



PROJECT MUSE®

Mind the Audience: Forensic Rhetoric, Persuasion, and
Identification by Reference to the Social Identity of
Athenian *dikastai*

Vasileios Adamidis

Rhetorica, Volume 42, Number 1, Winter 2024, pp. 1-30 (Article)

Published by Johns Hopkins University Press

DOI: <https://doi.org/10.1353/rht.2024.a925230>



➔ For additional information about this article

<https://muse.jhu.edu/article/925230>

VASILEIOS ADAMIDIS

Mind the Audience: Forensic Rhetoric, Persuasion, and Identification by Reference to the Social Identity of Athenian *dikastai*

Abstract: This paper highlights the importance of an audience-centric approach in the study of Athenian forensic rhetoric and leverages insights from Social Identity Theory and Burke's concept of 'identification' to examine courtroom speeches. Litigants, perceiving the Athenian *dikastai* as a distinct group marked by a salient social identity, rhetorically employed the group's prototypes, norms, and interests to establish their identification—and underscore the opponent's division—with the audience. This prominent role of social identity and the potential for jury bias affecting the large audiences of *dikastai* prompt a reconsideration of the nature of Athenian trials and suggest that, in addition to upholding the law, Athenian courts functioned as platforms for the imposition of social and legal conformity.

Keywords: Attic orators; Athenian forensic rhetoric; Social Identity Theory; Kenneth Burke; identification; jury bias

S ometime between 330–324 BCE, an Athenian farmer, Epicrates, brought a private suit for damages (*dikē blabēs*) against a resident alien named Athenogenes. In his speech before the panel of the Athenian *dikastai*,¹ written by Hyperides, Epicrates claimed that carried away by his attraction to a slave boy, he

¹The term *dikastai* (judges/jurors) refers to the male Athenian citizens over the age of 30 who were selected by lot as members of panels empowered to decide legal cases in the popular courts. In a system without professional judges to regulate what the jurors can hear, the vote of *dikastai* was based upon all questions of fact and law, thus combining the functions of modern judges and jurors.

was duped into signing a sale's contract with Athenogenes, for the acquisition of the boy, his brother, and their father, also assuming responsibility for any debts they had accumulated. What Epicrates had neither anticipated nor examined before the signing of the contract was that the boy's father, Midas, owed the enormous amount of five talents to his creditors, which now Epicrates had to pay. Naturally, when he found out the extent of Midas' debt, Epicrates disputed the validity of the contract. To Athenogenes' argument that according to Athenian law the written agreement was binding since it was freely made, Epicrates replied by contrasting two statutes of questionable relevance, the first providing that a seller should refrain from making false statements in the Agora and, the second, that in the case of the sale of a slave, the owner was under a legal obligation to disclose any physical defects the slave might have.

All of this appears legitimate and to the point, especially given that the dispute primarily revolved around a legal matter. However, Epicrates, alongside his narration of how he was tricked, sketched in fine detail his opponent's profile. The *dikastai* and any bystanders were informed that the disloyal and ungrateful Athenogenes escaped from Athens after the unfortunate battle of Chaeronea (Hyp., 3.29) (betraying the agreement with the laws of the state which welcomed him), betrayed his second host country, Troezen (3.29), and maltreated his kin (3.35). Meddlesome and fraudulent, Athenogenes and his equally deceitful mistress (3.2: the most gifted courtesan of her time) were too cunning for a quiet farmer such as the speaker (3.26). As Epicrates emphatically informed the audience, in the culmination of his opponent's portrayal, Athenogenes was "a speech-writer and marketplace type and worst of all, an Egyptian" (3.3).² What were Epicrates' objectives in providing this description?

The aim of this paper is to locate Athenian forensic rhetoric within the hermeneutical context of social identity theory and link it with Kenneth Burke's concept of "identification." While this theory of social psychology offers a particularly suitable interpretative framework for the analysis of speeches to large audiences, this is the first comprehensive study of Athenian forensic rhetoric considering the *dikastai* (and, to some extent, bystanders) as a psychological group.³

² Hyp. 3.3: text in *Oratori attici minori, 1: Iperide, Eschine, Licurgo*, ed. Mario Marzi, Pietro Leone, Enrica Malcovati (Torino, IT: Unione Tipografico-Editrice Torinese, 1977), trans. Craig Cooper, *Against Athenogenes*, in *Dinarchus, Hyperides, & Lycurgus*, trans. Ian Worthington, Craig Cooper, and Edward M. Harris, *The Oratory of Classical Greece* 5, ed. Michael Gagarin (Austin, TX: University of Texas Press, 2001).

³ To my knowledge, the utilization of social identity theory has been quite rare, and this is a suitable area for further development in the scholarship of rhetorical

The paper argues that the large panels of Athenian *dikastai* shared attributes akin to psychological groups marked by a prominent social identity, consequently introducing a potential bias risk in cases reliant solely on litigants' rhetoric. Speakers in Athenian courts strategically sought to exploit this dynamic by presenting arguments designed to forge a connection with the audience based on their adherence to a shared, largely constructed, social identity (identification), while simultaneously separating the audience from their opponents (division). While, as a norm, the discourse of litigants primarily centered on the legal aspects and charges outlined in the complaint, supplementary factors rooted in the social identity of the *dikastai* were also brought into play. This had significant implications for the Athenian justice system, potentially transforming trials into a means of resolving conflicts between litigants or between litigants and the law, through the—rhetorically contrived—identification between one party's narrative, the law, and the audience, by reference to a real or artfully constructed shared identity, and the dismissal of the adversary's narrative by isolating it from both the law and the *dikastai*.⁴

The importance of audience analysis for a successful oratorical performance was already highlighted by Aristotle in his *Rhetoric*, where he classified the kinds of rhetoric, inter alia, according to the type of audience.⁵ This paper further develops this idea by reference to the latest trends in social psychology, also connecting the Athenian patterns of forensic argumentation with Burke's concept of "identification." Having defined the relevant concepts and considering the risk of jury bias in the courtrooms by reference to the social identity of the participants identified in recent studies, the paper will proceed with the study of the panels of Athenian *dikastai* as physical and psychological groups with a shared, salient, social identity. Subsequently, the fundamental premises of Social Identity Theory will be applied to Athenian forensic rhetoric to identify the

studies. On the other hand, there have been some attempts to apply Burke's theory on Attic oratory; see, for example, Robert N. Gaines, "Identification and Redemption in Lysias' Against Eratosthenes," *Central States Speech Journal* 30, no. 3 (1979): 199–210, <https://doi.org/10.1080/10510977909368013>.

⁴The orators sought to rhetorically align themselves with the values, beliefs, and interests of the group of *dikastai*, or at least a majority within it, by invoking a presumed shared identity. This identification was not contingent on the factual existence of a shared identity but rather on their ability to convincingly argue for its presence, and to identify themselves with those values that were shared by the majority of the large, potentially diverse, panel of *dikastai*.

⁵Arist., *Rh.* 1.3.1.

main strategies of litigants. In conclusion, the paper will discuss the implications of social identity theory for the nature of Athenian law.

RHETORIC: THE ART OF “IDENTIFICATION” AND “DIVISION”

According to Aristotle, and to most traditional definitions, rhetoric is the art of persuasion or the “faculty of discovering the means of persuasion available in a given case.”⁶ Kenneth Burke, in his seminal study *A Rhetoric of Motives*, approached rhetoric as the enterprise of establishing rapport between the speaker and the audience.⁷ Burke described this process as “identification” or “consubstantiality,”⁸ which is a prerequisite to persuasion and, thus, a subdivision or component of rhetoric. According to Burke, human beings are by nature unique and separate, yet have the capacity to join each other, align their motives, and become “substantially one”; this produces an ambiguous, liminal state between identification and division, which triggers the need for rhetoric. As Burke asserts: “if men were not apart from one another, there would be no need for the rhetorician to proclaim their unity.”⁹ Once “identification” takes place, human beings act together, have common sensations, concepts, images, ideas, and attitudes that make them “consubstantial” and, therefore, receptive to persuasion.¹⁰

Identification is rhetorically achieved when there is the expectation or assertion of collaboration between the speaker and the audience. The projection of a shared identity, and the participation in a communal “we,” cultivate the “consubstantiality” of human beings,

⁶ Arist., *Rh.* 1.2.1.

⁷ This was already acknowledged by Aristotle. One of his apparently favorite passages, as he uses it twice in the *Rhetoric* (at 1.9.30 and 3.14.11), comes from Plato’s *Menexenus* (235d) which has Socrates saying that it is not difficult to praise the Athenians before an Athenian audience, but to praise the Athenians before the Spartans. For a detailed treatment of ancient sources on the importance of gaining the good will of the audience, see Vasileios Adamidis, *Character Evidence in the Courts of Classical Athens: Rhetoric, Relevance and the Rule of Law* (London, GB: Routledge, 2016), 208–212. For the importance of considering ancient Greek psychology and ideas of the self in the study of the Attic Orators, see Vasileios Adamidis, “The Rhetorical Use of Torture in Attic Forensic Oratory,” *Rhetorica: A Journal of the History of Rhetoric*, 37, no. 1 (2019): 16–34; <https://doi.org/10.1525/rh.2019.37.16>.

