

How Often Did the Athenian *Dikasteria* Meet? A Reconsideration

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IN 1979, Mogens H. Hansen proposed in an influential article in *GRBS* that the Athenian *dikasteria* in the fourth century met between 150 and 200 days a year.¹ Recently, Domingo Avilés and David C. Mirhady have argued that there were probably many fewer court days. Reasoning that the system described in the Aristotelian *Constitution of the Athenians* presupposes as many as ten trials occurring in a single day, they conclude that 1500–2000 trials a year would have been an implausible amount of litigation, even for Classical Athens.² Regardless of whether their estimate of ten daily trials is correct, Avilés and Mirhady have reopened a question that, to the best of my knowledge, had not been seriously addressed since Hansen's proposal.³ Following their lead, this essay advocates

¹ M. H. Hansen, "How Often Did the Athenian *Dikasteria* Meet?" *GRBS* 20 (1979) 243–246.

² D. Avilés and D. C. Mirhady, "Law Courts," in H. Beck (ed.), *A Companion to Ancient Greek Government* (Malden 2013) 205–218, at 214. D. C. Mirhady and C. Schwarz, "Dikastic Participation," *CQ* 61 (2011) 744–748, present a statistical argument that the lottery system would have worked more efficiently when many judges were required than when only a few were. They propose that, on a day when 1500 judges were needed, approximately 2650 potential judges would have had to volunteer (not quite twice as many as were needed), whereas, if only 500 were needed, approximately 1450 would have had to volunteer (almost three times as many as were needed).

³ R. K. Sinclair, *Democracy and Participation in Athens* (Cambridge 1988) 225, reached almost identical numbers to Hansen, estimating that the *dikasteria*

for fewer court days than Hansen's minimum of 150. Avilés and Mirhady advanced their argument briefly as part of an overview of the Athenian courts, basing it on what they see as an impossibly large number of trials for the size of the Athenian population. My argument is broader, considering the evidence of the Athenian festival calendar that Hansen adduced in support of his own argument, as well as the ambiguous evidence of literature and procedure.

None of the evidence known to me is inconsistent with the argument that the Athenians may have held fewer trials, perhaps many fewer trials, than Hansen calculated. The data is inadequate, however, to endorse unreservedly any model of trial frequency. My goal is therefore the modest one of demonstrating how little we actually know about this issue and suggesting an alternate interpretation. While accepting that Hansen's numbers may be correct, I will show how speculative his argument is and that the evidence of literature and procedure can be interpreted to support the *dikasteria* meeting on fewer days. Scholars should seriously entertain the possibility that trials in Athens were exceptional events, although it is impossible to put this in quantitative terms.

1. *The mathematical basis for determining the minimum number of days the dikasteria met*

Hansen bases his calculation on the days when the *dikasteria* are explicitly said not to have met, namely festival days ([Xen.] *Ath. Pol.* 3.8; Ar. *Thesm.* 78–80; schol. Ar. *Vesp.* 663; Lys. 26.6) and assembly days (Dem. 24.80), and the days they probably did not meet, namely *ἡμέραι ἀποφράδες*, such as when the Areopagus tried homicide cases. He reasons that there were 40 annual assembly days in the fourth century, approximately 75 annual festival days, and approximately 15 *ἡμέραι ἀποφράδες*, which leaves 225 days available for *dikasteria*. He takes another

met between 150–160 and 200 days a year. He cites M. H. Hansen, *The Athenian Ecclesia* (Copenhagen 1983), 35–72, 131–134, but seems to have reached his numbers independently of Hansen, *GRBS* 20 (1979) 243–246.

25 away from these, since the *Constitution of the Athenians* takes for granted that not every possible day will be used. This gives an approximate maximum of 200 days.⁴ To determine the minimum number of days, Hansen considers the days near the beginning of every month that were sacred to various divinities, the first (New Moon), the second (Agathos Daimon), the third (Athena's birthday), the fourth (Heracles' birthday; Hermes' birthday; Aphrodite's birthday; Eros), the sixth (Artemis' birthday), the seventh (Apollo's birthday), and the eighth (Poseidon and Theseus). There were 75 of these monthly festival days that were not also annual festival days. In his study of the Athenian calendar, Jon Mikalson concluded that the *boule* but not the *ekklesia* met regularly on these days.⁵ There is epigraphic evidence that the *dikasteria* met on them as well. Hansen argues that the Athenians would probably have avoided them for the *dikasteria*, as they seem to have done for the *ekklesia*, unless it was absolutely necessary. The 150 days that remain after taking the 75 monthly festival days from the absolute maximum of 225 must therefore have been insufficient to handle all the trials in Athens every year.⁶

These numbers are approximate, as Hansen makes clear in *The Athenian Democracy in the Age of Demosthenes*, where he uses slightly different estimates to calculate a range of 175 to 225 days for the *dikasteria*.⁷ The central issue is factual and not numerical, however, so minor discrepancies are unimportant. How secure is the conclusion that the Athenians would have

⁴ Hansen, *GRBS* 20 (1979) 244. His argument relies on J. D. Mikalson, *The Sacred and Civil Calendar of the Athenian Year* (Princeton 1975), and “ἡμέρα ἀποφοράς,” *AJP* 96 (1975) 19–27. Sinclair, *Democracy and Participation* 225, reaches a maximum of 200 in the same way.

