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UNINTENTIONAL HOMICIDE IN THE HIPPOLYTOS

At the end of the Hippolytos Artemis excuses Theseus for causing Hippolytos's death:

ἄκων γὰρ ὀλεσάς νῦν, ἀνθρώπουι δὲ
θεῶν διδόντων εἰκὸς ἕξαμαρτάνειν. (E. Hipp. 1433-4)

It may seem surprising to hear that Theseus killed Hippolytos unintentionally; was it not for precisely that purpose that he invoked Poseidon? But, explains W. S. Barrett in his admirable edition of the play (page 413), ἄκων means only “more or less ‘innocently’, “that he killed him without meaning to do wrong”. Furthermore Barrett suggests that “it is likely enough” that the Athenian legal term φόνος ἄκοντος included “the inevitably rare category of deliberate homicide committed in the mistaken belief that it was justifiable, and that Eur.’s use of ἄκων here is legally correct”.

I have already written about φόνος ἄκοψιος (Athenian Homicide Law 58–60; this appeared too late for Barrett to have seen it before completing his book), but I did not discuss this passage, and Barrett’s note has prompted me to further consideration.

Athenian law laid down that certain kinds of killing were lawful (killing in self-defence, killing a man caught stealing at night, and so on; I have made a list in Athenian Homicide Law 73–81). But there is no evidence, as far as I know (and Barrett does not quote any), for any specific legal provision about a killer who believed that his act was lawful when actually it was not, except in a single type of case: when a man killed a fellow-citizen in war, mistaking him for an enemy. Such a killer went unpunished. But that does not mean that he was declared to have committed unintentional homicide; the word used in the law was not ἄκοψιος or ἔκων but ἄγνωσις (Dem. 23. 53, Arist. Ath. Pol. 57. 3). So this evidence has no relevance to Artemis’s words to Theseus.

The usual application of the legal expression φόνος ἄκοψιος was quite different: a person was guilty of unintentional homicide if he committed an act which was not intended to result in someone’s death, but did. For instance, there was the woman who gave a man a drink which she thought was a love-potion, but it killed him (Arist. Ethika Megala 1188b 29–38). This plainly does not apply to Theseus’s case; when he invoked Poseidon, he certainly intended Hippolytos’s death.

But there is some evidence that another type of homicide could be called unintentional: homicide which one was compelled by someone else to commit. First there is a sentence of Lysias’s speech Against Agoratos (to which Barrett refers). Agoratos is alleged to have caused the death of Dionysodoros and others by denouncing them to the Thirty. How will he defend himself? ἵσως φήσει ἔκων τοσοῦτα κακὰ ἐγγάσσοθαι (Lys. 13. 52). I suppose this could mean that Agoratos might claim that when he denounced the men he did not intend their execution but some different result; that would make his act φόνος ἄκοψιος in the usual sense. But it is much more likely to mean that he might claim that he was compelled to make the denunciations.

Secondly there is a piece of facetious dialogue surviving from a lost play of Aristophanes, referring to the court at the Palladion (which tried persons accused of unintentional homicide):
Although it is hard to interpret the lines without their context, it is not likely that the old man means “I shall (voluntarily) commit an act which will result in your death, but I shall not intend to kill you”; to make such a prediction about his own act would be nearly (if not quite) self-contradictory. It is much more likely that he means simply “I shall be compelled to kill you” or “I shan’t be able to help killing you”.

These two passages are rather slight evidence for Athenian law. The Lysias sentence only suggests a line of defence which Agoratos might possibly use, and which the speaker claims would not be an adequate defence if he did use it. And the Aristophanes passage is only a joke. Still, taken together, I think they do make it likely that a person accused of intentional homicide in Athens might claim that the homicide was unintentional by saying that he was compelled by someone else to act as he did.

Can ἀκον mean “under compulsion” in E. Hipp. 1433? Clearly it can. Euripides makes it quite plain that Theseus is an instrument of Aphrodite. Aphrodite states her plan in the prologue, and part of it is νεανίαν κτενεὶ παθή (43–44). And at the end of the play Artemis excuses him not only by saying that he acted ἀκον, but with the phrase θεόν διδότων (1434); a god ordained his action. The idea that a person is blameless if he acts under compulsion from a god also appears elsewhere in Euripides. In the Troades Helen excuses herself by blaming Aphrodite: τὴν θεόν κόλαξ· ... συγγνώμη δ’ ἔμοι (E. Tro. 948–50; cf. A. W. H. Adkins Merit and Responsibility 124–5). The excuse which Hekabe rejects as untrue in the case of Helen (Tro. 983–90) is the one which Artemis allows in the case of Theseus.

It therefore seems to me that in Hipp. 1433 there is no need to give ἀκον the rather weak and uncommon sense “without meaning to do wrong”. I prefer the translation “under compulsion”. This is a more usual sense of ἀκον; it suits Euripides’s thought and the context of the play; and it is also in harmony with the evidence for the definition of unintentional homicide in Athenian law.