in §III) I propose a new reconstruction of the measures prescribed in these decrees.

I

There are three major difficulties that have not been squarely addressed by any study:

(1) *The terminology*. The most awkward piece of the puzzle – and the least examined – is the usage of *diadikasia/diadikazein*. Various details indicate that this procedure will bar or remove unqualified *phrateres*, and so, understandably, scholars have treated the *diadikasiai* in this singular text as 'scrutinies'. We are to assume that the procedure examines the qualifications of a member or candidate on objective grounds (such as citizen status), much like proceedings in the deme. But no one has offered a reasonable explanation why such proceedings should not be called, respectively, *diapsēphisis* and *dokimasia*.[10] *Diadikasia* normally indicates an adversarial procedure, pitting one claimant against another (or others) for a particular asset or assignment.[11] And something more complicated than scrutiny seems to be reflected in the other terms of Hierocles' decree. The defeated contender is called *apodikastheis* (22–3);[12] the one who introduced him is fined 100 drachmas (with no mention of appeal). Thereafter the disqualified are always called, 'those whom they reject', [οὓς] ἀποψηφίσωνται, both in the initial decision and on appeal; that phrasing might describe any contender, but it seems especially suited to the

[10] Leist (n. 3), 25–6, considered two explanations: (1) *diadikazein* and *diapsēphizesthai* are used interchangeably, as an essentially judicial decision (*dikē*) is reached by ballot (*psēphos*); (2) *diadikazein* properly refers to the second round of voting (as the first round is a formality), but loosely covers the whole sequence of proceedings. Leist preferred the latter explanation: he argued that Athenian *diadikasiai* roughly correspond to Roman *actiones in rem* and included the Demotionid procedure in a category of *diadikasiai* in which the litigant brings suit against the governing body. But the closest parallels he could cite were cases of confiscation (esp. Lys. 17), and his rationale was rightly rejected by Lipsius (n. 5), 165. Cf. Hedrick (n. 1), 33–4.

[11] Cf. G. Thür, 'Kannte das altgriechische Recht die Eigentumsdiadikasie?', in J. Modrzejewski and D. Liebs (edd.), *Symposion 1977* (1982), 55–69, at 60; with Leist (n. 3), 58.

[12] Hedrick (n. 1), 39–41, holds that the *apodikastheis* should be one who has evaded scrutiny (and his sponsor is fined on that account); Rhodes (n. 1), 112 n. 6, to the contrary.

rejected newcomer, as opposed to the incumbent.[13] Adjudication of an adversarial dispute also seems indicated in Nicodemus' decree, where he describes an *anakrisis* as preliminary to the *diadikasia*.

(2) *The one-year delay for 'regular scrutiny'*. Hierocles, in the midst of provisions for the retrospective 'scrutiny' of old members, appears to turn aside from his main topic, to prescribe a rule for the annual review of new members: 'Hereafter the *diadikasia* shall be in the year after [the sponsor] has sacrificed the *koureion* on (the day) Koureotis in the Apatouria' (26–9). By the conventional reading, there is a one-year delay between induction and 'scrutiny', and that interval is simply to allow for thorough vetting.[14] But (as we shall see) testimony in the speeches suggests that any challenge to the qualifications of a new member was ordinarily initiated at the induction itself; indeed, the challenger must block the *koureion*, the sacrifice solemnizing the induction. And that is what Nicodemus seems to assume: the *eisagōgē* and *diadikasia* form one connected procedure.

(3) *The disparity in penalties.* There is also a striking discrepancy in the fines levied against failed appellants by Hierocles and by Nicodemus. In the first decree, 'anyone of those whom they reject' initially (31, ὧν ἂν ἀποψηφίσωνται) may appeal to the Demotionidae; if the appellant is then rejected, he (or his sponsor)[15] is fined 1000 drachmas. But in the second decree, if the *thiasōtai* reject but the sponsor 'appeals to the full body … and they (also) reject, he shall owe (only) 100 drachmas' (94–9). Hedrick would explain the disparity as simply reflecting the difference between the extraordinary scrutiny of old members (which is Hierocles' subject) and the regular scrutiny of new members (Nicodemus'). That is surely part of the solution. But Lambert argues that the discrepancy points to the greater autonomy of the *Dekeleieis* in the second decree (no longer submitting appeals to the parent phratry but deciding among themselves). Attractive as each solution is, neither really explains why there should be such a dramatic difference in the two fines, one relatively modest, the other enough to make even a wealthy man reconsider.[16] But if Hierocles' appeal is a new and limited recourse for the stubborn challenger, contesting the rights of an incumbent, then the tenfold fine is a commensurate burden, in an era when such challenges were especially divisive.

The first discrepancy – the peculiar use of *diadikasia* and related terms – cannot be discounted. There is no other instance in all the surviving material where *diadikasia* simply describes a 'scrutiny' or vetting of qualifications. Instead, across a wide range of uses, it naturally conveys a form of litigation or a contest in which the principal claimant is challenged by a rival (or rivals); the distinctive procedural feature is that separate urns are set aside for the ballots of each contender.[17] And

[13] For the range of these terms, cf. *Ath. Pol.* 42.1–2, with Pollux 8.25 (Critias F 71).

[14] So most scholars suppose, going back to the earliest essays (e.g. Szanto and Tarbell [n. 2]).

[15] Hedrick (n. 1), 63–6 argues persuasively that Hierocles' rules for appeal and tenfold penalty apply to the inductee himself, not the sponsor.

[16] Neither can we put much credence in such solutions as Tarbell's (n. 2), 152, that the special appeal is for a candidate who was rejected and reduced to metic status as a child but who now appeals as an adult; or Wysocki's (n. 4), 45, that 'the privileges which the [*genos*] Demotionidae enjoyed were almost solely formulaic', and the appeal was a purely 'theoretical' option.

[17] Cf. Thür (n. 11), esp. 60. In addition to the examples collected by Leist (n. 3), the competitive principle is indicated in the so-called 'Diadikasia-documents', *IG* ii^2 1928–32, (dated 383–379): lists of persons, identified by patronymic and deme, following the formula, 'B

that, I suggest, is precisely what it means in the Demotionid decrees. It refers to a procedure in which one claimant challenges another for the right to be counted as heir to one of the constituent households of the phratry. It is a contest affecting inheritance rights, similar in this respect to the *diadikasiai* that had to be decided before the court. Unlike the court's decision, the phratry assigns status – it does not dispose of the estate. But where the phratry recognizes a son or adoptee as heir to the *oikos*, that determination should weigh heavily with the court in any litigation on the property. Scholars have been reluctant to treat the Demotionid *diadikasiai* as proceedings of this kind, perhaps because it seems unsuited to the judicial temperament of the Athenians to leave such decisions to a largely 'ceremonial' body. But recent studies show that the phratry continued to exercise a remarkable authority over the status and legal rights of its members even in the late fourth century.[18] And the peculiar conditions that prevailed in the decade after 403 seem to have made that authority all the more important in settling the inevitable disputes over succession.

