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### Chapter

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## 20: GREEK TRAGEDY AND LAW

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### METHOD

Greek tragedy abounds with political crises – struggles over wrongdoing and punishment, efforts to overturn or found regimes, contention about the rights of strangers and the weak. Clearly, punishment, constitutions, and asylum were all real legal issues in Athens, and the city had extensive institutions for dealing with them, some of which even work their ways into the plays as instruments available to the protagonists for resolving (or trying to resolve) their problems. Most famously in the *Oresteia* the Areopagus Court, with Athena's expert help, decides the fate of Orestes (*Eum.* 470–752) as does the Argive Assembly in Euripides' *Orestes* (866–956). Some form of conceptual continuum links tragedy and Athenian legal and political thought. But, because the political and legal crises of drama exist entirely in the realm of the imagination, what can be learned from them about the historical reality of law in Athens?

Scholars working on English-language literary texts have recently refined techniques for analyzing law and literature together.<sup>1</sup> Following the lead of eminent legal historian F. W. Maitland, who argued that “law and literature grew up together in the court of Henry II,” scholars have been exploring how concepts that developed in the legal arena – e.g., contract, evidence, testimony, privacy – have affected literature and, inversely, how narrative techniques developed by writers have provided tools to lawyers and judges.<sup>2</sup> Classicists have made a similar

<sup>1</sup> James Boyd White's *The Legal Imagination* inaugurated the field but has since been superseded by W. Benn Michaels (1979), Stanley Fish (1989: Chs. 4–7, 13), Martha Nussbaum (1995), and Brook Thomas (1997). For the reaction against this scholarship, see Posner (1988).

<sup>2</sup> *Id.*

move with Euripides, pointing out how his characters, in contrast to their Aeschylean and Sophoclean counterparts, employ the styles and tricks of courtroom argumentation.<sup>3</sup> But the typical treatment of the relationship between Euripides and the law casts the influence as going only in one direction, from the courts and rhetorical schools to Euripides. In the context of the English-language tradition, the burgeoning law and literature scholarship depends on the simultaneity of the legal and literary archives under examination. One examines lyric poetry of the Cold War period – and its notions of intimacy, privacy, and confession – in respect to the growth in privacy law of exactly this same period.<sup>4</sup> Thanks to the simultaneity, one can actually make claims about how each discursive field (law on the one hand, literature on the other) influenced the other. In contrast, students of the Greek classical period do not, by and large, have the luxury of contemporaneous legal and literary archives because the bulk of tragedy originates in the fifth century, whereas the greatest part of the legal archive, oratory, derives from the fourth. How then are classicists to use tragedy to study law?

Several attempts have been made. In the middle of the twentieth century, old school historicists attempted to pin down each tragedy as a commentary on specific political and/or legal events. The *Eumenides* was (and still is) read as a commentary on reductions in the power of the Areopagus effected by Ephialtes and (maybe) Pericles around 462 B.C.E.<sup>5</sup> Aeschylus' *Suppliants* was interpreted as a comment on the exile of Themistocles and/or on Athens' relationship to Argos, with which Athens would soon conclude a treaty.<sup>6</sup> Indeed, this treaty with Argos of 462/1 was thought to lie behind the *Eumenides*, and another treaty with Argos in 420 is taken by scholars as the backdrop to Euripides' *Suppliants*.<sup>7</sup> And because so many of Euripides' plays were produced during the Peloponnesian War, it has been especially tempting to take them as commentary on the particular events of that conflict – for instance, as opinions on Alcibiades' behavior and the nature of the Spartans.<sup>8</sup>

<sup>3</sup> As examples, take Hecuba and Polymestor arguing before Agamemnon in *Hecuba*, Iolaus and Copreus before Theseus in *Children of Heracles*, Hecuba and Helen in the *Trojan Women*, and Lycus and Amphitryon in *Heracles*.

<sup>4</sup> E.g., Nelson (2002).

<sup>5</sup> Gagarin (1976: esp. 106, 115–17, 127) remains helpful here. See also Podlecki (1966).

<sup>6</sup> I owe research on this subject to Alex Gottesman. For the political issues in the play, see Garvie (1969) and also Forrest (1960) and Diamantopoulos (1957).

<sup>7</sup> Scholars (e.g., Decharme 1906: 139) point to parallels between the language of the treaty in the play in lines 1187–1995 and the language describing the treaty in Thucydides 5.47 and the fragment of the inscription found in Athens (*IG I<sup>2</sup> 86*).

<sup>8</sup> E.g., Decharme (1906).

Unfortunately, this method of connecting plays to specific events is not ultimately satisfactory. We know too little about the details (as opposed to the broad picture) of fifth-century law and politics, and the lack of specific references in the tragedies to personages and happenings has drawn scholars into speculation. Worse still, this approach misprizes the project of tragedy. The Athenian reaction to Phrynichus' play on the Capture of Miletus – when the whole theater burst into tears at the portrayal of the recent catastrophe and the city subsequently fined Phrynichus 1000 drachmas and banned the play (Hdt. 6.21) – indicates that the Athenians did not want overly direct commentary on current events from their playwrights. This is not to say that the Athenians did not want responses from their tragedians to the hard issues of their day, but whatever of direct contemporary relevance they wanted from them, they preferred to get in an oblique fashion – addressing their own problems by “thinking through” the difficulties of mythic personages and other cities.<sup>9</sup> Regardless of whether tragedians alluded to particular political events, they certainly employed, manipulated, and refashioned the crucial concepts of the Athenian legal and political vocabulary, albeit vivifying those terms via the experiences of heroes, princesses, Thebans, and Danaids.<sup>10</sup>

