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## The Case of Dracontius (X. *An.* 4.8.25) and Spartan Homicide Law

### *Abstract*

The prevailing interpretation of the case of Dracontius (X. *An.* 4.8.25) has long been that Dracontius was exiled from Sparta for unintentional homicide. This paper argues that that interpretation is incorrect. Xenophon's description of the event indicates that Dracontius intended to strike his victim. Consequently, comparanda including the laws of Athens, of Antiphon's *Tetralogies*, and of Plato's *Laws* support the conclusion that Dracontius was treated as an intentional killer. The duration of Dracontius' exile provides further evidence in favor of this position. Strict liability for homicide at Sparta, of the type familiar from the case of Patroclus (Hom. *Il.* 23.85-88) and from Homeric and Hesiodic epic generally, is contraindicated by the Spartan concern with *oliganthrōpia* and the violence of the *agōgē*. Whether Dracontius' exile was penal or voluntary thus depends on the penalty for intentional homicide in Spartan law. If that penalty was fixed, then in all probability it was fixed at death, and Dracontius fled of his own accord to avoid that punishment. If, however, the penalty was assessable, then Dracontius either was sentenced to exile or fled voluntarily to avoid a possible sentence of death. These two alternative reconstructions of the Spartan law of intentional homicide in turn determine the reconstruction of the law of unintentional homicide, which will have carried a lesser penalty.

*Keywords:* Sparta, homicide, Xenophon, Dracontius, Greek law

Having fought their way north from Cunaxa, through hostile barbarians, daunting terrain, freezing weather, and toxic honey, in the winter or spring of 400<sup>1</sup> the Ten Thousand Greeks arrived at Trapezus by the Black Sea. To celebrate their deliverance, they sacrificed to Zeus Soter, Heracles Hegem-

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<sup>1</sup> Early date (January): Lee 2007, 287 (Table 1). Traditional date (February/March): e.g., Dindorf 1855, xxxviii. Late date (May/June): Lane Fox 2004, 35-46; Waterfield 2006, 154-56; Brennan in Brennan—Thomas 2021, 407-10.

on, and the other gods, and they held athletic competitions.

εἵλοντο δὲ Δρακόντιον Σπαρτιάτην, ὃς ἔφυγε παῖς ἔτι ὢν οἴκοθεν, παῖδα ἄκων κατακανὼν ξυήλη πατάξας, δρόμου τ' ἐπιμεληθῆναι καὶ τοῦ ἀγῶνος προσταῖσαι.

And they chose Dracontius the Spartiate [*PL* 250; *LGP*N III.A Δρακόντιος 2], who had fled/been exiled from his home while still a boy because he had unintentionally killed another boy by striking him with a *xyēlē*, to take care of the racecourse and preside over the games. (X. *An.* 4.8.25)

For over a century, commentators and translators have usually taken this passage to mean that the Spartans considered this killing to be a case of unintentional homicide and exiled Dracontius accordingly.<sup>2</sup> Recently, Gray

<sup>2</sup> Penal exile: White 1880, 218: ἔφυγε = “was banished.” Dakyns 1890, 208: ἔφυγε = “had been banished.” Harper—Wallace 1893, 427: ἔφυγε = “was banished”; “[e]ven the involuntary homicide among the Greeks was viewed as polluted, and had to quit the country for a time at least.” Goodwin—White 1894, 273 translates ἔφυγε as “was banished” and compares the law of Draco on unintentional homicide. Kelsey—Zenos 1895, 391: “ἔφυγεν: ‘had become an exile.’ At Athens murderers were put to death, but those who had killed any one unintentionally were banished till they had come to terms with the relatives of the person killed. A similar law seems to have prevailed at Sparta.” Mather—Hewitt 1910, 402: “ἔφυγε: *had been banished*... Any one who had caused another’s death, even by accident, was looked upon by the Greeks as polluted, and was banished, though without confiscation of his property, until he could become reconciled with the family of the dead person.” Masqueray 1931, 46: ἔφυγε = “exilé.” Rouse 1958, 111: ἔφυγε = “had been banished.” Anderson 1970, 38: “had been exiled... because he struck another boy with his *xyele* and accidentally slew him” (repeated in Anderson 1974). Cawkwell in Warner—Cawkwell 1972, 216 n. 9: “Exile was a common...penalty for unintentional homicide.” Cartledge 1987, 320: “had been exiled as a boy for manslaughtering a playmate during the *agōgē*”; cfr. Cartledge [1992] 2001, 87, placing Dracontius’ case in the category of “fatal accidents.” Kennell 1995, 133: “had been exiled...for accidentally killing...” Golden 1998, 1, 3: “had been exiled... for accidentally killing...”; “accidental bloodshed.” Brownson—Dillery 2001, 376: ἔφυγε = “had been exiled.” Waterfield in Waterfield—Rood 2005, 104: ἔφυγε...πατάξας = “had been banished...for having accidentally stabbed another boy with his dagger and killed him”; Rood (p. 214) compares the case of Patroclus. Lee 2007, 13: “exiled...from his native Lacedaemon for accidentally stabbing another boy.” Müri—Zimmermann 2010, 259: ἔφυγε...πατάξας = “als Knabe aus der Heimat verbannt worden war, weil er unabsichtlich durch einen Schwerthieb einen andern Knaben getötet hatte.” Hawkins 2011, 405: Dracontius “had been exiled from Sparta.” Flower 2012, 89: *infra*, n. 6. Steadman 2018, 107: “he was banished and therefore ‘was an exile.’” Unintentional homicide, type of exile unspecified: Crosby 1877, 103: “ἔφυγε, *went into exile*... Among the Greeks even involuntary homicide was thought to bring pollution

(2020, 185) has taken a somewhat more nuanced view:

...*Anabasis* 4.8.25 refers to unintentional homicide, which is the main focus of Dracon's Athenian law on homicide. It speaks of Dracontius, who had 'fled' or 'been exiled from' Sparta for the accidental killing of another boy with a Laconian dagger... Antiphon's fifth-century *Tetralogy IV* [*sic*] examines the operation of this law in the case of a teenager at Athens who accidentally killed a toddler [*sic*] when he was practicing throwing the javelin. Homer already has Patroclus explain how he fled from his home as a boy because he killed another accidentally over a dispute in a game of knuckle-bones (*Iliad* 23.85-90). One conclusion from the case of Dracontius is that the Spartans had laws on unintentional homicide within the normal range.

