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## DID RAPE EXIST IN CLASSICAL ATHENS?

Further Reflections on the Laws about Sexual Violence

### I

When studying the evidence for sexual violence in Classical Athens, one is immediately struck by a curious fact: the ancient Greeks had no word that is the precise equivalent of our word «rape.» This of course does not mean that acts that we would call acts of rape did not occur in Classical Athens or in other Greek *poleis*. On the contrary, our sources make it abundantly clear that such acts did occur. For instance, Pausanias (9.13.5; cf. Xen. *Hell.* 6.4.7) tells the story of two young Boeotian women who were the victims of sexual violence (βιάζονται) at the hands of two Spartan soldiers. In shame at their dishonor (ὑβρεως), both women killed themselves. When their father was unable to obtain justice for his daughter from the Spartan authorities, he too committed suicide. For us there is no doubt that this was an act of rape; in fact that is the way translators render the term. In the prologue to Euripides' *Ion*, the god Hermes tells us that Apollo «married by force» (10-11) the young Creusa, who became pregnant and bore a son whom she exposed. The language of tragedy is more delicate, but still makes clear that Apollo had sex with Creusa against her will. We would not hesitate to call what Apollo did to Creusa an act of rape.

But in each of these passages the author does not use a word that is equivalent to our term rape. Pausanias uses the term *hybris* when he refers to the rape of the two young Boeotian women, but this term has a broader semantic range than the word «rape» in English.

For instance, when Meidias harassed Demosthenes and finally punched him in the head at the festival of Dionysus in 348, Demosthenes charged him with the crime of *hybris* (Dem. 21.13-19). When Harmodius' sister was selected to serve as a basket-bearer at a religious festival, but Hipparchus took away this honor, Thucydides (6.57.3) says that the tyrant treated her brother Harmodius with *hybris*. In Sophocles' *Antigone* (309, 482), Creon calls Antigone's refusal to obey his order not to bury Polynices an act of *hybris*. Herodotus (2.32.3) relates that the sons of the leaders among the Nasamones once crossed the desert and went farther than anyone had before. The historian calls these young men *hybristai*, men who commit acts of *hybris*. The word *hybris* therefore had a very wide range of meaning. It sometimes refers to an act of rape, but it can also refer to any act that «damages the sexual honour or reputation of a person or a family, such as the seduction of a wife (Lys. 1.4, 16, 25)»<sup>1</sup>. And the word noun *bia* («force» or «violence») and the verb *biazein* («to force» or «to use violence») can refer to any action where someone uses violence or threatens to use it.

If the Athenians and other Greeks did not have a single term for an act of sexual violence, can we assume that they had one single attitude toward all acts of sexual violence? We have a single term «rape» because we do not think one can make any distinction between different kinds of sexual violence. In our eyes the act of forcing someone to have sex against his or her will or without his or her consent is a serious crime that is punishable by severe penalties<sup>2</sup>. Even though the legal definition of rape in the United States in particular has been modified in the past thirty years, absence of consent on the part of the victim has always been one of the constant features in the definition of the crime<sup>3</sup>. Even in the Middle Ages, Brac-

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<sup>1</sup> See, for instance, Cohen (1991), p. 177: «Violence or coercion are not necessary components of *hybris* in ordinary language ...». Doblhofer (1994), pp. 5-7, notes that there is no exact equivalent for the German word *Vergewaltigung* in Greek or Latin, but does not explore the implications of this fact.

<sup>2</sup> For the definition of rape in modern criminal codes in the United States, see the Appendix to this article.

<sup>3</sup> Take, for instance, the objection of Brownmiller (1975), pp. 428-429, to the view of Sir Matthew Hale that a man cannot rape his own wife. Hale thought that «A husband cannot be guilty of rape upon his wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband, which she can

ton assumed that rape was an offense where a man has sexual relations with a woman against her will <sup>4</sup>. As we will see, however, the Greeks referred to some acts of sexual violence as *hybris*, a serious crime, but viewed other acts of sexual violence more leniently. This would suggest that the Greeks did not have a single standard for evaluating acts of sexual violence. Instead of grouping all kinds of sexual violence into one category and giving it one single label («rape»), the Athenians and other Greeks made distinctions among such acts that we do not make. Therefore when one uses the word «rape» when analyzing the ancient sources, one may be imposing an anachronistic concept on the evidence, a concept that may prove to be an obstacle to our understanding of ancient attitudes.

Not surprisingly, attempts to answer the question «What was *the* attitude to rape in Classical Athens?» have produced some very strange results. In an otherwise valuable study of women in New Comedy, Fantham shows that she is well aware that the laws of Athens punished rape, but claims that ancient audiences «seem to have found rape a human error, when mitigated by darkness, drink, and youthful desire» <sup>5</sup>. Scafuro notes that «the rapists of New Comedy frequently plead in their defense that they did not intend their deed; they acted out of love, or drunkenness or youthful impetuosity». She compares these arguments to those found in forensic oratory where according to her «speakers use various arguments such as intoxication to prove the absence of intention». She reaches the paradoxical conclusion that in New Comedy «The rape is thus an admitted fact,

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not retract». Brownmiller argues that «consent is better arrived at each time for if women are to be what we believe we are – equal partners – then intercourse must be construed as an act of desire and not as a wifely duty, enforced by the permissible treat of bodily harm or of economic sanctions». Despite their differences, both writers implicitly agree that the absence of consent is a major element in the definition of rape. Where they disagree is about the nature of consent. Lape (2001), p. 84, therefore exaggerates when she claims that «definitions of rape vary widely in ordinary discourse, dictionary entries, and statutory designations».

<sup>4</sup> This is implicit in Bracton's list of possible defenses against a charge of rape: «... that he had her as his concubine and *amica* before the day and the year mentioned in the appeal ... of that he had her and defiled her with her consent and not against her will, and that if she now appeals it is in hatred of another woman whom he has as his concubine, or whom he has married, or that it is at the instigation of one of her kinsmen» (Thorne [1968], II, p. 417, quoted in Brownmiller [1975], p. 18).

<sup>5</sup> Fantham (1975), pp. 54-55.

but the young man is not a “rapist”<sup>6</sup>. Rosivach too knows that there were laws against sexual assault and recognizes that «Rape, it should be stressed, is never commended or even approved in New Comedy, and it is sometimes even criticized. It is unacceptable, anti-social behavior». Yet he hastens to add that «the plays also regularly make the point that the rapist’s rational capacities were diminished by drink and/or youthful passion and the seductive effects of the night». So while ancient audiences hated rape, they loved the rapist: «... if the act of rape is to be censured, the agent is less so, especially since no one ever asks why he allowed himself to get drunk in the first place». The playwrights therefore seem to have sent a rather contradictory message about rape to their audiences: New Comedy «even while censuring the fact of rape, nonetheless welcomes the rapist into every happy ending and inevitably sends a message to its audience that self-serving violence of the powerful against the vulnerable, especially violence of male against female, is permissible despite any public protestations to the contrary»<sup>7</sup>. In a study of rape in Menander Lape takes a similar approach and claims that «The nocturnal setting» of the rape «usually lends the act the cover of anonymity» and notes that wine and passion often supply the motive for the assault<sup>8</sup>. «This conventional stylization», she argues, «is calculated specifically to decriminalize rape. The anonymity of the act obscures the social identities of the victim and assailant while the rapist’s diminished capacity supplies a crucial explanatory factor leading to the conventional wisdom that New Comic rapists cannot be held accountable for their actions because they act without thinking». She thus arrives at the conclusion that «New Comedy divests rape of a social context». It strips «coerced sexual intercourse of the features that could make it actionable as *hybris* in Athenian law»<sup>9</sup>.

<sup>6</sup> Scafuro (1997), pp. 246-254.

<sup>7</sup> Rosivach (1998), pp. 39-42.

<sup>8</sup> Lape (2001), p. 93.

<sup>9</sup> Lape (2001), p. 94. How rape is stripped of a «social context» is not clearly explained by Lape. One might point out that both the aggressor and the victim in New Comedy are members of society when the offense occurs and thus subject to all the norms of their society, and this does not change afterwards. To «divest rape of a social context» one would have to place the action on a desert island, in a location removed from any human society. Certainly the characters that threaten to go to court in the plays of Plautus and Terence do not consider that these factors divest sexual violence

There are two main objections to these attempts to explain away the treatment of sexual violence in New Comedy. It is true that in several plays the young men attempt to obtain pardon by saying that they were drunk or carried away by passion. But in other plays this excuse is not given. In Menander's *Samia* (38-49) Moschion tells how upon returning from the fields one day, he came upon some women celebrating the Adonia. He stayed to watch, and besides their noise made it impossible to sleep. Moschion tactfully skips over the details of what happened next and says only that the girl became pregnant. Since he blames himself, the girl was obviously not at fault (47-51). Here there is no indication that Moschion was drinking; in fact, he was returning from work in the fields. In Menander's *Georgos* (30) an old woman named Philinna reminds Myrrhine how a young man has wronged her daughter. Nothing in the remaining fragments of the play would allow us to decide whether the young man was drunk at the time or not. And in Terence's *Eunuchus* Chaerea disguises himself as a eunuch and enters the house of Thais, who has him look after Pamphila. When he is alone with Pamphila, he makes love to her despite her protests. Chaerea is quite sober as he carries out his plot, and he achieves his aim by careful planning. Though he later claims his motive was love and not insult, there is no question of «diminished capacity» in his case<sup>10</sup>.

But were drunkenness, youthful enthusiasm, and passion really considered to be legitimate excuses in Athenian law and society? In the *Politics* (2.9.1274b) Aristotle mentions a law of Pittacus imposing a larger fine on men who commit an offense when drunk. He noticed that men who are drunk are more prone to commit outrage (ὕβριζεν) than men who are sober. In the *Nicomachean Ethics* (3.5.1113b) the philosopher observes that several legislators inflict double penalties on offenders who are drunk. Their reasoning is that the offender

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of a legal context. In general, I do not find convincing Lape's attempt to interpret the rape-plot in New Comedy in terms of democratic ideology. As Euphiletus says (Lys. 1.1), the penalties for *moicheia* are not peculiar to Athens, but found in all constitutions, both in democracies and oligarchies. There is no reason to doubt his statement: the law code of Gortyn, hardly a democratic community, contains several provisions on rape and seduction that are similar to those found in Athenian law. See Harris (1990).

