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DEATH AND RELIGION IN ATHENIAN LAW: IDENTIFYING POLLUTION?¹

[A] Preliminaries

As the title indicates, the aim of this paper is both restrictive but also wide-ranging. It is restrictive in that I am not seeking to explore all aspects of religious pollution (hence nothing for instance on regulations about sex or childbirth),² nor indeed any aspects of environmental pollution.³ By contrast, the absence of the phrase “homicide law” from my title indicates a breadth of intention, to consider not just the topic of homicide which has traditionally fascinated legal historians despite (or perhaps because of) its highly problematic history: as is well known, there is on the face of it very little sign of pollution in Homer or in the earliest Athenian homicide law; lots in tragedy, in

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² Both of which are found in the Cyrene Cathartic law (Sokolowski *LSS* no.115, e.g. at face A lines 11-20). There are to my knowledge no Athenian texts of this type: my initial suspicion had been that this might represent a primarily non-Athenian focus among the *leges sacrae* in the standard collections, but in fact the first 55 out of 181 texts in Sokolowski’s *LSCG* vol. are from Attica, plus nos. 178 and 179.

³ For which see Hughes (1994), whose focus is very much on issues such as “air pollution” and “water pollution” (16 and 11 index entries respectively), while mentioning ritual pollution only at pp.51-52.

Plato's *Laws*, and in the *Tetralogies* of Antiphon; but much less in the forensic speeches.⁴ But homicide law is a vast topic, so rather than attempting and inevitably failing to present a systematic study even just of its religious aspects, I propose instead to be more selective about homicide but to set this within a broader context of what might be termed either "unnatural deaths" (specifically executions, to be explored from the perspective both of the victim and of the agent), or else "problematic deaths" (viz. regulations covering the disposal of stray bodies, as when people drop dead in the street).⁵ Since each of these topics raises rather different research problems, the various substantive sections of this paper can be read as free-standing discussions. Overall, however, my aim is that bringing these topics together may not only enable a significant expansion in the range of this research field, but may also help to set agenda for future work within the field. To put it another way, my intention is that the combination of topics will enable a process of cross-fertilisation rather than contamination.

It is to avoid contamination, however, that I have restricted my scope deliberately to Athens: non-Athenian texts such as the Ioulis burial regulations,⁶ or the Cyrene cathartic law,⁷ or the newish Selinous lead tablet on purification,⁸ will be cited here only peripherally and for comparative purposes. Such texts are undoubtedly important as representing ways in which Greek cities might conceptualise the problems of pollution, but in religious as in other legal matters it is unsafe to assume that every city solved its problems in the same way.

[B] Methodological considerations

Attempting to evaluate the rôle of death-pollution specifically within the law of homicide requires us to confront the methodological problem of how to identify

⁴ Gagarin (2002: 109) presents a strong contrast between the prominence of pollution in the *Tetralogies* and its virtual absence from the forensic speeches ("Only one litigant in an actual case appeals directly to it [Ant. 5.82-84], and it is absent from most accusations of homicide, such as Lys. 13. It is most notably absent from Ant. 1, a prosecution speech alleging a familial homicide."), though his Antiphon commentary does acknowledge that a possible allusion could be read at Ant. 1.31 (Gagarin 1997: 121) and that other scholars have seen reference to pollution at Ant. 6.39 (1997: 242).

⁵ This is not to deny the relevance of pollution even for deaths which occur at the right time and in the right place (i.e. at home, on your deathbed, in the fullness of your age, and with your children available to conduct the funeral), but attested Athenian regulations for burial focus overwhelmingly on expenditure (cf. the analysis in Garland 1989: 3-8), without any equivalent of the pollution-related clauses found in the Ioulis funerary law (*LSCG* no.97A lines 14-18 [purification of house] and lines 25-29 [restriction in number of relatives allowed to be polluted, cf. n.18 below]).

⁶ Ioulis (cited at e.g. n.5 above, n.18 below): text at Sokolowski *LSCG* no.97, trans. Arnaoutoglou 1998 no.109.

⁷ Cyrene (cited at n.2 above): text at Sokolowski *LSS* no.115; text and trans. Rhodes-Osborne 2003 no.97.

⁸ Selinous: first published by Jameson, Jordan & Kotansky 1993; cf. also text and trans. at Lupu *NGSL* no.27 (cited at n.22 below).

and indeed how to conceptualise the phenomenon of religious pollution as a whole. Some sense of the difficulties involved here can be gained by comparing the very different treatments of this topic by MacDowell, Parker, and more recently Osborne. Of these, MacDowell's approach is the most specifically focused on legal problems, and is clearly articulated in the final chapter of his 1963 *Athenian Homicide Law*. It is based on a principle of differentiation between three possible motives for homicide legislation (vengeance or deterrence or cleansing from pollution), albeit the thrust of his argument (usually in response to claims by previous scholars that the obvious answer was "cleansing") is that in most cases the motive for particular regulations could be any one of the three.⁹ Despite these uncertainties, however, there is in MacDowell's view little space for ambiguity: for instance, it is assumed as a datum that vengeance is necessarily an individual motive reflecting the anger of the deceased or of his family, but that pollution is something which necessarily affects the whole community.¹⁰ The focus is very much on a search for the motives of the original legislators, rather than how the law could be persuasively presented to a fourth-century audience:¹¹ indeed, it is at one point suggested that since a legislator's thinking in such matters can be assumed to be consistent, the existence of provisions for which inconsistency of motives can be shown could potentially be used as a criterion to identify later additions to the legislation.¹² Those subsequent scholars who have studied pollution primarily from a legal perspective have generally followed MacDowell either in approach¹³ or at least in

⁹ For the three motives, see MacDowell (1963) at p.141. Aspects of homicide law which in his view could be any one of the three: death penalty for intentional homicide (p.141), exile as penalty for non-deliberate homicide (pp.141-142), court at Phreatto (p.142), justifiable homicide rules (p.143), obligation on family to prosecute (p.144). Aspects for which he sees two possible motives (vengeance as well as cleansing, p.145): religious jurisdiction of Basileus, homicide courts being held in the open air. Rules which he thinks can be safely attributed to one or other of his three motives: structuring of courts on principle of intent (deterrence, p.147), pardon by victim as irreversible commitment (vengeance, p.148), requirement for purificatory sacrifices by returning exile (cleansing, p.148). Rules which in MacDowell's view seem to ignore pollution: requirement for Basileus to carry out three *prodikasiai* (preliminary hearings) before bringing the case to trial, i.e. not to accept new cases in final three months of year (p.149), rules concerning *androlēpsia* (a form of extradition, p.149).

¹⁰ MacDowell (1963), at pp.2-3 "it was necessary also to free the whole state from the pollution incurred by homicide", or at p.4 "The pollution affects the whole state and all who come into contact with the killer", albeit with some acknowledgment at p.3 (based on Ant., *Tetral.*, 2.1.3) that "All citizens are polluted, but some are more polluted than others".

¹¹ Cf. for example the rule on holding homicide trials in the open air, discussed at n.37 below.

¹² MacDowell (1963): implausibility of internal contradiction in the work of a single legislator (p.149); hence "quite conceivable" that the purificatory sacrifice requirement for a returning exile is a later addition (p.150).

¹³ E.g. the wide-ranging treatment by Arnaoutoglou, for whom the primary purpose of the law is vengeance and deterrence rather than cleansing (1993: e.g. p.131), though with some difference on points of detail.

overall conclusions,¹⁴ though not universally.¹⁵

Whereas MacDowell's approach responds primarily to previous scholarship on the Athenian law of homicide, that of Parker (*Miasma*, 1983) focuses on pollution throughout the Greek world and represents a critical interaction with the work especially of the anthropologist Mary Douglas, for whom pollution regulations were fundamentally a way of imposing good order on "matter out of place".¹⁶ Parker's tendency is to regard pollution as an incidental rather than an integral feature of Athenian homicide law,¹⁷ but his conception allows for considerable nuancing. For instance, rather than treating pollution simply as a blanket threat to the community, he considers it also as something that may differentially affect e.g. close relatives, "more like going into mourning than catching a disease";¹⁸ rather than the two being differentiated, he sees a close link between pollution and the victim's anger, "as just another way of expressing the same sense of disruption";¹⁹ and rather than looking for a single explanation for each legislative provision, he emphasizes instead the ambivalence of terms like *katharos* (as meaning both "pure" and "not liable to punishment").²⁰

By contrast, what deserves attention about the recent work of Osborne (2011) is that it does not so much interact with the "matter out of place" classificatory model of pollution proposed by Douglas and largely accepted by subsequent classical scholars, but instead seeks to construct an alternative model (taking account of anthropological criticisms of Douglas esp. by Valeri 2000) which stresses the function of publicity, i.e. that pollution combined with the requirement for purification may serve to bring

¹⁴ E.g. Sealey (2006), focusing particularly on the problem of animal trials, with detailed analysis of mediaeval and early modern parallels, basing his discussion on the distinction drawn by von Amira (1891) between ecclesiastical sanctions against vermin for destroying crops (for which there seem to be no ancient parallels) and what the latter terms "secular" ("weltlich", von Amira 1891: e.g. 550) trials of domesticated animals for homicide.

¹⁵ E.g. Harris (2013), who emphasises the distinctive and often religious elements of homicide procedure (unusual solemnity of oath imposed on witnesses as well as litigants, proclamation that accused must not enter sacred spaces, etc.), which he interprets as a function of balancing the interests of the state with those of the family, noting the uniqueness of homicide as a private procedure with criminal sanctions.

¹⁶ For the phrase, itself taken from William James, see Douglas (1966), p.35, p.40, and esp. p.164. For the interaction with Douglas, see Parker (1983) esp. at pp.61-64, noting his view that her model works better for rites of passage such as death than as a general theory of pollution (Parker p.62: "not all pollutions can be seen as products of classificatory violations, and it is not clear that primitive societies are necessarily more disconcerted by classificatory anomalies than we are by, say, the ambiguous status of the tomato").

¹⁷ Parker (1983) p.116: "a kind of shadowy spiritual *Doppelgänger* of the law.... Not just Draco's but all surviving homicide laws ignore it almost entirely."

¹⁸ Parker (1983) pp.40-41, citing e.g. a provision in the Ioulis burial regulations limiting the number of relatives who are permitted to be defiled (*LSCG* no.97 face A lines 25-29).

¹⁹ Parker (1983) p.121.

