Death on a Road (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:

Εὰν τις ἀποκτείνῃ ἐν ἀθλοῖς ἄκον, ἢ ἐν ὀδῷ καθελῶν ἢ ἐν πολέμῳ ἄγνωσας, ἢ ἐπὶ δάμαρτι ἢ ἐπὶ μητρὶ ἢ ἐπὶ ἄδελφῃ ἢ ἐπὶ θυγατρί, ἢ ἐπὶ παλλακῇ ἢν ἂν ἐπὶ ἐλευθέρους παισίν ἔχῃ, τούτων ἕνεκα μὴ φεύγειν κτείναντα.

If one kills unwillingly in games, or by killing in a 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

The phrase ἐν ὀδῷ καθελῶν itself says nothing 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: κατίσκοι σκέφσατ’ ὡς ὑπός καὶ καλῶς ἐκαστὰ διελεῖν ὁ ταῦτ’ ἕξ ἀρχῆς διελ: ἂν τις ἐν ἀθλοῖς ἀποκτείνῃ τινά, τούτων ὁρίσεν οὐκ ἄδικεν. διὰ τί: οὐ τὸ συμβάν ἐσκέψατο, ἀλλὰ τὴν τοῦ δεδρακότος δύναναν. ἐστὶ δ’ αὐτὴ τίς; ξοῦνα νικήσαι καὶ οὐκ ἀποκτείναι. εἰ δ’ ἐκεῖνον ἀσθενείστερον ἢν τὸν ἄπερ τῆς νίκης ἐνεγκεῖν πόνον, ἐστιν τὸ πάθος αὕτου ἡγησάτο, διὸ τιμοριὰν οὐκ ἱδοκεν ὑπὲρ αὐτοῦ. πάλιν ἁν ἐν πολέμῳ φησίν ἄγνωσας: καὶ τούτων εἶναι καθαρὰ. καλῶς: εἰ γὰρ ἐγὼ τινὰ τῶν ἐναντίων οὐ πιθεῖ εἶναι διέφθειρα, οὐ δίκεν ὑπέχειν, ἀλλὰ συγγνώμης τυχεῖν δίκαιος εἶμι. τ’ ἐπὶ δάμαρτι φησὶν μὴ ἐπὶ μητρὶ ἢ ἐπὶ ἄδελφῃ ἢ ἐπὶ θυγατρί, ἢ ἐπὶ παλλακῇ ἢν ἂν ἐπὶ ἐλευθέρους παισίν ἔχῃ, καὶ τὸν ἐπὶ τούτων τον κτείναντ’ ἀδέσποτε μὲν ποιεῖ, πάντων γ’ ὀρθότατ’, ὃ ἀνδρεῖς Αθηναίοι, τούτων ἀφεῖς. “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.”
⁵ Ath. Pol. 57.3: ἐὰν δ’ ἀποκτείνῃ μὲν τὶς υμολογῃ, ὡς δ’ κατὰ τοὺς νόμους, οἷον μοιχὸν λαβὼν, ἢ ἐν πολέμῳ ἄγνωσας, ἢ ἐν ἅθλῳ ἄγνωσαν, τούτ[ο] ζ ἐπὶ Δελφινῷ δικαίουσιν. “If one admits to killing,
‘Road’ is not ‘Ambush’

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

"Ἡ ἐν ὀδόν καθελὼν: ἀντὶ τοῦ ἐνεδρεύοντα ἐλών, τοιότατο ἐν τινὶ ἐνέδρα καταβαλὼν. Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους."

Or having killed in a road: for ‘having caught a person while he is lying in ambush,’ that is ‘having struck (someone) down in an ambush.’ Demosthenes in Against Aristocrates.