By the conventional view, however, the *diadikasiai* in our decrees focus on the *objective* question of each person's qualification for phratry membership and citizenship. By calling it an 'objective' question, I mean that each case is considered on its own merits rather than comparatively, against some competitor's claim. The main issue is, supposedly, whether the candidate (or incumbent) is indeed the legitimate offspring of *astoi* and otherwise meets the requirements of phratry and polis.[19] Some concern about basic qualifications is indicated, indeed, in two provisions: Hierocles prescribes (18–21), 'anyone who is found to have been inducted (though) not being a phrater (*μὴ ὢν φράτηρ*)' shall have his name expunged from the roster; and the *synēgoroi* shall swear (36–8) not to admit anyone who is not a phrater (*μὴ ὄντα φράτερα*). But those clauses do not necessarily mean that those rejected were found to lack qualification as citizens, only that they no longer qualify as members of this phratry.[20]

Disqualified persons are treated in three ways: first described as 'not being a phrater' (whose name is expunged), then as the *apodikastheis* (whose sponsor is fined), and thereafter as one whom the phrateres vote to reject, *ἀποψηφίσωνται* (whether initially or on appeal). Scholars have usually treated all three descriptions as referring to persons in essentially the same predicament: the member or candidate who does not meet the objective criteria for phratry and polis (or evaded such scrutiny, as Hedrick interprets *apodikastheis*, above n. 12). Thus, we are to assume,

instead of A' (presumably contesting liability for liturgies); cf. V. Gabrielsen, 'The *Diadikasia*-documents', *C&M* 38 (1987), 39–51; J.K. Davies, *Wealth and the Power of Wealth in Classical Athens* (Salem, NH, 1981), 133–50, esp. 149. On *epidikasia* and *diadikasia* in property disputes, see S.C. Todd, *The Shape of Athenian Law* (Oxford, 1993), 220–1, 228–9.

[18] In general, Lambert (n. 1); esp. L. Rubinstein, *Adoption in IV.Century Athens* (Copenhagen, 1993).

[19] Thus Tarbell (n. 2), 150–1 suggests, 'the *diadikasia* of the Demotionidai, instead of being a procedure otherwise unknown to us, was nothing more or less than the trial and vote which every well-conducted phratry held on the admission of each new child, the peculiarity lying solely in the interval of a year required between the first presentation and the vote'. In fact, the scrutiny that he envisions, for *every* inductee, is not otherwise indicated in phratry proceedings.

[20] If citizen qualification were the focus of this process we might expect the witnesses to affirm expressly that the mother is an *astē* (as the father must affirm at the induction), but here they attest only that the child is 'legitimate … by a wedded wife' (110–11); that emphasis suggests that the real issue is rightful succession within the family (as argued below, at n. 48).

in the initial provisions (18–23), the terms *μὴ ὢν φράτηρ* and *ἀποδικασθείς* are virtually equivalent: the *apodikastheis* is a member who has been ejected (or would be) because his qualifications are discredited (e.g. not born of an *astē*). And the later references to those whom the Demotionidae or phrateres 'vote out' also refer to persons in the same situation. But a more likely reading is that these descriptions indicate three different situations that arise in a competitive process.

The key to making sense of these provisions is first to distinguish which clauses of the decree are resumptive – those that simply acknowledge what the standing rules and conventions require – and which clauses introduce some innovation. The first procedural provision (after the prescript) is essentially resumptive: whatever cases remain pending, the phrateres must promptly dispose *κατὰ τὸν νόμον τὸν Δημοτιωνιδῶν* (13–18). There is no innovation here, simply the order that standing rules be carried out expeditiously but with concern for sacred formalities (taking ballots from the altar). The next provision is bound to be largely resumptive as well: whoever is found to have been inducted though 'not being a phrater' is disqualified (18–21). That rule cannot be new, nor is it likely to be any innovation that the names of those disqualified are deleted from the official roster. It is only from this point on that we find substantially new rules, addenda to the *nomos*.

The third provision refers to the *apodikastheis* as though his case is old business: he would be one of those whose *diadikasiai* must be decided at once. His sponsor will now be fined 100 drachmas (22–6). The fine (or the amount) is probably an innovation,[21] as is, almost certainly, the rule that immediately follows: hereafter the *diadikasia* will be scheduled for the Apatouria in the year following the candidate's *koureion* (26–9). But the most prominent innovations come in the provisions allowing appeal to the Demotionidae (29–44). That set of rules applies to the current problem and seems to affect a particular set of participants, not covered by previous rules. Conversely the *nomos Demotionidōn,* invoked for the resumptive provisions (13–21), surely allowed for a vote of that body in cases where an *incumbent* is to be ejected – that would be the normal recourse. The progression from those clauses to the new arrangement (in 29–44) suggests that appeal is here granted to a group other than the *apodikasthentes.* That makes good sense if we interpret these *diadikasiai* as adversarial proceedings pitting the incumbent against a challenger (or challengers). The *apodikasthentes* are rejected incumbents whose right of appeal was defined in the *nomos Demotionidōn.* The new provisions for appeal (29–44) apply to challengers who lose their case, who previously had no right of appeal in the *nomos Demotionidōn*. After all, challenges of this sort may have been quite rare in the past, with the presumption strongly in favour of the incumbent. But after the prolonged disruption of the Decelean War and the civil conflict that followed, the number of challengers and the merits of their claims now demand a more balanced disposition.

On this hypothesis, the three terms may be distinguished as follows. Those who had occupied a particular household and are now ousted from it are *apodikasthentes*; their right to a hearing before the full body was secured in the *nomos Demotionidōn*. In some cases the *apodikastheis* will also lose his standing in the phratry (*μὴ ὢν φράτηρ*), if it is shown that he is not a rightful successor to the

[21] Ordering the priest *and* the phratriarch to collect the fine is probably an adaptation as well; traditionally such duties may have been assigned to one or the other, but now – with the membership localized at Decelea and at Athens – both officers are responsible.

household that he has claimed and that is his only claim to membership. In other cases, a member may be ousted from a particular house without losing his place on the roster, if he belonged to another family in the phratry before claiming the *oikos* at issue. Those who are newly given the right of appeal are those who challenge an incumbent; their claims are now too serious to be denied a full hearing, but they are also all the more divisive. And so, to balance the new guarantee, these challengers are liable to the tenfold fine if they insist upon a claim that is twice found unwarranted.

There is, as we shall see, testimony in the court speeches suggesting that such disputes were not uncommon in phratry proceedings: one heir would challenge another, usually at his induction, sometimes leading to a contest before the full body. The relevant speeches, of course, involve complex litigation in more settled times. But even then there seems to be no denying the phratry's authority to install a successor in an otherwise 'empty house', even when that disposition was bound to disadvantage other worthy contenders. Such is the phratry's authority in 'posthumous adoptions', without a will or agreement *inter vivos*. In such cases the father or guardian of a boy within the requisite degree of kinship (e.g. the son of an *epiklēros*) will introduce him as an adoptive son for the *de cuius*. As in other adoptions, confirmation by the phratry legitimizes his status. That intervention by the phratry must have been all the more crucial in the crisis of the 390s, especially where competing branches of a clan had claimed the estate while Attica was divided.

