

Aphairesis and *Apoleipsis* A Study of the Sources

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It is generally agreed that under Attic law divorce could be accomplished either by the husband dismissing his wife (*apoleipsis*) or by the wife leaving her husband (*apoleipsis*)⁽¹⁾. Most modern literature on the subject also recognizes a third form of divorce, *aphairesis*, where the agent of the divorce is the bride's father who takes back his daughter, though there has been considerable discussion of the possible limits on the father's right to carry out this form of divorce, most notably as to whether *aphairesis* required the daughter's consent⁽²⁾. In Athens' male-dominated society the circumstances involved in divorces initiated by women were necessarily more complicated than those initiated by men, but for the most part modern discussions of *apoleipsis* and *aphairesis* have failed to distinguish between the legal position of women and the realities of their social condition. Keeping this distinction in mind this paper will review all of the sources bearing upon divorces initiated from

(1) The impetus for this study was a paper on the Greek sources for divorce in classical Athens presented by Professor L. COHN-HAFT to the New England ancient history colloquium at its fall 1982 meeting. I would like to thank both Professor COHN-HAFT and Ms. Sherry MARKER for kindly reading this study and commenting on it.

(2) For a bibliography of the discussion see H.J. WOLFE, "Marriage Law and Family Organization in Ancient Athens", *Traditio* 2 (1944) 47, note 23; A.R.W. HARRISON, *The Law of Athens: The Family and Property* (Oxford 1968) 31, note 1.

the women's side to see what these sources can tell us about the legal and social aspects of the particular divorces and of *aphairesis* in general. The present study is a lengthy one, but it seems worthwhile inasmuch as our understanding of the term *aphairesis* clearly affects our perception of Athenian marriage and family relations in general.

Nature of the Sources

Any investigation of Athenian divorce practices is rendered difficult by the small amount of evidence available to us. Most discussions of *aphairesis*, for example, draw their evidence from four cases at most (the divorces contemplated in Menander's *Epitrepontes*, the anonymous Didot papyrus I and Plautus' *Stichus*, and the actual divorce of Spudias' wife from her first husband mentioned in Demosthenes 41.4) ⁽³⁾. Evidence for *apoleipsis*, as distinct from *aphairesis*, is drawn from only three cases (the attempt at *apoleipsis* by Alcibiades' wife described at [Andocides] 4.14 and Plutarch, *Alcibiades* 8.3-5; the divorce of Phile which is denied in Isaeus 3.8 and 78; and the sham divorce of Onetor's sister at issue in Demosthenes 30). Of these seven cases only one is actually a divorce, that of Spudias' wife from her first husband. The nature of the other cases (four divorces contemplated but never carried out, one denied and one a sham) makes the evidence which they provide far more ambiguous than we would like.

There is a further problem caused by the nature of our sources. With but one exception ⁽⁴⁾, all of our evidence comes either from

(3) Other sources have been noted by various scholars, but these have not become part of the mainstream discussion of the question, e.g. C. GATTI, "Alcuni aspetti della posizione giuridica della donna ateniese nel V e IV secolo A.C.", *Acme* 10 (1957) 57-65, cites Plaut. *Men.* 782 ff. and *Merc.* 784 ff.; U.E. PAOLI, "Lo Stichus di Plauto e l'aferesi paterna in diritto attico", *Studi in onore di P. de Francisci* (Milano 1956) 1.236, mentions *Rhet. ad Her.* 2.38.

(4) The one exception, Plut. *Alc.* 8.3-5, is also unreliable, see below, pp. 195-197 and note 7.

forensic speeches or from drama, primarily New Comedy. In the speeches it is not always in the interest of the speaker to give a detailed and accurate account of the divorce, either because such an account might hurt his case or simply because it is irrelevant. The dramatic evidence comes from plays which exist only in fragmentary form or which are known only through Latin adaptations. The fragmentary nature of much of this material complicates our study, and we must also allow for the possibility of poetic license and even, in the case of Latin adaptation, of Roman intrusions⁽⁵⁾. Obviously these are not the kinds of sources we would like, but they are what we have, and, provided we keep their shortcomings in mind, they are far from useless. The picture which emerges from their critical examination is coherent and consistent, but we shall still have to consider later in this paper how likely it is to reflect actual Athenian practice.

The non-dramatic sources

[Andoc.] 4.14⁽⁶⁾ and Plutarch, *Alcibiades* 8.4-6 both tell of the attempt by Alcibiades' wife Hipparete to divorce her husband. The story is of particular interest as evidence that a wife was required to register her divorce with a magistrate in the case

(5) It does not matter for our purposes how faithfully Roman comedy reflects Athenian law since, as argued below, the evidence of comedy bears on the social rather than the legal aspects of divorce. It is generally recognized that the society represented in Roman comedy is overwhelmingly Greek, and we may assume that, on the whole, the social relations reflected in our texts are those of the Greek originals, even if individual details are modified for the Roman audience. (On Attic law in Roman comedy see U.E. PAOLI, *Comici latini e diritto attico* [Milano 1962], and for a different view A. WATSON, *The Law of Persons in the Late Republic* [Oxford 1967] 46-47).

(6) Most scholars agree that this speech is not by Andocides but that it dates from no later than the early years of the fourth century B.C. (see e.g. G. DALMEIDA, *Andocide: Discours* [Paris 1930] 103-10); the possibility of Andocidean authorship is argued by A.E. RAUBITSCHER, "The Case against Alcibiades (Andocides IV)", *TAPA* 79 (1948) 191-210. In either case the speech is good evidence for our purpose since it is roughly contemporary with the events it describes.

of *apoleipsis*. According to [Andoc.], Alcibiades, by bringing *hetairai* into his house, forced his wife to divorce him (ἠνάγκασε τὴν γυναῖκα σωφρονεστάτην οὖσαν ἀπολιπεῖν), going before the archon *kata ton nomon*. Alcibiades, however, seized her by force from the agora (presumably where she had gone to register the divorce with the archon) and carried her off, thereby putting a rather violent end to her attempt at divorce. According to Plutarch, who tells the story somewhat differently, Hipparete left the house (ἐκ τῆς οἰκίας ἀποῦσα, 8.4) for a trial separation, as it were, but when Alcibiades still did not stop his disorderly behavior she went to deposit the notice of divorce (*to tes apoleipseos gramma*, 8.5) with the archon, at which point Alcibiades snatched her up and took her home.

Plutarch's account of this incident closely follows that in [Andoc.] but has been recast to show Alcibiades in a more favorable light⁽⁷⁾. In particular Plutarch adds at the end of his version of the story (8.6) that Alcibiades' actions did not appear to be totally *paranomios* or *apanthropos* for, according to Plutarch, "it seems" (*dokei*) that a woman contemplating divorce was required to appear before a magistrate ὅπως ἐγγένηται τῷ ἀνδρὶ συμβῆναι καὶ κατασχεῖν his wife. Plutarch's Greek is ambiguous, perhaps intentionally so, and *sumbenai* could mean "come to an agreement" but need mean nothing more than "meet up with"⁽⁸⁾. In either event there is no other evidence that the Athenian state was interested in hindering divorce in the husband's interest, and we may safely conclude that

(7) For example Plutarch makes the wife *philandros*, and he omits the detail that Alcibiades brought the *hetairai* into the same house with his wife. In [Andoc.] the *hetairai* are *doulas kai eleutheras*, but in Plutarch the slaves disappear and the *hetairai* are merely *xenais kai astais*. In [Andoc.] Alcibiades calls upon *hetairoi* for help, but in Plutarch he acts alone. *harpasas*, the participle used to describe Alcibiades seizing his wife in [Andoc.], is softened to *sunarpasas* in Plutarch. For a modern version of the same process (e.g. Alcibiades' *hetairoi* become witnesses supporting his case for reconciliation in the archon's court) see the retelling of the story by J. HATZFELD, *Alcibiade* (second edition, Paris 1951) 137.

(8) "... se réconcilier avec elle", FLACELIÈRE and CHAMBRY in the Budé; "... chance to meet", PERRIN in the Loeb.

Plutarch's explanation of the wife's appearance before the archon is part of his *apologia* for Alcibiades, telling us nothing about the real purpose of the appearance. As to that purpose, Harrison⁽⁹⁾ has suggested that the divorce was registered in order to publicize the fact that the wife's former husband was no longer her *kurios*, a suggestion which finds some support in Isaeus 3 and Demosthenes 30 (see below). The language used by [Andocides] (*apoleipin, elthousan pros ton archonta kata ton nomon*) implies that an appearance before the archon was a regular part of the process of *apoleipsis*, but that the wife, not the archon, was the agent of the divorce, i.e. the wife effected the divorce by the actions she performed, the archon did not dissolve the marriage on behalf of the state, and above all the archon had no power to withhold a divorce from a wife who wanted one.

The same conclusions may be drawn from the use of similar language at Isaeus 3.78 and Demosthenes 30.17. At Isaeus 3.78 the speaker, trying to convince his listeners that a woman involved in the case was never married to the man (now dead) whom she claimed to have married, asks rhetorically:

πρὸς ὁποῖον ἄρχοντα ἢ ἐγγυητὴ γυνὴ ἀπέλιπε τὸν ἄνδρα ἢ τὸν οἶκον αὐτοῦ⁽¹⁰⁾;

The question implies that there could have been no marriage since there was no record of the marriage's end. The assumption is that the wife was expected to make a declaration to the archon as part of *apoleipsis*, and that the result of the declaration, if not its intention, would be a public record of the divorce.

