Death on a Road (Dem. 23.53)

ABSTRACT: Scholarly consensus holds that a law quoted in Demosthenes (23.53) permitted one to kill a highway robber who had lain in ambush and attacked one on a road. But the relevant phrase (ἐν ὁδῷ καθελὼν) says nothing explicit about ambush. Modern interpretation derives from Harpocration and other ancient authorities. It is argued here that they were mistaken and that the phrase ‘ἐν ὁδῷ καθελὼν’ referred to those who inadvertently killed a fellow traveler while ‘overtaking on a road.’ The new interpretation may offer another way to think about the encounter between Oedipus and Laius.

According to a famous passage in Demosthenes, “It was permitted to kill a highwayman who waylaid one on a road.” The law is quoted at 23.53:

Εὖν τις ἀποκτείνῃ ἐν ἀθλοῖς ᾗκον, ἡ ἐν ὁδῷ καθελὼν ἢ ἐν πολέμῳ ἐγνοῆσας, ἢ ἐπὶ δάμαρτι ἢ ἔπι μητρὶ ἢ ἔπι ἀδελφῇ ἢ ἔπι θυγατρὶ, ἢ ἔπι παλλακῇ ἢ ἔπι άλλῳ ἐπίσκεψαν ἐκ τοῦτον ἕνεκα μὴ φεύγειν κτείναντα.

If one kills unwillingly in games, or in ὁδῷ καθελὼν, or having failed to recognize (a comrade) in war, or if one kills a man who is with a wife, or with a mother, or with a sister, or with a daughter, or with a concubine whom he keeps for purpose of producing free offspring, he shall not, for these (acts) go into exile for having killed.2

But the phrase ἐν ὁδῷ καθελὼν itself says nothing explicit about highway robbery or ambush, which are generally regarded as the circumstances involved in this claim to lawful homicide.3 If we turn to Demosthenes for explanation we find none; he discusses the other three scenarios, but not this one.4 The Ath.Pol. does not mention it at all.5 The modern view comes from Harpocration.

1 MacDowell 1978: 114; also 1963: 73: “catching him waylaying him,” and 75-76.
4 Dem. 23.54-55: καίτοι σκέψασθ’ ὡς ὅσιος καὶ καλός ἔκαστα διεῖλεν ὁ ταῦτ’ ἐξ ἀρχῆς διειλών. ἂν τις ἐν ἀθλοῖς ἀποκτείνῃ τινά, τούτον ὁρίσεν οὐκ ἀδικεῖν. διὰ τι; σύ τοι τὸ συμβαίνει ἐκσέγατο, ἀλλὰ τὴν τοῦ δεδρακότος διάνοιαν. ἐ στ’ ἀυτή τις; ἥξοντα νικήσαι καὶ οὐκ ἀποκτείναι. έι δ’ ἐκείνος ἀσθενέστερος ἦν τὸν ὑπὲρ τῆς νίκης ἐνέγκειν πόνον, ἐστιν τοῦ πάθους ἀτίμονον ἡγήσατο, διότι τιμωρών οὐκ ἔδωκεν υπὲρ αὐτοῦ. πάλιν ἄν ἐν πολέμῳ φησίν ἄγνοιας; καὶ τούτον εἶναι καθαρῶν. καλός: έι γὰρ ἐγὼ πνεῦ τὸν ἐναντίων σύμβουλον εἶναι διέφθερα, οὐ δύκων ὑπέχειν, ἀλλὰ συγγνώμης τυχεῖν δίκαιος εἰμί. ἢ ἐπὶ δάμαρτι φησίν ἢ ἐπὶ μητρὶ ἢ ἐπὶ ἀδελφῇ ἢ θυγατρὶ, ἢ ἐπὶ παλλακῇ ἢ ἐπὶ ἄλλῳ ἐπίσκεψαν ἐκ τοῦτον ἕνεκα μὴ φεύγειν κτείναντα.

5 For example, MacDowell saw the phrase τὸ καθελόν to mean that the man unintentionally killed his comrade. If we had a better idea of what that particular phrase meant, we might be able to infer something about the law. But we do not. Therefore, according to MacDowell, we can say that it is unclear what the law means. But this is not necessarily the case. It is possible that the phrase τὸ καθελόν means something about the circumstances in which the man was killed. For instance, it may mean that the man was killed while attempting to overthrow the ruler. If we assume this is the case, then we can infer that the law allowed for the killing of such a person, even if they were not a highwayman. This is because the law allows for the killing of someone who is trying to overthrow the ruler, regardless of whether they are a highwayman or not. Therefore, we can say that the phrase τὸ καθελόν means something about the circumstances in which the man was killed, and that this is why the law allowed for the killing of such a person.
‘Road’ is not ‘Ambush’

In two passages the lexicographer asserts that the phrase indicates killing a person who was lying in ambush.

Harp. s.v. ‘Ἡ ἐν ὀδόν καθελών: ἄντι τοῦ ἐνέδραυντα ἐλόν, τουτέστι ἐν τινὶ ἐνέδρᾳ καταβαλῶν· Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους.’

‘Ἡ ἐν ὀδόν καθελών: for ‘having caught a person while he is lying in ambush,’ that is ‘having struck (someone) down in an ambush.’ Demosthenes in Against Aristocrates.

Harp. s.v. Ὀδός: Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους φησιν “ὡς ἐν ὀδόν καθελών” ἄντι τοῦ ἐν λόχῳ καὶ ἐνέδρᾳ. τοιοῦτον δὲ εἶναι καὶ τὸ Ὀμηρικὸν φασίν “ὡς ὀδόν ἐλθέμεναι” [Hom. I. 1.151]. εἰ δὲ ψυλλωθεὶ καὶ προτέρα, σημαίνει τὸν βαθμόν, ὡς παρὰ Λυσία ἐν τῷ κατὰ Φιλίππου, εἰ γνήσιος ὁ λόγος.

Road: Demosthenes in Against Aristocrates says, “ὡς ἐν ὀδόν καθελών” for ‘in a trap’ and ‘in an ambush.’ They say that the Homeric “or to go a road” is also such. And if the first syllable should be written with smooth breathing, it denotes ‘threshold,’ as in Lysias, in Against Philippus, if the speech is genuine.

The first simply asserts Harpocratian’s understanding that the lemma “means” or “is for (ἀντὶ τοῦ) X.” The second restates the first and adds a passage from Homer, which, unnamed authorities claim, exhibits the same use.

