

Clitophon the *Moichos*: Achilles Tatius and the Trial Scene in the Greek Novel

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The jailhouse seduction of Clitophon by Melite, two-thirds of the way into Achilles Tatius' novel, *Leucippe and Clitophon*, has captured the attention of many scholars. This striking subversion of the generic conventions requiring the mutual fidelity of the leading couple has been explained as a sly parody,¹ as well as a piece of emotional realism.² Michel Foucault, reading the novel in a serious vein, overlooked it as 'an honorable, moral lapse.'³ This article considers the incident in the context of the trials in the final two books of the novel. For, by sleeping with Melite only after he has been accused of adultery, Clitophon becomes fully guilty of the crime *par excellence* of the Greek novels. This is no mere whimsy, thrown in by the author to catch the reader off guard, but is part of a sustained and sophisticated variation on an important *topos* in the Greek novels, the trial scene.

¹ Durham 1938, 11 writes, 'His fall is further evidence for the parodic nature of this novel.' Cresci 1978, 79 sees this episode as 'intrinsic di uno scetticismo pungente, talora amaro, che costituisce il correttivo del tono moraleggiante, serio (e banale) che si afferma all fine del romanzo.' Anderson 1982, 23–24 has called it simply 'ridiculous,' an example of Achilles Tatius' subversive sense of humor. Likewise, Fusillo 1991, 100 interprets it mainly as an 'ironic play on the conventions of the novel'. Goldhill 1995, 97 has noted that this ironic passage, in which 'Cleiton fails to keep an adequate distance from the lures of an argument ... compromises the distance of the reader from the erotic scenario.'

² Rattenbury 1926, 69–70 rationalizes it as a quid pro quo, a favor Clitophon owed Melite in return for winning back Leucippe. Rojas Álvarez 1989, 89–90 argues that Clitophon's resistance to Melite's overtures for so long was unrealistic, and adduces the ultimate consummation of the affair as evidence for Achilles Tatius' uniquely realistic sensibility. Reardon 1994, 88, translating Clitophon's statement 'ἐπαθὼν τι ἀνθρώπινον' (Ach. Tat. 5,27,1) as 'I felt as any man would', suggests that Clitophon's action is self-explanatory.

³ Foucault 1988, 231.

The inclusion of at least one trial in each of the extant Greek novels, as well as in the Latin novels of Petronius and Apuleius,⁴ attests to the appeal of this type scene, and indeed its centrality to the genre. The prevalence of such scenes reflects the importance of rhetoric in the literary culture of the Roman empire. The novelists, as well as their audience, had a taste for legal complexities—a taste informed by their rhetorical education. Chariton's familiarity with the technicalities of the law has long been noted.⁵ This is easily attributed to his occupation as *hypographeus*, or secretary to a *rhetor*.⁶ Achilles Tatius, on the other hand, has not received as much attention. Although the rhetorical qualities of his novel are patent, he has not been given the same sort of credit for using the law as plot material as Chariton.⁷ His *Leucippe and Clitophon* reflects an equally legalistic orientation—and indeed a virtuosity in the construction and elaboration of legal dilemma.

This article has two parts. The first outlines the characteristics of the typical trial. Then, part two examines how the relationship of Clitophon and Melite sets the stage for the trials in Ephesus and how the charge of adultery

⁴ There are thirteen identifiable trial scenes in the five extant Greek novels: the trial of Chaereas (Chariton 1,4–6), the trial of Theron (Chariton 3,4), the trial of Mithridates (Chariton 5,4–9), the case of Dionysius vs. Chaereas (Chariton 5,10–6,2), the trial of Habrocomes (X. Eph. 3,12–4,4), the trial of Daphnis (Longus 2,12–19), the trial of Melite and Clitophon (Ach. Tat. 7,7–16), the trial of the priest and others (Ach. Tat. 8,7–15), the trial of Cnemon (Hld. 1,9–14), the trial of Aristippus (Hld. 1,14–17; 2,8–9), the trial of Charicleia (Hld. 8,8–15), the trial of Hydaspes (Hld. 10,9–17), and the trial of Theagenes (Hld. 4,17–21; 10,34–38). For trials in the Latin novels, see Petr. 108–109 and Apul. *Met.* 10,6–12.

⁵ Calderini 1913, Zimmermann 1957, Karabélias 1990, Scarcella 1990.

⁶ Chariton 1,1,1: Χαρίτων Ἀφροδισιεύς, Ἀθηναγόρου τοῦ ῥήτορος ὑπογραφεύς, πάθος ἐρωτικὸν ἐν Συρακούσαις γενόμενον διηγῆσομαι. The Greek text of Chariton is taken from Goold 1995. I have deliberately left the term *rhetor* untranslated; the modern term 'lawyer' is misleading, and obscures the important Roman distinction between professional advocates and jurists. On the function of *rhetores* in the Roman legal system, see Crook 1995, 13, 37–46. The *hypographeus* was more than a notary; he also took moral responsibility for the documents he produced for his illiterate clients; see Youtie 1975. As *hypographeus*, Chariton may also have functioned as a legal assistant to Athenagoras; on the use of assistants by *rhetores*, see Cic. *De Orat.* 1,198 as well as Crook 1995, 149–151.

⁷ The late 13th century Byzantine scholiast Thomas Magister called Achilles Tatius a *rhetor*, perhaps an inference from his rhetorical style; see Vilborg 1955–62, 1:168 and 2:8; Rohde 1914, 473–474. On the reflection of *progymnasmata* in Achilles Tatius' ecphrases, see Rommel 1923 and Bartsch 1989. Anderson 1997, 2294 characterizes *Leucippe and Clitophon* as 'a text of which all but the first few pages is the recitation by a young man in love only just out of rhetorical school.'

unravels in the two trials themselves. The trial scene is not just a vehicle for authorial ingenuity but, in Achilles Tatius' hands, it shifts the moral balance within the adulterous triangle, and subtly subverts the valorization of marriage that lies at the core of the ideology of the Greek novels.