(9) HARRISON (above, note 2) 42-43.

(10) The words τὸν οἶκον αὐτοῦ are awkward as they stand, and the whole expression is probably meant as a shorthand version of ἀπέλιπε τὸν ἄνδρα ζῶντα ἢ τελευτήσαντος τὸν οἶκον αὐτοῦ, which may be supplemented from 3.8. The speaker's point is that there should be some record or witness which the woman's supporter could produce if there had been a divorce and the woman and made her declaration to the archon. There probably was no requirement for a similar declaration to the archon when the wife left her husband's house upon his death (certainly there is no other evidence for such a requirement), but the speaker slips in *e ton oikon autou* to suggest that there would have been.

Demosthenes 30 tries to convince a jury that the *apoleipsis* of Onetor's sister from Aphobus is a fraud because the two continue to live together as husband and wife: λόγῳ μὲν ἀπολειπυῖαν, ἔργῳ δὲ συνοικοῦσαν (§ 25). The *logoi* — *ergoi* contrast here, and the tenor of the speech as a whole, imply that there was a specific procedure for a wife to follow in *apoleipsis*, and that this wife had followed it. Demosthenes does not argue, however, that the wife obtained a divorce under false pretences, and that the divorce should therefore be rescinded, an argument which assumes that the state grants the divorce through its magistrates. Rather he argues that despite the appropriate formal procedure there has in fact been no divorce since the wife has not left her husband. Demosthenes' argument implies, again, that the wife's actions produce the divorce.

The formal procedure for *apoleipsis*, then, was the wife's presentation to the archon of a declaration of divorce. Demosthenes uses the declaration three times as a way of dating when the divorce was supposed to have taken place, at § 15 (ἡ δ' ἀπόλειψις ἐγράφη ποσιδεῶνος μηνὸς ἐπὶ Τιμοκράτους), and more loosely at § 26 (μετὰ τὸ γεγράφθαι παρὰ τῷ ἄρχοντι ταύτην τὴν γυναῖκα ἀπολειπυῖαν) and at § 17 (τὴν ἀπόλειψιν οὗτοι πρὸς τὸν ἄρχοντ' ἀπεγράψαντο). The verbe *apographo* (as opposed to *grapho*) has the additional nuance "enter on the public record" (11), and the fact that the declaration was written also tends to confirm that its purpose was to create a public record of the divorce. To belabor the obvious, the expressions *apoleipsis egrapho*, etc. are not the language one would expect if the wife "sought" or "got" a divorce, either from her husband or the state.

At § 17 Demosthenes uses the plural *apegrapsanto* for registering the divorce. Throughout this part of the speech Demosthenes argues that there has been collusion between Onetor, the defendant in the case and now the *kurios* of his sister, and Aphobus, her former husband with whom she still lives. As a way of keeping this collusion before the jury Demosthenes

(11) See *LSJ* 9 s.v. *apographo* II.

repeatedly uses verbs in the third person plural to imply that the two did everything together. Thus, e.g. "they" married off the wife in the first place (*exedosan*, § 11⁽¹²⁾), "they" carried out the divorce (*toutous pepoiesthai ten apoleipsin*, § 15), and "they" registered it (§ 17). This is a rhetorical trick, of course, and should not be taken as evidence that the former husband participated in the registration of the divorce. More importantly for our purpose, Demosthenes says later in the speech (§ 31):

οὐχ ἴριστ' αὐτὸς ἔδειξεν Ὀνήτωρ, ὅτι οὐκ ἀληθινὴν ἐποιήσατο
τὴν ἀπόλειπιν.

Pearson⁽¹³⁾ makes the wife the subject of *epoiesato*, but in view of the parallel with § 15 quoted above there is no reason why we should not accept the natural meaning of the text, that Onetor is the subject of *epoiesato*. The statement, however, should not be taken as evidence for legal procedure (that the *kurios* was the legal agent of the women's divorce), but as evidence for social realities (that a compliant woman could be pressured into action by the men in her life). Indeed, the text gives no indication that she was not a willing partner. We have the impression throughout that the wife was merely a pawn in the machinations of Onetor and Aphobus. Since such an impression so obviously suits Demosthenes' purpose it should put us on our guard. All the same, it seems unlikely that Demosthenes would seek to create this impression unless his listeners were prepared to believe that women could be manipulated by father and other male kin into divorcing their husbands, as they were forced into marriage, to further their *kurios*' interests.

The same wife had earlier been married to Timocrates but left him to marry Aphobus (cfr § 11, § 33). The text implies that this was done in Onetor's interests (cfr § 7), but Timocrates probably went along with the manoeuvring, if we may judge from

(12) Obviously a logical impossibility since she was given to Aphobus.

(13) L. PEARSON, *Demosthenes: Six Private Orations* (Norman 1972) *ad loc.*, somewhat exceptionally makes Onetor's sister the subject of *epoiesato*; commentators usually avoid taking a stand on the issue, and the Greek is usually translated by a verb in the passive voice.

the arrangements made for him to retain the use of his wife's dowry for a fee (cfr § 7). The fact that Demosthenes links Timocrates in collusion with Aphobus and Onetor at §§ 19-20 tends to support this inference. It is unlikely in such cases of collusive divorce that either side would allege reasons for the divorce which would be socially embarrassing to the other side. This suggests that it was not necessary to give the reasons for *apoteipsis* either as part of the declaration to the archon or elsewhere (14).

The issues addressed in Demosthenes 41 arise from the divorce of Polyeuctus' daughter from Leocrates and her remarriage to Spudias. The speaker describes these events as follows (§ 4):

διαφορᾶς γενομένης τῷ Πολυεύκτῳ πρὸς τὸν Λεωκράτη, περὶ ἧς οὐκ οἶδ' ὅ τι δεῖ λέγειν, ἀφελόμενος ὁ Πολύευκτος τὴν θυγατέρα δίδωσι Σπουδίᾳ τουτῶτι.

According to the text the divorce was initiated by the father who "took back" his daughter, and this passage is often cited as proof that a father could legally put an end to his daughter's marriage (15). The passage is clearly an abbreviated narrative, however, and it is not impossible that Polyeuctus' daughter agreed to the divorce and did what her father wanted her to do, as we assume the wife did in Demosthenes 30.

The speaker obviously does not want to tell the jury why the divorce occurred, and we are forced to speculate on what lies behind *diaphoras genomenes*. A curious feature of the present divorce is that the wife passed directly from one husband to the next (ὁ ... Σπουδίας ... παρὰ τοῦ Λεωκράτους ... τὴν γυναῖκα ἔλαβε, § 27). Now the same thing also occurred in Demosthenes 30 when

(14) Similarly HARRISON (above, note 2) 41, notes that Demosthenes does not mention any reasons alleged for the wife's second divorce. HARRISON argues that Demosthenes, who was eager to show collusion, would have brought these up in his speech; since he does not, HARRISON infers that none were offered by the wife, and hence that none were required.

(15) The passage is also the only time the verb *aphaireomai* is used in connection with divorce. On whether or not it is used here as a technical term, see below, pp. 229-230.

the wife left Timocrates to marry Aphobus (παρ' ἀνδρὸς ὡς ἀνδρ' ἐβάρδιζεν, 30.33; cfr 30.11). When a wife stays with her husband up to the day she marries the next⁽¹⁶⁾, it does not seem that the divorce is meant to protect the wife's interests as much as to advance those of her *kurios*, which we had reason to believe was the situation in Demosthenes 30. Again there was reason to suspect collusion between the wife's *kurios* and her divorced husband in the case of Demosthenes 30, and it is hard to avoid the suspicion that the same sort of arrangements were made between Leocrates, Polyuctus and Spudias to be sure that the divorce, transfer of dowry, etc. would all go smoothly⁽¹⁷⁾.

It is generally agreed that the state had no role in *apopempsis* divorce initiated by the husband, and we have seen above that in *apoleipsis* divorce initiated by the wife its role was limited to registering the divorce as a matter of public record. In other words, divorce was essentially a private action between the husband and wife, and not a public action to which the state was also a party. The private nature of divorce is a strong argument that the father could not use the law in *aphairesis* to compel his daughter to divorce against her will. Further, if the state is not a part of the process of divorce, then properly speaking there are no "legal grounds" for divorce. Rather the decision to divorce, like the decision to marry, was strictly in

(16) When does this wife register her divorce with the archon? While she is still with her first husband? On her way to her new home? One has the impression that in situations like this everyone play acts according to an agreed script as they go through the formalities of divorce.

(17) The text continues to the effect that Leocrates took things badly and brought a suit against Polyuctus and Spudias which eventually resulted in a financial agreement. The speaker does not tell us the grounds of the suit, but Leocrates could not sue to have the divorce rescinded (the divorce being non-rescindable, as we have seen), and if there had been any dispute over the dowry the wife's *kurios* would have sued Leocrates, who was originally in possession of the dowry, rather than vice versa. It would appear then that Leocrates could only have been concerned with arrangements made to win his cooperation, e.g. in transferring the dowry to Spudias, arrangements which he now felt were either inadequate or improperly observed.

the interests of the parties involved, and there was no reason to reveal these reasons since divorce was a private affair.

