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# SCRIPTA CLASSICA ISRAELICA

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## Punishment and Authority in the Athenian Forensic Discourse

Janek Kucharski

*Abstract:* Authority is a presupposition built into the modern concept of punishment, both in terms of its moral or legal justification, as well as language. Its lack not only raises questions about the justice of harming an offender for an offence, but also about the felicity of labeling such an act as punishment. In the ancient Athenian forensic discourse, however, punishment was not a distinct notional category. It was a concept superimposed on several other terms, each with its own semantic domain extending beyond the punitive sphere. It has been argued, nonetheless, that authority was a fundamental criterion of this concept, one, which distinguished the sense of “punishment” from other possible meanings of the relevant vocabulary. Indeed, when it came to legal offences, the orators showed a keen awareness that punishment was an exclusive prerogative of the state and its institutions. Yet on the level of discourse, they seem no longer interested in maintaining this distinction, as they frequently speak of punishment meted out to offenders by non-authoritative agents, such as the prosecutor. This paper argues that the question of authority, although legally recognised, never entered the framework which shaped the discourse of punishment in classical Athens.

*Keywords:* Punishment, authority, Athenian, oratory, revenge.

When Meidias punched Demosthenes in the Theatre of Dionysus, his act was considered by the victim as a manifestation of *hybris*, that is, of a disposition to overestimate one’s status vis-à-vis the community and those who have an equal share in it.<sup>1</sup> *Hybris* was a serious offence, subject to a high-profile public prosecution, and potentially the harshest penalties upon conviction, including capital punishment. For equality—that very special kind of it, restricted to male enfranchised citizens—was a fundamental tenet of Athenian democracy, to the point of becoming one of the civic virtues and frequently paired with justice, among other things.<sup>2</sup> Equal were the citizens, equal were the laws established for them, and equal was their share in the polis;<sup>3</sup> “equal” is, in fact, the epithet qualifying the Athenian political system itself.<sup>4</sup>

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<sup>1</sup> It was theoretically possible to prosecute one for *hybris* against a slave (Din. 1.23?), but that was because the act was considered a manifestation of the said disposition; see Canevaro (2018).

<sup>2</sup> Dem. 18.284 (ἴσης ἢ δικαίας προφάσεως), 315 (οὔτε γὰρ δίκαιον οὔτ’ ἴσον); 19.15 (τὴν εἰρήνην ὅπως ἴση καὶ δικαία γενήσεται), 333 (δικαίαν εἰρήνην καὶ ἴσην); Hyp. Epit. 5 (τὸ δὲ ἴσον [ἀντὶ τῆς ἀδικίας]); cf. 23.173 (οὐδὲν ἀπλοῦν... οὐδ’ ἴσον); in E. *Phoe.* ισότης is considered a δαίμων and θεός, which however seems to be a rhetorical exaggeration; cf. Stafford (2000), 11.

<sup>3</sup> E.g., Lys. 25.3; Dem. 24.59; Isoc. 7.69; 16.38; cf. Filonik (2023).

<sup>4</sup> Aeschin. 1.5 (ἴσην πολιτείαν).

## HIERARCHIES OF OFFENCE

The fact that the Athenians considered *hybris* a public offence meant that it was subject to prosecution by any citizen who wished to do so. The quarrel was thus moved from the egalitarian relationship between two individuals to a hierarchical one between the offender and the polis.<sup>5</sup> Demosthenes pinpoints this shift with a parallel from private litigation:

ἂν μὲν ἐκὼν παρ' ἐκόντος τις λάβῃ τάλαντον ἢ δὴ δὲκα καὶ ταῦτ' ἀποστερήσῃ, οὐδὲν αὐτῷ πρὸς τὴν πόλιν ἐστίν, ἂν δὲ μικροῦ πάνυ τιμήματος ἄξιόν τις λαβῇ, βίαι δὲ τοῦτ' ἀφέληται, τὸ ἴσον τῷ δημοσίῳ προσημιᾶν οἱ νόμοι κελεύουσιν ὅσον περ δὴ τῷ ἰδιώτῃ (21.44)

If one acquires from another, by way of mutual agreement, one talent, two, or ten, and fails to repay it, the polis has nothing to do with him. But if one acquires something completely insignificant, yet takes it by force, the law has him pay the same amount to the treasury as that to the private person.<sup>6</sup>

The fact that the dishonest debtor has nothing to do with the polis does not mean that the case does not involve the official apparatus in any way. What it means is that a legal action taken by the creditor (a *dikē blabēs*) would have resulted in compensation, that is a direct, egalitarian transaction between one individual (*idiōtēs*) and another. A successful prosecution for robbery, however, where in addition to damages the offender must pay a fine, involves also a “transaction” between him and the polis.

Thus, although fines and damages are not terminologically differentiated in the Athenian forensic discourse,<sup>7</sup> the legal principle distinguishing one from the other is clearly articulated by Demosthenes. The same notional indifference is found in the case of non-monetary punishment and its corresponding private, egalitarian “transaction,” that is revenge.<sup>8</sup> Terms such as *timōria* or the phrase *dikēn lambanein* are used to denote both. Yet here too, the stage is set for keeping the two ideas apart, as evident from Demosthenes’ remark in a different speech:

πλεῖστον δε δήπου διαφέρει τὸν νόμον κύριον τῆς τιμωρίας ἢ τὸν ἐχθρὸν γίνεσθαι (23.32)

There is a very big difference between the law having power over *timōria* and the enemy having such power.

It has been recognized, however, that the punishment-revenge antithesis is not very well at home in classical Athens, and not only because of the notional indifference.<sup>9</sup> Unlike that between fines and damages, it is nowadays a morally loaded distinction and one sustained by requirements which are manifestly upset in the Attic orators. Time and again, for instance, we find the litigants (usually, though not exclusively, in public lawsuits)

<sup>5</sup> See also Dem. 47.41: ἡ βουλὴ (...) ἰδοῦσα με ὡς διεκείμην, καὶ ἡγησαμένη ὑβρίσθαι οὐκ ἐμέ, ἀλλ' ἐαυτὴν καὶ τὸν δῆμον.

<sup>6</sup> Unless otherwise noted, the translations are my own.

<sup>7</sup> Cf. MacDowell (1978), 257; Todd (1993), 144.

<sup>8</sup> Cf. Mackenzie (1981), 11n27: ‘Revenge is characterized as a transaction taking place between individuals’; cf. Courtois (1984), 20–22.

<sup>9</sup> E.g., Gernet (1917), 107–108; Scheid-Tissinier (2006), 101–103; Cairns (2015); Rubinstein (2016), 57–60.

urging the jurymen to “punish” the offender in anger and hatred instead of dispassionate reasoning.<sup>10</sup> Demosthenes himself, in his prosecution of Meidias where he so eloquently laid down the groundwork for the distinction, maintains that the defendant ‘should rightfully be met with communal anger (*dēmosias orgēs*) and punishment (*timōrias*)’.<sup>11</sup> Furthermore, offences against the law are regularly represented as slights and insults offered to the jurymen and to the laws themselves<sup>12</sup>: ‘he treated you and the laws with such contempt’, says Apollodorus of Stephanus, whom he accused of masquerading his wife’s (or concubine’s) daughter as a citizen woman.<sup>13</sup> This is hardly surprising, given that Aristotle, Demosthenes’ contemporary, in his handbook for orators explicitly defines anger as a craving for *timōria* prompted by a slight (*Rh.* 1378a). But such a reaction is much better suited for revenge, not punishment, even though according to the philosopher, this is precisely what the aspiring speaker should seek to elicit from his dikastic audience.<sup>14</sup>

In the end, therefore, the Athenian jurymen may very well be said to consider an offence against the laws as a personal slight and to act on their passions instead of reason. But their relationship with the offender remained nevertheless hierarchical. As they embody the polis, their response to an offence, although disturbingly similar to revenge in other respects, is still considered punishment because ‘punishment’, writes Danielle Allen, ‘is about authority in the first instance and about law, dispassion and disinterestedness only in certain contexts’.<sup>15</sup> This observation provides the modern reader with an admirable structural framework to maintain the distinction between punishment and revenge despite the many factors, including terminological ones, which seem to upset it in the Attic orators. Yet it is precisely this observation, or to be more precise, its relevance to the Athenian forensic discourse, that will come under closer scrutiny in the discussion to follow.

#### PUNITIVE AUTHORITY

Now, distinguishing punishment from revenge on the basis of authority is nothing particularly new. The idea goes back at least as early as Thomas Hobbes and has been

<sup>10</sup> 19.258 and 24.213 (μισεῖν καὶ κολάζειν), 24.211 (ὀργίλως ἔχοντας καὶ κολάζοντας), 24.218 (ὀργισθῆναι καὶ κολάσαι); cf. Dem. 8.76 (κολάζειν καὶ μισεῖν); for a detailed analysis see Rubinstein 2004; see also Rubinstein 2016.

