SOME NON-LEGAL ARGUMENTS IN ATHENIAN INHERITANCE CASES*

M. Hardcastle

Before beginning this discussion it is useful to remember the peculiar situation of the Athenian jury to whom forensic speeches were addressed. It has been expressed well by Bonner when he says that each panel, being a plenipotentiary committee of the sovereign people, was supreme and independent in its sphere; its authority could not be shared with a chairman or judge or curtailed by any other court. Thus, no body of case law in equity or authoritative interpretations of statute law or binding precedents were developed. Each court was entirely free to determine facts and apply the law as it pleased.[1]

Conflict could exist not only between two laws (a situation dramatised in Sophocles' *Antigone*) but also between the words and intention of a single law.[2] Since witnesses could not be cross-examined and the jury received no objective guidance on points of law speakers were free to present all kinds of arguments in an attempt to interpret the laws in their own favour.[3] Therefore with the jury free to determine virtually both law and fact without control or instruction there was always the possibility that it could be confused and could reach a decision influenced by legal trickery.

Jurors swore an oath to vote on the matter at issue and in accordance with the laws[4] and they were reminded to remember their oaths and the arguments presented;[5] to consider all the points and to weigh them up in their own minds.[6] Furthermore litigants had to swear that they would confine themselves to the issue.[7] However, many irrelevant arguments are to be found in their speeches. Indeed many of the points and arguments which the jury were asked to consider in giving their verdict had nothing to do with the legal issues of the case. Because of the oaths taken by both the jurors and the litigants one might expect the inclusion of extraneous arguments to have been inadmissible, but because of the lack of direction given to the speakers and the jury such arguments occur again and again.

1. R.J. Bonner, *Lawyers and Litigants in Ancient Athens.* New York, 1927, p.74.
2. *Rhetorica ad Alexandrum* 1143a, 31ff.; Aristophanes *Clouds,* 1186ff.
3. Aristotle, *The Art of Rhetoric* 1. XV, 3-12.
4. Demosthenes XXIV, 149-151; Hyperides *In Defence of Euxenippus* 10. Also note R.J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle.* Vol. II. Chicago, 1938, pp.152-154.
5. Isaeus VIII, 46.
6. Isaeus VII, 45. See also Isaeus II, 47.
7. Aristotle *Ath. Pol.* LXVII, 1.

One can see how a man whose case was legally weak would be anxious to present other grounds for a vote in his favour. But even when a man's case was legally quite sound he was often disinclined to rest his case solely on legal arguments, given that the law could be interpreted against him. As the friends of Callimachus pointed out to the defendant in Isocrates XVIII, 'Many decisions rendered in the tribunals are contrary to the expectation of litigants, and chance rather than justice determines the issue in your courts![8] So, those who came before the courts left no argument untried but included everything which could in any way be used to their advantage or to their opponents' disadvantage.

The jurors in all types of cases had no time to study fully any of the facts before them but the situation was particularly severe as regards inheritance cases. As Kennedy notes, many testamentary cases were of limited interest and of great complexity. The jurors could not be expected to be deeply or personally interested nor to carry very many of the facts of law or of the involved family relationships long in their heads.[9] All of this created a situation in which it was to the speaker's advantage to include whatever arguments he felt would help foster a favourable impression.

Thus it is possible to make a division in the speeches between what may be called legal and non-legal arguments. In the legal section may be included those arguments which relate directly to the laws concerned with the important aspects of inheritance: the order of succession, wills, adoptions and marriage. In the non-legal section are those arguments which are not directly related to the laws or legal aspects of succession, wills, adoption or marriage. The most common of these found in inheritance cases are those concerned with the burial of the dead and customary rites for the deceased, litigiousness and family disputes (including the conduct and attitude of the deceased to the speaker and his adversary) and services to the state.[10]

I

For the people of Athens everything concerned with the burial of the dead was important.[11] It was, for example, very important for an Athenian to be buried in his native land. Hyperides concludes his speech in defence of

8. Isocrates XVIII, 9-10.

9. G. Kennedy, *The Art of Persuasion in Ancient Greece,* New Jersey, 1963, p.141.

10. Whilst there is no evidence from slaves offered in any of these speeches, in two of them (Isaeus VI and VIII) speakers use arguments against their opponents who refuse to allow the evidence of slaves to be obtained. It is suggested that those who refuse to surrender slaves for examination are trying to hide the truth (which of course the speaker is telling and which the slaves could verify). See Bonner and Smith, *op.cit.*, pp.126-30 and A.P. Dorjahn, 'On Slave Evidence in Greek Law' *C.J.* 47, (1952) 188.

