

A Tragic Case of Poisoning: Intention Between Tragedy and the Law^{*}

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SUMMARY: This paper explores the circuit of mutual influence between tragedy and law in fifth-century Athens, focusing on the differences between tragic and legal concepts of intention and responsibility. In Antiphon 1 *Against the Stepmother* the speaker calls his stepmother Clytemnestra. By this pointed tragic allusion he hopes to prejudge the stepmother's liability. But the stepmother also evokes another, more sympathetic, tragic model, Sophocles' Deianira. The tension between these two dramatic models of female intent introduces tragic ambiguities into the legal brief and reveals both the possibilities and the dangers of tragedy as a vehicle for jurisprudential thought.

Decision and responsibility are understood on two different levels in tragedy and thus have an ambiguous, enigmatic character; they are seen as questions that, in default of any fixed and unequivocal answers, always remain open. (Vernant 1988a: 81)

IN HIS INFLUENTIAL ESSAY, "TENSIONS AND AMBIGUITIES IN GREEK TRAGEDY," Jean-Pierre Vernant argues that tragedy must be read not only within its historical context but also within its "mental context," its culture's "categories of thought, types of reasoning, the system of representations, beliefs and values, forms of sensibility, and the modalities of action and of agent" (1988b: 30). He proposes that tragedy as a discourse is characterized by the ways in which it interacts with that mental context and "assimilates into its own perspective the elements it borrows, thereby quite transmuting them" (1988b: 31).

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One of his primary examples is tragedy's incorporation of legal thought. He shows how tragedy plays on tensions within the discourse of law in order to develop its own unique "mental world," for instance borrowing from the law's detailed categories of intentionality and liability to pose human agency as a problem and to articulate the riddle of "tragic man."¹

If law was part of the mental context of tragedy, tragedy was also part of the mental context of law as it emerged as a discrete discourse in the late fifth century, and legal discourse is likewise defined by the way it borrows and transforms elements from tragedy. In this paper I look at one such instance of creative borrowing, tracing a circuit of influence that runs in both directions between the Theater of Dionysus and the courts.² The early legal writer Antiphon draws on the conceptual resources of tragedy to think through one of the most vexing issues for jurisprudential thought, the question of intention and liability. His tragic allusions show the reverse-face of Vernant's theory, as the law incorporates a tragic notion of agency and responsibility and "assimilates [it] into its own perspective." That perspective is one that scrupulously avoids both tensions and ambiguities: the legal speaker who invokes tragedy does so not to pose problems (as Vernant argues tragedy does) but to resolve them, to elide tensions within his argument that might yield ambiguity in the verdict of the jurors. And yet, as I hope to show, certain ambiguities nonetheless emerge in Antiphon's text, and emerge precisely at the point where it engages with its tragic context. A residue of tragic ambiguity clings to even the most casual tragic allusion, thwarting the complete assimilation of "tragic man" into the perspicuous language of legal agency.³

A study of intention in tragedy and the law thus reveals both the extent and the limits of tragedy's discursive reach and law's discursive autonomy in late

¹ Vernant 1988b: 30–32, 38, 45–48; cf. Vernant 1988a.

² The homologies and mutual interaction between the courts and the theater (tragic and comic) have been much and well studied recently. See Dover 1974: 23–33; Garner 1987: 95–130; Ober and Strauss 1990; Bers 1994; Hall 1995; P. Wilson 1996; Scafuro 1997; Allen 2005.

³ In speaking of "tragic ambiguity" one runs the risk of reifying both tragedy and ambiguity. I do not suggest that ambiguity is an end in itself in tragedy, nor that it can be isolated from the various pressures (textual or cultural) that tend toward its resolution. But genres have (in fact, can be defined by) different degrees of tolerance for signficatory openness. Tragedy, I take it, is relatively receptive to ambiguity of all sorts; it embraces it and exploits it for its own ends (see, e.g., Goldhill 1984; Goldhill 1986). Legal discourse, on the other hand, generally seeks to avoid ambiguities in its language or argumentation in order to produce a lucid and unitary text. Seaford 1995 makes a strong case against privileging ambiguity in the reading of tragedy. It is significant, though, that his paradigmatic example is a legal verdict, the vote of Athena at the end of *Eumenides*. As I will suggest below, even as tragedy injects ambiguity into the law, the law offers tragedy a route toward decisive resolution.

fifth-century Athens.⁴ It shows how deeply enmeshed early legal discourse was in its “mental context” and suggests that its interaction with that context was at once unsettling and enriching for the law. For if tragic references smuggled unwanted ambiguities into the courtroom, they also imported the potential for an expanded definition of justice.

Intention in tragedy, like everything in tragedy, is complex and multifaceted. On first view, tragedy seems to subscribe to a principle of strict liability: as the chorus of Aeschylus’s *Choephoroe* put it, “the doer must suffer” (δράσαντα παθεῖν, *Cho.* 313). Bernard Williams argues that tragedy is less interested in subjective intent than in objective responsibility. He points to Oedipus. Oedipus didn’t intend to kill his father or marry his mother. In fact, from the moment he received the prophecy that he would commit those crimes he did everything in his power to avoid committing them, and yet the fact remains that he did commit them. Later, in *Oedipus at Colonus*, Oedipus claims that he was the victim as much as the perpetrator of those terrible deeds (*OC* 266–67), but, as Williams notes, this defense does not mitigate his responsibility. In fact, this is the point: Oedipus’s tragedy is that he is responsible for his acts *even though* he committed them unintentionally.⁵ The doer must suffer, and the suffering consists precisely in the doing and the responsibility for its consequences. This principle of strict liability is often figured in tragedy through the metaphor of *miasma*: the act in itself, regardless of the intentions behind it, generates a bloodstain that taints the perpetrator until it has been removed by his punishment. For *miasma*, intention does not matter: responsibility rests in the deed, not in the desires or deliberations behind it.

But strict liability is not the whole story: since tragedy seldom stages the unequivocally just punishment of an unambiguously evil character, it persistently reintroduces the question of intention. Tragic actions are, of course, determined at many levels simultaneously. The individual acts for his own reasons but does so within a penumbra of other forces: prophecies, inherited curses, divine will, or the will of other characters. Even in the absence of such extraneous forces, he necessarily acts without knowing how his acts will turn out. That paradox defines tragic agency: our actions have results we can neither foresee nor control but for which we are responsible nonetheless. Tragedy often

⁴ Fish 1991 argues that law wishes to have a discernible discursive autonomy, that it aims to be independent and self-defining, but that it will always fail because it is necessarily defined by values that lie beyond it. A sophisticated theorization of law as an autonomous system is offered by Luhmann 1990: 1–20, 227–45.

⁵ Williams 1993: 68–74: “That is the point of Oedipus’s words at Colonus. The terrible thing that happened to him, through no fault of his own, was that he did those things” (70).

probes this paradox by widening the gap between intention and results, a gap Aristotle denotes by the word *hamartia* or *hamartēma*.⁶ In the *Nicomachean Ethics*, Aristotle defines *hamartēmata* as culpable acts committed in ignorance of their object, instrument, or effect: the agent intended to throw, for example, but didn't mean to hit someone or to wound him (1135b11–25). They differ from misfortunes (*atukhēmata*) in that their results could reasonably have been foreseen, but unlike intentional crimes (*adikēmata*), they are not the result of deliberate choice. *Hamartēmata* thus deserve pity and forgiveness, Aristotle says, because they are virtually involuntary and cause the agent regret (1110b18–11a2, 1136a5–9). *Hamartia* is at the heart of the tragic plot, as Aristotle notes in the *Poetics*. When the protagonist suffers a reversal from good fortune to bad neither in total innocence nor on account of his wickedness but “because of some error” (δι’ ἀμαρτίαν τινά, 1453a10), this is the best sort of plot and arouses the most pity and fear (1453a7–17).⁷ On the one hand, then, the doer suffers in tragedy, regardless of his intent. On the other hand, tragedy solicits pity for those who suffer for crimes they didn't intend to commit. Objectively intention makes no difference; subjectively—and dramatically—it makes all the difference. Tragedy does not ask its audience to choose between these two responses—guilty or pitiable—but instead sets them in a tense and persistent juxtaposition that renders a clear-cut resolution difficult before the fact and insecure after.

Tragedy relishes the paradox of responsibility for unintended actions, often pushing it to the point of aporia. Law, by contrast, must reach a verdict and thus must resolve the sort of problems that tragedy often leaves open-ended.⁸ Law requires a strong link between the act and the agent: the forensic

⁶ The key passages are Arist. *NE* 1109b30–1115a24, 1135a15–1136a9, with a rapid synopsis at *Rh.* 1374b6–9. On *hamartia* in Aristotle, see Bremer 1969: 4–24, 52–57; Stinton 1975; Kenny 1979: 59–63; Sorabji 1980: 278–81, 295–98; Halliwell 1986: 215–37; Vernant 1988a: 62, 64–65; Rickert 1989: 93–126; Belfiore 1992: 166–70.

⁷ Just as in the *Nicomachean Ethics* *hamartēma* occupies the middle ground between sheer misfortune (*atukhēma*) and injustice (*adikēma*), in the *Poetics* reversal through *hamartia* is the middle term (*ho metaxu*) between the suffering of the undeserving and the success or punishment of the unjust, neither of which arouses pity or fear; cf. Bremer 1969: 20: “Aristotle has meant to say that the tragic hero must cause his ruin but not deserve it.” On pity and *hamartia* in Aristotle, see Stinton 1975: 229–30; Halliwell 1986: 168–84; Konstan 2001: 27–74. Eden 1986: 25–61 studies the intersection of Aristotle's poetic, rhetorical, and ethical theory around the question of intent.

⁸ The limitation placed upon philosophical speculation by the law's need for a verdict is a defining difference between law and literature: see, for one discussion, Felman 2002: 54–105. The practical constraints on judicial philosophizing were particularly narrow in Athens, where no trial lasted more than a day.

speaker's fundamental mandate is to discover and prove that link. Tragedy's *drasanta pathein* could be taken as the law's motto: there has been a *drama*, a criminal deed, and the jury must determine who is the doer and impose the appropriate suffering. It is not surprising, then, that Sophocles' *Oedipus Tyrannos* makes heavy use of legal diction: its plot of detection, prosecution, and punishment is the generic plot line of every court-case.

But if law requires a tight link between agent and act, equity seems to demand some consideration of intent.⁹ As early as the law code of Draco intentional homicide seems to be differentiated from unintentional: the code distinguishes between committing murder with and without malice aforethought (*pronoia*) and between planning and perpetrating a crime.¹⁰ These distinctions were formally institutionalized in legal practice, where there were different courts corresponding to different degrees of intent and liability. Intentional killing or wounding and poisoning where the accused administered the poison himself were tried in the Areopagus; unintentional killing and murder through an intermediary were tried in the Palladion; justifiable homicide, where the accused admits to the murder but claims it was legal, was tried in the Delphinion; when the cause of death was an animal or inanimate object, the case was heard in the Prytaneion.¹¹ Intention was also a factor, for example, in the crime of *hybris*, which was distinguished from the lesser crime of assault largely by the perpetrator's frame of mind.¹²

So intention is a structural part of Greek law, and yet it poses certain philosophical problems, as it can interrupt the tight connection between a criminal act and its liable agent. Psychology intervenes between the criminal's knife and the victim's wound, and instead of a mechanical causal link between doer and deed the law now has to consider murky questions of motive and intent: Why did the agent act as he did? What was he thinking? This is terrain on which the law is less sure-footed; it is better at determining cause and ef-

⁹ Arist. *Rh.* 1374b4–9: equity (*to epieikes*) does not judge *hamartēmata*, *atukhēmata*, and *adikēmata* the same but is lenient in the case of the first two; it considers not only the act but also the moral choice (*prohairesis*) behind it. Eden 1986: 48; for Aristotle "equity operates by filling in the simple act with the qualifying hypothesis of intention."

