



## LEGAL DEATH AND ODYSSEUS' KINGSHIP\*

### ABSTRACT

*The paper proposes a solution to the problem with Odysseus' kingship in the Odyssey by maintaining that Odysseus is not officially considered dead. Consequently, Telemachus cannot inherit the position of king and Penelope must leave Odysseus' household before remarrying. After discussing the modern concept of legal death and previous interpretations of the Ithacan situation, the paper focusses on Athena's speech at 1.275–92. A close reading demonstrates that erecting a cenotaph to Odysseus would be tantamount to a modern declaration of death in absentia, since it will render Penelope a widow and Telemachus the head of the household. This legal convention chimes with the Homeric depiction of Hades.*

**Keywords:** legal death; death *in absentia*; cenotaphs; *Odyssey*; Odysseus' kingship; Ithacan situation

### INTRODUCTION

Many scholars have been puzzled by the legal status of Penelope and Telemachus at the beginning of the *Odyssey*. Ten years have passed since the end of the Trojan War, and during this time no one has seen or heard from Odysseus. Since the seventh year of his disappearance, the elite men of Ithaca and the surrounding islands have frequented the palace (2.89, 19.151, 24.141), squandering the household's wealth through constant banquets. Such chaos could have taken place only due to the consensus that the king had died on his journey, which resulted in a power vacuum. Odysseus' two male relatives—his father Laertes and his son Telemachus—cannot fill the monarchic void, for a reason which the epic never explains. On the other hand, the suitors seek Penelope's hand to assume the role of king themselves.

Finley succinctly describes the situation with the maxim: 'The king is dead! The struggle for the throne is open!'.<sup>1</sup> But he cannot rationalize this social practice: first, why can Odysseus' adult male kin not take his place, even if temporarily, and second, why should the identification of the next king lie in Penelope's hands? Finley ends his discussion without a decisive explanation, raising the suggestion that 'the Penelope situation had become so muddled in the long prehistory of the *Odyssey* that the actual social and legal situation is no longer recoverable'.<sup>2</sup>

This study proposes a solution to this conundrum by examining death as a social construct with legal implications in Homeric society. It maintains that Odysseus is not officially considered dead and, consequently, Penelope is not a widow and Telemachus cannot inherit his father's throne. Their status can only be altered once Odysseus is honoured with a cenotaph, an act with repercussions similar to modern

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<sup>1</sup> M.I. Finley, *The World of Odysseus* (New York, 1978<sup>2</sup>), 87.

<sup>2</sup> Finley (n. 1), 89.

declarations of death *in absentia*.<sup>3</sup> The first section elaborates on the concept of legal death, drawing on contemporary legal systems and scholarship. The second section then outlines past interpretations of the question of Odysseus' kingship, highlighting their merits and flaws. The third section contains the core of the argument: the difficulties of Penelope and Telemachus stem from Odysseus' paradoxical condition; although the king is widely believed to have died, he has not been declared as such formally. In the first book, Athena tells Telemachus that after he erects a mound to Odysseus, he can marry off Penelope himself. This right—which he currently lacks—implies a new role for him as head of the household, and for Penelope as a widow who may remarry without first returning to her parents. The fourth section considers this legal convention alongside the Homeric depiction of Hades, showing that the funeral is a rite of passage for both the dead and living relatives.

### LEGAL DEATH

Death is, on the surface, a purely biological phenomenon: the cessation of all physiological functions. But the demise of the once-living body nevertheless charges the event with cultural importance, rendering death a social construct. Anthropologists Hertz and van Gennep reveal that many cultures conceptualize death not as a single moment in time, but as a prolonged process. Biological death is, in this view, only the beginning of a series of practices and rituals that culminates in the full incorporation of the deceased into the world of the dead. Focussing primarily on eschatological notions, the ground-breaking studies of Hertz and van Gennep demonstrate that death cannot be simply addressed in terms of physiology, since it is also a cultural construct. However, while they underscore the religious aspects of death, as a sociological phenomenon it similarly falls under the ambit of law.<sup>4</sup>

A legal declaration of death, in modern countries, is an ordinary act performed by people qualified by the state for this mission, such as when people with certain medical training (most commonly physicians) declare time of death. In other cases, the qualified person is a judge, particularly when the physiological state and whereabouts of a certain individual are unknown. Suspicion of death *in absentia* is a complex situation that generates a morass of legal problems concerning the absentee's duties and rights regarding finance, employment and marriage.<sup>5</sup> As long as the absentee is not declared dead, family members must keep paying the absentee's debt without having access to the financial assets, and the spouse cannot dissolve the marriage, claim benefits and

<sup>3</sup> Empty graves are well-attested in ancient Greece; see L. Favreau-Biseul, 'Cénotaphes en Grèce antique, de l'époque archaïque à l'époque hellénistique' (Diss., Sorbonne University, 2021), who shows that they were considered tombs. Cf. D.C. Kurtz and J. Boardman, *Greek Burial Customs* (Ithaca, NY, 1971), 99–100, 257–9.

<sup>4</sup> A relevant concept, which falls beyond the scope of this article, is 'civil death' (*ciuiliter mortuus*), a punitive mechanism in European criminal law codes since antiquity; Rome: *homo sacer*, see G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, transl. D. Heller-Roazen (Stanford, 1998); Holy Roman Empire: *Vogelfrei*, see J. von Schwarzenberg, *Bambergische Halsgerichtsordnung* (1507, ed. Nuremberg, 1979) §241; England and the United States: *Attainder*, see G.J. Chin, 'The new civil death: rethinking punishment in the era of mass conviction', *University of Pennsylvania Law Review* 160 (2012), 1789–1833. Cf. 'social death' for enslavement: O. Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA and London 1982).

