

## GREEK SANCTIONS AGAINST SEXUAL ASSAULT

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GREEK LITERATURE offers no strict definition of sexual assault, but there were definite sanctions against the offense in both law and custom.<sup>1</sup> While the victim of such assault could be either male or female, the issue of sexual assault of women raises special problems, because in certain circumstances sexual assault could have been treated as adultery.

The sexes were usually segregated from each other in ancient Greece,<sup>2</sup> and the opportunity for sexual contact with women from men outside their families was far more limited, especially in times of peace, than it is in modern Western society. Husbands and fathers kept their wives and daughters under their protection at home in part because they did not trust them,<sup>3</sup> but also because they did not trust other men.<sup>4</sup> Women themselves were aware of the need for protection from men outside their families.<sup>5</sup> Greek standards of modesty demanded that women be protected from any sort of physical contact with any man not her husband,<sup>6</sup> and

1. The original version of this paper was presented before the panel of the Women's Classical Caucus at the meetings of the American Philological Association in Vancouver in December 1978. I would like to thank M. Alexander, M. Gagarin, A. Henrichs, M. Ostwald, and the anonymous referee of *CP*, all of whom read the paper at various stages and whose comments and suggestions improved it at many points.

2. Segregation of the sexes varied according to social class; see K. J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Oxford, 1974), p. 98; S. J. Pomeroy, *Goddesses, Whores, Wives, and Slaves* (New York, 1975), pp. 79–81; J. Gould, "Women in Classical Athens," *JHS* 100 (1980): 40.

3. Although Euphiletus is represented as trusting his wife after she had given birth to a child (Lys. 1. 6), his suspicions could be easily aroused (1. 17). One reason for close supervision is the Greek male view of female sexuality. For the Greek view that women enjoy sex more than men, see Dover, *Greek Popular Morality*, p. 101; idem, "Greek Attitudes to Sexual Behavior," *Arethusa* 6 (1973): 65 (with a reference to Hes. frag. 275 Merkelbach and West); cf. Gould, "Women in Classical Athens," p. 38, n. 1.

4. For the natural sexual urges of men, see Dem. 54. 14, and for the difficulty of restraining these urges, Xen. *Mem.* 2. 1. 4–5. Cf. Men. *Epit.* 1123–24 ἡ φύσις ἐβούλεθ', ἥ νόμων οὐδέν μέλει / γυνὴ δ' ἐπ' αὐτῷ τῷδ' ἐφν; Plut. *Con. Prae.* 144E; and Ar. *Nub.* 1070 (for the male view that women enjoy rough sexual treatment). The idea that males are the natural initiators of heterosexual intimacy is reflected in the fact that Greek verbs for sexual intercourse are used in the active of the male and in the passive of the female (e.g., LSJ, s.vv. βινέω, λαγνέω, ὀπνίω, σποδέω; Arist. *EN* 1148b15–9a20). Verbs used in the active of the female are derisive and would not apply to proper Athenian matrons; see D. Bain, "φίκει, φικίω, \*φικιδίζω," *ZPE* 52 (1983): 56. For the threat of young men to married women, see [Plut.] *De lib. ed.* 12A.

5. Plut. *De mul. vir.* 249E–F, where the women of Amphissa, fearing that the Dionysiac Thyiades who had fallen asleep in the agora might be assaulted, set up a silent vigil around the sleeping women. It should be noted that the men from whom the women of Amphissa wanted to protect the Thyiades were not the local men of Amphissa, but soldiers quartered there. The women of Amphissa were not themselves at risk because they were protected by their *kyrioi* or guardians. In the same account (249D–E) Plutarch says that if men and women were allowed to associate with one another daily, there would be less fear about seduction and adultery—an idea not generally accepted.

6. The most exaggerated delicacy of this sort is represented by Lys. 3. 6 and Dem. 47. 53.

the situations in which a woman's (and therefore her family's) reputation were considered compromised encompassed a wide range of behavior.<sup>7</sup> Despite such care, however, unacceptable sexual contact did occur. Seduction of a free woman under the protection of a *kyrios* was considered wrong. The term for this activity was *μοιχεύειν* (usually translated as "commit adultery"), whether the woman was married or not.<sup>8</sup>

Ancient Greek has no explicit term for "rape" in the sense of "sexual intercourse committed by force," but several expressions used in Greek to mean assault can, in certain circumstances, denote rape. The noun *βιασμός*, "violence," when used with an objective genitive meaning "girl" or "woman" covers what we would call "rape" (Men. *Epit.* 453 Sandbach); the fact that pregnancy could result from *βιασμός* means that the word could be used for sexual attacks (Dion. Hal. 1. 77). There are several verbs used to express an act of violence or the use of force against another person, and some of these can be used in certain contexts to mean "assault sexually," especially if the direct object is female. *βιάζεσθαι* (Plat. *Leg.* 874C; Xen. *Hell.* 6. 4. 7; Plut. *Sol.* 23, *De mul. vir.* 250A; Paus. 4. 4. 2) and *βιάσθαι* (Hdt. 3. 80, 4. 43, 6. 137), "force," and *δαμάζεσθαι* (*Leg. Gort.* 2. 11–12), "subdue," belong to this category. With these words the emphasis is on the use of force (cf. Eur. *Hipp.* 885–86). *ὑβρίζειν*, "outrage," and *αἰσχύνειν*, "shame," are also used in the context of sexual assault (Lys. 1. 32; Plat. *Leg.* 874C; Isoc. 15. 251; Aeschin. 1. 15; Plut. *Eum.* 9, *Alex.* 12; Dio Cass. 76. 7. 1; Paus. 1. 21. 4). In these cases the violence of the act is defined by its effect on the victim. *Ἀρπάζειν*, "seize," can be used in conjunction with one of these other verbs in a context where sexual assault is meant (e.g., Plut. *Sol.* 23; Lucian *Hermot.* 81), but when used independently with a female or child as direct object, does not in itself refer to sexual assault, but to abduction.<sup>9</sup> The Greeks con-

7. If a man made suspicious remarks to a woman in the presence of her *kyrios*, he could expect retaliation (Hyp. *Lycoph.* frag. 4b. 5–6). In Macedonia before the first Persian invasion of Greece, the fondling of married women's breasts by Persian envoys was grounds for the men's deaths (Hdt. 5. 18–20).

8. U. E. Paoli, "Il reato di adulterio in diritto attico," *SDHI* 16 (1950): 123, 130–39; Dover, *Greek Popular Morality*, p. 209. The issue of the woman's consent is a delicate one. The verb *μοιχεύειν* is not used in the active voice for a female subject. This fact, however, is consistent with the use of verbs for sexual intercourse; see n. 4 above. Euphiletus' wife, as portrayed in Lys. 1, is certainly a willing, even provocative partner.