There are several problems with this interpretation. The case of Patroclus takes place under a regime of strict liability for homicide that differs from the laws of the *Tetralogies* and Athens and should not be assumed to correspond to the law of Sparta. Moreover, Patroclus may have killed accidentally, but he struck intentionally. Most fundamentally, while Dracontius

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requiring exile, at least for a time, and purification." Smith 1905, 298: "ἔφυγε οἰκοθεν: *had become an exile from home*. One guilty of homicide, even unintentional, had to leave his fatherland until he could effect a reconciliation with the relations of the slain man." Murray 1914, 251: "ἄκων: *i.e.* he was not a murderer. The Greeks, however, regarded one who had slain another even involuntarily as polluted, and he was obliged to go for a time, at least, into banishment..." Arapopoulos 1954, 362-63 translates ἔφυγε as "ἡναγκάσθη νὰ φύγῃ" and comments: "Ὁ διαπράξας ἀκούσιον φόνον ὠφείλε νὰ εἶναι μακρὰν τῆς πατρίδος ἕως ὅτου συνδιαλλαγῇ μετὰ τῶν συγγενῶν τοῦ φονευθέντος, διὰ τῆς πληρωμῆς χρηματικοῦ ποσοῦ, ὀριζομένου ὑπὸ τῶν συγγενῶν τοῦ θύματος." Warner in Warner—Cawkwell 1972, 216: ἔφυγε...πατάξας = "had been an exile...because he had accidentally killed another boy with a dagger." Poralla in Poralla—Bradford 1985, 48 (*PL* 250): Dracontius "wegen fahrlässiger Tötung...hatte flüchten müssen."

Type of exile unspecified, no stated assumption that Dracontius was treated as an unintentional killer: Townsend 1823, 60: ἔφυγε...πατάξας = "fugerat, quod puerum, quem gladiolo percusserat *Laconico*, imprudens interfecerat." Watson 1878, 142: ἔφυγε...πατάξας = "had become an exile...for having involuntarily killed...by striking him with a dagger." Rehdantz—Carnuth 1905, 60: ἔφυγε = "in die Verbannung gehen mußte." Ma 2004, 332-33: ἔφυγε...πατάξας = "had gone into exile...because he had killed a boy accidentally by striking him with his whittling-knife." Thomas in Brennan—Thomas 2021, 148: ἔφυγε...πατάξας = "had gone into exile...having struck another boy with a curved knife and unintentionally killed him."

Voluntary exile: Müller 1844, 2.220: *infra*, n. 35. Kendrick 1874, 134: ἔφυγε = "had fled." Chrimes 1949, 255: Dracontius "had fled from Sparta...because he had killed another boy by accident with a ξυήλη."

may not have intended to kill, all indications are that he too intended to strike. In that case, if Spartan law distinguished between intentional and unintentional homicide in the way that the law of the *Tetralogies* and Athenian law did, then the Dracontius case was an incidence of the former, not the latter; and this, in turn, requires a significant modification of our understanding of Spartan homicide law.<sup>3</sup>

The evidence for the Spartan law of homicide is exiguous in the extreme. The *gerousia*<sup>4</sup> possessed jurisdiction over homicide lawsuits (ἐν Λακεδαιμόνι τὰς τῶν συμβολαίων [*scil.* δίκας] δικάζει τῶν ἐφόρων ἄλλος ἄλλας, οἱ δὲ γέροντες τὰς φονικάς, ἑτέρα δ' ἴσως ἀρχή τις ἑτέρας, Arist. *Pol.* 1275b9-11; cfr. κυρίους...κρίσεων μεγάλων, 1270b39). It also exercised sole competence to sentence a Spartiate to death or exile (θεις [*scil.* Lycurgus]...τοὺς γέροντας κυρίου τοῦ περὶ τῆς ψυχῆς ἀγῶνος, X. *Lac.* 10.2; ὀλίγους εἶναι κυρίου θανάτου καὶ φυγῆς, Arist. *Pol.* 1294b33-34).<sup>5</sup> One or both of these penalties presumably applied to homicide. But which one applied to Dracontius? The answer may well have depended on the characterization of his intent.

Xenophon's description of the event, brief though it is,<sup>6</sup> strongly sug-

<sup>3</sup> Accurately assessing the ambiguity of the case: MacDowell 1986, 146-47: "At first sight this looks like a case of exile imposed as a penalty for unintentional homicide, and one is tempted to jump to the conclusion that the rule of death for intentional homicide, exile for unintentional homicide, familiar to us from Athenian law, applied also in Sparta. That may be correct, but Xenophon's words do not prove it; for ἔφυγε could mean that Drakontios fled from Sparta to avoid trial and execution." Bevilacqua 2002, 507 n. 11: "Si rimane un po' perplessi davanti alla notizia di una uccisione involontaria con un'arma come la ξυήλη, cioè il falcetto da guerra degli Spartani, che farebbe pensare a un omicidio volontario o almeno preterintenzionale (e non è da escludere che qui il termine ἄκων alluda proprio a quest'ultimo tipo di omicidio)." The present paper supersedes the brief discussion in Phillips 2022, 42-43 with n. 80.