⁵ Mikalson, *Sacred and Civil Calendar* 186–197.

⁶ Hansen, *GRBS* 20 (1979) 244–246. Although Sinclair, *Democracy and Participation* 225, does not mention the epigraphic evidence, he too believes that the Athenians would have tried to avoid holding trials on monthly festival days and so proposes 150 as the minimum number of days the *dikasteria* met.

⁷ *The Athenian Democracy in the Age of Demosthenes* (Oxford 1991) 186.

preferred to avoid holding trials on monthly festival days if they could have? Hansen calls it a “reasonable assumption,” qualifying it with “one could advance the following reasons”⁸ and “perhaps.”⁹ Since we know frustratingly little about the importance of the monthly festival days in fourth-century Athens, such caution is appropriate.

There is no question that the *dikasteria* could and did meet on monthly festival days, at least in the fourth century. Hansen mentions four occasions.¹⁰ On Athena's birthday, 3 Boedromion, probably in 359/8, a *dikasterion* awarded a contract for a construction project on Delos.¹¹ Twice on the day of the Agathos Daimon in 342/1, 2 Pyanopsion and 2 Skirophorion, a *dikasterion* judged cases involving property confiscations.¹² And again on the day of the Agathos Daimon in 325/4, 2 Mounichion, as well as three days later on 5 Mounichion, *dikasteria* were scheduled to judge the cases of Athenians requesting exemptions from trierarchies. Since the delivery date for the ships was 10 Mounichion, the time for trierarchs to object to their assignment was short.¹³ It is possible that Socrates' trial in

⁸ *GRBS* 20 (1979) 246, 244–245.

⁹ *Athenian Democracy* 186.

¹⁰ Dem. 42.5 may report a possible fifth occasion: on 2 Mounichion, the day of the Agathos Daimon, the “generals were setting in motion the exchanges for the Three Hundred” (transl. A. C. Scafuro, *Demosthenes, Speeches* 39–49 [Austin 2011] 112). Hansen, *GRBS* 20 (1979) 245 n.12, notes that it is not clear whether this refers to activity in a *dikasterion* or to another procedure. If it does refer to a trial, this would be a fourth example to occur on the second of a month.

¹¹ *I.Délos* 104–4.a.A.27–32 = V. Chankowski, *Athènes et Délos à l'époque classique* (Athens 2008) 499–507, no. 49.a.A.27–32 = *IG* II² 1678.a.A.27–32. On the date and the identification of the building in question as the Python see Chankowski 237, 258–260.

¹² *Agora* XIX P26.364–366, 460–463 = B. D. Merritt, “Greek Inscriptions,” *Hesperia* 5 (1936) 355–430, at 393–413, no. 10.11–13, 115–118. For discussion see Merritt 408, and R. Osborne, *Demos: The Discovery of Classical Attika* (Cambridge 1985) 1–6.

¹³ *IG* II³ 370.35–48 = Rhodes/Osborne, *GHI* 100.204–217. Cf. [Arist.]

400/399 occurred on 7 Mounichion, Apollo's birthday, but this depends on an unverifiable assumption that the ship for Delos would have left Athens on 6 Mounichion,¹⁴ and Hansen does not consider it.

Various public and private rituals are attested for the monthly festival days,¹⁵ but it is unclear whether all of these were repeated every month and whether all eight of the days were equally important. We are best informed about the day of the New Moon, when there seem to have been a procession to the acropolis,¹⁶ a sacrifice in the Erechtheum,¹⁷ and a market.¹⁸ We are less well informed about the second and third, when we know trials were held, but the evidence does not suggest that the days were prominent in every month of the city's ritual calendar. Sally Humphreys argues that drinking unmixed wine to honor the Agathos Daimon (Hesych. A 279, Ath. 675C) points towards a celebration only on the second day of the Anthesteria festival or of the month Anthesterion and not on the second of every month.¹⁹ And while Harpocration tells us

Ath. Pol. 61.1.

¹⁴ Stephen A. White, "Socrates at Colonus: A Hero for the Academy," in N. D. Smith et al. (eds.) *Reason and Religion in Socratic Philosophy* (Oxford 2000) 151–175, at 154–156. R. Parker, *Polytheism and Society at Athens* (Oxford 2007) 82 n.11, notes the uncertainty about the date.

¹⁵ See Mikalson, *Sacred and Civil Calendar* 13–24, and the summary of the evidence in J. Ferguson, *Among the Gods: An Archaeological Exploration of Ancient Greek Religion* (London 1989) 197–199.

