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Allison Glazebrook

## PROSTITUTING FEMALE KIN

(Plut. *Sol.* 23.1-2)

Although Solon's reforms seem to have averted a crisis in Athens, brought greater protection to the people, and recognized «Athenian» as an identity <sup>1</sup>, it is commonly acknowledged that his νόμοι <sup>2</sup> relating to women had few benefits for women themselves (Blundell 1995, p. 75; Fantham *et al.* 1994, pp. 74-76; Just 1989, pp. 22-23; Arthur 1973, p. 36). They restricted the number of garments women could wear in public to three, calculated the amount of food and drink they could carry on their person to one obol's worth, limited their movements at night, and reduced women's involvement in funerary ritual (Plut. *Sol.* 21; Dem. 43.62-63). The laws relating to marriage customs limited the amount of their dowry and trousseau (*Sol.* 20) <sup>3</sup>. These laws most commonly affected elite women, and thus the elite in general, since they limited the use of female adornment in conveying status and reduced the ostentation of marriages and also public funerals by eliminating hired mourners <sup>4</sup>.

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<sup>1</sup> See Solon, fr. 4; Arist. *Ath. Pol.* 5-10 and Plut. *Sol.* 13-25, on the nature of the crisis and his reforms. See Patterson (2005, pp. 270-273), Lape (2002-2003), Manville (1990, pp. 124-126, 132-136, 143-147, 156) and Halperin (1990) on Solon as the creator and restrictor of the concept of Athenian citizenship.

<sup>2</sup> From here on translated as «laws».

<sup>3</sup> There is some debate as to whether *φερνή* refers to dowry (Leduc 1992, p. 286) or simply trousseau (Vernant 1980, rpt. 1996, p. 67). Leduc argues that *φερνή* does refer to a dowry, since limits on the trousseau follow, and suggests that Solon restricted the dowry by no longer allowing land, traditionally accompanying the bride sometime in the past, as part of the dowry.

<sup>4</sup> On the laws in general see Arthur (1973, pp. 31-36); Blundell (1995, p. 162); Fantham *et al.* (1994, pp. 46-47, 75-76). For such legislation, particularly in the case of funerals, as curbing female behaviour and the use of women as a medium of elite display and also reducing rivalry between kinship groups see Humphreys (1983, pp. 85-87), Just

They further were likely intended to protect the integrity of the household and its property (Arthur 1973, pp. 33-34; Blundell 1995, p. 75; Fantham 1994, p. 75; Lape 2002-2003, pp. 120-126). Such laws, however, also had an impact on women generally and perhaps reflect changing gender roles with the rise of the polis and the importance of marriage in conveying status to offspring in Athens (Arthur 1973, p. 36; Lape 2002-2003, pp. 129-130) now that citizenship became dear (a trend that would continue as democracy developed)<sup>5</sup>. Restrictions on women's movement, for example, reflect a desire to control licentiousness, as Plutarch comments (*Sol.* 21), but more specifically female sexuality – after all, Euphiletus' wife got involved with Eratosthenes after he had seen her at the funeral of Euphiletus' mother (*Lys.* 1.8).

The foci of this paper are the laws on sexual misconduct involving women attributed to Solon. The most comprehensive passage on these laws is Plutarch's *Sol.* 23.1-2, where they are referred to as οἱ περὶ τῶν γυναικῶν νόμοι. I quote them in full here with the well-known Loeb translation by Bernadotte Perrin:

μοιχὸν μὲν γὰρ ἀνελεῖν τῷ λαβόντι δέδωκεν· ἐὰν δ' ἄρπασῃ τις ἑλευθέραν γυναῖκα καὶ βιάσῃται, ζημίαν ἑκατὸν δραχμᾶς ἔταξε, κἂν προαγωγέῃ, δραχμᾶς εἴκοσι, πλὴν ὅσαι πεφασμένως πωλοῦνται, λέγων τὰς ἑταίρας· αὐταὶ γὰρ ἐμφανῶς φοιτῶσι πρὸς τοὺς διδόντας. [2] ἔτι δ' οὔτε θυγατέρας πωλεῖν οὔτ' ἀδελφὰς δίδωσι, πλὴν ἂν μὴ λάβῃ παρθένον ἀνδρὶ συγγεγεννημένην.<sup>6</sup>

... [Solon] permitted an adulterer caught in the act to be killed; but if a man committed rape upon a free woman, he was merely to be fined a hundred drachmas; and if he gained his end by persuasion, twenty drachmas, unless it were with one of those who sell themselves openly,

(1989, p. 198) and Seaford (1994, pp. 74-86). *Contra* Blok who argues that funerary legislation was «meant to regulate the relations between the living and the dead» (p. 197) and thus minimize pollution (2006, pp. 197-247). On the significance of the funerary restrictions to women's relation to the public sphere see Alexiou (1974, pp. 21-22).

<sup>5</sup> Scholars commonly attribute a concept of citizenship to Solon. See Lape (2002-2003, p. 127 and n. 1 above). Cantarella, however, argues for such a change and concern as early as Drakon (1987, pp. 39-40) and (2005, p. 240). See also Gagarin who argues that while Solon appears to have recognized some concept of citizenship, Drakon also «appears to associate certain rights with the status of being an Athenian» (1986, pp. 80, 140).

<sup>6</sup> Greek text is from the Teubner edition (Ziegler, 4<sup>th</sup> edn, 1969, pp. 82-123). Note that Perrin follows Bekker (Tauchnitz, 1855) and so reads λέγων δὴ τὰς ἑταίρας instead of λέγων τὰς ἑταίρας.

meaning of course the courtesans. For these go openly to those who offer them their price. [2] Still further, no man is allowed to sell a daughter or a sister, unless he find that she is no longer a virgin.