11. D.C. Kurtz and J. Boardman, *Greek Burial Customs.* London, 1971, pp.143ff., and W.K. Lacey, 'Aspects of a Greek Marriage' *AULLA,* 13th Congress, (1970) 61.

Lycophron by stating 'I am on trial with the risk not only of losing my life, a minor consideration to men with a proper sense of values, but also of being cast out after death, without even the prospect of a grave in my own country'.[12]

A proper burial accompanied by what the orators referred to as customary rites consisted of a number of stages. Firstly, the *prothesis* which confirmed death. It usually lasted one day and took place on the day after death at the home of the deceased. On the third day the *ekphora* or procession set out from the *oikos*.[13] Since the *oikos,* as the locus of the household, formed the most important part of the *kleros,* the place where the laying out took place and from which the funeral procession left was significant since it seemed to identify the next-of-kin and therefore the heir. This certainly is the impression given by the orators in their accounts of men attempting to remove corpses from the house of the deceased to show that they and not 'the family' were the legitimate heirs.[14] Following the *ekphora* came the funeral feast, the ninth day rites and the end of mourning celebrations.[15]

No unfriendly person was to be in charge of a burial[16] This was the responsibility of a kinsman and the right to this responsibility devolved upon the heir.[17] Receiving the estate was the pleasant part of being an heir but there was also what Demosthenes calls duties which included this responsibility of burial of the deceased.[18] The idea of which speakers remind the jury is that those who have carried out these obligations, which are part and parcel of an inheritance, should also receive the estate and that those who have not seen to these duties should not inherit the estate.[19] Also, not to bury properly one's father, or one to whom one was next-of-kin, was considered a disgrace. Dinarchus, speaking against Aristogiton, says, 'This admirable son allowed his own father to lack the bare necessities of life while he survived and to do without a proper burial when he died; a fact for which evidence was often brought against him.'[20] It is therefore understandable that strong criticism should be levelled against a man who allowed another by default to bury one to whom he claimed to be next-of-kin.[21]

The end of mourning did not in fact mean the end of the heir's respon-

12. Hyperides *In Defence of Lycophron* 20.
13. Kurtz and Boardman *op.cit.*, p.144.
14. Isaeus VIII, 21-24, 38-39; W.K. Lacey, *The Family in Classical Greece.* London: Thames and Hudson, 1968, p.148. Henceforth referred to as *Family*; Kurtz and Boardman, *op.cit.*, p.144.
15. Isaeus II, 36, VIII, 39.
16. Isaeus I, 10.
17. W.K. Lacey, *Family,* p.148; Kurtz and Boardman, *op.cit.*, p.143.
18. Demosthenes XLIV, 66.
19. Demosthenes XLIII, 65; Isaeus IV, 19, IX, 4.
20. Dinarchus *Against Aristogiton,* 8.
21. See Isaeus IV, 19 and Isaeus IX, 4.

sibility to the deceased. Judging by the number of times they are mentioned in speeches[22] the annual commemorations and rites which were to be performed after death were equally as important as a proper burial.[23] In fact Harrison says one should

> 'be on guard against the anachronism of regarding succession in Classical Athens as purely an economic matter, concerned merely with the transmission of material goods or rights closely linked with material goods. There is ample evidence to show that a man's heir was still looked upon as owing him a primary duty to preserve the sacra of the house and that this aspect of succeeding to a dead man was seldom far from the minds of those who had to determine disputes as to succession'.[24]

The city itself was much concerned with encouraging the maintenance of family cults and the tending of ancestors' tombs. At the *dokimasia* of potential office holder he had to declare where his ancestors' tombs were.[25] It is also known that questions about Zeus Ktesios and Apollo Patroos were a normal part of the *dokimasia.*[26] Indeed the assurance of a proper burial and the proper performance of annual rites was reason enough for a man to adopt a son.[27]

There are two main non-legal arguments concerning burial and customary rites. One is when a speaker claims that by declaring a will invalid his opponent is desolating the deceased's house, depriving him of a son and thereby denying him an heir to carry out the annual rites. The other is used by a speaker to press his claim to an estate by declaring that he had carried out the burial of the deceased while his opponent had done nothing.

