Introduction

In ancient Greek and Roman culture, marriage was traditionally an institution for the propagation of patrilineal bloodlines, particularly when property was at stake. This was true at least among the elites whose perspectives are so disproportionately represented in the surviving literature from antiquity. At some point, however, there arose the concept that mutual love and fidelity ought to be the foundation of marriage. This ideal is espoused in a genre known as the Greek ideal romance, or novel. The five extant novels that have survived in full present a model of normative sexuality. They typically begin when boy and girl fall in love, undergo a series of adventures that test their love for each other, and end with their blissful union (or reunion) in marriage.

This study, however, is not about love. It instead focuses on the dark side of the romantic ideal: adultery, the inversion of the emblematic value of conjugality. The concept of fidelity is inseparable from that of infidelity. Michel Foucault observed that the Greek novels reflect a 'new erotics, [which] organizes itself around the symmetrical and reciprocal relationship of a man and a woman.'[1] The portrayal of 'sexual symmetry' in the novels was a radical ideal during the first centuries C.E.[2] The concept is illustrated not only through the depiction of couple's mutual commitment to chastity, but also through the important juxtaposition with the adulterous love triangle. It represents the purest recipe for dramatic conflict, using the basic ingredients of desire, sex, betrayal, jealousy, and violence. As a scholar of the modern novel has observed, 'It is the unstable triangularity of adultery, rather than the static symmetry of marriage, that is the generative form of Western literature as we know it'.[3] It is certainly true for the Greek novels as well.

To delay the formulaic happy ending, the authors of the novels introduce a string of threats to the lives and chastity of the protagonists. One of the most prominent of these intervening obstacles is the courtroom trial. Almost all trials originate from an act or suspicion of adultery, the paramount crime in the world

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[1] Foucault 1988, 232. Responses to Foucault: Konstan 1994a; Goldhill 1995; Whitmarsh 2011; Montiglio 2013. A succinct overview of sexuality in the novels can be found in Morales 2008.

[2] Konstan 1994a.

[3] Tanner 1979, 12.

of the Greek novels. Each of the five surviving complete Greek novels has at least one trial scene; some trials take up a considerable portion of the narrative.[4] Fragments of lost novels corroborate that trial scenes were an expected element of ancient Greek fiction.[5]

Adultery loomed over ancient Greek and Roman imagination. It tapped anxieties that a stranger might seduce a woman and thus corrupt marriages and destabilize peaceful relations between men. The scenario finds its earliest written expression in the epics of Homer and extending to the literature and legislation promoted by the Roman emperor, Augustus, who subjected marriage and adultery (at least among the senatorial elite) to regulation by the state. In the ancient imagination, the husband's discovery of his wife and her lover in flagrante delicto was a stock episode, immediately recognizable in the exaggerated form it often takes in comedy:

> The tale generally (but not invariably) follows a predictable pattern: an account of the marriage (generally between a frisky young wife and an older, rather dim-witted husband), followed by a description of the initial meeting between the wife and the young adulterer, their bamboozling of the husband, and (often, but not always) a final confrontation in which the guilty pair are caught in the act and either punished or, just as often, afforded the opportunity for a final triumph over the all-too gullible spouse.[6]

The adultery scenario is a paradigmatic moment of crisis that demands some form of redress. From the perspective of the courtroom, the conjugal bedroom remained a 'black box', a space beyond public purview. In lived experience, the only witnesses to the comings and goings into the interior space of the bedroom were members of the household; however, in literary narrative the distinction between private and public spaces is flattened as the internal operations and mysterious logic of the bedroom are laid open to inspection.[7] As readers, we become eyewitnesses to crime in intimate spaces. Bodies are displayed for all to see in the courtroom, while lovers plead behind closed doors in high rhetorical style. Private concerns are elevated to the status of public interest and the bedroom is transformed into a kind of stage itself where, as in the public trial scenes, the drama plays out

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[4] See the Babylonian trial in Chariton, book 5 (of 8 books); the trials in Ephesus in Achilles Tatius, books 7-8 (of 8 books); Heliodorus, trials in Athens in book 1 and in Meroe in book 10 (of 10 books).

[5] For example, Iamblichos *Babyloniaka* fr. 35 in Stephens and Winkler 1995, 228-233; and a fragment of *Panionis* in Parsons 2007.

[6] Porter 1997, 428.

[7] Perkins 2002.

the politics of chastity, as it were, and the impossibility of ascertaining the truth of sexual relations. Through narrative, readers are able to peer into the darkened bedroom and gain a sense of certainty about the events inside this private space, a certainty that eluded judges in a courtroom setting.

Greek literature had a long and vibrant tradition of staged debates going back to the Homeric epics and continuing throughout antiquity. Indeed, the motif of the trial is ubiquitous in world literature. Virtually all societies have mechanisms for mediating between claims that might otherwise lead to violence, and stories of trials are a way to reflect on social crises and individual choice. The interconnection between the law and literature is the subject of a thriving interdisciplinary 'movement', as it styled itself at its beginning in the 1980's.[8] The relationship between law and literature is, in a certain respect, self-evident. Lawyers craft stories in court to help them win cases; judges interpret and rewrite those stories in rulings; witnesses give depositions; and reporters cover cases for the public. The courtroom is a space consecrated to narratives that carry with them momentous consequences for individuals and for society.

Many great literary works reflect moments of crisis that challenge the relationship between law and society.[9] Both law and literature create narratives about justice and reflect upon the place of law in society. Literary fiction is often driven by characters that cross boundaries and challenge social norms. Some judges and lawyers produce legal texts that have a very literary quality, and authors of fictional narratives can exhibit a highly specialized knowledge of the law.[10] Yet, there is a significant distinction between the two modes of telling stories about law. Practitioners (and scholars) of the law tend to begin with a literal and precise approach to codes, statutes, and rulings, whereas readers of literary representations of law are conditioned to construe the narrative metaphorically. In this study, I attempt to bring these modes into dialogue, while acknowledging the particularities of how legal texts and literary texts reflect lived experience and are thus construed differently according to context and genre.

In literature, trial scenes engage the reader in forming a verdict along with the judge, in essence, a process of educating the citizens' faculty of judgment.[11] Aeschylus' *Eumenides,* the final tragedy of his trilogy, *The Oresteia*, illustrates how a fictional trial scene may perform the important civic function of inviting reflection upon the means of justice. Similarly, the defense speech of Socrates, as memorialized by Plato's *Apologia*, inspired a genre in which a wise man declares his

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[8] Overviews of the field can be found in Weisberg 1992; Posner 1998; Dolin 2007.

[9] Ziolkowski 1997.

[10] Weisberg 2002.

[11] Nussbaum 1995.

fidelity to his ideals before an audience of judges. The trial of Jesus, as it circulated in the gospel narratives, inspired a genre of stories of Christians tried under the auspices of Roman authorities.[12] Such *causes célèbres* have left a mark on the historical record; we can only imagine how many other locally notorious trials provided fodder for gossip throughout the towns of the Roman Empire.[13] Trials in the public spaces of the cities drew crowds of onlookers and entertainment-seekers.[14] These were the ancient analogues to present-day narratives about trials, in print and on screen. 'Procedural drama' is a robust formula for the generation of new television episodes, week after week.[15] The genre provides the satisfaction of closure at the end of the show, while at the same time auguring infinite material for the next week's episode. The very repetitiveness and openness of the genre lends such stories about the law a quasi-mythic function: the trial scene is a resilient formula for the exploration of dramatic conflict within a framework that presumes justice is a stable and transcendent force in the world. Robert Cover has eloquently argued that the trial is not only an event in which the law is applied, but is also an arena for competing narratives of justice:

> A legal tradition is part and parcel of a complex normative world. The tradition includes not only a *corpus juris*, but also a language and a mythos—narratives in which the *corpus juris* is located by those whose wills act upon it. These myths establish the paradigms for behavior. They build relations between the normative and the material universe, between the constraints of reality and the demands of an ethic. These myths establish a repertoire of moves—a lexicon of normative action—that may be combined into meaningful patterns culled from the meaningful patterns of the past.[16]

Along the same lines, Mary Beard has made a case for understanding the outrageously far-fetched scenarios of the declamations as products of 'mythic thinking' in that they present traditional themes 'without concern for origin or authorship, but are focused instead on reception, re-telling, re-elaboration.'[17] She makes the important point that in the culture of the declamations, the law replaces the gods

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[12] On narratives of the trial of Jesus see Lincoln 2000, Skinner 2010; on the legal and historical context, see Giovannini and Gryzbek 2008.

[13] Kadri 2005.

[14] On crowds in the Roman forum, see Bablitz 2007.

[15] Denvir 1996; Bergman and Asinow 1996; Harriss 2008.

[16] Cover 1983, 9.

