

## Twelve Twists In Euthyphro's Case

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*S: What is the charge? What is the case about?*

*E: Murder, Socrates.*

*S: Hercules! I imagine, Euthyphro, most men don't know how things ought to be. I don't think just anyone would be able to what you are doing. This is a job for one far advanced in wisdom!*

*E: Yes, by Zeus—very advanced, Socrates.*

*S: Is it a case, then, of your father killing another relative? But I suppose that much is obvious. You certainly wouldn't be prosecuting your father for killing a stranger.*

*E: It's ridiculous, Socrates, for you to think it makes a difference whether the victim is a stranger or a relative. One should only consider whether the killer acted justly or not; if he acted justly, let him alone; if not, prosecute even a killer who shares your hearth and home. You are just as polluted if you intentionally remain under the same roof with a person like that, instead of purifying both yourself and him by bringing charges. The victim was a dependent of mine, and when we were farming in Naxos he acted as our servant. In a drunken rage, he killed one of our household slaves, so my father bound him hand and foot, threw him into some ditch, then sent a man here to inquire of a religious advisor what should be done. In the meantime, he didn't show any consideration to the man as he lay there bound, and neglected him, thinking that as he was a murderer it wouldn't be a big deal if he were to die—which is just what happened. He died from hunger, the cold and his bonds before the messenger came back from the religious advisor. Now my father and other relatives are furious that I am prosecuting him for murder on behalf of a murderer—when, they say, my father didn't even murder him! And besides, even if he had just completely murdered him the dead man, being a murderer, doesn't deserve a second thought. They say it is impious for a son to prosecute a father for murder—that's how wrong they are, Socrates, about how things stand in the divine realm with respect to holiness and unholiness.*

Plato, *Euthyphro* (4b-e)

Euthyphro and Socrates meet on the steps of the *basileus*' court. Socrates explains he is charged with corrupting the youth and impiety, Euthyphro that he is prosecuting his father for murder. Euthyphro—living up to his name: *euthu* (straight) + *phronesis* (wisdom)—regards the matter as clear-cut. The straight path lies open before him. It is an interesting exercise to work out *how wrong* Euthyphro is about this, not just on the ethical, conceptual plane where Socrates has little trouble tripping him up, but in a technical, legal sense.

What might have happened, had Euthyphro's case come to trial in ancient Athens, at the start of the 4<sup>th</sup> Century B.C.?

Well, *did* it? We have no record, but that proves nothing. Euthyphro appears to have been a real person, since he is referred to in passing in *Cratylus* (396D). 'The great Euthyphro' is a self-styled expert on religious etymologies. You might invent a character, for a dialogue like *Euthyphro*. But for Socrates to name-drop non-existent persons would be odd. Let's say he lived. Prosecuting your own father, on behalf of a stranger, would be regarded by the average Athenian as scandalous, impious behavior. As Euthyphro says: everyone thinks he is 'insane'. If you wanted to investigate the case hypothetically, invent a hypothetical prosecutor. It would be potentially slanderous to pen a literary work, alleging, of a named, real person who never did anything of the sort, that he did something of the sort. This gives reason to suppose the historical Euthyphro did—or at least talked of doing—something *like* what he is presented as doing in Plato's dialogue.

Then again, it could all be hypothetical. Plato is writing about things that happened a generation earlier. Human memory is short and the power of invention is great.

### Problem 1: Just the Facts

First, there is the small matter of the dead servant's actual guilt for murder. Whether the father killed an innocent man or, in a sense, extra-judicially executed a guilty one may make quite a difference. But Euthyphro does not deny the servant's guilt, so we may grant the man who died was a murderer.

Second, would a reasonable person have anticipated this man would die, before the messenger returned? What time of year was it? We don't know. The messenger would need to travel from farm to port, secure passage, embark, sail to Athens, consult,

return. Delays could be expected at every stage. We are talking not days but easily a few weeks. No one could think leaving a man tied in a ditch for *weeks*, without care, could result in anything but death. But perhaps the plan wasn't to leave him in the ditch the whole time but only until more suitable arrangements could be made?

What was the father *thinking*? Under Athenian law, questions of intention are paramount. What do *we* think he was thinking?

