Athenian Attitudes Toward Wills

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The standard treatises on Athenian law ignore or misinterpret the sociological significance of wills in the fourth century. Minimizing the religious component of inheritance, Jones says that ‘a will was becoming simply an instrument for the *post mortem* disposition of property to such persons and for such purposes as the testators thought fit.’ Harrison holds that in the fourth century Athenians were prejudiced ‘against devising property by will.’ My reading of the evidence is, however, that even in the fourth century wills still served primarily a religious and social function so that a man without male issue could adopt an heir to have his property, perpetuate his family, and honor his cult, and a man with a son could arrange for the marriage of his daughter and the remarriage of his wife. While Athenian juries might have suspicions whether any given will actually represented the wishes of the deceased, they readily supported a man’s right to make a will.

Harrison cites two passages in Isaeus which ‘show the sort of prejudice against devising property by will which still existed in the early fourth century.’ The first of these proves nothing at all. Isaeus is trying to impeach the testimony of witnesses who say that they were present when Astyphilus adopted Cleon’s son by will: one must not believe them because they are bystanders and not intimates of the family. The passage which shows the alleged prejudice against wills (9.12) is this: ‘Furthermore, O gentlemen, if Astyphilus wanted no one to know that he was adopting the son of Cleon nor that he left a will, it was reasonable that no one else be inscribed in the document as a witness. But if he clearly made a will in the presence of witnesses, and they not his most intimates but chance acquaintances, how is it likely that the will is genuine?’ Harrison’s argument (never fully stated) is presumably that a man might be ashamed to have it known that he was adopting someone. Yet Isaeus denies this explicitly in the very next section. The notion itself is merely a straw man, for Isaeus is simply constructing a

2. Op. cit., 149, n. 3. Jones, op. cit., 195-196, citing the same evidence as Harrison, seems to hold that juries did not object to devising property per se but were highly suspicious that any given will was genuine. David Asheri, *Historia* 12, 1963, 10 also sees Athenian juries as ‘very suspicious of wills.’
dilemma here: either Astyphilus wanted the adoption secret or he wanted it known. If he wanted it secret, he would invite no witnesses; if he wanted it know, he would invite friends and relatives. The object is to show that neither protasis is correct, proving that the adoption never occurred.

If the second passage proves anything, it is not that Athenians were prejudiced ‘against devising property by will,’ but rather that they had reservations about the authenticity of the documents offered for probate:

And only in suits concerning inheritances does it seem fitting to me to trust indications rather than witnesses. For concerning the other transactions it is not very difficult to refute those bearing false witness. For they testify against the participant who is alive and present. But concerning wills how could someone discern those who do not tell the truth (unless the discrepancies are enormous) since the one against whom they testify is dead, and his relatives know nothing of what was done, and the testing process is by no means precise? (4.12)

This does not rely on a prejudice which the jurors already have; instead, it seeks to inspire one in them. And, of course, it does not suggest that wills are a bad thing in themselves, merely that it is too easy to forge them. (Cf. also 4.23.)

Indeed, there are other passages in Isaeus which make the same point: ‘It is necessary, O men, both because of the kinship and because of the truth of the matter to vote for those claiming in accordance with relationship (which is just what you do) rather than those claiming in accordance with a will. For . . . many have before now brought forth false wills, some those which were never made at all, and others when some (testators) have taken counsel incorrectly.’ (1.41) One should not take this last to mean that the jury would capriciously decide whether someone’s will was clever or stupid, but rather the law provided that a will was invalid if the testator was mentally incompetent (παρανοωυ) or under duress. 4 Just as a forgery or a will written by someone senile cannot possibly show the deceased’s true intentions, so in Isaeus 1 the argument is that the will in question no longer reflects his wishes since he attempted to revoke it.

Likewise, in defending adoption inter vivos, Isaeus says that by introducing the adoptee into his phratry and deme a man can validate his intentions by making them manifest, ‘but the one who seals them up in a will makes

4. See, for instance, the passages cited by Harrison, op. cit., 152, n. 5. In the fifth century critics of Athenian democracy thought that juries abused their discretion in interpreting this feature of the inheritance law; see Ath. Pol. 35.2 and Wasps 583-586. Yet one may doubt that the Thirty were unbiased observers, and the speeches preserved from the fourth century do not suggest that juries would wantonly overturn wills. At any rate, Aristotle, Problems 950b, shows that juries were concerned about possible forgeries and not the principle of devising property by will.
them unclear, wherefore many, saying that the wills have been contrived, deem it worthy to dispute against those adopted’ by will. (7.2) Again, we see that the jury is trying to discern the dead man’s intent.

