Spaces of Justice in the Roman World

Edited by Francesco de Angelis
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KANGAROO COURTS: 
DISPLACED JUSTICE IN THE ROMAN NOVEL

John Bodel

“Organizing ‘kangaroo courts’ for the slightest offense, were some of their daily amusements.”

1. Declamation and reality

Roman authors of the early Empire agreed: their world was in cultural decline. Love of money and widespread moral decadence were the principal causes, but in the realm of oratory and the practice of law, the schools of declamation were equally to blame. The common criticisms, voiced already in the time of Tiberius by the elder Seneca, who traced the beginning of the slide to the death of Cicero, had become so hackneyed by the end of the first century CE that Tacitus in his Dialogus can put them into the mouth of the orator Messala around the year 75 precisely in order to characterize him as somewhat old-fashioned. The passage is worth quoting in full:

At nunc adulescentuli nostri deducuntur in scholas istorum, qui rhetores vocantur, quos paulo ante Ciceronis tempora extitisse nec placuisse maiorebus nostris ex eo manifestum est, quod a Crasso et Domitio censoribus claudere, ut ait Cicero, “ludum impudentiae” iussi sunt. (2) Sed ut dicere institueram, deducuntur in scholas, (in) quibus non facile dixerim utrumne locus ipse an condiscipuli an genus studiorum plus mali ingenii adferant. (3) Nam in loco nihil reverentiae est, in quem nemo nisi aequae imperitus intret; in condiscipulis nihil profectus, cum pueri inter pueros et adulescentuli inter adulescentulos pari securitate et dicant et audiantur; ipsae vero exercitationes magna ex parte contrariae. (4) Nempe enim duo genera materiaorum apud rhetoras tractantur, suasoriae et controversiae. Ex his suasoriae

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1 “Kangaroo court: an unauthorized or irregularly conducted court”: Lighter (1997) 336 s.v., citing Craigie and Hulbert (1938–1944) s.v. for a quotation of 1890.
2 For general overviews, see, e.g., Williams (1978) 6–51; Clarke-Berry (1996) 85–99; Harrison (2005) 287–299. See also the initial pages of Frier, in this volume.
quidem etsi tamquam plane leviore et minus prudentiae exigentes pueris delegantur, controversiae robustioribus adsignantur—quales, per fidel, et quam incredibiliter compositae! sequitur autem, ut materiae abhorrenti a veritate declamatio quoque adhibeatur. (5) Sic fit ut tyrannicidarum praemia aut vitiatarum electiones aut pestilentiae remedia aut incesta matrum aut quidquid in schola cotidie agitur, in foro vel vel vel innumquam, ingentibus verbis perseverantur: cum ad veros iudices ventum ⟨...⟩

(Tac., Dial. 35.1–5)

But nowadays our young men are led off to the schools of those who call themselves rhetoricians. These appeared a little before the time of Cicero and were disliked by our ancestors, as is clear from the fact that, when Crassus and Domitius were censors [in 92 BCE], they were ordered, as Cicero says, to close ‘the school of impudence.’ (2) But, as I had started to say, the young men are led off to schools in which it is hard to tell whether it is the place itself (locus ipse) or their fellow students or the type of studies that harms their minds the most. (3) For there is no reverence in a place in which no one enters who is not as inexperienced as the others; there is no progress among the students when boys and young men both speak and are heard with equal assurance among their peers; and indeed, the exercises themselves are for the most part detrimental. (4) For two kinds of subject-matter are treated by rhetoricians, “persuasions” (suasoriae) and “controversies” (controversiae). The first, being more trivial and requiring less wisdom, are given to boys; the second are assigned to older boys—but good lord, how implausibly contrived they are! Consequently declaimers practice even on subjects remote from reality. (5) So it happens that the rewards of a tyrant, or the choices of violated maidens, or remedies against pestilence, or the incestuous behavior of mothers or whatever is daily dealt with in schools but rarely or never in the forum is pursued in lofty language. But when they come before real jurors ⟨...⟩

Here our manuscripts break off, but the litany of complaints against the schools of declamation had become so predictable by the latter half of the first century CE that we can complete the thought from a similar passage that opens our fragmentary text of Petronius’s Satyrlica, in which the speaker (the narrator Encolpius) fulminates against declaimers who, when they enter the forum are out of their element and lost.

Num alio genere Furiarum declamatores inquietantur, qui clamant: “Haec vulnera pro libertate publica excepi; hunc oculum pro vobis impendi: date mihi ducem, qui me ducat ad liberos meos, nam succisi poplices membra non sustinent”? (2) Haec ipsa tolerabilia essent, si ad eloquentiam ituris viam facerent. Nunc et rerum tumore et sententiarum vanissimo strepitu hoc tantum proficiunt ut, cum in forum venerint, putent se in alium orbem terrarum delatos. (3) Et ideo ego adulescentulos existimo in scholis stultissimos fieri, quia nihil ex his, quae in usu habemus, aut audiant aut vident, sed piratas cum catenis in littore stantes, sed tyrannos edicta scribentes quibus imper-
Are the declaimers stirred up by any other kind of Furies when they cry: “I took these wounds so the people could be free; I gave up this eye for you! Give me a leader to lead me to my children, since my hamstrung knees won’t support my limbs”? Even these things would be tolerable if they paved the way for those on the road to eloquence. But now with this bombastic puffery and empty clamor of phrases they bring it about only that, when they come into the forum, they think that they have been transported into another world. And so in my opinion young men become complete fools in school, because they neither hear nor see in them anything from real life but instead only pirates standing on the shore with chains, tyrants writing decrees ordering sons to cut off their fathers’ heads, oracular responses to plague prescribing the sacrifice of three or more maidens—honeyed globules of words and everything said and done as if flavored with sesame and poppy-seeds.

