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## DID THE ATHENIANS HAVE A WORD FOR CRIME?

Did the Athenians have a word for crime? The simple answer is no, they did not have a single word for what we now call crime <sup>1</sup>. And this remains true notwithstanding David Cohen's recent argument (2005) that the Athenian system of justice embodied both a conception of crime and an understanding of criminal law. At the core of the latter, he believes, is «the notion of certain kinds of wrongs as harming or threatening not just the immediate victim but the community as a whole and therefore requiring not merely compensation to the victim but punishment of the offender» in the name of the state (p. 214) <sup>2</sup>. I would agree with Cohen that the core idea of criminal law is embodied in Athenian legal thinking and legal practice. Nonetheless, the question remains: how did the Athenians refer to crime in the absence of a general word and, *a fortiori*, of any consistent legal terminology designating either crime or the activity of criminals? How did they differentiate criminals from other kinds of offenders? The present study will attempt to answer these questions by analyzing the language used in reference to crime and criminals in Athenian literary sources <sup>3</sup>.

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<sup>1</sup> Cf. Calhoun (1927), p. 75 n. 7: «Greek has no word comparable to our "crime"».

<sup>2</sup> For similar definitions of crime, see Harrison (1971), p. 77, and Baker (1990), p. 571. At the heart of modern definitions is Blackstone's notion of public wrongs. The latter, a renowned eighteenth-century professor at Oxford and later judge, distinguished crimes from private wrongs, or civil injuries, as «a breach and violation of the public rights and duties, due to the whole community, considered as a community» (Morrison [2001], pp. 4-5).

<sup>3</sup> It would go beyond the scope of this paper to list those offences that in Athens might be considered crimes. Like Cohen (2005, p. 213) I remain aware that the nature of

How did the Athenians talk about crime? Let us listen in to Aristophanes, whose characters are often represented as worrying about crime and criminals. One type of criminal in particular seemed to hold a special place in their imagination. I am referring to the *lopodytes* or clothes-stealer<sup>4</sup>, a criminal somewhat analogous to the modern mugger: not everyone experienced his deprivations but everyone knew and feared him. In Aristophanes, the *lopodytes*' victims are often the butt of humour – nervous humour. *Birds* (493-498) offers an extended example of what could happen to an unwary citizen. Euelpides tells the audience how he lost his cloak (χλαῖναν), a fine cloak too, made of Phrygian wool. He'd gone to a feast in Athens, had a few drinks and a sleep, then awakened to the sound of a cock.

And I leapt up, thinking it was dawn,  
 To go back to Halimos. But I'd hardly  
 Got out of the gate when I was cracked  
 On the head by some dirty crook (λωποδύτης)  
 And down I went and he swiped my cloak (θοιμάτιον)  
 Clean off my back before I could utter.<sup>5</sup>

This is not the only reference in *Birds* to clothes-stealing. Two other passages describe the nasty work of one Orestes, a name proverbial for criminal behaviour. The first (712) suggests that the threat of Orestes' stripping his victims (ἀποδύη) because he is cold might be averted if he weaves himself a cloak. In the second (1492), Orestes strikes at night, beating his victim and leaving him naked (γύμνος)<sup>6</sup>.

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a given society determines what is classified as a crime and so what offences or wrongs the state *qua* state elects to punish. Nonetheless, it seems possible to draw up a minimal list of offences that would be widely acknowledged as «crimes», however they might be designated in individual law codes, including that of Athens. My list has six entries: treason, homicide, personal injuries, arson, burglary, and robbery and theft. The list is drawn from Baker (1990), pp. 599-608, in a discussion that extends back to the thirteenth century, when rape was made a capital felony (p. 603). In 1351 treason became the first major statutory offence (p. 599). In addition to these six, there are, of course, many other offences in classical Athens that one might consider crimes.

<sup>4</sup> For the *lopodytes* and his significance in the spectrum of Athenian offences involving theft, see Cohen (1983), pp. 79-83.

<sup>5</sup> Translated by P. Dickinson. Unless otherwise indicated, translations are my own.

