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LAWS AFFECTING PROSTITUTION AT ATHENS

Modern legal theory generally attributes considerable importance to the clarity and certainty of legal rules, and to the predictability of the consequences of their violation.¹ But at Athens an absence of specialized technical vocabulary and an aversion to statutory definition of proscribed behavior meant that the substantive content of laws was often ambiguous and open to extraordinarily varied interpretation.² Frequent dependence on private prosecution by volunteers (*hoi boulomenoi*) often left uncertain the consequences of transgression. This paper explores Athenian laws affecting the practice of prostitution, especially the prohibitions of “pandering” (*proagôgeia*) and “outrage” (*hybris*), and assays the social and legal consequences of uncertainty of definition and unpredictability of consequences.

The Legality of Prostitution

At Athens prostitution was lawful,³ and pervasive.⁴ In a state which accorded legal recognition to “whatever someone has willingly agreed upon with another” – a state which never did restrict “victimless sexual conduct”⁵ – written arrangements for the sale of sex were commonplace, and complex contracts for erotic services were so widespread that the phrase “whoring under contract” had become idiomatic in local

¹ See Lanni in this volume.

² On the frequent “indeterminacy” of Athenian laws, see Carey 1998. Cf. D. Cohen 1995: 150, 152.

³ “Being a prostitute in itself was not an offense” (MacDowell 2005:86). Harrison, however, claims to infer from Aiskhinês 1 a prohibition on prostitution by male citizens supposedly evidenced by a court procedure allowing prosecution of “anyone who let out on hire a male citizen as a prostitute or anyone who hired one” (1968: 37). But this *graphê hetairêseôs* is explicitly described in Aiskhinês 1 as a ban on certain types of political and civic activity by male citizens who have been prostitutes, not as a prohibition of prostitution itself. See MacDowell 2000: 22; below, pp. 204-06.

⁴ Cf. Xen. *Apomn.* 2.2.4 (prostitutes available everywhere: τῶν γε ἀφροδισίων ἔνεκα ... τούτου γε τῶν ἀπολυσόντων μεστὰ μὲν αἱ ὁδοί, μεστὰ δὲ τὰ οἰκήματα).

⁵ Wallace 1997: 151-52 and ff.; Lape 2006: 139-41. For occasional limitations on other personal freedoms, however, see Wallace 1993, 1994a, and 1994b (*pace* Rahe 1992: 196; Sissa 1999: 154-55).

discourse.⁶ Lauded by comic poets as a democratic and ethically-desirable alternative to other forms of non-marital sex,⁷ prostitution gained social legitimacy from its association with the goddess Aphroditê,⁸ who was believed to foster prostitutes' prosperity (Athênaios 13.588c) and for whom prostitutes "clearly functioned as mediators, their sexual skills a sort of 'technology' that canalized her potent force" (Thornton 1997: 152). The shrine of Aphroditê Pandêmos, near the Akropolis,⁹ was said to have been built from the proceeds of one of Solôn's innovations, the state's purchase and employment of female slaves as prostitutes. Despite the doubtful historicity of this tale,¹⁰ the laudatory connection of democracy's founder with the foundation of brothels does provide startling insight into a fourth-century Athens that treated prostitution as a "'democratic' reform" (Kurke 1999: 199), "as an intrinsic element of the democracy" (Halperin 1990: 100). The city's Goddess, Athêna, titular deity of crafts, listed prostitutes among her benefactors (D. Harris 1995: 144-49), and a monument honoring a famed courtesan stood on the Athenian Akropolis next to a statue of Aphroditê (Pausanias 1.23.2). Female prostitutes appear even to have been welcome at the Thesmophoria,¹¹ religious rites of high exclusivity, and to have participated prominently in the sacred Adônia festival.¹²

In contrast, modern societies uniformly reject commercial sex as morally degenerate and humanly exploitative. In most countries, prostitutes are treated as criminals.¹³ Many European nations, however, have "decriminalized" prostitution by

⁶ The prevalence and significance of these "consensual contracts" is the subject of E. Cohen 2000a and 2006.

⁷ See Euboulos Frs. 67 and 82 (K-A); Philêmôn Fr. 3 (K-A).

⁸ "Hetairai in ancient Athens prayed and made offerings to their patron deity Aphroditê, just as wives and pregnant women worshipped Hera and Artemis respectively" (Neils 2000: 216). At Korinth, supplicants to Aphroditê actively sought prostitutes' help: Athên. 13.573c. On the perceived power of Aphroditê in human affairs ("les puissances de l'amour en Grèce antique"), see Calame 1996: 11-20.

⁹ For this temple (located immediately below that of Athêna Nikê at the Propylaia), see Paus. 1.22.3; Beschi 1967-68; for Aphroditê's temple on the Sacred Way, see Travlos 1937; I.G. II² 4570, 4574-85.

¹⁰ Athên. 13.569d-f= Philêmôn Fr. 3 (K-A), Nikandros of Kolophôn FGh 271/2 F 9. Pace Herter 1960 [1985]: 73 and Pellizer and Sirugo 1995: 9, most scholars dismiss the report as unfounded: see Henry 2000: 505-506; Lape 2004: 77; Halperin 1990: 100-101.

¹¹ Men. *Epitrep.* 749; Louk. 80.2.1.

¹² Diphilos Fr. 42, 39 (K-A); 49 (K-A); Alkiphr. 4.14.8. For the important involvement of prostitutes in this festival, see Detienne 1977; Parker 1996: 194; Thornton 1997: 152. Cf. Winkler 1990: 198-200 and (for detailed consideration of the Adônia festival) Attalah 1966.

¹³ More than 90,000 arrests are made in the United States annually under statutes prohibiting prostitution, and an additional indeterminable number of prostitutes are apprehended under laws forbidding disorderly conduct or loitering (Weitzer 2000: 159-65).

eliminating direct prosecution of individual providers of purchased sex,¹⁴ while maintaining prohibitions on soliciting, cohabitating, and/or operating commercial outlets for sex.¹⁵ “Decriminalization” itself is often accompanied by onerous and extensive regulation (physical examinations, bureaucratic rules, complex licensing) that effectively negates, in large measure, the purported authorization of the sale of sex.

Athens likewise had adopted ancillary legislation affecting the practice of prostitution. Criminal penalties were imposed on fathers (and other men) who took money for the erotic services of boys and girls for whom they were responsible.¹⁶ Prostitutes were monitored so closely that tax-agents collecting the annual impost on prostitution possessed precise information on individuals “practicing the trade” (*khromenoi tēi ergasiai*).¹⁷ Male citizens who had taken money for sex were denied the right to hold political office (*arkhē*) or act as a political leader (*rhētōr*).¹⁸ The *polis* imposed the “harshes penalties” (*megista epitimia*) on anyone acting as a “procurer” (*proagōgos*) for free women or free youths (Aiskhinēs 1.14). Were these laws then the Athenian equivalent of today’s prevailing European policy of “decriminalizing” prostitution by eliminating direct prosecution of individual prostitutes, while imposing regulatory burdens and punishing tangential aspects of commercial sex, thereby obstructing the supposedly lawful practice of prostitution? Was Athenian prostitution formalistically lawful, but effectively truncated by indirect sanctions?

¹⁴ See O’Neill and Barberet 2000: 124-25; Barberet 1995. A number of nations, including Spain, however, are considering the restoration of direct criminal sanctions (N.Y. Times: January 18, 2004), a step taken by Sweden in 1999 (Pisano: 2002: 245-49).

¹⁵ In 2003, a new French Law on Internal Security (*loi sur la sécurité intérieure*) was adopted, explicitly criminalizing even the appearance of “soliciting” (*racolage* [par] *une attitude meme passive*) (Article 50) and similarly penalizing other aspects of the sale of sex. The Minister of the Interior has insisted that restrictions on commercial sex are part of “la lutte contre les réseaux mafieux” (Le Monde: November 16, 2002). Britain has adopted similar legislation and is considering further indirect restrictions.

¹⁶ Aiskhin. 1.13: Διαρρήδην γοῦν λέγει ὁ νόμος, εἴαν τινα ἐκμισθῶσι ἑταιρεῖν πατῆρ ἢ ἀδελφῶς ἢ θεῖος ἢ ἐπίτροπος ἢ ὄλωσ τῶν κυρίων τις ... (ὁ νόμος) ἔᾶ γραφῆν εἶναι, κατὰ δὲ τοῦ μισθῶσαντος καὶ τοῦ μισθωσαμένου ... καὶ ἴσα τὰ ἐπιτίμια ἑκατέρῳ πεποίηκε ... Plut. *Solōn* 23.1: “Ἐτι δ’ οὔτε θυγατέρας πωλεῖν οὔτ’ ἀδελφὰς δίδωσι, πλὴν ἂν μὴ λάβῃ παρθένον ἀνδρὶ συγγεγεννημένην.

