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TEAM-SPEAKING AND COMPLEX LITIGATION
IN ATHENIAN JUDICIAL *DEFIXIONES*:
RESPONSE TO MARTIN DREHER

In his paper Professor Dreher has surveyed the rich material collected and analysed in the Magdeburg database of *defixiones*. His discussion has focussed in particular on the ways in which the judicial *defixiones* may throw additional light on the culture of litigation in antiquity. As far as the non-Athenian material is concerned, the tablets are often our main and sometimes even our only evidence for court-room practices in the communities to which they pertain. In these instances, the value of the tablets is, above all, the evidence that they provide for the centrality of oral pleading and court-room performance. This is apparent not least from the frequency with which the *defixiones* target not only a single main litigant but also other individuals who are expected to assist him in court as supporting speakers (*synegoroi* or *syndikoi*) or as witnesses.¹

My response, however, will focus more narrowly on classical Athens, where it is perhaps more difficult to assess precisely how the evidence of the judicial *defixiones* may enhance and complement the evidence of our other epigraphical and literary sources, the Attic Orators in particular. Professor Dreher has drawn attention to a number of points where the *defixiones* can add to our understanding and potentially lead to a refinement of current reconstructions based on other types of evidence. Among them is, first, the targeting of females. Their presence in some of the tablets may be taken as an indication that they may have played more of an active role, at least during the pre-trial stages that led up to the main confrontation in the courtroom, than most modern scholars are currently inclined to believe.² Second, Professor Dreher has emphasised the frequency with which groups, rather than single individuals, are targeted in judicial *defixiones*, and especially the size of

¹ See e.g. *TheDeMa* nos. 231 (Arethousa, Makedonia, C3), 241 (Selinous C6 or C5), 275 (Selinous, C5), 343 (Pydna, C4), 369 (Lokroi, Italy, C4 or C3), 423 (Aigina, C5 or C4), 478 (Olbia?, C4 or C3), 613 (Melos, C4), 815 (unknown community in Moesia, C4).

² The presence of women among the targets in judicial curse tablets has been discussed also by other scholars, including Eidinow (2007: 184-186) and Papakonstantinou (2014: 1031-1033). Applying Professor Dreher's narrower criteria for identifying judicial *defixiones*, their presence is somewhat less conspicuous and thus less surprising in the classical Athenian tablets than has sometimes been maintained: they appear in *TheDeMa* 119, 120, 140, 208, 300, 442, 931, and 955.

these groups. Although the deployment of supporting speakers in private and, especially, in public actions is amply attested in Athenian forensic oratory, the frequency with which the *defixiones* are directed against large groups suggest that the involvement of several supporting speakers on either side in a single trial was not at all exceptional. A third point that has been made by Professor Dreher is that it should not necessarily be assumed that the *defixiones* were commissioned only by those who were preparing to appear as defendants: prosecutors and plaintiffs, too, may have had equally good reasons for attempting to spike their opponents' guns by resorting to magic. In what follows I shall concentrate mainly on the latter two points and raise a number of issues that have to be taken into account in our interpretation of the *defixiones* in their original procedural context.

As I have argued elsewhere (Rubinstein 2000: 58-70), the deployment of supporting speakers is particularly well-attested in the context of Athenian public actions, where the allocation of an entire court day to the hearing of a single trial permitted several speakers on either side to make contributions to the case, in orations of varying length. In the *apophaseis* conducted in connection with the Harpalos affair, the prosecution teams elected by the Assembly numbered no fewer than ten *kategoroi* (Dein. 2.6). The evidence for prosecution teams in other types of public action, where the teams would, as a rule, have been constituted informally rather than by election, does not reveal the exact number of participants on the attested teams, but it is not at all unlikely that these teams, too, would have involved comparable numbers.