²⁰ Parker (1983), p.367, cf. p.114. Contrast the approach of Bonner & Smith (1930-38.ii: 206-207), who read the ambiguity here in terms of either/or.

problematic matters to public notice in areas where the law might find it difficult to intervene: e.g. in cases of homicide if there were no kin or if the kin were reluctant to prosecute, or as a means of publicising births and deaths in a society which lacked the bureaucratic apparatus to ensure official registration.²¹ This is in some ways an attractive hypothesis, especially given the ease with which the new Selinous tablet appears to make available purification apparently for homicide without requiring a court hearing.²² But I do have certain reservations, partly because Athens seems to make purification at least for involuntary homicide less readily available than at Selinous,²³ and partly because of a concern that Osborne may risk over-playing the claim that “because pollution may be incurred either voluntarily or involuntarily it carries in itself no judgment”.²⁴

[C] *Homicide jurisdiction*

Against the background of these methodological considerations, my first set of questions relates to an area of law that is not often considered when discussing homicide pollution, but which has in my view the potential to make useful contributions to the debate: that of jurisdiction, as a way of exploring how the Athenians thought about the relationship both between different types of homicide and between homicide and other types of religious offence.

Discussions of Athenian homicide law in sources from the fourth century onwards tend to place considerable emphasis on the division of labour between separate homicide courts, each of them responsible for different types of killing.²⁵ In this they differ significantly from our one earlier text, viz. the stele of 409/8 BC that (purportedly) re-inscribes the homicide law of Drakon from some two centuries earlier. For present purposes, what is most striking about the Drakon text is that it

²¹ Osborne (2011), ch.6 “dirty bodies”, esp. at p.177.

²² Lupu *NGSL* no.27 face B, lines 1-7 (the reading of this as homicide purification depends on the interpretation of *autorbektas* at line 9), discussed by Osborne (2011), p.172.

²³ Purificatory sacrifices are certainly required on the part of an involuntary homicide returning to Athens from exile (Dem. 23.72), which could in itself be read as a requirement for publicity, i.e. advertising the fact of reconciliation between the involuntary killer and the family of the victim. But the implication of requiring such sacrifices at this stage is presumably that full purification would not have been available before his previous trial and exile, as it is on Osborne’s reading (see n.22 above) of the Selinous text.

²⁴ Osborne (2011), p.180, seeking to distinguish between pollution and disgust.

²⁵ The earliest such passages are Dem. 23.65-79 (Areiopagos, Palladion, Delphinion, Prytaneion, Phreatto, continuing at 23.80-81 with a discussion of *apagôgê* as applied to homicide cases: given the discussion of Canevaro’s work in §E of this paper, it is perhaps worth noting that this part of the speech does not contain any quoted texts) and *Ath.Pol.* 57.2b-4 (Areiopagos, Palladion, Delphinion, Phreatto, and evidently [though unnamed] Prytaneion). Later testimonia, which give a few extra details about jurisdiction (some of which are possibly reliable) and many additional mythological aetiologies, are collected, translated and discussed by Boegehold (1995: 126-150).

contains no reference (at least in the portions that can be read or reconstructed, which are probably enough to make the absence of such detail significant)²⁶ to the existence of multiple homicide courts,²⁷ though it does include language which may imply some of the doctrinal or conceptual distinctions familiar from later texts.²⁸

Of the fourth-century texts, there is considerable overlap between Dem. 23.65–81 and *Ath. Pol.* 57.2b–4, but there are also some significant differences. The former text has of course a forensic purpose, in that Demosthenes is attacking the legality of a proposal to grant exceptional honours to the foreign mercenary commander Kharidemos, including a clause specifying that anybody who killed him would be *agōgimos* (subject to summary arrest, 23.11): it is therefore in Demosthenes' interest to maximise the range of proper homicide procedures that this proposal allegedly contravenes,²⁹ as well as emphasising the sanctity and unchanging antiquity of the homicide courts as illustrated above all by their mythological precedents.³⁰

The *Ath. Pol.*'s version, by contrast, sets the whole account within its discussion of the responsibilities of the Basileus (57.1–4),³¹ and emphasises much more clearly

²⁶ The restorations by Stroud (1968) are based on comparison with [a] a text quoted in the manuscripts of Dem. 43.57 (albeit now athetised on stichometric grounds by Canevaro 2013: 30 n.63 [cf. §E of this paper]) which contains most of lines 13–23 of the inscription though with a different order of clauses, and [b] two texts quoted in the manuscripts of Dem. 23, at §37 and at §60, which contain lines 26–29 and lines 37–38 of the inscription respectively.

²⁷ Some scholars (e.g. Sealey 1983) have indeed argued that the Drakon text reflects a date at which all homicide cases were heard by the *ephetai* with no rôle for the Areiopagos and no differentiation between ephetic courts of the type envisaged by the fourth-century texts discussed below.

²⁸ E.g. the law focuses from the outset on one who has killed με'κ [π]ρονοί[α]ς (i.e. *mē ek pronoias*, “without forethought”, line 11), and includes consideration also of one who has killed [β]ολεύσαντα (i.e. *bouleusanta*, “having instigated [a killing]”, lines 11–12) and of one who has killed ἄκο[v] (i.e. *akōn*, “unintentionally”, line 17). There is also reference to a particular category of revenge killer being liable to the same penalties “as one who killed an Athenian” (line 28), which may imply that killers of non-Athenians are to be treated differently. (On this point, see further at n.50 below.)

²⁹ Hence perhaps his supplementary inclusion of an additional procedure that is not formally envisaged at the outset: at Dem. 23.63, he promises an account of how the proposal has breached ὅποσοι νόμοι περὶ τῶν φονικῶν δικαστηρίων εἰσὶν (“however many laws there are dealing with homicide courts”), which are specified as being five in number (ἐπὶ πέντε δικαστηρίοις, same §); at the end, however, he adds *apagōgē* for homicide (which nb is judged by an ordinary dikastic court) as a sixth numbered procedure, arguing that this too contains constitutional safeguards that are ignored by the proposal to honour Kharidemos (Dem. 23.80–81).

³⁰ So much so that he does not actually bother to specify which particular categories of homicide case are heard by the Areiopagos (Dem. 23.65–66), preferring to cite as mythological precedents Poseidon's case against Ares for the killing of his son Halirrhothios and Orestes' killing of his mother (both at Dem. 23.66); the latter myth promptly recurs in his account of the Delphinion (23.74).

³¹ By contrast, the Basileus as an Athenian public official does not appear at all in Dem.

the distinction between his jurisdiction over cases of impiety or priesthoods (57.2a) and his jurisdiction over the whole range of *dikai phonou*,³² which itself serves as an introduction to the list of homicide courts (57.3-4).³³

It is worth here considering some of the details of these accounts, as they affect our topic of pollution. It hardly needs emphasising that all the responsibilities which *Ath. Pol.* attributes to the Basileus are religious,³⁴ but it is perhaps worth making explicit the contrast with family law, in which cases involving citizens were heard by the Arkhōn but those involving metics went to the court of the Polemarkh:³⁵ the fact that the Basileus had universal jurisdiction over both citizen and metic homicide victims – i.e. that the latter were not heard by the Polemarkh – suggests that in this respect, at least, the religious significance of homicide seems to take precedence over any distinctions based on the civic status of the victim.³⁶ Religion of course is a broader category than pollution, but details mentioned in *Ath. Pol.* which may be connected specifically with pollution include the statement at 57.4, which appears to relate only to homicide cases, that they take place “in a sanctuary and outdoors”;³⁷ also the statement that the Basileus removes his garland

23 (the word *basileus* recurs repeatedly in this speech, but only with reference to Thracian dynasts).

³² αἱ τοῦ φόνου δίκαι πᾶσαι: *Ath. Pol.*, 57.2b.

³³ A related set of problems which would merit further discussion than the space available in this paper is the question of how far the distinctive procedural elements (e.g. the special *diōmosia* oath imposed on witnesses as well as litigants, and the *exō tou pragmatos* rule restricting irrelevance, as well as the rules mentioned at n.37 and at n.39 below) were on the one hand general features of the Areiopagos, or on the other hand specific features of homicide trials (including the related category of *trauma ek pronoias* or “wounding with intent [sc. to kill]”). To the extent that they were specific, this could reinforce the argument of Harris (cf. n.15 above) for homicide being not just a distinctive but perhaps indeed a religiously distinctive area of law. A supporting argument – albeit one from silence – might be the absence of reference to the *diōmosia* in Lys. 7 (an impiety case), given its mention in Lys. 3.4 and Lys. 4.4 (both *trauma ek pronoias*); by contrast, the *exō tou pragmatos* rule is predicated of Areiopagos cases in Arist., *Rhet.*, 1.1.5 = 1354a23 (which should mean all Areiopagos cases, unless loosely worded), and there is a vague though very allusive hint at Lys. 7.41.

³⁴ Lipsius (1905-15.ii: 601) infers that the cases heard by homicide courts are being treated as a breach of divine as well as of human law.

³⁵ For a similar division of jurisdiction in other contexts, see Lys. 23.2-3, where a case (possibly for damages) is to be brought before the Polemarkh if the defendant is a metic and before sc. the Forty if he is a citizen.

³⁶ Thus Panagiotou (1974: 428). For the killing of non-citizens, see further n.52 below.

³⁷ *Ath. Pol.* 57.4: ἐν ἱερ[ῶ] καὶ ὑπαίθριοι. The sequence of thought is slightly confused (not least because of an uncertainty in the manuscript) because he appears to start §57.4 by saying that all these cases apart from the Areiopagos are judged by *ephetai*, but to end it by saying that cases sc. at the Prytaneion are not. The clause quoted in the text here comes immediately after the opening statement, which may mean that he is not thinking of the Areiopagos when he mentions sanctuaries, though Ant. 5.11 implies that the outdoor provision applies to homicide cases there as well. MacDowell (1963: 145) argues that the legislator’s real motive

while presiding over such cases;³⁸ and that his previous proclamation (*prorrhēsis*) excluding the accused from sanctuaries, etc., is temporarily suspended for the day of the trial.³⁹

One mildly puzzling feature of *Ath.Pol.*'s account is the way that he lists cases heard by the Areiopagos.⁴⁰ There is here a slight modification of the word-order of the law as quoted by Demosthenes, which may suggest a deliberate attempt by *Ath.Pol.* to enhance clarity,⁴¹ partly by making explicit that the phrase about premeditation applies both to killing and to wounding, but also by changing the order of poisoning and arson. The oddity here – possibly an oddity in *Ath.Pol.*'s mind as well – is the inclusion of arson within a list of what are presented as homicide cases, unless what is

for holding such trials outdoors may be because sharing a roof is a sign of friendship (which is certainly one of the explanations proposed by Antiphon) rather than a risk of pollution, but it is worth noting that the latter is the orator's first explanation: οὐδενὸς ἄλλου ἔνεκα ἢ ἵνα τοῦτο μὲν οἱ δικάσται μὴ ἴωσιν εἰς τὸ αὐτὸ τοῖς μὴ καθαροῖς τὰς χεῖρας (trans. Gagarin "for the simple reason that the jurors won't be together with somebody with impure hands").