¹⁷ Aiskhin. 1.119: καθ’ ἕκαστον ἐνιαυτὸν ἡ βουλή πωλεῖ τὸ πορνικὸν τέλος· καὶ τοὺς πριαμένους τὸ τέλος οὐκ εἰκάζειν, ἀλλ’ ἀκριβῶς εἰδέναι τοὺς ταύτη χρωμένους τῆ ἐργασίᾳ. Cf. Pollux 7.202, 9.29. Diod. Sik. suggests that such taxation was common throughout Greece: τῶν γὰρ ἄλλων ἀπάντων ἀμαρτανουσῶν γυναικῶν ἀργυρικὰς ζημίας τεταχότων (12.21.1). Cf. Polyain. 5.2.13. Similar tax at Kōs: Reinach 1892; Khatzibasileiou 1981: 8.55-56.

¹⁸ Aiskhin. 1.19-20, 27-33, 40, 46, 73, 119, 154, 195 and 3.175-76; Andok. 1.74; Dem. 15.32, 21.103, 22.29-31, 59.27; Lyk. ap. Harpokration, s.v. *dokimastheis*. See MacDowell 2005; Fisher 2001: 39-40, 157-63.

To the contrary, Athenian law generally touched on commercial sex only as an aspect of broader concerns and treated prostitutes no differently than others in similar situations: some statutes even facilitated the sale of sex by protecting the rights of sex workers. Thus sanctions on male relatives who prostituted children were merely one element of the extensive legislation protecting youngsters from sexual exploitation – laws that included detailed prohibitions against abuse by caregivers (and others) and safeguards against exploitation of boys by mature males in school or other educational situations (including choral, athletic and gymnastic pursuits).¹⁹ Taxation of Athenian prostitutes followed the procedures imposed on others, including farmers and merchants: Athens commonly gathered governmental funds not directly through *polis* officials but via third parties who sought to profit by purchasing the right to collect (extort?) tax money through information and procedures developed in conjunction with the Boulê, the *polêtai*, the *tamias* of the stratiotic fund, and the controllers of the theoric fund.²⁰ Athens denied political office, at least theoretically,²¹ not only to male prostitutes but to various other persons perceived as excessively motivated by personal financial advantage (including men who had consumed ancestral property or who had failed to furnish sustenance and housing to their parents) (Aiskhinês 1.28-32). This sanction reflected traditional Hellenic concepts of manliness (*andreia*) that condemned all commerce as inherently servile, insisting that farming alone provided a proper economic arena for the “free man” (*anêr eleutheros*).²² Thus, for Plato, “market people” (*agoraioi anthrôpoi*) were “defective men” (*phauloi*) who pursued monetary profit because they were incapable of more acceptable cultural and political pursuits²³: the selling of sex or fish is no less censurable than the making of shoes.²⁴ Theophrastos is dismissive of innkeeping, auctioneering, catering, gambling, operating brothels (and even of tax collecting!).²⁵ Aristotle and Xenophôn explicitly group the “commercial

¹⁹ See Aiskhin. 1.9-11, 139; Lysias 1.32. Cf. MacDowell 2000: 15-19; E. Cohen 2000b: 159-67; Scanlon 2002: 212-14.

²⁰ On “whore tax-farmers” (*pornotelônai*), see Pollux 7.202, 9.29. On procedures for “tax-farming,” see Aristot. *Ath. Pol.* 47.2; Andok. 1.73, 133-36; Aristoph. *Sphêk.* 657-59. Cf. Stroud 1998: (esp.) 27-30.

²¹ For the nuances of partial, potential and full *atimia* for meretricious and other offenses, see Gagliardi 2005: 93-94; Fox 1994: 149-51; Wallace 1998; Paoli [1930] 1974: esp. 328-34; Hansen 1976: 55-98.

²² Xen. *Oik.* 5.1; Eur. *Or.* 917-22, *Hiket.* 881-87; Plato *Laws* 889d; Men. Fr. 338 (Körte/Thierfelder 1953); Aristoph. *Eir.* passim, *Akharn.* 32-36. See Hanson 1995: 214-19; Meikle 1996: 138.

²³ *Rep.* 371c: οἱ ἀσθενέστατοι τὰ σώματα καὶ ἀχρεῖοί τι ἄλλο ἔργον πράττειν. Cf. *Protog.* 347c: τῶν φαύλων καὶ ἀγοραίων ἀνθρώπων; *Polit.* 289e: οἱ μὲν κατ’ ἀγοράς, οἱ δὲ ... νόμισμά τε πρὸς τὰ ἄλλα καὶ αὐτὸ πρὸς αὐτὸ διαμείβοντες ... μῶν τῆς πολιτικῆς ἀμφισβητήσουσί τι ...

²⁴ *Kharm.* 163b: οἶε οὖν αὐτόν ... οὐδενὶ ἄν ὄνειδος φάναι εἶναι σκυτοτομοῦντι ἢ ταριχοπωλοῦντι ἢ ἐπ’ οἰκίματος καθημένῳ;

²⁵ *Kharm.* 6.5: (ὁ δὲ ἀπονειομένης) δεινὸς δὲ καὶ πανδοκεῦσαι καὶ πορνοβοσκῆσαι καὶ

crowd” (*agoraios okhlos*) with slaves and servants.²⁶ Xenophôn finds the commercialization of sex no less disgusting than charging for education.²⁷ By aristocratic standards, men involved in non-agrarian, that is, “banausic” pursuits – production or trading of goods, labor for monetary compensation, even professional acting or musical performances – were unworthy of “citizenship,”²⁸ and many oligarchic states wisely and absolutely (according to Aristotle) prohibited male citizens (*politai*) from engaging actively in business.²⁹ Even at Athens, the right of laboring men, even practitioners of a skilled trade, to be citizens and to participate actively in public affairs was justified on the basis that engagement in such occupations was not a matter of choice but a pursuit necessary to provide sustenance.³⁰ But – it was feared – individuals choosing to sell themselves for money in personal dealings might similarly accept money to betray the city’s public interests.³¹ Yet this potential limitation on political activity seems to have had little actual effect. Political leaders at Athens were routinely accused of prostitution in the course of political debate, and routinely continued their public careers.³² The only

τελωνῆσαι καὶ μηδεμίαν αἰσχρὰν ἐργασίαν ἀποδοκιμάσαι, ἀλλὰ κηρύττειν, μαγειρεύειν, κυβεύειν. Cf. *Khar.* 6.1-2: ὁ δὲ ἀπνενοημένος ... τῷ ἦθει ἀγοραῖός τις καὶ ἀνασευρμένος καὶ παντοποιός.

²⁶ See Aristot. *Pol.* 1291b14-30. Cf. Aristot. *Pol.* 1289b26-34. Xen. *Hell.* 6.2.23 (τὸν ἀγοραῖόν τε ὄχλον καὶ τὸν τῶν θεραπόντων καὶ τὸν τῶν ἀνδραπόδων).

²⁷ *Aromn.* 1.6.13: παρ’ ἡμῖν νομίζεται τὴν ὥραν καὶ τὴν σοφίαν ὁμοίως μὲν καλόν, ὁμοίως δὲ αἰσχρὸν διατίθεσθαι εἶναι. τὴν τε γὰρ ὥραν ἐὰν μὲν τις ἀργυρίου πωλῆ τῷ βουλομένῳ, πόρνον αὐτὸν ἀποκαλοῦσιν, ἐὰν δὲ τις, ὃν ἂν γνῶ καλόν τε κάγαθον ἐραστήν ὄντα, τοῦτον φίλον ἑαυτῷ ποιῆται, σῶφρονα νομίζομεν. καὶ τὴν σοφίαν ὁσαύτως. ... For the equation of scholars and courtesans, see Athên. 567-573b.

²⁸ On the virulent opposition to *banausia*, see, e.g., Aristot. *Pol.* 1337b18-22; 1258b25-27, 33-39; 1260a41-b2; 1277b33-1278a13; 1277a32-b7; 1277a36-37; 1341b8-18. Cf. Balot 2001: 22-43; Humphreys 1978, esp. 148-49.

²⁹ Χρηματίζεσθαι (*Pol.* 1316b3-5). Cf. Ober 1991: 125.

³⁰ Aiskhin. 1.27: ὁ νομοθέτης διαρρήδην ἀπέδειξεν οὐς χρὴ δημηγορεῖν καὶ οὐς οὐ δεῖ λέγειν ἐν τῷ δήμῳ. Καὶ οὐκ ἀπελαύνει ἀπὸ τοῦ βήματος, εἴ τις ... τέχνην τινὰ ἐργάζεται ἐπικουρῶν τῇ ἀναγκαίᾳ τροφῇ ... Cf. Thouk. 2.37, 40.

³¹ Aiskhin. 1.29: τὸν γὰρ τὸ σῶμα τὸ ἑαυτοῦ ἐφ’ ὕβρει πεπρακότα καὶ τὰ κοινὰ τῆς πόλεως ῥαδίως ἠγήσατο ἀποδώσεσθαι. Cf. Lape 2006: 139.

