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Studies in Honour of Guido Avezzù

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Pollution and Purification in Athenian Law and in Attic Tragedy: Parallels or Divergences?

Edward M. Harris

Abstract

In the *Odyssey* Orestes kills Aegisthus in revenge for the death of his father Agamemnon. The murder does not create any pollution, and Orestes is held up as a positive moral example for Telemachus. In the *Choephoroi* of Aeschylus, Orestes kills both his mother Clytemnestra and Aegisthus and is pursued by the Erinyes, who consider him polluted and believe that he deserves punishment even though Apollo claims that he has purified him. Orestes is also considered polluted in several plays of Euripides. What is the reason for the different treatment? This paper explores the portrayal of pollution for homicide in Attic tragedy, examines the relationship between law and tragedy and show contemporary views about law and violence shaped dramatic plots. It also questions the view that Attic tragedy attempts to make pollution problematic. Finally, it refutes the view of Sommerstein that Oedipus in the *OT* is innocent.

In the first book of the *Odyssey* Zeus addresses a council of the gods on Olympus. The story of Orestes' killing of Aegisthus is very much on his mind (*Od.* 1.29-30). He complains that mortals often blame the gods for their sufferings, but counters that it is mortals who bring hardships on themselves beyond what is allotted to them by their reckless behaviour (*Od.* 1.32-34).[1] To illustrate his point, he recalls the recent fate of Aegisthus, who married the wife of Agamemnon while he was away fighting at Troy and murdered him when he returned home (*Od.* 1.34-43). The gods warned Aegisthus that he would suffer for his wrongs and sent Hermes to advise him not to marry Clytemnestra or to kill Agamemnon; if he did, they promised that vengeance would come from Orestes. But Aegisthus was not persuaded and later paid the penalty for his wrongful deeds (*Od.* 1.42: πάντ' ἀπέτισε). In this and other passag-

1 For the sense of ὑπὲρ μόρον see Heubeck, West, and Hainsworth 1988: 78.

es Orestes is praised and held up as a positive example, a person who had rightly won great fame among men (*Od.* 1.298-300; 3.193-200, 304-310). The *Odyssey* does not explicitly mention the killing of Clytemnestra although one passage alludes to her death occurring at the same time as that of Aegisthus (*Od.* 304-310).[2]

For those who have read the various tragedies produced later in Classical Athens about Orestes' killing of Aegisthus and Clytemnestra, one feature of the story is striking: the *Odyssey* never states that Orestes incurred pollution for his killing and was pursued by the Erinyes. As we will soon see, the Erinyes in Aeschylus' *Eumenides* consider Orestes polluted, and he is also considered polluted in Euripides' *Orestes*. That is not because the Erinyes are unknown in the Homeric epics. The Erinyes are mentioned in several passages in the *Iliad* (3.276; 9.565-572; 19.87, 258-260, 418; 21.410-424) and *Odyssey* (2.134-136; 11.271-280; 17.475-476) and the idea that the wrongdoing of a single person can bring suffering on an entire community, the basic concept underlying pollution, is found in both the epics (*Il.* 1.43-52; *Od.* 10.72-75) and in Hesiod (*Op.* 240-246. Cf. Aeschin. 2.158; 3.135 for the persistence of the idea). Yet even though epics recount or allude to many murders inside the community (as opposed to deaths resulting from warfare between communities), none of those who commit murder is ever considered polluted.[3] This stands in pointed contrast with Orestes in Attic tragedy. From being an admirable character in the *Odyssey*, Orestes becomes a deeply problematic figure in plays produced for the theater of Dionysus at Athens.

2 On this passage see Heubeck, West, and Hainsworth 1988: 181, who rightly note that there is no need to consider the allusion to the death of Clytemnestra a post-Homeric addition.

3 See especially schol. T on *Il.* 11.690; schol. T on *Il.* 24.480. Some scholars have thought that the washing of Odysseus' house after the killing of the suitors is a purification of pollution for homicide (*Od.* 23.438-40, 451-3, but this view is mistaken, *pace* Heubeck, Fernandez, Russo 1992: 296). For this cleansing to be a ritual purification (as opposed to a mere cleansing), it would have to be followed by an expiatory sacrifice (compare D. 23.72; 37.59). Allan 2013 does not see the difference between the rules about homicide in the Homeric poems and the rules about homicide and pollution in Athenian law and does not observe the different treatment of Orestes in the *Odyssey* and in Attic tragedy. In general, he tends to exaggerate the similarities between Homeric society and Classical Athens.

This essay takes its starting point from a study I recently published about pollution in Athenian homicide law and examines in more detail the role of pollution for murder in Attic tragedy, a topic that I could not cover there (Harris 2015a). It would therefore be best to start by summarizing the main findings of that essay. The traditional view is that the concept of pollution for homicide originated in the Homeric period and was rooted in an emotional dread of bloodshed. According to Parker, it must have begun in a society in which legal institutions were weak.[4] As a result, beliefs about pollution for homicide started to fade out in the late fifth century and were almost completely absent by the fourth century BCE when the institutions of the *polis* grew stronger. In support of his view, Parker points to the absence of the language of pollution in Lysias' speech *On the Murder of Eratosthenes* (Parker 1983: 128). The prominent role of pollution in Aeschylus, Sophocles and Euripides was therefore part of tragedy's debt to Homer and had little to do with contemporary realities. In fact, Sealey went so far as to claim that pollution for homicide was a purely literary phenomenon and had no influence on contemporary attitudes or legal institutions (Sealey 2006). Parker attempts to dismiss the numerous rules about pollution for homicide in Plato's *Laws* by claiming: "The prominence of pollution in the *Laws* is characteristic of that work's profound religious conservatism" (Parker 1983: 128).

In my study of pollution for homicide, I drew attention to the abundant evidence contradicting Parker's traditional view. First, there is much evidence indicating that beliefs about pollution for homicide were very much alive in the fourth century BCE, the period when Parker claimed that they were fading, if not disappearing. The concept of pollution is very prominent in Antiphon's *Tetralogies*, which are dated to the fourth century, and in the statutes about homicide in Plato's *Laws*.[5] It would be a seri-

4 Parker 1983: 126. To a large extent Parker follows MacDowell 1963, who also believes that beliefs about pollution do not play a significant role in Athenian laws about homicide. Parker's basic views have been followed by Carawan 1998: 17-20, Arnaoutoglou 2000, and Eck 2012. The views of Osborne 2011: 180 about pollution are not convincing. See Harris 2015a: 26n55.

5 For the evidence see Harris 2015a: 30-3.

ous mistake to dismiss the evidence of the *Laws* because the work was 'religiously conservative'. Far otherwise: Plato's views about religion are certainly not a throwback to the beliefs of an earlier period but are in some cases very innovative and challenge traditional views. In general, however, they are often in line with contemporary beliefs and only modify them.[6] Second, several litigants speaking in Athenian courts present arguments based on beliefs in pollution for homicide, passages that have escaped Parker's notice.[7] These passages assume that the audience to which these arguments were addressed believed that homicide cause religious impurity. In a law dated to 336 BCE about the killing of tyrants (*SEG* 12.87), one finds the language of ritual purity in a clause about those who kill tyrants; if pollution were not a concern at the time, why does the law specify that the tyrannicide is free from pollution?[8] As for Parker's observation that pollution is not mentioned in Lysias' *Speech on the Murder of Eratosthenes*, there is good reason for the silence of the speaker Euphiletus not to mention pollution: he claims that he is innocent and was therefore not polluted.

Third, beliefs about pollution had a major impact on Athenian procedures for the prosecution of homicide. After the *basileus*, the archon who had jurisdiction in cases of homicide, received the charge, he made a proclamation that the defendant keep away "from lustral water, libations, bowls of wine, ho-

6 See Harris 2015a: 17 with McPherran 2006; Morrow 1960: 399; Reverdin 1945: 247: "c'est, à bien des égards, la religion grecque repensée, épurée, spiritualisée". See also in general Mikalson 2010. Mikalson (2010: 19-27) observes how Plato makes celestial bodies into gods and created a separate role for *daimones*, both of which beliefs were not shared by the average Greek of the Classical period.