³⁸ For the suggestion that pollution is the explanation for this, see e.g. Rhodes (1981: 648). In addition to the evidence that he cites, it may be worth adding Lyk. 1.112 (where the *boulē* remove their garlands before lynching Lykidas/Kyrsilos: this could alternatively be because they are about to act in an unofficial capacity, but that seems less likely), and perhaps Aiskhin. 1.19 (if we posit a link between the reasons suggested for the ban on a former prostitute becoming Arkhōn [because this official wears a wreath: ὅτι οἶμαι στεφανηφόρος ἢ ἀρχή] and becoming a priest [because of impurity: ὡς οὐδὲ καθαρῶ τῶ σώματι]).

³⁹ *Ath.Pol.* 57.4: τὸν μὲν ἄλλον χρόνον εἴργεται τῶν ἱερῶν, καὶ οὐδ' εἰς τὴν ἀγορὰν ν[όμος] ἐμβαλεῖν αὐτῶ. τότε δ' εἰς τὸ ἱερὸν εἰσελθὼν ἀπολογεῖται. (Trans. Rhodes: "For the rest of the time the accused is excluded from the sanctuaries, and the law does not allow him to set foot in the Agora, but on this occasion he enters the sanctuary to make his defence.") On the basis that the Prytaneion is presumably a sanctuary, this would weaken the claim in Photios and the Souda (both s.v. *prodikasia*) that those awaiting trial for homicide were lodged there, though the suggestion of Phillips (2008: 75) that the safety of the killer pending trial might outweigh any risk of pollution is otherwise not unattractive. The religious significance of the exclusionary ban here ("kultische Reinheit") is discussed by Latte (1920: 61-62), albeit noting that a similar ban applies to women caught with an adulterer (Dem. 59.86). It is notable that the ban seems to apply only from the point where it is formally proclaimed by the Basileus: Arnaoutoglou (1993: 121, 129) sees the function more in terms of restricting the social interaction of the killer, but Mirhady (2008: 20) suggests in response that this may be the point at which "the assignation of the pollution to a single individual begins. Until then, the entire *polis* is tainted."

⁴⁰ *Ath.Pol.* 57.3: εἰσὶ δὲ φόν[ου] δίκαι καὶ τραύματος, ἂν μὲν ἐκ προνοίας ἀποκτείνῃ ἢ τρώσῃ, ἐν Ἀρείῳ πάγῳ, καὶ φαρμάκων, ἂν ἀποκτείνῃ δούς, καὶ πυρκαϊᾶς· ταῦτα γὰρ ἡ βουλὴ μόνᾳ δικάζει. (Trans. Rhodes: "The following are the suits for homicide and wounding. Trials are held at the Areopagus, when anyone intentionally kills or wounds; for poisoning, when anyone kills by this means; and for arson: these are the only charges tried by the council of the Areopagus.")

⁴¹ Rhodes (1981: 641), quoting Dem. 23.24: τὴν βουλήν δικάζειν φόνου καὶ τραύματος ἐκ προνοίας καὶ πυρκαϊᾶς καὶ φαρμάκων, ἔάν τις ἀποκτείνῃ δούς. (Trans. Vince: "the Council shall take cognizance of homicide, intentional wounding, arson, and poisoning, if a man kills another by giving him poison.")

being envisaged in the law is arson which causes death (but if so, there is no attempt to specify this, as there was with poisoning). It may be relevant here that although the etymology of *phonos* appears to denote hitting with an implement,⁴² nevertheless there is evidence e.g. in Homer and other archaic poets for the word having already developed either an alternative or perhaps a secondary meaning of “blood when shed, gore”.⁴³ On this basis, we could speculate that, presumably even in the time of Drakon, the terminology of [*dikē*] *phonou* would most naturally be thought to denote a case against a killer with blood on his hands,⁴⁴ such that it might seem desirable to specify the inclusion of other forms of killing in order to make clear that they too were actionable:⁴⁵ blood on the hands, however metaphorical or invisible,⁴⁶ is something that might be thought to require cleansing.⁴⁷

Two final points about homicide jurisdiction seem relevant here,⁴⁸ since both relate to

⁴² E.g. Chantraine, *Dictionnaire Étymologique* (1999, ed.2), p.1221 s.v. *phonos*, with cross-ref. to p.425 s.v. *theinō*: “frapper’ ... dit d’une arme qui abat l’adversaire, mais aussi d’un fouet, de coups de marteau, etc.” Cf. Latte (1933, col. 278), who argues that the etymology implies external force and visible injuries.

⁴³ LSJ s.v. *phonos*, 4, citing e.g. *Iliad* 16.162 ἐρευγόμενοι φόνον αἵματος “[wolves] belching forth the gore of blood”, *Iliad* 24.610 οἱ μὲν ἄρ’ ἐννῆμαρ κέατ’ ἐν φόνῳ ([of Niobe’s slain children] “lay for nine days in their blood”), and Alcaeus fr. 153 Lobel καὶ Ἀλκαῖος ἐπὶ τῶν βελῶν τῆς Ἀρτέμιδος λέγει· † μὴ † φόνος κέχυται γυναίκων. (Trans. Campbell: “Alcaeus too talks of the shafts of Artemis: ‘the blood of women has been shed.’”) Cf. Frisk, *Etymologische Wörterbuch* (1960), vol.2 p.1035 s.v. *phonos*: “Totschlag, Mord’, poet. ‘Blutvergießen, Mordblut’.”

⁴⁴ I should perhaps emphasise here that I am not trying to suggest that a *dikē phonou* was restricted to cases where killing involved bloodshed, albeit there are some hints in Lys. 3.28 and Lys. 4.6 that one of the distinguishing factors of *trauma ek pronoias* may have been the use of a weapon such as broken pottery, which even if informal would have been capable of shedding blood (Todd 2007: 282–283); instead, my point is that the linguistic paradigm may have affected the Athenians’ sense of the paradigm of homicide.

⁴⁵ Cf. e.g. the specification of one who has killed *bouleusanta* at IG i³ 104 lines 11–12, for which see n.28 above.

⁴⁶ Cf. perhaps Osborne (2011: 183) on the function of purification as making the fact of pollution visible.

⁴⁷ David Phillips draws attention in his response to the rule that a particular category of adulterer should be handed over in court to his opponent to treat as he wishes provided the latter does not use an edged weapon (ἐπὶ δὲ τοῦ δικαστηρίου ἄνευ ἐγχειριδίου χρῆσθαι ὅ τι ἄν βουληθῇ, Dem. 59.66), which he plausibly interprets as being intended to prevent “the sacred space of the *dikastērion* [from being] defiled by blood” (Phillips, p.350 below).

⁴⁸ Space does not permit detailed discussion in this paper of the rules concerning justifiable homicide (tried in the Delphinion), but it may be worth briefly mentioning killings in wartime: MacDowell (1963: 147) is surely right to say that the use of the participle in the phrase ἐν πολέμῳ ἄγνοήσας (i.e. one who kills “in war without recognising”, *Ath. Pol.* 57.3) must imply friendly fire (cf. Parker 1983: 67 for there being “no evidence that soldiers were ever polluted by the deaths of their colleagues”); but it is worth emphasising also that Athenians do not seem to have regarded the killing of an enemy in wartime as a source of pollution. Cf. Eck (2012: 72–73), who notes that occasional references to a Greek equivalent for the more common Roman ritual of *lustratio*

the seriousness of the offence, with possible implications for the seriousness of whatever pollution is associated with it. One is that scholars sometimes talk as if the distinction between Areiopagos cases and Palladian cases is based solely on the presence or absence of premeditation and/or intent,⁴⁹ but in fact the *Ath. Pol.* specifies also a distinction based on the status of the victim.⁵⁰ It is as if one were to say, borrowing the terminology of English law, that only a citizen can be murdered, and that even the deliberate killing of a non-citizen can never be more than manslaughter.⁵¹ Given the structure of the courts, the inference would seem to be that the maximum penalty for the latter offence was exile rather than a death-sentence, and there is some direct evidence to this effect.⁵² Harris has indeed argued that the extent of pollution will have varied depending on the extent of culpability:⁵³ such a reconstruction would imply that victims of lower status had less power to pollute.⁵⁴

exercitus (purification of the army) are always performed before campaign rather than afterwards; we may contrast William the Conqueror's foundation of Battle Abbey (1070-1094) apparently as penance for the deaths caused during his invasion of England, despite the fact that he had had papal sanction for the campaign.

⁴⁹ E.g. Thonissen (1875: 240), Adkins (1960: 99). There is continuing debate (summarised in Phillips 2013: 45-56) as to whether the distinction between premeditation and its absence (*ek pronoias/mē ek pronoias*) should be read as synonymous with the distinction between intentional and unintentional (*hekousios/akousios*), but all that needs to be noted here is that aspects of both terminologies are used at *Ath. Pol.* 57.3.

⁵⁰ *Ath. Pol.* 57.3: ἄν μὲν ἐκ προνοίας ἀποκτείνῃ ἢ τρώσῃ, ἐν Ἀρείῳ πάγῳ ... τῶν δ' ἀκουσίων καὶ βουλευέσεως, κἂν οἰκέτῃν ἀποκτείνῃ τις ἢ μέτοικον ἢ ξένον, οἱ ἐπὶ Παλλαδίῳ. (Trans. Rhodes: "[trials are held] at the Areopagus, when anyone intentionally kills or wounds ... For unintentional homicide, for planning homicide, and for killing a slave, metic or foreigner, the court at the Palladium is used.")

⁵¹ Robin Osborne suggests to me that Athenians may have thought of everybody as belonging to two groups, one the community of which they are a citizen and the other the community in which they reside: on this hypothesis, even the deliberate killing of a non-citizen would require the Athenian court to act on behalf only of the group among which the victim resided, for which exile might seem a sufficient penalty, leaving it to the native community (if there was one) to exact further penalty if wished. In this context, it is worth noting the penalties imposed by fifth-century Athens for the killing of an Athenian in allied territory, and the assimilation of *proxenoi* to Athenians in the context of homicide.

⁵² *Lex. Seg. (Dikōn onomata)* 194.11-12: Φονικόν· ἐὰν μέτοικόν τις ἀποκτείνῃ, φυγῆς μόνον κατεδικάζετο· ἐὰν μέντοι ἀστόν, θάνατος ἢ ζημία ("Pertaining to homicide: if someone kills a metic, he is condemned simply to exile; if however he kills a citizen, the penalty is death"), cited by Glotz (1904: 432 with n.2), Lipsius (1905-15.ii: 605 n.17), and Latte (1933: col. 288), with the latter noting that this is one of the more reliable lexicographers. For the hint at distinctions based on the victim's status as early as *IG* i³ 104 line 28, see n.28 above.

