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CHAPTER 3

Courtroom Rhetoric in Imperial and Late Antique Philosophical Dialogues

Dawn LaValle Norman

INTRODUCTION¹

Because dialogue represents philosophy happening among interpersonal relationships, it is a natural place to investigate power dynamics, both displays of power and displays of resistance. But in literature, unlike in life, the power-dynamics are completely within the control of one person, the author, who can script the situation as he chooses. In this chapter, I will argue that there was a change in the rules of comportment found in literary dialogues between the first and fourth centuries CE that can be traced through paying close attention to first the appearance and then the development of a new character in these discussions – a judge. A shared embrace of forensic rhetoric to express philosophical antagonism existed across changing modes of judgement in the Roman Empire. I argue that this forensic dialogic mode was introduced as a mode of sublimation of political energy, as a rerouting of resistance into a safer domain of scholastic antagonism.

Since this trend reaches its zenith in mature Christian dialogues of the fourth century, it could be used as perfect evidence to support the claim that true dialogues ended with the coming of Christianity. Richard Lim, while looking more broadly at patterns of debate rather than only at the genre of the philosophical dialogue, is a proponent of this general line of reasoning and argues that a certain apophatic strain in Christian theology won out over the desire to debate and reason as Greek culture progressed into the Byzantine period.² Simon Goldhill is even more explicit in linking the downfall of the entire genre of dialogue to the rise of Christianity with its commitment to ‘a strict hierarchical world picture, a single truth, and the physical suppression of any sign of uppity’.³ In readings such as these, it would be easy to assume that the judge is present in these later dialogues in order to make sure that the reader has no ambiguity about what the right answers to the questions under debate are.

However, my argument in this article will be that while the presence of judges might at first flush seem to be a statement of oppressive power, it is more often a sign of political weakness. In the vast majority of cases, the dialogic judges avoid giving a final judgment in

¹ In addition to the participants at the Resistance Conference at Cambridge, I owe thanks to the many questions and comments from audience members at the Biblical and Early Christian Studies Seminar at Australian Catholic University (June 2018), the Pacific Partnership in Late Antiquity conference (Auckland, July 2018), and especially the Works in Progress group in the Classics Department at Durham University (January 2019).

² Lim (1995).

³ Goldhill (1995) 7.

order to maintain friendly community dynamics that were expected of dialogues. The dialogue could absorb and safely contain some energy formerly given over to political life.⁴ However, with the last example I look at, the author plays with the return to political agency, a return that goes hand in hand with a new legal system that allotted a greater role to judges who had power to interfere in the proceedings. Changes that some have argued were caused by Christianity's 'increasing resistance to dialogue in the name of orthodoxy's resistance to heresy',⁵ I argue, should instead be seen as a natural growth in the dialogic genre as it reflected changing cultural realities.⁶ The line that separates the different uses of the judge are not religious affiliation, but rather the changing political situation that first developed new forensic settings and then opened up to Christian participation.

First, to set the stage for the change I am investigating, I will lay out the modulation of lawcourt language in Plato's dialogues. If Plato is taken as the epitome of the dialogic genre, then his resistance to introducing judges into his discussions poses serious challenges to the later appropriation of courtroom rhetoric in dialogues. Then I will turn to Plutarch, who uses the figure of Plato in *On the Daimonion of Socrates (De genio Socratis)* to suggest that intellectual energy should be turned from a resistance of political overlords, towards resistance of opposing philosophical sects. Plutarch shows us how educated men could move away from a focus on forensic oratory into less political genres, thereby sublimating legal rhetoric in situations when courtroom speeches began to decrease in political importance. Tacitus takes up this string of connections in his *Dialogus*, where the main interlocutor defends his choice to abandon a life in the courts for a life in the study, writing tragedies instead of crafting speeches, refusing to contribute to a culture built on violence against fellow-citizens. Yet, he does so using the trappings of a trial of ideas. Literature could be chosen as a safer path than a political life of public oratory, and at the same time absorb some of the same skills and political energy.

Such substitutionary resistance takes on a new shade in Christian texts. Minucius Felix's *Octavius* and Methodius' *De Resurrectione* both imagine situations where misguided friends are convinced of the truth when their ideas are 'put on trial.' In a period when Christians were very often brought before judges who judged them guilty of serious crimes, dialogic authors chose to imagine a different sort of judge and a different sort of judgment in their dialogues.⁷ In courtroom dialogues such as these, Christians do not directly challenge their *persecutors*, but rather move their claims of superiority into another arena – one which does not threaten the political order. Plato's hesitance about folding forensic trappings into philosophical conversations has been left far behind by the time we come to the dawn of the fourth century CE. Yet even so, some remnant of this hesitance remains: even when used, the judge character still frequently avoids proclaiming a final judgment on the participants. Authors chose to figure their literary 'trails of ideas' as substitutionary to political involvement: their strength, resolve, and intelligence were displayed instead in more private arenas.

My paper will conclude by looking at the new modulation of forensic rhetoric in the anonymously written early fourth century *Dialogue of Adamantius*. The *Dialogue of Adamantius* glamorises the titular Christian's ability to defeat his intellectual opponents in a courtroom scenario in front of an 'objective' judge. Although standing in a long line of

⁴ For another example of the absorption of political energy into literature, see Guast's "Greek Declamation and the Art of Resistance", Chapter 4 in this volume, p. 000.

⁵ Goldhill (1995) 7–8.

⁶ I respond at greater length to the arguments of Lim and Goldhill in 'Chapter 2: The End of Dialogue? The Christianization of a Tradition' (LaValle Norman (2019) 69–118, esp. 104–11).

