

Humiliating the Adulterer: the Law and the Practice in Classical Athens

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Adultery in classical Athens was considered to be a serious criminal offence threatening the structures of the family and the state and this is why it was severely punished ⁽¹⁾. A man could be accused of adultery if he had seduced one of the free women under another man's legal protection, i.e. his wife, concubine, mother, sister or daughter ⁽²⁾. If the woman's *kyrios* killed the

All references are as in *LSJ*, except *Anth. Gr.* = *Anthologia Graeca*.

1) Cf. U.E. PAOLI, *SDHI* 16 (1950) 123-182; D.M. MACDOWELL, *The Law in Classical Athens*, London 1978, 124-5; S.G. COLE, *CPh* 79 (1984) 97-113; E.M. HARRIS, *CQ* 40 (1990) 370-7; P.G. MCC. BROWN, *CQ* 41 (1991) 533-4; J.F. GARDNER, *G & R* 36 (1989) 51-62; R. FINNEGAN, *Women in Aristophanes*, Amsterdam 1995, 91-2; C. CAREY, *CQ* 45 (1995) 407-17; K. KAPPARIS, *RIDA* 42 (1995) 97-122.

2) D. COHEN (*RIDA* 31 (1984) 147-65) has suggested that adultery was limited to marital relations, but in the face of overwhelming evidence, the traditional view, which I maintain above, has prevailed: cf. D.M. MACDOWELL, *CR* 106 (1992) 345-7; K.J. DOVER, *Gnomon* 65 (1993) 657-60; E. CANTARELLA and L. FOXHALL in *Symposion 1990*, 289-96 and 297-304; CAREY (n. 1) 407-8; KAPPARIS (n. 1) 105-9. Some scholars, however, still remain sceptical: S.C. TODD, *The Shape of*

adulterer on the spot, the law of Dracon on justified homicide quoted in D. 23,53 exonerated him ⁽³⁾. Alternatively the *kyrios* of the woman could confine the adulterer and extract compensation, an advantageous but not very honourable option ⁽⁴⁾, or he could abuse the adulterer in any way he wished. The law allowing maltreatment of the adulterer was probably introduced by Solon as an alternative way of punishment, more lenient than execution and less risky for the *kyrios* of the woman ⁽⁵⁾. It limited the forms of abuse to anything which did not include bloodshed by banning the use of a blade. This restriction is omitted by the orator in Lys. 1,49, where this law is paraphrased, but is found in D. 59,66, as part of a later statute which re-inforced the existing law, if a man who denied allegations of adultery was judged to be an adulterer by the court. Based on the fact that, in this event, the law permitting humiliations was still in force, I have argued elsewhere that the restriction incorporated in the later statute was included in the law of Solon in the first place ⁽⁶⁾: ἔάν τις μοιχὸν λάβῃ, (ἄνευ ἐγχειριδίου D. 59,66) ὃ τι ἂν βούληται χρῆσθαι 'if one

Athenian Law, Oxford 1993, 276-9; E. CARAWAN, *AJP* 116 (1995) 143; C. PATTERSON, in *Athenian Identity and Civic Ideology*, ed. A.L. BOEGEHOLD and A.C. SCAFURO, Baltimore 1994, 213-4, n. 25.

3) For supporting evidence and further debate cf. KAPPARIS (n. 1) 99-100 and 105-110.

4) Cf. KAPPARIS (n. 1) 100-103 and 111.

5) KAPPARIS (n. 1) 112-3. Since I am convinced that this is a Solonian law, I refer to it as such on several occasions in this study.

6) KAPPARIS (n. 1) 114-6, cf. also HARRIS (n. 1) 374.

catches somebody committing adultery, he may treat him in any way he wishes (without a blade)'. PAOLI assumed that this restriction did not prevent the *kyrios* from killing the adulterer by other means, including torture or methods which would result in a slow and agonized death (7). In this article I concentrate on this law and I maintain that the phrase ἄνευ ἐγχειρίδιου should be understood in a wider sense, as a ban on execution of the adulterer; unless the *kyrios* killed the adulterer on the spot, he could not put him to death afterwards or inflict upon him lethal punishments. By focussing on the cruel and potentially lethal scorpion-fish punishment, which scholars increasingly in recent years have accepted as standard practice, I intend to show that the existing evidence is not sufficient to prove that it was ever in use, and I argue that such a practice would be neither permissible by the law nor acceptable as a deserved punishment by contemporary social standards. My point is that the purpose of the punishments permissible within the frame of this law was humiliation rather than torture or death and, since adultery was understood as an offence not only against the authority and masculinity of individual men but also against the structures of the state, the humiliations habitually practised were an assault on the adulterer's identity as a proud male and as a free person.