To underscore this point about how the tragic discourse related to the conceptual universe underpinning Athenian law and politics, let me turn to one of the rare moments when a tragic playwright does directly discuss goings-on in Athens. Every year in late January the Athenians held a festival called Anthesteria, which was also known as the Older Dionysia. On the second day of this festival, the Athenians broke out the year's new wine. Named after the wine-pitchers, this day was called Choes. The Anthesteria was celebrated throughout Greece, but the Choes seems to have been an Athenian festival.<sup>11</sup> Known as one of the “most polluted days” of the Athenian year, it was said to be the day that Orestes had arrived in Athens, bearing blood-guilt from the murder of his mother and seeking purification.<sup>12</sup> On this festival day, the Athenians varnished their house doors with purifying pitch, and whole households retired behind the blackened fronts to drink

<sup>9</sup> For more elaborated accounts of the relationship between tragedy and the Athenian conceptual universe, see Zeitlin (1993), Goldhill (2000), and Allen (2000b: 73–6).

<sup>10</sup> On the subject of ancient practices of giving concepts embodied form through narrative and symbol, see Allen (2000a).

<sup>11</sup> Hamilton (1992: 32).

<sup>12</sup> Burkert (1985: 238–9); Padel (1992: 182). Callimachus fr. 178.2; Phot. *Lex. s.v. Choes*. Cf. Robertson (1993: 206–8). Athenians 10.49, 437c.

the new wine in one another's company.<sup>13</sup> Adults received individual jugs out of which to drink (although it is impossible to say whether women participated as well as men). Even slaves might receive their own individual pitchers.<sup>14</sup> Children, too, received jugs, although it is unlikely that they drank wine from them.<sup>15</sup> The ritual practice of the festival stood in strong contrast to the sympotic tradition of passing a shared cup. Also unlike sympotic drinkers, those who participated in the festival drank without exchanging a word, competing to see who could drink the fastest, while enveloped in a ritual silence.<sup>16</sup> The day was sufficiently important that the stages of an Athenian's initiation into the community could be listed as birth, *choes*, adolescence, and marriage.<sup>17</sup> On this day, all of the sanctuaries were closed except for one.<sup>18</sup>

In *Iphigeneia in Tauris*, Euripides gives an etiology of the festival that places its roots in Orestes' arrival in Athens and the response of the community to his guilt. Euripides puts the etiology in the mouth of Orestes who recounts that when he arrived in Athens:

At first no host received me willingly. I was hated by the gods. Some had respect and pity, and set a table for me as their guest: a separate table, alone, under the same roof as them. By their silence they built up the feeling that I couldn't be spoken to (or that I might not speak) so I was apart from them in food and drink. Each enjoyed the pleasure of Bacchus, pouring an equal amount for all, but into private cups . . . I was my mother's killer. I hurt in silence, pretending not to notice. I cried. *I hear my sufferings became a festival for the Athenians. And still the custom says: Athena's people honor a bowl made for the Choes.* (947–60; emphasis added)

According to Euripides' fictionalized etiology, Orestes' arrival forced the Athenians to confront the problem of how to deal with wrongdoing

<sup>13</sup> Hamilton (1992: 30–1) also emphasizes the private familial aspects of the festival.

<sup>14</sup> On equal measures and slave participation, *IG II<sup>2</sup> 1672.204* (329 B.C.E.); Callimachus fr. 178.1–5ff, Schol. Hes. *Op.* 368; Athenaeus 10.50, 437E.

<sup>15</sup> Hamilton (1992: 114ff); Burkert (1985: 237).

<sup>16</sup> Burkert (1985: 237–38). For silence, see Athenaeus 7,276c; Pliny 4,613B, 643A. Callimachus, fr. 178; Suda *choes*; Ar. *Ach.* 1000ff. Hamilton (1992) rejects the claims of silence on the basis of the passage describing the Choes in Aristophanes' *Acharnians*. But the revelry displayed in that passage would by no means be incompatible with festival participants also having a ritual moment of silence around the time that they actually drank.

<sup>17</sup> *IG II<sup>2</sup> 1368.10, 127–31* (178 B.C.E.). See Burkert (1985: 238–9); Padel (1992: 182); Hamilton (1992: 30). See also Phot. *Lex. sv Choes*, Th. 2.15.4; [Dem.] 59.73ff.

<sup>18</sup> Burkert (1985: 218 n. 11), and (1985: 238–9); Padel (1992: 182).

and pollution. This the Athenians did, in the etiology, by reorganizing fundamental social relationships. Their guest was polluted, and so Orestes could not be accorded the standard welcome given guests. Instead he was isolated. The situation was problematic enough that the Athenians could not continue in standard patterns of sympotic behavior with talking and singing. While Orestes was in their midst, they sat silent, repudiating one of the most important forms of social interaction. But the norms of guest/host relationships could not be broken entirely. Orestes was given food and drink. The festival commemorated the ways in which isolation and integration were brought to bear in an attempt to solve the problem of wrongdoing.