7 See Harris 2015a: 18-19 with D. 9.44; 20.158; 23.72; 21.114; 37.59; Aeschin. 2.148; Lycurgus *Leocr.* 125.

8 One finds a similar clause in the decree of Demophantus about killing tyrants and traitors enacted after the fall of the Thirty. See Lycurgus *Leocr.* 125. The document at And. 1.96-98, which purports to be a text of the decree of Demophantus, is a forgery and its contents unreliable as evidence. See Harris 2013/14 with a detailed refutation of the attempt by Sommerstein 2014 to defend the document's authenticity and with additional evidence demonstrating that the document cannot be genuine.

ly places and the marketplace" (D. 20.158; Antiphon 6.35-36; cf. [Arist.] *Ath. Pol.* 57.4), which was not done for other legal charges (cf. Isoc. *Paneg.* 157: murderers banned from the Eleusinian Mysteries). The reason for this ban was obviously to prevent the pollution of the accused from causing sacrifices to fail (Antiphon 5.82-83) and from defiling public shrines and buildings. Next, trials for homicide took place in the open air so that, as Antiphon (5.11) states, the judges would not enter the same place as someone whose hands were unclean (τοῖς μὴ καθαροῖς τὰς χεῖρας). When a person who was in exile for involuntary murder was charged with committing another homicide, he was required to plead his case at Phreatto in a boat offshore (D. 23.78; Pollux 8.120). The boat could not touch land or place a gangway or anchor onto land because this would bring the defendant's pollution into contact with Attica. When Euthyphro brings a charge of murder against his father for killing a *pelates*, he says that he must accuse him because it would cause pollution (*miasma*) if he did not follow through with his accusation in the same way that he would incur pollution by sharing a meal with the killer (Pl. *Euthphr.* 4c). Finally, the person who committed voluntary homicide and was pardoned by the relatives of the victim had to perform a purificatory sacrifice to remove his pollution (D. 37.59). These procedures do not reveal any features that would link them to the social practices of the Homeric period but are anchored in the spatial features associated with the *polis* of the late Archaic and Classical period, especially fixed geographical borders and the demarcation of the *agora* as a religious space.[9] Fourth, there is no evidence in the Homeric poems for any belief in pollution for homicide. The reason why homicide does not give rise to pollution in the Homeric period but does so in the Classical *polis* must be linked to the development of the state's attempt to monopolize the use of legitimate force. In fact, we learn from both Antiphon (6.6) and Demosthenes (20.157) that the reason why there are special legal procedures for homicide is because murder is the single most important crime against the individual. Why is it the most

9 See Harris 2015a: 25-6 for the connection between the rituals about pollution for homicide and the approach to the civic space of the *polis*.

significant offense? Because the person who commits murder attempts to usurp the state's attempt to monopolize the state's use of deadly violence.[10]

Fears of pollution are attested in other Greek communities in the Classical period and later. For instance, during the retreat of the Ten Thousand in 400 BCE some of the Greek soldiers plundered a Colchian village near Cerasus. The villagers resisted the soldiers and killed several of them. When the Colchians sent three elders to ask the Greek soldiers why they attacked the village, the Greeks stoned the elders to death to prevent word from reaching the other soldiers (Xen. *An.* 5.7.13-19). After the murders were later discovered, at the advice of Xenophon and the seers, the entire army was purified (Xen. *An.* 5.7.35). In 392 BCE, exiles from the upper class of Corinth fled from their city after their opponents murdered their associates and attempted to merge the city with Argos (Xen. *HG* 4.4.2-5). The exiles believed that the new leaders were acting like tyrants and found that they had almost no rights at Argos. They therefore wished to free Corinth and to make it pure from the pollution of the murderers (Xen. *HG* 4.4.6: τῶν μιαιφόνων καθαράν). When Alexander issued his decree about exiles in 324 BCE, he declared when the Olympian games took place that all the exiles should return to their cities except for those who had committed theft of sacred property and homicide (D.S. 17.109.1). In his letter to the Greek cities, he gave the reason: these two categories were polluted (*enageis*) (D. S. 18.8.4).[11]

In a decree from Teos recording a *sympoliteia* with Kyrbissos, dated to the third century BCE (*SEG* 26: 1306), there is a clause about a phrourarch who does not turn over territory to the succeeding phrourarch sent by the city after his term of four months has elapsed (lines 21-23). This person must flee into exile from Teos and from Abdera and from the territory of these

10 Harris 2015a: 23-6. Several scholars have now endorsed the main conclusions of this essay. See Cairns 2015, Todd 2016, Phillips 2016, Scheibelreiter 2016, Canevaro 2016: 421, Petersen 2015, Salvo 2018. These points are missed by Petrovic and Petrovic 2016, who do not place views about pollution for homicide in their legal and political context.

11 One can find no mention of these passages in Parker 1983 or in Petrovic and Petrovic 2016.

two cities (lines 23-25). The offender's property is to be confiscated, and anyone who kills him is not to be considered *miaros*, that is, polluted for homicide (lines 25-26).[12] A law from Kyme, also dated to the third century BCE, concerns judicial officials called *dikaskopoi* (Engelman 1976: no. 11). The text is fragmentary, but grants "anyone who wishes" the right to kill an offender who appears not to have paid a fine (ll. 9-11). If the restoration of lines 11-12 is correct, the person who kills the offender is to be "ritually pure" (l. 12: . . . ἔστω κ]αὶ καθαρός).[13] As in the previous inscription, the statute not only declares the killer to be innocent, but also free from pollution, which would not have been stated explicitly if pollution for homicide were not a concern.[14] After a period of civil bloodshed, the people of Cynaethus were considered polluted. When they sent embassies to other cities in Arcadia, they were not allowed to enter. Mantineans allowed them into their territory, but after the ambassadors from Cynaethus departed, the people of Mantinea performed a ritual of purification (καθαρμὸν ἐποιήσαντο) and carried sacrificial victims (σφάγια περιήνεγκαν) around their city and around their entire territory to rid themselves of the pollution (Plb. 4.21.8-9).

Not only were those who committed murder banned from shrines but also those who had attempted to kill someone. In 172 BCE king Perseus sent Evander of Crete and three Macedonians to murder King Eumenes. When Eumenes was approaching Delphi from Cirrha, the conspirators rolled two boulders, which struck his head and his shoulder. The conspirators fled and were not caught, but Eumenes was able to recover from his injuries (Livy 42.15-16).[15] Several years later in 168 BCE, the Roman Lucius Atilius addressed the people of Samothrace. He reminded them that the island was sacred and then asked how a murderer could pollute the island with the blood of Eumenes, citing the

12 For discussion of the inscription and the date see Robert and Robert 1976, especially 210-14.

13 For discussion see Plassart and Picard 1913: 155-65.

14 There may be a reference to religious pollution in the law of Ilion about killing tyrants dated to the third century BCE (*Ilion* no. 25, l. 86).

15 Cf. Plb 22.18.5 and 27.6.2; D. S. 29.34.2; Plu. *Mor.* 184a, 489d. For a careful reading of this incident see Salvo 2018.

law that all those with unclean hands were banned sacred rites. He was referring to Evander, who was visiting the island after his attempt on Eumenes' life. The people of Samothrace therefore sent Theondas, who held the office of *basileus*, to Perseus to announce that Evander was being charged with murder at the court in which those who entered the sanctuary with unclean hands were tried. If Evander were confident of his innocence, he should entrust his case to the court. Perseus took Evander aside and advised him not to submit to trial because his case was weak. In reality, Perseus was worried that his own role in the affair would be exposed and suggested that Evander should take his own life. When Evander began to plan his escape, Perseus gave orders to have him killed. This put Evander out of the way, but Perseus incurred pollution (*labem*) by having Evander killed in a sanctuary. To avoid blame, Perseus had Theondas announce that Evander had committed suicide (Livy 45.5).[16] This passage shows not only that those who attempted murder were considered polluted but also those who gave orders to kill someone in a sanctuary. Pollution was therefore not just a primitive horror of bloodshed, but closely connected with views of wrongful intent.

A new text from Lydia dated to the second century BCE and found at the city of Thyateira contains similar rules about those who have committed being banned from entry into a sanctuary.[17] If anyone kills willingly, he is forbidden from entering the shrine. If someone kills involuntarily, he must purify himself according to the legally prescribed purification (ll. 10-12). As in Athenian law, a distinction is made between voluntary homicide, for which there is no purification, and involuntary homicide, for which the killer may be purified. All this evidence demonstrates that fears about pollution for homicide continued to be a concern down through the Hellenistic period.

These findings have major implications for our understand-

16 For the charge of attempted homicide and the charge of plotting a murder to be carried out by others in Athenian law see Harris 2006: 391-404. Petrovic and Petrovic 2016 do not see how attempted homicide can cause pollution.