<sup>4</sup> Properly, at this time, *γερωλία* (Ar. *Lys.* 980) or *γεροντία* (X. *Lac.* 10.1, 3): Kühner—Blass 1890-92, 1.113, 150; Bourguet 1927, 145-47; Buck 1965, 55; Schwyzler 1968, 270.

<sup>5</sup> Cfr. Plu. *Lyc.* 26.2: κύριον ὄντα καὶ θανάτου καὶ ἀτιμίας καὶ ὅλως τῶν μεγίστων; *Mor.* 217a-b, *Ap. Lac.* Anaxandridas [II, r. ca. 560-ca. 520, *PL* 81] 6: τὰς περὶ θανάτου δίκας πλείοσιν ἡμέραις οἱ γέροντες κρίνουσι etc.; D. 20.107; Isoc. 12.154. MacDowell 1986, 127-28, 144-50; de Ste Croix 1972, 131-38, 349-53; Manfredini—Piccirilli 2010, 274-75.

<sup>6</sup> Flower 2012, 89: "Xenophon can seem...a frustratingly allusive author, capable of... mentioning an incident in passing without giving the details or elaboration we would so dearly like to have... For example, what about...Dracontius, 'who had been exiled from home as a boy because he had accidentally killed another boy with the stroke of

gests that Dracontius intended to strike his victim. Had Xenophon meant that Dracontius struck accidentally, he could have written *παῖδα κατακανὼν ξυήλη ἄκων πατάξας* (“because he had killed another boy by striking him unintentionally with a *xyēlē*”), or, using a different construction, *ὅτι παῖδα ἄκων ξυήλη πατάξας κατέκανε* (“because he had unintentionally struck another boy with a *xyēlē* and killed him”) *vel sim*. But the text, *παῖδα ἄκων κατακανὼν ξυήλη πατάξας*, is most naturally read as limiting ἄκων to κατακανὼν: Dracontius meant to strike but not to kill.<sup>7</sup> The *xyēlē* was a characteristically Spartan sickle-shaped knife used for planing the shaft of a javelin;<sup>8</sup> the iron *xyēlē* blades that survive from dedications to Artemis Orthia starting in the fourth century B.C., offered by boys who had won competitions in the *agōgē*, are approximately 14 inches (35.5 cm) in length.<sup>9</sup> Xenophon elsewhere uses *πατάσσειν* of intentional striking with

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a dagger’ (4.8.25)? This might have occasioned an interesting digression, and it might have told us something about the training of Spartan youths or Spartan homicide law.”

<sup>7</sup> So, evidently, Brennan—Thomas 2021, 148 n. 4.8.25c: the *xyēlē* “was not designed to be a weapon, and perhaps only boys would use it as such” (cfr. Anderson 1974: the “story of Dracontius implies that the *xyele* was used by the boys, and not normally as a weapon”). This is not necessarily the case: the Chalybes used “a knife of the size and shape of a Spartan *xyēlē*” (μαχαίριον ὅσον ξυήλην Λακωνικὴν) as a weapon of war to kill and behead the enemy (X. An. 4.7.16), and Spartan boys may have trained to fight with the *xyēlē* (so Chrimes 1949, 255-56; cfr. Kennell 1995, 142), although there is no evidence that adult Spartan hoplites carried them (Anderson 1970, 39). Plu. Mor. 233f-234a, Ap. Lac. anon. 34 preserves the story of a fight between two boys, one of whom mortally wounded the other with his sickle (called δρέπανον, not ξυήλη, but see nn. 8, 9 *infra*; Hsch. s.v. ξυήλη, *infra*, n. 8, expressly designates the terms as synonymous). Their friends offered to slay the killer in retaliation, but the victim forbade it, since if he had fought better, the roles would have been reversed. The story ends there and thus tells us something about the *agōgē* but nothing decisive about Spartan law.

<sup>8</sup> X. Cyr. 6.2.32, An. 4.7.16; Poll. 1.137; 10.142, 144; Hsch. s.v. ξυήλη: ξυάλη. ἔστι δὲ καὶ ξιφίδιον, ὃ τινες δρέπανον λέγουσιν; Phot. s.v. ξυήλην ≈ Suda s.v. ξυήλην, ξ 91 Adler; Lendle 1995, 268.

<sup>9</sup> Dedicatory stelae: IG V.1 255-356, 629; Artemis Orthia, nos. 1-135. Preserved blades: IG V.1 257 = Artemis Orthia, no. 7; IG V.1 280 = Artemis Orthia, no. 29 (dimensions: Chrimes 1949, 254-55). Approximately half of the remaining stelae have fully or partially preserved sockets or cuttings for the attachment of *xyēlai*; a handful have rivets or rivet holes. Dedicated object designated δρέπανον: IG V.1 264 = Artemis Orthia, no. 4 (prob. of Augustan date); δρεπάνη: IG V.1 258, 316 = Artemis Orthia, nos. 8, 9 (?second half of second century A.D.); these words may have been used (cfr. nn. 7, 8 *supra*) either because the word ξυήλη had fallen out of use (Anderson 1974) or *metri gratia*. Chrimes 1949, 94-95, 254-56; Anderson 1970, 38-39; Anderson 1974;

other hand-held weapons (*An.* 7.8.14, ox-spit; *Eq.* 7.5, 12.6, spear or sword; *HG* 6.2.19, staff and butt-spike of spear);<sup>10</sup> the same meaning presumably applies to Dracontius' act.<sup>11</sup>

This makes the case of Patroclus a particularly apposite comparandum. As his ghost recounts to Achilles at *Iliad* 23.85-88,

...με τυτθὸν ἐόντα Μενόϊτιος ἐξ Ὀπέντοσ  
ἤγαγεν ὑμέτερόνδ' ἀνδροκτασίης ὑπο λυγρῆς,  
ἥματι τῷ ὅτε παῖδα κατέκτανον Ἀμφιδάμαντος,  
νήπιος, οὐκ ἐθέλων, ἀμφ' ἀστραγάλοισι χολωθεῖς...