Plutarch's passage (23.1) outlines the Athenian laws on the adultery and rape of free women, attributing these laws to Solon. Scholars frequently interpret 23.2 as the punishment for an unchaste woman and understand the specific penalty for such a woman to be the selling of the woman into slavery (Ogden 1996, p. 141; Blundell 1995, p. 125; Fantham 1994, p. 114; Seaford 1994, p. 207 n. 64; Just 1989, p. 70; Cole 1984, p. 107; Pomeroy 1975, p. 57). I aim to show instead that this last law related specifically to the prostitution and pimping of daughters and sisters and indicates the conditions under which such pimping was allowed. I begin by arguing that the laws in *Sol.* 23.1 outline the penalty against the procurer of free women, in addition to the penalties against the adulterer and rapist of free women. As is typical for lawgivers in Greece in general, more reforms and laws were likely attributed to Solon than he in fact implemented; nevertheless, his body of laws was extensive <sup>7</sup>. While the authenticity of some of the laws in Plutarch is questionable, the laws in this short passage of Plutarch are either considered authentic or enough debate exists regarding their authenticity to make them still worth considering in a discussion of Solonian law and policy <sup>8</sup>. Taken together, they represent the most complete collection of Solonian law on sexual misconduct involving women and thus merit greater

<sup>7</sup> See MacDowell (1978, p. 43). Gagarin comments that Solon wrote laws «that endured with very little change for several centuries» (1986, p. 76) and was the first lawgiver to enact a comprehensive set of laws covering more than other early lawgivers who focused on tort law, family law and especially legal procedure (1986, pp. 51-77). For a discussion of the public display of Solon's laws see Stroud (1979).

<sup>8</sup> Ruschenbusch argues that the laws in Plutarch are generally authentic as Solonian laws and that Plutarch had access to a commentary on the laws as well as the text of the laws (1966, pp. 46-47). He further suggests, based on F 70, that some of the laws recorded by Plutarch are in fact direct copies of the laws (p. 46). He labels the four laws in Solon 23.1-2 as F 26, F 28a and F 30a, F 31a and singles out F 26, F 30a and F 31 as definitely authentic (1966, pp. 46, 13). He makes no specific comment on F 28a. For a summary of Ruschenbusch's principles behind the labelling of the laws as genuine or spurious see Scafuro (2006, pp. 175-179). See further introduces a third category: «laws that may have a Solonian kernel» (p. 179). Ehrenberg argues that the laws relating to family appearing in the orators are most likely Solonian (1968, pp. 69-70). Also see Rhodes (2006, pp. 256-257). The various scholarship for and against each law recorded in Plutarch as Solonian appear in the discussion of that law.

attention<sup>9</sup>. The focus here is on what exactly they meant for free women, most importantly the female kin of Athenians, under the Athenian democracy<sup>10</sup>.

## THE BACKGROUND

Edward Cohen has recently argued that free women, including ἄσται, could become prostitutes (2000, pp. 114-115, 136; 2000b, pp. 157-58) and did in fact<sup>11</sup>. Still, there seems to be a bias against selling a daughter or sister for prostitution in classical Athens, and an agreed upon lie existed that prostitutes were not the daughters and sisters of citizens. In [Demosthenes], 59, for example, Apollodoros ends his speech with fear mongering, claiming that if the jury does not find Neaira guilty and punish her, their daughters will become prostitutes and prostitutes will become the equal of wives (112-114). In addition, the city and private citizens made an effort to provide dowries to daughters and sisters of poorer Athenians ([Dem.] 59.113 and Lys. 19.59). Although the dowry was not a necessary proof of marriage (Wyse 1904, rpt. 1967, pp. 308-309; Harrison 1968, rpt. 1998, pp. 48-49), without it the relationship between a citizen and a woman could be construed as prostitution (Isae. 3.8-11) and make

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<sup>9</sup> Johnstone has recently outlined the textual difficulties and legal rhetoric behind the accounts of some of these laws in the Attic orators (2002). When discussing Plutarch he comments: «Plutarch has cannibalized parts of four separate “laws” (*nomoi*, as he explicitly says), suturing them together in a monstrosity of his own making» (2002, p. 242). But in reality, Plutarch has less reason to manipulate the laws than the orators had. He is perhaps sometimes confused by the laws (he calls the laws under discussion here ἀτοπί α (23.1) and in another case he describes the law on the heiress as ἄτοπος and γελοῖος (20.2) given his late date and different cultural perspective, but he appears to have had access to one or more commentaries on the laws and may even have viewed the original ἄξονες. Some were still in existence in his time (*Sol.* 1 and 25; Ruschenbusch 1966, pp. 46-47; Stroud 1979, pp. 2, 33) and so should not be dismissed out of hand so easily.

<sup>10</sup> I am taking the view that Solon’s laws apply most importantly to the female kin of Athenians, not just free women in general. Lape argues that Solon is concerned with wives and potential wives, with potential wives being «unmarried female citizens» (2002-2003, p. 125). I am not, however, suggesting that Solon is the father of democracy here, but recognize that his reforms eventually led to the formation of democracy at Athens and were in force under the early democracy and beyond.

<sup>11</sup> He lists Isae. 3, Dem. 22.61 and Lys. fr. 82 [Th.] as support (2000b, pp. 167 n. 66).

any sons ineligible for citizenship (Isae. 6.17-26)<sup>12</sup>. This attitude combined with such a provision suggests that ideally ἄσπαι were desired as wives. Marriage with ἐγγύη had become an important criterion for passing on citizenship likely as early as Solon, whose reforms focused on membership in a particular group identified as Athenian (Lape 2002-2003, pp. 120-22)<sup>13</sup>. Only the father, brother or grandfather of a woman could contract such an arrangement. Given the evolving importance of citizenship and the resulting restrictions on that privilege to children of marriage with ἐγγύη, it makes sense that daughters, and even sisters, were suddenly more valued, protected and restricted<sup>14</sup>.