<sup>10</sup> Rosivach (1998), p. 46, realizes that the *Eunuchus* poses problems for his analysis of rape in New Comedy.

could have avoided getting drunk. If his drunkenness causes him to do something in ignorance, he has only himself to blame for his own ignorance. Far from considering drunkenness an excuse, these legislators held that people who committed crimes when intoxicated should still be held responsible for their actions.

Two cases described by Demosthenes in *Against Meidias* reveal that the Athenian courts did not consider drunkenness, darkness, and passion as legitimate excuses. In one case, a man named Ctesicles was carrying a whip while marching in a religious procession (Dem. 21.180-181). While drunk, he struck someone who happened to be a personal enemy. Demosthenes reports that «he appeared to strike with intent to insult and not because of the wine. On the contrary, he appeared to commit the offense of treating free men like slaves and used the procession and his drunken state as an excuse». Since the court judged that his intent was to insult his enemy, the court condemned him to death, and he was executed. In the other case, a man hit one of the Thesmothetai, an important official, who was defending the freedom of a female musician (Dem. 21.36). The assailant «had three excuses: drunkenness, passion, and ignorance because the action took place in darkness and at night» (Dem. 21.38)<sup>11</sup>. The Thesmothete did not prosecute the assailant, but agreed to settle the case out of court for a sum of money (Dem. 21.39). But even though the case did not go to trial, Demosthenes implies that it could have. Indeed, if the man was actually innocent and confident that these excuses would secure his acquittal, why did he agree to pay his victim a sum of money? This is not the way innocent men act. Drunkenness, passion, and ignorance clearly did not exculpate his conduct and as a result he found it necessary to reach a settlement so as to avoid an inevitable conviction in court<sup>12</sup>.

<sup>11</sup> The darkness in this case only made the assailant unaware of the status of the person whom he struck, not the nature of his offense. His ignorance of his victim's official position would have made it difficult to prosecute him for striking a magistrate (Dem. 21.32-33), but would not have protected him from a private action for assault and battery (*dike aeikeias*) or a public action for outrage (*graphe hybreos*).

<sup>12</sup> Scafuro (1997), p. 249, claims that «Demosthenes represents the private settlements» of the cases mentioned in this section «as flagrant breaches of the court system» and «insinuates that bribery was involved». I see nothing in Demosthenes' language that suggests this, and there was certainly nothing illegal about these out-of-court settlements – see Harris (1999). Scafuro cites these two cases to show «The absence of the

In the speech *Against Conon*, the plaintiff Ariston, who claims to be the victim of drunken violence, goes so far as to argue that there is no excuse whatsoever for committing outrage (*hybris*). If a young man commits outrage, his age may justify mitigating his penalty, but it is not a reason to acquit him of his crime (Dem. 54.21). And if drunkenness were an exculpatory factor, an accuser who was attempting to prove that a defendant was guilty certainly would not say that his opponent was drunk when he committed his offense. Yet Ariston makes a point of mentioning that his assailants had been drinking and the Conon's son was acting drunk (Dem. 54.7), and so does the speaker in Lysias' speech *Against Simon* (Lys. 3.12, 18, 19). In these speeches the accuser appears to mention the defendant's drunkenness in support of their charges, not in extenuation of his conduct. In Aristophanes' *Wasps* when Philocleon gets drunk and starts beating people up, one of his victims does not think his intoxication renders him innocent (Ar. *Vesp.* 1299-1300). Instead he goes ahead and summons him on a charge of *hybris* (1415-1418). His son Bdelycleon is so worried that his father will be convicted that he offers to reach an out-of court settlement (1418-1420). In Plautus' *Aulularia* (747-751), Euclio firmly rejects love and drunkenness as excuses: «If the law is such that you can use this kind of an excuse, let's go and rip gold jewelry from matrons openly and in broad daylight. If we should be caught, we would excuse our conduct by saying that we were drunk or did it out of love. Wine and love are much too inexpensive if drunken lovers have the right to do whatever they want without fear of punishment»<sup>13</sup>. And when Xenophon is accused of beating soldiers during the March of the Ten Thousand and charged with *hybris*, he does not try to defend himself by claiming he was drunk at the time. Quite the opposite: through questioning one of his accusers, Xenophon proves that he was justified in striking him and not acting out of *hybris* by establishing that he was *not*

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intention to insult might be claimed on the basis of a disturbed state of mind brought about by love, drunkenness, anger, and ignorance arising out of external factors such as the darkness of night» but does not note that in both cases these excuses did not exculpate the defendant.

<sup>13</sup> For a similar statement that there is no excuse for committing *hybris* see Philipides, fr. 27 K-A (also noted by Scafuro [1997], p. 251) and Plautus, *Truculentus*, 829-833.

intoxicated or in love (*Anabasis*, 5.8.1-5). So one cannot claim that drunkenness, youth, and passion were regarded as legitimate excuses in Athenian law and society. This way of explaining (or perhaps explaining away) the rapes in New Comedy does not work.

A second approach has been to claim that the rapes that occur in New Comedy were not really rapes. D. Cohen appears to have been the first to suggest this way of disposing of the evidence from Menander, Plautus, and Terence: «Rape of young unmarried, women at festivals plays a prominent role in the plots of several comedies of Menander, but it is often not clear whether the sexual transaction really was based upon force or it simply referred to as such in order to help preserve the reputation of the girl»<sup>14</sup>. Sommerstein takes this idea one step further and suggests that the rape-plot represents «a real-life strategy for dealing with the embarrassing situation of a pregnant daughter». In his view what has *really* happened is that the young man has actually only seduced his inamorata, but to save her reputation everyone covers up the facts «by explaining that the young man was overpowered by passion into committing a rash act of violence but has repented and been forgiven by his victim». This was a clever strategy «for young people of either sex who wished to marry according to their inclinations rather than according to the interests of their elders»<sup>15</sup>. But as Rosivach rightly observes, «there is absolutely no evidence in the texts to support the speculation that really consensual sex is referred to as rape to protect the reputation of the young women». True, women raised to be courtesans or prostitutes may have consensual sex with young men in New Comedy, but the women in these plays who are victims of rape «are all respectable, and respectable women do not willingly have sex outside of marriage»<sup>16</sup>. Cohen commits the fallacy of treating New Comedy as if it were a historical source that reports actual events. Although the texts do not say that the women were *actually* seduced as opposed to rape, Cohen appears to think that there was some real event behind the text, which he knows *must have happened* based

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<sup>14</sup> Cohen (1993), p. 148 n. 3. Cf. Brown (1993), p. 197, who however notes that no woman in New Comedy is ever said to have actually been a willing partner since this would have lowered her moral stature in the eyes of the audience.

<sup>15</sup> Sommerstein (1998), p. 112.

<sup>16</sup> Rosivach (1998), p. 14.

on his assumptions about Athenian society – and despite the absence of any evidence whatsoever. There might have existed a strategy such as the one Sommerstein describes, but without any source stating it did exist, there is also the possibility that it might not have existed at all.

A third approach has been to remove the obstacle created by the evidence of New Comedy by arguing that the plays of Menander, Plautus, and Terence belong to a fictional world that bore little or no relationship to contemporary reality. Leisner-Jensen believes that the rape-plot is merely a matter of literary convention: «The conventional ingredients occurring in the rape-stories down to details, all of them undoubtedly based on reality, make it unlikely that this is a frequent or commonplace feature fetched from everyday life in Athens. The universe of comedy is conventional as that of all other literary genres»<sup>17</sup>. Such a thing could never have happened in Classical Athens because Leisner-Jensen finds it much too horrible: «But how is it that a consummated rape could at all appear in Greek plays meant for a laughter-provoking pastime? A rape is a tragical and fatal experience to the victim and a serious criminal offence. Could it be different to the citizens of fourth-century Athens?»<sup>18</sup>. The consequences of assuming that New Comedy might reflect reality are simply too staggering for this scholar: «I can hardly believe that a corresponding proportion of marriages in Athens should have been based on a consummated rape». As a result, they «cannot be explained and understood by reference to actual social and legal conditions in fourteenth-century [*sic*] Athens and Hellas». Pierce is less certain than Leisner-Jensen, but is still skeptical: «... rapists might well have married their victims in real life as well as in drama. But this is really no more than supposition. ... Rape in these plays may, then, in the majority of cases, be just a means to an end, and as a comic convention or plot device it would have borne no relation to real life»<sup>19</sup>.

There are several implicit assumptions in these views. First, Leisner-Jensen appears to think that the Athenians must have shared our views of sexual violence; since we find rape so offensive, the Athen-

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<sup>17</sup> Leisner-Jensen (2002), p. 195.

<sup>18</sup> Leisner-Jensen (2002), pp. 195-196.

<sup>19</sup> Pierce (1997), pp. 177-178.

ians must also have found it offensive. But there is no reason to make such an assumption: the Athenians held very different views from us about a wide range of topics such as war, slavery, and infanticide. Is it not also possible that they held a different view of sexual violence? Second, both scholars seem to assume that literary conventions may bear no relation at all to real life. This is true in the case of science fiction and other genres, but Menander was renowned in antiquity for his realism. His depiction of marriage practices, the rules about the *epikleros*, and other legal procedures is generally judged to be reliable; why would he have invented this kind of solution to the problem of sexual violence <sup>20</sup>?

But the strongest argument against the view that the rape-plot was just a matter of literary convention and corresponded to nothing in daily life is the comparative evidence found in several Central and South American countries. For instance, in Peru as recently as 1997 the penal code exonerated a rapist if he offered to marry the victim, and she accepted his offer. Similar laws were on the books in Costa Rica, Argentina, Brazil, Chile, Columbia, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, the Dominican Republic, and Venezuela. Violeta Bermúdez, director of Manuela Ramos, a leading women's rights group in Peru, estimated in 1997 that 25,000 women a year were being raped and that a large percentage of these cases were resolved by offers of marriage. Mrs. Bermúdez reported at the time that «in many poor and rural areas of Peru, relatives put pressure on rape victims to accept a rapist's offer, which the relatives believe will restore honor to the victim and her family» <sup>21</sup>. If such a practice is well attested in modern societies, there is no reason to disbelieve sources attesting to its existence in Classical Athens.