17 Malay and Petzl 2017: no. 1. I would like to thank Georg Petzl for drawing my attention to this important text.

ing of the role of pollution in the plays of Aeschylus, Sophocles, and Euripides, which I could not explore in that essay. This topic is important for several reasons. First, it addresses the relationship between Attic tragedy and contemporary Athens. Once we take account of the evidence for the role of pollution in shaping Athenian legal procedures and in speeches delivered in Athenian courts, however, we can see that these beliefs influenced the tragic poets and caused them to reshape traditional myths to make them reflect contemporary attitudes.[18] They were not a purely literary phenomenon that had little to do with daily life. Second, it reveals that scholars can use descriptions of rituals and religious in the works of the tragic poets as evidence for Athenian religion in the Classical period. Third, it calls into question a recent study of pollution in Greek tragedy by Fabian Meinel, who claims that pollution rendered problematic in Attic tragedy.[19] This goes along with a recent approach to Attic tragedy advocated most prominently by Simon Goldhill that one of the functions of tragedy is to debate certain fundamental democratic views (Goldhill 1987). As I hope to show, in the case of the Orestes myth what is problematic in Attic tragedy is the use of deadly force by private individuals in a community in which the state is attempting to monopolize the use of legitimate violence. This is a theme of general significance for the Greek *polis* and the Panhellenic ideology and not just Athens and democratic ideology in particular.[20]

The first plays I will examine are Aeschylus' *Libation-Bearers* and *Eumenides*, the last two plays of the *Oresteia* trilogy. In the *Agamemnon,* the first play of the *Oresteia* trilogy, Clytemnestra greets Agamemnon on his return from Troy, then kills him in the bath and his slave mistress Cassandra. The difference with the

18 The findings of this essay require some modification of the views of Easterling 1985, who claims that there are few anachronisms in Greek tragedy.

19 Meinel 2015. On this book see my review in Harris 2016a.

20 Goldhill 1990. For criticisms of Goldhill's views see Rhodes 2003, who shows that the features that Goldhill believes are democratic were actually shared by many Greek *poleis*. But Rhodes does not discuss attitudes to pollution for homicide or try to identify the specific features of what he calls *polis* ideology.

version of the story found in the *Odyssey* is striking: in the epic Aegisthus is given the main role in killing Agamemnon, but in Aeschylus it is Clytemnestra who takes the lead. In the *Libation-Bearers* Orestes, who has fled Argos after his father's death, returns home with Pylades and meets his sister Electra. Together, they plot to kill Aegisthus and Clytemnestra.

Orestes has many reasons to kill Aegisthus and Clytemnestra, but one reason on which he lays much stress is that if he does not avenge his father, he too will become polluted. As noted above, when Euthyphro brings a charge of murder against his father, he states that he must initiate proceedings against his father because it would cause pollution (*miasma*) from which he will suffer if he does not bring the case to court and punish him (Pl. *Euthphr.* 4c). In the *Third Tetralogy* attributed to Antiphon (4.1.4) an accuser says that if he fails to avenge the dead man, he will be tormented by avenging spirits (δεινοὺς ἀλιτηρίους ἕξομεν τοὺς ἀποθανόντων προστροπαίους). The views about the effects of pollution on relatives who fail to avenge a murder are the same in Athenian law and in Attic tragedy. Orestes has also been told by the oracle that he too will suffer torments if he does not avenge his father Agamemnon (Aeschylus, *Libation-Bearers* 269-96):[21]

οὗτοι προδώσει Λοξίου μεγασθενὴς
χρησμὸς κελεύων τόνδε κίνδυνον περᾶν, 270
κἀξορθιάζων πολλά, καὶ δυσχειμέρους
ἄτας ὑφ' ἧπαρ θερμὸν ἐξαυδώμενος,
εἰ μὴ μέτειμι τοῦ πατρὸς τοὺς αἰτίους
τρόπον τὸν αὐτόν, ἀνταποκτεῖναι λέγων·
αὐτὸν δ' ἔφασκε τῆι φίληι ψυχῆι τάδε 275
τείσειν μ' ἔχοντα πολλὰ δυστερπῆ κακά,
ἀποχρημάτοισι ζημίαις ταυρούμενον·
τὰ μὲν γὰρ ἐκ γῆς δυσφρόνων μειλίγματα
βροτοῖς πιφαύσκων εἶπε, τὰς δ' αἰνῶν νόσους,
σαρκῶν ἐπαμβατῆρας ἀγρίαις γνάθοις, 280
λειχῆνας ἐξέσθοντας ἀρχαίαν φύσιν,

21 All passages of Aeschylus' tragedies are quoted from Denys Page's edition (Aeschylus 1972). The English translations are by Richmond Lattimore (Grene-Lattimore 1959) with some changes.

λεύκας δὲ κόρσαις τῆιδ' ἐπαντέλλειν νόσωι,
ἄλλας τ' ἐφώνει προσβολὰς Ἐρινύων
ἐκ τῶν πατρώιων αἱμάτων τελουμένας
†ὁρῶντα λαμπρὸν ἐν σκότωι νωμῶντ' ὀφρύν†.
τὸ γὰρ σκοτεινὸν τῶν ἐνερτέρων βέλος
ἐκ προστροπαίων ἐν γένει πεπτωκότων
καὶ λύσσα καὶ μάταιος ἐκ νυκτῶν φόβος
κινεῖ ταράσσει καὶ διωκάθει πόλεως
χαλκηλάτωι πλάστιγγι λυμανθὲν δέμας.
καὶ τοῖς τοιούτοις οὔτε κρατῆρος μέρος
εἶναι μετασχεῖν, οὐ φιλοσπόνδου λιβός,
βωμῶν δ' ἀπείργειν οὐχ ὁρωμένην πατρὸς
μῆνιν, δέχεσθαι δ' οὔτε συλλύειν τινά,
πάντων δ' ἄτιμον κἄφιλον θνήισκειν χρόνωι
κακῶς ταριχευθέντα παμφθάρτωι μόρωι.

[The great strength of Apollo's oracle will not
forsake me. For he charged me to win through this hazard,
with prediction of much, and speech articulate,
the winters of disaster under the warm heart
were I to fail against my father's murderers.
told me to cut them down in their own fashion, turn
to the bull's fury in the loss of my estates.
He said that else I must pay the penalty
with my own life, and suffer much sad punishment;
spoke of the angers that come out of the ground from those
beneath who turn against men; spoke of sicknesses,
ulcers that ride upon the flesh, and cling and with
wild teeth eat away the natural tissue, how on this
disease shall grow in turn a leprous fur. He spoke
of other ways again by which the avengers might
attack, brought to fulfillment from my father's blood.
For the dark arrow of the dead men underground
from those within my blood who fell and turn to call
upon me; madness and empty terror in the night
on one who sees clear and whose eyes move in the dark,
must tear him loose and shake him until, with all his bulk
degraded by the bronze-loaded lash, he lose his city.
And such as he can have no share in the communal bowl
allowed them, no cup filled for friends to drink. The wrath

of the father comes unseen on them to drive them back
from altars. None can take them in nor shelter them.
Dishonored and unloved by all the man just die
at last, shrunken and wasted away in painful death.]

What speakers in court only mention in general terms, characters in drama describe in horrifying detail, but the beliefs behind their words are exactly identical: the failure to avenge a murder brings pollution on the relatives of the victim.[22]

What is also important to note is that even though Aegisthus did not participate directly in the killing of Agamemnon (*Ag.* 1608, 1635, 1644), but only plotted with Clytemnestra and encouraged her, he is also considered guilty of the murder and must also be punished. When Aegisthus boasts about his role in the murder, the chorus in the *Agamemnon* express their shock: "Aegisthus, this strong vaunting I distress is vile; you claim that you willingly killed the king, you and you only plotted his pitiable death" (1612-1614: σὺ δ' ἄνδρα τόνδε φῂς ἑκὼν κατακτανεῖν, μόνος δ' ἔποικτον τόνδε βουλεῦσαι φόνον). The chorus take the same view of legal responsibility for homicide that one finds in Athenian law: Andocides (1.94) states that the person who plots to kill and the person who accomplishes the crime with his own hand are both subject to the same treatment (τὸν βουλεύσαντα ἐν τῷ αὐτῷ ἐνέχεσθαι καὶ τὸν τῇ χειρὶ ἐργασάμενον).[23] The chorus of slave women in the *Libation-Bearers* also consider Aegisthus just as guilty and polluted as Clytemnestra (*Ch.* 836-837, 944 [δυοῖν μιαστόροιν]). The pollution that attaches to Aegisthus is not caused by his participating in physical violence, but through his joint moral responsibility for the crime. After both Clytemnestra and Aegisthus are killed, the chorus triumphantly proclaim that the stain of pollution will be completely driven out of the hearth (ἀφ' ἑστίας μύσος ἅπαν ἐλαθῇ) by purifications that drive out

22 For the pollution of Orestes for failing to avenge his father see Hoessly 2001: 108-31. Cf. Petrovic and Petrovic 2016: 142-3. For the contrast between tragic style, which describes physical suffering in explicit detail, and forensic style, which avoids physical details, see Harris 2017: 230-6.