But before weighing those comparanda, let us be clear about the model that is usually invoked, a model based on proceedings in the deme. The regular scrutiny for deme enrolment (*dokimasia*) is described in *Ath. Pol.* 42.1–2; and the extraordinary procedure for reviewing the deme members (*diapsēphisis*) is well documented in the sources (esp. Dem. 57).[22] The *dokimasia* is, indeed, an objective procedure (at least in principle): it focusses on the boy's age and other legal requirements; in the fourth century the deme's decision is reviewed by the council.[23] Similarly, the deme's *diapsēphisis*, as a review of each member's qualifications, appears to be an up-or-down vote; in most cases the verdict is given summarily; an ejected member may appeal to the court and there have his case fully debated. There seems to be a general presumption that proceedings in the phratry ran parallel to those in the deme: there must have been a regular *dokimasia* of newcomers; and there may have been periodic *diapsēphiseis,* to discover unqualified members by reviewing the whole roster. In support of that assumption no other evidence is adduced than the Demotionid decrees – where it is assumed that these two procedures must be what is described by the one term, *diadikasia.*[24]

[22] See esp. D. Whitehead, *The Demes of Attica, 508/7–ca.250 B.C.: A Political and Social Study* (Princeton, 1986), 97–109.

[23] Ar. *Vesp.* 578 seems to suggest that the court was involved in the fifth century.

[24] Cf. Lambert (n. 1), 166, 170–2, on paucity of evidence on all aspects of the induction, acknowledging that 'arrangements for scrutiny [etc.] will have varied from phratry to phratry' but insisting that 'the scrutiny must have been the most important admissions procedure'.

II

Here let us consider the evidence we have regarding confirmation and challenge in the phratries and associated groups. In order to understand what is most problematic, we proceed from the least contested situation to the most contentious.

(1) When a father presented his *own son without challenge*, many phratries probably relied upon the father's oath; ordinarily there appears to be no objective examination of qualifications.[25] In fact the procedure is so routine that it is only mentioned incidentally, in cases where more complicated issues arise. Thus in Isaeus 7.13–17, the speaker tells how he was inducted as his uncle's adopted son, before a joint session of *genos* and phratry, and he observes that the same law (governing both groups) applies when the father inducts his own son as when he adopts. In this joint session there was a ballot vote (*diapsēphizesthai*) on all candidates for induction, by adoption and otherwise. The speaker announces this by way of claiming that his own qualifications were established in an especially rigorous process, and he suggests that many phratries and *genē* would *not* require that formality. He is probably overgeneralizing.[26] But the jurors should find it plausible that other phratries were not so rigorous, and that is likely to be so because in many phratries no balloting was required for the more ordinary case where a father inducts his own son: if the newcomer is not adopted and not challenged, he is accepted by the phratry summarily, without an examination of specific credentials. There may have been a show of hands (*diacheirotonia*), but voting with ballots from the altar[27] would be reserved for contentious issues that might be decided by a narrow margin.[28]

The usual procedure in uncontested cases may have been for the subgroup (*genos* or *thiasos*) to confirm the newcomer, without a vote by the phratry as a whole. Such was the case of Callias, mentioned by Andocides (1.125–7): by the rules of his *genos*, the Kerykes, Callias was allowed to induct a *kouros* of dubious qualifications simply on his oath that the boy was his own son;[29] and this was in the face of a challenge by Calliades. So, *a fortiori*, the rule seems secure for cases where the newcomer faces no challenge, at least for the Kerykes and probably for ordinary *genē*. And then, with his son confirmed in the *genos*, Callias evidently bypassed any 'scrutiny' in the phratry, relying on the law that Philochorus attests (F 35a)**:** '"Phrateres must accept the *orgeōnes* and the *homogalaktes*", whom we call *gennētai*'. This clause was probably part of a more comprehensive rule of long standing, perhaps revised in the fourth century.[30] Whatever we make of the

[25] Noted as early as W.R. Paton, 'Comment on Tarbell's "Study of the Attic phratry"', *AJA* 6 (1890), 116–17; similarly Lipsius (n. 5), 162.

[26] Cf. Rubinstein (n. 18), 36–45; comparing the Demotionid decrees, she concludes, 'the procedure described in Isaios VII was neither unique nor uncommon' (36).

[27] There is no mention of ballots from the altar in cases uncontested: esp. Isaeus 7–8; cf. Dem. 43.43–5; nor in the account of *diapsēphisis* in the deme, Dem. 57. 8–14. For ballots from the altar (in other proceedings), cf. Plut. *Them.* 17.1; Hdt. 8.123.

[28] Cf. Isae. 8.19: *ὅ τε πατὴρ … εἰς τοὺς φράτορας ἡμᾶς εἰσήγαγεν, ὀμόσας κατὰ τοὺς νόμους τοὺς κειμένους ἢ μὴν ἐξ ἀστῆς καὶ ἐγγυητῆς γυναικὸς εἰσάγειν· τῶν δὲ φρατόρων οὐδεὶς ἀντεῖπεν οὐδ' ἠμφισβήτησε μὴ οὐκ ἀληθῆ ταῦτ' εἶναι, πολλῶν ὄντων καὶ ἀκριβῶς τὰ τοιαῦτα σκοπουμένων.*

[29] Cf. E. Carawan, 'Pericles the younger and the citizenship law', *CJ* 103 (2008), 374–5.

[30] Andrewes (n. 4) argued that this rule from Philochorus belongs to the 430s, assuming the fragment comes from Book 4; but see C. Theodoridis, 'Eine unbeachtete Buchangabe zum

law, Andocides' testimony weighs heavily against the assumption of any regular scrutiny in uncontested cases.