⁸ Kenneth Burke, *A Rhetoric of Motives* (1950; repr. Berkeley, CA: University of California Press, 1969), 20–28, 55–59.

⁹ Burke, *Rhetoric of Motives*, 22.

¹⁰ Burke, *Rhetoric of Motives*, 21.

encouraging them to identify with each other insofar as they believe that their interests are joined.¹¹ This sense of *belonging* in a certain group is rhetorically contrived by taking into account the values, ideas, and beliefs of the audience and using the appropriate means of communication. As Burke notes: "You persuade a man only insofar as you can talk his language by speech, gesture, tonality, order, image, attitude, idea, *identifying* your ways with his."¹² Hence, the prospect of persuasion is enhanced, while the speaker also seeks to highlight the division between the audience and his adversary, exaggerating the differences which would cast the opponent as an ethical outsider, a member of an external "they" who compose the "out-group." Consequently, the essence of rhetoric may be described as the endeavor of the rhetorician for (his) identification and (the adversary's) division with the target of persuasion by reference to their shared social identity.

SOCIAL IDENTITY THEORY

Rhetoric, thus defined, belongs in the realm of social psychology and, in particular, of Social Identity Theory, that is "a social psychological analysis of the role of self-conception in group membership, group processes, and intergroup relations."¹³ According to this psychological framework, individuals classify themselves and others into distinct social groups, often cultivating a sense of belonging and self-esteem rooted in this group affiliation. Consequently, they tend to conform their behavior to and exhibit a preference for the values, beliefs, and norms of their own group, while concurrently displaying prejudice toward other groups. Social identities serve to

¹¹ Burke, *Rhetoric of Motives*, 20, 27–28, 58.

¹² Burke, *Rhetoric of Motives*, 55, 39: "Only those voices from without are effective which can speak in the language of a voice within."

¹³ Michael Hogg, "Social Identity Theory," in *Contemporary Social Psychological Theories* ed. Peter Burke (Stanford, CA: Stanford Social Sciences, 2006), 111; also, see Henry Tajfel and John Turner, "An Integrative Theory of Intergroup Conflict," in *The Social Psychology of Intergroup Relations*, ed. William G. Austin and Stephen Worchel (Monterey, CA: Brooks/Cole, 1979), 33–47; Henry Tajfel, "Social Categorization," English Manuscript of "La catégorisation sociale," in *Introduction à la psychologie sociale*, vol. 1, ed. Serge Moscovici (Paris, FR: Larousse, 1972), 272–302, who at p. 292 defines social identity as the "individual's knowledge that he belongs to certain social groups together with some emotional and value significance to him of this group's membership."

define, dictate, and assess an individual's sense of self, as well as their cognitive, emotional, and behavioral orientations. The fact that the overall self-concept is not monolithic but compartmentalized,¹⁴ means that an individual's identity is context-specific, depending on which (social or personal) identity happens to be salient in each case.¹⁵ The same individual may exhibit different behavioral traits in different settings at different times, for example, if he happens to be attending a professional meeting with colleagues, enjoying the concert of his favorite band with friends, or watching his favorite football team with a group of fans.

Group membership causes cognitive, relational, and affective transformations, which influence the behavior of individuals towards others.¹⁶ The cognitive transformation which sees the individual experiencing a sense of belonging to a particular group, causes a shift from personal to social identity which becomes salient and directs one's behavior. The resulting identification with the group means that the fate of the group becomes the fate of the individual, and any benefit or harm to the group reflect on the well-being of its members.¹⁷ The cognitive transformation triggers a relational one, which sees a fundamental shift towards intimacy, solidarity, and agreement among the group members. The affinity of individuals with a group, and the salience of the respective social identity, also promotes their 'constatinality' which, in rhetoric, according to Burke, is an essential step towards persuasion. In extreme cases, the cognitive and relational changes extend to an affective transformation, expressed by a passionate and emotional bond with the group, fostering in-group favoritism and out-group derogation.

From a social identity perspective, an aggregate of three or more people is transformed into a group, when they define themselves in terms of the same social category membership.¹⁸ These individuals

¹⁴Michael A. Hogg, Dominic Abrams, and Marilyn B. Brewer, "Social Identity: The Role of Self in Group Processes and Intergroup Relations," *Group Processes & Intergroup Relations* 20, no. 5 (September 2017): 571, <https://doi.org/10.1177/1368430217690909>.

¹⁵Hogg, Abrams, and Brewer, "Social Identity," 115.

¹⁶Stephen Reicher, "Crowds, Agency and Passion. Reconsidering the Roots of the Social Bond," in *The Psychology and Politics of the Collective. Groups, Crowds and Mass Identifications*, ed. Ruth Parkin-Gounelas (New York, NY: Routledge, 2012), 76–80.

¹⁷This depends on the salient social identity of the individual, as for different groups—and even for the same person in different group contexts—different things matter.

¹⁸Michael Hogg and Dominic Abrams, "Intergroup Behavior and Social Identity," in *The SAGE Handbook of Social Psychology*, ed. Michael Hogg and Joel Cooper (London, GB: SAGE Publications Ltd, 2003), 407.

develop a social bond and identify with the group, feeling that they are bound by a common fate, share the same goals, assume the same interests, and behave on the basis of interdependence, solidarity, and interaction.¹⁹ Thus, the membership of a group and the alignment of an individual's properties, values, and beliefs with those of others, provide one with the necessary social recognition, validation, and certainty to understand and confirm his position in the social world.²⁰

RISK OF JURY BIAS

Given that social identity often shapes the classification of individuals into either ingroups or outgroups based on prominent identifying features like age, status, race, gender, nationality, political affiliations, or other values, ideas, and beliefs, researchers have conducted studies to see the influence of social identity on contemporary juries. These studies aim to explore whether such categorization and potential stereotyping of witnesses, defendants, and victims could result in biased judgments.²¹ Evidence derived mainly from simulated jury studies indicates that even though jurors exert considerable effort to evaluate testimonies and other evidence systematically, particularly in cases with substantial and credible evidence, a heuristic type of information processing leading to bias may provide jurors with a cognitive shortcut, guiding them towards reaching a clear-cut judgment on the evidence.²² In particular, studies show that

¹⁹Hogg, "Social Identity Theory," 117.

²⁰Reicher, "Crowds," 80, notes that "In our everyday lives our perspective is constantly open to challenge and disconfirmation by others. . . . But in the crowd this contingency is removed by certainty. . . . [W]e can shout slogans, show rage or express joy, confident that others will understand us and join in with us. Critically, then, our understanding of the social world and our position in it is confirmed. For a while at least, our social being is beyond doubt." Considering this, Social Identity Theory can be a suitable frame for the interpretation of Philocleon's personality and his extreme attachment to his identity as a *dikastes* in Aristophanes' *Wasps*.

²¹See Neil Douglas Brewer, Robert Melvin Hupfeld, and Carolyn Schmidt, "How Evidence and Social Identity Interact to Affect Jurors' Judgments," *Law in Context* 17, no. 1 (2000): 130-147.

²²Many empirical studies are based on and confirm Shelly Chaiken, Akiva Liberman, and Alice Eagly, "Heuristic and Systematic Information Processing Within and Beyond the Persuasion Context," in *Unintended Thought*, James S. Uleman and John A. Bargh (New York, NY: Guilford Press: 1989), 212, regarding heuristic-systematic processing theory, which suggests that heuristic processing would bias systematic processing when the evidence was not decisive.

when the careful analysis of the evidence reveals it to be ambiguous or particularly complex (that is, an unambiguous conclusion is not apparent), then non-evidential and extra-legal considerations associated with social identity come into play, with the danger of reaching biased conclusions based on non-systematic analysis but heuristic cognitive processing of the relevant information.²³

When the evidence is too complicated or cognitively demanding, when there is time constraint, or when the mood of the jurors is extreme during the trial (too sad, angry, or even happy), the heuristic processing of the information based on social identity considerations tends to dominate. For example, research has shown that in certain cases physically attractive and high socioeconomic status defendants were less likely to be found guilty than unattractive or low status defendants; black defendants were considered more culpable when their evidence was assessed by white jurors, with the opposite pattern found when the roles were reversed; ethnic minority defendants were more likely to be convicted when the jury comprised an ethnic majority; young children were perceived as less credible than mature witnesses; jurors were more punitive towards male than female defendants, at least for certain crimes.²⁴

The conclusion of these studies is that jurors need judgmental confidence to reach a clear-cut decision and, if this is provided by the systematic analysis of the evidence, then there is no need to resort to the “short-cut” of heuristic reasoning based on stereotyping. However, when ambiguity exists and the systematic processing of the evidence does not lead to an unambiguous conclusion, there is a significant risk of bias by reference to social identity (ingroup—outgroup) considerations.²⁵

IMPLICATIONS FOR ATHENIAN COURTS

The modern empirical evidence of the encroachment of social identity considerations into the reasoning of juries should not be disregarded when analyzing Athenian forensic speeches. The Athenian *dikastai* were subject to specific shortcomings of the legal

²³Neil Brewer and R. M. Hupfeld, “Effects of Testimonial Inconsistencies and Witness Group Identity on Mock-Juror Judgments,” *Journal of Applied Social Psychology* 34, no. 3 (2004): 493–513, <https://doi.org/10.1111/j.1559-1816.2004.tb02558.x>.