Homeric then. Agamemnon has just proposed an expiatory embassy to Chryses and has suggested that Achilles, named last in a list of four and insultingly dubbed “the most terrible of all men,” might lead the group. Achilles erupts (Hom. II. 1.149-151):

"οἱ μοι ἁμαρτεῖν τε καιρίδαλόφορον
πότε τις τοιοῦτοι ἐπεσαν πείθηται Ἀχιλλῶν
ἢ ὀδὸν ἐλθέμεναι ἢ ἀνδράσιν ἠφεὶ πάντη σοι;

“if (one kills) having failed to recognize (a comrade) in war,” he says that this man too is to be free of guilt/pollution. Rightly. For if I destroyed someone, because I thought him one of my enemies, I have a right not to suffer legal execution but to find pardon. “Or with a wife,” he says, “or with a mother or with a daughter, or with a concubine whom he keeps for purpose of free children,” and he makes guiltless anyone who kills a man who is with any of these—most rightly of all, Athenian men—letting this man off.”

5 Ath. Pol. 57.3: ἦν δ’ ἀποκτεῖται μὲν τις ύμπολογή, φη δὲ κατὰ τοὺς νόμους, οἷον μοῦνον λαβόν, ἢ ἐν πολέμῳ ἄγνωσθαι, ἢ ἐν ἀθλίῳ ἀγοινίζομενος, τούτῳ ἐπὶ Δελφινῷ δικαίωσιν. “If one admits to killing, but says that (one killed) in accordance with the laws, e.g. having caught a moichos, or having failed to recognize (a comrade) in war, or competing in games, they bring him to trial at the Delphinion.”

6 Compare Suda s.v. ‘Ἡ ἐν ὀδόν καθελών: ἄντι τοῦ ἐνεχθέντα ἐλόν. τουτέστιν ἐν τινὶ ἐνέδρᾳ καταβαλῶν. Δημοσθένης εἶν τῷ κατὰ Ἀριστοκράτους; essentially the same, but for the evidently corrupt “ἐνεχθέντα.” So also Photius: s.v. ὧ ἐν ὀδόν καθελών.

7 Suda s.v. Ὀδός abridges: Δημοσθένης ἐν τῷ κατὰ Ἀριστοκράτους· ὣς ἐν ὀδόν καθελών. ἅντι τοῦ ἐν λόχῳ καὶ ἐνέδρᾳ. τοιοῦτον δὲ καὶ τὸ Ὀμηρικὸν· ὥς ὀδόν ἐλθέμεναι. ἕι δὲ ψυλλωθεὶ καὶ προτέρα συλλαβή, σημαίνει τὸν βαθμόν. The same in Photius: s.v. Ὀδός.

8 Hom. I. 1.156: πάντων ἐκπαγλότατ’ ἀνδρῶν. Kirk 1985: 68: “The final sting is the addition of Akhilleus to the list of possible delegates…as an apparent afterthought;” and on the phrase ἐκπαγλότατ’ ἀνδρῶν, “its choice by Agamemnon is certainly malicious.”
You, cloaked in shamelessness, greed-minded, how is any of the Achaeans to heed your words readily, either to go on a road or to fight men with force?!!

Harpocration does not name his source for the interpretation of this passage, but the scholia may hint at what he might have seen (Σ Homer. Iliad. I. 151 [Erbse]):

η ὁδὸν: φασί μὲν τινες περὶ τοῦ πλοῦ λέγειν b (BCE) ἐγὼ δὲ τὸν λόχον φημὶ, b (BCE) Τ ἐπείπερ τὴν ὁδὸν λοχία, Τ ὅταν τοὺς δύο κινδύνους φίλη ἐν ταύτῃ, ὅπερ τῶν ἀριστέων ὡς δίον, ὅπερ τῶν ἰχλων ὡς κοινόν, ὡς κάκι b (BE) Τ "οὐδὲ ποτ’ ἐς πόλεμον ἀμα λαοῦ / οὔτε λόχον <§> οὐδὲ σὺν ἀριστήγονσιν” (A 226-7). b (BCE) Τ

Some say that he is talking about voyage, but I say (that he means) ‘ambush,’ for the very reason that they lay / are laying an ambush on the road, so that he is defining two risks in the same word, on the one hand that which belongs to the best men in particular, and on the other that which belongs to the masses in general, as (he does) also there: “not ever [have you dared in your heart to gear up] for battle with the people, nor to go on an ambush with the best men.”

The scholiast rejects a competing view, that ‘to go a road’ here means to go on a voyage, a well-attested use.9 Instead, he thinks, the phrase meant to lay an ambush, an offensive tactic for the select few. On that idea, Achilles asked: who among elites will obey your commands to lay an ambush and who among the general force will heed your call to battle? But Harpocration says that ‘to kill on a road’ was to fall into an ambush not to lay one. His interpretation, then, is consistent not with this view, but with one that is found in the D scholia (at Iliad. I. 151): “or [to go a] road [sc. means] ‘or to come to a road,’ that is ‘to fall into an ambush’ (eis ἐνδέραν κατελθεῖν).”10 Thus, unnamed authorities think that the phrase means ‘voyage,’ while one scholiast thinks that it indicates laying an ambush and another thinks that it denotes falling into an ambush, a view with which Harpocration appears to be sympathetic. Three voices out of four agree that the word ‘road’ or the phrases ‘to go a road’ or ‘on a road’ by themselves bespeak ambush.

They do not appear to have been correct. The phrase to ‘go a road’ occurs only this once in the Iliad. But we find it numerous times in the Odyssey,11 and also in the

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9 See LSJ s.v. 2 and e.g. Homer. Od. 6.164-165; 9.259-262.

10 D scholia [Van Thiel] at Iliad. I. 151: ἢ ὁδὸν ἑλθεῖμαι: ἢ εἰς ὁδὸν παραγενέσθαι, ὡς ἐστίν εἰς ἐνδέραν κατελθεῖν. The scholia recentiora Theodor Meliteniotis [Nicole] add little: ἢ ὁδὸν ὁδὸς σημαίνει τρία: τὸν πλοῦν, ὡς τὸ «τὴν ὁδὸν ἦν Ἑλένην» (Vor ap’γαγεν) εὐπατέρειαν (II. VI. 292.), καὶ τὴν ἐνδέραν, ὡς τὸ «ὁδὸν ἑλθεῖμαι» ἢ ἀνδράσιν, καὶ <τὸν νόμον>, ὡς τὸ «μακάριοι οἱ ἁμοὶ <ἐν ὁδῷ>, οἱ πορευόμενοι εἰς νόμον Κυρίου» (Psalm. CXVIII, v. 1.): “Road means three things: voyage, as in “the voyage on which he hauled back well-sired Helen,” and ambush, as in “going a road or against men,” and the law, as in “blessed are the blameless on a path who walk in the law of the Lord.””