<sup>6</sup> Cf. *Acharnians*, 1164-1170, where Orestes also appears perpetrating violence at night. According to Sommerstein (1987), p. 243, Orestes was the nickname of the son of

In only one of the above examples is the word *lopodytes* mentioned. The very notion of stripping a victim (ἀποδύειν) signifies his work, as it does in *Ecclesiazusae*, when Blepyrus asks the redoubtable Praxagora about the new state and questions her contention that there will no longer be any reason for lawsuits. He becomes specific: «No thieves then, no one to strip off your clothes at night» (668: ἀποδύσουσ’)? No, Praxagora responds, and, in answer to the second question, not if you sleep at home. But even if you do go out and someone does strip you (670),

There’s no need to resist. Hand it over, and in the morning,  
Go to the store and get yourself fitted out even better.<sup>7</sup>

The audience does not have to hear the word *lopodytes* to know that it is he who is envisioned, and again envisioned as striking at night.

My final example, from *Clouds*, reveals the playwright making creative, not to say scandalous, use of this form of theft. Before the audience even meets Socrates, we learn from one of his students that the philosopher had pinched a cloak from the palaestra (179: θοῖμάτιον ὑφείλετο). Later, to gain entry to the school, Strepsiades must take off his cloak and is ordered to do so by Socrates himself (497). He demurs but eventually doffs it. This fact is not forgotten when Strepsiades and his slaves later attempt to burn down the school. «Who’s burning our house?» asks a frantic student. «The guy whose cloak you pinched», is the response (1498). The image of Socrates as a *lopodytes*, albeit a nonviolent one, is not pretty<sup>8</sup>.

It is no wonder that Athenians worried about clothes-stealing: it was a crime perpetrated mostly at night in unlit city streets or sometimes in the relatively unprotected area outside the walls of the city. Violence was to be expected, a beating, or even worse, if we accept the word of the defendant in Antiphon’s *First Tetralogy*. In attempting to shift the blame for the murder of which he is accused away

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one Timocrates and a notorious *lopodytes*. He also suggests that the name derives from Orestes, the son of Agamemnon, referring to his violent, even murderous, behaviour. The name Orestes is also applied to Diocles of Phyla by the speaker of Isaeus, 8 (3, 44).

<sup>7</sup> Translated by P. Dickinson.

<sup>8</sup> For other references to the *lopodytes*, see *Thesm.* 817; *Frogs*, 772; *Eccl.* 565, and *Plutus*, 165. For his work stripping a victim, see *Frogs*, 715, and *Plutus*, 926-930.

from himself, he suggests it was the work of a clothes-stealer. «It is», he states, «certainly not improbable that a man wandering about in the dead of night might be murdered for his clothes» (2.2.5). Nor was it just the outer garments that the *lopodytes* stripped off: he might take the tunic as well, leaving his victim utterly *gymnos*, as Lysias indicates in describing this kind of criminal activity (10.10). Given the lack of police or a professional investigative corps or even networks of communication such as newspapers or printed posters advertising a theft<sup>9</sup>, most such crimes probably went unsolved. Where did the clothes end up? Very few *lopodytai* would steal because they needed a cloak themselves. The garments probably found their way into the hands of a fence and were put up for sale in the flea markets of Athens or the Peiraeus<sup>10</sup>.

Another criminal who seemed to fascinate Aristophanes was the *toichorychos* or burglar<sup>11</sup>. Literally, the word means house-breaker, or one who digs or bores through the wall of a house (διορύττειν: *Plutus*, 565). Like the *lopodytes* he too struck at night, but rather than confront his victim, he worked through stealth. Unfortunately, Aristophanes does not offer a description of a burglar in the act of breaking in, although he does describe a burglar's disappointment at finding everything under lock and key once he had entered (*Plutus*, 203-206). Instead, he uses the word *toichorychos* as a term of

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<sup>9</sup> See Styles (1989) on the circulation of criminal intelligence in eighteenth-century provincial England, the result of the rapid spread of printing after 1695. Printing led to the use of handbills and advertisements in local newspapers. Together with improvements in the postal service, in travel by coach, and in road networks, the use of printing made possible vast improvements in «the dissemination of news about offences and offenders» (p. 55). In the end, written communication eclipsed «the hue and cry, the system whereby information about offences and offenders was passed from village constable to village constable» (p. 56). Needless to say, no such system replaced the hue and cry in Attica. For the state of communications in classical Athens, see Lewis (1996), who discusses, inter alia, gossip, heralds, inscriptions, and written communication, but does not consider the circulation of criminal intelligence. On the hue and cry, see Lintott (1982), pp. 18-22, and Hunter (1994), pp. 138-139, 150.