¹⁶ Dem. 25.99. E. M. Harris, *Demosthenes, Speeches 23–26* (Austin 2018) 193–197, argues that the speech is a Hellenistic forgery. While this would not invalidate the information about the procession, especially in light of the testimonia about the Erechtheum (next note), it should make us approach it with moderate caution.

¹⁷ Hdt. 8.41, Harp. E 105 Keaney, Hesych. E 78, *Suda* E 2477.

¹⁸ Ar. *Eq.* 43–45, *Vesp.* 169–171; Theophr. *Char.* 4.13. For a concise discussion of the evidence for what went on on the day of the New Moon see J. Diggle, *Theophrastus: Characters* (Cambridge 2004) 218–219.

¹⁹ S. C. Humphreys, *The Strangeness of Gods: Historical Perspectives on the Interpretation of Athenian Religion* (Oxford 2004) 258 n.89. Cf. S. Lambert, *Inscribed*

that the third was Athena's birthday,²⁰ the only evidence for a public celebration on that day is a reference in the *Lexica Segueriana* to a ἑορτή in Athena's honor.²¹ It is possible but far from certain, therefore, that the four trials attested for 3 Boedromion, 2 Pyanopsion, 2 Skirophorion, and 2 Mounichion would have interfered with significant events in the ritual life of the city. Along the same lines, no character in Aristophanes' *Wasps* shows the slightest concern that trials on the day of the New Moon are conflicting with rituals, even as Philocleon tries to escape the house on that day to judge cases with the *dikastai*, although this is of course not valid documentary evidence.

A chief argument for the sacred character of the monthly festival days is that the *ekklesia* is believed to have avoided them, but the evidence for this is not without complications. The *ekklesia* is known to have met on 8 Elaphebolion 347/6,²² 8 Elaphebolion(?) 326/5,²³ 2 Thargelion 322/1,²⁴ 8 Anthesterion(?) 303/2,²⁵ the 8th of an unknown month in 225/4,²⁶ and 4

Athenian Laws and Decrees 352/1–322/1 BC (Leiden 2012) 119 n.65.

²⁰ Harp. T 33 Keaney. Cf. *Etym. Magn.* 767.46–48 Gaisford; *Suda* T 1041; Mikalson, *Sacred and Civil Calendar* 16. On whether the 3rd was really celebrated as Athena's birthday see C. Anghelina, "Athena's Birth on the Night of the Dark Moon," *JHS* 137 (2017) 175–183.

²¹ *Lex. Seg.* 306 s.v. τριτόμηνις.

²² Aeschin. 3.67; *IG* II³ 298 = Rhodes/Osborne, *GHI* 64, with commentary on the date of the *ekklesia* at pp.322–323.

²³ *IG* II³ 364.4–5 = Schwenk, *Athens Alex.* 63.4–5, with argument in favor of the month at pp.309–313. The question mark here and in the other examples indicates that the month is only partly preserved on the stone.

²⁴ *IG* II³ 324.33–34 = Schwenk, *Athens Alex.* 88.18–20 = Lambert, *Inscribed Athenian Laws and Decrees* 119 no. 34 with n.65.

²⁵ *IG* II² 489.4. The argument in M. J. Osborne, *Naturalization in Athens* (Brussels 1981–1983) II 122–123, is relevant to the month being Elaphebolion. D. M. Lewis, "Never on the Day of the *Agathos Daimon*" (review of Mikalson, *Sacred and Civil Calendar*), *CR* 27 (1977) 215–216.

²⁶ *IG* II³ 1149.2–3 = *Agora* XV 121.2–3. Lewis, *CR* 27 (1977) 216.

Elaphebolion(?) 196/5.²⁷ There may also have been a meeting on 2 Anthesterion or 8 Anthesterion 336/5.²⁸ Some of these meetings have been doubted²⁹ or explained as unusual circumstances,³⁰ but it is safest to conclude with Stephen Lambert that “there is insufficient evidence to support a case that all these days [that is, the monthly festival days] were celebrated as major state festivals or that Assemblies were systematically avoided on them.”³¹ Since monthly festival days may not have been sacrosanct for the *ekklesia*, arguments based on their being sacrosanct for the *dikasteria* by analogy with the *ekklesia* are immediately made doubtful.

Conclusions based on such limited evidence can only be speculative. Hansen’s hypothesis that the Athenians would have preferred not to hold *dikasteria* on monthly festival days may be correct. A more economical conclusion, however, is that the four meetings of the *dikasteria* attested on 3 Boedromion, 2 Pyanopsion, 2 Skirophorion, and 2 Mounichion were held on those days for reasons that we do not know and not because the Athenians had run out of days they would have preferred. This leaves us with no decisive basis to calculate the minimum number of court days in the fourth century. The evidence of literature and procedure is similarly inconclusive but can be interpreted in a way consistent with fewer trials than Hansen proposed.