<sup>5</sup> J.L. Carriere, 'The rights of the living dead: absent persons in the civil law', *Louisiana Law Review* 50 (1989), 901–71, at 902–3.

life insurance or remortgage a house.<sup>6</sup> Without any evidence that could indicate the absentee's condition, declaration of death can be a long and complicated process; relatives and authorities dealing with uncertainty regarding an individual's physiological state always run the risk of declaring as dead a living person who might one day return home.<sup>7</sup> Legal requirements differ between countries; most commonly, the kin must wait a certain duration of time, usually 5–7 years, before they may approach a judge.<sup>8</sup> Only a ruling by the judicial authorities can establish the absentee as legally dead, thus allowing the close relatives to see to the necessary bureaucratic arrangements.

As will be demonstrated, recognizing the legal implications of death are crucial for understanding the Ithacan situation. While contemporary Western societies view declarations of death exclusively as a secular action, entrusted in the hands of physicians or judges, in Homeric society the legal act is actualized by the mortuary ritual. The funeral serves as a declaration of death: it constitutes the subject as dead and consequently changes the relatives' social status, since the spouse becomes a widow or widower, and the patrimony can be inherited. But before entering the main argument, let us first examine former suggestions raised for the problem with Odysseus' kingship.

### PREVIOUS SCHOLARSHIP

Since Finley, many scholars have attempted to provide a coherent account of the Ithacan situation. John Halverson, for example, rejects the existence of hermeneutical difficulties by problematizing the dichotomic social order in Ithaca.<sup>9</sup> According to him, although Odysseus is defined as βασιλεύς, this word should not be understood as a king with hereditary privileges, but less formally as the most prominent individual in a certain area, especially with respect to wealth.<sup>10</sup> The struggle is not about succession, since the suitors plan on forcing Penelope to leave Odysseus' household only at the beginning while later they collude to kill Telemachus and divide his assets between all of them.<sup>11</sup> The suitors vie over Penelope alone and perhaps the prestige that she will confer on her new husband due to her appearance, lineage or status as the former wife of the renowned Odysseus; marrying Penelope will furnish the new husband with high honour, but not with the office of ruler.<sup>12</sup> Nevertheless, the epic

<sup>6</sup> E. Tucker, 'What happens to someone's finances if they go missing?', *The Guardian*, 1 August 2015, at <https://www.theguardian.com/money/2015/aug/01/what-happens-finances-missing-legislation-families>.

<sup>7</sup> Erroneous declarations of death due to long and unexplained absence still occur: e.g. K. Dailey, 'Brenda Heist: how to come back from the dead', *BBC News*, 3 May 2013, <https://www.bbc.com/news/magazine-22362835>; A. Withnall, 'Living man in Ohio declared "legally dead" despite appearing alive and well before a US judge', *The Independent*, October 11, 2013, <https://www.independent.co.uk/news/world/americas/living-man-in-ohio-declared-legally-dead-despite-appearing-alive-and-well-before-a-us-judge-8874295.html>.

<sup>8</sup> J.H. Wigmore, *Evidence in Trials at Common Law*, vol. 9 (Boston and Toronto, 1981) §2531a at 462. See further Carriere (n. 5), 906–19.

<sup>9</sup> J. Halverson, 'Social order in the *Odyssey*', *Hermes* 113 (1985), 129–45.

<sup>10</sup> Halverson (n. 9), 133–6; cf. C.H. Whitman, *Homer and the Heroic Tradition* (Cambridge, MA, 1958), 307.

<sup>11</sup> J. Halverson, 'The succession issue in the *Odyssey*', *G&R* 33 (1986), 119–28.

<sup>12</sup> Halverson (n. 11), 125; cf. C.G. Thomas, 'Penelope's worth: looming large in early Greece', *Hermes* 116 (1988), 257–64; H. van Wees, *Status Warriors: War, Violence and Society in Homer and History* (Amsterdam, 1992), 285–92; I.J.F. de Jong, *A Narratological Commentary on the Odyssey* (Cambridge, 2001), 40–1 on 386–7.

undermines this interpretation, as is evidenced by the words of the suitor Eurymachus. In his last moments, he discloses the aims of Antinous, the most aggressive suitor of them all (22.49–53):<sup>13</sup>

οὗτος γὰρ ἐπίηλεν τόδε ἔργα,  
οὐ τι γάμου τόσον κεχρημένος οὐδὲ χατίζων,  
ἀλλ' ἄλλα φρονέων, τὰ οἱ οὐκ ἐτέλεσσε Κρονίων,  
ᾧφρ' Ἰθάκης κατὰ δῆμον ἐϋκτιμένης βασιλευοῖ  
αὐτός ...

For he executed these deeds not so much out of desire or need of marriage, but with other thoughts, which the son of Cronus did not fulfil for him, that he himself might be king in the land of well-built Ithaca.