⁷ See Shaw (2003); Kensky (2010) 255–92. Kensky's book puts the early Christian courtroom material into a much larger cultural context of divine courtroom scenes, both Jewish and Greco-Roman.

forensic dialogues, the *Dialogue of Adamantius* pushes the literary dialogue back towards the political, anticipating a new cultural moment when Christian theological issues would be welcomed into the centre of politics. The role of the judge, although it is the thread that pulls these texts together, is not static, and shifts from a playful and mostly silent adjudicator among friends to a more distant and powerful figure who interferes frequently. This shifting role for the judge maps onto changes we know were happening in the later Roman legal system.⁸

PLATO

In the competition between genres taking place within the Platonic corpus that have been so wonderfully explored by Andrea Nightingale, it seems that judicial rhetoric is one genre from which Plato particularly desired to distance his work.⁹ Within the Platonic corpus, there are a few places where judges (almost) appear. The most memorable, of course, is in the *Apology*, where the silent presence of the jury is an ever-present reality in the dialogue. These judges are characterised negatively, as biased and incompetent, wishing to hear from Socrates a certain type of law court speech to which they are accustomed. Socrates refuses to pander to them, instead insisting on the philosophic mode that is standard to him (Pl. *Ap.* 38d-e). Socrates stands as an anti-defendant, as the one who rejects the normal defence speech. There is even a story told by Cicero and Diogenes Laertius that Lysias offered to write a defence speech for him, which he rejects, saying that forensic rhetoric is incompatible with philosophical speech.¹⁰ In Xenophon's *Apology*, Socrates claims that his 'divine sign' always stopped him when he considered preparing a speech in defence (Xen. *Ap.* 1.5). Plato's *Apology* goes even farther, having Socrates claim *never to have been in court before* and therefore to have been a complete stranger to forensic oratory (ἀτεχνῶς οὖν ξένως ἔχω τῆς ἐνθάδε λέξεως, Pl. *Ap.* 17d), who begs to be allowed to speak in his own manner. Plato, even more explicitly than Xenophon, contrasts Socrates' mode of speaking with the type of speaking done in a courtroom.

In two other Platonic dialogues, something approaching a courtroom setting is suggested, only to be rejected or modulated. In both, Plato posits a fundamental difference between the type of talking done in law courts and that conducted among philosophers. In the first, *Laches* 196b, Laches distinguishes between a courtroom debate and a dialogue.¹¹ In the second, *Protagoras* 338a-e, Hippias suggests that a judge be appointed to moderate the debate between Protagoras and Socrates. Socrates refuses this suggestion, saying that it is impossible to pick an appropriate judge.

Yet while he rejects legal situations in some passages, in others he reincorporates the language of judges in a new modulation. For instance, even in the *Protagoras*, after rejecting Hippias' suggestion, he still leaves final judgement in the hands of the entire group of

⁸ In this aspect, the argument of this chapter parallels recent work by Sandra Schwartz analysing law court scenes in the Greek novels. She argues that the changes that can be observed display the process of 'acculturation to the Roman administration of justice in the Greek-speaking provinces' (Schwartz (2017) 10).

⁹ The thesis of her work is as follows: 'Indeed, it is precisely by designating certain modes of discourse and spheres of activity as "anti-philosophical" that Plato was able to create a separate identity for "philosophy"' (Nightingale (1995) 11). Nightingale does not take courtroom rhetoric as one of her examples, but the method she uses for other genres could be fruitfully applied to courtroom rhetoric as well.

¹⁰ Diog. Laert. 2.40-1

¹¹ Laches says: 'If these speeches were happening in a lawcourt, then to do these things would have some sense. But now why would anyone foolishly adorn himself with empty speeches in a gathering like this?' (εἰ μὲν οὖν ἐν δικαστηρίῳ ἡμῖν οἱ λόγοι ἦσαν, εἶχεν ἄν τινα λόγον ταῦτα ποιεῖν· νῦν δὲ τί ἄν τις ἐν συνουσίᾳ τοιαῦτα μάτην κενοῖς λόγοις αὐτὸς αὐτὸν κοσμοῖ;, Pl. *Lach.* 196b)

bystanders (Pl. *Prot.* 338b-e).¹² The presence of judges is not completely evaded. In the *Phaedo*, after Socrates avoided giving a defence speech during his actual trial as narrated in the *Apology*, he accepts giving a modulated version to his friends on the day of his death (Pl. *Phd.* 63b-69d).¹³ Similarly in the *Symposium*, although the speech competition is not set up as a formal one, and no prize is promised for the best composition, nevertheless the dialogue contains a submerged declaration of a winner. Alcibiades interrupts the party, initially in order to crown Agathon for his tragic win (Pl. *Symp.* 212e). However, when he moves the crown from Agathon's head to Socrates' head, he backhandedly declares a winner of the rhetorical contest that he had missed – a particularly attractive idea since Agathon had said at the beginning that it would be Dionysus himself who would judge whether Agathon or Socrates was wiser (καὶ ταῦτα μὲν καὶ ὀλίγον ὕστερον διαδικασόμεθα ἐγὼ τε καὶ σὺ περὶ τῆς σοφίας, δικαστῆ ἡρώμενοι τῷ Διονύσῳ, Pl. *Symp.* 175e). Who could be closer iconographically to Dionysus than Alcibiades, entering drunk and supported by flute girls? Yet Plato embraces these modulations while also strenuously avoiding formalised (rhetorical or otherwise) judgement scenes.

PLUTARCH OF CHAERONEA

DE GENIO SOCRATIS

Since Plato is the most influential writer of philosophical dialogues for the later tradition,¹⁴ it comes as something of a surprise that the Imperial writers rejected Plato's precedent, and instead began to embrace courtroom settings and rhetoric in their philosophical dialogues. I will suggest that the incorporation of forensic rhetoric into the dialogic might have been attractive in this period as a way of redirecting political resistance against Rome to resistance against internal Greek philosophical sects.