²⁷ *IG II*³ 1258.4 = *I.Délos* 1497bis.4. Lewis, *CR* 27 (1977) 216.

²⁸ Lambert, *Inscribed Athenian Laws and Decrees* 163–164, suggests that *IG II*³ 439.3–4 = Schwenk, *Athens Alex.* 67.4–5 should be supplemented as either 2 or 8 Anthesterion.

²⁹ E. M. Harris, *Democracy and the Rule of Law in Classical Athens* (Cambridge 2006) 94–95, argues that the *ekklesia* did not meet on 8 Elaphebolion in 347/6. For the counterargument see most recently M. H. Hansen, “*Ekklesia Synkletos* in Classical Athens and the *Ekklesiai* Held in the Eighth Prytany of 347/6,” *GRBS* 47 (2007) 273–278.

³⁰ Hansen, *Athenian Ecclesia* 336–337, proposes that all meetings of the *ekklesia* on festival days were ἐκκλησίαι σύγκλητοι called on short notice.

³¹ Lambert, *Inscribed Athenian Laws and Decrees* 163 n.81.

2. *Literary evidence from the fifth and fourth centuries*

The courts are a prominent theme of Athenian literature, from Orestes' trial in *Eumenides* to the men in Theophrastus' *Characters* who frequent *dikasteria*.³² There can be no question that this reflects the very real importance of litigation to Athenian society. As direct evidence for calculating the frequency of trials, however, literature is of little use. No text provides specific information about how often the *dikasteria* met. We can cautiously use literature as indirect evidence for the relative frequency of trials, but even this poses three overlapping challenges. First, what a text says may apply only to its own time and not to general conditions throughout the fifth and fourth centuries. Second, accounts may be exaggerated or motivated by political bias. Third, even when texts refer to frequent trials, there is no way for us to know how frequent frequent is. As a result, literary evidence can be used to support numbers as large as Hansen's for the fourth century or much smaller numbers, as I am advocating here.

The Athenians' reputation for excessive litigiousness is based primarily on sources from the fifth century, when the population of Athens was at or near its height and the Athenians compelled their allies to settle some disputes in courts at Athens.³³ In Aristophanes' early plays, the Athenians "do nothing but try cases."³⁴ Setting comic exaggeration aside, Ari-

³² E.g. *Char.* 6.8, 8.11, 11.7, 12.4, 14.3, 17.8, 27.9, 29.5–6 Diggle.

³³ Although there is no question that the Athenians claimed jurisdiction over important aspects of the allies' legal affairs, the specifics remain controversial. Important discussions include G. E. M. de Ste Croix, "Notes on Jurisdiction in the Athenian Empire," *CQ* 11 (1961) 94–112 and 268–280; R. Meiggs, *The Athenian Empire* (Oxford 1972) 220–233. See P. Low, "Law, Authority and Legitimacy in the Athenian Empire," in J. Duindam et al. (eds.), *Law and Empire: Ideas, Practices, Actors* (Leiden 2013) 25–44, for a recent discussion.

³⁴ *Pax* 505 (produced in 421). Cf. *Eq.* 1316–1318 (424), *Nub.* 207–208, 494–496 (423, revised 418–416), *Av.* 39–41, 109–110 (414), and all of *Vesp.* (422). Cf. S. C. Todd, *The Shape of Athenian Law* (Oxford 1993) 148–150.

stophanes' picture coincides with that of Thucydides and the Old Oligarch.³⁵ They both associate the volume of litigation in Athens with the empire (Thuc. 1.77.1; [Xen.] *Ath. Pol.* 1.16–18). The Old Oligarch, with typical oligarchic bias, adds the size of the population (3.6) and the scrutinies of office holders (3.2) as contributing factors. None of these authors tells us how many trials were happening. The Old Oligarch comes closest, with his repeated complaint that the Athenians try cases “throughout the year.”³⁶ It is clear, however, that they were all impressed by the number of trials.

Athens never established a fourth-century empire on the scale of her fifth-century one, and the population of Attica seems to have dropped by half from 431 to 400. The number of citizens was probably about 30,000 for much of the fourth century.³⁷ Variables besides population and empire would have affected the number of trials in Athens,³⁸ but it is reasonable to expect that it would have been lower in the fourth century than in the 430s, before the start of the war and the plague, and also lower than in the 420s and 410s, before the Sicilian disaster, the defeat, the total loss of the empire, and the 404/3 revolution and counter-revolution.³⁹ What Thucydides, the Old

³⁵ [Xen.] *Ath. Pol.* most likely dates to the first decade of the Peloponnesian War (431–421). See D. Lenfant, *Pseudo-Xénophon: Constitution des Athéniens* (Paris 2017) iv–ix; J. L. Marr and P. J. Rhodes, *The ‘Old Oligarch’: The Constitution of the Athenians attributed to Xenophon* (Oxford 2008) 3–6.

