TROISIÈME PARTIE

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Was *Atimia* for Debts to the State inherited through Women ?

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An Athenian man recorded as a debtor to the state was disfranchised, from the day the debt was created (1) until the day he paid it off (2). Disfranchisement meant that he was excluded from the public life and banned from the temples, the Agora and the law-courts (3). If the debt was not paid by the ninth prytany (4), it would be doubled in the ninth prytany (5). If the debtor

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1) Cf. D. 58, 49: ἀφ' ἧς ἂν ὀφλῃ.

2) See HARRISON, A.R.W., *The Law of Athens*, Oxford 1968-71, II, 72 ff. HANSEN, M.H., *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Feugontes*, Odense 1976, 67 ff. MACDOWELL, D.M., *The Law in Classical Athens*, 164 ff.

3) See HANSEN, *o.c.*, 55 ff.

4) Cf. the expressions in D. 24, 98 : ἄχρι τῆς ἐνάτης πρυτανείας; D. 24, 169 al.

5) D. 59, 7 ἐπὶ τῆς ἐνάτης πρυτανείας. In some cases it would be multiplied by ten: see also HARRISON, *o.c.*, II, 173 ff. The case in which payments to the state were due to be made in a fixed date is different: see HARRISON, *loc. cit.*; MACDOWELL, *o.c.*, 164 ff.; Arist. *Ath.* 47, 3-5; 54, 2 and RHODES, P.J., *A Commentary on the Aristotelian Athenaion Politeia*, Oxford 1981, com. *ad loc.*; RHODES, P.J., *The Athenian Boule*, 88 ff.

owned some property but he was unwilling to use it to pay the debt, he was liable to a legal procedure called ἀπογραφή. It began with a *graphe* which included a list of the man's property. A trial followed and if finally the verdict was against the defendant, his estate had to be given to the πωληταί, the officers in charge of selling public property. The sum collected from the sale would be used to reduce or pay off the debt. If any surplus existed it was returned to the debtor. The successful prosecutor would be rewarded with part (6) of the amount which the state recovered. If the estate of the debtor was enough to pay off the whole amount of the debt, then he was enfranchised again. Since ἀπογραφή could not be initiated, unless somebody was willing to prosecute the debtor, we may easily suggest that sometimes people would prefer to keep their property and remain disfranchised, if they were not prosecuted (7).

If the man died leaving a standing debt his heirs were responsible. Regarding private debts, scholars agree that the heirs were responsible for the whole of the debt if they accepted the inheritance and incorporated it into their own property. If the debt, however, was larger than the value of the estate, they could

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6) The evidence of D. 53, 2 τῇ πόλει τὰ τρία μέρη suggests that the successful prosecutor was rewarded with the three quarters of the sum which the city recovered. LEWIS (*Ancient Society and Institutions*, ed. D. BADIAN, 1966, 191, n. 67) thought that this proportion is too high and based on an inscription (*Hesperia* 19 (1950), 237, no. 14. 42) proposed τῇ πόλει τὰ τρίτα μέρη. His proposal is favoured by OSBORNE, *JHS* 105 (1985), 44-47 and R.C. MILLETT, *Lending and Borrowing in Ancient Athens*, Cambridge 1991, 265, n. 2. I would also think that the suggestion of LEWIS is more plausible.

7) See MACDOWELL, *Law* 168 and HARRISON, *Law* II, 180-1, 211-217.

renounce the inheritance and use the estate to pay part of the debt. Once this was done the creditors had no legal means of recovering the remaining debt (8). Debts to the state were a different issue. It is certain that the sons of the debtor could not avoid responsibility by renouncing the inheritance (9). If they did not or could not pay the total amount of the debt of their father, after his death they would be automatically registered as debtors to the state and, thus, disfranchised (10).

We do not know, however, with certainty, what happened if the man died leaving behind only daughters and standing debts to the state larger than his remaining estate. Women had no direct dealings with the state and ἀτιμία did not apply to women, since they did not participate in the public life (11). The question is whether those, under whose care the woman was after the

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8) See HARRISON, *o.c.*, 1, 125-7 and PARTSCH, Joseph, *Griechisches Bürgschaftsrecht*, 232 ff. Scholars do not agree over the responsibility of the direct descendants of the deceased, regarding private debts. This issue, however, is not of our concern here.

9) Cf. D. 58 *passim*, 22, 34; 24, 201; Lys. 20, 34, al.

