

EDWARD HARRIS (DURHAM)

WHO ENFORCED THE LAW IN CLASSICAL ATHENS?

In her book *Policing Athens*, V. Hunter claims that the enforcement of law in Classical Athens lay mainly in the hands of private citizens. She asserts that “very often arguments were settled, violence quelled, and miscreants apprehended without the intervention of the authorities at all.”¹ In particular, “the apprehension of criminals and other offenders (...) generally speaking (...) was left to the private initiative of individuals who caught or had knowledge of lawbreakers. An arrest is then a classic instance of self-help since it required the use of force.”² She concludes that “most of the major functions of policing Athens from investigations to prosecutions fell to citizens themselves.”³ In a recent article, M. Behrent has argued that the *polis* of Ancient Greece was a stateless society, and one of his main arguments in support of his view is that there was no agency in Athenian society that attempted to monopolize the use of legitimate force.⁴ Behrent endorses Hunter’s position and claims that the “absence of public coercive apparatuses meant that the ability to apply physical threat was evenly distributed among armed or potentially armed members of the community, that is, the citizen body.” According to Behrent, officials had little or no role in enforcing the law since “policing was done by self-help and self-defence (that is, with the help of friends, neighbours, family).”⁵ Behrent’s general position has been endorsed by P. Cartledge.⁶

This paper will show that role played by magistrates in enforcing the law in Athens was much greater than assumed by Hunter and Behrent and that the Athenians placed strong restrictions on the use of self-help. I have four main points to make:

1) The evidence adduced by Hunter as examples of citizens employing self-help to enforce the law are not relevant to her argument.

¹ Hunter (1994) 120.

² Hunter (1994) 134.

³ Hunter (1994) 149.

⁴ Behrent (2000) 260-61.

⁵ Behrent (2000) 261. Behrent (1996) contains many of the same arguments. Similar views can be found in Osborne (1985) 7: “there was no equivalent to the authority of the state, no attempt to monopolize the use of force. Such a monopoly of legitimate use of force has been seen as one defining feature of the state ...” A similar view is found in Lintott (1982) 26.

⁶ Cartledge (1999).

2) In laws and decrees passed by the Athenian Assembly the main responsibility for enforcing regulations is placed in the hands of public officials.

3) Athenian citizens did not have a right to use force against other citizens engaged in criminal activity except in a few exceptional circumstances.

4) The Areopagus, which is not discussed by Hunter and Behrent, played a significant role in investigating crime and arresting offenders.

First point. None of the passages discussed by Hunter show that “very often arguments were settled, violence quelled, and miscreants apprehended without the intervention of the authorities at all.”⁷ The first passage is the narrative from Lysias’ speech *Against Simon*, where two incidents involving violence are described. The defendant has been charged with intentional wounding (*trauma ek pronoias*). In his narrative of events, the defendant tells the court how he desired Theodotus, a boy from Plataea, and brought him to his house (Lysias 3.5). Simon too was in love with the boy and broke into the defendant’s house and entered the women’s quarters in an attempt to find him (6). Simon next asked the defendant to step outside the room where he was dining and, once outside, began to strike him (7). After the defendant pushed him away, Simon started to throw stones at him. He missed the defendant but hit one of his own comrades named Aristocritus (8). Instead of seizing Simon or bringing an action against him, the defendant decided to live abroad (9-10). It is difficult to see any attempt to enforce the law in this incident. Despite Simon’s alleged violation of his rights, the defendant does not seize him or denounce him to a magistrate. Aside from pushing him away, the defendant does not use force against Simon.

In the second incident, Simon and some friends attacked the defendant and Theodotus in the Piraeus as they were leaving the house of Lysimachus (12). With the help of some friends, they tried to seize Theodotus, who succeeded in running away (12). Once again the defendant did not use force against Simon. In fact, he avoided him by turning down another street (13). Next Simon and his comrades dragged Theodotus out of the fuller’s shop where he was hiding and started to beat him (15-16). When the defendant pulled Theodotus away, they began to strike him too (17). This developed into a brawl with both sides hitting each other, and everyone ended up with their heads battered (18). Once more one could not describe this melee as “law enforcement”: no one is arrested, and no official is summoned. There is no “violence quelled” or “miscreant apprehended”: the incident ends when the two sides stop throwing punches.

For her second example of self-help, Hunter cites Nicomedes’ arrest of Panoleon in Lysias’ speech *Against Panoleon* (23.9-11), but this passage is not relevant to her point. Panoleon is thought to be a slave (ιδὼν ἀγόμενον τουτουὶ Παγκλέωνα ὑπὸ Νικομήδους, ὃς ἐμαρτύρησεν αὐτοῦ δεσπότης εἶναι), and Nicomedes is simply enforcing his rights of ownership in seizing him. This is not a

⁷ Hunter (1994) 120ff.

case of a citizen using force against another citizen or foreigner who is breaking the law. In similar fashion Hunter claims that Phrynion's abduction of Neaira is another example of a private citizen enforcing the law ([Dem.] 59.37-40), but Phrynion too claims that Neaira is his slave (παραλαβὼν νεανίσκους μεθ' ἑαυτοῦ καὶ ἔλθὼν ἐπὶ τὴν οἰκίαν τὴν τοῦ Στεφάνου ἦγεν αὐτήν. ἀφαιρουμένου δὲ τοῦ Στεφάνου κατὰ τὸν νόμον εἰς ἔλευθερίαν, ...). In Classical Athens, as in all slave societies, masters had the power to recover slaves who ran away. In this regard they were acting no differently from a farmer who led back an animal who had wandered off his property.