A new approach is clearly needed if we are going to make progress in understanding ancient attitudes to sexual violence. The first step in this new approach should be to avoid modern and anachronistic concepts when analyzing the ancient evidence. Above

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<sup>20</sup> See, for example, MacDowell (1982). Brown (1983) is not quite as confident as MacDowell about the possibility of using Menander as a reliable source for details of the law that are not attested elsewhere, but still believes that «His plays certainly provide important evidence on legal matters» although he was «sometimes indifferent to detail».

<sup>21</sup> «New York Times», March 12, 1997, A1 and A12.

all, we should stop using the word «rape» and looking for «the Athenian attitude toward rape» or «the Greek concept of rape». The Greeks did not have a word for «rape» and therefore the search for the Greek concept of rape is a quest to find something that did not exist. What we should examine are Greek attitudes toward sexual violence: why were some acts of sexual violence condemned and punished severely and why were other acts of sexual violence treated more leniently? The second step is to examine a broader range of evidence than previous scholars have studied. Fantham, Scafuro, and Rosivach look primarily at New Comedy with some attention to forensic oratory, but they do not examine myth, tragedy, history or Old Comedy<sup>22</sup>. Cohen by contrast concentrates on forensic oratory, but avoids myth and New Comedy. Each literary genre tends to select and privilege certain aspects of social reality; a tendency to concentrate on one genre to the exclusion of others will therefore result in a distorted view of ancient attitudes. If we are going to understand Athenian and Greek attitudes to sexual violence, we should look at as many different kinds of evidence as possible, not arbitrarily select some evidence and ignore the rest. My survey of the evidence is not exhaustive, but I have tried to cover a wider range of sources than previous scholars have.

I will proceed by grouping the evidence into two categories. In Section II, I will examine cases where sexual violence against women is portrayed as wrong and/or subject to punishment. This punishment may be inflicted at the hands of her husband, father or other relative or by the legal authorities. In many of these cases sexual violence is denoted by the term *hybris* («outrage» or «aggravated insult»). I will begin with stories from myth and tragedy, then move to history, and finally examine a statement condemning sexual vio-

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<sup>22</sup> There is no extensive discussion of sexual violence against women in Foucault (1984), nor in the essays found in Halperin - Winkler - Zeitlin (1990), Larmour - Miller - Platter (1998), and Nussbaum - Sihvola (2002). Omitowaju (2002) discusses Menander's plays, but does not treat the plays of Terence and Plautus that are based on Menandrian originals. She devotes a few paragraphs (185-186) to Euripides' *Ion*, which, as she notes, contradicts her main thesis that Athenian authors did not pay attention to women's lack of consent in acts of sexual violence. Ideally a study of sexual violence in ancient Greece would include an analysis of its depiction in vase painting and sculpture. Arafat (1997) and Kilmer (1997) analyze some Late Archaic and early Classical vases, but a complete study still remains a *desideratum*.

lence in Menander's *Dyskolos*. In each example, it is important not only to study the narrative of events, but the way the author presents these events and the reasons why he considers the act of sexual violence wrong and deserving punishment. After having discovered the reasons why the Athenians found sexual violence a crime, we will be in a better position to understand the legal procedures that they created to prosecute this offense in certain circumstances. In Section III I will study cases where sexual violence against women is either condoned or treated leniently, starting with Euripides' *Ion* and other myths, next looking at New Comedy, then considering some other cases in different genres. Here we need to observe carefully how these cases differ from those in the group studied in Section II. Are there elements lacking in the second group present in the first? Is there a uniform attitude toward sexual violence or do attitudes toward it vary according to context?

## II

We begin with Attic tragedy <sup>23</sup>. In Sophocles' *Women of Trachis* (555-577) Deianeira recalls how she and her husband Heracles came to the river Evenus and asked the centaur Nessus to carry them across. Nessus took Deianeira first, but in midstream began to touch her with «vain hands» (565: ψάθει ματαΐαις χερσίν). Heracles, seeing what was happening from the river-bank, took his bow and killed

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<sup>23</sup> In Aeschylus' *Suppliant Women*, the Danaids repeatedly state that they are unwilling to marry their cousins and call their attempt to force them into marriage an act of *hybris* (29-30, 81, 104, 426, 487, 528, 817-818, 845, 880, 881). However I have not included this play in my survey because the legal issue in the play is complicated by the fact that the Danaids are Egyptian and thus subject to an Egyptian law that gives their cousins rights over them (Aesch. *Suppl.* 387-391, 933, 984). For a discussion of the legal issue in the play see Friis Johansen - Whittle (1980), I, pp. 29-40. In the prologue to Euripides' *Trojan Women* (69-70) the goddess Athena complains about the *hybris* done to her and her temple when the Locrian Ajax dragged away Cassandra by force. But Athena punishes the Greeks not for the violence done to Cassandra *per se*, but for violating her temple and not respecting the rights of asylum – see Nilsson (1955-61), pp. 66-69, and Touchefeu in *LIMC* 1.1.336-337. The earliest example of punishment for attempted sexual violence is found in Odysseus' account of the underworld, where he describes how he saw Tityos being punished for dragging Leto (*Od.* 11.576-581).

Nessus with an arrow. Tragedy maintains a certain decorum about the description of Nessus' crime, but Diodorus (4.36.3-5) is more explicit: the historian says that Nessus felt desire for Deianeira and tried to use force against her (βιάσασθαι). When she called out to her husband, Heracles killed the centaur with an arrow while he was having intercourse (μετὰξὺ μισγόμενος)<sup>24</sup>. No version of the myth says that Heracles had to atone for this murder in the way he did after the murder of Eurystheus. The hero's killing of Nessus is portrayed as a just punishment of an attempted rape.

In Euripides' *Hippolytus* there is an accusation of sexual violence, which turns out to be false, but Theseus' reaction to the charge is very revealing about his attitude toward the crime. After the nurse discloses to Hippolytus Phaedra's love for him, Phaedra decides to kill herself, but first extracts a promise from her step-son not to tell anyone about her passion. Before hanging herself, she writes a note and leaves it attached to her wrist accusing Hippolytus of having used force to enter her bed. When her husband Theseus returns and reads the note, he shouts:

Hippolytus has dared to put his hand by force (βία)  
To my marriage-bed, dishonoring (ἀτιμάσας) the eye of Zeus.  
(Eur. *Hipp.* 885-886, tr. Kovacs)

Theseus says the action took place by force, but the way that he expresses himself is telling: the offense was against *his* marriage bed. In other words, Hippolytus' crime was not directed not so much at Phaedra as against his father. When Hippolytus enters and tries to defend himself, Theseus repeats his point: his son has brought shame on his marriage bed (943-944: ἤσχυνε τὰ μὲν λέκτρα). His attack is not on Phaedra, but on his father's marriage to her. Even after Hippolytus attempts to prove his innocence and swears an oath denying his guilt, Theseus remains certain that his son «has dishonored his father» (1040: τὸν τέκοντ' ἀτιμάσας). Although Hippolytus is his own son, Theseus banishes him (1045-1054) and calls down a curse

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<sup>24</sup> Cf. Apollodorus, 2.7.6; Hyginus, *Fabula*, 34. The killing of Nessus for his attempt on Deianeira was popular in vase painting – see *LIMC* 6.1.838-846. On several vases the painter indicates Deianeira's lack of consent by her gestures of protest or her appeal to Heracles for help.

on his head (887-890), which causes his death. While it is obvious that Hippolytus has been accused of sexual violence, Theseus always stresses the wrong that is done to him; he never approaches the crime from Phaedra's point of view or emphasizes her lack of consent.

An act of sexual violence leads to revenge and tragedy in Sophocles' *Tereus*. Only fragments remain from the play, but summaries of the tragedy in later sources make it possible to recover the basic features of the plot<sup>25</sup>. Pandion, the king of Athens, married Zeuxippe and had two sons, Erectheus and Butes, and two daughters, Procne and Philomela. When Pandion needed help in his war against Labdacus, he called on Tereus, the king of Thrace, for help. After winning the war, Pandion gave his daughter Procne to Tereus in marriage (Apollodorus, 3.14.8). The versions of the story differ at this point, but Sophocles followed the version reported by Tzetzes<sup>26</sup>. In this version Procne requested to see her sister so Tereus went to Athens to escort Philomela to Thrace. On their way back, Tereus used violence to deflower her and cut out her tongue to prevent her from reporting his crime to her sister. After joining her sister, Philomela wove a robe with figures depicting what had happened to her and showed it to Procne. To take revenge on Tereus, Procne killed their son Itys and served him as a meal to his father. When he discovered what she had done, he pursued both sisters, who had fled. To evade capture, they asked the gods to transform them into birds; Procne became a nightingale, Philomela a swallow. The sisters appear to have been criticized in Sophocles' play for taking their vengeance too far<sup>27</sup>, but in Demosthenes' *Funeral Oration* (60.28) they are held up as an example, which the soldiers of the tribe Pandionis followed when they fought against Philip II at Chaeronea. Like Procne and Philomela, who punished Tereus for his *hybris* toward them, the men of Pandionis also showed courage when they

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<sup>25</sup> For summaries in later sources and the fragments of Sophocles' *Tereus*, see Radt (1977), pp. 435-445.

<sup>26</sup> The summary found in *P.Oxy.* 3013 is probably the hypothesis of Sophocles' *Tereus* and is similar to the version found in Tzetzes. See Haslam (1975), p. 150 n. 3. Apollodorus (3.14.8) implies that Tereus deceived Philomela by telling her that Procne was dead, but Hyginus, *Fabula*, 45, reports that Tereus used force (*compressit*).

<sup>27</sup> See Stobaeus, 3.20.32 = Sophocles, *Tereus*, fr. 589 (Radt).

saw all of Greece the victim of Macedonian *hybris*. Here again sexual violence is clearly condemned as *hybris* and merits serious punishment.