³⁶ δι’ ἐνιαυτοῦ, 1.16 and 3.6. Cf. Marr and Rhodes, *The ‘Old Oligarch’* 157.

³⁷ B. Akrigg, *Population and Economy in Classical Athens* (Cambridge 2019) 139–170. Cf. M. H. Hansen, *Demography and Democracy: The Number of Athenian Citizens in the Fourth Century B.C.* (Herning 1985) 26–69; *Three Studies in Athenian Demography* (Copenhagen 1988) 14–28; *Studies in the Population of Aigina, Athens and Eretria* (Copenhagen 2006) 19–60.

³⁸ For instance, the special courts for maritime commerce that were open to foreigners would probably have encouraged litigation in the fourth century.

³⁹ The decrease in population may also have affected the way the Athenians assembled panels of *dikastai*, although there is no evidence that there was ever a serious shortage of *dikastai*. See J. H. Kroll, *Athenian Bronze*

Oligarch, and Aristophanes say about Athenian litigiousness in this period is not relevant for the number of trials in the fourth century, especially at the time of Demosthenes and Aristotle, when we have most of our evidence about the Athenian courts. It is worth dwelling on this point. Even if individual Athenians remained as litigious during the fourth century as they had been in the fifth, the number of annual trials would have dropped along with the population and the decline of empire. To sustain the amount of litigation that Thucydides, the Old Oligarch, and Aristophanes had found worthy of note (and, again, we do not know exactly how much litigation that was), the average fourth-century Athenian would have had to participate in perhaps twice as many trials as the average fifth-century Athenian.

Frequent references to the Athenian courts continue throughout the fourth century, but interpreting them is not straightforward. The criticism of the courts that appears in Plato and Isocrates is consistent with their anti-democratic agendas and not a faithful reflection of real Athenian conditions.⁴⁰ Even if we were to take the criticism at face value, it would primarily be evidence for the corrupt power of orators and judges and not for the frequency of trials. Along the same lines, the famous fragment of Eubulus (*Olbia* fr.74 K.-A. = Ath. 640B–C) that catalogues the personnel and paraphernalia of the courts being sold alongside produce, flowers, and meat tells us that courts were located in the agora and that they were a fit subject for comic mockery, but nothing about the number of days they were in session. While Eubulus' reference to the courts may be an accurate description of contemporary Athens, anxiety about the supposed Athenian obsession with litigation is a comic trope inherited from Aristophanes and its

Allotment Plates (Cambridge [Mass.] 1972) 81–83, with reference to earlier scholarship.

⁴⁰ E.g. Pl. *Grg.* 454E9–455A6, 459B6–C2, *Resp.* 565E3–566A4; Isoc. 7.51, 54, 8.129–130, 15.20–23. See Todd, *Shape of Athenian Law* 150–151.

value as evidence should not be overstated.⁴¹

Aristotle in Book 6 of the *Politics* is one of few fourth-century authors critical of trials happening too often. He suggests that in democracies with limited sources of revenue there should be few *ekklesiai* (ὀλίγας ἐκκλησίας), and *dikasteria* of many judges should convene on few days (ὀλιγαῖς ἡμέραις). This will save money, especially if only the poor are paid, and it will also encourage the rich to participate in public business by minimizing the time they have to spend as assemblymen and judges (6.5.5–6, 1320a22–29). If Aristotle is criticizing Athens for having more sessions of the *ekklesia* and *dikasteria* than it can afford,⁴² this tells us nothing concrete about how often the *dikasteria* were actually meeting. We do not know what Aristotle means by “few.” The *ekklesia* was required to meet four times per prytany in the mid-fourth century ([Arist.] *Ath. Pol.* 43.3), which would be forty times per year. If “few” means fewer than this, then Aristotle would have considered only forty court days per year too many, which is many fewer than the minimum of 150 days proposed by Hansen. Along the same lines, when Plato’s Socrates in the *Republic* complains that “many *dikasteria*” open in states that are full of licentiousness (405A1–4), it is impossible to draw any conclusions about how many *dikasteria* he is en-

⁴¹ References to the courts persist in later comic literature. See the passages of Theophr. *Char.* cited in n.32 above. From the second sophistic, see Alciphron 4.18[2.3].6, 11 Schepers, where the *Heliaia* and *dikasteria* are symbols of Athens and Greek civilization as a whole. Cf. Yvonne Rösch, “Close Encounters with the *Hetaira*: Reading Alciphron’s Book 4,” in M. Biraud et al. (eds.), *The Letters of Alciphron: A Unified Literary Work?* (Leiden 2019) 224–243, at 237–238.

⁴² It is impossible to say whether this is a complete criticism of the Athenian courts or a recommendation for change based partly on the way things already worked in Athens. Aristotle could be endorsing an already limited schedule of *ekklesiai* and *dikasteria* while advocating for a means-test to determine who should be paid. A few sentences earlier, at 6.5.4, 1320a11–13, he endorses the Athenian practice of imposing financial penalties on those who bring frivolous prosecution. Cf. D. Keyt, *Aristotle Politics: Books V and VI* (Oxford 1999) 217–218.

visioning, or about how relevant his words are to actual Athenian practice.