⁵³ Harris (2013: 20): "ineradicable" in the case of deliberate homicide; "that which could be removed by purification" in the case of unintentional homicide (he notes the timing of the purificatory sacrifices at Dem. 23.72, cf. n.23 above); "a way of expressing regret" in the case of a master who had killed his own slave, etc.

⁵⁴ Morris (1987: 192-193) has suggested the concept of pollution, and a "[hardening of] the boundaries between gods, men and the dead", as an explanation for the general abandonment

The second point is that there is little sign that particular categories of homicide were marked out procedurally as the subject of particular disgust. We do hear from Aiskhines of suicides being buried in a special way, with the hand cut off from the body,⁵⁵ and there is an odd reference in Plutarch which may also suggest special treatment for suicides but may refer to a later period.⁵⁶ But there is no clear evidence that killing of a master by his slave or of a father by his son was subject to special penalties;⁵⁷ a not always very reliable lexicographer does indeed claim that the rule permitting defendants before the Areiopagos to withdraw into voluntary exile after the first set of speeches did not apply to those who had killed their parents,⁵⁸ but even

of intra-mural graves after 700 BC, with child graves being a significant exception to this rule (1987: 67, 184). Cf. R. L. Stevenson, *Treasure Island*, ch.32: “‘Why, nobody minds Ben Gunn,’ cried Merry [to the remaining pirates]; ‘dead or alive, nobody minds him.’ It was extraordinary how their spirits had returned and how the natural colour had revived in their faces.”

⁵⁵ Aiskhin. 2.244 (ἐάν τις αὐτὸν διαχρήσῃται, τὴν χεῖρα τὴν τοῦτο πράξασαν χωρὶς τοῦ σώματος θάπτομεν, trans. Adams: “when a man kills himself, the hand that did the deed is buried apart from the body”), glossed by Garland (1985: 98) as “a measure presumably adopted to render the spirit of the deceased harmless”. It is however worth noting that Aiskhines’ context links this regulation closely with the rules on casting out inanimate objects which have caused death, which may support the argument of Naiden (2015) that the hand here is being treated as an independent agent guilty of death.

⁵⁶ Plut., *Them.* 22.2: πλησίον δὲ τῆς οἰκίας κατεσκεύασεν ἐν Μελίτῃ τὸ ἱερόν, οὗ νῦν τὰ σώματα τῶν θανατουμένων οἱ δήμιοι προβάλλουσι καὶ τὰ ἱμάτια καὶ τοὺς βρόχους τῶν ἀπαγχονέων καὶ καθαιρεθέντων ἐκφέρουσιν. (Trans. Waterfield: “He built the shrine in Melite, near his house, on the site where nowadays the public executioners cast out the bodies of executed criminals and take the clothes and nooses of those who are strangled to death.”) The implication of *nun* would seem to be significantly after Themistokles’ own time (and possibly after it had ceased to be a sanctuary, unless there is something odd going on here about sanctuaries for transgressive acts); *apankhomai* could in principle be passive (i.e. execution victims, but hanging is not otherwise attested as a method of execution at Athens) or middle (i.e. suicide victims); it is not clear to me why clothes as well as nooses (but not specifically the corpses of those hanged, though the corpses of execution victims are specified) should receive this fate, unless the assumption is that clothing has been used as a makeshift noose and is therefore contaminated. For execution victims, see §D of this paper.

⁵⁷ Contrast the English feudal concept of Petty Treason, defined by the 1351 Statute of Treasons as occurring “when a servant slayeth his master, or a wife her husband, or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience”, with penalties based on those for High Treason rather than those for homicide, i.e. typically burning, since the most common cases were murders of husbands by wives (Lockwood 2013: 34). We do find special penalties prescribed in Plato, *Laws*, 9.872bc (flogging before execution for a slave who kills any citizen) and 9.872cd (execution, stoning of corpse at crossroads, and casting of body beyond the borders for the killer of any kinsman), but these seem to be Plato modifying rather than borrowing Athenian legal rules.

⁵⁸ Pollux, 8.117: μετὰ δὲ τὸν πρότερον λόγον ἐξῆν φυγεῖν, πλὴν εἴ τις γονέας ἀπεκτονῶς, accepted by Lipsius (p.604 with n.13). For Pollux, see Dickey (2007: 96, “an epitome that has suffered interpolation as well as abridgment”), and Hansen (1976: 108, unreliable in matters

if true, this is a marginal departure from normal homicide procedures, and is a long way from the sack-in-the-Tiber rules for Roman parricides attested in Cicero.⁵⁹

[D] *Executions and executioners*

My second set of questions is in one sense linked rather loosely to homicide, though in another sense it is the reverse side of the same coin. Any offence which in at least some circumstances carries the death penalty raises the question of who is going to carry it out, of how it is carried out, and of what is done with the body. What are the implications of this for pollution (and indeed for other related issues, such as blood-guilt)?

To take first the question of body-disposal: one of the things that I had been expecting, when I started to research the material for this paper, was that a person executed for homicide⁶⁰ would be denied burial within Attica. But in fact the evidence for such treatment refers overwhelmingly to other offences, namely treason and temple-robbery.

Of the references in our sources to denial of burial in Attica, a significant majority relates to those who are either described explicitly as traitors or else could be represented in those terms. For instance, we are told by Thucydides that it was illegal at Athens to repatriate and bury the bones of a dead traitor,⁶¹ and we have several cases in which the language of treason is used explicitly, including sentences imposed on those convicted of this offence, such as Antiphon and Arkheptolemos following the fall of the first oligarchy in 411 BC.⁶² Indeed, we are told by the later orator Lykourgos that an attempt presumably by oligarchic supporters to prosecute the assassins of Phrynikhos (another leader of the same oligarchic junta) had backfired so spectacularly that the restored democracy had resolved posthumously to put Phrynikhos himself on trial for treason, as a result of which his bones were dug up and cast out of Attica, with death and denial of burial being threatened also against anyone who might defend him in court.⁶³ It is presumably on the

of law unless independently confirmed).

⁵⁹ Cicero, *Pro Roscio Amerino*, 25-26.

⁶⁰ In practice this would mean the deliberate killer of an Athenian citizen, since the penalty for a non-deliberate killer or for the killer of a non-citizen would be exile, cf. at n.50 above.

⁶¹ Thuc., 1.138 (οὐ γὰρ ἐξῆν [sc. ἐν τῇ Ἀττικῇ] θάπτειν ὡς ἐπὶ προδοσίᾳ φεύγοντος), explaining why Themistokles' relatives had had to do this in secret.

⁶² [Plut.], *Lives of the Ten Orators*, *Antiphon*, 834ab (quoting the text of an inscription which may come from the collection by Krateros): convicted of treason (προδοσίας ὥφλον), with penalties for both defendants including execution (τοῖς ἔνδεκα παραδοθῆναι), confiscation of property with tithe paid to Athene (τὰ χρήματα δημόσια εἶναι καὶ τῆς θεοῦ τὸ ἐπιδέκατον), razing of house and erection of derogatory inscription (τῷ οἰκίᾳ κατασκάψαι αὐτῶν καὶ ὅρους θεῖναι <ἐπὶ> τοῖν οἰκοπέδοιν), denial of burial "at Athens or in territories which the Athenians rule" (μὴ ἐξεῖναι θάψαι Ἀρχεπτόλεμον καὶ Ἀντιφῶντα Ἀθήνησι, μὴδ' ὅσης Ἀθηναῖοι κρατοῦσι – hardly a vast area of territory in 411), hereditary *atimía*.

⁶³ Lyk. 1.112-115, esp. at §113 τὸν μὲν νεκρὸν κρίνειν προδοσίας ... τά γε ὅστ' αὐτοῦ

basis of similar considerations that the death-sentence against Phokion included a clause specifying “that his body should be carried beyond the boundary and that no Athenian should light fire at his funeral”.⁶⁴ Cases where the language of treason is not used explicitly but may be relevant by extension include the Charter of the Second Athenian Confederacy,⁶⁵ and perhaps also a couple of *eisangelia* speeches by Hypereides.⁶⁶

A second offence for which denial of burial is clearly attested, at least in the provisions of a legal statute, is temple-robbery. Indeed, this is specifically linked with treason in Xenophon’s account of the Arginousai trial, which presents the defence advocate Euryptolemos as proposing unsuccessfully that the defendants should be tried under the provisions either of the mysterious decree of Kannonos⁶⁷ or alternatively of “the following law, which applies to temple-robbers and traitors”, and which specifies denial of burial in Attica as well as confiscation of property.⁶⁸

It is by no means clear why a single law should cover both these offences, and there are to my knowledge no references to actual temple-robbers suffering this penalty at Athens (though we do hear occasional supporting statements elsewhere).⁶⁹ Certainly the penalty does not seem to apply in all cases of impiety, because Sokrates

ἀνορύξαι καὶ ἐξορίσαι ἔξω τῆς Ἀττικῆς (sentence proposed when it was resolved posthumously to try him) and §115 τὰ τοῦ προδότου ὅσα ἀνορύξαντες ἐκ τῆς Ἀττικῆς ἐξώρισαν (outcome of posthumous trial). There is however no suggestion that the body was brought into court, as in the posthumous trial of Pope Formosus in AD 897 (the so-called Cadaver Synod or Synod of the Corpse).

⁶⁴ Plut., *Phok.*, 37.3: ἔδοξε καὶ τὸ σῶμα τοῦ Φωκίωνος ἐξορίσαι, καὶ μὴδὲ πῦρ ἐναύσαι μηδένα πρὸς τὴν ταφὴν Ἀθηναίων. For the charge of treason, see 34.4 (Polyperkhon’s letter to Assembly): λέγοντος αὐτῷ μὲν ἐγνώσθαι προδότας γεγενέναι τοὺς ἄνδρας, ἐκείνοις δὲ διδόναι τὴν κρίσιν, ἐλευθέρους τε δὴ καὶ αὐτονόμοις οὐσί.

⁶⁵ Rhodes-Osborne, no.22, lines 59–63: [ἐάν] δὲ θανάτο τιμηθῇ, μὴ ταφήτω ἐν τῇ[ι] Ἀττικῇ [μ]ηδὲ ἐν τῇ τῶν συμμάχων (penalty imposed on anybody who makes proposals that contravene the decree), perhaps on the premise that such proposals would constitute an act of treason.