23 On responsibility for homicide in Athenian law see Harris 2006: 391-404.

the afflictions harming it (καθαρμοῖσιν ἀτᾶν ἐλατηρίοις) (*Ch.* 966-968).

The theme of pollution for homicide continues in the next and final play of the trilogy, the *Eumenides*. In the prologue Orestes is in the temple of Apollo at Delphi surrounded by the sleeping Erinyes (Aesch. *Eum.* 34-63). Apollo tells Orestes that he has lulled the Erinyes to sleep and orders him to go to Athens and seek the help of Athena (*Eum.* 64-84). Orestes expresses his fears about the journey and asks Apollo for reassurance (*Eum.* 85-87). Apollo calms his anxiety by sending Hermes to protect him (*Eum.* 88-93).[24] Orestes obeys the god, leaves Delphi, goes to the statue of Athena on the Acropolis and summons her to protect him (235-44). The Erinyes pursue Orestes to Athens and surround him while chanting a binding song (245-396). Athena then arrives and asks each party what they wish her to do (397-414). The Erinyes state that Orestes has killed his mother and is guilty of murder (415-35). Orestes admits that he has killed his mother, but asserts that he is innocent (443-69).

Scholars have often been puzzled by Orestes' ritual status at this point in the play: is he polluted or not? Oliver Taplin, followed by Parker, finds Orestes' ritual status rather confusing: "Aeschylus seems to be deliberately complicated and unclear on the matter of purification".[25] Let us examine the relevant passages. At lines 312-20 the Erinyes explicitly state that Orestes is polluted:

εὐθυδίκαιοι δ' οἰόμεθ' εἶναι·
ὸν μὲν καθαρὰς χεῖρας προνέμοντ'
οὔτις ἐφέρπει μῆνις ἀφ' ἡμῶν,
ἀσινὴς δ' αἰῶνα διοιχνεῖ·
ὅστις δ' ἀλιτὼν ὥσπερ ὅδ' ἀνὴρ
χεῖρας φονίας ἐπικρύπτει,
μάρτυρες ὀρθαὶ τοῖσι θανοῦσιν

24 Sommerstein in Aeschylus 1989: 93-4 accepts the transposition proposed by Burges and followed by West, but Pelliccia 1993 has shown that there is no good reason to accept the transposition and explains why the lines are best understood in the place in which they are found in the manuscripts.

25 Taplin 1977: 383, followed by Parker 1983: 386.

παραγιγνόμεναι πράκτορες αἵματος
αὐτῶι τελέως ἐφάνημεν. 320

[We hold we are straight and just. If a man
can spread his hands and show they are clean (καθαρὰς χεῖρας),
no wrath of ours shall lurk for him.
Unscathed he walks through his life-time
But one like this man before us, with stained (χεῖρας φονίας)
hidden hands, and the guilt upon him,
shall find us beside him, as witnesses
of the truth, and we show clear in the end
to avenge the blood of the murdered.]

But Orestes denies that he is polluted in three passages. At lines 235-40 he states that he is not polluted and that his hand is not uncleansed and appears to imply that the stain of pollution has been washed away by his travels. At lines 276-89 Orestes states that the stain of his matricide was washed away by the sacrifice of swine, a purificatory ritual. At 443-53 Orestes repeats his assertion that his pollution has been removed by running water and slain victims. Even though Orestes appears to give different reasons to support his assertion that he has been purified and is no longer polluted, he consistently asserts that he is ritually clean. One should note that his argument in the final passage – that he has been able to speak to others without causing harm – is similar to one given by a defendant in an Athenian court in the late fifth century BCE (Antiphon 5.82-3). The parallels between stage and court-room are therefore very close.

But is Orestes polluted or not? Is Aeschylus rendering pollution problematic in these passages? First, we need to bear in mind that pollution was not an emotional response to the sight of bloodshed; pollution resulted from the guilt of the murderer, not from the blood of the victim by itself as we saw in the case of Aegisthus. A murderer was polluted not because he killed but because he killed wrongly. Conversely, this means that if a person killed someone legally or justly, he was not polluted. The following passages make this clear.

Lycurgus *Against Leocrates* 125 (331 BCE): "They voted and swore

> that if anyone tried to set up a tyranny or destroy the city or subvert the democracy, the person who saw this and killed him was ritually clean" (Ἐψηφίσαντο γὰρ καὶ ὤμοσαν, ἐάν τις τυραννίδι ἐπιτιθῆται ἢ τὴν πόλιν προδιδῷ ἢ τὸν δῆμον καταλύῃ, τὸν αἰσθανόμενον καθαρὸν εἶναι ἀποκτείναντα).[26]

> Demosthenes 9.44: "It has been written in the laws about homicide in cases where it is not permitted to bring a suit for murder, but the killing is sanctified (*euagos*) and says 'let him die without honour (*atimos*)'. Indeed, this means the killer of these men is ritually pure (*katharos*)" (ἀλλ' ἐν τοῖς φονικοῖς γέγραπται νόμοις, ὑπὲρ ὧν ἂν μὴ διδῷ φόνου δικάσασθαι, ἀλλ' εὐαγὲς ᾖ τὸ ἀποκτεῖναι, 'καὶ ἄτιμος' φησὶ 'τεθνάτω.' τοῦτο δὴ λέγει, καθαρὸν τὸν τούτων τιν' ἀποκτείναντ' εἶναι).

> D. 20.158: "Just the same, he (i.e. Draco) does not eliminate all considerations of justice but specifies in what circumstances it is permitted to kill, and if one does so in the correct way, he sets him apart as free from pollution (*katharos*)" (ὅμως οὐκ ἀφείλετο τὴν τοῦ δικαίου τάξιν, ἀλλ' ἔθηκεν ἐφ' οἷς ἐξεῖναι ἀποκτιννύναι, κἂν οὕτω τις δράσῃ, καθαρὸν διώρισεν εἶναι).

In fact, several passages equate the term "innocent" with "ritually pure" and the term guilty with "polluted." There is no difference between the religious approach to guilt and innocence and the legal approach to guilt and innocence.[27] In Athenian laws about homicide and in Athenian religion, guilt brings about pollution, and innocence keeps one ritually "clean" or *katharos*. This in turn means that the question, is Orestes polluted or not? is directly related to the question, is Orestes guilty of murder or not? He has killed his mother and does not deny it. The question about which he and the Erinyes disagree is whether or not he did so justly. This is the issue that Orestes asks Athena to judge, and which Athena turns over to the judges of the Areopagus to decide.

26 This passage is from the decree of Demophantus, passed after the end of the regime of the Thirty. The document at Andocides 1.96-8, which purports to be the decree of Demophantus about killing tyrants is a forgery; see Harris 2013/14 refuting Sommerstein 2014. Petrovic and Petrovic 2016: 160, note 100 mistakenly believe that this document is genuine.

27 See Harris 2010: 129-30.

The reason why the Erinyes and Orestes do not agree about his ritual status is because they do not agree about his guilt. The Erinyes assert that Orestes is guilty and therefore believe him to be polluted. He has killed his mother and by the law of strict retribution, the does must suffer for what he has done. Otherwise there will be no deterrent against future crimes. This would justify their punishment. Orestes on the other hand asserts that he has killed his mother justly for several reasons as emerges from his defense at his trial: Clytemnestra has killed her husband Agamemnon, and Apollo has ordered him to avenge his father. Because the Erinyes believe that Orestes is guilty, they believe that he is polluted. Because Orestes claims that he is innocent, he claims that he is ritually pure. It is true that Apollo has performed the ritual of purification, but the Erinyes would argue that such a ritual would not be effective because it would work only for someone who is innocent, not for someone who is guilty. In Athenian law, we know that there was no ritual of purification for someone who had killed intentionally; it was only the person who killed against his will who could be purified by ritual after receiving pardon from the victim's relatives (D. 37.59).