¹⁰ For the place of intention in Draco's law and subsequent Athenian homicide law, see Gernet 1917: 310–88; MacDowell 1963: 44–47, 117–25; Maschke 1968: 28–110; Stroud 1968: 34–40; Loomis 1972; Gagarin 1981: 30–37, 65–79; Carawan 1998: 33–83; Carawan 2000; Lanni 2006: 87–96.

¹¹ Arist. *Ath. Pol.* 57.3–4; Dem. 23.22–99; MacDowell 1963: 39–89; Sealey 1987: 70–77; Carawan 1998: 6–20, 83–135.

¹² See, e.g., MacDowell 1976; Fisher 1992: 36–150; Cohen 1995: 120–26, 143–62; Cairns 1996.

fect than analyzing the ambiguities of the psyche.¹³ Modern law often deals with this by calling in psychological experts to testify to the defendant's state of mind. One way Antiphon dealt with it, I will suggest, was by turning to tragedy and borrowing from that genre's sophisticated discourse on intention and its limits.

This was not, it should be noted, a particularly common legal tactic. Fourth-century forensic oratory does occasionally allude to tragedy, invoking its prestige in support of an argument or evoking its scandalous scenarios in order to slander an opponent.¹⁴ But Antiphon's engagement with tragedy is at once broader and more precise: in his tragic allusions the genre provides not just atmosphere or a (positive or negative) emotional charge but a specific and well-defined understanding of agency and responsibility. Antiphon's unusual strategy may reflect his personal inclination toward creative jurisprudential speculation: as we will see, his Tetralogies create elaborate fictional scenarios in order to work through complex juridical questions. Alternatively, it may reflect a historical moment in which Athenian jurisprudence had not yet established a fully separate discursive identity and still had to lean on other, more firmly established discourses in order to articulate even its most fundamental concerns. Indeed, what we may be seeing in Antiphon's tragic appropriations is precisely the first steps toward such discursive autonomy as the forensic orator attempts to subsume tragic notions of agency within a legal framework of liability and subordinate "tragic man," with all his ambiguities, to the innocent-or-guilty logic of a legal verdict.

Whatever the reason why Antiphon employed this unusual tactic, this paper will suggest why it was not more often adopted by later forensic orators. Tragedy makes for a dangerous legal tactic, as we will see.¹⁵ Importing tragic *hamartia* into the courtroom, the forensic orator also risks exposing ambiguities within his own case, suggesting lines of thought that cut against the argumentative thrust of his speech and work against its goal of persua-

¹³ Farenga 2006: 310–45 explores the cognitive challenge Athenian jurors faced in reconstructing the hypothetical mental state and intention of the litigants. L. Wilson 2000: 25–67 offers a fascinating discussion of intention in Renaissance English law. See also Brooks 2000: 65–87 on the problem of voluntariness in modern legal thought.

¹⁴ Perlman 1964; Bers 1994: 189–91; P. Wilson 1996.

¹⁵ Bers 1994 also posits that "speechwriters were in danger of losing more than they gained in borrowing from the theatre" (189) and takes Antiphon 1 as his test case; for him the risk was that the intense affect of tragedy would seem tasteless to jurors, who "did not want to be treated to a spectacle too reminiscent of tragedy" and showed their displeasure "by derisive hooting and then their vote" (190). Such speculation presupposes that Antiphon's client lost his case, but there is no evidence for this.

sion. In Antiphon's speech *Against the Stepmother*, the speaker tries to use tragedy to prejudge the question of his stepmother's intention and to argue for strict liability: *drasanta* (or in this case *drasasan*) *pathein*. But in asking his jurors to think in tragic terms about the law he opens the possibility that they will feel more pity for the stepmother's intent than fear at her actual crime. The tragic allusions he hopes will allow him to cut neatly through the case's questions of liability instead risk introducing a tragic ambivalence that will culminate not in a decisive verdict but in *aporia*.¹⁶



Writing in the last third of the fifth century, Antiphon is our earliest forensic logographer and may in fact have been the first person to write out speeches for delivery in court.¹⁷ He was also a judicial theorist and along with three of his forensic speeches, we have preserved one of his theoretical works, the Tetralogies. These "cases," each consisting of four paired speeches, were probably not written for delivery in court but instead as models for teaching rhetorical techniques or for analyzing different types of forensic argument.¹⁸ They are theoretical analyses of the sort of situations that occurred and arguments that were used in real court cases, but unlike Aristotle's analysis of

¹⁶ Despite its generic distaste for ambiguity, forensic oratory is full of such counter-currents: images, allusions, or arguments that seem to derail the rhetorical trajectory of the text and undermine the speaker's ostensible interests. These errant elements are symptoms not of some subterranean purpose on the part of the speaker or logographer, but rather of the fertility of language, which by nature produces a surfeit of meaning that exceeds any individual speaker's aims: in the course of saying what we mean we always say more than we mean to (see especially Derrida 1988). I explore the effects of such linguistic hyper-productivity in juridical discourse in Wohl 2010.

¹⁷ On the identity of Antiphon, see Hermog. *Id.* (fr. 87A2 DK); Gagarin 2002: 7, 38–52. Gagarin and most other scholars believe that the character that Xenophon (*Mem.* 1.6.1–15) refers to as "Antiphon the Sophist" (presumably author of the sophistical tracts *On Truth* and *On Concord*) is the same man as Antiphon of Rhamnus, the orator. Cf. Morrison 1961; Decleva Caizzi 1969: 71–83; Avery 1982; Gagarin 1990b; Edwards 1998. The argument against this "unitarian" position is made most forcefully by Pendrick 1987; Pendrick 1993; Pendrick 2002: 1–26. I incline toward the former position, although my argument here does not depend on it.

¹⁸ Some have doubted the traditional attribution of the Tetralogies to Antiphon (see especially Sealey 1984a; Carawan 1993; Carawan 1998: 171–215), but Decleva Caizzi 1969: 11–30 and Gagarin 1997: 7–9; Gagarin 2002: 52–62 convincingly show that their stylistic and legal differences from the forensic cases (Antiphon 1, 5, 6) are adequately explained by their different function and setting. On the purpose and nature of the Tetralogies, see further Dover 1950: 56–59; Eucken 1996; Carawan 1998: 171–215; Gagarin 2002: 103–9.

forensic practice in the *Rhetoric*, for instance, they are presented in the form, setting, and language of the courts. We might say that they offer a theoretical *mimēsis* of legal *praxis*, an imaginative staging—neither fully theatrical nor fully forensic, but perhaps somewhere in between—of legal ideas and problems.

Intention takes center stage in the second of these cases, which presents a tragic tale of unintended consequences. A youth practicing javelin-throwing has accidentally struck and killed a boy who ran out onto the field to collect the javelins. The plaintiff and the defendant, fathers of the dead boy and the youth, respectively, both agree that the youth struck the boy and both agree that he did so unintentionally. The question then becomes what it means to act unintentionally and who is liable for an unintentional act. The second Tetralogy's fictional scenario illustrates not only Antiphon's interest in the question of intention, but also his tendency to appeal to tragedy as a way of thinking through it.¹⁹

The plaintiff argues, as we might expect, for strict liability. His one-paragraph opening speech has the brevity of common-sense: his son was killed by the javelin his opponent's son threw. He recognizes that the youth did not mean to kill his son (ἐκόντα μὲν οὖν οὐκ ἐπικαλῶ ἀποκτεῖναι, ἄκοντα δέ), but that, he says, does not change the result or lessen his own grief (1.1). As he says in his second speech, "He killed my son unintentionally no less than he would have if he had intended to Who was the one who threw the javelin? To whom does the murder belong? ... To me the matter of his death isn't obscure but all too clear" (3.7). For this father, the deed is defined by its result and causality automatically entails culpability. Conflating the two meanings of *ballein* (to throw and to strike), he argues that since the strike killed his son the thrower is necessarily liable, regardless of his intent, for the strike was fatal even if the throw was not (3.5).

This grieving father develops his case with tropes and diction borrowed from the tragic stage. His son's death is a disaster that "weighs on his heart" (ἐνθύμιον, 1.2), an adjective unparalleled in forensic oratory but common in tragedy. Missing its target, he says, the javelin instead hit "a target wretched and bitter for me" (ἄθλιον καὶ πικρὸν σκοπὸν ἐμοί, 3.6), another tragic locution.

¹⁹ These cases may have explored the debates of the day. Plutarch reports that "When a pentathlete accidentally struck Epitimios the Pharsalian with a javelin and killed him, Pericles spent the whole day debating with Protagoras whether the most correct argument should assign liability for the death to the javelin, the thrower, or the organizer of the games" (Plut. *Per.* 36.3). Carawan 1998: 180–81 believes the second Tetralogy was inspired by this same case, and in fact that each of the three Tetralogies was based on a famous or typical case (Carawan 1993: 239–40).

Now he shivers in dread of the “harshness of the *daimōn*” (τῇ δὲ σκληρότητι τοῦ δαίμονος, 3.4), lest he not only lose his son but also see him blamed for his own death.²⁰ His model of justice, too, is tragic. The murder has left a *miasma*, a blood pollution that will persist until the crime is finally avenged. Thus the boy’s father ends his first speech by begging the jurors to pity a parent’s loss and a child’s untimely death, and “not to overlook the fact that the whole city has been polluted (μιαυνομένην) by this man” (1.2). If they fail to convict the youth, he warns them in his second speech, the stain of pollution will fall upon them (3.11).

The notion of blood pollution is extremely rare in real courtroom speeches, but it is a primary mechanism of and metaphor for justice in tragedy.²¹ Pollution represents in material form the idea that responsibility for violent acts attaches to their agents without consideration of their intent. Thus in the *Oresteia* the murder of his mother stains Orestes with a pollution so indelible that even the priestess at Delphi cannot fully erase it, even though his action was commanded by Apollo himself: “For what purification is there for blood once fallen on the ground?” (*Cho.* 48; cf. 66–74, *Ag.* 1018–20). *Miasma* thus operates according to the same logic of strict liability as Antiphon’s plaintiff propounds in his first speech. Moreover, in tragedy *miasma* is prescriptive as well as descriptive; it demands punishment of the responsible agent: “There is a law that drops of blood shed to the ground demand more blood” (*Cho.* 400–2; cf. 312–13). With his allusions to *miasma*, Antiphon’s plaintiff appeals to the jurors as experienced theater-goers and invites them to read his situation as a tragic plot, missing only the final act of just retribution: *drasanta pathein*.²²

²⁰ Ἐνθῦμιον: cf. Soph. *OT* 739, *Trach.* 109; Eur. *HF* 722, *Ion* 1347. Ἀθλιον καὶ πικρὸν σκοπὸν ἐμοί: it is the use of the metaphor here (plus the pathetic dative) more than the specific vocabulary that evokes tragedy, but compare the juxtaposition of *pikros* and *athlios* at Eur. *Hipp.* 787, *Or.* 952. Τῇ δὲ σκληρότητι τοῦ δαίμονος: Eur. *Alc.* 500–501; Xenocles trag. fr. 2.1; Ar. *Nub.* 1264 (a parody of the Xenocles passage). The defendant also uses tragic idiom. He was forced into court, he says, by “harsh necessity” (σκληρὰς ἀνάγκης, 2.2): cf. Soph. *OC* 774, 1406 and Decleva Caizzi 1969: 215–16 on *Tet.* 2.2.2.