<sup>11</sup> δημοσίας ὀργῆς καὶ τιμωρίας δίκαιός ἐστι τυγχάνειν (21.34).

<sup>12</sup> Cf. Dem. 30.8; [42].2; [43].72; [50].57, 65; 57.65; [59].44; Aeschin. 3.203; Din. 1.85; 3.3; slights offered to the jurymen (or community) alone: Lys. 9.17; 12.84; 13.72; 14.8; Aeschin. 1.114; Lycurg. 1.68.

<sup>13</sup> οὕτω πολὺ τῶν νόμων καὶ ὑμῶν κατεφρόνησεν ([Dem.] 59.72).

<sup>14</sup> E.g., *Rh.* 1356a; 1377b.

<sup>15</sup> Allen (2000), 24; this remark, however, is quite mistaken on the point about the law, which is very frequently emphasized by the orators when they speak about punishment; e.g., Dem. 18.12, 13, 14, 123; 20.154; 21.26, 207; 22.29 (quoted below); 23.32 (quoted above), 34, 36, 41, 56, 57, 59, 69 (quoted below); 24.65, 102, 122; [59].86; Aeschin. 1.6, 36, 176; 3.8; Lycurg. 1.4 (quoted below), 8, 34, 93; Din. 2.12, 13; cf. also Lys. 1.4.



taken up by several recent philosophers and legal scholars.<sup>16</sup> Even more revealingly, those who deny its validity at the same time seek to dismantle the distinction between punishment and revenge itself.<sup>17</sup> While such endeavors may strike one as provocative or even idiosyncratic when it comes to modern theory and practice of law, one might legitimately ask, to what extent authority was indeed a defining feature of legal punishment in classical Athens. After all, the Demosthenic passage, in which the enemy's *timōria* is set apart from that of the law's, only signposts the distinction but says nothing about the distinguishing factor itself.

The idea of punitive authority, however, is formulated much more explicitly later on in the same speech. In discussing a hypothetical homicide lawsuit, Demosthenes once again deploys the same personification of the laws this time, however, firmly denying the right to punish to the prosecutor:

ἂν δὲ δόξηι τὰ δίκαι' ἐγκαλεῖν καὶ ἔληι τὸν δεδρακότα τοῦ φόνου, οὐδ' οὕτω κύριος γίγνεται τοῦ ἀλόντος, ἀλλ' ἐκείνου μὲν οἱ νόμοι κύριοι κολάσαι καὶ οἷς προστέτακται (23.69)

Even if his charges (*enkalein*) are considered just, and he convicts the perpetrator of the killing, not even then does he acquire authority (*kyrios*) over the convicted. Only the laws and those, to whom it is mandated, have the authority (*kyrioi*) over him and his punishment (*kolasai*).

Granted, the point driven home here is that the successful prosecutor cannot kill the convicted murderer with his own hands (or do whatever else he pleases with him). But the personified laws are not the best candidates for this particular job either. Their insertion into the picture, therefore, shifts it from the concrete reality of execution to the level of abstract principle. The laws do not kill, but they have the authority to punish, and this authority is emphatically denied to the prosecutor, whose role is limited to bringing charges (*enkalein*) against the accused. Demosthenes is not the only orator to voice out such a division of labor. His contemporary and political ally, Lycurgus, also takes it up in his speech with only minor modifications:

ὁ μὲν γὰρ νόμος πέφυκε προλέγειν ἃ μὴ δεῖ πράττειν, ὁ δὲ κατηγορὸς μηνύειν τοὺς ἐνόχους τοῖς ἐκ τῶν νόμων ἐπιτιμίοις καθεστῶτας, ὁ δὲ δικαστὴς κολάζειν τοὺς ὑπ' ἀμφοτέρων τούτων ἀποδείχθέντας αὐτῶι (1.4)

The law naturally forbids what is not to be done, that the prosecutor brings to attention (*mēnyein*) those who are liable to the penalties mandated by the laws, and that the judge punishes (*kolazei*) those denounced to him by both.

Unlike that of Demosthenes, this argument from the outset deals with abstract matters, that is the principles of justice administration in the democratic city. The single judge, who figuratively represents the entire body of sworn dikasts, “punishes” not in the sense

<sup>16</sup> Hobbes, *Leviathan* ch. 28; Flew (1954), 294–295; Benn (1958), 326; Hart (1959/60), 4–5; McCloskey (1962), 320, 323; Feinberg (1965), 400, 404; Honderich (2006<sup>2</sup>), 11–15; Boonin (2008), 40; Bennett (2011), 292; Kaufman (2013), 16; cf. Mackenzie (1981), 11–12.

<sup>17</sup> Zaibert (2006), 58–63; cf. Saunders (1991), 28–29, who rejects the authority criterion on the very same basis.

of actually executing penalties but as the one vested with the authority to mete them out, a point explicitly taken up by Lycurgus later, in the peroration of his speech:

ἐγὼ τοίνυν {ὕμῃν} μηνύω τὸν ἀφανίζοντα ταῦτα πάντα πρὸς ὑμᾶς τοὺς κυρίους ὄντας  
κολάσαι, ὑμέτερον δ' ἐστὶ καὶ ὑπὲρ ὑμῶν καὶ ὑπὲρ τῶν θεῶν τιμωρήσασθαι  
Λεωκράτην (1.145)

I am therefore bringing the one who destroyed all of this to your attention (*mēnyo*), as you have the authority to punish (*kyrious ontas kolasai*); it is now your job to punish (*timōrēsasthai*) Leocrates on behalf of yourselves and of the gods.

The authority to punish is by definition exclusive: it is vested in one agent precisely because it is explicitly (Demosthenes) or implicitly (Lycurgus) denied to others. And while the question of whether that one agent ought to be the laws or the judges is a point of difference, this difference is less a matter of substance and more of rhetoric. The one substantive point, however, on which both orators agree, is that it is denied to the prosecutor. Substantive, because the prosecutor is not an official but a private person (*idiōtēs*), an individual, as already hinted in the above quoted passage from Demosthenes (21.44). This applied not only to private lawsuits where the right to prosecute was restricted to the aggrieved party, but also to public ones where it was open to all enfranchised citizens of Athens.<sup>18</sup> In the latter case, he is still ‘explicitly distinguished either from the polis as the abstract ‘community’, or, more specifically, from (...) the magistrates’, as Lene Rubinstein observes.<sup>19</sup> And, as already noted, a private person, that is an individual, has no authority over another: their relationship—as long as both enjoyed full citizen status—was strictly egalitarian, and not hierarchical.

#### THE PROSECUTOR’S ROLE

The authority to punish was therefore a concept recognized in the Athenian forensic discourse. It was explicitly vested not only in the personified laws or the judges, but also in the magistrates (including the council of five hundred),<sup>20</sup> the courts,<sup>21</sup> and the Areopagus.<sup>22</sup> Yet it was firmly denied to the individual, and that also when he appeared in the capacity of a “public” (i.e., volunteer) prosecutor, which appears to be in line not only with the hierarchy of public and private offences, but also with the modern distinction between punishment and revenge, the other factors upsetting it in the ancient Athenian context notwithstanding.

Yet even this seemingly uncontroversial feature is not without its problems. As already intimated, punishment in the Athenian forensic discourse tends to have a clearly defined agent, which already sounds quite unfamiliar to the modern reader accustomed to an impersonal manner of articulating it:<sup>23</sup> instead of “X was punished,” the orators display a

<sup>18</sup> The elected prosecutors in the *apophasis* procedure (Hyp. Dem.; Din. 1, 2, 3) are the closest thing to a state attorney.

<sup>19</sup> Rubinstein (1998), 127–28, 131–39.

<sup>20</sup> Dem. 23.31, 69 (οἷς προστέτακται); [47].43; Din. 1.6, 62.

<sup>21</sup> Dem. 19.177; 24.151–52; [59].109.

<sup>22</sup> [Dem.] 59.80–81; Din. 1.6, 62.

<sup>23</sup> ‘[L]aw’s violence is hardly presented at all. It is named, when it is named in the most general, abstract and impersonal ways’ (Sarat (1993), 52); ‘[a]nytime we get too concrete and specific

marked preference for “Y punished X.”<sup>24</sup> Even more surprising, however, is the distribution of this punitive agency. Although it lies predominantly—and predictably—with the jurymen, the second actor most frequently cast in this role is none other than the prosecutor himself.<sup>25</sup> That is, precisely the one to whom the authority to punish was firmly denied in the orators’ reflections on the working of justice administration in classical Athens. The laws, the polis, and its institutions, that is the other actors explicitly vested with punitive authority, are long behind him in this respect.<sup>26</sup>

Paradoxically, the notional indifference of the punitive vocabulary may seem to offer a way out of this conundrum. As Demosthenes himself observed, there is a big difference between the *timōria* of an enemy and that of the law. Indeed, many Athenian prosecutors candidly acknowledged their personal enmity towards the defendant, in addition to which they sometimes made it clear that apart from assisting the polis (or the laws) they wanted to get back at him.<sup>27</sup> Thus, one of Demosthenes’ clients recounts an earlier lawsuit in which he acted as a co-prosecutor of Androtion:

ἦλθον ἐπ’ αὐτὸν μετ’ Εὐκτήμονος, ἡγούμενος ἀρόμττοντ’ εἰληφέναι καιρὸν τοῦ βοηθῆσαι θ’ ἅμα τῆι πόλει καὶ τιμωρίαν ὑπὲρ ὧν ἐπεπόνθειν λαβεῖν (Dem. 24.8)

Together with Euctemon, I proceeded against him, considering it a fitting opportunity to both help the polis and exact revenge (*timōrian labein*) for what I have suffered.