This well-attested court strategy may well explain the targeting of multiple speakers in some of the Athenian *defixiones*. One example among several is *TheDeMa* 138, mentioned by Professor Dreher. Here nine men, explicitly referred to as *kategoroi*, are named, along with a 'blanket spell' directed against 'all the other prosecutors with Nereides' (καὶ τοῦ[ς] ἄλλο[υ]ς ἅπαντας τοὺς με[τὰ] Νερ[ε]ῖδ[ο]υ κατηγοροῦς). The term *kategoroi* provides a strong indication that the targets were expected to appear as prosecutors in a public action, for although the verb *kategoroo* is frequently used in the context of private legal actions, its cognate noun nearly always refers to prosecutors who had volunteered or been elected to conduct prosecutions under a public procedural heading.³ This, together with the possibility that several of the named prosecutors were Athenians with very high political profiles (including Demosthenes and Lykourgos),⁴ suggests that Nereides had launched a public prosecution of considerable political importance, where the

³ In the context of private actions, the noun is attested in the context of a homicide trial (Ant. 6.7, 8, 14, 19, 33) and otherwise almost exclusively where a speaker claims that his opponent has become 'his own *kategoros*' (Dem. 45.2, 23, 40). The one exception is Isaios 12.8 where the term is applied to elected representatives of the deme that has challenged the defendant's citizenship entitlement.

⁴ See Wilhelm (1984: 212) and Faraone (1991: 30 n. 76) with references to previous scholarship.

participation of eight or more supporting prosecutors would have made good sense as a court strategy. Nine men are likewise bound in *TheDeMa* 304, with an additional ‘blanket spell’ cast on anyone else who may act as *syndikos* or as a witness with them (καὶ ἔτις ἄλλος μετ’ ἐχε<ί>νω{ι}ν ζύνδικός ἐστι ἐ μάρτυς).

In these and other cases, the ‘blanket spell’ may have been felt to be necessary, because no litigant could be sure in advance of who precisely might appear as supporting speakers for his opponent, except perhaps if he happened to be a defendant in an *apophysis* where the identities of the elected prosecutors would have been public knowledge. Unlike witnesses, whose written statements had to be submitted to the court before the hearing in chief, supporting speakers could mount the main litigant’s *bema* without prior notification. Thus, in [Dem.] 58.4, the young prosecutor complains that he has been abandoned by a number of citizens who had promised him to fight the case with him (συναγωνεῖσθαι), ‘so that there is no-one to speak with me, unless one of my relatives assists me’. The speech ends [58].70 with the speaker’s invitation ‘Help us, xxx (ὁ δεῖνα), if you can, and speak with us. Mount the platform.’ The speaker almost certainly had made sure that one or several speakers had been lined up in advance, but his feigned anxiety in his *prooimion* would not have made sense, unless impromptu participation by *synegoroi* was permitted in the Athenian courts.

The uncertainty surrounding the identity of the opponent’s supporting speakers on the day also means, of course, that even the individuals targeted by name in the *defixiones* might not necessarily turn up in the end – the predicament of the prosecutor just mentioned suggests that it was not unknown for supporting speakers to drop out in the eleventh or even the twelfth hour. So although it might be tempting to assume that the majority of Athenian *defixiones* that target large numbers of anticipated speakers are likely to have been connected with public actions,⁵ that temptation should be resisted.

There is yet another and perhaps more important *caveat*. When scholars discuss individual judicial *defixiones*, it is normally taken for granted that each tablet was commissioned in anticipation of a single legal conflict that was expected to culminate in a single confrontation in the courtroom. Occasionally there are texts that provide positive indications that more than one lawsuit is anticipated by the persons who had commissioned the tablets. Among them is *TheDeMa* 300 mentioned by Professor Dreher, which will be republished by Curbera and Papakonstantinou (forthcoming) as their text no. 1, a new reading of *SEG* 48: 354–356. The editors suggest that the *defixio* may have combined three separate commissions, which target, respectively, two males, Athenodoros and Smindyrides, who have each launched a private action,⁶ and a female, Irene, who is party to a suit

⁵ See e.g. Eidinow (2007: 188).