[17] Beard 1993, 58. On declamation's role in creating role models of Roman masculinity, see Gunderson 2000.

as the superhuman authority that governs the cosmos, and 'legalism itself' rather than actual, everyday law validates the fictive debates in the declamations.[18]

Unlike the Roman declamations, the Greek novels embrace the divine realm, especially the deified form of *Fortuna*, or Τύχη, as the transcendent force that guides the protagonists toward their happy ending. The power of the gods subverts legalism, as in the trial of Melite in Achilles Tatius' novel, where a hyper-legalistic oath is subverted in an ordeal of the water of the River Styx. As the following chapters will illustrate, the fictional courtrooms of the Greek novels shed light upon deeply embedded cognitive structures—the *mentalité*—of the readers who originally consumed the novels in which trial scenes play a prominent role.[19]

The Greek novels are but one part of what G. W. Bowersock describes as 'a larger context of fabrication and rewriting' that reached its peak circulation in the second century.[20] My contention is that courtroom scenes reflect aspects of the dynamic and fluid process whereby Roman law was understood, subverted, and received by the Greek-speaking inhabitants of the Roman Empire. Of course, fiction is not fact. By its very nature, the characters, actions, and settings in the novel do not claim to correspond to specific referents in the contemporary world of the novels' original audiences. It would be mistaken to take the trials in the novels, which dance on the line of verisimilitude, as conclusive evidence of any 'real world'. They tend to be moments of outsized drama, an opportunity to introduce weeping defendants, vengeful accusers, grandiose speakers, and cheering mobs to amplify pathos on the legal stage.

At best, the novels reflect the tastes and expectations of their readers. Sets of opposing speeches are embedded within a larger narrative and thus create an ironic distance from which the readers can observe the vagaries of the legal arena and the inherent uncertainty of verdicts. Courtrooms, as imagined in literary works, function as spaces for the competitive assertion of important cultural values. Aeschylus' *Eumenides,* which dramatized the mythic foundation of the Areopagus court, was first performed when Ephialtes' reforms were transferring most of the powers of the traditional high court of Athens to the democratic courts, thus precipitating a political crisis.[21] Likewise, over the course of the three or so centuries when the novels were written and received by Greek-speaking audiences,

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[18] Beard 1993, 60.

[19] The term *mentalité* was pioneered by historians of the *Annales* school in the 1960's to refer to habitual patterns of thought that are discernible over long periods of social history; see Boureau 1989.

[20] Bowersock 1994, 13. Stephens and Winkler include forty-two fragments on papyri in their collection, twenty-four of which they date to the latter half of the second century; see Stephens and Winkler 1995, 480-481.

[21] Ziolkowski 1997, 32.

Roman legal culture—its institutions, procedures, personnel, and jargon—was spreading into communities throughout the empire. The appearance of Roman law was not a single moment of crisis but rather a geographically varied process of adaptation at the local level, driven by pragmatic concerns involving jurisdiction when Greeks began to have dealings with increasing numbers of Roman citizens. The shift from Greek courts to Roman legal venues entailed using a different language, the formulating of grievances in terms that were coherent with Roman procedure, and working with magistrates and bureaucrats who operated with a set of laws that were an outgrowth of the structure of Roman society and reflected a distinctly different culture from that of the Greek polis. Although the translation of Latin legal terminology into Greek was not uniform, inscriptions and papyri attest to the tenacity of Greek speakers to have Roman legal records translated into their own language.[22]

One of the peculiarities of Roman law was the state's involvement in the regulation of marriage and criminalization of adultery, an abiding concern throughout Augustus' reign to rebuild Roman society after the devastation of civil war. There was no reason for Greeks to have been particularly concerned with this raft of legislation; as far as we know, the Augustan laws targeted only Roman society, in particular the senatorial class. In 19 B.C.E., the *lex Julia de maritandis ordinibus* restricted the right of legal marriage, *matrimonium iustum*, to particular classes and imposed various sanctions on the unmarried or childless. After a year or so, Augustus introduced another piece of legislation, the *lex Julia de adulteriis coercendis*, which made adultery liable to public prosecution. A full generation later, in 9 C.E., the *lex Papia Poppaea* limited the ability of unmarried and childless persons to claim inheritances. The causes and effects of this legislation have been the subject of much specialized scholarship, the particulars of which have limited bearing on the trials in the Greek novels. Nevertheless, it is clear that these laws established an ideal of marriage that emphasized procreation and the preservation of the Roman elite. [23]

It is worth noting that the marriages of provincials were not within the ambit of the Augustan legislation. Augustus' *Res Gestae* (6.1) only mentions that he was given (but refused) the *cura legum et morum*, the 'care of laws and morals,' but there is no mention of laws on marriage and adultery. This suggests that Augustus'

[22] Laffi 2013. A recent assessment of the percentage of Roman citizens estimates that no more than one third of the free population had Roman citizenship before 212 C.E.; see Laval 2016.

[23] For an overview of the complex history of the legislation and a summary of the scholarship, see Raditsa 1980.

regulations on marriage and adultery were not intended for implementation outside of the Roman elite. In the early Principate, there was not yet a critical mass of Roman citizens outside of Rome who would have been theoretically subject to the laws of Augustus. Provincials, many of whom aspired to be like the imperial elites, were more likely to assimilate to the new ideology of marriage through communication channels other than the law.[24] For example, senators who were married and had families had an advantage when the emperor assigned provinces. Those men had earned their governorship by conforming to the expectations enshrined in the Augustan laws. When a governor arrived in the province, his behavior, his *habitus*, conveyed the Augustan ideals of marriage and family to provincials aspiring to positions of influence. Members of local elites wishing to collaborate with imperial rule might have expected to gain some advantage by imitating the representatives of Rome.[25] Thus the ideals, if not the literal laws, of Rome shaped provincial attitudes about marriage and, more importantly, adultery. Whereas matrimonial customs were deeply rooted in local societies throughout the empire, the rupture of marriage—adultery—posed a challenge to established communal modes of private redress. What happened, then, when an alternative avenue for pursuing a grievance was made available in the form of a public prosecution for adultery? Did high profile trials of sexual misbehavior—such as the affair of Julia, the emperor's own daughter, in 2 B.C.E.— communicate to local elites that their own sexual affairs, too, were subject to official punishment?

These are difficult questions to answer definitively. Given the private nature of adultery and the risk of personal embarrassment, it is hard to imagine that prosecutions of adulterers were routine; yet, Cassius Dio noted that there were thousands of cases of adultery on the docket when he came to Rome at the beginning of the third century to serve as prefect in Rome under the Severans.[26] This suggests people did in fact use the court system to prosecute cases of adultery. It is virtually impossible to track the frequency of such trials from the first to the fourth centuries C.E. throughout the empire; nevertheless, Dio's anecdote suggests that, at least at Rome, adultery trials were not uncommon. This may provide a context for the novelists' choice to structure trial scenes around acts of adultery.

Trial scenes were an expected element of the ancient novel, as attested by Photius, the ninth-century commentator who was familiar with more examples of fictional works than we are today. In his *Bibliotheca,* he describes a novel, now lost, called *The Wonders Beyond Thule,* written by Antonius Diogenes, in the following terms:

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[24] Ando 2000, particularly chapter 1.
[25] Bourdieu 1977.
[26] Cassius Dio 76,16,4.

> Ἔστι δὲ ἐν αὐτοῖς καὶ μάλιστα, ὡς ἐν τηλικούτοις πλάσμασί τε μυθεύμασι, δύο τινὰ θηράσαι χρησιμώτατα· ἓν μὲν ὅτι τὸν ἀδικήσαντά τι, κἂν μυριάκις ἐκφυγεῖν δόξῃ, εἰσάγει πάντως δίκην δεδωκέναι, 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 he presents a wrongdoer, even if he appears to escape countless times, paying the penalty just the same; second, that he shows many innocent people, though on the brink of great danger, being saved many times in defiance of expectations.[27]

Photius clearly recognizes the episodic quality of the plots—that villains escape 'countless times' (μυριάκις) and heroes survive danger 'many times' (πολλάκις). More importantly, he categorizes the genre's characters into two basic types: 'the wrongdoer' (τὸν ἀδικήσαντά τι) and 'innocents' (ἀναιτίους). In doing so, he conceptualizes the plot as essentially motivated by the pursuit of justice; love is strangely absent. The fact that the ending comes when the villain 'pays the penalty' (δίκην δεδωκέναι) underscores a plot structure built upon the concept of just deserts, a formula Aristotle noted was so appealing to audiences because it meshed with conventional ideas of justice.[28] The trial scenes thus mirror expectations of how justice works, whether within the formal system of law or outside of it.

The fictional trial scenes in the novels reflect Greek readers' understanding (and misunderstanding) of the distinctively Roman customs and laws that governed imperial courts and increasingly influenced the operation and use of local courts in the Roman Empire over the course of the first four centuries C.E. The main corpus of this study consists of three of the five Greek extant Greek novels: *Callirhoe* by Chariton (henceforth abbreviated C); *Leucippe and Clitophon* by Achilles Tatius (AT); and the *Aethiopica* by Heliodorus (H).[29] The sole trial scene in *Daphnis and Chloe* by Longus (L) proves the rule that a trial scene was *de rigueur*: instead of adultery, it revolves around a pedestrian case of property damage caused by goats.[30] *Anthia and Habrocomes* by Xenophon of Ephesus (XE)

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[27] Photius *Bibliotheca* Cod. 166 [112a]; trans. Sandy 1989, 782 (adapted).
[28] Aristotle *Poetics* 1453a2-35.
[29] On the titles of the novels, see Whitmarsh 2005; Goold 1995, 3-4; Tilg 2010, 214-230.
[30] The rustic trial of Daphnis in L 2.12-19 is discussed extensively in S. Schwartz 2005.

contains trial-like scenes that lack legal detail, possibly due to the novel's epitomized style.[31] Legal motifs are present in abundance in the Latin novels of Petronius and Apuleius.[32] In early Christian narratives, scenes of trial, punishment, and execution assume an unmatched centrality; these provide another point of comparison for the novel's depiction of trials.[33] Although these other fictional and semi-fictional works have much to contribute to the project of exploring how Roman law was understood in the empire, I have chosen to focus on the Greek novels in order to focus on the evolution of the trial scene through three novelists of the first centuries of the empire.

