

Jurors (dikastai) in Athenian Judiciary Binding Curses

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Binding curses (defxiones) are direct and intensely personal texts that were widely used by individuals of all walks of life in the Greco-Roman world. Athens has yielded a significant number of binding curses dating to the classical period, especially the fourth century BC. Despite their explicit references to the legal system and other aspects of social life, until very recently classical Athenian binding curses have been studied almost exclusively by scholars of ancient magic while at the same time they had been largely neglected by historians of classical Athens.¹ Nevertheless the very nature of these texts, i.e. magical spells aimed at hampering one's opponents and securing certain advantages for the agent of the spell, provides invaluable glimpses on how Athenians perceived various facets of daily life, including legal disputes, professional antagonisms and love affairs. The views and attitudes afforded by the curse tablets are often at variance with views aired in drama, forensic oratory and other genres of publicly performed discourse. This contrast between the content of binding spells and public discourses should alert us to the possibility that at times binding curses articulate more candid, and hence more authentic, views and emotions. Due to the deposition of magical spells in secret, attitudes of agents of curses towards their adversaries and civic institutions were presented in a manner that, even though mediated by magical formulae and other rituals, it was nevertheless largely unadulterated from the need to conform to publicly endorsed civic standards of morality and behavior towards one's fellow citizens and the legal apparatus of the Athenian democracy.

The purpose of this paper is to dissect views on the role of jurors in disputes and formal litigation as revealed in judiciary binding curses from classical Athens. It is argued that the way agents of curses present the relationship between litigants and jurors (*dikastai*) in legal binding curses departs, at times sharply, from the way the same groups

¹ Recent exceptions include Eidinow 2007 and Riess 2012.

are depicted in Athenian forensic oratory. This state of affairs has implications for our assessment of the interaction of Athenians with their legal system, implications that are briefly explored at the end of the paper.

A significant number of extant Athenian binding curses can be considered judiciary or potentially judiciary, i.e. they either explicitly refer to some aspect of formal legal proceedings or otherwise refer to disputes that could potentially end up in an Athenian court or arbitrator. Overall, these texts provide a number of insights on the participants of legal dramas as well as on formal aspects of litigation. Agents of magical spells do not normally name themselves in curse tablets for fear that they might be accidentally cursed by their own spell. But we can still learn a lot about the dynamics of litigation in classical Athens through a careful analysis of the names, social affiliations and sometimes professions of the targets. Moreover, at times legal binding curses provide clues regarding the perception by litigants of other protagonists of trials, including the all-important in the Athenian popular courts jurors.

So far there are three references to jurors (*dikastai*) in extant Athenian legal binding curses. In what follows I will initially discuss the role and function of *dikastai* in classical Athens, especially in connection with their identity, their method of allocation as well as attested attempts of jury-tampering. I will then proceed to a thorough analysis of Athenian binding curses referring to *dikastai* followed by some observations on the interaction between litigants and jurors in classical Athens.

Dikastai in Classical Athens.

The discussion of whether it would have been expedient and feasible for an Athenian litigant to include a reference to jurors in a curse tablet about future events hinges largely, but not exclusively, on the extent to which the identities of jurors were known to litigants. We must therefore explore this issue before proceeding further with the examination of references to *dikastai* in legal binding curses. Since the overwhelming majority of Athenian judiciary curses date from the fourth century, for our purposes any discussion of the identity and method of allotment of jurors can focus on the period in question. It is agreed by most scholars that starting in the late fifth century BC, and

perhaps as early as c. 409 BC, groups of jurors were allotted to specific courts early in the morning on the day of the trial.² A few decades later, perhaps as early as 378/7 BC, Athenians began to allot individual jurors to courts on a daily basis.³ The complicated and punctilious allotment procedure is described in detail in *Ath.Pol.* 63-5 and was no doubt implemented with an eye towards the incorruptibility of the courts. It is true that at the very least the allocation procedure guaranteed that litigants could not possibly know in advance the identities of the jurors who would hear their cases.

This principle was somewhat compromised by some weaknesses in the system, e.g. the fact that the pool of potential jurors (6,000 for the fifth century, and possibly around the same number in the fourth) was selected for an entire calendar year. Moreover, even though there was a requirement of tribal representation, at times jurors from the demes of litigants or from demes around Athens were possibly overrepresented. Hence a litigant might expect that potential jurors from the demes in question might have a highest chance of being allocated to his trial. Such limitations did not fundamentally undermine the integrity of the system. However, they might help explain the occurrence of jury-bribery accusations in the fourth century as well as the tendency of some agents of legal curses to refer or even target potential *dikastai* in their curse tablets.