³² Aiskhinês (1.165) claims that “one of the citizens” prominently involved in public affairs made idiomatic the phrase “whoring under contract” by working as a male prostitute under written covenants deposited with a third party. While scholars since antiquity (Oxyrhynchus Papyri no. 1012 C II 14) have suggested the political leader Androtiôn as the anonymous citizen-prostitute referred to by Aiskhinês, in an unrelated action Androtiôn is explicitly characterized as a prostitute by Demosthenes (22.29). Aiskhinês also identifies the influential political leader Hêgêsandros as a “whore” (*pornos*) and as Laodamas’ paid “woman.” (See Aiskhin. 1, *passim* and esp. 1.70, 111). In turn, Demosthenes (19.287) makes allegations of prostitution against Aiskhinês’ brother Aphobêtos and his brother-in-law Nikias. A prominent member of the Boulê under the rule of the Thirty, Epikharês, is charged by Andokidês (1.100) with having been a promiscuously inexpensive male whore, compliantly and shamefully “taking

known invocation of this law involves Timarkhos, a prominent Athenian who had previously participated in Athenian politics notoriously and successfully for decades after his alleged acts of prostitution.³³ In any event, few Athenians ever reached the level of public activity targeted by the statute – that of *rhêtor*, synonymous at Athens with “political leader.”³⁴ Indeed, thousands of Athenian men, literally the majority of citizens, chose not even to attend Assembly meetings³⁵ – a right of attendance retained by male prostitutes.

Two other laws offered protection for prostitutes at the pinnacle and at the nadir of sexual commerce. The prohibition of *proagôgeia* (“pandering”) was especially important to courtesans in the highest rank of the profession (*tekhnê*), the free women popularly known as the “big earners” (*megalomisthoi*).³⁶ For them, a ban on pandering proffered security from the pimps who in numerous other societies have been a major source of sex workers’ oppression. The prohibition of *hybris* (“outrage”), for its part, offered a measure of human-rights protection for even the most vulnerable of whores, the brothel slaves, who were shielded, along with all other residents of Athens, from “gross abuse” – a commitment in a “slave society”³⁷ that was startling even to many of the free residents of Attika (and has been improperly dismissed as “incomprehensible” by many modern scholars).³⁸

small sums from any one inclined” (πραπτόμενος δ’ οὐ πολλὸν ἀργύριον τὸν βουλόμενον ἀνθρώπων ἐπὶ τοῖς αἰσχίστοις ἔργοις ἔζης).

³³ See Fisher 2001: 21; Dover [1978] 1989: 19. But other prosecutions were threatened: Dem. 22.21-24; Aiskhin. 1.64. Cf. Aristoph. *Hipp.* 876-79 (possible prosecution of Gryttos); Andok. 1.100 (objection to Epikharês participating in court because of his self-prostitution).

³⁴ Davidson 1997: 252; Ober 1996: 95-96, 1989: 105-112; Hansen 1991: 143-45.

³⁵ Archaeological evidence reveals that the fourth-century Pnyx, even after renovation and slight enlargement from the fifth-century gathering site, could barely contain the 6,000 *politai* needed for a quorum. See Thompson 1982: 138-39. For the possibility that the fourth-century expansion was never completed, see Camp 2001: 153-54. Cf. Forsén and Stanton (eds.), 1996: *passim*.

³⁶ *Megalomisthoi*: “the wealthy, famous hetaeras of the law courts and the comic stage” (McClure 2003: 48). Cf. below n. 74.

³⁷ Despite the ubiquitous presence of unfree individuals in virtually all human communities prior to the nineteenth century (Klees 1998: 1-18), Attika constitutes one of the world’s few attested true “slave economies” – those in which the contribution of a huge number of unfree persons to the totality of wealth-production are so substantial that a society’s overall production, distribution and consumption is highly dependent on slave labor. The Athenians believed that the servile population of Attika exceeded that of the free (Isager and Hansen 1975: 16-17). Canfora claims that “according to even the most conservative estimates, there were four slaves for every freeborn Athenian” (1995:124). Cf. Hyper., Fr. 33; Athên. 272c-d; Xen. *Por.* 4.4, 25, 28.

³⁸ For astonishment, ancient and modern, over the protection of slaves by the *graphê hybreôs*, see below, nn. 78, 85.

Prohibition of Proagôgeia

In many historically-attested societies, and in virtually all contemporary communities, the sale of sex has been largely a phenomenon in which female prostitutes, working for men, service male customers – a pattern conforming to the general domination of commerce by men.³⁹ But at Athens unenslaved prostitutes seem to have been free of outside interference in their sale of sex, and women appear generally to have controlled meretricious businesses (*ergasiai*). Although scholars often assume that men were the prototypical *pornoboskoi* (“literally ‘whore-pasturer,’ driving his herds of women around Greece following the seasons and the festivals”⁴⁰), few *pornoboskoi* are known to have been male, and the married free woman Nikaretê (whose business activity is chronicled at Demosthenes 59.18-23) is actually by far the fullest-attested and best-known Hellenic “herder of women” – originating in Elis, operating in Corinth, shepherding through Greece a band of well-known, high-priced whores whom she owned, bringing to Athens the young prostitute Neaira, among others. Isaios alludes to several women who operated brothels in Athens,⁴¹ and describes with particularity a female entrepreneur who ran a house (*synoikia*) in the Piraeus, where she maintained a number of slave girls.⁴² The fourth-century medical writer Hippokratês notes matter-of-factly the case of a danseuse owned by a woman who employed her as a prostitute.⁴³ The famed courtesan Aspasia, linked to the Athenian political leader Periklês, was allegedly the owner of large numbers of whores.⁴⁴ Masurios charges Sôkratês with consorting with Aspasia’s sex workers at her brothels,⁴⁵ and Aristophanês asserts, humorously, that the abduction of two of Aspasia’s whores was the proximate cause

³⁹ However, in a number of post-classical societies women have controlled, and benefitted from, management of prostitutional enterprises: see, for example, Henriot 2001: 238-39 (19th century China); Corbin 1998: 174-81 (19th century France); Lentakis 1998: 3.109-110 (Byzantium –*pace* Leontsini 1989: 169). For the dominance of female entrepreneurs in prostitutional businesses in contemporary Manhattan, see N.Y. Times: October 12, 2004.

⁴⁰ Davidson 1997: 92. Similarly: McClure 2003: 15.

⁴¹ Isai. 6. 21, 6.18. Roussel 1960: 113, n. 1.

⁴² Ἀπελευθέρῃ ἦν αὐτοῦ (sc. Εὐκτῆμονος) ἡ ναυκλήρει συνοικίαν ἐν Πειραιεὶ αὐτοῦ καὶ παιδίσκας ἔτρεφε (Isai. 6.19).

⁴³ *On Generating Seed and the Nature of the Child* 13 (=VII, 490 Littré= Lefkowitz and Fant 232). Cf. Hanson 1990: 322; Halperin 1990; Richlin 1998: 160.

⁴⁴ Ἀσπασία δὲ ἡ Σωκρατική ἐνεπορεύετο πλήθι καλῶν γυναικῶν, καὶ ἐπλήθυνεν ἀπὸ τῶν ταύτης ἐταιρίδων ἡ Ἑλλάς (Athên. 569F 7-9).

⁴⁵ Athên. 220e: Σωκράτης ὁ μετὰ τῶν Ἀσπασίας ἀλητριδῶν ἐπὶ τῶν ἐργαστηρίων συνδιατρίβων. The sexual availability of female musical performers was proverbial. See Metagenês 4 (K-A); Adespota 1025.1 (K-A); Aristoph. *Akh.* 551; *Sphêk.* 1345-46; Theopompos FGGrHist 115 F 290. Cf. Hamel 2003: 9-12; McClure 2003: 21-22; Rhodes 1981: 574. For ἐργαστήριον as brothel, see Dem. 59.67; Alkiph. 3.27 and Fr. 4. Cf. Aiskin. 1.124; Kapparis 1999: 312.

of the Peloponnesian War.⁴⁶ Although not universally accepted,⁴⁷ these claims do illustrate the connection, in popular imagination, between meretricious commerce and female entrepreneurship. In fact, the idiomatic term for a *mastropos* (a person operating a commercial-sex business) was “Mother” (*Mêtêr*).⁴⁸ Alexis, a fourth-century comic poet, explains that courtesans generally, after achieving some personal success, moved on to acquire younger women, new to the profession, whom they might refashion for maximum profit (*kerdos*).⁴⁹ They became, in Athênaios’ phrase, “the ladies who run the houses.”⁵⁰ Not surprisingly then, when Antigona (a former *hetaira* now operating her own prostitional business) receives a commission of 300 drachmas for facilitating the sale of a retail operation dealing in fragrances, she earmarks the money for the purchase of yet another female servant.⁵¹ Theodotê, a woman portrayed as having become wealthy because of her penchant for sleeping with “men who are persuasive,” commands a stable of comely and provocatively-attired young women.⁵² And even when self-employed, free female prostitutes seem generally to have lived and worked without interference from men seeking to infringe on their compensation or to control their business activity⁵³: they enjoyed the freedom to select their own clients and to establish the parameters of service; exercised control over their physical and familial surroundings; owned valuable personal property⁵⁴; and independently negotiated their own business arrangements.