⁶⁶ Hyp., *Lykophron* §20 ὑπὲρ τοῦ ἐξορισθῆναι καὶ ἀποθανόντα μὴδὲ ἐν τῇ πατρίδι ταφῆναι; *Euxenippos* §18 μὴδ’ ἐν τῇ Ἀττικῇ δεῖ τεθάρφαι (cf. §14 for the death sentence): what unites both of these cases is the claim that the prosecution are using *eisangelia* for inappropriate matters (adultery in the *Lykophron*, having the wrong dream at *Euxenippos* §3), and there may be a suggestion that it is ridiculous for them to have presented the charge using the terminology of treason.

⁶⁷ Xen. *Hell.*, 1.7.20.

⁶⁸ Xen. *Hell.*, 1.7.22 (the death penalty is not specified but is implied by reference to burial): κατὰ τόνδε τὸν νόμον κρίνατε, ὅς ἐστιν ἐπὶ τοῖς ἱεροσύλοις καὶ προδόταις, ἐάν τις ἢ τὴν πόλιν προδιδῶ ἢ τὰ ἱερά κλέπτῃ, κριθέντα ἐν δικαστηρίῳ, ἂν καταγνωσθῇ, μὴ ταφῆναι ἐν τῇ Ἀττικῇ, τὰ δὲ χρήματα αὐτοῦ δημόσια εἶναι.

⁶⁹ E.g. Diod.Sic., 16.25.2: Lokrian refusal to return bodies from Philomelos’ army on the grounds that “amongst all the Greeks there was a general law that temple-robbers should be cast forth without burial” (παρὰ πᾶσι τοῖς Ἕλλησι κοινὸς νόμος ἐστὶν ἀτάφους ῥίπτεσθαι τοὺς ἱεροσύλους).

assumes that his body will be returned to his family after death with no hint of any restriction on his obsequies.⁷⁰ There is however the famous counter-example of the Alkmaionid curse, where the original offence seems to be not so much the killing of Kylon's supporters but the fact that this was combined with the impiety of doing so in breach of sanctuary: we are told by Plutarch that this affair came to a head with a collective trial held a generation or so later at the instigation of Solon (it is unclear whether Plutarch envisages the defendants as being simply the original actors or as including also their descendants) at which those still alive were banished and those who were dead were dug up and cast out.⁷¹

The one text which does talk extensively – indeed obsessively – about refusal of burial as a penalty to be imposed on certain categories of homicide is Plato's *Laws*, which applies this penalty once to temple-robbers and once to atheists, but in the meantime attaches it to no fewer than five categories of killer (deliberate ones, murderers of kin, homicidal animals, inanimate killers, and unknown killers who subsequently become known), in contrast with one category for whom no such additional penalty applies (killer by planning) and two for whom there are additional penalties but not specified as this one (suicide, slave who kills citizen).⁷² The use of Plato's *Laws*

⁷⁰ Plato, *Phaedo*, 115a. Other cases where the body was returned to the family include Polemarkhos (charge unspecified, though arguably treason against the oligarchic régime) at Lys. 12.18, though the Thirty are said to have deprived many other victims of burial (Lys. 12.21: πολλοὺς δ' ἀδίκως ἀποκτείναντες ἀτάφους ἐποίησαν). Aristophanes and Nikophemos are said to have been executed without trial, with nobody having a chance to see them after their arrest and the bodies not returned to their family (ἄκριτοι ἀπέθανον ... οὐδεὶς γὰρ οὐδ' εἶδεν ἐκείνους μετὰ τὴν σύλληψιν· οὐδὲ γὰρ θάψαι τὰ σώματα αὐτῶν ἀπέδοσαν: Lys. 19.7), but it is not impossible that their execution took place on Cyprus.

⁷¹ Plut., *Solon*, 12.1-4, speaks of Megakles and his supporters as ἐναγεῖς ("accursed"), and reports the trial and its outcome (Μύρωνος δὲ τοῦ Φλυέως κατηγοροῦντος ἐάλωσαν οἱ ἄνδρες, καὶ μετέστησαν οἱ ζῶντες, τῶν δ' ἀποθανόντων τοὺς νεκροὺς ἀνορύξαντες ἐξέριψαν ὑπὲρ τοὺς ὄρους). By contrast, Thuc., 1.126.11-12, specifies that not only the killers but also their descendants were described as ἐναγεῖς καὶ ἀλιτήριοι τῆς θεοῦ ("accursed and transgressors against the goddess"), and speaks of several acts of exile and recall including at the time of Kleomenes the expulsion of the living (which by this date must mean descendants) and of the bones of the dead (τοὺς τε ζῶντας ἐλαύνοντες καὶ τῶν τεθνεώτων τὰ ὅσα ἀνελόντες ἐξέβαλον), but without mention of a trial; he evidently regards it as conceivable that Perikles as a distant descendant could have been subjected to exile (1.127), but without any direct implication that the digging up of bones would affect dead descendants as well as dead perpetrators.

⁷² Temple-robber: death plus ὑπὲρ τοὺς τῆς χώρας ὄρους ἀφανισθεῖς (Plato, *Laws*, 9.855a). Atheist: ἀποθανόντα δὲ ἔξω τῶν ὀρίων ἐκβάλλειν ἄταφον (10.909c). Deliberate killer: θανάτω ζημιούσθω καὶ μὴ ἐν τῇ τοῦ παθόντος χώρᾳ θαπτέσθω (871d). Murderer of kin: death plus stoning of corpse plus εἰς τὰ τῆς χώρας ὄρια φέροντες ἐκβαλλόντων τῷ νόμῳ ἄταφον (873c). Homicidal animal: death plus ἔξω τῶν ὄρων τῆς χώρας ἀποκτείναντας διορίσαι (873e). Inanimate killer: τὸ δὲ ὄφλὸν ἐξορίζειν (873e). Unknown killer who becomes known: death plus ἔξω τῆς τοῦ παθόντος χώρας ἐκβληθισόμενον ἄταφον (874b). By contrast, one who kills by planning can be buried at home (τῷ δὲ ὄφλοντι ταφῆς τῆς οἰκείας ἐξέστω τυχεῖν,

as evidence is problematic. Certainly we should not simply import his categories back into Athenian law, and hence it is dangerous to take this as evidence for the actual treatment of killers at Athens. That said, the reason why he chooses such categories might be revealing, either of distinctions with which he felt an Athenian audience might be familiar, or alternatively of distinctions that he thought they might find challenging (though the problem is that we cannot be sure which).

To my knowledge, there is only one non-Platonic passage which may imply denial of burial in some cases of homicide. This is where Demosthenes, having reported various attempts by Meidias to frame him either for refusing military service or alternatively for having been the plotter behind Aristarkhos' killing of Nikodemos, adds that such behaviour makes Meidias into Demosthenes' murderer (*autokheir*), on the basis that "had he succeeded in one of these plots, I would have been deprived of everything and would not even have been able to be buried at home."⁷³ Given the probability that the alleged charge would have been that of plotting the death of Nikodemos (i.e. presumably with a trial at the Palladion and a sentence of exile),⁷⁴ MacDowell reads this passage as evidence that "a person exiled for homicide could not be brought back to Athens for burial when he died";⁷⁵ this of course is not direct evidence that somebody executed by the Areiopagos for deliberate killing would be denied burial also, though it is not implausible that the body of a deliberate killer might have been felt to deserve a worse fate than that of a person exiled for homicide. But there are some puzzling things about this passage: the claim that Meidias' putative attempt to frame Demosthenes for murder makes Meidias himself into Demosthenes' murderer seems far-fetched if the sentence is indeed one of exile; and the phrase "at home" seems somewhat odd as a way of describing burial within Attica.⁷⁶

872a); a slave who kills a citizen is flogged either to death or subsequently executed in sight of the grave but without specifying what is to be done with the murderer's corpse (872bc); and those who commit suicide without good cause get an unmarked grave on the internal borders but within Magnesian territory (ἐν τοῖς τῶν δώδεκα ὁρίοις μερῶν τῶν ὅσα ἀργὰ καὶ ἀνώνυμα θάπτειν ἄκλεεῖς αὐτούς, μήτε στήλαις μήτε ὀνόμασι δηλοῦντας τοὺς τάφους, 873c).

⁷³ Details of plots at Dem. 21.103–105 (the names are from the hostile versions at Aiskhin. 1.171–172 and 2.148); quotation from Dem. 21.106: εἰ γὰρ ἐν ᾧ ἐπεβούλευσε κατώρθωσεν, ἀπάντων ἂν ἀπεστερήμην ἐγὼ καὶ μηδὲ ταφῆναι προσυπῆρχεν οἶκοι μοι.

⁷⁴ See however the response by David Phillips, who explores (at pp.350–355 below) various possible ways in which the charge might have been liable to trial by the Areiopagos: if accepted, the passage could be read as evidence for denial of burial following execution at Athens, contrary to what is suggested below.

⁷⁵ Thus MacDowell (1990: 332), noting that it seems to be the only evidence for such a rule. Dem. 21.43 mentions "death, perpetual exile (*aeiphugia*) and confiscation" as penalties for premeditated homicide, but MacDowell (1990: 259) plausibly reads this as a formal sentence passed if the killer takes up the option to withdraw into exile after the first set of speeches (i.e. rather than the metaphorical fate of his body after execution).

⁷⁶ The nearest parallel would seem to be Plato, *Laws*, 872a (ταφῆς τῆς οἰκείας ἐξέστω τυχεῖν), cited at n.72 above. I have wondered whether Dem. 21.106 could be a deliberately

Given the tenuous nature of the evidence for denial of burial in cases of homicide, what are we to make of Aiskhines' claim that inanimate objects which caused death would be put on trial (sc. at the Prytaneion) and if convicted would be cast outside the boundaries of Attica?⁷⁷ One way of understanding this would be as an act of punishment, i.e. seeing it as modelled on the sentence of exile that is the penalty for a human convicted by the Palladion of non-deliberate killing: scholars who tend towards this explanation include Parker, who cites the parallel of mediaeval and early modern animal trials in societies which do not have a sense of blood-pollution.⁷⁸ This is not impossible, but there are I think two counter-arguments. One is that an explanation framed in terms of punishment might work better in the case of deaths caused by animals (precisely because animals have intentions) than those caused by inanimate objects,⁷⁹ whereas Aiskhines is

misleading reference back to the *antidosis* challenge at 21.78-80 (i.e. reading it as "not able to be buried on my family property"), but that seems a long way away. An alternative sequence of thought, suggested to me by Robin Osborne, is that Demosthenes is short-circuiting the possibility of cremation at the place of death with bones then brought back to Athens (as in the case of soldiers dying on campaign), and leaving his hearers to assume that a man who died in exile would in practice be interred abroad.