For her final example, Hunter claims that the trierarch who tried to recover naval equipment from Theophemus resorted to self-help ([Dem.] 47.18-38).⁸ This incident hardly qualifies as a case of self-help or enforcement of the law by a private citizen. A trierarch was a magistrate and required to render accounts after his term of office (Aeschin. 3.13-15). He was also a Supervisor of his Symmory, an official post ([Dem.] 47.21: ἔτυχον δὲ ἐγὼ μὲν τριηραρχῶν καὶ ἐπιμελητῆς τῆς συμμορίας). Finally, he was not acting on his own initiative but on the orders of a decree passed in the Council by Chaeredemus and by the terms of Periander's law about symmories ([Dem.] 47.20-21). This example actually contradicts Hunter's thesis for here we encounter an official who is enforcing the law on the instructions of the Council.

In short, none of the evidence provided by Hunter proves her point about the role played by ordinary citizens in policing Athens.

Second point. In decrees and law passed by the Athenian Assembly, the main power to implement and enforce regulations is placed in the hands of magistrates.⁹ Let us begin with the law of Nicophon on silver coinage, which was passed in 375/74.¹⁰ The main official responsible for implementing the law is a public slave called the Dokimastes, who was to sit near the tables, that is, where the bankers conducted their business in the agora, or in the Council when payments were made to the *polis* (lines 4-8). The Dokimastes was ordered to evaluate any coins given to him for examination. After testing them, he was to return the genuine ones, but to keep the counterfeit coins, cut them in two, and turn them over to the Mother of the Gods (lines 8-13). If the Dokimastes does not perform his duties, the Syllogeis of the People are to give him fifty lashes (lines 13-16). In the event that someone refuses to accept silver coins approved by the tester, all his goods on display that day are to be confiscated, presumably by officials (lines 16-18). All charges (*phaseis*) about matters in the grain market are to be made to the Sitophylakes, all those about matters in the Agora and the rest of the city to the Syllogeis of the People, and all those about matters in the port (*emporion*) to the Overseers of the Port (lines 18-23).

⁸ Hunter (1994) 123-24.

⁹ I owe the distinction between implementing and enforcing to Professor P.J. Rhodes.

¹⁰ For the text see Rhodes and Osborne (2003) #25.

The Archons have the power to decide cases for amounts of less than ten drachmas. For larger sums, they must bring the case before the court (lines 18-26). If the offender is a slave, the officials only are instructed to give him fifty lashes (lines 30-32). If the various officials assigned to carry out the law do not perform their duties, a private citizen can report them to the Council, which has the power to impose a fine up to 500 drachmas and to remove the offender from office (lines 32-36). There will also be a Dokimastes in the Piraeus, but he too will be supervised by the Overseers of the Port (lines 36-44). In the final clause of the law, the Secretary of the Council is instructed to destroy any decree that is contrary to Nicophon's law (lines 55-56).¹¹

The primary responsibility for implementing and enforcing the law lies in the hands of a public slave, the Tester, the Syllogeis who supervise him, the Sitophylakes, the Secretary of the Council and the Council, which supervises all these officials. Private individuals can provide information to these officials and receive rewards, but it is the officials who enforce the law by confiscating counterfeit coins and the goods of merchants who do not accept good coins. The officials alone have the power to impose fines and have slaves whipped. Private initiative plays a role only in reporting offences to officials or to the Council, but they may not use physical force to punish those who break the law. It is public officials who do most of the work of detecting counterfeit coins and carrying out the sanctions contained in the law.

One could also cite the duties of the ten Astynomoi, who maintained order and enforced regulations for the entire city of Athens (*Ath. Pol.* 50.2).¹² One of their duties was to supervise the hiring of women who played the flute, harp or lyre and keep their fees to no more than two drachmas. They kept watch on those who collected excrement or garbage to see that they did not dump anything too close to the city. They also enforced building regulations to stop construction that encroached on public roads or created drainage problems. Finally, they had a force of public slaves to pick up corpses found on the roads and remove them for burial. The Agoranomoi exercised an extensive jurisdiction over buying and selling in the marketplace (*Ath. Pol.* 51.1: τούτοις δὲ ὑπὸ τῶν νόμων προστέτακται τῶν ὀνίων ἐπιμελεῖσθαι πάντων, ὅπως καθαρὰ καὶ ἀκίβδηλα πωλῆται). There were ten Agoranomoi, five stationed in the city and five in the Piraeus.¹³ Their duties may have extended to regulating the price of commodities.¹⁴

¹¹ Note that this task is usually assigned to officials, not to *ho boulomenos* (the average citizen). See *IG* ii² 43, lines 31-35 (Council); 116, line 39 (Treasurers). For a similar clause in *IG* ii² 98, lines 9-12 where the name of a board of officials should probably be restored.

¹² For discussion and references to other evidence about their activities see Rhodes (1981) 573-74.

¹³ For their duties see Rhodes (1981) 575-76.

¹⁴ See Bresson (2000) 151-208.

Although the *Constitution of the Athenians* lists the duties of the Agoranomoi and the Astynomoi, it does not indicate how they carried them out. More detailed information is found in an inscription containing a decree of the Assembly passed in the year 320 (*IG ii*² 380). The decree transfers some of the duties of the Astynomoi to the Agoranomoi and instructs them how to carry out their duties. It thus gives some indication about how both boards of magistrates went about their business. The Assembly orders the Agoranomoi to keep the wide streets where the procession for Zeus the Savior and Dionysus takes place clean and in good shape (lines 19-23). They have the power to force those who dump pots into the street to clean up their mess in any way they order (lines 25-8). The next clause deals with financial matters, then prohibits any dumping into the streets and singles out excrement in particular. The penalties are fifty lashes for slaves and most likely a fine for free persons (this part of the inscription is fragmentary). There is no provision at all for private initiative in this decree; the only ones with the power to enforce these regulations are magistrates. These magistrates may have acted on information provided by private citizens in the same way that the police in modern societies rely on tips or statements made by average citizens.¹⁵ But the task of implementing the decree's provisions is entrusted to officials and the power to impose fines on free men and physical punishment on slaves lies with them alone.

