Athenian Road Kill (Dem. 23.53)

According to a famous passage in Demosthenes, “It was permitted to kill a highwayman who waylaid one on a road.”¹ The law is quoted at 23.53:

Ἐὰν τις ἀποκτείνῃ ἐν ἁθλοῖς ἄκων, ἢ ἐν ὀδῷ καθελῶν ἢ ἐν πολέμῳ ἄγνοήσας, ἢ ἐπὶ δάμαρτι ἢ ἐπὶ μητρὶ ἢ ἐπὶ ἀδέλφῃ ἢ ἐπὶ θυγατρὶ, ἢ ἐπὶ παλλακῆ ἢν ἐν ἐπ’ ἐλευθέροις παισίν ἔχῃ, τούτων ἔνεκα μὴ φεύγειν κτείναντα.

If one kills unwillingly in games, or by pulling (someone) down in the road, 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 kept for purpose of producing free offspring, he shall not, for these (acts) go into exile for having killed.²

It is worrisome that the phrase ἐν ὀδῷ καθελῶν suggests nothing about self-defense, highway robbery, or ambush, which are widely regarded as the essential elements of this claim to lawful homicide. It is even more worrisome that in the exegesis that follows the quotation, Demosthenes does not even mention this clause.³ Neither does the Ath. Pol., which includes the other scenarios but omits this one altogether: “If one admits to killing, but says that (one killed) in accordance with the laws, e.g. having caught a moichos, or unknowingly in war, or competing in games, they shall bring him to trial at the Delphinion.”⁴

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³ Dem. 23.54-55: κατοι σκέψασθ’ ὡς όσιάς καὶ καλοὺς ἔκαστα διεύλθ’ ὁ τατ’ ἐξ ἀρχῆς διελόν. ἀν τις ἐν ἁθλοῖς ἀποκτείνῃ τινά, τούτων ὄρισεν οὐκ ἀδικεῖν. διὰ τί; ὡς τὸ συμβάν ἐκέχραστο, ἀλλὰ τὴν τοῦ δεδρακότος δίανοιάν. ἐστι δ’ αὕτη τίς, ἐλπίς νικῆσαι καὶ οὐκ ἀποκτείναι. εἰ δ’ ἐκεῖνὸς ἀσθενέστερος ἦν τὸν ὑπὲρ τῆς νίκης ἐνεγκεφάλων πάνον, εἰκοτὸ πάθους ἄτιν νήχησα, διὸ τοῖς τὴν πᾶσην ἔκδοκεν ὑπὲρ αὐτοῦ. πάλιν ἡν ἐν πολέμῳ φησιν ἄγνοήσας, καὶ τούτων εἶναι καθαρῶν. καλῶς· εἰ γὰρ ἐγώ τινα τῶν ἐναντίων οἰχείς εἶναι διώκει τῆς, οὐ δίκην ὑπέχειν, ἀλλὰ πυρενώμεις τυμχάν δίκαιος εἰμί. ἢ ἐπὶ δάμαρτι φησιν ‘ἢ ἐπὶ μητρὶ ἢ ἐπὶ ἀδέλφῃ ἢ θυγατρὶ, ἢ ἐπὶ παλλακῆ ἢν ἐν ἐπ’ ἐλευθέροις παισὶν ἔχῃ, καὶ τὸν ἐπὶ τούτων τοι κτείναντ’ ἄθροισιν, πάντων γ’ ὀρθώτατ’, ὁ άνδρας Ἀθηναίοι, τούτων ἀπεῖς. (And note how piously and well the one who originally defined these things defined them. “If someone kills someone in games,” he determined that this man did not do wrong. Why? He did not regard the thing that happened, but the intent of the one who had done it. And what is that? To conquer the man alive, not to kill. But if that man was too weak to bear the pain for victory’s sake, then he (sc. the lawmaker) thought him responsible for the suffering (that befell) him; wherefore he provided no vengeance on his behalf. Fine. For if I destroyed someone, because I thought him one of my enemies, it is just for me 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 has 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).