It may seem therefore, as Évelyne Scheid-Tissinier suggests, that as long as the agent of such *timōria* is the individual prosecutor, it might have more in common with our notion of revenge, while it denotes punishment when the agency lies with the jurymen representing the entire community.<sup>28</sup> Indeed, it is sometimes made clear that the prosecutor as an agent of *timōria* is seeking to settle his personal scores, as Lysias’ client in the case against Alcibiades the Younger:<sup>29</sup>

ἐγὼ μὲν οὖν καὶ φίλῳ ὄντι Ἀρχεστρατίδῃ βοηθῶν, καὶ Ἀλκιβιάδῃ ἐχθρὸν ὄντα ἐμαυτοῦ τιμωρούμενος, δέομαι τὰ δίκαια ψηφίσασθαι (15.12)

Thus, because I am seeking to help Archestratides, who is my friend, and to take revenge (*timōroumenos*) on Alcibiades, who is my enemy, I beseech you to give a just verdict.

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about the agency expressing condemnation, we run into trouble’ (Fletcher (2007), 235); Foucault (1977), who speaks of a ‘concealment’ and ‘anonymity’ of the power to punish in modern legal systems (e.g., (1977), 106, 176, 193, 220, 256), is seminal here.

<sup>24</sup> There are altogether 285 instances of punishment expressed without an agent against 499 which do have one; see appendix.

<sup>25</sup> Juries (*dikasts*, *Areopagites*, *ephetai*): 238 instances; prosecutor 162 instances; see appendix.

<sup>26</sup> The community (polis, ‘us’, ancestors): 47 instances; institutions (*Areopagus*, council) and magistrates: 28 instances; laws and lawgivers: 12 instances; see appendix.

<sup>27</sup> On vindictive prosecution in Athenian litigation, see Kucharski 2012; Alwine 2015; cf. Kurihara 2003 and Harris (2013), 60–98 for a different view.

<sup>28</sup> Scheid-Tissinier (2006), 103: ‘Le moyen τιμωρεῖσθαι (...) renvoie à la vengeance, lorsque le sujet potentiel est (...) la victime qui porte l’accusation (...) Il désigne plus spécifiquement la punition lorsque le sujet du verbe se trouve être l’ensemble des juges qui représentent la communauté.’

<sup>29</sup> Cf. also Antiph. 6.9; Lys. 3.39; 7.20; 10.13; 24.2; Isae. 1.7; Dem. 21.118; 24.8; [53].1, 2; [59].1.

The same method could be applied to other terms for punishment, such as *dikēn lambanein*, which in addition can also signify compensation, or other “transactions” sought—through the courts—by one private person from another. A client of Isaeus for instance articulates his claim to the inheritance of his grandfather precisely in such terms:

μετὰ δὲ ταῦτα ὁ Κορινθιακὸς πόλεμος ἐγένετο, ἐν ᾧ ἐγὼ κάκεῖνος στρατεύεσθαι ἠναγκαζόμεθα, ὥστε οὐδετέρῳ ἂν ἡμῶν δίκην ἐξεγένετο λαβεῖν (Isa. 10.20)

After that the Corinthian war broke out, in which both he and I were forced to serve in the army. As a result, it became impossible for either of us to obtain justice (*dikēn labein*).

In more general terms, therefore, it might be argued that when the agency of “punishment” lies with the prosecutor, what it really denotes are egalitarian affairs between individuals, which may take the form of either revenge, compensation, or even adjudication sought through the courts. However, there are several instances in which this approach does not work. Demosthenes’ argument about Aeschines’ failure to prosecute him in the past is a revealing example:

μηδενὸς δὲ ἀδικήματος πώποτε δημοσίου, προσθήσω δὲ μηδ’ ἰδίου, δίκην ἀξιώσαντα λαβεῖν παρ’ ἐμοῦ μήθ’ ὑπὲρ τῆς πόλεως μήθ’ ὑπὲρ αὐτοῦ (Dem. 18.279)

He never saw it fit to punish me (*dikēn labein*) for any public offense—nor any private one for that matter—neither for the sake of the city nor for his own.

Here, the phrase *dikēn lambanein* refers not only to a transaction between two private persons but also to punishment exacted for a public offence in the name of the city. And Aeschines is represented as the agent of both. Many other Athenian prosecutors, actual or potential, were also discursively cast as “punishers” of wrongs directed against the entire community and acting on its behalf. Still other prosecutors, despite Lycurgus’ (and Demosthenes’) restriction of their role in the Athenian system of justice administration, are found as agents of punishment alongside or together with the jurymen. Dinarchus’ client, for instance, makes such a claim about his successful prosecution of a certain Pistias in a case of impeachment (*eisangelia*):

καταψευσάμενον μέντοι κάμου καὶ τῆς βουλῆς ὥσπερ σὺ καὶ πονηρὸν καὶ προδότην ὄντ’ εἰσαγγείλας καὶ ἐξελέγξας ἐν πεντακοσίοις καὶ δισχιλίοις τῶν πολιτῶν ὅτι μισθῶας αὐτὸν Πυθοκλεῖ κατ’ ἐμοῦ ταῦτ’ ἔπραξεν, ἐτιμωρησάμην μετὰ τῶν τότε δικασάντων (Din. 1.52)

For the false allegations he made against me and the council, like you, and for being a traitor and a scoundrel, I have impeached him before two and half thousand citizens on the charge that he did this against me after hiring himself to Pythocles. And I have punished him together with those who then were jurymen.

Granted, there is an explicit personal motivation on the part of the prosecutor at play here. But not on the part of the jurymen. And yet both are seen as agents of the same *timōria*, on the same, equal footing, which in turn renders the question of punitive authority moot.

#### LANGUAGE AND LAW

The Athenian orators therefore appear to have been surprisingly careless when they talked of punishment. Although, as evident from Demosthenes and Lycurgus, they did recognize

punitive authority as an abstract and exclusive feature, and firmly denied it to the private person, including the volunteer prosecutor, the latter is nevertheless frequently found as the agent of penalties meted out for strictly public offences, sometimes even on par with the jurymen. There is, in other words, a glaring inconsistency between the legal theory presented by the Athenian orators and their discursive practice. In other words, between language and law.

This inconsistency sits uncomfortably with the expectations of the modern reader, which is evident from some translations of the relevant passages. A good example is a fairly recent rendering by Edward M. Harris of a passage, in which Demosthenes' client, a supporting speaker, reproaches the defendant:<sup>30</sup>

εἰ δέ σε μὴ πάντας ὅσους οἱ νόμοι διδῶσι τρόπους τιμωρούμεθα, χάριν ἡμῖν ὧν παραλείπομεν ἐκείνων ἔχε, μὴ διὰ ταῦτ' ἀξίου μηδένα δοῦναι τρόπον δίκην (22.29)

if we do not have you punished (*timōroumetha*) in all the ways that the laws allow, be grateful for the opportunities we are passing up, but do not assume that because of this you do not deserve any punishment (*dounai dikēn*) at all.

To be sure, there is nothing wrong with the translation itself: the causative 'we have you punished' is a perfectly legitimate rendering of the Greek middle. Apart from considerations of grammar (the causative middle),<sup>31</sup> it sounds much better in English than the more literal 'we punish you.' This is precisely because this way the individual's agency is further removed from the idea expressed by the verb: he is no longer the punisher himself, he only sets in motion the process that results in the punishment of the offender.

Why does distancing the individual from the process of punishing make for a better phrase? Because it sidesteps the problem posed by the lack of authority in the Greek original. Because one individual does not punish another, unless in very specific, quasi-institutional circumstances such as a teacher in a classroom or a coach of a football team; circumstances which render their mutual relationship hierarchical. And this is not only a legal stipulation, but also a linguistic criterion. It concerns not only the justification of punishment but also its very meaning, as evident from the *OED* definition of the verb "to punish":

As an act of a superior or of public authority: To cause (an offender) to suffer for an offence; to subject to judicial chastisement as retribution or requital, or as a caution against further transgression; to inflict a penalty on.