On the Daimonion of Socrates is an engaging and complicated dialogue by Plutarch, which takes place in the middle of a dramatic military coup in Thebes, as they throw out their Spartan occupiers in 378 BC. The wide-ranging discussion in this dialogue reflects seriously on the interaction between affairs of the state and affairs of the academy. One of the recurring themes in the dialogue is the relationship between a life of philosophy and a life of action. The debate between these two ways of life comes to a head in an early speech by one of the waiting conspirators. Simmias, a Platonic character taken from the *Phaedo*, recalls a recent visit to Egypt he took with Plato himself, in an attempt to learn philosophy. While there, they were present when an Egyptian priest deciphered a Theban artifact in ancient script. The priest interprets the mysterious letters to be a message that 'the god was leading and encouraging the Greeks through these letters to lead a life of leisure and peace, always competing through philosophy (διὰ φιλοσοφίας ἀγωνιζομένους ἀεὶ), and making their judgement about what was just by the Muses and by reason, laying down their weapons (τὰ ὄπλα καταθέντας)' (Plut. *De gen.* 579a-b). Simmias goes on to record a corroborating message from the gods that the sojourning pair received on their journey back to Greece. Plato is presented with a Delian prophesy to double the size of their altar. Since higher mathematics is required for such a job, he interprets the prophesy to mean that the god was 'commanding all Greeks that, throwing off war and evils, they associate with the Muses,

¹² Hölsle (2012) 280 remarks that Socrates' modulation of judgment onto the crowd of bystanders is really a backhanded way of praising Socrates' unique position.

¹³ 'I must make a defence speech in response to these things, just like I was in a lawcourt' (χρή με πρὸς ταῦτα ἀπολογήσασθαι ὥσπερ ἐν δικαστηρίῳ, Pl. *Phd.* 63b).

¹⁴ Although he is by no means the only influence, and dialogic writers like Xenophon continued to be used and cited.

through discourses and education calm their passions (διὰ λόγων καὶ μαθημάτων τὰ πάθη καταπραΰνοντας), and bear with each other harmlessly and helpfully' (Plut. *De gen.* 579c-d). Plato decides that the gods are encouraging the Greeks to embrace education over military science.

This early interlude sets the stage for the ongoing discussion about the possible substitution of a life of learning over a life of political action, a discussion which continues in debate over one of the main character's refusal to take part in the coup. It has not been hard for commentators such as Donald Russell to see in these divine exhortations Plutarch's own acceptance of Roman military rule, along with his embrace of Greek cultural primacy.¹⁵ We might suspect this all the more since Plutarch has the divine interpretation come from Plato – authorising his own life as a Platonist writer of philosophical dialogues rather than a member of a political resistance. Although not containing judge characters, this dialogue sets forth Plutarch's sublimation of political energy into academic energy. *On the Daimonion of Socrates* not only asserts the primacy of philosophy and culture over a life devoted to warfare, but it also explicitly welcomes war-like terminology into the life of philosophy. The Greeks are not to 'discuss' among each other but 'compete' with each other (ἀγωνιζομένου).

REPLY TO COLOTES AND THAT EPICURUS MAKES THE PLEASANT LIFE IMPOSSIBLE

Plutarch obliges us with writing examples of the new kind of antagonistic dialogue that takes seriously the necessity of defeating wrong-headed enemies. He pushes the dialogue genre to a breaking point by incorporating into it a point-by-point dismantling of opposing philosophical positions. His collection of works against the Epicureans and the Stoics include two dialogues that take explicit aim against a particularly egregious book written by the Epicurean philosopher named Colotes. An exegetical refutation (or book 'review' as Elena Kechagia has frighteningly called it)¹⁶ could be incorporated into the dialogue form.

The two dialogues *Reply to Colotes* and *That Epicurus Really Makes the Pleasant Life Impossible* should be read together, since they are written as back-to-back conversations. The first is barely a dialogue – the only interaction among voices occurs at the beginning of the work. Plutarch's main interlocutor is not present himself, but only through the words that he has written, through the dead letter that Plato so famously said could not answer back when questioned (Pl. *Phdr.* 275d-276a). Colotes' book has been read out-loud to the company, and Plutarch gives a section-by-section rebuttal. Since Colotes' text was an attack on a series of other philosophers in order, Plutarch's defence takes a similar structure, and is written like a defence speech. He was called to make this defence by another listener who asked for a 'fighter' against the work (μαχούμενον, 1107f).

The second dialogue continues the discussion after the school leaves the lecture hall and moves to the gymnasium. While the first dialogue was a defence speech against the attack of Colotes, the second dialogue presents a prosecuting speech against Colotes' own belief in Epicurus' philosophy of happiness. In this second conversation, Plutarch excuses himself so that the others who have already heard him can take over, dramatising the act of learning, proud of his students' abilities. Instead of defendant or prosecutor, he moves over to the role of judge,¹⁷ arbitrating when fairness of argument has been breached or not. In

¹⁵ 'If we venture to look at this in the light of Plutarch's own day, it is an acceptance of the role of Greece as a peaceful partner in the Roman world, whose contribution lies in the sciences and the arts' (Nesselrath et al. (2010) 6. For further insights into Plutarch's relationship with Rome, see Almagor Chapter 5 in this volume, p.000.

¹⁶ Kechagia (2011) 8.

¹⁷ He releases Zeuxippus from guilt while he is judge (ἡμῖν γε κριταῖς Plut. *Non posse* 1096f).

dialogues that are such explicit rebuttals, the voice of the other is submerged to such an extent that they are not even present as incarnate interlocutors. Instead, the wrong ideas are encountered on the written page (but still refuted by the ‘spoken word’), and both the method of rebuttal as well as the content of the correct view of the world is insisted upon.

This pair of dialogues includes a judge in a very exiguous way, but the very structure of the debate reveals Plutarch’s openness to forensic-style academic debates between philosophical sects staged as philosophical dialogues. In the next dialogue that I shall address, *Whether Land or Sea Animals are Cleverer* (*De sollertia animalium*), Plutarch goes a step further and makes the discussion explicitly forensic.

WHETHER LAND OR SEA ANIMALS ARE CLEVERER

Whether Land or Sea Animals are Cleverer is set in the educational community surrounding Plutarch’s father, Autobulus.¹⁸ The subject under debate arose the night before during a symposium, when an encomium to hunting was read aloud, and the young men were exercised enough to ask for a more formalised follow-up conversation on the next day.

