

Murder and stage history:

Medea's State of Mind and Criminal Law

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Since its origins, Greek tragedy has had a close and complicated relationship with the law. Similarly to legal trials, tragedies show crimes being committed and ask their audiences, like judges and juries, to assess the moral issues, attribute blame, and authorise punishment. Some ancient Greek tragedies actually include trials (like Aeschylus' *Eumenides*); in the contemporary world, trials that are televised – like that of O.J. Simpson --raise questions about where reality ends and fiction and entertainment begin.

One reason for the cultural longevity of Euripides' *Medea* is that it has so often been connected with discussions about legislation and the treatment of women before the law. In the 18th century, when *Medea* was regularly depicted as going mad before she killed her children, the play was adapted in ways that diminished her criminal responsibility, thus making her a more acceptable heroine. In Victorian England, the issue that was of greatest concern was the rival rights of mothers and fathers over their children in cases of divorce, and the play was repeatedly staged in different adaptations around the time of the great 1857 Divorce Act. In the first decade of the 20th century, productions across Europe began to address the question not only of women's economic and social equality, but of women's exclusion from the vote and politics.

Repeatedly, specific women charged with maternal filicide have been scrutinised for the similarities their psychological profiles bear to that of the Euripidean Medea. Twentieth- and twenty-first century Medeas, meanwhile, have often been reconfigured as victims of patriarchal oppression, stung into action only after years of suffering at the hands of men who have exploited their economic dependence in order to expose them to criminal abuse: Medea has even come to represent a symbol of resistance for women serving prison sentences for a many more (and much more trivial) crimes than she ever herself committed. In North America, a project encouraging women serving prison sentences to use drama to heal and grow personally has called itself the Medea project.

Yet my discussion today centres on another aspect of the law. It argues that one of the reasons why *Medea* has proved so perennially fascinating is that it thinks about murder as a crime. In one sense, it does not matter who the people that are murdered are, nor whether the killer is male or female: the point is that this is the first play in the Western theatrical tradition in which the audience watches someone make up their mind to kill, in great detail, and then carry out their decision. The play asks why people commit murder, and how they have usually wrestled with terrible emotions like anger and jealousy. The issue is made more complicated because the play does acknowledge that Medea has been involved in a killing before – that of her own brother years ago in the Black Sea. This of course raises the question of whether previous offences are relevant and can be used as evidence in a legal trial. But the play, in particular, tackles head-on the issue of criminal responsibility by questioning the distinctions between ‘unprovoked’ murder and manslaughter

under 'provocation' -- what in the USA is called the distinction between 'premeditated' first-degree murder and 'unpremeditated' second-degree murder.

Medea is the only surviving Greek tragedy where a murder is committed in this entirely ambiguous moral terrain. Clytemnestra's murder of Agamemnon in Aeschylus' *Agamemnon* has been planned for many years, and is therefore absolutely premeditated. Heracles in Euripides' *Heracles Furens* and Agaue in his *Bacchae* kill their children while demonstrably deluded and insane. The nearest parallels to *Medea* are actually offered by two other parents in Euripides. Creusa in *Ion* is persuaded into making an attempt on the life a youth she does not know is her son while she is sane but distraught. Agamemnon in *Iphigenia in Aulis* authorises the sacrifice of his daughter when clinically sane but psychologically confused and under pressure.

In the history of adaptations, from ancient Greece to the third millennium, the ambiguity inherent in the original *Medea* of Euripides has prompted numerous responses to *Medea's* criminal culpability or lack of it. It has produced a wide variety of adaptations for performance, related to historical changes in the cultural and legal views of murder, provocation, and premeditation. In the 19th century the great Italian actress Adelaide Ristori refused to play the role of *Medea* unless the play was rewritten by Ernest Legouv e to make the child-killing an act motivated by altruism (that is, to save the boys from a worse and more painful death). When Diana Rigg took the role of *Medea* in 1993, directed by Jonathan Kent – a production that was a big box-office hit in both London and New York – she deliberately made her *Medea* as sane and intellectually considered as possible. Yet Fiona Shaw, a few

years later, presented the murder of the children as taking place during a fit of psychosis brought on by intolerable provocation. She seems to have been thinking she was bathing the children when she killed them. Every actress, every translator and every director has to make this fundamental choice.