What this reveals is that despite their legal dispute the Erinyes on one side and Orestes and Apollo on the other side agree about one fundamental point: pollution for homicide attaches only to the person who has killed unjustly or against the law, and the person who has killed justly is ritually pure. There is nothing problematic about pollution for homicide in the play. The issue that is problematic and which divides the court of the Areopagus is, has Orestes killed justly or unjustly? This is in fact the question that Orestes asks Athena to decide (*Eum.* 468: σὺ δ' εἰ δικαίως εἴτε μὴ κρῖνον δίκην). When the judges decide by majority vote that Orestes is innocent, Athena is then able to persuade the Erinyes that Orestes should not be punished and that the Erinyes should not unleash the consequences of pollution on Attica (*Eum.* 778-967). But until that decision is made, both the question of Orestes' guilt and his ritual status remain unresolved.

The contrast with the portrayal of Orestes in the *Odyssey* is striking: there is no indication that in Argos or on Olympus there was any dispute about Orestes' guilt. Aeschylus has made the issue more complicated by stressing his killing of his mother, but

that is not the only reason for the different version. I must however postpone any analysis of the reason for the change until after we look at Euripides' *Orestes*.

We can now turn to Sophocles' *Oedipus Tyrannos*. In the prologue to the play the priest tells Oedipus that the city of Thebes is suffering from a plague and asks him to help (Soph. *OT* 14-57). Oedipus promises to help and informs him that he has sent Creon to Delphi to ask the oracle for information (Soph. *OT* 58-77). Creon then enters and reports that the oracle says that the plague has been caused by the death of Laius (Soph. *OT* 95-8, 106-7). We need to return to this in a moment. After the *parodos*, Oedipus addresses the chorus who represent the people of Thebes and urges them to report any information they might have about the killer of Laius (Soph. *OT* 224-35). He also bans the killer from the territory of Thebes and prohibits him from participating in prayers and sacrifices (Soph. *OT* 236-43). What is interesting is that his proclamation is obviously modeled on the proclamation made by the *basileus*, the archon at Athens who was responsible for charges of murder. After the *basileus* received a charge of murder from an accuser, he announced to those in Athens that the accused murderer is "is banned from lustral water, libations, bowls of wine, holy places, and the marketplace" (D. 20.158).[28] The terms of Oedipus' announcement are very similar. One might add that there is no parallel for this kind of announcement in the Homeric poems.

To return to Creon's news about the Delphic oracle, which is important for understanding the cause of the pollution in Thebes (95-101):[29]

ΚΡ. λέγοιμ' ἄν οἷ' ἤκουσα τοῦ θεοῦ πάρα. 95
ἄνωγεν ἡμᾶς Φοῖβος ἐμφανῶς, ἄναξ,
μίασμα χώρας, ὡς τεθραμμένον χθονὶ
ἐν τῇδ', ἐλαύνειν μηδ' ἀνήκεστον τρέφειν.

28 Finglass 2018: 247-50 anachronistically calls the proclamation an "excommunication", a term more appropriate to the medieval Catholic Church than to Classical Athens. The analysis of Harris 2010 is endorsed by Manuwald 2012.

29 All passages of Sophocles' tragedies are quoted from Sophocles 1990. The English translations are by Edward M. Harris.

ΟΙ. ποίῳ καθαρμῷ; τίς ὁ τρόπος τῆς ξυμφορᾶς;
ΚΡ. ἀνδρηλατοῦντας, ἢ φόνῳ φόνον πάλιν
λύοντας, ὡς τόδ' αἷμα χειμάζον πόλιν.

[CREON I would say what I have heard from the god.
Phoebus has clearly ordered us to drive
out the pollution growing in this land,
and not to harbor this incurable blight.
OEDIPUS By what purification? What is the solution for the crisis?
CREON By driving the man into exile or by washing away
Murder by murder, since this blood torments the city.]

Though some scholars have thought that it is patricide and incest that have caused the pollution, this is not what the oracle states. Apollo orders the Thebans to drive out the man who killed Laius either by having him killed or by driving him into exile. Patricide and incest are not mentioned in the oracle. As we will see in *Oedipus at Colonus*, Oedipus is not guilty of these crimes because he was unaware of Laius' identity when he killed him and unaware of Jocasta's identity when he slept with her. One should not argue that there was one rule for pollution in the law of the gods and another rule for responsibility in the laws of men. Both the laws of men and the laws of the gods recognized ignorance as an excuse (see below). A second point to notice is that the punishment prescribed for the murderer of Laius is that same as the punished for deliberate homicide at Athens: either death or permanent exile (D. 21.43: θανάτῳ καὶ ἀειφφυγίᾳ). The exchange that follows between Creon and Oedipus shows that the murder of Laius was deliberate and not against the will of the killer. In his commentary on the passage, Finglass misses the fact that the punishments specified by the oracle are not just those for homicide, but those imposed for deliberate homicide and not for involuntary homicide. This shows that *pace* Finglass Oedipus was considered guilty of deliberate homicide.[30] Once more, we see that the punishment

30 Finglass (2018: 197-8) does not make the connection with D. 21.43 and therefore misses the clear implications of the passage for the guilt of Oedipus. Petrovic and Petrovic (2016: 180-2) do not discuss the question of the guilt of Oedipus, but make the mistake of thinking that the pollution arises from incest, which is contradicted by lines 95-101, which show that the

of homicide in the play is the same as the punishment of homicide in Athenian law. The third point to make is that Apollo does not order the Thebans to drive out the killer of Laius because he is a *pharmakos*. Jean-Pierre Vernant claimed that Oedipus was innocent according to the laws of men and argued that Oedipus was to be driven into exile as a scapegoat for the plague at Thebes.[31] This is a view that is still popular in certain circles, but it is untenable.[32] First, the oracle states that the plague resulted from murder. Second, the word *pharmakos* never occurs in the entire play. Third, there is nothing in the treatment of Oedipus that is similar to the scapegoat rituals attested in ancient Greece.[33] If Oedipus were a scapegoat in this play, he would have been driven out of Thebes. But in the final scene Creon orders Oedipus to go inside the palace.

To return to the question of the guilt of Oedipus. In an essay published in 2010 and endorsed by several scholars, I showed that the killing of Laius described fits the criteria for the offense of deliberate homicide and is not a case of legitimate self-defense. Let us look at the passage again (Sophocles, *Oedipus the King*, 800-13):

καί σοι, γύναι, τἀληθὲς ἐξερῶ. τριπλῆς
ὅτ' ᾗ κελεύθου τῆσδ' ὁδοιπορῶν πέλας,
ἐνταῦθά μοι κῆρυξ τε κἀπὶ πωλικῆς
ἀνὴρ ἀπήνης ἐμβεβώς, οἷον σὺ φῄς,
ξυνηντίαζον· κἀξ ὁδοῦ μ' ὃ θ' ἡγεμὼν
αὐτός θ' ὁ πρέσβυς πρὸς βίαν ἠλαυνέτην.
κἀγὼ τὸν ἐκτρέποντα, τὸν τροχηλάτην,
παίω δι' ὀργῆς· καί μ' ὁ πρέσβυς, ὡς ὁρᾷ,
ὄχους παραστείχοντα τηρήσας, μέσον
κάρα διπλοῖς κέντροισί μου καθίκετο.
οὐ μὴν ἴσην γ' ἔτεισεν, ἀλλὰ συντόμως

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pollution was caused by the murder of Laius. Their view that "Sophocles displays a distinct intellectualizing stance toward issues of pollution and purity" is not convincing. As is clear from the comparison with the evidence of Athenian law, the stance of Sophocles is traditional.

31 Vernant 1972. Finglass 2018 appears to ignore this essay and the criticisms of its view of Oedipus's guilt.

32 See Harris 2010: 123 and *passim*.

33 On scapegoat rituals see Bremer 1983.

σκήπτρῳ τυπεὶς ἐκ τῆσδε χειρὸς ὕπτιος
μέσης ἀπήνης εὐθὺς ἐκκυλίνδεται·
κτείνω δὲ τοὺς ξύμπαντας.

[My wife, I will tell you the truth. When I was
travelling near this place where the road forks,
there I met a herald and a man
mounted on a chariot drawn by horses,
as you say. The man in front and the old man
attempted to drive me out of the road by force.
For my part I struck the man pushing me aside,
the charioteer, in anger. The old man, seeing this,
watched until I was alongside the chariot and
hit me right in the face with his two-pronged lash.
He did not pay an equal penalty, but suddenly,
struck by the stick in my hand, he collapsed right away,
falling on his back from the middle of the chariot.
Then I killed every last one of them.]

