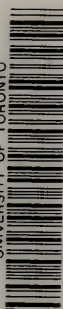


UNIVERSITY OF TORONTO



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POINE

A STUDY IN ANCIENT GREEK BLOOD-VENGEANCE

By

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*Rien de ce qu'ont pensé les Hellènes n'est indifférent
à l'histoire de la civilisation.*—GLOTZ

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PREFACE

It has not been my purpose in writing this book to occupy myself in expanding or discussing some articles written on Greek criminal law in a learned dictionary of antiquities. While it is true that ancient law, however crude and obscure its expression, is not so repulsive, so inhumanly technical as medieval or modern law, and while it is also true that a writer on Greek blood-vengeance cannot avoid an occasional reference to legal formulae and technique, nevertheless I feel that a merely legal treatise would not advance the prospects of Greek education or our knowledge of Greek civilisation, for the simple reason that no one but a professed student of ancient law could be induced to read it !

This work is intended rather as a supplement to the study of Greek literature, history, and archaeology. The first part contains an analysis of important elements of Homeric civilisation, an account of the different strata in the Homeric society and of the religious beliefs and practices of the Homeric Greeks. This section owes much to the pioneer work of Ridgeway and of Leaf ; it carries, so to speak, into remote corners and crevices the light which their genius has thrown on the general nature and structure of early Greek society.

The second part is concerned with the Middle Age of Hellenism (1000 B.C.—600 B.C.) : it is an attempt to explain the social and religious evolution of the Hellenes and to interpret the homicide laws of the historical period in the light of that evolution. This section is inevitably the most ' legal ' portion of the work, but an effort is made, even at the cost of what might appear excessive repetition, to avoid an unduly technical exposition, and the literary aspect of the subject is constantly emphasised.

The third part is an enquiry into the origin and development of the legends which are found in Attic tragedy. These

legends are permeated with references to homicide, and I have attempted to render less obscure and difficult the problems of blood-vengeance which they contain. As such an attempt would be utterly impossible without a previous discussion of the homicide laws of Greece, the account of these laws which I have given in the second part of the work should be regarded as a necessary preliminary to the subsequent analysis of these legends.

The extent of my indebtedness to modern writers on this and kindred subjects is sufficiently indicated in the footnotes and the second section of the Index. I must, however, express, in addition, my obligations to Professor Goligher, of Trinity College, Dublin, for his kind encouragement, assistance, and advice.

My best thanks are due to my friend and colleague, Mr. W. H. Porter, for his generous co-operation in reading and correcting the proofs of this work and for his valuable criticisms and suggestions. In particular, I owe to him the alteration which I have adopted, on p. 195, in connection with the restored Draconian inscription.

I should like also to record my appreciation of the accuracy and efficiency of Messrs. Spottiswoode, Ballantyne & Co.'s Reader.

H. J. T.

CORK,
June 1923.

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POINE

BOOK I

POINE IN HOMER

CHAPTER I

INTRODUCTION

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SECTION II. : Homeric Society ; Views of Leaf and Ridgeway : feudal militarism and tribalism.

SECTION I

IF we examine the various methods of blood-vengeance which have been adopted by different peoples throughout the ages, we shall find that they may be divided broadly into four groups or categories. Amongst rude and savage races there exists or has existed a system of vengeance which we may describe as a barbarous and unrestricted vendetta. In the absence of any social machinery for the determination of blood-guilt or for the estimation of its varying degrees, a single deed of blood provokes an endless series of retaliations : a hideous orgy of revenge rages through the land, an orgy which no one may escape ; for old men and women and children perish, whether one by one, or in a general massacre. The vengeance is at once collective and hereditary. It strikes at the neighbours and at the most distant relatives of the murderer : it strikes, too, at the children that are born when the murderer has been gathered to his fathers. It ends only when there is hardly anyone left to kill, or when a paltry sum of money is offered to placate a glutted thirst for blood. It is a strange fact that such a system should have survived up to comparatively recent times ¹ in the Balkan States. It is generally

¹ *Ibid.*, p. 41

but, as we hope to show, erroneously maintained that such a system prevailed amongst the earliest inhabitants of Greece about whom we have any certain knowledge.

A second mode of vengeance we may describe as a personal restricted vendetta. It is distinguished from the mode which we have just mentioned by the absence of collective or hereditary punishment. It refuses to visit the sins of the father upon his children or upon his neighbours. The right to avenge remains with the relatives of the slain. They may lie in wait for the slayer or, if he flees, they may dog his footsteps over land and sea. But they dare not strike the innocent for the guilty. There is some power, whether of military autocracy, or of public opinion, which prescribes the bounds of their avenging. The system does not generally include a regular tribunal for the trial of homicide, whether because there is little difficulty, in certain social groups, in determining the identity of the murderer: or because some primitive method of evidence, such as the ordeal of medieval Europe, takes precedence of human witnesses: or because a recourse to arbitration, in the private domain of a king or of a squire, is too insignificant a procedure to have found its way into any historical records. It is such a system that seems to have prevailed in Serbia up to very recent times. It is such a system that, we hope to show, existed amongst the Achæan caste in Homeric Greece.

A third, and for our present purpose the most important, mode of vengeance is that which we may describe as the 'tribal wergeld' mode. It consists essentially of a compensation, in the form of goods or valuables, which is paid by the relatives of the slayer to the relatives of the slain. It differs from our first-mentioned mode of vengeance in the fact that satisfaction is paid in 'money,' not in blood, and in the fact that payment is fixed by custom or law and is not of an indefinite duration. It differs from the second mode in this, that the ideal penalty is not death, but compensation or exile, and that the punishment is collective rather than personal. The system is found only in tribal communities, where the life of the individual is subordinated to that of the group, and where property is frequently possessed and enjoyed in common. It is, of course, true that all tribal societies do not adopt this system, whether

because temperament and environment foster a blood-lust that money cannot appease, or because a religious law has been superimposed upon the clans, or because a feudal or highly centralised government has become strong enough to resist the demands of the clansmen for compensation. But, apart from these special circumstances, tribal communities tend to adopt the 'wergeld' system of vengeance. We have the most ample evidence² of its operation in pre-medieval Germany, and Wales, and Ireland and Scotland, amongst the Anglo-Saxons, the Franks, the Wisigoths and the Vikings. We can see in ancient Israel an instance of a land which has evolved beyond the wergeld stage. There came a time when a theocratic legislator was sufficiently powerful to attack the privileges of the clans, and to cry out, as with a divine voice, 'Ye shall not take satisfaction for the life of a man that is guilty of blood.'³ We hope to make it clear that it was this system which prevailed amongst the earliest inhabitants of Greek lands, who may, for convenience, be described as Pelasgians. Owing to the great number of the individuals who were liable to make or to receive compensation, and also because of the social organisation of the tribes, we are not surprised to find that a regular tribunal was frequently appealed to, and that a trial, concerned more often with the question of payment than with the question of guilt, was one of the most common events of interest in the life of Pelasgian tribesmen. No wonder is it then that the poet Homer gives a description of such a scene⁴ and tells us that Hephaestus had engraved it on the famous Shield of Achilles. This is the earliest reference to a trial of any kind in all European literature.

Our fourth category of the modes of blood-vengeance is intended to comprise all the methods of punishing homicide which are characteristic of fully developed social organisms, whether in ancient or in modern times. Homicide, which was originally conceived as an outrage affecting only a family or clan, may come to be regarded as a crime against the body politic, as an insult to the majesty of the State, its laws, its gods, or its governors. Indeed, this latter conception usually becomes so vigorous that it obscures and ultimately

² See *infra*, pp. 6-11.

³ *Numbers* xxxv.

⁴ *Il.* xviii. 500 ff.

extinguishes the former, at least in so far as that former conception concerns the claims of the relatives of the victim. In early English law the word *murdrum*⁵ denoted a fine payable to the king if the murderer was not produced. In feudalism, the lord claimed a *portion* of the payment made by the relatives of the slayer. This was the *honour-price*, an atonement for the insult caused by a 'breach of the peace.' In historical⁶ Athens wergeld was forbidden, but the property of a convicted murderer who went into perpetual exile was confiscated to the State. In ancient Israel wergeld was abolished when murder was conceived as a 'sin' against the God of the State, when it was believed that blood polluted the land.⁷ In Greece, too, we hope to show that wergeld was abolished in the first instance by the religion of Apollo, and that the evolution of the State, if it did not assist in its abolition, at least ensured that the abolition should be permanent. Once murder becomes a sin against the gods, or a crime against the State, the day of private vengeance has passed: that of State trial, State imprisonment, State execution takes its place. The relatives may still assist, they may even be compelled to assist, in the punishment of homicide, but they have lost the right to material compensation.

We will now give a few illustrations of the actual operation of these modes of blood-vengeance. As the fourth or last-mentioned mode is found in all modern States, we need not here illustrate its operation, especially as we shall have to describe, at a later stage, the treatment of homicide in historical Athens.

As an example of the practice of unrestricted vendetta, we may cite the case of the Montenegrins.⁸ This little people, up to quite recent years, practised a collective and hereditary vendetta, which continued from generation to generation, until the number of victims on both sides was equal, or until a blood-price of ten sequins was accepted by the feud-weary relatives of the original victim. Again, in Sardinia,⁹ until the close of the eighteenth century, a collective hereditary feud followed a single act of murder, and hundreds of lives were lost in a single

⁵ See Stubbs, *Select Charters*, p. 201.

⁶ 621 B.C. onwards.

⁷ See *Numbers* xxxv.

⁸ See Récluse, *Universal Geography*, vol. i. p. 181 ff.

⁹ *Ib.* pp. 346-7.

year. In Corsica,¹⁰ in the eighteenth century, the vendetta-system caused the loss of a thousand lives each year: whole villages were depopulated: houses became fortresses where armed men lay in wait, hungry for vengeance, while the women tilled the fields. A similar barbarous blood-thirst was prevalent in Sicily,¹¹ in Calabria,¹¹ and in Albania,¹² up to quite recent times. The establishment of an improved system of government and the operation of disciplinary penalties have fortunately checked and must ultimately abolish so hideous a mode of vengeance. These peoples of the Mediterranean area are probably, as Ridgeway holds,¹³ the racial descendants of the old Pelagasian race. For this, and for other reasons, there is a tendency to assume that the Pelasgians followed this system of blood-vendetta. But we hope to show that this view is probably incorrect, and that it is much more applicable to the Greece of post-Achaean days, that is, from 1000 B.C. to 750 B.C. than to the Greece of Achaean and pre-Achaean times.

As an illustration of the second mode of vengeance, we may perhaps cite the Serbians of recent times who adopted a restricted form of vendetta and who often allowed murder to remain unpunished.¹⁴ The restricted system seems to have existed amongst the Araucanians¹⁵ of South America, and amongst the Jivaros Indians,¹⁶ but only when the identity of the murderer could be established. In this latter case we find the alternative operation of a more civilised with a more barbarous form of vengeance. But we must not assume that these forms coexist as alternatives everywhere. A French authority holds¹⁷ that the essential motive of collective punishment was the production or identification of the murderer. 'So long,' he says,¹⁷ 'as the murderer is unknown, so long is the responsibility collective and diffused.' We cannot accept this statement as an explanation of the origin of unrestricted vendetta. We admit that collective penalties of a minor kind would form a strong inducement for the discovery of the criminal. It was for this reason perhaps that an Anglo-

¹⁰ See Récluse, *op. cit.*, vol. i. p. 366.

¹² *Ib.* pp. 121-122.

¹¹ Récluse, *op. cit.* pp. 175-6.

¹⁶ *Ib.* p. 246.

¹¹ *Ib.* p. 321 ff.

¹³ *Early Age of Greece*, p. 277.

¹⁵ *Ib.* vol. xviii. p. 442.

¹⁷ See Glotz, *La Solidarité de la Famille*, p. 213.

Saxon law¹⁸ levied a fine on the whole 'hundred' if the murderer was not produced. But it is one thing to bring pressure to bear on a district, whether by a fine, as in this case, or by an oath, as in the instance mentioned in Deuteronomy¹⁹; it is quite another thing to destroy a whole town or village if the murderer was unknown. We shall see²⁰ that the Homeric Achaeans often waited long for vengeance, and often allowed the homicide to go unpunished, rather than visit with unjust punishment the innocent relatives of the slayer. In this system there is no trace of collectivity. The relatives have not even to pay a sum of money. The flight of the slayer is not indeed accepted as a substitute for the normal penalty, which is death, but it postpones indefinitely, if not for ever, a vengeance which the slayer alone can suffer.

To illustrate the operation of the 'tribal wergeld' system, we naturally turn, in the first place, to the Germans of pre-Christian days. Tacitus says²¹ of them: 'It is an indispensable duty to adopt the private enmities of a father or a relative . . . these, however, are not irreconcilable and perpetual. Even homicide is atoned for by a fixed number of cattle and sheep and the whole House accepts the satisfaction, to the benefit of the civic group.' Tacitus is obviously astonished at this system of compensation for homicide. The Romans, like the Germans, were familiar with the organisation of the clan, and of the tribe, but Roman law, as far back as we can trace it, did not permit wergeld. In Rome,²² from 450 B.C. onwards, the expiation of the insult which the homicide offered to the State and its gods had driven from view, and had therefore probably abolished, the material compensation of the clan. The chief detail of interest which Tacitus gives us is the collective acceptance of satisfaction by a whole House or Family. From other sources, which we shall presently discuss, we may infer that the House in this instance was a very large unit, including not merely the closer kindred which traced descent to a common living (or lately deceased) ancestor, but that wider group of kinsmen which is called the clan.

We note also, in Tacitus' account, a reference to a fixed

¹⁸ See Glotz, *loc. cit.*

¹⁹ *Deut.* xxi. 1-8.

²⁰ *Infra*, pp. 64-74.

²¹ *Germania*, chap. xxi.

²² See article *s.v.* 'Homicidium' in Ramsay's *Dict. Rom. Ant.* p. 348 ff.

number of cattle and sheep. Who was it that fixed the number? Who was it that paid? To answer these questions we shall cite some details of Welsh wergeld payments which have been admirably collected and explained by Mr. F. Seebohm.²³

In the Cymric codes, the normal wergeld was a payment of one hundred and twenty cows, but the number varied according to the rank of the slain. For the death of a chieftain the amount was one hundred and eighty cows: for the death of a stranger, from thirty to sixty cows.²⁴ Over and above the wergeld or *galanas*, there was payable an insult-price or *saraad*, consisting of six cows. This amount was always paid first, from the murderer's own cattle. Within fourteen days of the murder, a meeting of the slayer's clan or wider kindred was convened, at which the proportion of wergeld due from each family was determined. Usually the murderer's family paid forty cows, or one-third of the total wergeld. Of this amount the murderer himself paid one-third, or about fourteen cows; his father and mother paid one-third, and his brothers and sisters one-third, the brothers paying twice as much as the sisters. The remaining portion of the wergeld, namely, eighty cows, was paid by the wider kindred. Relatives on the paternal side paid two-thirds, those on the maternal side, one-third. As the clan comprised very often a large number of people, the actual contribution of individual cousins of the murderer would have been rather small. The murderer himself paid, in *saraad* and *galanas*, a total forfeit of twenty cows. But if the murderer was poor, there was paid 'spear-penny,' which was one-ninth of the wergeld, but was collected from male kinsmen on the paternal side.

It was not necessary that these payments should all be made at the same time, or immediately. They were frequently made in fortnightly instalments. The system of receiving wergeld seems to have been parallel. It is probable that the cows paid by the murderer's family went to the family of the victim: those paid by first cousins went to first cousins: those paid by paternal kindred went to paternal kindred: all being distributed in the last resort to individuals, if the clans involved had developed the principle of individual ownership

²³ See *Tribal Custom in Anglo-Saxon Law*, pp. 33-55.

²⁴ *Op. cit.* pp. 43 ff.

at that particular period of time. It is clear from the Cymric codes that individual ownership was assumed as universally prevalent. But it is certain that such a condition is not a characteristic of all tribal communities. In the Salic law, which operated amongst the Germans from about A.D. 500 onwards, a distinction was made between the inheritance of 'wergeld' and that of the 'allod' or family-domain.²⁵ While the latter could only be inherited by a family group which did not extend beyond second cousins, a group which in Wales was called a 'gwely,' the wergeld was inherited by all persons who could trace any kind of direct descent, however remote, from a common ancestor of the original receivers of the wergeld. This law seems to us to reflect an ancient system of communistic ownership in movable property amongst the Germans. Indeed we may infer the existence of such a system from the account which Caesar²⁶ gives of the pre-Christian Germans. Even in the time of Tacitus the arable land of the Germans had not yet become private property.²⁷

It is in this common control, or common ownership, of wergeld that we may find the explanation of the absence of wergeld-payments for homicide within the clan. Seebohm, speaking of the Welsh system, says²⁸: 'A murder within this wider kindred was regarded as a family matter. . . . There was no blood-fine or *galanas* within the kindred.' We shall find at least one illustration of this important principle in the *Iliad* of Homer.²⁹ It is not a complete explanation of the principle to assert, as Fustel de Coulanges would assert,³⁰ that the kinslayer had offended his domestic gods and that no payment could permit the continued presence of the murderer at the ancestral hearth fire in which the life of a kinsman had been violently submerged. In the phratry different clans had a common worship, and the murderer who paid wergeld joined in that worship. We agree with Coulanges that the attitude of the domestic gods towards kin-slaying differed from that of the phratry-gods towards ordinary homicide. But why? Because primitive man creates gods in his own image and endows them with his own emotions.

²⁵ F. Seebohm, *op. cit.* pp. 150 ff., and Maine, *Ancient Law*, p. 233.

²⁶ *Bell. Gall.* vi. 21.

²⁷ *Germania*, chap. xxvi.

²⁸ *Op. cit.* p. 55.

²⁹ *Il.* ii. 662 ff.; *infra*, p. 47 ff.

³⁰ See *Ancient City* (trans.), p. 125.

It is with man, not with gods, that the ultimate explanation lies. The real explanation of the principle is to be found, we think, in a tradition ultimately resting on the common ownership of property.

Accepting this principle, we can understand more easily the punishment of kin-murder in tribal society. There are only three alternative penalties to wergeld: exile, bondage (or servitude) and death. It is natural to assume, and it has been rightly maintained,³¹ that death was a loathsome penalty in days when relatives alone could avenge. It was therefore rarely, if ever, exacted. Bondage or servitude also, though sometimes found as a punishment for homicide,³² would naturally be avoided as a sequel to kin-murder. There remains only the option of exile. Like Cain, the slayer of his brother, the kin-murderer must wander over the wide earth.³³ Expelled from his clan, his home, his property and his gods, he goes forth to slavery or to death in other lands. As a French writer puts it, 'Alone, he has arrayed against him the universe.'³⁴

When homicide occurred between members of different clans, death was never inflicted on the slayer, except in the last resort. It was, perhaps, in order to avoid this fate, that the slayer sometimes fled into exile. But it is doubtful if his flight cancelled any part of the wergeld except his own individual share, or the 'spear-penny' which he was expected to collect, if he was poor. It is certain however that the life of the slayer was never exposed to danger from the relatives of the victim so long as he remained in exile. That there were variations in the matter of accepting exile as part-payment of wergeld will be obvious from the following facts which we cite also as illustrations of the survival of wergeld in a modified form under feudal or ecclesiastical rule.

In the *Canones Wallici*, a code of laws which operated in Wales in the seventh century A.D., we find³⁵ that the slayer pays half the total wergeld, and his relatives pay half. The wergeld at this time consisted of three male slaves and three female slaves: if the slayer went into exile his half was cancelled, but his relatives had still to pay their half, or to follow

³¹ Seebohm, *op. cit.* p. 55; Glotz, *op. cit.* p. 34. ³² See *infra*, p. 44 ff.

³³ *Genesis* iv. 11-16.

³⁴ Glotz, *op. cit.* p. 45.

³⁵ Seebohm, *op. cit.* p. 109.

him into exile. In the Burgundian homicide-laws of the fifth century A.D. we find³⁶ that the penalty for the murder of a freeman was death. The older wergeld penalty, which was now abolished for murder, was however retained in a certain form for minor degrees of guilt. Thus, for manslaughter, we have a list of blood-ransoms arranged according to the rank of the victim: for the unintentional slaying of a noble, the penalty was a payment of 300 solidi: for that of an ordinary man, 200 solidi, and so on. For slaying a person in self-defence, the penalty was reduced to one-half in each case. Amongst the laws of the early Norman Kings of England we find³⁷ the following, attributed to Henry I, in which a group of neighbours known as guild-brethren (*congildones*) are compelled to supplement the payments of the kindred. 'If anyone commit homicide of this kind, let his relatives pay as much wergeld as they would have received if he (the slayer) had been killed: if the slayer have relatives on the father's side and not on the mother's, they pay as much as they would have received, that is, two-thirds the wergeld: if the slayer has only maternal relatives, they pay one-third the wergeld, the *congildones* one-third, and himself one-third: if he has no maternal relatives, the *congildones* pay half, and himself half.' The manner in which feudalism gradually substituted the conception of murder as an insult to a king or to a lord for the older conception of it as an injury to the clan is clearly seen in the following law³⁸ attributed to King Henry I: 'If the slain man has no kindred . . . half shall be paid to the king, and half to the *congildones* (of the victim).' In one portion of the Salic law we read³⁹ that if anyone slays a kinsman and goes into exile, his goods are confiscated to the royal treasury. Feudalism has thus exacted a new penalty which the clan-regime did not exact.

On the other hand we find a diminution in the collective punishment which tribal wergeld carried with it, in the law of King Edmund (A.D. 940-946) which may thus be rendered in modern English⁴⁰: 'If anyone henceforth slay any man, (I will) that he himself bear the feud unless with the aid of his friends he compensate it with full wergeld

³⁶ Seebohm, *op. cit.* p. 123.

³⁸ *Loc. cit.*

³⁹ *Op. cit.* p. 164.

³⁷ *Ib.* p. 323.

⁴⁰ *Ib.* p. 356.

within twelve months. But if they will not pay, I will that all the kindred be free from the feud except the murderer, provided they do not afterwards give him food and protection.' In such laws as these we catch a glimpse of a system of blood-vengeance which once prevailed amongst tribal peoples, but which soon became a mere echo, a phantom shadow of its former self, in the march of mightier movements, in the onward course of civilisation.

We have wandered far afield in the search for definite details of the wergeld system, as we shall look in vain for such details in the ancient literature of Greece, though we can have no doubt that the system prevailed in Greece for many centuries. It is true that in the laws of Gortyn we find ⁴¹ a classification of money-payments which were exacted for adultery and seduction at a period which no authority regards as earlier than the seventh century B.C., and which is generally believed ⁴² to be the sixth or fourth century B.C. These payments varied according to the rank of the offender and of the injured party : and also according to the particular circumstances of the offence.⁴³ But at the time of the Gortyn laws, Crete had passed out of the stage in which murder was materially compensated. Hence these laws contain no reference to the wergeld system. We must therefore be content to apply to the earliest societies of Greek lands the general principles of the payment of wergeld which we find operative in other tribal countries. We have in the text of Homer unmistakable evidence⁴⁴ for the payment of some form of wergeld. The only question that arises is : was this payment a mere sordid termination of a sanguinary feud, such as characterised the Montenegrins up to recent years, or was it a genuine tribal wergeld ? Before attempting to answer this question, it will be necessary to examine briefly the nature of the societies which existed in Homeric Greece.

⁴¹ See Dareste-Reinach, *I.J.G.* tome i. pp. 352-493.

⁴² See Caillemer, in Daremberg and Saglio's *Dictionnaire*, p. 1630.

⁴³ See also Glotz, *op. cit.* pp. 383-5.

⁴⁴ See *infra*, p. 31 ff.

SECTION II

Fortunately, as a result of recent archaeological exploration we are now entitled to assume, what the ancient Greeks so naturally believed, that the *Iliad* and the *Odyssey*, the pioneer epics of European literature, are valuable historical documents for the period which preceded and followed the Trojan war. For our present purpose it does not very much matter whether the poems were composed by one great poet or by a number of rhapsodists, whether they were composed in Greece or in Asia Minor. The important thing is that they refer to actual places and events, to men and women who really lived and died. Just as Seeböhm accepts the poem *Beowulf* as sole evidence for early Scandinavian tribal custom, even though he describes⁴⁵ the poem as an 'Anglian or Northumbrian recension of a story founded on Scandinavian tradition and designed for recital at some eighth-century royal court,' so we see in the *Iliad* and the *Odyssey* a genuine historical picture of Greece under the Achaean domination, even though these poems were not the work of contemporary hands, and contain certain passages and verses⁴⁶ which are clearly of later origin than that of the poems as a whole. It is only necessary for us here to refer to two recent works⁴⁷ of Dr. Leaf which furnish a cogent justification for this assumption. Professor Ridgeway, too, who has done so much to remove the veil of obscurity which has hung for so long over early Greece, has never wavered in his belief⁴⁸ in the historicity of Homer. We should indeed prefer to be wrong with Leaf and Ridgeway rather than to be right with such critics as Gilbert Murray⁴⁹ and Miss Harrison,⁵⁰ who see in the Homeric poems the culmination of centuries of literary work, which took final form and shape in the Athens of Solon and Peisistratus, in the atmosphere of the Persian rather than the Trojan war.

The *Iliad* and the *Odyssey*, however, if they are to be correctly interpreted, must be studied in the light of

⁴⁵ *Op. cit.* pp. 56-72.

⁴⁶ See Leaf, *Homer and History*, pp. 83-86, 98 ff.

⁴⁷ See his *Homer and History and Troy*.

⁴⁸ See *Early Age of Greece*, p. 635.

⁴⁹ See *Rise of the Greek Epic*, *passim*.

⁵⁰ See *Themis*, pp. 335, 445 ff.

sociological analogy and archaeological research. Everyone is now familiar with the differentiation which the learning and genius of Ridgeway first defined in the population of early Greece, and with the distinction which he has indicated between the *Achaeans* and the *Pelasgians*.⁵¹ In Homer, the peoples of Greece are called *Achaeans*: but Ridgeway holds that the Achaeans were not Greeks: that they were not even members of any Mediterranean race; that they were Celts⁵² from Central Europe who descended slowly into Greece, who conquered the inhabitants by virtue of superiority in the arts and weapons of war, who settled and intermarried with native royal families, and who, in the course of two hundred years, had become assimilated to the natives in language and culture, until they lost all consciousness of difference.⁵³ Homer, the poet of the Achaeans, called the Greek-Achaean host, the mixed army of Pelasgians and Achaeans, by a name which belonged only to the Celtic kings in whose courts he sang his songs of praise. The Celtic Achaeans have lost their language but retained their name. The Pelasgians, according to Ridgeway,⁵⁴ spoke in the time of Homer an Aryan tongue so well that even their conquerors came to speak it and forgot their own. Yet they were not, in origin, an Aryan race! On this point we find it difficult to agree with Ridgeway, though we admire the scientific reasoning and the profound learning which support his theory. The precise nature of the social organisations of early Greece, Ridgeway does not attempt to decide—at least in his ‘Early Age of Greece’: but we infer from an article which he has written on Homeric land-tenure⁵⁵ that he believed, as does Mr. H. Seebohm,⁵⁶ that both Achaeans and Pelasgians were tribal peoples.

Some of the difficulties presented by Ridgeway’s reasoning are removed, in our opinion, by the more recent theories of Dr. Leaf. Before the advent of the Achaeans to Greece about 1400 B.C.,⁵⁷ there already existed in Greece, according to Leaf, two social and racial strata: (1) a dominant non-Aryan⁵⁸ caste who came originally from Crete, and who may be called

⁵¹ *Op. cit.* pp. 90–337.

⁵² *Ib.* pp. 339, 355, 370, 406.

⁵³ *Ib.* p. 95.

⁵⁴ *Ib.* pp. 678 ff.

⁵⁵ See *J.H.S.* vol. vi. pp. 319 ff.

⁵⁶ See *Greek Tribal Society*.

⁵⁷ See *Homer and History*, p. 41; also Bury’s article, *Quarterly Review*, July 1916.

⁵⁸ Leaf, *op. cit.* p. 37.

Minoans : (2) a primitive neolithic agricultural Aryan people who spoke Greek,⁵⁹ who were, in fact, the nucleus of the Greek race, and who had imposed their speech upon their non-Aryan masters. The Achaeans, in Leaf's view, came as a wave or series of waves in the perpetual tide of invasion from the north.⁶⁰ Settling first in Epirus,⁶¹ they pressed gradually southwards, subdued the Minyans (or Minoans) of Iolcos,⁶² and the Pelasgians of central Greece,⁶³ crossed later to the Peloponnese, and having conquered Elis, Laconia and Argolis, established themselves in all the strategic positions of the peninsula.⁶⁴ They were not necessarily, in Leaf's opinion, of different racial origin from the Pelasgians⁶⁵ : they may, in fact, have been remotely related to them. But the Achaean outlook and temperament were very different from those of the Pelasgian folk. The former were military freebooters ; piratical adventurers,⁶⁶ bound together by that rigid obedience to a single commander which was an essential condition of their survival and success. The latter were tillers of the soil, accustomed to political serfdom,⁶⁷ paying such dues as their masters exacted, following them, on occasion, to battle and to death. One point of difference which Leaf mentions must be here especially emphasised, as it is of vital importance for our theory of Homeric blood-vengeance. The Achaeans, Leaf holds,⁶⁸ had no tribal or ' kindred ' organisations, and were merely soldiers of a common army. The Pelasgians,⁶⁹ however, were for the most part organised on the model of tribal communities. Speaking of the Achaeans, he says⁷⁰ : ' All the rites and taboos of the primitive Family-system have disappeared and obligation only attaches to the natural kinship of close blood-relationship. . . . This is what we should expect in a race of military adventurers. Family rites do not tend to military efficiency : the efficient soldier must break away from local ties. In so doing he takes a long step away from the foundations of primitive society and religion.' Thus Leaf conceives the society of Homeric Greece as composed of two elements : (1) a military autocracy, ruling like the

⁵⁹ Leaf, *op. cit.* p. 37.

⁶² P. 51.

⁶⁵ Pp. 37, 247.

⁶⁸ Pp. 251-252.

⁶⁰ *Ib.* pp. 41, 49.

⁶³ P. 222.

⁶⁶ P. 252.

⁶⁹ Pp. 250, 251, 258.

⁶¹ *Ib.* pp. 49-50.

⁶⁴ Pp. 50-52.

⁶⁷ Pp. 37, 247.

⁷⁰ Pp. 251-252.

Spartans in Laconia, a small exclusive caste held together by the consciousness of a common origin and a common purpose and also by the danger of hostility from without : (2) a tribal agricultural subject-folk who lived their primitive lives in rural areas, in villages, in unimportant towns, and even in cities within view of the Achaean garrison. Now this conception differs fundamentally from the traditional ideas of Homeric society, and in particular from the conception of the Achaeans as a tribal people, which we have associated with Ridgeway and H. Seebohm. We believe that an attempt to decide this question is necessary for the elucidation of many Homeric problems, such as that of blood-vengeance or of land-tenure. We shall adduce evidence, in our study of Homeric blood-vengeance, which will serve as a confirmation of Leaf's hypothesis. At present we will confine ourselves to some more general arguments which can be regarded as supplementary to the evidence which Leaf himself puts forward.

Ridgeway, in discussing ⁷¹ the mode of land-tenure in Homeric Greece, seeks to prove that the Homeric poems reveal an evolution in the private ownership of land, beginning with a stage in which, as in the *Iliad*, land is held in common by all tribesmen except the king or chief whose *temenos* is private and personal and probably hereditary, and progressing to a stage in which, as in the *Odyssey*, 'allotments' among tribesmen tend to accumulate and to become more and more a family inheritance within the tribe, without attaining to the stage of absolutely private ownership which we find in the time of Hesiod. Such an evolution is, of course, a characteristic feature of settled tribal existence. Sir Henry Maine, in his interesting analysis ⁷² of the origin of private property in land, distinguishes three stages of its growth. In the first stage, there is communal ownership, both of land and harvest, such as is still found among some Highland clans of Scotland : the food-supplies of individuals are doled out, sometimes daily, by the chiefs of the clans.⁷³ The periodical distribution of the 'harvest,' such as was made by the elders of tribal Slavonic subjects in the once mighty

⁷¹ *J.H.S.* vol. vi. pp. 319 ff.

⁷² See *Ancient Law*, pp. 214 ff.

⁷³ *Op. cit.* p. 223.

Austrian and Turkish Empires, marks a slight modification of this system, which does not, however, affect the tenure of land.⁷⁴ 'In the Russian villages, however,' says Maine,⁷⁵ 'the substance of the property ceases to be looked upon as indivisible, and separate proprietary claims are allowed freely to grow up. . . . After the expiration of a given, but not in all cases of the same, period, separate ownerships are extinguished, the land of the village is thrown into a mass : and then it is redistributed among the families composing the community, according to their number.' The third stage finds an illustration in India, where, as Maine says,⁷⁶ 'not only is there no indivisibility of the common fund, but separate proprietorship in parts of it may be indefinitely prolonged and may branch out into any number of derivative ownerships, the *de facto* partition of the stock being, however, checked by inveterate usage and by the rule against the admission of strangers without the consent of the brotherhood.' Though neither Maine nor Ridgeway mentions the analogy, we think we can trace some such evolution in the old German tribes as described by Caesar and by Tacitus. Caesar tells us⁷⁷ that here 'no one has a fixed portion of land, his own peculiar property, but the magistrates and chiefs allot every year to *tribes and clans* as much land as, and in whatever place, they think proper, and they oblige them to remove the succeeding year.' Tacitus, however, says⁷⁸ that 'the lands are occupied by villages, in groups, in allotments proportioned to the number of cultivators, and are presently parcelled out among *individuals* according to rank and condition : the arable lands are annually changed.'

Such a theory of evolution in landed property within the tribe may, however, be complicated by the coexistence, in the same district, of tribal groups and of a dominant 'feudal' caste. Maine points out,⁷⁹ in reference to Russian village-communities, that 'these villages are always in theory the patrimony of some noble proprietor, and the peasants have within historical times been converted into the predial and, to a great extent, into the personal serfs, of the seignior. But the pressure of this superior ownership has never crushed the

⁷⁴ *Ancient Law*, p. 223. ⁷⁵ *Ib.* p. 221. ⁷⁶ *Ib.* p. 223. ⁷⁷ *Bell. Gall.* vi. 21.

⁷⁸ *Germania*, chap. xxvi. adopting emendation *vici*. ⁷⁹ *Op. cit.* p. 221.

ancient organisation of the village.' Now if we adopt the hypothesis of two distinct strata in the Homeric society, namely, of a dominant quasi-feudal Achæan caste, and of a tribal Pelasgian subject-folk, we shall be justified in assuming that some such 'superior ownership' coexisted with tribal ownership in the world of the Homeric poems. We shall expect to find a predominance of private ownership on the one hand, and a trace or 'reminiscence' of communal ownership on the other, in the verses of a poet who reflected in the main the atmosphere of the Achæan lords, but also, incidentally and fortuitously, that of the subject people. We must, then, consult the text of Homer if we hope to decide whether the Achæans were quasi-feudal adventurers who ruled over the Pelasgians, without disturbing or destroying their normal tribal life: or whether the Achæans, themselves a tribal nomadic people, adopted, by a social fusion, the tribal ownership which existed amongst their subjects, the chiefs alone possessing 'private land,' the others, common land. As the Homeric references to land-tenure are rare and obscure, it is obvious that the solution of the problem of Homeric land-ownership depends entirely on the answer to this wider and more important question.

In *Iliad* xii. 422-426 Homer makes use of a simile derived from a current mode of tenure of arable land, in order to describe the fierceness of the conflict between the Argives and the Lycians. 'As, in a common field, two men make quarrel over boundaries, with measures in their hands, and strive for equal rights, even inch by inch, so, too, were they (the Argives and the Lycians) by (the brief space of) the battlements divided.' This passage proves beyond question that the poet and his hearers were familiar with a certain degree of communism in the use of arable land. Whether the reference is to a social condition in which, as in the German tribes at the time of Tacitus, the arable land was redistributed annually to individuals, or whether the land was redistributed after long intervals of undisturbed enjoyment, as was the custom in certain Russian villages, it is impossible, as it is unnecessary, to decide. The really important point which we wish to emphasise is that there is no evidence that the quarrelsome tillers of the soil were Achæans. This passage

does not prove that the Achaeans lived in clans and tribes and possessed their lands in communal fashion. It merely proves that they were familiar with the existence of such a mode of possession. Incidentally, also, it proves how strong and how passionate, even in tribal rustic folk, the instinct begotten of even temporary private ownership may be. Yet this is the principal text of Homer upon which has been based the theory of the tribal nature of Homeric society!

In *Odyssey* vi. 6-10 we are told how Nausithous, the Phaeacian, brought his people to Scheria, 'and drew a wall around the town and builded houses, and made temples for the gods, and meted out the fields.' Here we may observe that elaborate ceremonial which, as Fustel de Coulanges points out,⁸⁰ was characteristic of the foundation of cities or of settlements in Ancient Greece and Rome. The distribution of land was an essential condition of agricultural existence for tribes which had already developed a certain degree of private ownership. But this passage merely proves that groups of people were known to change their habitations.

In *Iliad* vi. 190-195 we learn that a king of Lycia gave to Bellerophon, as a dowry for his wife, half his valuables (τιμῇ), and the Lycians gave him a domain (τέμενος) superior to that of others. Ridgeway and H. Seeböhm maintain that the only land which is held in private ownership, in the *Iliad*, is the domain of kings and princes. In this passage we admit the probable operation of tribal ownership, but we must point out that the Lycians were not Achaeans. A more relevant citation is *Iliad* ix. 574-84, a passage in which we are told that the Elders and Priests of the Aetolians offered a choice of their richest lands as a 'domain' to Meleager. H. Seeböhm holds⁸¹ that it is improbable that the richest lands were at the time unoccupied and that such an offer therefore proves the existence of a communal land-tenure which would admit of such a rapid partition and consequent readjustment. Again, we admit that tribal ownership may be inferred from this passage, but we deny that the donors of the domain were necessarily members of the Achaean caste. It is true that the Achaeans ruled over Aetolia, but there still survived many rich Pelasgian tribes. Even if we knew that the donors were

⁸⁰ *Ancient City* (trans.), p. 57.

⁸¹ *Op. cit.* pp. 103, 118.

Achaeans, it would not be necessary to conclude that the Achaeans lived in tribal groups, for the partition and readjustment might have been equally simple for rich quasi-feudal owners acting in unison.

In *Iliad* ix. 147-155 Agamemnon, the Achaean war-chief, says that he will give to Achilles, as a dowry with his daughter, 'seven cities, around Pylos, having men abounding in flocks who will worship him with gifts as a god and obey him.' Those who conceive the Achaean heroes as tribal chieftains will find it very difficult to explain how a chief can thus wantonly confiscate the territory of his allies. Pylos was in the 'kingdom' of Nestor, a Minoan ally of the Achaeans. No confederation of tribal chiefs engaged in a common war could survive such a confiscation. But the offer of Agamemnon becomes intelligible enough if we regard him as the leader of a dominant military power, or as the feudal over-lord who possessed by right of office a 'superior ownership' of all the lands of Greece.

In *Odyssey* iv. 171-177 Menelaus says that he would have given to Odysseus, had he been there on his return from Troy, a whole 'city to dwell in,' and that he would have built for him a house, and brought him from Ithaca, together with all his wealth, his son and all his people, 'making one city desolate, of those that lay around, in his domain.' H. Seebohm finds it difficult to understand this passage in the light of his tribal theory of the Achaeans. It is, he says,⁸² unusual, and merely shows the despotism to which a tribal chief frequently attained. But we prefer to see in Menelaus the typical Achaean over-lord, who by virtue of his kinship with Agamemnon, and of his own feudal and military power, tramples with impunity upon a whole city and moves a whole people from place to place, not as a chief would lead his tribe, but as a medieval baron might move his *villeins* from one part of his territory to another.

In the realm of Odysseus one seeks in vain for cogent evidence of tribal conditions. The shameless conduct of the suitors of Penelope, in devouring the substance of the absent Odysseus, and in plotting the assassination of his son and heir,⁸³ as also the cruel hyper-vengeance which Odysseus with

⁸² *Op. cit.* p. 115.

⁸³ *Od.* xvi. 362-385.

impunity wreaked upon them, seem to us more suggestive of feudalism and autocracy than of genuine tribalism. In tribal communities an immense importance attaches to questions of marriage and inheritance. The voice of the 'folk-moot,' of the clan-gathering, can and must be heard. It is true that in the *Odyssey* ⁸⁴ the disguised Odysseus, in questioning his son as to why he had not driven the suitors from his house, asks significantly: 'Do the people hate thee?' But it is equally true that in the domestic drama of the realm of Odysseus the rank and file of the people are ignored. For our part we feel that we move in that atmosphere of autocratic militarism which, in ancient Thessaly or Macedonia, and in medieval Europe, exalts the dagger of the assassin and the intrigue of the paramour.

In *Odyssey* xiv. 208 we are told that when a certain rich man, named Castor, died, his sons divided up and cast lots for his property. This procedure would be perfectly normal in modern society if the owner died intestate and the property was not entailed. We hear nothing in this narration of any clan-council having determined the right of succession, as would ordinarily occur in tribal conditions.

In *Odyssey* xix. 294 it is said that the wealth which Odysseus has amassed would suffice for his posterity even unto the tenth generation. The selection of the number *ten* in this passage seems to us to indicate a possible reference to tribal life. F. Seeböhm, speaking of medieval Welsh tribes, lays stress on the length of time which had to elapse before a 'stranger' could become a tribesman, pointing out ⁸⁵ that even the great-grandson of a stranger could not be a tribesman, though he could be recognised as the founder of an embryonic clan, whereas a semi-servile stranger's descendants could not attain to the rank of tribesmen until the ninth generation had passed away. Hence the saying that a man's wealth would suffice for ten generations could easily, in tribal language, have become a proverb. It would simply mean that a man's posterity would never be in want, for after nine generations any man's descendants could have formed a tribal organisation and possessed tribal wealth of their own. But must we conclude from this that Odysseus was a tribesman? No conclusion

⁸⁴ xvi. 95 ff.

⁸⁵ *Op. cit.* p. 51.

could be less cogent. It is true that the Achaeans, at the time of the Trojan war, were long enough settled in the country to have produced the nucleus of clans and tribes, for they had ruled over Greece for two hundred years. Thus the Achaean Melampus, a contemporary of Nestor and Atreus, founded a family in Argos, the development of which may thus be traced in Homer ⁸⁶:

Melampus—→	{	Antiphates—	Oicles—	Amphiaraus—	{ Alcmaeon Amphilochus.
		Mantius	—{	Polyphides—Theoclymenus. Cleitus.	

Here we find kinship extending to second and third cousins. Such kinship exists everywhere in the world to-day, but it clearly does not constitute a clan or a tribe. When, therefore, in Homer,⁸⁷ Theoclymenus is said to have killed a man who is described as *ἔμφυλος* in relation to his slayer, we must not suppose that the deceased was a tribesman. The word *ἔμφυλος* should be translated as kinsman,⁸⁸ not tribesman. Several instances may be found in Homer of tribal phrases and expressions applied in non-tribal contexts. Thus the word *γένος* which ordinarily means 'clan' is used in Homer to denote a family in the modern sense,⁸⁹ or to mean 'blood-descent,' and kinship.⁹⁰ Rarely or never does it carry its proper meaning. If the social organisation of the Achaeans had been of a tribal character, surely the Homeric use of the word *γένος* would have been different from what it actually is. Leaf calls attention ⁹¹ to the very rare occasions on which Homer refers to such groups as the clan, the phratry, and the tribe. Nestor says to Achilles that 'the lover of domestic strife is a man without hearth or law or phratry,' ⁹² and the same Nestor urges Agamemnon to divide his fighting forces 'by tribes and phratries,' ⁹³ but these solitary references no more compel us to regard Achilles and Agamemnon as tribal chiefs than the tribal proverb concerning the tenth generation compels us to regard Odysseus as a tribal patriarch. Such references are rather, as Leaf says, ⁹¹ 'reminiscences,' reflections, whether in the mind of a Minoan or of an Achaean,

⁸⁶ *Od.* xv.

⁸⁸ So Butcher and Lang, trans. *ad loc.*

⁹⁰ See *Il.* xiii. 354; *Od.* vi. 35, 209, xv. 533.

⁹² *Il.* ix. 63 ff.

⁸⁷ *Od.* xv. 273 ff.

⁸⁹ *Od.* viii. 573.

⁹¹ *Op. cit.* p. 251 n.

⁹³ *Il.* ii. 362.

of conditions which prevailed universally amongst the subject Pelasgian peoples.

We may then confidently conclude that the evidence of the Homeric poems is much more consistent with the theory that the Achaeans were a quasi-feudal military caste than with the theory which conceives them as tribal nobles. We may think of the Achaeans, in their relation to the Pelasgians, very much as we should think of the soldiers of the ancient Roman Empire quartered in a province.⁹⁴ When the Burgundians came to France about A.D. 500 they were regarded,⁹⁴ by a polite fiction, as guests, and were presented with *hospitalitas*, consisting of two-thirds of the land and one-third of the slaves ! When the Achaeans conquered Greece, they lived, indeed, in garrison-towns and sought to maintain a splendid isolation in their lofty fortresses, but they took unto themselves the richest lands and the fattest cattle and sheep, leaving the Pelasgians to till the soil and to squabble about boundaries. But when after two or three hundred years the Achaeans met a somewhat similar fate to that which they had meted out to Greece and to Troy, the tribal nobility of the primitive Pelasgians once more asserted its ancient privileges.

⁹⁴ F. Seebohm, *op. cit.* p. 122.

CHAPTER II

THE PELASGIAN SYSTEM

Current views explained and criticised : author's view : proofs from the text of Homer : question of a distinction between murder and manslaughter, and between justifiable and unjustifiable homicide : collectivity in vengeance.

THE opinions which have hitherto prevailed among scholars in regard to early Greek blood-vengeance are more or less unanimous. They seem to be based on an assumption of homogeneity in the society depicted by Homer. Expressed in terms of the modes of vengeance which we have described in the preceding chapter, the customs of Homeric Greeks in regard to homicide have been conceived as a confusion of modes I, II, and III—as a mixture of restricted and unrestricted vendetta and wergeld. Thus, Eichhoff¹ holds that in Homer murder is a 'private' affair, and that the slayer must go into exile if the 'money' paid to the injured family is not accepted. Bury² says : 'According to early custom which we find reflected in Homer, murder and manslaughter were not regarded as crimes against the State, but concerned exclusively the family of the slain man, which might either slay the slayer or accept compensation.' Grote³ says : 'That which the murderer in Homeric times had to dread was not public prosecution and punishment, but the personal vengeance of the kinsmen and friends of deceased. To escape from this danger he is obliged to flee the country, unless he can prevail upon the incensed kinsmen to accept of a valuable payment as satisfaction for their slain comrade.' Jevons⁴ says : 'If the family of the murderer were not content to pay the wergeld, the murderer generally found it expedient to flee into a far country, for, if he remained he would assuredly be killed in revenge.' In a

¹ See *Blutrache bei den Griechen*, chapter i.

² See *History of Greece* (second edition), p. 172.

³ *History of Greece*, vol. ii. p. 32. ⁴ See *Manual of Greek Antiquities*, p. 407.

foot-note in Butcher and Lang's translation of the *Odyssey*,⁵ we are told that 'as a rule blood called for blood, and the manslayer had to flee from the kindred who took up the feud. . . . It is superfluous to remark that the "price" as an alternative to vengeance is a widespread custom.' Glotz⁶ speaks of death, exile, wergeld, and slavery as possible penalties everywhere. He seems to believe that there existed in Homeric times that collective and hereditary vengeance which is so characteristic of barbarous peoples, but for this view he has adduced no evidence apart from post-Homeric legends. In an article in Daremberg and Saglio's *Dictionnaire des Antiquités Grecques et Romaines*,⁷ we are informed that 'originally' homicide is an offence only against the family of the victim, and all the members of the 'famille outragée' have a right and a duty of vengeance. To escape this vengeance the murderer has no other resource but exile. His exile will exempt his kinsmen from the reprisals to which they would otherwise be exposed.⁸ As the murderer will be most often supported and defended by his family, a war of families will lay desolate a whole country: in course of time, and with the softening of human character, the offended family will renounce its vengeance, and enter into a bargain with the murderer and his family. He will be permitted to return from exile, but, as a rule, only by payment of 'compensation.' His relatives will furnish him with this payment (*ποινὴ*), at once the price of the blood shed and the ransom of the murderer's life. The payment is vaguely defined at first, varying with the importance and the wealth of families. For murder within the family (*γένος*), there is no question of wergeld. A compromise is effected by which the family waive their right to kill the murderer on condition that he leaves the *γένος*—'ils se bornent au bannissement du coupable, rompant ainsi, par son expulsion, les liens qui le rattachaient au *γένος*.'⁹

All these critics appear to suggest that the early age of Greece presents us with a more or less homogeneous but undeveloped and quasi-barbarous race¹⁰ which slowly and

⁵ P. 408.

⁶ *La Solidarité de la Famille*, Book I. (*passim*).

⁷ See *s.v.* *φόνος*, p. 439.

⁸ See *supra*, p. 11.

⁹ *Loc. cit.* p. 440.

¹⁰ See, *e.g.*, Glotz, *loc. cit.* pp. 56-7: 'Les Grecs ont toujours senti et manifesté avec une vivacité extrême le bonheur de se venger. Le cannibalisme qu'ils avaient pratiqué à l'époque de la sauvagerie primitive, resta dans leur

gradually evolves into something like civilisation in the time of Dracon and Solon. Thus conceived, the homicide-customs of Homer are very similar to those of the Montenegrins of modern times, who have long lived in a condition of social chaos and who accept, in atonement for homicide, a payment of money when there is hardly anyone left to pay it !

Leaf, who in *Homer and History*¹¹ (1915) differentiates very clearly between the Pelasgian and the Achæan elements in the societies of Homeric Greece, points out that to the Achæans 'homicide is a local and family affair, and brings no disability other than exile from home.' A wealthy and generous king can give opportunities of advancement beyond all the hopes of a narrow family circle. To an ambitious Achæan (as witness Patroclus,¹² Phoenix¹³ and others¹⁴), exile in such circumstances is not a real punishment. When Leaf observes, in regard to the Achæans, that 'thus the most sacred of all taboos, the shedding of kindred blood, loses its final sanction,' he seems to hint at the existence, in the Homeric society, of a non-Achæan attitude to homicide. He does not however explain the precise nature or origin of this attitude.

Moreover, in *Homer and History*, Leaf does not suggest any solution of an important problem to which he refers in previous works—the problems presented by the reference to wergeld in the Homeric passage which describes the Shield of Achilles.¹⁵ In a note of his translation of the *Iliad* (1883), he said ¹⁶: 'The trial scene is one of the most difficult and puzzling passages in Homer. . . . The whole passage is clearly archaic, but the difficulty lies in the fact that no parallel, so far as we know, is to be found in the procedure of any primitive races which throws any light upon this passage.' In his *Companion to the Iliad* (1892) and in his latest edition of the *Iliad* (1902), in a note on the passage in question,¹⁷ he put forward an hypothesis which seems to suggest that he conceives

langue, s'il disparut de leurs mœurs.' On p. 57 they are compared to Montenegrins and Arabs.

¹¹ Pp. 253-5.

¹³ *Il.* ix. 565.

¹⁵ *Il.* xviii. 490-508.

¹² *Il.* xxiii. 85.

¹⁴ *Il.* xv. 334; *Il.* xxiv. 480.

¹⁶ P. 516.

¹⁷ See also *J.H.S.* xiii. 123-6 (1887). The view was first suggested by Müncher (1829); see Glotz, p. 116.

the Homeric Greeks as quasi-barbarous peoples. Having indicated the frequency of blood-for-blood retaliation in the *Iliad*, he interprets the trial-scene as representing a stage in the evolution of homicide customs from more primitive conditions. 'It seems absolutely necessary to assume an intermediate stage in which the community asserted the right to say in every case whether the next of kin should, for reasons of public policy, accept compensation, and the missing link is apparently brought before us here.'

By assuming that the trial-scene represents, not a murder trial (which few now maintain) nor yet a wergeld debt trial, *i.e.* an inquiry as to whether wergeld has been paid or not, but a piece of novel homicide legislation, Leaf thinks that 'the scene gains enormously in importance.' Postponing for a time¹⁸ our criticism of this view, published thirteen years before the date of *Homer and History*, and deferring the solution which we shall offer of the difficulty, we proceed to state our own theory of the homicide customs of Homer. This theory is based in the first place on a distinction between an Achæan dominant caste and a subject Pelasgian people; secondly, on the hypothesis which Leaf puts forward as to the different character and mode of life of the Achæans and the Pelasgians—the former being conceived as a race of bellicose military adventurers living in isolated groups; the latter, as an agricultural subject-people, tillers of the soil, who preserved intact their tribal organisations; thirdly, on the connexion existing between the homicide customs of a people or caste and their temperament and social organisation—a connexion which is established by a general study of blood-vengeance amongst various peoples; and, finally, on a correct interpretation of the text of Homer.

Our theory is as follows: there existed in Greece at the period of the Achæan domination (1300–1100 B.C.) two fundamentally distinct social strata, each having a distinct characteristic attitude to homicide, and observing distinct modes of blood-vengeance. The two modes coexisted side by side without affecting or modifying each other, but their coexistence produced a slight confusion of thought and an absence of clear discrimination in language in the Homeric

¹⁸ See *infra*, p. 37 ff.

poet (or poets) who were in contact with the two social strata, and who were familiar with the two modes of vengeance, but who almost ignored the one and exalted the other, out of courtesy to the masters whose praises they sang. These two modes of vengeance, which we will call respectively Achæan and Pelasgian, may be thus described: (1) Amongst the Achæans the normal penalty for homicide is death. Their system is private vendetta, of a restricted character, such as we have already described in our introductory chapter. The vengeance is quite personal and individual, that is, the murderer alone is liable to the blood feud, which is therefore neither collective nor hereditary. Vengeance is a duty which devolves upon the dead man's sons or brothers, but we may include the possibility of support from a kindred of limited extent¹⁹: a kindred which may be an embryonic clan, but whose attitude to homicide is quite different from that which normally characterises a clan. Wergeld is not accepted, even though it is known to exist outside the caste: exile is not a recognised appeasement or atonement, but is merely a flight from death, and the Achæan murderer frequently takes refuge with a king or a wealthy man. We shall describe this Achæan system more fully in a later chapter. (2) The Pelasgian mode will be found to be that which we have described in the Introduction as the 'tribal wergeld' mode, though it may have evolved from a more barbarous mode before 1300 B.C. In this system there are three or four recognised alternative penalties: (1) 'wergeld,' which is the normal measure of vengeance or retribution, and which is so frequently associated with tribalism; (2) exile, which involves a formal and solemn expulsion from the 'group,' a serious penalty for anyone born and bred in the atmosphere of tribal life and religion; (3) death, which is rarely inflicted, but is a possible alternative if neither 'wergeld' nor exile is accepted by the murderer or his clan; (4) we may add, with Glotz,²⁰ though there is no definite Homeric evidence for its existence, the option of slavery or servitude. This is not the slavery which is found in later times in Rome and in Greece, when there was a regular slave trade, nor is it the temporary 'slavery' which is involved in being 'kidnapped' and held to

¹⁹ See *supra*, p. 21.

²⁰ *Op. cit.* p. 162 ff.

ransom—a frequent occurrence in Homer ; it is, however, akin to this latter condition, inasmuch as it involves a state of bondage, from which a murderer can be redeemed, not by the payment of such a price as his ‘redeemer’ can be induced to pay, but by the payment of such valuables as have been determined by long tradition—his quota of the wergeld of the clan.

PROOFS FROM THE TEXT OF HOMER

In our introductory chapter we pointed out the connexion which exists between the homicide customs of a people or caste and their temperamental outlook and social organisation ; we have quoted Seebohm’s views as to the essentially tribal character of the wergeld-exile-death system ; and, therefore, anyone who accepts Leaf’s hypothesis as to the nature of the Achæan and Pelasgian social strata will be prepared to admit that our hypothesis as to Pelasgian blood-vengeance is logically *a priori* probable. In a later chapter we shall seek further confirmation of our theory by explaining the difference in the religious beliefs of the Achæans and the Pelasgians, and by indicating their different attitudes to the judicial aspect of homicide. We now proceed to the crucial test of our opinions—the evidence of the Homeric poems.

In Homer the word *ποινή* occurs very frequently. Glotz²¹ thinks the word is connected with the verb *τίνειν* (to pay). He says : ‘ De vrai, *ποινή* doit être rapproché de *τίνω* et des mots apparentés, *τίνυμι*, *τιμάω*, *τίσις*, *τιμή*.’ Others²² however hold that it is connected with the root *pu*, found in Greek *πῦρ*, and Latin *purus*, *punire*, *poena*. The word *ἄποινα* seems akin in origin to *ποινή*, but in Homer it is invariably used of a ransom or gift of valuables.²³ We do not think that Glotz²⁴ has quite succeeded in his attempt to prove the evolution of the word *ποινή* from an earlier meaning of ‘ blood-vengeance ’ to a later one of pecuniary satisfaction, at least within the limits of the Homeric poems. His reasoning is very similar to that known as ‘squaring one’s premises to one’s conclusions’ : he is not aware of any distinction

²¹ *Op. cit.* p. 105.

²² Pott, Corssen, Curtius, quoted by Glotz, *loc. cit.*

²³ *E.g. Il. ix. 131–2, ἀπερῆσι ἄποινα.* ²⁴ *Op. cit.* p. 110.

between Achaeans and Pelasgians, and he finds the Homeric use of *ποινή* rather difficult to explain. He must have been aware of the fact—one which we consider of great importance—that in Homer the word *ποινή* nearly always means ‘punishment’ or ‘revenge’ rather than ‘compensation’ or ‘ransom’: he is certainly aware that, while *ποινή* can mean a pecuniary satisfaction for a material wrong or injury, and can mean the ‘ransom’ of a captive or of a warrior’s dead body, nevertheless there are only two instances in all Homer in which *ποινή* can be formally interpreted to mean *wergeld*. Thus he says,²⁵ ‘On songe aux deux passages de l’*Iliade* où il est formellement parlé de composition pour homicide. Ce sont le discours d’Ajax à Achille au chant ix et la scène judiciaire figurée sur le bouclier d’Achille au chant xviii.’ It is by a close examination of these two passages that we hope to solve the difficulty connected with the Homeric *ποινή*. But, first, let us say that the word *ποινή* is precisely the kind of word which may easily possess a general as well as a special significance. The ideas of ‘payment’ and ‘punishment’ may, in certain circumstances, coalesce: and it is probably because Homer was subconsciously aware of the fusion of ideas involved in the use of the word *ποινή*, that he employs another word of kindred meaning, *ἄποινα*, to denote a payment in which the idea of ‘punishment’ is absent or obscured.

In Homer, the word *ποινή* is used to denote a variety of ideas ranging from ‘punishment in general,’ such as death inflicted in vengeance, to ‘compensation for injury’: thus in *Iliad* xvi. 398 Patroclus, having slain many foemen in battle, is said to have thus exacted vengeance (or payment) for many Greeks who had fallen:

κτεῖνε μεταῖσσω, πολέων δ’ ἀπαιτύντο ποινήν.

There is no question of ‘payment of goods’ or ‘*wergeld*’; it is merely the vengeance which a warrior inflicts upon his enemies. In *Iliad* xxi. 28 Achilles chooses out twelve Trojan youths whom he afterwards burns on a funeral pyre. His motive may have been to placate the shade of Patroclus, by sending him ‘souls’ to be his slaves in Hades, or, less probably,

²⁵ *Op. cit.* p. 114.

to gratify the desire of the shade for vengeance. The youths are spoken of as *ποινὴ Πατροκλοῖο*: clearly they are not 'goods or valuables,' and are neither 'paid' nor 'received.' The poet may have been conscious of an undercurrent of meaning, if he had known of bondage or slavery as a penalty for murder in the tribes. But the slaying of Patroclus was not murder! The *ποινή* of Patroclus is not even ordinary blood-vengeance, it is merely the retaliation of an indignant warrior.

Again, in *Odyssey* xxiii. 312 Odysseus tells Penelope how he exacted from the Cyclops punishment for the slaying of his companions,—ὡς ἀπετίσατο ποινὴν ἰφθίμων ἐτάρων. The Cyclops was regarded by Homer and the Achaeans as one of a lawless band of men who, as the poet says, 'have no plants or plough, no gatherings for council nor laws—each one giveth law to his children and wives, and they reck not of one another': he was thus the very antithesis of tribal or of civic society. The payment exacted was not wergeld, but the loss of an eye! In *Iliad* v. 266 *ποινή* denotes merely compensation for injury—there being no question of murder at all. Zeus, having carried off Ganymede, the son of Tros, gave Tros a gift of horses as compensation—*υἱὸς ποινὴν Γανυμήδεος*. It was really a case of 'kidnapping,' but Ganymede was not 'held to ransom'—a price is paid for his loss, which is very different from wergeld.

In *Iliad* xiv. 483 Akamas having slain Promachus tells how 'Promachus sleeps, done to death by my sword, lest a brother's vengeance (*ποινή*) be too long unpaid.' Here we have a formula of blood-vengeance applied to the collective vengeance of war. Akamas does not seek the life of Ajax, the slayer of his brother, but is satisfied by slaying any individual of the enemy as a 'satisfaction' for his brother. But there is no question of wergeld: death is the penalty desired and exacted. Though the phrase *δηρὸν ἄτιτος* could be regarded as a reminiscence of the wergeld system, in which a period of time was normally allowed for payment, it is quite naturally applicable to blood-for-blood revenge, as *δηρὸν* can simply mean 'a long time,' and the tendency of such vengeance was to quick retribution.

In *Iliad* xiii. 659 we are told of the slaying in battle of

Harpalion, son of Pylaimenes, king of the Paphlagonians. 'And the Paphlagonians tended him busily, and set him in a chariot and drove him to Ilios sorrowing, and with them went his father, shedding tears, and there was no atonement (ποινή) for his dead son.' It is obvious that even if we suppose the Paphlagonians (who were not Achaeans) to have had clans and tribes and wergeld payments in their normal home life, we cannot attribute to them any expectation of wergeld for a man killed on the field of battle. Nor could the absence of such a compensation, to a king who had much more wealth than he could ever enjoy, be regarded as a cause of tears. Hence the word ποινή here must mean blood-vengeance, the satisfaction arising from blood-for-blood retribution: and this satisfaction was frustrated because the Paphlagonians did not happen to see the man who slew Harpalion.²⁶

There are only two passages in Homer in which ποινή unmistakably refers to the genuine wergeld penalty. If those passages were missing no one could speak of wergeld as a penalty for homicide in the society described by Homer. We shall now examine those passages with a view to showing that they do not represent the normal system of the dominant Achaean caste, but are merely what Leaf would call 'remiscences,' traces of a system with which Homer and the Achaeans were familiar, but which they did not adopt or practise amongst themselves.

In the first passage (*Iliad* ix. 632-7) the scene is the tent of Achilles before Troy. Owing to the secession of Achilles from the Greek fighting-line the Trojans had been rapidly gaining the upper hand and the Greeks were only saved from destruction by the sudden approach of night.²⁷ An embassy is sent from Agamemnon to Achilles to induce him to waive his wounded pride in the interest of the Achaeans, and promising not only the restoration of his concubine Briseis but also a grant of seven cities in the Peloponnese and many splendid gifts. Achilles rejects every possible 'satisfaction' ²⁸ and

²⁶ Compare the weeping of Hrethel, when his eldest son was killed by his second son—and no vengeance was possible within the 'family.' *Beowulf* (2464), quoted by F. Seebohm, p. 63

²⁷ *Il.* viii. 500 ff.

²⁸ *Il.* ix. 378-386.

implies that the insult offered to him was so great that nothing short of the destruction of Agamemnon and his army would assuage his wrath. Odysseus and Phoenix having failed to bend his haughty spirit, the third member of the embassy, Ajax, son of Telamon, who was certainly an Achæan, reproached him with his indifference to the fate of his Achæan comrades, who loved him, and reminded him of the self-control possessed by other men in directing their passion for revenge, even when afflicted by a much graver injury—that of murder. ‘Yet,’ he says, ‘doth a man accept payment (ποινή) from the murderer of his brother or for the slaying of his son: and the manslayer abideth in his home-land when he hath paid a goodly price, and the man’s heat and proud spirit is restrained when he hath accepted the payment—but for thee the gods have put within thy breast an evil and implacable spirit.’ When Ajax delivered this speech, he had already despaired of the success of the embassy²⁹: and he mentioned the act of the receiver of wergeld, not as the act of a normal Achæan hero—the Achæans of the Homeric age are of a very different type—but as an act which was characteristic of a well-known kind of temperament, an act which, he thought, might serve to emphasise the extreme abnormality of Achilles’ desire for vengeance. If Achilles had had a son or a brother who was murdered, and if he were on the point of crushing a whole village in revenge, the argument of Ajax would have been more relevant to the case, but even then it could not be taken to imply that either Ajax or Achilles was a member of a society in which wergeld was a recognised penalty. It is significant also that Achilles, in his reply, makes no reference whatsoever to this argument. Viewing Homer as a whole, it seems more than probable that this almost solitary instance of wergeld was introduced by the poet, who³⁰ was aware of the existence of the wergeld system, but was not concerned with its details. We need not call attention to the non-factual nature of recorded speeches even in Greek prose writers, and *a fortiori* in the epic poets who reconstructed speeches more or less as a historical novelist would at the present day. It is in a similarly casual way that Homer gives us his one solitary reference to a common tillage

²⁹ *Il.* ix. 625.

³⁰ See *infra*, p. 43.

field ³¹—a reference which Ridgeway makes a basis for very wide generalisations as to Homeric land-tenure. No Achæan uses the words: they are the poet's own: hence they can easily be applied to conditions of tenure with which the poet was himself acquainted, but which were not necessarily adopted by the Achæans during their domination in Greece. In regard to the wergeld passage, Glotz suggests that, while the verses themselves would lead one to suppose that a certain 'superior force' constrained the kinsman of the victim to forgo blood-vengeance by accepting a blood-price, still they do not prove that there was any 'social justice' to intervene and impose a settlement or to indicate the amount of the wergeld. ³² This view we cannot accept. There is no explicit ³³ reference, of course, to any 'social justice,' but the temperament which forgoes blood-vengeance and accepts wergeld is the product of a social system which restricts and controls the human passion for revenge. The Achæans were above and outside such a system: the Pelasgians, we think, were born and bred in it,—perhaps for centuries. Allegiance to his tribal or civic unit and its laws alone could restrain primitive man—especially in Southern climes where passion dies very hard—from following the promptings of his natural blood-thirst. In course of time individual members of a settled agricultural tribe would inevitably develop a restrained temperament, through their fear of violating those unwritten laws of which Antigone said ³⁴ that they 'are not of to-day or yesterday, but no man knows the time which gave them birth.' The Achæans, who lived in every-day contact with such types of men, must have observed even though they did not imitate their self-restraint, and all the more because it was a quality which the Achæan caste-atmosphere could not produce.

The second of the two genuine wergeld passages in Homer

³¹ See *Iliad* xii. 422 and *supra*, p. 17.

³² *Op. cit.* p. 115. 'Rien ne prouve ici que la justice sociale intervienne à quelque titre et de quelque manière que ce soit, ni pour imposer ou conseiller un accommodement, ni pour indiquer le montant de la composition.'

³³ *Il.* ix. 634 suggests an 'arrangement' by which either (a) exile absolved the clan from punishment (*cf. Laws of King Edmund*, Seebohm, p. 356) or (b) exile was accepted in lieu of the murderer's share of the wergeld (*cf. Canones Wallici*, quoted by Seebohm, *op. cit.* p. 109).

³⁴ See Soph. *Antigone*, 456-7.

is found in the description of the Shield of Achilles.³⁵ This passage raises many problems and causes serious difficulties to Homeric scholars. Ridgeway, who holds that the Achaean shield was of a round shape, and who assumes that the Shield of Achilles was therefore round, still finds nothing in Homer's description to suggest that the Achaeans manufactured this particular shield. 'It is probable,' he says,³⁶ 'that whilst the shape of the shield and the style or ornament are derived from central Europe, its technique discloses the native Mycenaean craftsman employing for his Achaean lords the method seen in Mycenaean daggers.' Monro³⁷ also points out that 'in choice of subjects and in the manner of treatment there is a remarkable agreement between the Mycenaean remains and the Shield of Achilles.' All the pictures, he observes, are taken from incidents of every-day life, and the absence of any references to commerce or seafaring life suggests the antiquity of the picture.³⁸ Leaf, in his translation of the *Iliad* (1883),³⁹ makes the following comment: 'The whole passage is clearly archaic, but the difficulty lies in the fact that no parallel, so far as we know, is to be found in the procedure of any primitive races which throws any light upon this passage. Homer so constantly represents the kings as the keepers of the "traditions," and therefore sole judges, that he must have been consciously moving in some different world when he depicted the Shield: a world, too, in which there is no mythology and no sacrifice and nothing distinctly Hellenic.' In his *Companion to the Iliad*⁴⁰ (1892) and in his latest edition of the *Iliad* (1902) he has proposed a solution⁴¹ of the problems raised by this passage. He suggests that the passage does not refer to a murder-trial, nor yet to an inquiry into the question of payment of wergeld (as he held in his translation⁴² of the *Iliad*), but that it is an account of the establishment of a new murder-code, which abolishes private vendetta and substitutes a compulsory 'wergeld' system. We will now quote the portion of this famous passage which relates to homicide—and we will offer a solution of the difficulty.

³⁵ *Il.* xviii. 490–508.

³⁷ See his Edition of *Iliad*, vol. ii. pp. 340–1.

³⁹ P. 516; *supra*, p. 25.

⁴¹ See also *J.H.S.* xiii. pp. 123–6 (1887), and Glotz, *op. cit.* p. 116.

⁴² P. 516.

³⁶ *Op. cit.* pp. 473–4.

³⁸ See Monro, *loc. cit.*

⁴⁰ P. 312.

On the Shield are depicted, amongst other things, two cities, one of which is in a state of siege, the other in a condition of peace. It is with the latter city that we are here concerned. In this city two 'events' are described: the first is a wedding, concerning which we need only say that it is an event of common occurrence, which is not in the least degree novel or abnormal; the second event⁴³ is a dispute about the ransom of a slain man, which takes place in the *ἀγορά* of the city, in the presence of the Elders, of the sacred heralds, and of a cheering crowd of people. Leaf's original translation (1883) (some of which he has since abandoned, not, as we think, wisely) is as follows: 'But the folk were gathered in the assembly-place; for there a strife was arisen, two men striving about the blood-price of a slain man: the one avowed that he had paid all . . . but the other denied that he had received aught, manifesting it to the people: and each was fain to obtain consummation on the word of his witness⁴⁴: and the folk were cheering both, as they took part on either side. And heralds kept order among the folk, while the Elders on polished stones were sitting in the sacred circle and holding in their hands staves from loud-voiced heralds. Then before the people they rose up and gave judgment each in turn. And in the midst lay two talents of gold to be given unto him who should plead among them most righteously.'

This is the traditional view, which regards the scene as an investigation by the Elders of the city as to whether a recognised wergeld has or has not been paid. It is followed by Glotz, who proposes however some curious explanations of details, which we shall presently discuss. It is the view which we shall adopt when we have explained more precisely the exact nature of the 'court.'

There is however a second view, adopted by Leaf in 1887, 1892 and 1902, first propounded by Müncher (1829), and supported by other scholars,⁴⁵ which regards the scene as describing the first interference on the part of some higher authority with the chaotic blood-feuds of savages.

Thirdly, there is the view of Lipsius that the trial was a genuine murder-trial, and that the two talents of gold referred

⁴³ 490-508.

⁴⁴ ἵστωρ, see *infra*, p. 43.

⁴⁵ E.g. Hofmeister, Leist, Dareste; see Glotz, *loc. cit.*

to by the poet represented a genuine wergeld. This view is now generally rejected and we shall see presently the objections which militate against it : but our first duty is to formulate the arguments which will induce us to accept the first and to reject the second hypothesis.

First of all, we have already protested against the opinion which represents the early Greeks as cannibals living in a state of barbarism. In our view, the only period of Greek history to which such a conception may, with any justice, be applied is the period of the Dark Ages which succeeded the Trojan war, when continual migrations and the breakdown of tribal solidarity gave a temporary reality to the picture which is drawn for us by Hesiod. The Pelasgian, Minoan, and Achæan periods, however, present to our minds societies enjoying a civilisation which was regular and orderly, and a culture which was real and distinctive, even though it was also primitive. Again, the arguments which Leaf bases on the linguistic interpretation of one or two verbs in this passage are not only inconclusive for his hypothesis, as Glotz rightly holds,⁴⁶ but suggest, we think, the opposite deduction. In 1883 Leaf translated the words *ὁ μὲν εὐχέτο πάντ' ἀποδοῦναι . . . ὁ δ' ἀναίνετο μηδὲν ἐλέσθαι* as 'the one avowed that he had paid all . . . the other denied that he had received aught': but in his latest edition of the *Iliad* (1902) he translates them (to suit his changed hypothesis) thus: 'the one offered to pay all . . . the other refused to accept aught.' He admits, of course, that the verbs can have the meaning which he gave to them in 1883. But he omits to note the solitary word *πάντα* which we consider a decisive factor. If a man is said to 'pay all' surely that 'all' must have been a sum fixed by a traditional arrangement. We can find no parallel, in wergeld-paying communities, for a judicial decision on the part of the tribe which compels a relative of the victim to accept the wergeld which the tribe of which he is a member has traditionally recognised as the complete payment of the debt. It is only if payment is in default or dispute that the tribe would assert itself to prevent a feud of blood. When Homer adds, after the clause *ὁ δ' ἀναίνετο μηδὲν ἐλέσθαι*, the words *δήμῳ πιφαύσκων*,

⁴⁶ *Op. cit.* p. 116.

surely this means 'declaring it to the people' rather than 'manifesting it to the people,' for it is absurd to suppose that the actual wergeld was included in the scene, since such a payment, as we have shown, usually consisted of cattle and sheep.

Again, we may mention what we consider a very serious weakness in Leaf's later position. He has to assume that the scene in question is not a single scene, but two scenes. He thus describes the affair in his *Companion to the Iliad*⁴⁷ (1892). 'A man has been slain: the homicide has offered a money payment in commutation of the death, but the next of kin refuses to accept it. Both parties come into the public place attended by their friends and dispute. This scene ends here. The next scene shows us the dispute referred to the Elders, the King's Council, who are to decide what course is to be taken. The importance of this double scene lies in the fact that it shows us criminal law in its very birth. No criminal law can be said to exist when it is a matter for private arrangement between the homicide and the next of kin to settle the offence, if they like, by a money payment, instead of by the normal blood revenge, which means the exile of the homicide if he is not killed. But criminal law begins when the people claim to have a voice in the question and to say that the money shall be accepted.' We will merely say, by way of comment, that this two-scene theory not only is artistically improbable but finds no support whatever in the text of Homer.

A period of thirteen years separated the date of the *Companion* from that of the publication of *Homer and History*. Though in this latter work he does not mention the Shield of Achilles, still we feel that if Leaf had applied his later theory of the distinction between Achaeans and Pelasgians to the solution of his earlier problem, he could have thrown considerable light on the question. In 1883 it was the absence of a king in the trial that troubled him. But is it not now clear that the 'Kings' of Greece from 1300 B.C. to 1100 B.C. were Achaeans, bellicose war-lords, who held in their hands the 'sceptres' and dealt out dooms to the people, but who took little interest in local disputes, who did not understand, perhaps, and

⁴⁷ P. 312 ff.

probably did not adopt, many of the Pelasgian 'dooms'?⁴⁸ Hence, if we suppose that the Elders in this scene are not Achaeans but Pelasgian chiefs of clans and tribes, we can quite easily understand the absence of the Achaean king or over-lord.

Leaf gives us a very clear picture in *Homer and History*⁴⁹ which we may utilise to remove the difficulties which he felt in 1883. 'All this time,' he says, 'the main population of Greece was going on with beliefs and customs undisturbed, unaffected by the change of masters⁵⁰ at the Castle. The group society of the Pelasgians—φυλή, γένος, φπατρία—continued intact, abiding its time. The epic of the Achaeans takes no notice of it, why should it? The Achaeans knew little and cared less about the customs of their subjects, unless at times called in to settle disputes based on silly family usage, unworthy of a lord's notice.' Though Leaf does not say so explicitly, we think that in his conception of the Homeric wergeld he is now much nearer to the position he held in 1883 than to the positions he adopted in the intervening period.

If we combine then the arguments based on the text of this Homeric passage with the results of Leaf's latest researches and also with the general principles outlined in our Introductory Chapter, we may conclude that this trial-scene presents us with a genuine wergeld dispute, not within the Achaean caste, but amongst the Pelasgian tribal folk. We have seen that scholars are unanimous in holding that the Shield is of an essentially Mycenaean and therefore Pelasgian pattern. We have quoted Seeböhm at length for the connexion between the wergeld-system of homicide-compensation and tribal organisation and control.⁵¹ We have quoted Leaf's recent views as to the probable existence of clans and tribes among the Pelasgian subject-people. The conclusion we have drawn is therefore a practically self-evident deduction from assumed premises.

Before we apply this general conclusion to the solution

⁴⁸ For a fine illustration of Achaean 'arbitration' in homicide, see Euripides, *Hecuba* (1130 ff.).

⁴⁹ P. 258.

⁵⁰ Minoans or Achaeans.

⁵¹ Cf. Glotz, *op. cit.* p. 122. Aussi celui, qui traite au nom d'une famille lésée, doit avoir pleins pouvoirs d'agir au nom de tous ou en référer au groupe qu'il représente.

of minor difficulties presented by this Homeric passage, it may be desirable to discuss briefly the view of Lipsius which has been already mentioned. He maintains that the trial in question was a murder-trial—a decision of homicidal guilt or innocence: he therefore holds that the two talents of gold were the actual wergeld. He says⁵²: ‘Upon him (of the claimants) who, according to their (*i.e.* the judges’) opinion—at any rate in the verdict of the majority—has given his opinion best, are bestowed two talents of gold which have been laid down in front of them. They (*i.e.* the talents) constitute, therefore, the objects of the dispute, the amount of the blood-atonement which the accused deposits and is to get back in case of victory,⁵³ but otherwise must transfer to the plaintiff.’ This opinion has been attacked on many grounds, but chiefly on the ground that the sum of two (Homeric) talents of gold is too small to constitute a wergeld-payment.⁵⁴ But it does not follow that the Achæan standard of values was necessarily that of their Pelasgian subjects. Even though it is true that in Homer a goodly price is paid for a freeman sold as a slave⁵⁵; for a woman⁵⁶; and for the ransom of the kidnapped son of a king⁵⁷; although a ‘ransom unspeakable’ (*ἀπερείσι’ ἄποινα*) is offered for a warrior’s life on the field of battle⁵⁸; and Lycaon, son of Priam, is kidnapped and sold as a slave for 100 oxen and liberated by a ransom of 300 oxen⁵⁹:—although ten talents of gold is an insignificant portion of the ‘placation’ offered to Achilles,⁶⁰ and two talents of gold is the reward paid by Aegisthus to his scout,⁶¹ there is nothing in all this to prove that, amongst the poor tribal tillers of the soil, the sum of two talents of gold (which, though it was not real money, was still a valuable commodity) may not have sufficed as wergeld for a tribal race ruled over by strangers. The really insuperable objections which we find to the view of Lipsius are the following: In the first place tribal wergeld, even where it is comparatively small, as it was in Ireland under the Brehon

⁵² See *Das Attische Recht und Rechtsverfahren*, Einleitung, pp. iv. ff.

⁵³ That is, if he was proved to be innocent of the crime.

⁵⁴ See Leaf’s note in edition of *Iliad* (1902), p. 611 ff.

⁵⁵ *Od.* xv. 388.

⁵⁶ *Od.* xv. 429.

⁵⁷ *Od.* xv. 452.

⁵⁸ *Il.* x. 378.

⁵⁹ *Il.* xxi. 41–80.

⁶⁰ *Il.* ix. 264

⁶¹ *Od.* iv. 525.

Laws, is generally a collection of numerous valuables, whether cows or sheep or slaves. Even when money is substituted, the coins are small in value but numerous ⁶² (e.g. 200 solidi, 400 argentei). The reason for this lies in the diffused nature of the responsibility for payment, quite a number of families and individuals of the wider kindred being liable to contribution. Secondly, there is no parallel, in analogous instances of wergeld, for the assumption that the total amount was collected and deposited in court at any time, much less before the validity of the murder-charge had been established. In this case, the accused asserts (according to Lipsius' translation) that he had paid the whole sum : but surely ἀποδοῦναι cannot be taken to mean 'that the accused had deposited in court the normal wergeld.' How could the accused assert that he had paid it, how could the plaintiff deny that he had received it—if the actual wergeld were deposited in court before their very eyes ? Thirdly, to say that the two talents would be given to the most convincing pleader is a very strange way of describing a judgment of guilty or not guilty on a charge of homicide. Thus the text of Homer refutes the theory of Lipsius. Maine ⁶³ indicates the real function of the two talents in this court by showing that they served the same purpose as the *sacramentum* or court-fee of Roman law.

Assuming then that the court here described by Homer was a group of Pelasgian tribal chiefs or elders who could regularly be appealed to in such disputes, and who would also perform the functions of a murder-court if any person accused of homicide appealed to them to establish his innocence, we shall conclude our discussion by clearing up some minor points of difficulty.

We cannot concur with Glotz ⁶⁴ in the opinion that the result of the verdict is a matter of life or death for the murderer. He says 'Il peut y avoir un jugement de condamnation entraînant l'esclavage ou la mort.' ⁶⁴ But quick justice is not a characteristic of the wergeld-exile-slavery-death system. We have seen how ⁶⁵ among the Welsh tribes

⁶² See *supra*, p. 10 ; Seebohm, *op. cit.* p. 123 ff.

⁶³ *Ancient Law*, p. 313. See Leaf, edition of *Iliad* (1902), p. 612.

⁶⁴ *Op. cit.* p. 119.

⁶⁵ Seebohm, *op. cit.* pp. 43-5.

wergeld was paid in fortnightly instalments: and we may suppose that failure to pay any one instalment would have been a common subject for litigation. In the laws of King Edmund of England (A.D. 940-946) a period of twelve months⁶⁶ was allowed for payment of wergeld—'to prevent manifold fightings.' In the laws of Henry I. the period was fixed by 'Sapientes.'

Again, in this Homeric passage as it is usually interpreted, both pleaders cannot have been right. Payment of wergeld was very different from a modern transfer of cash. It involved a complete readjustment of the whole property of two clans, so that hundreds of people were aware of the transaction. If however we suppose that a portion of the wergeld was unpaid, it will be possible to maintain that both parties were *bona fide* in their assertions. We will assume that Homer, whether he is indulging his imagination or describing something which he had actually seen on a shield, is giving us an account of a typical wergeld dispute such as must commonly have taken place in Pelasgian life: we must especially remember that the accused (whom we assume to be the murderer) and the plaintiff are isolated members of large groups concerned in the payment, though the accused would normally have to pay the greatest individual share, and the plaintiff, if he was the nearest relative of the slain, would receive a large share of the wergeld. Let us suppose, then, that some of the wergeld had been paid, and that the part which had not been paid was due, not from the murderer himself or his immediate relatives,⁶⁷ but from some distant family of cousins who, unknown to the defendant, had defaulted or were unable to pay. We can, on this assumption, credit the defendant (that is, the murderer) with *bona fides*. Or again, assuming still that the defendant is the murderer, if we suppose that the disputed 'instalment' had been received, unknown to the plaintiff, by a distant family of his wider kindred for whom he is acting as the leading 'avenger' in negotiation—in a word, if we suppose that both litigants are acting as representatives of large groups, we can understand the contradiction in their statements which would be

⁶⁶ See *supra*, p. 11; Seeböhm, *op. cit.* pp. 328, 356.

⁶⁷ See *supra*, p. 7.

less intelligible if they were speaking for themselves personally. And have we not here a clue as to the constitution of the crowd which attended at the trial? Homer distinctly says that the crowd 'cheered on both parties' ⁶⁸: and he adds: 'taking part on either side' ⁶⁹: so interested were they in the issue, that the heralds had to maintain order.⁷⁰ This implies that there was a certain danger of rioting amongst the crowd—of something like the 'manifold fightings' ⁷¹ of the Anglo-Saxons.

We cannot agree with the general view that this scene must be expected to contain a picture of intense public interest.⁷² The parallel scene, in the city at peace, is a wedding! The Shield-picture contains also a reaping scene and a ploughing scene. Surely the artist was not so much at pains to reveal subjects of public interest as to depict topics of common occurrence. To us it seems obvious that one of the most frequent scenes of tribal life was a wergeld dispute: and as this dispute concerned the property of a large number of people, all such persons would be naturally interested in the verdict. In all ancient codes prominence is given to laws relating to theft, to inheritance, to marriage settlements and the like, rather than to what we should now consider graver matters. The reason is, that all ancient thought and religion centred around questions of property. Hence we think it more than probable that the 'folk' of the Homeric trial scene are not the general public but are rather the wider kinsmen of the plaintiff and the defendant. It would be not only natural but also right that they should have supported each one his own side, just as they would do in the event of a clan feud. But the success with which the heralds checked the passions of the people shows how very different the ancient Pelasgians were from the barbarous races who only accept wergeld under duress, and who hail with triumph the slightest pretext for another feud. Glotz, who thinks of the Pelasgians as he would of any barbarous primitive people, thinks therefore that in this scene the crowd came together armed to the teeth! 'Les hostilités, un instant

⁶⁸ λαοὶ δ' ἀμφοτέρωσιν ἐπήπουν.

⁶⁹ ἀμφὶς ἀρωγοί.

⁷⁰ κήρυκες δ' ἄρα λαὸν ἐρήτουν.

⁷¹ Seebohm, *op. cit.* p. 356.

⁷² Leaf, edition of *Iliad* (1902) p. 611; Glotz, *op. cit.* p. 118 ff.

suspendues, menacent d'éclater à nouveau. Les deux ennemis qui déjà se résignaient mal à une transaction, échangent des injures, en attendant qu'ils se cherchent les armes à la main.' ⁷³

What now, we may ask, is the meaning of ἵστωρ in this passage? Homer says:

ἄμφω δ' ἰέσθην ἐπὶ ἱστορίᾳ πεῖραρ ἐλέσθαι.

Leaf, in 1883, translated thus: 'and each one was fain to obtain consummation on the word of his witness.' Later (1892 and 1902), when he conceived that there were really two scenes described in the picture, he regarded the ἵστωρ as an arbitrator: 'each one relied on an arbitrator to win the suit.' We can only say that while the etymology and use of the word ἵστωρ permit of both interpretations, the relation of the verse to its context seems to us immeasurably in favour of the interpretation 'witness.' We may presume that the 'witnesses' were included in the 'people' and were brought forward to prove the actual transference of property which had or had not taken place. They are, therefore, similar to the 'compurgators' who figure so prominently in medieval litigation.⁷⁴

Since Homer, then, the poet of the Achaeans, has given us only two incidental references to wergeld, we are not surprised that he has told us nothing about the details of the system. We may indeed infer that the amount payable was very large,⁷⁵ but Glotz reveals how little he is himself acquainted with the system when he asserts ⁷⁶ that the offender only escaped death at the cost of ruin. 'La ποινή,' he says, 'c'est une large, parfois peut-être une totale dépossession de l'offenseur au profit de la partie lésée. A la mort juste on n'échappe que par la ruine.' It is probable that the payment took the form of 'women, cattle, or horses.'⁷⁷ But in the absence of more definite evidence ⁷⁸ we must fall back on what we can learn from analogous instances. It is for that reason that we have discussed at so much length the wergeld system in our introductory chapter. We have no doubt that the wergeld revealed by Homer was a genuine

⁷³ *Op. cit.* p. 118.

⁷⁵ *Il.* ix. 634.

⁷⁷ Glotz, *op. cit.* p. 118.

⁷⁴ Seebohm, *op. cit.* pp. 203-5; 409-11.

⁷⁶ *Op. cit.* p. 129.

⁷⁸ *Cf. also Il.* xxi. 41; *Od.* xv. 388, 452.

wergeld, and not a mere clumsy device for terminating the feuds of savages exhausted by slaughter.

We must now search further, in the text of Homer, for anything he may have to tell us of other alternative penalties existing amongst the Pelasgian people. In this matter we cannot trust to the analysis of Glotz, for he knows of no distinction between Achaeans and Pelasgians, and hence his account is misleading.

We may say at once that we cannot find any genuine Pelasgian reference to the death penalty as an alternative, in cases of homicide *outside the clan*, though from other analogies and, indirectly, from Homer⁷⁹ we may infer that the option was valid.

It is also doubtful if we can detect any genuine instances of slavery as a penalty for homicide. Glotz calls attention⁸⁰ to a very curious custom which is found among some primitive peoples, the custom of compelling a murderer to have himself 'adopted' by the 'family' of the victim. The murderer takes the place of the dead man! Among the Ossetes 'a mother does not hesitate to recognise as her son the man who has deprived her of her son'—but this adoption does not give him a right to succeed to property. Glotz⁸¹ thinks it more than probable that the same custom prevailed in the Homeric epoch, for he regards wergeld as a kind of debt, and slavery was a universal solvent of debt down to the time of Solon, by whom it was still permitted in the case of a daughter who was guilty of misconduct (*prise en faute*).⁸² The offer of a daughter in marriage by Agamemnon to Achilles, in an age when men bought women as venal chattels, Glotz regards as a species of wergeld (*πρωή*).⁸³ He quotes⁸⁴ Apollodorus⁸⁵ for the eight years 'captivity' of Cadmus with Ares whose son (the dragon) he had murdered—after which Ares gave him his daughter in marriage.⁸⁶ For having massacred the Cyclopes,⁸⁷ Apollo became a shepherd in the service of Admetus.⁸⁸ Heracles, having slain Iphitus, serves Omphale for three years.⁸⁹ The only Homeric reference

⁷⁹ *Il.* ii. 666.

⁸¹ *Op. cit.* p. 163.

⁸³ P. 130.

⁸⁶ Hesiod, *Theog.* 937.

⁸⁸ Apollod. iii. 10. 4. Cf. Euripides, *Alcestis*, 1–10.

⁸⁹ Apollod. ii. 6. 2.

⁸⁰ *Op. cit.* p. 162.

⁸² *Op. cit.* p. 29, and Plutarch, *Solon*, 23.

⁸⁴ Pp. 164, 173.

⁸⁵ iii. 4. 2.

⁸⁷ P. 173.

which Glotz mentions is a passage⁹⁰ which describes the year's service of Apollo and Poseidon with Laomedon for a sum of money, at the command of Zeus: they built the walls of Troy, but Laomedon refused to pay their wages. As there is here no question of murder, we may say that there is nothing relevant about this Homeric passage.⁹¹ Nor can we attach any weight to legends presented by Apollodorus, for, as we shall see, the abolition of wergeld in the seventh century B.C. made exile the inevitable penalty for murder and left the murderer no property to take away with him, and therefore he had little option but to accept menial service with a stranger.

If we reflect on the nature of the wergeld system, we shall see how difficult it would be to apply a penal form of slavery in default of payment within a tribe or in any definite locality. Wergeld was essentially a 'diffused' penalty, involving a large number of debtors, any one of whom could, equally with the murderer, be sold as a slave at the command of tribal authorities. To enslave a distant relative⁹² of the murderer for debt would constitute a severe form of collective punishment: and it is much more probable that, in default of payment on the part of any individual family, the deficiency would have been contributed by the rest of the clan.⁹³ It is improbable that an entire family or *gewely* would have been so poor and needy that they could not by a series of instalments have discharged the wergeld debt. In a law of Henry I. it is decreed⁹⁴ that 'Amends being set going (*i.e.* first deposits being paid) the rest of the wergeld shall be paid during a term to be fixed by the *Sapientes*.' And we must not ignore the role of the *phratores*, or of the *congildones*, who were selected from neighbouring clans, and who might have to contribute in certain emergencies. Thus, in another law of Henry I. we read⁹⁵: 'If the slayer has no maternal (or paternal) relations the *congildones* shall pay half, and for half he shall

⁹⁰ *Il.* xxi. 442 ff.

⁹¹ The same remark applies to *Od.* xv. 388, 452, where the 'ransom' and temporary bondage are connected with kidnapping by pirates.

⁹² A murderer's children are condemned to bondage for two or three generations in the Salic Law. Seebohm, *op. cit.* p. 164.

⁹³ *Cf.* the Chreneeruda of Salic Law by which poorer members throw the burden on the richer. Seebohm, p. 141.

⁹⁴ Seebohm, p. 328.

⁹⁵ Seebohm, p. 323.

flee or pay.' In ancient tribal Ireland an instance of bondage is related in the *Senchus Mor*,⁹⁶ but failure to pay occurs only in the case of an illegitimate son, who would normally have no real share in family property. There is here, indeed, a sort of 'collectivity.' Six men of the tribe of Conn of the Hundred Battles, including four brothers and an illegitimate nephew, had slain a brother who was under the protection of another tribal chieftain. A compensation was demanded, which is not so much wergeld as a fine payable to the chief. Five of the six men were able to pay, but the illegitimate murderer could not pay: so his mother was handed over to the tribe as a bondwoman in pledge. However, the fact that the slain man had been adopted by an outside tribe, and that the money was paid to the chief, forbid the conclusion that money was paid for murder within the kindred in tribal Ireland or that kin-slaying was normally atoned for by bondage in the family of the victim.

It may be urged that slavery was accepted as an expiation of *manslaughter* within the kindred on the ground that wergeld was impossible, that death was too dreadful, and that perpetual exile or outlawry was too severe a punishment. It is obvious, from the very nature of the case, that wergeld cannot apply to bloodshed within the clan or the wider kindred. Seebohm has found no instance of such a penalty amongst the tribes whose customs he has investigated. He points out that 'if it (i.e. *the murder*) was of someone within the kindred, there was no slaying of the murderer. Under Cymric custom there was no *galanas* (i.e. wergeld), nothing but execration and ignominious exile.'⁹⁷ . . . 'There is no feud within the kindred when one kinsman slays another. Accidental homicide does not seem to be followed even by exile. But murder breaks the tribal tie, and is followed by outlawry.'⁹⁸ . . . 'Tribal custom everywhere left the worst crime of all—murder of a parent or kinsman—without redress, . . . unavenged.'⁹⁹ Glotz, also, holds that there was no drastic punishment for bloodshed within the clan: 'Rien qu'un parent fait contre un parent n'est susceptible de châtiment.'¹⁰⁰ But the graver crimes against one's kindred are penalised, he says, by exile:—

⁹⁶ Seebohm, pp. 93–4.

⁹⁸ P. 71.

⁹⁹ P. 129.

⁹⁷ P. 42.

¹⁰⁰ P. 19.

'La peine la plus grave qui soit ordinairement infligée . . . c'est l'expulsion de la famille.'¹⁰¹ We believe that in all clans which worshipped ancestors kin-slaying was usually punished by exile, perpetual or temporary. In a later chapter, when we come to discuss the survival of primitive clan-customs in historical Attica, the grounds for this belief will become apparent. At present we will merely say, with Fustel de Coulanges,¹⁰² that kinsmen would not encourage the presence of a kin-slayer as a slave in daily intercourse with his clan, nor would they easily permit him to take part, at least for a time, in the worship of the family hearth—of the clan 'fire' which he by his act had to some extent extinguished.¹⁰³ We prefer to see him, as Glotz¹⁰⁴ describes it, stripped naked, and escorted to the clan boundaries, beaten and insulted, declared an outlaw for years or for ever for treason to his blood. Later, we shall see¹⁰⁵ that when Athenian State-magistrates are charged with the execution of the sentence of death, the kin-slayer may no longer escape, and his clan will refuse to have his corpse 'gathered to his fathers.' It was thus that the King of the Wisigoths commanded the judge to punish with death the kin-slayer who in the system of 'private vengeance' saved his life by becoming an outlaw from his clan.¹⁰⁶

We find a reference to the exile penalty for *kin-slaying* in Homer.¹⁰⁷ We are told that Tlepolemus, son of Hercules by Astyocheia, came to Troy from Rhodes, whither he had fled, because when grown to manhood he had slain his father's maternal uncle, an old man, Likymnius, of the stock of Ares. 'Then with speed he built ships and gathered much folk together and went fleeing across the deep, because the other sons and grandsons of the mighty Hercules threatened him.' So he came to Rhodes, a wanderer, and his folk settled by kinship in three tribes and were loved by Zeus.' Leaf would probably regard this passage as non-Homeric, since it happens to occur in the 'Catalogue': but this will not vitiate our argument, as the predominant atmosphere of post-Homeric Greece was, in Leaf's view, that of the 'group-system' and

¹⁰¹ P. 22.

¹⁰³ Coulanges, *loc. cit.*

¹⁰⁶ Seebohm, *op. cit.* p. 129.

¹⁰⁷ *Il.* ii. 662 ff.

¹⁰⁴ *Op. cit.* p. 24.

¹⁰² *Op. cit.* pp. 125–126.

¹⁰⁵ See Bk. II. chap. iii.

there was no break in the custom of tribal wergeld. We may assume¹⁰⁸ that the family of Hercules was Pelasgian. Homer does not mention the place where the slaying took place, but it was, possibly, Mycenae, of which Electryon, father of Likymnius, was at one time king. Likymnius was a half-brother of Alcmene, the mother of Hercules, whose birth, according to Homer,¹⁰⁹ took place at Thebes. Likymnius was, therefore, a maternal uncle of Hercules and grand-uncle of Tlepolemus. In a normal clan the avengers of Likymnius must have included the brothers of Tlepolemus, since the homicide affected the whole kindred-group. The case is remarkably similar to that described in *Beowulf*, and referred to by F. Seeböhm,¹¹⁰ but *Beowulf* took no part in the quarrel between his maternal and paternal kindreds and the quarrel was in violation of tribal usage. This is precisely the kind of event which would have tested to the utmost the solidarity of the kindred; for there was a clan law that all the members who were akin either paternally or maternally had to act together in the avenging of a kinsman. The murder of Likymnius—who was not a kinsman of Amphitryon, grandfather of Tlepolemus, but who was akin to Hercules, to Tlepolemus and the brothers of Tlepolemus—was a crucial test, as it involved a conflict between loyalty to clan law and loyalty to one's nearer relatives. When Homer speaks of the avengers of Likymnius as the 'sons and grandsons of the mighty Hercules,' it does not follow that the family of Hercules were the sole avengers, but that, as the nearest relatives of Tlepolemus, their action was the most important, seeing that they were the kinsmen whose obedience to clan law was most difficult and, therefore, most appreciated.

Glötz¹¹¹ does not seem to us to have rightly interpreted this passage. He refuses to believe that the duty of vengeance was so strict as to compel a man to exercise it against a relative of the paternal line, in the interest of a victim of the maternal line. Moreover, he argues that the sons of Hercules are not the avengers of Likymnius, for, if they were, they would not have allowed him to depart. Here, we believe, Glötz is confusing the exile penalty of Pelasgian tribes with the Achæan

¹⁰⁸ Müller, *Dorians*, i. pp. 411-46.

¹¹⁰ P. 64.

¹⁰⁹ *Il.* xix. 99 ff.

¹¹¹ P. 170.

exile, which was a flight from death. They let him go, says Glotz, because they wish to avoid a feud within the clan—*'Ils veulent seulement que le meurtrier s'en aille, parce qu'ils entendent ne pas se brouiller avec des alliés.'*¹¹² We think, on the contrary, that the case of Tlepolemus furnishes a splendid instance of the solidarity of the clan. There was no question of wergeld—nor, we think, of slavery. It was a question of exile or death. The brothers of Tlepolemus appear to lead the avengers. From this we need not infer that Likymnius, an old man, had no sons or grandsons or brothers living at the time. We have said that a clan conflict was averted by the decision of the sons of Hercules to join in avenging. Rather than tolerate in the clan society, in the worship of common ancestors, the slayer of a kinsman, the brothers of Tlepolemus would, if necessary, have killed him. It is with *death* that they threatened him, if he remained. But his exile was not a flight from death: he was granted a certain time in which to build himself ships. Such delay is characteristic of Pelasgian but not of Achæan vengeance. There would be some difficulty in interpreting the reference to the people whom he carried with him into exile, were it stated, as fortunately it is not, that they were his kinsmen. His companions were hangers-on, lackland men who were content to join a powerful 'exile' emigrant. He founded in Rhodes a city, in typical Pelasgian fashion,¹¹³ dividing the folk by kinship into three tribes. It is perhaps because he was a son of Hercules that his exile appears to be no excessive penalty but a mere inconvenience. It is perhaps for the same reason that he was loved by Zeus, the father of Hercules.¹¹⁴

For the Pelasgian penalty of exile as an alternative to wergeld for homicide *outside the kindred*, the most relevant, though indirect, Homeric reference is a passage in the *Iliad*¹¹⁵ which we have already discussed, in which we

¹¹² Glotz, p. 170. See also p. 51.

¹¹³ See Coulanges, *Ancient City*, pp. 169 ff.

¹¹⁴ For the exile of Amphytrion, father of Hercules, who had slain Electryon, father of Likymnius, see Euripides, *Her. Fur.* 15 ff. For the slaying by Hercules of Iphitus, his guest, an act which appears to bring no punishment save the vengeance of the gods, cf. *Od.* xxi. 27.

¹¹⁵ *Il.* ix. 632 ff.

hear of a man-slayer who abides among his people when he has paid a goodly wergeld. We have already argued that this passage refers to the tribal customs of the Pelasgians, and that the Achaean Ajax, who uses the words, is borrowing, for rhetorical purposes, a sentiment which did not characterise the Achaean attitude to homicide.¹¹⁶ We may now point out furthermore that the vagueness of the description of the wergeld payment, both in this passage and in that which relates to the Shield of Achilles, suggests, if it does not prove, that the description proceeds from Achaeans who were not familiar with the details of the system, but had merely become acquainted with its outstanding principles. When Homer says 'a man has been known to accept a blood-price for the death of a brother or a son,' the statement is only a vague description, as anyone who is familiar with real wergeld will admit. We have seen that a large number of people participated both in the payment and in the satisfaction. Whether Homer can be taken to mean that exile would have absolved the murderer's kindred from all payment, as it did in the laws of King Edmund of England,¹¹⁷ or whether it merely acquitted the murderer of his share of the debt,¹¹⁸ are questions which, owing to the vagueness of our Homeric references, cannot here be decided.

These are the only Homeric references to the exile penalty for homicide which can be definitely associated with Pelasgian customs. There is a passage in the *Odyssey*¹¹⁹ in which the penalty is referred to, but we think it wiser to interpret the passage as an Achaean reference, and to regard the exile as a flight from death. Odysseus, having slain the suitors—an action characterised by arbitrary Achaean hypervengeance—urges his son Telemachus to consult with him and take joint measures to prevent retaliation from the relatives of the slain. He says to Telemachus: 'A man who has slain a single individual amongst the folk (*ἐνὶ δῆμῳ*) goes into exile and leaves his connexions and his native land, even when the slain man has not many "helpers" left behind: but we have slain the mainstay of the city, those who were noblest of the youths in Ithaca, so I bid thee take thought upon the matter.' The

¹¹⁶ *Supra*, pp. 32–3.

¹¹⁸ *Ib.* p. 109; *supra*, p. 9.

¹¹⁷ Seebohm, p. 356.

¹¹⁹ *Od.* xxiii. 118–120.

outlook of the Achaean over-lord is clearly indicated in this passage, in the importance which Odysseus seems to attach to the numbers or military strength of the avenging relatives. For the Achaeans, murder went unavenged if there were no avengers or if the avengers were not sufficiently powerful to retaliate. Blood was rarely shed in vengeance, because the murderer usually fled and took precautions against pursuit. The idea of fleeing when the fear of 'reprisals' was negligible was not very intelligible to an Achaean, and it is mentioned here as an instance of unusual caution, in order to emphasise the danger for Telemachus and Odysseus who remain unprepared at home surrounded by a host of powerful and hostile Ithacans. Later on, Odysseus suggests that music and dancing should resound in the house to prevent the rumour of the slaughter being disseminated until he has time to prepare his plans.¹²⁰ When, eventually, the truth became known, the relatives of the suitors took counsel together,¹²¹ in the manner of an Achaean council of war, but not as a Pelasgian clan or tribe assembled to judge of guilt or innocence. Some said that Odysseus was justified in his act; others prepare for war. The fight ensues, and many are slain.¹²² Athene ¹²³ intervenes to reconcile the feud; she acts not as the patron of clan law but as the symbol of Achaean military discipline. Odysseus does not depart into exile: the covenant which the outraged relatives submissively enter into came from the throne of Zeus, and pledged them to serve the king for all his days.¹²⁴

Neither can we put forward as evidence for the Pelasgian exile penalty for homicide the passage in the *Iliad* ¹²⁵ in which Priam's inexplicable appearance before Achilles and his friends evokes in them an emotion which Homer compares to the amazement (*θάμβος*) felt when a man 'slays one in his country and goes into exile to the house of a rich man' ¹²⁶ and wonder possesses them that look at him.' The amazement here described would be equally natural whether the stranger was an exiled Pelasgian or, as Leaf suggests,¹²⁷ an Achaean fleeing for his life. Moreover, suspicion has been

¹²⁰ *Od.* xxiii. 133 ff.¹²¹ *Od.* xxiv. 421 ff.¹²² *Ib.* 526.¹²³ *Ib.* 533.¹²⁴ *Ib.* 483.¹²⁵ *Il.* xxiv. 480 ff.¹²⁶ Reading ἀφνειοῦ.¹²⁷ *Il. and Il.* p. 253.

thrown upon the whole passage by the reference, in two scholia, to 'purification,' which has led Müller¹²⁸ to infer that the scholiasts read, in their texts, ἀγνιτέω instead of ἀφνειοῦ. We hope to show later¹²⁹ the error of Müller's view that purification for homicide was a characteristic of the Homeric age, and hence we maintain that either the whole passage is a later interpolation or that the reading ἀγνιτέω found its way into some Homeric texts from a marginal gloss of post-Homeric origin, suggested by a false interpretation of the word ἄτη in a preceding verse.

Hence, while the poems of Homer indicate beyond reasonable doubt the existence of a genuine Pelasgian exile penalty, it is significant that the poet of the Achaeans tends to ignore the exile¹³⁰ alternative as he tends also to ignore the wergeld alternative, in the system of penalties for homicide adopted by a tribal people outside the Achaean caste.

VOLUNTARY AND INVOLUNTARY HOMICIDE

It is generally¹³¹ asserted that primitive societies recognise no distinction either between wilful murder and manslaughter (which presumes a certain degree of guilt), or even between wilful murder and accidental slaying. The reason assigned is that bloodshed, even in comparatively advanced civilisations, is a 'civil' rather than a 'criminal' offence—a matter for damages and compensation rather than for exemplary punishment. Thus Glotz¹³² says: 'L'intention n'est rien: le fait est tout. Pas de circonstances atténuantes. Nulle différence entre l'assassinat lâchement prémédité et l'homicide involontaire.' To the possible objection that the distinction is found in Greek legends, as given by Aeschylus, Apollodorus, Pausanias and others, he replies that these legends are of late origin—

¹²⁸ *Eumenides*, pp. 104–5.

¹²⁹ See *infra*, pp. 111ff., 139ff.

