

1. ON THE DEATH OF ERATOSTHENES



INTRODUCTION

At first sight, this appears to be a speech about adultery,¹ but in fact the case concerns homicide. Euphiletus, the speaker, has caught a man called Eratosthenes committing adultery with his wife and pleads justification for having killed him. Trials for justifiable homicide at Athens came before the court of the Delphinium, and it is possible (though not certain) that they were heard by a specialist panel of Ephetae, rather than by a regular dikastic court consisting of ordinary citizens selected by lot.² As usual, we do not know the result of the case, but the speaker will be declared guiltless if the court decides in his favor. If they decide for his opponents (who are presumably the dead man's relatives, as was normal in homicide cases), he will be convicted of deliberate homicide and punished accordingly.

Euphiletus cites three laws in his support (at 1.28, 1.30, and 1.31).

¹There has been considerable dispute in recent scholarship (based partly on this speech) over the meaning of the Greek word *moichos*. The most detailed treatment of the subject is by D. Cohen (*Law, Sexuality and Society* [Cambridge 1991], 98–132), who argues that a *moichos* was strictly an “adulterer” (i.e., somebody who has sex with a married woman), and this view has won some support. Other scholars, however, have continued to believe that what mattered was the civic status of the woman (rather than whether she was married), and possibly whether the action was committed indoors.

²The speech does not make any obvious concessions to the legal sophistication of its hearers (there seems to be no expectation that they will see through the use of selective quotation at 1.32–33; cf. below, n. 5), but this might mean that an ephetic as well as a dikastic court was liable to be taken in by this sort of argument.

The manuscripts of our speeches do not normally preserve the texts of documents read out in court, but scholars have plausibly identified one of these with a law on justifiable homicide quoted at Demosthenes 23.53: "If somebody kills a man after finding him next to his wife or mother or sister or daughter or concubine kept for producing free children, he shall not be exiled as a killer on account of this." In law, therefore, Euphiletus' action in killing the adulterer would seem justifiable. Lysias' problem, however, is that for a husband to kill an adulterer at Athens appears to have been unusual—and this creates suspicion. We know nothing about the opponents' arguments except what we can infer from Euphiletus' speech. It does seem, however, that they are taking the case seriously. They have evidently claimed that Euphiletus had enticed his victim into the house with the intention of killing him (cf. 1.37), and that the adulterer had not finally been captured in bed but had succeeded in escaping to the hearth of the house (1.27), thereby throwing on Euphiletus the sacrilege of removing him by force. It is not clear that either of these claims would undermine the legal basis of Euphiletus' case, but the prosecution presumably expect the court to regard his action in such circumstances as an improper (and therefore unlawful) exercise of his statutory rights.

We have already noted that the speaker's name is Euphiletus: this information arises from a chance remark he reports in 1.15. Otherwise, nothing more is known about him than can be inferred from his speech, and one of the main attractions of the speech is the extraordinarily vivid picture of Euphiletus' domestic circumstances. He is evidently a farmer, living either in the city or in one of the surrounding villages (his neighbors are mentioned at 1.14, but cf. also 1.10n and 1.23n) and walking out to his fields (1.11, 1.20). The unexpectedness of his return from the countryside in 1.11 suggests that he has been spending some days there. Presumably this is what he does at peak agricultural seasons, and he will have a hut or a shed where he can sleep. It is unlikely that he has a second house: we hear of only one domestic slave, who helps Euphiletus (not his wife) with the shopping, takes her turn minding the baby, and is (as usual) sexually available to her master. Euphiletus' wife at first sight appears dominated by her husband—it is the women's former rooms upstairs that are capable of being locked—but she is nowhere blamed for the affair, and she is quite capable (at least, as Lysias represents her) of outwitting her husband in private conversation (1.12–13).

Euphiletus' victim Eratosthenes is named several times.³ He cannot be firmly identified, but the name is very rare in Athens. The only other classical Athenian known to us with the same name is the member of the Thirty Tyrants who is accused by Lysias in speech 12 of having killed Lysias' brother Polemarchus. It has been suggested that the two are either the same Eratosthenes (in which case, of course, the dead man in Lysias 1 must previously have been acquitted of killing Polemarchus) or that they are closely related (Greek names tend to run in families). There are considerable problems with such an identification (most notably, why the connection with the Thirty is never mentioned⁴), but lingering hatred of the Thirty would provide a motive for Euphiletus' unparalleled action and would also suggest an attractive answer to one of the most puzzling problems behind this speech: how could a man like Euphiletus, from a one-slave family, afford to commission a speech from a (presumably expensive) orator like Lysias, unless Lysias had particular reasons for waiving his fees?