To supervise the use of weights and measures the Athenians had five Metronomoi in the city and five in the Piraeus (*Ath Pol.* 51.2).¹⁶ The *Constitution of the Athenians* does not describe how they carried out their duties, but an inscription from the end of the second century B.C.E. gives detailed regulations about the enforcement of standard weights and measures (*IG ii*² 1013). It is unlikely that these regulations changed very much over time so that many of its provisions are probably tralatitium with minor changes to take account of modifications in standards. The magistrates responsible for implementing this law are to make sample measures for wet and dry goods and weights and to compel all those who buy and sell to use them (lines 7-9). The law is comprehensive: it applies to sellers in the agora, in workshops, in retail shops, in wine shops and storehouses (line 9). Magistrates cannot make weights larger or smaller than these prescribed weights (lines 10-1). If

¹⁵ For the interaction between information provided by individuals and investigation by the Council Professor Rhodes draws my attention to Antiphon 6: "the *choregos* as a private individual made an *eisangelia* against various embezzlers (§35); in the new year he became a member of the Council, and during his time as a member of the prytany he in his official capacity uncovered further malpractices and induced the council to institute an enquiry (49). That I think sets out the possibilities nicely: it is the job of the officials to 'enforce' the law against offenders; sometimes they discover offences directly in the course of their duties, but at other times a private individual has to set the machinery in motion, whether by formally acting as a prosecutor or by alerting officials in some other way."

¹⁶ They may have been helped by an official called the Prometretes. See Rhodes (1981) 577.

the magistrates do not comply, they are to owe 1,000 drachmas to Demeter and Kore (lines 10-13). Private citizens have the right to report the property of those officials who incur the fine (lines 13-14), but do not otherwise appear to play a role in enforcing the use of official weights and measures. The task of checking to see that everyone uses is placed in the hands of officials (lines 14-15) and the Council of 600 has the job of making sure no one is using counterfeit weights and measures (lines 16-18). There follow detailed regulations about how to measure various items such as nuts and beans for sale (lines 18-27). If merchants do employ containers smaller than the required size, the magistrate should sell the contents at public auction, deposit the price at the public bank, and destroy the container (lines 27-29). To keep the official weights and measures in permanent use, the law instructs a certain Diodorus, the son of Theophilus from the deme of Halieus to hand them over to three public slaves stationed in various places. These slaves are to make them available to any magistrates who request them (lines 37-42). The final clause in the law makes those who commit offenses in regard to these weights and measures subject to the law about *kakourgoi* (line 58). It is not possible to tell whether this is the same law mentioned in the orators about thieves, enslavers and clothes-snatchers, which gave private citizens the right to arrest these offenders. What is significant is that the law instructs the Areopagus to mete out punishment to those who violate its provisions (lines 56-60). The significant point for the issue of enforcement is that the law issues almost all its commands to magistrates. Private initiative comes into play only when magistrates fail to carry out their duties and fail to collect fines.

The Sitophylakes also played a major role in regulating activities in the marketplace (*Ath. Pol.* 51.3). Originally there were ten men selected by lot for this office, but the importance of their duties led the Athenians to increase their number to twenty in the city and fifteen in the Piraeus.¹⁷ They had responsibility for overseeing the price of grain and bread (*Ath. Pol.* 51.3). Their duty was to make sure that grain was sold at just price (ὅπως ὁ ἐν ἀγορᾷ σίτος ἀργὸς ὄντιος ἔσται δικαίως), that millers did not raise the price of flour too much over the price of grain (ὅπως οἱ τε μυλωθροὶ πρὸς τὰς τιμὰς τῶν κριθῶν τὰ ἄλφιστα πωλήσουσιν), and that bread-sellers did not raise the price of bread far over the price of flour (οἱ ἀρτοποιῶλαι πρὸς τὰς τιμὰς τῶν πυρῶν τοὺς ἄρτους). In the description of their duties the *Constitution of the Athenians* says nothing about private initiative playing a role in this area.

One might object that all the evidence that presented so far pertains to the marketplace, where the *polis* had a special interest in promoting order for the sake of trade. But the enforcement of regulations by officials is also found in the sphere of the family. For example, the Eponymous Archon was responsible for looking after orphans, heiresses, and pregnant widows (*Ath. Pol.* 56.7). He directly supervised the leasing of the estates of orphans and heiresses and made sure that the lessees provide

¹⁷ For the date of the increase see Rhodes (1981) 577.

adequate security. Finally he had the power to fine those who wronged them and could collect food from guardians who did not give it to their wards. In this case the protection of vulnerable women and children is not left in the hands of private citizens, but assigned to a public official. The Archon may have acted on information given by private citizens, but he was the one with the sole power to enforce the regulations.