¹³⁰ We should perhaps also add the 'reminiscence' in *Il.* ix. 63, where the lover of domestic strife is said to be a lawless wretch without home or phratry. It is possible but not necessary to suppose that the wretch in question was outlawed because of homicidal tendencies which continued to manifest themselves afterwards. See Leaf, *H. and H.* p. 251. For a possible reference in the phrase ἀτλητος μετανδότης (*Il.* ix. 648), see Ridgeway, *J.H.S.* vol. vi.

¹³¹ Caillemet, art. φόνος in Daremberg and Saglio, p. 439; Philippi, *Areopag und Epheten*, pp. 3–4; Eichhoff, *Blutrache*, chap. i. p. 8.

¹³² P. 48.

a view which is not quite consistent with his usual attitude.¹³³ He thinks that those legends were invented by the Athenians to restore the history of the Areopagus, the Palladium, and the Delphinium courts.¹³⁴ He attributes the moral distinction, which these courts are assumed to imply, between voluntary and involuntary homicide to a period 'not much anterior to Dracon,' but he admits that the idea was being developed before that time in 'family law'—that is, in clan justice. He seems to us rather inconsistent in holding that 'dans les lois sur l'homicide (de Dracon) apparaît pour la première fois la distinction du meurtre prémédité et du meurtre involontaire,' and in maintaining at the same time that it was a 'principe lentement élaboré dans la justice sociale.'¹³⁵ The distinction was developed, he thinks, not from any philanthropic motives but only because private vengeance was abolished and the newly established power of the State sought thereby to restrain the taste for blood. Now we may admit, with Glotz,¹³⁶ that the distinction is a late development in most races whose social customs are known to us—for instance, amongst the Germans, the Slavs, the Celts, the Scandinavians, and the Ossetes. France does not seem to have recognised the distinction in its written laws before A.D. 819. In feudal England it does not make its appearance before the time of Henry VIII.¹³⁷ But Seebohm¹³⁸ shows that in the *Lex Wisigothorum* (about A.D. 650) 'a homicide committed unknowingly (*nesciens*) is declared to be . . . no cause of death. "Let the man who has committed it depart secure." ' The introduction of Roman law may have caused this innovation, for Roman law admitted the distinction from the time of the Twelve Tables¹³⁹ onwards, and this code was still operative amongst Gallic peoples when they were conquered by the Wisigoths.¹⁴⁰ From *Beowulf*, however, Seebohm¹⁴¹ infers that in Scandinavia within the clan 'accidental homicide does not seem to be followed even by exile.' The poem says¹⁴² : 'Hæthcyn by arrow from hornbow brought him (Herebeald) down, his near kinsman. He missed the target and shot his

¹³³ Glotz, *op. cit.* pp. 164–173.

¹³⁴ P. 48.

¹³⁵ P. 302.

¹³⁶ P. 48.

¹³⁷ *Encycl. Laws England*, ed. Renton, vol. ix. p. 32.

¹³⁸ P. 128.

¹³⁹ Cf. the phrase *si telum fugit magis quam iccit*.

¹⁴⁰ Seebohm, p. 126.

¹⁴¹ P. 71.

¹⁴² Quoted by Seebohm, *op. cit.* p. 63.

brother. One brother killed the other with bloody dart. That was a wrong past compensation. . . . Any way and every way it was inevitable that the Etheling must quit life unavenged.' In this case, of course, there could be no question of wergeld.

In the 'Canones Wallici'¹⁴³ (Celtic laws of the period A.D. 700-800), which are based on the tribal wergeld system as adopted by the Church, we find this clause: 'Si quis homicidium ex intentione commiserit, ancillas III et servos III reddat.' This implies a different penalty when murder was not *ex intentione*.

The Brehon laws¹⁴⁴ contain minute distinctions of payment in different cases of wounding. If a bishop's blood was shed in certain quantities, the guilty person had to be hanged or to pay seven *cumhals* (slaves)—or their equivalent in silver and gold: if a less quantity of blood was shed, the aggressor was condemned to lose his hand. If the blood of a priest was shed in certain quantities, the criminal's hand was cut off or seven *ancillae* paid, if the act was intentional; if it was not intentional, one *ancilla* sufficed for compensation. It is clear then that this distinction is not always absent even in a wergeld system where the crime of bloodshed is particularly objective. We have seen¹⁴⁵ that wergeld often carried with it an 'honour-price,' an atonement for the insult, which was caused by homicide. This price, it seems to us, could easily admit of a modification of the penalty. Moreover, it is possible that wergeld is not always to be regarded as a measure of the loss sustained by a clan, but as also to some extent a ransom of the prisoner's life. 'Partout,' says Glotz,¹⁴⁶ 'la composition varie selon le rang de la victime: et selon le rang du coupable: elle est à la fois la rançon du meurtrier et le prix du sang versé.' For the Germans, according to Coulanges,¹⁴⁷ 'la composition est un rachat, non pas rachat de la victime mais rachat de la vie du coupable.'¹⁴⁸ Is it not natural to suppose that a system of compensation for homicide which contains such minute differentiations would leave the road open for a discrimination as to degrees of guilt?

¹⁴³ Seebohm, *op. cit.* pp. 106-8.

¹⁴⁴ Seebohm, *op. cit.* p. 103.

¹⁴⁵ *Supra*, p. 7.

¹⁴⁶ P. 107.

¹⁴⁷ See *La Monarchie franque*, pp. 473-4 (Glotz, p. 107).

¹⁴⁸ For the contrary view of Dareste in regard to Aryan races, see his *Études d'histoire du droit*, pp. 252-275. Glotz, p. 106.

It is time to ask whether Homer has anything to say of this distinction. We will admit that he says nothing which is directly relevant to the question. But we will examine two passages with a view to showing that the distinction was known outside the Achæan caste.

The first passage is from the *Odyssey* ¹⁴⁹ and is concerned with King Oedipus the parricide and with his punishment. Odysseus narrates how, in Hades, he saw Epicaste, and how 'he that had slain his father wedded her and straightway the gods made known these things to men. Yet he abode in pain in pleasant Thebes, ruling the Cadmeans, by reason of the baneful devices of the gods. She indeed went down to Hades . . . but for him she left behind many a woe, such as the Erinnyes of a mother bring to pass.' Of all forms of homicide, that by which a son deprived a parent of life was regarded as the most horrible. Probably even the Achæans, as we shall see presently, felt a certain horror at the thought of parricide. Homer, then, cannot understand why the gods, who had taken the trouble of revealing the crimes of Oedipus, nevertheless permitted, if they did not encourage, his continued rule over the Cadmeans. All other parricides of whom Homer had ever heard had taken to flight! And what was the pain which Oedipus endured? Was it remorse of conscience? Or was it his self-inflicted blindness? Euripides ¹⁵⁰ tells how the sons of Oedipus confined their father under bolts and hid him away that his sad fate might be forgotten. We shall see, later, when we analyse the Oedipodean legends as given by the Attic dramatists, how Oedipus is filled with natural grief, but is free from that sense of moral guilt which we should expect him to have felt. He constantly pleads that he did not know that the man whom he slew was Laius, his father. Was this plea invented in later years, or was it part of the original legend? Seebohm ¹⁵¹ has told us that in primitive clan societies 'accidental homicide within the kindred does not seem to be followed even by exile.' Was it, then, because of 'accidental' or involuntary ¹⁵² parricide that Oedipus continued to rule over the Cadmeans? Oedipus was not an Achæan. Minoan or Cadmean, which was he? It does not matter, for our purpose,

¹⁴⁹ xi. 271 ff.

¹⁵¹ P. 71.

¹⁵⁰ *Phœnissæ*, 60 ff.

¹⁵² *Infra*, pp. 171, 310 ff.

if he obeyed the 'dooms' of private vengeance in tribal society. Homer is equally vague about the working of the mother's curse. Why did Epicaste curse Oedipus? The Attic dramatists do not mention this. Oedipus is cursed in Homer for one reason, and, as we think, for one reason only. It is because other slayers of kinsmen who did not suffer punishment were usually cursed. Thus Meleager, who in a quarrel slew his uncle, was cursed by his mother Althaea.¹⁵³ It is an Homeric maxim that the Erinyes command men to honour their parents.¹⁵⁴

The second passage which we shall cite is from the *Iliad*,¹⁵⁵ a passage in which the ghost of Patroclus tells Achilles how his father Menoitius brought him away from home to the realm of Peleus on the day when he slew the son of Amphidamas, though he was but a boy and did not intend it, and was angry over dice.¹⁵⁶ As this is the only passage in Homer which contains an explicit reference to involuntary homicide, and as the slayer is compelled to flee for ever precisely as if the act had been wilful murder, this passage has been quoted¹⁵⁷ as a proof that in early Greece there was no distinction made between murder and manslaughter. If, however, we are right in our discrimination between the Pelasgian and the Achaean attitudes to homicide, it would almost seem as if the passage could be regarded, not indeed as a proof, but perhaps as an indication, of the existence of this distinction in Homeric Greece. May we not suppose that the words of Patroclus are not an expression of subjective innocence by a member of a caste which regarded only objective facts, but a 'reminiscence' of a higher ethical code which obtained in the tribal villages around the fortress, and which had enshrined itself in the language which the Achaeans learned from the Pelasgians? In the words of Patroclus we think we can find an echo of a distinction which, in later times, is made the basis of grades of penalties in certain laws of homicide. Plato, whose penal code is probably modelled on the unwritten laws of tribal institutions, points out that a person who slays another in a passion but with intent to kill shall be exiled for a period of three years, while

¹⁵³ *Il.* ix. 563-570.

¹⁵⁴ *Cf. Il.* xv. 204 οἷσθ' ὡς πρεσβυτέροισιν Ἐριννύες αἰὲν ἔπονται.

¹⁵⁵ xxiii. 88 ff. ¹⁵⁶ νήπιος, οὐκ ἐθέλων, ἀμφ' ἀστραγάλοισι χολωθεῖς.

¹⁵⁷ See, e.g., Eichhoff, *Blutrache*, chap. i. p. 8.

a person who slays in a passion without intent to kill is punished by exile for two years. He adds that 'it is difficult to give laws on such matters with accuracy . . . Of all these matters, therefore, let the guardians of the laws have cognisance . . . and let the exiles acquiesce in the decisions of such magistrates.' We cannot, of course, ignore the main fact given by Homer that Patroclus was compelled to flee from death because of involuntary or quasi-involuntary homicide. But Patroclus was an Achæan and we do not associate with the Achæans any tendency to discriminate between degrees of guilt. The Achæan system of military control within a small dominant caste was merely capable of preventing indefinite retaliations. It was not interested in homicide as an offence against the stability of social organisations. It had no homicide tribunals, no elaborate code of penalties. We could not expect it to manifest any subtle power of delicate discrimination. It is possible that the military system of historical Sparta was equally crude in its conceptions of homicide-guilt as it was, apparently, equally severe in its punishment.¹⁵⁸

We shall see, later,¹⁵⁹ when we analyse the laws of Plato's homicide-code and of the ancient Hebrew code that the distinction between voluntary and involuntary slaying was much more likely to have arisen in the tribal customs of village-communities accustomed to the most minute differentiations in their wergeld system than in systems emanating from centralised political or religious authority. The Homeric poems give us, it is true, no reliable evidence which would help us to arrive at a definite decision on the existence of such a distinction in early Greece, but from the passages we have cited we may at least extract a suggestion that the distinction was really appreciated, and we have suggested a source from which that sentiment may very easily have sprung.

JUSTIFIABLE AND UNJUSTIFIABLE HOMICIDE

We come now to a kindred problem, namely, the question whether the Pelasgians¹⁶⁰ were aware of a difference between justifiable and non-justifiable slaying? Most writers

¹⁵⁸ See Xenophon, *Anab.* iv. 8. 25.

¹⁵⁹ See *infra*, pp. 140f., 197. ¹⁶⁰ For Attic legislation, see *infra*, p. 213 ff.

will admit that there was no vengeance set in motion by death on the field of battle. It was a recognised challenge of strength, an *ἄγων*, the issue of which was accepted as the will of the gods. But in local blood-vengeance, arising, let us suppose, out of failure to pay wergeld, or when the murderer's clan defended him at home or did not expel him and feud followed, was there no distinction between murder and just revenge? Glotz, as we should expect, holds that there was no distinction between murder and revenge.¹⁶¹ 'Coupable ou non coupable, il est responsable. Qui a versé du sang doit du sang.' It is thus, certainly, with modern Montenegrins, Albanians and others. But are the creators of Mycenaean civilisation to be compared with these? Glotz conceives the blood-vengeance of early Greece to be what we have called unrestricted vendetta, but this mode of vengeance is not usually associated with settled tribal communities who are otherwise known to accept wergeld, and we maintain that the Pelasgians had reached this stage at the dawn of Greek history. Glotz bases his view for the most part¹⁶² on those numerous 'flights' of murderers which Homer records. Now, these references concern murderers, not avengers of murder; and there is no instance, in Homer, of an avenger of blood becoming in turn the object of vengeance. The non-Homeric instances cited by Glotz,¹⁶³ such as the trial of Ares for the murder of Halirrhothius, who had dishonoured his daughter; the flight of Hyettos from Argos to Orchomenus, after slaying Molouros, who was caught in adultery with his wife, are derived from Pausanias, Apollodorus, or Euripides, and are therefore irrelevant for the interpretation of the Homeric age.

We admit, with Glotz, that in cases of adultery and seduction slaying was unjustifiable in Homer which would have been justifiable in historical Greece. Glotz¹⁶⁴ points out that the system of compensation for adultery and seduction which is found in the laws of Gortyn recalls, in a certain manner, the custom applied by Hephaestus to Ares in the *Odyssey*.¹⁶⁵ He says of this system: 'Nous y retrouvons aussi, exprimées avec précision, quelques-unes des règles que les coutumes ont transmises aux législations'¹⁶⁶ . . . Entre la *ποινή* de Gortyne

¹⁶¹ P. 50.¹⁶² P. 51⁷; see *infra*, ch. iii.¹⁶³ P. 50.¹⁶⁴ P. 383.¹⁶⁵ viii. 318, 332.¹⁶⁶ *Op. cit.* p. 385.

et celle de la fin des temps Homériques la ressemblance est frappante.¹⁶⁷ This is as much as to say that 'towards the close of the Homeric epoch' custom (or, as we should say, tribal unwritten law) compelled the husband of an adulterous wife to accept, in certain cases, compensation from the paramour, and to arrest, but not to slay him. In the *Odyssey*,¹⁶⁸ Hephaestus, having surprised Ares in the arms of his wife, decides to imprison them, saying 'the snare and the bond will hold them till her sire give back to me the gifts of wooing.' The other gods, among whom 'laughter unquenchable arose,' say that 'Ares owes the adulterer's fine' (μοιχάγρι' ὀφέλλει). In the *Iliad*¹⁶⁹ the wife of Proetus falsely accused Bellerophon of attempted adultery,¹⁷⁰ and begged her husband to slay the offender. But Homer tells us that Proetus feared to slay him, and sent him forth to Lycia with the famous σήματα λυγρά—a written injunction to the King of Lycia to put Bellerophon to death—an act which suggests that the death penalty for adultery was not customary in Greece.¹⁷¹ And surely the existence of a prescribed μοιχάγρια suggests that even amongst the Achaeans the slaying of an adulterer was unjustifiable. We may further infer that amongst the Pelasgians there existed some authority, whether tribal tradition, or clan-custom, which discriminated between the cases in which death could and those in which it could not be inflicted with impunity. The collective execution of death in case of refusal to obey clan-laws regarding the payment of wergeld, or μοιχάγρια, is a clear manifestation of that social justice which claims the right to decide between justifiable and unjustifiable slaying.

We cannot, of course, find any evidence in the Homeric poems for a tabulation of instances of justifiable homicide such as is found in the laws of Dracon.¹⁷² But the Homeric poems present us with a picture which is mainly, if not exclusively, Achaean, and we cannot infer from the absence of Homeric evidence that the Pelasgian tribes which had de-

¹⁶⁷ P. 386.

¹⁶⁸ viii. 318 ff.

¹⁶⁹ vi. 160 ff.

¹⁷⁰ For an interesting parallel cf. Euripides, *Hippolytus*.

¹⁷¹ The subsequent solitary wandering of Bellerophon in 'the plain of wandering,' and the death of his son and daughter through the anger of the gods, is not presented by Homer as a punishment for an act of adultery of which he was not guilty (200 ff.).

¹⁷² *Infra*, pp. 193, 215 ff.

veloped, as we think,¹⁷³ a capacity for discriminating between degrees of homicide guilt, had not also evolved a definite conception of the distinction between just and unjust slaying. We shall see¹⁷⁴ later that even the Achaeans recognised at least a distinction between murder and just revenge. Thus, the Achaean Orestes who slew his mother to avenge his father is said by Homer to have 'gained renown amongst all men.'¹⁷⁵ In the *Odyssey*,¹⁷⁶ Amphinomus, one of the suitors, refuses to join a conspiracy to murder Telemachus without consulting the gods: 'I for one would not choose to kill Telemachus: it is a fearful thing to slay one of the stock of kings: nay, first let us seek the counsel of the gods, and if the oracles (θέμιστες) of great Zeus approve, myself I will slay him and bid all the rest to aid; but if the gods are disposed to avert it, I bid you, too, refrain.' The θέμιστες here attributed to Zeus must be regarded as a reflex of the public opinion of the Achaean caste, which, therefore, had evolved a distinction between just and unjust slaying. In another place¹⁷⁷ Eupheithes, the father of a slain suitor, says 'It is a scorn if we avenge not ourselves on the slayers of our sons and brothers; rather would I die!' It is obvious that an act which is a duty prescribed by caste or law or custom cannot be regarded as a crime. So,¹⁷⁸ when the feud arose between Odysseus, who regarded himself as justified in slaying the suitors who had insulted his family, and the suitors, who were contriving what they considered a just revenge, Homer tells us that Odysseus would have slain them all, had not Athene intervened and ordered both sides to desist and to enter into a solemn covenant of reconciliation. This act of Athene¹⁷⁹ signifies that in her opinion both sides are justified in shedding blood, and hence that the feud can be cancelled without disturbing the balance of justice. Now Glotz¹⁸⁰ rightly points out that the ancients attributed to their gods such opinions as they themselves professed; and if Achaeanised Athene acted thus, how can we avoid assuming the existence of at least as high a standard amongst the Pelasgians? In Homer then we may conclude that there existed some distinction between just and unjust

¹⁷³ *Supra*, p. 55 ff.

¹⁷⁶ *xvi.* 400 ff.

¹⁷⁹ See also *Od.* i. 290 ff.

¹⁷⁴ *Infra*, p. 76.

¹⁷⁷ *Od.* xxiv. 420.

¹⁷⁵ *Od.* i. 298 ff.

¹⁷⁸ *Ib.* 530-555.

¹⁸⁰ *P.* 565.

slaying. For Glotz, this distinction arises only when the State takes justice into its own hands and legitimatises private vengeance after trial. The date of this evolution, he thinks, is the age of Dracon. But we maintain that, long before Dracon, or perhaps even before Homer, there existed, in Greece, States within States, that is, clans and tribes and phratries, whose interest it was, at the dawn of civilised society, to create the distinction between justifiable and unjustifiable bloodshed, which is so vital to domestic peace.

COLLECTIVITY IN VENGEANCE

Nothing that has been said in this chapter is incompatible with the view that punishment, in early societies, tends to be collective and hereditary. Feuds of blood must have occasionally occurred amongst the early Pelasgian folk, but we cannot ignore the control of tribal authority, and the Achæan domination which may have acted as a check. However, it is one thing to declare war on a group which refuses to fulfil the law of a district or of a tribe; it is quite another thing to refuse the 'satisfaction' prescribed by custom, and to make a single murder an invariable cause of incessant bloodshed. This is the state of Homeric society as conceived by Glotz, and by most writers on the subject of early Greek homicide. We prefer to emphasise the triumph of reason over passion which is symbolised by a wergeld system of local vengeance, by the worship of common ancestors, real or fictitious, by the early political synoekism of many Greek districts, and by international Amphietyonies of immemorial antiquity. We think that it was in post-Homeric times, when the Achæan control was removed, and the Migrations broke up the solidarity of Pelasgian clans, that Greek societies developed unrestricted vendetta. Glotz¹⁸¹ has difficulties about the Homeric age. He has to admit that there is no infallible system of collective punishment in Homer. 'Dans l'Iliade et dans l'Odyssée,' he says, 'les querelles strictement personnelles ne lient plus infailliblement au sort de l'offenseur tous les siens. On n'y voit point, après un meurtre ἐμφύλιος, les vengeurs du sang poursuivre la famille du meurtrier.' The difficulty is

¹⁸¹ P. 191.

obviated by our theory of Achaean restricted vendetta. The vengeance of Achilles¹⁸² for the death of Patroclus is no objection to our theory, as it is not revenge for homicide proper: war is distinct from peace. Achaean kings confiscate property, transfer and destroy whole cities¹⁸³: this is but the autocracy of a quasi-feudal militarism; it is not a punishment of moral guilt.

Euripides¹⁸⁴ makes Tyndareus utter a sentiment regarding the legitimate modes of homicide-vengeance which seems to us to be very applicable to early Greek societies. Tyndareus objects to the infliction of death as a penalty for the slaying of Agamemnon, on the ground that such penalties, in the absence of State-control, would inevitably lead to an indefinite series of retaliations. 'Right well,' he says, 'did our ancestors in olden times enact these ordinances . . . they punished (the murderer) with exile, but they suffered no one to slay him in return, for (in that eventuality) each successive avenger would be liable for bloodshed. . . . I will support the law, and try to check this brutal murderous practice destructive alike of individual States and of the world.' We shall see later¹⁸⁵ that Euripides is either consciously archaising in this passage or that the view of Tyndareus was somehow preserved in the legend which the dramatist follows. In either case, it seems to us to contain a valuable principle regarding the fear of unrestricted vendetta, of collective and hereditary punishment, which is found in civilised tribal societies in a condition of private vengeance. Such societies have either to abandon civilisation, and to fall back into a chronic state of chaotic barbarism, or to adopt a system of 'social justice' which, by definite rules and regulations, expressive of tribal authority, by public opinion and religious sanctions, prevents, as far as possible, the innocent from suffering with the guilty.

The penalty of wergeld was, in a certain sense, collective because it was diffused throughout the kindred. But this penalty is clearly far removed from the collective punishment of a barbarous hypervengeance. It arises, we have said, from the simple fact that property, in early society, was to a great extent collective or common; and also from the fact that the

¹⁸² *Il.* xviii. 336, xxiii. 181.

¹⁸⁴ *Orestes*, 500.

¹⁸³ *Supra*, p. 19.

¹⁸⁵ *Infra*, p. 348 ff.

individual of tribal life was not the isolated personality which feudal and modern civilisations have evolved, but was rather a branch of one great wide-spreading tree in which he lived and moved and had his being. Finally, in regard to the Homeric society, we must remember that the Achaeans stood on quite a separate plane. Amongst them there is little or no suggestion of collective punishment. Achaean military discipline prevented it. Such traces of this punishment as are found in many later legends must be attributed, as we shall see, to post-Homeric influences.

CHAPTER III

THE ACHAEAN SYSTEM

Achaean system explained according to author's theory : proofs from Homeric text : question of discrimination, amongst Achaeans, between murder and manslaughter, and between justifiable and unjustifiable homicide : no collectivity or solidarity in vengeance.

'THE Achaians,' says Leaf,¹ 'shew no signs in Homer of anything corresponding to the minor classifications, so important in later Greece, which is recalled to us by the Attic names of γένος and φπατρία. They appear as a single unit divided only locally. The whole primitive family system, with its rites and taboos, has disappeared and the only kinship recognised as carrying a moral obligation is the natural obligation of close blood relationship . . . this is only what we should expect in a people of military adventurers. . . . Homicide is a local and family affair.'

We have indicated the confusion of ideas which characterises the traditional views regarding Homeric homicide,² a confusion which is to be attributed to the failure of writers to discriminate between the Achaeans and the Pelasgians, between the individualistic quasi-feudal militarism of a dominant caste and the complex tribal organisations of a settled agricultural subject-people. We have suggested, as the most probable hypothesis, that the Pelasgian penalty for homicide was normally and essentially wergeld, except in cases of kin-slaying, for which the penalty was exile : we have argued that, within the Pelasgian tribe, or phratry, or village community, exile from his clan or phratry or State was accepted for the slayer as a complete or partial substitute for his wergeld debt : and that if the murderer in default of wergeld remained in his native place beyond a certain time, he could be killed with impunity, having been previously warned or threatened ;

¹ *H. and H.* pp. 251-253.

² *Supra*, chap. ii. pp. 21-6.

we have said that bondage or servitude might be accepted in case of failure to pay the prescribed wergeld quota—whether on the part of the murderer himself or on the part of delinquent relatives—a bondage which was not necessarily perpetual, but was rather a temporary punishment proportioned to the ‘debt.’ The Achaean system, we have suggested,³ was fundamentally different: it was a restricted ‘small family’ vendetta, in which blood for blood was the normal retribution, wergeld was unknown; and exile was merely a flight from death.

This view must now be defended from the text of Homer. In the *Odyssey* ⁴ we read that there came as a suppliant to Telemachus, at Pylos, a murderer from Argos, named Theoclymenus. He was a great-grandson of Melampus who was a contemporary of Nestor, and the family had been settled in Argos for four generations.⁵ That the family was Achaean is rendered obvious by the Homeric text.⁶ That the victim was probably a kinsman of the murderer appears from the words *ἄνδρα ἑμφυλον*.⁷ We pointed out, in the Introduction,⁸ how easily relatives could have accumulated in one or two hundred years, without, however, attaining to the reality, whatever may be said about the appearance, of a clan. But the important point to note is that, even in exile, Theoclymenus feared the death which was desired by those who were at once akin to him and to his victim. ‘I have fled,’ he says, ‘from my country, for the manslaying of one of mine own kin; and many brothers and kinsmen of the slain are in Argos . . . and rule mightily over the Achaeans. Wherefore now am I an exile to shun death and the black fate at their hands. . . . Set me on board ship since I supplicate thee in my flight, lest they slay me utterly: for methinks they follow hard after me.’⁹ Nothing could be farther removed than this from the recognised exile penalty of the wergeld system. The passage shows, moreover, that the supplication was not an appeal for homicide-purgation, as Müller would maintain¹⁰—we shall see later that this ceremonial was post-Homeric—but was merely an appeal for protection from the avengers of blood.

A similar supplication is mentioned in a passage in the

³ *Supra*, p. 27.

⁴ xv. 224, 273–278.

⁵ *Supra*, p. 21.

⁶ μέγα δὲ κρατέουσιν Ἀχαιῶν.

⁷ 273.

⁸ *Supra*, p. 21.

⁹ From the translation by Butcher and Lang.

¹⁰ See *Eumenides*, p. 109.

Iliad,¹¹ in which we read that 'Epeigeus, who ruled fair-set Boudeion of old, when he had slain a good man of his kin, came as suppliant to Peleus and silver-footed Thetis . . . and they sent him to follow with Achilles.' The locality of Boudeion is unknown.¹² While we cannot argue that Epeigeus was an Achæan from the fact that he is included amongst the Myrmidons (after his adoption by Peleus), still we may presume that he was an Achæan from the behaviour of Peleus and hence we may interpret his exile as a flight from death. We may therefore infer that death was the Achæan penalty for kin-slaying. This passage also illustrates the statement of Leaf¹³ that homicide, among Achæans, brings no disability other than exile from home. To an ambitious young man 'exile under such circumstances is no punishment: a wealthy and generous king can give opportunities of advancement beyond all the hopes of a narrow family circle.' Epeigeus, as Homer tells us,¹⁴ was slain by Hector in battle before the walls of Troy. His enrolment among the Myrmidons saved him from the hands of the avengers of blood.

In another passage of the *Iliad*¹⁵ we are told that Medon, son of Oileus and brother of Ajax, 'dwelt in Phylace, far from his own country, for that he had slain a man, the brother of his stepmother Eriopis.' The murder probably took place in Opus, a Locrian town, where also was perpetrated the death of the son of Amphi-damas at the hands of Patroclus.¹⁶ Like Patroclus, Medon came to Phthia, not to Peleus the king of the realm, but only, as Leaf would maintain,¹⁷ to Protesilaus, a 'baron' of Achilles who ruled the town of Phylace. The typically Achæan method of procedure is maintained.

Again, we are told¹⁸ that Lycophron, son of Mastor, of Cythera, slew a man in Cythera and came and dwelt with Ajax who made him his 'squire' or a member of his bodyguard. He, too, was slain in Troy, and when he falls Ajax says to his brother Teucer, 'Our faithful comrade has fallen . . . whom we honoured like our parents.' Leaf¹⁹ quotes this passage as an instance of the immunity of Achæans from any real punish-

¹¹ xvi. 511.

¹⁴ *Il.* xvi. 570.

¹⁶ *Il.* xxiii. 88.

¹⁸ *Il.* xv. 430 ff.

¹² Leaf, *H. and H.* p. 254.

¹³ P. 253.

¹⁵ xiii. 696; xv. 336.

¹⁷ *Op. cit.* pp. 125, 128, 135, 254.

¹⁹ *H. and H.* pp. 254-5.

ment for bloodshed. So far as tribal customs were concerned such men were entirely above the law.

In the *Odyssey*,²⁰ Eumaeus, swineherd of Odysseus, tells how a beggar appealed to him for help on the ground that he had slain a man, and that he knew Odysseus (which was a falsehood). From the poverty of the beggar it is not necessary to infer that he was a Pelasgian who had 'wandered over a vast tract of land.'

Again, Odysseus,²¹ inventing a fiction about his past, pretends that he is a murder-refugee from Crete (an Achaean dominion), having killed the son of Idomeneus. 'I smote him,' he says, 'with a bronze-shod spear as he came home from the field, lying in ambush for him by the wayside, with one of my companions.' He adds, very significantly, as we think: 'and now I have come hither with these my goods; and I left as much again to my children.' There is no trace here of that solidarity in the control of property, and of that 'passive collectivity' or distribution of punishment, which is so characteristic of clan *wergeld*. No tribal murderer could have taken any property away with him: his property, and therefore probably²² that of his children, was distributed among the wider kindred who either retained it or used it to defray their share of the *wergeld*.²³ Odysseus, however, departs with half his property, and the relatives of the slain Orsilochnus left the children in tranquil enjoyment of the rest! Of course, Odysseus did not really live through such an experience, but a 'tribesman' would have told a very different story.

Again, there is the story of Phoenix,²⁴ which opens up the question of parricide. Phoenix did not kill his father, but it occurred to him to do so, because his father cursed him with sterility, for having had amorous relations with one of his father's concubines. Fearing to commit the dread deed of parricide, he decided to leave his home. His relatives and comrades endeavoured to dissuade him, holding a feast in his house for nine days, but on the tenth he fled. He went from Hellas to Phthia, to King Peleus, who made him king over the Dolopians. A portion of this passage²⁵ has been considered

²⁰ xiv. 380.

²¹ *Od.* xiii. 258.

²² See Seebohm, pp. 129-130.

²³ See *supra*, p. 9; Seebohm, pp. 109, 356.

²⁴ *Il.* ix. 450-480.

²⁵ 458-461.

spurious by many editors, as it is not found in any Homeric manuscript, and Aristarchus is said by Plutarch to have omitted it, as being unsuitable to the character of Phoenix ²⁶; Glotz ²⁷ holds that the feast in question was a kind of gathering of the clan. The father, he thinks, wished to banish the son, but could not do so without the solemn and formal ratification of the assembled clan. He says of Amyntor, ²⁸ the father of Phoenix: 'Comme Thésée, il a maudit son fils: s'il ne le bannit pas, comme Thésée, c'est qu'il a besoin d'obtenir le consentement du γένος.' Now Euripides ²⁹ in describing the curse which Theseus pronounced against his son, Hippolytus, whom he believed to be the real though not the actual cause of the death of his wife Phaedra the step-mother of Hippolytus, tells us also that Theseus commanded Hippolytus to depart from Troizen and forbade him ever to reside at Athens.³⁰ This sentence was pronounced without any consultation with the clans of tribal Attica, because Theseus, in the legends, is erroneously presented as an autocratic ruler, like Peisistratus, rather than as a tribal chieftain. But Amyntor was an Achaean, and we have argued that the Achaeans did not acknowledge or recognise clan-jurisdiction. Hence, a comparison of Amyntor with the legendary Theseus is logically valid but does not justify Glotz's conclusions. Moreover, if it had been the desire of Amyntor to secure a formal decree from the clan for the expulsion of his son, why should the 'clan' have guarded Phoenix as if he were a prisoner? Surely it would have been sufficient to obtain a decree of banishment after the offender had fled. On this point, Glotz does not seem quite clear. 'Sans doute,' he says, 'tous ses parents montent la garde autour de Phoenix de peur qu'il ne s'échappe. Mais ce n'est pas pour cela qu'ils sont venus. Ils sont venus sur convocation.' But we can find no suggestion, in Homer, that the kinsmen were summoned by Amyntor to agree to a sentence of banishment for his son. We are told quite plainly that Amyntor and his son were exceedingly angry with each other, so much so that Phoenix contemplated parricide, and would have killed his father had not some of the immortals reminded him of the unpleasant reputation which the act

²⁶ See Monro's *Iliad*, vol. i. p. 349.

²⁸ P. 44.

²⁹ *Hippolytus*, 890 ff.

²⁷ Pp. 43, 44.

³⁰ *Ib.* 970 ff.

would bring him.³¹ Owing to his father's curse, he looked forward to a childless old age. He tells us that he decided to leave his home.³² For an Achaean such an exile involved no serious hardship, but might, on the contrary, have brought many advantages. His relatives came, as we think, to entreat and restrain him.³³ They 'imprisoned' him, or rather they sought to prevent his escape, in the hope that the feast would reconcile the father and the son. Can we imagine a group of clan-kindred, with a right of inheritance to the property of Phoenix, so very anxious to restrain him? We fear they would rather have celebrated his departure! But Homer makes no mention of clan-kindred. The *ἔται* and the *ἀνεψιοί* are the ordinary 'comrades and cousins' of the Achaean 'small family circle': the whole context supports the hypothesis of Leaf, of which Glotz is unaware, namely that the Achaeans of Homer lived in an atmosphere which is foreign to the clan.

The question remains: what was the consequential penalty which helped to deter the Achaean Phoenix, who had otherwise little regard for his father, from actually slaying him? We have seen³⁴ that kin-slaying, and therefore parricide, was punished by exile in the tribal system. How would it have been punished within the Achaean caste? We have little Homeric evidence to guide us here. Homicide amongst the Achaeans is a private affair which concerns a small family circle. In the *Iliad*³⁵ the Trojan Akamas says that it is desirable for a man to pray that 'some kinsman be left in his home to avenge his fall.' If Akamas avenges the slaying of his brother even in war, will a son not avenge the slaying of a father? Does not Orestes avenge the murder of his father, Agamemnon, even when that vengeance necessitates the shedding of his mother's blood? Homer implies that Clytaemnestra was the murderer of Agamemnon and also of Cassandra³⁶: he also implies that she was slain by her son Orestes.³⁷ Glotz³⁸ regards such vengeance as perfectly normal: 'Loin d'être impossible,' he says, 'la repression des crimes commis par un parent contre un parent est plus certaine et plus sévère que la réparation des dommages causés par une famille à une autre.'

³¹ 460.³² 463.³³ 465.³⁴ *Supra*, pp. 9, 47 f.³⁵ xiv. 484.³⁶ *Od.* xi. 410-23.³⁷ *Od.* iii. 310; *infra*, p. 72 ff.³⁸ P. 45.

Si l'offenseur . . . est parent de la victime ses auxiliaires naturels deviennent ses ennemis. Seul, il a contre lui l'univers.' Hence it is probable that the ἔται and the ἀνεψιοί who were so anxious to heal the feud between Amyntor and his son³⁹ would have been equally anxious to avenge Amyntor if he had been slain by Phoenix. They would have put the parricide to death.

The portion of the Homeric story of Phoenix which is generally regarded as spurious⁴⁰ happens to be the passage in which parricide is referred to in a casual and frivolous manner. Plutarch states that such a reference was considered unsuitable to the character of Phoenix. We will go further and say that it is unsuitable to the ancient Greek conception of parricide, whether among the Achaeans, or, *a fortiori*, among the clans. This latter point will become more evident when we discuss the laws of Plato and the legends of the Attic tragedians. Our theory of the Achaean penalty for homicide must now seek further confirmation from a discussion of other Homeric passages.

In the *Iliad*⁴¹ Phoenix tells Achilles the story of Meleager, son of Oeneus, King of Calydon, pointing out how he refused to fight for his people during a war between the Calydonians and the Curetes. The cause of his refusal was his indignation at the curse which his mother, Althaea, had launched against him because he had slain her brother, a prince of the Curetes, in the war. Homer, of course, does not mention the story which later legends contain, of the fateful brand, and the death of Meleager when the brand was burned by his mother.⁴² But from the entreaties of his father, Oeneus, of his sisters, and even of his mother,⁴³ and from the presents which were offered to him by the priests and the elders of the Aetolians,⁴⁴ in the hope that he would lay aside his anger and continue to fight for the Calydonians, we may infer that he was not regarded in Homeric times as a kin-slayer of certain guilt. His own anger, too, indicates what the Homeric facts would seem to imply, that the slaying of his mother's brother was in his own opinion justifiable as an act of war.⁴⁵

³⁹ *Il.* ix. 465 ff.

⁴⁰ 458-462.

⁴¹ ix. 550 ff.

⁴² Pausanias, x. 31. 2; Ovid, *Met.* viii. 450, 531.

⁴³ 581 ff.

⁴⁴ 575 ff.

⁴⁵ The conflict between the Calydonians and the Curetes (another Aetolian people) had arisen over the body of the famous boar.

When, in later times, the Roman poet Ovid makes Althaea say, as the Achaean avenger of a brother's death would naturally say, *mors morte pianda est*, he implies, what the Homeric story of the 'curse' compels us to assume, that Althaea regarded her brother's death as culpable kin-slaying, which required atonement. The curse of Althaea indicates her conviction that the death of Thestius was a crime and also her inability to avenge it at the time. But, in the general opinion, there was a doubt about the guilt of Meleager, and Meleager was sufficiently important to get the benefit of the doubt. There are, then, two conclusions which may be indirectly derived from this passage: (a) that kin-slaying, within the Achaean caste, was regarded as a crime which merited serious punishment, such as death; and (b) that the distinction between justifiable and unjustifiable slaying was in certain circumstances admitted and upheld by the Achaeans.⁴⁶

Our next quotation has reference to Tydeus, the brother of Meleager. Homer⁴⁷ tells us that Tydeus left his native Calydon, and 'roaming thence settled at Argos, (for thus did Zeus and other gods decree,) and married there a daughter of Adrastus.' In this connexion Leaf⁴⁸ points out that 'Homer does not tell of any actual homicide, yet the picture he gives of the family feuds in Tydeus' time is such as to make family bloodshed far from improbable.' From later legends⁴⁹ we learn what Homer has not mentioned, namely, that Tydeus was a kin-slayer. We know that Tydeus was an Achaean, and his action in fleeing from Calydon and settling at Argos was a typical Achaean procedure. His 'exile' was really a flight from death, and such a flight suggests that even in the case of kin-slaying the Achaeans, unlike the Pelasgians, did not accept 'exile' as a penalty for bloodshed. This has already been demonstrated in connexion with the flight of Theoclymenus.⁵⁰ The alliance of Tydeus, by marriage, with Adrastus, King of Argos, helped to preclude the possibility of blood-vengeance at the hands of Calydonian avengers.

A clear and cogent illustration of the Achaean system of avenging bloodshed is to be found in the punishment inflicted

⁴⁶ *Supra*, p. 58 ff; *infra*, p. 76.

⁴⁷ *Il.* xiv. 119 ff.

⁴⁸ *H. and H.* p. 254.

⁴⁹ See Smith, *Dict. Biog. and Myth.* s.v. Tydeus.

⁵⁰ *Supra*, p. 65

by Orestes on his mother and her paramour in revenge for the slaying of Agamemnon. It is not of course a matter of absolute certainty that Orestes slew his mother or that she slew her husband, in the Homeric story, but it can, we think, be inferred with the greatest probability. Homer says ⁵¹ that, after the Trojan war, Menelaus wandered about with his ships 'amongst men of strange speech' for seven years: that meanwhile 'Aegisthus planned baneful deeds at home: and for seven years ruled over rich Mycenae, having wrought the death of the son of Atreus, and subdued unto himself the people: but in the eighth year goodly Orestes came back from Athens as a retribution and slew the man guilty of his father's blood (πατροφονῆα), Aegisthus of crafty counsel, who had wrought his father's death. Now when he had slain him, he held a funeral feast with the Argives for his hateful mother and for Aegisthus powerless in defence (ἀνάλκιδος).' In this rendering of the text, we have deliberately avoided translating κτείνειν as 'to slay,' since it can also mean 'to seek to slay' ⁵² or, which is almost equivalent, 'to plot the death of.' From the point of view of homicide-guilt and retribution, the plotter and the perpetrator were probably equally culpable whether in the Homeric epoch or in historical times.⁵³ Hence it is that in other passages Homer presents Clytaemnestra as the plotter and Aegisthus as the executor. In both cases, of course, the guilt of bloodshed is aggravated by the additional stigma of adultery. In the *Odyssey* ⁵⁴ Zeus tells how he warned Aegisthus not to kill Agamemnon or to woo his wife, for Agamemnon would be avenged by Orestes. Again,⁵⁵ we are told that Aegisthus brought Clytaemnestra to his house—'a willing lover and a willing lady.' In another passage ⁵⁶ we hear of the famous scout whom Aegisthus placed in a tower, to watch for the homecoming of Agamemnon. This scout had been watching for the space of a year ⁵⁷ when Agamemnon arrived. Immediately upon his arrival, he accepted an invitation to a feast in the house of Aegisthus, who had prepared an ambush to destroy him in the event of his refusal.⁵⁸

⁵¹ *Od.* iii. 300 ff.

⁵⁴ i. 35 ff.

⁵⁶ *Od.* iv. 524 ff.; cf. Aeschylus, *Agamemnon*, 1 ff.

⁵⁷ 526.

⁵² See *Od.* ix. 408.

⁵³ *Infra*, p. 223 ff.

⁵⁵ *Od.* iii. 263 ff.

⁵⁸ *Od.* iv. 530 ff.

After the feast he was slain 'as one slayeth an ox at the stall'; but not without a struggle. 'None of the "companions" of the son of Atreus who attended him survived, nor any of the "companions" of Aegisthus, but they were slain in the house.'⁵⁹ We have pointed out that Clytaemnestra was living in this house with her paramour. The reference to the time of the deed—'after the feast'—and to the manner of the slaying—'as one slayeth an ox'—suggests the use of the axe and the fatal bath of Agamemnon which has been made so familiar by the Attic tragedians. We are definitely informed⁶⁰ that Clytaemnestra was an active agent in the terrible bloodshed which took place. The ghost of Agamemnon speaking to Odysseus in Hades says: 'Aegisthus contrived my death and doom and slew me, aided by my accursed wife . . . most pitiful of all I heard was the voice of Cassandra, daughter of Priam, whom, close to me, the guileful Clytaemnestra slew. As I was dying I strove to raise my hands to avert (or grasp)⁶¹ the sword, but let them fall to the ground again, and that shameless woman turned her back, nor could she bring herself, even when I was going to the house of Hades, to close my eyes or my mouth with her hands! Surely there is nought more horrible and shameless than a woman since she planned a foul deed, and wrought the death of her wedded lord.' Aeschylus, then, as we think, has kept very closely to the Homeric narrative, when, in the *Agamemnon*, he makes Clytaemnestra the actual slayer of her husband, and represents Aegisthus as concerning himself only with an ambush and a battle against the retainers of Agamemnon. In Homer, Aegisthus and Clytaemnestra were equally guilty. Orestes, therefore, slays them both, and gains renown among all men.⁶² In the clan-system, Aegisthus, a first cousin of Agamemnon, would not have been slain, if he had gone into exile, nor would wergeld have been payable, as he was akin to the victim. Clytaemnestra's kindred might have compensated the crime by a wergeld paid to the kindred of Agamemnon. How strange it seems that the children of Aegisthus would have

⁵⁹ 536-7.

⁶⁰ *Od.* xi. 409 ff.

⁶¹ I take *περὶ φασγάνῃ* with *χεῖρας ἀείρων* rather than with *ἀποθνήσκων*. Butcher and Lang render: 'I strove to raise my hands as I was dying upon the sword, but to earth they fell.'

⁶² *Od.* i. 288.

received a share! In historical Athens, Aegisthus would most probably have been put to death without the option of exile, since he was a kin-slayer, while Clytaemnestra could have gone into exile on the second day of the trial.⁶³ To the minds of post-Homeric legend-makers it would have been necessary for Orestes,⁶⁴ if he wished to be unimpeachably correct, to obtain authority from the war-council of the chieftains, as Menelaus did in the case of Helen⁶⁵; but in Homer Orestes is the natural avenger of a crime which would otherwise have gone unpunished. The slaying of Aegisthus and Clytaemnestra was not murder, but just revenge, so far as that distinction was admitted and sanctioned by the traditions and public opinion of the Achæan caste. If there had been any tendency to revolt at the abhorrent nature of Orestes' act in slaying two of his kindred—one of them the dearest of kin—this feeling would have perished on the recollection that Aegisthus and Clytaemnestra were not only murderers but adulterers. We find evidence of a strong public opinion against this twofold moral stigma in Homer. In the *Odyssey*,⁶⁶ for instance, Athene urges Telemachus to slay the suitors and quotes the act of Orestes as a parallel. The point of the comparison lies in the suggestion of adultery which attaches to the presence of the suitors in the home of Odysseus. 'Hast thou not heard,' says Athene, 'what renown the goodly Orestes gat him among all men in that he slew the slayer of his father? . . . thou, too, my friend . . . be valiant, that even men unborn will praise thee.' But as we have elsewhere argued⁶⁷ that adultery alone would not justify, in private vengeance, the death of the offender, we must conclude that the justification for Orestes' act consisted essentially in the fact that he avenged the murder of his father. From this episode we may, then, also conclude that the Achæans, in certain circumstances, admitted the distinction between justified and unjustified homicide.⁶⁸

We have now adduced sufficient evidence from the Homeric poems to justify the theory which we have propounded as to the nature of Achæan blood-vengeance, and to illustrate the contrast which it is necessary to make between the attitude

⁶³ *Infra*, pp. 218, 236 ff., 239

⁶⁵ Euripides, *Troades*, 900 ff.

⁶⁷ *Supra*, p. 59.

⁶⁴ See Eur. *Or.* 500.

⁶⁶ i. 298 ff.

⁶⁸ *Supra*, p. 60.

to homicide adopted by a temporary dominant caste of a military quasi-feudal type and that of the tribal village communities in which we believe the Pelasgian subject-race to have lived. It remains for us to conclude this chapter by some brief remarks on certain questions which we have already raised and partly answered: *e.g.*, whether there existed, in the Achaean caste, (a) the distinction between murder and manslaughter, (b) the distinction between justified and unjustified slaying, (c) the practice of collective and hereditary vendetta.

In regard to the first question, we have argued⁶⁹ that a legend as old as Homer must have presented as 'involuntary' the slaying of Laius by Oedipus. By this we mean that Oedipus neither intended to kill the old man whom he met at the 'crossing of the three roads,' nor was aware that the man whom he slew was his father. If we now assume that the Achaeans recognised no distinction between voluntary and involuntary slaying, and that Homer lived in such an atmosphere, though the language and the social system of the Pelasgian people who lived around him were familiar with this distinction, we can more easily understand the astonishment which the poet seems to feel at the sojourn of Oedipus at Thebes after the gods 'made known these things to men.' We can also, on this assumption, more easily explain⁷⁰ the protest which is implicit in the words of the dead Patroclus to Achilles when he describes his flight from death 'on the day when' he slew the son of Amfidamas, 'being a mere stripling and not intending (to kill) and being angered over (a game of) dice.' If we add to these probabilities the fact that the Achaeans were men of a proud and haughty spirit, men of quick passions, and accustomed to bloodshed, men who knew no restraint beyond that of a temporary military discipline, and no fear of any greater punishment than that of expulsion from a fortress or from the councils of a military clique, we shall conclude that the distinction between voluntary and involuntary slaying was not recognised by the Achaeans. Such a conclusion incidentally explains the general view of modern scholars⁷¹ that in the Homeric epoch no such distinction was admissible.

⁶⁹ *Supra*, p. 55.

⁷⁰ *Supra*, p. 56.

⁷¹ *E.g.* Glotz, p. 48; Eichhoff, *Blutrache*, chap. i.

In regard to the second question, concerning the distinction between just and unjust slaying amongst the Achaeans, we have indicated some evidence for this distinction in the public approval which greeted the vengeance of Orestes,⁷² in the sentiments of the Aetolians concerning Meleager,⁷³ in the scruples felt by one of the suitors in regard to a conspiracy against the life of Telemachus,⁷⁴ in the approval given by Euphithes,⁷⁵ and also, apparently, by the goddess Athene,⁷⁵ to the vengeance plotted for the slaying of the suitors. A distinction between the indiscriminate slaying of enemies which was permitted in war and the personal vendetta which was restricted to the person of the murderer, in peace, is illustrated by the contrast with normal modes of vengeance exhibited by the act of Akamas who avenged his brother's death on Promachos, and not on Ajax, the actual slayer.⁷⁶ Pausanias⁷⁷ says that before the time of Theseus, and the establishment of the Delphinium court, there was no distinction between just and unjust slaying, and that 'every manslayer had to flee for his life.' This statement does not altogether harmonise with our conception of Homeric Greece. It does not take into account the control of Pelasgian tribes and the influence of public opinion amongst the Achaeans. His remarks are, we think, much more appropriate to the post-Homeric period when society was in a state of disintegration. Yet in regard to the Achaeans, we must point out that their sentiments or ideals of vengeance may not always have coincided with their acts. The arbitrariness of military control, the presence of subjects outside the caste, the necessity felt by the Achaeans of supporting their own side in every dispute, make the period of their domination an epoch to which the words of Pausanias are not entirely inapplicable.

Finally, if one asks whether the Achaeans practised a collective and hereditary vendetta, we may reply that the nature of the Achaean system of life, their consciousness of the paucity of their numbers in the midst of potentially hostile people, would have hindered any tendency to such a practice within the Achaean caste. An insult inflicted from without provoked, of course, the most savage retaliation. 'Frightfulness,' no less

⁷² *Supra*, p. 60.

⁷³ *Supra*, p. 70.

⁷⁴ *Supra*, p. 60.

⁷⁵ *Supra*, p. 60.

⁷⁶ *Il.* xiv. 480 ff.

⁷⁷ i. 28.

than military skill and strategic control, was one of the pillars of the Achaean fabric of power. But we have seen how Athene interfered to prevent the Achaean feud in the realm of Odysseus ; in this rôle of peace-maker she may be regarded as a symbol of the restraining influence of military discipline and group-consciousness amongst the Achaeans. From certain passages in Homer,⁷⁸ in which there appears a kind of proverb, namely that a man is lucky to have a son or brother to avenge his fall, we may conclude that the danger of collective hypervengeance occurring amongst the Achaeans was much less probable than the danger of not being avenged at all. Similarly, in the *Odyssey*⁷⁹ we are told that an Achaean murderer had no fear that vengeance would fall upon his children. Thus, it is only in post-Homeric times, we think, that the Greeks lapsed into savagery and practised on a large scale a collective and hereditary vendetta. This will be still more manifest when we come to give an account of the Hesiodic society. From such a state of chaos the Greeks were saved by the seventh-century Apolline doctrine of pollution, which we shall describe in our Second Book, and also by the evolution of democratic civic government. When the State assumed responsibility for the trial and execution of criminals, including murderers, the lust of vengeance was gradually subdued. But all the more must we admire the comparative absence of collective and hereditary vendetta in the Homeric epoch, when, for Achaeans as well as for Pelasgians, the execution of vengeance devolved upon the relatives of the slain.

⁷⁸ *Od.* iii. 196 ; *Il.* xiv. 480.

⁷⁹ xiii. 258.

CHAPTER IV

JUDICIAL ASPECT OF HOMICIDE IN EARLY GREECE

Current views criticised: author's theory based on distinction between Achæan and Pelasgian societies: arguments from survivals in historical times: meaning of *δικασπόλοι βασιλῆες*: the Trial-Scene in the Homeric Shield of Achilles: origin of trials for homicide.

IN discussing the trial-scene which is found in Homer's description of the Shield of Achilles,¹ we were compelled incidentally to give, in anticipation, the main results of our inquiries as to the existence, in Homeric Greece, of tribunals for the trial of homicide. Previous writers on the subject, who are unaware of the differences in the organisation and nature of Pelasgian and Achæan societies, have naturally maintained that homicide in early Greece was entirely a 'private' affair and that trials for homicide only arose when a post-Homeric conception of murder as a 'pollution' compelled an investigation on the part of kings and nobles who were anxious to avert the wrath of the gods. Thus Bury says²: 'This notion of manslaughter [*i.e.* homicide] as a religious offence necessarily led to the interference of the State. For when the member of a community was impure, the stain drew down the anger of the gods upon the whole community, if the unclean were not driven out. Hence it came about that the State undertook the conduct of criminal justice.' Jevons³ propounds a similar view, though he apparently finds more difficulties in the Homeric text. 'There was, indeed,' he says, 'no State power to which the relatives of the deceased could appeal for redress, much less was there any State power which of its own motion undertook to apprehend and punish the murderer. But in Homeric times a feeling was gathering that murder was an offence against the members of the community in their collective

¹ *Il.* xviii. 497-508; *supra*, p. 34 ff.

² *History of Greece* (2nd ed.), p. 172.

³ *Manual of Greek Antiquities*, p. 406.

capacity.' Bury's general view-point is that homicide was the only crime which called for State interference, and that there was no such interference before the doctrine of pollution arose. Other 'crimes,' he thinks, continued to be 'private' affairs until the centralisation of government brought it about that the injured party, before punishing the offenders, had to seek State authorisation in the form of trial, but in such cases the State never acted on its own initiative or responsibility. 'It must be borne in mind,' he says,⁴ 'that, in old days, deeds which injured only the individual and did not touch the gods or the State were left to the injured person to deal with as he chose or could. The State did not interfere. Even in the case of blood-shedding it devolved upon the kinsfolk of the slain man to wreak punishment upon the slayer. Then, as social order developed along with centralisation, the State took justice partly into its own hands: and the injured man, before he could punish the wrong-doer, was obliged to charge him before a judge, who decided the punishment. But it must be noted that no crime could come before a judge unless the injured person came forward as accuser. The case of blood-shedding was exceptional, owing to the religious ideas connected with it. It was felt that the shedder of blood was not only impure himself, but had also defiled the gods of the community: so that, as a consequence of this theory, manslaughter of every form came under the class of crimes against the religion of the State.' Bury does not define precisely the time at which homicide became a religious offence, but from this and other references we assume that he regarded the period as post-Homeric. Thus he says⁵: 'According to early custom which we find reflected in Homer, murder and manslaughter were not regarded as crimes against the State, but concerned exclusively the family of the slain man. . . . But gradually, as the worship of the souls of the dead and the deities of the underworld developed, the belief gained ground that he who shed blood was impure and needed cleansing. . . . This notion of manslaughter as a religious offence necessarily led to the interference of the State.' We admit, of course, that there could not have been State trial before the State came into being; but the notion that there were no 'trials'

⁴ *Op. cit.* p. 145.

⁵ *Op. cit.* p. 172.

before the days of 'State trial' is, we think, one of the delusions which modern minds have derived from the legacy of feudalism. Bury admits the existence of religious courts before the period of State courts, but he apparently forgets the courts of the clan, of the phratry, and of the tribe.

It is frequently suggested that the right of sanctuary is the ultimate origin of the trials and negotiations which came to be associated with homicide. 'Among the Greeks,' says Gilbert,⁶ 'when blood was shed, the relatives of the murdered man usually set themselves to wreak vengeance on the murderer. If he did not quit the country immediately, he could only secure himself by taking refuge in a sanctuary until he had made compensation to the relatives of his victim. From his sanctuary, protected by the right of asylum, he could enter into negotiations with them as to what compensation must be paid. When the State took into its own hands the regulation of vengeance for bloodshed, it respected the right of sanctuary in so far that the three places⁷ of trial were connected with three sanctuaries.' Now we can find no evidence for the operation of a right of sanctuary in Homer. Hence this theory of Gilbert would compel us to believe that not only murder trials but even wergeld payments were of post-Homeric origin!

Glötz,⁸ in a passage which we have already quoted, refuses to see in the subjugation of blood-lust which is involved in the acceptance of wergeld, any suggestion of the interference of 'social justice,' whether to impose or advise a settlement, or to fix the amount of compensation. He holds, moreover, that in no case is exile authorised: that it is always a flight from the natural penalty, which is death. 'L'exil,' he says, 'dans ces conditions, n'est pour le meurtrier ni une peine ni un droit, mais une mesure de prudence . . . on ne peut obtenir l'autorisation de s'en aller tranquillement ni de revenir jamais.'⁹ It is only, he implies,¹⁰ when the idea of pollution abolished the arbitrary nature of State jurisdiction that the offended party was forced by public opinion to accept the customary wergeld. It is only then that a person wrongly

⁶ *Gk. Const. Ant.*, Eng. trans., p. 379. So, Köhler, *Herm.* 6. 102, there quoted.

⁷ i.e. in Attica. ⁸ P. 115; *supra*, p. 33. ⁹ Pp. 51, 52. ¹⁰ Pp. 237-8.

accused could appeal to judges who must hear the case. Thus he says: 'C'est un fait assez fréquent dans l'histoire qu'à l'origine de la législation sociale il y ait une révolution religieuse . . . mais la révolution qui en résulta fut diffuse. Elle ne fut personifiée que par un dieu. Vers les temps où la Grèce commence à se purifier et à demander au ciel un supplément de justice pour la terre, elle voit sur son horizon rayonner d'une lumière inconnue le sévère et doux guérisseur du mal et de la souillure, Apollon. . . Il exige que tout crime soit expié et s'en prend au peuple qui manque à ce devoir. . . L'expiation, il la fait consister, chaque fois qu'il peut, à élever un sanctuaire: par là il donne aux dieux leur part de la *ποινή* et aux juges la première idée de l'amende, en même temps qu'il multiplie les lieux d'asile et fait servir l'homicide même à sauver des vies humaines. . . Tandis que le droit religieux absorbait la plus grande partie de la *θέμις* familiale pour la transmettre à la *δίκη* sociale, la juridiction de l'Etat perdait son caractère d'arbitrage. . . Sous la pression de l'opinion publique . . . l'offense fut tenue de plus en plus strictement d'accepter une transaction aux conditions modérées de la coutume . . . l'offenseur qui trouvait exorbitantes les exigences de l'offensée put rejeter une *αἵδεσις* trop onéreuse: l'innocent qui ne croyait devoir aucun dédommagement put refuser le paiement d'une *ποινή* injuste, sans craindre la mort ou l'exil. . . Le recours en justice, de facultatif qu'il était, devint obligatoire par sa fréquence même. A ce moment, le tribunal des gérontes, sentant son pouvoir plus ferme, franchit par un empiètement fatal et naturel les limites étroites où sa compétence était primitivement circonscrite. . . La juridiction criminelle est créée.'

We shall see later¹¹ how impossible it was that wergeld could have continued to exist in days when the murderer was polluted. We admit that the Apolline murder-code did absorb much of the clan-customs in regard to homicide (*la θέμις familiale*). But from the account which we have given of the wergeld system,¹² it must be obvious how very non-arbitrary was the jurisdiction of the clans. In our view, the evolution of early Greek judicial authority is not a transition from a crude arbitrary local jurisdiction to an efficient

¹¹ *Infra*, Bk. II. chap. ii.

¹² *Supra*, p. 6 ff.

central compulsory jurisdiction, but rather a gradual extension to wider areas, in accordance with increasing political synoekism, of the judicial functions which had been previously discharged with equal authority within smaller areas.¹³ The court of Elders, to which Homer refers in his description of the Shield of Achilles, was, in our opinion, a city-state court. We may call it merely a city court if we wish to retain the word 'State' to denote a political unit exercising authority over a substantial territorial area, and it is in this sense that the word 'State' is generally used: but F. de Coulanges has shown that the difference between the ancient 'city' and a 'State' was one of degree, not of kind. The ancient 'phratry' was, he says,¹⁴ 'a small society modelled on the family.' Maine,¹⁵ speaking of the primitive Indian Village Community, says: 'The Community is more than a brotherhood of relatives and more than an association of partners. It is an organised society, and besides providing for the management of the common fund, it seldom fails to provide, by a complete staff of functionaries, for internal government, for police, for the administration of justice, and for the apportionment of taxes and public duties.' So, we think, the court which Homer describes had the highest jurisdiction in all matters of serious dispute, whether within the city proper or in rural areas which were politically united with the city. The elders of the trial-scene were, we think, tribal chieftains, like the Attic tribe-kings (*φυλοβασιλεῖς*), and their main function was to arbitrate, but with full authority, in cases of dispute between people of different clans or phratries. Inside the clan, and probably inside the phratry (a group of neighbouring clans), similar assemblies of interested and responsible persons would have decided disputes between members of their associations. The only judicial change which synoekism and the growth of State-power involved was, therefore, an extension of the area of jurisdiction, and an increase in the number of people who had the right, if not the duty, of referring their disputes to a common authority. But this new central court of justice was neither incompatible with, nor destructive of, the more primitive local courts. Coulanges¹⁶ maintains that

¹³ See *infra*, pp. 243 ff., 262 ff.

¹⁵ *Ancient Law*, p. 217.

¹⁴ *Op. cit.* p. 157.

¹⁶ P. 173.

Plutarch and Thucydides are wrong in the assertion that Theseus abolished the local magistracies of Attica. Gilbert¹⁷ admits that the Attic tribe-kings still functioned as judges in inter-tribal disputes, in historical Athens. It is quite possible that, in early times, there was no right of appeal outside the tribal court for members of the same tribe. There is a law¹⁸ of an Anglo-Saxon king of tribal England which decrees: 'Let no man apply to the king unless he may not be entitled to justice within his "hundred."'

The judicial system of the Homeric epoch is complicated by the presence of the quasi-feudal Achaeans, who sometimes hear appeals in cases of 'petty family disputes' among the natives, but who, amongst themselves, obeyed the short and swift decrees of military courts or councils of war. We have said¹⁹ that there is a suggestion of Achaean arbitration in the Euripidean legend in which Hecuba appeals to Agamemnon to justify, after the event, her punishment of Polymestor, the slayer of her son.²⁰ Assuming the view of Leaf²¹ that the Achaeans did not interfere with the 'group-system' of the Pelasgians, we may for the moment ignore the presence of the Achaeans, though it is the predominance of that caste in Homer which has misled modern scholars in their opinions of the early Greek judicial system. We shall now examine some interesting survivals of clan-courts in the days of Plato and Demosthenes, so that we may realise more clearly the nature and the functions of the local courts of the 'group system,' courts which Homer almost ignores, which he would, perhaps, have entirely omitted to mention, if the Pelasgian craftsmen who fashioned the 'Shield of Achilles' had not engraved upon the Shield a picture of a Pelasgian Court of Elders, which was a familiar event in the everyday life of the cities and tribes of the subject-race.

HISTORICAL SURVIVALS OF CLAN COURTS

The first instance of 'survival' which we shall cite is mentioned by Glotz,²² and in justice to him we must point out that we differ from him, not in regard to the question of the

¹⁷ *Op. cit.* p. 150.

¹⁹ *Supra*, p. 38.

²¹ *H. and H.* p. 258.

¹⁸ Stubbs, *Select Charters*, p. 73.

²⁰ *Hecuba*, 1135-1255.

²² *Op. cit.* p. 42.

existence of clan-courts, but in regard to the nature of their judicial functions in the matter of homicide. Glotz is not aware of the distinction between the Pelasgians and the Achaeans, or of the importance of the group system in the Pelasgian civilisation. He admits that there existed within the clan a regular tribunal, composed of heads of families, who consulted and decreed, with absolute authority, on all matters affecting property, such as adoption, inheritance, expulsion, and marriage. He quotes Plato²³ for a procedure which, he presumes, was a general characteristic of the clans. We have seen that homicide, in default of wergeld, was commonly punished by exile or banishment. The following is Plato's description of an expulsion from the clan: 'For him upon whom there has come a desire, by no means fortunate, whether just or not, to release from relationship to himself one whom he has begotten and brought up, let it not be lawful to do this upon slight grounds or without delay; let him first bring together his own relations as far as his cousins, and also those of his son on the mother's side, and let him accuse his son before them and prove that he deserves completely to be expelled from the family—and let him allow his son to prove equally that he does not deserve to suffer anything of the kind; and if the father can persuade and secure the votes of more than half all the relations (father, mother, son, and minors not voting),²⁴ then let it be lawful for the father to renounce his son: but otherwise not.' It is most important to note here the reference to the presence of the son's maternal relatives, for this implies an assembly of the clan or wider kindred, not merely of the gwely or descendants of a common living ancestor. It was this wider kindred which paid and accepted wergeld, even though they had not all a right of succession to family property. In the early clan system,²⁵ wergeld was part of the common stock which was inherited by all the wider kindred, and therefore decrees of expulsion, such as were pronounced, for instance, in default of wergeld payment, were matters for the decision of the whole clan rather than for those of the gwely or the 'family.' That such a procedure should have survived in Plato's time, when property

²³ *Laws* xi. 929 A-C.

²⁴ Reading ὅσοιπερ ἂν ᾤσι . . . μὴ τέλειοι.

²⁵ *Supra*, p. 8.

had to a great extent become 'private' in the modern sense, and when the political power of the clans had long since vanished into thin air, shows at once the tenacity of clan custom and the significance of Plato's account as an argument from survivals.

Plato has another reference to a clan court, to which Glotz has not referred and which seems to us to furnish a splendid illustration of the manner in which minor issues, which affected merely the members of a local kindred, remained within the scope of clan jurisdiction even in historical Athens. We shall see later²⁶ that, owing to religious influences, kin-slaying became too serious a matter for the adjudication of clan tribunals from the seventh century B.C. onwards. Even minor cases of bloodshed such as 'wounding with intent' had probably, in historical times, been transferred to the jurisdiction of an Attic state court, called the Areopagus.²⁷ The clan court to which Plato refers, in the present instance, seems to have had power to try and to punish the wounding of a kinsman by a kinsman, in a passion; it is presumed, however, that the wound was not sufficiently grave to interfere with military service. Plato says²⁸: 'If one kinsman²⁹ wounds another . . . let the heads of families³⁰ (*i.e.* the elders) and the male and female kindred, as far as the cousins³¹ on the male and female side, come together and having tried the case deliver the offender to his natural parents to fix the fine³²: and if the fixing of the fine be a matter of doubt, let the kindred on the male side fix the fine definitely; and if they are unable to decide, let them eventually refer the matter to the "guardians of the laws." ' Plato goes on to say that where children wound their parents (presumably in a passion) the judges must be over sixty years of age, none of them must be a relative of the offender, and they may fix the punishment, which may include death.

We have already hinted³³ that the discrimination between degrees of guilt in homicide cases, which is extremely minute in the laws of Plato, and which is present in a cruder form in the Draconian code, finds its ultimate origin in the old customs

²⁶ *Infra*, pp. 230, 236 ff. ²⁷ Aristotle, *Ath. Pol.* 57.

²⁸ *Laws*, ix. ch.15.

²⁹ δμόγονος.

³⁰ Reading: γεννήτας.

³¹ ἀνεψιών.

³² τιμῶν.

³³ *Supra*, p. 57.

of tribal life. Bearing this hypothesis in mind, we are not surprised to discover that such matters as wounding *without intent*, which is not mentioned in Dracon's code and which therefore was not a matter for compulsory prosecution in Attic state courts, can nevertheless be subjects for adjudication in the courts of the clans. Of course, the 'guardians of the laws' whom Plato mentions are technically officers of Plato's ideal State, but the main factors in the trial are doubtless derived from actual clan tribunals which operated in Plato's own experience, unless the 'guardians of the laws' are to be interpreted as symbolical of the appellant jurisdiction of the State. Glotz, of course, thinks³⁴ that at no time was kin-bloodshed a matter for Greek State courts, but we shall see, later, that this view is most probably incorrect. Plato insists that the judges who condemn to death the child who is guilty of wounding its parent must not be akin to the child. This principle need not imply that the judges must have been State judges. In the phratry and in the tribe one could find many men over sixty years of age who were not akin to such an offender. The fact that these judges in historical times had the power of condemning an offender to death is probably to be attributed to a survival of tribal jurisdiction in cases where that jurisdiction had not been definitely arrogated by the State.

A further instance of the survival of clan and phratry courts may be found in the law of Dracon³⁵ which prescribed a collective decree of 'appeasement' in cases of involuntary homicide. The law may be freely translated thus: 'Let there be "appeasement" if there is a father or brother or sons (of the victim): let all agree or let one objector hold the field; if there be none such, let all the kinsmen within the degree of cousin (be appeased) if all consent to be appeased; if there are none of these, and the slayer slew involuntarily, let ten phratores be appeased if all consent to be appeased.' The procedure here prescribed applied only to involuntary homicide. Before the 'appeasement' a period of exile had to be com-

³⁴ P. 322.

³⁵ See Dareste-Reinach, *I.J.G.* xxi. 13-19, where ἐπέσθων (from ἐσίγημι = permit to return from exile) is found instead of αἰδεσάσθων apud Dem. c. *Macart.* 1069 (57); Glotz, p. 313; *infra*, pp. 193, n.; 205.

pleted by the slayer.³⁶ It is not a case of *accidental homicide*, which involved no punishment.³⁷ Glotz³⁸ argues that the phrase *ἅπαντας ἢ τὸν κωλύοντα κρατεῖν* implies a universal clan consent; but it is obvious that the law is satisfied by the consent of groups within the clan or (in default of these) of the consent of ten phratores, who were members of the same local religious union. The only point we wish to make here is that in this survival of the consent of the kindred for the abolition of a feud caused by involuntary homicide we have all the elements which would have constituted a homicide tribunal in days before the encroachment of State power. It can only be a survival of a wergeld system of vengeance, as in this system alone is there found a minute arrangement for payment and receipt according to the different degrees of kinship. A similar law of clan-consent governed the rights and duties of *burial*, even in the time of Demosthenes, and is appealed to as evidence for the right of succession to property. Demosthenes thus quotes³⁹ a law of Solon: 'it shall not be lawful for any woman under sixty years of age to enter into the chamber of deceased or to follow the corpse when it is carried to the tomb except those within the degree of cousins' children.' A law of Dracon⁴⁰ decreed that after burial of a murdered man 'proclamation shall be made to the homicide in the market place by all the relatives within the degree of cousin; and cousins and children of cousins and sons-in-law and fathers-in-law and phratores shall prosecute.' Here we have a clear picture of the solidarity of the clan. The presence of the *φράτορες*, too, is significant. They were strictly outside the clan, as each phratry included members of neighbouring clans who were bound together by a common extra-clan worship. In this co-operation of the *φράτορες* we plainly see a natural basis for discussion and negotiation in blood feuds between different clans; this co-operation extended also, in certain cases, to the tribe and, after a coalition of tribes, to the 'ancient city.'⁴¹ Thus Glotz⁴² rightly says: 'La famille fictive suit les principes de la famille naturelle . . . On dirait que le groupe a conservé, en souvenir d'une parenté primitive,

³⁶ See *infra*, pp. 178 ff., 187, 211 ff. ³⁷ See Dem. in *Aristocratem*, 637.

³⁸ *Op. cit.* p. 313.

³⁹ *Contra Macart.* 1071.

⁴⁰ *Ibid.* 1069.

⁴¹ See Coulanges, *op. cit.* p. 157 ff.

⁴² *Op. cit.* p. 194.

en vertu d'une parenté théorique, un droit éminent sur les biens de chacun.'

So Fustel de Coulanges points out that just as each *gens*⁴³ or clan had its own tribunal and chief, so also the phratry⁴⁴ had its own phratriarch, assemblies and tribunals. 'It was,' he says, 'a small society modelled on the family,' and the tribe⁴⁵ had, as chief priest and judge, a tribe-king (*φυλοβασιλεύς*), and held assemblies whose decrees bound all tribesmen. The nature of such tribal conventions and decrees is further illustrated by a passage in Demosthenes, to which Coulanges refers.⁴⁶ In a speech against Theocrines,⁴⁷ Demosthenes narrates how the fellow-tribesmen of Theocrines convicted him of the embezzlement of tribal funds and punished him by a fine; and he was forbidden by State law to prefer any indictments against any citizen until he had paid this fine, as in the meantime he was regarded as a State debtor. The decree was moved against him at a tribal meeting by a certain Scironides and the fine proposed was seven minae.⁴⁸ From such passages as this Coulanges⁴⁹ argues that Plutarch and Thucydides are mistaken when they say that Theseus destroyed the local magistracies after the synoekism of Attica. This Demosthenic passage indicates clearly the survival of courts whose primeval jurisdiction had been largely superseded by that of the State.

Apart from those arguments which are based on the survivals of tribalism, it is logically probable that since homicide in Pelasgian society was normally atoned for by the payment of a collective wergeld penalty, which affected the property of at least two clans, and since the judicial machinery of Pelasgian tribes was such that it would ordinarily have been set in motion for adjudication in disputes regarding property, homicide was therefore a fit and proper subject for investigation by such tribunals.

THE SHIELD OF ACHILLES AND THE ROYAL JUDGES

Homer, in describing the Shield of Achilles, happens to mention a court which is appealed to in a dispute concerning wergeld, and such a reference is as complete a confirmation

⁴³ *Op. cit.* p. 137.

⁴⁴ P. 157.

⁴⁵ P. 158.

⁴⁶ P. 158.

⁴⁷ 1326 (Reiske).

⁴⁸ About £28.

⁴⁹ *Op. cit.* p. 173.

of our hypothesis as can reasonably be expected.⁵⁰ We have already given what we consider to be the correct interpretation of this passage. The Elders were Pelasgian tribal chieftains, who frequently came together and sat upon polished stones, 'in a sacred circle,' holding in their hands the sceptre of authority. It is quite probable, as Leaf⁵¹ suggests, that two of the Elders acted as 'advocates,' and it is almost certain⁵² that the two talents of gold which are mentioned were a kind of advocate's fee which was deposited by both litigants in order to encourage the advocates to give a proper exposition of the unwritten code of the tribes. The fact that the dispute concerned the payment of wergeld, and not the reality of guilt, does not warrant the conclusion that the court of Elders could not have functioned, if it were necessary, as a murder court. It is true that in the group system of primitive tribal life there was never very much difficulty in establishing the identity of the murderer; but it is equally true that if an accusation was challenged or disputed, there must have existed a court whose decision would have been accepted as final: we cannot conceive an entire clan agreeing to pay the wergeld of 120 cows if the person who was accused of homicide had assured his own clan court that he was innocent. Now the Elders of the Homeric trial-scene would normally have adjudicated in cases of homicide between the members of different tribes; and it is possible that they would have heard appeals from tribal or phratry courts, in the event of disagreement about inter-tribal cases. The Elders are therefore the *real* *δικασπόλοι βασιλεῖς* of the Homeric society. The fact that the Achaean kings are credited with this *title* in Homer does not prove that they ever functioned as such. Leaf⁵³ thinks that they might have consented to hear appeals in isolated instances, but the title *δικασπόλος* is one which could frequently have been applied without very much significance to Achaean feudal lords who possessed a theoretical supremacy in Greek jurisdiction. Within the Achaean caste, these lords revealed no interest nor did they acknowledge any obligations in the judicial aspect of homicide. On the contrary, they frequently

⁵⁰ *Il.* xviii. 500.

⁵¹ See note on passage in edition of *Iliad* (1902), p. 611 ff.

⁵² Maine, *Ancient Law*, p. 313; *supra*, p. 40.

⁵³ *H. and H.* p. 47.

gave their daughters in marriage to murderers! We think, therefore, that Leaf would not now find so much difficulty in the absence of a 'king' in the Homeric trial-scene as he did in 1883.⁵⁴ It is not certain, of course, in what Greek areas Pelasgian groups still retained Pelasgian kings. The Minoan kings of Mycenae, Lacedaemon, and Thessaly, and other districts disappeared in the Achæan conquest. Still there survived a few Minoan or Pelasgian kings who lived in friendly alliance with the Achæans, and who could still be truly described as defending 'the Zeus-given *θέμιστες*.' But it is also true that at the time of the Trojan war the Achæan lords would have come to be regarded as the 'heaven-sent guardians of law,' through the mere fact that they were 'kings.'

Maine⁵⁵ thinks that the *θέμιστες* (customs) of the Homeric age were isolated judgments delivered without any orderly sequence or precedent. But Glotz⁵⁶ insists that the word *θέμις* is peculiarly applicable to tribal custom, as opposed to the terms *δίκη* and *νόμος*. We believe that the word generally refers to Pelasgian traditions.

In the *Iliad*⁵⁷ we are told that Zeus is wrathful against men who judge crookedly in the Assembly, and drive out Justice. Who are these men? They may, of course, be Achæans, but we think it more probable that they are the judges, and therefore the chiefs, of Pelasgian tribes—judges whose tribal successors were accused of corruption in the days of Hesiod,⁵⁸ when the Achæans were no more. In Homer two talents of gold were offered as a reward for an advocate's successful pleading, and the advocates were probably chosen from the same caste as the judges. From this it is but a short step to bribery and the corruption of justice. Hence we can understand the words of Hesiod: 'The people pay for the folly of their kings, who with ill thoughts wrest aside judgments, declaring falsely. Beware of these things, ye kings, and set straight your speech, bribe-devourers, and utterly forget crooked judgments.' And again⁵⁹: 'There is the noise of the haling of Justice wheresoever bribe-devouring men hale her, adjudging dooms with crooked judgments. And she followeth

⁵⁴ *Supra*, p. 34 ff.

⁵⁷ See *Il.* xvi. 386–8.

⁵⁵ *Ancient Law*, p. 7.

⁵⁸ *W. and D.* 260.

⁵⁶ Glotz, p. 237.

⁵⁹ 220 ff.; see also 40.

weeping, clad in mist and fraught with doom, unto the city and the homes of men who drive her forth.' In ancient society social law is inseparable from religion ; as Coulanges puts it ⁶⁰ : ' To disobey law is sacrilege.' The law was regarded as the exclusive secret of the hereditary nobility,⁶¹ who alone could interpret it and whose decision was final. The opportunities for profit-making and bribery in such a system must have been innumerable. In later times when democracy asserts itself the less-privileged orders,⁶² championed sometimes by tribal or quasi-feudal kings, sometimes by usurping tyrants, equipped with mercenaries, compelled the 'Elders'—that is, the old patriarchal sacerdotal nobility—to codify their laws and to admit to judicial power the 'new nobility' of wealth and the ignoble proletariat. The old nobility came then to be distinguished for the integrity of its judicial character, partly because it had lost its monopoly of power, partly because corruption could no longer be practised with impunity.

ORIGIN OF HOMICIDE COURTS

From what has been already said ⁶³ it must be sufficiently clear what was, in our opinion, the origin of murder-trial in early Greece. The local courts of clans and tribes constituted a nucleus for the development of central State courts when civic groups emerged into being through political synoekism. Homicide was a proper subject for litigation, in the tribal wergeld system, simply because the normal penalty involved a transfer of collective property or the expulsion of a tribesman. If then phratry-courts had to decide issues between different neighbouring clans, if tribal courts had to decide disputes between clans of widely separated localities, is it not natural to suppose that the State courts of synoekised areas would have adjudicated in disputes between members of different tribes ? Hence the judicial assembly of tribe-kings (*φυλοβασιλείς*) constituted a more or less important State court from the most remote antiquity. In historical Athens, Aristotle ⁶⁴ assures us that they still judged, at the Prytaneum,

⁶⁰ *Op. cit.* p. 249.

⁶² Coulanges, *op. cit.* pp. 314, 338.

⁶¹ *Ib.* p. 336.

⁶³ *Supra*, p. 81 ff.

⁶⁴ *Ath. Pol.* 57

indictments concerning animals and inanimate objects (*δικαὶ ἀψύχων*). Glotz⁶⁵ says of the Prytaneum Court: 'Il semble même qu'il ait été le premier et longtemps le seul tribunal d'Athènes.'

Let us now consider some other hypotheses as to the origin and evolution of homicide-courts. Glotz and Bury are in agreement in supposing that wergeld was abolished, not by the Apolline religion, but by the establishment of State power: though, in so far as it was the Apolline doctrine of 'pollution' which compelled the State to interfere, they would be compelled to admit that Apollinism contributed to the abolition of wergeld if it did not directly abolish it. Glotz, in particular, is anxious to establish a novel theory of his own,⁶⁶ to the effect that it was Solon, not Dracon, who abolished wergeld! The only reason he gives is that Solon's general policy was opposed to clan-jurisdiction or clan-power exercised to the detriment of the State. This opinion we shall discuss in its proper place.⁶⁷ But there is an important element of truth in the Glotz-Bury position which must be clearly indicated. We have said that the original Pelasgian State courts very probably heard disputes in regard to homicide, at least between members of different tribes. Now, tribal society is based on a close exclusive aristocracy of birth. Strangers may be received with temporary hospitality, but their adoption into the permanent life and privileges of the tribe was a matter of great difficulty.⁶⁸ Every tribe contained a gradually increasing number of 'hangers-on,' lackland men, bondsmen, serfs, and casual vagrants, who may be regarded as the nucleus of the plebeian movement which in many cases culminated in democracy. The growth of commerce in the seventh century, the invention of coinage, migration and colonisation led to the rise of a new aristocracy of wealth⁶⁹ as distinct from birth. Many of the 'new men,' who now were very powerful, did not belong to the old aristocratic tribes. In cases of homicide between members of this new group, who would act as judge? The tribe-kings regarded such a group as entirely outside their caste. For such a group there was neither religion nor law nor justice. Hence they probably resorted to what we

⁶⁵ *Op. cit.* p. 190.

⁶⁶ P. 321 ff.

⁶⁷ See *infra*, pp. 179 ff., 222.

⁶⁸ Coulanges, *op. cit.* pp. 42, 195.

⁶⁹ P. 364.

have described as unrestricted vendetta. It was precisely at this juncture, as we think, that the new religion of Apollo, with its quasi-Asiatic doctrine of murder as a 'pollution,' came to Greece. Murder now became a 'sin' against the State gods. If unpunished, it brought upon the State the anger of its gods. State courts were now compelled to sit in judgment on all cases of homicide which occurred within the State: no longer were the tribes permitted to adjudicate for intra-tribal slaying. They could still hold 'minor investigations' at their local Prytaneum; though we cannot agree with Müller and Philippi in describing as a 'mock-trial'⁷⁰ their investigations into the guilt of animals and inanimate objects (*δικαὶ ἀψύχων*). But the man 'who shed man's blood' had now to appear before the central tribunals of the State: all men had to appear, not merely the aristocratic heirs of tribal privilege. This, in our view, is what happened in the seventh and sixth centuries B.C. In the circumstances of the time it was an event of incalculable utility to Greek societies. But the lustre of the event and the chaos which it terminated have dazzled the minds of modern thinkers so much that they forget the older and, for the period of its power, the equally effective vigour of the courts of the tribal State. *Thus, what Glotz and Bury have attributed to the evolution of State power is really to be attributed to the new non-tribal democracy and the religion of Apollo.*

The view of Gilbert and Köhler,⁷¹ and, we may add, of Müller,⁷² which places the origin of trials for homicide in the conception of bloodshed as a sin and in the respect for sanctuary, remains for discussion. Müller is, we think, mistaken in supposing that bloodshed was sinful from the earliest dawn of Greek society, and that wergeld originated in the purgation-ritual.⁷³ This opinion we shall criticise at length in the next chapter. Gilbert's conception that the right of sanctuary existed from immemorial antiquity and was a necessary preliminary to wergeld negotiations cannot be harmonised with the evidence of the Homeric poems or with the customs of other analogous tribal peoples. We shall find,

⁷⁰ Philippi, *Areopag*, pp. 15-16; Müller, *Eum.* pp. 141-2; see *infra*, p. 197.

⁷¹ *Supra*, p. 80.

⁷² *Eumenides*, p. 136 ff.

⁷³ Müller, *op. cit.* p. 123; see also Philippi, *Areopag*, p. 3.

indeed, in Euripidean legends evidence of the efficacy of sanctuary to protect ⁷⁴ the suppliant, but we also find evidence that it was potent merely to delay ⁷⁵ the inevitable doom. In Homer there is no suggestion that an Achaean would have ever heeded, or that a Pelasgian would have ever needed, such a refuge. Quick vengeance, permitting, as Demosthenes says, ⁷⁶ no *κρίσις* between *φόνος* and *τιμωρία*, is not a characteristic of the tribal wergeld system. In regard to later times, Gilbert says that 'when the State took into its own hands the regulation of vengeance for bloodshed it respected the right of sanctuary in so far that the three places of trial were connected with three sanctuaries.' He refers, we presume, to the Attic courts known as the Areopagus, the Palladium, and the Delphinium. But the connexion of these courts with local temples may be otherwise explained. Coulanges ⁷⁷ points out that the assembly-place of the Roman Senate, which was a judicial as well as an administrative council, was always a temple. We shall see later that the murderer in the 'pollution' period was debarred from any contact with a temple under most serious penalties. We must then defer to a subsequent stage of our work ⁷⁸ the final refutation of Gilbert and of Müller and the complete exposition of our own hypothesis as to the origin and evolution of the Attic murder courts.

⁷⁴ E.g. *Ion*, 1258, 1275, 1283, 1315.

⁷⁵ *Her. Fur.* 250, 715.

⁷⁶ *In Aristoc.* 640, 63.

⁷⁷ *Op. cit.* p. 217.

⁷⁸ *Infra*, Bk. II. ch. iii.

CHAPTER V

RELIGIOUS ASPECT OF HOMICIDE IN EARLY GREECE

Current views : digression on evolution of Greek religion : ancestor-worship : nature-worship : animal sacra : image-magic : anthropomorphism : Achæan and Pelasgian contributions to Homeric religion : fusion of Achæan and Pelasgian dogma and ritual : religious aspect of kin-slaying amongst Pelasgians and Achæans : origin and evolution of the Erinnyes : origin of homicide-purgation : comparison of Pelasgian with Achæan Erinnys, and of Homeric Erinnys with post-Homeric and 'tragic' Erinnys.

THERE is a considerable variety and conflict of opinions about the religious aspect of homicide in Homeric Greece. We have already explained by quotations from Glotz¹ and Bury² the theory which conceives the shedding of human blood as a deed which, in those days, did not touch the gods or draw down the anger of the gods on the community. On the other hand, Leaf, who indicates a clear and emphatic distinction between the religious beliefs and customs of the Achæans and the Pelasgians, holds that the Achæans ignored and the Pelasgians respected³ 'the most sacred of all taboos which forbids the shedding of *kindred blood*': for the Pelasgians retained the 'primitive family system, with all its rites and taboos'⁴ and possessed, therefore, the 'foundations of primitive society and religion.'⁵ Again, Fustel de Coulanges, in his analysis of the primeval domestic religion of the Ancient City, says⁶ that 'the shedder of blood was no longer able to sacrifice: the hand stained with blood could not touch sacred objects.' He believes, however, that⁷ the manslayer could be purified by an expiatory ceremony. Miss Harrison holds a somewhat similar view⁸: 'Purification,' she says, 'is the placation of ghosts and, unknown to the Olympians (i.e. *Achæans*), was the keynote of the lower stratum

¹ *Supra*, p. 80 ff.

² *Supra*, p. 78 ff.

³ *H. and H.* p. 253.

⁴ *Op. cit.* p. 251.

⁵ *I.* 252.

⁶ *Op. cit.* p. 135.

⁷ *I.* 126.

⁸ *Prolegomena*, p. 53, pp. 161-2.

(i.e. *Pelasgians*).’ . . . ‘The extreme need of primitive man for placation is from bloodshed : this is at first obtained by offering the blood of the murderer ; later, by the blood of a surrogate victim applied to him.’ . . . ‘So long as primitive man preserves the custom of the blood feud, so long will he credit his dead kinsman with passions like his own.’⁹ So, Müller maintains¹⁰ that the religious rites of expiation and purification are derived from the remotest times of Greek antiquity and were designed to reinstate the slayer in religious communion with his family and his comrades. Purgation ceremonies are, he thinks,¹¹ based upon the idea that the man-slayer must atone with his own life, but that this life may be bought off by vicarial substitution, by a sacrificial victim symbolical of such substitution. Our own views upon these subjects will appear in the course of the discussion : we shall point out, amongst other things, the distinction between expiation (*ἱλασμός*) and purgation (*καθαρμός*), and while refusing to accept on the one hand the views of Müller and of Miss Harrison, and indicating, on the other hand, the inaccuracies in the views of Glotz, Bury and the generality of writers, we shall develop and expand a theory which is suggested by Leaf’s¹² general position and which distinguishes carefully between the religious attitude of the *Pelasgians* and the *Achaeans*. To achieve this purpose it will, however, be necessary, even at the cost of a digression, to give a brief account of the evolution of early Greek religion.

ANALYSIS OF EARLY GREEK RELIGION

To the scientific mind of a modern European living in the atmosphere of a highly secularised society, nothing can appear more curious and incomprehensible than the almost universal belief in ubiquitous supernatural forces which is revealed in ancient literature. Such a belief is not, however, a symbol of savagery or barbarism ; it is merely a symptom of the absence of scientific knowledge. The general principle that men in all ages attribute to occult forces every effect of

⁹ *Prolegomena*, p. 64.

¹¹ *Ib.* pp. 118–120.

¹⁰ *Eumenides*, p. 106.

¹² *H. and H.* chap. vii.

which the cause is unknown or mysterious, is clearly expressed by Lucretius¹³:

quippe ita formido mortales continet omnes
quod multa in terris fieri caeloque tuentur
quorum operum causas nulla ratione videre
possunt ac fieri divino numine rentur.

It was natural then, in an age of unscientific mentality, that plagues and pestilences, and diseases of all kinds, lunacy and sterility, the failure of harvests, misfortune in peace or war, adverse winds, volcanoes, inherited characteristics, the activities of genius, emotion and desire, birth, growth, death and decay—almost everything that crosses the threshold of human consciousness—should be ascribed to the ubiquitous and perpetual operation of supernatural agents. The literature of ancient Greece and Rome is permeated with such beliefs. We will quote just one characteristic passage from the *Eumenides* of Aeschylus. When the avenging Erinnyes of the slain Clytaemnestra threaten to hurl the shafts of their wrath upon the Attic land because it has harboured Orestes, whom they regard as the murderer of his kin, Athene, who has caused a murder-court to declare him free from guilt, apparently on a plea of justifiable homicide, commands the Erinnyes to be appeased, and says: ‘Hurl you not the weight of your wrath upon Attica; be not indignant, nor cause barrenness by sending down the blighting drops that come from Spirits, the cruel bitter destroyers of our seed.¹⁴ . . . Fling not upon earth the fruit of thy wild curse, causing all things not to prosper.¹⁵ . . . Sow not within my boundaries those spurs to bloodshed that ruin young men’s hearts, maddened by a frenzy not born of wine¹⁶ . . . but (send) blessings from earth and from the waters of the deep, and from the sky wind-breezes that blow with kindly sunshine over earth: (send) fruit of the soil and of things that live, flowing with untiring vigour to my citizens, and of man’s seed a safe deliverance at the birth.’¹⁷ The Erinnyes, in consenting to be appeased, reply: ‘With kindly prophecy we pray for you here, that the radiant sunlight may bring forth with speed

¹³ *De R. N.* i. 151 ff.

¹⁴ *Eumenides*, 803–6.

¹⁵ *Ib.* 833–4.

¹⁶ *Ib.* 860–3.

¹⁷ *Ib.* 905–10.

from earth the blessings of your life¹⁸ . . . never—such is my boon—may the trees feel the hurtful wind or the scorching fire that robs them of their buds . . . or blight creep over them eternally that blasts their fruitfulness: and may Pan bring to full growth the prosperous flocks that will bear from wombs a twofold fruit, and in due season may the produce of rich earth present you with the good gods' gift of fortune¹⁹: . . . on the young men I forbid to fall the stroke of death untimely: and that the lovely maids find each her husband—do ye grant it, O ye who reign, and ye, O Fates divine!²⁰ . . . May the roar of Faction, thirsting for evil, never in this place be heard, nor the dust that drinks the dark blood of fellow-citizens bring to the State, from passion for revenge, the doom of retaliation. But may the citizens rejoice one another with a common love and hate only in union as one man.'²¹

The modern European, taught in childhood to accept the Christian doctrine of the divine creation of the world, must exert himself considerably if he is to realise that in Greek religion the notion of such a creation is not found before the fifth and fourth centuries B.C., and even then it existed only in the atmosphere of a pious philosophic sect. To the ancient Greek mind, the earth was not created; it had been from everlasting: it was itself divine. Gilbert Murray rightly says²² that the chief objects of primitive man's emotional activity are the food-supply and the tribe-supply. By a well-known confusion of cause and effect characteristic of the primitive mind, the earth became the object of universal worship, because of its association with the production of food.

Similarly, animals came to be regarded as sacred, though different races adopted different viewpoints in regard to their sacred character. In some instances a certain animal was 'sacred' simply because it was eaten: in others it was 'sacred' because it was 'tabu' or sinful to eat it. We shall see that the animal slain in certain Chthonian rites could not be eaten,²³ but it was 'sacred' all the same. The ancient

¹⁸ *Eumenides*, 923-7.

¹⁹ *Ib.* 939-49.

²⁰ *Ib.* 957-62.

²¹ *Ib.* 977-87.

²² *Four Stages of Greek Religion*, p. 43.

²³ *Infra*, p. 149 ff.; Glotz, *op. cit.* pp. 156, 182.

notion, which has survived so long in witchcraft, of the magical power of placation by images or effigies led to the widespread construction of those animal images which are so familiar to the students of primitive religion.²⁴ When divinities in human form, when anthropomorphic *sacra*, take precedence of the animal god, traces of a fusion in image-magic are clearly visible. Whether by accident, or by reason of some traditional connexion, certain human gods came to be associated with certain species of animals. The sacrifice of such animals was regarded as particularly pleasing to such gods, and it is therefore arbitrary to assume that the sacrifice of animals was originally accepted as a substitute for a previous human sacrifice. Herodotus says²⁵ that the image of Isis in Egypt was that of a woman with cow's horns: that a statue of Zeus in Egypt showed the figure of a man with the face of a ram. When the people of Egyptian Thebes sacrificed, annually, a ram to Zeus, they covered the statue of Zeus with the skin of the ram.²⁶ We know that the worshippers of the orgiastic Dionysus clothed themselves in fawn-skins,²⁷ and that the satyric choruses from which, we may suppose, Greek tragedy developed,²⁸ were dressed, to some extent, as goats. The goat and the snake, as well as the bull and the ram, seem to have been worshipped in early times as symbols at once of the fertility of the soil and of the fertility of the race. The serpents which gaze at us so terribly from the heads of the Aeschylean Erinnys are probably, in origin,²⁹ derived from the belief that the souls of the dead are connected with the fertility of the earth.³⁰ Herodotus tells us that offerings were regularly made to an imaginary serpent which was supposed to reside in the temple of Athene Polias at Athens.³¹ This serpent symbolised, like the undying fire of the Roman Vesta,³² the immortal progenitor of the race.

²⁴ See, e.g., Haddon, *Magic and Fetishism*; Burne, *Handbook of Folk-lore*; and Frazer, *Golden Bough*, vol. i. et passim.

²⁵ ii. 40.

²⁶ ii. 42.

²⁷ Euripides, *Bacchae*, 111, 137.

²⁸ Aristotle, *Poetics*, ch. iv. (1449a); see, however, Ridgeway, *Origin of Tragedy*, passim.

²⁹ See *infra*, pp. 120 ff., 298 ff.

³⁰ Farnell, *Cults of the Greek States*, vol. ii. p. 650.

³¹ viii. 41.

³² F. de Coulanges, *op. cit.* pp. 35-40.

ANTHROPOMORPHISM AND THE OLYMPIANS

In regard to the origin of anthropomorphic religion in Greece, we can only say that we prefer the opinion of F. de Coulanges,³³ which derives it from the ancestor worship of the early Pelasgian peoples, to that of Miss Harrison which, in its latest form, attributes it to a political anti-Persian reaction of the sixth and fifth centuries B.C.³⁴ Coulanges believes that when once the idea of human gods took shape, it tended at once to personify and humanise all the various objects of worship.³⁵ It is significant that the Persians, who had no ancestor worship, did not conceive their gods in human form.³⁶ Amongst the Greeks, however, who worshipped dead ancestors from the dawn of their history, the 'ghost' gave its form to the god.

Assuming, then, Coulanges' theory of the evolution of anthropomorphism, we must regard as absurd the opinion of some ancient writers who maintained that Homer and Hesiod not only told false stories about the gods but gave them, moreover, the manners and shapes of men.³⁷ The precise contribution of such poets as Homer to ancient religion is difficult to define, but we believe that it was not so much constructive as destructive. The poet gave a certain immortality to the conceptions which he expressed: the effect of a Bible in religious evolution is essentially conservative. It tends to stereotype for all men and for all time the religious opinions of its day. Now Homer was the poet of the Achaeans, and the Achaeans, as Leaf says,³⁸ conceived the gods as typical Achaeans of the other world. Whether they brought new human gods³⁹ to Greece or merely gave a personal interpretation to the Pelasgian gods, we need not at the moment decide. The gods of the Achaeans were conceived as kings and rulers like themselves. If they do not create the universe, they at least divide it into realms or dominions.⁴⁰ Moreover, they

³³ *Op. cit.* p. 28. ³⁴ *Themis*, pp. 335, 447, 461. ³⁵ *Op. cit.* pp. 36, 160.

³⁶ Herodotus, i. 131.

³⁷ See, e.g., Cic. *Tusc. Disp.* i. 26, 65; Plato, *Rep.* ii. 378 A-D, 380 D, 381 D.

³⁸ *H. and H.* p. 262.

³⁹ Chadwick, *Heroic Age*, p. 418; Leaf, *H. and H.* p. 263 ff.; Harrison, *Themis*, p. 491, *Proleg.* p. 299; Ridgeway, *J.H.S.* 1898, p. 34.

⁴⁰ *Il.* xv. 190 ff.

are presented as related to one another by blood, or connected by intermarriage, as the Achaeans were. They naturally have their quarrels, their disputes, their rivalries and their jealousies, as the Achaeans had. The stamp of the Achaean caste marks the Homeric pantheon. But apart from the great Olympian gods, there are a number of minor deities who suggest the existence of a less privileged social and religious caste. It is in this caste that we believe that we can find the source of supply or the materials for the creation of the Olympic Pantheon. Such a Pantheon could never have been the exclusive creation of Homer. If the Achaeans created it, they were limited, surely, by the nature of the materials at their disposal. Their creative power was restricted and directed, as we believe, by a pre-Achaean evolution of grades of divine greatness within the galaxy of Pelasgian divinities⁴¹: an evolution which attributed to elemental forces and to national ancestor-gods a power to which no mere local 'ghost' could aspire to attain. The Pelasgians and Minoans in their tribal villages, and particularly in their city-religion, had, we think, evolved the distinction between the greater and the lesser gods, between the gods of the upper air, and those of the sea and of the earth below, which was so characteristic a feature of later Greek religion. True, many of their 'deities' were nameless, as Herodotus⁴² seems to have heard that they were at Dodona, and as the ancestral spirits of historical times still were, since they were addressed as *Keres* at the Athenian Anthesteria.⁴³ But the old tribal and city gods must have had names. It would have been otherwise impossible to distinguish them from one another in the multitudinous deifications of an ancestor-worshipping and nature-worshipping peninsula. Coulanges⁴⁴ holds that the local gods of primitive peoples often carry the same name even when they are really different in form and ritual. But here we think that we can detect the influence of Homer and the Achaeans. The Homeric god is stereotyped in form and character as in name. The form and character was created, we believe, by the military Achaean caste, while the name was in most if not all cases a Pelasgian product. It was all the more possible for the

⁴¹ Leaf, *H. and H.* p. 261 note. ⁴² ii. 52; see Leaf, *H. and H.* p. 273.

⁴³ Harrison, *Proleg.* p. 35 and note.

⁴⁴ *Op. cit.* pp. 199-200.

Achaeans to give character and personality to the gods, if there had been local variations in the Pelasgian types. Moreover, the Achaeans drew, so to speak, a line of demarcation around the gods of their choice. They created a Pantheon of an exclusive type, which, by its prestige in later years, checked the Pelasgian tendency to increase the number of the greater gods, and compelled the Greeks to accept, instead, the worship of *Heroes*.⁴⁵ The creation of such a Pantheon presupposes, we think, the existence of an identity of type within some widespread organised society. No mere local poet or city-state could have created it. As we have no evidence of the existence in pre-Homeric days of a national union or federation of Minoan kings, or of a national Amphictyony, such as we meet with in later times, we naturally attribute to the ubiquitous Achaean caste and their poet-Royal the creation of that Pantheon which was the mainstay of Achaean religion. But this Pantheon was created out of pre-existing Pelasgian materials. We do not agree with Leaf and Chadwick in the view that the Achaeans were the *creators* of Greek anthropomorphic religion.⁴⁶

ACHAEAN-PELASGIAN RELIGIOUS FUSIONS

Many of the difficulties presented by Homeric religion are to be attributed to the fact that that religion was an eclectic product. If we compare the beliefs and customs of the Achaeans and the Pelasgians, it will be obvious that despite the circumstance of their social coexistence, a complete blending or fusion in dogma or in ritual would have been impossible. Yet it is equally impossible to suppose that both Pelasgians and Achaeans preserved their religious rites and conceptions unadulterated and pure.

Miss Harrison is, we think, mistaken—she seems to admit it in a later work ⁴⁷—in assuming that the Achaeans are to be associated with Olympian ritual, and the Pelasgians with Chthonian ritual, and that there is a rigid line of distinction between the two castes. Just as the Olympian rites which are so common amongst Homeric Achaeans were, we think,

⁴⁵ Leaf, *H. and H.* p. 273.

⁴⁶ *Ib.* p. 263.

⁴⁷ *Themis*, p. 134 note.

practised also by Minoan kings and Pelasgian nobles, so the Chthonian rites of the tillers of soil were practised, on occasions, by the Achaeans, and would perhaps have been more frequently practised if there had not existed within the two castes differences of dogma, such as we shall presently indicate. In our analysis of the social and judicial aspect of Homeric homicide we were enabled to differentiate clearly between the Achaeans and Pelasgians, for their social organisations were different and distinct. In a religious analysis, however, the gulf cannot with equal clearness be indicated, if we suspect that the practice of common rites and the eclectic conception of common gods may have modified the differences which are otherwise maintained. Leaf is aware of the complexity of the problem, which he aptly describes as a 'tangled skein.'⁴⁸ We do not, however, agree with Leaf's opinion⁴⁹ that 'there is no trace in Homer of any Chthonian religion,' if the word 'Chthonian' carries its usual significance. Leaf implies that the Achaeans, before they came to Greece, were worshippers of the dead. The absence of such worship in Homer is, he says,⁵⁰ due to the severance of the military adventurer from the tombs of his fathers. 'It is impossible to pay due rites to the departed when their tombs have been left far behind in the course of long migrations.' We have seen⁵¹ that the Achaeans were long enough settled in Greece, at the time of the Trojan war, to have produced relations extending to second and third cousins once removed. Surely the habit of ancestor-worship could easily have been renewed in the course of so many generations. We believe that the Achaean conception of a spirit land and their practice of cremation are a clear indication of the absence of the primitive ideas of ghost-raising, ghost-laying and fertility worship, which are the regular⁵² concomitants of the cult of the dead. *The dogmas which underlie these different burial rites cannot, we think, be fused. They can only combine by the evolution of an eclectic doctrine.* Had such a doctrine evolved in Homer? The only passage in the Homeric poems which can help us to decide is the *Nekuia*⁵³ of the *Odyssey*.

⁴⁸ *H. and H.* p. 261.

⁵⁰ *Ib.* p. 267.

⁵² Cf. Halliday, *Greek Divination*, p. 242 ff.; Daremberg and Saglio, *Art. Magia*.

⁴⁹ *Ib.* p. 267.

⁵¹ *Supra*, p. 21.

⁵³ *Od.* xi. 23 ff.

THE NEKUIA OF THE *Odyssey*.

Ridgeway's theory ⁵⁴ of the difference between the Pelasgian and the Achæan cults of the dead is now well known. The former, he maintains, buried their dead, honoured them with periodical offerings of food and drink, and believed that the dead lived in a subconscious state in the tomb; the latter, however, cremated their dead, practised no regular tomb offerings (*χοαί*), and believed that the souls of the dead flitted away through the air to a place called Hades in the west. The curious thing about the *Nekuia* is that the souls of the dead in Hades are represented as anxious for food and drink, and when Odysseus sacrifices there, the ghosts come forth to lick up the blood of the victim. Further, it is only when they have drunk the blood that they regain their memory and recognise their friends again.⁵⁵ Odysseus thus describes the scene at the entrance to Hades to which he has been miraculously permitted to descend: 'There (*i.e.* at the entrance to Hades) Perimedes and Eurylochos held the victims and I drew my sharp sword . . . and dug a pit . . . and about it poured a drink-offering to all the dead . . . mead and sweet wine and water . . . and I took the sheep and cut their throats over the trench and the dark blood flowed forth and lo! the spirits of the dead came out of Erebus . . . and they flocked together from every side about the trench.⁵⁶ First came Elpenor that had not yet been buried . . .⁵⁷ (who said) "Leave me not unwept and unburied . . . burn me and pile me a barrow on the shore. . . ." ⁵⁸ Anon came the soul of the Theban Teiresias . . .⁵⁹ (who said) "Whomsoever of the dead thou shalt suffer to approach the blood, he shall prophesy truthfully . . ."⁶⁰ my mother too drew nigh and drank the dark blood and at once she knew me.'⁶¹

Miss Harrison seeks to explain the difficulty which is presented by this unique passage concerning the Homeric cult of the dead by maintaining that it is a fusion of *Chthonian and Olympian ritual*.⁶² On the assumption which underlies the reasoning in 'Themis,' namely, that the Homeric poems assumed their final form and their characteristic theological

⁵⁴ *E.A.G.* ch. vii. p. 494 ff.⁵⁶ *Od.* xi. 23-37.⁶⁰ *Ib.* 147-8.⁵⁷ *Ib.* 51-2.⁶¹ *Ib.* 153.⁵⁵ See, *e.g.*, v. 153.⁵⁸ *Ib.* 72-5.⁵⁹ *Ib.* 90.⁶² *Proleg.* pp. 74-5.

setting in the time of Pisistratus,⁶³ it is surprising that we have not more frequent instances of such a fusion in the Homeric poems! Those poems contain many references to Chthonian deities, *e.g.* to the Erinnyes, to Ge, and to Hades. But in the *Nekuia* there is question not of gods but of ghosts—ghosts, too, conceived in a predominantly Achæan way, as living together in a western spirit-land. Other Chthonian rites are frequently mentioned in Homer, but not the placation of ghosts. Thus, in the *Iliad*⁶⁴ Agamemnon swears a solemn oath in a manner which is essentially Chthonian. With sword in hand and a boar prepared for sacrifice, he prays (or curses) thus: 'Be Zeus before all witness . . . and Earth and Sun and the Erinnyes who under Earth take vengeance upon men who forswear themselves, that I . . . and if aught that I swear be false, may the gods give me all sorrows manifold . . .' 'He spake and cut the boar's throat with the pitiless knife: and the body Talthybius whirled and threw into the great wash of the hoary sea.'⁶⁵ The reason for the action of Talthybius in this passage is that, in Chthonian ritual the animal which was slain to symbolise the hypothetical destruction of the swearer if certain promises were not carried out, could not be eaten and hence was thrown into the sea.