Apopempsis divorce would presumably be in the interests of the husband; *apoleipsis* divorce, the object of our study, should be in the interests of the wife, but we must wonder how free a wife was in actual practice to act in her own interests. The speeches we have considered touch on a very small number of actual divorces, but the evidence from this limited sample indicates that there could be a difference between the legal requirements of *apoleipsis* divorce and the social realities, that on the one hand the wife "divorced" her husband in the sense that she was the legal agent of the divorce, but that on the other hand the initiative for the divorce could in fact come from the wife's father or other male kin who acted in his own interests while the wife complied with his wishes.

The "stigma" of divorce

New Comedy, in Greek and in Latin adaptation⁽¹⁸⁾, tells us more about these social realities as distinct from the legal character of *apoleipsis*. We will begin by considering the evidence in these texts for the position of the women after *apoleipsis*.

There is nothing in any of our sources to suggest that the act of *apoleipsis* by itself discredited the woman⁽¹⁹⁾, and there is even some evidence to suggest that it did not. In Terence's *Phormio* the young man Antipho arranged to marry his dowryless beloved by contriving with a parasite to have the woman

(18) On the use of the evidence of Roman comedy for Greek social relations see above, note 5.

(19) At Eur. *Med.* 236-37 (οὐ γὰρ εὐκλεεῖς ἀπαλλαγαι / γυναιξίν, οὐδ' οἶόν τ' ἀνήνασθαι πόσιν) Medea appears to speak not only of the legal act of divorce, but also of its social implications, especially as they apply to her, a foreigner (cfr 238) with no father to whom to turn. Medea does not divorce her husband following her father's wishes, but *on her own* without her father's support. Such a woman will be censured by the community because she acts independently, as a woman ought not, and because she will now live alone, as no respectable woman would.

declared an *epikleros*, and himself her closest male kin. Anti-pho's father Demipho was abroad while this was done, and upon his return he recognizes the trick but apparently concedes the validity of the marriage and resolves to end it by divorce. Since the woman is an orphan Demipho cannot deal with her father, and he summons instead the parasite who had acted as *patronum mulieris* (307) and offers him the choice of either removing the woman or having her thrown out (436-37):

*nisi tu properas mulierem
abducere, ego illam ciciam* ⁽²⁰⁾.

This is the language of divorce (*eiicio* = *ekballo*, a synonym of *apopempo* ⁽²¹⁾); on *abduco* see below, p. 229), but we must be careful: The son married the woman, and he must divorce her, though the father of course assumes that his son will go along with his wishes, as we had reason to believe the wives did in the divorces in Demosthenes 30 and 41 discussed above. All the same, when the father speaks, he is only speaking on his son's behalf, as he himself admits (421-25), and when he talks of throwing the woman out he must mean, in legal terms, having his son divorce her. In a similar fashion Demipho may also fail to distinguish between the woman and her patron, and "removing" (*abducere*) the woman may just be his abbreviated way of saying to the parasite "have the woman divorce the young man by leaving him, and take her back to live with you" ⁽²²⁾. Indeed it is especially important in the present instance that the woman consent to the divorce in order to protect Demipho's reputation (724-25):

*non satis est tuom te officium fecisse, id si non fama
adprobat:
uolo ipsius quoque uoluntate haec fieri, ne se eiectam
praedicet.*

(20) Cfr *abduc* (410), *abduci* (799); *eicerit* (627), *eiectam* (725), *praecipitem* ... *daret* (625).

(21) HARRISON (above, note 2) 40.

(22) Intertwined with this is the further complication that the father, conceding a kinship relation with the woman, seeks to fulfil the obligation of the law by remarrying the woman to the parasite (cfr 409-10, 654-58).

(cfr 785 where Demipho asks his brother's wife to convince the younger woman *ut sua uoluntate id quod est faciundum faciat*) (23). In the case of a marriage, such as the present one, between a wealthy husband and a poor wife, *apoleipsis* by the wife is the only way both the wife and the husband (and here his father) can be insured against charges like those made by the parasite (413-14):

*itan tandem, quacso, item ut meretricem ubi abusus sis,
mercedem dare lex iubet ei atque amittere* (24)?

The divorce in the *Phormio* is atypical in that it is between a wealthy husband and a poorer wife. In the divorces in comedy the wife's family is usually well-to-do while the husband is often not as well off. This seems to be the pattern, for example in Terence's *Hecyra* (25) where the husband's father is more interested in keeping the marriage intact than is the wife's father, who assumes that with the dowry in hand he will have no trouble marrying his daughter off elsewhere (509; for the dowry cfr 502). The husband in the *Hecyra* marriage has learned to love his wife, but at the start of the marriage he was still so much in love with his *meretrix amica* that he had decided his marriage would have to end (*quam* [sc. *uorem*] *decrexim me non posse diutius habere*, 148-49). While the obvious recourse for a husband in these circumstances would be to divorce his

(23) Cfr also 911-13.

(24) = *apopempein*.

(25) Note especially the comment of the wife's father on the "uppity-ness" of the husband and his father: *quia accessit uobis paululum pecuniae sublatis sunt animi* (506-7; the *paululum pecuniae* could refer to the dowry or, more likely, to the inheritance they have just received [cfr 458-65]). The husband's father works in the country himself *praeter aequom atque aetatem meam* to maintain the leisurely life style of his son and his (the father's) wife (224-26; in the case of his son the reference is to his partying and whatever else his father suspects he is doing with the *meretrix*). The well-to-do fathers of comedy may complain about such expenses, but they usually can absorb them. Fathers who cannot are poor, either because they did not have much money to start with or, like the fathers in Plautus' *Mostellaria* and *Trinummus*, they were reduced to poverty by their son's escapades.

wife by *apopempsis*, this husband rejects such a course as *superbum* and hopes instead that his wife will divorce him by *apolepsis* (cfr *abituram*, 156) when she learns the facts of his affair (154-56):

*reddi patri autem, quoi tu nihil dicas uti,
superbumst. sed illam spero, ubi hoc cognouerit
non posse se mecum esse, abituram denique.*

These lines suggest that if divorce is to occur, at least when the reason is a husband's sexual misbehavior, then for a woman *apolepsis* is preferable to *apopempsis*.

In fact, the wife in the *Hecyra* was willing to endure the *incommoda* and *iniurias* she suffered and to conceal the *contumelias* (265-66), and by so doing she was able to win her husband's heart away from the *meretrix*. In a similar vein in Terence's *Andria* another young man is having a notorious affair with a *meretrix*, and his father tries to convince a potential bride's father to go through with the marriage in the hope that it will "cure" his son and lead him to settle down (556-62). The girl's father is understandably reluctant, but the young man's father argues that even if worse came to worst and the young man did not settle down, the worst that could happen would be divorce (567-68):

*nempe incommoditas (26) denique huc omnis redit,
si eueniat, quod di prohibeant, discessio.*

Discessio is of course *apolepsis*. The young man's father is unlikely to have made the argument in the present passage unless there was little or no stigma attached to *apolepsis*.

The dependent daughter

If the evidence suggests that no stigma attached to *apolepsis*, it also suggests that *apolepsis* was virtually impossible without

(26) The speaker seems to be anticipating the argument that marriage to a man who loves another will cause *incommoda* for a wife (cfr *Hec.* 165).

male support. Our sources on divorce, both the orators and New Comedy, reflect the circumstances of the more well-to-do classes of Athenian society, and women from those classes, having no source of income of their own, were economically in a condition of total dependence upon the males in their lives⁽²⁷⁾. Socially the only acceptable place for women such as these was in a man's house: their father's, their husband's, even their adult son's⁽²⁸⁾. A woman would not live alone unless by some catastrophe she had lost all her male relatives, or unless she was a prostitute. Practically speaking, for the well-to-do women in our sources divorce was next to impossible unless they could be sure in advance that their fathers or other male relatives would take them in.

Clearly then an Athenian wife was not really free to divorce her husband⁽²⁹⁾, and strong pressures *de facto* limited her *de iure*

(27) Women in our sources often bring large dowries into their marriages, but the dowry never actually belongs to the bride, and it reverts to her father or his successor in case of divorce. Women may sometimes have *de facto* control over family finances, but these situations are always in some way extra-legal and depend on some man's acquiescence. For one way in which such a situation might arise, see below, pp. 209-210.

(28) Social considerations are paralleled by legal ones. Legally an Athenian woman was never *sui iuris*, but always passed from the *kurieia* of one male into that of another; see HARRISON (above, note 2) 108-11. From a legal point of view the cooperation of her father or his successor as *kurios* was clearly desirable, and perhaps even required, for a wife to proceed with a divorce, but it was still the wife, not the father, who effected *apoleipsis*.