So closely do the improbable subjects that troubled Messalla mirror those enumerated by Enolpius that we are obliged to recognize them in both contexts as the common stock of trite criticism. In earlier days, according to Messalla, young orators in training had learned by accompanying their mentors to trials in the forum, attending their speeches not only there but in the assembly, and observing their teachers and their rivals engage in the thrust and parry of live debate.

Elsewhere in Tacitus’s dialogue a more creditable speaker, Maternus, reverts to the question of setting, decrying the contemporary custom of restricting the orator’s movement with constraining dress and confined spaces. Maternus speaks of auditoria (recital halls) and tabularia (records offices) in which many cases (he says) were held, and he implies that within their confines the judge’s dictation of points to address, the frequent interruptions for witnesses, and the virtual solitude in which the
proceedings are conducted debilitating and deprive the orator of the sustenance he traditionally drew from the clamor and applause of the crowd, as if he were in a theater \(\textit{velut quodam theatro}\). The situation described by Maternus clearly points to the procedural context of the \textit{cognitio extra ordinem}, a form that first appeared during the early Principate and gradually came to dominate the procedural landscape, in which the formulary procedure and private jurors were bypassed in favor of a public official representing the emperor and empowered both to adjudicate and to execute the judgment and which might be tried almost anywhere, even in private homes.

The salient point in Maternus’s comparison of the settings is the contrast between the noise and free-for-all hubub of the forum, which the skilled advocate had to learn to rise above, and the solitary isolation of the modern orator harried by the inescapable interference of an autocratic judge. The latter setting and mode of discourse were perhaps appropriate to the controlled environment of the schoolroom, but declamation was not debate: there was no give and take, no point and counterpoint, nothing, in fact, of the peremptory interruptions and curt responses apparently characteristic of \textit{cognitiones extraordinariae}. For that sort of interrogatory exchange, we may turn to the rhetorician Agamemnon in Petronius’s novel, the target of the narrator’s opening diatribe, engaging in repartee with his dinner host, the wealthy freedman Trimalchio, who plays the role of the irksome \textit{iudex}, feigning ignorance of poverty and sophistically exploiting a puerile \textit{double entendre} to dismiss a hypothetical case as fictitious:

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6 See, on \textit{cognitiones extraordinariae}, Crook (1995) 56–57, 66–67, 133–135; Harries (2007a) 28–42. For \textit{cognitiones} in private homes, note Vitr. 6.5.2: \textit{Forensibus autem et disertis elegantiora et spatsiosiora ad conventos excipiundos, nobilibus vero, qui honores magnistratusque gerendo praestare debent officia civibus, faciunda sunt vestibula regalia alta, atria et peristyliam amplissima ... quod in domibus eorum saepius et publica consilia et privata iudicia arbitriaque conficiuntur} (“for lawyers and orators, [the public spaces] must be more elegant and spacious enough to accommodate meetings. For the \textit{nobiles}, however, who are obliged to perform their duties to the citizens by holding offices and magistracies, the vestibules have to be made high and regal, the \textit{atria} and peristyles very capacious ... because both public deliberations and private judgments and arbitrations are conducted in their homes”). Perhaps the most famous and one of the earliest instances is known from Cicero’s speech in defense of the Galatian tetrarch Deiotarus, accused of attempting to assassinate Caesar, in a murky proceeding conducted before Caesar in Caesar’s home in November of 45 BCE: cf. Gotoff (2002) 253–256; see also de Angelis in this volume. See further, Crook (1995) 136; Bablitz (2007) 33–34, citing Quint., \textit{Inst.} 11.1.47; 11.3.127, 134, 156.
“Dic ergo, si me amas, peristasim declamationis tuae.” Cum dixisset Agamemnon: “Pauper et dives inimici erant ...”, ait Trimalchio: “Quid est pauper?” “Urbane”, inquit Agamemnon et nescio quam controversiam exposuit. Statim Trimalchio: “Hoc, inquit, si factum est, controversia non est; si factum non est, nihil est.”

[Trimalchio:] “Tell me, then, if you love me, the circumstances of the case in your declamation.” When Agamemnon had said, “A poor man and a rich man were enemies ...”, Trimalchio retorted, “What is a poor man?” “Clever!” replied Agamemnon, and expounded some controversia or other. Immediately Trimalchio broke in: “If this happened, it can’t be a controversia (a fictitious dispute); if it didn’t happen, it’s nothing.”

Students trained in such fashion lacked the stamina and concentration for public speaking in the forum, where, in the words of one rhetorician of the Tiberian period, Votienus Montanus, reported by Seneca the Elder, “if nothing else, the forum itself confounds them”, since they had never experienced in speaking the noise, or the silence, or the laughter of disapproval, or even the open air. To illustrate the point Seneca goes on to relate the story of the master declamer Porcius Latro, who became so flustered in defending a relative on trial in Spain that he tripped over his opening words and did not regain his composure until he had petitioned successfully to have the proceedings moved inside.

In the forum, if nothing else, the forum itself confounds them. You will know better whether the popular story is true, that Porcius Latro, the unequalled model of excellence in declamation, when he was defending his relative, Porcius Rusticus, on a trial in Spain, was so nonplussed that he began with a solecism and, lacking [a roof] and walls, was unable to pull himself together until he succeeded in having the trial moved from

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8 The anecdote about Latro is told also by Quint., Inst. 10.5.18. For the hubbub of the public courts, in contrast to the pampered and artificial environment of the declamation schools, see also Quint., Inst. 6.4.9–11, 10.3.30, 12.5.5–6, 12.6.5; Plin., Epist. 2.14.10; Dio Chr. 23.68 (catcalls to music) with Crook (1995) 135–136; 165–166.
the forum into a public hall. Students are so coddled in their scholastic exercises at the declamation schools that they don’t know how to handle noise, silence, laughter, even the open sky.