Alan Sommerstein has recently argued that Oedipus would have been innocent in Athenian law, but all the available evidence contradicts his view.[34] First, to count as legitimate self-defence, there must a threat of deadly violence against the person who kills. In the passage however the intention of the driver is not to kill Oedipus but to drive him out of the road.[35] The intent

34 Gagarin (1978) believes that there was a law permitting someone to kill an assailant who "started unjust blows" and that this law would have made Oedipus innocent of the murder of Laius. But Gagarin's view depends on a misreading of several key texts and a dubious restoration of *IG* i^3 104, ll. 33-5. For detailed refutation see Harris 2016b. Sommerstein (2011: 99) admits that there was not in fifth-century Athens any law that permitted or could even be plausibly read as permitting the killing of an assailant simply because he had struck the first blow". Despite the flaws in Sommerstein's analysis, his conclusion is uncritically followed by Finglass (2108: 73), which undermines much of his analysis of the play.

35 Sommerstein (2011: 103) claims that the blow could have been fatal but does not explain how it could have been fatal. More seriously, Sommerstein misses the statement of Oedipus himself that the blow was intended to drive him out of the road, not to kill him or to cause him serious bodily harm. This clearly shows that Oedipus himself did not think that he was under serious threat at the time. Sommerstein also fails to note that Oedipus states his rea-

of Laius is the same with the added motive of insulting Oedipus. This is clear from his use of a whip, which was not a deadly weapon – indeed it does not even cause a wound, much less a fatal wound – and is aimed at insulting Oedipus. One should recall the use of a whip in an incident recounted by Demosthenes in his *Against Meidias* (21.180), where the person striking commits *hybris* by treating a free person as a slave.[36] Second, the person who kills must kill because he is forced to use deadly force to avoid suffering harm and has no alternative. This is not the case with Oedipus, who could have simply left the scene to avoid harm. Finally, the motive of killer must be to avoid harm. But Oedipus states quite clearly that he did not strike to avoid further harm but out of anger at the insult.[37] This does not fit the mental element of a person acting in self-defence. Finally, Oedipus states that he paid Laius back "not in equal measure" (*OT* 810). If Laius had intended to kill Oedipus, Oedipus by killing him would have paid him back in equal measure. What he means by "not in equal measure" is that Laius only insulted him but did not threaten to kill him. Oedipus paid him back in unequal measure by paying back an insult with deadly violence, the latter being more serious an offense than the first.[38] The murder of Laius fits all the criteria of deliberate homicide in Athenian law because Oedipus causes the death of Laius (the meaning of the verb *apokteinein*) by an inten-

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son for striking back: it was anger, not an attempt to prevent bodily harm. As Sommerstein himself notes, "Oedipus is not blameless in this incident: he had no need to hit the driver".

36 Finglass (2018: 416-18) misses this point. He cites Sosin 2016 but does not see the flaws in Sosin's analysis of the phrase "in the road" at D. 23.53. For detailed refutation of Sosin 2016 see Harris 2016b.

37 Sommerstein 2011 never discusses the motive for Oedipus striking back, which is fatal against his view that Oedipus is innocent.

38 Sommerstein 2011: 102 quotes Gagarin 1978: 118n32, who however misinterprets the phrase. Oedipus is not comparing the results of the actions but contrasting the intent of the driver and Laius with his own intent. Finglass (2018: 418) repeats Gagarin's mistaken interpretation of the phrase. Finglass observes that retribution could exceed the original offense, but fails to see the parallel with D. 21.75, which shows that an excessive amount of retaliation could result in a conviction by Athenian judges.

tional action (the meaning of *ek pronoias*).[39] That is why the murder must be punished by death or permanent exile. The fatal objection to Sommerstein's belief that Oedipus is innocent is that he cannot explain why the murderer of Laius is to be punished and why he is polluted. As the passages cited above show, the person who was innocent was not polluted. But if as Sommerstein claims, Oedipus is innocent of murder, why does the oracle of Apollo explicitly state that the cause of the plague in Thebes is the pollution caused by the murder of Laius? And if the murderer of Laius is innocent, why does the oracle order that the killer of Laius must be punished (Soph. *OT* 95-107)? In the law of the gods and the laws of men punishment is given to those who are guilty, not to those who are innocent. And only those who are guilty are polluted, not the innocent.[40] Sommerstein further claims that there is no difference between the circumstances of the killing of Laius in the *Oedipus Tyrannus* and those in the *Oedipus at Colonus*. But if this is the case, why is Oedipus considered polluted in the former play and ritually pure in the latter play? As will become obvious in our discussion of the *Oedipus at Colonus*, the ritual status of Oedipus in this play is different because his legal status is different. The evidence against Sommerstein is overwhelming.[41]

Meinel tries to downplay the role of *miasma* in *Oedipus Tyrannos* as a way of explaining what happens to Thebes and to its leader). He claims that the absence of the term *miasma* after Oedipus learns his identity at 1183-5 means that the idea "is problematic as a concept by which comprehensively to grasp the suf-

39 On the meaning of the verb *apokteinein* see Harris 2006: 391-404. On the meaning of the phrase *ek pronoias* see Harris 2013: 182-9.

40 Finglass (2018: 72-73) does not understand that those are innocent of deliberate homicide or involuntary homicide are considered ritually pure.

41 It should come as no surprise that Sommerstein 2011 does not discuss any of the passages in the *OT* about the pollution incurred by Oedipus in relation to his legal status. To the evidence from the play, one can add Aristotle *Poetics* 13, in which the fate of Oedipus in the play is an example of a person who falls through his own *hamartia*, that is, wrongdoing for which he is responsible even though it is not as culpable as actions committed as a result of evil character. Clearly Aristotle considered Oedipus guilty. I plan to deal with this topic in the future.

fering man on stage as well as the complex misfortune that lies behind his suffering" (Meinel 2015: 67). But the language of pollution (1383 [*anagnos*], 1384-5 [*kelis*], and 1426-7 [*agos*]. Cf. Thuc. 1.127.1) and of purification (1227-8) used by the characters shows that they consider the concept a perfectly good explanation for Oedipus' downfall. Oedipus clearly considers himself polluted, and so do the other characters in the play. Meinel also mistakenly thinks on the basis of Dem. 23.72 that in cases of homicide a purification ritual would reintegrate Oedipus into the community. But the Demosthenes passage concerns involuntary homicide and is irrelevant to the guilt of Oedipus, who has committed intentional homicide and should go into permanent exile (see *OT* 98 with Dem. 21.43). What Oedipus desires for himself is the standard legal punishment, which *pace* Meinel is not a "corrupt purification" and does not constitute "non-compliance with strict ritual logic" (Meinel 2015: 71, 73). On the contrary, the order given by the oracle at Delphi and Oedipus' wish to be driven out of Thebes is in complete accordance with the sources for Athenian laws about the punishment for homicide and about the ritual status of the person who commits deliberate homicide. Sophocles does not make pollution problematic in this play, but adheres to the standard rules followed in Athenian law and society.

Next we turn to Sophocles' *Oedipus at Colonus*. In this play Oedipus is not polluted but ritually pure as he argues at length before the people of Colonus. The action of the play begins when Oedipus arrives at Colonus with his daughter Antigone after much wandering and accidentally walks into the grove of the Eumenides. Here he is discovered by a local inhabitant, who tells him about the sanctuary, which is holy ground (Soph. *OC* 37), and the surrounding area. He then departs to inform the people of Colonus.

When the people of Colonus arrive as the chorus, they ask him who he is. With great reluctance, he tells them that he is Oedipus. They are horrified, tell him that he must leave (Soph. *OC* 226), and accuse him of deceiving them (Soph. *OC* 229-36). Antigone immediately replies stressing that Oedipus acted against his will (Soph. *OC* 240). Oedipus follows by adumbrating his main arguments for innocence and ritual purity: he struck back

in self-defense against Laius after he was struck, and he committed parricide and incest in ignorance (Soph. *OC* 270-4) and repeats his defense of ignorance later in his interchange with the chorus (Soph. *OC* 547-8). This last passage is key because Oedipus not only claims to be morally innocent but ritually pure (*katharos*). As a result, he states that he was mistaken in punishing himself after he discovered his identity (Soph. *OC* 435-6), which is in stark contrast to his attitude in the *Oedipus Tyrannos*, in which he accepts responsibility.