The portrayal of law in the novels of Chariton, Achilles Tatius, and Heliodorus is a bricolage. It draws from a range of sources: the declamations, the Attic orators, the revival of the culture of the classical polis, and the experience of living under Roman rule while grappling with distinctly Roman (i.e., foreign) ways of conceptualizing legal disputes. Did imperial Greeks understand the procedures and laws in the Attic orations, at least a half a millennium in the past? How did Greeks make sense of Roman law, with its many edicts, rescripts, law, and rulings?[34] The surviving laws of classical Athens and Rome serve as landmarks for assessing whether the authors actually understood—or cared about—the nuances and technicalities of the law.

It is important to underscore that the Greek novelists were not jurists. Their representation of laws and legal procedures is irrelevant to the history of Roman jurisprudence. Yet, the storyworlds they create in their novels theoretically correspond to the 'horizons of expectations' that ancient readers brought to these narratives.[35] The realism of the novels is a literary style, a convention derived from rhetorical traditions that were actively revived in the imperial period. Their vision of the classical past was mediated by books, particularly those deemed to be canons of Atticism.[36] Verisimilitude was a matter of the author's narrative ringing a bell of familiarity in the reader's mind, of reminding the reader of something he

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[31] Hägg 1966, O'Sullivan 1994.

[32] Petronius *Satyrica* 107-8; Apuleius *Metamorphoses* 3,1, 10,6-12; see Bodel 2010.

[33] This argument is developed further in S. Schwartz 2003b, 2007. See also Haight 1945, 48-80; Musurillo 1954, 253-254; Lincoln 2000; Aubert 2010; Skinner 2010. On the relationship between Greco-Roman, Jewish, and Christian fictional and semi-fictional literature see Pervo 1987, 1994; Edwards 1987, 1991; Bowersock 1994, 1-28, 121-160; Wills 1994, 223-238; 1995; C. M. Thomas 2003; Kensky 2010.

[34] Schiavone 2012.

[35] A. Billault 1991, 24; Fusillo 1991, 56-57; Egger 1994b, 271. For an analysis of how the Attic orators used this strategy, see Schmitz 2000. On 'horizons of expectations', a critical concept in reception studies, see Jauss 1982, 28. The cognitive process of building storyworlds is discussed at length in Herman 2009, 105-136.

[36] Morgan 1978, 1982; Kloft 1989; Arnott 1994; Swain 1996, 28-29.

or she has seen, heard, experienced, or read.[37] For example, Chariton's narrative of the daughter of Hermocrates of Syracuse explicitly incorporates well-known incidents and figures from the historical past.[38] On the other hand, Achilles Tatius' story of lovers traveling through Alexandria and other major cities of the eastern Mediterranean is vaguely contemporary but curiously avoids overt reference to Rome.[39] Although Heliodorus does not allude to historical figures, his portrayals of Athens and Delphi suggest an elaborately classical setting.[40]

What seems on the surface to be a chaotic jumble of historically useless detail in the trial scenes may be due to the experience of living in between two unequal legal regimes, the local and the imperial.[41] The challenge of untangling the legal references in the novels is compounded by the multiplicity of sources available to imperial era Greeks: literary and rhetorical texts, experiences with local legal cultures of various Greek cities, contact with Roman institutions and personnel, and the reinvention of classical Greece in the Roman Empire. A similar interpretive hurdle exists for the analysis of the legal disputes in the comedies of Plautus and Terence, where legal references bring to light a complex textual stratigraphy deposited through the translation of Athenian New Comedy, replete with Attic legal customs and jargon, into terms comprehensible to Latin-speaking audiences in Italy two centuries later.[42] During the Roman Empire, the diffusion of Roman law necessitated adjustment of local legal traditions and procedures in the provinces. I shall argue that trial scenes in the Greek novels shed an indirect light on this process of acculturation to the Roman administration of justice in the Greek-speaking provinces.

The historical study of Greek reception of Roman law relies principally on evidence of papyri, inscriptions, and other documents; literary evidence is sometimes adduced to corroborate a shaky argument.[43] The legal procedures and scenarios in the novels present other insights into the Greek conceptualization of Roman law. To be sure, the fact that these are works of fiction limits their evidentiary value for actual law; instead, they offer a rare view into how a judicial process proceeded from beginning to end. My analysis consists of a quasi-ethnographic,

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[37] S. Bartsch 1989; Morgan 1993.

[38] Chariton's historiographical pose has been much discussed; see W. Bartsch 1934; Reardon 1996; De Temmerman 2002.

[39] Swain 1996, 111-113.

[40] Bowie 1977; Pouilloux 1983; Rougemont 1992; Oudot 1992; S. D. Smith 2007.

[41] Gabba 1982.

[42] Scafuro 1997, 193-231.

[43] For recent analyses of Roman law as a force of acculturation, see Fournier 2010, Ando 2011a, and Bryen 2012.

Geertzian 'thick description' of the trial scenes in the novel.[44] I treat the three novels as artifacts that originated at different moments in the history of Roman Empire. Chariton's novel is widely believed to be one of the earliest of the extant complete novels, perhaps as early as 41 C.E. and Heliodorus' the latest, perhaps composed in the third or fourth century. Achilles Tatius falls between the two, around 160 C.E.[45] Because of the intractable difficulties of establishing precise dates for the Greek novels, I have chosen to use the novels as general indicators—snapshots—of the aftermath of major legal developments. Accordingly, Chariton's novel falls after the Julio-Claudian era in the generations that inherited the Augustan legislation on marriage and the family. Achilles Tatius created his novel at the height of the Second Sophistic in the Antonine era when Hadrian cemented the partnership between Greeks and Romans in governing the empire. Although Heliodorus' date is contested, there is little doubt that it was written after the Severan project of rationalizing Roman law and finally extending it to all the empire's inhabitants in 212 C.E. Collectively, the eleven trial scenes in these three texts reflect the impact of the spread of Roman law on the way Greek-speakers thought about rights, liabilities, differences in legal status, due process—and, in general, the transformation of law from a communal project specific to a particular polity to a professionalized system that dealt in abstractions that could in turn be applied to cases across a vast, multicultural empire. By having characters navigate through exotic and treacherous legal waters, the texts reveal an acute perception of the opportunities—and pitfalls—created during a period of tremendous development across the multiple legal milieux of the eastern provinces of the Roman Empire.

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[44] 'Doing ethnography is like trying to read (in the sense of 'construct a reading of') a manuscript—foreign, faded, full of ellipses, incoherencies, suspicious emendations, and tendentious commentaries, but written not in conventionalized graphs of sound but in transient example of shaped behavior'; Geertz 1973, 10.

[45] For the most recent estimates of the dates of Chariton and Achilles Tatius, see Bowie 2002. The case for placing Chariton in the middle of the first century C.E. is laid out in full in Tilg 2010, 36-78. There is a possibility that Heliodorus wrote his novel in the middle of the third century; however, the *testimonia* place him around the third quarter of the fourth century. I discuss the complex question of Heliodorus' historical context at greater length in the introduction to Part III.

Rhetoric and Realia

Details of everyday life in the ancient fiction supplement the picture of imperial culture and society.[46] Because the Latin novels are set in a more or less contemporary context, the correspondence between representation and reality is relatively more straightforward than it is in the Greek novels.[47] Direct verbal allusions to Roman law are easier to detect in Latin than in Greek. For example Apuleius' *Apologia,* the text of his defense to a charge of magic, proves that he was familiar with the law and serves as a solid point of comparison for the legal elements in his *Metamorphoses*.[48] In contrast, in the Greek novels, the allusion to Roman law is partially obscured by the interference of translation.[49] Rome is for the most part absent from the world of the Greek novels. Swain has attributed this curious feature of the novels to Hellenocentrism, as expressed in Greek readers' desire to have 'their social and ethical concerns to be played out in a world entirely their own'.[50] Sometimes Latin legal concepts are transposed into Greek terms, whereas in other instances traditional Greek legal customs, especially surrounding the practices of betrothal (ἐγγύησις) and wedding (γάμος), are emphasized in the narrative.[51] Nevertheless, Rome is an absent presence that exerts a gravitational pull on the representation of verisimilar storyworlds.

Many studies have profitably identified aspects of legal realia, nuggets of historical reality in Greek fiction; to ask whether or not discrete details of the law in the novels are 'accurate' or 'true' seems inadequate. This study aims to examine not only the legal details, but also the Gestalt of justice. Does anything about the way fictional characters interact with the law indicate whether the novelists and their readers were cognizant of a shifting relationship between local Greek law and the law of the Roman Empire?

A useful model for understanding of the social reception of law is to be found in *The Common Place of the Law,* a sociological study of attitudes toward the law in contemporary American society by Patricia Ewick and Susan C. Silbey. Rather than ask their interviewees about 'the law', Ewick and Silbey instead invited them

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[46] Bowie and Harrison 1993, 166; Scarcella 1970, 1977; Futre Pinheiro 1989; Alvares 1993.

[47] Colin 1965a; Duncan-Jones 1974; Millar 1981; Shaw 1984; Hopkins 1993.

[48] On the law in Apuleius' *Metamorphoses*, see Norden 1912; Colin 1965a; Summers 1967, 1970, 1971; Elster 1991; Gebhardt 2009; Bodel 2010; Baker 2012. On the influence of declamations on the Latin novels, see van Mal-Maeder 2003, 2007.