<sup>10</sup> Fisher (1999, p. 58) identifies a «Villains' market», the agora of the Cercopes, in the main Agora near the Heliaea. Here stolen goods were sold. Millett (1998, p. 225) calls the market «The Fences». References to the Cercopes market are found in *Agora*, 3, pp. 669-673, among them Diog. Laert. 9.7.114.

<sup>11</sup> For the precise nature of the *toichorychos*' work and the distinction between it and ordinary theft (*klope*), see Cohen (1983), pp. 72-79.

abuse or as an indication of criminality. When, for example, Strepsiades is beaten by his son Phidippides, he calls him, among other insulting epithets, a *toichorychos* (*Clouds*, 1327). In *Frogs* (772-773) house-breakers figure prominently among the crooks in Hades to whom Euripides displays his talents. Finally, in *Plutus* (165), when Chremylus lists the trades invented for the sake of wealth, his slave Carion adds, no doubt in an aside, «One steals clothes (λωποδυτεῖ), one breaks into houses (τοιχορρυχεῖ)»<sup>12</sup>. Like clothes-stealing house-breaking was probably a difficult crime to solve once the burglar succeeded in wresting goods from a house and making his getaway. The stolen property might then end up being sold in Athens or the Peiraeus alongside that of the clothes-stealer. The only recourse that a householder had was to catch the burglar in the act, raise the hue and cry, arrest the man with the help of his slaves and/or neighbours, and bring him to justice by handing him over to the Eleven. On the other hand, if he caught the burglar at night, he might dispatch him on the spot (Dem. 24.113).

Burglars and clothes-stealers are, of course, not the only criminals mentioned by Aristophanes. Among a host of others found throughout his plays are «ordinary» thieves (including embezzlers), parricides, bandits, traitors, bribe-takers, and many more. What is special about the *lopodytes* and the *toichorychos* is that they belonged to a group of criminals legally designated as *kakourgoi*. Aristotle, in his discussion of the Eleven (*Ath. Pol.* 52.1), lists three categories of *kakourgoi*, *kleptai* (thieves), *andrapodistai* (kidnappers), and *lopodytai*. Demosthenes (35.47) adds *toichorychoi* to this list. Two other categories of *kakourgoi*, *ballantiotomoi* (purse-snatchers) and *bierosyloi* (temple-robbers) are attested by both Plato (*Rep.* 552D1-6, 575B6-7) and Xenophon (*Mem.* 1.2.62)<sup>13</sup>. *Kakourgoi* then were com-

<sup>12</sup> Other references to the *toichorychos* include *Frogs*, 808, and *Plutus*, 869, 909 and 939.

<sup>13</sup> Other references to *kakourgoi* include Ant. 5.9; Dem. 4.47, 24.204; Isoc. 15.90; Lys. 10.10; Plato, *Gorg.* 508E, *Rep.* 344B1-5; and Xen. *Symp.* 4.36. None of these sources lists all *kakourgoi*. Hansen (1976, pp. 36-48) amasses most ancient sources for *kakourgoi* (his list, however, does not include all the references found in Aristophanes). I have not accepted his argument for including killers (*androphonoi*), based on a single source, Aesch. 1.91, against Ant. 5.9-10, where the laws against *kakourgoi* and murderers are distinguished. On the other hand, I have accepted his argument for *bierosyloi*, based on

mon criminals, in Gagarin's view, «career criminals» (2003, p. 186), who, in committing offences against property, were caught *in flagrante delicto* (ἐπ' αὐτοφώρῳ: *Ath. Pol.* 52.1; *Aesch.* 1.91; *Dem.* 45.81; *Is.* 4.28; *Lys.* 13.85-87) or perhaps, as Harris (1994, p. 182) has argued, caught «red-handed» (with the stolen goods still in their possession)<sup>14</sup>. Aristotle also describes the procedures permitted in the case of such criminals. They might be arrested on the spot and taken to the office of the Eleven (*apagoge*), where, if they admitted their guilt (or it was patent), they were summarily executed. If, on the other hand, an alleged *kakourgos* disputed the charge, he was tried in a jury court and either acquitted or put to death (cf. *Aesch.* 1.91; *Dem.* 24.65, 113).