²⁴See Brewer, Hupfeld, and Schmidt, “How Evidence,” 134, with relevant bibliography.

²⁵Brewer and Hupfeld, “Testimonial Inconsistencies,” 508.

system which might have obstructed their judgmental confidence, leading them to apply a “short-cut” heuristic—rather than a systematic—processing of the information.²⁶ In the absence of hard evidence, and lacking the assistance of forensic science, Athenian trials appear to be over-reliant on rhetoric and performance.²⁷ While the *dikastai* were encouraged to pass judgments in accordance with the Heliastic oath,²⁸ and, admittedly, despite their amateurism, many of them would have adequate experience in deciding legal cases accumulated over several years of service, systemic issues might have hindered the development of a systematic and targeted processing of the information.

The absence of professional judges meant that the *dikastai* were not provided with legal guidance on the relevant laws and principles that applied to the case. Matters became even more complicated when considering that a particular offence might have been governed by several statutes, and that the same act could be prosecuted by different procedures which incurred various penalties.²⁹ In a system which lacked the concept of burden and standard of proof,³⁰ issues of law and fact were inextricably mixed together for the non-expert decision of the *dikastai*,³¹ who did not have an institutionalized way of deliberation before reaching their verdict. This was further aggravated by the time constraint, as all trials were confined to less than a day.³²

²⁶ Litigants often refer to the risk of bias or irrelevance of the adversary’s argumentation and anticipated this in their speeches. For example, see *Lys.*, 12.38; *Dem.*, 25.76; *Lys.*, 30.1; *Lycurg.*, 1.139; *Aeschin.*, 1.133, 179–180.

²⁷ See as well Vasileios Adamidis, “Populism in Power? A Reconsideration of the Athenian Democracy of the Late 5th Century BC,” *Journal of Ancient Civilizations* 37, no. 1 (2022): 33–64, in that the Athenian system of justice promoted the enforcement of the rule of law—as the Athenians understood it—and in a way that aligned with the rule of the majority (often becoming rule *by* law), though systemic deficiencies might have caused instances of arbitrariness and deviations from this ideal. I also agree with Michael Gagarin, *Democratic Law in Classical Athens* (Austin, TX: University of Texas Press, 2020), 5, who takes a balanced view of the nature of the Athenian legal system.

²⁸ Edward M. Harris, *The Rule of Law in Action in Democratic Athens* (Oxford, GB: Oxford University Press, 2013), 101–137; Gagarin, *Democratic Law*, 105–107.

²⁹ Gagarin, *Democratic Law*, 85–89; Robin Osborne, “Law in Action in Classical Athens,” *Journal of Hellenic Studies* 105 (1985): 40–58, <https://doi.org/10.2307/631521>.

³⁰ Adamidis, *Character Evidence*, 59–61.

³¹ Adele Scafuro, *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy* (Cambridge, GB: Cambridge University Press, 1997), 52.

³² In Plato’s *Apology*, 37a7-b2, Socrates is critical of this matter, especially as regards capital cases.

The complexity and ambiguity of conflicting narratives further inhibited the judgmental confidence of the *dikastai*. Even though litigants had to “speak to the point”³³ and develop a narrative by reference to the charges in the “complaint,”³⁴ irrelevant evidence, distracting arguments, and carefully calculated witness testimonies—provided exclusively by the litigants in a fiercely adversarial context—were admitted in the proceedings. The concept of relevance was much wider than in a modern court, indirectly inviting considerations based on non-legal or extra-legal arguments. It is likely that such irrelevant considerations (to a modern eye) could influence the decision of the *dikastai* inappropriately,³⁵ as acknowledged by the parties who often anticipated and warned of such deviations.³⁶ The above systemic issues could foster heuristic—at the expense of systematic—processing of the evidence by the *dikastai*, a factor that in all probability increased the likelihood of stereotyping and prejudice due to considerations based on the social identity of the parties.

THE SOCIAL IDENTITY OF *DIKASTAI*

It is beyond doubt that like any speaker endeavoring to persuade a large audience, Athenian litigants had to ground their argumentation in the traditions, ideas, and values of the panel of *dikastai*.

³³ Arist., *Rh.* 1354a22–3; *Ath. Pol.* 67.1. The *dikastai* could make litigants stick to the point by reacting to irrelevant arguments by creating an uproar; on dicastic *thorubos* (uproar) see Victor Bers “Dikastic *Thorubos*,” in *Crux: Essays in Greek History Presented to G. E. M. de Ste. Croix*, ed. Paul A. Cartledge and F. D. Harvey (London, GB: Cambridge University Press, 1985). On the link between *thorubos* and populist rhetoric, see Vasileios Adamidis, “Populist Rhetorical Strategies in the Courts of Classical Athens,” *Athens Journal of History* 7, no.1 (2021): 21–40, and Vasileios Adamidis, “Manifestations of Populism in Late 5th Century Athens,” in *New Studies in Law and History*, ed. David Frenkel and Norbert Varga (Athens, GR: Athens Institute for Education and Research, 2021). *Thorubos* could be the result of the division between a speaker and the audience (*Dem.*, 45.6).

³⁴ Edward M. Harris, “The Plaintiff in Athenian Law and Legal Procedure,” in *Archives and Archival Documents in Ancient Societies: Legal Documents in Ancient Societies IV*, Trieste 30 September–1 October 2011 (Trieste, IT: EUT Edizioni Università di Trieste, 2013), ed. Michele Faraguna, 143–162; Adriaan Lanni, “The Role of the Complaint (*Graphē/Enklema*) in the Athenian Legal System,” *Symposium 2017* available at <https://austriaca.at/0xc1aa5576%200x003a46d5.pdf>

³⁵ See Adamidis, *Character Evidence*, 4–10.

³⁶ For example, *Lys.*, 12.38; *Aeschin.*, 1.179–80; *Dem.*, 25.76; *Lycurg.*, 1.139. On the anticipation of ostensibly irrelevant argumentation see e.g., *Lys.*, 30.7; *Dem.*, 19.213; *Antiph.*, 5.75; 6.8. See Adamidis, *Character Evidence*, 84–87.

For such social identity characteristics to become salient among the *dikastai*, the individuals comprising this group should feel the sense of belonging and define themselves in terms of this social category membership, both physically and psychologically. Although the evidence suggests that the panels of *dikastai* were socioeconomically mixed and diverse, they nonetheless all belonged to the privileged class of the Athenian citizen body, a factor that had a homogenizing effect on their ideological, ethical, and social attitudes.³⁷

In addition to the objective existence of a social identity as a *physical* group of *dikastai* sitting in session, apparently, this salient group identity was *cognitively* felt in other contexts. The distinct group membership of the *dikastai* was emphasized and perpetuated by the swearing of the Heliastic Oath, a ritual that distinguished this social category from the rest. The ritualistic reinforcement of the *dikastai* as a special group was visualized during the jury selection too, when each *dikastes* was given a color-coded staff and a token as symbols of hearing and voting.³⁸ Furthermore, archaeological evidence suggests that Athenians were so proud of their service in the lawcourts that some of them chose to be buried with their *pinakia* which designated them as members of the group of *dikastai*.³⁹

The unique status of the Athenian *dikastai* as a group was also acknowledged by litigants in their speeches. In Athenian forensic rhetoric, it was not uncommon for speakers to address *dikastai* in the second person plural,⁴⁰ as to one single unit exhibiting the same behavioral traits and characteristics. In this way, and through the

³⁷ For the composition of the Athenian jury, see Stephen Todd, "Lady Chatlerley's Lover and the Attic Orators," *Journal of Hellenic Studies* 110 (1990): 146–173, <https://doi.org/10.2307/631737>, which includes a detailed discussion of previous studies. As Todd, rightly notes (64), "social values at Athens were a matter of consensus rather than of conflict."

³⁸ David Mirhady and Domingo Avilés, "Law Courts," in *A Companion to Ancient Greek Government*, ed. Hans Beck (Chichester, GB: Wiley-Blackwell, 2013), 212–216.

³⁹ John H. Kroll, *Athenian Bronze Allotment Plates* (Cambridge, MA: Harvard University Press, 1972), 9.