Ridgeway, who believes that the whole of the *Iliad* and the *Odyssey* was composed before 1000 B.C.⁶⁶ and who has done so much to differentiate Achæan and Pelasgian burial customs, finds in the *Nekuia* a fusion of *Achæan and Pelasgian ideas*. 'Such a blending of religious ideas,' he says, 'is but the natural concomitant of the intermixture of two different races and cultures.'⁶⁷ But Ridgeway is still not quite accurate if he means to imply that any real blending of *ideas* had occurred. We have said that the ideas underlying these different rites could never be really fused, but they could amalgamate in the form of an eclectic religion. We may regard it as a confirmation of our view that Ridgeway has to confess that the fusion of Achæan and Pelasgian ritual of which there is a solitary suggestion in the *Nekuia* does not seem to have established

⁶³ *Themis*, pp. 335, 445 ff.

⁶⁴ xix. 250-268.

⁶⁵ Cf. *Il.* iii. 268-292. So the Trojans offer black lambs to Zeus and a black sheep to Ge, *Il.* iii. 103, 119, 246, 273, 292, 310; iv. 158. See Glotz, p. 156.

⁶⁶ *E.A.G.* p. 678.

⁶⁷ *Ib.* p. 642.

itself in Greece very long before the time of Aeschylus.⁶⁸ He says: 'According to the Homeric doctrine, once the body was burned, the spirit returned no more from its dwelling place with the dead. But on this point Aeschylus held a very different view. It is evident that by the time of Aeschylus an eclectic doctrine had been evolved. The Homeric belief in a separate abode for disembodied spirits was adopted, but at the same time the ancient doctrine of the constant presence of the soul in the grave of its body was retained, the gulf between both doctrines being bridged over by the theory that even though the body was burned, the soul could return to its ashes in the grave.' Now the tomb-offerings made by Odysseus in the *Nekuia* do not take place at a tomb, but at the entrance to Hades. The inference from this fact is *not* that there was a blending of Achæan and Pelasgian *ideas*, in the cult of the dead, but that it was possible for Achæans who practised other forms of Chthonian ritual to perform such rites when commanded to do so in the realm of Hades, *the only place where their dogmas made such rites intelligible*. If the Achæans had believed in the Pelasgian doctrine of the presence of the soul in the tomb, they would normally have made Chthonian offerings at their tombs. Believing, as they did, that the souls of the dead lived in Hades, they could only find meaning in such a rite if they came, as Odysseus came, to the realm of Hades. We have seen that the Achæans, and Odysseus in particular, were familiar with Pelasgian beliefs, and had, in common with their subjects, certain Chthonian rites. The *Nekuia* therefore, instead of proving a fusion of beliefs, seems to us to suggest, on the contrary, that such a fusion had not taken place in Homeric Greece.

In the *Odyssey*⁶⁹ Circe instructs Odysseus in the rites which he must perform when he goes to the 'dank house of Hades.' The fact that he has to be instructed in this matter suggests that it was not a normal procedure in his domestic life. The same may be said about the command of Circe in regard to Teiresias. Circe bids Odysseus, when he performs the Chthonian rite in Hades, to promise that on his return to Ithaca he will offer up in his home 'a barren heifer' and fill a pyre with treasures, and 'sacrifice apart, to Teiresias alone,

⁶⁸ *E.A.G.* p. 549.

⁶⁹ x. 520 ff.

a black ram without blemish.' The burning of a mock-pyre, and the sacrifice of a barren heifer, may be an Achæan rite. The motive is the placation of the dead, but the rite is quite different from that regular feeding of the dead which is so frequent in necromantic magic and in ancestor-worship.⁷⁰ The offering of a black ram to Teiresias is, however, somewhat different. It is Chthonian, but we connect it especially with the worship of 'prophets.' Teiresias was a prophet of the old Pelasgian religion. He belongs to a stage in the evolution of prophecy which is akin to necromancy and witchcraft and which preceded prophetic colleges, 'magical secret societies,'⁷¹ or divination by direct inspiration. This latter divination retained indeed traces of the older rites. Thus in the *Ion* of Euripides⁷² the pilgrims to Apollo at Delphi are required before consulting the oracle to sacrifice a *πέλανος*, a Chthonian offering of meal, honey, and oil. So in Vergil's story of the visit of Aristæus to the underworld, we find that Cyrene tells Aristæus to offer, nine days after his return, a Chthonian sacrifice to an offended prophet, Orpheus :

inferias Orphei Lethæa papavera mittes
et nigram mactabis ovem lucumque revises.⁷³

We do not therefore agree with H. Seebohm⁷⁴ when he says that the placation of Teiresias proves that offerings to the dead were regularly made by the Achæans in their ordinary domestic life.

RELIGIOUS ASPECT OF HOMICIDE

We have pointed out that in Homeric Greece there were, so to speak, two different religions, which reflected, in their main features, the social caste-differences of the Achæans and the Pelasgians. It has been rightly said that primitive man creates his gods in his own likeness, and in the absence of any definite Homeric references to the religious aspect of homicide we must assume that the two religions of Homeric Greece adopted, towards homicide, the attitudes of the two corresponding social strata. Amongst the Achæans, we have seen,

⁷⁰ Ridgeway, *E.A.G.* pp. 328-9, 494-549.

⁷¹ Harrison, *Themis*, p. 55.

⁷³ *Georg.* iv. 545 ff.

⁷² 226.

⁷⁴ *Greek Tribal Society*, p. 6.

homicide was a deed which concerned only the slayer and the nearest blood-relations of the victim ; there was no co-operation of large groups, no trial, no civic interest in the execution of vengeance : it was entirely a matter for ' private settlement ' between the relatives of the slain and the individual slayer. And this ' settlement ' was not a payment in money or in kind : it was a payment in blood, and in blood alone. The Achaeans, as a caste, had no interest in such ' crimes ' : on the whole, they regarded bloodshed as a local misfortune, which should not be aggravated by an extension of the dispute to wider areas, and therefore they frequently adopted and protected murder-exiles. We are not then surprised to find that in Homer the Olympian gods of the Achaean caste manifest no anger against a murderer.

In the Pelasgian tribal religion we may assume that the position of the homicide was somewhat different. It required the payment of wergeld to purchase back the friendship of tribal gods. But we have seen ⁷⁵ that for slaying within the kindred no payment of wergeld could be offered or accepted ; and we have said ⁷⁶ that the penalty of slavery or bondage was probably inapplicable and that therefore exile was the normal punishment for bloodshed within the clan. It follows that the murdered man whose body was interred in the family tomb would never have come in contact, through worship, with his kinsman who had slain him. And in this sense we may accept the dictum of Coulanges ⁷⁷ that ' the hand stained with blood could not touch sacred objects : the shedder of blood could not sacrifice.' Hence it is perhaps significant that, in Homer, Tlepolemus who, when he had slain his maternal uncle, went into exile to Rhodes, is said to have been ' loved by Zeus,' ⁷⁸ for by exile he had atoned for his offence. In ordinary cases of homicide, however, between members of different clans, we must suppose that the gods of the phratry, of the tribe, and of the city became reconciled to the slayer if the relatives of the slain received the customary wergeld. If then Miss Harrison says ⁷⁹ that ' so long as primitive man retains the custom of the blood-feud, so long will he credit his dead kinsmen with passions like his own,' she is compelled,

⁷⁵ See *supra*, p. 8.

⁷⁶ *Supra*, p. 9.

⁷⁷ *Op. cit.* p. 125.

⁷⁸ *Il.* ii. 669.

⁷⁹ *Proleg.* p. 64.

by her own reasoning, to admit that the 'ghosts' of murdered men, in the tribal wergeld system, did not revolt at the presence of a murderer, unless he were a kinsman.⁸⁰

Coulanges⁸¹ implies that in addition to clan-religion there was domestic worship. Now this domestic worship was shared by a husband and wife who normally belonged to two different clans, and are we to assume that if a husband slew his wife or a wife her husband, the domestic religion would have compelled them to go into exile even when the clan could atone by wergeld? This point we cannot decide with any certainty. Clytaemnestra, in later legend, offers sacrifice at the tomb of her murdered husband: her children assert, not that it is sacrilegious, but only that it is unavailing as a placation. We think that the tribal penal code did not demand the exile penalty for homicide of this kind and would have permitted wergeld. But within the genuine kindred, and especially within the small kindred, bloodshed, particularly parricide, was from the earliest times a serious religious offence.

There remain for discussion two problems which most writers regard as intimately related—namely, the origin and evolution of the Erinnyes, and the source and significance of the ritual of homicide-purgation.

THE ERINNYES AND PURGATION

The Greek word *ἐριννύς* is probably an adjective meaning 'angry,' and should therefore be applicable to any spirit, whether ghost or god. But Miss Harrison⁸² believes that the word was originally an epithet of a ghost or *ker*. The following is a summary of her opinions: The *Keres* (*κῆρες*), she thinks, were primarily ghosts: they were neutral potencies who might be either quite harmless⁸³ or baleful bacilli, or good spirits.⁸⁴ The word *Erinnys* was originally probably an epithet of *ker*, and denoted a ghost-pest, a Poine. The *Erinnys* primarily is the *ker* of a human being unrighteously slain. It is the *ker* as Poine.⁸⁵ Thus, because it was a *ker*, the *Erinnys* was primarily a human ghost, but the word came, by a process of specialisation, to be applied only to such ghosts as are angry

⁸⁰ *Infra*, p. 121.

⁸¹ *Op. cit.* p. 52.

⁸² *Proleg.* p. 214.

⁸³ *Ib.* p. 166.

⁸⁴ *Ib.* pp. 175, 184.

⁸⁵ *Ib.* pp. 213-214.

because they have been murdered.⁸⁶ In Homer, she thinks, the Erinyes have passed beyond this stage and are 'personified (? deified) almost beyond recognition.' They are no longer souls, but the avengers of souls. They have even lost their exclusive connexion with souls, and are become the avengers of the moral law, vague equivalents of underworld Zeus and Persephone.⁸⁷

Now Miss Harrison implicitly connects the Erinyes with purgation, since she asserts that 'purification (*i.e.* purgation) is the placation of ghosts.'⁸⁸ But in Homeric times the ghosts of murdered men would not, she holds, accept any purgation sacrifice save the blood of the murderer.⁸⁹ Therefore, in a certain sense homicide could be purged, and in another sense it could not be purged in Homeric times !

Homer,⁹⁰ she says, does not understand the mystery of Bellerophon and the Aleïan plain, but Apollodorus⁹¹ reveals the fact that Bellerophon slew his brother unwittingly and that he was purified by Proetus. Apollodorus, she thinks, is unhistorical in speaking of the purification of Bellerophon : in those old days, she says,⁹² he could not be purified. But as murder was a physical infection, Bellerophon had to go to the Aleïan plain, an alluvial deposit which had recently been recovered from the sea and which was not therefore included in the 'earth' which was polluted by his deed of blood. The fallacies of this interpretation will become evident in the course of our reasoning. At present we will merely point out (1) that there is no evidence for the assertion that murder was a 'physical infection' in the Homeric age. Everything that we have said about the Pelasgian wergeld system and the Achaean protection of murder-exiles proves the contrary ; (2) the plain of wandering, if that is what Homer meant by 'Αλγίον, (it may have been a local place-name which conveyed to him no special meaning,) does not imply an alluvial deposit of any kind, but possibly a special place which known murderers, condemned to perpetual exile, were wont to frequent ; (3) Apollodorus may be unhistorical, in speaking of the purgation of Bellerophon, but so is every Greek writer of the historical period who attributed purgation to Achaean

⁸⁶ *Proleg.* p. 215.⁸⁷ *Ib.* p. 216.⁸⁸ *Ib.* p. 53.⁸⁹ *Ib.* p. 220.⁹⁰ *Il.* vi. 200 ff.⁹¹ *ii.* 2. 3.⁹² *Proleg.* p. 221.

heroes, as Aeschylus, for instance, does, to Orestes ; (4) to explain the absence of references to purgation in Homer by suggesting that the death of the murderer was the only purgation of his crime, and to imply that Bellerophon was fleeing from purgation when he fled from death to the Aleïan plain, is equivocal and misleading. For a murderer was either purged or he was not purged ; and if a murderer was put to death in sacrifice, no one could logically speak of him as ' purged.'

F. de Coulanges seems also to connect the purgation rites for homicide with the worship of the dead. In the primitive family group, he says,⁹³ ' there were domestic morals. The shedder of blood was no longer allowed to sacrifice or to offer libations or prayer or to offer the sacred repast. . . . The hand stained with blood could no longer touch sacred objects. To enable a man to renew his worship and to regain possession of his god, he was required at least to purify himself by an expiatory ceremony.' This opinion implies that such rites were as old as the domestic religion of the Family. The most serious objection to this implication is that Homer has no genuine reference to any such ceremony.

Bury, who rightly attributes the origin of purgation rites for homicide to post-Homeric times, nevertheless connects those rites with the worship of the Erinnyes and of the Chthonian deities. ' Gradually,' he says,⁹⁴ ' as the worship of the souls of the dead and of the deities of the underworld developed, the belief gained ground that he who shed blood was impure and needed cleansing. Accordingly, when a murderer satisfied the kinsfolk of the murdered man by paying a fine, he had also to submit to a process of purification and to satisfy the Chthonian gods and the Erinnyes or Furies who were, in the original conception, the souls of the dead clamouring for vengeance.' The validity of this conception of the origin of the Erinnyes will be examined presently. We hope also to show, at a later stage, that *wergeld* and ' pollution ' were mutually destructive.

O. Müller holds⁹⁵ that the religious rites of expiation and purification were derived from the remotest times of Grecian antiquity and were designed to reinstate the slayer in community of worship with his people. Confronted with the diffi-

⁹³ *Ancient City*, pp. 125-6.

⁹⁴ *H. of G.* p. 172.

⁹⁵ *Eum.* p. 106.

culty that such rites are not mentioned in our Homeric text, Müller argues,⁹⁶ firstly, that the reading ἀγνιτέω (= purifier) instead of ἀφνειοῦ (= rich man) in a passage in the *Iliad*⁹⁷ was the reading of the original text of Homer. He quotes a scholiast's opinion to the effect that there is an anachronism in the verse. Secondly, he holds that the absence of Homeric references to purgation for homicide is not surprising, because the poet's hearers would have taken it for granted as a matter of course! We must leave our readers to weigh for themselves the value of this argument. The opinion of the scholiast, if it proves anything, proves that there was an obviously false reading interpolated in the text.

Müller conceives⁹⁸ purgation (καθαρμός) as a form of expiation (ἱλασμός) which is closely related to the worship of the dead and the Erinnyes, and believes that it originated in the idea that the life of the manslayer (and sometimes the lives of all his clansmen) must be sacrificed in atonement for homicide. Such a sacrifice, he thinks, came to be obviated in course of time, either (1) by the substitution of a surrogate victim, or (2) by the degradation of the murderer to a state of servitude, or (3) by wergeld, which was originally suggested by the new religious custom of accepting the sacrifice of an animal in lieu of the death of the slayer.⁹⁹ Regarding the Erinnyes as Chthonian deities to whom this expiation is offered, he is surprised to find that, in the *Eumenides* of Aeschylus, the purgation of Orestes does not lay to rest the wrath of the Erinnyes. To obviate this difficulty he falls back on the obviously absurd assumption that Aeschylus, for dramatic purposes, presents Orestes as not completely purified.¹⁰⁰ The text of Aeschylus and the text of Homer furnish the best refutations of such hypotheses.

Glötz is quite definitely of the opinion, and in this we agree with him, that purgation for homicide was unknown to the Greeks of Homeric times. In Homer, he says,¹⁰¹ we find traces of a purely physical cleansing which is required as a preliminary to sacrifice: but such words as *μαίνω*, *μαρός* and *μαίφονος* refer to the victim, not to the slayer.¹⁰² Homicide is not a

⁹⁶ *Eum.* pp. 104-5; *supra*, p. 52. ⁹⁷ xxiv. 482. ⁹⁸ *Op. cit.* pp. 112-21.

⁹⁹ *Ib.* p. 123.

¹⁰⁰ *Ib.* p. 133.

¹⁰¹ *Op. cit.* p. 228 ff.

¹⁰² *Il.* iv. 146, xvi. 795; xxiv. 420; v. 31, 455, 844, xxi. 402.

religious offence: the murder exile, received without scruple,¹⁰³ eats at the same table as other guests, and takes part in libations and in prayers. The first genuine instance of purgation for homicide occurs in the *Aethiopis* of Arctinus of Miletus (750–700 B.C.), and the practice continued to develop until it reached its complete systematisation in the time of Dracon.¹⁰⁴ ‘Its development,’ says Glotz, ‘coincides with the disappearance of patriarchal clans and the progress of city life.’ The purgation-system mediated the transition from ‘private vengeance’ to ‘social justice.’ It was derived, he thinks,¹⁰⁵ from the Semites. Before its advent in Greece, the Greeks had long practised Chthonian rites, upon which, so to speak, it was easily grafted, such rites, for instance, as that which accompanied cursing or swearing, a rite in which ‘purging’ water was thrown over the hands of those about to swear,¹⁰⁶ or that which was associated with solemn reconciliations after feuds or enmities.¹⁰⁷ Hence, says Glotz, it came about, by a natural transition, that in historical times the preliminary pleas on oath of the accuser and the accused in cases of homicide were taken at the altar of the Erinnyes, and it was at this altar that sacrifice was offered by the defendant acquitted of murder by the Areopagus and by the returned exile who had paid the penalty of involuntary homicide.¹⁰⁸

Returning to Miss Harrison’s theory of the Erinnyes, we are of the opinion that the epithet *ἐριννύς* was originally equally applicable to all supernatural beings, whether ghosts or gods, but that before the time of Homer the epithet came to be limited to such divinities as were, for some reason, difficult to placate by the ordinary magic of placation.¹⁰⁹ The elemental forces which were deified, as we think, before the advent of the Achaeans, developed, under Achaean influence, a neutral and capricious nature, varying in moods of sun and shower, of calm and storm, like ‘typical men of the other world.’ Like men, they could be placated by gifts and by hospitable entertainment. But the ghost-worship which characterised

¹⁰³ *Op. cit.* pp. 230, 231. ¹⁰⁴ *Ib.* p. 232. ¹⁰⁵ *Ib.* p. 153; *infra*, p. 141.

¹⁰⁶ Cf. *Il.* iii. 268–270, xix. 250.

¹⁰⁷ *Od.* xxiv. 545.

¹⁰⁸ Glotz, *op. cit.* p. 155; Dinarchus, 47; Antiphon, *Her.* 11; Paus. i. 28. 6; Apoll. Rhod. iv. 715.

¹⁰⁹ See *Il.* ix. 572; cf. Müller, *Eum.* p. 161, on the worship of Demeter Erinnyes.

the Pelasgian stratum was of a much more gloomy and terrible nature. Miss Harrison thinks¹¹⁰ that Homer exalted the Olympians but caused the bad aspect of Chthonian deities and ghosts to be unduly emphasised. Though the Erinnyes are relegated by Homer to Erebus, yet he does not think of them as ghosts, but as minor deities who carry out instructions from their superiors. They are connected with Zeus (of the underworld), with Ge (the Earth), with the Sun (who, like Zeus, has an underworld aspect, for he too goes down every evening to Hades in the west), and with the Moirae who, though originally agricultural personifications of the Seasons, rapidly became synonymous with Destiny itself, and in Homer are superior even to Zeus.¹¹¹ It is especially in the ceremonies of cursing and of swearing that these Chthonian powers are invoked in Chthonian ritual. We have already¹¹² indicated Miss Harrison's error in associating the Achaeans exclusively with Olympian, and the Pelasgians with Chthonian ritual. She is, we think, equally mistaken in assuming that the pre-Achaean Erinnyes was an irrational being, predominantly animal in form, which had to await the coming of the humanising Achaeans before it assumed a respectable 'personified' shape. We think the Pelasgians retained quite faithfully the original anthropomorphic conception of the Erinnyes, while the Achaeans merely regarded them as minor deities who obediently submitted to 'Olympian' authority. The precise nature of the Pelasgian cult of the Erinnyes in Homeric Greece is rather difficult to define. In the Pelasgian religion there was but a small and indescribable difference between ghosts and gods, between minor deities and greater deities. It is probable that the Pelasgians practised, occasionally, Olympian ritual—for instance, at public festivals and in civic worship; but in the local domestic worship of the clan, the phratry, and the tribe, their placation of ancestors gave a predominantly Chthonian tone to their whole religious outlook. Hence their Erinnyes, also, though originally spirits which were angry but placable, easily became spirits, whether ghosts or gods, whose wrath was almost implacable. But the Achaeans did not realise the nature of these Erinnyes: and hence in Homer they almost assume the role of ministering spirits,

¹¹⁰ *Proleg.* p. 172.¹¹¹ *Leaf, H. and H.* p. 18.¹¹² *Supra*, p. 102.

sent to warn or to punish. They are not wicked and malicious, like the Harpies or the Sirens. Thus they are much more human and less, so to speak, diabolical than the real Pelasgian Erinnyes, and this is, perhaps, what Miss Harrison meant to convey when she said¹¹³ that 'in Homer they are *personified* beyond recognition.' The Achaeans could not appreciate the terrible potentialities of the angry ghost-god of the Pelasgians, for the simple reason that they did not worship the ghosts of departed ancestors or any kind of ghosts.

It would, however, be a serious error to suppose that the Pelasgian Erinnyes were as formidable and as implacable as the Erinnyes of post-Homeric times. Moreover, it is gratuitous to assume that ghosts were primarily and necessarily angry because they had been murdered. There is no evidence that homicide in Pelasgian times generated implacable Erinnyes. We admit, with Miss Harrison,¹¹⁴ that primitive man credits his dead kinsman with passions like his own. But we have already pointed out¹¹⁵ that if the passions of primitive man are checked and controlled by a tribal society which tramples upon individual instincts, and acts in a collective capacity, if *wergeld*, according to tribal and early civic law, permits a slayer to remain at home and guarantees him immunity from vengeance while his hands are still wet with blood, we cannot reasonably ascribe to 'dead kinsmen' a fierce and implacable desire for vengeance.

How comes it then, we may ask, that so many writers regard the evolution of early Greek blood-vengeance, and a corresponding evolution in the blood-thirst of the Erinnyes, as a transition from the wild to the tame, from the fierce to the gentle, from the barbarously savage to the rationally civilised? The reason is twofold. First of all, previous writers have not distinguished between the tribally controlled Pelasgians and the bellicose Achaeans, and have therefore misinterpreted the text of Homer. Secondly, many writers have regarded the dark age of chaos of post-Homeric Hesiodic days as a valid picture for early Greece as a whole. This confusion has not only affected modern writers, but it also affected the Greeks of historical times. The various legends of post-Homeric times came to be regarded as a proper medium for the interpre-

¹¹³ *Proleg.* p. 215.

¹¹⁴ *Ib.* p. 64.

¹¹⁵ *Supra*, p. 109.

tation of Homeric saga. The Athenians of the Periclean age were compelled to regard as barbarians their forebears of pre-Draconian times. It is most important to bear this point in mind, in view of our subsequent analysis of homicide in Attic tragedy. We do not assert that all the legends of Attic tragedy are 'unhistorical.' We shall see that in Euripides many legends suggest a reference to a period which we may describe as Homeric or, at least, pre-Hesiodic, and are so faithful a reproduction of that age that they must be either attributed to the most skilful conscious archaising on the part of the dramatist, or regarded as genuine legends which had been transmitted with the least possible adulteration. But most of the legends which we find in the Attic tragedians and in the later epic and prose writers are either adulterated saga, or inventions framed in imitation of such saga. To base a theory of social or religious evolution on such legends is obviously to build upon sand.

As an illustration of the confusion which may thus arise, we will cite the legend of the Boeotian Athamas which is given by Herodotus¹¹⁶ and by Pausanias.¹¹⁷ Pausanias says that Athamas, King of Orchomenus, slew his son Learchus after having made an abortive attempt to sacrifice his son Phrixus to Zeus Laphistius on a neighbouring mountain. Herodotus, however, says that Phrixus was slain by Athamas, and that, as a punishment for this act, an oracle decreed that the Achaeans of Thessaly, to whom Athamas had fled, should purge their country by slaying Athamas in sacrifice. When they were on the point of offering up Athamas, as a 'scapegoat' for *their* sins, Cytissorus, son of Phrixus, arrived from Colchis and saved him! The natural avenger of Phrixus became the deliverer of his slayer, even in defiance of the oracle! The gods, now seriously annoyed, forbade the descendants of Cytissorus to enter the Prytaneum of the city, and a mock human sacrifice was regularly offered to make amends to the gods for their loss. We believe that this legend is merely an attempt to explain two mock human sacrifices which survived, in Boeotia and in Thessaly, in historical times, and that the fact of their contiguity led to the association of Athamas with Phrixus in the legend.

Stories of this kind have suggested the theory that the rites of homicide-purgation originated in human sacrifice: but they are merely aetiological. Moreover the survival, in historical times, in barbarous countries on the outskirts of Greece, of actual human sacrifice, and the mock sacrifices of human beings which were offered at certain festivals in various places, helped to confirm what stories of actual human sacrifice in post-Homeric legend, and stories of bloodshed which could be interpreted as human sacrifices in the Homeric poems, all seemed to suggest, namely, the opinion that all the Greeks of pre-Draconian days practised human sacrifice and were only induced to cease from the practice by the device of a surrogate victim. But there is no trace of real human sacrifice in Homer, certainly no trace of the sacrifice of a murderer's life to gods who demanded it.

We shall see later that, in the Apolline code, death was probably the invariable penalty for kin-slaying,¹¹⁸ and there was no 'purgation': but in other cases purgation was possible, and in the purgation ceremony an animal was slain. The conclusion which is suggested *prima facie* by these facts, namely, that at one time human sacrifice was the only purgation for homicide, is not necessarily correct. We believe it is incorrect. We agree with Glotz¹¹⁹ in deriving the purgation rite from Chthonian sacrifice in its general aspect. In such sacrifice, originally, human beings were probably offered, prior to, contemporarily with, and even subsequent to, the adoption of animal sacrifice. We cannot legitimately assume that the latter supplanted the former. Glotz points out that religion, being conservative, tends to preserve in ritual elements which civilisation has abandoned. Hence arose the mock-rites of human sacrifice which took place in historical times.

The belief that homicide-purgation originated in the sacrificial slaying of the murderer was encouraged by the similarity which existed between the rites of homicide-purgation and the ordinary ritual of Chthonian expiation. We shall see later that, in the ceremonial of purification which was applied to persons guilty of homicide, from the seventh century B.C. onwards, the blood of a slain animal was poured over the hands of the slayer, and allowed to flow away into the sea or into a running stream.

¹¹⁸ *Infra*, pp. 142, 159.

¹¹⁹ *Op. cit.* p. 153 ff.

Thus, homicide-purgation (*καθαρμός*) easily came to be regarded as a kind of expiation (*ἱλασμός*); but it differs fundamentally in meaning from expiation, inasmuch as it is symbolical of the fact that a social or religious obligation has been discharged, rather than of the fact that it is being thereby discharged. The sacrifice of an ox or a sheep or a ram to a god or a ghost was *in itself* a payment or a retribution. But homicide-purgation (*καθαρμός*) was never permitted *until* the slayer had re-established his normal social equilibrium, had suffered the penalty prescribed by law, namely exile, temporary or perpetual, and was ready to resume religious communion with his fellow-men. Since, therefore, homicide-purgation was rather a symbol of reconciliation than a medium of expiation, it was more closely allied to the rites which accompanied the swearing of oaths,¹²⁰ the giving of pledges and the making of contracts. The animal on which an oath was sworn could not be eaten: so, too, the pig or the lamb by whose blood a murderer was 'cleansed' could not be eaten. Now it is unfortunate that such ceremonies, which were really symbolic of reconciliation, should have been so similar to the general ritual of religious expiation that they could easily be confused. There is a vast difference in meaning between reconciliation and the aversion of evil, yet all these ideas were confused in the general system of Chthonian ritual. As an illustration of this confusion we may cite a passage from Vergil, in which is described a rite which is really an 'aversion of evil,' a kind of purgation by anticipation. Urging the farmer to be religious in the interest of his crops, he says¹²¹:

cui¹²² tu lacte favos et miti dilue Baccho,
terque novas circum felix eat hostia fruges.

The milk, honey and wine here mentioned are the characteristic offerings in the placation of ghosts.¹²³ The rite was easily transferred to Demeter or Ceres, the Chthonian goddess, because of the natural tendency of Chthonianism to identify the ghost with the god. The ceremony of carrying a victim round the

¹²⁰ Cf. *Deuteronomy* xxi. 1-9. In the case of homicide by a person unknown, the Elders and Judges go to the nearest city and taking a heifer they kill it, and all the Elders of the city wash their hands over the heifer, saying 'We know not the slayer.'

¹²¹ *Georg.* i. 344.

¹²² *i.e.* Ceres.

¹²³ See, *e.g.*, Aesch. *Persae*, 203, 220, 609-17.

crops was not a symbol of atonement for moral guilt so much as an aversion of quasi-physical evil spirit which caused sterility.

Athenaeus,¹²⁴ describing the 'purgation' of an Arcadian city which was necessitated by the visit of certain citizens from a town which was polluted by bloodshed, says: 'They made purgation of the city, carrying "victims" round the city territory.' The similarity of this ceremony to the 'aversion' rite described by Vergil is obvious. Yet this ceremony is somewhat different from the purgation of an actual homicide, which we shall describe more fully later.¹²⁵ In the former a number of victims are slain; in the latter, only one. Now, if homicide-purgation originated in human sacrifice, and if, as Müller maintains,¹²⁶ wergeld was suggested to men by the *de facto* acceptance, on the part of the gods, of an animal substitute, why was the number of animals sacrificed in homicide-purgation limited to one? Why did men not offer to the gods at least the *saraad* or insult-price,¹²⁷ which generally consisted of a number of animals? The sacrifice of only one animal in such a ceremony cannot be explained by Müller's hypothesis. It can, however, be made intelligible if we assume a direct derivation of the rites of homicide-purgation from the ritual which accompanied solemn oaths and reconciliations. In such a ritual, only a single victim was slain: its death was a kind of inductive symbol of the fate of its slayer, if he ever proved false to his oath. But in ceremonies of general purgation, such as Athenaeus describes, there was an element of expiation, or aversion, and hence there was no limit to the number of victims, for there was no such limit in expiatory sacrifice of any kind.

We shall see later how, in historical times, purgation for homicide was inadmissible in cases of kin-slaying, unless the dying man forgave; even then the slayer had to be exiled for one year before he could be purged in his homeland: in cases of wilful murder, purgation of the slayer in his own country was impossible at any time, but was possible, if not compulsory, abroad: in cases of manslaughter, purgation could take place at home when the conditions of exile and of the 'appeasement' of the slain man's relatives had been fulfilled. From such regulations we can obviously infer that purgation was a symbol of reconciliation, but not an expiation of guilt.

¹²⁴ xiv. 22. 626. ¹²⁵ *Infra*, p. 150 ff. ¹²⁶ *Eum.* p. 123. ¹²⁷ *Supra*, p. 7.

THE HOMERIC AND THE TRAGIC ERINNYES

We must now contrast what we may call the Homeric Erinnys with the Erinnys of post-Homeric times and with the 'tragic' Erinnys. In the course of our discussion we hope to suggest some reasons, more satisfactory, even if they be more complex, than that which Müller¹²⁸ gives, for the refusal of the Erinnyes in the Oresteian legends of Attic tragedy to recognise the purgation of Orestes until they assume the rôle of Semnai Theai or Eumenides. In our view there are just two reasons for this refusal: one is the fact that the purgation-rites for homicide were a symbol of reconciliation, not with ghosts, but with gods: the other is the fact that the Erinnyes of Attic tragedy are a complex product, reflecting the attitude of the relatives of the slain at different periods, and from different points of view, in the post-Homeric era. We shall see later that there must have been several different variants of the Oresteian legend. The act of Orestes would have been approved or condemned according as social custom, at any given epoch, recognised the right of Apollo to command or to justify in advance the slaying of Clytaemnestra, or the right of a State court to approve, or at least to condone, an act which tribal society would have probably condemned.

We may thus summarise what we conceive to have been the different stages in the evolution of the 'tragic' Erinnyes. We must distinguish clearly between (1) the Pelasgian Erinnys; (2) the Achæan Erinnys; (3) the post-Homeric pre-Apolline Erinnys, and (4) the Apolline or historical Erinnys. In Homer there is a fusion of the first and second conceptions. In Attic tragedy there is a most disheartening confusion of all four conceptions. We must remember that the Erinnyes were not ordinary deities possessing a stereotyped cult. Having attained divinity largely through the personification or deification of an abstract cultus-epithet, their nature was liable to vary according to men's interpretation of the meaning and origin of the epithet, and their forms could be freely fashioned by the minds of poets and of legend-makers.¹²⁹

(1) In regard to the Pelasgian Erinnyes, we have suggested that they were divinities of different degrees of rank in the

¹²⁸ *Eum.* p. 133.

¹²⁹ *Infra*, pp. 298 ff., 307, 366 ff.

Chthonian religion. They did not visit their wrath on a murderer if he paid the tribal penalty, or even on the slayer of a kinsman, unless he remained in contact with the domestic worship of his dead relative.¹³⁰ There was no 'purgation' for homicide: because homicide was not yet an offence against *the greater gods of the State*. The exile or death of a murderer or the payment of wergeld appeased, of itself, the Erinnyes of the slain: to refuse to accept wergeld was impossible, in the organisation of the tribe.

(2) The Achaean Erinnyes was an eclectic product. It was not Homer who personified¹³¹ the Erinnyes because it was already personified, though in that vague collective nameless manner in which alone a cultus-epithet can be deified. The Achaeans conceived the Erinnyes as gods. For them there are only gods and men: there are no ghosts or abstractions in the galaxy of supernatural beings. The Achaean Erinnyes has lost its connexion with ghost-terror, though it retains sufficient traces of its Chthonian importance to be treated with considerable respect. It is merely a subordinate deity which executes the decrees of Olympian gods, but its association with Zeus and the Moirae suggests the greater dignity which it enjoyed in Chthonian religion. The connexion of the Erinnyes with curses is essentially Chthonian. All castes in Homer use the ritual of swearing, but we cannot say how far the Achaeans understood the ideas underlying the rite. The curse of a father or a mother was particularly terrible in the Pelasgian domestic religion. But we cannot suppose that the Achaean respect for parents, or their dread of curses, was as great or as profound as that of the Pelasgians. The Achaean Zeus himself hurled to Tartarus his aged father Kronos.¹³² Hence the Homeric references to parents' curses, such as are found in the stories of the Achaean Phoenix and the Achaean Meleager, indicate probably an assimilation of Pelasgian ideas.¹³³ But the literary heirloom which the poet of the Achaeans bequeathed to Greece helped to beget a false conception of the Achaean Erinnyes in the minds of later poets. The Achaean mode of blood-vengeance and their desire of blood for blood caused later legend-makers to

¹³⁰ Coulanges, *op. cit.* pp. 125-6.

¹³² *Il.* viii. 479, xiv. 203.

¹³¹ See Harrison, *Proleg.* p. 215.

¹³³ *Supra*, p. 67 ff.

attribute a veritable blood-thirst to the Erinnyes of murdered Achaeans.

(3) The post-Homeric pre-Apolline Erinnyes—a divine being whose nature can only be inferred by the logic of elimination—reflects in a more emphatic manner the blood-thirst of the slain. In the relaxation of Achaean military discipline which followed the Trojan war: in the great invasions and migrations, and in the demoralisation of clan-control, in a chaotic society such as Hesiod describes,¹³⁴ where force is the only law, and justice, virtue, honour, hospitality, loyalty and fraternal love have vanished from the earth, the Erinnyes came to assume a diabolical aspect: murder was confused with vengeance; the anger of impotent avengers became implacable: and inexorable hatred was attributed to the Erinnyes of the slain. At this period the gods were credited with an approval of collective punishment¹³⁵ such as men themselves practised. Nemesis became a god.¹³⁶ Kronos is now said to have devoured his children, and Rhea, their mother, inflamed the Erinnyes against him.¹³⁷ The blood-offerings which from time immemorial had been laid at the tomb of the dead were now interpreted, not as a resuscitation of the dead for purposes of necromancy or for the production of fertility, but, in the case of murdered dead, as the satisfaction of an unquenched thirst for blood. Curses became more frequent and more terrible than in days when tribal law or military control rendered recourse to religious sanctions less necessary. To this period we attribute the prevalence of customs of which some survived to historical times, while others soon became obsolete: we refer to the custom of writing curses on tombstones, the custom of planting a spear in the grave,¹³⁸ and the custom of *μασχαλισμός*, or partial mutilation of a corpse.¹³⁹ To those days, rather than to historical Greece, apply the words of the Chorus in the *Electra* of Sophocles¹⁴⁰:

The curse hath found, and they in earth who lie
Are living powers to-day.
Long dead, they drain away
The streaming blood of those who made them die.

¹³⁴ *W. and D.* 182–193; cf. Glotz, pp. 226, 227.

¹³⁵ Hesiod, *ib.* 240.

¹³⁶ Hesiod, *Theog.* 223.

¹³⁷ *Ib.* 473.

¹³⁸ Glotz, p. 70; Dem. *contra Everg.* 69.

¹³⁹ Glotz, p. 62; Harrison, *Proleg.* p. 70.

¹⁴⁰ 1420 ff.

In the *Ion* of Euripides¹⁴¹ we are told that around the Omphalos, or Sacred Stone, were figures of the Gorgons. One editor¹⁴² of this play remarks that these figures suggested to Aeschylus the dramatic forms of his Erinnyes. We are much more inclined to believe this, than to suppose, with Miss Harrison¹⁴³ or with Verrall,¹⁴⁴ that Aeschylus invented the dramatic form of the 'tragic' Erinnyes. We shall see later¹⁴⁵ that Aeschylus conceived the Erinnyes as Titans, as rebels against Zeus and the Olympians. Whence came this rebel-rôle of the Erinnyes? The answer will, perhaps, be more intelligible if we explain the nature of the Apolline or 'historical' Erinnyes.

(4) We are not concerned here with the nature of the cult of the Erinnyes in historical Greece. We seek rather to describe the Erinnyes as they were moulded in the minds of poets and of legend-makers in accordance with conceptions of homicide which were modified by the Apolline doctrine of 'pollution' and 'purgation,' and by the evolution of state-control. We must postpone to later parts of our work the details of our theory, and the more complete demonstration of its validity. We will merely give here, as it were by anticipation, a summary of our conclusions. The doctrine of 'pollution' which, as we think, came to Greece about 700 B.C., and which was gradually adopted in most Greek states under the rule of the 'aristocracy of birth,' declared the homicide to be an enemy to the gods of the State. His presence, in his native State, or in the country of the slain, brought upon the whole community plagues and pestilences and all those evils which the primitive mind attributes to divine anger. In our opinion, such a doctrine was incompatible with any further continuation of the wergeld system which had survived the age of chaos. The abolition of wergeld, at the dictate of Apollo, the national prophet-god of 'aristocratic' Greece, was a change which struck at the root of the great tribal principle of retribution to the relatives of the slain. Before the new doctrine acquired the prestige of traditional custom, we should expect that a feeling of revolt would have manifested itself in the sentiments of the old kindred of the clans. Such a revolt would have been reflected, in legend,

¹⁴¹ 224.¹⁴² Bayfield.¹⁴³ *Proleg.* p. 231.¹⁴⁴ *Introd. to Eumenides*, p. xxxvii ff.¹⁴⁵ *Infra*, p. 298 ff.

as an attribute of the Erinnyes of the slain. This conception of a revolting Erinnys will explain the Titanic rôle of the Furies in Aeschylus, and their refusal to recognise the purgation of Orestes by Apollo.

There was another factor, too, which may have helped to give vitality and realism to the rebellious rôle of the 'tragic' Erinnyes, especially in Euripides. We shall see¹⁴⁶ that the Apolline doctrine did not abolish every form of compensation. The relatives of a person involuntarily slain were entitled to 'appeasement,' were, perhaps, permitted under certain conditions to enter into what is known as 'private settlement'—though usually before 'appeasement' a certain period of exile was necessary. Now if, as some maintain,¹⁴⁷ the 'appeasement' depended entirely on the will of the relatives, and if the relatives had to be unanimous in accepting the gifts or presents which constituted 'appeasement,' it is clear that one single relative could have extorted enormous sums of money, or otherwise have compelled the manslayer to abide in perpetual exile. We shall argue, later, that the regular duration of exile for manslaughter was one year, and that this custom implies the influence of local control, on the part of judges or magistrates, directed against the right to refuse 'appeasement' on the part of a slain man's relatives. Such a control would naturally have produced irritation and dissatisfaction which, again, might have been reflected in men's conception of the Erinnyes. We shall see that at least one legend of Orestes conceived his deed as involuntary kin-slaying. It was probably this legend which represented some of the Furies as still implacable when the Areopagus trial had declared Orestes 'not guilty,' or rather, immune from further punishment.¹⁴⁸

The main difficulty connected with the 'appeasement' of the Oresteian Erinnyes arises from the fact that they are not unanimous in their opinions about Orestes, and that some of them—the Erinnyes of Clytaemnestra—are in violent conflict with the official opinion of Apollo. At a later stage we shall be in a position to explain this difficulty more clearly. At present we will merely cite a law of Plato which is probably

¹⁴⁶ *Infra*, pp. 143, 173 ff.

¹⁴⁷ e.g. Glotz, *op. cit.* p. 316.

¹⁴⁸ *Iph. Taur.* 965; see *infra*, Bk. III.

based on the old traditions of patriarchal tribes (as they were modified in course of time by Apollinism), and which forbids the slayer of a kinsman who slays under the influence of passion, ever to return to domestic communion with his kindred, even though he may return to his native state and undergo 'purgation.' We refer to this law because it is possible to interpret the act of Orestes, from Apollo's standpoint, not as fully justified but rather as in a sense involuntary, being extenuated by a religious command, as 'passion' would have extenuated it. Plato says ¹⁴⁹: 'If a father or a mother in a passion kills a son or daughter . . . let them be exiled for three years and be "purged," but, on return, let the husband be divorced from the wife and the wife from the husband . . . and not dwell in communion with (the family) . . . or share with them in sacred rites.' Now, in the Apolline system it is probable that the murder of a husband by his wife was of equal gravity with kin-murder which was punishable with death. Coulanges points out ¹⁵⁰ that the wife belonged to the domestic religion of her husband, even though she did not belong to his kindred. In the Pelasgian wergeld system husband and wife are 'strangers' in matters of homicide; but in the Apolline religious system they are members of the same hearth and home. Moreover, in historical times failure to obey the Apolline laws laid the delinquent open to a charge of impiety, for which the penalty of death might be inflicted. There is a suggestion of these legal viewpoints in Apollo's attitude when he tells ¹⁵¹ the Erinnyes that Clytaemnestra, the murderess of her husband, was justly slain, and that Orestes would have merited death if he had not slain her; and in the answer of the Erinnyes concerning the act of Clytaemnestra, that 'her slaying was not kindred bloodshed' ¹⁵²; and that Orestes, the slayer of his mother, must be pursued until he dies! ¹⁵³ Now, Plato suggests that in the Apolline code exclusion from domestic religion attended the 'extenuated' slaying of a parent by a son, even when the dying parent formally 'forgave.' ¹⁵⁴ Apart from the impossibility of the supposition of a formal 'forgiveness' of Orestes on the part of Clytaemnestra, it is

¹⁴⁹ *Laws*, ix. ch. 9.

¹⁵¹ Aeschylus, *Eumenides*, 213 ff., 617 ff.

¹⁵³ *Ib.* 210, 239.

¹⁵⁰ *Op. cit.* p. 54.

¹⁵² *Ib.* 212, 603.

¹⁵⁴ *Laws*, ix. ch. 9.

clear that the Erinnyes of the Apolline era would have naturally objected to the presence of Orestes in the home of his fathers. Thus they say, in the *Eumenides* ¹⁵⁵ :

His mother's blood upon the earth he spilled.
 Shall he in Argos dwell, his father's home ?
 What phratry-altar can him e'er receive ?
 What common lustral water can he share ?

But Orestes, fearing the Erinnyes of his father who naturally and legally, in the Apolline system, pursue the relative who fails to avenge, and who is 'polluted' almost equally with the murderer, cries out, in the *Choephoroe* ¹⁵⁶ :

The darkling arrow of the dead that flies
 From kindred souls abominably slain
 Should harass and unman me till the state
 Should drive me forth, with brand upon my body.
 So vexed, so banished, I should have no share
 Of wine or dear libations, but unseen
 My father's wrath should drive me from all altars.

Thus, the Erinnyes seem to reflect the conflict of opinions and of sentiments which would frequently have arisen amongst the relatives of the slain concerning the guilt of a kinsman who had slain a kinsman. They also, unfortunately, suggest the co-existence of conceptions of blood-vengeance which are really to be attributed to different periods of time and to widely different types of civilisation.

¹⁵⁵ 655-660.

¹⁵⁶ 285 ff.

BOOK II

FROM HOMER TO DRACON

CHAPTER I

SOCIAL AND LEGAL TRANSITIONS

SECTION I : Political changes in post-Homeric times : fall of Achæan Empire and its causes : post-Homeric migrations : Achæan survivals : the Hesiodic age of chaos : tribal stability and decay : evolution of the Attic State : aristocracy and democracy.

SECTION II : Religious and legal transitions in post-Homeric times : Asiatic-Greek intercourse : compromise between Asiatic and Greek ideas adopted in regard to homicide : origin of Apolline purgation-system : rise of Apolline influence : organisation of theocratic nobles : Apollo and pollution : extradition : origin of the laws of Dracon : proofs of author's theory from Greek legends, from Plato and Demosthenes : pollution doctrine and wergeld : question of 'legality' of 'private settlement' for homicide in historical Athens.

SECTION I

LESS than a hundred years¹ after the Trojan war, and some time about the year 1100 B.C., the great and glorious rule of the Achæans over Greece came to an end. 'Greece,' as Leaf puts it,² 'relapsed from the temporary union imposed upon it by its rulers into its normal congeries of loosely coherent cantons.' The Achæans did not, of course, entirely disappear, but they ceased to maintain that unified control and domination over Greece which they had enjoyed for two or three centuries. The causes of this change are variously estimated. Historical analogies, such as that of the Normans in England and in Sicily,³ suggest in general the brief duration of such a hegemony. 'The domination of a small military caste over a large subject population contains of necessity,' says Leaf,⁴ 'the germs of its own destruction. . . .' 'The *Iliad* itself

¹ Thuc. i. 12. ² *II. and H.* p. 259. ³ *Op. cit.* p. 54. ⁴ *Ib.* p. 255.

gives us vividly, in the portrait of Agamemnon, the inherent weakness of all hereditary military despotisms. . . . The time came . . . whether through the effort of the Trojan war which had reduced their numbers, or through lack of moral grit following on too long a tenure of power, when the Achaeans had to cast in their lot with their former vassals . . . the group system resumed its sway and the Achaeans were drawn into it.' ⁵ Ridgeway, arguing from analogous instances, attributes the decay of Achaean vigour partly to climatic influences, partly to the enervating effects of luxury and power. In regard to this latter factor, he says ⁶: 'It is a known fact that the upper classes in all countries have an inevitable tendency to die out . . . the dwindling of the master races in the Mediterranean, whether they were Achaeans, Celts, Goths, Norsemen or Turks, must be in part accounted for by the mere fact that they formed in each case the upper and ruling class, and could therefore afford to lead a life of luxury which was the very bane of their race.' For our part we are convinced with Leaf ⁷ that 'an invasion of Southern Greece by rude tribes from the north or north-west swept away the Achaean civilisation after the Homeric age'; that a military confederation of hereditary monarchs and nobles, such as that of the Achaeans, could not have lost its unified control if these inherent factors of disintegration had not been supplemented by an invasion from without.

O. Müller ⁸ has pointed out that in Thessaly, the former realm of Peleus and Achilles, there existed in historical times three strata of social and political privilege: (1) the Thessalians, post-Homeric immigrants, who ruled directly over the central territory, including the towns of Larissa, Crannon, Pharsalus, Iolcus. (2) Perioeci or semi-independent vassals, such as the Perrhaebians, the Magnesians, and the Phthiotian Achaeans, who paid tribute and were bound to assist in war. (3) Penestae, of Pelasgian stock, like the Helots of Sparta, who cultivated the land and served in war, who had private rights but no political privileges, who were, in a word, serfs, but not slaves.

⁵ *Op. cit.* p. 259.

⁶ *E.A.G.* p. 405.

⁷ P. 330.

⁸ *Dorians*, vol. ii. pp. 64-6; see also Ridgeway, *op. cit.* p. 659, and Thuc. ii. 101, iv. 78, viii. 3; Demosthenes, *Phil.* ii. 71, *Olynth.* ii. 20.

He mentions, further,⁹ that the Achaeans of the north coast of the Peloponnese remained in towns and fortified strongholds, keeping entirely aloof from the natives; they were still conquerors here, though they had become vassals elsewhere. In Sparta there appears to have been a mingling of Achaeans and Dorians. Thucydides says¹⁰ that here 'the few rule over the many, having obtained sovereignty by victory in the field.' That this victory was not very decisive is suggested by the view, which is commonly held,¹¹ that one of the two Royal families of Sparta was Achaean. The Perioeci of Laconia were always considered Achaeans¹²; there were about a hundred towns of Laconian Perioeci, both inland and on the coast; they paid tribute to Sparta, but they had a monopoly of trade and commerce, and in the time of Nabis were liberated and federated as independent states of the Achaean league.¹³ The Helots, of course, were serfs. They tilled the soil, and lived in hamlets which made up the greater part of the town of Sparta. They were probably Pelasgians, though they are called Achaeans by Theopompus.¹⁴ Similarly, in Argos and in Corinth there are traces of pre-Dorian peoples who can probably be regarded as including some remnants of the Homeric Achaeans.¹⁵

Leaf suggests¹⁶ that the Dorians may have followed methods of conquest similar to those of the Achaeans, yet he has no doubt that they were identical in social organisation with the Pelasgians.¹⁷ 'Hellenism as we know it,' he says, 'is founded on tribal distinctions, beginning with the great racial divisions of Dorian, Ionian, and Aeolian in the wide sense—the general name for all which did not belong to the other two;—passing thence to the local state, Athenian, Spartan and the rest. Each of these again is divided internally by tribe, clan, and family systems of the most complicated nature. Upon these ramifying subdivisions is based the polity, and largely the religion, of classical Greece.'

This statement is of first-rate importance for our theories concerning post-Homeric homicide. It means, in effect, that, in spite of conflicts and migrations, the dominant Hellenic

⁹ *Op. cit.* ii. 71.

¹⁰ *iv.* 126.

¹¹ *E.g.* Holm, *H.G.* i. 175; Gilbert, *G.C.A.* p. 4; Herod. v. 72, vi. 51.

¹² Pausanias, iii. 22. 7.

¹³ Müller, *op. cit.* ii. 18-23.

¹⁴ Athenaeus, vi. 265; Müller, *op. cit.* p. 31. ¹⁵ Müller, *op. cit.* ii. 54-8.

¹⁶ *Op. cit.* p. 334.

¹⁷ *Ib.* p. 250.

or post-Homeric Greek society was based on clan and tribal organisations similar to those of the early Pelasgians. The militarist Achaeans of the *Iliad* and the *Odyssey* must then be regarded as a solitary accidental ephemeral phantom which crossed the stage of Grecian history never to return. The Achaeans who survived the invasions either remained in isolated groups as in Achaea and in South Thessaly, where they seem to have preserved for a time their military character,¹⁸ though they may, in course of centuries, have evolved the mechanism of clan life: or they became subject Perioeci, and were rapidly merged in tribal organisations, or they were accepted as partners in government, as at Sparta, at Argos, at Corinth, and at Sicyon, and, like the Roman *Patres minorum gentium*, developed along the lines of tribal society. Their peculiar Homeric character disappeared: they were Hellenised—which is to say, with Leaf,¹⁹ that they were ‘drawn into’ the ‘group-system,’ which, after Homer, ‘resumed its sway.’

It was perhaps because of special circumstances that *Sparta* developed along peculiar lines of a quasi-Achaean and non-Hellenic kind. Thus, Müller holds²⁰ that the Spartans represent a continuation of the heroic age, a system of military rule over agricultural classes. So Holm²¹ says that ‘The Spartan monarchy was a continuation of that of the Homeric age, only its authority was more strictly defined and became gradually more limited.’ Grote,²² criticising the opinion of Müller, who holds that the Spartans were typical Dorians, maintains that the ‘institutions of Sparta were peculiar to herself, distinguishing her not less from Argos, Corinth, Megara . . . than from Athens or Thebes.’ Crete, he says, was ‘the only other portion of Greece in which there prevailed institutions in many respects analogous, yet still dissimilar.’ The creator or inventor of the peculiar Spartan character, was, he thinks, Lycurgus. We consider these opinions much more probable than that of Gilbert,²³ who believes that the three Dorian tribes, known as Hylleis, Dymanes, Pamphyloi, existed in the earlier days, at Sparta, as a social organisation. The reference of Demetrius of Scepsis (about 100 B.C.) to the existence of twenty-

¹⁸ Leaf, p. 315; Müller, *Dorians*, ii. 71.

¹⁹ *Op. cit.* p. 259.

²⁰ *Op. cit.* vol. ii. p. 18.

²¹ *H.G.* i. 180.

²² *H.G.* vol. ii. chap. 6, p. 262.

²³ *Op. cit.* pp. 10, 40.

seven phratries and nine tribes at Sparta, gives, of course, no basis for assuming their existence in post-Homeric times. We have a special reason for emphasising the peculiarity of Spartan institutions. A solitary reference in Xenophon²⁴ to a penalty of perpetual exile for involuntary homicide at Sparta, in contrast with the well-known penalty of temporary exile at Athens, has been taken to justify the opinion that the murder-laws of Athens were peculiar to herself. But, in our view, the peculiarity of Sparta²⁵ militates against the validity of such a conclusion. We hope to prove more clearly at a later stage that this conclusion is false.

The social evolution of post-Homeric Boeotia is a subject on which a wide diversity of opinions appears to exist. Ridgeway²⁶ thinks that the Boeotians were Achaeans: Leaf²⁷ supposes that they were Thessalians: Müller²⁸ believes that they were Pelasgian Aeolians driven out of the land which was afterwards called Thessaly, by invading Thessalians. Leaf argues²⁹ that the Achaeans did not occupy Boeotia at the time of their domination in Greece, but we do not see why they may not have occupied that district at a later date. Bury³⁰ contrasts the 'Boeotian conquerors' with the 'older Greek inhabitants' of Boeotia: Hogarth³¹ distinguishes between Aryan Boeotians and the non-Aryan Asiatic Cadmeans of Thebes. We cannot attempt to decide between these various opinions, and, fortunately, it is not necessary that we should do so. We have indicated the probable fate of the Achaeans after the fall of Troy, and for the rest we may be satisfied with the description of Thucydides.³²

'The country which is now called Hellas was not,' he says, 'regularly settled in ancient times. The people were migratory and readily left their homes whenever they were overpowered by numbers. There was no commerce . . . the several tribes cultivated their own soil just enough to obtain a maintenance from it. They were always ready to migrate. The richest districts were most constantly changing their inhabitants.' Thucydides mentions, as rich districts, Thessaly,

²⁴ *Anab.* iv. 8. 25; *infra*, p. 173.

²⁵ See Aristotle, *Politics*, 1271 b 22; Strabo, x. 481.

²⁶ *E.A.G.* p. 629. ²⁷ *Op. cit.* p. 339. ²⁸ *Dorians*, ii. 65. ²⁹ *P.* 52.

³⁰ *H.G.* p. 161.

³¹ *Life of Philip*, p. 30.

³² i. 2 (Jowett).

Boeotia and the Peloponnese (except Arcadia). Attica, however, of which the soil was poor and thin, enjoyed, he says, a long freedom from civil strife and retained its original inhabitants. Hence '... the Athenians³³ were the first who laid aside arms and adopted an easier and more luxurious mode of life.' Again he points out³⁴ that '... Even in the age which followed the Trojan War, Hellas was still in a state of ferment and settlement and had no time for peaceful growth. The return of the Hellenes from Troy after their long absence caused many changes; quarrels too arose in every city, and those who were expelled went and founded other cities... a considerable time elapsed before Hellas became finally settled... after a while she recovered tranquillity and began to send out colonies.'

Glötz³⁵ paints a lurid picture of the homicide customs of what he calls the Middle Ages of Hellenism (*Le Moyen Age hellénique*). 'Passé, le temps où toutes les forces du groupe se coalisaient spontanément, instantanément, contre toute agression, d'où qu'elle vint. Le meurtrier riche et puissant n'avait plus à craindre un aussi grand nombre de vengeurs: il n'était plus contraint de fuir par un aussi formidable soulèvement de haines... Le meurtrier d'un parent pouvait avoir des complices ou trouver des complaisants parmi ses plus proches... Ainsi les homicides commis à l'intérieur d'une famille étaient moins sûrement punis à l'époque où s'organisèrent les tribunaux de l'Etat que dans la période précédente, où la justice du *γένος* avait encore toute son efficacité... Il y eut un moment où vraiment, dans certains cas, le parricide n'avait rien à redouter d'aucune justice.' The references which Glötz here makes to the control exercised by the clan in cases of kin-slaying are quite in harmony with our theory of the nature of Pelasgian homicide customs, but they are quite inconsistent with Glötz's general hypothesis as to the nature of Homeric blood-vengeance. This inconsistency is to be explained by the absence of that distinction between the Achaean and the Pelasgian attitude to homicide which we have made the basis of our reasoning. Moreover, Glötz is not quite sound in supposing that the age of chaos began about the year 800 B.C. The date of Hesiod is now

³³ i. 6.³⁴ i. 12.³⁵ *Op. cit.* p. 225 ff.

generally regarded as approximately 850 B.C., and the condition of things which he depicts must have existed for a considerable time before that date. It was not a temporary or spasmodic condition of things. Substituting, therefore, the dates 1100 B.C.-700 B.C. for Glotz's figures 800 B.C.-600 B.C. as the time-limits of the age of chaos, we may accept as trustworthy Glotz's description of the Dark Ages. He quotes a Hesiodic passage to which we have already called attention.³⁶ 'Rien que désunion de père à enfants, d'hôte à hôte, d'ἑταῖρος à ἑταῖρος : plus d'amour fraternel, comme jadis. Vite on jette l'opprobre sur les parents qui vieillissent : on leur parle un langage dur et insultant, impie, sans souci de la vindicte divine : on refuse à la vieillesse de parents les vivres qu'on a reçus d'eux dans l'enfance : car on ne connaît que le droit de la force. . . . Pas d'égards pour la bonne foi, la justice, la vertu : au crime et à la violence tous les honneurs.' Into this chaotic condition, he says,³⁷ came the new religious doctrine of homicide as a pollution. 'La religion force la société à intervenir dans les affaires de sang intrafamiliales, et la société agit non pas contre le coupable mais contre la famille qui refuse d'agir. . . . Une idée nouvelle se fait jour dans l'esprit des Grecs, l'idée de la souillure qui s'attache à l'homicide . . . la purification du meurtrier n'est pas une coutume primitive . . . n'était pas connue à l'époque homérique.'

In many such passages Glotz implies that in the Hesiodic age there was a general weakening of tribal authority and of clan-law, a break-up of the power of control exercised by the kindred, the phratry, and the tribe over their members, in cases of homicide, and in other matters.³⁸ Yet when Glotz comes to discuss the Solonian legislation, we find him still speaking³⁹ of an anti-clan policy, of the desire of Solon to weaken the clans. 'Solon,' he says, 'fut nommé par la confiance de ses concitoyens arbitre et législateur. Pour remplir cette double mission, il lui fallut de toute nécessité affaiblir les γένη dans leur action extérieure et leur constitution intime. . . . L'esprit même de la constitution solonienne est opposé au classement des citoyens par γένη. L'Etat se met

³⁶ *Works and Days*, 182-193 ; *supra*, p. 122.

³⁸ See also Coulanges, *op. cit.* p. 336 ff.

³⁷ *Op. cit.* p. 228.

³⁹ Pp. 325-327.

directement en rapport avec les individus. Les groupes, il ne les détruit pas, il les ignore. . . . Effet indirect des lois constitutionnelles, le démembrement du γένος est le but immédiat et constant des lois civiles . . . cette signature de Solon, c'est l'hostilité envers les solidarités des vieux temps.' Again, he says ⁴⁰ that at the beginning of the sixth century B.C. 'At a time when all cities had equally suppressed tribal or clan responsibility (*la responsabilité familiale*) in common law, Athens surpassed all others by the vigour of the blows which it struck at the internal organisation and the civic action (*l'action sociale*) of the clans.' How can these apparently different view-points be reconciled? Can we express the facts so that the apparent discrepancy will disappear?

We have seen that in post-Homeric times the long submerged group-system of tribal society resumed its sway. Though the wars and migrations of the period must for a time have weakened its power, yet ultimately, as Thucydides says, 'Hellas recovered tranquillity, and began to send out colonies.'⁴¹ The new doctrine of Apollo, which regarded homicide as a 'pollution,' was, we think, adopted about the seventh century, which was pre-eminently the period of Greek colonisation. Henceforth the homicide was conceived as an enemy not merely of the ghosts of those whom he had slain but also of the gods of the new States which had evolved out of chaos through synoekism. But Attica, almost alone of all Greek States, was immune from the chaos of migrations and invasions and retained for the most part its original inhabitants. Therefore Attica, more than any other Greek State, required, for its political unification, a more strenuous law-making, a more violent attack on the civic action of the clan.

Yet we cannot suppose that the clans and tribes of the group-system were destroyed in Attica any more than they were in other parts of Greece. All through the historical era clans and tribes continued to exercise limited powers and jurisdictions; the old ties of kindred and of neighbourhood were maintained under the form of religious corporations long after the group-system had lost its political power. All this is merely to say that the old aristocracy of birth was

⁴⁰ P. 397.

⁴¹ i. 12.

replaced by plutocracy and democracy. The various stages in this transition will be made clear if we give a brief sketch of the political evolution of Attica, a sketch which is all the more necessary because of the analysis which we shall have to give, at a later stage, of blood-vengeance in Attic tragedy.

EVOLUTION OF THE ATTIC STATE

We need not allow ourselves to be detained by the obscure and conflicting legends which centre round the birth of the Attic nation. Coulanges⁴² refers to the traditions concerning local kings of Attica before the time of Cecrops. Pausanias refers to a kind of religious amalgamation which was doubtless the concomitant of political synoekism: 'Sacred to Athene,' he says, 'is all the rest'⁴³ of Athens and similarly all Attica; although they worship different gods in different townships, none the less do they honour Athene generally. He points out that four villages at Marathon were still in his time united in a local worship of Apollo, and that legend attributed to Cecrops a federation of Attica into twelve different states.⁴⁴ While Coulanges accepts the legend which attributes to Theseus the political unification of Attica, he thinks⁴⁵ that Plutarch⁴⁶ and Thucydides⁴⁷ are in error in supposing that Theseus abolished the local prytanies and magistracies. 'If he attempted this,' he says, 'he certainly did not succeed; for a long while after him we still find the local worships, the assemblies, and the kings of the tribes.'

In theory the four tribes of ancient Attic society were Ionian tribes which, in the days of oligarchic power, imposed their will upon the rest of Attica. Müller⁴⁸ points out that there is a distinct change in Attic mythology when we come to the Ionian Kings, Aegeus and Theseus. But Leaf thinks it possible that the adoption of the four Ionian tribes in Attica does not represent an Ionian conquest, but was due to the fictitious self-inclusion of Attica in the Ionian race.⁴⁹ Bury holds⁵⁰ that 'the statesmen who united Attica sought their method of organisation from one of those cities of Asia Minor

⁴² *Op. cit.* pp. 171-2.

⁴³ *i.e.* apart from the Erechtheum (i. 26).

⁴⁴ Coulanges, pp. 171-2.

⁴⁵ P. 173.

⁴⁶ *Theseus*, 24.

⁴⁷ ii. 15.

⁴⁸ *Dorians*, i. p. 256.

⁴⁹ *Op. cit.* p. 332.

⁵⁰ *Op. cit.* p. 169.

which Athens came to look upon as her own daughters': that the names of the four Attic tribes,⁵¹ Geleontes, Aigikoreis, Argadeis and Hopletes, were borrowed from Ionian Miletus: and that Attica was united into a single state in the period of what is known as the life-regency (1088 B.C.-753 B.C.)

The tribal continuity of Attic life is most clearly indicated in the excellent analysis of F. de Coulanges. The people of Attica, at the birth of the Attic State, were governed, he says,⁵² by noble clans called Eupatridae who had abolished, about 1050 B.C., the power of an hereditary monarchy. Some three hundred years later, these same noble clans limited the power of the life-regent (a member of the royal family) by insisting on an election being held every ten years. About 700 B.C. annual election was in force, and the royal family was represented by only one member in a government of nine archons elected from the Eupatrid caste. These Eupatridae, who dwelt in scattered groups in Attica,⁵³ created a united Attic State when they formed a confederation for the purpose of defence and common worship. But the absence of sustained danger from abroad and the development of mutual rivalry and internal feuds diminished, at length, their pristine vigour.⁵⁴ Non-privileged classes, herded together in towns and hamlets, saw in Eupatrid weakness their own opportunity.⁵⁵ The introduction of coinage in the seventh century and the expansion of trade and commerce led to the presence, in Attic ports and cities, of a new nobility of wealthy merchants who could not⁵⁶ aspire to enrolment in the exclusive Eupatrid tribes, who could not be permitted to worship at the altars of tribal gods, who were not, in fact, recognised as a functional element of the civic organism. Naturally, these merchants imported new worships; they seized on Oriental cults which, like Buddhism, excluded no caste. Conscious of the barriers which confronted them, they often had recourse to armed revolt.⁵⁷ The conflict ended at length upon the appointment of a legislator who was expected to revise and to codify the laws. Dracon, the first great Athenian legislator, certainly codified the laws, or some of them at least. But

⁵¹ See, further, article *J.H.S.* xl. Part ii. p. 202, and Pollux, viii. 109-111.

⁵² *Op. cit.* pp. 320 ff.

⁵³ *Ib.* p. 331.

⁵⁴ *Ib.* p. 338.

⁵⁵ *Ib.* pp. 345-6.

⁵⁶ *Ib.* p. 365.

⁵⁷ *Ib.* p. 369.

being too loyal a Eupatrid, he failed to remove the grievances of plebeian *nobiles*. Solon, a Eupatrid by birth, had the advantage of being a merchant by occupation.⁵⁸ He first attacked the large domains of the Eupatrids and their political power.⁵⁹ He assailed their monopoly of judicial authority⁶⁰ by setting up a timocratic, if not a plutocratic, Areopagus, as an alternative to the aristocratic Ephetae courts, and by the institution of popularly elected Heliastic juries which possessed at first, appellant, and later, universal jurisdiction in Attic law. But it was only in the time of Cleisthenes, about 510 B.C., that the four patriarchal tribes of Attica were removed from the pedestal on which they had stood so long and which was the basis of their political existence. Ten new tribes were created, on an entirely novel principle of local segregation: new hero-cults arose: new priests offered sacrifice, who were liable to annual election: and the four Ionian tribes ceased to have any political meaning.

But they did not, therefore, cease to exist.⁶¹ Obscure and hidden, they still lived on. Clan-courts still sat to decide disputes regarding property, adoption, and inheritance.⁶² In the time of Demosthenes⁶³ such courts imposed fines for the embezzlement of property. Homicide, in particular, which from the eighth century onwards assumed a 'religious,' which is to say, a theocratic or patriarchal aspect, was in historical times 'purged' and in certain cases 'judged' by the Ephetae and the Exegetae who were chosen⁶⁴ from Eupatrid families.

We shall now proceed to consider the advent in Greece of that new religious doctrine which for the first time declared the murderer to be a sinner against the gods and debarred him for ever from his country and his home.

⁵⁸ *Op. cit.* p. 373.

⁵⁹ *Ib.* p. 354.

⁶⁰ See *infra*, Bk. II. ch. iii.

⁶¹ See also Gilbert, *G.C.A.* (Eng. trans.), p. 350.

⁶² Glotz, *op. cit.* p. 328.

⁶³ Coulanges, *op. cit.* p. 158; *supra*, p. 88.

⁶⁴ See Pollux, viii. 111.

SECTION II

RELIGIOUS AND LEGAL TRANSITIONS

THE evidence of mythology and archaeology points so clearly to frequent and continuous intercourse between the early Greeks and their non-Aryan neighbours of Egypt and Asia Minor that up to quite recent years it was possible to maintain that early Greek civilisation was derived from African and Asiatic sources. Thus—to quote a writer easily accessible—Mahaffy⁶⁵ held that to the Phoenicians and to the Egyptians is to be traced ‘the prehistoric culture of Argos, Mycenae, Orchomenus and Crete.’ There are, he thought,⁶⁶ Oriental, Assyrian and Syrian influences in Mycenaean remains. Egypt, especially, was regarded as the home of wealth and culture.⁶⁷ It is only in more recent years when the explorations in Crete have shown, for example, that ‘compared with the palace of Cnossus, the palaces of the Pharaohs were but hovels of painted mud,’⁶⁸ that the early Aegean culture came to be regarded as derived from an indigenous Cretan civilisation, and Minoans received the honour which was previously accorded to the Phoenicians. It is now recognised that the great period of Asiatic intercourse with Greece was the post-Minoan period. The fall of the Minoan thalassocracy opened the Aegean Sea to Asiatic traders. ‘The Phoenicians,’ says Bury,⁶⁹ ‘had marts here and there on coast or island, but there is no reason to think that Canaanites made homes for themselves on Greek soil. . . . Their ships were ever winding in and out of the Aegean isles from north to south, bearing fair naperies from Syria, fine wrought bowls and cups from the workshops of Sidonian and Cypriot silversmiths, and all manner of luxuries and ornaments: this constant commercial intercourse . . . is amply sufficient to account for all the influence that Phoenicia exerted upon Greece. . . . The brisker trade was perhaps driven with the thriving cities of Ionia, and the Phoenicians adopted the Ionian name . . . as the general designation of all the Greeks.’ In Ionia, Bury thinks,⁷⁰ occurred

⁶⁵ *Social Life in Greece*, pp. 16–18.⁶⁶ *Greek Civilization*, p. 32.⁶⁷ *Ib.* p. 41.⁶⁸ Hall, *History of Near East*, p. 47.⁶⁹ *H.G.* p. 77.⁷⁰ *Op. cit.* p. 78.

that fusion of Semitic consonants with Greek vowel symbols which produced the Greek alphabet. In close contact with the Ionian Greeks were the Lydians, who were the first people to coin money (about 700 B.C.⁷¹) and who transmitted the discovery to the Greeks and to other Asiatic peoples. Needless to say, this discovery was of great commercial importance, and incidentally rendered possible an accumulation of non-landed wealth. Now Greek coinage, as Bury points out,⁷² 'was marked from the beginning by religious associations, and it has been supposed that the priests of the temples had an important share in initiating the introduction of coinage. It was in the shrines of their gods that men were accustomed to store their treasures for safe-keeping. . . . Every coin which a Greek State issued bore upon it a reference to some deity.'

From these facts alone, apart from general considerations, it will be evident how easy and natural it was that the Greeks should also have received religious inspirations from their Asiatic neighbours.

It is very significant that the first mention, in Greek literature, of the religious purgation of homicide occurs in an epic poem, the *Aethiopis*, by Arctinus of Miletus,⁷³ who lived in the last half of the eighth century (750-700 B.C.). In this poem we are told that Achilles, having slain Thersites because he had ridiculed his tears for the death of an Amazonian queen, went to Lesbos to be purified. Glotz points out that the presence of Achilles at a sacrifice before his purgation implies that the doctrine was not, at that time, fully developed or understood.

Again, it is very significant that Herodotus⁷⁴ attributes to the Lydians rites of homicide-purgation which, he says, are almost the same as those which the Hellenes used. According to the historian, there came to Croesus, King of Lydia, about the year 550 B.C., 'a man, in wretched plight, whose hands were not clean, a Phrygian by race, of royal blood.' 'Having reached,' he says, 'the house of Croesus, this man asked to have himself purified according to the customs of the place, and Croesus purified him.' After the ceremony Croesus asked his visitor who it was that he had slain: the stranger replied that

⁷¹ *Op. cit.* p. 113.

⁷² *Ib.* p. 114.

⁷³ See Glotz, *op. cit.* pp. 231 ff.; Kinkel, *Epic. gr. fragm.* i. p. 33.

⁷⁴ i. 35.

he had involuntarily slain his brother and that, in consequence, he had been expelled by his father and deprived of all his privileges. We shall see presently ⁷⁵ that involuntary kin-slaying could be purged abroad, in the Greek purgation-system. We cannot conclude, because Croesus made no inquiries prior to the ceremony as to the details of the deed of blood, that therefore all kinds of homicide could be purged amongst the Lydians. The very fact that the slayer requested purgation would, in the religious atmosphere of the time, have been taken as sufficient evidence that his deed was at least capable of being purged.

The conception of homicide as a pollution or religious offence is known to have existed at an early date amongst the Hebrews, and we may hazard the conjecture, though we find no express reference to the fact, that a system of purgation was practised by the Hebrews, at least for minor degrees of guilt. The penalties exacted for homicide amongst the Hebrews, as amongst the Romans, were much more severe than those which prevailed amongst the Greeks. We have seen ⁷⁶ that in the normal operation of homicide-purgation no religious 'cleansing' was valid while the civic penalty remained unpaid. In Roman law, death was the penalty prescribed for murder and for manslaughter: but for justifiable or justifiably accidental homicide ⁷⁷ there was no punishment, and religious expiation could immediately take place. Amongst the Hebrews, a similar penalty was exacted for murder and manslaughter. 'Whoso sheddeth man's blood, by man shall his blood be shed' is the general principle ⁷⁸; and again: 'He that smiteth a man so that he die ⁷⁹ shall surely be put to death: if a man slays presumptuously with guile, take him from my altar that he may die.' ⁸⁰ For accidental or justifiable slaying, however, we find that a mode of escape from the avengers of blood was provided: 'If God delivers a man into his hands, ⁸¹ I will appoint thee a place whither he shall flee ⁸² . . . and ye shall not take compensation for him that is fled to the City of Refuge that he should come home before the death of the high-priest. So ye

⁷⁵ *Infra*, p. 151.

⁷⁶ *Supra*, p. 118.

⁷⁷ Cicero, *Top.* 17; Müller, *Eum.* p. 107.

⁷⁸ *Genesis* ix. 6; *Numbers* xxxv. 11-34.

⁷⁹ *I.e.* without intent to kill.

⁸⁰ *Exodus* xxi. 12.

⁸¹ *I.e.* if one slays by accident.

⁸² *Exodus* xxi. 12.

shall not pollute the land wherein ye are.’⁸³ We may assume, with some degree of probability, that in this class of homicide, some form of purgation ceremony was customary. We mention the Hebrew custom here merely to show the general trend of Asiatic thought in regard to homicide.

We may, therefore, regard as highly probable the view which connects the origin of the post-Homeric Greek notion of homicide as a ‘pollution’ with the Semites and Asiatic peoples. Glotz merely states his view of this matter without giving reasons in support of his statement.⁸⁴ ‘Alors,’ he says, ‘les Grecs prendront aux Sémites les rites dramatiques de leurs cérémonies purificatoires.’ There were, however, some important differences between the original Semitic doctrine and the matured Greek adaptation of it, as will be evident from a brief explanation of the precise nature of the Greek ‘pollution’ doctrine.

THE GREEK POLLUTION DOCTRINE

At first, we think, there came to Greece a vague rumour of the doctrine through the medium of the Cyclic poets. Greek priesthoods in Asia had already adopted it because of their proximity to Asiatic races who had developed it. But originating, as it did, in the centralised theocracies which then existed amongst these races, the doctrine could be accepted only in a modified form by the Greek people whose predominant political institution was the city-state.

Traces of the doctrine in its early phase, prior to its formal adoption in Greece, appear in the story of Alcmaeon. Thucydides,⁸⁵ in his account of the islands known as the Echinades, in western Greece, which were gradually, owing to the silting up of the river Achelous, becoming part of the mainland, mentions the following legend: ‘when Alcmaeon, son of Amphiaraus, was wandering over the earth after the murder of his mother, he was told by Apollo that here he should find a home, the oracle intimating that he would never find deliverance from his terrors until he discovered some country which was not yet in existence and not seen by the Sun at the time when he slew his mother; there he might settle, but the rest of

⁸³ *Numbers xxxv.* ; cf. *Deuter. iv. 41, Joshua xx. 1-9.*

⁸⁴ *Op. cit.* p. 153.

⁸⁵ *ii. 102 (Jowett).*

the earth was accursed to him. He knew not what to do till at last, as the story goes, he espied the deposit of earth made by the Achelous, and he thought that a place sufficient to support life must have accumulated in the long time during which he had been wandering since his mother's death.' This conception of pollution is very Semitic, and reminds us of the Biblical allusion to Cain ⁸⁶ as 'cursed from the face of the earth,' but it is also to a certain extent Greek, since there was not in historical Greece any purgation for wilful matricide or, if we may trust Plato, ⁸⁷ for wilful kin-slaying. In the Apolline era Greek kin-slaying was punished, according to Plato, ⁸⁷ by death, and it was so punished in a later Israelite penal code. In the Pelasgian era, kin-slayers, condemned to perpetual exile, were often compelled to wander for years and years. Their wandering must have been almost proverbial, yet its meaning was understood. But the picture of a kin-slayer wandering till he finds an unpolluted piece of earth can only be attributed to the fanciful interpretation of a novel religious law which as yet was not fully comprehended. We have already discussed ⁸⁸ Miss Harrison's views in regard to Bellerophon and the 'plain of wandering.' Apollodorus tells us ⁸⁹ that Bellerophon was purified by Proetus. Miss Harrison says ⁹⁰ 'in those old days he could not be purified.' We agree that he could not be purged in Homeric times, because the rite was unknown: if in later times he was said to have been purged, it became necessary to suppose that the crime which he committed was involuntary. But Homer says nothing of Bellerophon's kin-slaying. ⁹¹ It was probably an invention of later minds intended to explain the Homeric reference to the 'Aleïan plain' which was interpreted as 'the plain of wandering,' after the analogy of the 'wandering' in the legend of Alcmaeon.

We hope to show presently that this religious doctrine, which declared in effect that homicide brought down the anger of the gods upon the community which neglected to punish it, took definite shape in historical Greece under the aegis of Apollo and his priesthoods and Amphictyonies. In our view, the final form of the doctrine was a fusion or compromise between the severer Semitic conception, on the one hand, and, on the other,

⁸⁶ *Genesis* iv. 11-15.

⁸⁷ *Laws*, ix. ch. 12.

⁸⁸ *Supra*, p. 110.

⁸⁹ ii. 2. 3.

⁹⁰ *Proleg.* p. 221.

⁹¹ *Il.* vi. 155-205.

the tribal traditions of Greek homicide-customs, weakened and disorganised, as they were, in the Hesiodic age of chaos, but unmistakably local in their outlook, and reflecting still the attitude adopted by the relatives and attributed to the victim. The Apollo of the Greek race could not accept in its entirety the Asiatic doctrine of pollution but had to modify it at the bidding of customs which were sanctified by time. As we believe that the Draconian homicide-laws were merely an eclectic codification of the seventh-century unwritten laws of the aristocracies of birth, it would clearly anticipate our whole account of the Draconian legislation if we were to explain at this stage the detailed operation of the Apolline pollution system. We shall then give here only an outline of the Asiatic-Greek compromise which we believe to have arisen in the eighth or seventh century B.C.

In the first place wergeld was abolished, as amongst the Hebrews, for wilful murder. This was the greatest concession which the new doctrine extorted from tribalism. The new provision which declared the property of the wilful man-slayer confiscated to the State when the slayer had gone into perpetual exile we attribute to a third factor—the evolution of State power: wergeld in the strict sense was also abolished for manslaughter, but the slayer was allowed and commanded, after a period of exile, to ‘appease’ by ‘presents’ the relatives of the slain. In this we can clearly detect a concession wrung from what we call Apollinism by the tribes. It is usually held ⁹² that in the case of manslaughter, and Glotz holds ⁹³ that even in the case of murder, ‘private settlement’ without trial was legal in historical Athens. We hope to show ⁹⁴ at a later stage that these opinions are incorrect, except in regard to one special and rare contingency.

Secondly, there was a religious compromise which is reflected in the ritual of purgation. In the Semitic doctrine of pollution, murder and manslaughter could only be ‘purged’ by the blood of the slayer, which meant, in practice, that the slayer could never be purged at all: but the ancient traditions of the tribes and their capacity for discerning the varying degrees of homicide-guilt led to a peculiar compromise, by which Apollo and

⁹² Müller, *Eum.* p. 92; Smith, *Dict. Gk. Ant.* s.v. φόνος.

⁹³ *Op. cit.* p. 314.

⁹⁴ *Infra*, p. 173 ff.

other State gods consented to accept the sacrifice of a surrogate victim, when the atonement which the law prescribed had been paid, the actuality of the atonement being *symbolised*, as it were, by this Chthonian sacrifice of 'reconciliation.'

Since Greece, unlike Israel, was a conglomeration of local civic groups, and as tribal custom had accepted exile in default of wergeld and prescribed different periods of exile according to varying degrees of guilt, therefore, when the issue was knit between the new Semitic doctrine of 'pollution' and the ancient tribal laws, the resultant compromise produced a new law which decreed perpetual exile for all cases of wilful homicide, including, we believe, originally, even kin-slaying. The law of historical times which condemned the kin-slayer inevitably to death was not, we have reason to believe, a product of the Asiatic-Greek compromise. Like the law which decreed the confiscation of a murderer's property, it is, we think, to be attributed to the evolution of centralised State government. In regard to manslaughter different periods of exile were, no doubt, decreed according to the different degrees of guilt: the despotic doctrine of theocratic Asia had, in this, to respect the long traditions of tribal Greece: accidental and justifiable slaying probably required no civic atonement. Apollo was compelled to admit such slayers to immediate 'purgation.' In other cases, 'purgation' was accepted when the prescribed atonement had been made.

Our account of this compromise in the Greek doctrine of pollution is complicated by the presence of a third factor which had become more and more important as Greek States increased in size and power, and which must be indirectly attributed to the doctrine of 'pollution,' namely, the conception of homicide as an insult to the State gods and to the State, not merely to the Sun, or to the Delphian Apollo, or to some still more distant Orphic deity in the underworld. This conception of homicide raises it at once from the position which it held in the system of 'private vengeance': the murderer, like the traitor and the man stained with sacrilege, now stands forth, if not as a criminal in the modern sense, at least as a quasi-criminal, a vile being who has jeopardised by his act the prosperity and the destiny of the State. He is henceforth liable to ἀτιμία,—he must be degraded from citizenship: if he waits for the verdict which

declares him a State criminal, he must die. If he flees, his property must be confiscated to the State, as was the property of all 'degraded' exiles. Retribution to the relatives, which is the basis of tribal wergeld, has vanished into the air, but the murderer cannot now be buried in the tomb of his fathers: he can never frequent the temples of his gods: he cannot even attend the public games of all the Greeks lest the contact of his presence should pollute his fellow citizens or the gods who no longer can tolerate his presence. But, provided he avoids certain areas and festivals, he may live without fear. A law of Dracon⁹⁵ declares that to slay such an exile was murder. Thus we see how the old tribal custom which accepted exile as a complete atonement, (not, as it was amongst Achæan militarists, a mere flight from death,) was respected despite doctrinal innovations, because it had been sanctified by time.

Glötz holds⁹⁶ that this immunity in foreign states of exiles who were guilty of wilful murder in their home-land was due to occasional treaties of *ἀσυλία* between Greek States. We shall see that such immunity was more probably derived from Greek extradition law, and such law implies international authorisation. It was precisely because such laws could be made and enforced that Greek homicides required no 'cities of Refuge.' Thus, the Greek pollution-doctrine bears on the face of it the stamp of a compromise between tribe and State, between local gods and international religion.

But there was a further compromise, which we must also indicate, namely, that which inevitably took place between the ghosts of the slain and the purifying gods, the *καθάρσιοι θεοί*. We have argued⁹⁷ that the chaotic centuries which followed the Achæan domination produced a much more monstrous and bloodthirsty conception of the Erinnyes than that which existed in the Homeric age. We have suggested that the revolt of the clansmen against Apolline innovations which abolished material retribution for homicide may have rendered still more ferocious and implacable the Erinnyes of the slain. Yet when the Greek Apolline doctrine of pollution was finally accepted by Hellenic tribes and States, the Erinnyes, like the Titans, were subdued, and became so mild that they could

⁹⁵ Dem. in *Aristoc.* 632, 634.

⁹⁶ *Op. cit.* p. 218; *infra*, p. 166.

⁹⁷ *Supra*, p. 122 ff.

be identified with the Semnai Theai and called Eumenides ! They could live in peace again, as in Homer, with the Olympian gods whom they had learned to loathe.

They had succeeded at least in imposing many old Pelasgian traditions upon the autocrat of Delphi. In historical Greece, at least before the third century B.C.,⁹⁸ the State could never take the initiative in a direct prosecution for homicide, as modern States do. It could, of course, bring a charge of Impiety against delinquent relatives of the slain⁹⁹ : but the initiative rested in theory with those relatives. The wish of a dying man who had been fatally wounded was expressed in a formal 'charge' which he gave to his relatives, and this very often determined the course of subsequent proceedings. 'Forgiveness' by the dying man precluded a charge of murder. If a Greek of the historical era, who had been fatally wounded, thus 'released' his slayer before he died, the relatives were not bound to prosecute¹⁰⁰ : they could be persuaded to refrain from prosecution by what is known as a 'private settlement' with the slayer and his relatives. This, of course, was not a genuine wergeld ; and even if it was, we could not infer that pollution could coexist with wergeld, for 'pollution' did not arise, in any real sense of the word, as the Greeks interpreted it, when the dying man forgave. Now we cannot conceive such considerations as these affecting the theocratic 'pollution' doctrine of the Hebrews. The law which decreed by divine command that : 'Ye shall not pollute my land wherein ye are : for blood defileth the land,' takes little account of the wishes of the dying or of the relatives of the slain. We must, of course, distinguish 'release' from 'forgiveness' in Greek law. 'Release' implies the absence of any 'charge' by the dying man. In cases of involuntary homicide, unless the dying man commanded his relatives to prosecute, no trial or formal proceedings were necessary¹⁰¹ : 'private settlement' was permitted. Whenever therefore a trial for involuntary homicide took place in historical Greece, we must assume either that the accused denied the guilt and refused 'private' compensation or that the dying

⁹⁸ See *infra*, ch. ii.

⁹⁹ See *infra*, p. 181, and Dem. in *Androktion*. 593.

¹⁰⁰ Dem. c. *Pantaen*. 893, 59 ; *infra*, p. 176 ff.

¹⁰¹ Lysias, c. *Agor*. 41, 78.

man charged his relatives to prosecute. In this latter case the slayer was polluted and had to undergo purgation when the civic atonement had been made. Hence we may truly say that, within certain limitations, Greek 'pollution' depended on the will of the victim and of his relatives.

In the light of these details we can more easily explain the peculiar fact that a man who had no relatives—and it was sometimes possible that a metic, or a stranger, or a casual vagrant should have no relatives—could not be avenged if he were slain. In the *Euthyphro* of Plato¹⁰² we are told how a poor freeman who had killed a slave was put in chains by his employer—it was a kind of informal arrest—till the verdict of the Exegetae should be heard. The freeman died. It was not wilful murder, but there was a certain degree of guilt, a certain amount of neglect on the part of his captor, a certain ἀφύλαξία which laid the employer open to a charge of manslaughter. Euthyphro, a son of the employer, feeling that he was 'polluted' by the fact of living with his father, proposed to charge him before the Archon Basileus at Athens; Socrates asks Euthyphro in the dialogue if he was a relative of the slain. Euthyphro replies that he does not see what difference it makes whether one is a relative of the deceased or not; the important thing is that he is polluted unless he accuses his father. Socrates implies that such an accusation is impious. We can only regret that Plato does not tell us the sequel of this fanciful drama. We think that Plato is sophistically exposing, if not covertly sneering at, the inconsistency¹⁰³ of the pollution doctrine. He objects, apparently, to the law which made prosecution the prerogative of the relatives of the deceased, a law which was derived, we think, from tribal traditions of 'private vengeance,' just as in other passages he objects to the legends of the gods which more primitive generations had created.¹⁰⁴

We have said that 'pollution' was not confined to the murderer, but extended, as if by contagion, to all persons who harboured or protected him or neglected to punish him. Thus Plato says,¹⁰⁵ in regard to kin-slaying: 'The relative of deceased as far as cousins, male and female, who does not

¹⁰² 1-6.

¹⁰³ 5E.

¹⁰⁴ e.g. *Rep.* ii. 379D-383.

¹⁰⁵ *Laws*, ix. ch. 11.

prosecute . . . shall take upon himself the pollution and the anger of the gods.' In this we see an aspect of the Greek 'pollution' doctrine which expressed the autocratic will of Delphi and of State-gods in alliance with Delphi. But if the dying man 'forgave' or, in certain cases, did not solemnly 'charge' his relatives to prosecute, this autocratic will could be ignored. Thus, the Erinnys of a slain man had a determining effect on the obligation of prosecution and on the nature of the penalty. In the Oresteian legends as they were staged by Attic dramatists, this twofold aspect of 'pollution' is never quite forgotten; but there are complications in these legends which prevent us from dwelling at any length upon them here.

In the case of kin-slaying in a 'passion,' the influence of the ghosts' will was especially vigorous. Plato says¹⁰⁶ that even 'when the 'involuntary' slayer had served a term of three years' exile, and had returned to his native land, he could never return to his family and his home, or share with his kindred in domestic rites. Thus the Erinnys of the slain kinsman refused to be controlled by a centralised autocracy at Delphi, or even by the will of native State-gods. Hence, perhaps, it is that in the dramatised versions of the Oresteia, Athene has to use 'Persuasion'¹⁰⁷ to induce the Furies of Clytaemnestra to become Eumenides. Hence the Furies say of Orestes¹⁰⁸:

' His mother's blood upon the Earth he spilled.
 Shall he in Argos dwell—his father's home ?
 What phratry-altar can him e'er receive ?
 What common lustral water can he share ? '

Hence, also, as Glotz points out,¹⁰⁹ the preliminary plea on oath of the accuser and the accused, in homicide cases, was taken before the altar of the Erinnyes or the Semnai Theai; and the defendant who was acquitted of murder by the Areopagus, as well as the returned exile who had paid the penalty of involuntary homicide, offered sacrifice there.

¹⁰⁶ Laws, ix. ch. 9.

¹⁰⁷ Aesch. *Eum.* 886.

¹⁰⁸ *Ib.* 655, 660.

¹⁰⁹ P. 155; Dinarchus, 47; Antiphon *de Caed. H.* 11; Pausan. i. 28. 6.

THE RITUAL OF HOMICIDE-PURGATION

In regard to the ceremonial of purgation by which the slayer, in certain circumstances, was 'cleansed' or purified, we have already¹¹⁰ pointed out what we consider to have been the origin of the rite; and we have shown how the analogies which existed between such a ceremonial and the general Chthonian sacrifices of 'expiation,' 'placation,' and 'aversion' caused these rites to be confused with one another in the minds of ancient and of modern writers. The ceremonial of homicide-purgation appears at first sight so simple and elementary in character that we would be inclined to assume *a priori* that it could have been duly performed by any ordinary person. But, in fact, we shall see, the performance became the privilege of priests or theocratic nobles. An animal, generally a pig,¹¹¹ but sometimes a calf or a lamb,¹¹² was bled to death and the warm flowing blood was poured over the hands of the slayer, passing away into the sea or into a running stream. The dead animal was then thrown into the water, or was buried, but it could not be eaten.

We may compare the Chthonian ceremony of swearing, in which the slain animal was conceived as at once symbolising and magically inducing a similar fate in case of perjury. The Roman formula is well known. Livy tells¹¹³ how a certain M. Valerius, one of the Fetiales, or Roman priests, swore on behalf of the Roman State, to the Almighty Juppiter, in a treaty with ancient Alba. 'Audi, Iuppiter: audi, pater patratus populi Albani: audi tu, populus Albanus . . . si prior defexit publico consilio, dolo malo, tu illo die, Iuppiter, populum Romanum sic ferito ut ego hunc porcum hic hodie feriam: tantoque magis ferito quanto magis potes pollesque.' Now, all such ceremonies, simple as they may appear, were hedged round with the most minute regulations as to formulae and procedure, and were thus removed from the competence of ordinary individuals.

Moreover, each locality developed differences of usage which, however slight, could never be ignored. Herodotus,¹¹⁴ speaking of homicide purgation, implies that all Greeks used

¹¹⁰ *Supra*, p. 112 ff.¹¹¹ Aesch. *Eum.* 283.¹¹² Eur. *Iph. T.* 1224.¹¹³ i. 24.¹¹⁴ i. 35.

the same rites. But that there were minor local variations may be inferred, perhaps, from a peculiar ceremony in the *Oedipus Coloneus* of Sophocles. Oedipus, having gone as an exile from Thebes to Attica because he had slain his father, is told ¹¹⁵ that he cannot hold converse with the Athenians while he is still uncleansed. The ban is removed when he is admitted to 'purgation,' but for the due performance of the rite he is entirely dependent on local direction. We shall give the relevant dialogue between Oedipus and the Chorus ¹¹⁶:

- Oed.* Kind sir,
Be my good guide. I will do all thou biddest.
- Ch.* Propitiate these holy powers, whose grove
Received thee when first treading this their ground.
- Oed.* What are the appointed forms? Advise me, sirs.
- Ch.* First see to it that from some perennial fount
Clean hands provide a pure drink-offering.
- Oed.* And when I have gotten this unpolluted draught?
- Ch.* You will find bowls, formed by a skilful hand,
Whose brims and handles you must duly wreath.
- Oed.* With leaves or flocks of wool, or in what way?
- Ch.* With tender wool ta'en from a young ewe-lamb.
- Oed.* Well, and what follows to complete the rite?
- Ch.* Next, make libation toward the earliest dawn. . . .
- Oed.* With what contents
Must this ¹¹⁷ be filled? Instruct me.
- Ch.* Not with wine,
But water and the treasure of the bee.
- Oed.* And when leaf-shadowed Earth has drunk of this,
What follows?
- Ch.* Thou shalt lay upon her then
From both thy hands a row of olive twigs
Counting thrice nine in all—and add this prayer—
- Oed.* That is the chief thing—that I long to hear.

It may be said that we have not here a genuine instance of homicide-purgation. There is no animal sacrifice, no 'cleansing' by a bath of blood. Water and honey were regular offerings to the dead, and the express prohibition of wine-libations reminds us very forcibly of the sacrifice to the Erinyes made by Clytaemnestra in the *Eumenides* of

¹¹⁵ 255 ff.¹¹⁶ 470-485 (trans. L. Campbell).¹¹⁷ *sc.* vessel.

Aeschylus.¹¹⁸ Has Sophocles in mind, then, a local rite of placation to the Erinnys of Oedipus at Colonus, which he interprets as a commemoration of purgation rites? We have seen how easily such rites may be confused. Or are we to assume that the purgation rite for involuntary or extenuated homicide was different from the rites by which a wilful murderer could be purged 'abroad' or from those by which a justifiable slayer was purged at home? Was the sacrifice which was offered to the Erinyes or the Semnai Theai¹¹⁹ by involuntary slayers after their return from exile, and by accused persons who were acquitted by the Areopagus, a regular purgation rite? These questions we find it difficult to answer either in the affirmative or in the negative. Plato's references¹²⁰ to greater and lesser 'cleansings' according to different degrees of guilt imply that the average Greek did not understand the exact nature or purpose of 'purgation' and that the secrets of this magic art of reconciliation were the exclusive privilege of theocratic nobles whose interest it was to obscure rather than to clarify the details of the system. The passage we have quoted from the *Oedipus Coloneus* possibly points to variations in the 'purgation' ritual according to degrees of guilt—variations which suggest moreover the ambition and the power of local deities and priesthoods to retain their distinctive peculiarities in the execution of a central Apolline doctrine.¹²¹

In the *Iphigenia Taurica* of Euripides¹²² we find a mock purgation ceremony arranged by Iphigeneia to save the lives of Orestes and of Pylades. The image of Artemis is said (it was a fiction invented by a loving sister) to have turned in its seat and to have closed its eyes when the blood-stained Argive cousins entered the temple! Iphigeneia proposes to 'cleanses' the pollution by the blood of young lambs shed in solitude by the sea and such other things as she has ordered as purifications. King Thoas, not being himself appealed to, leaves the whole question of purgation entirely in the hands of the priestess of Artemis.

From the legend that Bellerophon was cleansed by his host Proetus,¹²³ the king of Tiryns, we might be inclined to

¹¹⁸ 107. ¹¹⁹ *Supra*, p. 148; Glotz, *op. cit.* p. 155.

¹²⁰ *Laws*, ix. ch. 8.

¹²¹ But see *infra*, p. 153 ff.

¹²² 1175-1230.

¹²³ *Apollod.* ii. 2. 3.

argue that the purgation rites for certain forms of kin-slaying were performed by private non-sacerdotal individuals. But every king was a High Priest in primitive religion; and, further, we have already seen that Proetus could not have performed the post-Homeric ceremony which is attributed to him. It is however possible that Croesus personally 'purged' the Phrygian homicide mentioned by Herodotus.¹²⁴

It is probable that in Greece the 'cleansers' of homicide-guilt were always 'priests' of some kind. Epimenides of Crete purged the city of Athens on a famous occasion, yet not from murder but rather from sacrilege¹²⁵; moreover, Müller points out¹²⁶ that he was a native of Phaestus in Crete where there was a very ancient cult of Apollo; hence Epimenides was more than probably a member of an Apolline sacerdotal guild. Müller is, however, we think mistaken in regarding purgation for homicide as the exclusive privilege of Apolline priests. The Euripidean reference to purgation by a priestess of Artemis which we have just cited,¹²⁷ Athene's interpretation¹²⁸ of the supplication of Orestes as a supplication for purgation, in the *Eumenides* of Aeschylus, and many passages in the *Laws* of Plato,¹²⁹ reveal the error of this opinion.

The purgation of Orestes by Apollo is described by Aeschylus in the *Eumenides*. It is no priest or priestess of Olympian or Chthonian gods, but Apollo himself,¹³⁰ the chief of the *καθάρσοι θεοί*, who performs the rite. We cannot interpret the ceremony as the purgation of a wilful matricide 'abroad,' as we think that such purgation was impossible, at least in historical times.¹³¹ It is the 'purging' rather of a deed which is either justified or extenuated by Apollo's express command, a 'purging' which would normally take place in the slayer's home-land but which is here attributed to a divine Delphian purifier either because Apollo was the patron of the Greek 'purgation' system or because the deed was such that no one could have cleansed it save the god who had commanded it, or because a Phocian legend made Phocis, not Athens, the place to which Orestes fled after the slaying of his mother. Orestes

¹²⁴ i. 35. ¹²⁵ Aristotle, *Ath. Pol.* ch. 1. ¹²⁶ *Dorians*, i. 227-8.

¹²⁷ *Iph. Taur.* 1175 ff.

¹²⁸ *Eum.* 235-245, and 447-9.

¹²⁹ e.g. ix. ch. 12.

¹³⁰ *Eum.* 581.

¹³¹ See Dem. in *Androcton.* 593, 26; and Plato, *Laws*, ix. ch. 12.

tells¹³² Athene that he is not a suppliant for purgation at Athens, because he has been already 'purged.' We may infer from this that a homicide-exile had not to be 'purged' more than once in his changes of residence abroad, but we think it probable that such 'extern' purgation did not dispense with the need for 'domestic' purgation if the exile was ever permitted to return to his home.¹³³ Orestes says¹³⁴: 'There is a law that the shedder of blood is debarred from human intercourse until at the hands of a man who purifies from bloodshed the blood of a young animal has been poured upon him. Long ago have I been thus made clean by others who live elsewhere, by animal victims beside running water.'

From this passage, and from the reference which we have cited from Euripides' *Iphigenia Taurica*, as well as from more general considerations we conclude that homicide-purgation normally included the shedding of animal blood when some element of guilt was admitted. It is possible, therefore, that the rite described by Sophocles, in the *Oedipus Coloneus*,¹³⁵ was not conceived as a genuine purgation-rite but rather as an exceptional local procedure which was intended to supplement a presumed anterior purgation.¹³⁶ That Attica was noteworthy for its scruples regarding 'pollution' may be inferred from the remarks of the Corinthian Chorus in the *Medea* of Euripides.¹³⁷

We are entirely on the side of Müller¹³⁸ and Philippi¹³⁹ in the view that purgation, in historical Greece, was applied to the authors of justifiable bloodshed.¹⁴⁰ This we may regard as a further confirmation of our opinion that homicide-purgation was not a placation of ghosts or an expiation offered to gods, but a solemn and sacred symbol of reconciliation between the slayer and his native gods.¹⁴¹

Our hypothesis of the origin of the Greek doctrine of homicide as a pollution will receive still further confirmation when we describe in more detail the historical Greek system of penalties for bloodshed and the conceptions of those penalties which are found in Attic tragedy. We will now give the

¹³² *Eum.* 448. ¹³³ For the Attic Court Phreatto see *infra*, ch. iii.

¹³⁴ *Eum.* 451 ff.

¹³⁵ 470-485.

¹³⁶ See *supra*, p. 151.

¹³⁷ 840 ff.

¹³⁸ *Eum.* p. 136.

¹³⁹ *Areop.* p. 63.

¹⁴⁰ See Plato, *Laws*, ix. ch. 8.

¹⁴¹ *Supra*, pp. 113 and 119 ff.

reasons which have led us to associate the Greek 'pollution' doctrine with the Delphian Apollo and his Amphictyonic League, after which we shall be in a position to discuss ¹⁴² the influence of the 'pollution' doctrine on 'wergeld' and the legality of 'private settlement.' The following account is intended as a supplement to Müller's analysis, which errs only in attributing purgation-rites exclusively to Apollo and his priests.

APOLLO AND POLLUTION

In Homer, Apollo has already established at Pytho a temple of many treasures.¹⁴³ The reference to 'sacred Crisa' side by side with 'rocky Pytho' ¹⁴⁴ suggests, if the Greeks were right in their interpretation of 'Crisa' as 'the Cretan land,' that the region was already revered in the days of the Minoan thalassocracy. Aeschylus in the *Eumenides* ¹⁴⁵ reproduces the Greek tradition regarding oracle-deities at Delphi, before the advent of Apollo. The Delphian priestess accords priority to Ge, the Earth-goddess, 'the first of prophets,' and then she prays to Themis, as the second deity who gave oracles there. This legend probably originated in a joint worship of Ge and of Themis under the forms of the Mother and the Maid; for, just as the cult of Demeter and Kore represented the joint worship of the Earth and its produce, so the cult of Ge and Themis represented the worship of the Earth and of the deified uniformity of the Earth's fertility. Next the priestess prays to Phoebe, another daughter of Earth, who in turn transmitted the oracle to her son, Phoebus Apollo. It was supposed that the temple which is mentioned by Homer was the fourth ¹⁴⁶ temple which had been built on that site. This temple was destroyed in 548 B.C., according to Pausanias.¹⁴⁷ Hence it is much less probable that the oracular shrine had been handed down by continuous succession as an inheritance within a 'divine family' than that it was repeatedly destroyed and desecrated by successive invaders. The destruction of Crisa in 585 B.C. by the Amphictyonic League furnishes an

¹⁴² *Infra*, p. 173 ff.

¹⁴³ *Il.* ix. 404.

¹⁴⁴ *Il.* ii. 520; Müller, *Dorians*, i. 226-232.

¹⁴⁵ 1-10; see also Pausanias, x. 5.

¹⁴⁶ *Cf.* Aesch. *Eum.* 18.

¹⁴⁷ x. 54

historical illustration of its chequered career in prehistoric ages. The octennial festival known as the Stepteria,¹⁴⁸ which commemorated the conquest of the Python by Apollo, had probably an historical foundation. For the Python, a large snake, was worshipped as a symbol of the Earth's fertility : it was therefore associated with Ge and Themis, who ' handed down ' the oracle according to legend. The famous Omphalos at Delphi, of which the origin and significance were so mysterious to the Greeks, was really the tombstone of the Python. But Earth, though buried, still lived in the tomb ! It was from a cavern of Earth that the Pythian priestess received the vapours which produced her ' anaesthetic revelation.'¹⁴⁹ In the Apolline shrine was the Hestia, or sacred Hearth, derived from pre-Olympian ancestor worship and necromantic art. Before the pilgrim entered the shrine of the Olympian oracle, he had to perform a Chthonian sacrifice, and offer a *πέλανος*, a mixture of milk, wine and honey, which was a characteristic offering at the tombs of the dead.¹⁵⁰ Around the tomb of the Python stood Gorgon-images,¹⁵¹ which were probably suggested by ' image-magic ' as a placation of the wrath of the Erinnyes, who sought the life of the slayer of the Python. It was from these images, we think, that Aeschylus derived his conception of the Erinnyes, and the famous scene¹⁵² which depicts them as sleeping a loathsome sleep in the temple of Apollo, whom they hate but also fear. We find in Aelian and Plutarch the legend¹⁵³ that Apollo, in the days of his conquest of Delphi, fled to Tempe, after slaying the Python, to be purified from the pollution. The Stepteria festival was believed to commemorate his flight ! In this legend, however, as in that in which Zeus purifies Ixion,¹⁵⁴ we see the effect of aetiological myth-making and the operation of a principle of primitive religion whereby man makes the gods in his own image and attributes to them the emotions and the observances of his own day.

As we cannot regard Apollo, notwithstanding Müller's¹⁵⁵ reasoning, as the special product of Dorian religion, so we

¹⁴⁸ Harrison, *Themis*, pp. 396-429.

¹⁴⁹ See James, *Varieties of Religious Experience*, p. 387 ff.

¹⁵⁰ Euripides, *Ion*, 226 ff.

¹⁵¹ *Ibid.* 225.

¹⁵² *Eum.* 95-200.

¹⁵³ *Ael. Var. Hist.* iii. 1; *Plut. Q. Gr.* xii.

¹⁵⁴ Aeschylus, *Eum.* 440.

¹⁵⁵ *Dorians*, i. 297 ff.

cannot attribute his exaltation in post-Homeric days exclusively to the Dorian invasion. The Achaeans worshipped Apollo as a prophet-god and as a powerful ally in war, but their hegemony in Greece was based on military control rather than on theocratic manipulation. The Delphians are not mentioned in Homer. They were a Dorian dominant caste which conquered the Phocian masters of the 'Homeric' temple at Pytho,¹⁵⁶ about 1000 B.C. Undoubtedly they could not have retained the fruits of their conquest for any period of time, if they had not been supported by the power of the Dorian invaders of Southern Greece. Thus, in 448 B.C., when the Phocians had reoccupied Delphi, it was the Dorian Spartans who sent an army to restore it to the Delphians.¹⁵⁷ Yet the Athenians, who were then supreme in Central Greece, restored it to the Phocians for a time. But, about 585 B.C., when anti-Dorism was at its height in Greece, it was to a northern league of Greek States, in which the Dorians were subordinate, that Delphi looked for help against the Phocians of Crisa.¹⁵⁸ The fact that Cleisthenes of Sicyon, an anti-Dorian, championed the Delphians in this campaign, proves that their Dorian nationality was already subordinated to the prestige which they had won as the High Priests of Greek prophetic religion: and the loan of fifteen talents which a Spartan king gave to the Phocian general who had once more seized Delphi in 356 B.C. shows how Dorism had lost its primal solidarity.¹⁵⁹

We think, then, that the prestige of the Delphian Apollo, though originating in the Dorian migration, was due to a combination of two forces: (1) the widespread cult of Apollo in Greece and in Asia Minor: and (2) the skill by which the Delphians (who controlled the oracular decrees) impressed the Greeks and foreign peoples with the unrivalled divinity of their local shrine in matters of prophecy and healing-magic; and organised under their banner the local priesthoods of Greece by annual processions and pilgrimages, by the construction of sacred roads, and the establishment of religious Amphictyonies.¹⁶⁰ While other 'sacerdotal' nobles in Greece

¹⁵⁶ *Il.* ii. 517; ix. 405.