For yesterday, as you know, having proven that all animals in some way or other have a share in intelligence and reasoning, we provided a competition (ἄμιλλαν) about the intelligence of land and sea animals, that was neither incongruous nor graceless for the young hunters (τοῖς θηρατικοῖς νεανίσκοις). This competition, as it seems, we will today arbitrate (βραβεύσομεν), if those in the company of Aristotimos and Phaidimos hold to their challenges. The former of these men gave himself to his companions as advocate (συνήγορον) of the land as bearing animals excelling by intelligence, and the latter as advocate of the sea. (Plut. *De soll. an.* 960a-b)

Two students are chosen to represent the opposing sides of the question. Upon the arrival of the competitors and their supporters, a judge is appointed from among their number and each presents his arguments in turn, first about the marvels of land animals and then about the marvels of sea animals:

Autobulus: Here is our contemporary Optatus ... He is clearly coming to us, intending to offer himself to neither side. Or are we reckoning poorly, my friend Optatus, that you will be a balanced and fair judge (βραβευτήν) of the young men? ... Sit down here next to us, so that if a witness is required, we will not present the matters at hand to the books of Aristotle, but following you through experience we will cast our vote (τὴν ψῆφον ἐπιφέρωμεν) for those speaking truthfully. (Plut. *De soll. an.* 965c-d)

Optatus’ qualifications are that he is impartial and of the same age as the older men. But perhaps his best qualification is his familiarity with Aristotle – he can be used as a walking archive of the animal lore found in the biological works of Aristotle, a substitute for the text itself. Texts from the archives provide the true judgment upon their arguments.

Optatus does not speak another word after being chosen at the beginning of the debate.¹⁹ After the two sides have spoken their cases, one of the other older men declares that

¹⁸ While there is no assurance that this Autobulus is Plutarch’s father, Mossman (2005) 142, at least, believes this to be the case.

¹⁹ Mossman (2005) 146–7 believes that the dialogue’s inconclusive ending is a purposeful transition away from the question of the relative superiority of aquatic and terrestrial animals into an anti-Stoic argument about

both sides, although apparently at odds, were actually arguing *together* against the Stoic position that animals do not possess intelligence at all. The submerged opponent in the trial was once again not present – it was an absent Stoic. It has all been a sort of clever joke. Richard Lim suggests that this ‘may well be a refracted image of the practice of disputation in the Platonic Academy’.²⁰ We can now see this not as anomalous but rather as a typical strategy to avoid any final judgments even when judges are present as characters.²¹

TACITUS’ *DIALOGUS*

Tacitus, although most famous as an historian, was also a dialogue writer contemporary with Plutarch, although he only wrote one dialogue, as far as we know. The *Dialogus* is a discussion in the tradition of Cicero’s dialogue *Brutus* about the decline of oratory, but unlike his Ciceronian model, Tacitus sets up his debate as a forensic one.²² Tacitus’ characters match their style to their argument:²³ the combative character Aper uses courtroom rhetoric to accuse Maternus of abandoning the courtroom for the study, abandoning defence speeches for poetry. Maternus has just completed a play called the *Cato*, and Aper brings Maternus to mock-trial for wasting his time and talent on such drivel when real-world challenges await him. They choose their friend Secundus to be the judge of the disagreement not only between them, but between two modes of writing: the forensic and the poetic. Maternus says:

By which I rejoice all the more that a judge (iudicem) is present to us, who will forbid me to make verses in the future or, which I’ve hoped for now for a

animal rationality. ‘Finally, it is important that the competition is revealed at the end to be something of a rhetorical device in itself: for all that stress is laid on the competitiveness with which the competitors approach their task, through the legal and athletic imagery discussed above and in other ways, in the end no real judgment is made, certainly not by Optatus, despite Autobulus’ reference to him as an umpire at 965d; it is in fact Soclarus who collapses the competition into a draw and almost casually twists the whole competition into a rehearsal for combatting the idea that animals do not have reason. This setting up of a competition only to undermine it is a literary device used elsewhere by (for example) Lucian; here it further underlines the weight of evidence against the Stoics by stressing that the similarities between the two sides as presented in the debate are far greater than their differences from the Stoics, who are given no significant voice in the dialogue at all.’ This is not the only time when Plutarch’s dialogues fail to return to the frame with which he begins. For instance, *De tuenda sanitate* and *De cohibenda ira* quickly turn into monologues with no further interaction among characters after a dialogic setup.

²⁰ Lim (1995) 2.

²¹ Plutarch’s plays with including judges in other dialogues as well. The *Amatorius* likewise contains a trial scene between the advocates of heterosexual and homosexual love. Two men, advocating each side, chose Plutarch and his friends to be judges (ὡσπερ διαιτητᾶς ἐλόμενοι καὶ βραβευτᾶς, *Amat.* 750a), although Plutarch quickly abandons his role as neutral judge to support the arguments in favor of heterosexual love and marriage (*Amat.* 752c, 753c). Since their debate is interrupted by dramatic occurrences (*Amat.* 754e), Plutarch once again avoids having his characters render final judgment in situations that are set up as competitions. Judges are likewise invoked at Plut. *Quaest. conv.* 615e. Plutarch is asked to judge a debate about seating arrangements between his father and a fellow-guest. Plutarch refuses to decide as a *judge* (κριτής) but is willing act as an *arbitrator* (διαιτητής). Clarke (1965) 204 brings up an additional comparandum from one of Favorinus’ lost dialogues, summarized in Aulus Gellius’ *Attic Nights* 18.1, where Favorinus judges (*apud arbitrum Favorinum*) a debate between two of his friends, one a Peripatetic and the other a Stoic. Clarke suggests that this was one of the models for Minucius Felix’s *Octavius*, discussed below.

²² Although forensic rhetoric is missing from the *Brutus*, it is not entirely absent from Cicero’s dialogues. Book III of *De Republica* is set up as a formal competition between two different men who are to plead the cause of injustice and justice respectively (e.g. legal terminology at *De Resp.* III.v). The fragmentary nature of this book makes it difficult to get the full sense of the play-out of the legal set-up.