(2) Ordinarily (by contrast to Callias' case) when a father presents a boy as his *own son facing a challenge* from a kinsman with strong standing, the phratry conducted some sort of hearing and voted to decide between the two sides. Such is the case in Isaeus 6, *On the Estate of Philoctemon* (21–2): the aged father, Euctemon, attempted to enrol the child of a mistress as his own son, which would have given the newcomer a share in the estate. The elder son, Philoctemon, naturally opposed the induction. In this case it appears that the challenge was especially compelling and the candidate was roundly rejected; the sacrifice was cancelled. The vote was probably conducted within the subgroup and never proceeded to the full phratry.[31]

(3) All of the above are relatively straightforward, compared with adoptions that depart from the norm, especially posthumous adoptions. Ordinary adoptions *inter vivos* may often have been handled much like the father's induction of his own son (as Isaeus 7.13–17 suggests). And proper testamentary adoptions are unproblematic for the phratry, once the heir has established his position by law. The testamentary adoptee must assert his claim before the archon by *epidikasia*, and if challenged he must defend his title in court (= *diadikasia*). When his claim has been established, he takes possession of the property (*embateusis*), and his status as successor is confirmed by the phratry – at least that is the proper order.[32]

The most contentious cases seem to arise from posthumous adoptions in the strict sense: a candidate is put forward some time after the householder's death, without a will or any claim that the adoptee was specifically designated by the *de cuius*. In these cases the contender relies upon his standing in the *anchisteia*, just as he would in *diadikasia* before the court. Like testamentary adoption, 'posthumous adoption' does not in itself entitle the adoptee to take possession of the property, but it greatly strengthens his hand against any challenge in court. Indeed, this intervention by the phratry may have been designed or adapted to pre-empt litigation, by establishing a strong prejudice against any outsider. At least for the life of the adoptee, posthumous adoption sustains the status quo and the financial base of the phratry. But it seems to have caused enduring enmity among competing branches of the major families.

The legal basis for posthumous adoption was often challenged in *later* litigation, but there is no straightforward testimony about what statutory requirements applied *initially*. In fact it is not unlikely there was no positive law of the polis author-

Bruchstück des Philochoros über die attischen Orgeonen', in *ZPE* 138 (2002), 40–2, indicating an earlier measure, in Book 3. I. Arnaoutoglou, *Thusias heneka kai sunousias. Private Religious Associations in Hellenistic Athens* (Athens, 2003) 37–43, suggests a later date for some features of the law.

[31] Similarly in the case of Phrastor ([Dem.] 59.57–60), the dubious heir is opposed by disgruntled relatives (58, 63); phratry and *genos* promptly reject, *ἀποψηφίζονται τοῦ παιδός καὶ οὐκ ἐνέγραφον* (59). Phrastor brought suit and the matter went before an arbitrator, but there (we are told) he refused to take the oath that the boy was his own legitimate son, *ἐξ ἀστῆς γυναικὸς καὶ ἐγγυητῆς* (60).

[32] Apparently a claimant might sometimes take possession of the property without a will, as though adopted *inter vivos* (without formal adoption); that is arguably the case of Leocrates, the grandfather of Leochares, the defendant in Dem. 44. Rubinstein (n. 18) is rightly sceptical, pointing out that the speaker implies, in §46, that Archiades had indeed adopted Leocrates *inter vivos*. In any event, the speaker suggests, in §19, that Archiades' brother would have challenged, had he not been abroad; that challenge would have led, presumably, to adjudication in the phratry.

izing the phratry to dispose of estates by posthumous adoption without a will.[33] Such adoptions appear to be governed by conventions of the phratries themselves; those conventions would differ from phratry to phratry, and some may have been very restrictive. But it is clear that posthumous adoptions were not illegal since, in every known case, so long as the adoptee himself remained in possession, no one contested his right to the estate; his title was challenged only when the adoptee died without issue.

Thus in the case against Leochares regarding the estate of Archiades (Dem. 44, n. 32 above), it seems reasonably clear that the adoption is open to challenge only when the chain of custody is broken. The defendant's grandfather, Leocrates, was orginally adopted as heir to Archiades, as grandson of Archiades' sister, apparently without a will to that effect but without any opposition; he later returned to his native family, leaving his son Leostratus in possession of the estate. Leostratus in turn did the same, passing the estate to his elder son Leocrates II, who again was accepted as heir and successor to Archiades without challenge. But when Leocrates II died without heir, Leostratus tried to have the estate transferred to his younger son, Leochares, by what is described as yet a further posthumous adoption in this series (as heir to Archiades). At that point another branch of the family, descended from a brother of Archiades, asserted their claim, as Leochares was far beyond the requisite degree of kinship. And to discredit Leostratus' claim that the posthumous adoption was valid, the plaintiffs point out that he had tried to pre-empt the regular process by having Leochares enrolled in Archiades' deme *before* he was registered with the phratry – a manoeuvre of some relevance for our problem.[34] Now, in reviewing the whole sequence of adoptions, the speaker contends that every stage was unlawful, but he gives no clear criterion that made some posthumous adoptions legal and some not.

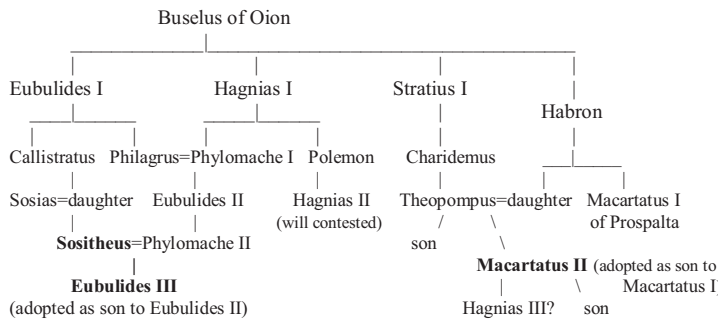
As Rubinstein has pointed out, the strongest claims to posthumous adoption seem to be those where the rights of the son had been established in a prior *epidikasia.* Such would be the case of Macartatus II, whose mother had asserted her claim to inherit from her brother Macartatus I. As her father's sole surviving offspring, she was able to pass on her claim to her son, Macartatus II, and he then took possession of the estate and his uncle's place in the phratry without challenge.[35] Similarly in the connected case of Eubulides III, the mother had her rights as *epiklēros* established in *epidikasia*, when she was claimed in marriage by her kinsman Sositheus; thereafter her son was inducted into his grandfather's phratry, as his son and successor. The rights of these two families then collided in court, in the sort of dispute that may have been all too common in the phratries.

[33] The plaintiff in Isaeus 10 comes close to saying that there was simply no statutory basis for posthumous adoptions. His cousin, Aristarchus II, had been posthumously adopted, as successor to his grandfather, but had died without heir; the estate devolved to his brother Xenaenetus II. No one challenged the adoption initially, but the plaintiff now condemns his rival for producing no law recognizing such adoptions (8, 14, 21), and seems to insist that posthumous adoptions were only valid if confirmed by will (9).

[34] Dem. 44.39–40 (Leochares enrolled on deme roster); 41, *εἰσποιεῖ Λεωχάρην τὸν αὑτοῦ υἱὸν Ἀρχιάδῃ παρὰ πάντας τοὺς νόμους, πρὶν τοῦ δήμου τὴν δοκιμασίαν γενέσθαι. οὐκ εἰσηγμένου δ᾽ εἰς τοὺς φράτεράς πω τοὺς Ἀρχιάδου, ἀλλ᾽ ἐπειδὴ ἐνεγράφη* (*sc.* in the deme), *τηνικαῦτα πείσας ἕνα τινὰ τῶν φρατέρων ἐνέγραψεν εἰς τὸ φρατερικὸν γραμματεῖον.*

[35] Rubinstein (n. 18), 48–59. This Macartatus later returned to his native family, leaving a son to occupy the estate of Macartatus I.