The proper place for a public trial, everyone agreed, was not the classroom but on the public stage of the open forum. In invoking a theatrical aspect of the orator’s proper milieu (velut quodam theatro), Maternus appeals to a feature of public trials remarked also by Cicero, who in De Oratore had characterized the speaker’s platform in a public assembly as the orator’s greatest stage and in Brutus had imagined his great rival Hortensius lamenting a forum, once the theater of his talent, bereft of eloquence. Like Maternus, Cicero was speaking metaphorically—note the qualifiers, velut in Tacitus, quasi (twice) in Cicero. The courtroom was not, in fact, a theater, and confusing the types of performance suitable to one with those appropriate to the other was one of the principal charges laid against those who trained in the declamation schools. So it had come about, according to Messalla, that speakers of the modern age imitated the style of entertainers—the speech patterns of actors, the tones of singers, and the gestures of dancers—so successfully that a shameful expression had arisen that the orators of the day spoke gracefully and the pantomimes danced eloquently.¹⁰

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¹⁰ Tac., Dial. 26.2–3 (Messalla): Neque enim oratorius iste, immo hercule ne virilis quidem cultus est, quo plerique temporum nostrorum actores ita utuntur, ut lascivia verborum et levitate sententiarum et licentia compositionis histrionalis modos exprimant. Quodque vix auditu fas esse debet, laudis et gloriae et ingenii loco plerique iactant cantari saltarique commentarios suos. Unde oritur illa foeda et praepostera, sed tamen frequens sicut his clam et exclamatio, ut oratores nostri tenere dicere, histriones diserte saltare dicantur (“For that style is befitting neither of an orator nor even, by god, of a man, which most of the pleaders of our day employ, whereby, through the playfulness of their diction, the triviality of their sentences, and the looseness of their composition, they squeeze out the strains of actors. From this arises that preposterous and disgraceful but
Three settings, then, each with its distinctive ambience, regularly came into discussion when the decline of modern oratory was debated or decried by early imperial authors: the open space of the forum, with its multiple distractions and real-world outcomes; the close confines of the declamation schools, where artificially contrived problems found improbable solutions; and the centripetally focused stage and seating ensemble of the Roman theater, where solo performers fed off an attentive audience riveted on them. Counterpoised to all three of these were the variable locations and spaces of the cognitiones extra ordinem that increasingly came to dominate the administration of justice during the Empire—the auditoria and tabularia and private chambers of aristocratic households—in which, paradoxically and incongruously, the histrionic mannerisms of the stage were squandered on paltry and unappreciative audiences enveloped in the stultifying closeness of the schools.

2. Lost at sea

It is against this backdrop that we must try to assess the spaces of justice depicted in the Roman novels and more particularly the settings of trials, real and figurative, that were such a staple of the Greek romances to which they bear such close affinities. Chariton, Longus, Achilles Tatius, and Heliodorus include in their fictions extended descriptions of trial scenes that advance the plot or showcase virtuoso displays of stylistic prowess.\(^{11}\) In the Roman novels, on the other hand, the trial scenes serve rather to reflect, by dislocation of setting, conceptual or perceptual dislocations in the worldview of the narrator. They are out of place physically, just as the narrative is out of place rhetorically and the narrator, often, perceptually. In this they exhibit a characteristic feature of Latin literature of the empire—its tendency to convey meaning indirectly and often

surreptitiously.\textsuperscript{12} So, for example, Messalla’s claim that the better apprenticeship practices of earlier days had been replaced by the declamation schools is belied by the presence in the same dialogue of the narrator Tacitus in precisely the role said no longer to exist (\textit{Dial} 1.2). The \textit{mise en scène} undermines the rhetorical position (and factual claims) of one of the protagonists in the debate not by direct rebuttal but by oblique refutation in fact.

Similarly, and more relevantly, the opening scene of the \textit{Satyricon}, in which Encolpius voices the standard complaints about rhetorical education, focusing on the impractical training on subjects remote from reality, when considered in context, disproves the position it advocates and furthermore (unlike the situation in the \textit{Dialogus}) calls into question the sincerity of its mouthpiece. As we learn from the denouement following Encolpius’s exchange with the rhetorician Agamemnon, Encolpius and his friends are posing as fans of declamation (\textit{tamquam scholastici}, 10.6), evidently in order to cadge an invitation to dinner (10.2). In deploring the state of modern education to the gullible professor, Encolpius has marked his man, and the pigeon gets stewed in its own juice when the rhetorically trained narrator applies all the conceits of the declamation schools to the real-life problem of conning an academic, a comparatively simple task he accomplishes with considerable panache.\textsuperscript{13} “Declaiming” is explicitly how the narrator characterizes his opening gambit, a tasty package of honey-ball words, as he calls them (\textit{mellitos verborum globulos}), which the professor swallows without blinking.\textsuperscript{14} Agamemnon commends Encolpius as a man of discriminating taste and goes on to expound a curriculum that would have pleased a Messalla or a Quintilian and is designed to flatter Encolpius; but the game is already over, for it is Agamemnon who succumbs to the flattery, inviting Encolpius and his companions to accompany him to Trimalchio’s banquet in his entourage,

\textsuperscript{12} On this now widely recognized phenomenon, see primarily, \textit{inter multos alios}, Bartsch (1994).