⁴ Dem. 57.3: ἔναν δ’ ἀποκτείναι μὲν τις ὄμολογη, φη δ’ κατὰ τοὺς νόμους, οἶον μοῦ λαβών, ἢ ἐν πολέμῳ ἄγνοήσας, ἢ ἐν ἁθλῷ ἄγνοιζόμενος, τούτῳ ἐπὶ Δελφινίῳ δικάζουσιν.
Why skip it? Carawan suggests that the clause 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 ὀδός 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.”5 Draconian or not, the phrase is unambiguously ancient,6 and Canevaro has concluded that the law as quoted was “already present in the Urexemplar.”7 Drerup thought the phrase either corrupt or else archaic and beyond Demosthenes’ understanding.8 Gibson urges the latter: “Perhaps [Demosthenes] did not understand the archaic expression “seizing on the road” and thus was unable to use it in his argument.”9 Right. Harpokration appears to have had no clue. He glosses ἦ ἐν ὀδός καθελὼν with “meaning seizing someone who is lying in ambush, i.e. falling upon someone in ambush.”10 This is invention, derived perhaps from acquaintance with the kinds of violence that take place on roads, but not from anything explicit in the Greek. On καθελών he notes that Demosthenes “uses the phrase for ἀνελόν or ἀποκτείνας,” and that others do too. They may, but in Demosthenes’ formulation, ἀκον (in an athletic event) and ἀγνόησας (in war) are circumstantial and describe subject and action. The participle καθελών must do the same and so is not likely to mean simply “kill” (“If someone kills by killing”). Finally, Harpokration notes that Demosthenes uses the phrase “ἦ ἐν ὀδός καθελὼν for ‘by ambush’ and ‘by trap’. And they say that such also is the Homeric ‘or coming down the road.’”12 But the Homeric phrase that he quotes appears once (II. 1.151) and simply denotes travel on a road. The semantic distance between these two phrases is great; it is not clear what Harpokration meant to show. His comments bespeak guesswork, and perhaps some confusion too.13

There is nothing implausible in the suggestion that even Demosthenes or the author of the Ath. Pol. omitted discussion of the clause because they too did not understand it. Athenian law had its share of old and odd words. In a case that turned heavily on the constructed meaning and interpretation of words, Lysias charged that his opponent was “so dim-witted that he cannot understand what is being said,” and then proceeded to “teach” his opponent a thing or two about

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7 Canevaro 2013: 69.
8 Drerup 1898: 277; as Canevaro 2013: 69n129 notes, with regard to the latter possibility, Weil 1886: 209n5 had reached the same conclusion.
10 Harp. s.v. ἵ ἐν ὀδὸς καθελὼν: ἀντὶ τοῦ ἐνδερεύοντα ἔλων, τούτεστι ἐν τινὶ ἐνέδρα καταβαλῶν· Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους.
11 Harp. s.v. Καθελὼν: Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους φησὶν “Ἦ ἐν ὀδὸς καθελὼν” ἀντὶ τοῦ ἀνελόν ἢ ἀποκτείνας· ἐχρήσαντο δὲ οὕτω τῷ ὀνόματι καὶ ἀλλω, ὡς καὶ Στησίχορος ἐν ἔλεος καὶ Ἀριστοκράτους ἐν ἐκφύεις.
12 Harp. s.v. Ἄδος· Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους φησὶν “Ἦ ἐν ὀδὸς καθελὼν” ἀντὶ τοῦ ἐν λόγῳ καὶ ἐνέδρα. τοιοῦτον δὲ οὕτω καὶ τὸ Ὀμηρικόν φασιν “Ἦ ὀδὸς ἐλθόμεναι.” εἰ δὲ ὑπολόγισε ἢ προτέρα, σημαίνει τόν βαθμόν, ὡς παρὰ Λυσία ἐν τῷ κατὰ Φιλίππου, εἰ γνήσιος ὁ λόγος.
13 Gibson 2002: 165 suggests that Harpokration’s reference to the alleged Homeric parallel may arise from conflation of καθελὼν and ἔλων.
a string of obscure, archaic words.\textsuperscript{14} “Realities are the same now as of old,” he concludes, “but some words we just don’t use the same now as previously.”\textsuperscript{15} Fine, but how many jurors would have known already that ἀπίλλειν meant simply ἀποκλείειν? The word is attested only in a passage of Lysias and the entry in Harpokration that quotes it.\textsuperscript{16} How many would have known that one swears an oath by Apollo with ἐπορκέω, an apparently unique use of a verb that to most will have indicated a false oath!\textsuperscript{17} How many would have known that where the law specifies that “money shall be 

\textit{stasimon} at however much the lender wishes,” \textit{stasimon} did not imply “placing on a balance, but exacting interest.”\textsuperscript{18} Technical meanings can be clear at the time and opaque centuries later.