One of the most striking features of this speech is the absence of reference to events outside the domestic sphere. For this reason it cannot be dated more narrowly than the broad confines of Lysias' career. However, the world that Lysias creates for us here, in what is perhaps his finest short speech, is extraordinarily vivid. There is some use of detailed legal argument, in particular that adultery is a more serious offense than rape (1.32–33).⁵ For the most part, however, it is the narrative that dominates the speech, creating a version of the story

³ After naming Eratosthenes in the introduction, Lysias takes considerable care throughout the preliminary narrative to refer to him as "this man," etc., rather than by name. This may be designed to support the claim that Euphiletus knew nothing of the affair until the news was broken to him in 1.16.

⁴ A possible explanation might be that to attack the Thirty would be to admit a motive, and that Lysias is leaving the opposition with the opprobrium of bringing up this subject if they dare.

⁵ The argument relies on selective quotation, because Lysias fails to mention that there were certainly other laws available which allowed for less severe penalties against adulterers, and that the law of *hubris* (which could result in a death sentence) may have been available against rape. (Both E. M. Harris, "Did the Athenians Regard Seduction as a Worse Crime than Rape?," *Classical Quarterly* 40 [1990]: 370–377, and C. Carey, "Rape and Adultery in Athenian Law," *Classical Quarterly* 45 [1995]: 407–417, agree on this point, though differing on much else.)

that makes Euphiletus' behavior appear to be what the laws "order" (whereas in fact they merely "permit"), and indeed turning the case from a prosecution of Euphiletus by Eratosthenes' relatives for homicide into a prosecution of Eratosthenes by "the laws" for adultery.

There are useful commentaries on the speech by Carey 1989 and by Usher in Edwards and Usher 1985. The latter is more accessible to the non-Greek reader, because the notes are keyed to an English translation, but I am not convinced by Usher's insistence that Euphiletus is portrayed as a man whose response to adultery would be anger. A modern pleader would tend to play this case as a crime of passion, but what is striking is the atmosphere of terrible calm in which Euphiletus represents himself not as outraged individual but as quasijudicial representative of the city (this point is well made by Carey, p. 62).

I. ON THE DEATH OF ERATOSTHENES: DEFENSE SPEECH

[1] I should be very glad, gentlemen, if in this case you are the same sort of judges towards me as you would be towards yourselves, if you had suffered what I have. For I know full well that if you held the same opinions about others as you do about yourselves, there would not be a single one of you who would not be angry at what has happened; instead, you would all regard as trivial the penalties for those who do things like this. [2] Indeed, this verdict would be shared not only by you, but throughout Greece: this is the only crime for which both democracy and oligarchy give the same right of revenge to the powerless against the most powerful, so that the lowliest citizen has the same position as the greatest. Clearly therefore, gentlemen, everybody believes this is the most terrible outrage. [3] I am sure you all agree about the level of the penalty. Nobody rates the matter so lightly as to think that those responsible for such offenses ought to be pardoned or that they deserve only a trivial punishment. [4] As far as I can see, gentlemen, my job is to demonstrate the following: that Eratosthenes committed adultery with my wife; that he corrupted her, disgraced my children, and humiliated me by entering my house; that there was no prior hostility between us except for this; and that I did not do what I did for the sake of money, to become rich instead of poor, or for any other reward except for the vengeance permitted by law. [5] So I shall tell you everything I did from the beginning, leaving nothing

out, but telling the truth. This in my opinion will be my only refuge, if I can tell you everything that happened.

[6] After I decided to get married, men of Athens, and brought my bride home, for a while my attitude was not to trouble her too much but not to let her do whatever she wanted either. I watched her as best I could and gave her the proper amount of attention. But from the moment my son was born, I began to have full confidence in her and placed everything in her hands, reckoning that this was the best relationship.¹ [7] In those early days, men of Athens, she was the best of women: a good housekeeper, thrifty, with a sharp eye on every detail. But my mother's death was the cause of all my troubles. [8] For it was while attending her funeral that my wife was seen by this fellow and eventually corrupted by him: he kept an eye out for the slave girl who did the shopping, put forward proposals, and seduced her.