References to *dikasteria* being closed for private cases are sometimes interpreted as evidence that the number of trials in the fourth century was so great that the Athenians occasionally ran out of money to pay the judges.⁴³ It is more likely that trials were suspended because of the pressures of war. In *Against Stephanus* I, Apollodorus explicitly says this (Dem. 45.4). The civil war in the late fifth century led to a similar suspension of private cases.⁴⁴ The lack of funding for the courts that the speaker of *Against Boeotus* I mentions probably also arose because of the expenses of Athens' campaigns.⁴⁵ Since unexpected military expenses could have drained the treasury regardless of how many trials there were,⁴⁶ these closings of the *dikasteria* also tell us nothing concrete about how often they met.

We can draw three conclusions from this brief survey to support the argument that the Athenians did not have so much litigation that they had to schedule trials on every available day in the fourth century, while acknowledging that the evidence is ambiguous and can be interpreted in support of the opposite viewpoint. First, the number of trials may have peaked in the years before and during the Peloponnesian War and then been sharply lower in the fourth century because of the smaller Athenian population and the loss of the empire. Second, fourth-century authors who refer to the Athenian courts were influenced by bias and genre, but, even if we take them at their

⁴³ E.g. V. Bers, *Genos Dikanikon: Amateur and Professional Speech in the Courtrooms of Classical Athens* (Washington 2009) 21; A. Lanni, *Law and Order in Ancient Athens* (Cambridge 2016) 131.

⁴⁴ Lys. 17.3; Isoc. 21.7. Cf. D. M. MacDowell, *Studies on Greek Law, Oratory, and Comedy* (Abingdon 2018) 281–285.

⁴⁵ Dem. 39.17 with C. Carey and R. A. Reid, *Demosthenes: Selected Private Speeches* (Cambridge 1985) 180–181.

⁴⁶ Bers, *Genos Dikanikon* 21, on the other hand, argues that the closing of the courts suggests both “the added pressure of warfare” on Athens' finances and “a caseload that overwhelmed the system.”

word, they do not reflect a widespread belief that trials were happening notably often. Third, even when authors do complain about the frequency of trials, we have no way of knowing how many trials they considered too many.

3. *Fourth-century Athenian procedure*

A fruitful way to approach the frequency of trials is to consider Athenian procedure. Although the evidence is again inconclusive, it strongly suggests first that mechanisms for dispute resolution in fourth-century Athens discouraged trials except in unusual circumstances and second that the Athenian court calendar reflects a low number of trials.

The variety of ways to settle disputes in fourth-century Athens without having to convene the *dikasteria* is consistent with a low number of trials.⁴⁷ For instance, the Eleven, the *apodektai*, the Forty, the eponymous archon, the *strategoï*, and probably the *boule* all had the power to judge certain matters summarily.⁴⁸ Individuals could also settle their disputes outside the institutions of the polis through oath-challenges⁴⁹ or private arbitration. In private arbitration, the parties referred their dispute to arbitrators selected by themselves. This encouraged compromise and speedy resolution but also had certain disadvantages due to its informal nature.⁵⁰ Public arbitration, on

⁴⁷ Cf. Avilés and Mirhady, in *Greek Government* 214. There is a survey of options in A. Scafuro, *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy* (Cambridge 1997) 31–42.

⁴⁸ [Arist.] *Ath. Pol.* 52.1 (the Eleven), 52.3 (the *apodektai*), 53.2 (the Forty), 56.7 (the eponymous archon), 61.2 (the *strategoï*). *Ath. Pol.* 45.1–3, 46.2, states that penalties imposed by the *boule* always had to be confirmed by a *dikasterion*, but this seems incorrect: P. J. Rhodes, *The Athenian Boule*² (Oxford 1985) 147.

⁴⁹ D. C. Mirhady, “The Oath-Challenge in Athens,” *CQ* 41 (1991) 78–83; A. H. Sommerstein and A. J. Bayliss, *Oath and State in Ancient Greece* (Berlin 2013) 101–108.

⁵⁰ On the procedure see D. M. MacDowell, *The Law in Classical Athens* (London 1978) 203–206; V. J. Hunter, *Policing Athens: Social Control in the Attic Lawsuits, 420–320 B.C.* (Princeton 1994) 55–62; Scafuro, *Forensic Stage* 117–

the other hand, followed formal rules, especially concerning witnesses and record-keeping. All *dikai* brought to the Forty which they were not empowered to address themselves were subject to public arbitration. The arbitrators were appointed to cases by lot from a pool of citizens in their sixtieth year. Like private arbitration, public arbitration aimed at compromise. If both parties agreed to the arbitrators' decision, it was binding. Otherwise, a *dikasterion* would judge the dispute using the evidence gathered by the arbitrator.⁵¹ Konstantinos Kapparis has recently compared the *dikasteria* to modern appellate courts.⁵² The comparison is not perfect; appellate courts generally defer to lower courts' findings of fact and do not hear direct evidence, while *dikasteria* were not bound in this way. Despite the comparison's limitations, it forcefully brings out the fact that, in most types of *dikai*, the *dikasteria* only heard cases on appeal from public arbitration. Trials were the final stage in a process of dispute resolution that was designed to discourage Athenians from resorting to them.