The case pitting Eubulides III against Macartatus II arises out of a complicated family history.[36] In the mid fifth century the wealthy Buselus of Oion[37] divided his estate among his five sons, so that each now headed a new house. One of these heads, Eubulides I, was wealthy enough in his own right to be treasurer of Athena in 441. Another, Hagnias I, left a son Polemon and a daughter Phylomache; to Polemon was born Hagnias II; Phylomache was married to Eubulides' son Philagrus, and to them was born Eubulides II. Hagnias II died in 396 without issue. The daughter of Eubulides II, Phylomache II won the estate only to have it taken from her in *diadikasia* by Theopompus, a second cousin of Hagnias II. Theopompus then had his son Macartatus II adopted posthumously as son and successor to Macartatus I, son of Habron (another son of Buselus), thus to control another branch of the family fortune (in the deme Prospalta). But at the death of Theopompus (or anticipating it) Macartatus II returned to his native house and left his son as successor in the house of Macartatus I (as the law required). It was soon thereafter that the husband of Phylomache II, Sositheus, had their son Eubulides III posthumously adopted as son to Eubulides II, in order to claim the estate of Hagnias.[38] (For this discussion the following schema will suffice.)



The merits of each suit in this long-running dispute may seem dubious, but the points essential for our inquiry are not in doubt: posthumous adoption established the decisive claim to an estate in three instances. The claims of Macartatus II to his uncle's estate in Prospalta and of his son to succeed him in that estate were apparently undisputed and seem to have served the intended purpose, to sustain an otherwise empty house. Similarly the title of Eubulides III, as heir to his namesake, now seems unimpeachable.

[36] For details see esp. C.A. Cox, *Household Interests: Property, Marriage Strategies, and Family Dynamics in Ancient Athens* (Princeton, 1998), 3–10; S.C. Humphreys, 'The date of Hagnias' death', *CPh* 78 (1983), 219–25; M. Broadbent, *Studies in Genealogy*, (Leiden, 1968), 61–112.

[37] The landholdings and deme affiliations of this clan seem to be centred in north Attica. Tarbell (n. 2) even suggested, 151 n. 41, 'the phratry of Dem. XLIII might be the Demotionidai'. Buselus' deme, *Oion Kerameikon*, belonged to the inland trittys of the tribe Leontis and may have been a near neighbour of *Oion Dekeleikon* (but cf. J. Traill, *The Political Organization of Attica* [Princeton, 1975], 44, n. 17). Cox (n. 34), 8–9 with n. 15, suggests that the estate lay on the western edge of this area, as the holdings of Stratocles (Theopompus' brother) were clustered along the road to Eleusis.

[38] Cf. Thompson (n. 4), 68–9.

But Sositheus, the speaker of Demosthenes 43, suggests that there was an abortive challenge in the phratry when Eubulides III was posthumously adopted: Macartatus must have objected initially, only to acquiesce when sentiment ran against him.[39] Of course Sositheus' argument is self-serving, but it is none the less indicative: he assumes that the jury would readily accept his premise, that a man must contest an adoptee whose place in the *oikos* would conflict with his own claims or those of his heirs.

Thus Sositheus (who belonged to another phratry) tells in detail how he introduced his son into the phratry of Eubulides and Hagnias (Dem 43.13–15). Thereafter, in the presentation of witnesses and the argument based on their testimony, he proceeds as though the court case is a continuation of proceedings in the phratry. After framing the family tree so as to emphasize that the boy is in the direct line from Hagnias I, Sositheus tells how he introduced his son 'among the phrateres of Hagnias and Eubulides', and on that occasion Macartatus, as a member of that phratry, did not contest the adoption. Thus,

> those who know the family best, Macartatus' own fellow phrateres, seeing that he was unwilling to take the risk and did not remove the victim from the altar … taking their ballots from the altar of Zeus Phratrios, with the victim burning upon it, with Macartatus himself at hand, gave the just verdict … that this boy was rightly and properly inducted in the house of Eubulides (II) and Hagnias.

It is a complicated scene, sketched for an audience familiar with the usual implications. If we supplement that sketch with details attested elsewhere, it suggests the following scenario. A formal examination of some sort was required (as in most adoptions), and in the course of this examination, Macartatus raised an objection (as in Isaeus 6.22), but he stopped short of presenting himself as the heir to Hagnias. Because there was no formal challenge, the matter may have been decided by a vote of the subgroup, 'who know the family best' (probably a *thiasos*, as no *gennētai* are indicated among the many witnesses); the other phrateres would show their approval by sharing in the sacrifice. Thus Macartatus challenged the induction before the *thiasos* but then, when the vote went against him, he did not appeal to the full body, where rejection would have hurt his case and might have incurred a fine (as in the Demotionid procedure).[40]

What would have occurred, if Macartatus had insisted upon his claim, seems to be represented in the hypothetical *anakrisis* at Dem. 43.48–9:

> If one should ask … Who is the contender (ὁ ἀμφισβητῶν), who contests this boy's claim to the estate of Hagnias? … He would answer, 'Macartatus'. Son of what father? 'Theopompus.' And of what mother? 'The daughter of Apolexis of Prospalta, sister of Macartatus of Prospalta.' And Theopompus was son to what father? 'Charidemus.' And Charidemus, of what father? 'Stratius.' And Stratius, of what father? 'Buselus.' This … is the house of Stratius … and these men are descendants of Stratius. Nowhere in this list is there any name belonging to the house of Hagnias, not even close.
>
> But now let me ask this boy here: Who is the contender, who contests Macartatus' claim to the estate of Hagnias? He could make no other answer … but 'Eubulides'. (Son)

[39] Thus Lipsius (n. 5), 162 n. 3, and W. Wyse, *The Speeches of Isaeus* (Cambridge, 1904), 674 (both judging from Dem. 43.14, treated below).

[40] The usual assumption is that the 'risk' is the matter of being sued for false testimony, but we have no evidence that such testimony was actionable. After all, the phratry's decision does not in itself establish a legal right to the property.

of what father? 'Eubulides, the cousin of Hagnias.' Of what mother? 'Phylomache, who was the child of Hagnias' cousin on her father's side' (i.e. Eubulides II). And who was the father of Eubulides (II)? 'Philagrous, the cousin of Hagnias.' And who the mother? 'Phylomache (I), the aunt of Hagnias.'

This exercise is probably meant to recall the sort of examination familiar to the jurors from their own experience. A similar *anakrisis* would be required in *diadikasiai*, before the magistrate; but that was probably an occurrence that few among the jury had witnessed. It would be the natural line of inquiry in contested cases in the phratry, where a rival challenges a new inductee.[41] And this, I suggest, is the sort of questioning indicated in Nicodemus' decree as the *ὑπερωτώμενα*.