9. P. Walcot, "Herodotus on Rape," *Arethusa* 11 (1978): 137–47, claims that Herodotus, in his preliminary discussion of the source of enmity between the Greeks and Persians, attributes the hostility to a series of rapes. Herodotus uses the term *ἀρπαγή*, which Walcot translates as "rape," using it in the modern English sense of "sexual assault." LSJ, s.v. *ἀρπαγή*, however, when translating the Greek word by "rape," uses "rape" in its original English sense of "violent robbery" or the "act of taking something by force." The examples given do not refer to sexual assault, but to robbery, plundering, and abduction. It is in this last sense that Herodotus uses the term to describe the stealing of Io by the Egyptians, of Europa by the Cretans, of Medea by the Greeks, and of Helen by Alexander. When Herodotus means "sexual assault," it is its violence that his language stresses: *βιάται γυναῖκας* (3. 80), *ἐβήγατο παρθένον* (4. 43), *βιάσθαι σφέας* (6. 137). Where he uses *ἀρπαγή* or *ἀρπάζω*, he describes only abduction (2. 118; 5. 94; 6. 65, 138). Plutarch makes the same error as Walcot, describing the women in the first chapters of Herodotus as *βιασθείσαι* (*De Her. mal.* 857A), the type of term which Herodotus himself avoids. Plutarch is more accurate elsewhere (*Amat.* 755C), where abduction (*ἀρπαγή*) is coupled with, but precedes, rape (*βιασμός*). L. Gernet, "Observations sur la loi de Gortyne," *Droit et société dans la Grèce ancienne* (Paris, 1955), p. 53, also makes a distinction between abduction and rape. For *ἀρπαγή* as a term for homosexual abduction, see J. Bremmer, "An Enigmatic Indo-European Rite: Paederasty," *Arethusa* 13 (1980): 285.

sidered ἀρπαγή as reprehensible as sexual assault, but not identical to it.<sup>10</sup>

For our understanding of Greek legal sanctions against rape, we must rely upon two types of sources: legal evidence from inscriptions recording laws or from speeches presented in court; and literary accounts (historical or legendary anecdotes and works of fiction). Evidence of the first kind is, of course, more reliable, but most of what is preserved comes from Athens and Gortyn. Other cities may have had similar sanctions and laws, but it is likely that there was some diversity.

In Athens there were several laws concerned with *moicheia* and sexual assault. These laws were not systematic and did not strictly define either offense. There was a law against forcible rape, reported in two versions, one in a speech of Lysias (1. 32), and the other in Plutarch's *Solon* (23). In both versions the emphasis is on the penalty, and in each case that penalty is a monetary fine. Each version describes the fine in a different way, but I shall argue later that both versions belong to the same law.

There was no specific lawsuit for sexual assault in Athens, but the offense would have been covered under one of two more general charges. A man who had been raped or the *kyrios* of a female or a boy who had been raped could bring a *δίκη βιαιών* (a charge of assault) against the offender. Such a suit was not restricted to cases of sexual assault, however,<sup>11</sup> and the penalty was only monetary.<sup>12</sup> Because the suit was private, the damages would have been paid to the victim himself, if he were a male adult, or to the *kyrios*, if the victim were a female or a boy. Another suit that could be brought in cases of sexual assault was a *γραφὴ ὕβρεως*. Because a *graphe* was a public and not a private suit, action could have been brought by someone other than a victim or a victim's *kyrios*. *Hybris* against a free man, woman, child, or slave was actionable (Aeschin. 1. 15; Dem. 21. 45–50). *Hybris* as a legal term is not strictly defined, but it appears that it was felt to involve a kind of arrogant attitude accompanying excessively violent acts meant to bring shame or dishonor to a victim.<sup>13</sup> The charge of *hybris*, however, was rather general, applicable to crimes other than sexual assault.<sup>14</sup>

10. Ἀρπαγή was not an offense at Athens: J. H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig, 1903–15; repr. Darmstadt, 1966), p. 442. Cf. *RE* 7.2 (1912): 2395, s.v. ἀρπαγῆς γραφή (Thalheim), where it seems that the suit for ἀρπαγή elsewhere was one for theft.

11. It could be used in cases of illegal enslavement: see Lys. 23. 12.

12. A. R. W. Harrison, *The Law of Athens*, vol. 1 (Oxford, 1968), p. 35.

13. D. M. MacDowell, "Hybris in Athens," *G&R* 23 (1976): 16–31, esp. 26–27, emphasizes the attitude of the offender, while N. R. E. Fisher, "Hybris and Dishonour: I," *G&R* 23 (1976): 177–93 and "Hybris and Dishonour: II," *G&R* 26 (1979): 32–47, concentrates, more correctly, on the effects of *hybris* on the victim; M. Gagarin, "The Athenian Law against Hybris," *Arktouros: Hellenic Studies Presented to Bernard M. W. Knox on the Occasion of His 65th Birthday*, ed. G. W. Bowersock et al. (Berlin and New York, 1979), pp. 229–36, points out that in *Rhet.* 1373b28–74a17 Aristotle indicates that the definition of *hybris* depends not so much on the attitude of the offender, but on his intent.

14. K. J. Dover, *Greek Homosexuality* (Cambridge, 1978), p. 36, argues that rape would not necessarily make the offender liable to a charge of *hybris*. He would exempt rape that was the result of exuberant sexual feeling, committed with no intention of harming the victim; but certainly it is the effect on the victim, not the attitude of the rapist, that is the determining factor. In support of Dover, it is rape of the kind that he describes for which the young men of Menander's plays seem so easily to be forgiven; but we should note that Menander's young men never have to face an Athenian jury.

Fourth-century writers associate three Athenian laws with *moicheia*. One law requires a husband who catches<sup>15</sup> an adulterer to cease living with his wife or face the possibility of *atimia*; the guilty woman is barred from public religious ceremonies ([Dem.] 59. 86–87). A second law exempts from prosecution a *kyrios* who kills an adulterer caught in the act with a woman under his guardianship. Demosthenes includes this law in a list of four situations where homicide is not considered a crime. Describing one of two situations of intentional homicide,<sup>16</sup> he says that if a man kills a person whom he finds in intercourse with his wife, mother, sister, daughter, or concubine with whom he consorts for the purpose of producing freeborn children, he shall not be exiled [for homicide] (23. 53). The law applies only in situations where the offender is caught in the act and protects only a man who is connected by kinship, marriage, or a recognized relationship with a free woman. A third law protected an accused adulterer and allowed for a suit (*γραφὴ ἀδίκως εἰρχθῆναι ὡς μοιχόν*) to be brought against the man who had unjustly detained him. If the suit was unsuccessful, the offended *kyrios* could perform in court on the assailant any punishment he chose, as long as he did not use a knife ([Dem.] 59. 66). None of these three laws actually defines *moicheia*; they are concerned instead only with the penalties for those involved.

The statement that comes closest to defining *moicheia* occurs in the law on intentional homicide attributed by Demosthenes to Draco, where Demosthenes describes the offense as being caught in the act of intercourse with a free woman under the protection of a *kyrios*. A paraphrase of this law by Lysias (1. 30),<sup>17</sup> and a reference to the law by Aristotle (*Ath. Pol.* 57. 3),<sup>18</sup> indicate that later Athenians took it to refer to *moicheia*. Both Lysias and Aristotle use the same phrase: *μοιχόν λαβών*. Plutarch refers to the same law but calls it a law of Solon, and says that it gave the man who caught a *moichos* the right to kill him (*Sol.* 23). Nothing in Demosthenes' version of the law, however, excludes rape. In fact, in a myth about the first trial for intentional homicide at Athens, Ares is acquitted of the killing of a man caught in the act of raping his daughter (Paus. 1. 21. 4 *αἰσχύναντα*).<sup>19</sup> The myth obviously incorporates the law on inten-

15. Or "procures the conviction of": see Harrison, *The Law of Athens*, 1:36, n. 1.

16. See M. Gagarin, "Self-Defense in Athenian Homicide Law," *GRBS* 19 (1978): 116–17.

17. Lysias paraphrases the law in a speech written for the defense of Euphiletus, a husband who claims to have caught an adulterer with his wife. The content of two of the laws read in court can be inferred from Euphiletus' gloss. One of these, which he calls "that law from the stele on the Areopagus," is the same one that Demosthenes attributes to Draco. Euphiletus says that whoever catches an adulterer with his wife (1. 30 *ὅς ἂν ἐπὶ δαμαρτί τῇ ἐαυτοῦ μοιχόν λαβών*; for *ἐπὶ δαμαρτί*, cf. Dem. 23. 53) will not be punished. In the next sentence, when Euphiletus adds that the lawgiver allowed a man caught in *moicheia* with another man's *pallake* to be killed, he repeats another of the protected relationships mentioned by Demosthenes. The law summarized by Lysias and cited by Demosthenes is not included on the preserved part of a fifth-century copy of Draco's law on homicide from the Stoa Basileios (*IG* 1<sup>2</sup>. 115), for which, see R. S. Stroud, *Drakon's Law on Homicide* (Berkeley, 1968). M. Gagarin, *Drakon and Early Athenian Homicide Law* (New Haven, 1981), pp. 26–28, suggests that a separate stele was located on the Areopagus, recording the laws of concern to that court.