⁴⁶ *Akh.* 524-29 (=Athên. 570a4-b1): πόρνην δὲ Σιμαίθαν ἰόντες Μεγαράδε / νεανίαι κλέπτουσι μεθυσκότταβοι/ κᾶθ’ οἱ Μεγαρῆς ὀδύνας πεφυσιγγωμένοι / ἀντεξέκλεψαν Ἄσπασίας πόρνα δύο· / κἀντεῦθεν ἀρχὴ τοῦ πολέμου κατερράγη / Ἑλλησι πᾶσιν ἐκ τριῶν λαικαστριῶν.

⁴⁷ MacDowell, however, finds the Aristophanic treatment of the outbreak of the Peloponnesian War “not inconsistent with the account given by Thucydides; it is not illogical or incredible; and I see no reason why it should not be essentially true” (1995: 66; cf. 187-88). Fisher disagrees (1993: 37, 46 n. 30). Cf. Carey 1993: 252-53.

⁴⁸ Phôtios, s.v. ματρυλεῖον. Μέγα Ἑτυμολογικόν 574.267 notes that Dorians also called *mastropoi* “mothers” [ματέρας in Peloponnesian dialects].

⁴⁹ Πρῶτα μὲν γὰρ πρὸς τὸ κέρδος ... ῥάπτουσι δὲ / πᾶσιν ἐπιβουλὰς. ἐπειδὴν δ’ εὐπορήσωσιν ποτε, / ἀνέλαβον καινὰς ἑταίρας, πρωτοπείρους τῆς τέχνης· / εὐθὺς ἀναπλάττουσι ταύτας ... (Fr. 103 [K-A]).

⁵⁰ Τὰς ἐπὶ τῶν οἰκημάτων (568d). Translation: Gulick’s 1937: 71.

⁵¹ Ἐκείνη προσπεριέκομεν αὐτῇ ὡς δὴ εἰς παιδίσκην τριακοσίας δραχμὰς εὐνοίας ἔνεκα ... γυναικὸς ἢ δεινοτάτη μὲν τῶν ἑταίρων ἐφ’ ἡλικίας ἐγένετο, διατετέλεκε δὲ πορνοβοσκοῦσα (Hyper. *Ath.* 2-3). Cf. §18: τῇ Ἀθηνογένους ἑταίρα ... ἡ ἑταίρα σο[υ] ... On this and similar relationships, see Cox 1998: 186-89, especially 187, n. 99.

⁵² *Arorn.* 3.11.4-5: ὁ Σακράτης ὄρων αὐτὴν τε πολυτελῶς κεκοσμημένην καὶ μητέρα παροῦσαν αὐτῇ ἐν ἐσθῆτί τε καὶ θεραπείᾳ οὐ τῇ τυχοῦση, καὶ θεραπαίνας πολλὰς καὶ εὐειδεῖς καὶ οὐδὲ ταύτας ἡμελημένως ἐχούσας, καὶ τοῖς ἄλλοις τὴν οἰκίαν ἀφθόνως κατεσκευασμένην ... νῆ τὴν Ἥραν, ἔφη, ᾧ Θεοδότῃ, καλὸν γε τὸ κτήμα.

⁵³ See further E. Cohen 2003.

⁵⁴ Courtesans’ luxurious possessions are frequently mentioned in Athenian literature. See, for example, Louk. 80.4.1 (θαϊμάτια γὰρ καὶ τὰ χρυσία ταῦτα προείμην ἡδέως). Cf.

Although male aversion to business enterprise might have been an important factor in women's control of sexual businesses at Athens, not all Athenian men were dissuaded from commerce. Economic necessity or financial advantage did bring many male citizens into business: about half of all *politai* (perhaps 10,000 men) pursued non-agricultural work in hundreds of individual *métiers* (E. Harris 2002: 70), as did thousands of foreigners and slaves. But pandering could not lawfully be one of those pursuits. Athenian law imposed the "harshest penalties" (*megista epitimia*, a euphemism at Athens for the death penalty) on anyone who undertook the *proagôgeia* of customers for the sexual services of a "free youth or free woman."⁵⁵ Because *proagôgeia* was a word of protean and confusing significations – ranging from mere "persuasion" to criminal compulsion, from pimping to "matchmaking" to outright control of a sexual enterprise – this statute offered a basis for criminal prosecution of anyone who dared to involve himself or herself in any aspect of the commercial provision of sex by free women or free youths – other than the self-employment of offering one's own body for sale.

This linguistic uncertainty, although extreme, was not anomalous. At Athens "there was relatively little technical legal vocabulary and the language of the street was itself the language of the law."⁵⁶ Everyday words, however, often have multiple, and sometimes even inconsistent, meanings determined by context. But context is almost always absent from the texts of statutes. In the Athenian legal system where critical terms were not given definition by code or through judicial precedent, and in which inexact criminal prohibitions were not annulable as "unconstitutionally

the sumptuous lifestyles and impressive property attributed to Khrysis in Menander's *Samia* (e.g. lines 373, 380) and to Theodotê in Xenophôn's *Memoirs of Sôkratês* (3.11). On women's rights of "ownership" at Athens, see Foxhall 1989; Sealey 1990: 45-49. Cf. Aristot. *Rhet.* 1361a.

⁵⁵ Aiskhin. 1.14: καὶ τίνα ἕτερον νόμον ἔθηκε φύλακα τῶν ὑμετέρων παίδων; τὸν τῆς προαγωγείας, τὰ μέγιστα ἐπιτίμια ἐπιγράψας, ἐάν τις ἐλεύθερον παῖδα ἢ γυναῖκα προαγωγέῃ. *Megista epitimia* is invoked by Aiskhinês as a fixed penalty but is probably only the orator's interpretation of a statute providing for a procedure (*agôn timêtos*) where the penalty, set by the *dikasts* if they found the defendant guilty, might be execution. Because ancient Greek (like English) permits a preceding adjective to refer to either the first or both of two following nouns – with exact meaning determined by context – some translators have rendered the Greek text literally as precluding the "proagôgeia" of any woman, including presumably enslaved females (for example, Martin and Budé 1927: I, 25: "un enfant libre ou une femme"). But social and economic context argues strongly that the ban could apply only to free women: slaves were the chattels of their masters. Plutarch understood the protection as applying only to free women (Solôn 1.23), as have most translators (e.g. Adams 1919: 14: "a free-born child or a free-born woman"; Fisher 2001: 74: "free woman or boy.")

⁵⁶ Millett and Todd 1990: 17. Perusal of Todd's Lexicon (appended to Cartledge, Millett and Todd 1990 and to Todd 1993) suggests that this comment is somewhat overstated: Athenian law may have lacked special vocabulary for criminal offenses, but it had developed many technical terms for procedural matters.

vague,” each court case necessarily evoked a fresh determination of precisely what kind of behavior had been outlawed.⁵⁷ In this ambience, the very uncertainty of legal definition and the resultant unpredictability of judicial decision served as an “effective means of social control” (Lanni, this volume.)

The chilling effect of this statute on individual behavior is suggested by Sôkratês’ allusion, in Plato’s *Theaitêtos*, to midwives’ fear of being charged with *proagôgeia*. Claiming to be a midwife (*maia*)⁵⁸ – in the metaphorical role of helping to give birth to an understanding of “knowledge” (*epistêmê*) – Sôkratês insists that midwives, because of their life experience, are best suited to bring together men and women who would make fine parents. “But they flee from this matchmaking (*promnêstikê*) because they’re fearful of being charged with that wrongful and unprofessional bringing-together of man and woman which goes by the name of *proagôgeia*.”⁵⁹

Promnêstikê was not the only activity that might be conflated with *proagôgeia*. In Xenophôn’s *Symposion*, Sôkratês equates *proagôgeia* with *mastropeia*. Here Sôkratês claims to be not a midwife but a *mastropos* (3.10) – one who fashions those under his/her control into attractive seducers of customers, teaching his/her charges the enticing sexual skills useful for pleasing clients.⁶⁰ But after detailed analysis of the traits required of a fine *mastropos* (4.56-61), Sôkratês identifies not himself but another participant in the *symposion* (Antisthenês) as surpassingly manifesting these characteristics of the good *mastropos* – which, Sôkratês claims, explains why Antisthenês is an excellent *PROAGÔGOS*!⁶¹ Sôkratês does know that the two activities are not absolutely indistinguishable, for he calls *proagôgeia* the

⁵⁷ The entire case against Timarkhos (Aiskhinês 1), for example, depends on interpreting the term *hetairos*, i.e. defining “prostitution” – a word whose definition has generated decades of unresolved academic dispute. Although scholars have long sought to differentiate commercial sex from other erotic arrangements, emphasizing factors like payment, promiscuity and emotional attachment (or indifference), the defining line – if any – between prostitution and other forms of sexual exchange remains unclear. See, for example, McGinn 2004: 7-9, 1998: 17-18; Palmer and Humphrey 1990: 150; Bloch 1912: 7. Cf. Jaggar 1985; Shrage 1994: 99-119.

⁵⁸ 149a1-4: ἐγὼ εἰμι ὑδὸς μαίαια ... καὶ ... ἐπιτηδεύω τὴν αὐτὴν τέχνην.