The very same speaker who says that juries prefer to vote for those who base their claim on kinship also makes the point that juries vote in favor of claimants who can prove their connection to the deceased either by birth or by friendship. (1.38) Isaeus tells how a man could make sure that his will passed muster in the courts. ‘It is likely that he not only wanted to leave an adopted son but also that he saw to it that the arrangements he made would be entirely valid . . . and that he knew that all this would especially happen if he did not make the will without his relatives, but calling first relatives, then phraters and demesmen, then as many of his other connections as possible’. (9.7-8) Then, if anyone entered a challenge to the will, ‘he would easily be proven lying.’ And Demosthenes says of his guardians, ‘It was necessary, as soon as my father died, to call in many witnesses and to bid them to seal up the will so that, if anything should become disputed, it would be possible to refer back to these written documents and to discover the truth of all things.’ (28.5) The whole point of all these passages (mostly from speeches which challenge the validity of a will) is that the jury will accept a will if it is convinced that it truly represents the wishes of the deceased.

We turn now to Jones’ materialistic view of the Athenian will:

While the orators, when it suited their purpose, continued to express their horror at the possibility of a man being left without an heir to carry on his house, it is clear that even in their time a will was becoming simply an instrument for the post mortem disposition of property to such persons and for such purposes as the testators thought fit, family feeling making it unlikely that the issue or nearest collaterals would not receive their due share. The religious significance of the household as of the city itself was on the wane. Anyone who wished to have his memory or that of his ancestors honoured with the appropriate sacrifices and feasts might think it safer not to rely on the piety of his children to maintain the cult but to take steps thereto in his will; and not by testamentary adoption, but by appropriating specific funds to be applied for that purpose by some sort of association, usually comprising his nearest relations. A legal duty was put beside or in place of the old moral or religious one.5

Since Jones is dealing with the laws of all the Greek cities, it is not surprising that some of his remarks do not apply to Athens. There is no evidence that Athenians in the fourth century set up foundations or appropriated

money in their wills to assure that honors would be paid them after death.\textsuperscript{6} But what really concerns us is whether the will was becoming \textit{simply} an instrument for the disposition of property and whether collaterals would receive their \textit{due share}.

Here we must make a distinction, as a practical matter, not one of law. Athenians had two basic types of adoption, one used by old men and one used by young men. Likewise, an old man made one type of will, a young man another. An Athenian wanted to produce a male heir of his body, but once he realized that he could not do so, he formally adopted an heir \textit{inter vivos}.\textsuperscript{7} If he was still capable of siring a son but had to face the dangers of a voyage or military campaign, he made provision for a contingent adoption. If he was killed, the adoption went into effect; if he survived, it did not.\textsuperscript{8} The main purpose of a young man’s will was to name a contingent heir.\textsuperscript{9} Naturally, a will made by an old or sick man who already had an heir (natural or adopted) served a different function. It might simply be an inventory of his possessions. But this is no development of the age of the orators; as early as 416/5 Euripides says that one of the benefits of writing is that it permits a dying man to tell his heir the \textit{amount} of property he leaves behind.\textsuperscript{10} Plato’s will is primarily just such a document,\textsuperscript{11} and Demosthenes says that his father listed all his possessions in his will (27.40 and 29.42).

In addition, these testators attempted to control affairs even after death. Plato freed one of his slaves and left instructions not to sell one of his plots of land but to retain it in the family if at all possible. According to Demosthenes, his father also freed a slave and provided that his estate should be leased.\textsuperscript{12} Moreover, he picked a husband for his daughter and a new husband for his wife and arranged dowries for them (27.5). Pasion too named a new husband for his wife and gave her a dowry.\textsuperscript{13}