Yet the possibility remains that some prostitutes were the daughters of citizens, not simply ξέναι and slaves. Little is known, however, about the circumstances under which such women might undertake or be forced into such a profession. Destitution and necessity, as Antiphanes claims, were perhaps causes (Ath. 13.572A)<sup>15</sup>, but the importance of legitimate marriage in determining citizenship and a growing concern with protecting female chastity may have restricted the prostituting of an ἄσπῆ, even though they did not make it illegal. The laws themselves are proof that female chastity was an important ideal of Athenian democracy. *Sol.* 23.1 is the evidence for a specific law against μοιχεία (illegal sexual relations with a citizen's wife, daughter or sister)<sup>16</sup> that possibly dates to the time of Solon (Lape

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<sup>12</sup> The speaker of Isae. 3.10-16, 24, argues that the mother of Phile was a prostitute in order to discredit Phile as an ἐπίκληρος.

<sup>13</sup> Ancient sources are Dem. 44.49 and 46.18. Modrzejewski credits this law to Solon (1981, p. 243). Harrison is more cautious, claiming merely that the law is «fairly early» (1968, rpt. 1998, p. 5), but this still links marriage with ἐγγύη to the early polis. Patterson is also cautious about the attribution of the law, but considers ἐγγύη a requirement for determining legitimacy (1991, p. 52). In general, she identifies legitimacy of offspring as the first concern of Athenian marriage and restricting family membership to Athenians as the second concern (pp. 59-60).

<sup>14</sup> Patterson states «... the protection of the person of the citizen enunciated by Solon remained a central and inclusive feature of citizenship in Athens – regardless of age, economic status or gender» (2005, p. 272). Also Lape (2002-2003, p. 125).

<sup>15</sup> E. Cohen argues that «personal inclination, private situations and financial considerations – not political classification – largely determined individual involvement in the sexual market» (2000b, p. 160).

<sup>16</sup> This definition is commonly accepted by scholars. See for example Cantarella (2005, pp. 239-240). See D. Cohen for a more restrictive definition (1991, pp. 100-109)

2002-2003, p. 125). *Sol.* 23.2 records the treatment of a woman who was a victim of *μοιχεία* – she could be sold (what exactly «sold» means is a question I take up below). Evidence from the fourth century adds that such a woman was no longer suitable for marriage with a citizen ([Dem.] 59.86-87; Isae. 3.11) and lost any advantages she previously had as an *ἄσπῆ* and wife. She was banned from participating in religious festivals, such as the Thesmophoria and the Anthesteria, from attending public sacrifices, and was further restricted in her personal adornment. Any citizen had the legal right to punish the woman with a beating if she attempted to violate such rules ([Dem.] 59.85-87; Aeschin. 1.183)<sup>17</sup>. In Aeschines, 1.183, these laws are attributed to Solon<sup>18</sup>. Other laws reflect trends and attitudes set in motion with Solon's reforms and the early democracy that followed after the Pisistratids. With Perikles' citizenship law of 451/450 BCE, Athenian membership became most restrictive and the status of a woman as *ἄσπῆ* took on greater importance: it was no longer possible to have a legitimate marriage with a foreign woman. Now both parents had to be *ἄσπῆ* in order to produce sons who were eligible for full citizenship<sup>19</sup>. Taken all together, these laws demonstrate a connection between legitimate marriage and citizenship and the importance of a woman's chastity in this formulation<sup>20</sup>.

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and Cantarella's response (1991, pp. 289-296). Lipsius sees the term first apply to wives, and only later by extension to female kin (1966, p. 429).

<sup>17</sup> For a thorough discussion of adultery laws and other sexual offences see Harrison (1968, rpt. 1998, pp. 32-38).

<sup>18</sup> Ruschenbusch doubts the authenticity of these laws as Solonian (1966, p. 115). The laws of the democracy were revised after 410/409 and 403 BCE and so the orators' record of laws attributed to Solon possibly represent any laws in force before this time of revision.

<sup>19</sup> See Arist. *Ath. Pol.* 42.1. This law, however, most likely affected the elite, since they could no longer distinguish themselves by marriage into elite families of foreign poleis (Vernant 1980, rpt. 1996, pp. 60, 67-68). *Contra* Patterson (2005, p. 282).

<sup>20</sup> See Lape (2002-2003, pp. 127-129) for the argument that this connection was a result of Solon's reforms. For the view that such a connection occurred later under Cleisthenes or Perikles see Wolff (1944), Vernant (1980, rpt. 1996, pp. 60-61), Loraux (1993, pp. 119-120) and Leduc (1992, pp. 291-293) – all cited by Lape (p. 128 n. 47). For the political nature of Solon's «family» laws see Lape (2002-2003, pp. 118-120).



## THE LAWS ON SEXUAL OFFENSES

With such connections, chastity requires protection and necessitates clearly stated penalties for violator's of such chastity. Plutarch's *Sol.* 23.1 discusses the penalties on adultery and rape attributed to Solon as follows:

μοιχὸν μὲν γὰρ ἀνελεῖν τῷ λαβόντι δέδωκεν· ἔαν δ' ἄρπάσῃ τις ἐλευθέραν γυναῖκα καὶ βιάσῃται, ζημίαν ἑκατὸν δραχμᾶς ἔταξε.<sup>21</sup>

There exists much scholarly debate as to whether or not these two laws are authentic laws of Solon<sup>22</sup>. If authentic, they suggest that Solon coined specific laws for dealing with adultery that distinguished seduction from rape. This recounting of the law is consistent with *Lys.* 1.32<sup>23</sup>, which identifies the death penalty as part of a law introduced by «the lawgiver» (Drakon's justifiable homicide law or a specific law on adultery) that covered μοιχεία<sup>24</sup>. The difference in penalties between adultery and rape seems absurd, as Plutarch notes (23.2), but other texts do mention penalties of varying severity for the μοιχός such as corporal punishment and a fine ([Dem.] 59.65-66)<sup>25</sup>.

