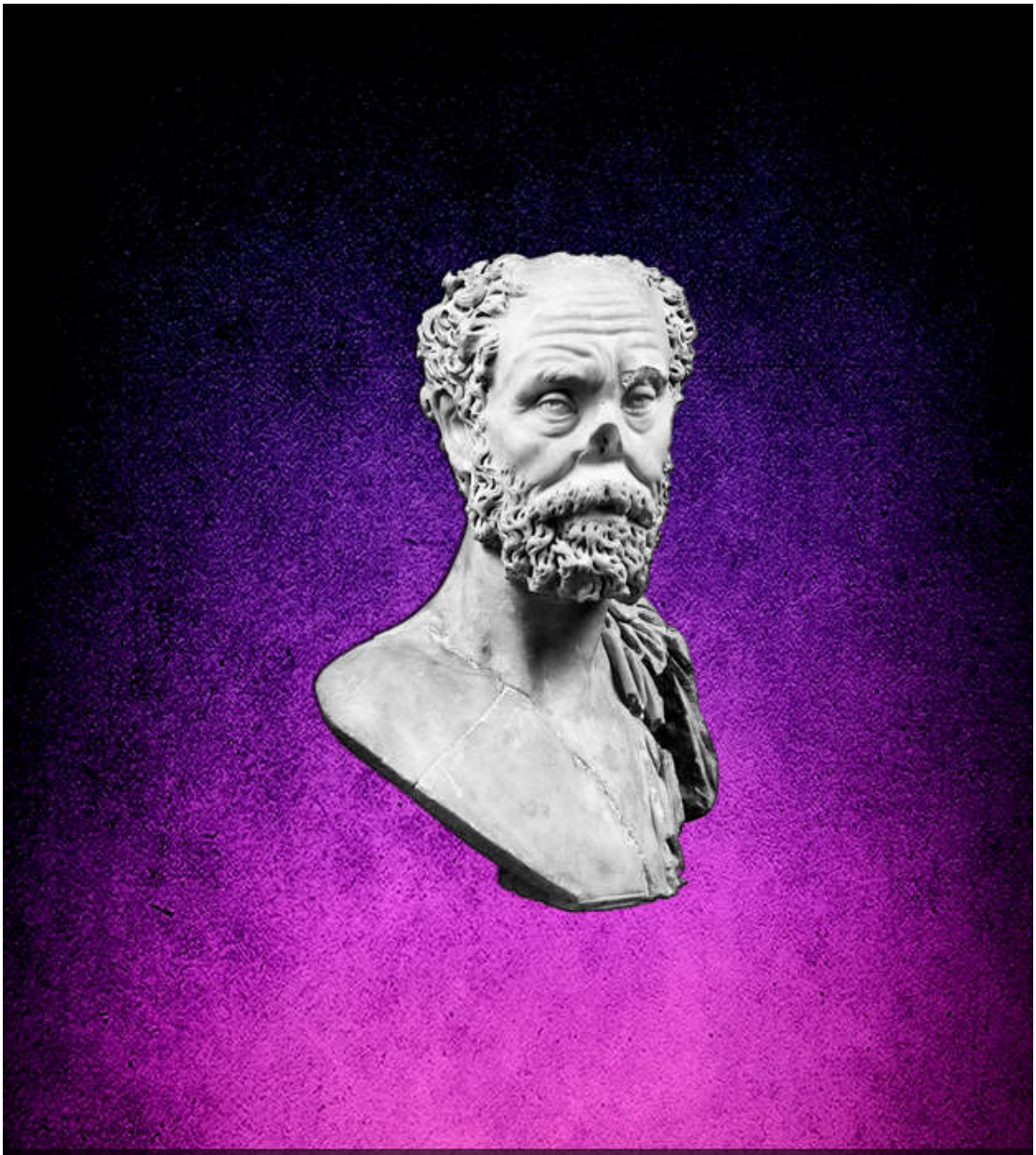

Antiphon

Complete Works

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The Complete Works of

ANTIPHON

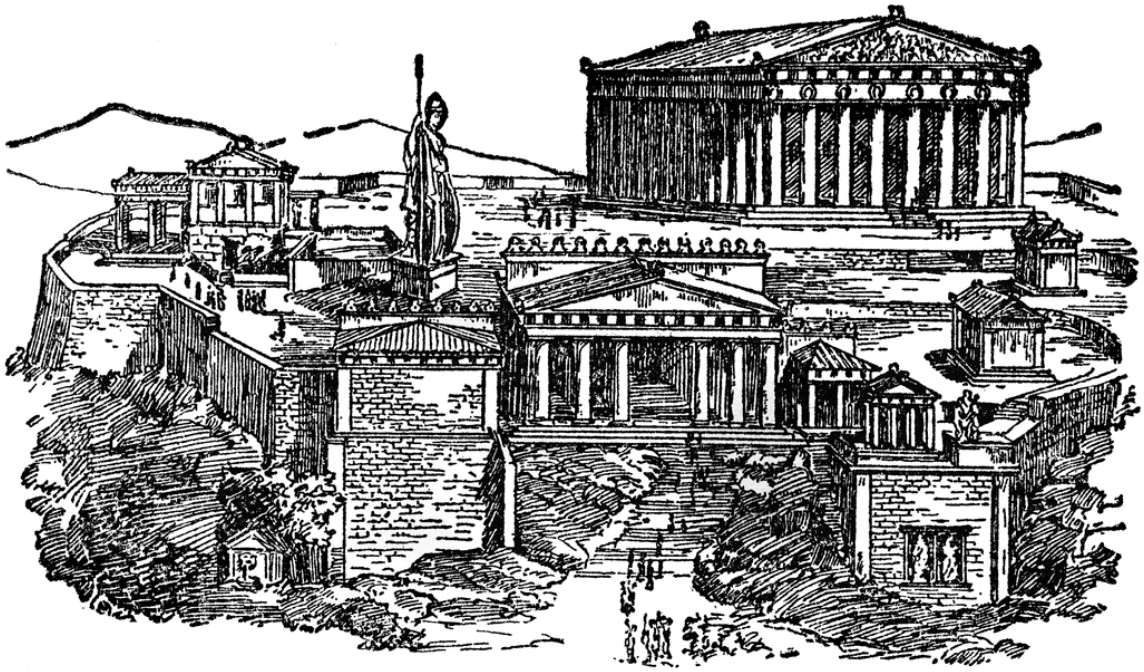
(480-411 BC)

Contents

Version 1

The Complete Works of

ANTIPHON OF RHAMNUS



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The Translations

The site of ancient Rhamnous, a Greek city in Attica, overlooking the Euboean Strait, close to Marathon — Antiphon's birthplace

Speeches

Translated by K. J. Maidment, Loeb Classical Library, 1940

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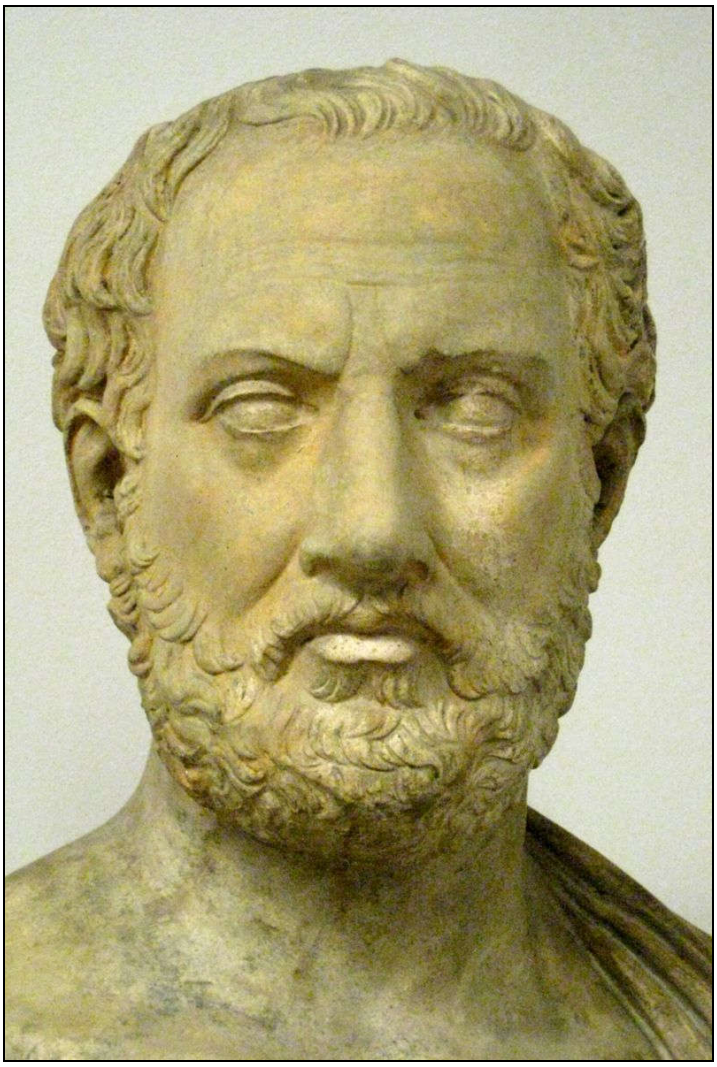
The Ecclesia in Athens convened on a hill called the Pnyx — many of Antiphon's speeches were delivered at the Ecclesia of ancient Athens.



Plaster cast bust of the historian Thucydides (in the Pushkin Museum) from a Roman copy (located at Holkham Hall) of an early fourth-century BC Greek original. Thucydides was a great admirer of Antiphon.

Speech I. Prosecution of the Stepmother for Poisoning

Introduction to ‘Prosecution of the Stepmother for Poisoning’

THE FACTS WITH which the Prosecution for Poisoning is concerned may be summarized as follows. A certain Philoneos entertained a friend to dinner at his house in Peiraeus. His mistress served them both with wine after the meal. The wine, it seems, was poisoned; and Philoneos died instantaneously, while his friend fell violently ill and died three weeks later. The woman, who was a slave, was arrested, tortured for information, and executed.

The occasion of the present speech was the reopening of the case some years afterwards by an illegitimate son of the friend. In obedience to his father’s dying command (ἐπίσκηψις) he charges the father’s wife, his own stepmother, with the murder of her husband and of Philoneos. The stepmother’s defence is conducted by her own sons, the prosecutor’s half-brothers. The line of attack chosen by the prosecution is that the mistress of Philoneos was merely an accessory to the crime: the principal had been the stepmother, who had previously made a similar, but ineffectual, attempt to murder her husband.

It has been suggested that the speech was never intended for actual delivery in a court of law, but that it is simply an academic exercise in the manner of the *Tetralogies.* The reasons advanced for this are the complete inadequacy of the prosecution’s case from a practical point of view, the absence of witnesses, and the seemingly fictitious character of the proper names which occur. However, a brief consideration of the structure and contents will perhaps be enough to show that we have here what is almost certainly a genuine piece of early pleading.

The case for the prosecution rests upon two things: a carefully elaborated narrative of the planning and execution of the murders, and the development of a single argument to the detriment of the defence, the argument that the accused must be guilty, because the defence has refused to allow the family slaves to be questioned under torture about the previous attempt to poison the husband. The refusal, it is assumed, means that the stepmother was guilty of that attempt, and this fact furnishes in its turn a strong presumption, if not proof, of her guilt in the present instance.

This is quite unlike the *Tetralogies,* where no emphasis is laid on the narrative, the minimum of fact is given, and the writer obviously regards the speeches for the prosecution and defence as an opportunity for demonstrating the possibilities of *a priori* reasoning and sophistry when a case has to be presented to a jury. It is scarcely credible that the present speech, if composed for the same purpose, should contain so circumstantially detailed a narrative, and at the same time be limited to but a single argument in favour of the prosecution. On the other hand, its peculiar meagreness becomes intelligible if it is assumed that the case was historical but, owing to the circumstances which set it in motion, extremely weak.

Thus, a man lies dying from the effects of the wine which he drank when dining with a friend; the fact that his friend died instantaneously convinces him that they have both been poisoned. He has been on bad terms with his wife for some time, and only recently caught her placing something in his drink. He suspected her at the time of trying to poison him; but she avowed that it was merely a love-philtre. The incident remains in his mind, and the fact that his wife is acquainted with the girl who served his friend and himself with wine at dinner leads him to conclude that she has made a second attempt upon his life, this time with success. He therefore summons his son

and solemnly enjoins him to prosecute the wife for murder. The son is bound to carry out the command; but unfortunately there is not a scrap of evidence to show that his stepmother was concerned in his father's death. The one possible source of information was the supposed accomplice who administered the poison; and no amount of pressure had induced her to say anything to incriminate any second person whatsoever. Hence he has to make what play he can with the imaginary account of the planning of the crime given him by his father. He tries to shift attention to the earlier attempt at poisoning which failed; but the defence refuses to let him question the family slaves about the facts. Thus he is reduced to emphasizing as strongly as possible the damning implications of the refusal. That is why the speech necessarily takes its present unsatisfactory form. On the assumption that the prosecution was set in motion entirely in deference to the father's *επίσκηψις,* both its unconvincing argumentation and the absence of witnesses become intelligible.

If this is the truth, there is a strong probability that the stepmother is innocent. Had she been implicated in any way, it is difficult to believe that the *παλλακή* of Philoneos would not have tried to shift the blame on to her when faced with torture and death. The refusal of the defence to allow an examination of the slaves is not in itself evidence of guilt: slaves could not be relied upon to adhere to the truth under pressure; and to refuse to hand them over was the obvious course, in spite of its drawbacks.

The evidence of the proper names which occur in the speech does not affect the above interpretation. There are only two: Philoneos and Clytemnestra. Philoneos is well authenticated as an Attic name by inscriptions ranging from the fifth century to the third and by a reference in the '*Αθ.* Πολ. to an Archon so called in the age of Peisistratus. The fact that the Philoneos of this speech lived in Peiraeus and may thus have had some connexion with shipping is an intelligible coincidence. Clytemnestra (§ 17) occurs in a corrupt passage which should almost certainly be emended to give it a purely metaphorical sense.

If, then, the speech was more than an academic exercise, before what court was it delivered? Probably the Areopagus, which tried cases of wilful murder. Admittedly, the defendant was charged, not as having caused her husband's death immediately, but as having procured it through the agency of an accomplice; and the law of homicide, as we know it in the last quarter of the fourth century, distinguished between *πραξις* and *βοθλευσις,* assigning *πραξις* to the cognizance of the Areopagus, *βουλευσις* to that of the Palladium. But this proves nothing of fifth century procedure; and the evidence of the speech itself, which treats the defendant, no less than the *παλλακή,* as a *φονευσ,* suggests rather that contemporary practice made no distinction between principal and agent.

There remains the question of authorship. Ancient tradition unanimously regarded the speech as the work of Antiphon; and it is supported by the evidence of language and style. Here there are none of those peculiarities of diction which must make the authorship of the *Tetralogies* a matter of doubt; and, although such evidence cannot be stressed, the recurrence in both the *Herodes* and the *Choreutes* of a form of argument used in the present speech points likewise to a common origin for all three. Critics who follow Schmitt in treating the *Prosecution for Poisoning* as apocryphal rest their case almost entirely upon the intuitive conviction that it is unworthy of Antiphon. But, as he himself would remark, αύτος έκαστος *τούτου κρατεί.* The crudity of the speech, no less than its Gorgian assonances and rhythms, are better explained by the assumption that it is a product of Antiphon's early years.

Analysis

§§ 1-4. APPEAL to the jury for sympathy.

§§ 5-13. Conclusions to be drawn from the fact that the defence had refused to hand over their slaves for examination.

§§ 14-20. Narrative of the crime.

§§ 21-31. Largely a repetition of the arguments used in §§ 1-13. The half-brother who is conducting the defence is bitterly attacked for his behaviour, and fresh emphasis is laid on the guilt of the stepmother. There is, strictly speaking, no formal peroration.

Speech I. Prosecution of The Stepmother For Poisoning

NOT ONLY AM I still too young to know anything of courts of law, gentlemen; but I am also faced with a terrible dilemma. On the one hand, how can I disregard my father's solemn injunction to bring his murderers to justice? On the other hand, if I obey it, I shall inevitably find myself ranged against the last persons with whom I should quarrel, my half-brothers and their mother. [2] Circumstances for which the defence have only themselves to blame have made it necessary that my charge should be directed against them, and them alone. One would have expected them to seek vengeance for the dead and support the prosecution; but as it is, the opposite is the case; they are themselves my opponents and the murderers, as both I and my indictment[1] state.

[3] Gentlemen, I have one request. If I prove that my opponents' mother murdered our father by malice aforethought, after being caught not merely once, but repeatedly, in the act of seeking his life,[2] then first avenge the outrage against your laws, that heritage from the gods and your forefathers which enables you to sentence the guilty even as they did; and secondly avenge the dead man, and in so doing give me, a lonely orphan, your aid. [4] For you are my kin; those who should have avenged the dead and supported me are his murderers and my opponents. So where is help to be sought, where is a refuge to be found, save with you and with justice?

[5] I am at a loss indeed to understand the feelings which have led my brother to range himself against me. Does he imagine that his duty as a son consists simply in loyalty to his mother? To my mind, it is a far greater sin to neglect the avenging of the dead man; and the more so since he met his doom as the involuntary victim of a plot, whereas she sent him to it by deliberately forming that plot. [6] Further, it is not for my brother to say that he is quite sure his mother did not murder our father for when he had the chance of making sure, by torture, he refused it; he showed readiness only for those modes of inquiry which could yield no certainty. Yet he ought to have been ready to do what I in fact challenged him to do, so that an honest investigation of the facts might have been possible; [7] because then, if the slaves had admitted nothing, he would have confronted me with a vigorous defence based on certainty, and his mother would have been cleared of the present charge. But after refusing to inquire into the facts, how can he possibly be certain of what he refused to find out? [How, then, is it to be expected, gentlemen of the jury, that he should be sure of facts about which he has not learned thetruth?[3]]

[8] What reply does he mean to make to me? He was fully aware that once the slaves were examined under torture his mother was doomed; and he thought that her life depended upon the avoiding of such an examination, as he and his companions imagined that the truth would in that event be lost to sight. How, then, is he going to remain true to his oath as defendant,[4] if he claims to be in full possession of the facts after refusing to make certain of them by accepting my offer of a perfectly impartial investigation of the matter by torture? [9] In the first place, I was ready to torture the defendants' slaves, who knew that this woman, my opponents' mother, had planned to poison our father on a previous occasion as well, that our father had caught her in the act, and that she had admitted everything — save that it was not to kill him, but to restore his love that she alleged herself to be giving him the potion. [10] Owing, then, to the nature of the slaves' evidence, I proposed to have their story tested under torture after making a written note of my charges against this woman; and I told the

defence to conduct the examination themselves in my presence, so that the slaves might not give forced answers to questions put by me. I was satisfied to have the written questions used; and that in itself should afford a presumption in my favour that my search for my father's murderer is honest and impartial. Should the slaves resort to denial or make inconsistent statements, my intention was that the torture should force from them the charges which the facts demanded: for torture will make even those prepared to lie confine their charges to the truth.

[11] I am quite sure, though, that had the defence approached me with an offer of their slaves directly they learned that I intended to proceed against my father's murderer, only to meet with a refusal of the offer, they would have produced that refusal as affording the strongest presumption of their innocence of the murder. As it is, it was I who in the first place volunteered to conduct the examination personally, and in the second told the defence to conduct it themselves in my stead. Surely, then, it is only logical that this corresponding offer and refusal should afford a presumption in my favour that they are guilty of the murder. [12] Had I refused an offer of theirs to hand over their slaves for torture, the refusal would have afforded a presumption in their favour. The presumption, then, should similarly be in my favour, if I was ready to discover the truth of the matter, while they refused to allow me to do so. In fact, it is amazing to me that they should try to persuade you not to find them guilty, after refusing to decide their case for themselves by handing over their slaves for torture.

[13] In the matter of the slaves, then, it is quite clear that the defence were themselves anxious to avoid ascertaining the facts. The knowledge that the crime would prove to lie at their own door made them desirous of leaving it wrapped in silence and uninvestigated. But you will not do this, gentlemen, as I know full well; you will bring it into the light. Enough, though; I will now try to give you a true statement of the facts: and may justice guide me.

[14] There was an upper room in our house occupied by Philoneos, a highly respected friend of our father's, during his visits to Athens. Now Philoneos had a mistress a whom he proposed to place in a brothel.[5] My brother's mother made friends with her; [15] and on hearing of the wrong intended by Philoneos, she sends for her, informing her on her arrival that she herself was also being wronged by our father. If the other would do as she was told, she said, she herself knew how to restore Philoneos' love for her and our father's for herself. She had discovered the means; the other's task was to carry out her orders. [16] She asked if she was prepared to follow her instructions, and, I imagine, received a ready assent.

Later, Philoneos happened to have a sacrifice to perform to Zeus Ctesius[6] in Peiraeus, while my father was on the point of leaving for Naxos. So Philoneos thought that it would be an excellent idea to make one journey of it by seeing my father as far as Peiraeus, offering the sacrifice, and entertaining his friend. [17] Philoneos' mistress accompanied him to attend the sacrifice. On reaching Peiraeus, Philoneos of course carried out the ceremony. When the sacrifice was over, the woman considered how to administer the draught: should she give it before or after supper? Upon reflection, she decided that it would be better to give it afterwards, thereby carrying out the suggestion of this Clytemnestra here.[7] [18] Now it would take too long for me to furnish or for you to listen to a detailed description of the meal so I shall try to give you as brief an account as I can of the administration of the poison which followed.

After supper was over, the two naturally set about pouring libations and sprinkling some frankincense to secure the favour of heaven, as the one was offering sacrifice to Zeus Ctesius and entertaining the other, and his companion was supping with a friend and on the point of putting out to sea. [19] But Philoneos' mistress, who poured the

wine for the libation, while they offered their prayers — prayers never to be answered, gentlemen — poured in the poison with it. Thinking it a happy inspiration, she gave Philoneos the larger draught; she imagined perhaps that if she gave him more, Philoneos would love her the more: for only when the mischief was done did she see that my stepmother had tricked her. She gave our father a smaller draught. [20] So they poured their libation, and, grasping their own slayer, drained their last drink on earth. Philoneos expired instantly; and my father was seized with an illness which resulted in his death twenty days later. In atonement, the subordinate who carried out the deed has been punished as she deserved, although the crime in no sense originated from her: she was broken on the wheel and handed over to the executioner; and the woman from whom it did originate, who was guilty of the design, shall receive her reward also, if you and heaven so will.[8]

[21] Now mark the justice of my request as compared with my brother's. I am bidding you avenge once and for all time him who has been wrongfully done to death; but my brother will make no plea for the dead man, although he has a right to your pity, your help, and your vengeance, after having had his life cut short in so godless and so miserable a fashion by those [22] who should have been the last to commit such a deed. No, he will appeal for the murderess; he will make an unlawful, a sinful, an impossible request, to which neither heaven nor you can listen. He will ask you to refrain from punishing a crime which the guilty woman could not bring herself to refrain from committing. But you are not here to champion the murderers: you are here to champion the victims willfully murdered, murdered moreover by those who should have been the last to commit such a deed. Thus it now rests with you to reach a proper verdict; see that you do so.

[23] My brother will appeal to you in the name of his in mother who is alive and who killed her husband with out thought and without scruple; he hopes that if he is successful, she will escape paying the penalty for her crime. I, on the other hand, am appealing to you in the name of my father who is dead, that she may pay it in full; and it is in order that judgement may come upon wrongdoers for their misdeeds that you are yourselves constituted and called judges. [24] I am prosecuting to ensure that she pays for her crime and to avenge our father and your laws wherein you should support me one and all, if what I say is true. My brother, on the contrary, is defending this woman to enable one who has broken the laws to avoid paying for her misdeeds. [25] Yet which is the more just: that a willful murderer should be punished, or that he should not? Which has a better claim to pity, the murdered man or the murderess? To my mind, the murdered man: because in pitying him you would be acting more justly and more righteously in the eyes of gods and men. So now I ask that just as this woman put her husband to death without pity and without mercy, so she may herself be put to death by you and by justice; [26] for she was the willful murderess who compassed his death: he was the victim who involuntarily came to a violent end. I repeat, gentlemen, a violent end; for he was on the point of sailing from this country and was dining under a friend's roof, when she, who had sent the poison, with orders that a draught be given him, murdered our father. What pity, then, what consideration, does a woman who refused to pity her own husband, who killed him impiously and shamefully, deserve from you or anyone else? [27] Involuntary accidents deserve such pity: not deliberately planned crimes and acts of wickedness. Just as this woman put her husband to death without respecting or fearing god, hero, or human being, so she would in her turn reap her justest reward were she herself put to death by you and by justice, without finding consideration, sympathy, or respect.

[28] I am astounded at the shameless spirit shown by my brother. To think that he swore in his mother's defence that he was sure of her innocence! How could anyone be sure of what he did not witness in person? Those who plot the death of their neighbors do not, I believe, form their plans and make their preparations in front of witnessess; they act as secretly as possible and in such a way that not a soul knows; [29] while their victims are aware of nothing until they are already trapped and see the doom which has descended upon them. Then, if they are able and have time before they die, they summon their friends and relatives, call them to witness, tell them who the murderers are, and charge them to take vengeance for the wrong; [30] just as my father charged me, young as I was, during his last sad illness. Failing this, they make a statement in writing, call their slaves to witness, and reveal their murderers to them. My father told me, and laid his charge upon me, gentlemen, not upon his slaves, young though I still was. [31] I have stated my case; I have championed the dead man and the law. It is upon you that the rest depends; it is for you to weigh the matter and give a just decision. The gods of the world below are themselves, I think, mindful of those who have been wronged.[9]

ENDNOTES.

[1] i.e., the charge as formally registered with the βασιλεύς (cf. Antiph. 6.38, 41 ff.). The action itself was of course a δίκη φόνου

[2] A natural rhetorical exaggeration. The proof does not in fact occur as promised; but there is no good reason for supposing that the speech is therefore incomplete. In the circumstances outlined in the Introduction such a proof would have been impossible.

[3] See critical note.

[4] A curiously loose expression. The oath taken by both parties in cases of murder was always a διωμοσία, (cf. Antiph. 1.28), never as here, an ἀντωμοσία

[5] Clearly as a slave, as Philoneos has complete control over her, and she was later tortured and summarily executed.

[6] Zeus as a god of the household. Hence the sacrifice takes place at Philoneus' private residence.

[7] For the metaphorical use of the name cf. Andoc. 1.129 τίς ἂν εἴη οὗτος; Οἰδίπους, ἢ Αἴγισθος;

[8] αἰτία must here have the meaning of "ultimately responsible" rather than "guilty." That the παλλακή was to some extent guilty is implicitly acknowledged in the statement that she deserved her punishment.

[9] i.e., a curse will fall upon the living, unless justice is done to the dead. Cf. Tetral. Gen. Introd. pp. 38-39.