²¹ As Parker 1983: 130 comments, “It seems that the author of the Tetralogies has taken the doctrine of pollution to a theoretical extreme some way beyond the level of unease that in practice it created.” Carawan 1998: 197 and Gagarin 2002: 58, 100 suggest that Antiphon borrows this language of pollution from drama. On Antiphon’s treatment of *miasma*, see further Decleva Caizzi 1969: 25–31; Parker 1983: 104–10; Williams 1993: 60–63; Carawan 1993: 249–54; Carawan 1998: 192–98; Gagarin 2002: 109–12; Bendlin 2007: 185. On the pollution from homicide, see Moulinier 1952: 81–87, 176–212; Adkins 1960: 86–115; MacDowell 1963: 3–5, 141–50; Gagarin 1981: 164–67; Parker 1983: 104–30; Sealey 1984a: 74–75; Arnaoutoglou 1993; Carawan 1998: 17–19, 192–97; Bendlin 2007: 185–88.

²² Gagarin 2002: 112: “The idea of pollution [in Antiphon] thus creates a world of strict liability or ‘whole person’ responsibility that has its roots in the world of myth and

The defendant, the father of the javelin-throwing youth, also argues for strict liability, but he turns the argument on its head. Both sides agree that the death was unintentional, he begins, and that responsibility rests with the agent whose unintentional action resulted in the death. But that wasn't his son—he intended to throw the javelin at the target and he did so—but the boy himself. He erred in running out on the field when he did and he has been punished for his error with his death. This speaker too uses tragic language to argue this counter-intuitive point, the language of *hamartia* (2.8):

... ἀκουσίως δὲ ἀμαρτῶν εἰς ἑαυτὸν οἰκείαις συμφοραῖς κέχρηται, τῆς δ' ἀμαρτίας τετιμωρημένος ἑαυτὸν ἔχει τὴν δίκην, οὐ συνηδομένων μὲν οὐδὲ συνεθελόντων ἡμῶν, συναλγούντων δὲ καὶ συλλυπούμενων. τῆς δὲ ἀμαρτίας εἰς τοῦτον ἡκούσης, τό τ' ἔργον οὐχ ἡμέτερον ἀλλὰ τοῦ ἑξαμαρτόντος ἐστί, τό τε πάθος εἰς τὸν δράσαντα ἐλθὼν ἡμᾶς μὲν ἀπολύει τῆς αἰτίας, τὸν δὲ δράσαντα δικαίως ἅμα τῇ ἀμαρτίᾳ τετιμώρηται.

He erred unintentionally toward himself and brought on his own suffering. He has thus paid the penalty, avenging himself for his error, though I wish it weren't so and I grieve for him. But since the error fell on him, the deed belongs not to us but to the one who committed the error. The suffering that comes to the agent clears us of liability, and has punished the doer justly at the very moment of his error.

The same logic of intentionality that makes his son innocent makes the dead boy guilty of his own murder. If the death is defined as an unintended act, then the agent who acted unintentionally must bear responsibility.

That paradox of responsibility without intentionality is glossed as *hamartia*. This passage and, indeed, the entire case is an extended pun on the meaning of *hamartia*: *hamartia*'s metaphorical mis-hit between intention and results is staged as a literal missing of the target, the root meaning of the word.²³ The case also enacts one of Aristotle's paradigmatic examples of *hamartia*, hitting (*ballein*) the wrong person or with the wrong weapon or with unintended results (*Eth. Nic.* 1135b13–16). *Hamartia* intervenes between throw (*ballein*) and strike (*ballein*), breaking the causal chain between intention and results. For Aristotle, *hamartia* evoked the tragic theater: his second example is a man striking his father without knowing that it is his father (1135a28–30), an apparent allusion to Oedipus.²⁴ So, too, in this passage, the boy's unintentional

religion." The defendant's counter-argument is that the homicide does not leave behind a pollution (προστροφήιον, 4.9) since the boy was responsible for his own death and has already paid the fatal consequences of his action.

²³ For instances of this usage, see Bremer 1969: 30–59.

²⁴ Sorabji 1980: 295 (although he resists conflating the meaning of *hamartia* in this passage with that in the *Poetics*) and Belfiore 1992: 167 make this connection.

error elicits sympathy (συναλγούντων δὲ καὶ συλλυπούμενων)—a response akin to the pity Aristotle associates with *hamartia* in the *Poetics*—but also recalls the classic formulation of tragic responsibility, *drasanta pathein*: “The suffering that comes to the agent (τό τε πάθος εἰς τὸν δράσαντα ἐλθόν) clears us of liability.”²⁵ Incorporating a tragic notion of error and responsibility, Antiphon pushes to its logical end the argument that holds an agent liable for unintended acts. The pitiable conclusion is that the boy is liable for his own death: the doer has suffered.

Antiphon thus uses tragedy and its dynamics of *miasma* and *hamartia* to think theoretically about the problem of legal responsibility. That thinking does not lead to a decision in the Tetralogies, but that is not their goal. They are thought experiments, not real cases, and they end not in a verdict but in jurisprudential aporia. In fact, these tragic ideas, even as they allow Antiphon to articulate nuanced theories of volition and responsibility, precipitate the aporia. *Hamartia* in this case names the paradox of culpability without intention but does not resolve it: collapsing the metaphorical into the literal, the case reenacts without working through the difficult issues it raises. *Miasma*, likewise, does not offer a solution to the case’s problem but only raises the stakes. In this dramatic enactment of legal theory, tragic justice may be incorporated precisely in order to produce a tragic aporia, to generate the sort of insoluble conundrums that, as Vernant showed, are so conducive to thought in tragedy.



Antiphon also uses tragedy to articulate the issue of liability in his real forensic speeches. Antiphon 1 *Against the Stepmother* was composed for a murder trial to be delivered before the Areopagus. The speaker presents a simple brief for the prosecution: his father was killed when he was a boy, poisoned (he claims) by his stepmother; now he has reached adulthood and is prosecuting her for intentional homicide. As is typical, we do not have the opposing speech, but we can infer from this speech that the opposing litigants were the speaker’s half-brothers, the stepmother’s sons, and that their position may have been that their mother did not mean to poison their father but merely to administer a love potion (9). As so often with Athenian forensic oratory, the real issues of the case (to say nothing of the facts) are hard to determine, but it

²⁵ Konstan 2001: 58–60 distinguishes the shared feeling expressed by *sunalgein* and *sullupeisthai* from *eleos* in Aristotle’s sense, which he argues implies a discriminating distance between pitier and pitied. *Eleos*, as he notes (53–54), is the word most often used for juridical pity and if he is right that it is reserved for unmerited suffering it makes sense that the defendant does not use it here: his sympathy for the dead boy does not lead him to a pity that would declare him innocent.

appears that the speaker is making a double charge: first, that the stepmother planned the administration of the drug and, second, that she did so knowing and intending its fatal result. Intention is thus a key element of his case.²⁶ But intention is difficult to ascertain. The stepmother herself could not be put on the stand: women could not testify in court in person, and at this period even their written testimony was not admissible. The family slaves could in theory have provided evidence: the speaker claims they would have testified to a prior instance in which the stepmother had been caught drugging his father (9), but when he demanded they be interrogated under torture his half-brothers had refused to hand them over (6–13). In the absence of hard proof, rhetoric must suffice to convince the jurors that the father's death was a deliberate murder and not an unfortunate accident.²⁷

Against his opponents' claim that their mother aimed only to regain her husband's love, the speaker insists that she intended, desired, and planned the murder. Again and again he hammers the point: "I will show, jurors, that their mother murdered my father by plotting and premeditation" (ἐξ ἐπιβουλῆς καὶ προβουλῆς, 3); "she is responsible as the one who devised the act and carried it out" (ἡ δ' αἰτία τε ἦδη καὶ ἐνθυμηθεῖσα καὶ χειρουργήσασα, 20); "she killed him voluntarily and with malice aforethought" (ἐκουσίως καὶ βουλευσασα, 26). In this repeated insistence on (and conflation of) the stepmother's volition, deliberation, and foreknowledge, the speaker is not only trying to counter a potential defense that the death was an accident; he also needs to address the awkward fact that his stepmother didn't actually administer the drug herself.²⁸ This is the story the speaker tells. His father was entertaining

²⁶ Gagarin 2002: 146–52 argues that the issue is not intent but planning, that is, the stepmother's conduct not her motive. Cf. Carawan 2000: 211–15, who proposes that knowledge of lethal effect, and not the intent to kill, determined liability in Athenian law. In this case, knowledge, agency, and intent are (purposely) hard to disentangle. Thus I agree with Gagarin that the speaker's primary burden of proof is that the stepmother planned the fatal dose, not that she did so with specific intent to kill her husband, and that this charge, if proved, may well have been damning enough for an Athenian jury. But his vague language of volition allows him simultaneously to insinuate her murderous intent (a natural reading of, e.g., τῷ πατρὶ τῷ ἡμετέρῳ θάνατον μηχανωμένην φαρμάκοις, 9) and in this way to counter a possible defense of accidental homicide. On the complex question of liability in this case, see also MacDowell 1963: 62–63; Carawan 1998: 216–50.

²⁷ On narrative as a mode of legal argumentation, see Johnstone 1999: 46–69; Gagarin 2003 (esp. 204–6 on this speech).

²⁸ Gagarin 1990a shows convincingly that there was no separate legal category of *bouleusis* (planning), and that those who planned a murder were charged simply with *phonos*, homicide: "planning is treated simply as one way of committing homicide, like poisoning, and it is considered just as serious as the actual killing" (92). Hence the setting

a friend named Philoneus, who had with him his *pallakē* (mistress), whom he was about to abandon and send to a brothel (14). While the two gentlemen dined, the stepmother befriended the *pallakē* and took advantage of the girl's desperate situation; she told her that she, too, had been wronged by her husband, but she had a remedy for both of them, if only the girl would do her bidding (15). By this deception, she persuaded the *pallakē* to administer the poison, thinking it was a love potion.

This vivid narrative paints the stepmother as the criminal mastermind behind the scheme; the *pallakē* (who is probably a slave) merely follows and executes the stepmother's plan (15, 17).²⁹ It is important to note, however, that the speaker provides no actual evidence for this account. He never says how he found out about the private conversation between the two women or their respective roles in the murder. There is a distinct possibility that he is simply fabricating the entire episode, and with it both the stepmother's motive and her responsibility for the murder. In place of proof, the speaker makes his legal argument by way of a literary allusion: he calls the stepmother Clytemnestra. The *pallakē* gave the men the poison, he says, "following the advice of Clytemnestra, my opponent's mother" (ταῖς τῆς Κλυταιμνήστρας τῆς τούτου μητρὸς ταῖς ὑποθήκαις ἅμα διακονοῦσαν, 17).

