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MOICHEIA AND THE UNITY OF GREEK LAW*

Abstract: This paper proposes *moicheia* (seduction) as an instance of the unity of ancient Greek law. Part I examines the sources that state or imply such unity. Part II analyzes the treatment of *moicheia* in specific sources and places. Part III concludes that the most compelling evidence for unity lies in the detention for ransom of the seducer caught in the act and in the humiliation of the seducer and/or his paramour.

Keywords: Greek law, *moicheia*, seduction, adultery, sexual offenses

Prohibitions and sanctions against illicit consensual sex between a man and a woman are as old as law itself. The world's oldest extant legal code, the Laws of Ur-Nammu (r. 2112-2095), ordains the death penalty for some cases of adultery (§4(7)) and the river ordeal for others (§11(14)). The Decalogue forbids adultery (οὐ μοιχεύσεις, Ex. 20:13 = Dt. 5:17)¹ and coveting another's wife (Ex. 20:17 = Dt. 5:21). When Horace (*Sat.* 1.3.99-110) imagined the evolutionary journey from bestial vegetarianism to human civilization, the lawgivers' first concerns were theft, robbery, and adultery. And the Greeks were no exception. On Homer's Olympus, the gods enforce remedies for *moicheia* (no. 7 *infra*); among the earliest Greek lawgivers, Zaleucus (no. 16) possibly, and Draco (no. 9) certainly, wrote laws dealing with *moicheia*. Employing the criteria I have previously advocated for the investigation of unity in ancient Greek law,² I propose to demonstrate that a

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¹ References to the Old Testament are to the Septuagint version. Elaboration of the rule: Lev. 20:10-12; Dt. 22:21-24.

² Namely, (1) significant similarity in the laws of multiple independent *poleis*; (2) the legal phenomena of communities—permanent, temporary, virtual, or fictional—that comprise Greeks from different *poleis*; and (3) evidence spanning a significant period of time as well as a significant sample of communities for which evidence exists (Phillips 2014, esp. 75-83; see also Phillips 2016b: 49-54). Within category (2), for virtual communities, see esp. nos. 3 and 7; for actual communities, nos. 5, 13 (?Heracleia Pontica), 20. Among the regulations governing the Panhellenic cult site of Zeus at Olympia, *moicheia* will have come under the No Fornicating In The Sanctuary Law (*IvO* 7.1-3, end of the sixth

substantive category of *moicheia* (seduction, including, but not limited to, adultery)³ existed across sufficiently broad space and time to qualify *moicheia* as a concept of “Greek” law. To this end, I will first address the sources that state or strongly imply such unity (Part I), and then test the resulting hypotheses against the evidence for the treatment of *moicheia* in discrete sources and places (Part II), in order to arrive at conclusions (Part III).

I. General statements asserting or implying unity

1. Sometime between 403 and *ca.* 380, Euphiletus stood trial by an Athenian *dikē phonou* for killing Eratosthenes. His preserved speech (Lysias 1) argues that the killing was lawful because he caught Eratosthenes in the act of *moicheia* with his wife (cf. D. 23.53 (*lex*), no. 9). Euphiletus maintains that the killing of a *moichos* apprehended *in flagrante* is a right recognized not only in Athens but throughout Greece (ἐν ἀπάσῃ τῇ Ἑλλάδι), regardless of constitutional type and the standing of killer and victim (§2). This is an obviously partisan and tendentious statement, especially given the total lack of supporting proof elsewhere in the speech; but before we dismiss it out of hand, we must consider the other available sources.

2. Partial confirmation of Euphiletus’ claim is offered by Xenophon, *Hiero* 3.3, where Hiero asserts that “many cities practice the killing with impunity of seducers alone” (μόνους γοῦν τοὺς μοιχοὺς νομίζουσι πολλαὶ τῶν πόλεων νηποινεὶ ἀποκτείνειν; we are presumably to infer that the seducer must be caught in the act). Leaving aside the hyperbolic “alone,”⁴ this statement carries a higher presumption of credibility than Euphiletus’ more sweeping claim: Xenophon and his Hiero have no particular motive for special pleading, and Xenophon’s service with the Ten Thousand Greeks had afforded him an ideal opportunity to learn about the laws and practices of numerous *poleis*.⁵ Such knowledge may also be reflected in *Cyr.* 1.2.2-3, which contrasts Persian law with the laws of the majority of Greek cities, including those concerning *moicheia*; but since Xenophon specifies neither cities nor penalties, this passage provides better evidence for the prevalence of *moicheia* laws than for their content.⁶

century: αἱ δὲ βενέοι ἐν τιαροῖ, βοί κα θοάδοι καὶ κοθάρσι τελεαίαι καὶ τὸν θεαρόν ἐν ταῦτῳ).

³ *Moicheia* as “seduction” of a woman irrespective of her marital status: Latte 1932: col. 2446; Cantarella 1976: 153-54; MacDowell 1978: 124-25; Schmitz 1997: 132; Patterson 1998: 114-25; Omitowoju 2002: 73-95; Harris 2004; Phillips 2014: 78-79; *contra* Lipsius 1905-15: 429; Cohen 1991: 98ff.; Todd 1993: 277-78.

⁴ Cf. Lys. 1.2: περὶ τούτου γὰρ μόνου τοῦ ἀδικήματος κτλ.

⁵ Phillips 2014: 81. Xenophon will have gained additional knowledge during his subsequent exile from Athens, service with Sparta, and settlement at Scillus (X. *An.* 5.3.7-13) and then at Corinth (D. L. 2.53).

⁶ With Xenophon’s ensuing comment on the efficacy of Persian law contrast his report (albeit with distancing ἐλέγετο) of Cyrus the Younger’s committing *moicheia* with Epyaxa (*An.* 1.2.12).

3. In his division of obligations (συναλλάγματα) into the voluntary (ἐκούσια) and the involuntary (ἀκούσια), Aristotle includes *moicheia* in the latter category:

Among the involuntary obligations, some are secret (λαθραῖα), such as theft, seduction (μοιχεία), poisoning, pandering, enticement of slaves from their master, murder (δολοφονία), and bearing false witness; others are violent (βίαια), such as battery, imprisonment, homicide (θάνατος), rape [or “kidnapping”: ἄρπαγή], maiming, defamation, and insult. (*EN* 1131a5-9)

On multiple occasions, especially in the *Nicomachean Ethics* and the *Rhetoric*, *moicheia* recurs as a paradigmatic legal offense and/or moral vice.⁷ Particularly valuable, given Aristotle’s expertise in the laws of the various Greek states and his Panhellenic intended readership,⁸ are several passages in the *Rhetoric* that concern definitions and arguments relevant to the hypothetical construction of laws and the actual litigation of cases. At *Rh.* 1372a21-23, Aristotle asserts that “people are likely to escape detection (λαθητικοί) when their persons contradict the offenses (ἐγκλήματα), such as a weak man in the matter of battery and a poor or ugly man in the matter of *moicheia* (ὁ πένης καὶ ὁ αἰσχροὺς περὶ μοιχείας).” Like the *topos* of the weak man accused of battery (*Pl. Phdr.* 273b3-c4; *Arist. Rh.* 1402a17-19; *Rh. Al.* 1442a28-29), that of the poor or ugly man accused of *moicheia* will have not only abetted concealment but also served in court as an argument for innocence, and the juxtaposition argues for its frequency. *Topoi* for the prosecution included the argument from consequence that the accused dressed finely and wandered about at night (*Rh.* 1401b23-25; cf. *Rh.* 1416a23-24; *SE* 167b9-11).

The frequency of a different sort of argument is explicitly stated at *Rh.* 1373b38-1374a9:

But seeing that people often admit having committed an act but do not admit either the title [of the act] or what the title concerns—for example, [they admit] “taking” but not “stealing,” or “striking first” but not “committing hubris,” or “having intercourse” (συγγενέσθαι) but not “committing *moicheia*” (μοιχεύσαι)...for these reasons concerning these matters too it must be determined what is theft, what is hubris, what is *moicheia* (τί μοιχεία), so that, whether we wish to demonstrate that such is the case or not, we are able to make clear our claim to right.

Aristotle’s *desideratum* of an explicit substantive definition of *moicheia* implies that this was generally lacking in relevant laws. The missing criteria, in his opinion, deal

⁷ See esp. *EN* 1129b19-22, 1132a2-5; *Rh.* 1373b23-24; also *EN* 1107a8-17, 1117a1-2, 1130a24-30, 1134a17-23, 1137a6-26, 1138a24-26; *MM* 1186a36-b1, 1196a18-22; *Rh.* 1391a18-19.

⁸ Phillips 2014: 82, 2016b: 37. *EN* 1181b15-23 refers to the collected *Politeiai* (numbering 158: D. L. 5.27) and looks forward to the *Politics*; see Rhodes 1993: 1-2. For *moicheia* in the various *Politeiai* and in the *Politics*, see nos. 9, 13, 14, 15, 16.

with *mens rea*:⁹ they are adumbrated in the surrounding argument¹⁰ and specified at *EE* 1221b23-25: accused *moichoi* “dispute the charge, asserting that they had intercourse (συγγενέσθαι) but did not commit *moicheia* (μοιχεύσαι), because they acted in ignorance [i.e., of the status of the woman in question] or under compulsion (ἀγνοοῦντες γὰρ ἢ ἀναγκαζόμενοι).”

4. Two centuries later, Polybius states as self-evident the rule that *moichoi*—presumably, those caught in the act—may be killed with impunity: “the killing of citizens is considered an impiety of the greatest magnitude and deserving of the most severe penalties; and yet clearly the killer of a thief or seducer goes unpunished (καίτοι γε προφανῶς ὁ μὲν τὸν κλέπτην ἢ μοιχὸν ἀποκτείνας ἀθῶός ἐστιν), and the killer of a traitor or tyrant receives honors and preferential treatment among all men” (2.56.15).

Polybius’ strict standards of accuracy and his diplomatic and other travels suggest a level of credibility meeting or exceeding that of all the preceding sources except Aristotle, and further support for the presumptive validity of his statement about *moichoi* consists in its status as a virtual *obiter dictum*.¹¹ But while Polybius has no motive to lie, he equally cannot be presumed to rest his assertion on any specific evidentiary inquiry. The right to kill the seducer caught in the act must have applied in Polybius’ native Megalopolis; in all probability it also applied in some (and perhaps even in all) of the rest of the contemporary Achaean League, which included virtually the entire Peloponnese and possessed common federal laws and courts (Plb. 2.37.10-11). But beyond this, absent specific attestation, we pass into the realm of conjecture.

5. Philo of Alexandria (ca. 25 B.C.-ca. A.D. 50) goes even further than Lysias in having Joseph assert the universal right to kill the *moichos* caught in the act:

“For this who among mankind does not yearn to kill? For while in other matters they are accustomed to differ, this alone all men everywhere by common consent consider deserving of countless deaths, surrendering without trial those who are caught in the act to the men who have discovered them (ἀκρίτους ἐκδιδόντες τοὺς ἀλόντας τοῖς πεφωρακόσι).” (*Ioseph.* 44)

Despite the hyperbole, we may confidently infer that this right applied in contemporary Alexandria, for Philo would not present as ubiquitous a rule that did

⁹ But, significantly, not with the marital status of the female party, which may corroborate *e silentio* the position that *moicheia* in Greece generally, and not just, for example, in Athens (no. 9) and Gortyn (no. 11), did not require the woman to be married. Ignorance as to status (see *infra*) does not necessarily concern marital status; the issue might be whether the woman was free or slave, or whether she was a prostitute (cf. Lys. 10.19; [D.] 59.67; Plu. *Sol.* 23.1, no. 9).