...when I was little, Menoetius brought me from Opus to your house because of a grievous homicide, on that day when I killed the son of Amphidamas, as a child, unintentionally, in anger over a game of dice...

Patroclus struck his victim intentionally, in anger (χολωθεῖς); he did not mean (οὐκ ἐθέλων) to kill him.<sup>12</sup> But the mitigating factors he cites—his youth and his lack of intent to kill—had no effect on his liability. In Homeric and Hesiodic epic, homicide is a strict-liability offense: killers must flee into exile or pay compensation to the relatives of their victims (which the relatives are not bound to accept), or else risk being killed in retaliation.<sup>13</sup> At *Il.* 18.324-27, Achilles recalls his unfulfilled promise to Menoetius that he would restore Patroclus to Opus along with his share of the spoils of Troy. Patroclus would presumably have used some of these spoils to recompense his victim's family. Dracontius may have done, or hoped to do, what Patroclus could not. Indeed, close verbal parallels suggest that Xenophon's description of Dracontius intentionally evokes Patroclus' account of

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Kennell 1995, 6, 28-30, 70, 83, 87-89, 142.

<sup>10</sup> On the use of τύπτειν, πατάσσειν, etc. in Attic prose generally, see Sandys—Paley 1910, 234-39.

<sup>11</sup> Xenophon's report, ambiguous as it is, should be accepted. He has no motive to lie, the case will have been famous, and there were other Spartiates among the Ten Thousand who could have corrected any misrepresentations Dracontius made.

<sup>12</sup> Cfr. Gagarin 1981, 32. *Contra* Cantarella 1976, 43-48, and Pepe 2012, 134-35, who favor an interpretation whereby Patroclus' anger renders the act itself involuntary.

<sup>13</sup> Cfr. Hom. *Il.* 2.661-70; 9.632-36; 13.694-98; 15.430-40; 16.570-76; 18.497-508; 24.480-84; *Od.* 3.193-98; 13.257-75; 14.379-81; 15.223-25, 271-81; 23.118-20; ?Hes. *Megalae Ehoiae* fr. 257 Merkelbach—West = fr. 15 Hirschberger; [Hes.] fr. 195.8-21 Merkelbach—West = fr. 91.8-21 Hirschberger (*Ehoiae*) = *Scut.* 1-14. See Bonner—Smith 1930, 15-21; Cantarella 1976, 15-75; Gagarin 1981, 5-18; Hirschberger 2004, 366; Phillips 2021, 10-11.

his exile, with παῖς ἔτι ὦν οἰκοθεν (Xenophon) echoing τυτθὸν ἐόντα...ἐξ Ὀπόμεντος (Il. 23.85), and παῖδα ἄκων κατακανὼν...πατάζας (which follows in Xenophon) echoing παῖδα κατέκτανον...οὐκ ἐθέλων...χολωθείς (which follows in Homer: Il. 23.87-88).<sup>14</sup>

Dracontius' intent to harm (but not kill) his victim finds a more significant parallel in Antiphon's *Third Tetralogy* than in his *Second Tetralogy*. The *Second Tetralogy* resembles the case of Dracontius in involving two boys and a weapon, but the prosecution concedes that the thrower of the lethal javelin intended no harm to the victim (3 γ 8, 10; cfr. 3 δ 3) and accordingly charges the killer with unintentional homicide (3 α 1, β 9, γ 5-7, 10), which under the law of the *Tetralogies* carries a penalty of exile (3 α 2, β 10, γ 11-12). The *Third Tetralogy* deviates from Dracontius' case in involving a claim of self-defense and no weapon, but concurs with regard to the defendant's intent to harm but not to kill (stipulated by the prosecution, 4 γ 4: the defendant, μείζω ὢν ἤθελε πράξας, τῇ ἑαυτοῦ ἀτυχίᾳ ὃν οὐκ ἤθελεν ἀπέκτεινεν; and by the defense, 4 δ 4: τύπτειν καὶ οὐκ ἀποκτεῖναι διανοηθεὶς ἤμαρτεν, εἰς ᾧ οὐκ ἐβούλετο πατάζας). In the *Tetralogies*, intent to harm is the requisite *mens rea* for intentional homicide,<sup>15</sup> which carries a penalty of death (4 α 6-7, β 7-8).

Athenian homicide law corresponds to the law of the *Tetralogies* in its distinction as to the killer's intent<sup>16</sup> and the corresponding charges and penalties. So, if Dracontius had stood trial either under the law of the *Tetralogies* or under the law of Athens, the charge would have been intentional homicide, and the penalty upon conviction would have been death. Both systems would have allowed him to avoid the extreme sanction by flight in advance of the second speech in his defense (Ant. 2 β 9, 4 δ 1; Ant. 5.13, D. 23.69). Moreover, while Athenian law certainly influenced the law of

<sup>14</sup> Cfr. Golden 1998, 3, who detects "Homeric echoes" in the games over which Dracontius presides (comparing the funeral games in honor of Patroclus, Il. 23) and their prizes (oxhides at An. 4.8.26 and Il. 22.159-60) as well as the description of Dracontius.

<sup>15</sup> Gagarin 1997, 169.