The best example of the first kind is found in Isaeus II where the defendant repeatedly calls to mind the awful state of childlessness and accuses his opponent of wishing to deprive Menecles of a son.[28] The argument is made all the more forceful by the speaker comparing his opponent's (Menecles' brother's) actions and motives with those of Menecles, who had decided not to adopt his brother's son since he was his only son and it would have meant depriving him.[29] The speaker often places these attacks in such a position that they contrast some appailing motive of the opponent with some appealing motive of his or of the deceased. For example the attack at (22) comes

22. These customary rites are alluded to in Isaeus I 10, II 10, VI 51, VII 30, IX 7, 36.
23. Although today one cannot be sure of what they entailed these rites were so well known to the ancient Greeks that they were known merely as *ta nomizomena.* See W.K. Lacey, *Family,* p.149 and p.299, n.100.
24. A.R.W. Harrison, *The Law of Athens.* Vol. 1. Oxford, 1968, p.123.
25. Dinarchus *Against Aristogiton,* 17-18; *Ath. Pol.* LV, 4. Lacey, *Family,* p.77, 148.
26. *Ath. Pol.* LV 3; cf. Xen. *Mem.* II 2, 13. Lacey, *Family,* p.27.
27. Isaeus II 10, 46, VII 30, IX 7.
28. Isaeus II 1, 7, 10, 11, 12, 13, 14, 20, 22, 23, 24, 25, 27, 33, 37, 43, 46.
29. *ibid.,* 10.

after the speaker has stated that it was loneliness that brought the deceased to adopt a son; at (37) after the speaker has told the jury of how he had given his adoptive father's name to his son and how he won praise from the demesmen for the way in which he carried out the burial; and at (46) after the speaker has listed his services to the state.

Similarly Sositheus in Demosthenes XLIII accused his opponent Macartatus of caring nothing for the extinction of the house of Hagnias[30] and the speaker in Demosthenes XLIV often reminds the jury that he and his father did not wish the house of Archiades to become extinct.[31]

Thrasyllus in Isaeus VII, before he justifies Apollodorus' choice in adopting him, explains why Apollodorus could not have adopted a closer relative. He explains that these relatives had never given their own brother a son by adoption and that they had allowed his house to be left shamefully and deplorably desolate. Again using the first kind of argument he continues, 'Knowing that their brother had been treated thus, could he himself have ever expected even if there had been friendship between him and them, to receive the customary rites from them, being only their cousin and not their brother?'[32]

In orations IV and IX of Isaeus both the speakers try to prove either the non-existence or the illegality of wills which benefited their opponents. In both speeches the second kind of argument is used to show the impudence of such men who claim to have been adopted when they have not even buried the deceased. In Isaeus IV the advocate for Hagnon and Hagnotheus charges that Chariades neither took up the body of his adoptive father nor committed it to the flames nor collected the bones but that he left all these duties to be done by complete strangers.[33] In Isaeus IX the speaker claims that when his brother's remains were brought home the person who claimed to have been long ago adopted as his son did not lay them out or bury them but that his brother's friends and companions-in-arms laid out the remains and carried out all the other customary rites.[34]

It is clear therefore that litigants often made much of this sacred duty of burying the dead. Unfortunately the body could sometimes be in the hands of one's adversary, as in the case of the speaker in Isaeus VIII. What could one argue from the other side of the fence to explain how one's opponent had carried out the burial? The speaker in Isaeus VIII offers the following: he went to his grandfather's house to remove the body so that the funeral could be conducted from his house, presumably to demonstrate his rights as heir. But he gave way to his grandfather's widow's request and allowed the