III

As these examples illustrate, the phratry exercised a remarkable authority to dispose of households that might otherwise be left 'empty', although such cases would be inevitably contentious. The Decelean War and its aftermath must have greatly complicated those disputes for families from the vicinity of Decelea: an adoptive son (or daughter) might be designated as successor (or *epiklēros*) when other branches of the family were cut off, only to face strong opposition in the 390s, when those branches rejoined the body.

Lambert's contribution here is crucial: he shows that traditional groups – phratries and *genē* – were subject to continual pressures to divide and combine.[42] In our inscription Lambert sees the dividing process at work, as the *oikos Dekeleiōn* secedes from the Demotionidae. But the details suggest that the phratry is here insisting upon reunification after a period of division. There is nothing to indicate that Demotionidae and *Dekeleieis* are at odds. But we do find, in Nicodemus' decree, a clear indication that some *thiasoi* were not respecting the standards of the phratry: the *thiasōtai* are fined for accepting a candidate whom the phratry rejects. And so it seems, the crisis at hand is not a two-party schism but a wider fragmentation: local groups have favoured their own members, without weighing the rights of other branches. The phratry at large now attempts to reconcile those divisive decisions. *Diadikasiai* served as the essential instrument of that reconciliation.

Of course we must recognize the limitations of the evidence: there is no clear case in the speeches where a *diadikasia* in the phratry is expressly attested. But the speeches do give a clear picture of persistent disputes over succession within

[41] Thus in §31, witnesses affirm that the arbitrator awarded the estate to Phylomache II 'against all contenders' (*τοὺς ἀμφισβητοῦντας αὐτῇ πάντας*). In §§43–5, witnesses affirm, having heard from their fathers, that, when Euboulides II claimed the estate of Hagnias, no one disputed his claim (*ἀμφισβητῆσαι*). In the latter there is no mention of arbitrator or magistrate, so the recollection probably comes from confirmation in the phratry. Similarly in four depositions (35–7), the witnesses assert on their own knowledge that 'Polemon, the father of Hagnias (II) never had a brother' (who would have contested the estate). On the authenticity of these depositions and the importance of fellow phrateres as witnesses, see S.C. Humphreys, 'Social relations on stage: witnesses in Classical Athens', in E. Carawan (ed.), *The Attic Orators* (Oxford, 2007), 147 and 188–90.

[42] Lambert (n. 1), 106–12, and id., 'The Attic genos Salaminioi and the island of Salamis', *ZPE* 119 (1997), 85–106.

the families,[43] leading to at least one case (Macartatus II vs Eubulides III) where a kind of *diadikasia* in the phratry was envisioned if not actually initiated. And it is important to remember that the conventional view – that *dokimasiai* and *diapsēphiseis* were regular proceedings in phratries – is based upon no other evidence than our inscription, where both vettings are indicated (supposedly) by the one term, *diadikasiai.* That term would naturally indicate a contest between rival claimants, and to insist that *diadikasiai* have that sense amounts to a small distinction in procedure: the aim of scrutiny – weeding out intruders – is accomplished though an ad hoc competitive process, not a systematic and objective examination. The important difference for interpreting the text is that the relevant provisions involve another party, a rival to the incumbent or original candidate. That second party explains many of the disparities. And if we assume an adversarial procedure, I think the implications favour the old model (defended by Hedrick) whereby Demotionidae are the phratry and the *oikos Dekeleiōn* represents the deme. On that hypothesis, here let us reconsider the difficulties outlined in §I.

(1) The *diadikasiai* addressed by Hierocles are contests pitting the incumbent householders – those who established their standing when the phratry was divided – against other members who have only reasserted their place in the phratry within the last few years. There are two (or more) parties to each *diadikasia*, and this is reflected in the distinctive terminology. The *apodikastheis* is the incumbent householder who is ousted by *diadikasia*. Not all of these are necessarily ejected from the phratry: one might remain if the phratry also included his native *oikos,* where he belonged before the dubious adoption that put him at the head of another house. Anyone disqualified as 'not being a phrater' (*μὴ ὢν φράτηρ*), who has his name erased, was adopted from a family outside the phratry; his membership thus depended upon the adoption. The sponsor of any *apodikastheis*, expunged or not, is liable to the fine of 100 drachmas that Hierocles prescribes; and that sponsor is obliged to pay because *he* remains a member, even if his protégé returns to his native family in another phratry.

Whatever right those incumbents had to appeal, the *nomos Demotionidōn* prescribed. Quite apart from them is the group affected by Hierocles' new provisions for appeal (29–44). These appellants are challengers who have failed in their bid to unseat an incumbent that the *oikos Dekeleiōn* installed; for that reason the *oikos Dekeleiōn* appoints *synēgoroi* to oppose them. What then was the position of the *oikos Dekeleiōn*?

We cannot rule out the possibility that the *Dekeleieis* of our inscription are in fact a phratry – that we are dealing with a phratry and deme of the same name – and the *oikos Dekeleiōn* thus represents the phratry in appeals to the Demotionidae. The latter would then be a *genos*-like group (as Rhodes contends) or the parent phratry from which the *oikos Dekeleiōn* is seceding (as Lambert argues).[44]

[43] The documents often refer to *ἀμφισβήτησις* in the phratry (examples in n. 41 above), and the vote to decide any such dispute would be properly called *διαδικασία.* On the terms, cf. Leist (n. 3): *δίκη* asserts a claim proper to that plaintiff, *ἀμφισβήτησις* involves 'relative' or comparative rights to some asset or status (4–9); *diadikasia* is the disposition of such 'relative' rights (58).

[44] The lack of any reference to *genos* or *gennētai,* in a text which refers to the phratry (phrateres, phratriarch and Zeus Phratrios) more than 20 times, suggests that neither body was a genos.

But I think it more likely that the *oikos Dekeleiōn* represents the 'rump' of the deme that had functioned as the chief collective body for families that relocated to Athens during the occupation of Decelea. Now nine years after the occupation ended and only five years after the reunification of Attica, members still gravitate to the site(s) where phratry and deme had met during the period of partition. Against this inertia Hierocles insists that the centre of activities must return to the phratry altar at Decelea: those who continue to celebrate *meia* or *koureia* elsewhere shall be fined (52–8). Yet the possibility that phratry proceedings might once again be driven from Decelea is realistically recognized and so, significantly, the notice of any such change of venue must be posted 'wherever the Deceleans frequent *in the city*' (59–64), not at Decelea.

The records and collective memory of this deme-in-exile were now essential to the decisions of the phratry, as the branches were rejoined to it. During the period of partition, the phratry had been fragmented; aside from the families who relocated to Athens, there were others who remained in and around Decelea, yet others (most probably) who relocated to other demes outside the corridor to Athens (e.g. toward Prospalta to the south and Eleusis to the west).[45] The outlying groups probably continued to convene as *thiasoi*, in order to carry on the essential functions of the phratry, inducting their children at *meia* and *koureia*. Then, when the phratry was reconstituted, those who had gathered at Athens would probably be the largest and most assertive group in that reorganization; and the meeting house in Athens would probably be the most reliable repository for records of the inductions and other transactions of the last generation. Any member who needed to establish credentials, as phrater and family member, would naturally make use of the deme record (as Leostratus did in Dem. 44.41).