⁶ The spell cast on Smindyrides (Col. II) indicates clearly that his suit was a *dike blabes*, whereas the identification of the procedure launched by Athenodoros (Col. I) is less certain. Successive editors restore δίκην [βλάβη]ς in Col. I, but the restoration δίκην

introduced before the polemarch. The polemarch presided over inheritance suits concerning metics, as well as other *oikos*-related disputes that in cases concerning citizens belonged to the remit of the eponymous archon (*Ath. Pol.* 58.3). It is highly likely that Irene's case may have concerned an inheritance claim – a type of claim where women were regarded as parties in their own right, even though their cases would have to be conducted in court by male representatives on their behalf.⁷ Inheritance disputes often resulted in very complex litigation that involved also other interested parties, especially if the dispute arose from a new claim advanced after the inheritance had already been awarded by a court in a previous *epidikasia*.⁸ If it is assumed that there was a connection between Irene's case and the cases brought by Athenodoros and Smindyrides, this would also explain the shift to the plural of the pronouns in Col. III.8-12, where the curse is directed against 'all their witnesses and the polemarch and the court of the polemarch', and in Col. III.15-17 against 'all the *syndikoi* with them'.⁹

Indeed, if we go by the evidence of the Attic Orators, it was not at all unusual for litigants to be involved in multiple, interrelated lawsuits both private and public.¹⁰ In the context of public actions, this could typically happen when more

[ἐξόλη]ς is equally plausible. In this case Smindyrides' and Athenodoros' actions may have been part of an on-going legal dispute, with each of them responding to the outcome of a previous legal action that had affected them in different ways.

⁷ See e.g. the long dispute over Hagnias' inheritance, where both Hagnias' mother and Phylomache, the daughter of Hagnias' (first or second) cousin, were claimants in their own right (Isaios 11.9, 16 and [Dem.] 43.3-10). There are several other similar examples. What is more, it is not only in inheritance suits that we find women as main parties in a formal sense. Aristophanes *Wasps* 1406-1410 represents a female issuing a formal summons in an action for *blabe* before the *agoranomoi*; her reference to herself as 'Myrtia, the daughter of Ankylion and Sostrate' in 1396-1397 suggests that she was of citizen status (see e.g. MacDowell (1971: 312) and Sommerstein (1983: 240)).

⁸ See e.g. Isaios 5.22-23: the court had reversed a previous outcome of a *diadikasia*, with the result that the successful claimants found themselves having problems reclaiming assets that had already been sold to third parties. The speaker relates how he had incurred a loss of 4000 *drachmai*, probably in a *dike exoules*, for having attempted to evict (by *exagoge*) the buyer of a bath-house that had been part of the disputed estate.

⁹ Col. III.8-12: κ<α>ταδέω {δεω} δὲ καὶ τὸς μάρτυρας αὐ[τ]ῶν ἅπαντας καὶ τὸν [πολ]έμαρχον καὶ τὸ δικασ[τ]ήριον τὸ τῷ πολεμάρχῳ κτλ. and Col. III.15-17: κα[τ]αδ[έω] καὶ [συνδίκ]ος ἅπαντας τὸς με[τ]᾽ ἐκε[ί]νων καὶ ἅπα[ν]τας...

¹⁰ See e.g. Thür (1975) on the complex procedural moves and countermoves in the dispute between the banker Pasion and the young Bosporan speaker of Isokrates 17; he observes (1975: 160) that '[e]rforderte ein Rechtsstreit in Athen zumeist eine Reihe wohlüberlegter vorprozessualer Schritte, so waren die Parteien außerdem noch häufig gezwungen, mehrere *formal selbständige, jedoch sachlich zusammenhängende Prozesse* zu führen' (Thür's italics). For the frequency with which individual lawsuits formed part of a series, see also Osborne (1985), and for the implications of this phenomenon for the deployment of *syndikoi* and *synegoroi* particularly in private suits, see Rubinstein (2000: 80-91).

than one member of a board of officials were formally accused of being involved in the same crime. One example among several can be found in Ant. 6.35, where the speaker relates how he was involved in the prosecutions of Ariston, Philinos, Ampelinos and the under-secretary of the thesmothetai for embezzlement.¹¹ While the legal initiative in such multiple suits may well have rested with just one individual who acted as main prosecutor in all of the inter-related public actions, the composition of the prosecution teams in each of the individual trials most probably would have varied. There was an obvious strategic advantage if the team in each case included some supporting *kategoroi* with personal knowledge of (and hostile ties to) the specific defendant on trial. Likewise, the team of each individual defendant would be likely to have included fellow citizens who were willing to vouch for his personal integrity as well as advancing arguments in support of his claims to innocence.