"Οδός: Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους φησίν “ἡ ἐν ὀδό καθελὼν” ἀντὶ τοῦ ἐν λόχῳ καὶ ἐνέδρα. τοιοῦτον δὲ εἶναι καὶ τὸ Ὄμηρικόν φασιν “ἡ ὀδόν ἐλθέμενα” [Hom. II. 1.151]. εἰ δὲ ψιλωθεὶ ἡ προτέρα, σημαίνει τὸν βαθμόν, ὡς παρὰ Λυσία ἐν τῷ κατὰ Φιλίππου, εἰ γνήσιος ὁ λόγος."

Road: Demosthenes in Against Aristocrates says, “or having killed in a road” 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 Harpocration’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.

Homer 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):

οὐ μοι ἣν ἄναιδεῖν ἐπειμένεν κερδαλεόφρον
πὼς τις τοι πρόφορον ἐπέσεν πειθεῖς Αχιλῶν
ἡ ὀδόν ἐλθέμεναι ἢ ἀνθρώπις ἢ ἀνδράσιν ἢ μάχεσθαι;

You, cloaked in shamelessness, greed-minded,
how is any of the Achaians 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 passages, but the scholia may hint at what he might have seen (Σ ad. Hom. II. 1.151 [Erbse]):

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 Suda s.v. ‘Ἡ ἐν ὀδό καθελὼν: ἀντὶ τοῦ ἐνεχθέντα ἐλών. τοιότατο ἐν τινὶ ἐνέδρα καταβαλὼν. Δημοσθένης ἐν τῷ κατὰ Ἀριστοκράτους; essentially the same, but for the evidently corrupt “ἐνεχθέντα.” So also Photius: s.v. ἢ ἐν ὀδό καθελὼν.

7 Suda s.v. Ὅδος: Δημοσθένης ἐν τῷ κατὰ Ἀριστοκράτους; ἢ ἐν ὀδό καθελὼν. ἀντὶ τοῦ ἐν λόχῳ καὶ ἐνέδρα. τοιοῦτον δὲ καὶ τὸ Ὄμηρικόν; ἢ ὀδόν ἐλθέμενα. εἰ δὲ ψιλωθεὶ ἡ προτέρα συλλαβή, σημαίνει τὸν βαθμόν; a very lightly excerpted version of the same. Photius: Ὅδος: Δημοσθένης ἐν τοῖς κατὰ Ἀριστοκράτους; ἢ ἐν ὀδό καθελὼν. ἀντὶ τοῦ ἐν λόχῳ καὶ ἐνέδρα. τοιοῦτον δὲ καὶ τὸ Ὄμηρικόν; ἢ ὀδόν ἐλθέμενα: εἰ δὲ ψιλωθεὶ ἡ προτέρα συλλαβή, σημαίνει τὸν βαθμόν. The same in Photius: s.v. Οδός.

8 Hom. II. 1.146: πάντων ἐκκαταλότατ’ ἀνδρών.
Some say that he is talking about a voyage, but I say (that he means) ‘ambush,’ for the very reason that they 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 \textit{Iliad} 1.151): “or [to go a] road [sc. means] ‘or to come to a road,’ that is ‘to fall into an ambush’ (eis ἐνδέραν κατέλθειν).”\(^10\) 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.\(^11\)

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 \textit{Iliad}. But we find it numerous times in the \textit{Odyssey},\(^12\) and also in the Homeric Hymn to Apollo, and Theognis, and Aeschylus.\(^13\) And in all of these cases it

\(^9\) See LSJ s.v. II and e.g. Hom. \textit{Odyssey} 6.164-165; 9.259-262.

\(^10\) D scholia [Van Thiel] at \textit{Iliad} 1.151: ἢ ὁδὸν ἐλέθαμεν: ἢ εἰς ὁδὸν παραγενέσθαι, ὡς ἐστιν εἰς ἐνδέραν κατέλθειν. The scholia recentiora Theodori Meliteniotis [Nicole] add little: ἢ ὁδὸν ὁδὸς σημαίνει τριά: τὸν πλοῦν, ὡς τὸ «τῆν ὁδὸν ἢ Ἐλένην πετατέρεσαν» (II. VI, 292.), καὶ τὴν ἐνδέραν, ὡς τὸ «ὁδὸν ἐλέθησαν ἢ ἀνδρᾶσαν», καὶ «τὸν νόμον», ὡς τὸ «μακάριοι οἱ ἄμωμοι ἢ ὁδὸς», οἱ πορεύομενοι ἐν νόμῳ 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.””