Typology of the Trial Scene

The frequency of trials in the novels suggests that ancient audiences expected courtroom drama. Indeed, at the opening of his last book, Chariton lists trials among what is a virtual catalog of misadventures:

Chariton 8,1,4: οὐκέτι ληστεία καὶ δουλεία καὶ δίκη καὶ μάχη καὶ ἀποκατέρησις καὶ πόλεμος καὶ ἄλωσις, ἀλλὰ ἔρωτες δίκαιοι ἐν τούτῳ καὶ νόμιμοι γάμοι.

There will be no more piracy or slavery or litigation or fighting or suicide or war or captivity; now there will be rightful love and lawful marriage.

Although Chariton puts the trial, *δίκη*, on the same level as other misfortunes (to which might be added storms, shipwrecks, false deaths, jealous rivals, and kidnappings), the trial is unique in its degree of complexity, as well as its flexibility. The trial scene is exceptionally well suited to keeping the plot of the novel pleurably complicated. The procedures and institutions of the law provided ample material for the novelist to prolong his narrative and defer the anticipated happy ending. A trial may be a short synopsis briefly mentioned in passing, as in Ach. Tat. 2,34,6, where a minor character explains why he has been in exile). Alternately, it can be expanded to consume one-quarter or more of the entire narrative, as in the cases of the Babylonian trials in Chariton's novel as well as the trials in Ephesus in Achilles Tatius. The semantic field of trial-related words was a particularly rich source for metaphors. For example, in Achilles Tatius, when Clitophon agonizes over whether to pursue his love for Leucippe or to follow through with an arranged marriage, he uses the metaphor of a contest between his father and Eros, with Clitophon himself acting as the judge. He imagines his predicament thus:

Ach. Tat. 1,11,3: καὶ θέλω μὲν σοὶ δικάσαι, πάτερ, ἀλλ' ἀντίδικον ἔχω χαλεπώτερον. βασανίζει τὸν δικαστήν, ἔστηκε μετὰ βελῶν, κρίνεται μετὰ πυρός. ἂν ἀπειθήσω, πάτερ, αὐτῷ καίομαι τῷ πυρί.

I want to rule in your favor, father, but I have a harsher opponent. He tortures the judge, appears in court with arrows, and influences the verdict with fire. If I decide against him, father, I will go up in flames.⁸

The concentration of legal imagery here and elsewhere in the Greek novels highlights the degree to which the life of the law—its discourses, practices, and habits of thought—infused the sensibility of the Greek novels, as characteristic of many other literary products of the highly rhetorical culture of the Greek-speaking elites of the Roman empire.

In its ideal form, a trial is supposed to restore social order at a moment when disorder is threatened. On a purely functional level, a trial comes after a crime and before a punishment. In the ancient Greek novels, the suspense does not usually lie in solving mysteries of ‘who done it?’ but rather in seeing how the villains will be punished and the heroes vindicated. This reflects the basic ideals of what courtroom trials are supposed to do—that is, discover the truth and mete justice. The expectation is perfectly congruent with that of the ideal romances as a whole, as articulated by Photius in his synopsis of Antonius Diogenes’ novel:

Phot. *Bibl.Cod.* 166 [112a]: Ἔστι δὲ ἐν αὐτοῖς καὶ μάλιστα, ὡς ἐν τηλικούτοις πλάσμασί τε μυθεύμασι, δύο τινὰ θηράσαι χρησιμώτατα· ἐν μὲν ὅτι τὸν ἀδικήσαντά τι, κἂν μυριάκις ἐκφυγεῖν δόξη, εἰσάγει πάντως δίκην δεδωκένας, καὶ δεύτερον ὅτι πολλοὺς ἀναιτίους ἐγγὺς μεγάλου γεγονότας κινδύνου, παρ’ ἐλπίδας δείκνυσι πολλάκις διασωθέντας.

In this story in particular, as in fictional works of its kind, there are two especially useful things to observe: first, that [the author] presents a wrongdoer, even if he appears to escape countless times, paying the penalty just the same; second, that he shows many guiltless people, though

⁸ The Greek text of Achillius Tatius is taken from Vilborg 1955–62. My translation is more literal than Winkler’s, yet his rings nicely with the legalistic metaphors: ‘If I don’t give a verdict in favor of Eros, I’ll burn at the stake.’ See Winkler in Reardon 1989, 184. Other metaphorical uses of trial words can be found in Longus 1,12 and Hld. 2,25; 4,8.

on the brink of great danger, being saved many times in defiance of expectations.⁹

It is revealing that Photius defines the novel's antagonist as τὸν ἀδικήσαντᾶ τι, 'the one doing something unjust;' the protagonists are therefore ἀνατρίους, 'the blameless ones.' He correspondingly calls the resolution of the story—that is, when the villain meets his fate—as δίκην δεδωκέναι, 'paying the penalty'. The vocabulary with which Photius distills the essence of a Greek novel (in this case, a lost one) reflects an underlying cognitive framework in which justice is the critical value. The trial scene is an effective and economical formula for fulfilling this expectation.