One could also point to the regulations applying to schools listed by Aeschines (1.9-10). These rules are quite detailed and specify the times when boys can enter school, when they must leave, the number that can attend a school, the prescribed ages of students, and the qualifications for attendance. These rules extended to the supervision of slave-attendants given to the students (*paidogogoi*), the conduct of two festivals, the *Mouseia* in the schools and the *Hermaia* in the gymnasia, the kind of people whom the students could associate with, and the training of cyclical choruses. The task of enforcing these rules is not left to private initiative but assigned to a magistracy (ἀρχήν, ἥτις ἔσται ἡ τούτων ἐπιμελησομένη).¹⁸

The task of maintaining discipline in the army on campaign was the responsibility of the generals (*Ath. Pol.* 61.2). They had the power to imprison (δησαί),¹⁹ “to banish by proclamation” (ἐκκηρῦξαι), which probably meant to dismiss them from the army, and to impose fines (ἐπιβολήν ἐπιβάλλειν) on disorderly soldiers (τὸν ἀτακτοῦντα).²⁰ Lysias (13.67) alludes to an incident when the general Lamachus executed a soldier caught sending messages to the enemy during the siege of Syracuse (Lysias 13.67). In Demosthenes’ speech *Against Conon* (54.4-5) Ariston recounts how the sons of Conon started to harass their slaves, then turned on him and his messmates. Instead of resorting to self-help, Ariston reported them to the general, who criticized their conduct. His warning did not put an end to their rowdiness: as soon as night fell, Conon’s sons started another brawl. This time the general, the taxiarchs, and several soldiers intervened to quell the violence. Once again, the task of keeping order was in the hands of officials.

So far I have looked at the evidence for the fourth century where there are more literary sources for every day life. But the evidence from the fifth century does not alter this picture (see the Appendix). When decrees of this period indicate who is to enforce a law, we rarely find the possibility of prosecution by private individuals; in general the enforcement of laws and decrees is assigned to officials. Especially noteworthy is the protection afforded to *proxenoi*; in decrees awarding this title, the responsibility for ensuring that those who are honored do not come to harm lies with the Council and other officials such as the generals (e.g., *IG* i³ 156, lines 1-9; 167, lines 12-7; 181, lines 7-9). A decree about Neapolis dated to 410/9 instructs the

¹⁸ Athens was not unusual in this regard. For the role of officials in enforcing regulations in the gymnasium see Gauthier and Hatzopoulos (1993).

¹⁹ Cf. [Demosthenes] 50.51.

²⁰ The *Ath. Pol.* states that the generals did not normally impose fines, but see Lysias 9.6-12; Lysias 15.5.

generals to protect the people of this community against injustice at the hands of private individuals and public officials (*IG* i³ 101, lines 44-45). If the private citizens of Neapolis were normally expected to provide for their own safety, this decree would not have been necessary.

Some scholars have observed that the Athenians never had an organization that resembled the police found in modern states.²¹ From this they have concluded that the officials of the community lacked the coercive force to compel citizens and foreigners to obey their orders. This is misleading. First, as we have seen, Athenian officials had the power to levy fines. Those who did not pay fines became public debtors and incurred *atimia*, the loss of civic rights. The penalty for violating the terms of this *atimia* was harsh: Demosthenes (21.182) informs us that when Pyrrhus, one of the Eteobutadae, attempted to serve as a judge when owing money to the treasury, he was denounced to a magistrate (*ἐνδειχθέντα*), put on trial, and executed.²² Second, officials were often accompanied by public slaves, who could be called upon to enforce their orders if someone refused to comply. Three passages in Aristophanes' comedies show that officials exercised a policing function as part of their duties and used Scythian archers to arrest citizens disobeying the law.²³ In *Acharnians* (54-8) the Herald of the Assembly commands archers to arrest Amphitheus, who is disrupting public business. In *Lysistrata* (433-62) the Proboulos tells archers to seize Lysistrata and other women. In *Women at the Thesmophoria* (930-34) the Prytanis instructs the Scythian archer to tie the relative of Euripides to a plank and to guard him. If anyone comes near, he is to strike him with his whip. This is not just comic fantasy; Demosthenes (21.179) reveals that the assistant (*paredros*) of an Archon had a force of attendants (*hyperetai*) who could enforce his orders. The Astynomoi had a force of public slaves who accompanied them and carried out their orders (*Ath. Pol.* 50.2). The trierarch who attempted to recover naval equipment from Theophemus took along a slave "from the magistrates" ([Dem.] 47.35: *παρὰ τῆς ἀρχῆς ὑπηρέτην*).²⁴ Androtion was helped by the Eleven in his efforts to collect arrears from the *eisphora* (Dem. 22.49-55. Cf. Dem. 24.162, 197).²⁵ Finally, an official might intervene to protect a private individual threatened with harm.

²¹ E.g. Badian (1970) 851; Finley (1983) 18-20; Behrent (2000) 260-61.

²² For the procedure of *endeixis* of *atimoi* such as public debtors [Demosthenes] 58.48-9; Andocides 1.73 with Harrison (1971) 172-75. Here private initiative played a role, but the denunciation was made to an official, who carried out the arrest.

²³ Hunter (1994) 145-49 discusses these public slaves, but downplays their importance. Hall (1989) claims that the average Athenian resented being manhandled by slaves, but see MacDowell (1995) 272-73.

²⁴ Cf. the public slave Opsigonos who accompanied the general Dicaeogenes in the dockyards. See *IG* ii² 1631, lines 196-7, 381-2. On public slaves in Athens see Jacob (1979).

²⁵ Demosthenes paints a rather lurid picture of Androtion's activities, but cannot suppress the fact that the Assembly voted to have the Eleven help him to use force against defaulting debtors.

Demosthenes (21.36) refers to a Thesmothetes who was struck while rescuing a female *aulos*-player from a drunken assailant.²⁶ In *Acharnians* (723-24, 824-25) Aristophanes alludes to the use of whips by the *agoranomoi* to exclude banned individuals from entering the marketplace. It would thus be misleading to state that the ancient *polis* “never developed a proper police system.”²⁷ It would be more accurate to say that in Classical Athens the functions of public administration and policing were not kept separate and assigned to different bodies but carried out by the same officials accompanied by public slaves. The officials who were responsible for conducting public business therefore had at their disposal the coercive power to compel compliance with their orders and might themselves use physical force against offenders. We should not think of Athenian officials as modern bureaucrats who sit behind desks and shuffle paper all day long. These officials did not issue orders to a police force, which arrested offenders, but did the policing themselves.