⁴⁰ For the use of the second person plural, see Giulia Maltagliati, "Persuasion through Proximity (and Distance) in the Attic Orators' Historical Examples," *Greek, Roman, and Byzantine Studies* 60, no. 1 (2020): 86. For the forms of addresses to *dikastai*, see Gunther Martin, "Forms of address in Athenian courts," *Museum Helveticum* 63, no. 2 (Juni 2006), 75–88, <https://www.jstor.org/stable/44079551>, and Andreas Serafim, "'I, He, We, You, They': Addresses to the Audience as a Means of Unity/Division in Attic Forensic Oratory," in *The Rhetoric of Unity and Division in Ancient Literature*, eds. Andreas Michalopoulos, Andreas Serafim, Flavinia Beneventano della Corte, Alessandro Vatri (Boston, MA: De Gruyter, 2021), who makes a brief reference to social identity theory.

extensive use of this technique, each *dikastes* was seen as a component of a wider collective, suggesting that his social identity was salient and dominant over his individuality. An indicative example of this rhetorical technique in Demosthenes' *On the Crown*:

Were it my intention to argue that I moved *you* to aspire to the standards of *your* forebears, everyone would chastise me with good reason. But my point, in fact, is that *you* made that choice yourselves, and I have been demonstrating that the city aspired to those standards even before my time; I do claim, however, to have been of service in bringing about particular achievements. This man, on the other hand, denounces the whole enterprise and urges *you* to despise me for putting the city in terrible danger, and though he yearns to deprive me of an honor for the present, he is trying to steal from *you* the praises of all future time. For if *you* convict Ctesiphon because my policy was not the best one, *you* will make it appear that *you* were wrong, not that subsequent events befell *you* by fortune's cruelty. But *you* were not wrong, no, *you* were not, Athenians, to take on danger for the sake of the freedom and safety of all. . . .⁴¹

To further highlight their social identity as a distinct group, the *dikastai* were collectively presented as the embodiment of a transcendent Athenian demos.⁴² The conclusive and, in many respects, most important evidence that the panels of *dikastai* were viewed as a distinct group with a distinctive social identity is provided by the surprisingly calculated method employed by speakers on how to address the Athenian *dikastai*. In the corpus of Attic orators litigants used three *main* forms of address of the Athenian *dikastai*: i) civic (ὃ ἄνδρες Ἀθηναῖοι), ii) judicial (ὃ ἄνδρες δικασταί), and iii) descriptive

⁴¹ Dem., 19.208: text in *Demosthenes: On the Crown. Cambridge Greek and Latin Classics*, ed. Harvey Yunis (Cambridge, GB: Cambridge University Press, 2001), trans. Harvey Yunis, *On the Crown*, in *Demosthenes, Speeches 18 and 19*, trans. Harvey Yunis, *The Oratory of Classical Greece* 5, ed. Michael Gagarin (Austin, TX: University of Texas Press, 2005). Also, see Dem., 18.97–100; Aeschin., 1.175–179.

⁴² The extent to which the judges sitting in courts represented the demos of the Athenians has caused some controversy; see Josiah Ober, *The Athenian Revolution: Essays on Ancient Greek Democracy and Political Theory* (Princeton, NJ: Princeton University Press, 1996), 118–119; Paul Cartledge, *Democracy: A Life*, (Oxford, GB: Oxford University Press, 2016), 17; Andrew Wolpert, "Addresses to the Jury in the Attic Orators," *American Journal of Philology* 124, No. 4 (Winter 2003): 537–555, <https://doi.org/10.1353/ajp.2003.0064>. Indicatively, see Aeschin., 3.14, 37, 232; Dem., 20.12. That the *dikastai* were often collectively presented as the embodiment of a transcendent Athenian demos is shown, for example, in Aeschin. 1.173, where Aeschines says to the panel of *dikastai* trying the case *Against Timarchus* in 346/5 BCE that they put Socrates to death, even though the trial of Socrates took place in 399 BCE.

(ὦ ἄνδρες).⁴³ According to Serafim, who examined closely the whole corpus of speeches in Attic forensic oratory, the use of the civic address was mainly used in public cases where matters of civic importance relevant to all Athenians were discussed, whereas the judicial address was mainly retained for private cases or, when used in public cases, mainly in instances that the speaker focused on technical legal matters and thus the *dikastai* had to be reminded of their occupational role.⁴⁴

Based on these findings, it is safe to conclude that the choice of the form of address to the audience made by Athenian orators was not random; instead, the evidence suggests that orators made a conscious decision as to which form of address to use by reference to the social identity they would like the *dikastai* to have at each given time (civic as “Athenian citizens,” judicial as “Athenian *dikastai*,” or—less frequently—descriptive).

This rhetorical strategy, and the activation of specific supplementary facets of the audience’s group identity, whether as *dikastai* or as Athenians, served the speaker’s interests by facilitating: i) the interpellation of the audience (by reference to the constructed salient group identity), and ii) the speaker’s identification—and the adversary’s division—within the context of the presumed norms and convictions of this particular group. Litigants used communication patterns to construct a shared identity with the audience, and foster in-group favoritism and out-group derogation, emphasizing their affiliation with the group and their adherence to the group values, while criticizing their opponent of being an ethical and social outsider.

PROTOTYPES

The benchmark for the ingroup/outgroup categorization was the perceived “prototype,” that is, the set of characteristics that are considered typical or representative of the group.⁴⁵ Such proto-

⁴³In the typology of the forms of address of the Athenian *dikastai* I follow Serafim, “I, He,” though my view has been equally influenced by Martin, “Forms of address.”

⁴⁴Andreas Serafim, “‘Conventions’ in/as Performance: Addressing the Audience in Selected Public Speeches of Demosthenes,” in *The Theatre of Justice: Aspects of Performance in Greco-Roman Oratory and Rhetoric*, Mnemosyne, Supplements 403, ed. Sophia Papaioannou, Andreas Serafim, Beatrice da Vela (Leiden, NL: Brill, 2017), 41; Martin, “Forms of Address,” 79.

⁴⁵Hogg, Abrams, and Brewer, “Role of Self,” 572.

types, according to Social Identity Theory, describe and prescribe group-appropriate ways to feel and behave, and provide the lens through which group members categorize and evaluate what otherwise would be a number of idiosyncratic individuals but now form part of the same group.⁴⁶ The perceived similarity to the prototype plays a key role to the formation of an individual's social identity,⁴⁷ but is also pivotal to the perception of others and to how the dynamic relations among group members evolve. More prototypical members tend to be popular and take up a role of leadership within the group, whereas less prototypical members may be considered peripheral, deviant, and even treated as black sheep.⁴⁸

Quite often, the prototype is embodied in the form of ideal, often hypothetical or legendary figures.⁴⁹ These personify the traditional, commonly acclaimed properties, attitudes, and perceptions of the group, become the point of reference for ingroup members, and have a homogenizing, almost aspirational, effect on their behavioral norms. In Athenian courts, litigants referred to relevant prototypical figures who represented the social identity of, and appealed to, the group of the Athenian *dikastai*, in order to show their similarity or pay their respect (and, thus, claim a 'consubstantiality' with the audience by highlighting their adherence to common in-group norms) or to note the opponent's dissimilarity (and, thus, emphasize his division with the group). Indicatively, reference to the prototypical figures of "Solon" the famous Athenian statesman and lawgiver, the unnamed "lawgiver," the "poets," and the "ancestors" will be made.

In the corpus of the Attic orators, Solon is mentioned 65 times.⁵⁰ The majority of those references (44) appears in the public

⁴⁶ Hogg, "Social Identity Theory," 118–120.

⁴⁷ Leonie Huddy, "From Social to Political Identity: A Critical Examination of Social Identity Theory," *Political Psychology* 22, no. 1 (March 2001): 134, <https://www.jstor.org/stable/3791909>.

⁴⁸ On leadership, see Reicher, "Crowds," 82–83, where the concept is defined as "a social relationship between leaders and followers. . . . Leaders, then, need to be seen as representing the norms and values of the group—in the language of the social identity tradition, they must be prototypical of the groups they seek to influence."; Hogg, "Social Identity Theory," 125; an excellent case study would be Demosthenes' speech 18 (*On the Crown*). On deviancy and rejection, see Robin Martin and Miles Hewstone, "Social-Influence Processes of Control and Change: Conformity, Obedience to Authority, and Innovation," in *The SAGE Handbook of Social Psychology*, eds. Michael Hogg and Joel Cooper (London, GB: SAGE Publications, 2003), 316.

⁴⁹ Hogg, "Social Identity Theory," 118.

⁵⁰ Draco is mentioned by name only eight times, five of them in conjunction with Solon, and twice as the author of the homicide law. See Michael Gagarin, "Storytelling about Lawgiver in the Athenian Orators," in "Figure(s) du législateur: la

speeches of Demosthenes (33) and Aeschines (11), and this is most likely not a coincidence.⁵¹ In those public speeches of the two statesmen, matters of civic importance to Athens formed the focus of the orations concerning the award of a crown to Demosthenes (Dem., 18 and Aeschin., 3), the execution of an embassy to Philip (Dem., 19), the fate of Timarchus (Aeschin., 1), and issues of legislation (Dem., 20, 22, 24). Solon's figure is used by the orators as the prototype social identity of the *dikastai* they wanted to be salient, both to show their admiration for the ideal lawgiver and to highlight the stark contrast between Solon and the opponent. Two indicative examples will be used to show the rhetorical technique of using the prototypical figure of Solon to construct a social identity, identify with the audience, and divide the opponent accordingly.

Firstly, in Aeschines' *Against Timarchus* (1.6–26), the virtues of decency, honor, and orderly conduct, prototypically represented by Solon, and adhered to by Aeschines (as a loyal ingroup member), are compared with the licentious (outgroup) behavior of Timarchus.⁵²

Consider, men of Athens, how great a concern for decency was shown by that ancient legislator Solon, and Draco, and the other legislators

parole de l'expert dans la littérature antique," *Cahiers des études anciennes* 57 (2020): 33–44, available at <http://journals.openedition.org/etudesanciennes/1434>.