The basic formula of the novelistic trial is straightforward. First comes the narrative of the crime, which can comprise its own subplot. An accusation is made, and the accused is summoned to court or arrested. A physical description of the courtroom serves as a segue to the trial scene proper. The centerpiece of the trial scene is a pair of speeches; as in an actual trial, the accusation comes first, then the defense. All this takes place before a crowd of spectators, who provide an emotional backdrop to the action. Much as a chorus in drama, the crowd serves to guide as well as amplify the reader's response. Finally comes the verdict; if the accused is condemned, then his or her punishment serves as a dramatic finale to the trial scene. Yet, because the novels thrive on paradox, expectations are characteristically thwarted in the trials. In fact, the procedures of the courtroom often seem to subvert what the reader knows is the just ending. Usually, a surprising twist: extraneous to the courtroom procedures arises to complicate the expected outcome. More often than not, trials are abortive: rather, they tend to perpetuate social disorder, as the conflict shifts to another, more momentous sphere such as the battlefield or, with the intervention of supernatural forces, to a cosmic plane. Despite the prospect of closure implicit in the formula of the trial scene, the anticipated moment when order is restored eludes the judicial process.

The formula is highly flexible. Any portion may be condensed or expanded, but the heart of the formula is the speeches. The trial scene is not only contained by the larger narrative, but it in turn contains the embedded subnarratives of the parties to the trial. The most important quality of the trial scenes is the variation between narrative and inset orations. It lends to the trial scenes an additional layer of complexity by contextualizing the

⁹ Translation by G.N. Sandy in Reardon 1989, 782.

speeches in the trial. Thus, the reader is empowered to assess the ‘truthfulness’ of competing accounts of a single event. Accordingly, trial scenes must be considered not in isolation, but as embedded in the larger narrative. This is what differentiates the novelistic trial scenes from declamations, to which they are often compared.¹⁰ Declamations are presented with only the most skeletal framework; the declaimer is free to flesh it out, and the audience is less concerned with reconstructing ‘truth’ than with appreciating rhetorical style. In contrast, the readers of the novels are given a privileged knowledge of events prior to the trial. They are able not only to gauge the truthfulness of opposing speeches, but also assess the efficacy of the process as a whole—that is, the possibility of arriving at the ‘truth’ at all within a courtroom.

The Trials in Ephesus in Achilles Tatius’ *Leucippe and Clitophon*

In the novels, crimes of passion are the rule.¹¹ Whether the act is completed, threatened, or alleged matters little. While murder is a common crime, most novelistic trials ensue from adultery. In Chariton, the Babylonian trials are launched by Dionysius’ suspicion that Mithridates is trying to seduce Callirhoe. In Xenophon of Ephesus, Cyno murders her husband to get him out of the way so she can take Habrocomes as a lover; when her plan fails, she then launches an accusation against Habrocomes, who ends up in the court of the prefect of Egypt. In Heliodorus, Cnemon is tricked into inappropriately taking the role of the outraged cuckold, and ends up on trial for attempted patricide. At the end of that novel, Charicleia must refute the appearance that Persinna committed adultery in order to assert her claim that she is the child of Hydaspes. The ubiquity of these scenes of adultery serves to contrast with and thus underscore the protagonists’ fidelity to one another. The vilification of adultery is the necessary counterpart of the valorization of marriage; therefore, the trial of the *moichos* is the corollary of the *dikaïos gamos*. In this respect, the trial scenes offer the perfect formula for an author to articulate, judge, and reinforce the core values of the ideal romance.

¹⁰ Rohde 1914, 337–341 and Russell 1983, 38–39.

¹¹ The trial of Daphnis for negligence in Longus 2,12–19 is the exception which proves the rule: in this case, Daphnis is put on trial for allowing his goats to graze on the beach, where they ate the willow shoots with which the boats of the Methymnean youths were tied. It is a pedestrian case of property damage.

The triangle of *moicheia* always has at its fulcrum a married woman. She is between two men: her husband and her lover—in Greek, the *moichos*. The initiator of the adultery, male or female, is inscribed as the villain. So, for example, in Xenophon of Ephesus, Habrocomes falls prey to the lust of his benefactor's wife, Cyno, or 'Bitch.' The villain may also be the male seducer, such as Mithridates the satrap in Chariton's novel. In general, the Greek novels portray the husband as basically sympathetic; however, Achilles Tatius inverts the conventional sympathies by telling the story from the point of view of an adulterer who is caught in the act. The cuckolded husband, on the other hand, is depicted as so hyperbolically violent that his very name, Thersander, 'Wild Man', is sufficient to distill his character.

Thersander first enters the narrative when he surprises his wife, Melite, in the bedroom with her lover, Clitophon. The ancient audience of the novels would have immediately recognized the scenario of the 'bedroom show-down'. It was a common motif in a variety of genres, including mime and declamation.¹² It is the central issue in Lysias' *Against Eratosthenes*, an oration that was much admired and imitated for its skillful use of *narratio*. Chariton invokes Lysias' scenario in the first book of *Chaereas and Callirhoe*. There, Chaereas is tricked into believing that an elegantly dressed man is entering his house to seduce his new wife Callirhoe.¹³ In the mimes, the confrontation leads to slapstick; in the novels, it leads to a trial. In the imperial era, when adultery mimes came to be criticized for their corruptive influence, trial scenes became incorporated into the mime.¹⁴ The Greek novels reflect a similar impulse to contain the dangerous influence of the adultery scene by setting it in the context of a trial. Thus, after Chaereas surprises Callirhoe in her darkened bedroom and delivers her an apparently fatal blow, he is put on trial for her murder. In Chariton's novel as in others, the threat of social disorder triggered by a presumed act of adultery is held in check by the trial scene, the forum where the truth is revealed. It is this that Achilles Tatius subverts in his trials of Clitophon and Melite.

¹² On the adultery mime, see Reynolds 1946 and Kehoe 1984. Of particular relevance is Mignogna 1996, who identifies a number of specific parallels between the adultery mime and the Thersander-Melite section of Achilles Tatius' novel. On adultery in Greek declamation, see Russell 1983, 33–35, 60–62; in Latin declamation, see Bonner 1949, 119–122. The motif of the 'homecoming husband' in Apuleius' novel is discussed by Lateiner 2000.