¹⁵⁷ See Bury, *H.G.* p. 361.

¹⁵⁸ *Op. cit.* p. 157.

¹⁵⁹ *Op. cit.* p. 695.

¹⁶⁰ Coulanges, *op. cit.* p. 279; Müller, *Dorians*, i. 258, 270, 272-9.

worshipped a number of deities, Olympian and Chthonian, the Delphians seem to have concentrated on Apollo. They were definitely theocratic—being a select caste of nobles, whose High Priests were elected by lot.¹⁶¹ They formed a criminal court which exacted the death penalty for sacrilege. It follows that when homicide became a religious offence, these judges would not only have decided all cases within their territory,¹⁶² distinguished between different degrees of guilt, and pronounced upon the possibility of purgation, but they would also have used the prestige of the oracle to make their decisions imitated elsewhere. Thus, the Attic Eupatridae, who worshipped Apollo Patroos, and their judges, the Ephetae, who swore by him before their trials,¹⁶³ would naturally have adopted the decisions of the central Apolline oracle. Moreover, the annual processions of representatives (*θεωροί*) of Greek states to Delphi, the Pythian Games, a festival in which all Greeks participated, and the formation of religious international leagues or Amphictyonies made obedience to Apolline oracles almost a matter of obligation.

The great Thessalian Amphictyony of Demeter at Anthela, a very ancient association, including Thessalians, Locrians, Phocians, Boeotians, Athenians, Dorian and minor states, came in the sixth century¹⁶⁴ to meet also at Delphi, and the temple was placed under the control of international Hieromnemes who met twice a year and promulgated laws to be obeyed by all its members, called Amphictyonic laws. It is significant that, in historical Athens, murder exiles were prohibited from Amphictyonic festivals.¹⁶⁵ This law was clearly of Amphictyonic origin.¹⁶⁶

We have quoted Thucydides' ¹⁶⁷ account of the command which was issued by the oracle of Apollo to Alcmaeon, the matricide, directing him to travel to the Echinades Islands. This legend bears, on the face of it, an antique stamp, and the function which is here ascribed to the Delphic oracle is a first-

¹⁶¹ Müller, *op. cit.* p. 232; and Euripides, *Ion*, 1111, 1220, 1256 there quoted.

¹⁶² Cf. Plato, *Laws*, ix. ch. 11, *re* kin-slaying: 'let the judges of these matters be the same as those to whom has been given the power of deciding upon sacrilege.'

¹⁶³ Müller, i. 263-5.

¹⁶⁴ Bury, *op. cit.* p. 159.

¹⁶⁵ Law of Dracon, *Dem. in Arist.* 632.

¹⁶⁶ Cf. Coulanges, p. 279.

¹⁶⁷ Thuc. ii. 102.

rate piece of evidence for the connexion of Apollo with the historical doctrine of 'pollution.'

We have quoted Herodotus' ¹⁶⁸ account of the story concerning Phrixus and Athamas, in which a Delphic oracle was said to have commanded the Thessalians to 'purge' their country by slaying Athamas in sacrifice. This legend we regard as 'unhistorical' and pseudo-aetiological, but the rôle which it assigns to Delphi may be cited in support of our present hypothesis.

In historical Attica, the rites of homicide-purgation were performed by three persons called Exegetae or Interpreters who, Suidas ¹⁶⁹ assures us, were appointed or controlled by Delphi (Πυθόχρηστοι). Plato, ¹⁷⁰ speaking of the appointment of Sacred Interpreters, says: 'It is right to bring from Delphi the laws relating to all "divine matters" and to follow these laws, having appointed interpreters for them.' Speaking of their appointment he says that from the names of candidates which stood first on the list after election, nine should be sent to Delphi, and 'the god' was to select three of these names. The homicide laws of Dracon, as we shall see later, were not a complete code of homicide-law. Many details were omitted, and these details, we believe, were worked out in the unwritten code of the Ephetae and the Exegetae. In the *Euthyphro* ¹⁷¹ of Plato, a poor freeman who had killed a slave was put in chains and cast into a trench on the wayside to await the decision of the Exegetae concerning his guilt! The man died from hunger and neglect before the decision arrived, and the question of avenging his death forms one of the problems of the dialogue.

Coulanges points out ¹⁷² that the Spartans regarded, not Lycurgus, but Apollo, as the author of their laws. These laws were Πυθόχρηστοι. If they operated, concerning homicide, in a comparatively severe manner, this was because the Spartan military system absorbed without much modification the autocratic tendencies of Delphic law, but we must not attach too much importance to a single statement of Xenophon's which can perhaps be otherwise explained. ¹⁷³

¹⁶⁸ Her. vii. 197.

¹⁷⁰ *Laws*, vi. ch. 7.

¹⁷¹ 1-6.

¹⁶⁹ s.v. ἐξηγηταί.

¹⁷² *Ancient City*, p. 252.

¹⁷³ Xenophon, *Anabasis*, iv. 8. 25; see *infra*, p. 173.

Solon, the Athenian legislator, abolished all the laws of Dracon except those which related to homicide.¹⁷⁴ These particular laws were themselves an anomaly in the Draconian code. Plutarch says that the laws of Dracon were said to have been written with blood, not with ink.¹⁷⁵ Death was the penalty for minor thefts, yet the wilful murderer was accorded the option of exile, and the involuntary slayer, the further option of 'appeasing' the relatives of the slain! The life of a murderer in exile was 'protected' by the decree of a State whose jurisdiction ceased at its boundaries! We believe that the Draconian homicide-laws are an eclectic codification of existing traditions and that these traditions were a compromise between tribal customs and the seventh-century Apolline doctrine of 'pollution.' Coulanges says ¹⁷⁶ that Solon did not change the murder laws of Dracon, because they were 'divine,' and to disobey or tamper with such laws was regarded as sacrilegious. In our view Apollo and the Delphic oracle constituted one of the sources, and clan-traditions another, from which sprang the laws which Dracon codified.

Plato,¹⁷⁷ speaking of the penalties for wilful kin-slaying, refers to a myth or legend 'clearly told by priests of old' to the effect that Justice, the avenger of kindred bloodshed, has ordained that the perpetrator of such an act shall suffer the same doom as he has himself inflicted.¹⁷⁸ We have seen ¹⁷⁹ that in the clan-system, kin-slaying was normally punished by perpetual exile, but not by death. We do not agree with Caillemet ¹⁸⁰ that the fate of such exiles was more pitiable than that of ordinary homicide exiles, but we support the following opinion of his in regard to the attitude of the kindred. 'Ils hésitent,' he says, 'souvent à verser le sang de leur parent : ils se bornent au bannissement du coupable.' In Plato,¹⁸¹ the penalty for kin-slaying is inexorably death. It was, we believe, the pollution doctrine which indirectly produced this change, through the abolition of 'private vengeance.'¹⁸² It could not have *directly* produced it, as is clear from the fact that amongst the Israelites, who still retained the avenger of

¹⁷⁴ Arist. *Ath. Pol.* 7. 1.

¹⁷⁵ Plutarch, *Solon*, 17.

¹⁷⁶ *Op. cit.* p. 252.

¹⁷⁷ *Laws*, ix. ch. 12.

¹⁷⁸ See Aeschylus, *Agam.* 1557.

¹⁷⁹ *Supra*, p. 47 ff.

¹⁸⁰ See article, *s.v. φόρος*, in Daremberg and Saglio, p. 440.

¹⁸¹ *Laws*, ix. ch. 12.

¹⁸² See *infra*, pp. 229, 236 ff.

blood, Cain, the murderer of his brother, was punished only by exile; but when, as in Greece, the pollution-doctrine caused the State to interfere in the trial of homicide and in the execution of its penalties, State judges came to execute a penalty which the relatives of the slain would never have inflicted upon a kinsman in the days of 'private vengeance.' We shall discuss more fully, later,¹⁸³ the problems concerning parricide in Attic law. The fact that parricide was not expressly mentioned in Dracon's laws does not prove that such a crime was not punished by State officials in historical times. Thus the myth which is attributed by Plato to 'priests of old' may be regarded as another proof of the 'divine,' which is to say, the Apolline inspiration of historical Greek homicide law.

Again,¹⁸⁴ in regard to suicide, Plato says that it is necessary for the relatives of the deceased to inquire of the 'Interpreters' as to the proper methods of purification and of burial.

But the most decisive argument to be derived from Plato as to the connexion of Apollo with purgation and with Greek homicide law can be found in the scholium to a passage in the *Laws*, a scholium which incidentally supplies a proof of the historicity of Plato's murder laws. The passage enunciates different cases of justifiable homicide, or rather justifiably accidental homicide—the essence of such discrimination lies in the fact that certain kinds of accidental slaying were foreseen and provided for, in advance, whether by custom, or by public opinion, or by written codes—and the cases which are here enunciated are identical with those of the Draconian law regarding justifiable bloodshed.¹⁸⁵ We cite only a section of the passage,¹⁸⁶ which is sufficient for our present purpose. 'If any person unintentionally slays a fellow-citizen (φίλος) in a "contest" or at the public games . . . or during war, or in military exercises . . . in imitation of warfare . . . let him be purified according to the law brought from Delphi about such matters and be immune from punishment (καθαρός).' The scholiast gives the Delphic law, as follows.¹⁸⁷ 'The law or

¹⁸³ See *infra*, ch. ii.

¹⁸⁴ Bk. ix. ch. 12.

¹⁸⁵ See Demosthenes in *Aristoc.* 637.

¹⁸⁶ See *Laws*, ix. ch. 8.

¹⁸⁷ ὁ ἐκ Δελφῶν κομισθεὶς νόμος ἡγουν χρησμὸς ἐπὶ τοῦ ἄκοντος ἀνέλοντος τὸν φίλον. ἔκτεινας σὸν ἐταῖρον ἀμύνων, οὐ σε μιάνει αἷμα, φόνου δὲ πέλεις καθαρώτερος ἢ πάρος ἦσθα . . . ὁ ἀνδρὶ φιλῶ θνήσκοντι πάρων πέλας οὐκ ἐπάμυνας, ἡλυθες οὐ καθαρός.

oracle brought from Delphi regarding a man who kills his friend (*i.e.* fellow-citizen, as distinct from public enemy) involuntarily:—"Thou hast slain thy comrade (*ἑταῖρον*) while intending to defend him (*ἀμύνων*)—his blood doth not pollute thee: thou art purer than thou wast before: but thou, man, who standing near a comrade being killed hast not defended him—thou hast gone not pure away." That such important cases of justifiably accidental homicide should be provided for by Delphic legislation is a most noteworthy fact. Such cases are mentioned in Dracon's laws, and we presume that they found a place in other Greek written codes. The reference to 'public games' suggests unmistakably an international code of laws. Here, then, we find Plato, a member of that Attic State which prided itself on the early foundation¹⁸⁸ of the Delphinium court, for the trial of justifiable homicide, in the time of its first Ionian Kings, advising a conformity to Delphic legislation in homicides of this kind! This scholium, if properly weighed and considered, would in itself be almost sufficient to demonstrate our theory of the Delphic origin of historical Greek homicide-laws, and of the universal similarity of these laws. We cite it here, however, as a mere link in a chain of evidence which is still very far from completion.

We have already referred¹⁸⁹ to the exclusion of homicide-exiles from Amphictyonic festivals in Greece, and we have maintained that such a law probably originated in some Amphictyonic league such as that of Apollo at Delphi. The same reasoning applies to the law quoted by Demosthenes¹⁹⁰ as a law of Dracon, which protected the lives of homicide exiles abroad. The law reads: 'If anyone shall slay a murderer or cause his death while he abstains from market-places on the State boundaries and from (public) games and Amphictyonic festivals, such a person shall be liable to the same penalties as if he had killed an Athenian citizen.' We have already¹⁹¹ suggested the origin of such a law. It was, we think, due to the influence of tribal custom in conflict with the new doctrine of 'pollution,' in the seventh century B.C. Demosthenes does not understand correctly the origin of the law, though he is reasonably successful in explaining the law.¹⁹² 'What,' he says, 'was the legislator's

¹⁸⁸ Pausanias, i. 28. 10.

¹⁸⁹ *Supra*, p. 157.

¹⁹⁰ *In Aristoc.* 632.

¹⁹¹ *Supra*, p. 145.

¹⁹² *In Aristoc.* 632-634.

object? (He thought) that if we slay people who have fled to other countries, others will slay those who have fled to us: if this happens, the only refuge left for the unfortunate wretches will be abolished . . . also he strove to prevent an indefinite series in the avenging of (such) crimes. . . . He considered that if a man who is tried for murder, and condemned, once escapes securely, though he ought (also) to be expelled from the native State of the victim, it is not righteous to kill him in every place.' Demosthenes forgets that it was quite possible for ancient Greek States to make an international compact such as appears to operate between States of the modern world, whereby all murderers who fled abroad would be *extradited*—not slain where they had taken refuge, but handed over to the State of the 'victim.' We shall see presently¹⁹³ how the Greeks did evolve a system of extradition of a special kind. All the objects which Demosthenes attributes to the legislator are the creations of his own rhetorical mind. Why should he expect pity for 'unfortunate wretches' in a legislator who decreed that, if these wretches remained at home until the verdict of the court was given, they would inexorably be put to death? Why should a murderer expect pity from the relatives of the slain who were polluted by his presence? No, such a law must have originated in a central international Amphietyony or oracular authority which, in its legislation, had to respect the traditions of tribal village communities and of tribal aristocratic States, traditions which had come down from distant ages, and could not be suppressed without a struggle. Tradition held that 'exile' saved the murderer's life, and it was not felt that such a penalty was not a sufficient deterrent. New social conditions, new religious doctrines may have changed men's conceptions of the deterrent power of exile, but they had, nevertheless, to respect the old tradition. The homicide laws of historical Greece are, we believe,¹⁹⁴ a compromise between central autocratic deterrence and tribal 'private vengeance.'

In the last clause of the Demosthenic passage which we have cited there is a reference to the righteousness of slaying a murderer if he did not abstain from the 'land' of the victim where that 'land' or State was different from his own. We

¹⁹³ *Infra*, p. 164 ff.

¹⁹⁴ See *supra*, p. 142 ff.

fail to understand how such a law could have existed, or could have effectively operated, without an international compact expressly made or tacitly adopted through the mouthpiece of an Amphictyonic oracle. We cannot accept Glotz's theory¹⁹⁵ that the immunity of homicide exiles abroad originated in separate treaties of Refuge or *ἀσυλία*. The law is much too wide and universal to permit of such an explanation. Thus, for instance, if an Athenian slew a Theban at Athens or at Thebes, the murderer was bound, after conviction, to abstain from Athens and Thebes for the rest of his life. No single Greek state could have produced such a law. Such eventualities would inevitably require an international compact or an Amphictyonic sanction.

Plato confirms the existence of these laws. Speaking of involuntary homicide, he says¹⁹⁶: 'It is necessary that the slayer should withdraw from the (country of the) slain and evacuate his own native land for a year: if the deceased is a stranger, let the homicide be debarred from the stranger's "land" for the same period.' Speaking of wilful murderers, he says¹⁹⁷: 'If he goes abroad without challenging a verdict (*μὴ θέλησας κρίσιν ὑποσχεῖν*), let him suffer perpetual exile: but if any such person sets foot upon the "land" of the slain, let whoever first meets him, whether relative (of slain) or citizen, slay him with impunity, or . . . hand him to the magistrates . . . to put him to death.'

So far we have assumed that only two States were involved in the homicide. But let us suppose that an Athenian slew a Theban at Argos. It would seem that the Athenian slayer, if he elected to become an exile rather than to die, was debarred from three places or rather three States, namely, Athens, Thebes and Argos. Plato, speaking of involuntary homicide between strangers, metics, and citizens, says¹⁹⁸: 'If a stranger involuntarily kills a stranger in the city, let anyone who wishes prosecute him in accordance with the same laws: if the slayer is a metic, let him go into exile for a year: if he is a complete foreigner, let him, if he shall have killed a stranger or a metic or a citizen, be banished for his whole life from the country which has power over these laws,¹⁹⁹ and if he returns contrary to the

¹⁹⁵ *Op. cit.* p. 218.

¹⁹⁶ *Laws*, ix, ch. 8.

¹⁹⁷ *Ib.* ch. 11.

¹⁹⁸ *Ib.* ch. 8.

¹⁹⁹ *τῆς χώρας τῆς τῶν νόμων τῶνδε κυρίας.*

law let the guardians of the laws punish him with death.' The city which has 'authority or power in regard to these laws' must be, in this case, the city in which the deed took place. Thus, a person guilty of involuntary homicide could in certain circumstances be debarred for ever from the place in which the deed occurred, and for at least a year from the land of the victim and also from his native land. Who could have enacted such laws except an international authority?

The operation of such an authority is also revealed in the laws regarding *ἀνδροληψία*, or the seizure of hostages, when a murderer was not tried or punished by a 'foreign' State. A law which is attributed to Dracon, but which clearly must have had its origin in some national or central Greek authority of pre-Draconian days, reads as follows²⁰⁰: 'If anyone dies a violent death, his relations shall be entitled to take hostages on his behalf, until (the people concerned) either challenge a verdict of murder at a trial (*δίκας τοῦ φόνου ὑπόσχωσιν*) or extradite the slayers: and the taking of hostages shall extend to three persons but not more.' The meaning of the law may be thus illustrated: if an Athenian slew a Theban at Argos, and if the Argives ignored the deed, and no one prosecuted the slayer, the relatives of the Theban could come to Argos and seize the first three men whom they met, and hold them as hostages till the Argives either tried the slayer or handed him up to the Thebans.' We have taken an extreme case, but it is such a case which Demosthenes has in mind when he comments²⁰¹ on the law. In historical Greece, the duty of prosecution was normally limited to the relatives of the slain. The slaying of strangers was therefore likely to pass without prosecution. But this right of *ἀνδροληψία* was an important corrective of the laxity of this system. Relatives, living at a distance, ignorant of the actual slayer, might be regarded as impotent since they knew not whom to accuse. But the seizure of hostages would speed up the revelation of the criminal!

We may distinguish three different cases of *ἀνδροληψία*.
(a) If an Athenian slew a Theban at Thebes, that is, if a stranger slew a citizen, then the relatives of the slain who were on the spot could ascertain easily enough the identity

²⁰⁰ Dem. in Aristoc. 647-8.

²⁰¹ Loc. cit.

of the slayer and could put him on trial. If after conviction he fled to his native State, that State was bound to put him to death. If he remained after trial in the State of the slain, which, in this case, was also the State in which the deed took place, he was also put to death. But if he fled before trial to his own State, and if his fellow-citizens did not try him and punish him, or arrest and surrender him, the relatives of the slain could legally seize as hostages three of his fellow-citizens. (b) If an Athenian slew a Theban at Athens, that is, if a citizen slew a stranger, then the relatives of the slain, being aliens, had the right to prosecute through a *προστάτης*; but if the slayer was not tried or surrendered, seizure of hostages followed, for such seizure was the only means by which this result could be secured, and ultimately the slayer was debarred both from Athens and from Thebes. (c) If an Athenian slew a Theban at Argos, and if the slayer remained at Argos, unpunished, or if he fled to Athens and enjoyed immunity there, the relatives of the slain Theban were entitled to seize three Argives or three Athenians, as the case might be, in order to compel his surrender. The city which harboured him had either to put him on trial or to give him up to the relatives of the slain. We may infer from Plato that, if he were convicted of manslaughter at Argos, his punishment would have been more severe than if he were convicted at Athens of slaying an Athenian in Athens! But we presume that he could have elected to stand his trial at Athens, if the Theban relatives agreed to accept the verdict of an Athenian court.

The wording of the Draconian extradition law is vague and incomplete. The emergencies which it does not expressly indicate were no doubt provided for by an Apolline Amphictyonic code, which was either unwritten or, if committed to writing, was kept secret, or if promulgated, has left no trace of itself in inscriptions or in literature. But we fail to see how even the Draconian law could have ever originated in any one State, or in the mind of a single legislator. We believe that it was, on the contrary, of international or Amphictyonic origin. We have suggested, moreover,²⁰² that the homicide penalties of historical Greece were the result of a compromise between the religion of Apollo and the traditions of local State-gods

²⁰² *Supra*, p. 145.

and of the Erinnyes who represented the wrath of the slain and the desire of the relatives for retribution. Does not this theory help to explain and does it not therefore derive support from the fact that the punishment of homicide was most severe and the duty of prosecution most widely diffused in the case of homicide committed in a State in which both slayer and slain were legally 'strangers'?

Glötz,²⁰³ who sees in the protection of a murderer's life 'abroad' (which means, as we now see, anywhere outside the one, two, or three States which might be involved in the case) the operation of treaties of *ἀσυλία* or Refuge between individual States, explains the extradition law regarding the seizure of hostages as an ancient tradition of the clans. Indicating the contrast which exists between ancient and modern extradition, he observes²⁰⁴: 'En Grèce, l'extradition a de bonne heure figuré dans le droit des gens. Mais elle n'était pas du tout à l'origine ce qu'elle est devenue. Les peuples civilisés des temps modernes ont pour principe de livrer des étrangers présumés coupables de crimes commis en pays étranger, mais non pas leurs nationaux, même pour crimes commis sur terre étrangère. Les anciens se faisaient un point d'honneur de ne pas abandonner le malheureux qui s'était enfui sur leur sol et confié en leur protection. L'hôte est toujours sacré: le foyer d'une cité est un asile inviolable... c'est l'extradition telle qu'ont pratiquée longtemps les Aryens, *ut populus religione solvatur*.' It was, according to this view, only a sense of honour, a fear of violating the sacred rights of hospitality, which gave to Greek extradition law its peculiar characteristics. But criminals cannot claim any right of hospitality, in the ordinary sense. Moreover, Glötz forgets that a Greek State had to expel or deliver up a stranger if the deed of blood was committed in its territory. It also had to give up its 'nationals' if these 'nationals' had slain foreigners at home or abroad. Glötz draws too fine, too neat a contrast between ancient and modern extradition. He does not explain the origin of the ancient system. To say that it existed in early clan-law but that it developed later into something quite different is not an explanation of it. Clan-extradition arose, we believe, as a solvent of war

²⁰³ *Op. cit.* p. 218.

²⁰⁴ *Ib.* p. 214

between the clans concerned. The tribal court or the city court may possibly have acted in Pelasgian times as a medium for the operation of this solvent. But the historical system of extradition, with all its minute differentiations and variations, bears, we think, the stamp of Amphictyonic legislation in the age of aristocratic rule in Greece, or in what we may call the Apolline era. It was only when homicide became an offence against an international god at Delphi, that is, in the seventh century B.C., that such legislation came to be applied to this kind of 'crime.' This is our explanation of the origin of the law. It was an international compact issued in the form of an oracle.

As an illustration of the interference of oracles in international disputes we will cite one or two passages from Herodotus. At the battle of Thermopylae in 480 B.C. Leonidas, the famous king and commander of the Spartan band, was slain, and Xerxes, the Persian king, mutilated the corpse by decapitation and crucifixion.²⁰⁵ This act is regarded by Herodotus as a barbarous violation of the customs of war, and is attributed by him to the rage and anger of Xerxes at the time. The Spartans seem to have been able to present the act afterwards as a case for damages, and they secured the support of the Delphic oracle. When the Persians had failed in their expedition against Greece, and Xerxes was returning to the Hellespont, 'an oracle came from Delphi to the Lacedaemonians bidding them ask satisfaction from Xerxes for the death of Leonidas and accept that which should be given by him.'²⁰⁶ Xerxes ridiculed the suggestion at first, but later he referred the herald to Mardonius, who would, he said, pay satisfaction. At the battle of Plataea Mardonius was slain, and then, says Herodotus,²⁰⁷ 'the satisfaction for the death of Leonidas was paid by Mardonius according to the oracle given to the Spartans.' Again, we are told²⁰⁸ that after the Persian conquest of Lydia, Cyrus charged Mazares to bring to him alive a certain Pactyas, a leading anti-Persian rebel. Pactyas fled to Kyme, and when messengers came from Cyrus demanding his 'extradition,' 'the Kymeans resolved to consult the deity at Branchidai as to the course which they should follow. . . . For there

²⁰⁵ vii. 238.²⁰⁶ viii. 114.²⁰⁷ ix. 64.²⁰⁸ i. 156, 157.

was there an oracle established of olden time, which all the Ionians and Aeolians used to consult': and 'when they thus inquired, the answer was given them that they should deliver up Pactyas to the Persians.' Herodotus says that the Kymeans did not give up Pactyas, as they suspected the oracle of political designs. Later, the oracular shrine informed them that they were bidden to deliver up Pactyas only in order that they should be punished by the gods for contemplating the violation of a suppliant's rights! This does not imply, as Glotz²⁰⁹ supposes, that such rights belonged to murderers, for Pactyas was not a murderer. We cite the passage here merely to illustrate the custom of consulting oracles in 'extradition' disputes.

The theory which connects Apollo with the doctrine of homicide as a 'pollution' finds further confirmation in many Greek legends. The story of the purgation of Ixion by Zeus, which is first referred to by Pindar²¹⁰ and by Aeschylus,²¹¹ is, we think, an instance of 'reconstruction,' or 'retrojection,' on the part of legend-makers who were less concerned with the matter of consistency in the character of Zeus than with the maintenance of his exalted rôle in the Olympian religion of post-Homeric days, which tended to extol Apollo the Son over Zeus the Father. Sidgwick's view²¹² that this legend originated in an attempt to derive the name *Ixion* from the root *ik* as found in the words *ικέτης* and *ικετεύειν* (which refer to suppliant-rights) seems to us very probable. Pindar has perhaps been misinterpreted by Verrall²¹³ in the translation of *ἐμφύλιον αἶμα* as kindred-murder. We have seen²¹⁴ that the word *ἐμφυλος* sometimes carries this meaning in Homer. But in the Pindaric narrative it was his father-in-law whom Ixion slew, and fathers-in-law are not, as a rule, akin in blood to their sons-in-law, though they may belong to the same tribe (*φυλή*). Pindar asserts that the act of Ixion was malicious: but we have said²¹⁵ that for malicious kin-slaying purgation was not possible: 'Of a kindred blood defiled,' says Plato,²¹⁶ 'there is no other cleansing . . . before the life that has sinned shall pay kin blood for kin blood.' Hence, it is neces-

²⁰⁹ *Op. cit.* p. 214.

²¹⁰ *Pyth.* ii. 32.

²¹¹ *Eum.* 444.

²¹² See note, *Eum.* ad loc.

²¹³ See edition of *Eumenides*, p. 78.

²¹⁴ *Supra*, pp. 21, 65.

²¹⁵ *Supra*, p. 142.

²¹⁶ *Laws*, ix. ch. 12.

sary to suppose that Ixion was not akin to his victim. The legend of the purgation of Ixion is open to suspicion on the further ground that Ixion is said ²¹⁷ to have been the first who 'supplicated' for purgation, and is said to have been purged by Zeus. Now Apollo, not Zeus, was the pioneer amongst the Purifying gods (καθάρσιοι θεοί). It was Apollo who purified Orestes, in the legend which Aeschylus follows in the *Eumenides*.²¹⁸ 'Mine was the house,' says Apollo, 'and mine the hearth which received this suppliant, and I am the purger of his blood-guilt.'

We shall see, later,²¹⁹ what a difficult problem the Homeric saga of Orestes presented to the legend-makers of the 'Apolline' era (750 B.C. onwards). There was only one means by which the Homeric story could be retained without assuming an atrocious indifference to kin-slaying on the part of the Homeric Greeks: namely, by representing the act of Orestes as in some way justified. But the Apolline code, if we may regard Plato as a worthy exponent of it, did not admit a plea of justification for the slaying of a parent in any circumstances. 'In what other way (than by death),' says Plato, 'would it be right to punish one whom no law will permit, even in self-defence and in danger of his life, to slay his father or mother . . . and whom (the legislator) will bid to suffer anything rather than perpetrate such a deed?'²²⁰ We are convinced that there was one thing, and one thing only, which would have been accepted by Plato as a justification for such an act, namely, the express command of Apollo himself. Apollo was the reputed founder of the Attic Court Delphinium; he was regarded as the initiator of the distinction between just and unjust slaying²²¹: he appointed and controlled the Exegetae or the Sacred Interpreters of the laws of 'purgation'²²²; surely his command, impossible to disobey, would have been admitted as a justification for the deed of Orestes. In the *Eumenides*²²³ of Aeschylus, Orestes says to Apollo: 'Be thou my witness: show, Apollo, whether I slew her justly. The fact of slaying I do not deny: do thou decide whether in thy judgment I slew her justly or not, that I may tell these

²¹⁷ Schol. ad *Eum.* 444.

²¹⁸ 580 ff.

²¹⁹ *Infra*, Bk. III.

²²⁰ *Laws*, ix. ch. 9.

²²¹ Müller, *Eum.* p. 141.

²²² *Supra*, p. 158.

²²³ 612-616.

judges here.' And Apollo replies ²²⁴: 'I am a prophet and will not deceive: never, in my oracular shrine, have I said aught that Zeus, the father of Olympian gods, doth not command. Take note, ye judges, of the value of such a justification.' So, in the *Electra* of Sophocles, Orestes says ²²⁵: 'When I approached the oracular shrine of Pytho, to learn whereby I might punish the murderers of my sire, Phoebus made answer: "No host of shielded warriors, but thine own guileful craft, O prince, and thine own arm shall deal the death-blow righteously."' Even in the *Orestes* of Euripides, a drama in which, as we shall see, ²²⁶ the plea of justifiable matricide is almost entirely absent, Orestes tells the Chorus ²²⁷: 'Behold! Apollo, who in his palace in mid-earth gives to mortals oracles most clear, by whom we are entirely guided—him I obeyed when I slew my mother. 'Twas he who erred, not I. Is it not enough to remove "pollution" if I transfer the guilt to the god?'

Again, in the post-Homeric form of the legend of the Theban Oedipus, it is Apollo who commands the Thebans to search for the murderer of Laius, and, when they have found him, to put him to death or to drive him from the land. ²²⁸ In this option of death or exile we have the normal Attic, and, therefore, ²²⁹ the normal Greek penalty for wilful murder. The direction which Apollo gives, in the *Oedipus Rex* of Sophocles, is quite general. ²³⁰ Apollo speaks therefore as a lawgiver, and as a deity angered by unpunished homicide, rather than as a prophet; since he conceals for a time his knowledge of the slayer of Laius. In historical Greek law the penalty for parricide was invariably death. If Apollo had proclaimed the death penalty without the option of exile, for the slayer of Laius, the famous drama of Sophocles would have had to be considerably if not fundamentally altered. The area of the 'search' would have been limited to the kinsmen of the deceased Laius. The Homeric story of Oedipus is so very different from the later 'tragic' story that the evolution of the legend must have been attended with considerable

²²⁴ 618–622.

²²⁵ 32 ff.

²²⁶ *Infra*, p. 348 ff.

²²⁷ 600 ff.

²²⁸ Sophocles, *Oed. Rex*, 95 ff.

²²⁹ *Infra*, p. 173.

²³⁰ *Infra*, p. 311. We do not attach any legal importance to Oedipus' reference to *parricide* (1441). It would have ruined the dramatic plot if this word were mentioned earlier in the play.

difficulty. Legend-makers could not ignore the Homeric saga which told ²³¹ how Oedipus, having slain his father, ruled over the Cadmeans, even though 'the gods revealed these things to men.' How was this fact to be explained from the standpoint of the post-Homeric doctrine of 'pollution' according to which all wilful parricides were inexorably put to death? We have suggested that Homer did not understand the mysterious immunity of Oedipus, and that this immunity was derived from a Pelasgian story, based on Pelasgian legal distinctions, to the effect that Oedipus did not really know that it was his father whom he slew, and that therefore Oedipus could not be regarded as a parricide of full guilt. It is also possible to suppose that the old Pelasgian story contained a reference to a further extenuation of Oedipus' guilt, namely, a certain *provocation* on the part of Laius and his attendants; Sophocles says that Oedipus was insulted by the herald of Laius and that Laius smote him on the head with his goad.²³² Sophocles tells us also that when all the facts concerning the death of Laius had come to light, Kreon, instead of proceeding to punish Oedipus, decided to consult again the oracle at Delphi. Thus, when Oedipus, anxious to avail himself of the option of exile, asks Kreon to drive him from the land, Kreon answers ²³³ : 'Assuredly I should have already done so, did I not first desire to learn from the god what should be done.' Now if the deed of Oedipus had nothing to extenuate it beyond the fact that he did not know his father when he slew him, he would still have had to suffer the penalties of wilful murder, namely, death or perpetual exile. If, then, Kreon did not immediately proceed to punish Oedipus, but consulted Apollo a second time, this must be attributed either to the element of involuntariness or to the element of provocation, or to both these elements in the legend of Oedipus. These elements of provocation and involuntariness are most important for the legal intelligibility of the *Oedipus Coloneus*, as we shall see later.²³⁴ At present we wish to emphasise the fact that this legend, like the legend of Orestes, became, so to speak, 'Apollinised' in post-Homeric times. Such transitions are only intelligible if we assume a connexion between Apollo

²³¹ *Od.* xi. 271 ff.

²³³ *Oed. Rex*, 1438.

²³² See *Oed. Rex*, 805 ff.

²³⁴ *Infra*, Bk. III. ch. ii.

and 'pollution.' We may infer that, in the post-Homeric legend, Apollo took a lenient view of the guilt of Oedipus, from the fact that, in the *Oedipus Coloneus*, the responsibility for his continued exile is laid not upon Apollo, but upon Kreon and the sons of Oedipus, who wish to enjoy the vacant throne of Thebes.²³⁵ According to Euripides,²³⁶ Oedipus' sons imprisoned him, but Kreon drove him into exile.

In the *Orestes* of Euripides²³⁷ it is Apollo who saves Orestes from the wrath of the Argives who have condemned him to death. Apollo decrees that, when Orestes has endured a period of exile and has submitted to a trial at Athens, the Argives must accept as their king a man whom they had already deemed worthy of an ignominious death! In the *Electra* of Euripides,²³⁸ Castor and Pollux refer, by way of prophecy, to the fact that Apollo will ultimately secure Orestes' deliverance from the Erinnyes.

In the *Ion* of Euripides²³⁹ the Pythian priestess of Apollo commands Ion not to slay Creusa, who had attempted to poison him, and who otherwise would have urged in vain her plea of self-defence and the sacredness of her sanctuary.

In the *Andromache* of Euripides, Apollo is criticised for having permitted the slaying of Neoptolemus within the precincts of the temple at the hands of Orestes and the Delphians. The Messenger says²⁴⁰: 'Thus has the Lord who gives oracles to others, who is the umpire for all men of what is right, requited the son of Achilles . . . like any wicked mortal, he stores in his memory an ancient quarrel.'

Thus the conception of homicide as a pollution permeates all Greek tragedy: however various the legends, however different the localities to which they refer, they all breathe the same Apolline atmosphere. We have already²⁴¹ quoted Herodotus' opinion as to the universality of the 'purgation' rites by which the pollution of homicide was cleansed. If it be true, moreover, that the laws which regulated the historical Greek treatment of homicide were more or less identical in all the more important and advanced Greek States, would not this fact suggest that the origin of these laws must be sought,

²³⁵ Soph. *Oed. Col.* 600, 770.

²³⁶ See *Phoenissae*, 60 ff., 1626; *infra*, p. 382.

²³⁸ 1245 ff.

²³⁹ 1330 ff.

²⁴⁰ 1155 ff.

²³⁷ 1640 ff.

²⁴¹ *Supra*, p. 139.

not in the genius of occasional local legislators, but rather in the simultaneous universal operation of identical causes? One of these causes, we believe, was the doctrine of pollution.

The legends of Attic tragedy on the whole suggest a uniform system of murder-law in historical Greece. In Euripides' *Orestes*²⁴² we are told that Orestes did not follow 'the common law of the Greeks.' In the *Heracleidae*,²⁴³ Eurystheus, referring to a threat of murder on the part of Alcmena, says: 'By the laws of the Greeks, if I am slain I shall cause my slayer to be polluted.' In the *Hercules Furens*,²⁴⁴ Hercules, the slayer of his children, feels that men's doors will be closed against him in all parts of Greece, without exception. We have already²⁴⁵ referred to the possibility that a more severe code of penalties for homicide existed at Sparta than in other parts of Greece. Xenophon²⁴⁶ says that a certain Dracontius was condemned to perpetual exile for involuntary homicide. If we have here a really exceptional penalty, we must attribute it to the peculiarly military character of the Spartan State. But can we be sure that the penalty was exceptional? Plato decrees perpetual exile for involuntary slaying between strangers in any given State²⁴⁷; moreover, for slaying in a passion, which is quasi-involuntary, he decrees perpetual exile for the second offence.²⁴⁸ Xenophon does not give us sufficient details about Dracontius to enable us to regard this penalty as a definite exception. Again, in regard to Crete, we have indicated²⁴⁹ the absence of any reference to wergeld in the laws of Gortyn. This shows the influence of some universal Greek doctrine which led to its abolition. The fact that Apollo was said to have received many of his Delphic priests from Crete,²⁵⁰ and the fame of the Cretan purifier, Epimenides, in the seventh century B.C., point to the same conclusion.

WERGELD AND PRIVATE SETTLEMENT

We must now discuss more fully the question: did the pollution doctrine abolish wergeld? We can answer this question satisfactorily by merely answering another question

²⁴² 495. ²⁴³ 1010 ff. ²⁴⁴ 1282 ff. ²⁴⁵ *Supra*, pp. 130, 158.

²⁴⁶ *Anabasis*, iv. 8. 25.

²⁴⁷ *Laws*, ix. ch. 8. 154

²⁴⁸ *Ib.* ch. 9.

²⁴⁹ *Supra*, p. 12.

²⁵⁰ See Müller, *Dorians*, i. 227.

which is intimately connected with it, namely : ‘ was “ private settlement ” legal in historical Athens ? ’—‘ was it lawful for the relatives of the slain, if they so wished, to abstain from prosecution, and could they legally accept from the slayer a bribe or a gift if they so abstained ? ’ We do not deny the fact that such settlements did occasionally take place ; but if these settlements were legal, then our theory that pollution abolished wergeld cannot stand. We are glad to be able to quote the authority of Philippi²⁵¹ in favour of the illegality of ‘ private settlement,’ but as the arguments of Philippi are rejected by Glotz,²⁵² we must in turn reject the arguments of Glotz ! It is strange that Müller, who holds²⁵³ that wergeld originated in ‘ pollution,’ maintains that in historical times ‘ private settlement ’ was not valid except in cases of involuntary slaying.²⁵⁴

For the sake of clearness we will summarise our own conclusions in advance. We believe that ‘ private settlement ’ was permitted by law or custom—it was not *expressly* prohibited or permitted by any written code—whenever a ‘ release ’ from blood-guilt on the part of the victim, before death, was *formally granted*, or, in the absence of a ‘ charge,’ could be *tacitly assumed* ; but that otherwise ‘ private settlement ’ was a sin, a religious quasi-criminal offence, and must therefore have been legally invalid, in the sense that the offender was liable to prosecution.²⁵⁵ This view is not only consistent with, but is in part derived from, our theory of the incompatibility of ‘ pollution ’ and wergeld. ‘ Private settlement ’ is not, of course, wergeld in the strict sense, but it has this much in common with it, that it allowed the slayer to remain in his native State for the rest of his life. His presence was not a cause of pollution.

We have seen²⁵⁶ that the Greek religious doctrine of homicide as a ‘ pollution ’ expresses a compromise between the newly evolved power of synoekised States and the traditions of the tribes, between the ideals of an international autocratic Apollo and the claims of the Erinnyes of the slain who reflected the desires of the dead and of their relatives. It follows that

²⁵¹ *Areopag.*, pp. 148–9.

²⁵³ *Eum.* p. 123 ; *supra*, p. 112.

²⁵⁵ For conclusion see p. 213.

²⁵² *Op. cit.* p. 314 ff.

²⁵⁴ *Eum.* p. 92.

²⁵⁶ *Supra*, p. 143 ff.

whenever the laws which resulted from this compromise were observed, whenever the prescribed penalty or atonement was paid, Apollo and the Erinnyes were logically compelled to accept the 'appeasement' and to signify by their consent, in certain cases, to the ceremonial of 'purgation' that the 'pollution' of the criminal was washed away. But it was never forgotten that, in theory, the pollution of the slayer had a twofold source: that the stigma of bloodshed was, so to speak, bicellular, and was expressive of the anger of Apollo, on the one hand, and of the anger of the Erinnyes on the other. It is obvious, therefore, that a 'release' on the part of a dying victim precluded any serious anger on the part of the Erinnyes, whereas a victim's solemn command to his relatives to prosecute his slayer²⁵⁷ set in motion the entire supernatural vigour of the avenging Erinnyes. Thus in the *Eumenides* of Aeschylus²⁵⁸ the Furies tend to go to sleep and to forget until they are goaded into activity by the ghost of the slain Clytaemnestra. Hence it is correct to maintain that in the event of a formal or presumed 'release' on the part of a dying victim, the slayer was not in any real sense polluted. In such cases, the slayer may have had to undergo 'purgation' of a minor kind, one of these local supplementary 'purgations' which were intended to free the citizens from religious scruple.²⁵⁹ Purgation, we have said, was not symbolical of guilt, but rather of atoned guilt or of innocence. But in such cases the slayer was not really 'polluted.' His presence in his homeland did not anger the dead or the gods. But if the dying victim did not formally release his slayer, if he charged his relatives to prosecute, then in all cases, even in the event of justifiable homicide, the slayer was 'polluted' until he was formally purged. This purgation could not be performed by any ordinary person or at any ordinary time. The conditions of its performance were regulated by Delphic law and by State law. Once charged by the relatives of the slain, the accused had either to admit guilt or to advance a 'plea,' and the civic penalty had to be paid before purgation was permitted.

It is difficult to understand how Glotz can attribute to

²⁵⁷ See Lysias c. *Agor.* 40-42.

²⁵⁸ See 94 ff., 117 ff., 179 ff.

²⁵⁹ See Plato, *Laws*, ix. ch. 8, for greater and lesser purifications.

'pollution' a considerable influence in abolishing 'private vengeance' and in necessitating State interference in homicide,²⁶⁰ and at the same time maintain²⁶¹ that in historical State justice 'private settlement' was legal as an option for prosecution. Attic law proves that the slayer was 'polluted' during the long period of time—three or four months—which intervened between the first public accusation, at the funeral of deceased, and the trial.²⁶² He could not enter the city temples, or frequent the public places, under penalty of death. Glotz admits²⁶³ that a person who was accused but unconvicted of murder was 'polluted,' but he seems to think that the pollution could be privately purged or ignored altogether. 'Before the public accusation,' one may say, 'the slayer was not polluted.' He was perhaps not publicly known to be 'polluted,' we admit. But in reality we believe that he was polluted when the 'victim' died without 'release.' If the relatives chose to hush the matter up, this did not destroy the real 'pollution.' If the matter became known to the public, these relatives could themselves be indicted on a charge of impiety.²⁶⁴ They had broken the religious laws, the unwritten customs, of the State. They could not righteously 'settle' except in the event of 'release.'

We will now support and illustrate our views by a few quotations. Demosthenes²⁶⁵ tells us that 'if the victim (ὁ παθών) himself releases the slayer from guilt of blood before he (the victim) dies, it is not lawful for the relatives to prosecute.' This is a most important piece of evidence, although the context in which it occurs is vitiated by rhetorical exaggeration. It means, in effect, that in any kind of homicide²⁶⁶ the relatives of the slain were powerless in regard to prosecution if the dying man 'released' his slayer and did not 'charge' them to avenge him. Thus even the homicide laws of a theocratic Apollo and of centralised Greek governments depend for their operation on the will of the victim. In such an event

²⁶⁰ *Op. cit.* pp. 237–8.

²⁶¹ *Ib.* p. 314 ff.

²⁶² See Plato, *Laws*, ix. ch. 11 and ch. 12; Pollux, viii. 90; Arist. *Ath. Pol.* 57.

²⁶³ P. 428.

²⁶⁴ See *infra*, p. 181 ff.

²⁶⁵ *C. Pantaen.* 983, 20; also *c. Nausimachum*, 991.

²⁶⁶ Müller (*Eum.* p. 92) thinks this refers to manslaughter only.

the slayer was not 'polluted.' No impiety, no illegality was involved in 'private settlement' in such a case; on the contrary, to prosecute the slayer would probably have been impious. Not even a charge of involuntary homicide (which was possible in the case of simple 'forgiveness' on the part of the dying) could be brought against the slayer, if the victim 'released' him from all guilt of blood. This decree of the dying was tantamount to a 'release' in law; it did not merely reduce the charge to one of justifiable or accidental slaying. Hence the 'private settlement,' which no doubt occasionally occurred in such cases, was not so much a bribe offered to prevent prosecution as an informal offer of material retribution—a relic of the old-time wergeld traditions of tribal Greece.

In a speech of Lysias which is concerned with political or judicial murder, we are told ²⁶⁷ that one of the condemned, named Dionysodorus, summoned his brother and sister and brother-in-law to prison before he died and charged them 'and all his kindred' (*φίλοις*) to punish as a murderer Agoratus who had given the false information which led to his condemnation. Thus we see converted into a charge of wilful murder an act which ordinarily would have been regarded as political perjury. The relatives of Dionysodorus actually decided to take the law into their own hands ²⁶⁸—political ferment demands such drastic action—and they would have slain Agoratus as a criminal (*κακοῦργος*) if Anytus, the general, had not persuaded them, on grounds of public policy and expediency, to desist. The Thirty Tyrants acquitted Agoratus later, presumably because of political prejudice. The plaintiff in this speech ²⁶⁹ appeals to the Heliasts to do the pious and just thing and to condemn him to death. Thus we see how the relatives of a slain man were directed and compelled by the 'charge' of the dying. There was nothing involuntary about this case of homicide, as some writers seem to assume. ²⁷⁰ It was deliberate political murder.

Müller says ²⁷¹: 'When a verdict of manslaughter was returned it was allowable for the prosecutor and the accused to enter into a compromise on the spot, if they pleased.' He

²⁶⁷ *C. Agor.* 40–42.

²⁶⁸ *Ib.* 78.

²⁶⁹ *Ib.* 96–7.

²⁷⁰ Smith, *Dict. Gk. Ant. s.v. φόνος*, vol. ii. p. 385.

²⁷¹ *Eum.* p. 92.

admits, however, that 'in the regular mode of procedure the convict quitted his country by a certain road and at a certain time and remained absent' until he 'appeased' the relatives of the slain, 'whereupon he was permitted to return home under certain prescribed forms, and, after the due performance of sacrifices and rites of purification, he was at liberty to dwell once more in his native land.' The question of the 'appeasement' of relatives after exile in cases of involuntary homicide will come up for discussion later.²⁷² At present we are speaking of 'compromise,' or of 'private settlement,' without exile: we may note Müller's admission as to the 'regular mode of procedure.' He cites no authority for his statement about a 'compromise.' Plato uniformly insists that a period of exile was always compulsory in cases of involuntary homicide.²⁷³ 'Forgiveness' on the part of the 'dying'—as distinct from 'release,' which Plato has not in mind²⁷⁴—always reduced the charge to one of manslaughter. Hence we have argued that 'release' abolished all guilt and pollution. Speaking of 'forgiveness' Plato says²⁷⁵: 'If any person of his own accord gives an absolution (*ἀφεσις*) to anyone for such a deed let the purgations take place for the slayer as if the act had been involuntary and let there be a period of one year in exile according to law (*ἐν νόμῳ*).' Speaking of general cases of manslaughter, he says²⁷⁶: 'If anyone kills involuntarily a freeborn person, let him be purified with the same purgations as he who has killed a slave and let him not dishonour a certain ancient legend . . . hence the slayer must withdraw (into exile) . . . for all the seasons of a single year.' The legend which Plato mentions is suggestive: 'A freeman slain by violence was,' he says, 'angry with his murderer while his death was still recent . . . and seeing his slayer roaming about in the places which he himself frequented (when alive) shuddered at the thought and, sore distressed, harasses with all his might the slayer and his movements, using memory as an ally in the task.' Here we can plainly detect that minor local 'pollution' which was caused by the temporary

²⁷² *Infra*, p. 205; see also p. 198.

²⁷³ *Infra*, p. 210.

²⁷⁴ We interpret the Greek words *ἀφεσις* and *ἀφίημι* as implying 'release' when blood-guilt is entirely remitted, as in the Demosthenic passages cited on page 176. Plato, however, obviously applies the terms to 'partial release' or forgiveness.

²⁷⁵ *Laws*, ix. ch. 9.

²⁷⁶ *Ibid.* ch. 8.

resentment of the slain, and such 'pollution' could only be removed by a period of exile. There is a difference, then, between 'release' and 'forgiveness.' In the latter case the slayer was still 'polluted': the ghost has absorbed the anger of the gods which is caused by the shedding of blood. Hence we think that the relatives were not free, in such a case, to 'compound' with the slayer except at the risk of incurring the anger of the dead and of the gods. We agree with Müller's statement regarding Plato²⁷⁷—namely, that his 'scheme of criminal law is in the main based on the same principles as the Attic code.' But in his theory of the legality of 'private settlement' in cases of manslaughter Müller seems to have omitted to notice these passages which we quoted from Plato. He was probably influenced, in his judgment, by one or two passages in Demosthenes which are obviously rhetorical and which we shall presently discuss.²⁷⁸

Glötz also attaches considerable importance to such Demosthenic passages, forgetting that they are not legal documents and that they are, moreover, inconsistent with other passages from the same author. Glötz is anxious to establish the theory that *wergeld* was abolished in Athens not by Dracon, as is generally held, but by Solon, who sought to exalt the power of the State and to weaken the influence of the clans. To arrive at this conclusion, Glötz boldly assumes that a certain clause in a Draconian law, namely that which forbade the acceptance of 'ransom' from a murderer found in his home-land after conviction, was not inscribed by Dracon but by Solon.²⁷⁹ Our opinion is that neither Dracon nor Solon abolished *wergeld*, but that it had been already rendered sacrilegious by the Apolline doctrine of pollution in the seventh century B.C. The laws of Dracon do not anywhere mention real *wergeld*—they simply assume that such a system was obsolete. But the phrase *μηδ' ἀποινᾶν* in the Draconian law,²⁸⁰ which is usually but quite erroneously connected with *wergeld*, suggests, if it does not prove, what Glötz would not apply to the period of Dracon or of Solon—namely, the fact that 'private settlement' was illegal. Why should a law

²⁷⁷ *Eum.* p. 93.

²⁷⁸ *Infra*, p. 186 ff.

²⁷⁹ *Op. cit.* pp. 319–321, 363–364, p. 377.

²⁸⁰ *Dem. in Aristoc.* 629–630; see also *infra*, p. 222.

forbid the 'ransom' of a murderer's life after conviction if it permitted such a 'ransom' before conviction? Leaving aside religious considerations, which we, however, believe to be essential to the matter, and viewing the question from the standpoint of Glotz's own pet hypothesis as to the exaltation of State power,²⁸¹ we believe that the opposite procedure would have been more logical—that a State would more naturally have prohibited 'ransom' before conviction, but permitted it afterwards, when the property of the slayer had found its way into the coffers of the State, and when the State had extracted all that it could possibly extract from the unfortunate slayer! But, as a matter of fact, the 'ransom' which is prohibited by this law of Dracon was not a real 'ransom' of the slayer's life in the legal sense. It refers only to a slayer caught 'en rupture de ban.' It was merely a bribe which the slayer would be disposed to offer to any citizen whom he encountered in order to be allowed to escape from forbidden territory. His life was still forfeit if he returned again, or even if he did not succeed in escaping after he had bribed, say, one citizen, out of the total number of citizens in the State. The law says: 'It shall be lawful to kill murderers (found) in our territory . . . but not to amerce them.' The penalty for 'amercement' was 'double the amount extorted.' To our mind the law suggests the illegality of 'private settlement' rather than the abolition of wergeld! Glotz, moreover, seems to ignore the Demosthenic references to a *γραφὴ ἀσεβείας*, an indictment for impiety, which could be brought against the relatives of a slain person if they did not prosecute the slayer. We need not dwell upon the importance of a *γραφὴ* in Attic law. It denoted a most important species of public accusation, similar to our modern indictments or impeachments. Human nature being what it is, and Greek human nature being what it was, can we conceive that a Greek would have omitted to propose a 'private settlement' if it had been legal for him to do so, as an option for prosecution? Can we conceive that prosecutions for homicide would ever have occurred if such an option would have freed the relatives of the slain from liability to a charge of impiety which involved their banishment and the confiscation of their property? We

²⁸¹ See *op. cit.* pp. 377-8.

must then rather assume that the guilt of impiety would have been still incurred if the relatives of the slain accepted 'settlement' and failed to prosecute.

Glötz makes no reference to the *γραφὴ ἀσεβείας*. We agree with him²⁸² that there was no *γραφὴ φόνου* in Attic law, but we do not understand why he should credit Solon with the institution of *γραφαί* for *ὑβρις* and *κάκωσις*, but omit to mention *ἀσέβεια*. The indictment for impiety, which we attribute to Solon,²⁸³ is incompatible with 'private settlement' for homicide, which Glötz believes to have been legal in the days of Demosthenes as in those of Solon. Let us see what Demosthenes has to say of this indictment.

In his speech against Androtion²⁸⁴ a certain Diodorus says of Androtion: 'He accused me of a deed which anyone who was not of his type would have been afraid to mention, namely, of slaying my own father: he prepared an indictment of impiety²⁸⁵ not against me, but against my uncle, impeaching him for impiety in associating with one who, as alleged, had committed this crime; he put him on trial, and if he happened²⁸⁶ to be found guilty—what man would have suffered a more cruel fate than I would at this man's hands? What citizen (*φίλος*) or stranger would have ever consented to associate with me? What city (*i.e.* State) would have tolerated within its precincts a man who appeared to have perpetrated such an impious deed? None whatever.' It is noteworthy that the indictment, which is here referred to, was brought, not against the alleged parricide, but against his uncle. The reason is not, as Glötz would maintain,²⁸⁷ that parricide was not a crime in historical Athens, but that direct prosecution of homicides was limited, by a legal technicality, based on immemorial custom, to the relatives of the slain. If Glötz's theory of unrestrained 'private settlement'²⁸⁸ is assumed, what a glorious hunting-ground for unscrupulous blackmailers must Athens have been! We can conceive Diodorus' uncle approaching Diodorus with his hand outstretched and crying 'Your money or your life'! We can also conceive any outsider—there is no limit to the number—approaching the uncle

²⁸² *Op. cit.* p. 373.

²⁸³ Plutarch, *Solon*, 18.

²⁸⁴ 593.

²⁸⁵ *ἀσεβείας γραφήν*.

²⁸⁶ *συνέβη*.

²⁸⁷ *Op. cit.* p. 322.

²⁸⁸ *Ib.* pp. 314, 324, 372.

of Diodorus equally determined to 'settle' the indictment for impiety! This is much too absurd for reality, even in a modern State, not to speak of the ancient city with its ubiquitous gods and ghosts and scruples! This passage explains, incidentally, an episode in the *Euthyphro* of Plato.²⁸⁹ Euthyphro proposes to accuse his father of homicide, since a poor freeman in his employment at Naxos, whom his father had put in chains and cast by the wayside to await the decision of the Exegetae regarding the slaying of a slave by his freeman employee, had died of hunger and neglect. Socrates asks if Euthyphro is a relative of the freeman. Euthyphro says that he is not, but that he is 'polluted' by associating with his father who is a murderer, and that he is therefore bound to prosecute him. Plato, as we have said, is probably here posing a problem which the Attic legal mind would have found it difficult to solve. But the atmosphere of the dialogue is very far removed from that of 'private settlement' for homicide.

That the action of Euthyphro was from one point of view impious (*ἀνόσιος*), which is to say of doubtful legality, is suggested by another passage in Demosthenes.²⁹⁰ A nurse in the employment of the plaintiff died as a result of rough treatment at the hands of two men who came to his house to distrain his goods and chattels. The plaintiff tells how he went to the Interpreters to ask their advice. The Interpreters said that the only course which was open to him in law was 'to carry a spear in front of the funeral procession, and at the tomb to publicly inquire (*προαγορεύειν*) if the woman had any relative, and to watch the tomb for three days'! 'For the woman,' they said, 'was not akin to you, nor even a slave of yours . . . and it is to relatives and "masters" that the law assigns the duty of prosecution.' The plaintiff then looked at a copy of Dracon's laws and consulted his friends, and taking into account the fact that he was not a personal witness of the assault and could not find any witnesses that would weigh with a court, he obeyed the Interpreters, and refrained from further action. The Draconian law required, we are told, that in taking the oath in a murder charge the accuser had to state definitely in the court in what relationship he stood to

²⁸⁹ 1-6, especially see 5 E.

²⁹⁰ *C. Euerg. et Mnesib.* 1161.

deceased or whether the deceased was his slave. This technical legal condition, the demands of this legal formula, could not be complied with by the plaintiff. Hence it is doubtful if Euthyphro could have complied with them, unless, perhaps, he regarded himself as a kind of 'master' in relation to the deceased freeman.

But the indictment for impiety was based on the religious doctrine of pollution rather than on clan-technicalities connected with funerals and burial and obsolete wergeld agreements. It is an instance of unsolved conflict between these two systems which we find in the *Euthyphro* and in the speech *against Androtion*—a conflict which was in other respects mitigated by the compromise we have described ²⁹¹ in historical Greek homicide law. The indictment for impiety could be brought by any citizen against the relatives of a murdered man, if they failed to prosecute, and if the dying man had not given a 'release.' If such failure to prosecute was impious, then surely a 'private settlement' which prevented prosecution was also impious.

We will now examine two passages—one from Demosthenes, the other from Aristophanes—which Glotz quotes in support of his theory of the legality of 'private settlement.' Glotz's theory is clearly stated in these words ²⁹²: 'Il est improbable que la réconciliation ait été explicitement interdite et le silence de la loi valait une permission. Par autorisation formelle ou par tolérance, ouvertement ou tacitement l'Etat devait consacrer dans tous les cas le privilège de la famille.' The only thing, in Glotz's view, that would have forced a 'recourse to the State' was the absence of unanimity in the relatives concerning the amount for which they would 'settle.' One dissentient voice compelled a recourse to prosecution. ²⁹³

In the speech of Demosthenes *against Theocrines* ²⁹⁴ we read that a certain Theocrines whose brother had been murdered threatened to bring Demochares, the alleged murderer, before the Areopagus, unless he paid him a sum of money. The money was paid, and that was the end of it! The relevant passage reads: 'Not very long after his dismissal, his brother was slain by violence. Mark how he behaved! He made

²⁹¹ *Supra*, p. 143 ff.

²⁹³ *Ib.* p. 324.

²⁹² *Op. cit.* p. 314.

²⁹⁴ 1331 (Reiske).

inquiries as to the murderers, and having discovered who they were, he accepted a sum of money and abandoned further proceedings. He went round threatening to bring Demochares before the Areopagus until he "compounded" with the guilty parties. What an honest and trustworthy man!' Philippi's conclusion²⁹⁵ that the action of Theocrines was illegal does not convince Glotz, who inquires²⁹⁶: 'Qu'est-ce donc qui retient Démosthène de flétrir un tel pacte comme illicite?' But it is quite obvious that the action of Theocrines is presented by Demosthenes as unusual and disgraceful. The object of Demosthenes, in the speech, is to emphasise the mercenary character of Theocrines. He is more concerned with this aspect of Theocrines' action than with its legality or illegality. We may therefore answer Glotz's question by asking another: 'If this action was legal, why does Demosthenes refer to it as a disgrace?' Or, again: 'Could an act be described as illegal which was not expressly prohibited by law?' Glotz in seeking to prove that 'private settlement' was legal infers that it was legal because it is not here declared illegal! This argument seems to us invalid. Demosthenes wrote speeches for private and public litigants. Sometimes he emphasised one point, sometimes the opposite point. He does not wish to stultify himself unnecessarily. He is not a self-constituted legislator, as Plato, in his ideal world, was. He leaves the legal decision to the jury and aims merely at a victory in the suit. Moreover, we must point out, in Attic law there was a Statute of Limitations. If Theocrines kept his secret to himself, and if he had no religious scruples about the matter, he could, after a number of years, have divulged it with impunity. But Demosthenes speaks as if the whole action only took twenty-four hours! This may be excellent rhetorical skill, but it may also involve a complete distortion of facts. We admit, of course, that 'private settlements' for homicide did occasionally take place in historical Athens, as they do in modern States. The actuality of such a settlement may perhaps be inferred from this speech of Demosthenes, but certainly not the legality of it.

The second text which Glotz adduces in support of his theory is a passage from the *Frogs* of Aristophanes,²⁹⁷ in which

²⁹⁵ *Areop.* pp. 148-9.

²⁹⁶ *Op. cit.* p. 315.

²⁹⁷ 1154-1166.

Euripides criticises as a redundant expression the following Aeschylean verse ²⁹⁸ which describes the return of Orestes to Argos after his sojourn as an exile in Phocis :

ἦκω γὰρ ἐς γῆν τήνδε καὶ κατέρχομαι.

Aeschylus, in reply, denies that there is any redundancy in the verse, asserting that there is a very real difference between the home-coming of a citizen and that of an exile. Euripides, changing his ground, attacks the application of the verb *κατέρχομαι* (‘ I return from exile ’) to Orestes, because, he says, Orestes came home secretly, without having duly ‘ appeased ’ by gifts those who were competent to permit his return.²⁹⁹

It does not, says Glotz,³⁰⁰ occur to Euripides to say that no ‘ appeasement ’ was possible in the case of Orestes ; and since, in the eyes of Aristophanes, the deed of Orestes was regarded as wilful murder, therefore, Glotz argues, Aristophanes may be regarded as implying in this passage that a wilful murderer could always return to his home-land, if he happened to be abroad, provided he paid ‘ compensation ’ to the relatives of the slain !

There is a strange but very obvious error in this reasoning. Glotz has forgotten that in the early portion of the *Choephoroe*, in which the verse in question occurs, Orestes has not yet slain his mother ! At this stage, therefore, he was not a murder-exile at all. He was merely a political or a quasi-political exile. Homer and later legend are quite clear in regard to the nature of this exile. Hence, obviously, the ‘ persuasion of those in power ’ in this passage has no connexion with homicide, and is, for Glotz’s argument, irrelevant. The return of political exiles was a common occurrence in the Greece of Aristophanes and Euripides. The persuasion used in such cases may have consisted merely of some kind of promise or undertaking to obey the existing government, but it may of course occasionally have taken the form of gifts or bribes. But the ruling power at Argos which Orestes would have had to persuade consisted of his deadliest enemies, Clytaemnestra and Aegisthus. He came home without their sanction and without their knowledge ; Euripides therefore

²⁹⁸ *Choeph.* 3.

²⁹⁹ *λάθρα γὰρ ἦλθεν, οὐ πιθὼν τοὺς κυρίους.*

³⁰⁰ *Op. cit.* p. 315.

is right in his opinion that Orestes did not come home by permission of the Argive 'government.' The verb *κατέρχομαι*, which normally implies a formal and 'recognised' return, has not therefore here its normal meaning. Aeschylus is therefore technically in error in his use of this word, but he is right in maintaining that there is no verbal redundancy in the verse.

Apart from the irrelevance of this quotation, as an argument for the legality of 'private settlement,' we may point out that we have no reason for believing, as Glotz believes, that Aristophanes regarded Orestes as a wilful murderer. Aeschylus in the *Eumenides* makes the Erinnyes say so,³⁰¹ but their viewpoint is shown to be mistaken by an Athenian Court. Euripides also was aware that not only Homer but several Attic legends conceived Orestes as very different from a murderer.³⁰² In spite of the variety and the confusion which characterised the Oresteian legends, Aristophanes, Euripides and Aeschylus were probably well aware that the Homeric and legendary accounts of the exile of Orestes at Athens or at Phocis had no connexion with the penalty for homicide. We can only say of Glotz's reasoning here :

Indignor quandoque bonus dormitat Homerus.

There is another passage in Demosthenes, to which Glotz seems to attach considerable importance, but which does not in our view warrant the conclusion which he has drawn from it. In a speech *against Nausimachus*, in which an action for breach of trust is brought by the plaintiff against his guardian Aristaechnus, who had, fourteen years before, compromised the dispute by a payment of three talents, Demosthenes is naturally led, in defence of Aristaechnus (or his son) the plaintiff, to emphasise the dishonesty of proceeding with an action where a 'release' has been previously granted. Incidentally, the orator happens to refer to 'private settlements' for homicide in the following passage³⁰³ : ' This I presume you will all acknowledge, that other people have suffered wrongs before now, of a more grievous nature than pecuniary wrongs, for example, unintentional homicides,

³⁰¹ *Eum.* 317, 428, 496, 656 ff.

³⁰² *Infra*, p. 340 ff.

³⁰³ 991. Cf. also *c. Pantaen.* 983.

profane outrages and many similar offences are perpetrated ; yet in all these cases the injured parties are finally and conclusively barred when they have come to a settlement and given a "release." This rule of justice is so universally binding that when a man has convicted another of intentional homicide and clearly proved him to be "polluted," yet if he afterwards condones the crime and "releases" him he has no longer the right to force the same person into exile. Nor again where the murdered man has released his murderer before he died, is it lawful for any of the relatives to prosecute, but those whom the laws sentence, upon conviction, to banishment or exile or death, if they have been released, are by that word "release" at once absolved from all penal consequences.' This passage is repeated verbatim in the speech *against Pantaenetus*.³⁰⁴ Müller³⁰⁵ points out that both passages are 'disputed' by many scholars. He thinks that there should only be a reference to involuntary homicide.

It is of course possible that for the word ἐκούσιου (voluntary) Demosthenes wrote ἀκούσιου (involuntary). So Müller would emend the passage. But, apart from such a solution, the very fact that Nausimachus was legally entitled to sue, even after a 'compromise' or 'release,' proves that Demosthenes is rhetorical rather than logical. As the passage stands, it is in direct conflict with the law of Dracon forbidding 'amercement' after conviction, a law which we have already quoted.

We are convinced that such 'settlements' were illegal and criminal in cases of wilful murder. In manslaughter cases, at least one year's exile was necessary, with or without trial.³⁰⁶ In practice some of the relatives may have drawn up a 'release' immediately, and such relatives could not perhaps take part in expelling the slayer. Our conclusions on this question will appear more fully later.³⁰⁷ We have already referred³⁰⁸ to 'the release' which was given by the dying as a most important factor in Greek homicide-law. We also admit that 'settlements' were occasionally made, though not legally authorised, and it is clear that such 'settlements' could easily be confused with the 'appeasement' of

³⁰⁴ 983 (Reiske).

³⁰⁵ *Eum.* p. 92.

³⁰⁶ *Infra*, p. 213.

³⁰⁷ See *infra*, p. 212 ff.

³⁰⁸ *Supra*, pp. 146, 178.

relatives in manslaughter cases, especially in the pleadings of an orator.

We should contrast with this Demosthenic passage another from the speech *against Aristocrates*,³⁰⁹ in which there is reference to involuntary homicide. 'If,' he says, 'the accused be convicted and be found to have done the deed, neither the prosecutor nor anyone else has control over him, but the law alone. And what does the law command? That a person convicted of involuntary homicide shall on certain stated days leave the country by an appointed road and remain in exile until he has appeased certain of the relatives of the slain . . . above all it is right that the laws should control everybody and everything.'

Similarly, in his speech against Meidias,³¹⁰ a judge who accepted money in settlement of a prosecution for 'assault' is said to have taken no account of the laws: and another man who 'settled' a case of assault is said 'to have bidden farewell to the laws.'

As an instance of Demosthenes' rhetorical skill in the distortion of the meaning of words, we may refer to a passage in the Third Philippic.³¹¹ The question at issue was really one of treason, not of murder. A certain Arthmius of Zelea (in Asia), having distributed Persian gold for political purposes at the time of the Persian invasion of Greece, was solemnly declared *ἄτιμος* by the Athenian people. Now a decree of *ἀτιμία* for treason involved much more severe consequences than the historical exile penalty for murder. It was the sole historical survival of collective and hereditary punishment, and involved not only the traitor but also his family and all his posterity (*αὐτὸς τε καὶ γένος*).³¹² In practice, no doubt, it was but a trifling penalty to an Asiatic, like Arthmius, who had no intention of living at Athens or in the Athenian confederacy. But Arthmius was declared by this decree to be an outlaw within the territory of Attica or within the Athenian Empire. If found within this territory, he, or his descendants, could be slain with impunity. Demosthenes, anxious to illustrate the patriotism of the Athenians of former days, compared with that of his contemporaries, by showing

³⁰⁹ 63 ff.³¹⁰ 526-7.³¹¹ iii. 44.³¹² Glotz, *op. cit.* p. 465 ff.; Dem. in *Arist.* 640.

the severity with which treason was formerly punished, even in a foreigner, has recourse to the subtle hypothesis that ἄτιμος in the decree against Arthmius did not mean merely 'degraded' from civic rights but should be linked up with a verb τεθνάτω, to form a clause which means 'let him be slain with impunity.' The word ἄτιμος in this decree has, he says, the same significance as it bears in the murder-laws 'in the case of murderers for whom the legislator forbids a prosecution for homicide,' where it is said 'ἄτιμος τεθνάτω.' It is true that the word ἄτιμος could be used to mean 'unpunished,' but when the Athenians declared a person ἄτιμος, they meant by the word 'degraded' not 'unpunished.' They declared the person 'dishonoured,' or degraded from civic privileges. Moreover, in the laws of Dracon as Demosthenes quotes them the word ἄτιμος does not occur, and the adverb used to denote 'with impunity' is νηπιουεί. Plato also has ἀνατί.³¹³ Demosthenes, then, is quite capable of juggling with words and with the wording of laws, in his desire to secure a rhetorical victory. But here Demosthenes, without knowing it, weakens the very point which he desires to emphasise. A decree of ἀτιμία for treason was much more severe than any penalty in the Attic murder laws. A murder-exile could be slain with impunity, as a traitor could, if found within Athenian territory. But his descendants could not! His family could remain securely at Athens, in full enjoyment of civic rights. If the word ἄτιμος in the decree against Arthmius meant what Demosthenes asserts that it meant in the murder-laws, then it is incorrect to speak of the punishment of the traitor and his descendants (αὐτός τε καὶ γένος). Now what does Demosthenes mean by the phrase 'in cases where the legislator forbids a trial for homicide' ³¹⁴? The context gives the only possible meaning: he means, in cases where *an already convicted murderer* returned to forbidden territory and could be slain with impunity without trial.

We shall return to this question in our next chapter, when treating of manslaughter in Attic law, but we may for the present conclude, as the most probable hypothesis, that in historical Athens 'private settlement' as a means of absolution from homicide guilt was sinful and legally punishable, in

³¹³ *Laws*, ix. 871e.

³¹⁴ ὑπὲρ ὧν μὴ διδῶ φόνου δικασθῆναι.

all cases where the dying victim did not grant a 'release' and where a public prosecution was otherwise legally possible. This hypothesis, if correct, shows that amongst the Greeks, as amongst the Semites, wergeld was abolished by the religious doctrine of homicide as a 'pollution,' as an offence against supernatural beings.

Assuming, as a result of our general reasoning in this chapter, and for other reasons which will presently appear, that the historical murder laws of Greece were as universal and as uniform as the Greek purgation-rites for homicide, assuming that the novelties which they contain, in regard to their ideals of punishment, and their insistence on compulsory State trial, were not the creation of local legislators, but the product of international Amphictyonies which expressed their compacts in oracular decrees—compacts which were only gradually evolved in a compromise between local customs or desires and a new religious doctrine which was adopted from Asiatic peoples—we will now proceed to a brief colligation of the Laws of Dracon concerning homicide, and after giving such commentaries as these laws may seem to demand, we will then review the Attic murder-courts and offer an explanation of their origin and evolution.

CHAPTER II

THE DRACONIAN CODE

Restored inscription of 409–8 B.C. and author's explanation : other Draconian homicide-laws derived from Demosthenes : Plato's code confirms and supplements these data : classification of Attic homicide laws as follows : (a) those relating to accidental homicide, to death caused by animals or inanimate objects ; and to homicide by persons unknown : (b) those relating to justifiable and to justifiably accidental homicide : (c) those relating to manslaughter : (d) those relating to wilful murder : some problems suggested by these laws : origin of confiscation of property : evolution of State-execution : parricide and kin-slaying : historicity of Plato's legislation regarding homicide.

THE only direct source of evidence which we possess for the historical murder-laws of Attica—for the murder-laws of other Greek States we have no direct evidence at all—is a fragmentary inscription of the year 409–8 B.C., containing a few lines written in the old Attic alphabet, which, though 'restored' in a manner sufficiently satisfactory to render it trustworthy and intelligible, gives us nevertheless the most rudimentary information about the Attic murder-code. The real value of this inscription has been indicated by Lipsius.¹ The fragments of laws which are found on the inscription are so closely identical with the corresponding portions of the Draconian laws as they are cited by Demosthenes that they must, he says, be regarded as furnishing a convincing proof of the validity of the remaining laws which Demosthenes has cited. Now, these remaining laws are written in the Ionic alphabet, which was used by Athenian writers in the fourth century and in the latter half of the fifth century B.C., and it so happens that the date of the change in the alphabet used in Attic inscriptions, namely, the year 403–2 B.C., was also the date of what Glotz² describes as 'la grande révision législative qui signala l'archontat d'Euclide.' If, then, any changes occurred in Attic murder-law, in the period which elapsed between

¹ *Das attische Recht*, vol. i. p. 17. ² *Op. cit.* p. 377 ; Arist. *Ath. Pol.* 35.

Dracon and Eucleides, it was probably in the year 403–2 B.C. that such changes were finally incorporated in the written code. We shall see that there is no reference to the Areopagus in our fragment, but it may of course have been mentioned in the missing portion of the inscription which referred to wilful murder. Pollux and Plutarch³ state that the Areopagus was created by Solon. We shall see later⁴ what elements of truth this dictum may contain. The only change which we believe to have been made in the period from Dracon to Eucleides was the isolation of the Areopagus from the general list of the Ephetae courts.⁴ This change we attribute to Solon, and with this exception we accept the murder-laws which are quoted by Demosthenes as the original code of Dracon. We have already⁵ argued against the theory of Glotz that the clause *μηδ' ἀποιναὶν* was a Solonian innovation. The alteration which we attribute to Solon was not properly speaking a change in the murder-code, but merely a change in the distribution of pleas in the judicial system. Hence we accept the ancient tradition⁶ that 'Solon changed all the laws of Dracon except those relating to homicide.' The Solonian legislation was less severe and more humane than Dracon's code. If Solon did not alter the murder-laws, it was probably because they were, so to speak, so non-Draconian, because they did not bear the stamp of Dracon's own peculiar genius. They were, we have said,⁷ an eclectic codification of the unwritten laws of the Ephetae and the Exegetae. Religiously consecrated by their joint tribal and Apolline inspiration, they stood above the gales of Athenian political ferment. It was only in the personnel of the judicial system that a loophole was left open for political intrigue. In this respect alone was alteration easy and obvious: and in this respect alone do we suppose that alterations took place.

The original inscription of 409–8 B.C. consists of forty-eight lines, of which six are undecipherable, and nine others badly mutilated. We will give here just four of the best lines, from which the condition of the remainder may be inferred.

11. *καὶ εαμ . εκ . ρονο..ς . τ* ι
12. *καζεν δε τος βασιλεας αιτ . ο . φο* λ
13. *ευσαντα τος δ . εφετας διαγν* ε
14. *ι ε αδελφο . ε Ηνες Παπα* υ

³ Pollux, viii. 125; Plutarch, *Solon*, 19.

⁴ *Infra*, p. 269 ff.

⁵ *Supra*, p. 180.

⁶ Aristotle, *Ath. Pol.* 7.

⁷ *Supra*, p. 143.

The most important portion of the inscription, as restored by Köhler, is given by Dareste,⁸ and transliterated into the Ionic alphabet reads as follows :

11. καὶ ἔαμ μ' ἐκ προνοίας κτείνῃ τίς τινα, φεύγειν, δι-
12. κάζειν δὲ τοὺς βασιλέας αἰτιῶν φόνου ἢ ἔάν τις αἰτιῶται ὡς βουλ-
13. εὔσαντα, τοὺς δὲ ἐφέτας διαγνῶναι, αἰδέσασθαι δ' ἔαμ μὲν πατὴρ ἡ-
14. ἰ ἡ ἀδελφὸς ἡ ὑῆς ἀπάντας ἡ τὸν κωλύοντα κρατεῖν. ἔαν δὲ μὴ οὖ-
15. τοι ᾧσι, μέχρ' ἀνεψιότητος καὶ ἀνεψίου, ἔαν ἅπαντες αἰδέσασ-
16. θαι ἐθέλωσι τὸν ὄρκον ὁμόσαντας. ἔαν δὲ τούτων μηδεὶς ᾗ, κτεί-
17. νῃ δὲ ἄκων, γνῶσι δὲ οἱ πεντήκοντα καὶ εἰς οἱ ἐφέται ἄκοντα
18. κτείνειν, ἐσέσθων δὲ οἱ φράτερες, ἔαν ἐθέλωσι, δέκα, τούτους δὲ ο-
19. ἰ πεντήκοντα καὶ εἰς ἀριστίνδην αἰρείσθων. καὶ οἱ πρότερ-
20. ον κτείναντες ἐν τῷδε τῷ θεσμῷ ἐνεχέσθων
26. ἔαν δὲ τις τ-
27. ὄν ἀνδρόφονον κτείνῃ ἡ αἷτιος ἡ φόνον ἀπεχόμενον ἀγορᾶς ἐφο-
28. ρίας καὶ ἄλλων καὶ ἱερῶν Ἀμφικτυονικῶν ὥσπερ τὸν Ἀθηναῖον κ-
29. τείναντα ἐν τοῖς αὐτοῖς ἐνέχεσθαι, διαγιγνώσκειν δὲ τοὺς Ἐφέτας.
30. τοὺς δὲ ἀνδροφόνους ἐξεῖναι ἀποκτείνειν καὶ ἀπάγειν ἐν τῇ ἡμεδ-
31. απῇ, λυμαίνεσθαι δὲ μὴ, μηδ' ἀποινᾶν ἡ διπλοῦν ὀφείλειν ὅσον ἂν κ-
32. αταβλάβῃ
37. ἔαν δὲ τις φέροντα ἡ ἄγοντα βία ἀδίκως εὐθὺς ἀμυνόμενο-
38. ς κτείνῃ, νηποινεῖ τεθνάναι.⁹

This inscription has been restored, mainly, from quotations in the speeches of Demosthenes. But before attempting to translate it, we must point out that even in its restored form the inscription is archaic and obscure, and the meaning is not always certain. The first half of the inscription seems to refer to involuntary or accidental homicide. But the end of the second line, as it stands, cannot possibly be taken to refer to accidental homicide, because the verb *βουλεύειν* usually means 'to plot' or 'to resolve,' and therefore implies an element of deliberation. Wilful murder is not expressly mentioned, save in so far as the slaying of a homicide exile abroad is decreed to be equivalent to murder. There is also a reference to justifiable homicide in self-defence. But most of the fragment consists of an enumeration of the persons who

⁸ Dareste-Hassouillier-Reinach, *I.J.G.* No. xxi. ll. 10-19 (vol. i. p. 3 ff.); see also Hicks and Hill, *Gk. Hist. Inscript.* p. 113; Philippi, *Areopag.* p. 335.

⁹ Philippi, *Areopag.* pp. 335-337, proposes to restore the end of l. 12 as follows: ἡ βουλευέσως τὸν ἀεὶ βασιλεύσαντα. For ἐσέσθων (l. 18), Demosthenes gives αἰδεσάσθων, c. *Macart.* 1069. The unrestored inscription has εσεσθ .. (l. 18).

are by law entitled to share in the acceptance of gifts of 'appeasement' from an involuntary slayer: and of the judges by whom the various kinds of homicide must be decided. We do not believe that any judicial distinction is intended in the use of the two verbs *δικάζειν* and *διαγιγνώσκειν*. Both words mean, we think, 'to adjudicate.' There is no question of preliminary investigation as distinct from final decision. In regard to the second line, the restoration *ὡς βουλευσάντα* can only mean 'on the ground of having plotted (to kill).' Did the restorer mean by this clause 'attempting murder' (when death did not ensue) or 'contriving murder' (when death did ensue)? The noun *βούλεσις* can have both these meanings, but the verb *βουλεύειν* cannot, we think, denote attempts to kill. If the restorer meant 'contriving murder,' such an interpretation is open to the following objections: (1) 'contriving murder' ranked with wilful murder in Attic law, and was tried by the Areopagus, not by the Ephetae¹⁰; (2) it is rightly maintained¹¹ that the presence of *καί* at the beginning of the inscription indicates that a portion is missing, and it is natural to assume that this missing portion contained the law relating to the graver kinds of homicide, including not only wilful murder, but also contriving murder. In order to obviate such objections, Philippi abandons the verb *βουλεύειν* and proposes to read *βουλεύσεως τὸν αἰὲ βασιλεύσαντα*, 'the King-archon for the time being shall judge concerning attempted murder.' But this suggestion is open to the following objections: (1) we are compelled to render *διαγνώναι* (l. 13) 'to adjudicate finally,' and we do not think that it bears this meaning in the inscription; (2) *τὸν αἰὲ βασιλεύσαντα* is a very questionable Greek rendering for 'he who is King-archon for the time being': (3) while it is true that attempted murder was tried, in Aristotle's time,¹² in the Palladium, it has no real affinity with manslaughter. It is impossible to suppose that the 'appeasement' mentioned in the inscription could have ever been applied in cases of attempted murder. It would be absurd to compensate relatives who had lost nothing,

¹⁰ Andocides, *de Myst.* 94; Dem. *contra Conon.* 1264, 20.

¹¹ Gilbert, *G.C.A.* (Eng. trans.), p. 126; Hicks and Hill, *op. cit.* p. 114.

¹² *Ath. Pol.* 57.

and to ignore the person on whose life the attempt was made. Demosthenes definitely cites¹³ this law of 'appeasement' as referring to manslaughter. Hence, as we believe that the second line of our inscription refers to manslaughter and as *λευσαντα* (*sic*) is found in the unrestored part of the inscription, we propose to restore *μὴ βου]λεύσαντα* instead of *ὥς βου]λεύσαντα* and understanding *κτείνειν* with *αἰτιᾶται*, we translate 'if anyone accuses a person of slaying without deliberate resolve.'

We will now suggest a translation of this passage, reading *μὴ* instead of *ὥς* in the second line.

'And if a man slays a man not with intent (to kill), let him be put on trial (*φεύγειν*), and let the "Kings" judge of the causes of death, or, if anyone accuses a person of slaying without deliberation (*μὴ βουλεύσαντα*), let the Ephetae adjudicate. And the "appeasement," if there is a father or (and) brother(s) or (and) sons (of the slain), let all (accept) or let one objector hold the field: if there be none of these, let (the "appeasement" extend) to cousinship and cousins, provided all consent to be "appeased" having sworn the (customary) oath: if there be none of these (*i.e.* cousins) and if the man slays involuntarily, and the Fifty-one, the Ephetae, decide that he slew involuntarily, let ten phrateres permit his return from exile,^{13*} if they (all) agree, and let the Fifty-one select these (ten) according to birth (or rank or merit—*ἄριστίνδην*), and let (all) previous slayers be bound by this law: . . . and if any person slays a manslayer or causes (*i.e.* plots) his death while the manslayer abstains from the boundary markets and from Amphictyonic games and festivals, let him be liable to the same penalty as if he had slain an Athenian (citizen): and let the Ephetae judge the case: . . . it is lawful to kill manslaughterers or to arrest them, in our territory (*ἡμεδαπῇ*) but it is not lawful to torture them or to amerce them: the fine payable shall be twice the amercement: . . . if any person slays on the spur of the moment in self-defence a man who tries by violence unjustly to rob and plunder him, let his act of bloodshed go unpunished.'

Philippi¹⁴ finds the reference to 'the kings' in this inscription rather difficult to explain. He thinks that the

¹³ *C. Macart.* 1069.

^{13*} *ἐσέσθων* from *ἐσίστημι*.

¹⁴ *Arcop.* p. 238.

allusion can only be to archons, but he feels also that 'it seems inadmissible to assume collegiate functioning after the archonship became annual.' He therefore views with sympathy the extraordinary suggestion of Köhler, that τὸς βασιλέας means τοὺς αἰὲ βασιλεύοντας, that 'the kings' are 'those who from time to time held the office of king-archon.' The solution of this, as of other difficulties in the inscription, is, we believe, to be found in a correct analysis of the word ἄκων, which means 'involuntarily' or without intent.

Let us suppose that a man A caused the death of another man B. Obviously this event could occur either (1) in an accidental manner, without the least possible foresight or culpable neglect, as for instance in a wrestling-match or in a javelin-throwing competition: or (2) in circumstances which implied a certain amount of culpable neglect, or ἀφυλαξία, because the slayer did not take the usual or the necessary precautions—as, for instance, if a drug was administered, in illness, to B, and A did not see to it that the drug was of the proper kind: or (3) in a manner which involved a certain amount of intent or deliberation, though not necessarily 'malice aforethought,' on the part of the slayer, as, for instance, if A struck B in a drunken bout, or in a sudden fit of anger, jealousy or revenge. Plato,¹⁵ in the *Laws*, makes the clearest possible distinction between these cases, and so does Antiphon¹⁶ in his *Tetralogies*. But the Greek words ἄκων and ἀκούσιος were applied indiscriminately to all three cases!

The Greeks of historical times actually put on trial inanimate objects which had slain a man. Why? Was it because these objects were regarded as polluted and it was necessary to discover the extent of the pollution? We do not think so, for such objects were either polluted or they were not. There could have been no question of degrees of pollution. The purpose of such a trial was rather, we think, to inquire whether the objects were guilty or not. But why was this question of such importance? Clearly because there was a human, as distinct from a divine, interest in such trials. We suggest that these trials were instituted primarily in order to establish the innocence of an accused man. In Greek law, unlike modern law, it was necessary for a man to prove

¹⁵ ix. ch. 9; *infra*, p. 210 ff.

¹⁶ *Tetralogies*, ii. 4, iii. 2, iii. 3.

his innocence. He could only do this, very often, by proving that somebody else, or something else, was guilty. We do not agree with Müller¹⁷ and Philippi¹⁸ in regarding these trials (*δικαὶ ἀψύχων*) as sham trials. Presided over by five 'kings,' as Aristotle¹⁹ assures us that they were, they cannot have been so altogether meaningless and absurd. They were, we think, almost as important as a modern Coroner's inquest. Now, who, we may ask, were the five 'kings' who sat at the Prytaneum 'murder' court in the time of Aristotle? They were, simply, the King-Archon, and the four Phyllobasileis, or Tribe-Kings, who still survived as the religious and judicial representatives of the old Ionian tribes of Attica. These kings are therefore the aristocratic descendants of the Elders who 'sat on smooth stones in a sacred circle,' in the Pelasgian Age.²⁰ The Prytaneum, as Glotz²¹ points out, was the oldest court at Athens. Coulanges²² connects this court with the worship of the ancestral-hearth; it was, he thinks, the divine 'hearth-stone' of the nation, the source of its vitality, the symbol of its immortality. Yet this court Müller and Philippi regard as a mock or sham-court, in which a number of respectable but unintelligent nobles persisted in upholding the obsolete traditions of a ridiculous past!

We believe that 'the kings' of the Prytaneum Court are identical with 'the kings' of our Draconian inscription. The first two lines of the fragment refer, in our view, to accidental slaying, in which there was no degree of guilt attaching to the human agent, but in which it was necessary to prove that the guilt was attached to an animal or an inanimate object. We think it quite probable that such cases were tried at the Prytaneum.²³ We may go so far as to say that such cases were the *raison d'être* of the survival and the historical importance of such a court.²⁴ The legislator, in our inscription, says: 'If a man slays another without intent, let him be put on trial, let "the kings" judge of the causes of death' (*δικάζειν αἰτιῶν φόνου*).

We shall discuss²⁵ later the function of the Ephetae judges

¹⁷ *Eum.* p. 141. ¹⁸ *Arcop.* p. 16.

²⁰ Homer, *Il.* xviii. 500.

²² *Op. cit.* pp. 32-40, 173, 439.

²⁴ See *infra*, p. 204.

¹⁹ *Ath. Pol.* 57; *infra*, p. 250.

²¹ *Op. cit.* p. 190; *supra*, p. 92.

²³ See *infra*, pp. 201 ff; 256.

²⁵ *Infra*, p. 263 ff.

who are mentioned in this inscription as collaborating with the kings in the judicial investigation of homicide-guilt, and we shall suggest an explanation of the fact that they were invariably fifty-one in number.²⁶ In regard to the adverb *ἀριστίνδην*, which means, in general, 'according to excellence,' we agree with Philippi²⁷ that in the context it refers to birth rather than to social rank. The selection of the phrateres would probably have been made from 'brethren' who were not kinsmen of the slayer, but merely related by ties of 'affinity' or of local contiguity with him. Plato²⁸ suggests that in certain cases of homicide the judges of guilt (and probably therefore of atonement) should not be akin to the criminal. The fact that the father and the brothers (we assume that the singular form *ἀδελφός* includes all the brothers) and the sons of the slain could, if unanimous, have accepted 'appeasement' and have legalised the manslayer's return from exile, shows how far from, and yet how near to, the wergeld customs of Pelasgian days were the historical murder laws of Greece. Yet here we have not wergeld proper, but only a survival, a reflection, of its ancient vigour. Nothing could show more clearly than this law does the validity of our theory²⁹ which finds in a 'compromise' between different forces the origin of the historical homicide-code of Greece.

Glötz³⁰ holds that the objection of a single relative to 'appeasement' could neutralise the will of the other kinsmen because, if he were obdurate, he could prevent the unanimity which was required by law for such return. But we shall argue, later,³¹ that while the relatives had considerable legal powers if they were unanimous, they were probably subject to superior control if they disagreed. It is difficult to suppose that one bitter enemy amongst the relatives of the slain could, *in practice*, have imposed a penalty of perpetual exile for manslaughter.

We have discussed³² the theory of Glötz that 'private settlement' was legal, even for wilful murder. How can Glötz reconcile such a theory with this Draconian law which provided for³³ a trial and a verdict even in cases of accidental

²⁶ *Infra*, p. 268.

²⁸ *Supra*, p. 85 f.

³¹ *Infra*, p. 209 f.

²⁷ Philippi, *Areop.* pp. 138-9.

²⁹ *Supra*, p. 143 ff.

³² *Supra*, p. 174 ff.

³⁰ *Op. cit.* pp. 311, 324.

³³ But see *infra*, p. 213.

slaying? According to our interpretation of the restored inscription, the relatives of the slain may not always agree, but the kings and the Ephetae must adjudicate in each case.

Glötz suggests,³⁴ further, that Dracon first introduced the distinction between murder and manslaughter. Is this the view which is suggested *prima facie* by the restored inscription? To us it seems quite obvious that the inscription assumes, as a familiar fact, an already existing distinction, not merely between murder and manslaughter, but also between manslaughter and accidental slaying. If the distinction appeared as a legal innovation in the Draconian legislation, surely such a distinction would have received some emphasis, since it would have been necessary to enlighten an uncivilised public opinion; surely the definitions of the various kinds of homicide would have been more clearly marked and the penalties more clearly indicated.

Since the Draconian inscription has been restored from quotations in Demosthenic speeches, we shall turn to those speeches for a more complete account of Attic homicide law. But the Demosthenic references must be supplemented from other sources—especially from Plato's penal code.

HOMICIDE LAWS IN PLATO AND DEMOSTHENES

If we accept the opinion of Coulanges³⁵ that the synoekism of Attica did not abolish the local prytanies and magistracies, it will be readily conceded that the Athenian city courts, that is, the Attic State courts, did not necessarily adjudicate in all cases of homicide. Owing to the civic and religious aspect of wilful murder and kin-slaying—crimes which involved the penalty of death or the confiscation of property—we may feel certain that the State courts had exclusive jurisdiction in such cases.³⁶ But we cannot be sure that the same principle applied to manslaughter and minor degrees of guilt, except when such deeds occurred between parties who had only one civic bond between them, namely, the political union of the State. Most frequently, we admit, the parties involved would

³⁴ P. 302; *supra*, p. 53.

³⁵ *Op. cit.* p. 173.

³⁶ See *supra*, pp. 82, 93.

be of such a kind. The rise of political democracy and of a new nobility of wealth led to the accumulation, in the cities of Attica, of a vast multitude of persons who did not belong to any of the old tribes or religious corporations.³⁷ The common worship of the clan, the phratry and the tribe did not receive their allegiance. Hence, probably, the courts of such organisations would not, even if they could, adjudicate in their case. But there survived in Attica, all through the historical era, families who still belonged to these more primitive groups. They were the old nobility, the country gentry, scattered over rural Attica,³⁸ who continued to obey and, where possible, to exercise the old jurisdictions of the clan, the phratry, and the tribe. We have shown that local tribal courts still functioned, with State-sanction, in historical Attica.³⁹ We have quoted a passage⁴⁰ from Plato which suggests that some such local courts had power to condemn to death a person who maliciously wounded one of his parents.

We agree with Müller⁴¹ and Coulanges,⁴² in opposition to Glotz⁴³ and Philippi,⁴⁴ in the view that Plato's *Laws* are based, in the main, upon the Attic legal codes. There are certain points in which Platonic law seems independent of Attic law. Are these variations to be attributed to the fancy of an idealist or are they rather a supplement, an incorporation of local and tribal laws which the State codes did not mention but always presupposed? So far as homicide at least is concerned, we prefer the second alternative: and we shall give at a later stage the reasons for our preference.

In describing the trial of inanimate objects and of animals which were guilty of human bloodshed, Plato says⁴⁵: 'If a beast of burden or any other animal shall kill any person (except in a public contest) let the relatives (of the deceased) prosecute the cause of death: and let the wardens of rural areas (*ἀγρόνομοι*) upon whom . . . the relatives shall impose this task, decide upon the matter: and let them destroy the animal (if) condemned and cast it beyond the boundaries (of the State). If any inanimate object deprives a person of life (except lightning or such god-sent bolt . . .) either by

³⁷ Coulanges, *op. cit.* pp. 169-176, 252, 360, 367, 376.

³⁸ *Ib.* p. 331.

³⁹ *Supra*, p. 88.

⁴⁰ *Supra*, p. 85.

⁴¹ *Eum.* p. 93.

⁴² *Op. cit.* p. 105.

⁴³ *Op. cit.* pp. 180, 234, 537, 594.

⁴⁴ *Areop.* p. 148.

⁴⁵ *Laws*, ix. ch. 12.

the person falling upon it or by its falling upon the person, let the nearest of kin appoint the nearest neighbour to act as judge, and (thus) free from pollution himself and his whole kindred, and cast the condemned object beyond the boundaries.' There is no mention of the Prytaneum Court or of the Tribe-Kings. We can explain the omission by supposing that Plato is referring to local courts and local cases of bloodshed, in which the relatives had not to go outside their immediate neighbourhood to obtain jurisdiction. The ancient phratry was an assembly of local clans: neighbourhood was the essential factor in the bond which the phratry religion represented. The 'nearest neighbour' in this quotation would have been a member of the phratry, if not of the clan, to which the slain person belonged. The duty of prosecution which is here referred to was no sham duty ⁴⁶; it was a serious religious obligation. Failure to prosecute would have 'polluted' the relatives of the slain.

So far there is no question of any human guilt. But such a question might have easily arisen. In the Hebrew murder-code,⁴⁷ if an ox gored a man to death, it was necessary to inquire whether the ox had been 'let out' by the owner, and whether the ox was previously 'known to be dangerous.' If so, the owner could have been put to death, unless he ransomed his life. Let us suppose, furthermore, that the object had not 'fallen,' but was such that it must have been 'thrown.' Two cases might now arise: (1) the 'thrower' might confess that he threw the object, say, a stone or a piece of wood, but at the same time deny that he threw it with the intention of hitting, much less, of killing, any person: or (2) the 'thrower,' guilty of intent to kill, might escape undetected, perhaps concealed by a wall or a boulder or a shrubbery, from which he had hurled the fatal missile. Thus, the trial of inanimate objects, and also, but to a less extent, the trial of animals, might have had a close connexion on the one hand with the question of accidental homicide, committed by a human agent, and on the other with the question of 'murder by persons unknown.' Upon the precise circumstances of each case would have depended the question whether local magistrates

⁴⁶ See, e.g., Müller, *Eum.* p. 142, and *supra*, p. 197.

⁴⁷ *Exodus*, xxi. 28-36.

and tribunals would have possessed jurisdiction in the matter, or whether it would have had to be referred to the central State authority at Athens. But to this same authority would naturally also have fallen the decision as to the guilt of animals or objects which had caused the loss of human life within the city of Athens and its environs : and hence we can understand why the central Prytaneum court had to adjudicate not only upon guilty animals and inanimate objects, but also, and with much more serious possibilities, upon murder by persons unknown.

In the case of objects which could only have proved fatal if they were thrown by a human agent, a verdict of acquittal, in regard to such objects, would have logically involved a verdict of murder by persons unknown ; for, if we suppose that the object was accidentally thrown, it is probable that the thrower would have come forward and established the blood-guilt of the object concurrently with his own innocence. Demosthenes⁴⁸ says in regard to the Prytaneum court : ' If a stone or piece of wood or iron or anything of the kind falls upon and strikes a man and we are ignorant who it was that threw it, but know and have in our possession the instrument of death, proceedings are taken against such instruments here.' Plato asserts that the objects mentioned were prosecuted by the relatives of the slain : but may we not also assume that a man who had thrown one of these objects without malicious intent, and who was accused of murder or manslaughter, would have lodged an accusation against the ' object ' at the preliminary inquiry⁴⁹ before the King-Archon, that is, at the Prytaneum ? If the Prytaneum found the object guilty, would not the verdict have prohibited any further proceedings ? If, on the other hand, the object was clearly hurled by a human agent with malicious intent, and if the agent was unknown, proceedings, of a most formal kind, were taken against the unknown slayer.

Similar proceedings would of course be taken if there was no ' object ' involved, as, for instance, in case of death by strangling. Such proceedings are thus described by Plato⁵⁰ : ' If anyone,' he says, ' is found dead and the murderer is not

⁴⁸ *In Aristoc.* 645. Cf. Pausanias, i. 28, Aristotle, *Ath. Pol.* 57.

⁴⁹ ἀνέκρισις.

⁵⁰ *Laws*, ix. ch. 12.

known, and is not discovered by careful search-parties, let there be proclamation against the murderer as in other cases, and let the heir-at-law (*i.e.* the nearest relative of the deceased) proclaim in the market-place that the murderer, whoever he is, must not, since he is guilty of bloodshed, set foot in any sacred place in his native State or in that of his victim, or if he does, and he is discovered and identified, he shall be put to death and cast unburied beyond the boundaries.' We have already pointed out ⁵¹ that the object and purpose of trials for homicide in Greece was not so much the establishment of guilt, as it is in modern States, but rather the establishment of innocence. Now, our last quotation from Plato suggests that a man who came to be suspected of homicide some time after the crime was committed, and who was never formally prosecuted and convicted, could, nevertheless, be put to death! But we shall see ⁵² that one refuge still remained to the 'unfortunate wretch.' He could have pleaded innocence, in the presence of the avengers, and this plea compelled *ipso facto* a recourse to trial: he could of course be arrested on the spot and imprisoned, but he could challenge a verdict at a court of summary jurisdiction, the prison court, known as 'the Eleven,' ⁵³ and if he proved his innocence to the satisfaction of more than four-fifths of his judges, his accuser paid a fine of one thousand drachmae! Thus, he could not be slain on the spot by the avengers if he pleaded innocence: but unless he proved that he was innocent he was ultimately put to death.

Aristotle may be taken to suggest that there was no essential connexion between the trial of inanimate objects and the verdict of murder against a person unknown. He says ⁵⁴: 'if the name of the homicide is unknown, the indictment is prosecuted in general terms against the unknown author'; but in the next line he adds: 'The King-Archon and the Tribe-Kings have competence in indictments against lifeless objects and the brute creation.' The juxtaposition of such references is sufficiently significant. Pollux ⁵⁵ is more definite: 'The Prytaneum court,' he says, 'adjudicates concerning slayers if they are unknown, and also concerning lifeless objects that have fallen and caused death.'

⁵¹ *Supra*, p. 196.

⁵³ οἱ ἑνδεκα.

⁵² *Infra*, p. 258 ff.; Arist. *Ath. Pol.* 52.

⁵⁴ *Ath. Pol.* 57.

⁵⁵ viii. 120, also viii. 90.

Though none of these authorities say anything to support, neither do they say anything which refutes, our opinion that the Prytaneum court could also try cases of 'accidental' slaying in which a person accused of manslaughter pleaded an entire absence of neglect ⁵⁶ or passion or intent. Our view is however rendered probable by the fact that preliminary inquiries in homicide cases were made in this place which, in addition to being a court, was also the official residence of the King-Archon and of the Prytaneis ⁵⁷; but the most cogent argument in favour of our hypothesis is to be found in the first two lines of the Draconian inscription if our interpretation of these lines is correct. We fail to see how the Draconian reference to 'kings' as 'the judges' in cases of homicide committed 'without intent' ⁵⁸ can be otherwise satisfactorily explained.

If it be objected that pleas of 'accidental' homicide were regularly tried at the Palladium court, ⁵⁹ we may reply that the proper function of this court was subsidiary or supplemental to that of the Prytaneum. In the Palladium the accused in his plea denied, indeed, any guilt, but he would have found it difficult to prove his innocence unless he could transfer the guilt to another person. In the Prytaneum, as we conceive it, he had often an opportunity of laying the blame upon an inanimate instrument of death. Such a plea of accidental slaying involved no question of human guilt, as the accusation was centred upon an inanimate 'object.' Again, whenever the plea of the accused differed from the charge of the accuser, it was the duty of the King-Archon to decide on the probabilities of the case, before he relegated the trial to its appropriate court. ⁶⁰ If, then, a person accused of murder or manslaughter could advance a plea of accidental homicide by accusing an inanimate object, the Prytaneum court adjoining the official residence of the King and the Prytaneis would have been at the immediate disposal of the defendant. No long period of time, such as ordinarily had to elapse between formal accusations and homicide trials, preceded the trials at the Prytaneum; and we may infer from Plato's account that the verdict of 'death by persons unknown' was normally

⁵⁶ ἀφυλαξία. ⁵⁷ Paus. i. 3. 14; Plato, *Euthyphro*, 2; Pollux, viii. 90.

⁵⁸ μὴ ἐκ προνοίας.

⁵⁹ Aristotle, *Ath. Pol.* 57, 3.

⁶⁰ *Ib.* 57, 2.

brought in by the Prytaneum court before any formal proclamation of the unknown murderer was made by the relatives of the slain.

INVOLUNTARY HOMICIDE

In regard to pleas and charges of manslaughter, we hope to show that there is a very substantial agreement amongst the ancient authorities. Once more ⁶¹ we must call attention to the possibility of local as distinct from central jurisdiction. Demosthenes ⁶² quotes a law of Dracon relating to the 'appeasement' of the relatives of the slain, which is practically identical with the law which we have quoted from the restored inscription. 'Proclamation to (or against) the slayer shall be made in the market-place (by all relatives of deceased) within the degrees of cousinship and by cousins; in the prosecution there shall act jointly with these, the sons of cousins, the sons-in-law (*γαμβρούς*) and the fathers-in-law (*πενθερούς*), the cousins-in-law, the sons of such cousins and the phrateres. If "appeasement" is prescribed (*δέη*), if there is a father or (and) brother(s) or (and) sons, let all (these) be appeased or let one objector hold the field: if there are none of these, and (the accused) slays involuntarily, and the Fifty-one, the Ephetae, decide that he slew involuntarily, let ten phrateres decide about appeasement, if (all) consent. These let the Fifty-one choose according to birth (or merit).' We give below ⁶³ the Greek version of the latter portion of the law, so that it may be the more easily compared with the corresponding portion of the Draconian inscription. In this inscription, there are two lines which are not found in Demosthenes, namely those which refer to the rôle of the 'cousins' in accepting 'appeasement.' We must not, however, conclude that the cousins had ceased to have a voice in 'appeasement' in the time of Demosthenes,

⁶¹ See *supra*, pp. 88, 200 ff.

⁶² *C. Macart.* 1069; *ἐντὸς ἀνεψιότητος* is usually interpreted 'nearer than cousins': we read *ἀνεψιούς* instead of *ἀνεψιοῦ*; as the word recurs, we translate it, in the second instance, as 'cousins-in-law': we interpret *ἀνεψιαδούς* as sons of female cousins.

⁶³ *ἐὰν δὲ αἰδέσασθαι δέη, ἐὰν μὲν πατὴρ ᾖ ἢ ἀδελφὸς ἢ υἱεῖς, πάντας ἢ τὸν καλύοντα κρατεῖν. ἐὰν δὲ τούτων μηδεὶς ᾖ, κτείνῃ δ' ἄκων, γυνῶσι δ' οἱ πεντήκοντα καὶ εἰς ἢ οἱ ἐφέται, ἄκοντα κτεῖναι, αἰδεσάσθων οἱ φράτορες ἐὰν θέλωσι, δέκα. τούτους δ' οἱ πεντήκοντα καὶ εἰς ἀριστίνδην αἰρεσθων.*

or from the year 403/2 B.C. onwards, or in Solon's time. We are convinced that the omission is due either to the negligence of a scribe or to the deliberate excision by Demosthenes of unnecessary elements of law in a legal quotation which included extracts from different laws, most of which are only remotely relevant to his main purpose in the speech. It would be absurd to suppose that a legal innovator jumped from the 'small family' to the neighbour-brethren (phrateres) and ignored the cousins in an enactment involving the transfer of property which constituted 'appeasement.' Surely if any change were made in the personnel of the recipients, the 'neighbours' would have been first omitted. And we cannot suppose that cousins had become obsolete since Dracon's time!

The formal proclamation of a charge of manslaughter against the accused was the initial act of the 'prosecution' which, after a period of inquiry, after examination of witnesses, and after various other formalities, ultimately culminated in the formal trial of the accused at the Palladium court. But, as it stands, this quotation from Demosthenes suggests, *prima facie*, that trial could be dispensed with if the deceased had near relations who unanimously consented to accept 'appeasement': and that it was only in the absence of relatives that a trial took place, after which the phrateres, who were merely neighbours, negotiated the appeasement. But this *prima facie* inference arises from the clumsy and unscientific wording of the law. That the inference is logically invalid is obvious from the simple fact that, in the absence of relatives of the deceased, the slayer could not be tried at all! When the law says 'if there are none of these,' it must be taken to mean 'if none of the groups which are privileged to decide about appeasement can be brought to unanimity.'