The forms of punishment to which an adulterer could be subjected, if he escaped instant execution, surely depended on the level of anger, ingenuity and character of the insulted man, but some which seem to have been common practice are mentioned

7) PAOLI (n. 1) 149.

repeatedly in comic writers⁽⁸⁾. References in other authors are vague and simply indicate that adulterers were subjected to various kinds of abuse (X. *Mem.* 2,2,5, Is. 8,44). Confinement⁽⁹⁾ of the adulterer, either with a view to compensation (as in D. 59,65-6) or further humiliations (as X. *Mem.* 2,2,5 implies), apparently was standard practice and surely some blows would be inflicted (Lys. 1,25, Luc. *Peregr.* 8, Iuven. 10,317). But more humiliating and painful practices such as inserting radishes into the anus of the adulterer and removing his pubic hair with the assistance of ash⁽¹⁰⁾, are well attested⁽¹¹⁾. The traditional view that these forms of abuse were standard practice was questioned by D. COHEN, on the grounds that there is no evidence from the classical period outside comedy specifically referring to radishes, removal of pubic hair, or ash. J. ROY, following the point made by COHEN, considered these references

8) I use the term 'comic writers' to indicate not only comedians like Aristophanes, but also a number of other authors who have written in a jocular mood, like Lucian, Catullus, composers of epigrams, etc.

9) Cf. KAPPARIS (n. 1) 101-3 and 107. In Gortyn the adulterer had to be confined and if his family did not ransom him within five days, then the *kyrios* could treat him in any way he wished (IC 4, 72, col. 2, lines 30-6). Athenian practice, however, may have been different and not as clearly regulated by the law.

10) Scholars frequently speak about 'hot ash', reflecting the words of Sch. Ar. *Nub.* 1083: see. e.g. K.J. DOVER, *Clouds* (ed.), Oxford 1968, 227, C. CAREY, *LCM* 18 (1993) 53. Considering, however, that ash does not remain hot, I suspect that the ash would simply be used to make the hair easier to catch with the fingers before it was removed. This would explain why the women in Ar. *Th.* 537 are looking for ash in order to pluck the pubic hair of Mnesilochos.

11) See Ar. *Nub.* 1083 and scholia, Plu. 168 and scholia, *Anth. Gr.* 9,520, Luc. *Peregr.* 8; KAPPARIS (n. 1) 101-2 and 112-3.

to be standard jokes. C. CAREY, however, has correctly replied that such explicit references would be unacceptable in the language of the orators or other serious literature. These swift jokes in comedy would not have any poignancy, in fact they might not work at all, and surely they would not be circulating around for centuries (cf. e.g. the much later *Anth. Gr.* 9,520) if they did not reflect well known practices (¹²).

Some scholars believe that a much more cruel and gruesome form of punishment was used in parallel to the radish, the scorpion fish, an unimpressive inhabitant of the Mediterranean in size (around 25 cm long, 5x3 cm thick) and shape, but equipped with severely poisonous spines. One main spine, very much like a standard nail 2 to 3 cm long, is situated on the back of the fish and one or more smaller spines can be found on each side. When the fish is dead they rest flat, almost unnoticeable, on its body in the direction of the tail, but they can be raised by an obstacle moving in the opposite direction. If one is scratched their poison causes instantly severe pain and swelling which lasts for days (¹³). The idea that a scorpion fish could be used in parallel to the radish was first suggested by MAYOR and reiterated by

¹² D. COHEN, *ZRG* 102 (1985) 385-7; J. ROY, *LCM* 16 (1991) 73-6; C. CAREY, *G&R* 41 (1994) 174-5 and (n. 10) 53-55.

¹³ These observations are based on my own experience of a scorpion fish. As my father was a professional fisherman before his retirement, the scorpion fish was often on the menu in my family home. If the spines are safely removed the rest of the fish makes a delicious soup. The normal way to remove them is to run a blade from the tail towards the head, find the spines and break them. But, once a member of my family, although very experienced in handling scorpion fish, had to be rushed to hospital after being injured by the spine while she was trying to prepare the fish for cooking.