¹⁰ *Rh.* 1373b33-36, 1374a9-18; cf. *EN* 1135a23-33, 1135b8-27, 1109b30-1114b25, 1134a17-23; *Rh.* 1368b9-12, 1374b4-10, 1375a7.

¹¹ Polybius may refer to Roman as well as Greek treatment of *moicheia* (cf. Walbank 1957-79: 1.263, and see n. 12).

not obtain in his own city.¹² This is all the more important in light of Alexandria's status as the consummate Panhellenic city, with inhabitants originating by immigration or descent from Macedonia and from *poleis* throughout the Greek world.¹³

6. In stark contrast, Josephus alleges that most (Greek and other non-Mosaic) lawgivers have treated *moicheia* with leniency:

I omit at present to discuss penalties (τιμωριῶν)—all the types of settlement (διαλύσεις) that from the beginning the majority of lawgivers have granted to bad actors, legislating monetary fines for *moicheia* (ἐπὶ μοιχείας μὲν ζημίας χρημάτων) and even marriage for corruption [of a virgin] (φθορᾶς)... (*Ap.* 2.276, *post* A.D. 93)

Although Josephus is aware of the traditions concerning Greek lawgivers such as Draco, Solon, Lycurgus, Zaleucus, and Minos (*Ap.* 1.21; 2.154, 161-62, 225-27; cf. 2.273), he presents no evidence to support his claim. Moreover, he has abundant motive to minimize the severity of Greek laws, in accordance with his theme of the unique inflexibility of the law of Moses, which punishes *moicheia* with death (*Ap.* 2.215).¹⁴ Even so, the contrast between the leniency alleged by Josephus and the

¹² Goodenough 1929: 78-80. The Alexandrian *Dikaionomata* (*PHal* 1, mid-third century B.C.) contain no law on the subject. There was no necessary conflict with Roman law, for the self-help remedies attested in Plautus (e.g., *Bac.* 842-924; *Mil.* 1394-1427), Terence (*Eu.* 949-963), Horace (*Sat.* 1.2.41-46 *et alibi*; 2.7.56-82), and Catullus (15.18-19)—binding, beating, cudgeling, whipping, castration, sodomy, radishes, mullets, and death—were in all likelihood, under certain circumstances, countenanced (though not in most cases specifically ordained) by Roman law not only before but, with some restrictions, under and after the *lex Iulia de adulteriis coercendis* (ca. 18 B.C.), which treated *adulterium* (with a married woman) and *stuprum* (with an unmarried woman) together. See *inter alia* *D.* 48.5.13(12); 48.5.6.1; 48.5.25(24) *pr.*; 48.5.21(20); 48.5.23(22).2-3 (cf. Quint. *IO* 5.10.88; *Coll.* 2.5.1 \approx *Inst.* 4.4 *pr.*); 48.5.24(23) *pr.* (*infra*, n. 27); 48.5.26(25).1-3; *Inst.* 4.18.4; Paul. *Sent.* 2.26.1 \approx *Coll.* 4.12.1, with Cantarella 1976: 162-204; Crawford 1996: 781-86; Robinson 1995: 58-67; Frier—McGinn 2004: 110-20, 205-9; Treggiari 1991: 262-319, 507-10; Scafuro 1997, esp. 216-31; Richlin 1983: 215-19; Bauman 1996: 32-34; Watson 1971: 23. The provisions of the *lex Iulia* concerning self-help represent an encroachment of state criminal jurisdiction upon an older private domestic jurisdiction that had previously enjoyed greater latitude: cf. *Coll.* 4.8.1; D. H. *Ant. Rom.* 2.25.6; Cat. Mai. *De dote ap.* Aul. Gell. 10.23.5. Many of the aforementioned practices have Greek parallels or antecedents, including the radish (nos. 9, 17).

¹³ Fraser 1972: 1.38-92; Phillips 2014: 79-80; Str. 17.1.12 = Plb. 34.14: “even granted that they were all mixed together, they nonetheless were Greeks by descent and preserved the common custom of the Greeks (ἐμμένοντο τοῦ κοινοῦ τῶν Ἑλλήνων ἔθους).”

¹⁴ Cf. *Ap.* 2.201, 292. With *Ap.* 2.276 cf. ?Philo, *Hypothetica* 1 fr. *ap.* Eus. *PE* 8.7.1: “Does any of these things or anything similar to them exist among [the Jews]—anything that appears mild and tame and that involves the bringing of lawsuits, and excuses and delays and penal assessments (τιμῆσεις) and counter-assessments (ὑποτιμήσεις)? No; everything is simple and clear: if you commit pederasty, if you commit *moicheia*...the penalty is death.”

severity posited by Lysias, Xenophon, Polybius, and Philo does not amount to outright contradiction. In fact, all the preceding sources might be taken together as creating a rebuttable presumption that the various Greek states commonly granted the right to kill the seducer caught in the act, while simultaneously offering less drastic remedies. To test this presumption and its constituent elements, we shall now examine the treatment of *moicheia* in specific sources and places.

II. Specific sources and places

7. Pride of place for both precedence and influence goes to Homer's Lay of Ares and Aphrodite, sung by Demodocus at *Od.* 8.266-369.¹⁵ Informed by Helios that the adulterous couple has sullied his house and bed (μίγησαν ἐν Ἡφαίστοιο δόμοισι/λάθρη...λέχος δ' ἦσχυνε [*sc.* Ἄρης] καὶ εὐνην/Ἡφαίστοιο ἄνακτος, 268-70), Hephaestus lays a trap in his bedroom, forging unbreakable, inescapable, and invisible chains which he places all around the posts of the bed and suspends from the central rafter of the roof. He then feigns departure for Lemnos, and Ares and Aphrodite take the bait, mount the bed, and are caught. Alerted again by Helios, Hephaestus returns, announces the capture to Zeus and the other gods, and calls them to witness ('Ζεὺ πάτερ ἦδ' ἄλλοι μάκαρες θεοὶ αἰὲν ἐόντες./δεῦθ', ἵνα ἔργα γελαστά καὶ οὐκ ἐπιεικτὰ ἴδῃσθε./ὥς ἐμὲ χωλὸν ἐόντα Διὸς θυγάτηρ Ἀφροδίτη/αἰὲν ἀτιμάζει, φιλέει δ' αἰδέηλον Ἄρηα...ἀλλ' ὤψεσθ' ἵνα τῷ γε καθεύδοντι ἐν φιλοφροσύνῃ/εἰς ἐμὰ δέμνια βάντες./ἐγὼ δ' ὁρώων ἀκάχημαι,' 306-9, 313-14). The chains, he declares, will not be loosed until Zeus refunds the bride-price he paid for the faithless Aphrodite ('ἀλλὰ σφωε δόλος καὶ δεσμὸς ἐρύξει./εἰς ὃ κέ μοι μάλα πάντα πατήρ ἀποδοῖσιν ἔεδνα./ὅσσα οἱ ἐγγυάλιξα κυνώπιδος εἵνεκα κούρης,' 317-19). The gods who rally to Hephaestus' summons break out in laughter at the skill of the hare who has caught the tortoise and adjudge Ares liable to a penalty as a seducer caught in the act ('τὸ καὶ μοιχάγρι' ὀφέλλει,' 332). Poseidon entreats Hephaestus to release Ares, offering to stand surety (evidently *corpore suo*, as a potential hostage, given Hephaestus' response) for Ares' payment, the amount of which is at Hephaestus' discretion provided that he does not exceed propriety ('Ἀῶσον· ἐγὼ δέ τοι αὐτὸν ὑπὶσχομαι, ὥς σὺ κελεύεις./τίσειν αἴσιμα πάντα μετ' ἀθανάτοισι θεοῖσι,' 347-48);¹⁶ but Hephaestus balks at the prospect of imprisoning Poseidon in the event that Ares defaults ('μὴ με, Ποσειδάων γαίῳχε, ταῦτα κέλευε./δειλαί τοι δειλῶν γε καὶ ἔγγυαι ἐγγυάσθαι./πῶς ἂν ἐγὼ σε δέοιμι μετ' ἀθανάτοισι θεοῖσιν./εἴ κεν Ἄρης οἴχοιτο χρέος καὶ δεσμὸν ἀλύξας,' 350-53).¹⁷ Then Poseidon offers a guaranty for the fine itself ('Ἥφαιστ', εἴ περ γάρ

¹⁵ On this episode see Forsdyke 2008: 10-11.

¹⁶ Varying interpretations of ὥς σὺ κελεύεις and αἴσιμα πάντα: Cantarella [1964] 2011a: 5-7.

¹⁷ Δειλαί...ἐγγυάσθαι is best interpreted as "Pledges given on behalf of worthless men [i.e., Ares] are worthless things to hold." See scholl. E, P, Q, V, M, T *ad loc.*; Merry—Riddell 1886 *ad loc.*; Stanford 1965 *ad loc.*; Garvie 1994: 309.

κεν Ἄρης χρεῖος ὑπαλύξας/οἴχηται φεύγων, αὐτός τοι ἐγὼ τάδε τίσω,' 355-56); Hephaestus accepts and releases Ares and Aphrodite.

The date of composition of the *Odyssey* (ca. 700),¹⁸ the authority of Homer, and the Olympian status of the *dramatis personae* combined to provide the ideal aetiology for the practice of detaining for ransom the *moichos* caught in the act that we find in many later sources and places. Characteristic elements include Hephaestus' rights as husband and householder to apprehend and detain Ares; the humiliation of Ares (here by being displayed in chains to the mockery of the witnessing gods); and Ares' release on the security proffered by Poseidon. Most likely the practice preceded the aetiology:¹⁹ by ca. 700 the practice obtained in enough parts of Greece that the *hapax* μοιχάγρια (penalty for a seducer caught in the act) would be immediately understood by those audiences at least,²⁰ and that thenceforth adoption of the practice elsewhere would be facilitated by the Olympian precedent enshrined in Homer.²¹

8. Pausanias 9.36.6-8 quotes and interprets a fragment of the Hesiodic Μεγάλοι Ἡοῖαι (fr. 257 Merkelbach—West = fr. 15 Hirschberger) concerning the reception of the hero Hyettus:

¹⁸ Date: *inter multos alios*, Rosen 1997: 465; Raaflaub 1997: 625; West in Heubeck—West—Hainsworth 1998: 33-35. Ancient critics and the scholiasts were divided as to the genuineness of this passage (see Merry—Riddell 1886 *ad loc.*), and a few moderns have rejected it (e.g., Blass 1904: 269-74). The athetizers have relied on the immorality and irreverence of the episode and/or its linguistic peculiarities. The tone of the episode (as commentators frequently observe: e.g., Merry—Riddell 1886: 332-33; Hainsworth in Heubeck—West—Hainsworth 1998: 363-64) presents no bar to authenticity. Independent proof of authenticity includes (1) the correspondences between [Hom.] *h. Ven.* 58-64, 234 and *Od.* 8.362-66, 298; (2) Hesiod's familiarity with the episode, demonstrated by *Op.* 328-29, promising divine vengeance against ὅς τε κασιγνήτοιο ἐοῦ ἀνὰ δέμνια βαῖνη/κρυπταδῆς εὐνῆς ἄλόχου: in addition to the substance of the offense, note the verbal coincidence with *Od.* 8.314, εἰς ἐμὰ δέμνια βάντες (cf. Straubel *ap.* West 1978: 239); and (3) Xenoph. fr. 11.3, 12.2 D—K, which take Homer and Hesiod to task for ascribing to the gods κλέπτειν μοιχεύειν τε καὶ ἀλλήλους ἀπατεύειν. The episode's linguistic peculiarities may indicate a relatively late date at which it entered the oral tradition (Finley 1978: 49; Hainsworth in Heubeck—West—Hainsworth 1998: 364; cf. Garvie 1994: 293-94, 296; West 2014: 135, 194). In any case, the earlier the story entered the tradition, the more likely it was to influence broader Greek practice; the later it entered the tradition, the more likely it was to reflect broader Greek practice.