(29) In Plautus' *Miles Gloriosus* a *meretrix* will pretend that she is a respectable (cfr *ornatam ... ex matronarum modo*, 791) and well dowered (cfr *aedis ... dotalis*, 1166) woman who has divorced her husband (*ex hoc matrimonio abierim*, 1164-65) in order to marry the *miles*. Her story implies that upon divorce a woman retained control of her dowry and was free to determine whom she would marry next. It also implies that it was socially (as distinct from legally) possible for a respectable woman to divorce a presumably reputable husband in order to marry a disreputable mercenary, and that no relative would intervene either to prevent the offense to family dignity or the lose of the dowry to the *miles*. That the *miles* cannot see how improbable this all is is meant to show how easily he is deluded, as are those who use the present passage for evidence of Greek (or Roman) law.

rights of divorce. This is the point for example at Plautus, *Merc.* 819-23 where, despite the use of *lex* (823; cfr *dura lege*, 817) ⁽³⁰⁾, we can be almost certain that the passage deals with social realities rather than legal necessities:

*nam si uir scortum duxit clam uxorem suam,
id si rescivit uxor, impunest uiro;
uor uirum si clam domo egressa est foras,
uiro fit caussa, exigitur matrumonio.
utinam lex esset eadem quae uori est uiro.*

The passage is spoken by Syra, an aged female servant who believes that her mistress' husband is unfaithful. Earlier the mistress, concluding that the husband's behavior was intolerable, had sent her servant to fetch her father (*Merc.* 784-88):

*non miror, sei quid damni facis aut flagiti.
nec pol ego patiar seic me nuptam tam male
measque in aedis seic scorta obductarier ⁽³¹⁾.
Syra, i, rogato meum patrem uerbeis meeis
ut ueniat ad me iam simul tecum.*

Here the wife does not say specifically why she wants her father, but the situation directly parallels that at Plautus, *Men.* 734-37. There too Menaechmus' wife has learned of her husband's affair with a *meretrix*, and a few moments earlier she had declared that she would rather be unmarried (*uidua* 720, 726, 727; = *abitura*, 723). At 734-37 she sends for her father:

*iam patrem accersam meum
atque ei narrabo tua flagitia quae facis.
i, Decio, quaere meum patrem, tecum simul
ut ueniat ad me: ita rem esse dicito.*

The father comes and the wife's first request to him is (781-82):

*uerum uiuere hic non possum neque durare ullo modo.
proin tu hinc me abducas.*

(30) For *lege* in the sense of "on the condition" cfr e.g. Plaut. *Most.* 359-60, *Truc.* 1412; Ter. *Eun.* 102.

(31) Cfr the mistresses which Alcibiades brought into his house, forcing his wife to seek a divorce (see above, pp. 195-196).

In other words, Menaechmus' wife wishes to leave her husband but it would appear that she cannot conceive of doing so, for the reasons stated above, unless her father consents to take her back (*abducas*, 782). So too in the *Mercator* the wife would prefer divorce (*nec pol ego patiar seic me nuptam tam male*, 785), but needs the cooperation of her father whom she sends her servant to fetch. In the *Menaechmi* the wife's desire for divorce is frustrated when her father will not comply with her wishes, but instead makes excuses for her husband's behavior. In the *Mercator* the servant cannot even find the father, and returns to the stage alone. If the situations in the *Menaechmi* and *Mercator* are identical, as they appear to be, then the servant's complaint (784-88 quoted above) does not mean that legally wives could not divorce their husbands (for this is just what the servant's mistress plans to do). Rather, in the real world, as opposed to the realm of legal principles, women could not initiate divorces on their own, as their husbands could, but needed parental support instead, and such support was not always to be found.

The conversation between the wife and her father at *Men.* 775 ff. gives an interesting example of the reasons for divorce which a father might be expected to find convincing:

- (i) *at enim ille hinc amat meretricem ex proximo* (790);
- (ii) *atque ibi potat* (792);
- (iii) *at ille suppiat mihi aurum et pallas ex arcis domo, me despoliat, mea ornamenta clam ad meretrices degerit* (803-4).

Throughout the play the wife has seemed far more concerned about her husband's theft of her clothes⁽³²⁾ than she is over his infidelity (cfr 559-60, 609 ff., etc.), and her complaints about her

(32) The *aurum et pallae* (*ta chrusia kai ta himatia*) were not part of the dowry which passed to the husband's control, but form the wife's trousseau which is treated as personal property (HARRISON, above note 2, 47, note 1). Normally if a husband were to indulge himself at his wife's expense we would expect him to misuse the dowry which is under his legal control. That Menaechmus must steal his wife's clothing is a ludicrous detail which shows how totally the dowry is *de facto* under his wife's control, and how little his own man Menaechmus really is.

husband's misbehavior⁽³³⁾ seem included here merely because they should win a father's support⁽³⁴⁾. Again, it should be emphasized, it is not a question of what constituted legal grounds for divorce (since legally no grounds were required), but rather of why a father would be willing to have his daughter divorce her husband. The *Menaechmi* passage is not an isolated case, and the husband's sexual misconduct and/or his financial irresponsibility⁽³⁵⁾ will figure in most of the cases drawn from comedy to be considered below.

A final point deserves notice here before we leave the *Menaechmi* and the *Mercator*, and that is the question of a wife's dowry and its bearing on the marriage. At *Men.* 766-67 Menaechmus' father-in-law says:

*ita istaec solent, quae uiros subseruire
sibi postulant, dote fretae, feroces.*

There can be no doubt that he has his own daughter in mind when he says this, for he echoes the language here a few lines later when he says directly to her: *seruiren tibi postulas uiros* (795-96). Though the text does not say so in so many words, the impression we get is that Menaechmus "married up" and that his present state owes mores to his wife's dowry than to any contribution he himself has made to the marriage. This would explain, for example, why his wife should seem to control the purse strings, and Menaechmus to be reduced to filching jewelry

(33) Love-making and drinking (*amare* and *potare*) are frequently linked together in comedy (e.g. *Plaut. Curc.* 124, *Most.* 36, *Poen.* 603, 661, *Stich.* 447; *Ter. Ad.* 33, 63, 102) as two aspects of the same thing.

(34) As it turns out the father is totally unsympathetic to his daughter and even makes excuses for the husband's love-making (790-91) and drinking (792-95), and only the theft of the wife's clothing, i.e. the financial aspect of the husband's infidelity, gives him pause.

(35) The two are not easily separated since one of the things wrong with illicit love affairs in comedy is that they are ruinously expensive. Further, with the exception of *Daemones* in *Plautus' Rudens* who lost his money through overgenerosity, no male in comedy, as far as I know, is reduced to poverty except by a ruinous love affair, either his own or his son's. For the linking of the two ideas of *flagitium* and *damnum* cfr e.g. *Plaut. Bacch.* 1032, *Merc.* 237, 784, *Pseud.* 440.

and clothes from his wife's trousseau to give as gifts to his mistress (cfr 803-4). Indeed Menaechmus does not even object when his wife shuts him out of the house until he returns the dress which he has taken (662; cfr 963-65) ⁽³⁶⁾.

The situation in the *Mercator* is less clear, but it is noteworthy that the husband there is also afraid of his wife (*metuo ego uxorem*, 586; but cfr especially his behavior after he is discovered, 709 ff.), and his wife, when she first learns of what she believes to be her husband's infidelity, speaks of the insults she has received for her ten talents of dowry (703-4):

*em quoi decem talenta dotis detuli,
haec ut uiderem, ut ferrem has contumelias.*

Clearly the wife believes that the money which she brought into the marriage was significant enough, compared to her husband's wealth, to assure her better treatment ⁽³⁷⁾. Legally the husband always controls his wife's dowry, but a wife's *de facto* power (as in the *Menaechmi*), and her expectation of respect (as in the *Mercator*), depend upon her legal ability to divorce her husband whenever she wishes by *apoleipsis*, thereby depriving him of the use of her dowry. In other words, as we concluded earlier from our examination of the law speeches, the requirement that the divorce be registered with the archon was not intended to limit in her husband's interests a wife's freedom to divorce. Nonetheless, as we have seen, a wife can exercise this right only with the support of her male next-of-kin, as the wives in the *Menaechmi* and the *Mercator* both realize when they send for their fathers.

(36) His bravura *si tibi displiceo, patiumdum: at placuero huic Erotio ...* (670), like his earlier threat of *apopempsis* (... *faxo foris uidua uisus patrem*, 113 — note again the divorce wife returning to her father) are spoken only when his wife cannot hear.

(37) Cfr the similar juxtaposition of dowry and blatant infidelity at [Andoc.] 4.14.

The *Hecyra*

Terence's *Hecyra* revolves around a case of *de facto apoleipsis* (38). The young wife won over her philandering husband only to discover that she was pregnant herself, and apparently not by her husband. While her husband was away the wife returned to her father's house and refused to go back to her husband's house, pretending to be ill (183-88). The father was opposed to the separation and at first attempted to pressure his daughter to return (*ui* (39) *coepi cogere ut rediret*, 268), reminding her of his right to require her obedience (*meum ius esse ut te cogam quae ego imperem facere*, 243-44), but in the end he yielded to her wishes *patrio animo uictus* (244). Yet when the husband returns, the father agrees to send his daughter back to him (467), without even consulting her first. Throughout, the father's treatment of his daughter confirms the impossibility of a wife seeing a divorce through without the support of her father or male next-of-kin (40).

The divorce in the *Hecyra* is, as we have said, an instance of *de facto apoleipsis* initiated by the wife. The wife's father, however, is willing to pretend that he summoned his daughter

(38) The woman has left her husband's house, but the *apoleipsis* has not been registered with the archon; the husband, who is resolved not to take his wife back, says *discidium euenisse* (476), but the bride's father is equally open to having the husband either take back the wife or return the dowry (501-2). The woman seems to be somewhere between being divorced and not being divorced, and it is probably most accurate to say that her departure will have marked the end of the marriage if in fact she does not return, but that the break has still not been definitive enough to require remarriage when husband and wife are reconciled. To try to be more specific would probably demand more precision of the Athenian legal system than in fact it had.

(39) *ui* here = βίη in the sense of "against her will". It is doubtful that the father would use physical violence to restore his daughter to her husband, but he would rely upon psychological pressure, invocation of paternal authority (cfr 243-44) and the like.