[49] Zimmermann 1957; Karabélias 1990; De Temmerman 2002; Papathomas 2010. References to νόμος and θεσμός (and their derivatives) in the Greek novels are gathered in Scarcella 1990.

[50] Swain 1996, 113.

[51] Calderini 1959, 29; Scarcella 1976; Liviabella Furiani 1988; Egger 1994a.

to describe situations when they faced conflicts and how they resolved them. The researchers were thus able to elicit narratives that reflect a picture of the law as a living presence in the lives of real people who use and misuse, understand and misunderstand, and engage and avoid the law and its institutions. To describe the totality of the law's effects upon the general social consciousness, they use the term 'legality' to describe

> an emergent structure of social life that manifests itself in diverse places, including but not limiting itself to formal institutional settings. Legality operates, then, as both an interpretive framework and a set of resources with which and through which the social world (including that part known as the law) is constituted.[52]

Ewick and Silbey distinguish three types of 'legal consciousness'. In the first type, which the authors label 'Before the Law', law is conceived of as 'an objective realm of disinterested action'. In this view, law consists of impartial and authoritative rules, procedures, and hierarchies. Reliance upon documents leads to the reification of the law as separate and above normal social relations. The second type, **'**With the Law', regards legality as a competitive game to be played out in a bounded arena by self-interested players. Resourceful individuals approach the law tactically and use the law as an instrument to get what they want. Finally, the third type of legal consciousness, 'Against the Law', emphasizes resistance, subversion, and sometimes evasion of law, particularly when it is perceived as arbitrary. This view is informed by awareness that power defines rules and norms, that 'might makes right'. This attitude seems cynical, but in fact is informed by a deeply held sense of justice.[53]

The methodological shift from a focus on the law proper to the Gestalt of legality is a useful model to understand how people in the ancient world envisioned the law. For example, Serena Connolly's study of petitions submitted by individuals living in the late third century C.E. reveals a lively and variegated picture of the strategies real people used in approaching the Roman judicial system for help in resolving conflict. [54] As an element of daily life in Greco-Roman cities, trials and other legal hearings provided material for the imagined universes of ancient fiction. The trial scenes of the novels of Chariton, Achilles Tatius, and Heliodorus show people—fictional characters— navigating and experiencing legal institutions and procedures. The novels reflect not a unitary ideal of the law,

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[52] Ewick and Silbey 1998, 23.
[53] Ewick and Silbey 1998, 45-49.
[54] Connolly 2010, 98-136.

but rather multiple and overlapping forms of legal consciousness suggesting that the assimilation of Roman law into Greek culture was a dynamic process, theoretically subject to continual negotiation.

The influence of rhetorical training is ubiquitous in the literature of the Roman Empire.[55] The Greek novels were part of this trend. It is generally accepted that the readers were drawn from the same general segment of Greek society that filled the rhetorical schools.[56] In the opening of the Latin novel, *Satyrica*, Petronius ridicules the far-fetched situations of the declamations, the exercises that were the basis of rhetorical education, for creating a 'cancer of cases' (*rerum tumore*) that made the students feel 'transported to an alien planet' (*in alienum orbem terrarum delatos*). Quintilian criticized such exercises for being hollow; Tacitus resigned himself to the reality that speakers had to resort to colorful tricks of the trade in order to get the attention of busy judges and noisy onlookers.[57] To train young, Greek-speaking men in the skills they would need for public life in assemblies, law courts, and before magistrates of various types, teachers utilized declamations (μελέται) based upon fictional court cases and historical speeches drawn from an imaginary world D. A. Russell has dubbed 'Sophistopolis'.[58] Though easy to dismiss for their absurd premises, such exercises were a serious method for inculcating social values for the class that managed the civic and imperial administration.[59]

Inferences derived from the novels themselves suggest that their authors assumed at least some of their readers would appreciate the play of legal jargon and argumentation in the trial scenes.[60] Written primarily from the perspective of elite city-dwellers, the novels envision a world where the Greek city stands at the center of life. The novels present norms of behavior for the educated elite (πεπαιδευμένοι). They espouse a conservative social ideology that reinforced the values of a patriarchal, Greek-speaking, civic elite and the traditional, polytheistic religious practices of the Greco-Roman world.[61] The length of the works suggests

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[55] Much has been written on rhetoric the Greek novels; see Barwick 1928; Kestner 1973-1974; Billault 1979 and 1990; S. Bartsch 1989; Ferrini 1991; Laplace 1994; Birchall 1996; Doulamis 2001 and 2011. On debates in the novels see chapters by Bost-Pouderon, Jouanno, Daude, Brethes, De Temmerman, Morgan, and Berranger-Auserve in Pouderon and Peigney 2006. Finally, for the construction of character in accordance with rhetorical precepts, see De Temmerman 2014, 26-45.

[56] Stephens 1994; Bowie 1994.

[57] Quintilian *Institutio Oratoria* 10,2,11 and Tacitus *Dialogus de Oratoribus* 20.

[58] Russell 1983, 21-39.

[59] Webb 2001.

[60] For an overview of scholarship on the readership of the novels, see Hunter 2008; Paschalis, Panayotakis, and Schmeling 2009.

[61] Swain 1996, 101-103; Saïd 1999; Morgan 1989b; Dowden 1996.

that they would have been read silently, or perhaps aloud in intimate settings.[62] Perhaps a father might have purchased a copy of a novel, which would have been quite expensive, to bring home and have read aloud as entertainment for the entire family.[63] Stories of young people falling in love, remaining loyal in the face of danger, marrying, and then returning to the city was a genre of wholesome entertainment that would communicate to their children their anxious parents' expectations of suitable marriages. In this vein, Sophie Lalanne argues that the plots of the novels mirror *rites de passage* for the teenagers who must separate from their families, undergo various tests, and then return home to assume their adult roles in the community of the polis.[64] Similarly, Tim Whitmarsh has argued that the narratives of journeys from center to periphery and back (sometimes) illustrate the relationship between the self and society and the development of a specifically Greek identity during the Roman imperial era.[65]

The relative expansion of Roman citizenship formalized relationships between self and society. As more people were granted the right to access Roman modes of dispute resolution, a new cadre of functionaries—clerks, advocates, jurists, and secretaries to the emperor—arose to meet the demands placed on the courts. Students from land-owning families with the means to pay for education were prepared to serve as members of city councils, and perhaps functionaries in the imperial administration.[66] Literacy was essential but, more importantly, the ability to speak in a stylized manner communicated membership in the elite and hence access to channels of influence.[67] Even apparently silly declamatory themes challenged students to hone their skills of persuasive argumentation, to systematize complex sets of facts, and to grapple with contradictory rules—skills that were vital to the work of the courts.[68] Ambitious students might advance to law schools in Beirut or Rome, an arduous path that involved learning Latin and mastering the technical vocabulary and conceptual framework of Roman law. Those who took this route must have believed they had much to gain by learning Latin and assimilating into the culture of the imperial administration. Inscriptions documenting the deeds of a third-century jurist, M. Cn. Licinius Rufinus of Thyatira in Lydia, sketch a picture of how one such 'unambiguously Greek' descendant of

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[62] Starr 1990/1; Konstan 2009.

[63] Konstan 1994b, 220.

[64] Lalanne 2006.

[65] Whitmarsh 2011.

[66] Beard 1993; Richlin 1996; Bloomer 1997; Gunderson 2003. On schools, see Marrou 1956; Cribiore 2001; Watts 2006.

[67] Hägg 1983, 90-100; W. V. Harris 1989, 248.

[68] On the serious legal issues in the declamations, see Bornecque 1902; Lanfranchi 1938; Parks 1945; Bonner 1949; Winterbottom 1982.

an Italian family became a prominent figure in his city and made a career in the imperial administration through his expertise in Roman law; a client of his commemorated him as 'most experienced in the law'.[69] He attained the consular rank, became an *amicus Caesaris,* and under the Severan dynasty held the post of *a libellis* in which he was responsible for managing rescripts to petitions, both in Greek and in Latin, the more prestigious language. Others less inclined to pursue formal training would have likely acquired a practical knowledge of Roman law simply through the experience of handling legal affairs of various sorts in a population where there were growing numbers of people who had acquired Roman citizenship.[70] At all levels of proficiency, the beneficiaries of a good, rhetorical education were positioned to be brokers between the differing legal cultures of the Greek cities and the Roman Empire. The values of rhetorical education radiated beyond the circle of students and teachers to influence the broader culture.

The author of an early and well-known romance came from a distinctly legal milieu, albeit on a more humble level than the third-century Rufinus. In the proem to his novel, *Callirhoe*, Chariton presents himself as a clerk of the rhetor Athenagoras. As such, he is representative of the personnel who staffed civic and legal institutions in the Greek cities of the Roman Empire.[71] This is the only *testimonium* we have for Chariton, but it opens a window onto his social context. In Roman law, the functions that we might associate with the practice of the law were split between jurists and orators. In Latin, jurists (*iuris prudentes*) provided technical legal advice not only to pleaders but also to judges and advocates (*rhetores,* ῥήτορες) such as Chariton's employer, Athenagoras, whose expertise lay primarily in speaking before magistrates, judges, and jurors. People from the uppermost stratum of society usually did not do this for their living; however, there were some from 'a less exalted social level' who made advocacy their career.[72]Advocates gathered around the court of a magistrate and made themselves available to

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[69] *IG* X,2(1), no. 142: Λικίννιον Ῥουφεῖνον τὸν κράτιστον καὶ λαμπρότατον καὶ ἐνπειρότατον νόμων ὑπατικόν; see Millar 1999.