What is curious about Aristophanes' references to criminals, whether *kakourgoi* or others, is that he never uses the legal term *kakourgos*. If one were to select a general word that recurs in his plays in reference to offenders of all kinds or indeed to people who are just plain offensive, it is *panourgos*. The word and its cognates (*panourgein* and *panourgia*) are used to describe Socrates' activities as a «sophist» (*Clouds*, 1310), the impious behaviour of Mnesilochus at the Thesmophoria (*Thesm.* 929, 1112), the criminals in Hades (*Frogs*, 781), Cleon (*Peace*, 652), and, finally, Dicaeopolis, the hero of the *Acharnians* (311), who holds heretical, even traitorous, views about the Spartans<sup>15</sup>. The word is often translated «crook» or «rascal», and rightly so, since it is immensely unspecific and without legal significance. The same is true of another term used in reference to offenders of all kinds, the adjective *poneros* (and its cognate *poneria*). The chorus of *Clouds*, for example, tell Strepsiades that he is responsible for his own plight in being unable to defeat his son in argument, for he directed himself along a crooked course (1455: ἐς πονηρὰ πρᾶγματα; cf. 1459). In the same play, it is alleged that Hyperbolus

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Plato and Xenophon, even though some have contested the category. Another group I have rejected, with Harris (1994), p. 182, and Fisher (2001), p. 225, is adulterers (*moichoi*), even though Hansen (1976), p. 45, seems to include them, again on the basis of *Aesch.* 1.91. Certainly, Cohen (1984; 1991, pp. 111-122) does include them. It seems to me that there is some argument both for rejecting categories mentioned only once and for retaining the notion of *kakourgemata* as property crimes.

<sup>14</sup> On *flagrante delicto*, see further Hansen (1976), pp. 48-53, and Cohen (1983), pp. 52-61.

<sup>15</sup> Cf. *Knights*, 247-250, 803; *Wasps*, 932; *Thesm.* 893; *Frogs*, 549; *Eccl.* 437, and *Plutus*, 368, by no means an inclusive list.

got rich through *poneria* (1066). Elsewhere the adjective *poneros* is used to describe both the litigious Philocleon (*Wasps*, 192-193) and the rich who have gained their wealth through illegal means (*Plutus*, 502-503). Finally, the insulting term *poneros*, together with the epithet *toichorychos*, is tossed at a hapless sycophant who comes on stage in *Plutus* (869, 939) lamenting his losses<sup>16</sup>. In other words, apart from eschewing the technical term *kakourgos*, Aristophanes did not employ a general word for criminal or criminal behaviour. The words he did use, *panourgos* and *poneros*, he applied both to criminals and to a host of quotidian «bad guys».

In contrast to Aristophanes, the orators do not hesitate to use the legal term *kakourgos*. Such references are, however, limited, being very often embodied in definitions (e.g., Dem. 35.47; cf. Arist. *Ath. Pol.* 52.1) or in citations of laws (e.g., Aesch. 1.91; Dem. 24.65). Thus they offer even less evidence than Aristophanes as to how and where these criminals worked. Antiphon's *First Tetralogy*, cited above, suggests that clothes-stealers might murder a person found wandering in the streets of Athens at night (2.2.5). A truly chilling prospect, if true, but, in the case being argued – and the case itself is hypothetical – a mere probability put forward by the defence. As the prosecution points out, the murdered men were found still wearing their cloaks (2.1.4). On the other hand, Demosthenes (58.65) indicates clearly that people did fear crime and devised ways to protect themselves against *kakourgoi* (κακουργοῦντες)<sup>17</sup>. Some did so by setting up a security system (φυλακή) to protect the contents of their homes, while others stayed home at night to avoid harm.