6. Jones, \textit{op. cit.}, 197, n. 7, cites E.F. Bruck, \textit{Totenteil und Seelgerät im griechischen Recht} (Munich, 1926) 238ff., and W. Kamps, \textit{Arch. hist. dr. or.} 1 (1937) 145-179. The former simply notes the importance of introducing an adopted son into one’s religious organization, while the latter is concerned with cult foundations established outside Attica.
7. Isaeus 2.6-12, 7.14, and 8.36; Dem. 43.12.
8. The testator could then revoke his will (see Isaeus 1.14) or allow it to remain valid.
9. Of course, a young man with sons could provide dowries for his women and make other arrangements about the management of his property (see Lys. 32.6).
12. Dem. 27.40; 29.25-26. (Perhaps the manumission was oral and not included in the written document.) His guardians deny that they were required to let the estate (27.42-43).
13. Dem. 36.8 and 45.28. This case shows another use of wills: to prevent quarrels about the division of the property a father could specify which son was to receive which piece of property, as Herakles does in the \textit{Trachiniai} (161-163). Once his sons were grown, a man would have little or no reason to make a will. A case in point is Mantias’ failure to leave a will which might have settled the disputes between his sons by two different women (cf. Dem. 40, \textit{passim}).
Certainly, then, an old man’s will was concerned with property, but in wills of this type we do not find men disposing of property to friends or even giving collaterals a ‘due share’. They do provide dowries for their womenfolk and sometimes give them clothing and jewelry in addition. But then a father could give such extras during his lifetime. A man, that is, would provide for his daughter himself when she married or see to it in his will that his executors would, but Athenian marriage was more than a property transaction. According to Demosthenes (30.21), when we celebrate their weddings, ‘we entrust the lives of sisters and daughters, on whose behalf we particularly see to their safety.’ A client of Isaeus says (7.12) that marriage alliances reconcile differences between families because ‘what they value most highly, they entrust to one another.’ And Lysias (19.13-17) states the ideal that men themselves marry into decent families and marry their daughters to decent, even if poor, men. In a friendly divorce a husband sometimes had such concern for his wife that he assisted her to remarry. Pasion and the father of Demosthenes did more than merely endow their women: they fulfilled their social obligation by choosing their husbands.

It has become traditional to cite two wills which grant property ‘to such persons and for such purposes as the testator thought fit.’ But one cannot

14. Dem. 27.5 and 45.28; see also Lys. 32.5-6, a will made by a man setting out to war. Unlike the husbands who knew that they were dying, this last man did not name a new husband for his wife.

15. Isaeus 2.9.

16. It may seem needless to say that Athenian marriage had a social basis, but some scholars emphasize only the property relations involved. Asheri, op. cit., 15, says, ‘In the Athenian high society marriage had become a pecuniary affair to be contracted between rich families, while brides were considered merely as channels of transferment of property from one household to another,’ while J.W. Fitton, CQ 64 (1970) 63, asserts, ‘Marriage at Athens was basically a property transaction and a means of family alliance.’

17. I note four instances: Isaeus 2.7-9, Dem. 30.6-11 with hypothesis, Dem. 57.41, and Plut., Per. 24.

18. Jones, op. cit., 197, n. 6; cf. L. Beauchet, Histoire du Droit privé de la République athénienne 3 (Paris, 1897) 675-677 and 691-697. The true significance of these passages, however, is demonstrated by de Ste. Croix, op. cit., 390, and W.K. Lacey, The Family in Classical Greece (Ithaca, 1968) 131-137. Beauchet also cites the wills of various philosophers living at Athens in the Hellenistic period, but these too do not show us the normal Athenian attitude toward wills in the age of the orators. Harrison, op. cit., 152, says, ‘Polyeuktos, who had no sons but was survived by two daughters, disposed of some of his property by will without making either of their husbands his adopted son.’ Actually, Polyeuctus simply ordered the placement of boundary stones to mark the debt (a portion of a dowry) he owed one of his sons-in-law (Dem. 41.6). Instead of ‘disposing of’ property by will, he was merely acknowledging the disposition of property he had made while alive. Euctemon’s ‘will’ at Isaeus 6.27-28 is just another record of the transfer of property during the testator’s lifetime (cf. 6.23-24). Asheri, op. cit., 10, cites three examples of ‘acquiring an estate, or part of it, without becoming an adopted son of the donor,’ but Isaeus 3.36 has nothing to do with wills, Dem. 52.23-24 involves a foreigner, and Lys. 32.6 speaks of a will which provides a dowry for the testator’s wife and daughter.
expect to determine normal Athenian behaviour from the will of Conon (Lys. 19.40), for he spent the last fifteen years of his life in exile, dealing with princes and satraps. He contracted a new marriage in Cyprus and set up a family there, and that is where he made his will (19.39). Again, Demosthenes’ father used his will to appoint three guardians for the boy, two kinsmen (named also to marry his wife and daughter) and a friend (Dem. 27.4-5). The daughter’s prospective husband was to have the income from the dowry right away even though the marriage would not occur for a decade, and the friend was to receive the income from seventy minai until Demosthenes was grown. The first concession may have been customary, and it is clear that the friend argued that he was merely being compensated for managing Demosthenes’ factory of slaves. His pay would cease when the boy came into control. This is actually the exception that proves the rule. If it were normal to make bequests to friends and relatives and alienate property away from the lineal heir, why did Demosthenes’ father not simply leave his friend a sum of money outright instead of giving him the use of it until such time as the principal reverted to the son? Our conclusion must be that elderly (or dying) Athenians used a will to order their affairs, financial and familial, not to bestow gifts on friends and relatives.