For starters: what did the father even *ask* the religious authorities, the *exegetai*? The case is complicated *now*, so seeking advice seems natural. But when the messenger set off, matters stood more simply: a murderer caught red-handed. Perhaps the 'what is to be done?' question had nothing to do with the man in the ditch, or only incidentally to do with him. Perhaps the father was asking after proper methods for ritually cleansing the farm after the death of the slave? (Is one of the roots of this family trouble that Euthyphro is resentful his father did not consult *him* concerning unwritten religious truths—the exegetes' competence, which is also Euthyphros' self-proclaimed specialty.) Or perhaps, as we tend to assume, the question was, indeed, whether it was the father's *legal* duty to bring the man to stand trial. This, we can imagine, would have been an unwelcome prospect: a murder charge takes at least three months to come to trial (see below). Possibly this particular case would have taken longer. Time is money; *money* is money. The father has lost his slave, his property. A servant is unlikely to have deep pockets to make recompense. If the father must take responsibility for bringing—laboriously *hauling*—the case to Athens, the costs are only going to mount.

The ditch affords, I think we have an immediate suspicion, a convenient range of quick outcomes. The man dies. When the messenger returns, perhaps with news that the father is obliged to take up the burden of an inconvenient prosecution, he can mock-lament this unforeseen accident that prevents him from doing his legal duty. Or perhaps the man doesn't die. Perhaps he frees himself from his bonds after a few very uncomfortable days. He creeps off into the night. With just a bit more luck, he will never be heard from again on the island of Naxos, and the father can mock-lament *that* unforeseen event.

The father is, on this reading, hoping to make a show of acting responsibly, while doing his best not to take *legal* responsibility. This is understandable: if there is no real doubt as to the outcome, a trial is a formality. At worst, the father is taking the straightest path to a correct result: death or enforced exile for a murderer. The father,

owner of the slave (the destroyed property), is the proper person to act. This is a case of the right person getting a correct result, albeit by unorthodox means.

### Problem 2 – Killing and Letting Die

Engineering possible death by exposure is a suggestive method. This is how the ancients dealt with unwanted infants, as any number of Greek myths, tales and dramas testify. We cannot be sure the practice was widespread, though it may have been *very* widespread; attitudes seem to have varied—quite as much as attitudes towards abortion today. In *Theaetetus*, Plato writes as though it is obvious exposure is rational practice, therefore mandatory to consider in any given case (160e-161a). Aristotle seems to regard it as necessary in the case of deformity, and socially necessary to control population, but concedes public sentiment may be so strong against that it may be banned in the latter case (*Politics* 7.4.16). Isokrates rails against “outrageously perverse and horrid crimes,” such as one can see enacted on the stage. He lists murder, incest, various bloody acts, and “abandonment of the newborn” (*Panathenaicus* 122).

Abandoned children were a popular literary trope, so the moral category ‘getting rid of inconvenient persons this way’ is ready and waiting. Exposure—leave them on the hill, in those woods—recommended itself to parents for the same reasons Euthyphro’s father may have hit upon it: letting die seems intuitively less bad than killing. ‘It was not *I* who did away with the child but the elements, the animals. Perhaps the child is not even dead. If it is dead, it at least might have lived.’ One hopes to keep one’s hands clean by interposing insulating layers of uncertainty and passivity.

If myths and stories are any guides, those who leave others to die may, after the passage of years, face the sudden wrath of a grown child—as indeed is happening to Euthyphro’s father, ironically enough, even though his child is not the one he left in that ditch. Not that the servant was an infant. But he is, in a certain sense, like one. A newborn infant has not been named, has not yet been initiated into the circle of the family and society. It is only this ‘outside the law’ status that makes infanticide acceptable, if anything does. This man in the ditch (so one might creatively reason) *excluded himself* from society’s circle, by his bloody deed. He is an outlaw.

Obviously these two moral models of the man in the ditch—justly executed and pardonably ‘let die’—cannot be maintained together. Neither can really be seriously

maintained to be *quite* satisfactory on its own. But the human mind might clutch at both, by way of trying to claw its way out of the ditch of inconvenient duty.

This brings us to our final, factual possibility. It can hardly be ruled out that the death really was honestly unintended, although surely somewhat negligent. The father's incoherent approach—throw him in the ditch *for weeks?*—might be due to the fact that, in difficult situations, when people have found no satisfactory way out of their troubles, they often do strange things that make no sense.