It is an extraordinary thing, that in this Demosthenic citation of the law relating to manslaughter there is no *certain* reference to the penalty of exile. Are we to assume that such a penalty was not legally compulsory, that it was merely a fortuitous eventuality which depended entirely on the attitude of the relatives to 'appeasement'? Are we to suppose that if all the relatives concerned agreed to be 'appeased' immediately after the trial and the verdict, the manslayer could have

remained at home precisely as in the old wergeld days? We have no doubt that so far as the relatives of the slain were concerned, he could have remained at home. But could he have been admitted to purgation? Was he not 'polluted' if the dying man did not 'release' him? Could he have ignored the anger of the gods and of the slain? The laws of Dracon do not directly assist us in answering these questions: on the contrary, by their obscure wording they suggest frequently the wrong answer. But we have seen⁶⁴ that these laws can only be explained as a 'compromise.' In the wergeld system of tribal Greek societies in pre-historic days, there was a regular and scientific method of 'appeasement' which, in most kinds of homicide, was recognised as a solvent of the feud. But in the Draconian code 'appeasement' appears in a degenerate and insignificant aspect. It is subordinated to other penalties which are not stated with any degree of emphasis, for the simple reason that they were universally familiar. All the arguments which we have put forward in support of our theory of a 'compromise' in Attic law compel us to assume that exile was an essential ingredient of the penalty for manslaughter. Such an assumption is implied in the reading *ἐσέσθων* (let them permit to return) occurring in the Draconian inscription. Demosthenes, unfortunately, has *αἰδεσάσθων*, which refers merely to 'appeasement.' As we should have expected, Glotz⁶⁵ and Müller⁶⁶ interpret this Demosthenic reference as if it were a logical scientific document: and they accept the *prima facie* inference that a person accused of manslaughter could, as soon as he was publicly proclaimed and banned from all public and religious intercourse, avoid the ordeal of a trial and the punishment of exile by simply taking some money with him to the house of the father, brother and sons of deceased; if he succeeded in securing a 'settlement' and procured a 'legal release,' he could have quietly resumed his ordinary occupations! This interpretation, which we have already rejected,⁶⁷ is inconsistent with other passages in Demosthenes and in Plato which we shall now discuss. While we admit that this law of Dracon does not, unfortunately, mention the exile penalty for manslaughter as an obvious and incontrovertible fact, yet

⁶⁴ *Supra*, p. 143 ff.

⁶⁵ *Op. cit.* pp. 314-316, p. 324.

⁶⁶ *Eum.* p. 93.

⁶⁷ *Supra*, p. 174 ff.

we insist that it does mention trial as a normal concomitant. The Ephetae are there, first and last. The Ephetae must decide the degree of guilt: they must decide that the slayer slew involuntarily: they must in the absence of relatives or in the event of their disagreement select the 'phrateres' according to birth or merit. This at least is very different from 'private settlement.'

Demosthenes⁶⁸ quotes another law of Dracon regarding manslaughter, as follows: 'If anyone shall pursue or plunder beyond the civic boundary any of those slayers who have gone into exile and whose property is not confiscate to the State, he shall incur the same penalty as if he did so inside our boundaries' (ἐν τῇ ἡμεδαπῇ). Fortunately we possess Demosthenes' explanation of this law which, because of its peculiar expression, requires some such explanation. The word ἐπίτιμα, in reference to property, is opposed to ἄτιμα and means 'not confiscated.' Hence, the phrase 'Slayers whose property is not confiscated' must refer, says the orator, to 'involuntary slayers,' because the property of wilful murderers is confiscated to the State. Thus this Draconian law, instead of employing the adjective 'involuntary' (ἀκούσιος) as a predicate of 'slayers,' uses two clauses to describe what a single adjective would have described. Are these two clauses, then, to be regarded as definitive; as concerned with qualities which normally and universally characterised involuntary slayers? Are involuntary homicides, as a class, defined as 'those manslaughterers who have gone into exile and whose property is State-guaranteed' (ἐπίτιμα)? Or are we rather to suppose that there were two classes of involuntary homicides, and that this law refers to only one of these classes—that in some cases, as Glotz and Müller conceive the matter, the slayer bribed the relatives of the slain, and avoided all further trouble; and, in other cases, he went into exile? In our opinion this quotation suggests that all involuntary slayers went into exile for a period of time. Müller holds⁶⁹ that the duration of this period of exile was not fixed by any law: that the slayer remained in exile until such time as the relatives accepted 'appeasement.' We shall discuss this opinion more fully later, but we may say here that it seems very strange

⁶⁸ In *Aristoc.* 634-5.

⁶⁹ See Müller, *Eum.* p. 93.

that the State should have guaranteed protection for the property of the slayer, and should, at the same time, have had no voice in determining the limits of his period of exile, no influence in constraining the relatives of the slain to accept 'appeasement.'

Speaking of involuntary homicide, in another passage, Demosthenes says ⁷⁰: 'If the accused be convicted and be found to have done the deed, neither the prosecutor nor anyone else has control over him, but the law alone. And what does the law command? That a person convicted of involuntary homicide shall on certain stated days leave the country by an appointed road and remain in exile until he has appeased certain ⁷¹ of the relatives of the slain (*τινα τῶν ἐν γένει τοῦ πεπονηθότος*): then it permits him to return, not anyhow, but in a particular manner, ordering him to sacrifice and be "purged" and giving other directions which he must carry out. Rightly, men of Athens, does the law prescribe all this. It is just to make the penalty of involuntary homicide less than voluntary, and it is right to prescribe exile guaranteeing (a person) a secure exodus, and for the returning exile to free himself from tabu and be cleansed by customary rites; above all it is right that the laws should control everybody and everything.' In this passage we find the usual obscurity of language and even apparent discrepancies.

Is it suggested that if the manslayer is not accused and convicted, the law has no control over him? Glotz and Müller would find in such quotations a proof of their theory of the legality of 'private settlement.' But it is absurd to examine as it were microscopically such passages as this. They must be interpreted, as far as possible, in the light of other parallel references, and accepted or rejected according to the criterion of consistency. We admit of course that Demosthenes is not always consistent; he was essentially an orator, and as an orator he placed rhetoric before logic, persuasion before truth. But in legal quotations he had to respect the legal knowledge of his audience. Hence such quotations contain of necessity an important element of truth. In the passage which we have just cited there is an apparent discrepancy which militates somewhat against its logical value. We may

⁷⁰ In *Aristoc.* 643-4. ⁷¹ Glotz takes this word too literally, *op. cit.* p. 311ff.

ask: 'How can the law be said to be master of everybody and everything if it guarantees to the relatives of the slain the right to refuse "appeasement," even if there be only one dissident?' A law of Dracon prescribed that 'all must agree or let one objector hold the field.' Was not this objector, then, *κύριος τοῦ ἀνδροφόνου*? What control had the law over such an objector? On the very face of it, therefore, this statement of Demosthenes seems inconsistent with itself! But perhaps Plato will help us to solve the problem.

We have already ⁷² quoted Plato's account of the penalty for manslaughter. The legend, which he mentions, 'of priests of old' concerning the temporary anger of the dead shows the religious significance which the exile penalty possessed for Plato: he understood the meaning of the 'customary rites' of cleansing and purgation which the manslayer had to perform on his return. In his penal code, Plato differentiates between different degrees of guilt in involuntary homicide: and it is significant that the penalties vary correspondingly—not in the extent of the 'appeasement,' but in the duration of the period of exile. Thus he says ⁷³: 'If anyone kills a freeman in a passion, let him be of necessity an exile for two years.' In this case there is an element of guilt, but there is no deliberation or intent to kill. He goes on to say: 'He who in a passion but with a certain degree of intent (*μετ' ἐπιβουλῆς*) slays a person, . . . let him be an exile for three years . . . being punished during a longer period because of the greater seriousness of his passion.' 'It is difficult,' he continues, 'to give laws on such matters with accuracy. Of all such matters, therefore, it is right for the guardians of the laws to have cognisance: and when the period of the exile shall have expired for each offender, it is right to send twelve judges to the civic boundaries who having considered still more clearly meanwhile the condition (or conduct—*πραξίς*) of the exiles, will be the final arbiters (*δικαστάς*) of the "appeasement" and their return home from exile: and let them abide by the decisions of these magistrates; and if, after returning from exile, anyone of these commits again the same offence, let him be exiled and never return: if he returns let him suffer in the same way as if a stranger returns' (*κατὰ τὴν τοῦ ξένου*

⁷² *Supra*, p. 178.

⁷³ *Laws*, ix. ch. 9.

ἄφιξις). Here we have a very different picture from that which the theories of Glotz and Müller and some Demosthenic passages suggest. There is question of manslaughter, but there is no reference to the power of wrangling relatives to prevent the exile's return. On the contrary, it is stated that the 'appeasement' was controlled by judges who may have been *phrateres*, but were probably not kinsmen of the slayer. The last line in the passage refers to a law which we have already ⁷⁴ mentioned, namely that which decreed perpetual exile for manslaughter committed between strangers in any given State. The penalty for 'returning' in such a case, that is, for *rupture de ban*, was death.

In a passage which refers to a case of kin-slaying, in which the dying man 'forgave' his slayer (without, however, granting a 'release'), Plato says ⁷⁵: 'If any person of his own accord absolves anyone for such a deed, let the purgations be made for the slayer as if his act had been involuntary, and let one year be the term of his absence from the country according to law.' The theory of the legality of 'private settlement,' before or after trial, cannot be reconciled with this quotation. The phrase 'according to law' suggests that Plato refers to actual Attic law, and not to an ideal law of his own creation.

Plato adds that in such a case the slayer can never resume his ordinary domestic life, even though he recovers his civic status. Similarly, for the slaying in a passion of a husband by his wife, or of a wife by her husband, the penalty prescribed is three years' exile, but such persons, even though not akin in blood, cannot return home to share in common domestic rites with their children, or to eat at the same table. In this law we see clearly the operation of a local or domestic 'pollution' which debars the slayer from his family hearth, and which is quite distinct from the civic pollution which debars him from certain definite States. It is important to observe that with the local or domestic pollution no civic or international law has ever interfered; whereas civic pollution has been regulated by law according to the varying degrees of guilt, and the claims of the relatives to 'appeasement.'

Plato implies that one year was the normal period of

⁷⁴ *Supra*, pp. 163, 173.

⁷⁵ *Laws*, ix. ch. 9.

exile for manslaughter. The Greek verbs ἀπειναντίζειν ⁷⁶ and ἀπειναντεῖν convey the same implication. Can this fact be reconciled with the law of Dracon? We believe that it can, but only by distinguishing between theory and practice, between local and central courts, between local and central religion.

Plato shows how local judges would have solved the difficulty caused by recalcitrant relatives. We have seen ⁷⁷ that Plato decrees perpetual exile for manslaughter between strangers. But exile from what State? Surely it was only from the State in which the deed took place: and the reason for this penalty was probably the fact that the relatives of the slain did not live in the State where the deed took place: and hence no 'appeasement' of these relatives could formally admit him to that State, though he could be admitted through 'appeasement' to his native State, if the slayer and the slain were both citizens of the same State. Thus the tendency of the pollution doctrine, apart from the claims of the relatives of the slain, was to exact perpetual exile for manslaughter. Plato decrees that any citizen had the right to prosecute a stranger for manslaughter, but not that he had a right to accept 'appeasement.' ⁷⁸ Hence, by a strange paradox, the relatives of the slain provided a medium by which the man-slayer regained his civic status. Yet, in the case of involuntary kin-slaying, the slayer could never re-enter his home! We believe that these decrees are not Platonic creations, but were found in Attic law, written or unwritten. Can they be reconciled and made intelligible?

We saw ⁷⁹ that wergeld was not admissible for kin-slaying in the Pelasgian tribal system. Outside the kindred, however, wergeld permitted the slayer to remain at home or to return after a time, if he could not pay the full *were*. A comparison of such customs with the historical homicide code suggests quite obviously a compromise, in which the seventh-century pollution-doctrine failed to impose its will on the relatives of the victim because of a real or presumed 'forgiveness' on the part of the slain. Without the anger of the dead, the pollution doctrine could not operate.⁸⁰ Apollo himself could

⁷⁶ Xen. *Mem.* i. 3. 13; see Müller, *Eum.* p. 94.

⁷⁸ Plato, *Laws*, ix. ch. 8.

⁷⁹ *Supra*, p. 8.

⁷⁷ *Supra*, p. 163.

⁸⁰ *Supra*, p. 146.

not enforce it. The relatives of the slain had a just claim to be regarded as the best interpreters of the anger of the dead. It was in this crevice, so to speak, in the doctrine of pollution that the kindred of the slain drove the thin end of their old tribal wedge. They claimed the right to determine the period of exile for manslaughter, but for manslaughter only: for in such cases the anger of the dead could not be regarded as perpetually implacable. In theory, then, these relatives had the right to consent to 'appeasement' at any time; but in deference to the dead their consent could not become effective before a year had passed. They could in theory delay their consent indefinitely, but delay was less probable in local than in central jurisdiction. They were compelled by law to prosecute the manslayer in court if the slayer denied his guilt; but if he admitted guilt, no trial was necessary; and it was only in such a contingency that 'appeasement' could occur without trial: nevertheless a year's exile was still necessary before the relatives could accept 'appeasement' and finally remove the barriers to 'purgation.' The fact that the involuntary kinslayer could never re-enter his home we attribute to the tradition of Pelasgian domestic religion.⁸¹ This solution reconciles, we think, the law of Dracon, the code of Plato, and most of Demesthenes' references. It is also in harmony with our general theory⁸² of the compromise between 'pollution,' tribal wergeld, and State law, which is expressed in the murder-code of historical Greece.

JUSTIFIABLE AND JUSTIFIABLY ACCIDENTAL HOMICIDE

In our analysis of the Attic laws concerning justifiable homicide, we will begin by drawing a distinction between three possible contingencies. First of all, we can conceive that blood has been shed without any intent to kill, but with a certain element of neglect (*ἀφουλαξία*), which has however been expressly mentioned and declared to be justifiable in law. Secondly, we may suppose that there was a certain degree of intent to kill and a certain amount of deliberation, but also that there was an extenuating element of impulse

⁸¹ *Supra*, p. 108.

⁸² *Supra*, p. 143 ff.

or passion which has been decreed guiltless, in certain circumstances, by the law. Thirdly, we may suppose that the person slain was an outlaw or a State-criminal, whose life was forfeit by the laws of the land, and whose citizen-slayer was declared to be justified in advance.

Homicide of the first class has so much in common with ordinary accidental homicide that we think it probable that they were often confused in Greek thought, if not in law. The words *ἄκων* and *ἀκούσιος* which, we have seen,⁸³ were applied indiscriminately to denote cases of different degrees of guilt in accidental slaying and in manslaughter, were also used to denote such forms of accidental slaying as were expressly 'justified' by law. Perhaps this confusion may help to explain still further the apparent discrepancies in Demosthenic references to 'release' and 'private settlement.' For the case which we are now discussing, there was no penalty, no exile, or loss of property, not even a fine. Pleas of justifiably accidental homicide were doubtless frequently made in answer to charges of manslaughter or of wilful murder. The King-Archon (and perhaps also the Tribe Kings) had to decide between the merits of the 'charge' and of the 'plea.' Obviously, it was always as a result of a 'plea,' never as a result of a 'charge,' that homicide cases were referred to the Delphinium court.

Justifiable homicide of the second class has close affinities with extenuated manslaughter, or slaying in a passion. The essential difference lies in an express legal justification in one case, and the absence of such a justification in the other. When we come to analyse the Oresteian legends of Attic tragedy we shall find⁸⁴ that the close affinity which exists between these two legal conceptions caused considerable confusion in the legends—caused Orestes to be immune from punishment, from one standpoint, but liable to a period of exile, from another. The oracle of Apollo, which commanded him to slay his mother, should naturally have been accepted as a complete justification. Some legends took this view.⁸⁵ But such a contingency was not expressly mentioned in the Attic laws concerning justifiable homicide. Plato assures us⁸⁶

⁸³ *Supra*, p. 196.

⁸⁴ See *infra*, pp. 278, 295, 347.

⁸⁵ See *infra*, p. 291 ff.

⁸⁶ *Laws*, ix. ch. 9.

that under no circumstances, not even in self-defence, was it lawful to slay a parent. Hence it became necessary to regard Apollo as the divinely immune cause of guilt; and Orestes, as his blind, obedient instrument, became liable to a merely nominal charge of manslaughter or extenuated matricide! His mother was almost compelled to 'forgive' the deed! In one legend ⁸⁷ Apollo commanded the Erinnyes to withdraw from pursuit, and drove them from his temple; in another he decreed that they should pursue Orestes for a year! ⁸⁸

Our third classification includes cases in which only two issues could be raised—namely, lawful homicide or wilful murder. From this point of view the act of Orestes could also be discussed, and an Athenian court could find it interesting to discuss and difficult to decide at what precise time in the post-Homeric social evolution did private vengeance become illegal! The trial of Orestes at Argos, which Euripides describes in the *Orestes*, seems to depend upon this legal difficulty. ⁸⁹

We will now illustrate these cases by relevant quotations.

Aristotle's ⁹⁰ account is a mere extract, or rather a kind of summary: 'Homicide,' he says, 'admitted and alleged to be lawful, as of an adulterer caught in the act, or of a friend mistaken for an enemy in war, or of an antagonist in an athletic contest, is tried in the Delphinium.' The first clause has been included in our second classification, the rest of the cases belong to our first category. Demosthenes quotes ⁹¹ the Draconian laws, and his account is almost identical with that which Plato ⁹² gives. To facilitate comparison, we will quote both accounts together in parallel columns:

Demosthenes

If any person shall kill another accidentally in a contest or in an ambush or in a battle by mistake or having caught him (in adultery) with his wife or with his mother, or

Plato

If any person shall kill a citizen accidentally in a contest at public games . . . or during a war or the practice of military exercises . . . let him be purified according to the law brought

⁸⁷ See Aeschylus, *Eumenides*.

⁸⁸ *Infra*, p. 352.

⁹¹ *In Aristoc.* 629-639.

⁸⁸ See Euripides, *Orestes*, 1645 ff.

⁹⁰ *Ath. Pol.* 57.

⁹² *Laws*, ix. chs. 8, 12.

sister, or daughter, or a concubine kept to beget free children, he shall not be put on trial (*or* he shall not be exiled) (*φεύγειν*) for such homicide: and if anyone resisting unlawful seizure or violence shall immediately kill the aggressor his death shall not be punishable,⁹³ and it shall be lawful to kill murderers (found after conviction) in our territory, but not to illtreat or amerce them, under pain of paying⁹⁴ double damage inflicted: no person shall be liable to any legal proceedings for homicide who gives information against (and therefore causes the death of) exiles who return when it is not lawful.⁹⁵

from Delphi about these matters, and be immune from punishment: and, regarding physicians, should any person who is attended by them die without their intending it, let such physicians be immune by law.⁹⁶ If anyone catches a thief entering his house by night, with intent to steal . . . and kills him, let him be immune. If anyone commits rape . . . let him be slain with impunity: if a man finds his wife being ravished and kills the offender, let him be immune by law. If anyone shall kill a person, warding off unjust death from his father, mother, children or brothers . . . let him be immune.⁹⁷ If any such persons (wilful murderers) set foot upon the civic territory of the slain, let him who first meets him . . . kill him with impunity.⁹⁷

We have elsewhere⁹⁸ cited a Delphic law which concerned justifiable slaying, and which, in its completeness, we regard as the common parent of both these legislations. These excerpts are strikingly similar, especially if we remember that they are a number of extracts which we have put together with the object of eliciting a complete list of cases. No better proof than this could be adduced of the 'historicity' of Platonic legislation⁹⁹ regarding homicide. Antiphon¹⁰⁰ refers to the legal immunity of physicians, and we may therefore consider this Platonic law to be also Draconian (or Solonian).¹⁰¹

To both the above quotations our triple classification of cases of justifiable homicide can without difficulty be applied. Confining our attention to the Demosthenic account, we may point out that the reference to accidental slaying in a

⁹³ *In Aristoc.* 639.

⁹⁴ *Ib.* 629.

⁹⁵ *Ib.* 636.

⁹⁶ Ch. 8.

⁹⁷ Ch. 12.

⁹⁸ *Supra*, p. 161.

⁹⁹ *Infra*, p. 240 ff.

¹⁰⁰ *Tetralogy*, i. 5.

¹⁰¹ *Supra*, p. 192.

contest, ambush, or battle, is covered by our first category : the infliction of death for adultery or seduction is included in our second category : and the slaying of unjust aggressors, and of murderers *en rupture de ban*, in our third category.

In regard to adultery, we have already¹⁰² suggested that the right to kill *in flagrante delicto* must not be regarded as a relic of a primeval custom which decreed the death penalty for adulterers in all circumstances. The Gortyn laws and the Homeric customs which are denoted by the word *μοιχάγρια* support our view that the right to kill *in flagrante delicto* was an innovation of the period of synoekism and of centralised government. Philippi¹⁰³ thinks that there is a strong probability of correctness in Pausanias' view¹⁰⁴ that the age of Theseus represents the point at which the distinction of justifiable homicide could be applied in such matters. But our reading of Pausanias suggests that in his view the distinction was first applied to adultery in the time of Dracon.¹⁰⁵ We believe the distinction, thus applied, was as late as the seventh century, and we agree with Pausanias that the penalty thus decreed was severe.

WILFUL MURDER

We have seen that the restored Draconian inscription contains no reference to wilful murder. Demosthenes quotes a law which merely mentions the crime and which is mainly concerned with the allocation of trials for wilful murder to the Areopagus court which normally had jurisdiction in such cases. We shall discuss this law when we come to describe the Athenian homicide courts. The actual penalties for murder can only be inferred from the wording of other Draconian laws, and from other sources, such as Plato. Thus we may infer from the law¹⁰⁶ which declared inviolable the person and property of involuntary slayers, who are described as 'those who have gone into exile and whose property is not confiscate,' that in the graver kinds of homicide, such as murder, the criminal's property was confiscated to the State.

¹⁰² *Supra*, pp. 59, 74.

¹⁰³ *Areop.* p. 5.

¹⁰⁴ i. 23. 10.

¹⁰⁵ See ix. 36. 4.

¹⁰⁶ Dem. *in Aristoc.* 634.

Again, from the law ¹⁰⁷ which forbade the slaying of a murderer 'whilst he keeps away from the markets on State-boundaries and from public games and Amphictyonic festivals,' and from the further law ¹⁰⁸ which permitted the slaying of a murderer found, after conviction, in his native territory, we may infer that death was the normal penalty for any murderer who did not go into perpetual exile. Demosthenes, in the speech *against Meidias*,¹⁰⁹ says that 'the laws punish those who have slain with intent by death *or* (καί) perpetual exile *and* (καί) confiscation of property.' Plato¹¹⁰ is quite lucid in his account of wilful murder, but he omits to mention confiscation of property. 'Whoever,' he says, 'deliberately and unjustly shall kill with his own hand any of his fellow citizens (τῶν ἐμφυλίων), let him be debarred from civic and religious privileges (τὰ νόμιμα) and let him not "pollute" the temples or ports or other public meeting-place . . . let him who is convicted pay the penalty of death and let him not be buried in the native land of the slain [or in his own, if that is different]: but if he goes into exile without wishing to challenge a verdict (κρίσιν ὑποσχεῖν) let him remain in perpetual exile.' Demosthenes¹¹¹ implies that the last moment at which the murderer could flee was 'after the first speech' at the trial.¹¹² Pollux¹¹³ clearly means to say the same thing, though the omission of the tiny negative μή has annoyed the commentators.¹¹⁴ 'The Areopagus,' he says, 'judged cases of slaying and wounding with intent (to kill) and arson (with intent to kill?) and (the administering of) drugs if one intends to kill in administering (them).' So far his words are identical with those of the 'Draconian' law, as it is given by Demosthenes. He continues: 'There took place a preliminary oath (διωμοσία), and after this the trial . . . and after the first speech it was lawful (for the defendant) to go into exile if anyone had slain his parents' (εἴ τις γονέας εἴη ἀπεκτονώς). When we discuss presently¹¹⁵ the Attic law of parricide and kin-slaying, it will perhaps be more obvious that Pollux must have written εἰ μή τις γονέας εἴη ἀπεκτονώς, 'unless a man had slain his

¹⁰⁷ Dem. in *Aristoc.* 632.

¹⁰⁸ *Ib.* 629.

¹⁰⁹ 528.

¹¹⁰ *Laws*, ix. ch. 11.

¹¹¹ In *Aristoc.* 643.

¹¹² τὸν πρότερον ἔξῃστιν εἰπόντα λόγον μεταστῆναι.

¹¹³ viii. 117.

¹¹⁴ See Dindorf *ad loc.*

¹¹⁵ *Infra*, p. 233 ff.

parents.' The 'Draconian' law concerning the Areopagus will be discussed later, in our chapter on the Attic murder courts. We need not enter into the details of the preliminary accusations, the investigation before the Archon Basileus, and the three monthly trials which preceded the final trial and the verdict. Such details, if not already referred to, may be found in all the ordinary books of reference.¹¹⁶ But there is one question which merits a brief examination at this stage: namely, the question whether the death penalty, in cases of wilful murder, cancelled or obviated the confiscation of the murderer's property to the State.

We have seen¹¹⁷ that in the wergeld system of the tribes, the death of the slayer generally affected the payment of wergeld, though custom seems to have varied between the cancellation of the whole wergeld and the cancellation of the murderer's share. But we do not think, as Glotz appears to think, that confiscation took the place of wergeld. The purgation-rites for homicide, says Glotz,¹¹⁸ caused the creation of sanctuaries and gave to the gods their share of the *ποινή*. We have seen¹¹⁹ that in tribal societies which practise wergeld there was a *saraad* or honour-price, quite distinct from the *galanas* or wergeld proper, and it was this honour-price which we consider to have been the indirect source of the later penalty of confiscation. In the evolution of strong central civic government, or of theocratic power, this element could have been, and usually was, retained, when wergeld was abolished. But 'honour-price' rarely amounted to the total property of the offender. Hence the direct source of the confiscation penalty must be sought elsewhere. We have suggested¹²⁰ that one direct result of the evolution of State-power was the conception of certain 'crimes' or 'sins' as an insult to the State and to its gods. This insult had to be atoned for in a more substantial and drastic manner than by the mere payment of an 'honour-price.' The State created new penalties, of which the most important was civic degradation (*ἀτιμία*). In Greece, this degradation in its graver forms was usually attended by

¹¹⁶ E.g. Smith, *Dict. Gk. Ant.*, s.v. *φόνος*, vol. ii. p. 385.

¹¹⁷ *Supra*, p. 9 ff.

¹¹⁸ P. 238; *supra*, p. 81.

¹¹⁹ *Supra*, p. 7.

¹²⁰ *Supra*, pp. 93, 144.

perpetual exile and confiscation of property. It is impossible to explain the conjunction of these two penalties, except on the assumption of grades of criminality and of degrees of severity in deterrence and in punishment. We cannot suppose that wilful murder was the gravest crime or sin which the State had to punish. Treason was much graver. The penalty for treason, at least in fifth-century Athens, was death and confiscation of property¹²¹: and this, we believe, was also the penalty for parricide.¹²² But the penalty for treason was collective and hereditary. No descendant of a traitor could be permitted to live, or to possess property, in the State which condemned him. The penalty for parricide was, however, individualistic, except in so far as confiscation implied a certain injury to the offender's family and his descendants. If we may trust Andocides,¹²³ the penalty for sacrilege was death, without confiscation of property, in Athens in 399 B.C. Glotz¹²⁴ thinks that after 403 B.C. confiscation did not accompany death for any crime, even for treason. We have already¹²⁵ discussed a passage in the Third Philippic speech of Demosthenes, which implies that there was a relaxation in the punishment of treason which the orator attributes to lack of patriotism. Demosthenes frequently compares the penalties for manslaughter with the penalties for murder, and says that they were rightly less severe.¹²⁶ But if death *and* confiscation were the penalties for murder, it would, we think, be rather ironical to describe these penalties as 'more' or 'less' severe! We shall see presently¹²⁷ that exile without confiscation was the penalty for wounding with intent to kill. The phrase which Demosthenes uses, in speaking of murder-penalties, is unfortunately rather ambiguous. He says¹²⁸: *θανάτῳ καὶ ἀειφυγίᾳ καὶ δημεύσει τῶν ὑπαρχόντων*: here, we must suppose that the first *καί* means 'or,' and we may suppose that the second means 'and': and we translate 'by death *or* by exile and confiscation of property.' This juxtaposition of words suggests, on the whole, that death absolved the murderer from confiscation.

¹²¹ Glotz, p. 521.

¹²² Dem. in *Timocr.* 702; *infra*, p. 236 ff.

¹²³ *De Myst.* 149-150.

See also Plato, *Laws*, iv. ch. 2.

¹²⁴ P. 523 ff.

¹²⁵ *Supra*, p. 189.

¹²⁶ E.g. in *Aristoc.* 644.

¹²⁷ *Infra*, p. 225.

¹²⁸ *Against Meidias*, 528.

We may support this conclusion from Pollux and from Aristotle. The latter, speaking of the sale-commissioners (πωληταί) at Athens, says ¹²⁹ that, amongst other things, they 'sell the estates of exiles from the court of Areopagus and the property of State debtors.' Pollux ¹³⁰ says of these same officers that they 'sell the property of those who have fled from the Areopagus after the first speech.' If death was accompanied by confiscation for wilful murder, why do not Pollux and Aristotle say so? The reference of Pollux to exiles who fled 'after the first speech' must apply to murder-exiles, and to them alone. This whole subject has been ably discussed by Glotz, ¹³¹ and we are glad to be in agreement with his main conclusion, that death absolved from confiscation in cases of wilful murder. We agree with Glotz that the phrase in Lysias, ¹³² ἐγὼ γὰρ νῦν καὶ περὶ τοῦ σώματος καὶ περὶ τῶν χρημάτων καὶ περὶ τῶν ἄλλων ἀπάντων κινδυνεύω, does not prove, as Philippi ¹³³ maintains that it proves, the combination of death and confiscation in such cases. The word σῶμα here, as Meier ¹³⁴ and Glotz ¹³⁵ point out, means civic status, like the Latin word *caput*, and need not refer to 'life.' In general, we may say of the ancient authorities what Glotz says ¹³⁶ in reference to one of Antiphon's *Tetralogies*, ¹³⁷ that if the dual punishment was legal it could not fail to have been mentioned. If we add to this fact of omission the force of our general reasoning as to the origin and *raison d'être* of the penalty of confiscation, and the plain and obvious inferences from the Attic murder laws, we cannot come to any other conclusion than that which we have reached. Philippi must stand alone as the sole exponent of the opposite opinion.

PRIVATE SETTLEMENT FOR WILFUL MURDER

It is, however, rather inconsistent for Glotz to maintain that confiscation (though prevented by death) was an invariable concomitant of exile and at the same time to suppose that 'private settlement' for wilful murder was legal. ¹³⁸ On purely

¹²⁹ *Ath. Pol.* 47.

¹³⁰ viii. 99.

¹³¹ Pp. 516-539.

¹³² *On the murder of Eratosthenes*, 50.

¹³³ *Arcop.* pp. 112-125.

¹³⁴ *Att. Proc.* (1st ed.), p. 307.

¹³⁵ *Op. cit.* p. 517.

¹³⁶ P. 578.

¹³⁷ i. 2.

¹³⁸ *Op. cit.* p. 316.

material grounds, and apart from any religious considerations,¹³⁹ it seems obvious that no State would have legalised a bribe which, by paralysing the action of the leading prosecutor, removed from the murderer all civic degradation and deprived the public treasury of that property which it regarded as a partial retribution for the insult which its religion had received. It is not necessary for Glotz¹⁴⁰ to propose, as a novel hypothesis, that the phrase *μηδ' ἀποινᾶν*, which forbade the amercement of a murderer *en rupture de ban*, was a Solonian innovation. Why should Solon have troubled to forbid such amercement if 'private settlement' was legal? Glotz would answer that the phrase *μηδ' ἀποινᾶν* refers to the abolition of wergeld: that wergeld was one of the pillars of clan-power: that Solon, being opposed to clan-power, therefore abolished wergeld: but that 'private settlement' was not wergeld and stood therefore on a different plane: that Solon could not have abolished 'private settlement' as long as the relatives had the initiative in prosecution! This position we have already¹⁴¹ discussed at length. It seems clear, *prima facie*, that 'an amercement *en rupture de ban*' was not wergeld but was very much akin to, if not actually identical with, 'private settlement.' The splendid hypothesis of Glotz must therefore be turned against himself. We may go a step farther. As there is no reason for supposing that Solon rather than Dracon should have prohibited 'private settlement' for wilful murder, the phrase *μηδ' ἀποινᾶν*, which does not refer to wergeld but does forbid a kind of 'private settlement' or 'amercement,' is therefore quite properly Draconian. As for wergeld, we have shown that it was abolished, or at least that it lost all but the shadow of its substance, in the religious revolution which declared murder a 'pollution.' Any possibility of its resuscitation was removed when in the atmosphere of theocratic religion the State gods claimed, as a retribution, the property of the slayer. For cases of wilful murder at least, which was now placed on an execrable pedestal beside treason and sacrilege, the days of retribution to the relatives of the slain were no more.

¹³⁹ *Supra*, p. 175.¹⁴⁰ Pp. 319 ff., 377.¹⁴¹ *Supra*, p. 173 ff.

REFUSAL OF BURIAL TO EXECUTED MURDERERS

From Plato ¹⁴² we infer that there could be no burial for murderers who did not go into exile and who were executed by State officials.¹⁴³ We need not again ¹⁴⁴ call attention to the importance of burial in ancient Greece. It alone gave repose to the dead, and enabled the entombed spirit to be periodically revived, and even recalled from Hades, by the offerings made at the grave. The refusal of burial to murderers, especially kin-slayers, to traitors, and sacrilegious persons, was a particularly revolting form of supplementary punishment. Their bodies, stripped naked and cast beyond the boundaries, were devoured by dogs and birds. No wonder that a pleader, in a Demosthenic speech,¹⁴⁵ says that to them death was not easy, as it was to ordinary men. No wonder that the slayer would flee and lose his property rather than preserve it for his children at the cost of such a fate.

PLOTING AND CONTRIVING MURDER

Included in the category of wilful murderers, from the legal standpoint, were the plotters or contrivers or instigators of murder, at least when the plan materialised.¹⁴⁶ Andocides, in his speech *On the Mysteries*, says: 'This law existed in former times and now also exists, namely, that the "plotter" shall be liable to the same penalty as he that has wrought with his hand.'¹⁴⁷ From the law ¹⁴⁸ of Dracon which declares that 'if anyone shall kill a murderer or be the cause of his death (αἷτιος φόνου) while he abstains from the markets on the civic boundary . . . he shall be liable to the same penalties as if he had killed an Athenian,' we can infer that the equation of plotting to kill with unjustifiable homicide, which is here mentioned, applied also to ordinary wilful murder. Plato ¹⁴⁹ confirms this conclusion, but suggests that in regard to burial the slayer was more severely punished than the 'plotter.'

¹⁴² *Laws*, ix. ch. 11.

¹⁴³ *Infra*, p. 231.

¹⁴⁴ See *supra*, p. 106 ff.

¹⁴⁵ *In Timocr.* 702; *infra*, p. 232.

¹⁴⁶ See Smith, *Dict. Gk. Ant.* vol. ii. p. 386.

¹⁴⁷ 94.

¹⁴⁸ *In Aristoc.* 632.

¹⁴⁹ *Laws*, ix. ch. 11.

'If a person,' he says, 'shall not with his own hand (perpetrate) but shall suggest to another a deed of murder and by deliberate plotting (*βουλήσει καὶ ἐπιβουλεύσει*) be the cause of slaying, let there be for him similarly . . . a trial and verdict. . . . If convicted let it be lawful for him to have the family burial place.' Demosthenes¹⁵⁰ puts the matter beyond the pale of doubt when he says: 'Remember, the father of the priestess at Brauron, who was admitted not to have touched the deceased, was sentenced to exile by the Areopagus because he instigated the actual striker to strike.' This sentence of banishment for plotting murder probably carried with it the confiscation of the plotter's property. Aristotle tells us that one of the terms of the Peace made between the rival factions in Athens in 403 B.C. was as follows¹⁵¹: 'Trials for homicide in accordance with the ancient laws shall only be held in the case of persons who have killed with their own hand.' We can understand the political significance of such a condition: but it was merely a temporary amnesty for criminal political intrigue. The guilt of the plotter or contriver of homicide is frequently referred to in Attic tragedy. It was, we must suppose, a strong feature in traditional legend. Euripides, as we shall see, refers to this blood-guiltiness in several plays, for instance in the *Orestes*,¹⁵² the *Electra*,¹⁵³ the *Medea*,¹⁵⁴ the *Andromache*,¹⁵⁵ and the *Heracleidae*.¹⁵⁶

But there is another kind of homicide guilt which may easily be confused with this, namely 'attempted murder.' The Greek words *βούλευσις* and *ὁ βουλεύσας* are unfortunately ambiguous, as we have already explained.¹⁵⁷ Subjectively, the guilt of the 'plotter' and of the 'attempter' is the same, but objectively there is a difference. In one case a human life is violently taken: in the other it is not. Lipsius seems to have confused these issues.¹⁵⁸ In Aristotle's account of the Attic murder courts, he finds a reference to *βούλευσις* being tried at the *Palladium*. Knowing, from the speech of Demosthenes *against Conon*,¹⁵⁹ that 'plotters' were tried at the Areopagus, he supposes that a change of jurisdiction had

¹⁵⁰ *C. Conon*. 1264, 20. ¹⁵¹ *Ath. Pol.* 39. ¹⁵² 75, 416, 600, 770.

¹⁵³ 1294, 1300. ¹⁵⁴ 485. ¹⁵⁵ 340, 810. ¹⁵⁶ 280, 1020.

¹⁵⁷ *Supra*, p. 194. ¹⁵⁸ *Op. cit.* pp. 443, 612 ff. ¹⁵⁹ 1264 (Reiske).

taken place shortly before 330 B.C. Before this, he implies that there was a division of labour by which *βουλευσεις φόνου ἀκουσίου* were held at the Palladium, and *βουλευσεις φόνου ἑκουσίου* at the Areopagus. We confess we cannot find any meaning in 'plots of manslaughter'; it is a contradiction in terms! Now Poste, in his translation of this Aristotelian passage, does not use the word 'plotters' in connexion with the Palladium. He translates thus: 'Homicide with malice aforethought is tried in the Areopagus, including homicide by wounding, by administering poison, or by fire . . . involuntary homicide, attempts to commit homicide . . . are tried in the Palladium.' Thus, we see the difficulties which arise from ambiguities of language. We have quoted Andocides for the principle that plotting murder was regarded as equivalent to wilful murder. A Draconian law mentions both kinds as equally punished in cases of unjustifiable homicide. Therefore plots to kill would normally always have been tried by the Areopagus. Poste's translation of Aristotle, which is superior to Lipsius in this respect, nevertheless suggests perhaps that 'malicious wounding' without fatal results was not tried by the Areopagus. The law which Aristotle gives is that of Dracon, and it means that the Areopagus tried wilful murderers, plotters of murder, wounding with intent to kill, poisoning with intent to kill, and arson—whether with intent to kill or not, we cannot say. Attempted murder must be defined, we think, owing to some discrimination in Attic legal procedure, as an attempt to kill which did not cause any actual bodily harm.¹⁶⁰ Such attempts may have been always tried at the Palladium, but what the penalty was we cannot say—it was probably banishment for a period of years.

For wounding with intent to kill, the penalty was perpetual exile,¹⁶¹ which was not accompanied, we think,¹⁶² by confiscation of property. The penalty for 'plotting' murder (which was successful) was death or banishment, accompanied by confiscation. Wounding without intent to kill was a case

¹⁶⁰ Cf. phrase *κτείνων ἢ ἐπιχειρῶν* in law of Solon *re tyrannicidio*, Andoc. *de Myst.* 98.

¹⁶¹ Lysias, *c. Simon.* 42.

¹⁶² Plato, *Laws*, ix. ch. 14; Andocides, *de Myst.* 94.

for civil damages, before the Heliastic courts—it was perhaps a *δίκη αἰκίας*.¹⁶³

STATE EXECUTION OF DEATH PENALTY

Before discussing the legal aspect of parricide and of kin-slaying we must examine the question of the origin and evolution of official State execution in the capital punishment of homicide. The establishment of this method of execution had, we believe, an important influence on the penalty for parricide and, probably, for all general cases of wilful kin-slaying. The prevailing opinion on this subject tends to suppose that the method of private execution which is found in the *Iliad* and the *Odyssey* was the normal method of execution in historical Greece and even in Athens until the time of the orators, that is to say, the fourth century B.C. The only difference which can be found, according to this view, between the Homeric and the historical modes of execution is that in the former case the execution was unauthorised by any written law or by any public trial, while in the latter case it was legally authorised and permitted. Thus Gilbert¹⁶⁴ holds that the relatives of the slain personally executed the slayer in Athens in the fifth century, and that the exceptional instances of State execution must be attributed to the sacred 'right of sanctuary,' and especially to the Athenian sanctuary of the Semnai Theai. Glotz minimises as far as possible the change which, he is compelled to admit, had taken place in historical Greece. It was, he thinks,¹⁶⁵ from philanthropic motives that the State consented to execute the murderer if it was requested to do so by the relatives of the slain. The old principle of primitive society: 'de voluntario convictus parentibus vel cognatis occisi tradatur occidendus' gives place to an alternative principle that 'murderers are put to death sometimes by the judges, sometimes by the relatives.'¹⁶⁶ At Athens, the ideals of philanthropy went one step further. 'L'exécution étant faite au nom du peuple par le δῆμος (*public executioner*) le parent qui avait engagé

¹⁶³ Plato, *Laws*, ix. ch. 13; Dem. c. *Conon*. 1262.

¹⁶⁴ *Gk. Const. Ant.* p. 380.

¹⁶⁵ P. 308.

¹⁶⁶ P. 307.

la poursuite contre le meurtrier assistait à son supplice.' ¹⁶⁷ It is clear that Glotz regards this public execution as strangely exceptional. He cannot, however, ignore the evidence of the orators. But he seems quite certain that this custom did not apply in the time of Dracon. 'C'est dans l'Iliade et l'Odyssée qu'on surprend les origines des *φονικὸὶ νόμοι*. Ce que la famille lésée demandait à l'état, d'après la loi de Dracon, c'était la permission de se venger. Il fallait donc que son droit fût reconnu, non seulement au moment des poursuites mais si elle l'emportait, au moment du supplice ou de l'expulsion. A l'origine de la juridiction sociale, comme dans la période antérieure de l'arbitrage, le tribunal, pour faire exécuter ses arrêts, n'avait que les armes de celui qu'il déclarait vainqueur. C'était le principe universel en droit grec, que l'exécution du jugement fût abandonnée à la partie gagnante.' ¹⁶⁸ . . . 'Reconnaître le privilège de la famille en matière de poursuite et d'exécution, c'était pour Dracon admettre le principe de la vengeance privée, sauf opposition de l'état.' ¹⁶⁹ But philanthropy will not explain the evolution of State execution, any more than the right of sanctuary will explain it. Public execution may be of a much more revolting character than the private infliction of death by an avenging relative in some secret place or at the tomb of the victim. Moreover, Glotz cannot suggest any definite date for the change of custom. He would probably have attributed it to Solon, only that he cannot assume a tremendous growth of philanthropy in that space of twenty years which separated him from Dracon; and he could not attribute an act of philanthropy to a legislator whose main object was the exaltation of State power! We admit that there is a certain suggestion of private execution in the infliction of death which was not only permitted but commanded when a murder-outlaw returned to forbidden territory. But in this case slaying was not the exclusive privilege of the relatives of the slain, but it was the duty of 'the first citizen who met him' to act as the avenger of the law. We have already ¹⁷⁰ described such an 'execution' as a case of justifiable homicide. It is not in the least indicative of a *system* of private execution. The slayer acts as a

¹⁶⁷ Pp. 308-309.¹⁶⁸ P. 306.¹⁶⁹ P. 312.¹⁷⁰ *Supra*, p. 214.

State executioner. Neither can we argue, as Glotz does,¹⁷¹ from the right of an injured husband to slay an adulterer *in flagrante delicto*, to the prevalence of private execution. Such an act is definitely declared by law to be justifiable homicide.

Our opinion on this subject may be thus summarised : (1) It is misleading to assume that the Achæan system of vengeance which is found in the *Iliad* and the *Odyssey* is the norm or standard of blood-vengeance either of tribal village communities or of synoekised States possessing a strong centralised government. Even amongst the Achæans, we have shown,¹⁷² there was a certain submission to military discipline, to a public opinion which discriminated between murder and vengeance, and therefore the avenger's act was not entirely 'private.'

(2) On the analogy of Indian tribal life, which Maine¹⁷³ has investigated, we may suppose that amongst Pelasgian village communities or tribal cities there existed a body of official police who acted as the supporters and preservers of tribal law. If, in such societies, homicide was not officially avenged, this was only because homicide was what we should now call a 'civil offence,' a matter for retribution between the families concerned.

(3) It was in post-Achæan times, and especially in the Hesiodic period and in the Dark Ages of Greek history, that murder and vengeance passed outside the control of law or discipline. In such conditions it was more than probable that murder would be unjustly punished, but it was equally probable that it would not be avenged at all. Into this abyss of chaos came in the seventh century the Apolline religion of 'pollution.' The birth of great States, the dawn of synoekised nationhood, was overshadowed by the wrath of gods and ghosts, which reflected the vindictive hatred of human vengeance. Amongst the first essential duties of the new-born States was the prevention of murder and the regulation of vengeance. In Attica, especially, where the blight of chaos fell most lightly,¹⁷⁴ could the new religion be most promptly honoured and obeyed.

(4) We will not maintain that the pollution-doctrine, alone

¹⁷¹ Pp. 317, 322.

¹⁷³ *Ancient Law*, p. 217; *supra*, p. 82.

¹⁷² *Supra*, pp. 60, 76.

¹⁷⁴ *Thuc.* i. 2.

and unaided, would have led to the official State execution of the penalty of death. Amongst the Hebrews,¹⁷⁵ one may point out, the 'pollution' of the murderer coexisted with the avenger of blood. The obligation of the State, one may hold, was satisfied by the trial and the condemnation of the murderer, and by the sentence of outlawry which was pronounced against him. But we would suggest, on the other hand, that Greek States did not confine themselves to a sentence of outlawry. The murderer, in Greek law, at the moment of his condemnation, nay at the moment that he challenged a verdict and uttered his second speech at the trial, no longer ranked as an outlaw; he was a State criminal whose insult to the State and its gods must be atoned by public execution. Like the sacrilegious criminal, he must be executed solemnly and with public execration. His body cannot be buried in the tomb of his fathers. Naked, it is cast beyond the civic boundaries, amidst the curses and the groans of the mob, to be eaten by dogs and wild birds when it has been bruised and mutilated by the stones and missiles which are hurled not by the relatives only, but by an angered populace.

Yet we cannot suppose that the pollution-doctrine of itself degraded murderers to the same level with sacrilegious criminals, at least in the judgment of Apolline theocratic nobles, the pre-historical Greek sacerdotal aristocracy. From the *Ion* of Euripides¹⁷⁶ we infer that sacrilege was the main element which the Delphian nobles and magistrates condemned in the attempted murder of Ion, the priest of Apollo, by Creusa. We cannot infer that ordinary homicide would have called for such public action unless we assume that the Delphians, in addition to being priests, were also the leaders of a civic government. Their action in the *Andromache*¹⁷⁷ in slaying, in conjunction with Orestes, Neoptolemus, who was consecrated by his presence in the sanctuary, cannot be reconciled with their procedure in the *Ion* unless we assume that the death of Neoptolemus was an act of vengeance. Such indeed it was, but, as Euripides presents it,¹⁷⁸ it was entirely out of proportion to the offence. The attitude of the

¹⁷⁵ See, e.g., *Joshua*, xx. 1-9.

¹⁷⁷ See *infra*, p. 411.

¹⁷⁶ See *infra*, p. 406.

¹⁷⁸ *Andromache*, 1095-1200.

Delphians in the *Ion*, and also the survival of the avenger of blood in Hebrew society under the operation of 'pollution' doctrines, prevents us from asserting that private execution was abolished by 'pollution.'

(5) But we have suggested¹⁷⁹ that the murder code of historical Greece was a compromise between three forces: (a) the tribal traditions of material retribution to the relatives of the slain; (b) the Apolline doctrine of homicide as an offence against the gods; and (c) the conception of murder as an insult to the majesty of the State and to its gods, which arose after the synoekism of local peoples and the establishment of strong civic governments. As we believe that the pollution-doctrine abolished wergeld, so we believe that the concurrence of the pollution-doctrine with State power led to the abolition of private execution for homicide in the rare cases in which the murderer refused to flee and was put to death, because he had the audacity to perjure himself in the attempt to prove his innocence. It follows that official execution was in existence in Dracon's time. There is no more reason for delaying its arrival twenty years in order to link its advent with the name of Solon than there is for supposing that wergeld was not abolished before the time of Solon. Between 600 B.C. and the time of Demosthenes we know of no civic or legal innovation to which such a change could be attributed. The 'Eleven' who obeyed the verdicts of the Heliasts also obeyed the decision of the Areopagus and of the pre-Solonian Ephetae courts.¹⁸⁰

Such evidence for State execution as we possess in Plato and the Attic orators, far from suggesting that it was a recent innovation, implies on the contrary that in their time it was a well-established practice.

Lysias,¹⁸¹ speaking of a certain Menestratus who was a prominent informer and an accuser of citizens under the Thirty Tyrants, says that the citizens of the restored democracy 'having arrested Menestratus in court on the ground that he was a murderer,'¹⁸² condemned him justly to death and handed him over to the public executioner, and he was cudgelled till he was dead' (ἀπετυμπανίσθη). There is, of course, a

¹⁷⁹ *Supra*, p. 143 ff.

¹⁸⁰ *Infra*, p. 263 ff.

¹⁸¹ *C. Agorat.* 135, 56.

¹⁸² λαβόντες ἐν δικαστηρίῳ ὡς ἀνδροφόνον ὄντα.

political complication in this case. The guilt of treason was added to that of murder. Yet the procedure is similar to that which would have taken place if an ordinary murderer challenged the verdict of the Court.

Plato,¹⁸³ speaking of the punishment which was decreed for a slave who had wilfully murdered a freeman, and who was condemned to death, says: 'Let the public executioner lead him to the tomb of the deceased or to a place from which he may see the tomb, and having scourged him with as many stripes as the plaintiff (a relative of deceased) shall order, slay him if he survives the scourging.' Even on a slave, then, who had murdered a man, the relatives could not personally execute the death sentence. Again, speaking of wilful kin-slaying, for which, in his code of laws, there is no option but death, he says¹⁸⁴: 'Let the servants (*ὑπηρέται*) of the judges and the rulers (*ἄρχοντες*) put him to death and cast him out naked to an appointed place where three roads meet, and let all the public officials (or magistrates) on behalf of the whole State carry each a stone and hurl it at the head of the corpse, and free the whole city from pollution, and, after this, carry the corpse to the civic boundaries and cast it out unburied according to law' (*τῷ νόμῳ*). There is here no mention of the relatives of the slain. We must suppose that if these relatives had been the normal executioners, the kin-slayer would not ordinarily have been slain at all. Human nature, as well as the actual evidence, compels us to believe that the relatives of a kin-slayer would have revolted at the infliction of death, whether in Pelasgian or in historical times.

Again, Aeschines suggests that the enemies of a man condemned to death were impotent to do more than attend as spectators at his execution when he says¹⁸⁵: 'It is not death that is so terrible: the really horrible thing is the insult suffered at the last moment of life. How pitiable a fate, to see an enemy's face relaxing into a broad grin, and to hear with one's ears the insults of enmity.' This quotation has been taken by Glotz¹⁸⁶ to imply that the memory of private execution was still vivid in Athens in the time of Aeschines; but in our opinion it merely shows that public execution

¹⁸³ *Laws*, ix. ch. 11.

¹⁸⁴ *Ib.* ch. 12.

¹⁸⁵ *Παραπρεσβ.* 181-2.

¹⁸⁶ *P.* 309.

was a regular and established custom. A private enemy could have laughed as a freeman died : he could have counted the stripes and commanded their continuance, as a slave murderer was scourged to death. But his hand was bound : he could not strike the blow of vengeance.

Demosthenes ¹⁸⁷ attributes to a certain Diodorus, whose uncle was indicted for impiety by Androtion, because he had not prosecuted his nephew on a charge of parricide, the following statement : ' If Androtion had succeeded in his prosecution of my uncle I as a convicted parricide should have been deprived not only of my property but of my life : nay, even to die, which is the common lot of all, would not for me have been easy.' This passage implies that Diodorus, if convicted, in this indirect manner, ¹⁸⁸ of parricide, would have suffered a cruel death. The conjunction of the death penalty with confiscation in this instance points very forcibly to State execution. Hence we believe that the cruel death to which Diodorus refers was the public execution which Plato describes when he speaks of stones being hurled at the corpse, and of its abandonment to the dogs and the birds. Glotz has, we think, completely misinterpreted this passage. He thinks ¹⁸⁹ that the penalty indicated is perpetual exile and thus renders the concluding words of Diodorus : ' Je ne serais pas seulement dépouillé de ma fortune, je ne pourrais plus vivre, et le refuge commun de tous les hommes, la mort libératrice, ne serait pas un asile pour moi.'

Demosthenes confirms our hypothesis of the evolution of State execution in another passage which concerns wilful murder. Speaking of the accuser, he says ¹⁹⁰ : ' If his accusation is considered just and he obtains a conviction for murder, even then he gets no power over the condemned man, who is given over for punishment to the laws and to the persons charged with that official duty : the accuser may be a spectator while the condemned suffers the penalty which the law imposes, but he can do no more.' This quotation speaks for itself. Its value as a link in our chain of reasoning it would be impossible to overestimate. The conclusion which it points is indisputable.

¹⁸⁷ *In Timocr.* 702.

¹⁸⁹ *P.* 438.

¹⁸⁸ *Infra*, p. 260.

¹⁹⁰ *In Aristoc.* 642. 25-643.

The explanation which Demosthenes gives of this law is not, indeed, very profound. 'How comes this to be the case,' he says,¹⁹¹ 'men of Athens? Because they that made the laws originally, whoever they were, Heroes or Gods, did not (seek to) oppress the unfortunate, but in a humane way as far as they could with justice, they alleviated their misery.' But Demosthenes shows a certain clarity of vision in another place in which he examines the question why the laws were so careful to preserve the lives of murderers abroad. One of the reasons was, he says,¹⁹² 'to prevent an infinite series in the avenging of injuries.' We have already quoted Euripides¹⁹³ for a similar sentiment: 'Right well,' he says, 'did our ancestors in olden times enact these laws . . . they punished the murderer with exile, but they suffered no one to slay him in return, for (in that event) each successive avenger would be liable for bloodshed.' This sentiment may have been inspired by the atmosphere in which Euripides himself lived, and taken in conjunction with that which we have just cited from Demosthenes, suggests that the Greeks did not practise the 'private execution' of death penalties within the living memory of those authors. In the light of our conclusion we shall proceed to examine the position of parricide and of kin-slaying in historical Attic law.

PARRICIDE AND KIN-SLAYING

Two problems present themselves for solution: (a) First of all we must inquire whether parricide and kin-slaying were civic offences which were punishable by State law or whether the avenging of these deeds of blood was entirely at the discretion of the relatives and the clansmen; (b) secondly, we must decide what the nature of the legal penalty was (if the penalty was legal) in the historical era. The opinion of Glotz on this subject has already been given in outline.¹⁹⁴ He suggests that the pollution-doctrine affected the penalty for parricide, but he maintains that it was merely a public opinion which reinforced this doctrine and that the historical penalty

¹⁹¹ *In Aristoc.* 643.

¹⁹³ *Orestes*, 497 ff.; *supra*, p. 62.

¹⁹² *Ib.* 632, 20.

¹⁹⁴ *Supra*, p. 181.

was perpetual exile. The Draconian law, he holds,¹⁹⁵ did not interfere in the jurisdiction of the family. 'En réalité Dracon n'édicteait aucune sanction contre le parricide parce que l'Etat n'avait pas à s'occuper avec cela. La juridiction de la famille subsistait sur tous les points où elle n'était pas abolie par une disposition expresse. La loi ne parlait donc du parricide . . . toutes ces questions échappaient à sa compétence.'¹⁹⁶ 'Quand la conscience sociale se mit à intervenir contre les criminels, elle se proposait seulement de faire respecter les vieux usages. Elle obligea tous les meurtriers à quitter le pays au moins pour un certain temps : le meurtrier d'un proche, elle l'obligea . . . à sortir de sa famille pour toujours.'¹⁹⁷

In passing, we may note how inconsistent is this statement regarding the exile penalty for homicide with Glotz's favourite hypothesis of the legality of 'private settlement.'¹⁹⁸

It is not true that the pollution-doctrine confirmed and preserved old customs. It was in many respects opposed to them. It tolerated them only by way of compromise. The last clause of the quotation which declares that the penalty for kin-slaying was perpetual exile is based upon a misinterpretation of a passage in the *Laws* of Plato. Plato clearly states that death was the invariable penalty for kin-slaying.¹⁹⁹ The exile penalty to which Glotz refers is applied by Plato only to extenuated or involuntary kin-slaying, and in this connexion there is no question of perpetual exile in the ordinary sense, but merely of banishment from the domestic hearth, not from the State or the country of the slayer.²⁰⁰ Glotz quotes various analogies, such as ²⁰¹ the Irish clan-law, which is revealed in the *Senchus Mor*, in support of his theory. But in historical Attic law we have left behind us the clan-laws of tribal society. We are in the presence of civic legislation and of international religious authorisation.

Caillemer,²⁰² who is admittedly influenced by Glotz, holds a very similar view. He says : ' Il est très vraisemblable que la juridiction de la famille ne fut pas notablement modifiée par Dracon, et que le chef de famille garda le droit de juger et

¹⁹⁵ *Op. cit.* p. 321.

¹⁹⁸ *Supra*, p. 174 ff.

²⁰¹ *Op. cit.* p. 323.

¹⁹⁶ *Ib.* p. 322.

¹⁹⁹ *Laws*, ix. ch. 12.

²⁰² See Art. in Daremberg and Saglio, p. 441.

¹⁹⁷ *Ib.* p. 235.

²⁰⁰ *Ib.* ch. 9.

de punir sa femme, ses enfants, ses esclaves. . . . Avant Solon, le chef de famille, en vertu de sa magistrature domestique, pouvait ou bien mettre à mort la coupable, ou bien la chasser de sa maison. . . . Solon n'ignorait pas qu'il y avait à Athènes des parricides : mais il laissait à la famille le soin de les punir. . . . La société n'a pas à intervenir directement. Si cependant les parents manquent à leur devoir, une action publique va être donnée contre eux et elle pèsera de tout son poids sur l'homicide.' The 'public action' which is here referred to is clearly the indictment for impiety, such as was brought by Androtion against the uncle of Diodorus.²⁰³ But this indirect State interference which Caillemer is compelled by a passage in Demosthenes to regard as admissible in cases of parricide was the only kind of State interference which was permissible in cases of ordinary homicide in historical Athens. If then parricide and homicide stand on the same plane, so far as 'social justice' is concerned, why should we assume a distinction between them in regard to State jurisdiction and State execution? Caillemer attributes undue importance to an anecdote which is related by Cicero concerning Solon.²⁰⁴ 'On demandait,' he says, 'un jour à Solon pourquoi il n'avait pas établi de peine contre le parricide. "J'ai pensé," répondit-il, "que personne ne s'en rendrait coupable. Pourquoi statuer contre un attentat jusqu'alors sans exemple? Le défendre pourrait en inspirer l'idée.' In view of the fact that Solon did not change the murder-laws of Dracon, that the wording of those laws was sufficiently general to include kin-slayers, and that Roman ideas of jurisdiction and execution were different from those of Greece, we should be slow to base any theory upon such an anecdote. We read in Livy²⁰⁵ that a certain P. Horatius, the father of a famous warrior who in a moment of passionate triumph slew his sister, and who was in consequence arraigned before the King and the Duumviri, said to the judges that he considered his daughter was justly slain, and that otherwise he would have punished his son by right of his parental authority.

Again, Livy tells us²⁰⁶ how a certain Cassius, a consul, as

²⁰³ Dem. in *Androtion*. 593; in *Timoc.* 702.

²⁰⁴ *Op. cit.* p. 442; Cic. *pro Roscio Amico*, xxv. 70.

²⁰⁵ i. 26.

²⁰⁶ ii. 41.

soon as he went out of office, was sentenced to death and executed. 'There are some who say that his father inflicted the punishment, that after putting him on trial in private he scourged him and put him to death.' Such passages illustrate the well-known *patria potestas* of a Roman father. Yet even in Rome the State could interfere in such matters, since we find that a Decemvir ordered the arrest and the imprisonment of a certain Virginius who had slain his daughter.²⁰⁷ Rome, however, can give us no really valid evidence for Greek law. The power of a father to sell his daughter as a slave, which Solon abolished, was a remnant of *patria potestas*.²⁰⁸ But Solon's interference in such matters proves that the sacred jurisdiction and power of the family had been already in his time invaded by the State. All matters which concerned public morality and utility, all matters which were affected by national or international religion, had naturally passed out of the exclusive control of the kindred. We have already indicated ²⁰⁹ the survival in historical Greece of clan-courts and of local religious corporations. We have also quoted Plato ²¹⁰ for the operation of local jurisdictions in cases of 'wounding in a passion,' between members of the same kindred.

But the religious doctrine of pollution placed the actual slaying of kinsmen on an altogether different plane. Moreover, we believe that the evolution of State execution affected the question of the penalty for kin-slaying. Demosthenes, in two passages ²¹¹ recently cited, makes his client Diodorus say that if Androtion had succeeded in the indictment for impiety which he had brought against the uncle of Diodorus, he himself, as a result of the indictment, would not only have lost his property but would also have lost his life. Now such a confiscation of property must have been a State confiscation : and the only authority which could decree or execute such a confiscation was a State court and State officials. It is therefore natural to assume that the death penalty would also have been carried out by the State.

Plato describes, in hideous detail, the execution by public

²⁰⁷ Livy, iii. 48.

²⁰⁸ Glotz, *op. cit.* p. 350.

²⁰⁹ *Supra*, p. 84 ff.

²¹⁰ *Laws*, ix. ch. 15.

²¹¹ *In Timoc.* 702 ; *in Androtion*, 593.

magistrates of the slayer of a kinsman.²¹² Even for malicious wounding within the family, the penalty of death is decreed.²¹³ For wounding in a passion, a fine could be imposed by the parent or the male kindred of the offender: but if a parent was wounded by his child, death could be inflicted, even by a tribal court, in which none of the relatives of the child could act as judges.²¹⁴

Lysias²¹⁵ makes one of his pleaders repudiate, most emphatically, the suggestion that parricide was not criminal and illegal. The word *ἀνδρόφονος*, or homicide, includes, he says, implicitly if not explicitly, the slayer of a parent. Pollux,²¹⁶ however he be interpreted, must be regarded as implying that parricide was a crime, which was probably punished by the Areopagus. We have quoted the relevant passage already.²¹⁷ Pollux is describing the Areopagus, which was the admittedly regular court for wilful murder. He refers to the preliminary affidavits, and, speaking of the final trial, is represented by the text of Dindorf as saying 'After the first speech it is lawful to go into exile—if one has slain one's parents'! Now, if we suppose that this text is correct, it would follow that parricide was a State offence which was judged by the Areopagus State court. But the same conclusion can be maintained even if, as we believe, the text is incorrect. We believe that Pollux wrote not *εἰ* but *εἰ μὴ*, and that he means 'unless one slays one's parents.' He clearly implies that parricide also came before the Areopagus.

Finally, the *Euthyphro* of Plato, which represents a man actually bringing an indictment or a charge of murder against his father, cannot be explained on the assumptions of Glotz and Caillemer. The weakness of Euthyphro's legal position is pointed out by Socrates,²¹⁸ namely that Euthyphro was not a kinsman of the slain. The threatened indictment was a *δίκη*, not a *γραφή*. It was a regular charge of homicide which was lodged with the Archon Basileus.²¹⁹ Now Socrates' objection would not apply if the slain man had been a kinsman of the accuser: and this would necessarily have been the

²¹² *Laws*, ix. ch. 12.

²¹³ *Ib.* ch. 14.

²¹⁴ *Ib.* ch. 15; cf. Andocides, *de Myst.* 74: ἄτιμοι ἦσαν τὰ σώματα, τὰ δὲ χρήματα εἶχον.

²¹⁵ *C. Theomnest.* 116, 7-8.

²¹⁶ viii. 117.

²¹⁷ *Supra*, p. 218.

²¹⁸ 4C.

²¹⁹ 2A-3E.

case if the father of Euthyphro had slain a member of his own family or kindred.

We have seen ²²⁰ that in the days of private vengeance and of tribal society, kin-slaying was normally punished by exile, as wergeld was impossible, and kinsmen revolted against the infliction of death. In those days, kin-slaying was normally a matter for the jurisdiction of the clan. In historical times, kin-slaying was punished by death and the confiscation of property—and these penalties can no longer be regarded as in conflict with clan-psychology, since the slayer was prosecuted in a State Court and was executed by State officials. All these facts are therefore quite consistent and they are mutually explanatory. It was the doctrine of pollution and the evolution of civic government which produced so drastic a revolution in the punishment of kin-murder.

We can now understand quite clearly the meaning of Plato's reference to the penalty of kin-slaying: 'Of a kindred blood defiled,' he says, ²²¹ 'there is no other cleansing, and the pollution cannot be washed away until the life of the slayer shall atone for kin-blood by kin-blood and appease and set to rest the anger of all the kindred. It is proper that a person be restrained from such deeds by the fear of such punishments from the gods.' Euripides also expresses the same sentiment in the *Medea*. The Chorus say ²²²:

Stern upon mortals the vengeance falleth
For kin's blood spilt: from the earth it calleth,
A voice from the gods, and the slayers appalleth,
On whose homes it shall light.

How then do we suppose that the murder of a husband by his wife, or of a wife by her husband, was punished in Attic law? Such parties were usually not akin by blood. Yet they lived in the same house and they ate at the same table. ²²³ The penalty in this case was, we think, precisely the same as the penalty for ordinary wilful homicide. The slayer had the option of going into exile for ever if he fled before conviction, or of suffering death at the hands of the public executioner if he did not flee. Hence, perhaps, Euripides ²²⁴

²²⁰ *Supra*, p. 9.

²²¹ *Laws*, ix. ch. 12.

²²² 1270 (trans. A. S. Way); cf. 1339, also *Her. Furens*, 1280, 1325.

²²³ See Eur. *Alcestis*, 534.

²²⁴ *Orestes*, 497 ff.

is thinking of the historical Attic law when, in the *Orestes*, he makes Tyndareus assert that Orestes should not have slain his mother, but should have put her on trial and have banished her as an exile for ever. We must assume that in the event of exile the property of such slayers was confiscated, though it seems very cruel that children whom murder and vengeance had deprived of both their parents were compelled in addition to forfeit their patrimony.

The malicious wounding of a husband by his wife or of a wife by her husband did not, apparently, involve such a confiscation but did involve perpetual exile. This identical penalty is applied by Lysias to ordinary cases of malicious wounding.²²⁵ Hence Plato is quite authentic when he says²²⁶ 'If a woman wounds her husband with intent to kill, or a husband his wife, let (the offender) undergo a perpetual exile . . . let guardians manage the property and take care of the children as if they were orphans. . . . In case there are no children let the kindred, as far as cousins, on the male and female side, come together and appoint an heir.'

It is in cases of involuntary homicide or of homicide in a passion, between man and wife, that the influence of the pollution doctrine is especially apparent. The penalty for such deeds, as Plato assures us, was perpetual exile from the family and temporary exile from the State. Now, temporary exile, in ordinary cases of involuntary homicide, was terminated by the 'appeasement' of the relatives of the slain. The primeval tribal law in which 'appeasement' ultimately originated recognised the payment of material retribution in cases of husband-wife slaying. But the 'pollution' doctrine prevented the survival, in historical times, of 'appeasement' in cases of this kind. Plato²²⁷ assures us that such offenders could never, in any circumstances, return to dwell in their old homes with their children.

We have now completed our review of the murder-laws of Dracon. We have not referred in this connexion to the law which related to the seizure of hostages in default of extradition (*ἀνδροληψία*) because this law has already²²⁸ been

²²⁵ *C. Simon.* 42; *supra*, p. 225.

²²⁶ *Laws*, ix. ch. 14; cf. Andocides, *de Myst.* 74-75.

²²⁷ *Laws*, ix. ch. 9.

²²⁸ *Supra*, p. 164 ff.

discussed and explained. We have also omitted many legal details, of which some will find a place in our next chapter, which deals with Attic murder-courts, and others have not been considered sufficiently important or sufficiently relevant to our main purpose—which is, in effect, the philosophical explanation of the origin and evolution of Greek homicide law.

There is one point which, in conclusion, we wish to emphasise, namely the value and the importance of the Platonic code when considered as a supplement to the laws of Dracon in cases where they do not directly reproduce them. It is easy to assert that Plato is an idealist when his ideas do not correspond with one's pet hypotheses.²²⁹ But what, we may ask, was the source of Platonic idealism, and was this source of such a kind that it would have affected the historicity of his homicide-laws? The idealism of Plato was, we think, derived from the Orphic-Pythagoreans, and also to some extent from the Eleatic philosophers. His theory of 'ideas' originated, as Burnet has shown,²³⁰ with the Pythagoreans. So, Glotz rightly says ²³¹: 'l'eschatologie de Platon présente une grande cohésion. Elle vient de l'orphisme.' Was there, then, in Orphism any special doctrine which could have affected Plato's attitude to homicide? Could such a doctrine have imported new ideas into Plato's legislation? It is true that murderers were excluded from the famous Mysteries at Eleusis when those Mysteries came under Orphic domination, from 400 B.C. onwards.²³² Murderers were punished by everlasting fire in the Orphic Tartarus,²³³ and parricides and matricides were singled out for the most severe punishment. Aristophanes has a line ²³⁴ which has been interpreted as referring ²³⁵ to human bloodshed,

Ὅρφεὺς μὲν γὰρ τελετάς θ' ἡμῖν κατέδειξε φόνων τ' ἀπέχεσθαι:

but the *φόνοι* which are here mentioned denote the sacrificial

²²⁹ See Glotz, *op. cit.* pp. 537, 594, and contrast p. 234.

²³⁰ *Phaedo*, Introduction, p. xlv.

²³¹ P. 594.

²³² See Smith, *Dict. Gk. Ant.*, s.v. 'Eleusinia,' vol. i. p. 722; Isocrates, *Panegy.* 42.

²³³ Plato, *Phaedo*, 113E-114; *Laws*, ix. ch. 17.

²³⁴ *Frogs*, 1032.

²³⁵ Harrison, *Proleg.* p. 470; Pausanias, ix. 30.

slaying of animals, to which the Orphics objected. Horace ²³⁶ puts it more clearly when he says :

silvestres homines sacer interpresque deorum
caedibus et victu foedo deterruit Orpheus.

Orphism, then, stands in the same relation to the Apolline religion of pollution as Christianity does to Judaic religion. It supplements the punishment which angry deities send upon criminals here on earth by a further punishment hereafter. But, considered as modifying factors in the evolution of social law, the Judaic and the Apolline doctrine of pollution are incomparably more important. We have seen that Christianity accepted wergeld in Europe,²³⁷ while Judaism abolished it in Israel.²³⁸ Orphism, as we conceive it, had no effect upon the murder-laws of Greece. Plato was, naturally, sympathetic towards the Orphic religion : still he does not place much trust in merely posthumous punishment for so great a crime as homicide : and hence in his penal code he falls back on the historical Greek laws which were the offspring of Apolline religion, because there was no other code available. Thus he says ²³⁹ : 'Let our prelude include a "myth" which many of those who seriously take to heart such matters in the mysteries have heard and believe firmly, namely, that for such persons (*i.e.* murderers) there is a punishment in Hades : or that it is necessary for them to come back hither to suffer punishment according to nature (by a natural law), to suffer from others what they had done themselves . . . for him who is persuaded . . . and who terribly fears such punishment, there is no necessity to frame a law, but for him who is not persuaded let the following law be written thus.' Here Plato, as a prelude to his homicide legislation, definitely states that these laws are intended for the general public and not for Orphic votaries. So again ²⁴⁰ he says : 'Death is not the extreme punishment : the pains spoken of in regard to such persons (*i.e.* murderers) in Hades are still more extreme : though they who tell such truths accomplish nothing by way of deterrence (*ἀποτροπή*) for people of such a character : otherwise there would never have arisen matricides and

²³⁶ *Ars Poetica*, 391.

²³⁷ *Supra*, p. 9 ff.

²³⁸ *Supra*, pp. 3, 140.

²³⁹ *Laws*, ix. ch. 10.

²⁴⁰ *Op. cit.* ch. 17.

impious attacks on parents. Hence the punishments here in this life for such crimes should rival in efficacy those in Hades.' Here we see that, despite the Orphic sympathies of Plato, he has to adopt as his legal model the historical Greek murder code which was mainly derived from the Apolline 'pollution' doctrine. He has to appeal to the religious sanctions of Apollinism, just as in modern society Christian preachers appeal to Judaic doctrines when a more ideal and higher conception of religion fails to deter the shedder of blood. The homicide code of Plato was therefore not affected by Orphic ideas. It was based on the Attic code of Dracon, and also on local traditions, or, as Glotz would describe it,²⁴¹ 'la vieille jurisprudence des exégètes.'

²⁴¹ P. 234.

CHAPTER III

ATTIC HOMICIDE-COURTS

Attic legends concerning origin of courts for homicide : the accounts of Pollux, of Aristotle, of Demosthenes : question of a *γραφὴ φόρου* : Plato's *Euthyphro* : author's theory of the origin of Attic courts for homicide : Dracon and the Ephetae : Solon and the Areopagus : the Exegetae.

IN an earlier section¹ of this work we have explained what we consider to have been the origin and the evolution of judicial investigation in matters of homicide. We have said² that 'the evolution of early Greek judicial authority is not a transition from a crude arbitrary local jurisdiction to an efficient central compulsory jurisdiction but rather a gradual extension to wider areas, in accordance with increasing political synoekism, of the judicial functions which had been previously discharged with equal authority within smaller areas.' The influence of the 'pollution' doctrine in compelling the State to investigate and to adjudicate concerning degrees of blood-guiltiness has also been clearly shown.³ We shall now apply our conclusions to the Attic homicide courts—the only Greek courts of which we have any precise and authentic knowledge. The actual origin of the Athenian courts is surrounded by mystery and obscurity. Many of the legends which refer to their foundation are clearly the fabrications of men who were born when these courts were already old. Places which in later times came to be notoriously associated with the courts which sat there to give judgment in homicide cases, had previously, in many instances, been consecrated by legends which had no connexion with homicide at all. The 'Areopagus,' for example, that is, the Hill of Ares, may have been at one time the scene of a battle in which Theseus, an Ionian King of Attica, proved victorious. The place would then naturally have come to be called 'the Hill of Ares.' Aeschylus⁴ says that the hill got its name from the

¹ See *supra*, p. 80 ff. ² *Supra*, p. 81. ³ *Supra*, pp. 93, 144. ⁴ *Eum.* 688.

sacrifice which was offered to Ares by the Amazons whom Theseus defeated. Glotz points out that there was no temple of Ares on the Areopagus, and he holds that the connexion of Ares with this hill was derived from a time when *Ares* signified not only war but murder, as in the Homeric phrase, "Ἀρεω ἀλκτῆρ (avenger of blood).⁵ This homicidal rôle of Ares, and, moreover, the existence of an altar of Athene *Areia* at the Areopagus, which is referred to by Pausanias, explains, he thinks, the real origin of the place-name. But Pausanias was not of this opinion. 'Here also,' he says, 'is the Areopagus, so called because Ares was first tried here.'⁶ This is really a third hypothesis as to the meaning of the word. Aeschylus gives also a fourth explanation. The place may be called, he suggests,⁷ from the Erinnyes who here became 'appeased' under the form of Semnai Theai, but who were called *Arai* or Curses beneath the earth. The main point of interest in this confusion of opinions is that the hill called the Areopagus was in historical times so closely associated with trials for homicide that Ares had to be conceived as a murderer in order to retain his connexion with the place. Orestes, whose sojourn at Athens, as Homer relates it, had no connexion with homicide,⁸ was associated, in legend, with the Areopagus to such an extent that Ares was almost eclipsed and the Athenians found it difficult to decide whose trial came first! Demosthenes⁹ wisely refrains from deciding. 'In ancient times,' he says, 'as we are informed by tradition, the gods on this tribunal alone deigned to demand and render justice for murder. . . . Poseidon claimed justice against Ares because of the murder of his son Halirrhothius, and the Twelve Gods sat in judgment between the Erinnyes and Orestes. Such are its ancient glories.' Aeschylus is naturally led by dramatic considerations to regard the trial of Orestes as the first¹⁰ Athenian murder-trial: and therefore, out of courtesy to Ares, he is led to reject the legend that Ares was a murderer, in favour of what we believe to have been an older story, namely that Ares was a war god to whom, on that hill, the Amazons sacrificed when they were overthrown by Theseus.¹¹ Euripides¹² accepts as a

⁵ *Op. cit.* pp. 282-3; but see Leaf, *Il.* xiv. 485 n.

⁶ i. 28.

⁷ *Eum.* 420.

⁸ *Supra*, pp. 72, 185 f.

⁹ *In Aristoc.* 641, 25.

¹⁰ *Eum.* 685.

¹¹ *Ib.* 688.

¹² *Iph. Taur.* 960, 1420; *Electra*, 1260.

fact the trial of Ares on the Areopagus, but he places it prior to the trial of Orestes. It is quite impossible to base any historical reasoning upon such legends. The mention of the Areopagus in a law of Dracon—or rather, as we think, in a Solonian modification of it—is the only genuine evidence for the antiquity of the Court.

Similarly, in regard to the Delphinium, Pausanias implies that it was believed to be as old as Theseus: but we have not the least doubt that its exclusive association with pleas of justifiable homicide was a product of the seventh and sixth centuries B.C. Pausanias says¹³: ‘The Delphinium is the court for those who plead that they have committed justifiable homicide, which was the plea of Theseus when he was acquitted for killing Pallas and his sons . . . and before the acquittal of Theseus every manslayer had to flee for his life.’ Such statements belong to the region of aetiological legend, but not to that of historical fact. Theseus slew Pallas and his sons in war¹⁴; hence his act was not homicide in the ordinary sense. We have seen that in Homer¹⁵ Pelasgian manslayers had not to flee, for they could pay their share of the wergeld and remain in the home of their fathers. It is strange that Orestes was not more definitely connected with the Delphinium court, for his plea in most legends was justifiable homicide. Demosthenes suggests that Orestes’ acquittal by the Areopagus was the cause of the establishment of the Delphinium.¹⁶ But Orestes was bound to the Areopagus by ‘hooks of steel’ and he could not be divorced from it! We have little doubt that the Delphinium was a temple of Apollo at Athens long before it became associated with homicide-trials. Legends which explain it as the court of Apollo the Delphian justifier of Orestes, or of Apollo the justifiable slayer of the *Δελφίνη*, or Python,¹⁷ do not prove that the distinction between justifiable and unjustifiable homicide originated in or had any essential connexion with this temple.

Legend is equally powerless to explain the birth of the Palladium court. Pollux is content to give a legend which explains only the origin of the temple, and even this story is

¹³ i. 28. Pollux, viii. 119, makes Aegeus the founder.

¹⁴ Pausanias, i. 22, 28.

¹⁵ *Il.* ix. 632.

¹⁶ *In Aristoc.* 644, 20.

¹⁷ *See Müller, Eum.* p. 141.

probably fictitious.¹⁸ Pausanias¹⁹ tells us a similar tale about the Argives and the wooden image of Pallas, but in order to account for the origin of the court as distinct from the temple, he relates that Demophon, son of Theseus, was tried here for having slain, in an attack upon the Argives, an Athenian citizen whom in the confusion he had not recognised as such. But we have seen²⁰ that such slaying, in Attic law, was justifiably accidental homicide, not manslaughter. Yet Pausanias fancies that he is explaining the origin of a manslaughter court! No wonder that he feels that 'the reason why he was tried is a matter of dispute.'²¹

In his account of the Prytaneum court which tried inanimate objects or animals guilty of bloodshed and which also brought in verdicts against unknown murderers, Pausanias²² refers to the ceremony of slaying an ox at the Bouphonia. 'They call one of the priests,' he says, 'Ox-Killer, and he, after throwing the axe, runs away, for that is the usage: and, as if they did not know who had done the deed, they bring the axe into court as defendant.' The first instance of such a trial occurred, he thinks,²³ in the time of Erechtheus: 'Then first did Ox-Killer kill an ox, and left the axe and fled the country, and the axe was forthwith acquitted after trial and is tried annually even nowadays.' Pausanias is probably correct in attributing to the Prytaneum an ancient origin. But the Bouphonia belongs to a different strand of development from that in which originated the trial of inanimate objects. There is a stage in the evolution of ancient religion in which the slaying of an animal was a religious offence and needed expiation.²⁴ This stage is quite independent of that in which the shedding of human blood became sinful. (We speak, of course, only of ordinary homicide, for in the earliest days²⁵ the slaying of a kinsman was a sin against the family ghosts and the gods of the hearth.) Now, the tabu against animal sacrifice had probably disappeared, in Greece, long before the seventh century B.C. when the tabu against human bloodshed had set in. But ritual is conservative, and the original rite of the Bouphonia

¹⁸ viii. 119.

²¹ See *infra*, p. 254.

²⁴ Glotz, *op. cit.* pp. 178-9; see also Herodotus, i. 132, 140, ii. 41-42, 54.

²⁵ *Supra*, p. 108.

¹⁹ i. 28.

²² i. 24.

²⁰ *Supra*, p. 215.

²³ i. 28.

continued to be carried out at a time when its meaning was lost and its origin forgotten. A new meaning—but a wrong meaning—was grafted upon this rite, a meaning which is derived from the trial of guilty animals and inanimate objects in the central Prytaneum court. Now this central trial was forced upon the State by the doctrine of pollution in the seventh century. The trial of animals at the Prytaneum cannot therefore be explained by the Bouphonic rite. The account of Pausanias is therefore misleading. We do not assert that the trial of animals and of inanimate objects in local courts was not as old as the Bouphonic rite. There is no time-limit to the antiquity of a jurisdiction which was necessary for the assessment of material damages, in such cases, in tribal society. This jurisdiction was also, we believe, appealed to in pleas of accidental homicide, as well as in cases where the slayer was unknown. But there is a vast gulf between local and central jurisdiction in such matters. Synoekism and 'pollution' were the two factors which bridged that gulf, but that result cannot have been earlier than the seventh century B.C. Hence we assert that the two events which are connected by Pausanias belong to two different strands of development.

Finally, in regard to the homicide court at Phreatto, legend is particularly at fault. Is this because the court was established very late, or is it that the conception on which the court was based could not easily have found analogies in the distant past? The latter, we believe, is the more correct explanation. The court at Phreatto was clearly and unmistakably derived from the religion of 'pollution.' The defendant pleaded from the deck of a ship and was not permitted to set foot on the shore.²⁶ This court had jurisdiction in the event of a person, who was already exiled for manslaughter, being afterwards, before his exile terminated, indicted for murder.²⁶ We may refer both accusations to the same act or to different acts. We may suppose, either that new evidence had been obtained which destroyed the plea of manslaughter guilt which had once been successfully advanced, or that an entirely new deed of blood had been laid at the door of the exile. It would have been clearly very difficult to find archaic facts so similar in general outline to such events that they could have been perverted so

²⁶ *Infra*, pp. 250, 256 f.

as to form archaic precedents. Legend ²⁷ revealed no better precedent than the story of Teucer pleading innocence for the death of Ajax! This plea was made to Telamon of Salamis, before Salamis became Athenian, and is therefore entirely irrelevant. The name Phreatto seems to be derived from *φρέαρ*, *φρέατος*, which denoted an enclosed area of the sea near the Peiraeus where the court sat.²⁸ The origin of this court belongs to the pollution era, but that fact does not prove that its origin was very much later than that of the other courts, if we regard these other courts as centres of official State judicature functioning compulsorily under the influence of the 'pollution' religion. We maintain that there were courts for homicide from time immemorial in tribal Greece. But it was the seventh century that saw the birth of the Attic murder courts in that particular rôle which they fulfilled, with some slight modifications in respect of the distribution of labour in historical times.

As we cannot then derive any assistance from the legends in our attempt to describe the evolution of the Attic murder-courts, we are compelled to begin, so to speak, at the other end, and by arguing from survivals, to reconstruct the most probable mode of evolution from an analysis of historical facts.

We will begin with the synoptic account of Pollux ²⁹ which is as follows :

(1) *The Areopagus* 'judged (charges of) wilful murder and wounding with intent to kill, arson and the administering of drugs, if a person gives them with intent to kill.' This account is identical in fact with that of Dracon's law, as Demosthenes ³⁰ quotes it. It is therefore probably based upon the Demosthenic passage or upon an archaic inscription. The clause *φόνου καὶ τραύματος ἐκ προνοίας καὶ πυρκαϊᾶς καὶ φαρμάκων* occurs both in Pollux and in Demosthenes.³¹ Pollux adds that the nine archons were added to the *Areopagites*, and that they held their trials in the open air.

(2) *The Palladium* : 'in this court are heard charges of involuntary slaying.' Pausanias ³² corrects this account, though he is not himself very precise, when he says : 'Murder-

²⁷ Paus. i. 28 ; see Soph. *Ajax*, 1020.

²⁸ See Müller, *Eum.* p. 134, and Sandys' note, Aristotle, *Ath. Pol.* p. 228.

²⁹ viii. 117-120.

³⁰ In Aristotle, 627, 20.

³¹ *Loc. cit.*

³² i. 28.

cases are taken in this court . . . in which are also tried cases of manslaughter.' Further details we shall presently adduce from Aristotle and from Demosthenes ; we shall see ³³ that this court tried no murder-cases except those which occurred between strangers.

(3) *The Delphinium* : the trials in this court are modelled, Pollux suggests, on that of Theseus and the Pallantidae ' whom he admitted that he slew but asserted that he had justly slain.'

(4) *The Prytaneum* ' judges about those who have slain, if they are unknown (*ἀφανεῖς*), and about inanimate objects which have fallen upon and slain (persons). The Tribe-Kings, whose duty it is to cast the fallen object over the (civic) boundaries, preside over this court.'

(5) The Court at *Phreatto* : ' in this court anyone was tried who, being an exile for involuntary homicide, becomes liable to a second charge of wilful murder. The Court was by the sea ; the accused had to make his defence from the ship, without touching the land. . . .'

Pollux ³⁴ then proceeds to describe the *Heliastic* courts, which were five or six in number. Pausanias ³⁵ mentions four of these courts, namely : (1) The Crush ; (2) The Triangle ; (3) The Froggy and (4) The Scarlet. From this description of them we may infer that these courts were always distinguished in procedure if not in personnel from the famous Ephetae courts. One of these Heliastic courts which Pollux mentions is the court of the ' Eleven ' Gaol-Commissioners. These officials had summary jurisdiction in certain cases. Aristotle ³⁶ mentions the cases of ' thieves, kidnappers and highway robbers ' who confessed their guilt. Demosthenes ³⁷ refers to a prison court in which an accused but unconvicted murderer who was found frequenting temples or public places could be summarily tried and put to death. We shall discuss this court more fully presently. It seems to us to be properly described as a special kind of Heliastic court : for the Eleven were appointed, like the ordinary Heliasts, by lot.³⁸

Whether the Heliastic jurors in the fourth century were compelled to occupy separate places of jurisdiction from the Ephetae or whether they also sat in the actual Ephetae courts

³³ *Infra*, p. 250. ³⁴ viii. 121-122. ³⁵ i. 28 ; see also Aristotle, *Ath. Pol.* 63.

³⁶ *Ath. Pol.* 52. ³⁷ *In Aristoc.* 647 ; *infra*, p. 257 ff. ³⁸ Aristotle, *loc. cit.*

is a difficult question to decide. One thing at least is certain, as Lipsius points out.³⁹ The mode of procedure in the old courts remained peculiar and distinct. When therefore Antiphon⁴⁰ makes a pleader, in a homicide charge, object that 'here there is no open-air trial, no customary giving and taking of oaths,' we know that the trial is by Heliastic jurors in a Heliastic court. No mere change of personnel from that of the Ephetae or nobles to that of democratic jurors was so drastic as the legal sanction of an alternative procedure which entirely lacked the religious traditional prestige of the older Ephetae courts.

Aristotle's account⁴¹ of the five great homicide courts is very similar to that of Pollux :

(1) *The Areopagus* : Homicide with malice aforethought (*i.e.* wilful murder) is tried in the Areopagus, wounding with intent to kill,⁴² poisoning with intent to kill, and arson : these are the only indictments tried by the Areopagus.

(2) *The Palladium* : Involuntary homicide, attempts to commit homicide (*βούλευσις*), and the homicide of a slave, or a foreigner domiciled or undomiciled, are tried in the Palladium.

(3) *The Delphinium* : Homicide avowed and alleged to be lawful, as of a surprised adulterer, or in war of a friend mistaken for an enemy, or of an antagonist in an athletic contest, is tried in the Delphinium.

(4) *The Prytaneum* : the King-Archon and the Tribe-Kings judge indictments of inanimate objects and of animals.

(5) *Phreatto* : If an exile for involuntary homicide has not yet obtained permission from the relatives of the deceased to return, and is charged with another homicide or with wounding, he is tried at Phreatto. He pleads from the deck of a vessel brought to land.

Aristotle adds that 'the jurors are appointed by lot, except in the case of the Areopagus. The "King" (*i.e.* the King-Archon) introduces indictments : the courts sit by night and in the open air, and when the "King" takes his place in any court, he lays aside his crown.⁴³ If the name of the

³⁹ *Op. cit.* p. 14 ff. ⁴⁰ *De Herodis Caede*, 130, 139. ⁴¹ *Ath. Pol.* 57.

⁴² Poste's translation 'homicide by wounding' is obviously incorrect.

⁴³ See also Pollux, vii. 90.

homicide is unknown, the indictment is prosecuted in general terms against the unknown author.'

In these extracts we must indicate some points of interest.

(1) The jurisdiction of the Areopagus, according to Poste's interpretation, extended only to cases in which human life was actually taken, and deliberately taken: obviously therefore it did not include all cases of arson. But according to the usual interpretation, which we accept, arson of any kind was included in its jurisdiction, and so was malicious wounding which did not end in death. (2) In Aristotle's account of the Palladium, the word *βούλευσις* must mean 'attempted murder' which did not succeed in inflicting any physical injury.⁴⁴ It cannot, as Lipsius⁴⁵ thinks, include 'contriving death,' which, according to Demosthenes,⁴⁶ was tried by the Areopagus. (3) The Palladium adjudicated in cases of wilful homicide between foreigners. Pausanias also attributes this function to this court, as we have shown.⁴⁷

The Athenian Areopagus had a very chequered career. Solon is generally regarded as its creator, and in his time it functioned as a Council of State with very wide supervisory powers. But about the year 460 B.C. Ephialtes and Pericles⁴⁸ restricted the function of the Areopagus to the trial of wilful murder, and of cases of arson and poisoning which included actual intentional slaying. About the same time the archonship was thrown open to the poorer citizens, so that the personnel of the court became more democratic.⁴⁹ Pollux and Aristotle agree in assigning to the Areopagus functions which it continued to discharge, despite the vicissitudes of fortune, from the sixth century onwards. When Aristotle says that the Athenian jurors were appointed by lot,⁵⁰ he refers, clearly, to the Heliastic courts and not to the Areopagus. The Areopagus court, which was composed for the most part of Archons and ex-Archons, was on quite a different plane. Similarly the Ephetae judges were probably not chosen by lot, since they were members of the old aristocracy of birth. Aristotle does not expressly mention the Ephetae. Yet we cannot suppose that they were ever completely deprived of jurisdiction in

⁴⁴ *Supra*, p. 225.

⁴⁵ *Op. cit.* pp. 443, 612 ff.

⁴⁶ *C. Conon.* 1264, 20.

⁴⁷ *Supra*, p. 248.

⁴⁸ *Arist. Ath. Pol.* 25, 27.

⁴⁹ *Op. cit.* 26.

⁵⁰ *Op. cit.* 63.

homicide cases. Harpocration ⁵¹ says that the jurors in all the great homicide courts except the Areopagus were Ephetae ; that they were fifty-one in number, and were chosen according to the qualification of birth. The statement of Pollux ⁵² that ' the Ephetae judged in the five courts ' applies only, we shall see, to Dracon's time. When he adds : ' gradually the jurisdiction of the Ephetae was regarded as a joke ' (*κατεγελάσθη*), we can hardly suppose that he is comparing them with the Areopagus, but rather with the Heliastic jurors. But he implies at least that the Ephetae continued to function as judges and that they were never confused with the Heliastic jurors. If then in Aristotle's time the judges at the Palladium, Delphinium and Phreatto are Heliasts, we must conclude not that the Ephetae had ceased to exist, but that democracy had invaded their jurisdiction to the extent of permitting an option in the personnel of the court, though the traditional procedure of the court was maintained. We shall see that the Areopagus and the four Ephetae courts were regarded with reverential awe in the time of Demosthenes. We do not know to what period Pollux refers when he says that ' the court of the Ephetae was regarded as a joke.' It is probable that the Heliasts had the option of sitting in such courts, and this fact may have preserved for them at least a remnant of their old prestige. But the main cause of the reverence which these courts inspired was their traditional procedure. The King-Archon when he presided at the Areopagus laid aside his crown.⁵³ According to our interpretation of Aristotle, he also laid aside his crown when he sat amongst the Heliastic jurors in the Ephetae courts. This act was not a tribute paid by obsolete monarchy or aristocracy to victorious democracy. It was an act which the religious atmosphere of the Areopagus and of the Ephetae courts had enshrined in traditional custom. It was an act which fully harmonised with the solemn procedure of these courts, with their traditional nocturnal sessions, in the open air, beneath the dark sky and the cold stars.

We will now quote some extracts from Demosthenes in relation to the Athenian homicide-courts :

⁵¹ See Poste's translation of *Ath. Pol.* p. 114.

⁵² viii. 125.

⁵³ Pollux, viii. 90.

(1) *The Areopagus*.⁵⁴ 'There are many institutions amongst us of a character not elsewhere found, but the most characteristic and venerable of all is the court of the Areopagus . . . in ancient times, as tradition tells us, the gods deigned in this court alone to demand and to render justice for murder and to sit and judge mutual disputes : Poseidon sued Ares for having slain his son Halirrhothius,⁵⁵ and the twelve gods judge the suit of the Erinnyes and of Orestes : this tribunal neither tyrant nor oligarchy nor democracy has ventured to deprive of its jurisdiction in murder cases : everyone knows that any process of popular invention would be less efficacious than that of the Areopagus . . . of this court only is it true that no convicted criminal or defeated plaintiff has ever assailed the propriety of its verdict. For all know that in the Areopagus where the law permits and commands proceedings for homicide to be taken, the person who charges another with such a crime will take an oath with imprecations on his family and his house : it is no ordinary oath that he has to swear . . . he must stand upon the entrails of a boar and a ram and a bull : these animals must have been sacrificed by the proper persons and on the appointed days so that both in regard to time and to officiating persons every due solemnity may have been observed. Even then the person who has sworn such an oath is not yet believed, but if he is convicted of falsehood, he will carry away the curse of perjury upon his children and his posterity.' The solemn procedure here described is also referred to by Antiphon⁵⁶ : and Lysias⁵⁷ assures us that 'the plaintiff swears that the defendant was the slayer, the defendant swears that he did not slay.' Pollux⁵⁸ states that both plaintiff and defendant were required to confine themselves to the point at issue and to abstain from any attempt to excite sympathy or compassion. What a contrast this picture presents to the procedure in a democratic Heliastic court composed of five hundred or seven hundred Athenian citizens, sitting together at the *Crush*, at the *Triangle*, at the *Froggy* or at the *Scarlet* !⁵⁹ When Demosthenes says that the Areopagus was never deprived of its jurisdiction on homicide, not even by the democracy, we feel that he is acutely conscious

⁵⁴ In *Aristoc.* 641, 18-642.

⁵⁶ *De Herodis Caede*, 130, 139.

⁵⁸ viii. 117.

⁵⁵ *Supra*, p. 244.

⁵⁷ *C. Theomnest.* 117, 11.

⁵⁹ See Paus. i. 28 (trans. Shilleto).

of the contrast in the procedure of the Areopagus and of the Heliastic courts, as Antiphon certainly is ⁶⁰: we may also infer that some such democratic invasion had occurred in the case of the four other homicide courts in which the Ephetae at one time had exclusive jurisdiction.

(2) *The Palladium* ⁶¹—the court for involuntary homicide: ‘here it is the law that both parties should first take oath (*δωμοσία*), then deliver their speeches, and finally that the court should decide.’ Demosthenes gives no further details, but the missing information is supplied by Aristotle and by Pausanias. We shall see presently ⁶² that at one period this court probably tried all kinds of homicide pleas between citizens. The legend ⁶³ concerning Demophon’s plea at this court must have originated at such a period. But the court had developed, we think, before the time of Solon a specialised function in regard to pleas of involuntary homicide. The reason for this was, perhaps, because it was situated outside the city boundary and would naturally therefore have been selected as a court of appeal by exiles who had been convicted of manslaughter and who were anxious to return. Hence in Solon’s time this court was habitually appealed to by the citizens in charges of manslaughter. If it still continued to hear pleas of wilful murder between foreigners, this was perhaps because such pleas were regarded as of minor importance. In such cases no Athenian court could decree or execute the penalty of confiscation, since the slayers were foreigners, and their property was not subject to Athenian control. It is also possible that the laws of extradition (*ἀνδροληψία*) made it desirable to judge cases of homicide between foreigners at a court which was outside the original boundary of the city.

(3) *The Delphinium* ⁶⁴: ‘There is a third tribunal, of all courts the most sacred and filled with awe, in which a person acknowledges that he has slain another but contends that he has done it lawfully. This is the court at the Delphinium. It appears to me, men of Athens, that they who originally distinguished the lawful from the unlawful inquired whether it was right to consider no homicide lawful, or whether a certain

⁶⁰ *De Her. Caede*, 130, 139.

⁶² *Infra*, p. 273.

⁶³ Pausanias, i. 28.

⁶¹ *Dem. op. cit.* 643, 20.

⁶⁴ *Dem. op. cit.* 644, 15.

kind of homicide must be considered lawful. . . . Considering then that Orestes who admitted that he slew his mother was acquitted by a tribunal of gods, they decided that some kinds of homicide were justifiable. . . . Having come to that decision they defined in precise terms the circumstances in which it was lawful to kill.' What a halo of sanctity still seems to surround this Delphinium court! In ancient societies it was much less difficult to ascertain the identity of a slayer than it was to define the boundaries of righteous and unrighteous slaying. But once the boundary lines were fixed, and we have seen ⁶⁵ how they were fixed by a law of Dracon, the judgment resolved itself into a question of facts. Apart from religion, however, facts may be obscured by perjury. Hence it was probably the religious atmosphere of the court, and also its procedure, which was consecrated by long tradition, that caused the verdicts of the court to be revered and respected.

We may ask whether, in the event of a verdict for the defendant (the accuser), this court could have condemned the vanquished plaintiff to death? We agree with Lipsius ⁶⁶ that theoretically it could have done so. In practice, however, it rarely did so, because the Archon Basileus must have previously estimated the balance of guilt in favour of the plaintiff (accused), and if he were vanquished at the Delphinium it was probably open to him to advance a further plea of manslaughter in the Palladium. The real meaning of a verdict of this court against the plaintiff was an imputation of some degree of homicide guilt, not necessarily the full guilt of wilful murder.

The attempt ⁶⁷ to connect Orestes with the institution of this court is very interesting, but it is not successful. If it was the Areopagus which really acquitted Orestes, why did the Athenians set up a new court for such pleas? If it was the Delphinium, then why did legend connect him with the Areopagus? According to one account it was the gods who acquitted Orestes, ⁶⁸ yet it was open to Aeschylus ⁶⁹ to represent him as acquitted by Athenian citizens! It is important, however, in view of our subsequent analysis of the Oresteian

⁶⁵ *Supra*, pp. 195, 215 f.

⁶⁶ *Op. cit.* p. 616 ff.

⁶⁷ Demosth. in *Aristoc.* 644, 20.

⁶⁸ Demosthenes, *loc. cit.* See also Eurip. *Orestes*, 1650. ⁶⁹ *Eum.* 490.

legend in Attic tragedy, to note that according to at least one form of the legend, it was on a plea of justifiable matricide that Orestes was tried and acquitted. Though Plato ⁷⁰ says that in no circumstances was it lawful to kill one's parent, yet Plato would admit, we have no doubt, that the command of Apollo constituted an extenuation if not a justification for such a deed, in the days of private vengeance. But the connexion of Orestes with two different courts suggests a variation in the legends of Orestes, for it is unlikely that the same legend would have represented him as having been prosecuted before both courts on the same charge.

(4) *The Prytaneum* ⁷¹: 'If a stone or a piece of wood or iron or anything of the kind falls and strikes a person, and we are ignorant who threw it but know and have in our possession the instrument of death, proceedings are taken against such instruments here.' Demosthenes does not mention animals, but Aristotle supplies this deficiency.⁷² It is strange to speak of an object 'falling and striking' and at the same time to assume that somebody threw it. We have already suggested ⁷³ that even if the thrower was known, proceedings could still be taken against the object if the thrower could swear that he did not intend to kill any person. Is it not probable that the weapon by which a person was accidentally slain in war or at gymnastic exercises, or the weapon by which a person was deliberately but justifiably slain, according to the Draconian law, would, after the slayer's acquittal at the Delphinion, be tried and found guilty here?

(5) *At Phreatto* ⁷⁴: 'There is yet a fifth court . . . that in Phreatto. Here, men of Athens, the law requires a person to be tried if one is in exile on account of involuntary homicide and if, before those who procured his banishment have accepted "appeasement" from him, he incurs another charge, this time, of wilful murder. The framer of these laws did not overlook the criminal's case because it was impossible for him to come to Athens, nor did he take the charge against him for granted because he had done some such act before. He devised a means by which religion was not outraged and the criminal was not deprived of a hearing and a trial. . . . He

⁷⁰ *Laws*, ix. ch. 9.

⁷¹ *Dem. op. cit.* 645, 15.

⁷² *Supra*, p. 250.

⁷³ *Supra*, p. 201.

⁷⁴ *Dem. op. cit.* 645, 25-646, 15.

brought the judges to a spot to which the criminal might come, appointing a certain place in Attica by the sea. The accused sails up in a ship and pleads without touching the land : the judges hear him and give their verdict on the shore : if found guilty, he suffers the penalty of wilful murder, quite justly : if acquitted, he escapes that penalty but continues to serve the exile decreed for his previous manslaughter.' The influence of the pollution doctrine in the origin of this court is quite manifest. The contingency which is thus provided for was, no doubt, very rare, but it was not nevertheless ignored. The 'framer of the laws' here referred to is, of course, Dracon, but we think that the court may have existed for some years before his time. The seventh century is, however, the most probable date of its origin. In view of the facts narrated in this quotation it is difficult to understand how scholars can believe that 'private settlement' was legal even for manslaughter.⁷⁵ The theoretical power of the relatives of the slain to resist 'appeasement' as long as they wished is here most clearly indicated.⁷⁶ The procedure here described might, we think, apply to homicide which at first was adjudged involuntary but which came, in the light of later evidence, to be considered voluntary. The penalty of wilful murder here referred to is perpetual exile and confiscation of property. In the event of the slayer choosing to land, he could be arrested and delivered to the 'Eleven' for execution ; hence it is clear that the verdict of this court involved, *en rupture de ban*, the penalty of death. Plato was probably thinking of this court when he decrees⁷⁷ that a murder exile who is cast by a storm upon the coast of forbidden territory may put up a tent in the water and must keep his feet in the water till he finds an opportunity for resuming his voyage !

In a continuation of this same passage Demosthenes⁷⁸ refers to a sixth legal process, involving, so to speak, a possible sixth homicide-court, which we have already⁷⁹ identified with the Prison court of 'the Eleven,' a special Heliastic court of summary jurisdiction. Demosthenes says : 'If a man is ignorant of all the other legal courses, or if the time within

⁷⁵ See *supra*, p. 177 ff.

⁷⁶ *Supra*, p. 213.

⁷⁷ *Laws*, ix. ch. 8.

⁷⁸ *Op. cit.* 646, 25-647, 7.

⁷⁹ *Supra*, p. 249.

which they must be followed has gone by, or if for any reason whatever he does not choose to adopt those (other) methods of prosecution, and sees the homicide walking about in the temples or in the market-place, it is lawful for him to "arrest" and bring the murderer to prison . . . and when he is brought to prison, he will suffer no punishment till he is tried, but if he is found guilty, he will be punished with death: if however the person who arrested him does not get a fifth part of the votes, he will pay a fine of 1000 drachmae.' Aristotle⁸⁰ says of the Eleven Gaol commissioners: 'Their duties are to have charge of prisoners, to put to death all thieves, kidnappers and highway robbers if they confess their guilt, to bring them before the Heliasts if they plead not guilty, to discharge them if acquitted, to put them to death if convicted.' Demosthenes clearly does not refer to a convicted murderer *en rupture de ban*. Glotz⁸¹ is right in rejecting this possible interpretation of the passage. By a law of Dracon⁸² a convicted murderer *en rupture de ban* could be put to death by the first person who met him or taken to the 'Eleven' for execution, without further trial. But Demosthenes suggests that the 'Eleven' could try a murderer and condemn him to death! Pollux⁸³ assures us that 'the Eleven' sat as a Heliastic court. But could they try cases of homicide? Was prosecution open to any citizen? Was there at Athens a *γραφὴ φόνου*?

THE QUESTION OF A *γραφὴ φόνου*

Glotz answers the question in the negative. But Pollux says⁸⁴ that there was a *γραφὴ* or public indictment for wilful murder, for malicious wounding, for arson, and for poisoning, as well as for adultery, sacrilege and impiety. The Heliasts were the normal judges for indictments (*γραφαί*), though Philippi⁸⁵ thinks that indictments could be also brought before the Areopagus. Was it then possible for any citizen to indict a murderer before the Heliasts in the time of Demosthenes? If so, what becomes of the law of Dracon which prescribed prosecution by the relatives? Glotz says⁸⁶: 'Si Solon avait imaginé une *γραφὴ* de ce genre,

⁸⁰ *Ath. Pol.* 52.

⁸¹ *Op. cit.* p. 428.

⁸² *Dem. in Aristoc.* 629.

⁸³ viii. 121.

⁸⁴ viii. 40.

⁸⁵ *Areopag.* 156-7.

⁸⁶ *Op. cit.* p. 373.

il eût par là-même ruiné la loi de Dracon sur un point essentiel.' Caillemier finds it difficult to solve the question. He says ⁸⁷: 'La question est malaisée à résoudre et très controversée parce que les textes sont contradictoires ou obscurs . . . l'institution par Solon d'une véritable *φόνου γραφή*, la concession à tous les citoyens du droit d'intenter une action d'homicide, pouvait-elle se concilier avec le principe même de la loi de Dracon? Lorsque les plus proches des parents du défunt étaient d'accord pour pardonner ou pour transiger, les parents plus éloignés n'avaient pas le droit de poursuivre le meurtrier devant les tribunaux.' He concludes, however: 'en fait, dans beaucoup de cas, on pouvait arriver à la répression du meurtre par d'autres voies. Certains homicides donnaient certainement ouverture à l'*εἰσαγγελία* et cette procédure permettait d'atteindre un coupable que la loi de Dracon aurait laissé impuni.'