[70] C. P. Jones 2007.

[71] C 1,1,1: Χαρίτων Ἀφροδισιεύς, Ἀθηναγόρου τοῦ ῥήτορος ὑπογραφεύς, πάθος ἐρωτικὸν ἐν Συρακούσιας γενόμενον διηγήσομαι; see Schmeling 1974, 19; Karabélias 1990, 369-396; Alvares 1993; Edwards 1994. Rohde (1914, 520 in reprint edition) originally believed 'Chariton of Aphrodisias' was a pseudonym, meaning literally 'Man of the Graces' from the City of Aphrodite, an appropriate hometown for a writer of erotic fiction. Inscriptions attest to the presence in Aphrodisias of an Athenagoras and a Chariton, though there is no way of positively identifying these two with the novelist and the rhetor for whom he worked; see Ruiz-Montero 1994, 1007. The relevant inscriptions are in Calder and Cormack 1962. For 'Chariton', see no. 552 (= CIG 2846); for 'Athenagoras', see nos. 437, 438 (= CIG 2748), 462, 475, 517, 519, 532, 565.

[72] Crook 1995, 37-46.

be 'Vicarious Voices' for litigants in a wide variety of cases.[73] While their chief job was not the interpretation or creation of law, they knew enough about the practical aspects of the law to be able to sort through the facts of a case and arrange them in the most persuasive fashion.

For more technical legal matters, the services of other professionals were needed. Cicero refers to the practice among the Greeks of hiring assistants, whom he calls *pragmatikoi*, to give professional speakers legal advice.[74] During the Principate, freedmen and other private individuals served as secretaries (*notarii*) who took the minutes of the proceedings; the many reports of proceedings in the papyri confirm that there was incentive to retain a record of what had been said in court.[75] This may well have been one of the functions that Chariton performed in his duty as a clerk (ὑπογραφεύς). Many details throughout the novel suggest that Chariton was conversant with the administrative aspects of legal transactions. This is illustrated by series of transactions revolving around the sale of Callirhoe between the pirate/slave-trader, Theron, and Leonas, the manager of a larger estate.[76] However, ὑπογραφεῖς were not scribes who simply took dictation; more than that, they acted as moral agents and took responsibility for what they wrote. In documentary papyri they always identified themselves at the end of the documents they helped write.[77] They scanned agreements to ensure that they accurately reflected the intentions of their illiterate clients. If the rhetor acted as a 'Vicarious Voice', his clerk, the ὑπογραφεύς, acted as a 'Vicarious Hand'. We might expect they had a similar proficiency with the practical application of the law. It is quite plausible that Chariton's ability to parse complex legal dilemmas was honed at his day job. Achilles Tatius is likewise associated with the world of rhetoric. The sophistic style of *Leucippe and Clitophon*—particularly in the trial speeches— reflects the influence of rhetorical training and suggests that he, like Chariton, was familiar with the practice of law.[78] Though he does not identify his occupation or name, biographical *testimonia* unanimously point to Alexandria, the setting for a major portion of the novel, as the author's hometown. Both Eustathius, the twelfth-cen-

[73] Crook 1995, 58-118.
[74] Cicero *de Oratore* 1,198.
[75] Crook 1995, 61. For reports of proceedings, see Coles 1966. On *notarii*, see Teitler 1985, 38-44.
[76] Zimmermann 1957, 72-81. Chariton's interest in law has also been noted by Calderini 1913, 223-224; Scarcella 1990, 250-252; Karabélias 1990; Ferrini 1991, 34-37.
[77] Youtie 1975.
[78] Russell 1983, 38 n.100.

tury archbishop of Thessalonica, as well as Thomas Magister, a fourteenth-century Byzantine scholiast, refer to him as 'Achilles Tatius the Rhetor'.[79] This may be an inference based on the stylistic qualities of the novel, yet there is no compelling reason to rule out this attribution: like Chariton, Achilles Tatius' interest in trials is difficult to mistake.

As people experienced in the business of the law courts, novelists and readers must have been keenly aware of the hierarchies of authority. Above them were imperial officials of various types as well as the ruler himself; below were free lower-class citizens, peasants, freedmen, and slaves. As Roman citizenship was granted to more inhabitants of the Roman Empire, its value waned and social class became a more significant factor in determining the odds of achieving success in a courtroom. Members of the local civic councils, the *decuriones*, were recognized for the positions of honor they customarily held in their cities. Status symbols such as distinctive dress, special seats in the theater, and public perquisites made their social superiority unmistakable.[80] The ability to speak in the Attic style of Demosthenes, a skill that required years of arduous practice to learn, effectively raised an insurmountable barrier between the wealthy, leisured class and the masses.[81] The pervasive consciousness of status is reflected in the novelists' interest in the effects of the protagonists' change in social status. The novelists and their readers seem to have taken a perverse pleasure in identifying with protagonists who are subjected to disabilities of status. The reader could vicariously experience the situation of a free person who is treated as a slave, a social inferior, an exile, and a foreigner—at least temporarily. In the end, the freeborn heroes are restored to their innate, elite status. The fundamentally conservative nature of the ancient novels' outlook is clear: rarely is the justice of the social order called into question—unless it happens to be the protagonist who suffers degradation.

Roman Law in the Greek World

In order to understand the representation of the law in fiction, we need to know something of the world of law as it might have been experienced and understood by inhabitants of the eastern provinces of the Roman Empire. Papyri, inscriptions, juridical texts, and law codes document the laws of Rome as they were used in

[79] Eustathius, *Comm. in Odysseam* 14,350: ὁ τὰ ἐρωτικὰ παίξας Ἀλεξανδρεὺς ῥήτωρ and Thomas Magister, *Ἐκλογὴ ὀνομάτων καὶ ῥημάτων Ἀττικῶν,* s.v. ἀναβαίνω: Ἀχιλλεὺς ὁ ῥήτωρ ἐν Λευκίππῃ. Both references come from Vilborg 1955, 167-168. Biographical details are summarized by Vilborg 1962, 8; see also Whitmarsh 2011, 83-84.

[80] Garnsey 1970, 234-245.

[81] Schmitz 1997.

the Greek-speaking parts of the empire and so establish a general context for the expectations contemporary readers might have brought to their reading of trial scenes in the Greek novels.

The accommodation of Roman law by already established legal cultures in the Roman Empire is a topic that, until recently, has been under-explored. Traditionally, Roman law has been seen as an edifice of rationality that inexorably supplanted local legal customs as the empire spread. This illusion is due in part to the fact that so much of what is known about Roman law comes from the *Digest,* the monumental codification of the law in the sixth century under the Byzantine emperor Justinian.[82] Before the discovery and publication of papyri from Roman Egypt in the late nineteenth and early twentieth centuries, the relative paucity of evidence rendered the study of the laws of the Greek cities in the imperial period a moot point. In 1891, Ludwig Mitteis, papyrologist and student of Theodor Mommsen, established the framework for the history of Roman law in the Greek East in his monumental *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*, which revealed a complex process of local adjustment to imperial law. His analysis rests on a wide range of sources: epigraphic, juristic, historiographical, and literary evidence, as well as documentary papyri that were beginning to come to light, such as the Syro-Roman law book, a collection of Roman and indigenous laws compiled and used by Syrian Orthodox Christian communities in Late Antiquity. Mitteis coined the term *Volksrecht* to refer to the laws of peoples before contact with Rome, as distinct from the bastardized version of Roman law that resulted from the fusion of local and Roman practices.[83] His collection of material from the Hellenistic period to Late Antiquity is organized into three parts: the foundation of Hellenistic law, the reception of Greek law in the eastern Roman Empire, and a thematic overview of particular aspects of private law. As a jurist, Mitteis focused on how peoples of the eastern provinces conceived of rights and duties before and after the introduction of Roman law, and how the implementation of Roman law in turn was shaped by local practices.[84]

The general understanding is that Rome demanded that Greek cities cede control over foreign affairs (sovereignty), but allowed them retain their own local legal processes (autonomy), unless there was a particular interest at stake for Rome. The result was a mosaic of legal cultures that differed from city to city,

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[82] Schiavone 2012.

[83] Mitteis 1891, 5-6.

[84] A concise summary of the response to Mitteis' theory can be found in Oudshoorn 2007, 25-31.

inhibiting any sort of anti-Roman solidarity.[85] Comparing Hadrian's establishment of the council of the Panhellenion to the British Raj's encouragement of the Brahmin administration of traditional Indian law, Simon Swain argues that Hadrian's purpose in promoting traditional Greek culture was not simple philhellenism, but a calculated measure to co-opt the local elite:

> [In India], as in the case of the Greeks, an ancient written culture with a prestige language commanded respect from the ruling power which was consequently keen to further the position of those already in control by referencing the impulses of their traditions.[86]

By the time the Romans first absorbed Greek regions into their growing empire in the early second century B.C.E., most city-dwelling Greeks had already experienced political life under foreign—i.e., Macedonian—rule. Nominally the constitution of many Greek cities was democracy, albeit in a defanged form, with a general tendency towards empowerment of the council over the assembly.[87] By the time Chariton wrote his novel, another three centuries under foreign rule—now Roman—had solidified the position of propertied elites throughout the cities of the Greek world.[88] The resulting political identity of Greek city-dwellers was dual: they were both subjects of an empire and citizens of autonomous poleis. Accordingly, they lived under at least two sets of rules: the imperial edict and the traditional laws of their cities.