\(^11\) Like Harpocration, Eustathius connects Dem. 23.53 with the line of Homer (530 ad Hom. \textit{Iliad} 1.151): Ὑπὶ δυὸ ὁδὸν ἑνταῦθα τρόποις πολέμου ὡς ποιήτης ἢ ὁδὸν ἐλέθην ἢ ἀνδρᾶσαν ἤκακεσθαι. ἔστι δὲ ὁδὸν μὲν ἐλθεῖν τοὺς ἀριστεῖς εἰς λόγος ἐπέλθεν, ὡς δοκεῖ τοῖς παλαιοῖς, καὶ οἱ ἀπὸ Δημοσθένους φέρουσι χρήσαι εἰπόντος ἐν τῷ κατὰ Αριστοκράτας τὸ «ἐν ὁδὸ καθελόν» ἀντὶ τοῦ ἐν λόχῳ.

\(^12\) Od. 3.316: σο δέ τρέωσέν ὁδὸν ἐλθής. “And you will journey in vain.” 6.164-165: ἢλθον γὰρ καὶ κέισε, πολὺς δὲ μοι ἐπέστει λαὸς, / τὴν ὁδὸν, ἢ δὴ μέλλεσιν ἐμοί κακὰ κήδε ἐσπεράθησα. “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: ἢμεῖς τις Τροήθην ἀποπλαγγάνητας Ἀχαιοι / παντοίους ἀνέμων υπὲρ μέγα λατίμα βαλάσσῃς, / οἰκάδε ἤμουνοι, ἀλλὰ ὁδὸν ἄλλα κέλεσθαι, ἢλθομεν—οὐτοί σοι Ζεὺς ἠθελε μητρισθασθαι. “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: ἀλλ’ ἀγαπή μοι τὸδε εἰπή καὶ ἀντρεκεσις καταλέξων, / εἰ καὶ Λαέρτῃ αὐτὴν ὁδὸν ἄγγελος ἐλθὼν δύομορο. “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: τῶν ἐνεκ’ ἐξεσίην πολλὴν ὁδὸν ἢλθον Ὁδοσεις, / παιανὸς ἥμων. “For the sake of these, Odysseus went on an embassy, a long road, when he was young.”

\(^13\) \textit{HII Apollo} 232-233: χαμαὶ δ’ ἐλατήρ ἄγαθός περ / ἐκ δίφρου θορὸν ὁδὸν ἔρχεται. “And springing to the ground from his chariot, the noble driver goes his way.” Theognis 1.219-220: Μηδὲν ἄγαν ἀσχάλλε
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.”14 The Trojans have not hurt him, “since a great many shady mountains and a roaring sea stand between”15 Troy and his home. “But we,” Achilles continues, “followed” Agamemnon.16 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.”17 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 the exchange between Agamemnon and Achilles is the journey and *t* 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 ‘όδον ἐλθέμενα’ implies only travel and 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 “in 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.”19 A fable of Aesop begins, “A lion is walking together with a man on a road, and the man declares….”20 Clues to Cyrus’ origins emerge when he and some other children are playing “in a road.”21 In Thucydides, the phrase describes troops “on the march” or “en route.”22 Also in Xenophon, and Dionysius of Halicarnassus, and Menander—there, not...
troops. A scholiast glossed Homeric ηία as “fodder: not what is eaten at home, but what (is eaten) on the road.” 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. Aesop’s brigand slew a man “on a road,” and in view of bystanders. 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.” 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 ὀδόι 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.

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 ‘in a road’ likewise does not suggest ambush and Harpocration’s assertion to the contrary is also wrong.

‘Καθαίρειν’ 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 καθαίρειν is synonymous with ἀναίρειν and ἀποκτείνειν, and is found with this sense elsewhere.