<sup>21</sup> Ruschenbusch F 28a and F 26 respectively.

<sup>22</sup> Harrison argues that the attribution of the law on adultery in 23.1 to Solon is likely incorrect (1968, rpt. 1998, p. 33 n. 1), but argues that an adulterer could be put to death under the laws of Drakon (32-33). Lape supports the attribution of a law on adultery to Solon (2002-2003, p. 125). Kapparis argues for a law punishing adultery with death from the time of Drakon (1995, pp. 110, 120), but suggests Solon was the first «to include a separate statute on adultery» and suggests it was a more lenient law (1995, pp. 113, 120). Cole suggests the provision for rape may or may not be Solonian (1984, p. 103). Ruschenbusch argues that F 26 is definitely authentic (1966, p. 46) and Harrison appears to agree (1968, rpt. 1998, p. 19 n. 2). There is no doubt about the authenticity of the laws as Athenian.

<sup>23</sup> On the similarity between the law in Lysias and the one cited in Plutarch see Ogden (1996, p. 149) and Cole (1984, pp. 101-102), who also discusses the differences. See further Lipsius (1966, pp. 638-639).

<sup>24</sup> Scholars dispute which law Euphiletus invokes here. See Omitowoju (2002, pp. 95-114), D. Cohen (1991, pp. 110-122) and Hansen (1981, pp. 22-23) who cite the laws pertaining to κακοῦργοι as also applicable in the case of the μοιχός. *Contra* Harris (1990, pp. 376-377) and Carey (1995, pp. 411-412) who argue for a law on μοιχεία that did include the death penalty.

<sup>25</sup> Aeschin. 1.91 also states that the death penalty was the penalty for an adulterer who admitted his guilt after being caught in the act, but adds that a court trial occurred if the adulterer had committed the act secretly and denied his guilt.

Lysias' text, however, tries to obscure this fact and argues that the death penalty is the most appropriate punishment for adulterers (1.47), since this suits his client's needs <sup>26</sup>.

Plutarch's account of the laws on sexual crimes continues as follows: κἄν προαγωγέυη, δραχμὰς εἴκοσι <sup>27</sup>. The LSJ defines προαγωγέυειν as «to prostitute» or «procure». It appears in Aeschines in a law against procurers of a free child or woman (1.14; cf. 184) as part of a larger discussion on laws against sexual predators and prostitution in general (1.12-21). In addition to Aeschines (1.14), the term appears in Xenophon (*Sym.* 4.62) and in Aristophanes (*Nub.* 980). It is also found three times in Athenaeus (10.443a; 13.605c; epitome 2.2.41) and once in Diogenes Laertius (10.4.7). It occurs two other times in Plutarch (*Amat.* 759F9; *Quaest. conv.* 693C9). The word is typically paired with ἑτάϊρα, γυνή or παῖς and signifies procuring for sexual purposes <sup>28</sup>. The term in our passage of Plutarch, however, typically gets translated into English as an act of persuasion or seduction (Arthur 1973, p. 34; Perrin 1914, p. 467; Waterfield 1998, p. 67) <sup>29</sup>, but with such a translation it is unclear then how the μοιχός differs from the seducer. For this reason, perhaps, scholars often ignore προαγωγέυη and Plutarch's text when writing on sexual crimes against women. Scholars who do distinguish the two translate τῷ λαβόντι as seizing the adulterer in the act (Perrin 1914, p. 467, and Waterfield 1998, p. 67), but it is not actually clear that the adulterer has to be in the midst of the crime when executed <sup>30</sup>. When Euphiletus seizes Eratosthenes, Eratosthenes is in bed with his wife, but clearly not in

<sup>26</sup> Lysias tries to gloss over more lenient penalties, since they are not beneficial to his client. See Lys. 1.25-33. See further Omitowaju (2002, pp. 67-68), Cole (1984, pp. 103-104) and Harrison (1968, rpt. 1998, p. 35 n. 1). Also see Cantarella (2005, p. 242). Harris also notes the rhetorical nature of the account in Lysias and further concludes that seduction was not a worse crime than rape as Euphiletus tries to argue (1990, pp. 370-375).

<sup>27</sup> Ruschenbusch F 30a. Ruschenbusch considers the law authentic as a Solonian law (1966, p. 46).

<sup>28</sup> Note also that γαμετή appears once. The one exception is in Xen. *Sym.* 4.62-64. Here procurement is used to describe Antisthenes' role as go-between for Prodicus, Hippias and others, but the sexual implications of the term are still in evidence. Maffi argues that προαγωγέυειν was originally a more general term that only became specific as a term for pimping by a pimp in the fourth century. It is this specific meaning that occurs in Plutarch (1984, p. 1562).

<sup>29</sup> Note the exception of Johnstone's translation (2002, p. 233).

<sup>30</sup> Cantarella argues that it does mean this (1991, p. 291 and 2005, p. 241). *Contra* Foxhall (1991, p. 299) and Kapparis (1995, pp. 103-108).

the act of intercourse (Lys. 1.24). In other contexts Lysias emphasizes simply that it is one's duty to kill an adulterer (1.32, 47).

A more likely possibility is that Plutarch is referring to a law not mentioned in Lysias, but the law against procurement of women and children cited in Aeschines and attributed to Solon (1.14, 184). Harrison, in fact, supports such a reading of Plutarch (1968, rpt. 1998, p. 37) and discusses it also in the context of the law against procurement in Aeschines<sup>31</sup>. Flacelière's translation, «pour l'avoir prostituée», makes clear that he too interprets προαγωγεύειν as to procure for purposes of prostitution (1949, p. 126 and 1968, p. 37). Manfredini and Piccirilli also support such a translation, rendering κἄν προαγωγεύῃ as «qualora l'adeschi» in their translation (1977, p. 69) and as «per chi avesse prostituito» in their commentary (1977, p. 244)<sup>32</sup>. They too, like Harrison, consider this law a law of Solon and compare and contrast it with the law in Aeschines<sup>33</sup>. Unlike the English translations cited above, these scholars recognize that Plutarch is distinguishing between three different sexual crimes against free women: adultery as seduction, rape and procurement<sup>34</sup>. The laws should thus translate into English as follows:

He permitted the one seizing an adulterer to kill the adulterer. But if someone seizes and forces a free woman, he set a fine of 100 drachmas. And if he procures her for prostitution, 20 drachmas ...