11 Od. 3.316: σῶ δε τηρήσῃν ὁδὸν ἑλθείς; “And you will journey in vain” (also 15.13). 6.164-165: ἡλθὼν γὰρ καὶ καίσε, πολὺς δὲ μοι ἔπεσεν λαός, / τὴν ὁδὸν, ἡ δὲ μέλλειν ἐμοὶ κακὰ κήδε ἐπεσθα; “For I went there too—and a great host followed me—on the journey on which indeed wicked pains would be mine.” 9.259-262: ἢ μὲν τοῖς Τριώσσεσθι ἄπολαγχεθέντες ἄρχων / παντοῖοι ἀνέμοις ὑπὲρ μέγα λατήμα ταλάσσης, / σκέφτε εἰμενοι, ἄλλην ὁδὸν ἄλλα κελέπθα / ἠλθομέν; “We, I say, are Achaeans, from Troy, blown off course by all manner of winds, upon the great gulf of sea; heading home, we go another road, other paths.” 16.137-139: ἄλλ’ ἂν μοι τὸδε εἰπέ καὶ ἀτρέκεως κατάλεξον, / εἰ καὶ Λαέρτη αὐτὴν ὁδὸν ἠγγέλος ἔλθη δισφρόροις, “But come, tell me this and recite it exactly, whether I shall go this road as a messenger to ill-fated Laertes.” 21.20-21: τοῖς ἐνεκ’ ἐξετήσει πολλὴν ὁδὸν ἠλθεν Ὀδυσσείς, / παθνὸς ἐὼν; “For the sake of these, Odysseus went on an embassy, a long road, when he was young.”
Homer’s Hymn to Apollo, and Theognis, and Aeschylus. And in all of these cases it simply indicates travel. ‘To go a road’ was a generic expression for journey, implying nothing about ambush. The same goes for Achilles’ question at Iliad 1.151, as the context shows. Achilles’ next sentence proclaims, “For it was not because of Trojan warriors that I came here to fight.”13 The Trojans have not hurt him, “since a great many shady mountains and a roaring sea stand between”14 Troy and his home. “But we,” Achilles continues, “followed” Agamemnon.15 And so, if Agamemnon is going to devalue the honor that led Achilles to come and fight, Achilles concludes, “I am going back to Phthia, now, since it is much better to go home with the beaked ships.”16 Achilles begins the speech with his journey to fight at Troy and ends it with a threat to abandon the fight and journey home. Moreover, he is responding to Agamemnon’s suggestion that Achilles lead a peaceful delegation to Chryse. Kirk urges that ὠδὸν ἐλθέμεναι referred to that trip.17 This makes sense; that voyage was the proposal on the table, the offer that prompted Achilles’ speech. For Achilles, ‘going a road’ could refer to the journey to Troy, upon whose value he casts doubt, or the voyage to Chryse, which he would not lead—or even, as a sort of hendiadys, ‘going to fight’ in a general sense. In any case, a major thrust of the exchange between Agamemnon and Achilles is the journey and the fight. Ambush does not enter into it. The phrase ὠδὸν ἐλθέμεναι denotes travel and says nothing about ambush, neither in archaic Greek in general nor at Iliad 1.151 in particular. The scholiasts misunderstood.

Harpocration, I suggest, was similarly mistaken. To be or go or do something “on a road” was a straightforward expression, neither pregnant nor very subtle. Hesiod advises, “Don’t urinate while you walk, neither on a road nor off a road.”18 A fable of Aesop begins, “A lion is walking together with a man on a road, and the man declares....”19 Clues to Cyrus’ origins emerge when he and some other children are playing “on a road.”20 In Thucydides, the phrase describes troops “on the march” or “en

12 HH Apollo 232-233: χαμαὶ δ’ ἐλατήρ ἀγαθὸς περ / ἐκ δίφρου θορόν ὁδὸν ἔρχεται; “And springing to the ground from his chariot, the noble driver goes his way.” Theognis 2.129-220: Μηδὲν ἄγων ἀσχάλλε ταρασσομένοις πολιτέων, / Κύρνε, μέσαν δ’ ἢρθεν τὴν ὁδὸν ὅσπερ ἔγω; “Do not be too vexed when the citizens are in turmoil, Kyrnos, but go the middle road just as I do.” 1.330-331: Ἕσπερός ὅσπερ ἐγὼ μίσησον ὁδὸν ἐρχον ποσσῖν; “Go the middle road quietly, just as I do, with your feet.” Aes. Septem 714: μὴ ἔλθης ὠδοὺς σὺ τάσδ’ ἔρ’ ἐδόμαις πᾶλαις; “Do not go these roads to the seven gates.”

13 Il. 1.152-153: οὐ γὰρ ἔγω Τρῶων ἕνεκ’ ἡλιθίων αἰχμητῶν / δεδομαχησόμενος.  

14 Il. 1.156-157: ἐπει ἡ μᾶλα πολλὰ μετατέθ / ὦρεά τε σκόποντα θηλασσά τε ἡχήσεσα·  

15 Il. 1.158: ἄλλα σοι ὁ μέγ’ ἀναιδεὶς ἀμ’ ἐπάσπομεθ’ ὅφα σὺ χαίρῃς.  

16 Il. 1.169-170: νῦν δ’ εἷμι Φθίνη δ’, ἐπει ἡ πολλ’ φερτερὸν ἔστιν / οἷκα’ ἣμ’ σὺν νησιί κορωνίσιν.  

17 Kirk 1985: 68: “ὁδὸν ἐλθέμεναι: a specific reference to the journey to Khruse proposed by Agamemnon.”

18 Hes. W&D 729: μὴ’ ἐν ὠδῷ μὴ’ ἐκτός ὠδὸν προβάδινη σύρρησι.  

19 Aesop Fab. 264: λέονν σὺν ἀνθρώπῳ οἴδουν ὑμὸν ὁδὸ, ὁ δὲ ἀνθρώπος αὐτὸ ἐλακε: “ὕπατοτέρον ἔστιν ὁ ἀνθρώπος παρά τὸν λέοντα.”