We have seen ⁸⁸ that Socrates objected to Euthyphro's prosecution of his father on the ground that he was not a relative of the slain man. Yet Euthyphro began his prosecution nevertheless! He calls his charge a *δίκη*, not a *γραφή*.⁸⁹ He is consulting the King Archon at the Prytaneum. We have quoted from Demosthenes ⁹⁰ a law mentioned by the Exegetae, to the effect that it was not permitted to anyone save a relative of the victim, or a master, if the victim was a slave, to prosecute for homicide. Yet the Exegetae advised the plaintiff on independent grounds. 'As you were not present yourself, but only your wife and children, and you have no other witnesses, we recommend you not to make proclamation of anyone by name, but only in general against the guilty parties, and further not to begin proceedings before the Archon Basileus. . . . Our advice is that you perform the necessary religious ceremonies for yourself and your house, bear the misfortune as patiently as you can, and take vengeance if you like in some other way.' The religious ceremonies mentioned in this passage were probably an expiation-offering to the ghost of the nurse who had been slain. If so, then the Erinnys of the dead, at least, accepted the Draconian law!

⁸⁷ Art. in Daremberg and Saglio, *s.v.* *φόνος*, p. 440.

⁸⁸ See *supra*, pp. 147, 182, 237.

⁸⁹ Plato, *Euthyphro*, 2A, 3E.

⁹⁰ *C. Euerg. et Mnesib.* 1161; *supra*, p. 182.

Is it possible—it cannot of course be certain—that the ‘other way’ of avenging was by a *γραφή*? If this indictment could not be brought till a number of years had passed, is this the reason that the misfortune had to be borne with patience?

We have referred to a Demosthenic passage⁹¹ in which an unsuccessful *γραφὴ ἀσεβείας* was brought against the uncle of a man who was alleged to be guilty of parricide. If the charge succeeded, the alleged parricide, Diodorus, assures us that he would have been put to death and that his property would have been confiscated. But there is no reference to a specific trial for parricide. Did the *γραφὴ ἀσεβείας* involve, indirectly, a *γραφὴ φόνου*?

We believe that there was not, at Athens, a *γραφὴ φόνου*, that is, a direct indictment of a murderer by any citizen who wished to charge him. The suit which Euthyphro brought against his father was a *δίκη*, which was a quasi-civil or quasi-private process, and in any case the Archon Basileus would, we feel sure, have refused to accept it. But we think that an indictment for impiety, which could be brought by any citizen against a relative of a slain man who had failed to ‘proclaim’ and to prosecute the slayer, involved, if successful, a verdict of murder against the slayer; and that it was the possibility of such indictments which led Pollux to use the expression *γραφαὶ φόνου*. Thus if an indictment for impiety had been brought against a relative of the nurse whose violent death is referred to in the speech of Demosthenes against *Euergus*, it would have involved a verdict of murder or of manslaughter against *Euergus* and *Theophemus*. This is probably the ‘other way’ which was referred to in the speech by the *Exegetae*.

How then do we explain the Demosthenic passage⁹² with which we began our present inquiry? The essential points in this passage are, we think, the reference to the murderer as actually ‘walking about in the temples or in the market-place,’ and the implication that he was ‘proclaimed’ but untried and unconvicted. Assuming that the relatives of the slain had proclaimed the slayer but had not proceeded with the prosecution, we can understand why the normal procedure

⁹¹ In *Timoc.* 702; In *Androtion.* 593; *supra*, pp. 181, 232, 236.

⁹² In *Aristoc.* 646, 647.

of homicide-prosecution could not have been applied. For the relatives of the slain alone had the right of direct prosecution. But if the murderer had been proclaimed, but was, for some reason, untried and unconvicted, he could, if he frequented the temples or public places, have been proceeded against directly by a *γραφὴ ἀσεβείας*—an indictment for impiety. For the validity of such an indictment it was necessary that he should have been formally proclaimed as a slayer by the relatives of the slain: for, otherwise, he could not be regarded as publicly ‘polluted.’ But if we assume that he was proclaimed, and that afterwards—either because of lack of evidence, or because the proper time had passed by, or simply because the relatives of the slain were indifferent (we may suppose that they were bribed by a ‘private settlement’)—he proceeded to act as if he had not been proclaimed, then it was open to any citizen to indict the proclaimed homicide for impiety, but only if he was found in the temples or the market-place. The result of a successful indictment of this kind would have been more severe than that of a successful murder-charge: for though the slayer could have saved his property, he would not have been permitted to go into perpetual banishment, but he would have been put to death.

It is therefore, we think, a *γραφὴ ἀσεβείας* to which Demosthenes in this passage refers. Such an indictment would have been in practice but not in theory an indictment for murder. In theory it was an indictment for impiety or sacrilege. To win the indictment it was not necessary that the plaintiff should prove that the defendant was a murderer. For a proclaimed murderer had to prove his innocence. Hence, normally, a proclaimed murderer would either have challenged a verdict immediately after accusation, or he would have fled into exile. Thus, once more, we observe that ‘private settlement’ was not only illegal but was dangerously so. If the slayer settled with the relatives of the slain, they could have been indicted; and if he frequented the temples or the market-place, he himself could have been indicted for impiety. But if he was not proclaimed by the relatives of the slain, they alone could have been indicted for impiety: yet an adverse verdict would have involved his condemnation. Such is our solution of this difficult problem.

Whether this indictment against a proclaimed murderer who had been found in a temple or a public place was brought before 'the Eleven' for final judgment, or whether it was referred by them, if the accused denied the charge, to the ordinary Heliastic courts, is a question which we cannot decide. Pollux⁹³ includes 'the Eleven' amongst the Heliastic judges, but Aristotle⁹⁴ implies that they could only judge when the accused pleaded guilty. If it sounds strange to say that gaol commissioners might have heard such indictments, it is, we think, not quite so strange as the fact indicated by Philippi,⁹⁵ that indictments for impiety were in certain cases heard by judges who had no other judicial qualification save the fact that they had been initiated at the mysteries of Eleusis! The passage in Andocides,⁹⁶ on which Philippi's statement is based, certainly suggests that there were at Athens special religious or ecclesiastical courts for the trial of offences connected with ritualistic procedure, such as profane conduct or the divulging of religious secrets. The court which is described by Andocides consisted of initiated citizens, and the accusation was concerned with an offence in regard to the Mysteries. Were these citizen courts a democratic development of the Eumolpid Exegetae courts which are referred to by Lysias?⁹⁷ Very probably they were, just as the Heliasts were a democratic development of the Ephetae courts. In both cases, however, we must assume that the development did not involve the destruction of the older system of judicature, but merely reformed it by providing an option in the personnel, while retaining the traditional procedure of the court.

ORIGIN AND EVOLUTION OF ATTIC HOMICIDE COURTS

Having now set forth the most important features of the homicide-judicature of Athens in the fourth century B.C., it remains to inquire what inferences may be drawn from these features as to the origin and the evolution of these courts. Our views as to the general origin of the Attic courts have already been indicated.⁹⁸ The theory of Gilbert and of Köhler

⁹³ viii. 121.

⁹⁴ *Ath. Pol.* 52.

⁹⁵ *Areop.* pp. 156-7.

⁹⁶ *De Myst.* 29.

⁹⁷ *C. Andoc.* 104, 10.

⁹⁸ *Supra*, pp. 81 ff.; 91 ff.

that these courts originated in the right of sanctuary we have rejected as improbable.⁹⁹ The court at Phreatto had no connexion with a temple. Neither had the Prytaneum. The temple of Athene Areia on the Areopagus may not have existed when the hill first became famed for its legal judgments. The Palladium and the Delphinium were both temple courts, and during the Dark Ages (900-750 B.C.) the right of sanctuary may have given to these places their first connexion with homicide-investigation. This is, however, an accidental matter. The real cause of the birth of the Attic murder courts was the concurrence of the doctrine of homicide-pollution with the political synoekism of States in the eighth and seventh centuries B.C. Some Attic courts may have functioned in an arbitrary manner for local offences in earlier times, but their historical rôle began, and some of them, like Phreatto, were born, in the seventh century B.C.

DRACON AND THE EPHETAE

Was it then Dracon who established the Ephetae courts as Solon established the Heliastic courts? Gilbert¹⁰⁰ finds it difficult to decide this question. 'Whether Dracon himself,' he says, 'introduced or merely codified, in accordance with customs already existing, the system by which murder cases were tried at Athens and which, even measured by the standard of to-day, is tolerably complete, can as little be decided with certainty as can the question whether he was the founder of the five different courts at which in later times the trial was held according to the nature of the case.' Yet, a few lines previously¹⁰¹ Gilbert decides the latter question in the affirmative. 'Dracon,' he says, 'transferred the judicial powers which the Areopagus had previously possessed to two new bodies which he created, the Ephetae and the Prytaneis.'

This question, for many scholars, has turned on the interpretation of a passage in Pollux,¹⁰² who wrote eight hundred years after the event. Pollux says of the Ephetae that they were fifty-one in number and that 'Dracon established them, chosen on grounds of birth. They were the judges of those

⁹⁹ *Supra*, pp. 93 f.; 112.

¹⁰¹ *Ib.* p. 123.

¹⁰⁰ *G.C.A.* (Eng. trans.), p. 124.

¹⁰² viii. 125.

accused of bloodshed in the five courts. It was Solon who established in addition the council of the Areopagus.'

Philippi was the first to question the value of this evidence. As the phrase 'chosen on grounds of birth' occurs in a law of Dracon which mentioned the Ephetae, Philippi¹⁰³ thinks that Pollux is arguing from a false interpretation of that law, suggested by a false reading *τούτοις* for *τούτους* in the law as quoted by Demosthenes.¹⁰⁴ As the verb *αἰρείσθων* may have a 'middle' or a 'passive' meaning, the sentence *τούτοις δ' οἱ πεντήκοντα καὶ εἰς ἀριστίνδην αἰρείσθων* may be translated 'for these (*i.e.* the phrateres) let the fifty-one be chosen according to birth': instead of: 'these phrateres (*τούτους*) let the fifty-one choose according to birth.' But the Demosthenic citation of the law contains a reference two lines earlier to an existing body of fifty-one judges of the plea of involuntary homicide, and, therefore, the reading *τούτοις* is obviously false.

Gilbert says¹⁰⁵ that this supposition of Philippi is 'possible but not necessary.' But it seems obvious from the law as cited that the supposition is fanciful and impossible. Yet we hold that Pollux was in error in asserting that Dracon instituted the Ephetae. The reason for the error has been correctly indicated by Müller.¹⁰⁶ 'This title (Ephetae),' he says, 'occurred so frequently in Dracon's laws that it gave rise to the opinion which we find in Pollux that Dracon instituted the college of the Ephetae.' We may add that in the laws of Dracon there is no suggestion of the creation of homicide-judges or of homicide-courts. Their existence is presumed, just as clearly as the distinction between grades of homicide-guilt and the details of the various penalties are presumed. Dracon, in our view, merely codified existing laws in relation to homicide, and allotted the trials of the different kinds of homicide to the tribe-kings, on the one hand, and to the fifty-one Ephetae, on the other. This conclusion will be confirmed by a consideration of the meaning of the word Ephetae.

Müller¹⁰⁷ rightly points out that the ending *της* normally has an active signification. The word *ἐφότης* (we will assume for the moment that the plural form *ἐφῆται* had a corresponding singular form) should not, says Müller, denote 'a person

¹⁰³ *Areopag*, p. 139.

¹⁰⁴ *In Macart.* 1069.

¹⁰⁵ *Op. cit.* p. 124.

¹⁰⁶ *Eum.* p. 138.

¹⁰⁷ *Loc. cit.*

appealed to,' but rather a person who permits an avenger to punish. Müller thus connects the word with the verb ἐφίημι, 'I permit,' rather than with the term ἔφεσις, meaning 'appeal.' Schömann¹⁰⁸ and Gilbert¹⁰⁹ also connect the word with ἐφίημι, but interpret the verb as an archaic form, which means 'I direct' persons as to the manner in which the accused should be punished or proceeded against. The Ephetae, according to this view, are 'the directors' or the determining arbiters of prosecution or vengeance. Philippi¹¹⁰ points out that this opinion gives to the term too wide and general a meaning. We agree with this criticism. Any judge or group of judges could have been called 'Ephetae,' according to this view. Why, then, we may ask, did not Dracon call these judges by the ordinary title of homicide judges, namely, dicasts (δικασταί)? Such was the usual title of the democratic Heliastic judges.

Lange, who at a later period came to favour the Schömann-Gilbert view, originally proposed¹¹¹ that the term Ephetae was an abbreviated clause, that the words οἱ ἐφῆται are derived from the phrase οἱ ἐπὶ τοῖς ἔταις ὄντες, i.e. 'those who presided over the citizens of full right'—the foremen or heads of the old aristocracy of tribal Attica. Philippi¹¹² favours the original theory of Lange, which is, he says, 'so excellent from a linguistic point of view that I am entirely satisfied.' Philippi points out that, according to this view, the Ephetae are the Athenian counterpart of the Spartan Gerousia and that therefore we can understand their selection on grounds of birth. Glotz¹¹³ also adopts this interpretation. He speaks of 'les éphètes ou chefs d'ἔται.' Now, the Homeric word ἔται may mean either cousins or comrades. It was a word which could denote, in Pelasgian life, members of the same clan or of the same phratry. The chiefs of the phratries were therefore nobles, closely connected with the kings of the tribes. It is therefore significant that the only homicide judges who are mentioned in the Draconian inscription of 409-8 are the kings and the Ephetae.

Pollux¹¹⁴ assures us that, in the time of Dracon, the Ephetae sat in all the five great homicide courts. They therefore

¹⁰⁸ *Jahrb. f. cl. Phil.* 1875, i. 196.

¹⁰⁹ *Loc. cit.*

¹¹⁰ *Arcop.* p. 213.

¹¹¹ *De Eph. Athen. nomine.*

¹¹² *Arcopag.* p. 213.

¹¹³ *Op. cit.* p. 313.

¹¹⁴ viii. 125.

sat on the Areopagus at that time, and also in the Prytaneum. In the time of Aristotle¹¹⁵ the judges at the Prytaneum court were the Tribe-Kings and the King-Archon. The Ephetae continued to sit at the Delphinium, the Palladium, and the Phreatto courts.¹¹⁶ These facts suggest, *prima facie*, a survival in the democratic era of the judicial power of the old nobility of birth. Pollux¹¹⁷ states that the Tribe-Kings were Eupatridae, which implies that they were members of the old Attic nobility. The Ephetae, he says,¹¹⁸ were chosen on grounds of birth: a fact which proves, as Gilbert points out,¹¹⁹ that they also were Eupatridae. Aristotle¹²⁰ says that, before Dracon, the highest magistrates were elected from the ranks of the aristocrats and the oligarchs; and that these magistrates were the final judges of the suits that came before them, not, as in his own time, the preliminary investigators.

Is it not obvious therefore that we must interpret the evolution of Attic homicide courts as a gradual encroachment on the part of the new plutocracy and the new democracy upon the domain which at one time was administered exclusively by the sacerdotal aristocracy of birth? According to this view, the Ephetae and the Tribe-Kings, who once sat in all the great Attic courts and who were never suppressed, though they certainly were submerged, in the classical period of Greek history, were the lineal descendants of the tribal Elders of Pelasgian days whom Homer describes¹²¹ as 'sitting on smooth stones in a sacred circle, with sceptres in their hands.' According to this hypothesis Dracon did not create the Athenian Ephetae. He did not even establish them in the rôle of homicide judges, for such they had been from time immemorial, in the local judicature of tribal society; and such they must also have been, in the centralised civic judicature, which before Dracon, though perhaps not long before him, had evolved under the twofold influence of political synoekism and the religious doctrine of homicide as a 'pollution.'

¹¹⁵ *Ath. Pol.* 57, ll. 30-31.

¹¹⁸ *viii.* 125.

¹²¹ *Il.* xviii. 500 ff.

¹¹⁶ *Ib.* 57, l. 24.

¹¹⁹ *Op. cit.* p. 124.

¹¹⁷ *viii.* 111.

¹²⁰ *Ath. Pol.* 3.

THE EXEGETAE AND THE NUMBER FIFTY-ONE

We have frequently ¹²² referred to the Ephetae in connection with the Exegetae or Interpreters, and we have described both these groups as a sacerdotal nobility. We must now attempt to explain this connection, and, incidentally, discuss the origin of the curiously constant number 'fifty-one,' which is usually associated with the Ephetae. According to Suidas,¹²³ the Exegetae or Interpreters were appointed or controlled by the oracle at Delphi and they were three in number. Pollux ¹²⁴ defines the Exegetae as 'those who gave information regarding omens and other sacred matters.' But the Tribe-Kings, as Pollux states,¹²⁵ were also concerned with 'sacred matters': and so, therefore, probably, were the Ephetae. Now Demosthenes does not mention the number three in connexion with the Exegetae. Neither does Plato. Plutarch ¹²⁶ states that the Eupatridae of Athens were the Exegetae of sacred law. This statement implies that the Exegetae were a widespread caste rather than a group of three individuals. Similarly Lysias ¹²⁷ refers to the Eumolpidae of Eleusis as the Exegetae of unwritten customs.

Taking it for granted that the Athenian Interpreters were three in number, Gilbert ¹²⁸ and Schömann explain the number fifty-one, which is applied by Dracon to the Ephetae, as composed of forty-eight Ephetae (elected by the four Ionian tribes of Attica, twelve from each tribe) and of three Exegetae. According to this view, there was in Dracon's time no distinction between the Exegetae as Interpreters and the Exegetae as homicide-judges. Müller,¹²⁹ however, thinks that the three Exegetae were not judges, but only purifiers; and he explains the number fifty-one as a Cleisthenic or post-Cleisthenic figure, made up of, say, five members from each of the ten Cleisthenic tribes, and one additional judge, who was presumably the King-Archon.¹³⁰ But, we may point out, the number fifty-one occurs in the actual (unrestored) Draconian inscription ¹³¹ of the year 409-8 B.C.: and it is

¹²² *Supra*, p. 192.¹²³ *s.v.* ἐξηγηταί.¹²⁴ viii. 124.¹²⁵ viii. 111.¹²⁶ *Theseus*, 25.¹²⁷ *C. Andoc.* 104, 10.¹²⁸ *Op. cit.* pp. 124, 387.¹²⁹ *Eum.* p. 152.¹³⁰ *Ib.* p. 148.¹³¹ *Supra*, p. 193.

improbable that any changes were made in the law in the time of Cleisthenes.

Plato says¹³² that the Interpreters, in his ideal State, should be elected annually *one* from each tribe. It is therefore better, we think, to abandon the hypothesis that the Exegetae were at all times three in number. Suidas is a very late authority for this number, and he may be referring merely to the chief members of a group. But how, then, do we explain the fact that the number of the Ephetae was invariably fifty-one? It is, we think, very possible to suppose that in early times the three most important 'archons' were Ephetae, who acted in conjunction with the other Ephetae, who were therefore forty-eight in number, and that the number forty-eight was made up of the four Tribe-Kings and of forty-four nobles elected by the four Ionian Attic tribes, eleven from each tribe. Aristotle¹³³ assures us that the three 'archons' in the seventh century were nobles and that they were 'final judges,' not mere investigators. It is not necessary to assume that in later times the Ephetae always sat together as a body of fifty-one judges. Sometimes they may have adjudicated as a single group, but more frequently they were divided into sections which sat in different courts. The presence of the King Archon and the Tribe-Kings at the Prytaneum¹³⁴ suggests perhaps a previous condition of things in which these officials sat with the entire Ephetae body in the more important homicide courts.

We prefer therefore to suppose that the Ephetae and the Exegetae were for a long time¹³⁵ identical. They were both members of a sacerdotal nobility of birth which preserved the oral traditions of tribal law, and expounded these traditions. As these nobles normally supervised the ritual of public sacrifices, they naturally also, after the advent of the pollution doctrine, acquired control of the ceremonial of homicide purification. Thus, Müller says¹³⁶: 'The purification of the bloodshedder came under the sacred law of Athens which remained in the hands of the old nobility even after they had lost their political authority.' The number *three* applied, apparently, in Müller's view,¹³⁷ to the three chief purifiers

¹³² *Laws*, vi. ch. 7.

¹³⁵ *Infra*, p. 273.

¹³³ *Ath. Pol.* 3.

¹³⁶ *Eum.* p. 135.

¹³⁴ *Ib.* ch. 57.

¹³⁷ *Ib.* p. 153.

or supervisors of the rite of purgation, though Müller is not quite explicit on this matter. But we cannot suppose that this figure limited the number of purifiers at any time.

SOLON AND THE AREOPAGUS

In regard to the question of the Solonian origin of the Areopagus, Gilbert, arguing from Aristotle's account, holds ¹³⁸ that the Council of the Areopagus was in existence even before Dracon's time. 'The great powers,' he says, 'which the Council of the Areopagus possessed in the government before Dracon were considerably curtailed by him . . . for whereas the Areopagus before Dracon . . . exercised judicial functions . . . so long as Dracon's constitution lasted, that council was merely the guardian of the laws and superintended the magistrates. Dracon transferred the judicial powers which the Areopagus previously possessed to the Ephetae and the Prytaneis.' This account exceeds, we think, the limits of legitimate inference from the text of Aristotle.¹³⁹ We cannot even be sure that the text of Aristotle is trustworthy. The Athenians did not possess any accurate evidence in regard to their early institutions. Müller¹⁴⁰ rejects the view (which is also held by Schömann)¹⁴¹ that Dracon interfered with the judicial functions of the Areopagus. Pollux¹⁴² states definitely that Solon added the Council of the Areopagus to the already existing Ephetae courts. Gilbert regards this statement as a confirmation of his theory that Dracon created the jurisdiction of the Ephetae. We think it is rather a refutation of it. Plutarch apparently did not believe that an Areopagus court, as distinct from the Ephetae, existed before Solon's time: for he thinks ¹⁴³ that a so-called law of Solon which referred to persons 'condemned by the Areopagus, by the Ephetae, or, in the Prytaneum by the Kings,' should have read 'those condemned for such offences as (now) belong to the Areopagites.'

We believe that there was a Council of State which was also a State court, connected with the Hill of Ares (or Areopagus), in Dracon's time and even before it—but that it was not then distinguished from the Ephetae who, like the Spartan Gerousia,

¹³⁸ *Op. cit.* p. 122.

¹³⁹ *Ath. Pol.* 3, 4, 8, 25, 27, 57.

¹⁴⁰ *Eum.* p. 137.

¹⁴¹ See Gilbert, *op. cit.* pp. 123-4.

¹⁴² *viii.* 125.

¹⁴³ *Solon*, 19.

were the supreme Council of the State. When Pollux says that Solon added the council of the Areopagus to the Ephetae, he is not quite accurate. What he should have said—perhaps what he meant to say—was that Solon established a new Areopagus as distinct from what we may call the older Ephetae-Areopagus, and that he gave to this new body judicial and administrative functions. The error of Gilbert (and of Aristotle) lies in their failure to distinguish between the personnel of the old Council and that of the new Council. The old Council was composed exclusively of the old nobility, that is to say, of the Ephetae. It was a select group, within the Ephetae caste, a group, for instance, of nobles who had held executive power. The new Council which Solon created was composed of ex-‘archons’ or ex-magistrates, but the basis on which these ‘archons’ were chosen was essentially different from that on which the Ephetae were chosen. For wealth, not birth, was the qualification which was necessary for the office.

The motive which induced Solon to establish this new Areopagus Council was probably his desire to set up a plutocratic body, surrounded by a halo of sanctity derived from the traditions of the older Ephetae-Areopagus, which would act as a check on the increasing power of a more democratic Council, which Aristotle also mentions, namely the Draconian Senate of 400 (or 401) which was appointed, by lot, from the ranks of all ‘citizens.’¹⁴⁴ It was, we think, this democratic council, or Senate, which threatened most seriously the power of the aristocracy. The wide powers of supervision which the Ephetae-Areopagus possessed were, of course, a valuable possession, but, with the growth of the Senate, the legislative and executive powers, and perhaps even the judicial powers, of the old Council of Noble Elders were endangered. Hence Solon, who was neither a democrat nor an aristocrat, but who was, as we conceive him, a plutocrat, instituted a new plutocratic Areopagus at the expense of the Ephetae on the one hand and of the Draconian Senate on the other. Though he allowed an appellant jurisdiction to the popular Heliastic jurors,¹⁴⁵ the normal homicide jurisdiction remained attached to the court of the Areopagus even though its personnel was now changed, just as in later times it continued attached to the ‘Ephetae’ courts

¹⁴⁴ *Ath. Pol.* 4, 8.

¹⁴⁵ *Ib.* ch. 9.

when the Heliasts acquired the privilege of sitting there. The explanation of this strange fact is to be found in the religious doctrine of homicide as a 'pollution.' In these five courts alone—the fact that one of them was now a Council does not matter—were homicide trials held at night, in the open air, solemn oaths and imprecations were sworn, and the King-Archon sat without his crown. Solon, then, did not create the court of the Areopagus: he merely changed the personnel of the court. The Ephetae, that is, the nobles, were no longer the judges in that court. According to the literal interpretation of Pollux, we might conclude that there existed in Solon's time six Athenian homicide courts. But Pollux must have been well aware that the Ephetae (including the Tribe Kings) from Solon's time onwards functioned only at the four minor courts, which were known as the Delphinium, the Palladium, the Prytaneum, and the court at Phreatto.

Why then, we may ask, did Solon select the Areopagus as the court in which the Ephetae were compelled to give place to plutocratic ex-archons, and why was the jurisdiction of that court, now perhaps for the first time, limited to cases of homicide 'with malice aforethought'? Müller¹⁴⁶ offers a solution of this problem. 'The administration,' he says, 'of the rites of expiation could not be taken away from the old aristocracy of Athens even when the constitution underwent in other respects a complete change. None but an aristocratic court was competent to pronounce an act of homicide expiable, and itself to preside over the rites of expiation and cleansing. Accordingly, the cases reserved for the decision of that court were those in which a person was accused of unpremeditated slaying—for here expiation came in after the exile; further, where the plea put in by the accused was that of justifiable homicide—in this case there was no punishment . . . but still it was necessary, at least in certain cases, that he should undergo purification: further, in case an unpremeditated was followed by a premeditated act of homicide, it being then a question whether expiation was admissible or not: lastly, the formalities observed in trials of the weapon by which blood was shed . . . necessarily devolved upon the managers of the ancient rites of expiation. As wilful murder, on the contrary, could not be

¹⁴⁶ *Eum.* pp. 135–136.

expiated . . . there was no need in this case to refer to expositors of ancient Sacred Law. So that Solon was at liberty here to vest the cognisance of such cases in a corporate body which . . . he formed out of the most affluent Athenian citizens who had filled the offices of archon.'

This hypothesis is very ingenious. We have little doubt that there is a large substratum of correctness in its underlying principle—namely the association of the old nobility with 'purgation' rites. But surely the court of Phreatto was not based on the probability that purgation would have followed the trial. Again, the Palladium frequently tried cases of wilful murder between metics and between foreigners. These murderers could never have been purged at Athens, since the deed was committed there. Moreover, all these Ephetae courts, except the Prytaneum, could, in all probability, have brought in a verdict of wilful murder, just as the Areopagus could have acquitted the defendant and admitted him therefore to some kind of 'purgation' at the shrine of the Semnai Theai. Furthermore, Müller is not quite consistent with himself in associating purgation exclusively with judges as in this quotation, and in maintaining elsewhere ¹⁴⁷ that the three Exegetae who supervised those rites were not judges ¹⁴⁸ at all. By his own reasoning, therefore, he would be compelled to admit that the Exegetae could have cleansed the accused after acquittal in any court. Again, he holds ¹⁴⁹ that in early Attica there was no discrimination between murder and manslaughter, and that the same courts originally tried all these different pleas; but yet he maintains that a certain distribution of functions which was based on this discrimination had already taken place in the time of Solon.

We believe that a discrimination between different degrees of homicide guilt was recognised in early tribal Attica, and that in the seventh century B.C., when a compromise took place between what we may call Apollinism and tribalism, the Apolline religion was compelled by tribal aristocracy to define the kinds of homicide to which purgation could be applied. Moreover, the detailed formulae and ritual of purgation were confided as a secret and sacred trust to this aristocracy. But even within an exclusive nobility there

¹⁴⁷ *Eum.* p. 135.

¹⁴⁸ *Ib.* p. 153.

¹⁴⁹ *Ib.* p. 135.

must eventually arise a division of labour. The same nobles who judged a suit might also be appealed to for purgation, and hence they probably found it more convenient to delegate the latter duty to one particular family or clan. Most especially would the Ephetae of the Areopagus, who in those days held in their hands the reins of civic government, have found it difficult to discharge at once the various duties of a Council of State, of homicide judges, and of purgation priests. Hence, therefore, we may assume that the Ephetae-Areopagus limited its activities as a homicide-court and confined itself to charges of wilful murder, of plots to kill, and perhaps also of arson, between the citizens (who were, originally, the nobles), not merely because of the necessity for a division of labour, but also because the Areopagus court was the supreme Council of the State. To the other courts, therefore, fell the duty of trying minor homicide cases, and such cases as were more likely to require purgation. Thus, wilful murder between foreigners was comparatively a minor issue, and was no longer tried by the Areopagus. Such cases were relegated to the Palladium court, perhaps because it lay outside the city.¹⁵⁰ Again, charges of murder which were brought against a person already convicted of manslaughter were naturally tried at Phreatto, as such a slayer was not permitted to land in Attica. It was in some such way as this, we think, that a traditional custom had grown up in regard to the distribution of homicide pleas among different courts in the time of Dracon and of Solon. Solon made the Areopagus the basis for a reform which was directed against the old nobility, partly because it was feasible to introduce innovations into this court with the least possible interference with existing religious traditions, but even more so because the Ephetae-Areopagus was the keystone of the fabric of aristocratic power. Here, despite the advancing influence of the Senate of Four Hundred with its increasing executive and administrative powers, the old nobility retained the strongest outpost of authority in a court which, amidst other privileges, possessed the right of final decision in matters of life and death. This right of final decision was not a privilege of the new Solonian Areopagus—it was transferred to the popular Heliastic courts. The innovations of Pericles and

¹⁵⁰ See *supra*, p. 254.

Ephialtes in 460 B.C. reduced the Areopagus almost to the level of a simple homicide court¹⁵¹: yet its personnel, which was composed of ex-archons, enabled it as a judicial body to command general respect. But it was, nevertheless, the traditions and the religious procedure of the court which lifted it above the level of the Crush and the Triangle. This theory, which we have propounded, of the origin and evolution of the Areopagus is in perfect harmony with the statement of Demosthenes¹⁵² that: 'neither tyranny nor oligarchy nor democracy have ventured to deprive this tribunal of its jurisdiction in murder.' But Gilbert's theory¹⁵³ of Draconian interference with the judicial powers of the Areopagus is not consistent with this statement. The opinion of Pollux¹⁵⁴ and of Plutarch¹⁵⁵ that there was no Areopagus court before the time of Solon contains at least an important element of truth, since it may be taken to imply that the Areopagus of historical times, the personnel of which was composed of ex-archons, did not exist before the time of Solon. The pre-Solonian Areopagus was not in our opinion really distinguishable from the Ephetae. Hence, there is a sense in which the statement of Pollux is true, that in Solon's time 'the Ephetae sat in the five murder courts.'¹⁵⁶

We have now sufficiently indicated the methods and laws of Greek blood-vengeance in the post-Homeric epoch and in historical times. We may, therefore, proceed to examine and, if possible, to explain the problems of blood-vengeance which are presented by Attic tragedy. In our account of Homeric homicide we found it necessary to distinguish between a military dominant Achaean caste on the one hand, and a subject Pelasgian tribal people on the other. In our exposition of post-Homeric and historical developments we found it indispensable to distinguish the post-Achaean and Hesiodic periods from the 'pollution' era and to regard the final evolution of historical Greek murder law as a resultant compromise between divergent forces. When we turn to the legends which are given by the Attic tragedians, we must be prepared to consider the operation of several distinct

¹⁵¹ Aristotle, *Ath. Pol.* 25, 27.

¹⁵² *In Aristoc.* 642.

¹⁵³ *Op. cit.* p. 122 ff.

¹⁵⁴ viii. 125.

¹⁵⁵ *Solon*, 19.

¹⁵⁶ Pollux, viii. 125.

alternative factors in the creation of these legends. Some legends are presented to us in a form which seems quite consistent with the period to which they refer, either because they came down comparatively unadulterated through the ages or because the dramatist consciously and correctly archaised. Other legends, however, become so adulterated in course of time that they are difficult to analyse and their evidential value is very small. Again, different myths about the same event assumed, in different places and at various times, forms which were legally, at least, incompatible. It was open to the dramatists to make a selection from amongst the most suitable varieties of the legend ; but they naturally aimed at consistency in characterisation, rather than at harmony in their legal conceptions. As a result of the variety of inconsistent legends it was obviously impossible for those dramatists to fulfil the maxim of Horace ¹⁵⁷ :

denique sit quidvis, simplex dumtaxat et unum.

¹⁵⁷ *Ars Poetica*, 23.

BOOK III

POINE IN ATTIC TRAGEDY

CHAPTER I

AESCHYLUS

THE ruthless hand of callous Fortune has robbed the world and civilisation of all save seven of the dramatic works of Aeschylus, the first and perhaps the greatest of European tragedians. Of these seven extant plays, there are only three which directly and formally present any problems of blood-vengeance. These three plays are concerned with a single theme, the murder of Agamemnon, King of Argos, by his wife Clytaemnestra and by her paramour Aegisthus, and the subsequent vengeance of Orestes. In the remaining plays (if one excludes the *Persians*) one finds occasional and incidental references to bloodshed, which require and will receive from us only a brief discussion. It is the Oresteian 'trilogy' which is our first and chief concern.

Horace¹ mentions the following maxim as one of the canons of ancient dramatic art :

aut famam sequere aut sibi convenientia finge

('Either follow tradition or create new themes which are congruous and consistent'). Now these alternatives are not necessarily mutually exclusive unless the tradition is rigidly stereotyped. A considerable scope for inventive genius and dramatic skill was provided by such legends as those which centred around Orestes. We are convinced that there existed quite a number of variants in the story of Orestes.

First of all, there was the original Homeric story, to which we have already referred.² In this account, Orestes slew his

¹ A.P. 119.

² *Supra*, p. 72 ff.

mother and Aegisthus in strict accordance with the Achæan system of vendetta. His act was not murder but just revenge. There is no suggestion of an ancestral curse, of an indefinite series of murders continuing from generation to generation. Blood has been shed; blood is avenged by blood. It was the Achæan principle, whether for strangers or for kinsmen. There is no trace of divine interference or of social justice. Apollo has no place or part in the story: there is no trial or official execution. We cannot discover even the element of psychological conflict. The Achæans were soldiers, trained in the stern school of war. Neither emotion nor family religion stood between passion and its satisfaction.

But the legend or legends which are found in Aeschylus present very obvious and important points of difference. Are we to suppose that Aeschylus was not aware of any other tradition save that which Homer gives, that all the non-Homeric elements in the Aeschylean account are Aeschylus' own invention, and that in this invention he was guided by the laws and the atmosphere of his own time? This is not our view of the matter. The Homeric legend, in our opinion, had a long and varied career before Aeschylus was born. It came down through many centuries, reflecting, as it came, many different atmospheres, and assimilating many different points of view, as it took shape in various localities.

Thus there was, we maintain, an Arcadian legend which told how Orestes came as an exile—a murder-exile—to Azania and to the town called Oresteum,³ and how he died there as the result of snake-bite.⁴ It is impossible to reconcile this version of the story with another which represented him as having married Hermione⁵ and as having reigned as King of Sparta; and with another story of his reign as King of Argos.⁶

Again, we shall see that there probably was an Argive legend, which mentioned a trial of Orestes at Argos at which he was condemned to death. From a legal point of view, this is the most important variant of the Homeric saga. Euripides gives it due prominence in the *Orestes*, but Aeschylus and Sophocles ignore it altogether.

³ Euripides, *Electra*, 1275, *Orestes*, 1647.

⁴ Schol. ad Eur. *Orestes*, 1640.

⁵ Eur. *Orestes*, 1654; Pausanias, iii. 1. 16.

⁶ Eur. *Orestes*, 1660.

Again, in what we conceive to have been the Attic forms of the legend, there must have been at least two variations. In our analysis of the Attic law concerning justifiable homicide,⁷ we pointed out that at one point the conception of homicide as justifiable may be very closely related to the conception of homicide as extenuated. The short duration of the exile penalty in cases of manslaughter or of slaying in a 'passion' when the act is 'forgiven' indicates a very slight legal difference between these two standpoints. Yet they cannot of course be regarded as identical, and they cannot even be fused or blended without a considerable indifference to consistency. In the transition from the Homeric age to historical times it was inevitable that Apollo, the champion and founder of the 'pollution' doctrine and of homicide-purgation rites in Greek lands, should have been drawn into the story. He is ignored, as we shall see later, in the Argive legend of Orestes. But he is found in all the other variants. Yet his rôle is not simple and definite. He purges Orestes certainly: but what was the nature of the guilt which he has purged? Was the act of Orestes justifiable or extenuated? In Homer the act was justifiable from the Achæan standpoint; but the legend-makers of the 'pollution' era could not accept that solution. For them, the immunity of Orestes could only be explained by the direct intervention of Apollo in advance. But this intervention was at one stage conceived as a complete justification, at another as a mere extenuation of the vengeance of Orestes. We shall find traces of both these conceptions in Aeschylus. In Sophocles the conception of Orestes' act as justifiable matricide is predominant: in Euripides it does not appear at all. The interpretation of Orestes' act as extenuated matricide does indeed appear in Euripides, but it is subordinated to another viewpoint which is quite incompatible with this—namely, the viewpoint of the Argive legend which ignores Apollo and regards Orestes as a common matricide who is worthy only of death.

One or two other minor variations may be traced in the Oresteian legends. Thus we read of a sentence which is very suggestive of perpetual exile in the *Electra* of Euripides,⁸ while in other plays there is a reference to the penalty of exile

⁷ *Supra*, p. 214.

⁸ 1250, 1274.

for the duration of a single year, a penalty which is elsewhere extended by a decree of Apollo so as to permit Orestes to embark upon a second expedition—this time to the Tauric Chersonese!⁹ Again, the story which was invented to explain the Athenian Pitcher-Feast, and which is mentioned in the *Iphigenta Taurica* of Euripides,¹⁰ is quite inconsistent with the Aeschylean legends, for in the former case Orestes was represented as ‘polluted’ when he came to Attica, while in the latter he is said to have been already ‘purged.’

The legal aspect of the Oresteia is further complicated by what we may term archaic assumptions. We hope to show presently that the Attic legends of Orestes would have been legally unintelligible if the Athenian legend-makers had not assumed that Orestes came to Athens as an exile *after* he had slain his mother, and not, as Homer said, *before*. Again, if they had not assumed that the Areopagus court, which in historical times did not normally judge cases of homicide between strangers, did judge such cases in early times, and that its verdict of acquittal, which was ordinarily a proof of the innocence of the accused, could at one time have been applied to a person who admitted the fact but pleaded justification, the legal analysis of this legend would have been impossible. We have seen¹¹ that before Solon the Areopagus court adjudicated in all kinds of homicide cases. The attribution of such functions to the Areopagus by Attic legend is therefore an archaism, even though it is an ‘historical’ archaism. We cannot be certain whether the archaism was transmitted from the sixth century onwards or whether it was ‘invented’ by later minds by a process which is described as ‘conscious archaising.’ Again, according to the legend which conceived Orestes’ act as extenuated matricide, he had already served a period of exile before he reached Athens. In this account, therefore, the Areopagus merely decreed him immune from further penalties. But such a decree was never associated with the historical Areopagus! Thus it is clear that the Oresteian legends sometimes contain ‘un-historical’ archaisms. We must now consider in detail the Aeschylean presentation of the story.

⁹ Eur. *Orestes* (1645 ff.); *Iph. in Tauris*.

¹⁰ *Infra*, p. 375 ff.

¹¹ *Supra*, p. 270 ff.

THE 'AGAMEMNON.'

The outstanding event of the *Agamemnon* drama, the pivot upon which the plot revolves, and the catastrophe which gives it meaning, is the brutal murder by Clytaemnestra of her husband, Agamemnon, King of Argos, after his triumphant return from Troy. In this play Aeschylus follows in the main the Homeric story, but there are one or two non-Homeric features which must be indicated.

In the gloomy chants of the Chorus, in their veiled fears of coming danger, one finds something more than the echoes of a political conspiracy, one finds the unmistakable influence of the creed of the ancestral curse. Are we to suppose that Aeschylus invented this non-Homeric doctrine which, in his own day, was a 'creed outworn'? Such a supposition is improbable, for we know from Stesichorus¹² that this doctrine had already in the sixth century been incorporated in the legend. We have already¹³ attributed the *floruit* of this doctrine to the post-Homeric age of chaos. Such beliefs survive in dogma and in ritual long after men have ceased to adhere to them. In Aeschylus the ancestral curse began with the famous 'feast of Thyestes,' but Euripides attributes its origin to the murder of Myrtilus.¹⁴ The Erinnyes of the children who were brutally slain by their kinsman Atreus continued to pursue the children of the slayer. Hence, in this play Cassandra, the prophetess, cries out on her arrival at Argos¹⁵:

Yea! There, there, there! Here's evidence enough!
Smell? Nay, I see, I hear them! Little children
Whose throats are cut, still wailing of their murder,
And the roast flesh a father tasted—swallowed!

Again¹⁶:

See the beginning of sorrows: what are these,
What dreamlike forms kneel on yon roof? Young boys
As they'd been slain by those who should have loved them,
Holding a burden piteous to be borne—
Gobbets of flesh, their very own, their entrails
Clearly discernible, the heart, the liver,
Of which their father ate!

¹² See Jebb's edition *Soph. Electra*, Introd. p. xxii.

¹⁴ *Orestes*, 990 ff.

¹⁵ 1095 ff. (trans. L. Campbell).

¹³ *Supra*, p. 122.

¹⁶ 1220 ff.

In these lines we can hear the rumblings of the coming storm. When the storm has passed, when the curse has found its mark, Clytaemnestra echoes the same sentiment, thus representing herself as the divine instrument of an avenging Justice. She says to the Chorus¹⁷:

Ye proclaim it my deed. Yet, beware! . . .
 'Tis the spirit of Vengeance awaking from sleep
 For the banquet of Atreus of old to Thyestes cruelly given,
 Putting on the resemblance of her that was queen to the dead,
 That hath visited all upon him
 And hath sternly repaid a grown victim for little ones slain.

A second important point of difference between the Homeric story and that of the *Agamemnon* is the reference in the latter story to the 'sacrifice of Iphigeneia,' the daughter of Agamemnon, at the hands of her father, at Aulis, and the interpretation of this act, by Clytaemnestra, as a justification for the death which she inflicted on Agamemnon. It would take us too far afield if we attempted to explain, at this stage, the origin of the story of the sacrifice of Iphigeneia. England gives an excellent account of this difficult problem in his edition of the *Iphigenia Taurica* of Euripides,¹⁸ and we shall recur to this topic when we come to deal with that play. The following points, however, may here be briefly indicated:

(1) The 'sacrifice' of the daughter of Agamemnon to Artemis at Aulis would certainly have been referred to by Homer if it had been an historical fact, or even if the poet had heard a rumour of such a strange event.

(2) This sacrifice, which is used as a 'plea' by Clytaemnestra, and which is a well-established element in the Oresteian legends of Attic tragedy, could hardly have been the invention of Aeschylus, for it tends to diminish the guilt of the villains of the drama, Clytaemnestra and Aegisthus, and it is far too complex a story to be attributed to the invention of a single mind. The confusion of the Homeric word Iphianassa with Iphigeneia, which was merely a cultus-epithet of the goddess Artemis, the invention of a mock human sacrifice at Aulis which was suggested by a sham rite of human sacrifice at a temple of Artemis in the Attic coast town of Halae, and the translation of Iphigeneia to a Tauric temple of Artemis,

¹⁷ 1495 ff.

¹⁸ See Introduction, p. xii ff.

where Orestes was said to have interviewed his sister—all these facts suggest, we think, the ‘ecclesiastical’ origin of the story.

(3) The doctrine of the ancestral curse would not have mediated the identification of Iphigeneia with Iphianassa. According to this doctrine the death of Agamemnon was a natural result of the curse of Thyestes. But the sacrificial death of Iphigeneia cannot naturally be connected with such a curse.

(4) The Attic legend which regarded Orestes as justified by Apollo cannot be supposed to have contributed to the genesis of the Iphigeneia story. It is not probable that such a legend, which conceived Clytaemnestra as a murderess and an adulteress, would have also presented her as the heroic avenger of an act of sacrificial bloodshed which was performed in obedience to a divine command.

(5) It is probable therefore that, although this legend of the ‘sacrifice’ may have originated independently of the Oresteia, it was in conjunction with a second Attic legend which decreed for Orestes a temporary period of exile, and which depicted a less implacable but persistent pursuit by the as yet unappeased Erinnyes, that the story of the sacrifice of Iphigeneia developed and took final shape. For when once a legend has admitted in the hero a degree of guilt, it is so much easier to admit also a degree of excellence in the villain. Hence it is that in Aeschylus, who follows mainly the first of these legends, this ‘plea’ of Clytaemnestra is not presented in a natural or forcible manner.

It is only at the end of the play, when the spectators are so fully convinced of the amorous infidelity, the designing malice, the flagrant hypocrisy and the murderous brutality of this queen of Argos, that they cannot attach much value to the boastful words which proclaim her love of her children, that she says to the railing critics in the Chorus ¹⁹:

Prate not of dishonour! ‘Deserving’ were rather the word.
Had *he* not prepared for his house an encumbrance of woe?

Let him not loudly plead there below
That in paying the price of her death whom a nation deplored,
The branch I had reared from his loins, he is slain with iniquitous sword.

Men shall reap what they sow.

In regard to the penalty which Clytaemnestra expects to suffer, the language of Aeschylus is deliberately vague. The Chorus say ²⁰ :

Hast thou cut him off ? Thou shalt be cut off from the State.
Our citizens shall hate thee with firm hate.

Clytaemnestra interprets these words as a threat of exile :

That is your sentence : I must fly the land
With public execration on my head.

We have seen ²¹ that an option of exile would have been permitted in such cases in historical Attic law, for husband and wife were not usually akin in blood. But the Achaeans did not recognise the exile penalty in any circumstances. We have said ²² that the penalty of death and private vendetta were the characteristics of Achaean vengeance. They also characterised at various periods the blood-feuds of noble or royal families whose conduct was uncontrolled by law. Thus, in fourth-century Macedonia blood-vengeance was still of an Achaean or quasi-Achaean type. Pausanias ²³ tells how Antipater, the brother of Alexander, ordered the Macedonians to stone to death the queen-regent Olympias, and himself poisoned the sons of Alexander : how in turn Alexander called in Demetrius, the son of Antigonus, and succeeded by his help in deposing his brother Antipater and in punishing him for his matricide. Thus Aeschylus, without knowing anything of the different modes of vengeance of the Achaeans and the Pelasgians, was enabled, by the predominance of Achaean vengeance in Homer, and the occurrence of quasi-Achaean vengeance in outlying regions, to visualise ²⁴ correctly the Achaean vengeance of Orestes, and the Achaean punishment of Clytaemnestra. Hence he makes the Chorus say ²⁵ :

O that Orestes, if he lives to-day,
Might yet return auspiciously to Argos
And kill both tyrants in his pride of power !

Hence the exile to which Clytaemnestra ²⁶ refers is an Achaean

²⁰ 1410 ff. ²¹ *Supra*, p. 238. ²² *Supra*, pp. 2, 27, 65. ²³ ix. 7.

²⁴ See *infra*, p. 422. ²⁵ 1645 ff. ²⁶ 1413.

'flight from death.' But the penalty of death was the ultimate aim of Achæan vengeance; and therefore the Chorus say ²⁷:

Robber is robbed: slayer slain: revenge is sure.
Firm stands, while Zeus remains upon his throne,
One law: who doeth shall likewise suffer.

THE 'CHOEPHOROE'

In the *Choephoroe* Orestes slays his mother and her paramour. Two important deviations from the Homeric saga are manifest throughout the play: (1) the conception of homicide as a 'pollution,' and (2) the command which is given by the Delphian Apollo to Orestes, to slay his mother in vengeance for his father's murder. Thus Orestes says ²⁸:

We shall not fail: Apollo's mighty word
Will be performed, that bade me stem this peril.
High rose that sovran voice, and clearly spake
Of stormy curses that should freeze my blood,
Should I not wreak my father's wrongful death.

There is no doubt about the meaning of these words. Apollo, the oracle-god of the Delphian Amphictyony, which, as we think,²⁹ contributed so much to the historical homicide code of Greece, has issued a definite command. It must be obeyed. If it is executed, its execution must be just. No penalties can attach to such avenging, but punishment unthinkable follows failure to avenge. Orestes tells us that he would at least have lost his life if he did not slay his mother. But a real Homeric Achæan would not have suffered for failure to avenge. Was this Aeschylean conception, then, derived from contemporary Attic law? Would an Athenian citizen of historical times have suffered in such circumstances? We have seen ³⁰ that pecuniary 'private settlements' were actual events, though not, as we think, legal events in historical Athens. In such cases a relative of the slain would have benefited by failure to prosecute.³¹ But we have also shown that in Athens a relative of a slain person who did not prosecute could be proceeded against on a charge of impiety:

²⁷ 1555 ff.

³⁰ *Supra*, p. 174 ff.

²⁸ 268 ff.

³¹ *Supra*, p. 180 ff.

²⁹ *Supra*, p. 156 ff.

and it is probable that, if convicted, he would have been degraded from citizenship and sentenced to perpetual exile. Are we then to suppose that Aeschylus deliberately imported into the Homeric story conceptions which he borrowed from contemporary Attic law, and that he also imported Apollo as a *deus ex machina* whose rôle it was to propound Athenian law to an Achæan king? This hypothesis is very unsatisfactory. We prefer to believe that the non-Homeric elements in this play had gradually found their way into the legend as it was transmitted down the ages. It is, of course, unfortunate that the legend-makers did not remember that Orestes lived at a time when murder was not regarded as a 'pollution': but in a legend which evolved through a long period of time it was inevitable that sentiments and customs of a later age should have been attributed, anachronistically, to the people of earlier periods.

We have already referred³² to the anger which it was believed that a slain person felt towards his relatives who did not avenge him, and which contributed to the 'pollution' of delinquent relatives. It is only from this standpoint that we can understand Orestes' reference to the evils that would follow his failure to avenge³³:

The darkling arrow of the dead that flies
 From kindred souls abominably slain,
 And madness and vain terror of the mind
 Should harass and unman me till the State
 Should drive me forth, with brands upon my body.
 So vexed, so banished, I should have no share
 Of wine or dear libation, but unseen
 My father's wrath should drive me from all altars.
 None should receive me: none should dwell with me,
 And my long friendless life, bereft of honours,
 Should shrivel down to darkness and decay.

The reference to the State in this quotation is noteworthy. In such a reference we find ourselves very far removed from the Homeric saga and the days of private vengeance! The brand or stigma which is mentioned is that civic degradation which is known as *ἀτιμία*. We cannot suppose that these actual words were recorded in the legend which Aeschylus follows. The

³² *Supra*, pp. 148, 178, 211.

³³ 285 ff.

statement is much too long for a real oracle! Did Aeschylus then derive this sentiment from contemporary Attic life? We have seen that the pollution-doctrine was closely associated, in Greece, with the interference of the State in matters of homicide. It follows that the importation of this doctrine into the Oresteian legend would have naturally introduced, also, the conception of Orestes as a State criminal, worthy of State punishment. When once the legend received, so to speak, this colouring, the general atmosphere of the story would have suggested such words as are attributed in this quotation to Orestes. We believe that these words of Orestes are the creation of Aeschylus' own mind, but we do not attribute to Aeschylus the creation of the legendary atmosphere which makes such words intelligible.

There is a subtle suggestion of the clash of clan-feuds which characterised the transition period of the Dark Ages in the Aeschylean description of the conflict of viewpoints between the Erinnyes of Agamemnon and the Erinnyes of Clytaemnestra—a conflict which it is improbable that Aeschylus invented. The avenging goddesses are conceived as real beings: they are not mere delusions or 'extrajections' of a distracted mind. We have already referred ³⁴ to Orestes' fear of the 'darkling arrow' which may be hurled at him by the Erinnyes of his father. On the other side, however, stand the Erinnyes of his mother, who are equally formidable. Orestes says ³⁵:

Ah! ah!

What grisly troup come yonder in grey robes,
With Gorgon faces and thick serpent hair
Twisted in writhing coils? I must be gone.
This is no fancy, but a present woe.
I see my mother's Furies clearly there!

This conflict Apollo, of himself unaided, is unable to avert. But we shall now see how Apollo and Athene, in conjunction, persuade the Furies of Clytaemnestra to accept 'appeasement.' It was thus, as we conceive it, that the religion of pollution and political synoekism ultimately overcame the resistance of the clans to new laws and new gods. It was thus that, after years of chaos and transition, ghosts came at length to obey State

³⁴ *Supra*, p. 285.

³⁵ 1046 ff.

gods and State laws as in tribal life they obeyed the 'dooms' of the tribe.

THE 'EUMENIDES'

The main theme of the *Eumenides* is the trial, at the Athenian Areopagus, of the Argive Orestes who had slain at Argos his mother and her paramour, and who upon acquittal returns to Argos to occupy the throne of his murdered father. We admit that the exaltation of the Areopagus is one of the motives of the dramatist. There is much to be said for the view of Blass³⁶ that the conflict between Apollo and the Furies made this 'divine drama' worthy of Athenian interest. But we maintain that Aeschylus would not have selected such a theme for presentation to an Athenian audience, if it had not also contained a difficult legal problem which was calculated to thrill the emotions of those litigious men of Athens who were at once judges, litigants and legislators. The play was produced at the time of the curtailment of the powers of the Areopagus by Pericles and by Ephialtes. Aeschylus suggests³⁷ that it was this Council which held the first trial for bloodshed in a barbarian world. In this view there is no protest against the reform of Ephialtes, for such a reform seemed to recognise that homicide-trial was the sole and proper function of the Areopagus.

Whether the play was produced before or after this reform it is impossible to say. Bury holds³⁸ that the play is not a protest after the event, that, on the contrary, Aeschylus approved of the reform. Other scholars maintain, however, that Aeschylus was opposed to democratic interference with the established privileges of an ancient Council, and that he left Athens on this account and died in Sicily of a broken heart.³⁹ Our reading of the play inclines us to support the view of Jevons which will be manifest from the following extract⁴⁰: 'The *Eumenides*,' he says, 'was produced in 458 B.C. . . . at a time of great political excitement in Athens. The oligarchical

³⁶ See Introduction to *Eumenides*. ³⁷ *Eum.* 685. ³⁸ *H. of G.* p. 348.

³⁹ See question discussed in Bury, *loc. cit.* and in Jevons, *Hist. Gk. Lit.* pp. 194 ff.

⁴⁰ *Op. cit.* p. 194.

party had just been defeated on both their foreign and their home policy. Their foreign policy was alliance with Sparta.⁴¹ The home policy consisted in opposing such changes in the constitution as would give more power to the people, and at this time also consisted particularly in supporting the powers and privileges of the Areopagus against the attacks of the democratic party. . . . The democrats under Ephialtes succeeded in depriving the Areopagus of its political powers, leaving to it only the right of trying cases of homicide. . . .⁴² The *Eumenides* is sometimes said to be a panegyric on the Areopagus and sometimes even to have been a call to all good men to join in preserving to it the political powers which it had long enjoyed. But it is probable that the *Eumenides* was produced after the reforms of Ephialtes: and as Aeschylus represents the Areopagus to have been founded to try cases of homicide, the very class of cases which Ephialtes left to it, it is more reasonable to regard the play as having been intended to reconcile those who strove for the preservation of the political powers of the Areopagus to the new state of things which Aeschylus shows to be in harmony with the original nature of the court. This view receives some support from the fact that the alliance with Argos to which the oligarchic party was opposed is also shown by Aeschylus (727 *et seq.*) to be in harmony with tradition, myth, and religion.⁴³

Verrall takes up a similar attitude to this problem ⁴⁴: 'It is clear,' he says, 'from the tone of the final scene and it is generally recognised that Aeschylus did not intend to appear at least as a partisan, that he supposed himself to be a peace-maker and to have advanced only what would be generally approved. He justifies trial by jury: he extols the Areopagus as a court of crime: he leaves room, but in vague terms, for a larger execution of its vigilant protection. . . . He is for the middle way, "neither tyranny nor anarchy." . . . But the attitude of the poet is not that of a practical politician. Religion, always first with him, in the *Eumenides* covers the whole field.'

We do not agree with Verrall's view that Aeschylus justifies 'trial by jury,' if Verrall means by this phrase trial by popular

⁴¹ That of the democrats was alliance with Argos. ⁴² *Op. cit.* p. 195.

⁴³ *Ib.* p. 196.

⁴⁴ *Introd.* to *Eum.* p. xlix.

juries such as the Heliasts of the post-Solonian age. The Areopagus was never invaded by the Heliasts. Its procedure was fundamentally different from that of Heliastic courts. Its personnel was composed of archons and ex-archons. It is to such judges that Athene refers when she says that she will select, for the trial, the best of her citizens.⁴⁵ There was for the Areopagus no election by lot, such as characterised the popular juries,⁴⁶ nor is there in the phrase ἀστῶν τῶν ἐμῶν τὰ βέλτατα any reference to the Ephetae, the aristocracy of birth. Aeschylus either never knew, or he has forgotten, or he has perhaps deliberately ignored the aristocratic character of the pre-Solonian Ephetae-Areopagus.⁴⁷ It is the plutocratic Solonian Areopagus of the sixth century and of his own day that he puts before us. When Verrall says that 'Aeschylus leaves room . . . for a larger execution of its vigilant protection,' he implies that Aeschylus opposed the reform of Ephialtes. As this view commits Aeschylus to the exaltation of plutocracy, we prefer, with the scholiast, to give a narrower interpretation to the phrase εὐδόντων ὕπερ ἐργηγορὸς φρούρημα⁴⁸ and we translate it: 'the vigilant custodian of vengeance for the slain,' whereas Verrall takes the 'sleepers' to mean 'the citizens when they are asleep at night.'

We think, moreover, that Verrall overestimates the religious as distinct from the legal aspect of the play. Apollo and the Furies seem to us to present a rather sordid picture at the trial. If Apollo had maintained his traditional rôle of Olympian autocracy, he would have been more impressive. As it is, he condescends to discuss the justice of Orestes' act with rival deities of a quasi-diabolical type: and his arguments are rhetorical rather than logical. He advances the absurd opinion that the real parent of a child is the father not the mother.⁴⁹ This view and the similar opinion of Athene⁵⁰ may of course be explained as a characteristic sentiment of the Eupatridae, an Athenian noble caste, who were excluded from the worship⁵¹ of the Semnai Theai at Athens, a sentiment which is here directed against the Erinnyes, by way of anticipation, in view of their prospective

⁴⁵ *Eum.* 490. ⁴⁶ Aristotle, *Ath. Pol.* chs. 3, 7, 63. ⁴⁷ *Supra*, p. 269 ff.

⁴⁸ 708. ⁴⁹ 661 ff. ⁵⁰ 740.

⁵¹ Schol. ad Soph. *Oed. Col.* 489; Harrison, *Proleg.* p. 246.

metamorphosis into Semnai Theai.⁵² But it is more probable that the argument represents an undignified squabble between Olympian gods and Chthonian goddesses, between the deities of the 'pollution' religion and of new-born Greek States, on the one hand, and the old clan-ghosts who are here conceived as Titans, on the other.⁵³ The Furies are not even consistent with themselves. At one time⁵⁴ they pose as the avengers of all kinds of homicide: at another⁵⁵ they are only concerned with kin-slaying. The Olympian exaltation of 'the father' is met, swiftly and flippantly, in the manner of repartee, by an objectionable quotation from Olympian theology! 'Did not Zeus,' the Furies ask,⁵⁶ 'bind in chains his aged father Kronos?' The answer of Apollo is even weaker than the question: 'to fetter,' he says, 'is not to slay . . .'⁵⁷ Remedies for the one are easy, remedies for the other there are none! If then the religious aspect of the trial of Orestes had been predominant or paramount in the mind of Aeschylus, we do not think that he would have presented the gods in such a frivolous and futile manner to an audience of Athenian citizens. He would, much more probably, have followed a different form of the legend, which is found in Euripides,⁵⁸ and is mentioned by Demosthenes,⁵⁹ and which represented the Twelve Olympian Gods as the judges of Orestes' guilt. Hence we believe that the dramatic aspect of the story was the more important one for Aeschylus. The essence of tragedy is conflict, and there is conflict in the *Eumenides*, between rival emotions, between rival ethical theories, between rival gods and goddesses, first, last, and all the time! But next in importance to the dramatic motive we place the legal motive of the play. We do not agree with Verrall in maintaining⁶⁰ that 'what is certain is that in the law of the matter, the law proper, he (Aeschylus) took little interest. The ultimate issue of his play is not legal but religious. . . . It matters nothing that the prosecutors, in different parts of the play, assume, respecting the limits of punishable homicide, views which are not compatible: or again that the question of the validity of the oracular command, though it is a main point in the defence, and though the jury must be supposed to

⁵² Harrison, *loc. cit.*⁵³ *Infra*, p. 300 f.⁵⁴ 338, 424.⁵⁵ 210, 212, 608.⁵⁶ 644.⁵⁷ 648 ff.⁵⁸ *Orestes*, 1650.⁵⁹ *In Aristoc.* 641, 27.⁶⁰ *Introd.* p. xlvii.

disagree about it, is not argued, unless contradiction is argument, at all. . . . On law, therefore, and the history of law, the *Eumenides* is but a dubious authority: and the reader or expositor of Aeschylus as such is not bound or perhaps entitled to consider the play from this point of view.' This kind of reasoning seems to us very suggestive of a well-defined mental attitude, namely, that of a writer who knows little or nothing about law and who, in addition, does not want to know anything about it. We do not assert that the legal problems of the *Eumenides* are simple, but they cannot for that reason be ignored. The more difficult a problem is, the greater is the prestige of a court which can decide the issue. Athene confesses the difficulty of the problem in this play and she requests the citizens of Athens to solve it.⁶¹ What an exaltation of religion! What a contempt for law!

The legal complexities of the trial of Orestes arise, we have said, from the circumstances which attended the evolution of the legends. The introduction of the story of Apollo's command to Orestes was intended by the legend-makers of the 'pollution' era to explain and to reinforce the Homeric conception of Orestes' act as justifiable matricide. That Apollo's command justified his act is the legal plea of Orestes, in this play; at least, it is the predominant plea.

Thus he says to Apollo ⁶²:

Now give thy witness and expound the truth.
 Apollo, was I just in slaying her?
 To have done it I deny not. 'Tis the fact.
 But whether to thy thought this matricide
 Be justified or no, declare thy mind
 For information of those present here.

We may naturally ask: 'Why is Apollo appealed to for judgment, when he has been cited as a witness?' We have argued that, in Attic law, if we may trust Plato,⁶³ matricide could never have been legally justified. On the other hand the Apolline doctrine of pollution declared that the defaulting avenger was polluted. The pollution doctrine permitted and did not condemn 'private execution.' It was synoekised State power which made such execution criminal.⁶⁴ The

⁶¹ 474, 484.

⁶³ *Laws*, ix. ch. 9; *supra*, p. 215.

⁶² 612 ff.

⁶⁴ *Supra*, p. 229.

conflict which is presented by these different points of view was too grave a matter for the decision of a human court. The command of Apollo was regarded by the legend-makers as the only solution of that conflict. The only question which a human court could be reasonably expected to decide was the question whether Apollo did actually command the act of Orestes. If the actuality of such a command was established, the acquittal of Orestes was inevitable. The only alternative possibility was a verdict of 'responsibility for murder' ⁶⁵ against Apollo! But such a verdict, in the religious atmosphere of the ancient City, would have been unthinkable.

So far therefore the legal issue in the *Eumenides* is comparatively intelligible. But we must call attention to the peculiar fact that in the play Orestes is represented as having been tried not at Argos but at Athens. If Orestes had slain his mother at Athens, his act would have been, in Athenian law, a case of homicide between foreigners, and such an act, though normally in Aeschylean Athens tried by the Palladium court, could quite conceivably, in pre-Solonian times, have been tried by the Areopagus. But Orestes did not slay his mother at Athens, and therefore the case would not have come before any Athenian court, unless Orestes intended to reside at Athens, and his right to reside at Athens was challenged by the relatives of the slain. Now, in Greek extradition law these relatives ⁶⁶ had no right to object to the residence of the slayer 'abroad' unless he was guilty of wilful kin-slaying, as, for instance, of wilful matricide: for the penalty for kin-slaying in historical times was death, without the option of exile. It is precisely on such a charge of wilful matricide that the Erinyes, in this play, prosecute Orestes. To that extent their prosecution was lawful. But the fact that the prosecution took place at Athens implies that Orestes intended to live in Athens as an exile, at least for a time. We have pointed out that, according to Greek extradition law, the relatives of the slain could have compelled the fellow-citizens of the slayer to try him or to extradite him if he fled to them for refuge. But in cases of kin-slaying

⁶⁵ Cp. Dracon's phrase *αἵτιος φόνου*, *supra*, p. 193.

⁶⁶ Dem. *In Aristoc.* 647, 24-648.

it is probable that any State to which the slayer fled could have been compelled to put him on trial before they received him as an exile, or otherwise to expel or extradite him. Yet the avenging relatives were not compelled to accept a verdict of acquittal in any court as a complete restoration of the slayer to social and religious communion, just as in certain cases of kin-slaying the relatives were not compelled to admit the slayer to domestic communion, even when his own State court had permitted his return from exile. Hence, in the Oresteia, a verdict of acquittal brought in by the Athenian Areopagus in regard to a foreign Argive kin-slayer was primarily intended to legalise the residence at Athens of Orestes, but it could not have legalised his return to Argos unless the relatives of the slain accepted the verdict of the Athenian court as a final verdict of innocence, and ceased, of their own accord, from further prosecution. Now, the legends of Orestes seem to differ in their account of the 'appeasement' of the Erinnyes of Clytaemnestra. In some legends, as in that upon which is based the *Iphigenia Taurica* of Euripides, the Furies do not accept the verdict of the Areopagus, and continue to pursue him over land and sea. The fact that they can drive him out of Athens is due to their divine power. In law, ordinary human relatives could not have done so. But it is clear that, in the absence of unanimity in regard to the attitude of the Erinnyes to the Areopagus, the Attic legend-makers who emphasised the connexion of Orestes with the Areopagus must have assumed that Orestes intended to reside, at least for a time, as a homicide-exile at Athens. Now there is no evidence in Homer of such an intention on the part of Orestes. In Homer, Orestes went to Athens *before*, not *after*, he slew his mother. Hence the whole basis of the Attic legends of Orestes is a pure assumption, without any historical foundation.

The main difficulty which the ancients found in the post-Homeric legends of Orestes was the interpretation of the command which Apollo gave to Orestes. Some legends, of course, such as that which we have called the 'Argive legend,'⁶⁷ did not include any reference whatever to such a command.

⁶⁷ *Supra*, p. 277.

But in the Attic legends, which represent this command as an essential element in the story, there is no precise and definite answer to the question: 'Did this command justify the vengeance of Orestes or was it a mere "extenuation" of his guilt?' We have said that the conception of this command as a complete justification predominates in the *Eumenides*, though the Erinnyes naturally object to this interpretation. But the command may also be regarded as an abnormal psychic factor which would make it possible to interpret the act of Orestes as 'kin-slaying in a passion,' or extenuated kin-slaying, which is akin to involuntary homicide. It is only thus that we can explain the reference in certain forms of the legend to a penalty of one year's exile: and to other details of punishment which are never associated with voluntary homicide. The Furies, in the *Eumenides*,⁶⁸ find it difficult to conceive that Orestes will ever return to his domestic religion. Now Plato⁶⁹ asserts that a son who slew his parent in a passion could not, unless the dying parent 'forgave,' return again to his domestic hearth, even though he could return, after a period of exile, to his native State. We cannot suppose that the Furies, in the *Eumenides*, represent an attitude of 'forgiveness' on the part of Clytaemnestra, and hence we could not expect them to accept the possibility of Orestes' return to his native home in Argos. But the mere mention of such a detail suggests a plea of quasi-involuntary matricide. A verdict of acquittal on a plea of justifiable slaying is precisely the verdict which the Erinnyes in Aeschylus, before their 'conversion,' cannot recognise. But they might have accepted as an alternative to their charge of wilful matricide a charge of extenuated matricide. Such a charge, such a conception of Orestes' guilt, is very prominent in a form of the legend which Euripides gives.⁷⁰ But even in Aeschylus this conception is not altogether absent, though it is very much suppressed, perhaps because it was inconsistent with the dominant viewpoint of the Aeschylean drama. Thus, Orestes suggests that before he came to Athens to stand his trial he had already atoned for any element of guilt which was involved in his obedience to Apollo. He says to Athene, before the trial⁷¹:

⁶⁸ 660-665.

⁷⁰ See *infra*, pp. 341, 359.

⁶⁹ *Laws*, ix. ch. 9.

⁷¹ *Eum.* 236-240, 276-286.

Sovereign Athene, sped by Phoebus' word,
 I come. Do thou with clemency receive
 The outcast—not red-handed nor unpurged,
 But mellowed by long time and travel-worn.
 Among new households, alien ways, o'er land
 And beyond sea. . . .
 Taught wisdom in the school of misery,
 I am learned in all atonement. . . . The stains
 Of slaughter on my hands are dulled and pale.
 The guilt of matricide is washed away,
 For while quite recent, at Apollo's hearth,
 'Twas driven out and purged with death of swine,
 And tedious were the number to tell o'er
 Of men I have communed with without harm.
 All-mellowing time makes old defilement pure.

Nothing can remove the inconsistency in this quotation. We seek merely to explain it by attributing it to a confusion of two different legends, which viewed the act of Orestes from two different legal standpoints. In this passage Aeschylus happens to emphasise a standpoint which he usually ignores, namely the conception of Orestes as a matricide of partial guilt, or as an extenuated matricide, the conception which underlies the stories of the wandering of Orestes and of his sojourn as a homicide-exile in various lands. If Aeschylus does not consistently exclude this conception from his drama, this must be attributed not only to a certain legal affinity which exists between the conception⁷² of Orestes as justified, and the conception of him as partially guilty, but also to a confusion of these conceptions in pre-existing legends.

This analysis which we have given indicates, at least, the value of legal considerations for the complete intelligibility of this play. For the history of law, also, we may infer from Aeschylus, or rather from pre-Aeschylean legend, that the early Areopagus, and therefore the early Ephetae courts, adjudicated in various kinds of homicide cases. The division of labour which took place, we believe,⁷³ in pre-Solonian times, and which

⁷² *Supra*, p. 214. It must be remembered that in strict law it was not possible to plead extenuation in cases of deliberate parent-slaying (Plato, *Laws*, ix. ch. 9). The command of Apollo, however, gives an extra-legal aspect to the story.

⁷³ *Supra*, p. 272 f.

left to the Areopagus exclusive jurisdiction in cases of wilful murder, of malicious wounding, and of poisoning with intent to kill, had obviously not yet appeared at the time when this Attic legend took shape. There is thus no basis for Ridgeway's hypothesis⁷⁴ that the place of Orestes' trial was not the Areopagus but the Palladium. The image of Athene which Orestes embraces in the *Eumenides* was not, as Ridgeway thinks, the famous wooden image of the goddess at the Palladium, but was rather, as Müller points out,⁷⁵ the image of Athene on the Acropolis.

The relation between the legal and the dramatic aspects of the story of Orestes may be indicated by the following useful, if fanciful, hypothesis: Let us suppose, for the moment, that there existed in the time of Aeschylus no other legends of Orestes except that which is found in the Homeric poems. If Aeschylus wished to incorporate this legend, in the form of a tragic drama, following we may assume in his dramatic art the Horatian maxim⁷⁶:

aut famam sequere aut sibi convenientia finge,

he could have followed one or other of two possible courses: On the one hand he could have simply dramatised the Homeric story in its original setting, thus giving us what would be called an 'historical drama,' or, on the other hand, he could have invented a 'drama' in which the facts, the names and the characters alone were Homeric, but the ideas, the viewpoints, the legal and religious atmosphere were derived from contemporary life. If Aeschylus had chosen the former course he could not have produced a trilogy such as we now possess: the *Eumenides* at least would have been impossible: he could, however, have written the *Agamemnon*, and a *Choephoroe* somewhat similar to, though also somewhat different from, our present play, as both these dramas are Homeric in their main outlook. Again, if we suppose that Aeschylus chose the second course, the *Agamemnon* would still have been possible: but the *Choephoroe* would have been unrecognisable—in fact, there could not have been a *Choephoroe* at all: Orestes could not have been regarded as the sole or proper agent of execution: if he slew his mother without trial, or without having given her the option of exile,

⁷⁴ See *Classical Review*, vol. xxi. p. 163 ff. ⁷⁵ *Eum.* p. 139. ⁷⁶ *A.P.* 119.

he would have been a State criminal, liable to prosecution as a matricide or a violator of civic law. The *Eumenides* would also, in this hypothesis, have been very different. There could not have been any doubt regarding Orestes' guilt or the verdict of the court: there could not have been any conflict between Apollo and the Erinnyes. There could, in short, have been no *Eumenides* drama worthy of the name. We may therefore, as a result of this reasoning, and from the actual nature of the extant Oresteian trilogy, infer that there must have existed a post-Homeric pre-Aeschylean legend, or legends, of Orestes which predetermined the Aeschylean presentation of the story. These legends, by combining very different reflections in the course of legal and religious developments, created the moral and the legal problems of the Oresteia. It was probably these problems which constituted, for the litigiously minded Athenian people, the main dramatic interest of the *Eumenides*, if not also of the *Choephoroe*. But that interest was purchased at the cost of obscurity and confusion. It is, for instance, quite inconsistent for Aeschylus to have represented the trial of Orestes as the first Greek trial ⁷⁷ of homicide and at the same time to have conceived Orestes as guilty of bloodshed: for it was at the precise moment at which State trial and State execution came into being that Orestes became a criminal! Before that moment he was simply the normal avenger of blood. This inconsistency is, we think, a proof that the Aeschylean story was not his own invention: for if Aeschylus had invented it, it would not have contained so many inconsistencies. On the other hand, inconsistency would naturally have characterised a legend which evolved through ages of legal and religious transitions. When once it had become stereotyped in the story, Aeschylus could not, even if he would, have thought it away.

Verrall therefore is right in saying ⁷⁸ 'That a legend gave the main fact, the prosecution of Orestes by the Erinnyes before a tribunal at Athens and his acquittal there, might safely be inferred from the play and is beyond doubt.' And Müller says ⁷⁹: 'The transmutation of the Erinnyes into Eumenides formed in Greece an essential appurtenance to the legend of Orestes. The persecution of Orestes from country to country

⁷⁷ *Eum.* 685.

⁷⁸ *Introd. to Eum.* p. 38.

⁷⁹ *Eum.* pp. 174-5.

by his mother's Erinnyes, in the place of human vengeance, was no invention of poet or priest but Greek national tradition.'

The 'tragic' Erinnyes, whom we have already encountered in the *Choephoroe*,⁸⁰ find in the *Eumenides* their real battleground. In this drama they have received from the hands of Aeschylus an immortality which no mere legend or even religious ritual could ever have bestowed. In the dramatisation of those Titanic shapes the genius of Aeschylus found congenial work: but what, if any, elements of the final product were 'invented' by him is a matter of dispute. Miss Harrison thinks that the Erinnyes, *qua* Erinnyes, had no special cult in Greece. This view implies that religion, or image-magic, had not created these monstrous forms. Müller,⁸¹ however, thinks that in a chasm near the temple of the Semnai Theai beside the Areopagus there were, in all probability, carved wooden images of the Erinnyes. But these images, he holds, did not influence the Aeschylean picture. 'In the outward and visible form of the Erinnyes,' he says, 'Aeschylus seems to have drawn a good deal on his invention, for the earlier poets had no definite image of the goddesses before their eyes: and though there were in the Temple at Athens old carved wooden images of the Semnai, still their figures could not be adapted for dramatic purposes. Hence it is that the Pythian priestess after having beheld the Erinnyes is only able to describe their forms without being apprised thereby of the nature of the beings she had seen.' Pausanias⁸² says that it was an innovation on the part of Aeschylus to have represented the Furies 'with snakes in their hair.' Müller holds that this was not an innovation, but that it was borrowed from the images of Gorgons.⁸³ The Furies are compared to Gorgons in the *Choephoroe*.⁸⁴ We have elsewhere maintained⁸⁵ that it was from the Gorgon images which, in the *Ion* of Euripides,⁸⁶ are depicted as sitting around the Omphalos at Delphi, that Aeschylus got his idea of the 'tragic' Erinnyes. But in the *Eumenides* the Pythian priestess definitely states that though similar to the Gorgons they are not identical with them. If they had been identical she would no doubt have recognised

⁸⁰ 1046 ff.⁸¹ *Eum.* p. 178.⁸² i. 28.⁸³ *Op. cit.* p. 188.⁸⁴ 1046; *supra*, p. 286.⁸⁵ See Bayfield's edition, and *supra*, p. 123.⁸⁶ 224.

them : moreover, they are not Harpies, she says, because they have no wings.

Hence we are of the opinion that Aeschylus, feeling that he was not bound by any definite traditional form, conceived the Erinnyes as monsters-in-general, but with a predominantly human shape in order to prepare the way for their subsequent transformation into Semnai Theai. In a certain still extant vase-painting ⁸⁷ which represents a scene from the *Eumenides*, the figure of the Fury could be transformed into the image of a respectable goddess by merely removing the snake which hisses at Orestes, above her head ! But the nature and function of the 'tragic' Erinnyes are not the invention of Aeschylus. Their form, indeed, his hand defined, but their nature and their character had long been enshrined in traditional legend. We have suggested ⁸⁸ the social, legal, and religious transitions which led to the birth of these quasi-diabolical monsters. While the docile Pelasgian ghosts of primeval days have many affinities with the Semnai Theai in whose forms Pausanias ⁸⁹ could discern nothing terrible or dreadful, the 'tragic' Erinnyes, which are a product of post-Homeric times,⁹⁰ appear in the rôle of avengers so savage and so implacable that they cannot be recognised by either ghosts or gods. Thus Apollo says to Orestes ⁹¹ :

Even now thou see'st those Furies overtaken,
Their madness lost in sleep : maidens abhorred,
Aged, but ever crude, whom none that lives,
Man, god or beast e'er met in fellowship.
To evil they were born, evil the gloom
Of Tartarus, their haunt beneath the ground,
And hated both of men and gods in Heaven
The power they exercise.

We have already discussed ⁹² the problem involved in the refusal, on the part of the Erinnyes in this play, to recognise the purgation of Orestes. This purgation ceremony is quite naturally attributed by Aeschylus to Apollo, who was the pioneer deity of the purgation-system. It could not have been

⁸⁷ The Orestes Vase in the British Museum.

⁸⁹ i. 28.

⁹⁰ *Supra*, p. 122.

⁸⁸ *Supra*, p. 120 ff.

⁹¹ *Eum.* 67 ff

⁹² *Supra*, pp. 112, 120.

performed in historical times by priests or purifiers, since the matricide had not been previously acquitted by a court. Hence the purgation of an untried kin-slayer, which in Attic law would have been invalid, was naturally rejected by the Erinnyes. They say ⁹³:

Such deeds the younger brood of gods will do,
Swaying all things by force beyond the right.
One sheet of gore, mantled from base to cope,
Earth's midmost shrine is visibly beheld
Self-cloaked with horror-breathing guilt of blood.
O prophet-god! Thou hast stained thine own hearthstone
From thine own mind, moved by no just appeal,
Breaking the law of gods to honour man.

But Apollo regards them as Titan-rebels, as deities of a barbarous past. He sees in them the avengers of the Dark Ages.⁹⁴

Begone! I bid you, forth of mine abode! . . .
Profane not with your presence this fair shrine,
But go where headsmen execute the doom,
Where eyes are gouged, throats gashed, where robbed of prime,
Boys lose all hope of offspring, tender limbs
Are hacked or stoned: where men, impaled alive,
Moan long and bitterly. . . . Go,
Inhabit, as beseems such form, the den
Of some blood-lapping lion, nor infect
With touch accursed my oracular seat.
Go! herded by no goat-herd, ye fell flock,
Hated of all in Heaven. Away! Depart!

Yet the Erinnyes have not lost all traces of the ghost-cult of primitive ancestor-worship and fertility-worship. We have already quoted ⁹⁵ the magnificent passage in which they promise their blessings to the Attic land. We are reminded of primitive ancestral ghosts by the words which Clytaemnestra (herself a ghost) speaks to the Erinnyes ⁹⁶:

Much wealth of mine ye have glutted, drink offerings,
Unmixed with wine, tempered to soothe your heart;
And rich burnt offerings at dead of night,
That hour of dread, avoided by all gods.

⁹³ *Eum.* 162 ff.

⁹⁵ *Supra*, p. 97 f.

⁹⁴ *Eum.* 179 ff.

⁹⁶ *Eum.* 106 ff.

The conception of the Erinnyes as Titans is established by comparing their frequent references in this play to Apollo and Athene as 'younger gods'⁹⁷ with their words applied by Prometheus, in another play, to the Olympian gods⁹⁸:

Yet who but I to these new deities
Gave and determined each prerogative ?

and again⁹⁹ :

Young gods, young pride of unproved majesty.

We agree with Müller¹⁰⁰ that the 'appeasement' of the Furies and their transmutation into Semnai Theai was an essential part of the pre-Aeschylean legend. We have already suggested the forces which probably contributed to the story of their 'conversion.' Beneath the religious, mythical story of a transference of cult, beneath the story of the adoption by the Erinnyes of the worship of the Semnai, lurks, we believe, the echo if not the reality of legal and social evolution. The 'conversion' of the Erinnyes, which directly indicates the acceptance, on the part of non-Athenian avengers, of the verdict of an Athenian homicide court, symbolises also, in general, the acquiescence of rebellious clans, which in the seventh century B.C. were deprived of material retribution in cases of bloodshed, in the new system—the historical system—of murder-penalties, which we have associated with Apollo and political synoekism. The cult of the 'Eumenides,' who were probably the 'Semnai' under a different name, we need not discuss here. It is a religious rather than a legal matter. It has been discussed at length by Verrall,¹⁰¹ Miss Harrison,¹⁰² Müller,¹⁰³ and others, and we do not see that its elucidation affects in the least the intelligibility of this play.

THE 'SUPPLIANTS' AND THE 'SEVEN AGAINST THEBES'

In the remaining plays of Aeschylus there is little or nothing which is worthy of comment from our present viewpoint. In the *Suppliants*, the daughters of Danaus, in their efforts to

⁹⁷ *Eum.* 162, 781, 811.

⁹⁸ *Prom.* 440.

⁹⁹ *Prom.* 953.

¹⁰⁰ *Eum.* pp. 174–5.

¹⁰¹ *Introd. to Eumenides*, pp. xxxv–vi.

¹⁰² *Proleg.* pp. 253–6.

¹⁰³ *Eum.* p. 173 ff.

avoid incestuous marriage, seek asylum at Argos. They have some difficulty in obtaining refuge there, and they feel it necessary to describe themselves thus :

Exiles from the sacred land
 Bordering Syria's meads, we flee,
 Not for guilt of murder banned
 By a people's just decree.¹⁰⁴

In this play the daughters of Danaus are not yet wedded nor have they slain their cousins, the sons of Aegyptus. We believe, however, that Aeschylus is thinking of their subsequent kin-slaying when he attributes to them these words. In historical Greece, persons guilty of ordinary homicide were legally entitled to reside as aliens abroad. It is only to kin-slayers that we can properly apply an expression which suggests that slayers could not be accorded the privilege of exile.

In the *Septem* we read of the impossibility of cleansing kin-slaughter—an idea which we have already explained.¹⁰⁵ The reference is to the war of the 'Seven against Thebes' and to the death of Eteocles and Polyneices ¹⁰⁶ :

Enough that Argive and Cadmean came
 To the issue : blood so shed hath power to cleanse.
 But death of brothers, each by a brother's hand,
 That were a stain no time could purify.

Finally, the doctrine of the ancestral curse is applied to the guilt of fratricide ¹⁰⁷ in the lines :

What charm may purge the guilt
 Of blood so foully spilt ?
 Whose hands shall bathe them ? Oh ! unhappy store
 Of fresh woes for this House, blent with the woes before !

¹⁰⁴ 4-7.¹⁰⁵ *Supra*, p. 238.¹⁰⁶ 666 ff.¹⁰⁷ 725 ff.

CHAPTER II

SOPHOCLES

'GREEK drama,' says Jevons,¹ 'owes its origin to religion and its development to art. It is but another way of stating this fact to say that one sign of the growth of the Greek drama was the diminution of its religious significance.' The drama of Sophocles compared with that of Aeschylus is less theological and celestial, more human and terrestrial. From the artistic point of view it not only obeys the first alternative in the Horatian maxim² which we have already quoted and which prescribes adherence to traditional story; it also follows, even more closely than Aeschylean drama, the second alternative, which exalts the merit of consistency. Aristotle³ has attributed to Sophocles a piece of self-criticism in which he asserts that he depicted his characters, 'not as they are, but as they must be' (*οἷους δεῖ*). We shall not attempt to enter into the controversy which this simple statement has evoked,⁴ but we may suggest as a probable interpretation of the words that certain ideal criteria guided the characterisations of Sophocles. These criteria were, in our opinion,⁵ consistency and tradition. 'The characters of Sophocles,' says Jevons,⁶ 'are bound up with his plots in an artistic and harmonious whole . . . it is equally true that his characters depend upon his plots.' But the plots and the characters of Sophocles were not, we think, his own invention. They were derived from pre-existing legend and tradition. If, then, Sophocles did not always represent his characters precisely as legend described them, the reason is that there were inconsistencies in the legends. To escape such inconsistencies, Sophocles sometimes had recourse to what we may term

¹ *Hist. Gk. Lit.* p. 213.

² *A.P.* 119; *supra*, p. 276.

³ *Poetics*, 25, 1460 b 36.

⁴ See Butcher *ad loc.*

⁵ See also Tyrrell, ed. of Eur. *Bacchae*, *Introd.* p. xxxii.

⁶ *Op. cit.* pp. 213-14.

eclecticism. If, for instance, in Homer, Oedipus, after slaying his father, is said to have continued to rule over the Cadmeans,⁷ Sophocles ignored this tradition because it was inconsistent with the sequel which post-Homeric legend indicated.⁸ Euripides, on the contrary, often reproduced, in one and the same drama, various mutually inconsistent legends, and then introduced a *deus ex machina*⁹ to cut the Gordian knot ! Nevertheless it remains true that not only in Sophocles, but also in Aeschylus and in Euripides, the characters and the plots are to a great extent based upon pre-existing legends, and these legends are often very difficult to analyse because of the varying influences which were derived from the ages through which they passed. If religion is less prominent in Sophocles than in Aeschylus, the reason, we think, is that the personality of the dramatist selected those varieties of legends which emphasised the human element rather than the divine. But, for an Athenian of the classical period, there was one aspect of human nature which was always interesting and could never be ignored, namely the relation of man to the laws of the society in which he lived. Fear of the laws and of the penalties which they prescribed, a knowledge of the laws and their administration, a habit of legal casuistry, an almost morbid delight in legal problems, were essential elements of Athenian psychology. To say this is to imply that the Sophoclean drama, like that of Aeschylus, has an important legal interest, and cannot be made completely intelligible without an analysis of its legal aspect. Of the seven extant tragedies, six are concerned with themes of human bloodshed. These six plays we shall now briefly examine, from the standpoint of homicide law. With the *Philoctetes* we have not any special concern.

THE 'ELECTRA'

The plot of the *Electra* corresponds, in the main, with that of the *Choephoroe* of Aeschylus. It is regrettable that we do not possess the companion plays in which Sophocles represented, dramatically, the murder of Agamemnon and the trial of Orestes, but we may infer from the similarity of

⁷ *Od.* xi. 271 ff.

⁸ See *infra*, p. 315.

⁹ See Jevons, *op. cit.* p. 225.

the *Electra* to the *Choephoroe* that these plays followed the Aeschylean model. We have said¹⁰ that the trial of Orestes at Athens for the slaying of his mother at Argos is not legally intelligible unless we assume that Orestes fled to Athens with the intention of residing there, in the event of acquittal, until such time as the avenging Erinnyes permitted his return to Argos. But there is no evidence for this assumption in the Homeric story,¹¹ which merely implies that Orestes came from Athens to avenge his father's death. Aeschylus, therefore, is following the Attic legend rather than Homer when he suggests that Orestes went to Athens after, not before, he slew his mother, and that it was from Phocis, not from Athens, that the avenging Orestes came. In Sophocles also it is from Phocis that Orestes comes. Moreover, we are definitely told that Phocis had been the place of Orestes' exile since his expulsion from Argos.¹² With Athens, then, Orestes was not associated before he slew his mother! Aeschylus is not quite so precise upon this point, but from the words which Orestes utters when he arrives at Athens¹³ after he had slain Clytaemnestra and Aegisthus, we cannot infer that he had ever been there before. Sophocles, therefore, and Aeschylus seem equally to have ignored an important element of the Homeric narrative in their close adhesion to the Attic legends, in which the trial of the matricidal Orestes at Athens was an outstanding essential fact. The only reason which we can suggest for this strange omission is the fact that in post-Homeric times the legend was so completely permeated by the dominant figure of Apollo that Phocis, not Athens, came to be regarded by certain legend-makers as the natural refuge and place of residence of Orestes before he slew his mother. It is not, of course, altogether impossible to suppose that Orestes had lived for a time in Phocis, and for a time at Athens. The command of Apollo could have been issued to a pilgrim from Athens as well as to a resident of Phocis. But it is strange that Aeschylus and Sophocles do not emphasise this point. The story of Orestes' trial at Athens must, we think, have been based, if the legend-makers had any care for legal issues, on the assumption that Orestes

¹⁰ *Supra*, pp. 279, 292.

¹² See *Electra*, 1073, 1353.

¹¹ *Od.* iii. 306-7.

¹³ *Eum.* 235 ff.

intended to reside at Athens after he had slain his mother. This assumption is implied in the story that an Apolline oracle directed him to Athens for trial. The Homeric narrative does not justify though it is not inconsistent with such an assumption. If therefore this narrative was ignored by Attic legend-makers, it must have been because the prestige of Apollo had obscured the Homeric story in a variant of the legend which we may call the Phocian legend of Orestes, and because this variant, though not originally identical with the Attic legend, became nevertheless at some time fused with it.

If we happened to possess the non-extant drama which contained Sophocles' account of the trial of Orestes, we feel sure that the plea of Orestes would have been identical with the Aeschylean plea, namely that of justifiable matricide. Thus, in the Sophoclean *Electra* Orestes says ¹⁴ :

I, when I visited the Pythian shrine
 Oracular that I might learn whereby
 To punish home the murderers of my sire,
 Had word from Phoebus which you straight shall hear :
 ' No shielded host, but thine own craft, O King !
 The righteous death-blow to thine arm shall bring.'

The post-Homeric doctrine of pollution appears in the following words of *Electra*, who sees in the cohabitation, within her home, of two polluted murderers a horrible crime which well-nigh obscures their incestuous adultery.¹⁵

My mother—if she still must bear the name—
 When resting in those arms—— Her shame is dead :
 She harbours with bloodguiltiness and fears
 No vengeance.

The atmosphere of 'private execution' which characterised the Homeric age and the earliest stratum of the pollution era is faithfully retained. Orestes is the sole avenger : without him there is little hope of vengeance. *Electra* may strike, in the last resort, but not before she has despaired of the return of Orestes. The deed of blood is calmly executed by Orestes, whose conscience is salved by the command of Apollo.

¹⁴ *Electra*, 32 ff.

¹⁵ *Ib.* 274 ff.

The Chorus do not condemn the act. They have looked forward to it.¹⁶ Thus they say ¹⁷:

Behold they come, they come !
His red hand dripping as he moves
With drops of sacrifice the war-god loves.
My 'wilderer heart is dumb.

The desire of Electra that Aegisthus should not be buried is clearly derived from the historical custom, for which Plato is our sole authority,¹⁸ of refusing burial to wilful murderers and especially to kin-slayers ¹⁹ such as Aegisthus was. The Homeric account ²⁰ is here of necessity abandoned. Electra says ²¹:

Kill him at once !
And, killed, expose him to such burial,
From dogs and vultures, as beseemeth such.

The Sophoclean Erinnyes are even more 'Homeric,' and therefore less 'tragic,' ²² than the Aeschylean Erinnyes. In Sophocles we do not find any reference to the Erinnyes of the slain Clytaemnestra. This is perhaps because he conceived Orestes' act as clearly and unmistakably the act of a just avenger. Hence Electra prays ²³:

And ye, Erinnyes, of mortals feared,
Daughters of Heaven that ever see
Who die unjustly,
Avenge our father's murder on his foe.

But Sophocles shares with his brother-dramatists two ideas which we have ascribed ²⁴ to post-Homeric times, namely the notion of an ancestral curse and the notion of the blood-thirst of the dead, as is manifest from the following lines ²⁵:

The curse hath found, and they in earth who lie
Are living powers to-day ;
Long dead they drain away
The streaming blood of those who made them die.

To the post-Homeric period we have also ascribed ²⁴ the custom

¹⁶ 490 ff. ¹⁷ 1415 ff.

¹⁸ *Laws*, ix. ch. 11.

¹⁹ *Ib.* ch. 12.

²⁰ *Od.* iii. 309 f.

²¹ 1483 ff.

²² *Supra*, p. 120 ff.

²³ 110 ff., *cf.* 490 and 1388.

²⁴ *Supra*, p. 122.

²⁵ 1419 ff.

of *μασχαλισμός*, or mutilation of the limbs of the dead, which is mentioned in this play,²⁶ as it also is in the *Choephoroe* of Aeschylus.²⁷ The 'sacrifice' of Iphigeneia is also referred to in the *Electra*. It is not described in detail, nor is it boldly emphasised, as it is in Aeschylus.²⁸ But it is mentioned as an argument by which Clytaemnestra seeks to seduce Electra from her desire for vengeance.²⁹ Since Agamemnon was a murderer, she argues, surely his death need not be avenged. In her reply, Electra utters a sentiment which at first sight seems inconsistent with her general attitude in the play; she says ³⁰:

But grant thy speech were sooth, and all were done
In aid of Menelaus : for this cause
Hast thou the right to slay him ? What high law
Ordaining ? Look to it, in establishing
Such precedent, thou dost not lay in store
Repentance for thyself. For if by right
One die for one, thou first wilt be destroyed
If Justice find thee.

What, we may ask, is the meaning of the 'precedent' to which Electra refers? Does it mean that no individual should have the right to take human life? Does it imply a condemnation of 'private vengeance' as distinct from social justice? We do not think that the 'precedent' which Electra mentions refers to private vengeance. We have seen ³¹ that, amongst the Homeric Achaeans, there was a distinction, vague and unwritten, but none the less real, which was enshrined in a public opinion of the caste, the distinction between murder and vengeance. The act of Agamemnon in sacrificing Iphigeneia (if we suppose for the moment that the sacrifice actually took place) would not have been regarded by the Achaeans as an act of murder. But the act of Clytaemnestra in slaying her husband would have been, and was, regarded as murder, and Orestes was conceived as a just avenger. Hence, in this play, when Clytaemnestra sets herself up as an isolated authority on questions of right and wrong in matters of homicide, she is violating what

²⁶ 445.²⁷ 439.²⁸ *Agamemnon*, 228 ff., 1527 ff.²⁹ *Electra*, 525 ff.³⁰ 575 ff.³¹ *Supra*, p. 76.

must have been an established precedent in the Achæan society. It is, we think, to some such precedent as this that Electra here refers. To suppose that Electra is referring to the precedent of 'private vengeance' would be to attribute an inconsistent and illogical character to Electra, for is she not whole-heartedly scheming to accomplish what, on this hypothesis, she verbally condemned?

Finally, Sophocles does not attribute to Electra, or perhaps even to Pylades, any actual share in the act of vengeance. In this he follows Aeschylus, whose object it was to make Orestes the central figure in the drama. Euripides, however, we shall see, suggests that the act of vengeance was, so to speak, 'partitioned' amongst three avengers. Both Electra and Pylades have to suffer punishment, as well as Orestes. Perhaps Euripides is following a legend which, while admitting a degree of guilt, sought to lessen the guilt by dividing it. This version Sophocles does not follow, nor does Aeschylus. But Pylades had been too long and too well established in the post-Homeric story to be omitted or ignored. He had come into the story almost as early as Apollo, for he is mentioned in a cyclic epic ³² by Agias of Troezen which belongs to the middle of the eighth century B.C. The connexion of Orestes with Pylades and with Phocis, rather than with Athens, belongs, probably, to the Phocian variant of the Oresteian story. This version was older, we think, than the Argive legend which we shall find in the *Orestes* of Euripides, and it was also probably older ³³ than the Attic legends which emphasised the trial of Orestes at the Areopagus. The Attic legend-makers should at least have followed the Homeric saga which suggested the connexion of Orestes with Athens before his act of vengeance; and if neither they nor the Attic dramatists refer to such a connexion, this must be attributed to the fact that the famous friendship of Pylades and Orestes and the famous purgation of Orestes at Delphi had in course of time obscured, in a fusion of legends, the previous association of Orestes with Athens, a fact which Apollo had not forgotten when he directed him to that State for trial and acquittal.

³² *The Nostoi*.

³³ See Verrall, *Introd. to Aeschylus, Choephoroe*, p. xxvi.

THE ' KING OEDIPUS '

We have already mentioned ³⁴ the Homeric legend of Oedipus, and the difficulties which it presents to the legal analyst. Homer ³⁵ appears to think it strange that a parricide should have continued to rule in his native land. He hints that the dreadful deed was punished in the first instance by pain and suffering, and later by ' pains full many ' such as the Erinnyes of a mother bring to pass. The story is complicated by the addition of the crime of incest, just as the story of Orestes is, to a less extent, complicated by the addition of adultery. We have suggested ³⁶ that in pre-Homeric times the deed of Oedipus was already regarded, by Pelasgians, as at least involuntary parricide, and perhaps also, because of the provocative action of Laius, as quasi-involuntary homicide ; and we have attributed the wonder which is expressed by Homer at Oedipus' continued rule in Thebes to the absence, amongst the Achæan caste, of the distinction between voluntary and involuntary slaying. In post-Homeric times the notion of an ancestral curse was added to the story, and also, if it was not already in the legend, the idea of provocation on the part of Laius. Furthermore, the pollution doctrine was applied to the legend, and Apollo was appealed to as the sole judge of guilt, as he was, we think, appealed to in the Phocian legend of Orestes.³⁷ It is strange that Attic legend-makers did not seek to connect Oedipus with the Areopagus court, seeing that he was said ³⁸ to have been buried in Attica and to have been given a refuge there before his death.

We have seen ³⁹ that Orestes was tried by the Areopagus, on a plea either of justifiable or of quasi-involuntary matricide, according to the different versions of the Attic legends. In the 'second Attic legend,' which is based on the plea of quasi-involuntary matricide, for which Orestes claimed that the penalty had already been paid, the Areopagus functions as a ' court of reconciliation ' rather than as an ordinary homicide court. In the case of Oedipus there is a suggestion, in the *Oedipus Coloneus*,⁴⁰ of an informal trial of Oedipus on the

³⁴ *Supra*, p. 55.³⁷ *Supra*, p. 309.³⁵ *Od.* xi. 271 ff.³⁸ *Infra*, p. 318.⁴⁰ 280 ff., 550 ff.³⁶ *Supra*, p. 171.³⁹ *Supra*, p. 294.

part of Theseus, King of Athens. It was probably a legendary reference to his trial by Theseus which prohibited any connexion of Oedipus with the Areopagus.

In the present play Apollo threatens to send a plague upon Thebes if the Thebans do not search for and punish the murderer of Laius. The penalty which is mentioned by the oracle is of a general kind, that is, it does not definitely imply that the crime was parricide—such an implication would have militated against the development of the drama—but it assumes that the slaying of Laius was an act of wilful murder. Thus Kreon says ⁴¹:

Sovereign Apollo clearly bids us drive
Forth from this region an accursèd thing
(For such is fostered in the land and stains
Our sacred clime), nor cherish it past cure . . .
By exile or by purging blood with blood,
Since blood it is that shakes us with such storm.

It is of course possible to maintain that a penalty which permitted the option of death or exile was the punishment of parricide in the early stages of the 'pollution system,' though such an option was not permitted for kin-slaying in Attic law. We have suggested ⁴² that it was not the pollution doctrine which of itself abolished private execution, and exile was permitted, as we think, ⁴³ until private execution was abolished. It is therefore legally possible that a legend of the early pollution era contained such an oracular penalty for parricide, in days when political synoekism had not yet established State execution. We might be inclined to interpret in this way the description of the oracle which is given—but only at the end of the play!—by Oedipus himself ⁴⁴:

His sacred utterance was express and clear,
The *parricide*, the unholy, should be slain ;

and he requests Kreon to execute the penalty ⁴⁵:

Fling me with speediest swiftness from the land
Where nevermore I may converse with men.

⁴¹ 98 ff.

⁴² *Supra*, p. 229.

⁴³ *Supra*, p. 236 ff.

⁴⁴ 1440.

⁴⁵ 1436.

But we cannot suppose that the word 'parricide' which is here used by Oedipus was actually mentioned by the oracle, as, if it had been, the greatest tragedy of ancient literature, the *King Oedipus* of Sophocles, could never have been written. The whole dramatic evolution of the plot depends on the suppression of the murderer's identity. The Thebans would not have understood such a description, seeing that, so far as they knew, Laius had no living child. Jevons refers to a dramatic characteristic which may help to explain this difficulty, namely the 'irony of Sophocles.' He says⁴⁶: 'For the full appreciation of the irony of Sophocles . . . it must be remembered that whereas the torturing contrast between the condition of Oedipus as he fancies it, and as it really is, is only discovered by Oedipus at the last moment, this contrast is perpetually present from the beginning to the spectator.' Oedipus implies that Kreon had used the word 'parricide' when speaking to him in connexion with the oracle. When Kreon replies⁴⁷ 'Ay, so 'twas spoken,' are we to interpret the answer literally? If Kreon had known the truth, he would have been compelled by religious fear to declare it. The character of Kreon, as revealed in the *Oedipus Coloneus* and in the *Antigone*, is that of a loyal and religious citizen rather than that of a loyal kinsman. Hence we must either suppose that this reference to parricide is a dramatic slip, an instance in which the Sophoclean 'irony' overreached itself, or we must suppose that Oedipus and Kreon have incorrectly interpreted the oracle in the tragic excitement brought about by the dramatic developments of the plot. From the legal standpoint we consider it most probable that the oracular declaration of the penalty was of a non-committal character. Hence it is that when Kreon discovers the true facts of the case he decides to consult the oracle again before taking any action. To Oedipus' request to drive him from the land, he replies⁴⁸:

Doubt not I would have done it, but the god
Must be inquired of, ere we act herein . . .

In such a time

We needs must be advised more perfectly.

⁴⁶ *Op. cit.* p. 211.

⁴⁷ 1442.

⁴⁸ 1438 ff.

Does Kreon then anticipate that the second consultation of the oracle will elicit a severer penalty, namely death without the option of exile, which was the historical penalty for parricide, or is he well aware that the act of Oedipus, committed in ignorance of Laius' identity, was, at worst, wilful murder, and, if he hesitates to decree a penalty of perpetual exile, is it because he is aware that the act was provoked by Laius and was therefore quasi-involuntary? The answer to these questions cannot be found in the *King Oedipus* drama. The play ends while the homicide penalty of Oedipus is still undecided. We do not connect with the death of Laius the self-blinding of Oedipus or the suicide of Jocasta. These events, which are referred to explicitly or implicitly by Homer,⁴⁹ we connect rather with the crime of incest. The legal analysis of the story is complicated not only by the presence of this crime, but also by the post-Homeric doctrine of the ancestral curse in the house of Laius. But we hope to elicit from the companion play, the *Oedipus at Colonus*, a more satisfactory account of the legal aspect of the legend.

THE ' OEDIPUS AT COLONUS '

Already, in the preceding play, we have been informed by Oedipus that his act was not only not wilful parricide but was not even wilful homicide. Describing the fatal scene, Oedipus said ⁵⁰:

When I drew near the cross-road of your tale
 A herald, and a man upon a car
 Like your description, there encountered me.
 And he who led the car and he himself,
 The greybeard, sought to thrust me from the path.
 Then in mine angry mood I sharply struck
 The driver-man who turned me from the way ;
 Which when the elder saw he watched for me
 As I passed by, and from the chariot seat
 Smote full upon my head with the fork'd goad ;
 But got more than he gave, for by a blow
 From this right hand, smit with my staff, he fell,
 Instantly rolled out of the car supine.

⁴⁹ *Od.* xi. 271 ff.

⁵⁰ *Oed. Rex*, 800 ff.

When the full revelation of his accursed destiny came home to Oedipus, he was so overwhelmed with grief, remorse and terror that he became for the time insane. But in the *Oedipus Coloneus* he has once more regained his reason. He argues ⁵¹ with himself and with others as a rational Theban or Athenian of the historical era. What, he asks, was his crime? The guilt lies with the Curse and the Fates who accomplished it. Has he committed incest? No, for he did not know that his wife was his mother. Why, therefore, should he be punished? One crime only has he committed, yet not with malice and deliberation. He had slain an old man 'with dark locks just sprinkled o'er with grey,' ⁵² and this old man was no slave or serf, but a free man and a prince. For this deed, according to Greek law, Oedipus must become an exile. But was the exile to last for ever? We have quoted from Plato ⁵³ what we believe to have been the Greek legal penalty for slaying in a passion, namely a period of exile which sometimes extended to two, and sometimes to three, years, according to the degree of malice in the act. But we have argued that in such cases the duration of the exile depended in theory, if not in practice, on the consent of the relatives of the slain. Now Plato says that in no circumstances, not even in self-defence, was it lawful for persons to slay their parents.⁵⁴ Hence the legal position of Oedipus is a complex one. Objectively, he was guilty of wilful parricide; subjectively, he pleaded guilty to extenuated homicide. Such complex issues were not provided for in ancient law, not even in Plato's penal code.

If therefore we find that Euripides ⁵⁵ speaks of Oedipus as 'imprisoned' in Thebes, and that Sophocles speaks of Oedipus as an exile in Athens, and mentions also a projected arrangement by which Oedipus might live near Thebes—not in it, but just outside it ⁵⁶—may we not see in these accounts the efforts of legend-makers to keep their creations in harmony with legal facts, and may we not suppose that their failure to agree with one another, and especially with the Homeric narrative, was due to the twofold aspect, subjective and

⁵¹ See *O.C.* 965 ff. ⁵² *O.R.* 741. ⁵³ *Laws*, ix. ch. 9; *supra*, p. 210.

⁵⁴ See *infra*, pp. 341n; 359n.

⁵⁵ *Phoenissae*, 62.