Oedipus gives his most detailed defense of his actions after Creon accuses him of being a parricide and ritually impure in front of Theseus (Soph. *OC* 944-6). Oedipus starts by stressing that he acted against his will. What is very important is that he attributes all the responsibility for his suffering on the gods and their anger against his family. But note that he does not say that the gods made him polluted. They only made him suffer because of the actions done by his ancestors; as for himself, he is completely innocent (lines 965-8). The word ἡμάρτανον is translated by Lloyd-Jones in his Loeb edition as "crimes", but that is too strong; it can refer to any actions that miss the mark from those deliberately committed with wrongful intent to those committed in ignorance. He next states that he cannot be held responsible for what the oracle predicted before he was born. As for the killing of Laius, Oedipus gives a different version of the incident in this play, which is very different from that of the *Oedipus Tyrannos*: he states that Laius did not just insult him but tried to kill him, which made it impossible for him to act in any other way (Soph. *OC* 991-9). In the *Oedipus Tyrannos* Oedipus could have refrained from striking Laius without fear of further harm. In *Oedipus at Colonus* he had no choice, no freedom of action. Finally, he states that if his father's soul could speak, he would not be able to contradict him.

One cannot argue that ignorance was only an excuse that could absolve one of guilt in the law of the *polis* but not in religious law. First, there is the story of Theogenes, the archon *basileus*, as told by Apollodorus ([Dem.] 59.81-3). The archon *basileus* was required to be married to a woman who was an Athenian citizen and was a virgin at her wedding. The Areopagus investigated Theogenes when he held this position and discovered that his wife

did not meet these qualifications. When they were about to fine Theogenes, he said that he had been naïve and did not realize that his wife failed to meet the criteria. The Areopagus accepted his excuse and decided not to impose the fine. Second, the law about maintaining order on the Acropolis outlaws certain activities, but only imposes fine on those who knowingly violate its provisions (*IG* i^3 4, ll. 6-8, 11-13). Third, the law about initiation into the Mysteries imposes a penalty on persons who initiate people at the Eleusinian Mysteries without being members of the Eumolpidai or the Kerykes, but only imposes this penalty if they do so knowingly (*eidos*).[42] Fourth, if someone killed a member of his own community in battle through ignorance (ἀγνοήσας), he was considered ritually pure" (καθαρόν), that is, innocent (Dem. 23.54). In each case, the offender is considered guilty only if he was aware that he was committing an offense. If he were ignorant of violating a rule about religious activities, he would be considered innocent. One cannot therefore divide up the laws of the *polis* into religious and non-religious laws (in my recent essay on regulations about religion I have shown that this division is hard to draw) and argue that each group of laws had a different approach toward moral responsibility.[43] The same approach is found in all laws of the *polis* no matter what their substantive contents.

In his recent book on *Ancestral Fault* Renaud Gagné has a good analysis of the relationship between the fate of Oedipus and his moral responsibility, but becomes confused about his ritual status (2013: 386-93). Even though Gagné sees that Oedipus is innocent, he claims that "In his answer to Creon's accusation, which puts so much emphasis on his pollution, Oedipus says nothing about this pollution". Gagné therefore claims that Oedipus is "simultaneously stained beyond measure and completely innocent". He appears to make a distinction between the "subjective aspect of his will, of his character, that must count in the end in the acceptance of Oedipus in the land by the chorus, Theseus and by the gods, not the objective fact of his crime".

42 Clinton 2005, no. 138, ll. 27-9.

43 As I show in Harris 2015b: 65-7, it is difficult to draw a clear distinction between laws about religious practices and laws about non-religious matters.

All of this is very mistaken for three reasons. First, Oedipus does assert to the chorus that he is *katharos* at line 548. Second, as we saw before, ritual purity in homicide law results from moral and legal innocence, and pollution results from moral and legal guilt. One cannot drive a wedge between moral innocence based on subjective factors and pollution based simply on objective factors as Gagné tried to do. Third, if Oedipus were polluted, his pollution would be dangerous and would lead both the chorus and Theseus to reject his supplication and not allow him to dwell in Attica. The fact that they accept his supplication and promise to protect him indicates that they believe that he is not only innocent but also free from any pollution that would pose a threat to Attica. Gagné appears to hold the traditional view of pollution, that it was a relic from the Homeric period during which humans were judged by their actions and not their intentions and rooted in a primitive fear of bloodshed regardless of the motive. But as I have shown in my essay on pollution for homicide, these assumptions are contradicted by the evidence.[44]

So Oedipus is innocent and is ritually pure. But this leaves the question, why has he suffered so much if he is innocent? Meinel seems to think that one must conjure up another kind of pollution, which is to be distinguished from purity and pollution by law, to explain Oedipus' suffering, but this is unconvincing for two reasons (Meinel 2015: 209). First, it would be wrong to contrast legal purity and pollution and religious purity and pollution because the laws of Athens and other Greek states did not address only non-religious matters but also religious matters. Meinel's view is therefore rooted in a false dichotomy. Second, as we saw before, Oedipus provides a very good answer to the question, why have you suffered so much? It is the gods who have made him suffer despite his moral innocence. In *Oedipus Tyrannos* the oracle of Apollo has decreed that he will kill his father and marry his mother, but his pollution is caused by killing someone who happens to be Laius. This pollution brings about the plague in Thebes, which leads to a series of events leading to his discovery of his identity

44 One of the merits of Petrovic and Petrovic 2016 is that they do see the importance of intention and will in certain types of pollution and purity.

and fate. In *Oedipus at Colonus*, however, Oedipus must be ritually pure to enter Attica and become a local hero.[45] Sophocles therefore alters the story to make Oedipus innocent and ritually pure, but keeps the oracle and the gods' will to explain his extraordinary suffering. What is important for our topic is that the arguments Oedipus uses to support his claim that he is innocent and ritually pure and the evaluation of his supplication by the chorus and by Theseus are in keeping with contemporary legal principles, which viewed self-defense as exculpatory and ignorance as a legitimate excuse against a charge of wrong-doing. From a legal perspective and a ritual perspective, Oedipus and the audience at the Dionysia both inhabited the same moral, legal and religious universe.

The concept of pollution for homicide is also important for understanding several passages in Euripides' *Heracles*. In the play, Heracles returns to Thebes from helping Theseus to escape from Hades and finds the tyrant Lycus in control on the point of killing his family. Heracles kills Lycus and frees his family and the city, but his fate suddenly changes.[46] Hera sends Iris with Lyssa to drive Heracles mad so that he kills his wife and children (Eur. *HF* 922-1015). Heracles considers himself polluted as a result of the murder of his wife and children. When Theseus arrives in Thebes Heracles veils his head to prevent his pollution from touching his friend Theseus because the taint of pollution for killing his children (τεκνοκτόνον μύσος) can spread by contact with others (1155-9. Cf. 1234). He does not wish to harm the innocent by casting on them the blood that causes pollution (προστρόπαιον αἷμα προσβαλών) (1160-2).[47] For this reason, Heracles observes that he cannot attend the funeral of his children because law requires that the murderer not have contact with the family of the victims. The most that

45 Note that Theseus has to purify Heracles so that he can be buried in Attica and become the object of worship (Eur. *Her.* 1322-1333 with Bond in Euripides 1981: 395-6).

46 Note that Heracles purifies the house after the killing of Lycus (Eur. *HF* 922-4, 1145), but is not guilty of the crime of homicide because he has killed a tyrant. For purification carried out even in the case where the killing does not incur punishment see Antiphon 6.4; Plato *Lgg.* 865a-b.

47 For pollution spreading by contact see the passages in Bond in Euripides 1981: 359-60.

he can do is to urge his father to give them burial and to weep at their grave (1358-64).[48]

Even though he has killed his children against his will (1364: διώλεσ' ἄκων), Heracles knows that the law still requires that he leave the territory of Thebes (1281-2). Theseus also knows the legal rules and agrees that Heracles must leave Thebes "for the law's sake" (1322: τοῦ νόμου χάριν). The penalty for Heracles' actions is the same as the penalty in Athenian law: the person who was convicted of involuntary homicide was also required to leave Attica though there was the possibility of return if the relatives of the victim granted pardon (Dem. 23.72; Antiphon 6.4).[49] Just as the person who committed involuntary homicide could be purified (Dem. 37.), Theseus also proposes to purify Heracles once they reach Attica (1324-5).[50]

Heracles also invokes inherited pollution for homicide as a reason for his suffering. He recalls that his father killed Electryon, the father of his mother Alcmene, and was polluted by the bloodshed (*prostropaios*). Because this pollution was never washed away, it was passed on to him as the son of Amphitryon, and this explains why he as one of his descendants has suffered (1262: δυστυχεῖν τοὺς ἐκγόνους).[51] The view that pollution could be passed from father to son was one that was still current in Greece during the late fifth century BCE. According to tradition, the Alcmeonids had killed the followers of Cylon after they accepted

48 For the idea that the murderer should not have contact with the family of the victim see Herodotus 3.50.3.

49 Cf. Bond in Euripides 1981: 395. Meinel 2015 does not discuss this passage. The victim could also pardon the killer before dying and thus remove his pollution. See Dem. 37.59 and Eur. *Hipp.*1448-1451 with Barrett in Euripides 1964: 415. This is another passage in which the actions of tragic characters follow rules of Athenian law.