<sup>16</sup> Intent to harm suffices in Athenian law: Loomis 1972; Gagarin 1981, 30-37; Phillips 2013, 45-46; tentatively, MacDowell 1963, 59-60. *Contra* Cantarella 1976, 97-111; Carawan 1998, 223-25; Pepe 2012, 87-128. The exception to the intent-to-harm standard occurs in athletics, where, given the inherent intent to harm in combat events such as wrestling, boxing, and pancration, the provision of immunity for killing ἐν ἁθλοῖς ἄκων (D. 23.53 (*lex*)) must refer to intent to kill.



the *Tetralogies*, the two are not identical.<sup>17</sup> Since Antiphon composed the *Tetralogies* for a Panhellenic readership,<sup>18</sup> they can be expected to conform to generally common Greek legal norms. This raises the probability that many *poleis* beyond Athens—potentially including Sparta—distinguished intentional from unintentional homicide by the presence or absence of the killer’s intent to harm, and punished the former offense with death and the latter offense with exile.<sup>19</sup>

<sup>17</sup> Whereas Athenian law permits killing under certain circumstances (*IG* I<sup>3</sup> 104.26-31, 33-38; D. 23.28, 37, 53, 60 (*leges*); Lys. 1.30-31), the law of the *Tetralogies* forbids just (δικαίως) as well as unjust (ἀδίκως) killing (Ant. 3 β 9, γ 7, 4 β 3) and does not recognize a category of lawful homicide. Dittenberger 1897, 6: “der Tetralogien-schreiber... überhaupt keine straflose Tödtung kennt”; Eucken 1996; Gagarin 2002, 54; Phillips 2018, 322; *contra* Gagarin 1997, 151-52.

<sup>18</sup> Gagarin 2002, 60, 133.

<sup>19</sup> This finds further support in Plato’s hypothetical homicide laws (*Lg.* 865a-874d). Despite the artificially fine gradations of intent featured therein (cfr. Arist. *EN* 1135a23-33, b8-27; 1109b30-1114b25; *Rh.* 1368b9-12; 1373b33-1374a18; 1375a7), and the higher threshold for intentional homicide (Plato requires a premeditated intent to kill), homicides committed in anger, which might have constituted their own true intermediate category, are instead classed as εἰκόνες of intentional and unintentional homicide (χαλεποὶ διορίζειν οἱ τῷ θυμῷ παρὰ φύσιν φόνοι, πότερον ἐκουσίους αὐτοὺς ἢ τινας ὡς ἀκουσίους νομοθετητέον, βέλτιστον μὴν καὶ ἀληθέστατον εἰς εἰκόνα μὲν ἄμφω θεῖναι..., 867b1-c2; cfr. 866d5-7, 866e6-867a2). Note in particular Plato’s assumption, presumably grounded in a Greek reality strong enough to overpower his own theoretical inclinations, that the fundamental division must be between intentional and unintentional killing. The penalty for most unintentional killings and killings in anger is exile, with the term of exile depending on the circumstances of the killing, the status and relationship of killer and victim, and the precise level of the killer’s intent. For intentional killing the penalty is death; the offender who flees to evade judgment is condemned to perpetual exile. The *dialogi personae* in the *Laws* are the Athenian Stranger, Cleinias of Crete, and Megillus of Sparta. Latte [1931] 1968, 288 n. 8 observes that “die Unterscheidung der beiden Tötungsarten...ist nicht auf Athen beschränkt, wie schon die Mannigfaltigkeit der Terminologie lehrt,” noting comparanda from Mytilene, Teos, and Elis (*ibid.*) and Priene (p. 291). Mytilene and Phocaea: Osborne—Rhodes 2017, no. 195, vv. 13-17 (late fifth-early fourth century): penalties for reducing the gold content of electrum coins θέλων vs. μὴ θέλων. Teos: Osborne—Rhodes 2017, no. 102 (the *Dirae Teiae*, 480-450) B 11-28: treason, highway robbery, harboring a highway robber, brigandage or piracy, harboring brigands or pirates, or plotting ill for the Teian state, all committed εἰδώς. Elis: *IVO* 2 = Schwyzler [1923] 1987, no. 409, vv. 7-8 (*ante* 580): penalty for false imprisonment (?) committed Φειζώς. Priene: *IPriene* 84.3ff. (second century): monetary penalties and price of restoration from exile for killing a free person ἐκόν. On the unity of ancient Greek law, see most recently Phillips 2021.



Other facts about Dracontius and his fellow Spartans provide further indications that he was treated as an intentional killer. Aristotle (*Pol.* 1294b33-34, *supra* with n. 5) informs us that exile was a legal penalty at Sparta, but it seems to have been used sparingly,<sup>20</sup> owing to concerns over *oliganthrōpia*.<sup>21</sup> The same will have applied *a fortiori* to the penalty of death:<sup>22</sup> exiles can be recalled, corpses cannot.<sup>23</sup> The case of Sphodrias (*PL* 680) is particularly instructive in this regard (X. *HG* 5.4.20-33). Accused of taking a bribe from the Thebans to mount his grossly incompetent invasion of Attica (378/7), he was recalled to Sparta and put on trial for his life; despite his failure to appear, he was acquitted thanks to the intercession of Agesilaus II (*PL* 9), in what many considered the worst miscarriage of justice in Spartan history (5.4.24). Before the trial, Etymocles (*PL* 287) informed a friend of Sphodrias that Agesilaus had been telling everyone he spoke to that Sphodrias must be guilty, but that “it is difficult to put to death a man who as a boy, youth, and young adult has continuously performed all honorable service, for Sparta needs such soldiers” (5.4.32).<sup>24</sup>

We cannot know for certain whether Dracontius’ exile was penal or vol-

<sup>20</sup> Hdt. 1.68.5: *paullo post* 560, the Spartans exiled Lichas (*PL* 491) on a fabricated charge so that he could steal the bones of Orestes from Tegea. Hdt. 6.72: in 476 (How—Wells 1928, 92), Leotychidas II (*PL* 488) was brought to trial for receiving bribes and ἐφύγε (voluntarily, according to Paus. 3.7.10); his house was razed. Th. 5.72.1: Aristocles (*PL* 127) and Hipponoidas (*PL* 394) were exiled for insubordination and cowardice at Mantinea, summer 418. X. *HG* 1.1.32: Pasippidas (*PL* 591) ἐφύγεν (probably “was exiled” but possibly “fled”) in consequence of a charge (κατατιθεῖς) of colluding with Tissaphernes in the ejection of the Spartan harmost and the laconizing party from Thasos in 410/09, but he was recalled by 408/7 (X. *HG* 1.3.13). Theopomp. *FGrHist* 115 F 240: Agesilaus II got Lysandridas (*PL* 503) exiled by the Spartans.