20 Hdt. 1.114: Ἐπαινεί ἐν τῇ κόμη ταύτῃ ἐν τῇ ἡσαν καὶ οἱ βουκολίαι [αὐταί], Ἐπαινεί δὲ μετ’ ἄλλων ἥλικον ἐν ὁδός. Καὶ οἱ παῖδες παῖζοντες εὐλογόν ἐσωτόν βασιλέα εἶναι τούτον ὅτι τὸν τοὺς βουκόλους ἐπίκλησιν παίδα.
route.”²¹ Also in Xenophon, and Dionysius of Halicarnassus, and Menander—there, not troops.²² A scholiast glossed Homeric ἡμα as “fodder: not what is eaten at home, but what (is eaten) on the road.”²³ Roads could be violent places, it is true. By Egyptian custom, “a person on a road in the country, upon seeing a person being killed or suffering a violent act of any sort” was to offer help or else face death.²⁴ Aesop’s brigand slew a man “on a road,” and in view of bystanders.²⁵ And to return to Homer, after hearing of Telemachus’ homecoming Antinoos proposes, “Let us act first, catching him in the country away from the city, or on a road.”²⁶ Whether Antinoos’ intention was ambush or direct confrontation is a matter of interpretation, absent from the Greek. Here and elsewhere, and violent circumstances notwithstanding, the phrase ἐν ὀδόν simply describes one who is “on the/one’s way,” “on a/the road,” “en route,” “on a journey,” “travelling,” by land or sea, with no necessary implication that anyone was lying in ambush.²⁷

In Homer in particular and Greek in general, ‘to go a road’ does not imply ambush, and the contrary views of the scholiasts and Harpocration are incorrect. The expression indicated travel or journey. Moreover in Greek and in Demosthenes the phrase ‘on a road’ likewise does not suggest ambush and Harpocration’s assertion to the contrary is also wrong.

‘Καθαρεῖν’ is More than ‘Kill’

So much for ambush. What about the killing? Harpocration observes in the last of his three entries to address this clause (first, alphabetically) that καθαρεῖν is synonymous with ἀναιρεῖν and ἀποκτεῖνειν, and is found with this sense elsewhere.

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²¹ Thuc. 2.12.1: εἴ τι ἄρα μᾶλλον ἐνδοτέθη οἱ θητηναιοί ὄρεμας σφας ήδη ἐν ὀδὸν ὄντας; 2.13.1: Ἐτι δὲ τὸν Πελοποννησίων ἔνθελενεμνον τις ἐς τὸν Ἱσθμον καὶ ἐν ὀδόν ὄντων.

²² Xen. Cyr. 4.3.13: ἵππηκῇ δὲ οὐκ ἐν ὀδό μὲν ἡδίων ἀὑτοῖ ποτὲ δοῦν ψευδοθαλῆς; 5.3.53: τοῦτο μὲν ὁ Κύρος δοὺς ἠγεμόνος τῆς ὀδοὺς περιεσθαὶ ἐκλέπθους ἡγούμεθα· οὐ γὰρ πο ἐν ὀδόν πάντες ἦσσαν. Dion. Hal. 2.52.2: καὶ αὐτίκα τοὺς προπριῶτας ἀναλαβὼν ἔρρησε διὰ τάχους ἐν ὀδό τι ὄνται τοὺς πρεσβίες καταλαβὼν ὄφειλε τοὺς ἀπαθαμβοῦν. Men. Sam. 693: ὡς ὀραίς, ἵππηκῇ βαδιζεί κατέστη ἐν ὀδοῖ.[i]


²⁴ Diod. Sic. 1.77.3 (Hecataeus FGrHist. 264 F25): ἐπείκε τίς ἐν ὀδοί κατὰ τὴν χώραν ἑδίων φονευόμενον ἄνθρωπον ἢ τοῦ καθόλου βιαίω τι πάσχοντα μὴ ρύσαιτο δυνατός ὁν, βιαστεῖν περιπεσεῖν ὄφειλεν.

²⁵ Aesop Fab. 157: ληστὴς ἐν ὀδὸ τινα ἀποκτείνας ἐπειδὴ ὑπὸ τῶν παρατυχοῦντων ἐδώκετο, καταλαμβάνων αὐτὸν ἡμαμέλεις ἐφρηγε.


²⁷ I cannot tell whether LSJ endorse, or simply acknowledge, Harpocration’s explanation (s.v. I.2): “ἐν ὀδόν on a road, Hdt.1.114; ἐν τῇ ὄ. μέσῃ Id.3.76 (but ἐν ὔ. καθαλοῦν Lex ap.D.23.53, expld. by ἐν λόγῳ καὶ ἐνέδρᾳ by Harp. s.v. ὄ.);” Note also Philostr. Her. 18.6: ὑβρίσαντος γὰρ ἐν αὐτῶν πέρισσα μειράκιον τινός (ἡν δ’ ὡς φαινομένος νέος καὶ ἀπαθεῖτων), ὄρμησαν ἐπὶ τὸ μειράκιον καὶ ἀπέκτεινον αὐτὸ ἐν ὀδό, ποταμῷ τὸ ἔργον προσθείες; “For when, last year, a young man was acting with hybris toward him (and they say that he was quite young and uneducated), he rushed headlong against the young man and slew him on a road, attributing the deed to a river.” This is a much later text but Philostratus knew both Homer and classical Greek well, and here there is open aggression, not ambush.
In the law, as it appears in Demosthenes, the two adjacent scenarios define the circumstances of the kill carefully: “in games, against one’s will” and “in war, having failed to recognize” (ἐν ἄθλοις ἄκων, ἦ ἐν ὀδὸν καθελὼν ἦ ἐν πολέμῳ ἁγνοῆσας). If καθαιρεῖν was simply a synonym for ‘to kill’ then the participle καθελὼν does not offer the precision that ἄκων and ἁγνοῆσας so clearly do and the law specifies clumsily, “if one kills … by killing.” Moreover, if ἦ ἐν ὀδὸν does not mean ‘having fallen into an ambush’ then any killing that was committed on a road was lawful: “if one kills … on a road by killing.” That does not seem likely. We are missing something. Either words have been omitted in error, or else we and Harpocrata both have failed to understand καθαιρεῖν.

Omission or corruption are nearly always possibilities, especially where documents quoted by the orators are concerned. In this case, Carawan suggests that the phrase, ‘ἡ ἐν ὀδὸν καθελὼν’ is ancient but not Draco’s, that “there was a later statute recasting the substance of Draconian laws on justifiable killing to be found in the enabling ordinance for the Delphinium court,” and that the editor (of Demosthenes) found ἦ ἐν ὀδὸν καθελὼν there and inserted it at 53, “probably assum[ing] that the Draconian law of justifiable homicide that Demosthenes had read to the court in §53 was the same as the law of the Delphinium court to which he alludes in §74.” If this is what happened, then perhaps in an attempt to mirror the structure of “ἐν ἄθλοις ἄκων” and “ἐν πολέμῳ ἁγνοῆσας” a longer phrase was pared down to “ἐν ὀδὸν καθελὼν”—all of this at the point of reformulation of Draco’s laws, or transfer to the edition of Demosthenes. But Canevaro argues that “the expression was indeed very old, and the editor [of Demosthenes] has also in this case been very conscientious in quoting the law in its entirety. Yet Demosthenes and Ps. Aristotle avoided its mention exactly because they did not understand it, and therefore would not have been able to explain its meaning;” that the law as quoted can “confidently be confirmed as already present in the Urexemplar.”