The phenomenon of multiple concurrent jurisdictions—legal pluralism—is illuminated by anthropological studies of societies undergoing the process of decolonization in the middle of the twentieth century.[89] In a survey of scholarship on this topic, Sally Engle Merry defines legal pluralism as 'a situation in which two or more legal systems coexist in the same social field', specifically where 'the sovereign commands different bodies of law for different groups of the population varying by ethnicity, religion, nationality, or geography, and when the parallel legal regimes are all dependent on the state legal system'.[90] The model emphasizes the way legal systems interact dialectically over time. Plural legal systems are

[85] A succinct overview of this process may be found in Ando 2012, 76-85.
[86] Swain 1996, 72-73.
[87] A. H. M. Jones 1940, 157-169.
[88] Millar 1993, 118; Habicht 1997, 287-289.
[89] Pospíšil 1958; Moore 1973, 1978; Nader and Todd 1978; Nader 1997.
[90] Merry 1988, 870-871.

often 'stacked' or 'nested', though in practice there is 'rampant boundary crossing' by legal actors and 'fragmentation' of imperial authorities'.[91] Studies of modern empires provide a useful comparative model for exploring the dynamics of legal transformation that, for the legal history of the Roman Empire, are obfuscated in the codifications of Roman law by Theodosius II and Justinian the Great, made long after local laws and legal institutions were eclipsed by Roman law. The model of legal pluralism makes intuitive sense for the Roman Empire; ancient documentary evidence illustrates a legally pluralistic society in which disputes often crossed jurisdictional boundaries.[92]

The foundations for this legal pluralism began well before the Roman period. Various types of treaties created mechanisms for mediating between citizens of different poleis. In the Hellenistic and Roman periods, cities granted citizenship to outsiders, usually in order to honor celebrities and large landowners. Epigraphic evidence attests to the significance of holding citizenship in multiple poleis, principally with regard to council membership, liturgies, and the holding of magistracies. Citizenship was principally a marker of social identity, but in theory it also granted access to legal venues in other cities.[93] Hellenistic and imperial Greek laws are reflected in the epigraphic and papyrological record. Documentary papyri of Roman Egypt indicate that Roman law was superimposed to an extent upon the Hellenistic law, which had coexisted with, and in parts supplanted, the native Egyptian law before it.[94] Unfortunately, the papyri do not offer direct parallels to the sensationalistic crimes of Greek novels. Adultery, murder, and seduction rarely surface among the private papers of an average Roman citizen living in an Egyptian village; nevertheless, important legal issues such as inheritance, taxation, leases, sales, and other everyday transactions are well-represented in the papyri. The evidence for Roman law is more systematically organized thanks to the *Digest*; however, the impact of laws emanating from Rome on the legal customs in the communities of Greek provinces can be difficult to assess, particularly in matters that were not of interest to the ruling power. The general policy of the Roman imperial administration seems to have been to allow local laws to stand, unless they came into conflict with Roman interests. The historical evidence, fragmentary as it is, provides a sketch of the Romanization of Greek law and the Hellenization of the imperial administration during the first three or four centuries

[91] Benton 2002, 8-9.
[92] Ando 2011b, 22-28; Bryen 2012.
[93] On the phenomenon of multiple citizenship, see the articles collected in Heller and Pont 2012.
[94] Modrzejewski 1986.

C.E. As we shall see, the novels also provide an indirect perspective into this process.

The spread of Roman law is not merely a legal question, but one with cultural implications.[95] Since the publication of Mitteis' work, the view of the unifying power of Roman law has been modified. One view holds that the Romans were less interested in the supposed 'compulsory elimination' of local laws than in the more pragmatic project of keeping the peace in the provinces.[96] The work of the Roman jurists, professional consultants to emperors and magistrates who were unfamiliar with local laws and who had to make authoritative rulings that would be accepted by the provincials, was instrumental in the adaptation of the traditional law of the city of Rome to the diversity of populations living outside Italy throughout the Roman Empire.[97] On the other hand, provincials would not necessarily know from year to year what kind of policies a particular Roman magistrate would decree in his edict.[98] The evidence of inscriptions, especially from Asia Minor, shows the interaction between the laws of Greek cities and Roman law. For example, Julien Fournier examines changing conceptions of citizenship and the administration of justice through the lens of the epigraphic records of four representative Greek cities: Athens, Sparta, Rhodes, and Mylasa, from 129 B.C.E. to 235 C.E.[99] His study shows that Greek civic governments adapted to Roman practices while still retaining their own institutions and legal customs. The process was not systematic but was tailored to the needs and customs of each city.[100] Papyrological studies of the Roman administration of justice among the Greek-speaking inhabitants of Egypt paint a picture of a society in which documentation played an important role in negotiating layers of legal authority. Benjamin Kelly's study of petitions concerning everyday conflicts illustrates a consciousness that legal complaints could be pursued along more than one channel.[101] Judicial claims were frequently delegated, deferred, and dropped.

Litigants who understood how to work the system were better able to achieve their goals. Occasionally, legal documents were taken out of context and used for political purposes. Andrew Harker untangles the complex history of the transmission and reception of the *Acta Alexandrinorum,* a group of papyri that purport to

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[95] Ando 2011a.
[96] Galsterer 1986, 24.
[97] Frier 1985; Honoré 1994.
[98] Bryen 2012, 776-777.
[99] Fournier 2010.
[100] Other epigraphic studies of the civic administration in the Greek East, can be found in van Bremen 1996; Ando 2000; Dmitriev 2005; Zuiderhoek 2009.
[101] Kelly 2011.

be documents arising from the acrimonious disputes between the Greek and Jewish communities of Alexandria that were played out in the court of the Roman emperors.[102] The reports took on a life of their own after the events and, with the acts of Christian martyrs, formed a new genre of popular literature. The resulting impression suggests that Greek readers in the Roman Empire were vitally interested in knowing what took place before the tribunals of Roman authorities.

The ancient Greek novels reflect an awareness of changing the boundary between public and private under Roman rule. The use of punishment as a public spectacle grew while legal proceedings receded to the magistrate's tribunal or the governor's *praetorium*. Trials by juries of hundreds or thousands of citizens were a memory that could only be imagined through texts. The Greek novels present an overview of all aspects of the trial, both public and private, encompassing crime, arrest, speeches, deliberations, verdict, and punishment. This may seem self-evident; however, it is important to underscore that all literary representations of trials are shaped by the power dynamics of society and its cultural discourses.[103] For example, during the period of the Athenian democracy in the fifth and fourth centuries B.C.E, the literary spotlight was on the trial phase, during which common citizens addressed their pleas directly to juries comprised of hundreds of citizens. In contrast, during the Roman Empire, trials by large citizen juries became less frequent as legal cases were presented to magistrates and their councilors instead of to citizen audiences. The procedure of the *cognitio* (or *cognitio extra ordinem,* as it is often called in modern scholarship) became the most common procedure for trials in the Empire because magistrates were not required to apply the Roman formulary procedure to people who were not Roman citizens.[104] Eventually, provincials who held Roman citizenship did not even bother with local justice, but appealed directly to the Roman ruler.[105] Under the *cognitio*, the magistrate had authority to determine how to handle matters presented to him at the provincial level.[106] Litigants who could afford it employed the service of professional speakers to present their cases.[107]

A trend toward moving trials from open and publicly accessible places, such as the forum, to more restricted interior spaces, such as a magistrate's *cubiculum,* is detectable from the beginning of the Empire in Rome, Italy, and the provinces.[108] Roman governors of larger provinces traveled on a circuit through the

[102] Harker 2008; Musurillo 1954.
[103] Foucault 1979.
[104] Peachin 1996, 7-9.
[105] Millar 1977, 465-477; Ando 2000, 362-373.
[106] Sherwin-White 1963, 1-23.
[107] Crook 1995.
[108] de Angelis 2010; Capponi 2010; Aubert 2010.

territory in order to administer justice. The governor's visit, known as the *conventus,* was a major event in the life of a town. Dio Chrysostom (35,15) describes a mob scene of 'litigants, judges, public speakers, governors, attendants, slaves, pimps, muleteers, hawkers, panderers, companions, and torturers: as a result, those having the goods sell for the highest price, and there is nothing idle in the city, neither animals nor houses nor women'.[109] Much of the real business of the law—that is, the hearing of competing litigants, the assessing of claims, and the rendering of verdicts—took place in controlled spaces that could be more easily closed to the public. It became necessary to keep written records because the trial did not take place before a large group of witnesses who could testify to what had occurred. [110] With the increasing reliance on paperwork, the issuance of rescripts, or responses to appeals, came to occupy a greater portion of the emperor's duties.[111] In the third century, Septimius Severus delegated to appointed judges the responsibility for handling the mounting volume of petitions.[112] A class of professional legal consultants arose to help keep track of the emperor's edicts and his numerous replies.[113] The bureaucracy connected to the administration of the law grew. The effect was a minimization of opportunities for the masses to directly observe and therefore learn about the process of Roman adjudication and sentencing.