50 Meinel 2015 does not discuss this passage.

51 For the idea compare Euripides F 82 Kannicht: τὰ τῶν τεκόντων ὡς μετέρχεται θεὸς μιάσματα. Bond in Euripides 1981: 383 and Gagné 2013: 344-45 do not comment on Heracles' suffering as a result of Amphitryon's pollution. Note that Hesiod *Sc.* 79-94 does not say that the killing of Electryon created pollution. In this regard the poetry of Hesiod is similar to the *Iliad* and the *Odyssey*, in which homicide does not create pollution. See Harris 2015a: 28-30.

their supplication, then killed them without giving them the trial they had promised (Hdt. 5.70.1-72.1). Just before the outbreak of the Peloponnesian War, the Spartans reminded the Athenians of the legend and demanded that they drive out Pericles, who was a descendant of the Alcmeonids and had therefore inherited their pollution for the murder (Th. 1.126.2-127.2). The Athenians of course rejected the charge, but it was not because they did not share the Spartan view that pollution for homicide could be inherited. In fact, the Athenians retorted by reminding the Spartans that they were polluted because they had killed some Helots after accepting their supplication and because of the circumstances surrounding the death of King Pausanias (Th. 1.128, 134.2-4).

There is one passage in Euripides' *Hercules Furens* in which Theseus questions traditional views about pollution. When Theseus uncovers Heracles' head and exposes it to the sun, Heracles asks him why he did this (Eur. *Her.* 1231). Theseus replies that a mortal cannot pollute what belongs to the gods (Eur. *Her.* 1232). Heracles insists that Theseus should flee is pollution, but Theseus insists that no spirit of vengeance attacks a friend because of those he befriends (Eur. *Her.* 1232).[52] Yet even though the words of Theseus are expressed in rationalistic terms, Theseus does not question the standard attitudes about pollution as we have seen above: he still believes that Heracles must go into exile to satisfy the demands of the law and that Heracles is polluted and must therefore be purified. Theseus merely places an original interpretation on one aspect of pollution. Normally, one had to stay away from someone who was polluted as a way of expressing social disapproval and of compelling the murderer to leave the community. But Theseus' aim is to help a friend in need, not to enable a guilty man to avoid punishment. Aside from this one modification, Theseus accepts the general outline of Athenian views about pollution and does not question their basic tenets.

By way of ring-composition, I end with Euripides' *Orestes*. The contrast between the portrayal of Orestes in the *Odyssey* and that in Euripides' play could not be more stark. In the *Odyssey* Orestes is praised by gods and men as an example to follow. In

52 On these lines see Bond in Euripides 1981: 376.

Euripides' play, Orestes has been put under house arrest; he and his sister Electra are to be tried by the assembly of citizens in Argos. Orestes is also considered polluted, and the authorities in Argos have proclaimed that no one is to receive inside their house or at their fireside or to speak with them because they are polluted. In the *Odyssey* the stress is on his murder of Aegisthus; in Euripides as in Aeschylus the emphasis is on his murder of his mother. Opinions about his actions are divided both among the gods and among men. On the one hand, Apollo has ordered him to kill his mother and Aegisthus; on the other, the Eumenides pursue him in his mind and threaten to drive him mad with visions. In the assembly at Argos opinions are also divided. Some argue that Orestes and Electra merit the death penalty. One humble citizen however speaks up for Orestes and proposes that he be awarded a crown.

The reason for the different treatment of Orestes and his sister is clearly connected to the development of the city-state with its formal legal institutions. Though Orestes is ultimately rescued by Apollo and promised that the gods sitting in judgment on the Areopagos will acquit him (1648-52). But early in the play, Tyndareus accuses him of violating the laws of the Greeks by taking the law into his own hands (Euripides, *Orestes*, 491-517):[53]

πρὸς τὸνδ' ἀγών τις ἀσοφίας ἥκει πέρι·
εἰ τὰ καλὰ πᾶσι φανερὰ καὶ τὰ μὴ καλά,
τούτου τίς ἀνδρῶν ἐγένετ' ἀσυνετώτερος,
ὅστις τὸ μὲν δίκαιον οὐκ ἐσκέψατο
οὐδ' ἦλθεν ἐπὶ τὸν κοινὸν Ἑλλήνων νόμον;
ἐπεὶ γὰρ ἐξέπνευσεν Ἀγαμέμνων βίον
κάρα θυγατρὸς τῆς ἐμῆς πληγεὶς ὕπο
(αἴσχιστον ἔργον· οὐ γὰρ αἰνέσω ποτέ),
χρῆν αὐτὸν ἐπιθεῖναι μὲν αἵματος δίκην
ὁσίαν διώκοντ', ἐκβαλεῖν τε δωμάτων
μητέρα· τὸ σῶφρον τ' ἔλαβ' ἂν ἀντὶ συμφορᾶς
καὶ τοῦ νόμου τ' ἂν εἶχετ' εὐσεβής τ' ἂν ἦν.
νῦν δ' ἐς τὸν αὐτὸν δαίμον' ἦλθε μητέρι·
κακὴν γὰρ αὐτὴν ἐνδίκως ἡγούμενος,

53 Text and translation by David Kovacs in Euripides 2002.

αὐτὸς κακίων μητέρ' ἐγένετο κτάνων.

[It's this man who's on trial for folly: if good and bad are manifest to all, what man has ever shown himself more foolish than he has, seeing that he did not consider justice or have recourse to the common law of the Greeks? When Agamemnon breathed his last, struck on the head by my daughter (a most disgraceful deed, which I shall never condone), then he ought as prosecutor to brought a charge for murder consistent with piety and expelled his mother from his house. Instead of disaster he would have won praise for moderation, and he would have stuck close to the law and been god-fearing. But as it is, his lot proved to be the same as his mother's. He rightly considered her to be wicked, yet he showed himself more wicked than she was by committing matricide.]

The case of Orestes is made problematic in Euripides' play in part because the use of violence by private individuals has become problematic as a result of the rise of the state and its attempt to monopolize the use of legitimate force. Orestes' case proves to be an exception to this rule, but it is an exception that gives rise to debate about the use of violence and its role in the community. And just as Orestes' legal status is problematic, so is his ritual status: he is polluted until he can get a court to acquit and stop the Erinyes from pursuing him. We have come a long way from Homer. Even though Euripides uses a myth that was familiar to the audience of the *Odyssey*, he has recast it in terms that made sense to a Greek audience in the fifth century BCE. The poets who wrote for the tragic festival of the Dionysia often have the characters in their plays debate important issues in contemporary life. On the other hand, there are certain beliefs that the poets do not question: the gods deserve respect and must be honored with splendid offerings, citizens should defend their cities against foreign enemies, tyrants are unjust and should be removed from power, children should respect their parents and wives should be loyal to their husbands, and the dead should receive proper burial. As we have seen, the poets do not question contemporary beliefs about pollution for homicide. In all the plays we have examined, it is only those who have killed unjustly and against the law

who are polluted. Those who are innocent are considered ritually clean and do not pose a threat to their communities. If there is a debate about the ritual status of Orestes or Oedipus, it is because there is a question about their guilt or innocence, not because the tragic poets make the concept of pollution problematic. And pollution for homicide is an important belief in Athenian tragedy because it expressed an important attitude about the attempt of the city-state to monopolize the use of legitimate force: those who took the law into their own hands were not just considered guilty of a crime but also polluted. This was not a belief that was just democratic and Athenian. As Tyndareus makes clear in his speech in Euripides' *Orestes* and as Alexander's Exiles Decree (D. S. 17.109.1; 18.8.4) also reveals, this was a view shared by all the Greeks, not just the Athenians. We must bear in mind that when the tragic poets produced plays for the Dionysia, these plays were performed before an audience that came from all over Greece.[54] Because the tragic poets were able to appeal to this broader audience about Panhellenic concerns, their plays were able to find audiences abroad in theaters from Asia Minor to Sicily and Southern Italy.[55]

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54 On Attic tragedy as a Panhellenic genre see now the important book of Stewart 2017.

55 On performances of Attic tragedy outside Athens see Vahtikari 2014.

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