

The Sixth Amendment & The Oresteia in Idaho

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In the *Libation Bearers*, Orestes waffles over the choice to kill his mother. On one hand, his mother killed his father, Agamemnon, and he believes that he must avenge his father's murder due to prophecy (P102, Line 540). On the other, and rightfully so, he assumes that the gods will punish him for seeking revenge on his mother, proven by the Furies following him later. This choice revolves around lines 899-902 of the *Libation Bearers*, in,

Orestes: What shall I do, Pylades? Be shamed to kill my mother?

Pylades: What then becomes thereafter of the oracles declared by Loxias at Pytho? What of sworn oaths? Count all men hateful to you rather than the gods?

Ultimately, Orestes decides to commit the sin of matricide; he recognized that he would be punished by the gods for sin, and did it anyway. Orestes' decision implies that he, personally, believes that he was acting justly, and therefore the gods would find his actions just and not punish him.

The idea of justice isn't explicitly stated in the *Oresteia*, especially with the deadlock of the jury in the *Eumenides*, so we must use a personal definition of justice. My definition of a just punishment is it must be the person or group's "business" to punish someone. The definition of a person's "business" used in this paper will be whether they are affected, bodily, materially, or societally by an action. A bodily effect would generally concern harm to a person – physically or mentally – spanning the breadth of assault to murder in today's legal system. A material effect would harm a person by taking or damaging their possessions – effectively a broad definition of theft. Finally, a societal effect would be the modern equivalent of libel or slander; you cannot place an exact number on the value of a person's standing, but you may be able to judge it through comparison. Together, these three definitions determine what is a person's business, and therefore, whether a person is acting justly. And, luckily, in the latter third of the *Oresteia*, the court case concerns whether it was Orestes' business to kill Clytemnestra.

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Apollo begins the trial with a defense of Orestes, on lines 579 through 580, claiming, “I have also come to help him win his case. I bear responsibility for his mother’s murder.” However, Apollo killing Clytemnestra would be unjust; it isn’t his business. As a given, the gods in *The Oresteia* are fallible and can be held to justice – the Eumenides pursued an unjust punishment and lost, demonstrating that the gods can make mistakes. First, he is a god, above everything. He cannot be harmed by the murder of another, in the grand scheme of things, Agamemnon and Clytemnestra’s death means absolutely nothing to him. He has no spoken-of material possessions and the gods cannot really be slandered. The action of mortals is not his business – he is acting unjustly by involving himself in them. Therefore, if we are to believe that the case was rightly decided, Orestes must be the sole actor.

Orestes’ argument revolves around two quotes; “She murdered her husband, and thereby my father too,” from line 602 in the *Eumenides*, and “We both are driven in exile from the house that should be ours,” from lines 253-254 of the *Libation Bearers*. Here, we can find some direct effects of Agamemnon’s murder on Orestes. Bodily, there is no harm – after all, Orestes was already in exile before the events of *Agamemnon*, but Orestes can claim much material harm. First, Orestes has been stripped of his birthright to rule through Aegisthus and Clytemnestra’s rule, therefore losing the property of all that the kingdom holds, constituting a material effect. Much more important, however, is the societal effect he faces if he doesn’t kill Clytemnestra. Through the lines 899-902 of the *Libation Bearers* used earlier in the paper, he faces “all men hateful to him” if he chooses to preserve Clytemnestra. Therefore, and arguably, more importantly, he can claim that he faced serious societal repercussions if he didn’t act in turn against his mother. Together, these define the defense’s case, in opposition to the Furies prosecution.

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What if Clytemnestra acted justly as well? After all, in Clytemnestra's own words, from lines 1417-1418 of *Agamemnon*, "he slaughtered at the altar his own child, my pain grown into love, to charm away the winds of Thrace." Here, I would argue that Clytemnestra suffered bodily harm, after all, I cannot imagine not suffering mentally through the loss of a child at the hands of a husband. This is her business and therefore can claim that she justly killed Agamemnon. In the same vein, death is certainly a bodily harm, so it was very much her business to summon the Furies to punish Orestes

What can be drawn from this is that a person may act justly and still be punished justly. This was the case for Clytemnestra. Why then, was Orestes not punished in the same way? Textually, the answer is that the jury came to a deadlock and Athena is inherently biased toward the man (As an aside, it is interesting that Orestes chose to be punished by the gods yet ended up in a trial where men could have decided his fate). However, from the earlier definition of justice, neither the jury, Furies, nor Athena had the ability to justly punish Orestes.

As with Apollo, Athena is a god. Therefore, she cannot suffer bodily harm – physically or mentally – from mortals. Unlike Apollo, she does have material holdings – she is the figurehead of Athens – but the murder of Clytemnestra has no effect on another city one-hundred and twenty-six kilometers away. And, she cannot suffer societally, as she is a god. In the same way, the Furies cannot claim that Orestes is their business. So, what about the jury? After all, they are human and can suffer all three kinds of damages. However, they hail from a different city – Clytemnestra's death does not affect them in any physical or material way, and inter-kingdom trading and fighting systems are not spoken of enough to attest to whether the citizens of Athens are affected. They cannot claim that Clytemnestra's death is their business. And, since none of these people can justly punish Orestes, he cannot be found guilty for killing Clytemnestra.