18. Giving three of the four cases of justifiable homicide listed by Demosthenes, Aristotle includes the situation of a man who catches and kills an adulterer.

19. Cf. Apollod. 3. 14. 2 (*βυζόμενος*); the original version goes back to Hellanicus, for which see *FGrH* 323a F 22.

tional homicide attributed to Draco. It does not seem likely that the Athenians would have tolerated a legal inconsistency in a story meant to glorify the Areopagus, one of their hallowed institutions. At the time the story was invented, therefore, the law attributed to Draco was apparently believed to cover rape as well as *moicheia*. There are two possible explanations: either Draco's law did not distinguish between *moicheia* and rape, but covered all types of proscribed sexual intercourse with a free woman; or the definition of *moicheia* itself could in certain circumstances (e.g., when the *moichos* was caught in the act?) include a situation where the woman was not a willing partner.

Neither of these explanations is entirely satisfactory, because in both sources where the penalty for rape is compared with the penalty for *moicheia*, *moicheia* is contrasted with rape and distinguished from it by the severity of the penalty imposed. Both Lysias and Plutarch believe *moicheia* to be a far more serious crime in Athens, and both believe that the penalty for *moicheia* exceeded the penalty for sexual assault. In his discussion of laws about sexual offenses, Plutarch says that Solon gave "to the one who catches a *moichos* the right to kill him, but if anyone seizes (ἀρπάσῃ) a free woman and forces (βιάσῃται) her, he assigned the penalty of one hundred drachmas" (*Sol.* 23).<sup>20</sup> Plutarch is distressed that the punishment for *moicheia* is so severe, while the penalty for sexual assault is so mild. If, however, there were some basic distinction between the two acts, the difference in penalty might be explicable. One distinction might lie in the fact that *moicheia* was thought of as taking place in the woman's home, as in the case of Euphiletus' wife in Lysias 1,<sup>21</sup> and that rape was considered to be an act that took place outside her home, as in Menander's *Epitrepontes*, where a young woman is assaulted on the way home from a religious festival (450–54).

In Lysias 1, Euphiletus' discussion of the penalties for *moicheia* and sexual *bia* makes the same distinction in penalty as Plutarch does and offers an explanation. In order to prove that the punishment for *moicheia* is greater than the punishment for sexual assault, he paraphrases a law on sexual assault: "If someone shames by force [αἰσχύνῃ βίᾳ] a free man or child, the penalty is assessed at double the damage.<sup>22</sup> If anyone [shames by force] a woman for whom it is permissible to kill [him], he is liable to the same penalty" (1. 32). For dishonoring by the use of force a woman in the category of wife, mother, daughter, sister, or concubine of an Athenian citizen, the offender owes double the damage. In other words, a *moichos* could be killed, but a rapist only pays a fine. The difference in penalty, according to Euphiletus, is due to the fact that *moicheia* occurs by means of persuasion, sexual assault by means of force. He argues that the law allows a greater penalty for the *moichos* because the use of persuasion to effect compliance corrupts the woman's soul and casts doubt

20. E. Ruschenbusch, ΣΟΛΩΝΟΣ ΝΟΜΟΙ, Historia Einzelschriften 9 (Wiesbaden, 1966), p. 64, T 8 and p. 77, F 28.

21. Paoli, "Il reato di adulterio," p. 123.

22. It is not clear from the Greek whether δειπλῆν refers to the doubling of the assessment of the damage to the victim, or to the doubling of the fine in a previous law: see below, pp. 102–3.

on the paternity of her husband's children. It can be argued from this that sexual assault, only *bia* against the body of the woman, does not cause her to betray her *kyrios* or guardian. Here, then, is one explanation for the problem that troubles Plutarch; the possible distinction between *moicheia*, as an offense that takes place in the home, and sexual assault, as an offense that takes place elsewhere, provides another.

The law on sexual assault paraphrased by Lysias is consistent with the law on sexual assault described by Plutarch. The language defining the offense is similar. Plutarch uses the verb *βιάζεσθαι*; Lysias uses the expression *αἰσχύνειν βιά*. The use of the verb *αἰσχύνειν* by Lysias' speaker is more apt to reflect the appearance of decorum that he is trying to convey than the wording of the law itself, but the idea of force (*bia*) as the defining feature in sexual assault is present in both versions and indicates that both laws covered the same offense. The law reported in Lysias' text, however, extends the range of sexual assault to include both free men and boys as well as women. Nevertheless, while Plutarch includes his version of the law among a list of sexual offenses against women, there is no reason to believe that the law on sexual assault he attributes to Solon referred in its original form only to women. Plutarch paraphrases only that part of the law that refers to women because sexual offenses against women are his immediate subject.

One issue troubling commentators is the apparent inconsistency between the penalty for sexual assault described by Plutarch (one hundred drachmas) and the penalty described by Lysias. Lysias' text might mean that the amount was fixed by assessing the damage to the victim and doubling that amount. Lipsius and D. M. MacDowell accept this interpretation and assume that the law had changed since the time of Solon.<sup>23</sup> If this were true, the earlier version of the law, the one attributed to Solon, would cover a case where the penalty was fixed by law (*ἀτίμητος*) and the second, the one paraphrased by Lysias, one assessed in court (*τιμητός*). G. Glotz, whom Harrison appears to follow, suggests that Lysias paraphrases only part of the law and that the complete version defined the penalty for violating a free person as twice that for violating a slave.<sup>24</sup> In this case both versions could cover a situation where the penalty was

23. Lipsius, *Das attische Recht*, pp. 259, 435, 639; MacDowell, *The Law in Classical Athens* (London and Ithaca, 1978), p. 124, appears to follow Lipsius, accepting (n. 261) the questionable evidence of Harpocration, s.v. *βυαίων* (which he wrongly attributes to *Lex. Cant.*, s.v. *βυαίων δίκη*), that the offender had to pay equal amounts of compensation to the woman's *kyrios* and to the state.

24. *La solidarité de la famille dans le droit criminel en Grèce* (Paris, 1904), pp. 393–94. Harrison, *The Law of Athens*, 1:34–35, n. 2, puzzled by the procedure for assigning a value to a person's chastity and the doubling of it, is inclined to follow Glotz. Unfortunately, a similar law parodied by Herondas (who attributes it to Charondas from Ionian Catana) is no help: *ἐπὶν δ' ἐλευθέρος τις αἰκίσθη δούλην / ἢ ἑ(λ)κων ἐπίσπη, τῆς δίκης τό τίμημα / διπλοῦν τελεῖτω* (2. 46–48). The offense seems to be assault, not rape, and the speaker, a pimp who probably owns female slaves for hire as prostitutes, could be compensated for damage to his property. F. Salviat and C. Vatin, "La répression des violences sexuelles dans la convention entre Delphes et Pellana, le droit d'Athènes et les *Lois* de Platon," *Inscriptions de Grèce centrale* (Paris, 1971), p. 72, suggest that in Lysias 1. 32 Euphiletus quotes only part of the fourth-century law on sexual assault, maintaining that there must have been a two-part penalty, a fixed amount set by law (as in the law attributed to Solon) plus an amount to be set by the court to cover twice the loss of other damage incurred in the attack. They seem right on the first point, wrong on the second.

fixed by law. The fine mentioned by Plutarch refers to the case of sexual assault of a free woman. Sexual assault of a slave, by the formula in Lysias, would therefore require a fine of fifty drachmas. On the whole, the interpretation of Glotz seems preferable to that of Lipsius and MacDowell because it would not then be necessary to assume that the procedure for fixing the penalty for sexual assault had changed over time. Further, a graduated scale of fines for sexual assault at Athens would correspond to the system at Gortyn.<sup>25</sup> Whichever the case, it still remains that at Athens it was believed that *moicheia* could be punished more severely than sexual assault.