As mentioned above, an important point made by Professor Dreher is precisely that we must question the currently widespread assumption that *defixiones* were as a rule commissioned by defendants rather than by prosecutors or plaintiffs. If Professor Dreher's view is correct, the practice of suing several defendants in a series of related *graphai* or other public procedures may account for the targeting of several individuals, along with their supporters, in some of the Athenian *defixiones*. One example is *TheDeMa* 117, which runs as follows:

Φιλιππίδης | Εὐθύκριτος | Κλεάγορος | Μενέτιμος | καὶ τὸς ἄλλος πάντας |
ἢ ὅσοι συν[ήγο]ροι αὐτο[ί]ς

Here there are four main targets, in addition to 'all the others' and all those who will appear as their *synegoroi*. There is no compelling reason to assume that all four men and their supporters would have formed part of a single prosecution team in a single trial. It would make equally good, if not better sense for the tablet to have been commissioned by a prosecutor who, like the speaker in Ant. 6, was preparing for parallel legal actions against several defendants.

As for private actions, there were, as already mentioned, several different ways in which a single legal conflict could give rise to multiple inter-related trials. This can be further exemplified with reference to the disputes that involved the young Demosthenes. When he first took action against his three former guardians, he had to proceed by bringing separate suits against each of them individually (Dem. 27.12), in the same way that a prosecutor targeting a board of officials had to proceed against the individual members one by one. Demosthenes' victory in his case against Aphobos next gave rise to a *dike pseudomartyrion* brought by Aphobos against one of Demosthenes' witnesses, for whom Demosthenes himself spoke as

¹¹ See further Rubinstein (2012) for a discussion of the individual and joint liabilities of boards of officials in Athens and other Greek communities.

synegoros (Dem. 29). And later, when Demosthenes attempted to execute the court's decision in his successful suit against Aphobos, he encountered obstacles from Aphobos' brother-in-law, Onetor, who had prevented Demosthenes from seizing property which, according to Demosthenes, formed part of Aphobos' estate (Dem. 30 and 31).

Each of these suits drew further protagonists into the conflict, and it is important to bear the ubiquity of this phenomenon in mind when subjecting individual judicial *defixiones* to interpretation. One example where this may be directly relevant is that of *TheDeMa* 118 discussed by Professor Dreher (*IG* III App. 103, of which a revised edition will be presented in Curbera and Papakonstantinou (forthcoming) as their no. 4). The text includes in lines 10-11 the identification of one of the targets as τὸν περὶ τῆς δίκης δικαζόμενον, 'the one who is bringing a suit concerning the *dike*' (or if the alternative reading mentioned by professor Dreher is to be preferred, τῶν περὶ τῆς δίκης δικαζομένων, 'of those who are bringing suit(s) concerning the *dike*').¹² It is conceivable that *dike* here refers to an attempt to undermine the outcome of a previous lawsuit, for instance by means of one or several *dikai pseudomarturion* or *dikai exoules*. However, another explanation might be that the target (or targets) was contesting the admissibility of a legal action, initiated by the person who had commissioned the *defixio*, by countering it with a *paragraphe* (or several, if the genitive plural is read).¹³

In addition to the phenomenon of parallel and serial lawsuits, it is important to bear in mind, as Professor Dreher points out, that Athenian *diadikasiai* concerning inheritance are known often to have involved several claimants who were all on the same footing, and who addressed the court in turn, with their own allocation of water. Among the most famous examples is one of the *diadikasiai* concerning the estate of Hagnias mentioned earlier (n. 7 above): in [Dem.] 43.8-9 the speaker relates how his wife, represented by himself, had had her claim to Hagnias' inheritance contested by four rival claimants, who had each been allocated a full *amphoreus* of water for their main speeches, as well as three *choes* each for their rejoinders.