A young man with a son could also make an inventory of his property when he went on a dangerous journey, but our interest is those men who provided for the adoption of an heir in case they were killed. Since one or more of their relatives would automatically inherit under the rules of intestate succession, the very making of a will disinherited them and deprived them of a ‘due share’. The only exception occurs when a man adopts a son on the condition of receiving part of his estate. We are reasonably well informed about a dozen or so testamentary adoptions, and of these only

19. Cf. Dem. 27.42, where Therippides denies that the will required the estate to be let. He himself managed the factory for seven years (27.19).
20. Isaeus (3.72, 4.18, and 7.5-9) and others (Dem. 44.63 and 59.55-57) speak of disinheriting hostile relatives. In giving priority to paternal relatives over maternal kin, the Athenian law of intestate succession ignored the reality that a man might feel closer to a homometric brother with whom he had grown up than to his father’s nephew or cousin.
22. Isaeus 5.5-6. Notice that at one stage in the proceedings the husband of one of the sisters agreed to return the house which he was holding as a pledge for her dowry and to receive her share of the estate instead (5.26-27). As I reconstruct the affair, the testator originally made this will to assure that his sisters would receive an adequate dowry, but once they were all married he changed his will and gave his heir the entire estate (5.7). This second will was not discovered until the first had been probated. If the man who had custody of the will was abroad for several years during the Ionian War, that would explain why it took so long for it to come to light. See Suidas, s. v., διάθεσις, for a case of Isaeus in which one side produced a second will which, they said, had been written on Lemnos.
one involves a division of the estate between the appointed heir and the collaterals. In this instance he received a third of the inheritance and the sisters of the deceased each got a sixth. It appears likely that the testator made these arrangements to guarantee that his sisters would receive a substantial dowry even if he should die. If so, this will served the same purpose as those written by Demosthenes' father and Pasion. Nor do we see here the supposed decadence of the fourth century, for the testator probably died in 411. In every other case it appears certain or likely that the adopted heir received the entire estate. Clearly it was not normal practice to alienate property away from the natural or adopted heir or to make multiple bequests.

To see the continuing religious significance of testamentary adoption we need only examine the orators. It will not do to belittle their evidence by saying that they raise a topic when it suits their purposes. That is the whole point: it did suit their purposes to dwell on the social aspects of inheritance since that is what juries cared about. Whatever may have been the aims of greedy litigants, the ordinary Athenian—as represented by the juror—was still concerned in the fourth century to see that the dead man received his due honors.

Surprisingly, there are no speeches extant delivered to Athenian juries in support of a testamentary adoption, but we can determine from speeches which oppose wills and from those concerned with adoption *inter vivos* just what the jury expected from an heir named by will. And we can confirm our deductions by reference to the speech which Isocrates wrote for a trial on Aegina (Isoc. 19, the *Aegineticus*).