Third. There were strict limits placed on the use of force by private citizens. The citizen could arrest only three types of offenders: enslavers (*andrapodistai*), thieves (*kleptai*), and a curious category called “clothes-snatchers” (*lopodutai*).²⁸ The distinction between the last two categories, thieves and clothes-snatchers, is probably between those who taken another person’s property stealthily and those who seize it openly.²⁹ Even in this case one could not arrest the offender in any circumstances. The guilt of the offender had to be obvious (*ep’ autophoro*), that is, the person who arrested him had to have strong evidence for his charge.³⁰ In the case of the enslaver, he had to catch the offender in possession of someone who was clearly free. One could not seize someone who had made a free person into a slave at some time or another: one had to find the offender keeping the free person as a slave on his property. Dinarchus (1.23) alludes to two cases where Athenians were executed for this crime, but also makes clear that in each case the offender was caught using the free victims as slaves:

You put Menon the miller to death because he held a free boy from Pellene in his mill (...) You punished Euthymachus because he put a young girl from Olynthus in a brothel.

Neither defendant could deny his guilt since there was no question that the victim was a free person and that he was using this person as a slave, in the first case in a mill, which was considered onerous even for a slave, in the second case, in a brothel, where no respectable, free woman would work unless compelled.

²⁶ The scholion to the passage (121 Dilts) says that the Thesmothetai were required to patrol at night to stop abductions but MacDowell (1990) 255 may be right to consider this “a false inference from this passage.”

²⁷ Badian (1970).

²⁸ See *Ath. Pol.* 52.1 with Harris (1990) 376-77. This may have been extended to murderers – see Lysias 13. and Antiphon 5.8-10 with Harris (2000).

²⁹ For analysis of these terms see Harris (1994) .

³⁰ On the meaning of this term see Harris (1994).

To arrest a thief or a “clothes-snatcher” one had to catch the thief in highly incriminating circumstances, that is, either in the act or with the stolen object in his possession soon after the crime was committed. The clothes-snatcher presumably had to be seized during the actual assault or just after he took the clothes. One source ([Demosthenes] 45.81) indicates that the person who arrested a thief tied the stolen object to his back and brought him before the magistrate. We cannot tell whether this was a legal requirement or only a means of proving that the offender’s guilt was obvious. In any event, arrest by private individuals was highly restricted; the sources indicate that it was permitted in just these cases and not in dozens of others. It was the exception rather than the norm.

On the other hand, if one did not catch the thief with the stolen object, but suspected that someone had the stolen object in his house, one could not go ahead and enter the house simply because he thought he would discover the object. He had to conduct his search in accordance with the law. Aristophanes (*Nub.* 498-99; *Ran.* 1362-63) and Isaeus (6.42) allude to the legally prescribed form of search (*phorazo*), which required that the person who claimed his property was in the house had to enter naked. According to a scholion on Aristophanes, the purpose was to prevent people from taking something from the house without being detected or to stop them from maliciously (ὕπὸ ἔχθρας) planting the object they were looking for in the house out so as to make the owner guilty of theft.³¹ In his *Laws* (954a), Plato sets forth the requirements for the search in some detail, and his rules are probably based on the Athenian procedure with some minor additions:

If someone wishes to search for something in anyone’s house, he must conduct his search in the following way: naked or with a small *chiton* without a belt after first swearing an oath by the legally prescribed gods that he expects to find (the stolen object). Let him (the suspect) provide his house to be searched, both the sealed and unsealed items. If anyone does not give his house to be searched to someone which wishes to investigate, let the person who is prevented estimate the value of the object he is looking for and bring a private suit, and if he (the defendant) owes, let him pay damages double to the amount estimated.

Here we find strict regulation of a procedure carried out by a private individual to prevent its abuse as a means of personal vendetta.

Different rules applied to *moichoi*, those who seduced free women.³² The man who caught the seducer could lock him up until he either paid compensation or made arrangements for payment.³³ But here too the Athenians placed careful restrictions on the use of force. In his speech *Against Neaera*, Apollodorus ([Dem.] 59.64-74) describes how his opponent Stephanus attempted to use this procedure against

³¹ For the similarity between this procedure and *quaestio cum lance et licio* in Roman Law see Wyse (1904) 528-30.

³² Some scholars translate the term *moichos* as adulterer, but the word also applies to those who seduce unmarried women. See Kapparis (1999) 297 for a summary of the debate.

³³ On this law see Kapparis (1999) 308-9.

Epaenetus only to find that it backfired and almost landed him in serious trouble. At the time of her trial Neaera was living with an Athenian politician named Stephanus. Apollodorus tells how Stephanus caught Epaenetus with Neaera's daughter and by threats induced him to make a promise to pay thirty *mnai*. Stephanus released him after Epaenetus named two respectable Athenians as his sureties for this sum ([Dem.] 59.65). Apollodorus claims that the entire incident was the result of a plot hatched by Stephanus and Neaera, but he provides no evidence for his allegation, which we are entitled to view with some skepticism. As soon as Epaenetus was released, he brought a charge against Stephanus for wrongful imprisonment ([Dem.] 59.66). Here Apollodorus reminds the court that if someone claimed that he had been wrongfully held as a seducer, he could bring a charge against the man who detained him and, if he proved there was a plot against him, his sureties would win release from payment. If he did not convince the court, however, the defendant could do anything he wished to him provided he did not use a knife. This statute once again reveals an awareness that self-help could easily be abused and that it was necessary to protect the victims of such abuse by providing them with legal remedies.