According to the speaker, Theopompos, one of Phylomache's four rivals, had persuaded the other three challengers to Phylomache's claim to strike a deal behind the scenes. As a result, all four of them colluded against her and by this means

¹² For a similar collocation, see Dem. 40.34: μετὰ δὲ ταῦτα ἀντὶ τοῦ ὀνόματος οὐ ἔθετο αὐτῷ ὁ πατὴρ Βοιωτόν, ὥσπερ καὶ πρὸς ὑμᾶς μεμαρτύρηται, ἐπειδὴ ἐκεῖνος ἐτελεύτησε, Μαντίθειον ἑαυτὸν ἐγγράφας εἰς τοὺς δημότας, καὶ τοῦ αὐτοῦ ἔμοι καὶ πατρὸς καὶ δήμου προσαγορευόμενος, οὐ μόνον τὴν δίκην ταύτην, περὶ ἧς νυνὶ δικάζομαι, ἀνάδικον ἐποίησεν, κτλ., cf. also Dem. 29.2.

¹³ Such multiple *paragrapheai* initiated in the context of a single legal conflict are attested in Dem. 38, where two former orphans had each brought individual suits against the four sons of their former guardian, which were probably countered by eight separate *paragrapheai* (see Rubinstein (2000: 82-83) and MacDowell (2004: 196-197)).

succeeded in depriving her of Hagnias' estate. A comparable strategy of collusion was allegedly also adopted by two of the heirs to the estate left by the childless Komon (Dem. 48), and it is possible that at least one of the Athenian *defixiones* was produced under similar circumstances. *TheDeMa* 398 targets four men, Pytheas, Pythippos, Hegestratos and Smindyrides, along with 'whoever are Euopes' opponents in court (*antidikoi*) together with Pytheas'.¹⁴ The *defixio* clearly envisages that more opponents might come forward, and it is possible that Euopes was involved as a claimant in a *diadikasia*, with several rivals ranged against him and possibly coordinating their efforts to secure his defeat.¹⁵

To sum up. It is important to keep in mind the possibility that some of the *defixiones* were produced in anticipation of multiple parallel or serial legal actions, culminating in not one but several court-room performances, when we try to make sense of the large number of targets in many of our Athenian *defixiones*. It should not be assumed *a priori* that all the named targets, along with their *syndikoi* or *synegoroi*, would be appearing together on the opposing *bema* in court, or for that matter in a single pre-trial procedure or arbitration (where applicable) in advance of the hearing in chief.

This in turn makes it considerably more risky to rely on target numbers alone when trying to decide if a particular *defingens* was preparing for a public or a private action. To be sure, we sometimes come across large, all-male teams as in *TheDeMa* 138 and 334, which appear to have been involved in a single legal action (often indicated by a clear identification of a single main litigant). In such a case the context is most likely to have been a public action of long duration. This is all the more probable if one or more members of the male team in question are known from other sources to have been Athenian citizens with high political profiles.¹⁶ On the other hand, in those cases where a judicial *defixio* provides no positive indication that the *defingens* was preparing for a single trial, a large number of targets identified by name, along with their possible *synegoroi* or *syndikoi*, does not rule out that the *defixio* had been commissioned in a legal conflict that was fought mainly through a series of *dikai*, *diadikasiai*, or *paragraphai* (sometimes in combination).

Moreover, we need to take into account the possibility that a *defingens*, who was preparing for several related court-room confrontations, may have been acting as plaintiff in some of them and as defendant in others. This lends further weight to Professor Dreher's argument against any *a priori* assumption that the judicial *defixiones* were primarily defensive measures. And above all, it reinforces his point

¹⁴ Πύθεας | Πύθιππος | Ἡγέστρατος | Σμινδυρίδης | ὅποσοι ἴσιν | ἀντίδικοι | Εὐόπηι | μετὰ Πυθέο.

¹⁵ The designation ἀντίδικος is comparatively rare in the Athenian *defixiones*. It is used in the singular in *TheDeMa* 301 and 420, and in the plural in *TheDeMa* 306, 398, 402 (where the restoration [ἀ]ντ[ι]δικός is uncertain) and 442.

¹⁶ For a recent discussion of some of these, see Papakonstantinou (2014: 1028-1030).

made on this and on earlier occasions that we have to wary of generalisations when interpreting the tablets. Athenian litigation very often took the form of a complicated set of procedural moves and counter-moves, with significant scope for variation in individual cases. It would be very surprising indeed if this complexity would not be reflected also in the Athenian *defixiones*.

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