It has been rightly noted that the authority requirement is not part of the definition itself, but a preface or a preamble to it.<sup>32</sup> Indeed, other lexica, such as the Merriam-Webster or the American Heritage Dictionary do away with it. Yet the preamble must not be underestimated. In terms of cognitive linguistics it can be seen to set 'the frame or background against which the meaning of a word is defined and understood', to use the

<sup>30</sup> Cf. 'Et si nous n'usons pas, pour ta punition, de tous les moyens que nous offrent les lois...'  
(Navarre – Orsini in Budé).

<sup>31</sup> See Smyth (1956<sup>2</sup>), 392; Schwyzer (1959), 232.

<sup>32</sup> Flew (1954), 294; Kleinig (1973), 38n67.

observation of Charles J. Fillmore.<sup>33</sup> Causing an offender to suffer for an offence merits the name “punishment” only when it is measured against the yardstick of authority. The best illustration of how this criterion works in the background are the three examples produced by Robert A. Samek to deny its validity:<sup>34</sup> (1) ‘You had no right to punish my children’, (2) ‘You took punishment into your own hands’, and (3) ‘I am going to punish you though I know I have no right to do so and ought to leave the matter to the police’. They all explicitly negate the authority requirement, but at the same time are textbook examples of a presupposition (semantic and pragmatic), that is a background condition that warrants the felicity of a given utterance. What is presupposed in each of these statements is precisely an exclusive authority to punish. Without it, they would have constituted an infelicity, in the same way as saying: (1) ‘You had no right to kidnap my children’ or (2) ‘You took brushing your teeth into your own hands’. Because there is no such thing as a right to kidnap children, nor is brushing one’s teeth a prerogative of an authority usurped in a defiant act of performing oral hygiene.

This is not to say, however, that authority constitutes an all-or-nothing criterion that firmly distinguishes punishment from other cases of harming an offender. Almost seventy years ago Anthony Flew, with admirable intuition, refused to draw a ‘sharp line (...) at which we must stop using’ this term, noting that between the examples which certainly do and certainly do not merit the name “punishment” there exists instead a ‘twilight zone’ or a ‘No-Man’s-Land of vagueness’.<sup>35</sup> Kenneth J. Dover, for instance, reported the words of a vengeful husband who wanted to “punish” his wife,<sup>36</sup> which might be at home in such “No-Man’s Land,” unless one qualifies them as a downright infelicity. As Flew rightly observes, a ‘direct action by an aggrieved person with no pretensions to special authority is not properly *called* punishment, but revenge’ (my emphasis). But he also imagines a hypothetical ‘unauthorized busybody’, that is one without any vindictive agenda, ‘who takes it upon himself to punish’, as an even better example of such a borderline case.

#### PUNITIVE CATEGORIES

This “No-Man’s Land,” populated by cases where the otherwise unauthorized individual is the agent of punishment, is in the Athenian forensic discourse a particularly busy area. But there are two important twists to this analogy. First, with the actions that Flew relegates to the twilight zone at the conceptual fringes of the category “punishment,” it is the label itself that is problematic, while the agency of the individual (a busybody, an avenger) an obvious and straightforward matter (as with Dover’s vengeful husband). In the Attic orators, however, the reverse is the case. What they speak of, undoubtedly merits

<sup>33</sup> Fillmore (2006), 379 (orig. 1982); this is a general remark, which does not concern punishment specifically; Fillmore’s concept was reformulated by Lakoff into that of the Idealized Cognitive Model (1987, 67).

<sup>34</sup> Samek (1966), 221; others: Kasachkoff (1973), 374–75; Kleinig (1973), 38 (who uses Samek’s examples but does not reference him); Scheid (1980), 457; cf. also Zaibert (2006), 61 (who quotes Kleinig with approval).

<sup>35</sup> Flew (1954), 292–93; cf. also Hart (1959/60), 4, who speaks of ‘substandard cases’ of punishment.

<sup>36</sup> Dover (1991), 178n10 (which he took, too rashly in my opinion, as evidence that in modern parlance punishment is often not distinguished from revenge); cf. Cairns (2015), 655n40.

the name punishment, as it is meted out by the court and for public offences; it is the individual's agency, attached to it on the level of discourse, that is the problem: Andocides is said to have "punished" (*dikēn labein*) others for impiety, having sycophantically prosecuted them for this offence.<sup>37</sup> In other words, Flew's fringe cases are the actions of busybodies and avengers that are discursively disguised as punishment, while in the Attic orators, it is a punishment that is discursively disguised as an action of an avenger or a busybody, who usually presented himself as a public-spirited citizen.<sup>38</sup>

The second twist is that in the Athenian forensic discourse punishment is a general concept and not a specific notional category,<sup>39</sup> as it is nowadays. It is denoted by way of several terms or phrases, four of which stand out in particular:<sup>40</sup> the verb *kolazein*,<sup>41</sup> the clusters around *timōria*<sup>42</sup> and *zēmia*,<sup>43</sup> and the mirror phrases *dikēn lambanein* and *dikēn didonai*. Since they refer to the same phenomenon, they are sometimes explicitly used as synonyms. This is already apparent in the quoted passage from Demosthenes (22.29), where *timōreisthai* appears alongside *dikēn didonai*. But it is also found in a similar relationship with *kolazein* and *zēmioun*.<sup>44</sup> The latter two terms are used as synonyms as well,<sup>45</sup> and in addition, each of them is also seen as equivalent to *dikēn lambanein* or *didonai*.<sup>46</sup> Such equivalence, however, is not evidence of full synonymy, but rather of the overlapping nature of these notions. For even when they do refer to the punishment meted out for public offences—and not other things, such as revenge (*timōria*), loss (*zēmia*), or curbing (*kolazein*)—they still operate each in their own particular way.

Now the agency of the individual is one such distinguishing factor, as it is distributed among these notional categories quite unevenly. It is most prominent with *dikēn lambanein* and *timōria*, which also happen to be the most common terms denoting

<sup>37</sup> καίτοι ὁπότε οὗτος παρ' ἐτέρου ἠξίωσε δίκην ἀσεβείας λαβεῖν, ἧ που ἐτέρους γε παρὰ τούτου λαβεῖν δίκαιον καὶ εὐσεβές ἐστίν (Lys. 6.11).

<sup>38</sup> A public-spirited citizen and the busybody or the sykophant were the two rhetorical sides of the same coin, the former for the prosecutor, the latter for the defense; cf. Lycurg. 1.31; Ar. Pl. 898–913; some speakers furthermore explicitly deny vindictive motivation and represent themselves as serving the polis (Dem. 23.1–2; Lycurg. 1.5–6); on the uneasy relationship between vindictiveness and sykophancy, see Kucharski (2012).

<sup>39</sup> A concept, according to Gernet (1917), 98, 'dont l'unité est plus ou moins clairement perçue.'

<sup>40</sup> Gernet (1917), 98; Allen (2000), 68–69.

<sup>41</sup> The *nomen agentis* κολαστής is attested once (Lys. 27.3); the *nomen actionis* κόλασις is absent from what remains of Athenian forensic discourse (but see IG II<sup>2</sup> 216b.9).

<sup>42</sup> Which include the verb τιμωρεῖν/τιμωρεῖσθαι but also phrases such as τιμωρίαν λαμβάνειν, τιμωρίαν ποιεῖσθαι or τιμωρίας τυγχάνειν.

<sup>43</sup> Which include the verb ζημιῶν but also phrases such as ζημίας τυγχάνειν or ζημίας περιπίπτειν.

<sup>44</sup> ὅταν μὲν τοὺς ἀποστεροῦντας τιμωρήσθε, τοὺς πλουσίους μόνον ὠφελεῖτε, ὅταν δὲ τοὺς ὑβρίζοντας κολάζητε, ὑμῖν αὐτοῖς βοηθεῖτε (Isoc. 20.15); καὶ οὐκ ἐλέγξαντες, εἴ τι ἀδικῶ, δικαίως με βούλωνται τιμωρεῖσθαι, ἀλλὰ διαβαλόντες, καὶ εἰ μηδὲν ἀδικῶ, ζημιῶσαι καὶ ἐξελάσαι ἐκ τῆς γῆς ταύτης (Antiph. 6.7).

<sup>45</sup> ἡ βουλή ἢ ἐν Ἀρείῳ πάγωι... ἐζημιῶν τὸν Θεογένην ὅσα κυρία ἐστίν... οὐ γὰρ αὐτοκράτορες εἰσιν ὡς ἂν βούλωνται Ἀθηναίων τινὰ κολάσαι. (Dem. 59.80–81).