That this allusion is not just mythic but specifically tragic is suggested by the tragic diction that peppers the speech. The father's death, for instance, is staged in a tragic idiom, as he and Philoneus sacrifice to Zeus of the Household, and drink the fatal draught in the libation they offer to the gods with a prayer "that was to remain unfulfilled" (18–19). So he dies "an impious and inglorious death (ἄθέως καὶ ἀκλεῶς) before his fated time, leaving life by the hand he least should have" (21). This is language an Athenian would recognize from the Theater of Dionysus.³⁰ The stepmother is a tragic

of this case in the Areopagus, which heard cases of intentional homicide. On planning and the rhetoric of conspiracy in the speech, see also Roisman 2006: 11–13.

²⁹ Gagarin 1997: 115 on section 16 notes that the stepmother is the subject of all the main verbs in this narrative, and the *pallakē* either the object or subject of subordinate verbs. "This reinforces the impression that the stepmother is the primary agent, the *pallakē* her subordinate." The status of this *pallakē* is disputed, but I assume that she is a slave. The argument of Bushala 1969 that she is a free woman is refuted by Carey 1988. Even if, as Bushala claims, many *pallakai* were free non-citizens, it is unlikely that a free woman would be sold to a brothel. Cf. Din. 1.23.7, where an individual is sentenced to death for putting a (presumably free) Olynthian woman in a brothel.

³⁰ See also the image of *dikē* as a helmsman (13). Due 1980: 20–21 notes these and other tragic echoes in the speech. Cf. Bers 1994: 189, who remarks that this speech "shows the most tragic colouring of all the preserved speeches," and posits that Antiphon was

Clytemnestra. Indeed, perhaps we can be even more specific and see her as the Aeschylean Clytemnestra. Not only was Aeschylus's version of the myth paradigmatic for Athenians, but his *Oresteia* makes for particularly strong legal precedent because it is itself elaborated in juridical terms.³¹ The lines of influence between the theater and courts run in both directions, and in Antiphon's literary allusion we see the law borrowing from a tragedy that itself borrowed heavily from the law.

The opening lines of the speech cleverly weave together the forensic and the theatrical: "Young and inexperienced in the law as I am, jurors, I face a terrible double-bind in this case: either I fail to prosecute my father's murderers when he commanded me to do so, or in the course of prosecuting I am forced to contend against those I least should, my half-brothers and their mother" (1). This opening combines the forensic trope of the inexperienced litigant with the terrible aporia of a tragic Orestes, forced to choose between disobeying his father's dying command and fighting against his own kin. The speaker subtly presses this parallel to Orestes throughout the speech: following the demands of justice and filial duty, he must kill his (step)mother to avenge his father. The speech ends with a scene of the father summoning the speaker, then just a boy, to his deathbed and commanding him to take vengeance for the injustice he had suffered (30), a task for which he repeatedly entreats the jurors' aid. Thus he presents this case before the Areopagus as a replay of Orestes' trial in *Eumenides* and hopes for a similarly positive outcome.

By inviting general comparison of his case to the *Oresteia* the speaker tries to shape the way the jurors receive his brief, but his specific comparison of his stepmother to Clytemnestra also has a more focused aim. By this

"driven to compensatory stylistic extremes" (189) by the weakness of his case. Gagarin 2002: 147, by contrast, suggests that an audience familiar with tragedy's depiction of the desperate remedies of women in love would be naturally sympathetic toward the speaker's narrative.

³¹ On the trilogy's use of juridical language and themes, see Goldhill 1984: 208–83; Goldhill 1986: 33–56; Cohen 1986; McClure 1997. For the paradigmatic status of the *Oresteia* in antiquity, see Wilson and Taplin 1993 and Easterling 2005, who documents the frequent quotation of the *Agamemnon* in other fifth-century drama (30–33). Artistic evidence also shows the pervasive influence of Aeschylus's version of the myth: see Prag 1985, esp. 48–51, 53, 57. Antiphon 1 was probably composed sometime between 420 and 411, the Tetralogies somewhat earlier, perhaps as early as 430. This means that in theory Sophocles' and Euripides' *Electras*, probably both produced in the 410s, might also have served as models for Antiphon's Clytemnestra, but they, too, build on and refer to Aeschylus's treatment: see Davies 1998, with further references. Antiphon's allusion to Clytemnestra would have been all the more pointed if Aeschylus's *Oresteia* had been recently revived: on this possibility see Bain 1977: 111–13; Davies 1998: 393.

explicit tragic allusion the speaker hopes both to prejudge and to preempt the question of his stepmother's intent. In Aeschylus's version of the myth, Clytemnestra's intent is never much in doubt. In a trilogy notorious for its moral uncertainties, this much is clear: Clytemnestra is guilty. She premeditated her husband's murder and desired its outcome. She herself wielded the fatal blow, a fact she not only confesses but boasts of, in a speech that stands as a paradigm of perversity (1377–92):

ἐμοὶ δ' ἄγων ὅδ' οὐκ ἀφρόντιστος πάλαι
 νείκης παλαιᾶς ἦλθε, σὺν χρόνῳ γε μήν·
 ἔστηκα δ' ἔνθ' ἔπαισ' ἐπ' ἐξεργασμένοις.
 οὕτω δ' ἔπραξα—καὶ τὰδ' οὐκ ἄρνήσομαι—
 ὥς μήτε φεύγειν μήτ' ἀμύνεσθαι μόρον.
 ἄπειρον ἀμφίβληστρον, ὥσπερ ἰχθύων,
 περιστιχίζω, πλοῦτον εἵματος κακόν,
 παῖω δέ νιν δίς, κὰν δυοῖν οἰώγμασιν
 μεθῆκεν αὐτοῦ κῶλα· καὶ πεπτωκότι
 τρίτην ἐπενδίδωμι, τοῦ κατὰ χθονὸς
 Διὸς, νεκρῶν σωτῆρος εὐκταίαν χάριν.
 οὕτω τὸν αὐτοῦ θυμὸν ὀρμαίνει πεσών,
 κάκφυσιῶν ὀξεῖαν αἵματος σφαγὴν
 βάλλει μ' ἑρεμνῇ ψακάδι φοινίας δρόσου,
 χαίρουσαν οὐδὲν ἦσσαν ἢ διοσδότῳ
 γάνει σπορητὸς κάλυκος ἐν λοχεύμασιν.

This contest of an ancient quarrel has long been in my thoughts, and with time it has come to pass. I stand where I struck him, the site of the very deed. I accomplished this—I will not deny it—so that he could not escape or ward off death. In a boundless net, as for catching fish, I cover him, an evil wealth of cloth, and I strike him twice. He cries out twice and his limbs give way. And as he falls I give him the third blow, a votive gift to Zeus beneath the earth, savior of corpses. So he falls and gasps away his life; and blowing out a sharp wounding of blood, he hits me with a black drizzle of bloody dew, and I rejoice no less than the crop rejoices in the god-given rain at the bursting of the bud.

The sadism of this famous speech, its perversion of ritual, natural, and sexual imagery, overdetermines the question of Clytemnestra's responsibility. Not only did she plan her husband's death, but she longed for it and relished it. The murder is for her at once a sacrament and an orgasm.³²

³² On this speech, see Peradotto 1964: 380; Zeitlin 1965: 473–74; Moles 1979; O'Daly 1985. Foley 2001: 204–5 contrasts Clytemnestra's perverted language here to Orestes' juridical language in his “defense speech” in *Choephoroe*. She astutely observes that we are not shown Clytemnestra's decision-making process as we are Orestes'.

Through speeches like this, Aeschylus preempts the claim that Clytemnestra acted with justice. This is important, because the tradition and indeed the trilogy itself give her material for such a defense.³³ Agamemnon's death marks the convergence of numerous vectors of causality. His sacrifice of Iphigeneia is represented as an abhorrent sacrilege that reiterates the still-unavenged murder of Thyestes' children by his brother Atreus, Agamemnon's father. A familial cycle of *hybris* and *atē* going back to Tantalus is at work in Agamemnon's death; the Trojan War is also a contributing factor for, as the chorus say, the gods do not fail to mark the killers of many (Ag. 461–62).³⁴ But all these multiple causes are overshadowed on stage by the monstrous figure of Clytemnestra. After the murder, she will not deny her responsibility but will claim that she acted with *dikē*: "This is Agamemnon," she proclaims, "my husband and a corpse, the work of my right hand, a just craftsman" (δικαίως τέκτονος, 1404–6). She will use juridical language to suggest that his death is a just verdict upon Agamemnon for his sacrifice of Iphigeneia, whose blood is still on his hands and calls for expiation (1412–21, 1431–33, 1521–29). Clytemnestra will also suggest that she was herself merely the human agent for the divine curse on Agamemnon's house (1497–1504):

αὔχεις εἶναι τόδε τοῦργον ἐμόν·
 μηδ' ἐπιλεχθῆς
 Ἀγαμεμνονίαν εἶναι μ' ἄλοχον.
 φανταζόμενος δὲ γυναικὶ νεκροῦ
 τοῦδ' ὁ παλαιὸς δριμύς ἀλάστωρ
 Ἀτρέως χαλεποῦ θοινατῆρος
 τόνδ' ἀπέτεισεν,
 τέλεον νεαροῖς ἐπιθύσας.

³³ Clytemnestra's action is represented in the play as driven by multiple motives, both legitimate (the death of Iphigeneia) and illegitimate (Agamemnon's relationship with Cassandra or her own with Aegisthus). Repeatedly the play yokes the illegitimate motives to the legitimate, with the effect of undermining Clytemnestra's claims to justice. At 1431–47, for example, the *themis* of her oath by *dikē*, *atē*, and the *erinus* of her daughter is undercut by her mention of Aegisthus, "the fire on my hearth," and her abusive (and, if the text is secure, obscene) reference to Cassandra. "And so the arguments which Aeschylus gives Clytemnestra take away with one hand whatever credibility the other has provided" (O'Daly 1985: 8). On Clytemnestra's motives, see further Winnington-Ingram 1983: 101–14; March 1987: 81–98; Neuburg 1991: 59–62; Zeitlin 1994: 167, and compare Eur. *El.* 1011–50, where Clytemnestra presents the case for her defense, a case the chorus deem "just, but shamefully so" (1051).

³⁴ Lloyd-Jones 1962 is the classic study. See also Winnington-Ingram 1983: 78–100.

You proclaim that the deed is mine.
 But do not consider me
 the wife of Agamemnon.
 But likening itself to the wife of this corpse,
 the fierce ancient avenger
 of Atreus, terrible banqueter,
 has taken vengeance on him,
 sacrificing a grown man on top of children.