²³ van den Berg (2014) 22: ‘In the course of the introduction Tacitus redefines the speeches so as to underscore their relevance to forensic practice: the initial general inquiry befitting a philosophical dialogue is cast into the narrower syncrisis of two models of eloquence, with the institution of a judge to settle matters (itself a *topos* of dialogue)’.

long time, will compel me by his authority so that, having left off the burdens of forensic trials (omissis forensium caesarum angustiis), in which I have laboured enough and more than enough, I will cultivate a holier and more august eloquence instead. (Tac. *Dial.* 4.1)

This might be Maternus' final courtroom, allowing him to turn his back on this dangerous life with little reward forever.

The profession of the characters as advocates is vital, but so is the changing political situation that would lead Maternus to make the decision to leave the courtroom. The characters in the dialogue suggest that the increasing power of the Emperor has made it risky to practice traditional oratory, but Aper's prosecution turns this on its head by arguing that Maternus' new profession is just as dangerous even though it is less effective:

'So now I call you forth from the auditoria and theatres into the forum, to trials and true battles (et ad causas et ad vera proelia), especially since you are not able to escape even to this argument, that serves as a patron for many, as if the work of a poet is less likely to offend than that of an orator. For the power of your most beautiful nature came forth, and you caused offence not for any friend, but, what was more dangerous, for Cato.' (Tac. *Dial.* 10.5–6)

Aper derides literary competitions as legitimate fields of noble battle. The law-courts are unique in providing gentleman with a true challenge.

But as in Plutarch's *Whether Land or Sea Animals are Cleverer*, final judgement by the named judge is still postponed. Their debate is interrupted by the arrival of Messalla, who moves their style of speech away from *controversiae* to an *historical* discussion of the causes of oratory's decline. The generic restriction that has been active up to this point, the discomfort with making a final judgement between friends, remains.

In Tacitus' *Dialogus*, the idea that the ideal elite Roman male should lead the life of an advocate goes on trial. Considering the current political circumstances, the dialogue suggests that other intellectual activities, such as the writing of tragedy, history, or literary dialogues, might be better alternatives. These could also be outlets for rhetorical skill more suitable than the lawcourts. The urge to go to trial can be safely contained within the fiction of a harmless conversation between friends.²⁴

CHRISTIAN FORENSIC DIALOGUES

The attraction of moving sublimating forensic energy into philosophical debates, staging their dialogues as trials of ideas, was common to both Latin and Greek, Christian and non-Christian dialogue writers of this period. Like Plutarch and Tacitus, some of the earliest examples of Christian Imperial dialogues, Minucius Felix's second-century *Octavius* and in two of Methodius of Olympus' late third-century dialogues, feature judge characters. In all these cases a judge is chosen to arbitrate a private dispute among friends, who agree upon a judge from among their number.

²⁴ Not all writers were equally happy with the introduction of such antagonistic rhetoric into philosophical debate. For instance, Lucian mocks the tendency towards philosophical competition in *Eun.*: Pamphilos: 'You are speaking of something that is truly laughable, philosophers bringing one another to trial (φιλοσοφοῦντας δικάζεσθαι πρὸς ἀλλήλους), since it is necessary, even if there is some major cause, for the complaints to be worked out among themselves peacefully.' (Luc. *Eun.* 1)

Minucius Felix seems to have modelled his *Octavius* directly on Tacitus' *Dialogus*, and likewise stages a conversation among a group of lawyers during a moment of leisure.²⁵ The *Octavius* opens with an idyllic scene-setting where the narrator expresses his pleasure at being on vacation from his typical job at the lawcourt. Caecilius, the pagan friend along for the holiday walk, proposes a serious discussion on the validity of Christianity.

And we sat down at his suggestion, so that they could cover me by encircling the side, while I sat in the middle of the threesome. Nor was this arrangement followed because of rank or honour, since indeed friendship always admits and creates equals, but so that I as the judge (*arbiter*) could listen sitting next to both and so that I, sitting in the middle, could separate the two disputants (*disceptantes duos*). (Min. Fel. *Oct.* 4.6)

They agree to give over the power of judgment to their mutual friend, but Caecilius is still afraid that he will not be impartial, and he admonishes him to pretend that he does not know either of them beforehand:

'In the present circumstances, your mind must be settled on this, that you hold the scale of the most balanced judgement (*libram teneas aequissimi iudicis*), and that you do not incline to either point of view, lest you seem to offer opinions born less from our arguments than from your own preferences. Further, if you consider yourself as if you were a newcomer to this and unknown to either party (*Proinde, si mihi quasi novus aliqui et quasi ignarus partis utriusque considas*) ...' (Min. Fel. *Oct.* 5.1)

After these warnings, Caecilius speaks first, giving his critique of Christianity, before Octavius responds with a much longer speech in defence. In reply, Caecilius declares that he has been defeated and desires to become a Christian as well. But he says that his victory is actually the defeat of error (*Vicimus et ita: ut improbe, usurpo victoriam. Nam ut ille mei victor est, ita ego triumphator erroris, Oct.* 40.1). Everyone goes home happy as the sun sets, planning on continuing their discussion on the next day.

The judge, Marcus Minucius Felix, who is also our author, stays silent throughout most of the dialogue. When he makes one intervention between the speeches, to remind both sides that truth is more important than rhetoric, Caecilius snaps at his apparent impartiality and warns that he is tilting the judgment unfavourably (*Oct.* 15.1). Like Tacitus and Plutarch, he avoids making an actual judgment at the end because of the voluntary conversion of Caecilius. The dialogue ends with his relief at avoiding this decision – he has not only avoided causing a difficult scene between friends, but also avoided crossing a line in the genre's expectations.