Speech II. The First Tetralogy: Anonymous Prosecution for Murder

General Introduction to the Tetralogies

OF ALL THAT has come down to us under the name of Antiphon nothing presents a more interesting or a more difficult problem than the three groups of four short speeches each, which are known as the Tetralogies. Each group deals with a case of homicide, the first with wilful murder, the second with what to-day would be described as death by misadventure, and the third with homicide in self-defence; and each consists of two speeches for the prosecution and two corresponding speeches for the defence. In all three the purpose of the author is to show how far it is possible to establish the guilt or innocence of the accused by means of purely general reasoning; he is concerned with what Aristotle calls πιστεις εντεχνοι, "artificial proofs," as distinct from πίστεις άτεχνοι, proofs based on evidence. Hence although the cases which he selects for treatment would in practice be settled largely by the citation of witnesses and the application of specific laws, he keeps both witnesses and laws in the background as far as possible and concentrates instead upon logical subtleties and *a priori* inferences. [*A priori* inferences in general are known as εικότα, probable conclusions based on known facts. These evidentiary facts are called τεκμήρια (a different thing from μαρτυρίαι, the evidence of witnesses). A third term, σημεία, also occurs. The meaning of this can be gathered from an extant fragment 34, of Antiphon's own Τεχνη (Fr. 74, in fra, p. 308)]

Now, as is well known, the first attempts to develop an "art of persuasion" were made during the fifth century. They had their origins in the sophistic movement which came into being in the generation after the Persian Wars, to meet the needs of an age of growing intellectual activity and political self-consciousness. The aim of the sophists was educational; they systematized the knowledge and acquirements necessary to the man who was seeking to become an enlightened and efficient member of society, and for a fee would instruct all comers. In the main they interpreted efficiency as the ability to present a point of view in a convincing fashion, whether in the Assembly, the law-courts, or general conversation; and sophists from Protagoras to Thrasymachus devoted a great deal of thought to the formulation of the basic principles of argument and the most effective method of presenting a case. It is in this setting that tradition places the *Tetralogies.* Antiphon himself is known to have taught rhetoric and to have written upon the subject; and so it was only natural that he should have published a number of model speeches for the benefit of pupils. Furthermore, it is known that the type of situation proposed for discussion in the *Tetralogies* was a favourite one with the sophists of the fifth century. Pericles, for instance, argued with Protagoras over the hypothetical case of the boy who was accidentally killed by a javelin in the gymnasium, precisely the problem treated in the second *Tetralogy*; and in Plato's *Phaedrus* there is a still more striking parallel.

Socrates is discussing the methods of argument advocated by Antiphon's predecessor, Teisias, in his handbook on rhetoric. Teisias, he says, lays it down that "if a man who was courageous but physically weak gave a hiding to a strong man who was a coward, because he had been robbed by him of his cloak or something similar, and was prosecuted in consequence, neither of the two must speak the truth. The coward must allege that the courageous man did not give him the hiding unaided, while the other must seek to establish the fact that the two of them were alone, and then go on to make play with the argument: 'How could a man such as I have attacked a man such as he?' The prosecutor, on the other hand, will not admit his own

cowardice, but will endeavour to produce some false statement by means of which he may perhaps refute his opponent." Here again we have precisely the methods of argument illustrated at length in the first *Tetralogy.*

Thus far the evidence suggests that we are dealing with what is genuinely the work of Antiphon, the work perhaps of his younger days when he had not as yet made his reputation as a *λογογράφος* and was still obliged to teach for a living. But such a consideration is hardly supported, if the style and language of the *Tetralogies* be compared with that of the *Herodes* and *Choreutes.* It was Herwerden who first called attention to their peculiarities of vocabulary and grammar.

If, then, the *Tetralogies are his* work, how comes it that they show such peculiarities of grammar and diction? The difficulty is no trifling one. Admittedly, academic exercises of the type which we are considering will differ considerably from speeches composed by the same author for delivery in a court of law. They will be more concise, probably a good deal more closely argued, and certainly less ornate. But that they should exhibit a language entirely peculiar to themselves is strange. It is hard to see how the man who wrote the *Herodes,* an Athenian born and bred, could have sprinkled his pages with Ionicisms in his earlier days.

If an examination of their language points to the conclusion that the *Tetralogies* are not the work of Antiphon, is the same true of the evidence to be obtained from what may conveniently be called their general background? This is a far harder question. It has already been pointed out that the author is clearly at some pains to give as little prominence as: possible to πιστεις άτεχνοι, proofs based on specific laws, on the evidence of witnesses, and on other matters of fact, because his intention is to reveal the scope of general reasoning in forensic pleading. But reasoning, however general, cannot develop *in vacuo;* it must proceed from premises of a kind; and if the *Tetralogies* discard the premises afforded by particular laws, they can do so only by substituting, the universal principles from which those laws derive. This is in fact what happens; and before proceeding further, we must briefly consider the conception of blood-guilt upon which the entire argument of the *Tetralogies* rests.

The central fact for the author is that, unlike ordinary crimes, the taking of life, whether wilfully or by accident, is an άσεβημα, an act of impiety, which upsets the existing harmony between man and those superhuman forces which surround him, and brings upon him a μίασμα or defilement. This μίασμα, also spoken of as a κηλίς, is described at times in terms which suggest a literal stain of blood (cf. II. γ. 8, θεία κηλis τω δράσαντι προσπίπτει άσεβουντι). It rests primarily upon the slayer himself; but in a wider sense his family and the entire community to which he belongs are infected with it, possibly because of their contact with him, but more probably because of the persistence of the primitive notion that the true unit of existence is the tribe or the πόλις, the members of which have no separate individuality. This μίασμα will continue until due expiation has been made; and the expiation should, strictly speaking, consist in the death of the slayer; he has taken the life of another, and his own life must be taken' in return. The Tetralogies recognize, however, the possible alternative of exile, the permanent exclusion of the offender from his community being regarded as itself equivalent to death. Unless expiation of the one sort or the other is forthcoming, the dead man will remain ενθυμιος τοισ ζωσιν, i.e. the conscience of the living will be burdened with guilt, and the unseen powers of vengeance which have been awakened by the shedding of blood will work their will. Upon the criminal himself they will bring destruction; upon the state famine and disaster. Generally these powers of vengeance are called *αλιτήριοις*; but here and there a different word is used to describe them — *προστρόττάιοι* — a word which lets

us see something more of their nature. They are the vaguely conceived personification of eternal justice "turned to" in mute appeal by him who has been wronged. They will hear his appeal, and until reparation has been made will ceaselessly haunt the guilty.

Much that is curious in the argument of the Tetralogies follows directly from these presuppositions. Tetralogy II, for example', is concerned with the case of a boy who was accidentally killed by a javelin-cast in the gymnasium. Now it might be expected that the only method of treating the situation open to the author would be to make the prosecution take the line that the victim met his death as the result of a deliberate intention to kill on the part of the defendant, or else as the result of criminal negligence; while the defendant would reply, by trying to prove that death occurred by misadventure. But instead both sides admit from the start that death was purely accidental, because for the writer it makes no difference. A life has been lost by violence. Therefore an unexpiated *μίασμα* may still rest upon the community. If the boy was himself to blame for running into the path of the javelin, all is well; but if the fault rested with its thrower, the blood-guilt arising from the deed still remains, and he will have to make reparation with his life. From this springs the involved argument as to which of the two parties was guilty of *αμαρτία,* with its series of sophistries so wearisome to modern taste. For the author it represents the one means, however imperfect that may be, of discovering whether or not satisfaction is still owing to the powers of vengeance for the blood which has been shed.

It is hardly necessary to point out how extraordinarily primitive are the beliefs which lie behind this conception of blood-guilt. They have their roots in a dim past when the life of man was felt to be at the mercy of mysterious δαιμονες, spiritual forces which surround him on every side and manifest themselves in the endless processes of nature, forces of which none knew the limits or precise character, but which might be rendered benevolent by due propitiation. It was in an animistic world of this kind that the worship known as Chthonic took shape. The spirits of the dead below the ground were themselves thought to influence the lives of those upon the earth which they had quitted. They too were δ*αίμονες,* and malignant, ones, starved ghosts, potent for evil, unless appeased with food and drink and the performance of the ritual proper to them. And most malignant of all was the spirit of the man whose life had been taken from him by violence. He demanded blood, the blood of his slayer; and until he had received satisfaction, his curse lay upon the living.

Beliefs of this kind, woven into the very fabric of life, provide in themselves an inarticulate code of law; and with the development of a more complex social system, while some will pass into oblivion, others will receive explicit formulation as being fundamental to society's existence. They will become *νόμοι πάτριοι* whose authority is unquestioned — not so much because the superstitions and taboos from which they originated still persist, but because they have proved their worth in practice and have become accepted as part of the nature of things. We have seen how the author of the *Tetralogies* takes such a body of primitive law as his material; it now remains to ascertain whether this is in any way related to the Athenian legal code in so far as that code is concerned with *φόνος.*

Homicide in all its forms was dealt with at Athens under the laws first put into writing by Draco in the seventh century, but with origins in a far remoter past. The basic principle upon which they were framed was the principle with which we have already met in the Tetralogies, namely, that the shedding of blood involves a defilement which can only be removed by making due reparation to the dead. But closely related to this was a second principle, of which the Tetralogies take no account, the principle that there are degrees: of blood-guilt and that therefore the

reparation in a given case of φόνος must depend upon the nature of that case. Homicide, in fact, under the Draconian code could take one of two main forms, φόνος εκούσιος and φόνος ακούσιος; and according as it was the one or the other, so the penalty to be inflicted upon the offender was death (with the recognized alternative of exile for life) or exile for a specified period, probably not more than a year (άπενιοντισμός). In addition there was a third form, φόνος δίκαιος, which might be εκούσιος or ακούσιος, but which at the same time embodied a legal principle that the other two did not. How early these momentous distinctions were drawn is not known; but there can be no doubt that it was long before the days of Draco, as already in his time special courts were in existence for the trial of different kinds of *φόνος.* These courts were five in number. The first, and probably the most ancient, was the Areopagus, which sat to try cases of *φόνος, εκούσιος,* wilful murder. The second was the court which met in the precincts of the Palladium (τδ *επι* Παλλαδίφ *δικαστήριον),* to try cases of *φόνος ακούσιος,* homicide committed without intent to kill. The third met in the precincts of the temple of Apollo Delphinius (το *επι Δελφινίω* δικ.), to try cases of *φόνος δίκαιος,* homicide where the defendant pleaded justification. The fourth met in the precincts of the Prytaneum, the ancient Council-Hall (*το επι τω Πρυτανείω δικ.*), to try cases where the slayer was unknown or where death had been caused by an inanimate object. The fifth sat at Phreatto, a part of Peiraeus on the seashore, (*το εν Φρεαττοΐ δικ.)* and tried cases where a person already in exile for *φόνος ακούσιος* was charged with having taken life a second time before leaving the country; Phreatto was chosen to enable the defendant to plead from a boat, and thereby avoid setting foot on the soil from which his previous crime had debarred him. The same jury, the fifty-one Ephetae, sat in all these courts save the Areopagus, which was composed of ex-Archons.

Of two of the five courts, the Areopagus and the Palladium, something more should be added. As already stated, the Draconian code recognized the existing distinction between *φόνος εκούσιος* and *φόνος ακούσιος.* Now such a distinction can only be made after it has become clear that the law must take into account not only facts but intentions. But from this it is only a step to a further principle. Cases sometimes occur where A plans an act and B carries it out at A's suggestion in ignorance of the effects which will follow. In such cases the *βούλενσις* and the *πραξις,* which are usually indissolubly connected, are divided between A and B. It follows that the responsibility for the act must also be divided; and at once there emerges the principle τον *βονλεύσαντα εν Τφ αντω ενεχεσθαι καί* τον τη *χειρί εργασάμενον*; and this will apply not only to *φόνος εκούσιος* but also to *φόνος ακούσιος.* B may perform an act at the instigation of A which results in the death of C. Neither A nor B foresaw such a consequence; yet the act was deliberately performed. A is therefore guilty of *βούλευσις φόνου άκονσίον,* and in the eyes of the law must make precisely the same reparation as B. When this principle first received explicit formulation is not known. Possibly it is as early as Draco or earlier. In any case by the fifth century *βούλευσις φόνου εκονσίον* came within the jurisdiction of the Areopagus and *βονλεθσίς φόνου* ακουσίου within, that of the Palladium.

If was into the framework of the five courts that Draco fitted his laws relating to φόνος. Of the character of that code enough has been said to show that it represents a relatively advanced stage of development; the instinctive sanctions of a more rudimentary society have been modified by the emergence of consciously articulated legal principles. But in spite of the rational analysis to which the act of homicide has been subjected, the primitive conception of blood-guilt persists and forms the basis of the Draconian code. Homicide was still held to involve defilement, and was for that

reason placed in a category of its own. This is abundantly clear from known details of procedure in trials for homicide during the fifth century. Thus as soon as a charge of φόνος had been registered with the Basileus, a proclamation was made, forbidding the accused access to the Agora and temples as being suspected of defilement. Anyone who came into contact with him or even spoke to him was liable to be infected with the same μίασμα; while the court which eventually tried the case sat in the open air to avoid sharing a roof with him There could be no better evidence that the old conception of blood-guilt had never lost its hold. Homicide was still an ἄσεβημα rather than an αδίκημα, an act of impiety rather than a crime against the community.

It is plain from this that, in taking the view which he did of the nature of blood-guilt, the author of the *Tetralogies* was doing nothing more than accepting an assumption recognized as fundamental by Athenian law itself. At the same time he diverges noticeably in his treatment of particular cases from the lines laid down in Draco's code. One of the features of that code was its recognition of the fact that φόνος ακούσιος cannot be treated as a crime of the same order as φόνος εκούσιος; and it even went so far as to acknowledge that in certain circumstances φόνου ακούσιον was no crime at all; thus the man who accidentally takes the life of another *εν* άθλοις is expressly absolved from blame, and it is held that he has incurred no defilement. The second *Tetralogy,* however, which deals with a case of homicide in almost these circumstances, pays no attention to this. It replaces Draco's law with another, which is less of a νόμος, though it is spoken, of as such, than a general principle: homicide, whatever the circumstances in which it is committed, is punishable with death. Again, the Draconian code recognized that homicide in self-defence is in certain cases justified; it laid down, for instance, that the man who kills a thief in the effort to protect his goods is guiltless. But the third *Tetralogy,* which would have provided an excel lent opportunity for exhibiting the principle implicit in such a law, is taken up with argument along different lines.

Does this divergence mean that the author of the *Tetralogies* was ignorant of Athenian law on the subject of homicide, and that his conception of blood-guilt as involving defilement agrees with that embodied in the Draconian code only by chance? The evidence does not admit of a certain answer. But it is significant that while the *Tetralogies* do not openly recognize the existence of the Draconian code, each of them deals with one of the three types of *φόνος* distinguished by it: the first is concerned with *φόνος εκούσιος,* the second with *φόνος ακούσιος,* and the third with *φόνος δίκαιος.* Further, passing references to laws other than those of homicide certainly seem to indicate a knowledge of the Athenian legal system as a whole. Thus *κλοπή ίερων χρημάτων* is punishable by fine after being made the subject of a *γραφή*; slaves can only give evidence under torture; a citizen convicted of *ψευδομαρτυρία* is fined and disfranchised; no blame attaches to a physician, if a patient dies while under his care. And in addition to this it must always be remembered that the author is not trying to show how the cases which he selects would be argued in a court of law; as has already been pointed out, he is confining himself as far as possible to purely general reasoning. In view of such facts it seems more probable that he was purposely neglecting the details of the Draconian code than that he was ignorant of them altogether.

The evidence of background, then, suggests, if anything, that the writer of the *Tetralogies* was acquainted with Attic law. That he was Antiphon, or indeed a native Athenian at all, it is not easy to believe, when the peculiarities of language are taken into account. We are left with the possibility that he was a foreigner who had spent time enough in Athens to gain a knowledge of her legal system and write Attic of a

kind. On this assumption the *Tetralogies* will stand as the relic of a literature long since dust and shadows; for the naïve ingenuity of their thought and the archaic balance of their language alike suggest that they are the work of a sophist of the age of Corax, Teisias, and Gorgias, rather than the forgery of a later time. If this is so, we may regret the namelessness of their author; but we must count it fortunate that we possess a perfect specimen of that *τίχνη ρητορική* which held the young Pericles engrossed, while it invited the scorn of Aristophanes and Plato.

Introductory Note to 'The First Tetralogy'

THE SITUATION PRESUPPOSED by the first *Tetralogy* is a simple one. X is found dead in a deserted spot. His attendant, a slave, lies mortally wounded at his side and dies shortly after the pair are discovered, but not before stating that he had recognized Y among the assailants. The family of X now prosecute Y for wilful murder. This clearly affords an admirable field for argument *εκ των εικότων* on the side of prosecution and defence alike, as the evidence of the slave cannot be tested under torture and has to be accepted or rejected as the probabilities dictate. In fact the whole purpose of this particular *Tetralogy* is to show how far *a priori* methods of proof can be pushed.

The prosecution opens with an attempt to establish the guilt of the accused by elimination. Next this negative argument is buttressed by the positive evidence of Y's past relations with X; the known fact that X was threatening Y with a serious lawsuit at the time of his death proves that Y had a peculiarly strong motive for committing the murder. Finally the statement of the slave is produced.

Y replies by showing that the method of elimination employed by the prosecution is logically unsound, that the evidence of the slave was given in such circumstances as to render it untrustworthy, that his presence at the scene of the crime is in any event improbable *a priori,* and finally that the suggested motive is inadequate.

The two remaining speeches break no new ground, but consist of further argument on the lines followed in the first two. A touch of realism is added in the final speech for the defence. The speaker states that he will prove from the evidence of his slaves that he was at home and in bed on the night of the Diipoleia, when the crime was committed. This may well be a practical hint on the part of the author to indicate the most effective moment for the introduction of important evidence. Coming where it does, the prosecution has no opportunity of replying to it.

Speech II. The First Tetralogy: Anonymous Prosecution for Murder

First speech for the prosecution

WHEN A CRIME is planned by an ordinary person, it is not hard to expose; but to detect and expose criminals who are naturally able, who are men of experience, and who have reached an age when their faculties are at their best, is no easy matter. [2] The enormous risk makes them devote a great deal of thought to the problem of executing the crime in safety, and they take no steps until they have completely secured themselves against suspicion. With these facts in mind, you must place implicit confidence in any and every indication from probability[1] presented to you. [3] We, on the other hand, who are seeking satisfaction for the murder, are not letting the guilty escape and bringing the innocent into court; we know very well that as the whole city is defiled by the criminal until he is brought to justice, the sin becomes ours and the punishment for your error falls upon us, if our prosecution is misdirected. Thus, as the entire defilement falls upon us, we shall try to show you as conclusively as our knowledge allows that the defendant killed the dead man. [4] (Malefactors are not likely to have murdered him,)[2] as nobody who was exposing his life to a very grave risk would forgo the prize when it was securely within his grasp; and the victims were found still wearing their cloaks. Nor again did anyone in liquor kill him: the murderer's identity would be known to his boon companions. Nor again was his death the result of a quarrel; they would not have been quarrelling at the dead of night or in a deserted spot. Nor did the criminal strike the dead man when intending to strike someone else; he would not in that case have killed master and slave together. [5] As all grounds for suspecting that the crime was unpremeditated are removed, it is clear from the circumstances of death themselves that the victim was deliberately murdered.[3] Now who is more likely to have attacked him than a man who had already suffered cruelly at his hands and who was expecting to suffer more cruelly still? That man is the defendant. He was an old enemy of the other, and indicted him on several serious charges without success. [6] On the other hand, he has himself been indicted on charges still more numerous and still more grave, and not once has he been acquitted, with the result that he has lost a good deal of his property. Further, he had recently been indicted by the dead man for embezzling sacred monies,[4] the sum to be recovered being assessed at two talents; he knew himself to be guilty, experience had taught him how powerful his opponent was, and he bore him a grudge for the past; so he naturally plotted his death: he naturally sought protection against his enemy by murdering him. [7] Thirst for revenge made him forget the risk, and the overpowering fear of the ruin which threatened him spurred him to all the more reckless an attack. In taking this step he hoped not only that his guilt would remain undiscovered, but that he would also escape the indictment;[5] [8] nobody, he thought, would proceed with the suit, and judgement would go by default; while in the event of his losing his case after all, he considered it better to have revenged himself for his defeat than, like a coward, to be ruined by the indictment without retaliating. And he knew very well that he would lose it, or he would not have thought the present trial the safer alternative. [9] Such are the motives which drove him to sin as he did. Had there been eyewitnesses in large numbers, we should have produced them in large numbers; but as the dead man's attendant was alone present, those who heard his statement will give evidence; for he was still alive when picked up, and in reply to our questions stated that the only assailant whom he had recognized was the defendant.

Inferences from probability and eyewitnesses have alike proved the defendant's guilt: so both justice and expediency absolutely forbid you to acquit him. [10] Not only would it be impossible to convict deliberate criminals if they are not to be convicted by eyewitnesses and by such inferences; but it is against all your interests that this polluted wretch should profane the sanctity of the divine precincts by setting foot within them, or pass on his defilement to the innocent by sitting at the same tables as they.[6] It is this that causes dearth and public calamity. [11] And so you must hold the avenging of the dead a personal duty; you must visit the defendant with retribution for the sin which was his alone; you must see that none but he suffers, and that the stain of guilt is removed from the city.

Reply to the Same Charge

I AM NOT far wrong, I think, in regarding myself as the most unlucky man alive. Others meet with misfortune. They may be buffeted by a tempest; but calm weather returns and they are buffeted no longer. They may fall ill; but they recover their health and are saved. Or some other mishap may overtake them; but it is followed by its opposite which brings relief. [2] With me this is not so. Not only did this man make havoc of my house during his lifetime; but he has caused me distress and anxiety in plenty since his death, even if I escape sentence; for so luckless is my lot that a godfearing and an honest life is not enough to save me. Unless I also find and convict the murderer, whom the dead man's avengers cannot find, I shall myself be deemed guilty of murder and suffer an outrageous sentence of death. [3] Now the prosecution allege that it is very difficult to prove my guilt because of my astuteness. Yet in maintaining that my actions themselves prove me to be the criminal, they are assuming me to be a simpleton. For if the bitterness of my feud is a natural ground for your deeming me guilty today, it was still more natural for me to foresee before committing the crime that suspicion would settle upon me as it has done. I was more likely to go to the length of stopping anyone else whom I knew to be plotting the murder than deliberately to incur certain suspicion by committing it myself; for if, on the one hand, the crime in itself showed that I was the murderer,[7] I was doomed; while if, on the other hand, I escaped detection, I knew very well that suspicion would fall on me as it has done. [4] My plight is indeed hapless; I am forced not only to defend myself, but to reveal the criminals as well. Still, I must attempt this further task; nothing, it seems, is more relentless than necessity. I can expose the criminals, I may say, only by following the principle used by my accuser, who establishes the innocence of every one else and then asserts that the circumstances of death in themselves show the murderer to be me.[8] If the apparent innocence of every one else is to fasten the crime upon me, it is only logical for me to be held guiltless, should others be brought under suspicion. [5] It is not, as the prosecution maintain, unlikely that a man wandering about at the dead of night should be murdered for his clothing; nothing is more likely. The fact that he was not stripped indicates nothing. If the approach of passers-by startled his assailants into quitting him before they had had time to strip him, they showed sense, not madness, in preferring their lives to their spoils. [6] Further, he may not in fact have been murdered for his clothing; he may have seen others engaged in some quite different outrage and have been killed by them to prevent his giving information of the crime; who knows? Again, were not those who hated him almost as much as I did — and there were a great many — more likely to have murdered him than I? It was plain to them that suspicion would fall on me; while I knew very well that I should bear the blame for them. [7] Why, moreover, should the evidence of the attendant be allowed any weight? In his terror at the peril in which he stood, there was no likelihood of his recognizing the murderers. On the other hand, it was likely enough that he would obediently confirm any suggestions made by his masters.[9] We distrust the evidence of slaves in general, or we should not torture them; so what justification have you for putting me to death on the evidence of this one? [8] Further, whoever allows probability the force of fact when it testifies to my guilt must on the same principle bear the following in mind as evidence of my innocence; it was more likely that, with an eye to carrying out my plot in safety, I

should take the precaution of not being present at the scene of the crime than that the slave should recognize me distinctly just as his throat was being cut. [9] I will now show that, unless I was mad, I must have thought the danger in which I now stand far greater, instead of less, than the danger to be expected from the indictment. If I was convicted on the indictment, I knew that I should be stripped of my property; but I did not lose my life or civic rights. I should still have been alive, still left to enjoy those rights and even though I should have had to obtain a loan of money from my friends,[10] my fate would not have been the worst possible. On the other hand, if I am found guilty today and put to death, my children will inherit from me an insufferable disgrace; if instead I go into exile, I shall become a beggar in a strange land, an old man without a country. [10] Thus not one of the charges brought against me has any foundation. But even if the probabilities, as distinct from the facts, point to me as the murderer, it is acquittal that I deserve from you far more than anything else; since first, it is clear that if I struck back, it was only because I was being deeply wronged; had that not been so, it would never have been thought likely that I was the murderer; and secondly, it is the murderers, not those accused of the murder, whom it is your duty to convict.[11] [11] As I am completely cleared of the charge, it is not I who will profane the sanctity of the gods when I set foot within their precincts, any more than it is I who am sinning against them in urging you to acquit me. It is those who are prosecuting an innocent man like myself, while they let the criminal escape, to whom dearth is due; it is they who deserve in full the penalty which they say should he inflicted upon me, for urging you to become guilty of impiety. [12] If this is the treatment which the prosecution deserve, you must put no faith in them. I myself, on the other hand, as you will see by examining my past life, do not form plots or covet what does not belong to me. On the contrary, I have made several substantial payments to the Treasury,[12] I have more than once served as Trierarch,[13] I have furnished a brilliant chorus,[14] I have often advanced money to friends, and I have frequently paid large sums under guarantees given for others; my wealth has come not from litigation, but from hard work;[15] and I have been a religious and law-abiding man. If my character is such as this, you must not deem me guilty of anything sinful or dishonorable. [13] Were my enemy alive and prosecuting me, I should not be resting content with a defense; I should have shown what a scoundrel he was himself and what scoundrels are those who, while professedly his champions, seek in fact to enrich themselves at my expense over the charge which I am facing.[16] However, more out of decency than in fairness to myself, I shall refrain. Instead, I entreat you, gentlemen, you who are empowered to decide the most critical of issues; take pity on my misfortune and remedy it; do not join my opponents in their attack; do not allow them to make an end of me without regard to justice or the powers above.