⁷⁷ Aiskhin. 3.244 εἰ τὰ μὲν ξύλα καὶ τοὺς λίθους καὶ τὸν σίδηρον, τὰ ἄφωνα καὶ τὰ ἀγνώμονα, ἐάν τῳ ἐμπεσόντα ἀποκτείνῃ, ὑπερορίζομεν. (Trans. Adams: "When sticks and stones and iron, voiceless and senseless things, fall on any one and kill him, we cast them beyond the borders.") Supporting statements in Pollux 8.120 τὸ ἐπὶ Πρυτανείῳ ... δικάζει δὲ καὶ περὶ τῶν ἀψύχων τῶν ἐμπεσόντων καὶ ἀποκτεινάντων. προειστήκεσαν δὲ τούτου τοῦ δικαστηρίου οἱ φυλοβασιλεῖς, οὓς ἔδει τὸ ἐμπεσὸν ἄψυχον ὑπερορίσαι ("The court at the Prytaneion ... it also judges inanimate objects which have fallen on [a person] and killed him. The Phylobasileis preside over this court, and it is their task to cast out the fallen inanimate object."), and in Patmos scholion on Dem. 23.76 Ἐπὶ Πρυτανείῳ: ... ἐν τῷ αὐτῷ δὲ τούτῳ δικαστηρίῳ ἅν τι ἐμπεσὸν πατάξῃ τινὰ καὶ ἀνέλῃ τῶν ἀψύχων, δικάζεται τούτῳ καὶ ὑπερορίζεται ("At the Prytaneion ... In this same court also, if any of the inanimate things strikes and kills anybody by falling on him, a trial is held for it (? in this [court]) and it is cast outside [the boundaries]").

⁷⁸ Parker (1983), pp.117-118. (For the parallel, cf. also n.14 above.) A similar view is taken by Arnaoutoglou (1993: 129-130): "the revenge for the dead person who was killed by an animal or by an inanimate object was taken at a symbolical level, by the punishment of the animal or object, as a form of retribution."

⁷⁹ There are admittedly contexts even today where people attribute certain characteristics of personhood to inanimate objects, particularly cars. (On this phenomenon, cf. Gell 1998: 18-19: "If, God forbid, my Toyota were to break down in the middle of the night, far from home, I should consider this an act of gross treachery for which I would hold the car personally and morally culpable, not myself or the garage mechanics who service it. Rationally, I know that such sentiments are somewhat bizarre, but I also know that 99% of car owners attribute personality to their cars in much the same way that I do, and that such imaginings contribute to a satisfactory *modus vivendi* in a world of mechanical devices.") But I am uncomfortable about the level of rationalisation entailed by MacDowell's comparison (1963: 89) of the Prytaneion to a coroner's court ("if someone was killed by an object, an animal, or an unknown person, it was desirable that the state

specifically talking about the latter; and although Plato proposes that animals which cause death should be cast outside the borders of Attica, this is not reliable evidence for a similar provision in Athenian law.⁸⁰ The second – though it would merit further investigation than is possible here, not least to cover a full range of literary genres – is that compounds in *-horizō*, as used here by Aiskhines, seem more commonly to be applied at least in the Orators to the casting out of bodies rather than to the exile of living persons.⁸¹

The alternative, of course, would be to interpret the casting out of homicidal inanimate objects in religious terms, i.e. as an act of cleansing from pollution. The problem with this explanation is that (as we have seen) the category of offenders that we most often hear about in connection with denial of burial in Attica is not homicides but traitors, and although it is undoubtedly possible to represent treason as a religious offence (as is done most notably by Lykourgos),⁸² it is a somewhat far-fetched argument. That said, the story of the Alkmaionid curse may provide evidence for a religious link (i.e. broader than just temple-robbers). It is possible, of course, that explanations might overlap.

The question of how Athens carried out death-sentences is one that I have discussed elsewhere;⁸³ so it is unnecessary for me to revisit that material in detail, but it is worth reiterating two points. The first of these relates to the nature of the evidence: what makes it difficult to draw firm conclusions about the relationship between available execution methods is that our sources characteristically use euphemisms, talking not of execution but of “the greatest of punishments” or of “handing over to the Eleven”, etc.⁸⁴ The question arises, however, whether these euphemisms

should take note of the manner of his death, and take any steps that were practicable to see that no one else died in the same way in future”): Aiskhines’ language here is much more about attribution of blame than about accident prevention.

⁸⁰ Thus e.g. MacDowell (1963: 88): “here as elsewhere Plato’s law may differ from Athenian law” – but even if not, the parallel here would be death and denial of burial rather than exile, because Plato specifies that the animal is to be killed and then cast out (*Laws* 873e, cf. text at n.72 above).

⁸¹ *Exorizō* at Lyk. 1.112, 115 (text at n.63 above); Plut., *Phok.*, 37.3 (text at n.64 above); Hyp., *Lykophr.*, §20 (text at n.66 above); Plato, *Laws*, 873e (inanimate killer: text at n.72 above). *Diorizō* at Plato, *Laws*, 873e (homicidal animal: text at n.72 above). Naiden (2015: 89) translates ὑπερορίζομεν in Aiskhin’s passage as “we exile”, but this may be begging the question.

⁸² Connor (1985: 92), on traitors as *alitērioi* at Lyk. 1.117, though cf. Martin (2009: 7–8) on the tendency of the Orators to use terms like *miaros* or *asebēs* as general terms of abuse, and the difficulty of determining the connotations in specific contexts. See also more generally Lyk. 1.97, 129, 147 for the religious significance of treason (depriving the gods of their cults, etc.).

⁸³ Todd (2000).

⁸⁴ Todd (2000: 36 n.22), citing e.g. Lys. 22.16 (δίκην τὴν μεγίστην), 28.17 (τὴν μεγίστην δίκην), Ant. 5.70 (παραδεδομένος ... τοῖς ἔνδεκα).

are motivated by social or by religious scruples. The second concerns a feature shared by the two methods of execution that are attested as being used during the period of the Orators, viz. the drinking of hemlock (as e.g. in Plato's account of the death of Sokrates) and *apotumpanismos* (analogous to crucifixion, but the body of the condemned appears to have been fastened to a plank by cramps rather than nails). It is notable that neither of these execution-methods involves direct bloodshed, and in neither of them does death result from the direct action of the executioner.⁸⁵ The difference in both respects between Athenian and Roman practice is so striking that it seems reasonable to posit as a motive either the avoidance of blood-guilt (i.e. on the part of agents of the Athenian state), or the avoidance of blood-feud, or a combination of both.

We do hear from an earlier period of "throwing into the *barathron*" (a sort of pit) as a method either of execution or possibly a place for disposing of the bodies of those executed.⁸⁶ The former interpretation would of course entail the direct causing of death, and there has been some discussion of whether it would entail leaving the corpse of the condemned exposed to the open air, and whether this would have implications for attitudes towards pollution. It is of course not necessarily the case that a body in the *barathron* (even if uncovered) is automatically polluting, because even on a "matter out of place" reading of pollution,⁸⁷ there could be the view that that is the proper place for him;⁸⁸ similarly, Parker has suggested that for traitors and temple-robbers, "one might even conclude that with their honour they lost the power to pollute".⁸⁹ It is of course possible that traitors are being conceptualised in the same way as enemies killed in wartime (noting that killing the enemy in war does not seem to pollute, cf. n.48 above), though such an explanation would not be so applicable to temple-robbers.

One other relevant feature about the practicalities of executions is that we hear very little in Athenian practice about the bodies of the condemned being kept on public view after death.⁹⁰ I have discussed elsewhere the possibility (though no more) that executions

⁸⁵ Hemlock is given to Sokrates to drink at any time he chooses during the night, while *apotumpanismos* seems to have placed the body in a position where death from exposure will supervene, rather than directly strangling. For the shedding of blood, contrast Roman executions by sword or by crucifixion (Todd 2000: 35 with n.17).

⁸⁶ No clear cases after the mid fifth century, though it is attested (possibly as an obsolete but not formally repealed penalty) in the context of Euryptolemos' proposal to deploy the decree of Kannonos (ref. at n.67 above).

⁸⁷ For which see at n.16 above.

⁸⁸ Cf. perhaps Visser (1996) at p.196: "removed from the city's sight by being pushed into a cleft in the earth" (the choice of the term "cleft" in place of the more usual translation "pit" for the *barathron* is an interesting if tendentious one).

⁸⁹ Parker (1983), at p.46.

⁹⁰ Contrast the 1750s-1830s English practice of gibbeting (i.e. leaving the corpse hanging in chains from the gibbet) for which see Gatrell (1994: 267-269), and the story of Crassus' execution of 6,000 slaves captured in the war against Spartacus (Appian, *Civil War*, 1.120):

by *apotumpanismos* may have taken place in public;⁹¹ also a passage in Plato's *Republic* which speaks of Leontios son of Aglaion walking from Peiraieus along the outside of the north Long Wall and being simultaneously revolted and entranced by the sight of "bodies lying beside the executioner",⁹² but it is not clear that the bodies here are on continuing display, as opposed to being in the process of disposal or even in the course of expiring.⁹³ It is only in Sophokles' *Antigone* that we have the body being displayed unburied in public and with guards being set to prevent burial; and although the *Widow of Ephesus* story is set by Petronius in the context of a Greek city, the setting is explicitly under Roman rule, with the corpse that the soldier is required to guard being a crucifixion ordered by the Roman governor.⁹⁴

In terms of personnel, it is here worth reiterating the point about avoidance of blood-guilt or avoidance of blood-feud. One of the things that is very striking about public order at Athens is the use of publicly-owned slaves, authorised at least on occasions to use force against citizens.⁹⁵ The use of public slaves by Athenian officials is of course widespread, with the slaves often carrying out jobs that are either technically skilled or physically unpleasant, and the officials making sure that such jobs are done (it is worth noting that officials will normally have no specialist experience, especially if appointed by lot).⁹⁶ In the case of the Skythian Archers, whose job was to maintain order, it has been suggested that the use of public slaves served to minimise situations in which ordinary citizens are manhandled by citizen officials, with all the risks e.g. of *stasis* or civil strife that that might entail.⁹⁷ But something similar applies with executions, where it is notable that the actual carrying out of the penalty

the context of the latter may suggest a deliberate and unusual act of deterrence, but the guarding of crucified corpses as a routine act within Roman provinces is implied by the text quoted at n.94 below.

⁹¹ We do have clear evidence for the prosecutor being allowed to watch (Dem. 23.69, cf. Aiskhin. 2.181-182), but, as noted in Todd (2000: 42, 48), there are reasons to be cautious about passages like Dem. 10.63 ("publicly execute by *apotumpanismos*") and about inferences from the public fate of Kēdestēs in Aristoph., *Thesmo.* (quite possibly a function of the plot).

⁹² Plato, *Rep.*, 483e8-9: αἰσθόμενος νεκρὸς παρὰ τῷ δημίῳ κειμένους. Discussion in Todd (2000: 49 with n.64).