The clause, on this understanding, is genuine but was too obscure and archaic for Demosthenes or the author of the Ath.Pol. to comprehend. Whichever view is correct, a simple explanation of the preserved wording would be most welcome.

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28 Suda abridges, s.v. Καθελὼν: Δημοσθένης ἀντί τοῦ ἄνελὼν ἦτοι ἀποκτείνας. καὶ Στησίχορος δὲ καὶ Σοφοκλῆς οὔτος ἐχρήσαντο τὸ ὀνόματι; similarly Photius, s.v. Καθελὼν.


30 Canevaro 2013: 69, with wider discussion of arguments for and against authenticity at 64-70, including conjectures about ancient incomprenhension, to which add also Ruschenbusch 1960: 150n106 and Gibson 2002: 165. The phrase was known not only to Harpocrata, but also to the author of P.Berol. inv. 5008 [http://www.trismegistos.org/text/59647] (see Gibson 2002: 157-171, esp. 160, 165-166), who (at least in the case of the lemma ὁ κάτωθι νόμος) drew on a common source, which may have drawn on Didymos: Gibson 1997. The clause is also attested in P.Mich. III 142 [http://www.trismegistos.org/text/59552], dated to the second century CE.
Kathairein is a strong word, and generally does not denote straightforward killing, much less defensible killing of an unlawful aggressor. In perhaps its most common use it is intensely physical, the word for demolishing inscribed laws and decrees and tearing down walls, a meaning that is widespread and persists. But, in archaic and classical Greek it often denotes utter destruction, obliteration. In Homer “ruinous fate destroys one in long-painful death.” Zeus rips the breath from one’s chest. Time obliterates everything. The gods destroy men like Paris. Hecataeus recommends naval build-up on such a scale as to exhaust all of Croesus’ dedications at Branchidae. Corinth eradicated piracy. Panactum was razed. The Greeks obliterated the power of Priam. A tragic chorus cheers the slaughter of Aegisthus. The list could go on. The verb’s primary range was either ‘tear down,’ or else something more like ‘devastate’ than ‘kill,’ either one an odd choice for describing the reaction of a traveler surprised by a brigand.

There is another meaning, less well attested but long known (LSJ s.v. III), and apt: catching up to and overtaking another. So, the Phoenicans pursue and overtake (κατεύθων διόκοντες) an enemy ship. Similarly, Cyrus imagines the benefits of learning to ride (Xen. Cyr. 4.3.16):

For now, I at least am pleased if, having commenced to run with any man on even footing, I am able, with a stretch, to make it in time to

31. IG II 43.31-35; 98.10-11; 116.39; 448.66-67; in literary representations too, e.g.: Thuc. 1.139.2: οἴ δέ Ἀθηναίοι οὔτε τάλλα υπήκουν οὔτε τὸ ψήφισμα καθήρουν.
32. Thuc. e.g. 1.56.2; 1.101.3; 1.117.3; 5.33.3; 8.93.1.
33. See e.g. in Demosthenes alone 16.27; 19.61, 275, 312; 20.37; 24.209; 58.67.
35. Pyth. 3.56-58: χειρὶ δ’ ἀρα Κρονίων / ρίψας δ’ ἀμφοῖν ἀμπυαν στέρνων κάθελεν / ἀκέλως, αἶθων δὲ κεραυνός ἐνέσκισεν μόρον.
37. Aes. Ag. 396-402: λιτῶν δ’ ἀκούει μὲν οὕτως θεῶν, / τὸν δ’ ἐπίστροφον τῶν / φῶτ’ ἀδικον καθαιρεῖ / τοις καὶ Πάρις ἑλθὼν / ἔς δύον τόν Ατέρειδαν / ἤσθενε ξενίαν τράπεζαν κλεισάε γυναικός.
38. Hdt. 5.36: εἰ δέ τὰ χρήματα καταφρεθέν τὰ ἐκ τοῦ ἱπό τοῦ ἐν Βραγχίδισι, τὰ Κροῖοτος ὁ Λυδός ἁνέθηκε, πολλὰς εἶχε ἐλπίδας ἐπικρατήσει τῆς θαλάσσης.
39. Thuc. 1.13.5: τὰς ναοὺς κτησάμενοι τὸ ληστικὸν καθήρουν.
40. Thuc. 5.42.1: τὸ μὲν Πάνακτον υπὸ τῶν Βοιωτῶν ἀυτῶν καθημένον ἤρων; similarly 3.68.3, 4.116.2.
41. Hdt. 1.4: Ἑλλήνης δὲ Λαικεδαιμονίης ἐνέκεν γυναικὸς στόλον μέγαν συναγείρατι καὶ ἔπειτα ἐλθόντας ἐς τὴν Ἀτην τὴν Πρώμον ὄνωμαν κατελείν.
42. Eur. El. 876-878: νῦν οἱ πάροι μεταπέρα γαίας τυράννεσουσι φιλοί βασιλῆς / δικαίως, τοὺς ἀδίκους καθελόντες. This, just before his corpse is carried on stage.
43. Hdt. 6.41: τὴν δὲ οἱ πέμπτην τῶν νεῶν κατεύθων διόκοντες οἱ Φοίνικες.
spear or shoot it before it gets too far ahead. But if I become a horseman I shall be able to overtake a man at a distance as far as I can see. And I shall be able, when pursuing animals, upon catching some, to strike them by hand, and to spear others as if they were standing still.

Now, in such circumstances, destruction may be the goal, so that the word may convey more than simple overtaking. But to chase, reach, and pass is the basic sense. Simonides, we are told, wrote an entire poem in order to ‘overtake’ the saying ‘τὸ χαλεπὸν ἐσθλὸν ἔμμενα’ (Pl. Prot. 343b7-c3):

οὐν Ἑλεάνης, οὗτος ἐσθλὸς δὲν ἐπὶ σοφία, ἂν γὰρ ἐτοι καθαρὲς τοῦτο τὸ ρῆμα ὅσπερ εὔδοκιμοῦντα ἀθλητὴν καὶ περιγένοντο αὐτῷ, αὐτὸς εὔδοκιμήσει ἐν τοῖς τότε ἀνθρώποις.

Simonides, then, since he was keen to win honor for wisdom, judged that, if he should overtake this saying, just as (if one should overtake) a distinguished athlete and prevail over him, he himself would be distinguished among the men of his time.