Another problem with the lawsuits is that they offer few real-life examples of *kakourgoi*. One exception is Lysias, 13, *Against Agoratus*, which tells us that three of Agoratus' brothers died the death of criminals, two outside Athens. The third was arrested as a *lopodytes* in Athens, put on trial, and condemned to death on the plank (13.68). Even this all too brief account is related only in passing in order to demonstrate that criminality ran in Agoratus' family. We have no lawsuit extant wherein one of the protagonists was a *kakourgos*.

<sup>16</sup> Cf. *Knights*, 336-337; *Thesm.* 836-837, and *Frogs*, 710.

<sup>17</sup> The verb *kakourgein* generally refers to *kakourgoi* and their work. See, e.g., Ant. 2.3.2; Dem. 24.37; Isoc. 12.212, 15.237, with Hansen (1976), p. 39. For exceptions, see note 8, below.

Perhaps the reason is that most *kakourgoi* caught in the act were summarily executed or if, like Agoratus' brother, they stood trial, did not have the status and wherewithal to hire a speech-writer (cf. Hansen [1976], p. 54; Todd [1993], p. 81). On the other hand, it was not unknown for elite Athenians to suggest that an opponent was a *kakourgos* in order to prejudice the jury. Witness the allegations of Ariston in a private suit for assault brought against his enemy Conon (Dem. 54). The latter, he suggests, was liable to arrest as a *lopodytes* (1), since he and his sons had not only assaulted and demeaned him but had also stripped him of his cloak (8-9). Similarly, the speaker of Isaeus, 4 (28), argues that Chariades, a claimant to Nicostratus' estate, was entirely undeserving because he had once been caught in the act of theft and thrown into prison. Though released by the Eleven, he was denounced as a *kakourgos* and fled Athens, only to return 17 years later to claim his putative inheritance.

The above are just a few examples of the ways in which the orators used the term *kakourgos*. But how precise was that use? First, it would be misleading to state that in the orations the word *kakourgos* (or, *mutatis mutandis*, its cognates, *kakourgein*, *kakourgia*, and *kakourgema*) never meant simply a criminal without reference to the type of crime committed. But the instances of such usage are so rare as to be exceptional<sup>18</sup>. In fact, the meaning of the word, as used by the orators, is remarkably precise and virtually always refers to the specific group of criminals discussed above (cf. Hansen [1976], p. 36; *pace* Fisher [2001], p. 242). Demosthenes, for example, distinguishes a *kakourgos* from a person charged with impiety or with anything else for which one might stand trial (22.28). Elsewhere, he argues that Timocrates' law benefits three types of criminals – *kakourgoi*, parricides, and draft-dodgers (24.102). Similarly, the speaker of Antiphon, 5, knows very well that, though he was arrested as a *kakourgos*, he cannot be at one and the same time a

<sup>18</sup> Hansen (1976, p. 36 nn. 1-2) gives some examples in which he believes the word *kakourgos* means simply a criminal (Thuc. 1.134.4, 3.45.3; Xen. *Mem.* 1.2.56, *Hieron*, 4.3, 10.4; Lyc. 1.93) or a scoundrel or rogue (Dem. 40.34, 53). He is probably right about most of these examples, though I might question the references cited from Xen. *Hieron* and Lycurgus. I would add to his list the following examples of cognates used in reference to bad or criminal behaviour: Dem. 21.130 (*kakourgemata* done to kinsmen), 24.94 (*kakourgia*); Aesch. 1.109; Dem. 24.106, 113 and possibly 216, 27.40 (*kakourgein*). Again this is not an inclusive list.



murderer and a *kakourgos* (i.e., a thief or a *lopodytes*, as he defines the word). Different laws apply to each (9). In other words, *kakourgos* was a technical legal term and recognized as such by the orators. It was not a general word for criminal.