⁵¹Solon is mentioned by name: 2 times in Dem. 18, 13 times in Dem. 19 (all concentrated between 19.251–256), 8 times in Dem. 20 (90–104), emphasizing that Leptines violated the spirit of Solon's laws, 3 times in Dem. 22, and 7 times in Dem. 24, contrasting Solon against Timocrates as lawgivers. In the private speeches of the Demosthenic corpus, Solon's name appears 10 times to attribute specific pieces of legislation to him, as was customarily done by litigants in the 4th century (often inaccurately). In Aeschines, Solon is mentioned 7 times in *Against Timarchus*: i) to prove the enormous difference between the great concern for decency shown by Solon and the behavior of Timarchus (1.6–26) and ii) to show to the *dikastai* the view of their fathers on the issue of orderly conduct, shame and honor, by reference to Solon's laws, in order to ask whether they should acquit Timarchus, a man guilty of the most shameful practices (1.183–185). In *Against Ctesiphon*, Solon, is mentioned only 4 times in total, and after a passing reference to contrast his approach to cowardice with Ctesiphon's proposal for a crown to Demosthenes (in 3.175–176), Solon is referred to in the epilogue of the speech as a prototype figure of the Athenian glorious past together with other city's benefactors (Aristides and Themistocles), in contrast with Demosthenes and the supporting speakers of Ctesiphon (3.257–258). Apart from the public speeches of Demosthenes and Aeschines, meaningful reference to Solon—beyond his capacity as author of specific laws that litigants refer to in their (mainly private) speeches (4 times in Andocides, 2 in Hyperides, 4 in Lysias)—is made in Lysias 30.28 (together with Themistocles and Pericles), to contrast the lawgivers of the past with the unworthy Teisamenus and Nicomachus.

⁵²Note that in Aeschin., 1.1–26, there is a repetitive (13 times) address to the *dikastai* as "Men of Athens."

of that period. . . . They wrote these laws down and entrusted them to your care, making you their guardians. What I want to do now is to use the same order in my own speech to you as the legislator uses in the law. . . . At the same time, men of Athens, I also want first to give you a preliminary account of the city's laws, and then after that to examine Timarchus' character; for you will find that his way of life has been contrary to all the laws. . . . Now observe, men of Athens, the enormous difference between Solon and those great men whom I mentioned a little earlier in my speech and Timarchus.⁵³

Secondly, an indicative example from the public speeches of Demosthenes concerning legislation comes from *Against Timocrates* (103–113). While Solon's name is mentioned 7 times in the whole speech, these are enough to support three different, yet interconnected, arguments. The opponent, Timocrates, is first contrasted as a lawgiver against the prototypical Solon:

The laws established by Solon, a lawgiver completely different from this man. . . . Men of Athens, aren't this man and Solon the lawgiver rather similar? The former makes men better both now and in the future. The latter shows those who have committed crimes in the past the way to avoid punishment, discovers how those in the present can commit crimes with impunity, and provides that those in the future, in short, criminals at all times, can remain safe and suffer no harm. . . . Indeed, Solon, men of the court, a lawgiver whom not even Timocrates himself would claim to resemble. . . .⁵⁴

Similarly, Solon is contrasted with the contemporary politicians (including Timocrates and his associates) who act to the city's detriment (142–143):

By contrast, men of the court, the politicians in our city, first pass laws for their own advantage almost every month, then, when they are in office, they drag private citizens off to prison, but they do not believe that the same rule of justice should be applied to them. Finally, even as they are abolishing the laws of Solon, which your ancestors enacted

⁵³ Aeschin., 1.6–26: text in *Aeschines: Orationes, Bibliotheca scriptorum Graecorum et Romanorum Teubneriana* 1009, ed. Mervin R. Dilts (Berlin, DE: De Gruyter, 1997), trans. Chris Carey, *Against Timarchus*, in *Aeschines*, trans. Chris Carey, The Oratory of Classical Greece 3, ed. Michael Gagarin (Austin, TX: University of Texas Press, 2000). For a delayed response to this argument by Demosthenes, see *Dem.*, 19.251–256.

⁵⁴ *Dem.*, 24.103–113: text in *Demosthenis Orationes II, Oxford Classical Texts*, ed. Mervin R. Dilts (Oxford, GB: Oxford University Press, 2005), trans. Edward M. Harris, *Against Timocrates*, in *Demosthenes, Speeches* 23–26, trans. Edward M. Harris, The Oratory of Classical Greece 15, ed. Michael Gagarin (Austin, TX: University of Texas Press, 2018).

and which have passed the test of time, they claim that you should obey their laws, which they are enacting to the city's detriment. If, then, you do not punish them, it will not be long before the majority of you become the slaves of these beasts.⁵⁵

Finally, the speech culminates with an anecdotal story of Solon (212–214) and a call to the *dikastai* to show their anger, punish those who corrupt the city's laws, and make an example of the defendant for the future:⁵⁶ "Indeed, if you are right to praise Solon and Draco, whose public contribution you could not describe as anything other than making useful and good laws, it would certainly be right for you to make clear that you are angry with those who enact the opposite sort and to punish them."⁵⁷

A similar methodology is followed by the speakers when they refer to the prototypical unnamed "lawgiver,"⁵⁸ particularly in cases where the Athenian *dikastai* decided about the legality of a decree or the expediency of a law.⁵⁹ In addition to bolstering a strictly legal argument, which entailed the exposition of the conflict between the contested inexpedient law or illegal decree and other statutes or their underlying principles, the ascription of Athenian laws to an authoritative lawgiver, as well as the invocation of his prototype

⁵⁵ Dem., 24.142–143 (trans. Harris, *Against Timocrates*).

⁵⁶ About the connection between a call for anger and for making an example of the defendant in public trials, see Lene Rubinstein, "Stirring Up Dicastic Anger," in *Law, Rhetoric, and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*, ed. D. L. Cairns and R. A. Knox (Swansea, GB: Classical Press of Wales, 2004), 187–203, and Lene Rubinstein, "Differentiated rhetorical strategies in the Athenian courts," in *The Cambridge Companion to Ancient Greek Law*, ed. Michael Gagarin and David Cohen (New York, NY: Cambridge University Press, 2005), 129–145. Rubinstein's observations square well with the salient social identity of the *dikastai* in those cases which justified such requests from the speakers.

⁵⁷ Dem., 24.211 (trans. Harris, *Against Timocrates*).

⁵⁸ See Adamidis, *Character Evidence*, 186–187 with note 105; Gagarin, "Storytelling," 37. On Greek lawgivers, see Andrew Szegedy-Maszak, "Legends of the Greek Lawgivers," in *Greek, Roman, and Byzantine Studies* 19, no. 3 (1978): 199–209; on Solon, see Edward M. Harris, "Solon and the Spirit of the Law in Archaic and Classical Greece," in *Solon of Athens: New Historical and Philological Approaches*, eds. Josine Blok and André Lardinois (Leiden, NL: Brill, 2006), and Vasileios Adamidis, "Solon the Lawgiver: Inequality of Resources and Equality before the Law," in *Role of Law, Human Rights and Social Justice, Justice Systems, Commerce, and Law Curriculum: Selected Issues*, ed. David Frenkel (Athens, GR: Athens Institute for Education and Research, 2017), 121–138.

⁵⁹ For example, see Dem., 23 (*Against Aristocrates*), where the unnamed lawgiver is mentioned 8 times between sections 27–81 where it is highlighted how Aristocrates' proposal violates several Athenian laws about homicide.

as the benchmark of Athenian legislation, served to underpin the consistency, enduring relevance, and merit of Athenian laws. The speaker defended these laws against the adversary's deviant position, aligning himself with the audience whose identity had been ostensibly constructed in harmony with this prototype and their deeply esteemed legal traditions.⁶⁰ Furthermore, reference to the unnamed lawgiver could be made to support a specific interpretation of the law. Speakers—acting prototypically—claimed to be able to discern the genuine intent behind the enactment, and presented it as if presupposing that the audience also understood the original intent, fostering the notion that they all shared the same social identity, rooted in reference to the prototype.⁶¹

A similar technique could be employed by litigants incorporating poetry into their orations. Primarily in a select few prominent cases documented among the works of the Attic Orators, speakers presented verses from esteemed poets to illustrate the prototypical values upheld by Athenians. These values, endorsed by both speakers and *dikastai*, are ostensibly challenged or undermined by the opponent.⁶² For example, in *Against Leocrates*, through the quotation of verses from Homer, Euripides and Tyrtaeus, Lycurgus emphasizes the magnitude of Leocrates' offence which amounted to treason.⁶³ Lycurgus demonstrated his own adherence to these ingroup prototypical norms, presenting a solemn patriotic ethos, emphasizing Leocrates' deviation.

Finally, references to ancestors, mythical personas, and other prototypical figures, served the dual purpose to i) construct the preferred social identity of the *dikastai* and ii) delineate the characters traits of the parties, facilitating the process of identification or division with the audience.⁶⁴ For example, in *Against Leocrates*, Lycurgus asked the *dikastai* to "draw inspiration" from their prototypical ancestors: "[when] you cast your votes, do not forget what kind of men your ancestors were, but encourage each other not to leave the

⁶⁰David Mirhady, "Knowing the Law and Deciding Justice: Lay Expertise in the Democratic Athenian Courts," *Comparative Legal History* 3, no. 2 (2015): 235, <https://doi.org/10.1080/2049677X.2015.1110972>.

⁶¹For example, see Lys., 3.42; Aeschin., 1.183; 3.2, 26, 175; Dem., 21.45–50; 22.25–32; 23.30, 51, 79.

