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## When Literature Becomes Law: An Example From Ancient Greece

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## CLASSICAL APPROACHES

### WHEN LITERATURE BECOMES LAW: AN EXAMPLE FROM ANCIENT GREECE

Mark J. Sundahl†

I. INTRODUCTION.....	331
II. SOLON AND THE TESTAMENTARY LAW .....	332
A. <i>Solon: Poet and Legislator</i> .....	332
B. <i>The Testamentary Law</i> .....	333
III. THE “PERSUASIVE WOMAN” IN GREEK LITERATURE...	335
IV. THE “PERSUASIVE WOMAN” IN THE ATHENIAN COURTS.....	338
V. THE HESIOD LINK: HOW LITERATURE BECAME LAW ..	341

#### I. INTRODUCTION

Most scholarship in the field of law and literature describes how law is reflected in literature. Fewer articles discuss the effect of literature on law, which is a natural consequence of there being relatively few examples of literature having a direct effect on the creation of law. This paper presents one of these rare examples, drawn in this case from ancient Greece, of literature directly influencing the creation of law.

The subject of this paper is the peculiar Athenian law, generally referred to as the Testamentary Law, which permitted a will to be invalidated if a jury determined that the testator composed the will while “under the influence of a woman” (in the original Greek, *gunaiki peithomenos*).<sup>1</sup> While scholars have long argued that the progressive ideas of the archaic poets of ancient Greece inspired political change—such as the emergence of democracy in Athens—this paper makes an even stronger claim regarding the connection between law and literature in ancient Greece. This paper proposes that Solon, the famous Athenian legislator who wrote the Testamentary Law, borrowed the phrase *gunaiki peithomenos* from Hesiod, the renowned

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1. DEMOSTHENES: PRIVATE ORATIONS II 253–54 (A.T. Murray trans., 1939) (Dem. 46.14). Each citation to an ancient text also includes in parentheses the standard reference used by classical scholars. Except as otherwise indicated, all translations from the original Greek are those of the author. The Greek reproduced in this paper has been transliterated to assist the reader in appreciating the poetic devices and literary allusions discussed herein.

poet of archaic Greece, in the expectation that the citizens of Athens would interpret the statute in light of Hesiod's poetry. In short, by inserting Hesiod's language into this statute, Solon turned literature into law.

After a brief introduction to Solon and the Testamentary Law in the next section, Part III of this paper will examine the origin of the phrase "under the influence of a woman" by tracing the evolution of the concept of the "persuasive woman" in the poems of Homer and Hesiod. Part IV will then show that the mythological models of the female enchantress contained in these poems gave rise to a cultural fear of the "persuasive woman" in Greece, which was reflected both in the Testamentary Law as well as in the courtroom speeches of classical Athens. The final part of this paper will examine this unique intersection of law and literature and, in particular, the close connection between Hesiod's poetry and Solon's legislation.

## II. SOLON AND THE TESTAMENTARY LAW

### A. *Solon: Poet and Legislator*

Solon is famous primarily as one of the great legislators of ancient Greece, alongside Draco and Lycurgus.<sup>2</sup> While Lycurgus wrote the laws of ancient Sparta, Draco and Solon were both Athenian lawgivers.<sup>3</sup> However, Solon was not only a famous legislator, but was also one of the premier poets of his era. This multi-faceted genius explains why he is traditionally counted among the "Seven Sages" of ancient Greece.<sup>4</sup>

Solon emerged onto history's stage in 594 B.C. when he was elected to serve as *archon*, or governor, of Athens.<sup>5</sup> During his term in office, he took great strides in transforming Athens from an oligarchy to a more democratic society.<sup>6</sup> Among Solon's first reforms was the aboli-

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2. For a general discussion of Draco's achievements see MOGENS HERMAN HANSEN, *THE ATHENIAN DEMOCRACY IN THE AGE OF DEMOSTHENES* 27–29 (J.A. Cook trans., 1991). Plutarch wrote the original biographies of both Solon and Lycurgus. 1 PLUTARCH, *THE LIVES OF THE NOBLE GRECIANS AND ROMANS* 49–74, 97–117 (Arthur Hugh Clough ed., John Dryden trans., 1992).