When Epaenetus made his charge before the Thesmothetai, he admitted that he had had relations with the girl, but claimed that he was not a seducer ([Dem.] 59.67). He presented two arguments to support his point. His first argument was that the girl was not the daughter of Stephanus, but of Neaera, who was aware that he was having relations with the girl. He also pointed out that he had spent money on both mother and daughter and that they were under his care while he was in Athens. His probable reason for making this statement was to undercut Stephanus' claim to be the girl's *kyrios* or protector. His second argument was that the law states that one cannot commit *moicheia* (seduction) with women who reside in a brothel or sell themselves openly in the marketplace, that is, work as prostitutes on the street ([Dem.] 59.67).³⁴ At this point Stephanus grew frightened because he was worried that he would be exposed as a brothel-keeper and an extortionist. He therefore agreed to submit the dispute to arbitration provided that Epaenetus withdrew his charge and the sureties were released from their obligation ([Dem.] 59.68).³⁵ Epaenetus agreed, and a settlement was worked out that required Epaenetus to contribute 1,000 drachmas for the dowry of Neaera's daughter ([Dem.] 59.69-70). The entire incident reveals that the person who used self-help did so at some risk. He had to be certain that he had strong grounds for using physical force against his opponent and might be vulnerable to the charge that he had abused his power. In this case, Stephanus was forced to relinquish his claim to the payment of forty *mnai* and accept a settlement for much less. He had also exposed himself to a charge for

³⁴ On this law see Kapparis (1999) 311-13.

³⁵ There was nothing illegal about withdrawing a public charge at this stage. See Harris (1999).

wrongful imprisonment, which could have brought serious penalties if he had been convicted.

Fourth point. The Areopagus exercised a general supervision over all residents of Attica and had the power to conduct investigations and to make reports of crimes (*apophaseis*).³⁶ The Assembly might order the Areopagus to investigate or it might do so on its own initiative (Dinarchus 1.50). These reports were presented to the Assembly, which then decided how to proceed. The Areopagus played a major role in detecting cases of treason. Dinarchus (1.63) reports that Charinus was sent into exile for treason as a result of reports made by the Areopagus. In another case (Din. 1.58-60) the Assembly ordered the Council to investigate Polyeuctus of Cydantidae. After the Areopagus found that he was consorting with exiles, the Assembly elected prosecutors, and Polyeuctus was tried in court.³⁷

The most famous case involving the Areopagus was the Harpalus affair. Harpalus was the treasurer of Alexander the Great. After Alexander's return from India, Harpalus was afraid that he would be punished and fled from Babylon in early 324 with 5,000 talents of silver and six thousand mercenaries (Diodorus 17.108.6). With thirty warships, he crossed the Aegean and came to Attica (Curtius 10.2.1). When he asked for permission to enter Athens, Demosthenes persuaded the Assembly to deny his request (Plutarch *Moralia* 846a). After leaving his mercenaries at Taenarum in Laconia, he returned with some of his money and became a suppliant for Athenian help (Diodorus 17.108.7).³⁸ This time his request was granted.³⁹

Soon afterwards envoys sent by Philoxenus, a Macedonian naval commander, arrived in Athens to demand the surrender of Harpalus. Demosthenes persuaded the Assembly not to hand over Harpalus, but also wished to avoid causing offence to Alexander. He therefore proposed that Harpalus be taken into custody and that his money be placed on the Acropolis for safekeeping (Hyperides *Demosthenes* 8-9, 12;

³⁶ Wallace (1989) 115-19 argues on the basis of Dinarchus 1.62-3 that "the *apophasis* procedure was introduced by a decree of Demosthenes probably in the early part of 343." But see de Bruyn (1995) 117-18, who rightly notes that the passage has nothing to do with the introduction of the procedure, but concerns several decrees of Demosthenes aimed at applying the procedure. She attributes the procedure to Ephialtes, but her view is based on a dubious restoration in the text of *IG* i³ 102, 38-47. See Harris (1997). Wallace's view is also rejected by Rhodes (1995) 312-13.

³⁷ On these cases see Harris (2004).

³⁸ For the procedure of supplication in the Assembly see with Naiden (2004).

³⁹ I see no reason to follow Worthington (1992) 43-44, 315 in believing that Harpalus entered Athens by bribing Philocles in violation of the previous decree denying him entry. Worthington relies on Dinarchus 3.2, but this passage probably refers to the earlier occasion when Harpalus came with his ships and mercenaries.

Dinarchus 1.89).⁴⁰ Harpalus reported that the entire sum was 700 talents, but the amount was later discovered to be only 350 talents (Hyperides *Demosthenes* 9-10; [Plutarch] *Moralia* 846B).⁴¹ Harpalus was allowed to escape (Hyperides *Demosthenes* 12), collected the troops left at Taenarum, and fled to Crete where he was murdered (Diodorus 17.108.7-8). Suspicion of bribery fell on Demosthenes, who declared his innocence and proposed that Areopagus investigate the matter (Hyperides *Demosthenes* 2; Din. 1.61). The Areopagus turned in its report six months later (Din. 1.45). This report listed the names of those who had taken money and the amounts they had received (Hyp. 5.5-6). Demosthenes and Aristogeiton were among those named (Din. 1.53). Ten prosecutors were appointed by the Assembly (Din. 2.6), and the accused tried in court. What is significant here is that private initiative played no role at all in the detection and the prosecution of the crime. The investigation was undertaken at the suggestion of a politician Demosthenes, but was carried out by the Areopagus on its own. The prosecutions of those reported by the Areopagus were brought by elected accusers, not by private individuals acting on their own initiative.

But the Areopagus was not only involved in detecting major crimes against the community. More routine matters also fell within its competence. Dinarchus (1.56) alludes to two incidents where the Areopagus reported minor infractions. In one case, the Areopagus fined one of its own members who had cheated a ferryman of his payment and reported him to the Assembly. In another case, it caught Conon fraudulently claiming a state payment worth five drachmas, hardly a large sum of money.