¹³ Hammer 1922, 105–110.

¹⁴ Reynolds 1946, 84.

Achilles Tatius is using a well-worn formula when he has the final third of his novel revolve around a pair of trials. In the first (Ach. Tat. 7,7–7,16), Clitophon and Melite are accused of adultery by Thersander, Melite's husband. Each of the two trials includes three speeches—making them, in effect, incomplete tetralogies—for a total of six full speeches by almost as many speakers.

The prosecution's speech is alluded to indirectly. The first speech presented in *oratio recta* is Clitophon's defense; however, it paradoxically evolves into a self-accusation for the murder of Leucippe, thereby *de facto* becoming the speech for prosecution. This speech is followed by a defense of Clitophon by his friend and advocate Cleinias. Finally, Thersander delivers a speech in which he urges the immediate execution of Clitophon as a self-confessed murderer. The court decides for Thersander, but Clitophon's execution is deferred so that he can be tortured for evidence in the trial of Melite for adultery. After an interval of intense plotting and counter-plotting during which the priest of Artemis stays Clitophon's execution and Leucippe seeks refuge in the temple of Artemis and thus moots the murder charge, the court again convenes for a second trial. This subject of the second trial is vaguer: it is a generalized prosecution by the villain of the heroes and their friends. Thersander and his advocate Sopater make multiple charges against the protagonists: against Clitophon for defying the court's sentence in the first trial; against the priest for assisting a convict and defiling the temple of Artemis; against Melite for adultery; and against Leucippe and her father for unspecified actions. Both of these trials include all of the typical elements of the novelistic trial scene—indeed, the account of these trials is the most expansive in the extant Greek novels, including the Babylonian trials in Chariton.

In most novelistic trials, the reader's sympathies lie with the defendant, who is usually one of the two main protagonists; however, in this case the villain appears to have a solid case against Clitophon. The reader knows that the hero is in fact guilty as charged. Logically, here the villain assumes the mantle of the Greek novels' ideology: he defends lawful marriage against the insidious threat posed by the *moichos*.

The dramatic conflict in the trial scene presupposes a familiarity with the way legal dilemmas are set up. Other critics have emphasized the superficiality of legal realia. Brigitte Egger reaches the conclusion, based mainly upon her study of Chariton, that the novelists were less concerned with maintain-

ing a historically consistent image of legal realia than with cultivating a ‘hoary patriarchal fantasy’ of the ‘erotically powerful female upon whom all eyes are focussed.’¹⁵ Massimo Fusillo likewise characterizes the realia of the novels as a backdrop to the main thematic object, the love story.¹⁶ My argument is that habits of legalistic thought profoundly shaped the structure of the novels’ plots. This becomes apparent in the narrative of the characters’ actions and statements leading to the trial scene, where the subtle shadings of those actions move into the foreground and become subject to explicit debate. One example is the trial of Chaereas in the first book of Chariton’s novel, where the preliminary narrative of the circumstances surrounding Callirhoe’s apparent death allows the author to explore the issue of intention, and the question of whether or not a husband’s jealousy exculpates him. The multifaceted nature of a well-constructed legal dilemma is what makes such a fruitful generator of plot complexity.

The trials in Achilles Tatius could likewise be recast as a rhetorical exercise where the problem (or, to use the technical rhetorical term, the *stasis*) might be set out as follows: ‘A man is presumed dead in a shipwreck. His widow remarries according to the law. The first husband survives and returns home and accuses the second husband of adultery.’ The problem, thus set forth, would have been characterized in rhetorical treatises as a *stasis nomikê*, a legal issue; an important part of rhetorical education was the construction of arguments about law. The case of Thersander versus Clitophon falls under a type of legal issue called *antinomia*, conflict of laws.¹⁷ It pits two principles against each other: the right of return, in Roman law called the *postliminium*, which granted certain rights to returning prisoners of war or victims of brigands to take possession of their property and reinstate legal relationships, versus the right of a lawful husband.¹⁸ Thus in the narrative leading up to the trial, it seems that the case will hinge on the precise nature of Clitophon’s liaison with Melite. Clitophon’s initial defense strategy is to claim that he was not a *moichos*, but the lawful husband of Melite (Ach. Tat. 6,5,4: καὶ γὰρ ἐθάρρουν τῷ λόγῳ περιέσεσθαι μὴ μοιχὸς εἶναι, γῆμαι δὲ ἐμφανῶς).

¹⁵ Egger 1994, 273–274.

¹⁶ Fusillo 1991, 57.

¹⁷ Russell 1983, 40–41, 67–68.

¹⁸ On *postliminium*, see *Dig.* 49,15; however, the *lex Julia et Papia* of Augustus placed limits on the right of a husband to recover his wife; see *Dig.* 49,15,8.

However, the matter is not so simple. In the preceding narrative Achilles Tatius had taken great care to leave the validity of Melite and Clitophon's 'marriage' open to question. In order to appreciate Achilles Tatius' technique, it is important to emphasize that in the ancient world, marriage was enacted through a process of events, and not at one discrete moment.¹⁹ Throughout the course of book 5, Clitophon and Melite carry out a series of actions which, in sum, effectuate their marriage. Specifically, these are: betrothal, vows, formal marriage agreement, public wedding feasts, ceremonial entrance to the bridal chamber, and apparent cohabitation—all of which are historically attested practices in Greco-Roman Alexandria.²⁰ Despite the appearance of legal marriage, at each step of the process a significant loophole is left open: namely, Clitophon's deferral of the sexual act. The cumulative effect of these details is to create a genuine sense of ambiguity about whether or not the marriage is technically complete, prior to the formal accusation of adultery. According to all social criteria Clitophon and Melite are married: the only respect in which the marriage has not been formalized—that is, in its sexual aspect—was, according to Roman law, juristically insignificant in defining marriage. The principle was stated clearly by the third-century Roman jurist Ulpian: *nuptias non concubitus, sed consensus facit*, 'not intercourse, but agreement creates a marriage' (*Dig.* 50,17,30).