⁵⁹ 150a1-4: διὰ τὴν ἄδικόν τε καὶ ἄτεχνον συναγωγὴν ἀνδρὸς καὶ γυναικός, ἥ δὴ προαγωγία ὄνομα, φεύγουσι καὶ τὴν προμνηστικὴν ἅτε σεμναὶ οὖσαι αἱ μαίαια, φοβούμεναι μὴ εἰς ἐκείνην τὴν αἰτίαν διὰ ταύτην ἐμπέσωσιν· ἐπὶ ταῖς γε ὄντως μαίαια μόναις που προσήκει καὶ προμνήσασθαι ὀρθῶς. 149d6-8: προμνήστριαί εἰσι δεινόταται, ὡς πάσσοφοι οὖσαι περὶ τοῦ γυναιαί ποίαν χρῆσι ποίω ἀνδρὶ συνοῦσαν ὡς ἀρίστους παῖδας τίκτειν.

⁶⁰ 4.57-59: ποία ἐστὶν ἔργα τοῦ μαστροποῦ ... ἀγαθοῦ δοκεῖ μαστροποῦ ἔργον εἶναι ἢν ἂν ἢ ὄν ἂν μαστροπεύῃ ἀρέσκοντα τοῦτον ἀποδεικνύουσι οἷς ἂν συνῆ: ... ἐκ τοῦ πρέπουσαν ἔχειν σχέσιν ... λόγοι οὐκ εἰσὶ μὲν τινες ἀπεχθανόμενοι, εἰσὶ δὲ τινες οἱ πρὸς φιλίαν ἄγουσι; Οὐκοῦν τούτων ὁ ἀγαθὸς μαστροπὸς τὰ συμφέροντα εἰς τὸ ἀρέσκειν διδάσκει ἂν ...

⁶¹ 4.64: ταῦτα ὀρῶν δυνάμενόν σε ποιεῖν ἀγαθὸν νομίζω προαγωγὸν εἶναι.

“complementary profession” of *mastropoia*: *proagôgeia* is a skilled calling (*tekhnê*) requiring the ability to identify and bring together clients and servicers who would share a mutual attraction and be good for one other.⁶² This Antisthenês has done. He has worked successfully in introducing the sophist Prodikos to the wealthy Kallias (after identifying Kallias as yearning for “knowledge” [*philosophia*] and Prodikos as needing money).⁶³ Antisthenês had also successfully linked Kallias with Hippias of Elis, and had introduced Sôkratês himself to Aiskhylos the Phleiasian and to Zeuxippos of Hêraklea – arousing in Sôkratês enormous passion (and great gratitude to Antisthenês). A *proagôgos* of skill, writes Xenophôn, could make a lot of money – as could a good *mastropos*.⁶⁴ But a defendant charged with *proagôgeia* might have had a difficult time separating the two “complementary professions” by establishing that he was in fact teaching the sexual skills that would bring a client and prostitute together (that is, being a *mastropos*) and not functioning as a mere “go-between” (*proagôgos*).

Testifying further to the elasticity of the term *proagôgeia*, Aiskhinês cites the statute against *proagôgeia* in his case against Timarkhos – despite the absence of any contention that the defendant has been acting on behalf of anyone else. But the case involves prostitution – Timarkhos is charged with years of political activity after years of male prostitution – and the statute is cited in Aiskhinês’ narration of various laws dealing with the sale of sex.⁶⁵ Its relevance is vaguely suggested within the pervasive thought that Timarkhos had “done it to himself”⁶⁶ – although, as Sôkratês claims, the essence of *proagôgeia* is a bringing-together (*synagôgê*) of others. But the language of the law, the language of the street, seems not to have known such fine distinctions – at least when interpreted by a skilled rhetorical wordsmith.⁶⁷

⁶² Ἄγαθὸς προαγωγός: ὁ γὰρ οἷος τε ὧν γινώσκειν τε τοὺς ὠφελίμους αὐτοῖς καὶ τοὺτους δυνάμενος ποιεῖν ἐπιθυμεῖν ἀλλήλων, οὗτος ἂν μοι δοκεῖ ... πολλοῦ ἂν ἄξιός εἶναι ... (4.64). Complementary *tekhnê*: τὴν (τέχνην) ἀκόλουθον ταύτης (4.61).

⁶³ 4.62: Οἶδα μὲν, ἔφη, σε Καλλίαν τουτονὶ προαγωγέυσαντα τῷ σοφῷ Προδικῷ, ὅτε ἑώρας τοῦτον μὲν φιλοσοφίας ἐρῶντα, ἐκείνον δὲ χρημάτων δεόμενον.

⁶⁴ *Mastropos*: καὶ πάννυ ἂν πολλὰ χρήματα λαμβάνοιμι, εἰ βουλοίμην χρῆσθαι τῇ τέχνῃ (3.10). *Proagôgos*: ἔαν γὰρ (ἔφη) ταῦτα δύνωμαι, σεσαγμένος δὴ παντάπασι πλούτου τὴν ψυχὴν ἔσομαι (4.64). Cf. 4.60.

⁶⁵ Aiskhinês’ references to Athenian laws are often problematic. He sometimes purports to be quoting the text of laws verbatim when he is in fact selectively (and sometimes misleadingly) paraphrasing the actual content of the statute. Cf. Fisher 2001: 125; Ford 1999: 242. Furthermore, the manuscripts of Aiskhinês offer paleographical difficulties: they often contain the purported text of laws which Aiskhinês has cited, but these addenda are generally dismissed as illegitimate appendages composed in later antiquity. See MacDowell 1990: 43-47; Harris 1992: 71-77. But Aiskhinês’ reference to the statute against *proagôgeia* is straight-forward: he does not purport to quote the actual text of the law, nor is purported original language attached to his citation.

⁶⁶ See, for example, §§ 15-17, 185-87.

⁶⁷ Περιττός ἐν τοῖς λόγοις (Aiskhin. 1.119, applied to Demosthenes).

Proagôgeia had yet other – contradictory – meanings. For Aristotle, it was inherently coercive, akin to *moikheia*; for Plutarch, it was mere “persuasion” in the sense of seduction, as *opposed* to *moikheia*.⁶⁸ Thus Aristotle, in the *Nicomachean Ethics*, groups *proagôgeia* with other furtive wrong-doing imposed on victims involuntarily: theft, murder by treachery, false adversarial testimony, sexual violation of another man’s female relatives (*moikheia*), poisoning, preying on slaves, *proagôgeia*.⁶⁹ Plutarch, in his *Life of Solôn* written long after the classical age of Athens, expresses bewilderment at the inconsistency of the law-giver’s enactments relating to women,⁷⁰ noting with astonishment the seemingly haphazard differences in severity of sanctions for sexual offenses against free women.⁷¹ But at least a portion of Plutarch’s dismay arises from his assumption that a *proagôgos* is one who “gains his end by persuasion” – in contrast to the *moikhos* who “commits rape upon a free woman” (Perrin: Loeb translation). In Plutarch’s report, both forms of behavior are forbidden – except when practiced against prostitutes (a bizarre interpretation since whores are the one group, of course, with whom “procurers” normally work). Yet “persuasion” was a prime classical Athenian meaning of *proagôgeia*. In *Clouds*, for example, Aristophanês actually humorously exploits this duality: a flirtatious youth is described as “walking around *proagôgeuôn* for himself with his eyes,” that is, persuasively inviting sexual attention and at the same time “procuring for himself” in a meretricious way – “streetwalking” being a common manifestation of Athenian prostitution.⁷²

The presumed deterrent effect of imprecise interdiction is a familiar feature of contemporary American law. The U.S. Securities and Exchange Commission, for example, systematically avoids clear and specific descriptions of prohibited

⁶⁸ Ancient usage of *moikheia* likewise tends to be inexact, generating considerable dispute among modern scholars who often assume precision of usage. See Cantarella 2005: 241-45, 1991; Foxhall 1991; D. Cohen 1991: 98-132.

⁶⁹ 1131a2-8: τῶν γὰρ συναλλαγμάτων τὰ μὲν ἐκούσια ἔστι τὰ δ’ ἀκούσια ... τῶν δ’ ἀκουσίων τὰ μὲν λαθραία, οἷον κλοπὴ μοιχεῖα φαρμακεία προαγωγεία δουλαπατία δολοφονία ψευδομαρτυρία, τὰ δὲ βίαια, οἷον αἰκία κ.τ.λ.

⁷⁰ Although modern scholarship has discovered that Athenians of the fourth century tended to assign to “Solôn” all laws of indeterminate origin (Fox 1994: 150; MacDowell 2000: 21), Plutarch assumed that the legislation against *proagôgeia* was factually attributable to Solôn.