Second Speech for the Prosecution

IT IS AN outrage to "misfortune" that he should use it to cloak his crime, in the hope of concealing his defilement. Neither does he deserve your "pity"[17] he did not consult his victim's wishes[18] in bringing doom upon him: whereas he did consult his own before exposing himself to danger. We proved in our first speech that he is the murderer; we shall now endeavor to show by examination that his defense was unsound. [2] Assume that the murderers hurried off, leaving their victims before they had stripped them, because they noticed the approach of passers-by. Then even if the persons who came upon them found the master dead, they would have found the slave still conscious, as he was picked up alive and gave evidence. They would have questioned him closely and have informed us who the criminals were; so that the defendant would not have been accused. Or assume, on the other hand, that others, who had been seen by the two committing some similar outrage, had murdered them to keep the matter dark. Then news of that outrage would have been published at the same time as the news of the present murder, and suspicion would have fallen on those concerned in it. [3] Again, how persons whose position was not so serious should have plotted against the dead man sooner than persons who had more to fear, I fail to understand. The fears and sense of injury of the second were enough to put an end to caution; whereas with the first the risk and disgrace involved, to which their resentment could not blind them, were sufficient to sober the anger in their hearts, even if they had intended to do the deed. [4] The defense are wrong when they say that the evidence of the slave is not to be trusted; where evidence of this sort is concerned, slaves are not tortured; they are given their freedom. It is when they deny a theft or conspire with their masters to keep silence that we believe them to tell the truth only under torture.[19] [5] Again, the probabilities are not in favor of his having been absent from the scene of the crime rather than present at it. In remaining absent he was going to run the same risks as he would run if present, as any of his confederates if caught would have shown that it was he who had originated the plot. And not only that; he was going to dispatch the business on hand less satisfactorily, as not one of the criminals taking part would have felt the same enthusiasm for the deed. [6] Further, he did not believe the danger threatened by the indictment to be less serious than that in which he now stands, but much more so, as I will prove to you. Let us assume that his expectations of conviction or acquittal were the same in the one suit as in the other.[20] Now he had no hope of the indictment being dropped as long as his enemy was alive; his entreaties would never have been listened to. But he did not, on the other hand, expect to be involved in the present trial, as he thought that he could commit the murder without being found out. [7] Again, in claiming an acquittal on the ground that he could foresee that he would be suspected, he is arguing falsely. If the defendant, whose position was desperate could be deterred from violence by the knowledge that suspicion would fall on himself, nobody at all would have planned the crime. Every one who stood in less danger than he would have been more frightened by the certainty of being suspected than by that danger, and would therefore have been less ready than he to use violence. [8] His contributions to the Treasury and his provision of choruses may be satisfactory evidence of his wealth; but they are anything but evidence of his innocence. It was precisely his fear of losing his wealth which drove him to commit the murder; though an unscrupulous crime, it was to be expected of

him. He objects that murderers are not those who were to be expected to commit murder, but those who actually did so. Now he would be quite right, provided that those who did commit it were known to us; but as they are not, proof must be based on what was to be expected; and that shows that the defendant, and the defendant alone, is the murderer. Crimes of this kind are committed in secret, not in front of witnesses. [9] As he has been proved guilty of the murder so conclusively from his own defense, he is simply asking you to transfer his own defilement to yourselves. We make no requests; we merely remind you that if neither inferences from probability nor the evidence of witnesses prove the defendant guilty today, there remains no means of proving any defendant guilty. [10] As you see, there is no doubt about the circumstances of the murder; suspicion points plainly to the defendant;[21] and the evidence of the slave is to be trusted so how can you in fairness acquit him? And if you acquit him unfairly, it is not upon us that the dead man's curse will lie; it is upon you that he will bring disquiet.[22] [11] So with this in mind come to the victim's aid, punish his murderer, and cleanse the city. Do this, and you will do three beneficial things; you will reduce the number of deliberate criminals; you will increase that of the godfearing; and you will yourselves be rid of the defilement which rests upon you in the defendant's name.

Second Speech for the Defense

SEE, I HAVE chosen to place myself at the mercy of the misfortune which you have been told that I blame unfairly, and at the mercy of my enemies here; for much as I am alarmed by their wholesale distortion of the facts, I have faith in your judgement and in the true story of my conduct; though if the prosecution deny me even the right of lamenting before you the misfortunes which have beset me, I do not know where to fly for refuge, [2] so utterly startling — or should I say villainous? — are the methods which are being used to misrepresent me. They pretend that they are prosecuting to avenge a murder; yet they defend all the true suspects, and then assert that I am a murderer because they cannot find the criminal. The fact that they are flatly disregarding their appointed duty shows that their object is not so much to punish the murderer as to have me wrongfully put to death. [3] I myself ought simply to be replying to the evidence of the attendant, for I am not here to inform you of the murderers or prove them guilty; I am answering a charge which has been brought against me. However, in order to make it completely clear that the prosecution have designs upon my life and that no suspicion can attach itself to me, I must, quite unnecessarily, go further. [4] I ask only that my misfortune, which is being used to discredit me, may turn to good fortune; and I call upon you to acquit and congratulate me rather than condemn and pity me. According to the prosecution, those who came up during the assault were one and all more likely to inquire exactly who the murderers were and carry the news to the victims' home than to take to their heels and leave them to their fate. [5] But I, for my part, do not believe that there exists a human being so reckless or so brave that, on coming upon men writhing in their death agony in the middle of the night, he would not turn round and run away rather than risk his life by inquiring after the malefactors responsible. Now since it is more likely that the passers-by behaved in a natural manner, you cannot logically continue to treat the footpads who murdered the pair for their clothing as innocent, any more than suspicion can still attach itself to me.[23] [6] As to whether or not proclamation of some other outrage was made at the time of the murder, who knows? Nobody felt called upon to inquire and as the question is an open one, it is quite possible to suppose that the malefactors concerned in such an outrage committed the murder. [7] Why, moreover, should the evidence of the slave be thought more trustworthy than that of free men?[24] Free men are disfranchised and fined, should their evidence be considered false; whereas this slave, who gave us no opportunity of either cross-examining or torturing him — when can he be punished? Nay, when can he be cross-examined? He could make a statement in perfect safety; so it is only natural that he was induced to lie about me by his masters, who are enemies of mine. On the other hand, it would be nothing short of impious were I put to death by you on evidence which was untrustworthy. [8] According to the prosecution, it is harder to believe that I was absent from the scene of the crime than that I was present at it. But I myself, by using not arguments from probability but facts, will prove that I was not present. All the slaves in my possession, male or female, I hand over to you for torture; and if you find that I was not at home in bed that night, or that I left the house, I agree that I am the murderer. The night can be identified, as the murder was committed during the Diipoleia.[25] [9] As regards my wealth, my fears for which are said to have furnished a natural motive for the murder, the facts are precisely the opposite. It is the unfortunate

who gain by arbitrary methods, as they expect changes to cause a change in their own sorry plight. It pays the fortunate to safeguard their prosperity by living peaceably, as change turns their good fortune into bad. [10] Again, although the prosecution pretend to base their proof of my guilt on inferences from probability, they assert not that I am the probable, but that I am the actual murderer. Moreover, those inferences[26] have in fact been proved to be in my favor rather than theirs — for not only has the witness for the prosecution been proved untrustworthy, but he cannot be cross-examined. Similarly, I have shown that the presumptions[27] are in my favor and not in favor of the prosecution and the trail of guilt has been proved to lead not to me, but to those whom the prosecution are treating as innocent. Thus the charges made against me have been shown without exception to be unfounded. But it does not follow that there is no way of convicting criminals, if I am acquitted; it does follow that there is no way of effectively defending persons accused, if I am sentenced. [11] You see how unjustifiably my accusers are attacking me. Yet notwithstanding the fact that it is they who are endeavoring to have me put to death in so impious a fashion, they maintain that they themselves are guiltless; according to them, it is I who am acting impiously — I, who am urging you to show yourselves godfearing men. But as I am innocent of all their charges, I adjure you on my own behalf to respect the righteousness of the guiltless, just as on the dead man's behalf I remind you of his right to vengeance and urge you not to let the guilty escape by punishing the innocent; once I am put to death, no one will continue the search for the criminal. [12] Respect these considerations, and satisfy heaven and justice by acquitting me. Do not wait until remorse proves to you your mistake; remorse in cases such as this has no remedy.

ENDNOTES.

[1] εἰκός, εἰκότως, and τὰ εἰκότα cannot properly be rendered by any single English equivalent. I have made use of “natural,” “logical,” “probable,” “to be expected,” etc., according to the requirements of the context.

[2] Inserted in the Aldine edition to fill a probable lacuna in the manuscript text; some reference to κακοῦργοι is clearly wanted. The term κακοῦργος(cf. Antiph. 2.4.5-6) is a generic one comprising various species of criminal; κλέπται, τοιχωρύχοι, βαλλοντιοτόμοι, etc. The “ malefactors” her referred to are doubtless λωποδύται”footpads”. For a further discussion of κακοῦργοι see Herodes, Introd.

[3] Here, as elsewhere in the Tetralogies, the Greek has to be expanded in translating in order to make the connection of thought clear. For an explanation of the words αὐτὸς ὁ θάνατος, “circumstances of death” see Antiph. 2.2.4 note 1.

[4] ἱερῶν κλοπή (embezzelment of sacred monies of which the person concerned was in charge) is to be distinguished from ἱεροσυλία(temple-robbery), for which see Antiph. 5.10. The penalty for ἱερῶν κλοπή was the repayment of ten times the sum embezzled (Dem. 24.111-112).

[5] Or possibly: “be acquitted on the indictment.”

[6] Cf. the disabilities involved in τὸ εἴργεσθαι τῶν νομίμων, Antiph. 6.34 sqq.

[7] Or possibly: “If on the one hand I was detected in the act of committing the crime. . . “ The speaker is endeavoring to prove that he did not commit the murder by showing that his knowledge of the consequences to himself, even in the event of his escaping detection, must necessarily have deterred him. The sentence must therefore be regarded as explaining not the whole of that preceding, but only αὐτὸν . . . ἐμπεσεῖν.

[8] An exceedingly difficult sentence to render clearly in English. The speaker means that he too is obliged from the nature of the case to resort to proof by elimination. The prosecution had argued (Antiph. 2.1.4-5) that death could not have been due to footpads, a drunken quarrel, or a mistaken assault, i.e. it cannot have been unpremeditated; therefore, since the circumstances showed it to have been violent, not natural (this is the point of αὐτὸς ὁ θάνατος in Antiph. 2.1.5, it was premeditated; and the defendant was alone likely to have planned such a crime. Here the defendant recapitulates this, actually quoting the words αὐτὸς ὁ θάνατος, which had formed part of the argument of the prosecution.

[9] ἀναγιγνώσκειν in the sense of “persuade,” which it must bear here, is found elsewhere only in Herodotus. “Masters” implies that the passers-by who found the slave were members of the dead man’s own family, although this fact is nowhere explicitly mentioned by the prosecution.

[10] ἔρανον συλλέγειν. Cf. infra 12, ἐρανίζειν. The reference in both cases is to a sum of money advanced without interest by friends who each contributed a portion. ἔρανος later came to have the more specialized sense of a club formed for the purpose of lending money without interest to any of its members. Each member paid a subscription (also called ἔρανος); and such clubs often acquired landed property. They grew political in character as time went on.

[11] i.e. (1) Even if he can he proved guilty, there are extenuating circumstances which will make it impossible to condemn him. (2) But he cannot be proved guilty in any case.

[12] The εἰσφορά was an extraordinary property-tax levied on citizens and metics in time of war.

[13] One of the most important liturgies or public services which the richer members of the community were obliged to undertake from tine to time. The τριήραρχος served for a year as the commander of a trireme; and although the State furnished rigging etc., and pay for the crew, the trierach was to expend

large sums on repairs and to make up shortages in the payment of his men from his own pocket. The average cost of a Trierarchy was 50 minae.

[14] i.e. as Choregus he had paid for the training and equipment of a chorus at one of the dramatic or choral festivals so frequent at Athens and throughout Greece in general.

[15] The Greek is a deliberate jingle, which cannot be rendered convincingly in English. Perhaps ". . . not from litigation, but from application" might serve.

[16] Implying that the defendant's property would be confiscated upon his conviction and a percentage given to the prosecution. See Antiphon 5.79, On the Murder of Herodes, for a similar complaint.

[17] The ἀτυχία and ἐλεεῖσθαι of course echo the ἐλεήσαντας τὴν ἀτυχίαν μου at the close of the preceding speech for the defense.

[18] It is important to distinguish between the various meanings of ἀκούσιος Whereas ἑκούσιος is always "willing" or "voluntary", ἀκούσιος can mean one of three things; (a)" unwilling," (b) "accidental" or involuntary," (c) "non-voluntary." In (a) I do or suffer something against my will; in (b) I do or suffer something voluntarily, but the consequences are other than I willed them to be; in (c) I do or suffer something unconsciously or in entire ignorance (e.g. I may be hypnotized and unknowingly commit murder, or I may be the unsuspecting victim of sudden death, as here); my will does not enter into the matter at all.

[19] The evidence of slaves was accepted only under torture. But the torture could not be inflicted without the consent of the owner. Hence there are instances of the purchase of slaves solely for the purpose of extorting evidence from them (see Antiph. 5.47, On the Murder of Herodes, for a case in point). The last half of the present paragraph envisages a similar purchase in order to obtain evidence against the slave's former owner. On the other hand, a slave who defended his master's life at the risk of his own would more often than not be rewarded with his freedom; and once he was free, he could not be tortured; he gave his evidence in a court of law in the ordinary way. Thus the argument in the present passage is; the dying slave was virtually a free man, as he had given his life for his master; hence there is no ground whatever for maintaining, as the defendant is doing, that his evidence cannot be accepted in court because it was not given under torture.

[20] i.e. that his position in both suits was completely hopeless.

[21] Lit.: "the tracks left by suspicion lead in the direction of the defendant." ὑποψία is half personified and regarded as itself moving towards the person upon whom it is to settle. Cf. τὰ ἴχνη τοῦ φόνου in Antiph. 2.4.10.

[22] See Introduction.

[23] Immediately intended as an answer to Antiph. 2.3.2, where it is maintained that if the murder was the work of footpads, the passers-by who appeared on the scene would have obtained information about their identity from the victims. The reply here given is; (a) if a group of footpads had in fact been engaged in the murder, the passers-by would have run away. (b) The passers-by would in that case have been unable to supply information about the identity of the criminals. (c) As no passer-by has come forward with such information, all the passers-by must have run away. (d) It follows from (a) that the murderers must have been a group of footpads. A portentous petitio principii, which of course entirely neglects the fact that passers-by had come forward with very different information.

[24] Or "of the free men." A puzzling sentence which has been treated by some as evidence of the incompleteness of this tetralogy in its present form. No "free men" have given evidence in favor of the defense, and we can hardly suppose that the speaker is referring to himself. I have taken the words in a purely general sense, although I feel it to be unsatisfactory.

[25] A festival in honor of Zeus, celebrated in the first week of June.

[26] The ἄλλα is answered by ὅ τε γὰρ, which explains away the one fact which might have been unfavorable to the defense. The connection of thought is; "The inferences are all in my favor; and, after

all, it is only inferences that we have to consider in this case. There can be no question of evidence of fact, as the one possible witness has been proved prejudiced." The construction is thus elliptical.

[27] τεκμήρια are here distinguished from εἰκότα; but the distinction is hardly observed by Antiphon in practice.

Speech III. The Second Tetralogy: Prosecution for Accidental Homicide

Introductory Note to the Second Tetralogy

THE SECOND *TETRALOGY* is concerned not with establishing facts but with interpreting them. X was practising with the javelin in the gymnasium. Y ran in front of the target just as X was making a cast, and was killed. Y's father prosecutes X for accidentally causing his son's death.

To understand, the case as developed in the four speeches' made by the prosecution and defence, it is necessary to bear in mind the oddly inelastic conception of blood-guilt upon which they are based. Homicide, whether wilful or not, involves blood-guilt; and that blood-guilt must rest upon someone; in the last resort it may even be assumed to rest upon the inanimate instrument of death. Here, then, the question at issue is not whether X is guilty of wilful murder or manslaughter, nor again whether Y met his end by misadventure. It is acknowledged from the start that Y's death was purely accidental. The point is that a life has been lost; and as only two persons, X and Y, were concerned, the blood-guilt must rest upon the one or the other. If it can be shown to rest upon Y himself, due atonement has already been made, as Y has paid with his life. If, however, it proves to rest upon X, X must be punished. Otherwise X's defilement will bring down divine vengeance not only upon himself but upon the community at large.

Since an accident involves *αμαρτία* on the part of the person responsible, the object of the prosecution and defence throughout is to prove that the *αμαρτία* lay with the other side, *αμαρτία* is the failure to perform an act as one intended to perform it, owing to circumstances outside of one's control; it is "error." But owing to the conception of blood-guilt mentioned, a *αμάρτημα* which results in another's death carries a certain moral responsibility with it. It was only the fact that the agent was performing the act at all that made it possible for the error to occur: and so he must bear the blame. In γ, § 8 it is implied that at least in some cases a *αμάρτημα* is due to the direct intervention of heaven; the agent has committed a sin, and the divine Nemesis takes the form of his being so blinded that he becomes guilty of a *αμάρτημα, for* which he is punished; it is the familiar notion of *υβρις* and *άτη* thinly disguised. Presumably in other cases the *αμαρτία* is due simply to *τύχη;* but the author of *the Tetralogy* is not concerned to work out the theory in detail.

Speech III. The Second Tetralogy: Prosecution for Accidental Homicide

First speech for the Prosecution

CASES IN WHICH the facts are agreed upon are settled in advance either by the law or by the statutes of the Assembly, which between them control every branch of civic life. But should matter for dispute occur, it is your task, gentlemen, to give a decision. However, I do not imagine that any dispute will in fact arise between the defendant and myself. My son was struck in the side by a javelin thrown by yonder lad in the gymnasium, and died instantly. [2] I accuse him not of killing my son deliberately, but of killing him by accident — though the loss which I have suffered is not thereby lessened. But if he has not caused the dead boy himself disquiet, he has caused disquiet to the living[1]; and I ask you to pity that dead boy's childless parents: to show your sorrow for his own untimely end: to forbid his slayer to set foot where he is forbidden to set foot by the law[2]: and to refuse to allow him to defile the whole city.

Reply to a Charge of Accidental Homicide

I NOW SEE that sheer misfortune and necessity can force those who hate litigation to appear in court and those who love peace to show boldness[3] and generally belie their nature in word and deed; for I myself, who, unless I am sorely mistaken, am very far from finding or wanting to find such a task congenial, have today been forced by sheer misfortune to depart from my habits and appear as defendant in a case in which I found it hard enough to arrive at the exact truth, but which leaves me still more perplexed when I consider how I should present it to you. [2] I am driven by pitiless necessity: and I, like my opponents, gentlemen of the jury, seek refuge in your sympathy. I beg of you: if my arguments appear more subtle than those generally presented to you, do not allow the circumstances already mentioned[4] so to prejudice you against my defence as to make you base your verdict upon apparent fact instead of upon the truth; apparent fact puts the advantage with the clever speaker, but truth with the man who lives in justice and righteousness.

[3] In training my son in those pursuits from which the state derives most benefit I imagined that both of us would be rewarded; but the result has sadly belied my hopes. For the lad — not from insolence or wantonness, but while at javelin-practice in the gymnasium with his fellows — made a hit, it is true, but killed no one, if one considers his true part in the matter[5]: he accidentally[6] incurred the blame for the error of another which affected that other's own person.

[4] Had the boy been wounded because the javelin had traveled in his direction outside the area appointed for its flight, we should be left unable to show that we had not caused his death. But he ran into the path of the javelin and placed his person in its way. Hence my son was prevented from hitting the target: while the boy, who moved into the javelin's path, was struck, thereby causing us to be blamed for what we did not do. [5] It was because he ran in front of the javelin that the boy was struck. The lad is therefore accused without just cause, as he did not strike anyone standing clear of the target. At the same time, since it is plain to you that the boy was not struck while standing still, but was struck only after deliberately moving into the path of the javelin, you have still clearer proof that his death was due to an error on his own part. Had he stood still and not run across, he would not have been struck.

[6] Both sides are agreed, as you see, that the boy's death was accidental; so by discovering which of the two was guilty of error, we should prove still more conclusively who killed him. For it is those guilty of error in carrying out an intended act who are responsible for accidents[7]: just as it is those who voluntarily do a thing or allow it to be done to them who are responsible for the effects suffered.

[7] Now the lad, on his side, was not guilty of error in respect of anyone: in practising he was not doing what he was forbidden but what he had been told to do, and he was not standing among those engaged in gymnastics when he threw the javelin, but in his place among the other throwers: nor did he hit the boy because he missed the target and sent his javelin instead at those standing clear. He did everything correctly, as he intended; and thus he was not the cause of any accident, but the victim of one, in that he was prevented from hitting the target.

[8] The boy, on the other hand, who wished to run forward, missed the moment at which he could have crossed without being hit, with results which he by no means desired. He was accidentally guilty of an error which affected his own person, and has

thus met with a disaster for which he had himself alone to thank. He has punished himself for his error, and is therefore duly requited; not that we rejoice at or approve of it — far from it: we feel both sympathy and sorrow.

It is thus the dead boy who proves to have been guilty of error; so the act which caused his death is to be attributed not to us, but to him, the party guilty of error: just as the recoiling of its effects upon the agent not only absolves us from blame, but has caused the agent to be punished as he deserved directly his error was committed.

[9] Furthermore, our innocence is attested by the law upon which my accuser relies in charging me with the boy's death, the law which forbids the taking of life whether wrongfully or otherwise. For the fact that the victim himself was guilty of error clears the defendant here of having killed him by accident: while his accuser does not even suggest that he killed him deliberately. Thus he is cleared of both charges, of killing the boy by accident and of killing him deliberately.

[10] Not only do the true facts of the case and the law under which he is being prosecuted attest my son's innocence; but our manner of life is equally far from justifying such harsh treatment of us. Not only will it be an outrage, if my son is to bear the blame for errors which he did not commit; but I myself, who am equally innocent, though assuredly not more so, will be visited with woes many times more bitter. Once my son is lost, I shall pass the rest of my days longing for death: once I am left childless, mine will be a life within the tomb.

[11] Have pity, then, on this child, the victim of calamity, though guilty of no error: and have pity on me, an old man in distress, stricken thus suddenly with sorrow. Do not bring a miserable fate upon us by condemning us: but show that you fear God by acquitting us. The dead boy is not unavenged for the calamity which befell him: nor ought we ourselves to share the responsibility for errors due to our accusers. [12] So respect the righteousness which the facts before you have revealed: respect justice: and acquit us as godly and just men should. Do not bring upon a father and a son, two of the most wretched of beings, sorrows which the years of neither can well bear.

Second Speech for the Prosecution

THAT SHEER NECESSITY can force all men to belie their nature in both word and deed is a fact of which the defendant seems to me to be giving very real proof. Whereas in the past he was the last to show impudence or audacity, his very misfortune has today forced him to say things which I for one would never have expected of him. [2] I, in my great folly, imagined that he would not reply; otherwise I would not have deprived myself of half of my opportunities as prosecutor by making only one speech instead of two; and he, but for his audacity, would not have had the twofold advantage over me of using one speech to answer the one speech for the prosecution and making his accusations when they could not be answered.[8]

[3] With his great advantage over us in the matter of the speeches, and with the far greater one which his methods have given him in addition,[9] it is outrageous that the accused should entreat you to listen kindly to his defence. I myself, on the other hand, far from causing any harm, have been the victim of cruel affliction, and am today being treated still more cruelly. It is as one who seeks more than a pretended refuge in your sympathy that I make my own request of you. You who take vengeance for unrighteous deeds and determine wherein is righteousness, do not, I beg of you, let worthless subtleties of speech induce you to disregard plain facts and treat the truth as false; [4] for such subtleties result in a tale more plausible than true, whereas the truth, when told, will be less guileful and therefore less convincing.

My faith in justice, then, enables me to despise his defence. Yet my distrust of the pitiless will of fate makes me fear that I may not only lose the benefit of my child, but that I may see him convicted by you of taking his own life in addition. [5] For the defendant has had the audacity and shamelessness to say that he who struck and killed neither wounded nor killed, whereas he who neither touched the javelin nor had any intention of throwing it missed every other point on earth and every other person, and pierced his own side with the javelin. Why, I should myself sound more convincing, I think, were I accusing the lad of willful murder, than does the defendant in claiming that the lad neither struck nor killed.

[6] My son was bidden at that moment by the master in charge, who was taking the javelins of the throwers into his keeping, to pick them up; but thanks to the wantonness of him who cast it, he was greeted by yonder lad's cruel weapon; though guilty of error in respect of no single person, he died a piteous death. The lad, on the other hand, who mistook the moment at which the javelins were being picked up, was not prevented from making a hit. To my bitter sorrow, he struck a target; and although he did not kill my son deliberately, there are better grounds for maintaining that he did than for asserting that he neither struck nor killed.

[7] Although it was by accident that they killed my son, the effects were the same as those of willful murder. Yet they deny that they killed him at all, and even maintain that they are not amenable to the law which forbids the taking of life whether wrongfully or otherwise. Then who did throw the javelin? To whom is the boy's death in fact to be attributed? To the spectators or the masters in charge — whom no one accuses at all? The circumstances of my son's death are no mystery: to me, for one, they are only too clear; and I maintain that the law is right when it orders the punishment of those who have taken life; not only is it just that he who killed without meaning to kill should suffer punishment which he did not mean to incur; but it would

also be an injustice to the victim, whose injury is not lessened by being accidental, were he deprived of vengeance.

[8] Nor does he deserve acquittal because of his misfortune in committing the error which he did. If, on the one hand, the misfortune is not due to any dispensation of heaven, then, as an error pure and simple, it is right that it should prove disastrous to him who was guilty of it; and if, on the other hand, a defilement from heaven has fallen upon the slayer by reason of some act of sin, then it is wrong for us to impede the visitation of God.[10]

[9] They also maintained that it is wrong for those who have lived as honorably as they to be treated with severity. But what of us? Should we be treated aright, if we are punished with death when our life has been as praiseworthy as theirs?

When he argues that he is not guilty of error and claims that the consequences must be borne by those who are, instead of being diverted to the innocent, he is pleading our case for us. Not only would it be an injustice to my son, who was killed by yonder lad, though guilty of error in respect of no one, were he deprived of vengeance; but it will be an outrage, if I myself, who am even more guiltless than he, fail to obtain from you the recompense which the law assigns me.

[10] Further, the defence's own statements show that the accused cannot be acquitted either of error or of accidentally taking life, but that he and my son are equally guilty of both; I will prove this.[11] Assume that because my son moved into the path of the javelin instead of standing still, he deserves to be treated as his own slayer. Then the lad is not free from blame either; he is only innocent if he was standing still and not throwing his javelin when the boy was killed. The boy's death was therefore due to both of them. Now the boy, whose error affected his own person, has punished himself even more harshly than that error warranted: for he has lost his life. So what right has his accomplice, who joined him in committing his unfortunate error, to escape unpunished?