Plutarch's text continues on explaining that no crime has been committed, if the adulterer, rapist or procurer can prove that the woman in question is a prostitute. Scafuro suggests such a loophole was a

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<sup>31</sup> See also Maffi (1984, pp. 1560-1563). Plutarch is not relying on Aeschines, however, since Aeschines also records the death penalty as a possible punishment for such an offence (1.184). Ruschenbusch considers the Solonian attribution of the law in Aeschines to be doubtful (1966, p. 115), but considers F 30a to be authentic. Aeschines also differs in that he discusses the law in connection with boys as well as women (1.14). According to Maffi, boys are not mentioned in Plutarch because Plutarch is only discussing «leggi sulle donne» and so has only extracted the part of the law relating to women (1984, p. 1566).

<sup>32</sup> Once again note Johnstone above n. 29.

<sup>33</sup> According to Manfredini and Piccirilli the fine in Plutarch is the original Solonian penalty for the crime. Later, sometime before the fourth century, the penalty was increased to include the death penalty, and the change attributed to Solon despite its actual lateness (1977, p. 244). See also Lipsius (1966, pp. 435-436).

<sup>34</sup> See also Maffi (1984, pp. 1560-1561).

defense against a charge of rape or adultery (1997, p. 112)<sup>35</sup> and Apollodoros claims that the foreigner Epainetos argued this when Stephanos charged him in adultery with Phano ([Dem.] 59.67)<sup>36</sup>. Plutarch fashions this part of the law as follows:

πλὴν ὅσαι πεφασμένως πωλοῦνται, λέγων τὰς ἐταίρας· αὗται γὰρ ἐμφανῶς φοιτῶσι πρὸς τοὺς διδόντας.<sup>37</sup>

This statement defines what is NOT adultery or rape and what is not wrongful procurement of free women. It clearly states that these laws do not hold in the case of female prostitutes, who can be slave or free, since prostitutes make their living via intercourse and are openly bought and sold to customers, frequently through the work of a pimp or madam. Being readily available for sex to anyone who can pay is a necessary condition of the prostitute and in fact defines the prostitute ([Dem.] 59.19, 20, 23, 41; Isae. 3.11, 13, 15, 16, 77).

After stating the punishment for the male perpetrator, the passage goes on to state the possible consequences for the female victim, not specifying whether it be for seduction or rape:

ἔτι δ' οὐτε θυγατέρας πωλεῖν οὐτ' ἀδελφὰς δίδωσι, πλὴν ἂν μὴ λάβῃ παρθένον ἀνδρὶ συγγεγεννημένην.<sup>38</sup>

<sup>35</sup> See also Flacelière (1949, p. 127) and Kapparis (1995, p. 116). Kapparis also comments that «A law stating that the alleged adulterer could not be accused of this offence, if he could prove that the woman with whom he was having an affair was practising some form of prostitution amounted to a *de facto* recognition of prostitution by the law» (1999, p. 312). Cf. Ruschenbusch who includes this condition with F 30a only. Johnstone too interprets this phrase as attached to the law against procurement only (2002, p. 243).

<sup>36</sup> But note that Johnstone rejects [Dem.] 59.67 as a law that withholds «the protection of the law from a particular class of women», and instead sees it as referring to female sellers in general (2002, pp. 252-254). See nn. 37 and 44 below.

<sup>37</sup> Ruschenbusch F 30a. See n. 8 above on its authenticity. Compare the wording in [Dem.] 59.67: ὅποσαι ... πωλῶνται ἀποπεφασμένως, and Lys. 10.19: ὅσαι δὲ πεφασμένως πωλοῦνται (Ruschenbusch F 29a and b). Kapparis takes all three as referring to the same law and as being Solonian (1995, pp. 113, 116 and 1999, p. 311). *Contra* Johnstone who rejects the emended manuscript reading for [Dem.] 59.67, retaining the original manuscript reading of ὅποσαι ... ἐν τῇ ἀγορᾷ πωλῶσι τι ἀποπεφασμένως (2002).

<sup>38</sup> Ruschenbusch considers F 31a to be genuine (1966, p. 13). Manfredini and Piccirilli also consider it Solonian (1977, p. 244). Lape expresses some doubt, but appears to accept the law as Solonian (2002-2003, p. 126). Harrison also implies that perhaps the law is not legitimate, but concludes there is no reason to doubt it (1968, rpt. 1998, p. 73 n. 2). Ogden questions whether or not such a law was still active in classical Athens, but otherwise seems to view it as authentic (1996, p. 141).

The statement itself is part of the laws already discussed and should not be treated as a separate law as is frequently the case. ἔτι δ' connects this statement to the previous statements and makes it continue on from them. Furthermore, Plutarch had access to two or more commentaries on Solon's laws, that of Didymus and at least one other that has not been identified, and likely even viewed some of the surviving ἄξονες in person (*Sol.* 1.1, 25.1; Ruschenbusch 1966, pp. 46-47; Stroud 1979, pp. 2, 33-34)<sup>39</sup>. He groups this particular law with these other three and discusses them in a single context, as he typically does for other groups of laws throughout his *Life of Solon*, because the laws are related<sup>40</sup>. Maffi too talks about four «reati sessuali» in the passage of Plutarch, with this particular offense being the fourth (1984, pp. 1561, 1562). This law then refers to daughters and sisters who are no longer considered *παρθένος*, eligible for marriage, because they are no longer considered chaste. It appears at first to protect women from absolute control of the *κύριος* and being randomly sold into slavery (Arthur 1973, p. 35), but is instead a direct reference to the pimping of such women<sup>41</sup>. No mention of wives is necessary of course, since a wife found to be unchaste was divorced ([Dem.] 59.86-87) and sent back to her paternal household. Plutarch, however, does not use the expected *προαγωγεύειν* here, because this term appears to refer to professional pimps only<sup>42</sup>. He chooses *πωλεῖν* («to sell») instead, and my argument hinges on what specifically Plutarch means by this verb.