¹⁹ Cf. Carey 1995: 417, who considers it "possible, particularly in the light of...*Odyssey* 8.266-366, that ransom and perhaps abuse were already established practice in pre-Solonian Athens."

²⁰ Cf. μοιχοληπτία "(the act of) catching a seducer [in the act]" (Phryn. Arab. *PS* (Lex. Seg.) s.v. ἀνοητία). Homer as historical evidence: Finley 1978: 48-50, 142-58; Cantarella [1988] 2011b: 108, 116.

²¹ The episode continued to possess precedential value even for Juvenal (2.29-33; 10.311-17).

While this Orchomenus was king, Hyettus arrived from Argos, in exile for the killing of Molurus son of Arisbas, whom he had killed upon catching him [*in flagrante*] with his wedded wife (ἐπὶ γυναικὶ ἐλὼν γαμετῇ). Orchomenus granted Hyettus a share of his country, the vicinity of the present village of Hyettus and the adjoining territory. Hyettus was mentioned by the composer of the epic poem that the Greeks call the *Great Ehoëae*:

And Hyettus, after killing Molurus son of Arisbas in his house for bedding his wife (κτείνας ἐν μεγάροις εὐνῆς ἔνεκ' ἧς ἀλόχοιο), left his home far behind and fled horse-pasturing Argos, and came to Minyan Orchomenus; and there the hero took him in and granted him a portion of his possessions, as was fitting.

This Hyettus, then, was clearly the first man to exact punishment for seduction (δίκην μοιχείας λαβόν);²² later, when Draco served as *thesmothetês* for the Athenians, it was established on the authority of his laws that he wrote during his term of office that there was to be immunity (ἄδειαν) for all other acts for which it was necessary, and in particular for the punishment of a seducer (καὶ δὴ καὶ τιμωρίας μοιχοῦ).

While (this fragment of) the *Great Ehoëae* in all probability postdates the *Odyssey*,²³ the legal world it describes is of at least equal, and likely greater, antiquity. For Hyettus' self-imposed exile for the killing of Molurus comports with the principle, observed consistently in Homeric and Hesiodic epic, that homicide is a strict-liability offense. Extenuating circumstances may mitigate the killer's moral liability but have no effect on his legal liability: in order to avoid being killed in retaliation, the killer must either go into exile or pay compensation to his victim's relatives.²⁴

²² This is the sole occurrence of the killing of a *moichos* in the act in surviving Homeric or Hesiodic poetry; the closest comparandum is Proetus' unsuccessful attempt to have Bellerophon killed due to a false accusation of attempted *moicheia* brought by Anteia (*Il.* 6.157-95).

²³ Hirschberger 2004: 84 places the composition of the fully-developed Μεγάλαι Ἡοῖαι in the first half of the sixth century; West 1985: 136 proposes *termini* of 580-520. But the gradual agglomeration and rearrangement of material will have been facilitated by the catalogic form of the poems; West's conclusion that "most of the genealogies contained in [the *Ehoëae*] had evolved by stages from local genealogies constructed not later than the eighth century" (West 1985: 164) presumably holds true for the *Great Ehoëae* too, but the latter is far too fragmentary to permit the sort of reconstruction that is possible for the *Ehoëae* (West 1985: 3, 167). Regarding Hyettus and Orchomenus, note West's argument (1985: 144-53) that the establishment of close mythical genealogical connections between Argos and Boeotia can be traced to *ca.* 750-700.

²⁴ For the rule of exile, compensation, or death, see esp. *Il.* 9.632-36; *Od.* 23.118-20; 3.193-98. The arbitration scene on the Shield of Achilles (*Il.* 18.497-508) shows that accepting compensation was not mandatory. Strict liability is best illustrated by the case of Patroclus (*Il.* 23.85-90), who had to flee Opus even though he had killed the son of Amphidamas νήπιος, οὐκ ἐθέλων, ἀμφ' ἀστραγάλοισι χολωθείς. Reception of the killer by a powerful foreigner is the norm (*Il.* 24.480-84); for examples, in addition to Patroclus, see *Il.* 15.430-40; [Hes.] fr. 195.8-21 Merkelbach—West = fr. 91.8-21

Both the consistency of early epic and the inherent probability of a time before the rise of the Greek lawgivers when the killer's *mens rea* was not considered²⁵ point to the conclusion that these epics reflect actual Greek practice at least shortly before and/or at the time of their composition; that is, roughly speaking, in the ninth, eighth, and/or early seventh century (and, for all we know, even earlier).²⁶

9. The Athenian law of *moicheia* begins with the Draconian provision referenced by Pausanias, which immunized the killer of a man caught *in flagrante* with the killer's wife, mother, sister, daughter, or concubine kept for the procreation of free children (ἐπὶ δάμαρτι ἢ ἐπὶ μητρὶ ἢ ἐπ' ἀδελφῇ ἢ ἐπὶ θυγατρὶ, ἢ ἐπὶ παλλακῇ ἢν ἂν ἐπ' ἐλευθέροις παισὶν ἔχῃ, D. 23.53 (*lex*)).²⁷ But besides Lysias 1 (no. 1), the only known case of such killing is the legend of king Hippomenes, who caught his daughter with a *moichos*, dragged the latter to his death behind his

Hirschberger (Hoῖαι) = *Scut.* 1-14. Homicide in early epic: Bonner—Smith 1930: 15-21; Cantarella 1976: 15-75; Gagarin 1981: 5-18; Hirschberger 2004: 366; Phillips 2017: 55-56.

²⁵ As late as the twelfth century A.D., the *Leges Henrici Primi* (compiled 1114-1118) could assert no fewer than three times as a principle of English law that “he who transgresses involuntarily shall make amends voluntarily” (*Legis enim est qui inscienter peccat scienter emendet, et qui* [i.e., originally, *se pe*] *brecht ungewealdes betan [lege bete] gewealdes*, §90.11a; cf. §§70.12a-12b, 88.6a). The contemporary Icelandic *Grágás* (whose written codification began in 1117-1118) declares, “It is prescribed that there shall be no such things as accidental acts” (*Pat er mælt at engi scola verða vaða verc*, *Konungsbók* §92).

²⁶ See Finley 1978: 29, 31, 33-34, 48-50, 77, 92, 94-95, 101, 110, 117-18, 153-54; Gagarin 1981: 5-6, 18-19; Raaflaub 1997: 625-28, 630, 643-48; Schmitz 1997: 53-54.

²⁷ Draco enacted his laws in 621/0 ([Arist.] *Ath.* 4.1); by the fourth century (and presumably much earlier), these clauses were understood as providing a self-help remedy against the *moichos* caught in the act (μοιχὸν λαβὼν, [Arist.] *Ath.* 57.3). Cf. Lys. 13.66: ἐλήφθη μοιχός· καὶ τούτου θάνατος ἡ ζημία ἐστίν. Additional laws of Draco and/or Solon addressing *moicheia per se* may have included clarifying language, but the evidence is weak. (1) According to Ulpian, D. 48.5.24(23) *pr.*, *Pomponius scripsit in ipsis rebus Veneris deprehensum [sc. adulterum] occidi; et hoc est quod Solo et Draco dicunt ἐν ἔργῳ* (cf. n. 12). But without corroboration, we cannot assume that Solon or Draco anywhere wrote ἐν ἔργῳ; Ulpian may be using “Solon and Draco” as fourth-century Athenians did, to refer summarily to the totality of Athenian law. (The phrase is, however, used in the required sense by Lucian, *DDeor.* 21(17).1, and Solon uses ἔργα of sex in the elegiac fr. 26.1 West.) (2) Lucian, *Eun.* 10 has Lycinus report a third party's courtroom statement against the title character that if the stories about him are true, καὶ μοιχὸς ἐάλω ποτέ, ὡς ὁ ἄξων φησὶν, ἄρθρα ἐν ἄρθροις ἔχων. The *Eunuch* is set in Athens (of the later second century A.D.), and Lucian was a skilled Atticist who knew his Attic orators, but it is scarcely credible that either Draco or Solon explicitly specified a requirement of genital-to-genital contact. For summary discussion, see Leão—Rhodes 2015: 43-44 (fr. 28b-c); a more positivist reading is given by Cantarella 1976: 197-201, [1991] 2011c: 349-50, [2002] 2011e: 381. See further Schmitz 1997: 55-64, on proposed reconstructions of a Solonian law on *moicheia per se*.

chariot, and immured the former with a horse until it ate her.²⁸ Moreover, we do not know the outcome of Euphiletus' trial, and it is quite possible that by that time the ἐπὶ δόμαρτι κτλ clauses were a dead letter.²⁹

By the time of the orators, too, three additional remedies were available against the seducer apprehended *in flagrante*. The first of these was *apagôgê* (Aeschin. 1.91).³⁰ Under the second, the seducer's captor had the right to detain him and subject him to physical abuse by means including the forcible insertion of a large radish (or, possibly, an axe handle or a scorpion fish) into his anus and the depilation of his genitals and buttocks using heated ash.³¹ In this situation, the captor may in

²⁸ Heraclid. Lemb. *Epit. Ath. Pol.* 1 Chambers = *Ath. Pol. fr. part. prim. deperd.* 7 Gigon; Aeschin. 1.182 with schol. 367b Dilts; cf. Nic. Dam. *FGrHist* 90 F 49 ≈ *Suda* s.v. Ἴππομένης, ι 573 Adler. Note that Aeschines states, and Heracleides implies, that Leimone was unmarried. It is entirely possible that one of the last Athenian kings was named Hippomenes (and thus probably lived in the late eighth century); the tale of his daughter and the horse will have been created (with the daughter, "Meadow," aptly named) to justify the fall of the monarchy. Rhodes 1993: 78-79; Fisher 2001: 331-34; Phillips 2013: 103, 2017: 52.

²⁹ Phillips 2017: 51-54; on the general peril, cf. Arist. *EN* 1117a1-2; cf. Riess 2012: 43. Euphiletus asserts that killing the *moichos* is a recognized remedy throughout Greece, yet he cites no precedent from Athens or anywhere else to justify this claim. Xenarch. fr. 4.22-24 K—A (fourth century), ἄς πῶς ποτ', ὃ δέσποινα ποντία Κύπρι/βινεῖν δύνανται, τῶν Δρακοντείων νόμων/ὀπότεν ἀναμνησθῶσι προσκινούμενοι; is arguably funnier if the Draconian sanction is no longer a likely threat; cf. Men. fr. 267 K—A: οὐκ ἔστι μοιχοῦ πρᾶγμα τιμιώτερον/θανάτου γάρ ἐστὶν ὄνιον. Lycophron's prosecutors accuse him of being a repeat offender (*Hyp.* 1.12). Pausanias' awareness of Draco's law (no. 8) does not necessarily imply that it was still enforced, and Tertullian's hearsay allegation that Speusippus (d. 339), Plato's successor as head of the Academy, "perished in the act of adultery" (*Apol.* 46) merits no credence (contrast D. L. 4.3). On Draco's law and *moicheia*, see further Schmitz 1997: 49-55.

³⁰ See Schmitz 1997: 66-69.