30. Demosthenes XLIII 68.
31. Demosthenes XLIV 2, 11, 43.
32. Isaeus VII 31-32.
33. Isaeus IV 19.
34. Isaeus IX 4.

funeral to take place from there.[35] He then charges his opponents with not allowing him to share the funeral expenses so that it might appear that they, and not he, had buried his grandfather.[36]

His opponents who had spoken first had no doubt made much of the issue and this speaker obviously felt a great need to minimize its effect by explaining in more detail that 'In order that they might gain no advantage over me by alleging to you that I bore no part of the funeral expenses, I consulted the interpreter of the sacred laws and by his advice I paid for at my own expense and offered the ninth day offerings in the most sumptuous manner possible'.[37]

In Isaeus VI the main arguments with which the speaker for Chaerestratus is concerned are the legality of the will of Philoctemon in which he adopted Chaerestratus and the fact that there was no valid marriage between Euctemon and Callippe and that therefore her two sons, the claimants, were not entitled to inherit.[38] But such is the importance of these burial and customary rites that Chaerestratus' advocate can say to the jury 'You have, therefore, gentlemen, to consider whether this woman's son ought to be heir to Philoctemon's property and go to the family tomb and offer libations and sacrifices'.[39] This was one of the points which the speaker claims the jury will have to decide by their verdict, in addition to the question of inheritance.

II

To call a man litigious or quarrelsome was a serious reproach. It was in fact thought better to seek reconciliation even at a disadvantage than to press a claim with the intention of seeking complete satisfaction.[40] Understandably disputes and litigation within the family, where mutual toleration was expected, were considered to be disgraceful acts bringing opprobrium. They were also injurious to the public interests, threatening as they did the central institution of the state.[41]

In view of this attitude it is not surprising to find speakers claiming that they have been forced into appearing in court because of intolerable wrongs[42] or that it was the fault of their opponent.[43] Many speakers are also

35. Isaeus VIII 21-22.
36. *ibid.*, 38.
37. *ibid.*, 39.
38. As Lacey points out, this is an involved case since Callipe's children had already been allowed a portion of Euctemon's estate. Lacey, *Family*, pp.127-129, 143.
39. Isaeus VI 51 and also 65 for rites at the mother's tomb.
40. Isaeus V 30; Demosthenes XLVIII 8, XLI 1, LIV 24, LVI 14, Lysias 10, 2-3.
41. Bonner and Smith *op.cit.*, p.73.
42. Demosthenes XLVIII 2.
43. Demosthenes XLIV 1, XLVIII 3.

quick to make known their previous lack of association with the law courts and their inexperience in speaking. In Demosthenes XLIV the son of Aristodemus begins his speech on behalf of his father by stating that it was the fault of Leochares, the defendant, that he himself was being brought to trial, and a little further on he says that his father came into court with manifest signs that he was a poor man and that he knew nothing of pleading.[44] Likewise the speaker in Isaeus I claims that while Cleonymus was living he and his brother were so discreetly brought up by him that they had never entered a law court.[45]

Such explanations were intended to justify the presence of the defendant or plaintiff in court, but what of those who were speaking for them? Paid speakers were attacked[46] but the practice of having a relative or friend act on one's behalf had its defenders.[47] To avoid the risk of any imputation such a speaker was careful to explain the reason which obliged him to participate. Usually this was friendship for the deceased or for members of the deceased's family. Thus in Isaeus VI the speaker begins by saying, 'That I am on terms of very close friendship with Phanostratus and with Chaerestratus here, I think most of you gentlemen are aware'.[48] Likewise, in Isaeus IV, the opening words of the speaker are 'Hagnon here and Hagnotheus, gentlemen, are intimate friends of mine, as was their father before them. It seems, therefore, only natural to me to support their case to the best of my ability.[49]

To attribute to the adversary the rejection of the good offices of friends and to reproach him with litigiousness and indecent exposure of family dissension were among the commonplaces of forensic oratory.[50] The most extended usage of these kinds of arguments is found in Demosthenes XLVIII and Isaeus I. In Demosthenes XLVIII the plaintiff Callistratus covers many points, and with such force that if effective the jury would have become more and more intolerant of the defendant. Most of these points are made in his own defence but they indirectly accuse his adversary