The Greek dialogues of Methodius, written in Asia Minor a hundred years later in the late third century, present two further options for private judgment. In the first, Methodius' *Symposium*, the host of the party, Arete, appoints *herself* as judge (*Meth. symp.* Prelude 9). But this is not a trial of ideas. Rather, what is being judged is eloquence of expression, as the participants compete to give the best encomium of the virtue of chastity. The contest is real, but it is lifted from the rhetorical competitions of the Second Sophistic rather than the law courts of the Roman Empire. To my knowledge, this is the first example we have in 'dialogues with judges' where the judge actually renders a verdict in the end. That strong sense of inappropriateness of final verdicts that we saw in the previous examples was beginning to melt, yet it had not gone completely. Arete, while declaring that Thecla's speech was the best, also says that all of the other virgins competed well enough to be awarded a

²⁵ Carver (1972).

crown (Meth. *symp.* 11.284). Convivial harmony is restored in the end, when they join into a circle to sing a unified hymn together.

An example closer to the law-courts is another of Methodius' dialogues, *On the Resurrection*, where the character Ebulius is asked to be a judge for a dispute about bodily resurrection happening among a group of Christians who have gathered in Patara, Lycia, to greet a visiting philosopher. Methodius here is playing with the scene in the *Protagoras* which we examined earlier, where Socrates speaks about how difficult it would be to find a suitable judge (Pl. *Prot.* 338a-e). But while Ebulius refuses the role with the correct Platonic reference (Meth. *de res.* I.5, trans. Bonwetsch 70), another character takes it up, somewhat modified, setting out the rules for the debate and deciding who should speak for each side of the controversy. Once again, like in Plato, the judge gets modified. But while Plato had turned to put the role of judgment onto all of the bystanders, Ebulius accepts greater authority for the new solo judge. The ending of the text is corrupt, however, leaving open the question of how a verdict was rendered, if at all. In some ways this matters little, since one side was declared the orthodox position *from the outset*. However, it would have been important to see if the literary form had already made a decisive change at this point, and whether Methodius was comfortable with a final judgment being explicitly given in this kind of dialogue.

HISTORICAL ROLE OF JUDGES

All of the Imperial dialogues that I have looked at so far present a somewhat unified role for the judge. He or she is one of the group of friends who is chosen to adjudicate, who, in the end, avoids declaring a firm winner. Even Arete, who does choose a 'top' winner, at the same time declares all the participants winners.²⁶ The judges listen in almost complete silence as the sides present their cases. Any interference (such as we see by Caecilius in the *Octavius*) is treated with suspicion by the orators as unjustified meddling. Such a literary depiction corresponds to what we know about how judges worked in the early Empire.

In Classical Roman law, being a judge was not a profession, but rather a semi-frequent requirement of being a good member of the community, for those above a certain income threshold. The two sides of a court case could mutually choose a judge that they agreed would arbitrate their case. The technical legal formulation was reached in consultation with legal experts, well before the case ever came before the judge. Although as a member of the elite the judge would probably have a certain level of legal knowledge, he was not required to, and was not expected to interfere in the presentation of the case. Instead, his role was to take the agreed-upon formula of the law under debate, hear the elaboration of each side by the advocates, and render a judgement.²⁷ After the judgement was given, the judge returned to civilian life until called upon again.

However, the system of judgment began to change in the High Empire with a procedure known as *cognitio (extra ordinem)* or 'cognition'. Magistrates who had before been involved in the first stage of deciding upon the parameters of the case, now become the judges themselves.²⁸ There was a professionalisation of the role of judge, and along with it, an increase in their expected interference. They could stop the orator's speech to ask for evidence or to question their logic. The most-cited evidence for the changing role of judges comes from Tacitus' *Dialogus* itself, where Maternus bemoans the decline of rhetoric since

²⁶ Lim (1995) 5 suggests that dialogues such as these are examples of 'a member from an intimate circle of friends [who] was asked to judge a "school disputation"'.

²⁷ Humfress (2007) 24–8.

²⁸ Turpin (1990).

there is no room for oratorical performance in the law courts.²⁹ He complains that legal disputes are now conducted in offices before magistrates rather than before a large audience, in ‘auditoria et tabularia’ (Tac. *Dial.* 39). Even the new clothes that speakers in law courts are required to wear are undignified and restrictive.³⁰ Bureaucratisation left rhetoric out in the cold. Worst of all, these new professional-style judges do not let you get up your rhetorical steam:

We find out that the great care and anxiety over the careful pen has become useless, because often the judge (*iudex*) questions you when to begin and you must begin from his question. And frequently he requests silence for proofs and witnesses. Only one or two people are present to hear, and the affair is conducted as if in isolation. (Tac. *Dial.* 39.3–4).³¹

Nowhere is the new role carved out for interference by judges clearer than in the final dialogue to which I will now turn.

ANONYMOUS *DIALOGUE OF ADAMANTIUS*: THE END OF RESISTANCE?

Sometime at the turn from the third century to the fourth, a work was written that was transmitted for many centuries under the name of Origen of Caesarea. The mistake is a natural one since the name of the main character, Adamantius, was a famous nickname of the great second-century Christian theologian.³² However, the *Adamantius* is clearly a later work, which we can tell from its direct citations of Methodius of Olympus’ *On the Resurrection*. It was popular enough to be translated by Rufinus in the fourth century, who also translated a great many works of Origen (which aided and abetted the confusion about its authorship).

The *Adamantius* portrays a forensic debate unlike any that we have hitherto examined. The structure of the debate has changed from long, free-flowing advocacy to a cross-examination based on written evidence, with a frequent interference of a judge, who asks for clarification and makes mini-judgments of various points along the way. The *Adamantius* reflects the new type of judgement, Imperial *cognitio*, in action. The judge is no longer a friend of either party, but an ‘impartial’ pagan.³³ Most interesting for our story, this is only the second time, after Arete’s example in Methodius’ *Symposium*, when the chosen judge renders a clear verdict at the end of a philosophical dialogue. And there is no softening of the blow as there was in the *Symposium*. Adamantius is unambiguously declared the winner against all of his many assailants. As the juridical culture of the Empire continued to advance, it had a changing influence upon the dialogic genre.