Despite this trend—or perhaps because of it—the public expected legal spectacle.[114] As trials moved out of the public eye, into the magistrate's audience halls and onto the page, the punishment phase became more public. Assemblies could be so large that they typically needed to gather in the theaters.[115] Shrewd rulers (whether Roman administrators or *decuriones*) understood the necessity of vetting the issues presented to large body of spectators: it was more expeditious to present a defendant to the crowd after he had already been condemned. Executions of criminals became a regular feature of entertainment.[116] By the time the criminals were presented to the spectators in the arena, their guilt had already been decided. This was a win-win situation for the rulers: if the crowd demanded the execution of the criminal, then they could feel as if they shared in the dispensing of justice. If the spectators thought that the criminal deserved to live, then the ruler could

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[109] On the scale of the *conventus,* see Boatwright 2000, 98; Ando 2000, 376.
[110] Coles 1966; Musurillo 1954.
[111] Millar 1977, 203-272.
[112] Peachin 1996.
[113] Frier 1985; Honoré 1994.
[114] Slater 1995; Peachin 1996, 1-3.
[115] McDonald 1943.
[116] Colin 1965b; Callu 1984; MacMullen 1990; Hinard 1987; Coleman 1990; Potter 1993; Vismara 1994.

display mercy (*clementia*) to the criminal while simultaneously gratifying the people.[117] In the later second century C.E., the distinction in Roman penal law between *honestiores* and *humiliores* assumed a place in this dynamic. The courtroom was not a level playing field; high social status conferred a distinct advantage.[118] Magistrates who tried cases *extra ordinem* had a degree leeway to assess penalties. During the first centuries of the empire, a growing demand for games, coupled with a decrease in the acquisition of captives through war and the spread of citizen rights, meant that victims for the arena were increasingly difficult to find. Ramsay MacMullen has argued that during this period, criminal penalties became increasingly harsh. Roman citizens were no longer necessarily immune from crueler forms of punishment. Citizens of higher status, or *honestiores*, were exempt from harsher penalties; *humiliores*, on the other hand, found that they were subject to the death penalty in an increasing number of capital offenses. This dichotomy in penal law reinforced existing class distinctions. Citizenship mattered less than the person's *habitus*, the persona he projected.[119] In the provinces, there were many Roman citizens who could not even speak Latin; the magistrate was less likely to show sympathy with such a person than with someone of his own social class.[120]

During the imperial period, Greeks negotiated their place in a fluctuating system where the layer of Roman rule floated above local systems of power. The mesh was not perfect; the overlaps and gaps created ambiguity and confusion. Some cities were free and lived under their own constitutions, whereas others were part of an imperial province.[121] In the New Testament, the *Acts of the Apostles* shows how an individual might navigate the layers of varying jurisdictions.[122] Erwin Rohde, a 19th-century pioneer of modern studies of the ancient Greek novel, saw its readers as alienated, fatalistic, disillusioned, urbane, and individualistic.[123] The view persisted well into the middle of the twentieth century; for example, B. E. Perry envisioned readers who felt a deep sense of loss and fatalism in 'the new order of things, which had deprived them of the normal functions and aspirations of citizenship by making them subjects of a big empire on a par with

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[117] Potter 1996; Dowling 2006.

[118] Garnsey 1970, 99-100. Vertical relations of patronage mitigated to a degree the horizontal class distinctions; see Rilinger 1988, 274-279.

[119] Bourdieu 1977. Bourdieu's model has been influential in studies of the Second Sophistic, particularly well illustrated in Gleason 1995.

[120] MacMullen 1990, 216.

[121] Colin 1965b; A. H. M. Jones 1940.

[122] S. Schwartz 2003b.

[123] Rohde 1914.

vast numbers of foreigners and expatriates'.[124] And yet, despite this hypothetical alienation and disenchantment with politics, the Greek novels present characters who experience not anomie but a surfeit of laws, privileges, and social ranks—which they navigate with aplomb. Greeks of the imperial period were well aware of the privileges and honors conferred by identification as citizens of a Greek city, as members of the upper classes, and as possessors of Roman *ius*. That knowledge, along with a demanding rhetorical education steeped in the images of past grandeur, created an urban elite that was articulate and adept at using the complexities of the legal system to its advantage.

The Form of the Trial Scene

A trial is an event governed by ritualized actions that are performed in a space consecrated for the purpose of hearing narratives about the past in order to render justice and, if required, determine punishment. The boundedness of the trial lends itself to being represented in a formulaic manner, as can be seen in samples of court reports preserved on papyrus.[125] In Roman law, a lawsuit consisted of a prescribed series of actions, narratives, and speech-acts by participants playing predetermined roles. Likewise, the literary representations of trials exhibit features of formulaic sequences, analogous to Homeric 'type-scenes'. In her study, *Homer and the Resources of Memory*, Elizabeth Minchin argues that type-scenes are more than mnemonic devices for bards; they are expressions of culturally determined, but deeply embedded, cognitive frameworks for interpreting experience.[126] Drawing upon the insights of the cognitive psychology—the study of how the brain processes, organizes, and retrieves memories—Minchin suggests that type-scenes are templates for organizing sensory input with maximum efficiency. Influenced by the science of artificial intelligence, the field of cognitive narratology begins from the premise that readers use stored memories of patterns of events in order to make sense of narrative structures.[127] These templates for complex sequences of events (usually social), referred to as 'scripts', reflect deep-seated cultural assumptions about how the world operates. This type of 'scripted knowledge' facilitates the communication of information about the world:

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[124] Perry 1967, 6-7.
[125] Coles 1966.
[126] Minchin 2001.
[127] Schank and Abelson 1977; Herman 1997, 1047-1049.

> Because we all have a wide range of experiences in common, we have a large number of scripts in common. It is possible, therefore, that one person can communicate with another simply by making a brief reference to a script. It is not necessary to express all its details since both parties, it is assumed, already share this information. A speaker need only mention one key action from the scripted sequence and this so-called script-pointer activates the whole script in the mind of his or her listener.[128]

In employing type-scenes, storytellers tap into cultural patterns of understanding experience. Because these scripts seem so 'natural' to the members of the community in which they circulate, they serve as ready-made patterns for writers of fiction—that is, narratives whose purpose is, to varying extents, to make the reader believe in the plausibility of the world imaginatively constructed in the narrative. Type scenes thus reveal the shared cognitive blueprints of a universe that would seem realistic to readers and authors who share expectations about how the world is supposed to work. In order for the authors to successfully sustain the illusion that these invented stories are true, they must in fact adhere closely to their audience's assumptions of how the world works, since their narratives do not rest on independent facts.

A few general observations about the typical pattern of trials in the Greek novels are in order. Essentially, a trial scene consists of a verbal dispute between two parties, initiated by an accusation, judged by a third party who functions in an official capacity, witnessed by an audience, and entailing punishment or reward. The centerpiece of the trial scene is the contest of speeches, the ἀγὼν λόγων, a concept with deep roots in Greek thought that conditioned the readers' expectations of a trial scene.[129] The courtroom scene, like the ἀγὼν λόγων, highlights a clash of values and dramatizes social ideology. The expectation is that a trial is a zero-sum game, consistent with the imagery of athletic competition used in rhetorical treatises to classify types of arguments.[130] Regardless of the political setting, a prominent theme in the Greek novels is the public interest in private matters. The trial scene is a formula not only for the exposition of competing ideas, but also for the valorization of the moral position implicitly supported by the text.

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[128] Minchin 2001, 37.

[129] Lloyd 1992; Dubischar 2001; Barker 2009. Disputes and stories about competing claims to justice are nearly universal in human culture; see Nader 1997.

[130] Russell 1983, 136-141.

Trials are rhetorical moments *par excellence*; representations of trial scenes reflect an interest in dissecting the relationship between persuasion and truth.[131] Because the speeches are embedded in a broader narrative, the reader is given a context against which to gauge their truthfulness—i.e., the speeches' factual consistency with the facts of the narrative. This detailed, circumstantial framework renders the appreciation of speeches in fictional narrative as fundamentally different from the experience of reading the text of speeches alone and detached from any broader context. Both the Attic orations and the declamations were commonly included in the corpora of rhetorical education. In fiction, the novelist has the power to create in the reader's mind the illusion of objective truth. When there is a gap between the facts as laid out in the narrative and the accounts presented by the various parties to the trial, a space opens for detached observation of the use and misuse of rhetoric, such as the hollowness of an adversary's claims or the naïveté of an inexperienced speaker. The reader thus participates in the imaginative construction of a literary space of justice.

This study concentrates on those trials that are described in extensive detail and excludes a small number of legal actions only briefly alluded to in the narratives.[132] Because the focus of this book is on scenes that show the complete process of the law, summaries of trials mentioned only indirectly or in passing have been omitted.[133] Although there is some overlap between trials and other scenes of deliberation, the criterion of an accusation eliminates most of these.[134] Given these considerations, eleven full trial scenes are identified in the three novels that form the corpus of this study. A summary is shown in Table 1:

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[131] Ferrini 1991, 34, 42.

[132] A crude approximation of the relative prominence of trials in the five extant Greek novels is revealed in the frequency of justice-related words. A search using the string ΔΙΚ in the *Thesaurus Linguae Graecae* yielded a total of 373 separate passages (excluding false hits). Thirty-nine percent of all instances were found in the novel of Chariton, with Heliodorus (28 percent) and Achilles Tatius (24 percent) trailing close behind. Xenophon of Ephesus (3 percent) and Longus (14 percent) had fewer hits, not surprising given their relative brevity.

[133] Hägg 1971, 87-88. For a formal narratological definition of scene and summary, see Bal 1985, 104-106. Examples of summaries of trials are the trial imagined by the pirates in their debate concerning what to do about the kidnapped Callirhoe (C 1,10), and the trial briefly narrated to Clitophon by Menelaus, his traveling companion (AT 2,33).