⁵⁶ *Oed. Col.* 400 ff., 785 ff.

objective, of the deed of Oedipus? The Homeric account of the subsequent rule of Oedipus at Thebes could only be retained, in the 'pollution' era, by assuming that his act was not parricide, but homicide, that it was not wilful, but quasi-involuntary, and that the kinsmen of Laius unanimously consented to his return from temporary exile. If his act was conceived, objectively, as parricide, it would have been necessary to assume (1) that Laius 'forgave' him before he died and (2) that his kinsmen consented to his return. But no legend suggests that Laius forgave his slayer. Furthermore, the legends seem to have emphasised the fact that the kinsmen of Laius were not unanimous in consenting to the return of Oedipus. Hence the Homeric story of his continued existence at Thebes had, in the 'pollution' era, to be abandoned.

In the *Oedipus Coloneus* Oedipus protests against his continued banishment from home, because, he maintains, his deed was involuntary. Thus, he says ⁵⁷:

If,

Born as I was to misery, I encountered
And killed my father in an angry fray,
Nought knowing of what I did or whom I slew,
What reason is't to blame the unwitting deed? . . .

If to-day,

Here now, one struck at thee a murderous stroke,
At thee,⁵⁸ the righteous person,—wouldst thou ask
If such assailant were thy sire, or strike
Forthwith? Methinks, as one who cares to live,
You would strike before you questioned of the right,
Or reasoned of his kindred whom you slew.
Such was the net that snared me: such the woes
Heaven drew me to fulfil. My father's spirit,
Came he to life, would not gainsay my word.⁵⁹

Kreon, coming to Athens from Thebes, invites Oedipus to his home, not only on his own behalf, but on behalf of the citizens of Thebes ⁶⁰:

But I am sent to bring

By fair persuasion to our Theban plain
The reverend form of him now present here. . . .

All Cadmus' people *rightfully*

Invite thee with one voice unto thy home.⁶¹

⁵⁷ 975 ff.

⁵⁸ *I.e.* Kreon.

⁵⁹ 992 ff.

⁶⁰ 732 ff.

⁶¹ 741 ff.

But Oedipus does not regard this attitude as sincere. Previously, Ismene, his daughter, had warned him that Kreon would come :

To set thee near their land, that thou mayst be
Beyond their borders but within their power.⁶²

In the opinion of Ismene, Oedipus can never return to his home ; she says ⁶³ :

The blood of kindred cleaving to thy hand,
Father, forbids thee.

This statement interprets the act of Oedipus as parricide rather than as homicide, for, assuming that the act was quasi-involuntary, the removal of pollution required, in the former conception, the forgiveness of the dying, whereas in the latter conception it required only the consent of the relatives to 'appeasement.' Ismene implies that, whatever attitude Kreon and the other relatives of Laius adopt, Oedipus can never return, because Laius has not forgiven his slayer.

Kreon betrays a similar attitude of mind when he says ⁶⁴ to Theseus that he did not think the citizens of Athens would give refuge to 'a man incestuous and a parricide . . .' He says :

Such was the mount of Ares that I knew . . .
That suffers no such lawless runaways
To haunt within the borders of your realm.

We have seen that in international Greek law exile was not permitted for wilful parricide or, more generally, for wilful kin-slaying, and therefore no State could open its doors to such slayers. But for involuntary or extenuated kin-slaying exile was recognised by law, and therefore whenever a foreign kin-slayer applied to be admitted as an exile into any State it was necessary to hold an inquiry, in order to discover whether his deed of blood was voluntary or involuntary, before admitting him to civic and religious communion. The attitude of Kreon in the last speech is, we believe, a rhetorical exaggeration, for it implies that in his opinion Oedipus was a wilful kin-slayer of full guilt, and it is legally incompatible with his

⁶² 400 ff.

⁶³ 407.

⁶⁴ 945.

previous proposal to escort Oedipus to his home. Polyneices, the son of Oedipus, promises ⁶⁵ the same boon, if Oedipus will only forgive him and help him in his conflict with Eteocles. But Oedipus refuses to forgive his unfilial son and launches his curse against him, because he and his brother and his uncle are the cause of his continued exile ⁶⁶:

'Tis thou hast girt me round with misery ;
'Tis thou didst drive me forth, and driven by thee
I beg my bread, a wandering sojourner.

Thus, if we make due allowances for rhetorical deceptions, we may conclude that, except in the mind of Oedipus himself, his act was regarded as voluntary rather than as involuntary: the oracle of Apollo took, on the whole, the same view, but made some allowance for the element of provocation in the act. Long before, it had foretold that Oedipus would not return to reign in Thebes or to die there, but that in Athens he would find rest and asylum. Oedipus quotes the oracle ⁶⁷:

When I should reach my bourne,
And find repose and refuge with the Powers
Of reverend name, my troubled life should end
With blessing to the men who sheltered me
And curses on their race who banished me.

There is reference in this quotation to a shrine of the Semnai Theai in the deme Colonus. It was at this shrine that Oedipus appeared as a suppliant for asylum and it was here that he had to submit to a ceremonial of 'cleansing' which we have already referred to ⁶⁸ as a minor local purgation. This ceremonial was probably applied to all foreign homicide exiles who claimed the privilege of residing in a State. Orestes does not require it when he arrives at Athens, because he has not yet been tried and convicted, because Apollo has commanded him to go to Athens, and because Apollo has purged him of his guilt. The purgation ceremony in the *Oedipus Coloneus* was similar to that which Croesus administered to the Phrygian kin-slayer, as Herodotus ⁶⁹ records. We have said ⁷⁰ that, in cases of kin-slaying, some kind of inquiry, an informal

⁶⁵ 1340.

⁶⁶ 1363 ff.

⁶⁷ 87 ff.

⁶⁸ *Supra*, p. 151.

⁶⁹ i. 35.

⁷⁰ *Supra*, pp. 292, 316.

trial, was held to investigate the question of guilt. The Athenians ⁷¹ here do not at first accept the plea of Oedipus, but refer the matter to the decision of Theseus, King of Athens. It is ultimately upon the word of Apollo that Theseus grants him protection.⁷²

Within the precincts of the shrine of the Semnai Theai, there was, in the time of Pausanias, a tomb which was called the tomb of Oedipus. Pausanias ⁷³ does not believe the story of Sophocles that Oedipus died and was buried in Attic soil. Does not Homer,⁷⁴ he argues, prove that Oedipus was buried at Thebes? Yet the tomb of Oedipus was to be seen in the shrine of the Semnai! Pausanias inquired about this curious contradiction, and he discovered, as he thinks, the solution. The bones of Oedipus were, he says, transferred from Thebes to Athens! Nothing could better illustrate the credulity of the ancients and their want of historical logic. Oedipus was, in all probability, buried at Thebes. According to Homer,⁷⁵ he never left that city. But the doctrine of pollution, which was applied retrospectively to Oedipus, insisted that he did leave Thebes and that he could never return to it. Plato implies that a person who was stained with kindred bloodshed—even extenuated kin-slaying—could never be buried in the tomb of his fathers. To Corinth Oedipus did not return. To Phocis he could not go, for it was there that the deed of blood was wrought, and we have seen ⁷⁶ that a foreign slayer could never return, whether his act was voluntary or involuntary, to the State in which the act occurred. As a blind exile could not be expected to go very far from home, the natural place for the exile of Oedipus was the Attic land beyond Cithaeron. Thither legend brought him, to constitute a further link in the eternal friendship between Thebes and Athens! In the time of Demosthenes,⁷⁷ just before the battle of Chaeronea, the Athenian reception of Oedipus was put forward as an argument for the alliance of Thebes and Athens. In Attica legend said that he was buried, and his tomb was there for everyone to see. But he could not have been buried in Attica, since, according to Homer, he was buried at Thebes. To reconcile Homer with later legend, it was necessary there-

⁷¹ 295 ff.⁷² 665 ff.⁷³ i. 28.⁷⁴ *Il.* xxiii. 677.⁷⁵ See *Od.* xi. 271 ff. ⁷⁶ *Supra*, p. 164. ⁷⁷ *Dem. De Corona*, 291, 187.

fore to suppose that the bones of Oedipus were transferred from Thebes to Athens. Pausanias, however, unfortunately failed to see that, according to this hypothesis, the whole structure which post-Homeric legends of the 'pollution' era built round the name of Oedipus topples to the ground. The explanation lies in the evolution of the legend. The legend which Sophocles followed is absolutely incompatible with Homer; and this was the ordinary and, so far as we know, the only legend of the death of Oedipus which existed in post-Homeric days.

THE 'ANTIGONE'

In the *Antigone* drama, which is rightly famous not only for its dramatic art, but also for the problems which it presents and the conflicts of human passion which dominate it, there is no plain, direct and obvious matter for the student of homicide law. But there are points of interest on the borderland of homicide which cannot be entirely omitted. It is easy for the adverse critic to assert that in this play we find reference to civil war, to suicide, to judicial execution, and to quarrels about burial, but we find no reference to homicide. We venture to suggest that fratricide in civil war, judicial executions of which the justice is called in question, and suicide, are very closely related to homicide by the similarity, if not the community, of their nature. Lysias⁷⁸ tells how, in the political crises at Athens, men were prosecuted, sentenced, and executed as murderers who had merely acted as informers, or as we should say 'secret service' agents, in regard to that vague political crime which is called treason. According to Pausanias,⁷⁹ the Athenians accepted as a foundation legend for the Delphinium homicide-court the story that Theseus pleaded justification for having slain, in civil war, Pallas and his sons who were his kinsmen. Again, suicide and homicide, as they appear in drama, may be closely related, since Teucer was punished by his father, Telamon, because of the suicide of his half-brother, Ajax.⁸⁰ He was even said to have been tried for this deed, for the story of his trial is solemnly told by Pausanias⁸¹ when he is

⁷⁸ See *C. Agorat.* 135, 56.

⁷⁹ i. 28.

⁸⁰ Sophocles, *Ajax*, 1006-20; *infra*, p. 327 f.

⁸¹ i. 28.

describing the origin of the Attic murder-court Phreatto. In the *Antigone* the judicial execution of Antigone by Kreon is assailed as murder by his son, Haemon. The messenger describes how Haemon attempted to slay Kreon in revenge ⁸²:

But with savage eyes the youth
Glared scowling at him, and without a word
Plucked forth his two-edged blade. The father then
Fled and escaped : but the unhappy boy,
Wroth with himself, even where he stood, leant heavily
Upon his sword and plunged it in his side.

What, we may ask, caused Haemon to commit suicide? We admit that his love for Antigone and the grief which he felt at her loss were essential causative factors; but we also feel that there was present in his heart an overwhelming fear that if he survived he would slay his father. We think that it was partly in order to avoid this horrible deed that he killed himself, just as in Homer, ⁸³ Phoenix, through fear of parricide, fled from his home, his country and his kindred. The fact that even for Kreon the execution of Antigone was not merely repugnant to sentiment but was actually a source of conscience-conflict may be inferred from the extraordinary manner in which he caused her to die. He tells the Chorus ⁸⁴:

Where human footstep shuns the ground
I'll hide her in a cave-like vault,
With so much provender as may prevent
Pollution from o'ertaking the whole city.

He places Antigone in a cave and leaves with her a little food. In his effort to avoid kin-bloodshed he proposes to starve the girl to death! Nature and Fate can take the guilt. This procedure of Kreon cannot have been entirely due to the aversion which human nature, even in very primitive societies, felt towards the shedding of kindred blood.

In Sophocles, Kreon is more devoted to the city than to his kindred. Otherwise he would have permitted the burial of the dead Polyneices without waiting for the compulsion of circumstances. Yet we feel that if the rebellious subject who sought to bury Polyneices had not been akin in blood to

⁸² 1233 ff.

⁸³ *Il.* ix. 458 ff.

⁸⁴ 775 ff.

Kreon, he would have been immediately executed.⁸⁵ Hence we suggest that the starving to death of Antigone without bloodshed, in order to avoid pollution, implies a latent fear in the mind of Kreon lest her execution might be a judicial murder, for it was when the victim was a kinsman that the religious aspect of execution was most formidable and that the least doubt about its justice produced the greatest scruples. It is of course open to us to suppose that we have in this story a fusion of ideas which are derived from different atmospheres, and that in course of time pollution ideas became grafted upon an earlier story which represented the peculiar nature of this execution of Antigone as entirely due to human psychology and tribal custom. But, in the absence of any evidence for the existence of such a legend in early times, we may conclude that the act of Kreon is presented in this drama as an act which is open to the suspicion of being a judicial murder. For such murder there was no penalty in law or custom while the perpetrator remained in power, and the avenger was impotent to avenge. Teiresias the prophet takes this view of the matter and forebodes a terrible reckoning. He includes this execution in his recital of the crimes of Kreon when he says ⁸⁶:

Not many courses of the racing sun
 Shalt thou fulfil, ere of thine own true blood
 Thou shalt have given a corpse in recompense
 For one on earth whom thou hast cast beneath,
 Entombing shamefully a living soul.

The whole plot of the *Antigone* really turns on the question of the burial of Polyneices, just as that of the *Ajax* depends upon the problem of the burial of Ajax. Eteocles and Polyneices had fallen in mutual combat as leaders in a war between the Argives and the Thebans, a combat which, from the existence of blood-relationship between the leaders, assumed the external aspect of civil war. The problem of guilt is obscured by political complications. If we inquire whether the mutual slaughter of these two brothers was culpable fratricide, we must answer that, in the circumstances of the case, it seems obvious that either both slayers were

⁸⁵ 309.⁸⁶ 1064 ff.

guilty or that both were justified. Theseus was justified,⁸⁷ according to legend, in the slaying of the Pallantidae, and, according to Kreon, in the *Antigone*, Eteocles was justified in slaying Polyneices, for he commands that Eteocles should be buried with full honours—and we know that culpable kin-slayers could not be buried. Polyneices, however, was not, in Kreon's view, justified in slaying Eteocles. Here are Kreon's words⁸⁸:

. . . The man,
 Eteocles—I mean—who died for Thebes . . .
 Shall be entombed with every sacred rite
 That follows to the grave the lordliest dead.
 But for his brother who, a banished man,
 Returned to devastate and burn with fire
 The land of his nativity, the shrine
 Of his ancestral gods . . . for Polyneices
 This law hath been proclaimed concerning him :
 He shall have no lament, no funeral,
 But lie unburied for the carrion fowl
 And dogs to eat his corse, a sight of shame.

The law which is here mentioned is not an archaic fossil recovered from an antique past. It is the law of 'the mortal lawgiver' which Plato gives and which we have already described.⁸⁹ Its application in this context implies that Polyneices was guilty of culpable fratricide, which in the special circumstances of the case has affinities with the crime of treason. Plato⁹⁰ gives a law which confirms this supposition. 'If a brother,' he says, 'shall, in his own defence, during a fight occurring in a sedition, kill a brother while warding off the party who first had recourse to violence (τὸν ἄρχοντα), let him be considered free from guilt as he is who kills an enemy.' In the laws of Dracon, also, as we know from the restored inscription and from Demosthenic quotations, the category of justifiable homicide included the slaying of the 'first' aggressor and of the 'unjust' aggressor.⁹¹ According to our theory that Dracon codified existing laws but did not invent new laws, it would follow that Plato here refers to a very ancient and for a long time unwritten law of

⁸⁷ *Supra*, p. 245.

⁸⁸ 195 ff.

⁸⁹ *Supra*, p. 231.

⁹⁰ Laws, ix, ch. 9.

⁹¹ *Supra*, pp. 193, 216.

the Ephetae and the Exegetae. The attitude of Kreon to Eteocles is precisely that of the Platonic legislator. His attitude to Polyneices seems also, at first sight, to be legally correct, because Polyneices was technically *the unjust aggressor*. But the tendency of legislation concerning such cases is to condemn too swiftly, without due consideration and with a superficial examination of the facts. Such legislation assumes that a man must be either right or wrong, either wholly innocent or wholly guilty. Now we find it very difficult to conceive Polyneices as guilty of wilful fratricide. Before he became an 'aggressor' he had been banished from his country, because he refused to divide the throne with his brother Eteocles. Was not his expulsion a prior act of aggression? Perhaps therefore he can be regarded as fully justified⁹² if one goes far enough back in one's analysis of 'aggression.' But on such questions 'justice' is frequently a crude political hotchpotch even in the most civilised communities. We suggest that it is against such political 'justice' that Antigone in the play revolts. It is frequently asserted⁹³ that this play symbolises a conflict between religion and civil power; that Antigone and Teiresias champion the laws of the gods, while Kreon defends the laws of the State. But in ancient Greece there was ordinarily no distinction between Church and State. The State was identified with its gods. Treason was a kind of sacrilege; sacrilege was a form of treason. Again, it may be argued that the conflict between Kreon and Antigone symbolises an opposition between the State law which refused to traitors the privilege of burial, and the ancient Clan-law, according to which the burial of a dead kinsman was a religious duty, and its neglect a dangerous 'sin.' We regard this hypothesis as much more reasonable, but if it be pressed to its logical conclusions it compels us to see in the *Antigone* an exaltation of tribalism over State power, or otherwise to attribute moral weakness to Antigone. But we suggest that tribalism had evolved the custom of refusing burial to traitors long before the advent of centralised civic government. In this respect, therefore, tribal law and State law were in unison, not in conflict. Hence this hypothesis compels us to assume

⁹² See Eur. *Phoenissae*, 300-445, 460-635.

⁹³ See Jebb's edition, Introd. p. xxi ff.

that in this play there is an exaltation of moral weakness. There are passages in the play which support this interpretation. Thus Antigone says ⁹⁴:

But had I suffered my own mother's child,
Fallen in blood, to be without a grave,
That were indeed a sorrow.

But, a few lines earlier,⁹⁵ she implies that there is something hideously novel and unorthodox about the edict of Kreon:

Nor thought I thy commandment of such weight
That one who is mortal thus could overbear
The infallible unwritten laws of Heaven.

Haemon, too, implies ⁹⁶ that there is something very arbitrary in Kreon's proclamation. All the citizens of Thebes, he says, repudiate the guilt of Antigone:

She perishes for a most glorious deed,
Who when her own true brother on the earth
Lay weltering after combat in his gore,
Left him not graveless for the carrion fowl
And raw-devouring field-dogs to consume—
Hath she not merited a golden praise?

Hence we think that the conflict in this drama lies rather between human nature and human reason on the one hand and the arbitrary tyranny of civic governments in political legislation and administration on the other. Antigone protests against the decree which declared her brother at once a traitor and a fratricide of full guilt.⁹⁷ If Polyneices had slain Eteocles and had become in his stead the ruler of Thebes, how different would Kreon's appreciation of the facts have been! It is obvious that sedition, faction, and civil war, whether in ancient Greece or in modern Ireland, produce a contempt for civic law because of the despotic dogmatism which regards the same individual as now a patriot and now a traitor, now a hero and now a villain, according to the momentary swing of a political pendulum or the varying strength of political parties.

Finally, we may point out that in this play there is a

⁹⁴ 466.

⁹⁵ 460 ff.

⁹⁶ 697.

⁹⁷ *E.g.* 20 ff.; 450 ff. For an interesting historical parallel compare the conflict of opinion at Corinth in regard to the 'fratricide' of Timoleon. (Diodorus, xvi. 65; Plutarch, *Timoleon*, 1-8.)

veritable epidemic of suicide. But it is not suicide of the ordinary ignoble kind. There is a clear distinction, in the mind of the dramatist, and in the facts, which makes such self-slaughter more akin to sacrifice. Haemon, Eurydice, and Antigone one by one put off 'this mortal coil.' It is only when it is too late that Kreon is brought to see the selfish obstinacy of his point of view. The play ends with a warning against impious pride. But the gods have punished the humble with the proud! The legal analysis of suicide of this kind is rather difficult and unsatisfactory, but we shall offer some further remarks upon the subject in connexion with the following play, the *Ajax*, in which suicide forms a prominent feature of the plot.

THE 'AJAX'

When the council of the Achaean chieftains on the plains of Troy decided to bestow upon Odysseus the arms of Achilles as the prize of martial valour, Ajax, the rival claimant for the prize, was overwhelmed with jealousy and wounded pride, and he resolved to slay Odysseus and, with him, other Achaean chieftains. This resolution he fortunately failed to execute, not through any fear of the consequences of his act, nor yet through moral or legal scruples, but simply as a result of the intervention of Athene, who directed his murderous hand against a herd of cattle and 'mesmerised' him into believing that those cattle were his human enemies. This fictitious imaginary slaying of men cannot easily be classified from the standpoint of historical law. Are we to regard Ajax as a plotter of murder or a contriver of murder or as guilty of 'attempted murder'?

We have already seen that in historical Greek law ⁹⁸ the contriver of murder and the actual murderer were more or less identical, and were tried by the same Areopagus court. Now, plotting to kill which did not succeed but which merely resulted in wounding would have been regarded as 'malicious wounding' (τραῦμα ἐκ προνοίας), whereas such plotting without wounding was 'attempted murder' (βούλευσις). From the probable fact ⁹⁹ that the Palladium court tried cases of βούλευσις in the time of Aristotle, we have inferred that this offence was punished by temporary banishment;

⁹⁸ *Supra*, p. 223 ff.

⁹⁹ *Supra*, p. 251.

for the connexion of *βούλευσις* with the Palladium implies that the degree of guilt was regarded as more or less identical with that of manslaughter, even though the nature of these offences is very different. Now we have seen that amongst the Achaeans of the Homeric age there was no discrimination in regard to the penalties for murder and for manslaughter: but are we also to assume that there was no distinction between murder and plotting-without-wounding (*βούλευσις*)? The act of Ajax, as it is described in this Sophoclean drama, was, according to our definition of the words, an instance of *βούλευσις*. Now it is possible to maintain that in this play Ajax is regarded as a murderer, and that he would have been punished as a murderer if his act of suicide had not rendered it impossible to carry out such punishment. The fact that he slew some herdmen, with the cattle, is not, we think, of any legal importance, though the Chorus happen to mention it, for these herdmen were either slaves or inferior serfs whose death was not regarded as murder. In the *King Oedipus* we are told¹⁰⁰ that Oedipus slew all the attendants of Laius at the famous Phocian cross-roads, but their death was unavenged and for their death the Delphic oracle demanded no punishment. In the *Ajax* the Chorus proclaim the death penalty for Ajax¹⁰¹:

The man will die, disgraced in open day,
Whose dark-eyed steel hath dared through mad-brained error,
The mounted herdmen with their herds to slay.

Again it is possible to maintain that the attempt of Ajax was also, in a certain sense, treasonable, for it was an insult and a danger to the whole Achaean army. Now, the penalty for treason, we have seen,¹⁰² was 'collective,' that is, it applied to the family of the traitor, not merely to himself, until the fourth century B.C. It is thus perhaps that we must explain the attempt which was made by the Achaean army to slay Teucer, the half-brother of Ajax, as the messenger records¹⁰³:

They swarmed around him and with shouts of blame
From each side one and all assaulted him,
As brother to the man who had gone mad
And plotted 'gainst the host—threatening aloud
Spite of his strength he should be stoned and die.

¹⁰⁰ 810 ff.¹⁰¹ 228 ff.¹⁰² *Supra*, pp. 188, 220.¹⁰³ 724.

But they did not slay Teucer, despite their threats, and this fact suggests that *βούλευσις* (equated with murder) rather than treason was the crime which they imputed to Ajax: for the penalty for murder was rarely collective. In the following dialogue between Teucer and Menelaus, Ajax is called a murderer ¹⁰⁴:

Men.: Just, that my murderer have a peaceful end?

Teu.: Thy murderer? Strange to have been slain and live!

Men.: Yea, through Heaven's mercy. By his will, I am dead.

Yet we cannot infer from the suggestion that the penalty of death would have been inflicted upon Ajax had he lived to suffer it, that such was the penalty for *βούλευσις* in historical Attic law. It is much more probable that Sophocles is here attributing, by an archaism, an absence of discrimination between murder and *βούλευσις* to the Homeric society.¹⁰⁵

Teucer foresees that when he returns to Salamis he will be banished by his father, Telamon, because of the death of Ajax. Addressing the corpse of Ajax, Teucer says ¹⁰⁶:

Will Telamon, my sire and thine, receive me . . .

Returning without thee?

. . . I shall leave my land a castaway,

Thrust forth an exile and proclaimed a slave.

We have quoted ¹⁰⁷ from Pausanias the legend that the Attic court of Phreatto was first founded when Teucer pleaded innocence for the death of Ajax. Apart from the impossibility of assuming any real historical connexion between Teucer and Phreatto, we may naturally ask, why was it that Teucer was presumed to have been guilty of bloodshed, and what degree of guilt was attributed to him? We cannot very logically apply to Teucer the principle which was enunciated by a Delphic oracle which we have already mentioned ¹⁰⁸: 'Thou, who standing near a comrade being killed hast not defended him, hast gone not pure away.'

Yet such oracles suggest that Teucer incurred some guilt through not having protected Ajax from himself. The only

¹⁰⁴ 1127 ff.; see also 1060.

¹⁰⁵ The story of Ajax's attempted murder and suicide is post-Homeric. See Jebb's *Ajax*, Introduction.

¹⁰⁶ 1007 ff.

¹⁰⁷ *Supra*, p. 248.

¹⁰⁸ *Supra*, p. 161.

explanation which we can offer for the facts is this : Teucer was regarded by Telamon as partially culpable in regard to the death of Ajax. In Greek law, it was necessary for the accused to prove his innocence, and Teucer could not prove it. Ajax had died in a solitary place ; but he was more or less insane, and he should not have been left without a protecting escort.¹⁰⁹ The guilt of Teucer, being of a minor kind, was connected with that of manslaughter. The court of Phreatto was based on the principle that the slayer who was guilty of involuntary homicide could not have returned to his native land until he had appeased the relatives of the slain. Therefore Telamon, the father of Ajax, was represented in legend as having refused to permit Teucer to land in Salamis. The fact that Ajax was a kinsman of Teucer causes further complications. But in the event of minor pollution the legal aspect of such a case approximates to that of ordinary manslaughter. We have seen that the Achaeans punished kin-slaying by death and that they did not distinguish between major and minor degrees of guilt. But this story of Teucer is not, we think, of Achaean origin : it was attributed to an Achaean by post-Homeric legend. We have seen ¹¹⁰ that in tribal society, before political synoekism, the penalty for kin-slaying was exile, and that tribal law discriminated meticulously between varying degrees of blood-guilt. Thus, the story of the banishment of Teucer can only be made intelligible by being considered in its obviously archaic atmosphere.

It remains for us to discuss the dispute which arose concerning the burial of Ajax in this play. Ajax has committed suicide, but there are different kinds of suicide. Plato ¹¹¹ includes under the category of kin-slaying the act of a person who ' by violence deprives himself of his lot of destiny, without being compelled either by a verdict of the city which decrees it, or by a very painful and unavoidable misfortune which has befallen him, or by being involved in a disgrace which cannot otherwise be tolerable, but through sheer indolence, weakness and cowardice.' Such persons must not, says Plato, be buried in the family tomb, or with funeral honours, or where anyone else has been buried. Now, the case of Ajax might easily

¹⁰⁹ 905 ff.¹¹⁰ *Supra*, p. 238.¹¹¹ *Laws*, ix. ch. 12.

have been included in one or other of the categories of suicide which Plato regards as honourable. Because of his *βούλευσις* he probably regarded himself as under sentence of death: he was insane with grief and wounded pride. No one could accuse him of cowardice or weakness. Moreover, Plato admits that some kind of burial was accorded to all suicides. In the *Ajax* some Achaeans demand the burial of Ajax with full military honours, but others object to any form of burial. Moreover, in the whole course of the dispute between the chieftains the word 'suicide' is not mentioned even once.

Hence we cannot with any probability attribute to the fact of Ajax's suicide the quarrel which arose about his burial. The quarrel arose, we think, because he was a virtual murderer and, in a sense, a traitor. We know that in ancient society persons who were convicted of treason were not buried, and also that wilful murderers who had been 'executed' were not granted the rites of burial. In the course of the quarrel, Ajax is called a murderer by Menelaus,¹¹² a traitor and a rebel by Agamemnon.¹¹³ It is only because of the intercession of Odysseus that the other chiefs eventually permit Teucer to bury him. We feel that Odysseus in this play acts as an intermediary who is used to bring the dramatic story into harmony with Homeric facts. In the *Odyssey* ¹¹⁴ Ajax is depicted as dwelling in Hades, the western Spirit-land which was a place of repose for the Achaean dead but which could only be entered when their bodies had been buried. If it had not been for this Homeric reference we feel that the dead Ajax, who, by his suicide, had become his own executioner, would, on account of treason and *βούλευσις*, have been exposed to the wild birds and the dogs.

THE 'TRACHINIAN MAIDENS'

This drama centres round the name of Hercules, and records his tragic death under circumstances which to us suggest the presence, at the birth of the story, of a morbid passion for legal problematising. As we shall have to deal with the legends of Hercules at greater length when we discuss the Euripidean dramas which are based upon them, we shall

¹¹² 1126 ff.

¹¹³ 1240 ff.

¹¹⁴ *Od.* xi. 543 ff.

postpone for the present our general remarks about this Hero-god. In this play there is an incidental reference to the murder by Hercules of Iphitus, the son of Eurytus, King of Oechalia, a deed which is mentioned by Homer.¹¹⁵ The herald says ¹¹⁶:

When Iphitus to the Tirynthian height
Followed the track where his brood-mares had strayed,
He, while the thought and eye of the man by chance
Were sundered, threw him from the tower-crowned cliff.

In anger for which deed the Olympian king,
Father of gods and men, delivered him
To be a bond-slave.

Now, in Homer, the Olympian Zeus takes no such action. It is merely stated that the act of Hercules was a violation of the etiquette of hospitality! ¹¹⁷ The act is censured, but not punished. But in later times, when murder became a religious offence and legend-makers imported the pollution-doctrine retrospectively into pre-existing legends, Hercules could not have escaped the pollution which even Apollo was said to have incurred when he slew the Python. And just as Apollo was said to have served as a bondman with Admetus,¹¹⁸ so Hercules had to endure also a period of bondage. We cannot suppose that the penalty of servitude in the 'pollution' religion was identical with the tribal penalty of 'servitude' which is sometimes found in primitive societies.¹¹⁹ The latter penalty was domestic and local, being regarded as a substitute for *wergeld*; the former penalty could only have been served 'abroad,' and it was, we think, really a consequence of the helpless poverty of an exile. Thus it is quite in keeping with what we may call the 'pollution' bondage of Hercules that Deianira should say ¹²⁰:

For since he quelled the might of Iphitus,
We here in Trachis ¹²¹ dwell, far from our home,
Dependent on a stranger, but where he
Is gone none knoweth . . .
These fifteen months he hath sent me not one word.

¹¹⁵ *Od.* xxi. 27 ff.

¹¹⁶ 268 ff.

¹¹⁷ *Od.* xxi. 28.

¹¹⁸ Aeschylus, *Eum.* 726; Euripides, *Alcestis*, 1-10.

¹¹⁹ *Supra*, p. 44.

¹²⁰ 40 ff.; see also *λατρεύοντα* (35).

¹²¹ See also Pausanias, i. 32.

If it be objected that bondage or temporary exile was not the 'pollution' penalty for wilful murder, we may reply that while in Homer, and perhaps also in Sophocles, the slaying of Iphitus is presented as wilful murder, we learn from other sources that Hercules slew Iphitus under the influence of frenzy. According to another version of the story, it was in Lydia, not in Trachis, that Hercules went into bondage. Moreover, Hercules was not an ordinary, real, historical man, and the multitudinous legends which hang around him render him a very unsafe basis of illustration for the operation of any law, human or divine !

The main theme of this play is the death of Hercules, which, by a tragic irony, was caused by poison concealed in a garment which his spouse Deianira had sent him in the belief that the garment would act as a love-charm. Subjectively, the heart of Deianira was pure from guilt, and ultimately, but too late, her innocence was vindicated by a discovery of all the facts. The poison of the fatal garment ¹²² was traced to the Centaur Nessus, who had assured Deianira that it was a charm for waning love. The dying Hercules sees in the fatal gift the work of destiny, and his son Hyllus proclaims the innocence of Deianira ¹²³ :

She erred with good intent. The whole is said.

The suicide of Deianira prevents us from witnessing the 'forgiveness' of the dying Hercules, the 'release,' as it were, which the revelation of her innocence would have evoked. Instead we hear him utter,¹²⁴ while still he believes her guilty, a 'curse' such as in historical Attica would have declared her 'polluted' by blood-guilt and would have compelled her, if she did not prove her innocence, to become an exile or to die :

O may I see her falling, even so
As she hath thrown me, to like depth of woe.
. . . She who hath done this deed shall feel my power.
Let her come near that, mastered by my might,
She may have this to tell the world, that, dying,
As living, I gave punishment to wrong.

¹²² 1140.

¹²³ 1136.

¹²⁴ 1003-4, 1110-14 ; 1133.

CHAPTER III

EURIPIDES

THE extant dramas of Euripides are permeated with references to homicide. It will be necessary to examine seventeen out of the nineteen extant plays. We need not discuss the *Cyclops* or the *Rhesus*. The Oresteian dramas will be our first concern. In attempting a legal analysis of Euripides we are confronted with a difficulty which is present only in a minor degree in the case of Aeschylus and of Sophocles, namely the difficulty of deciding how far Euripides followed mythological tradition, or how far he ignored this tradition and invented characters and plots which reflect mainly his own mental outlook and the ideas of his time. Owing to the prominence which he gives to the prologue and to the *deus ex machina*, and owing to the frequency of his allusions to contemporary ideas and developments, it is often maintained that the main elements of Euripidean drama are derived from fifth-century Athenian life, and that, therefore, the plots and the scenes are incongruous and impossible. Thus Jevons says¹: 'If Sophocles laid his scenes in "a past which never was present," he at any rate adhered to his imaginary period with fidelity. But Euripides lays his scenes in a time which is neither past nor present, but an incongruous and impossible epoch, in which Theseus defends the republican institutions of Athens and Hecuba regrets the high price of Sophists' lectures'; and again²: 'The motive seems to have been to give as little time as possible to the myth as traditionally related, in order to concentrate attention on the incidents and situations of Euripides' own making. Euripides could not throw off the myths altogether, but he got rid of them as much as possible by relegating them to the prologue and to the *deus ex machina*' . . . 'Compelled³ by the tradition of the tragic art to take his subjects from mythology, Euripides was impelled by his instinct as an artist to draw his characters

¹ *Hist. Gk. Lit.* p. 224.

² *Ib.* p. 225.

³ *Ib.* 228.

from real life : and to present the heroes of mythology acting from everyday motives and with everyday feelings was to attempt in most cases an impossible fusion. The slaying of Clytaemnestra by Orestes is a proper subject for the art of Sophocles or Aeschylus, but is wholly unsuited to the new form of art which Euripides was making for. . . . The discords⁴ which exist in Euripides' plays between his character-drawing and his situations, between his sentiments and his mythical subjects . . . are discords which Sophocles avoided and Euripides could not or would not convert into harmonies.' On this subject, Verrall also holds a similar view.⁵

It would be obviously impossible for us to discuss this matter with any degree of completeness, but we must point out that we do not agree with this interpretation of Euripides. In Attic drama, as we conceive it, it was customary for the poet to derive the skeleton of his plots and situations from traditional myth. In clothing that skeleton with vitality and movement and with organic unity, the dramatist was compelled to translate himself into the past, to reconstruct from his data the details of speech, of action, and of character. In a word, he consciously archaised. Now we admit that in this vital point of ancient dramatic art Euripides is not so correct, so unimpeachable, as Sophocles or as Aeschylus. He could not always shake off the influences of his time. But to suggest that Euripides deliberately set himself to create a new form of drama admittedly incongruous, unhistorical and unreal, seems to us, as far as we can judge, as nonsensical as to suppose that Pheidias could have created a statue of Olympian Zeus with an Asiatic turban on its head and 'barbarian slippers'⁶ on its feet. In our view, Euripides followed traditional legend not only in the prologue and in the epilogue, but also in the dramatic 'episodes.' To depart from tradition, it would have been necessary and, for a dramatist with new and advanced ideas, it would have been easy to invent new characters, new names, new situations. In such an event, Euripides could at least have been consistent. But since in actual fact we find that he concerned himself less with questions

⁴ P. 229.

⁵ See *Euripides the Rationalist* (*passim*) and Introduction to Aeschylus, *Choephoroe*, p. xxxvii ff.

⁶ Eur. *Orestes*, 1370.

of consistency than with situations involving surprise and horror, with problems of human passion, and with incidents of human interest, we must attribute his inconsistencies to the fact that he was fettered by traditional legend and that he overreached himself in his desire to give to the characters of mythology a really living personality. He was, of course, aware of variations in the legend. Like Sophocles and Aeschylus, he had to become an 'eclectic,' to choose certain elements from different stories for dramatic purposes, and to ignore other elements. But whereas the eclecticism of Sophocles and also to a great extent of Aeschylus is dominated by the canon of consistency, that of Euripides is dominated mainly by a less orthodox canon which is more conducive to human interest and which we may call the canon of psychic hedonism. Judged by the criterion of the Horatian maxim

aut famam sequere aut sibi convenientia finge,⁷

Euripides stands condemned if the latter alternative is applicable to the former. But if the maxim be interpreted to mean 'Follow tradition and if there are variations in the story do not trouble about consistency' ⁸ provided that every character and every situation has a traditional basis, but if you abandon tradition consistency is absolutely necessary,' then Euripides is canonical. Of the real meaning of this maxim we cannot be certain, but to our mind it seems to mean: 'Consistency is the aim of all literary art, but tragedians must be guided by traditional myth, and therefore in tragedy consistency, though desirable, is not indispensable, whereas in all other domains of art consistency is essential.' Miss Harrison and Gilbert Murray ⁹ have suggested a theory of the origin of Greek tragedy which supposes, in effect, that its forms or characteristic 'events' were derived from an ancient ritual of the Year Spirit, while its actual 'content,' its characters, situations, episodes, were derived from Homeric saga. This theory we need not now discuss, but we must point out that Homer was not the only source of ancient mythology. When Horace says ¹⁰:

rectius Iliacum carmen deducis in actus
quam si proferres ignota indictaque primus,

⁷ A.P. 119. ⁸ See A.P. 131-5. ⁹ See *Themis*, 341 ff. ¹⁰ A.P. 129.

he merely mentions the *Iliad* as an example of traditional story, not as the boundary of its extent. In many instances—as, for example, in the case of Orestes—we have suggested that there were several variants in the post-Homeric myths.

Aristotle says¹¹ of Sophocles and Euripides, Σοφοκλῆς ἔφη αὐτὸς μὲν οἷους δεῖ ποιεῖν, Εὐριπίδην δὲ οἶοι εἶσιν. This much-controverted statement is usually interpreted to mean that Sophocles reproduced the antique mythological atmosphere in his characters and in his plots, whereas Euripides imported contemporary types into the legendary background. But we find it very difficult to believe that Euripides conceived Orestes, Hercules, Menelaus and other heroic characters as ordinary fifth-century Athenians.¹² The context in which this statement of Aristotle occurs is very obscure. Aristotle mentions three possible ideals of characterisation: ἡ γὰρ οἷα ἦν ἡ ἔστιν, ἡ οἷα φασιν καὶ δοκεῖ, ἡ οἷα εἶναι δεῖ, 'Either as (things and people) were or are, or as they assert that they are and as they seem to be, or as they must be.' Now if the criticism of Euripides which Aristotle attributes to Sophocles read οἶοι ἦσαν instead of οἶοι εἶσιν, meaning 'men as they were,' not 'men as they are,' we should be more readily prepared to accept it. We hope to show that the characters and situations in Euripides are often archaic, and this archaism must be attributed either to the conscious archaising of the dramatist or to the antiquity of the legends which he follows.

With this preamble we may proceed to discuss the references to blood-vengeance in the dramas of Euripides. Once more we will begin with the legend of Orestes. We do not possess a Euripidean play which describes the actual murder of Agamemnon; but the deed is attributed to Clytaemnestra and to Aegisthus in the prologue to the *Electra*.

THE 'ELECTRA'

In the *Electra* Euripides follows closely the lines which were laid down by Aeschylus in his *Choephoroe* and by Sophocles in his *Electra*. There are certain minor divergencies which Verrall has indicated in the Introduction to his edition of the *Choephoroe*, but there are also very

¹¹ *Poetics*, 25.

¹² See Wedd, *Introd. to Orestes*, p. xvii ff.

striking similarities, not only in the main plot, but even in the arguments which appear in the dialogue. We are told that Orestes left Argos while his father was still in Troy, and went to Phocis.¹³ We do not hear that at that period he was associated with Athens. Thus the Homeric narrative¹⁴ is ignored and we observe, once more, the strange omission of a fact which rendered so natural the legendary assumption of Orestes' subsequent trial at Athens. But the omission is less flagrant in Euripides than it is in Aeschylus or in Sophocles, because Euripides follows in the main a legend which connected the trial of Orestes with Argos and not with Athens, and though the dramatist cannot altogether avoid a reference to a trial at the Areopagus, he refers to it in a subordinate manner,¹⁵ attributing, no doubt, any difficulty which he found in understanding it to the inscrutable nature of Apolline decrees.

Once more we find Clytaemnestra pleading, as a justification for her act, the 'sacrifice' of Iphigeneia. The peasant of the Prologue doubts the justice of this plea¹⁶ and the ordinary people are not in the least deceived by it. Electra repudiates it as a dangerous fiction. She reveals the insidious nature of the plea by pointing out, as she does also in the *Electra* of Sophocles, that if Clytaemnestra arrogates to herself the right to decide whether the sacrifice of Iphigeneia was or was not an act of murder, and whether, therefore, the death of Agamemnon was or was not justified by this sacrifice, she must logically concede to Orestes a similar right of decision regarding these issues, and therefore, also, the right to slay Clytaemnestra if he considers it right to slay her!

If blood, in righteous retribution, calls
 For blood, by me behoves it thou should'st bleed,
 And by thy son, Orestes, to avenge
 My father: there if this was just, alike
 Is it just here.¹⁷

In reasoning of this kind, which we cannot suppose to have been included in traditional saga, we see a deliberate effort at 'conscious archaising' on the part of Sophocles¹⁸ and

¹³ 15 ff.¹⁴ *Od.* iii. 307.¹⁵ *Electra*, 1254 ff.; *Orestes*, 1648 ff.¹⁶ 29-30.¹⁷ 1093-6.¹⁸ See *supra*, p. 308.

of Euripides. In the Homeric society there existed, we have argued,¹⁹ a distinction between murder and righteous vengeance. If this distinction had not existed in the Achæan caste the result would have been chaotic. Instead of a restricted system of 'private vengeance' which is controlled by discipline and by public opinion, we should find prevailing everywhere a barbarous vendetta-system. The 'sacrifice' of his daughter by Agamemnon is not mentioned in Homer, and there is no reason for assuming that such a sacrifice ever took place. But if it had occurred, the Achæans would not have regarded it as an act of murder. In historical Athens such a plea as that which Clytaemnestra here advances could never have been made, as the legal and religious atmosphere was so entirely different. Hence, in dramatising a legend of this kind the correct reproduction of such arguments as those which we are discussing demanded considerable skill. As this play of Euripides cannot be regarded as a mere servile imitation of the corresponding Sophoclean drama, we must suppose that Euripides had recourse to 'conscious archaising.' It so happens, as we think, that in attributing this sentiment to Electra he has visualised correctly the Achæan attitude to murder.

In the *Orestes* we shall find an argument attributed to Tyndareus which at first sight seems to resemble the reasoning of Electra in this passage, but which is really very different. Tyndareus says of Orestes²⁰:

He ought t' have called the laws, the righteous laws,
 T' avenge the blood, and by appeal to them
 Have driven his mother from this royal house :
 Thus 'midst his ills calm reason had borne rule,
 Justice had held its course, and he been righteous.

We believe that this sentiment of Tyndareus was either included in or suggested by an Argive variant of the Oresteian legend, and that it is based on the assumption that trials for homicide existed *before* Orestes slew his mother. The contrast which is drawn in the *Orestes* passage is a contrast between social justice and private vengeance, but the *Electra* passage indicates a contrast between private vengeance and vendetta.

¹⁹ *Supra*, p. 58 ff.

²⁰ 500 ff. ; *infra*, p. 348.

Now, in social justice such as existed in historical Greece, from the seventh century onwards, the Achaean system of private vengeance would have been regarded as a crime. Similarly in the Achaean system of 'private vengeance' uncontrolled and indiscriminate 'vendetta' was a crime. In both cases the crime would have consisted in the violation of the existing order. Now Euripides suggests (as we infer from these two passages in the *Orestes* and the *Electra*) that the consequence of such a violation is identical in both circumstances, namely an indefinite series of murders. As applied to vendetta we admit that this criticism is true, but in regard to private vengeance it is false. We have seen²¹ that such a series of slayings did not characterise either the Achaean or the Pelasgian system of 'private vengeance.' We shall have occasion to refer to this topic again when we discuss the problems of the *Orestes* drama.²²

In the *Electra* the Chorus approves of the long-expected vengeance of Orestes. Speaking of the slain Aegisthus, they say to his slayer, Orestes²³:

His deeds were dreadful : dreadful hath he felt
Your vengeance. With great power is Justice armed.

Orestes tells Electra that, since Aegisthus was a murderer, his body cannot be buried²⁴:

. . . his lifeless corse
I bring thee : treat it as thy soul inclines ;
Cast it by rav'nous beasts to be devoured,
Or to the birds, the children of the air ;
Fix it, impaled, a prey.

We have already quoted Plato for the custom of refusing burial to murderers. We presume that it was a legally prescribed custom in historical Greece. The precise origin of the custom cannot be determined with any degree of certainty, but we associate it with the doctrine of pollution and the evolution of State power in the seventh century. In Homer,²⁵ of course, Aegisthus was duly and formally buried, even though the people of that age regarded burial as a passport to eternal repose in the Spirit-land. It is perhaps because

²¹ *Supra*, Book I.

²⁴ 895 ff.

²² *Infra*, p. 348 ff.

²³ 957-8.

²⁵ *Od.* iii. 310.

of this Homeric fact that, at the end of the *Electra*,²⁶ the deities Castor and Pollux decree that the body of Aegisthus must be buried. Thus we find Euripides making use of the *deus ex machina* to reconcile two divergent viewpoints, and probably, therefore, two inconsistent legends.²⁷

Euripides is distinctly non-Homeric in attributing to Orestes a psychological conflict as the dread moment approached in which he was to slay his mother and his cousin Aegisthus. Such a conflict would have been natural, in Pelasgian tribalism, if a kin-slayer refused to go into exile ; but the conflict would not have been confined to a single avenger : it would have been diminished by the group-consciousness of an avenging clan. Nor could such a conflict have arisen in historical times, for the punishment of kin-slayers had, as we maintain,²⁸ been assumed by the State. Hence we must regard this tragic conflict as a piece of unhistorical conscious archaism on the part of Euripides. The fact that the picture is unhistorical is no doubt to be condoned in view of its dramatic value.

In this play *Electra* actually assists her brother in his deed of vengeance. For this co-operation she is sentenced to exile by Castor and Pollux,²⁹ but we are prevented from regarding the penalty as severe by the further decree that she must become the wife of Pylades !³⁰ It is true that Pylades was absent from the actual slaying of Clytaemnestra, but a short time previously he was present at the death of Aegisthus,³¹ although he took no actual part in the slaying. From the standpoint of historical Attic law, he was therefore as guilty (or as innocent) as Orestes and *Electra* were. Hence this decree of Castor and Pollux must be interpreted prophetically ; they are speaking of the future, which, as gods, they foresee. Therefore they regard the exile of *Electra* as temporary and her guilt as that of extenuated matricide. That the death of Clytaemnestra and Aegisthus involved their slayers in some degree of guilt, in the opinion of Castor and Pollux, is obviously suggested by the penalties which they impose. They say to Orestes³² :

With justice vengeance falls
On her : in thee unholy is the deed.

²⁶ 1277.²⁷ Cf. Soph. *Electra*, 1483.²⁸ *Supra*, p. 236 ff.²⁹ 1230.³⁰ 1250.³¹ 840 ff.³² 1244 ff.

Such sentiments can only be rendered intelligible by assuming the existence of what we have described³³ as the second Attic legend, which conceived Orestes and his friends as guilty of quasi-involuntary homicide. Castor and Pollux are compelled by their foreknowledge of destiny to believe that, some day, a court will declare the act of Orestes to have been either justifiable or extenuated; that Court they know will be the Athenian Areopagus. They cannot understand, perhaps, why the court should be Athenian, but they know it must be so! From a legal point of view, nothing could be more strange than their decree that Orestes, pending his acquittal at the Areopagus, must leave his native Argos. In historical Greece an accused kin-slayer awaiting trial would only have been debarred from the temples and the public places of his own State; he would have been tried before a court of his own State. He would not have been tried by a foreign court unless he fled from his own State and sought permission to reside in a foreign State. Hence to command Orestes to leave Argos until he was tried at Athens is legally absurd. The only explanation which we can offer for such an absurdity is that Euripides is following either two separate legends or a fusion of two legends, and that he uses the dramatic device of the *deus ex machina* to remove, or rather to obscure, the inconsistency and the confusion.

Again, it is strange that, in this play, Castor and Pollux, who, as divine kinsmen of the slain Clytaemnestra, should appear in a diabolical implacable rôle clamouring for blood, content themselves with the promulgation of Apolline decrees which they do not profess to understand. We can only explain this fact by supposing that in the story of Orestes, as it evolved in post-Homeric times, the influence of Apollo, the pioneer Interpreter and Purifier, was so great that no respectable local gods could resist his decrees; and it devolved upon the quasi-diabolical Titanic Erinnyes to unfurl the standard of revolt.

Castor and Pollux proclaim that, at Athens, Apollo will take upon himself the guilt of having commanded the deed³⁴:

For the blame
Apollo on himself will charge, whose voice
Ordnained thy mother's death.

³³ *Supra*, p. 282.

³⁴ 1266 ff.

In historical Greek law the plotter and the executor of bloodshed were equally criminal and culpable. To partition blood-guilt was not to remove it. Therefore, if Apollo can transfer to himself the guilt of Orestes, this can only be because there is a doubt about the nature of the guilt. But in estimating the nature or the extent of this guilt, the legends seem to have been divided, some of them regarding the case as one of justifiable matricide and others as one of extenuated matricide.³⁵ Similarly the Erinyes were divided in their opinion. Sometimes they pursue Orestes in the rôle of avenging relatives clamouring for the trial or extradition of a wilful kin-slayer who had fled to a foreign State with the intention of residing there as an exile and who hoped to secure admission by a plea of 'justifiable slaying'; but sometimes they seem to suggest that Orestes was not a matricide of full guilt, that the anger of the slain was temporary and transient, and that it would ultimately terminate in 'forgiveness,' because of the extenuation involved in Apollo's command.

This latter standpoint is undoubtedly implied in several passages in the *Electra*: we shall find it also at the end of the *Orestes*,³⁶ for Orestes is there condemned to a period of one year's exile from Argos and from Athens, and this penalty can only refer to involuntary or quasi-involuntary slaying, and presumes, in the event of kin-slaying, that the deed was either formally 'forgiven' or that, at least, it merited 'forgiveness.' Plato³⁷ assures us that in such cases the anger of the dead did not continue for more than a year. He refers to a sacred legend which described how a freeman who had been slain was angry with his slayer while his death was still a recent event, and in his anger he harassed and worried the slayer, 'using memory as an ally.' This picture seems to us very suggestive of the attitude of the milder group of Furies in some Oresteian legends, but the attitude of the fiercer group is more aptly illustrated by the following story from Herodotus which reveals the nature of the implacable anger of the dead. Herodotus³⁸ tells us how Cleisthenes, the tyrant of Sicyon, was anxious to drive out of Sicyon the spirit and the cult of

³⁵ *Supra*, p. 294. Such a conception is rendered possible by the command of Apollo, which gives an extra-legal complexion to the case. In strict law such a plea was probably inadmissible (Plato, *Laws*, ix. ch. 9).

³⁶ 1644 ff.

³⁷ *Laws*, ix. ch. 8.

³⁸ v. 67.

the Argive hero Adrastus, and how, to secure this object, he established in Sicyon the hero-worship of a certain Theban, named Melanippus, who had slain a son and a son-in-law of Adrastus in the war of the Seven against Thebes. Cleisthenes therefore anticipated that by the magical induction of the spirit of Melanippus into a Hero-tomb at Sicyon he could drive out of Sicyon the Spirit of Adrastus, because Adrastus was still so angry with the slayer of his kindred that he could not, even after the lapse of five hundred years, tolerate the presence of the Spirit of Melanippus!

The meaning of the 'conversion' of the Erinnyes therefore varies according to the dramatist's conception of the rôle of the Erinnyes. In Aeschylus the Erinnyes proclaim Orestes a wilful matricide, and their 'conversion,' which implies that they accept his plea of justifiable matricide, must be regarded as symbolical of a transition in their attitude to the social and religious aspect of homicide.³⁹ But in Euripides the conversion of the Erinnyes symbolises not so much a transition as a compromise. Thus, in the *Iphigenia in Tauris* some of the Erinnyes refuse to be placated even when the Areopagus acquits Orestes.⁴⁰ For them the issue does not lie between wilful matricide and justifiable matricide, but between varying degrees of extenuated matricide. Hence they reject a verdict of acquittal, because they interpret it not as an indication that Orestes was justified, but as an indication that he had already suffered a sufficient penalty for his 'extenuated' act of matricide. Some of the Erinnyes, however, accept the acquittal, because they are satisfied that Orestes has sufficiently atoned for his guilt.

The most severe and uncompromising attitude to the guilt of Orestes which is found in any legend appears in the *Orestes* drama, which we shall now discuss.

THE 'ORESTES'

The main theme of the *Orestes* is the trial of Orestes at Argos, on the charge of having slain, unjustly, his mother, Clytaemnestra. It would not be correct—it would, in fact, be misleading—to assert that, as the Euripidean *Electra* corresponds with the Aeschylean *Choephoroe*, so the *Orestes*

³⁹ *Supra*, p. 145 ff.

⁴⁰ See *infra*, p. 368.

corresponds with the *Eumenides*. The points of resemblance between these two dramas are much less important than the points in which they differ. In this play we find, very strangely, a reference to two distinct trials of Orestes, at two distinct places, in two distinct States, namely Argos and Athens. But while the Argive trial is described at great length, and forms in fact the chief topic of the play, the Athenian trial is only casually referred to, in the closing scene, as an event of the not too distant future. In the Argive trial Orestes is condemned to death as an unjust avenger, or, which is almost the same thing, as a wilful matricide. His act is conceived, we think, as an act of culpable private vengeance committed in an atmosphere of social justice. But at the end of the play, when Apollo appears on the scene, the act of Orestes is presented, according to our interpretation, as extenuated matricide, which involves a penalty of temporary exile. The words of Apollo imply that when Orestes has served a period of one year's exile—the penalty which was prescribed by Attic law for involuntary homicide—he will be declared by the Athenian Areopagus to have sufficiently atoned for his partial degree of guilt and he will be at liberty to return forthwith to Argos. Now these two verdicts, these two conceptions, are legally incompatible. The verdict of the Argive court is not found in Sophocles or in Aeschylus, and, needless to say, it is not found in Homer; the Athenian verdict has, however, been rendered familiar by references in Aeschylus, in Sophocles, and in the *Electra* of Euripides.

Are we then to suppose that the Argive verdict was the invention of Euripides? Such, no doubt, is the view of the matter which Jevons and Verrall would adopt. They would probably see in the Argive trial Euripides' own idea of how Orestes ought to have been tried, and in the use of Apollo as a *deus ex machina* they would see a device by which Euripides' idea was brought into harmony with the traditional legend.

But we venture to suggest, as against such an hypothesis, that in his account of the Argive trial Euripides is not putting before us his own conception of the moral and legal position of Orestes. Euripides leaves us in no doubt that in his opinion Orestes was not a matricide (i.e. an unjust avenger) and that he was not worthy of death. Hence the attitude of the

dramatist is much more in harmony with the traditional Attic legends which regard Orestes as a just avenger, or at most as an avenger of merely nominal guilt, than with the attitude of the Argives and their verdict of condemnation which is the predominant feature of the drama.

At the Argive trial all the speakers save one solitary individual are opposed to the death penalty, yet only one speaker favours complete acquittal. Now it was in the speeches that Euripides found himself least trammelled by tradition, and if he 'invented' the Argive episode—including the verdict—in order to provide, for an Athenian audience, a thrill which the traditional accounts of the Athenian trial of Orestes no longer possessed, why is he not consistent in attributing to the speakers the sentiments which are expressed in the verdict? How do we explain, on the 'invention' hypothesis, the fact that the Messenger, in his account of the trial, takes the part of Orestes and condemns the verdict? The ordinary Athenian of Euripides' day, who regarded the matter from the standpoint of contemporary law, could not possibly have approved of the act of Orestes. Why does not Euripides express this disapproval in his speeches, since he was free to do so?

Again, Euripides was an Athenian democrat, and the Athenian democratic party were anti-Spartan and pro-Argive. In the *Andromache*⁴¹ Euripides reveals his democratic leanings by a bitter attack upon Sparta. In the *Orestes* he undoubtedly exalts an Argive court above the Athenian Areopagus, but is there not a suggestion that the Argive verdict was barbarous and unjust?

Again, if the Argive trial episode was the invention of Euripides, would it not have been just as easy, and more consistent, for him to have caused the Argives to acquit Orestes? If he was not fettered by any tradition, would he not have represented the Argive verdict as similar to, if not identical with, the predicted verdict of the Athenian Areopagus? It may be suggested, as an objection to this view, that an adverse verdict at Argos was necessary as a prelude to the Athenian trial, and that Euripides was naturally anxious to include a reference to the Areopagus, out of respect for the

⁴¹ 445 ff.

legends and for the prestige of the Areopagus. The actual *Orestes* drama supplies the answer to this objection, for it ignores, almost completely, the Attic legends of Orestes, and it shows very little respect for the Areopagus court. Moreover, a favourable verdict at Argos could still have been followed by a trial at Athens, if we merely suppose that the Erinnyes refused to accept an Argive acquittal, just as the verdict of the Areopagus could have been followed by a trial among the Tauri (if these people had developed homicide courts), since in the *Iphigenia in Tauris* the Erinnyes refused to accept the Athenian verdict.

Again, it is not very flattering to the Argives (and Euripides was pro-Argive) to represent them as condemning Orestes to be stoned to death at one moment, and as accepting, twelve months afterwards, a condemned criminal as their king, simply because a different verdict had been brought in by an Athenian court! In fact, to suggest that Euripides invented the conjunction of two different trials, and represented one as overriding the decision of the other—the foreign court having the right to dictate to the native court—is to attribute to Euripides an astounding disregard for international Greek homicide-law. The introduction of Apollo in order to persuade ⁴² the Argives to accept Orestes as their king would not be sufficient, on this hypothesis, to remove the insult to the Argive people which is implied in the suggestion that they are compelled to accept Athenian arbitration.

For these reasons then, and for others which will appear in the course of the discussion, we do not believe that the episode of the Argive trial was invented by Euripides. We admit of course that Euripides composed the speeches, because he wrote the play! But we believe that he was guided and controlled by a certain tradition, by the skeleton form of an Argive saga which supplied him with the fact of an Argive trial of Orestes, with the nature of the verdict, and perhaps with some remarks which were made at the trial. While there are many elements in Euripides' account which could have been suggested by contemporary Attic thought, we think that the skeleton-saga reflects, and therefore probably originated in, the early historical era. The Achaean

⁴² See 1664–5.

atmosphere is missing ; Orestes was an Achæan, but he was judged, in this saga, as the Achæans would not have judged him.

The reason why Aeschylus ignored this legend was that it obviously could not be reconciled with his theory that the Orestes trial was the first homicide-trial in Greek lands, it was less complimentary to Athens than the Attic legends were, and it was too much at variance with the Phocian legend, in which Apollo was the central figure and Orestes was conceived as a just avenger. It was probably for similar reasons that Aeschylus also ignored the Arcadian stories of Orestes, of which one seems akin to the Argive variant, for it represented Orestes as never having returned to Argos and as having died of a snake-bite in Arcadia.⁴³ Euripides, however, apparently found the Argive legend more interesting than the others, though he condescends to mention, in passing, the Attic and Arcadian variants.⁴⁴

If, then, Euripides reproduces in the same drama several different legends, without any regard for their mutual inconsistencies, this is probably because he aimed at variety and human interest rather than consistency, and because he felt that he could always fall back, in the last resort, on a *deus ex machina* to help him to maintain the appearances, if not the realities, of consistency.

In the beginning of the play *Electra* describes, though naturally she does not accept, the prevailing attitude of the Argives to the vengeance of Orestes. This attitude is post-Draconian. Orestes is conceived, not as an Homeric Achæan, but as an Argive citizen of the historical era. He is of course 'polluted' even before trial, and so also is *Electra*. A preliminary decree of social boycott has been issued against them and the sentence of death is foreshadowed as ultimately inevitable. Thus, *Electra* says ⁴⁵ :

Meantime the State of Argos hath decreed
That shelt'ring roof and fire and conference
Be interdicted to us matricides.
And this decisive day the State pronounces
Our doom, to die, crushed with o'erwhelming stones,
Or by th' avenging sword plunged in our breasts.

⁴³ Schol. ad Eur. *Orest.* 1640.

⁴⁴ *Electra*, 1254-75 ; *Orestes*, 1643 ff.

⁴⁵ 46-50.

It is strange that Helen, the sister of Clytaemnestra, who would naturally have been expected to assume an attitude of stern condemnation, assures Electra that she regards Orestes and herself as innocent, and that she transfers the guilt to Phoebus :

With thee conversing I am not polluted,
Charging the crime on Phoebus.⁴⁶

There is a suggestion of the Attic rather than of the Argive legend in this attitude of Helen. Her words are very similar to those spoken by Castor and Pollux in the *Electra* in a dialogue with Orestes and the Chorus ⁴⁷ :

Chorus : O sons of Jove, may we presume t' approach
And converse with you be allowed to hold ?
Castor : You may : no curse this blood derives on you.
Orestes : May I address you, sons of Tyndareus ?
Castor : Thou mayst : to Phoebus this dire deed I charge.

This confusion may be attributed to a conflation of ideas which had already affected the Argive legend prior to the time of Euripides, or it may be merely due to a lack of consistent discrimination, on the part of the dramatist, between the divergent viewpoints of the Attic and the Argive legends. In historical times a person accused of homicide was not debarred from private social intercourse. He was merely prohibited from frequenting the temples and public places. Plato asserts ⁴⁸ that there were degrees of pollution corresponding to degrees of guilt and in proportion to the certainty of guilt. In this case, therefore, the 'pollution' of Orestes and Electra was of a minor character, since they were both as yet untried and unconvicted.

Orestes naturally interprets his guilt from the standpoint of the Attic and the Phocian legends, but he does not distinguish very clearly ⁴⁹ between justification and extenuation. He says to Menelaus ⁵⁰ :

Yet have we where to charge our miseries . . .
Phoebus, by whose command I slew my mother.

⁴⁶ 75-6.

⁴⁷ 1292-7.

⁴⁸ *Laws*, ix. ch. 9.

⁴⁹ See 268 ff., 390 ff., 545 ff., 776, 1229.

⁵⁰ 414-416.

Again, he says to Tyndareus ⁵¹ :

See'st thou Apollo, who to mortal ears
 Sounds from his central cave the voice of truth ?
 Him we obey in all that he commands :
 Obeying his commands I slew my mother :
 Drag him then to your bar, put him to death :
 The guilt is his, not mine. What should I do ?
 The guilt on him transferred, is not the god
 Sufficient to absolve me ? Where shall man
 Find refuge if the god, at whose command
 I did it, will not now save me from death ?

But the attitude of Tyndareus and Menelaus towards Orestes' act which is revealed in their conversation with Orestes is fundamentally different. This attitude discloses a condemnation of private vengeance from the standpoint of social justice. As we conceive it, this attitude would normally have been adopted by Greek States, not only in Euripidean times but also in Draconian times. We have suggested that Euripides is following, in the play, a post-Draconian Argive legend—we use the term ' post-Draconian ' merely to indicate that the legend presumes the existence of State interference in the trial and punishment of homicide. This legend was therefore, as we conceive it, so historical, so ' modern '—in a sense—that it demanded little or no conscious archaising on the part of Euripides. Tyndareus says to Menelaus ⁵² :

If virtuous and dishonourable deeds
 Are plain to all, who more unwise than he ?
 Deaf to the call of justice, he infringed
 The firm authority of the public laws :
 For when beneath my daughter's murd'ring axe
 Th' imperial Agamemnon bowed his head,
 A horrid deed, which never shall I praise,
 He ought t' have called the laws, the righteous laws,
 T' avenge the blood, and by appeal to them
 Have driven his mother from the royal house :
 Thus 'midst his ills calm reason had borne rule,
 Justice had held its course, and he been righteous.
 But the same Fury which had seized his mother
 Had now seized him ; and with ungoverned rage,
 Justly abhorrent of her impious deed,
 He did a deed more impious, slew his mother.

In this passage the historical Greek system of State trial and the historical penalty of exile for wilful murder are clearly indicated. We need not point out how inapplicable such an attitude is to Homeric Achaeans.

The manner in which social justice abolished the evils of vendetta is thus described ⁵³:

For, let me ask thee, should the faithless wife
 Bathe in the husband's blood her murd'rous hands,
 And should th' avenging son the mother slay,
 His son retaliate by deed of blood,
 What bound shall the progressive mischief know ?
 The wisdom of our ancestors ordained
 That he who had the guilt of blood upon him
 Be not allowed the sight, the walks of men,
 By banishment atoning, not by death :
 Else one must always be to death devote
 Who hath the last pollution on his hands.

It was natural that the Greeks of the 'pollution' era—that is, the historical period—should have referred to the chaotic vendetta which their 'fathers' had abolished. But the Achaean vengeance-system was not a chaotic vendetta, because Achaean military discipline and Achaean public opinion were able to maintain a distinction between murder and just revenge.⁵⁴ We have said ⁵⁵ that it was only in the Dark Ages of chaos and migration—that is, from 1000 B.C. to 700 B.C.—when the control of tribal chieftains, of phratry-assemblies, and of clan-courts, and the public co-operation of organised groups were paralysed and rendered impotent, that the instinct and habit of vendetta was awakened from its slumber. In the seventh century the doctrine of pollution and the evolution of State power restored equilibrium by the institution of the historical system of homicide law. But it was erroneously supposed that the vendetta system which was thus abolished had always existed in prehistoric Greece.

If in historical Greece Clytaemnestra had slain her husband, she would have been tried by a regular State-court, and, as her husband was not a kinsman, she would have been permitted, as Tyndareus here implies, the option of exile. But Tyndareus does not correctly visualise the Achaean mode of

⁵³ 507-517.

⁵⁴ *Supra*, p. 76.

⁵⁵ *Supra*, pp. 122, 132.

vengeance. He argues as if trials for homicide had been always and everywhere operative. This anachronism, at least, is absent in Aeschylus, who could not have attributed such an attitude to his characters, since, in his view, the trial of Orestes was the first Greek murder-trial.⁵⁶ Hence it is that the condemnation of 'private vengeance' from the standpoint of social justice does not appear in Aeschylus—nor, we may add, in Sophocles.⁵⁷

Further, the suggestion of Tyndareus that Clytaemnestra could have been sent into exile is an additional anachronism. In historical Greece a wilful murderer usually went into exile. But the autocratic Homeric Clytaemnestra remained in the royal palace with Aegisthus! Thus Tyndareus again fails to reproduce the essential elements of the Homeric story. Now Euripides elsewhere, as we shall see, frequently reproduces quite correctly the Homeric atmosphere. If then he attributes here⁵⁸ to Tyndareus a non-Homeric standpoint, it is not because he was incapable of correctly archaizing, but because he deliberately depicted a non-Homeric Oresteian legend and attributed a non-Homeric attitude to the Argives. The views which he attributes to Tyndareus are quite consistent with the subsequent verdict of the Argive court, and with the sentence of death for unjustifiable kin-slaying, which is pronounced against Orestes and Electra.

There is a very archaic—an almost Homeric—tone in the words with which, we are told, the herald ushered in the Argive trial⁵⁹:

Soon as th' assembly sate, the herald's voice
Proclaimed free speech to all who wished to speak,
Whether Orestes for his mother slain
Should die or not.

In historical times such a proclamation could only be associated with a trial which was known as an *ἄγων τιμητός*, concerning offences for which the penalty was not fixed by law, and for which, therefore, the penalty had to be determined by the court, as, for instance, the crime of Impiety.⁶⁰ We have argued⁶¹ that there were no homicide-indictments (*γραφάι*

⁵⁶ *Eum.* 685.

⁵⁷ See *supra*, p. 308.

⁵⁸ 256-7.

⁵⁹ 884 ff.

⁶⁰ Plato, *Apologia Socratis*, 36-42.

⁶¹ *Supra*, p. 258 ff.

φόνου) at Athens, but even if there had been there could not have been any assessment of penalties in such cases, since the penalties for homicide were fixed by law from time immemorial. It is therefore, we believe, from the Homeric *ἀγορά* rather than from the Athenian Heliastic courts that Euripides received his inspiration for such a proclamation. Moreover, his description of the composition and of the general procedure of this Argive court is very Homeric, and reminds us very forcibly of other archaic pictures in Greek drama, such as the Council of Achæan chieftains in the *Ajax* of Sophocles,⁶² and the Assembly of the Greeks who condemn to death Helen⁶³ and Polyxena.⁶⁴ It is a herald who conveys the death-sentence pronounced by the Greeks against Astyanax, in the *Troades*⁶⁵ of Euripides. Thus we have in this play a strange mixture of the archaic and the historical. We sometimes feel as if the Achæan atmosphere had momentarily reappeared in the Draconian age, as if Homeric heroes had been suddenly transformed into historical Argives, without, however, having completely divested themselves of their Homeric usages.

Pollux assures us⁶⁶ that at the Athenian Areopagus it was not permitted to appeal to pity or to indulge in rhetorical persuasion, but it was necessary for the plaintiff and the defendant to confine themselves to the issues of guilt or innocence. Similarly, we may assume, at the Delphinium court no discussion of general principles would have been admitted, but merely evidential statements of fact. But at the Argive trial in this play there is no attempt at an investigation of facts. The speeches are entirely concerned with general principles. It is impossible to maintain that Euripides is explaining, in this trial, his ideas, based on contemporary practice, of the manner in which Orestes ought to have been tried.

Talthybius, the ubiquitous herald, sets his sails to the wind, but he cannot, unfortunately, decide how the wind is going to blow. He does not approve of the vengeance of Orestes, because, he says,⁶⁷ it establishes a bad precedent in regard to parents. This viewpoint ignores the distinction

⁶² *Ajax*, 749 ff.⁶³ Eur. *Troades*, 900.⁶⁴ Eur. *Hecuba*, 119 ff.⁶⁵ *Troades*, 715, 780.⁶⁶ viii. 117.⁶⁷ 892-3.

between murder and vengeance. Orestes is conceived as a matricide, pure and simple, and being a matricide his guilt is greater than that of Clytaemnestra. It is regrettable, of course, that Agamemnon was slain, but Clytaemnestra, his slayer, was not his daughter, but only his wife ! The Erinnyes, in Aeschylus,⁶⁸ advance a similar argument, but in the *Orestes* such reasoning is more logical because the Argive court interprets the vengeance of Orestes as an act of barbarous vendetta and assumes that such a mode of vengeance was already obsolete and unlawful in his time. It is only by assuming that Orestes and Clytaemnestra were both criminals that one can logically compare the act of Clytaemnestra with that of Orestes and maintain that the act of Orestes was, because of blood relationship, more criminal than that of Clytaemnestra. It is thus that Hesiod,⁶⁹ living in an age of chaotic vendetta, would have singled out for special condemnation the shedding of kindred blood. In the Aeschylean drama, on the other hand, and therefore, as we think, in the Attic legends of Orestes, 'private vengeance' is not definitely and dogmatically assumed to have been obsolete and unlawful in the time of Orestes. There is of course a doubt about the matter such as would naturally have arisen amongst legend-makers of the transitional seventh century. This doubt is, naturally enough, availed of by the Erinnyes of the slain. But Apollo has no doubt about the matter. In the interests of justice he commands a 'private' avenger to avenge.

After Talthybius, Diomedes utters a speech⁷⁰ in which he attributes the guilt of matricide not only to Orestes but also to Electra, and proposes not indeed that they should be put to death, but that they should be banished from the city of Argos. He suggests, very curiously, that the death penalty would be impious ! It is difficult to find any legal justification for this view. It is quite possible that Euripides is depicting for dramatic purposes, with a complete disregard for law, a variety of possible penalties. In Attic law a criminal who was convicted in a matter of grave import was punished by a general penalty of ἀτιμία, or loss of citizen rights ; in some cases, such as parent-slaying, this degradation of civic status involved death and confiscation of property : in

⁶⁸ *Eum.* 212, 608.

⁶⁹ *Works and Days*, 180 ff.

⁷⁰ 898 ff.

other cases, such as sacrilege, it involved death without confiscation; in ordinary wilful murder, it involved either death or banishment and confiscation, and in cases of malicious wounding the penalty of ἀτιμία denoted simple banishment without confiscation. It may be, then, that Euripides is applying such a gradation of penalties⁷¹ to a period when the penalties for crime were not rigidly fixed.

If we suppose that in this speech of Diomedes Euripides is consciously archaising, his archaism is not very felicitous. For kin-slaying amongst Pelasgian clans, we have seen,⁷² the normal penalty was exile: for kin-slaying amongst the Achaeans, the penalty was death. In historical times, when private vengeance gave place to State execution, the penalty was invariably death. Hence, Diomedes' reference to impiety can become legally intelligible only if it is interpreted according to the standpoint of the tribal renaissance of post-Achaean days, when the group-system resumed its sway. From such a standpoint the act of the Achaean Orestes would have been viewed as matricide by the Elders of the tribe and in the public opinion of the clans. If a tribal court sat in judgment on Orestes in, say, the year 1000 B.C. and discussed the penalty which his act deserved, it would have been natural to suggest the exile penalty which was the normal punishment for kin-slayers. If then Euripides has been so very subtle in his archaising as to have attributed this proposal to the Argive Diomedes, he might at least have selected for the mouth-piece of this utterance someone whose name was not so inextricably connected with the Achaean domination!

After Diomedes, there rises up a bold bad man whom the messenger describes as 'an Argive who was not an Argive'⁷³ and who is generally supposed to typify, in Euripides' view, the Athenian demagogue Cleophon.⁷⁴ His speech, we are told,⁷⁵ had been previously prepared for him by Tyndareus, who, though the nearest kinsman of the slain Clytaemnestra, does not speak at all at this assembly! His nameless subordinate, however, proposed⁷⁶ that Orestes and Electra should be stoned

⁷¹ See *supra*, p. 225 ff.

⁷² *Supra*, pp. 9, 47.

⁷³ 903-6. ὥσεί ἐλεγε νόθος πολίτης (Schol.)

⁷⁴ Cleophon was of Thracian descent. (Schol. ad v. 772.)

⁷⁵ 915.

⁷⁶ 914-15.

to death. This was the opinion which in a modified form the assembly ultimately adopted,⁷⁷ though only one speaker actually proposed it. Orestes succeeded in obtaining his request that he, together with his sister Electra, should be allowed to end their own lives in a respectable manner.

The penalty of death by stoning is not mentioned in Homer, in Attic law, or in Plato's laws. Was it, then, mentioned in an Argive legend or did Euripides invent it? The penalty may have existed in the antique system of tribal vengeance. Plato assures us⁷⁸ that the slayer of a parent or a kinsman was stoned, *after death*, by the judges and the magistrates. This custom was probably a survival of the more primitive custom of stoning criminals to death. If the Argive legend of Orestes did not mention such a penalty, Euripides is either archaising on the basis of this survival or is importing into the drama an idea which he derived from the crude customs of outlying 'barbarian' lands.

The sentence of the Argive court permitted suicide as an alternative to execution. We do not know of any legal basis for this option. We have no reason to doubt that suicide was always in practice, if not in theory, accepted as an alternative for execution in historical Greece. Here, however, the theory is accepted by a homicide-tribunal.

Before the verdict of the court was given, a nameless man, for whom Euripides clearly feels much admiration,⁷⁹ a small farmer by occupation, proposed to crown Orestes because he avenged his father by slaying his impious mother, whose adulterous criminality was fatal, he said, to the interests of a martial or militaristic society. We have said⁸⁰ that the legal aspect of the vengeance of Orestes is complicated to some degree by the fact that his mother was an adulteress. We have argued⁸¹ that death was not the regular penalty for adultery in Greek tribal life, and we do not think that the Achaeans, like the German tribes, followed a sterner code. It is difficult to derive any deductions either in regard to homicide or to adultery from this argument, because adultery and murder are mentioned in conjunction. The following words of the nameless speaker⁸² seem, however, to imply

⁷⁷ 944-6.⁷⁸ *Laws*, ix. ch. 12; *supra*, p. 231.⁷⁹ 917 ff.⁸⁰ *Supra*, p. 74.⁸¹ *Supra*, p. 59.⁸² 923-30.

that adultery required a more serious punishment than that which custom sanctioned :

For who in distant fields, at honour's call,
Would wield his martial arms if in his absence
Pollution stains his wife and his pure bed
Be made a foul sty of adulterous lust ?

A similar conjunction of murder and adultery is revealed in the words of Orestes,⁸³ who poses as a pioneer in the application of the death penalty to adultery :

Ye illustrious Argives . . . to vindicate your honour,
Not less than to avenge my father's death,
I did this deed. For should the husband's blood
Leave on the wife's hand no foul stain, full soon
The purple tide would flow, or you must sink—
O shame to manhood !—vile slaves to your wives.
Now she that to my father's bed was false
Hath died for it. If you require my life,
The law hath lost its force : and who shall say
His own life is secure, as these bold deeds
From frequency draw force and mock at justice ?

In Aeschylus and in Sophocles the only plea of justification which Orestes advances is the command of Apollo. But in the Euripidean account of the Argive trial Apollo is not mentioned at all. We cannot explain this strange fact by supposing that it would have been unprofitable to refer to him because at the end of the play the decree of Apollo is accepted without question by the Argives. We cannot suppose that Euripides, in his conscious archaising, is trying to visualise a pre-Apolline Court, as he would probably, in such a case, have ignored Apollo completely and avoided all references to pollution. The most satisfactory and, to our mind, the most obvious explanation of the absence of any reference to Apollo at the Argive trial is this : Apollo appears in the Oresteian legends in the rôle of justifier and purifier. Such a rôle is consistent only with the conception of Orestes as an avenger of partial guilt or as an entirely justified avenger. It is quite irreconcilable with the theory that Orestes was a wilful matricide of full guilt. Now, the

verdict of the Argive court conceived Orestes as a guilty matricide worthy of death. The only speaker who approves of his act does so not because he was a just avenger, but because his mother was an adulteress. To introduce Apollo into a court of this kind would have been to expose him to ridicule and contempt. Hence the attitude of the Argives to Orestes, whether invented by Euripides or, more probably, as we think, enshrined in an Argive legend, made it impossible to connect Apollo with this Argive trial.

In the above quotation Orestes poses as a pioneer in the stern punishment of adultery. We have already ⁸⁴ suggested what we consider to have been the evolution of the penalties of adultery in Greece. We have quoted Pausanias ⁸⁵ for the view that, at first, adultery was leniently treated. A certain Hyettus, he says, first punished it by death, and Dracon finally legalised the death penalty, but only for adultery *in flagrante delicto*. We believe that this plea of Orestes was the invention of Euripides. Seeing that he could not permit any reference to Apollo at the Argive trial, he had to invent a new plea. But ancient law shows no regard for pioneers. Until the law is changed the pioneer reformer is a criminal. In our opinion, Greek law never adopted the penalty for adultery which, according to Orestes, it ought to have adopted.

In this quotation Orestes refers ⁸⁶ to a law upon which he seems to rely for his acquittal. 'If you require my life,' he says, 'the law hath lost its force.' It is obvious that he is not referring to any law which the Argives recognise, for otherwise they would have acquitted him. Yet he suggests that such a law exists somewhere. We cannot suppose that he is referring to an actual law which prescribed the death-penalty for adultery, since he is definitely represented, like the nameless farmer, as endeavouring to persuade the Argives to adopt a code of penalties for adultery which would be more conducive to martial efficiency than the existing system. In the *Troades* the Achaean army conferred on Menelaus the right to slay the adulterous Helen. But this fact implies that no existing law would have justified such a slaying. Moreover, there was nothing in contemporary Attic law or social custom to suggest to Euripides that murder and adultery

⁸⁴ *Supra*, pp. 58 ff.; 217.

⁸⁵ ix. 36.

⁸⁶ 941.

in conjunction could be legally punished by death. Yet the law which Orestes mentions implies the legality of such a punishment somewhere. We cannot suppose that Euripides is indicating a contrast between Athenian and Argive legislation, for, so far as murder is concerned, we believe that their laws were similar. The explanation which we propose to offer for this peculiar reference is an alternative one, such as we have suggested in regard to the speech of Diomedes in the play. We believe that the law which Orestes mentions is either a pure fabrication of Euripides' mind, derived from the supposition that archaic penalties were more severe than the penalties of contemporary law, or an instance of conscious archaising, in which Euripides attributes to an Homeric Achaean a discrimination in certain cases between murder and just revenge. The former alternative is rendered somewhat improbable by the fact that the Argives do not recognise the legality of this 'archaic penalty.' The latter alternative is therefore the more probable and suggests, if it is correct, that Euripides could sometimes be very subtle and, at the same time, successful in his archaising. According to this theory, Orestes suggests that he is justified by a law of the Achaean caste. But the Argives, who reflect the viewpoint of historical social law, reject a plea of justification which would compel them to recognise the legality of private vengeance.

Between the conclusion of this trial of Orestes at Argos and the appearance of Apollo as a *deus ex machina* at the end of the play there occur some exciting incidents, such as the seizure of Hermione as a hostage and the murder of Helen⁸⁷ by Orestes. Apart from the fact that Menelaus, her husband, is very angry and vindictive, no one else seems to take much interest in the death of that famous woman who lived (and died!) in so many places.⁸⁸ The argument used by Pylades to Orestes in urging the death of Helen is very unscrupulous.⁸⁹ 'Slay Helen,' he says, 'and people will forget that you slew your mother.' The slaying of Helen was really murder, but Apollo ignores it. Legally, it does not exist. Legally, its presence in the *Orestes* is a grotesque anomaly. But it has

⁸⁷ 1300. Her miraculous translation to 'heaven' is not inconsistent with, but rather, we think, confirms our opinion that she was slain.

⁸⁸ See, e.g., Herodotus ii. 113 ff.; Eur. *Helen*, 1640 ff.; *Troades*, 875 ff.

⁸⁹ 1140.

at least this value: it shows us how little Euripides cared for the legal aspect of a story as compared with its dramatic vitality. When Apollo comes on the scene, Orestes is in the act of setting fire to the royal palace at Argos. Orestes' threats of incendiarism, his use of Hermione as a hostage, and the murder of Helen have delayed the doom which was pronounced by the Argives until Apollo comes! But when he comes,⁹⁰ how different is the picture! The conception of Orestes' vengeance is completely altered. In an instant we pass from wilful matricide to quasi-involuntary matricide. We breathe once more the atmosphere of the Attic legend which we find in the *Electra*. Apollo is not consulted about the problem which had occupied, throughout the play, the attention of the Argive court, namely the question whether Orestes pursued an obsolete course of unlawful vendetta and obeyed the dictates of an Achæan system of vengeance which a later system of social justice had superseded, or whether he did not. The only problem which confronts Apollo is the question how he will most easily persuade the Argives, and the Erinnyes of Clytaemnestra, to recognise the fact that he, Apollo, commanded Orestes to slay his mother and that, therefore, Orestes' act was either justified or at least extenuated.

The contrast in this drama between the attitude which Apollo adopts in regard to Orestes and the attitude which the Argives adopt is so obvious and important that the legends which incorporated these attitudes could never have been reconciled. No Athenian with an interest in legal problems could ever have thought of them together without mentally contrasting them. But these legends, namely what we have called the Argive and the Attic legends, are both found in juxtaposition in this drama, and Euripides is naturally compelled to make use of Apollo as a *deus ex machina* in order to produce a nominal appearance of dramatic unity. Euripides could not have ignored altogether the Attic legend. He was an Athenian, not an Argive. The *Electra* could have been written without any reference to the Areopagus, but the *Iphigenia in Tauris* could not. Thus, whether he is condemned or acquitted at Argos, Orestes must in either event

go to Athens! But before he goes to Athens, Orestes must go into exile for a year in Arcadia.⁹¹ Two problems now arise: (1) Why is one year the limit of the exile-period? (2) Why is this exile spent in Arcadia? The first question can only be solved by a reference to the *Laws* of Plato. In the *Laws*⁹² Plato assures us that there was a fixed penalty of one year's exile which was applicable only to the following homicide cases: (1) involuntary homicide; (2) slaying in a passion (in which we include quasi-involuntary or extenuated homicide), if the dying person 'forgave' his slayer; and (3) quasi-involuntary kin-slaying, if the slayer was 'forgiven.' Of these three possible cases, only the last can be relevantly⁹³ applied to the slaying of Clytaemnestra by Orestes. Legally therefore it is necessary to regard the act of Orestes as quasi-involuntary matricide if we wish to explain the penalty which Apollo decrees at the end of the play. When Orestes has served a period of one year's exile, he will be 'acquitted' by the Areopagus.⁹⁴ We cannot interpret this acquittal as a verdict of 'not guilty,' since on this assumption the preliminary penalty of one year's exile becomes either meaningless or unjust. It is a curious kind of 'acquittal,' since it is intended to imply that a certain degree of guilt has now been sufficiently atoned. In the Attic homicide-code there is no reference to an acquittal of this kind, but Plato mentions something which suggests that such an acquittal was a legal possibility. Speaking of extenuated homicide, Plato says⁹⁵ that 'when the period of exile shall have expired, it is right to send twelve judges to the borders of the State that . . . they may judge of the pity to be shown and of the return (of the exiles to their home-land).' Now Apollo in this play says⁹⁶ that Orestes will be tried by gods, not by men, at Athens. Demosthenes gives the tradition more explicitly when he says⁹⁷ that 'the twelve gods judged between Orestes and the Erinyes.'

We have said that there were two Attic legends of Orestes, that one of these represented him as tried by the Areopagus

⁹¹ 1645.

⁹² *Laws*, ix. chs. 8, 9.

⁹³ See *supra*, p. 256. The command of Apollo was an extra-legal extenuation of Orestes' act. This act therefore merited, though it did not actually receive, the 'forgiveness' of Clytaemnestra.

⁹⁴ 1648 ff.

⁹⁵ *Laws*, ix. ch. 9.

⁹⁶ 1650.

⁹⁷ In *Aristoc.* 641, 27.

on a plea of justifiable matricide, and the other, on a plea of quasi-involuntary matricide. There is some difficulty involved in connecting the Areopagus with either of these pleas. In regard to the first we must assume that the Areopagus in early times tried pleas of homicide between strangers which were normally tried by the Delphinium. In regard to the second plea, we suggest that it is necessary to suppose that the ancient Areopagus would have tried pleas of involuntary and quasi-involuntary homicide which normally came under the jurisdiction of the Palladium court and of minor local courts. It is therefore, we must assume, in the unusual rôle of a reconciling court that the Athenian Areopagus 'acquitted' Orestes in the 'second Attic legend.' That he was not satisfactorily 'acquitted' will be manifest⁹⁸ when we discuss the *Iphigenia in Tauris*. Orestes had to leave Athens and to undergo still further wanderings as an exile, because all the Erinnyes did not recognise his 'acquittal.' We have already suggested⁹⁹ that the Erinnyes in the Oresteian legend frequently symbolise the conflict of opinions which sometimes preceded the consent of the relatives of the slain to accept 'appeasement' in cases of involuntary and quasi-involuntary homicide. The court to which Plato refers in the passage cited above was a 'court of reconciliation.' The 'twelve judges' whom Plato mentions may have been suggested by the 'twelve gods' who judged between the Erinnyes and Orestes. Such myths and such 'courts of reconciliation' made it possible, we believe, for the creators of the 'second Attic legend' to connect Orestes with the Areopagus.

It is not easy to explain why Euripides selected Arcadia as the place of exile for Orestes. First of all, there seems to have existed an Arcadian variant of the Oresteian legend which associated Orestes with Arcadia and maintained that he actually died there.¹⁰⁰ One of the Arcadian towns was called, from Orestes, 'Oresteum.' Again, it is possible to suppose that Euripides, who, in this drama, reveals a certain desire for originality, should have selected Arcadia because Aeschylus and Sophocles had exalted the association with Orestes of Athens and of Phocis, and had entirely ignored Arcadia. But there may also have been a religious or quasi-legal fact

⁹⁸ *Infra*, p. 370 ff. ⁹⁹ *Supra*, p. 124. ¹⁰⁰ Schol. ad Eur. *Orest.* 1640.

behind this idea of Euripides. We have seen that, in Attic law,¹⁰¹ a homicide-exile was debarred (a) from his native place, (b) from the country of the slain, (c) from the State in which the deed took place. The basis of these legal facts was sentimental or religious. It was supposed that the spirit of the slain was not merely intolerant of the presence of the slayer in civic proximity to his burial-place, but was also indignant at the thought that the slayer should be enjoying himself, as it were, and not suffering any real hardships as a punishment for his crime.¹⁰² Now, Argos was of course forbidden ground to the exiled Orestes. But one legend said that he had lived in Athens, another that he had lived in Phocis, before he slew his mother. In these places he had made friends and companions. In these places exile would not have involved for him sufficient hardship and suffering. Arcadia, however, held no attraction for Orestes, and hence it was to Arcadia that the Erinnyes of Clytaemnestra desired that he should go.

We can therefore, in the light of these conclusions, understand in their full meaning the words of Apollo to Orestes¹⁰³ :

Thou, Orestes,
 Quitting this country, in Parrhasia's plains
 For one revolving year thy dwelling fix,
 And give the place thy name : that honour share
 With Azan and with Arcas. Pass from thence
 To Athens : there against the Furies urge
 Thy plea ; acquit thee of thy mother's blood :
 There in that awful court the gods shall sit
 Thy judges ; and thy just cause shall prevail.

After the lapse of a single year and after his 'acquittal' by the Areopagus, Orestes may again return to the city of Argos. This return is announced prophetically by Apollo to Menelaus, when he says¹⁰⁴ :

Thou, Menelaus, yield that Orestes reign
 In Argos : haste to Sparta, reign thou there. . . .
 It shall be mine t' appease the State to him,
 Compelled by my command to slay his mother.

¹⁰¹ *Supra*, p. 163.

¹⁰³ 1643-1652.

¹⁰² See Plato, *Laws*, ix. ch. 8.

¹⁰⁴ 1660-5.

THE PROBLEM OF PYLADES

We may now consider a problem concerning Pylades which is presented by this drama. As in Aeschylus and in Sophocles, so in Euripides, Pylades co-operates with Orestes in avenging Agamemnon. But in Euripides the guilt of Pylades is more clearly emphasised. Hence, we hear for the first time that he is punished. He tells Orestes ¹⁰⁵ :

My father in his rage hath banished me.

We saw that in Greek law the plotter, the co-operator, was as guilty as the actual slayer.¹⁰⁶ Hence the problem of Pylades' guilt depends on that of Orestes' guilt. If therefore Strophius, the King of the Phocian land, punishes Pylades *pendente lite*,¹⁰⁷ we attribute this to the autocratic power of a king on the one hand, and on the other to the general principle of Greek law that an accused person was presumed to be guilty until he had established his innocence.¹⁰⁸ Now, in the *Electra* ¹⁰⁹ Castor and Pollux declare that Electra will marry Pylades and that he will take her to his home, but there is a suggestion that a brief period of time, probably one year, must elapse before this event takes place. We presume that he would be permitted by his father to return, in obedience to the divine decree. In the *Orestes* he is still an exile from his home, as the guilt which he shares with Orestes has not yet been atoned by exile. But has he any legal right to remain in Argos? Orestes warns him that his life is in danger there, but Pylades replies that the Argives have no power to punish him ¹¹⁰ :

They have no right : I am no subject here.

Which of these opinions is correct—that of Orestes or that of Pylades? We have shown ¹¹¹ that, in Greek law, accused and convicted slayers were debarred from three possible States, of which one was the State of the deceased. Demosthenes says ¹¹² : 'The boundary-line for all homicides is exclusion from the country of the deceased . . . from everything in which the deceased in his lifetime had a part.' We cannot of course suppose that this law applied to unconvicted slayers, but we may presume that they were at least debarred

¹⁰⁵ 765.¹⁰⁶ *Supra*, p. 223 f.¹⁰⁷ 765.¹⁰⁸ *Supra*, p. 196.¹⁰⁹ 1249 and 1285.¹¹⁰ 771.¹¹¹ *Supra*, p. 163.¹¹² *In Aristoc.* 635; see also Plato, *Laus*, ix. ch. 8.

from the temples and the public places of the State. Hence we can reconcile these two opinions by assuming that Orestes is referring to the public aspect and Pylades to the private aspect of residence at Argos. When Pylades asserts that he deserves to suffer at Argos,¹¹³ he is referring to the period which follows the trial of Orestes, which involved, we presume, a condemnation of Pylades. Menelaus asks if Pylades had a share in the slaying of Helen, and leaves us in no doubt that his life is forfeit in Argos.¹¹⁴ We have quoted ¹¹⁵ Plato in support of the assertion that strangers were liable to more serious penalties for homicide than natives were. But this assertion only applies to convicted slayers. Hence it is possible to accept the suggestion of Euripides that Pylades was not imprisoned at Argos, as Orestes was, and that he visited Phocis before the trial of Orestes.

THE PROBLEM OF ORESTES' POLLUTION

From what has been said it will be obvious that Orestes is more 'polluted' in Euripides than he is in Aeschylus or in Sophocles. The 'pollution' of a person who was conceived as guilty of wilful and unjustified matricide was the greatest and the most horrible kind of 'pollution,' and it is this conception of Orestes which predominates in this Euripidean drama. At the end of the play the pollution of Orestes is miraculously diminished. This is because Orestes is here conceived not as a wilful matricide of full guilt, but as a quasi-involuntary matricide who transfers the main portion of his guilt to Apollo. In Greek law an extenuated act of homicide produced, even when the dying person 'forgave,' a minor temporary 'pollution,' which continued until the slayer had endured a minimum period of one year's exile and had appeased the relatives of the slain. During this period of exile the slayer had to abstain from three possible States, which we have already defined. But a kin-slayer was in a peculiar position. Until the fact of involuntariness was established before a court he was liable to be regarded as polluted wherever he went. In Arcadia Orestes was not 'polluted,' according to Euripides, perhaps because Apollo

¹¹³ 1074.

¹¹⁴ 1591 ff.

¹¹⁵ *Supra*, p. 163.

commanded him to go there, perhaps because his residence there did not create any special anger on the part of the slain Clytaemnestra. But in Argos he would have been polluted, because Argos was his native State and could not therefore have been for him a place of exile even if he had been guilty of involuntary homicide, and not, as he was, of involuntary kin-slaying. In Athens, too, he would have been regarded as polluted until he had been tried, especially if he was accused (as he was accused, by the Erinnyes) of wilful kin-slaying; but his pollution would have been that of an untried criminal, and therefore public rather than private. We shall see in the *Iphigēia in Tauris* that he was, in a certain sense, polluted when he came to Athens for his trial, and the Athenians based upon this 'pollution' an explanation of a peculiar ritual of which the origin was obscure, namely the Feast of the Pitchers (χόες) at the Anthesteria.¹¹⁶ Now in Aeschylus and in Sophocles the predominant conception of Orestes is that of an unconvicted matricide who pleads justification for his act; and if we find, in addition, the conception of Orestes as a quasi-involuntary matricide, this does not affect to any great extent the question of Orestes' pollution, because Orestes has already atoned for the guilt of extenuated matricide. He has actually been purged by Apollo himself, and he is still, so far as Athens is concerned, untried and unconvicted, and therefore his pollution is minor and merely 'public'—that is, he is forbidden to frequent the temples or public places but he is free to associate privately with his fellow-men. In Euripides, however, Orestes is convicted of wilful matricide by an Argive court. His pollution is therefore technically so great that no Greek city could receive him. If his pollution is subsequently reduced to the minor pollution of involuntary kin-slaying, this is only because Apollo acts not as a purifier, but as a dramatic *deus ex machina* who does miraculous and impossible things.

Wedd, in his edition of this play, proposes a strange explanation for the graver pollution of the Euripidean Orestes, which is based, as we think, on a false interpretation of the dramatic ideals of Euripides. 'In Sophocles,' he says,¹¹⁷ 'all men will honour Orestes, in Aeschylus he is welcomed as a

¹¹⁶ *Infra*, p. 375 ff.

¹¹⁷ See Introduction to *Orestes*, p. xxvi ff.

deliverer, in Euripides the whole State rises up in horror against him . . . in Aeschylus, although Orestes flies for his first purification to Apollo, many others aid in freeing him from guilt and he associates with thousands in harmless intercourse ; in Euripides all doors are shut against him, all speech is denied him, none will perform the purifying rites for him ; the full rigour of Athenian law, which refused to the parricide alone among murderers the right of escaping death by flight, is exercised against him . . . the attitude of the whole State towards the matricide, the feeling of the murderers themselves with regard to their own act, are precisely what would be expected if in modern (? fifth century B.C.) Athens two children were induced by an oracle to take the law into their own hands and put their mother to death.'

This account of the facts is fairly accurate, but it suggests that the Euripidean Orestes is a definite unitary personality, whereas we have shown that there are at least two different conceptions of Orestes in this play. The 'full rigour of Athenian law' is certainly apparent in the Argive verdict, but Wedd assumes that Euripides, in this play, adopted towards Orestes an attitude which ignored Homer and the Attic legends made familiar by Aeschylus and Sophocles, and which paid no attention to Apolline decrees. In this respect the account is misleading. It is based on an erroneous conception of Euripides. According to Wedd, Aeschylus and Sophocles adopted towards Greek legends an attitude which was quite different from that which Euripides adopted. These two dramatists accepted, he thinks, the legends in their main outline and sought to reproduce them as far as possible in their archaic setting, with the least possible admixture of 'historical' ideas. Euripides, on the contrary, adopted a critical attitude to the myths and made it his object *not* to reproduce them for their own sake but to contrast them with the more enlightened feeling of his own time. This interpretation of Euripides is very similar to that of Jevons which we have already discussed.¹¹⁸ The arguments which we adduced against Jevons are therefore applicable to Wedd, but we offer here an additional criticism which is more definitely concerned with the *Orestes* drama.

¹¹⁸ *Supra*, p. 332 f.

According to Wedd's hypothesis, the trial of Orestes at Argos which is described in this play contains the Euripidean conception of the manner in which the myth should have regarded Orestes. We admit that the viewpoint of the Argive court is in the main historical; by an anachronism it identifies the world of Orestes with that of the Argives of the historical era.

But the existence of an Argive legend which despite its lack of archaism¹¹⁹ was of considerable human interest would explain Euripides' description of such a trial. The fact that at the end of the play¹²⁰ the resultant verdict of the trial is ignored and reversed suggests rather that Euripides regarded the Attic legend as more archaic and therefore more correct than the Argive legend. We have already¹²¹ pointed out that the Messenger's description of the trial and the opinions of some of the speakers at the trial are more suggestive of the dramatist's own views than is the verdict of the Argive court. According to Wedd, the *real myth* occurs at the end of the play, and the rest of the play is the invention of Euripides. Euripides did not agree with the mythical presentation of Orestes, so he invented a new version which he deliberately set in emphatic contrast to the obsolete Attic myth! In our view, Euripides reproduces two pre-existing legends—an Attic and an Argive legend of Orestes. The Argive legend he regarded as more dramatic, the other as more orthodox but less replete with human interest. According to Wedd, the graver pollution of the Euripidean Orestes is due to the fact that Euripides conceived him as a fifth-century Athenian. For us, the different degrees of pollution in Orestes are due to different conceptions of Orestes' guilt or to the different legal and religious attitudes of the legends which the dramatists followed. They are not to be attributed to any distinction in the attitude of the dramatists to the legends themselves. The contrast is in the legends, not in the dramatists.

THE ERINNYES IN EURIPIDES

The conception of the Erinnyes in this play is naturally different from the Aeschylean and Sophoclean conceptions. It is similar to but not identical with the picture of these goddesses which we shall find in the *Iphigenia in Tauris*.¹²²

¹¹⁹ *Supra*, pp. 309, 345, 348. ¹²⁰ 1625 ff. ¹²¹ *Supra*, p. 344. ¹²² 285 ff.

It is, however, erroneous to suppose that the Furies who in this play assail Orestes are conceived by the dramatist as the subjective delusions of a madman. In our opinion, the Erinnyes in Euripides, though not actually brought upon the stage, are as real and as vital as the Erinnyes of Aeschylus.¹²³ If the psychical effect which these goddesses produce upon Orestes is greater in Euripides, this is because the Erinnyes stand, so to speak, like vultures beside their prey, since the Argives are about to condemn him to death, and because Orestes is conceived as irremediably polluted, a victim already 'devoted' to the Erinnyes. Hence, naturally, at Argos Orestes feels that he is powerless to struggle against the Erinnyes; his insight into the immediate future and his contemplation of his approaching fate deprives him, temporarily, of sanity and self-control. We must not suppose that a more tender or more civilised and 'modern' Orestes realises his guilt more keenly than does the archaic Orestes of Aeschylus, nor must we imagine that this feeling of remorse and self-contempt produces the mental insanity which creates a more hideous Erinnyes. On the contrary, Orestes is here, as elsewhere, subjectively innocent. He admits no moral guilt. If the legend insists that he is guilty, if the public opinion of the Argives decides to punish him with death, he does not admit the validity of this conception or of the decision, but nevertheless his fear of the Erinnyes naturally increases, since in death even more than in life can these titanic monsters torture the slayer. Aeschylus makes them say ¹²⁴:

It is our fate to track the steps of men
By murderous wantonness polluted, till
Beneath the earth they pass, nor yet for them
Can death grant freedom from our power.

It is Orestes' fear of such titanic monsters waiting to inflict on him unspeakable punishment that makes him cry out in this Euripidean drama:

Ah! mother, do not set thy Furies on me.
See how their fiery eyeballs glare in blood,
And wreathing snakes hiss in their horrid hair!
There, where they stand, ready to leap upon me. . . .¹²⁵

¹²³ *Supra*, pp. 123 ff; 298 ff. ¹²⁴ *Eum.* 338-41. ¹²⁵ *Orestes*, 255-7.

And again :

O Phoebus, they will kill me, those dire forms,
These Gorgon-visaged ministers of hell.¹²⁶

The conflicting attitudes of the Erinnyes of Clytaemnestra and the Erinnyes of Agamemnon which we found in the *Choephoroe* of Aeschylus are also revealed in this play. Speaking of his father's Erinnyes, Orestes says ¹²⁷ :

Had I in silence tamely borne her deeds,
Would not the murdered, justly hating me,
Have roused the Furies to torment my soul ?
Or hath she only her assisting fiends
And he no fav'ring power t' avenge his wrongs ?

We shall meet the Erinnyes of Clytaemnestra in a somewhat similar rôle in the *Iphigenia in Tauris*. But in that play the Erinnyes are not united in their conception of Orestes as they are here. Those Erinnyes who refuse to accept the 'acquittal' of Orestes by the Areopagus continue to pursue him to the Tauric Chersonese. When Orestes sees them he cries out ¹²⁸ :

Dost thou behold her, Pylades,
Dost thou not see this dragon fierce from hell—
Rushing to kill me, and against me rousing
Her horrid vipers ? See this other here
Emitting fire and slaughter from her vests,
Sails on her wings, my mother in her arms
Bearing, to hurl this mass of rock upon me !
Ah, she will kill me ! Whither shall I fly ?

The important thing to remember about the Euripidean Erinnyes is that they are real goddesses, not mental fictions. The Furies of the 'Argive Scene' are the Furies who pursue the criminal convicted of wilful matricide. For him there is no cleansing. To him no land can offer the shelter of its protection. 'Alone, he has arrayed against him the universe.'¹²⁹ Sooner or later he will be put to death and will be delivered into the hands of the Erinnyes. But in the Attic legend Orestes is not a wilful matricide. Hence the Erinnyes of the *Iphigenia* drama

¹²⁶ *Orestes*, 260-1.

¹²⁷ *Ib.* 580-84.

¹²⁸ *Iph.* *Taur.* 285-291.

¹²⁹ Glotz, *op. cit.* p. 45.

are not so implacable as the Erinnyes of the *Orestes*. They are placated by the simple device of transferring an image of Artemis from the Tauric land to Athens !

THE 'IPHIGENIA IN AULIDE' AND 'IPHIGENIA IN TAURIS'

A comparison of these two dramas reveals at first sight a rather obvious inconsistency. The Aulid play centres round Agamemnon's sacrificial slaying of his daughter at Aulis, while in the Tauric play the victim reappears as a priestess of Artemis amongst the Tauri ! It is generally maintained that the last scene of the Aulid play, which describes the substitution of a stag for the maiden by a miraculous intervention, is not the work of Euripides. But in the *Orestes* Apollo intervenes to preserve the life of Helen, though he can do so only by deifying her ! In the Aulid play, also, Iphigeneia is said to have been saved from death by deification.¹³⁰ In the Tauric drama, however, the daughter of Agamemnon has once more assumed a mortal form and appears as a priestess of Artemis among the Tauri. Nowhere else in Euripides can we find such a magical atmosphere. If the human Iphigeneia was really saved, would we not expect that her father and her mother should have been informed of her deliverance ? But they both believe that she is dead.¹³¹ The plea which Clytaemnestra advances in the *Electra* of Euripides,¹³² namely that the death of Agamemnon was a revenge for the death of her daughter, is based upon the reality of her death. Hence we think that Euripides reproduced both these legends of Iphigeneia simply because of their human interest and dramatic merit, without any special concern for their consistency. It is clear that Euripides did not invent the Aulid story, since it is found in Aeschylus¹³³ and in an epic poem,¹³⁴ entitled the *Cypria*, of post-Homeric date. The Tauric story is not found in any previous author, but we do not think that it was invented by Euripides. Both legends suggest a similar source. Two hundred years before Euripides¹³⁴ it was said that Iphigeneia was made immortal

¹³⁰ *Iph. in T.* 1580 ff.

¹³¹ *Iph. Aul.* 1615-20.

¹³² *Supra*, p. 336.

¹³³ *Agamemnon*, 194 ff.

¹³⁴ See England, *Introd. to Iph. in T.* p. xii.

by Artemis, who brought her from Aulis to the Tauri, and substituted for her a stag-victim. As soon as Iphigeneia became a goddess she could, like other goddesses, be easily transferred from place to place by a simple transference of images. Herodotus says¹³⁵ that the goddess to whom the Tauri sacrificed was Iphigeneia the daughter of Agamemnon. The word 'Iphigeneia' was apparently a cultus epithet of Artemis¹³⁶ which signified her connexion with fertility and her influence on the birth of men and animals. The real as distinct from the legendary deification of Iphigeneia was therefore due to the abstraction and personification of a cultus epithet. The existence of a temple of Artemis-Iphigeneia at Aulis, whence Agamemnon sailed to Troy, and the similarity of the name Iphigeneia with Iphianassa (the Homeric name for a daughter of Agamemnon), led to a belief in the deification of Iphianassa at Aulis. Moreover, the survival at Halae, in Attica, in historical times of a mock ritual of human sacrifice to Artemis induced the further idea that Iphianassa had been deified through sacrifice at Aulis. The existence at Halae of a statue of Artemis believed to have been brought from the Tauric land, and the existence there of a temple to 'the maiden' at which real rites of human sacrifice were enacted, explain the origin of the Tauric belief which is referred to by Herodotus. Iphianassa, identified with Iphigeneia, becomes a goddess among the Tauri, and Iphigeneia is worshipped as the daughter of Agamemnon! The final transition to the stage in which Iphigeneia returns to life as a priestess of Artemis at Tauri is explained by reference to the ancient tendency to identify the priest with the god and by the ritual of resurrection or re-birth which is found in ancient fertility-religion. England¹³⁷ thinks that this stage was probably pre-Euripidean but that the story of Orestes' visit to the Tauri was invented by Euripides. We do not think that even this story was of Euripidean origin. It belongs rather, we think, to the legends of the wandering of Orestes, which conceived him as guilty of extenuated or quasi-involuntary matricide which was ultimately 'forgiven.' When Iphigeneia was conceived as a priestess of Artemis and at the same time as the sister of Orestes, the evolution of a story which described

¹³⁵ iv. 103.¹³⁶ See England, *op. cit.* p. xviii.¹³⁷ *Op. cit.* p. xxi.

