

Marriage in Classical Athens – in the Service of the State

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In Classical Athens, the human dimension was irrelevant to the purpose and object of a marriage. What was decisive was the function marriage played in Athenian civil law – it became an instrument of the new system of government: democracy.

Marriage - a private matter

Just as in our day, the family was in Classical times the kernel of society and the state. It was grounded in marriage, and was the institution that bore the burden of administering the household and ensuring the raising of legitimate children. And just like today, social and political changes had a wide range of consequences for this socially recognised relationship between man and woman. Classical societies were eminently flexible in this respect – in Classical Athens there existed various forms of marriage side by side, while at the same time the political development from an aristocratic society to the democratic *polis* or city-state was reflected in the "family constitution."

In the Homeric epics it was simply custom and tradition that made a woman into a wife and a man into a husband. The central precondition for the existence of a marriage was the entry of one partner into the household and family of the other; in most cases it was the woman who joined the man's family. That early form of marriage was not based on a single legal act, but simply upon the fact that the partners lived together and ran their household together; the partnership was dissolved as soon as one partner left the other and entered into a new marriage. Nevertheless, it seems that lasting first marriages were the social norm. Agreements were made before the wedding in an effort to ensure the permanence of the marriage and to discourage an irresponsible divorce.

The purchased bride and her duty of loyalty

An important role was played by the *hedna* (bride-price), which was included in most marriage contracts. In early times it was paid in cattle, later on in woven cloth and jewellery. It was a kind of pledge for the bride's family paid by the bridegroom to the bride's father. In other words, the bride was actually purchased. The *hedna* reverted to the bridegroom if the marriage was broken through the woman's fault, for example by her leaving the marital partnership or through adultery on her part. If, however, the dissolution of the marriage was the fault of the husband, the bride-price remained in the possession of the woman's family as a kind of compensation, and to give her security. To lose the *hedna* was a considerable financial loss for the guilty party.

But adultery only led to divorce if it was committed by the woman; a husband was permitted to have sexual relations with other women. These double standards, which imposed sexual loyalty only on the woman, arose from the function of the wife as the bearer of legitimate children for the head of the family – the legitimacy of the children was based on their having the head of the family as their natural father. Accordingly, a man who had an affair with a married woman could expect sanctions, but not from his own wife, only from the husband of the woman who had been unfaithful.

The core family becomes an affair of state

At the same time as the aristocracy lost power, which meant that families and noble houses were no longer at the centre of political activity, the *polis* – the community – assumed power in their stead; the state assumed responsibility for the private institution of marriage and the family. The reorganisations carried out by Solon in 594 BC were a first step in making them the basis of the system. The core family was made independent of the aristocratically-organised noble houses and phratries (groups of families), and placed directly under the authority of the *archon eponymos*, a magistrate elected yearly by the assembly of the people. From then on, he regulated matters of family law and inheritance disputes. The prohibition of marriages between siblings was accompanied by the introduction of testamentary freedom – a childless testator now had the opportunity to prevent his family from dying out by adopting children. This law was introduced because the survival of the *oikoi*, the self-sufficient households and farms, was in the interests of the community as a whole. Solon's political concept, which raised the independence and responsibility of every citizen to the central governing principle of the *polis*, automatically led to increased influence of the state in family affairs, including of course marriage, the very centre of the family.

No legal marriage: no civil rights, no rights of inheritance

Marriage had formerly been one of the sources of power for aristocrats, who used it to form political alliances. Now marriage acquired a new function: it became the pivotal principle of Athenian civil law. A decisive role in this process was played by the establishment of a single recognised form of marriage: every valid marriage had to be performed by *engye* (a contractual betrothal) and *ekdosis* (the handing-over of the bride to the bridegroom). Only marriages performed in that way ensured marital legitimacy including rights of inheritance, and above all full civil rights, to the sons born in them. Despite those laws, in the 6th century BC liaisons were also recognised that had not been conducted in the prescribed way but which fulfilled the social requirement of marriage, namely that of living together. Children of such liaisons apparently possessed civil rights, but ranked below legitimate sons in matters of inheritance. Politically that was highly inflammatory; in the second half of the century it was just such sons with limited civil rights who played an important role in the seizure of power by Peisistratus, the tyrant of Athens, since they formed a significant proportion of his followers.