How then did the orators refer to crime and criminals? Two words, *adikein* (to act unjustly, wrongly, or illegally and so to inflict injury or wrong) and *hamartanein* (to fail or err and so to do wrong) and their cognates (*adikema* and *hamartema*) predominate in the orations. Both are used in reference to criminals and offenders of all kinds. The former, for example, may, in its active voice, denote criminal, or other legally offensive, activity, while, in its passive voice, it expresses the suffering of the victim (e.g., the criminal is ὁ ἀδικῶν or plural οἱ ἀδικοῦντες, the victim, ὁ ἀδικούμενος). One oration, Demosthenes, 24, *Against Timocrates*, will serve to illustrate this point. The major target of the oration is the law of Timocrates. Passed in 353, it allowed those state debtors on whom the additional penalty of imprisonment had been imposed to name sureties and remain free until the ninth prytany. Exceptions to the law included tax-farmers and other contractors. The speaker, however, jeers at the suggestion that tax-farmers are the worst offenders (60: μάλιστα ἢ τὰ μέγιστα ... ἀδικοῦσιν), offering a list of those who offend much more (πολὸν ... μάλλον ... ἀδικοῦσιν). The list includes traitors, children who maltreat their parents, and individuals who enter the Agora with unclean hands. All could be considered serious offenders under Athenian law, a fact that does not escape the notice of J.H. Vince, the translator of the Loeb edition, who designates the three groups as «criminals». Demosthenes himself does not have a general term to embrace all three but speaks merely of «wronging» or «offending», using the verb *adikein*. Later, he employs the same verb to describe the criminal activity of the embezzlers whom, he alleges, Timocrates' law was meant to benefit: they have wronged Athenians enormously (67: ὑπὲρ μεγάλα ἡδίκηκότων ὑμᾶς). Elsewhere (172), he contends that embezzlers are far worse offenders than those state debtors who have failed, for reasons that are understandable, to pay their taxes (the *eisphora*). Here again the verb *adikein* is used in reference to both groups. Finally, Demosthenes compares Timocrates unfavourably to a *kakourgos* – a thief or a *lopodytes*. The latter, he contends, wrongs (204: ἀδικεῖ) only one person, his victim, while Timocrates wrongs (205: ἀδικεῖ) the whole city.

These are just a few among numerous examples of the verb *adikein* used in respect of offenders, some criminal, some not, in Dem. 24<sup>19</sup>. The verb (and its cognates) is also omnipresent in a host of other orations<sup>20</sup> and in other genres of Greek literature. It is, for example, one of the words used to denote crime in the disquisition on crime attributed by Thucydides to Diodotus in the Mytilenian Debate (3.45.3), in Plato's description of criminals in the *Republic*<sup>21</sup>, and in Aristotle's discussion of the motives that lie behind crime (*Pol.* 1271a18, 1295b11). In Aristophanes' plays it refers to wrongs of all kinds, as it does throughout Menander<sup>22</sup>.

*Hamartanein* is not so common as *adikein* but, where it is found, it is generally used as a synonym for the latter. For instance, the offences/crimes of Aristogiton are designated both as *hamartemata* (Dem. 25.39) and as *adikemata* (6, 49, 94). In addition, the speaker of Dem. 54 uses the terms (verb and noun) interchangeably, as does Lysias in numerous orations<sup>23</sup>, and even Thucydides in the speech attributed to Diodotus (3.45.3).

<sup>19</sup> See, e.g., Dem. 24.69, 74, 80, 84, 85, 87, 102, 110, 113, 116, 122, 173, 175, 217. J.H. Vince, correctly, translates many of the above passages so as to indicate criminality. See especially 113, where the verb *kakourgein* is virtually a synonym of *adikein*, both being employed preceding a discussion of theft.

<sup>20</sup> Important among them are Aesch. 1; Dem. 22 and 25; Din. 1 and 2; Lyc. 1; Lys. 6, 14, 27 and 30. *Adikein* is so widely found that it would be pointless to list all the orations where it is used in respect of offenders. In the orations too, crimes are generally designated as *adikemata*. Typical is Dem. 23.26, where homicide, temple-robbery, and treason are all so designated. Gernet (1917, pp. 35-95) studies the evolution of the word and its cognates, especially the substantive, *adikema*, which he believes was formed relatively late (85). He argues that the primitive religious connotations of *adikein* gradually disappeared (or became implicit) as the word developed into a concept that was both secular and rational (63, 92) and that applied, juridically, «au délit général et, spécialement, à la lésion des intérêts individuels» (43).