The festival not only ritualized the problem of the polluted wrongdoer in the community but also dramatized the various roles that the Athenians would have to play in dealing with that polluted wrongdoer. The citizenry had to confront the problem of Orestes not merely as a collective but also as individuals.<sup>19</sup> Most festivals took place in capacious public spaces. This one did not. The festival made the point that each Athenian had to face the problem of pollution as a member of an *oikos* or household. Each Athenian, however, also played another role as each sat drinking in silence. The drinkers were not only the citizens who had accepted Orestes into the city, not only members of households, but each was also Orestes, the lonely matricide. Callimachus described the day of the Choes as the day when festival drinkers drank from an Oresteian cup.<sup>20</sup>

The ritual signified to Athenians the lesson that dealing with the problem of the wrongdoer required keeping in mind the overlapping penal roles of each Athenian: each was at once an isolated and competitive individual, a member of an *oikos*, and a member of the *polis* understood as a set of isolated households. Athenian litigants and jurors entered the courtroom having participated in such communal explorations of the role of the citizen in punishment, and these gave them a shared vocabulary for analyzing legal and political problems. Lysias draws on this communal vocabulary in a speech written for the prosecution of Agoratus in 399:

[Agoratus] had the nerve to go to Phyle [the democratic hold-out during the fight against the oligarchs] where some of those who had been banished [by the oligarchs] were. As

<sup>19</sup> Hamilton (1992: 31) also stress the emphasis on the individuation of citizens in the accounts of the festival.

<sup>20</sup> Call. fr. 178.2.

soon as they saw him, they laid hold of him, and dragged him straightway to be killed where they execute whichever other people they capture as a pirate or wrongdoer. Anytus said that they ought not to do that on the ground that they were not yet in a position to punish certain of their enemies. At that moment they should have peace. But if they ever returned home, they would punish the guilty. So they did not kill him at Phyle, but no one would share table or tent with him, he received no tribal place, no one talked with him, considering him polluted. (Lys. 13.79)

When Agoratus, a man with ambiguous ties to the oligarchs whose behavior had brought about numerous Athenian deaths, went to join the democratic troops at Phyle, the prodemocracy forces treated him as Orestes was treated in the festival. Now we have a neat triangulation of an Athenian ritual and tragic commentary on that ritual with the oratorical deployment of that ritual's symbols to prosecute a treasonous citizen. Three different discursive forms (ritual, tragedy, and oratory) each address the same problem: pollution and its remedy. Each does so differently. What, then, is the precise contribution of tragedy to crafting the symbols, meanings, and aspirations used by citizens to fashion and analyze law in the courts and assembly?

The figure of Orestes in the Euripidean passage serves nicely as a figure of the tragic poet's relation to Athens. He says: "I hear my sufferings became a festival for the Athenians. And still the custom says: Athena's people honor a bowl made for the Choes." Like Orestes, the poet *hears* what goes on in Athens, in the sense that he notices what the city's central values and commitments are. Then he responds to these – sometimes to criticize, sometimes to explain, and sometimes simply to explore – with narratives, like Orestes' etiology, that highlight particular terms in the discourse above others and thereby rework the content of key terms available to the citizens for ethical and political evaluation. By turning to tragedy in our study of Athenian law, we can discover conceptual elaborations of and/or challenges to the key terms that guided Athenian legal thought.

In the second half of this chapter, I will therefore provide two brief examples of how tragedy can be mined to explicate the content of central terms in Athenian legal reasoning. For lack of space, I will not be able to address the particular arguments that any one of the tragedians develops through the dramatic movement of a single play but rather will analyze conceptual patterns that are repeated across the work of

all three major tragedians. I will focus first on how the tragedians dealt with anger and second on how they dealt with law.

## ANGER

The idea that anger was a key term for Athenian legal reasoning must be justified.<sup>21</sup> Although the city's penal laws allowed any citizen to prosecute on behalf of someone who had been the victim of a crime, or on behalf of the city in general, in roughly 96 percent of the cases for which we still have copies of the courtroom speeches, the prosecutor was in fact either himself the victim of the wrong done or else he was personally involved in some dispute with the wrongdoer. In court, one after another prosecutor would launch his case by invoking and explaining his personal animosity toward the defendant. This is what Aeschines is doing in 330 B.C.E. in the speech from his prosecution of Timarchus for speaking in the assembly despite having worked as a prostitute:

When I saw that Timarchus was, though disqualified by law, speaking in your assembly, and when I myself was personally being slanderously accused [by him and his allies], I decided it would be most shameful not to help the whole city and the laws and you and myself. It would seem, O Athenians, that the usual saying about public trials is not false: i.e. the saying that private enmities do indeed correct many public matters. (1.1–2)

Aeschines does not here explicitly invoke the idea of anger in conjunction with the term enmity, but other orators do (e.g., Lys. 3.39, 12.2; Dem. 40.1–5). Usually, but not always, their term is *orgē*. Invocations of anger do not, however, stop here at the beginnings of a speech.

After the initial story of personal outrage, one after another prosecutor would move beyond that to argue that his jury should also adopt an anger equivalent to his own. Here is Demosthenes doing exactly this in the 360s:

It's not right that Meidias' behavior should arouse my indignation alone and slip by, overlooked by the rest of you. Not at all. Really, it's necessary for everyone to be equally angry

<sup>21</sup> For a full justification, see Allen (2000b: esp. Chs. 3–8).



(*orgisteon*). (21.123; cf. Dem. 24.138; Lys. 14.39, 31.11, 32.19; Din. 2.4)

With rare exceptions, cases of punishment in Athens were directed at resolving a problem that had arisen between two people (and that might or might not have serious political consequences) and that was identified when someone said he was angry. Anger was so central to the Athenian experience of wrongdoing and punishment that courtroom litigants could describe laws as having been established for the purpose of establishing what levels of anger were appropriate for various acts of wrongdoing (e.g., Dem. 21.43; Aes. 1.176). Thus Demosthenes writes:

Observe that the laws treat the wrongdoer who acts intentionally and with hubris as deserving greater anger and punishment; this is reasonable because while the injured party everywhere deserves support, the law does not ordain that the anger (*orgē*) against the wrongdoer should always be the same. (Dem. 21.42, 43; cf. Dem. 24.118, 138; Aes. 3.197; Lyc. 1.78)

The Athenians had no doubts about why they punished: it was simply because someone was *angry* at a wrong and wanted that anger dealt with. Specifically, the anger of the *victim* necessitated punishment, and the Athenians made this idea central to their penal practice. This does not mean that every punishment was meant to vent or express anger; there are myriad ways to respond to and resolve anger. But most importantly, anger was assumed to be not only the source of particular punishments but also, as in the Demosthenic passage just cited, at the root of law itself. The centrality of *orgē* to the debate between Cleon and Diodotus in Thucydides suggests that this term was important already in the fifth century.

