

7.5. Antiphon / Arguments in an Accidental Homicide

The fifth-century writer Antiphon, in drawing up a set of four speeches as an exercise in the logical presentation of a hypothetical case at law, provided an excellent example of how rhetoric can be turned in any direction.

Antiph. *Sec. Tet.* Source: Maidment, K. J. *Minor Attic orators in two volumes*, vol. 1. London: Heinemann, 1941.

1. PROSECUTION

Cases in which the facts are agreed upon are settled in advance either by the law or by the statutes of the Assembly, which between them control every branch of civic life. But should matter for dispute occur, it is your task, gentlemen, to give a decision. However, I do not imagine that any dispute will in fact arise between the defendant and myself. My son was struck in the side by a javelin thrown by yonder lad in the gymnasium, and died instantly. I accuse him not of killing my son deliberately, but of killing him by accident—though the loss which I have suffered is not thereby lessened. But if he has not caused the dead boy himself disquiet, he has caused disquiet to the living; and I ask you to pity that dead boy's childless parents: to show your sorrow for his own untimely end: to forbid his slayer to set foot where he is forbidden to set foot by the law: and to refuse to allow him to defile the whole city.

2. REPLY

I now see that sheer misfortune and necessity can force those who hate litigation to appear in court and those who love peace to show boldness and generally belie their nature in word and deed; for I myself, who, unless I am sorely mistaken, am very far from finding or wanting to find such a task congenial, have today been forced by sheer misfortune to depart from my habits and appear as defendant in a case in which I found it hard enough to arrive at the exact truth, but which leaves me still more perplexed when I consider how I should present it to you. I am driven by pitiless necessity: and I, like my opponents, gentlemen of the jury, seek refuge in your sympathy. I beg of you: if my arguments appear more subtle than those generally presented to you, do not allow the circumstances already mentioned so to prejudice you against my defence as to make you base your verdict upon apparent fact instead of upon the truth; apparent fact puts the advantage with the clever speaker, but truth with the man who lives in justice and righteousness.

In training my son in those pursuits from which the state derives most benefit I imagined that both of us would be rewarded; but the result has sadly belied my hopes. For the lad—not from insolence or wantonness, but while at javelin-practice in the gymnasium with his fellows—made a hit, it is true, but killed no one, if one considers his true part in the matter: he accidentally incurred the blame for the error of another which affected that other's own person.

Had the boy been wounded because the javelin had travelled in his direction outside the area appointed for its flight, we should be left unable to show that we had not caused his death. But he ran into the path of the javelin and placed his person in

its way. Hence my son was prevented from hitting the target: while the boy, who moved into the javelin's path, was struck, thereby causing us to be blamed for what we did not do. It was because he ran in front of the javelin that the boy was struck. The lad is therefore accused without just cause, as he did not strike anyone standing clear of the target. At the same time, since it is plain to you that the boy was not struck while standing still, but was struck only after deliberately moving into the path of the javelin, you have still clearer proof that his death was due to an error on his own part. Had he stood still and not run across, he would not have been struck.

Both sides are agreed, as you see, that the boy's death was accidental; so by discovering which of the two was guilty of error, we should prove still more conclusively who killed him. For it is those guilty of error in carrying out an intended act who are responsible for accidents: just as it is those who voluntarily do a thing or allow it to be done to them who are responsible for the effects suffered.

Now the lad, on his side, was not guilty of error in respect of anyone: in practising he was not doing what he was forbidden but what he had been told to do, and he was not standing among those engaged in gymnastics when he threw the javelin, but in his place among the other throwers: nor did he hit the boy because he missed the target and sent his javelin instead at those standing clear. He did everything correctly, as he intended; and thus he was not the cause of any accident, but the victim of one, in that he was prevented from hitting the target.

The boy, on the other hand, who wished to run forward, missed the moment at which he could have crossed without being hit, with results which he by no means desired. He was accidentally guilty of an error which affected his own person, and has thus met with a disaster for which he had himself alone to thank. He has punished himself for his error, and is therefore duly requited; not that we rejoice at or approve of it—far from it: we feel both sympathy and sorrow.

It is thus the dead boy who proves to have been guilty of error; so the act which caused his death is to be attributed not to us, but to him, the party guilty of error: just as the recoiling of its effects upon the agent not only absolves us from blame, but has caused the agent to be punished as he deserved directly his error was committed.

Furthermore, our innocence is attested by the law upon which my accuser relies in charging me with the boy's death, the law which forbids the taking of life whether wrongfully or otherwise. For the fact that the victim himself was guilty of error clears the defendant here of having killed him by accident: while his accuser does not even suggest that he killed him deliberately. Thus he is cleared of both charges, of killing the boy by accident and of killing him deliberately.

Not only do the true facts of the case and the law under which he is being prosecuted attest my son's innocence; but our manner of life is equally far from justifying such harsh treatment of us. Not only will it be an outrage, if my son is to bear the blame for errors which he did not commit; but I myself, who am equally innocent, though assuredly not more so, will be visited with woes many times more bitter. Once my son is lost,

I shall pass the rest of my days longing for death: once I am left childless, mine will be a life within the tomb.