Orestes' visit to the Tauri does not, we think, require the genius of Euripides. Again, the inconsistencies of this story with the Aulid story which he has dramatised, with arguments which he introduces in the *Electra*¹³⁸ and with other legends of Orestes, such as the Arcadian legend, and, moreover, the insult to Apollo, the degradation of Athene, and the exaltation of Artemis which this story involves—all suggest a local origin for the story and the inspiration of theocratic legend-makers rather than the invention of a dramatist.

In the *Iphigenia in Aulide* the sacrifice of Iphigeneia is condemned as murder not only by Clytaemnestra¹³⁹ but also by Achilles,¹⁴⁰ whose promised marriage with Iphigeneia was the bait by which legend lured her from her Argive home. This view, we have said,¹⁴¹ belongs to an age which has rejected human sacrifice and which interprets all the traditional systems of blood-vengeance as unrestricted hereditary vendetta. It belongs therefore to the border-line between the Dark Ages of Greece and the civilised historical era. From the legal point of view Clytaemnestra's plea has no validity; we see in it rather a counterpart to the plea of justification which Orestes based on the command of Apollo. If Orestes claims the command of Apollo as a justification and if this claim is disputed, then the command of Artemis to Agamemnon may also be impugned. Artemis has the same right to obedience as Apollo has. If the Furies of the dead Clytaemnestra rejected the Apolline oracle, it was natural that the living Clytaemnestra should have repudiated the justice of the decree of Artemis at Aulis.

The *Iphigenia in Tauris* merits special consideration from our present point of view. As the general *dénouement* of the plot is sufficiently familiar, we shall proceed *in medias res*. We may confine our comments to the speech delivered by Orestes to Iphigeneia after their mutual recognition. Omitting for the moment Orestes' reference to the Athenian custom of using separate drinking-cups on the Libation-day of the Anthesteria festival, we will give first Orestes' description of his trial at Athens and of its immediate sequel. It will be noted that he has already served a period of exile before he

¹³⁸ 1020 ff.¹³⁹ 1190 ff.¹⁴⁰ 940 ff.¹⁴¹ *Supra*, pp. 337, 349.

reaches Athens and that the verdict of the Areopagus is not accepted by all the Erinnyes. We have suggested ¹⁴² that the Erinnyes symbolise in this legend the attitude of the relatives of the slain and that the Areopagus acts as a court of reconciliation rather than as an ordinary homicide court. We have seen that the relatives had always a theoretical right to refuse to accept 'appeasement' in cases of involuntary homicide, according to the Draconian law, *ἀπάντας ἢ τὸν κωλύοντα κρατεῖν*: 'let all be appeased or let one objector hold the field.'¹⁴³ We cannot suppose that the Erinnyes of Clytaemnestra in this play assume the same attitude to Orestes as they assume in the *Eumenides* of Aeschylus, for in Aeschylus the conversion of the Erinnyes signifies acceptance of the plea of justifiable matricide. Neither is their attitude to be compared to that of the Erinnyes of the Argive scene in the *Orestes*, for there they conceive Orestes as guilty of wilful matricide. Their attitude here is rather that of the 'second Attic legend,' in which Orestes is conceived as a matricide of partial guilt—his crime being conceived as extenuated by Apollo's command. According to this assumption we can explain the conflict of opinion which characterises the Erinnyes. It is derived from a legendary conception of the Erinnyes as the symbols of the relatives of the slain Clytaemnestra who are presumed to have refused 'appeasement' and to have resisted the verdict of the Areopagus, which was conceived as a court of reconciliation rather than as a high State court adjudicating with full authority on questions of guilt or innocence. Orestes says:

When vengeance from my hands o'ertook
My mother's deed—foul deed which let me pass
In silence—by the Furies' fierce assaults
To flight I was impelled: to Athens then
Apollo sent me, that, my cause there heard,
I might appease the vengeful powers whose names
May not be uttered. The tribunal there
Is holy, which for Mars when stained with blood,
Jove in old times established . . . ¹⁴⁴
. . . when to the tribunal on the mount

¹⁴² *Supra*, p. 360.¹⁴³ *Supra*, pp. 193, 213.¹⁴⁴ 940-946.

Of Mars I came, one stand I took, and one
 The Eldest of the Furies opposite :
 The cause was heard touching my mother's blood,
 And Phoebus saved me by his evidence ;
 Equal, by Pallas numbered, were the votes,
 And I from doom of blood victorious freed
 Such of the Furies as there sate, appeased
 By the just sentence, nigh the court resolved
 To fix their seat : *but others whom the law*
Appeased not, with relentless tortures still
Pursued me, till I reached the hallowed soil
 Of Phoebus.¹⁴⁵

But Orestes' visit to Delphi merely suspends, it does not terminate, the pursuit of the Erinnyes. At this point the religious rather than the legal aspect of the Erinnyes comes into prominence, and what may be described as a magical mode of appeasement is indicated by Apollo when he commands Orestes to visit the temple of Artemis among the Tauri, to bring back with him the image of the Tauric Artemis and to deposit it in an Attic temple. Orestes says to Iphigenia :

From the golden tripod burst
 The voice divine, and sent me to this shore,
 Commanding me to bear the image hence
 Which fell from Jove, and in th' Athenian land
 To fix it. . . . If we obtain
 The statue of the goddess, I no more
 With madness will be tortured.¹⁴⁶

Here we breathe the atmosphere of religious expiation rather than of legal atonement. The origin of this oracular command may be attributed to Attic priests of Artemis, for in the temple at Halae there was an image which was believed to have been brought from the Tauri.¹⁴⁷ This expiation was not in any real sense 'purgation,' but it was sufficiently similar in character to be readily confused with it.¹⁴⁸ We are reminded of the expiatory sacrifice offered at the altar of the Erinnyes or the Semnai Theai at the Areopagus by persons

¹⁴⁵ 961-972.

¹⁴⁶ 976-982.

¹⁴⁷ See Callimachus, *Hymn to Artemis*, 173 ff. ; England, *op. cit.* p. xiii.

¹⁴⁸ *Supra*, p. 117 ff.

who had been acquitted of homicide at the Areopagus court and by involuntary slayers who had returned from exile.¹⁴⁹ We may recall also the expiatory festival which Medea instituted at Corinth after she had slain her children and put to death the King of Corinth and his daughter.¹⁵⁰ In this play a mock ceremonial of purgation is performed in connexion with Orestes by Iphigeneia. She says ¹⁵¹:

The strangers come, the sacred ornaments,
The hallowed lambs, for I with blood must wash
This execrable blood away, the light
Of torches, and what else my rites require
To purify these strangers to the goddess.

It will seem curious that Thoas, a barbarian king, should admit the necessity for such a ceremony, seeing that in the *Andromache* ¹⁵² Hermione is made to say

Such is the whole abhorred barbarian race.
. . . friends by their dearest friends
Are murdered : deeds like these no wholesome law
Prohibits.

We shall see presently ¹⁵³ that this sentiment was the outcome of Hermione's emotional attitude to the Trojan Andromache.

ORESTES AND THE PITCHER FEAST

The suggestion of Orestes that his 'pollution,' when he reached the Attic land, was the origin of the Attic rite which prescribed the use of separate cups on the second day of the Anthesteria is of interest as an illustration of what is known as the aetiological myth. Orestes says to Iphigeneia ¹⁵⁴:

There arrived,
None willingly received me, by the gods
As one abhorred : and they, who felt the touch
Of shame, the hospitable board alone
Yielded, and though one common roof beneath,
Their silence showing they disdained to hold
Converse with me, I took from them apart

¹⁴⁹ *Supra*, p. 148.

¹⁵¹ 1223-5.

¹⁵³ *Infra*, p. 421.

¹⁵⁰ Eur. *Medea*, 1380 ff.

¹⁵² Eur. *Androm.* 173-6.

¹⁵⁴ 947-960.

A lone repast ; to each was placed a bowl
 Of the same measure : this they filled with wine,
 And bathed their spirits in delight. Unmeet
 I deemed it to express offence at those
 Who entertained me, but in silence grieved,
 Showing a cheer as though I marked it not,
 And sighed for that I shed my mother's blood.
 A feast, I hear, at Athens is ordained
 From this my evil plight, e'en yet observed,
 In which the equal-measured bowl then used
 Is by that people held in honour high.

Euripides is not our only authority for such a myth. Its existence is confirmed by Athenaeus¹⁵⁵ and by Suidas.¹⁵⁶ It is not probable that Euripides himself invented it. At the Libation-feast which was known as the 'Cups' (χόες) an unusual custom decreed that each man should drink from a separate goblet and forbade any suggestion of collective drinking such as attached to the ordinary wine-bowl. The Athenians did not understand the real origin of this rite. In the strange blending of joy and sorrow which characterised this Dionysiac festival, they overlooked the connexion which existed between the public civic offering, at this festival, of libations to dead ancestors of the citizens as a whole and the primitive tomb-offerings (χοαί) of tribal ancestor-worship. Coulanges has indicated¹⁵⁷ the private, individual, or domestic nature of such tomb-offerings. He goes so far as to suggest that the origin of private ownership in land is to be attributed to the exclusive and non-communistic character of primitive ancestor-worship. Even in Solon's time the laws defined rigidly the limit of relationship to the deceased which permitted a relative's presence at the funeral.¹⁵⁸ The worship of Dionysus had many affinities with the worship of the dead. It is in such affinities that we must seek, in the last resort, the explanation of the gloom and morbid mourning which permeates all Greek tragedy. But we cannot suppose that the Dionysiac festival was able to import an aspect of civic communism into the essentially local and tribal ritual of tomb-libations. Hence, we believe a compromise was

¹⁵⁵ x. 49.

¹⁵⁷ *Ancient City* (trans.), p. 78 ff.

¹⁵⁶ s.v. χόες.

¹⁵⁸ *Supra*, p. 87.

accepted in which men were permitted to drink together at a public libation-festival but were compelled to drink from separate vessels and to sit at separate tables! Such, we believe, was the real origin of this strange rite. But the Athenians, who were ignorant of its true origin, sought to find for it at least an intelligible explanation. They knew from the Attic legends of Orestes that this Argive prince had come to Athens for his trial. They knew that a kin-slayer who had not yet been tried and declared innocent was 'polluted' with a minor kind¹⁵⁹ of pollution wherever he went. His purgation by Apollo was legally valid for Phocis if an Apolline court had declared him innocent. But in the Attic legends he was untried and therefore unpurged. They argued therefore that when Orestes came to Athens to submit to trial on a charge of kin-slaying, he was prohibited from public civic and religious communion with Athenian citizens. It does not matter in this connexion whether the plea of Orestes was justifiable matricide or extenuated matricide. As he had been proclaimed as an unjust slayer by the avengers, who in this case were the Erinyes, he was 'polluted' until he had either established his innocence or indicated the completion of his atonement to a court of reconciliation. Now 'pollution' was regarded by the ancients as a disease of a quasi-physical nature. Murder courts had to be held, even by night, in the open air. The 'polluted' man could not enter the temples or the market-place. He could not eat at anyone's table. He was isolated from public life. His civic existence was suspended. If, then, it be supposed that Orestes arrived for his trial at Athens during the Anthesteria festival, he could not have been received into civic or religious communion. Hence the creators of this myth could quite naturally have conceived that a compromise was agreed upon by which the Athenians preserved, on the one hand, their reputation for hospitality, and respected, on the other, the religion of pollution. They admitted Orestes to the public feast, but they insisted that he should sit apart and drink from a separate vessel! It was thus that the Athenians explained the origin of this rite: nor is the explanation to be regarded as 'anomalous' or 'artificial,'

¹⁵⁹ *Supra*, pp. 175, 347.

as Miss Harrison suggests.¹⁶⁰ To people who were ignorant of the real origin of the Pitcher Feast, this was at least a respectable and intelligible aetiology.

Orestes says to Iphigeneia that he had some difficulty in refraining from rebuking his hosts on this occasion.¹⁶¹ Miss Harrison's explanation¹⁶² of this statement is that Orestes was mad! But we are convinced that Orestes was not mad, either at Athens or amongst the Tauri, though he may have been temporarily insane amongst the Argives.¹⁶³

We have seen that there were conflicting opinions concerning the guilt of Orestes in different legends. The predominant opinion in Aeschylus and in the legend (probably Phocian) which referred to his purgation by Apollo suggests that his act was justified. The Argive legend which we have met in the *Orestes* of Euripides conceived his act as wilful matricide which involved an eternal pollution. But the prevailing conception of Orestes' act which we find in the legends of post-Homeric times regards him as guilty of matricide extenuated through Apollo's command. The dramatic attempt to unify these various legends is the source of the complexity of the problem of Oresteian blood-vengeance in Euripides. It is impossible to analyse successfully the legal and religious position of a hero who is tried and who is at the same time untried, who is eternally and who is at the same time temporarily polluted, in one and the same drama! But the myth of the Pitcher Feast was based on a well-defined tradition. It ignored the Argive and the Phocian legends, it ignored also what we have called the first Attic legend, and it considered only the second Attic legend from which the *Iphigeneia in Tauris* drama was ultimately derived.

The surprise which Orestes feels at the partial social boycott which confronts him in Athens is, we think, to be attributed to the coexistence of the Attic and the Phocian legends. In the Phocian legend Orestes was tried and purged, therefore he could visit any Greek city with impunity. But the Attic legend suggested that this purgation, though valid for Phocis, could not be accepted by the Athenians, so long as the avenging Erinnyes pursued, until Orestes had been acquitted by an Athenian court. This conflict of legendary view-points

¹⁶⁰ *Proleg.* p. 41.

¹⁶¹ 955.

¹⁶² *Loc. cit.*

¹⁶³ *Supra*, p. 367.

explains, we believe, the divergence of opinions which is suggested by these words.

THE 'PHOENICIAN MAIDENS' AND THE 'SUPPLIANTS'

The homicide-problems of the *Phoenissae* and of the *Supplices* may be simultaneously discussed, as both these dramas are concerned with the war of the Seven against Thebes. The dramas correspond in their general atmosphere and in regard to the problems which they present with the *Septem* of Aeschylus or the *Antigone* of Sophocles. We also find an incidental reference¹⁶⁴ to the punishment of Oedipus which recalls the *Oedipus at Colonus* and the *King Oedipus* of Sophocles. Euripides, in his account of the conflict which took place between Polyneices and Eteocles and of the war between the Argives and the Thebans is, from a legal point of view, more satisfactory than his brother dramatists, inasmuch as he makes a clear distinction between the different aspects of the problem of burial in both cases. Polyneices may or may not have been a fratricide and a traitor,¹⁶⁵ but the Argives at least were legitimate belligerents. In the *Antigone* these two issues seem to have been deliberately confused. The burial of the Argives was a question for Greek international law, the violation of which brought down upon the offenders the anger of the gods. The burial of Polyneices was a more delicate question, upon which the gods might adopt divergent attitudes. Teiresias, in the *Antigone*, does not differentiate very clearly between the religious aspects of these two problems. The gods were angry—about that there was no doubt. But might not this anger have been mainly, if not entirely, due to the non-burial of the Argives? Here are the words addressed by Teiresias to Kreon¹⁶⁶:

And this evil state
Is come upon the city from thy will :
Because our altars—yea, our sacred hearths,
Are everywhere infected from the mouths
Of dogs or beak of vulture that hath fed
On Oedipus' unhappy slaughtered son.

¹⁶⁴ *Phoen.* 1585 ff.

¹⁶⁵ *Supra*, p. 323.

¹⁶⁶ *Ant.* 1012–1017.

Kreon is unmoved by this declaration, which he regards as the outcome of bribery and political corruption.¹⁶⁷ But Teiresias now utters words which strike terror into Kreon's heart ¹⁶⁸ :

A little while, and thine own palace-halls
Shall flash the truth upon thee with loud noise
Of men and women, shrieking o'er the dead,
And all the cities whose unburied sons,
Mangled and torn, have found a sepulchre
In dogs or jackals or some ravenous bird
That stains their incense with polluted breath,
Are forming leagues in troublous enmity.

Now, Euripides, on the other hand, keeps these two questions clearly distinct. The burial of the Argives, being an international question, is referred by Adrastus to Theseus,¹⁶⁹ King of Athens. At first Theseus refuses to intervene, and rightly, since Athens was merely one of a number of Greek States, and she did not wish to undertake single-handed a war which was properly an Amphictyonic war. But ultimately Theseus, yielding to the persuasion of his mother and of Adrastus, fought and defeated the Theban army under the command of Kreon, and handed over the bodies of the Argives to their relatives for burial.¹⁷⁰ That in refusing burial to the Argives Kreon had violated a Greek international law is clear from many passages in the *Suppliants*. Thus Aethra says ¹⁷¹ :

The mothers now of these,
Spear-slain, are fain to lay them in the grave,
Wherefrom the victors let them, and refuse
The corpses, setting the gods' laws at nought ;

and Theseus says ¹⁷² :

But lifeless bodies—harming not your State, . . .
I claim to bury : lo ! all Hellas' law
Do I uphold.

¹⁶⁷ *Ant.* 1035–62.

¹⁶⁹ *Eur. Supp.* 113 ff.

¹⁷¹ 16–19 (trans. A. S. Way) ; cf. 310 ff.

¹⁶⁸ *Ib.* 1080 ff.

¹⁷⁰ *Ib.* 940 ff.

¹⁷² 524–7 ; cf. 560 ff.

The Messenger thus describes the words of the herald ¹⁷³ :

Silence, ye people ! Hush, ye ranks of Cadmus !
Hearken—we come but for the corpses' sake,
To bury them and keep all Hellas' law
Inviolatè.

The problem of the burial of Polyneices has two distinct aspects in Euripides, as it has in Sophocles. In both accounts Polyneices was ultimately buried, as it was necessary for legend to insist that he should be, in view of the existence of tombs in Thebes which were said to contain the bones of all the seven Argive leaders.¹⁷⁴ But whereas in Sophocles it is religious fear which causes Kreon to consent to the burial of Polyneices, in Euripides we feel that it is rather the victorious intervention of Theseus which is the cause of this *dénouement*. Eteocles and Polyneices are represented by Euripides as having foreseen the conflict which would rage over their burial when they had mutually slain each other. Thus, Eteocles solemnly binds Kreon to refuse burial to Polyneices ¹⁷⁵ :

But I, on the city
And thee, O Kreon, this injunction lay :
If I prove stronger, suffer not the corse
Of Polyneices in this Theban realm
To be interred : let death be the reward
Of him who scatters dust o'er his remains,
Although he be the dearest of my friends.

Again, Polyneices is said to have commanded, as he lay dying, his mother and Antigone to bury him in Theban soil ¹⁷⁶ :

But bury me, O thou who gav'st me birth,
And my loved sister, in my native land,
Your mediation to appease the city
Uniting, that of my paternal soil
Enough for a poor grave I may obtain,
Though I have lost the empire.

Thus Euripides conceives in a twofold aspect the act of Polyneices. Subjectively, he thinks, Polyneices was justified

¹⁷³ 669–72.

¹⁷⁴ Eur. *Supp.* 1207 ; cf. Pausanias, ix. 18.

¹⁷⁵ *Phoenissae*, 774–7 (trans. Woodhull) ; cf. 1646.

¹⁷⁶ *Ib.* 1447–50.

in attacking and in slaying his brother¹⁷⁷: objectively, however, or technically, he was a traitor and a fratricide because *prima facie* he was the aggressor.¹⁷⁸ But the sympathetic intuition of Antigone looks beyond the superficial enactments of a political justice of which the obscure and oscillating dictates cannot compete with her love for her brother in life, with her grief for him in death, and with her reverence for the solemn injunction which his dying lips had uttered.

The punishment of Oedipus which is mentioned in the *Phoenissae* is based, we believe, on the conception of his fatal act as voluntary homicide,¹⁷⁹ but it also takes into account the facts of the Homeric narrative. The Homeric¹⁸⁰ story of the continued rule of Oedipus 'over the Cadmeans' was not in harmony with Achaean principles of blood-vengeance. Homer does not understand it. Perhaps this is because, in Boeotia, as Leaf points out,¹⁸¹ the Achaeans had not established their power. It is possible that Oedipus enjoyed immunity from punishment because of his position as a Minoan autocrat, but as there existed in legendary story many capable and willing avengers it is better to attribute his immunity to a discrimination between degrees in homicide-guilt which we have associated with Pelasgian tribal custom, and to interpret the Homeric reference as a Pelasgian 'reminiscence.'¹⁸²

In Homer, Oedipus lives, dies, and is buried in Thebes. But post-Homeric legend, under the influence of the pollution doctrine, could not accept these facts. Even if the plea of quasi-involuntary homicide which Oedipus himself put forward had been accepted he would still have had to go into exile for at least a period of years, and even then he could not have returned to his domestic religion or have been buried in the tomb of his fathers. The duration of exile for extenuated or involuntary slaying in historical times, and therefore presumably¹⁸³ in the pollution era, depended on the will of the relatives of the slain. One single objector could have extended the exile period indefinitely, at least in theory, according to the law 'let all consent to be appeased or let

¹⁷⁷ See 360 ff. and 465 ff. ¹⁷⁸ *Supra*, pp. 216, 323. ¹⁷⁹ *Supra*, pp. 311, 317.

¹⁸⁰ *Od.* xi. 271 ff.; *supra*, p. 55.

¹⁸¹ *Homer and History*, p. 52.

¹⁸² *Supra*, p. 21.

¹⁸³ See *supra*, p. 143.

one objector hold the field.' ¹⁸⁴ But in the post-Homeric story of Oedipus, as Sophocles gives it, the plea of Oedipus was not accepted. He was regarded as a voluntary homicide and sent into exile. It is true that when Polyneices himself was banished, for political reasons, from Thebes, he naturally relented, and in his altered mood he offered to restore Oedipus to his home. ¹⁸⁵ But in order to restore Oedipus it was necessary that Kreon and Eteocles should be either killed or exiled, and this contingency had not been realised. In Euripides the unhappy king ultimately suffers the same fate. Kreon says to Oedipus ¹⁸⁶ :

But to my words, O Oedipus, attend :
 Eteocles, thy son, hath to these hands
 Consigned the sceptre of the Theban realm, . . .
 I for this cause no longer can allow thee
 Here to reside : for in the clearest terms
 Teiresias has pronounced that, while thou dwell'st
 In these domains, Thebes never can be blest.
 Therefore depart. Nor through a wanton pride,
 Nor any hate I bear thee, do I hold
 Such language, but because I justly dread
 Thy evil genius will destroy this land.

And Oedipus refers to the Apolline oracle which foretold that he would die in Athens (an oracle which Sophocles also mentions ¹⁸⁷) when he says ¹⁸⁸ :

The oracle of Phoebus is fulfilled . . .
 That in Athens an exile I shall die.

But in Euripides it is clear that Oedipus is not banished before the death of Eteocles and Polyneices. A number of years is known to have elapsed during which he still lived in Thebes. But he was imprisoned all the time, and, as this suggestion is not implied in the Homeric story, we must suppose that some legend invented this novel device by which part at least of the Homeric facts could be brought into harmony with the requirements of the post-Homeric doctrine of 'pollution.' It supposed that Oedipus continued to live in Thebes, not however as a king or as a free citizen with full civic rights,

¹⁸⁴ *Supra*, pp. 193, 213.

¹⁸⁵ *O.C.* 1255-1345 ; *ib.* 1341.

¹⁸⁶ *Phoenissae*, 1585-94.

¹⁸⁷ *O.C.* 87 ff.

¹⁸⁸ *Phoen.* 1703-5.

but as an imprisoned criminal who by the very fact of his imprisonment did not pollute the State. Jocasta, who, in accordance with the Homeric narrative, is represented as living in Thebes for many years after the crimes¹⁸⁹ of Oedipus were committed, says :

Soon as he learned
That I whom he had wedded was his mother,
The miserable Oedipus, o'erwhelmed
With woes accumulated, from their sockets
Tore with a golden clasp his bleeding eyes.
But since the beard o'ershaded my sons' cheeks
Their sire they in a dungeon have confined,
The memory of this sad event t' efface,
For which they needed every subtle art.
Within those mansions he still lives, but sick
With evil fortunes, on his sons pours forth
The most unholy curses, that this house
They by the sword may portion out.

We have said¹⁹⁰ that 'pollution' was conceived by the Greeks as a quasi-physical reality which resembled a contagious disease. In historical times a 'polluted' murderer was isolated by imprisonment. A law of Dracon, which is confirmed by Plato and by Demosthenes, prescribed that a convicted murderer *en rupture de ban* could be arrested and imprisoned, instead of being put to death, by the first person who encountered him.¹⁹¹ But imprisonment was never regarded, in Attic law, as a permanent method of isolation for a murderer, simply because it was not a recognised legal penalty for homicide. Oedipus therefore would have been justified, from the standpoint of historical law, in uttering curses against his relatives who imprisoned him. Hence we suggest that this story of the imprisonment of Oedipus was invented by some legend-maker of the pre-Draconian age, in an attempt to harmonise the Homeric story of the continued life of Oedipus at Thebes with the post-Homeric atmosphere which regarded him as 'polluted' and debarred from civil and religious communion with his fellow-citizens. Euripides implies¹⁹² that ultimately the Apolline oracle was fulfilled

¹⁸⁹ *Phoen.* 59-68.

¹⁹¹ *Supra*, pp. 195, 258.

¹⁹⁰ *Supra*, p. 376.

¹⁹² *Phoen.* 1705 ff.

and that Oedipus died as an exile at Athens. In view of the general acceptance of this oracle by traditional legends and of the 'established fact'¹⁹³ of the burial of Oedipus at Athens, Euripides appears to have abandoned the Homeric account of the burial of Oedipus at Thebes. In this he reveals more intelligence and a greater insight into the meaning of the post-Homeric legend than did Pausanias and his authorities who believed that the bones of Oedipus were transferred from Thebes to Athens.¹⁹⁴ For either Oedipus was 'polluted' or he was not. If he was, he could not have been buried at Thebes, since he was regarded as a wilful murderer: if he was not, then he need not have come to Athens as a homicide-exile at all.

The statement of Jocasta¹⁹⁵ that Oedipus was imprisoned in order that his disgrace might be forgotten, and that of Kreon¹⁹⁶ that Oedipus had to be exiled for ever because he was 'polluted,' are inconsistent; but we may infer from these statements, which Euripides himself composed, that he did not quite understand the origin and motive of the story of the imprisonment of Oedipus. For whoever invented this story did so with a definite purpose, namely, to reconcile religious doctrine with historical fact. The inventor knew the meaning and purpose of his invention. Hence the statement of Jocasta to which we have referred cannot have originated with the inventor of the story, for otherwise she would have said that Oedipus was imprisoned to avoid pollution.

Nevertheless we think that here again Euripides sought to achieve dramatic interest by introducing an antique variant of the story which Sophocles had ignored. In Sophocles, Oedipus dies before the clash of arms takes place between the Argives and the Thebans. In Euripides he lives to see the realisation of his own curses, and becomes more easily reconciled to his own sad fate when he finds that Destiny has avenged him in his turn, as Laius was avenged, and that in leaving Thebes he has removed from his life the local anger of ghosts and gods.

¹⁹³ Pausanias, i. 28.

¹⁹⁵ *Phoen.* 64.

¹⁹⁴ i. 28.

¹⁹⁶ *Ib.* 1593.

THE 'MAD HERCULES'

The theme of this drama is one of the multitudinous episodes which are associated with the life of Hercules. Now the legends of Hercules have this much in common with such legends as we have examined concerning Orestes and Oedipus, that they refer to the deeds of a great man who has died. In Greek religion, apart from the Olympian Pantheon of the Achæan caste, every great man assumed a divine nature when he died. But the Olympian religion did not recognise the right of man to become divine, and therefore whenever legend attributes human acts to such Olympian gods as Apollo or Athene (of whose mortal life there was no record) we must assume that at the time of such acts these gods have temporarily assumed a human form. But Hercules never was an Olympian. In Homer, Hercules is mentioned in a manner which suggests that he had been living quite recently upon this earth, and living moreover a normal human life. We find him in Hades, like all other dead men, though, curiously, he retains some of his old vitality, for he is married to Hebe, the goddess of eternal youth.¹⁹⁷ We hear of his maternal uncles living ordinary human lives in Argos or in Thebes,¹⁹⁸ and his grandsons actually fought in the Trojan war! We will not here attempt to discuss the origin of the Grecian cult of Hercules. Müller, of course, connects him with the Dorians. He thinks that Hercules and Apollo, in their respective rôles of hero and of god, satisfied the normal wants of Dorian religiousness.¹⁹⁹ We admit that the exaltation of Hercules as a divinity was of post-Homeric origin; but it is futile, we believe, to seek to distinguish the historical from the fictitious strata in Heracleian legends. At the dawn of European literature the human life of Hercules, if there ever was such a man, was a thing of the past, and it is therefore more than probable that all the post-Homeric legends of Hercules are equally fictitious. The main point which we wish to emphasise here is that most of the legends of Hercules are based on the assumption that he had not yet died: that he was a mortal man, who obeyed, on most occasions, the laws of

¹⁹⁷ *Od.* xi.¹⁹⁸ *Il.* ii. 660 ff.¹⁹⁹ *Dorians*, i. 411 ff.

social humanity, not a god who had condescended to take human form and who was superior to the operation of natural laws. We agree that in the legends of Hercules there is a certain element of magic, such as is found in the legends of Medea, or Jason, or Iphigeneia. This element imports into Heracleian legends a certain degree of lawlessness or of chaos. But, so far as homicide at least is concerned, we will assume that Hercules is a man; not indeed an ordinary man, subject to every ordinary law, but nevertheless a man, whose actions, however archaically they may be conceived, can nevertheless be explained. The difficulties which are presented by the Heracleian legends are due in part to their archaic setting, but still more to their almost infinite variety—a variety which we may attribute to the multitude of localities in which this Hero-god was worshipped. The greater the number of shrines which a god or hero possessed, the greater was the variety of the myths which grew up around him, because ancient myths—which are not like modern fairy tales, but which were rather sacred commemorations of religious events—could be transferred from one Hero to another. Herodotus tells ²⁰⁰ how Cleisthenes of Sicyon transferred the ‘tragic choruses’ which commemorated the sorrows of Adrastus to the cult of Dionysus. Thus too must Hercules have had attributed to him the joyful exploits as well as the sorrowful events of the ‘lives’ of local Heroes. For this reason, and because of the tendency of myths to become more and more fanciful, we believe that the legends of Hercules as of most gods are ‘fictitious.’

In the Euripidean drama, the *Mad Hercules*, we are told that Hercules, in a fit of madness, slew his wife, Megara, and his children.²⁰¹ He was deluded by the goddess Hera ²⁰² into believing that he was thereby inflicting death upon the children of his taskmaster, Eurystheus. We may recall a somewhat similar delusion which was sent in a Sophoclean drama by Athene upon Ajax. But whereas in the *Ajax* no actual homicide occurs, here we have actual bloodshed, and, worst of all, kin-slaying. From a legal point of view, the position of Hercules is therefore quite different from that of Ajax. It is, we think, more akin to that of Oedipus.

²⁰⁰ v. 67.²⁰¹ 977 ff.²⁰² 840–75.

Hercules slays his children without knowing that they are his children. We may omit, for purposes of legal analysis, the death of Megara, his wife, for this death is obscured by the more heinous slaying of his kindred. Like Oedipus, Hercules discovers the truth; like Ajax, he contemplates suicide. He gives expression to sentiments regarding the punishment of kin-slaying which are suggestive of historical Attic law; though he forgets, for the moment, that his act was involuntary, when he says ²⁰³:

Ah! why lengthen out
A guilty life, when of my dearest children
I am become the murderer? Why delay
To leap from the high rock or with a sword
Transpierce this bosom, on myself their blood
Avenging? or t'avert that infamy
Which waits me, shall I rush into the flames?

Presently he begins to feel that he should not be considered fully culpable ²⁰⁴; yet he sees that it will be difficult for him to establish 'extenuation' as a plea.²⁰⁵ The fit of madness which Hera had sent upon him was indeed a grim reality, but it would be difficult to prove it in a court of justice. Moreover, in the Euripidean account Hercules is an alien in Thebes. His native State is Argos.²⁰⁶ We have said that exile was not permitted as a penalty for voluntary kin-slaying in historical Greece. We have quoted ²⁰⁷ Plato for the law that even involuntary slaying between aliens was punished by perpetual exile. If Hercules was an alien at Thebes, so also were his children. In Homer ²⁰⁸ Thebes is the birthplace of Hercules, but this Homeric fact is not accepted by Euripides. In the following passage Hercules regards exile rather than death as his correct and proper punishment, but owing to the difficulty of proving involuntariness he fears that no city will receive him. Thebes, he says, he must leave. To Argos, his native home, he cannot return, because, as he says,²⁰⁹ he has been already banished from that State owing to his feud with Eurystheus. In other places he will indeed be called a kin-slayer, and if he cannot prove his innocence he may be

²⁰³ 1146-52.²⁰⁶ 462, 1285.²⁰⁴ 1253-80; 1310-1364.²⁰⁷ *Supra*, p. 163.²⁰⁹ *H.F.* 1285.²⁰⁵ 1229 ff.²⁰⁸ *Il.* xix. 98-9.

banished. This statement lends support to our theory that in historical Greece exile was not permitted for voluntary kin-slaying.²¹⁰ He says ²¹¹ :

My fate is such
That in my native Thebes I must not dwell :
But if I here continue, to what temple
Or friends can I repair ? for by such curses
I now am visited, that none will dare
To speak to me. To Argos shall I go ?
How can I, when my country drives me forth ?
To any other city should I fly,
The consequence were this : with looks askance
I should be viewed as one well-known, and harassed
With these reproaches by malignant tongues :
' Is not this he, the son of Jove, who murdered
His children and his consort ? from this land
Shall not th'accursed miscreant be expelled ? '

But the archaic atmosphere of the ' life ' of Hercules furnishes a solution for this problem. Theseus arrives from Athens ! Apparently we are now living in the days which preceded the institution of citizen juries or even of Ephetae courts ! As Theseus, the autocratic King-judge, tried Oedipus at the shrine of the Semnai,²¹² so also, in a similarly informal manner, he tries Hercules. He knows already, without being told of it, that Hera is to blame. Therefore, he says ²¹³ :

. . . This mischief
Springs from no god except the wife of Jove. . . .

Hence he says to Hercules ²¹⁴ :

From Thebes retire
Since thus the laws ordain : and follow me
To Pallas' city : when thy hands are there
Cleansed from pollution, I to thee will give
A palace, and with thee divide my wealth.

What, we may ask, is the law to which Theseus here refers ? Wilamowitz ²¹⁵ rightly says that the law is that which pro-

²¹⁰ *Supra*, p. 234 ff.

²¹¹ 1281-90.

²¹² *Soph. O.C.* 490-660 ; *supra*, p. 317.

²¹³ 1311-12 (attributed to Theseus by the MSS.).

²¹⁴ 1322-5.

²¹⁵ Note *ad loc.*

hibits his continuance at Thebes. We believe, however, that this was not a specifically Theban law. If it had been, the fact would have been more clearly indicated. The law in question is, we believe, an international law, which declared that when an alien slew an alien, even without intent, he must be debarred for ever from the State in which the deed occurred. This law we have already quoted from Plato.²¹⁶ Hercules therefore left Thebes and went to Athens,²¹⁷ and we are told that when, in course of time, he dies in Athens he will receive the worship of a Hero!²¹⁸ The similarity of this *dénouement* to that of the *Oedipus Coloneus* of Sophocles needs no comment. Both these consummations are based, perhaps, on the existence of Hero-shrines in Attic soil. But the legend-makers were careful not to give us legal impossibilities. Hercules had shrines everywhere in Greece. Yet Hercules could not go to Argos, for the simple reason that he had been exiled from that city. He could not return to Thebes because of 'the law.' It was fortunate then for Hercules that he found a king such as Theseus who admitted without question the element of extenuation in his act. In historical Greece a wilful kin-slayer could not have been accepted as an exile in any State. The law which is referred to by Theseus cannot therefore have reference to wilful slaying, for it permitted him to leave Thebes. If he had slain his children wilfully, it would not have allowed him the option of exile. If he is allowed this option, it is because his deed was viewed, either by the dramatist or by the legend-maker, or by both, as extenuated or quasi-involuntary kin-slaying. Such slaying in Greek law prescribed a period of exile, temporary or perpetual, pending the appeasement of the kinsmen.

Owing to the important differences which exist between the Euripidean conception of the native state of Hercules and Homer's conception, we must assume that Euripides has abandoned Homer and is following an Argive legend concerning Hercules. This conclusion is strengthened by the account which Euripides gives, in this play, of Amphitryon, the father of Hercules. Euripides makes Amphitryon say²¹⁹

²¹⁶ *Laws*, ix. ch. 8; *supra*, p. 163.

²¹⁸ 1333.

²¹⁷ See 1422.

²¹⁹ 15 ff.

that he is an exile from Argos living at Thebes, because he had slain Electryon. Now, if Euripides conceived Amphitryon as a Theban by birth, he could not legally have presented him, since he was a man-slayer, as a resident in Thebes. We have seen ²²⁰ that homicide-exiles were debarred from three possible places of residence, namely (1) the State of the slayer, (2) the State of the victim, and (3) the State in which the deed of blood took place.

Pausanias also refers ²²¹ to this legend of Amphitryon. The Thebans of his time pointed out a ruined house in Thebes, 'where they say Amphitryon dwelt when he fled from Tiryns owing to the death of Electryon.' As Tiryns was a city within the boundary of the historical Argive State it is frequently confused with Argos in the legends. Electryon was the father-in-law and the uncle of Amphitryon. That the slaying of Electryon was not wilful is suggested by certain facts. Thus, the return of Amphitryon to Argos is said to depend on the will of Eurystheus and the labours of Hercules are regarded as the necessary 'appeasement.' ²²² We need not suppose that there is any reference to the Pelasgian wergeld system in the story of the 'recompense' which was demanded by Eurystheus. This 'recompense' is more akin to the 'appeasement' of relatives in the pollution system. It was the father of Eurystheus, Sthenelus, the brother of Electryon, who had driven Amphitryon into banishment. Euripides concedes this much to the claim of Thebes to be regarded as the home of Amphitryon, in so far as he makes Amphitryon say ²²³ that he has settled there as an exile. But legally he could not have lived there as a homicide-exile if he had been a citizen of Thebes. Hence Euripides calls him 'the Argive Amphitryon.' His hopes of an ultimate return to Argos and of the 'appeasement' of Eurystheus suggest that his act was involuntary, or quasi-involuntary. The very fact of his exile points to the same conclusion.

The attempt of Lycus, King of Thebes, to murder Amphitryon, Megara, and the children of Hercules, is also described in the play. The motive of Lycus was political. Hercules had married Megara, daughter of Kreon, the Regent of Thebes, and his family was therefore a dangerous rival in the

²²⁰ *Supra*, p. 163.

²²¹ ix. 41.

²²² Eur. *H.F.* 19.

²²³ *ib.* 13.

matter of dynastic succession. Hercules, as soon as he heard of the plot, put Lycus to death.²²⁴ This penalty, we have suggested,²²⁵ was a normal penalty for attempted murder (*βούλευσις*) in Achæan or quasi-Achæan²²⁶ society. We have discussed this penalty in our analysis of the *Ajax* of Sophocles. Whether there was an antique legend which referred to this penalty, or whether the dramatist is consciously archaising, it is difficult to decide. The Chorus, at least, have no doubt that the penalty was just and Amphitryon takes the same view.²²⁷ The Chorus say to him as he dies²²⁸:

Others have perished by that bloody hand.
 . . . the retribution thou endur'st . . . is just.

THE 'CHILDREN OF HERCULES'

Of the Heracleidae, another family of Hercules, Pausanias says²²⁹: 'When Hercules fled from Eurystheus at Tiryns, he went to his friend Ceyx, the King of Trachis. But when Hercules left the society of men²³⁰ Eurystheus demanded his children, and Ceyx sent them to Athens, suggesting that Theseus should protect them. And coming to Athens, they caused the first war between the Athenians and the Peloponnesians, as Theseus would not give them up to Eurystheus.'

In this Euripidean play, also, the children of Hercules are represented as dwelling in the city of Athens, in the charge of Iolaus and Alcmena,²³¹ and the war between Eurystheus and Theseus for their extradition is the main theme. The presence of Iolaus in the drama is probably, we think, derived from the legend of an expedition which the Athenians made under his leadership to Sardinia.²³² The chief point which we wish to emphasise here is that the demand for the extradition of the Heracleidae has no connexion with homicide. Amphitryon had slain Electryon. Hercules had sought in vain to 'appease' Eurystheus. It is now evident that Eurystheus has refused all 'appeasement,' as the sons of Oedipus refused it, *for political reasons*. In Greek law homicide could not continue to afflict the children of a slayer unto the

²²⁴ *H.F.* 567, 754.

²²⁵ *Supra*, p. 327.

²²⁶ *Supra*, pp. 20, 283.

²²⁷ 732.

²²⁸ 755-6.

²²⁹ i. 32.

²³⁰ i.e. when he died.

²³¹ 50 ff.

²³² Pausanias, i. 29.

fourth generation. With the death of Amphitryon, the homicide episode is closed. In this drama, the extradition demand is therefore entirely political. Upon this point our play is quite explicit. Eurystheus says to Alcmena²³³ :

For well I knew thy son
Was no mere cipher, but a man indeed :
Though strong my hate, on him will I confer
The praise he merits from his valiant deeds.
But after he was dead, was I not forced,
Because I was a foe to these his sons,
And knew what bitter enmity 'gainst me
They from their sire inherited, to leave
No stone unturned, to slay, to banish them
And plot their ruin ? Could I have succeeded
In these designs, my throne had stood secure.

Demophon, son of Theseus, refuses to give up the sons of Hercules and uses as a pretext the right of suppliants.²³⁴ We recall the statement of Pausanias²³⁵ that Demophon was the first Athenian who was tried at the Palladium court—a court which regularly tried cases of homicide between strangers.²³⁶ The words which Demophon speaks to the herald of Eurystheus²³⁷—

Therefore, go thou back
To Argos, and this message to Eurystheus
Deliver : tell him, too, if there be ought
Which 'gainst our guests he can allege, the laws²³⁸
Are open : but thou shalt not drag them thence—

imply that the right of suppliant was not potent to protect offenders but was only potent to secure for them a respite from merited punishment ; moreover they imply that Eurystheus has no right to demand the extradition of offenders without the option of a trial.²³⁹ We have already admitted that the right of sanctuary helped to determine the locality of certain courts, but we have maintained²⁴⁰ that it had no essential connexion with the origin of the principle of trials for homicide, and that its connexion with murder courts is

²³³ 997 ff.²³⁴ 238 ff.²³⁵ i. 28.²³⁶ *Supra*, p. 251.²³⁷ 250-252.²³⁸ *δικης κυρήσειν*.²³⁹ See *supra*, p. 164 ff.²⁴⁰ *Supra*, p. 263.

quite accidental. We have suggested that ²⁴¹ in historical Greece trial was a possible option for extradition in case of homicide. Hence the refusal of Eurystheus to accept trial suggests what Demophon definitely asserts,²⁴² that the 'offence' of the Heracleidae was not criminal but political.

But if the Heracleidae are innocent, what shall we say of Eurystheus? Is he not as culpable as Lycus is in the *Mad Hercules*? Is he not guilty of plotting murder for political ends? If he is not yet *αἷτιος φόνου*, is he not guilty of *βούλευσις*? For this crime, we have said, in early Greece, the penalty was probably death.²⁴³ It is, then, significant that in this play Eurystheus is put to death by the servants of Alcmena.²⁴⁴ Both the penalty and its mode of execution are archaic. Either legend retained these elements unadulterated in their transition down the ages, or Euripides deliberately imported into the myth an archaic atmosphere. In neither case is Euripides giving us the ideas of his own time, for in historical Greece *βούλευσις* was not punishable by death.

Eurystheus was captured alive in the battle and hence he claims the right of a captive warrior and demands the protection of the Athenians!²⁴⁵ Alcmena, however, insists that he should be given up to her for execution!²⁴⁶ What a nice legal problem was this for a litigious Athenian audience! How replete it is with that intense human interest which was so dear to Euripides! The conflict is skilfully depicted in the dialogue which takes place between Alcmena and the messenger (or the Chorus?) after the battle.²⁴⁷ Eurystheus' appeal to the 'laws of Greece'²⁴⁸ implies the existence of international legislation concerning the rights of war-captives, but he himself had previously shown very little regard for the international status of exiles. In vain does he advance the plea of self-defence against these harmless but dangerous children! The Athenians decide to take no action. They cannot put to death a captive taken in war. But Alcmena claims that Eurystheus is a murderer. According to ancient practice, it is her privilege to avenge! Moreover, so far as Alcmena is concerned, she will not bury a man whom she

²⁴¹ *Supra*, p. 164 ff. ²⁴² 464-470.

²⁴³ *Supra*, p. 327.

²⁴⁴ 1050.

²⁴⁵ 1009 ff.

²⁴⁶ 1022 ff.; 1045 ff.

²⁴⁷ 961-980.

²⁴⁸ 1010.

believes to be a criminal.²⁴⁹ But unfortunately there was an oracle of Apollo that Eurystheus should be buried in Athens.²⁵⁰ The Athenians therefore are disposed to bury him.²⁵¹ At first Alcmene says ²⁵² that she will not object to the burial of Eurystheus by the Athenians, but this assertion is incompatible with the command which she gives to her attendants later, to deliver the dead Eurystheus to the dogs. We may perhaps assume that she performed a mock ritual of 'exposure' of the dead, that she cast the body of Eurystheus beyond the boundaries, and that afterwards his relatives removed him for sepulture. Such is the attempt which Euripides seems to make to solve the deadlock between two elements of Greek law, namely that which permitted the burial of an enemy,²⁵³ and that which forbade the burial of a murderer.²⁵⁴ In the archaic atmosphere of the play, homicide and attempted homicide ²⁵⁵ are equated as identical. In the words of Eurystheus, who declares in vain that his death will cause pollution to his slayer, we discern at once the failure of Euripides to be consistently archaic and the failure of a dead man's ghost to impose 'pollution' in the teeth of civic law and international religion.

THE 'MEDEA'

In regard to the origin and the evolution of the story of Medea which is the subject of this drama, we cannot do better than summarise the account which Verrall gives in his edition of the play. Verrall thinks ²⁵⁶ that Medea was a Phoenician moon-goddess who was worshipped at Corinth at an early period, and to whom were offered, in sacrifice, human victims, including children; that these rites, which in course of time assumed a more civilised form, (when a mock ritual of human sacrifice was accepted in the place of ancient realities,) were 'transferred' to the goddess Hera; that sacred legend retained indeed a memory of Medea, but the evolution of Corinthian religion degraded to the level of a priestess the Medea who

²⁴⁹ 1050.

²⁵⁰ 1028 ff.

²⁵¹ 1053.

²⁵² 1024.

²⁵³ *Supra*, p. 379.

²⁵⁴ *Supra*, p. 223.

²⁵⁵ *βούλευσις*, in the sense of a plot to kill which is not realised.

²⁵⁶ See introd. to *Medea*, p. xi ff.

once had been a goddess; and that hence arose the fiction that Medea had once slain children—in sacrifice! Later, Verrall thinks, this Corinthian story was expanded under the influence of eastern Greek colonisation, and legend traced in the route from the Euxine to Iolcos the natural course of Medea's introduction to Greek lands. Weird Asiatic notions of sorcery and witchcraft clustered round her name; to her were attributed the atrocities which legend-memory recorded of the Aeolidae at Iolcos. Thus was Medea degraded not only from a goddess to a priestess, but also from a priestess to a sorceress, and from a sorceress to the vilest murderess whom Grecian legends knew.

If the creators of the story of Medea were ignorant of her original character, so also naturally was Euripides. For him, Medea is not a goddess who has assumed the form of a woman, but a woman who has not yet put off this mortal coil, and who as yet has done little to deserve that she should, after death, attain to divinity! As a woman, she is, despite her magic, subject to social laws. Her deeds of blood must be regarded from a legal standpoint, whether that standpoint is applicable to one era or to another. Let us consider how the deeds of Medea were avenged.

First of all, she slew her brother, Apsyrtus, in Colchis, to prevent his pursuit.²⁵⁷ For this crime she paid no penalty, if we except the exile which destiny had, in any event, decreed for her. It was quite unnecessary for the legend-maker to invent this additional atrocity of fratricide, for to Colchis Medea was never to return! But as exile was an archaic Pelasgian penalty for wilful kin-slaying, this conception bears an antique stamp which is attributable either to the antiquity of the story or to the archaising of later minds.

Again, Medea caused the daughters of Pelias to put to death their aged father by deluding them into the belief that by cutting him in pieces and boiling him with certain magic potions, they would restore him to youth and vigour.²⁵⁸ Here Medea acts as the 'plotter and contriver'²⁵⁹ of murder. In primitive as in historical²⁶⁰ times, such a deed was regarded as equally culpable with that of an actual slayer—

²⁵⁷ 1334.

²⁵⁸ 485.

²⁵⁹ *βόλευσις*, when the plot was realised.

²⁶⁰ *Supra*, p. 223 f.

indeed, in the special circumstances of the case she was the real if not the actual murderer of Pelias, and the daughters of Pelias were guilty, at most, of involuntary slaying. We cannot of course attribute to Medea the guilt of kin-slaying, as she was not akin to Pelias. It is more probable that she would have been regarded, for purposes of punishment, as an ordinary murderess. In actual fact, she and Jason were expelled from Thessaly. Even so, in the play,²⁶¹ she still fears the vengeance of Acastus, the son of Pelias. This fact does not imply that she was conceived as guilty of kin-slaying, which in historical Greece was punishable by death. We believe that the Thessalian story of Medea was not conceived from the standpoint of historical law.

In this story there are complications of blood-vengeance which suggest an Achæan, or rather what we may call a quasi-Achæan atmosphere. While, in Homer,²⁶² Pelias, son of Poseidon, rules over Iolcos like an Achæan, by divine right, later legend revealed that he had previously defrauded his half-brother Aeson of the kingdom and put him to death, and that Jason the son of Aeson had himself narrowly escaped death at his hands. Hence it was natural that Jason, the one-sandalled hero of the oracle,²⁶³ should command Medea to put Pelias to death. That is the real reason why Jason, together with Medea, was banished from Thessaly by Acastus. This quasi-Achæan exile is therefore similar to the Achæan 'flight from death,' and hence it is that Medea still fears the vengeance of Acastus.²⁶⁴ When Jason arrived at Corinth, he became affianced to the king's daughter, just as the Achæan Tydeus became the son-in-law of Adrastus.²⁶⁵ No pollution was involved in an alliance with a kin-slayer! The presence of such Achæan episodes in Euripides, side by side with episodes which bear a later stamp, suggests either a marvellous capacity for archaising on the part of the dramatist or, more probably, the unadulterated transmission of an antique legend.²⁶⁶

The main plot of this drama reveals two further atrocities which were perpetrated by Medea. She plots the death of her

²⁶¹ 735.

²⁶³ Pindar, *Pyth.* iv. 95 ff.

²⁶⁵ Eur. *Phoen.* 410-425.

²⁶² *Od.* xi. 253 ff.

²⁶⁴ 735.

²⁶⁶ *Supra*, p. 116.

husband, of his intended wife, Glauce, of his intended father-in-law, Kreon, King of Corinth, and of her own two children, whom she had borne to Jason. Her murderous plot proved successful, except in regard to Jason. Her children she slew deliberately with her own hand. It happened, previously, that Aegeus, King of Athens, arrived at Corinth. Medea, well aware of the consequences of the murderous plot which she had planned, and being, in addition, under an edict of banishment from Corinth, entreated Aegeus to give her protection at Athens.²⁶⁷ He promised to do so, but she was not content with a promise. She bound Aegeus under a solemn oath :

Swear by the earth on which we tread, the sun,
Thy grandsire and by all the race of gods . . .
That from your land you never will expel,
Nor while you live consent that any foe
Shall tear me thence.²⁶⁸

One or two problems are suggested by this quotation. If Medea had not succeeded in securing this solemn contract on the part of Aegeus, would she have carried out her plot? And was Aegeus bound by the oath when he discovered the sequel? In this section of the story—which is the main theme of our play—homicide is conceived as a ‘pollution,’²⁶⁹ and in the pollution system exile was not permitted for voluntary kin-slaying.²⁷⁰ The murder of her children was by far the most serious offence which Medea committed, since they were her kindred. For the other deeds of blood she could have legally sought asylum at Athens, as she was not a citizen of that State, and the deeds had not been perpetrated there. Medea seems to be well aware of these facts, for she utters no hint to Aegeus of her dreadful plans. But it was her intention of slaying her children which led her to extract from Aegeus this solemn oath. If he had refused to swear, she would, we believe, have slain all her intended victims, but she would then have committed suicide.

But was the oath which Aegeus swore binding in Greek international law? Apparently Medea thought so, and

²⁶⁷ 709 ff.

²⁶⁹ See 796, 850, 1268, 1383.

²⁶⁸ 746–7 and 749–51.

²⁷⁰ *Supra*, p. 234 ff.

Euripides seems to think so, too. The Chorus, however, do not understand how Medea can find a refuge at Athens. But it is only in the slaying of the children that they seem to find a difficulty. They say ²⁷¹ :

For its holy streams renowned
Can that city, can that State
Where Friendship's generous train are found
Shelter thee from public hate,
When, defiled with horrid guilt,
Thou thy children's blood hast spilt ?
Think on this atrocious deed
Ere the dagger aim the blow.

But at the end of the play the Sun-god, the grandfather of Medea, places his chariot at her disposal in order to facilitate her journey to Athens,²⁷² the Corinthian gods accepting, as an expiation, the establishment by blood-stained hands of a festival and mystic rites!²⁷³ Jason is foredoomed to death,²⁷⁴ and we are told that Medea will escape the Erinnyes of her children!²⁷⁵

If Euripides, as Wedd maintains,²⁷⁶ habitually contrasts the morality of the legends with that of his own day, we can only say that here the contrast is so obvious that it need not have been indicated at all. But is such a contrast really indicated? Does the futile protest of the Chorus represent the Athens of Euripides, and does the action of Aegeus typify the Athens of a barbarous past? If not, how do we explain the facts of the drama? In our view, it is Jason, not Medea, who is the villain of this play. Medea had left her home, her kindred, everything that life held dear, for the love of a Greek adventurer. Jason never taunts Medea with the slaying of his father. He had commanded it. Driven forth as an exile from the land of Thessaly, she clings to her blood-stained mate. In Corinth he deserts her, and she is ordered to go away—anywhere, somewhere, into the great unknown. To the distracted mind of a desperate woman who sees herself deserted in a friendless world comes then the image of a two-edged sword, begotten of slighted love and sexual jealousy.

²⁷¹ 846 ff.²⁷² 1321—2.²⁷³ 1378 ff.²⁷⁴ 1386 ff.²⁷⁵ 1389 ff.²⁷⁶ *Supra*, p. 365.

Love rejected, love transferred, transforms Medea from a faithful friend into a dangerous enemy. Her children, erstwhile the sweetest pledges of affection, are now so many goads which stimulate her vengeance. The conflict of passions which rages in Medea's breast is depicted by Euripides with matchless skill. It proclaims her at once human and insane. Subjectively therefore she need only plead guilty to extenuated homicide, to slaying in a passion; and if such a plea were accepted she would be entitled in Greek law ²⁷⁷ to the sanctuary of exile. Why then does she bind Aegeus by an oath? We suggest that the explanation is to be found in the distinction between the objective or legal aspect of an act and its subjective or psychological aspect. It would have been difficult for Medea to have established her plea in any court, formal or informal. Aegeus might not have given her the benefit of the doubt, as Theseus did to Oedipus, and Medea could take no risks. Furthermore, this legend has an archaic setting, and portrays a Greek story of a period which was antecedent to the establishment of regular State courts of justice and to codified international law. This explains why Aegeus observed his oath. There was no authority of an international religion to declare that it was not binding. Viewed in this light, the protest of the Chorus in our last quotation is a confirmation of our hypothesis. They actually approve of the slaying of Kreon and of his daughter, though they regret that they should have suffered for Jason's infamy. They say ²⁷⁸:

Heaven its collected store of evil seems
This day resolved with justice to pour down
On perjured Jason. Thy untimely fate
How do we pity, O thou wretched daughter
Of Kreon, who in Pluto's mansions go'st
To celebrate thy nuptial feast.

When the Chorus urge Medea not to slay her children, we feel that they are prompted by feelings of pity and humanity, rather than by any sense of legal or religious guilt. In the following passage in which we see the strongest and most emphatic instance of their disapproval of Medea's act, their

²⁷⁷ *Supra*, p. 234.

²⁷⁸ 1231 ff.

main objection is that her act is unusual! Only one woman, they say, has ever been known to do such a deed before! ²⁷⁹

Art thou a rock, O wretch, or steel to slay
 With thine own hand that generous race of sons
 Whom thou didst bear? I hitherto have heard
 But of one woman who, in ancient days,
 Smote her own children, Ino, by the gods
 With frenzy stung. . . .
 But she, yet reeking with the impious gore
 Of her own progeny, into the waves
 Plunged headlong from the ocean's craggy beach.
 Can there be deeds more horrible than these
 Left for succeeding ages to produce?

Thus, in this play we have no Euripidean contrast of barbarous with civilised morality. Euripides favours Medea; so does the Chorus; so does the plot. So strong is her passion, so conscious is she of her own moral rectitude, so magnanimous is her soul, that, if Aegeus had not come, she would have carried out her plans, and if Aegeus had not sworn, she would have done the same. But with her blood-stained hands she would have driven into her heart the sword which had just drained the life blood of her children.

THE 'HIPPOLYTUS'

The scene of the *Hippolytus* is laid in Troizen, in S.E. Argolis, the realm of Pittheus, the maternal grandfather of Theseus, King of Athens. Thither Theseus has come, because, says Euripides, he was sentenced to one year's exile for the slaying of Pallas and his sons. Aphrodite says ²⁸⁰:

But from Cecropia's realm since Theseus fled
 To expiate his pollution, with the blood
 Of Pallas' sons distained, and with his queen
 Sailed for this coast, to punishment of exile
 Submitting for one year.

²⁷⁹ 1279 ff.

²⁸⁰ 34-7. I venture to modify Woodhull's version of v. 37—ἐναυσίαν ἐκδημον αἰνέσας φυγῆν, —as he renders 'to voluntary exile submitting for one year.'

Now Pausanias informs us ²⁸¹ that 'justifiable homicide was the plea of Theseus when he was acquitted for killing Pallas and his sons.' We have pointed out ²⁸² that Pallas and his sons were slain in a civil war in Attica. As they were technically rebels, and unjust aggressors, seeking to dethrone Aegeus (the father of Theseus), who was the reigning monarch, it was quite natural that from one point of view the act of Theseus should have been morally regarded as justifiable homicide. It would not have required a court of justice to have established the validity of such a plea. Had not Eteocles been automatically 'acquitted' for the slaying of Polyneices? But why does Euripides speak of a sentence of one year's exile? This penalty in relation to kin-slaying (Pallas was a brother of Aegeus) can only have one meaning. Plato assures us ²⁸³ that if a kinsman slays a kinsman in a passion, and if the deceased before he expires shall have 'forgiven' him and absolved him from blood-guiltiness, the deed shall be regarded as involuntary homicide for which the normal penalty was one year's exile. To explain this reference in Euripides, therefore, Theseus must be conceived as guilty of extenuated kin-slaying which was 'forgiven.' But we are nowhere told that the Pallantidae forgave their slayer! We have said ²⁸⁴ that there was a legal affinity between the conceptions of justifiable and of extenuated slaying. Yet the two kinds of homicide were never identified, and it would be all the more difficult to identify them when the deed concerned a King of Athens. Hence we must suppose either (1) that Euripides has here abandoned the tradition mentioned by Pausanias, or (2) that the legal aspect of the slaying of the Pallantidae had become confused in the legends, before Euripides, with the legal aspect of some other deed of blood with which the name of Theseus was associated.

During the sojourn of Theseus at Troizen, where his son Hippolytus was being brought up, Phaedra, the second wife of Theseus, sought to seduce into adulterous intercourse her step-son, Hippolytus. Euripides represents Hippolytus as an Orphic votary, ²⁸⁵ and we will condone the anachronism ²⁸⁶ because it emphasises the probability of Hippolytus' repudiation

²⁸¹ i. 28.²⁸⁴ *Supra*, p. 214.²⁸² *Supra*, p. 245.²⁸⁵ 950 ff.²⁸³ *Laws*, ix. ch. 9.²⁸⁶ *Supra*, p. 240 ff.

of Phaedra's suggestions. Phaedra, in shame and anger, committed suicide,²⁸⁷ but in revenge for the puritan's rejection of her love, she left behind her a letter in which she accused Hippolytus of forcible violation.²⁸⁸ Such an accusation, followed by suicide, would be sufficient to convict Hippolytus in either ancient or modern times. It would have convicted him of attempting an 'indecent assault,' and of attempted adultery. But would it have convicted him of having caused the death of Phaedra? Theseus believed him guilty of all these crimes, and decided to banish him from Troizen, pronouncing against him, in addition, a virulent curse which, in the religious atmosphere of the ancient world, was as dangerous to the life of Hippolytus as the *σήματα λυγρά* were which were sent, in analogous circumstances, by Proitus to the King of Lydia, in the legend of Bellerophon.²⁸⁹ He says ²⁹⁰:

O Neptune, O my sire,
 Since thou hast firmly promised that thou thrice
 Wouldst grant me what I prayed for, now fulfil
 One vow, and slay my son, nor let him 'scape
 This single day, if thou with me design
 To ratify the compact thou hast made. . . .
 Moreover I will drive him from the land :
 For of these twofold fates, or this or that
 Must smite him : Neptune, when he hears my curses,
 Will plunge the miscreant to the shades of hell ;
 Else, cast forth from this region, and ordained
 To wander in some foreign land, a life
 Of the profoundest misery shall he drag.

The crimes which Theseus attributes to Hippolytus are so many and so various that it is impossible to connect this penalty of banishment with the homicidal aspect of Phaedra's death. The penalty is too severe, as his action in causing Phaedra's death could hardly have been regarded even as manslaughter.

It is to be noted that Hippolytus was banished from Athens as well as from Troizen.²⁹¹ After leaving Troizen, as he was travelling along the coast, he was assailed by a sea-monster which was sent by Poseidon, within sight of the Scironian

²⁸⁷ 800.²⁸⁸ 877 ff.²⁸⁹ Homer, *Il.* vi. 160 ff.²⁹⁰ 887-898, omitting 891-892.²⁹¹ 974, 1094.

rocks ²⁹² (this point, we shall see, is important for the correct analysis of the legend): the horses took fright, and Hippolytus was dragged behind the chariot until he was mortally injured. He was brought back to Theseus; and as Artemis miraculously revealed to Theseus his innocence of the crime which had been alleged against him, the father and the son became reconciled; and, before he died, Hippolytus absolved his father from the guilt of blood.²⁹³ Thus the play ends.

We have said ²⁹⁴ that in early Greece, and even amongst the Achæan caste, adultery was not punishable by death. Hence the curse of Theseus renders him liable to blood-guilt. He 'contrives' death, he is *αἷτιος φόνου*,²⁹⁵ even if he does not actually slay Hippolytus. He confesses his guilt in the closing scene. Now the 'forgiveness' of a dying kinsman did not absolve the slayer from all punishment. He had still, in historical Greece, to endure a penalty of one year's exile from his home-land. Is it not strange, therefore, that in this play Theseus suffers no punishment for the death of Hippolytus? Troizen was reputed to have been the birth-place of Theseus; Athens was the birth-place of Hippolytus. Euripides remembers the latter fact when he represents the exiled Hippolytus as debarred from Athens. But he forgets the former fact when he makes Troizen a place of exile for Theseus! Pausanias says ²⁹⁶ that Theseus went to Troizen to be purified for the slaying of Pallas and his sons, and that at Troizen Phædra accomplished the death of Hippolytus. Moreover, Pausanias tells us ²⁹⁷ that over the royal portico of the Athenian Prytaneum there was an earthenware statue which represented Theseus in the act of hurling into the sea a certain brigand named Sciron. For Euripides, Sciron is the name of a sea boulder in the Saronic gulf. But Plutarch assures ²⁹⁸ us that Sciron was a kinsman of Theseus, that Theseus slew him, and that as an atonement he instituted the sacred Isthmian games!

It seems obvious that Euripides has either adopted an eclectic attitude to these various legends of Theseus, or that they had become 'fused' before his time. But he is not concerned with legal accuracy or consistency, so much as with

²⁹² 1195 ff.²⁹³ 1282 ff.²⁹⁴ *Supra*, pp. 53 ff.; 76.²⁹⁵ *Supra*, p. 223.²⁹⁶ i. 22.²⁹⁷ i. 3.²⁹⁸ *Theseus*, 10.

the construction of an intelligible plot of intense human interest. To Euripides it must have appeared improbable that the temporary sojourn of Theseus at Troizen was connected, as Pausanias alleges, with purgation rites, since these rites would normally have been performed at Athens. Moreover, the brief period of time which such rites would have necessitated does not afford a sufficient explanation of his 'exile' for the space of one year. Again, it was absolutely necessary to suppose that Theseus returned to Athens. But, for this, it was necessary to assume that he was 'forgiven' by Hippolytus whom he, directly and immediately, and Phaedra indirectly,²⁹⁹ caused to be killed. But we have not yet discovered the secret of that one year's sojourn at Troizen. We believe that it is in the legend of Sciron, which Euripides ignores, that we must seek the real origin of the tradition concerning a 'forgiveness' and a period of one year's exile, in the life of Theseus. We have already³⁰⁰ pointed out how closely these two ideas may be correlated. We suggest that the real legends of Theseus presented some such facts as the following:

1. Theseus slew Pallas and his sons, was acquitted by the Delphinium court,³⁰¹ and was purged at Athens.

2. Phaedra, not Theseus, caused the death of Hippolytus.³⁰²

3. Theseus slew a kinsman,³⁰³ named Sciron, in Attica, but Sciron, before dying, forgave his slayer. Theseus therefore went into exile for one year—not to Troizen—but to the Isthmus where he instituted a sacred festival. He could not have gone into exile to Troizen, for this realm belonged to him (since he was the grandson of Pittheus³⁰⁴), and in Euripides he claims the right to banish Hippolytus from Troizen.³⁰⁵ He was certainly a citizen of Troizen since in legend he was born there.

We must suppose, therefore, according to this hypothesis, either that Euripides selected different elements from these legends and joined them together, or that they had been confused in some one legend before his time. In this fusion the forgiveness was shifted from Sciron to Hippolytus. Theseus

²⁹⁹ Paus. i. 22.

³⁰⁰ *Supra*, p. 178.

³⁰¹ Paus. i. 28.

³⁰² *Ib.* i. 22.

³⁰³ Plutarch, *loc. cit.*

³⁰⁴ Through his mother, Aethra.

³⁰⁵ Eur. *Hipp.* 974, 1094.

was conceived as the cause of Hippolytus' death ; Sciron was ignored and the slaying of Pallas was regarded as extenuated but not as justifiable homicide.

THE ' ION '

The most important incident in the *Ion* is the attempted murder (*βούλευσις*) of Ion, the eponymous ancestor of the Ionians, by his mother Creusa, who does not know that he is her son. Thus we meet once more a homicide problem forming the basis of a drama, and a solution of that problem which requires for its intelligibility the application of homicide-law. Euripides is deliberately pandering to Athenian national pride when he represents Ion, by repute the son of Xuthus, as really the son of Apollo and Creusa.³⁰⁶ In the temple of Delphi he is reared as a minister of the god. Creusa has almost forgotten the issue of her ancient amour, and by a tragic irony comes with Xuthus to Delphi, to consult Apollo as to the causes of her childlessness. Apollo informs Xuthus that he will give him a son and heir, and Xuthus is led to believe that his newly found 'son,' Ion, is the offspring of some intrigue of his youth. When Creusa hears about this 'stranger,' she regards him with hostile feelings, and decides to kill him by poison. In this design, however, she does not succeed. Have we here, then, a 'plot to kill' or attempted murder? The legal essence of the former, we have seen,³⁰⁷ is the realisation of the plot. Therefore, the guilt of Creusa is that of attempted murder or *βούλευσις*. No one except Apollo is supposed to be aware until the end of the play of the real relationship which exists between Ion and Creusa. Hence, we have here a suggestion of an act which, like that of Oedipus, is objectively related to kin-slaying, but which, subjectively, must be regarded as ordinary 'attempted murder.' We have seen³⁰⁸ that in early Greece attempts to kill and actual slayings were accorded equal punishment. But we find in the *Ion* that Creusa is not punished at all! The explanation of this problem is the main object of our present inquiry.

³⁰⁶ Müller, *Dorians*, i. 265 ff. ³⁰⁷ *Supra*, p. 224 f. ³⁰⁸ *Supra*, p. 326 f.

When the attempted murder of a minister of Apollo is discovered and reported, the whole civic machinery of the Delphian State is put in motion.³⁰⁹ A court is held at which Ion is the accuser. He charges his mother with attempted murder, but there is a subtle suggestion of the additional guilt of attempted sacrilege. This court of Delphian nobles condemns Creusa to death. Creusa's servant says³¹⁰ :

Delphi's rulers have decreed
My queen shall be thrown headlong from the rock,
Nor hath one single voice, but the consent
Of all, adjudged her death, because she strove
E'en in the temple to have slain the priest.
Pursued by the whole city, hither bend
Her inauspicious steps. She through a wish
For children to Apollo came : but now
She perishes with all her hoped-for race.

The Chorus recommend Creusa to take refuge in a sanctuary.³¹¹ She answers that sanctuary is valueless as a refuge against the sentence of death. The Chorus comfort her with the assurance that while she remains in the sanctuary she cannot be slain.³¹² But Ion, who by a tragic irony leads the executioners, leaves no doubt that her refuge will not avail her. He says³¹³ :

Behold
The sorceress, what a complicated scene
Of treachery hath she framed, yet trembles not
The altar of Apollo to approach.
As if Heaven's vengeance could not reach her crimes.
But neither shall this altar nor the temple
Of Phoebus save thy life.

Creusa in the ensuing dialogue advances a plea of justification. She argues that if Ion came to Athens, sooner or later he would have slain her through dynastic rivalry :

I sought
To take away the life of you, a foe
To me and to my house. . . .³¹⁴
Lest I should perish if your life was spared.³¹⁵

³⁰⁹ 1106 ff.³¹⁰ 1222 ff.³¹¹ 1254 ff.³¹² 1259.³¹³ 1275 ff.³¹⁴ 1291 ff.³¹⁵ 1301.

But this was also the plea of Eurystheus when he sought the lives of the Heracleidae. In Greek law the plea has no validity. Ion commands his mother to leave the altar,³¹⁶ saying

Shalt thou 'scape unpunished
For thy attempt to slay me ? ³¹⁷

At this critical moment the Pythian priestess intervenes, and requests Ion to desist. She holds that the attempt of Creusa was mitigated by 'passion'—and that therefore she did not deserve to die. She says ³¹⁸ :

Wives with inveterate hatred ever view
Their husbands' sons sprung from another bed.

Thus does Apollo override the verdict of his priests ! But he goes farther. Creusa, according to the oracular interpretation of her act, was guilty of an 'extenuated' attempt to kill, and should therefore in strict law³¹⁹ have been punished by a penalty of temporary exile. Yet she is permitted to return forthwith to Athens, her native country ! In the following verses Ion is urged to 'forgive' :

Banish from thy soul
This rancour, now the temple thou art leaving,
And on thy journey to thy native land.³²⁰

But we have not yet rendered the *dénouement* legally intelligible. We think that it can only be explained by one hypothesis, namely, by assuming that Apollo takes upon himself the responsibility for Creusa's act. It was he who, by concealing the true facts, had provoked Creusa to attempted murder. It was he, therefore, who must take the blame. We have seen that there is no doubt that otherwise Creusa would have suffered death. That penalty is an archaic one, being based, as we think, on the notion of the absence of discrimination in early Greece between degrees of homicide-guilt. In the more subtle analysis of Apollo we may see perhaps a suggestion of Euripides as to the evolution of such distinctions, which characterised the historical period. But it is possible that such distinctions existed in Pelasgian groups, though not in Achæan

³¹⁶ 1306.

³¹⁷ 1308.

³¹⁸ 1329.

³¹⁹ From 750 B.C. onwards.

³²⁰ 1330 ff.

or quasi-Achaean societies. If there is anything legally improbable in this legend, it is obscured by the dramatic interest which attaches to the recognition scene between the mother and the son. Moreover Euripides and therefore the legend which he follows were compelled to indicate the important fact that Creusa *did* return with Ion to Athens, and that the glorious mother of the Ionian race had not been stained by the guilt of kindred bloodshed.

THE 'ANDROMACHE'

In the *Andromache* there are two events of a homicidal character which we must discuss: (1) the attempted murder of Andromache, who was then a war-captive in the home of Neoptolemus, and that of her son, by Hermione, the wife of Neoptolemus, and by her father Menelaus: (2) the slaying of Neoptolemus, at Delphi, by the Apolline priests and magistrates on a false charge of sacrilege which was urged against him by Orestes. The first event is clearly a case of attempted murder, because the plot failed to materialise owing to the arrival of Peleus. The second event is more difficult to define. Objectively, it points to the execution of a normal penalty for an alleged sacrilegious attempt to despoil the temple and for a previous actual spoliation: but, subjectively, Orestes was guilty of contriving the death of Neoptolemus, and he advances, in private, a sham plea of justification, when he says that he regards Neoptolemus, who had married Hermione, his own fiancée, as a virtual adulterer.³²¹ From the words which are addressed by Thetis to Peleus at the end of the play,³²² we may infer that the plot of Orestes was viewed with disapproval by the gods. But, legally, he must escape punishment because the actual slayers could plead sufficient justification, and his private motives were not publicly proclaimed. Let us give some details of both episodes. Hermione, when her attempt to kill is discovered and frustrated, meditates suicide, because, we are told, she fears that her husband will slay her or send her into exile. Thus, a nurse in Hermione's service says ³²³:

³²¹ 1000 ff.

³²² 1231 ff.

³²³ 802 ff.

Within these doors

Hermione, my mistress, by her sire
 Forsaken, and grown conscious of the guilt
 She hath incurred by that attempt to murder
 Andromache and her unhappy son,
 Resolves to die, because she dreads lest, fired
 With indignation at her guilt, her lord
 Should cast her forth with scorn, or take away
 Her life because she purposed to have slain
 The innocent. The servants who attend
 Can hardly by their vigilance prevent her
 From fixing round her neck the deadly noose
 Or snatch the dagger from her hand, so great
 Is her affliction, and she now confesses
 That she has done amiss.

In this passage death appears as the archaic penalty for attempted murder. If Neoptolemus, the husband of Hermione, permits an option of exile, it is perhaps because such an option was permitted for actual murder in historical times, and the penalties were supposed to have been identical, in cases of attempted and of actual murder, in prehistoric days. It is also possible to explain the option by reference to the fact that Andromache was a captive and that therefore her master had the right to forgo the full penalty. We have seen ³²⁴ that the Achaeans did not discriminate between voluntary and involuntary homicide, and we may regard the reference to this penalty here as a case of historical archaism, which attributed to the Achaean Neoptolemus an ignorance of the distinction between attempted murder and actual murder. But we may also suppose that there was a legend which originally contained all these details and retained them as an unadulterated tradition down the ages. In historical times attempted slaying could not have been punished by a more severe penalty than that of exile, the duration of which depended perhaps on some form of 'appeasement.' That such was the historical penalty may be inferred from the fact that the Palladium court tried such cases in the time of Aristotle and, we think, from Solon's time onwards.³²⁵ When the 'attempt' (*βούλευσις*) resulted in actual wounding or in

³²⁴ *Supra*, p. 75.

³²⁵ *Ath. Pol.* ch. 57; *supra*, pp. 192, 251.

physical injury, as in cases of attempted poisoning, the case was probably ³²⁶ tried by the Areopagus, and the sentence was perpetual exile without confiscation of property.³²⁷ In this play, however, as in the *Ion*, the attempted murder of Andromache was unpunished; Neoptolemus, the natural punitive agent, did not live to hear of the attempt. Andromache herself warned Menelaus that the people of the district would put him and Hermione on trial and punish them. She says ³²⁸:

O Menelaus, be it now supposed
I by thy daughter am already slain.
'Twill be impossible for her to 'scape
From the pollution ruthless murder brings ;
Thou, too, by many tongues wilt be accused ³²⁹
Of this vile deed, with her will they confound
Thee, the abettor.

Do we not seem to have here a legend which evolved ? First of all we have private vengeance. Everything depends on Neoptolemus. Then pollution enters the story and the people have a religious interest in homicide. Yet the main fact could not be got rid of, namely that Hermione escaped punishment. If Euripides is archaising, could he not have been consistent ? Or is he thinking of that vaguely defined post-Homeric age in which the conception of murder as a pollution existed, but in which homicide is still, as amongst the Hebrews, a matter for the avenger of blood ? But why, then, does he mention the people ? Is he thinking of the pressure of public opinion, such as was already gathering in Achæan times ? Andromache seems to take a different view from that of Hermione. The issue of the plot confirms Hermione's outlook, which is Achæan. Is it not more natural to suppose that an Achæan story became partially 'Apollinised' in later times than to suppose that Euripides gives us two different archaisms side by side ?

Andromache's attack on Spartan homicide becomes intelligible if we remember the anti-Spartan sentiments of the democrat Euripides. 'Is not murder abundant at Sparta ?' asks Andromache.³³⁰ When, we ask, was it abundant ?

³²⁶ According to the usual interpretation of Aristotle, *supra*, pp. 225, 251.

³²⁷ *Supra*, p. 225.

³²⁸ 333 ff.

³²⁹ *Cf.* 496.

³³⁰ 450.

Is this statement merely a retort to Hermione's assertion that murder was common in barbarian Troy ? ³³¹ Or is Euripides deliberately asserting that Sparta was inferior even to barbarians ? According to the latter hypothesis we must assume that he is speaking of historical Sparta, and his opinions are to be attributed to anti-Spartan prejudice.³³²

In the second homicide episode of this drama, Neoptolemus is slain at Delphi. Orestes who plots and in part executes his death escapes all punishment, for reasons which we have already indicated. The Delphians who are prepared, in the *Ion*, to condemn to death a person guilty of attempted murder, are here themselves engaged in slaying a visitor to their temple. But Neoptolemus was an enemy. He has already despoiled the temple. His life is therefore forfeit. To slay him was, like the projected execution of Creusa, a just revenge. Yet Fate has dealt harshly with Neoptolemus. He now visits the temple not to despoil it, as Orestes falsely alleges, but to make atonement for a previous offence which he had committed against Apollo.³³³ Despite the false evidence of Orestes, Apollo, the prophet who knows all things, should have intervened. Thus the messenger utters a criticism which suggests the sentiments of Euripides and of fifth-century Athens ³³⁴ :

Thus Phoebus,
Who prophesies to others, mighty King,
And deals out justice to the admiring world,
Hath on Achilles' son revenged himself,
And like some worthless human foe, revived
An ancient grudge : how then can he be wise ?

Thetis declares that the death of Neoptolemus is a disgrace to the Delphians and, is for Orestes, a murderous crime.³³⁵ Though slain on grounds of sacrilege, Neoptolemus is buried near the shrine of Phoebus ! ³³⁶ The existence of such a tomb at Delphi would naturally have begotten the story of his death there : the fact that Hermione was, in one legend, the wife of Orestes, in another the wife of Neoptolemus, and the close connexion of Orestes with Delphi in post-Homeric story, may explain his association with the death of Neoptolemus. But

³³¹ 174 ff.

³³² *Supra*, p. 173.

³³³ 1106.

³³⁴ 1161 ff.

³³⁵ 1241-2.

³³⁶ 1240.

the murderous plot which is here attributed to Orestes we believe to be Euripidean. It has no proper sequel: it does not harmonise with anything antecedent or subsequent: it is just a novel, thrilling episode introduced by Euripides to give an artistic interest to an otherwise dull and lifeless drama.

THE 'HECUBA'

A deed of blood and its avenging forms the subject of the *Hecuba*. The scene is laid at Troy and the atmosphere is predominantly Homeric. Polymestor, King of Thrace, having consented to act as the guardian and protector of Polydorus, the son of Priam, King of Troy, murdered his ward and cast his body unburied on the sea-shore. The mode of vengeance which is put in force against Polymestor is peculiarly archaic. The avengers are exclusively women, and are led by Hecuba, the mother of Polydorus. The punishment which is exacted is not the death or the exile of Polymestor, but the death of his two sons, and the destruction of his eyes. Here we have an instance of physical torture such as was prohibited by a law of Dracon³³⁷ in the case of a convicted murderer caught *en rupture de ban*. We have also an instance of hereditary punishment which Greek law had abolished for homicide in the seventh century, and had retained for treason alone in the historical era,³³⁸ in the form of a civic degradation of the traitor's posterity. Polymestor has no consciousness of guilt after the slaying of Polydorus, as he regards his act as justified in political self-defence, and therefore he proceeds to avenge himself on Hecuba and the Trojan women whom he now regards as the murderers of his children. At this stage Agamemnon is requested by Hecuba to act as an arbitrator.³³⁹ In his presence Polymestor says³⁴⁰:

But hear my motives for the deed, to prove
How justly and how prudently I acted:
Your enemy, that boy, if he survived
The ruin of his country, might, I feared,
Collect the scattered citizens of Troy,

³³⁷ *Supra*, p. 195.

³³⁹ 1232 ff.

³³⁸ Glotz, *op. cit.* p. 473 ff.

³⁴⁰ 1136-1144.

And there again reside. I also feared
 That when the Greeks knew one of Priam's line
 Was living, with a second fleet invading
 The shores of Phrygia, they again might drain
 Of their inhabitants the Thracian fields,
 Involving us, their neighbours, in the vengeance
 They on their foes at Ilion wreak. To us
 Already hath such neighbourhood, O King,
 Proved baneful.

The Chorus, however, imply that Polymestor has been justly punished ³⁴¹ :

Hapless man,
 How art thou visited by woes too grievous
 To be endured : but by dread Jove, thy foe,
 On him whose deeds are base, it is ordained
 That the severest punishments await.

This passage suggests that the poet is reproducing an archaic atmosphere. Now the Achaeans, we have seen, ³⁴² ordinarily held no trials for homicide. The pleadings before Agamemnon, which we find here, do not, strictly speaking, constitute such a trial. We have seen ³⁴³ that the Achaeans recognised a distinction between murder and just revenge. Athene upholds that distinction in the *Odyssey*. Agamemnon upholds that distinction here. He decides in favour of Hecuba, saying to Polymestor ³⁴⁴ :

Know, then, to me thou seem'st not to have slain
 Thy guest through an attachment to my cause,
 Nor yet to that of Greece, but that his gold
 Thou might'st retain : though in this wretched state
 Thou speak to serve thy interests. Among you
 Perhaps the murder of your guests seems light ;
 We Greeks esteem it base. If I acquit thee,
 How shall I 'scape reproach ? Indeed, I cannot :
 Since thou hast dared to perpetrate the crime,
 Endure the consequence.

The acceptance by Polymestor of Agamemnon's decision suggests to us the potency of Achaean military discipline in matters of homicide. Was this acceptance indicated in an

³⁴¹ 1085-6.

³⁴² *Supra*, p. 83.

³⁴³ *Supra*, p. 76.

³⁴⁴ 1243-51.

ancient legend, which was preserved in Thrace, and which was transmitted without adulteration, or is Euripides correctly archaïsing from his general knowledge of Achæan procedure as revealed by Homer? The former alternative seems to us the more probable in view of the consistently archaic atmosphere of this play. There is no reference to homicide as a 'pollution,' to purgation, to Apollo, to State trial. A certain degree of divine anger against Polymestor is indicated, but this was caused by the violation of hospitality and by the act of deprivation of burial, both of which acts are religious offences in Homer. Hecuba says to the Chorus ³⁴⁵:

O, 'twas a deed
Unutterable, a deed without a name,
Surpassing all astonishment, unholy,
And not to be endured. Where now the laws
Of hospitality? Accurséd man,
How cruelly hast thou with reeking sword
Transpierced this unresisting boy, nor heard
The gentle voice of pity!

Again she says to Agamemnon ³⁴⁶:

Avenge
My wrongs upon the man who 'gainst his guest
Such treachery could commit, who, nor the gods
Of Erebus beneath, nor those who rule
In Heaven above regarding, this vile deed
Did perpetrate, e'en he with whom I oft
Partook the feast, on whom I showered each bounty,
Esteeming him the first of all my friends:
Yet, when at Ilion's palace with respect
He had been treated, a deliberate scheme
Of murder forming, he destroyed my son,
On whom he deigned not to bestow a tomb,
But threw his corse into the briny deep.

In the scepticism of Talthybius regarding the existence of the gods, we have an anachronism which is strictly applicable only to the rationalists of fifth-century Athens. The comparative indifference of the Achæans to religion left the road open for this anachronism on the part of Euripides.

When the son of Achilles is sacrificing Polyxena at the tomb of Achilles, he says to the spirit of Achilles ³⁴⁷ :

Son of Peleus,
My father, the propitiatory drops
Of these libations which invite the dead
Accept. O come and quaff the crimson blood
Of this pure virgin whom to thee all Greece
And I devote.

For this placation of the dead by human sacrifice we have perhaps a precedent in the sacrifice by Achilles of twelve Trojan youths to the shade of Patroclus. But the suggestion that the dead man came to the tomb to drink the blood offering indicates a fusion of Pelasgian and Achaean beliefs such as Ridgeway assumes to have taken place before the time of Aeschylus.³⁴⁸ Already in the *Odyssey*, however, there is evidence of the tendency to a fusion of ritual and beliefs, which reached maturity before the historical period.³⁴⁸ Such words as Euripides here attributes to Achilles could never have been spoken by the Homeric Achilles. For the Achaeans, the dead, once they were buried, could never leave Hades, and they did not, like Pelasgian ghosts, drink blood offerings at the tomb. This, then, is an anachronism, which was perhaps derived from a misinterpretation by Euripides of the Nekyia in the *Odyssey*. Hecuba naturally objects to the sacrifice of her daughter,³⁴⁹ but incidentally she objects to human sacrifice in general, save in the case of a real enemy. Polyxena, she argues, was not an enemy to Achilles. His ghost therefore could not be placated by her sacrifice. This attitude of Hecuba suggests that a post-Homeric Thracian legend contained a reference to a barbarous blood-thirst on the part of the dead, which we have attributed to the Hesiodic age of chaos. Euripides elsewhere attributes the sacrifice of Polyxena to the expressed desire of the ghost of Achilles!³⁵⁰ We cannot be certain whether a post-Homeric legend embodied these conceptions, or whether Euripides invented them in his desire to add to the horrors of the story another grim idea.

³⁴⁷ 534-8.

³⁴⁸ *Supra*, p. 106.

³⁴⁹ 260 ff.

³⁵⁰ 40.

THE 'BACCHAE'

On the first introduction, into Thebes, of the worship of Bacchus, or of what may be termed the orgiastic cult of Dionysus, Pentheus, the reigning King, opposed the new religion, declared Bacchus an impostor,³⁵¹ and threatened him with death.³⁵² Hence the chorus of Bacchanals, inspired with prophetic foresight, approve in advance the death of Pentheus whom they regard as an enemy or a traitor.³⁵³ By a tragic irony, Agave, the mother of Pentheus, who has joined the Bacchic worshippers and is mesmerised by Bacchic influence, is the actual perpetrator of the death of Pentheus. She is deluded by Bacchic frenzy into believing that she is slaying a lion, and returns to Thebes carrying what she believes to be a lion's head. She says ³⁵⁴:

Ye that within the high-towered Theban city
Dwell, come and gaze ye all upon our prey,
The mighty beast by Cadmus' daughter ta'en ;
Nor with Thessalian sharp-pointed javelins,
Nor nets, but with the white and delicate palms
Of our own hands. Go ye and make your boast,
Trusting to the spear-maker's useless craft :
We with these hands have ta'en our prey, and rent
The mangled limbs of this grim beast asunder.
Where is mine aged sire ? Let him draw near !
And where is my son Pentheus ? Let him mount
On the broad stairs that rise before our house ;
And on the triglyph nail this lion's head
That I have brought him from our splendid chase.

Her position, then, differs from that of Ajax,³⁵⁵ in that the deed really takes place and that she did not intend it. The act is, we shall find, analogous to, but less culpable than, that of Oedipus when he slew his father.

Cadmus, father of Agave, refers the ultimate guilt to Bacchus ³⁵⁶:

Justly—too justly hath King Bromius
Destroyed us, fatal kindred to our house.

Agave adopts a similar attitude when she realises the nature

³⁵¹ *Bacchae*, 240 ff.

³⁵² 356 ff.

³⁵³ 995 ff.

³⁵⁴ 1202-15.

³⁵⁵ See *supra*, p. 325 ff.

³⁵⁶ 1250.

of the deed which she has wrought.³⁵⁷ But she cannot escape all punishment. At the end of the play Dionysus propounds an oracle of Zeus which declares ³⁵⁸ that Cadmus shall become a dragon, and his wife Harmonia shall become a serpent, but that they will nevertheless conquer many barbarian cities and will be borne ultimately to the land of the blessed gods. Yet they must leave Thebes now because of their impious attitude to Dionysus! Is this decree an instance of 'collective' punishment? Is it necessary that the entire family of Cadmus should suffer for the impiety of Pentheus which he has already atoned for by an ignominious death? It may be an explanation of this obscure punishment to say that it is collective. But what shall we say of Agave? She also has to leave Thebes. Is her exile to be regarded as a penalty for 'impiety' in regard to Dionysus? Surely she has already been sufficiently pious and to her cost! She was actually one of the Bacchic worshippers, in the play. Moreover, in going into exile she bids farewell to her father!³⁵⁹ They are all sent into exile together, yet she cannot go with her father.³⁶⁰ Surely, if impiety were the offence, and the penalty were collective exile, all the offenders could have gone in conjunction. Why is Agave exiled, then, if she is condemned to separate exile? We suggest that this penalty is inflicted because of kin-slaying in religious frenzy, that is to say, in legal language, 'in a passion.' Plato assures us ³⁶¹ that kin-slaying extenuated by passion prohibited the slayer from any further intercourse with her family. 'If a father or mother in a passion kill their son or daughter by blows or in any other violent manner . . . let them remain in exile for three years and on returning let the husband be divorced from the wife and the wife from the husband, and let them never afterwards beget children together nor dwell in fellowship with those whom they have deprived of child or brother, or have a share in their sacred rites.' But Agave goes into exile with her sisters Autonoe and Ino, who had shared in the death of Pentheus. They too are separated from Cadmus. The reason is perhaps that Cadmus symbolises the domestic religion of their home. From him, as from their home, they must be exiled for ever.

³⁵⁷ 1296.³⁵⁸ 1330 ff.³⁵⁹ 1363, 1379.³⁶⁰ 1350.³⁶¹ *Laws*, ix. ch. 9.

THE 'ALCESTIS'

Neither the *Alcestis* nor the other two plays of Euripides which remain for discussion are of very much importance from the point of view of homicide-law. In the prologue³⁶² Apollo tells how he slew the Cyclops who forged the thunder-bolt by which Zeus slew Aesculapius, Apollo's son, and how in consequence he went into bondage with Admetus of Pherae for a period of one year. Thus Zeus plots the death of his grandson and punishes his son for avenging it! The reason is that Zeus regards the death of Aesculapius as justified, and therefore, as Apollo's vengeance is unjust, he must be punished. The penalty of bondage which is here referred to may be the Pelasgian servitude which we have discussed in an early part of this work,³⁶³ or it may be a form of that same penalty which was retained under the pollution-system, in pre-Draconian days when it was indispensably connected with exile. There is here, however, no reference to pollution or to purgation. Apollo was purified for slaying the Python³⁶⁴ but not for the slaying of the Cyclops! We cannot apply to the Olympian Apollo the laws which were made for mortal men. Apollo, unlike Hercules, could not be conceived as a man. It was from Olympus, the abode of the Olympian gods, that he was banished. The obvious motive for the legend is the association of Apollo with Admetus. Some reason had to be assigned for this 'exile' of Apollo. We may suppose that a deed of homicide was invented to explain this 'exile,' but that its details were not worked out. The only real importance of such a legend is that it affords a certain amount of evidence for the existence of servitude as a homicide-penalty in early Greece.

Admetus is permitted by the Fates to live if he can find a substitute. His wife Alcestis voluntarily dies in his stead. Was her death attributable to Admetus? Was he her murderer? His father, Pheres, seems to think so!³⁶⁵

I go : thou shalt entomb her, as thyself
 Her murderer. Look for vengeance from her friends.
 Acastus is no man if his hands fail
 Dearly t'avenge on thee his sister's blood.

³⁶² 5-7.³⁶³ *Supra*, p. 44 ff³⁶⁴ Plutarch, *Greek Questions*, 12 ; Aelian, *Var. Hist.* iii.³⁶⁵ 730 ff.

As Hercules, in this play, raises to life the dead Alcestis, we are freed from the necessity of discussing the legal aspects of such a problem. The whole plot of this play belongs to the supernatural rather than to the natural order. The murder laws of Greece made no provision for such contingencies.

THE 'TROADES'

In the *Troades* Cassandra foresees the murder of Agamemnon and the vengeance of Orestes, and connects these tragic misfortunes with the woes which were brought by the Atreidae upon the house of Priam. Aeschylus has a suggestion of this sentiment in the *Agamemnon*.³⁶⁶ To represent Clytaemnestra and Orestes as mere instruments in the hands of Destiny may be religiously orthodox to a superstitious people, especially in the Dark Ages of prehistoric Greece, but it has no legal validity. Such sentiments are really antagonistic to legal sanctions. Applied to Achaeans, they are, we think, anachronistic. Murder is distinct from war, and murder is not conceived as begetting murder, in the course of Destiny, until post-Homeric times. In the decision of the Greeks to slay Astyanax, the son of Andromache, as a reprisal for the adultery of Paris,³⁶⁷ we see an instance of hyper-vengeance, which is characteristic of hostile belligerents. We cannot infer that amongst the Achaeans the punishment for adultery was more severe than amongst the Pelasgians.³⁶⁸ Astyanax was not an adulterer! His punishment was a reprisal, and has therefore no legal significance. Talthybius refers to a strange proposal on the part of the Greeks, namely a proposal to set up a spear in the tomb of Astyanax.³⁶⁹ Now this spear is a symbol of future vengeance. It is strange that such a symbol should have been set up by the party who deserve and anticipate punishment. Moreover, we have seen³⁷⁰ that this custom was probably post-Homeric. The Achaeans did not credit their dead spirits, after burial, with any local habitation in the tomb or with any effective desire for vengeance. Here, the suggestion is clearly intended by Talthybius, and possibly by Euripides, to bring some slight comfort to Hecuba,

³⁶⁶ *E.g.* 333 ff.

³⁶⁷ *Troades*, 705 ff.

³⁶⁸ *Supra*, p. 58 ff.

³⁶⁹ 1150 ff.

³⁷⁰ *Supra*, p. 122.

the bereaved mother. We have referred to a passage in Demosthenes,³⁷¹ in which a plaintiff, who was debarred from a prosecution for bloodshed, because of his not having been akin in blood to the deceased, was advised by the Exegetae to carry a spear at the funeral. It was therefore rather a cruel piece of irony for Euripides to suggest that by the setting up of this symbol—which had come, in historical times, to indicate the absence of avengers—the Greeks intended to express at once to Hecuba the hope of retaliation and to themselves the hope of immunity from vengeance.

THE 'HELEN'

The scene of the *Helen* is laid in Egypt. We are told that the ubiquitous Helen escapes with Menelaus from Egypt, having deceived by a stratagem her amorous protector, Theoclymenus. She was aided in her plans by Theonoe, the sister of Theoclymenus, and he, therefore, in the anger of disappointed passion, proceeded to slay his sister. The Dioscuri intervened in time to prevent the realisation of his purpose, and all ends happily! Technically, Theoclymenus is guilty of attempted kin-slaying, but the poet leads us to suppose that an ungovernable fit of passion would, in such a case, be regarded as a complete extenuation. We may infer from the words of the Chorus that the slaying of one's kindred was regarded with horror by races which were outside Greece. The Chorus will not permit the death of Theonoe, even though they intervene at their peril. They say to Theoclymenus³⁷²:

Kill me. Your sister you with my consent
Shall never slay : I rather would yield up
My life on her behalf. It is most glorious
To generous servants for their lords to die.

Euripides also makes the barbarian Thoas, King of the Tauric Chersonese, gasp with horror when Iphigeneia, the priestess of Artemis, informs him of the arrival of the matricide Orestes. When Iphigeneia says³⁷³:

They came polluted with domestic blood,

³⁷¹ *Contra Euerget. et Mnesib.* 1160, 15; *supra*, p. 182.

³⁷² 1639–41.

³⁷³ *Iph. in T.* 1171.

he answers ³⁷⁴ :

O Phoebus ! This hath no barbarian dared.

Euripides, then, did not believe that the conception of kin-slaying as a horrible and revolting act was an exclusively Grecian sentiment. When therefore in the *Andromache* he makes Hermione say ³⁷⁵ :

Such is the whole abhorred barbarian race :
 The father with his daughter, the vile son
 With his own mother, with her brother too
 The sister sins ; friends by their dearest friends
 Are murdered : deeds like these no wholesome law
 Prohibits : introduce not among us
 Such crimes. . . .

we may attribute such an assertion to a mind inflamed with the jealousy which a wife feels towards a concubine rather than suppose Euripides not to have known that the horror of kin-slaying is an aboriginal universal sentiment of the human race when once it has abandoned the cave of the cannibal.

We have now concluded our inquiry into the problem of blood-vengeance in Attic tragedy. Nothing has been revealed by this inquiry which is in conflict with the hypotheses which we have sought to establish in this work, as to the various systems of blood-vengeance which existed in Greece, from Pelasgian times to the age of the orators. While Attic tragedy does not in itself contribute anything to our knowledge of these various systems, there can be little doubt that an attempt, however imperfect, to investigate the origin and nature of these systems is indispensable for a proper appreciation of these dramatic masterpieces. If our analysis of blood-vengeance in the works of the three great Attic tragedians has not, in many cases, succeeded in establishing definite clear-cut conclusions, this, we hope, will be attributed to the intrinsic difficulty and obscurity of the subject. We can never be quite certain whether any particular drama gives us (a) an antique unadulterated legend ; or (b) an antique legend which in course of evolution has taken on new forms without any

regard to the consistency or the historicity of the tradition ; or (c) whether the drama is based upon a late invention which owing to skilful archaising takes on the garb and appearance of an antique story, betraying perhaps, here and there, by its anachronisms, the mind and atmosphere of its creator. It so happens that the attitude to homicide or to religion which the Achaeans reveal was also taken up by many individual Athenians of the Periclean age. Thus the indifference to the gods which Sophocles attributes to Ajax was common to Achaeans and to many Periclean Athenians. So the conception of homicide as a matter for 'private settlement' which is found in Demosthenes, and the survival, in outlying places, such as Macedonia, of family vendettas, fierce and lawless, would have suggested to the mind of the dramatist that there was no very wide gulf between the primitive and the historical Greeks. Such a fact almost invites anachronisms. Nevertheless, we frequently find in dramatic legends an atmosphere so antique, so unlike that of fifth-century Athens, that we may assume, as the most probable hypothesis, that these legends are not inventions, but have behind them a long and, often, a chequered past.

GENERAL CONCLUSION

Having now concluded our inquiry into the origin, the nature, and the evolution of Greek systems of blood-vengeance, it may be desirable to give here a brief synoptic summary of the theories which we have sought to establish. Our summary naturally falls into two sections: (A) chronological and (B) literary.

(A) (1) From the earliest times there existed in Greece a code of homicide-customs which is a well-known characteristic of the tribal or 'group' system of primitive human society ; wergeld was the dominant penalty, and exile or death, or, possibly, servitude were alternative penalties ; there was regular trial and collective control. We may call the system 'private vengeance,' but it was fundamentally different from 'vendetta.' This system has left only very slight traces of its existence in extant Greek literary or inscriptional remains : while it persisted in a suppressed or modified form all through

the course of ancient Greek history, its presence was obscured by other developments, social, religious, and political.

(2) Thus there was, in the first place, the Achaean domination (say, 1300–1100 B.C.) which is the dominant atmosphere of the Homeric poems; we have seen that the Achaean system in regard to homicide made death the normal penalty, but that this penalty could be avoided in practice, though not in theory, by the flight of the slayer. There was no regular or prescribed trial, but there existed a kind of social etiquette or a potential military discipline which established a general distinction between murder and vengeance, and which, while omitting any nice points of discrimination in estimating the degrees of guilt, nevertheless prevented any wholesale system of vendetta.

(3) When in the 'Hesiodic' age (1000–750 B.C.) various migrations and economic changes disturbed the peaceful operation of clan-laws, and no form of control, either tribal or military, could be said to exist in the greater part of Greece (excluding, perhaps, the Attic State), then arose, as we think, in its full vigour the barbarous vendetta system which has left so marked a trace in Greek legends: then rose to prominence the belief in ancestral curses, which were held to fall upon children even in the fourth generation. Then came into being the blood-thirst of the dead, the mutilation of the murdered corpse, the deprivation of burial—all the barbarisms of collective hereditary vendetta.

(4) Into this state of chaos there came, as it were, by the foresight of the gods, in the seventh century, the 'Apolline' religious code. The murderer now becomes god-hated: he is shunned by society: all men must rise in horror against him, and if he is guilty they must either slay him or banish him for ever. Courts must operate, for murder, if for nothing else. The right of suppliants must be respected at least till guilt is proved. Wergeld is abolished, but a minor appeasement of the relatives is permitted after exile, for minor degrees of guilt.

(5) Almost contemporaneously came the evolution of the synoekised Greek State. A compromise between the old and the new ideas produced the laws of Dracon and the historical murder-codes of Greece. The State now takes over

the execution, as well as the trial of homicides. The avenger of blood gives place to the Public Executioner. Parricide and kin-slaying are punishable with death. The property of wilful murderers is confiscated to the State. Courts which at first have general jurisdiction specialise in certain kinds of homicide, and their specialised functions are stereotyped in law. The personnel of these courts undergoes modifications which keep pace, in the main, with the advance of democracy to complete political power.

(B) (1) We have seen that the homicide references in Homer can only be properly understood by assuming a predominance, in legend or in the atmosphere of the poet, of the Achæan system of vengeance, and the existence of faint but unmistakable echoes of the Pelasgian wergeld system.

(2) Of the Hesiodic period the poems of Hesiod are the only authentic evidence, and such evidence is obscure. We may however supplement it indirectly by arguments from survivals, and by the argument of 'elimination.'

(3) Of the Apolline or historical system we need not review the evidence which has been given at length in our Second Book. This evidence has been examined and interpreted by many modern scholars. We have indicated what we considered the most probable interpretation of matters which were open to doubt, especially when the solution of the problem was important for the analysis of blood-vengeance in Attic tragedy. We have sought to prove that Plato's homicide code should be regarded as an important and indispensable contribution to the study of Greek homicide-law. However difficult the analysis of the references to homicide in Attic tragedy may have been, without Plato any such analysis would have been impossible.

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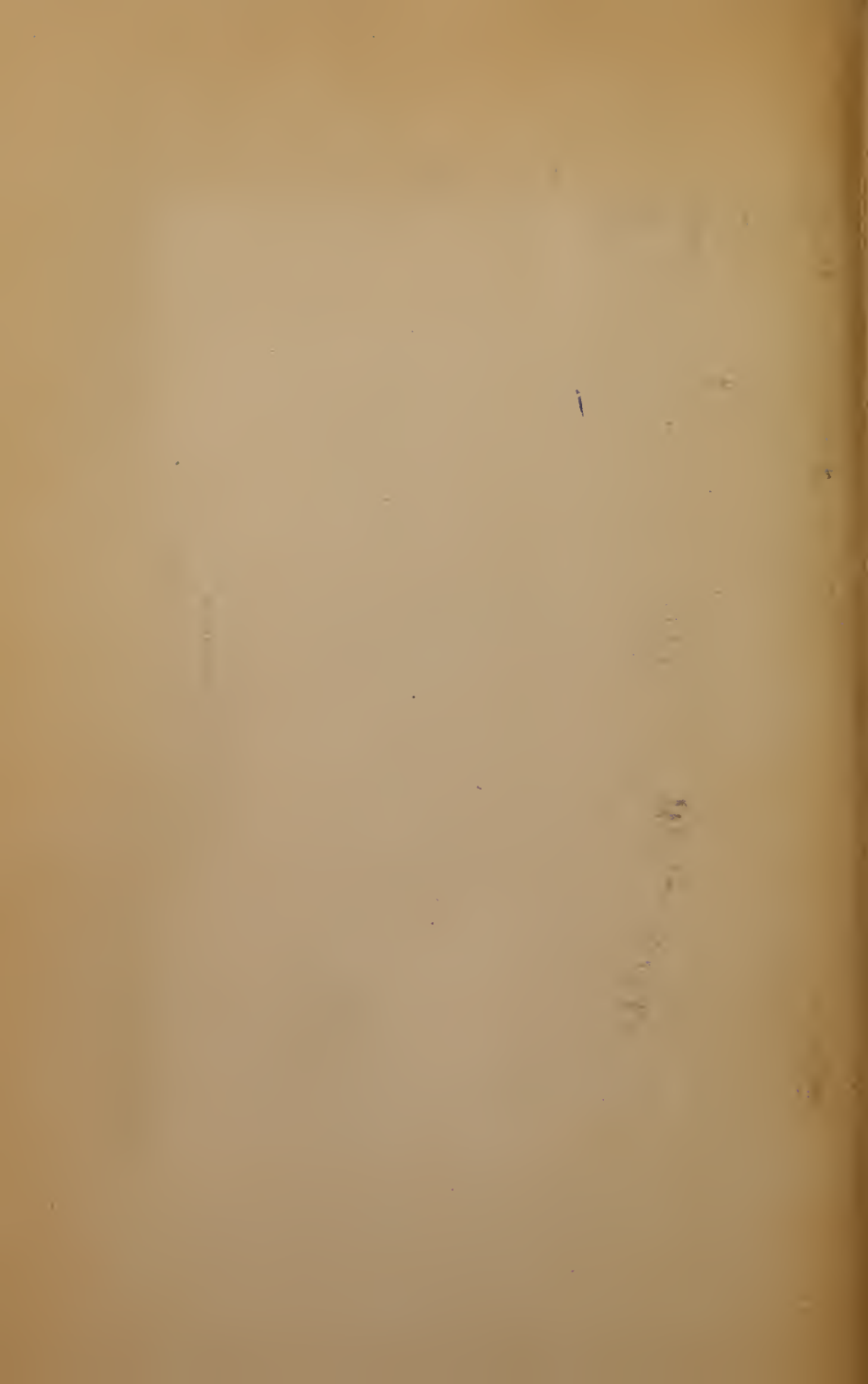
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