44. Demosthenes XLIV 1, 4.

45. Isaeus I 1.

46. Lycurgus *Against Leocrates*, 138. The law quoted in Demosthenes XLIV 26 has been taken by most scholars to mean that payment for advocacy was forbidden but there is still room for doubt. See Bonner and Smith *op.cit.*, pp8 and 35; A.R.W. Harrison, *The Law of Athens* Vol. II. Oxford, 1971, p.28; G.M. Calhoun, *Athenian Clubs in Politics and Litigation*. New York, 1970, pp.68 and 87. As Bonner and Smith note the law was difficult to enforce and had fallen into abeyance by Isaeus' time as had the law referred to in Demosthenes XX 152 which forbade public advocates to act more than once.

47. Hyperides *In Defence of Lycophron* 10, and *In Defence of Euxenippus*, 11.

48. Isaeus VI 1.

49. Isaeus IV 1.

50. W. Wyse, *The Speeches of Isaeus*. Cambridge, 1904, p.176. In addition to the speeches mentioned here see also Lysias XXXII 2; Demosthenes XXVII 1, XXX 1, XLI 1, 14, XLII 12.

for he claims that he was neither practiced nor skilled in speaking and had been wronged by one who should have been the last to wrong him; that he had been unwilling to go into court but had been forced to by a multitude of wrongs; and that he had not refused to adopt any other fair course of action.[51] A little later in the speech, to add further to the good impression of himself, he informs the jury that he had chosen voluntarily to share the inheritance rather than risk a trial with one who was a relative and so that he would not have to say unpleasant things of him.[52]

Similarly, in Isaeus I, the speaker attacks his opponents by saying that they were not ashamed to come into court about a matter which it would have been disgraceful even for those who were not relatives at all to dispute.[53]

Closely allied to these disputes and litigation within the family was the question of the feeling or conduct of the deceased toward the speaker and the adversary respectively. As one would expect, the feeling toward the speaker is represented as friendly, that toward the adversary as one of enmity. In Isaeus I, VII and IX the speakers' moral rights are argued strongly. All the speakers bring forward evidence of a quarrel between the deceased and their opponents, which by implication is intended to demonstrate to the jury that the deceased would not have wished his property to fall into their hands.

On the other hand friendly behaviour is taken to indicate that the deceased would have wanted his property to go to those with whom he was friendly and that it is consequently right that it should do so. In Isaeus I the nephews of Cleonymus who are in a weak position legally[54] are at great pains to stress the friendship between themselves and the deceased,[55] although the proof of this close affinity is never substantiated by witnesses. It is simply expressed in vague terms such as 'it is common knowledge he held closer affection for us'[56] and 'you are all aware of our friendship and close relations'.[57] The speaker introduces the fact that Cleonymus was at variance with some of his heirs but succeeds in showing that Cleonymus

51. Demosthenes XLVIII, 1-3.
52. *ibid.*, 8.
53. Isaeus I 5. See also Demosthenes XLIV 19-20.
54. The nephews were not among the heirs named in the will of Cleonymus. Cleonymus deposited the will with an official and though the speaker makes no mention of the length of time it appears from the speech that the will remained with the official for some time. During this time Cleonymus apparently made no attempt to revoke his will and as Wyse says 'his nephews would have been left without the least chance of throwing doubt on his intentions but for an incident which occurred during his last illness'. Wyse *op.cit.*, p.177.
55. Isaeus I 4, 17, 19, 20, 30, 33, 37, 42.
56. *ibid.*, 37.
57. *ibid.*, 42.

quarrelled with only one relative, Pherenicus.[58] In spite of this inconsistency the speaker persists in stating that Cleonymus had quarrelled with some of his heirs and for this reason wished to alter his will.[59]

Thrasyllus in Isaeus VII also brings out the fact that his grandfather and Apollodorus were close friends,[60] whereas Apollodorus and Eupolis, father of his opponent, were always at enmity with one another.[61]