We do not know whether Euphiletus' arguments convinced the jury, but he at least expected these arguments to be believable. The fact that he so carefully distinguishes between *moicheia* and rape indicates that he thought his audience would make the same distinction. What then does this mean for our discussion of the original law attributed to Draco? That law did not distinguish between *moicheia* and rape. A myth whose plot depends on an interpretation of that law assumes that it referred to rape as well as to *moicheia*. I would like to suggest that the original law on intentional homicide was stated almost exactly as it stands in Demosthenes' text (23. 53), that its intention was not to distinguish between rape and *moicheia*, but simply, as it states, to exonerate a *kyrios* who killed someone caught in intercourse with a woman under his protection.<sup>26</sup> At some time between this law and the speech of Lysias, another law, one on sexual assault, was introduced, whether by Solon, as Plutarch says, or by someone else. This new law encouraged a distinction between rape as an act of violence, and *moicheia* as an act of choice. Because of this distinction, the original law came to be thought of as a law on *moicheia*, and when later writers, such as Lysias, Aristotle, and Plutarch, refer to it, they describe it as a law on *moicheia*.<sup>27</sup>

In spite of Euphiletus' rhetoric, it is important to notice that his argument is sophistic. He wants to argue that the punishment for the adulterer is death, but he alludes only to that law which allows for the death of a *moichos* in one specific situation. The law does not require but only allows the offender to be killed, and it allows this only if he is caught in the act. Euphiletus tries to make the jury believe that the law on intentional homicide (1. 30) sets death as the penalty for the *moichos*. He chooses not to mention that there was a legal procedure for redress in cases of adultery, a *γραφὴ μοιχείας*, heard by the Thesmothetai (*Ath. Pol.* 59. 3). Granted, the penalty in such a case could be more severe than the penalty for sexual assault, but it is not the death penalty, as Euphiletus

25. As argued by S. Cataldi, "Commento storico-giuridico al trattato di assistenza giudiziaria tra Delfi e Pellana," *ASNP*, 3d ser., 7.2 (1977): 540–41.

26. Gagarin, *Drakon*, p. 118, points out that such a law "allowing the killing of an adulterer caught in the act . . . can easily be thought of as a prescription for lawful homicide."

27. Cf. Lys. 1. 30, *Ath. Pol.* 57. 3, and Plut. *Sol.* 23 for the phrase *μοιχὸν λαβών*. It is possible, but not likely, that such a phrase stood in the original law. At any rate, other later writers assumed the law to refer to *moicheia*. Xenarchus frag. 4 Kock (*Ath.* 13. 569A) and Pausanias 9. 36. 8 both refer to Draconian legislation about *moicheia*.

would like the court to believe.<sup>28</sup> From the speech delivered against Neaera, it is clear that in another type of suit, where an accused *moichos* charged the woman's *kyrios* with illegal imprisonment and lost, the *kyrios* could do in court whatever he wished to the adulterer, as long as he did not use a knife ([Dem.] 59. 66). Physical punishment of the adulterer was allowed, but the offended *kyrios* probably could not kill a convicted adulterer in this type of suit.<sup>29</sup> Although we do not know what the possible penalties were in a *γραφὴ μοιχείας*, it is unlikely that this suit would have allowed a greater punishment.

If little is known about the procedure for prosecution of violence against women, even less is known of actual cases.<sup>30</sup> Dinarchus says that a man named Themistius was condemned to death because during the festival at Eleusis he had dishonored (*ὑβρίσεν*) a young female musician from Rhodes (*Dem.* 23). There is nothing to show that the offense of *hybris* accompanied an act of sexual assault,<sup>31</sup> and it is not even clear that the suit was a *graphe* for *hybris*.<sup>32</sup> Lucian describes a scene in which the uncle of a youth complains that he had to pay a talent because his nephew had lost a *δίκη βιαιῶν* for raping a neighbor's daughter (*Hermot.* 81), but Lucian is not necessarily a reliable source for the classical period.

28. As Lipsius points out, *Das attische Recht*, pp. 432–33, n. 50. Harrison, *The Law of Athens*, 1:35, and W. K. Lacey, *The Family in Classical Greece* (London, 1968), p. 114, apparently believe Euphiletus. In Lysias' text Euphiletus says that a man who catches an adulterer can do anything to him he wishes (1. 49). One assumes that this refers to situations where the *moichos* is caught in the act. The nature of the punishments popularly thought to have been possible is indicated by Ar. *Nub.* 1083 (and schol.), *Plut.* 168, and schol. ad *Thesm.* 537. That adulterers actually survived such punishment is shown by a remark in Isaeus 8. 44, where it is said that Diocles had been caught in adultery, but that the punishment he suffered had not made him give up the habit. As Harrison points out (*ibid.*, n. 2), Lycophron was charged with *moicheia*, but the death penalty to which he was liable if convicted was the result of the procedure (*εἰσαγγελία*), not the charge (*Hyp. Lycoph.* 20). On punishments for adultery at Rome, see A. Richlin, "Sources on Adultery at Rome," *Women's Studies* 8 (1981): 228 (repr. in *Reflections of Women in Antiquity*, ed. H. P. Foley [New York and London, 1981], p. 382) and "The Meaning of *Irrumare* in Catullus and Martial," *CP* 76 (1981): 40–46.

29. Paoli, "Il reato di adulterio," p. 149, suggests that the convicted adulterer could be thrashed to death in court, but can cite no evidence.

30. MacDowell, "Hybris in Athens," p. 29, says that there is no extant speech from a *γραφὴ ὑβρεως*, but Fisher, "Hybris I," p. 192, n. 15, points out that a speech of Isaeus against Diocles (frag. 6 Budé) was written for such a case. The issue of that speech, however, is not rape, but disenfranchisement. In *Dem.* 54. 8–9 Ariston argues that Konon showed *hybris* when he assaulted him, but Ariston brought a *δίκη αἰκείας* against Konon instead of a *γραφὴ ὑβρεως*. Cf. Harp., s.v. *ἀξιοί*, for a possible lost speech of Antiphon about *hybris* against a boy.

31. Fisher, "Hybris I," p. 193, n. 44, lists passages where *hybris* seems to refer to sexual acts between men and women. Of the passages which he says refer to rape, only Hdt. 6. 137 and Eur. *Hipp.* 1073 are unambiguous. Men can behave with *hybris* toward women in many ways. The possible range of the actions by a man against a woman that can be described as originating from *hybris* can be illustrated by three examples. In the first, Electra's peasant husband explains that he has refrained from sexual relations with his wife because it would be an act of *hybris* for a man of his status to sleep with a woman of her class even though she is his wife (Eur. *El.* 45–46). In the second, when Hippias refuses to allow the sister of Harmodius to carry a basket in a religious procession, the dishonor to the sister (and therefore to Harmodius) is described as *hybris* (Arist. *Pol.* 1311a–b; cf. Thuc. 6. 57). In the third, Andocides attacks Alcibiades for openly bringing mistresses into the same home with his legal wife and calls this an act of *hybris* (*Alc.* 14). None of the acts called *hybris* in these examples would be actionable in a court of law. For use of the term *hybris* in situations where rape might be part of disrespect to women, see Thuc. 8. 74; Isoc. 4. 114; *Hyp. Epit.* 20 (corrupt).