⁷¹ 23.1-2: Ὅλως δὲ πλείστην ἔχειν ἀτοπίαν οἱ περὶ τῶν γυναικῶν νόμοι τῷ Σόλωνι δοκοῦσι. Μοιχὸν μὲν γὰρ ἀνελεῖν τῷ λαβόντι δέδωκεν· ἐὰν δ’ ἀρπάσῃ τις ἐλευθέραν γυναῖκα καὶ βιάσῃται, ζημίαν ἑκατὸν δραχμὰς ἔταξε· κἄν προαγωγέῃ, δραχμὰς εἴκοσι, πλὴν ὅσαι πεφασμένως πωλοῦνται, λέγων δὴ τὰς ἐταίρας. Αὐταὶ γὰρ ἐμφανῶς φοιτῶσι πρὸς τοὺς διδόντας ... τὸ δ’ αὐτὸ πρᾶγμα ποτὲ μὲν πικρῶς καὶ ἀπαραιτήτως κολάζειν, ποτὲ δ’ εὐκόλως καὶ παίζοντα, πρόστιμον ζημίαν τὴν τυχοῦσαν ὀρίζοντα, ἄλογόν ἐστι.

⁷² 979-80: οὐδ’ ἂν μαλακὴν φυρασάμενος τὴν φωνὴν πρὸς τὸν ἔραστὴν | αὐτὸς ἑαυτὸν προαγωγέων τοῖν ὀφθαλμοῖν ἐβάδιζεν. Cf. Aristoph. *Sphêk.* 1028, *Batr.* 1079, *Thes.* 341. On the equation of “walking” and “whoring,” see E. Cohen (forthcoming), Ch. 1.

behavior, seeking to deny “safe harbor” to persons seeking lawful access to activities proscribed by the Commission.⁷³ By banning *proagōgeia*, an inexact noun affixing itself chameleon-like to virtually every aspect of the commercial provision of sex other than self-employment, Athenian law provided maximum protection for free women and free youth in their practice of prostitution. Wealthy female prostitutes were invariably free persons.⁷⁴ Third-party control of a prostitute’s life, and revenues, was effectively lawful only for enslaved women, enslaved youth, and mature free men. But Athenian *philanthrōpia* did not ignore even these victims of coercive exploitation – who were included in the all-encompassing provisions of the law forbidding “outrageous” victimization (the *graphê hybreōs*).

Prohibition of Outrageous Behavior (Hybris)

A fundamental Athenian law purported to protect every inhabitant of Attika – “whether a child or a woman or a man, whether free or slave” – from outrageous abuse (*hybris*). Under a statute preserved in the text of Demosthenes, Athenian law authorized a prosecution for *hybris* “whenever someone intentionally insults the honor (*hybrizei*) of another, whether a child or a woman or a man, whether free or slave, or does something improper (*paranomon*) against any such person.”⁷⁵ Aiskhinēs cites the legislation in language virtually identical with that of Demosthenes.⁷⁶ Hypereidēs notes the law’s explicit protection of slaves from bodily abuse,⁷⁷ and Demosthenes praises the “humane benevolence” (*philanthrōpia*) of the Athenians in forbidding the subjection of slaves to *hybris*.⁷⁸ This prohibition is so

⁷³ Most recently, by failing to offer a technical definition of “security,” the SEC has left unresolved the potential need for provision of detailed offering materials for the sale of Tenant-in-Common interests under the Tax-Deferred Exchange section (§1031) of the U.S. Federal Tax Code. Cf. the Commission’s failure to provide a “safe harbor” for “insider trading.”

⁷⁴ “Unter der Gruppe der renommierten Hetären, die als Spitzenverdienerinnen galten (*megalomisthoi*) (Athēnaios 570b; 558a-e), waren Sklavinnen kaum anzutreffen” (Klees 1998: 147, n. 16). Cf. Lentakis 1999: 146, 165.

⁷⁵ 21.47: Ἐάν τις ὑβρίζει εἷς τινα, ἢ γυναικα ἢ ἄνδρα, τῶν ἐλευθέρων ἢ τῶν δούλων, ἢ παράνομόν τι ποιήσῃ εἷς τούτων τινά ...

⁷⁶ Aiskhin. 1.15: Ἐάν τις ὑβρίζει εἷς παῖδα (ὑβρίζει δὲ δὴ που ὁ μισθούμενος) ἢ ἄνδρα ἢ γυναικα, ἢ τῶν ἐλευθέρων τινά ἢ τῶν δούλων, ἢ ἂν παράνομόν τι ποιῇ εἷς τούτων τινά, γραφὰς ὕβρεως εἶναι πεποίηκεν ... The text of the “law” preserved at Aiskh. 1.16 is patently a forgery: MacDowell 1990: 263-64.

⁷⁷ Frag. *Mantitheos*: ἔθεσαν οὐ μόνον ὑπὲρ τῶν ἐλευθέρων, ἀλλὰ καὶ ἂν τις εἷς δούλου σῶμα ὑβρίσῃ, γραφὰς εἶναι κατὰ τοῦ ὑβρίσαντος.

⁷⁸ 21.48-49: τοῦ νόμου τῆς φιλανθρωπίας, ὃς οὐδὲ τοὺς δούλους ὑβρίζεσθαι ἀξιοῖ ... εἰσὶν Ἑλληνέες τινες ἄνθρωποι οὕτως ἡμεροὶ καὶ φιλάνθρωποι τοὺς τρόπους ὥστε ... οὐδ’ ὅσων ἂν τιμὴν καταθέντες δούλους κτήσωνται, οὐδὲ τούτους ὑβρίσειν ἀξιούσιν ... A frequent *topos* in Athenian sources is pride (and astonishment) at Athens’ humane protection of even slaves through the law against *hybris*: see Aiskhin. 1.17; Dem. 21.47-49; Hyper. and Lykurg. cited at Athēn. 266e-267a.

well-attested that there is “general agreement (that) we possess the actual text of the law as it stood in the fourth century” (Fisher 1992: 36), the “genuine law” (MacDowell 1990: 263).⁷⁹

But the behavior actually banned by this legislation is uncertain, for the law contained no definition of *hybris*,⁸⁰ prohibiting instead everything encompassed by a common word having multiple and contradictory significations changing with everyday context. The term *hybris* could describe a broad scope of conduct ranging from mundane “human arrogance, overconfidence or unawareness of the reasons for one’s own good fortune” through “behavior seriously injurious” (Fisher 1995: 45-46). However, the meaning of *hybris* in any specific legal context would depend on a decision-maker’s conclusion in that particular matter. Not surprisingly, scholarly efforts to identify a core concept underlying or unifying the various notations of *hybris* have yielded only prolonged academic disputation – despite the profusion of surviving evidence. The standard work on *hybris* (Fisher 1992) runs 526 pages and considers hundreds of elusive testimonia. Ruschenbusch (1965), for example, sees *hybris* as inclusively covering all offenses against the person. MacDowell and Cairns insist on arrogance as the defining characteristic of *hybris*.⁸¹ Fisher identifies *hybris* as “the deliberate infliction of serious insult on another human being.”⁸² Gagarin, in contrast, finds *hybris* distinguished by the use of inordinate force or violence (1979: 232). Others offer still other opinions.⁸³ *Tot homines, quot sententiae*. Prohibition of behavior so undefinable precludes reasonable anticipation of the situations to which the proscription might apply.

But because of modern perception of Athens as a society in which slaves had absolutely no rights (other than perhaps the right not to be murdered),⁸⁴ the statute’s

⁷⁹ Edward M. Harris, appropriating the arguments of Drerup (1898: 297-300), asserts that the text of the law at Dem. 21.47 is a “fake” (1992: 77) – a position that has found no support (see Fisher 2001: 139-40; Carey 1998). Harris’ main contention is that the law treats ἡ παράνομόν τι ποιήση εἰς τούτων τινά as “covering every imaginable crime.” That clause, however, merely insures that any illegal action taken against a slave (and others) – even in the presence or absence of other relief – is actionable pursuant to the special severities of the *graphê hybreôs*. Harris overlooks the presence of the same clause at Dem. 43.75 (ἐὰν δέ τις ὑβρίζει ἢ ποιῇ τι παράνομον) – elaborated upon in 43.77-78 (ὑβριστής, παρανομώτεροι). Finally, Harris assumes that Athenian law aimed for exactitude and specificity in the drafting of criminal charges rather than for the deterrence and elasticity inherent in generalized prohibitions subject to (re)interpretation in each individual case.

⁸⁰ Aiskhinês specifically notes that the statute “summarized all these offenses in a single (term)”: τὸν (νόμον) τῆς ὑβρεως, ὃς ἐνὶ κεφαλαίῳ πάντα τὰ τοιαῦτα συλλαβὸν ἔχει (1.15).

⁸¹ MacDowell 1976, 1978: 129-32; Cairns 1996.

⁸² Fisher 1995: 45. Cf. Fisher 1992: 36-82, 1990: 126.

⁸³ For a select survey of interpretations, see Cairns 1996; Fisher 1992: 2-5.

⁸⁴ Antiph. 5.47, 6.4. Cf. Isok. 18.52; Dem. 59.9. See Harrison 1968: 171-72; Klees 1998: 176-217.