<sup>46</sup> τοὺς μὲν στρατηγούς (...) θανάτοι ἐζημιώσατε, ἠγούμενοι χρῆναι τῆι τῶν τεθνεώτων ἀρετῆ παρ' ἐκείνων δίκην λαβεῖν (Lys. 12.36); κολασθεὶς καὶ δοὺς ἀξίαν δίκην τοῖς ἄλλοις παράδειγμα γενήσεται μὴ τιθέναι τοιοῦτους νόμους (Dem. 24.102).

punishment in the orators. Yet the most frequent agent of *timōria* (in the sense of punishment) are still the jurymen: the individual prosecutor comes second but is not very far behind.<sup>47</sup> Only with *dikēn lambanein* is this order reversed with the individual coming before the court,<sup>48</sup> but here, in turn, most numerous are the instances of this phrase in its passive variant *dikēn didonai* with no indirect object marking the agent.<sup>49</sup> The notion *zēmia* shows a similar preeminence of its agentless usage, and whenever it does have one, it is the jurymen or other bodies that are elsewhere explicitly vested with punitive authority.<sup>50</sup> The individual as an agent of *zēmia* is very infrequent and it is not always certain if such instances carry the meaning of punishment or damages, or loss.<sup>51</sup> The verb *kolazein* is also rarely found to accommodate the individual in such a role, despite being used predominantly in an active way with the jurymen as its most common agent.<sup>52</sup>

Why was it so easy to say that the prosecutor exacted *timōria* for public offences (and in the form of court-ordained penalties), but more difficult to do the same with *kolazein*? As noted above, in the Athenian forensic discourse the idea of punishment is piggybacking on various notions, and each of them operates by its own set of presuppositions or in its own cognitive frame. The verb *kolazein*, given its extra-judicial usage (which is not amply attested, perhaps due to preservation bias), might therefore presuppose a hierarchical relationship between its agent and patient: in domestic contexts it is used to refer to disciplining slaves<sup>53</sup> (only very rarely does one exact *timōria* from them)<sup>54</sup> and, perhaps in a metaphoric way, of training animals and cultivating plants.<sup>55</sup> Such a presupposition would sit uneasily with the overarching ideology of democratic equality, which in turn would explain why the agency of *kolazein* is transferred so infrequently to the individual when it denotes the act of punishing: it might carry the implication that one citizen treats the other as he treats his slaves or even his animals. If not a downright infelicity, therefore, such usage is certainly more at home at the conceptual peripheries of this particular notion. No such relationship, however, is presupposed in the case of *timōria* (or *dikēn lambanein*): outside the legal sphere, it expresses the essentially egalitarian relationships of revenge or satisfaction. As a result, the individual is much more felicitously cast as its agent and seems comfortably placed at its conceptual center, regardless of what exactly the notion refers to. In the Athenian forensic discourse, therefore, it is not the idea of punishment

<sup>47</sup> Juries: 115 instances; prosecutor: 78 instances; see appendix.

<sup>48</sup> Prosecutor: 78 instances; juries: 51 instances; no agent: 165 instances; see appendix.

<sup>49</sup> Such as: οὐκ οἶει ἐμοὶ καὶ τούτοις <δεῖν> δοῦναι δίκην; (Lys. 12.26).

<sup>50</sup> No agent: 42 instances; juries: 13 instances; community (polis): 4 instances; law (lawgiver): 4 instances; juries: 13 instances; see appendix.

<sup>51</sup> οὐδὲν ἦττον εἰσελήλυθεν πρὸς ὑμᾶς, δῆλον ὡς ζημιώσων ἡμᾶς τῆι ἐπωβελίᾳ (Dem. 56.4); it should be noted that the ζημιώσων is the defendant who appeared in court so that the prosecutor might be liable to the penalty for frivolous litigation in private matters, known as ἐπωβελία (which was payable to the adversary and not to the polis); on ἐπωβελία see MacDowell (2008) and Wallace (2008).

<sup>52</sup> Prosecutor: 5 instances; juries: 59 instances; no agent: 36 instances; see appendix.

<sup>53</sup> Ar. *Nub.* 7; Xen. *HG* 5.3.7; *Mem.* 2.1.16, 3.13.3; *Cyr.* 1.6.33, 7.5.84; Arist. *Rh.* 1380a, 1380b; Aristox. F 30 Wehrli.

<sup>54</sup> Anax.Lampsac. *Rh.* 16.3; Theophr. F 526 FHSg.

<sup>55</sup> Animals: Xen. *Eq.* 8.13; *Oec.* 13.9; plants: Theophr. *Caus. pl.* 2.14.1, 2.14.4, 3.18.2, 5.9.11, 5.16.3; *Hist. pl.* 2.7.6 (emphasizing the metaphoric sense).



itself that presupposes a hierarchical relationship between the agent and the patient, but only some of the notions that express it. The authority to punish could be explicitly articulated, as is evident from some of the above-quoted passages (Dem. 23.31). But it was not built into the idea itself, as it is to the meaning of modern punitive vocabulary.<sup>56</sup>

#### CONCLUSION

Punitive authority was not an idea unfamiliar to the main actors of Athenian litigation. They were acutely aware of the fact that certain offences affected the entire community and not just an individual. They were also capable of conceptualizing a communal reaction to such offences as qualitatively different from that of an aggrieved individual, which in turn suggests the familiar antithesis of revenge (or compensation) on the one hand and punishment on the other. Although this strict dichotomy is upset in the Athenian forensic discourse on several counts, beginning with the well-accounted-for notional indifference, it has been argued that punitive authority alone is enough to sustain it. Indeed, on more than one occasion the orators are found to recognize the law's or the judges' exclusive right to "punish," which in Demosthenes is furthermore explicitly opposed to the individual's, or to be more precise, the enemy's "revenge." This stipulation, however, was not reflected in the discursive practice of Athenian litigation. On numerous occasions we find the prosecutor, that is precisely an individual, a private person, as the agent of "punishment" meted out for offences against the entire community, and not of personal "revenge," satisfaction, or compensation negotiated through the courts. This is because in the Athenian forensic discourse (and other discourses of classical Athens as well) "punishment" was not a unitary concept expressed by way of a single notional category with a clearly defined conceptual frame, as is the case with its modern counterpart, which always presupposes an authoritative, hierarchical relationship between the punisher and the punished. Thus, from the legal (or moral) point of view, Demosthenes may have distinguished law's "punishment" from the enemy's "revenge"; but as a notion, it remained the same *timōria* with the same set of background presuppositions at work in every context.<sup>57</sup>

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<sup>56</sup> Kaufman (2013), 16 ('built into'); cf. Scheid (1980), 457 (who argues against this criterion): 'If we consult our linguistic intuitions, it seems that criteria (iii) and (v) [i.e., authority] are somehow genuine parts of the meaning of "punishment".'

<sup>57</sup> This article stems from a talk delivered at the 51<sup>st</sup> conference of the Israeli Society for the Promotion of Classical Studies (Ra'anana; June 2023); I would like to express my gratitude to the organizers of this event, and in particular to Rachel Zelnick-Abramovitz for her kind invitation; I am also very grateful to the anonymous readers for the SCI who offered many valuable suggestions and saved me from a number of errors (all that remain are, of course, my sole responsibility); research for this paper was within the scope of the research project 'Punishment in Ancient Athens: A Cognitive Approach' funded by the Polish National Science Center (ID: 557119; agreement no.: UMO-2022/45/B/HS2/0380).