[9] Now before continuing, gentlemen, I need to explain something. My house has two stories, and in the part with the women's rooms and the men's rooms, the upper floor is the same size as the floor below.² When our baby was born, his mother nursed him. To avoid her risking an accident coming down the stairs whenever he needed washing, I took over the upstairs rooms, and the women moved downstairs. [10] Eventually we became so used to this arrangement that my wife would often leave me to go down and sleep with the baby, so that she could nurse it and stop it crying. Things went on in this way for a long time, and I never had the slightest suspicion; indeed, I was so naive that I thought my wife was the most respectable woman in Athens.³

[11] Some time later, gentlemen, I returned unexpectedly from the country. After dinner, the baby began to cry and was restless. (He was being deliberately teased by the slave girl, to make him do this, because the man was inside the house: I later found out everything.) [12] So I

¹ Or "reckoning that our relationship was as secure as it could be" (lit. "was the strongest").

² Or perhaps, "the upper floor (i.e., the women's rooms) is the same size as the lower floor (i.e., the men's)."

³ Lit. "in the *polis* (city)," but the word includes the surrounding countryside as well as the urban center and does not necessarily imply that they live in the city itself.

told my wife to go down and feed the baby, to stop it crying. At first she refused, as if glad to see me home after so long. When I became angry and ordered her to go, she said, "You just want to stay here and have a go at the slave girl. You had a grab at her once before when you were drunk." [13] I laughed at this, and she got up and left. She closed the door behind her, pretending to make a joke out of it, and bolted it.⁴ I had no suspicions and thought no more of it, but gladly went to bed, since I had just returned from the country. [14] Towards morning, she came and unlocked the door. I asked her why the doors had creaked during the night, and she claimed that the baby's lamp had gone out, so she had to get it relit at our neighbors'. I believed this account and said no more. But I noticed, gentlemen, that she had put on makeup, even though her brother had died less than a month earlier. Even so, I did not say anything about it but left the house without replying.

[15] After this, gentlemen, there was an interval of some time, during which I remained completely unaware of my misfortunes. But then an old woman came up to me. She had been secretly sent, or so I later discovered, by a lady whom this fellow had seduced. This woman was angry and felt cheated, because he no longer visited her as before, so she watched until she found out why. [16] The old woman kept an eye out and approached me near my house. "Euphiletus," she said, "please do not think that I am being a busybody by making contact with you. The man who is humiliating you and your wife is an enemy of ours as well. Get hold of your slave girl, the one who does the shopping and waits on you, and torture her: you will discover everything. It is," she continued, "Eratosthenes of the deme Oe who is doing this. He has seduced not only your wife but many others as well. He makes a hobby⁵ of it." [17] She said this, gentlemen, and left. At once I became alarmed. Everything came back into my mind, and I was filled with suspicion. I remembered how I had been locked in my room, and how that night both the door of the house and the

⁴It is not linguistically clear whether this is a lock from which she can remove the key, or a bolt which remains on the outside of the door, and both are archaeologically attested. A bolt (unlike a key) would imply that she is concerned simply to prevent her husband getting at the slave girl, rather than the slave girl getting in.

⁵*Technē*, lit. "craft-skill," almost "profession."

courtyard door had creaked (which had never happened before), and how I had noticed that my wife had used makeup. All these things flashed into my mind, and I was full of suspicion. [18] I returned home, and told the slave girl to come shopping with me,⁶ but I took her to the house of one of my friends and told her that I had found out everything that was going on in my house. "So it is up to you," I said, "to choose the fate you prefer: either to be flogged and put out to work in the mill, and never have any rest from such sufferings; or else to admit the whole truth and suffer no punishment, but instead to be forgiven for your crimes. No lies now: I want the full truth." [19] At first she denied it and told me to do whatever I pleased, because she knew nothing. But when I mentioned the name Eratosthenes to her and declared that this was the man who was visiting my wife, she was astonished, realizing that I knew everything. She immediately fell at my knees and made me promise she would suffer no harm. [20] She admitted,⁷ first, how he had approached her after the funeral, and then how she had eventually acted as his messenger, and how my wife had in the end been won over, and the various ways he had entered the house, and how during the Thesmophoria,⁸ when I was in the country, my wife had attended the shrine with his mother. She gave me a full and accurate account of everything else that had happened. [21] When she had finished, I said, "Make sure that nobody at all hears about this, otherwise nothing in our agreement will be binding. I want you to show me them in the act. I don't want words; I want their actions to be clearly proved, if it is really true." She agreed to do this.

[22] After this there was an interval of four or five days, as I shall bring clear evidence to show.⁹ But first, I want to tell you what

⁶ Lit. "to accompany me to the Agora," as in 1.16.