Thus the question remains open: Are they married, or are they not? The answer to this question does not matter until Leucippe and, more significantly, Thersander enter the picture. Thersander's formal indictment of Clitophon for *moicheia* is foreshadowed by Leucippe's confrontation with Clitophon. Disguised as a slave working on the estate of Melite in Ephesus, the heroine makes the natural inference that the newly returned mistress and her male companion (Clitophon) are in fact married. She writes a letter in which she castigates Clitophon for his infidelity. Upon reading her letter Clitophon makes a curious comment: he says that he feels like 'an adulterer caught in the act.' (Ach. Tat. 5,19,6 πάνυ δὲ ἡρυσθρίων ἐφ' οἷς μοι τὸν γάμον ὠνειδίζεν, ὥσπερ ἐπὶ αὐτοφώρῳ μοιχῶς κατελιημμένος). At first glimpse, this might appear to be nothing more than a casual expression; however, Achilles Tatius was quite deliberate in making such an analogy. From a legal standpoint, Clitophon's identification with a *moichos* is absurd: according to both Greek

¹⁹ This distinction has most recently been emphasized by Patterson 1998, 112.

²⁰ On marriage in the Hellenistic and Roman periods, see Wolff 1939 and Vatin 1970. I plan to elaborate this argument further in a separate article.

and Roman law, a man was only an adulterer if he had an affair with a woman married to another man. It was not technically *moicheia* if a husband cheated on his wife, and *a fortiori* if a groom-to-be cheated on his fiancée.²¹ Technically, Clitophon is an adulterer not with respect to Leucippe but with respect to Melite, as he (and the reader) will soon learn to everyone's surprise.

The device of Leucippe's letter provides an opportunity for the author to foreground the discrepancy between Clitophon's private perception of the marriage and the way it appears in public. Clitophon's servant, the one who delivered the letter, reassures his master that he explained to Leucippe that Clitophon married ἄκων, 'against his will' or 'accidentally'—another absurdity in light of Roman law, where consent was the criterion for legal marriage.²² In response, Clitophon writes a letter, an *apologia*, in which he insists that he imitated Leucippe's virginity (Ach. Tat. 5,20,5 μαθήσῃ τὴν σὴν με παρθενίαν μεμυημένον). He thus denies that his liaison with Melite is marriage at all on the grounds that it has not been sexually consummated. This excuse satisfies Leucippe. Subsequently, when Melite asks Leucippe to concoct an aphrodisiac to cure Clitophon's impotence, the heroine is assured of the hero's innocence (Ach. Tat. 5,22,5). That is the end of Leucippe's accusation against Clitophon. His infidelity *vis-à-vis* Leucippe ceases to have any significance to the subsequent plot.²³

The logic of the novel's elevation of the sexual act conflicts with the law's indifference to it as a criterion of marriage. This is not so in the case of adultery, the breach of marriage. In laws relating to adultery, as well as in the popular imagination, the decisive moment was when the husband caught the adulterer 'ἐπ' αὐτοφώρῳ'—in the act itself.²⁴ And this is where Achilles Tatius' plot thickens. Thersander suddenly bursts into the bedroom, punches

²¹ Cohen 1991, 98ff.; Treggiari 1991, 264 notes that 'some philosophers and later the Christian theologian [tried] to make linguistic usage symmetrical,' and cites August. *Quaest. Exodi* 71.4 (= *Corpus Christianorum series latina* xxxiii,104), where Augustine calls a married man who has sexual relations with a woman other than his wife a *moe-chus*.

²² Ach. Tat. 5,20,2 κἀγὼ γὰρ αὐτῇ διωμοσάμην, ὡς ἄκων αὐτὴν ἔγημας. For Roman law, mutual consent was required (*Dig.* 23,1,7). In Athenian law, the consent of the woman was not required; the consent of the groom, however, was required in the betrothal procedure known as ἐγγύη. See Harrison 1968, 1:21.

²³ Later, when Clitophon recounts his adventures to Leucippe's father, he glosses over the details of his sexual relationship with Melite, but does so without lying and with a sense of shame. See Ach. Tat. 8,5,2–3.

²⁴ For a comparison of this phrase as it appears in the law of theft, see Harris 1994.

a stunned Clitophon, and calls him an adulterer (repeatedly) and confines him to a small room in the house.²⁵ The reader knows that it only appears that Clitophon is Melite's lover: the truth is that there has been no sexual act.

Yet, this is precisely where Achilles Tatius once again subverts himself. The formula for the trial scene requires that the hero be falsely accused. And this is precisely the case—that is, until Melite, who now has given up all hope of marrying Clitophon, sneaks into the little room where he has been imprisoned and seduces him. Since Thersander's existence is plainly clear, when Clitophon finally has sexual intercourse with Melite he does so, from a legal perspective, with a *mens rea* or ἔκόν. This is his peripety.

This single act sets in motion an exquisite dilemma. The reader knows the romantic hero is in fact not only morally culpable for breaking his promise of fidelity to the heroine (which seems to be beside the point), but is also technically guilty of the crime for which he had been, until that point, falsely accused. Clitophon lists a number of ameliorating factors—the force of Eros' rhetoric, normal human reaction, fear of Eros' wrath, hope for freedom and reunion with Leucippe, compassion for Melite's sickness.²⁶ In declamatory treatises, such excuses were classed as *colores* or χρώματα: when the issue was one of quality, not of fact, the defendant would try to change the appearance (the 'color') of the action so as to lessen the appearance of wrongdoing.²⁷ It is hard to tell whether any of these excuses would have exonerated him in an actual courtroom.