APPENDIX: AGENCY OF THE PRINCIPAL NOTIONS EXPRESSING PUNISHMENT IN THE  
ORATORS

**τιμωρία**

**Juries** (115): **1.** Antiph. 1.3; **2.** Antiph. 1.21; **3.** Antiph. 1.21; **4.** Antiph. 1.28; **5.** Antiph. 2.1.11; **6.** Antiph. 2.3.11; **7.** Antiph. 3.3.3; **8.** Antiph. 3.3.12; **9.** Antiph. 4.17; **10.** Andoc. 1.31; **11.** Andoc. 1.32; **12.** Lys. 3.43; **13.** Lys. 6.13; **14.** Lys. 6.15; **15.** Lys. 6.19; **16.** Lys. 10.30; **17.** Lys. 12.70; **18.** Lys. 12.94; **19.** Lys. 12.100; **20.** Lys. 13.1; **21.** Lys. 13.1; **22.** Lys. 13.1; **23.** Lys. 13.3; **24.** Lys. 13.48; **25.** Lys. 13.76; **26.** Lys. 13.76; **27.** Lys. 13.92; **28.** Lys. 13.93; **29.** Lys. 13.94; **30.** Lys. 13.95; **31.** Lys. 13.97; **32.** Lys. 14.12; **33.** Lys. 14.19; **34.** Lys. 14.30; **35.** Lys. 15.9; **36.** Lys. 18.19; **37.** Lys. 25.27; **38.** Lys. 25.35; **39.** **40.** Lys. 27.15 (bis); **41.** Lys. 27.16; **42.** Lys. 28.9; **43.** Lys. 28.11; **44.** Lys. 28.15; **45.** Lys. 29.6; **46.** Lys. 29.8; **47.** Lys. 29.9; **48.** Lys. 29.13; **49.** Lys. 30.6; **50.** Lys. 30.16; **51.** Lys. 30.23; **52.** **53.** Lys. 30.33 (bis); **54.** Lys. 30.35; **55.** Isoc. 20.11; **56.** Isoc. 20.13; **57.** Isoc. 20.15; **58.** Dem. 19.87; **59.** Dem. 19.276; **60.** Dem. 19.282; **61.** Dem. 19.343; **62.** Dem. 21.30; **63.** Dem. 21.75; **64.** Dem. 21.118; **65.** Dem. 21.227; **66.** Dem. 24.87; **67.** Dem. 24.131; **68.** Dem. 24.143; **69.** Dem. 24.175; **70.** Dem. 24.205; **71.** Dem. 34.19; **72.** Dem. 45.70; **73.** Dem. 45.87; **74.** Dem. 46.28; **75.** **76.** Dem. 50.64 (bis); **77.** Dem. 50.65; **78.** Dem. 58.54; **79.** Dem. 58.63; **80.** **81.** Dem. 59.74 (bis); **82.** Dem. 59.77; **83.** Dem. 59.117; **84.** Dem. 59.126; **85.** Aeschin. 1.185; **86.** Aeschin. 3.244; **87.** Aeschin. 3.253; **88.** Aeschin. 3.144; **89.** Hyp. Dem. 39; **90.** Hyp. Phil. 5; **91.** Hyp. Phil. 10; **92.** Lycurg. 1.15; **93.** Lycurg. 1.51; **94.** **95.** Lycurg. 1.53 (bis); **96.** Lycurg. 1.76; **97.** Lycurg. 1.78; **98.** **99.** Lycurg. 1.141 (bis); **100.** Lycurg. 1.146; **101.** Din. 1.4; **102.** Din. 1.15; **103.** Din. 1.22; **104.** Din. 1.23; **105.** Din. 1.57; **106.** Din. 1.64; **107.** Din. 1.98; **108.** Din. 1.109; **109.** Din. 1.113; **110.** Din. 2.5; **111.** Din. 2.14; **112.** Din. 2.15; **113.** Din. 2.20; **114.** Din. 2.21; **115.** Din. 3.14.

**prosecutor** (79): **1.** Antiph. 1.2; **2.** Antiph. 1.4; **3.** Antiph. 1.5; **4.** Antiph. 1.24; **5.** Antiph. 1.30; **6.** Antiph. 2.22; **7.** Antiph. 2.41; **8.** Antiph. 2.42; **9.** Antiph. 4.14; **10.** Antiph. 4.31; **11.** Antiph. 4.4.11; **12.** Antiph. 5.79–80; **13.** Antiph. 5.87; **14.** Antiph. 5.95; **15.** Antiph. 6.4; **16.** Antiph. 6.5; **17.** Antiph. 6.7; **18.** **19.** Antiph. 6.9 (bis); Antiph. F 3.1 Gernet; **20.** Andoc. 1.139; **21.** Lys. 3.39; **22.** Lys. 6.41; **23.** Lys. 7.17; **24.** Lys. 7.20; **25.** Lys. 10.3; **26.** **27.** Lys. 10.13 (bis); **28.** Lys. 13.1; **29.** Lys. 13.3; **30.** Lys. 13.42; **31.** **32.** Lys. 13.83 (bis); **33.** **34.** Lys. 13.84 (bis); **35.** Lys. 13.90; **36.** **37.** Lys. 13.92 (bis); **38.** Lys. 14.2; **39.** Lys. 15.12; **40.** Lys. 24.2; **41.** Lys. 25.5; **42.** Isoc. 18.39; **43.** Isoc. 20.2; **44.** Isoc. 20.6; **45.** Isae. 1.7; **46.** Isae. 3.48; **47.** Isae. 4.30; **48.** Isae. 5.30; **49.** Dem. 18.13; **50.** Dem. 18.280; **51.** **52.** Dem. 21.26 (bis); **53.** Dem. 21.28; **54.** Dem. 21.40; **55.** Dem. 21.118; **56.** Dem. 21.207; **57.** Dem. 21.226; **58.** Dem. 22.29; **59.** Dem. 23.57; **60.** Dem. 24.8; **61.** Dem. 47.70; **62.** Dem. 50.65–6; **63.** Dem. 53.1; **64.** Dem. 53.2; **65.** Dem. 53.15; **66.** Dem. 58.1; **67.** Dem. 58.52; **68.** Dem. 58.58; **69.** Dem. 59.1; **70.** Dem. 59.12; **71.** Dem. 59.15; **72.** Dem. 59.126; **73.** Aeschin. 3.224; **74.** **75.** Hyp. Eux. 39 (bis); **76.** Lycurg. 1.126; **77.** Din. 1.52; **78.** Din. 1.63.

**no agent** (42): **1.** Antiph. 5.88; **2.** Antiph. 5.93; **3.** Antiph. 6.6; **4.** Andoc. 1.29; **5.** Lys. 1.47; **6.** Lys. 27.13; **7.** Lys. 29.11; **8.** Lys. 31.24; **9.** Lys. 31.26; **10.** Isoc. 20.1; **11.** Isoc. 20.3; **12.** Isoc. 20.4; **13.** Isoc. 20.6; **14.** Isoc. 20.19; **15.** Isa. 3.47; **16.** **17.** Dem. 18.85 (bis); **18.** **19.** Dem. 18.274 (bis); **20.** Dem. 21.34; **21.** Dem. 21.45; **22.** Dem. 24.110; **23.** **24.**

Dem. 24.119 (bis); **25.** Dem. 24.122; **26.** Dem. 24.130; **27.** Dem. 58.52; **28.** Aeschin. 1.34; **29.** Aeschin. 3.221; **30.** Aeschin. 3.227; **31.** Hyp. *Phil.* 9; **32.** Hyp. *Dem.* 26; **33.** Lycurg. 1.34; **34.** Lycurg. 1.56; **35.** Lycurg. 1.67; **36.** Lycurg. 1.91; **37.** Lycurg. 1.93; **38, 39.** Lycurg. 1.134 (bis); **40.** Din. 2.3; **41.** Din. 2.11; **42.** Din. 2.22.

**individual not prosecutor (27):** **1, 2.** Antiph. 2.1.7 (bis); **3.** Antiph. 3.2.8; **4.** Antiph. 3.3.10; **5.** Antiph. 5.37; **6.** Antiph. F 3.1 Gerent; **7.** Andoc. 1.60; **8.** Isae. 1.20; **9.** Lys. 1.4; **10.** Lys. 1.30; **11.** Lys. 1.40; **12.** Lys. 1.42; **13.** Lys. 9.14; **14.** Lys. 12.88; **15.** Lys. 13.78; **16.** Lys. 13.78; **17.** Lys. 13.82; **18.** Lys. 18.10; **19.** Lys. 25.15; **20.** Dem. 21.75; **21.** Dem. 59.86; **22, 23.** Aeschin. 1.145 (bis); **24.** Aeschin. 1.149; **25.** Aeschin. 1.173; **26.** Aeschin. 1.185; **27.** Andoc. 1.60.

community (9): **1.** Andoc. 1.81; **2.** Andoc. 1.21; **3.** Andoc. 1.140; **4.** Lys. 6.11; **5.** Lys. 6.53; **6.** Lys. 25.23; **7.** Dem. 20.4; **8.** Dem. 21.142; **9.** Dem. 23.25.

ancestors (6): **1.** Lycurg. 1.71; **2.** Lycurg. 1.111; **3, 4.** Lycurg. 1.116 (bis); **5.** Lycurg. 1.120; **6.** Lycurg. 1.123.

gods (6): **1.** Antiph. 4.13; **2.** Andoc. 1.137; **3.** Lys. 6.3; **4.** Lys. 6.14; **5.** Lys. 27.31; **6.** Isoc. 18.3.

magistrate (3): **1.** Lys. 9.17; **2.** Dem. 22.55; **3.** Dem. 24.168.

nomos (3): **1.** Dem. 20.154; **2.** Dem. 23.32; **3.** Dem. 24.215.

Thirty (3): **1.** Isoc. 21.12; **2.** Lys. 12.6; **3.** Lys. 13.51.

polis (2): **1.** Lys. 14.10; **2.** Dem. 19.289; Areopagus (1): Din. 1.63; council (1): Aeschin. 1.112; crime itself (1): Antiph. 3.28.