This, I suggest, was the case with this use of καθαιρέω. Its root meaning is clearly physical, ‘tearing down,’ and that persists. But in archaic and classical Greek it often denotes utter destruction, obliteration. In Homer “ruinous fate \textit{destroys} one in long-painful death.”\textsuperscript{19} Time \textit{obliterates} everything.\textsuperscript{20} The gods destroy men like Paris.\textsuperscript{21} Hekataios recommends naval build-up on such a scale as to require total \textit{exhaustion} of all of Kroisos’ dedications at Branchidae.\textsuperscript{22} Körinth eradicated piracy.\textsuperscript{23} Panakton was razed.\textsuperscript{24} The Greeks obliterated the power of Priam.\textsuperscript{25} A tragic chorus cheers the \textit{slaughter} of Aigisthous.\textsuperscript{26} The list of examples could go on, and on. This was not the verb for self-defense against robbers. It signaled total destruction rather than the lethal reactions of a surprised pedestrian.

Furthermore, the clause is held to describe a form of justifiable homicide. “Lawful” homicide in Athens conformed to one of two fact patterns, in which the killing was what we might, for convenience, call either justifiable or inadvertent. The former inhered where one slew,

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14 Lys. 10.15: ἐγὼ τοίνυν, ὃ ἄνδρες δικασταί, ὑμᾶς μὲν πάντας εἰδέναι ἤγομαι ὅτι ἐγὼ μὲν ὅρθος λέγω, τούτον δὲ οὕτω σκαίνων εἶναι ὄσε ὡς δύνασθαι μαθεῖν τὰ λεγόμενα. βούλομαι οὖν αὐτὸν καὶ εξ ἐτέρων νόμων περὶ τοῦτον διδάξαι, ἀν ποις ἀλλὰ νῦν ἐπὶ τοῦ βήματος παίδευθη καὶ τὸ λοιπὸν ὑμῖν <μὴ> παρέξη πράγματα.

15 Lys. 10.20: ἅλ' εἰ μὴ σιδηροῦσ᾿ ἔστιν, οἴμοι αὐτὸν ἔννοον γεγονόντα ὅτι τὰ μὲν πράγματα ταύτα ἔστι νῦν τε καὶ πάλαι, τόν δὲ ὀνομάτων ἐνίοις οὐ τοῖς αὐτοῖς χρόμεθα νῦν τε καὶ πρῶτον.

16 Lys. 10.17: τὸ ἀπίλλειν τούτῳ ἀποκλῆσθαι νομίζεται, καὶ μηδὲν διὰ τοῦτο διαφέρου; Harp. s.v. ἀπίλλειν: Λυσίας ἐν τῇ καθα θεομνήστῳ, εἰ γνήσιος, ἃποκλείειν νομίζεται.

17 Lys. 10.17: τούτῳ τὸ ἐπορκησάντα ὁμόσαντα ἐστί.

18 Lys. 10.18: Νόμος: “τὸ ἀργύρου στάσιμον εἶναι ἐν ὑπόσῳ ὅσον βούληται ὁ δανείζων,” τὸ στάσιμον τούτῳ ἐστιν, ὃ βέλτιστε, οὐ χαλίνοις ἢταν ἀλλὰ τόκων πράττεσθαι ὡς ἀπό φυλὼν βούληται.


20 Aes. Fr. 469 [Rad]: χρόνος καθαρεῖ πάντα γηράσκους ώμοι.

21 Aes, Ag. 396-402: λετᾶν δ᾽ ἀκούει μὲν οὐσίς θεόν, / τὸν δὲ ἐπιστροφὸν τῶν / φῶς τ' αδικον καθαρεῖ· / ὡς καὶ Πάρις ἔλθων / ἐς δόμον τὸν Ατρείδαν / ἢσθενε νεῦσιν τράπεζ/ζαν κλοπαίται γυναικός.

22 Hdt. 5.36: εἰ δὲ τὰ χρήματα καταφερθεὶν τὰ ἐκ τοῦ ἱερὸ τὸν ἐν Βραχιδησί, τὸ Κροίδος ὁ Λυδός ἀνέθηκε, πολλάς εἴς ἐλλάδα ἐπικρατήσατο τῆς θαλάσσης.

23 Thuc. 1.13.5: τὰς ναὸς κτισάμενοι τὸ ληστικὸν καθήρουν.

24 Thuc. 5.42.1: τὸ μὲν Πάνακτον ὑπὸ τῶν Βοιωτῶν αὐτοῦ καθημερινοῦ ἢρον.

25 Hdt. 1.4: "Εἶλθηνα δὲ Λακεδαιμονίς εἶνεκὲν γυναικὸς στόλὸν μέγαν συναγείρατο καὶ ἐπείτα ἐλθόντας ἐς τὴν Ἀσίην τὴν Πριμαύον δύναμιν κατελείν.