The Areopagus also pried into the private lives of Athenians. When Phano, the wife of Theogenes, the Basileus, participated in the Anthesteria, the Areopagus discovered that she was neither a virgin when she married her husband, nor even a citizen ([Dem.] 59.79-81). Theogenes persuaded the Council that he was not aware of her true status and forgiven, but it is clear that he could have been fined ([Dem.] 59.81-83).⁴² The power of the Areopagus to examine the private lives of citizens is also attested in an anecdote of Athenaeus (IV 168 a-b). When the philosophers Menedemus and Asclepiades were young, the Areopagus asked them how they could be in such good shape although they owned nothing and passed their time with other philosophers. The two youths produced a miller, who told the Council that every night they worked in his mill and received two drachmas. The Areopagus was so impressed that it gave them two hundred drachmas. This incident must date to the period 330-320.⁴³ This amusing story may have been invented, but its details ought

⁴⁰ Ambassadors also came from Antipater and Olympias to demand his surrender (Diodorus 17.108.7). Worthington argues against the existence of these embassies, but see Blackwell (1999) 17-27.

⁴¹ On the figures see Whitehead (2000) 385.

⁴² On this incident see Kapparis (1999) 344-48.

⁴³ For the date see de Bruyn (1995) 135.

to be authentic. Contemporary evidence reveals that there was a law against idleness (Dem. 57.32), and the wage paid to the two is comparable to the rate attested for unskilled labor in this period.⁴⁴ If the Areopagus could look into Theogenes' marriage, there is no reason to doubt that it also had the power to inquire into other aspects of the personal lives of metics and citizens.

Perhaps the best illustration of the limits of self-help and the role of the Areopagus is found in the case of Antiphon (Dem. 18.132-33). Antiphon lost his citizenship through the *diapsephisis* procedure in 346. Several years later, between 343 and 340, Demosthenes seized him while "hiding" and brought him before the Assembly, charging that he was a spy for Philip, the king of Macedon.⁴⁵ During the debate in the Assembly, Aeschines objected to the arrest on the grounds that Demosthenes had entered a private dwelling without a decree.⁴⁶ The Assembly sided with Aeschines and ordered Antiphon to be released. The decision in favor of Aeschines show that it was illegal for an Athenian to enter a private house without a decree of the Council or Assembly, a significant restriction on the power to make arrests even in the case of traitors.

Antiphon's case did not end there. Demosthenes' charge aroused the suspicions of the Areopagus, which launched an investigation and arrested Antiphon shortly afterwards. This time Antiphon was tortured and evidently confessed since he was put to death. There is no need to believe that Antiphon's confession vindicated Demosthenes; confessions obtained under torture are notoriously unreliable as evidence (despite the views of some in the Bush administration). What this incident does show is the limits of private initiative in law enforcement and the key role of public bodies like the Areopagus.

The final piece of evidence to be examined comes from the decree about the Sacred *Orgas*, which is dated to 352/1.⁴⁷ The decree concerns the placing of boundary-markers around the Sacred *Orgas* (lines 7-10, 69-73) and the issue of whether or not the *Orgas* should be cultivated (lines 23-53). The decree notes that the law entrusts the administration of the *Orgas* and other sacred matters to a series of public bodies and officials: those whom the law orders to look after the *Orgas* (lines 18), the Areopagus (lines 18-19), the general elected to protect the countryside (lines 19-20), the peripolarchs (lines 20-21), the demarchs (line 21) and the Council of 500 (lines 21-22). At the very end of this list, we find almost as an afterthought "and any other Athenian who wishes" (line 22). In this case it is clear that the primary responsibility for looking after sacred business was in the hands of over eight hundred public officials.⁴⁸ The passage leaves us with the distinct impression

⁴⁴ For wages in this period see Loomis (1998), esp. 104-120.

⁴⁵ For the date see Harris (1995) 169-70.

⁴⁶ For the legal grounds for Aeschines' objection see Harris (1995) 172.

⁴⁷ For the text and discussion see Rhodes and Osborne (2003) #58.

⁴⁸ The Areopagus gained nine new members every year. If these men lived an average of twenty years after induction, that would give about 200 members. There were 133 demes

that private initiative was merely a supplement to the main work carried out by magistrates, a kind of default mechanism, which would be necessary only in exceptional circumstances when they were not able to perform their duties.

To sum up. The evidence presented here reveals that *pace* Hunter and Behrent the enforcement of law in Classical Athens was not primarily in the hands of private citizens. A study of the actual laws and decrees of the Athenians shows that officials and bodies like the Council of 500 and the Areopagus played the primary role in policing Athens. Far from entrusting private citizens with wide powers to employ self-help, the laws of Athens carefully circumscribed their right to use force. That is not to say that the Athenians had no concerns about official misconduct. But they clearly believed that it was better to place the administration of justice in the control of magistrates sworn to uphold impartially the laws and decrees of the Athenian people.⁴⁹ This was because the Athenians clearly understood the risks of leaving enforcement to the whim of private citizens who might abuse legal procedures to pursue personal feuds to the detriment of the public good.⁵⁰

in the fourth century, each with one demarch. For the figure see Rhodes (1981) 252. The peripolarchs appear to have been officials in charge of the *peripoloi*. On these see Aeschines 2.167 with Rhodes (1981) 508.

⁴⁹ For the requirement that officials perform their duties and enforce the law impartially see Rhodes and Osborne (2003) #58, lines 9-10; Dem. 57.64; 23.96-7.