As such, the approach that the suitors' main goal is indeed to take hold of the monarchic power still holds water.<sup>14</sup>

Some scholars solve the problem by arguing that Greek mythology preserves a model of succession through the female line in which transmission of royal power does not pass from father to son, but by marrying the king's daughter.<sup>15</sup> Menelaus, for example, became king of Sparta by taking Helen, the daughter of the former Spartan king Tyndareus, as his wife.<sup>16</sup> Furthermore, similar uxori-local patterns are attested in other Mediterranean cultures, suggesting that this practice was prevalent in more ancient times.<sup>17</sup> This could explain why neither Telemachus nor Laertes can assume kingship. Although Laertes is old, he cannot be much older than Nestor, the active king of Pylos during the Trojan war.<sup>18</sup> According to this interpretation, he is incapable of retaining the throne, even temporarily until Odysseus' return, since he never held the position of king, nor does his lineage have monarchic history.<sup>19</sup> Although the mythological background of the Ithacan royal line is murky, Homer never describes Laertes as βασιλεύς,<sup>20</sup> Telemachus' royal blood, following the same logic, does not afford him the prospect of ruling Ithaca. Only the one who marries Penelope will become the next king of Ithaca, just as Odysseus had done beforehand.<sup>21</sup>

This model, however, does not dovetail with the full social apparatus presented in the Homeric epics. As Westbrook shows, Homeric society recognizes two mechanisms for

<sup>13</sup> Cf. *Od.* 15.521–2, where Telemachus says that Eurymachus is 'most eager to marry my mother and hold Odysseus' honour (γέρας) (μέμονέν τε μάλιστα | μητέρ' ἐμὴν γαμέειν καὶ Ὀδυσσῆος γέρας ἔξειν); see R. Scodel, 'The suitors' game', *AJPh* 122 (2001), 307–27, at 311.

<sup>14</sup> e.g. M.P. Nilsson, *Homer and Mycenae* (London, 1933), 225–6; J.V. Luce, *Homer and the Heroic Age* (New York, 1975), 74. Cf. B.A. Olsen, 'The worlds of Penelope: women in the Mycenaean and Homeric economies', *Arethusa* 48 (2015), 107–38, at 128.

<sup>15</sup> K. Atchity and E.J.W. Barber, 'Greek princes and Aegean princesses: the role of women in the Homeric poems', in K. Atchity, R. Hogart and D. Price (edd.), *Critical Essays on Homer* (Boston, 1987), 15–36; M. Finkelberg, 'Royal succession in heroic Greece', *CQ* 41 (1991), 303–16.

<sup>16</sup> Hence the importance of retrieving Helen to Menelaus: Atchity and Barber (n. 15), 20.

<sup>17</sup> Finkelberg (n. 15), 305, 308

<sup>18</sup> Finley (n. 1), 86.

<sup>19</sup> Finkelberg (n. 15), 306–7. Cf. R. Westbrook, 'Penelope's dowry and Odysseus' kingship', in R.W. Wallace and M. Gagarin (edd.), *Symposium 2001: Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Vienna, 2005), 3–23, at 15–16.

<sup>20</sup> D. Wender, *The Last Scenes of the Odyssey* (Leiden, 1978), 53–4; Westbrook (n. 19), 16. Laertes held other titles; he is mentioned as one of the elders (πατήρ ἄλλοι τε γέροντες, *Od.* 21.21), presumably an institutionalized office, and he likewise held the position of 'lord of the Cephallenians' (Κεφαλλήνεσσιν ἀνάσσειν, see 24.378).

<sup>21</sup> Finkelberg (n. 15), 307; cf. Atchity and Barber (n. 15), 21.

assuming royal power—marriage and inheritance.<sup>22</sup> Kingship may indeed be gained through marriage; territories were considered part of the king's household, οἶκος, and hence were an alienable property which the king could provide as a dowry, thus establishing his new son-in-law as king. Agamemnon, for example, promises that he will give Achilles one of his daughters' hand in marriage together with seven cities, over which he shall rule as king (*Il.* 9.144–56 = 286–98).<sup>23</sup> Although this is not stated explicitly, it is a reasonable assumption that Odysseus won his status in exactly this fashion, since, as noted above, Laertes was seemingly never king. Odysseus was given sovereignty over Ithaca by Penelope's father, the Spartan king Icarius, upon his marriage.

Nevertheless, the transfer of power from father to son is also present in the Homeric epics: while Menelaus won the Spartan throne thanks to his marriage with Helen, his brother Agamemnon succeeded their father Atreus in Mycenae. Moreover, Telemachus' right to the throne is recognized by Antinous, who tells him: 'Would that Cronus' son never make you a king in sea-girt Ithaca, which is your ancestral right by lineage' (μη σέ γ' ἐν ἀμφιάλω Ἰθάκῃ βασιλῆα Κρονίων | ποιήσειεν, ὃ τοι γενεῇ πατρῴων ἐστίν, *Od.* 1.386–7; cf. 15.533–4). Since the monarchy is part of the king's household, a male child can inherit it from his father (cf. 14.207–9). Westbrook explains Telemachus' inability to become king by arguing that Homeric kingship requires two factors: strength and legitimacy.<sup>24</sup> Legitimacy can be acquired either through marriage or through blood. But strength is equally important, meaning that Odysseus won his throne not only due to his marriage with Penelope, and the dowry Icarius had provided her with, but also thanks to his valour and military successes. Telemachus, however, despite his legitimacy by blood, still cannot assume the throne because of his young age and inexperience.<sup>25</sup> The suitors, for their part, are grown men who do possess strength, and they wish to marry Penelope in order to acquire legitimacy.<sup>26</sup>

Westbrook accounts for the situation on Ithaca, but the question of how Telemachus can become king remains. Telemachus at this stage is twenty years old—not a young child by any standards. He has the power to summon and speak before the assembly, even though his authority is yet to be fully recognized,<sup>27</sup> and he enjoys the support of many among the Ithacan population, such as the swineherd Eumaeus. When Odysseus returns, Telemachus helps him to massacre the suitors (22.92–104), showing that he is lacking in neither bravery nor skill. True, he has not fought in a war, but this fact can be attributed to the peaceful years following the Trojan War rather than to any personal flaw. It is moreover unclear why kingship is sometimes treated just like any other tangible possession, while at other times there are some unique restrictions that distinguish it. Whereas 'legitimacy' presupposes a society with established mechanisms for the peaceful transferral of power, the prerequisites of 'strength' are vague and suggest a society in which physical superiority trumps legal procedure. Therefore, the full legal circumstances on Ithaca remain obscure.