### Problem 3: Time and Jurisdiction

It happened on Naxos. This means Euthyphro and his father were part of the Athenian cleruchy there. They were colonial occupiers; part of a group of Athenian citizens settled to ensure the Naxians stayed within the sphere of Athenian naval hegemony. But Athens lost the war, and its empire, in 404 BC. Now it is 399 BC, because Socrates' case is just coming to trial. This means the case Euthyphro means to bring against his father is *at least five years old*, perhaps older. And it concerns events on an island over which Athens no longer claims any jurisdiction.

None of these facts are mentioned in the dialogue, but it would have been obvious to Plato's readers that we must be talking about events on two sides of a significant historic divide: the time when Athens had an overseas empire, before the democracy fell; the year Socrates was executed, after democracy was restored. Euthyphro is dredging up old history, which can only make his case appear in an even stranger light than it already does.

What are the attenuating effects of 'long ago, and in another country' in such a case? The Athenians are clear there is no statute of limitations on murder, but this case is almost a parody of the sort of case they would be *wanting* to let in, by allowing an indefinitely long time-frame. In a system in which prosecution is semi-public, semi-private—in which it is the duty of family to bring suit—you may have to wait for the prosecutor to grow up. A young son might pursue his father's killer only after he reaches adulthood. That is entirely proper. But a son who waits years to prosecute his own flesh and blood would be a cold, strange thing. That Euthyphro is the very picture of hot enthusiasm makes the picture stranger still.

As to jurisdiction: the servant apparently has no Athenian family to prosecute on his behalf. Let's suppose he was a Naxian. Should an Athenian in Athens, who killed a

Naxian on Naxos, who killed an Athenian (slave) on Naxos, be tried in Athens or on Naxos? Before 404 BC the answer would probably have been: in Athens. There were, although we don't know much about it, Athenian courts to hear cleruchy cases. (Apparently they only heard cases at a certain time of the year, making it even more inconvenient to bring a murder charge, potentially). But there are no cleruchy courts in the restored democracy. We confront an awkward, jurisdictional straddle.

#### Problem 4 Euthyphro's Standing To Bring Suit

Is it even *possible* for a son to bring suit against a father, on behalf of a victim not part of his family?

We have a record of a speech, one actual case, that bears on this question; a case that, furthermore, gives some idea what advice from the exegetes—those religious authorities Euthyphro's father consults—might have been like. The speech is attributed to Demosthenes (D.47), *Against Euergos and Mnesiboulos*.

The speaker is a city official, *trierarkhos*, whose duty is to collect funds for trireme construction. The trouble began when a certain Theophemos refused to pay up. There was a fight, then lawsuits, both parties charging the other with 'striking first'—that is, assault. Then there was that business with the alleged witness and the question of who was, or wasn't, willing to have her come forward to testify. Theophemos won and the dispute subsequently evolved into a perjury charge against Theophemos' brothers-in-law (allegedly they lied about that witness.) Now comes the element of the case that bears on our concerns. When Theophemos won a judgment in his assault case, the *trierarkhos* refused to pay up. Theophemos and his brothers-in-law entered his house, while he was away, intending to extract payment in whatever form they could manage to carry it away. The speaker's old nurse attempted to hide a single cup but it was snatched away from her. She was injured and, later, died of those injuries. The speaker relates that he consulted the exegetes about whether he has standing to bring suit for murder. He relates what he was told.

The difficulty is this: the woman was a former slave, who had belonged to the speaker's father. Had she still been a slave at the time of her death, there would be no problem. The speaker could prosecute on her behalf; indeed, would plausibly have a positive duty to do so. But she was freed, long since. The woman moved away, married.

Her husband died and she retired back into the household of the son of her former master, whom she had nursed as a child. So: she is *like* family, but not, strictly, family.

What does the relevant Athenian law say? It says that family of the victim is obliged to bring suit in a case like this. The distance this duty grows, out the branches of the tree, is narrowly specified: proclamation (initiation of proceedings) is to be made by one who is at least first cousin, once removed (son of a cousin). Prosecution may then be shared more widely within the *phratry*—official, civic clan. Every Athenian has a *phratry*. But the trouble with a law that says some X is *obliged* to do something is that it does not establish whether some Y, who is not X, might be *permitted* to do this thing. Obviously if there *is* some X prepared to do his duty, Y's services will not be needed. But suppose there is no X?