⁷ Lit. "accused," which has a slightly stronger flavor and prefigures the way in which Euphiletus constructs himself as the judge of Eratosthenes' case at 1.26.

⁸ A women's festival in honor of Demeter, celebrated in the autumn. Men were excluded, and women camped out together for three days (as in Aristophanes' *Women at the Thesmophoria*).

⁹ He does not in fact produce such evidence, nor is it obvious why he should wish to do so. Many scholars suspect that some words have dropped out of the text between "days" and "as."

happened on that last day. There is a man called Sostratus, who was a close friend of mine. I happened to meet him, at sunset, on his way back from the country. I knew that if he arrived at that time, he would find none of his friends at home, so I invited him to dine with me. We returned to my house, went upstairs, and had supper. [23] After he had had a good meal, he left, and I went to bed. Eratosthenes entered the house, gentlemen, and the slave girl woke me at once to say he was inside. I told her to take care of the doors, and going downstairs, I went out silently. I called at the houses of various friends: some I discovered were out, and others were not even in town.¹⁰ [24] I gathered as many as I could find at home and came back. We collected torches from the nearest shop and made our way in; the door was open, because it had been kept ready by the slave girl. We burst open the door of the bedroom, and those of us who were first to enter saw him still lying next to my wife. The others, who came later, saw him standing on the bed naked. [25] I struck him, gentlemen, and knocked him down. I twisted his arms behind him and tied them, and asked why he had committed this outrage against my house by entering it. He admitted his guilt, and begged and entreated me not to kill him but to accept compensation. [26] I replied, "It is not I who will kill you, but the law of the city. You have broken that law and have had less regard for it than for your own pleasure. You have preferred to commit this crime against my wife and my children rather than behaving responsibly and obeying the laws."

[27] So it was, gentlemen, that this man met the fate which the laws prescribe for those who behave like that. He was not snatched from the street, nor had he taken refuge at the hearth, as my opponents claim. How could he have done so? It was inside the bedroom that he was struck, and he immediately fell down, and I tied his hands. There were so many men in the house that he could not have escaped, and he did not have a knife or a club or any other weapon with which to repel those coming at him. [28] I am sure you realize, gentlemen, that men who commit crimes never admit that their enemies are tell-

¹⁰The word literally means "in the deme," and could equally well be used whether Euphiletus lives in the city of Athens or in an outlying village.

ing the truth, but instead they themselves tell lies and use tricks to provoke their hearers to anger against the innocent.

So, first of all, please read out the law.

[LAW]

[29] He did not dispute it, gentlemen. He admitted his guilt, he begged and pleaded not to be killed, and he was ready to pay money in compensation. But I did not accept his proposal. I reckoned that the law of the city should have greater authority; and I exacted from him the penalty that you yourselves, believing it to be just, have established for people who behave like that.

Will my witnesses to these facts please come forward.

[WITNESSES]

[30] Read me this law also, the one from the inscribed stone on the Areopagus.¹¹

[LAW]

You hear, gentlemen, how the court of the Areopagus (to which the ancestral right of judging homicide cases belongs, as has been reaffirmed in our own days) has expressly decreed that a man is not to be convicted of homicide if he captures an adulterer in bed with his wife and exacts this penalty from him. [31] Indeed, the lawgiver was so convinced that this is appropriate in the case of married women that he has established the same penalty in the case of concubines, who are less valuable. Clearly if he had had a more severe penalty available in the case of married women, he would have imposed it; but in fact he was unable to find a more powerful sanction than death to use in their case, so he decided the penalty should be the same as in the case of concubines.

Read me this law as well.

¹¹ The Areopagus (consisting of former Archons) was the most famous Athenian homicide court. For the identification of the law cited here with the one quoted in Dem. 23.53, see the Introduction.

[LAW]

[32] You hear, gentlemen: if anybody indecently assaults a free man or boy, he shall pay twice the damages; if he assaults a woman (in those categories where the death sentence is applicable), he shall be liable to the same penalty. Clearly therefore, gentlemen, the lawgiver believed that those who commit rape deserve a lighter penalty than those who seduce: he condemned seducers to death, but for rapists he laid down double damages. [33] He believed that those who act by violence are hated by the people they have assaulted, whereas those who seduce corrupt the minds of their victims in such a way that they make other people's wives into members of their own families rather than of their husbands'. The victim's whole household becomes the adulterer's, and as for the children, it is unclear whose they are, the husband's or the seducer's. Because of this the lawgiver laid down the death penalty for them.¹²