Turning to history, we find a series of abductions in the very first chapters of Herodotus' account of the *Persian War* (Hdt. 1.1-5)<sup>28</sup>. According to Persian story-tellers, the Phoenicians once came to Argos on a trading voyage. On the fifth or sixth day after their arrival, the king's daughter Io came to the shore with many Argive women to go shopping. The Phoenicians rushed at them and took away Io and several other women. The Greeks retaliated by taking Europa, the daughter of the king of Tyre. According to Herodotus, «this evened the score». In the next round, the Greeks went to Colchis and abducted Medea, the daughter of the king. When the king sent a herald to demand her back, the Greeks replied that since they had received no justice for the abduction of Io, they would not make amends for Medea. In the third round, Alexander, the son of Priam, after hearing these stories, wished to abduct a woman from Greece, thinking that he would not be punished for it. After he took Helen, the Greeks sent messengers to ask for her back and for compensation for the abduction. They received the reply that since there was no compensation for Medea, there would be none for Helen. Not content with this answer, the Greeks raised an expedition and destroyed the power of Priam «on account of a single woman».

In his account of Egypt in Book 2, Herodotus (2.113-15) returns to the story of Paris and Helen<sup>29</sup>. When Paris was sailing back to Troy from Sparta, he was blown off course and forced to land in Egypt at the mouth of the Nile. There some of his slaves deserted and sought refuge as suppliants in the temple of Heracles. Wishing to do some harm to their former master, they told the priests and Thonis, the official in charge of the area, about what happened to Helen and «the wrong committed against Menelaus» (2.113.3). Thonis sent a messenger to report the news of Paris' crime to King Proteus and how he had tricked the wife of his host and stolen his property.

<sup>28</sup> Sexual violence in Herodotus is studied in a perceptive essay by Harrison (1997).

<sup>29</sup> Even though Herodotus appears to have drawn on local sources for his account of Egypt, it is generally agreed that the story of Helen is based on Greek myth and mirrors Greek attitudes. On the sources for Book II of Herodotus see Lloyd (1988), esp. pp. 33, 45.

Proteus ordered Thonis to seize Paris and to take him along with Helen and the stolen goods to his palace at Memphis. When he started to ask Paris how he took Helen, Paris tried to avoid answering, but his slaves told the king the truth. At this point Proteus expressed his shock at the way Paris treated his Spartan host, then declared he would keep Helen in Egypt until her husband came to get her.

Two features of these stories are significant for understanding Greek attitudes toward sexual violence. First, abduction by one group is seen as a legitimate response to an abduction committed by another group. In our eyes, no woman should be removed from her community against her will. The Geneva Convention protects women of all countries against rape and abduction by the enemies of their country, no matter how wrong the policies of their own country may be. The Greeks appear to have viewed the matter differently: when the Greeks respond to Io's capture by taking Europa, Herodotus does not condemn both sides equally, but regards the Greek action as justifiable revenge. The fact that Europa is innocent of wrongdoing is immaterial.

Second, Paris' abduction of Helen through deceit is not seen as an offense against her but as a violation of the guest-host relationship and a wrong done to Menelaus (Hdt. 2.115.4). Helen's own role in the abduction is a little vague. On the one hand, Paris is said to have abducted her (2.113.1: ἀρπάσαντα), which suggests her abduction was against her will, but he is also said to have aroused her emotions (we might translate ἀναπτερώσας at 2.115.4 as «set her heart a-flutter»), which seems to imply seduction. But Herodotus places her abduction on the same level as that of Io, who was clearly seized against her will. What counts for him is not her consent or lack of consent, but Paris' violation of Menelaus' rights as husband and host <sup>30</sup>.

Moving from Egypt of the Pharaohs to Greece just before the Persian Wars, we encounter a story about sexual violence that concerns the Macedonians (Hdt. 5.18-21). Before the Persian Wars, Darius sent Persian envoys to ask for earth and water from the Macedonians, the

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<sup>30</sup> Cf. Harrison (1997), p. 190: «... his crime, an infringement of the obligations of guest-friendship, is perceived as being committed against Menelaus rather than Helen herself».

tokens of political subjection. Amyntas, the king of Macedon, agreed and invited the envoys to dinner. They had a great deal to drink, then insisted that the Macedonians bring their wives to drink with them. When Amyntas says that this is not the Greek custom for women to join in drinking, the Persians insist. Here we should bear in mind that the only women who joined men at *symposia* were courtesans<sup>31</sup>; for the Persians to request that Macedonian women sit with them as they drank is to treat them as if they were prostitutes, an insult to their honor. To prevent trouble, Amyntas had the women sit opposite his guests, but the Persians complained that they should not have come at all if they were to remain at a distance. Under pressure Amyntas ordered them to sit next to their guests. The Persians, who were quite drunk, began to fondle their breasts and tried to kiss them (Herodotus is quite explicit on this point). Amyntas, though horrified, held his tongue, but his son Alexander could not bear the situation and asked his father to let him entertain the guests. Amyntas yielded to his son, and Alexander told the Persians they could go to bed with any of the women they wanted and ordered the women back to their quarters. He then dressed some young men in their clothes and when the Persians come to sleep with the women, the young men killed them.

The striking feature about this story is that Herodotus does not say whether the women were willing or not, even though it is hard to imagine they welcomed the fondling by the Persians. What Herodotus stresses is the reaction of Amyntas and Alexander. There is no indication that Alexander asked the women how they felt before he went ahead with his plot. As far as he was concerned, the Persians had insulted the women by insisting that they sit with them as they drank, then fondling them and trying to kiss them. For this insult to their honor, and his own, they deserved to die.

In his account of the battle of Leuctra Xenophon (*Hell.* 6.4.7) mentions the monument of two virgins who were said to have committed suicide because they had been «forced» (*i.e.* to have sex) by two Spartans. Pausanias (9.13.5) gives more details: a Boeotian named Scedasmus lived near Leuctra and had two daughters, Molpia and Hippo. When these girls reached adolescence, two Spartans

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<sup>31</sup> Isaeus, 3.14 with Wyse (1904/1979) *ad loc.*

Phrourarichidas and Parthenius «used force on them contrary to what is right (βιάζονται παρὰ θέμιδα)». The girls could not bear the insult to their honor (ὕβρεως) and hanged themselves. When their father Scedasus went to Sparta and could not obtain justice for this crime, he too killed himself. The version given by Plutarch (*Pelop.* 20) is similar but he omits the names of the girls and adds that the father called down curses on the Spartans before killing himself before his daughters' tomb<sup>32</sup>. Two points are worth noting here. First says that used force contrary to *themis*, «what is right» which would seem to suggest that in other cases it was not contrary to justice to use force against a woman. Second, the shame felt by the victims is shared by their father, how has not been able to protect women who are in his household. When he cannot avenge their suffering, he cannot bear the dishonor and also kills himself.

The tragedy of Scedasus' daughters was repeated on a massive scale during the raid of the Gauls on the Kallieans in 279/278<sup>33</sup>. In Pausanias' account (10.22.2) of the raid, women threatened with rape killed themselves or die after being raped. The Gauls «butchered every human male of that entire race, the old men and the children at the breast; and the Gauls drank the blood and ate the flesh of those slaughtered babies that were fattest with milk. Any women and mature virgins with a spark of pride killed themselves as soon as the city fell; those who lived were subjected with wanton violence to every form of outrage (*hybris*) by men as remote from mercy as they were remote from love (ἴσον μὲν ἐλέου, ἴσον δὲ τὰς φύσεις καὶ ἔρωτος ἀπέχοντες). Women who came upon a Gaulish sword committed suicide with their own hands; it was not long before the others were to die by famishing hunger and sleeplessness, outraged in an endless succession by pitiless and barbarous men; they mated with the dying; they mated with those already dead» (tr.

<sup>32</sup> Diodorus (15.54) gives a slightly different version: he says that some Spartans also committed the same crime against the daughters of Leuctrus and does not mention the suicide of Scedasus.

<sup>33</sup> There is no reason to be skeptical of Pausanias' account of this atrocity. Excavations at Kallipolis have confirmed the destruction of the city in this period. See Habicht (1985), pp. 32-35, with the references cited there. For sexual violence against women taken in war see the evidence collected by Pritchett (1991), pp. 238-241.

Levi). The news of this atrocity was so alarming to the women in nearby towns that they joined their husbands in attacking the Gauls.

What is curious about Pausanias' account, however, is the way he describes the actions of the Gauls. He remarks that they were as removed from mercy as they were removed from love. The implication seems to be that their violence would not have been so awful if their motive had been love instead of humiliation. In other words, when Pausanias condemns the actions of the Gauls, he views it more from the point of view of the intention of the aggressor and does not focus on the absence of consent on the part of the victim. This is a point to which we will return.

When we turn to New Comedy we find that in the vast majority of cases where a young man commits sexual violence, he is treated leniently and allowed to marry the victim – if he is not married to her already. We will look at these in Section III. But in a passage from Menander's *Dyskolos* (289-298) we encounter a less indulgent attitude. Gorgias, a hard-working farmer, has seen Sostratus, a rich young man from the city, lurking around his father's farm and suspects that he may have designs on his daughter.

Gorgias: You seem to be keen on some foul deed,  
intending to persuade a free-born virgin  
or watching for an opportunity to accomplish  
a deed that deserves many deaths.

As Brown has rightly noted, Gorgias suggests that Sostratus is planning to make love to the girl either by persuading her or by achieving his goal against her will<sup>34</sup>. Yet though he considers the latter possibility a terrible crime, he considers both offenses more of a crime against himself than against the girl, an insult to his own honor as much as to hers.

It is certainly not right for your leisure to cause  
trouble for us who never have any leisure.  
Keep in mind that a poor man, when wronged,  
is the most difficult thing in the world.  
At first he is pitiable, but then he considers

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<sup>34</sup> Brown (1991).

everything that he has suffered not merely  
an injustice but an insult to his honor (*bybrin*).

It makes little difference to Gorgias how Sostratus succeeds in making love to his sister; either way the wrong is one that is done to him<sup>35</sup>.

Several key themes emerge from this survey of passages depicting sexual violence. The main one is that the wrong is always done to the husband, father or other male relative. The offense is generally seen in terms damage done to their honor. Second, in several passages the emphasis is less on the absence of the woman's consent than on the intent of the aggressor. What seems to make his action wrong is not so much his use of force – whether Sostratus intends to use force or persuasion does not make much difference to Gorgias – as his motive for using force. Third, the main concern is with honor, not with the issue of consent. Sexual violence is not a unique crime, but one of many possible threats to the honor of men and the women under their control.