(40) Cfr *uelitne an non; ut alii, si huic non sit, siet* (509), in effect, if he does not marry her I will marry her to someone else; again, it seems, the father will make the decision and the daughter's wishes are irrelevant.

home⁽⁴¹⁾ in order to shift the responsibility to himself (*ut nihil uxor sua sponte fecerit*, Don. *Hec.* 466). Elsewhere, as we shall shortly see, fathers do in fact seek to end their daughter's marriages. The modern literature calls this process *aphairesis*, and one should note that the verb *abduco* is used three times in the *Hecyra* in connection with the wife's return to her father's house. In two of these instances, however, the verb describes actions of the wife's mother, and must mean at best something like "put an end to the marriage⁽⁴²⁾ by getting the wife to come home" (545, 748); it is probably used in the same way by the wife's father (*abducta a uobis ... fuerat*, 640), rather than in some technical sense to describe a specific legal action taken by the father. Donatus' comment quoted above implies that in a divorce set in motion by the wife's father, the wife could not be blamed if she acceded to her father's wishes. We shall consider below some reasons why she might do so.

***Apharesis*: a stock motif**

There are four cases in drama where the wife's father wishes to end his daughter's marriage but the daughter does not want to leave her husband: Menander's *Epitrepontes*, Plautus' *Stichus*, the Didot papyrus, and a dramatic excerpt quoted in the *Rhetorica ad Herennium*. All of these cases follow a similar pattern which suggests that we are dealing with a stock dramatic situation. The pattern may be summarized as follows: The wife's father seems to have the upper hand. He is wealthy and his son-in-law poor (or at least poorer than the wife's father). The wife's husband appears to have squandered money on riotous living, and he is now absent from his house, leaving his wife alone with no one to lend her support in her dealings with the father. In particular there is no sign of her husband's father who could intervene to protect his son's interests or whom the wife's

(41) //heri Philumenam ad se accersi hic iussit. Dic iussisse te ...//... iussi, 466-67).

(42) accersi enim dicitur ad maritum, abduci ab marito ad diuortium, Don. *Hec.* 748.8.

father might fear to offend by insisting on divorce, while the husband himself, being young (and poor), is unimportant. Further, all the wives also appear to be young women rather than matrons, and at least in the *Epitrepontes* the marriage is relatively recent⁽⁴³⁾. Finally, father-in-law and son-in-law are eventually reconciled and there is no divorce. The complete pattern is found only in the *Epitrepontes* and the *Stichus*; elements of the pattern are found in the excerpts in the Didot papyrus and the *Rhetorica ad Herennium*, and there is nothing in these fragments to contradict the hypothesis that we would find the other elements of the pattern if we had the complete plays. We shall examine each of these cases in turn, beginning with the *Epitrepontes*.

Charisius, the husband in the *Epitrepontes*⁽⁴⁴⁾, appears to be (but in reality is not) another example of the type of youth we saw earlier in the *Menaechmi* and the *Hecyra* (and potentially in the *Andria*): legally married but still unable to put aside the life of partying and prostitutes more appropriate for an unmarried youth. We may infer that Charisius is poorer than his father-in-law⁽⁴⁵⁾ from the fact that the latter expects Charisius to be subservient⁽⁴⁶⁾ to his wife in return for the dowry, and is upset when Charisius is not (134-35):

(43) The wife gives birth during the play to a child she conceived before marriage. The marriages in the *Stichus* have to be older (the husbands have been away for three years), and there is no evidence one way or the other in the other two cases.

(44) Text, line numbers and the assignment of lines to speakers are according to the edition of F.H. SANDBACH, *Menandri reliquiae selectae* (Oxford 1972).

(45) The father's wealth is shown by the substantial dowry of four talents which he provided (on which see A.W. GOMME and F.H. SANDBACH, *Menander: a Commentary* [Oxford 1973] on 134). Before her marriage the wife was visibly *plousian* (485; cfr her expensive Tarantine cloak, 489).

(46) The language used here is somewhat crude, but the father thinks he is alone on stage (and so does not have to watch what he says), and he is quite upset. For the cliché of a husband enslaved to his well-dowered wife see the examples cited by GOMME-SANDBACH (preceding note), *loc. cit.*, to which add Plaut. *Men.* 766-67 quoted above, *Men.* 583K; for a poor

προῖκα δὲ λαβὼν τάλαντα τέτταρ' ἀργύρου
οὐ τῆς γυναικὸς νενόμιχ' αὐτὸν οἰκέτην.

Later in the play (1065-67) the father expresses his fear that Charisius, in his partying, will spend away the dowry, something which he would not do if he had his own funds. When the play opens, Charisius has left his wife, believing her to be pregnant by another man. His father-in-law, assuming that Charisius has gone to live with a prostitute, determines to end his daughter's marriage, while the daughter, left by herself, must resist her father's demands on her own. By the end of the papyrus Charisius is reconciled with his wife; his father-in-law learns of the birth of the child, and we may be confident that father-in-law renounces his hostility to Charisius in the now lost ending of the play.

The same pattern is repeated in the *Stichus* where two brothers are married to two sisters. The brothers have been abroad for three years without even sending word to their wives (29-33), whose father now wishes to end their marriages, presumably in order to marry them to wealthier husbands (138; cfr 80). The husbands' father is not available to intervene in his son's interests, and with their husbands absent, the wives are isolated, with no one to support them, except each other, in opposing their father's wishes. The husbands are also poor⁽⁴⁷⁾, or more precisely they appear to have once been wealthy⁽⁴⁸⁾ but

wife enslaved to a wealthy husband see Plaut. *Aul.* 534, Ter. *Phor.* 653. Some scholars, most extensively T. WILLIAMS, "Menanders *Epitrepontes* im Spiegel der griechischen Eheverträge aus Aegypten", *WS* 7 (1961) 49-51, have argued that *oiket[en]* should be taken as "house mate", but no convincing parallels can be adduced for such an interpretation.

(47) *Mendicis* (132, cfr 133-35). Poverty is of course relative. The husbands still had capital for their trading enterprise, and the wives, even after three years without their husbands, do not seem to be in particularly bad straits (they even have slaves).

(48) *olim in diuitis*, 134. Cfr also: *dum parasitus mi atque fratri fuisti, rem confregimus*, 628). It is also implied by the general behavior of the wives' father who now seeks to take his daughters back but who will be immediately reconciled with his sons-in-law when he sees the money they have made: if he is this attentive to money now it is unlikely that

to have lost their wealth, presumably through riotous living⁽⁴⁹⁾, and have now gone trading to recover it. The father was hostile to the husbands even before their departure, presumably because of the wealth they were squandering, but he is immediately reconciled with them when they return and he learns of their successful trading venture⁽⁵⁰⁾.

The Didot papyrus contains 44 verses of a speech which a wife addresses to her father who wishes her to divorce and remarry. It would appear that the wife's present husband was wealthy at the time of his marriage, but has since lost his wealth (note the perfect ἠπόρηκε, "has become poor" [v. 19] instead of the usual ἀπορεῖ, "is poor" ⁽⁵¹⁾). We may also infer from παρόντα in καὶ ποῦ τοσαῦτα χροῖματ' ἐστίν, ὃ πάτερ, ἃ μᾶλλον ἀνδρὸς εὐφρανεῖ παρόντα με (22-23) that the husband is absent. Certainly the general situation implies that the husband is not able (or is not inclined) to intervene on his wife's behalf. The wife's defense of her husband's poverty (19, 22-23), the fact that she is to be married now to a wealthy man (cfr 20, 30), and her paraphrase of her father's statement σὺ δ' ἀνδρὶ μ', ὡς φήης, ἐκδίδως νῦν πλοσίω, ἵνα μὴ καταζῶ τὸν βίον λυπομένη (20-21) all suggest that the husband's poverty was a major reason why the father moved to seek his daughter's divorce⁽⁵²⁾. The wife does not mention how

earlier he would have been so indifferent as to marry his daughters to poor husbands.

(49) The only textual evidence for this is 628 (quoted in preceding note), but as mentioned above (note 35) almost no one in comedy becomes poor except as a result of such wild living.

(50) For the father's hostility cfr the references to reconciliation between the father and his sons-in-law at 409-14, 517-20, 529-30. Since the father is willing to be reconciled when he sees the wealth his sons-in-law have made (cfr 410-12; 517-22), presumably it was the loss of wealth (rather than e.g. the husbands leaving their wives) which caused the father's hostility in the first place.

(51) Cfr also 30: ἄν οὗτος (sc. the man whom her father wishes her to marry) αὐθις ἀποβάλλῃ τὴν οὐσίαν where *authis* implies that the present husband has done the same thing.

(52) As in the *Stichus* the father wishes to remarry his daughter elsewhere (27 suggests that he has a specific candidate in mind); the daughter's μέχρι πόσου τὴν τῆς τύχης, πάτερ, δεῖ λήψει πείρων ἐν τῷ ἡμῶ βίῳ; (33)

her husband lost his wealth, but it is tempting to assume that he had squandered it all on wild living (especially by having an affair) since this is the typical route to poverty in comedy⁽⁵³⁾.