She does not disown her responsibility for the murder, however, nor does the chorus allow her to. They acknowledge the influence of the *daimōn* “that works its heart-rending power through women” (1468–71) and concede that the *alastōr* may have been her accomplice (συλλήπτωρ, 1507). But they insist that she is still liable for the act: “Who will testify that you are not responsible (ἀναίτιος) for this murder?” (1505–6).³⁵ Acting in concert with forces beyond her individual will and agency—not only the “*daimōn* heavy with wrath” but ultimately Zeus himself (1481–88)—she nonetheless comes to bear the full responsibility for Agamemnon’s overdetermined death and must pay the price for her act: “This prevails so long as Zeus is on his throne: that the doer suffer (παθεῖν τὸν ἔρξαντα). For this is the law” (1564). And so it is celebrated as the fulfillment of *dikē* and divine will when, in *Choephoroe*, Orestes avenges his father by killing her: “Loud cries Dikē, exacting what is owed: for murderous blow let murderous blow be paid. The doer must suffer (δράσαντα παθεῖν): so goes the thrice-venerable saying” (*Cho.* 310–14).

The demonization of Clytemnestra (effected in part through the explicit staging of her intent) allows Aeschylus to simplify the complex and overdetermined problem of responsibility, reducing a penumbra of forces, human and divine, to a single liable agent whose punishment will allow the trilogy to reach its ultimate resolution. The figure who in *Agamemnon* stands at the intersection of multiple trajectories of guilt (some of which mitigate, if not exonerate, her own) by *Choephoroe* becomes a criminal pure and simple, a regicide and husband-killer, a monstrous embodiment of a mythic female

³⁵ Neuburg 1991 argues convincingly against the view that Clytemnestra here seeks to disown responsibility for the murder. See also Bremer 1969: 128; O’Daly 1985, and the comments of Vernant on *ēthos* and *daimōn* in tragedy (1988b: 32–38, 45–48). Foley 2001: 211–34 offers a detailed and insightful discussion of Clytemnestra’s defense speech and the chorus’s response to it; see especially 217–21 on critical interpretation of lines 1497–1504: she reads the *alastōr* as “a daimonic incarnation of Clytemnestra’s relation to Aegisthus” (220) and not as an attempt to deny her agency in or liability for the murder. Of course, Aegisthus shares her guilt, but he is represented dramatically in both *Agamemnon* and *Choephoroe* as an adjunct to Clytemnestra.

murderousness (*Cho.* 585–651). It is this paradigm of unambiguous guilt that the speaker of Antiphon 1 wants to call to the jurors' minds when he names his stepmother Clytemnestra. By evoking the monstrous perversion of Clytemnestra's act he hopes to forestall any sympathy for the stepmother, "for how does she deserve pity from you or anyone else," he asks, "when she did not pity her own husband, but killed him without shame or scruple?" (27). Further, in comparing the stepmother to Aeschylus's Clytemnestra, he hopes to plant in the jurors' minds the idea not only that she committed the murder by her own hand (which he acknowledges in his own narrative that she did not) but that, like Aeschylus's queen, she premeditated the act and intended its lethal outcome. And even if she did not (since like any good lawyer, the speaker leaves himself a fall-back position), her intent is irrelevant since she still caused his death and, as the thrice-venerable saying goes, the doer must suffer.

The speaker uses the Aeschylean model simultaneously to prejudice the issue of his stepmother's intent and to preempt it, to rule it inadmissible. In so doing, he appropriates for his own case the legal sleight of hand that had secured Clytemnestra's posthumous conviction in Aeschylus's trilogy. The trial of Orestes in *Eumenides* does not so much answer the trilogy's questions of responsibility—Agamemnon's, Clytemnestra's, or Orestes'—as it supersedes them.³⁶ That case looks not to causes but to effects: it weighs a regicide against a matricide. The jury is split on this question but Athena's vote breaks their deadlock: the man's life is worth more than the woman's. This familiar gender hierarchy allows for a simplification of the trilogy's intractable quandaries of guilt and liability; this simplification is then sealed by a court's verdict. Thus tragic ambiguity is resolved by an appeal to the law and the closure of the legal verdict provides (after some finessing by the divine judge) for dramatic closure.

Antiphon hopes to take from the *Oresteia* a decisive resolution that it itself took from the law. The speaker appeals to the logic behind Athena's judgment when he presents a vote to avenge his father as a vote to uphold the law. "I beg you, jurors, first to avenge your own laws which you have received from the gods and your ancestors and by which you judge convictions just as they did; and secondly to avenge the dead man, and simultaneously to help me, since I am left all alone" (3; cf. 24). Yoking the rule of law to paternal authority, he puts forward the same case as Aeschylus's Apollo and hopes that the jury will reach the same verdict in this trial as Athena did in Orestes' trial.



³⁶ See especially Zeitlin 1994.

The speaker thus wields Aeschylus's tragedy as a knife to cut through his case's questions of intention and liability. Through highly selective use of the *Oresteia*, he gets Aeschylus to make his legal argument for him. He ignores the myriad ambiguities of the end of *Eumenides*—the deadlock of the jury, Athena's thinly veiled threats of violence, Apollo's thinly veiled bribes, the blatant bias of the final verdict—and instead offers the tragedy as an unambiguous model for indisputable liability. But the strategy may prove less straightforward than he anticipates. Not only is *Eumenides* itself a tricky precedent, but in asking his jury to apply a tragic framework to his case Antiphon's speaker risks evoking another, more complex and more complicating tragic paradigm. While he explicitly alludes to the *Oresteia*, the speaker's narrative is in its actual details closer to Sophocles' *Trachiniae*. In *Trachiniae*, the heroine Deianira fears she is losing the love of her husband Heracles, who she has just learned is bringing his latest paramour, Iole, home to live with them. In despair, Deianira remembers a magic potion, ostensibly a love charm, given to her many years before by the centaur Nessus. She determines to use it to save her marriage, rubbing it on a robe which she sends to Heracles. But the love-charm turns out to be a deadly poison, and when she realizes that she has murdered her husband, she kills herself.³⁷

Sophocles' play resembles a legal scenario mentioned in the fourth-century Aristotelian *Magna Moralia*. That text describes a case of poisoning in which the woman is acquitted because she thought the poison was a love charm and therefore did not kill her husband intentionally (ἐκ προνοίας, ἐκούσιον, μετὰ δαυοίας, 1188b29–38).³⁸ We cannot know whether such a trial actually took

³⁷ The date of *Trachiniae* is highly uncertain. If Mitchell-Boyask 2008: 67–104 is right in dating it to the 420s (instead of the 440s, as others have proposed) that might increase the probability that Antiphon's audience would have noticed the parallels, but neither date vitiates that possibility nor proves it as a fact. The argument for intertextual allusion can be based only on textual potentialities, not historical certainties. Even if we had vastly more surviving evidence than we do, we could not know whether Antiphon's jurors made a connection to Sophocles' play and if so what effect that connection had on them. The same is true for the connection to the *Oresteia*. That allusion is much more explicit, but we still cannot know whether Antiphon's jurors (individually or collectively) "got" it or how they responded to it.

³⁸ I understand *pronoia* and *dianoia* to indicate intent, not premeditation: see Loomis 1972: 89–91, who argues that the premeditated and the intentional were interchangeable for the Greeks. Contra, Carawan 2000: 212–13, who believes that this case involves not intent but awareness of the probable outcome. His reading seems to me to rely on an overly restrictive understanding of *dianoia*, a word that covered as broad a semantic range as "intent" does in English, encompassing not only ratiocinative deliberation but also desire, will, aim, hope. Cf. Gagarin 2002: 148–49. On the Greek vocabulary of will

place (as the text claims) or whether this was a generic case-study for working through the problem of unintentional homicide. Either way, though, we can see an overlap between legal and tragic thinking. Sophocles stages a dramatic exploration of the same question at issue in that legal scenario, the question of the woman's subjective intent. Whereas in the *Oresteia*, Clytemnestra's motives are at first overdetermined and finally irrelevant, Deianira's intention and the question of her responsibility are at the dramatic heart of *Trachiniae*. Her action fits precisely Aristotle's definition of *hamartia*, an error committed in ignorance, which simultaneously entails culpability and deserves pity.³⁹ While the overt reference to Clytemnestra seems to promise a conviction in Antiphon's case of poisoning, the shadowy presence of Deianira adumbrates the lines of a defense. In invoking the former, the speaker risks conjuring the latter: by asking the jurors to hear his case with tragedy in mind, he risks arousing pity where he meant to provoke only fear and anger, and producing tragic aporia where he wanted the clear-cut catharsis of a death sentence.

more generally, see Gernet 1917: 350–88; Maschke 1968: 69–170; Dihle 1982: 20–31; Vernant 1988a: 53–69; Rickert 1989.

³⁹ Bremer 1969: 145–53. The precise nature of Deianira's *hamartia* and degree of her culpability are matters of wide disagreement. Although few have followed Errandonea's suggestion that Sophocles' heroine acted deliberately to kill her husband (Errandonea 1927), some have argued that she acted irrationally under the influence of *erōs* or her own passionate nature (e.g., Stinton 1975: 237; Winnington-Ingram 1980: 80–81, 86–89; Gasti 1993: 23); others that she deliberately employed a remedy that she knew to be risky in order to preserve her status in Heracles' *oikos* (Faraone 1994: 121–23, 128; Carawan 2000: 202–20). Carawan 2000 offers an interesting interpretation of the play from a legal perspective. He argues that the criterion for guilt in Athenian homicide law was not intent but awareness of the lethal effect of an act, and that by that measure Deianira, who knew—or at least might have known and made an effort to verify—that the potion was lethal, was culpable, even if her intent was innocent. I am not fully convinced by his interpretation of Athenian homicide law, which seems to me to rest on finer distinctions than the Greek vocabulary of intentionality supports (cf. the preceding note), but even if we grant that knowledge was the criterion in law, knowledge in tragedy is rarely so cut-and-dried. Tragic agents (one thinks of Oedipus) often operate in a murky space between knowledge and ignorance or between conscious and unconscious knowledge, which makes their actions difficult to judge by legal criteria (the same could, of course, be said about real life: see Brooks 2000). The impossibility of certain knowledge is a central problem in *Trachiniae*, as Lawrence 1978 and Heiden 1989 detail, and therefore if knowledge of likely results was the criterion for liability in law, as Carawan argues, this play would seem to problematize rather than reaffirm the audience's assumptions about Deianira's guilt. On Deianira's intention, knowledge, and culpability, see further Hester 1980; Ryzman 1991; Foley 2001: 95–97.

The *Poetics* famously proclaims that drama is an imitation not of individuals but of actions and life. *Ēthos*—character, psychology—is secondary for Aristotle, like color filling out a line drawing (*Poet.* 1450a38–b3). But in *Trachiniae*, line and color are mutually defining and *ēthos* is fundamental to the *praxis*.⁴⁰ Sophocles goes to great lengths to establish Deianira's state of mind. The play opens with an intimate subjective account of her situation. She tells of her unhappy life: wooed by the terrifying river-god Achelous, she was saved by Heracles, who wrestled Achelous for her hand. But marriage to Heracles has brought worries of its own: he is often away on his labors, and visits the house only occasionally, "like a farmer working an outlying field, who sees it only when he sows and reaps" (31–33); in the meantime, she lies awake "nurturing fear upon fear" (28). This opening speech establishes Deianira's attachment to Heracles: her relief when he defeated Achelous, her fear for his safety, her longing for his return. Of course, Aeschylus's Clytemnestra said similar things about her life in Agamemnon's absence, but in language so dripping with irony that it erodes the surface sentiment: "If my husband had suffered all the wounds reported here, he would have been more pierced than a fishing net," she says (Ag. 866–68); and "I know of the censorious gossip of pleasure with another man no more than I do of dipping bronze" (Ag. 611–12). Clytemnestra speaks in images that anticipate her crime. Deianira's imagery, by contrast, is primarily maternal: she nurtures fear (τρέφω, 28; cf. 108) and her worry for Heracles is like sharp birth-pains (πικρὰς ὠδίνας, 41–42).⁴¹ There is nothing in either the form or the content of the opening speech to suggest that Deianira is a Clytemnestra, "saying many things to suit the occasion" (Ag. 1372).