<sup>22</sup> Westbrook (n. 19), 3–23, especially 15–20.

<sup>23</sup> See Westbrook (n. 19), 15 who also gives the example of Pharaoh and Solomon in *1 Kings* 9:16.

<sup>24</sup> Westbrook (n. 19), 17, based on Finley (n. 1), 87–91.

<sup>25</sup> Westbrook (n. 19), 17.

<sup>26</sup> Westbrook (n. 19), 17–18.

<sup>27</sup> See S. Besslich, *Schweigen - Verschweigen - Übergehen: Die Darstellung des Unausgesprochenes in der Odyssee* (Heidelberg, 1966), 104–10.

## LEGAL PERSPECTIVE

Finley and subsequent scholars presume that Odysseus is considered dead. This has spawned a nexus of interpretative problems, which those scholars explain through ever-developing hypotheses regarding the social conventions of widowhood and kingship in the Homeric world. None has so far chosen to reexamine the assumption rather than the arguments.<sup>28</sup> The ambiguity regarding Odysseus' condition may, in fact, explain the legal conundrums that Penelope and Telemachus face, since not only is Penelope not considered a widow, Telemachus also cannot take hold of his patrimony.

Indeed, due to Odysseus' long absence, the consensus on Ithaca holds that the king has died. Even Penelope, as part of her pretext, admits that Odysseus is dead (*Od.* 2.96 = 19.141 = 24.131). However, this does not mean that Odysseus has formally been declared dead.<sup>29</sup> When Telemachus speaks with Antinous, he refers to the vagueness regarding his father's physiological condition (2.131–2). This uncertainty is further demonstrated in the first book in the speech of Athena, disguised as Mentor, to Telemachus, where the goddess implores him to look for information concerning Odysseus (1.280–3; cf. 2.212–17):<sup>30</sup>

νή ἄρσας ἐρέτησιν ἐείκοσιν, ἢ τις ἀρίστη,  
ἔρχεο πευσόμενος πατρός δὴν οἰχομένοιο,  
ἦν τις τοι εἴπησι βροτῶν, ἢ ὄσσαν ἀκούσης  
ἐκ Διός, ἣ τε μάλιστα φέρει κλέος ἀνθρώποισι.

Prepare a ship with twenty oars, the best one, and go to learn about your long-lost father, whether a mortal might inform you or you hear Zeus' word, which especially brings tidings to men.

Were Odysseus' death considered a fact, searching for proofs would be redundant. But the possibility, however unlikely, that he is still alive remains and must be examined.<sup>31</sup> The lengthy period since Odysseus was last seen is not sufficient evidence for his death, and an oral account—either of human or divine origin—is required.<sup>32</sup>

Athena's speech at 1.275–92 merits further examination, for in it the goddess enumerates the potential courses of action that Penelope and Telemachus might take, as well as specifying their implications. Although some scholars find the speech chaotic

<sup>28</sup> Finley raises the possibility that 'behind the confusions there lay the understandable uncertainty whether Odysseus was dead or alive, whether Penelope was a widow or not' (n. 1), 89. However, this hypothesis has yet to be adequately addressed.

<sup>29</sup> *Contra* E. Flaig, 'Tödliches Freien: Penelopes Ruhm, Telemachs Status und die sozialen Normen', *Historische Anthropologie* 3 (1995), 364–88, who writes that Penelope's words bear legal power.

<sup>30</sup> Other cases in Greek mythology of people actively searching for information about an absent relative include Europa's siblings after her abduction. Similarly, in Euripides' *Ion*, Creusa arrives at Delphi before her husband to ask about the child whom she abandoned as infant (332–46).

<sup>31</sup> Penelope has, in fact, received many accounts regarding Odysseus, but these were deemed untrustworthy (*Od.* 14.122–30). For the transmission of targeted news and misinformation in Greek antiquity, see I. Levin, 'News and the family in ancient Greece', *CJ* 119 (2023), 159–88.

<sup>32</sup> A similar practice exists in Jewish Law where a woman whose husband's fate is unknown is considered anchored, *Agunah* (עגונה), and she may not remarry (*Yevamot* 10:1–5; *Mishnah*, *Kiddushin* 1:1). The husband's death must be confirmed by an eyewitness account, and the *Mishnah* disputes whether in such cases a woman or a gentile may testify and whether one witness is sufficient, in juxtaposition to the regular Jewish Law (*Eduyyot* 8:5; *Yevamot* 16:5, 7).

and self-contradictory,<sup>33</sup> others argue for its cohesiveness.<sup>34</sup> As will be elaborated in the following paragraphs, the account can be outlined as a series of conditional clauses:

1. If Penelope wishes to remarry, she should return to the household of Icarus, who will marry her off (275–8);
2. If Penelope wishes to remain at Odysseus' palace, Telemachus can look for information about his father (280–3) and:<sup>35</sup>
  - 2a. if he hears that Odysseus is alive and will return, he should wait (287–8);
  - 2b. but if Odysseus is dead, he should perform a funeral and build a tomb, and then marry his mother off (289–92).

The first option is for Penelope to return to her paternal household, where her father should give her hand in marriage to whomever he deems most worthy (1.275–8; cf. 2.195–7):

μητέρα δ', εἴ οἱ θυμὸς ἐφορμάται γαμέεσθαι,  
 ἄψ ἴτω ἐς μέγαρον πατρὸς μέγα δυναμένοιο·  
 οἱ δὲ γάμον τεύξουσι καὶ ἄρτυνέουσιν ἔεδνα  
 πολλὰ μάλ', ὅσσα ἔοικε φίλης ἐπὶ παιδὸς ἔπεσθαι.