<sup>21</sup> On this phenomenon, see Doran 2018.

<sup>22</sup> Cfr. MacDowell 1986, 140: “Trials by the senate [*i.e.*, *gerousia*] will not have been very frequent.”

<sup>23</sup> Though they can be repatriated: Hdt. 1.67-68, Paus. 3.11.10 (Orestes to Sparta, *paullo post* 560); Paus. 7.1.8 (Teisamenus to Sparta, a few years after Orestes); Plu. *Cim.* 8.3-7, *Thes.* 36.1-3 (Theseus to Athens, 475); Th. 1.138.6 (Themistocles to Athens, *post ca.* 459, surreptitiously and illegally, since he died in exile for treason).

<sup>24</sup> On this case cfr. Plu. *Ages.* 24.4-26.1; Diod. 15.29.5-6, and see de Ste Croix 1972, 134-37; Cartledge 1987, 30, 136-38, 156-59, 375; Shipley 1997, 286-301. Hesitation to execute a Spartiate is also shown by Plu. *Mor.* 217a-b, *Ap. Lac.* Anaxandridas 6 (*supra*, n. 5), on which see MacDowell 1986, 142-43. By contrast, *perioikoi* could be put to death by the ephors without trial (Isoc. 12.181), and helots could be killed by any Spartiate (Plu. *Lyc.* 28.7 = Arist. fr. 538 Rose = fr. 543 Gigon; MacDowell 1986, 36-37).

untary, for, in keeping with common Greek usage, Xenophon uses φεύγειν and related words to refer to both types.<sup>25</sup> Clearchus (*PL* 425), the immediate comparandum to Dracontius as the other named Spartiate exile in the *Anabasis* (Λακεδαιμόνιος φυγάς, *An.* 1.1.9, 2.9; cfr. 1.3.3, 2.6.4), fled voluntarily to avoid a death sentence for gross insubordination (*An.* 2.6.3-4; cfr. Diod. 14.12.2-7).<sup>26</sup> What we do know about Dracontius' exile is that it lasted a long time: it began when he was a *pais* and was still in effect as of his second and final appearance in the *Anabasis*, when he participated in the embassy to Cleander (*PL* 422), harmost of Byzantium (*An.* 6.4.18), in the summer or fall of 400 (6.6.30). *Paidēs* were the younger age group in the *agōgē*, with an upper age limit of about 13 years.<sup>27</sup> In 400, Dracontius must have been well into adulthood: the Ten Thousand would not have appointed

<sup>25</sup> In addition to Pasippidas (*supra*, n. 20): *HG* 3.1.8: Thibron (*PL* 374) fled to evade a fine he could not pay (399/8), presumably because death was the penalty for nonpayment (MacDowell 1986, 147-49); but in 391/90 the Spartans granted him the command against the Persian deputy satrap Strouthas in coastal Asia Minor (*HG* 4.8.17-19). *HG* 3.5.25: king Pausanias (*PL* 596) fled to avoid trial carrying a sentence of death, 395/4. Non-Spartans: *HG* 1.1.27: Syracusan generals are exiled by the *dēmos*, 410/09. *HG* 2.3.15: Critias had been exiled by the Athenian *dēmos*. *HG* 7.3.1-3: Aeneas of Stymphalus recalls to Sicyon those who were exiled without a decree of the Sicyonian assembly; Euphron of Sicyon hands over the harbor of Sicyon to the Spartans and exiles anti-Spartan Sicyonians, 366/5. *An.* 7.7.57: Xenophon is exiled by the Athenian Assembly, *post* 400/399.

<sup>26</sup> The supposedly Lycurgan law prohibiting Spartiates of military age, on pain of death, from traveling abroad without state permission (Isoc. 11.18; Arist. fr. 543 Rose = fr. 549.1 Gigon = Harpo. s.v. καὶ γὰρ τὸ μηδένα τῶν μαχίμων ἄνευ τῆς τῶν ἀρχόντων γνώμης ἀποδημεῖν, κ 8 Keaney; Plu. *Lyc.* 27.6; *Agis* 11.2; *Mor.* 238d-e, *Ap. Lac.* Inst. Lac. 19; MacDowell 1986, 115-16; Cartledge 1987, 36-37, 49-50, 244; Manfredini—Piccirilli 2010, 277-78) predictably failed to deter men facing a death sentence at home, and at any rate was effectively in abeyance in Xenophon's time (πρόσθεν...ἀποδημεῖν οὐκ ἐξόν, X. *Lac.* 14.4). Since Dracontius was a *pais* when he went into exile, this law did not apply to him.

<sup>27</sup> Elsewhere Xenophon gives the age groups from boys to young men as παῖς, παιδίσκος, ἡβῶν (*HG* 5.4.32, *supra* with n. 24); παῖδες, μενράκια/παιδίσκοι, ἡβῶντες (*Lac.* 2-4). See Chrimes 1949, 86-95; MacDowell 1986, 159-67; Kennell 1995, 28-48. *Pais* could also be used in a broader sense, of any boy, but Xenophon's reference to Dracontius as παῖς ἔτι ὢν must signify that he was a relatively young boy when he killed and went into exile, since there would be little point and no pathos in so describing Dracontius if he were (say) 17 years old at the time. The same phrase implies a significant lapse of time since the commencement of Dracontius' exile (see below): Xenophon would not say that Dracontius began his exile παῖς ἔτι ὢν if he were anywhere close to boyhood in 400.

as president of their games, and then as an ambassador to Cleander, a man who was little older than a boy. A very conservative estimate, therefore, would make Dracontius at least 25 at this time; probably he was in his thirties or forties.<sup>28</sup> He had thus been in exile for twelve years at the very least, and probably for two decades or more.<sup>29</sup>

Exile for at least some other offenses was revocable (n. 20 *supra*); yet Dracontius had received no such reprieve either from the Spartan state or, if Spartan law included a pardon provision similar to that in Athenian law,<sup>30</sup> from the family of his victim. Recall may have been forbidden, or at least more difficult, for a person who had fled to avoid sentence of death;<sup>31</sup> and families were less likely to pardon intentional killers than unintentional killers. Thus the duration of Dracontius' exile suggests that he was considered to be an intentional killer.