The exegetes take a delicate line. Would the speaker like them to expound only his strict, religious duty? Or would he like them, as well, to give practical advice about what is 'expedient'? He would like both. Very well: he should proclaim, in an appropriate manner, at the woman's grave. He should bring his spear, signifying the violent manner of her death, and call out for relatives of the victim to come forward to take action against 'the doers and killers'. Beyond that—now comes what is expedient—the case is not his *legal* affair. He should endure this misfortune as he may, get his revenge in some other way, if he must. (Note: the exegetes do not seem to be strictly *authoritative* to do more than tell you how to conduct a funeral. Is this evidence that, perhaps, that is all Euthyphro's father ever asked? How should I bury this slave?)

Why would it be 'inexpedient' to do more? Perhaps because the speaker has no chance of winning, because he has no standing to bring suit? That is not what the exegetes imply. They suggest he *may* lose. But they also make the point that, even if he wins, he will be unpopular. The speaker will look like he is getting back at his enemy, by abusing the spirit of the homicide statute, which aims to make these cases family affairs, whatever the letter may be stretched to allow.

Apply this to Euthyphro's case. It may be possible for him to prosecute on behalf of someone who is not part of his family. But if it would be unpopular to prosecute on behalf of someone who nursed you like a mother, lived in your household, died trying to defend it, how much worse, in Athenian eyes, to prosecute on behalf of a strange murderer against your own flesh-and-blood? Euthyphro's case will be deemed a gross

violation of the *spirit* of the law. But, to repeat, it is not clearly inconsistent with the law's letter.

One final remark about the case of the dead former slave. Note the degree to which the justice system countenances what we would consider egregious vigilantism. It is not particularly shocking, apparently, that a man should break into another's house, to recover damages awarded in a court case. It is *only* an issue because the old woman died. Furthermore, the exegetes are apparently not above hinting, in their at least semi-official capacity as religious-legal advisors, that it might not be inappropriate for the speaker to seek *extra-judicial* revenge. How likely is it, then, that the exegetes would fundamentally disapprove of a bit of convenient justice, perpetrated to a passive nicety, far from town, by means of a ditch and a spot of cold weather?

On the other hand, they would hardly suggest that someone should *not* do his strict duty, even if that were expedient. Let us consider.

#### Problem 5 – The *basileus* will have to make a decision

The *basileus*—king-archon—is an elected official in charge of managing religious affairs for the city. He will hear the case and, if it has plausible merit, forward it to an appropriate court, where he will also preside, perhaps cast a vote with other members of the jury, but not exclusively judge. The minimum three-month delay occurs at this point. The *basileus* conducts three pre-trial hearings at one-month intervals (so he should not take up any case within three months of the end of his one-year term. More potential delay, if you happen to catch a murderer too near the end of the year.) Beyond permitting the *basileus* to determine which court will be proper, this delay deters frivolous suits and exposes the demerits of hopeless ones. Accusers may withdraw. The accused may voluntarily go into exile. And, one assumes, it tacitly encourages solving problems in more 'expedient' manner, where possible.

Might the *basileus* have the authority simply to dismiss Euthyphro's suit—that is, refuse to hear it at all? Or, after the pre-trial hearings, declare it to be of insufficient merit to come to trial? It is not clear he could do either of these things. We have one case of a *basileus* who refused to take a case because his term in office was ending (*Ant.* 6.42). The reason given for refusing was simply that the law says a *basileus* cannot pass a case to his successor, ergo he could not take up a case he could not legally conclude in his term. There is no suggestion that the *basileus* has any positive discretion in taking

cases, beyond that. Let's suppose the *basileus* is unwilling or unable to dismiss Euthyphro's suit, and unable to discourage Euthyphro even by telling him (what is surely true) that his chances are very uncertain. Which court might hear the case? There is a range of possibilities, all of which pose problems.

#### Problem 6 – On the Areopagus?

Cases of *intentional* homicide are handled 'on the Areopagus', that is, by the Areopagite council composed of ex-archons. They do not hear cases in which the victims are slaves or non-citizens, however. If the dead servant was a non-citizen, this will not be the court for Euthyphro's case. Then again, it *is* possible, for all we know, that the servant was a citizen, none of whose relatives are prepared to step forward (the man was a murderer, and it all happened far away.) Let us just suppose he was a citizen, because there are interesting points to be made. Euthyphro's father has, by accident or design, contrived to land himself exactly on the line between intentional/non-intentional, as killings go. Consider two cases: a woman gives a man what she thinks is a love potion, which turns out to be poison. She is not convicted of intentional homicide. A man strikes another in a fight. The man did not mean to kill, but intended to harm. Had the blow proved fatal, the man would have been guilty of intentional homicide. Tying someone up and leaving them in a ditch is, plausibly, halfway between. Euthyphro's father can at least argue—as a man who throws a punch cannot—that he meant no harm. No one can say the man should not have been *restrained*. This is not wholly plausible, but would be difficult to disprove.