Καθελών: Δημοσθένης ἐν τῷ κατ’ Ἀριστοκράτους φησιν “ἡ ἐν ὀδῷ καθελών” ἀντὶ τοῦ ἀνελὼν ἢ ἀποκτείνας. ἔχρησαντο δὲ οὗτο τῷ ὄνοματι καὶ ἄλλω, ὡς καὶ Στηρήσιος ἐν Ἡλιοπέρσιδι καὶ Σοφοκλῆς ἐν Ἐμύθλῳ.

23 Xen. Cyr. 4.3.13: ἵππη δὲ οὐκ ἐν ὀδῷ μὲν ἡδὼν ἢ αὐτοῖν τοῖν ποδοῖν πορεύεσθαι; 5.3.53: τοῦτο μὲν ὁ Κῦρος δοὺς ἡγεμόνας τῆς ὀδοῦ πορεύεσθαι ἐκέλευσεν ἡσύχως· οὐ γάρ ποι ἐν ὀδῷ πάντες ἤσαν. Dion. Hal. 2.52.2: καὶ ἀυτίκα τοὺς στρατιώτας ἀναλαβόντας ἐβοήθη διὰ τάξιν ἐν ὀδῷ τε ὢντας τοὺς προέβαις καταλαβόν ἄφεντο τοὺς ἀπαγομένους. Men. Sam. 692-693: ὡς ὀραίας, ἡδή βαδίζει κάστιν ἐν ὀδόι[i. vòν δὲ χρῆ] κάμε τοὺς ἐνδὸν προσαίπειν: ἔρχοι[μ’ ἢδόν.]


25 Diod. Sic. 1.77.3 (Hecateus FrHist. 264 F25): ἐπείτα εἰς τε ἐν ὀδῷ κατὰ τὴν χώραν ἰδίων φωνεύον άνθρωπον ἤ τὸ καθόλου βιαίαν τι πάσχοντα μὴ ρύσαστο δυνατός ὄν, θανάτους περιπεσεῖν ἀφείλεν.

26 Aes. Fab. 157: λῆμνος ἐν ὀδῷ τίνα ἀποκτείνας ἀπειδή ὑπὸ τῶν παρατυχῶντων ἐδώκετο, καταλιπών αὐτὸν ἡμαγμένας ἔφυγε.


28 I cannot tell whether LSJ endorse, or simply acknowledge, Harpocration’s explanation (s.v. I.2): “ἐν ὀδῷ on a road, Hdt.1.114; ἐν τῇ ὄ. μέσῃ Id.3.76 (but ἐν ὄ. καθελὼν Lex ap.D.23.53, expld. by ἐν λόγῳ and ἐνέδρα by Harp. s.v. ὀδός).” Note also Philostr. Her. 18.6: ὡρίσαντος γάρ ἡ ἀυτὸν πέρυς μειράκιοι τινὸς (ἡν δ’ ὡς φασὶ κοιμὴ νέον καὶ ἀπαίδευτον), ὀρμησάν ἐπὶ τὸ μειράκιον καὶ ἀπέκτειναν αὐτὸ ἐν ὀδῷ, ποταμῷ τὸ ἔργον προσδει. “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.
Having killed: Demosthenes in Against Aristocrates says, “or having killed in a road” for ‘having made away with’ or ‘having killed.’ Others too used the word in this way, for instance Stesichorus in Ilioupersis and Sophocles in Eumelus.

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, ἢ ἐν ὁδῷ καθελὼν ἢ ἐν πολέμῳ ἁγνοήσας). If καθελών was simply a synonym for ‘to kill’ then the participle καθελὼν does not offer the precision that ἄκων and ἁγνοήσας so clearly do and the law specifies clumsily, “if one kills … by killing.” Moreover, if ἢ ὁδῷ does not mean ‘having fallen into an ambush’ then any killing that was committed on a road was lawful: “if one kills … in a road by killing.” That does not seem likely. We are missing something. Either words have been omitted in error, or else we and Harpocratio both have failed to understand καθελών.