All well and good, but this was by no means, in Athens, an end to the question of what role anger and other emotions might play in law and politics. As in oratory, in tragedy characters invoke anger (e.g., *thymos*, *kotos*, *orgē*) as the reason to punish but they also, in contrast to the orators, reiterate the idea that wrongdoing and its punishment involved the community in some sort of communal sickness.<sup>22</sup> This is especially evident in the tellings and retellings of the myth of the House of Atreus, the story of how King Agamemnon won the Trojan War and returned

<sup>22</sup> For a fuller argument, see Allen (2000b: Ch. 4).

to his hometown of Argos only to be killed by his wife Clytemnestra, who was in turn killed years later by their son Orestes. He then is driven out of the city by the Furies. All of the versions of this story use the metaphor of disease to describe the effect of wrongdoing on the diverse members of a community who participate in an event of wrongdoing and its punishment.

Euripides, for instance, describes the *victim*, that is, the murdered Agamemnon, as a festering wound within the household (*Electra*, 318). In another play, he makes the *wrongdoer*, Orestes, diseased and calls him a disease in the land (*Orestes* 395, 831). Aeschylus, in contrast, treats *would-be punishers*, namely the Furies, as bearers of illness to the land; he says that their disease drips from their eyes (*Eumenides*, 480). In the mythical tradition of the House of Atreus all the parties to wrongdoing and the responses to it – victim, wrongdoer, punisher, and the community or “land” – somehow share in a “disease,” and this surely symbolizes the idea that no party to the experience of wrongdoing is exempt from the trouble it introduces to the community. But in exactly what sense is each of these parties diseased?

When Aeschylus describes the Furies’ disease, the sickness of their anger, as dripping from their eyes, he employs the common Athenian habit of drawing connections among vision, anger, and the spread of the disease of social disruption.<sup>23</sup> Those who addressed or looked on a murderer were polluted by the sight; and a murderer’s glance could flash poisonously like that of a snake.<sup>24</sup> In Greek conceptions of vision, sight involved the physical transfer of particles and properties from one person to another. Aristotle provides a graphic example of the idea that vision was a physical transfer of properties from seer to seen when he writes that whenever a woman who was menstruating looks into a mirror, the glass ends up covered with blood (*De insomnis* 495b.25–3). Vision was a two-way exchange between seer and seen and so an exchange of glances provided a figure for intersubjectivity in general. Wrongdoers and their acts of wrongdoing were poisonous and were like poisonous snakes, because they introduced anger to the community: glares, glances, and poisonous looks or, simply, negative forms of intersubjective exchange among citizens. They were “plagues” to the community as a whole precisely because sight of them made people angry. Whereas the victim and would-be punisher were diseased because they felt anger, the

<sup>23</sup> Id.

<sup>24</sup> For murderers as a cause of pollution, see Soph. *OT* 100, 241, 310; Eur. *IT* 202. For a murderer with a snaky glance, see Eur. *Or.* 479–80. See also Padel (1992: 123–4).

wrongdoer transmitted disease because, in angering people, he upset the harmony of social relations. Anger justified punishment because as a disease, it demanded a cure.

In Euripides' play *Orestes*, one of the characters gives his city the following advice on how to cure the city in respect to Orestes' pollution:

If the wife who shares his bed kills a man and the son of this one kills the mother in turn, and afterwards the one born of this one does away with murder by means of murder, where will a limit of these evils be reached? The ancient fathers handled these matters nobly: whoever was stained with blood, they did not allow to come near to the sight of their eyes, nor to encounter them – but rather required such a person to make matters holy by exile and not to exchange blood for blood. (Eur. *Or.* 508)

Here the speaker recommends exile as a way to deal with wrongdoing and to avoid cycles of angry vendetta. Exile is useful precisely because it removes the wrongdoer from the *sight* of those who are angry. Tragedy thus reflects an awareness that the problem of anger can be addressed with words, and with attempts to restore friendship, as well as with exile.

Nonetheless the Athenians often used extremely violent methods of punishment in their attempts to cure the community and to restore its peacefulness. The word *pharmakon*, which means both remedy and poison and which is central to tragic analyses of anger and punishment, expresses particularly well the paradoxical idea that spectacular acts of violence could cure anger.<sup>25</sup> Creusa tries to punish her husband by using a *pharmakon* that is made out of the Gorgon's blood and of which it is said that one drop deals death, and the other heals disease (*noson*) (Eur. *Ion* 1005, 1221, 1225).<sup>26</sup> The *pharmakon* symbolizes the idea that destruction and healing can be two halves of one concept.<sup>27</sup>

The same idea appears when Cassandra predicts her death at the hands of Clytemnestra precisely by triggering the ambiguities lodged in the idea of curing anger. Before she enters the palace of Agamemnon, she describes Clytemnestra as not only preparing a penalty (*misthon*) for her in wrath (*kotīōi*) but also as brewing a remedy (*pharmakon*) (*Ag.* 1261).

<sup>25</sup> Scarborough (1991: 139ff) elaborates on the meaning of *pharmaka*. See also Padel (1995: 134–5).