[11] The accused have themselves proved by their defence that the lad had a share in the slaying. So, as just and god-fearing men, you cannot acquit him. If we, who have lost our life through the defendants' error, were found guilty of having taken it ourselves, it would be an act not of righteousness but of wickedness on your part: and if those responsible for our death were not prohibited from setting foot where they should not, [it would be an outrage against heaven:][12] you would have acquitted persons stained with guilt.

As the whole of the defilement, upon whomsoever it rests, is extended to you, you must take the greatest care. If you find him guilty and prohibit him from setting foot where the law forbids him to set foot, you will be free of the charges brought today; but if you acquit him, you become liable to them. [12] So satisfy the claims of heaven and the laws by taking him and punishing him. Do not share his blood-guilt yourselves: but let me, the parent whom he has sent to a living death, at least appear to have had my sorrow lightened.

Second Speech for the Defense

WHILE IT IS only to be expected that the preoccupation of my opponent with his speech for the prosecution should prevent his understanding my defence, the same is not true of yourselves. You should bear in mind that while we, the interested parties, take a biassed view of the case, each naturally thinking that his own version of it is fair, your duty is to consider the facts conscientiously; and so you must give your attention to me as much as you did to him[13]: [2] as it is in what is said that the true facts are to be sought. For my part, if I have told any falsehoods, I am content that you should treat the truth which I have spoken as itself a piece of equally dishonest pleading. On the other hand, if my arguments have been honest, but close and subtle, it is not I who used them, but he whose conduct made them necessary, upon whom the displeasure which they have caused should properly fall.

[3] I would have you understand to begin with that it requires not mere assertion, but proof, to show that someone has killed someone else. Now our accuser agrees with us as to how the accident happened, but disagrees as to the person responsible; yet it is only from what happened that that person can be determined. [4] He complains bitterly, because, according to him, it is a slur upon his son's memory that he should have been proved a slayer when he neither threw the javelin nor had any intention of doing so. That complaint is not an answer to my arguments. I am not maintaining that his son threw the javelin or struck himself. I am maintaining that since he moved within range of the javelin, his death was due not to the lad, but to himself; for he was not killed standing in his place. As this running across was his undoing, it follows that if it was at his master's summons that he ran across, the master would be the person responsible for his death[14]; but if he moved into the way of his own accord, his death was due to himself.

[5] Before proceeding to any further argument, I wish to show still more clearly which of the two was responsible for the accident. The lad no more missed the target than any of those practising with him[15]: nor has he rendered himself guilty of any of the acts with which he is charged owing to error on his own part. On the other hand, the boy did not do the same as the other onlookers; he moved into the javelin's path. And this is clear proof that it was through his own error that he met with a disaster which those who stood still did not. The thrower would not have been guilty of an error in any respect,[16] had no one moved into the path of his spear: while the boy would not have been hit, had he remained in his place among the onlookers.

[6] Further, my son was not more concerned in the boy's death than any one of those throwing javelins with him, as I will show. If it was owing to the fact that my son was throwing a javelin that the boy was killed, then all those practising with him must share in the guilt of the deed, as it was not owing to their failure to throw that they did not strike him, but owing to the fact that he did not move into the path of the javelin of any one of them. Similarly the young man, who was no more guilty of error than they, would not have hit the boy any more than they did, had the boy stood still with the onlookers.

[7] Again, not only was the boy guilty of the error committed; he was also to blame for the failure to take due precautions. My son saw no one running across, so how could he have taken precautions against striking anyone? The boy, on the other hand,

upon seeing the throwers, might easily have guarded against running across, as he was quite at liberty to remain standing still.

[8] The law which they quote is a praiseworthy one; it is right and fair that it should visit those who have killed without meaning to do so with chastisement which they did not mean to incur. But the lad is not guilty of error; and it would therefore be unjust that he should suffer for him who is. It is enough that he should bear the consequences of his own errors. On the other hand, the boy, who perished through his own error, punished himself as soon as he had committed that error. And as the slayer has been punished, the slaying has not gone unavenged.

[9] The slayer has paid the penalty; so it is not by acquitting us, but by condemning us that you will leave a burden upon your consciences. The boy, who is bearing the consequence of his own error, will leave behind him nothing that calls for atonement from anyone; but if my son, who is innocent, is put to death, the conscience of those who have condemned him will be more heavily burdened than ever.

If the arguments put forward prove the dead boy his own slayer, it is not we who have stated them whom he has to thank, but the fact that the accident happened as it did. [10] Since examination proves beyond doubt that the boy was his own slayer, the law absolves us from blame, and condemns him who was guilty. See, then, that we are not plunged into woes which we do not deserve, and that you yourselves do not defy the powers above by a verdict succoring my opponents in their misfortunes. Remember, as righteousness and justice require you to do, that the accident was caused by him who moved into the javelin's path. Remember, and acquit us; for we are not guilty of his death.

ENDNOTES.

[1] For ἐνθύμιος see General Introduction.

[2] See Antiph. 6.34 ff., On the Choreutes, for the meaning of εἴργεσθαι τῶν νομίμων.

[3] For τολμᾶν used absolutely in this sense cf. Antiph. 3.3.2.

[4] i.e. the fact that he was not accustomed to appearing in courts of law, which should make it a priori probable that he is a simple and straightforward man who would not resort to subtleties of argument if his case were a sound one.

[5] Two interpretations of the text as it stands in the manuscripts are possible: (1) "He threw (his spear), it is true, but killed no one"; (2) "He struck (someone), it is true, but did not kill him." (1) gives good sense; but elsewhere in the tetralogy βάλλειν means "to hit," not "to throw." (2) avoids this difficulty; but it has been urged (e.g. by Blass, who favors emendation) that the words τὸν μὲν βαλόντα καὶ ἀποκτείναντα οὔτε τρῶσαι οὔτε ἀποκτείναί φησι in Antiph. 3.3.5 (cf. also Antiph. 3.3.6 sub fin.) prove that the speaker in the present passage had not admitted that X struck Y. The contradiction, however, is only apparent. The speaker here is saying in effect that the responsibility for the blow must rest with Y, although X dealt it; in Antiph. 3.3.5-6 his opponents argue that the responsibility must rest with X, because X dealt it.

[6] For ἀκουσίως cf. Antiph. 2.3.1, note 2.

[7] The argument is: (1) It is agreed that death was accidental. (2) But accidents are always due to ἁμαρτία on the part of someone. (3) Therefore if the person guilty of ἁμαρτία is discovered, we have eo ipso discovered the person responsible for the boy's death.

[8] I take the speaker to mean: "The case seemed so simple that instead of developing any argument in my first speech for the prosecution, I merely stated the bare facts. The defendant, however, has make an elaborate reply, and will doubtless do the same again in his second speech; this is equivalent to his making two speeches to my one. Further, he will be able to use his second speech to answer my one serious speech for the prosecution (ἕνα πρὸς ἕνα λόγον ἀπολογηθείς); while I cannot effectively answer the attack which he made upon me in his first speech (ἃ κατηγόρησεν ἀναποκρίτως εἰπών), because, as prosecutor, I must now devote myself to attacking him."

[9] Referring apparently to the artifices employed by the defence for working upon the feelings of the court (cf. Antiph. 3.2.1 ff.).

[10] i.e. it might be argued that the lad was ἀτυχής in committing the ἁμαρτία which he did, and therefore deserves acquittal. But the prosecution produces a dilemma: (a) If the ἀτυχία was a piece of divine retribution for some past offence, he deserves punishment all the more, as it is God's will that he should be punished. (b) If it is not due to God, then to say that the lad was the victim of ἀτυχία is only a more polite way of saying that he was guilty of ἁμαρτία(ἁμάρτημα οὖσα), and we are back where we started.

[11] An attempt to show the two-edged character of the arguments used by the defence. "If," say the prosecution, "the dead boy has been proved guilty by the defence, then eo ipso the lad has been proved guilty too."

[12] The passive of εὐσεβεῖν, while exceedingly rare (it occurs otherwise only at [Plato,] Axiochus 4, as far as I know), might be supported here by the parallel use of the passive of ἀσεβεῖν in the phrase τοὺς ἄνω θεοὺς ἀσεβεῖσθαι, Lys. 2.7. But εὐσεβοῖντ᾽ ἄν could only mean "would be reverenced"; and that clearly gives an impossible sense to the passage, which requires something like "would be rendered εὐσεβεῖς," or "would be treated as εὐσέβεια requires," if it is to be intelligible. Conceivably there is a lacuna before εὐσεβοῖντ᾽ ἄν, which might be filled by τὰ ἄξια ἂν φέροιντο τῆς αὑτῶν ἁμαρτίας: οὐδὲ

αὖ αὐτοὶ οἱ θεοὶ or something similar, giving εὐσεβοῖντ᾽ ἄν the subject it requires. But this would destroy the balance of the two halves of the sentence as they stand in the manuscripts; and it is more probable that the words εὐσεβοῖντ᾽ ἄν are themselves corrupt.

[13] The addition of this sentence is necessary for a proper understanding of the connection of thought. The γάρ is explanatory of the words ὑμᾶς δὲ χρή in section 1.

[14] It is at first sight odd that so little is made of the part played by the παιδοτρίβης, who would be a vitally important witness, were the case being tried in a modern court of law. But it should not be forgotten that the writer is throughout endeavoring to exhibit the possibilities of the πίστις ἔντεχνος as such. See General Introduction.

[15] A highly artificial piece of sophistry. (1) The lad did exactly the same as the other throwers: so, as they did not miss the target, neither can he have done. (2) On the other hand, the boy did not do the same as the other spectators; and so he is not blameless, as they are.

[16] A curious admission that the μειράκιον was guilty of ἁμαρτία to at least some extent.

Speech IV. The Third Tetralogy: Prosecution for Murder Of One Who Pleads Self-Defense

Introductory Note to the Third Tetralogy

THE THIRD *TETRALOGY* treats of φόνος in yet another of its aspects, that of homicide in self-defence. As in the second *Tetralogy,* the facts are not disputed; the problem is one of interpretation. An old man, X, quarrels with a young one, Y, as they sit drinking. They come to blows: and X is seriously injured in consequence. He receives medical attention, but ultimately dies. The relatives of X prosecute Y for wilful murder. He, however, pleads provocation and attempts to show that he was acting in self-defence.

The argumentation is considerably more involved than in the second *Tetralogy,* where the issue resolved itself immediately into the question whether the *αμαρτία* committed lay with X or Y. Here the original charge is wilful murder, and the prosecution make some effort to sustain it throughout. On the other hand, the defence meet it by attempting to prove justifiable homicide; while it is simultaneously suggested that death was entirely due to the incompetence of the medical attention received. Besides this, the possibility that death was purely accidental is admitted, and both sides use arguments similar to those developed at greater length in *Tetralogy II* to show that the *αμαρτία* committed must rest with their opponents.

In spite of the complication of the issue, the object of the author is clearly to exhibit the lines along which a plea of justifiable homicide should be supported or attacked. On the side of the defence it is argued that the responsibility for the fatal blow must be thrust back beyond the striker to the aggressor, because Y, the striker, was acting under compulsion. On the side of the prosecution it is urged that responsibility for a given act must remain with the agent himself; Y struck the blow which caused death, therefore Y is to blame for it. This principle is forgotten, however, when the physician comes under discussion. The question of his competence is treated as irrelevant, and it is maintained that the responsibility for death must be thrust back to Y, whose blows made medical attention necessary in the first place. But the inconsistency is intelligible, if it is remembered that the purpose of the *Tetralogy* as a whole is to illustrate the opportunities offered the advocate by a pseudo-philosophical analysis of the terms, motive and will.

A touch of realism is added in δ, where it is stated that the accused has taken advantage of his right to throw up the case half-way through. The last speech is delivered by his friends on his behalf.

Speech IV. The Third Tetralogy: Prosecution for Murder Of One Who Pleads Self-Defense

First speech for the Prosecution

IT IS VERY rightly laid down that in cases of murder prosecutors must take especial care to observe justice in making their charge and presenting their evidence: they must neither let the guilty escape nor bring the innocent to trial. [2] For when God was minded to create the human race and brought the first of us into being, he gave us the earth and sea to sustain and serve us, in order that we might not die for want of the necessaries of life before old age brought us our end. Such being the value placed upon our life by God, whoever unlawfully slays his fellow both sins against the gods and confounds the ordinances of man. [3] For the victim, robbed of the gifts bestowed by God upon him, naturally leaves behind him the angry spirits of vengeance,[1] God's instruments of punishment, spirits which they who prosecute and testify without giving heed to justice bring into their own homes, defiling them with the defilement of another, because they share in the sin of him who did the deed. [4] And similarly, should we, the avengers of the dead, accuse innocent persons because of some private grudge, not only will our failure to avenge the murdered man cause us to be haunted by dread demons to whom the dead will turn for justice, but by wrongfully causing the death of the innocent we are liable to the penalties prescribed for murder, and because we have persuaded you to break the law, the responsibility for your mistake also becomes ours. [5] For my part, my fear of such consequences has led me to bring the true sinner before you, and thus the stain of none of the charges which I am making rests upon me; and if you yourselves give that attention to the trial which the considerations I have put before you demand, and inflict upon the criminal a punishment proportionate to the injury which he has done, you will cleanse the entire city of its defilement. [6] Had he killed his victim accidentally, he would have deserved some measure of mercy. But he wantonly committed a brutal assault upon an old man when in his cups; he struck him and throttled him until he robbed him of life. So for killing him he is liable to penalties prescribed for murder: and for violating every right to respect enjoyed by the aged he deserves to suffer in full the punishment usual in such cases. [7] Thus the law rightly hands him over to you for punishment; and you have listened to the witnesses who were present during his drunken assault. It is your duty to take vengeance for the injury which he so lawlessly inflicted: to punish such brutal violence as harshly as the harm which it has caused requires: to deprive him in his turn of a life which was used to plot another's death.

Reply to a Charge of Murder, Arguing that the Accused Killed in Self-Defense

THE FACT THAT their speech was brief does not surprise me: because for them the danger is, not that they may come to some harm, but that they may fail to gratify their animosity by sending me to a death which I do not deserve. On the other hand, that they should want to treat the present matter, in which the victim had himself to blame more than me, as a case of the greatest gravity, gives me, I think, some excuse for indignation. By resorting to violence as he did and making a drunken assault upon a man far more in control of himself than he, he was responsible not only for the disaster which befell himself, but for the accusation which has been brought against me. [2] In my opinion, the prosecution are setting both God and man at defiance in accusing me. He was the aggressor; and even if I had used steel or stone or wood to beat him off, I was acting within my rights; an aggressor deserves to be answered with, not the same, but more and worse than he gave. Actually, when he struck me with his fists, I used my own to retaliate for the blows which I received. Was that unjustified? [3] Well and good. "But," he will object, "the law which forbids the taking of life whether justifiably or not shows you to be liable to the penalty prescribed for murder; for the man is dead." I repeat for a second and a third time that I did not kill him. Had the man died on the spot from the blows which he received, his death would have been due to me, not but what I would have been justified — an aggressor deserves to be answered with not the same, but more and worse than he gave; [4] — but in fact he died several days later, after being placed under an incompetent physician. His death was due to the incompetence of the physician, and not to the blows which he received. The other physicians warned him that though he was not beyond cure, he would die if he followed this particular treatment. Thanks to your advice, he did die, and thereby caused an outrageous charge to be brought against myself. [5] Further, the very law under which I am being accused attests my innocence; it lays down that the guilt of a murder shall rest upon that party which acted from design. Now what designs could I have on his life which he did not also have on mine? I resisted him with his own weapons, and returned blow for blow; so it is clear that I only had the designs upon his life which he had on mine. [6] Furthermore, if anyone thinks that his death was the result of the blows which he received and that therefore I am his murderer, let him set against that fact that it was the aggressor who was the cause of those blows, and that they therefore point to him, not to me, as the person responsible for his death; I would not have defended myself unless I had been struck by him

Thus my innocence is attested both by the law and by the fact that my opponent was the aggressor; in no way am I his murderer. As to the dead man, if his death was due to mischance, he had himself to thank for that mischance: for it consisted in his taking the offensive.[2] Similarly, if his death was due to a loss of self-control it was through his own loss of self-control that he perished: for he was not in his right mind when he struck me. [7] I have now proved that I am unjustly accused. But I wish to prove also that my accusers are themselves exposed to all the charges which they are bringing against me. By accusing me of murder when I am free from guilt, and by robbing me of the life which God bestowed upon me, they are sinning against God by seeking to compass my death wrongfully, they are confounding the laws of man and

becoming my murderers; and by urging you to commit the sin of taking my life, [they are murdering your consciences also].[3] [8] May God visit them with the punishment which they deserve. You on your side must look to your own interests and be more disposed to acquit than to condemn me. If I am acquitted unjustly, if I escape because you have not been properly informed of the facts, then it is he who failed to inform you, not you, whom I shall cause to be visited by the spirit who is seeking vengeance for the dead. But if I am wrongfully condemned by you, then it is upon you, and not upon my accuser, that I shall turn the wrath of the avenging demons. [9] In this knowledge, make the prosecution bear the consequences of their sin; cleanse yourselves of guilt: and acquit me as righteousness and justice require you to do. Thus may all of us citizens best avoid defilement.

Second Speech for the Prosecution

I AM NOT surprised that the defendant, who has committed so outrageous a crime, should speak as he has acted; just as I pardon you, who are desirous of discovering the facts exactly, for tolerating such utterances from his lips as deserve to be greeted with derision. Thus, he admits that he gave the man the blows which caused his death; yet he not only denies that he himself is the dead man's murderer, but asserts, alive and well though he is, that we, who are seeking vengeance for the victim, are his own murderers. And I wish to show that the remainder of his defense is of a similar character. [2] To begin with, he said that even if the man did die as a result of the blows, he did not kill him: because it is the aggressor who is to blame for what happens: it is he whom the law condemns; and the aggressor was the dead man. First, let me tell you that young men are more likely to be the aggressors and make a drunken assault than old. The young are incited by their natural arrogance[4] their full vigor, and the unaccustomed effects of wine to give free play to anger: whereas old men are sobered by their experience of drunken excesses, by the weakness of age, and by their fear of the strength of the young. [3] Further, it was not with the same, but with vastly different weapons that the accused withstood him, as the facts themselves show. The one used hands which were in the fullness of their strength, and with them he slew; whereas the other defended himself but feebly against a stronger man, and died without leaving any mark of that defense behind him. Moreover, if it was with his hands and not with steel that the defendant slew, then the fact that his hands are more a part of himself than is steel makes him so much the more a murderer. [4] He further dared to assert that he who struck the first blow, even though he did not slay, is more truly the murderer than he who killed; for it is to the aggressor's wilful act that the death was due, he says. But I maintain the very opposite. If our hands carry out the intentions of each of us, he who struck without killing was the wilful author of the blow alone: the willfull author of the death was he who struck and killed: for it was as the result of an intentional act on the part of the defendant that the man was killed.

Again, while the victim suffered the ill-effect of the mischance, it is the striker who suffered the mischance itself; for the one met his death as the result of the other's act, so that it was not through his own mistake, but through the mistake of the man who struck him, that he was killed; whereas the other did more than he meant to do, and he had only himself to blame for the mischance whereby he killed a man whom he did not mean to slay.[5] [5] I am surprised that, in alleging the man's death to have been due to the physician,[6] he should assign responsibility for it to us, upon whose advice it was that he received medical attention; for had we failed to place him under a physician, the defendant would assuredly have maintained that his death was due to neglect. But even if his death was due to the physician, which it was not, the physician is not his murderer, because the law absolves him from blame. On the other hand, as it was only owing to the blows given by the defendant that we placed the dead man under medical care at all, can the murderer be anyone save him who forced us to call in the physician? [6] Although it has been proved so clearly and so completely that he killed the dead man, his impudence and shamelessness are such that he is not content with defending his own act of wickedness: he actually accuses us, who are seeking expiation of the defilement which rests upon him, of acting like

unscrupulous scoundrels. [7] Assertions as outrageous as this, or even more so, befit one guilty of such a crime as he. We, on our side, have clearly established how the death took place: we have shown that there are no doubts about the blow which caused it: and we have proved that the law fixes the guilt of the murder upon him who gave that blow. So in the name of the victim we charge you to appease the wrath of the spirits of vengeance by putting the defendant to death, and thereby cleanse the whole city of its defilement.

Second Speech for the Defense

THE DEFENDANT, NOT because he has judged himself guilty, but because he was alarmed by the vehemence the prosecution, has withdrawn.[7] As to us, his friends, we are discharging our sacred duty to him more fitly by aiding him while he is alive than by aiding him after he is dead. Admittedly, he himself would have pleaded his own case best; but since the present course appeared the safer, it remains for us, to whom his loss would be a very bitter grief, to defend him. [2] To my mind, it is with the aggressor that the blame for the deed rests. Now the presumptions from which the prosecution argues that the defendant was the aggressor are unreasonable. If brutal violence on the part of the young and self-control on the part of the old were as natural as seeing with the eyes and hearing with the ears, then there would be no need for you to sit in judgement; the young would stand condemned by their mere age. In fact, however, many young men are self-controlled, and many old men are violent in their cups; and so the presumption which they furnish favors the defense no less than the prosecution. [3] As the presumption supports us as much as it does the dead man, the balance is in our favor; for according to the witnesses, it was he who was the aggressor. This being so, the defendant is cleared of all the other charges brought against him as well. For once it is argued that, because it was only the blow given by the striker which obliged you to seek medical attention at all, the murderer is the striker rather than the person immediately responsible for the man's death,[8] it follows that the murderer was he who struck the very first blow of all: because it was he who compelled both his adversary to strike back in self-defense and the victim struck to go to the physician. It would be outrageous, were the defendant, who was neither slayer nor aggressor, to be held a murderer in place of the true slayer and the true aggressor. [4] Nor again is the intention to kill to be attributed to the accused rather than to his accuser. If it had been the case that, whereas he who struck the first blow had meant not to kill, but to strike, he who was defending himself had meant to kill, then it would have been this last who was guilty of the intention to kill. As it was, he who was defending himself likewise intended to strike, not to kill; but he committed an error, and struck where he did not mean to strike. [5] He was thus admittedly the wilful author of the blow; how can he have killed willfully,when he struck otherwise than he intended?

Further, it is with the aggressor rather than with him who was defending himself that the responsibiIity for the error itself rests. The one was seeking to retaliate for the blows which he was receiving, when he committed his error: he was being forced to act by his attacker; whereas with the other, it was his own lack of self-control which caused him to give and receive the blows which he did: and so, since he is responsible both for his own error and for his victim's, he deserves the name of murderer. [6] Again, his defense was not more vigorous than the attack made upon him, but much less so: as I will show. The one was truculent, drunken, and violent; he took the offensive throughout, and was never on the defensive at all. The other was seeking to avoid blows and repel him; the blows which he received, he received from no choice of his own and the blows which he gave were given in defense of himself against the aggressor, and much less vigorously than that aggressor deserved, because his only object was to avoid the hurt which was being done to him; he did not take the offensive at all. [7] Even supposing that his defense was more vigorous than the attack

made upon him, because there was more vigor in his hands, you cannot justly condemn him. Heavy penalties are invariably provided for the aggressor: whereas no penalty is ever prescribed for him who defends himself. [8] The objection that the taking of life, whether justifiably or not, is forbidden, has been answered; it was not to the blows, but to the physician, that the man's death was due, as the witnesses state in their evidence. Further, it is the aggressor, and not he who was defending himself, who was responsible for the accident. The one gave and received the blows which he did from no choice of his own, and therefore the accident in which he had a part was not of his own causing. The other did what he did of his own free will, and it was by his own actions that he brought the accident upon himself; hence he had himself to blame for the mischance whereby he committed his error. [9] It has been shown, then, that not one of the charges made concerns the defendant; and even if both parties are thought equally responsible alike for the actual crime and for the mischance which led to it, and it is decided from the arguments put forward that there is no more reason for acquitting the defendant than for condemning him, he still has a right to be acquitted rather than condemned. Not only is it unjust that his accuser should secure his conviction without clearly showing that he has been wronged: but it is a sin that the accused should be sentenced, if the charges made against him have not been proved conclusively. [10] As the defendant has been cleared so completely of the charges made, we lay upon you in his name a more righteous behest than did our opponents: in seeking to punish the murderer, do not put him who is blameless to death. If you do, [the slayer no less than the slain will bring the wrath of heaven upon the guilty:][9] and if the defendant is put to death without scruple, he causes the defilement brought upon his slayers by the spirits of vengeance to become twofold.[10] [11] Hold that defilement in fear: and consider your duty to absolve him who is guiltless. Him upon whom the stain of blood rests you may let time reveal, even as you may leave his punishment to his victim's kin. It is thus that you will best serve justice and the will of heaven.

ENDNOTES.

[1] For the ἀλιτήριοι see General Introduction, p. 39.

[2] See note on Antiph. 4.3.4, ad fin.

[3] The text of the manuscript is clearly corrupt here. αὐτοὶ cannot be right; and φονῆς is hardly tolerable after the φονῆς of the previous sentence. No satisfactory emendation has yet been proposed.

[4] ἡ μεγαλοφροσύνη τοῦ γένους ought to mean "pride of birth": but the speaker is not limiting his remarks to young aristocrats. γένος must be used in the sense of "class" or "type."

[5] A reply to the arguments of the defense in Antiph. 4.2.6. The terms ἀτυχία, ἁμαρτία, and συμφορά represent the logically distinguishable elements which constitute an "unfortunate accident." Owing to ἀτυχία the agent commits an error (ἁμαρτία), i.e. performs an act which he either had no intention of performing at all or intended to perform differently, and the result is a συμφορά, which may fall either upon the agent himself or upon some second person. In the present paragraph it is assumed for the moment, as it had been assumed by the defense in Antiph. 4.2.6, that death was purely accidental. Blood-guilt will still rest upon one of the two parties: but it will rest on the party guilty of ἁμαρτία (cf. Antiph. 3, Tetralogy II). Now the defense had argued in Antiph. 4.2.6 that X, the aggressor, had been responsible for the ἁμαρτία; it had consisted in his taking the offensive: and he was ἀτυχής in doing so. The resultant συμφορά had fallen upon himself. The prosecution here replies that while the συμφορά indeed fell on X, the ἀτυχία and the ἁμαρτία lay with Y, because Y had given a harder blow than he intended.