A further point: in listing the sorts of cases heard by the Areopagus, Aristotle distinguishes deliberate killing and deliberate poisoning that causes death. But isn't deliberate poisoning that causes death just one *way* of deliberately killing? In the Greek, the first term connotes 'doing to', 'sticking it to'. Poison *might* be considered distinct because it is, in a sense, less overtly violent; less likely to get 'blood on your hands'—ritually serious matter. Poison is added to the list to make clear it is, indeed, considered to be as serious. The reason this might be significant, in Euthyphro's case, is that 'murder by ditch' is *not* added to the list. There is a sense in which this is not a self-evidently *possible* mode of intentional killing, under Athenian law. The father's desire to keep his hands clean by 'letting happen', rather than doing, may aim at a legal loophole. A society

that tolerates—tacitly or explicitly—infanticide by exposure will not *expressly* criminalize intentional exposure that leads to death.

Problem 7 – At the Palladion?

If the Areopagus is not the proper court, the Palladion might be a more appropriate venue. The *ephetai*, jury of 51 (men over fifty, of virtuous reputation; or, possibly, chosen by lot; or, possibly, chosen by lot among those of virtuous reputation) hear charges of unintentional homicide and ‘planning’. There are a number of ways of being charged with a lesser crime than intentional killing by involving oneself, or conspiring, without doing the deed oneself; or by attempting and failing.

Charging Euthyphro’s father with ‘manslaughter’ or ‘negligent death’, as we would say, would make intuitive sense. Is there any absurdity in trying the case at the Palladion?

There are two problems. First, per above, the case plainly concerns events that happened before the restoration of Athenian democracy, in 403 BC. There has been, famously, an amnesty. That would cover Euthyphro’s father, except that the amnesty specifically excludes cases of ‘homicide *with one’s own hand*’. (This could be either intentional or unintentional, I take it.) Suppose, as is plausible, Euthyphro’s father is only guilty of ‘planning’ this thing; he *ordered* the servant to be tied and ditched. Will the trial turn out to hinge on whether the father himself *laid hands* on the accused? And, if so, whether causing death by throwing someone into a ditch constitutes not just causing death but killing *with one’s own hand*?

Second, the punishment for unintentional homicide is, invariably, exile. When the victim is a non-resident non-citizen, which may be the case, this is peculiar for two reasons. The point of the punishment is to ensure the victim’s family—in the most extended sense—need have no inappropriate contact with the killer. But, of course, sending Euthyphro’s father out of Athens will have no tendency whatsoever to keep him apart from his victim’s family, if that family is either nonexistent or on Naxos. The father might even travel *to* Naxos, in exile. And there will be no procedure for the father to petition to *end* his exile. Standardly, the victim’s family will have discretion to permit the exile’s return at a later date. If there is no family, 10 members of the *phratry* may elect to allow it. Every Athenian belongs to a phratry. No non-Athenian does. So the father’s

exile, in addition to being conspicuously functionless, in religious terms, would be unduly punitive, due to an inevitable procedural break-down in the pardon phase.

Still, should Euthyphro's father deny that he *intended* the man's death, he might well find himself defending himself in the Palladion. Or he might leapfrog this court for either of two others, where his prospects might look better. Or not.

### Problem 8 - the Delphinion?

The Delphinion is another court, also juried by the *ephetai*, where admitted killings alleged to be legal are judged. Cases would include: accidental killing of a fellow soldier in battle; accidental death in sporting events; doctors whose patients die; anyone exiled for homicide, found on Athenian territory, may be killed with impunity; anyone attempting to set up a tyranny may be killed with impunity; killing of a wife or her lover for adultery; killing in self-defense, or in defense of one's property. So, for example, if Euthyphro's father had impulsively struck the servant dead on the spot where the servant struck the slave, that would have been legal (at least arguably.) But you cannot catch your wife with another man, then premeditate killing them at a later date. One should bring criminals to court, if circumstances permit.