32. MacDowell, "Hybris in Athens," p. 29, suggests that the case was one of *προβολή* and that the charge actually involved not the *hybris* itself, but interference with the religious festival. There is nothing in Dinarchus to imply that sexual assault was involved.



No other contemporary evidence for legal proceedings in specific cases of sexual assault is extant from classical Athens. The only other evidence comes indirectly from Roman comedy and the late rhetorical tradition. In Roman adaptations of lost Athenian plays, an unmarried man could be compelled to marry his rape victim.<sup>33</sup> Further, in Greek and Roman rhetorical exercises of late antiquity, there are references to different laws relating to the punishment of men who rape young women. For instance, Hermogenes reports that a girl who has been raped can choose either that the rapist die or that he marry her (*Peri stas.* 10 Rabe 87). Sopater says that the penalty for rape was a fine of one thousand drachmas (*Rhetores Graeci* 8. 362 Walz); he also reports that if a man raped a girl at a *panegyris*, he had to pay ten thousand drachmas (8. 370–73). As with the story told by Lucian, these amounts seem very high when compared with the actual Athenian evidence.<sup>34</sup>

The *Controversiae* of the elder Seneca preserve several model debates based on two hypothetical laws, one of which says that a girl who has been raped can choose either death for a rapist or marriage to him without dowry,<sup>35</sup> and another which says that a rapist will die unless he wins over the injured girl's father and his own within thirty days (*Controv.* 2. 3). The second is in obvious contradiction with the first, where the choice is left to the girl instead of her father. S. F. Bonner argues that the first is not inconsistent with Athenian custom, basing his argument on the tradition from New Comedy as it appears in the plays of Plautus and Terence.<sup>36</sup> Except, however, for a single example where one of Menander's characters seems obliged to obtain his father's permission to marry a girl whom he has seduced (*Fab. inc.* 30–31),<sup>37</sup> there is nothing extant from Athens to confirm this. In general, the laws quoted in the rhetorical exercises are not reliable. Their origins are unknown, and they are quoted in exercises whose purpose was not to teach law, but to teach public speaking. Further, all the laws on rape, as reported in the rhetorical exercises of the Imperial period, both Greek and Latin, are concerned with the seduction or rape of unmarried virgins, a limitation that is not characteristic of the laws for classical Athens.

There is no way to know just how many cases actually came to trial at Athens. Women, of course, although they could appear as witnesses, could not prosecute a suit.<sup>38</sup> A woman's *kyrios*, in any private suit, would

33. Plaut. *Aul.* 793–95; Ter. *An.* 780, where it is emphasized that Glycerium is an Athenian. For comments on these passages, see Lipsius, *Das attische Recht*, p. 482, and Harrison, *The Law of Athens*, 1:19, n. 2. On the reliability of Roman comedy for Athenian law, see E. Fantham, "Women in New Comedy," *Phoenix* 29 (1975): 44–45.

34. Lipsius, *Das attische Recht*, p. 639, and Cataldi, "Commento storico-giuridico," p. 539, discount them. Cf. [Quint.] *Decl.* 252. For other examples, almost certainly fictitious, see J. Meurs, *Themis Attica*, vol. 2 (Lugduni Batavorum, 1685), pp. 18–19.

35. *Controv.* 1. 5, 3. 5, 7. 8, 8. 6; cf. [Quint.] *Decl.* 262, 270, 280, 286.

36. *Roman Declaration in the Late Republic and Early Empire* (Berkeley, 1949), pp. 89–90.

37. Harrison, *The Law of Athens*, 1:19, n. 2.

38. But they could issue the summons: Ar. *Vesp.* 1406–8; MacDowell, *The Law in Classical Athens*, p. 238. Women could not conduct suits themselves: see Harrison, *The Law of Athens*, 1:32, 108; schol. Ar. *Eq.* 969a–c (Jones), cited by Harrison as 965.

have had to act as prosecutor, but a comment by Aeschines indicates that husbands were reluctant to testify about a wife's infidelity.<sup>39</sup> In addition to the scandal of a public trial, the requirement that the husband divorce an unfaithful wife might have been awkward because the husband would have had to return her dowry. From the fact that Eratosthenes tried to strike a bargain with Euphiletus before Euphiletus killed him (Lys. 1. 25), it is clear that an offended *kyrios* could have made a cash settlement out of court with a *moichos* in order to avoid the scandal that a court case would have involved. Such a settlement would be risky, however, because the suit for *moicheia* could be brought by someone else. The foregoing rules apply to *moicheia*; in the case of sexual assault, one would expect a *kyrios* to be ready to initiate a suit because the offense was clearly not the woman's fault, but there is no evidence on this point.<sup>40</sup>

Socially at least, the consequences of *moicheia* were considered more important to the woman's family than to the woman herself. The consequence to be feared was the introduction into the family of a bastard child, especially a bastard son.<sup>41</sup> One would expect the same concern to apply in cases of sexual assault of a female, but there is no evidence on this point. Nevertheless, if pregnancy resulted from a sexual assault, it is possible that the child would have been exposed. A literary illustration of a rape followed by pregnancy and exposure of the child occurs in Euripides' *Ion*, where the text makes clear that Creusa was raped and not seduced (437–38).<sup>42</sup> In several plays of Menander the plot turns on the fate of a child who is born after a rape and exposed.<sup>43</sup>

The consequences of sexual assault for a female victim are not a consideration in Attic law. Any monetary compensation would go to her *kyrios*, not to her. Harrison assumes that a married victim of rape would have been liable to the same fate as a woman caught in *moicheia*, who could not continue to live with her husband and who was permanently barred from participation in public religious rites.<sup>44</sup> The law on this issue, however, may not distinguish married from unmarried women,<sup>45</sup> and would not necessarily apply to a victim of sexual assault. The issue of exclusion from religious ceremonies raises the issue of possible ritual pollution for a woman caught in *moicheia*. If the issue is one of defilement,

39. Aeschines claims (1. 107) that he had been unable to get any men whose wives had been seduced by Timarchus to testify in a suit for *moicheia*.

40. Plato's proposal for a law on sexual assault is of course no evidence for actual Athenian practice, but it is of interest to note that he gives to the victim the right of killing a rapist (*Leg.* 874C). He states that the punishment for sexual assault of a free woman or child is death at the hands of the victim or the victim's father, brother, or sons.

41. This point is developed by Lacey, *The Family*, p. 115; see also Harrison, *The Law of Athens*, 1:32.

42. Cf. Soph. *Tyro* (frags. 648–69 Radt) and Eur. *Mel. Des.* (frags. 489–516 Nauck<sup>2</sup> and Page, *GLP* 13).

43. For example, *Samia*, *Epitrepontes*, *Phasma*. For a discussion of the motif of rape in the plays of Menander, see Fantham, "Women in New Comedy," pp. 53–55, 67–68.

44. For the Athenian penalties for a woman caught in *moicheia*, see [Dem.] 59. 85–86, discussed by Harrison, *The Law of Athens*, 1:36, n. 1.