[6] If the οὐχ of the manuscripts is retained, we have a flat contradiction of Antiph. 4.2.4, where the defense does in fact accuse the prosecution of having caused the man's death. Further, the argument of the present paragraph becomes exceedingly elliptical. It will presumably run thus: "The defendant accuses the physician; but he ought logically to accuse us instead. He would undoubtedly have accused us of having been responsible for the man's death through neglect, had we not sought medical aid at all; so he should similarly accuse us of murder, if we sent the patient to a bad physician instead of a good one." If the οὐχ is deleted, we get consistency with Antiph. 4.2.4, and the argument is as in the text. οὐχ was probably inserted by a reader who thought that the first sentence of 5 was self-contradictory. Note that this first sentence (ὑπὸ δὲ . . . διαφθαρῆναι) does not imply merely that the defense have contradicted themselves by accusing first the physician and then the prosecution; this is clear from the καὶ γὰρ ἂν κτλ. which follows, giving the true reason for the speaker's surprise.

[7] A touch of realism. It was recognized that the defendant in a δίκη φόνου had the right of withdrawing into exile half-way through the trial, if he saw no hope of an acquittal. Cf. Herodes, Introduction.

[8] τοῦ ἀποκτείναντος is of course the physician.

[9] There is clearly some corruption here. Some reference is wanted to the the spirits of vengeance who will continue to haunt the guilty until due reparation has been made to the dead. See app. crit.

[10] Briegleb's μήνιμα is unnecessary. It is clear from Antiph. 4.1.3 sub fin. that the writer felt the δυσμένεια τῶν ἀλιτηρίων and the μίασμα φόνου to be complementary aspects of one and the some thing. The ἀλιτήριοι were the positive forces which gave effect to the μίασμα. Hence such a phrase as μίασμα τῶν ἀλιτηρίων in the present passage is perfectly orthodox; it is the "pollution to which the spirits of vengeance give expression."

Speech V. On the Murder of Herodes

Introduction to ‘On the Murder of Herodes’

ANCIENT CRITICISM REGARDED the *Murder of Herodes* as one of the most notable products of Antiphon’s period of maturity. The year in which it was delivered cannot be determined with absolute accuracy: but it was not much earlier or much later than 415; thus we learn that the revolt of Lesbos (428-427) had occurred when the speaker was still a mere child, and he has now just reached manhood (§ 74): while it is clear that the Athenian disaster in Sicily is still a thing of the future (§ 81). The facts are as follows.

A wealthy young Mytilenean, Euxitheus, and an Athenian, Herodes — probably one of the Cleruchs settled in Lesbos after the revolt — embarked together at Mytilene for Aenus on the Thracian coast. They were unfortunate enough to meet with bad weather before completely rounding Lesbos and were forced to run for a bay on the north coast of the island near Methymna. Other ships had done the same; and Herodes, Euxitheus, and their fellow-passengers took the opportunity of sheltering from the rain on one bound for Mytilene, as their own vessel was open to the sky. A convivial evening followed; and in the course of it Herodes, who had drunk more than was good for him, went ashore. From that moment he was never seen again. A search was made in the “Cf. Sopater, ap. Rhet. Graeci, iv. 316. f — 1 *J* neighbourhood and a message sent back to Mytilene in the hope that he had made his way thither; but both were without result. Finally, he was given up for lost, and the remainder of the passengers resumed their voyage to Aenus in the original vessel.

The family of Herodes, who had been informed of his disappearance, were convinced that he had been the victim of foul play, and suspected Euxitheus; so directly the boat which Herodes had left so strangely reached Mytilene, they boarded it to make investigations for themselves. Some bloodstains came to light; but they turned out to be due to a sacrifice. A member of the crew was examined under torture; but he stoutly maintained that Euxitheus had remained on board throughout the night in question. A second member of the crew, a slave, was purchased from his owners for similar examination. However, before he had been tortured, a note was discovered purporting to be a message from Euxitheus to a certain Lycinus to the effect that Euxitheus had murdered Herodes. Then the slave was examined, and the confession wrung from him that he had helped Euxitheus to commit the murder. He alleged that Euxitheus had struck Herodes on the head with a stone, the pair of them had carried the body down to a boat, and then he himself had rowed out to sea and thrown it overboard. In consequence of this admission the accusers put the slave to death as a party to the crime. They next seem to have obtained authority for the arrest of Euxitheus by lodging an information against him, whether locally or with the Eleven at Athens; and, in accordance with the warrant, he was taken to Athens and thrown into prison to await trial, bail being refused.

At the trial Euxitheus adopts two main lines of defence. First, he maintains that the case should have taken the form of a *δίκη φόνου* instead of an *απαγωγή* for *κακουργία*; and secondly he shows that the evidence of his guilt produced by the prosecution is self-contradictory. In connexion with this second line of argument he examines the case against Lycinus, who, it had been suggested, had paid him to commit the murder, and endeavours to rehabilitate his own father, whose supposed anti-Athenian activities during the past dozen years had been used to prejudice the court.

The main problem presented by the speech is that of the validity of the objection raised by the defendant to the action of his accusers in prosecuting him as a κακούργος before a Heliastic court, instead of as a φονευς before the Areopagus. The procedure generally followed in cases of murder was that of the δίκη φόνου, which had remained unchanged since the days of Draco. The form which it took is known from the Choreutes. The prosecution had first to register their charge with the Basileus (απογράφεσθαι την δίκην). If he consented to admit it, the accused was ipso facto debarred from the Agora and from all temples — was forbidden in fact to take any part whatsoever in the public and religious life of the community; and proclamation was made to this effect by his prosecutors (πρόρρησις). No one who was under suspicion of having the blood of another on his hands could be allowed to contaminate his fellows or defile sacred buildings. Next the Basileus issued writs to secure the attendance of the accused and the necessary witnesses. There followed a preliminary inquiry (προδικασία), which opened with the administration of a peculiarly solemn oath to the prosecutor, defendant, and witnesses by the court official known as the ορκωτής. A goat, a ram, and a bull were sacrificed, and all had to lay their hands on the offerings and swear, εξωλείαν αυτοίς και γενει και οίκία επαρώμενοι, ["Invoking utter destruction upon themselves, their family, and their house."] to tell nothing but the truth and to confine themselves to the question at issue. Two other προδικασίαι were held within the three months following the registration of the charge, and it was not until the fourth month that the case came before the Areopagus. At the trial proper each side spoke twice, and the penalty upon conviction was death. However, the defendant had the right to throw up his case and withdraw into exile after making his first speech.

Clearly this was a cumbersome procedure; and it became lengthier still if the Basileus had less than three months of office left when the prosecutor applied for permission to register the charge. As he was forbidden by tradition to hand over the case half finished to his successor, the entire proceedings had to be postponed to the next archonship. But what if the accused were not an Athenian citizen? Could the *δίκη φόνου* operate at all? Direct evidence is lacking; but it seems most doubtful. The *δίκη φόνου* was essentially a local institution. It was the instrument whereby the community of archaic Attica had sought to rid itself of the pollution brought upon it by the blood-guilt of one of its members. Hence the elaborate precautions to insure that none came into contact with the accused. But if the *φονεύς* had no part in the *πόλις* of the victim, his blood-guilt lost this social importance; what now required satisfaction was the wrong done to a member of the community by one outside it. And for such a purpose the *δίκη φόνου* had never been intended.

It would seem likely *a priori* that some alternative procedure should appear to meet this difficulty, particularly after the growth of her empire forced Athens to some definition of the legal (Status of her subjects in relation to herself; and the methods used against Euxitheus meet it admirably. An alien, or at least, an alien from a subject-state charged with the murder of an Athenian citizen can be treated as a κακούργος; and a charge of κακουργία allows the summary arrest of the accused and his close confinement until the day of his trial. When that day arrives, he is brought before an ordinary Heliastic court and tried as a "malefactor," his particular malefaction being murder.

This is, I think, the reasonable conclusion from (a) the fact that the δίκη φόνου was parochial in its operation, and (6) the definite statement of Euxitheus that he was being tried as a κακούργος before the Heliaea, instead of as a *φονευς* before the Areopagus. But we must be wary of identifying the use here made of ενδειξις and

απαγωγή with their use in certain other cases of *φόνος;* if a common legal principle can be, detected at work, it was a fluid one, as a brief examination will show.

There are three such instances: (1); Lysias, In Agoratum; Here Dionysius arrests Agoratus for causing the death of his brother, Dionysodorus, under the Thirty by turning informer. Dionysius proceeds by lodging an information against Agoratus with the Eleven. They, however, refuse to permit his arrest until Dionysius has added the qualification επ αυτοφώρω ληφθείς ["taken in the act."] to his formal charge of murder. The case is tried before a Heliastic court and the penalty upon conviction is death. (2) Demosthenes, *In Aristocratem* (§§ 641 ff.). Here there is a detailed description of the five courts competent to try the various forms of homicide, followed by the statement that there was a sixth means of proceeding against a murderer in cases where none of the others was possible or convenient. This was by *απαγωγή.* If the criminal was seen in the Agora or in a temple, he could be arrested at sight and thrown into prison to await trial. Should he be found guilty, the penalty was death. (3) Lycurgus, *In Leocratem* (§112). The friends of Phrynichus arrest and imprison his murderers. A clear case of *απαγωγή*, although the absence of further details makes it impossible to say under what head the accused were tried.

Originally απαγωγή was limited in its application to crimes of violence where the criminal was caught in flagrante delicto. For judicial purposes these crimes formed a single group and were known as κακουργήματα. Thieves, footpads, cutpurses, temple-robbers, kidnappers, were all κακούργοι, and, if caught in the act (επ αυτόφώρώ), could be summarily arrested and in most eases punished by the Eleven on their own authority. If the crime was too serious to fall within the jurisdiction of the Eleven, however, they kept the prisoner in close confinement until his trial before a Heliastic court.

Now it is clear from Lysias that Agoratus, who was charged with murder, was similarly subjected to *απαγωγή*; and the fact that his arrest was authorized by the Eleven only on the condition that the clause επ *αυτοφώρώ ληφθείς* was added to the written ενδειξις presented to them by the prosecutor, makes it reasonably certain that by the end of the fifth century murder itself could be treated as a *κακούργημα*, provided that the criminal was taken επ *αυτοφώρω.* Agoratus, it is important to remember, had some sort of civic rights, in spite of the statement to the contrary in § 64 of Lysias' speech. The allegation that he was "a slave and of slave parentage" is a rhetorical exaggeration which is tacitly acknowledged as false in the next paragraph, where we are told that Agoratus had made a living as a *συκοφάντης* and had been very heavily fined for it. No slave could have conducted prosecutions in this fashion.

The case mentioned by Demosthenes, on the other hand, is somewhat different. It is true that the criminal is in a sense taken επ *αυτοφώρω*; he is caught in the act of entering the Agora or a temple when his defilement has deprived him of the right to do so. But he is not arrested *qua κακούργος,* because he is not caught in the act of committing the murder which has brought about his defilement. The justification for his *άπαγωγή* must be sought, elsewhere. Now it is highly probable, if not certain, that *απαγωγή* was permissible, if a person against whom proceedings were being instituted for murder before the Basileus disobeyed the formal *πρόρρησις* of his accuser which forbade him to frequent public places; and it is here that we must look for the origin of the type of *απαγωγή* described in the *In Aristocratem.* It looks as though the *πρόρρησή* had been dispensed with by the middle of the fourth century, allowing the use of *απαγωγή* without any of the preliminaries before the Archon. In fact, it is a convenient, because quicker, alternative to the *δίκη φόνου* from which it had been evolved. It must have emerged after 400 B.C., as *το επ αύτοφώρω λαβεῖν* is still the

one condition of the *απαγωγή* of murderers in the time of Agoratus. No doubt it quickly superseded this older form of *απαγωγή,* which treated the *φονευs* as a *κακούργος* and required him to be caught επ *αυτοφώρω,* because of its wider application.

It remains to determine the relation between the arrest of Agoratus and that of Euxitheus. Both were apparently *κακούργοι* in the eyes of the law. But whereas it was necessary in the case of Agoratus that he should be taken επ *αυτόφωρω,* no such condition was observed in the case of Euxitheus. Now Euxitheus was a ξενος from Lesbos, a subject-state; Agoratus had civic rights of some kind and lived in Athens. Clearly the conclusion is that *απαγωγή* was permissible in the case of Athenians only if they were caught επ *αυτοφώρω*; while *ξενοι* suspected of murder could be arrested as *κακούργοι,* even if they were not so caught, for the reason that *απαγωγή* was found to be the only practicable method of bringing them to trial.

A second difficulty in connexion with the objections raised by Euxitheus to the procedure of the prosecution is the statement in § 10 that the case was τιμητός, i.e. that in the event Of a verdict of guilty, alternative penalties would be proposed by the prosecution and defence, and the court would decide between them. In § 10 it is stated that this penalty would take the form of a fine. Later in the speech, however, the only penalty envisaged is death (e.g. §§ 59, 71, etc.).

We cannot treat Euxitheus' words in § 10 as a piece of sheer falsehood. Both he, and the jury must have known whether or not the case was *τιμητός,* and, if it was not, if the penalty was fixed at death, Euxitheus would hardly have been so ingenuous as to imagine that he could talk his hearers into forgetting the fact He must mean what he says; and the explanation would appear to be this. In the case of a citizen there were various courts to try the various kinds of homicide which he might commit, and the penalties which, each was empowered to impose differed in severity according to the seriousness of the offence with which the court in question dealt. But these courts were largely unsuited to try ξενοι, and the alternative, procedure of *απαγωγή* followed by a trial before a Heliastic court seems frequently to have replaced them. The various types of offence were here all tried in identical fashion; and as no common penalty was possible, the difficulty must have been surmounted by treating any case of homicide tried by the Heliaea as an *άγων τψητςς* which admitted of an adjustment of the penalty, to suit circumstances.

The further fact that Euxitheus contradicts himself later in the speech by treating the penalty as fixed at death is intelligible if it is remembered that he is arguing in § 10 for the, transference of the case to the Areopagus. As there was never any alternative to death as the penalty for conviction before the Areopagus, Euxitheus gives great emphasis to the possibility of his merely being fined by the Heliaea in order to prove the incompetence of such a court to try his case as it should be tried; that the prosecution have in fact determined upon the death penalty is carefully kept in the background at this stage.

The fact that bail was refused cannot be accounted for with absolute certainty owing to the incompleteness of the evidence as to ενδειξις and απαγωγή. It is clear from § 17 that the right of furnishing sureties (εγγυητάί) was recognized by law in certain cases, probably in the case of citizens only. The Eleven very likely had powers of discretion when the prisoner was an alien, and if the accuser could show good reason for supposing that the accused would default if allowed his liberty, bail would be refused.

Analysis

§§ 1-7. PRELIMINARY request for a fair hearing.

§§ 8-19. Objections to the procedure adopted by the prosecution.

(i) The defendant cannot legally be tried as a *κακούργος*.

(ii) The trial is being held in the wrong place.

(iii) The trial has been made an *ἀγων τιμητός*.

(iv) The δ*ιωμοσία* has been omitted.

(v) The defendant has been deprived of the right of throwing up his case and going into exile.

(vi) Bail has been refused.

§§ 20-24. Brief account of the circumstances of Herodes' disappearance.

§§ 25-28. *A priori* conclusions to be drawn from that account as to the innocence of the defendant.

§§ 29. The attempt of the prosecution to collect evidence by a personal investigation.

§§ 80-41. Examination of the value of the evidence of the first witness tortured by the prosecution, a slave who had admitted that he had helped the defendant to commit the murder.

§§ 42-52. Examination of the value of the evidence of the second witness tortured by the prosecution, a free man who had not incriminated the defendant. Arguments establishing the comparative trustworthiness of the two witnesses.

§§ 53-56. Discussion of a letter from the defendant to Lycinus admitting his guilt, which had been produced in evidence by the prosecution.

§§ 57-59. Proof that no adequate motive for committing the murder has been or can be suggested.

§§ 60-63. Examination of the case against Lycinus.

§§ 64-73. Unfairness of expecting the defendant to explain the mystery of Herodes' disappearance. Historical parallels.

§§ 74-80. Defence of the defendant's father, who had been violently attacked by the prosecution for his anti-Athenian activities.

§§ 81-84. Proof of the defendant's innocence drawn from the "signs from heaven."

§§ 85-96. Final appeal for acquittal on the ground that the case can be properly tried only by means of a *δίκη φόνου*.

Speech V. On the Murder of Herodes

I COULD HAVE wished, gentlemen, that my powers of speech and my experience of the world[1] were as great as the misfortune and the severities with which I have been visited. Instead, I know more of the last two than I should, and am more wanting in the first than is good for me. [2] When I had to submit to the bodily suffering which this unwarranted charge brought with it, experience afforded me no help; while now that my life depends upon my giving a truthful account of the facts, my case is being prejudiced by my inability to speak. [3] Poor speakers have often before now been disbelieved because they spoke the truth, and the truth itself has been their undoing because they could not make it convincing: just as clever speakers have often gained credit with lies, and have owed their lives to the very fact that they lied. Thus the fate of one who is not a practised pleader inevitably depends less upon the true facts and his actual conduct than upon the version of them given by his accusers. [4] I shall therefore ask you, gentlemen, not indeed for a hearing, as do the majority of those on trial, who lack confidence in themselves and presume you to be biassed; for with an honest jury the defence is naturally assured of a hearing even without appealing for it, seeing that that same jury accorded the prosecution a hearing unasked — [5] no, my request of you is this. If, on the one hand, I make any mistake in speaking, pardon me and treat it as due to inexperience rather than dishonesty; and if, on the other hand, I express a point well, treat it as due to truthfulness rather than skill. For it is no more right that mere words should be the undoing of a man who is in fact innocent than that they should be the salvation of a man who is in fact guilty; the tongue is to blame for a word whereas the will is to blame for an act. [6] Moreover, a man in personal danger is sure to make some mistake; he cannot help thinking of his fate as well as of his argument, as the decision of an issue which is still in doubt always depends more upon chance than upon human effort. Hence a man in danger is bound to be not a little distraught. [7] Even speakers with a long experience of the courts are far from being at their best, I notice, when in any danger; they are more successful when conducting a case in safety. [8] So much for my request, gentlemen; it breaks no law, human or divine: and it takes into account what you have a right to expect from me as much as what I have a right to expect from you. And now for the charges made, which I will answer one at a time.To begin with, I shall prove to you that the methods used to involve me in today's proceedings were entirely illegal and arbitrary. Not that I wish to evade trial before a popular court; as far as my belief in my innocence of the present charge and in the justice of your verdict is concerned, I would place my life in your hands even if you were not on oath and I were being tried under no particular law. No, my object is to let the arbitrary and illegal behavior of the prosecution furnish you with a presumption as to the character of the rest of their case against me [9] First,[2] whereas an information has been lodged against me as a malefactor, I am being tried for murder: a thing which has never before happened to anyone in this country.[3] Indeed, the prosecution have themselves borne witness to the fact that I am not a malefactor and cannot be charged under the law directed against malefactors, as that law is concerned with thieves and footpads, and they have omitted to prove my claim to either title. Thus, as far as this arrest of mine goes, they have given you every right and justification to acquit me. [10] They object, however, that murder is a malefaction, and a grave one. I agree, a very grave one; so is sacrilege; so is treason; but the laws which apply to each of them differ. In my case the prosecution have first

of all caused the trial to be held in the one place from which those charged with murder are always debarred by proclamation, the Agora: and secondly, although it is laid down by law that a murderer shall pay with his life, they have entered a claim for damages[4] — not as a kindness to me, but for their own benefit — and by so doing they have grudged the dead man his lawful due. Their motives you will learn in the course of my speech.[5] [11] Secondly, as of course you all know, every court judges cases of murder in the open air, and for good reasons: first, that the jurors may avoid entering the same building as those whose hands are unclean: and secondly, that he who is conducting the prosecution for murder may avoid being under the same roof as the murderer. No one but yourself has ever dreamed of evading this law. And not only that you should, as a preliminary, have taken the most solemn and binding oath known,[6] swearing, under pain of causing yourself, your kin, and your house to perish from the earth, that you would accuse me only in connection with the murder itself, to the effect that I committed it; whereby, however numerous my crimes, I could have been condemned only on the charge before the court, and however numerous my good deeds, none of those good deeds could have gained me an acquittal. [12] This requirement you have evaded. You have invented laws to suit yourself. You, the prosecutor, are not on oath; nor are the witnesses, who are giving evidence against me which they should have given only after taking the same preliminary oath as yourself, their hands on the sacrifice as they did so. You bid the court, moreover, believe your witnesses, in spite of their not being on oath, and pass sentence for murder — when your own evasion of the laws of the land has destroyed the trustworthiness of those witnesses. Yes, you imagine that, in the eyes of the court, the laws themselves should have less authority than your own actions in defiance of them. [13] You reply that if I had been allowed my freedom, I should have made off without awaiting my trial — as though you had forced me to enter this country against my will. Yet if I attached no importance to being debarred from Athens for the future, it was equally open to me either to disregard the summons to appear in court and so lose the case by default, or to avail myself of the right given to every one of leaving the country after making the first speech for the defense.[7] You, however, for purely personal reasons, are trying to rob me, and me alone, of a privilege accorded to every Greek, by framing a law to suit yourself. [14] Yet it would be unanimously agreed, I think, that the laws which deal with cases such as the present are the most admirable and righteous of all laws. Not only have they the distinction of being the oldest in this country, but they have changed no more than the crime with which they are concerned; and that is the surest token of good laws, as time and experience show mankind what is imperfect. Hence you must not use the speech for the prosecution to discover whether your laws are good or bad: you must use the laws to discover whether or not the speech for the prosecution is giving you a correct and lawful interpretation of the case.[8] [15] The laws concerned with the taking of life are thus excellent, and no one has ever before ventured to interfere with them. You alone have had the audacity to turn legislator and substitute worse for better; and the object of this arbitrary behavior of yours is to have me put to death without just cause. In fact, your infringement of the law is itself decisive evidence in my favor, because you well knew that you would find no one to testify to my guilt once he had taken that preliminary oath. [16] Furthermore, instead of acting like a man confident of his case and arranging that it should be tried once and indisputably, you have left yourself grounds for dispute and argument, as though you proposed to show your distrust of even the present court. The result is that even if I am acquitted today, I am no better off; you can say that it was as a malefactor that I was acquitted, not on a charge of murder. On the other hand, if you win your case,

you will claim my life, on the ground that it is on a charge of murder that I have been tried and found guilty. Could any thing more unfair be devised? You and your associates have only to convince this court once, and your object is gained; whereas I, if I am acquitted once, am left in the same peril as before. [17] Then again, gentlemen, my imprisonment was an act of illegality quite without parallel. I was ready to furnish the three sureties required by law; yet the prosecution took steps to ensure that I should be prevented from doing so. Hitherto no alien willing to furnish sureties has ever been imprisoned; and, moreover, the law concerned applies to the custodians of malefactors[9] as it does to others. Here again, then, we have a law by which every one benefits: and it has failed to release me, and me alone, from confinement. [18] The reason was that it was to the prosecution's advantage, first, that I should be prevented from looking after my interests in person, and so be quite unable to prepare for my trial: and secondly, that I should undergo bodily suffering, and by reason of that bodily suffering find my friends readier to tell lies as witnesses for the prosecution than the truth as witnesses for the defence.[10] In addition to which, lifelong disgrace has been brought upon me and mine. [19] Such are the manifold respects in which I have had to submit to a loss[11] of the rights accorded me by your laws and by justice before appearing in court. However, in spite of that disadvantage, I will try to prove my innocence: although it is hard to refute at a moment's notice false charges so carefully framed, as one cannot prepare oneself against the unexpected. [20] I sailed from Mytilene, gentlemen, as a passenger on the same boat as this Herodes whom, we are told, I murdered. We were bound for Aenus, I to visit my father, who happened to be there just then, and Herodes to release some slaves[12] to certain Thracians. The slaves whom he was to release were also passengers, as were the Thracians who were to purchase their freedom. I will produce witnesses to satisfy you of this."

Witnesses

" [21] Such were our respective reasons for making the voyage. In the course of it, we happened to meet with a storm which forced us to put in at a place within the territory of Methymna, where the boat on to which Herodes transhipped, and on which the prosecution maintain that he met his end, lay at anchor. Now consider these circumstances in themselves to begin with; they were due to chance, not to any design on my part. It has nowhere been shown that I persuaded Herodes to accompany me; on the contrary, it has been shown that I made the voyage independently on business of my own. [22] Nor again, as is clear, was I making my voyage to Aenus without good reason. Nor did we put in at this particular spot by prearrangement of any sort; we were forced to do so. And the transhipment after coming to anchor was similarly forced upon us, and not part of any plot or ruse. The boat on which we were passengers had no deck, whereas that on to which we transhipped had one and the rain was the reason for the exchange. I will produce witnesses to satisfy you of this."

Witnesses

" [23] After crossing into the other boat, we fell to drinking. Now whereas it is established that Herodes quitted the boat and did not board it again, I did not leave the boat at all that night. Next day, when Herodes was missing, I joined in the search as anxiously as any; if anyone considered the matter serious, I did. Not only was I responsible for the dispatch of a messenger to Mytilene, that is to say, it was upon my suggestion that it was decided to send one, [24] but when none of the passengers or the personal companions of Herodes volunteered to go, I offered to send my own

attendant; and I hardly imagine that I was deliberately proposing to send someone who would inform against me. Finally, when the search had failed to reveal any trace of Herodes either at Mytilene or anywhere else and, with the return of fair sailing-weather, the rest of the boats began standing out to sea, I likewise took my departure. I will produce witnesses to prove these statements to you."

Witnesses

" [25] Those are the facts; now draw the logical conclusions. First, in the interval before I put to sea for Aenus, when Herodes was missing, not a soul accused me, although the prosecution had already heard the news; otherwise I should never have taken my departure. For the moment the true facts of the matter were too much for any charge which they could bring; and, moreover, I was still on the island. It was not until I had resumed my voyage, and the prosecution had conspired to form this plot of theirs upon my life, that they made their accusation. [26] Their story is that it was on the shore that Herodes was killed, and that I, who did not leave the boat at all, struck him upon the head with a stone. Yet while they have detailed information of this, they cannot give any plausible account of how the man came to disappear. Clearly, the probabilities suggest that the crime was committed somewhere in the neighborhood of the harbor. On the one hand, Herodes was drunk; and on the other hand, it was at night that he left the boat. He probably would not have been in a condition to control his own movements, nor could anyone who wished to take him a long way off by night have found any plausible excuse for doing so. [27] Yet in spite of a two days' search both in the harbor and at a distance from it, no eyewitness, no bloodstain, and no clue of any other description was found. But I will go further. I accept the prosecution's story. I can indeed produce witnesses to prove that I did not quit the boat.[13] But suppose as much as you please that I did quit it; it is still utterly improbable that the man should have remained undiscovered after his disappearance, if he did not go very far from the sea. [28] However, we are told that he was thrown into the sea. From what boat? Clearly, the boat came from the harbor itself; and in that case, why should it not have been identified? For that matter, we should also have expected to find some traces in the boat, seeing that a dead man had been placed in it and thrown overboard in the dark. The prosecution claim, indeed, to have found traces — but only in the boat on board of which he was drinking and which he quitted, the one boat on which they themselves agree that he was not murdered. The boat from which he was thrown into the sea they have not discovered; they have found neither it itself nor any trace of it. I will produce witnesses to prove these statements to you. "Witnesses" [29] After I had departed for Aenus and the boat on which Herodes and I had been drinking[14] had reached Mytilene, the prosecution first of all went on board and conducted a search. On finding the bloodstains,[15] they claimed that this was where Herodes had met his end. But the suggestion proved an unfortunate one, as the blood turned out to be that of the animals sacrificed. So they abandoned that line, and instead seized the two men and examined them under torture.[16] [30] The first, who was tortured there and then, said nothing to damage me. The second was tortured several days later, after being in the prosecution's company throughout the interval. It was he who was induced by them to incriminate me falsely. I will produce witnesses to confirm these facts."