3. Draco created the first body of written laws for the Athenians in 621 B.C. in order to promote the rule of law in Athens after a long period of political struggle between the oligarchs and lower classes. See HANSEN, *supra* note 2, at 29. Perhaps due to their notorious severity, most of Draco's laws were eventually repealed. See *id.* Only Draco's homicide laws continued to be in force during the classical period of the fourth and fifth centuries. See *id.* For a general discussion of Draco's homicide law see RONALD S. STROUD, *DRACON'S LAW ON HOMICIDE* (1968); see also EDWIN CARAWAN, *RHETORIC AND THE LAW OF DRACO* (1998) (providing information regarding Draco's homicide law).

4. The Seven Sages who attend the symposium described in Plutarch's *The Dinner of the Seven Wise Men* are Anacharsis, Thales, Chilon, Pittacus, Bias, Cleobulus, and Solon. See 2 PLUTARCH'S *MORALIA* II 348–449 (Frank Cole Babbitt trans., 1971).

5. See HANSEN, *supra* note 2, at 29.

6. See *id.* at 29–31.

tion of debt peonage in Athens (a pivotal event in Athenian history referred to as the *seisachtheia*, or the “shaking-off of the burdens”).<sup>7</sup> Before Solon’s reforms, debtors were frequently forced to secure their obligations not only on their land but also on their own person.<sup>8</sup> This allowed creditors to take defaulting debtors as slaves and resulted in the creation of a deeply indebted underclass of serfs in Athens.<sup>9</sup> Solon ended this practice of debt slavery and cancelled outstanding debts in order to liberate the underclass.<sup>10</sup> Solon also opened up the political system by changing the prerequisites for holding public office to enable Athenians from outside of the established oligarchic families to take part in the administration of Athens.<sup>11</sup> In addition to transforming the social and political landscape of Athens, Solon carried out a review and revision of the Athenian laws, including the law of inheritance which is the subject of this paper.<sup>12</sup>

As mentioned above, Solon was also an important poet of the archaic period.<sup>13</sup> In fact, much of what people know about his accomplishments comes from his own poetry where, for example, he predicts that his new laws will cure Athens of its ailments:

[My law] takes crooked judgments and makes them straight,  
Calms arrogant deeds, stops seditious acts,  
And ends the anger of troublesome strife. And so under it,  
Everything for mankind becomes just and wise.<sup>14</sup>

Solon’s career as both a poet and legislator reflects an extraordinary confluence of law and literature. His strong interest in, and knowledge of, both law and literature created the perfect environment for these two disciplines to interact. Solon’s literary skills undoubtedly helped him with the task of writing laws. The question pursued in this paper is to what extent literature directly influenced the language of Solon’s laws.

## B. The Testamentary Law

Under Athenian inheritance law, a male citizen’s property passed in equal portions to his legitimate male offspring.<sup>15</sup> If a man had no le-

7. See *id.* at 30; ARISTOTLE’S CONSTITUTION OF ATHENS & RELATED TEXTS 73 (Kurt von Fritz & Ernst Kapp trans., 1950) (Arist.Ath.Pol.6.1) [hereinafter ARISTOTLE].

8. See ARISTOTLE, *supra* note 7, at 73.

9. See *id.* at 72–73.

10. See *id.* at 73.

11. See HANSEN, *supra* note 2, at 30–31; ARISTOTLE, *supra* note 7, at 75–76, 120 (Arist.Ath.Pol.8.1,47.1).

12. See HANSEN, *supra* note 2, at 31; ARISTOTLE, *supra* note 7, at 74 (Arist.Ath.Pol.7.1); HERODOTUS, THE HISTORIES 51 (Aubrey de Sélincourt trans., 1988) (Hdt.1.29.2).

13. For a general discussion of Solon’s poetry see ALBIN LESKY, A HISTORY OF GREEK LITERATURE 121–28 (James Willis & Cornelius de Heer trans., 2d ed., 1963).