10) See HARRISON, I, 127 ff.; HANSEN, 71 ff.

11) In general, if a man with no male descendants died leaving some property, then the daughters became ἐπίκληροι and his property would go with them. They had to be given to marriage to the closest relative of their father with the prospect of having a male child who would inherit the estate of their father and continue his οἶκος. If the closest relative did not want to marry an ἐπίκληρος, he should let the second closest relative claim her and the property that would come along with the woman, and so on. If, however, the ἐπίκληρος happened to be poor, the closest relative had a legal obligation either to marry her or to give her a dowry and betroth her to another man (D. 43, 54). And. 1, 117 and Isae. 1, 39 speak about the legal and moral obligation of the closest relative (as defined by the law quoted in D. 43, 54) either to marry her or to give her a dowry.

death of her father, were responsible for the total amount of the debt. Several sources imply that they were responsible, at least to a certain extent. Isae. 10, 16 says: οἷς ἐγένετο ἡ ἐμὴ μήτηρ ἐπίδικος, τούτοις ἀναγκαῖον ὑπὲρ αὐτῶν (τῶν χρεῶν) βουλεύσασθαι. The same impression is given by D. 28, 1-4, where it appears that the husbands of Gylon's daughters should have hidden their property, if Gylon had died leaving a debt to the state. Both sources say that the men who were legally entitled to have the women, would be responsible for the debts, too. Their degree and form of responsibility, however, is a much more complex issue. There is evidence suggesting that if they used the property of the deceased to pay part of the debt to the state, they would not be responsible for the remaining debt and therefore not subject to ἀτιμία.

PARTSCH (12) suggested that ἀτιμία was inherited only by members of the same οἶκος, i.e. sons, or grandsons from an ἐπίκληρος who would continue the οἶκος (13). It would not be inherited laterally by other relatives, because they were members of a different οἶκος (14). His conclusion is based

12) Pp. 232-35.

13) See also HARRISON, I, 128-9, n. 3.

14) *IG* II^2 1631, 350 ff., where a man appears to be responsible for the debt of his brother, according to PARTSCH (234 ff.) and HARRISON (I, 129, n. 3) cannot be used as evidence proving that debts could be inherited laterally. On the other hand, the case of Arethousios in D. 53, especially §§ 28-29, confirms that the brothers of the debtor were not responsible for the debt. When Arethousios was fined, and apparently disfranchised, his family stepped in with claims on his property. According to Apollodoros, their intention was to avoid confiscation of some of his belongings. This

on Isae. 10, 17: ὅταν μὲν περὶ χρήματα δυστυχῶσι, τοὺς σφετέρους αὐτῶν παῖδας εἰς ἑτέρους οἴκους εἰσποιοῦσιν, ἵνα μὴ μετάσχωσι τῆς ἀτιμίας τοῦ πατρός. PARTSCH apparently understands οἶκος meaning 'family' not 'property' in this context. His statement does not necessarily imply that οἶκος had legal significance in the Attic Law. As MACDOWELL has pointed out, "Athenian Law did not recognize rights of families, but rights of individual persons" (15). Thus in this study we will be looking at rights and obligations of individual citizens within the frame of the οἶκος.

I would agree with PARTSCH that this passage quite clearly, states that only persons who would continue the οἶκος inherited the ἀτιμία for a standing debt to the state. This conclusion is also supported by several other sources. Aeschines (16) mentions a law banning magistrates who are still ὑπεύθυνοι from changing οἶκος. The clear intention of this law is to prevent magistrates who have stolen public money from evading responsibility by adoption into another οἶκος. The expression of Aeschines ἐκποίητον γενέσθαι is hazy, because it seems to imply that the magistrate himself was not permitted to change οἶκος. It would not make any difference, however, whether the

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only makes sense if the brothers of Arethousios were by no means responsible for the remaining debt.

15) See MACDOWELL, D.M., 'The οἶκος in Athenian Law', *CQ* 39 (1989), 10-21 and TODD, S.C., *The Shape of Athenian Law* (1993), 204-10.