\textsuperscript{13} See Kennedy (1978), Cosci (1978), and Salles (2002), on the position of the \textit{rhetor} Agamemnon in the cultural world of Trimalchio and his friends.

\textsuperscript{14} Petron. 3.1: \textit{Non est passus Agamemnon me diutius declamare in portico, quam ipse in schola sudaverat, sed: “Adulescens,” inquit, “quoniam sermonem habes non publici saporis et, quod rarissimum est, amas bonam mentem, non fraudabo te arte secreta”} (“Agamemnon did not allow me to declaim longer in the portico than he had sweated in the school but said, ‘Young man, since you have a cultivated manner of speech and, what is most unusual, good sense, I won’t deceive you about my secret skill’”). \textit{“Honey-ball words”:} Petron. 1.3, above, p. 313.
and it is Encolpius’s impractical modern rhetorical education that enables him to parlay his literary learning into substantive gain for himself and his friends.

Within the insular world of the declamation schools and the houses of the wealthy with cultural pretensions, a liberal education brought its own rewards. Very different was its value outside that rarified environment, and the next time Encolpius and his companions attempt to deploy the training of the declamation schools to improve their circumstances, its inadequacies in the real world are exposed. After the banquet of Trimalchio, Encolpius and his boyfriend Giton fall in with a disreputable poetaster Eumolpus, who leads them on board a ship bound for points south. Only after embarking do the protagonists discover that they have inadvertently fallen into the hands of the very pair—a ship captain Lichas and a woman of leisure Tryphaena—whom they have previously offended and are trying to avoid. Lichas, a respectable businessman, is described as a veritable Cyclops, and with an Odyssean story pattern that will carry through the remaining portions of the novel thus launched, the trio deliberate plans of escape. Eumolpus, momentarily nonplussed and in need of direction, has recourse to the only world he knows, the world of rhetoric and literature, and, in assessing the task, sets out the problem exactly as a rhetor would an assignment to his pupils:


(Petron. 101.7)

Confused and in need of a plan, he [Eumolpus] ordered each of us to produce an opinion [or an ‘epigram’] and said: “Imagine that we have entered the Cyclops’s cave: some escape must be found, unless we are to stage a shipwreck and free ourselves from every danger”.

The latter alternative—the staged shipwreck as a final solution (ponimus must be understood in this theatrical sense)—was characteristic of mime, an entertainment known for its abrupt and ill-motivated endings; it will in fact be realized at the climax of the episode, when it is the implacable Lichas, rather than any of the heroes, who washes up dead on shore.16

15 Petron. 101.4–6. For the Odyssean leitmotif, see, conveniently, Courtney (2001) 152–159.

16 Naufragium ponimus, “stage a shipwreck”: Watt (1986); Cic., Fam. 10.32.3; Pers. 5.3. Sen., Dial. 4.2.5, refers dismissively to a mimicum naufragium: see Panayotakis (1995) 144–146.
But the series of improbable proposals that follows, each refuted in turn (101.8–103.2) and eventually resulting in a misguided attempt to disguise the fugitives by shaving their foreheads and inking fake tattoos onto their brows in order to mark them as runaway slaves, f(ugitivi) (103.3–6), evokes the competitive one-upmanship of the classroom rather than the stage. The ruse is quickly exposed (104–106), and Encolpius and Giton enlist Eumolpus in their defense in an impromptu shipboard trial presided over by Lichas (the beginning of the scene is lost in a lacuna in the manuscripts).

In the exchange that follows, Eumolpus deploys a variety of oratorical approaches, many evocative of famous Ciceronian strategies and often recalling Cicero's words, but each is ineptly applied, and each is systematically demolished by Lichas, who refutes the arguments point by point.¹⁷ Eumolpus's claim that the culprits, honorable freeborn men, have voluntarily submitted to the mark of runaway slaves as a sign of their contrition, a tactic based on the formal device of the deprecatio (a plea in mitigation of guilt, bolstered by an appeal to the social standing of the accused—both techniques recommended by the rhetorical handbooks and deployed to good effect by Cicero) founders in the face of Lichas's demand that the points be treated individually and not confused.¹⁸ In fact, the tactic of the deprecatio, according to the anonymous late Republican rhetorical manual addressed to Herennius, though it seldom worked in court, was more effective before a council or a general—but only when the plea could be supported by a rehearsal of the guilty party's good deeds, neither of which situations applies in the present circumstances.¹⁹ Eumolpus knows his oratory as Trimalchio knows his mythology—only well enough to botch it. Petronius sets up a court scene and then puts into the mouth of Eumolpus a type of speech that would rarely have been heard in court.

The sequence of proposition and rebuttal is brought to an end when Lichas turns to examine the accused Encolpius directly, and Encolpius,

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¹⁸ Petron. 107.6–8: Interpellavit deprecationem supplicis Lichas et: “Noli,” inquit, “causam confundere, sed impune singulis modum. Ac primum omnium, si ullo venerunt, cur nudavere crinis capit? Vultum enim qui permutat, fraudem parat, non satisfactionem” (“Lichas interrupted the plea of a suppliant and said: 'Don't confuse the case but put a limit on your individual points. First of all, if they came on board voluntarily, why did they denude their heads of hair? One who changes his appearance is preparing deceit, not resolution’”).
like the discomfited declarer constrained to plead in the forum, finds himself confused (turpatus) and, faced with a stark reality (in manifestare), unable to say a thing.\textsuperscript{20} Both the setting and the nature of the proceedings are relevant. In refuting the points individually as they arise, and especially in dictating the course of the interrogation, Lichas assumes simultaneously the roles of prosecutor and judge and thus instantiates the procedure of a cognitio extraordinaria. Conducted before only a few sailors and passengers aboard a ship at sea, the proceedings were indeed extra ordinary. A basic principle of Roman maritime law held the captain of a ship to be the sole legal authority empowered to administer justice on board, provided the vessel was not in port. Issues of liability arose only when the captain—the gubernator or magister navis—had been designated by the ship-owner for a specific charge—hence the important specification, when he is first introduced (101.4), that Lichas is both owner and commander of the ship.\textsuperscript{21} His power as iudex of a cognitio extra ordinem is thus symbolically figured (and amplified) by his position as owner-captain of a ship at sea.