The *Adamantius* begins with no scene-setting. Instead, a certain Adamantius proposes a debate with a certain Megethius. They choose as a judge of their dispute Eutropius, who is a pagan. Each person whom Adamantius debates unabashedly represents a different heretical position. And each one he defeats using argument and evidence, victories which are declared

²⁹ Frier (2010).

³⁰ Tacitus calls these *paenulae*, which were long traveling cloaks that kept the rain out.

³¹ As Frier (2010) 72 explicates this passage: ‘judges, instead of playing an essentially passive role in conducting trials, now intervene aggressively by questioning speakers and cutting off their presentation of proofs and witnesses’.

³² Origen was himself an author of dialogues. See Lim (1995) 16–20. A Pamphilus-Eusebius collection is argued in Scherer (1960) 13–15. The *Dialogue with Heraclitus* is the only surviving dialogue of Origen and is written as stenographic notes from a juridical and dogmatic church meeting where Origen is the star speaker (see the edition of Scherer (1960)).

³³ There is a close parallel to this in the fourth-century *Acta Archelai*, where a Christian bishop argues against Mani in the presence of a group of pagan judges (see analysis in Lim (1995) 76–8 and Voss (1970) 154–5).

by Eutropius. Such antagonism between the sects is familiar from the examples we have looked at in Plutarch, yet the role of the judge has radically changed. Plutarch's judges were internal students of his own philosophy, whereas in the *Adamantius*, the judge has become an external expert.

Let us take a moment to look at how the role of the judge is introduced in this dialogue:

Eutropius: Do you both choose me as judge (δικαστήν)?

Adamantius: Yes, both of us.

Eutropius: And you're to stick to my judgement (τῆ ἐμῆ κρίσει)?

Megethius: I will stick to and be contented with your declarations.

Adamantius: The listeners who are present are illustrious and not random. If your judgement (ἡ ὑπὸ σοῦ κρίσις), justly offered, is presented to them, I too will stick to the things said by you in truth. (*Adam.* 3.20–4.3)

That both agree to accept Eutropius as judge is a formality. But the unexpected element in this passage is the turn to focus on the audience, who have not been mentioned up to this point. Adamantius insists that the judgment of the judge must also be approved by acclamation.³⁴ Adamantius flatters the audience, and thereby flatters us readers as well. He also gets our buy-in in the process of judgment, and our willingness to 'watch the watcher,' and put the judge himself on trial. From here on out, Eutropius frequently mentions how the audience agrees with his judgment. We are forced likewise to agree to his justice and impartiality.

Yet, not all those listening to Eutropius are quite so sure about the justness of his judgment. Half-way through the first altercation, Megethius the Marcionite complains that Eutropius is a far cry from an objective judge:

Megethius: 'It would appear that you are not a judge (δικαστής), but a defendant (ἀντίδικος)!' (*Adam.* 30.13)

To counter this claim, Eutropius turns to the audience (Οἱ παρόντες ἀκροαταί), to support his impartiality.³⁵ The author thereby attempts to quell any suspicions we readers might also have at this point. The complicit silence of the 'listeners' makes us complicit in the trial too. And this is not the last time such a mechanism of reader buy-in will be used.³⁶ Eutropius' constant interference required some massaging of the reader's willingness to proceed.

The topic of the debate also folds in discussions about just judgment. Adamantius' first adversary, Megethius, is a Marcionite, and believes that there are three first principles: the Good God, the Demiurge, and the Evil One. Therefore, he does not believe that the God of the Old Testament is the same God as the good God of the New Testament; he is scandalised by the idea that the gentle saviour can also be a fierce judge. Adamantius handily defeats him, and then goes on to defeat a series of other opponents who rise in turn. At the end, Eutropius makes an unambiguous declaration that Adamantius has won the day, and he summarises all of the key doctrines that had been disputed in the culminating paragraph of the work.

³⁴ Lim (1995) 233 argues throughout his influential book that acclamation (or as he sometimes terms it 'synchronic consensus') became an important method for churchmen who wished to move away from the dangers of pure dialectic to other forms of consolidating power.

³⁵ 'EUTR. 'Let the audience here present determine whether I have represented the matter unjustly' (*Adam.* 30).

³⁶ 'EUTR. 'This is no chance audience we have present; let *them* say if I have overstepped what is just' (*Adam.* 202.27–8).

The final one of these disputed doctrines is the one that is key to my argument. After asserting that there is only one first principle, one God who is both Creator and Saviour, Eutropius also asserts that this good God is a judge:

He it is who was appointed to lead all men into judgement justly through their free will, he whom nothing can oppose, to whom every power submits, whom the whole world justly worships, together with the group of bishops, and even more their school, around whom, piously persuaded, kings and all rulers gather together, being voters of the truth (σύμψηφοι μὲν τῆς ἀληθείας), trying to repel and exclude falsehood. (*Adam.* 242)³⁷

Eutropius' summary points to the fact that God's role as judge had formed one of the central themes of the debate. Adamantius is adamant that the good God who saves is also the same as the God who judges, and Eutropius, fancying himself to be a good judge, likes this argument as well.

The anonymous writer of the *Dialogue of Adamantius* found a theological justification for his inclusion of a judge in his literary world. The perfect agreement between the audience and the judge assures the justice of the method of debate. Such a judge would naturally turn from the errors of his ways and embrace the truth to which his justice leads him. And throughout the debate, Eutropius drops hints that he might not remain a pagan for long.³⁸ The just judge who is adjudicating for the orthodox side is also being convinced, and therefore aligned more closely with the Just Judge who is also the Saviour God.