<sup>26</sup> On poison, passion, shame, and gender, see Segal (1981: 60–108).

<sup>27</sup> Girard ([1977] 1992: 38) also uses Creusa's poison for the sake of discussing the way violence and cleansing are interwoven.

Cassandra's death under Clytemnestra's axe is a poisonous penalty that cures Clytemnestra of her wrath although it cures no one else.

The Athenians employed a form of "remedy" that was meant to benefit the whole community: a scapegoat ritual where the scapegoats driven out of the city were called *pharmakoi*, human versions of remedies. In a ritual that resembled a stoning, the Athenians "cleansed" the city by driving out two of the city's least significant citizens who had been decked out with dried figs around their necks.<sup>28</sup> This event took place during a festival held on Thargelion, the last day of the Athenian year. In some sense, the ritual expulsion of the scapegoats rang in the new year. As myth had it, the festival had begun at a time when the city had killed a Cretan man named Androgeos and had repented of the deed. The *pharmakoi* were human remedies for the city's anger at itself. More importantly, the citizens' participation in the stoning reminded them, at the beginning and end of every year, that all the citizens were mutually implicated in the processes of violence that were involved in curing the problems of wrongdoing, passion, and punishment that arose in the community. The festival implied that the new year could not start until this act of cleansing and the communal admission of responsibility had taken place.

Endeavors to cure personal and social anger were not uniformly successful. The idea that the *pharmakon* was both poison and remedy signified not only the paradox that violence could cleanse but also warned the community about the dangers involved in trying to remedy anger. This warning is perhaps best encapsulated in Sophocles' depiction of how Deianira, the wife of Herakles, tries to deal with her anger at the fact that her husband is bringing a new wife home with him from his labors and journeys (after the manner of Agamemnon). As the story is told in the *Trachiniae*, Deianira decides that it is a mistake for her to be angry at Herakles because "It is not noble (*kalon*) for a woman who has any sense (*noun echousan*) to grow angry (*orgainein*)" (552–3). It occurs to her that she needs a better sort of remedy with which to ease her pain (*lutērion luphēma*).<sup>29</sup> She decides to use a love potion to win Herakles

<sup>28</sup> Farnell (1896–1909), Bremmer (1983: 299–320), Vernant and Vidal-Naquet (1988), Griffith (1993) (on scapegoating). See also Hipponax, fr. 4 et 5, Bergk; Ar. *Knights*. 1133, 1405; *Frogs* 730–4; Lyc. 1.98f; Men. *Sam.* 481; Plut. *Theseus* 15, 18, 22; Tzetzes *Chiliades* V, 729. It is interesting that Diogenes Laertius places Socrates' birthday on the day of the Thargelia (2.44).

<sup>29</sup> Easterling (1982) on lines 553–4 translates *lutērion luphēma* as "a pain which brings release." The reading of *luphēma* is contested. Campbell suggests *nosēma* and Jebb *lōphēma*. Stinton (1976) gives a persuasive defense of *lutērion luphēma*.

back (*philtrois kai thelktroisi* 584–7; *pharmakon* 685–6; cf. *pharmakeus*, 1140). The potion is made from the blood of the centaur Nessus, whom Herakles had killed, and the centaur has played a nasty trick on Deianira by telling her that the poison is an aphrodisiac. He sets her up to use a “remedy” that will transform the despairing but hopeful wife into an unwitting murderess. Deianira had wished to avoid acting on her anger in any way that would amount to punishment but her attempt to remedy her anger nonetheless led to violence. (It is worth noting here that the defendant in Antiphon’s *Against the Stepmother* defends herself with a story that is a lot like Deianira’s.) The ambiguous nature of the *pharmakon* available in situations of punishment indicates how easily the Athenians thought that an attempt to deal with it could go wrong.

Whereas the orators invoked anger, and expected to use it as a term with which to justify judicial and political choices, the tragedians did the hard work of analyzing the implications of constructing cultural and institutional forms around it. Orators could successfully use terms such as *orgē* in making their arguments only if they were sensitive to how tragedy, and the city’s cultural activities more generally, had prepared the audience to receive the term. To the degree that particular laws and procedures evolved to permit the mediation of competitive contests among citizen men,<sup>30</sup> the city’s conversations about the concepts that factored into competition, for instance, *orgē*, must have affected the direction of that evolution. Indeed, legal scholar Eugene Kontorovich has recently offered explanations both of *timēsis* and of Solon’s law that all citizens must take sides in a *stasis* in terms of a culture that had decided to deal with anger by providing some institutional spaces for venting anger but also countervailing institutional mechanisms for moderating anger and converting it back to sociability.<sup>31</sup>

## LAW

How, then, did the tragedians treat law itself? Again, I seek out not the particular arguments of one or another of the tragedians but rather the general conceptual fabric developed across their plays.

Let us return briefly to anger and punishment, for there is a relationship between them and law in tragedy. Anger in the community

<sup>30</sup> Cohen (1995).

<sup>31</sup> Kontorovich, forthcoming. Thus a reading of tragedy allows us to combine the positions of Cohen (1995) and Herman (1993, 1994, 1995, 1996). See also Allen (2000b: 126–8).

disturbed the peaceful relations among citizens. To cure anger was to restore and also order, and so punishment was used not only to cure anger but also to establish stable power structures. The queen Alcmena, for instance, is expected to want to witness the punishment of Eurystheus precisely so that she can see that he has been mastered by her hand (*sēi despōtōumenon cheri*) (Eur. *Children of Herakles* 885). Punishment introduced to the community not only the problem of anger but also a struggle over the establishment of authoritative powers. *Prometheus Bound* is the best example of the relationship between punishment and power struggles. Importantly, whereas the spectacle of punishment satisfies the power hungry, like Alcmena, it could also pain others, in particular, those who suffer the punishment.