14. ELEGY AND IAMBUS I 120 (J.M. Edmonds ed., trans., 1968).

15. See S.C. TODD, THE SHAPE OF ATHENIAN LAW 217–18, 223 (1993).

gitimate sons, he had the right to dispose of his estate as he saw fit by means of a will.<sup>16</sup> This right to freely dispose of one's property was enshrined in Solon's Testamentary Law, which is reproduced here in part:

Let [all citizens] . . . dispose of their property as they wish, if they do not have legitimate male children, and if not deranged as a result of dementia, old age, drugs, illness or *being under the influence of a woman*, or compelled by force or constraint.<sup>17</sup>

This law not only granted Athenians the right to freely dispose of their property by means of a will, but it also listed the exceptions to the validity of a will. As is true of modern legal systems, these exceptions to the validity of a will are related to the testator's soundness of mind and freedom of will: the disposition of the testator's property could be enjoined if the testator was insane or was "compelled by force or constraint" when composing his will.<sup>18</sup> Despite a comment by Aristotle in his *Constitution of Athens* that these exceptions were notoriously ambiguous, the basic meaning is clear: the right to dispose of one's property is abridged if the testator was found to be insane or to have been deprived of his free will through physical compulsion.<sup>19</sup> Nor is there any mystery as to the purpose of these exceptions to the validity of a will. Such exceptions were necessary in order to protect the financial security of a household, as well as the interests of rightful heirs, from the irrational actions of a testator. Even the forms of insanity mentioned are, for the most part, familiar and understandable to a scholar of modern law, such as senility or delirium caused by illness or drugs. However, one form of insanity mentioned in the Testamentary Law is not found in the modern legal system, namely the insanity suffered by a man who is "under the influence of a woman" (*gunaiki peithomenos*).<sup>20</sup> This rule—that a will can be invalidated if it is created under

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16. Wills in ancient Athens were typically used by a testator without a male heir for the purpose of adopting a son *post mortem*. See *id.* at 223. The estate would then pass to this adopted son. See *id.* However, there are some instances of bequests of property that more closely resemble the purpose of a modern will. See *id.* at 222 n.23. Regarding Athenian inheritance law and how it related to adoption, see *id.* at 216–27; see also LENE RUBINSTEIN, ADOPTION IN IV. CENTURY ATHENS 78–86 (1993) (providing information about wills connections to fourth-century Athens adoptions). If anyone contested another person's claim to an estate, the inheritance could be challenged in court. See TODD, *supra* note 15, at 220.

17. DEMOSTHENES, *supra* note 1, at 253–54 (Dem. 46.14) (emphasis added). For a general discussion of the Testamentary Law see Eberhard Ruschenbusch, *Diatithesthai ta heautou. Ein Beitrag zum sogenannten Testamentgesetz des Solon*, 79 ZEITSCHRIFT DER SAVIGNY-STIFTUNG FÜR RECHTSGESCHICHTE 307 (1962).

18. See generally EUNICE L. ROSS & THOMAS J. REED, WILL CONTESTS (2d ed. 1999 & Supp. 2005) (analyzing the historical treatment of Anglo-American law regarding will contests).

19. See ARISTOTLE, *supra* note 7, at 107 (Arist. Ath. Pol. 35.2).

20. The phrase *gunaiki peithomenos* translates literally as "being persuaded by a woman," *peithomenos* being the present passive participle of the verb *peitho*, "to persuade." However, the phrase *gunaiki peithomenos* can also be translated as "being

the influence of a woman (referred to hereinafter as the “persuasive woman” exception)—is unique to the Athenian legal system, which raises interesting questions about the cultural factors that motivated Solon to include this exception in his law.

This paper argues that the origin of the Testamentary Law’s “persuasive woman” exception can be found in the long tradition of persuasive women in Greek literature and myth, who use songs, words, and magic to control the minds of men. These tales of powerful women led the Athenians to believe that certain women had an irresistible ability to control a man’s actions, and it was this concept of the dangerously persuasive woman that was encoded into Solon’s Testamentary Law. The following sections describe the origin of this cultural fear of the “persuasive woman” in Greek literature and show how this fear was later reflected in the law and legal culture of classical Athens.

### III. THE “PERSUASIVE WOMAN” IN GREEK LITERATURE

The rise of the “persuasive woman” in Greek myth began with Homer whose poems provide the earliest depictions of women who possess irresistible, supernatural powers. These powerful women of Greek mythology laid the foundation for the cultural fear of the “persuasive woman,” which prompted Solon to include the “persuasive woman” exception in the Testamentary Law. Women figure prominently among the many dangers Odysseus faced during his journey homeward following the Trojan War as narrated in Homer’s epic poem, *The Odyssey*.<sup>21</sup> Apart from the cannibals and monsters (such as Scylla and Polyphemus) he encounters along the way, the greatest threat to Odysseus’s homecoming was the women who tried to prevent him from reaching home—namely, Calypso, Circe, and the Sirens.<sup>22</sup>

Calypso is perhaps the best-known example of a female with extraordinary powers of persuasive rhetoric. Odysseus fell under Calypso’s spell when he landed on the remote island inhabited by the goddess while attempting to sail home to Ithaca.<sup>23</sup> As seen in the following excerpt, Calypso was able to detain Odysseus on her island through the power of words alone: “She constantly with soft and crafty words (*haimulioisi logois*) seeks to bewitch (*thelgei*) him into

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under the influence of a woman” (since influence is the end result of persuasion) or even as “trusting in a woman.”