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 ὁδῷ 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 ἢ ἐν ὁδῷ 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 ἁγνοήσας” a longer phrase was pared down to “ἐν ὁδῷ 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, then, 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.

Καθελών 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

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30 Canevaro 2013: 69, with wider discussion of arguments for and against authenticity at 64-70, including conjectures about ancient in comprehension, to which add also Ruschenbusch 1960: 150n16 and Gibson 2002: 165. The phrase was known not only to Harpocratio, but also to the author of P.Berol. inv. 5008 [Trismegistos 59647] (see Gibson 2002: 157-171, esp. 160, 165-166), who (at least in the case of the lemma ὁ κάθελων νόμος) drew on a common source, which may have drawn on Didymos: Gibson 1997. The clause is also attested in P.Mich. III 142 [Trismegistos 59552], dated to the second century CE.

31 IG II² 43.31-35; 98.10-11; 448.66-67; 116.39; in literary representations too, e.g.: Thuc. 1.139.2: οἱ δὲ Αθηναῖοι οὔτε τάλλα ὑπήκουον οὔτε τὸ ψήφισμα καθήρουν.
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 require total exhaustion of all of Croesus’ dedications at Branchidae. Corinth eradicated piracy. Panactum was razed. The Greeks obliterates 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 Phoenicians pursue and overtake surprised by a brigand. For now, I am pleased if, having commenced to run with any man on even footing, I beat him by only a head, and if on seeing an animal running by I am able, with a stretch, to make it in time to 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.

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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; 27.7; 58.67.
34 Hom. Od. 2.100, 3.238, 19.245: διώκοντες διώκοντες.
35 Thuc. 1.13.5: διώκοντες.
36 Aes. Fr. 469 [Radt]: χρόνους τρείς της Κρονίως τους καθαιρείν.
37 Aes., Ag. 396-402: διώκοντες τούς.
38 Hdt. 5.36: τὰ δὲ τὰ θρίαμβον καταφέρθηκα τὰ δὲ τοῦ Ἰππίου τὸν Ἰππίου τὸν Πανακτόνταν.
39 Thuc. 1.13.5: τὰς ναοὺς ταπεινοῦντο τὸ λεγομένον καθήρουν.
40 Thuc. 5.42.1: τὸ μὲν Πάνακτον ὑπὸ τῶν Βοιωτῶν αὐτῶν καθηρημένον ἄρον; similarly 3.68.3, 4.116.2.
41 Hdt. 1.4: Ἐλληνας δὲ Δακιδαμόνης ἐνέχειν γυναικὸς στόλον ἐμάχησαι καὶ ἐπείτε ἐλθόντας ἐς τὴν Ἀσίαν τὴν Πρώτοιν δύναμιν κατελέευν.
42 Eur. El. 876-878: νῦν οἱ πάροις ἀμέτρητας γαῖας τυραννεύσοιος φίλοι βασιλέως / δικαίως, τοὺς ἀδίκους καθελόντες. This, just before he walks on stage carrying the dead body.
43 Hdt. 6.41: τὴν δὲ οἱ πέμπτην τὸν νεὸν κατελέευν διώκοντες οἱ Φοίνικες.
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):

οὐ δὲν Σιμώνιδης, ἂτε φιλότιμος ὃν ἐπὶ σοφία, ἔγνω ὦτι εἰ καθέλοι τοῦτο τὸ ῥῆμα ὅσπερ εὐδοκιμοῦντα ἀθλητὴν καὶ περιγένοιτο αὐτὸν, αὐτὸς εὐδοκιμήσει 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. 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):