⁶²On poetry, see for example Adamidis, *Character Evidence*, 155–157. Aristotle recommends its use as a kind of ancient testimony or evidence (*Rhet.* 1375a–b). For an example, see Aeschin., 1.141–154.

⁶³For other examples, see Aeschin., 3.184–190; Dem., 18.209, 316.

⁶⁴See Aristotle, *Rhetoric* 1368a and 1356b, 1357b, 1377a, 1393a.

court today until you have voted in the very same way they did. . . . Don't think you have inherited the property your ancestors have left behind but have not also inherited their oaths and their pledge."⁶⁵

Despite their reluctance to draw direct comparisons with the idealized heroes of the past, speakers frequently employed a strategy of linking their opponents with individuals known for their detrimental deeds. In doing so, they portrayed these opponents as prototypical deviants undermining the ingroup.⁶⁶ To highlight his rival's unworthiness to receive a crown, Aeschines contrasted Demosthenes with Pericles and Miltiades (Aeschin., 3.181), while Demosthenes used the same argument against Charidemus (Dem., 23.196) and Aristogeiton (Dem., 26.6).⁶⁷ The prototypes functioned as the standard for acceptable conduct and solidarity within the ingroup. They aided in the skillful construction of a prominent group identity for the *dikastai* (and frequently, bystanders), simultaneously reinforcing the allegiance of the speakers while emphasizing the deviance of the adversary.

MAJORITY POSITION

In addition to employing prototypes, another crucial rhetorical strategy involved crafting a 'majority position' by aligning it with the social identity of the *dikastai*. Recent research on group behavior indicates that the preservation of prominent group norms is achieved through the enforcement of conformity, which involves individuals adhering to the normative stance of the group as opposed to that of the minority (deemed deviant or part of the outgroup).⁶⁸ This normative position is expressed by a real or artificial "majority" which

⁶⁵ Lycurg., 1.127: text in *Licurgo. Orazione contro Leocrate e frammenti*, ed. Enrica Malcovati (Rome, IT: Tumminelli, 1966), trans. Edward M. Harris, *Against Leocrates*, in *Dinarchus, Hyperides, & Lycurgus*, trans. Ian Worthington, Craig Cooper, and Edward M. Harris, *The Oratory of Classical Greece* 5, ed. Michael Gagarin (Austin, TX: University of Texas Press, 2001).

⁶⁶ See for example Dem., 19.247; 18.127, 180; 21.143; Lys., 6.17, 45; 21.20; 58.38; Antiph., 1.17. Also, for the frequent comparisons with the Thirty see Andoc., 1.101; Lys., 25.31; Dem., 24.90, 164.

⁶⁷ However, when this argument was used against him by Aeschines, he insisted that one should be judged by reference to contemporaries (Dem., 18.209, 316).

⁶⁸ See Martin and Hewstone, "Social-Influence," 313, who define conformity as "the process of resolution of conflict by deviant group members changing their opinion to that of the majority."

exerts a homogenizing pressure on deviant members by virtue of its authority.⁶⁹ According to relevant studies, identification with the majority is generally considered favorable, whereas deviating from the group norm is perceived as disruptive and potentially harmful to group cohesion. As a result, individuals who deviate from the norm often face the choice of either conforming to the group's expectations or experiencing social rejection.⁷⁰ The process of conforming to the majority is often based on heuristic reasoning; often, individuals comply with the normative-majority position without examining the content of the majority's message in detail. This preference for identification with the majority stems from a dual rationale. Firstly, it is grounded in the belief that the majority serves as a dependable source of evidence regarding reality. Secondly, being part of the majority is inherently desirable because it validates one's social status and offers protection against the risk of being rejected by the group.

This conclusion of recent studies on social identity theory is of particular importance since it may provide valuable insights into the operation of the Athenian administration of justice. In the popular courts of Athens, litigants requested the *dikastai* (often, with the indirect support of bystanders) to apply their conformity-imposing power and punish the non-compliant adversary who undermined the well-being of the group by breaching its laws. In this context, legal enforcement, as exercised in the Athenian courts, can be characterized as the resolution of disputes through the establishment of conformity based on the majority stance. This conformity is imposed not only upon the individuals who have violated the law but also upon the broader community, including spectators and any *dikastai* who may have cast dissenting votes.

In rhetorical practice, speakers began by formulating a majority-normative standpoint, assumed to be familiar to all, and their identification with it. The "Who doesn't know?/Everybody knows" *topos*, frequently employed by orators, served to construct an artificial majority that accepted a certain view as true, to which uninformed members of the audience were encouraged to conform. This

⁶⁹ A 'majority' may be defined as "the numerically larger group that holds the normative position and has power over others." See Martin and Hewstone, "Social-Influence," 313.

⁷⁰ Martin and Hewstone, "Social-Influence," 316-318. In Athenian courts, litigants often stressed the deviancy of the adversary by reference to his past record and revealing his bad character. This had particular probative value by reference to the psychology of ancient Athenians. See Adamidis, *Character Evidence*, 141-146.

had the effect of creating pressure on (or removing doubt from) the *dikastai* who were not well-informed of the account (allegedly of the majority) that the speaker offered.⁷¹ Quite often, the “everybody knows” *topos* introduced arguments from precedent, which was another way of achieving the construction of a majority-normative position (without this of course reducing the legal importance of this practice in cases that judicial precedent was invoked).⁷² In *On the Crown*, Demosthenes asserts that “Everyone knows that before now you (i.e. Athenians) have bestowed crowns on many politicians. Yet no one could assert that any other single person apart from me—I mean among advisers and politicians—has won crowns for the city.”⁷³

Similarly, precedent was rhetorically used as a means of showing that the normative-majority position that should be followed by the *dikastai* was the one followed by the panels of *dikastai* in the past, a rhetorical technique which would generate the illusion of an unbroken sequence of identical decisions by a quasi-transcendent group of *dikastai*:⁷⁴ “Now, I want to tell you how many people you have convicted after the assembly voted that they were guilty of an offense concerning the festival. I also want to show you what they did and how great your anger was, so that you may compare their actions with those done by this man.”⁷⁵

⁷¹ On the “everybody knows” *topos*, see Aristotle, *Rhet.* 1408a32–36 who argues that the hearer agrees, because he is ashamed to appear not to share what is a matter of common knowledge. Also see Josiah Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People* (Princeton, NJ: Princeton University Press, 1989). Similarly, orators invoked “common report” to argue for a persuasive “majority view” which should be endorsed by the *dikastai*; see, for example, Aeschines 1.125–131. For the employment of reputation and common report in the Attic orators, see Adamidis, *Character Evidence*, 146–148.

⁷² On the use of precedent in Athenian courts, see Harris, *Rule of Law in Action*, 246–273; Adriaan Lanni, “Arguing from ‘Precedent’: Modern Perspectives on Athenian Practice,” in *The Law and the Courts in Ancient Greece*, ed. Edward M. Harris and Lene Rubinstein, (London, GB: Duckworth, 2004), 159–171.

⁷³ Dem. 18.94 (trans. Yunis, *On the Crown*).

⁷⁴ According to Burke, *Rhetoric of Motives*, 39 and 55, and Martin and Hewstone, “Social-Influence,” 323, only those who are similar to self (on dimensions relevant to influence) can be the agents of influence and, thus, persuasion. Previous panels of *dikastai*, to whose decisions the adherent speakers refer to, are not just similar but almost transcendentally identical. Similarly, the attitude of Areopagus was invoked by speakers as the aspirational prototype for ordinary courts.

⁷⁵ Dem., 21.175: text in *Demosthenes, Against Meidias (Oration 21)*, ed. Douglas M. MacDowell (Oxford, GB: Clarendon Press, 1990), trans. Edward M. Harris, *Against Meidias*, in *Demosthenes, Speeches 20–22*, trans. Edward M. Harris, *The Oratory of Classical Greece* 12, ed. Michael Gagarin (Austin, TX: University of Texas Press,

In addition to legal precedent, references to examples from the past (often referring to ancestral prototypical figures) created the impression of a normative-majority standpoint which provided the benchmark of appropriate behavior and decision-making. This stance, which underscored the principles of being and behaving as an Athenian, served as the normative benchmark of the group, as articulated by the speakers. It was an ideal to which all ingroup members were expected to adhere, but the adversary opted to undermine. A good example of this is to be found in Lycurgus' speech *Against Leocrates* where a series of past examples is invoked by the speaker to emphasize the deviancy of the adversary by reference to the salient norms of the group:⁷⁶

I get very angry, gentlemen, whenever I hear one of his associates say that it is not treason if someone leaves the city. For example, your ancestors once left the city when they were fighting against Xerxes and crossed over to Salamis. This man is so foolish and holds you in such complete contempt that he thinks it right to compare the most glorious of deeds with the most shameful. . . . but our forefathers, even though deserted by all the Greeks, preserved freedom for themselves and for the others by using force to compel the Greeks to fight the barbarians at sea near Salamis. Alone they triumphed over both enemies and allies in the right way, by helping the latter and routing the former in battle. Was this in any way similar to the man who fled his country on a four-day voyage to Rhodes? Would any of these men of old have perhaps tolerated such a crime? Wouldn't they have stoned to death the man who brought shame on their own courage? . . . With such thoughts in mind, therefore, they maintained their position as leader of the Greeks for ninety years, sacked Phoenicia and Cilicia, won victories in battle on land and sea at Eurymedon, captured one hundred triremes from the barbarians, and sailed around Asia on raids. . . . They made a treaty that forbade them from sailing beyond Cyaneai and Phaselis in a warship and established the right of the Greeks to conduct their own affairs not only for the Greeks living in Europe but also for those living in Asia. Do you think any of these fine deeds would have happened or that you would still live in this country if they thought like Leocrates and fled? Just as you praise and honor good men, in the same way you must punish cowards, especially Leocrates, who neither feared nor respected you.⁷⁷

2008). Indicatively, also see Dem., 21.175–182; 21.143; 24.138; 34.50; Aeschin., 3.195; 3.252–3; 1.86–88; Lys., 3.43; 22.18.