Starting with this prologue, Sophocles develops in Deianira a protagonist characterized by her reasonableness and desire to do what's right. When confronted with the beautiful young captive Iole, whom she learns Heracles has brought home as "his secret bedmate" (360), she responds not with resentment but with sympathy: "I am not a bad woman (γυναικὶ ... κακῇ)," she says, "or one who doesn't know the facts of human existence ... Whoever tries to box against Eros is a fool (οὐ καλῶς φρονεῖ), since Eros rules over the gods as he wishes and over me too—how not also over others like me? So if I blame my husband for falling prey to this disease, I would certainly be mad, or if I blame

⁴⁰ Sophocles was recognized in antiquity as a master of *ethopoia*: *Vita Soph.* 21; Easterling 1977. On Aristotle's theory of tragic character, see Jones 1962; Halliwell 1986: 138–67; Goldhill 1990: 118–22; Belfiore 1992: 83–110. Foley 2001: 109–23 cautions about the difficulties of applying Aristotle's theory to female characters.

⁴¹ On Clytemnestra's metaphors in these passages, see Goldhill 1986: 8–9, 14; McClure 1997; McClure 1999: 77–79, and on maternal imagery in *Trachiniae*, Wohl 1998: 32.

this girl, who is guilty of nothing shameful or wicked against me” (438–48; cf. 552). Deianira is praised for her restraint by both the chorus and the messenger Lichas, who remarks that her attitude is “humane and not ignoble” (φρονοῦσαν θνητὰ κοῦκ ἀγνώμονα, 473). In these scenes she is presented as a model of *sōphrosunē*, moderation, restraint, human empathy.

She carries these same qualities even into the fatal act itself (543–51):

ἐγὼ δὲ θυμοῦσθαι μὲν οὐκ ἐπίσταμαι
νοσοῦντι κείνῳ πολλὰ τῇδε τῇ νόσῳ·
τὸ δ’ αὖ ξυνοικεῖν τῇδ’ ὁμοῦ τις ἂν γυνή
δύναιτο, κοινωνοῦσα τῶν αὐτῶν γάμων;
ὁρῶ γὰρ ἥβην τὴν μὲν ἔρπουσαν πρόσω,
τὴν δὲ φθίνουσαν· ὧν ἀφαρπάζειν φιλεῖ
ὀφθαλμὸς ἄνθος, τῶν δ’ ὑπεκτρέπει πόδα·
ταῦτ’ οὖν φοβοῦμαι μὴ πόσις μὲν Ἡρακλῆς
ἐμὸς καλῆται, τῆς νεωτέρας δ’ ἀνὴρ.

I do not know how to be angry with Heracles,
suffering greatly as he is with this disease.
But to live together with this girl—what wife
could bear it, sharing the same marriage?
I see her youthful beauty blossoming
and mine fading. Men’s eyes love to pluck
the flower of youth; from age they turn away.
Thus I fear lest Heracles will be called my husband,
but will be the younger woman’s man.

She proposes a *lutērion lupēma*, a “pain that brings deliverance” (554), a desperate remedy but one she hopes is consistent with the prudence on which she prides herself, for “it is not right (καλὸν) for a sensible woman to be enraged” (552–53).

For a tragic audience familiar with the lethal machinations of women in love, this *lutērion lupēma* bodes ill, as does the secrecy and deception with which she carries out her plan.⁴² That foreboding is heightened when we learn that her remedy is the potion given her by Nessus. She tells how when she and Heracles were traveling to Trachis, Nessus ferried the two of them across the river Euenos on his back. Midstream he made a pass at Deianira. She cried out and Heracles shot the centaur from the river-bank with a poisoned arrow.

⁴² Carawan 2000: 207: “such remedies work by causing pain and suffering. It was a harsh but familiar reality”; cf. 211–216, and Faraone 1994: 119. The meaning and reading of the text in this passage are disputed: see Davies 1991 on 554 for the various conjectures and Lloyd-Jones and Wilson 1990 ad loc. for a defense of *lutērion lupēma*.

Before he died, the centaur invited her to gather from his wound some blood that was mixed with the hydra's poison from Heracles' arrow. He told her that this was a favor (ὀνήση) to her as his last ferry-passenger (570–71) and that it would act as “a charm (κηλητήριο) for Heracles, so that he will never look at another woman and love her more than you” (575–77).

Now, a sophisticated audience might condemn Deianira's naivité: no doubt she should have realized that a gift from an enemy was unlikely to be beneficent and that a potion derived from the venom of the Lernaean hydra was likely to be deadly.⁴³ But there is no indication in the play that she did make these connections—neither when she received the potion nor when she decided to use it—and this passage explains her credulity. The centaur offered a pretext for the gift and told her very clearly, as she recounts it, that the potion was a love charm; this, she says, is why she kept the potion for so many years and why she has decided to use it now (578).

The poet gives us no reason, then, to doubt the sincerity of her intention or her belief that the *pharmakon* was, in truth, a love potion. Some readers have questioned her intent, though, pointing to her own misgivings about using the charm. It is true that she hesitates to act and is nervous about the outcome. She caps the speech in which she lays out her plan with a plea for the chorus's advice (582–87):

κακὰς δὲ τόλμας μήτ' ἐπισταίμην ἐγὼ
μήτ' ἐκμάθοιμι, τάς τε τολμώσας στυγῶ.
φίλτροις δ' ἑάν πως τήνδ' ὑπερβαλώμεθα
τὴν παῖδα καὶ θέλκτροισι τοῖς ἐφ' Ἡρακλεῖ,
μεμηχάνηται τοῦργον, εἴ τι μὴ δοκῶ
πράσσειν μάταιον· εἰ δὲ μή, πεπαύσομαι.

May I never know or learn wicked daring:
I hate daring women.
If somehow I can defeat this girl with the love-charm
and the spells I lay on Heracles,
then the deed is devised—unless you think
I am acting rashly. If you do, I will stop.

But this hesitation, instead of suggesting that the murder was intentional, pinpoints the problem of tragic agency. Deianira cannot know until after

⁴³ Faraone 1994: 116–17. Heiden 1989: 86–89 details the ambiguities surrounding Nessus's philter and notes that Deianira deceives herself into thinking she can control the drug's effects only by ignoring these ambiguities; see also Scodel 1984: 35–36; Kraus 1991: 88–91; Bowman 1999.

the fact whether she will have performed a crime of wicked daring, whether her act was *mataion* or not. She must act, as we all must, in ignorance of the consequences of her actions. The chorus respond to her tentative proposal, “If there is any ground for confidence in acting you do not seem to us to have planned badly” (ἀλλ’ εἴ τις ἐστὶ πίστις ἐν τοῖς δρωμένοις, δοκεῖς παρ’ ἡμῖν οὐ βεβουλεῦσθαι κακῶς, 588–89). But the play suggests that there is no *pistis* in acting (δρωμένοις), only in having acted (δρῶσαν, 592), and a noble plan does not predict a positive outcome.⁴⁴ Knowledge inevitably comes too late: “Too late have I come to understand, when it is no longer useful,” Deianira laments. “I alone—if I am not deceived in my judgment—will destroy my husband” (710–13).

Deianira acts in ignorance: she is proved in time, as she puts it, to have “committed a great evil out of a noble hope” (κακὸν μέγ’ ἐκπράξας ἀπ’ ἐλπίδος καλῆς, 667). The play responds to this *hamartia* by holding her responsible for the *kakon mega* even as it offers pity for her futile *elpis kalē*. The chorus suggest that Deianira deserves forgiveness, for (they say) “anger is softer against those who err unwillingly” (τοῖς σφαλεῖσι μὴ ᾽ξέκουσίας, 727–28). But Deianira herself makes no excuses. She takes full responsibility for her action. If Heracles dies, she resolves, “I will die with him by the same blow; for to live with a base reputation is unbearable for one who prides herself on not being base by nature” (720–22). Her son Hyllus also initially holds her liable. Knowing only the results of her act and not the motives behind it, he condemns her in words that sound like Antiphon’s prosecution speech: “You have been caught planning and enacting this against my father,” he concludes, “and may Dikē and the Erinyes make you pay for it” (τοιαῦτα, μήτηρ, πατρὶ βουλευσας ἐμῷ καὶ δρῶσ’ ἐλήφθης, ὦν σε ποίνιμος Δίκη τείσαιτ’ Ἐρινύς τ’, 807–9). Calling down this divine retribution upon her in the name of Themis,

⁴⁴ Lawrence 1978: 297–98. Carawan 2000: 209–10 sees in this exchange the proof of Deianira’s culpability: she uses the drug without having tested it, despite her knowledge of its potentially lethal effects and the chorus’s warning that those effects can be ascertained only through testing; cf. Solmsen 1985 and Hall’s insightful discussion of deliberation and its failure in the play (2009). The chorus’s advice that “one must know from having acted” (ἀλλ’ εἰδέναι χρὴ δρῶσαν, 592) seems to me to work on two separate levels: on a prosaic level, they are advising Deianira to experiment with the drug before using it on Heracles; but on a broader thematic level, the phrase suggests the tragic *pathei mathos*. These two levels are in tension, for if the latter epistemology holds, then no amount of advance testing will secure *pistis en tois drōmenois*. To say that Deianira’s *hamartia* was her failure to verify the potency of the drug is thus akin to saying that Oedipus’s *hamartia* in the *OT* was to sleep with a woman old enough to be his mother: it may be true, but in a way that rather misses the point.

he acts as a prosecutor, as the chorus say (κατηγόρω, 814), convicting her of intentional and premeditated homicide and sentencing her to death. The audience knows that Hyllus is only half right in his accusation: she did carry out (δρῶσ') the deed but did not precisely plan (βουλεύσασ') it. But Deianira accepts her son's verdict and enforces his sentence: she goes into the house and kills herself on her marriage bed. She imposes upon herself the tragic law of strict liability: she acted and she suffers for it.