“plain meaning” – its extension of protection to slaves (and thus to unfree brothel prostitutes) – has tended to be disregarded, or even dismissed as “incoherent” or theoretically impossible.⁸⁵ Even those scholars who do acknowledge the law’s explicit statement of protection for slaves and other dependents often assume the provision to have been meaningless in actual practice.⁸⁶ Yet Athenian legal protection for persons of inferior status or situation was far from theoretical. Demosthenes notes that harsh punishment had actually been meted out, pursuant to the law against *hybris*, in many cases involving victimization of slaves.⁸⁷ Deinarkhos reports that at the Eleusinian festival the Athenian *politês* Themistios had been put to death for *hybris* against a Rhodian lyre-girl,⁸⁸ and that a certain Euthymakhos was executed for forcing an Olynthian slave woman into a brothel.⁸⁹ Legal actions also appear to have been brought over the hybristic treatment of another enslaved Olynthian woman by Athenians at a Macedonian symposium after Philip’s destruction of Olynthos,⁹⁰ although “we do not know enough about these cases to know in what circumstances they did, or might, reach the courts” (Fisher 1995: 69-70). To mitigate the lengthy legal delays endemic within the Athenian court system,⁹¹ actions charging *hybris* had to be heard within thirty days after the day on which the charges were first brought⁹² – a virtually unique acceleration of process.⁹³

⁸⁵ The enshrinement of slaves’ rights, for example, leaves distinguished scholars grasping (unsuccessfully) for words: “such a law would have had to envisage a situation involving the treatment of free men as if they were slaves, or citizens as if they were foreigners, or slaves (who are specifically mentioned as within the scope of the law) as if they were – what?” (Murray 1990: 140). “Incoherent”: Gernet 1917: 183-97. Cf. Fisher 1992: 59ff.

⁸⁶ Todd 1993: 189: “When Demosthenes tells us that it was possible to commit *hybris* against a slave ... we should be careful to place a minimalist interpretation on his words.”

⁸⁷ Dem. 21.48-49: Ἀκούετ’, ὦ ἄνδρες Ἀθηναῖοι, τοῦ νόμου τῆς φιλανθρωπίας, ὃς οὐδὲ τοὺς δούλους ὑβρίζεσθαι ἀξιοῖ ... καὶ πολλοὺς ἤδη παραβάντας τὸν νόμον τοῦτον ἐζημιώκασιν θανάτῳ.

⁸⁸ Dein. Dem. 23: Θεμίστιον δὲ τὸν Ἀφιδναῖον, διότι τὴν Ῥοδίαν κιθαρίστριαν ὑβρίσεν Ἐλευσινίοις, θανάτῳ ἐζημιώσατε ... Cf. Worthington 1992: 169. Demosthenes mentions by name a number of other persons executed for misdeeds at such religious gatherings (21.175-181).

⁸⁹ Dein. Dem. 23: Εὐθύμαχον δὲ <θανάτῳ ἐζημιώσατε> διότι τὴν Ὀλυνθίαν παιδίσκην ἔστησεν ἐπ’ οἰκῆματος.

⁹⁰ Dem. 19.196-198; Aiskhin. 2.4, 153-55.

⁹¹ For the systemic prevalence and causes of protracted and postponed litigation, see E. Cohen 1973: 10-12; Charles 1938: 9-10.

⁹² Dem. 21.47: οἱ θεσμοθέται εισαγόντων εἰς τὴν ἡλιαίαν τριάκοντα ἡμερῶν ἀφ’ ἧς ἂν γραφῆ, ἐὰν μὴ τι δημόσιον κωλύη, εἰ δὲ μὴ, ὅταν ἦ πρῶτον οἶόν τε. In practice – as anticipated by the statute – state considerations could still sometimes delay prompt resolution of the matter: γραφὴν δ’ ὑβρεως γράφομαι πρὸς θεσμοθέτας αὐτόν. χρόνου δὲ γιγνομένου, καὶ τῆς μὲν γραφῆς ἐκκρουομένης, δικῶν δ’ οὐκ οὐσῶν, γίνονται παῖδες ἐκ τούτου τῆ μητρὶ (Dem. 45.4).

Should the prosecutor prevail, there was to be an immediate determination of penalties.⁹⁴ Upon conviction, an offender was held in prison until payment of any fine that had been assessed⁹⁵ – an extraordinary remedy in a system where private litigants generally had to enforce court judgments without official assistance⁹⁶ and where even debts owed to the state often were allowed to languish for months before obligors – subject to no restraint – fled.⁹⁷

To avoid the chimera of a protection not practically available to those unable personally to vindicate their rights against a more powerful abuser, prosecution for *hybris* could be pursued by any Athenian *politês*⁹⁸ – in contrast to the usual requirement in a private action (*dikê*) of suit by the victim directly or through his or her male representative (*kyrios*).⁹⁹ Although Harrison, for example, considers that

⁹³ MacDowell 1990: 266-67 refutes Hansen's claim (1981: 167-70) that requirement of trial within thirty days was not uncommon: no other provision for *εἰσαγωγή τριάκοντα ἡμερῶν* is known at Athens (although we do know of "thirty-day cases" [τριακοσταῖαι δίκαι] from Naupaktos [Meiggs/Lewis 1969: 35-37, #20] and from Hêraklea [Dareste 1892-1904 (1965) I, 194ff., face II, ll. 26-27]). Cf. Gofas 1979: 180, n. 21. For the δίκαι ἔμμηνοι at Athens, see E. Cohen 1973: 23-26, Vélissaropoulos 1980: 242-45.

⁹⁴ Dem. 21.47: ὅτου δ' ἄν καταγνῶ ἡ ἡλιαία, τιμάτω περὶ αὐτοῦ παραχρῆμα, ὅτου ἄν δοκῆ ἄξιος εἶναι παθεῖν ἢ ἀποτεῖσαι.

⁹⁵ Dem. 21.47: ἐὰν δὲ ἀργυρίου τιμηθῆ τῆς ὕβρεως, δεδέσθω ἐὰν ἐλεύθερον ὕβριση, μέχρι ἄν ἐκτεῖσῃ. Imprisonment thus was not automatically available in cases of transgressions against slaves.

⁹⁶ See Todd 1993: 144-45; Allen 1997: 34. But cf. now Harris (Symposium 2005). In the case of *hybris*, the fine was paid to the state, not to the victim or prosecutor, thereby giving the *polis* a direct financial interest in extracting payment. See Dem. 21.45: καὶ τῆς ὕβρεως αὐτῆς τὰς μὲν γραφὰς ἔδωκεν ἅπαντι τῷ βουλομένῳ, τὸ δὲ τίμημα ἔποιησεν ὅλον δημόσιον.

⁹⁷ For the rarity of imprisonment as a procedural or punitive process at Athens, see E. Cohen 1973: 74-83; MacDowell 1990: 268; Hunter 1997. For a variant interpretation, see Allen 1997. On the state's laxity even in situations involving public debtors, note the famous case of Demosthenes' father-in-law, Gylôn (Dem. 28.1-3, Aiskh. 3.171; Davies 1971: 121).

⁹⁸ Dem. 21: 47: γραφέσθω πρὸς τοὺς θεσμοθέτας ὁ βουλόμενος Ἀθηναίων οἷς ἕξεστιν. Some potential cases, however, may have been discouraged by the absence of monetary incentive for a voluntary prosecutor (ὁ βουλόμενος) and by the requirement (see Lipsius [1905-15] 1966: 243-4; Harrison 1968: 195 n. 1) that the prosecutor be an Athenian citizen. For *graphai* open also to prosecution by non-Athenians, see Dem. 59.66 (Ἐραίνετος "certainly a foreigner" [Carey 1992: 121]), 59.16, 21.175, 24.105, possibly 59.52.

⁹⁹ Although some commentators persist in referring to the *kyrios* as "the head of the household to which (an Athenian woman) was attached" (Just 1985: 173, n. 8) – itself an improvement over renderings of *kyrios* as "lord and master" (Wolff 1944: 46-47, n. 22) or even as "sovereign" ("in certain contexts": Todd 1993: 383) – recent studies have established that the senior male in an *oikos* was merely the household representative or "steward" in dealing publicly with household interests. See Foxhall 1989, 1996: 150. Cf. Schaps 1998: 163-67.

there was not even a “slender chance” that any outsider would actually prosecute an alleged act of *hybris* by a master against his slave,¹⁰⁰ even our sparse knowledge of actual Athenian litigation provides numerous examples of third parties instituting actions on behalf of women, children and other dependents. Athenian values encompassed a strong ideological commitment to aid unrelated persons who might be victimized. Solôn reportedly considered the ideal state to be one in which otherwise uninvolved persons came to the aid of those being wronged: a key element in the legislation attributed to him was authorization for volunteers to act on behalf of unrelated victims.¹⁰¹ Periklês’ enunciation of Athenian values in the Funeral Address includes praise of the Athenians’ penchant for legally aiding persons being victimized.¹⁰² Even where wrongdoing involved only allegation of financial mismanagement, third parties are known to have come to the victims’ defense. In Demosthenes 38, under a statute permitting any willing person to intervene, a certain Nikidas, not otherwise involved, denounced a guardian for mismanagement of an estate intended to benefit minor children.¹⁰³ When Neaira, an ex-slave staying in Megara, had been subjected to *hybris* by the Athenian *politês* Phryniôn (who claimed to be her master), she sought assistance from the Athenian *politês* Stephanos whom she had only recently met. He responded to her appeal – for Stephanos the beginning of substantial litigation on her behalf, including defense of her freedom through a claim of *aphairesis* against Phryniôn.¹⁰⁴ Similarly the public slave Pittalakos was able to call on the influential *politês* Glaukôn to vindicate his legal rights against harassment by the prominent Hêgêsandros.¹⁰⁵

The law against *hybris* clearly affected many aspects of Athenian behavior. Yet its prime impact was felt in sexual context, for eroticized misconduct was a

¹⁰⁰ 1968: 172. Cf. Humphreys 1993: 5.