THOMSON on the evidence of Plato Comicus, *PCG* fr. 189, v. 22: (A) σκόρπιος αἶ (B) παίσειέ γέ σου τὸν πρωκτὸν ὑπελθὼν, understood as a reference to a situation of adultery. THOMSON, ROY and CAREY have agreed, although from different points of view (see above), that there is a pun in this passage referring to the punishment of adulterers⁽¹⁴⁾. The connection of this line with adultery is based on Catullus 15,17-9 *ah tum te miserum malique fati, / quem attractis pedibus patente porta / percurrent raphanique mugilesque*, Iuven. 10,314-7 *exigit autem / interdum ille dolor plus quam lex ulla dolori / concessit; necat hic ferro, secat ille cruentis / verberibus, quosdam moechos et mugilis intrat*, Sch. Iuven. 10,317 *Mugilis piscis grandi capite postremus exilis qui in podicem moechorum deprehensorum solebat immitti* and Hor. *Serm.* 1,2,133 *ne nummi pereant, aut puga, aut denique fama*. It is widely accepted that these passages refer to a standard Roman practice which involved a sea-mullet (Latin *mugilis*), a fish with four rigid spines, being inserted into the anus of the adulterer⁽¹⁵⁾. Those who connect the passage of Plato Comicus, too, with adultery, understand that it must reflect a parallel practice in Athens, involving the scorpion fish.

14) J.E.B. MAYOR, *Juvenal*, London and Cambridge 1878, com. on 10,317; D'A.W. THOMSON, *Glossary of Greek Fishes*, London 1947, 246; ROY (n. 12); CAREY (n. 10). B.B. ROGERS, *Aristophanes, Clouds*, (2nd ed.) London 1916, com. on 1083, suggested that the fish replaced the radish in the Roman era.

15) Cf. MAYOR (n. 14) *loc. cit.*; N. RUDD - E. COURTNEY, *Juvenal*, Bristol 1977, com. *ad loc.*

However, it is far from certain that the Roman passages refer to common contemporary practice. In fact the passage of Juvenal confirms explicitly the opposite, stating that torturous practices would be totally against the law and that no level of anger could legitimize them. The punishments mentioned in this passage surely do not describe common practice, as they are supposed to be extreme examples. The reference to the sea-mullet does not reflect something which happened often in Rome and, as R. ELLIS has suggested, it could simply echo the passage of Catullus¹⁶). If this is the case, the scholiast of Juvenal is probably guessing and the passage of Horace is too vague to be taken as evidence, since it does not specify how someone's *puga* would be wasted. Thus the entire argument rests with the passage of Catullus, which is certainly an unsafe source: in comparison with passages like 28,10 where the poet states that he received a whole log into his anus, it may be the case here, too, that penetration with a sea-mullet, as a punishment for these men who mess about with his boyfriend, might be nothing more than a joke, a wicked invention of the ingenious poet (perhaps a word-play: *puga* / *mugilis*). The evidence showing that the sea-mullet was in use in Rome as a punishment for adultery is truly flimsy and the argument based on it shaky. This would place the connection of the passage of Plato Comicus with adultery on even shakier ground. Adultery is neither mentioned nor implied anywhere in this fragment, dealing with the aphrodisiac effects of fish in a language full of double meanings and jokes. However,

16) R. ELLIS, *A Commentary on Catullus*, Oxford 1879, com. *ad loc.*

there is no pun here: anyone hearing the verb *παίω* with the scorpion fish as the subject would only understand 'to scratch' and considering how powerful this obvious meaning is, there is no room for a second meaning hidden beneath (17). The wish of speaker (B) that a scorpion fish enters the anus of speaker (A) and scratches him is jocular and sharp enough in its own right; it does not need to refer to any kind of standard practice in any context. The connection of this passage with adultery is mere guessing and in fact unfortunate, since, as I intend to show further, the use of the scorpion fish as a punishment for adultery is a highly unlikely prospect.

Supposing that it could be used, the size, shape and slippery surface of the scorpion fish would ensure that penetration is not particularly difficult. But removing it would be almost impossible without major surgery. If one tried to slip it out, the spines would be pulled up and hooked into the internal walls of the rectum, causing severe injury, and eventually ripping the rectum apart, or even breaking inside. Simultaneously the poison would spread causing swelling and making the whole undertaking almost impossible, while the pain would be excruciating. Even if a skilful medic removed it successfully the poison in the large intestine, the possible presence of fragments from the spines, the swelling and the injuries, combined with the limited assistance which contemporary medicine could offer, might prove lethal.

17) For the sexual connotations of *παίω* see J. HENDERSON, *The Maculate Muse* 113, 116, 157, 169, 171.