Yet if she condemns herself, the play in a sense acquits her posthumously and challenges the equity of its own judgment upon her. After Deianira's death, Heracles picks up the case for the prosecution. Bellowing in pain from the poison, he charges Deianira with having killed him and vows to pay back "the woman who did this" (τὴν γε δράσασαν τάδε, 1108; cf. 1125, 1137). He compares her to his mythic enemies, Hera, Eurystheus, and the legion monsters and beasts he has fought (1048–49, 1058–61, 1089–111); she has succeeded in destroying him as none of them could. Heracles does not care about her motives. For him it is the deed, with its agonizing results, that counts: she did the deed and must die for it. At the same time, though, he also implicitly accuses her of hostile intent by comparing her not only to Hera and his other enemies but also to Clytemnestra. Deianira wrapped him in a "woven net of the Furies" (Ερινύων ὕφαντὸν ἀμφίβληστρον, 1051–52) and "overpowered him in unspeakable fetters" (ἀφράστω τῇδε χειρωθεὶς πέδῃ, 1057).⁴⁵ These allusions to Aeschylus suggest that, as far as Heracles is concerned, Deianira is no different from Clytemnestra: her act was the same and her intention, to the extent that it even matters, may as well be the same. Clytemnestra thus functions here in precisely the same way she does in Antiphon 1, as a short-hand for deliberate crime and unequivocal guilt. By this allusion, Heracles convicts Deianira of intentional homicide and sentences her to death. *Drasasan pathein*.

But Heracles does not get the last word on the question of Deianira's guilt, and the allusions to the *Oresteia* ultimately serve to emphasize the differences between the two tragic heroines. Hyllus belatedly defends his mother, for when he sees her lifeless body, he realizes "that he had driven her to this deed with his anger: he learned too late from those within the house that she had acted unwillingly (ἄκουσα), because of Nessus" (933–35). His too-late learning echoes Deianira's own. He, too, acts in ignorance, and repeats his mother's

⁴⁵The cloth in which Clytemnestra wrapped Agamemnon before stabbing him is called an ἄπειρον ἀμφίβληστρον and ὕφαντοῖς ἐν πέπλοις Ἐρινύων (Ag. 1382, 1580) and later πέδαις δ' ἀχαλκεύτοις (Cho. 493; cf. 982). On these allusions, see Easterling 1982: 21; Scodel 1984: 31; March 1987: 70; Lee 2004: 269–70. Webster 1936 draws out most fully the contrast between the two heroines: see esp. 177 on these lines.

fatal *hamartia*.⁴⁶ But Hyllus's *anagnōrisis* leads him to a *peripeteia*: armed with hindsight, he defends his mother against his father's accusations. Listen to me, father, he says, what I ask of you is just (δίκαια, 1116): my mother erred unwillingly (ἤμαρτεν οὐχ ἔκουσία, 1123). She was wrong in thinking she was giving him a love potion and did wrong because she thought she was giving him a love potion (στέργημα γὰρ δοκοῦσα προσβαλεῖν σέθεν ἀπήμπλαχ', 1138–39). He does not deny that she caused his father's death but insists that "she erred in this entire matter, but from the best intent" (ἅπαν τὸ χρῆμ' ἤμαρτε χρηστὰ μωμένη, 1136).

This last line encapsulates the tragic paradox of *hamartia*: our responsibility for the unintended consequences of our actions, the inevitable gap between our intentions and the results which, being mortal, we cannot predict. The appropriate response to this very human limitation is necessarily ambivalent, Sophocles suggests: the doer must suffer, whether she acted intentionally or not, but in this play at least, her suffering merits our pity. Heracles demands that Hyllus hand over Deianira for punishment; he wants to see which Hyllus pities more, his father's lamentable (οἰκτρὸν) suffering or his mother's deserved punishment (ἐν δίκη κακούμενον, 1066–71). But Hyllus refuses this choice: he is pained by his father's agony (971–73, 992–93) but still makes his case for his mother's innocence (1114–39). Likewise, the chorus extend their pity to both protagonists. They shiver at Heracles' torment and lament his demise (851–55, 1044–45, 1112–13). But they also weep for Deianira's death, and cannot choose between these two disasters: "Which should I groan over first? In my misery it is hard to decide. One we already see in the house, the other we anticipate. It is the same to have trouble and to await it" (947–52). So, too, the play as a whole refutes Heracles' mutually exclusive allocation of pity and invites its audience to pity both him and Deianira: we see Heracles' agony with our own eyes and hear his anguished moaning; we are not shown Deianira's death but, as the Nurse tells the chorus, "if you were there near her and saw what she did you would certainly have pitied her" (κάρτ' ἂν ᾤκτισας, 896–97). Hyllus's summation in the final speech of the play—"no one can see what will come but things as they stand are pitiful for us (τὰ δὲ νῦν ἐστῶτ' οἰκτρὰ μὲν ἡμῖν), and shameful for the gods, and hardest of all for the man

⁴⁶ His act, like hers, is described as *ματαίως* (940; cf. 587). This word, which can imply futility, rashness, or wrongness, encapsulates the tragic problem of acting in the inevitable absence of foresight: "If someone counts two or more days ahead, he is *mataios*, for there is no tomorrow before one successfully makes it through the present day" (943–46). Heiden 1989: 101–24 shows that the attributions of blame to Deianira (Hyllus's, the chorus's, and her own) are part of the play's larger theme of the instability of knowledge and rhetoric.

undergoing the disaster” (1270–73)—seems to encompass the tragedies of both his parents in its pity for “things as they stand.”

For the chorus, pity for both protagonists makes it impossible to render a simple verdict in the case of Heracles’ murder—“in my misery it is hard to decide” (δύσκριτ’ ἔμοιγε δυστάνω, 949)—and complicates their assessment of Deianira’s guilt. In the third Stasimon, which falls between Hyllus’s report of the effects of the poison and the nurse’s report of Deianira’s suicide, the chorus for the first time recognize the meaning of the oracle and the larger framework of fate surrounding Heracles’ death. “Deceptive necessity” (832) has destroyed Heracles, but Deianira shares the blame. Foreseeing harm approaching her family, she did not hesitate to act: “She applied part (τὰ μὲν) herself, while another part (τὰ δ’), coming from a stranger’s design through a deathly meeting, she bemoans and sheds a tender flood of constant tears” (841–48). Just as the chorus of *Agamemnon* acknowledged that the ancestral *daimōn* of the house of Atreus was Clytemnestra’s accomplice, this chorus divide the blame for Heracles’ death equally (τὰ μὲν ... τὰ δ’) between Deianira and Nessus. Both choruses confront the ambiguity of tragic agency and for both this creates an insoluble tension around the issue of liability. For each the case is *duskriton*: it is “hard to battle through to a verdict,” as the chorus of *Agamemnon* say (δύσμαχα δ’ ἔστι κρίναι, 1561). In Aeschylus’s trilogy that conundrum prompts a call for Clytemnestra’s punishment (“the killer pays,” 1562). In *Trachiniae* it provokes sympathy: the chorus hold Deianira responsible yet still pity her for the suffering she has caused both Heracles and herself, only partly through her own agency and against her own intention.⁴⁷

This tension between responsibility and pity is never resolved in *Trachiniae*. Instead the question of Deianira’s guilt is pushed to the side, subsumed by prophecies of Heracles’ death and the preparations for his apotheosis. Any clarity that is achieved will come on the divine level, not the human. Tragedy does not reach a verdict on the difficult question of unintentional action. Instead, it highlights and heightens the tension between the law of strict li-

⁴⁷ Thus I disagree with Carawan 2000 that “the drama presents the triumph of a moral standard that the ephebe must come to accept: the measure of guilt is not the specific aim or desire but knowledge of the wrong” (228). He argues that the last third of the play stages a contest between the young man’s sympathetic view of his mother on the basis of her innocent intent and the stricter standard of blame applied by the male community (220–29). But the end of the play loses much of its force if Deianira is as objectively culpable as Carawan posits. To the extent that the audience identify with Hyllus, will they not share his pity for his mother? If they do, the “triumph” of the moral standard that finds her guilty will necessarily be troubled by a sense that, if the law is on their side, equity is on Hyllus’s and Deianira’s.

ability and the demand of equity that we consider intentions. The play closes in *aporia*—"none of this is not Zeus" (1278)—and indeed the play seems structured precisely to produce such *aporia*.



The ambiguities of that tragic case of poisoning reverberate beyond the Theater of Dionysus. The speaker of Antiphon 1 invited us to read his case as a tragedy, but how does it look if we read it not against the tragedy of Clytemnestra, as he wants, but against that of Deianira? Viewed from this perspective, the model of tragedy produces certain tragic ironies within the speaker's brief, tensions and ambiguities that cut against the legal thrust of his case. A juror thinking tragically might notice the speaker's oddly sympathetic depiction of Philoneus's *pallakē*, who served as the stepmother's accomplice and was put to death for her part in the affair. Rhetorically the *pallakē* functions within the speech as part of a simple argument *a fortiori*: if the unwitting accomplice was put to death, so much more does the stepmother deserve to die (20). Her relative innocence highlights the stepmother's guilt. But that innocence is elaborated with a sympathy that goes beyond—and, indeed, against—the legal argument. The *pallakē* is faced with the unpleasant prospect of being placed in a brothel, a fate that the stepmother terms an "injustice" (ἀδικεῖσθαι, 15). Thus when the plan was proposed to her, the speaker says, the girl agreed "immediately, I think" (τάχιστα, ὥς οἶμαι, 16). This aside, as Michael Gagarin notes, suggests "sympathy for the poor *pallakē*" by imagining the desperation of her situation and her gratitude for what she thinks is a means of salvation (1997: 115). That desperation is the source of further pathos: when she poured the drug into the men's drinks, she gave more to Philoneus, "thinking she was being clever because the more she gave him the more he would love her. For she didn't yet know that she had been deceived by my stepmother, until she was already in trouble" (19). The girl's simple reasoning becomes a tragic blindness: she will understand what she has done only too late, and her wisdom will come through suffering.⁴⁸

This sympathetic characterization resonates in the narrative of the *pallakē*'s punishment. After the deaths of the two men (20),

⁴⁸ The anonymous referee points out to me the suggestive parallel between Philoneus's sacrifice to Zeus before his poisoning and the sacrifice to Zeus in *Trachiniae* at which Heracles dons his poisoned robe. In both texts the ritual setting compounds the immediate crime but also suggests the hidden influences (the stepmother's scheme, Nessus's curse) behind it.

ἀνθ' ὧν ἡ μὲν διακονήσασα ἔχει τὰ ἐπίχειρα ὧν ἀξία ἦν, οὐδὲν αἰτία οὔσα—τῷ γὰρ δημικοίνῳ τροχισθεῖσα παρεδόθη—, ἡ δ' αἰτία τε ἤδη καὶ ἐνθυμηθεῖσα καὶ χειρουργήσασα ἔξει, ἐὰν ὑμεῖς τε καὶ οἱ θεοὶ θέλωσιν.

the woman who assisted in them got the rewards she deserved, although she was not responsible: she was tortured on the wheel and then handed over to the executioner. But the woman who is responsible, who devised the plan and executed it, will soon get hers too, if you and the gods are willing.

The account is brief and unsentimental. The girl is tortured (either for information about the murder or for her role in it, or both) and then killed.⁴⁹ Her innocence (οὐδὲν αἰτία) is designed to contrast with the stepmother's liability (αἰτία). On one level there is nothing particularly startling about this passage; however unwitting she may have been, the *pallakē* was the agent of a murder and must be punished: *drasasan pathein*. But on another level, the very compression of the passage produces a jarring juxtaposition between *axia* and *aitia*, desert and liability. This sympathetic figure evokes the paradox of tragic *hamartia*: as the agent she deserved her punishment; but she also merits pity inasmuch as she acted in ignorance, committing “a great evil from a good hope.” The *pallakē* is a minor Deianira, and her death, instead of the simple legal precedent the speaker presents it as, has the silent pathos of the tragic heroine's necessary but lamentable death.