In Euripides' *Hippolytus* Aphrodite, goddess of love, punishes with death Hippolytus, who is the son of Theseus and an Amazon queen, because he has managed to resist the impulses of *eros* and remain a virgin. As he comes near death, Hippolytus expostulates against his punishment, and cries out in his agony: "Zeus, Zeus, do you see these things? . . . Some bloodstained family evil of ancient ancestors breaks the bounds (*exorizetai*) and does not rest but comes against me. Why, when I am in no way guilty of evils?" (1381). The treatment that he is receiving "breaks the bounds" insofar as it exceeds the norms of reciprocity. Choruses are the most common source of criticism, and they specify the nature of the "excessiveness" that often characterizes tragic punishment. In the *Oresteia* the chorus describes divine excess in punishment as arising from divine "unlawfulness." The chorus in the *Agamemnon* is tired of the cycle of murderous violence that the goddess Artemis has inspired and prays for a state of affairs free from excessive pain (*periōdynos*) (1448). Acknowledging the requirement that "to the doer something must be done" is a *thesmion* from Zeus (1560), the old men also wish that someone could end the curse and vengeful calamities (*ata*) inflicting the house of Atreus. They say: "If Agamemnon must pay for earlier murders and will in turn require further penalties and other deaths after he dies for the dead, what mortal could claim to have been born under a happy spirit once he has heard this?" (1335). The cause of their woes, they think, is Artemis' "unlawful" desire (*anomon*) to have Agamemnon sacrifice his daughter, a sacrifice that leads to Clytemnestra's murder of her husband (151). What is the nature of this unlawfulness?

Tragic characters who are said to punish excessively or lawlessly are often accused of three other violations: of impiety, of introducing

novelty to the laws, and of treating law as a private possession.<sup>32</sup> Thus in Euripides' *Madness of Herakles* Herakles' enemy is the tyrant Lycus, who is a new ruler (*kainos anax*), has overturned the ancient line (*palaios*), and acts "in lawlessness (*anomia*) flouting the gods, and saying that the gods are not strong (*sthenousin*)" (755, 768). Similarly, the chorus of the *Prometheus* accuse Zeus of being a new ruler, but they also say that he rules with private laws: "new rulers (*neoi gar oiakonomoï*) rule in heaven and with new-fangled (*neochmois*) laws; Zeus rules arbitrarily and the things that were great before he makes nothing of. . . . (148–51)"; and "Zeus, ruling with private laws (*idiois nomois*), displays towards the earlier gods (*tois paros*) an over-weening (*hyperēphanon*) scepter (Aesch. *Prom.* 402–5)." Prometheus has introduced the theme of Zeus' possessiveness of law earlier in the play. He remarks that Zeus is harsh (*trachys*) and angry without limit (*atermanon . . . orgēn*) and possesses justice for himself (*kai par' heautōi / to dikaion echon Zeus*) (186–92). The injustice of Zeus' attempt to punish Prometheus somehow lies in the connections between his personal possession of law and his unlimited anger. Prometheus thus implies that what is just or lawful puts limits on anger. Zeus' attempt to punish Prometheus, however, is unjust not only because his anger is limitless but also because he has used private laws or a private justice to justify and explain the exercise of his anger.

But what exactly are private laws? And what is wrong with them? Euripides' *Suppliants* will be the most help here. Aethra, the mother of Theseus, wants her son to help a group of suppliant women who have come to Athens to seek support in reclaiming the bodies of relatives lost in a war. She bases her argument on the importance of preserving the laws of Greece (*nomima Hellados*):

I would have held my peace, but now know that this duty falls on you, . . . to stop the people who confound the laws of Greece (*nomima Hellados*); for the bond (*synechon*) of the cities of all men is this, when each preserves the law nobly (*nomous sōizei kalōs*) (300ff).

The chorus agree with Aethra but cast their arguments as having to do with not the laws of Greece but "the laws of mortals (*nomous brotōn*)."

<sup>32</sup> E.g., Medea equates new laws with an end of divine power (492–5). See Segal (1981: 168–70), on law in *Antigone*; Ostwald (1969). Cf. the arguments of the Erinyes in the *Eumenides* at lines 92, 695, 778.

These, they say, “must not be polluted (*miainein*)” (378). Theseus agrees both with his mother and with the chorus about the need to preserve law but he discusses the matter by referring to the need to preserve the laws of the community or publicly possessed laws:

No worse foe has a city than a tyrant from whom there are first of all no common (*koinoi*) laws, but who rules (*kratei*) possessing (*kektemenous*) the law (*nomon*). When this happens, equality (*ison*) is no more. From written laws the weak and wealthy have equal justice (*isēn dikēn*), . . . thus freedom speaks (430).

On Theseus’ account the tyrant’s personal possession of the law violates equality and freedom. Such violations bring pollution to the city.<sup>33</sup> As we saw above, not only lawlessness but also excessive anger brought pollution to the city. And excessive anger played a role in Zeus’ tyrannical behavior and in his use of private laws. The acceptable forms of law, then, which are common and not private, are also able to keep excessive anger under control. But what does it take for law to do this?