[34] In my case, gentlemen, the laws have not only acquitted me of crime but have actually commanded me to exact this penalty. It is for you to decide whether the law is to be powerful or worthless. [35] In my opinion, every city enacts its laws in order that when we are uncertain in a situation, we can go to them to see what to do, and in such cases the law commands the victims to exact this penalty. [36] So I ask you now to reach the same verdict as the law does. If not, you will be giving adulterers such immunity that you will encourage burglars to call themselves adulterers too. They will realize that if they describe adultery as their object and claim that they have entered somebody else's house for this purpose, nobody will dare touch them. Everyone will know that we must say good-bye to the laws on adultery and take notice only of your verdict—which is the sovereign authority over all the city's affairs.

[37] Please consider, gentlemen: my opponents accuse me of having ordered my slave girl on the night in question to fetch the young man. In my view, gentlemen, I should have been acting within my rights in capturing in any way possible the man who had corrupted my wife. [38] Admittedly if I had sent her to fetch him when words

¹²The argument here is discussed in the Introduction at n. 5.

alone had been spoken but no act had been committed, then I would have been acting unlawfully; but if I had captured him, whatever my methods, when he had already done everything and had repeatedly entered my house, then I would regard myself as acting properly. [39] But consider how they are lying about this as well, as you can see easily from the following argument. As I told you before, gentlemen, Sostratus is a close friend of mine. He met me around sunset on his way home from the country, he had dinner with me, and when he had eaten well, he left. [40] But just think for a moment, gentlemen. If I had been laying a trap that night for Eratosthenes, would it not have been better for me to dine somewhere else with Sostratus, instead of bringing him back home for dinner and so making the adulterer less likely to risk entering my house? And secondly, does it seem plausible to you that I would send away the man who had had dinner with me, and remain behind alone and unaccompanied, instead of asking him to stay and help me punish the adulterer? [41] Then again, gentlemen, do you not think I would have sent messages during the day to my acquaintances, asking them to meet at a friend's house—whichever was nearest—rather than running around during the night the moment I heard the news, not knowing who I would find at home and who would be out? In fact I called on Harmodius¹³ and on another man, who were out of town (I had no reason to expect this), and I found others not at home; but I went around and gathered everybody I could. [42] And yet if I had planned it all in advance, do you not think I would have gathered some slaves together and warned my friends: then I could have entered the bedroom with complete safety (how was I to know whether he too might be armed?), and could have exacted the penalty with the maximum number of witnesses? But in fact I knew nothing of what was going to happen that night, so I took with me those I could find.

My witnesses to these facts will please come forward.

¹³Harmodius cannot be identified, but he has the same name as one of the two tyrannicides (Harmodius and Aristogeiton, who became popular heroes following their assassination of Hipparchus in 514 BC), and since the name is rarely attested outside this family, it is possible that this is a descendant.

[WITNESSES]

[43] You have heard the witnesses, gentlemen. Examine the affair in your own minds as follows. Ask yourselves if there had ever been any enmity between Eratosthenes and myself except for this. You will not find any. [44] He had not maliciously brought a public prosecution against me, he had not tried to expel me from the city, he had not brought a private prosecution, and he did not know of any offense of mine that I would kill him for, out of fear that it would become public knowledge. And if I had succeeded, I had no hope of receiving any money (some people do admittedly plot the deaths of others for this purpose). [45] So far from there being any dispute or drunken brawl or other disagreement between us, I had never even seen the man before that night. What was I hoping for, then, by running so great a risk—if I had not in reality suffered the most terrible of injuries at his hands? [46] And why did I commit this impious act after summoning witnesses, given that if I had wanted to make away with him illegally, I could have prevented them all from knowing about it?

[47] So, gentlemen, I do not accept that this penalty was exacted privately on my own behalf. Instead, it was for the sake of the whole city. If men who commit this sort of offense see the rewards that await such crimes, they will be less eager to commit them against other people—provided they see you holding fast to the same opinion. [48] Otherwise, it would be much better to erase the existing laws and enact others, which would impose penalties on men who guard their own wives, and grant total impunity to those who commit offenses against married women. [49] It would be far more just to do this than to let citizens be trapped by the laws: for the laws instruct the man who catches an adulterer to treat him in any way he pleases, whereas the court turns out to be far more dangerous to the victims than to the men who break the law and dishonor other people's wives. [50] For I am now on trial for my life, my property, and everything else—simply because I obeyed the laws of the city.