Did Dracontius' intent matter, as a matter of law? In other words, did Spartan law penalize intentional and unintentional homicide differently, or did the principle of strict liability obtain? Despite the famed conservatism of the Spartans, which might in theory have encouraged a Homeric attitude to homicide, the overarching problem of *oliganthrōpia*, if not necessarily the comparanda provided by other states (the Spartans prided themselves on their difference), makes strict liability highly unlikely. So does the inherently violent nature of Spartan society, including, in particular, the *agōgē*. Even before the introduction of the *diamastigōsis*,<sup>32</sup> the hazards of the

<sup>28</sup> The games over which Dracontius presided took place before the embarkation of the men over forty for the voyage to Cerasus (An. 5.3.1). For the demographics of the Ten Thousand, see Lee 2007, 74-77, estimating that men over forty constituted 10-15% of the army at the beginning of its campaign and  $\leq 5-8\%$  of the army at Trapezus, and men aged 30-40 constituted 45-60% of the army at the beginning of the campaign.

<sup>29</sup> Cfr. Ma 2004, 333: "he has been in exile, for decades, since" the killing.

<sup>30</sup> IG I<sup>3</sup> 104.13-19: qualified relatives of the victim may, by unanimous decision, pardon the unintentional killer and end his exile.

<sup>31</sup> Cfr. D. 21.43: Athenian homicide law punishes with perpetual exile (ἀειφυγία) accused intentional killers who abscond before their second defense speech (Goodwin 1906, 29; MacDowell 1990, 259; cfr. Pepe 2012, 21-22, 75-77, 83). The same rule applies in the law of Antiphon's *Tetralogies* (Ant. 2 β 9; Thiel 1932, 86; MacDowell 1963, 113-15) and in Plato's homicide law (Pl. *Lg.* 871d6-7, *supra*, n. 19).

<sup>32</sup> Name: Plu. *Mor.* 239c-d, *Ap. Lac.* Inst. Lac. 40. Testimonia: Kennell 1995, 149-61. Discussion: Kennell 1995, 70-97. Xenophon knows only of the precursor contest, in which boys competed to steal the most cheeses from the altar of Artemis Orthia while being whipped (X. *Lac.* 2.9). For violence in Classical Spartan education, cfr. Pl. *Lg.* 633b5-c7.

*agōgē*, which encouraged boys to fight and trained them to kill, must have resulted in occasional deaths by violence.<sup>33</sup>

Even adult men were not so disciplined that their fights did not require intervention to prevent excessive injury or death. Xenophon (*Lac.* 4.6) informs us that Spartiate men in their twenties (ἡβῶντες, *supra*, n. 27) box out of pure contention (διὰ τὴν ἔριν) whenever they meet; any bystander has the power to separate the fighters, and the fighter who fails to obey is brought by the *paidonomos* to the ephors, who punish him severely so as to deter him from allowing his anger (ὀργήν) to prevail over obedience to the laws (τοῦ...πείθεσθαι τοῖς νόμοις). Fights in which both parties obeyed the rules might nonetheless turn fatal, since even a single blow to the head can cause lethal cranial or cervical trauma. Sepsis leading to death could result from whipping, which, both as an element of the steal-the-cheese contest (*supra*, n. 32) and as the punishment for boys who were caught stealing (*X. An.* 4.6.14-15; *Lac.* 2.8) or guilty of other infractions (*Lac.* 2.2), was not just authorized but mandatory.<sup>34</sup> It is thus scarcely conceivable that every violent death at Sparta was equally punished at law.<sup>35</sup> And evidently Dracontius did not claim self-defense, which Xenophon could have indicated by the addition of the single word ἀμυνόμενος;<sup>36</sup> liability may have arisen because Dracontius struck first in an unauthorized circumstance or manner, and/or because he used a weapon, while his victim did not (contrast *Plu. Mor.* 233f-234a, *Ap. Lac.* anon. 34, *supra*, n. 7).

<sup>33</sup> Cfr. Cartledge [1992] 2001, 87: “fatal accidents in the *agōgē* are easily predictable.”

<sup>34</sup> On corrective and pedagogical violence, cfr. *X. An.* 5.8.18.

<sup>35</sup> Nor can the remedy have been Homeric self-help revenge killing by the relatives of the victim, as is maintained by Müller 1844, 2.220 (“Die Flucht, welcher sich der Mörder, namentlich der unvorsätzliche, unterziehen mußte...ist nur eine Ausweichung vor der Rache der Verwandten”). Totalitarian fifth-century Sparta, reluctant as it was to put a Spartiate to death by legal process (*supra* with nn. 22, 24), cannot have permitted private blood vengeance.