Our final text appears at *Rhetorica ad Herennium* 2.38. At this point in his work the rhetorician is dealing with different ways of escaping a dilemma, and he gives as an example of a dilemma:

<i>iniuria abs te adficior indigna, pater.</i>	1
<i>nam si improbum esse Chrespontem existimas,</i>	2
<i>cur me huic locabas nuptiis? sin est probus,</i>	3
<i>cur talem inuitam inuitum cogis linquere?</i>	4

He then gives two ways of escaping the dilemma, first:

<i>nulla te indigna, nata, adficio iniuria.</i>	5
<i>si probus est, locavi. sin est improbus,</i>	6
<i>diuortio te liberabo incommodis.</i>	7

and second:

<i>nam si improbum esse Chrespontem existimas,</i>	8
<i>cur me huic locabas nuptiis? //duxi probum,</i>	9
<i>erravi. post cognoui, et fugio cognitum.</i>	10

The *Rhetorica* does not say where this text is drawn from, but on the basis of the name *Chrespontem* it is usually assigned to the *Chresphontes* of Ennius. Wilamowitz, on the other hand, emended *Chrespontem* to *Ctesiphontem*, believing that the text was drawn from some comedy, possibly by Caecilius⁽⁵⁴⁾. The

seems to imply that the father is more concerned with his own interests (viz. improving family connections) than he is with his daughter's well-being, a situation which we suggested might also be true for the *Stichus* (see below, pp. 219-220).

(53) See above, note 35. When the wife says of her husband γέγονεν ἐκείνος εἰς ἔμ' ὄλον ἠξίου ἐμοί τ' ἀρέσκει πάνθ' ἃ κακείνω (17-18) and describes him as *chrestos* (19), she may merely be covering up for him like the wife at Ter. *Hec.* 165-66 who tolerated the *incommoda* and *iniurias* arising from her husband's affair, and concealed the *contumelias* in order finally to win over his heart.

(54) U. WILAMOWITZ-MOELLENDORFF, *Analecta Euripidea* (Berolini 1875) 154, n. 5; cfr U.E. PAOLI, "Lo Stichus ..." (above, note 3) 236, n. 1.

text is so similar to the others we have been studying that it is tempting to agree with Wilamowitz' estimate⁽⁵⁵⁾, but whether the text be Ennius' version of a Greek tragedy or a Roman comedian's version of an excerpt from Attic New Comedy, the proposed divorce was originally part of a Greek drama, and therefore subject to the literary conventions of that drama⁽⁵⁶⁾.

The dramatic situation can be easily imagined: The father married off his daughter, believing the husband to be upright (cfr *probus*, 3 and 6), but now he has "found him out". The wife's argument in the first excerpt, and the father's reply in the second both imply that the husband has done something which leads the father to call him *inprobus* (2). We cannot say with certainty what the husband has done, but if the text is drawn from comedy, being involved with a *meretrix* is a likely possibility. Both here and in the case of the Didot papyrus we are dealing with fragments. We cannot be sure that father-in-law and son-in-law were eventually reconciled as they were in the

(55) There is a further reason for not assigning our text to Ennius' *Cresphontes*. The logical source for Ennius' play would be Euripides' *Cresphontes*, but it is generally agreed that Euripides' play dealt with the younger Cresphontes (= Aepytus), and there is no way in which our text can be reconciled with what we know of Euripides' play. On the problem see H.D. JOCELYN, *The Tragedies of Euripides* (Cambridge 1967) 271-72. JOCELYN's solution, following RIBBECK and L. MUELLER, is to make Ennius' play deal with the elder Cresphontes, but he does not suggest a Greek source for such a play. The whole problem could be solved by not including our text among the fragments of Ennius since the rest of the fragments which can be assigned to the Ennian *Cresphontes* can be accommodated to the hypothesis that Ennius' play was based on the Euripidean play which dealt with the younger Cresphontes.

(56) It is hard to say how much of our text goes back to the Roman playwright, and through him to his Greek model, and how much is new material added by the rhetorician or his source. We may safely assume that the wife's argument is part of the original. The second part of the text could be the father's response to the wife's argument. The third part is clearly stitched together from the second and third lines of the wife's argument and from something else, perhaps a piece elsewhere in the father's speech or perhaps even the rhetorician's own creation. Finally the general dramatic situation, viz. the father seeking his daughter's divorce, must certainly go back to the original.

Epitrepontes and the *Stichus*, but if the fragments are drawn from comedies, the likelihood is that they were.

Stock arguments

It should be clear from the preceding that we are dealing with a stock dramatic motif whose conventional features are repeated from play to play. It is therefore not surprising that different fathers argue in much the same way defending their actions, and that similar arguments are used against them.

Unfortunately in the case of the *Epitrepontes* most of the arguments on both sides are lost in gaps in the papyrus, though enough survives to give us some sense of the debate. Throughout the play, the father's primary concern is with the expenses incurred by his son-in-law's wild living⁽⁵⁷⁾, particularly as these may drain away the dowry which the father, anticipating the divorce, already considers his own again (*ten proika mou*, 1065; cfr *peri ton emautou*, 1067)⁽⁵⁸⁾. When speaking to his daughter he naturally discourses at length (720-51 or beyond) on the costs for the husband of having both a wife and a mistress, and the financial ruin which will inevitably ensue for both husband and wife⁽⁵⁹⁾. There is little else, however, in favor of divorce in the text as it stands⁽⁶⁰⁾, and we are left with the impression that

(57) Note his distress at the money squandered by his son-in-law on lavish parties (127-31) and a greedy pimp (135-36). Cfr the complaints of drinking and the *psaltria* at 589-600, 681-93 (for the linking of loving and drinking see above, note 33). There also appears to be a complaint about gambling at 601, but the line is too fragmentary for us to be sure.

(58) At 1079-80 the slave describes the father ἐπὶ τὴν προίκα καὶ τὴν θυγατέρα ἤκων. The ordering, money first, then his daughter, reflects and comments upon what have been the father's priorities throughout the play.

(59) [οὔτ'] ἄν ἔτι σωθείη ποθ' οὗτος [οὔ]τε σύ (720); cfr σώζων (714). That the rescue is from financial ruin is clear from the general context; cfr esp. the father's conclusion to his catalogue of his son-in-law's expenses: οὔκουv ἀπόλωλεν οὗτος ὁμολογουμένως; (751).

(60) Frag. 7 speaks of a lady being unable to compete with a prostitute, but while this fragment does fit the context of the *Epit.* it is uncertain that it actually belongs to our play, much less that it was spoken by the father.

the father argues primarily, if not exclusively, on the grounds that his daughter will become impoverished if she remains married to her present husband.

As to the arguments against the father, he could be charged with *polupragmosune* for interfering in his daughter's marriage (655-56 quoted below), and his son-in-law's slave argues that his actions are ignoble (1102-3 quoted below; cfr *to kakon* [1105], *poneron pragma* [1107]). More important for our purpose is the wife's argument quoted at 920-22:

κοινωνὸς ἦκειν τοῦ βίου
 κ]οῦ δεῖν τὰτύχημ' αὐτὴν φυγεῖν
 τὸ συμβεβηκός.

We shall see this same argument that marriage is a lasting institution, for worse and not just for better, in the *Stichus*, the Didot papyrus, and the dramatic fragment in the *Rhetorica ad Herennium* (61).

In the *Stichus* the father decides to pretend that his daughters are in some way at fault, as a way of pressuring them into leaving their husbands (*adsimulabo quasi quam culpam in sese admiserint*, 84) (62), but the only arguments he addresses to the women are that their husbands are poor and that because of their long absence their wives should feel free to remarry (132-38):

uosne ego patiar cum mendicis nuptas me uiuo uiris?

...

...

uosne latrones et mendicos homines magni penditis?

...

*quid illos cœspectatis qui abhinc iam abierunt triennium?
 quin uos capitis condicionem ex pessuma primariam?*

(61) On this motif see F. ZUCKER, "Socia unanimans", *RhM* 92 (1943-44) 193-217.

(62) He continues: *perplexabiliter earum hodie perpauēfaciam pectora* (85) which may be compared with *suntarattēis* describing the father's actions at Men. *Epit.* 931.

It will be noted that the father does not want his daughters simply to divorce their husbands, but to divorce them in order to make a better match (138). It would appear that the father is at least as concerned with improving social connections as he is with the welfare of his daughters.

One of the wives, talking to her sister, says of her father (14-17):

*eum nunc inprobi uiri officio uti,
uiris qui tantas absentibu' nostris
facit iniurias inmerito
nosque ab eis abducere uolt.*

The use of *inprobi* here recalls the use of similar terms of censure at Men. *Epit.* 1102-7 mentioned above. It would not be proper, however, and it would probably not be very effective either, for a daughter to address such language directly to her father. Instead the daughters try to dissuade their father with four arguments: (i) that it would be unfair for the women to be removed while their husbands were absent (*nunc non aequomst abduci, pater, illisce absentibus*, 131; the language here recalls 15-17 quoted above); (ii) that they will be as devoted to their husbands when they are poor as when they were wealthy (*placet ille meus mihi mendicus: suo' rex reginae placet. idem animust in paupertate qui olim in diuitis fuit*, 133-34; cfr also 101-2: *puccitiant, pater, eos nos magnificare qui nos socias sumpserunt sibi*); (iii) that they will be hostile to the new husbands their father wishes them to marry (139-40); (iv) that they are simply following their father's wishes by remaining loyal to the husbands to whom he gave them (*persequimur [sc. imperium patris], nam quo dedisti nuptum abire nolumus*, 142; cfr 98) — either the father ought not to have married them to these men in the first place (*olim, nisi tibi placebant, non datas oportuit*, 130) or he ought to leave their marriage alone now (131). Argument (iv) is closely related to argument (ii) which is itself a variant of the argument at Men. *Epit.* 920-22 that marriage is for worse as well as better.