In essence, Clitophon's dilemma at the opening of the trial is this: if he plans to defend himself by arguing that he was married to Melite, then he will lose Leucippe. If he is convicted, then he will become a dishonored man, forbidden from marrying a respectable, freeborn woman.²⁸ Either way he seems doomed to lose Leucippe. Despite this elaborate set-up—or perhaps, because of it—at the last minute Achilles Tatius once again subverts

²⁵ In the subsequent narrative, Clitophon is referred to as a *moichos* no less than twenty times: 5,23,1; 6,3,5; 6,5,1; 6,5,3; 6,9,1 [twice]; 6,9,2; 6,17,1; 6,17,3; 6,20,2; 6,21,2; 8,8,3; 8,8,10; 8,8,11; 8,8,13; 8,10,1; 8,10,3; 8,10,4; 8,10,5; 8,10,11.

²⁶ Ach. Tat. 5,27,1–2.

²⁷ Bonner 1949, 55–56.

²⁸ Under the *lex Iulia*, the penalties for adultery included confiscation of property, prohibition from giving oral testimony, loss of civic privileges, general infamia, *relegatio* to island, and exile. See McGinn 1998, 142–143.

the trial for adultery by introducing a new plot twist: Clitophon's cell mate tells him a specious story that Leucippe has been killed.²⁹

With this, the moral balance of the trial is restored in the hero's favor, as the type scene demands. Clitophon, now completely beside himself with grief, changes his strategy. Instead of a defense, he will confess to Leucippe's murder, and implicate Melite as well, and thereby 'leave [his] cursed life behind' (Ach. Tat. 7,6,3). The effect of this change in course is that Clitophon's guilt as a fully conscious adulterer is now eclipsed by the pathos of a grief so great that he can no longer bear living.

Clitophon's seemingly paradoxical strategy of suicide by self-condemnation was in fact a commonplace in the novels. This is precisely the situation found in Chariton's novel, in the trial of Chaereas for the murder of Callirhoe. In that trial, Chaereas begs the court to put him out of his misery and condemn him for Callirhoe's murder:

Chariton 1,5,4: συνέβη δὲ πρᾶγμα καινὸν καὶ ἐν δικαστηρίῳ μηδεπώποτε πραχθέν· ῥηθείσης γὰρ τῆς κατηγορίας ὁ φονεὺς μετρηθέντος αὐτῷ τοῦ ὕδατος ἀντὶ τῆς ἀπολογίας αὐτοῦ κατηγορήσε πικρότερον καὶ πρῶτος τὴν καταδικάζουσιν ψῆφον ἤνεγκεν.

Then something strange happened which had never before been done. After the accusation had been presented, the murderer, instead of defending himself during his allotted time accused himself more bitterly and was the first to cast a vote for condemnation.

This type of defense—in effect, as D.A. Russell has so aptly put it, a form of “ostentatious euthanasia”—was also a commonplace in declamations: it was labelled the *prosangelia* in the rhetorical treatises.³⁰ Achilles Tatius carefully lays the groundwork for this well-worn device. In book two, on the lovers' voyage to Alexandria, one of their travelling companions, an Egyptian named Menelaus, explains that when he was tried for killing his lover, he made no defense but begged the jury for a death sentence instead (Ach. Tat. 2,34,6).³¹

The defendant's paradoxical self-accusation upsets the normal stances of the two parties in the trial. In Chariton's novel, Hermocrates—the leader of

²⁹ Ach. Tat. 7,1,3–5,4.

³⁰ See Russell 1983, 35–36 and 140.

³¹ See also Charicleia in Hld. 8,9,7.

Syracuse and, more significantly, the very father of the murder victim—acts as Chaereas' advocate (Chariton 1,5,6 Ἑρμοκράτης συνηγόρησε Χαιρέα πρώτος). Likewise, the expected order of speeches is altered in Clitophon's trial. In the trial scene proper, Clitophon's is the first speech presented in *oratio recta*. The previous speeches of Thersander and of Melite's *rhetoires* are mentioned in the scene-setting transition to the trial. Thersander arrays 'no less than ten *rhetoires*' against him (Ach. Tat. 7,7,1 πλήθος ῥητόρων οὐχ ἦττον δέκα). Their speeches, as well as those of Melite's advocates, are referred to as a generalized plural (Ach. Tat. 7,7,2 ἐπεὶ δὲ ἐπαύσαντο λέγοντες, αἰτήσας καὶ λόγον). The narrative framework on which the speeches hang creates the impression of a grandiose trial, with innumerable speakers. The entire courtroom is thrown into an uproar (Ach. Tat. 7,9,1 θορύβου πολλοῦ κατὰ τὸ δικαστήριον ὄντος), but at the core of the trial scene is a pair of speeches: the first is for the prosecution, followed by the defense, as was the customary practice. Although Clitophon is technically the defendant, his speech, by virtue of its position in the narrative as well as its content, functions as the prosecution. According to the formula, it must be balanced by a defense: and so Clinias, Clitophon's friend, begs the court to allow him to speak on the grounds that this is a 'contest for a man's life' (Ach. Tat. 7,9,1 "Κάμοί τινα λόγον," εἶπε, "συγχωρήσατε· περὶ γὰρ ψυχῆς ἀνδρὸς ὁ ἀγών").³² Although he is Clitophon's advocate, the point of his speech is to refute rather than support his friend. Paradoxically, he tries to save his friend's life by demolishing his argument! Despite this, however, Clinias' speech, as the second presented in *oratio recta*, clearly is intended to be the counterbalancing second half of a pair of set speeches.