⁹³ By contrast, the story by Douris of Samos – which nb Plutarch disbelieves – of Perikles and the Samian trierarkhs refers to death being induced after ten days and followed by the casting out of the bodies without funeral rites (Douris ap. Plut., *Per.*, 28.2: ἐφ' ἡμέρας δέκα κακῶς ἤδη διακειμένους προσέταξεν ἀνελεῖν, ξύλοις τὰς κεφαλὰς συγκόψαντας, εἴτα προβαλεῖν ἀκήδευτα τὰ σώματα).

⁹⁴ Petronius, *Satyricon*, 111: *cum interim imperator provinciae latrones iussit crucibus affigi...*

⁹⁵ E.g. Aristoph., *Thesmo.*, 933-934 (instruction to use whip if anybody interferes with the execution of Kēdestēs).

⁹⁶ Technically skilled: e.g. the *dokimastēs* or public tester of silver coinage (Rhodes-Osborne, no.25), or the clerical duties alluded to at *Ath.Pol.* 47.5 and 48.1. Physically unpleasant: e.g. *Ath.Pol.* 50.2 (used by Astunomoi for collecting bodies of those who die in the streets, cf. n.103 below) and 54.1 (used by Hodopoioi for road-building).

⁹⁷ Thus e.g. Tordoff (2013: 13).

seems to be placed in the hands of public slaves, albeit acting under the instruction of public officials. Thus for instance the Eleven are present to remove Sokrates' chains on the morning of his execution, but it is their attendant who later provides the bowl of hemlock;⁹⁸ the execution of the Kēdestēs in *Thesmophoriazusae* is carried out on the instructions of the Prytanis but by the agency of the Archer;⁹⁹ and the executed corpses seen by Leontios are "lying beside the *dēmios* (public slave)".¹⁰⁰ It is not clear whether the motive for this is that being an executioner is a polluting task, or to avoid situations where the relatives of executed criminals feel under obligation to take out a contract on members of the Eleven (or a combination of both).

[E] *Stray bodies*

The final substantive section of this paper deals with what was described at the outset as "problematic deaths", i.e. those which are natural but happen in the wrong place, and specifically the problem of dealing with the bodies of those who drop dead on public land. My particular interest here is to explore the extent to which the terms of debate may need to be changed following Canevaro's recent athetisation of what had previously been seen as one of two key pieces of evidence.

The evidence that is unaffected is *Ath. Pol.* 50.2, which outlines the duties of the *Astunomoi* (City Magistrates) in Peiraieus and in Athens itself. Their responsibilities in this account cover aspects of social order (the price of hiring flute-girls), of hygiene (the activities of the *koprologoi* or "dung-collectors"),¹⁰¹ alongside various building regulations (some of which are probably a matter of amenity while others may affect safety),¹⁰² but conclude with the statement that "they pick up those who die in the streets, having public slaves [for the purpose]".¹⁰³

A second and more detailed text – but nb this is the one athetised by Canevaro¹⁰⁴ – is quoted in the manuscript at Dem. 43.57-58. This begins with a set

⁹⁸ Plato, *Phaed.*, 59e6 "λύουσι γάρ," ἔφη, "οἱ ἔνδεκα Σωκράτη..." (the active verb "they are releasing" may at first sight seem surprising, given that the Eleven are presumably having their attendants remove his shackles, but the middle *luomai* tends to denote "ransom", which would have inappropriate connotations here); 116b8 ὁ τῶν ἔνδεκα ὑπηρέτης.

⁹⁹ Aristoph., *Thesmo.*, 923 (προσέρχεται γὰρ ὁ πρύτανις χῶ τοξότης), cf. 930-933.

¹⁰⁰ Text at n.92 above.

¹⁰¹ On which see Owens (1983), arguing that these are private contractors rather than public slaves.

¹⁰² Overhead drainpipes probably fall into the first category, but windows opening outwards (τὰς θυρίδας εἰς τὴν ὁδὸν ἀνοίγειν) may be the latter.

¹⁰³ *Ath. Pol.* 50.2: καὶ τοὺς ἐν ταῖς ὁδοῖς ἀπογιγνομένους ἀναιρουῖσιν, ἔχοντες δημοσίους ὑπηρέτας.

¹⁰⁴ Canevaro (2013: 30 n.63) for the athetisation on stichometric grounds of the laws quoted at Dem. 43.57-58, and (2013: 329-330) for the argument that such non-stichometric texts "should not be used as evidence for the laws, decrees, and procedures that they allegedly preserve". It should be noted that such athetisation means that a quoted text is unlikely to have belonged to the early manuscript tradition: this does not necessarily preclude the possibility

of regulations that overlap substantially though not completely (and in a different order of clauses) with part of the Drakon homicide law, but then shifts suddenly into a set of regulations about those who die in the demes, when nobody collects them. The Demarkh is to give notice to those responsible that they must bury the body and purify the deme; if they fail to do so, he is to contract out the job and seek to recover the costs from them; there is repeated specification that the work is to be done on the same day, and at the lowest possible cost, and an explicit statement that purification of the deme is required at least if the relatives do not immediately collect the body. The text offers fairly detailed provisions to specify how those responsible are to be traced (the owner of a dead slave, or the person inheriting the property of the deceased, or the relatives of somebody who left no property), together with regulations specifying who is liable in case of non-fulfilment.¹⁰⁵

Despite the athetisation, the second text does retain some value. In particular, the fact that it uses *tous apoginomenous* evidently to denote dead humans (cf. the details for tracing those responsible) may be taken to confirm the overwhelming likelihood that the word denotes humans in the *Ath. Pol.* passage also.¹⁰⁶ What the Dem. 43 text cannot any longer be used for (if the athetisation is accepted) is as independently reliable evidence for burial regulations, and the assumption of previous scholars that there is a responsibility on the Demarkh to contract for the burial of every person that dies in a deme.¹⁰⁷ So it would now be possible to argue for a position in which bodies which drop dead in built-up areas are the responsibility of the *Astunomoi* but that nobody is formally responsible for those who drop dead in the countryside.¹⁰⁸

that all or part of it was brought in late but is genuine (as is evidently the case with the first third of the text quoted at Dem. 43.57-58 [78 words out of 220], which can be restored with reasonable plausibility though a different order of clauses in the Drakon homicide inscription, cf. n.26 above); it does however leave a burden of proof on the deme burial regulations, which are not attested elsewhere, albeit the responsibilities laid on the Demarkh are not themselves implausible.

¹⁰⁵ Dem. 43 is not one of the speeches analysed by Canevaro for possible errors of legal understanding, and there is insufficient space here for detailed exploration of any oddities. It is notable that the Demarkh is liable to pay a fine to the state treasury (*dēmosion*) if he fails to contract for the burial of the body, in contrast e.g. to the Demotionidai decree (RO 5.91-92 and 5.100), where penalties are to be paid to Zeus Phratrios. But this may simply reflect the fact that the latter is for breach of the phratry's own membership rules, whereas the purported Dem. 43.58 law is about what the city requires of the Demarkh.

¹⁰⁶ To my knowledge, nobody has suggested that the *Ath. Pol.* passage includes dead animals also, for which we would I think have expected the inclusion of a neuter or a noun.

¹⁰⁷ This text has played an important part in discussions of burial regulations: e.g. Patterson (2006: 52 "one of the most important texts for the treatment of the dead in Athens"), using it e.g. against Morris as evidence for the responsibility to bury slaves; Osborne (2008: 54), etc.

¹⁰⁸ Aelian, *VH*, 5.14, claims that there was an Athenian law or custom (νόμος καὶ οὗτος Ἀττικός) that "anybody who came across an unburied body was obliged to cover it with earth, and to bury it facing west" (ὅς ἂν ἀτάφῳ περιτύχῃ σώματι ἀνθρώπου, πάντως ἐπιβάλλειν αὐτῷ γῆν, θάπτειν δὲ πρὸς δυσμὰς βλέποντας), but this is not the most independently reliable

We do, as it happens, have one entry in the accounts of the Eleusinian Treasurers for 329/8 specifying a payment made to a locally-based metic (Nikon, resident in Eleusis) for collecting a corpse (*nekus*) from the Rarian Field: it is presumably this sacred location that makes the matter into the special responsibility of the Eleusinian Treasurers, and we cannot be sure that a body on non-sacred land outside the built-up area would have been treated in an identical way, let alone who would have been responsible. But it is notable that the Treasurers' record continues with a payment to a second and city-based metic (Sotion, resident in Melite) for the price of a pig for cleansing the Rarian Field.¹⁰⁹

Returning finally to *Ath. Pol.* 50.2: scholars have frequently interpreted regulations about the collection of bodies as being motivated primarily by considerations of hygiene.¹¹⁰ But it is worth noting that human bodies are not simply left to the *koprologoi*; and (if we are right in reading *tous apoginomenous* as referring specifically to human bodies) there is no mention of the public slaves having to pick up dead animals, which would presumably be just as much a health hazard to the local community.

[F] (Preliminary) Conclusions

One of the aims of this paper has been to expand our understanding of the problem of death pollution by bringing together three sets of questions that are often considered separately. First, those relating to homicide jurisdiction (§C), particularly as an insight into how the Athenians conceptualised on the one hand the distinctiveness of homicide, and on the other hand the relative seriousness of different categories of homicide and their capacity to pollute. Secondly, those relating to executions (§D), both in terms of the rules on denial of burial and e.g. why we hear so little about this in contexts of homicide, and also in terms of the execution itself and its implications either for pollution or blood-guilt or even blood-feud. Thirdly and more briefly, those relating to the bodies of those who drop dead in a public place (§E), and the question of how widely there was a responsibility on public officials to deal with this, and how far such responsibility was restricted to human as opposed to animal deaths, with implications for pollution vis-à-vis hygiene.

A striking feature of this material, particularly but not only as it relates to homicide law, is the extent to which scholars disagree over what constitutes evidence for pollution. In part, this may be because, as Gagarin has remarked about another homicide debate,

of authors.

¹⁰⁹ Clinton (2005-08), no.177, lines 181-182 (previously *IG* ii² 1672.119-120). It is conceivable that the use of an Eleusis resident to remove the body implies greater urgency in the removal of the body than the subsequent purification involving a transaction with a resident of a city deme, but this may be to read too much into the text.

¹¹⁰ E.g. Osborne (2008: 54), albeit primarily with reference to Dem. 43.57: "The pollution from which purification is required seems here to be very physical: rotting bodies are what the law is trying to avoid."

“the evidence is incomplete and difficult to evaluate (a common situation in the study of Athenian law).¹¹¹ But there may in this case be more going on, and I have three suggestions that are intended as prompts to future work in this field.