τίνα οὖν ἀμήχανος συμφορὰ καθαρτέ ἐν πλοίῳ ἀρχῆ; δήλον ὅτι οὐ τὸν ἰδίωτην· ὁ μὲν γὰρ ἰδίωτης ἂει καθόρησαι, ὅσπερ οὖν οἶνο τὸν κείμενον τις ἀν καταβάλοι, ἀλλὰ τὸν μὲν ἐστάτα ποτε καταβάλοι ἢ τις ὅστε κείμενον ποιήσαι, τὸν δὲ κείμενον οὐ, οὕτω καὶ τὸν εὐμήχανον ὄντα ποτὲ ἀμήχανος ἀν συμφορὰ καθέλοι, τὸν δὲ ἂει ἀμήχανον ὄντα οὐ, καὶ τὸν κυβερνήτην μέγας χειμῶν ἐπιστοῦν ἁμήχανον ἀν ποιήσειν, καὶ γεωργὸν χαλεπὴ ἀρά ἐπέλθοσα ἁμήχανον ἄνθεί, καὶ ἰστρόν ταῦτα ταῦτα.

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 overtaken. Thus, just as one could not throw down him who is lying down, but rather one could throw him lying down 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, καθαρένων was the word with which one power beat and supplanted a competing power. So Cyrus took down Astyages and Croesus.46 So the prospect of Sparta surpassing Athens, and the memory of Athens outstripping Persia, and a promise that Spartan

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45 Hdt. 9.122: Ἐπει Ζεὺς ... Πέρσης ἠγεμονίνι διδοῖ, ἀνδρὸν δὲ σοι, Κώρη, κατελὼν Ἀστυάγεα, φέρε, γὴν γὰρ ἐκτίμησα ὄλγην καὶ ταύτην τρίχειαν, μεταναστάντες ἐκ ταύτης ἄλλην σχέσιν ἀμένων. / 1.46: metà δὲ ἡ Ἀστυάγεας τοῦ Κωσάρκου ἠγεμονίνι καταρθηθείτα ὑπὸ Κώρου τοῦ Καμβισσα; / 1.95: Ἐλπίζεται δὲ δὴ τό ἐνθέστων ἡμῖν ὁ λόγος τόν τε Κώρον ὅστε ἐὼν τὴν Κροίσσου ἄρχην κατείλε, καὶ τῷς Πέρσας ὅτε τρόπο ἠγίσατο τῆς Ἀσίς. Thuc. 1.16.1.: ἡ Περσική βασιλεία Κροίσσου καθελούσα καὶ ὅσα ἐντὸς Ἀλικος ποταμοῦ πρὸς θάλασσαν ἐπεστράτευσε καὶ τάς ἐν τῷ ἡπείρῳ πόλεις ἐδούλωσε.
46 Thuc. 1.77.6: ὡμεῖς γ’ ἄν οὖν εἰ καθελόντες ἡμᾶς ἀρέσαι, τάχα ἄν τὴν ἐδούνοι ἦν διὰ τὸ ἡμέτερον δέος εἰλήφατε μεταβάλοιτε, εἶπερ οία καὶ τότε πρὸς τὸν Μήδον δ’ ὁλίγον ἠγίσαμεν ὑπεδείξατε, ὥμοια καὶ νῦν γνώσασθε.
47 Thuc. 6.83.2: καὶ οὐ καλλεπούμεθα ὡς ἦ τὸν βάρβαρον μόνοι καθελόντες εἰκότως ἄρχομεν.
power would overcome Athenian.\textsuperscript{48} As with powers, so with individuals. When the Cypriot king 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):

\begin{quote}
Βασιλέα μὲν καὶ στρατηγὸν χρεὼν εἶναι φημι βασιλεί τε καὶ στρατηγῷ προσφέρεσθαι· ἢν τε γὰρ κατέλεγεν ἄνδρα στρατηγὸν, μέγα τοι γίνεται, καὶ δεύτερα, ἢ σὲ ἔκεινος, ὅποι ἄξονοι καὶ ἄκοθανεὶν ἡμίσας συμφορῆ· ἡμέας δὲ τοὺς ὑπηρέτας ἐπέρισε τε ὑπηρέτησε προσφέρεσθαι καὶ πρὸς ἔπον.
\end{quote}

I say that it is necessary for king and general to engage with king and general. For if you take down a man who is a general, it is great for you, and second, if that man (takes down) you—may that not happen!—even to be killed by a worthy man is half the misfortune. (It is necessary) for us attendants to engage with other attendants, and with the horse.

