

Watching a Lawsuit: A New Curse Tablet from Southern Russia

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DAVID R. JORDAN has recently published with ample commentary a curse tablet said to have been found in “southern Russia.”¹ In relation to a lawsuit an unknown person curses his opponents, as well as those who “are their supporting speakers/advocates” (ὄσοι συνηγοροῦσι αὐτοῖς) and those who “observe” (παρατηροῦσι). The *defixio* probably dates to the late fourth or early third century B.C. The expression ὄσοι παρατηροῦσι is unique in curse tablets mentioning lawsuits² and is moreover unknown in legal documents. The editor is cautious and rightly points out that a παρατηρητής “was someone whose presence, like that of the opponent’s συνήγορος, in a possibly fourth- or early third-century lawcourt north of the Black Sea was thought to be worth cursing.” This paper, drawing on some parallels for the rôle of the public at trials, aims to show that the παρατηρηταί were persons brought by the litigant to the court in order to influence the judges with their reactions or merely with their presence.

The word παρατηρητής is not attested as a legal terminus technicus, nor does it occur in court orations or legal documents to describe an institution, a magistrate, or the ordinary participants in a trial (*i.e.*, μάρτυρες, συνήγοροι, σύδικοι, ἔνορκοι, δικασταί, κατήγοροι, *etc.*). In the Attic orators παρατηρεῖν preserves its literal meaning, *i.e.*, “watch, observe, look on” (*sc.* a lawsuit), without judicial implications.³ Aeschines, for instance, in the only attestation of the word in a

¹ *Mnemosyne* SER. 4 40 (1987) 162–66; *SEG* 37.681; *Bull. épigr.* 1988, 250.

² The verb παρατηρεῖν has been restored by B. Bravo (*Poikilia. Études offertes à Jean-Pierre Vernant* [Paris 1987] 215 n.29) in an Attic *defixio*; a daemon is called to “guard” (παρατηρεῖ) a person. This *defixio* does not concern a lawsuit and the restoration is quite uncertain.

³ Aeschin. 1.193 (“watch carefully”); Dem. 16.10 (“take care”), 18.161 (“watch for”); Isoc. *Antid.* 132 (“consider”).

legal oration (1.193), urges the jury to watch carefully the opponent's preparations and advocates (καὶ τὴν παρασκευὴν καὶ τοὺς συνηγόρους αὐτῶν παρατηρεῖτε). Obviously this morally positive and impartial sense of παρατηρεῖν cannot apply in the new curse tablet, unless we suppose that the litigant was cursing the jury for doing its job conscientiously and cautiously or the audience for watching the lawsuit carefully.

The exact meaning of παρατηρεῖν is approached in this context only if we consider (a) the ancient judicial practice, especially the the rôle of 'onlookers' in lawsuits, and (b) that the actions of συνηγορεῖν and παρατηρεῖν, occurring close together in the new *defixio*, actually describe two different kinds of support offered to the opponent. As παρατηρεῖν has no direct object, this object evidently must be the lawsuit. Indeed, ancient courts, like modern ones, were often frequented by persons not directly involved in the lawsuit, e.g. relatives, interested neighbors, or simply old men with nothing better to do. Demosthenes, for example, often refers to "people standing around" and listening to the litigants (περιεστηκότες).⁴ But could the audience, or parts thereof (the 'onlookers' of our inscription) influence a lawsuit, thus provoking the anger of one of the litigants? And if so, how was this done?

Attic legal orations and comedy provide ample evidence that accused persons brought their weeping children, wives and mothers to court in order to win the sympathy of judges and to achieve a mild verdict.⁵ But the presence of certain persons among the audience could be manipulated by a skillful orator as a silent testimony supporting his case, just as Aeschines pointed out (οὐτοσὶ μὲν ἐστὶ μοι) his 94-year-old father among the public, thus reminding the judges of his family's history and contribution to democracy (2.147, cf. 149). Socrates's trial, as presented by Plato, offers an interesting example of how such 'silent witnesses' could endorse a litigant's arguments just by their physical presence (Pl. *Ap.* 33C–34A). Socrates argued that if Meletos' accusations of his misleading the Athenian youth were true, his victims or their relatives, now watching the trial, would have stood up to support the accuser or would have been called by Meletos to testify; there follows a long list of persons

⁴ Dem. 20.165, 54.41; see also D. M. MacDowell, *The Law in Classical Athens* (London 1978) 248, 251.

⁵ MacDowell (*supra* n.4) 251.

present at the trial, who verify Socrates' argument just by remaining still and not raising their voices.

A discussion of the audience's influence on the judges and jury should also consider that the Greeks were (and still are) a rather impetuous and passionate people. An ancient trial did not merely include two speeches and a few witnesses, but also applause and protest, cries and laughter. We need not remind the reader of tumultuous scenes in modern courts or to recall the vivid participation of a loud mob in Jesus' trial in order to show that the presence and reactions of bystanders watching a trial could be an important factor in ancient jurisdiction.

An Hellenistic inscription concerning the arbitration of Patrae in a territorial dispute between Thuria and Megalopolis (*ca* 182–167 B.C.)⁶ clearly presents the litigant's efforts to bring his own clique to a trial, to have as many 'observers' on his side as he could, and to influence the jury with their support. This decree of Thuria includes measures for her representation in the trial:

If the Patraeans accept their assignation to arbitrators, our advocates as well as all members of the council, except for those belonging to the tribe Oupisia and those chosen (to remain in Thuria for all eventualities), shall go to Patrae. Along with them shall go all who wish it. In Patrae the secretary of the council shall make a list of these volunteers. And if we win the case, he shall write on a stone stele in the shrine of the Syrian goddess all the names and patronymics of the advocates and of the persons that went with them (to Patrae).