21. HOMER, *ODYSSEA* (P. Van der Muehl ed., 1993).

22. Regarding Odysseus’s encounter with the cannibalistic Laestrygonians see *id.* at 175–77 (Hom.*Od.*10.80-132). For the passage describing Scilla and Charybdis, see *id.* at 224–26 (Hom.*Od.*201-259). Concerning the tale of Odysseus’s struggle with Polyphemus, the Cyclops, see *id.* at 155–71 (Hom.*Od.*9.116-566). Regarding Calypso, Circe and the Sirens see *infra* Part III.

23. HOMER, *supra* note 21, at 3 (Hom.*Od.*1.48-57).

forgetting Ithaca . . . .”<sup>24</sup> Although some men, such as Odysseus and Nestor, were known for their skilled tongues, the voices and words of women in myth, such as Calypso, were imbued with a certain supernatural quality that is not seen in any male characters. Homer’s choice of the word *thelgei* (“bewitch”) in the excerpt above clearly indicates the magical quality of Calypso’s words.<sup>25</sup> If the reader translates the word *thelgei* simply as “charm,” the reader runs the risk of neglecting the magical power of her speech because the word “charm” can have a rather innocuous meaning in English (in that anyone with a delightful personality might be called “charming”). In contrast, the Greek word *thelgei* denotes a supernatural influence that is more accurately captured by the word “bewitch.” Moreover, Homer leaves no doubt that Calypso’s powers are rooted in the spoken word when he refers to her as the “dread goddess of speech.”<sup>26</sup>

The voices of the Sirens have an equally enchanting effect on Odysseus as he tries to make his way home. The story is well-known: as his ship approaches the Sirens—whose voices are famed for their destructively mesmerizing effect—he orders his men to lash him to the mast while they plug their ears with wax, so that he could listen to the song of the Sirens without fear of being compelled by the power of their voices to steer his ship into the cliffs.<sup>27</sup> Just as in the case of Calypso, Homer uses the word *thelgo* to describe the “bewitching” effect of the Siren’s voices: “Whoever unwittingly draws near and hears the voice of the Sirens, his wife and innocent children will not rejoice when he returns home, instead the Sirens bewitch (*thelgousin*) [him] with their clear song.”<sup>28</sup>

Following in Homer’s footsteps, the poet Hesiod, whose works date to approximately 700 B.C., crystallized the belief that women are naturally endowed with special persuasive powers when he described the mythic creation of the first woman, Pandora, in the famous didactic poem *Works and Days*.<sup>29</sup> In the poem, several major figures from the Greek pantheon, including Hephaestus, Athena, and Hermes, collaborate in Pandora’s creation (hence the name Pandora, or “Gift of All”).<sup>30</sup> Hesiod uses this opportunity to imbue Pandora with all of the qualities of the ideal woman and chooses to highlight the female power of persuasion by having Peitho, the goddess of persuasion, assist in the ornamentation of Pandora by draping her with golden neck-

24. *Id.* (Hom.*Od.*1.56-57).

25. *Id.*

26. *Id.* at 233 (Hom.*Od.*12.449).

27. *Id.* at 222–24 (Hom.*Od.*12.153-200).

28. *Id.* at 218 (Hom.*Od.*12.41-44).

29. See HESIOD, *WORKS AND DAYS* 11–12 (T.A. Sinclair ed., 1932) (Hes.*Op.*59-82). Regarding the date of Hesiod’s compositions see LESKY, *supra* note 13, at 91.