<sup>39</sup> Stroud argues he may have used Aristotle's work on the ἄξονες or some 5<sup>th</sup> century BCE source (1979, p. 34).

<sup>40</sup> For example, Plutarch discusses laws related to marriage in 20.2-7, on slander at 21.1-2, on restrictions on female behaviour in 21.5, and on regulations concerning property lines in 23.7-8.

<sup>41</sup> Maffi, however, provides a more cautious view of the term. He interprets it simply as selling, including for a sexual purpose, but notes that no separate penalty appears to have been established in the case of prostituting sisters or daughters (1984, p. 1563).

<sup>42</sup> See Aeschin. 1.13-14, where a distinction appears to be made (in both terminology and penalty) between pimping by guardians (*ἐκμισθοῦν ἔταιρεῖν*) and pimping by pimps (*προαγωγεύειν*). Also see Maffi (1984, p. 1563). Maffi further argues that *προαγωγεύειν* had a broader sense in the fifth century where it could mean matchmaking in general, and not specifically pimping (1984, p. 1562). Plutarch, like Aeschines, understands the more specific meaning.

Πωλεῖν is possibly related to πωλοῦνται appearing just previously<sup>43</sup>. The context of prostitution for the first instance of the verb, indicated by λέγων τὰς ἑταίρας, suggests the same context here. Although μισθαρνεῖν (to work for pay) and ἐκμισθοῦν (to let out) are more common in classical texts to refer to prostitution – [Dem.] 59.20, 23; Aeschin. 1.13 (3X) –, an active form of πωλεῖν is used to indicate prostitution in Xenophon's *Memorabilia*, 1.6.13: τὴν τε γὰρ ὄραν ἐὰν μὲν τις ἀργυρίου πωλῆ τῷ βουλομένῳ, πόρνον αὐτὸν ἀποκαλοῦσιν. Here πωλεῖν is clearly used in a context that means prostitution. Harpokration's lexicon of words in the Attic orators further suggests that πωλεῖν can signify prostitution. It records a construing of πωλῶσι as πορνευῶσι («to prostitute» or «be a prostitute»). Although commenting on πωλῶσι in the context of [Demosthenes], 59.67, a problematic passage to interpret, and although the etymology offered may seem convoluted<sup>44</sup>, the passage in the lexicon suggests that πωλεῖν may sometimes imply prostitution<sup>45</sup>.

According to Flacelière, however, πωλοῦνται stems from πωλεῖσθαι («to wander») since there is no other instance of «to sell oneself» in the ancient record. Flacelière explains that Plutarch would have written πωλοῦσιν ἑαυτάς instead, if he meant «sell themselves» (1949, pp. 126-127). But examples of passive forms of πωλέω in reference to people do occur<sup>46</sup> and Persaios of Kition uses it in the context of

<sup>43</sup> Scholars debate whether the term πωλοῦνται is related to πωλεῖν (to sell) or more euphemistically to πωλεῖσθαι (to wander). Harrison clearly understands it to be related to the former (1968, rpt. 1998, p. 37). See also Lipsius (1966, p. 430 n. 43). A connection between πωλοῦνται and πωλεῖν strengthens my argument, but a lack of connection does not negate it. As the modern and ancient confusion over the exact meaning indicates (for example [Dem.] 59.67 has been corrected from πωλῶσι or πωλῶσιν τι [codd. Harp. Π 131] to πωλῶνται) Plutarch's use of πωλεῖσθαι and πωλεῖν has a homonym like play. Thus πωλοῦνται suggests selling even if its exact meaning here is «to wander» and πωλεῖν brings to mind the previous use of πωλῶντα and its immediate context.

<sup>44</sup> πωλεῖν γὰρ τὸ παρέχειν ἑαυτὴν τοῖς βουλομένοις, ὅθεν καὶ τὸ πορνεύειν, ὅπερ ἐστὶ περνάναι. See Johnstone (2002, pp. 234-235).

<sup>45</sup> The etymology may not be convincing, but it is difficult to determine whether or not the association with prostitution is being forced on πωλεῖν or whether πωλεῖν had a colloquial meaning that connected it with prostitution that is being drawn on here. After all, according to Smyth, περνάναι is the epic version of πωλεῖν (711) and περνάναι and πόρνος/ῆ are etymologically related (Chantraine 1968, p. 888).