At the same time, the man of letters Eumolpus and the ineffectually well-read Encolpius, fully armed with a panoply of rhetorical devices and steeped in literary precedent, find themselves no match for the blunt reality imposed upon them by Lichas and, more broadly, by their judicial circumstances. Lichas’s pragmatic exposure of the implausibilities and logical inconsistencies in Eumolpus’s exculpatory ruses recalls Trimalchio’s more jocular but equally peremptory interrogation of Agamemnon. Ill-equipped by their education to respond to the rigors of the new legal procedure, the protagonists are metaphorically as well as literally at sea in a world in which improbable fictions are held up to the clear light of day. Petronius’s point is the same one that Maternus articulates in the Dialogus—the legal landscape had changed: isolated environments and activist judges gave little space for the grand oratory of the past, and the rhetorical

\textsuperscript{20} Petron. 107.15–108.1: “Quid”, inquit Lichas, “attinuit supplices radere? Nisi forte miserabiles calvi solent esse? Quamquam quid attinet veritatem per interpretem quaerere? Quid dicis tu, latro? …” Obstupueram ego supplicii metu petrified, nor, in my state of confusion and faced with the stark reality, did I find anything to say …”).

\textsuperscript{21} Petron. 101.4: Lichas Tarentinus, homo verecundissimus et … huius navigii dominus, quod regit (“Lichas of Tarentum, a most respectable man … and owner of this ship, which he commands”); Rougé (1981) 189; (1971) 178–180.
training purveyed in schools was useless in the real world. Obfuscation and misdirection, the successful pleader’s stock in trade, had no truck with an investigating judiciary more impressed by evidence and direct testimony than by rhetorical flourishes. That the episode ends with the triumph of injustice over justice—the death of Lichas and the gratuitous survival of the three reprobates—is characteristic both of the Roman novelists’ cynical view of the world and of their penchant for realizing the fictive and fictionalizing the real. The theatrical denouement imagined by Eumolpus at the outset (nisi naufragium ponimus, 101.7) materializes with a deus ex machina conclusion to real life at the end. The mise en scène of the trial at sea matches the ineffectiveness of the rhetorical strategies deployed by the protagonists to extricate themselves from a discomfitting turn in the plot with the physical displacement of the proceedings from any of their traditional venues and the restrictive procedural innovations invariably associated with the more confined physical spaces of the cognitiones extra ordinem.

3. Out of court

When we turn to the other major Roman novel to come down to us, the Metamorphoses of Apuleius, we encounter a similar perspective, engineered differently. There the narrator, Lucius, introduced as a well-born young man driven by curiosity to investigate magic in the heart of Thessaly (1.1–2), finds himself embroiled in a trial in the town of Hypata, where he is sojourning as the guest of a local miser, Milo. As he learns when he first arrives and asks directions to the house of his host, presumed to be among the first citizens of the community (e primoribus), Milo lives “outside the town limits and the entire city” and is thus among the first of the local residents to be encountered by those arriving at the town. “Joking aside” (remoto ioco) Lucius replies to his interlocutor’s feeble wit—but he might have said remoto loco, for the positioning of Milo’s home beyond the pale marks only the first of several significant markers of place that punctuate the episode.22

22 Apul., Met. 1.21.2–4: “Estne” inquam “Hypata haec civitas?” Adnuit. “Nostine Milonem quendam e primoribus?” Adrisit et: “Vere” inquit “primum istic perhibetur Milo, qui extra pomerium et urbem totam colit.” “Remoto” inquam “ioco, parens optima, dic oro et cuiatis sit et quibus deversetur aedibus” (“Is this town Hypata?; I asked. He nodded. ‘Do you know a certain Milo, among the first citizens?’ He smiled and said, ‘Indeed, Milo is...
After locating the residence and learning of his host's stinginess, Lucius ventures into the forum to procure food for supper and there encounters an old schoolmate from Athens, Pythias, now a local aedile invested with the trappings of office (the rods and dress of a magistrate), who offers his assistance and asks how much Lucius has spent for the fish he purchased. To Lucius’s reply, Pythias responds in appropriately Delphic fashion by berating the fishmonger for price gouging, ordering the fish to be trampled under foot, and, after remarking his satisfaction with having abused the old man, sending Lucius on his way (1.25). To this miscarriage of justice perpetrated in the forum Lucius reacts in the same manner as the schoolboy thrust into the limelight of judicial proceedings in foro or Encolpius confronted with direct interrogation by a figure in authority—with bewilderment and stupefaction (consternatus ac prorsus obstupidus, 1.25.6). In this case, however, it is not the inadequacies of his rhetorical training that leave the narrator speechless but the officious behavior of the local magistrate—not a failure of words, in other words, but an incomprehensible failure of deeds (his actis consternatus, 1.25.6).

This reversal of the topos, with similar results, diverts focus away from the ineffectual and innocent 'plaintiff' onto the individual magistrate, who, empowered within his own element—the forum—both to investigate and to punish, vaunts his authority but is bound by no rules of logic or sense of equity and produces no justice.