**δίκη:** δίκην λαμβάνειν/διδόναι/(ὕπ)έχειν

no agent (160): **1.** Ant. 1.23; **2.** Antiph. 1.24; **3.** Antiph. 1.25; **4.** Antiph. 1.25; **5.** Antiph. 2.4.7; **6.** Antiph. 3.2.8; **7.** Antiph. 3.4.9; **8.** Antiph. 5.73; **9.** Antiph. 5.73 (bis); **10.** Antiph. 5.79; **11.** Antiph. 6.36; **12.** Antiph. 6.38; **13.** Antiph. 6.49; **14.** Antiph. F 3.1 Gernet; **15.** Andoc. 1.17; **16.** Andoc. 1.113; **17.** Lys. 3.1; **18.** Lys. 3.42; **19.** Lys. 6.19; **20.** Lys. 6.20; **21.** Lys. 6.20; **22.** Lys. 6.34; **23.** Lys. 6.41; **24.** Lys. 7.6; **25.** Lys. 10.3; **26.** Lys. 10.13; **27.** Lys. 10.14; **28.** Lys. 11.6; **29.** Lys. 12.35; **30.** Lys. 12.37; **31.** Lys. 12.78; **32.** Lys. 12.82; **33.** Lys. 20.6; **34.** Lys. 20.9; **35.** Lys. 20.21; **36.** Lys. 20.21 (bis); **37.** Lys. 22.10; **38.** Lys. 25.11; **39.** Lys. 25.17; **40.** Lys. 25.32; **41.** Lys. 25.35; **42.** Lys. 26.3; **43.** Lys. 26.12; **44.** Lys. 27.8; **45.** Lys. 27.9; **46.** Lys. 28.1; **47.** Lys. 30.4; **48.** Lys. 30.24; **49.** Isocr. 20.17; **50.** Isoc. 21.18; **51.** Isae. 4.29; **52.** Isae. 8.41; **53.** Isae. 8.43; **54.** Dem. 18.133; **55.** Dem. 18.153; **56.** Dem. 19.82; **57.** Dem. 19.138; **58.** Dem. 19.182; **59.** Dem. 19.215; **60.** Dem. 19.255; **61.** Dem. 19.276; **62.** Dem. 19.280; **63.** Dem. 19.299; **64.** Dem. 19.307; **65.** Dem. 19.328; **66.** Dem. 20.164; **67.** Dem. 20.164 (bis); **68.** Dem. 21.12; **69.** Dem. 21.27; **70.** Dem. 21.33; **71.** Dem. 21.35; **72.** Dem. 21.35; **73.** Dem. 21.37; **74.** Dem. 21.50; **75.** Dem. 21.57; **76.** Dem. 21.90; **77.** Dem. 21.99; **78.** Dem. 21.111; **79.** Dem. 21.123; **80.** Dem.

21.125; **81.** Dem. 21.128; **82.** Dem. 21.131; **83.** Dem. 21.138; **84.** Dem. 21.151; **85.** Dem. 21.169; **86.** Dem. 21.173; **87.** Dem. 21.177; **88.** Dem. 21.202; **89.** Dem. 21.207; **90.** Dem. 21.225; **91.** Dem. 22.7; **92.** Dem. 22.28; **93.** Dem. 22.29; **94.** Dem. 22.29; **95.** Dem. 22.29; **96.** Dem. 22.39; **97.** Dem. 22.43; **98.** Dem. 23.32; **99.** Dem. 23.41; **100.** Dem. 23.46; **101.** Dem. 23.55; **102.** Dem. 23.69; **103.** Dem. 23.78; **104.** Dem. 23.115; **105.** Dem. 23.144; **106.** Dem. 23.150; **107.** Dem. 24.81; **108.** Dem. 24.89; **109.** Dem. 24.101; **110.** Dem. 24.106; **111.** Dem. 24.107; **112.** Dem. 24.113; **113.** Dem. 24.123; **114.** Dem. 24.137; **115.** Dem. 24.154; **116.** Dem. 24.199; **117.** Dem. 24.207; **118.** Dem. 30.1; **119.** Dem. 32.6; **120.** Dem. 33.27; **121.** Dem. 34.27; **122.** Dem. 37.26; **123.** Dem. 37.37; **124.** Dem. 37.43; **125.** Dem. 40.3; **126.** Dem. 40.21; **127.** Dem. 41.13; **128.** Dem. 45.18; **129.** Dem. 45.27; **130, 131.** Dem. 45.27 (bis); **132.** Dem. 45.63; **133.** Dem. 45.88; **134.** Dem. 47.48; **135.** Dem. 51.12; **136.** Dem. 53.20; **137.** Dem. 54.17; **138.** Dem. 54.21; **139.** Dem. 54.22; **140.** Dem. 54.40; **141.** Dem. 54.42; **142.** Dem. 54.43; **143.** Dem. 59.44; **144.** Dem. 59.77; **145.** Dem. 59.117; **146.** Dem. *Peoem.* 12; **147.** Dem. *Peoem.* 20; **148.** Dem. *Peoem.* 40; **149.** Aeschin. 1.91; **150.** Aeschin. 1.192; **151.** Aeschin. 2.127; **152.** Aeschin. 3.147; **153.** Aeschin. 3.227; **154.** Aeschin. 3.230; **155.** Aeschin. 3.246; **156.** Hyp. *Eux.* 39; **157.** Lycurg. 1.91; **158.** Din. 1.10; **159.** Din. 1.10; **160.** Din. 1.47; **161.** Din. 1.49; **162.** Din. 1.65; **163.** Din. 1.103; **164.** Din. 1.112; **165.** Din. 2.22.

prosecutor (76): **1.** Antiph. 6.9; **2.** Lys. 3.9; **3.** Lys. 4.20; **4.** Lys. 6.12; **5.** Lys. 6.12; **6.** Lys. 6.24; **7.** Lys. 7.16; **8.** Lys. 10.22; **9.** Lys. 11.7; **10.** Lys. 12.26; **11.** Lys. 12.37; **12.** Lys. 12.84; **13.** Lys. 23.5; **14.** Lys. 23.12; **15.** Isoc. 16.2; **16, 17.** Isoc. 16.49 (bis); **18.** Isoc. 17.48; **19.** Isoc. 18.35; **20.** Isoc. 20.6; **21.** Isoc. 21.15; **22.** Isae. 10.2; **23.** Isae. 10.20; **24.** Isae. 11.28; **25.** Dem. 18.124; **26.** Dem. 18.279; **27.** Dem. 19.284; **28.** Dem. 20.66; **29.** Dem. 21.20; **30.** Dem. 21.37; **31.** Dem. 21.26; **32.** Dem. 21.81; **33.** Dem. 21.88; **34.** Dem. 21.92; **35.** Dem. 21.97; **36.** Dem. 21.141; **37.** Dem. 21.189; **38.** Dem. 21.207; **39.** Dem. 21.219; **40.** Dem. 21.220; **41.** Dem. 22.1; **42.** Dem. 22.23; **43.** Dem. 22.25; **44.** Dem. 22.26; **45.** Dem. 22.26; **46.** Dem. 22.53; **47.** Dem. 22.55; **48.** Dem. 23.84; **49.** Dem. 23.120; **50.** Dem. 24.165; **51.** Dem. 27.18; **52.** Dem. 30.6; **53.** Dem. 32.29; **54.** Dem. 33.22; **55.** Dem. 35.46; **56.** Dem. 36.22; **57.** Dem. 36.54; **58.** Dem. 37.8; **59.** Dem. 37.37; **60.** Dem. 37.57; **61.** Dem. 39.35; **62.** Dem. 40.33; **63.** Dem. 40.55; **64.** Dem. 41.13; **65.** Dem. 44.57; **66.** Dem. 45.1; **67.** Dem. 45.67; **68.** Dem. 45.86; **69.** Dem. 46.9; **70.** Dem. 47.1; **71.** Dem. 53.20; **72.** Dem. 54.16; **73.** Dem. 54.24; **74.** Dem. 55.19; **75.** Dem. 57.3; **76.** Dem. 59.12; **77.** Dem. 59.86; **78.** Aeschin. 1.161.

juries (51): **1.** Antiph. 4.1.5; **2.** Antiph. 6.36; **3.** Andoc. 1.7; **4.** Andoc. 1.24; **5.** Lys. 6.34; **6.** Lys. 7.7; **7.** Lys. 12.26; **8.** Lys. 12.29; **9.** Lys. 12.36; **10.** Lys. 12.60; **11.** Lys. 12.79; **12.** Lys. 12.82; **13.** Lys. 12.84; **14.** Lys. 12.100; **15.** Lys. 14.20; **16.** Lys. 15.6; **17.** Lys. 22.16; **18.** Lys. 22.18; **19.** Lys. 22.21; **20.** Lys. 27.5; **21.** Lys. 27.6; **22.** Lys. 27.7; **23.** Lys. 27.16; **24.** Lys. 28.9; **25.** Lys. 28.15; **26.** Lys. 28.17; **27.** Lys. 28.17; **28.** Lys. 30.6; **29.** Lys. 30.8; **30.** Lys. 30.23; **31.** Lys. 30.24; **32.** Lys. 30.30; **33.** Lys. 30.32; **34.** Lys. 30.33; **35.** Isoc. 16.44; **36.** Isoc. 20.7; **37.** Dem. 19.8; **38.** Dem. 19.37; **39.** Dem. 19.182; **40.** Dem. 19.284; **41.** Dem. 19.313; **42.** Dem. 21.12; **43.** Dem. 22.68; **44.** Dem. 23.204–5; **45.** Dem. 45.20; **46.** Dem. 45.86; **47.** Dem. 58.56; **48.** Dem. *Peoem.* 12; **49.** Dem. *Peoem.* 20; **50.** Aeschin. 1.179; **51.** Lycurg. 1.126.

polis (8): **1.** Antiph. 6.10; **2.** Lys. 14.10; **3.** Isoc. 18.22; **4.** Dem. 18.12; **5.** Dem. 19.289; **6.** Dem. 24.14; **7.** Dem. 24.125; **8.** Aeschin. 3.53.

community (4): **1.** Lys. 6.11; **2.** Lys. 12.82; **3.** Isoc. 16.7; **4.** Dem. 21.127.

individual not prosecutor (3): **1.** Lys. 1.29; **2.** Lys. 1.34; **3.** Lys. 1.35.

gods (2): **1.** Antiph. 4.2.7; **2.** Lys. 6.11.