Simonides does not seek to kill the proverb, but to overtake it, to beat it fair and square in a contest of wits, to chase it down, and pass it by, like a racing athlete. And yet, the sense of ruin is not far off. That poem asserts that “It is not possible for a man to be not bad whom unmanageable misfortune has taken down (καθέλη).” 44 Misfortune, moreover, does not target the lowly (344c5-d5):

ἄνθρωποις γὰρ καθαρὲς ἐν πλοίῳ ἄρχῃ, δῆλον ὅτι οὐ τὸν Ἰωάννην· ὁ μὲν γὰρ ἰδιώτης ἠὲ καθήρτησε, ὅσπερ οὖν οὐ τὸν κείμενον τις ἀν καταβάλοι, ἀλλὰ τὸν μὲν ἐστῶτα ποτὲ καταβάλοι ἃν τις ὡστε κείμενον ποιήσα, τὸν δὲ κείμενον οὐ, οὕτω καὶ τὸν εὐμένιχον οὔτα ποτὲ ἀμήχανος ἐν συμφορᾷ καθέλοι, τὸν δὲ ἂν ἰδιώτης ἠντα οὐ, καὶ τὸν κυβερνήτην μέγας χειμῶν εἰπενον ἀμήχανον ἄν ποιήσειν, καὶ γαρρῳγιὸν χαλέπῃ ὥρα ἐκπέλεθος ἀμήχανον ἀν θεῖ, καὶ ἱατρον ταῦτα ταύτα.

Whom, then, does misfortune take down in command of a ship? It is clear that it is not the common man. For the common man is ever overaken. Thus, just as one could not throw down him who is lying down, but rather one could throw down him who is standing at the moment so as to make him lying down, but not him who is lying down, so also irresistible misfortune would take down him who is capable of resisting at the moment, but not him who is ever incapable of resisting: and a great storm falling upon a helmsman could make him incapable, and a harsh season befalling a farmer could render him incapable, and the same applies to a doctor.

There is no overcoming a man who is down already, no victory in an unfair fight. Thus, καθαρέων was the word with which one power beat and supplanted a competing power. So Cyrus took down Astyages and Croesus. 45 So the prospect of Sparta surpassing Athens, the memory of Athens outstripping Persia, a promise that Spartan power would overcome Athenian. 46 As with powers, so with individuals. When the Cypriot king


45 Hdt. 9.122: Ἐπεὶ Ζεὺς ἐπὶ Πέρσας ἠγεμονίαν διδότα, ἀνδρόν δὲ σοι, Κύρη, κατελον Αστυάγεα, φέρε, γῆν γὰρ ἐκτίμησα ὅλην καὶ ταῦτα τρεῖσαν, μεταναστάντες ἐκ ταύτης ὄλην σχοίνων ἁμείνιον: 1.46: μετὰ δὲ ἢ Ἄστυάγεας τοῦ Κωνάκρων ἠγεμονίαν καταρρίθησα ἕπο Κύρου τοῦ Κυμήδους; 1.95: Ἐπιδιόρετα δέ δὴ τὸ ἑνθέτοις ἦμαν ὁ λόγος τὸν τὲ Κύρον ὅταν ἔδω τὴν Κροίσου ἄρχην κατείλα, καὶ τοὺς Πέρσας ὁτερ τρόπο ἠγιάσαντο τῆς Αἰγῆς. Θου. 11.16.1: ἡ Περσικὴ βασιλεία Κροίσου καθελοῦσα καὶ ὅσα ἐντὸς Ἀλλος ποταμός πρὸς θάλασσαν ἐπεστράτευε καὶ τὰς ἐν τῇ ἡμέρᾳ πόλεις ἐδόμεθα.

46 Θου. 1.77.6: ὡμεῖς γ’ ἂν οὖν εἰ καθαλόντες ἦμας ἄρξατε, τάχα ἂν τὴν ἑυάνοιαν ἄν διὰ τὸ θηρετῶν δέος εἰλήφατε ἑμβαθαίτε, εἴπερ ὅσι τότε πρὸς τὸν Μήδιν δ’ ὀλγόν ἠγιάζουν ὑπεδείξατε, ὡμοία
Onesilus asked his shield-bearer whether he had in mind to attack the Persian general Artybius or his dangerous horse, he told the king that he would do as ordered but (Hdt. 5.111):

If ἕν ὀδὸς does not mean ‘in an ambush’ but simply ‘on a road,’ and if καθαιρεῖν does not mean simply ‘kill’ but in this case ‘overtake,’ though often with an implication of destruction, then we have enough to translate the clause literally and sensibly: “if one kills … while overtaking on a road.” The English phrase ‘to run someone down’ captures the dual sense nicely, meaning both to catch up to and to collide with, to chase down and run over. This, I suggest, was the meaning of the clause in the law quoted by Demosthenes. Homicides that resulted from misfortune when one traveler on a road attempted to overtake another were to be treated as lawful, accidental in a manner analogous to that which applied to the athlete who meant to do something dangerous but not to kill; the driver or rider meant to overtake, but not to kill thereby. Now, this clause might appear to be less transparent about the killer’s disposition than the two that flank it. But if this use of καθελόν implied ‘overtake’ or ‘pass’ or ‘beat’ in a competitive sense, then while it carried a clear undertone of violence, its explicit meaning was simply to outstrip. If so, the use alone suggested a lack of ‘intent’ to kill.

We can see how even a well-informed, careful, scholar such as Harpocration might have reached a conclusion that is incorrect, or at least unsustainable by extant

47 Vehicular homicide was considered but rejected by Carawan 1998: 92. Ruschenbusch 1960: 150 describes this scenario as “Wegsperre” (road-block), finding a possible parallel at Lex Francorum Chamavorum [MGH Font. iur. Germ. VI] XLI: Si quis viam publicam cluserit, in fredo dominico solidos 4. I do not understand how this scenario is thought to concern homicide. Thalheim 1894: 50n4 suggested accidental ejection of a person from a mountain road. Strictly speaking, ‘overtaking’ describes the passing of another vehicle that is going in the same direction; I could imagine such an ancient provision applying to accidents with oncoming traffic as well.
Greek. To begin, καθαρεῖν generally means to destroy and destruction often means killing, and he found such a use in archaic verse. So, he concluded, the verb at Dem. 23.53 meant simply to kill. He also found one or more suggestions that Homer had used the word ‘road’ to indicate ‘ambush’ and he either inferred or else read that this same sense might apply to the passage from Demosthenes.48 He will have known that roads could be dangerous and that bandits were a part of both life and the literary imagination. So, the apparent Homeric use may have seemed appropriate. Perhaps even necessary: if καθαρεῖν meant to kill, then ἐν ὁδῷ could not mean simply ‘on a road,’ for surely the law did not excuse any killing that took place on a road. The context was lawful killing so that self-defense against bandits would have seemed appropriate as qualifying circumstances. Wrong, I suggest, but not irrational.