It might seem the father would still be on fairly solid ground here. He certainly *feels* he acted justly, binding the murderer and throwing him in the ditch. But, of course, one cannot argue *both* that a killing was unintended *and* that it was intended to be just. So he would have to tread carefully. Euthyphro might take his stand here as well, with a perverse makes-sense-until-the-very-end-when-it-all-falls-apart coherence. Even if his father killed justly, there should *still* be a trial. The existence of a court like the Delphinion is a standing argument for this proposition. One must have a chance to clear one's name, cleanse oneself. A trial is a religious ritual. That's why the *basileus*, in charge of religious affairs, is the one to hear homicide charges. There is no paradox in the proposition that even a just killing *pollutes*. Many things pollute, especially things associated with blood: childbirth pollutes. If one thinks a person has committed a just killing one should "let him alone," as Euthyphro says. That is, one should not *just* not prosecute but actually fastidiously disassociate, until he is cleaned up. But this is not really an option for a son, obliged to dwell under the same roof with a father who shows no inclination to 'clean up his act'. So, since he cannot 'let him alone', Euthyphro is peculiarly compelled not *even* to 'let him go'.

Of course, this is hypothetical. Euthyphro is not preparing to argue that his father is a *just* killer, in need of requisite ritual scrubbing. He insists the killing was unjust. Perhaps it would make more sense for Euthyphro to shift to the other foot. Arguing that his father must stand trial precisely *because* what he did was just might seem less impious. But then again: those who bring accusations heard in the Delphinion are, apparently, supposed to think the accused has *not* killed justly. So making more sense would oblige Euthyphro to take less action. Cleanliness, via the Delphinion, is next to wrongliness, in the sense that *someone* must bring a wrongful accusation before a rightful acquittal can be arrived at. (It is, admittedly, not entirely clear this is the case. Perhaps there is a way to arrange, as it were, a purely ‘ritual’ trial and acquittal, aimed at removing pollution, with someone merely playing at prosecutor. But surely there would be oaths. What would the prosecutor swear, if he didn’t really believe his prosecution had merit?)

The final irony is this: it is not clear the father can *legally* defend his actions, however just. The Athenians, it would seem (but there is uncertainty), had a law commanding themselves ‘to kill neither justly nor unjustly’ except per that list above—which does not include exceptions in cases of extrajudicial killing-by-ditch. It might be that the court would find that what the father did was *just*, since the man was a murderer, but *illegal*, in which case he could not be acquitted in the Delphinion. This is a possibility neither Euthyphro nor his family seem to be considering. It would not be a pleasant prospect. The father would not like to be found guilty, and presumably Euthyphro would not like to admit that he was prosecuting his father for acting justly.

#### Problem 9 – the Prytaneion?

The Athenians had a court for trying unknown killers, inanimate objects and animals. This is the Prytaneion, presided over by the *basileus* and *phylobasileus* (lesser official.) A stone is thrown and kills a man. The ‘doer’ may be convicted, even if unknown. A tree falls and kills a man. The tree may be convicted. It will be carried and cast beyond the border. By modern standards holding a trial for an inanimate object is very strange. It is probably best to think of the function of the Prytaneion as located at the crossroads of ritual, contagious magic, criminal forensics and public health and sanitation. People do not like to keep objects associated with bloody death around. If one of your kitchen knives was used to kill someone, you would not keep it around to

slice your bread, even though it has been washed and is a perfectly good knife. Also, if there is some physical hazard, it seems reasonable to try to eliminate it. The problem might recur. This is not just ritual but prudence.

It would be bold, but Euthyphro's father could make a case that 'the elements' killed the man in the ditch. I will not bother to speculate about the likelihood of this long-shot legal strategy succeeding. But, to bring up the case of infanticide a final time, the idea of blaming the 'elements', or wild animals, for the death of an intentionally exposed human, is not without cultural precedent. Also, as noted, it seems that 'murder by ditch' is not a possible mode of *intentional* killing. But then how can it be a mode of killing at all, which really leaves only 'the elements did it'. Would this sort of argument be acceptable? Probably that would largely depend on whether one *wanted*—or felt it socially necessary—to find it acceptable.

#### Problem 10 – *Apagoge*?

There is a specific procedure—*apagoge*—by which non-relatives of a victim 'arrest' a killer, who will taken to the authorities, the 'Eleven'—Athenian police—jailed and eventually stand trial before a regular jury of citizens. This is not the procedure Euthyphro is undertaking, because he is going to the *basileus*, but it is interesting to consider.