Witnesses

“ [31] You have listened to evidence for the length of the delay before the man’s examination under torture; now notice the actual character of that examination. The slave was doubtless promised his freedom: it was certainly to the prosecution alone that he could look for release from his sufferings. Probably both of these considerations induced him to make the false charges against me which he did; he hoped to gain his freedom, and his one immediate wish was to end the torture. [32] I need not remind you, I think, that witnesses under torture are biassed in favor of those who do most of the torturing; they will say anything likely to gratify them. It is their one chance of salvation, especially when the victims of their lies happen not to be present. Had I myself proceeded to give orders that the slave should be racked for not telling the truth, that step in itself would doubtless have been enough to make him stop incriminating me falsely. As it was, the examination was conducted by men who also knew what their own interests required. [33] Now as long as he believed that he had something to gain by falsely incriminating me, he firmly adhered to that course; but on finding that he was doomed, he at once reverted to the truth and admitted that it was our friends here who had induced him to lie about me. However, neither his persevering attempts at falsehood nor his subsequent confession of the truth helped him. [34] They took him, took the man upon whose disclosures they are resting their case against me, and put him to death,[17] a thing which no one else would have dreamed of doing. As a rule, informers are rewarded with money, if they are free, and with their liberty, if they are slaves. The prosecution paid for their information with death, and that in spite of a protest from my friends that they should postpone the execution until my return. [35] Clearly, it was not his person, but his evidence, which they required; had the man remained alive, he would have been tortured by me in the same way, and the prosecution would be confronted with their plot: but once he was dead, not only did the loss of his person mean that I was deprived of my opportunity of establishing the truth, but his false statements are assumed to be true and are proving my undoing. Call me witnesses to confirm these facts. “<Witnesses>“ [36] In my opinion, they should have produced the informer himself in court, if they wished to prove me guilty. That was the issue to which they should have brought the case. Instead of putting the man to death, they ought to have produced him in the flesh and challenged me to examine him under torture. As it is, which of his statements will they use, may I ask: his first or his second? And which is true: the statement that I committed the murder or the statement that I did not? [37] If we are to judge from probability, it is obviously the second which is the truer; he was lying to benefit himself, but on finding that those lies were proving fatal, he thought that he would be saved by telling the truth. However, he had no one to stand up for the truth, as I, who was vindicated by his second, true statement, was unfortunately not present; while there were those who were ready to put his first, his false one, beyond all reach of future correction. As a rule, it is the victim who quietly seizes an informer and then makes away with him. In this case, it is the very persons who arrested the slave in order to discover the truth who have done so; [38] and it is the very person who had supplied information against myself with whom they have made away. Had I myself been responsible for his disappearance, had I refused to surrender him to the prosecution or declined to establish the truth in some other way, they would have treated that very fact as most significant: it would have furnished the strongest presumption in their favor that I was guilty. So now that they themselves have declined to submit to an inquiry, in spite of a challenge from my friends to do so, that fact should in the same way furnish a presumption in my favor that the charge which they are bringing is a false one.[18] [39] They further allege that the slave admitted under

torture that he had been my accomplice in the murder. I maintain that he did not say this; what he said was that he conducted Herodes and myself off the boat, and that after I had murdered him, he helped me pick him up and put him in the boat; then he threw him into the sea. [40] Also let me point out to you that at the start, before being placed on the wheel, in fact, until extreme pressure was brought to bear, the man adhered to the truth and declared me innocent. It was only when on the wheel, and when driven to it, that he falsely incriminated me, in order to put an end to the torture. [41] When it was over, he ceased affirming that I had had any part in the crime; indeed, at the end he bemoaned the injustice with which both I and he were being sent to our doom: not that he was trying to do me a kindness — hardly that, after falsely accusing me as he had done; no, the truth left him no choice: he was confirming as true the declaration which he had made to begin with. [42] Then there was the second man.[19] He had travelled on the same boat as I: had been present throughout the voyage: and had been constantly in my company. When tortured in the same way, he confirmed the first and last statements of the other as true; for he declared me innocent from start to finish. On the other hand, the assertions made by the other upon the wheel, made not because they were the truth, but because they were wrung from him, he contradicted. Thus, while the one said that it was not until I had left the boat that I killed Herodes, and that he had himself helped me to remove the body after the murder, the other maintained that I did not leave the boat at all. [43] And indeed, the probabilities are in my favor; I hardly imagine myself to have been so benighted that after planning the murder on my own to ensure that no one was privy to it — for there lay my one great danger — I proceeded to furnish myself with witnesses and confederates once the crime had been committed. [44] Furthermore, Herodes was murdered very close to the sea and the boats, or so we are told by the prosecution. Was a man who was struck down by but one assailant not going to shout out or attract the attention of those on shore or on board? Moreover, sounds can be heard[20] over much greater distances by night than by day, on a beach than in a city. Moreover, it is admitted that the passengers were still awake when Herodes left the boat. [45] Again, he was murdered on shore and placed in the boat; yet no trace or bloodstain was found either on shore or in the boat, in spite of the fact that it was at night that he was picked up and at night that he was placed in the boat. Do you think that any human being in such circumstances would have been able to smooth out the traces on shore and wipe away the marks on the boat, clues which a calm and collected man could not have removed successfully even by daylight? What probability is there in such a suggestion, gentlemen? [46] One thing above all you must remember, and I hope that you will forgive me for repeatedly stressing the same point; but my danger is great, and only if you form a right judgement, am I safe; if you are misled, I am doomed. I repeat, let no one cause you to forget that the prosecution put the informer to death, that they used every effort to prevent his appearance in court and to make it impossible for me to take him and examine him under torture on my return; [47] although to allow me to do so was to their own advantage.[21] Instead, they bought the slave and put him to death, entirely on their own initiative — put the informer himself to death, without any official sanction, and without the excuse that he was guilty of the murder. They should of course have kept him in custody, or surrendered him to my friends on security, or else handed him over to the magistrates of Athens in order that his fate might be decided by a court. As it was, you sentenced him to death on your own authority and executed him, when even an allied state is denied the right of inflicting the death-penalty in such fashion without the consent of the Athenian people.[22] You thought fit to let the present court decide the merits of his statements;

but you pass judgement on his acts yourselves. [48] Why, even slaves who have murdered their masters and been caught red-handed are not put to death by the victim's own relatives; they are handed over to the authorities as the ancient laws of your country ordain. If it is a fact that a slave is allowed to give evidence that a free man is guilty of murder, if a master can seek vengeance for the murder of his slave, should he see fit, and if a court can sentence the murderer of a slave as effectively as it can the murderer of a free man,[23] it follows that the slave in question should have had a public trial, instead of being put to death by you without a hearing. Thus it is you who deserve to be on trial far rather than I, who am being being accused this day so undeservedly. [49] And now, gentlemen, consider further the statements of the two witnesses tortured. What are the fair and reasonable conclusions to be drawn from them? The slave gave two accounts: at one time he maintained that I was guilty, at another that I was not. [50] On the other hand, in spite of similar torture, the free man has not even yet said anything to damage me. He could not be influenced by offers of freedom, as his companion had been; and at the same time he was determined to cling to the truth, cost what it might. Of course, as far as his own advantage was concerned, he knew, like the other, that the torture would be over as soon as he corroborated the prosecution. Which, then, have we more reason to believe: the witness who firmly adhered to the same statement throughout, or the witness who affirmed a thing at one moment, and denied it at the next? Why, quite apart from the torture employed, those who consistently keep to one statement about one set of facts are more to be trusted than those who contradict themselves. [51] Then again, of the slave's statements half are in favor of one side, half in favor of the other: his affirmations support my accusers, and his denials support me. [Similarly with the combined statements of both the witnesses examined: the one affirmed, and the other consistently denied.][24] But I need not point out that any equal division is to the advantage of the defence rather than the prosecution, in view of the fact that an equal division of the votes of the jury similarly benefits the defence rather than the prosecution. [52] Such was the examination under torture on which the prosecution rely, gentlemen, when they say that they are convinced that I am the murderer of Herodes. Yet if I had had anything whatsoever on my conscience, if I had committed a crime of this kind, I should have got rid of both witnesses while I had the opportunity, either by taking them with me to Aenus or by shipping them to the mainland.[25] I should not have left the men who knew the truth behind to inform against me. [53] The prosecution further allege that they discovered on board a note stating that I had killed Herodes, which I had intended to send to Lycinus. But what need had I to send a note, when the bearer himself was my accomplice? Not only would he, as one of the murderers, have told the story more clearly in his own words, but it would have been quite unnecessary to conceal the message from him, and it is essentially messages which cannot be disclosed to the bearer that are sent in writing. [54] Then again, an extensive message would have had to be written down, as its length would have prevented the bearer remembering it. But this one was brief enough to deliver— "The man is dead." Moreover, bear in mind that the note contradicted the slave tortured, and the slave the note. The slave stated under torture that he had committed the murder himself,[26] whereas the note when opened revealed the fact that I was the murderer. [55] Which are we to believe? The prosecution discovered the note on board only during a second search, not during their first one; they had not hit on the idea at the time. It was not until the first witness had said nothing to incriminate me when tortured that they dropped the note in the boat, in order to have that, if nothing else, as a ground for accusing me. [56] Then, once the note had been read and the second witness, when

tortured, persisted in disagreeing with the note, it was impossible to spirit away the message read from it. Needless to say, had the prosecution supposed that they would induce the slave to lie about me immediately, they would never have devised the message contained in the note. Call me witnesses to confirm these facts."

Witnesses

" [57] Now what was my motive in murdering Herodes? For there was not even any bad feeling between us. The prosecution have the audacity to suggest that I murdered him as a favor. But who has ever turned murderer to oblige a friend? No one, I am sure. The bitterest feeling has to exist before murder is committed, while the growth of the design is always abundantly manifest. And, as I said, between Herodes and myself there was no bad feeling. [58] Well and good. Then was it that I was afraid of being murdered by him myself? A motive of that kind might well drive a man to the deed. No, I had no such fears with regard to him. Then was I going to enrich myself by the murder? No, he had no money. [59] Indeed, it would be more intelligible and nearer the truth for me to maintain that money was at the bottom of your own attempt to secure my death than it is for you to suggest it as my motive in murdering Herodes. You yourself deserve to be convicted of murder by my relatives for killing me far more than I by you and the family of Herodes. Of your designs on my life I have clear proof: whereas you, in seeking to make an end of me, produce only a tale of which proof is impossible. [60] I assure you that I personally can have had no motive for murdering Herodes; but I must apparently clear Lycinus as well as myself by showing the absurdity of the charge in his case also. I assure you that his position with regard to Herodes was the same as my own. He had no means of enriching himself by the murder; and there was no danger from which the death of Herodes released him. [61] Further, the following consideration indicates most strikingly that he did not desire his death: had redress for some old injury been owing to Lycinus, he could have brought Herodes into court on a charge which endangered his life, and have enlisted the help of your laws in making an end of him. By proving him a criminal he could have gained both his own object and your city's gratitude. This he did not trouble to do: he did not even attempt to institute proceedings against him, in spite of the fact that he was running a more honorable risk <by bringing Herodes into court than by engaging me to murder him. Call me witnesses to confirm these facts.>[27]"

Witnesses

" [62] So we are to understand that Lycinus left Herodes in peace as far as an action at law was concerned, and instead chose the one course which was bound to endanger both himself and me, that of plotting his death, notwithstanding the fact that, if discovered, he would have deprived me of my country and himself of his rights before heaven and mankind, and of all that men hold most sacred and most precious. I will go further: I will adopt the standpoint of the prosecution: I will admit as readily as you like that Lycinus did desire the death of Herodes. Does it follow that I should ever have been induced to perform in his stead a deed which he refused to commit with his own hand? [63] Was I, for instance, in a position to risk my life, and he in a position to hire me to do so? No, I had money, and he had none. On the contrary, the probabilities show that he would have been induced to commit the crime by me sooner than I by him; for even after suffering an execution for a debt of seven minae, he could not release himself from prison: his friends had to purchase his release. In fact, this affords the clearest indication of the relations between Lycinus and myself; it

shows that my friendship with him was hardly close enough to make me willing to satisfy his every wish. I cannot suppose that I braved the enormous risk which murder involved to oblige him, after refusing to pay off seven minae for him when he was suffering the hardships of imprisonment. [64] I have proved, then, to the best of my ability that both Lycinus and I are innocent. However, the prosecution make endless play with the argument that Herodes has disappeared; and doubtless it is a fact which you want explained. Now if it is conjecture which is expected of me, you are just as capable of it as I am — we are both alike innocent of the crime; on the other hand, if it is the truth, the prosecution must ask one of the criminals: he would best be able to satisfy them. [65] The utmost that I who am not guilty can reply is that I am not guilty; whereas the criminal can easily reveal the facts, or at least make a good guess. Criminals no sooner commit a crime than they invent an explanation to suit it[28]; on the other hand, an innocent man can scarcely guess the answer to what is a mystery to him. Each of you yourselves, I am sure, if asked something which he did not happen to know, would simply reply reply to that effect; and if told to say more, you would find yourselves, I think, in a serious difficulty. [66] So do not present me with a difficulty which you yourselves would not find easy of solution. Furthermore, do not make my acquittal depend on my making plausible conjectures. Let it be enough for me to prove my innocence of the crime; and that depends not upon my discovering how Herodes disappeared or met his end, but upon my possessing no motive whatever for murdering him. [67] As I know from report, there have been similar cases in the past, when sometimes the victim, sometimes the murderer, has not been traced; it would be unfair, were those who had been in their company held responsible. Many, again, have been accused before now of the crimes of others, and have lost their lives before the truth became known. [68] For instance, the murderers of one of your own citizens, Ephialtes,[29] have remained undiscovered to this day; it would have been unfair to his companions to require them to conjecture who his assassins were under pain of being held guilty of the murder themselves. Moreover, the murderers of Ephialtes made no attempt to get rid of the body, for fear of the accompanying risk of publicity — unlike myself, who, we are told, took no one into my confidence when planning the crime, but then sought help for the removal of the corpse. [69] Once more, a slave, not twelve years old, recently attempted to murder his master. Had he had the courage to stay where he was, instead of taking to his heels in terror at his victim's cries, leaving the knife in the wound, the entire household[30] would have perished, as no one would have dreamed him capable of such audacity. As it was, he was caught, and later confessed his own guilt.

Then again, your Hellenotamiae[31] were once accused of embezzlement, as wrongfully as I am accused today. Anger swept reason aside, and they were all put to death save one. Later the true facts became known. [70] This one, whose name is said to have been Sosias, though under sentence of death, had not yet been executed. Meanwhile it was shown how the money had disappeared. The Athenian people rescued him from the very hands of the Eleven[32]: while the rest had died entirely innocent. [71] You older ones remember this yourselves, I expect, and the younger have heard of it like myself.

Thus it is wise to let time help us in testing the truth of a matter. Perhaps the circumstances of Herodes' death will similarly come to light hereafter; so do not discover that you have put an innocent man to death when it is too late. Weigh the matter carefully while there is yet time, without anger and without prejudice: for they are the worst of counsellors; [72] it is impossible for an angry man to make a right decision, as anger destroys his one instrument of decision, his judgement. The lapse of

one day after another, gentlemen, has a wondrous power of liberating the judgement from the sway of passion and of bringing the truth to light. [73] Remember too that it is pity which I deserve from you, not punishment. Wrongdoers should be punished: those wrongfully imperilled should be pitied. You must never let your power to satisfy justice by saving my life be overridden by my enemies' desire to outrage it by putting me to death. A delay will still allow you to take the awful step which the prosecution urge upon you; whereas haste will make a fair consideration of the case quite impossible. [74] I must also defend my father although, as my father, it would have been far more natural for him to be defending me. He is far older than I, and knows what my life has been whereas I am far younger than he, and cannot know what his has been. If my accuser were on trial, and I were giving evidence against him based on hearsay instead of certain knowledge, he would protest that he was being treated monstrously; [75] yet he sees nothing monstrous in forcing me to explain occurrences with which I am far too young to be acquainted save from hearsay. However, as a loyal son, I will use what knowledge I have to defend my father against the unwarranted abuse to which you have been listening. Possibly indeed I may fail. I may describe but faultily a life which was without fault. But none the less, I will accept that risk. [76] Before the revolt of Mytilene[33] my father gave visible proof of his devotion to your interests. When, however, the city as a whole was so ill-advised as to commit the blunder of revolting,[34] he was forced to join the city as a whole in that blunder. Not but what even then his feelings towards you remained unchanged: although he could no longer display his devotion in the old way. It was not easy for him to leave the city, as the ties which bound him, his children, and his property, were strong ones; nor yet could he set it at defiance as long as he remained there. [77] But from the moment that you punished the authors of the revolt — of whom my father was not found to be one — and granted the other citizens of Mytilene an amnesty which allowed them to continue living on their own land,[35] he has not been guilty of a single fault, of a single lapse from duty. He has failed neither the city of Athens nor that of Mytilene, when a public service was demanded of him; he regularly furnishes choruses, and always pays the imposts.[36] [78] If Aenus is his favorite place of resort, that fact does not mean that he is evading any of his obligations towards Athens,[37] or that he has become the citizen of another city, like those others, some of whom I see crossing to the mainland and settling among your enemies, while the rest actually litigate with you under treaty;[38] nor does it mean that he desires to be beyond the reach of the Athenian courts. It means that he shares your own hatred of those who thrive on prosecution. [79] The act which my father joined his whole city in committing, which he committed not from choice but under compulsion, affords no just ground for punishing him individually. The mistake then made will live in the memory of every citizen of Mytilene. They exchanged great prosperity for great misery, and saw their country pass into the possession of others. Nor again must you be influenced by the distorted account of my father's conduct as an individual with which you have been presented. Nothing but money is at the bottom of this elaborate attack upon him and myself; and unfortunately there are many circumstances which favor those who seek to lay hands on the goods of others; my father is too old to help me: and I am far too young to be able to avenge myself as I should. [80] You must help me: you must refuse to reach those who make a trade of prosecution to become more powerful than yourselves. If they achieve their purpose when they appear before you, it will be a lesson to their victims to compromise with them and avoid open court; but if by appearing before you they succeed only in gaining an evil reputation for themselves, you will enjoy the honor and the power which it is right that you should.

So give me and give justice your support. [81] Proof as complete as the presumptions and the evidence supplied by things human could make it has now been presented to you. But in cases of this nature the indications furnished by heaven must also have no small influence on your verdict.[39] It is upon them that you chiefly depend for safe guidance in affairs of state, whether in times of crisis or tranquillity; so they should be allowed equal prominence and weight in the settlement of private questions. [82] I hardly think I need remind you that many a man with unclean hands or some other form of defilement who has embarked on shipboard with the righteous has involved them in his own destruction.[40] Others, while they have escaped death, have had their lives imperilled owing to such polluted wretches. Many, too, have been proved to be defiled as they stood beside a sacrifice, because they prevented the proper performance of the rites. [83] With me the opposite has happened in every case. Not only have fellow-passengers of mine enjoyed the calmest of voyages: but whenever I have attended a sacrifice, that sacrifice has invariably been successful. I claim that these facts furnish the strongest presumption in my favor that the charge brought against me by the prosecution is unfounded; I have witnesses to confirm them."

Witnesses

" [84] I know furthermore, gentlemen of the jury, that if the witnesses were testifying against me that my presence on shipboard or at a sacrifice had been the occasion of some unholy manifestation, the prosecution would be treating that fact as supremely significant; they would be showing that here, in the signs from heaven, was to be found the clearest confirmation of their charge. As, however, the signs have contradicted their assertions and the witnesses testify that what I say is true and that what the prosecution say is not, they urge you to put no credence in the evidence of those witnesses; according to them, it is their own statements which you should believe. Whereas every one else uses the facts to prove the worth of mere assertion, they use mere assertion for the purpose of discrediting the facts. [85] All the charges which I can remember, gentlemen, I have answered; and for your own sakes I think that you should acquit me. A verdict saving my life will alone enable you to comply with the law and your oath; for you have sworn to return a lawful verdict; and while the crime with which I am charged can still be tried legally, the laws under which I was arrested do not concern my case.[41] If two trials have been made out of one, it is not I, but my accusers, who are to blame; and I cannot suppose that if my bitterest enemies have involved me in two trials, impartial ministers of justice like yourselves will prematurely find me guilty of murder in the present one. [86] Beware of such haste, gentlemen; give time its opportunity; it is time which enables those who seek the truth to find it with certainty. In fact, gentlemen, I for one have always maintained that, while a case of this kind should certainly be tried according to law, the rights of the matter should be established as many times as the law will permit, since they would thus be the better understood; the repeated trial of a case is a good friend of the truth and the deadly foe of misrepresentation. [87] In a trial for murder,[42] even if judgement is wrongly given against the defendant, justice and the facts cannot prevail against that decision. Once you condemn me, I must perforce obey your verdict and the law, even if I am not the murderer or concerned in the crime. No one would venture either to disregard the sentence passed upon him because he was sure that he had had no part in the crime, or to disobey the law if he knew in his heart that he was guilty of such a deed. He has to submit to the verdict in defiance of the facts, or submit to the facts themselves, as the case may be, above all if his victim has none to

avenge him.[43] [88] The laws, the oaths, the sacrifices, the proclamations, in fact the entire proceeding in connection with trials for murder differ as profoundly as they do from the proceedings elsewhere simply because it is of supreme importance that the facts at issue, upon which so much turns, should themselves be rightly interpreted. Such a right interpretation means vengeance for him who has been wronged; whereas to find an innocent man guilty of murder is a mistake, and a sinful mistake, which offends both gods and laws. [89] Nor is it as serious for the prosecutor to accuse the wrong person as it is for you jurors to reach a wrong verdict. The charge brought by the prosecutor is not in itself effective; whether it becomes so, depends upon you, sitting in judgement. On the other hand if you yourselves, when actually sitting in judgement, return a wrong verdict, you cannot rid yourselves of the responsibility for the mistake by blaming someone else for that verdict. [90] Then how can you decide the case aright? By allowing the prosecution to bring their charge only after taking the customary oath, and by allowing me to confine my defence to the question before the court. And how will you do this? By acquitting me today. For I do not escape your sentence even so: you will be the judges at the second hearing also.[44] If you spare me now, you can treat me as you will then; whereas once you put me to death, you cannot even consider my case further. [91] Indeed, supposing that you were bound to make some mistake, it would be less of an outrage to acquit me unfairly than to put me to death without just cause; for the one thing is a mistake and nothing more: the other is a sin in addition. You must exercise the greatest caution in what you do, because you will not be able to reconsider your action. In a matter which admits of reconsideration a mistake, whether made through giving rein to the feelings or through accepting a distorted account of the facts, is not so serious; it is still possible to change one's mind and come to a right decision. But when reconsideration is impossible, the wrong done is only increased by altering one's mind and acknowledging one's mistake. Some of you yourselves have in fact repented before now of having sent men to their death; but when you, who had been misled, felt repentance, most assuredly did those who had misled you deserve death. [92] Moreover, whereas involuntary mistakes are excusable, voluntary mistakes are not; for an involuntary mistake is due to chance, gentlemen, a voluntary one to the will. And what could be more voluntary than the immediate putting into effect of a carefully considered course of action? Furthermore, the wrongful taking of life by one's vote is just as criminal as the wrongful taking of life by one's hand. [93] Rest assured that I should never have come to Athens, had such a crime been on my conscience. I am here, as it is, because I have faith in justice, the most precious ally of the man who has no deed of sin upon his conscience and who has committed no transgression against the gods. Often at such an hour as this, when the body has given up the struggle, its salvation is the spirit, which is ready to fight on in the conscience that it is innocent. On the other hand, he whose conscience is guilty has no worse enemy than that conscience; for his spirit fails him which his body is still unwearied, because it feels that what is approaching him is the punishment of his iniquities. But it is with no such guilty conscience that I come before you. [94] There is nothing remarkable in the fact that the prosecution are misrepresenting me. It is expected of them just as it is expected of you not to consent to do what is wrong. I say this because if you follow my advice, it is still open to you to regret your action, and that regret can be remedied by punishing me at the second trial: whereas if you obediently carry out the prosecution's wishes, the situation cannot be righted again. Nor is there a question of a long interval before the law will allow you to take the step to which the prosecution are today urging you to consent in defiance of it. It is not haste, but discretion which triumphs; so take cognizance of the case today: pass

judgement on it later[45]; form an opinion as to the truth today: decide upon it later. [95] It is very easy, remember, to give false evidence against a man on a capital charge. If you are persuaded only for an instant to put him to death, he has lost his chance of redress with his life. A man's very friends will refuse to seek redress for him once he is dead; and even if they are prepared to do so, what good is it to one who has lost his life? [96] Acquit me, then, today and at the trial for murder the prosecution shall take the traditional oath before accusing me: you shall decide my case by the laws of the land: and I, if I am unlucky, shall have no grounds left for complaining that I was sentenced to death illegally. That is my request; and in making it I am not forgetting your duty as godfearing men or depriving myself of my rights, as my life is bound up with your oath. Respect which you will, and acquit me.

ENDNOTES.

[1] τῶν πραγμάτων refers especially to the workings of the law, and is picked up by οὗ μὲν γάρ με ἔδει . . . ἐμπειρία. The speaker means that had he been less ignorant in such matters, he might have effectively protested against the employment of ἔνδειξις and ἀπαγωγή which involved the close confinement of the defendant before his trial, instead of the more regular δίκη φόνου before the Areopagus. See Introduction.

[2] For the meaning of this and the following paragraph see Introduction.

[3] A deliberate ambiguity. τῶν ἐν τῇ γῇ ταύτῃ can mean (a) Athenian citizens, (b) persons who happen to be in Attica. Taken in sense (a) the statement is true. Taken in sense (b) it is probably false.

[4] For an explanation of the phrase τίμησιν ποιεῖν see Introduction pp. 155-156.

[5] A promise which is never adequately fulfilled. The only further reference to the subject is in Antiph. 5.79 ad fin.