⁵⁰ For Athenian hostility to use of the courts to pursue private feuds see Harris (2005). In the discussion after I presented an earlier version of this essay at *Symposion 2005* Gerhard Thür and Lene Rubinstein pointed out that I did not discuss execution of judgment by citizens and foreigners in private cases. For instance, plaintiffs were allowed to seize defaulting debtors (see Demosthenes 21.11 with MacDowell [1990] 234). But officials may have played a role here too: see Aristophanes *Clouds* 37 (cf. Harpocration s.v. *demarchos*) where Strepsiades implies that the demarch will collect the debts he owes to private lenders.

A revised version of this essay was presented to the Institute of Classical Studies at the University of London in January of 2006. I would like to thank the audience there for encouragement and helpful discussion. On that occasion several pointed out that I did not discuss the limits placed on the use of force by Athenian officials. I plan to address this topic in the future. I would also like to thank Professor P.J. Rhodes for reading over a draft of the first two sections and offering several constructive suggestions, which I have tried to incorporate into the final version.

This essay does not discuss the restricted use of deadly force by private citizens – this topic is well treated in the response of Sophie Adam.

APPENDIX

Magistrates Enforcing Laws and Decrees in the Fifth Century B.C.E.

- IG* i³ 1 (510-500), lines 7-8 (fine on those who lease their land in Salamis levied by Archon)
- IG* i³ 4 (before 485/4), lines B6-16 (Treasurers have power to impose fines for lighting fires, throwing dung, dwelling, baking, etc. on the Acropolis)
- IG* i³ 45 (c. 445), lines 3-6 (regulation concerning runaway slaves and thieves (*lopodytai*); three archers from the tribe holding the prytany are to act as guards)
- IG* i³ 58B (c. 430), lines 16-19 (Archons or architects instructed to place guards to prevent illegal access at Eleusis)
- IG* i³ 65 (c. 427/6), lines 11-17 (generals, Council and Prytaneis are to keep precinct of Zeus safe)
- IG* i³ 78 (422?), lines 8-10, 57-9 (Demarchs are to collect first-fruits and give to the Hieropoioi; provisions to be enforced by the Basileus who brings matter before Council)
- IG* i³ 82 (421/0), lines 24-28 (Hieropoioi responsible for keeping order at Hephaestaea and have power to impose fines. If fine is higher than fifty *dr.*, they must take case to court)
- IG* i³ 98 (411), lines 19-26 (Pythophanes is granted protection against harm and *asylia*; the generals and Council are responsible for his safety)
- IG* i³ 101 (410/09), lines 51-55 (generals to protect people of Neapolis against harm from public officials and private individuals)
- IG* i³ 102 (410/09), lines 32-34, 39-47 (Thrasybulus of Calydon is given *enktesis*; the Council and the Prytaneis are responsible for protecting him; Council instructed to conduct investigation about those bribed to pass a decree and to punish them and/or bring them to court as well as to report its findings.)
- IG* i³ 107 (c. 409), lines 3-5 (the Prytaneis, Council, and generals are ordered to see that no harm is done to an unknown honorand)
- IG* i³ 110 (408/7), lines 15-20 (Council, generals, and official in Sciathus responsible for protecting Oeniades of Palaeosciathus).
- IG* i³ 138 (before 434), lines 15-18 (two treasurers and priest are to oversee shrine of Apollo)
- IG* i³ 153 (440-25), lines 16-19 (fine of 1,000 *dr.* on captains and trierarchs. Dock-Supervisors enforce)
- IG* i³ 156 (440-425), lines 1-9 (Prytaneis and Council to protect the *proxenos* Leonidas of Halicarnassus in Athens, officials in other cities when he is abroad)
- IG* i³ 159 (c. 430), lines 17-20 (the generals and the Council [?] are ordered to see that no harm is done to an unknown honorand, probably a *proxenos*)
- IG* i³ 167 (430-415), lines 12-7 (Council and Prytaneis responsible for protecting an unknown *proxenos*)
- IG* i³ 170 (430-405) (generals [?] and Council are ordered to see that no harm is done to an unknown honorand)
- IG* i³ 178 (420-405), lines 4-6 (Council is ordered to see that no harm is done Dorcis, his wife, and probably his descendants)
- IG* i³ 181 (c. 410), lines 7-9 (Council is ordered to see that no harm is done to an unknown *proxenos* and possibly his children)
- A similar phrase is plausibly restored in *IG* i³ 183 (after 445), lines 4-6.

The identity of the archers in *IG* i³ 45 is discussed by Wernicke (1891) 60-75. He believes that they are citizens and compares the archers mentioned in *IG* i² 60, line 17. He argues that their functions as police were later taken over by the Scythians mentioned at [Andoc.] 3.7.

One could perhaps add *IG* i³ 61 (426/5), lines 36-38, where it is clear that the Hellespontine guards have the power to control traffic through the Hellespont.

A *lex sacra* from Paeania grants Hieropoioi the right to carry a rod or staff (*rhabdos*) (*IG* i³ 250 (450-430), lines 9-11: ῥαβδοχῆν τῶς ἱεροποιοῦς καὶ ἠὸς ἄν κελεύουσιν). This clause may give them the power to keep order at festivals. For officials using a rod to enforce rules see Herodotus 8.59; Thucydides 5.50. For metaphorical usage see Aristophanes *Peace* 734-35; Plato *Protagoras* 338a.

By contrast, the phrase *ho boulomenos* (voluntary prosecutor) is found in fifth-century Attic inscriptions only at *IG* i³ 34, line 34 and is plausibly restored at *IG* i³ 68, line 46. The phrase is also found at *IG* i³ 14, line 8; 34, line 34; 41, line 61, but all these inscriptions are fragmentary, and not enough remains of the stone to determine whether these decrees allow for voluntary prosecution.

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