45. Unless *γυνή* means "wife" in [Dem.] 59. 87.

it might also have applied to a woman who had been raped: she may have been considered defiled whether it was her fault or not.<sup>46</sup>

An unmarried woman guilty of *moicheia* was considered unfit for marriage. One of the accusations brought against Lycophron, allegedly a notorious seducer, was that he had made many women unfit for marriage, forcing them to remain unmarried in their fathers' homes (Hyp. *Lycoph.* frag. 4b. 12). This evidence is inconsistent with a law attributed to Solon by Plutarch, which, while unattested elsewhere, allowed a father or brother to sell an unmarried daughter or sister into slavery (*Sol.* 23), and may have been designed to provide a remedy for a *kyrios* who did not want to risk *atimia*. The evidence about Lycophron, then, may only indicate that fourth-century custom did not necessarily coincide with earlier law.

An unmarried victim of sexual assault may have suffered the same fate as a girl who had been seduced. Menander's plays, however, suggest that an unmarried victim of rape might escape conventional opprobrium by marrying her assailant (if he were also suitably eligible). The successful resolution of Menander's plots often depends in fact on the satisfactory marriage of a victim and her attacker. It is important to observe in these cases that the girl has been raped and not seduced.<sup>47</sup> Sexual passion is expected of a young man but is unforgivable in a young woman. The victim of rape is superior to a woman who has been seduced in only this respect: the sexual activity was not her fault. Consequently, she is still marriageable, but only to her attacker. How common such marriages were, we have no way of knowing. Menander is certainly not to be trusted on this point, just as he is not to be trusted on the survival of exposed infants, another frequent motif in his plays.

The discussion thus far of Athenian laws and customs about *moicheia* and sexual assault results in the following observations. The Athenians did distinguish between the two offenses in law, in procedure, and in penalty. Our difficulty in reconstructing these distinctions arises from the chance survival of the evidence. While we know that there was a law

46. Aeschines says that a woman caught in adultery would be excluded from public sacrifices because she might corrupt other women (1. 183), but it is clear from the treatment of women caught in adultery at Cumae that it was thought that such a woman could be a source of pollution (Plut. *Quaest. Graec.* 219F). In the speech against Neaera ([Dem.] 59. 85–86; see note 44, above), it is argued that a woman caught in adultery must be excluded from sanctuaries and sacrifices on pain of any punishment just short of death for two reasons: (1) to protect sanctuaries from pollution and impiety (*μιάσματα* and *ἀρεθίσματα*) and (2) to establish a punishment great enough to inspire fear in order to encourage women to live modestly. For control of women's ritual activity as a means of social control, see B. J. Garland, "Gynaikonomoi: An Investigation of Greek Censors of Women" (Ph.D. diss., Johns Hopkins University, 1981), pp. 150–53, and H. Mills, "Greek Clothing Regulations: Sacred and Profane?" *ZPE*, forthcoming. Included on a list of ritual prohibitions relating to sexual abstinence, from a cult of Men at Sunium in the second century, is a requirement that a man who has committed sexual assault or forcible rape not be allowed to sacrifice: F. Sokolowski, *Lois sacrées des cités grecques* (Paris, 1969), p. 106, no. 55.8. I know of no such restriction for victims of rape. See Plut. *Quaest. Graec.* 300E, for an explanation of the exclusion of women from the sanctuary of the hero Eunostos: he died because of a woman's false accusation of rape. For a different view on punishment of adultery and pollution, see R. Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford, 1983), pp. 94–97.

47. See A. W. Gomme and F. H. Sandbach, *Menander: A Commentary* (Oxford, 1973), pp. 33–34, where it is made clear that marriage would be preferable to a lawsuit.

against *moicheia* because we know the procedure for prosecution (*γραφὴ μοιχείας*), we may not have the law about *moicheia* itself. We do know that there was a law against sexual assault, but we are not told, except in myth, what could happen if a *kyrios* killed a man he caught raping his wife, sister, daughter, or *pallake*.<sup>48</sup> We know the laws concerning the penalties for women guilty of *moicheia*, but we have no legal evidence for possible consequences for the victim of sexual assault. The last two issues would not be troublesome if there were some reason to believe that *moicheia* with a woman and *bia* against a woman were considered to have the same result, but there is no evidence for that belief.

Although the penalties for adultery in cities other than Athens are sometimes known,<sup>49</sup> little is known about the penalties for sexual assault in other cities of Greece. An exception is Gortyn on Crete, the only place for which there is evidence of a clear linguistic and legal distinction between *moicheia* and rape. The laws of that city, preserved on an inscription of the mid-fifth century B.C.,<sup>50</sup> list separate penalties for each offense and refer to adultery and rape by different terms. Rape is described by the expression *κάρτει οἴπει* (*Leg. Gort.* 2. 3), which refers explicitly to sexual intercourse by force.<sup>51</sup> The penalties for rape vary with the social class of the victim and the social class of the offender. The highest compensation is demanded in the case of the rape of a free man or woman by a slave (2. 5–7; two hundred staters). Half of that amount is required in the case of the rape of a free man or woman by a free person (2. 3–4). Rape of a person of the rank of *ἀπέταιρος* (a term which may refer to a free person with no political rights)<sup>52</sup> is compensated by the payment of ten staters (2. 5). If a free person rapes a male or female slave, the penalty is only five drachmas (2. 7–9; two drachmas equal one stater), while if a male slave rapes a male or female slave, the penalty is five staters (2. 9–10).<sup>53</sup> In none of these cases is there any distinction between

48. But see Harrison, *The Law of Athens*, 1:34–35.

49. At Locri a man caught in adultery had his eyes cut out (Heraclid. Pont. 30. 3, *FHG* 2:221; Ael. *VH* 13. 24). At Leprium a man caught in adultery was bound and led through the city for three days and a woman was punished by being forced to stand in the agora wearing transparent clothing (Heraclid. Pont. 14, *FHG* 2:217). In Pisidia an adulterer was led around the city on a donkey (Nic. Dam. *FGrH* 90 F 103.1); see P. Schmitt-Pantel, "L'âne, l'adultère et la cité," *Le charivari* (Paris, 1982), pp. 117–22.

50. Inscribed in the middle of the fifth century, the laws of Gortyn reflect an earlier tradition. For the date, see L. H. Jeffery, *The Local Scripts of Archaic Greece* (Oxford, 1961), pp. 310, 315; R. F. Willetts, *The Law Code of Gortyn*, *Kadmos* Suppl. 1 (Berlin, 1967), pp. 8–9.

51. Dover, *Greek Homosexuality*, p. 123, describes *οἴπειν* as a "very blunt word for sexual intercourse," referring to its appearance on a series of early (seventh-century B.C.) inscriptions on Thera: *IG* 12.3. 536, 537, 538b. It is likely that Mimnermos used this word (frag. 21a West).

52. Willetts, *The Law Code of Gortyn*, p. 12.

53. The issue of social classes at Gortyn is a thorny one. In the laws of the city free citizens are called *ἐλευθεροί/ἐλευθέρα*. There is a second class of free people called *ἀπέταιροι* who, although free, are excluded from rights of citizenship. The non-free population is described by two terms: *φοικεύς/φοικέα* and *δοῦλος/δοῦλα*. Late writers describe a class on Crete halfway between slave and free, defining it as attached to the land (Strab. 12. 542, 15. 701; Ath. 6. 263E–64A). Willetts, *The Law Code of Gortyn*, pp. 13–15, argues that this is actually a class of serfs, to be distinguished from slaves that could be bought and sold. The fifth-century laws, however, use the terms *φοικεύς* and *δοῦλος* almost interchangeably, usually to refer to the class attached to the land. Willetts (pp. 16–17) suggests that the laws refer only twice to slaves that can be bought and sold, namely, in 2. 11–16, the passage on sexual violation of a female domestic slave, and in 7. 10–15, where the rules for buying and selling of slaves are listed. Concurring with M. Guarducci, *Inscriptiones Creticae*, vol. 4 (Rome, 1950), p. 153, I have translated both *φοικεύς*