<sup>21</sup> See, e.g., 344B1-5, where, in the midst of a discussion of right and wrong (justice and injustice), criminals (*kakourgoi*) are described as οἱ κατὰ μέρη ἀδικούντες τῶν τοιούτων κακουρημάτων. Cf. *Gorg.* 508E. In the *Laus*, Plato formulates legislation to deal with a variety of crimes. While he does not employ a general word for criminal, he does make liberal use of *adikein* and its cognates to express the notion of crime and criminality (as well as injustice). See, e.g., 854E, 859B, 876A, 880B and 941C.

<sup>22</sup> See, e.g., *Clouds*, 1175; *Wasps*, 245, 589, 591, 839; *Birds*, 1221; *Thesm.* 378; *Frogs*, 147; *Plutus*, 503.

<sup>23</sup> The plaintiff in Demosthenes, 54, describes himself as the victim of wrongdoing (2, 16: ἀδικεῖσθαι). At the same time, he describes the acts of his opponent, Conon, and his sons as *hamartemata* (42). Cf. the verb ἐξαμαρτάνειν used in reference to the same

Finally, one ought not to overlook a word already discussed above (pp. 10-11) as part of Aristophanes' vocabulary of abuse. It is *poneria* (and its cognate, *poneros*), a quality Demosthenes contrasts with its opposite, *kalokagathia* (25.24). *Poneria* connotes wickedness or vice, and hence, as an adjective, it is often translated «scoundrel» or «rogue» (Dem. 24.94, 106; Lys. 24.19)<sup>24</sup>. It is widely used throughout the orations to characterize bad behaviour of all kinds<sup>25</sup>. It can also be part of an extended attack on an opponent meant to undermine his character. Or so Demosthenes uses the term in the suit against Aristogiton. Over and over he accuses the latter of *poneria* (25.5, 14, 39, 45, 49, 67, 91, 94), going so far as to allege that he was foremost among the sycophants who made a public exhibition of «wickedness» in the assembly (9: ἀπόδειξις ... πονηρίας). Even more telling was his experience in Athens' prison, where his outrageous behaviour incited men incarcerated there for *poneria* to ostracize him as more *poneros* than themselves (63; cf. Din. 2.10). Here again, however, we are not dealing with a word that necessarily implies criminality, though it may. Rather, *poneria* has moral

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(23, 25). Among Lysias' orations, see especially 4.17, 7.1, 25.3, 31.27, where *adikein* and *exbamartanein/bamartanein* are employed in the same sentence as synonyms. Forms of both are also found sprinkled throughout Lys. 6, mostly in reference to the offences/crimes of Andocides (*adikein*: 3, 14, 18, 20, 28, 30, 42, 45; *bamartanein*: 19, 34; *bamartema*: 18, 19, 20, 22, 40, 49, 55). See too Lys. 3, 14, 20, 24, 28, 31. Again this usage is so common in the orations that it would be pointless to list all references.

<sup>24</sup> The translations are those of J.H. Vince and W.R.M. Lamb, respectively, in the Loeb Library. The latter (Lys. 24.19) is a reference to a group of *poneroi* who the prosecution alleges assembled for no good at the establishment of the defendant, a disabled tradesman: having spent their own money, they laid plots against others more well off. Todd (2000, p. 258) deems them «criminals», while Fisher (1999, p. 57) believes that the suggestion of «a criminal association is interestingly ambiguous». He construes *poneroi* as «villainous men», perhaps «a gang of crooks» or «dissolute-livers» planning sycophancy. *Poneroi*, in other words, were ne'er-do-wells, though what kind is not always clear.