30. See HESIOD, *supra* note 29, at 10–12 (Hes.*Op.*59-82). The creation of Pandora was the price that man had to pay for the gift of fire received from Prometheus. See *id.* at 8–9 (Hes.*Op.*54-58).

laces.<sup>31</sup> Moreover, the god Hermes supplements these persuasive powers by endowing Pandora with “lies and crafty words” (*pseudea th’ haimulious te logous*),<sup>32</sup> a phrase which echoes Homer’s description of Calypso’s “soft and crafty words” (*malakoisi kai haimulioisi logoisin*).<sup>33</sup> The effect of this passage should not be underestimated. In the space of a few lines, Hesiod succeeded in transplanting the Homeric concept of the “persuasive woman” into the myth of the first mortal woman; he thereby made a significant contribution to the Greek cultural belief that the power of deceptive persuasion is an essential component of all mortal women.

When creating powerful female characters, the Greek poets often coupled the woman’s power of persuasion with sorcery to achieve a potent synergistic effect.<sup>34</sup> Sorcery, like persuasion, was one of the ways a woman could influence her world in antiquity. Unable to compete physically with men and prohibited from engaging in political activity, women turned to other methods to express their will. In her essay *Women and Witchcraft in Ancient Assyria*, Sue Rollin explains the rise of witchcraft in ancient society as a result of the exclusion of women from the central institutions of their society, thus requiring that “any power which they held . . . be achieved and wielded indirectly.”<sup>35</sup> Witchcraft was one such form of alternative power that women were thought to have exercised in antiquity. The type of sorcery that occurs in Greek mythology typically involves the use of potions, poisons, or drugs. For example, Circe (called *polupharmakou*, or “of many drugs,” by Homer) captures Odysseus’s men when they happen upon her dwelling not through physical domination (a traditionally male method of control), but by first charming them with her sweet song and then tricking them into eating drugged food.<sup>36</sup> The reader finds in this scene a combination of deception (a sinister form of persuasion) and the administration of drugs.<sup>37</sup> These two elements are frequently matched in mythological stories about powerful women be-

31. See *id.* at 11 (Hes.*Op.*73-74). The name *Peitho* is a nominalization of the verb *peitho* (“to persuade”).

32. See *id.* (Hes.*Op.*77-79).

33. HOMER, *supra* note 21, at 3 (Hom.*Od.*1.56).

34. The connection between rhetoric and magic was also made by the ancient courtroom orators who frequently accused one another of deluding the jury with rhetorical wizardry. For a discussion of this phenomenon see Jon Hesk, *The Rhetoric of Anti-Rhetoric in Athenian Oratory*, in *PERFORMANCE CULTURE AND ATHENIAN DEMOCRACY* 201, 211–14 (Simon Goldhill & Robin Osborne eds., 1999).

35. See Sue Rollin, *Women and Witchcraft in Ancient Assyria*, in *IMAGES OF WOMEN IN ANTIQUITY* 34, 38 (Averil Cameron & Amélie Kuhrt eds., 1983). Scholars have pointed out how women in classical Athens found ways to exert their influence despite attempts by society to limit their power. For example, although excluded from direct participation in politics and, to a large extent, from commerce, Athenian women circumvented these restrictions by actively influencing their husbands at home. See, e.g., ROGER JUST, *WOMEN IN ATHENIAN LAW AND LIFE* 13, 21 (1989).

36. HOMER, *supra* note 21, at 180 (Hom.*Od.*10.226-236).

37. *Id.*



cause deception can aid in the delivery of drugs and poison. For example, Euripides's Medea was successful in carrying out her revenge due to an effective combination of deception and drugs.<sup>38</sup> When Jason abandoned Medea to marry the king's daughter, Glauce, Medea took her revenge by feigning forgiveness and giving Glauce, as a peace offering, a robe that she had secretly smeared with skin-searing poison.<sup>39</sup> Medea's cunning speech of false forgiveness opened the palace doors to her poisonous gifts. Circe shows similar cunning when kindly inviting Odysseus's men inside to partake in a feast of drugged food. Yet another example of the clever employment of poison by a woman is found in Euripides's *Ion*, where Creusa hatches a complex plot to poison her son, Ion, with the blood of Medusa.<sup>40</sup>

Taken together, the foregoing mythological examples of powerful women, who use enchanting words, potions, and poisons to harm men, laid the foundation for the belief in ancient Athens that a woman could exert control over a man's mind. Homer created the epitome of female power in the characters of Calypso, Circe, and the Sirens. Hesiod, then, symbolically imbued all women with the power of persuasion and deception by giving these powers to Pandora, the first woman. As described in the following section, this view of the persuasive woman as a threat to the autonomy of men eventually found its way into the mainstream culture of classical Athens.