It is worth reviewing at this point some prominent instances of attempted or alleged jury-bribery in late fifth and fourth-century Athens. In a notorious case that possibly contributed to the switch from annual to daily allocation of juries to a particular court, Anytus was reportedly acquitted in 409 BC from a charge of treason after bribing the jury.⁴ Furthermore, in a speech delivered in 388 BC (Lys. 29, 12), the prosecutor claims that the defendant Philocrates and his associate Ergocles, two men accused of embezzlement, went around town bragging that they had bribed over 2,100 potential jurors.⁵ Even as late as 345 BC there were accusations against men who allegedly attempted to bribe members of the popular assembly and the courts.⁶ Even though the accuracy of these reports could be doubted on the grounds of rhetorical exaggeration they

² MacDowell 1978, 35-40; Boegehold 1984; Boegehold et al. 1995, 22.

³ *Ath.Pol.* 63-5. See MacDowell 1978, 35-40.

⁴ *Ath.Pol.* 27.5.

⁵ For a discussion of this passage see Roy 1993.

⁶ Aeschin. 1.86. Cf. Isoc. 18.11 (late fifth century BC) where a friend of the plaintiff is denounced as a corrupter of the courts.

cannot be altogether dismissed, especially in view of the existence of a public procedure against jury tampering, the *graphē dekasmou*, in fourth-century Athens.⁷

Nevertheless, it must also be conceded that the establishment of the daily allocation of jurors in the early fourth century BC in conjunction with the large number of jurors assigned to each court⁸ and the fact that Athenian jurors voted secretly, must have presented insurmountable practical difficulties for most litigants and jurors prone to venality. To the extent that there is any truth in the reports of alleged jury-bribery in the Athenian orators, they probably involved high-profile trials where litigants sensed an ambivalent public sentiment regarding their case. In such instances it is plausible that some litigants felt that they could have a go in swaying, by bribery or other means, part of the jury in the hope that that could be sufficient in swinging the vote to their favor. Attested attempts during the 340s and 330s to tamper with juries in the short interval following the lottery allocation and before the beginning of the trial should be understood in the same spirit.⁹ Overall, it appears that during the fourth century, especially after the establishment of the procedure of random allocation of individual jurors to specific courts on the morning of the trial, it would have made little sense for litigants to even endeavor large-scale jury bribery.

Dikastai in Athenian Curse Tablets.

We can now turn to the Athenian curse tablets that target or refer to *dikastai*. *DTA* 67 is a fourth-century judicial curse which targets at least eleven individuals, including two women. A fragmentary part of the tablet contains a reference to καὶ τῶν δικα[στῶν (l. 11), immediately following a *similia similibus* formula in which it is requested that just as the lead tablet and the retrograde text “are cold and written backwards (*eparistera*)” so the words of a certain Krates should be cold and nonsensical (ll. 8-10).¹⁰ Furthermore *DTA* 65, fourth-century curse against Kallias and all those who

⁷ Reservations regarding Lys. 29, 12 see Todd 2000, 295. For the Athenian law against jury-bribery see [D.] 46.26 and the discussion in MacDowell 1983, 63-39 and Conover 2010, 282-5. For other aspects of bribery in classical Athens see Hashiba 2006.

⁸ See [Xen.] *Ath. Pol.* 3.7 where the author admits that courts with fewer jurors are easier to bribe.

⁹ D. 19.1 and perhaps Aeschin. 3.1.

¹⁰ See Graf 1997, 132; Eidinow 2007, 362-3.

might assist him in court, includes a reference to Καλλίο[υ] μάρτυρες ἢ δικα[σταί]?. It is very likely that the Kallias in question along with Hipponikos targeted in l. 3 belong to the famous Kallias-Hipponikos clan, prominent in Athenian public life since the sixth century BC.¹¹

The collocation “witnesses or jurors” in *DTA* 65 is unique among Athenian curse tablets. If Wünsch’s published transcription of the text is broadly correct it would appear that there is no room for more than 3 or 4 letters after δικα in line 4. Hence the restoration δικα[σταί] seems likely, but the publication of a good quality drawing will assist in settling this point.

It has been argued, on the basis of the restored readings of *dikastai* in *DTA* 65 and 67 that the paucity, or even the complete absence of them if we doubt Wünsch’s restorations, of references to jurors in Athenian judiciary curse tablets suggests that the tablets in question were produced before the end of formal legal proceedings.¹² That this is indeed the case for most Athenian legal *defixiones* can be substantiated through temporal references provided in the tablets themselves.¹³ However, the fact that most legal binding curses seem to have been produced before the conclusion of the formal litigation stage of a dispute can hardly be sufficient reason to doubt the restoration of references to Athenian jurors or account for their scarcity.