In the first place, a lot depends on how far we see the study of Athenian law as being about the inferred intentions of the legislator (MacDowell’s position, cf. at n.11 above) and how far we see it as being about ways in which the law could be presented and represented to a fourth-century audience (a view to which I would myself be more sympathetic); there is of course room for cross-fertilisation, as when talking about institutional structures.

A second consideration is the question of how far to look for single explanations for a given phenomenon, as opposed to multiple possibilities. This is often tied up with the question of what you are reacting against, and I suspect there may sometimes be a certain rhetorical sleight-of-hand here, e.g. in the way that MacDowell in particular moves from the proposition that many aspects of homicide law could reflect any one of three motives (revenge, deterrence, cleansing) to the proposition that the last of these plays only a peripheral rôle.

Thirdly, it is I think important for us as scholars to recognise where it is that we are each coming from. Harris, for instance, starts from the perspective (with seems to me important) that the institutions of Athenian homicide law were regarded as having uniquely religious solemnity, and reads many of the individual pieces of evidence in a very different way from MacDowell. Similarly, if you take as one of your focal points (as I have done) the question of how Athenians think about problematic deaths, then I suspect I would be inclined to see pollution in homicide law as being both more extensive but also less clear-cut than MacDowell does.

I would however end with one caution, that “religion” and “pollution” are not identical terms. In one sense this is so obvious as to go without saying, because the former is obviously a much broader category than the latter. But one of the things that struck me during the course of background reading for this paper was a book on status-tensions between members of trade-guilds and holders of degraded professions (including executioners) in sixteenth-century Augsburg: what seemed most interesting here is that there was a clear sense of contamination or contagion that arguably justifies the use of “defilement” and “pollution” in the book’s title – but the terminology being used was that of *Unehrlichkeit* (absence of honour) rather than *Unreinheit* (uncleanness). This may be significant when evaluating some aspects of the material covered in this paper, for instance the attitude towards executions and executioners.¹¹²

¹¹¹ Gagarin (1979: 301).

¹¹² An obvious direction in which to develop the comparative aspect of this paper would be the question of Indian Dalits (formerly “untouchables”): the link between some Dalit castes and hereditary occupations that are perceived as polluting is noted by Mendelsohn & Vicziany (1998: 7–8), but also the limitations of such an explanation.

BIBLIOGRAPHY

- Adkins, A. W. H. (1960), *Merit and Responsibility: a study in Greek values*. Oxford.
- Arnaoutoglou, I. (1993), "Pollution in the Athenian Homicide Law", *RIDA*, ser. 3, vol. 40 = 48: 109-37.
- Arnaoutoglou, I. (1998), *Ancient Greek Laws: a sourcebook*. London.
- Boegehold, A. L. (1995), *The Athenian Agora: results of excavations conducted by the American School of Classical Studies at Athens*, vol. XXVIII, *The Lawcourts at Athens: sites, buildings, equipment, procedure, and testimonia*. Princeton.
- Bonner, R. J., & Smith, G. (1930-1938), *The Administration of Justice from Homer to Aristotle*. 2 vols. Chicago (repr. New York 1970).
- Canevaro, M. (2013), *The Documents in the Attic Orators: laws and decrees in the public speeches of the Athenian orators*. Oxford.
- Chantraine, P. (1999, ed.2), *Dictionnaire étymologique de la langue grecque. Histoire des mots*. Paris.
- Clinton, K. (2005-08), *Eleusis: the inscriptions on stone. Documents of the sanctuary of the Two Goddesses and public documents of the deme. Vol. 1a, Text; vol. 2, Commentary*. (= The Archaeological Society at Athens Library, no. 236 and no.259). Athens.
- Connor, W. R. (1985), "The Razing of the House in Greek Society", *TAPA*, 115: 79-102.
- Dickey, E. (2007), *Ancient Greek Scholarship: a guide to finding, reading, and understanding scholia, commentaries, lexica, and grammatical treatises, from their beginnings to the Byzantine period*. Oxford.
- Douglas, M. (1966), *Purity and Danger: an analysis of concepts of pollution and taboo*. London.
- Eck, B. (2012), *La mort rouge. Homicide, guerre et souillure en Grèce ancienne*. Paris.
- Frisk, H. (1960-72), *Griechisches etymologisches Wörterbuch*. Heidelberg.
- Gagarin, M. (1979), "The Prosecution of Homicide in Athens", *GRBS*, 20.4: 301-323.
- Gagarin, M. (1997), *Antiphon: the speeches*. Greek & Latin Classics. Cambridge.
- Gagarin, M. (2002), *Antiphon the Athenian: oratory, law, and justice in the age of the Sophists*. Texas.
- Garland, R. S. J. (1985), *The Greek Way of Death*. London.
- Garland, R. S. J. (1989), "The Well-Ordered Corpse: an investigation into the motives behind Greek funerary legislation", *BICS*, 36: 1-15.
- Gatrell, V. A. C. (1994), *The Hanging Tree: execution and the English people, 1770-1868*. Oxford.
- Gell, A. (1998), *Art and Agency: an anthropological theory*. Oxford.
- Glötz, G. (1904), *La solidarité de la famille dans le droit criminel en Grèce*. Paris.

- Hansen, M. H. (1976), *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes: a study in the Athenian administration of justice in the Fourth Century BC*. Odense.
- Harris, E. M. (2013), "The Family, the Community and Murder: the role of pollution in Athenian homicide law", in C. Ando & J. Rüpke, *Public and Private in Ancient Mediterranean Law and Religion*, pp.11-35. Berlin.
- Hughes, J. D. (1994), *Pan's Travail: environmental problems of the ancient Greeks and Romans*. Baltimore.
- Jameson, M. H., Jordan, D. R., & Kotansky, R. D. (1993), *A Lex Sacra from Selinous*. (= GRBS monographs 11.) Durham, NC.
- Latte, K. (1920), *Heiliges Recht: Untersuchungen zur Geschichte der sakralen Rechtsformen in Griechenland*. Tübingen.
- Latte, K. (1933), "Mord, griechisch", in *RE*, 16.1, cols. 278-289.
- Lipsius, J. H. (1905-15), *Das attische Recht und Rechtsverfahren*. 3 vols., Leipzig.
- Lockwood, M. (2013), "From Treason to Homicide: changing conceptions of the law of petty treason in early modern England", *Journal of Legal History*, 34.1: 31-49.
- Lupu, E. (2005), *Greek Sacred Law: a collection of new documents*. Leiden & Boston. (= NGSL)
- MacDowell, D. M. (1963), *Athenian Homicide Law in the Age of the Orators*. Manchester.
- MacDowell, D. M. (1990), *Demosthenes Against Meidias (Oration 21), edited with introduction, translation and commentary*. Oxford.
- Martin, G. (2009), *Divine Talk: religious argumentation in Demosthenes*. Oxford.
- Mendelsohn, O., & Vicziany, M. (1998), *The Untouchables: subordination, poverty and the state in India*. Cambridge.
- Mirhady, D. (2008), "Drakonian Procedure", in C. Cooper, ed., *Epigraphy and the Greek historian* (= Festschrift P. Harding) (= *Phoenix* suppl. 47), pp.15-30. Toronto.
- Morris, I. (1987), *Burial and Ancient Society: the rise of the Greek city state*. Cambridge.
- Naiden, F. S. (2015), "The Sword Did It: a Greek explanation for suicide", *CQ*, 65.1: 85-95.
- Osborne, R. G. (2008), "Law and Religion in Classical Athens: the case of the dead", in C. Langenfeld & I. Schneider, eds., *Recht und Religion in Europa: zeitgenössische Konflikte und historische Perspektiven*, pp.46-58. Göttingen.
- Osborne, R. G. (2011), *The History Written on the Classical Greek Body*. Cambridge.
- Owens, E. J. (1983), "The *Koprologoi* at Athens in the Fifth and Fourth Centuries BC", *CQ*, 33.1: 44-50.
- Panagiotou, S. (1974), "Plato's *Euthyphro* and the Attic Code on Homicide", *Hermes*, 102: 419-37.
- Parker, R. C. T. (1983), *Miasma: pollution and purification in early Greek religion*. Oxford.
- Patterson, C. B. (2006), "'Citizen cemeteries' in classical Athens?", *CQ*, 56.1: 48-56.

- Phillips, D. D. (2008), *Avengers of Blood: homicide in Athenian law and custom from Draco to Demosthenes*. (= *Historia Einzelschrift* 202). Stuttgart.
- Phillips, D. D. (2013), *The Law of Ancient Athens*. Ann Arbor, MI.
- Rhodes, P. J. (1981), *A Commentary on the Aristotelian Athēnaion Politeia*. Oxford.
- Rhodes, P. J., & Osborne, R. G., eds. (2003), *Greek Historical Inscriptions, 404–323 BC*. Oxford.
- Sealey, R. (1983), “The Athenian Courts for Homicide”, *C.Phil.*, 78.4: 275–96.
- Sealey, R. (2006), “Aristotle, *Athenaion Politeia* 57.4: trial of animals and inanimate objects for homicide”, *CQ*, 56.2: 475–485.
- Sokolowski, F. (1962), *Lois sacrées des cités grecques, supplément*. Paris. (= *LSS*)
- Sokolowski, F. (1969), *Lois sacrées des cités grecques*. Paris. (= *LSCG*)
- Stroud, R. S. (1968), *Drakon's Law on Homicide*. Berkeley & Los Angeles.
- Stuart, K. (2000), *Defiled Trades, Social Outcasts: honor and ritual pollution in Early Modern Germany*. Cambridge.
- Thonissen, J. J. (1875), *Le droit pénal de la république athénienne, précédé d'une étude sur le droit criminel de la Grèce légendaire*. Brussels & Paris.
- Todd, S. C. (2000), “How to Execute People in Fourth-Century Athens”, in V. J. Hunter & J. Edmondson, eds., *Law and Social Status in Classical Athens*, pp.31–51. Oxford.
- Todd, S. C. (2007), *A Commentary on Lysias, speeches 1–11*. Oxford.
- Tordoff, R. (2013), “Introduction: slaves and slavery in ancient Greek comedy”, in B. Akrigg & R. Tordoff, eds., *Slaves and Slavery in Ancient Greek Comic Drama*, pp.1–62. Cambridge.
- Valeri, V. (1999), *The Forest of Taboos: morality, hunting, and identity among the Huauilu of the Moluccas*. Madison, WI.
- Visser, M. (1984), “Vengeance and Pollution in Classical Athens”, *Journal of the History of Ideas*, 45.2: 193–206.
- von Amira, K. (1891), “Thierstrafen und Thierprocesse”, *Mittheilungen des Instituts für Oesterreichische Geschichtsforschung*, 12: 545–601.