The speaker in Isaeus IX bases his moral right to inherit his brother's estate on the grounds that Astyphilus had received many benefits from the speaker's family, and that he had never had a quarrel with him.[62] On the other hand he claims that Astyphilus had no more bitter enemy than Cleon and hated him so much and with such great cause that he would have been much more likely to have arranged that no one of his family should ever speak to Cleon than that he should have adopted his son.[63] He later asks the jury: 'Can you imagine, gentlemen, that Astyphilus, detesting Cleon so heartily and having experienced so many kindnesses at the hands of my father, would himself have adopted a son of one of his bitterest enemies or bequeathed his property to him, to the detriment of his benefactors and relatives?'[64]

III

Frequently in these speeches arguments are based on services rendered to the state by the speaker and on his adversary's omission to perform such services. It was expected that a man should fight for his city and the importance of this expectation can be seen from the words of Dinarchus who says, 'Moreover, when choosing a man for public office they used to ask what his personal character was, whether he treated his parents well, whether he had served the city in the field and where he had an ancestral cult'.[65] Serving the city however was more than just fighting in its defence. The good man at Athens was expected not only to sacrifice his life but also to supply when necessary his money and property. Thus when a speaker in the court offers evidence of his own contribution and decries the worth of his opponent, services involving financial outlay tend to be put in the same category as services entailing physical danger.[66]

The most common form of public service in peacetime was the perfor-

58. *ibid.*, 30-32.
59. *ibid.*, 35, 42, 43.
60. Isaeus VII 8.
61. *ibid.*, 8, 11, 12.
62. Isaeus IX 27-30.
63. *ibid.*, 16.
64. *ibid.*, 31.
65. Dinarchus, *Against Aristogiton,* 17-18.
66. K.J. Dover, *Greek Popular Morality.* Berkeley and Los Angeles, 1974, p.175.

mance of liturgies. The most important of these were probably the trierarchy, the choregia and the gymnasiarchia but one could not make empty claims about such contributions because contributions were not anonymous. Men did not pay into some general tax from which expenses were met but those liturgies were a matter of public record so that contributors were identifiable furnishers of the needs of a specific ship or the identifiable providers of a particular chorus.[67]

The family at Athens was important as an integral part of the city and state and the importance of the continuation of the family in relation to family cults and the performance of rites for the deceased has already been mentioned but there was a further consideration which the orators point out: if a family which had supported liturgies became extinct then the state would suffer financially.[68] It is clear that orators expected juries to sympathise with appeals to maintain the possessions of families who performed liturgies since it was in the interests of everyone that such families be kept alive.[69]

Since all were expected to be active in the whole public life of the *polis*, and since a man who performed well and contributed generously was commended, speakers often boasted, if they could, of having paid more than required—but with a motive, as can be seen from Lysias XXV. The speaker there cites his services to the state and follows these with, 'But my purpose in spending more than was enjoined upon me by the city was to raise myself the higher in your opinion, so that if any misfortune should chance to befall me I might defend myself on better terms'.[70] The extent to which this kind of argument was used is shown by Lycurgus who states that 'Some of them (speakers) indeed are no longer using arguments to try to deceive you; they will even cite their own public services in favour of their defendants'.[71] Lysias at the beginning of one speech shows what effect this practice could have. 'Gentlemen of the jury' he says, 'there have been cases of persons who, when brought to trial, have appeared to be guilty, but who, on showing forth their ancestors' virtues and their own benefactions, have obtained your pardon.'[72]

67. A.W.H. Adkins, *Moral Values and Political Behaviour in Ancient Greece.* London, pp.123-124.

68. See Isaeus VII 32.

69. Also, the Greeks would have been aware that the resources of the state was the sum of the citizen's resources, and no more, and that the citizens of a defeated state lost all. Lacey, *Family,* p.173, 175, 96-99. See also R.F. Wevers, *Isaeus: Chronology Prosopography and Social History.* The Netherlands, 1963. Chapter 3. Here Wevers shows that the testators all left sizeable estates.