And let your mother, if her desire stirs her to marry, return to the grand palace of her mighty father, and they will furnish her with a wedding and place upon her a high dowry (ἔεδνα), as high as befits a beloved daughter.

Under the current circumstances, Penelope must first leave the household of her husband Odysseus in order to remarry. In the patriarchal Homeric society, women lack autonomy and form part of the possessions held by the male κύριος, the head of the household.<sup>36</sup> During the marriage ritual, the bride passes from the guardianship of her current κύριος to that of her new husband. Returning to the previous household is not so much a physical act as a legal one, for it terminates the role of the husband as the bride's guardian.<sup>37</sup> The woman henceforth is no longer married, and her old-new κύριος is allowed to marry her off to another man. In other words, the act of leaving the husband's household dissolves the matrimonial bonds, constituting the separation of husband and wife.<sup>38</sup>

<sup>33</sup> See D.L. Page, *The Homeric Odyssey* (Oxford, 1955), 53–7; G.S. Kirk, *The Songs of Homer* (Cambridge, 1962), 229–30.

<sup>34</sup> E. Siegmann, 'Die Athene-Rede im ersten Buch der *Odyssee*', *WJA* 2 (1976), 21–36; H. Patzer, 'Die Reise des Telemach', *JCS* 16 (1991), 17–35, at 33–5; S.D. Olson, *Blood and Iron: Stories and Storytelling in Homer's Odyssey* (Leiden and New York, 1995), 71–4.

<sup>35</sup> Athena does not account for the possibility that Telemachus will find no information about Odysseus, see S. West, in A. Heubeck, S. West and J.B. Hansworth (edd.), *A Commentary on Homer's Odyssey, vol. 1: Introduction and Books I–IV* (Oxford, 1988), 112 on 287–92.

<sup>36</sup> Olsen (n. 14), 128–9. The same is true for classical Athens, see S. Blundell, *Women in Ancient Greece* (Cambridge, MA, 1995), 114. For further discussion, H. van Wees, 'The invention of the female mind: women, property and gender ideology in archaic Greece', in D. Lyons and R. Westbrook (edd.), *Women and Property in Near Eastern and Mediterranean Societies* (Washington DC, 2005), 1–26; L. Foxhall, *Studying Gender in Classical Antiquity* (Cambridge, 2013), 24–44.

<sup>37</sup> Penelope can seemingly remarry while staying on Ithaca, perhaps since Icarus has already approved her remarriage (19.158–9).

<sup>38</sup> L. Allione, *Telemaco e Penelope nell'Odisea* (Turin, 1963), 30–3; Olson (n. 34), 67 n. 10. The actualization of separation in classical Athens was similar, but required an archon's registration: D.M. MacDowell, *The Law in Classical Athens* (Ithaca, NY, 1978), 88–9; L. Cohn-Haft, 'Divorce in

Athena says that Penelope's parents will provide her new groom with ἔδνα (ἔεδνα). The exact meaning of this term in Homer is much debated, and it is unclear whether the word refers to gifts that the families of both the groom and the bride exchange,<sup>39</sup> or if the ἔδνα are a bride-price exclusively given by the groom to the bride's family.<sup>40</sup> Another thesis maintains that the term can mean either bride-price or dowry, but not both at the same time, and hence it demonstrates a certain inconsistency in the Homeric institution of marriage.<sup>41</sup> In the context of Athena's speech, ἔδνα clearly refer to property which the bride's family provides, best translated as 'dowry' (cf. 2.53, 196–7).<sup>42</sup> But these are not simply gifts given to the groom, but rather assets that carry unique status; whereas the husband may use them freely, the ἔδνα formally remain the possession of the bride.<sup>43</sup> In the act of separation, the husband's household must pay back the dowry to the bride's former κύριος.<sup>44</sup> As discussed above, Penelope's dowry probably includes, *inter alia*, rule over Ithaca.<sup>45</sup> The throne is not the inalienable property of Odysseus' οἶκος, and hence, should Penelope leave it, she would deprive the household of monarchic rights. Royal power over Ithaca would return to Icarius, who could then bestow it upon his new son-in-law, just as he once bestowed it upon Odysseus. Therefore, the suitors do have a strong basis to believe that whoever marries Penelope will become the next king of Ithaca.<sup>46</sup>

Homer does not reveal whether Telemachus would be entitled to the throne if his parents' marriage were dissolved. Yet Penelope's ruse may suggest that Telemachus could lose that right.<sup>47</sup> To delay her separation, Penelope says that she will remarry after finishing weaving a shroud for Odysseus' father Laertes.<sup>48</sup> There are other people in the household, servants and maids, including Odysseus' nurse Eurycleia, but Penelope is seemingly the only one allowed to make the shroud. Moreover, Penelope cannot finish the garment after her separation. The only explanation for these settings is that this task can be performed only by a free female member of the οἶκος. Penelope will not be allowed to complete the shroud after remarrying since the separation would terminate all ties to Odysseus' household. Telemachus, unlike

Classical Athens', *JHS* 115 (1995), 1–14; Blundell (n. 36), 68–9; E.M. Tetlow, *Women, Crime and Punishment in Ancient Law and Society* (New York and London, 2005), 2.65.

<sup>39</sup> M.I. Finley, 'Marriage, sale, and gift in the Homeric world', *RIDA* 2 (1954), 167–94; W.K. Lacey, 'Homeric ΕΔΝΑ and Penelope's ΚΥΠΙΟΣ', *JHS* 86 (1966), 55–68; I. Morris, 'The use and abuse of Homer', *CA* 5 (1986), 81–138.