That is the character of the *oikos Dekeleiōn*, as I see it. It was a body that had combined for a time the functions of phratry and deme; it now constituted a body distinct from the phratry but inextricably linked to it.[46] The *oikos Dekeleiōn* thus appoints *synēgoroi* to appear before the phratry and oppose those whom the demesmen have rejected, just as the deme would do in the court appeal of those whom they rejected (*Ath. Pol.* 42.1). The incumbent, whom the deme supports against the appellant, owes his title to decisions of the deme meeting house.

(2) The one year prescribed between the initial induction and *diadikasia* is not simply to allow for vetting but serves as a limitation: if anyone means to challenge the inductee, he must present the rival candidate at the next Apatouria. This is presumed to be a boy not yet enrolled, who must now be introduced: the *eisagōgē* of this newcomer is thus an essential stage of the *diadikasia.* This adjudication involves a preliminary hearing that probably has no counterpart in ordinary inductions, an *anakrisis* in which each contender is questioned, and three witnesses must vouch for his 'response-to-queries' (ὑπερωτώμενα).

Nicodemus describes his decree as an addendum to 'the earlier decrees regarding the *eisagōgē* of offspring and (their) *diadikasia*' (68–71). Following Hierocles' decree as it does, the natural implication is that this addendum particularly relates to the content of Hierocles' decree, though other measures now lost to us are also implicated. That much seems unproblematic. But where Hierocles prescribed

[45] Cf. the migration to Prospalta by Macartatus, grandson of Buselus of Oion (at n. 37 above); Cox (n. 36), 8–9, locates other branches near Eleusis.

[46] On the linkage between demes and phratries, see esp. Hedrick, 'Phratry shrines of Attica and Athens', *Hesperia* 60 (1991), 241–68.

that 'henceforth the *diadikasia* shall be in the year after the *koureion*', the usual interpretation is that he is describing a regular 'scrutiny' that comes one year after a boy's introduction. But I think it makes better sense to suppose that he is speaking of one connected procedure that plays out in the same session, not a staggered arrangement in which the introduction comes one year and *diadikasia* the next. The particular situation that Nicodemus addresses (and the one that Hierocles alluded to) is a combined *eisagōgē*-and-*diadikasia* for the challenger who must be presented one year after the first claimant was introduced. The fact that a new clause in the oath must be prescribed for the witnesses suggests as much. For ordinary inductions the requisite oaths would remain unaltered, but for this new and troublesome context the oath must now be specified: 'I witness that this candidate, whom he is introducing, is his own legitimate son by a wedded wife' (109–11).[47]

The provision for three witnesses appears to have been included in earlier rules; as Nicodemus says at the outset, they are 'the three witnesses which are prescribed (for the sponsor) to produce at the *anakrisis*' (71–2). The other evidence on phratry inductions gives no indication that witnesses were required in the ordinary case of a father inducting his own son uncontested. So it is reasonable to suppose that the *anakrisis* which these witnesses attend is part of a challenge procedure, a disposition of rival claims – *diadikasia* in the strict sense. Now a year or more after Hierocles' decree, the only contests will involve sons newly inducted (the *diadikasiai* involving incumbents have concluded). So when a rival is introduced, to challenge last year's successor to the *oikos*, the oath must take the particular form required in that situation. The issue is not the legal requirement, whether the boy is the child of two *astoi*.[48] What the witnesses must swear to is more a matter of inheritance than citizen rights: the rightful successor must be the offspring of contractual marriage (secured by *enguēsis*), and either the father's own son or an adoptive son whose rights can be secured by *epidikasia* (as the son of an *epiklēros*).

The contender who cannot find three witnesses among his own *thiasōtai* must call upon other phrateres (76–8). Scholars have puzzled over this detail, assuming that it indicates very small *thiasoi* (without even three other members). But if we assume an adversarial procedure, the implication is not that *thiasoi* were minuscule but that members might be reluctant to support the contender under oath. After all, the witnesses share responsibility for what the boy claims about his family connections. If his answers-to-queries are false, they must object or refuse to swear.

The voting is the definitive process and Nicodemus seems to refer to this as the *diadikasia* proper: where he specifies 'when there is the *diadikasia* …' (78–9), he is referring specifically to the voting in a particular case. Each contender will have a separate urn; first the *thiasōtai* and then the other phrateres will cast ballots from the altar. The phratriarch is not to distribute ballots to the phratry at large

[47] The translation here comes from Rhodes and Osborne (n. 1). The phrase *ὃν εἰσάγει ἑαυτῶι υἱὸν*, may be parenthetical and not part of the oath (as Paton [n. 25] pointed out, 314, citing Isae. 7.16). In any event the wording seems to suggest that the sponsor can only induct his own son or adopt *inter vivos* – thus barring posthumous adoptees from challenging other contenders.

[48] In contrast to the father inducting his own son, Dem. 57.54: *ὁμόσας τὸν νόμιμον τοῖς φράτερσιν ὅρκον εἰσήγαγέ με, ἀστὸν ἐξ ἀστῆς ἐγγυητῆς αὐτῷ γεγενημένον εἰδώς*. Similarly the father affirms the mother's status as *astē* in Isae. 8.19 (above n. 28) and [Dem.] 59.60 (above n. 31).

until the *thiasos* has voted and had its votes counted (79–83). Appeal is available to whichever candidate loses the first vote; and there is a natural presumption that he will appeal – indeed, the phratriarch has apparently got into the habit of combining the two stages into one. If the second vote goes in favour of the appellant, that vote of the phratry at large is the deciding vote: the new inductee has his name inscribed in the roster (94–8), and the member favoured by the *thiasos* in the previous round is no longer the recognized successor in that household. But if the appellant loses the at-large vote, then his sponsor is fined 100 drachmas, and presumably any further dispute is foreclosed.

(3) There are two types of sanction, expulsion and fine, and both involve some disparity between Hierocles' provisions and Nicodemus'. As I have argued, the *apodikastheis* in Hierocles' decree (22) is the defeated incumbent, who loses his place as heir to an *oikos*. Among the *apodikasthentes,* anyone who is also disqualified as 'not being a phrater' now has his name struck from the roster – both the phratry's copy and the deme's; his sponsor is fined 100 drachmas (18–23). The incumbent's right to a hearing before the full phratry is implicit in the law of the Demotionidae. By contrast, the new rules for appeal (29–44) apply specifically to those who challenge an incumbent. It is only those challengers who insist upon taking their case to the full phratry who risk a tenfold penalty if their claims are rejected a second time. These appellants are likely to be challengers from reconnected branches within the phratry; so their place in the phratry does not depend upon winning the *diadikasia*. Thus the appellant himself (or his *kurios*) risks a huge fine for disputing his rejection: as he comes from one of the other constituent families, he would continue to be liable as a phrater, even after losing the appeal. The fine would be practically unenforceable against an outsider, but in these cases it enforces a new solidarity – as though to demand, 'Let us close these disputes and be done with them'.