The Athenian tyranny ended with the fall of the sons of Peisistratus in 510 BC. It became evident that many were claiming civil rights who were not entitled to them. The reorganisation carried out by Cleisthenes restructured society and created the means of integration. The reform made every Attic citizen a member of a *deme*, the smallest unit of administration in a *polis*. Thenceforth, however, the membership of a *deme* depended on legitimacy of birth, which in the first half of the 5th century BC meant that the father had to possess Athenian civil rights, the mother had at least to be a freeborn woman, and their marriage had to have been performed with *engye* and *ekdosis*. Only sons of such a marriage were full members of the *polis*. With the steady development of democracy, however, the toleration of free marriages and the enjoyment of rights by children who now counted as illegitimate became more and more difficult, until finally such toleration became incompatible with the requirements of the democratic system.

The rules are tightened...

The most far-reaching tightening of the rules was the civil-rights law introduced by Pericles in 451-450 BC. From then on, not only the fathers but the mothers too had to be Athenian citizens, if their children were to be guaranteed acceptance into the rank of citizen by legitimacy of birth. In contrast, marriages between Athenians and foreign women became free liaisons which were not

capable of producing legitimate children. Pericles himself was affected by this new rule, since his second marriage was to Aspasia, who was from Miletus. His son from that marriage remained without Athenian civil rights until Pericles obtained an exceptional ruling after the death of his two legitimate sons from his first marriage.

The Periclean civil-rights law underlines the profoundly political importance and function of marriage in Athens. It became indeed an instrument of the new form of government, democracy. The purpose of the law was clearly to restrict the circle of those who possessed civil rights and hence had a right to play a political and economic part in the *polis*. So Athenian civil rights were particularly exclusive. At the same time, it obliged members of the aristocracy, who had traditionally often chosen a noble wife from another *polis*, or else a non-Greek wife, to marry an Athenian woman, which bound them more firmly to the *polis*. Marriage had largely ceased to be a private matter. Pericles's civil-rights law must clearly be seen as giving privileges to Athenian women. It improved the marriage prospects of the daughters of Athenian citizens, and it gave the daughters of poorer parents, whose dowries could not be large, the advantage of being able to bear legitimate children who were entitled to full citizens' rights.

...and loosened again

The extent to which marriage was at the service of the state is shown by the fact that the Periclean law was loosened once political circumstances began to change. During the second half of the Peloponnesian War, between 414 and 411 BC, free civil marriages, concluded without the legally prescribed formalities, and possibly with a foreign woman, were elevated to the rank of legitimate marriages as far as the civil rights enjoyed by the children were concerned, though they still counted as illegitimate, which brought disadvantages from the inheritance point of view. A significant number of Athenian marriages were evidently only *de facto* partnerships, so the position of sons born within them was precarious within the *polis*. One reason for the loosening of the law is no doubt that Athens wanted as soon as possible to fill up the gaps in the citizenry left by the losses of war. It is also not improbable that there is a connection with oligarchical tendencies – the sons of wealthy Athenians who themselves did not possess civil rights no doubt saw their opportunity here. The ruling was only repealed in 403-402 BC, after Athens had returned to democracy once more. In the long run, influential circles seem to have accepted the civil-rights law together with the limitations it imposed on the family, and from that time onwards the illegitimate sons of citizens were no longer a destabilising factor.

Despite the high political status of marriage in Athens there was no social obligation to marry. In reality this only applied to the male population, since for women there was actually no alternative to marriage. The basis of women's social acceptance, their very *raison d'être* and hence their only aim in life, was founded on marriage.

Woman and man - unequal before the law of marriage

Despite the enormous political changes, the tasks of wives scarcely changed. The most important of those tasks was the bearing and raising of legitimate offspring. And of course the management of the household within the *oikos* was the wife's task. Xenophon's "Oeconomicus" is nothing less than a manifesto on the purpose of marriage and the tasks of a wife – the newly-wedded husband Isomachus explains to his 14-year-old wife that tasks within the house are those of the wife, those outside it those of the husband; the central concern is the continuance of the family – not least in order to provide for old age – and the best possible management of property.

The impression of partnership that arises from this dispassionate description of the tasks of the couple is deceptive. Indeed the comparatively large age difference between man and woman (about 15 years), and the early age at which girls married (between 13 and 15) as against the relatively greater age of men (about 30), imposed an initially educational relationship between the marriage partners. The picture of an ideal wife was that of a girl from a protected upbringing who had seen and heard as little as possible, and who had little to say. It was a conscious aim of marriage that the husband should form the wife.

The role of the lover was not necessarily one of the wife's tasks, in contrast to the situation described in the Homeric epics, in which sex was regarded as a constituent element of marriage. Since marriage did not impose a sexual monopoly as in the Christian moral code, its primary purpose was not the gratification of the man's sexual desires. For that purpose, he had the choice, as he had had during his comparatively long bachelorhood, among a wide range of prostitutes of both sexes. In his "Memorabilia," Xenophon makes Socrates say to his son: "You surely don't imagine that people have children in order to gratify their lust – the streets and brothels offer ample opportunities for that."