70. Lysias XXV 12-13.

71. Lycurgus *Against Leocrates,* 139.

72. Lysias XXX 1.

Again Lysias makes it clear that the use of these kinds of arguments was frequent and one can see how a speaker, faced with the problem of an opponent whose record of public service was a good one, might need in some way to nullify its effects.[73] One answer of course was to have an even longer list of benefactions.[74] Alternatively if one claimed to be less well off than one's opponent, one could denounce such arguments as the boasting and general insolence of the rich.[75] After all, contributions to the war tax and the furnishing of choruses were proof of opulence, but not of innocence.[76]

A speaker would no doubt recite his contributions in the hope of gaining general approval and respect. However the specific purpose in these inheritance cases seems to be to show (a) what the speaker and his predecessors had done with their wealth and that if the jury voted in his favour this benefit would continue and (b) that the speaker's opponent had had no concern for the city and had spent his money on himself and that if successful he would continue in this way, the state receiving no benefit at all.

The strongest uses of the argument of services to the state are to be found in Isaeus V, VI and VII. In Oration V Dicaeogenes' miserable record is revealed by his opponent Menexenus: he was placed fourth when he acted as choregus, was last in the Pyrrhic dances and though many trierarchs had been appointed he had never served either alone or jointly, nor had he made any contributions.[77] On top of this, once having promised three hundred drachmas, he had not paid, and his name had been placed on the list of defaulters.[78]

This is closely followed by a list of all the contributions made by the forefathers of Menexenus, the speaker. These include the performance of every kind of choregic office, the contribution of large sums of money for war expenses and the fact that they had never ceased to act as trierarchs.[79] Menexenus could also boast of a father, a grandfather and an uncle who not only had fought for their country but also had died fighting for it.[80] Then, as if there was no such thing as the will by which Dicaeogenes III claimed the whole of the estate of Dicaeogenes II, but rather the case was to be decided solely on the matter of worth, Menexenus asks 'What possible reason will you give, Dicaeogenes, that the judges should acquit you?'[81]

73. Lysias *Against Eratosthenes,* 38-40.
74. Demosthenes XXI 154ff.
75. Demosthenes XXXVI 40; Isocrates VII 53.
76. Antiphon *Tetralogies* I, III, 8.
77. Isaeus V 36.
78. *ibid.*, 37-38.
79. *ibid.*, 41.
80. *ibid.*, 42-43.
81. *ibid.*, 45.

In Isaeus VI the speaker for Chaerestratus answers his opponent, who had inveighed against his clients because they were rich and he was poor, by admitting that though they were rich the family fortune was being spent on the city rather than on themselves. Phanostratus had been trierarch seven times and his son Chaerestratus, although young, had also been trierarch; both father and son were among the three hundred who paid special war taxes and now the younger son had also been enrolled.[82] Finally the purpose of it all is made apparent when the speaker says to the jury, 'If the estate of Philoctemon is adjudicated to my client, he will hold it in trust for you, performing all the public services which you lay upon him, as he had done hitherto, and with even greater generosity. If on the other hand, our opponents receive it, they will squander it and then seek other victims'.[83]

In Isaeus VII Thrasyllus spends a great deal of time stressing his moral right to inherit and, having proclaimed himself to be a man of public spirit, informs the jury that these were the just grounds on which he claimed he was entitled to keep the estate.[84] His rather invidious argument is stretched to include the services of Apollodorus' father who had died more than fifty years before the case.[85]

It was with such non-legal arguments as these that the speakers in inheritance cases sought to direct the jurors' attention to their own commendable qualities and to the worthless character of their opponents, in short to use character as a means of proof. As Dover has rightly pointed out 'It was of the utmost importance that the speaker should adopt a "persona" which would convey a good impression. He could not afford to express or imply beliefs or principles which were likely to be offensive to the jury: at the same time, it was important that he should impose a discreditable "persona" upon his adversary'.[86]

* My grateful thanks go to Professor W.K. Lacey and Dr J.E.G. Whitehorne for their helpful advice and comments on this paper.

82. Isaeus VI 60.
83. *ibid.*, 61.
84. Isaeus VII 33-37.
85. *ibid.*, 38-42. For further references to fighting for the city or paying contributions and the opponent's omission of same see Isaeus II 42, IV 27, X 25-26, XI 47-50.
86. Dover *op.cit.*, pp.5-6.