#### IV. THE "PERSUASIVE WOMAN" IN THE ATHENIAN COURTS

The stories of Calypso, Medea, and other women of supernatural abilities in Greek mythology gave rise to a cultural fear of the "persuasive woman" in ancient Athens. This belief in a woman's irresistible powers of persuasion is not only reflected in the Testamentary Law, which provided rightful heirs with a defense against women who had influenced the disposition of the testator's property, but is also made explicit in the colorful descriptions of "persuasive women" in the courtroom speeches preserved from the trials of classical Athens.

That the idea of "woman as enchantress" was current in the fourth century is evident in Isaeus's speech *On the Estate of Meneclēs*, which was delivered in front of an Athenian jury in approximately 355 B.C.<sup>41</sup> After two wives had been unable to bear him any children, Meneclēs decided to adopt the brother of his second wife.<sup>42</sup> Twenty-three years later, Meneclēs died, and his brother promptly claimed the estate.<sup>43</sup>

38. EURIPIDES, TEN PLAYS 51–53 (Moses Hadas & John McLean trans., 1960) (E.Med.870-975).

39. *Id.* at 53.

40. *Id.* at 156–58 (E.Ion.978-1038).

41. WILLIAM WYSE, THE SPEECHES OF ISAEUS 236–37 (1904).

42. *See id.* at 23–24 (Is.2.10-12).

43. *Id.* at 232.

This led to litigation between Meneclēs's brother and adopted son.<sup>44</sup> The phrase *gunaiki peithomenos* was at the heart of the brother's case, which centered on the allegation that Meneclēs was not in control of his mental faculties when he adopted the boy because he had fallen under the influence of his ex-wife who then compelled him to adopt her son.<sup>45</sup> In his speech, the adopted son demolishes this allegation by explaining that Meneclēs lived for 23 years after the adoption without ever complaining of the arrangement, and therefore, he could not possibly have carried out the adoption against his will.<sup>46</sup> The interesting point here is not that the charge is easily refuted, but how it is refuted. The allegation that Meneclēs was somehow controlled by his ex-wife's persuasive powers is not ridiculed or dismissed; the idea is instead treated as perfectly rational. It is only by proving Meneclēs's mental acuity and pointing out a lack of evidence of any undue influence that the charge is countered.

Isaeus's speech on Meneclēs's estate suggests a cultural belief in a form of female persuasion that could overpower a man's rational mind. However, Isaeus provides an even more colorful example of an enchantress in his speech *Concerning the Estate of Philoctemon*, which concerns the undue influence of a prostitute by the name of Alce, who was nothing less than a modernized Calypso. Although the erotic nature of Alce's persuasion should not be overlooked, the speaker never describes her influence as sexual. Instead, the speaker tries to convince the jurors that Alce's influence was something much more mysterious and powerful than mere sexual seduction.

Despite its misleading title, the speech *Concerning the Estate of Philoctemon* actually concerns the succession to the estate of a certain Euctemon. One of the main issues in the case was whether Euctemon had any legitimate sons who could claim his estate.<sup>47</sup> Although Euctemon did not himself sire any sons, he did introduce Alce's son into his *phratry*, a community brotherhood before which a father would formally present his sons to be recognized as legitimate offspring.<sup>48</sup> The fact that the *phratry* accepted the boy as legitimate undermined the speaker's claim that no heirs existed. In order to challenge the boy's status as a legitimate heir, the speaker tries to discredit the boy's introduction to the *phratry* by arguing that Euctemon acted under the influence of Alce when he decided to present the boy to the *phratry*.<sup>49</sup> In support of this argument, the speaker provides a melodramatic account of how Euctemon gradually fell under this wo-

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44. *Id.*

45. *See id.* at 20–21 (Is.2.1).

46. *See id.* at 32–33 (Is.2.45).

47. *See id.* at 85 (Is.6.10).

48. *See id.* at 88–89 (Is.6.19–24).