The wife - a ward of her husband and her father

Legal regulations are also enlightening on the rank and importance of wives within the *polis*. A decisive factor in their situation was that for their entire lives they remained legally immature and hence incapable of performing legal acts. They remained permanently under the *kyrieia* (authority) of a man. This meant of course that no woman could possess civil rights; they were included in the registers of neither the *deme* nor the phratry. Athenian women were regarded as citizens only insofar as they had the privilege of contracting a legal marriage and bearing legitimate children. Such a marriage was registered in the phratry lists and formed the conclusion of the wedding ceremonies.

Women's legal incapacity meant that Attic women were betrothed and married off by their *kyrios*, their father or male guardian. Brides were thus subject to their fathers' authority. This is made especially clear by the concept of *ekdosis*, the transfer of the bride to her husband and new *kyrios* – the term *ekdosis* was also used for the transfer of leased property or the lending of slaves. Thus the concept means the transfer of a person or a thing from the legal authority of one party into that of another, without extinguishing the original legal relationship. The owner of a leased property remained its owner, and in the same way a wife, under certain circumstances such as divorce or widowhood, could fall again under the authority of her natural family.

The *engye*, usually translated as "betrothal," was by contrast the legal act which laid the basis of the future husband's legal authority over his future wife; it contractually fixed the process which was completed by *ekdosis*. The *engye* gave the bridegroom clear, though not unlimited, rights over his bride. For the wife, that legal position, based on the law of property, meant protection against injustice and insults, since any attack on her was at the same time an attack on the property rights of her *kyrios* and was a punishable offence. It seems that even informal marriages gave the woman the same protection. The protection of her own family was available to help a wife against unacceptably despotic behaviour by her husband, since her marriage had not removed her entirely from their legal authority – she could always leave her husband and return to her family.

The most serious breach of property rights was adultery. In view of the principle that only legitimate children fulfilled the requirements of legitimacy, a wife who committed adultery had to be disowned. However, this law often seems to have been infringed for economic reasons. The disowning of a wife counted as divorce, and no matter which partner caused or performed it, in the

case of a divorce the *proix*, the woman's dowry, had to be paid back to her family. Not every husband was able or willing to accept that loss of assets.

Marriage, divorce and the role of the dowry

A divorce could be instituted by the husband or the wife. If the husband wanted to dissolve the marriage, he had only to proclaim a divorce before witnesses. If, however, the wife wanted the divorce, she had to announce her intention to the *archon*. Although divorce, like marriage, was an act of private law, this compulsory announcement constituted a public instrument of control. Since women were legally incapable, they were inexperienced in dealing with the political institutions of the *polis*, so such a rule must have represented a considerable disincentive for them. Revealingly, this was not true of informal marriages – the *polis* was not interested in maintaining such partnerships. For the man, however, the woman's dowry was a disincentive to pronouncing a divorce, since considerable sums were involved. Although the purpose of the *proix* was to protect the woman financially, she could not decide on its use; it became part of the assets of her husband upon her marriage. He had full rights over it as long as the woman was still living with him, which was a clear source of risk to the woman, or to her *kyrios*, since there was no way of protecting the property brought into the marriage by the woman if her husband wasted it through incompetence. In the case of a divorce or widowhood, the *proix* had to be handed to whichever man was to assume the burden of the woman's livelihood.

The dowry was not prescribed by law, but it was a social imperative. The amount was an expression of the social position of the woman. The importance of the *proix* was such that the state provided a dowry if fathers who had served the *polis* well were unable to pay one. The increase in assets brought by a legally formalised marriage made legal marriages more attractive for Athenian men, since informal marriages were without a dowry.

The institution of the dowry had the obvious purpose of favouring legitimate marriages and making divorces difficult; at the same time the financial reserves of the Athenian citizenry were constantly redistributed among the various *oikoi*. Nevertheless, the dowry provided no financial security for the woman.

And things go on changing...

In the course of the 4th century BC, new burdens were imposed on marriage. These burdens arose out of the increased importance accorded to the individual citizen and to citizens' private lives. That development was mainly a result of the political changes after the Peloponnesian War. Whereas formerly the new democracy was at the centre of interest and activity, and set the standards for marriage, the weakening of democracy led to its retreat from public life. That meant that the personal dimensions of marriage were able to develop, and marital fidelity was required of the man as well. Nevertheless, the dualism of the informal marriage alongside the legitimate citizens' marriage continued to exist, although it became less of a divisive issue.

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