16) 3, 21.

magistrate himself belonged to this or that οἶκος; he would be equally responsible. The law surely was concerned about his direct heirs, especially his sons. It intended to stop people from giving their sons to adoption, in order to avoid responsibility for the debt of their father to the state and consequently ἀτιμία. That this is the correct interpretation of this expression is confirmed by *Anecdota Bekker* 247, 10 ff.: ἐκποίητον γενέσθαι : ἀποκηρυχθῆναι ἐκ τοῦ γένους, ὥσπερ εἰσποίητος ὁ θετός. Πολλοὶ δὲ τοῦτο ποιοῦσι τῶν πατέρων τοὺς παῖδας αὐτῶν, ὅταν ἐν ταῖς ἀρχαῖς κλέψαντες ἐλπίσωσιν ἁλώσεσθαι ἐν ταῖς εὐθύναις. ἤτοι οὖν ἐπὶ τοῦ ἄρχοντός ἐστι τὸ ἐκποίητον, ἢ ὑπὲρ τῆς οὐσίας τῆς ὑπερτιθεμένης εἰς ἄλλους διὰ τὴν προσδοκίαν τῶν εὐθυνῶν. It is possible that the ban from adoption was not restricted to the period of time before the εὔθυνα, if finally the magistrate was found guilty of misconduct. It would make more sense if the ban lasted until the death of the man and the debt was inherited by his sons.

Another case in which the state directly intervened to prevent evasion of ἀτιμία can be found in the decree which condemned Antiphon and Archeptolemos to death (17). The explicit declaration that anyone who adopts a son (or grandson) of Antiphon or Archeptolemos would be ἄτιμος, intends to prevent

17) Plu. *Mor.* 834 A-B.

the offspring of these two families from escaping ἀτιμία by adoption into another οἶκος (18).

Summarizing, if a man died with a standing debt to the state larger than the value of his property the possibilities were the following :

1. If he had legitimate sons (either natural or adopted) they were solely responsible for the total amount of the debt of their father. They would become ἄτιμοι from the day of their father's death (19) until they paid it off. The only way to evade responsibility was adoption to another οἶκος. This option, however, was restricted on some occasions by direct intervention of the law. Another obstacle would be the fact that a citizen willing to adopt them needed to be found, normally a relative or family friend (20). In reality, only childless citizens or citizens with no male descendant would be willing to adopt them. In addition, religion restricted further the option of adoption. If a man gave his sons for adoption, his οἶκος would be extinct. The family cults would be neglected and this the Athenians thought to be deplorable (21). Thus, it is hardly surprising that the Athenians

18) The fact that ἀτιμία in this occasion was imposed as a penalty for treason and not as a result of debts to the state, does not affect the conclusion that disfranchisement could be avoided by adoption into another οἶκος.

19) Cf. e.g. D. 24, 201; 58, 2.

20) See also RUBINSTEIN, Lene, *Adoption in IV Century Athens*, Copenhagen 1993, 21 ff.

21) Cf. e.g. Is. 2, 46; 7, 30 and RUBINSTEIN, 62 ff.

often did not or could not give their sons to adoption in order to escape ἀτιμία, and, indeed, we know several cases of citizens who remained disfranchised for debts to the state.

2. If he had only daughters his grandsons from the ἐπίκληρος could, in theory, be responsible for the total amount of the debt, as they could be the successors to his οἶκος. There is no such case, however, known to us and this is not surprising. RUBINSTEIN convincingly states that posthumous adoption of one of the sons of the ἐπίκληρος into the οἶκος of her father was neither a legal nor a very strong moral obligation (22). The husband of the ἐπίκληρος could secure the civil rights of his son through the following procedures:

a) If the closest relative (or the second closest, etc.) decided to marry the ἐπίκληρος, he should at first try to satisfy part of the demands of the state, by liquidating the whole of the property of her father. Then, since nothing of her paternal estate would be left, he would bring the ἐπίκληρος into his own οἶκος without dowry. His sons from this woman would be members of his οἶκος, and thus not responsible for the debt of their grandfather. The οἶκος of the woman's father would be extinct.

b) If the closest relative decided to betroth the woman to another man, again he should first liquidate the estate of her father and give it to the state. Then he ought to give her a dowry out of his own property and betroth her. The woman would join

22) *O.c.* 105 ff.

the οἶκος of her husband and her father's one would be extinct. Her sons would be members of the οἶκος of their father.

3. Other relatives would not be responsible if they liquidated the property of the deceased, since they were members of other οἶκοι.

In conclusion, ἀτιμία, for debts to the state, in theory, could be inherited through females, but, in practice, responsibility could be avoided if the potential heirs of the debtor remained in their father's οἶκος, while his οἶκος was left to be extinguished.