

Drakon's homicide law (*IG* i³ 104) begins with the case, if a man kill "without *pronoia*." When Ronald Stroud republished the inscription, he suggested that *pronoia* indicates premeditation as the criterion of the unforgivable crime: even an intentional killing might be pardoned by the family, if there were no *pronoia* (*Drakon's Law* [1968]). But then W.T. Loomis (*JHS* 1972) argued that *pronoia* is not strictly premeditation of murder but a general intent to harm; *hekōn* and *ek pronoias* are equivalent (followed by Gagarin, *Drakon* [1981]; disputed by Wallace, *Areopagos Council* [1989], and Carawan, *Rhetoric and the Law of Draco* [1998]). Now David Phillips (*JHS* 2007) follows Loomis, explaining *trauma ek pronoias* as not strictly "attempted homicide" but "intentional wounding." Loomis and Phillips have made some useful distinctions, but they conclude that killing or wounding *ek pronoias* may be a sudden act, "on the spur of the moment." In this arena of retribution, *pronoia* seems to have reversed its normal meaning.

That conclusion is based on procedural implications and modern categories; there is no testimony where *pronoia* itself conveys sudden intent. This paper focuses on the homicide cases and argues to the contrary: *pronoia* in the law remains close to its natural sense and preserves an important distinction; it refers to prior knowledge or awareness rather than intention. That principle has instructive parallels in modern law. And in the law of Athens such knowledge seems to have served as the threshold or first element of the crime, in lawsuits demanding death for intentional killing.

Among the examples where *pronoia* involves prior knowledge: In Antiphon 1, the "step-mother" is charged with murder by poisoning and accused of instructing another woman to administer the drug that proved fatal. Sometime earlier she had been discovered drugging her husband and, from that experience, the prosecutor claims that she acted with forethought or recognition, (*ek pronoias*): that is, she acted with the knowledge that the drug was life-threatening. The Aristotelian *Magna Moralia* 1189b presents a similar case, with the notice that the Areopagos acquitted the woman on grounds that her act was not *hekousion*. In most commentary on this passage, *ek pronoias* and *hekousion* are treated as equivalent, but the author consistently uses *dianoia* to convey intent and mentions *pronoia* only in explaining the verdict: the court found that her act was not *hekousion* **because** she had acted without *pronoia*. That is, she could not be guilty of murder if she did not know the drug would be fatal. In Antiphon 5, *On the Slaying of Herodes*, the non-citizen defendant was prosecuted as a *kakourgos*, by the procedure for such crimes, but he is charged with killing Herodes after preparation and arranging to dispose of the body. Therefore the defendant insists that he should have been tried by the traditional procedure, *dikē phonou*, because (*i.a.*) the charge involves a plan indicating *pronoia*.

Moreover, we have clear testimony that acts of sudden violence were **not** *ek pronoias*. Thus Aristotle explains (*NE* 1135b 19-25): when a man acts consciously but without planning or prior deliberation, it is an actionable wrong but not so damnable as acts done by choice (*proairesis*) indicating an evil character; "[t]hat is why acts due to anger are rightly judged not to be committed with **malice aforethought**" (= *pronoia*; Ostwald trans. 1962). This model can be reconciled with Phillips's finding, that *trauma ek pronoias* is not strictly attempted murder, to this extent: the intention may be obscure but the assailant acts with prior knowledge that critical injury is the likely result. A similar concept of "malice" was, in fact, standard in Anglo-American law before the death penalty was reserved for premeditated murders.