The writer of the *Dialogue of Adamantius* successfully resists each heretical opinion brought before him, but judgment itself is no longer resisted in the *Adamantius*. The real impact of the dialogue is in imagining, or experiencing the exhilaration of, having the political situation change, tipped towards support of Christian positions. Along with the embrace of a just judge, a just world of judgement, comes the embrace of the political system rendering judgement.³⁹ With that shift, imagined, expected, or experienced, the *Dialogue of Adamantius* rejects resistance, and welcomes collaboration with political power. Dialogues such as this not only show how to overcome your intellectual opponents, as did Plutarch's *Reply to Colotes*, but reinstates the possibility of re-entering political courtrooms without fear. The author writes gleefully of a combination of intellectual and political trials, a time when the earthly judges echo the heavenly judge. And soon enough, affairs of the intellect would become the affairs of the state and emperors would convene theological councils.⁴⁰

CONCLUSIONS

³⁷ Since the assertion that 'kings' listen to bishops is also present in the Latin translation of Rufinus, which is believed to represent an earlier version of the text, it seems that the author of the *Adamantius* is here exaggerating the state of affairs of the church in the late third century (Pretty (1997) 190). Of course, Eutropius as a character would have a particular reason to want to emphasise that he is not alone in being an official who is partial to the Christian faith.

³⁸ In final sentence of the work, Eutropius expresses the hope that the interlocutor might be saved "like him" and become an initiate (σωζόμενοι σὺν ἡμῖν, γινόμενοι θεῶν μαθημάτων μύσται, *Adam* 242).

³⁹ The dating the *Adamantius* is very difficult since it exists in two versions which differ in precisely those places that would typically be used for dating. While the Greek text claims that the period of persecution is over, and that rulers are now on the side of truth, the Latin version of Rufinus says that there are still on-going persecutions. Some think that Rufinus preserves an earlier version that has been later 'updated' in the Greek, while others think that Rufinus changed the Greek text to fit his own agenda (Pretty (1997) 63-65). Whatever the case, the text was written very near to the point of transition on precisely the question of persecution.

⁴⁰ A later example of this trend can be found in *Religious Conversation at the Sasanian Court*, an anonymous dialogue from the sixth century that brings different religious philosophers into the presence of the Sasanian king to argue for the truth of their religious beliefs (Rigolio (2019) 222-9).

Plutarch, Tacitus, Minucius Felix, Methodius and the anonymous author of the *Dialogue of Adamantius* all decide to incorporate courtroom rhetoric into their philosophical dialogues. Ignoring Plato's allergy, they allow judges to be present, and sometimes to render final judgement on the proceedings. Stemming from the evidence in Plutarch and Tacitus, it seems that this rise in courtroom rhetoric was understood by its authors as a literary compensation for a decrease in the political power felt by elites in the Imperial system. It was a redirection of energies from public political debates into written debate between philosophical sects. It seems that the oracle Plutarch tells us Plato received 'commanding all Greeks that, throwing off war and evils, they associate with the Muses, through discourses and education calm their passions (διὰ λόγων καὶ μαθημάτων τὰ πάθη καταπραΰνοντα), and bear with each other harmlessly and helpfully' (Plut. *De gen.* 579c-d), was obeyed.

Tim Whitmarsh has suggested that literary resistance in the Imperial period was found in 'finding spaces that elude imperial control',⁴¹ such as the extremely local, the regions outside the Roman Empire and the individual body. Such spaces elude empire because they can be made to contain a different set of values, ones that are felt necessary to maintain by persons who feel implicated in empire:

This is what I mean by 'discursive' resistance: imaginative literature has the power to shift our perspectives, so that the reach of imperial control no longer seems infinite, but bounded and contained; and the defeated can become victors.⁴²

The typical reaction in early Christian literature to the human court of judgment emphasises it as the site of apparent imperial control, while nevertheless insisting that it was fundamentally under divine control.⁴³ In the Gospels, much of the Acts material, and later martyr narratives, we see judges repeatedly rendering verdicts *against* the Christians, hand-in-hand with an insistence that *at the end of time* the judgment will be turned, and the unjust judge will himself be judged.⁴⁴ Both Jesus and Socrates, after all, refuse to give true defences, refuse to fight for their lives, and live in the assurance that their case is just without the approval of their judges. It is clear to see how this kind of literature could be imperial 'discursive resistance literature' in Whitmarsh's schema, and in fact, he includes some of these as his examples, following the work of Brent Shaw.⁴⁵

I add that another kind of literary resistance in the Imperial period was the redirection of political energies away from politics and legal courts and into other cultural arenas, such as philosophy and literature. This dynamic was expressed by dialogic authors such as Plutarch, Tacitus, Minucius Felix and Methodius of Olympus. With the sublimation of forensic oratory into literary genres such as the dialogue, writers were able to keep resistance alive in a way less threatening to the social order but still with its own type of power. These were tools open to both Christians and non-Christians. What the imperial dialogues share—the tendency towards forensic literary shaping—is greater than where they differ.

It was a unique confluence of influences during the Imperial period that made more forensic-influenced dialogues attractive to write for a period. Rival philosophical schools were able to take over some of the energy previously reserved for political strife and move them to a safer arena of antagonism. This, coupled with the omnipresence of Roman courts of

⁴¹ Whitmarsh (2013b) 68.

⁴² Whitmarsh (2013b) 76.

⁴³ In this volume see, comparably, Niccolai (p.000[13–14]) on the Christian context.

⁴⁴ E.g. Lincoln (2000); Kensky (2010), esp. 242–54. Kensky's treatment of the theme in Revelation reads the authors' insistence on God's final judge judgment as protesting too much, envisioning skeptical readers behind the text.

⁴⁵ Whitmarsh (2013b) 72. See also Guast's section on "Spectacular Resistance", p. 000.

law with their changing modes, allowed new imaginative spaces to emerge for philosophical dialogues. Yet, as the Imperial period slipped into Late Antiquity, another possibility opened. The *Dialogue of Adamantius* extended the tentative hope that perhaps the political and the intellectual would cease to be such separate domains, that subtle differences in how to understand the resurrection of the body would become a political issue, and that the energy that had thrived in the literary world would be reinstated back into the political realm. While this might spell the end of resistance for the author of the *Dialogue of Adamantius*, it would be a rallying cry for a new set of intellectual resistance fighters.