Most legislatures, including those of classical Athens and third-millennial North America, Britain and Germany, acknowledge that if violence has been a spontaneous response to unreasonable provocation, this can be a factor that mitigates an individual's culpability for a crime. If provocation can be proved, then it can cut prison sentences by many years. It can make murder (Mord) more like manslaughter with some real justification ('Minder schwerer Fall des Totschlags' according to article 213 of the German Strafgesetzbuch, which speaks of the killer being less culpable

‘durch eine ihm oder einem Angehörigen zugefügte Misshandlung oder schwerer Beleidigung von dem getöteten Menschen zum Zorn gereizt und hierdurch auf der Stelle zur Tat hingerissen worden...’).

Euripides' tragedy therefore raises questions not only about the gendering of Medea's psyche and the degree to which *as a woman* she is capable of moral deliberation, but, crucially, about Medea's own stated view that she is acting, as an autonomous agent before the law, with full moral understanding, competence, and time to consider her actions.

I believe that Euripides' presentation of what happened outside and inside that resident alien's house in Corinth, during the course of a single day in the late Bronze Age, is deliberately and carefully crafted. This is done in order to raise questions about Medea's own stated view -- and that of many

subsequent scholars, interpreters, translators, actresses and directors -- that she is acting freely, with freewill, out of choice informed by full moral understanding of her actions. It is interesting that several contemporary forensic psychologists have recently argued that when parents separate, children are acutely vulnerable to violence from the abandoned party, but that in most cases this extremely volatile and dangerous period only lasts for about one week. Children are at terrible risk during the first week after their parents separate, even if those parents would never normally be violent at all. This is how explosive and strong the emotions are at this critical time. And by far the most important issue here is the speed at which the events in Euripides' *Medea* develop: the children's parents have indeed only just split up.

Medea's state of psychological shock at being abandoned may be a day or two old, but she is banished and then argues violently with her husband *immediately* before the murders she commits: they may indeed be 'premeditated', but the 'premeditation' is extremely compressed and abridged; alternatively, it could be argued that Euripides has stretched the precise definitions of 'sudden' violence in response to unbearable 'provocation' to their absolute limits. Euripides' *Medea* not only deconstructs the psychic categories of 'male' and 'female', but rivets attention on the blunt instruments that both ancient and modern criminal law needed (and today still need) to utilise.

Provocation in Criminal Law is a ground of defence found in many legal systems. This defence attempts to excuse a crime by alleging a 'sudden' or 'temporary' 'loss of control' (as opposed to a plea of insanity) in response to another's provocative conduct. In the UK and some other Common Law jurisdictions it is *only* available against a charge of murder and only acts to

reduce the conviction to voluntary manslaughter. In the United States of America the absence of premeditation is one of the ways of distinguishing second-degree murder from first-degree murder. Yet in some states of the USA, premeditation has been seen as requiring *only a few seconds' deliberation* before the murderous act, while in others it can be seen as requiring *several hours*. How long has Medea got? In England, the crucial terms are in Section 3 of the Homicide Act 1957:

“Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.”

The 1957 act changed the common law in Britain which had previously provided that provocation *must* be more than words alone and had to be form of violence by the victim to the accused, subject only to two exceptions - a husband discovering his wife in the act of adultery; and a father discovering someone committing sodomy on his son! Instead, the new Act provided that provocation can be by *anything* done or said without it having to be an illegal act; the provoker and the deceased can be third parties. If the accused was provoked, *who provoked him is irrelevant*.

My view that Euripides is making us all scrutinise the difficulty of distinguishing between provoked and unprovoked murder is supported by the fact that this distinction was acknowledged in the legal system of his own day, in Classical Athens of the fifth century BC. There has survived a speech by the Athenian lawyer Lysias, called *Against Eratosthenes*. This is the actual defence speech of a man on trial certainly within a few decades of the première of Euripides' *Medea*. He freely admits that he has killed a man named Eratosthenes, but is asking to be acquitted because Athenian law allowed a man to kill another whom he found in bed with his wife. No entrapment was allowed and the occasion had to arise spontaneously. But the killer did *not* have to prove that he had only just discovered that the affair was going on. The man on trial says that his slave girl had told him about the affair, and he had gone home, with witnesses, to find the man standing naked on his own marriage bed beside his wife. It was at this sight that he became angry and struck the lover. The implication is that killing a man found in this sexual situation with your wife was perfectly understandable!