<sup>25</sup> Among a host of others, the following are designated as *poneros* or charged with *poneria*: Conon (Dem. 54.24), Theocritus (Dem. 58.27), Aristogiton (Din. 2.9-10, 19), Andocides (Lys. 6.45), Alcibiades (Lys. 14.35), Philocrates, an alleged embezzler (Lys. 29.11), and Philon, an alleged traitor (Lys. 31.3). See too Arist. *Pol.* 1295b9-12, who distinguishes between those who are exceedingly fortunate in terms of beauty, strength, birth, or wealth and their opposites in their propensity for wrongdoing, and even crime. The former indulge in *hybris* and in wickedness on a grand scale – become *megaloponeroi* – while the latter turn to crime and to bad behaviour on a petty scale – become *kakourgoi* and *mikroponeroi* (small-time crooks).

overtone, indicating behaviour unbecoming a person of honour and integrity, a *kalokagathos* (Isoc. 15.100, 316) <sup>26</sup>. By definition then it is usually the characteristic of criminals such as the men who ostracized Aristogiton. Nonetheless, no matter how demeaning and abusive it may be as applied to criminals and others, it has no legal significance.

In sum, the use of these three clusters of words is as unspecific as Aristophanes' designation of wrongdoers as *panourgoi*. They are not legal technical terms but embrace the activity of both law-breakers and criminals of all kinds including minor offenders and of individuals who have simply offended, injured, or wronged another or who have gone wrong in some way. In other words, the Athenians did not develop legal terminology analogous to that found in Roman law, which distinguished between *delicta*, lesser offences (some of them crimes) affecting individuals, and *crimina*, serious crimes which had implications for the community <sup>27</sup>. They did, however, develop the nucleus of a concept of crime in *kakourgemata* and in their perpetrator, the *kakourgos*. We have already noted above that the word *kakourgos* was a technical legal term and recognized as such by the orators. In this case, a whole series of crimes involving property and, potentially, violence were considered so heinous as to deserve extraordinary sanctions, immediate arrest and summary execution. Clearly, the community of Athens placed the *kakourgos* beyond the pale, or as Gagarin puts it (2003, p. 191), «somehow outside the community». But such crimes were no more than the nucleus of a concept, since the *kakourgos* was, as we have seen, unique, just one category of criminal among many and in no way linked through

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<sup>26</sup> Cf. Dem. 23.75, where that which is *adikon* (unjust, wrong, or even criminal) is adjudged *poneron*, while its opposite (what is just or right) is described as *χρηστὸν καὶ καλόν*. See too Menander, *Aspis*, 125-130, where the two uncles of Cleostratus are a study in contrasts in respect of honour and integrity. Smicrines, the greedy uncle, is deemed *poneros*, while the generous Charestratus is *chrestos*. The opposition of *poneros* and *chrestos* is omnipresent throughout pseudo-Xenophon's *Constitution of the Athenians*, where it has distinct class connotations (see especially 1.1-9 and 2.19). For example, those who are *poneroi* are linked to the poor and *demotikoi*, those who are *chrestoi*, to the wealthy and aristocratic (οἱ βέλτιστοι) (1.4-5).

<sup>27</sup> Needless to say, the Athenians did not develop criminal courts similar to the Roman *iudicia publica*. For an account of the latter and their discursive practices, see Riggsby (1999).

a general concept to others such as traitors or embezzlers. In other words, there was no «supercategory of crime» embracing all acts of a criminal nature<sup>28</sup>. The concept of crime had not separated itself from the larger category of wrong (*adikia*). Thus, the Athenians thought in terms of wrongs, some serious, some not; some affecting individuals, some the community as a whole (Dem. 21.29-35: *dikai idiai* versus *dikai demosiai*, with Harrison [1971], pp. 75-76)<sup>29</sup>. The language they used in respect of crime reflected this fact.

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<sup>28</sup> «Supercategory» is the term employed by Riggsby (1999), p. xii, who rejects the notion of an abstract category of crime in Ciceronian Rome. «Crime» as such», he concludes, was «of no particular interest» (p. 167).

<sup>29</sup> Demosthenes (21.45, 25.86) also uses the term *koin'adikemata* for wrongs that affect the community. Cf. Lyc. 1.6; Isoc. 20.2 (again with Harrison, *ibidem*).

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