³¹ Ar. *Nu.* 1083-84 with schol. *ad* 1083 (radishing and depilation); *Pl.* 168 (depilation) with schol. (radishing and depilation); *Th.* 536-38 (depilation); Hsch. s.vv. Λακιάδαι, ῥαφανιδωθῆναι (radishing; cf. Hsch. s.v. στείλεαν); *Suda* s.vv. ῥαφανιδωθῆναι καὶ τέφρᾳ τιλθῆναι, ρ 55 Adler (radishing and depilation); ὃ Λακιάδαι, ω 62 Adler (radishing and axe handles); Zen. 73 Miller, *Mélanges* pp. 357-58, s.v. Πλακιάδαι [*sic*] καὶ στέλαιον = Posidipp. fr. 4 K—A (radishing and axe handles: third century); Philonid. fr. 7 K—A (depilation: fifth century); Cratin. fr. 129 K—A (depilation: fifth century); Pl. Com. fr. 189.22 K—A (fifth or fourth century) = Ath. 5d (scorpion fish): A. ... σκορπίος αἰ—B. παίσειε γέ σου τὸν προκτὸν ὑπελθόν. See Kapparis 1996; Kapparis 1999: 302-3; Schmitz 1997: 91-107; Phillips 2016b: 50-52 with nn. 91-93, 96-97. According to *Suda* s.v. ὃ Λακιάδαι and Zenobius, axe handles were employed in default of radishes. Kapparis 1996: 67-70 doubts that a scorpion fish (σκορπίος: *Scorpaena porcus* or *Scorpaena scrofa*, Thompson 1947 s.v. σκόρπαινα) could substitute for the radish (*contra* Schmitz 1997: 100) on the grounds that upon removal its poisonous spines would cause agonizing pain if not death, and he argues that after the passage of the law discussed at n. 32 *infra* (which he attributes to Solon), "unless the *kyrios* killed the adulterer on the spot, he could not put him to death afterwards or inflict upon him lethal

fact have been entitled by law to “do with” the *moichos* “whatever he wishes,” perhaps on condition that he not penetrate the *moichos* with an edged weapon.³² The third, which could be employed in combination with the second, was to detain the seducer for ransom.³³ A man who alleged unjust detention could bring a *graphê adikôs heirschthênai hōs moichon*; if the captor was convicted, the detainee was set free and his sureties released from their obligation, while if the captor was acquitted, he was permitted, on the spot (ἐπὶ τοῦ δικαστηρίου), to do whatever he wished with the detainee, provided that he not use an edged weapon (ἄνευ ἐγχειριδίου χρῆσθαι ὅ τι ἂν βούληθῃ, [D.] 59.66).³⁴ The sole attested instance of this *graphê* ([D.] 59.66-71) never made it to trial. The alleged *moichos* Epānetus, we are told, admitted to having sex with Phano but asserted that Stephanus had wrongfully detained him, since Stephanus was not Phano’s father and since he was immunized

punishments.” The latter hypothesis is not provable; this may have been the intent of the lawgiver, but determining how soon after capture a *moichos* was killed will often have been impossible (and what if the captor could demonstrate that the scorpion fish was his punishment of first resort?). In any event, the man who has determined to shove a poisonous fish into another man’s anus might well view the latter’s survival as being of little concern. The Romans borrowed the radish from the Greeks (cf. no. 17; Roman adoption is an additional argument for the spread of the practice in Greece beyond Athens: on the unity of Greek law as a key factor in its influence upon Rome, see Mitteis 1891: 61-62), but the mullet (Catull. 15.18-19; Juv. 10.317 with schol.; cf. Hor. *Sat.* 1.2.133)—specifically, the gray mullet, *Mugil cephalus* or *Mugil capito* (Thompson 1947 s.vv. κεστρεύς, κέφαλος)—was a Roman innovation (unless it served as a substitute for the scorpion fish). Ar. *Ach.* 849, characterizing Cratinus as “always having his hair cut *moichos*-style, with a single blade [i.e., a razor]” (ἀεὶ κεκαρμένος μοιχὸν μιᾷ μαχαίρᾳ), may indicate that Cratinus’ head resembles the depilated genitals and/or buttocks of a *moichos* caught in the act; that *moichoi* might have their heads as well as other areas depilated; or that very short haircuts were associated with *moichoi* (Sommerstein 1992: 199; Schmitz 1997: 93-101; Phillips 2016b: 51 n. 92). In the first two cases, reference to a blade is interesting, given the ban on the use of edged weapons by the captor who has prevailed in a *graphê adikôs heirschthênai hōs moichon* (see *infra*). Presumably the solution is that blades might be used for shaving but not for penetration (cf. Phillips 2016a: 351-52). On the humiliation of *moichoi* and their partners at Athens by these and other means, see Forsdyke 2008: 8-26.

³² The statement at Lys. 1.49 that the laws “command that if a person catches a *moichos*, he may do with him whatever he wishes” (ἐάν τις μοιχὸν λάβῃ, ὅ τι ἂν οὖν βούληται χρῆσθαι) is plausibly interpreted as the paraphrase of a law on *moicheia* by Kapparis 1995: 114-16 (cf. the treatment of the female party who violates the restrictions on her clothing or movements, *infra*; and note the parallel language in the Great Code of Gortyn, no. 11). Kapparis also tentatively imports the ἄνευ ἐγχειριδίου proviso from the paraphrased law governing the *graphê adikôs heirschthênai hōs moichon* (see *infra*).

³³ Lys. 1.25, 29; [D.] 59.41, 64-71; Callias fr. 1 K—A (440s-430s; cf. *Suda* s.vv. μοιχός, μ 1360 Adler; ἔλκει μοιχὸς εἰς μοιχόν, ε 880 Adler, with Kassel—Austin 1983: 41; Schmitz 1997: 75); Cratin. fr. 81 K—A (ca. 430).

³⁴ The captor was thus presumably empowered to employ the non-lethal punishments that he might have employed within his house: Phillips 2016b: 53; Schmitz 1997: 76-77.

under a law “forbidding the seizure of a man as a *moichos* in the company of those women who are located in a brothel or go about in public” (τὸν νόμον...ὃς οὐκ ἔᾱ ἐπὶ ταύτησι μοιχὸν λαβεῖν ὁπόσαι ἂν ἐπ’ ἐργαστηρίου καθῶνται ἢ πωλῶνται ἀποπεφασμένως, §67).³⁵ Nowhere do we find an objection that Epænetus could not be guilty of *moicheia* because Phano was unmarried; this provides our best evidence that in Athens *moicheia* did not require the female party to be married.³⁶

At least when she had been caught in the act, the female party was prohibited from attending public religious rites and from wearing adornment, on pain of being stripped and beaten (but not killed or maimed); and if she was married, her husband had to divorce her ([D.] 59.87 (*lex*, under the rubric νόμος μοιχείας); Aeschin. 1.183).³⁷ According to Plutarch, *Sol.* 23.2, Solon permitted a man to sell his unmarried daughter or sister into slavery if he caught her having had sex with a man;³⁸ but we have no evidence for the enforcement of this provision in the time of the orators, by which it was presumably a dead letter (note its absence from Aeschin. 1.183).

Still more remedies against the *moichos* were available that did not require capture in the act: a dedicated *graphê moicheias* (Hyp. 1.12; [Arist.] *Ath.* 59.3; ?Lys. fr. XXVII Carey κατ’ Αὐτοκράτους μοιχείας; penalty unattested);³⁹ the *graphê hybreôs* (Isoc. 20.2; D. 21.45, 47 (*lex*); D. 37.33; Hyp. 1.12; Lys. 1.25; D. 45.3-5),⁴⁰ an *agôn timêtos* without penal limit (Lys. fr. 178 Carey = Phot. s.v. ὕβρις = *Suda* s.v. ὕβρις, v 16 Adler; D. 21.47 (*lex*)); and, employed at least once (and evidently for the first time) at some time between 333 and 330, *eisangelia* (Hyp. 1).⁴¹

³⁵ Cf. Lys. 10.19 (cf. Harpo. s.v. πεφασμένης, π 64 Keaney = Lyc. fr. X-XI.9 Conomis; similarly *Suda* s.v. πεφασμένος, π 1417 Adler); Plu. *Sol.* 23.1. Lysias’ version presumably replicates actual statutory language, of which Apollodorus offers an expanding paraphrase (cf. Harpo. s.v. ἀποπεφασμένον, α 198 Keaney; similarly *Suda* s.v. ἀποπεφασμένον, α 3475 Adler).

³⁶ Cf. Men. *Sam.* 589-91: Zeus ἐμοίχευσεν the unmarried virgin Danae. The story of Hippomenes, Leimone, and her lover might be taken as supporting evidence (Schmitz 1997: 101, 130).

³⁷ See Kapparis 1999: 354-60; Schmitz 1997: 89-91. The arguments of Canevaro 2013: 190-96 against the authenticity of the law are not, to my mind, dispositive; I think the law is most likely genuine but incomplete (*pace* Canevaro, I do not believe a forger would have invented the otherwise unattested mandatory divorce clause). As to public religious rites, analogous concerns about the pollution posed by *moicheia* (by women) are evident at Aeolian Cyme (no. 19, with Cole 1984: 107 n. 46) and in a Messenian *lex sacra* of 92/1 (Dittenberger, *Syll.*³ 736 = de Prott—Ziehen, *Leges Graecorum sacrae* II 58, vv. 7-10).

³⁸ Cole 1984: 107; Phillips 2013: 104, 105; 2017: 51 n. 18. See also Schmitz 1997: 88.

³⁹ Cf. Phot. s.v. πέμπτη φθίνοντος = *Suda* s.v. πέμπτη φθίνοντος, π 960 Adler = Men. fr. 403 K—A; Poll. 8.40. Hypotheses regarding the penalty: Harrison 1968: 35; Harris 1990: 374; Schmitz 1997: 77, 79-85; Cantarella [2002] 2011e: 386; Omitowoju 2002: 107-9; Phillips 2006: 384 n. 26.

⁴⁰ See Phillips 2016b: 34 with n. 39, 36.

⁴¹ Date: Phillips 2006: 376-81.