Two criteria must be met: the killer must have entered a holy place, or the *agora*, or done something else on the list of things the Drakhonian law expressly forbids to killers (above and beyond forbidding the killing itself, obviously.) By spreading his pollution in this way, the killer is making a conspicuous 'public health' issue of his private guilt. By implication, it would not be permissible to make someone submit to *apagoge* if he were simply sitting home all day, however guiltily.

Second criterion: the killer must be 'manifestly' guilty. This is an unclear condition, and there do seem to have been problems interpreting it, in practice. It is motivated, at least in part, by the consideration that those arrested will be jailed until trial, whereas in other cases the accused is free until trial, although forbidden 'the holy things' and 'the legal things' during this period, per that Drakhonian list.

If the accuser cannot get at least a fifth of the votes at the trial, he shall face a stiff fine: 1000 drachmae.

For what it is worth, this procedure is probably unavailable to Euthphro. He is concerned about his father polluting their *home*, not any of those public places; and the guilt is probably not sufficiently 'manifest'. Yet this procedure is a nice expression of the values Euthphro says he is championing: if a killer is 'polluting' innocent people, that is a serious enough problem that someone ought to step in, even someone not a relative of the victim.

### Problem 11 - The Oaths

In the event that Euthphro and his father should find themselves facing off in the Areopagus or Palladion, there will be a tragic-comic moment at the start. Both will swear solemn oaths. Here is Demosthenes (D 23.67-8), on what will happen 'on the Areopagus':

First the man who accuses someone of such a deed will swear an oath invoking destruction on himself and his family and his house, and no ordinary oath either, but one which no one swears on any other subject, standing over the cut pieces of a boar, a ram, and a bull, which have been slaughtered by the right persons and on the proper days, so that every religious requirement has been fulfilled both as regards the time and as regards the executants. And after this the man who has sworn this solemn oath is not to be trusted even then, but if he is proved to be lying he will bring perjury home to his children and his family and will not gain anything by it at all.

Then the defendant will swear as well. Apparently something similar will happen at the Palladion. At the conclusion of a trial there, writes Aiskhines, the victor will speak in thanks, offering cut pieces to the jurors who voted for him. They voted truly; he spoke truly; if it is not so, let destruction fall on himself and his house.

It is this element of elaborate sacrifice that distinguishes these scenes from those of other oath-takings. Invoking destruction on family and house, if one speaks false, is not peculiar to homicide trials. That alone would be quite bad enough, of course, when both parties are from the same family and house. But it is a nice, extra touch that Euthphro, self-professed expert on matters sacrificial, may manage to engineer in such nice, public, ritually airtight manner a costly, guaranteed lose-lose bargain with the gods.

(In the dialogue Socrates innocently wonders how we mortals have managed to negotiate such a favorable balance of trade with the gods. They give us so much, we apparently give them so little. In this case, maybe *that* at least won't be a puzzle.)

To put it mildly, the law is *not* prepared to deal with sons prosecuting fathers for homicide, at least not in a way that spares their houses from Atreus-grade doom and trouble.

### Problem 12 – Filial Impiety

We tend to assume that Euthyphro has already made a solid start, tearing apart his family and house, just by dredging up this old case and bringing it to trial. There is one further legal mechanism to enforce these developments. Even if Euthyphro wins—and most certainly if he loses—someone might subject him to *apagoge*. Any citizen could do so. Demosthenes (D.24.105):

If anyone is arrested, being caught maltreating his parents, or evading military service, or going where he should not after a proclamation has been made to keep him away from the legal things, the Eleven shall imprison him and bring him before the people's court, and anyone who wishes, of those who have the right, shall be the prosecutor.

It does not seem impossible that prosecuting even a guilty father could be regarded as maltreatment. *Both* father and son could end by losing court cases.

### Conclusion

Let me give credit where due. This essay began life as a brief commentary on Aristotle's *Athenian Constitution*, 57, with an eye for applying what is said about the workings of Athenian courts to Euthyphro's case. Then I discovered *Athenian Homicide Law In the Age of the Orators*, by Douglas M. MacDowell (Manchester, 1964), which—as one reviewer remarked—“could be called an extended commentary on *Ath.pol.* 57.” MacDowell's research has stood the test of time. I have gleaned such of my legal facts as do not come out of Aristotle from MacDowell, with just a few exceptions. This chapter could be called an extended application of MacDowell to Euthyphro's case, which he mentions but does not consider in depth.