26 Eur. El. 876-878: νῦν οὶ πάροι ἀμετάφρα αἰαίς τυραννοῦσοι φίλοι βασιλῆς / δικαίοις, τοὺς ἀδίκους καθιλόττες. This, just before he walks on stage carrying the dead body.
for example, a man who was ‘with’ a woman in one’s household, or a would-be tyrant, or a 
condemned and exiled killer who had returned to Athenian soil. Inadvertent homicide was 
different: a boxing match gone wrong, the unfortunate killing of a comrade in battle. At Dem. 
23.53, “ἐν ὅδω καθελὼν” is flanked by two forms of inadvertent homicide, all three expressed in 
the same fashion: ἐν + dative + circumstantial participle. This trio precedes a clear example of 
justifiable homicide. The law as quoted, I urge, did not jumble the two classes; the first three 
scenarios are of a common type, all of them instances of inadvertent lawful homicide. 

If this is right, then the phrase ἐν ὅδω καθελὼν should refer to a type of accidental killing 
that happens on a road and can inflict ruinous damage on a person. Thalheim suggested 
accidental ejection of a person from a mountain road. The more obvious candidate, I suggest, is 
vehicular homicide. Such deaths happened. And anyone who has witnessed a car running 
over a pedestrian knows that the action on the victim’s body can rightly be described as ‘pulling 
down.’ The clause, then, had nothing to do with self-defense against robbers who lay in ambush. 
Rather it protected drivers and passengers of carriages, carts, horses and the like from charges of 
intentional homicide when they accidentally ran over pedestrians in the road. But this was an 
old use of the verb, and by the fourth century BC a different term may have been current. 

Demosthenes and the author of the Ath.Pol. may not have known what to make of the phrase, 
and by Harpokration’s time one could only guess. 

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 what ills would come. 
Some have thought that an Athenian audience might regard Oedipus as innocent of murder: he 
was waylaid in the road and acted in self-defense. But Harris has argued that Athenian 
theatregoers would have understood that Laios and driver had not laid in “ambush,” and that 
Athenian law would not have recognized their killing as justified and lawful. The driver shoved 
and Laios goaded, but Oedipus slew. For the audience member who was inclined to think in 
terms of Athenian law, Oedipus was guilty of intentional homicide.

27 For recent discussion see Harris 2010: 131-133. 
28 Thalheim 1894: 50n4. 
29 A possibility 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. 
30 Some were memorialized on stone, for example the tragic death of a seven-year-old (I.Parion 52, with Robert, 
Hellenica X 276-282), or that of a prized pig (I.Epidamnus T527); the accident that resulted in the death of the latter 
is depicted in the relief that accompanied the epitaph: Daux 1970: 611 fig.1. See also the shocking description of a 
person crushed beyond recognition by a collapsed freight vehicle at Juv. Sat. III 257-261; compare with Maiuri, 
NSER 48 (quoted at Robert, Hellenica X 282). 
31 Carawan 1998: 92 asks how law on highway killings of any sort suited “public policy in the same way that 
athletics, military service, and defence of the oikos against sexual violation called for legal safeguards.” A great 
question. One thing that seventh-century athletes, hoplites, and carriag drivers/passengers have have had in 
common is economic status. Laws set policy but also reflect the interests of constituencies. These three potentially 
common and highly visible types of tragic accident may have loomed large in elite Athenians’ minds. 
32 See at Harris 2010: 122-123. 
33 Harris 2010: 136-137: guilty, at least insofar as the narrative at OT 800-813 suggests; see also Sommerstein 
2011 for an extended response and discussion of Oedipus’ guilt and self-defense.
But if the clause addressed inadvertent vehicular homicide, as I suggest, then that same legally minded audience member will not have contemplated the possible innocence of Oedipus, in whose version of events Laios and the driver initiated the violence by “driving [Oedipus] off the road.” What if, that Athenian might wonder, the collision had been accidental? In that case, a more direct, lethal strike would have brought the father neither guilt nor pollution, and so spared the son the very same. All the more tragic.

**WORKS CITED**


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34 Soph. *OT* 804-805: καὶ ὁδὸν μ’ ὀ θ’ ἣγεμόν / αὐτός θ’ ὀ πρέσβυς πρὸς βιάν ἠλαθεντήν.