To return to the references to jurors in judicial *defixiones*, a recently published fourth-century legal binding curse from Athens (Jordan 2008 = Jordan 2000, no. 14 = *SEG* 55 324) sheds further light on litigants’ attempts to influence jurors through binding curses. It invokes the god Palaimon and binds Aristophanes, ostensibly the main adversary, and five other individuals, presumably his supporters in the upcoming trial. The agent of the curse requests from Palaimon to make his adversaries appear to the jurors (*dikastai*) to say unjust things and to render whatever the witnesses do useless.¹⁴ We can plausibly conjecture that the fragmentary reference to the *dikastai* in *DTA* 67 which, as we have already pointed out, immediately follows a *similia similibus* formula, was written in the same spirit as the reference to the *dikastai* in the curse against

¹¹ Wilhelm 1904, 119; Davies 1971, p. 269.

¹² Ottone 1992; Martin 2010, 47.

¹³ See e.g. *DTA* 94; Jordan 1985, no. 42; 49. Costabile 2001, 158, col. II, 7-9.

¹⁴ Ll. 7-9: καὶ δικαστᾶĩ<ς> ἄδικα δοκοῖεν λέγειν, καὶ μάρτυσιν ἄτε πρᾶτο[υ]σιν ἄχ<ρ>εῖα γένε. See also the discussion in Versnel 2010, 311-12.

Aristophanes: the author of *DTA* 67 quite possibly elaborates on the request in ll. 9-10 that Kallias' words should be cold and nonsensical by requesting that that should be especially so in front of the jurors (l. 11).

Even if one accepts this reconstruction for *DTA* 67, we are still left with a conundrum regarding the disjunctive conjunction Καλλίο[υ] μάρτυρες ἢ δικασταὶ in *DTA* 65, l. 4. The apparent reference to the “witnesses or jurors of Kallias” has been recently interpreted as an insinuation of a partisan jury.¹⁵ In this particular case the disjunctive conjunction seems to be inclusive, i.e. the agent of the curse implies that some witnesses *and* jurors will favor Kallias. It is entirely legitimate to consider the reference to the *dikastai* in *DTA* 65, l.4 as a tacit admission on the part of the curser that jurors would most likely side with Kallias on the strength of the latter's case. Alternatively, the agent of the curse might imply that Kallias had tampered with the jury. Besides attempted bribery, a course of action that as we have already pointed out presented several practical difficulties, the agent of the curse could have envisaged a number of other options in Kallias' attempt to win over and influence jurors.

For instance, it is well documented that while in court litigants often accuse their opponents of trying to manipulate and win over the jury through sophistry, rhetorical tricks¹⁶ and false promises.¹⁷ Speakers in Athenian forensic orations naturally denounce such practices themselves, but very often this righteous attitude was nothing more than another rhetorical strategy designed to win over the sympathy of the jury. Moreover, while in court it was customary for Athenian litigants to attempt to elicit the jury's pity in their favor and channel the jurors' anger towards the punishment of their opponent.¹⁸ Lastly, it was certainly the case that Athenian jurors were subjected to peer-pressure and often harassment by trial audiences and bystanders during and after the completion of judicial hearings.¹⁹ Magic, in the form of the three curse tablets under consideration

¹⁵ Eidinow 2007, 175-6.

¹⁶ Lys. 12.38; Aeschin. 1.175-6; 3.168; D. 35.41; 40.53-4. See in general Hesk 2000.

¹⁷ D. 20.100.

¹⁸ Allen 2003.

¹⁹ Peer-pressure by audiences during trials: Din. 1.30, 66 and 2.19 remind the jury of the judgmental surveillance of bystanders. Assessment by onlookers after the trial: Dem. 25.98. For trial bystanders see Lanni 1997.

(*DTA* 65, *DTA* 67 and *SEG* 55 324) should be added to the body of evidence elucidating the dynamics of the litigants-jurors relationship in classical Athens.²⁰

The extent to which all these practices influenced jurors is open to discussion. In addition to undoubtedly genuine beliefs in the restraining and often destructive powers of magical spells, binding curses were also effective through hearsay and the power of suggestion. In other words, even though the enactment of a binding curse involved surreptitious rituals, to a certain extent it was to the advantage of the agent of a magical curse to make its existence known and hence generate feelings of frustration and uncertainty to his opponents. In this context, the agents of *SEG* 55 324 and *DTA* 67, if our tentative interpretation of the latter is accepted, attempt to manipulate the jurors' rational and emotional faculties and hence influence the jurors' perception of the trial and litigants. Conceptually related are the attempts by some litigants in the ancient world who, instead of attempting to frustrate the chances of success of their adversaries, they seek divine help in victory charms in order to achieve a favorable reception for themselves in court by judges, officials and audiences.²¹