Thuria evidently won the trial and the stele was written with the names of the advocates, the officials, and the volunteers. Although the list is only partially preserved, it still includes 111 names! Not unlike modern football fans many Thurians responded promptly to this decree and undertook the long journey to Patrae as 'onlookers', hence παρατηρηταί, of this

⁶ L. M. Moretti, *Iscrizioni storiche ellenistiche* I (Florence 1967) 128f no. 51: ἔδοξε τοῖς συνέδροις πορεύεσθαι εἰς Πάτρας ἐπὶ τὰς κρίσεις, ἂν ἐπιδέξωνται οἱ Πατρεῖς τὸ κρίμα, τοὺς τε συνδίκους καὶ τοὺς συνέδρους πάντας πλὴν τῶν τῆς Οὐπισίας καὶ τῶν ἐπικριθέντων· πορευέστωσαν δὲ καὶ τῶν ἄλλων οἱ θέλοντες· τοὺς δὲ ἐλθόντας ἀναγραφάσθω ὁ γραμματεὺς τῶν συνέδρων ἐν Πάτραις, καὶ ἂν νικάσωμεν, ἀναγραφάτω ἐν τῷ ἱερῷ τῆς Συρίας εἰς στάλαν λιθίναν τοὺς τε συνδίκους πάντας πατριστί, ὁμοίως δὲ καὶ τοὺς ἐλθόντας.

important trial. How vital their support was, is clearly shown by the measures taken by their city to secure a large participation in this delegation. Interestingly enough the names of the volunteer παρατηρηταί were to be written only in case of success; the council was apparently convinced that any success in this trial depended not only on the oratorical talents of the σύνδικοι but also to a great part on the lively support of the public. The decree of Thuria is not isolated in ancient Greek arbitration. When Magnesia on the the Maeander arbitrated between the Cretan cities Itanos and Hierapytna (ca 112 B.C.), the official delegations of advocates (διαδικαζόμενοι) of each city were supported by representatives of allied cities who accompanied them to Magnesia (συνπαρόντες).⁷ Thus these Hellenistic international arbitrations offer an interesting parallel to the new curse tablet, which can now be evaluated as an important new evidence for ancient Greek jurisdiction.

The tablet, once belonging to Franz Cumont, is said to come from "southern Russia." Its provenance might be accurately defined through onomastics. The names of the litigants (Menestratos, Kallippos, Herakleides, Leodamas, and Herodotos) are not unusual and are widely distributed in ancient Greece. All five, however, occur, as far as I know, in only one city north of the Black Sea, namely at Olbia⁸—also the origin of other *defixiones*, at least two of them concerning lawsuits.⁹ The Olbian Leodamas, the son of Herodotus (*IOSPE* I² 201), who died in the late fifth or early fourth century B.C., might be an older relative of the Herakleitos and Leodamas mentioned in our curse tablet. This conjecture can be supported by the well-known practice of using the same names in a family for generations. It is also probable that the five litigants were members of one family.

⁷ *ICr.* III.4 9.27f: παρόντων τῶν τε διαδικαζομένων ἀφ' ἑκατέρας πόλεως καὶ τῶν συνπαρόντων αὐτοῖς; cf. line 111: [Γο]ρτυνίων δὲ συνπαρόντων αὐτοῖς. Cf. L. Robert, *BCH* 59 (1935) 492f, who regarded the συμπαρόντες as citizens of Itanos and Hierapytna.

⁸ See the indices of the *Inscriptiones Antiquae Orae Septentrionalis Ponti Euxini Graecae et Latinae* (St Petersburg 1885–1916), *Corpus Inscriptionum Regni Bosporani* (Moscow 1965), and *Inscriptiones Olbiae* (Leningrad 1968). In southern Russia the name Leodamas is attested only at Olbia.

⁹ D. R. Jordan, *GRBS* 26 (1985) 195f nos. 171–75.

The coexistence of all five names only at Olbia is naturally only an indication and not certain evidence. There is, however, one more point. In another Olbian *defixio* concerning a lawsuit,¹⁰ we find the unique formula καὶ τὸς αὐτῶι συνιόντας πάντας, which recalls the expression used in our curse tablet: a litigant curses his opponent and “all who go with him,” *i.e.*, all his supporters. The precise meaning of συνιέναι in this context is not clear; it might be supposed that support of any kind (testimonies in court, supporting speeches, *etc.*) was intended. The author of this text, however, did not use a legal term, but instead a vague expression like the παρατηρεῖν in our *defixio*. “Those who go with” the litigant might have been persons engaged by him to attend the trial and, by their reactions or simply their presence, influence the judges.

Although the participation of the audience at trials is not an Olbian peculiarity, the analogies between these two *defixiones* are striking. It remains to hope that further epigraphic evidence will throw new light on the practice sketched here and increase our knowledge of law and jurisdiction in classical Olbia.¹¹

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¹⁰ V. P. Yailenko, *VDI* 153 (1980) 86f (=Jordan [*supra* n.9] 195 no. 171).

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