According to Isaeus, 'All who are going to die take concern for

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24. Isaeus 6 is spoken on behalf of a man who bases his claim on a will, but the entire speech is devoted to an attack on the legitimacy of those who claim the inheritance as descendants of the deceased. Thus we do not see how one goes about arguing in favor of a will. Clearly he would begin by praising the testator as a worthy citizen whose will it is unjust to invalidate (cf. Isaeus 7.37 and 10.22). Then he would explain the claimant's connection by blood or marriage to the deceased (Isaeus 2.3-12 and 7.5-8) and show that they had associated together closely for many years, preferably since childhood (Isaeus 1.12 and 8.18-20 show the sort of argument I mean). On the other hand, he will prove, if possible, that the testator was angry with his nearest relatives (Isaeus 7.7-8 and a variant, Isaeus 1.9-11). He will then detail the many benefits each man has done the other, including any good deeds performed by their fathers (Isaeus 2.3-4 and 7.7-10). The jury will next hear that the beneficiary of the will has buried his friend and has subsequently been tending his cult (see especially M. Hardcastle, *Prudentia* 12 (1980) 12-16). And the peroration of the speech will include some such appeal to the emotions as, 'The lawgiver established the law thus for this reason, seeing that this alone is a refuge from loneliness and a comfort of life for the childless among men, the possibility of adopting whomever they wish.' (Isaeus 2.13) Isocrates' *Aegineticus* is just such a speech.
themselves so that they may not leave their houses extinct but that there may be someone to sacrifice and perform all the customary rites for them. Wherefore, even if they die childless, still at least they adopt and leave someone.’ (7.30) Any testator would want to make sure that the adoptee ‘would have the estate and proceed to the ancestral altars and perform the customary rites for the deceased himself and for his ancestors.’ (9.7) Again, ‘Menecles considered how he could avoid being childless and might have someone to support him in his old age while he still lived, and bury him when he died, and for the future would perform the customary rites for him.’ (2.10) Those who oppose Menecles’ desire to adopt want ‘to render the deceased nameless so that no one will honor the ancestral cults on his behalf nor sacrifice to him every year but rather so that he may take his honors away.’ (2.46) In another case the jury must decide who is fit to ‘be the heir of Philoctemon and go to his monuments, pouring libations and offering sacrifices.’ (6.51)

One who quarrels with his closest relatives will disinherit them by adopting someone else, as did Cleonymos, for he ‘considered it terrible to leave his worst enemy as guardian of his relatives and controller of his own property, and that this man should perform the customary rites for him, this man with whom he was hostile during his lifetime.’ (1.10) A fortiori, a man would certainly not adopt hostile relatives, so the jury must not permit ‘the worst enemies of Astyphilus to go to his monuments and rites.’ (9.36)

The ordinary Athenian considered it so important to carry on the household and perform the cult duties for the deceased that we find every type of litigant who can possibly make the claim arguing that he has carried out these obligations. This is an argument made by a man who founds his claim on a will, by a son adopted inter vivos, by nephews basing their case on kinship, by grandsons whose ancestry is challenged, by a man trying to effect a posthumous adoption decades after the original property holder died, and by another who opposes a similar posthumous adoption.25 Litigants also excoriate their opponents for failing to honor the dead. Two men who oppose wills make the point that the beneficiaries could not be bothered to bury their supposed benefactors,26 while the testamentary heir in the Aegineticus says that his opponent was so ‘savage and wicked’ that she did not come to mourn her brother (Isoc. 19.31). A client of Isaeus alleges that the deceased disinherited his nearest relative, his cousin, because he knew that he could not expect to receive the ‘customary rites’ when she had failed

25. Isoc. 19.31; Isaeus 2.36, 4.26, and 8.21-24; Dem. 43.63-74 (where the adoptee is not the son of the de cuius, Hagnias, but the son of Eubulides, who is allegedly the heir to Hagnias by the law of intestate succession; cf. 13-15 and 19-30); Dem. 44.2, 11, 32, 43, and 66.
to provide one of her sons as an heir to her own brother (7.31-32). In a case which does not involve inheritance Apollodorus can expect the jury to believe that a dying man was so distressed by the prospect of childlessness that he agreed to legitimize his child by the daughter of a *hetaira* (Dem. 59.57).

It is, of course, possible to cite cases where people have not followed the Athenian ideal, and Asheri calls attention to "a scandalous case of fraud by adoptive sons, who ‘exploit the substance (of their adoptive father) and are brought up there in their infancy, and afterwards they always come back to the property of their (natural) father, which had remained intact while they used up the other’" (Ps. Dem. XLIV, 23), repeating the same device for some generations." But then the orator does not recite this as an example of contemporary *mores*, ‘the way we live now.’ He raises the matter to inflame the jury against his opponents because Athenians did not countenance such behaviour.