The modern reader, informed by Harpocration, might seek indication that to kill in self-defense was lawful. But a claim of self-defense alone does not appear to have secured admission to the Delphinion.49 Moreover, defense against a hidden highwayman would seem an oddly narrow framing,50 especially since Draco’s homicide law defined terms under which a broader claim to self-defense could be invoked: “and if a person, acting in self defense (ἀμυνόμενος) immediately kills one who is plundering or seizing (φέροντα ἢ ἠγοντα) by force unlawfully, [the latter] shall die without [the killer paying] penalty.”51 This clause is often interpreted as applying to seizure of property only.52 But φέρω and ἠγο co-occur,53 rather like English ‘rape and pillage,’ φέρω tending to apply to goods and ἠγο to persons or other animals (who upon seizure in war or piracy became goods). The pair could apply to animate or inanimate booty, or indeed to both.54 Draco’s

48 Gibson 2002: 165 suggests that perhaps Harpocration’s reference to Homeric parallel might have arisen from conflation of καθελόν and ἐλθόν. On this logic, perhaps he even conflated καθαρεῖν, such as we find in the D scholia at II. 1.151 (the interpretation with which his own seems to be closest), or ἔλθουσα, such as we find in that line of Homer, with καθελόν in Dem. 23.53. Eustathius too would connect Dem. 23.53 with the line of Homer (p110 ad Hom. II. 1.151): Ὅτι δύο οὖν ἐνταθά τρόπους πολέμου ὁ ποιητής ἢ ὁδὸν ἐλθεῖν ἢ ἀνδράσιν ἵνα μάχεσθαι. ἄτι δὲ ὁδὸν μὲν ἐλθεῖν τὸ τούς ἀριστεῖς εἰς λόχον ἀπελθεῖν, ὡς δοκεῖ τοῖς παλαιοῖς, οἱ καὶ ἀπὸ Δημοσθένους φέρουσι χρῆσιν εἰπόντος ἐν τῷ κατὰ Αριστοκράτος τὸ «ἐν ὁδῷ καθελών» ἀντὶ τοῦ ἐν λόχῳ.

49 Gagarin 1978.

50 The other scenarios mentioned in the quoted section are broad: games (ἀθλοῖς), not e.g. pankration; war (πολέμῳ), not e.g. infantry battle; “with” (ἐπὶ) women in a man’s charge, a construction that covered both adultery and rape: Carey 1995: 409-410; Harris 1996: 293.

51 Dem. 23.60: Καὶ ἐὰν φέροντα ἢ ἠγοντα βία ἀδίκως εὐθὺς ἀμυνόμενος κτείνη, νηπονεῖ τεθάναι. This seems to be IG I3 104.37-38: καὶ ἐὰν φέροντα ἢ ἠγοντα βία ἀδίκως εὐθὺς] ἀμυνόμενος κτέ[νει, γ]επονέ τεθάναι; see also the more fragmentary lines 33-35: - - - ἄρχον[τα] χερ[ῶν] ἀδίκον -30 - χερ[ῶν] ἀδίκον κτέ[νει - - -, which must concern lawful response to the aggressor who “commences unlawful blows.”

52 Canevaro 2013: 70, with references at n133.

53 E.g. Dem. 4.34; 9.52; 13.6; 18.230; 24.128; 51.13.

54 Both: Gagarin 1978: 113n9. At Eur. Troad. 1310, Hecuba cries, “ἀγομέθα φερόμεθ”, which refers to seizure of her person, and Strepsiades laments that his property is being taken by creditors (Ar. Nub. 239-241): ὑπὸ γάρ τόκων χρήστων τε δισκολοτάτους / ἁγομαι, φέρομαι, τὰ χρήματ᾽ ἐνεγκυρώμαι. Canevaro 2013: 70 notes that “At [Dem. 23] §62, about the eventuality that Charidemus may φέρειν ἢ ἠγεῖν, Demosthenes writes: ὅτε γὰρ δήκου τοῦθ᾽ ὅτι πάντες οἱ στράτευμ᾽ ἠγοντες, ὅν όν οὖν κρατέους ἐπεσταίνα, ἠγοντει καὶ φέρουσι χρήσιες αἰτούντες. The matter seems again to be just χρήματα.” But this
law of homicide, then, defined the conditions of this claim clearly: the killing must be performed in immediate response to seizure of person or property and that seizure must be both violent and—since force was permitted in some circumstances—unlawful. The killing of a highway robber must have been covered by this broader clause and did not need to be defined as a “special type of self-defense.”

Athenian law made no special provision for self-defense against highwaymen. Greek does not support it. The homicide law of Draco did not need it. It did not exist.

**Not Oedipus but Laius**

If the suggestion offered here is accepted, then Draco’s homicide law made it difficult to prosecute the driver of a vehicle who struck and killed a family member. To a modern reader, this might seem an odd exception, not in the same category as boxing accidents or death by friendly fire. But it may have made sense to an Athenian in the seventh century. Mounted and vehicular travel could be treacherous. Horses startle. Ruts could be deep. Roads were often narrow, drop-offs sheer. And chariots at least were notoriously fragile, their crashes a fixture of Greek myth and literature. Moreover, Greeks’ agonistic disposition probably did not make road travel any safer.

Model men did not give way. To wit, Laius and Oedipus, the context of whose violent clash Gregory neatly explains, “By asserting the right of way either party could claim dominance of the public space,” while “to yield the right of way was to be marked as an inferior.” In recounting the virtues of quiet Delphi Ion observes that “no worthless man (πονηρὸς) ever drove me off a road (ἐξέπληξε) and that is not to be tolerated, giving way, to yield the road (ἐκέκαθεν ὁδόν) to one’s inferiors (τοῖς κακίσσιν)! These are strong words, in contemplation of a scenario both socially charged and physically violent. Socrates wraps a similar complaint in humor: Athens is so liberal that even horses and donkeys are “accustomed to make their way freely and solemnly, up and down the roads, crashing into anyone who encounters them, unless he step aside.” Even for pedestrians, the road was a place where anger erupted. After reviling the disguised Odysseus, “passing by,” Melanthius “kicked him on the hip with a foot, in his folly. He did not drive him from the path (οὐδὲ μὴ ἐκτὸς ἀταρπητοῦ ἐστιφέλεξεν), but he stood fast. And

Example illustrates the dual valence of the phrase (Dem. 23.61): “For surely you know that all who have an army, whomever they think they will best, they rape and pillage, demanding money,” that is, ransom, which could be paid toward release of animate and inanimate plunder alike.