[6] The διωμοσία, or preliminary oath, taken by the prosecutor, the defendant, and the witnesses of each, was peculiar to the δίκη φόνου; the equivalent elsewhere was the ἀντωμοσία taken by both plaintiff and defendant at the ἀνάκρισις before the Archon. From this witnesses were exempt.

[7] i.e., the prosecution justify their choice of an ἀπαγωγή rather than a δίκη φόνου by claiming that only thus could the defendant be prevented from slipping through their fingers. The defendant objects to this on two grounds: (a) The prosecution have no reason to assume that they would not have faced a δίκη φόνου if left at liberty. In fact, he cut himself off from Athens by so defaulting, and that was a strong deterrent. (b) In any case, it was recognized that the defendant in a δίκη φόνου had the right of withdrawing into exile either before or during the trial. The speaker is of course careful not to remind the court that he is an alien, whose position is not necessarily the same as that of an Athenian citizen charged with murder.

[8] This paragraph reappears in Antiph. 6.2 (cf. 87-89 and Antiph. 6.3-4). The employment of such loci communes was frequent, and there is no reason to suspect the genuineness of the present passage.

[9] i.e., the Eleven, who were the magistrates concerned in the ἔνδειξις of a κακοῦργος and who were responsible for his safe custody pending trial.

[10] Apparently on the assumption that the rats will leave a sinking ship.

[11] From the reading ἕλος σωθεὶς of the inferior Mss. the writer of a (late) Argument, which is found prefixed to the speech in A and N, made the curious deduction that the speaker's name was Ἕλος.

[12] Probably prisoners of war who were being ransomed by their relatives. It is surprising that no attempt is made to throw suspicion on one of these Thracians, as a motive would have been easy to find.

[13] These "witnesses" are not specifically referred to again. If they are included in those cited at the end of the paragraph, it is strange that nothing more is made of their evidence. In all probability the speaker is alluding to the witness for the prosecution who sturdily maintained that Euxitheus remained on board all night. See Antiph. 5.42.

[14] Weil's emendation is certain. Herodes and Euxitheus took shelter for the night on a boat bound for Mytilene. After the storm was over, the passengers returned to their own vessel.

[15] τὸ αἷμα(cf. τῶν προβάτων), because it had already been mentioned in the preceding evidence. Similarly with τοὺς ἀνθρώπους(infr); they had been referred to in the speech for the presecution.

[16] The references in the course of the speech to the two witnesses for the prosecution are confusing. The relevant passages are 29, 42, 49, and 52. From 49 it is clear that one was a slave and the other a free man, although he cannot have been a Greek, as he was subjected to torture by the prosecution (ibid). 29 suggests that the two were members of the crew of the homeward bound vessel on which Euxitheus and Herodes sheltered form the rain, and that after the storm they continued their voyage to Mytilene, where the relatives of Herodes immediately came aboard and took them into custody. This is supported by 52, which implies that Euxitheus parted from the men after the storm, he proceeding the Aenus, and they to Mytilene. 42, however, offers a difficulty. Euxitheus there says with reference to the free man: "he sailed in the same boat as myself, and was present and in my company throughout," a statement which on the face of it should mean that he travelled with Euxitheus from Mytilene to Aenus. There seems to be only one explanation of the inconsistency. Euxitheus must have been intentionally misrepresenting the facts in 42, as it was important to show that the favorable evidence of this witness was based upon a personal acquaintance with his movements and general behavior. If so, it seems not unlikely that the man was actually in the pay of Euxitheus. Can he have been the ἀκόλουθος of 24, sent back to Mytilene by E. and there detained by the family of Herodes?

[17] It should be noted that the witness was a slave who had been purchased by the prosecution (cf. previous note and Antiph. 5.47, init.).

[18] Cf. Antiph. 1.11, Prosecution of the Stepmother, and Antiph. 6.27, On the Choreutes, for a similar line of argument.

[19] The ἐλεύθερος of Antiph. 5.49. Since he is tortured, he cannot have been born a Greek. For further details as to both witnesses see Antiph. 5.29 note 3.

[20] If the manuscript reading is retained, this sentence will be the supposed answer of the prosecution to the question just put by the defence; but the introductory καὶ μὴν argues against such an interpretation. In view of the frequent mis-copying of perfectly common words elsewhere in the manuscripts, it is less likely that γε ἀγνοεῖν arose through ignorance from the rarity γεγωνεῖν, than that it replaced γε ἀκούειν through carelessness.

[21] Since, if his statements were true, he would adhere to them when examined by Euxitheus, and the prosecution would be able to take advantage of the fact in court.

[22] The evidence of inscriptions confirms this. Decrees regulating the relation between Athens and certain members of her confederacy have survived, from which it would seem that while the σύμμαχοι were left with a limited civil jurisdiciton of their own, criminal cases were transferred to the Athenian courts. Thus the Erythraean Decree (I.G. i2. 10 ff.) enacts that all cases of treason involving capital punishment shall be tried at Athens, the Chalcidian Decree (I.G. i2. 39) that cases arising from the εὔθυναι of a magistrate and involving exile, death, or ἀτιμία, shall likewise be tried at Athens, while the Milesian Decree (I.G. i2. 22) allows the local courts a jurisdiction extending only to cases which do not involve a penalty of more than 100 drachmas. It should be borne in mind, however, that although the trial of Euxitheus himself took place at Athens, the choice of such a forum was not necessarily determined by a similar decree transferring the criminal jurisdiction of the Mytilenean courts to Athens. Such a decree doubtless existed; but those which have survived appear to envisage only those cases in which the parties were both members of a subject-state, and it is very probable, though nowhere explicitly stated, that Herodes was not a native Lesbian, but an Athenian citizen resident in Lesbos as a cleruch. If so, there is nothing to prevent our supposing that the trial would have taken place in Athens in any event.

[23] i.e., (1) The slave could have been cited as a witness in court. (2) It is a criminal offence to put to death a slave belonging to someone else. (3) Anyone who commits such an act can be prosecuted for murder. (2) is of course a deliberate distortion of the facts, as the slave in question had become the property of the prosecution by purchase (cf. 47); and with it (3) loses its force.

[24] Clearly an addition by a reader who thought that the argument ought to be pushed still further. The syntax is harsh and the reasoning itself unsound; B had denied throughout, it is true; but A, as we have just heard, spent half his time denying, and the other half affirming; so he cannot be set against B.

[25] i.e., to Asia Minor.

[26] The speaker forgets that he denied this in Antiph. 5.39.

[27] The occurence of the rubric Μάρτυρες immediately after the words ὁ κίνδυνος αὐτῷ in the Mss. has led the majority of edd. to suppose that one of the usual formulae introducing witnesses has dropped out. But there are grounds for suspecting a larger lacuna. If the words καίτοι καλλίων γε ἦν ὁ κίνδυνος αὐτῷ form a complete sentence in themselves, they are both obscure and ambiguous. κίνδυνος might refer (a) to κινδύνῳ μεγάλῳ six lines above and bear the meaning "the danger into which L. would bring H. by prosecuting him." The gist of the sentence would then be "to endanger H.'s life by legal methods was a more creditable course for L. than to murder him." On the other hand, it might refer (b) to the risk (of failing to gain a verdict and so being fined) run by L. himself in prosecuting H. The speaker would then be saying in effect "it was more creditable for L. to risk losing a case at law against H. than to risk murdering him." Of the two alternatives (b) is the more probable. But Antiphon is not in the habit of being terse to the point of obscurity; and it is hard to believe that the sentence as he wrote it ended at αὐτῷ. For a suggested supplement see crit. note 3.

[28] i.e., a culprit is the first to suggest that someone else is to blame.

[29] The murder had been committed some forty-five years before (first half of 461). Ephialtes was an extreme radical, and in conjunction with Pericles was responsible for the violent attack made upon the prerogatives of the Areopagus in 462. His assassination was the result. Aristotle states that the crime was committed by Aristodicus of Tanagra, employed for the purpose by Ephialtes' enemies. This may well be true, as it suited Antiphon's requirements here to assume that the mystery had never been satisfactorily solved. Cf. Aristot. 35.5, Dio. Sic. 11.77.6, Plut. Per. 10.

[30] i.e., of slaves.

[31] Nothing further is known of the incident. The Hellenotamiae were ten in mumber and administered the funds of the Delian League.

[32] The accusation must have taken the form of an impeachment (εἰσαγγελία) before the Assembly. The task of the Eleven was to supervise the execution of the sentence.

[33] Mytilene had revolted from Athens some ten years previously, in 428.

[34] Although the τῆς ὑμετέρας γνώμης of the Mss., if retained and taken with ἥμαρτε, would give the sense "failed in what you expected of them," an expression for which there are parallels, συνεξαμαρτεῖν REQUIRES ἥμαρτε alone to balance it, and the repetition of γνώμη lines later is harsh in the extreme.

[35] See Thuc. 3.50. The walls of Mytilene were rased, her fleet taken from her, and the entire island, except for Methymna, divided among Athenian cleruchs. These drew a fixed rent from the inhabitants, who continued to work the land.

[36] The choruses mentioned were of course local, and performed at the Mytilenean festivals. The "services to Athens" amount to nothing more than the payment of τέλη(?harbor-dues). Professor Wade-Gery suggests to me that the εἰκοστή may be meant, a 5 per cent impost which replaced the tribute early in 413 (Thuc. 7.28). If so, the date of the speech must fall between the spring of 413 and the autumn, when news of the Sicilian disaster arrived.

[37] Or possibly Mytilene.

[38] The text of the manuscript is clearly unsound here. (1) The μὲν in the fourth line of Antiph. 5.78 has no answering δὲ. (2) The sense of the passage as it stands is in any case unsatisfactory. σύμβολα (l. 6)were special treaties regulating the settlement of private disputes, generally commercial in character, between the citizens of different states. Fragments of two such treaties have survived : Athens-Phaseils (I.G.i2 16 ff.) and Athens-Mytilene (I.G. i2 60 ff.); and in the first of these there is a reference to a third, Athens-Chios. It is quite certain, however, that agreements of this sort did not extend to enemy states, as the passage would suggest if the manuscript reading be accepted. Various corrections have been proposed. A. Fraenkel and Wilamowitz suppose a considerable lacuna which contained the words τοὺς δ' ἐς πόλιν συμμαχίδα διοκιζομένους, or the like. The objection to such a solution is that καὶ δίκας

ἀπὸ συμβόλων ὑμῖν δικαζομένους in l. 6 becomes otiose, as it is known that σύμβολα already existed between Athens and Mytilene. Better is Reiskes's τοὺς δὲ. We then have a contrast between Euxitheus' father, who is a loyal citizen of Mytilene under Athenian rule, and other Mytileneans who, since the revolt of Lesbos ten years previously, have either (a) shown their hostility to Athens passively by settling on the Asiatic coast in towns under Persian control or (b) shown it actively by remaining in Lesbos and initiating an unending series of lawsuits against the Athenian cleruchs who have become their landlords.

[39] The fact that an argument of this kind could be advanced in a court of law, shows, like the popular agitation over the mutilation of the Hermae, that the average Athenian of the time was far from being a rationalist.

[40] Oddly reminiscent of Aesch. Seven 602 ff.: ἢ γὰρ ξυνεισβὰς πλοῖον εὐσεβὴς ἀνὴρ ναύταισι θερμοῖς καὶ πανουργίᾳ τινὶ ὄλωλεν ἀνδρῶν σὺν θεοπτύστῳ γένει.

[41] Another reference to the argument that his case could be preperly tried only by a δίκη φόνου before the Areopagus. The "laws under which I was arrested" are of course the νόμοι τῶν κακούργων defining the scope of ἀπαγωγή for the κακουργία.

[42] Antiph. 5.87-89 appear, with slight modifications, in Antiph. 6.3-6. It is clear that we have here one of those loci communes which were part of the stock in trade of every λογόγραφος and could easily be adapted to different contexts (cf. Antiph. 5.14 ff. and Antiph. 5.38 ff., Antiph. 6.2, Antiph. 6.27, Antiph. 1.12 ff., and Andoc. 1.1, 6, 7, 9). The present passage stresses the gravity and the finality of a δίκη φόνου, a theme which was likely to find a place in most φονικοὶ λόγοι. Here, however, it is introduced a little awkwardly. The words δίκη φόνου (87 init .) refer, not to the present trial, which is an ἔνδειξις, but to the trial before the Areopagus which Euxitheus hopes will follow; and the word ὑμεῖς in the third line of 87 is used in the same general sense as in 90 (cf. Antiph. 5.90 note 1).

[43] The speaker is here thinking of the master who has killed his slave; the slave has no family to institute proceedings on his behalf (cf. Antiph. 6.4 f.). The argument of 87 as a whole sounds odd to modern ears; but it should be remembered that at Athens the defendant in a δίκη φόνου always had the option of going into voluntary exile before the court passed sentence. Hence it was possible to speak of "disregarding the sentence imposed."

[44] True only in a general sense. The present jury was composed of ordinary Heliasts; whereas the jury at a δίκη φόνου would consist of ex-arkhons, sitting as members of the Areopagus. Euxitheus is speaking as an alien, and by ὑμεῖς means "you Athenians."

[45] τῶν μαρτύρων is clearly an unintelligent gloss, added by a reader who felt that a genitive was needed to correspond to τῆς δίκης.

Speech VI. On the Choreutes

Introduction to 'On the Choreutes'

THERE HAS BEEN a considerable divergence of opinion as to the date of the Choreutes. It is clear from internal evidence that it was delivered one autumn, following the impeachment of a certain Philinus in the previous April (§ 12 et pass.); but the year within which the two speeches fell has been, and still is, a matter for dispute. On the one side we have a fragment of the Κατά Φιλινου, also the work of Antiphon, which consists of the words "to make all the Thetes hoplites" (τους τε θήτας απαντας οπλίτας ποιησαί); and it has been urged that such a measure could have been suggested only during the period of domestic demoralization which followed the Athenian defeat in Sicily in 413 B.C. Hence the Philinus is to be assigned to April, 412, and the Choreutes to the closing months of the same year. Confirmation of this date is sought in the political colouring of the Choreutes itself; the man who delivered it, it is argued, is clearly someone of oligarchic sympathies who is being attacked by his political enemies in revenge for his having exposed some months previously the corruption and jobbery rife among the officials of the popular government; and such attempts as his to discredit democrats and democracy fall most naturally within the twelve months which preceded the oligarchic revolution of 411. These arguments are not entirely convincing, however. In the first place, the evidence of the Philinus fragment is by no means conclusive. Apart from the fact that we are completely ignorant of the context in which the words which survive occurred, Thucydides in his account of the situation at the close of 413 and the beginning of 412 implies very clearly that the scarcity felt was not one of heavy infantry but of rowers for the navy; and it is not easy to believe that at such a moment it can have been proposed to train as hoplites the one class of citizens who were traditionally the source of man-power for the fleet. Nor again can overmuch weight be attached to the argument from the political situation of 412. Oligarchs were never slow to seize an opportunity of discrediting their opponents, and there is no reason to presume that the incidents referred to in the Choreutes could not have taken place at any time during the last half of the fifth century. More suggestive perhaps of a date somewhere in the region of 412 is the style of the speech itself, which is far less stiff than that of the Herodes and in which the artificialities of Gorgias and the older generation of rhetoricians are far less apparent. Recently, however, attention has been called to evidence of date of a rather different kind. The Choreutes contains certain references to the Athenian calendar, which, when related to what is otherwise known of the' system of intercalation in use in the last quarter of the fifth century, suggest that the speech must have been delivered in 419 B.C., i.e. before the *Herodes*.

It is impossible to examine this evidence in any detail here; but in brief it is as follows. §§ 44-45 of the Choreutes contain two indications of time: (a) the speaker was formally accused of φόνος before the Basileus on the fifty-first day after the latter took up office, i.e. on the 21st of Metageitnion, the second month of the Attic year: (b) he was Prytanis for the whole of the first Prytany of the year save two days (the implication being that he was forced to resign before completing his term of office, because of the charge of φόνος lodged against him with the Basileus). Now as in the latter part of the fifth century the opening Prytanies of a given year are known to have consisted of 37 days, the speaker must have held office for 35; and this gives the equation: Prytany I. 35 = Metageitnion 21: or, in other words, Prytany I. 1 = Hecatombaeon 16. The Council therefore assumed office in this particular year

sixteen days after the commencement of the civil year, an occurrence which was common enough, as the civil and conciliar years rarely coincided. It remains to discover in which years this particular discrepancy of sixteen days made its appearance; and the epigraphical evidence [Meritt's calculations are based upon data furnished by I.G. i2. 324, a fragmentary inscription containing detailed accounts of monies borrowed by the state from Athena Polias, Athena Nicê, Hermes, and the "Other Gods" during the years 426-422 B.C.] makes it clear that only 419 B.C. will meet the case. This is admittedly unsatisfactory in view of the marked difference in style between the *Choreutes* and *Herodes*; but the systematic variations in the Attic calendar have been convincingly demonstrated from the plentiful data available, and unless we are inclined to resort to arbitrary alteration of the figures contained in the MSS. of the *Choreutes,* we must rest content with the earlier date. It will be best, then, to assume, in default of further evidence, that the speech was delivered in the autumn of 419 B.C.

Although its language shows a considerable advance on the *Herodes* in suppleness and force, the argumentation of the *Choreutes* is less satisfactory. The issues with which it deals are far more complex, and much of the fact underlying it is assumed to be too familiar to the jury to need detailed repetition; thus even the narrative of the death of the boy Diodotus breaks off before the actual circumstances of the accident have been described. In addition to this, there is evidence that the concluding paragraphs are incomplete as we have them, and further references to certain important facts, which in the present speech receive a surprisingly brief mention, may well have been lost. The following is a reconstruction of the events leading up to the trial in so far as they can be ascertained from the speech.

Early in 419 an Athenian, whose name is unknown, but who probably belonged to the anti-democratic party which was to enjoy a short period of supremacy after the revolution of 411, discovered that the clerk to the Thesmothetae, in conjunction with three private citizens — Ampelinus, Aristion, and Philinus, was systematically embezzling public monies. He at once impeached all four before the Boulé; and it was arranged that the case should be heard during the last week in April. Meanwhile this same man had been selected as Choregus for the Thargelia, a festival held about the first of May, the chief feature of which was a competition between choruses of boys. He recruited a chorus and set aside a room in his own house for training purposes; and as he was himself too preoccupied with his approaching lawsuit to be able to supervise the boys in person, he appointed his son-in-law, Phanostratus, and three others as deputies. All went well until a week or so before the festival, when one of the Choreutae, Diodotus, was given some kind of mixture to improve his voice. It unfortunately proved poisonous, and he died after drinking it.

It was fully recognized by every one concerned that the death of Diodotus had been a pure accident. However, Philinus and his associates, whose trial was to begin three days later, saw at once that they could turn it to their own advantage. By putting pressure upon Philocrates, the boy's brother, they induced him to go to the Basileus without delay and enter a formal charge of homicide against the Choregus. This would of course have the effect of depriving him of the right to frequent public places until his case had been tried, and he would consequently be unable to proceed with his impeachment. Unfortunately, however, they had overlooked the fact that a *δίκη φόνου* had to be preceded by three preliminary inquiries, conducted by the Basileus and spread over a period of three months: and the same official had to conduct all three. It was now the last week of April; and as the Basileus went out of office on the twenty-

first of June, he had no time for three inquiries. He therefore refused to register the charge.

The four were not yet defeated. Philocrates was persuaded to appear before a Heliastic court without loss of time and there publicly avow that the Choregus had been responsible for his brother's death. The purpose of this move is not absolutely clear; it was probably a final effort to proclaim the fact that the Choregus was defiled and therefore debarred from conducting a prosecution; it was certainly not a second attempt to enter a charge of homicide, as that could not be done by merely appearing before a court in session. The Choregus retorted by pointing out to the court why Philocrates was attacking him in this fashion; and when Philocrates reappeared next day, the day fixed for the trial of the other four, and declared once more — very probably to the jury which was about to try them — that the Choregus was guilty of homicide and had no right to prosecute, he challenged him to an examination of the witnesses of the accident and offered to hand over his slaves for torture. Philocrates could do no more. He withdrew; and the trial took place. All four defendants were convicted and heavily fined.

No sooner was the trial over than Philocrates changed his tone. He apologized for his behaviour, and went so far as to ask for a formal reconciliation. His motives are not hard to discover. Not only had he had some kind of connexion with Philinus and the other three, as is clear from his readiness to oblige them, but he was involved in similar activities on a far greater scale elsewhere; and it was obviously in his interests to remain on friendly terms with a man who had shown how merciless he was prepared to be in exposing public corruption. The Choregus consented to a reconciliation; and for a month or so all was well. On July 7th, however, he became a member of the Boulé, and from July to August acted as Prytanis. During this period it came to his notice that members of no less than three boards of finance-officers, the Poristae, the Practores, and the Poletae, together with their clerks, were systematically embezzling monies over which they had control, and that certain private citizens — Philocrates among them — were enjoying a share in the profits. He immediately brought the matter before the Boulé and demanded an investigation.

The culprits acted quickly. If we are to believe the statement of the Choregus himself, a substantial bribe was offered to Philocrates as an inducement to reopen the matter of the death of Diodotus; but he probably needed little encouragement. He approached the new Basileus, and this time had no difficulty in registering his charge. The usual *πρόρρησις* followed, debarring the Choregus from intercourse with his fellow men until such time as his case should be tried; and on the 10th of August, while still a Prytanis, he was obliged to resign from the Boule and withdraw from public life. However, Philocrates had struck too late; attention had been called to the criminals, and an inquiry into their activities was held, as a result of which they were put on trial and convicted.

Naturally this did not quash the charge made against the Choregus. After the requisite *προδίκασίαι* he appeared for trial in the following November, probably before the court which sat επι Παλλαδιω. Antiphon composed his defence; and we have the first of the two speeches delivered. The final verdict is unknown, although it: is hard to believe that the defendant was not acquitted.

One problem remains: what was the charge brought against the Choregus by Philocrates? Such evidence as there is is to be found in §§ 16,17, and 19, where the following statements occur: (i) § 16 διωμοσαντο δε αυτοι μεν άποκτεΐναί με Διοδοτον βουλευσαντα τον θάνατον, εγώ δε μη άποκτεΐναί, μήτε χειρι εργασάμενος μήτε βουλευσας. (ii) § 17 αιτιωνται δε ουτοι μεν εκ τούτων, ώς αίτιος OS εκέλευσε πιείν

τον παῖδα το φάρμακον ἡ ἠνάγκασεν ἡ εδωκεν. (iii) § 19 πρώτον μεν αυτοί οἳ κατήγοροι ομολογουσι μή εκ προνοίας μηδ' εκ παρασκευής γενεσθαι τον θάνατον τω παιδί. To take (i) first: it is clear that βουλευσαντα τον θάνατον is directly contrasted with χειρι εργασάμενος, and that therefore the Choregus is charged with having been in some sense the principal concerned in the death of Diodotus. On the other hand (iii) indicates that the prosecution were not bringing a charge of wilful murder; if the accusation was one of βουλευσις φόνον, it was βουλευσις φόνου άκονσίον. This, then, is a different type of βουλευσις from that envisaged in Antiphon's first speech, on the Stepmother. There we have βουλευσis in its simplest and most readily intelligible form. A. who wishes to murder C, procures B to perform an act which will result in C's death. B may or may not know that the act will have this result. Whichever is the case, the responsibility must rest jointly with B and A. This became a recognized legal principle at an early date, although there are no grounds for supposing that at the time of the speech against the Stepmother it was felt necessary to draw a distinction in kind between the part played by the principal and that played by the accessory: both alike are φονείς, and the prosecutor argues throughout that his stepmother has committed murder, φόνος άκοθζιος was analysed in the same fashion. If A incites B to perform an act which unexpectedly results in the death of C, A and B are equally guilty of homicide. And it is clearly this principle which is invoked to prove that the Choregus was concerned in the death of Diodotus. Here too it is doubtful whether any clear distinction as yet exists between βουλευσις and πραξις; the prosecution appears to be trying to prove that the accused was a φονευς άκουσιος in much the same way as the stepson appeared to be trying to prove his stepmother guilty of φόνος εκουσιος in the earlier speech. But however that may be, we may conclude that Diodotus died as the result of the voluntary act of someone who performed that act in pursuance of certain general instructions given by the Choregus; Phanostratus, say, deliberately gave him a certain mixture to drink because he had been given orders to make the boys' voices as perfect as possible. So far this is intelligible enough. But there is a difficulty in § 17 (ii supra); there it is stated that the prosecution argue the Choregus to be guilty because the responsibility for the boy's death must lie with the person who ordered him to drink the poison, forced him to drink it, or gave it to him to drink. This suggests that they accused the defendant of having been immediately, instead of indirectly, responsible for the accident; and the Choregus assumes this to be so, when he replies that he was not even in the room when it happened. The explanation is probably to be found in the ambiguous phraseology of the charge and the natural desire of the prosecution to make as much play with it as possible. In actual fact, the defendant was accused of having given certain general instructions which, as interpreted by a second person, accidentally led to the death of a third. Is it surprising that his accusers should at some point in their speech have argued as though the responsibility was directly, instead of indirectly, his? Diodotus was dead, poisoned. He had been forced to drink the poison. Who had forced him to drink it? The accused, because it was in accordance with the instructions of the accused that measures were taken to improve his voice. It must be remembered that Philocrates was driven to prosecute, and had to make as strong a case as he could out of somewhat unpromising material; the Choregus had certainly been indirectly concerned in his brother's death, but the more confused the court became over the precise extent of his responsibility, the better.

Analysis

§§ 1-6. INTRODUCTORY. Excellence of the laws for murder: importance of returning a fair verdict: finality of that verdict. These opening paragraphs are largely composed of *loci communes* which were also used in the *Herodes.*

§§ 7-9. The prosecution have not confined themselves to the charge before the court. Unfairness of introducing irrelevant issues.

§§ 10-13. Narrative of the events which led up to the death of the boy Diodotus.

§§ 14-19. Refutation of the immediate charge. The defendant proves with the help of witnesses that he was not even present when the poison was administered.

§§ 20-24. Account of the first attempt of Philocrates to register a charge of homicide with the Basileus. Its bearing upon the impending trial of Aristion, Philinus, and Ampelinus explained. The refusal of Philocrates to accept the challenge of the speaker to cross-examine those who witnessed the death of Diodotus and to question his slaves under torture.

§§ 25-26. Digression on the surest methods of eliciting the truth from witnesses. The defendant's *πρόκλησις* had made it possible for the prosecution to employ these methods.

§§ 27-32. The witnesses are one and all agreed upon the innocence of the defendant; the importance of this fact is emphasized at length.

§§ 33-40. Further and more detailed explanation of the attempt of Philocrates to debar the Choregus from proceeding against Aristion and the other two, by registering a charge of homicide.

§§ 41-46. Refutation of the suggestion that the Basileus refused to register the charge because he had been tampered with by the speaker.