Whether the *kyrios* ought to be exonerated if the adulterer died in the process, according to the law of Drakon which ordered that the killer of the adulterer should not be punished, cannot be directly answered from our sources. Only one late source of unreliable authority may be taken to indicate that an adulterer could perish during humiliations: Alc. 3,62 says ὁ μοιχὸς δὲ ἀπολείται ῥαφάνοις τὴν ἔδραν βεβυσμένος. But the range of meanings of ἀπολείται is too wide to offer any positive indication and the remark could easily be just a joke. In fact, Lys. 1,27 can be taken as an indication of the opposite: Euphiletos, in the style of a heroic avenger, kills the adulterer instantly and single-handed, refusing to accept any argument or compromise ⁽¹⁸⁾. This presentation of the events seems to be essential for his defence. The point which Euphiletos is trying to make is that he caught the adulterer and without procrastination killed him. This would exclude other motives or complications on which the prosecution could capitalize and show that the murder of Eratosthenes was a well designed plot, rather than an act of revenge committed in the heat of the moment. But, whatever the scenario, Euphiletos was fighting for his life: killing the adulterer was always a very dangerous undertaking. A homicide trial, initiated after the death of a man during maltreatment following allegations of adultery, would be as perilous as any other trial for

18) Some of the remarks on Lys. 1 I owe to the lectures on this speech by Professor Th. K. STEPHANOPOULOS, in the University of Crete.

deliberate homicide and carrying the same penalty, namely death, for the unsuccessful defendant (19).

A justified homicide (φόνος δίκαιος) did not amount to permission to kill readily and as one pleased. To kill in a rage, exasperated by grave injustice and insolence, was understandable and the law of Drakon was prepared to treat a murder committed under these circumstances in a different manner from other kinds of homicide, by allowing the killer to use in his defence the argument that the murder was legitimate. But to kill at a later time with cruel and sober deliberation was different. The question is whether the Attic Law recognized this difference, and the lack of evidence showing that the possible death of the adulterer as a result of maltreatment was addressed separately in another law, probably means that no special provisions were set. This can indicate either that this type of killing was covered by the law of Drakon, or that it would not be treated as justifiable homicide, and it seems that the issue was one of interpretation of the laws rather than one to be decided on the basis of specific provisions. During the trial, the defence would certainly appeal to the law of

19) Cf. D.M. MACDOWELL, *Athenian Homicide Law*, Manchester 1963, 70-81. I have deliberately avoided exploring parallels, regarding the concept of 'in the act' in the case of κακοῦργοι (cf. E.M. HARRIS, *Symposion* 1993 169-84, B. MANUWALD *RhM* 138 (1995) 41-59), in order not to cause further confusion. It has been widely disputed whether adulterers were classed as κακοῦργοι, but the whole issue has arisen from a forced interpretation of Aesch. 1.90: for a recent summary of the debate see CAREY (n. 1) 410-3. Not only adultery evidently was treated as a separate offence in the eyes of Athenian Law through a number of specific provisions, but also, on the grounds of its complex nature and seriousness, this offence could not be equated with the activities of common criminals, by any standard.

Drakon which sanctioned the death of the adulterer, playing down at the same time the fact that it happened later and as a result of torture. The other party could claim that this case was a meticulously designed plan executed with cruel deliberation and inhumanity, or even appeal to the law of Solon which prohibited bloodshed - and surely plenty of blood would have been spilt during such a punishment - and everything finally could rest with the judges, from the interpretation of the law itself to the decision over this particular incident. If the *kyrios* failed to convince the law-court or the prosecution succeeded in presenting the case in a persuasive manner, the *kyrios* would be condemned to death.

At the time of Solon, when the law permitting humiliations was introduced, there was no need for another piece of legislation also permitting death, like Drakon's law, but by other, more inhumane means, and in fact increasing the risks and complications for the *kyrios*. However, there was a real need for further legislation providing alternative ways of satisfaction for the insulted man. The law of Solon apparently was introduced with the clear intention to respond to this need and to cover the gap by providing alternative punishments, less risky for the *kyrios* and less severe for the adulterer, by allowing humiliations instead of death, and surely did not intend to sanction death by other means. It is also possible that the law of Solon simply provided a legal frame for forms of abuse already in practice, since not every insulted man would have risked his life previously by killing the adulterer and not every adulterer