⁷⁶ Also, indicatively, see Din., 1.75–77; Dem., 22.13–16.

⁷⁷ Lycurg., 1.68–74 (trans. Harris, *Against Leocrates*).

Based on such arguments from precedent, which ostensibly indicated the normative, intertemporal position of the group of Athenian citizens and *dikastai*, orators managed to construct the desired social identity for their audience and requested compliance with the view of the normative majority with which they identified themselves. *Dikastai*, as members of a transcendent and timeless group, had to guarantee the preservation of the shared social identity, to reinforce the group norms through their decisions and the imposition of conformity, and act as a force of deterrence against any non-compliant members for the future. Verdicts were presented as acts of historical importance that would confirm and preserve the prototypical values of the ancestors and continue the honored Athenian traditions which constituted their identity.⁷⁸ As Dinarchus emphasizes in his speech *Against Philocles*: “Athenians, you are about to vote on behalf of the whole country, its established shrines, your ancestral customs, and the constitution that was handed down by your ancestors. . . . Do not forsake the values for which your ancestors faced many dangers, do not reduce the reputation of the city to ignoble shame, do not show goodwill to these men rather than to the laws, the decrees of the people, and the reports of the Areopagus.”⁷⁹

Culminating their argumentation, especially in cases of public importance, speakers urged the *dikastai* to exert the influence of the majority position, “make an example” of the opponent to deter future deviants and safeguard the shared community values.⁸⁰ A good example of this rhetorical *topos* is seen in *Against Leocrates*, where Lycurgus claims that:

By defending our country, our temples, and our laws, I have conducted this case in a fashion both just and correct, without attacking the rest of this man’s life or making irrelevant charges. Each of you must now realize that a vote to acquit Leocrates is a vote to condemn our country

⁷⁸ On the historical importance of decisions, see: Din., 3.21; Aeschin., 3.6–7, 3.14, 3.108, 3.112, 3.175, 3.178; Dem., 20.12, 20. 89–93, 20.135, 20.142, 20.154; 22.35, 22. 94–99; 24.38.

⁷⁹ Din. 3.21: text in *Dinarchi orationes cum fragmentis*, Bibliotheca scriptorum Graecorum et Romanorum Teubneriana, ed. Nicos C. Conomis (Berlin, DE: De Gruyter, 1975), trans. Ian Worthington, *Against Philocles*, in *Dinarchus, Hyperides, & Lycurgus*, trans. Ian Worthington, Craig Cooper, and Edward M. Harris, *The Oratory of Classical Greece 5*, ed. Michael Gagarin (Austin, TX: University of Texas Press, 2001).

⁸⁰ See Rubinstein, “Differentiated Rhetorical Strategies,” 138–140 who finds that appeals to dicastic anger, often coupled with an educational role of the court to make an example of the adversary, were mainly employed in most public prosecution speeches (appear in 23 out of 29 public prosecutions).

to death and destruction. There are two urns placed before you, one for treason, the other for survival, and you are casting your votes either to destroy our country or to keep it safe and prosperous. If you acquit Leocrates, you will vote to betray the city, the temples, and the fleet; if you put him to death, you will encourage the defense and protection of the country, its revenues, and its prosperity. Imagine then, men of Athens, that the land and the trees are imploring you; the harbors, the shipsheds, and the city walls are asking you; and the temples and the shrines are pleading with you to defend them. *Make an example* out of Leocrates; remember the charges against him, for pity and tears do not have a stronger claim than the preservation of the laws and the people.⁸¹

The speakers' identification with the prototypical group norms, values, and beliefs of the *dikastai* was ostensibly rooted in a strictly legal argumentation that emphasized their adherence to the law and the adversary's divergence from it. This alignment complemented arguments pertaining to justice and the public interest.⁸²

SELF-ESTEEM HYPOTHESIS: RECOGNITION, VALIDATION, SOLIDARITY

According to the self-esteem hypothesis within social identity theory, individuals assess their own worth based on the groups they are a part of and the values these groups embody. Consequently, people possess a strong inclination to establish or uphold the favorable evaluation of their own group in comparison to other relevant groups,⁸³ to the extent that the standing of the group, the collective

⁸¹ Lycurg., 1.149–150 (trans. Harris, *Against Leocrates*). For other examples, see Aechin., 1.186–187; 1.194–195; 3.245–247; Dem., 46.27; Lycurg., 1.9; Lys., 1.47; 5.5; 14.45; Antiph., 5.15.

⁸² See Gagarin, *Democratic Law*, chapters 6 and 7. According to Social Identity Theory, the cognitive transformation taking place in groups, makes social (not personal) identity as the benchmark for the definition of good and bad, and thus arguments grounded in the public (group) interest become particularly persuasive.

⁸³ Hogg and Abrams, "Intergroup Behavior," 412. This part of the self-esteem hypothesis of social identity theory might explain why, regardless of the actual composition of the court, the litigants' addresses to the *dikastai* did not identify them with the poor, as individuals prefer to be associated with more positively esteemed groups. Addresses to the *dikastai* tended to homogeneously identify them with groups with positive properties, projecting a certain social identity, for example, as if they all belonged to the democratic resistance during the reign of the Thirty (see Wolpert, "Addresses," 543 with note 20 for references).

achievement of group goals and the realization of group values, even the individual successes of other group members, become the source of one's self-esteem. This may occasionally lead to prejudice, bias, and stereotyping against members of outgroups, often causing intergroup conflicts and discrimination.⁸⁴ Recent studies verify the conclusion that intergroup discrimination leads to an increase of self-esteem by reference to the individual's group membership and salient social identity.⁸⁵

In Athenian courts, it was not uncommon for litigants to underscore that the harm caused by deviant individuals within the group could have repercussions on the overall welfare of the collective. They would then appeal to the *dikastai*, asking them to express their disapproval or anger towards, and subsequently punish, those who subverted the group's norms.⁸⁶ In the speech *Against Athenogenes* (29–35), mentioned in the introduction of this article, the speaker highlights the disloyal attitude of an outsider (emphatically labelled as "Egyptian") who, although granted the opportunity to become an ingroup member, his behavior was subversive and characteristic of an outsider:

<In the past he was never willing> to risk his life <in our time of need, as most loyal> metics <did.> . . . Good <metics have never> done this to you; . . . Athenogenes <has never thought of anything but his own personal interests. . . . Although he benefited from our city, he has deserted it in the face of danger.> . . . after violating the social contract with the city, he insists on his private contract with me, as if anyone would believe that the man who holds his obligations to you in utter contempt would care anything for his obligations to me. <I think you have heard enough about> what he has done, how Athenogenes has plotted against me, and how he has treated you. He is evil in his private life, he has given up hope for the safety of our city, he has abandoned you, he has expelled those with whom he took up residency. You have this man in your grasp; will you not punish him?⁸⁷

⁸⁴Hogg and Abrams, "Intergroup Behavior," 415–418.

⁸⁵Mark Rubin and Miles Hewstone, "Social Identity Theory's Self-Esteem Hypothesis: A Review and Some Suggestions for Clarification," *Personality and Social Psychology Review* 2, No. 1 (1998): 40–62.

⁸⁶Rubinstein's assertion in "Stirring Up Dicastic Anger," 188, that direct appeals to negative emotions, especially anger and hatred, were most common in those procedures that could result in the defendant's having to pay a penalty to the *polis* rather than just a compensation to the injured party, squares well with the application of the social identity theory to Athenian forensic rhetoric.

⁸⁷Hyp., 3.29–35 (trans. Cooper, *Against Athenogenes*).