Later in the play Theseus amplifies what he says here by returning to his mother’s topic – the laws of Greece. He says: “All Greece’s law I preserve . . . Never let it be said that when it came to me to uphold the ancient (*palaios*) law of the gods, it perished (*diephtharē*)” (526, 561–3). Aethra had begun the conversation by invoking the laws of Greece. Here Theseus treats the laws of Greece and the law of the gods as one and the same.<sup>34</sup> But the conversation has also established two other terms as synonymous to these. “The laws of Greece,” “the laws of the gods,” “the laws of mortals,” and “the laws of the community” are all labels for the forms of law that uphold equality and freedom. But these four categories of law all share another feature too. If the tyrant’s law is personally or privately possessed, then all four of the good types of law must somehow be a public possession. The word *koinos* was used by Theseus to describe the valid law that is set in opposition to the tyrant’s law. That word denotes precisely that legitimate law is public or a communal or shared possession. The laws of Greece, the laws of

<sup>33</sup> As Theseus and Adrastus have an argument over what a good leader is, Theseus criticizes Adrastus for keeping the law to himself (431–2).

<sup>34</sup> Shaw (1982: 3–19) agrees that panhellenic law and divine law are equated in the play and discusses the relation of these to hubris and to memory and different forms of written law.



mortals, and the laws of the gods must all be different types of “common law” or “law of the community.”<sup>35</sup> These types of law are publicly possessed insofar as none can be said to have a specific, named mortal author; they seem to come from the community as a whole. In a society whose religious laws were not based on a single divinely inspired text, even the laws of the gods took their authority from the community’s valorization of religious beliefs. The tyrant’s laws, in contrast, are issued by some specific, named person, who claims to be the author of the law and who claims authority on the basis of that authorship.

In *Oedipus Tyrannus*, the chorus draws a contrast between legitimate law – in this case divine law – and the tyrant’s laws precisely in terms of authorship:

May such destiny abide with me that I win praise for a reverent purity in all words and deeds sanctioned by the laws that stand high, generated in ethereal heaven, whose only father is Olympus. The mortal nature of men did not give birth to them, neither shall they be lulled to sleep by forgetfulness. Great in these laws is the god, nor does he ever grow old.

Hubris gives birth to the tyrant (*hybris phyteuei tyrannon*)/ if it is sated with many things without reason (*ei pollōn hyperplēsthēi matan*) (863–873).

The chorus praise the divine laws because they have no anthropomorphic parent or author, whether divinity or mortal. Their only progenitor is Olympus, not even a specific god but only the “realm” or “place” of divinity.

The distinction between laws written by a single named person and laws written by the community or based on the consent of the community was crucial to the development of law in Greece. Ostwald and Shipp have independently shown that in the archaic period, *thesmos*, the standard term for law, denoted the decree or decision of a single, authoritative person. In contrast, the classical period used the word *nomos* for law, and this term signified rule that “was motivated less by the authority of the agent who imposed it than by the fact that it is regarded

<sup>35</sup> Burnett (1976: 5), writing on law in the *Children of Heracles*, argues that two legal distinctions matter in tragedy, the distinction between customary law and statute or decree law (although it does not matter whether or not either is written) and a difference between law that prosecutes and law that protects.

and accepted as valid by those who live under it” (Ostwald 1969, 55).<sup>36</sup> Athenian tragedy thus treats the archaic version of “lawfulness,” rule by *thesmos*, as tyrannical and valorizes the idea that lawfulness arises from collective, not individual, opinion. In depicting tyrannies, the tragedians explored the myriad ways a strong communitarian approach to law might be undermined. The criticism of tyrants as “new men” or “new rulers” was thus a pointed statement about their disruption of communal norms.

Let us return for a moment to the *Oedipus Tyrannus* passage and the subject of new rulers. In that passage the chorus celebrates not merely laws that arise from no particular mortal author but also laws that never grow old. If the laws of the gods do not grow old, neither can they be said to be new. Like the gods they live forever and were simply ageless. They simply exist eternally. The famous dispute about law between Antigone and Creon in Sophocles’ *Antigone* also invokes these distinctions between unnamed and named legislators and between old and new laws. According to the chorus Creon is a “new kind of man (*neochmos*) for new conditions” (155, cf. 735). And when Antigone gets caught burying her brother, their conversation takes up the subject of this novelty:

Creon: You dared to step beyond the bounds of these laws?

Antigone: Yes, for Zeus was not the herald of these, nor did Justice who is fellow administrator with the gods below draw up such laws, and I do not think that your proclamations, being mortal, are strong enough to overrule the unwritten and unfailing customs of the gods. For these live not just now and yesterday, but always and forever (*aei pote*) and no one knows when (*otou*) they appeared. (449–470)<sup>37</sup>

<sup>36</sup> Shipp (1978: 10) writes: “*Nomos* differs from *themis*, *rhetra*, *thesmos* in being secular and popular. If a community is governed by *nomoi* it cannot at the same time be ruled by other institutions.” Scholars (e.g., Lanza and Vegetti 1977 and Steiner 1994) have usually approached the tensions about law attested in tragedy from the perspective that what is at issue is the distinction between written and unwritten laws. This is incorrect. *Either* written *or* unwritten law was *unproblematic* as long as it did not have a specific author. Written law is more frequently accused of being problematic in tragedy not because it is *per se* problematic but because written law can be made the property of a single author/authority more easily than oral law can be. Written law, if preserved as public property, was not problematic (e.g., Eur. *Supp.* 430). Even outside of tragedy, tyrants were criticized for treating law as their own possession. Anonymous Iamblichi 7.12–14; Solon Fragments 4, 9, 11 West; Heraclitus B33; Xen. *Mem.* 1.2.43.

<sup>37</sup> O’Brien (1978: 68) takes the *aei pote* as conveying infinity in both directions.