The following evening, upon returning home from a dinner in town, Lucius encounters what he believes to be three robbers attempting to break into Milo’s home. He lays into them with his sword and, after stabbing them repeatedly, staggers into the house and into bed and falls asleep immediately (2.32). The next morning he awakens wracked with guilt and bleakly contemplates his future, imagining his arraignment in the forum and foreseeing not only a public trial but an adverse verdict and execution of the capital punishment he believes he deserves. A crowd arrives to haul him off to court and, after leading him throughout the streets to the accompaniment of a growing throng, brings him into the

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23 Apul., Met. 3.1.2–3: Ubertim flebam, iam forum et iudicia, iam sententiam, ipsum denique carnificem imaginabundus. "An mihi quisquam tam mitis tamque benivolus iudex obtinget, qui me ... innocentem pronuntiare poterit?" (‘I was weeping copiously, imagining now the forum and the trial, now the judgment and the executioner. Or will I happen upon a judge so mild and kind that he will be able to pronounce me innocent?’).
forum and stations him before the town magistrates seated on a lofty tribunal. Lucius likens his role to that of a sacrificial victim in a ritual of expiation, and modern scholars have recognized in the scene that follows a classic scapegoat ritual in which the sins of a community are heaped onto a hapless surrogate who, after undergoing the requisite ritual abuse, is driven from the community to expel the pollution. \(^{24}\) The essential orientation of a scapegoat ritual is centrifugal, however, whereas the trial of Lucius develops in a centripetal fashion, proceeding from outside of town to the forum and thence to the theater, where the ensuing spectacle results in a proposal for his integration into, rather than alienation from, the community. \(^{25}\)

The location of the trial in the theater has attracted notice, but the nature of its significance has not been fully recognized. As that narrative unfolds, it becomes clear that the proceedings are not a trial but a farce, the centerpiece of the local Festival of Laughter, in which the murdered robbers turn out to be wineskins and the eager participants (witnesses and magistrates as well as a prosecutor and spectators) actors complicit in Lucius's unwitting role in the drama. \(^{26}\) What has not, perhaps, been sufficiently remarked is the incongruity between the Roman legal context suggested by the technical language sprinkled throughout the episode and the setting of the trial in a theater, a natural venue for proceedings \textit{in iure} in the Greek world, where verdicts in public prosecutions were generally rendered by popular acclaim, but out of place in the Roman west, where the areas set aside for trial and punishment were distinct, and

\(^{24}\) Apul., \textit{Met.} 3.2.5–6: \textit{Tandem pererratis plateis omnibus et in modum eorum quibus lustralibus piamentis minas portentorum hostis circumforaneis expiant circumductus angulatim forum eiusque tribunal adstituor. Iamque sublimo suggestu magistratus residentibus, iam praecone publico silentium clamante, repente cuncti consona voce flagitant propter coetus multitudinem, quae pressurae nimia densitate periclitaretur, iudicium tatum theatro redderetur} ("Finally, after we had wandered through every main street and I had been led around every corner in the manner of those purificatory processions whereby they expiate threatening portents by carrying around victims, I was brought to the forum and made to stand in front of the tribunal. The magistrates had already taken their seats on the lofty platform, and the town crier was calling for silence, when suddenly everyone with one voice demanded, on account of the size of the gathering, which was in danger of becoming overcrowded, that so important a judgment be rendered in the theater"). Scapegoat ritual: e.g. James (1987) 87, 97 n. 1; Habindek (1990); McCreight (1993) 46-47; Finkelpearl (1998) 91–92.


\(^{26}\) See already, Robertson (1919), highlighting the carnivalesque aspects of the episode; Zimmerman (2000) 25–26, noting the mirroring aspects of the theatrical settings of Lucius’s trial in Hypata and the pantomime judgment of Paris enacted in the amphitheater at Corinth in Book 10.29–34; Frangouilides (2002).
where (if we are to believe the Roman critics of declamation schools) the confined spaces, limited audience, and controlling *iudex* of the former stood in stark contrast to the public, popular, and increasingly theatrical exhibitions in Roman theaters and amphitheaters that characterized the latter.  

When Roman judicial procedure was enacted within the traditional spaces of justice in the Greek world, the clash between the two systems, the one tending toward spatial and judicial constraint, the other toward spectacular and popular extravagance, became apparent, and the perils of both mob justice and the potentially autocratic *cognitiones extra ordinem* were publicly exposed. The raucous accusation of the apostle Paul by artisans convened in unlawful assembly in the theater at Ephesus in 62 CE provides a case in point: the crowd on that occasion was summarily dismissed after being reminded that there were proper courts and proconsuls to try private lawsuits. Polycarp in 155 CE is brought before the governor at Smyrna in the amphitheater, where he enranges the mob by defying the governor’s threats of torture by wild animals before fulfilling its lust to see him burned alive. In the *Passio Perpetuae et Felicitatis*, set in Carthage or possibly Thuburbo Minus in 203 CE, the western distinction of venues for trial and punishment is preserved: Perpetua faces her judge from a raised platform (*catasta*) in the forum, but on the day set aside for a gladiatorial exhibition is marched to the amphitheater, where she is tortured according to the mob’s dictates before being put to the sword in the arena.  