49. *Id.*

man's spell.<sup>50</sup> The trouble allegedly began when Euctemon hired Alce as the manager of a tenement house that he owned. At first he saw her only periodically, but soon she began to exercise an insidious power over him that the speaker compares to the effect of drugs.<sup>51</sup> Euctemon gradually spent more and more time with her until he virtually abandoned his family.<sup>52</sup> It was at this point that he allegedly introduced Alce's son into his *phratry*. What is of greatest interest here is the manner in which the speaker draws on the Homeric image of the enchantress by coupling persuasion with drugs and pointing out how Euctemon abandoned his family, just as Calypso tried to make Odysseus forget his wife and son on Ithaca.<sup>53</sup>

In two other speeches, Athenian litigants attempt to extend the defense of being "under the influence of a woman" to other types of transactions. The plaintiff who delivers Hypereides's speech *Against Athenogenes* claimed to have been defrauded by a certain Athenogenes in the purchase of three slaves and the perfumery they managed (which turned out to be heavily indebted despite assurances from the seller that its debts were negligible).<sup>54</sup> A prostitute by the name of Antigona had colluded with Athenogenes to induce the plaintiff into making the purchase by repeatedly urging the plaintiff to trust Athenogenes.<sup>55</sup> The plaintiff sought to void the sale based on the law prohibiting fraud in the *agora*, the central marketplace of Athens, but the plaintiff also relies, by analogy, on the Testamentary Law by arguing that the fraudulent transaction should be deemed void because the plaintiff had entered into the transaction "under the influence of a woman."<sup>56</sup> From the very beginning of the speech, the speaker blames his actions on Antigona's seductive nature (even describing her at one point as "the most clever courtesan of her time").<sup>57</sup> Although the reader does not know how this case was resolved, the plaintiff's assertion that he had acted "under the influence of a woman" appears to have been acceptable grounds on which to challenge the finality of a business transaction.

The "persuasive woman" argument is employed in an even more remarkable fashion in the speech *Against Olympiodorus*, which was delivered by a certain Callistratus in a case he brought against his brother-in-law, Olympiodorus, contesting the inheritance of a relative's estate.<sup>58</sup> Upon the death of their relative, Callistratus and

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50. *Id.*

51. *Id.* at 88 (Is.6.21).

52. *Id.*

53. HOMER, *supra* note 21, at 3 (Hom.Od.1.57).

54. See HYPEREIDES, *THE FORENSIC SPEECHES* 272–73 (David Whitehead trans., 2000) (Hyp.Ath.4-7).

55. See *id.* at 272 (Hyp.Ath.5).

56. See *id.* at 275 (Hyp.Ath.18).

57. See *id.* at 272 (Hyp.Ath.2-3).

58. DEMOSTHENES, *supra* note 1, at 334–69 (Dem.48).

Olympiodorus entered into a contract pursuant to which they were to share equally in the estate of the deceased.<sup>59</sup> When Olympiodorus breached the contract by keeping the entire estate for himself, Callistratus initiated a court action to enforce the contract.<sup>60</sup> In his speech, Callistratus contends that Olympiodorus's disregard for his contractual obligations was due solely to the influence of a prostitute, and therefore, every action taken by Olympiodorus since they entered into the agreement to divide the estate should be nullified and the terms of the contract should be enforced.<sup>61</sup> In this way, Callistratus attempts to extend the "persuasive woman" exception beyond the narrow context of the Testamentary Law by insisting that "*whatever a man does under the persuasion of a woman is invalid.*"<sup>62</sup> This argument shows that the fear of the "persuasive woman" was so deeply entrenched in the Athenian legal culture that proof of a woman's influence could potentially suffice as a basis for contesting the validity of any legal action.

## V. THE HESIOD LINK: HOW LITERATURE BECAME LAW

The "persuasive woman" exception to the validity of a will reflects a belief that a woman could exert an irresistible influence over a man's affairs. This belief was not only encoded in the Testamentary Law, but it was also clearly expressed by litigants in the courts of classical Athens. As discussed earlier, this belief had its origins in the powerful women of Greek mythology; therefore, a connection exists in this case between law and literature. But how close is this connection? The least that can be said is that both Homer's poems and Solon's law reflect the cultural belief that a woman can mesmerize a man. A more concrete connection between law and literature can be drawn if the mythological figures of Calypso, Circe, and the Sirens can be said to have created the cultural fear of the "persuasive woman" (rather than simply reflecting an existing fear). If this is the case, Homer can be said to have created the cultural fear, which prompted Solon to include the "persuasive woman" exception in the Testamentary Law. Both of these arguments have merit, but there is evidence that an even closer connection between law and literature exists here. This evidence, which is presented below, suggests that Solon actually drew the language of the Testamentary Law directly from one of Hesiod's poems.