An understanding of Greek attitudes toward sexual violence helps us to explain certain salient features of the legal procedures that were employed to punish this crime. First to note is the absence of a specific statute outlawing rape *per se* or directed only at acts of sexual violence toward women. There were legal procedures that someone could employ against a person who had committed sexual violence, but their main aim was not to protect a woman's autonomy and her right to choose who her sexual partners would be. This makes sense in a society where women were under the control of their fathers before marriage and subject to the will of their husbands after marriage. When a woman was given to a man, it was her father who concluded the agreement with her husband and determined the nature of the union, either one based on a pledge (*engye*)

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<sup>35</sup> A fragment of Menander (*Fabula Incerta*, 13-17, 23-25, 27-28) that is not attributed to a specific play also concerns sexual violence. A young man Chaireas claims that the daughter of Cleainetus has been pledged to him in marriage and says that Moschion has assaulted her and thus forced her into marriage. Although his claim is part of a ruse, it is significant that he says the wrong done by Moschion was done to him, not the girl. For the plot and analysis of the fragments see Gomme - Sandbach (1973), pp. 683-689.

or a form of concubinage (*pallake*), which in turn determined the status of her children (*gnesioi* or *nothoi*)<sup>36</sup>. A marriage did not require a woman's consent to become valid. The father was also the one who set the amount of the dowry and handed it over to the husband; if there was a divorce, the father initiated the action to recover the dowry if it was not returned<sup>37</sup>. The father also appears to have had the power to terminate the marriage, and in some cases we read that husbands in their wills determined who would marry their widows<sup>38</sup>. That is not to say that the Athenians did not think that a woman was incapable of giving or withholding her consent. The Athenians were quite capable of distinguishing between sexual acts where the woman gave her consent and where she did not. The woman who allowed herself to be seduced was punished by a certain loss of rights; no evidence suggests that the victims of sexual violence were subject to similar treatment<sup>39</sup>. But protecting a woman against sexual violence was not the law's main concern. What was more important was protecting men's control over their wives, daughters and other female relatives<sup>40</sup>. For instance, when Euphile-

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<sup>36</sup> On marriage as a legal act see VÉrilhac - Vial (1998), pp. 229-265, with the conclusion at 265: «... le mariage grec n'a jamais été un acte par lequel deux conjoints s'unissaient l'un à l'autre sur un pied d'égalité. Un mariage impliquait nécessairement trois personnes: le marié, la mariée, et l'auteur de la dation. Non seulement la présence d'un tiers était indispensable, mais c'était lui qui avait le rôle principal et l'initiative dans l'acte juridique. Le rôle actif revenait aux deux hommes, le marié et le père de la mariée. Cette dernière, sauf exception rarissime, avait un rôle passif.»

<sup>37</sup> On practices for the dowry see VÉrilhac - Vial (1998), pp. 125-208.

<sup>38</sup> For the father's right to terminate his daughter's marriage (*aphaeresis*) see Dem. 41.4 with Cohn-Haft (1995). For men giving their wives to new husbands see Dem. 36.28-29.

<sup>39</sup> For the punishment of women who allow themselves to be seduced see Aeschin. 1.183 and Dem. 59.86 with Fisher (2001), pp. 336-337, and Kapparis (1999), pp. 354-357. This evidence undermines the view of Omitowaju (2002) that Athenian law paid no attention to women's consent.

<sup>40</sup> Cf. Foxhall (1991), p. 299: «Rape, seduction, and *moikheia* are therefore not so much offenses against women or "the husband-wife relationship" as they are offenses against men's authority over their households and against their power to control the sexual activities of household members». Cf. Porter (1986), p. 217: «From Old Testament Jewish codes up to feudalism, rape was treated primarily as theft, as a property offense, but one perpetrated against *men*. The crime was principally that of stealing or abducting a woman from her rightful proprietors, normally her father or husband. Moreover, in the case of a maiden, rape destroyed her property value on the marriage market, and because defloration polluted, heaped shame on her family.»

tus compares men who have sex with other men's wives against their will with those who seduce them, he evaluates the two types of men not in terms of the effect they have on the woman but on her husband's control over his household (Lys. 1.32-36). A threat to this control could come either through force (sexual violence) or through persuasion (seduction). These two alternatives were not viewed as fundamentally different, but as two sides of a single threat.

This would explain why in the statute concerning just homicide or homicide according to the laws, nothing is said about the woman's absence of consent and no distinction is made between cases of sexual violence and acts of seduction<sup>41</sup>. The statute listed various situations where a man could not be convicted for homicide. It is therefore concerned with the cases where the law allowed a man to use lethal force or did not hold him responsible for murder if he caused death (Dem. 23.53; *Ath. Pol.* 57.3)<sup>42</sup>. If he were accused of homicide and alleged that the killing took place in one of the situations enumerated in the law, his case would go to the Delphinion, not the Areopagus. In other words, the law is about what men can or cannot do – its primary concern is not with what men can or cannot do to women. One of the situations covered by the law was the one where a man caught someone «with» or «on top of» or «in intercourse with» his wife, mother, sister, daughter or concubine (*pallake*) kept for the purpose of free children. By exempting him from conviction in this case, the law recognizes the man's right to use violence against those who challenge his authority over the women under his control. It is not aimed just at protecting his authority over his partner in an *engye* union, who would produce the *gnesioi* children who will inherit his property<sup>43</sup>. The law covers every woman that might live in his household including a concubine living with him and kept for the purpose of free children who will be *nothoi* and thus ineligible to receive a share of his estate. It obviously did not cover prosti-

<sup>41</sup> See Harris (1990).

<sup>42</sup> On the category of just homicide or homicide according to the laws, see MacDowell (1963), pp. 70-81.

<sup>43</sup> Pace Cohen (1984) who thinks that the punishment of *moicheia* was aimed primarily at protecting the marriage bond and Doblhofer (1994), pp. 106-111, who believes that the penalties against rape mainly protected the legitimacy of offspring – see Harris (1996).

tutes kept in a brothel ([Dem.] 59.66). Since it protects male control and not female autonomy, it allows males to use force against all threats to their control and makes no distinction between consensual acts and those committed by force.

The second legal procedure that could be used in cases of sexual violence is the *graphe hybreos*, the public action for *hybris*<sup>44</sup>. *Hybris* is a complex offense, which covers a wide range of actions. As with all offenses, there are two aspects to *hybris*, a subjective side and an objective side. As a state of mind, *hybris* is a disposition that causes a person to act in a certain way and is characterized by certain forms of behavior (subjective side)<sup>45</sup>. As a wrongful action, *hybris* is a deed that affects another person and inflicts harm and suffering (objective side). When the verb *hybrizein* is used without an object in the active voice, the emphasis is clearly on the state of mind of the person who commits *hybris* (e.g. Homer *Od.* 1.227). When the verb is used in the passive, the emphasis shifts to the effects of *hybris* inflicted on the victim (e.g. Dem. 21.1, 75).

As a legal offense, *hybris* always involves a victim who suffers dishonor or shame as a result of the defendant's actions. To prove a charge of *hybris*, therefore, one had to show, first, that the offender acted in a certain state of mind, and, second, that the victim incurred shame or dishonor. As Aristotle (*Rhet.* 1374a13-15) states, «if some-

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<sup>44</sup> On the *graphe hybreos* as a procedure for punishing sexual violence see Harris (1990). For successful prosecution of sexual violence on this procedure see Din. 1.23 with Doblhofer (1994), p. 52, rightly rejecting Cole (1984), p. 104. There is no need to think, as does MacDowell (1976), pp. 28-29, that prosecutions for *hybris* were difficult to prove and thus rare. On the contrary, the Old Oligarch ([Xen.] *Ath. Pol.* 3.5), when explaining the large number of cases in Athenian courts, lists cases of *hybris* as one reason. For an argument that Demosthenes' case against Meidias was a charge of *hybris* see Harris (1989), pp. 130-131. Omitowaju (1997) believes that one could bring a charge of *hybris* in cases of sexual assault only if the victim were respectable, but see Harris (1998). Pace Fisher (1992), p. 36, the text of the law about *hybris* preserved at Dem. 21.47 is a forgery – see Harris (1992), pp. 75-78.

<sup>45</sup> In what follows I draw heavily on the valuable work of MacDowell (1976) and Fisher (1992). The views of the two scholars, though clashing on several points, are not incompatible. Their differences stem mainly from the fact that each emphasizes a separate side of *hybris*: MacDowell tends to stress the subjective aspect, while Fisher concentrates on the objective aspect. As a result, both scholars argue to some extent at cross-purposes.

one strikes another person, he does not in each case commit an act of *hybris*, but only if he does so for a certain reason such as to dishonor him or for his own pleasure». Aristotle stresses this aspect of *hybris* in Book 2 of the *Rhetoric* (1378b23-35):

The *hybrizon* also demeans: for *hybris* is doing and saying things which cause shame for the victim, not for the purpose of gaining anything beyond the action itself, but simply to experience pleasure. For those who act in retaliation do not commit *hybris* but take revenge. The reason why people who commit *hybris* feel pleasure is that they think that they are far superior by treating other people badly. Dishonor is the result of *hybris*, and one who dishonors demeans someone since what has no value has no honor either for good or for bad. That is why Achilles in his anger said: he dishonored me since he has taken my prize and keeps it [*Il.* 1.356] and he treated me as if I were some vagabond without respect [*Il.* 9.948 = 17.59] since he was angry for these reasons.

In Isocrates' speech *Against Lochites* (5-6) the plaintiff accuses the defendant not only of beating him but also committing *hybris* because he humiliated him:

If there was no *hybris* present in his actions, I would never have come before you. But as it is, I am here in front of you to obtain justice from him not for the other damage incurred from his blows, but for the mistreatment and the dishonor. These are the things that are most likely to cause men to grow angry and seek the greatest revenge.