In tragedy, laws are called “old” or to be seen as displaying “longevity” only when they have no identifiable mortal author.<sup>38</sup> In contrast, laws with a named human author also have a birthdate (they can be dated in relation to the author’s life), and insofar as they represent the will of one man and one lifetime, they cannot represent the cumulative opinion of a long-lived community. Laws that can be dated because they have authors with names fall short of legitimacy precisely because of their particularity to time, place, and person. This goes some way to explaining why students of Athenian law have such trouble finding dates for those laws. The very conceptual basis of legal legitimacy in Athens mitigated against a regularized dating system that would undermine the status of any given law as universally valid. That so many Athenian laws were wrongly attributed to Solon is the exception that proves the rule. The decision to identify laws with his name means that the Athenians wanted to periodize their history and to insist that a radical break with the past had occurred in his lifetime.

The problem at the heart of the *Antigone* is that both Antigone and her uncle want to act on the basis of laws that they have written for themselves in violation of communal norms. Creon violates religious prescriptions about the burial of relatives. Antigone violates political norms about the place of women in politics. The chorus knows this. They argue that Antigone is dying because she is the author of her own laws; she is autonomous or self-legislating (*autonomos*, 821). This is the earliest appearance of the word *autonomos* in extant Greek literature, and it is used not to praise but to condemn. In addition to calling Antigone autonomous, the chorus adds, fifty lines later, that she has destroyed herself with *autognōtos orga* or “self-chosen or independently chosen anger” (875). Antigone has refused to adhere to norms of justice generated by the consensual community of citizens and has claimed, in

<sup>38</sup> Indeed, in tragedy, when law is attributed a specific source *other than* the divine or the Hellenic, it is nearly always associated with the novel and tyrannical. The examples I’ve used thus far are but the beginning. Here are others: Soph. *OC* 905, 1382; *Ajax* 1129, 1343, 1349–50; *El.* 579–80, 1015, 1043; Eur. *Or.* 487, 527, 571, 941; *Med.* 238, 493, 811, 1000; *Ion* 20, 442, 1312; *Hipp.* 91; *LA* 1095; *Hec.* 800, 847, 864. Aesch. *Pers.* 585 (*personomountai = basileia ischys*); *Agam.* 140 (*oikonomos*); Eur. *Hipp.* 1046 (*ouk houtō thanēi / su sautōi tonde prouthēkas nomon*) (Wheeler proposed deletion of this line); *Hel.* 1429 (Pelopid law). See also Xen. *Mem.* 4.4.17; 1.11.45–50. For a valorization of “Hellenic law,” take Jason’s comment to Medea (538): “By bringing you to Greece, I’ve given you an understanding of justice and the use of law for other than the sake of force (*ischyos*).” Burnett (1976: 5) notices that in Euripides’ *Children of Herakles* (194), local Argive law (as opposed to general Hellenic custom) is problematic. Again law is problematic when it belongs to some specific author (or authors).

her own a name, a right to push off into new moral territory. Creon does the same. Legitimate law is thus set in contrast to individual wills. In the *Antigone* those wills are described in terms of anger and desire that lead to a violation of community norms.<sup>39</sup> Tragedy puts the case over and over again that punishment must work to control anger by allowing anger to be exercised only in accordance with norms that are based on consensual authority. Antigone and Creon ignore that argument, and the result is that instability and disorder spread through Thebes.

The remark that Antigone acts on *autognōtos orga* puns easily on the accusation that Antigone is *autonomos* but also on an important argument about human culture found earlier in the play in the famous Ode to Man. There the chorus praises the achievements of mortals and signs of how humankind tames the world and traps birds in the net of its mind, sails the seas, and plows the earth. Most important, people have learned how to build cities and practice politics. The chorus celebrates humankind for having been the architects of politics by teaching themselves voice (*phthegma*), wind-swift perception and/or thought (*anemoen phronēma*), and anger that is city-regulated and/or city-regulating (*astynomous orgas*) (354–5). In the Ode to Man Sophocles thus draws together the two themes under discussion in this chapter, anger and law, and makes the very arguments that I have been making: first, that in Athens a central task of law was to manage anger and, second, that the Athenians desired legal procedures and institutions that would shift attention from the choices of the individual to the choices of the city, thus emphasizing historical continuity above radical (and generational) transition. That is, the Athenians wanted a judicial system that was driven by the demands of anger (angers that regulate the city) but they also needed laws that could subdue the power of individual tempers and temperaments to communal norms (angers that are regulated by the community). Sophocles heard (I imagine) that these sorts of dealings with anger and law were going on in the Assembly and courtroom of Athens and responded with an extended meditation on the tension between individual tempers and communal norms.

## CONCLUSION

Notably, many scholars have had difficulty understanding Sophocles' phrase *astynomous orgas*, and the line has been frequently atheticized.

<sup>39</sup> On the *orgai* of Creon, Antigone, and Haemon in Sophocles' *Antigone*, see Segal (1981: 152–4).

F. Storr's Loeb from 1912 emended the phrase to *astynomous agoras*.<sup>40</sup> Presumably, the editor could easily understand how marketplaces are relevant to politics but had less straightforward a time parsing the relationship of anger to law. But Sophocles' remark makes perfect sense if one recognizes the centrality of *orgē* to Athenian legal and political reasoning. Here then is an instance where the study of Athenian law in fact enables our ability to read Greek tragedy, and not merely the other way around. This underscores the basic point about methodology that I have been making in this chapter. Tragedy becomes useful for studying Athenian law only after scholars have already taken the time to work out not merely the procedures of Athenian law but also its conceptual foundation and implications. The tragedians responded profoundly and robustly to the content of their contemporaries' political, legal, and ethical aspirations, that is, to their *ideas*, regardless of what they thought about current events.

<sup>40</sup> This emendation was based on Dindorff's edition of the text.