<sup>40</sup> B. Wagner-Hasel, 'Geschlecht und Gabe: Zum Brautgütersystem bei Homer', *ZRG* 105 (1988), 32–73; I.N. Perysinakis, 'Penelope's ΕΕΔΝΑ again', *CQ* 41 (1991), 297–302; É. Scheid-Tissinier, *L'homme grec aux origines de la cité (900–700 av. J.-C.)* (Paris, 1999), 133–4.

<sup>41</sup> A.M. Snodgrass, 'An historical Homeric society?', *JHS* 94 (1974), 114–25.

<sup>42</sup> Lacey (n. 39), 56; West (n. 35), 110 on 275–8.

<sup>43</sup> See Westbrook (n. 19), 5–6, who gives also parallel conventions in Near Eastern cultures.

<sup>44</sup> Finley (n. 1), 88; Lacey (n. 39), 58; Westbrook (n. 19), 10. This was also the custom in Athens, see A.R.W. Harrison, *The Law of Athens* (Oxford, 1968), 1.56–7; Blundell (n. 36), 68–9, 115–16.

<sup>45</sup> Penelope is described as a 'richly-dowered wife' (ἄλοχος πολύδωρος, 24.294; cf. Andromache: *Il.* 6.394); she brought with her to the marriage two enslaved people, Dolius and Actoris (*Od.* 4.735–6, 23.227–8).

<sup>46</sup> In classical Athens, it was customary (though not obligatory) for the former κύριος to give the second husband the same dowry as the first (e.g. Dem. 40.6): D.M. Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh, 1979), 82, 145 n. 77.

<sup>47</sup> *Contra* Westbrook (n. 19), 6. Cf. Flaig (n. 29), 367–9 on the possible legal implications of Penelope's hypothetical remarriage.

<sup>48</sup> 2.94–102, 19.141–7, 24.128–37. For the act of weaving and unweaving the shroud as a metaphor, see N. Felson-Rubin, *Regarding Penelope: From Character to Poetics* (Princeton, 1994), 17–18; S. Lowenstam, 'The shroud of Laertes and Penelope's guile', *CJ* 95 (2000), 333–48.



Laertes, is related to Penelope by blood, but their relations will have no formal legal status. Telemachus will be entitled only to the property in Odysseus' household, which will no longer include his mother's dowry.<sup>49</sup>

Seeing Penelope's refusal to leave Odysseus, the suitors bid Telemachus to send his mother away against her will (2.113–14). Being the only man in the household, Telemachus appears to possess this privilege. But he refuses to implement it, explaining that 'it is bad for me to repay Icarus a great price, if I send away my mother by my own will' (κακὸν δέ με πόλλ' ἀποτίνειν | Ἰκαρίῳ, ἄ κ' αὐτὸς ἐκὼν ἀπὸ μητέρα πέμψω, 2.132–3). Telemachus probably refers here to a penalty that he would have to pay Icarus in addition to the dowry.<sup>50</sup> He does not explain his refusal through monarchic aspirations, but turns the conflict into a purely economic one. This can be interpreted as evidence of Telemachus' political shrewdness.<sup>51</sup> The suitors are not in the palace to woo Penelope, but to force her separation from Odysseus by squandering the household's wealth (2.123–8, 203–8).<sup>52</sup> Their goal is to make it more profitable for Telemachus to send Penelope away than keeping her in his οἶκος (cf. 19.159, 532–4). Telemachus' response to Antinous pinpoints the flaw in their plan: he requires his family assets in order to send Penelope away, due to the expected financial cost of doing so. Telemachus uses the suitors' ploy against them, hinting that they should stop wasting his resources if they want him to be capable of dissolving his mother's marriage.

This logic behind the actions of Penelope, Telemachus and the suitors demonstrates that the Ithacan situation embodies a coherent rationale within the fictional work. The suitors take advantage of the cloud of obscurity hovering over Odysseus' whereabouts, believing that, in the lack of trustworthy information, Penelope and Telemachus will forever be in the dark concerning their husband/father's fate. They try to force Telemachus into sending Penelope away, which would allow one of them to win her dowry and become king. Since the throne is the suitors' true goal, they are destined to leave the palace after Penelope's separation, making her return to Icarus the first and simplest solution for Telemachus' troubles. But both Penelope and Telemachus refuse to implement this method, supposedly because of the love they hold for their family as well as the ramifications of separation between husband and wife.

Athena, for this reason, presents Telemachus with an alternative: to set sail to find information or, more accurately, to declare Odysseus dead. Widows were not obliged to return to their former household if they had a grown son who could assume the role of κύριος and marry them off.<sup>53</sup> Under current circumstances, Penelope must separate herself from Odysseus before remarrying simply because she is not formally a widow.<sup>54</sup> Athena, however, mentions a prospect for Telemachus to give his mother's hand in marriage (1.287–92; cf. 2.18–23):

<sup>49</sup> The same may be true in Athenian law: sons were entitled to the dowry only if the widow remained in the late husband's household: Dem. 42.27; Blundell (n. 36), 116, 144.

<sup>50</sup> Wagner-Hasel (n. 40), 54; Westbrook (n. 19), 19. Cf. Blundell (n. 36), 115–16. West (n. 35), 140 on 132–3 is uncertain whether Telemachus refers to an additional penalty or the dowry alone.

<sup>51</sup> Homer describes Telemachus with the epithet *πεινυμένος* (2.129), which is reserved for times when he is acting in a canny and calculated fashion, see J. Heath, 'Telemachus ΠΕΠΝΥΜΕΝΟΣ: Growing into an epithet', *Mnemosyne* 54 (2001), 129–57.

<sup>52</sup> Halverson (n. 11), 121.