Like the *Oresteia*, its tragic paradigm, this speech tries to reduce a complex domestic drama to an adjudicable vote between the father and the mother. Near the end of the speech, the speaker recasts the issues of the case as a straightforward alternative: “Whom should one pity more, the dead man or the murderer?” (25). This is the same choice Heracles demanded of Hyllus (*Trach.* 1066–71) but that Hyllus refused to make: his pity for his father's suffering did not preclude pity for his mother. For Antiphon's plaintiff, by contrast, the choice is clear. The stepmother deserves no pity from the jurors because she killed her husband without pity. “It is more appropriate to have pity for involuntary suffering (τοῖς ἀκουσίοις παθήμασι) than for crimes and injustices committed intentionally and with forethought” (27).⁵⁰ Through his strict allocation of juridical pity, Antiphon's speaker hopes to preempt

⁴⁹ The speaker makes no mention of the challenges or procedural negotiations that usually accompany the *basanos*; therefore, the torture is probably imagined not as interrogation of the *pallakē* as a witness but as her punishment as an accomplice. But there is disagreement on this point: see Thür 1977: 21n42; Hunter 1992: 283.

⁵⁰ On the appeal for juridical pity, see Johnstone 1999: 109–25, who stresses its cognitive aspect and its difference from tragic pity. Konstan 2001: 27–48 likewise emphasizes the element of judgment in juridical pity, which he shows was reserved for unmerited suffering.

the tragic ambiguities produced by Hyllus's sympathy for Deianira, the unresolved (and irresolvable) tension between pity for her innocent intention and blame for her fatal effect.

But where do these mutually exclusive alternatives leave the *pallakē*, whose "involuntary suffering" earns a muted sympathy in the speech? Like the father, she was an unwitting victim of the stepmother. Both are described as tragic figures who "do not know anything until they are in the midst of the evil itself, and only then understand the disaster they are in" (29; cf. 19). The speaker sympathizes with this concubine but can make no positive space for that sympathy within the parameters he sets on judicial pity. Instead it comes out in the compressed and conflicted account of her death. In this trial's catharsis of pity and fear, the "involuntary suffering" of a *pallakē*'s death constitutes a minor tragedy of its own, but one which introduces unwelcome tensions in the Oresteian narrative this loyal son is telling.

While the *pallakē*'s unintended harm makes her comparable to Deianira, in other respects she more closely resembles Sophocles' Iole, the silent young woman whom Heracles brought home to be his "secret bedmate." In *Trachiniae*, it is Iole's introduction into her house and bed that drives Deianira to her fatal action: hence Hyllus accuses the girl of "sharing sole responsibility" (μόνη μεταίτιος, 1233–34) for his mother's death and father's affliction. But even as Iole is *metaitios* in Deianira's deed and its disastrous consequences, she also adds to the pity that deed elicits in the play, for Deianira's gentle treatment of Iole and her fellow captives contributes to her characterization as *sōphrōn* (243, 329–34, 445–67), while her sympathy for the girl, with whom she strongly identifies, lends sympathy in turn to Deianira as a fellow victim of *erōs* and prize of Heracles' heroic contests (312–13, 462–67). Iole's present plight recalls all the violence and anxiety of Deianira's own introduction into Heracles' house (narrated in the prologue and the first Stasimon), and if an audience feels pity for Deianira's situation it is in part because Deianira feels pity for Iole's: "I pitied her most as soon as I saw her, because her beauty has destroyed her life" (463–65; cf. 24–25).⁵¹

If the silent Iole lends a reflected sympathy to Deianira, could the same be true of Antiphon's *pallakē* and the stepmother? The entire thrust of the speaker's rhetoric works against this possibility. The plaintiff wishes her to function instead like another tragic *pallakē*, Aeschylus's Cassandra, who finally speaks only to condemn Clytemnestra as Agamemnon's killer and her own (Ag. 1107–11, 1125–29, 1227–38, 1258–63), and to predict her eventual punishment (Ag. 1279–84, 1316–19). Cassandra's dying condemnation of

⁵¹ See Wohl 1998: 38–56.

Clytemnestra is central to the latter's demonization in the trilogy.⁵² Antiphon's plaintiff hopes that Philoneus's *pallakē* will serve the same role in his own brief, convicting the stepmother as "some net of Hades, a net that sleeps with him, accomplice in his murder" (Ag. 1115–17) and prophesizing retribution.

And yet the truth testified by the pitiful death of Philoneus's *pallakē* is more ambiguous than the speaker hopes and it leaves the slightest opening for a counter-argument. When the stepmother was trying to convince the *pallakē* to help her, she offered her sympathy to the girl, saying that she too had been wronged (καὶ αὐτὴ ἀδικοῖτο) by her husband (15). This scene is designed to show the stepmother's machinations and to prove that she was the sole mastermind behind the plot. But the diction of injustice in this imagined conversation raises the possibility of a counter-narrative in which the poisoning is not a cold-blooded murder but an act of erotic self-help gone awry, a *hamartia* that deserves, if not forgiveness, at least pity for the unmerited suffering it entailed.⁵³ This fleeting moment of identification between these two women, both victims of "injustice" at the hands of their men, recalls Deianira's conflicted sympathy for Iole. When the speaker attributes these words to the stepmother—and we should remember that this entire conversation is likely a fiction of the speaker's own invention—he makes it possible to imagine the stepmother not as a Clytemnestra but as a Deianira, wronged by her husband and, like Sophocles' heroine, fearful that he will be "called her husband but will be the younger woman's man." "To live with this girl, sharing a marriage—what wife could bear it?" asked Deianira (*Trach.* 545–46). Did the stepmother reach the same answer Deianira did and employ the same desperate remedy, with the same unintended effect?

The ambiguities of this scene are further intensified if, as seems probable, the speaker himself is the son of a *pallakē*. As Gagarin observes, the half-brothers are older than him and (since their mother was still married to his father at the time of the murder) he must therefore be the child of his father's concubine, presumably a free non-citizen, although it is impossible to know.⁵⁴

⁵² Wohl 1998: 100–17. Webster 1936: 168 and Scodel 1984: 31 believe that the meeting between Deianira and Iole is modeled on that between Clytemnestra and Cassandra.

⁵³ Compare Goodrich 1996 on the medieval "courts of love." Johnstone 1998 shows how in Athens disputes between husband and wife (or disputes involving other individuals excluded from legal competency) had to be represented as disputes between citizens in order to be brought to court.

⁵⁴ Gagarin 1997: 104. Gagarin proposes that the case, brought long after the murder, when the speaker had grown to adulthood, may have been motivated by an inheritance dispute (Gagarin 1997: 106; Gagarin 2002: 152). Cf. Carawan 1998: 220–21, 228–29. The status of the children of *pallakai* is much disputed: Sealey 1984b; Mossé 1991; Patterson

This other concubine, moreover, may herself be obliquely involved in the trial's erotic drama: Gagarin suggests that the *adikia* to which the stepmother alludes in her imagined conversation with Philoneus's *pallakē* may be the father's affair with the speaker's own mother.⁵⁵ If that is so, the case suddenly looks much less clear-cut than the speaker wishes, and he himself looks less like Orestes, confident in the justice of his act, than like Hyllus before his *anagnōrisis*, about to discover too late that the situation was more ambiguous than he let on. Tragic parallels now threaten to derail the legal argument they were meant to consolidate. The literary allusion marshaled for the prosecution suggests a possible case for the defense. We are reminded that Clytemnestra, too, had her reasons for her deed—among them her husband's *pallakē*—and represented it as the righting of an injustice. After all, even Orestes hesitated before striking the breast that nursed him.

By re-opening a gap between intention and action that the speech attempts to close, tragic allusion points to a justice beyond strict liability and suggests that one might feel pity even while assigning responsibility. Tragedy's aporetic exploration of *hamartia*—of unintentional responsibility and pitiable culpability—invites its audience to look less to the rigid application of the law than to the equity of the particular case, to consider, as Aristotle says, not just the act but the choices behind it (μὴ πρὸς τὴν πράξιν ἀλλὰ πρὸς τὴν προαίρεσιν, *Rh.* 1374b11–16). If equity (*to epieikes*) demands consideration of intent and leniency toward human weakness—including the human blindness that results in *hamartēmata* (*Rh.* 1374b4–6, 10–11)—then we might posit that tragedy taught its audience to be more equitable judges of actions both in the theater and in the courts. We cannot know how that may have played out in this particular case or what Antiphon's jurors may have thought when they heard the name Clytemnestra. But we can say that what the speaker requires the majority of them to think in order to win his case stands in tension with the ambiguous lessons tragedy offered its viewers. When the law borrows from tragedy it risks importing a tragic sensibility that it cannot fully assimilate or transform, one that in recognizing the ambiguities of human agency makes the process of assigning guilt both more problematic and, potentially, more equitable.⁵⁶

1991; Ogden 1996: 157–63. It is possible that they were barred from full citizen status but were able to claim an inheritance. Roisman 2005: 39 lists cases where children of *pallakai* claim inheritances. It is also possible that Pericles' Citizenship Law of 451/450, which made citizenship depend upon the citizen status of both parents, was relaxed at the end of the fifth century in response to the Peloponnesian War's depletion of the citizen population.

⁵⁵ Gagarin 1997: 114 on section 15. See also Carawan 1998: 220–21.

⁵⁶ Eden 1986: 32–54: "Crucial to the tragic effect, these same feelings of pity, in the law court, precede an equitable judgment" (58). Sternberg 2006: 11–12 suggests but does not

The speaker in Antiphon 1 hopes to use tragedy as a simple model for a simple case of liability. In this trial for poisoning (*pharmaka*) he sees tragedy as a rhetorical cure, a salve for healing his case's legal frailties. But *pharmaka*, as Deianira learned to her woe, are notoriously double-edged, poison as well as cure. In the process of applying one tragic paradigm the speaker unwittingly—unintentionally—administers another, one that injects pity into his prosecution and tragic aporia into the legal verdict. Tragedy makes for a dangerous legal tactic because it teaches its audience that no case is ever open and shut, even if forensic speakers present things that way. The tragic emplotment of human action produces tragic ambiguities of a sort the law generally seeks to avoid in its push for a decisive judgment. Tragedy is a potent resource of thought for the law, then, as it is for every Athenian discourse, but one that must be administered with care. The orator who applies it always risks finding out—too late—that its ironies work against him and that the lesson the jurors take from his speech is not what he intended.

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pursue the possibility that "Athenian audiences, having witnessed the responses of tragic characters, might or might not carry from the theater a residue of feeling, a propensity toward action, predicated directly or indirectly upon the dramatic confrontations they had seen on stage" (12). Compare, too, Nussbaum 1986, who argues that tragic pity taught the audience a kind of emotional wisdom or "rationality of the passions" (47) that made them more sensitive toward the role of chance in human life (15–16, 41–50, 378–94). Aristotle's ethical theory, she suggests, builds upon and generalizes this tragic philosophy.

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