The phrase *gunaiki peithomenos* ("under the influence of a woman") does not appear to have been Solon's invention. Instead, it is fairly clear that he borrowed the phrase from the following section of Hesiod's poem *Works and Days*:

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59. *Id.* at 339–41 (Dem.48.8-9).

60. *Id.* at 353 (Dem.48.32).

61. *Id.* at 365–67 (Dem.48.53-54).

62. *See id.* at 367–69 (Dem.48.56) (emphasis added).

*mç de gunç se noon pugostolos exapatato  
haimula kotillousa, teçn diphôsa kaliçn.  
hos de gunaiki pepoithe, pepoith' ho ge phçlçtçsin.*

Do not let a lewd woman cleverly distract  
And deceive your mind, while she looks through your house.  
Whoever trusts a woman, trusts in thieves.<sup>63</sup>

This last line—“Whoever trusts a woman, trusts in thieves”—has a gnomic poignancy that sticks to the mind.<sup>64</sup> It is a sort of mantra for the misogynist. The original Greek also has a resonant ring, due to the repetition of the word *pepoithe* (“he is persuaded” or “he trusts”), which transforms the line into a memorable, if deplorable, aphorism.<sup>65</sup> This line encapsulates the Greek fear of the “persuasive woman” and does so with elegant simplicity.

Solon must have been aware of Hesiod’s language when he inserted the phrase *gunaiki peithomenos* in his law. The words clearly echo the phrase *gunaiki pepoithe* that Hesiod so strongly emphasizes in his poem.<sup>66</sup> Moreover, as an educated man of the sixth century, Solon would have been well versed in the poems of Hesiod, whose stature as a poet was second only to Homer. It is, therefore, likely that Solon deliberately incorporated Hesiod’s language into his law. The many echoes of Hesiod’s language in Solon’s poetry have long been evident to scholars.<sup>67</sup> Therefore, it should not come as a surprise that Hesiod may have also influenced the wording of Solon’s laws.

By using Hesiod’s language in the Testamentary Law, Solon provided the law with a literary background that clarified the meaning of the phrase *gunaiki peithomenos*. Because the poems of Hesiod were well-known in Athens (perhaps even more so than in the rest of the Greek world), Solon likely expected the citizens of Athens to be reminded of Hesiod’s warning about the danger of a seductress who took covert inventory of a man’s house (with the apparent intention to acquire it for herself).<sup>68</sup> This story of the “persuasive woman” seeking to acquire a man’s wealth is precisely the issue that Solon addressed by including the “persuasive woman” exception in his Testamentary Law. As seen in the trials described above, this is also the context in which litigants invoked the defense.

63. HESIOD, *supra* note 29, at 40 (Hes.*Op.*373-75).

64. It is also worth noting that Hesiod alludes to Homer’s descriptions of Calypso in this passage by using the word *haimula* (meaning “cunning,” “crafty,” or “clever”). As discussed above, Homer uses the same word when describing Calypso’s “crafty words” (*haimulioisi logoi*).

65. Regarding the meaning of *pepoithe*, a form of the verb *peitho* (“to persuade”), see HOMER, *supra* note 21.

66. Both *peithomenos* and *pepoithe* are forms of the verb *peitho*, “to persuade.” The forms differ merely due to the different grammatical structures found in the poem and the law.

67. See LESKY, *supra* note 13, at 122–26.

68. See HESIOD, *supra* note 29, at xxxi.

This connection between Hesiod and Solon expands our appreciation of Hesiod's influence on Greek society. That Hesiod's poetry was an impetus for social and political change in the seventh and sixth century has been generally accepted. For example, T.A. Sinclair, in his landmark 1932 commentary on *Works and Days*, called Hesiod a "prophet of justice" and suggested that the teachings contained in the poem regarding the sufferings of the peasant class and the need for justice incited the underclass to demand a more equitable society that, in turn, resulted in political reforms such as those instituted by Solon.<sup>69</sup> However, the recognition of Hesiod's language in Solon's Testamentary Law provides new evidence that Hesiod's influence was even wider than previously understood. For this evidence indicates that Hesiod's poems not only inspired democratic change in Athens, but also contributed, in a more direct way, to the specific language of an Athenian law.

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69. *Id.* at xxxi, xxxiii.