General overtakes general, state overtakes state, athlete overtakes athlete. It is a greater misfortune for the low to take down the high. That is the normal order of Greek agonistic society and the context for this other sense of the word καθαιρεῖν, to pursue and surpass, to supplant in geopolitical supremacy and to overtake in sport, to run down and leave behind.

\textit{‘Εν Ὀδῷ Καθελῶν’ is ‘Overtaking on a Road’}

If ἐν Ὀδῷ does not mean ‘in an ambush’ but simply ‘in 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 admirably, 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,\textsuperscript{49} 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 καθελῶν 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

\textsuperscript{48} Thuc. 6.92.5: ἵνα τὰ τε ἐκεῖ βραχεῖ μορίῳ ξυμπαραγενόμενοι μεγάλα σώσητε καὶ Λῃσσαίων τὴν τε ὀὔσαν καὶ τὴν µέλλουσαν δύναµιν καθέλητε.

\textsuperscript{49} Vehicular homicide was considered but rejected by Carawan 1998: 92. Ruschenbusch 1960: 150 describes this scenario as “Wegsperr” (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.50 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 οἴδῳ could not mean simply ‘in 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.51 Moreover, defense against a hidden highwayman would seem an oddly narrow framing,52 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 (ἂμυνόμενος) immediately kills one who is plundering or seizing (φέροντα ἢ ἄγοντα) by force unlawfully, [the latter] shall die without [the killer paying] penalty.”53 This clause is often interpreted as applying to seizure of property only.54 But φέρω and ἄγω co-occur,55 rather like English ‘rape and pillage,’ φέρω tending to apply to goods and ἄγω 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.56 Draco’s 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

50 Gibson 2002: 165 suggests that perhaps Harpocration’s reference to Homeric parallel might have arisen from conflation of καθέλων and ἠλθόν. On this logic, perhaps he even conflated καθαρεῖν, such as we find in the D scholia at Il. 1.151 (the interpretation with which his own seems to be closest), or ἠλθέμεναι, such as we find in that line of Homer, with καθέλων in Dem. 23.53.

51 Gagarin 1978.

52 The other scenarios mentioned in the quoted section are broad: games (ἀθλοῖς), not e.g. pankration; war (πολέμῳ), not e.g. infantry battle; “with” (ἔτι) women in a man’s charge, a construction that covered both adultery and rape.

53 Dem. 23.60: Καὶ ἐὰν φέροντα ἢ ἄγοντα βία ἀδίκως εὐθύς ἄμυνόμενος κτείνῃ, νηποῖει τεθνάναι. This seems to be IG I 104.37-38: καὶ ἐὰν φέροντα ἢ ἄγοντα βία ἀδίκως εὐθύς ἄμυνόμενος κτείνῃ, γ[ε]ποιεῖ τεθνάναι.

54 Canevaro 2013: 70, with references at n133.


56 Both: Gagarin 1978: 113n9. At Eur. Troad. 1310, Hecuba cries, “ἀγόμεθα φερόμεθο,” which refers to seizure of her person, and Strеппιάδες laments that his property is being taken by creditors (Ar. Nub. 239-241): ὑπὸ γὰρ τόκων χρήστον τε δυσκολοτάτου ἢ ἄγοιμαι, φέρομαι, τὰ χρήματ’ ἐνεχραζόμαι. Canevaro 2013: 70 notes that “At [Dem. 23] §62, about the eventuality that Charidemus may φέρειν ἢ ἄγειν, Demosthenes writes: ἰτεὶ γὰρ ὅτι τοῦτο ἃτυχεντες, ὅτι καὶ τοῖς στρατευμαῖς ἐχοντες, ὅπως καὶ καθαρέεις τρίτων ἤτοι τοις διὸς εἴπετε, ὅπως τοῖς τρίτων. The matter seems again to be just χρήματα.” But this 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 plunder, whether living or not.
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-defence.”