After the special round that Hierocles prescribes, settling the backlog of current challenges, there will be an annual hearing for any disputes that arise in the induction of new members. That is, eighteen years after the occupation of Decelea, the sons of those who succeeded to 'empty houses' in that era would now be coming of age as candidates for *koureion*. After the year of Phormio (396/5) no one could challenge the fathers' qualifications *per se*. That should be the effect of Hierocles' decree: cases as yet undecided must be disposed at once (αὐτίκα μάλα); the new rules for appeal (29–44) apply specifically to that backlog of cases. Hereafter *diadikasia* will be available only against newcomers, in the year after their *koureion*.[49] In that annual procedure, as detailed by Nicodemus (88–100), those who are rejected have the right of appeal but they face the much more tolerable fine of 100 drachmas if they fail. The *thiasōtai* now share the burden, as they are fined for supporting an unworthy inductee.

These annual *diadikasiai* would typically involve cases of adoption, where two (or more) successors lay claim to a particular household. The fine for those who appeal is less burdensome because the disputes are less divisive: they do not threaten to oust an incumbent, who has occupied his *oikos* for some years, whose family ties and property rights might all unravel, if he were now ejected.

There remains a basic complication for which recent theories have offered tolerable

[49] Hedrick (n. 1) argues plausibly to the contrary; but see below.

solutions but none very satisfying. After the initial provisions for pending *diadikasiai* (13–26), there follows the rule that 'henceforth (τὸ λοιπόν) the *diadikasia* shall be in the year after [the sponsor] sacrifices the *koureion*, on the (day) Koureotis of the Apatouria (festival)'. Thereupon Hierocles proceeds with his rules for appeal (29–44). And then he gives a starting date (44–5): 'These provisions (ταῦτα) apply from the archonship of Phormion.' Lambert and Rhodes and, indeed, most commentators have supposed that the two framing clauses – the 'henceforth' and the starting date – naturally mark off the intervening material as applying specifically to the annual 'scrutiny', not the current round of *diadikasiai*. That implication might seem to be confirmed by the next provision, after the starting date: 'Each year the phratriarch shall put it to a vote (ἐπιψηφίζεν) concerning any cases that require *diadikasia*.'[50]

But if we suppose that Hierocles' rules for appeal apply to the 'regular', annual scrutiny, the implications prove awkward. If the Demotionidae are the phratry, then there is the great disparity in the fines for an appellant rejected by that body, a thousand drachmas versus one hundred. If we suppose (as Rhodes does) that *Dekeleieis* are the phratry and Demotionidae are a *genos* or similar body, then we have to reckon with a three-stage procedure in the annual scrutiny: initial decision by *thiasos*, appeal to the phrateres (*Dekeleieis*), and further appeal to the Demotionidae.[51] Lambert avoids this complication; by his theory, Nicodemus' decree represents the newly autonomous procedure of the emerging phratry (*oikos Dekeleiōn*), so there is no longer any question of appeal to the Demotionidae. But again it seems reasonable to object that we would expect some more assertive statement that this second decree dispenses with the requirements of the first – under which it is added practically as a rider.

Hedrick argues to the contrary, that Hierocles' rules for appeal apply to the 'extraordinary scrutiny' addressed at the beginning of his decree; the 'henceforth' clause alluding to the 'regular' scrutiny is an aside – it does not change the subject. On balance, I think that is the best solution. But Hedrick's explanation of the starting date is less persuasive: he concludes that the 'extraordinary scrutiny' is an open-ended process, commencing in the year of Phormio and to be resumed in any year – there is 'a *continuous revision* of the phratry registers'.[52] That interpretation seems at odds with two other provisions. Hierocles begins by insisting that outstanding cases be decided *at once,* which naturally suggests that any challenge to an incumbent must be prosecuted in the current session, in order to close off this divisive process. And that same aim is indicated in the 'henceforth' clause, as it would seem to rule out any *diadikasiai* except those that involve a new inductee: 'henceforth [any] *diadikasia* shall be in the year after [the sponsor] sacrifices the *koureion*'. By implication, any members inducted more than a year before cannot be challenged hereafter.

[50] περὶ ὧν ἂν <<διαδικά>>ζεν δέηι (46–7). The erasure probably corrects {ἐπιψηφί}ζεν.

[51] Rhodes (n. 1), 118 argues that this complication is 'no less likely … than the involvement of deme, lawcourt, and council [in] the process of admission to a deme'; cf. Wysocki (n. 4), 45, supposing that appeal to the *genos* Demotionidae is purely theoretical.

[52] Hedrick (n. 1), 63; he renders the following clause (45–8) 'the phratriarch shall put it to a vote annually whether they need to scrutinize anyone' (περὶ ὧν ἂν διαδικάζεν δέηι). Cf. Rhodes (n. 1), 112 at n. 8: 'The phratriarch is to take the vote each year on those who have to undergo adjudication.'

From that perspective there may be a rather different scope to the starting date: the summary ταῦτα covers the whole arrangement, not simply the rules for extraordinary *diadikasiai* but also the limitation, that the annual challenge procedure thereafter shall only deal with inductees of the previous year. The extraordinary round of adjudication, with its special rules for appeal, is specifically addressed to cases current and pending; these must be decided *at once.* In regard to those disputes the starting date stands as a statutory limitation: after the special round of *diadikasiai* is concluded, in the year of Phormio, there can be no direct challenge to members inducted before that year.[53] Much like the dubious adoptees in the speeches, there can be no further dispute until some break in the chain of custody; any contest for control of the *oikos* must come at the induction of the successor. That annual process for contesting new inductees is addressed in the injunction to the phratriarch that follows the starting date: 'Each year the phratriarch shall put to the vote any disputes requiring a disposition (περὶ ὧν ἂν διαδικάζεν δέηι), and if he does not put it to the vote, he shall owe 500 drachmas.' That provision sounds a concern that will echo in Nicodemus' decree: any challenge to a newcomer must be decided by ballot voting; the implication is that these contests have been handled all too casually.

The most pressing problem addressed in these decrees is not that non-citizens have infiltrated the phratry and must be rooted out year by year, but that family quarrels, over succession in a particular household, threaten to divide the phratry along the lines that emerged in the era when Attica was divided. Read in this way, Hierocles' measure is a sort of 'reconciliation agreement' within the community of phratry and deme: it is a corollary to the covenants that ended civil conflict, embracing their cardinal principle, that divisive disputes must now be disposed of, once and for all.[54]

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[53] This is in keeping with the revised citizenship law, which restored Pericles' restriction (*Ath. Pol.* 42.1) but barred any challenge on that basis against demesmen enrolled before 403 (Dem. 57.30).

[54] For their constructive comments I am much obliged to Charles Hedrick, Jr., and to the reader for *CQ*. Of course, any errors that remain are mine.