### **κολάζειν**

juries (59): **1.** hereafter Antiph. 4.1.7; **2.** Antiph. 4.4.10; **3.** Antiph. 5.76; **4.** Antiph. 5.94; **5.** Lys. 6.13; **6.** Lys. 6.42; **7.** Lys. 6.43; **8.** Lys. 12.36; **9.** Lys. 14.12; **10.** Lys. 22.20; **11.** Lys. 27.5; **12.** Lys. 28.3; **13.** Lys. 30.6; **14.** Lys. 30.24; **15.** Isoc. 18.36; **16.** Isoc. 20.1; **17.** Isoc. 20.15; **18.** Dem. 19.37; **19.** Dem. 19.177; **20, 21.** Dem. 19.267 (bis); **22.** Dem. 19.301; **23.** Dem. 21.27; **24.** Dem. 21.30; **25.** Dem. 21.176; **26.** Dem. 21.218; **27.** Dem. 22.4; **28.** Dem. 22.39; **29.** Dem. 23.24–5; **30.** Dem. 24.175; **31.** Dem. 24.211; **32.** Dem. 24.213; **33.** Dem. 24.218; **34.** Dem. 35.56; **35.** Dem. 45.67; **36.** Dem. 51.10; **37.** Dem. 54.43; **38.** Dem. 59.74; **39.** Dem. 59.82; **40.** Dem. 59.109; **41.** Dem. 59.116; **42.** Dem. 59.117; **43.** Aeschin. 1.36; **44.** Aeschin. 1.118; **45.** Aeschin. 1.176; **46.** Aeschin. 3.8; **47.** Hyp. Dem. 5; **48.** Hyp. Dem. 38; **49.** Hyp. Athen. 36; **50.** Lycurg. 1.4; **51.** Lycurg. 1.9; **52.** Lycurg. 1.10; **53.** Lycurg. 1.51; **54.** Lycurg. 1.74; **55.** Lycurg. 1.82; **56.** Lycurg. 1.97; **57.** Lycurg. 1.146; **58.** Din. 1.27; **59.** Din. 3.11.

no agent (36): **1.** Antiph. 3.3.7; **2, 3, 4.** Antiph. 3.4.8 (ter); **5.** Antiph. 4.1.6; **6.** Lys. 6.44; **7.** Isoc. 18.6; **8.** Isoc. 18.47; **9.** Isoc. 20.14; **10.** Isae. F 13.6.1 Roussel; **11.** Dem. 19.258; **12.** Dem. 19.272; **13.** Dem. 19.280; **14.** Dem. 20.24; **15.** Dem. 20.139; **16, 17.** Dem. 21.37 (bis); **18.** Dem. 21.70; **19.** Dem. 21.218; **20.** Dem. 23.34; **21.** Dem. 23.56; **22.** Dem. 23.144; **23.** Dem. 23.168; **24.** Dem. 23.219; **25.** Dem. 24.14; **26.** Dem. 24.65; **27.** Dem. 24.101; **28.** Dem. 23.116; **29.** Dem. 24.167; **30.** Dem. 24.204; **31.** Dem. 24.210; **32.** Dem. 24.218; **33.** Dem. 45.63; **34.** Hyp. Dem. 25; **35.** Din. 2.3; **36.** Lycurg. 1.67.

ancestors (8): **1.** Antiph. 3.2; **2.** Dem. 23.204; **3.** Hyp. F 55 Jensen; **4.** Lycurg. 1.71; **5.** Lycurg. 1.111; **6.** Lycurg. 1.119; **7.** Lycurg. 1.121; **8.** Lycurg. 1.123.

community (8): **1.** Andoc. 1.21; **2.** Dem. 19.259; **3.** Dem. 19.265; **4.** Dem. 19.299; **5.** Dem. 23.25; **6.** Dem. 24.203; **7.** Aeschin. 1.6; **8.** Lycurg. 1.93.

prosecutor (5): **1.** Andoc. 1.136; **2.** Lys. 12.47; **3.** Dem. 20.150; **4.** Dem. 58.64; **5.** Hyp. Dem. 21–2.

Areopagus (5): **1.** Dem. 23.25; **2.** Dem. 59.80–81; **3.** Aeschin. 3.20; **4.** Din. 1.62.

lawgiver (3): **1.** Dem. 22.30; **2.** Dem. 23.81; **3.** Lycurg. 1.65.

council (3): **1.** Lys. 31.30; **2.** Dem. 51.910; **3.** Aeschin. 1.111.

god (3): **1.** Lys. 7.13; **2.** Dem. 19.71; **3.** Aeschin. 1.190.

law (2): **1.** Antiph. 3.4.8; **2.** Dem. 23.69; polis (1): Dem. 24.14; trierarch (1): Dem. 51.11; Thirty: Isoc. 18.17; uncertain: Isae. F 13.5.1 Roussel.

### ζημία

no agent (42): **1.** Antiph. 2.4.7; **2.** Antiph. 3.3.9; **3.** Andoc. 1.72; **4.** Lys. 6.15; **5.** Lys. 7.5; **6, 7.** Lys. 9.9 (bis); **8.** Lys. 9.11; **9.** Lys. 9.12; **10.** Lys. 9.13; **11.** Lys. 13.91; **12.** Lys. 16.7; **13.** Lys. 31.26; **14, 15.** Isoc. 16.11 (bis) **16.** Isoc. 17.21; **17.** Isoc. 18.3; **18.** Isoc. 18.37; **19.** Isae. 1.39; **20.** Isae. 4.11; **21.** Dem. 19.276; **22.** Dem. 19.287; **23.** Dem. 20.135; **24.** Dem. 21.181; **25.** Dem. 23.80; **26.** Dem. 24.103; **27.** Dem. 24.208; **28.** Dem. 32.18; **29.** Dem. 37.41; **30.** Dem. 42.3; **31.** Dem. 59.53; **32.** Aeschin. 1.12; **33.** Aeschin. 1.88; **34.** Aeschin. 1.91; **35.** Aeschin. 1.113; **36.** Aeschin. 1.174; **37.** Aeschin. 3.131; **38.** Aeschin. 1.184; **39.** Aeschin. 3.224; **40.** Lycurg. 1.130; **41.** Din. 1.60; **42.** Din. 3.16.

juries (13): **1.** Lys. 12.36; **2.** Lys. 18.14; **3.** Lys. F 178 Carey; **4.** Dem. 21.182; **5.** Dem. 23.167; **6.** 23.245; **7.** Dem. 34.50; **8.** Aeschin. 3.232; **9.** Din. 1.23; **10.** Din. 3.5; **11.** Lycurg. 1.45; **12.** Lycurg. 1.117; **13.** Lycurg. F 31 Conomis.

Areopagus (6): **1.** Lys. 7.26; **2.** Lys. 7.29; **3.** Dem. 59.80–81; **4.** Aeschin. 3.252; **5.** Din. 1.6; **6.** Din. 1.56.

magistrate (6): **1.** Lys. 9.6; **2.** Lys. 9.13; **3.** Lys. 9.16; **4.** Lys. 20.14; **5.** Lys. 22.2; **6.** Dem. 23.31; **7.** Din. 2.20.

individual (also prosecutor) (3): **1.** Antiph. 6.7; **2.** Isoc. 18.16; **3.** Dem. 56.4.

lawgiver (2): **1.** Lys. 10.30; **2.** Lycurg. 1.65; law (2): **1.** Lys. 1.48; **2.** Dem. 21.43; polis (2): **1.** Antiph. 5.47; **2.** Dem. 58.20; community (2): **1.** Dem. 21.50; **2.** Lycurg. F 68 Conomis; council (1): Dem. 47.43.

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