Lucius’ trial in a theater at Hypata thus suits the Thessalian

27 Keulen (1997) 203–204 rightly criticizes the overly historicizing readings of the legal terminology throughout Apuleius’s works by Norden (1912) and more recently by Summers (1970), but the abundance and versatility of Roman legal language in Apuleius’s lexical arsenal is undeniable. Colin (1965a) 338–343 believes that Lucius’s trial at Hypata was meant to show Apuleius’s familiarity with the judicial procedure of the free cities of Thessaly. Summers (1970) 517–518 regards the juxtaposition of Roman terminology (518 n. 20) and Greek setting as indicative of Apuleius’s indictment of the Roman legal system (521). With Keulen (1997), I see Apuleius’s intention as less moralizing and propaedeutic, his goal more literary and aesthetic: as he advises in the preface, *lector intende, laetaberis* (1.4.9). For trials in Greek theaters during the Hellenistic and Roman periods, see Colin (1965b); (1965a) 342 nn. 3–4. For Roman punishments as theater, see the classic discussion by Coleman (1990) and now also (2006) 316, s.v. ‘mythological enactments’. For the Christian martyrs, see Aubert, in this volume.  

28 Paul: *Acta Apostolorum* 19.24–41; *Martyrium Polycarpi* 8–9 (amphitheater), 11 (threat), 12 (mob rage); *Passio Perpetuae et Felicitatis* 6.1–2 (forum and *catasta*), 7.9 (*munus castrense*), 18.1 (amphitheater), 21.7 (execution in *medio*), with Aubert, in this volume, pp. 302–303 (Polycarp), 286–289 (Perpetua). Chariton, probably the earliest of the extant Greek novelists, locates trials at Syracuse in both the agora (1.4–6, Chaereas) and the theater (3.4, Theron); see further below n. 35.
setting but displaces the Roman proceedings from their traditional context. The theater was also in the Roman world (both east and west) a place where declamations were regularly performed as public entertainments, and thus it is unclear at the outset of the proceedings, to us as well as to the narrator, into which of these two situations he has fallen.\footnote{See Russell (1983) 76; van Mal Maeder (2003) 352.} The rich raw material provided by a theatrical setting for a trial in a Greco-Roman context thus enabled Apuleius to interweave with one another the thematic threads of east and west, fictional and real, to create a complexly variegated literary texture (mutuus nexus).

The drama unfolds to the direction of the town crier (praeco publicus), who summons forth an elderly prosecutor to deliver an accusation properly drawn up in accordance with the rhetorical handbooks and thus proceeding from exordium to narratio to thundering peroratio, in which he appeals explicitly to the xenophobia that he rightly presumes to be the dominant unifying spirit of the community: Lucius the defendant is a murderer; worse, a murderer caught in the act; worse still (so concludes his tricolon crescendo), a foreigner (reus peregrinus) and outsider (homo alienus) undeserving of the consideration owed to citizens.\footnote{Apul., Met. 3.3: Habetis itaque reum tot caedibus impiatum, reum coram deprensam, reum peregrinum. Constanter itaque in hominem alienum ferte sententias de eo crimen quod etiam in vestrum civem severiter vindicaretis (“You have before you a defendant stained by so many slaughters, a defendant seized in the act, a foreigner! Therefore render with conviction against a stranger a verdict about a crime that you would punish severely even in one of your own citizens”).} Momentarily reduced to tears by the withering charges, Lucius recovers by drawing inspiration from the setting and, somewhat to his own surprise, launches on cue into a self-defense that is a model of its kind, addressing point by point his accuser’s argument in the same cannonical order of exordium, narratio, here much embellished with elaborately fabricated detail, and finally a suitably expectant peroration that asserts the orator’s respectability among his own people and demands of his accuser a plausible motive for the alleged crime (3.5–6). His speech concluded, Lucius opens the floodgates of his tears and stretches his hands out in supplication, now to one part of the crowd, now to another (3.7).

Lucius recognizes his setting as that of a regular Greek trial before an assembly in a theater, an environment in which a defendant might win acquittal as readily by an appeal to popular mercy as by legal argumentation and persuasive rhetoric. Judging his performance suitably effective, he is then surprised when the audience responds not with the anticipated
absolution but with laughter and applause. It is only in the aftermath, once he has been led forth from the theater, back through the streets by a devious route to Milo’s house, avoiding encounters along the way (and thus reversing the course and circumstances of his earlier procession from the house to the forum), that Lucius realizes that he has been applauded for his declamatory performance as an entertainer rather than acquitted for his eloquence as an advocate: the local magistrates arrive at Milo’s house to acknowledge Lucius’s noble background and to offer him the honor of a public statue for his service to the town, a distinction he declines to accept (3.11).

Place, or rather dislocation, is central to the Hypata episode, marking as distinct the physical spaces of justice and entertainment and then systematically confusing the two, so that the forum becomes the setting for a farcical enactment of ad hoc justice in the real world and the theater serves as the site for a fictitious trial resolved by a real-world declamation. Lucius, the homo alienus and reus peregrinus, resident locally only as a temporary visitor outside of town, is a foreigner to both worlds; but his failure to distinguish between them, unlike that of Petronius’s narrator Encolpius, is less the product of his own perceptual inadequacies than of the systematic deceptions perpetrated upon him by a community fully engaged in exploiting the ambivalences between the two.

4. A sophist on trial

The well-known signature (sphragis) at the end of Apuleius’s novel in which the identities of author and narrator are fused (11.27.9) has long seemed to justify the quest in Lucius’s adventures for reflections of Apuleius’s life as a neo-Platonic philosopher and orator in his native North Africa. The most famous episode in that relatively well-attested life is the trial in which Apuleius was obliged to defend himself in late 158 or early 159 CE before the proconsular governor of Africa, Claudius Maximus, at Sabratha. The facts of the case are well known and can be briefly summarized. Travelling east to Egypt from Carthage through Libya, Apuleius

31 This is not the place to explore further the thematic implications of the mirroring features that link the trial of Lucius at Hypata to the theatrical judgment of Paris, itself a pantomime reflection of Lucius’s life, in Book 10.29–34 as they pertain to the broader themes of the novel. See Zimmerman–de Graaf (1993) and Zimmerman (2000) 25–26.