10. An intriguing fragment of Hipponax (fr. 41 Degani), who was active in Ephesus and Clazomenae in the mid- to late sixth century, reads:

οὐ μοι δικαίως μοιχὸς ἀλῶναι δοκεῖ
Κριτίης ὁ Χίος ἐν ἱερῷ κατωτικῷ δούμῳ

Wrongfully, in my opinion, was Critias the Chian caught as a seducer in...house⁴²

Besides the inference that at the time of composition, in Ephesus or Clazomenae or Chios, there was a right under some circumstances to apprehend a seducer in the act, no secure conclusions can be drawn from these lines; a parallel with the Athenian known-prostitute exception (no. 9)⁴³ may be tempting but is not provable.⁴⁴

11. The clauses of the Great Code of Gortyn (IC IV 72; Willetts 1967; Gagarin—Perlman 2016, no. G72) dealing with seduction, attempted and actual (col. II vv. 16-45), provide as follows:

If a person attempts to have sexual intercourse with (ἐπιπερᾶται οἴπεν) a free woman who is under the oversight of a relative (ἀκεύοντος καδεστᾶ), he shall pay ten staters, if a witness should testify. If a person is caught in the act of

⁴² Or “building,” “room,” “chamber”; alternatively, “religious association” and/or “association of women” (LSJ⁹ Suppl. s.v. δοῦμος). Various emendations of the *locus desperatus*: Degani 1983 *ad loc.*

⁴³ Latte 1932: col. 2448; cf. Degani 1983 *ad loc.*

⁴⁴ Anacr. fr. 43.7-9 Page describes Artemon as “having often placed his neck on the wood [i.e., the *kyphôn* or something like it: cf. no. 13] and often on the wheel, having often had his back scourged with a leather whip, his hair and beard plucked out.” Schmitz 1997: 94 conjectures that the depilation is punishment for *moicheia*; if so, then the preceding punishments might apply as well, and we would have evidence roughly contemporary with Hipponax for the treatment of *moichoi* in Artemon’s city of residence (Teos? Abdera? Samos? Athens? somewhere in Thessaly?). *Moicheia* was a standard element in mime (Aristocles fr. 8 Müller, *FHG*; cf. Aristoxenus fr. 58 Müller, *FHG* (fourth century B.C.); Headlam—Knox 1922: xlv; Cunningham 1971: 5, 148; Zanker 2009: 140). Herodas 5 (270s-260s, perh. Alexandria or Cos: Headlam—Knox 1922: ix, xxvii; Cunningham 1971: 2-3, 2004: vii; Zanker 2009: 1) is a comic travesty of the apprehension and punishment of a *moichos*: note in particular χρῶ ὅτι βούλῃ <μοι>, v. 6 (cf. [D.] 59.66, χρῆσθαι ὅ τι ἂν βουληθῇ, no. 9; κρεῖθθαι ὅπαι κα λείοντι, no. 11; Xen. Eph. 2.5.4 with Headlam—Knox 1922: 233; Cunningham 1971: 149) and the proposed public shaming both temporary (exposure in the agora: Headlam—Knox 1922: 249-50; Cunningham 1971: 154; cf. nos. 13, 15, 18, 19) and permanent (tattooing: Headlam—Knox 1922: 256; Cunningham 1971: 152; Zanker 2009: 145). See also the “Adulteress mime” (*POxy* 413 verso, coll. 1-3; Cunningham 2004: fr. mim. pap. 7; Cunningham 1971: 8-9; Zanker 2009: 140, 155) and (perhaps, if [μ]οιχ[ο]ῦ *vel sim.* is restored at v. 24) Cunningham 2004: fr. mim. pap. 10 (*PLitLond* 97). A tragic inversion of the capture and killing of the *moichos* may be discerned at A. *Ag.* 1380-92: note in particular the ἄπειρον ἀμφίβληστρον in which Clytemnestra ensnares Agamemnon (v. 1382), which Fraenkel 1962: 649-50 compares to Hermes’ comment upon witnessing the capture of Ares (no. 7), δεσμοὶ μὲν τρὶς τόσσοι ἀπείρονες ἀμφὶς ἔχουσιν...αὐτὰρ ἐγὼν εὐδοίμῃ παρὰ χρυσῇ Ἀφροδίτῃ (Hom. *Od.* 8.340-42).

seducing (μοικίον αἰλεθεῖ) a free woman in the house of her father, brother, or husband, he shall pay 100 staters; if in the house of another, fifty. If she is the [daughter, sister, or wife] of an *apetairos* (τὰν τῷ ἀπεταίρῳ), ten. If a slave is caught in the act of seducing a free woman, he shall pay double; if she is the [daughter, sister, or wife] of a slave (δόλο), he shall pay five staters. The captor shall, in the presence of three witnesses, make a proclamation to the relatives of the man caught that they must ransom him within five days; if it is a slave, they shall make a proclamation to his master in the presence of two witnesses. If he is not ransomed, it shall be in the power of his captors to do with him however they wish (ἐπὶ τοῖς ἐλόνοσι ἔμεν κρεῖσθαι ὅπαι κα λείοντι). If he declares that he was taken by treachery (δολόσασθαι), his captor shall swear, in a case involving 50 staters or more, along with four others, each calling down curses upon himself [should he lie], and in the case of an *apetairos* with two others, and in the case of a serf the master and one other, that he caught the man in the act of seduction and did not take him by treachery (μοικίοντ' ἑλέν, δολόσασθαι δὲ μέ).

Inscribed around the middle of the fifth century,⁴⁵ the Code is generally assumed to incorporate or amend a significant amount of earlier legislation.⁴⁶ At Gortyn, *moicheia* did not require the female party to be married. In the attempted-seduction clause, she is certainly unmarried (as indicated by ἀκεύοντος καδεστᾶ; if she were married, this role would be performed by her husband), and in the clauses dealing with the seducer caught in the act, specification of the home of the woman's father or brother implies that she is presumed to be unmarried.⁴⁷ The captor may hold the seducer for ransom; as opposed to the situation in the *Odyssey* and in Athens, the ransom amount is fixed, and some details of procedure vary, according to the status of the seducer and his paramour and the location of the offense. If ransom is not paid, the captors may “do with [the seducer] however they wish” (κρεῖσθαι ὅπαι κα λείοντι). A similar power is granted to the victorious captor in an Athenian *graphê adikôs heirchthênai hōs moichon* (ἄνευ ἐγχειριδίου χρῆσθαι ὃ τι ἄν

⁴⁵ E.g., van Effenterre—Ruzé 1994-95: 2.292 (*Nomima* II 81); Gagarin—Perlman 2016: 334; Osborne—Rhodes 2017: 132, 142 (no. 125).

⁴⁶ See esp. van Effenterre—Ruzé 1994-95: 2.297 (“Toutefois les vieux usages relatifs aux mariages et aux adultères ont encore laissé des traces dans le *Code*”). In all probability, the requirement of proclamation, the fixed amounts of ransom, the specified period for its payment and corresponding moratorium on captors' power to treat the seducer “however they wish,” and the exculpatory oath required in cases of alleged entrapment are all innovations developed at one or more times that limited captors' previous rights (cf. Schmitz 1997: 111-12). Cf. the list of *adulteri* whom the *lex Iulia de adulteriis coercendis* permitted a Roman husband to kill (*D.* 48.5.25(24) *pr.*), which raises the presumption that before the *lex Iulia* he was allowed, by custom if not by statute, to kill any adulterer.

⁴⁷ Cf. Gagarin—Perlman 2016: 349, 350; *contra* Guarducci 1950: 154; Willetts 1967: 28, 40.

βουληθῆ, [D.] 59.66, no. 9); but the Gortynian law has no limiting condition, and so we should assume that κρεῖθθαι ὅπαι κα λείοντι means exactly what it says. In Gortyn, as in Athens, the law provides a remedy for wrongful seizure, though the remedies themselves differ greatly.

According to Aelian (*VH* 14.46a Dilts, early third century A.D.), “a seducer caught [in the act] at Gortyn was brought before the magistrates, interrogated, and crowned with [fillets of] wool” in order to signify his effeminacy and his facility with women, and “was sold at public auction, dishonored completely from that day forth, and deprived of all civic rights.”⁴⁸ These measures (if genuine) cannot be reconciled with the Code and so must have arisen later,⁴⁹ while Aelian’s use of the imperfect tense marks them as obsolete.

12. In both the *Life of Lycurgus* (15.16-18) and the *Spartan Apophthegms* (*Mor.* 228b-c, *Apoph. Lac.* Lycurgus 20), Plutarch contrasts the Spartans’ current laxity with their continence under the Lycurgan regime, when the very idea of *moicheia* was inconceivable. To illustrate his point, he relates an anecdote about Geradas (Geradatas in the *Apophthegmata*), a Spartiate of days of yore (τῶν σφόδρα παλαιῶν), who was asked by a foreigner how seducers were punished at Sparta (τί πάσχουσιν οἱ μοιχοὶ παρ’ αὐτοῖς) and responded that they did not exist. When the foreigner asked what would happen if a seducer arose, Geradas replied that he would be fined a bull so large that it could extend its head over Mt. Taygetus and drink from the Eurotas. The shocked foreigner asked, “How could there could be a bull of such size?”; Geradas rejoined, “How could there be a *moichos* at Sparta?”

In the *Apophthegmata*, the foreigner cites his inability to find any Lycurgan legislation on *moicheia*. This is not surprising, since according to Spartan tradition Lycurgus did not record his laws in writing (*Lyc.* 13.1) and prohibited the use of written law (*Lyc.* 13.4). At most, therefore, the absence of “Lycurgan” *moicheia* law may indicate that no written law of evident antiquity governing *moicheia* existed in Plutarch’s time. But evidence from the Archaic period to Plutarch himself indicates the presence of unwritten law. As early as 706, a bumper crop of “immaculate conceptions”—the Partheniai, actually produced by illicit sex between helot men and Spartiate women during the First Messenian War—was dispatched to found Taras.⁵⁰ The controversy over the paternity of Demaratus, deposed in 491, involved his mother’s current and former husbands, the hero Astrabacus, and the household’s

⁴⁸ A doublet appears at *VH* 12.12 Dilts, which has the seducer not sold into slavery but fined 50 staters payable to the state.

⁴⁹ See Latte 1931: 156-57 with n. 3. *Contra* Kapparis 1996: 74; Schmitz 1997: 71, 112-14.

⁵⁰ Antiochus, *FGrHist* 555 F 13; Ephor. *FGrHist* 70 F 216; Theopomp. *FGrHist* 115 F 171; Arist. *Pol.* 1306b29-31. The various claims these authors make about the paternity of the Partheniai can all be diagnosed as attempts to redeem some part of Spartan and/or Tarentine honor. For differing interpretations of the tradition, see the papers by W. Schmitz and M. Dreher in this volume.

helot donkey-keeper (Hdt. 6.63-69).⁵¹ The specific term and concept of *moicheia* surely existed in Sparta long before 406, when Callicratidas warned Conon that he would make him stop fornicating with the sea (Κόνωνι δὲ εἶπεν ὅτι παύσει αὐτὸν μοιχῶντα τὴν θάλατταν, X. *HG* 1.6.15: note that Xenophon preserves the Spartan Doric form μοιχῶντα). Qualifying the Spartan practice of a married woman's having sexual relations (with a view to procreation) with a man other than her husband was the requirement that the latter obtain the husband's consent.⁵² It is inconceivable that no remedy existed for the case where the husband—or, say, the father of an unmarried woman—had not given his consent.⁵³ What this remedy may have been we can only guess; the extreme example, the death warrant issued for Alcibiades in 412 for seducing Timaea, the wife of Agis II, and impregnating her with the supposititious royal heir Leotychidas,⁵⁴ is clearly a special case.⁵⁵

⁵¹ Herodotus has Demaratus assure his mother that if any of the accusatory rumors is correct, she would have plenty of company (6.68.3). Cf. E. *Andr.* 590-604, partially quoted by Plu. *Comp. Lyc. Num.* 3.6, who reports the stereotype of Spartan women as ἀνδρομανεῖς; Arist. *Pol.* 1269b12-1270a15. From Astrabacus' supposed role as the patron hero of donkey-keepers and muleteers (cf. ἄσπράβη, a backed saddle used normally by women or disabled persons for riding mules or donkeys: e.g., D. 21.133, with MacDowell 1990: 351) commentators conclude that some Spartans cynically responded to the rumor of Astrabacus' paternity by positing the donkey-keeper in his stead (Rawlinson 1858-60: 3.461-62; Macan 1895: 1.326-27; How—Wells 1928: 2.90-91); but the donkey-keeper could just as well have been replaced by Astrabacus in an effort to ennoble the liaison and its result. Donkeys and *moicheia*: nos. 18, 19.

⁵² X. *Lac.* 1.7-8, paraphrased by Plu. *Lyc.* 15.12-13; Plb. 12.6b.8; MacDowell 1986: 82-86; Cartledge 2001: 123-25.