Demosthenes (21.72) describes the devastating effects of *hybris* and the sense of humiliation felt by the victim in a passage from his *Against Meidias*:

It is not the fact of being beaten which is terrible for free men, but when it is done with the intent to insult. There are many things that a man who strikes might do, men of Athens, but the victim might not be able to describe to someone else even one of these things: the way he stands, the way he looks, his tone of voice, when he strikes to insult, or when he acts like an enemy, or when he punches, or when he hits him on the jaw. When men are not used to being insulted, this is what stirs them up, this is what drives them to distraction. No one, men of Athens, would by reporting these actions be able to convey to his audience the terrible effect of outrage in the exact way that it really and truly appears to the victim and those who witness it.

What made *hybris* different from merely hitting someone was in part the intent to cause dishonor. When Ariston tries to prove that he suffered *hybris* at the hands of Conon, he lays stress on his opponent's behavior after striking him:

This man Conon here, his son and the son of Andromenes fell on and first pulled my cloak off, then tripped me and pushed me into the mud. They jumped on me and beat me so violently that they split my lip open and my eyes were closed shut. They left me in such an awful state that I could not get up nor make a sound. Lying there, I heard them say many terrible things, most of which was quite abusive (I would be reluctant to go into the details in front of you), but I will tell you about the thing that is a sign of his *hybris* and proof that the whole business was his responsibility. He started to crow, imitating a fighting cock that has won a victory; his friends asked him to beat his elbows against his sides like wings. (Dem. 54.9)

The violence is an act of *hybris* is not so much because of the physical injury but because of the assailant's attitude. Conon beats his victim for no apparent reason other than to enjoy his own sense of superiority over him. The emphasis is on his intent to humiliate and to rob his victim of his self-respect<sup>46</sup>.

As this brief discussion should make clear, the crime of *hybris* in Classical Athens is far different from the crime of rape in modern law. In rape the emphasis is on the victim's lack of consent – the crime violates the person's right to make decisions about his or her sexuality<sup>47</sup>. But in Classical Athens it was men who determined by and large when and with whom women could have sexual relations. In contrast to rape, *hybris* is an offense that looks partly at the intention of the aggressor, partly at the effect on the honor of the victim and her relatives. In the modern crime of rape the intent of the aggressor is irrelevant: if a man forces a woman to have sexual relations against her will, it makes no difference whether he was in love

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<sup>46</sup> Fisher (1992), pp. 130, 133, 148, 173, 402, understands that *hybris* is in many cases a disposition but limits the subjective aspect of the offense to the intent to dishonor someone. But Fisher cannot explain away passages where the verb *hybrizein* is used without an object or where there is an act of *hybris* with no victim involved – see MacDowell (1990), p. 21, and Cairns (1996).

<sup>47</sup> For definitions of rape in modern statutes see the Appendix.

with her or not. And in a modern courtroom a defendant could not try to avoid conviction on a charge of rape by claiming that he acted out of love and did not intend to humiliate his victim. One must also bear in mind that the charge of *hybris* committed against a woman would be brought by a man and was therefore as much a way of vindicating his own honor as that of the woman. As we saw in the case of Scedasus, men found it imperative to avenge the dishonor done to their daughters. When Scedasus could not do this, the sense of humiliation was too much for him to bear so he killed himself. And it was the man who decided whether to bring the charge or not. In other words, it was his conception of her honor that counted, not hers. This is consistent with what we have discerned in the passages from literature where sexual violence is described.

An understanding of the differences between the ancient idea of *hybris* and the modern concept of rape helps to explain some of the distinctive features that we have noticed in the accounts of sexual violence studied in this section. First is the emphasis on the dishonor inflicted not only on the woman but on her husband and male relatives. For Theseus Hippolytus' assault on Phaedra was an attack on his honor more than a crime against her person. The abduction of Helen was a wrong against Menelaus, not an offense against Helen. Second is the relative lack of interest in the victim's point of view. When the Persians start to fondle the Macedonian women, the story is told from the point of view of their male relatives, who feel themselves insulted. When the Gauls attack the Kallieans, the narrative looks at their intent, which had nothing to do with love, not the absence of consent on the part of the women. When Gorgias suspects Sostratus of plotting against his daughter, it makes little difference to him how he accomplishes his goal, with or without her consent.

Now that it is clear why the Athenians and other Greeks condemned some types of sexual violence, it will be possible to find out why they took different attitudes toward other forms of it.

## III

This section will examine cases of sexual violence where the assailant is either treated leniently or not punished at all. In all these cases the act of sexual violence is not called *hybris*. Here it is crucial to analyze the particular features of each case to discover how it differs from the cases where sexual violence is condemned as *hybris*. This in turn will help us to understand why these cases are treated differently from those studied in Section II.

We start again with tragedy. In Euripides' *Ion* an act of sexual violence is the driving force behind the entire plot. The play begins with the prologue where the god Hermes relates how Apollo «placed the yoke of marriage on Creousa, the daughter of Erechtheus, by force» (10-11. Cf. 891-901, 941: *akousa*)<sup>48</sup>. Creousa became pregnant and gave birth to a child, whom she exposed in the same cave where she was assaulted by Apollo (15-21). Although she expected him to die, she left certain tokens with him (26-27). Apollo ordered his brother Hermes to take the child to the steps of his temple at Delphi, where it was discovered by a priestess there (28-42). Even though the priestess assumed that the child was left there by some local girl, she did not cast it out of the precinct, but kept the child and raised him (43-51).

Years later Creusa comes to Delphi with her husband Xuthus, the king of Athens. The couple cannot have children and have come to consult Apollo in hopes of finding a solution to their problem. Creusa arrives at the temple first and meets Ion, who now serves as a slave protecting the shrine (237-251). Not knowing that he is her son, Creusa tells him that she has come to consult with Apollo on behalf of a friend whose situation is similar to her own (329-380). She claims that her friend wishes to know what has become of her child, but in reality she has come to find her own son. After telling her story, Creusa reproaches Apollo not for using force against her friend, but only because Apollo did not keep the child for her so that she could bury him, if dead, or see him again, if alive (384-389; cf. 252-254, 425-426). Ion too finds fault with the god, but his criticism is similar to Creusa's: the god is wrong not for making love to her

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<sup>48</sup> I do not understand how Lefkowitz (1993), p. 27, can state that Apollo «did not use force».

against her will, but for doing so and then abandoning his child (436-439). He goes so far as to accuse Apollo, Poseidon, and Zeus of hypocrisy because they set down laws for men, then break the laws that impose penalties for using violence (440-451). Ion here alludes to the *dike biaion*, a private action for damages that could be brought in cases of sexual violence<sup>49</sup>. In the ode that follows this scene, the chorus refers to the child born from Apollo and Creusa's friend as the «*hybris* of a bitter marriage» (505-506). Here the stress appears to be on the humiliation of bearing a child out of wedlock, which the mother exposed so as to avoid shame in the eyes of her parents and of society. Finally when Creusa tells her slave what Apollo did to her, he calls the god evil (952: *kakos*) for not protecting the child (951-966). None of these characters is reluctant to criticize the god's conduct, but his use of force is not what causes their disapproval.

When Xuthus arrives to consult the god, he is told that the first person whom he meets on leaving the temple is his son. This turns out to be Ion, who is understandably skeptical at first that Xuthus is his father, but gradually allows himself to be convinced (517-675). Creusa, still unaware that Ion is her son, becomes jealous of her husband's child by another woman and with the aid of her slave plots to kill him (747-1047). When her attempt to poison him is thwarted and exposed, she is tried and condemned to death by the Delphian authorities (1106-1228). To escape punishment, Creusa flees to the altar of Apollo and becomes the god's suppliant (1250-1260). Ion enters and tells Creusa that she should leave the altar because she is guilty of murder (1261-1319). At this point the priestess emerges from the temple and reveals the cradle that were left with Ion when he was abandoned (1320-1368). This enables Creusa to realize that Ion is her son, and mother and child are finally reunited (1369-1509). But when Creusa tells him that Apollo is his true father, Ion is skeptical until the goddess Athena appears, reveals the truth,

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<sup>49</sup> Scafuro (1997), p. 211, believes that the money paid to the victim in a *dike biaion* was used to increase the amount of the victim's dowry, but her idea is rightly rejected by Omitowaju (2002), pp. 69-70, on the grounds that a court case would have drawn attention to the victim's loss of virginity and would only have diminished her chances of finding a husband.

and predicts a glorious future for the boy as the ancestor of the Ionian race (1512-1617).

The final scene of the play is very significant for our understanding of Athenian attitudes toward sexual violence. When Athena tells Ion and Creusa how Apollo has contrived to place Ion in the line of succession for the kingship of Athens, she states that «Apollo has done all things well» (1595). Then Creusa praises the god:

Hear now what I have to say. I praise Phoebus, though before I did not praise him, because he has given me back the son I did not take care of. Lovely now in my eyes are the gates of the god's oracular shrine, which I once hated. Now my hands cling with pleasure to the door knocker as I bid the gates farewell. (1609-1613; tr. Kovacs)

Her language is revealing. She does not see the return of Ion and his glorious future as compensation for the wrong done to her by Apollo's rape. A modern woman might have replied, «Well, Apollo, you bastard, that is the least you could do after raping me and abandoning me and my child». Creusa does not pardon Apollo, but praises him, and her praise is unqualified. What is more, she implicitly admits to being wrong for failing to praise him before (252-254). Now one might be tempted to discount this evidence since Apollo is a god and Creusa is a mortal – surely, one might object, different rules apply. But earlier in the play Ion says that gods ought to be held to the same standard of justice as mortals (440-451). Previously all that Creusa and the other characters have criticized Apollo for is abandoning his child. Now that it is clear that Apollo did not allow his child to die, he is seen as wise and just, his conduct above reproach. Once Creusa sees that the consequences of Apollo's violence are beneficial to herself and her child, she has no grounds for charging him with *hybris* because the god's intent was not to bring shame on her, but to glorify her and her descendants. This strikes a modern audience as strange: for us all sexual violence is wrong and is condemned as rape. But for the Athenians, as well as the other Greeks, attitudes toward sexual violence vary according to context. If the intent of the aggressor is to shame and humiliate his victim, to take his pleasure without a thought for her offspring, he is condemned for committing *hybris* and punished. But if the aggressor acts with good intentions and seeks to enhance the status of his child, he cannot be blamed and may even be praised.