To prompt a heuristic form of reasoning and promote the utilization of stereotypes, speakers not only emphasized their own conformity to the group norms and resemblance to the prototype but also resorted to invective and underscored the outgroup characteristics of the adversary.⁸⁸ For instance, Demosthenes directly compared his properties with those of Aeschines:

So examine my life and yours in comparison with each other, and do it sympathetically and without bitterness, Aeschines. Then ask each member of the audience whose fortune in life he would prefer. You taught school, I was a student; you conducted initiation rites, I was initiated; you served as a public scribe, I attended the Assembly; you played bit parts on stage, I sat in the audience; you were hissed off-stage, I was hissing. All your policies helped the enemy; mine helped our country.⁸⁹

Being part of a group enhances an individual's self-esteem for two primary reasons. First, it involves the recognition of their membership in that group. Second, it validates and reinforces their beliefs as they are shared with others within the group.⁹⁰ While these sentiments may vary in intensity, research has shown that as positive identification with a group and its interests elevates self-esteem, similarly groups can increase people's motivation to invest effort in pursuing the group's objectives.⁹¹ Group members who are considered prototypical and provide exceptional services for the benefit of the group may de facto assume positions of leadership, whose policies and proposals are considered conducive to the realization of collective goals or represent the prototypical values of the group.⁹² Probably the finest rhetorical example of this technique comes from the speech *On the Crown*, where Demosthenes described his

⁸⁸ For example, Aeschines consistently accused Demosthenes of being of Scythian origin (2.78, 180; 3.172; Din., 1.15), while Demosthenes replied by alleging that Aeschines' father was a slave (Dem., 18.129, 131). Similarly, reference to other stereotypes included appearance and physical characteristics (e.g., in Lys., 16 the growing of long hair as a sign of elitism or oligarchic [pro-Spartan] sympathies); solecism was an indication of barbarism (Dem., 45.30; 36.1); fast walking and loud voice placed someone at a disadvantage (Dem., 45.77).

⁸⁹ Dem., 18.265 (trans. Yunis, *On the Crown*).

⁹⁰ Nick Hopkins, Stephen Reicher, Clifford Stevenson, Kavita Pandey, Shail Shankar, and Shruti Tewari, "Social Relations in Crowds: Recognition, Validation and Solidarity," *European Journal of Social Psychology* 49, no. 6 (October 2019): 1285-1286, <https://doi.org/10.1002/ejsp.2586>.

⁹¹ Hogg, "Social Identity," 124.

⁹² Reicher, "Crowds," 83.

outstanding (prototypical) initiative for the benefit of the Athenians in a time of crisis:

[Philip] marched here with his army and seized Elatea. . . . All of you know about the turmoil that struck the city then. . . . The city was full of turmoil. At break of dawn the next day, the Presiding Officers called the Council to the Council-house while you [Athenians] proceeded to the Assembly. . . . Then the herald asked, "Who wishes to speak?" but no one came forward. The herald asked many times but to no avail. No one rose, though all the generals were present and all the politicians too, and the country was calling for a speaker to save it. For the voice of the herald lawfully discharging his task is rightly considered the common voice of the country. If those who desired the city's safety were asked to come forward, all of you and all other Athenians would have risen and advanced to the platform, for all of you, I know, desired the city to be safe. . . . The one who emerged as the right man on that day was I. I stepped forward and addressed you, and for two reasons listen carefully to what I said. First, you should know that I alone of the speakers and politicians did not abandon my post of civic concern at the moment of danger but rather proved to be the one who in the very midst of the horrors both advised and proposed the necessary measures for your sake. Second, in a short time you will gain much experience regarding all aspects of your future political life. I spoke as follows. . . . I persevered from beginning to end and for your sake applied myself entirely to the dangers encircling the city. Please produce the decree that was passed then. And yet, Aeschines, how would you like me to describe your performance that day, and how would you like me to describe mine? Would you have me assign myself the role of Battalus, as you like to call me with your insulting ridicule, and you the role of not just any hero but one of those stage heroes such as Cressphontes or Creon or the Oenomaus whom you once horribly savaged at Collytus? So be it: on that occasion at the moment of crisis I, Battalus of Paeania, showed myself to be more valuable to our country than did you, Oenomaus of Cothocidae. But then you never did anything useful on any occasion, while I did everything that one would expect of a good citizen.⁹³

In this context, the valuable services rendered by speakers underscored their goodwill and solidarity towards the group, in stark contrast to the subversive and deviant attitude exhibited by the opponents. As Social Identity Theory provides, groups can increase members' motivation to exert effort on behalf of the group and, when the task is identity-defining, they may work harder to achieve

⁹³Dem., 168–180 (trans. Yunis, *On the Crown*). Also, see Dem., 18.88.

the group's goals. This was illustrated by reference to the public services (liturgies) of litigants, often invoked to indicate their solidarity towards fellow Athenians, thus claiming their absolute and selfless identification with the interests of the group.⁹⁴ Voluntary generous expenditure for the benefit of the community served as a tangible demonstration of whole-hearted commitment to the group's norms. Liturgies provided evidence of the internalization and adoption of the group's ideals, effectively positioning them as prototypical members within the group.

CONCLUSIONS

The paper demonstrated the importance of an audience-centric approach for the study of Athenian forensic rhetoric, particularly in the context of Social Identity Theory. The theory delineates several fundamental attributes characterizing group identity, which are exhibited and stimulated by speakers in Athenian courts, encompassing:

1. A sense of common fate.
2. The perception of the uniqueness of the group and its distinction from others.
3. Call for coordinated activity of the group members.
4. Commonality of beliefs, attitudes, norms, and values that bind them together.
5. Concern for the welfare of the group; mobilization and sacrifice for its sake.
6. Continuity and consecutiveness in the dimension of time and a sense of historical significance.

In Athenian courts, speakers skillfully showcased and activated these group identity features. The main act was all about presenting themselves as one with the *dikastai* while spotlighting the divide between their opponents and the audience. As speakers found themselves in a neutral tripartite relationship with the audience, their rhetoric attempted to shift this delicate balance to their favor.

⁹⁴ For the relevance of liturgies and a psychological explanation of this practice in Athenian courts, see Vasileios Adamidis, "The Relevance of Liturgies in the Courts of Classical Athens," *ATINER'S Conference Paper Series*, 14 November 2016, <http://www.atiner.gr/papers/HUM2016-2050.pdf>.

Athenian litigants employed the strategy of identification with the *dikastai*, which started with their alignment with the law and what they argued to be its correct interpretation according to the prototypical values of the group. Furthermore, they extended this alignment to encompass their commitment to the commonly held, typical norms of the group, while they underscored the stark contrast between their stance and that of their opponents, both in relation to the law and the sentiments of the audience, effectively isolating their opponents from the group and fostering a sense of alienation. Top of Form

In this interpretation, Athenian forensic rhetoric had a broader aim than solely resolving conflicts based on the literal interpretation of the law as outlined in the complaint. Indeed, Athenian forensic rhetoric also aimed to take into account the social identity of the group and the inclinations of the majority as integral factors when seeking resolution. The ostensible division with the law, was restored through the identification of the winning party with the version of the law accepted by the majority of the *dikastai*, and vice versa. The verdict served as the mechanism through which the majority of the social group enforced conformity on the losing party, as well as on any deviants, including the entire group of *dikastai* and bystanders. This process effectively reinforced and sustained the authority of the prevailing social norms and the interpretation of the law embraced by the majority. Criticism was typically tolerated only from individuals belonging to the ingroup who had demonstrated their credentials, usually by adhering to the majority of the group's norms and values.⁹⁵

Litigants actively urged the majority of *dikastai* to exert their influence and wield their power to enforce conformity upon the dissenting opponent, who was seen as undermining the collective social identity of the group. Recent studies highlighting the potential for jury bias and stereotyping offer an intriguing vantage point for examining the speeches preserved in the collection of Attic Orators. This is particularly relevant because Athenian *dikastai* comprised a unique social group with a well-defined social identity, which might have made them susceptible to certain vulnerabilities commonly observed in large audiences and crowd dynamics. This

⁹⁵ As Burke notes, *Rhetoric of Motives*, 56, a rhetorician may only succeed in changing an audience's opinion in one respect only insofar as he yields to that audience's opinions in other respects. According to Social Identity Theory, criticism is accepted as constructive and welcome if the critic is an ingroup member, especially prototypical.

phenomenon likely played a role in the evolution of rhetorical commonplaces (*topoi*). Speakers constructed their arguments by drawing upon a carefully crafted, ostensibly permanent, social identity with which they aligned themselves. They considered prototypes, leveraged stereotypes, and established a prevailing perspective that boosted the self-esteem of the group and encouraged the *dikastai* to interpret the ongoing case in a manner consistent with the (often, artificial) majority's viewpoint.

Indeed, to gain a more comprehensive understanding of these dynamics, future research should delve deeper into the analysis of speeches considering the social identity of the audience. This can be accomplished through a detailed classification based on the public or private character of the trial, the particular charges in the complaint, the nature of the speech as prosecution or defense, and other pertinent factors, all while examining how they align with the forms of social identity employed by the speakers. Furthermore, there is a need for additional studies that can illuminate the social identity of the *dikastai* and its intricate relationship with the evolution and utilization of commonplaces and stereotypes. Finally, the social identity of Athenian *dikastai* could shed light on their commitment to the rule of law. The persistent emphasis on the law as the central theme of Athenian forensic rhetoric, along with litigants consistently showcasing their adherence to this principle, implies that a belief in the rule of law was an enduring and widely held social norm. This norm was systematically and repeatedly reinforced and perpetuated through the rhetoric employed within Athenian courts. Such research would provide a deeper understanding of how the *dikastai's* social identity influenced the persuasive techniques employed by speakers in the Athenian courts and shed more light into the nature of Athenian trials and the overarching aims of the Athenian administration of justice.⁹⁶

⁹⁶I am indebted to the anonymous reviewers of *Rhetorica: A Journal of the History of Rhetoric* for their constructive comments and help in the preparation of the manuscript of this paper. All remaining errors and erroneous assumptions are my own. This work was facilitated by the sponsorship of The Society of Legal Scholars.