28. When a man permitted the adoption of one of his sons, he always incurred the danger that his remaining son or sons would die without issue, leaving him without an heir. In such an event certain consequences necessarily followed. Apart from any monetary considerations, the adopted son normally could not neglect his natural father and allow his house to become extinct. But at the same time he had to honor his commitments to his new father. The law provided him an escape from his dilemma, permitting him to return to his original family if he fathered a son to take his place as adoptee. When, therefore, a man returns to his original house, it is not *necessarily* a crass, materialistic attempt to double his inheritance. In many cases this was the only way to fulfill his obligations to both his fathers. So in the case of Dem. 44 Archiades’ adopted son Leocrates returned to his original family, leaving Leostatus in his stead. When Leocrates could not beget an heir for himself, Leostatus became his heir and left behind a son, Leocrates II, as heir to Archiades. When the younger Leocrates died childless, Leostatus naturally was unwilling to allow his natural son’s property and cult to pass to hostile relatives (the speaker of Dem. 44 and his kin), so he arranged to have another son adopted posthumously as the new heir (44.19-27). Without a doubt the Leostratus-Leocrates family wanted to have the property which was at stake, but all their manoeuvres are compatible with the view that they were also fulfilling their social and religious obligations to their...
I would concede, however, that a few Athenians may have had cause to bequeath their property without adopting the heir. 29 The speaker of Dem. 44 says that Archiades chose not to marry, did not adopt an heir, and agreed with his brother not to divide their patrimony (44.10 and 17-19). Other childless Athenians apparently died without adopting an heir. 30 Clearly, then, some men were content not to establish separate households of their own. In such a case the heir (or heirs) would not have to leave his own family in order to preserve the dead man's oikos, and he could tend his cult while remaining in his original family. Since there was no need to adopt, someone with confidence in his nearest relative could let his property pass to him automatically by the law of intestate succession, but if he preferred someone else, he could simply make over his property to him by will. 31 Certainly, though, this course would be unusual. For even though he seeks to have Archiades' estate awarded to him according to the impersonal rules of intestate succession, nevertheless the speaker of Dem. 44 assumes that Archiades, who supposedly did not form his own household, still needs to have a son provided for him by posthumous adoption (44.43). So ingrained was the custom of making one's heir a son by adoption. 32

In the age of the orators, then, Athenians supported a man's right to make a will, and litigants tried to show that they were attending to the

29. De Ste. Croix, op. cit., 389-390, says, 'Apparent departures from the traditional rules' that one does not 'dispose of his property without adopting the legatee ... can all be explained satisfactorily' by inferring 'an adoption which the speaker has no reason to mention.' This is a possible way to account for (or explain away) the evidence of the orators, but I do not think that it is necessary. Particularly troublesome are Isaees 1.2 and 35, which (even positing an adoption) imply multiple heirs. On the other hand, there is no problem with Isaees 7.6, which may refer to an arrangement whereby a man gave his estate to his brother with the stipulation that the brother would someday introduce his own son as the testator's heir by posthumous adoption.

30. E.g., Isaees 7.19.
31. Either way the heir would have a second estate in addition to his patrimony.
32. So also two people who have inherited by intestate succession are criticized for failing to introduce a son posthumously for the deceased (Isaees 7.31 and 44; Dem. 43.77), and at Isaees 4.7 a whole host of forgers claim to be adopted sons, rather than legatees, of the deceased.
testator’s wishes and needs. The will itself served both financial and social ends, as a father could leave instructions about the management of his property or its division among his sons, and also he could arrange the marriage of the women in his family or the adoption of a son. Some or all of these functions are not developments of the fourth century but can be found in the fifth century as well.

33. One could do both at the same time by adopting a son and having him marry one’s daughter (cf. Dem. 41.3, a marriage made while the father was still alive), or even adopting the daughter and choosing a husband for her (perhaps exemplified by the will at Isaeus 7.9, which may have carried the stipulation that a son born of the marriage should become the testator’s son by posthumous adoption).

34. In fifth century sources wills are used to record the extent of an estate (Eur., Palamedes, fr. 578 Nauck), to divide the property among the sons (Trachiniai 161-163), to leave a dowry for a wife (Lys. 32.5-6), to marry an heiress to a man not next-of-kin (Wasps 583-586), and to adopt a son who receives only a third of the estate (Isaeus 5.5-6). Asheri, op. cit., 9, says, ‘In the radical democracy of fourth century Athens new forms of wills began to be gradually accepted and legalized,’ including a type ‘unknown till the time of the orators.’ That is, of course, the whole point. Since almost all of our evidence comes from the orators, we cannot expect to trace the development of wills in the sixth and fifth centuries.