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 (πονηρός) ever drove me off a road (ἐξέπληξ”)—and that is not to be tolerated, giving way, to yield the road (ἐίκεν οδὸ) to one’s inferiors (τοίς κακίστοις)! 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 μιν ἄταρπτοι ἐστυφέλξεν), but he stood fast. And 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 Gregory’s good examples we might add Herakles’ encounter with Cycnus,

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57 MacDowell 1963: 75.
58 To name just a few drivers: Phaethon, Oenomaus, Hippolytus, Eumelus (Hom. Il. 23.391-397), or Adrastus whose chariot crash some thought gave the name to the Boeotian town Harma (Strabo 9.2.11).
60 Eur. Ion 634-637: τὴν φυλατήν μὲν πρῶτον ἀνθρώπος σχολήν / ὥστε τε μέτριον, οὐδὲ μ’ ἔξεπληξ’ ὁδὸν / πονηρός οὐδείς: κείνο δ’ οὐκ ἀνασχέτον, / ἐίκεν οδὸν χαλώντα τοῖς κακίστοις.
61 Pl. Rep. 563c5-d1: ἄτεχνος γάρ αἱ τὰ φύσει κατὰ τὴν παραμόναν οὐδέπερ αἱ δέσποιναι γίγνονται ταὶ δῆμοι καὶ ὑπὸ καὶ ὑπὸν, πάνω ἐλευθερίας καὶ σεμνοῦς εἰθῆμενοι πορεύεσθαι, κατὰ τὰς οὐδοὺς ἐμβάλλοντες τῷ ἀεὶ ἀπαντώντε, ἐὰν μὴ ἐξίστηται, καὶ τάλα πάντα ὅστο μεστὰ ἐλευθερίας γίγνεται.
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 (κεκλεύθου / εἰκε).” 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 entitled 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.

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

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63 Hes. Aspis 350-353: “Κύκνει πέπον, τι νυ νόιν ἐπίσεχεν ὀκέας ἵππους, / ἀνδράςιν οἴ τε πόνον καὶ ὀξίος ἱδρεύς εἴμεν; / ἀλλὰ παρέξ ἔχε δίφρον ἐξύς ἡδὲ κελεύθου / εἰκε ἑπαρὲς ἱέναι.”

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


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

67 Harris 1997; Van Wees 1999.

68 Stahl and Walter 2009: 140.

69 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. This law is an artefact of the seventh century, long before democracy was even a glimmer on the horizon. The clause before ἐν ὀξίῳ καθέλων 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 requirement that all types of lawful homicide fit a common policy or conform to the interests of an identifiable constituency. But if one looks for coherence, perhaps it is found here.
thought that an Athenian audience might regard Oedipus as innocent of murder, for he was waylaid in the road and acted in self-defense.\textsuperscript{70} 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. Moreover, 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.\textsuperscript{71}

But if the phrase ἐν ὀδῷ καθελών addressed vehicular homicide committed while overtaking someone on a road, then Oedipus’ guilt had nothing to do with the absence of ambush. That audience member, if he thought about how the episode looked through the lens of Athens’ archaic homicide law, may not have contemplated the innocence of Oedipus. He might have wondered about Laius, though: 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 \textit{killed} Oedipus 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 wonder. But all the more tragic.

\textsuperscript{70} See at Harris 2010: 122-123.

\textsuperscript{71} Harris 2010: 136-137: guilty, at least insofar as the narrative at \textit{OT} 800-813 suggests. His account in the \textit{OC} differs in crucial and interesting ways: Harris 2010: 138-139. For another view on Oedipus’ guilt and self-defense see Sommerstein 2011.

\textsuperscript{72} Soph. \textit{OT} 804-805: καξ ὀδῷς ο’ ἡγεμὼν / αὐτὸς θ’ ὁ πρέσβης πρὸς βίαν ἐλαυνέτην.
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