<sup>46</sup> For example see Xen. *Mem.* 2.5.5 and Diog. Laert. 6.29.8 in the context of slaves being sold; Aristoph. *Pax* 633, where the meaning is more figurative.

an ἀϋλητρίς (flute-girl) being sold to a guest at a symposion for the purpose of sex, since ἀϋλητρίδες double as prostitutes<sup>47</sup>. So if the middle form is «surprenant» as Flacelière comments (1949, p. 126) and too rare, then πλὴν ὅσαι πεφασμένως πωλοῦνται can translate passively as «except those who are openly bought and sold [for sex]», whether through themselves or a pimp. Flacelière also argues that φοιτῶσι, in Plutarch's qualification, corresponds to πωλοῦνται and thus that both mean «to go to and fro»<sup>48</sup>. But φοιτάω frequently implies intercourse and it is surely for this reason that Plutarch employs the term<sup>49</sup>. Plutarch thus comments that he is speaking of ἑταῖραι, since they openly go to (φοιτῶσι), that is, have intercourse with men, who offer some sort of material compensation. His qualification clarifies the meaning as prostitutes, who are sold for sex, not slaves in general, who are also sold<sup>50</sup>, but not available for sex with anyone without their owner's permission. Given the larger context of 23.2, these other examples employing πωλεῖν in the sense of selling for the purpose of sex, and the scholarly debate over the exact translation of πωλοῦνται in 23.1, it seems reasonable to suggest that the law in 23.2 is claiming that it is only possible for a citizen to pimp his sister or daughter once she is identified as having had intercourse outside of wedlock. Ruschenbusch also interpreted 23.2 as being connected to the prostituting of female family members and not the selling of these women into slavery more generally (1968,

<sup>47</sup> Ath. 13.607d: εἶθ' ὕστερον πωλουμένης τῆς ἀϋλητρίδος, καθάπερ ἔθος ἐστὶν ἐν τοῖς πότοις γίνεσθαι, ἐν τε τῷ ἀγοράζειν πάνυ νεανικὸς ἦν καὶ τῷ πωλοῦντι ἄλλω τινὶ θάττον προσθέντι ἡμφισβῆται καὶ οὐκ ἔφη αὐτὸν πεπρακέναι· καὶ τέλος εἰς πυγμὰς ἦλθεν ὁ σκληρὸς ἐκεῖνος φιλόσοφος καὶ ἐν ἀρχῇ οὐδ' ἂν παρακαθίσει ἐπιτρέπων τῇ ἀϋλητρίδι. On flute-girls see Starr (1978, pp. 401-410) and Davidson (1998, pp. 80-82).

<sup>48</sup> Flacelière further bases his argument on Lys. 10.19 and [Dem.] 59.67 (1949, pp. 126-127). He argues that the verb is defined by Lys. 10.19 as βαδίζειν and that πωλοῦνται in [Dem.] 59.67 is in nice opposition to καθῶνται (from καθήμαι meaning «to sit») if πωλοῦνται has the sense of πωλέομαι «to wander». Manfredini and Piccirilli follow Flacelière (1977, p. 244) as does Kapparis (1999, pp. 311-313). Johnstone has recently argued that the law in [Dem.] 59.67 does not specifically refer to prostitution (2002, p. 253) and outlines the problems with the account of the law in Lys. 10.19 (2002, pp. 240-242, 254).

<sup>49</sup> LSJ s.v. φοιτάω 3. See Johnstone (2002, p. 233 and n. 9). Two examples are Pl. Rep. 390C and Lys. 1.19. See Hdt. 3.69 for the verb carrying such a sense with women as the subject (but followed by the dative case).

<sup>50</sup> See n. 46 above.



p. 50 and n. 162), but his suggestion has been largely ignored in subsequent scholarship <sup>51</sup>.

The law in 23.2, therefore, is not a separate law, but relates directly to the previous laws, which together outline a policy on sexual misconduct. I suggest that the laws as recorded by Plutarch in 23.1-2 translate as follows:

He permitted the one seizing an adulterer to kill the adulterer. But if someone seizes and forces a free woman, he set a fine of 100 drachmas; if he procures her for prostitution, 20 drachmas; unless the woman be of the type who is openly bought and sold [for sex], meaning *ἐταῖραι*. For they themselves openly go to [have sex with] those who offer [the right price]. Still further, he does not allow anyone to sell his daughters or sisters [for sex], unless he finds she is not *παρθένος*, having had sex with a man.

Rather than being sold into slavery more generally, the law indicates the circumstances under which it was allowable for a citizen to prostitute his daughter or sister, or otherwise force her into prostitution <sup>52</sup>. This suggestion does not mean that all free prostitutes were adulterers or had been raped previously, or that all had been forced into prostitution, but rather that their own kin would be liable if they were prostituting them as *παρθένοι*. This translation also removes the inconsistency of the fact that Solon abolished citizen slavery on the one hand (*Sol.* 15; *Arist. Ath. Pol.* 2.2-3, 4.4, 6.1, 9.1) and likely also the selling of one's children (future citizens) into slavery, a practice that existed at one time in Athens (*Sol.* 13.5), but yet continued to allow for daughters and sisters to be sold into slavery (*Sol.* 23.2) because of any infidelity <sup>53</sup>. Actual punishments

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<sup>51</sup> But see Scafuro (2006, pp. 178-179). Also see Maffi who critiques Ruschenbusch's argument (1984, pp. 1561 and 1563). Maffi argues that *πωλεῖν* simply means selling and may cover prostitution, but is not specific to prostitution. He fine tunes the understanding of the term as selling into slavery as implied by Harrison (1968, rpt. 1998, p. 73 n. 2) and followed by Manfredini and Piccirilli (1977, p. 244).

<sup>52</sup> I am not arguing here that there was or was not a moral stigma against selling female kin for purposes of prostitution, nor that every unchaste woman became a prostitute, nor that all free women who became prostitutes were forced into prostitution, but only that unchaste women no longer required special protection from contact with non-kin males and thus could be sold for sex.