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So, who has jurisdiction? Who can justly punish Orestes? The gods are far out of contention. However, the people of Argos – the only people who can claim to be affected by a death within their community – can claim justice under the above jurisdiction. After all, the murder of a person within a community can constitute bodily, mental effects. And, since governance itself is changed by the murder of a ruler, one could argue that serious societal changes can occur. The people of Argos have the sole right to claim justice; this is why Orestes could not be convicted in Athens. To consolidate this argument in modern terms, just punishment can only be given by people within the community affected; a just punishment for an action can only be handed down by a jury of a person's peers and if the action constituted some bodily, material, or societal harm.

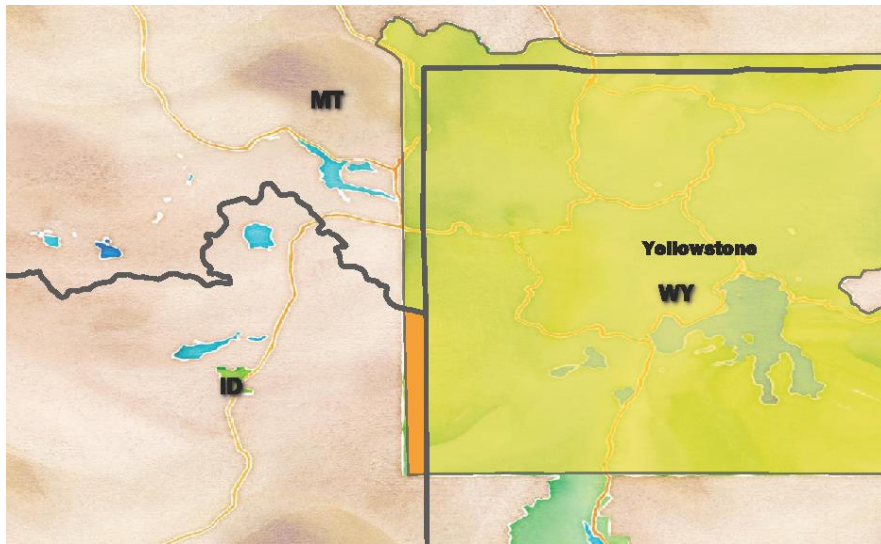
Seemingly by fate, this definition of who can dole out a just punishment is remarkably similar to the Vicinage Clause of the Sixth Amendment of the US Constitution in, “the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” But I'd like to contrast the Sixth with my definition of justice – I believe the former falls flat in a number of cases relating to the location and selection of a jury. For example, in *Flowers v. Mississippi*, the Sixth did not guard against racial discrimination in jury selection (which excludes a portion of an affected community) – the Fourteenth did. The Sixth requires an impartial jury, but by my definition, the community that delivers a punishment must be affected by the crime – this is opposition to the “impartial” requirement.

There are additional differences between my definition and the government's on who can deliver a just punishment. While searching for court cases that were ruled on similar grounds to my definition, I found a thought experiment, termed “The Perfect Crime”, by Mich. State

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University Professor Brian C. Kalt. The facts that construct the crime are thus: Yellowstone National Park is exclusively under federal law. The park is partially in Wyoming, then Montana and Idaho, but under only the Wyoming District Court. If you committed a crime in the Idaho portion of the park, the Sixth Amendment would require the jury to be from Idaho, but from the portion of it that is contained by the Wyoming District Court. Finally, this area of Idaho (see map below, relevant area in orange), as of the 2010 Census, has a population of zero (Kalt).



Under the Sixth Amendment, this is a sticky situation. Kalt claims the U.S., under the Sixth Amendment, could not easily prosecute a crime committed solely in the orange area, answering several counterarguments not applicable to this paper. He finds some “promising” cures such as having the government move people to the desolate land of Idaho, but largely, the Sixth Amendment falls flat.

What about my definition? The only people who may dole out a just punishment are the members of the community that was harmed by a crime. Topically, there is no community to speak of in the Yellowstone portion of Idaho, and therefore, no one is affected by a murder in that area. But, the victim hails from somewhere, and was not simply dropped into this world for the purpose of a thought experiment. This person has family, friends, a city that they came from,

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all of which are affected by the absence of a member of their community. Under my definition, these communities could all deliver a just punishment – they are the ones affected, and they are the ones that can heal from delivering the punishment. Cases like these expose where the *Oresteia* definition can be more effective than the Sixth Amendment's "impartial" view.

The *Oresteia* instructs us of the importance of just punishment, and its role in healing. While a punishment won't reconstitute losses, or revive the dead, it plays a hand in healing the community. If a punishment is handed down from some faraway city, removed from the site of the crime, the harmed community, still reeling from the crime, has no sense of control in the matter. And, as the act of having an action against a community implies a lack of control to begin with, there is no healing, no control regained. Athena did not punish Orestes, leaving open the possibility of Argos doing so. This is the importance of just punishment; the retaking of control by a community, and this is what the Sixth lacks.

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