<sup>53</sup> This was the norm in classical Athens: Harrison (n. 44), 44, 57; Blundell (n. 36), 116.

<sup>54</sup> See similarities with Jewish Law (*Mishnah*, *Yevamot* 16:7 and *Talmud Bavli*, *Yevamot* 222:71). Penelope, however, can decide to undo her marriage and remarry, unlike anchored women in Jewish Law.

εἰ μὲν κεν πατὴρὸς βίοντα καὶ νόστον ἀκούσῃς,  
 ἦ τ' ἂν τρυχόμενός περ ἔτι τλαίης ἐνιαυτὸν·  
 εἰ δέ κε τεθνηῶτος ἀκούσῃς μηδ' ἔτ' ἐόντος,  
 νοστήσας δὴ ἔπειτα φίλην ἐς πατρίδα γαίαν  
 σήμα τέ οἱ χεῦσαι καὶ ἐπὶ κτέρεα κτερεῖξαι  
 πολλὰ μάλ', ὅσσα ἔοικε, καὶ ἀνέρι μητέρα δοῦναι.

If you should hear that your father is alive and returning, then—despite suffering greatly—you might still endure a year. However, if you hear that he has died and no longer lives, thereupon—having returned to your beloved fatherland—raise a mound and honour him with magnificent rites, as appropriate, and give your mother to a man.

As long as Odysseus is alive, Telemachus has nothing to do but keep on waiting. All the problems are expected to be solved with Odysseus' return, as finally occurs at the end of the epic. But if Telemachus hears that Odysseus is dead, only then can he raise a mound—a cenotaph in fact—in his father's memory. After completing the funerary procedures, he himself is to marry Penelope off, and not her father. Thus, erecting a mound to Odysseus would allow Penelope to remarry without first leaving Odysseus' οἶκος.

As for Telemachus, he cannot inherit his patrimony, including the royal power over Ithaca, for the same reason: his father is still considered to be alive. Since royal power—like women—is held just as any other property, it is under the exclusive domain of the κύριος. The ability of Telemachus to marry off his mother by himself after the funeral demonstrates his new role as her guardian, instead of Odysseus. Being the new κύριος he would gain control over Odysseus' assets, including his mother's dowry,<sup>55</sup> and finally assume the position of king. When giving Penelope's hand in marriage, he would be providing her new husband with ἔδνα of his choosing and would not be obliged to relinquish the throne. Therefore, Telemachus' current inability to assume kingship stems from the social norms regarding death, widowhood and inheritance in Homeric society. Odysseus' cenotaph would serve as a declaration of death *in absentia*, freeing Penelope and Telemachus from their current legal limbo.

#### THE RITE OF PASSAGE: RELIGION AND LEGAL CONVENTIONS

Odysseus' hypothetical cenotaph has drawn the attention of scholars attempting to rationalize the practice of erecting empty tombs in Homeric society. Rohde offers two explanations for this phenomenon; the first relates to the Homeric heroes' desire for glory.<sup>56</sup> The funeral mound is a vital part of the Homeric hero's mortuary dues, as it ensures that his glory will pass down to posterity.<sup>57</sup> An empty tumulus could also represent the dead in the world of the living; Menelaus narrates how, upon hearing of

<sup>55</sup> As in classical Athens: Harrison (n. 44), 57; Blundell (n. 36), 114.

<sup>56</sup> E. Rohde, *Psyche: The Cult of Souls and Belief in Immortality among the Greeks*, transl. W.B. Hillis (London and New York, 1925), 42–3. For the concept of inextinguishable glory, see e.g. N. Loraux, 'The "beautiful death" from Homer to democratic Athens', transl. D.M. Pritchard, *Arethusa* 51 (2018), 73–89; J.-P. Vernant, 'A "beautiful death" and the disfigured corpse in Homeric epic', in F.I. Zeitlin (ed.), *Mortals and Immortals: Collected Essays* (Princeton, 1991), 50–74.

<sup>57</sup> I. Morris, *Burial and Ancient Society: The Rise of the Greek City-State* (Cambridge, 1987), 46; see also A. Schnapp-Gourbeillon, 'Tumuli, sema and Greek oral tradition', in O. Henry and U. Kelp (edd.), *Tumulus as Sema: Space, Politics, Culture and Religion in the First Millennium BC* (Berlin and Boston, 2016), 205–17.

the murder of his brother Agamemnon at Mycenae, he raised a mound in Egypt 'so that his glory would be inextinguishable' (χεῦ' Ἀγαμέμνονι τύμβον, ἴν' ἄσβεστον κλέος εἶη, 4.584).<sup>58</sup>

However, according to Rohde, this explanation emerged as a later rationalization of a practice which originally pertained to the soul's well-being in the afterlife.<sup>59</sup> Beliefs in life after death are ubiquitous, and anthropologists in the nineteenth and early twentieth centuries discussed the requisite of funerary honours for appeasing the dead soul and allowing for its incorporation in the company of the dead.<sup>60</sup> As for the *Iliad* and *Odyssey*, Homer depicts diverse—and sometimes contradictory—notions regarding the afterlife.<sup>61</sup> Yet a repeating depiction in the epics dovetails with van Gennepe's model of the funeral as a rite of passage, since the dead are unable to enter Hades without receiving due honours.<sup>62</sup> The most striking portrayal of this perception is the appearance of Patroclus' ghost to the dreaming Achilles (*Il.* 23.69–74):

εὔδεις, αὐτὰρ ἐμεῖο λελασμένος ἔπλεν Ἀχιλλεῦ.  
οὐ μὲν μευ ζῶοντος ἀκήδεις, ἀλλὰ θανόντος·  
θάπτέ με ὅτι τάχιστα πύλας Αἴδαο περήσω.  
τῆλέ με εἴργουσι ψυχαί, εἰδῶλα καμόντων,  
οὐδέ μέ πω μίσγεσθαι ὑπὲρ ποταμοῖο ἐῶσιν,  
ἀλλ' αὐτως ἀλάλμηαι ἀν' εὐρυπυλῆς Αἴδος δῶ.