Unlike *dikai* brought before the Forty, public suits were not subject to pre-trial public arbitration. Other safeguards, however, discouraged recourse to *dikasteria* except in the most serious circumstances. Prosecutors of most kinds of public suits who failed to secure one-fifth of the judges' votes or who did not appear in court were fined 1000 drachmas and forbidden from bringing similar suits in the future. There was no fine, however, if they dropped the charges or entered private arbitration before the trial began.⁵³ Other kinds of public suits had

131. On its advantages and disadvantages see E. M. Harris, "Trials, Private Arbitration, and Public Arbitration in Classical Athens or the Background to [Arist.] *Ath. Pol.* 53, 1–7," in C. Bearzot et al. (eds.), *Athenaion Politeiai tra storia, politica e sociologia: Aristotele e Pseudo-Senofonte* (Milan 2018) 213–230, at 213–224.

⁵¹ [Arist.] *Ath. Pol.* 53.2–6. MacDowell, *Law* 207–211; Hunter, *Policing Athens* 62–66; Harris, in *Athenaion Politeiai* 224–227.

⁵² K. A. Kapparis, *Athenian Law and Society* (London 2019) 40.

⁵³ MacDowell, *Law* 64–65, 252–253; Kapparis, *Athenian Law* 40 with 66–

safeguards as well. For instance, an *eisangelia* could proceed to the *dikasteria* only after it was approved by the *boule*, and sometimes the *ekklesia* as well.⁵⁴ Once again, Kapparis' comparison to appellate courts is qualifiedly appropriate.⁵⁵ The *dikasteria* were courts of last resort in two senses, both because there was no procedure to appeal their decisions, at least in ordinary circumstances, and because they were literally the last resort, meant to be used only in the most serious circumstances and when other options of dispute resolution had failed.

We have no way of knowing how successful the Athenians were at keeping disputes from reaching the courts. Even if we could be sure that many private and public arbitrations did end in mutually satisfactory agreements,⁵⁶ we could not express this quantitatively. If we speak in non-numerical terms, however, the Athenians' tendency to schedule multiple trials on a single day can be interpreted to support the conclusion that many disputes never did reach the courts.⁵⁷ The most efficient way of dealing with a relatively small number of cases would have been to group them all together on as few days as possible to make greatest use of the judges' time and to save the polis' money. One of the enduring puzzles of the Athenian court system is how a sufficient number of judges to staff the *dikasteria* could have been induced to show up on a regular basis, especially if they were not guaranteed to be lotteried into service and so earn their three obols. It is plausible to think that

67 n.88.

⁵⁴ MacDowell, *Law* 64; Kapparis, *Athenian Law* 40–41. After 330, prosecutors of *eisangeliai* were subject to a 1000 drachma fine for failing to get 1/5 of the votes.

⁵⁵ Kapparis, *Athenian Law* 45.

⁵⁶ Cf. Scafuro, *Forensic Stage* 36–38.

⁵⁷ [Arist.] *Ath.Pol.* 63.2–66.3 describes the post-340 system. See also the reconstruction at A. L. Boegehold, *The Lawcourts at Athens* (Princeton 1995) 36–41. Boegehold notes (29 and 36) that individual *dikasteria* could have tried multiple cases in a day not just in this period but throughout the fourth and fifth centuries.

more judges would have presented themselves if there were a limited number of court days a month, and if each day required such a large number of judges that those who did show up were more likely to be selected for a *dikasterion*. It is also possible, of course, that the *dikasteria* had so many cases to try that the only way to fit them onto the calendar was to crowd as many cases as they could into every available day. Athens' reputation for litigiousness should not predispose us to this second option, since, as I have shown, that reputation is based primarily on fifth-century sources and is inconsistent with the dispute resolution mechanisms actually employed in the fourth century. If the Athenians really did have a class of cases that had to be resolved in a month,⁵⁸ this would be further evidence that the *dikasteria* were not meeting on every possible day. The requirement would presume enough available space in the calendar to schedule the monthly cases on short notice.