The wife's reply to her father in the Didot papyrus is a clever piece of rhetoric. Her father must have said that her husband

was committing some injustice against her (cfr ἔστω δ' ὁ βούλει τοῦτο· τί μ' ἄδικαί λέγε, 14). Since the remedy proposed by the father is that the daughter remarry a wealthy man (cfr 20-21 quoted above), it would seem that the husband's "injustice" was to lose his wealth, and so to force his wife to live in poverty. The wife first implies that her husband has done her no wrong⁽⁶³⁾ (εἰ δ' εἰς ἔμ' ἠμάρτηκεν, αἰσθέσθαι μ' ἔδει, 8), and then argues that even if he has, she is still content with anything he does because this is what a good wife is expected to be (13-18). To her father's concern that she would suffer "grief" living in poverty (20-21 quoted above), she says that no amount of money could cheer her more than her husband (22-23 quoted above). Finally she argues that what her father is doing is wrong⁽⁶⁴⁾ (i) because in marriage a wife should share with her husband both the good and the bad (24-26); (ii) because the wealth of her proposed new husband can be no more secure than her current one's (27-33); and (iii) because the father, having given his daughter her present husband, should now leave her alone to determine what is in her own interest (34-38). We have already seen argument (i) at Men. *Epit.* 920-22 (cfr Plaut. *Stich.* 133-34) and argument (iii) is a variant of the argument at Plaut. *Stich.* 130-31 discussed above.

In the excerpt found in the *Rhetorica ad Herennium* the father claims that by divorce he will "free" (*liberabo*, 7; cfr σφύζων, Men. *Epit.* 714) his daughter from the *incommoda*⁽⁶⁵⁾ caused by her husband's *inprobitas*. The daughter says that her father is

(63) She seems to tease her father a bit for using the term *adikia* (6-7; see also the next note), and she herself uses the milder *hemarteken* (8). On the two terms see T.B.L. WEBSTER, *Studies in Menander*, 2nd ed. (Manchester 1960) 205.

(64) Wrong because unjust (cfr 5, 24, 41), an argument perhaps chosen to refute her father's charge of *adikia* against her husband (see preceding note), and because it is not *kalos echon* (cfr 24), language which recalls that of the slave censuring the father at Men. *Epit.* 1102-7 cited above (p. 219; cfr p. 225).

(65) The type of *incommoda* will of course depend on what the husband is doing. The word *incommoda* is used at Ter. *Hec.* 165 for the effects of a husband's affair with a *meretrix*; cfr also *incommoditas* at Ter. *And.* 567.

treating her unfairly (*iniuria abs te adficior indigna*; cfr the repeated references to "justice" in the Didot papyrus; "fairness" [to the absent husbands] is also an issue at Plaut. *Stich.* 131). The daughter's principal argument, however, is cast in the form of a dilemma: either the father ought not to object to his son-in-law now or he ought not to have married his daughter to him in the first place (2-4). We have already seen the same sort of dilemma at Plaut. *Stich.* 130-31, and the argument is closely related to that at Didot papyrus 34-38.

Generally speaking the arguments arise from the dramatic situation. The son-in-law appears to have squandered his wealth, and the wife's father wishes to improve his daughter's condition by making a better match. The daughter always replies with some version of the argument that marriage is for worse as well as better. The conventional nature of the arguments underlines the conventional nature of the dramatic situations in which they occur.

"Forcing" divorce

Since the fathers in these texts wish to end their daughters' marriages, we must ask whether this is possible without the daughter's consent. Several passages in the *Epidrepones* bear directly on this question. At 714-15 the daughter says to her father:

ἀλλ' εἴ με σφύζων τοῦτο μὴ πείσῃς ἐμέ,
οὐκέτι πατήρ κρίνοι' ἄν ἀλλὰ δεσπότης.

Harrison⁽⁶⁶⁾ argues from this passage that if a father cannot convince his daughter to leave her husband the only compulsion available to him is the force of the law, i.e. that the law allows him to obtain her divorce whether she wants it or not. The matter may not be quite so simple. Earlier we noted how, in the society represented in comedy, the economic and social status of women placed them in a position of dependence on the men

(66) HARRISON (above, note 2) 31, note 1.

in their lives. It is easy to imagine the psychological pressures which the father in the *Epitrepontes* could bring to bear upon his daughter, recently married and living alone without her husband. A young woman like this, unaccustomed to acting independently, would certainly find it difficult to refuse her father the obedience she had given him prior to her marriage (the same as it would be difficult for the father to imagine that her obedience would not be automatically forthcoming). From the father's point of view it would obviously be preferable to convince his daughter to divorce her husband, i.e. to make her want to do it, but it would also be possible for him to pressure her into agreeing to do so even though, emotionally, she still loved her husband and wanted to remain married to him. This is the situation the husband seems to have in mind when he imagines himself ordering his father-in-law to stop trying to bring about a divorce (930-31):

οὐκ ἀπολείπει μ' ἡ γυνή.

τί συνταράττεις καὶ βιάζῃ Παμφίλην;

Biazomai and *bia* can as easily describe psychological pressures (cfr *suntaratteis*, 931) as physical or legal ones⁽⁶⁷⁾. It is impossible to exclude the possibility that the father in the *Epitrepontes* intends to exercise some legal right to bring about his daughter's divorce, but it is interesting to note that he never cites any such right in his conversations with his daughter or with others. It is also worth noting that in the scene which begins at 714, though the father may question the need for persuasion (716) — but only because he believes that the facts should speak for themselves (cfr 717-18) — he still tries to convince his daughter to leave, and when his arguments fail he departs without constraining his daughter to come with him.

(67) For *biazomai* used for psychological pressures cfr e.g. Eur. *Ale.* 1116 (βιάζῃ μ' οὐ θέλοντα δρᾶν τάδε), *HF.* 1366, frag. 840.2; Xen. *Hier.* 7.7; Dem. 20.166 (ὅπως μὴ βιασθῆθ' ἀμαρτάνειν. πολλὰ γὰρ ... ἀφηρέσθηθ' ὑπὸ τῆς τῶν λεγόντων κραυγῆς καὶ βίας καὶ ἀναισχυντίας); similarly Eur. frag. 840.2 (*phusis*, cfr Dem. 21.150), Aristoph. frag. 20 (νόσω βιασθεὶς ἢ φίλων ἀχηνίφ); frag. 350.5-6 (ἔρωτι ... οἴνου).

Somewhat earlier in the play when the wife's father was on his way to see his daughter⁽⁶⁸⁾, he complained at length, apparently in a monologue⁽⁶⁹⁾, about his son-in-law's behavior, saying in part (655-59):

ἀλλ' ἴσως ἐγὼ
 πολυπραγμ[ονῶ πλεί]ω τε πρῶττω τῶν ἐμῶν,
 κατὰ λόγον ἐξὸν [ἀπιέν]αι τὴν θυγατέρα
 λαβόντα. τοῦτο μὲν ποιήσω καὶ σχεδὸν
 δεδογμένον μ[οι τυγχ]άνει.

The words *kata logon ewon apienai ten thugatera labonta* (657-58) are frequently cited as evidence that a father had the legal right to dissolve his daughter's marriage, but this is not what the Greek says. *Kata logon* means "reasonably". The words *kata ... labonta* (657-58) are meant to contrast with *all ... emon* (655-56), so that *kata logon ewon*⁽⁷⁰⁾ is not an assertion of a legal right but a defense against the charge of *polupragmosune*, with the father saying in effect: "Some people may call me a busybody, but what I am doing is not, under the circumstances, unreasonable, and reasonable people will not censure me for it". Further, the words *apienai ... labonta* (657-58) do not in themselves say that the father will remove his daughter against her will, and they may just as easily reflect an assumption that his daughter will yield and go along with his wishes.

(68) This is actually the father's second visit. The first time, he came simply to learn the facts of his daughter's situation before deciding how he would deal with the husband (... ὄντινα τρόπον πρὸς τοῦτον ἤδη προσβῶλω, 161-63). The question of divorce had not yet been raised then as far as we can tell, and it would seem that at that point the father intended to do nothing more than to speak to his son-in-law to call him to task for his behavior. The wife apparently calmed her father's anger (because of gaps in the papyrus we do not know what arguments she used), and the father simply left.

(69) The passage continues μαρτύρομαι ὑμᾶς δ' ὁμο[(659-60) which could suggest others present on the stage, but *hymas* could just as easily refer to the gods who are frequently invoked with the verb *marturomai* (see *LSJ* 9 s.v. *marturomai*).

(70) The caesura groups *ewon* more closely with *kata logon* and separated from *apienai*.

The verb *aphaireomai* does not appear in the *Epitrepontes*, but *apago* is used twice to describe the father's actions. At 1064 the father rejects the charge that he is acting precipitously (προπετῶς ἀπάγω τὴν θυγατέρ');). Here *apago* means only that he has come to take his daughter home, not that he will do so against her will, and in fact just a few lines later the father will tell an aged female servant to persuade his daughter to change her mind (*metapeison auten*, 1070). A bit later the husband's slave asks the father (1102-3):

ἀλλ' ἀπαγαγεῖν παρ' ἀνδρὸς θυγατέρα
ἀγαθὸν σὺ κρίνεις, Σμικρόνη;

Here *apagagein* has a somewhat different nuance, "to detach a wife from her husband", recalling the similar use of *abduco* at Ter. *Hec.* 545 and 748, in both instances describing there the actions of the wife's mother who had no legal power to effect her daughter's divorce.