<sup>53</sup> See Lipsius on this law (1966, p. 500). There is also discomfort with this inconsistency. See for example Lape (2002-2003, p. 126). Harrison also implies that perhaps the



for women caught with a *μοιχός* are perhaps no less harsh. They lost their social status as *ἄσταιί*, which gave them special privileges and important roles in the polis (Just 1989, p. 70). They were banned from the Thesmophoria, a festival for the wives of Athenians (Isae. 6.49-50), other festivals like the Anthesteria ([Dem.] 59.73-76), and all public sacrifices that even slaves and foreign women could attend ([Dem.] 59.85). If they ignored the ban and attempted to attend, they were subject to harsh treatment short of death ([Dem.] 59.86; Aeschin. 1.183)<sup>54</sup>. Thus, being caught with a *μοιχός* meant they suffered a female version of *ἀτιμία* as punishment: they were no longer eligible for marriage, to bear sons eligible for citizenship, and to participate in certain festivals, such as the Thesmophoria<sup>55</sup>. The consequence of this lack of chastity, not the punishment for it, meant that they were no longer women who needed to be 'protected' from non-kin males, but could now be pimped as prostitutes, even by their *κύριος*, and otherwise forced into prostitution<sup>56</sup>. This reading does not necessitate the selling of such women into slavery, since prostitutes could be free ([Dem.] 59.36). It does, however, suggest that more than simply necessity was required before daughters and sisters of citizens could be sold for prostitution by a *κύριος*.

## CONCLUSION

Is there evidence of daughters or sisters being pimped in Greece and/or Athens? Apollodoros states Nikarete claimed to her customers that the girls she had purchased were her own daughters in or-

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law is not legitimate, but concludes there is no reason to doubt it (1968, rpt. 1998, p. 73 n. 2).

<sup>54</sup> Aeschines attributes these punishments to Solon (1.183). Ruschenbusch doubts they are Solonian (1966, p. 115). Kapparis argues they date to the classical period (1995, pp. 118-119, 121).

<sup>55</sup> Aeschin. 1.183: *ἀτιμῶν τὴν τοιαύτην γυναῖκα*. See Kapparis (1995, p. 118). Cantarella notes the similarities between the penalty of the woman caught with a *μοιχός* and the citizen who prostitutes himself. Both are banned from their participation in the polis (1992, rpt. 2002, p. 52).

<sup>56</sup> Once again I am not intending to imply that all free prostitutes had been forced into the profession, or had previously been a victim of rape or adultery, but only that *κύριοι* were restricted in the prostitution of female kin in their care.

der to increase their desirability and also their price ([Dem.] 59.19). The speaker of Isaeus 3 accuses Nikodemos of prostituting his sister (10-11). In Aristophanes' *Acharnians*, a Megarian disguises his daughters as χοῖροι (young pigs) (739) and attempts to sell them to Dikaiopolis (730-835). The resulting exchange (773-796) plays on the double meaning of χοῖρος as pig and female genitals (LSJ s.v. χοῖρος 2; Henderson 1998, p. 147 n. 94). The scene climaxes with the Megarian suggesting that the younger χοῖρος will make a very fine sacrifice to Aphrodite (792). When Dikaiopolis asks what they eat, he is told chickpeas and figs, which have «phallic double meanings» (Henderson 1998, p. 157 n. 99). The many sexual innuendos hint the daughters are being sold for sex and the reference to Aphrodite further implies prostitution<sup>57</sup>. These three examples suggest that free sisters and daughters in Greece were sold for prostitution and in two cases it is their κύριος who does so<sup>58</sup>. What we have in the case of this law in Plutarch is an attempt to define the circumstances in which it was permissible to do so in Athens. The law thus offers some protection for free women, especially important in the case of the female kin of citizens, by preventing them from being randomly sold as prostitutes.

Finally, one question remains. To what extent can we associate these νόμοι in Plutarch and a policy on sexual misconduct with Solon? Solon's laws superseded Drakon's laws, except his homicide law (*Sol.* 17.1), and specified penalties for specific crimes ranging from fines, to disenfranchisement, to the death penalty<sup>59</sup>. It appears he may have made changes in the case of Drakon's justifiable homicide law, which allowed one to kill an adulterer without penalty, by establishing a specific law on μοιχεία<sup>60</sup>. He also possibly enacted legislation on rape<sup>61</sup>. What seems most plausible is that Solon

<sup>57</sup> The actual verb used is πεπρόσθαι (734, 735), the perfect passive for πέρνημι. The Megarian also refers to himself as a χοιροπώλας (818), a pig seller, from πωλεῖν.

<sup>58</sup> In another example, in Dem. 25.55, the speaker expresses disgust at the accusation that Aristogeiton sold his sister (on his mother's side). The passage, however, does not appear to suggest prostitution, simply stating ἐπ' ἐξαγωγήν ἀπέδοτο (he sold for export).

<sup>59</sup> Stroud (1979, p. 43); Gagarin argues that although Solon's laws replaced most of Drakon's laws, we must be cautious in accepting death as the penalty for all the laws of Drakon (1986, p. 66 n. 64).

<sup>60</sup> See Lape (2002-2003, p. 125).

<sup>61</sup> See Cole (1984, p. 103).

defined what did constitute adultery and rape by making clear the circumstances under which an individual's actions were not considered criminal<sup>62</sup>. He also appears to have put a check on prostituting free women, and thus daughters and sisters of citizens, by penalizing procurers of free women and only allowing those daughters or sisters proven unchaste to be sold for such purposes<sup>63</sup>. His laws thus protected «the sexual integrity of all wives and potential wives in the interests of male citizens and the polis as a whole»<sup>64</sup>. Solon's vision of an Athenian community excluded women as full members of the polis, but began to recognize the importance/usefulness of women in determining legitimacy and citizenship. It was not until Perikles' citizenship law that the latter was fully realized.

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<sup>62</sup> See Kapparis (1995, p. 116) and Flacelière (1949, p. 127).

<sup>63</sup> It is perhaps this part of Solon's legislation dealing with prostitution that earned him the reputation of having set up state run brothels and a temple to Aphrodite on the proceeds. See Ath. 13.569d-f. See Halperin (1990, pp. 100-101), Rosivach (1995, pp. 2-3) and Frost (2002, pp. 34-46) on the dubiousness of this tale. For another law on prostitution attributed to Solon see Dem. 22.30.

<sup>64</sup> Lape's comment on the law against *μοιχεία* (2002-2003, pp. 125-126). I suggest here that her comment is fitting for the laws on rape and procurement also.

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