32 For the date, see Guey (1951) and Syme (1959) 315–316; for the location, cf. Apul., Apol. 59.2.
had paused at Oea (Tripoli) to visit his old school friend from Athens, Pontianus. While there, he fell in love with and was encouraged to marry Pontianus’s widowed mother, whose wealth had made her a target of local suitors. Somehow the financial situation became clouded; Pontianus turned against his old friend and with other relatives accused Apuleius of gold-digging, prosecuting him on charges of seducing his mother by magic. We do not know the outcome of the trial, but Apuleius’ successful career in North Africa as a sophist and philosopher suggests that he was acquitted. If so the skills of the orator surpassed the merits of the case. The speech in which Apuleius defends himself—the only private oration we have from the period of the Principate—is a masterpiece of misdirection and obfuscation in which he does not so much refute the charges, which remain somewhat obscure, as dazzle with his erudition and rhetorical skill the proconsul Claudius Maximus, who, as a proconsular governor holding an assize, was the sole authority adjudicating the case. With a single, controlling, *iudex* presiding, an elitist appeal to common cultural currency in two men of learning—sophisticates among the bumpkins—provided a suitable bulwark against local xenophobia. Subsequently, as we learn from Augustine, the town of Oea awarded Apuleius a bronze statue, the dedication of which evidently mentioned his speech before the proconsul.  

Illusory biographical fantasy lurks throughout the *Metamorphoses*, and caution is warranted, but it would be a bold critic who claimed that major experiences in an author’s life left no mark in his literary creations, and in this case the correspondences between the mock trial of Lucius at Hypata and the real-life trauma of Apuleius at Oea are striking: a sojourning visitor, brought up on false charges relating to magic, defends himself before an enthusiastic audience, eloquently and evidently successfully, by an appeal to a common cultural heritage shared with the presiding authority. We do not know where in Sabratha the trial was held—in his speech Apuleius makes frequent reference to the surrounding crowd, the factions of supporters, and a water clock—and the forum is perhaps the most likely place to imagine the scene. But it is

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33 Aug., *Epist.* 138.19; cf. Hicter (1945) 61–63. The speech itself, like Lucius’s at Hypata, has been aptly described as a mixture of the forensic and the epideictic: Harrison (2000) 44.

34 As is supposed by Caputo (1959) 31 (“certamente nella Basilica”) and Manton (1988) 78 (“in the old law courts in the Forum”), without evidence or argument. What little can be surmised of the setting and ambience is summarized by Hunink (1997) 12–15.
perhaps worth noting that Sabratha, a Roman town since the end of the first century BCE and a provincial center from the early second century, was graced by the time of the Severi with a large and well-appointed stone theater capable of seating between 5,200 and 6,400 spectators, where public assemblies and extraordinary gatherings, as well as theatrical entertainments, were held. The structure itself has been dated toward the end of the second century, its decorative elements and stage building to the Severan age. It is not impossible, however, that the basic complex belongs to the Antonine period, in which case, the trial could well have been held in that venue, and we would perhaps be justified in regarding its setting also as a relevant factual element of Apuleius’s farcical life-experience at Oea that was exploited elegantly for its literary potential in his novel. More plausibly, perhaps, the trial, an evident cause célèbre, was one of those judicial spectacles constrained by the confined spaces of the courts that lent themselves to ready transposition in life to theaters throughout the eastern Mediterranean and north African world and in the fertile imagination of Apuleius the sophist in his Metamorphoses to restaging as the Festival of Laughter at Hypata.

35 For the building and dates, see Guey (1951) 313–315, Caputo (1959) 29–32 and Sear (2006) 283–284, with further bibliography. For the range of activities held in North African theaters, and the need for an orator to distinguish his performance from the others, note Apul. Flor. 5 (the shortest of the excerpts) and 18.3–9, on the theater at Carthage, to a large crowd assembled there to hear him speak, acknowledging the setting as the customary venue of mimes, comedians, tragedians, ropewalkers, jugglers, pantomimes, and other players (18.4) but appealing to his audience, in the manner of a tragic or comic actor, to imagine themselves in the local senate house or library (18.9) and to attend to nothing more closely than the “reasoning of the assembly and the oration of the speaker” (convenientium ratio et dicentis oratio, 18.5); further Hunink (2001) 83, 181.

36 The date of the Metamorphoses is uncertain, but most now favor a period a decade or more after that of the trial, in the 170s or 180s: see Harrison (2000) 9–10. My thanks to the hosts of the stimulating occasion that led to this volume, Francesco de Angelis and W.V. Harris, and to the other participants in the conference, especially Francesco de Angelis, B.W. Frier, and Saundra Schwartz, for congenial criticism and comment.
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Spaces of Justice in the Roman World Vol. 35 Law and Justice Roman law covered marriages, inheritances, and contracts (agreements) between people, as well as countless other areas of daily life. Modern legal codes in European countries like France and Italy are based in part on ancient Roman laws. Another legacy of the Romans was the Roman idea of justice. The Romans believed that there was a universal law of justice that came from nature. By this natural law, every person had rights. Judges in Roman courts tried to make just, or fair, decisions that respected people’s rights. Similarly, many people around the world believe that all humans have basic rights that no written law can take away. Citizenship When Rome first began expanding its power in Italy, to be a citizen of the city-state of Rome.