⁵³ Nor should we assume, with Plutarch, that Spartans of earlier antiquity (or any period) obviated *moicheia* by always obtaining the requisite permission: as Xenophon has Socrates note, *moichoi* are irrational actors insofar as they assume the risks of seduction despite the wide range of licit sexual activity (X. *Mem.* 2.1.5, with Phillips 2017: 52-53). MacDowell 1986: 87 hypothesizes that "[t]he rule about μοιχεία, observed in the early period but not later, must have been that a man might not have sexual intercourse with another man's wife unless the husband gave permission, nor with an unmarried woman unless, being unmarried himself, he carried her off to keep her in his own house (which would constitute marriage)." I would not rule out the continuation of this rule into later Sparta (except insofar as in Plutarch's day the Spartans no longer engaged in marriage by abduction (ἐγάμουν δὲ—note the imperfect—δι' ἀρπαγῆς, *Lyc.* 15.4)), and I would qualify the second category by positing that the father or other guardian of an unmarried woman would have to consent to the marriage by abduction (on which see Hdt. 6.65.2; Plu. *Lyc.* 15.4-7, with MacDowell 1986: 77-81; Cartledge 2001: 121-23) either (before and) during or after the fact.

⁵⁴ Th. 8.12.2, 45.1; X. *HG* 3.1.1-4; Plu. *Alc.* 23.7-9; *Lys.* 22.6-13; *Ages.* 3, citing Duris (*FGrHist* 76 F 69); *Mor.* 467f, *De tranq. an.* 6; cf. Paus. 3.8.7-10.

⁵⁵ At Sparta, *moichoi* caught in the act may have been subject to summary execution: one might argue that the Laconophile Xenophon would not have Hiero present the right to kill as obtaining in "many cities" (no. 2) if those cities did not include Sparta.

13. Aristotle, *Pol.* 1306a36-b2, presents two cases in which a judgment on a charge of *moicheia* sparked civil strife:

Lawcourt verdicts resulted in the civil strife at Heracleia and at Thebes, with the Heracleotes procuring against Eurytion and the Thebans against Archias a penalty on a charge of *moicheia* (ἐπ' αἰτίᾳ μοιχείας) that was just but motivated by factionalism: their enemies were so determined to get the better of them that they were bound in the pillory (κυφῶνι) in the agora.

Archias was one of the polemarchs killed by assassins in drag as the first strike in the liberation of Thebes in 379/8 (X. *HG* 5.4.2-7); the episode Aristotle describes presumably belongs to the period shortly preceding the Spartan occupation of Thebes (382), when rival factions led by Ismenias and Leontiadas divided the citizenry (X. *HG* 5.2.25). If Heracleia is Heracleia Pontica, Eurytion's trial may be connected with the *stasis* that led to the establishment of tyranny by Clearchus in 364/3 (Diod. 15.81.5). Here we have evidence in both named cities for *moicheia* as a specific offense that is tried by a court and can result in a penalty of public binding in the *kyphōn*, an instrument named for its resemblance to the bent yoke of a plow and thus presumably featuring a crossbeam with manacles or other fastenings for the neck and wrists.⁵⁶

In Thebes, prosecuting the *moichos* was probably not the only option. In his description of the city, Heracleides Criticus ([Dicaearch.] fr. 1.22 Müller, *GGM*; third century)⁵⁷ quotes two lines of the contemporary comic poet Laon (fr. 2 K—A) that allegedly commemorate Laon's capture and ransom:

Laon's lines [about the Boeotians are as follows] (he writes in praise of them rather than telling the truth, for he was caught as a seducer but released (μοιχὸς γὰρ ἀλοῦς ἀφείθη) upon buying off for a small sum the man he wronged): "Love a Boeotian man, and do not shun (the woman of) Boeotia (τὴν Βοιωτίαν μὴ φεῦγ'): for he is good and she is lovely."⁵⁸

Whether these verses belong to Laon speaking in his own voice or to one of his characters,⁵⁹ it is entirely plausible that Boeotians detained seducers for ransom (and perhaps for self-help punishment)—and that in the third century this was no novelty but a venerable custom—given the similar practices we have seen elsewhere, especially among the Boeotians' Athenian neighbors.

14. According to the lost Aristotelian *Constitution of the Tenedians* (fr. 593 Rose = fr. 610.1 Gigon), a king of Tenedos enacted a law whereby the person who caught a *moichos in flagrante* was to kill both the *moichos* and his paramour with an

⁵⁶ Schmitz 1997: 109; *Suda* s.v. κύφωνες, κ 2800 Adler; LSJ⁹ s.v. κύφων. Ael. *VH* 11.6 (Schmitz 1997: 109-10) tells a similar story about Thespiæ but offers no details and is therefore of questionable value.

⁵⁷ Identification and date of the author: Müller 1855: li-liiii; Daebritz 1912; Walbank 1957-79: 3.72.

⁵⁸ I take τὴν Βοιωτίαν as a pun (*sc.* either γυναῖκα or γῆν).

⁵⁹ Meineke *ap.* Kock 1880-88: 3.382.

axe (βασιλεύς τις ἐν Τενέδῳ νόμον ἔθηκε τὸν καταλαμβάνοντα μοιχοὺς ἀναιρεῖν πελέκει ἀμφοτέρους, Steph. Byz. s.v. Τένεδος).⁶⁰ As the story goes, this king enforced this law against his own son, which explains why Tenedian coins bear an axe on one side and the heads of a man and a woman on the other. Of course, this alleged law is immediately suspect as a later numismatic aetiology; but if such a law ever existed (and the sources as we have them neither assert nor deny that the law was in force in the fourth century), it is plausible that the use of the axe and the requirement that the female party as well as the *moichos* be killed were intended to prevent premeditated entrapment (cf. the remedies at Athens, no. 9, and at Gortyn, no. 11).⁶¹

15. Much more inherently plausible is the report derived from the lost Aristotelian *Constitution of the Lepreans* and preserved in Heracleides Lembus (Arist. fr. 611.42 Rose = tit. 143.1, no. 14 Gigon = Heraclid. Pont. fr. XIV Müller, *FHG*):⁶²

When the Lepreans catch (λάβωσι) seducers (μοιχοὺς) [in the act], they lead them around the city in chains (δεδεμένους) for three days and deprive them of civic rights (ἀτιμοῦσι) for life; as for the woman, they make her stand in the agora for eleven days ungirt and wearing a transparent chiton and inflict indignities upon her (ἀτιμοῦσι).

Shaming, public or private, of the *moichos*, his paramour, or both, was evidently a common practice in the Greek world generally (cf. nos. 7, 9, 11, 13, 18, 19, 20).⁶³

16. Heracleides Lembus also provides the earliest surviving evidence (presumably derived from an Aristotelian *Constitution of the Epizephyrian Locrians*) of a law on *moicheia* attributed to Zaleucus, lawgiver of Locri Epizephyrii (fl. Ol. 29 = 664-661):⁶⁴

If a person is caught [in the act]/convicted⁶⁵ as a seducer, he has his eyes gouged out (ἐὰν ἀλώῃ τις μοιχός [κλέπτων *aut nihil* MSS],⁶⁶ τοὺς ὀφθαλμοὺς

⁶⁰ Similarly Phot. s.v. Τενέδιος ξυνήγορος (Arist. fr. 610.2 Gigon); cf. Apostol. 16.26 (Arist. fr. 610.3 Gigon). Heracleides Lembus (Heraclid. Pont. [*sic*] fr. VII.3 Müller, *FHG* = Arist. fr. tit. 143.1, no. 7 Gigon) states only that the *moichos* was to be killed in this manner; cf. Diogenian. 8.58; Macar. 8.7.

⁶¹ Latte 1931: 132; Schmitz 1997: 54, 85.

⁶² See Schmitz 1997: 107-8; Forsdyke 2008: 3-4, 12-16, 22-23.

⁶³ Latte 1931: 154-56, 1932: coll. 2448-49; Forsdyke 2008: 3-26. The Greeks were not the only people in antiquity to inflict shaming punishments upon offenders of this class. Mesopotamia: e.g., Driver—Miles 1955-56: 1.281. Egypt: Diod. 1.78.5; cf. the defendant's repeated disavowals in ch. 125 (Introduction and Negative Confession) of the *Book of the Dead*: *n(n) nk·i*, "I have not copulated"; *n(n) d3d3(i)·i*, "I have not copulated"; *nn nk·i hmt t3(y)*, "I have not copulated with the wife of a man." Germans: Tac. *Germ.* 19.2. Romans: n. 12.

⁶⁴ Eus. *Chron.* 2 coll. 363-64 Migne; Graham 1982: 191.

⁶⁵ Although the phrasing suggests apprehension *in flagrante*, we may posit (if the law is genuine) that a conviction in court, or at least some formal confirmation of the claim of seduction, was required; otherwise we must envision a scenario in which such a drastic

ἐξορύττεται). Zaleucus' son was so caught/convicted and the Locrians were ready to let him off, but Zaleucus would have none of it: he plucked out one of his own eyes and one of his son's. (Arist. fr. 611.61 Rose = tit. 143.1, no. 31 Gigon = Heraclid. Pont. fr. XXX.3 Müller, *FHG*)

The anecdote about the lawgiver's son we may dismiss as yet another instance of the trope of the lawgiver hoist with his own petard (cf. no. 14), but the law itself may be genuine. While skepticism is warranted, outright dismissal is not.⁶⁷ The later tradition of Zaleucus' legislative severity possesses no more intrinsic value than that concerning Draco,⁶⁸ but the well-attested law mandating that the proposer of novel legislation speak with a noose around his neck that is drawn tight if the proposal fails (D. 24.139; Plb. 12.16.9-14) and another law that prescribed the literal retribution of an eye for an eye (D. 24.140)⁶⁹ bespeak a community that would probably not blanch at the blinding of a seducer. If genuine, Zaleucus' seduction law would possess especial value as the first written law on *moicheia* in Greek history.⁷⁰ In this case, moreover, we might hypothesize that Zaleucus set the fixed penalty of blinding in part in order to obviate variations in self-help punishment and ransom.⁷¹

17. An anonymous mock epitaph (*Anth. Pal.* 9.520) for Alcaeus of Messene, a contemporary and enemy of Philip V of Macedon, reads:

This is the grave of Alcaeus, who was killed by the broad-leaved punisher of seducers (τιμωρὸς μοιχῶν), Earth's daughter, the radish.

and irreversible punishment might be available to the householder on his sole authority, while leaving the alleged seducer alive to contest his guilt.

⁶⁶ The emendation, proffered by Müller, must be correct: cf. Val. Max. 6.5 ext. 3 (*adulterii crimine damnatus*); Ael. *VH* 13.24 (τὸν μοιχὸν ἀλόντα... ἀλοῦς ἐπὶ μοιχείᾳ).

⁶⁷ See Latte 1931: 145-46; Dunbabin 1948: 71-72; Schmitz 1997: 114-15 raises the possibility, based on the story of the blinding of Daphnis, which originated with the Himeraean Stesichorus (fr. 102 Page = fr. 279 Davies), that "die Blendung des moichos eine in den griechischen Städten Süditaliens und Siziliens verbreitete Strafe war."

⁶⁸ Zen. 4.10; Diogenian. 4.94; Apostol. 8.27; Dunbabin 1948: 72; Gagarin 1986: 66-67.

⁶⁹ According to D. 24.140-41, the only new law that the Locrians, who generally enforce their old laws strictly, have reputedly passed in over two centuries was motivated by the case in which a man threatened to strike out the eye of a one-eyed enemy. The latter allegedly proposed and carried a law ordaining that if a two-eyed person struck out the eye of a one-eyed person, he should lose both eyes.