Yet even to raise the question of diminished responsibility in the case of Euripides' *Medea* may seem fundamentally misguided. At the point that she finally makes up her mind to commit child-murder, she notoriously states that although she is well aware that what she is going to do is wrong, her internal organ of passionate emotion, what the Greeks called her *thumos*, has overwhelmed the conclusions to which her deliberations have (or would) lead her -- that is, her emotion has overwhelmed her reason (1079-80). These two iambic lines, favourites of ancient philosophers, thus explicitly frame her as the protagonist in the earliest known version of any Greek myth to make a mother kill her own children *knowingly*: this was almost certainly Euripides'

own innovation in 431 BC, and it was a shocking departure from the ancient convention by which filicidal parents were exonerated (up to a point) by a fit of madness at the time of the commission of the crime: examples of course include Heracles in Euripides' *Heracles Furens* and Agave in his *Bacchae*.

Does the play, however, imply that Medea has really been able to think clearly about what she is doing? At the beginning of the play we hear that Jason and Medea arrived in Corinth as man and wife some time ago. Medea is described by the nurse as someone 'who has won a warm welcome from her new fellow citizens and seeks to please her husband in all she does' (11-13). But at the moment when the play opens, Jason has, it seems just a day or two ago, abandoned Medea to marry instead the Corinthian princess, daughter of Creon. The exact timing of the wedding rituals is left very ambiguous, partly because there was no one exact minute in ancient Athenian law when a couple became completely married legally, at least until the birth of the first child acknowledged as his by the father.

Medea has been lying prostrate and unfed ever since heard the news that she had been 'just lately' abandoned by her husband (25-26), for a period of time which can't be understood as more than hours or a few days at the very most. Although her nurse is terrified of what she may do, and feels fear of a general kind on behalf of the children (45-6), until after the Aegeus scene (i.e. until more than half-way through the play) there is only one suggestion that they are in serious danger. This suggestion is Medea's own inclusive curse on her whole family -- comprising the children, herself as the 'wretched mother', the father and the whole household (113-14). The occurrence that actually precipitates her into action of any kind is Creon's arrival to announce her banishment, with immediate effect: all the rest of the events of the play then

accelerate over a matter of the few hours' grace she succeeds in extracting from him. The exile decree is certainly a measure which has only just been taken, since it is to announce Creon's decision that the tutor arrives (67-72). It is the immediate impact on Medea of this fresh blow that the play dramatises. Medea commits *all* the murders during the same day that she receives this news. She has less than 24 hours to find a solution. It could be argued by a barrister that this is really unbearable psychological pressure.

The banishment – decree of permanent exile from Corinth -- tends to get overlooked by modern interpreters of the ancient play. For in the ancient Greek world, to be without a city, or friends in any other city, especially for a woman, was a virtual death sentence. The degree of panic which it induces in Medea is palpable: it is revealed, just after Creon leaves, in her improbable fantasies about the different ways she could try to steal into the palace and kill Jason and his bride (376-80). The big mistake Creon makes is to allow a woman in this volatile state of mind alone to organise anything at all.

The blows then rain hard on Medea's head. Jason arrives, but instead of helping her, he goads her and insults her during the course of some of the most unpleasant and insensitive speeches in world theatre. He even claims that he has left her for another woman for her own good! He also provokes her by talking about sex and about her different ethnicity. Yet the idea to kill the children is still not explicitly formulated in Medea's mind until after the Aegeus scene, the purpose of which is less to provide Medea with an ally than to make her aware just how much psychological pain can be caused to a man by childlessness. It is Aegeus' misery which prompts Medea into conceiving her plan to make Jason survive, but suffer. The decision remains far from final, however, and the psychological point of the 'vacillation' speech, during

which Medea appears to change her mind no fewer than *five times*, is to portray that very struggle between Medea's heart and her mind -- her passion and her ability to make reasoned decisions -- that she finally admits has been won by the former.

Let us look in more detail at Medea's great disturbed speech, which may have been extended and developed by actors trying to make sense of Euripides' text even as early as the 5th century BC. She says, over the course of the whole long soliloquy

- How sad that I must kill the children, but I must.
- No, I can't do it; I will take them away with me.
- Yes, I must do it in order to punish my enemies.
- No, I can't do it, because they bring me joy.
- The princess must be near death and I will despatch them shortly.
- 'I understand that what I am about to do is wrong, but my emotion (*thumos*) has vanquished my ability to deliberate (*bouleumata*)'

But she *still* does not follow the boys inside to do it! She waits through 35 lines of tense anapaests while the chorus march, reciting gloomily, around the stage. Euripides is showing us a woman who is struggling morally. She is in crisis.