Have pity, then, on this child, the victim of calamity, though guilty of 110 error: and have pity on me, an old man in distress, stricken thus suddenly with sorrow. Do not bring a miserable fate upon us by condemning LIS: but show that you fear God by acquitting us. The dead boy is not unavenged for the calamity which befell him: nor ought we ourselves to share the responsibility for errors due to our accusers. So respect the righteousness which the facts before you have revealed: respect justice: and acquit us as godly and just men should. Do not bring upon a father and a son, two of the most wretched of beings, sorrows which the years of neither can well bear.

3. SECOND SPEECH FOR THE PROSECUTION

That sheer necessity can force all men to belie their nature in both word and deed is a fact of which the defendant seems to me to be giving very real proof. Whereas in the past he was the last to show impudence or audacity, his very misfortune has to-day forced him to say things which I for one would never have expected of him. I, in my great folly, imagined that he would not reply; otherwise I would not have deprived myself of half of my opportunities as prosecutor by making only one speech instead of two; and he, but for his audacity, would not have had the twofold advantage over me of using one speech to answer the one speech for the prosecution and making his accusations when they could not be answered.

With his great advantage over us in the matter of the speeches, and with the far greater one which his methods have given him in addition, it is outrageous that the accused should entreat you to listen kindly to his defence. I myself, on the other hand, far from causing any harm, have been the victim of cruel affliction, and am to-day being treated still more cruelly. It is as one who seeks more than a pretended refuge in your sympathy that I make my own request of you. You who take vengeance for unrighteous deeds and determine wherein is righteousness, do not, I beg of you, let worthless subtleties of speech induce you to disregard plain facts and treat the truth as false; for such subtleties result in a tale more plausible than true, whereas the truth, when told, will be less guileful and therefore less convincing.

My faith in justice, then, enables me to despise his defence. Yet my distrust of the pitiless will of fate makes me fear that I may not only lose the benefit of my child, but that I may see him convicted by you of taking his own life in addition. For the defendant has had the audacity and shamelessness to say that he who struck and killed neither wounded nor killed, whereas he who neither touched the javelin nor had any intention of throwing it missed every other point on earth and every other person, and pierced his own side with the javelin. Why, I should myself sound more convincing, I think, were I accusing the lad of wilful murder, than does the defendant in claiming that the lad neither struck nor killed.

My son was bidden at that moment by the master in charge, who was taking the javelins of the throwers into his keeping, to pick them up; but thanks to the wantonness of him who cast it, he was greeted by yonder lad's cruel weapon; though guilty of error in respect of no single person, he died a piteous death. The

lad, on the other hand, who mistook the moment at which the javelins were being picked up, was not prevented from making a hit. To my bitter sorrow, he struck a target; and although he did not kill my son deliberately, there are better grounds for maintaining that he did than for asserting that he neither struck nor killed.

Although it was by accident that they killed my son, the effects were the same as those of wilful murder. Yet they deny that they killed him at all, and even maintain that they are not amenable to the law which forbids the taking of life whether wrongfully or otherwise. Then who did throw the javelin? To whom is the boy's death in fact to be attributed? To the spectators or the masters in charge—whom no one accuses at all? The circumstances of my son's death are no mystery: to me, for one, they are only too clear; and I maintain that the law is right when it orders the punishment of those who have taken life; not only is it just that he who killed without meaning to kill should suffer punishment which he did not mean to incur; but it would also be an injustice to the victim, whose injury is not lessened by being accidental, were he deprived of vengeance.

Nor does he deserve acquittal because of his misfortune in committing the error which he did. If, on the one hand, the misfortune is not due to any dispensation of heaven, then, as an error pure and simple, it is right that he should prove disastrous to him who was guilty of it; and if, on the other hand, a defilement from heaven has fallen upon the slayer by reason of some act of sin, then it is wrong for us to impede the visitation of God.

They also maintained that it is wrong for those who have lived as honourably as they to be treated with severity. But what of us? Should we be treated aright, if we are punished with death when our life has been as praiseworthy as theirs?

When he argues that he is not guilty of error and claims that the consequences must be borne by those who are, instead of being diverted to the innocent, he is pleading our case for us. Not only would it be an injustice to my son, who was killed by yonder lad, though guilty of error in respect of no one, were he deprived of vengeance; but it will be an outrage, if I myself, who am even more guiltless than he, fail to obtain from you the recompense which the law assigns me.

Further, the defence's own statements show that the accused cannot be acquitted either of error or of accidentally taking life, but that he and my son are equally guilty of both; I will prove this. Assume that because my son moved into the path of the javelin instead of standing still, he deserves to be treated as his own slayer. Then the lad is not free from blame either; he is only innocent if he was standing still and not throwing his javelin when the boy was killed. The boy's death was therefore due to both of them. Now the boy, whose error affected his own person, has punished himself even more harshly than that error warranted: for he has lost his life. So what right has his accomplice, who joined him in committing his unfortunate error, to escape unpunished?