¹⁰¹ Τὸ ἐξεῖναι τῷ βουλομένῳ τιμωρεῖν ὑπὲρ τῶν ἀδικουμένων (Aristot. *Ath. Pol.* 9.4). See Plut. *Sol.* 18.3-8: ἐρωτηθεὶς γάρ, ὡς ἔοικε, ἦτις οἰκεῖται κάλλιστα τῶν πόλεων, ἐκείνη, εἶπεν, ἐν ἧ τῶν ἀδικουμένων οὐχ ἦττον οἱ μὴ ἀδικούμενοι προβάλλονται καὶ κολάζουσι τοὺς ἀδικούντας. Cf. Plato, *Rep.* 462d.

¹⁰² οὐ παρανομοῦμεν ... ἀκροάσει καὶ τῶν νόμων, καὶ μάλιστα αὐτῶν ὅσοι τε ἐπ’ ὠφελίᾳ τῶν ἀδικουμένων κεῖνται ... (Thouk. 2.37.3).

¹⁰³ Dem. 38.23: οὐκ ἐμισθωσαν ἡμῶν τὸν οἶκον, ἴσως ἐροῦσιν. οὐ γὰρ ἐβούλεθ’ ὁ Θεῖος ὑμῶν Ξενοπείθης, ἀλλὰ φήναντος Νικίδου τοὺς δικαστὰς ἔπεισεν ἑᾶσαι αὐτὸν διοικεῖν. For *phasis* as a procedure against κάκωσις οἴκου ὀρφανικοῦ, see Harpokr., s.v. φάσις; Aristot., *Ath. Pol.* 56.6.

¹⁰⁴ Dem. 59.37-40: ἐπιδημήσαντα Στέφανον τουτονὶ εἰς τὰ Μέγαρα ... διηγησαμένη πάντα τὰ πεπραγμένα καὶ τὴν ὕβριν τοῦ Φρυνίωνος ... προίσταται Στέφανον τουτονὶ αὐτῆς ... ἀφαιρουμένου δὲ τοῦ Στεφάνου κατὰ τὸν νόμον εἰς ἐλευθερίαν, κατηγγύησεν αὐτὴν πρὸς τῷ πολεμάρχῳ. Neaira’s dependence on male juridical mediation is discussed at Johnstone 1998: 232-33.

¹⁰⁵ Aiskhin. 1.62: σκέψασθε μεγάλην ῥώμην Ἡγησάνδρου· ἄνθρωπον ... ἦγεν εἰς δουλείαν φάσκων ἑαυτοῦ εἶναι. Ἐν παντὶ δὲ κακοῦ γερόμενος ὁ Πιττάλακος προσπίπτει ἀνδρὶ καὶ μάλα χρηστῷ. Ἔστι τις Γλαύκων Χολαργεύς· οὗτος αὐτὸν ἀφαιρεῖται εἰς ἐλευθερίαν.

fundamental and frequent manifestation of *hybris*. Of approximately 500 occurrences of *hybris* or its cognates in the principal surviving Athenian prose authors, 82 incidents relate to sexual misconduct – more cases by far than of any other typology.¹⁰⁶ Even an ex-slave's marital bedding of his former mistress generated an action for “*hybris*” (Demosthenes 45.4). Rape is repeatedly denominated as *hybris*.¹⁰⁷ In fact, Aristotle specifically warns rulers that of the various manifestations of *hybris*, sexual abuse of boys and girls, and physical violation of individuals are most to be avoided.¹⁰⁸

But how could one commit *hybris* against a brothel slave? Prostitution was lawful; owners could require slaves to work at such tasks as were assigned.¹⁰⁹ Yet the law against *hybris* could easily be interpreted as forbidding outrageous (mis)treatment of even a slave prostitute in his or her sexual labors: the statute was understood to forbid *hybris* “against the body of a slave.”¹¹⁰ Thus Neaira, allegedly a foreign whore born into slavery, charged the Athenian *politês* Phryniôn with *hybris* for forcing her to have sexual intercourse in public places.¹¹¹ In homoerotic situations, charges of *hybris* likewise arose from grossly abusive behavior. The public slave Pittalakos brands as *hybris* the actions of the well-connected Athenian *politai* Hêgesandros and Timarkhos who, as the dénouement of a sexual triangle, had sadistically tied Pittalakos to a column and whipped him during a nocturnal revel.¹¹² The linguistic anarchy inherent in the conceptualization of *hybris* explains

¹⁰⁶ Even physical assault against free persons is reported less frequently. See D. Cohen 1991: 172-73; MacDowell 1976; Fisher 1976, 1979.

¹⁰⁷ See D. Cohen 1991: 175; Doblhofer 1994, *passim*; Dover [1978] 1989: 36.

¹⁰⁸ *Pol.* 1315a14-16: ἔτι δὲ πάσης μὲν ὕβρεως εἴργεσθαι, παρὰ πάσας δὲ δεῖν, τῆς τε εἰς τὰ σώματα [κολάσεως] καὶ τῆς εἰς τὴν ἡλικίαν ... μὴ χρῆσθαι δεῖ τοῖς τοιούτοις, ἢ ... φαίνεσθαι ποιούμενον ... τὰς δὲ πρὸς τὴν ἡλικίαν ὀμιλίας δι' ἐρωτικὰς αἰτίας, ἀλλὰ μὴ δι' ἐξουσίαν.

¹⁰⁹ See Garland 1988: 60-73; Klees 1998: 109-116. Hence, the master's *métier* largely determined the slave's future opportunities: οἶμαι γὰρ ἅπαντας ὑμᾶς εἰδέναι, ὅτι τοῦτον, ἡνίκ' ὄντιος ἦν, εἰ συνέβη μάγειρον ἢ τινος ἄλλης τέχνης δημιουργὸν πρίασθαι, τὴν τοῦ δεσπότου τέχνην ἂν μαθὼν πόρρω τῶν νῦν παρόντων ἦν ἀγαθῶν. ἐπειδὴ δ' ὁ πατὴρ ὁ ἡμέτερος τραπεζίτης ὦν ἐκτήσατ' αὐτὸν ..., εὐδαίμων γέγονεν (*Dem.* 45.71-72).

¹¹⁰ Ἐάν τις εἰς δούλου σῶμα ὑβρίση, γραφὰς εἶναι κατὰ τοῦ ὑβρίσαντος (*Frag. Mantitheos*).

¹¹¹ *Dem.* 59.33-37: ἐκόμαζέ τ' αἰεὶ μετ' αὐτοῦ, συνῆν τ' ἐμφανῶς ὅποτε βουλευθεῖη πανταχοῦ, φιλοτιμίαν τὴν ἐξουσίαν πρὸς τοὺς ὀρώτας ποιούμενος. ... διηγησαμένη πάντα τὰ πεπραγμένα καὶ τὴν ὕβριν τοῦ Φρυνίου ... προίσταται Στέφανον τουτοῦ ἀυτῆς.

¹¹² Although he had the support of *politai* who were prepared to act for him and who might have brought a public action for this *hybris*, the slave instead brought a private suit (*dikê*) on his own behalf against the two *politai*. (*Aiskhin.* 1.62: βαρέως δὲ φέρων τὴν ὕβριν αὐτῶν ὁ ἄνθρωπος, δίκην ἐκατέρῳ αὐτῶν λαγχάνει.) In *P. Hamb.* 133, a freedwoman's suit against Zoilos for killing her child was later undertaken by her former master. Cf. *P. Oxy.* 13.1606 (*Lys. Fr.* 1 [Gernet & Bizos]) where Lysias (or a

the exaggerated conclusion of Montuori – from the varied evidence of Aiskhinês 1 – that a charge of *hybris* could be brought against anyone who prostituted a male slave (1976: 12-14). Of course, not every possible accusation would have been made, and not every accusation made would have been successful. Each individual court case involving *hybris* against slaves would have had to resolve anew, in court or otherwise, the inherent conflict between Athenian commitment to protecting the authority of a slaveowner and Athenian social concepts mandating protection for dependent persons, the *philanthrôpia* in which Athens took pride.¹¹³ But the law against *hybris* might have protected slave prostitutes in case of extreme abuse. The prevalence of prostitution in Athenian life and the absence of definition in Athenian law preclude any greater predictability.

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colleague) defends a *therapaina* who had been sued by Hippothersês for her role in the effort to reclaim property confiscated by the Thirty and sold to Hippothersês.

¹¹³ This tension is explored in detail in Fisher 1995.

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