According to the formula of the defense by self-accusation, the jury is persuaded by the public display of the defendant's pathos and either acquits him or gives him a lighter punishment, thereby thwarting the hero's suicidal impulse. Chaereas is acquitted (Chariton 1,6,1), and Menelaus is sent into exile for three years (Ach. Tat. 2,34,6). In this light, we can see what is truly surprising about Clitophon's trial: the jury, instead of pitying the bereft hero, actually finds him guilty. It gives him exactly the death sentence he longs for

³² Harrison 1971, 2:158–159 notes that in the Attic orations, it seems that statements by advocates had to be delivered within the time allotted to the litigant by the water-clock. As a matter of courtesy, or perhaps as a general rule, the advocate had to request permission to speak. There are examples of such requests in the orators; Harrison cites Dem. 34,52; 59,14; Aeschin. 2,170; and Hyp. 2,20.

and more—he is to be tortured for evidence when the court resumes the trial of Melite (Ach. Tat. 7,12,1). At this point, the trial scene is transformed into another type scene, that of the hero's torture. Clitophon's degradation is vividly carried out by his being fettered, stripped, and hung from ropes while an array of torture devices is prepared. As in the other scenes of torture in the Greek novels, the threatened torture is forestalled at the last moment when a priest of Artemis arrives with an embassy led by none other than Leucippe's father (Ach. Tat. 7,12.3), thus bringing to a halt the uncomfortable scene of a hero's complete social humiliation.³³

By the end of the first trial, the adultery charge has been completely buried: the description of the jury at the end of the first trial makes this clear:

Ach. Tat. 7,12,1: ἔδοξε τῷ προέδρῳ τῶν δικαστῶν—ἦν δὲ τοῦ βασιλικοῦ γένους καὶ τὰς μὲν φονικὰς ἐδίκαζε δίκας, κατὰ δὲ τὸν νόμον συμβούλους ἐκ τῶν γεραιτέρων εἶχεν, οὓς ἐπιγνώμονας ἐλάμβανε τῆς γνώσεως

It was decided by the president of the judges—he was of the royal clan and he judged trials concerning homicide; according to the law he had councillors selected from among the elders, whom he took as arbiters in the investigation.

The composition of the jury vaguely reflects real courts. The president's royal lineage as well as the role he is assigned in homicide cases recall the Athenian *archon basileus*, the official who presided over the court of the Areopagus, the most famous of the Athenian homicide courts. Similarly, the jurors' senior status accords with the court of the Areopagus.³⁴ Clearly, it is

³³ The suspension of public business, including the hearing of trials, during religious festivals was common throughout Greek and Roman history. The *locus classicus* in Greek literature for the temporary suspension of public business during a religious festival is the postponement of Socrates' execution until the return of the Delian *theōria*. Related is the Roman *iustitium*, a more *ad hoc* suspension of public business, which could be declared at any time by the senate or by a magistrate with *imperium* during the Republic and by the Roman emperor during the imperial period. See *Kl. Pauly*, s.v. 'iustitium.' cf. Chariton 5,3,11, where the first trial in Babylon is postponed for thirty days because of a religious festival; as well as Chariton 6,1,4, where the king postpones the second trial by declaring another sacred month of sacrifices.

³⁴ Vilborg 1962, 2:122. On the Athenian homicide court, see MacDowell, 1963, 33–38. Juries of ten elected *dikastai* presided by a *proedros* are attested in Alexandria; see Taubenschlag 1955, 484–485.

the appropriate jury not for adultery, the original charge, but for murder, an unforeseen charge that arises only in the course of the trial for adultery. Here, consistency is subordinated to the demands of the narrative; the hyper-verisimilar description of the court, with its agglutination of realistic-sounding details, serves to cover up this shift. By the end of the first trial scene, the fact that a court convened for an adultery trial tries a murder case is nothing more than a minor inconsistency, easily glossed over by the melodramatic sweep of events.

However, the case is not yet over and the adultery charge will come back to haunt Clitophon and Melite. In the Greek novels, it is typical for one trial to lead to another, grander than the first. In Chariton's novel, Chaereas is acquitted, but the case of Callirhoe's 'murder' is not solved until Theron is convicted in a second trial and punished for her kidnapping. Xenophon of Ephesus has his hero, Habrocomes, taken to the prefect three times for sentencing before he is absolved of blame in the murder of his former patron, Araxus. The Athenian saga of Cnemon in Heliodorus' novel involves not only a trial for patricide, but also a plea for pardon and a revenge lawsuit lodged against Cnemon's father by his wife's relatives.

In Achilles Tatius' novel, the interval between the trials is marked by a series of challenges and counter-challenges for the torture of slaves, a common tactic in the Attic orators.³⁵ Intertwined with the plot of the trial is the plot of Thersander's pursuit of Leucippe, who eventually seeks asylum in the temple of Artemis. Sosthenes, the libidinous overseer of the estate and Thersander's lackey, becomes embroiled in the intrigue. These details serve to obscure the glaring fact that by the opening of the second trial, the reappearance of Leucippe makes the murder charge moot and Clitophon's execution superfluous. As a result, in the second trial the accusations are broader and there is a wider scope for pure invective. Ultimately, however, the trial returns to the crime that triggered it and the crime for which Clitophon might legitimately be found guilty: that is, adultery.

The speeches of Thersander, the priest of Artemis, and Thersander's advocate Sopater are more than showpieces of rhetoric.³⁶ A chain of charges and counter-charges generates a legal paradox of mind-boggling complexity. Throughout the second trial, the alert reader remembers that Clitophon is

³⁵ On the use of the *proklesis eis basanon* as a rhetorical strategy, see the argument of Gagarin 1996.