⁷⁰ Written laws of Zaleucus: Arist. fr. 548 Rose = fr. 555 Gigon, with Gagarin 1986: 58 with nn. 22-23; Graham 1982: 191. Zaleucus was credibly reckoned as the first of the (historical) Greek lawgivers (Ephor. *FGrHist* 70 FF 138b, 139; Graham 1982: 191; Willetts 1982: 236).

⁷¹ Polybius castigates Timaeus for alleging that Aristotle had audaciously slandered Locri Epizephyrii as a colony of runaways, slaves, seducers (μοιχῶν), and slavers (Plb. 12.8.2 = Timae. *FGrHist* 566 F 156 = Arist. fr. 547 Rose = fr. 554.2 Gigon); the only value in this excursus is found in Timaeus' entirely credible (cf. Walbank 1957-79: 2.331) assertion that in contemporary (late fourth- to early third-century) Locri Epizephyrii, seduction was a punishable legal offense (ἐπιτίμια τετάχθαι... τοῖς μοιχοῖς, Plb. 12.9.6).

Presumably composed by Philip or a member of his court between 215 and 179,⁷² this epigram, its satirical tone notwithstanding, indicates that the use of the radish to punish seducers was not limited to Athens.⁷³

18. Nicolaus of Damascus, in his *Collection of (Strange) Customs* (ante 4 B.C.), notes that in Pisidia, “when a seducer is caught (and/or ‘convicted’: ἄλῃ), he is led around the city on a donkey with the woman for a fixed number of days” (Nic. Dam. *FGrHist* 90 F 103(1) = Arist. fr. tit. 143.4 F 11 Gigon).⁷⁴ The donkey was presumably selected as the vehicle for this public humiliation due to its status as a proverbially hubristic animal.⁷⁵

19. In his *Greek Questions*, Plutarch explains a similar custom in Aeolian Cyme, evidently obsolete by his time, that applied specifically to women (Plu. *Mor.* 291e-f, *QG* 2; cf. Hsch. s.v. ὄνοβάτιδες):⁷⁶

“Who is the ‘donkey-rider’ (ὄνοβάτις) at Cyme?” When a woman was caught in *moicheia*, they brought her to the agora and had her stand on a rock so that she was visible to all. Then, without further ado, they placed her on the back of a donkey; after being led in a circle around the city, she had to take her place back on the same rock and then live the rest of her life in shame (ἄτιμον), being called a “donkey-rider.” The rock they consequently deemed unclean and held in abomination.

Significant here is the double entendre in ὄνοβάτις, which means “donkey-mounter” (*sensu obsceno*) as well as “donkey-rider”: ὄνοβατεῖν describes a donkey’s

⁷² Gow—Page 1965: 2.7-8, 591.

⁷³ According to D. L. 2.128, the philosopher Menedemus (ca. 339-ca. 265) once “asked a brazen *moichos*, ‘Don’t you know that it’s not just cabbage that has a pleasant taste, but radishes too?’” The significance of this anecdote (if authentic) depends on where it took place: in Menedemus’ native Eretria or during one of his residences in Athens, Elis, or Macedonia. In Lucian, *Peregr.* 9 (post A.D. 165), Peregrinus, as a young man (ca. 120), “in Armenia, was caught in the act as a seducer (μοιχεύων ἄλούς), received an enormous number of blows, and finally jumped off the roof and made his escape with a radish plugging up his anus (ῥαφανίδι τὴν πυγὴν βεβυσμένος).” Farcical though this is, again, an alleged radishing in Armenia would seem to indicate that the practice was fairly widespread in the Greek world. See also Alciph. 3.26(62).4. On the persistence of the *topos*, along with the concision of Aristophanes’ jokes, the proverbial status of the phrase ὦ Λακιάδαι (the deme was famed for its radishes), and the predictable lack of specificity offered by authors such as Xenophon (*Mem.* 2.1.5) and Isaeus (8.44; cf. 46) as evidence for the reality of the practice, see Kapparis 1996: 65-67; Schmitz 1997: 97-103; Forsdyke 2008: 8. The Egyptian use of the radish as a purgative (Hdt. 2.77.2; Ar. *Pax* 1254 with schol.; *Th.* 857), including in mummification (Hdt. 2.88), is probably merely coincidental.

⁷⁴ See Schmitz 1997: 107; Forsdyke 2008: 3-4; Schmitt-Pantel 1981.

⁷⁵ X. *An.* 5.8.3; Pi. *P.* 10.33-36; Hdt. 4.129; Ar. *V.* 1303-10; Phillips 2016b: 21 with n. 6; cf. Schmitz 1997: 107 n. 195; Forsdyke 2008: 46; Schmitt-Pantel 1981: 119.

⁷⁶ See Schmitz 1997: 107; Forsdyke 2008: 3-4, 13-16, 22; Schmitt-Pantel 1981.

mounting a mare, from the point of view of either the donkey or the person supervising the copulation.⁷⁷

20. In second-century A.D. Thuri, *moichoi* were denied the protection of the law against being mocked in comedy (εὖ δὲ καὶ ὁ τῶν Θουρίων νομοθέτης· κωμωδεῖσθαι γὰρ ἐκώλυσεν τοὺς πολίτας πλὴν μοιχοὺς καὶ πολυπράγμονας, Plu. *Mor.* 519b, *De curios.* 8).⁷⁸ The purpose of these exceptions was to maximize the offender's exposure to public ridicule, as with the donkey-riders of Pisidia (no. 18) and Cyme (no. 19); in later Gortyn (no. 11); in Heracleia and Thebes (no. 13); in Lepreum (no. 15); and in the case of the seducer who lost a *graphê adikôs heirschthênai hōs moichon* at Athens (no. 9).⁷⁹

III. Conclusions

The preceding survey significantly complicates the claim for a Panhellenic right to kill the *moichos* caught in the act,⁸⁰ at least in the most extreme and absolute version advanced explicitly by Lysias (no. 1) and implicitly by Philo (no. 5). The license to kill is specifically attested at Athens (no. 9) and can be securely presumed at Megalopolis (and elsewhere in the Achaean League: no. 4) and at Alexandria (no. 5). At Gortyn, under the Great Code, it applied only if the seducer was not ransomed (no. 11); and the alleged Tenedian *moicheia* law (no. 14) is of questionable authenticity. By contrast, apart from the cases of Ares (no. 7) and Molurus (no. 8), the evidence from Lepreum (no. 15) and later Gortyn (no. 11), and perhaps Locri Epizephyrii (no. 16) and Pisidia (no. 18), appears to rule out self-help killing. It remains possible, though, that such a right obtained commonly (according to Xenophon, no. 2) or even generally (as implied by Polybius, no. 4) in the Greek world; and this possibility deserves serious consideration, in light of the experiences of Xenophon and Polybius and the Alexandrian origins of Philo (no. 5). In those places that permitted self-help killing, less drastic remedies must have been available, including, in at least some cases, the fines decried by Josephus (no. 6), whether exacted as ransom or under judicial sentence. While we cannot assume that the laws of other cities featured the wide range of procedural options at Athens or

⁷⁷ Donkey: Poll. 5.92. Breeder: X. *Eq.* 5.8. Cf. the curse in the Adoption Papyrus from New Kingdom Egypt, “[As for any who shall contest their rights]—may a donkey copulate with him and a donkey with his wife” (quoted in translation from Jasnow in Westbrook 2003: 1.347). For Egyptian views on donkeys, cf. the nickname “the Donkey” given to Artaxerxes III Ochus (Plu. *Mor.* 363c, *I. et O.* 31 = Deinon, *FGrHist* 690 F 21; Ael. *VH* 4.8), presumably with a pun on the Persian title “Great King”: Egyptian ‘3 “great” and ‘3 “donkey” were at least partial homophones, differentiated in hieroglyphic spelling by the determinatives depicting a phallus and a donkey appended to the latter (Gardiner 1957: 456, 459, 557).

⁷⁸ See Schmitz 1997: 108.

⁷⁹ Cf. Phillips 2016b: 53-54; Schmitz 1997: 134-36; Forsdyke 2008: 8-26.

⁸⁰ Scholarly opinion on this issue is divided: see Cantarella 1976: 151, 196-97; Schmitz 1997: 55, 111; Carey 1995: 414-15; Todd 2007: 89-90.

the total discretion granted by the Great Code to Gortynian captors after a five-day moratorium, it is scarcely conceivable that in any Greek city the only two options available to the captor were to kill the seducer or forgo all punishment.

Regardless of the means and limits of redress, *moicheia* clearly constituted a specific substantive offense at law in numerous Greek cities (note especially the attention devoted to the topic by Aristotle, no. 3; cf. X. *Cyr.* 1.2.2-3, no. 2; J. *Ap.* 2.276, no. 6), including (at least) Athens (no. 9), Gortyn (no. 11), Heracleia (no. 13), Thebes (no. 13), Lepreum (no. 15), Locri Epizephyrii (no. 16), and one or more of the cities of Pisidia (no. 18), with the *moichagria* incurred by Ares (no. 7) indicating a similar status on Homer's Olympus. The most compelling evidence for unity in the treatment of *moicheia*—predictable local variation notwithstanding—lies in the practice of detaining for ransom the seducer caught *in flagrante* and/or humiliating, physically or otherwise, in private and/or in public, the seducer and/or his paramour, with various reflections of and variations upon the Homeric *exemplum* (no. 7) attested at Athens (no. 9), in Hipponax (and possibly Anacreon; cf. the comic inversion in Herodas and elsewhere: no. 10), at Gortyn, both under the Great Code and later (no. 11), at Heracleia (no. 13), at Thebes (and perhaps elsewhere in Boeotia, no. 13), at Lepreum (no. 15), in the mock epitaph of Alcaeus (cf. D. L. 2.128; Lucian, *Peregr.* 9: no. 17), in Pisidia (no. 18), at Aeolian Cyme (no. 19), and at Thurii (no. 20).⁸¹

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⁸¹ In this area, as we have seen, Greek practice—specifically, the use of the radish—directly influenced that of the Romans. Other influences were less direct but more lasting. The right, under the laws of Draco and of Solon (at least insofar as he left Draco's homicide laws intact: [Arist.] *Ath.* 7.1), to kill the seducer apprehended *in flagrante* was cited by Ulpian (d. A.D. 223) as precedent for the corresponding requirement ('*in filia adulterum deprehenderit*') in the *lex Iulia de adulteriis coercendis* (D. 48.5.24(23) *pr.*, n. 27). The *lex Iulia*, in turn, influenced the treatment of adultery and related offenses not only in the Continental civil law tradition (*Lex Rib.* 80(77); *Lex Burgund.* (*Lib. Const.*) 68 (cf. *Lex Rom. Burgund.* 25); *Lex Visigoth.* 3.4.4-5 (cf. 3.2.2, 6; 3.3.11; 3.4 *passim*); see Cantarella 1976: 182, [1992] 2011*d*; cf. Treggiari 1991: 311-19) but in the Anglo-American common law as well (*Leis Willelme* 35, with Liebermann 1903-16: 1.514, 2.365, 3.291). Finally, Greek terminology—mediated through centuries of Roman colloquial usage—survives in the laws of the Salian and Ripuarian Franks (*Lex Sal.* 'A' 15.2-3; 25; *Lex Rib.* 39(35).2).