This pattern – a god falls in love with a mortal woman and makes love to her against her will, followed by the birth of illustrious offspring – is found in several Greek myths. In the *Homeric Hymn to the Dioscuri* (17.4), Leda is said to have been subdued by Zeus (ὕποδηθεῖσα) and gives birth to Castor and Pollux. Apollodorus (3.12.6) reports that Aeacus pursued Psamathe, the daughter of Nereus, who changed herself into a seal to avoid contact with him. Her trick seems to have failed since she gave birth to Phocus, who was the ancestor of the Phocians. One of the most famous examples of the pattern is the myth of Zeus and Europa. The most elaborate version of the myth is the one told by the Hellenistic poet Moschus<sup>50</sup>. His poem tells the story of Zeus' passion for Europa when he sees her playing in a meadow with several other young women and how he changes himself into a handsome bull (Moschus, 2.74-88). Thus transformed, Zeus approaches the girls, who are attracted by his beauty and immortal fragrance and begin to touch him (89-101). Finding him mild and gentle, Europa innocently places herself on his back to go for a ride (102-109). At this point the bull dashes toward the sea and rushes out into the waves (109-114). When the bull is so far out in the water that the shore is no longer visible, Europa starts to sense that something is amiss and grows worried (115-151). To calm her fears, Zeus speaks these words to her:

Have courage, young maid; do not fear the waves of the sea. Even though I appear close up to be a bull, I am actually Zeus himself, since I can take any shape that I like. It was desire for you that made me take on the appearance of a bull and go so a long distance out to sea. Crete, the land that bore me, will soon welcome you when your wedding will take place. From me you will bear famous sons, who will rule as scepter-bearing kings among mortals. (153-161)

Zeus neglects the fact that he has lured Europa into a position where she is powerless to resist and never asks for her consent. What counts for him is that he is acting out of love and that she will have the distinction of bearing remarkable offspring<sup>51</sup>. Since his intent is

<sup>50</sup> For sources and representations on vases see Robertson in *LIMC* 4.1.76-92.

<sup>51</sup> In Homer, *Iliad*, 14.321-322, her offspring are Minos and Rhadamanthys. In a fragment of Aeschylus' *Carians or Europa* she bears Minos, Rhadamanthys, and Sarpedon. See Radt (1977), pp. 217-221.

not to dishonor her and the result of his action will bring her fame and glory, not shame, there is no *hybris* involved, and he is therefore doing nothing wrong. This is what distinguishes him (at least in his own eyes and those of the audience) from Nessus when he laid his hands on Deianeira and the Persians who fondled the Macedonian women; Zeus may be committing sexual violence, but he is not culpable as long as he does it for the right reasons – or what he thinks are the right reasons.

In the *Homeric Hymn to Demeter* Persephone is abducted by Hades and also receives honor even though there are no offspring of hers mentioned. Several passages in the poem stress the lack of consent on her part. In the opening verses, Hades is said to have seized her (ἤρπασεν). When she is snatched away against her will, she cries out and calls on Zeus to witness the injustice (19-20 [ἄέκουσαν]; cf. 30, 56, 405-433). But when Demeter tells Helios that her daughter has been taken away by force and without her consent (64-73), he advises her to stop lamenting and says that she should not be angry for no good reason (μάψ). After all, Hades is a quite respectable son-in-law; in fact, he is her own brother! As for honors, he has the kingdom that was allotted to him in the original threefold division of the universe. Far from causing her any shame, the abduction has elevated her to the position of the wife of the man who rules among the dead. Thus Helios implicitly argues that Demeter has no grounds for complaint because the consequences of the abduction have proved to be so advantageous for her daughter<sup>52</sup>.

One finds a similar attitude toward sexual violence in the plays of New Comedy<sup>53</sup>. There are two basic kinds of plots involving sexual violence. In the first, a young man assaults a young virgin, who becomes pregnant. Later, unaware of her identity, the young man marries his victim. In most cases the husband believes that the father of the child is someone else, and this leads to various complications in

<sup>52</sup> What causes Demeter to grieve is not so much the violence done to her daughter as the loss of her company. Once she is promised that her daughter will dwell with her for two thirds of the year (*Homeric Hymn to Demeter*, 445-447), she consents to the arrangement and makes no further protest.

<sup>53</sup> Rosivach (1998), pp. 13-50, analyzes plots in New Comedy that contain acts of sexual violence. Even though I do not agree with some of his analysis and conclusions, I have found his collection of the evidence more valuable than that of Omitowaju (2002), pp. 169-203, whose treatment is selective and superficial.

the plot. After many twists and turns, the plot ends happily when the husband realizes his wife's child is his after all <sup>54</sup>.

In the second type of plot, a young man has sex with a young virgin against her will, then is allowed to marry her <sup>55</sup>. There are several examples of the second kind of plot, but the most valuable ones for helping us to understand ancient attitudes toward sexual violence are two plays of Terence based on plays of Menander, *The Brothers* and *The Eunuch* <sup>56</sup>.

In the *Brothers* a young man named Aeschinus has forced himself on Pamphila, the daughter of Sostrata, and made her pregnant. By the beginning of the play, Pamphila is about to give birth, but Sostrata's slave, the nurse Canthara assures her that «In the circumstances, things couldn't have turned out better than they have, mistress. I mean, given she's been the victim of an offense, that he's the person involved, such a nice young man of such good birth and from such a fine family» (295-297), and Sostrata agrees «You're right. May the gods keep him safe for us!» (298; tr. adapted from Barsby). The fact that her daughter's sexual initiation took place in less than romantic circumstances does not seem to bother her very much. The violence done to her is less important than the prospect of a marriage with a good family. When Sostrata hears from her slave Geta that Aeschinus is in love with someone else, the two worry about Sostrata's reputation (340: *tua fama*) as well as her daughter's future (330-342). Even though Aeschinus was drunk when he made her daughter pregnant, this does not stop Sostrata from thinking about taking him to court (344-350). When Demea informs his brother Micio that his adoptive son Aeschinus has debauched (467: *vitiavit*) Sostrata's daughter, he says that this is not what is most serious about her situation (468-469). The act of violence was «only human» since done under the influence of the night, love, wine, and youth (470-471). What is most shocking is that after promising to marry

<sup>54</sup> For this kind of plot see Rosivach (1998), pp. 27-35.

<sup>55</sup> For this kind of plot see Rosivach (1998), pp. 14-23.

<sup>56</sup> On Menander's *Adelphoe* as the source for Terence's *Adelphoe* see Martin (1976), pp. 19-21. On Menander's *Eunouchos* and *Kolax* as the sources for Terence's *Eunuchus* see Ludwig (1959) and Lowe (1983). For Athenian laws and legal procedures alluded to in Terence's *Eunuchus* see lines 957 and 960-961 with Barsby (1999), pp. 262-263.

her, Aeschinus has taken up with a woman of lower status and has forgotten about Pamphila (471-477). Micio too feels that what makes his son's conduct reprehensible is not so much the violence done to Pamphila but his actions afterwards:

In what country, may I ask, do you think you are living? You ruined a girl you had no right to touch. That was your fist wrongdoing and serious enough, but it was human. Many respectable men have done the same. But after the event, tell me, did you give the matter any thought? Did you think of the future: what needed to be done and how? If you were ashamed to tell me about this yourself, how was I to find out? While you sat around doing nothing, ten months have passed. You've betrayed yourself and the poor girl and the child: you couldn't have behaved worse. (685-692; tr. adapted from Barsby)

What is striking here is the similarity with the criticism made of Apollo in Euripides' *Ion*: Aeschinus is faulted not so much for acting against the will of his victim as for neglecting his responsibilities as father. As long as he is willing to look after his child, there is nothing wrong with his conduct.

In Terence's *Eunuch* the victim is a young girl named Pamphila, who was stolen from Attica as a child by pirates. These pirates sold her to a merchant, who in turn gave her to a woman living in Samos (107-110, 114-115). The woman realized that the girl was freeborn and raised her as her own daughter (116-117). This woman also had a daughter of her own named Thais, who became a courtesan. After the woman died, her brother sold Pamphila to the soldier Thraso (130-135). The play takes places in Athens, where Thais now resides and has Phaedria as her lover. As the play begins, Thais has become the lover of Thraso in the hope of getting him to give her Pamphila as a present so she can restore her to her parents and win their friendship (137-149). To give Thraso the impression that she no longer cares for Phaedria, she asks the latter to leave for two days until he gives her Pamphila. Phaedria is naturally jealous, but consents to stay away (180-196). But not to be outdone by Thraso's generosity, Phaedria gives Thais a slave-girl from Ethiopia and a eunuch, each worth twenty *mnai* (163-169). A little later Phaedria's brother, Chaerea tells his slave Parmeno that he has seen Pamphila and fallen in love with her (292-319). At Parmeno's suggestion, Chaerea dresses up in the clothes of the eunuch that his brother has given Thais and takes his place in her household. When Chaerea is

left alone with Pamphila, he locks the door and takes advantage of the opportunity (*occasionem*) to have sex with her (369-390, 564-606). There can be no question about Chaerea's use of violence: Thais' slave Pythias describes how he ripped her dress and tore her hair (645-646).

The key passage in the play for attitudes toward sexual violence is the scene where Thais confronts Chaerea<sup>57</sup>. When she asks him what he has done, he says he did «something trivial» (*paullum quidem*). Thais responds with the indignant question: «Does it seem trivial to you to dishonor (*vitiare*) a girl who is a citizen?». Chaerea offers the excuse that he thought she was a slave like himself. But what causes Thais to worry is not the harm done to Pamphila, but the effect that it may have on her attempt to forge a social connection with her family (867-871). To console her, Chaerea offers his own friendship (872-875) and assures her that when he assaulted Pamphila, he did it not to insult but out of love (877-878: *unum hoc scito, contumeliae non me fecisse causa, sed amoris*). To our way of thinking this is irrelevant: what makes sexual violence wrong is the absence of the victim's consent. But by claiming that he acted out of love, Chaerea avoids the charge of *hybris*, which alone would have made his conduct reprehensible. To show that his words are sincere, he then offers to marry her (885-888). It is important to note that the claim to have acted out of love is not sufficient to get Chaerea out of the trouble he has caused. Even if Chaerea's motive is not completely dishonorable, the objective damage to Pamphila's reputation still remains. The only way to remove the dishonor of becoming pregnant out of wedlock is for Chaerea to marry Pamphila and restore to her the honor she otherwise would have lost. Thus the motive of love is not an «excuse» as claimed by certain scholars. The shame caused by sexual violence to a woman and her family cannot be

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<sup>57</sup> Konstan (1986), p. 387, sees Chaerea as «an engaging scamp, witty, frank and ebullient» and believes «An untroubled empathy with the youth is licensed by the holiday mood of the comedy, as well as by the custom of the genre, which will require that he accept as wife the citizen whom he has violated». See, however, Smith (1994) who rightly questions Konstan's view that the audience would have been completely sympathized with Chaerea. What may have made the audience less inclined to judge Chaerea harshly was his ignorance of Pamphila's true status. For attitudes toward the use of sexual violence as a punishment for slaves and Chaerea's motivation see note 63.

explained away by citing excuses; the claims of honor must be respected by an act of marriage.