[134] On debates in general, see the collection of articles in Pouderon and Peigney 2006.

Table 1. Overview of the Trial Scenes in Chariton, Achilles Tatius, and Heliodorus

	PARTIES	CRIME	VENUE	JUDGE	AUDIENCE	VERDICT
1	Hermocrates v. Chaereas (C 1,4-6)	Uxoricide	Agora of Syracuse	Jury court empaneled by magistrates	Demos	Not guilty
2	Chaereas v. Theron (C 3,4)	Tomb Robbery and Kidnapping	Theater of Syracuse	Magistrates?	Demos meeting as an assembly including women	Guilty; crucifixion.
3	Dionysius v. Mithridates (C 5,4-9)	Malfeasance	Special hall in royal palace in Babylon	Persian king	All of Babylon	Not guilty
4	Dionysius v. Chaereas (C 5,1-6,2)	Bigamy	Same as above	Same as above	Same as above	Dionysius is awarded Callirhoe.
5	Thersander v. Melite and Clitophon (AT 7,7,1-6)	Murder of Leucippe	Ephesus, a courtroom near temple of Artemis	Member of royal clan presiding over a council	Unspecified public	Clitophon is guilty; torture and execution.
6	Thersander v. Priest, Melite, Leucippe, Sostratus (AT 8,7-15)	Sacrilege	Same as above; grove on the temple precinct	Same as above; the gods	Same as above; Clitophon	Not guilty
7	Aristippus v. Cnemon (H 1,9-14)	Patricide	Athens	Demos	‘Everyone’	Guilty; sentenced to exile
8	Kinsmen of Demaenete v. Aristippus (H 1,14-17; 2,8-9)	Entrapment of Demaenete	Same as above	Same as above	Unspecified	Guilty; exile and property confiscation
9	Arsace v. Charicleia (H 8,8-15)	Poisoning of Cybele	Memphis, palace and outside the city walls	Persian nobles	Demos	Guilty; burning at the stake
10	Charicleia v. Hydaspes (H 10,9-17)	Infanticide, sacrilege	Meroe, pavilion on the plain, near altar	Gymno-sophists	Ethiopians	Not guilty; law abrogated by popular acclamation
11	Charicles v. Theagenes (H 4,17-21; 10,34-38)	Abduction	Same as above	Hydaspes	People and army of Meroe	Not guilty

The analyses that form the body of this study show that each trial scene is a rich and varied nexus of topoi. The representation of a trial in narrative is bounded by two events: a crime and a verdict. Although crime, arrest, and punishment are, strictly speaking, external to the courtroom proceeding, they are inseparable from it, as will become clear. In the Greek novels, the crime that sets a trial in motion is usually melodramatic: adultery, murder, kidnapping, or corruption. A description of the crime, usually committed in private, always precedes the account of the trial. This may seem self-evident; however, one only has to compare with the contemporary popular genre of 'procedural dramas', which present the audience with the hermeneutic challenge of solving a mystery along with professional detectives or attorneys.[135] In the Greek novels, by the time the trial begins, the reader already knows what happened. The effect of constructing the narrative of a trial in this way is to shift the focus to embedded narratives that retell the same story from different perspectives. The venue of the courtroom and the threat of punishment raise the stakes in the competition. The text is created for a culture that valued rhetorical inventiveness. The reader's pleasure comes not from solving a mystery but, as Photius observed, from seeing wrongdoers punished and the innocent vindicated—that is, in reinforcing the genre's moral position.[136]

Courtrooms are portrayed as bounded spaces where highly technical rules govern all action. Typically, an introductory phrase about the convening of the court serves to demarcate the trial scene from the rest of the narrative. Breaking the rules can lead to surprising reversals and challenge the efficacy of the judicial process. Variations across jurisdictions are a subject of interest to the novelists. Trials are set in Greek cities, as well as in the tribunals of kings and of imperial officials beyond the frontiers of the Greek world.[137] Intermediary officials also take part in trials: for example, Persian satraps are involved in trials, either as parties or facilitators. Crowds of spectators are omnipresent in the novels; they serve as the emotional wallpaper, an internal audience that, like a chorus in Greek drama, channels the response of the ideal reader to the events in the court. Eruptions of the crowd's joy, anger, astonishment, and pity punctuate the trial scenes. References to details of the spaces of courts, their personnel, and their procedures lend a realistic aura to the trial. It is not unexpected to find historical anachronisms and imprecise terminology in the escapist fantasies of the Greek novels, whose

[135] Harriss 2008.

[136] Photius *Bibliotheca* Cod. 166 [112a]; trans. Sandy 1989, 782.

[137] Mapping of the limits of the civilized world occupied Greek intellectuals of the Second Sophistic, see Richter 2011, 114-134.

purpose was not to document actual events, but to entertain and to propound a certain worldview.[138]

In the majority of scenes, the defendant is the male protagonist. Although there are instances of female protagonists on trial, they are more likely to be involved in trials insofar as their safety or marital status gives rise to legal actions. Villains, on the other hand, tend to be cast as accusers; less frequently does a protagonist initiate a lawsuit. Accusers are more likely to run away, or to kill themselves out of the view of the reader. Characters who are otherwise portrayed in a neutral or positive light assume the role of villain by virtue of their opposition to the hero in a trial scene. Sometimes the innocent protagonist is unjustly captured, enslaved, beaten, berated, or imprisoned. The level of violence during the arrest reflects the villain's animosity to the hero, and signals the moral polarity in the coming trial. A prison scene might serve as a hiatus in the narrative to allow the defendant to articulate his or her plan of action, a function that resembles the prison scenes in the acts of early Christian apostles and martyrs.[139] Generally, however, the narrative time between arrest and trial is minimal: typically, the imprisonment lasts only until the court opens the next morning.

The moral universe of the novels has little ambiguity. Seldom is there any doubt as to the guilt or innocence of the parties; therefore, chance and paradox destabilize the reader's expectations for the final outcome of the trial. Evidence and witnesses appear by chance at the last moment. A bereaved lover tries to commit suicide by falsely confessing to a capital crime. Parties to the trial lie, withhold information, and manipulate their opponents. Often the outcome of the trial is paradoxical. The novelists do their best to maximize the shock value of such upsets by placing them at critical moments and exaggerating the spectators' shock. Magic, amulets, and ordeals contribute to the atmosphere of uncertainty. Despite the expectation that the verdict will be a moment of truth, trials often confound or subvert justice, and thereby perpetuate the dramatic conflict.

Trials are rarely simple affairs; most are episodes in extended litigation. Their very complexity is the key to their entertainment value. Trials fail because certain dilemmas—particularly involving bigamy and adultery—are so difficult to untangle cleanly. Hence trials-by-ordeal, which function as a deus ex machina, are a convenient device to bring closure to extremely messy cases. If the defendant is convicted, the punishment becomes a moment of high drama. Modes of punishment are always painful and spectacular: torture, crucifixion, burning at the stake, and being hurled from a high place (*praecipitatio*). Sometimes the punishment is carried out; more usually it is interrupted at the last moment. The more spectacular

[138] On the use of entertaining narratives as a tool for edification of Christians, see Pervo 1987.
[139] Perkins 2002.

the punishment, the greater the pathos of the wrongly punished defendant. Justice is instead accomplished through other means such as miracles, religious tests, or trials by combat. Justice lies outside the parameters of the law and occurs on the level of 'Providence' or 'Fortune', terms that serve as code for plot.

The study of fictional trial scenes straddles the disciplines of history and literature. Beginning with a formal analysis of the trial scenes, I consider how each trial functions within the broader narrative. Next, I consider possible literary influences.[140] The interest in justice is in no way particular to the novels; there was a vast literature during the Second Sophistic that concern matters of the law. Tragedy and New Comedy also lend many motifs to the novels; this is apparent in the context of trial scenes that explore legally ambiguous situations that resonated with post-classical Greeks. Parallels from the rhetorical tradition, in the form of speeches delivered in actual cases as well as fictitious ones, are taken into account.[141] Once the generic conventions and possible literary influences have been noted, I assess whether or not the legal procedures and disputes portrayed in fiction are consistent with evidence of substantive and procedural law, mostly Roman but not excluding Greek legal customs and institutions. Details drawn from the contemporary world, when they do occur, seem to slip in unconsciously, taken for granted as presumably timeless features of everyday life that need no special explanation.[142] Because of the inherent elusiveness of interpreting fiction as a form of historical evidence, the structure of the present book reflects a conscious decision to focus upon an in-depth analysis of three novels, rather than a broader survey of Greek authors of the first four centuries C.E. Needless to say, the standard disclaimer in studies of the ancient world applies: because evidence is fragmentary the conclusions will be qualified rather than absolute. As I hope to show, trial scenes in the three novels that form the corpus of this study suggest the contours, sometimes distorted through the filter of cultural nostalgia, of the impact of legal reforms that occurred decades prior to the time of the texts' composition, upon the imagined community of the literate elite of the Greek East.

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[140] Perry 1967, 29. For a concise overview of the novels' literary parallels, see Fusillo 1991, 17-120; Ruiz-Montero 1996, 29-85.

[141] On ἀγῶνες in drama, see Duchemin 1968; Lloyd 1992; Scafuro 1997; Dubischar 2001.

[142] For example, the *eirenarch* in Xenophon of Ephesus; see Rife 2002.