BIBLIOGRAPHY

- Bauman, R. A. 1996. *Crime and Punishment in Ancient Rome*. London—New York.
- Blass, F. 1904. *Die Interpolationen in der Odyssee*. Halle a. S.
- Bonner, R. J.—Smith, G. 1930. *The Administration of Justice from Homer to Aristotle*, vol. 1. Chicago.
- Canevaro, M. 2013. *The Documents in the Attic Orators*. Oxford.
- Cantarella, E. 1976. *Studi sull'omicidio in diritto greco e romano*. Milan.
- Cantarella, E. [1964] 2011a. “La ἐγγύη nell’*Odyssea*.” In *ead.*, *Diritto e società in Grecia e a Roma: Scritti scelti, a cura di A. Maffi—L. Gagliardi*, 3-20. Milan. Orig. pub. *Studi italiani di filologia classica* 36 (1964) 199-214.
- Cantarella, E. [1988] 2011b. “La garanzia personale delle obbligazioni in Omero: ripensando all’adulterio di Afrodite.” *Ibid.*, 103-16. Orig. pub. *Atti del Seminario sulla problematica contrattuale in diritto romano* 1 (Milan 1988) 261-72.
- Cantarella, E. [1991] 2011c. “Moicheia: Reconsidering a Problem.” *Ibid.*, 345-54. Orig. pub. M. Gagarin, ed. *Symposion 1990*, 289-96. Köln—Weimar—Vienna.
- Cantarella, E. [1992] 2011d. “La causa d’onore dalla ‘lex Iulia’ al Codice Rocco.” *Ibid.*, 553-76. Orig. pub. “*Testimonium Amicitiae*” (Milan 1992) 73-94.
- Cantarella, E. [2002] 2011e. “I reati sessuali nel diritto ateniese: Alcuni considerazioni su ‘moicheia’ e violenza sessuale.” *Ibid.*, 373-90. Orig. pub. “*Iuris vincula*”: *Studi in onore di Mario Talamanca*, 375-90. Naples.
- Carey, C. 1995. “Rape and Adultery in Athenian Law.” *CQ* 45: 407-17.
- Cartledge, P. 2001. “Spartan Wives: Liberation or Licence?” In *id.*, *Spartan Reflections*, 106-26. Berkeley—Los Angeles. Orig. pub. *CQ* 31 (1981) 84-105.
- Cohen, D. 1991. *Law, Sexuality, and Society*. Cambridge.
- Cole, S. G. 1984. “Greek Sanctions against Sexual Assault.” *CP* 79: 97-113.
- Crawford, M. H., ed. 1996. *Roman Statutes*, vol. 2. London.
- Cunningham, I. C. 1971. *Herodas: Mimiambi*. Oxford.
- Cunningham, I. C. 2004. *Herodas: Mimiambi cum appendice fragmentorum mimorum papyraceorum*. Munich—Leipzig.
- Daebritz. 1912. “Herakleides (46) ὁ Κριτικός.” *RE* vol. VIII, 1, coll. 484-86. Stuttgart.
- Degani, H. 1983. *Hipponactis testimonia et fragmenta*. Leipzig.
- Driver, G. R.—Miles, J. C. 1955-56. *The Babylonian Laws*, 2 vols. Oxford.
- Dunbabin, T. J. 1948. *The Western Greeks*. Oxford.
- Finley, M. I. 1978. *The World of Odysseus*, rev. ed. New York.
- Fisher, N. R. E. 2001. *Aeschines: Against Timarchos*. Oxford.

- Forsdyke, S. 2008. "Street Theatre and Popular Justice in Ancient Greece: Shaming, Stoning and Starving Offenders Inside and Outside the Courts." *Past and Present* 201: 3-50.
- Fraenkel, E. 1962. *Aeschylus: Agamemnon*, vol. 3, ed. corr. Oxford.
- Fraser, P. M. 1972. *Ptolemaic Alexandria*, 3 vols. Oxford.
- Frier, B. W.—McGinn, T. A. J. 2004. *A Casebook on Roman Family Law*. Oxford.
- Gagarin, M. 1981. *Drakon and Early Athenian Homicide Law*. New Haven.
- Gagarin, M. 1986. *Early Greek Law*. Berkeley—Los Angeles.
- Gagarin, M.—Perlman, P. 2016. *The Laws of Ancient Crete c. 650-400 BCE*. Oxford.
- Gardiner, A. 1957. *Egyptian Grammar*, ed. 3. Oxford.
- Garvie, A. F. 1994. *Homer: Odyssey, Books VI-VIII*. Cambridge.
- Goodenough, E. R. 1929. *The Jurisprudence of the Jewish Courts in Egypt*. New Haven.
- Gow, A. S. F.—Page, D. L. 1965. *The Greek Anthology: Hellenistic Epigrams*, 2 vols. Cambridge.
- Graham, A. J. 1982. "The Western Greeks." In J. Boardman—N. G. L. Hammond, eds., *The Cambridge Ancient History*, vol. 3 pt. 3 ed. 2, 163-95. Cambridge.
- Guarducci, M. 1950. *Inscriptiones Creticae*, vol. 4. Rome.
- Harris, E. M. 1990. "Did the Athenians Regard Seduction As a Worse Crime Than Rape?" *CQ* 40: 370-77.
- Harris, E. M. 2004. "Did Rape Exist in Classical Athens? Further Reflections on the Laws about Sexual Violence." *Dike* 7: 41-83.
- Harrison, A. R. W. 1968. *The Law of Athens*, vol. 1. Oxford.
- Headlam, W.—Knox, A. D. 1922. *Herodas: The Mimes and Fragments*. Cambridge.
- Heubeck, A.—West, S.—Hainsworth, J. B. 1998. *A Commentary on Homer's Odyssey*, vol. 1. Oxford.
- Hirschberger, M. 2004. *Gynaikōn Katalogos und Megalai Ēhoiai*. Munich—Leipzig.
- How, W. W.—Wells, J. 1928. *A Commentary on Herodotus*, 2 vols., ed. corr. Oxford.
- Kapparis, K. A. 1995. "When Were the Athenian Adultery Laws Introduced?" *RIDA* ser. 3 vol. 42: 97-122.
- Kapparis, K. A. 1996. "Humiliating the Adulterer: The Law and the Practice in Classical Athens." *RIDA* ser. 3 vol. 43: 63-77.
- Kapparis, K. A. 1999. *Apollodoros 'Against Neaira': [D.] 59*. Berlin.
- Kassel, R.—Austin, C. 1983. *Poetae Comici Graeci*, vol. 4. Berlin—New York.
- Kock, T. 1880-88. *Comicorum Atticorum fragmenta*, 3 vols. Leipzig.
- Latte, K. 1931. "Beiträge zum griechischen Strafrecht. II. Die Strafen." *Hermes* 66: 129-58.
- Latte, K. 1932. "Μοιχεία." *RE* vol. XV, 2, coll. 2446-49. Stuttgart.
- Leão, D. F.—Rhodes, P. J. 2015. *The Laws of Solon*. London.

- Liebermann, F. 1903-16. *Die Gesetze der Angelsachsen*, 3 vols. Halle a. S. Repr. Clark, NJ, 2007.
- Lipsius, J. H. 1905-15. *Das attische Recht und Rechtsverfahren*. Leipzig.
- Macan, R. W. 1895. *Herodotus: The Fourth, Fifth, and Sixth Books*, 2 vols. London.
- MacDowell, D. M. 1978. *The Law in Classical Athens*. Ithaca, NY.
- MacDowell, D. M. 1986. *Spartan Law*. Edinburgh.
- MacDowell, D. M. 1990. *Demosthenes: Against Meidias (Oration 21)*. Oxford.
- Merry, W. W.—Riddell, J. 1886. *Homer's Odyssey*, vol. 1, ed. 2 rev. Oxford.
- Mitteis, L. 1891. *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*. Leipzig.
- Müller, C. 1855. *Geographi Graeci minores*, vol. 1. Paris.
- Omitowaju, R. 2002. *Rape and the Politics of Consent in Classical Athens*. Cambridge.
- Osborne, R.—Rhodes, P. J. 2017. *Greek Historical Inscriptions 478-404 BC*. Oxford.
- Patterson, C. B. 1998. *The Family in Greek History*. Cambridge, MA.
- Phillips, D. D. 2006. "Why Was Lycophron Prosecuted by *Eisangelia*?" *GRBS* 46: 375-94.
- Phillips, D. D. 2013. *The Law of Ancient Athens*. Ann Arbor.
- Phillips, D. D. 2014. "Hubris and the Unity of Greek Law." In M. Gagarin—A. Lanni, eds., *Symposion 2013*, 75-94. Vienna.
- Phillips, D. D. 2016a. "Notes on Pollution and Jurisdiction in Athenian Homicide Law. Response to Stephen Todd." In D. F. Leão—G. Thür, eds., *Symposion 2015*, 351-64. Vienna.
- Phillips, D. D. 2016b. "Xenophon and the Muleteer: Hubris, Retaliation, and the Purposes of Shame." In W. Riess—G. G. Fagan, eds., *The Topography of Violence in the Greco-Roman World*, 19-59. Ann Arbor.
- Phillips, D. D. 2017. "Assumption of Risk in Athenian Law." In D. P. Kehoe—T. A. J. McGinn, eds., *Ancient Law, Ancient Society*, 46-65. Ann Arbor.
- Raaflaub, K. A. 1997. "Homeric Society." In I. Morris—B. Powell, eds., *A New Companion to Homer*, 624-48. Leiden.
- Rawlinson, G. 1858-60. *The History of Herodotus*, 4 vols. London.
- Rhodes, P. J. 1993. *A Commentary on the Aristotelian Athenaion Politeia*, rev. ed. Oxford.
- Richlin, A. 1983. *The Garden of Priapus*. New Haven—London.
- Riess, W. 2012. *Performing Interpersonal Violence*. Berlin.
- Robinson, O. F. 1995. *The Criminal Law of Ancient Rome*. Baltimore.
- Rosen, R. M. 1997. "Homer and Hesiod." In I. Morris—B. Powell, eds., *A New Companion to Homer*, 463-88. Leiden.
- Scafuro, A. C. 1997. *The Forensic Stage*. Cambridge.
- Schmitt-Pantel, P. 1981. "L'âne, l'adultère et la cité." In J. Le Goff—J.-C. Schmitt, eds., *Le Charivari*, 117-22. Paris.

- Schmitz, W. 1997. "Der nomos moicheias—Das athenische Gesetz über den Ehebruch." *ZSS* 114: 45-140.
- Sommerstein, A. H. 1992. *The Comedies of Aristophanes*, vol. 1. Warminster.
- Stanford, W. B. 1965. *The Odyssey of Homer*, vol. 1, ed. 2 rev. London.
- Thompson, D. W. 1947. *A Glossary of Greek Fishes*. London.
- Todd, S. C. 1993. *The Shape of Athenian Law*. Oxford.
- Todd, S. C. 2007. *A Commentary on Lysias, Speeches 1-11*. Oxford.
- Treggiari, S. 1991. *Roman Marriage*. Oxford.
- van Effenterre, H.—Ruzé, F. 1994-95. *Nomima*, 2 vols. Rome.
- Walbank, F. W. 1957-79. *A Historical Commentary on Polybius*, 3 vols. Oxford.
- Watson, A. 1971. *Roman Private Law around 200 BC*. Edinburgh.
- West, M. L. 1978. *Hesiod: Works and Days*. Oxford.
- West, M. L. 1985. *The Hesiodic Catalogue of Women*. Oxford.
- West, M. L. 2014. *The Making of the Odyssey*. Oxford.
- Westbrook, R., ed. 2003. *A History of Ancient Near Eastern Law*, 2 vols. Leiden.
- Willetts, R. F. 1967. *The Law Code of Gortyn*. Berlin.
- Willetts, R. F. 1982. "Cretan Laws and Society." In J. Boardman—N. G. L. Hammond, eds., *The Cambridge Ancient History*, vol. 3 pt. 3 ed. 2, 234-48. Cambridge.
- Zanker, G. 2009. *Herodas: Mimiambes*. Oxford.