55 MacDowell 1963: 75.

56 Οδός did not necessarily apply only to wide roads: Lolos 2003: 140.

57 To name just a few drivers: Phaethon, Oenomaus, Hippolytus, Eumelus (Hom. II. 23.391-397), or Adrastus whose chariot crash some thought gave the name to the Boeotian town Harma (Strabo 9.2.11).


59 Eur. Ion 634-637: τὴν φιλτάτην μὲν πρῶτον ἄνθρωπος σχολήν / ὀδόν τε μέτριον, οὐδὲ μ᾽ ἐξέπληξεν ὁδόν / πονηρὸς οὕδεις· κεῖνο δὲ ὀκκάσετον, ἔκεκαθεν ὁδόν χαλόντα τοὺς κακίσσιν.

60 Pl. Rep. 563c5-d1: ἁπευγός γὰρ αἱ τε κόντες κατὰ τὴν παροιμίαν οὐαίπερ αἱ δέσποιναι γίγνονται τε ὑπ’ ἄδη καὶ ἦποι καὶ ὄνοι, πάνω ἐλευθερος καὶ σεμνός εἰθαμένοι περιεύθεσα, κατὰ τὰς ὁδοὺς ἐμβάλλοντες τῷ ἀεὶ ἀπαντῶντι, ἔναν μή ἐξετίσεται, καὶ τάλλα πάντα ὁτὸ τε ἐλευθερίας γίγνεται.
Odysseus wondered whether he ought to charge him and tear his life out with his staff or heft him round the middle and dash his head to the ground.” Odysseus might have reacted with such overwhelming violence, but the beggar whose identity he had assumed could not. To these good examples offered by Gregory we might add Herakles’ encounter with Cycnus, at whose obstruction on a road, he warned, “Gentle Cycnus, why now do you aim your fleet horses against us, men who are experienced in pain and woe? But keep your polished chariot aside and yield the path (κελεύθου / εἶκε).” The son of Zeus was not about to yield the road to an inferior, powerful as he (and his supporter) may have been. To force someone off a road was a power to which superiors felt entitled—to be forced from a road an abuse that they felt free to repay with violence.

Draco wrote this clause in a period when violence and the force of social hierarchies loomed large, when Attica was “torn by violence where powerful men seize[d] poor men and [s]old them abroad.” Elites imposed harsh, even mafia-like, ‘protection’ regimes on poorer residents of the Attic countryside. “General insecurity was enhanced further because probably in this early phase of developing state organization not all areas of Attica’s large territory were equally pacified. During any stasis, nobles and their followers may have controlled their own districts. Likely zones of potential violence were remote pastures and roads.” Even as civil society began to blossom, the roads of Attica were liminal places where social status dominated, where law looked rather more like that of Homer’s world than Demosthenes’, where the big man simply did not yield. This clause in Draco’s law, I urge, preserved and protected that old elite entitlement to exercise a particular kind of potentially violent behavior in inherently dangerous circumstances, without fear of reprisal.

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63 This episode resonated with the painters and purchasers of sixth-century Attic pottery; it is depicted on more than a hundred surviving vessels, sometimes featuring not only the combatants but their chariots too: Shapiro 1984; chariots: Zardini 2009: 148-152.

64 On ‘road rage’ see Rusten 1996: 105-107.

65 Harris 1996: 265, on Solon fr. 4.23-25 [West].

66 Harris 1997; Van Wees 1999.

67 Stahl and Walter 2009: 140.

68 Carawan 1998: 92 asks how a law on highway killings of any sort might have suited “public policy in the same way that athletics, military service, and defence of the oikos against sexual violation called for legal safeguards.” An excellent question. Athenian laws generally offer scant detail on their social, cultural, or economic background, or on how discrete clauses are meant to serve policy. The clause before ἐν ὀδῷ καθελὼν protected athletes, who in the seventh century will have been elites. The clause after it protected soldiers, who similarly were by and large not the farmers-cum-fighters of a later age. Finally, the last scenario mentioned in the quotation permitted a man to kill with impunity in order to protect the women in his power, but also (and perhaps especially) the clear line of inheritance and succession to which their protection was so essential. Games, horses, war, and the perpetuation of the household were core to an elite male’s identity—add hunting and drinking and the picture would be basically complete. There is no
Well into the classical period, roads remained places in the Greek literary imagination where a bit of the heroic mindset endured, where elites demanded the right of way, period. Antiquity’s most famous highway killing is the backstory to its most famous play. Where three roads meet, father drove at son and son killed father, neither knowing the other’s identity, relative social status, or what ills would come. Some have thought that an Athenian audience might regard Oedipus as innocent of murder, for he was waylaid in the road and acted in self-defense. But Harris has argued that Athenian theatergoers would have understood that Laius and driver had not lain in “ambush,” so that Athenian law cannot have recognized their killing as justified and lawful; that the driver shoved and Laius goaded, but Oedipus slew, out of rage. No ambush, no self-defense, and a disproportionate response: for the audience member who was inclined to think in terms of Athenian law, Oedipus had no viable claim to lawful killing; he was guilty of homicide.

But if the phrase ἐν ὁδῷ καθελὼν addressed vehicular homicide committed while overtaking someone on a road, then the question of Oedipus’ guilt had nothing to do with the absence of ambush. And if we examine the episode through the lens of Athens’ archaic homicide law, then we should ask also about the innocence of Laius. For in Oedipus’ version of events the old man and driver issued no warning but simply “started driving me off the road,” as if exercising the superior man’s right and privilege to pass without yielding, and to use force if opposed. What, then, if the man had simply killed Oedipus, and lawfully, in his attempt to pass? Father might have incurred neither guilt nor pollution, and so spared the son the very same. An awful thing to ponder. But all the more tragic.

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requirement that all types of lawful homicide fit a common policy or conform to the interests of a single identifiable constituency. But if one looks for coherence, perhaps it is found here.

69 See at Harris 2010: 122-123.

70 Harris 2010: 136-137: guilty, at least insofar as the narrative at OT 800-813 suggests. His account in the OC differs in crucial and interesting ways: Harris 2010: 138-139. For another view on Oedipus’ guilt and self-defense see Sommerstein 2011.

71 Soph. OT 804-805: καξ όδος μ’ ὁ θ’ ἣγεμὼν / αὐτός θ’ ὁ πρέσβυς πρὸς βίαν ἠλαυνέτην.

72 For reading earlier drafts of this paper I am grateful to Edwin Carawan, Michael Gagarin, Craig Gibson, Kent Rigsby, and especially José González and an anonymous (and unpersuaded) reader at another journal. I own the errors.
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