You sleep, yet you have forgotten me, Achilles. You neglect me not while I am alive, but in death; provide me with a funeral with all speed that I may pass Hades' gates. The souls and shadows of those whose work is done keep me far away and do not let me join them beyond the river, and thus I wander above the wide-gated house of Hades.

Patroclus' words reveal that the kingdom of the dead is not automatically accessible to all souls, but is an enclosed space, separated off by a river and a gate from which the other dead souls exclude those not properly honoured. Similarly, when Odysseus descends to Hades, he first encounters the spirit of the recently deceased Elpenor since his corpse had been left unburied (*Od.* 11.51–4).<sup>63</sup> As Elpenor has not received funerary rites, his soul does not dwell with the rest of the dead whom Odysseus is to meet, but in some outer space near Hades' gates, allowing Odysseus to encounter

<sup>58</sup> See Schnapp-Gourbeillon (n. 57), 208; cf. C. Sourvinou-Inwood, 'Reading' *Greek Death: To the End of the Classical Period* (Oxford, 1995), 120–1, on the grave of Patroclus in the *Iliad*.

<sup>59</sup> Rohde (n. 56), 42, 54 n. 87.

<sup>60</sup> See e.g. J.G. Frazer, 'On certain burial customs as illustrative of the primitive theory of the soul', *The Journal of the Anthropological Institute of Great Britain and Ireland* 15 (1886), 63–104; R. Hertz, *Death and the Right Hand*, transl. R. Needham and C. Needham (New York, 1960), especially 58–61; A. van Gennepe, *The Rites of Passage*, transl. M.B. Yizedom and G.F. Caffee (Chicago, 1960), 146–65.

<sup>61</sup> For a full discussion, see Sourvinou-Inwood (n. 58), 10–107.

<sup>62</sup> For the applicability of van Gennepe's paradigm to ancient Greece, see J.N. Bremmer, *The Early Greek Concept of the Soul* (Princeton, 1983), 89–108 for Homeric and archaic literature, and R. Garland, *The Greek Way of Death* (Ithaca, NY, 1985), 21–76 (especially 38–47) for Archaic and Classical times, with a focus on Athens.

<sup>63</sup> The souls whom Odysseus meets in Hades cannot speak, but make 'squeaking' or 'hissing' noises, until they receive blood, see Bremmer (n. 62), 84–5. The reason that Patroclus and Elpenor maintain their cognitive abilities can be attributed to the fact that their bodies have yet to decompose; cf. G.G.E. Mylonas, 'Burial customs', in A.J.B. Wace and F.H. Stubbings (edd.), *A Companion to Homer* (London, 1962), 478–88, at 484; Vernant (n. 56), 68. According to Hertz (n. 60), 41–4, the soul is incorporated within the soft tissue.

him before all others.<sup>64</sup> The entrance to Hades is illustrated as a physical liminal space between the two realms for the dead who are yet to receive honours. Their intermediate condition is also manifested in Patroclus' ability to communicate with the living through dreams, which themselves function as a liminal cognitive state between wakefulness and sleep, parallel to the state between life and death.<sup>65</sup>

The Homeric depiction of Hades corresponds with the tacit legal conventions that have given rise to the problems with Odysseus' kingship. It is not the physiological condition, but the funeral itself that *ipso facto* constitutes one's status as dead.<sup>66</sup> Subsequently, the legal and economic implications of death are actualized after the funerary rites are completed. The metaphysical belief and social conventions mirror each other since the funeral functions as a rite of passage for the dead and the bereaved alike. The performative power of the ritual defines death, which further affects the social status of the relatives: the spouse becomes a widow/widower, while the male kin can inherit the patrimony.<sup>67</sup> Therefore, the widespread belief that Odysseus died *in absentia* is immaterial. Before Telemachus erects a cenotaph in his father's memory, the king is not (legally) dead.

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<sup>64</sup> Bremmer (n. 62), 89–90; S.I. Johnston, *Restless Dead: Encounters between the Living and the Dead in Ancient Greece* (Berkeley, Los Angeles and London, 1999), 9.

<sup>65</sup> The two states are intertwined in Greek mythology; Death (Thanatos) and Sleep (Hypnos) are twin brothers who often collaborate as a pair (Hom. *Il.* 14.230–1, 16.671–3; Hes. *Theog.* 211–12, 756–61).

<sup>66</sup> Later authors discuss cases of people who returned after a cenotaph was erected in their name, calling them 'later-fated' (ὕστερόποτοι) or 'double-fated' (δευτερόποτοι) and explaining that they bore death-pollution until undergoing a purification ritual that imitated childbirth or infancy (Plut. *Quaest. Rom.* 5; Hsch. δ 746 Latte–Cunningham). Euripides' *Alcestis* might echo a similar custom (1144–6), see E.P. Trammell, 'The mute Alcestis', *CJ* 37 (1941), 144–50; G.G. Betts, 'The silence of Alcestis', *Mnemosyne* 18 (1965), 181–2. R.M. Newton, 'The rebirth of Odysseus', *GRBS* 25 (1984), 5–20 argues that the *Odyssey* also attests to the practice.

<sup>67</sup> In Athenian law, heirs made claims for inheritance by proving they completed the funerary duties (e.g. Isae. 4.19; Dem. 44.32–3; Lys. 31.21); Morris (n. 57), 54.