<sup>36</sup> Antiphon has a speaker claim in the *Tetralogies* that the right of self-defense obtains everywhere (τῷ δὲ ἀμυνομένῳ οὐδαμοῦ οὐδὲν ἐπιτίμιον γέγραπται, 4 δ 7); “the reference to a written penalty (γέγραπται) indicates that A. has in mind the written laws of all Greek cities” (Gagarin 1997, 172). Of course Antiphon did not possess an encyclopedic knowledge of the whole of ancient Greek law, but the statement must be generally true (cfr. Latte [1931] 1968, 289: “Es kann keinem Zweifel unterliegen, daß ähnliche Bestimmungen allenthalben in Griechenland galten”). For the right to use lethal force in defense of self and others in Athens, see *IG I<sup>3</sup>* 104.33-36, 37-38 (= *D.* 23.60 (*lex*)); *D.* 23.53 (*lex*), with Harpo. s.vv. ἡ ἐν ὁδῷ καθελών, η 6 Keaney; καθελών, κ 5 Keaney; ὁδός, ο 2 Keaney; Lys. 1; *D.* 21.71, 73-75. In Plato’s *Laws*: *Lg.* 874b6-d1.

Thus, if the preceding analysis is correct and Dracontius was treated as an intentional killer, the following potential reconstructions of Spartan homicide law and the case of Dracontius result.

1. The action for homicide carried a fixed penalty for intentional killing (it was an *agōn atimētos*). Since Dracontius ended up in exile, the penalty cannot have been less severe than that: it was either exile or death. If the penalty was exile, then Dracontius was convicted and so penalized. However, given the generally liberal use of the death penalty in the Greek world and the comparanda for the treatment of intentional homicide elsewhere, including the laws of Athens, of Antiphon's *Tetralogies*, and of Plato's *Laws*, it is far more likely that the penalty was death, and Dracontius fled voluntarily, to save his life. The penalty for unintentional homicide will have been either fixed and of lesser severity—probably exile—or assessable.

2. The action for homicide allowed for discretion in sentencing for intentional killing (it was an *agōn timētos*). Penal assessment may have been limited (for example, to death or exile) or unlimited (including disfranchisement or a fine). Either Dracontius fled voluntarily, to avoid the possibility of a death sentence, or the *gerousia* sentenced him to exile. There is a very small outside chance that the *gerousia* inflicted a fine, with death as the penalty for nonpayment, and Dracontius fled voluntarily because his family could not pay it.<sup>37</sup> The court may have exercised leniency, sparing Dracontius' life, because it viewed his youth as a mitigating factor. The penalty for unintentional homicide will in all probability have been likewise assessable, with a lower cap than the penalty for intentional homicide.

As we have seen, by the time Dracontius appears in the *Anabasis*, he has been in exile for at least a dozen years, and probably much longer. The last we hear of him is his participation in the successful embassy to the harmost Cleander about half a year later. There is no way to know whether Dracontius ever returned to Sparta. And yet there was some reason for him to hope for recall. He was *persona non grata* in Sparta but not to all Spartans, including powerful and influential men such as Cleander. His selection to the embassy demonstrates that his status as an exile was not expected to count

<sup>37</sup> We have evidence for this happening with kings and other prominent Spartiates. Leotyichidas II: *supra*, n. 20. Pleistoanax (*PL* 613), fled 446/5, recalled 427/6: Th. 2.21.1, 5.16 (cfr. 1.114.2); Ephor. *FGrHist* 70 F 193; Plu. *Per.* 22.1-3. Lysanoridas (*PL* 505), former harmost of Thebes, fled 379: Plu. *Pel.* 13.3; *Mor.* 598f, *De genio Socratis* 34. Thibron, harmost of Ionia: *supra*, n. 25. See Gomme in Gomme—Andrewes—Dover 1945-81, 1.341, 2.74, 3.663-64; MacDowell 1986, 147-49.

against him,<sup>38</sup> and the embassy succeeded in its mission despite Cleander's predisposition to believe that some were leading the Ten Thousand to operate against Spartan interests—in Cleander's reported words, to revolt (ὑφίστατε) against Sparta (*An.* 6.6.34). Not only did Cleander grant the embassy's request by returning the two prisoners he was holding; he even ventured that, if the gods permitted, he would lead the Ten Thousand back to Greece (*ibid.*). While that was not to be (6.6.36)—and the offer by no means implies the restoration of Spartan or any other exiles—the goodwill and promised cooperation of Cleander can only have encouraged Dracontius. From the beginning of their campaign, after all, the Ten Thousand had been operating with the official, if covert, approval and assistance of the Spartan state (*X. HG* 3.1.1-2; *Diod.* 14.19.4-5, 21.1-2), which at least countenanced the command position of the notorious exile Clearchus (*supra* with n. 26).<sup>39</sup> The treacherous seizure of Clearchus by Tissaphernes (*An.* 2.5.31-32) and his consequent execution by order of Artaxerxes II Mnemon (2.6.1) put to an end whatever hope of restoration he may have cherished, but Dracontius surely knew of cases in which Spartan exiles had been recalled (cfr. nn. 20, 25 *supra*). If he survived until, and past, the point at which the remnants of the Ten Thousand were taken into Spartan service under Thibron (*An.* 7.8.24, winter or spring 399), his chances of return can only have improved. Perhaps, even, the battle of Coroneia in 394 (*X. HG* 4.3.15-21; *Ages.* 2.6-16), in which “some of the Cyreans” (τῶν Κυρείων τινές, *Ages.* 2.11) fought alongside the Spartans, led to both the exile of Xenophon from Athens (*An.* 7.7.57, *supra*, n. 25) and the restoration of Dracontius to Sparta.<sup>40</sup>

<sup>38</sup> Cfr. Brennan—Thomas 2021, 213 n. 6.6.30a: “even though he was an exile..., his status [*scil.* as a Spartiate] would add weight to the generals' representations in Kleandros' eyes.”

<sup>39</sup> Ma 2004, 333 n. 6 hypothesizes that Dracontius “may have been recruited by Sparta to join the not-so-secret military aid sent to Cyrus...—with a promise of reinstatement in case of good service?”

<sup>40</sup> I thank the anonymous readers for *Dike* for their comments and suggestions. The responsibility for any remaining errors is mine.



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