the rape of a man and the rape of a woman.<sup>54</sup>

Immediately following the list of penalties for rape, the inscription records two special categories of offenses related to, but not identical with, rape. As opposed to rape, which could be directed against either a male or a female, these two offenses are directed only against women. The first is described by the expression *κάρτει δαμάσαιτο* (2. 11–12), which refers to subjection or seduction by force. *Δαμάζω* and *δάμνημι* are commonly used to mean “tame” if the object is an animal, and to mean “seduce” if the object is a woman.<sup>55</sup> Implied in the second meaning of the term is the idea of domination of a man over a woman and the consequent sexual submission of the unwilling female. The term could be used of the submission of a wife to her husband,<sup>56</sup> or of an unmarried woman to an aggressive seducer. The action described by the word is not necessarily immoral. In the law from Gortyn, however, it is the accompanying expression “by force” and the characterization of the victim as a female slave “belonging to the home” that makes the activity illegal. Compensation for the crime is high: five staters. The same amount is demanded for the rape of a slave by a slave, but in the present situation five staters would be demanded even from a free man (who otherwise would be liable for a fine of only five drachmas for rape of a female slave not “belonging to the home”). The reason becomes clear in the next line, where it is stipulated that if the victim has been previously seduced (*δεδαμν[α]μέναν*), the fine is only one obol by day, two by night (2. 13–15). Clearly a higher premium is placed on a female domestic slave who is a virgin. There are two possible explanations for this. One is that a virgin would be more valuable should she be sold. The other is that her master has *ius primae noctis*. Thus the activity described by the expression *κάρτει δαμάσαιτο* would not be rape in the technical sense, but sexual subjugation of a woman the sexual rights to whom belong initially to her owner.

The second offense is described by the words *ἐπιπῆρῆται οἶπεν* (2. 17), which mean “attempt to have intercourse,” and which have been taken by Gernet to refer to attempted rape.<sup>57</sup> The language describing the of-

and *δοῦλος* as “slave,” although the word used in the law about rape is usually *φοικεύς* and the word used in the law about adultery is *δοῦλος*. For the synonymy of *φοικεύς* and *δοῦλος* in the Gortynian inscription, see M. I. Finley, “The Servile Statutes of Ancient Greece,” *RIDA*, 3d ser., 7 (1960): 169–70 (repr. in *Economy and Society in Ancient Greece* [New York, 1982], pp. 135–37).

54. Willetts, *The Law Code of Gortyn*, p. 58, suggests that a gloss of Hesychius gives the reason: *Κρήτα πρόπον· τό παιδικούς χρῆσθαι*. Dover, *Greek Homosexuality*, p. 189, thinks that Ephorus (*FGH* 70 F 149) describes “ritualized homosexual rape” on Crete, but from the description in Ephorus, it is clear that the issue is actually abduction, and that any sexual activity must not result from the use of force. There is nothing described in Ephorus that would be illegal under the laws of Gortyn. [Plut.] *De lib. ed.* 12A expresses disapproval of the Cretan custom.

55. See E. Vermeule, *Aspects of Death in Early Greek Art and Poetry* (Berkeley and Los Angeles, 1979), pp. 101 and 235, n. 22. The term *δαμάζειν* is used of the reluctant submission of Thetis to Peleus (*Il.* 18. 432), of Trojan wives about to be raped by Greeks (*Il.* 3. 301), and of Clytemnestra seduced by Aegisthus (*Od.* 3. 269).

56. For advice to a woman on how to behave in such a situation, see Ar. *Lys.* 162–66; cf. Eur. *Med.* 623 and 1366.

57. “Observations,” pp. 53–54.

fense, however, does not imply that the offense is thought of as accompanied by violence, and it seems more correct to interpret the offense, as Willetts does,<sup>58</sup> as an attempt at seduction. The victim is defined as a free woman under the jurisdiction of a *καδεστάς*, a relative other than father, brother, or husband.<sup>59</sup> The victim, therefore, would be an *ἐπίκληρος*, and the fine, only ten staters, is less than that for rape of or *moicheia* with a free woman, because the intercourse is only attempted and not completed.<sup>60</sup> This is the only instance among the sexual offenses on this list where a witness is necessary.

The next section of the column deals with the fines for *moicheia* (2. 20–28). Like the fines for rape, the fines for *moicheia* are graduated according to social class. The amounts of compensation for rape and adultery are the same, except that adultery with a free woman must take place in the house of her father, brother, or husband for the full compensation to be required. The fine for adultery taking place anywhere else is set at only half of the full amount.

From the description of the procedure for dealing with captured offenders in cases of rape and *moicheia*, it is clear that at Gortyn, at least, the ransoming of the captive is controlled by members of the offended family. The amounts of compensation provided by law would be awarded directly to the victim or the victim's family. In the case of the rape of a free male, the victim himself would receive payment. In the case of the rape of or *moicheia* with a free female, the money would probably be paid to the woman herself.<sup>61</sup> In the case of the rape of a slave woman, the money would be awarded to her owner. As opposed to Athens, where the penalty for *moicheia* could be death if the offender were caught in the act, at Gortyn the highest penalty is only monetary.<sup>62</sup> At Gortyn, however, rape is considered more serious than *moicheia* in two ways. The rape of a free person demands compensation regardless of the location of the offense, but *moicheia* must take place in the home of the woman (and therefore of her *kyrios*) in order to require the full amount. Adultery is a violation of the family and of the *kyrios*, but especially so when it takes place in the family's home. Further, while there is a penalty for the rape of a slave by a free person, there is no penalty for adultery between a free man and a slave woman. *Moicheia* does not apply to a slave woman because she does not have a *kyrios*.

The distinction between free women and slave women, so carefully

58. *The Law Code of Gortyn*, pp. 19, 58–59; it should be noted that the controversy over the meaning of this passage rests on real problems in determining the meaning of *ἐπιπῆρῆται, ἀκύνουτος* (the meaning of which depends on a lemma of Hesychius), and *καδεστάς*.

59. Gernet, "Observations," p. 53; Willetts, *The Law Code of Gortyn*, p. 18, argues that in the Gortynian inscription the *καδεστάς* could be the mother or the mother's brothers.

60. Willetts, *The Law Code of Gortyn*, p. 59, suggests that it is less because a *καδεστάς* is not as close a relative as a father or brother.

61. At Gortyn in the fifth century women apparently controlled their own property; see D. M. Schaps, *The Economic Rights of Women in Ancient Greece* (Edinburgh, 1979), pp. 58–60.

62. In later periods the penalty for adultery may have been more severe. Aelian says that at Gortyn a convicted adulterer had to wear a wreath of wool, pay a fine of up to fifty staters, suffer disenfranchisement, and be excluded from public affairs (*VH* 12. 12).

defined at Gortyn, is implied in references to offenses against women at Athens and elsewhere. Violation of a free woman is always considered to be a greater offense than violation of a female slave, because an offense against a free person is always considered by the Greeks to be more serious than the same offense against a slave. The respect usually accorded free women is reflected in the expression of contempt for men who disregard that respect. Lysias' accusation of Simon takes its sting from the fact that Simon dared to intrude upon free women at night (3. 23). Likewise, Lysias criticizes Agoratus for seducing free women (13. 68). One of the offenses of Timarchus was licentious violence (*ἀσελγεια*) toward the wives of free men (Aeschin. 1. 107). Theopompus tells of a tyrant of Methymna who punished female procurers of free women (*FGrH* 115 F 227). The same author, in detailing the offenses of Hegesilochus of Rhodes, includes as a special outrage the sexual assault (described by the verb *αἰσχύνειν*) of free women (some even *εὐγενεῖς*) who, after being selected by a throw of the dice, were forced to submit to intercourse with Hegesilochus and his drinking companions (F 121).