The accused have themselves proved by their defence that the lad had a share in the slaying. So, as just and godfearing men, you cannot acquit him. If we, who have lost our life through the defendants' error, were found guilty of having taken it ourselves, it would be an act not of righteousness but of

wickedness on your part: and if those responsible for our death were not prohibited from setting foot where they should not, it would be an outrage against heaven: you would have acquitted persons stained with guilt.

As the whole of the defilement, upon whomsoever it rests, is extended to you, you must take the greatest care. If you find him guilty and prohibit him from setting foot where the law forbids him to set foot, you will be free of the charges brought to-day; but if you acquit him, you become liable to them. So satisfy the claims of heaven and the laws by taking him and punishing him. Do not share his blood-guilt yourselves: but let me, the parent whom he has sent to a living death, at least appear to have had my sorrow lightened.

4. SECOND SPEECH FOR THE DEFENSE

While it is only to be expected that the preoccupation of my opponent with his speech for the prosecution should prevent his understanding my defence, the same is not true of yourselves. You should bear in mind that while we, the interested parties, take a biased view of the case, each naturally thinking that his own version of it is fair, your duty is to consider the facts conscientiously; and so you must give your attention to me as much as you did to him: as it is in what is said that the true facts are to be sought. For my part, if I have told any falsehoods, I am content that you should treat the truth which I have spoken as itself a piece of equally dishonest pleading. On the other hand, if my arguments have been honest, but close and subtle, it is not I who used them, but he whose conduct made them necessary, upon whom the displeasure which they have caused should properly fall.

I would have you understand to begin with that it requires not mere assertion, but proof, to show that someone has killed someone else. Now our accuser agrees with us as to how the accident happened, but disagrees as to the person responsible; yet it is only from what happened that that person can be determined. He complains bitterly, because, according to him, it is a slur upon his son's memory that he should have been proved a slayer when he neither threw the javelin nor had any intention of so doing. That complaint is not an answer to my arguments. I am not maintaining that his son threw the javelin or struck himself. I am maintaining that since he moved within range of the javelin, his death was due not to the lad, but to himself; for he was not killed standing in his place. As this running across was his undoing, it follows that if it was at his master's summons that he ran across, the master would be the person responsible for his death; but if he moved into the way of his own accord, his death was due to himself.

Before proceeding to any further argument, I wish to show still more clearly which of the two was responsible for the accident. The lad no more missed the target than any of those practising with him: nor has he rendered himself guilty of any of the acts with which he is charged owing to error on his own

part. On the other hand, the boy did not do the same as the other onlookers; he moved into the javelin's path. And this is clear proof that it was through his own error that he met with a disaster which those who stood still did not. The thrower would not have been guilty of an error in any respect, had no one moved into the path of his spear: while the boy would not have been hit, had he remained in his place among the onlookers.

Further, my son was not more concerned in the boy's death than any one of those throwing javelins with him, as I will show. If it was owing to the fact that my son was throwing a javelin that the boy was killed, then all those practising with him must share in the guilt of the deed, as it was not owing to their failure to throw that they did not strike him, but owing to the fact that he did not move into the path of the javelin of any one of them. Similarly the young man, who was no more guilty of error than they, would not have hit the boy any more than they did, had the boy stood still with the onlookers.

Again, not only was the boy guilty of the error committed; he was also to blame for the failure to take due precautions. My son saw no one running across, so how could he have taken precautions against striking anyone? The boy, on the other hand, upon seeing the throwers, might easily have guarded against running across, as he was quite at liberty to remain standing still.

The law which they quote is a praiseworthy one; it is right and fair that it should visit those who have killed without meaning to do so with chastisement which they did not mean to incur. But the lad is not guilty of error; and it would therefore be unjust that he should suffer for him who is. It is enough that he should bear the consequences of his own errors. On the other hand, the boy, who perished through his own error, punished himself as soon as he had committed that error. And as the slayer has been punished, the slaying has not gone unavenged.

The slayer has paid the penalty; so it is not by acquitting us, but by condemning us that you will leave a burden upon your consciences. The boy, who is bearing the consequence of his own error, will leave behind him nothing that calls for atonement from anyone; but if my son, who is innocent, is put to death, the conscience of those who have condemned him will be more heavily burdened than ever.

If the arguments put forward prove the dead boy his own slayer, it is not we who have stated them whom he has to thank, but the fact that the accident happened as it did. Since examination proves beyond doubt that the boy was his own slayer, the law absolves us from blame, and condemns him who was guilty. See, then, that we are not plunged into woes which we do not deserve, and that you yourselves do not defy the powers above by a verdict succouring my opponents in their misfortunes. Remember, as righteousness and justice require you to do, that the accident was caused by him who moved into the javelin's path. Remember, and acquit us; for we are not guilty of his death.