This attitude toward solving the «problem» of sexual violence finds a depressing parallel in modern Peru, where as noted earlier, a law in the penal code written in 1920, but still in effect in 1997, absolved a defendant in a rape case if he consents to marry his victim<sup>58</sup>. Despite attempts to change the law in 1997, many Peruvians thought the law should remain in place. «Marriage is the right and proper thing to do after a rape», said Jaime Baquero, a taxi driver. «A raped woman is a used item. No one wants her. At least with this law the woman will get a husband». Even though the victims are often reluctant to accept these offers, it is reported that «in many poor and rural areas of Peru, relatives put pressure on rape victims to accept a rapist's offer, which the relatives believe will restore honor to the victim and her family. When the victim does not want to marry, her family often tells her incorrectly that the law requires her to do so or to withdraw the charges ...». One should note that in Terence's *Eunuchus* it is Thais who decides to accept Chaerea's offer and that Pamphila is apparently not consulted, and that in other plays such as the victim is not asked whether the solution accepted by her relatives is acceptable to her. And when Thais ponders what to do, it is her own interests that guide her (865-871), not those of Pamphila, just as in modern Peru it is often the parents who decide for the victim what course of action to take.

Our analysis so far has shown that there was no single standard for judging acts of sexual violence. Attitudes toward these acts varied according to the context and to the intent of the aggressor. If the man using violence aimed at causing dishonor, he was guilty of *hybris* and deserved punishment. Absent this intent to humiliate, an aggressor would be judged more leniently provided he was willing to do something to remove the shame caused by his act of violence. But were there other situations where sexual assault was not considered a serious offense?

In the cases examined in Section II, the victims were not under the control of the aggressor, who was usually an outsider. But what about the man who used force to compel sex with his own wife?

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<sup>58</sup> See note 21.

Here there was no threat to the husband's control over his spouse. Besides, one would assume that no husband would intend to dishonor a woman living under his own protection. In fact, Aristophanes alludes to this kind of situation in the *Lysistrata* (160-166). When Lysistrata proposes that the women of Athens go on a sex-strike, one asks what they should do if their husbands take them into the bedroom by force (βίβα). Lysistrata advises that they grab a hold of the door. «But what if they strike us?» the woman continues. Lysistrata then proposes: «You should submit in the grudgingest way – there's no pleasure in when it's done by force – and you should vex them generally, and have no fear, they'll tire of it very quickly. For no man is ever going to get any gratification unless it suits the woman that he should». When the women swear an oath not to sleep with their husbands, they pledge «And if he force me by force against my will (ἄκουσαν βιάζεται βίβα) ... I will submit grudgingly and will not thrust back» (225-228; tr. Sommerstein). As Sommerstein rightly observes, «In a play which is often, and rightly, cited as evidence that the marital relationship was more important to the Athenian male than has sometimes been claimed, this is an uncomfortable indication that that relationship could include, as apparently quite a normal incident, forced sex accompanied by physical violence»<sup>59</sup>. What is significant in the way the violence is described is that the women do not call it *hybris*. Nor could they, since the man was acting out of desire for a woman who was under his control and given to him by her relatives «for the purpose of bearing legitimate children». It would thus be no dishonor for a woman to become pregnant after having sex with her own husband – even if against her will<sup>60</sup>.

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<sup>59</sup> Sommerstein (1998), p. 107. Sommerstein goes on to note that «if it were not an obvious and safe thing for the frustrated husband to attempt, it would not have been mentioned, since it has no comic point; rather it is a genuine weakness in Lysistrata's plan and has to be disposed of if that plan is to be effective».

<sup>60</sup> One should perhaps compare the thoughts of Soames in the *Forsyte Saga* on the morning after he has raped his wife: «The incident was really of no great moment; women made a fuss about it in books; but in the cool judgment of right-thinking men, of men of the world, such as he recollected often received praise in the Divorce Court, he had but done his best to sustain the sanctity of marriage, to prevent her from abandoning her duty» (quoted in Brownmiller [1975], p. 427). At the time when Brownmiller

Finally, sexual violence could be used as a form of punishment and not be considered *hybris*<sup>61</sup>. Aristotle in the *Rhetoric* (1378b) observes that one who acts in retaliation for some wrong does not commit *hybris* but takes revenge. Thus when the Phoenicians took Io, Herodotus (1.1) reports that the Greeks considered themselves justified in abducting Europa. In Aristophanes *Acharnians* (271-275) Dicaeopolis catches a Thracian slave girl stealing wood and has forcible sex with her as a punishment. In these cases, however, the violence is inflicted on a foreigner and a slave, both outsiders. The abduction of Europa in retaliation is in keeping with the Greek practice of reprisals (*sylan*) in inter-state relations<sup>62</sup>. And the slave girl is not entitled to the same protections as a free person. Had she been free, Dicaeopolis would not have been able to act the same way (Dem. 53.15-16)<sup>63</sup>. The different standard for citizens can be seen in a story from the Macedonian court. Diodorus (16.93.3-94.4) relates that there was a Pausanias who was the favorite of King Philip II. When Philip began to transfer his affections to another Pausanias, the latter insulted his rival by calling him a hermaphrodite and accused him of being promiscuous. This caused the other Pausanias to seek death in battle. To punish the first Pausanias, Attalus invited him to dinner, made him drunk, then handed him over to his mule-drivers for *hybris*, to be sexually assaulted. When Pausanias sobered up, he did not consider this justified and accused Attalus in front of the king. The king voiced his disapproval but took no steps against Attalus since he needed his services. This was too much for Pausanias, who later assassinated Philip for his failure to avenge the insult.

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wrote, men could not be convicted of raping their wives in many jurisdictions in the United States.

<sup>61</sup> Doblhofer (1994), pp. 45-46, collects the evidence for the use of rape as a punishment, but does not offer much in the way of analysis and does not discuss the abduction of Europa in Herodotus. This use of sexual violence as punishment is not discussed by Cohen (1991) and (1993).

<sup>62</sup> On the practice of reprisals (*sylan*) see Bravo (1980).

<sup>63</sup> Note that Chaerea in the *Eunuchus* (382) regards his plot to have sex with Pamphila (who he thinks is a slave) as justifiable revenge on the courtesan Thais for arousing the desires of young men. As Barsby (1999), p. 247, observes, Thais at lines 864-865 'admits the possibility that as a courtesan she has deserved such treatment'. In other words, the violence done to her slave was just retaliation for the suffering caused by her seductive charms.

What therefore may have been appropriate for a slave or a foreigner was not appropriate for a free citizen.

To sum up. In the modern United States and Europe as well as many other countries, women are recognized as full citizens with equal rights. The laws of these countries recognize that women have the right to make decisions about all aspects of their lives and that any attempt to infringe these rights is illegal, if not a crime. Since rape violates a woman's right to make decisions about the most intimate aspect of her life and can also have devastating psychological effects, it is therefore severely punished.

In Classical Athens, women did not enjoy these rights. Decisions about women's lives lay largely (though not completely) in the hands of men, who monopolized all basic legal and political rights. Sexual violence against women was therefore evaluated not so much for its impact on the victim (though poets and artists were not indifferent to her suffering) as for its effects on men's power and honor. If sexual violence threatened a man's authority in his household, it might incur harsh penalties. If such violence served a «useful» purpose, such as fathering demigods or intimidating slaves and foreigners, the Greeks did not object to its use. And if a young man claimed that he had sexually assaulted a young woman out of desire and without intent to insult her, he was treated leniently as long as he was willing to eradicate through marriage the shame and embarrassment caused by his actions.

#### IV

If there is a larger lesson to be learned from the study of laws of Classical Athens regarding sexual violence, it is that one should not study Athenian legal procedures in isolation. If we are to understand why the Athenians dealt with sexual violence in the way that they did, one must also look at the substantive aspects of these procedures and pay close attention to the terms used to denote various offenses. And these terms cannot be fully analyzed without placing them in the context of the social relations of the society that created these laws. Sexual violence has not had one meaning throughout

time; different societies have devised different responses to the problems posed by this type of aggression, and those responses have been shaped by the interests of those holding positions of power and authority. We may not like the way that that Athenians dealt with the issue of sexual violence, but we will never make progress in our understanding of their attitudes if we are not willing to think away our own assumptions about the issue and to approach the Athenians on their own terms.

APPENDIX  
THE DEFINITION OF RAPE  
IN CONTEMPORARY AMERICAN CRIMINAL CODES

Virginia Criminal Code § 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness who is not his or her spouse or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person, or (ii) through the use of the complaining witness's mental incapacity or physical helplessness, or (iii) with a child under age thirteen as the victim, he or she shall be guilty of rape.

B. If any person has sexual intercourse with his or her spouse and such act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or another, he or she shall be guilty of rape.

South Dakota Criminal Code 22-22-1.

Rape defined – Degrees – Felony. Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than ten years of age; or
- (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or

- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
- (5) If the victim is ten years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim; or
- (6) If persons who are not legally married and who are within degrees of consanguinity within which marriages are by the laws of this state declared void pursuant to § 25-1-6, which is also defined as incest; or
- (7) If the victim is ten years of age but less than eighteen years of age and is the child of a spouse or former spouse of the perpetrator.

United States Code Title 10 (Armed Forces), Section 920  
(rape and carnal knowledge)

- (a) Any person subject to this chapter who commits an act of sexual intercourse, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

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