Greeks expected their enemies, both Greek and non-Greek, to behave outrageously toward their women in times of war (Dem. 23. 56).<sup>63</sup> Although most literary anecdotes about sexual assault of women occur in the context of war, such behavior was not generally condoned.<sup>64</sup> For instance, the defeat of the Spartans at Leuctra was attributed by ancient historians to the rape of Scedasus' daughters by Spartan envoys years earlier.<sup>65</sup> The daughters were said to have killed themselves and their father to have committed suicide on their tomb after a fruitless attempt to obtain compensation from Sparta. The suicide of the girls illustrates the extent to which rape was considered a source of shame for female victims and their families; their father's frustration illustrates the limitation of local law and custom in dealing with an offender from another city;<sup>66</sup> and the use of the story as an omen to predict the Spartan defeat indicates disapproval of sexual assault itself.

63. See also Plut. *Arat.* 31–32 and *De mul. vir.* 258; cf. 244B–E for a plan by the Phocians to save their women from assault in time of war. The Athenians expected the worst of the Macedonians in the fourth century B.C.: see Hyp. *Epit.* 20.

64. D. M. Schaps, "The Women of Greece in Wartime," *CP* 77 (1982): 203–204.

65. There are five versions of the story, but four have a similar plot (Xen. *Hell.* 6. 4. 7; Diod. Sic. 15. 54; Paus. 9. 13. 5; Plut. *Pel.* 20. 3). In the fifth (Plut. *Amat. nar.* 773D–E) the young women were killed because they exhibited too much distress. For the suggestion that the plot of rape followed by suicide owes its origin to ritual rather than history, see C. Calame, *Les chœurs de jeunes filles en Grèce archaïque* (Rome, 1977), p. 261, and W. Burkert, *Structure and History in Greek Mythology and Ritual* (Berkeley and Los Angeles, 1979), pp. 73–75.

66. Salviat and Vatin, "La répression des violences sexuelles," pp. 68–70, argue that a treaty between Delphi and Pellana, which sets up procedures for tribunals to judge disputes between the citizens of the two cities, includes sexual assault as one of the crimes for which a citizen of one city has protection from a citizen of the other: see B. Haussoullier, *Traité entre Delphes et Pellana* (Paris, 1917); H. Schmitt, *Die Staatsverträge des Altertums*, vol. 3 (Munich, 1969), pp. 336–45, no. 558. By placing frag. IVB next to frag. IIA, they claim to have restored the procedures in cases of sexual assault. As they read it, the inscription sets the fine for sexual assault of a free man or woman at one thousand drachmas, payable to the victim, and the rape of a slave at fifty drachmas. Their reading is accepted without comment by J. and L. Robert (*Bull. ép.*, 1972, 208), but the fragmentary state of the stone leaves some doubt as to the reliability of the restoration. Cataldi, "Commento storico-giuridico," pp. 459–73, argues, correctly, that the penalties listed in the treaty refer not to sexual assault, but to illegal enslavement or kidnapping.

Abuse of women of an allied city was also discouraged. In his speech against Aeschines, Demosthenes accuses him of having been corrupted by Philocrates, with whom he had served on an embassy to Olynthus before the city was destroyed in 348 B.C. (19. 309). Because Olynthus had been an ally of Athens, and because her citizens deserved protection, it would have been considered scandalous if Philocrates had brought freeborn Olynthian women to Athens for immoral purposes; this is what Demosthenes tries to imply he did. Apologizing for not being able in court to describe in detail exactly what Philocrates had done to the women (although his affectation of reticence encourages them to think the worst), and asking the jurors to let Philocrates' reputation speak for itself, Demosthenes says only that he had brought the women to Athens "for *hybris*."<sup>67</sup> Although Philocrates need not have expected prosecution (even if he had done what Demosthenes implies),<sup>68</sup> Demosthenes clearly assumes that the jury would not approve of the mistreatment of women from an allied city.

Women were especially at risk at the hands of a victorious enemy in times of war, but an anecdote preserved by Plutarch and others shows that restraint on the part of commanding officers could be considered a virtue. It is said that when Alexander captured Thebes in 335 B.C., a Theban woman, Timocleia, killed one of his officers after he had raped her, by pushing him into her well (Plut. *Alex.* 12, *De mul. vir.* 259E–260D; Polyaeus 8. 40).<sup>69</sup> Impressed by her courage, Alexander allowed her to leave as a free woman. There is no question of a legal issue here. At the worst, having killed one of Alexander's officers, Timocleia could have been killed on the spot. At the least, as a female resident of a captured city, she might have been enslaved; but Alexander, who elsewhere is shown to have respect for women captured in war, allowed her to go free.

Sexual assault of women may have been the inevitable consequence of war, but that consequence was felt by some to be unfortunate and even repugnant. This attitude had a long history in Greece. In his comparison of democracy with other forms of government, Herodotus includes the raping of women among the vices of an uncontrolled monarch, implying that he believes this sort of thing is less likely in a democracy (3. 80). Excessive violence against women is for some Greek historians a mark of a tyrant (Clearch. *FHG* 2:307 = Ath. 541C–E; Plut. *De mul. vir.* 253C–E) or a poor ruler (Polyb. 6. 8. 5),<sup>70</sup> and courtesy toward conquered women is estimable in a commander (Plut. *Mar.* 19). Alexander was held

67. Cf. Dover, *Greek Popular Morality*, p. 207, n. 5.

68. Because the Olynthian women had no male relatives in Athens, and because their own city had been destroyed, it seems unlikely that anyone would have bothered to instigate (or even could have instigated) a suit on their behalf. The incident, which indicates the vulnerability of women whose *kyrioi* were dead or absent, shows that women without *kyrioi* could not expect protection in a foreign city, even one formerly allied with their own.

69. Cf. Polyb. 21. 38. 1–7 and Plut. *De mul. vir.* 258E–F on Chiomara at Sardis. Timocleia is not the only woman who avenges a rape. Legend preserves another: see [Plut.] *Par.* 310B–C, where a young woman kills her father.

70. For assaulting women and children as a mark of despotic rule, cf. Thuc. 8. 74; see also Nic. Dam. *FGrH* 90 F 61.



up by historians as a model of sexual restraint, not only in his personal life, but in the behavior he expected from his troops.<sup>71</sup> Whether or not this is an accurate representation of Alexander himself is for our purposes irrelevant.<sup>72</sup> What is important is that historians attributed to Alexander a virtue they expected their audience to admire.

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71. According to our sources for Alexander, after the battle of Issus, although his soldiers were excited by the captured Persian women, Alexander himself refrained from abusing the wife and daughters of Darius (Diod. Sic. 17. 38. 1–7; Curt. Ruf. 3. 12. 12, 17, 18, 21; Plut. *Alex.* 21). Alexander's restraint was not always reflected in the behavior of his troops. Plutarch makes it clear that his soldiers, when they arrived at Damascus, were as excited about the Persian women as they were by the Persian gold (*Alex.* 24). Alexander himself, however, is said to have shown *sophrosune* (Arr. *Anab.* 4. 19. 6). It is this aspect of his character that W. W. Tarn, *Alexander the Great*, vol. 2 (Cambridge, 1950), pp. 319–26, takes as the clue to understanding Alexander's attitude toward women. Alexander's *sophrosune* found expression in his criticism and punishment of soldiers who abused women (Diod. Sic. 17. 108. 4); he even returned one hundred Median women sent to him as tribute in order to protect them from his soldiers (Arr. *Anab.* 7. 13. 2–3).

72. For suspicions about the sources on this point, see A. B. Bosworth, *A Historical Commentary on Arrian's "History of Alexander,"* vol. 1 (Oxford, 1980), p. 221.