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" (ὅσοι συνήγοροι ᾠδοίς) and those who "observe" (παρατηροῦσι). The defixio probably dates to the late fourth or early third century B.C. The expression ὅσοι παρατηροῦσι is unique in curse tablets mentioning lawsuits\(^2\) 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 role of the public at trials, aims to show that the παρατηρηται 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, ἐνορκοι, 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

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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 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). 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. 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 (ὅτου στὰ 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' 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 accusor 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.) clearly presents the litigant’s efforts to bring his own claque 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: ἐδοξε τοῖς συνέδροις πορεύεσθαι εἰς Πάτρας ἐκ τὰς κρίσεις, ἃν ἐπιδέξονται οἱ Πατρείς τὸ κρίμα, τοὺς τε συνδίκους καὶ τοὺς συνέδρους πάντας πλάν τῶν τῆς Οὔπισιας καὶ τῶν ἐπικριθέντων· πορευέστωσαν δὲ καὶ τῶν ἄλλων οἱ θέλοντες· τοὺς δὲ ἑλθόντας ἀναγραφάσθω ὁ γραμματεὺς τῶν συνέδρων ἐμ Πάτραις, καὶ ἄν νικάσωμες, ἀναγράψατο ἐν τῷ ιερῷ ταῦ Συρίας εἰς στάλαιν λιθίναν τοὺς τε συνδίκους πάντας πατριστὶ, ὀμοίως δὲ καὶ τοὺς ἑλθόντας.
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 παρατηρηται 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 oratorial 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). 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 Olbia—also the origin of
other δεξιών, at least two of them concerning lawsuits. The
Olbian Leodamas, the son of Herodotus (IOSPE I 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 διαδικαζόμενων ἀρ' ἑκατέρας πόλεως
καὶ τῶν συνπαρόντων αὐτοῖς; cf. line 111: Γορηνίων ἀ δυναρόντων
αὐτοῖς. Cf. L. Robert, BCH 59 (1935) 492f, who regarded the συμπαρόντες as
citizens of Itanos and Hierapytna.

8 See the indices of the Inscriptioes 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.

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,\textsuperscript{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," \textit{i.e.}, all his supporters. The precise meaning of συνιένοι in this context is not clear; it might be supposed that support of any kind (testimonies in court, supporting speeches, \textit{etc.}) was intended. The author of this text, however, did not use a legal term, but instead a vague expression like the παροτηρεῖν 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.\textsuperscript{11}

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\textit{December, 1992}

\textsuperscript{10} V. P. Yailenko, \textit{VDI} 153 (1980) 86f (=Jordan \textit{supra} n.9 195 no. 171).

\textsuperscript{11} I would like to express my thanks to Professors J. Nicols, M. G. Peachin, and the anonymous reader for \textit{GRBS} for improving this paper.