

*Phonos* as a Term of Athenian Law: "Homicide" or "Killing," Not "Murder/Manslaughter"  
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This paper argues that *phonos*, when used as the name of an offense under Athenian law, should be translated as "homicide" or "killing," not as "murder" or "manslaughter." With regard to the intent of the killer, Athenian law distinguished only between intentional homicide (*hekousios phonos* or *phonos ek pronoias*) and unintentional homicide (*akousios phonos*); these categories do not correspond to the common-law categories of murder and manslaughter either in their original significance or in their present definitions.

"Murder" (Old English and Old Norse *morð*, Medieval Latin *murdrum*) originally signified a homicide that the killer kept secret; if the killer took credit for the deed, the killing was called "(simple) homicide" (Medieval Latin [*simplex*] *homicidium*) in England and *víg* (Old Norse, commonly translated "manslaughter") in Iceland (e.g., F. Pollock and F. W. Maitland, *History of English Law*, ed. 2 [1898] 2.458 n. 1, 486 with n. 3; *Grágás* K §88; *Hrafnkels saga Freysgoða* 7). Murder was considered the more serious offense, owing to the killer's act of concealment after the fact, not to the killer's state of mind before and/or during the act of killing. In the present-day common law, the distinction does depend on the killer's state of mind: the element that normally distinguishes murder from manslaughter is "malice aforethought" (e.g., California Penal Code §187), which is a more restrictive term than bare intent (see, e.g., *Black's Law Dictionary*, ed. 7, s.v. malice aforethought).

In Athenian law, by contrast, the terms *hekousios/hekôn/ek pronoias* ("intentional[ly]") and *akousios/akôn/mê ek pronoias* ("unintentional[ly]") signify merely the presence or absence of intent to harm at the time an act is committed (W. T. Loomis, *JHS* 92 [1972] 86-95; D. D. Phillips, *JHS* 107 [2007] 74-105). Athenian homicide law thus did not distinguish between killings committed after significant reflection (which would qualify as common-law murder; cf. the accusations in Antiphon 1) and killings committed intentionally on the spur of the moment (which in many cases would be classified as common-law voluntary manslaughter; cf. Antiphon 4, Demosthenes 21.71-75, and the argument concerning the intent of the lawgiver at Demosthenes 54.17-19). Fundamentally, moreover, the Athenian categories of intentional and unintentional *phonos* militate against the translation of *phonos* as "murder": while it is possible under the common law for an unintended wrongful death to be classified as murder (under the felony-murder rule), "unintentional murder" remains a *prima facie* contradiction in terms. The best solution, and that most faithful to the Greek, which qualifies *phonos* by an adjective or prepositional phrase in order to express the level of intent involved, is to translate *phonos* as "homicide" or "killing."