In surviving forensic speeches, litigants routinely claim that they have no prior experience with the courts and that they have done everything in their power to either overlook an injury or settle a dispute without a trial.⁵⁹ Such claims are to a certain extent a rhetorical topos, especially when they concern quarrels with relatives (Dion. Hal. *Lys.* 24), but they would have been more effective if the interpretation I have been advocating

⁵⁸ [Arist.] *Ath. Pol.* 52.2. There is controversy over whether ἔμμηνοι δίκαι are suits which had to be decided within a month, the traditional interpretation, or which took place on a monthly schedule, in which case ἔμμηνοι would be equivalent to κατὰ μῆνα. E. E. Cohen, *Ancient Athenian Maritime Courts* (Princeton 1973) 9–59, advocated the latter interpretation, which has been influential but not universally accepted. See the list of references in Cohen, “Commercial Law,” in M. Gagarin et al. (eds.), *The Cambridge Companion to Ancient Greek Law* (Cambridge 2005) 290–302, at 301 nn.59, 60. M. J. Sundahl, “*Dikai emporikai*: Response to Alberto Maffi,” in D. F. Leão et al. (eds.), *Symposion 2015* (Vienna 2016) 209–212, offers a recent argument in favor of the traditional interpretation.

⁵⁹ E.g. Ant. 1.1, 5.1; *Lys.* 7.1, 10.2, 19.2, 32.2; Isae. 1.5–7, 5.28–30, 8.5, 10.1; Dem. 27.1, 29.58, 30.1–2, 34.1–2, 39.1, 40.1, 39, 43–44, 41.1, 14–15, 42.11–12, 44.1, 47.4, 48.1–2, 40, 53, 53.1.

is correct. When speakers say that they have “absolutely no experience of the lawcourts”⁶⁰ or have “never even pleaded a private suit of my own,”⁶¹ and when they declare that “decent and peace-loving Athenians do not rush headlong into court-rooms,”⁶² they would not merely be appealing to a supposed Athenian ambivalence towards litigation but would be stating perfectly plausible facts. They have not been near a *dikasterion* because trials were unusual occasions and not everyday facts of life for most Athenians. On the other hand, if there were really an average of ten trials 150 to 200 days every year, that would mean between 3000 and 4000 litigants every year⁶³ and 30,000 to 40,000 litigants every decade. These estimates are too low, perhaps by thousands of people, since they disregard team litigation and speakers who were not litigants themselves, but as minimums they serve to make the point. Even granting that some portion of litigants would have been metics or *xenoi*, it is hard to see how it would have been possible for any of the approximately 30,000 fourth-century Athenian citizens to have avoided the *dikasteria* for very long if there were really so many trials. More to the point, it is hard to see why anyone would have had to justify bringing a case to court when nearly every other citizen must have done so at least once and probably many times. Claiming to have never been in a *dikasterion* before and to have come to one now only under duress makes much more sense, logically and rhetorically, if most disputes never did make it to court.

4. *Conclusions*

The argument that the Athenian *dikasteria* met a minimum of 150 days a year rests on an uncertain foundation. Since the

⁶⁰ Isae. 8.5, transl. M. Edwards, *Isaeus* (Austin 2007) 153.

⁶¹ Isae. 10.1, transl. Edwards, *Isaeus* 165.

⁶² Dem. 42.12, transl. Scafuro, *Demosthenes* 114.

⁶³ Lanni, *Law and Order* 132, proposes 4000 litigants a year based on 10 daily trials spread over 200 court days. Cf. F. Carugati, *Creating a Constitution: Law, Democracy, and Growth in Ancient Athens* (Princeton 2019) 78 with n.4.

sacred character of the monthly festival days is open to question, the four meetings of the *dikasteria* on the second and third of the month need have had no special significance and may have been ordinary court days. Without the distorting lens of fifth-century references to litigiousness, fourth-century Athens looks like a society that actively discouraged using the *dikasteria* to resolve disputes. The system of holding multiple trials a day suggests that the Athenians were so successful at reducing the number of trials that they could consolidate the ones they did hold into as few days as possible.

To conclude, I echo Hansen's words about his own proposal that I quoted earlier. In the absence of decisive evidence, especially about the monthly festival days, any argument about the number of Athenian trials needs to be qualified with a perhaps, including this one. One could reasonably believe that the limited evidence for the monthly festival days points towards the Athenians trying to avoid scheduling either *ekklesiai* or *dikasteria* on them. One could also reasonably believe that alternative methods of dispute resolution often failed and that the *dikasteria* really did meet at least 150 days a year throughout the fourth century. I hope to have shown, however, that the balance of evidence is against accepting these as default assumptions. It is a strong possibility that trials in fourth-century Athens were not regular events in the lives of any citizens but the *dikastai*, and that even they were probably convened many fewer than 150 days every year.⁶⁴

June, 2020

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⁶⁴ I am grateful to the editors and the anonymous reader for *GRBS*, whose comments improved my argument, to Robert Cioffi and Yvona Trnka-Amrhein, who kindly discussed monthly festivals with me, to the librarians, staff, and director of the Center for Hellenic Studies, where I held a fellowship while writing this article, and to Cynthia Patterson, who invited me to present a very preliminary version of this paper to a helpful and welcoming audience at Emory University in 2015.