§ 47-51. Reason for the second and successful attempt of Philocrates to register his charge against the Choregus. The speech then closes abruptly without the usual Epilogos.

Speech VI. On the Choreutes

TRUE HAPPINESS FOR one who is but human, gentlemen, would mean a life in which his person is threatened by no peril: and well might that be the burden of our prayers. But well too might we pray that if we must perforce face danger, we may have at least the one consolation which is to my mind the greatest of blessings at such an hour, a clear conscience; so that if disaster should after all befall us, it will be due to no iniquity of ours and bring no shame; it will be the result of chance rather than of wrongdoing.

[2] It would be unanimously agreed, I think, that the laws which deal with cases such as the present are the most admirable and righteous of laws. Not only have they the distinction of being the oldest in this country, but they have changed no more than the crime with which they are concerned; and that is the surest token of good laws, as time and experience show mankind what is imperfect. Hence you must not use the speech for the prosecution to discover whether your laws are good or bad: you must use laws to discover whether or not the speech for the prosecution is giving you a correct and lawful interpretation of the case.[1]

[3] The person whom today's proceedings concern most of all is myself, because I am the defendant and in danger. Nevertheless, it is also, I think, of great importance to you who are my judges that you should reach a correct verdict in trials for murder, first and foremost because of the gods and your duty towards them, and secondly for your own sakes. A case of this kind can be tried only once[2]; and if it is wrongly decided against the defendant, justice and the facts cannot prevail against that decision. [4] Once you condemn him, a defendant must perforce accept your verdict, even if he was not the murderer or concerned in the crime. The law banishes him from his city, its temples, its games, and its sacrifices, the greatest and the most ancient of human institutions; and he must acquiesce. So powerful is the compulsion of the law, that even if a man slays one who is his own chattel and who has none to avenge him, his fear of the ordinances of god and of man causes him to purify himself and withhold himself from those places prescribed by law, in the hope that by so doing he will best avoid disaster. [5] Most of the life of man rests upon hope; and by defying the gods and committing transgressions against them, he would rob himself even of hope, the greatest of human blessings. No one would venture either to disregard the sentence passed upon him because he was sure that he had had no part in the crime, or to disobey the law if he knew in his heart that he was guilty of such a deed. He has to submit to the verdict in defiance of the facts, or submit to the facts themselves, as the case may be, even if his victim has none to avenge him. [6] The laws, the oaths, the sacrifices, the proclamations, in fact the whole of the proceedings in connection with trials for murder differ as profoundly as they do from the proceedings elsewhere simply because it is of supreme importance that the facts at issue, upon which so much turns, should themselves be rightly interpreted. Such a right interpretation means vengeance for him who has been wronged; whereas to find an innocent man guilty of murder is a mistake, and a sinful mistake, which offends both gods and laws. Nor is it as serious for the prosecutor to accuse the wrong person as it is for you judges to reach a wrong verdict. The charge brought by the prosecutor is not in itself effective; whether it becomes so, depends upon you, sitting in judgement. On the other hand, if you yourselves arrive at a wrong verdict, you cannot rid yourselves of the responsibility for so doing by blaming someone else for that verdict.

[7] My own attitude to my defence, gentlemen, is very different from that of my accusers to their prosecution. They, on their side, allege that their object in bringing this action is to discharge a sacred duty and to satisfy justice; whereas they have in fact treated their speech for the prosecution as nothingbut an opportunity for malicious falsehood, and such behavior is the worst travesty of justice humanly possible. Their aim is not to expose any crime I may have committed in order to exact the penalty which it deserves, but to blacken me, even though I am entirely innocent, in order to have me punished with exile from this country. [8] I, on the other hand, consider that my first duty is to reply to the charge before the court by giving you a complete account of the facts. Afterwards, if you so desire, I shall be pleased to answer the remaining accusations made,[3] as they will, I feel, turn to my own credit and advantage, and to the discomfiture of my opponents to whose impudence they are due. For it is indeed a strange fact, gentlemen: [9] when they had the opportunity of avenging themselves on an enemy and doing the state a service by exposing and bringing home to me any public offence of which I had been guilty, as Choregus or otherwise, not one of them was able to prove that I had done your people any wrong, great or small.[4] Yet at today's trial, when they are prosecuting for prosecution to the charge before the court,[5] they are seeking to achieve my downfall with a tissue of lies calculated to bring my public life into disrepute. If the state has in fact been wronged, they are compensating it not with redress, but with a mere accusation; while they are themselves demanding that reparation for a wrong which has been suffered by the state should be made to them in person. [10] Indeed, they deserve to win neither gratitude nor credence with these charges of theirs. The circumstances in which they are prosecuting are not such as to allow the state to obtain satisfaction if really wronged, and only so would they be entitled to its gratitude; while the prosecutor who refuses to confine himself to the charge before the court in an action such as the present does not so much deserve to be believed as to be disbelieved. I myself know well enough what your own feelings are; nothing save the facts immediately at issue would lead you either to condemn or to acquit, because only thus can the claims of heaven and of justice be satisfied. So with those facts I will begin.

[11] When I was appointed Choregus for the Thargelia,[6] Pantacles[7] falling to me as poet and the Cecropid as the tribe that went with mine [that is to say the Erechtheid],[8] I discharged my office as efficiently and as scrupulously as I was able. I began by fitting out a training-room in the most suitable part of my house, the same that I had used when Choregus at the Dionysia.[9] Next, I recruited the best chorus that I could, without indicting a single fine, without extorting a single pledge,[10] and without making a single enemy. Just as though nothing could have been more satisfactory or better suited to both parties, I on my side would make my demand or request, while the parents on theirs would send their sons along without demur, nay, readily.

[12] For a while after the arrival of the boys I had no time to look after them in person, as I happened to be engaged in suits against Aristion and Philinus,[11] and was anxious to lose no time after the impeachment in sustaining my charges in a just and proper manner before the Council and the general public. Being thus occupied myself, I arranged that the needs of the chorus should be attended to by Phanostratus, a member of the same deme as my accusers here and a relative of my own (he is my son-in-law); and I told him to perform the task with all possible care. [13] Besides Phanostratus I appointed two others. The first, Ameinias, whom I thought a trustworthy man, belonged to the Erechtheid tribe and had been officially chosen by it to recruit and supervise its choruses at the various festivals; while the second, . . ., regularly recruited the choruses of the Cecropid tribe, to which he belonged, in the

same way. There was yet a fourth, Philippus, whose duty it was to purchase or spend whatever the poet or any of the other three told him. Thus I ensured that the boys should receive every attention and lack nothing owing to my own preoccupation.

[14] Such were my arrangements as Choregus. If I am lying as regards any of them in order to exonerate myself, my accuser is at liberty to refute me on any point he likes in his second speech. For this is how it is, gentlemen: many of the spectators here present are perfectly familiar with every one of these facts, the voice of the officer who administered the oath is in their ears, and they are giving my defence their close attention; I would like them to feel that I am respecting that oath, and that if I persuade you to acquit me, it was by telling the truth that I did so.

[15] In the first place, then, I will prove to you that I did not tell the boy to drink the poison, compel him to drink it, give it to him to drink, or even witness him drinking it. And I am not insisting on these facts in order to incriminate someone else once I have cleared myself; no indeed — unless that someone else be Fortune; and this is not the first time, I imagine, that she has caused a man's death. Fortune neither I nor any other could prevent from fulfilling her destined part in the life of each of us. . . .[12]"

Witnesses

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[16] The facts have been confirmed by evidence as I promised, gentlemen; and you must let that evidence help you to decide which of the two sworn statements made,[13] the prosecution's or my own, reveals more respect for truth and for the oath by which it was preceded. The prosecution swore that I was responsible for the death of Diodotus as having instigated the act which led to it[14]; whereas I swore that I did not cause his death, whether by my own act or by instigation.

[17] Further, in making their charge, the prosecution invoke the principle that the responsibility rests with whoever told the boy to drink the poison, forced him to drink it, or gave it to him to drink. By that very principle, however, I will myself prove that I am innocent: for I neither told the boy to drink the poison, nor forced him to drink it, nor gave it to him to drink. I will even go a step further than they and add that I did not witness him drink it. If the prosecution say that it was a criminal act to tell him to drink it, I am no criminal: I did not tell him to drink it. If they say that it was a criminal act to force him to drink it, I am no criminal: I did not force him to drink it. And if they say that the responsibility rests with the person who gave him the poison, I am not responsible: I did not give it to him.

[18] Now accusations and lies can be indulged in at will, as they are at the command of each one of us. But that what never happened should be transformed into fact, that an innocent man should be transformed into a criminal is not, I feel, a matter which depends upon the eloquence of the prosecution; it is a question of what is right and what is true. Admittedly, with a deliberately planned murder, carried out in secret and with none to witness it, the truth can only be determined from the accounts given by the prosecutor and the defendant, and from them alone; their statements must be followed up with care and suspected on the slightest grounds and the final verdict must necessarily be the result of conjecture rather than certain knowledge. [19] But in the present instance, the prosecution themselves admit to begin with that the boy's death was not due to premeditation or design: and secondly, everything which happened happened publicly and before numerous witnesses, men and boys, free men and slaves, who would have ensured the complete exposure of the criminal, had there been one, and the instant refutation of anyone who accused an innocent person.[15]

[20] Both the spirit shown by my opponents and the way in which they set to work are worth noticing, gentlemen; for their behavior towards me has been very different from mine towards them from the outset. [21] Philocrates yonder presented himself before the Heliaea of the Thesmothetae[16] on the very day of the boy's burial, and declared that I had murdered his brother, a member of the chorus, by forcing him to drink poison. At that, I presented myself before the court in my turn. I told the same jury that Philocrates had no right to place legal impediments in my way by coming to court with his outrageous charge, when I was bringing suits against Aristion and Philinus on the following day and the day after: for that was his only reason for making such allegations. [22] However, I said, there would be no difficulty in provlng his monstrous accusation a lie, as there were plenty of witnesses, slave and free, young and old, in fact, over fifty in all, who knew how the drinking of the poison had been accounted for and were in complete possession of the facts and circumstances.

[23] Not only did I make this declaration before the court, but I offered Philocrates a challenge there and then, and repeated it the following day in the presence of the same jury. Let him take with him as many witnesses as he liked: let him go to the persons who had been present at the accident (I specified them by name): and let him interrogate and cross-examine them. Let him question the free men as befitted free men; for their own sakes and in the interests of justice, they would give a faithful account of what had occurred. As to the slaves, if he considered that they were answering his questions truthfully, well and good; if he did not, I was ready to place all my own at his disposal for examination under torture, and should he demand any that did not belong to me, I agreed to obtain the consent of their owner and hand them over to him to examine as he liked. [24] That was the challenge which I addressed to him before the court; and not only the jurors themselves but numbers of private persons also were there to witness it. Yet the prosecution refused to bring the case to this issue at the time, and have persistently refused ever since. They knew very well that instead of supplying them with proof of my guilt, such an inquiry would supply me with proof that their own charge was totally unjust and unfounded.

[25] You do not need to be reminded, gentlemen, that the one occasion when compulsion is as absolute and as effective as is humanly possible, and when the rights of a case are ascertained thereby most surely and most certainly, arises when there is an abundance of witnesses, both slave and free, and it is possible to put pressure upon the free men by exacting an oath or word of honor, the most solemn and the most awful form of compulsion known to freemen, and upon the slaves by other devices, which will force them to tell the truth even if their revelations are bound to cost them their lives, as the compulsion of the moment has a stronger influence over each than the fate which he will suffer by compulsion afterwards.[17]

[26] It was to this, then, and nothing less that I challenged the prosecution. Every means which mortal man finds it necessary to use in order to discover the true rights of a matter, they had the opportunity of using; not the vestige of an excuse was left them. I, the defendant, the alleged criminal, was ready to give them the chance of proving my guilt in the fairest possible way; it was they, the prosecutors, the professedly injured party, who refused to obtain proof of such injury as they had sustained. [27] Suppose that the offer had come from them. Then had I refused to disclose who the eyewitnesses were: had I refused to hand over my servants at their request: or had I been afraid to accept some other challenge, they would be claiming that those facts in themselves afforded to my detriment the strongest presumption of the truth of their charge. Instead, it was I who issued the challenge, and the prosecution who evaded the test. So it was surely only fair that this same fact should

afford me a presumption to their detriment that the charge which they have made against me is untrue.

[28] Further, I am certain, gentlemen, that if the witnesses present at the accident were testifying in the prosecution's favor and against me, the prosecution would be treating them as supremely important: they would be showing that such unfavourable evidence was proof conclusive. As, however, these same witnesses are testifying that what I say is true and that what the prosecution say is not, they urge that the evidence of those witnesses in my favor is untrustworthy; according to them, it is their own statements which you should believe, statements which they would be attacking as false, were I making them myself without witnesses to support me. [29] Yet it is strange that the witnesses who would be trustworthy, were their evidence favorable to the prosecution, are to be untrustworthy when it is favorable to me. Were I producing eyewitnesses when there had been none, or were I not producing the true eyewitnesses, there would be some ground for treating the statements of the prosecution as more trustworthy than my witnesses. But the prosecution admit that witnesses were actually present: I am producing those witnesses: and both I and all my witnesses are well known to have maintained from the very first day what we are repeating to you now. So what other means than these are to be employed to confirm what is true and to disprove what is not? [30] If a bare statement of the facts were made, but not supported by the evidence of witnesses, it might well be criticized for the absence of that support; and if witnesses were forthcoming, only to conflict with the presumptions furnished by the pleader, his opponent might well pass a corresponding criticism, should he so wish. [31] Now in my own case, you are being presented with an account which is reasonable, with evidence which is consistent with that account, with facts which are consistent with that evidence, with presumptions drawn immediately from those facts, and with two arguments of the greatest significance and weight in addition: [32] the first, the circumstance that the prosecution have been proved impostors both by themselves and by me: and the second, the circumstance that I have been proved innocent both by the prosecution and by myself; for in refusing to obtain proof of such injury as they had sustained when I was ready for an inquiry into the crime with which they were charging me, they were clearly acknowledging my innocence and testifying to the injustice and falsity of their own accusation. If I supplement the evidence of my own witnesses with that of my opponents in person, what other expedients, what other proofs are necessary to establish my entire freedom from the charge?

[33] I feel that both the arguments and proofs which I have put before you, gentlemen, would justify you in acquitting me; you all know that the charge before the court does not concern me. However, to confirm you in that knowledge, I will go further. I will prove that my accusers here are the most reckless perjurors and the most godless scoundrels alive: that they have earned not only my own hatred, but the hatred of every one of you and of your fellow-citizens besides, by instituting this trial.

[34] On the first day, the day of the boy's death, and on the second, when the body was laid out, not even the prosecution themselves thought of accusing me of having played any kind of criminal part in the accident: on the contrary, they avoided neither meeting me nor speaking to me.[18] It was only on the third day, the day of the boy's burial, that they yielded to my enemies and set about bringing a charge and proclaiming me to be under the usual disabilities.[19] Now who was it who instigated them? And what reason had those others for wanting to do such a thing? I must enlighten you on these further points.

[35] I was about to prosecute Aristion, Philinus, Ampelinus, and the secretary to the Thesmothetae, with whose embezzlements they had been associated, on charges which I had presented to the Council in the form of an impeachment. As far as the facts of the case were concerned, they had no hope of acquittal: their offences were too serious. On the other hand, could they but induce my accusers here to register a charge and proclaim that I was under the statutory ban, they would, they thought, be safely rid of the whole business. [36] The law runs that the ban comes into force as soon as anyone has a charge of murder registered against him; and if placed under it, not only should I myself have been unable to proeeed with my case, but once the party responsible for the impeachment and in possession of the facts failed to proceed, the four would gain an acquittal without difficulty, and the wrong which they had done you would go unpunished. I was not, I may say, the first against whom Philinus and his companions had employed this device; they had already done the same to Lysistratus, as you have heard for yourselves.[20]

[37] The prosecution started by doing their utmost to register a charge at once, on the day after the burial, before the house had been purified or the proper rites performed; they had taken care to choose the very day on which the first of the other four was to be tried, to make it impossible for me to proceed against a single one of them or present the court with any of their offences. [38] However, the Basileus read them the law, and showed that there was not sufficient time to register a charge or issue the necessary writs[21]; so I took the originators of the plot into court, and secured a conviction in every case — and you know the amount at which the damages were fixed. No sooner, however, did my accusers here find it impossible to give the help which they had been paid to give than they approached me and my friends with a request for a reconciliation, and offered to make amends for their past errors. [39] I took my friends' advice, and was formally reconciled to them on the Acropolis[22] in the presence of witnesses, who performed the ceremony near the temple of Athena. Afterwards, they met me and spoke to me in temples, in the Agora, in my house, in their own — everywhere in fact. [40] The crowning point was reached in the Council-chamber in front of the Council — heavens, to think of it! — when Philocrates here himself joined me on the tribune and conversed with me, his hand on my arm, addressing me by my name as I addressed him by his. No wonder that the Council was astounded to learn that I had been proclaimed under the ban by the very persons whom they had seen in my company chatting to me on the previous day.[23]

[41] And now I want your attention, gentlemen: I want you to cast your minds back; for I shall not use witnesses alone to prove the facts to which I am now coming; your own knowledge of how the prosecution have acted will itself show you at once that I am telling the truth. To begin with, they complain of the Basileus and attribute his refusal to register their charge to activities of mine. [42] That complaint, however, will serve merely to damage their case by suggesting that their statements in general are untrue; for after registering the action, the Basileus was obliged to hold three preliminary inquiries in the course of the three months following, only bringing the case into court during the fourth — as he has done today. Yet only two months of office remained to him, Thargelion and Scirophorion.[24] It would thus clearly have been impossible for him to bring the case into court during his own period of office; and he is not allowed to hand on an action for murder to his successor; such a thing has never been done by any Basileus in this country. So, as it was a case which he could neither bring into court nor hand on to his successor, he did not see why he should break your laws by registering it. [43] There is, indeed, one very striking indication that he did not rob the prosecution of their rights: whereas Philocrates

yonder tormented other magistrates who had to render account of their office[25] with vexatious complaints, he failed to come forward with any grievance when this particular Basileus, whose conduct, we are told, had been so outrageously high handed, was rendering account of his. What clearer indication could I present to you that Philocrates had suffered no injury from either myself or him?

[44] Moreover, after the present Basileus had come into office, there were thirty clear days from the first of Hecatombaeon onwards,[26] on any of which they could have registered their charge, had they wanted to; yet they did not do so. Similarly, they could have registered it any day they liked from the first of Metageitnion onwards. But even then they did not do so: they let twenty days of this second month by as well. Thus the total number of days in the present archonship on which they could have registered their charge, but failed to do so, was over fifty.[27] [45] Ordinarily, anyone who has not time enough under one archon <registers his charge as soon as he can under the next>. But the prosecution, who were perfectly familiar with the laws concerned and could see that I was a member of the Council and used the Council-chamber — why, in that very chamber itself stands a shrine of Zeus the Councillor and Athena the Councillor, where members offer prayers as they enter; and I was one of those members: I did as they did: in their company I entered all our other sanctuaries: I offered sacrifices and prayers on behalf of this city: nay more, I acted as a Prytanis for the whole of the first Prytany save two days[28]: I was to be seen sacrificing and making offerings on behalf of our sovereign people: I was to be seen putting motions to the vote: I was to be seen voicing my opinion on the most momentous, the most vital public questions. [46] And the prosecution were in Athens: they witnessed it: by registering their charge they could have debarred me from it all. In spite of that, they did not see fit to do so. Yet if their wrong was real, their duty to alike enough to keep the memory of it fresh and to make it their constant thought. Then why did they fail to register a charge? Their reason was the same as their reason for not refusing to associate and converse with me. They associated with me because they did not think me a murderer and they refused to register a charge for exactly the same reason: they did not think that I had either killed the boy, been concerned in his death, or had any part in the affair at all.

[47] Where indeed could one find fewer scruples or a greater contempt for law? Here are men who expect to persuade you to believe what they have failed to persuade themselves to believe, who bid you declare guilty the man whom they have themselves in fact declared innocent; whereas everyone else uses the facts to prove the worth of mere assertion, they use mere assertion for the purpose of discrediting the facts. [48] Indeed, if I had said nothing, established nothing, and produced evidence of nothing, but had proved to you the one fact that, whereas when paid to attack me the prosecution produced charges and proclamations, they frequented my society and were on speaking terms with me when there was no one to finance them, you would have heard enough to acquit me and treat the prosecution as the worst perjurors and the most I impious scoundrels alive. [49] What accusation would they hesitate to bring, what court would they hesitate to mislead, what oaths would they feel any compunction in breaking, after taking thirty minae, as they have, from the Poristae, the Poletae, the Practores, and the clerks attached to them, to bring me into court,[29] after driving me from the Council-chamber, and after swearing oaths so solemn, all because during my Prytany I learned of their scandalous malpractices, brought them before the Council, and showed that an inquiry should be instituted and the matter probed to the bottom. [50] As it is, they themselves, those who struck the bargain with them, and the parties with whom the money was deposited are paying the price of

their misdeeds[30]; and the facts have been revealed so clearly that the prosecution will find it difficult to deny them, even if they wish to; such is the lack of success which they have had.

[51] What court, then, would they hesitate to invade with their lies, what oaths would they feel the slightest compunction in breaking? The impious scoundrels! They knew that you are the most conscientious and the fairest judges in this nation; yet they come before you intent on deceiving even you, if they can, in spite of the solemn oaths which they have sworn.[31]

ENDNOTES.

[1] Cf. Antiph. 5.14.

[2] Cf. Antiph. 5.87-89.

[3] This promise is never directly fulfilled, but Antiph. 6.33 ff. deal with the general conduct of the prosecution.

[4] This is presumably a reference to the speaker's δοκιμασία when elected a member of the βουλή in the preceding June. All magistrates had to submit to an inquiry into their general fitness to assume public office before they were installed.

[5] Cf. Antiph. 5.11. There it is stated more explicitly that the διωμοσία ensured against irrelevant charges.

[6] The χορηγία was one of the λητουργίαι, or public duties, imposed upon the richer citizens by the state. A Choregus had to equip and train a chorus for one of the annual festivals, in this case the Thargelia, held in honor of Apollo and celebrated on the 7th of Thargelion (May 1st) by a competition between choirs of boys selected from the ten tribes, which were grouped in pairs for the purpose.

[7] Probably this is the Pantacles who appears as a lyric poet in a choregic inscription of the period (I.G. i(2). 771). Aristophanes also refers jokingly to a Pantacles who got into difficulties with his helmet at the Panatheniac procession on one occasion (Aristoph. Frogs 1036: first staged in 405); but it is not certain that he was the poet.

[8] See critical note 6.

[9] i.e. the Great Dionysia (τὰ ἐν ἄστει Διονύσια), celebrated every March with a procession, choruses of boys, and tragic and comic performances. The speaker had undertaken the training of a chorus for the festival in some previous year.

[10] The Choregus was empowered to inflict fines upon parents who refused to allow their sons to perform without good reason. The "pledges" mentioned would presumably be exacted from parents who did proffer some excuse. If the excuse proved unsatisfactory, they would forfeit their money.

[11] For embezzelment of public monies. See Antiph. 6.35.

[12] Some such phrase as καὶ μοι μάρτυρας τούτων κάλει seems to have been lost. Cf. Antiph. 5.61.

[13] For the διωμοσία cf.Antiph. 5.11.

[14] That βουλεύσαντα τὸν θάνατον is not to be taken in the sense of "wilfully caused his death" is clear from Antiph. 6.19.

[15] Antiph. 6.19 in the Greek consists of an intricate dependent clause without a main verb to complete the grammatical construction. By the time ἐξελέγχοιτο has been reached, the initial ὅπου has been forgotten.

[16] i.e. before an ordinary Heliastic court (δικαστήριον).

[17] A difficult sentence. Literally: "The compulsion which is present has more influence over each than that which is to come." The meaning seems to be: the torture which they are suffering at the moment (ἡ παροῦσα ἀνάγκη) forces them to speak in spite of the fact that they will inevitably be put to death in consequence of their disclosures (ἡ μέλλουσα ἀνάγκη). ἀνάγκη is used in two slightly different senses — (1) of torture: that which leaves a man no choice but speak. (2) Of a death which is certain.

[18] The force of συνῆσαν καὶ διελέγοντο can be best conveyed by a negative. The implication is, of course, that had the prosecution believed the speaker guilty, they would have avoided all contact with him for fear of being tainted with the μίασμα which rested on him. Cf. Antiph. 2.1.10.

[19] τὸ εἴργεσθαι τῶν νομίμων was the immediate consequence of a πρόρρησις. A suspected murderer had to withdraw from intercourse with his fellows until his innocence had been established or his guilt expiated. Cf.Herodes, Introduction.

[20] Nothing further is known of Lysistratus.

[21] προκλήσεις are writs summoning the witnesses for the prosecution and defence.

[22] Scheibe conjectured ἐν Διπολείοις for ἐν τῇ πόλει, on the ground that Harpocration quotes the word Diipoleia as occurring in this speech. The Diipoleia (cf. Antiph. 2.4) was an ancient festival celebrated annually in the first week of June on the Acropolis in honor of Zeus Polieus. Its date would suit the context; but the fact that the last part of the speech is apparently incomplete makes it possible that Harpocration is quoting from some lost passage.

[23] A reference to the sudden change of front shown by Philocrates when he saw that the Choregus had discovered his own activities.

[24] The dates are roughly as given in the Introduction. The Βασιλεύς went out of office on the 21st June: Philocrates attempted to register his charge in the last week of April. Thargelion and Scirophorion were the last two months of the Attic year.

[25] The εὔθυναι of a magistrate consisted of public examination of his accounts and general conduct at the end of his period of office. There was a corresponding δοκιμασία, or preliminary investigation of his fitness, before his installation.

[26] Hecatombaeon was the first month of the official Attic year; it extended from 22nd June to 21st July. Metageitnion followed it.

[27] The words “over fifty” look like a rhetorical exaggeration. For the bearing of this and the following section on the date of the speech, see Introduction.

[28] The βουλή was divided into ten sections, each representing a tribe. Each section took it in turn to act as presidents (πρυτάνεις) for a period known as a πρυτανεία(one tenth of the year) at meetings of both the βουλή and the ἐκκλησία. The πρυτάνεις themselves were under the presidency of one of their number known as an ἐπιστάτης who was selected by lot. It was he who put motions to the vote in the Assembly. The Choregus was clearly ἐπιστάτης during his Prytany.

[29] For an explanation of this see Introduction.

[30] Apparently it had come to light in the course of the investigations into the activities of the Practores, etc. that thirty minae had been promised Philocrates if his charge of homicide was successful. The money would be deposited with a third party, to be claimed by Philocrates when he had earned it.

[31] The repetitions in these closing paragraphs, and the absence of the usual ἐπίλογος make it probable that the end of the speech, as we have it, is mutilated.

End of Sample