When the messenger arrives, he recommends that she escape by any means possible, and concludes by saying that her dire punishment is unavoidable. Medea's first words after the messenger speech are 'My friends, I

have decided to act at once. I will kill the children and then leave this land' (1236-7). She is not shown wavering again.

If Medea were a classical Athenian male, who could prove that she had murdered her spouse's lover at the moment their affair was discovered, then she would have been acquitted at least of that crime. And Medea, of course, for much of the time thinks of herself in very masculine terms, using the language -- including the term *thumos* -- appropriate to Homeric warriors such as Achilles. She is very clear that she is an important person who has been insulted and publicly humiliated. That is the emotional background to the plot. And Medea's state of psychological shock at being abandoned may be a day or two old, but she is banished and then argues violently with her husband *immediately* before the murders she commits: they may indeed be 'premeditated', but the 'premeditation' is extremely compressed and abridged; alternatively, it could be argued that Euripides has stretched the precise definitions of 'sudden' violence in response to unbearable 'provocation' to their absolute limits. He is working on exactly the legal and psychological borderlines that judges and juries have to work on all the time, even in our own day.

Yet the law has never been gender-blind, and contemporary feminist lawyers have been arguing that the range of defences available in the case of murder are hopelessly sexist, since they are defined with a male defendant in mind: the mitigation of a murder charge on the ground of sudden anger was framed as, and is very much seen as, a 'male' defence suited to deaths consequent upon pub brawls and similar situations. Women who kill tend to do so after more extended periods of cumulative provocation or psychological

hardship, and in less obviously explosive circumstances. In Britain, women have been convicted of murder, rather than the manslaughter that brings with it a much lighter sentence of many fewer years, after they have been systematically tortured and abused for long periods. The sexism inherent within ancient Greek psychology and law is also relevant, although from a different viewpoint, to the case of Euripides' Medea. Her status as a responsible and morally autonomous legal agent, since she is female, is fundamentally ambiguous, even anomalous.

The ability to deliberate (in Greek, *bouleuesthai*) about ethical decisions was one which, according to Aristotle, using the same linguistic stem as Medea had a hundred years earlier (*bouleu-*), was in women inoperative, or 'lacking governance' (*a-kyron*, *Politics* 1.1260a). The word for 'lacking governance' is connected with the same root, *kyr-*, as the word which in Athenian society designated the male legal 'guardian' and representative -- father, brother, husband, or uncle -- whom every woman was required to have and to obey throughout her life (her *kyrios*). This means that the 'governance' which Aristotle held was denied to the female's deliberative capacity was, in fact, the equivalent of male legal authority over the female. That is, according to ancient Greek men, female brains, especially the parts of them that take ethical decisions, *can* only operate safely under male supervision. Women need constant moral supervision. Jason and Creon were stupid to leave Medea unsupervised.

Since Medea has been abandoned without a husband, brother or father to supervise and control her, Jason has created a situation in which there is a much greater likelihood that she will act unreasonably. Indeed, almost all Greek tragedy can be interpreted as illustrating Aristotle's view of the female

deliberative faculty, since every tragic woman who becomes transgressive is either temporarily or permanently husbandless, and always lacks the presence and authority of a sanctioned *kyrios*. Phaedra falls in love when her husband goes away, Clytemnestra takes a lover and plots Agamemnon's death when he goes to Troy. The virgins Electra and Antigone are left without fathers and brothers in the house when they begin to rebel against male authority. One other factor needs to be taken into account here. Ancient Greek medicine and medical writers such as Hippocrates actually thought that women of childbearing age who had no husbands or regular sex life were actually prone to madness because their wombs wandered around their body and damaged their mental ability and emotional self-control!

Euripides' *Medea*, in conclusion, not only deconstructs the psychic categories of 'male' and 'female', but also raises questions about the precise definitions of moral responsibility, provocation and premeditation which the blunt instruments of both ancient and modern criminal law need to utilise. This very resistance to clear-cut psychological and legal categorisation has always helped to keep *Medea* on our minds, and looks set to be a major factor in the continued revival of her play and renewal of interest in her during the third millennium.