³⁶ For a detailed rhetorical analysis of these speeches, see Schwartz 1998, 185–226.

guilty: he did have sexual intercourse with Melite. As the exchange of charges of sexual misbehavior intensifies, Clitophon's moral and legal position becomes more precarious. The case becomes like a game of tournament chess, where the first person to make a mistake gives the victory to the opponent. In this case, Thersander falls victim to his own cleverness. Sopater, Thersander's advocate, ends an impassioned speech with a syllogism:

Ach. Tat. 8,10,12: οὐκοῦν εἰ μὲν τέθνηκεν, ἀπήλλαξαι τῆς αἰτίας· οὐδὲ γὰρ ἔστιν ὁ τὴν μοιχείαν παθὼν, οὐδὲ ὑβρίζεται γάμος οὐκ ἔχων ἄνδρα· εἰ δὲ ὁ γάμος τῷ τὸν γήμαντα ζῆν οὐκ ἀνήρεται, τὴν γαμηθεῖσαν διαφθείραντος ἄλλου λελήστευται.

Therefore, if on the one hand he [Melite's husband] were dead, she would be free of the charge, for no one exists to suffer the injury of adultery, and when a marriage lacks the husband, it cannot be insulted. But if on the other hand the marriage has not been annulled, because the husband is still alive, then a stranger corrupting the wife has poached on another man's property. (trans. Winkler)

This makes perfect sense. Sopater's logic is consistent with the traditional definition of adultery: it is an injury to the husband's honor and his possession of his wife. Emboldened by his advocate's cleverness, Thersander jumps up to issue yet another challenge, this time for a trial by ordeal. Thersander asks not whether Melite committed adultery with Clitophon, the proper question for this trial, but whether Melite committed adultery while Thersander was away from home (Ach. Tat. 8,11,2 εἰ μὴ κεκοινώνηκεν εἰς Ἄφροδίτην τῷδε τῷ ξένῳ παρ' ὃν ἀπεδήμουν χρόνον). To make it patently obvious, Achilles Tatius underscores this limiting clause—'while Thersander was away'—twice in the account of how Melite accepted the challenge (Ach. Tat. 8,11,3 παρ' ὃν ἀπεδήμει χρόνον ὁ Θέρσανδρος and καθ' ὃν λέγεις καιρόν³⁷). Melite readily agrees to the challenge.

In the end, the only way out of this legal morass is a *deus ex machina* in the form of a pair of supernatural tests.³⁸ Leucippe's virginity test is a red

³⁷ The reading for 8,11,3 καθ' ὃν λέγεις καιρόν, represents a correction made by Jacobs and endorsed by Vilborg of a corrupt passage in the manuscripts. See Vilborg 1955-62, 1:155 and 2:136.

³⁸ The pair of ordeals at the end of Achilles Tatius' novel has been studied, but not in the context of the entire narrative of crime, trial, and punishment. Segal 1984 presents a structuralist reading of the dichotomy in female sexual roles in Achilles Tatius' novel, a

herring: it is the ordeal of Melite that represents the final resolution of the story. While the reader has little doubt that Leucippe is a virgin, Melite not only seems like an adulteress, but is in fact one. A legalistic technicality in the wording of the oath not only exonerates Melite, but enables Clitophon the *moichos* to get away scot-free with his crime and to live happily ever after with his virginal bride—a subtle, yet profound subversion of the genre's sense of justice.

In conclusion, the jailhouse tryst of Melite and Clitophon serves a significant purpose; it cannot be dismissed as merely a joke. Rather, it shifts the moral grounding of the trial scene, and reveals the complexity of Achilles Tatius' narrative strategy. The litigants' 'brinksmanship' exposes the depth of the novel's roots in the law.³⁹ The extraordinary skill with which Achilles Tatius develops and sustains the legal dilemma can only be fully appreciated in light of the generic formula of the trial scene.

The depiction of law in the novels is heavily conditioned by the demands of the narrative. The trial scenes are not an uncomplicated reflection of the real world. The value of legal realia in illustrating the world of the novels becomes clear if we consider the 'sharp, paradoxical, and litigious wit' that D.A. Russell notes was a hallmark of Greek declamatory culture.⁴⁰ Steeped in that culture, the novelists were familiar with the procedures in the Attic orations; as part of the Greek civic elite, they would also have had experience with Roman law.⁴¹ Accordingly, they draw on both Athenian and Roman law not merely to decorate their plots, but to construct them. The resulting pastiche reveals more about *mentalité* than reality.

But the *mentalité* is significant for our understanding of the history of the period: the production of the novels coincides with a time when law was in flux. Greek civic forms were being revived as Roman law was being extended. At the same time, the officials who administered these cities for the Roman emperors needed to control the wild and potentially unpredictable process of rendering decisions publicly before a civic audience, particularly

contrast which is highlighted in the ordeals of Leucippe and Melite at the end of the novel. A much more moralistic (and dated) interpretation of these ordeals may be found in Rattenbury 1926.

³⁹ On 'brinksmanship' as a feature of Achilles Tatius' overall style, see Reardon 1988, 87-88.

⁴⁰ Russell 1983, 39.

⁴¹ The legal background of the declamations is examined by Bonner 1949, 84 ff. See also Bornecque 1902, Lanfranchi 1938, and Parks 1945.

in cases of serious public import. The trend toward the spectacularization of punishments in the empire was shadowed by a corresponding movement of the trial process out of the public spotlight and safely indoors, where it could more easily be controlled by the imperial magistrates.⁴² This left room for the free play of fantasy about the operation of public trials, informed by the memory of the *polis* of a Golden Age. The trials in the novels elevate private matters to the level of political issues, but the dilemmas leading to trials are as profound as they are playful. They reflect a heightened awareness of the tensions created when persons find themselves subject to overlapping legal systems. It is for this reason that the trials were regarded as an essential element of ancient fiction.

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⁴² On the effects of spectacle upon the administration of justice, see MacMullen 1986 and Coleman 1990.

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