would have been able to pay compensation. This strengthens the suggestion of G.H. SCHAEFER⁽²⁰⁾ that the interpretation of the law referring to the adulteress by Aeschines 1,183 as εἰργόμενον θανάτου καὶ τοῦ ἀνάπηρον ποιῆσαι reflects the restrictions imposed *de facto* upon the *kyrios* by this law, too. Similar laws were in force elsewhere in Greece (e.g. Gortyn: *IC* 4, 72, col. 2, lines 20-22) and also in Rome (*Dig.* 48,5,23). If we believe Juvenal, it would be illegal in Rome to kill the adulterer by means of torture, but above all, the parallel of Crete I find particularly enlightening: the law ordered that unless a ransom was paid within five days, then the *kyrios* could treat the adulterer in any way he wished (very much like Athens). The standard way of abuse in this case was to place on the head of the adulterer woollen fillets in a public place. Ael. *VH* 12,12 describing the custom says: ἐστεφανοῦτο ἐρίῳ. ἐννόει δὲ τοῦτο τὸ στεφάνωμα αὐτῷ ὅτι ἄνανδρός ἐστι καὶ γύννις καὶ εἰς γυναικας μάχλος 'he was crowned with a woollen fillet. This crowning signified that he was unmanly and womanish and wanton with women'. Here the abuse did not involve any element of physical pain at all: its sole purpose was humiliation, by placing the adulterer in the position of a woman. Similarly in one of the adultery tales of Apuleius (*Met.* 9,28) the insulted husband takes the handsome and cocky adulterer into his bedroom, enjoys his favours himself for the entire night and the

20) G.H. SCHAEFER, *Apparatus Criticus et Exegeticus ad Demosthenem*, London 1826, com. on D. 59,66.

next morning flogs him and throws him out (21). The concept behind this scene is that the husband avenges his insulted masculinity by penetrating the adulterer himself, that is to say, by treating him as a woman. That taking the passive role in intercourse between males was thought equivalent to assuming the role of the woman has been stressed by DOVER on the evidence of vases and literary sources, of which perhaps the most remarkable is the passage of Aeschines (1,111) where a speaker in the assembly says 'men of Athens, a man and a woman are stealing from you ... the man is Hegesandros, who was before the woman of Leodamas himself; the woman is Timarchos' (22).

The two well attested forms of abuse, the radish and the depilation, served very much the same purpose: both punishments involve an element of pain but physical suffering is not their predominant characteristic. The radish would cause some pain if inserted suddenly rather than gradually, but similar pain would be experienced, for example, by the passive partner in homosexual intercourse, if the active partner were too hasty. Depilation would not cause any more pain than what the average Athenian woman would need to endure during her routine

21) Cf. G. BECHTLE, *Hermes* 123 (1995) 106-116. For adultery as a theme in mime see R.W. REYNOLDS, *CQ* 40 (1946) 77-84; P.E. KEHOE, 'The adultery mime reconsidered' in *Classical Texts and their Traditions. Studies in Honor of C.R. Trahman*, California 1984, 89-106.

22) K.J. DOVER, *Greek Homosexuality*, London 1978, 100-109; E. CANTARELLA, *Bisexuality in the Ancient World*, (Trsl) New Haven and London 1992, 44-8.

toilettry (23). The predominant element in these two practices was that they were considered to be activities suitable for women, therefore absolutely unbefitting for men; penetration and depilation feminized a man, depriving him of his male persona.

Another important dimension is that these punishments were a direct assault on the adulterer's status as a citizen and as a free person. Suspension of some of his most precious rights as a free person, such as his freedom and legal protection against abuse, in a society which drew a very clear distinction between free men and slaves on the basis of these rights, were severe penalties and, more than any of the available penalties, underline the seriousness of this offence in the eyes of Athenian law (24). As I have argued elsewhere, in a society where participation in the public life and the institutions of the city was based on one's parentage and legitimacy, the state felt obliged to interfere and make sure that those who are entitled to citizenship are born lawfully (25). Thus adultery extended well beyond the private sphere and the emotions of the parties directly involved. The radish and the depilation as a form of humiliation constituted an assault upon the offender's entire persona, as a man by depriving him from his manhood and as a citizen by depriving him from his most precious and stringently reserved rights.

23) About depilation as part of the feminine toilettry see M. KILMER, *JHS* 102 (1982) 104-112.

24) Cf. MACDOWELL (n. 1) 126-32.

25) KAPPARIS (n. 1) 117-9.

In this pattern violent and torturous punishments like the scorpion fish had no place. Murder in a rage might be excused but sadistic, potentially lethal tortures under the pretext that justice is enforced belonged neither to the way of thinking of the ordinary Athenian nor to the intentions of this law. A man who insulted another man by interfering with the females under his legal protection and questioned his authority as man through this, would be insulted himself exactly by having his masculinity put down. And a man who threatened another man's *oikos* by interfering with the legitimacy and status of his offspring would be reduced himself to having his most important civil rights suspended. For this purpose the humble radish and some ash for depilation were exactly the appropriate means.