Regarding the reference to the *dikastai* in *DTA* 65, one needs to consider that agents of legal curses often target directly (e.g. by binding their tongues and minds) or indirectly (e.g. by attempting to influence the way their actions were perceived by jurors) particular individuals who were known or were expected to play an active part in a dispute. Yet often legal binding curses adopt a more generic tone, as if the authors of the curses were uncertain about the extent of support their opponents were expected to receive. In these cases they curse in a comprehensive manner all individuals who could potentially favor or side with their adversary. Examples of this type of spell are *DTA* 39 in which, following a list of named targets, the agent of the curse aims at "all those who are their friends and support them in court"²² as well as *DTA* 66 where, in addition to a curse against a certain Euaratos and his supporters, the reverse side of the tablet contains a spell against "anyone else who is engaging in the hostile acts of these men against

²⁰ In a fictitious forensic oration by Antiphon (4.2.8) the speaker threatens to turn the wrath of avenging demons to the jurors, if the latter condemn him unjustly.

²¹ See Kotansky 1991, a late Roman victory charm from Arabia in which the author requests that he might win any trial justifiably or unjustifiably "before any judge, before a magister and before all who observe him and who hear him and his words" (ll. 17-21).

²² Ll. 20-22: καὶ τοὺς τούτων συνδίκου(ς) πάντας καὶ φίλους.

me”.²³ In light of these generic references to potential supporters of one’s adversaries, it is perhaps apposite to interpret Καλλίο[υ] μάρτυρες ἢ δικασταὶ in *DTA* 65 in the same spirit. We have no compelling reason to believe that the author of *DTA* 65 anticipated a corrupt and partisan jury, but he might have had reasons to believe that Kallias’ case will be received favorably in court. Hence he directs his frustration towards the jurors and he requests that they, similar to all other targets of the curse, become mindless (l. 8).

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In the Athenian courtrooms litigants acknowledged the centrality of jurors in deciding the outcome of a trial and they addressed them accordingly. According to extant forensic orations while in court Athenian litigants presented jurors as a representative sample of Athenian popular wisdom, collective memory and public opinion. Juries are viewed as upholding egalitarian principles and the rule of law while promoting the interests of the Athenian *demos*. Yet very often forensic speeches allude to the possibility that jurors might be misled in their judgment by malicious and manipulative litigants who, acting out of sheer self-interest, are at odds and at times openly subversive to the principles that the jurors and the Athenian *demos* at large hold dear.

Athenian legal binding curses form a sounding board against which to evaluate claims to justice, the pursuit of the rule of law and attitudes towards jurors articulated by litigants in extant forensic orations. The professed primacy of justice over expediency as well as the attitudes of expressed trust and concealed suspicion towards juries that emerge from forensic orations are largely challenged by legal binding curses. The frustration, skepticism and even open hostility towards jurors and other court officials articulated in legal curse tablets are indicative of notions of dispute-resolution and use of the legal system that go beyond the conventional picture of adjudication depicted in Athenian forensic oratory. Legal spells suggest a much wider, inclusive and conceptually malleable perception of “law” and “litigation” on the part of Athenians, a perception, driven primarily by utility and expediency, that extended far beyond the strict confines of

²³ καὶ ἐ(ῖ) τις ἐναντί(α) ἐ(ῖ) τὰ τούτων ἐσ(τ)ί ἄλλος πράττ<ι>ει ἐμοί. See also *DTA* 103a where a man targets his adversaries’ “associates in court and any other friend of theirs”.

formal legal proceedings and the courts. Hence individuals with limited legal standing, social networking practices and acts of magic appear to have, in the mind of the agents of binding curses, equal and at times greater clout in deciding the outcome of a dispute than statutory rules and court proceedings. In this context, expediency and mistrust towards civic institutions often overrides the desire, professed by many litigants in court, to reach a fair resolution to disputes. All the above strongly suggest that in addition to illuminating Athenian perceptions of facets of litigation, including the role of jurors, the social background of litigants and the involvement of subaltern groups in the legal process, binding curses open up intriguing interpretative possibilities regarding the legal system of classical Athens.

ABBREVIATIONS

DTA: Wünsch, R. 1897, *Defixionum Tabellae Atticae* (= IG III.3 Appendix), Berlin.

SEG = *Supplementum Epigraphicum Graecum*, Amsterdam 1923-present.

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