To summarize, the *Epitrepontes* provides no evidence for *aphairesis* divorce. While the father is eager to end his daughter's marriage he never speaks of bringing about the divorce himself. Rather he comes simply to take his daughter home. Of course if she does go with him she leaves her husband, but this is *apoleipsis* and not *aphairesis* as the term is commonly understood.

In the opening monologue of the *Stichus* the elder daughter, who is more willing to yield to the father (71), says at 68-69:

patri
nos oportet quod ille faciat, cuius potestas plus potest (72).

(71) Cfr 26-29 where she concedes that their father is not acting unreasonably in view of the husbands' long absence.

(72) Cfr *uerum postremo in patri potestate est situm: faciendum est nobis quod parentes imperant* (53-54, also spoken by the "weak" sister), though most editors, following RITSCHL, bracket 48-57 since they are missing in *A*. The "stronger" sister does say to her father *quem acquiust nos potioem habere quam te?* (97), but this is flattering the father, telling him what he wants to hear, and should not be taken as defining his legal position in their lives.

The jingle *potestas plus potest* sounds particularly Plautine and should put us on our guard, but assuming that it still represents the ideas of the Greek original it is important to note that the daughter does not counsel acquiescence because there is no alternative, but because *aduorsari sine dedecore et scelere summo hau possumus* (72). In other words it is possible to oppose their father's wishes but it would be wrong to do so, not because it is against the law, but because such disobedience would be disgraceful (cfr *dedecore*) and morally wrong (cfr *scelere*). Similarly, near the end of his conversation with his daughters the father asks rhetorically (141):

certumne est neutram uostrarum persequi imperium patris?

The word *imperium* carries a heavy force implying that the daughters should obey, but the question itself concedes that they do not have to. The father himself knows that he cannot simply order his daughters to leave their husbands⁽⁷³⁾, and when he fails to convince them, he simply wishes them well and leaves. The father never claims, or even contemplates claiming, that he has the *legal* right either to require his daughters to leave their *husbands* or to initiate a divorce for them himself (i.e. to effect *aphairesis* as the term is normally understood). His *imperium* is his *moral* authority (cfr 72 quoted above) as the women's father, an authority which it is not totally unreasonable to expect even married daughters to obey, particularly in their husbands' absence.

In the Didot papyrus the wife says that she will never willingly divorce and remarry as long as she has the power to resist (28-29):

ὃ μὴ γένοιτο, Ζεῦ φίλ', οὐδ' ἔσται ποτέ,
οὔκουν θελούσης <γ'> οὐδὲ δυναμένης ἔμοῦ

but it is clear from the text that the father can force a divorce upon his daughter (39-43):

ὥστε μή με, πρὸς τῆς Ἑστίας,

(73) Cfr 75-87 where he weighs different ways of pressuring them into agreeing.

ἀποστερήσης ἀνδρὸς ᾧ συνώκισας
 χάριν δίκαιαν καὶ φιλόανθρωπον, πάτερ,
 αἰτῶ σε ταύτην. εἰ δὲ μή, σὺ μὲν βία
 πρῶξις αἰ βούλει.

and if the father gets his way the wife will resign herself to her lot (43-44):

τὴν δ' ἐμὴν ἐγὼ τύχην
 πειράσομ' ὡς δεῖ μὴ μετ' αἰσχύνῃς φέρειν.

The father can end his daughter's marriage "by force" (*biai*), but this need not mean that he can get the divorce on his own without his daughter's assent or that he can use the law in some way to force that assent. As noted earlier, *bia* and *biazomai* can also describe compulsion arising from psychological pressures, forcing one to do what one does not really want to do, and we have seen some of the ways a daughter, perhaps one abandoned by her husband, can be pressured by a father, especially one who invokes paternal authority. It is also noteworthy that in advancing his argument that her husband has been *adikos*, the father must have been trying to convince his daughter to leave her husband, instead of ordering her to do so. The daughter's *me met' aischunes* in the last line quoted above recalls the reason for not resisting her father given by the "weak" sister at Plaut. *Stich.* 72 (*aduorsari sine dedecore et scelere summo hau possumus*), a reason which, as we have seen, deals with the moral, not the legal, authority of the father.

In the excerpt quoted in the *Rhetorica ad Herennium* the wife also assumes that her father can force (*inuitam ... cogis*, 4) her into a divorce against her will, and in line 7 (*diuortio te liberabo incommodis*) the father certainly seems to feel that he can. On the other hand, as we have seen, there is no reason to assume that "force" means "legally compel", and the father does seem to be trying to persuade his daughter, as all the other fathers do in similar circumstances, instead of simply requiring her to leave. Since we are dealing only with a fragment of the play we have no way of knowing whether the father does force the issue through, or whether he withdraws, as the fathers in the

Epitrepontes and the *Stichus* do, in the face of their daughters' opposition.

It is interesting that the father is trying to force his daughter to "leave" (*linquere*, 4) her husband since the language suggests *apoleipsis* rather than *aphairesis*. We cannot be sure that *linquere* is here meant to reflect the technical Greek term, but if it does, then the present passage does provide further evidence for a father "forcing" his daughter into *apoleipsis*.

To summarize, fathers attempt to persuade and/or force their daughters to leave their husbands (divorce by *apoleipsis*), but their pressures are psychological rather than legal, and depend on the socially dependent position of their daughters. The plays provide evidence neither for fathers using the law to require their daughters' divorce, nor for *aphairesis* as a separate form of divorce in which the father could go into a law court on his own to obtain his daughter's divorce.

Since we are dealing with nothing more than a stock dramatic situation there is no reason to expect that fathers in the real world forced their daughters into divorce with any greater frequency than, e.g. husbands unknowingly married women they once had raped or young men fell in love with poor young women who eventually turned out to be the long lost daughters of wealthy neighbors. Still, the same picture of designing fathers and compliant daughters also emerges from the speeches studied earlier in this paper, and it is consistent with what we know of the dependent status of women of the upper classes represented by our sources. In this light it is significant that the situation we have been describing became part of the dramatists' stock repertoire since it suggests at least what the Athenian audience was prepared to believe, that designing fathers could and did pressure their daughters, particularly those in vulnerable situations, to divorce and remarry in order to benefit their own social ambitions. In the same way fathers prevented daughters' divorces which were not in their interest (cfr the *Heceyra*), and indeed they married off their daughters in the first place to form their own social connections without consulting their daughters' wishes.

The word *aphairesis*

While the word *aphairesis* is regularly used in modern literature as a technical term to describe a divorce whose legal agent is the wife's father, the noun is never used in this fashion in any extant ancient sources⁽⁷⁴⁾. The corresponding verb *aphaireomai* is used only once to describe the father's actions in divorce (*ἀφαιρόμενος ... τὴν θυγατέρα*, Dem. 41.4), though we do find *apago* used in this way twice (Men. *Epit.* 1064, 1102) and the expression *apienai ten thugatera labonta* also occurs (Men. *Epit.* 657-58). On the other hand, the frequent use of *abduco* in Roman comedy to describe a father taking his daughter back from marriage (Plaut. *Men.* 782, *Stich.* 17, 128, 130; Ter. *Hec.* 545, 640, 748, *Phor.* 410, 436, 799) suggests that some similar verb was used in Greek to describe the same situation. This verb was probably *apago*, however, rather than *aphaireomai* which often has the added nuance of "deprive"⁽⁷⁵⁾ which the Latin *abduco* does not have.

The problem here is that if divorce initiated by the wife's father was a separate and distinct form of divorce, as the modern literature regularly assumes it was, we should expect to find somewhere an abstract noun for it parallel to *apopempsis* and *apoleipsis*, and the fact that we do not, not even in the lexicographers, should give us pause. Further, if *apago* rather than *aphaireomai* is indeed the Greek original for *abduco*, then the abstract noun should be *apagoge*, but *apagoge* is already used as a legal term to describe the process whereby a person caught in a crime is arrested and led off to the magistrates. None of this excludes the possibility that the abstract noun *aphairesis* was used by fourth century Athenians in the same way it is

(74) In fact the simple noun *aphairesis* is used in a legal context apparently only once (*ἀφαίρεσις ἰδίως λέγεται ἢ εἰς ἐλευθερίαν*, Harp. s.v. citing Hyperides = Hyp. frag. 23; cfr Suda s.v. *aphairema*) where, as the citation shows, it refers to the assertion made in defense of a reputed slave that he or she is in fact free (cfr the common use of the verb *aphaireomai* with *eis eleutherian* in this sense).

(75) E.g. Thuc. 3.58.5; Is. 3.64; Dem. 20.46; cfr *aphairesis*, Men. *Epit.* 319.

used by modern sources, if only because we cannot prove that something did not appear in texts which no longer exist. Nonetheless, if there was a separate form of divorce whose legal agent was the father, it is disquieting that no abstract noun has survived to describe it. But if there was no separate form of divorce, which is also the conclusion we would draw from the divorce cases studied above, then the verbs *apago*, *abduco*, etc. would simply describe a father taking his daughter back into his house as a consequence of *apoleipsis*.